



No. S095493
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

DENNIS JONES and SUSAN WILKINSON

Plaintiffs

AND:

ZIMMER GMBH, ZIMMER, INC., and
ZIMMER OF CANADA LIMITED

Defendants

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

AFFIDAVIT OF A. ANITA VERGIS

I, A. Anita Vergis, Barrister & Solicitor, of the City of Vancouver, in the Province of British Columbia, MAKE OATH AND SAY THAT:

1. I am a lawyer with Klein Lawyers LLP (formerly Klein Lyons LLP), counsel for the plaintiff class, and have personal knowledge of the matters referred to in this affidavit. Where a fact is not within my personal knowledge, I have stated the source of my information and I believe those facts to be true.

2. I make this affidavit in support of a motion to approve notice of a settlement approval hearing, and for the subsequent motion to approve the settlement of this class action. The plaintiff claims without prejudice settlement privilege in this affidavit, and does not consent to the use of this affidavit for other purposes.

A. Experience and Recommendation of Counsel

3. Klein Lawyers has specialized in the area of class action practice for more than 20 years. We were plaintiffs' counsel in the first class action certified in British Columbia, the first class action certified in Manitoba, and the first class action certified in Newfoundland & Labrador. Our managing partner, David A. Klein, is a past-president of the Trial Lawyers' Association of British Columbia. He is listed in Best Lawyers in Canada in the area of class action litigation, as Repeatedly Recommended by Lexpert in the field of class action litigation, and as a Local Litigation Star by Benchmark Canada. In 2014, Global Legal Experts named our lawyers as Appellate Law Firm of the Year. A copy of Mr. Klein's *curriculum vitae*, which details our class action experience, is attached as **Exhibit A**.

4. Based on our firm's experience, and for the reasons more fully set out below, we recommend the proposed settlement and ask that it be approved. We have weighed the risks and benefits of continued litigation against the certainty of timely compensation to class members through settlement. In the circumstances of this case, we believe it is in the interests of class members as a whole to accept this settlement.

5. Our firm has diligently litigated this case for seven years. We proceeded through a contested certification and appeal in British Columbia, a carriage motion in Ontario, and obtained certification in Ontario. We established a case management schedule in British Columbia that set a timetable for documentary and oral discoveries, the exchange of expert reports and trial. We have reviewed thousands of the Defendants' internal documents, many of them highly technical, and a substantial number of which we had to translate from German as a

Defendant, Zimmer GMBH, is based in Switzerland. We implemented a very successful notice program, and our staff interviewed over 1,000 class members who opted into these proceedings. We obtained and reviewed medical records for several hundred class members, and took steps to preserve the explanted devices as evidence for many class members. We attended three separate mediations before settlement talks finally began to bear fruit, culminating in the signature of a formal settlement agreement, which is attached to my affidavit as **Exhibit B** (the “Settlement Agreement”).

6. The Settlement Agreement was signed by our clients, by the Defendants, and by the provincial health insurers in November, 2015. The Merchant Law Group LLP (“Merchant”) participated in the negotiation and drafting of the Settlement Agreement on the basis that it had filed a proposed class action in Quebec. Merchant, however, sat on the Settlement Agreement for an extended period of many months, and its Quebec client, Mr. Wainberg, died on December 8, 2015. By reasons issued March 7, 2015, Mr. Justice Gouin of the Quebec Superior Court appointed a new plaintiff, Mr. Major, and new counsel, Trudel Johnston & Lesperance, to represent a proposed Quebec class. A certified English translation of Mr. Justice Gouin reasons is attached as **Exhibit C**.

7. Further to Mr. Justice Gouin’s decision, an Addendum to the Settlement Agreement was signed in April, 2016. This is attached as **Exhibit D**.

B. Benefits of the Settlement Agreement

8. In our view, the Settlement Agreement is a reasonable result. In particular, we highlight two key benefits of this Settlement Agreement. The first is that it arguably offers tort-level

recoveries. While any settlement is a compromise, accounting for litigation discounts, when one considers the circumstances of the typical class member, the compensation levels available under this settlement may not be that far removed from what could be achieved at trial.

9. The second benefit is that the Settlement Agreement provides a timely, “claims-made” process. The Defendants have agreed to pay fixed amounts to each class member who can satisfy certain medical criteria, regardless of how many class members come forward. This is distinguished from a “lump sum” settlement in which a defendant pays a global amount that must be divided among class members in some way. There are potential downsides to a lump-sum approach which this claims-made settlement avoids. Specifically, under this Settlement Agreement, class members will begin receiving compensation very soon after the settlement is approved by the courts, without any class members having to wait on the adjudication of other class claims before being paid, and no class member is at risk for proration.

(i) Compensation Levels

10. With respect to the first benefit, we believe that the compensation amounts available under the Settlement Agreement is reflective of what a typical class member might recover at trial if the class members were successful in proving their claims. The principal alleged injury in this case is premature revision surgery. This is a significant injury but it must be put into context as set out in the expert report and affidavit of Dr. Turgeon. No hip implant is perfect, many class members have other co-morbidities, and with enough time and wear, all hip implants eventually fail.

11. When an implant fails, revision surgery will often be necessary. This can be an unpleasant and challenging procedure which may lead to complications, but it can also be

relatively effective in restoring class member health and mobility after an interval of recuperation.

12. The typical class member receiving hip implant surgery will be older, and often retired at the time of revision surgery. From our review of class member medical records submitted to us, the median age of class members is 61. This is not to minimize the disruptive effect of such surgery, but the reality is that claims for economic loss for aging class members as a result of revision surgery will often be relatively modest.

13. The Settlement Agreement provides compensation for those who have undergone a single revision surgery without complication, with a base payment of \$70,000, plus up to \$6,000 for derivative claimants, plus certain payments of out-of-pocket expenses with receipts of up to \$2,500 or more, plus payment of provincial health insurer claims of \$15,000, plus refunds for class members who paid out-of-pocket for the device (approximately \$4,000). The total value of an uncomplicated revision may therefore be \$97,500.

14. The Settlement Agreement provides enhanced compensation for those who underwent revision surgery and suffered complications, or who had bilateral surgery, with a top base payment of \$130,000, plus payments to derivative claimants, payment of certain out-of-pocket expenses, plus potential refund of the device cost, and payment of provincial health insurer claims. When these added payments are considered, the maximum potential value of an individual claim under this settlement may exceed \$172,500.

15. Based on our interviews with class members, and the medical records we obtained from them, we expect that there will be several hundred class members who have had revisions.

Based on that review, we further expect that the majority of these revised class members will not have suffered complications.

16. To the best of our knowledge, there are no reported Canadian trial court decisions considering damage awards for a defective hip implant. There are, however, a variety of reported decisions involving injury to the hip where hip revision surgery was required. We have reviewed this case law. Damage verdicts in these cases ranged from a low of \$90,000 to a high of \$200,000 depending on the age of the plaintiff (with younger plaintiffs typically receiving higher non pecuniary damages), the complications suffered by the plaintiff, and the number of hip revisions the experts opined would be required by the plaintiff in the future.

17. In the personal injury cases we reviewed, the plaintiff had usually suffered additional trauma which extended beyond the hip, so these reported decisions provide an imperfect comparison to the present situation. Moreover, class members have a pre-existing injury to their hip, typically osteoarthritis, which made their initial hip implant surgery necessary. This pre-existing condition further weakens the comparative value of reported verdicts in personal injury lawsuits involving trauma to the hip.

18. The Settlement Agreement provides compensation of \$40,000 for class members who are unrevised and medically precluded from undergoing revision surgery. Based on our interviews with class members, review of medical records, and discussion with experts, we believe that the number of class members asserting such a claim will be rare. The settlement value for these claimants reflects, in part, the challenges in proof that such claimants would have. Specifically, the best evidence of a product failure is the revision surgery itself, and the operative report generated therefrom together with the explant. A class member who does not undergo revision

may ascribe their health problems to the failure of the device, and not to some other cause, but they will lack the results of a revision surgery to confirm their assertion.

19. The Settlement Agreement provides compensation of \$600 for class members who have not been revised. Such class members may have consulted a doctor to determine if there was a potential problem with their implant, but in the absence of a revision surgery, or a diagnosis that such surgery is required but is medically precluded, they may not have any other proof of an injury. In other words, the Defendants' implant will have arguably worked for them, and these individuals will not have proof of a premature product failure. There are several thousand class members who fall within this compensation category

(ii) The Claims-Made Process

20. An important feature of the Settlement Agreement is that class members will be paid the above amounts with no *pro rata* reductions from any over-subscription to the settlement, and each class member can be paid as soon as their claim has been adjudicated, without the need to wait on the adjudication of other class member claims. A lump sum settlement can sometimes create inordinate delays for class members, and put class members at the risk of proration.

21. I am advised by Mr. Klein and verily believe that the Vioxx class action settlement, which involved a lump sum, took three years to adjudicate individual claims with class members still waiting for their payments to be distributed, and the Celebrex/Bextra settlement, which was also a lump sum, was significantly over-subscribed resulting in a drastic proration reduction of claim payments.

22. The claims process is user-friendly and objective. The schedules to the Settlement Agreement, including the claim form and the list of eligibility requirements explain what medical

documentation and product identification is needed for a class member to establish a claim. Our firm has already gathered this information for hundreds of class members, and is available to assist class members in making claims.

C. The September 1, 2015 Eligibility Deadline

23. To be eligible for compensation as a revised claimant, class members must have undergone their revision surgery by September 1, 2015, or have at least scheduled the revision surgery for the removal of the Zimmer Durom implant by that deadline with such surgery to then occur by the final claims deadline.

24. The primary reason for the Eligibility Deadline is that while all hip implants may eventually fail for a variety of reasons, this litigation concerns the premature failure of the Defendants' implants by reason of a lack of bone adhesion. As set out in the report of our expert, Dr. Turgeon, such failure would be seen within the first 4.5 years of implantation. The published medical literature indicates that for patients who received the Defendants' implant and get past this 4.5 year threshold, the performance of the implants is quite good, and indeed, better than other comparator devices. In other words, if this case went to trial, class members who suffered an early failure of their implant may be able to prove product failure, but class members who suffered a late failure of the implant may not.

25. The Defendants' implant was sold in Canada between 2004 and 2010. Based on our investigations and documentary discovery, we have determined that the vast majority of the Defendants' sales of the product in Canada (84%) took place in 2008 or earlier, with limited sales in 2009, and a handful of sales in early 2010. This data is as follows:

Year	Number of Sales
2004	120
2005	475
2006	1046
2007	1294
2008	1186
2009	665
2010	142
Total	4,928

26. Thus, there will be no class members who received their implants less than 4.5 years before the Eligibility Deadline, and the average class member will have received their implant at least 8 years before the Eligibility Deadline, with some class members having had the implant for as much 11 years before the Eligibility Deadline.

27. The Settlement Agreement reduces the compensation by \$10,000 for class members who had the device implanted for more than 6 years prior to revision surgery, recognizing the added challenges that such class members might have in proving that their revision related to a product defect, and not for some other reason that might have occurred in any event.

28. A second reason for the Eligibility Deadline is to guard against the possibility of creating unintended incentives for class members. There was a risk to the defendant in agreeing to a claims-made settlement that class members might alter their behaviour to take advantage of the settlement. In this case, if the Eligibility Deadline was extended to some further date, class members with knowledge of available compensation levels might be influenced on whether to seek revision surgery.

29. During negotiations the Defendants made clear to us that the Eligibility Deadline was an essential term for them, for patient safety concerns and so that they could reasonably manage

their risk. Having considered the expert evidence in this case, we consider such a deadline to be reasonable.

D. The Costs, Risks and Duration of Continued Litigation

30. If the settlement is not approved, the matter will proceed, and move forward to trial. At the time of the third mediation, we had made substantial progress in completing documentary discoveries, and we were in the process of scheduling the oral discoveries. If there is no settlement, we will proceed to oral discoveries, the exchange of expert reports, and then the common issues trial. We would expect, subject to the court's availability, that a common issues trial in Vancouver could be held in 2018. The parties have disagreed as to the length of such a trial, with estimates ranging from 2 to 4 months.

31. The outcome of a common issues trial is uncertain. While we believe in our clients' case, we recognize that there is a risk the Plaintiffs would not be able to prove that the Defendants' product is defective, or that some class members would not be able to prove causation and damages at the individual damage assessment trials that would follow.

32. Following a common issue trial one or both parties could appeal. It is possible that the British Columbia Court of Appeal might resolve such an appeal by 2019. Thereafter, an appeal to the Supreme Court of Canada is possible. Such an appeal, if heard by the Supreme Court, might not be resolved until 2021.

33. Once appeals were dealt with, it would be necessary to conduct individual damages assessments. If the matter were fully litigated, there would be several hundred such mini-trials to

conduct across the country. Assuming we could do 4 mini-trials per month, it might take 5 or more years to complete these mini-trials. There is a right of appeal to both parties from each of these mini-trials.

34. As noted, the median age of class members is currently 61. Years of further litigation is not in their best interests.

E. Our Work in Advancing This Litigation

(i) Prosecution of the Jones Action

35. Our firm began investigating a potential class action concerning the Zimmer Durom Cup after we were contacted by our client, Dennis Jones in April, 2009. As we researched the matter during the spring of 2009, we began to receive calls from other clients who reported similar problems, including our client Susan Wilkinson, who first contacted us regarding her Zimmer hip implant on June 14, 2009.

36. A concern for us, as we started investigating this claim, was that while the Durom Cup had been recalled in the United States on July 22, 2008, it had not been recalled in any other country. Public statements by the Defendants at the time suggested that problems with the Durom Cup might be limited to the United States, and that the device manufactured for the U.S. market had a plasma spray coating that underwent additional processes in order to comply with US regulations that made it different from the device sold in Canada and in Europe.

37. I am advised by my colleague, Mr. Lennox, that Klein Lawyers LLP consulted several medical experts in British Columbia in the spring of 2009 to determine whether the problem with

the Durom Cup was limited to the United States, or whether Canadian doctors were also seeing excessive revision rates for this device. The feedback we received from these experts encouraged us to go ahead with a case, even though there had been no Canadian recall.

38. We filed the Jones Action on July 24, 2009. A copy of the Statement of Claim is attached as **Exhibit E**. The Jones Action was the first lawsuit in Canada regarding the Zimmer hip implant. Other Canadian law firms did not file such claims until over a year and a half later.

39. On October 13, 2009, an Urgent Urgent Field Safety Notification was issued for the Durom Cup with European regulators. On November 15, 2009, a recall notice for the Durom Cup was posted on Health Canada's website.

40. I am advised by Mr. Klein that the Statement of Claim in the Jones Action was promptly filed with the National Class Action Database of the Canadian Bar Association, and also posted to our firm's website in accordance with the practice direction given by courts across the country in respect of national class actions.

41. The Jones Action was diligently prosecuted from its commencement. An appearance for the Defendants, Zimmer Inc., and Zimmer of Canada Limited was entered by their counsel, Fasken Martineau DuMoulin on August 5, 2009. The Defendant, Zimmer GMBH, is a resident of Switzerland and service on this Defendant was effected under the Hague Convention through the Swiss authorities, which took time to complete.

42. A Request for Assignment of Judge was filed by the Plaintiffs with the British Columbia Supreme Court in the Jones Action on November 24, 2009. A case conference was scheduled by the court for April 13, 2010. This was rescheduled by mutual agreement of the parties to May 12, 2010. The Plaintiffs delivered their certification record on May 27, 2010. The parties could

not agree on a schedule, and so a scheduling motion was argued on June 1, 2010, resulting in reasons issued June 25, 2010. This established the following schedule:

- (a) The Defendants were required to deliver their responding materials on class certification by October 1, 2010;
- (b) The Plaintiffs then had until November 6, 2010 to deliver any reply affidavits, and their argument;
- (c) The Defendants were required to deliver their argument by December 10, 2010;
- (d) The Plaintiffs were to deliver any reply argument by January 7, 2011; and
- (e) The certification hearing was to commence on February 7, 2011.

43. The matter proceeded as scheduled with one variation. The Defendants brought a motion for production of additional medical records from the Plaintiffs. This was heard before Madam Justice Loo on September 13-14, 2010. Madam Justice Loo denied the Defendants' motion on September 23, 2010.

44. Class certification was argued before Mr. Justice Bowden on February 7-9, and April 26, 2011. Mr. Justice Bowden released reasons certifying the class action on September 2, 2011. A copy of Mr. Justice Bowden's certification order is attached as **Exhibit F**.

45. The Defendants appealed class certification. Their Notice of Appeal was filed on September 30, 2011. Their appeal factum was delivered on December 28, 2011. Our responding factum was delivered on January 31, 2012. The appeal was heard by the British Columbia Court of Appeal on May 29 and 30, 2012. Their appeal was dismissed on January 22, 2013.

46. On December 9, 2011, the Defendants filed their defence to the Jones Action. This is attached as **Exhibit G**.

47. On April 23, 2012, a case management conference was held before Mr. Justice Bowden, and a case management order was issued, setting a schedule for documentary and oral discovery, the exchange of expert reports, and trial. This case plan order is attached as **Exhibit H**.

48. The parties commenced documentary discoveries in June 2012. I am advised by Mr. Lennox, that the Defendants have produced over 140,000 documents in the Jones action. Our firm has devoted substantial resources to the review and organization of those documents. As the Defendant, Zimmer GmbH is a Swiss based company, many key documents are written in German. Our firm hired a German speaking lawyer on contract to help us review Zimmer's documentary productions.

49. We brought several applications before Mr. Justice Bowden dealing with the Defendants' documentary productions, including an application requiring the Defendants to disclose the transcripts of testimony of its witnesses in related litigation in the United States. The Defendants ultimately conceded to this request, and we have had access to, and reviewed the testimony of 18 of the Defendants' employees based in the United States and Switzerland.

50. On April 24, 2014, the Plaintiffs served their Notice of Appointment to Examine for Discovery, with oral discovery of the Defendants set to commence on August 19, 2014.

51. We retained experts to assist with this litigation. In particular, we have had the assistance of Dr. Nizar Mohammed, the head of orthopedic surgery at Toronto Western Hospital, Dr. Thomas Turgeon, a professor of orthopedic surgery at the University of Manitoba, and Mr. Stan North, a regulatory consultant with decades of experience assisting medical device companies to comply with Health Canada requirements.

52. The Jones Action had been scheduled for trial beginning on September 21, 2015. As both parties were making reasonable progress towards finalizing a settlement agreement, the parties sought and obtained an adjournment of the trial from Justice Bowden on May 29, 2015.

(ii) The Notice Program

53. On June 26, 2013, Mr., Justice Bowden issued an order approving notice of class certification. This is attached as **Exhibit I**.

54. The notice order required 95 hospitals across Canada to notify their patients who received Zimmer Durom Cup hip implants of the Jones class action. This list of hospitals, which is at Schedule A to the notice order, has been redacted at the Defendants' request, pursuant to a confidentiality order, dated July 15, 2013, which is attached as **Exhibit J**.

55. The majority of hospitals across Canada promptly complied with the notice order, and did not raise any jurisdictional concerns. A handful of hospitals in Ontario and Quebec requested that homologation orders be obtained in those jurisdictions before complying with the notice order. Accordingly, a homologation order was obtained from the Ontario court on September 13, 2013 and from the Quebec court on October 22, 2013. These are attached as **Exhibit K** and **Exhibit L**.

56. Pursuant to the notice order, the hospitals were required to report back to us as to their efforts to notify patients. The hospitals advised that they had identified and mailed the notice to 3,423 patients across Canada, and that 85 letters containing the notice had been returned due to a non-current address.

57. The notice to Quebec residents was sent in English and in French. A copy of the bilingual notice is attached as **Exhibit M**.

58. In response to the notice program, a total of 1,102 opt-in requests have been delivered in the Jones Action from across Canada.

59. Based on our professional experience, we believe that the notice program was highly effective. In particular, the notice program achieved three important objectives necessary to the successful prosecution of this lawsuit. These are:

- (a) It notified Canadians of their right to participate in the class action;
- (b) It assisted Canadians in learning about the recall of the product so that they could seek medical attention, and ameliorate their injuries; and
- (c) The notice program allowed us to gather data about the performance of the Defendants' hip implants. At the certification hearing, the Defendants had argued that the failure rate in Canada for this product was very low, and that the product was therefore not defective. It can be difficult for plaintiffs to challenge such a statement by a defendant because there is no mandatory reporting system in Canada to track hip implant performance, unlike in other countries. While the Canadian Institute for Health Information maintains the Canadian Joint Replacement Registry ("CJRR"), participation by Canadian doctors in this registry is voluntary and very low (in Quebec, for example, only about 20% of doctors report hip implant failures to the registry). Furthermore, the Canadian registry does not track product failures by manufacturer, unlike in other

countries. An effective national notice campaign helped us develop product failure evidence for trial, to the benefit of class members across Canada.

60. We have been able to work with the Quebec Ministry of Health (“RAMQ”) to verify the success of our notice program. While most provinces are not equipped to independently track how many revision surgeries they have paid for, RAMQ does have this ability. RAMQ has informed us that, as of January 13, 2016, it had paid for revisions for 192 patients who received Durom Cup implants. We have cross-referenced RAMQ’s data with our list of opt-in requests from Quebec, and we can account 146 of these individuals as having opted into the Jones Action. We have cross-referenced another 21 individuals to RAMQ’s list based on court filings in individual lawsuits brought in Quebec by the Kugler Kandestin firm. Thus, even before notice of a settlement, we are able to account for 87% of revision cases in Quebec as having come forward to assert a claim in this class action (146) or by way of individual lawsuits (21). In our experience, this is a high participation rate, and although data from other provincial health ministries is not available to verify this, we see no reason why other provinces would not have similarly strong participation rates.

61. The original deadline for Canadians to opt into the Jones class action was December 31, 2013. Because we continued to receive opt in requests, this deadline was extended by Justice Bowden to June 1, 2015, by order dated May 29, 2015. This order is attached as **Exhibit N**.

62. Members of our staff have interviewed every class member who delivered an opt-in form. To date, we have received signed retainer agreements for 332 clients, and we have collected medical records for nearly all of these retained clients.

63. Furthermore, we have taken steps to prevent the spoliation of evidence necessary to prove class member claims, including helping clients to preserve and store explanted hip implants.

64. Pursuant to our settlement negotiations with the Defendants, we have regularly sent them copies of class members' medical records, on a without prejudice basis, so that they have information as to the claims they are facing.

(iii) The McSherry Action

65. On August 10, 2010, our firm filed the McSherry Action in Ontario. To my knowledge, this was the first Zimmer Durom Cup action filed in Ontario.

66. On July 13, 2012, Mr. Justice Perell of the Ontario Superior Court of Justice granted carriage to the McSherry Action and stayed competing class actions filed by other firms in the province. This order is attached as **Exhibit O**.

67. Thereafter, we prosecuted the McSherry Action, and achieved class certification on September 24, 2014. A copy of the certification order is attached as **Exhibit P**.

(iv) Opt-Out Requests

68. Our firm received a total of 15 opt-out requests with respect to the Jones Action and 36 opt-out requests with respect to the McSherry Action. Two individuals opted out of both the Jones Action and the McSherry Action. Lists of these opt-outs, and their counsel, are attached at **Exhibits Q and R** respectively.

F. Actions Filed by Other Counsel

69. Merchant filed eight proposed class actions concerning the Zimmer Durom Cup in various provinces. None of these cases have been certified. They are as follows:

(a) *D'Anna v. Zimmer Inc., et al*, Ontario Superior Court of Justice, Court File No. CV-10-0005293-10, filed November 22, 2010. Status: stayed by order of Justice Perell.

(b) *Schmidt c. Zimmer Inc. et al*, Quebec Superior Court, Court File No. 500-06-000539-102, filed November 26, 2010. Status: discontinued.

(c) *Wainberg c. Zimmer GMBH et al*, Quebec Superior Court, Court File No. 500-06-000543-104. Filed December 10, 2010. Status: Wainberg removed as plaintiff by order of Mr. Justice Gouin on March 7, 2016.

(d) *Day v. Zimmer Inc. et al*, Alberta Court of Queen's Bench, Court File No. 1001-16627, filed September 28, 2010. Status: not certified.

(e) *Nicoles v. Zimmer Inc., et al*, New Brunswick Court of Queen's Bench, Court File No. MC093140, filed November 19, 2010. Status: not certified.

(f) *Manning v. Zimmer Inc., et al*, Supreme Court of Nova Scotia, Court File No. 340390, filed November 12, 2010. Status: not certified.

(g) *Ducharme v. Zimmer Inc., et al*, Ontario Superior Court of Justice, Court File No. 53708/12, filed May 2012. Status: stayed by order of Justice Perell.

(h) *Przybilla v. Zimmer Inc., et al*, Saskatchewan Court of Queen's Bench, File No. QB 1758 of 2014, filed December 31, 2014. Status: not certified.

70. We understand that several firms have filed individual lawsuits in Canada concerning the Zimmer Durom Cup. These include Kugler Kandestin in Quebec, Rochon Genova LLP, Gillespie Law Office, and Will Davidson LLP in Ontario, and Osborne Cane in British Columbia. To the best of our knowledge, these various individual lawsuits remain unresolved. Three individual lawsuits commenced by Will Davidson LLP were subsequently referred to us, and have been folded into the McSherry Action. It is my understanding that the Plaintiff in the Osborne Cane lawsuit plans to be part of the Jones Class Action.

G. Mediation

71. I am advised by Mr. Klein that a mandatory mediation was held in the Jones Action under British Columbia's mediation rules on March 7, 2012. The mediation was held in Toronto before Mr. Justice George Adams, a retired judge of the Ontario Superior Court of Justice. Our clients, Ms. Wilkinson and Mr. and Mrs. McSherry attended the mediation, traveling considerable distances to do so. We filed a detailed brief at the mediation, supported by expert opinion, medical literature and medical records. The mediation was adjourned.

72. I am advised by Mr. Klein that a second mediation was held in the Jones Action on July 30 and 31, 2013, also in Toronto, and also before Mr. Justice George Adams. Again, our clients, Ms. Wilkinson and Mr. and Mrs. McSherry, traveled great distances to attend the mediation. We added a further client to the mediation session, Mr. Emond, who resides in Toronto. Again, we

filed a detailed brief, updating the work and evidence we had obtained since the last mediation session.

73. This second mediation was not successful. A third mediation was held before Justice Adams in Toronto on June 4 and 5, 2014. Our clients, Mr. and Mrs. McSherry, and Mr. Emond attended the mediation. Ms. Wilkinson was available by telephone. Again, we filed a detailed brief, presenting additional evidence we had obtained through continued litigation.

74. An agreement-in-principle was reached at the mediation. It was then necessary to convert this understanding into a formal agreement. A drafting session was held in Chicago on November 13, 2014 for that purpose.

75. Ultimately, a formal settlement agreement was finalized, and has been signed by the parties.

H. Durom Cup Litigation Other Countries

76. When considering the risks of continued litigation, it is instructive to look at the experience of plaintiffs in other countries with Zimmer Durom Cup lawsuits. In its Annual Report for 2014, Zimmer Holdings Inc., reports that it had paid \$471.7 million to settle Durom Cup lawsuits. It is our understanding that these settlement payments relate primarily to U.S. litigation, although we are aware from my colleague, Mr. Lennox's discussions with lawyers in Australia and England that claims against Zimmer in respect of the Zimmer Durom Cup have been brought in those countries well. Zimmer's Annual Report does not provide any breakdown of settlement figures that would allow an evaluation of per-claimant values, and we

understand that settlements Zimmer reached in other countries as of the date of its 2014 Annual Report are confidential.

77. We are aware from U.S. court filings that Zimmer reached a proposed public settlement of remaining Durom Cup litigation in that country on March 11, 2016. This proposed U.S. settlement is attached as **Exhibit S**.

78. While the Settlement Agreement in this Canadian proceeding was negotiated prior to, and without knowledge of the proposed public U.S. settlement, there are nevertheless similarities to the agreements. The compensation amounts available under the U.S. settlement are somewhat higher than in Canada, but when one considers the potentially higher verdicts available from U.S. juries, and when one also considers the higher health care costs U.S. plaintiffs must pay as a lien from any settlement, the amounts available under the Canadian agreement appear reasonable.

79. We understand that 4 individual lawsuits concerning the Zimmer Durom Cup have gone to verdict in the United States. The plaintiffs in that country have not done well in the cases that went to trial, as opposed to settled. There have been three defence verdicts, and one plaintiff verdict. These cases are as follows:

- (a) *Pugliese v. Zimmer Inc.*, Illinois Circuit Court, December 2014, Defence verdict;
- (b) *Brady v. Zimmer Inc.*, May 2015, United States District Court for the District of New Jersey, Defence verdict;

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David A. Klein
Barrister & Solicitor

- Partner, Klein Lawyers, Vancouver, B.C.
- Member of the British Columbia (1992), Ontario (1980) and Washington State Bars (1995)
- Recognized by Lexpert Survey each year for the past 14 years as a Repeatedly Recommended Lawyer in Class Action Litigation
- Listed in Best Lawyers in Canada as leading counsel in Class Action Litigation
- Appeared as Counsel in the Superior Courts of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Newfoundland & Labrador, and Yukon

Professional and Community Activities

Trial Lawyers Association of British Columbia

- President 1998 – 1999
- Treasurer 1997 – 1998
- Secretary 1996 – 1997
- Executive Member 1994 – 1996
- Seminar Planning Committee 1998 – 1999
- No-Fault Committee 1997 – present
- Mandatory Mediation Committee 1998 – present
- Delegate, Attorney-General's Justice System Consultation, 1999;

Member, Auto Insurance Committee, Canadian Bar Association, BC Branch, 1998 – 2004

Member, Vice-Chair and Chair, Board of Directors, Fraser Academy School, 1995 – 1998

Member, Board of Directors, St. John's School, 1998 – 2004

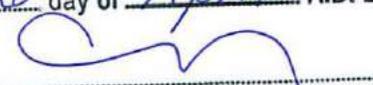
Member, Board of Directors, B.C. Automobile Insurance Consumer Rights Foundation, 1998 – present

Member, Attorney-General's Planning Committee for Community Forums on Justice, 1999 – 2000

Periodic consultations with:

- Ministry of Attorney General, Policy and Planning, re: Class Proceedings Act
- Ministry of Attorney General, Dispute Resolution Office, re: mandatory mediation
- Supreme Court of British Columbia, Rules Committee, re: Rules Amendments for class proceedings
- Public Guardian and Trustee, re: protection of persons with legal disabilities in class proceedings

This is Exhibit "A" referred to in the affidavit of A. ANITA VERGAS sworn before me at Vancouver in the Province of British Columbia this 20th day of April A.D. 2016


A Commissioner for taking Affidavits
for British Columbia

Significant Cases

Plaintiffs' counsel in first class action certified in British Columbia: *Harrington v. Dow Corning Corp.*, (1996) 22 B.C.L.R. (3d) 97 (S.C.); affirmed (2000) 193 D.L.R. (4th) 67, 2000 BCCA 605

Plaintiffs' counsel in first class action certified in Newfoundland & Labrador: *Pardy v. Bayer Inc.*, 2004 NLCTD, 72; leave to appeal denied 2005 NLCA 20, [2005] N.J. No. 122

Plaintiffs' counsel in first class action certified in Manitoba: *Walls v. Bayer Inc.*, (2005) 189 Man. R. (2d) 262, 2005 MBQB 3; leave to appeal denied 2005 MBCA 93, [2005] M.J. No. 286

Plaintiffs' counsel in first prospectus misrepresentation class action certified in Canada: *Pearson v. Boliden Ltd.*, (2001) 94 B.C.L.R. (3d) 133, 2001 BCSC 1054

Plaintiffs' counsel in first tobacco class action certified in Canada: *Knight v. Imperial Tobacco Canada Ltd.*, (2005) 250 D.L.R. (4th) 347, 2005 BCSC 172; affirmed 2006 BCCA 235

Appointed by Justice Brockenshire of the Ontario Superior Court to represent the interests of British Columbians in national class action for recipients of defective pacemakers: *Nantais v. Telectronics Canada Inc.*

Appointed by Justice Blair of the Ontario Superior Court to represent the interests of British Columbians infected with hepatitis C tainted blood in Red Cross insolvency proceedings: *In Re The Canadian Red Cross Society*

Appointed by Justice Cumming of the Ontario Superior Court to represent the interests of British Columbians in national class action for persons injured by diet drugs (fen-phen): *Wilson v. Servier Canada Inc.*

Plaintiffs' counsel in over 25 certified class actions in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Newfoundland & Labrador:

- silicone gel breast implants: *Harrington v. Dow Corning Corp.*, (1996) 22 B.C.L.R. (3d) 97 (S.C.); affirmed (2000) 193 D.L.R. (4th) 67, 2000 BCCA 605
- silicone gel breast implants – certification of out-of-province residents: *Harrington v. Dow Corning Corp.*, (1997) 29 B.C.L.R. (3d) 88 (S.C.); affirmed (2000) 193 D.L.R. (4th) 67, 2000 BCCA 605
- defective jaw implants: *Sawatzky v. Society Chirgicacale Instrumentarium Inc.* 71 BCLR (3d) 51
- securities misrepresentation: *Fischer v. Delgratia Mining Corp.* [1999] B.C.J. No. 3149 (S.C.)

- securities misrepresentation: *Delf v. Merit Energy Ltd.*, (10 July 2000) Calgary, Action No. 0001-01899 (Alta. Q.B.)
- hydro dam flood: *Pausche v. B.C. Hydro et al.*, 2000 BCSC 1556; affirmed 2002 BCCA 62
- securities misrepresentation: *Pearson v. Boliden Ltd.* (2001) 94 B.C.L.R. (3d) 133, 2001 BCSC 1054
- harmful diet drugs (Pondamin & Redux): *Wilson v. Servier Canada Inc.* (2001) 11 C.P.C. (5th) 374, [2001] O.J. No. 1615 (Ont. Sup. Ct.)
- hepatitis C tainted blood: *Killough v. Canadian Red Cross Society* (2001) 91 B.C.L.R. (3d) 309, 2001 BCSC 1060
- e-coli outbreak from tainted meat products: *Knudson v. Consolidated Food Brands Inc. (c.o.b. Fleetwood Sausage)* 2001 BCSC 1837, [2001] B.C.J. No. 2902
- salmonella food poisoning outbreak: *Dalhuisen (Guardian ad litem of) v. Maxim's Bakery Ltd.*, 2002 BCSC 528, [2002] B.C.J. No. 729
- retiree benefits (4 actions): *Andrews v. Air Canada and Air Canada Regional Inc. d.b.a. Airbc* (26 February 2003) Vancouver Registry, S014583 (B.C.S.C.)
- hepatitis A food poisoning outbreak: *Fakhri v. Alfafa Canada, Inc. (c.o.b. Capers Community Market)*, (2003) 26 B.C.L.R. (4th) 152, 2003 BCSC 1717; affirmed (2004) 34 B.C.L.R. (4th) 201, 2004 BCCA 549
- faulty fuel additive: *Young v. Shell Canada Ltd.* (12 December 2003) Vancouver Registry, L021060 (B.C.S.C.)
- defective cholesterol drug (Baycol): *Pardy v. Bayer Inc.*, 2004 NLSCTD, 72; leave to appeal denied 2005 NLCA 20, [2005] N.J. No. 122
- faulty fuel additive: *Pinkson v. Shell Canada Ltd.*, [2004] O.J. No. 42 (Ont. Sup. Ct.)
- defective cholesterol drug (Baycol): *Walls v. Bayer Inc.*, (2005) 189 Man. R. (2d) 262, 2005 MBQB 3; leave to appeal denied 2005 MBCA 93, [2005] M.J. No. 286
- deceptive marketing of light cigarettes: *Knight v. Imperial Tobacco Canada Ltd.*, (2005) 250 D.L.R. (4th) 347, 2005 BCSC 172; affirmed 2006 BCCA 235
- pension surplus: *Williams v. B.C. College Pension Board of Trustees*, 2005 BCSC 788, [2005] B.C.J. No. 1211

- failure to sterilize hospital instruments: *Rideout v. Health Labrador Corp.*, 2005 NLTD 116, [2005] N.J. No. 228
- pension surplus: *Ruddell v. B.C. Rail Ltd.*, 2005 BCSC 1504
- pension surplus: *Lieberman and Morris v. Business Development Bank of Canada*, 2005 BCSC 389; 2005 BCCA 268; 2006 BCSC 242
- securities misrepresentation: *Jeffrey v. Nortel Networks*, 2007 BCSC 69
- failure to make injury claims for children in government care: *T.L. v. Alberta (Director of Child Welfare)*, 2006 ABQB 104; 2008 ABQB 114, affirmed 2009 ABCA 182
- securities misrepresentation: *Bellan v. Curtis*, 2007 MBQB 221
- institutional abuse of mentally disabled children: *Richard v. HMTQ*, 2007 BCSC 1107; 2008 BCSC 1275; 2009 BCCA 77; 2010 BCSC 773; 2011 BCSC 1490
- contaminated contact lens solution: *Chalmers v. AMO Canada Company*, 2009 BCSC 689; 2010 BCCA 560
- faulty breast cancer testing: *Doucette v. Eastern Regional Health Authority*, 2010 NLTD 29
- pain control pumps: *Schroeder v. DJO Canada Inc.*, 2010 SKQB 125, affirmed 2011 SKCA 106
- defective hip implants: *Jones v. Zimmer GMBH*, 2010 BCSC 897; 2010 BCSC 1504; 2011 BCSC 1198; 2013 BCCA 21; *McSherry v. ZimmerGMBH*, 2012 ONSC 4113
- dermal fillers: *Logan v. Dermatech, Intradermal Distribution*, 2011 BCSC 1097
- hair loss medication side effects: *Miller v. Merck*, 2013 BCSC 1652
- Paxil birth defects: *Bartram v. GlaxoSmithKline*, 2012 BCSC 1804

Author

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Creating an Advertising Plan, Trial Lawyers Association of British Columbia, Vancouver, BC, February 1994.

Class Actions: A New Opportunity for Creative Counsel, The Continuing Legal Education Society of British Columbia, Vancouver, BC, November 1995.

Winning An MVA Case, Trial Lawyers Association of British Columbia, Vancouver, BC, December 1995.

Turn Lead Into Gold – Ten Ways to Change a Losing Case Into a Winner, Trial Lawyers Association of British Columbia, Vancouver, BC, December 1995.

Personal Injury Class Actions and A Primer on British Columbia's Class Proceeding Act, Trial Lawyers Association of British Columbia, Vancouver, BC, January 1996.

Breast Implant Litigation in Canada, Association of Trial Lawyers of America, New Orleans, Louisiana, February 1996.

Class Actions: Pitfalls and Opportunities, Trial Lawyers Association of British Columbia, Vancouver, BC, March 1997.

The Future of Motor Vehicle Litigation in British Columbia, Trial Lawyers Association of British Columbia, Vancouver, BC, November 1997.

Class Actions & Mass Tort Litigation, Faculty of Law, University of British Columbia, Vancouver, BC, March 1998.

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Mandatory Mediation is Here, Trial Lawyers Association of British Columbia, Vancouver, British Columbia, March 1998.

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Diet Pill Litigation in Canada, Association of Trial Lawyers of America, Annual Convention, Chicago, IL., July 2000.

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Vaccine Litigation in Canada, Mealey's Vaccine Litigation Conference, Philadelphia, PA, March 18-19, 2002.

What Makes a Good Class Action – The Plaintiffs' Perspective, The Canadian Institute, Litigating Class Actions, Calgary, Alberta, May 29, 2002.

Class Actions in British Columbia - A Year in Review, The Canadian Institute – Litigating Class Actions, Toronto, Ontario, September 26 – 27, 2002.

Thimerosal Litigation in Canada — Mealey's Thimerosal-Containing Vaccines Conference, West Palm Beach, Florida, December 3, 2002.

An Introduction to Class Actions; Costs in Class Actions; The Year in Review, BC., Manitoba Bar Association Mid Winter Conference, January 31, 2003.

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Cross-Canada Certification Update: What's Being Certified, What's Not – And Why, Litigating Class Actions, The Canadian Institute, Toronto, Ontario, September 30 & October 1, 2003.

Shareholder Class Actions, Insight Seminars, Corporate Governance Conference, Calgary, Alberta, December 1 – 2, 2003.

Litigating Class Actions: The Continental Divide: Emerging Differences Between British Columbia and Ontario Class Actions, The Canadian Institute, Toronto, Ontario, September 26, 2004.

Sharing the Load: How to Set Up Partnering Arrangements in Class Actions, Continuing Legal Education Society of British Columbia, Class Actions 10th Anniversary, February 25, 2005.

The New Battleground: Class Actions in Employment Law Across Canada, Insight Seminars, Vancouver, B.C., March 1, 2005

Vioxx and Celebrex Litigation, Continuing Legal Education Society of British Columbia, Personal Injury Conference, May 27, 2005

Vioxx Litigation in Canada, The Lawyers Weekly, July, 2005

Backburners and Bellwethers: Comparing Class Actions and Test Cases, The Canadian Class Action Review: Volume 2, No. 1, July 2005

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Class Actions: What to Seek and What to Expect on Costs, Osgoode Hall National Symposium on Class Actions, Toronto, Ontario, April 7, 2006.

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Canadian Product Liability Law, Association of Trial Lawyers of America, Seattle Washington, July 18, 2006

Partial Settlements of Class Actions, The Canadian Class Action Review: Volume 3, No. 2, July 2006

A Plaintiff's Perspective on Securities Class Action Lawsuits in Western Canada, Professional Liability Underwriting Society, Vancouver, British Columbia, February 8, 2007

Harnessing Doctors' & Lawyers' Skills in the Medico-Legal Setting, Trial Lawyers Association of British Columbia, Vancouver, British Columbia, March 30, 2007

Defeating Class Actions Prior to Certification: A Plaintiff's Perspective, Insight Seminars: Class Actions Litigation, Toronto, Ontario, September 17, 2007

Class Action Cost Regimes Across Canada, Osgoode Class Actions Symposium, Toronto, Ontario, April 10, 2008

Class Actions Against Government Defendants, Canadian Institute: Litigation Against the Crown, Toronto, Ontario, June 23, 2008

Fiduciary Duties for Pension Trustees, Federated Press: Essential Skills for Pension Committee Members, Vancouver, British Columbia, November 24, 2008

Assessing and Managing Conflicts of Interest, Pension Law and Litigation, Vancouver, British Columbia, April 20, 2009

Managing Conflict in Multi-Jurisdictional Class Actions, Continuing Legal Education Society of British Columbia: Western Canadian Class Actions Conference, Vancouver, British Columbia, November 20, 2009

Assessing & Managing Conflicts of Interest, Federated Press: Pension Law & Litigation Course, Vancouver, British Columbia, March 17, 2010

Class Action Defence Tactics to Watch Out For, Canadian Education Track, AAJ Annual Convention, Vancouver, British Columbia, July 11, 2010

Electronic Production in Complex Litigation, Electronic Evidence Section, AAJ Annual Convention, Vancouver, British Columbia, July 12, 2010

Latest Developments and Strategies in Class Actions, Insight Information: Complex Litigation Management, Vancouver, British Columbia, November 17, 2010

The Role of U.S. lawyers in Canadian Class Action Litigation, American Association for Justice, Class Action Litigation Group: Annual Convention, New York, New York, July 9, 2011

Challenges in Representing Clients with Intellectual Disabilities – The Woodlands Experience, Social Justice Conference, Vancouver, British Columbia, October 1, 2011

The Judge's Role in Adjusting Class Action Settlements, Osgoode Hall Symposium on Class Actions, Toronto, Ontario, April 26, 2012

Creative Remedies in Tort Actions, Canadian Education Track, AAJ Annual Convention, Chicago, July 29, 2012

Comprehending the Key Differences in Class Actions Against Government, Canadian Institute: Class Actions Litigation, Toronto, September 21, 2012

Class Action Ethics, Continuing Legal Education Society of British Columbia: Western Canadian Class Actions Conference, Vancouver, January 25, 2013

Class Actions Against Governments, Continuing Legal Education Society of British Columbia: Suing and Defending the Government, Vancouver, November 1, 2013

Who's On First: Control of the Class Action, Osgoode Hall Symposium on Class Actions, Toronto, Ontario, April 24, 2014

Introduction to Class Actions, Law Foundation of British Columbia: Systemic Advocacy Workshop, Vancouver, December 11, 2014

**CANADIAN DUROM ACETABULAR HIP IMPLANT CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

Between

DENNIS JONES and SUSAN WILKINSON

(the "British Columbia Plaintiffs")

and

GLORIA MCSHERRY

(the "Ontario Plaintiff")

and

BEN WAINBERG

(the "Quebec Plaintiff")

and

ZIMMER GMBH, ZIMMER, INC., ZIMMER BIOMET HOLDINGS, INC. (FORMERLY
KNOWN AS ZIMMER HOLDINGS, INC.), and ZIMMER OF CANADA LIMITED

(the "Defendants")

This is Exhibit B referred to in the
affidavit of A. ANITA VERGIS
sworn before me, this 20th
day of April 2016


A COMMISSIONER, ETC.



**CANADIAN DUROM ACETABULAR HIP IMPLANT CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

RECITALS

- A. **WHEREAS** the British Columbia Plaintiffs commenced Action No. S095493 ("the BC Proceeding") in the British Columbia Court alleging that the Defendants marketed a defective hip implant known as the Durom Acetabular Component ("Durom Cup");
- B. **AND WHEREAS** Susan Wilkinson was appointed as representative plaintiff in the BC Proceeding;
- C. **AND WHEREAS** the Ontario Plaintiff commenced Action No. CV-10-40836500 CP ("the Ontario Proceeding") in the Ontario Court alleging that the Defendants marketed a defective hip implant known as the Durom Cup;
- D. **AND WHEREAS**, with the consent of the Defendants in relation to this Settlement Agreement, Gloria McSherry was appointed as representative plaintiff in the Ontario Proceeding;
- E. **AND WHEREAS** the Quebec Plaintiff commenced Action No. 500-06-000543-104 ("the Quebec Proceeding") in the Quebec Court alleging that the Defendants marketed a defective hip implant known as the Durom Cup;
- F. **AND WHEREAS** no representative plaintiff has been appointed in the Quebec Proceeding;
- G. **AND WHEREAS** the Defendants deny liability in respect of the claims alleged in the Proceedings, and believe that they have good and reasonable defences in respect of the merits in the Proceedings;
- H. **AND WHEREAS** the Defendants assert that they would actively pursue these defences in respect of the merits at trials if the British Columbia Plaintiff, the Ontario Plaintiff, or the Quebec Plaintiff continued the Proceedings against them;
- I. **AND WHEREAS** the Parties have negotiated and entered into this Settlement Agreement to avoid the further expense, inconvenience, and burden of this litigation, and to achieve final resolution of all claims asserted or that could have been asserted against the Defendants by the British Columbia Plaintiff on her own behalf and on behalf of the class she represents, the Ontario Plaintiff on her own behalf and on behalf of the class she represents, the Quebec Plaintiff on his own behalf and potentially on behalf of a Quebec-specific class (collectively, the "Plaintiffs") or the respective Provincial Health Insurers, and avoid the risks inherent in uncertain, complex, and protracted litigation, and thereby to put to rest this controversy;

- J. **AND WHEREAS** counsel for the Defendants and counsel for the Plaintiffs have engaged in extensive arms-length settlement discussions and negotiations in respect of this Settlement Agreement;
- K. **AND WHEREAS** as a result of these settlement discussions and negotiations, the Defendants, the Plaintiffs, and the Provincial Health Insurers have entered into this Settlement Agreement, which embodies all of the terms and conditions of the Settlement between the Defendants, the Plaintiffs, and the Provincial Health Insurers, subject to the approval of the British Columbia, Quebec, and Ontario Courts;
- L. **AND WHEREAS** the Plaintiffs and the Provincial Health Insurers have agreed to accept this Settlement, in part, because of the monetary payments to be provided by the Defendants under this Settlement Agreement, as well as the attendant risks of litigation in light of the potential defences that may be asserted by the Defendants;
- M. **AND WHEREAS** the Defendants do not admit through execution of this Settlement Agreement any of the conduct alleged in the Proceedings;
- N. **AND WHEREAS** the Plaintiffs, Class Counsel, the Provincial Health Insurers, the Provincial Health Insurers' Counsel, and Defendants agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by or evidence against the Defendants or evidence of the truth of any of the Plaintiffs' or the Provincial Health Insurers' allegations against the Defendants;
- O. **AND WHEREAS** the Plaintiffs, the Provincial Health Insurers, and their counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs and the Provincial Health Insurers, and having regard to the burdens and expense in prosecuting the Proceedings, including the risks and uncertainties associated with trials and appeals, the Plaintiffs, the Provincial Health Insurers, and their counsel have concluded that this Settlement Agreement is fair, reasonable, and in the best interests of the Plaintiffs, the Classes they seek to represent, and the Provincial Health Insurers;
- P. **AND WHEREAS** the Defendants are entering into this Settlement Agreement in order to achieve a final and nation-wide resolution of all claims in respect of the Durom Cup asserted or that could have been asserted against them by the Plaintiffs and the Provincial Health Insurers in the Proceedings or otherwise, and to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation;
- Q. **AND WHEREAS** the Parties therefore wish to, and hereby do, finally resolve on a national basis, without admission of liability, all of the Proceedings against the Defendants;
- R. **AND WHEREAS** the BC Proceeding was certified on November 22, 2011;

- 14
- S. AND WHEREAS the Ontario Proceeding was certified on September 24, 2014;
- T. AND WHEREAS Defendants have consented, or will consent, to the authorization of a class action in the Quebec Proceeding consisting only of Quebec residents who have not opted into the BC Proceeding; and
- U. AND WHEREAS for the purposes of settlement only and contingent on orders by the Courts as provided for in this Settlement Agreement, the Plaintiffs have consented to a dismissal of the Proceedings against the Releasees, as that term is defined in Section 1 below, and release of all claims that have been or could have been asserted against Releasees.

NOW THEREFORE, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Proceedings be settled and dismissed on the merits with prejudice as to the Releasers, on the following terms and conditions:

SECTION 1 – DEFINITIONS

For the purpose of this Settlement Agreement only, including the Recitals and Schedules hereto:

- (1) *Account* means an interest-bearing trust account under the control of the Claims Administrator at a Schedule 1 chartered Canadian bank. All interest accrued will be added to the fund used to compensate Approved Claimants.
- (2) *Approved Claimant* means a Class Member or Derivative Member whose claim has been approved for payment by the Claims Administrator.
- (3) *Settlement Agreement or Settlement* means this Agreement, including the Recitals and Schedules hereto.
- (4) *Approval Hearings* means the hearings on the motions before the BC Court, Quebec Court, and the Ontario Court for the approval of the Settlement Agreement.
- (5) *BC Class Member* means a Class Member in the BC Proceeding. This includes Class Members resident in British Columbia who did not opt out of the BC Proceeding on or before the December 31, 2013 opt-out deadline set by the Supreme Court of British Columbia, and Class Members who are not resident in British Columbia who opted into the BC Proceeding on or before the opt-in deadline set by the Supreme Court of British Columbia.
- (6) *BC Court* means the Supreme Court of British Columbia.
- (7) *BC/Ontario Class Counsel* means Klein Lawyers LLP.

- (8) *BC Plaintiff* means Susan Wilkinson.
- (9) *BC Proceeding* means *Dennis Jones and Susan Wilkinson v. Zimmer GmbH et al.*, Action No. S095493, Vancouver Registry.
- (10) *Bilateral Revision* means that a Class Member had a Durom Cup implanted into both his/her left and right hips and has undergone surgery(ies) to remove both Durom Cups.
- (11) *Claimant Declaration* means the form attached as Schedule A.
- (12) *Claims Administrator* means the entity appointed to administer the Settlement pursuant to the terms of this Settlement Agreement.
- (13) *Claims Deadline* means the date that is 270 days after the date on which the Notice of Settlement Approval is disseminated.
- (14) *Claims Period* means the 270 day period after the date on which the Notice of Settlement Approval is disseminated.
- (15) *Class Counsel* means Klein Lawyers LLP in the BC Proceeding and the Ontario Proceeding, and Merchant Law Group LLP in the Quebec Proceeding.
- (16) *Class Counsel Fees* means the fees, costs, and other applicable taxes or charges of Class Counsel specified in Section 9 of this Settlement Agreement.
- (17) *Class or Class Members* means, for purposes of this settlement, all persons who were implanted with the Durom Cup in Canada, including their estates.
- (18) *Complication* means the medical conditions identified in Schedule L that occurred as a result of a Revision Surgery.
- (19) *Court(s)* means the BC Court, the Ontario Court, and the Quebec Court, as appropriate.
- (20) *Defendants* mean Zimmer GmbH, Zimmer, Inc., Zimmer Biomet Holdings, Inc. (formerly known as Zimmer Holdings, Inc.), and Zimmer of Canada Limited.
- (21) *Defendants' Counsel* means Fasken Martineau DuMoulin LLP.
- (22) *Derivative Claimant(s)* means all residents of Canada asserting the right to sue the Defendants independently or derivatively by reason of their familial relationship to a Class Member as defined herein, and shall mean for the purposes of this Settlement Agreement, either a Principal Caregiver who is a family member of a Class Member or Minor Child of a Class Member who has undergone a Single Revision or Bilateral Revision for the purpose of explanting a Durom Cup or is Medically Precluded from undergoing a Revision Surgery.

(23) *Disbursements* means funds paid out by Class Counsel in connection with the BC Proceeding, the Ontario Proceeding, or the Quebec Proceeding.

(24) *Durom Cup* means the device at issue in these Proceedings, which bears the lot and reference (sometimes referred to as "catalogue") numbers that were subject to and included in the November 9, 2009 Field Safety Notification.

(25) *Effective Date* means the latest date on which any of the Final Orders in British Columbia, Ontario, or Quebec take effect.

(26) *Eligibility Deadline* means September 1, 2015.

(27) *Extraordinary Expense Pool* means the amount established by this Settlement Agreement to compensate Class Members who believe they have incurred extraordinary expenses. The Extraordinary Expense Pool totals \$50,000.00 (CAD).

(28) *Final Order(s)* means the final orders entered by the Courts in respect of the approval of this Settlement Agreement once the time to appeal such order has expired without any appeal being taken, or if an appeal from a final order is taken, once there has been affirmation of the approval of this Settlement Agreement upon a final disposition of all appeals.

(29) *Initial Deposit* means the sum of \$5 million paid by the Defendants into the Account.

(30) *Medically Precluded* means that a Class Member for whom a Revision Surgery is necessary is unable to undergo a Revision Surgery due to the existence of a medical condition that is documented by a verified statement from the Class Member's treating physician.

(31) *Minor Child* means the child of a Class Member who has undergone a Single Revision, Bilateral Revision, or is Medically Precluded from undergoing Revision Surgery who was less than eighteen years of age when the Class Member was implanted with his or her Durom Cup.

(32) *Notice and Administration Costs* means all fees, costs, PST, GST, and HST taxes, and any other amounts incurred for the approval, implementation and operation of this Settlement Agreement, including the costs of notices, the costs of translation of the notice, and the fees and expenses of the Claims Administrator, but excluding Class Counsel Fees and Disbursements.

(33) *Notice of Approval Hearing* means the form of notice agreed to by the Plaintiffs and the Defendants, as set forth in the attachments to Schedules B1, B2, and B3, or such other form as may be approved by the BC Court, the Ontario Court, or the Quebec Court, that informs the Class of the date and location of an Approval Hearing, the principal elements of this Settlement Agreement, and the process by which Class Members may object to the Settlement.

(34) *Notice of Settlement Approval* means the form of notice, agreed to by the Plaintiffs and the Defendants, as set forth in Schedules H, I, and J, or such other form as may be approved by the BC Court, Quebec Court, or the Ontario Court, that informs the Class of the approval of this Settlement Agreement.

- (35) **Ontario Class Member** means a Class Member in the Ontario Proceeding. This includes Class Members who did not opt out of the Ontario Proceeding on or before December 17, 2014, excluding BC Class Members and Quebec Class Members.
- (36) **Ontario Court** means the Ontario Superior Court of Justice.
- (37) **Ontario Plaintiff** means Gloria McSherry.
- (38) **Ontario Proceeding** means *Gloria McSherry v. Zimmer GmbH, et al.*, Action No. CV-10-40836500 CP.
- (39) **Parties** means the parties to this Settlement Agreement, including Plaintiffs, the Provincial Health Insurers, and the Defendants.
- (40) **Plaintiffs** means the BC Plaintiff, the Ontario Plaintiff, and the Quebec Plaintiff.
- (41) **Principal Caregiver** means an immediate family member who provided care for a Class Member who underwent a Single Revision, Bilateral Revision, or is Medically Precluded from undergoing a Revision Surgery.
- (42) **Proceedings** mean the BC Proceeding, the Ontario Proceeding, and the Quebec Proceeding.
- (43) **Provincial Health Insurers** means all provincial and territorial Ministries of Health or equivalents, Provincial and Territorial Governments, and/or provincial and territorial plans funding medical services throughout Canada.
- (44) **Provincial Health Insurers' Counsel** means Klein Lawyers LLP.
- (45) **Quebec Class Counsel** means Merchant Law Group LLP.
- (46) **Quebec Class Member** means a Class Member resident in Quebec who has not opted out of the Quebec Proceeding on or before the opt out deadline set by the Quebec Court and who has not opted into the BC Proceeding.
- (47) **Quebec Court** means the Superior Court of Quebec.
- (48) **Quebec Plaintiff** means Ben Wainberg.
- (49) **Quebec Proceeding** means *Ben Wainberg v. Zimmer, Inc., et al.*, Action No. 500-06-00543-104.
- (50) **Released Claims** means any and all manner of claims, demands, actions, suits, civil law and statutory liabilities, and causes of action alleged or that could have been asserted in the Proceedings, whether direct or indirect, class, individual, or otherwise in nature, whether



personal or subrogated, damages whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, penalties, and lawyers' fees that Releasors, or any one of them, whether directly, indirectly, representatively, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have against the Releasees, whether known or unknown, relating in any way to the Durom Cup, including but not limited to the use, purchase, implantation, or revision of the Durom Cup.

(51) *Releasees* means, jointly and severally, the Defendants and their respective present and former parents, subsidiaries, affiliates, officers, directors, employees, insurers, agents, attorneys, servants, and representatives, and the successors, heirs, executors, administrators, trustees, and assigns of each of the foregoing, as well as any other person, corporation, or entity, including without limitation any health care professionals, health care providers, and hospitals or other health care facilities, against whom a Class Member asserted or could have asserted a claim relating in any way, directly or indirectly, to the Durom Cup.

(52) *Releasors* means, jointly and severally, individually and collectively, the Plaintiffs, Provincial Health Insurers, BC Class Members, Ontario Class Members, and Quebec Class Members, including all Derivative Claimants, and their respective successors, heirs, executors, administrators, trustees, and assigns, and their affiliated, predecessor, successor, and related companies or entities.

(53) *Revision Surgery* means an operation to remove a Durom Cup.

(54) *Settlement Amount* means the aggregate amount payable by the Defendants pursuant to Section 4 of this Settlement Agreement.

(55) *Single Revision* means Revision Surgery of one Durom Cup implanted into the hip of a Class Member.

(56) *Subsequent Deposit* means further amounts paid by the Defendants into the Account.

(57) *Unrevised* means that a Class Member has not undergone a Revision Surgery.

SECTION 2 – CALCULATION OF DEADLINES AND CONDITION PRECEDENT

(1) If any deadline identified in the Settlement Agreement falls on a weekend or Canadian national holiday, the deadline shall occur on the following weekday that is not a Canadian national holiday.

(2) Subject to section 8.1 below, this Settlement Agreement shall be null and void and of no force or effect unless the BC Court, the Ontario Court, and the Quebec Court each approve this Settlement Agreement and the orders so made have become Final Orders and the Effective Date has occurred.

SECTION 3 – SETTLEMENT APPROVAL

3.1 Best Efforts

The Parties shall use their best efforts to effect this settlement and to secure the prompt, complete, and final dismissal with prejudice of the Proceedings against the Defendants.

3.2 Motion Approving Notice

At a time mutually agreed to by the Parties after the Settlement Agreement is executed, (1) the BC Plaintiff shall bring a motion before the BC Court for an order in the form of Schedule B1 approving the Notice of the Approval Hearing, (2) the Ontario Plaintiff shall bring a motion before the Ontario Court for an order in the form of Schedule B2 approving the Notice of the Approval Hearing, and (3) the Quebec Plaintiff shall bring a motion before the Quebec Court for an order in the form of Schedule B3 approving the Notice of the Approval Hearing after the Quebec Court has authorized a proceeding as a class action.

3.3 Motion for Approval

- (1) The BC Plaintiff shall file a motion in the BC Court for an order approving this Settlement Agreement. The order shall be generally in accordance with the form attached at Schedule C.
- (2) The Ontario Plaintiff shall file a motion in the Ontario Court for an order approving this Settlement Agreement. The order shall be generally in accordance with the form attached at Schedule D.
- (3) After the Quebec Court has authorized the settlement class and subject to the requirements of section 3.4 of the Settlement Agreement, the Quebec Plaintiff shall file a motion in the Quebec Court for an order approving this Settlement Agreement. The order shall be generally in accordance with the form attached at Schedule E.

3.4 Sequence of Motions

The Quebec Plaintiff shall not proceed with the motion described in section 3.3(3) until the BC Court and the Ontario Court approve the Settlement Agreement. The Defendants may agree to waive this provision.

3.5 Effect of Court's Approval

- (1) Subject to the Court's approval, the order or judgment of approval of this Agreement shall:
 - (a) Describe the group as all persons who are or may be members of the Class;



- (b) Ascribe the status of representative and/or designated person to the BC Plaintiff, the Ontario Plaintiff, and the Quebec Plaintiff;
- (c) Approve this Agreement and order the Parties and all members of the Class to comply with it;
- (d) Declare that this Agreement constitutes a "transaction" pursuant to Article 1025 of the Code of Civil Procedure, which is binding on the Parties and all Quebec Class Members;
- (e) Declare that, subject to Article 1008 of the Code of Civil Procedure, any Quebec Class Member who has not opted out from the Class by _____ shall be bound by this Settlement Agreement and judgment of approval;
- (f) Declare that this Agreement is reasonable, fair, adequate, and in the best interest of the Class;
- (g) Order publication of the Notice of Settlement Approval as well as the form, contents, and method of its dissemination;
- (h) Confirm the appointment of the Claims Administrator;
- (i) Enter such other orders as are needed to effectuate the terms of the Settlement Agreement; and
- (j) Enjoin all members of the Class (other than those who have validly opted out of the Class) entitled to benefits hereunder from asserting and/or continuing to prosecute claims against Defendants or any other Releasee, as well as any Released Claim that such Class member has, had, or may have in the future.

(2) Subject to the Court's approval, the Parties agree that the Quebec Proceeding will be authorized only for the purpose of this Agreement.

3.6 Publication of Notice of Settlement Approval

After the Settlement Agreement has been approved by the BC Court, Ontario Court, and Quebec Court, and the Class has been authorized pursuant to the Settlement Agreement, Class Counsel shall disseminate the Notice of Settlement Approval to the Class. Pursuant to Defendants' obligations in Paragraph 4.2(10) of the Settlement Agreement, Defendants will pay the cost of dissemination.



SECTION 4 – SETTLEMENT BENEFITS

4.1 Applicable Currency

All monetary amounts provided herein, including all amounts due to Approved Claimants, are stated and payable in Canadian dollars. The parties agree that the Defendants shall make all payments to the Claims Administrator in U.S. dollars, and the Claims Administrator shall promptly convert the payment funds to Canadian dollars no later than one business day after receipt of the funds from Defendants.

4.2 Payment of Settlement Amount

(1) An individual is eligible for recovery under this Settlement Agreement only if:

- (a) He or she is a BC Class Member, an Ontario Class Member, or a Quebec Class Member; and
- (b) He or she meets the eligibility requirements provided in Schedule N.

(2) With the exception of the Provincial Health Insurers, which are entitled to compensation under this Settlement Agreement as provided in Paragraph 9 of this Section, only BC Class Members, Ontario Class Members, and Quebec Class Members who have submitted all necessary information to the Claims Administrator by the Claims Deadline shall be entitled to receive compensation under the Settlement Agreement. For all claimants, "necessary information" includes a completed Claimant Declaration (Schedule A) and the information described in Schedule N. As described below and in the Claimant Declaration, certain claimants will also be required to submit a completed Physician's Declaration (Schedule F).

(3) The amount of recovery for any Class Member otherwise eligible for recovery under Sections 4.2(1) and (2) above shall be established according to the patient's status as of the Eligibility Deadline. If a Class Member has scheduled, but not undergone, a Revision Surgery before the Eligibility Deadline, he or she will be eligible to receive the compensation available to Approved Claimants who underwent a Revision Surgery under this Settlement Agreement, so long as the Class Member's Revision Surgery occurs before the Claims Deadline, and the Class Member submits a Physician's Declaration that provides confirmation of, and information relating to, the scheduling of the Revision Surgery by the Eligibility Deadline and the occurrence of the Revision Surgery on or before the Claims Deadline.

(4) If a Class Member who indicated that he or she did not want to be part of the class by opting out of, or not opting into, the BC Proceeding, Ontario Proceeding, or Quebec Proceeding submits a Claimant Declaration under this Settlement Agreement prior to the Claims Deadline, the opt out or failure to opt in shall be deemed revoked, and such Class Member will be deemed to be a BC Class Member, Ontario Class Member, or Quebec Class Member, as determined by the Claims Administrator. However, this change in status does not impact Defendants' right of termination under Section 8.1(g) of the Settlement Agreement.

(5) Any amount paid to an Approved Claimant under the Settlement Agreement has been paid as damages on account of alleged personal physical injuries or illness of the Approved Claimant, including physical injuries or illness resulting from alleged emotional harm.

(6) The Defendants agree to pay amounts in accordance with this Settlement Agreement, in full satisfaction of all of the Released Claims against the Releasees, contingent on dismissal of the claims of the certified classes in British Columbia and Ontario, authorization of the proposed class in the Quebec Action, and subsequent dismissal of the claims of the authorized class in Quebec.

(7) BC Class Members, Ontario Class Members, and Quebec Class Members shall be compensated as follows, less their respective pro rata share of any Class Counsel Fees that the Court may award to Class Counsel in accordance with section 9.1(3) of this Settlement Agreement:

(a) BC Class Members, Ontario Class Members, and Quebec Class Members who are Unrevised and are not Medically Precluded from undergoing a Revision Surgery each receive \$600 (CAD);

(b) BC Class Members, Ontario Class Members, and Quebec Class Members who are Unrevised and are Medically Precluded from undergoing a Revision Surgery each receive \$40,000 (CAD) less pro rata Class Counsel Fees;

(c) Subject to paragraph (g), BC Class Members, Ontario Class Members, and Quebec Class Members who have undergone a Single Revision each receive \$70,000 (CAD) less pro rata Class Counsel Fee;

(d) Subject to paragraph (g), BC Class Members, Ontario Class Members, and Quebec Class Members who have undergone Bilateral Revision each receive \$90,000 (CAD) less pro rata Class Counsel Fees;

(e) Subject to paragraph (g), BC Class Members, Ontario Class Members, and Quebec Class Members who have undergone either a Single Revision or a Bilateral Revision and who have experienced a Complication will receive additional funds up to \$40,000 (CAD) less pro rata Class Counsel Fees. The amount to which a BC Class Member, Ontario Class Member, or Quebec Class Member may be entitled for a Complication sustained is identified in Schedule L;

(f) Any payment to a BC Class Member, Ontario Class Member, or Quebec Class Member who underwent either a Single Revision or Bilateral Revision and whose Durom Cup was *in vivo* for more than 6 years at the time of the Revision Surgery will be reduced by \$10,000 (CAD);

(g) BC Class Members, Ontario Class Members, and Quebec Class Members who underwent a revision surgery for a purpose other than explanting a Durom Cup are not entitled to the compensation provided in paragraphs (c), (d), (e), and (h).

(h) Subject to paragraph (g), BC Class Members, Ontario Class Members, and Quebec Class Members who have undergone either a Single Revision or a Bilateral Revision and who purchased the Durom Cup with their own funds will be reimbursed for the cost of the device, less pro rata Class Counsel Fees. This reimbursement is separate from the reimbursement for expenses described in section 4.2(7)(i) below. The Claims Administrator will be responsible for determining and subtracting any pro rata class counsel fees.

(i) BC Class Members, Ontario Class Members, and Quebec Class Members who underwent a Single Revision, a Bilateral Revision, or who are Medically Precluded from undergoing a Revision Surgery will be reimbursed for the expenses they incurred in connection with the Durom Cup, upon submission of all documentation required by Schedules A and G of this Settlement Agreement and approval for reimbursement from the Claims Administrator, as follows:

(i) BC Class Members, Ontario Class Members, and Quebec Class Members who do not have receipts to support their expenses will each receive up to \$750 (CAD), less pro rata Class Counsel Fees;

(ii) BC Class Members, Ontario Class Members, and Quebec Class Members who have receipts documenting their expenses will each receive the amount of those documented expenses, up to a cap of \$2,500 (CAD), less pro rata Class Counsel Fees; and

(iii) BC Class Members, Ontario Class Members, and Quebec Class Members who believe they have incurred extraordinary expenses in connection with their Durom Cup(s) may apply for reimbursement from the Extraordinary Expense Pool. Pro rata Class Counsel Fees will be deducted from any Extraordinary Expense Pool award. If the total amount of approved claims payable from the Extraordinary Expense Fund exceeds \$50,000 (CAD), each reimbursable claim will be reduced on a pro rata basis. If the total amount of approved disbursements payable from the Extraordinary Expense Fund is less than \$50,000 (CAD), the Claims Administrator shall refund the difference to Defendants.

(8) Derivative Claimants shall be compensated as follows:

(a) The Principal Caregiver is entitled to \$5,000 (CAD), less pro rata Class Counsel Fees;

(b) Up to two Minor Children are entitled to \$500 (CAD) each, less pro rata Class Counsel Fees.

(9) Provincial Health Insurers shall be compensated as follows:

(a) Each Provincial Health Insurer will receive \$15,000 (CAD) for each Revision Surgery that a Class Member who submits a proper and approved claim for recovery under this Settlement Agreement underwent in the Provincial Health Insurer's province.

(b) Upon approval from the Claims Administrator, each Provincial Health Insurer is permitted to recover \$15,000 for each Revision Surgery that a Class Member who does not submit a proper and approved claim for recovery under this Settlement Agreement underwent in the Provincial Health Insurer's province, provided that the Provincial Health Insurer properly completes all information pertaining to such Class Members required by Schedule M and submits Schedule M to the Claims Administrator no later than 90 days after the Claims Deadline. All requests for compensation submitted by Provincial Health Insurers that do not meet the requirements of Schedule M will be denied.

(10) Defendants will pay up to \$250,000 (CAD) in Notice and Administration Costs. All other Notice and Administration Costs shall be borne by Class Counsel, subject to the provisions of Section 9.1(2) of the Settlement Agreement.

(11) Within 30 days of the Effective Date, the Defendants shall pay the Initial Deposit into the Account.

(12) The Claims Administrator shall pay Class Counsel for Counsel Fees and Disbursements owing under sections 9.1(1) and (2) from the Account, and the Claims Administrator may draw upon the Account to pay the Notice and Administration Costs.

(13) The Claims Administrator shall make determinations as to the entitlement of Approved Claimants prescribed by sections 4.2(7)(a)-(i) and 4.2(8). It shall pay those entitlements to the Approved Claimants, or their legal representation or counsel, less each Approved Claimant's pro rata portion of Class Counsel Fees prescribed by section 9.1(3), from the Account.

(14) At the same time the Claims Administrator pays each Approved Claimant, the Claims Administrator shall also remit from the Account the pro rata Class Counsel Fees prescribed by sections 9.1(3) and 9.1(4) to BC/Ontario Class Counsel or to Quebec Class Counsel. Class Counsel Fees owing under sections 9.1(3) and 9.1(4) shall be remitted to BC/Ontario Class Counsel for Approved Claimants who are BC Class Members or Ontario Class Members or their estate representatives. Class Counsel Fees owing under sections 9.1(3) and 9.1(4) shall be remitted to Quebec Class Counsel for Approved Claimants who are Quebec Class Members or their estate representatives. The Claims Administrator determines to which class an Approved Claimant belongs.

(15) If the amount in the Account falls below \$500,000, the Defendants will forthwith make a Subsequent Deposit of \$1 million into the Account.

(16) Once the Claims Administrator determines that all amounts owing under this Settlement Agreement have been paid, the Claimants Administrator shall notify the Defendants and Class Counsel.

(17) The Claims Administrator will maintain the funds received pursuant to this Settlement Agreement in an Account. All interest accrued will be added to the funds used to compensate Approved Claimants.

(18) The Claims Administrator shall maintain the Account and shall not pay out funds from the Account in a manner inconsistent with the provisions of this Settlement Agreement except by Court order made on notice to, or on the consent of, the Defendants' Counsel and Class Counsel.

4.3 Appointment and Role of Claims Administrator

(1) The Parties will agree upon a Claims Administrator to be appointed by the BC Court for the purpose of administering the Settlement.

(2) The Claims Administrator shall make a determination as to whether each Class Member who seeks payment under the Settlement Agreement is an Approved Claimant. If such person is an Approved Claimant, the Claims Administrator shall determine the amount of funds due to the Approved Claimant under the Settlement Agreement. The Claims Administrator shall be subject to removal by the BC Court for cause.

(3) The Claims Administrator shall sign and adhere to a confidentiality statement, in a form satisfactory to the Parties, by which it agrees to keep confidential any information concerning Class Members or Defendants. Further, the Claims Administrator shall institute and maintain procedures to ensure that the identity of all Class Members and all information regarding any claims and submissions will be kept strictly confidential.

(4) The Claims Administrator shall administer all monies payable under the Settlement Agreement, except as specifically provided for herein, and process all claims of Class Members and Provincial Health Insurers in accordance with the terms of this Settlement Agreement.

(5) The funds payable under the Settlement Agreement that Defendants are required to submit to the Claims Administrator under the Settlement Agreement shall be held in an Account. The Claims Administrator shall distribute payments under the Settlement Agreement under the supervision of the BC Court, the Ontario Court, and the Quebec Court. Funds submitted to the Claims Administrator shall be maintained and invested in a manner consistent with that of a prudent and reasonable administrator.

(6) Defendants shall retain a reversionary interest in all funds provided to the Claims Administrator and interest earned on the funds. If any funds remain in the Claims Administrator's trust account 365 days after the Claims Deadline, those funds and any interest accrued shall be immediately returned to Defendants' Counsel upon written request to the Claims Administrator (copy to Class Counsel), less any funds that have been approved for payment to an Approved Claimant but have not yet been paid out.



(7) The Claims Administrator shall offer its services in both English and French.

(8) The Claims Administrator shall report monthly to Class Counsel and Defendants' Counsel on the number of claims received in that month and the decisions made by it in respect of any claim. Such reports will include the name of each Approved Claimant or approved Provincial Health Insurer, the category and amount of each payment from the Account, and whether the claim relates to a BC Class Member, Ontario Class Member, Quebec Class Member, or Provincial Health Insurer.

(9) The Claims Administrator shall retain all records relating to each Class Member's or Provincial Health Insurer's claim. Defendants' Counsel, Defendants, and the Releasees, as well as their respective insurers, may, at their expense and upon providing seven days' written notice to Plaintiffs' Counsel, inspect the Claims Administrator's records. Any party inspecting the Claims Administrator's records under this paragraph shall maintain the confidentiality of the records to the extent necessary to protect the identity and privacy of Class Members.

(10) All submissions, requests, or motions made by the Claims Administrator to the BC Court, the Ontario Court, or the Quebec Court must be served at least 15 days prior to the proposed date for the hearing of the request or motion.

4.4 Claims and Claimants

(1) In order to recover under this Settlement Agreement, BC Class Members, Ontario Class Members, and Quebec Class Members must hand-deliver, email, mail, or fax a properly executed Claimant Declaration in the form attached as Schedule A along with a Physician's Declaration (if applicable) in the form attached as Schedule F such that they are received by the Claims Administrator no later than 5:00 p.m. Eastern time on the Claims Deadline.

(2) To recover from the Extraordinary Expense Pool, BC Class Members, Ontario Class Members, and Quebec Class Members must hand-deliver, email, mail, or fax a properly executed Extraordinary Expense Pool Claim Form in the form attached as Schedule G, and any supporting documentation, such that it is received by the Claims Administrator no later than 5:00 p.m. Eastern time on the Claims Deadline.

(3) No later than 60 days from the date that the Claims Administrator receives a completed version of Schedule A to this Settlement Agreement from a Class Member or a completed version of Schedule M from a Provincial Health Insurer, the Claims Administrator shall notify the Class Member or Provincial Health Insurer about whether he, she, or it will receive payment under this Settlement Agreement, and if the Class Member or Provincial Health Insurer will not receive payment, the reason why the claim for compensation was rejected.

(4) If the Claims Administrator determines that the materials submitted by a Class Member or Provincial Health Insurer are deficient, the Claims Administrator shall notify the Class Member or Provincial Health Insurer in writing of the deficiency and shall provide the Class Member or Provincial Health Insurer with 90 days to rectify the deficiency by delivering further or amended materials.

(5) The Claims Administrator shall determine and certify, in its sole discretion, whether a claim for compensation under Schedule A or Schedule M to this Settlement Agreement has been properly made. The decision of the Claims Administrator regarding a Class Member's or Provincial Health Insurer's eligibility to recover under this Settlement Agreement shall be final and not subject to review. All other decisions made by the Claims Administrator in connection with a Class Member's recovery under this Settlement Agreement may be appealed by a Class Member or Defendants within the time frame and by following the Appeal Protocol outlined in Schedule O. A Claims Administrator's decision will be deemed received seven days after it is mailed to a Class Member. All appeals will be decided by The Honourable Marion J. Allan, The Honourable Andre Forget, or such other person upon whom Class Counsel and Defendants' Counsel agree in writing, for decision based only on written submissions from the parties involved. All decisions rendered by The Honourable Marion J. Allan, The Honourable Andre Forget, or such other person upon whom Class Counsel and counsel for Defendants agree in writing shall be final and not subject to further review or appeal.

(6) After approving a claim for payment made by a Provincial Health Insurer, BC Class Member, Ontario Class Member, or Quebec Class Member, the Claims Administrator shall promptly pay the Provincial Health Insurer, Approved Claimant or the Approved Claimant's legal representatives or counsel. However, payment under the Settlement Agreement shall not be made to an Approved Claimant until the Approved Claimant satisfies the requirements of Section 4.4, paragraph 8, and Schedule N.

(7) Class Members and Class Counsel agree to secure all authorizations from Provincial Health Insurers necessary to facilitate settlement under the Settlement Agreement.

(8) Within 30 days after receiving notice that he or she will receive payment under the Settlement Agreement, a Class Member is required to return his or her explanted Durom Cup, if the Durom Cup is in his or her possession, custody, or control, to Defendants' Counsel at the address below, or take all actions necessary for a third-party to return the explanted Durom Cup to Defendants' Counsel.

SECTION 5 – DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST

5.1 Settlement Distribution

Any Settlement Amounts held by the Claims Administrator shall be held in trust for the benefit of Class Members and Provincial Health Insurers, and after the Effective Date, shall only be paid in accordance with the provisions of this Settlement Agreement.

5.2 Monies in the Account

In no event shall the Defendants have any responsibility, financial obligations, or liability whatsoever with respect to the investment, distribution, use, or administration of monies in the Account, including, but not limited to, the costs and expenses of such investment, distribution, use and administration, Administration Expenses, and Class Counsel Fees, except as otherwise provided for in sections 4 and 9.1 of this Settlement Agreement.

5.3 Taxes and Interest

- (1) All interest earned on funds in the Account shall become and remain part of the Account.
- (2) Plaintiffs, Class Counsel, and Provincial Health Insurers' Counsel shall bear all risks related to investment of the funds in the Account.
- (3) All funds held by the Claims Administrator shall be deemed and considered to be *in custodia legis* of the BC Court and shall remain subject to the jurisdiction of the BC Court until such time as such funds are distributed pursuant to the Settlement Agreement and/or further order of the BC Court.
- (4) All taxes payable on any interest that accrues on the funds in the Account shall be the responsibility of the Class. The Claims Administrator, in consultation with Class Counsel, shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amount shall be paid from the Account.
- (5) The Defendants shall have no responsibility to make any tax filings relating to the Account and shall have no responsibility to pay tax on any income earned by the funds in the Account or pay any taxes on the monies in the Account.

SECTION 6 – OBJECTIONS

6.1 Procedure to Object

- (1) A Class Member may object to the approval of the Settlement by sending a written objection by pre-paid mail, courier, fax, or email to Class Counsel. Class Counsel is required to forward all objections to Defendants' Counsel within 48 hours after receiving an objection.
- (2) Objections must be received before 5:00 p.m. Eastern time on a date that is five days before the date of the Approval Hearing applicable to the Class Member's claim.
- (3) A Class Member who wishes to object to the approval of the Settlement shall state in his/her objection:

- (a) The full name, current mailing address, fax number, telephone number, and email address of the person who is objecting;
- (b) A brief statement of the nature and reasons for the objection;
- (c) A declaration that the person believes he or she is a member of the Class and the reason for that belief including, if available, the reference/catalogue and lot numbers of his/her Durom Cup;
- (d) Whether the person intends to appear at the relevant Approval Hearing or intends to appear by counsel, and, if by counsel, the name, address, telephone number, fax number, and email address of counsel; and
- (e) A declaration under the penalty of perjury that the foregoing information is true and correct.

(4) Class Counsel shall, no later than three days before the date of the relevant Approval Hearing, report to the Court, by affidavit, with a copy to counsel for the Defendants, the names of persons who objected and copies of any objections.

SECTION 7 – RELEASES AND DISMISSALS

7.1 Release of Releasees

(1) Upon the Effective Date, and in consideration of the payment of the Settlement Amount and for other valuable consideration set forth in the Settlement Agreement, the Releasors forever and absolutely release the Releasees from the Released Claims, including all claims, actions, causes of action, suits, debts, duties, accounts, bonds, covenants, contracts, and demands whatsoever that were asserted, or could have been asserted, in the litigation that is the subject of this Settlement Agreement. For the consideration provided herein, the Releasors agree not to make any claim or take or continue any proceedings arising out of or relating to the subject matter of the Released Claims against any other person, corporation, or entity (including, without limitation, any health care professionals, health care providers, and hospitals or other health care facilities) that might claim damages and/or contribution and indemnity and/or other relief under the provisions of the *Negligence Act* or other comparable provincial legislation and any amendments thereto, the common law, equity, Quebec civil law, or any other statute, for any relief whatsoever, including relief of a monetary, declaratory, or injunctive nature, from one or more of the Releasees.

(2) Without limiting any other provisions herein, each Class Member who does not affirmatively opt out of the Proceedings or who has affirmatively opted into the BC Proceeding, and the Provincial Health Insurers, whether or not he, she, or it submits a claim or otherwise receives an award, will be deemed by this Settlement Agreement completely and unconditionally to have released and forever discharged the Releasees from any and all Released Claims, including all claims, actions, causes of action, suits, debts, duties, accounts, bonds, covenants,

contracts, and demands whatsoever that were asserted, or could have been asserted, in the litigation that is the subject of this Settlement Agreement.

(3) Each Class Member who does not affirmatively opt out of the Proceedings, or who affirmatively opted into the BC Proceeding, and the Provincial Health Insurers, whether or not he, she, or it submits a claim or otherwise receives an award, will be forever barred and enjoined from continuing, commencing, instituting, or prosecuting any action, litigation, investigation, or other proceeding in any court of law or equity, arbitration, tribunal, proceeding, governmental forum, administrative forum, or any other forum, directly, representatively or derivatively, asserting against any of the Defendants or Releasees any claims that relate to or constitute any Released Claims covered by this Settlement Agreement.

7.2 No Further Claims

The Releasees shall not now or hereafter institute, continue, maintain, or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim, or demand against any Releasees, or against any other person who may claim contribution or indemnity from any Releasees in respect of any Released Claim or any matter related thereto. The Parties agree that no Class Members shall recover, directly or indirectly, any sum from Defendants or Releasees other than those authorized under the Settlement Agreement in connection with the Durom Cup.

7.3 Dismissal of the Proceedings

- (a) The Proceedings shall be dismissed with prejudice and without costs as against the Defendants.
- (b) All lawsuits relating to the Durom Cup in which clients of the Merchant Law Firm seek class certification will be dismissed on consent by the Merchant Law Firm.

SECTION 8 - TERMINATION OF SETTLEMENT AGREEMENT

8.1 Right of Termination

- (1) The Defendants shall have the right to terminate this Settlement Agreement if:
 - (a) The BC Court, Quebec Court, or the Ontario Court declines to approve this Settlement Agreement or any term or part thereof deemed material by Defendants;
 - (b) Any order approving the Settlement Agreement does not become a Final Order;
 - (c) The Quebec Court declines to authorize the proposed class in the Quebec Action;
 - (d) Any order dismissing the Quebec Proceeding does not become a Final Order;



(e) The form and content of any of the Final Orders approved by the BC Court, the Ontario Court, or the Quebec Court do not comply with the terms of this Settlement agreement;

(f) The Provincial Health Insurers do not accept this Settlement Agreement or any material term or part thereof; or

(g) More than 200 Class Members opt out.

(2) To exercise a right of termination, the Defendants shall deliver a written notice of termination to Class Counsel and Provincial Health Insurers' Counsel. Upon delivery of such a written notice, this Settlement Agreement shall be terminated and, except as provided for in sections 8.2 and 8.3, it shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.

8.2 If Settlement Agreement is Terminated

(1) If this Settlement Agreement is not approved by the BC Court, the Ontario Court, or the Quebec Court, is terminated in accordance with its terms, or otherwise fails to take effect for any reason:

(a) Any order approving this Settlement Agreement shall be set aside and declared null and void and of no force or effect, and anyone shall be estopped from asserting otherwise;

(b) All negotiations, statements, and proceedings relating to the settlement and the Settlement Agreement shall be deemed to be without prejudice to the rights of the Parties, and the Parties shall be deemed to be restored to their respective positions existing immediately before it was executed;

(c) All funds in the Account (including accrued interest) shall be returned to Defendants' Counsel within 10 days after the date of termination; and

(d) Authorization of the Quebec Proceeding will be reversed and/or set aside.

8.3 Survival of Provisions after Termination

If this Settlement Agreement is not approved by the BC Court, the Ontario Court, or the Quebec Court, is terminated in accordance with its terms, or otherwise fails to take effect for any reason, the provisions of this section and sections 8.2, 12.2, and the Recitals, Definitions, and Schedules applicable thereto shall survive the termination and continue in full force and effect. In addition, the Parties agree that termination of the Settlement Agreement warrants class authorization through ordinary procedures, and nothing shall prevent Defendants and the Releasees from contesting or opposing class authorization in this action or any other action for any purpose.

SECTION 9 – LEGAL FEES AND DISBURSEMENTS

9.1 Class Counsel Fees

Class Counsel will be compensated as follows:

- (1) \$500,000 (CAD) in Class Counsel Fees payable by the Defendants;
- (2) Up to \$500,000 (CAD) in Disbursements payable by the Defendants. Any unused Disbursement monies shall be used to pay Notice and Administration Costs exceeding \$250,000 (CAD). If unused Disbursement monies remain after satisfying Notice and Administration Costs, the remaining unused monies will revert to the Defendants;
- (3) Additional Class Counsel fees payable by Class Members, which may be determined and approved by the BC Court, the Ontario Court, and/or the Quebec Court.
- (4) The amounts payable under sections 9.1(1) and (2) will be allocated as between BC/Ontario Class Counsel and Quebec Class Counsel as agreed by them or as directed by the Courts. The amounts payable under sections 9.1(3) in respect of Approved Claimants whose claims related to BC Class Members or Ontario Class Members will be paid to BC/Ontario Class Counsel. The amounts payable under sections 9.1(3) in respect of Approved Claimants whose claims relate to Quebec Class Members will be paid to Quebec Class Counsel.

9.2 Procedure

- (1) Class Counsel will bring motions, with notice to Defendants' Counsel, to the BC Court, the Quebec Court, and/or the Ontario Court for determination and approval of Class Counsel Fees and Disbursements payable by the Class Members in accordance with sections 9.1(3) and (4). In any such Court application, Class Counsel shall serve and file documentation that itemizes and supports the amount of Class Counsel Fees claimed.
- (2) Class Counsel Fees and Disbursements payable pursuant to sections 9.1(1) and (2) may be paid out of the Account only after Class Counsel obtains the approval of the BC Court, the Ontario Court, and the Quebec Court. Payment of Additional Class Counsel Fees under sections 9.1(3) in respect of BC Class Members is subject to approval of the BC Court. Payment of Additional Class Counsel Fees under sections 9.1(3) in respect of Ontario Class Members are subject to approval of the Ontario Court. Payment of Additional Class Counsel Fees under sections 9.1(3) in respect of Quebec Class Members are subject to approval of the Quebec Court. Class Counsel Fees and Disbursements shall be paid in the manner prescribed by sections 4.2(7), (12) and (14).
- (3) Class Members who have retained, or in the process of making a claim do retain, lawyers to assist them in making their individual claims in this Settlement shall be responsible for the legal fees and expenses of such lawyers.



- (4) For the purposes of allocating fees payable under section 9.1(3) as between BC/Ontario Class Counsel and Quebec Class Counsel, where an Approved Claimant's Claimant Declaration has been filed by BC/Ontario Class Counsel, then that Approved Claimant's claim shall be deemed to relate to the BC Class Members or Ontario Class Members, and where an Approved Claimant's Claimant Declaration has been filed by Quebec Class Counsel, then that Approved Claimant's claim shall be deemed to relate to the Quebec Class Members.

9.3 Payment of Appeal-Related Fees and Costs

Payment of all fees and costs charged by The Honourable Marion J. Allan, The Honourable Andre Forget, or other such person who will serve as the appeal adjudicator by written agreement of Class Counsel and Defendants' Counsel in connection with any appeal initiated by a Class Member or Defendants, will be made as specified in Schedule O.

SECTION 10 – ADMINISTRATION AND IMPLEMENTATION

10.1 Mechanics of Administration

Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement shall be determined by the BC Court on motion brought by the Parties, or any one of them.

10.2 Notices Required

- (1) Each Class Member shall be given notice of:
 - (a) The hearing applicable to the Class Member's claim at which the BC Court, the Ontario Court, or the Quebec Court will be asked to approve the Settlement Agreement; and
 - (b) Settlement approval, if applicable.
- (2) Class Counsel and Defendants' Counsel will jointly prepare such Notices as may be required, substantially in the form attached in Schedules H, I, and J, respectively, as well as a plan for dissemination of the Notices (Schedule K). Counsel acknowledge that all Notices and the plan for dissemination of Notices must be approved by the BC Court, the Ontario Court, and the Quebec Court. No notices shall be disseminated until such time as they are approved by the BC Court, the Ontario Court, and the Quebec Court.

SECTION 11 – NO ADMISSION OF LIABILITY

The Parties agree that whether or not this Settlement Agreement is approved by the BC Court, the Ontario Court, or the Quebec Court, or is terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions, and

proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing of liability by the Releasees, or of the truth of any of the claims or allegations made in the Proceeding or in any other pleading filed by the Plaintiffs.

The Parties further agree that whether or not this Settlement Agreement is approved by the BC Court, the Ontario Court, or the Quebec Court, or is terminated, neither this Settlement nor any document relating to it shall be offered in evidence in any action or proceeding in any court, agency, or tribunal, except to seek court approval of this Settlement Agreement or to give effect to and enforce the provisions of this Settlement Agreement.

SECTION 12 – MISCELLANEOUS

12.1 Motions for Directions

(1) The BC Plaintiff, Ontario Plaintiff, Quebec Plaintiff, Class Counsel, the Claims Administrator, the Provincial Health Insurers, or the Defendants may apply to the BC Court for directions in respect of the implementation and administration of this Settlement Agreement.

(2) All motions contemplated by this Settlement Agreement, including applications to the BC Court for directions, shall be on notice to the Parties.

12.2 Releasees Have No Liability for Administration

The Releasees shall have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement.

12.3 Headings, etc.

In this Settlement Agreement, the division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement. The terms "this Settlement Agreement," "the Settlement Agreement," "hereof," "hereunder," "herein," "hereto," and similar expressions refer to this Settlement Agreement and not to any particular section or portion of this Settlement Agreement.

12.4 Ongoing Jurisdiction

The BC Court shall retain exclusive jurisdiction over all matters relating to the implementation and enforcement of this Settlement Agreement.

12.5 Governing Law

This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of British Columbia.

12.6 Entire Agreement

This Settlement Agreement and the Schedules attached hereto constitute the entire agreement among the Parties, and supersede any and all prior and contemporaneous understandings, undertakings, negotiations, representations, communications, promises, agreements, agreements in principle, and memoranda of understanding in connection herewith. The Parties agree that they have not received or relied on any agreements, representations, or promises other than as contained in this Settlement Agreement. None of the Parties shall be bound by any prior obligations, conditions, or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein. This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto, and any such modification or amendment must be approved by the BC Court, the Ontario Court, and the Quebec Court.

12.7 Survival

The representations and warranties contained in this Settlement Agreement shall survive its execution and implementation.

12.8 Counterparts

This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile signature shall be deemed an original signature for purposes of executing this Settlement Agreement. This Settlement Agreement may be delivered and is fully enforceable in either original, faxed, or other electronic form provided that it is duly executed.

12.9 Negotiated Agreement

This Settlement Agreement has been the subject of negotiations and discussion among the Parties, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.



12.10 Language

The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; les parties reconnaissent avoir exigé que la present convention et tous les documents connexes soient rédigés en anglais.

12.11 Dates

Dates referred to in this Settlement Agreement may be altered with the written consent of the Parties and with the approval of the BC Court, the Ontario Court, and the Quebec Court.

12.12 French Translation

The Parties acknowledge that they have required that the Settlement Agreement, including Schedules, be prepared in English and French. The English version of the Settlement Agreement is authoritative in British Columbia and Ontario (and is authoritative as to all Class Members in any province or territory of Canada except Quebec), and the French and English versions of the Settlement Agreement have equal force in Quebec (and are authoritative as to all Class Members who reside in Quebec). A French translation of the settlement agreement and all notices pursuant to this Settlement Agreement shall be paid for by the Defendants.

12.13 Confidentiality

The Parties agree that no public statements shall be made regarding these Proceedings or their settlement that are in any way inconsistent with the terms of the Settlement Agreement.

In particular, the Parties agree that any public statements regarding these Proceedings will indicate only that the settlement has been negotiated and agreed by the parties and approved by the BC Court, Quebec Court, and the Ontario Court without any admissions or findings of liability or wrongdoing and without any admissions or conclusions as to the truth of any of the facts alleged in the Proceedings, all of which are specifically denied.

12.14 Recitals

The recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

12.15 Schedules

The Schedules annexed hereto form part of this Settlement Agreement and are:

- Schedule A – Claimant Declaration
- Schedule B1 – Order on Notice of Approval Hearing (BC Court)
- Schedule B2 – Order on Notice of Approval Hearing (Ontario Court)

- Schedule B3 - Order on Notice of Approval Hearing (Quebec Court)
- Schedule C - Order on Approval of Settlement Agreement (BC Court)
- Schedule D - Order on Approval of Settlement Agreement (Ontario Court)
- Schedule E - Order on Approval of Settlement Agreement (Quebec Court)
- Schedule F - Physician's Declaration
- Schedule G - Extraordinary Expense Pool Claim Form
- Schedule H - Notice to BC Action Class Members
- Schedule I - Notice to Ontario Action Class Members
- Schedule J - Notice to Quebec Action Class Members
- Schedule K - Plan for Dissemination of Class Notices
- Schedule L - List of Complications and Corresponding Payment Amounts
- Schedule M - Health Insurer Claim Form
- Schedule N - Eligibility Requirements
- Schedule O - Appeal Protocol

12.16 Acknowledgements

Each of the Parties hereby affirms and acknowledges that:

- (1) He, she, or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
- (2) The terms of this Settlement Agreement and the effects thereof have been fully explained to him, her, or the Party's representative by his, her, or its counsel;
- (3) He, she, or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
- (4) No Party has relied upon any statement, representation, or inducement (whether material, false, negligently made, or otherwise) of any other Party with respect to the first Party's decision to execute this Settlement Agreement.

12.17 Authorized Signature

Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement.

12.18 Notice

Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication, or document shall be provided by email, facsimile, or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For Plaintiffs, Provincial Health Insurers, Class Counsel, and Provincial Health Insurers' Counsel:

**David Klein
Klein Lawyers LLP
Suite 400
1385 West 8th Avenue
Vancouver, BC V6H 3V9
Telephone: 604-874-7171
Facsimile: 604-874-7180
Email: dklein@callkleinlawyers.com**

**Daniel Chung
Merchant Law Group LLP
200 - 10 Notre-Dame E.
Montréal, Québec H2Y 1B7
Telephone: 514-248-7777
Facsimile: 514-842-6687
Email: dchung@merchantlaw.com**

For Defendants and Defendants' Counsel:

**Peter Pliszka
Fasken Martineau DuMoulin LLP
Suite 2400
333 Bay Street
Toronto, ON M5H 2T6
Telephone: 416-868-3336
Facsimile: 416-364-7813
Email: ppliszka@fasken.com**



The Parties have executed this Settlement Agreement on the dates provided below.

CLASS COUNSEL:

Klein Lawyers LLP

Date: November 24, 2015

By: [Signature]

Printed: David Klein

TRUDEL JOHNSON LESTERADGE
Merchant Law Group LLP

Date: April 13, 2016

By: [Signature]

Printed: PHILIPPE TRUDEL

PROVINCIAL HEALTH INSURERS:

Date: November 24, 2015

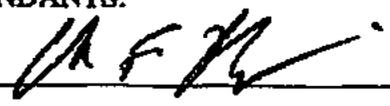
By: [Signature]

Printed: David Klein

Its: Solicitor

Date: November 23, 2015

DEFENDANTS:

By: 

Printed: Chad F. Phipps

Its: Senior Vice President,
General Counsel & Secretary

Section B: Personal Representative

Are you completing this form as someone with the legal capacity to act on behalf of the Claimant (i.e., an individual with power of attorney, an estate representative, etc.)?

Yes No

If "Yes," please complete the remainder of Section B with information about yourself. If "No," skip to Section C.

First Name Middle Last Name

Date of Birth (mm/dd/yyyy)

Address

City Province/Territory Postal Code

Email Date of Death of the Claimant (if applicable) (mm/dd/yyyy)

Daytime Phone Number Cellular Phone Number

Relationship to Claimant:

Please attach the documents that grant you the legal authority to act on behalf of the Claimant to this form (i.e. Power of Attorney, Last Will and Testament, Letters of Administration, etc.). If the Claimant is deceased, please also attach a copy of the Claimant's death certificate to this form.

- Power of Attorney
- Certificate of Incapacity
- Letters of Administration
- Will
- Death Certificate
- Grant of Probate
- Other. Please explain _____

Section C: Lawyer Information (if applicable)

Lawyer Last Name Lawyer First Name

Name of Law Firm

Address

Phone Number Email

Section D: Durom Cup Implant Information

Location of the Durom Implant: Right Left Bilateral

Implant Date (Right) _____
(mm/dd/yyyy)

Name of Hospital _____

Surgeon _____

Implant Date (Left) _____
(mm/dd/yyyy)

Name of Hospital _____

Surgeon _____

Identification stickers and operative report(s) for your Durom Cup(s) must be submitted with this Claimant Declaration.

Section E: Revision Information

Has the Claimant undergone a revision surgery or surgeries to remove the Durom Cup(s)?

Yes No

If you checked "No," please skip to Section F below.

Location of Revision: Right Left Bilateral

Implant Revision Date (Right) _____
(mm/dd/yyyy)

Name of Hospital _____

Surgeon _____

Implant Revision Date (Left) _____
(mm/dd/yyyy)

Name of Hospital _____

Surgeon _____

Did the Claimant have children under the age of 18 who lived with him/her on the date of his/her revision surgery to implant the Durom Cup?

Yes No

If you checked "Yes," list the names and dates of birth of up to two children only:

Name DOB: (mm/dd/yyyy)

Name DOB: (mm/dd/yyyy)

If the Claimant is medically contraindicated from undergoing a revision surgery, please answer the following:

Did an immediate adult family member provide the Claimant with care to assist in the Claimant's recovery after his/her surgery or surgeries to implant the Durom Cup(s)?

Yes No

If you checked "Yes," list the family member's name and his/her relationship to the Claimant:

Name of Family Member Relationship to Claimant

Did the Claimant have children under the age of 18 who lived with him/her on the date of his/her surgery to implant the Durom Cup(s)?

Yes No

If you checked "Yes," list the names and dates of birth of up to two children only:

Name DOB: (mm/dd/yyyy)

Name DOB: (mm/dd/yyyy)

Section H: Post-Revision Complications

Did the Claimant's revision surgery or surgeries cause any of the following? If so, state the date on which the complication occurred.

	Date (mm/dd/yyyy)
Second Revision (Right)	_____
Second Revision (Left)	_____
Third Revision (Right)	_____
Third Revision (Left)	_____
Stroke	_____
Blood Clot	_____
Infection	_____
Permanent nerve damage	_____
Death	_____

If you claimed above that the Claimant experienced a blood clot, infection, and/or permanent nerve damage, you must submit a completed Physician's Declaration with this form. If you claimed above that the Claimant suffered from a second revision, a third revision, death, or a stroke, you must submit hospital records (including revision operative reports) relating to each complication, or a Physician's Declaration documenting each complication, with this form.

Section I: Out-of-Pocket Expenses

Complete this section only if the Claimant had a revision surgery or is medically precluded from undergoing revision surgery.

- Check here if the Claimant purchased his or her Durom Cup(s) with his or her own funds (*i.e.*, the cost of the implant was not paid by an insurer). If you checked the box, attach all receipts or other documentation reflecting the amount paid by the Claimant for the Durom Cup(s) to this form.

Did the Claimant (who has been revised or is medically precluded from undergoing a revision) incur any other out-of-pocket expenses in connection with a revision surgery, post-revision complications, or medical treatment?

- Yes No

If you checked "No," skip to Section J. If you checked "Yes," please answer the following:

Are these claimed out-of-pocket expenses \$2,500 or less?

- Yes No

If you checked "No," and you wish to seek reimbursement for the expenses you incurred that are greater than \$2,500, you may complete and submit the Extraordinary Expense Pool Claim Form. Please note that you are required to provide receipts substantiating all of your out-of-pocket expenses if you seek reimbursement totaling more than \$2,500. If you choose to complete the Extraordinary Expense Pool Claim Form, please attach the receipts substantiating the expenses you seek to recover up to \$2,500 to this Claimant Declaration and attach the receipts substantiating any additional expenses you seek to recover to the Extraordinary Expense Pool Claim Form.

If you checked "Yes" above, or you seek to recover no more than \$2,500 in out-of-pocket expenses, do you have receipts to substantiate the expenses you incurred?

- Yes No

If "Yes," please attach your receipts to this form. If "No," please state the approximate total of the expenses you incurred: \$_____.

Section J: Declaration

I solemnly declare that:

The Claimant was implanted with one or more Durom Cup acetabular component(s) ("Durom Cup").

The Claimant wishes to make a claim for compensation in this class action.

Attached are copies of the Claimant's implant and revision (if applicable) operative reports and documentation identifying the catalogue and lot numbers of the Claimant's Durom Cup.

If I am not submitting the Claimant's Durom Cup peel-and-stick labels as product identification, it is because the hospital at which the Claimant's implant surgery occurred could not provide me with the labels because they are not in the Claimant's hospital medical records.

If I am not submitting a photograph of the Claimant's Durom Cup in lieu of the Claimant's Durom Cup peel-and-stick labels, I cannot submit a photograph because the Claimant's Durom Cup is not within the Claimant's or my possession, custody, or control.

I make this declaration believing it to be true, and knowing that it is of the same legal force and effect as if it were made under oath.

Signature of Claimant or Representative

Date

Please note: All pages of this Declaration and supporting documents must be submitted to the Claims Administrator on or before the Claims Deadline.

SCHEDULE B1 – BC ORDER PROVIDING NOTICE OF APPROVAL HEARING

No. S095493
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

DENNIS JONES and SUSAN WILKINSON

Plaintiffs

AND:

ZIMMER GMBH, ZIMMER, INC., and
ZIMMER OF CANADA LIMITED

Defendants

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE) this th day of
MR. JUSTICE BOWDEN)
)
)

ON THE APPLICATION of the Plaintiffs for an order approving the form of notice that will advise class members of the hearing to approve the proposed settlement, as well as the manner of publication of such notice coming on for hearing at the Courthouse at 800 Smithe Street, Vancouver, British Columbia on the ___ day of _____, 2015, with the consent of the Defendants and on hearing counsel for the parties and reading the materials filed including the settlement agreement and the exhibits thereto that are attached to this Order as Schedule “1” (“Settlement Agreement”);

THIS COURT ORDERS that:

1. For the purposes of this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. The motion for settlement approval for this proceeding shall be heard on [date] at the Court House, 800 Smithe Street, Vancouver, British Columbia (the “Approval Hearing”).

3. The form and content of the hearing notice, substantially in the form attached as Schedule "2", is approved (the "Hearing Notice"). The Hearing Notice shall be available in both English and French.

4. The proposed manner of publishing the Hearing Notice as described in Schedule "3", is approved (the "Notice Plan").

5. The Hearing Notice and the Notice Plan constitute fair and reasonable notice of the class of the Approval Hearing.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS NOTED ABOVE:

Signature of
 party lawyer for the Plaintiffs
David A. Klein

Signature of
 party lawyer for the Defendants
Andrew Borrell

By the Court.

Registrar

Schedule "1": Settlement Agreement

Schedule "2": Notice of Approval Hearing

Were you, or a family member, implanted with a Zimmer Durom® Hip Implant in Canada?

This notice may affect your rights. Please read carefully.

Class action lawsuits were initiated in Canada regarding allegations that the Zimmer Durom hip implant, or "Durom Cup," was defective, and that it failed prematurely. Specifically, a class action was certified by the British Columbia court on September 2, 2011 in *Jones v. Zimmer GMBH et al*, and by the Ontario court on September 24, 2014 in *McSherry v. Zimmer GMBH et al*. A proposed class action was also filed in Quebec as *Wainberg v. Zimmer GMBH*, but it has not yet been authorized.

The Defendants, while not admitting liability, have agreed to a settlement of these lawsuits. The Defendants have also consented to the authorization of *Wainberg* as a class action; the *Jones* Action and *McSherry* Action already having been certified. For a copy of the settlement agreement, or for more information, please contact Class Counsel listed below.

Who is Eligible to Participate in the Settlement?

The settlement applies to all persons who were implanted with the Durom Cup in Canada who have not opted out of the *Jones*, *McSherry*, or *Wainberg* actions and/or who have affirmatively opted into the *Jones* action, and their estates and family members.

The Terms of Settlement

The settlement provides compensation to class members who timely submit all forms and documentation required under the Settlement Agreement, less deductions for legal fees. The settlement also provides for payment to public health insurers. Please refer to the settlement agreement for specific terms and conditions.

Court Hearings and Your Right to Participate

Motions to approve the settlement agreement are scheduled to be heard by the British Columbia Court in Vancouver on [date] and the Ontario Court in Toronto on [date]. A motion to approve the settlement, and a motion to authorize the class action in *Wainberg* will be heard by the Quebec Court in Montreal on [date]. Class Counsel will also ask the courts to approve an award of fees and disbursements for their work in connection with *Jones*, *McSherry*, and *Wainberg* during the hearings.

Class members who do not oppose the settlement need not appear at the hearings or take any other action at this time to indicate their desire to participate in the settlement. All class members have the right to present arguments to the courts as regards the settlement, or to object to the settlement, by delivering a written submission to Class Counsel on or before [date]. A class member who wishes to object to the settlement shall provide in his or her objection:

- (a) The full name, current mailing address, fax number, telephone number, and email address of the person who is objecting;
- (b) A brief statement of the nature and reasons for the objection;

- (c) A declaration that the person believes he or she is a member of the Class and the reason for that belief including, if available, the catalogue and lot numbers of his/her Durom Cup; and
- (d) Whether the person intends to appear at the relevant Approval Hearing or intends to appear by counsel, and if by counsel, the name, address, telephone number, fax number, and email address of counsel, and
- (e) A declaration under the penalty of perjury that the foregoing information is true and correct.

For Québec Residents Only: Excluding Yourself from the Class Action

If you are a resident of Quebec who has not already opted into the *Jones* action and you wish to exclude yourself from the *Wainberg* action, you must deliver a written submission declaring your intention to opt out of the class action to the Clerk of the Superior Court of Quebec and Class Counsel by registered or certified mail at the addresses below on or before [date]. Your submission must include your name and address. If you exclude yourself from the class action, you will not be entitled to receive compensation under the settlement agreement. If you previously opted into the class in the *Jones* action, you are entitled to compensation in connection with your Durom Cup only as provided in the settlement agreement. For all other class members, the deadline for you to have excluded yourself from these lawsuits has already expired.

Montréal Courthouse
 Clerk of the Superior Court of Québec
 Court file number: 500-17-081863-147
 1, Notre-Dame East
 Montréal (Québec) H2Y 1B6

Daniel Chung
 Merchant Law Group LLP
 10, Notre-Dame East
 Suite 200
 Montreal (Québec) H2Y 1B7

For Additional Information and a Copy of the Settlement Agreement:

Class Counsel in *Jones* and *McSherry* Actions

Klein Lawyers LLP
 Suite 400
 1385 West 8th Avenue
 Vancouver, BC V6H 3V9
 Telephone: 604-874-7171
 Facsimile: 604-874-7180
www.kleinlyons.com

Class Counsel in *Wainberg* Action:

Merchant Law Group LLP
 2401 Saskatchewan Drive
 Regina, Saskatchewan
 S4P 4H8
 Phone: 306-359-7777
 Fax: 306-522-3299
www.merchantlawgroup.com

Schedule "3" – Notice Plan

The Notice of Approval Hearing shall be disseminated by the following means:

1. Class Counsel shall send a copy of the Notice of Approval Hearing by mail or email to all class members who have contacted them, and those class members who have provided addresses to Class Counsel for the purposes of this litigation.
2. Class Counsel shall post a copy of the Notice of Approval Hearing and the Settlement Agreement to their respective websites.
3. Class Counsel shall forward a copy of the Notice of Approval Hearing to all counsel in Canada who, to Class Counsel's knowledge, have filed litigation regarding the Zimmer Durom Cup.
4. Class Counsel shall issue the media release attached hereto as Schedule "4" with the Notice of Approval Hearing, and the media release will be distributed through Canada Newswire or Market Wired.
5. Class Counsel shall publish Notice of Approval Hearing in all publications listed in Schedule K to the Settlement Agreement.

Schedule “4”—Media Release

Zimmer Durom Cup Hip Implant Class Action Settlement

Subject to court approval, a settlement has been reached in the certified class actions involving Canadians who were implanted with the Zimmer Durom Cup hip implant. Class actions have been certified in British Columbia (*Jones v. Zimmer*) and Ontario (*McSherry v. Zimmer*). Certification is pending in a proposed class action filed in Quebec (*Wainberg v. Zimmer*), and the parties have consented to certification of that action.

The settlement applies to “all persons who were implanted with the Durom Cup in Canada” and their estates and family members.

The defendants to the three actions do not admit liability, but have agreed to a settlement providing compensation to class members with certain injuries upon approval after receipt of supporting documentation, less deductions for legal fees. Public health insurers are also entitled to compensation under the settlement agreement. Please refer to the settlement agreement for compensation details.

Motions to approve the settlement agreement will be heard by the Supreme Court of British Columbia in Vancouver on [date] and the Ontario Superior Court of Justice in Toronto on [date]. A motion to approve the settlement and to authorize the class action in *Wainberg* will be heard by the Quebec Superior Court in Montreal on [date]. At the hearings, Class Counsel will also ask the courts to approve payment of its fees and disbursements for its work in connection with the three actions.

Class members who do not oppose the settlement do not need to appear at the hearings to indicate their desire to participate in the settlement. Class members who oppose the settlement have the right to present arguments to the courts or to object to the settlement by delivering a written submission to Class Counsel on or before [date]. A class member who wishes to object to the settlement shall provide in his or her objection the following information: (a) the full name, current mailing address, fax number, telephone number, and email address of the person objecting; (b) a brief statement of the reasons for the objection; (c) a declaration that the person believes he or she is a member of the Class, and the reason for that belief, including, if available, the catalogue and lot numbers of his/her Durom Cup(s); (d) whether the person intends to appear at the relevant approval hearing or intends to appear by counsel, and, if by counsel, the name, address, telephone number, fax number, and email address of his or her counsel; and (e) a declaration under the penalty of perjury that the foregoing information is true and correct.

For additional information and a copy of the settlement agreement, contact:

Class Counsel in *Jones* and *McSherry* Actions

Klein Lawyers LLP
Suite 400
1385 West 8th Avenue
Vancouver, BC V6H 3V9
Telephone: 604-874-7171
Facsimile: 604-874-7180
www.callkleinlawyers.com

Class Counsel in *Wainberg* Action:

Merchant Law Group LLP
2401 Saskatchewan Drive
Regina, Saskatchewan
S4P 4H8
Phone: 306-359-7777
Fax: 306-522-3299
www.merchantlawgroup.com

SCHEDULE B2 – ONTARIO ORDER PROVIDING NOTICE OF APPROVAL HEARING

Court File No. CV-10-40836500 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
JUSTICE PERELL)
)

DAY, THE
DAY OF,
2015

B E T W E E N:

GLORIA McSHERRY

Plaintiff

-and-

ZIMMER GMBH, ZIMMER, INC., and ZIMMER OF CANADA LIMITED

Defendants

Proceeding under the Class Proceedings Act, 1992

ORDER

THIS MOTION by the Plaintiff for an order approving the form of notice that will advise class members of the hearing to approve the proposed settlement, as well as the manner of publicizing such notice, was heard in Toronto.

UPON BEING ADVISED that the Plaintiff and the Defendants have entered into the Settlement Agreement attached hereto as Schedule “1” and that the Defendants have consented to the terms of this Order, **THIS COURT ORDERS** that:

1. For the purposes of this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. The motion for approval of settlement in this proceeding shall be heard on [date] at the Osgoode Hall, 130 Queen Street West, Toronto, Ontario (the “Approval Hearing”).

3. The form and content of the hearing notice, substantially in the form attached hereto as Schedule "2", is approved (the "Hearing Notice"). The Hearing Notice shall be available in both English and French.
4. The proposed manner of publicizing the Hearing Notice as described in Schedule "3", is approved (the "Notice Plan").
5. The Hearing Notice and the Notice Plan constitute fair and reasonable notice to the class of the Approval Hearing.

Registrar

Schedule "1": Settlement Agreement

Schedule "2": Notice of Approval Hearing

Were you, or a family member, implanted with a Zimmer Durom® Hip Implant in Canada?

This notice may affect your rights. Please read carefully.

Class action lawsuits were initiated in Canada regarding allegations that the Zimmer Durom hip implant, or "Durom Cup," was defective, and that it failed prematurely. Specifically, a class action was certified by the British Columbia court on September 2, 2011 in *Jones v. Zimmer GMBH et al*, and by the Ontario court on September 24, 2014 in *McSherry v. Zimmer GMBH et al*. A proposed class action was also filed in Quebec as *Wainberg v. Zimmer GMBH*, but it has not yet been authorized.

The Defendants, while not admitting liability, have agreed to a settlement of these lawsuits. The Defendants have also consented to the authorization of *Wainberg* as a class action; the *Jones* Action and *McSherry* Action already having been certified. For a copy of the settlement agreement, or for more information, please contact Class Counsel listed below.

Who is Eligible to Participate in the Settlement?

The settlement applies to all persons who were implanted with the Durom Cup in Canada who have not opted out of the *Jones*, *McSherry*, or *Wainberg* actions and/or who have affirmatively opted into the *Jones* action, and their estates and family members.

The Terms of Settlement

The settlement provides compensation to class members who timely submit all forms and documentation required under the Settlement Agreement, less deductions for legal fees. The settlement also provides for payment to public health insurers. Please refer to the settlement agreement for specific terms and conditions.

Court Hearings and Your Right to Participate

Motions to approve the settlement agreement are scheduled to be heard by the British Columbia Court in Vancouver on [date] and the Ontario Court in Toronto on [date]. A motion to approve the settlement, and a motion to authorize the class action in *Wainberg* will be heard by the Quebec Court in Montreal on [date]. Class Counsel will also ask the courts to approve an award of fees and disbursements for their work in connection with *Jones*, *McSherry*, and *Wainberg* during the hearings.

Class members who do not oppose the settlement need not appear at the hearings or take any other action at this time to indicate their desire to participate in the settlement. All class members have the right to present arguments to the courts as regards the settlement, or to object to the settlement, by delivering a written submission to Class Counsel on or before [date]. A class member who wishes to object to the settlement shall provide in his or her objection:

- (a) The full name, current mailing address, fax number, telephone number, and email address of the person who is objecting;
- (b) A brief statement of the nature and reasons for the objection;

- (c) A declaration that the person believes he or she is a member of the Class and the reason for that belief including, if available, the catalogue and lot numbers of his/her Durom Cup; and
- (d) Whether the person intends to appear at the relevant Approval Hearing or intends to appear by counsel, and if by counsel, the name, address, telephone number, fax number, and email address of counsel, and
- (e) A declaration under the penalty of perjury that the foregoing information is true and correct.

To Exclude Yourself from the Class Actions

If you are a resident of Quebec who has not already opted into the *Jones* action and you wish to exclude yourself from the *Wainberg* action, you must deliver a written submission declaring your intention to opt out of the class action to the Clerk of the Superior Court of Quebec and Class Counsel by registered or certified mail at the addresses below on or before [date]. Your submission must include your name and address. If you exclude yourself from the class action, you will not be entitled to receive compensation under the settlement agreement. If you previously opted into the class in the *Jones* action, you are entitled to compensation in connection with your Durom Cup only as provided in the settlement agreement. For all other class members, the deadline for you to have excluded yourself from these lawsuits has already expired.

Montréal Courthouse
 Clerk of the Superior Court of Québec
 Court file number: 500-17-081863-147
 1, Notre-Dame East
 Montréal (Québec) H2Y 1B6

Daniel Chung
 Merchant Law Group LLP
 10, Notre-Dame East
 Suite 200
 Montreal (Québec) H2Y 1B7

For Additional Information and a Copy of the Settlement Agreement:

Class Counsel in *Jones* and *McSherry* Actions

Klein Lawyers LLP
 Suite 400
 1385 West 8th Avenue
 Vancouver, BC V6H 3V9
 Telephone: 604-874-7171
 Facsimile: 604-874-7180
www.kleinlyons.com

Class Counsel in *Wainberg* Action:

Merchant Law Group LLP
 2401 Saskatchewan Drive
 Regina, Saskatchewan
 S4P 4H8
 Phone: 306-359-7777
 Fax: 306-522-3299
www.merchantlawgroup.com

Schedule “3” – Notice Plan

The Notice of Approval Hearing shall be disseminated by the following means:

1. Class Counsel shall send a copy of the Notice of Approval Hearing by mail or email to all class members who have contacted them, and those class members who have provided addresses to Class Counsel for the purposes of this litigation.

2. Class Counsel shall post a copy of the Notice of Approval Hearing and the Settlement Agreement to their respective websites.

3. Class Counsel shall forward a copy of the Notice of Approval Hearing to all counsel in Canada who, to Class Counsel’s knowledge, have filed litigation regarding the Zimmer Durom Cup.

4. Class Counsel shall issue the media release attached hereto as Schedule 4 with the Notice of Approval Hearing, and the media release will be distributed through Canada Newswire or Market Wired.

5. Class Counsel shall publish Notice of Approval Hearing in all publications listed in Schedule K to the Settlement Agreement.

Schedule "4"—Media Release

Zimmer Durom Cup Hip Implant Class Action Settlement

Subject to court approval, a settlement has been reached in the certified class actions involving Canadians who were implanted with the Zimmer Durom Cup hip implant. Class actions have been certified in British Columbia (*Jones v. Zimmer*) and Ontario (*McSherry v. Zimmer*). Certification is pending in a proposed class action filed in Quebec (*Wainberg v. Zimmer*), and the parties have consented to certification of that action.

The settlement applies to "all persons who were implanted with the Durom Cup in Canada" and their estates and family members.

The defendants to the three actions do not admit liability, but have agreed to a settlement providing compensation to class members with certain injuries upon approval after receipt of supporting documentation, less deductions for legal fees. Public health insurers are also entitled to compensation under the settlement agreement. Please refer to the settlement agreement for compensation details.

Motions to approve the settlement agreement will be heard by the Supreme Court of British Columbia in Vancouver on [date] and the Ontario Superior Court of Justice in Toronto on [date]. A motion to approve the settlement and to authorize the class action in *Wainberg* will be heard by the Quebec Superior Court in Montreal on [date]. At the hearings, Class Counsel will also ask the courts to approve payment of its fees and disbursements for its work in connection with the three actions.

Class members who do not oppose the settlement do not need to appear at the hearings to indicate their desire to participate in the settlement. Class members who oppose the settlement have the right to present arguments to the courts or to object to the settlement by delivering a written submission to Class Counsel on or before [date]. A class member who wishes to object to the settlement shall provide in his or her objection the following information: (a) the full name, current mailing address, fax number, telephone number, and email address of the person objecting; (b) a brief statement of the reasons for the objection; (c) a declaration that the person believes he or she is a member of the Class, and the reason for that belief, including, if available, the catalogue and lot numbers of his/her Durom Cup(s); (d) whether the person intends to appear at the relevant approval hearing or intends to appear by counsel, and, if by counsel, the name, address, telephone number, fax number, and email address of his or her counsel; and (e) a declaration under the penalty of perjury that the foregoing information is true and correct.

For additional information and a copy of the settlement agreement, contact:

Class Counsel in *Jones* and *McSherry* Actions

Class Counsel in *Wainberg* Action:

Klein Lawyers LLP
Suite 400
1385 West 8th Avenue
Vancouver, BC V6H 3V9
Telephone: 604-874-7171
Facsimile: 604-874-7180
www.callkleinlawyers.com

Merchant Law Group LLP
2401 Saskatchewan Drive
Regina, Saskatchewan
S4P 4H8
Phone: 306-359-7777
Fax: 306-522-3299
www.merchantlawgroup.com

SCHEDULE B3 – QUEBEC ORDER PROVIDING NOTICE OF APPROVAL HEARING

SUPERIOR COURT

**CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL**

No.: 500-06-000543-104

Ben Wainberg

Plaintiff

v.

Zimmer Inc.
Zimmer GmbH
Zimmer Holdings, Inc.
Zimmer of Canada Limited

Defendants

JUDGMENT

1. The Plaintiff has filed a motion seeking authorization to institute a class action for the purpose of settlement and for approval of the notice that will advise class members of the hearing to approve the proposed settlement of this matter, as well as the approval of the manner of publication of the notice.
2. On reading the materials filed, and on hearing the submissions of counsel for the Plaintiff and the Defendants:
3. **THE COURT HEREBY:**
4. **GRANTS** Plaintiff’s motion for authorization to institute a class action for settlement purposes and for approval of the form of notice that will advise class members of the hearing to approve the proposed settlement.
5. **DECLARES** that for the purposes of this Judgment, the definitions set out in the Settlement Agreement attached hereto as Schedule “1” apply to and are incorporated into this Judgment.
6. **AUTHORISES** the exercise of a class action against Defendants for the purposes of settlement only and subject to the conditions of the Settlement Agreement.

7. **ORDERS** that, for the purposes of the settlement, the Quebec Class Members are defined as all persons residing in Quebec who were implanted with the Durom Cup in Canada and who have not opted out of the Quebec Proceeding on or before the opt-out deadline set by the Quebec Court and who have not opted into the BC Proceeding, and their estates and family members.

8. **DESIGNATES** the Petitioner, Ben Wainberg, as the representative of the Quebec Class Members for the sole purpose of settlement.

9. **ORDERS** that Plaintiff's motion for settlement approval in this proceeding shall be heard on [date] at the Court House, Montreal, Quebec (the "Approval Hearing").

10. **APPROVES** the form and content of the Notice of Approval Hearing substantially in the form attached hereto as Schedule "2." The Notice of Approval Hearing shall be available in both English and French.

11. **APPROVES** the proposed manner of publishing the Notice of Approval Hearing described in the Notice Plan attached hereto as Schedule "3."

12. **DECLARES** that the Notice of Approval Hearing and dissemination thereof through the Notice Plan constitute fair and reasonable notice to the Quebec Class Members of the hearing to approve settlement in this action.

13. **DECLARES** that Quebec Class Members who wish to exclude themselves from this lawsuit and the settlement thereof may do so by delivering a written notice confirming that intention that includes their name, address, telephone number, and signature, to the Clerk of the Superior Court and Class Counsel at the following addresses on or before [date]:

Montréal Courthouse
Clerk of the Superior Court of Québec
Court file number: 500-17-081863-147
1, Notre-Dame East
Montréal (Québec) H2Y 1B6

Daniel Chung
Merchant Law Group LLP
10, Notre-Dame East
Suite 200
Montreal (Québec) H2Y 1B7

By the Court.

Registrar

Schedule "1": Settlement Agreement

Schedule "2": Notice of Approval Hearing

Were you, or a family member, implanted with a Zimmer Durom® Hip Implant in Canada?

This notice may affect your rights. Please read carefully.

Class action lawsuits were initiated in Canada regarding allegations that the Zimmer Durom hip implant, or "Durom Cup," was defective, and that it failed prematurely. Specifically, a class action was certified by the British Columbia court on September 2, 2011 in *Jones v. Zimmer GMBH et al.*, and by the Ontario court on September 24, 2014 in *McSherry v. Zimmer GMBH et al.* A proposed class action was also filed in Quebec as *Wainberg v. Zimmer GMBH*, and was authorized for settlement purposes on [date].

The Defendants, while not admitting liability, have agreed to a settlement of these lawsuits. The Defendants have also consented to the authorization of *Wainberg* as a class action; the *Jones* Action and *McSherry* Action already having been certified. For a copy of the settlement agreement, or for more information, please contact Class Counsel listed below.

Who is Eligible to Participate in the Settlement?

The settlement applies to all persons who were implanted with the Durom Cup in Canada who have not opted out of the *Jones*, *McSherry*, or *Wainberg* actions and/or who have affirmatively opted into the *Jones* action, and their estates and family members.

The Terms of Settlement

The settlement provides compensation to class members who timely submit all forms and documentation required under the Settlement Agreement, less deductions for legal fees. The settlement also provides for payment to public health insurers. Please refer to the settlement agreement for specific terms and conditions.

Court Hearings and Your Right to Participate

Motions to approve the settlement agreement are scheduled to be heard by the British Columbia Court in Vancouver on [date] and the Ontario Court in Toronto on [date]. A motion to approve the settlement, and a motion to authorize the class action in *Wainberg* will be heard by the Quebec Court in Montreal on [date]. Class Counsel will also ask the courts to approve an award of fees and disbursements for their work in connection with *Jones*, *McSherry*, and *Wainberg* during the hearings.

Class members who do not oppose the settlement need not appear at the hearings or take any other action at this time to indicate their desire to participate in the settlement. All class members have the right to present arguments to the courts as regards the settlement, or to object to the settlement, by delivering a written submission to Class Counsel on or before [date]. A class member who wishes to object to the settlement shall provide in his or her objection:

- (a) The full name, current mailing address, fax number, telephone number, and email address of the person who is objecting;
- (b) A brief statement of the nature and reasons for the objection;

- (c) A declaration that the person believes he or she is a member of the Class and the reason for that belief including, if available, the catalogue and lot numbers of his/her Durom Cup; and
- (d) Whether the person intends to appear at the relevant Approval Hearing or intends to appear by counsel, and if by counsel, the name, address, telephone number, fax number, and email address of counsel, and
- (e) A declaration under the penalty of perjury that the foregoing information is true and correct.

For Québec Residents Only: Excluding Yourself from the Class Action

If you are a resident of Quebec who has not already opted into the *Jones* action and you wish to exclude yourself from the *Wainberg* action, you must deliver a written submission declaring your intention to opt out of the class action to the Clerk of the Superior Court of Quebec and Class Counsel by registered or certified mail at the addresses below on or before [date]. Your submission must include your name and address. If you exclude yourself from the class action, you will not be entitled to receive compensation under the settlement agreement. If you previously opted into the class in the *Jones* action, you are entitled to compensation in connection with your Durom Cup only as provided in the settlement agreement. For all other class members, the deadline for you to have excluded yourself from these lawsuits has already expired.

Montréal Courthouse
 Clerk of the Superior Court of Québec
 Court file number: 500-17-081863-147
 1, Notre-Dame East
 Montréal (Québec) H2Y 1B6

Daniel Chung
 Merchant Law Group LLP
 10, Notre-Dame East
 Suite 200
 Montreal (Québec) H2Y 1B7

For Additional Information and a Copy of the Settlement Agreement:

Class Counsel in *Jones* and *McSherry* Actions

Class Counsel in *Wainberg* Action:

Klein Lawyers LLP
 Suite 400
 1385 West 8th Avenue
 Vancouver, BC V6H 3V9
 Telephone: 604-874-7171
 Facsimile: 604-874-7180
www.kleinlyons.com

Merchant Law Group LLP
 2401 Saskatchewan Drive
 Regina, Saskatchewan
 S4P 4H8
 Phone: 306-359-7777
 Fax: 306-522-3299
www.merchantlawgroup.com

Schedule “3” – Notice Plan

The Notice of Approval Hearing shall be disseminated by the following means:

1. Class Counsel shall send a copy of the Notice of Approval Hearing by mail or email to all class members who have contacted them, and those class members who have provided addresses to Class Counsel for the purposes of this litigation.
2. Class Counsel shall post a copy of the Notice of Approval Hearing and the Settlement Agreement to their respective websites.
3. Class Counsel shall forward a copy of the Notice of Approval Hearing to all counsel in Canada who, to Class Counsel’s knowledge, have filed litigation regarding the Zimmer Durom Cup.
4. Class Counsel shall issue the media release attached hereto as Schedule 4 with the Notice of Approval Hearing, and the media release will be distributed through Canada Newswire or Market Wired.
5. Class Counsel shall publish Notice of Approval Hearing in all publications listed in Schedule K to the Settlement Agreement.

Schedule "4"—Media Release

Zimmer Durom Cup Hip Implant Class Action Settlement

Subject to court approval, a settlement has been reached in the certified class actions involving Canadians who were implanted with the Zimmer Durom Cup hip implant. Class actions have been certified in British Columbia (*Jones v. Zimmer*) and Ontario (*McSherry v. Zimmer*). Certification is pending in a proposed class action filed in Quebec (*Wainberg v. Zimmer*), and the parties have consented to certification of that action.

The settlement applies to "all persons who were implanted with the Durom Cup in Canada" and their estates and family members.

The defendants to the three actions do not admit liability, but have agreed to a settlement providing compensation to class members with certain injuries upon approval after receipt of supporting documentation, less deductions for legal fees. Public health insurers are also entitled to compensation under the settlement agreement. Please refer to the settlement agreement for compensation details.

Motions to approve the settlement agreement will be heard by the Supreme Court of British Columbia in Vancouver on [date] and the Ontario Superior Court of Justice in Toronto on [date]. A motion to approve the settlement and to authorize the class action in *Wainberg* will be heard by the Quebec Superior Court in Montreal on [date]. At the hearings, Class Counsel will also ask the courts to approve payment of its fees and disbursements for its work in connection with the three actions.

Class members who do not oppose the settlement do not need to appear at the hearings to indicate their desire to participate in the settlement. Class members who oppose the settlement have the right to present arguments to the courts or to object to the settlement by delivering a written submission to Class Counsel on or before [date]. A class member who wishes to object to the settlement shall provide in his or her objection the following information: (a) the full name, current mailing address, fax number, telephone number, and email address of the person objecting; (b) a brief statement of the reasons for the objection; (c) a declaration that the person believes he or she is a member of the Class, and the reason for that belief, including, if available, the catalogue and lot numbers of his/her Durom Cup(s); (d) whether the person intends to appear at the relevant approval hearing or intends to appear by counsel, and, if by counsel, the name, address, telephone number, fax number, and email address of his or her counsel; and (e) a declaration under the penalty of perjury that the foregoing information is true and correct.

For additional information and a copy of the settlement agreement, contact:

Class Counsel in *Jones* and *McSherry* Actions

Klein Lawyers LLP
 Suite 400
 1385 West 8th Avenue
 Vancouver, BC V6H 3V9
 Telephone: 604-874-7171
 Facsimile: 604-874-7180
www.callkleinlawyers.com

Class Counsel in *Wainberg* Action:

Merchant Law Group LLP
 2401 Saskatchewan Drive
 Regina, Saskatchewan
 S4P 4H8
 Phone: 306-359-7777
 Fax: 306-522-3299
www.merchantlawgroup.com

SCHEDULE C – BC ORDER ON APPROVAL OF SETTLEMENT

No. S095493
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

DENNIS JONES and SUSAN WILKINSON

Plaintiffs

AND:

ZIMMER GMBH, ZIMMER, INC., and
ZIMMER OF CANADA LIMITED

Defendants

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE) day, the th day of
MR. JUSTICE BOWDEN)
)
)

THE APPLICATION OF the representative Plaintiff for approval of the settlement of this action pursuant to s.35 of the *Class Proceedings Act*, in accordance with the terms of the Settlement Agreement was heard this day in Vancouver, British Columbia.

UPON READING the representative Plaintiff's application record, and upon hearing the submissions of counsel for the representative Plaintiff, _____, and counsel for the Defendants, _____, and upon being advised that the parties consent to this order,

THIS COURT ORDERS AND DECLARES that:

1. The definitions set out in the Settlement Agreement, which is attached as Schedule "A", apply to and are incorporated into this Order.

2. The settlement of action, as set out in the Settlement Agreement, is fair and reasonable and in the best interests of the BC Class Members, and is hereby approved.

3. The Defendants shall pay the amounts required under the Settlement Agreement subject to the rights of termination in Section 8 of the Settlement Agreement.

4. The form and content of the Notice of Approval of Settlement to BC Class Members shall be substantially in the form which appears at Schedule "H" to the Settlement Agreement.

5. The BC Class Members shall be given notice of this order in accordance with the plan attached as Schedule "K" to the Settlement Agreement.

6. The notification plan described in paragraphs 4 and 5 of this Order satisfies the requirements of s. 19 of the *Class Proceedings Act*.

7. The Settlement Agreement and this Order are binding upon each BC Class Member, whether or not such person receives or claims compensation, including persons who are minors or are mentally incapable.

8. Crawford Class Action Services is hereby appointed as Claims Administrator.

9. Upon the Effective Date, the Releasees are forever and absolutely released by the Releasers from the Released Claims. The Releasers are barred from making any claim or taking or continuing any proceedings arising out of or relating to the Released Claims against any other person, corporation, or entity (including, without limitation, any health care professionals, health care providers, or health care facilities) that might claim damages and/or contribution and indemnity and/or other relief under the provisions of the *Negligence Act* or other comparable provincial legislation and any amendments thereto, the common law, Quebec civil law, or any other statute, for any relief whatsoever,

including relief of a monetary, declaratory, or injunctive nature, from one or more of the Releasees.

10. This Court shall have continuing jurisdiction over the implementation and enforcement of the Settlement Agreement.

11. This action is dismissed without costs and with prejudice.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of
 party lawyer for the Plaintiffs
David A. Klein

Signature of
 party lawyer for the Defendants
Andrew Borrell

By the Court.

Registrar

SCHEDULE D- ONTARIO ORDER ON APPROVAL OF SETTLEMENT

Court File No. CV-10-40836500 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
JUSTICE PERELL)
)

DAY, THE
DAY OF ,
2015

BETWEEN:

GLORIA McSHERRY

Plaintiff

-and-

ZIMMER GMBH, ZIMMER, INC., and ZIMMER OF CANADA LIMITED

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the representative Plaintiff for approval of the settlement of this action pursuant to s.29 of the *Class Proceedings Act*, in accordance with the terms of the Settlement Agreement was heard this day in Toronto.

UPON READING the Representative Plaintiff's motion record, and upon hearing the submissions of counsel for the representative Plaintiff and counsel for the Defendants, and upon being advised that the parties consent to this order,

THIS COURT ORDERS AND DECLARES that:

- 1. The definitions set out in the Settlement Agreement, which is attached as Schedule A, apply to and are incorporated into this Order.

2. The settlement of action, as set out in the Settlement Agreement, is fair, reasonable, and in the best interests of the Ontario Class Members, and is hereby approved.
3. The Defendants shall pay the amounts required under the Settlement Agreement, subject to the Right of Termination set out in Section 8 of the Settlement Agreement.
4. The form and content of the Notice of Approval of Settlement to Ontario Class Members shall be substantially in the form which appears at Schedule H to the Settlement Agreement.
5. The Ontario Class Members shall be given notice of this order in accordance with the plan attached as Schedule K to the Settlement Agreement.
6. The notification plan described in paragraphs 4 and 5 of this order satisfies the requirements of s. 17 of the *Class Proceedings Act*.
7. The Settlement Agreement and this Order are binding upon each Ontario Class Member, whether or not such person receives or claims compensation, including persons who are minor or are mentally incapable.
8. Crawford Class Action Services is hereby appointed as Claims Administrator.
9. Upon the Effective Date, the Releasees are forever and absolutely released by the Releasers from the Released Claims. The Releasers are barred from making any claim or taking or continuing any proceedings arising out of or relating to the Released Claims against any other person, corporation, or entity (including, without limitation, any health care professionals, health care providers, or health care facilities) that might claim damages and/or contribution and indemnity and/or other relief under the provisions of the *Negligence Act* or other comparable provincial legislation and any amendments thereto, the common law, Quebec civil law, or any other statute, for any relief whatsoever, including relief of a monetary, declaratory, or injunctive nature, from one or more of the Releasees.
10. This Court shall have continuing jurisdiction over the implementation and enforcement of the Settlement Agreement.
11. This action is hereby dismissed without costs and with prejudice.

Registrar

SCHEDULE E – QUEBEC ORDER ON APPROVAL OF SETTLEMENT

SUPERIOR COURT

**CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL**

No.: 500-06-000543-104

Ben Wainberg

Plaintiff

v.

Zimmer Inc.
Zimmer GmbH
Zimmer Holdings, Inc.
Zimmer of Canada Limited

Defendants

JUDGMENT

- 1. The Plaintiff has filed a motion seeking approval of the settlement reached in this proceeding, together with a motion authorizing this proceeding as a class action.
- 2. On reading the materials filed and hearing the submissions of counsel for the Plaintiff and the Defendants:

FOR THESE REASONS, THE COURT:

- 3. **DECLARES** that the definitions set out in the Settlement Agreement, attached as Schedule A, apply to and are incorporated into this Judgment.
- 4. **DECLARES** that the settlement of action, as set out in the Settlement Agreement, is fair, reasonable, and in the best interest of the Quebec Class Members, and accordingly, the Settlement Agreement is hereby approved pursuant to section 1025 of the *Code of Civil Procedure*, R.S.Q., c.C-25.
- 5. **DECLARES** that the Settlement Agreement constitutes a “transaction” pursuant to Article 1025 of the Code of Civil Procedure, which is binding on the parties and the Quebec Class Members.

6. **DECLARES** that subject to Article 1008 of the Code of Civil Procedure, any Quebec Class Member who has not opted out of the Quebec Class by the Opt-Out Deadline shall be bound by the Settlement Agreement and this Judgment.
7. **ORDERS** that the Defendants shall pay the amounts required under the Settlement Agreement subject to the Right of Termination set out in Section 8.1 of the Settlement Agreement.
8. **ORDERS** that the form and content of the Notice of Approval of Settlement to the Quebec Class Members shall be in the form attached as Schedule J to the Settlement Agreement. The Notice of Approval of Settlement to Quebec Class Members shall be available in both French and English.
9. **ORDERS** that Class Members shall be given notice of this Judgment in accordance with the plan attached as Schedule K to the Settlement Agreement.
10. **DECLARES** that this Judgment, including the Settlement Agreement, is binding upon each Quebec Class Member, including minors and persons who are mentally incapacitated, whether or not such person receives or claims compensation under the Settlement Agreement.
11. **DECLARES** that Crawford Class Action Services shall serve as the Claims Administrator.
12. **DECLARES** that upon the Effective Date, the Releasors forever and absolutely release the Releasees from the Released Claims. And for the consideration provided in the Settlement Agreement, the Releasors agree not to make any claim or take or continue any proceedings arising out of or relating to the subject matter of the Released Claims against any other person, corporation, or entity (including, without limitation, any health care professionals, health care providers, or health care facilities) that might claim damages and/or contribution and indemnity and/or other relief under the provisions of the *Negligence Act* or other comparable provincial legislation and any amendments thereto, the common law, Quebec civil law, or any other statute, for any relief whatsoever, including relief of a monetary, declaratory, or injunctive nature, from one or more of the Releasees.
13. **ORDERS** that this action is hereby dismissed without costs and with prejudice.

By the Court.

Registrar

Are you one of the patient's treating physicians?

Yes No

If "Yes," state your role in the patient's medical care and treatment relative to his/her Durom Cup implant:

3. IMPLANT INFORMATION

State the reference and catalog numbers that correspond to the patient's Durom Acetabular Cup ("Durom Cup")

Date of Implantation (Right) _____
(MM/DD/YYYY)

Implant Reference/Catalogue Numbers _____
(if available)

Implant Lot Number _____
(if available)

Date of Implantation (Left) _____
(MM/DD/YYYY)

Implant Reference/ Catalogue Numbers _____
(if available)

4. REVISED PATIENT

Has the patient been diagnosed as requiring a revision surgery to replace the Durom Cup?

Yes No

If "Yes," please answer the remaining questions in section 4. If "No," please skip to section 8.

Date of the diagnosis: _____
(MM/DD/YYYY)

Has a revision surgery been scheduled? Yes No

If "Yes," date on which the surgery was scheduled: _____

(MM/DD/YYYY)

Has the surgery occurred? Yes No

If "Yes," date on which the revision surgery took place: _____
(MM/DD/YYYY)

Describe all reason(s) a revision surgery for the Durom Cup has been diagnosed and identify all testing or films taken and the results that support this diagnosis:

5. UNREVISED PATIENT WHERE REVISION SURGERY IS CONTRAINDICATED

If a revision surgery has not been scheduled or will not take place, is there a medical condition that prevents the patient from undergoing a revision surgery ("Contraindication")? Yes No

If "Yes," describe the Contraindication(s) that prevent(s) replacement of the Durom Cup, and state whether the Contraindication(s) is/are temporary or permanent:

Provide the date on which you determined that a revision surgery for the patient was Contraindicated: _____
(MM/DD/YYYY)

6. COMPLICATIONS RESULTING FROM REVISION SURGERY

Check here if the patient underwent a revision surgery or surgeries to remove his/her Durom Cup(s).

If you checked the box above, and the patient sustained any of the following complications during or after his/her revision surgery, please state the date on which the complication(s) occurred:

DATE
(MM/DD/YYYY)

- (a) A second revision (Right)
A second revision (Left) _____
- (b) A third revision (Right)
A third revision (Left) _____
- (c) Stroke that occurred within 72 hours after a
revision surgery to remove a Durom Cup as a result of
that surgery _____
- (d) Blood clot that occurred within 72 hours after a
revision surgery to remove a Durom Cup as a result of
that surgery _____
- (e) Infection in the revised hip that was diagnosed within 30
days after a revision surgery to remove a Durom Cup
and was caused by that surgery _____
- (f) Permanent nerve damage resulting from a revision
surgery to remove a Durom Cup _____
- (g) Death within 72 hours after a revision surgery
to remove a Durom Cup that resulted from that surgery _____

Please attach medical records to this form that confirm that the complication(s) noted above occurred. Such medical records may include, but are not limited to, operative reports, pathology reports, office records, and/or discharge summaries.

7. DECLARATION

I affirm that the foregoing representations are true and correct.

Executed on _____, 201__.

By: _____
Signature of Physician

Print Name

Total Amount Claimed: \$ _____

SCHEDULE H – NOTICE TO BC CLASS MEMBERS

Were you, or a family member, implanted with a Zimmer Durom® Hip Implant in Canada?

This notice may affect your rights. Please read carefully.

Class action lawsuits were initiated in Canada regarding allegations that the Zimmer Durom hip implant, or “Durom Cup,” was defective, and that it failed prematurely. Specifically, a class action was certified by the British Columbia court on September 2, 2011, in *Jones v. Zimmer GMBH et al*, and by the Ontario court on September 24, 2014, in *McSherry v. Zimmer GMBH et al*, and was authorized by the Quebec court on [date] in *Wainberg v. Zimmer GMBH*.

These actions have now been settled, and the courts have approved the settlement. For a copy of the settlement agreement, please contact Class Counsel or the Claims Administrator at the address below.

Who is Eligible to Participate in the Settlement?

The settlement applies to all persons who were implanted with the Durom Cup in Canada who have not opted out of the *Jones*, *McSherry*, or *Wainberg* actions and/or who have affirmatively opted into the *Jones* action, and their estates and family members.

The Terms of Settlement

The settlement provides compensation to class members who timely submit all forms and documentation required under the Settlement Agreement, less deductions for legal fees. The settlement also provides for payment to public health insurers. Please refer to the settlement agreement for specific terms and conditions.

To Make a Claim

To be entitled to a payment pursuant to the settlement agreement, class members must submit all required forms and documentation to the Claims Administrator on or before **[deadline]**.

For More Information or to Obtain a Claim Form

Please contact Class Counsel or the Claims Administrator at the address below:

Class Counsel in *Jones* and *McSherry* Actions:

Klein Lawyers LLP
Suite 400
1385 West 8th Avenue
Vancouver, BC V6H 3V9
Telephone: 604-874-7171
Facsimile: 604-874-7180
www.kleinlyons.com

Class Counsel in *Wainberg* Action:

Merchant Law Group LLP
2401 Saskatchewan Drive
Regina, Saskatchewan
S4P 4H8
Phone: 306-359-7777
Fax: 306-522-3299
www.merchantlawgroup.com

Claims Administrator:

Crawford Class Action Services

180 King Street S.

Waterloo, ON N2J 1P8

Telephone: 519-578-4053

SCHEDULE I – NOTICE TO ONTARIO CLASS MEMBERS

Were you, or a family member, implanted with a Zimmer Durom® Hip Implant in Canada?

This notice may affect your rights. Please read carefully.

Class action lawsuits were initiated in Canada regarding allegations that the Zimmer Durom hip implant, or “Durom Cup,” was defective, and that it failed prematurely. Specifically, a class action was certified by the British Columbia court on September 2, 2011, in *Jones v. Zimmer GMBH et al*, and by the Ontario court on September 24, 2014, in *McSherry v. Zimmer GMBH et al*, and was authorized by the Quebec court on [date] in *Wainberg v. Zimmer GMBH*.

These actions have now been settled, and the courts have approved the settlement. For a copy of the settlement agreement, please contact Class Counsel or the Claims Administrator at the address below.

Who is Eligible to Participate in the Settlement?

The settlement applies to all persons who were implanted with the Durom Cup in Canada who have not opted out of the *Jones*, *McSherry*, or *Wainberg* actions and/or who have affirmatively opted into the *Jones* action, and their estates and family members.

The Terms of Settlement

The settlement provides compensation to class members who timely submit all forms and documentation required under the Settlement Agreement, less deductions for legal fees. The settlement also provides for payment to public health insurers. Please refer to the settlement agreement for specific terms and conditions.

To Make a Claim

To be entitled to a payment pursuant to this Settlement Agreement, class members must file a claim with the Claims Administrator on or before **[deadline]**.

For More Information or to Obtain a Claim Form

Please contact Class Counsel or the Claims Administrator at the address below:

Class Counsel in *Jones* and *McSherry* Actions:

Klein Lawyers LLP
Suite 400
1385 West 8th Avenue
Vancouver, BC V6H 3V9
Telephone: 604-874-7171
Facsimile: 604-874-7180
www.kleinlyons.com

Class Counsel in *Wainberg* Action:

Merchant Law Group LLP
2401 Saskatchewan Drive
Regina, Saskatchewan
S4P 4H8
Phone: 306-359-7777
Fax: 306-522-3299
www.merchantlawgroup.com

Claims Administrator:

Crawford Class Action Services

180 King Street S.

Waterloo, ON N2J 1P8

Telephone: 519-578-4053

SCHEDULE J – NOTICE TO QUEBEC CLASS MEMBERS

Were you, or a family member, implanted with a Zimmer Durom® Hip Implant in Canada?

This notice may affect your rights. Please read carefully.

Class action lawsuits were initiated in Canada regarding allegations that the Zimmer Durom hip implant, or “Durom Cup,” was defective, and that it failed prematurely. Specifically, a class action was certified by the British Columbia court on September 2, 2011, in *Jones v. Zimmer GMBH et al*, and by the Ontario court on September 24, 2014, in *McSherry v. Zimmer GMBH et al*, and was authorized by the Quebec court on [date] in *Wainberg v. Zimmer GMBH*.

These actions have now been settled, and the courts have approved the settlement. For a copy of the settlement agreement, please contact Class Counsel or the Claims Administrator at the address below.

Who is Eligible to Participate in the Settlement?

The settlement applies to all persons who were implanted with the Durom Cup in Canada who have not opted out of the *Jones*, *McSherry*, or *Wainberg* actions and/or who have affirmatively opted into the *Jones* action, and their estates and family members.

The Terms of Settlement

The settlement provides compensation to class members who timely submit all forms and documentation required under the Settlement Agreement, less deductions for legal fees. The settlement also provides for payment to public health insurers. Please refer to the settlement agreement for specific terms and conditions.

To Make a Claim

To be entitled to a payment pursuant to this Settlement Agreement, class members must file a claim with the Claims Administrator on or before **[deadline]**.

For More Information or to Obtain a Claim Form

Please contact Class Counsel or the Claims Administrator at the address below:

Class Counsel in *Jones* and *McSherry* Actions:

Klein Lawyers LLP
Suite 400
1385 West 8th Avenue
Vancouver, BC V6H 3V9
Telephone: 604-874-7171
Facsimile: 604-874-7180
www.kleinlyons.com

Class Counsel in *Wainberg* Action:

Merchant Law Group LLP
2401 Saskatchewan Drive
Regina, Saskatchewan
S4P 4H8
Phone: 306-359-7777
Fax: 306-522-3299
www.merchantlawgroup.com

Claims Administrator:

Crawford Class Action Services

180 King Street S.

Waterloo, ON N2J 1P8

Telephone: 519-578-4053

SCHEDULE K – PLAN FOR DISSEMINATION OF CLASS NOTICES

The Notices of Approval Hearing and the Notices of Settlement Approval (“Notices”) shall be disseminated by the following means:

1. Class Counsel shall send copies of the Notices by mail or email to all class members who have contacted Class Counsel regarding this action and provided their contact information.
2. Class Counsel shall post copies of the Notices to their respective websites.
3. Class Counsel shall forward copies of the Notices to all counsel in Canada who, to Class Counsel’s knowledge, have filed actions on behalf of their clients relating to the Zimmer Durom Cup.
4. Class Counsel shall arrange for publication of the Notices in the following publications (single insertion, ¼ panel), with such publication to occur as soon as reasonably feasible following the date of the Final Orders:
 - (a) Globe & Mail
 - (b) Vancouver Sun
 - (c) Edmonton Journal
 - (d) Calgary Herald
 - (e) La Presse (FR)
 - (f) Montreal Gazette (ENG)
 - (g) Le Journal de Montreal (FR)
 - (h) Montreal Metro News
 - (i) The Star Phoenix (Saskatoon)
 - (j) Regina Leader-Post
 - (k) Toronto Star
 - (l) Toronto Metro News
 - (m) Sudbury Star

- (n) Hamilton Spectator
- (o) Le Soleil
- (p) Le Journal de Quebec

SCHEDULE L—LIST OF COMPLICATIONS AND CORRESPONDING PAYMENT AMOUNTS

SECTION 1: DEFINITIONS

In this Schedule, the following is a Complication:

- (1) “Blood Clot” means a diagnosis made within 72 hours of a Revision Surgery of pulmonary embolism or deep vein thrombosis that resulted from a Revision Surgery.
- (2) “Death” means the class member died within 72 hours after a Revision Surgery as a result of the Revision Surgery.
- (3) “Permanent Nerve Damage” means nerve damage resulting from a Revision Surgery that has been declared permanent by the medical professional who signed the Physician’s Declaration.
- (4) “Infection” means any infection in the revised hip that is diagnosed within 30 days after a Revision Surgery and determined to have been caused by the Revision Surgery.
- (5) “Second Revision” means a surgery to remove a replacement hip implant that had been installed as part of a Revision Surgery because the replacement hip implant failed.
- (6) “Stroke” means a cerebrovascular incident or insult occurring within 72 hours of a Revision Surgery.
- (7) “Third Revision” means a surgery to remove a replacement hip implant that had been installed as part of a Second Revision because the replacement hip implant failed.

SECTION 2: CORRESPONDING PAYMENT AMOUNTS

2.1 The amounts payable under s. 4.2(4)(e) of the Settlement Agreement to Class Members who have suffered a Complication are as follows, but in no event shall a Class Member be awarded more than \$40,000 for all Complications sustained:

Complication	Payment
Infection	\$10,000 (CAD)
Permanent Nerve Damage	\$20,000 (CAD)

Second Revision	\$20,000 (CAD)
Blood Clot	\$10,000 (CAD)
Stroke	\$40,000 (CAD)
Third Revision	\$40,000 (CAD)
Death	\$40,000 (CAD)

2.2 The amounts payable at paragraph 2.1 of Schedule L are cumulative, but in no event shall more than \$40,000 be payable to a Class Member for Complications under this Schedule. Thus, regardless of the number of Complications a Class Member has, the Class member can recover only up to a total of \$40,000 for all Complications.

2.3 Only a Complication diagnosed on or before the Eligibility Deadline is compensable under this Settlement Agreement.

SCHEDULE M – HEALTH INSURER CLAIM FORM
Zimmer Durom Cup Hip Implant Class Action

1. Entitlement to Reimbursement

The Settlement Agreement provides for the potential reimbursement of \$15,000 (CAD) per Revision Surgery undergone by each BC Class Member, Ontario Class Member and Quebec Class Member in a Provincial Health Insurer's province, regardless of whether the BC Class Member, Ontario Class Member or Quebec Class Member seeks compensation under this Settlement Agreement.

2. Information Required for Reimbursement

Each Provincial Health Insurer will receive \$15,000 (CAD) for each Revision Surgery that a Class Member who submits a proper and approved claim for recovery under this Settlement Agreement underwent in the Provincial Health Insurer's province. Upon approval from the Claims Administrator, each Provincial Health Insurer is permitted to recover \$15,000 for each Revision Surgery that a Class Member who does not submit a proper and approved claim for recovery under this Settlement Agreement underwent in the Provincial Health Insurer's province, provided that the Provincial Health Insurer properly completes all information pertaining to such Class Members required by Schedule M and submits Schedule M to the Claims Administrator no later than 90 days after the Claims Deadline. All requests for compensation submitted by Provincial Health Insurers that do not meet the requirements of Schedule M will be denied.

3. Verification

- A. I, _____ (*name of individual completing verification*) submit this request for reimbursement on behalf of _____
 _____ (*name of Provincial Health Insurer*) (hereafter "Provincial Health Insurer"). I affirm that I am a duly authorized representative of this Provincial Health Insurer and that the information provided herein, including the information in Table M1, was obtained from the business records maintained by Provincial Health Insurer.
- B. The complete list of individuals who underwent at least one Revision Surgery in the Provincial Health Insurer's province but who did not properly submit a claim for compensation under the Settlement Agreement for whom Provincial Health Insurer seeks reimbursement, along with the required information relating to those individuals, is attached at Table M1. The total amount that the Provincial Health Insurer is claiming for reimbursement for these individuals is \$ _____ (CAD).
- C. I affirm under the penalties of perjury that the information submitted in this verification and in Table M1 is true and correct.
- D. I affirm under the penalties of perjury that the claims identified in Table M1 are not duplicative and that the Provincial Health Insurer did not receive compensation in the past from Defendants in connection with any of those claims.

Name

Date

Position

Provincial Health Insurer

SCHEDULE N – ELIGIBILITY REQUIREMENTS

Who is eligible to participate in the Settlement Class?

If you received a Durom Acetabular Component (“Durom Cup”) in Canada, then you are eligible to participate in the settlement.

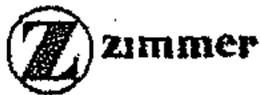
The compensation that you are eligible to receive as a member of the settlement class will be determined based on your status on September 1, 2015. This is referred to as the “Eligibility Deadline.” You are required to submit your claim and the documentation required elsewhere in this Settlement Agreement on or before *[insert claims deadline date]*. This is referred to as the “Claims Deadline.”

How is eligibility determined?

In order to participate, you must provide Product Identification that confirms the reference number (sometimes referred to as “catalogue number”) and lot number of the device that was implanted, in addition to other documents required by the Settlement Agreement. Product Identification confirms that you were implanted with a Durom Cup. Product Identification can be found on the peel-and-stick label (the “Label”) from the Durom Cup that should be affixed to the medical record from your implant surgery (sometimes called the implant operative report). You can obtain your implant surgery medical record from the hospital where your implant surgery occurred or from your physician. To be eligible for settlement, the reference/catalogue number on the Label must be one of the following:

- 01.00214.044
- 01.00214.046
- 01.00214.048
- 01.00214.050
- 01.00214.052
- 01.00214.054
- 01.00214.056
- 01.00214.058
- 01.00214.060
- 01.00214.062
- 01.00214.064
- 01.00214.066

The image below is an *example* of Product Identification. Please note that not all product labels are identical to the example provided below, but they are all similar to it. This example is provided to help you identify the location of the reference and lot numbers of your device so that you can confirm that you are eligible for settlement.

REF 01.00214.050	EDI: 0100214050	
LOT 2420836	 2013-03 Qty: 001	
Metasul® Durom® Acetabular Component uncemented 50/ 644 Code J		
CoCrMo (Protasul®-21WF) ISO 5832-12		
C.P. Titanium (Protasul®-Ti) ISO 5832-2		
		
H84401002140501/130902420836D8EF		
Zimmer GmbH, CH-8404 Winterthur, Switzerland / www.zimmer.com		25955v02 - LB1v02

If, and only if, you are unable to obtain the Label because the implant surgery hospital could not locate it in your hospital medical records, then you may provide the following to prove that you received a Durom Cup:

- a. If the Durom Cup has been explanted from your body and it still exists, you must provide (1) a color photograph of the Durom Cup that shows the identification numbers on the edge of the Durom Cup, and (2) a Physician Declaration confirming that you were implanted with a Durom Cup and the date of the implantation;

OR

- b. If you cannot obtain a photograph because your Durom Cup is not within your possession, custody, or control, you must provide (1) a copy of your implant surgery operative report from the hospital where you were implanted, in which your surgeon confirms that you were implanted with a Durom Cup, and (2) a Physician Declaration confirming that you were implanted with a Durom Cup and the date of implantation.

Important Note: Failure to provide Product Identification in the manner stated above by the Claims Deadline [*insert date*] will render you ineligible to recover under this Settlement Agreement.

When will my status under the Settlement Agreement be determined? What if I have scheduled a revision surgery, but the revision surgery will not occur before the Eligibility Deadline?

The Eligibility Deadline is an absolute deadline unless, as of the Eligibility Deadline, you have a Scheduled Revision Surgery. A "Scheduled Revision Surgery" means that you have selected and confirmed a date with a surgeon on which you will undergo a surgery to remove the Durom Cup that was implanted in your hip (referred to as a "Revision Surgery"), but that date will occur after

the Eligibility Deadline. Note that a Scheduled Revision Surgery refers only to a surgery to remove the Durom Cup, and does not include revision surgeries performed for other reasons.

If you have a Scheduled Revision Surgery as of the Eligibility Deadline, then the determination of the compensation owed to you will be postponed until the Scheduled Revision Surgery occurs, provided that you submit a Physician Declaration by the Claims Deadline that confirms:

- a. That the physician signing the declaration determined that a revision surgery is required;
- b. The date on which your need for a Revision Surgery was diagnosed; and
- c. The date on which your revision surgery took place.

No compensation will be provided to you unless and until the revision surgery occurs.

What if I decide not to have a Scheduled Revision Surgery?

If the surgery is cancelled and not rescheduled because you have decided not to have the Scheduled Revision Surgery, you may receive compensation under the Settlement Agreement as an unrevised claimant. In that case, you will submit a Claimant Declaration on or before the Claims Deadline denoting that you are unrevised, and any compensation to which you are entitled will be determined accordingly.

What if I must cancel a Scheduled Revision Surgery because I am medically unable to proceed?

If the Scheduled Revision Surgery cannot occur due to a realistic medical risk to your life or health, as defined elsewhere in the Settlement Agreement, you may receive compensation under the Settlement Agreement as an unrevised claimant for whom revision is medically precluded. In that case, you will submit the appropriate documentation that reflects this status (as defined in the Settlement Agreement) on or before the Claims Deadline and your compensation will be determined accordingly.

Important note: The Eligibility Deadline is an absolute deadline for the determination of compensable injuries in all cases except for those individuals who have a properly documented Scheduled Revision Surgery. No other exceptions will be made.

Can the Claims Deadline be extended for any reason?

No, the Claims Deadline is an absolute deadline for which there are no exceptions.

SCHEDULE O - APPEAL PROTOCOL

The following procedure shall apply to appeals of decisions by the Claims Administrator that may be brought by a Class Member or the Defendants pursuant to section 4.4(5) of the Settlement Agreement (“Appealable Decisions”):

1. The party who seeks to appeal an Appealable Decision (the “Appellant”) shall submit to the Claims Administrator a written statement setting out the nature of, and the reasons for, the appeal (the “Appeal Statement”). The time for submitting an Appeal Statement is as follows:

(a) for a Class Member—within 30 days after the Appellant was deemed to have received the Class Administrator’s decision that is the subject of the Appeal Statement; and

(b) for Defendants—within 30 days after receiving notice of the Class Administrator’s decision under Section 4.3(8) of the Settlement Agreement.

2. Upon receipt of the Appeal Statement, the Claims Administrator shall send a copy of the Appeal Statement to the Defendants (c/o their counsel, where a Class Member is the Appellant) or to the affected Class Member (where the Defendants are the Appellant) (the “Respondent”) for review and consideration. The Respondent shall inform the Claims Administrator of whether it agrees or disagrees with the Appellant’s Appeal Statement within 30 days following the Respondent’s receipt of the Appeal Statement. If the Respondent agrees with the Appellant’s Appeal Statement, the Claims Administrator shall accept the Appellant’s position and change the decision accordingly.

3. If the Respondent disagrees with the Appellant’s Appeal Statement, then the Appellant shall have a right to appeal the Claims Administrator’s decision to one of the following private arbitrators (the “Arbitrator”):

(a) for all Class Members who reside outside of the Province of Quebec, the Honourable Marion J. Allan; or

(b) for all Class Members who reside in the Province of Quebec, The Honourable Marion J. Allan or The Honourable André Forget.

4. The Claims Administrator shall contact the applicable Arbitrator and ask the Arbitrator to provide a pre-estimate of its fee for conducting the appeal. As a pre-condition to submitting an appeal to the Arbitrator, the Appellant shall provide to the Claims Administrator (for forwarding to the Arbitrator) a cheque payable to the Arbitrator in an amount representing 50% of the Arbitrator’s pre-estimated fee for conducting the appeal.

5. The Claims Administrator shall send the Respondent a copy of the Appellant’s Appeal Statement and confirmation that the Appellant has provided payment of the Arbitrator’s fee. Within 30 days after receiving the Appeal Statement and notice of payment of the Arbitrator’s fee, the Respondent shall provide to the Claims Administrator a statement of

its position in response to the appeal (the "Responding Statement") and a cheque payable to the Arbitrator in an amount representing the remaining 50% of the Arbitrator's pre-estimated fee for conducting the appeal.

6. If the Respondent fails to provide the Claims Administrator with both its Responding Statement and 50% portion of the estimated Arbitrator's fee within 30 days after the Respondent has received the Appeal Statement, the Appellant's appeal shall be deemed to have been allowed.
7. Upon receipt of the Respondent's Responding Statement and Arbitrator's fee, the Claims Administrator shall send to the Arbitrator the Appeal Statement, the Responding Statement, and the two cheques respecting the Arbitrator's fee.
8. The appeal shall be conducted entirely in writing. There will be no oral hearing of any appeal.
9. The Arbitrator shall consider the appeal and render a decision within 45 days following the Arbitrator's receipt of the appeal material from the Claims Administrator. The Arbitrator shall provide the Appellant and the Respondent with written reasons in support of the appeal decision.
10. If the appeal is allowed, the Arbitrator shall order the Respondent to pay to the Appellant within 30 days following release of the appeal decision the entire amount of the arbitration fee that the Appellant had paid. If the appeal is dismissed, the Arbitrator shall order the Appellant to pay to the Respondent the entire amount of the Arbitrator's fee which the Respondent had paid.
11. If the Arbitrator determines that success on the appeal was divided relatively equally between the Appellant and the Defendants, then the Arbitrator shall order that neither party shall have to reimburse the other for any portion of the Arbitrator's fee which it had paid in advance of the appeal.
12. If the Arbitrator's fee exceeds the amount of the pre-estimated fees that were paid by the Appellant and the Respondent in advance of the appeal, then the Arbitrator shall order the party that was unsuccessful on the appeal to pay the additional amount of the Arbitrator's fee within 30 days after the date of release of the Arbitrator's decision. If the Arbitrator determines that the success on the appeal was divided between the two parties relatively equally, then the Arbitrator shall order any additional fee to be paid in equal 50% portions by each of the Appellant and the Respondent within 30 days after the date of the Arbitrator's decision.
13. The Arbitrator's decision shall be final and binding. There shall be no right of appeal from the Arbitrator's decision.

SUPERIOR COURT
(Class Action)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-06-000543-104

DATE: March 7, 2016

PRESIDING: THE HONOURABLE JUSTICE LOUIS J. GOUIN, J.S.C.

MICHEL MAJOR
Petitioner

v.

BEN WAINBERG
Respondent

and

ZIMMER INC.

and

ZIMMER GMBH

and

ZIMMER HOLDINGS INC.

and

ZIMMER OF CANADA LTD

Mis en cause

JUDGMENT

1. BACKGROUND

[1] The undersigned was assigned by the chief judge to the special case management of the class action filed in Quebec on December 10, 2010, by the respondent Ben Wainberg ("Mr. Wainberg") against the mis en cause (collectively "Zimmer") (the "Wainberg Action").

[2] Mr. Wainberg initially sought leave to bring the Wainberg Action as the representative of the members of the following group:

"All persons in Canada (including their estates, executors, personal representatives, their dependants and family members), who were implanted with a Zimmer Durom Cup Acetabular Hip Implant [(the "Implant")];

ALTERNATELY (OR AS A SUBCLASS):

This is Exhibit C referred to in the
affidavit of A. ANITA VERGIS
sworn before me, this 20th
day of April 2016

A COMMISSIONER, ETC.

All persons in Québec (including their estates, executors, personal representatives, their dependants and family members), who were implanted with a Zimmer Durom Cup Acetabular Hip Implant;

(the "Group").

[3] As of the date hereof, the Wainberg Action has not yet been certified and the status of representative of the Group has therefore not yet been ascribed to Mr. Wainberg.

[4] This delay in the proceedings is due in part to the settlement negotiations between the parties, as explained below.

[5] A "petition by Michel Major to be substituted for the Respondent, Ben Wainberg, as petitioner in the petition to certify a class action" (the "Petition") is now before the Court. It was filed on February 23, 2016, under sections 25 and 589 of the *Code of Civil Procedure* ("C.C.P.").

2. INTRODUCTION

[6] At the outset, the counsel for Mr. Wainberg, the firm Merchant Law Group (the "Firm Merchant") requested that all the allegations and documents referring to the negotiations between the parties, including during the mediation sessions that have taken place in recent years, be deleted from the Petition and the exhibits filed with it.

[7] The Court immediately indicated that there was no need to discuss this matter as the content of negotiations and sessions of that kind are not at all taken into account by the Court when it makes its decision on the Petition.

[8] Regardless of the content of those negotiations, as is apparent below, the management of the Wainberg Action by the Firm Merchant and the way in which it has fulfilled its obligations toward Mr. Wainberg and the other members of the Group clearly weigh in favour of a change of law firm.

[9] At the same time, Mr. Wainberg must also be replaced as the proposed representative of the members of the Group, as Mr. Wainberg died on December 8, 2015.

[10] Incidentally, it was only after notification of the Petition was given, after February 23, 2016, that the Firm Merchant learned that Mr. Wainberg had died, despite the fact that written communications were sent in January and February 2016 by the Firm Merchant, in principle on behalf of Mr. Wainberg.

[11] This provides a good indication of how closely the Merchant Firm was following Mr. Wainberg's situation, although it had been aware that he was ill and in hospital at least since early December 2015.

[12] Apparently, Mr. Wainberg was to contact the Firm Merchant in mid-December 2015, and as it had not heard from him, the Firm Merchant assumed without any verification that he was recovering, and it sent written communications relating in principle to the Wainberg Action with no instructions from Mr. Wainberg.

3. PRINCIPAL FACTS AND FINDINGS OF THE COURT

[13] On April 4, 2012¹, the Court denied the petition of Zimmer, represented by the firm Fasken Martineau DuMoulin (the "**Firm Fasken**"), to stay the Wainberg action and the parallel class action filed in Quebec against Zimmer by Richard Brunet ("**Mr. Brunet**"), case No. 500-06-000555-116 (the "**Brunet Action**"), despite the fact that both these class actions involved the same Implant as the one that was already the subject of a certified class action against Zimmer in British Columbia (the "**Jones Action**")², filed by the firm Klein Lawyers (the "**Firm Klein**").

[14] On September 12, 2012³, the Court stayed the Brunet Action and ordered that the Wainberg Action be proceeded with first, essentially on the basis of the "first to file" rule, as at that time, a comparison between the two actions did not provide sufficient reason to disregard that rule.

[15] If the events reported below had taken place prior to September 12, 2012, it is clear and certain that the Court would instead have stayed the Wainberg Action and ordered that the Brunet Action be proceeded with first.

[16] In March 2012, before either of the decisions referred to above had been rendered, a mediation session took place between Zimmer on the one hand and the representatives in the Jones Action and those in the similar class action filed in Ontario (the "**McSherry Action**") by the Firm Klein.

[17] In June 2013, a second mediation session took place with the representatives of the Jones Action and the McSherry Action, and also the representatives of the Wainberg Action. The Firm Merchant attended on behalf of Mr. Wainberg, who could be reached by telephone as required.

[18] One year later, in June 2014, a third mediation session took place with the representatives of the Jones Action, the McSherry Action and the Wainberg Action. The Firm Merchant attended on behalf of Mr. Wainberg, who was available by telephone as required.

[19] On September 11, 2014, the Court was informed that an agreement in principle had been reached between the parties, including the Wainberg Action, and that an agreement document would be submitted to the Court shortly.

[20] On October 24, 2014, a draft "National Settlement Agreement" (the "**Draft Agreement**") between Zimmer on the one hand and the representatives of the Jones Action, the McSherry Action and the Wainberg Action on the other hand was sent to the Firm Merchant for its comments.

[21] On October 29, 2014, the Firm Klein pressed the Firm Merchant to send it its comments on the Draft Agreement as soon as possible.

[22] On November 6, 2014, the Firm Merchant sent its comments⁴ to the Firm Klein, which were, on the whole, very minor, with no reservations of any kind whatsoever with regard to any "outstanding issues" to be negotiated.

¹ Exhibit P-7.

² Exhibits P-1 and P-2.

³ Exhibit P-6.

⁴ Exhibit P-9.

[23] On November 13, 2014, a working session took place in Chicago with Zimmer and the representatives of the Jones Action, the McSherry Action and the Wainberg Action. Mr. Wainberg was not present, but the Firm Merchant attended on his behalf.

[24] At the end of that meeting, the Firm Merchant made no mention of any “outstanding issues” that it wished to see resolved in the near future, and it told the Court at the hearing of the Petition that it assumed that all the issues were broadly still subject to negotiation.

[25] But exactly what issues?

[26] The Court received no answer to this question, which it asked during the hearing of the Petition, and as indicated below, these “outstanding issues” would not be mentioned to Zimmer until February 26, 2016 after notification of the Petition was given.

[27] Furthermore, these “outstanding issues” are not related to the Wainberg Action but rather to the class action filed in Saskatchewan by the Firm Merchant on December 31, 2014 against Zimmer on behalf of fifteen other plaintiffs in connection with the Implant (the “Saskatchewan Action”)⁵.

[28] The Court will return to this below.

[29] On December 3, 2014, in light of the information obtained by the Court on September 11, 2014 indicating that an agreement in principle had been reached, the undersigned sent a follow-up letter⁶ to the Firm Merchant and the Firm Fasken.

[30] On December 5, 2014, the Firm Merchant responded with a letter to the undersigned, copied to the Firm Fasken: “[...] *an agreement has not been reached between the parties [...]... we are hopeful that progress may be made in the next couple of months but the issues remain unresolved. We will ensure that Your Lordship is kept apprised of any significant developments*”⁷.

[31] On December 31, 2014, as noted earlier, the Saskatchewan Action was filed by the Firm Merchant. It makes no mention of the Wainberg Action, nor of any settlement negotiations regarding the Implant involving Zimmer, nor of any “outstanding issues” in connection with the Draft Agreement.

[32] On September 11, 2015, more than nine months after the Court’s previous follow-up on December 3, 2014, having received no up-dates, the undersigned sent another follow-up email⁸ to the Firm Merchant and the Firm Fasken.

[33] On September 15, 2015, the Firm Fasken sent a letter⁹ to the undersigned, copied to the Firm Merchant, indicating that the process of drawing up the Draft Agreement was longer than expected, but that it was moving forward.

⁵ Exhibit R-2, “B”.

⁶ Exhibit P-4.

⁷ *Idem.*

⁸ *Idem.*

⁹ *Idem.*

[34] On September 21, 2015, the undersigned sent an email¹⁰ to the Firm Fasken thanking it for this update, copying the Firm Merchant, stating that he was "counting on your diligence to let me know the outcome as soon as you are able."

[35] On October 1, 2015, the Firm Merchant sent a letter to the undersigned, copied to the Firm Fasken, stating the following:

« [...] the Respondents [Zimmer] have not communicated with Petitioner [Mr. Wainberg] in months regarding the settlement, other than advising us in early September that they have been discussing with Plaintiffs' counsel in the Jones and McSherry actions in British Columbia and Ontario respectively, and that a copy of the agreement would be sent to our attention in the following week or two, which we have yet to receive. We have also not had communications with Plaintiffs' counsel in the British Columbia and Ontario actions for several months. As such, we have been instructed by the Petitioner to resume the present proceedings before this Honourable Court. »¹¹

(emphasis added)

[36] On November 3, 2015, in view of these instructions, the undersigned sent another follow-up email¹² to the Firm Merchant and the Firm Fasken.

[37] On November 10, 2015, the Firm Merchant sent a letter to the undersigned, copied to the Firm Fasken, which read as follows:

« [...] our firm has not had any further communications with Respondents' counsel since my letter of October 1, 2015.

As such, the Petitioner wishes to resume the present proceedings, and respectfully requests that a case management hearing be scheduled in order to determine the following steps in the present matter. »¹³

(emphasis added)

[38] At the same time, on November 11, 2015, the Firm Fasken also sent a letter to the undersigned, copied to the Firm Merchant, stating:

"[...] Please note that Zimmer has reached an agreement regarding the hip implants (Durom Cup), which is Canada-wide in scope. The negotiation of this settlement agreement required a long drafting process between Zimmer and the lawyers at the firm Klein Lawyers which represented the plaintiffs in the Jones case in British Columbia and the McSherry case in Ontario.

¹⁰ *Idem.*

¹¹ *Idem.*

¹² *Idem.*

¹³ *Idem.*

Daniel Chung of the firm Merchant participated, along with Zimmer and lawyers from Klein Lawyers, in the last mediation session and in a subsequent settlement meeting in Chicago while the basic terms of the agreement were being negotiated. Zimmer and the lawyers of Klein Lawyers are currently engaged in the process leading to the signing of the settlement agreement documents and we understand that the lawyers from the firm Klein Lawyers have already contacted or will shortly be contacting the firm Merchant in this regard.”¹⁴

[39] Despite the fact that the Draft Agreement was then circulated to be signed and thus become the settlement agreement (the “**Agreement**”), the Firm Merchant took no steps to suspend the signing and raise issues it believed to be outstanding and subject to negotiation.

[40] At the very least, the Firm Merchant ought to have been proactive in advising the other parties that it was pointless to sign the Agreement in view of the fact that certain specific issues had not yet been resolved and that they remained subject to negotiation among the parties.

[41] As stated earlier, the Firm Fasken was only made aware of these “outstanding issues” on February 26, 2016, more than three months later and three days after notice of the Petition was given.

[42] When, during the hearing of the Petition, the Court asked the Firm Merchant what these “outstanding issues” were in November 2015, it received no answer.

[43] The truth is quite simple: these “outstanding issues” had not yet been articulated by the Firm Merchant.

[44] Consequently, on November 23 and 24, 2015, the Agreement was signed by all the parties except the Firm Merchant.

[45] Then on November 25, the Agreement was sent to the Firm Merchant by the Firm Klein accompanied by the following note:

« Please find enclosed a copy of the formal settlement agreement of the Zimmer class actions as executed by the Defendants and our clients.

Please give me a call to discuss. I would be happy to walk you though [sic] the text. I trust that you will find that the formal agreement is consistent with the agreement-in-principle that Daniel approved at the mediation in 2014. »¹⁵

[46] No response was received from the Firm Merchant until January 26, 2016.

¹⁴ *Idem.*

¹⁵ Exhibit R-3.

[47] In the meantime, on December 8, 2015, Mr. Wainberg died. As stated earlier, the Firm Merchant would be informed of this on or after February 27, 2016, after the Court had set the date for the hearing of the Petition for March 4, 2016.

[48] Thus, on January 26, 2016, the Firm Merchant wrote the following to the Firm Fasken, without copying the Firm Klein:

« Our firm has serious concerns about several of our clients being able to qualify for adequate compensation awards under the draft settlement that your office proposes. Our firm also has concerns about issues affecting unknown class members (for example, the length of the proposed claims period).

I want to ensure that our firm's position is clearly understood – while we had a lawyer present at a mid-2014 mediation meeting, he did not agree to any binding issues, and our clients are not bound to terms now being proposed by your office.

We served your office with a new statement of claim (as attached) [the Saskatchewan Action] more than a year ago. Clearly, that step demonstrated that our firm found any previous discussions and the direction of the process to be unacceptable.

Further, anytime a mediation session occurs, all parties attend on a without prejudice basis and on the basis that even if discussions fruitful, it is subject to future client authorization and an acceptable formal writing agreement being executing [sic]. While I am certainly not suggesting that any type of tentative agreement was reached in mid-2014 (and in fact the opposite is true – and almost 18 months passing since then clearly demonstrates that the parties were nowhere close to agreement, and that substantial concerns existed regarding the method of qualification and client compensation), parties leaving an unconcluded mediation are bound to nothing.

*If there is a desire to negotiate with our firm independently, please advise accordingly.*¹⁸

(emphasis added)

[49] There can be no mistaking the fact that the Firm Merchant was referring to “its clients” in the Saskatchewan Action, which included more than fifteen (15) distinct plaintiffs, compared to a single plaintiff in the Wainberg Action: Mr. Wainberg.

[50] As stated earlier, the Firm Merchant never came forward after the Chicago meeting of November 13, 2014, to raise the “outstanding issues” which in its view needed to be negotiated as part of the Draft Agreement in connection with the Wainberg Action.

¹⁸ Exhibit R-2, “C”.

[51] Furthermore, the Draft Agreement and the Agreement never included the outcome of the Saskatchewan Action.

[52] On February 23, 2016, Michel Major ("Mr. Major") filed the Petition in which he asks to be substituted for Mr. Wainberg in the Wainberg Action in order to provide adequate representation for the members of the Group, and to this end, he is represented by the firm Trudel Johnston & Lespérance (the "Firm Trudel").

[53] Essentially, Mr. Major alleges the following:

- a. Mr. Wainberg's chronic inaction at the procedural level;
- b. actions on the part of the Firm Merchant that are tantamount to bad faith, in a context of clear conflict of interest, to the detriment of the interest of the members of the Group in the Wainberg Action;
- c. the approval process for the Agreement is currently being obstructed by the Firm Merchant, for no apparent valid reason except to obtain more for its fees;
- d. his interest as a result of two surgical procedures he underwent in 2011 and 2012 to remove the Implants inserted in 2006;
- e. in 2013, he chose to join the Jones Action group¹⁷, but now he has abandoned it so that he can file the Petition;
- f. he is fully aware that his potential role as representative of the Group in the Wainberg Action involves being objective and acting in the best interest of all members of the Group, and although he agrees with the terms of the Agreement, the Firm Trudel advised him that it was subject to the approval of the Court, after independent opinions on it have been obtained, which he fully accepts; and
- g. he has the time, energy, willingness and determination to take on all his responsibilities in pursuing the Wainberg Action with diligence.

[54] As has already been stated, it was only after the Petition had been received, on February 26, 2016, that for the first time the Firm Merchant submitted in writing the "outstanding issues" it considered not yet resolved. It wrote the following to the Firm Fasken without copying the Firm Klein:

*"Further to our recent correspondence [letter of January 26, 2016], while I would be prepared to meet with you (or conduct negotiations by teleconference), I think it would be more productive for me to first flesh out our primary concerns in writing. [...]"*¹⁸

(emphasis added)

¹⁷ Exhibit P-13.

¹⁸ Exhibit R-2, "D".

[55] The Firm Merchant then listed its “outstanding issues”, including some explanations, which deal with the following subjects: “*Compensation Categories, Public Notice, Eligibility Deadline, 6 years In Vivo Reduction and Claims Period.*”

[56] It is clear from reading these “outstanding issues” that the Firm Merchant formulated them for the plaintiffs in the Saskatchewan Action.

[57] There is no mention of the Wainberg Action, and at no point are the interests of the members of the Group taken into account.

[58] A letter of this kind, which unduly delayed the outcome of the Agreement and the progress of the Wainberg Action, should first have been approved by the client, in this case, Mr. Wainberg. At the very least, he should have been informed about it.

[59] However, Mr. Wainberg had died more than two and a half months previously, and the Firm Merchant was still unaware of this.

[60] The Court doubts whether Mr. Wainberg would have authorized such a letter, which disregarded his interest and the interest of the members of the Group in the Wainberg Action.

[61] The Firm Merchant acted as if only the plaintiffs in the Saskatchewan Action counted, and the members of the Wainberg Action Group were simply held hostage.

[62] In short, one can only conclude that the signing of the Agreement was essentially conditional on the settlement of the Saskatchewan Action, based on the “outstanding issues” raised by the Firm Merchant on February 26, 2016, without the slightest concern for the consequences of such a strategy for the members of the Wainberg Action Group.

4. DISCUSSION

4.1 LAW

[63] Under section 25 *C.C.P.*, the Court may apply the provisions of section 589 *C.C.P.* at the pre-certification stage¹⁹.

25. The rules of this Code are designed to facilitate the resolution of disputes and to bring out the substantive law and ensure that it is carried out.

Failure to observe a rule that is not a public order rule does not prevent an application from being decided provided the failure is remedied in a timely manner; likewise, if no specific procedure is provided for exercising a right, any mode of proceeding may be used that is not inconsistent with the rules of this Code.

589. The representative plaintiff is deemed to retain sufficient interest to act even if that person’s personal claim is extinguished. The representative plaintiff cannot waive the status of representative plaintiff without the authorization of the court, which

¹⁹ *Cohen c. LG Chem Ltd.*, 2015 QCCS 6463, par. [4] - [9].

cannot be given unless the court is able to appoint another class member as representative plaintiff.

If the representative plaintiff is no longer in a position to properly represent the class members or if that person's personal claim is extinguished, another class member may ask the court to be substituted as representative plaintiff or propose some other class member for that purpose.

A substitute representative plaintiff continues the proceeding from the stage it has reached; with the authorization of the court, the substitute may refuse to confirm any prior acts if they have caused irreparable prejudice to the class members. The substitute is not liable for legal costs and other expenses in relation to any act prior to the substitution that the substitute has not confirmed, unless the court orders otherwise.

4.2 DISCUSSION

[64] In view of the Court's comments under the heading "Principal Facts and Findings of the Court," the Court's decision is clear, and there is no need to elaborate further.

[65] Firstly, since Mr. Wainberg died on December 8, 2015, it is undeniable that he must be replaced immediately.

[66] The Firm Merchant proposes – needless to say without conviction – that Mr. Wainberg's estate take his place.

[67] There is no justification for this solution, particularly at this stage, when the Wainberg Action has not yet been certified and the status of representative of the members of the Group had therefore not yet been assigned to Mr. Wainberg.

[68] The Court is satisfied, at this stage, that Mr. Major is in a position to provide adequate representation for the members of the Group, and in any event, this will have to be confirmed during the certification hearing for the Wainberg Action.

[69] Secondly, throughout the hearing of the Petition, the Court clearly expressed and manifested its dissatisfaction with the way in which the Firm Merchant has to date fulfilled its obligations and responsibilities in the management of the Wainberg Action.

[70] The Court's questions in this regard were evaded or simply remained unanswered.

[71] The Firm Merchant has not been at all proactive in its management of the Wainberg Action, not reacting in a timely fashion or reacting only when it was forced to do so, or at the last minute, or too late, and furthermore, for dubious reasons or without conviction, showing more concern for its own interests than those of the members of the Group in the Wainberg Action.

[72] We expect much more from a firm acting on behalf of a petitioner in a class action.

Daniel Chung
Merchant Law Group
Counsel for the Respondent

André Durocher and Peter J. Pliszka
Fasken Martineau DuMoulin
Counsel for the Mis en cause

Robert Kugler
Kugler Kandestin
Counsel for Richard Brunet

Date of hearing: March 4, 2016



**ADDENDUM TO CANADIAN DUROM ACETABULAR
HIP IMPLANT CLASS ACTION NATIONAL SETTLEMENT AGREEMENT**

RECITALS

- A. Whereas the Defendants, the BC Plaintiff, the Ontario Plaintiff, BC/Ontario Class Counsel and the Provincial Health Insurers have signed the Canadian Durom Acetabular Hip Implant Class Action National Settlement Agreement on November 23 and 24, 2015, respectively (the "Settlement Agreement");
- B. And Whereas the plaintiff in the Quebec Proceeding, Ben Wainberg, died on December 8, 2015 without he or his counsel signing the Settlement Agreement;
- C. And Whereas, by order of Mr. Justice Gouin in the Quebec Action, dated March 7, 2016, Ben Wainberg has been replaced as the representative plaintiff by Michel Major;
- D. The parties to this Addendum have signed this Addendum to modify and amend the Settlement Agreement so that they can complete the terms of the Settlement Agreement.

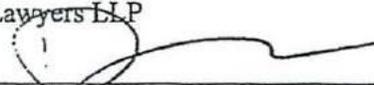
AMENDMENTS TO THE SETTLEMENT AGREEMENT

- 1.1 All references to "Ben Wainberg" or "Wainberg" in the Settlement Agreement are struck, and are replaced with "Michel Major" or "Major". The Quebec Plaintiff in the Settlement Agreement is therefore Michel Major.
- 1.2 All references in the Settlement Agreement to the "Merchant Law Group LLP" in the Settlement Agreement are struck, and are replaced with "Trudel Johnston & Lesperance". The Quebec Class Counsel in the Settlement Agreement is therefore Trudel Johnston & Lesperance.
- 1.3 Section 7.3(b) of the Settlement Agreement is struck.
- 1.4 The parties to the Addendum may make such amendments to the Schedules to the Settlement Agreement as they may agree upon, or as the Courts may direct, to conform to this Addendum.
- 1.5 The parties to this Addendum have executed it on the dates provided below.

BC/ONTARIO CLASS COUNSEL:

Klein Lawyers LLP

Date: April 8, 2016

By: 

Printed: DOUGLAS LENNOX

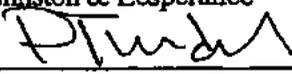
This is Exhibit D referred to in the affidavit of A. ANITA VERGIS sworn before me, this 20th day of April 2016


A COMMISSIONER, ETC.

QUEBEC CLASS COUNSEL:

Trudel Johnston & Lesperance

Date: 13 AVRIL 2016

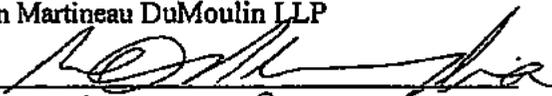
By: 

Printed: PHILIPPE TRUDEL

DEFENDANTS' COUNSEL:

Fasken Martineau DuMoulin LLP

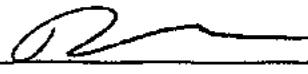
Date: April 11, 2016

By: 

Printed: Peter Pliszka

PROVINCIAL HEALTH INSURERS:

Date: April 8, 2016

By: 

Printed: DOUGLAS LENNOX

Its: COUNSEL



S-095493

Court File No.
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

DENNIS JONES and SUSAN WILKINSON

Plaintiffs

and:

ZIMMER GMBH, ZIMMER, INC., and ZIMMER OF CANADA LIMITED

Defendants

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

STATEMENT OF CLAIM

The Parties

1. The Plaintiff, Dennis Jones, is a resident of Langley, British Columbia.
2. The Plaintiff, Susan Wilkinson, is a resident of Osoyoos, British Columbia.
3. The Plaintiffs bring this action on their own behalf, and on behalf of a class of persons resident in British Columbia, and elsewhere in Canada, who were implanted with a Durom Hip Resurfacing System.
4. The Defendant, Zimmer, Inc. ("Zimmer US"), is incorporated in the State of Delaware with its principal place of business in Warsaw, Indiana. It is licensed by Health Canada as a manufacturer of medical devices.
5. The Defendant, Zimmer GMBH ("Zimmer Europe"), is a Swiss corporation with its principal place of business in Winterthur, Switzerland. It is licensed by Health Canada as a manufacturer of medical devices.

This is Exhibit E referred to in the
 affidavit of A. ANITA VERGIS
 sworn before me, this 20th
 day of April 2016

A COMMISSIONER, ETC.

6. The Defendant, Zimmer of Canada Limited ("Zimmer Canada"), is incorporated in Ontario with its head office in Toronto, Ontario. Zimmer Canada is registered as an extra-provincial company in British Columbia with its address for delivery at 1500 – 1040 West Georgia Street, Vancouver, British Columbia V6E 4H8. It is a wholly owned subsidiary of Zimmer US. It imports and distributes into Canada medical devices manufactured by related Zimmer corporations.

The Durom Cup Hip Implant

7. The Defendants individually and collectively participated in one or more of the following: the development, manufacture, distribution, marketing, promotion and importation of the "Durom Hip Resurfacing System", (hereinafter referred to as the "Product"). The Product is a Class III medical device under the *Food and Drugs Act*, R.S.C. 1985, F-27. It may only be sold in Canada with the licence and approval of Health Canada. The Defendants obtained the license to sell the Product in Canada in or about April 2005.

8. The Plaintiffs were implanted with the Product during hip surgery. The Product was defective. The Plaintiffs require surgery to remove the Product and replace it with another hip implant. The Plaintiffs have suffered personal injuries as a result.

9. The source of the Product's defect is one of its components, the Durom Acetabular Component or Durom Cup. This is a non-cemented cup with a coating of titanium plasma spray. It is designed to act as an artificial joint socket and to allow the patient's bone to grow into or around it, thus keeping the cup or artificial socket in place.

10. The cup was defective in that it fails to properly heal or adhere to the surrounding bone. Instead, it remains loose, or separates from the bone, causing the patient excruciating pain. It must be removed, requiring the patient to undergo further hip surgery.

11. Problems with the Durom Cup became publicly known in or about April 2008, when Lawrence Dorr, MD., a world-renowned orthopedic surgeon and Director of the Dorr Institute for Arthritis Research and Education, wrote a letter dated April 22, 2008 to his colleagues at the American Association of Hip and Knee Surgeons, warning of failures and defects associated with the Defendants' Durom Cup. Dr. Dorr wrote:

"This failure rate has occurred within the first two years. In the first year the x-rays looked perfect. We have revised four that did not have any radiolucent lines or migration (and John Moreland revised one). These early cups fooled us, but the symptoms were so classic for a loose implant that we operated the patients. When we hit the edge of the cup it would just pop free. As time goes by the cups begin developing radiolucent lines. We now have one cup at two years that has actually migrated a short distance. It has tilted into varus. We do not believe the fixation surface is good on these cups. Also there is a circular cutting surface on the periphery of the cup that we believe prevents the cup from fully seating. We stopped using the cup after the first revisions."

12. Prior to writing that letter, Dr. Dorr had communicated his concerns about the product to the Defendants in early 2008. The Defendants failed to initiate a timely investigation into these concerns. Instead, the Defendants took the position that surgical error was the cause of any problems with the Product, even though the concerns relayed to the Defendants were coming from a highly experienced and respected surgeon.

13. Subsequent to the publication of Dr. Dorr's letter, the Defendants received many more complaints from orthopedic surgeons about the Product's failures. Finally, in late May 2008, the Defendants began an investigation into these complaints.

14. On July 22, 2008, the Defendants recalled the Product in the United States. To date, the Defendants have not initiated a similar recall in Canada.

15. According to the Defendants own investigation, as of July 2008, some clinics using the Product experienced a failure of at least 5.7%.

16. Notwithstanding the absence of a recall in Canada, a similarly high rate of failure has been seen in this country with the Durom Cups.

Defendants' Negligence

17. As the manufacturers, marketers, developers, distributors, and/or importers of the Product, the Defendants were in such a close and proximate relationship to the Plaintiffs, and other class members, as to owe them a duty of care. They caused the Product to be introduced into the stream of commerce in Canada, and they knew that any defect in the Product would cause foreseeable injury to the Plaintiffs and class members.

18. The Defendants were negligent in the research, development, testing, manufacture, distribution and sale of the Product. Effective adhesion of the Duron Cup to the patient's bone was critical to the safety and medical efficacy of the Product. The Defendants owed a duty to use all reasonable care and skill to ensure that the Product was effective at adhering to bone before marketing it, and to continually monitor its safety thereafter. The Defendants further owed a duty to warn the Plaintiffs, class members, their health care providers, and the regulator of any safety problems with the Product.

19. Particulars of the Defendants' negligence are:

- (a) manufacturing and/or marketing a device which they knew, or ought to have known, had an unreasonably high risk of loosening and of implant failure in patients;
- (b) failing to adequately test the safety and efficacy of the Product before bringing it to market;
- (c) failing to do follow-up studies on the safety and efficacy of the Product after bringing it market;
- (d) failing to monitor and follow up on reports of adverse reactions to the Product;
- (e) failing to recall the Product;
- (f) failing to warn consumers, their health care providers, and Health Canada, of the increased risks of loosening and implant failure presented by the Product;

- (g) marketing a product which was unsafe, not fit for its intended purpose, and not of merchantable quantity;
- (h) designing, manufacturing and/or marketing a product which was not reasonably safe and effective in comparison with already available, alternative designs; and
- (i) incorrectly blaming failures of the Product on surgical error instead of properly and promptly investigating the Product's unreasonably high rate of failure as due to design defects.

20. The Defendants' common law duties are informed by the *Medical Devices Regulations*, SOR/92/82. Pursuant to s.1 of those regulations, each of the Defendants is a "manufacturer". They designed and assembled the Product, attached their trade name to it, labeled it and assigned it a purpose.

21. The regulations impose continuous obligations on the Defendants, commencing at licensing and continuing thereafter. They require the Defendants to ensure the safety of the Product before selling it, and to continuously monitor the safety of the Product thereafter, monitoring any complaints from doctors, hospitals and patients, keeping up with any new developments in the scientific literature, conducting further testing as necessary, and promptly taking corrective action, including issuing a warning or recall, if new information becomes available which alters the Product's risk profile.

22. Pursuant to s. 9(2) of the *Medical Devices Regulations*, the Defendants were required to maintain objective evidence to establish the safety of the device. The Defendants breached this section. They failed to adequately obtain such information before licensing and they failed to promptly update such information thereafter.

23. Pursuant to s. 10 of the *Medical Devices Regulations*, the Defendants were required to identify the risks of the device, to eliminate or reduce those risks if possible, and to provide safety information with the device concerning those risks which remained. The

Defendants breached this section. They failed to eliminate the risk that the Product would loosen or fail and they failed to warn against this risk.

24. Pursuant to s. 11 of the *Medical Devices Regulations*, the Defendants were required to assess the risks of the Product against its benefits, and to not sell a product whose risks outweigh its benefits. The Defendants breached this section. The risks of the Product outweighed its benefits.

25. Pursuant to s. 12 of the *Medical Devices Regulations*, the Defendants were required to ensure that the product was effective for the uses for which it was represented. The Defendants breached this section. The Product was not effective.

Business Practices and Consumer Protection Act

26. The Defendants' solicitations, offers, advertisements, promotions, sales and supply of the Product for personal use by the Plaintiffs and by class members were "consumer transactions" within the meaning of the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 ("BPCPA"). With respect to those transactions, the Plaintiff and class members who were implanted with the Product in British Columbia are "consumers" and the Defendants are "suppliers" within the meaning of the BPCPA.

27. The Defendants' conduct in their solicitations, offers, advertisements, promotions, sales and supply of the Product, as particularized above, had the capability, tendency or effect of deceiving or misleading consumers regarding the safety and efficacy of the Product. The Defendants' conduct in its solicitations, offers, advertisements, promotions, sales and supply of the Product were deceptive acts and practices contrary to s.4 of the BPCPA. The Defendants' deceptive acts and practices included the Defendants' failure to properly disclose all material facts regarding the safety and efficacy of the Product.

28. Further, in their marketing brochures, promotional materials, and website directed both to consumers and their physicians, the Defendants made representations concerning the

efficacy of the Product, including a description of studies that suggested that the Product had a success rate of up to 99%. In reality, the Product's failure rate is unreasonably high compared to other, available implants. The Defendants knew or ought to have known that their marketing claims regarding the Product were inaccurate, incomplete or misleading, and that the Product had an unreasonably high failure rate. Such marketing claims were deceptive and had the tendency, capability or effect of misleading consumers and their physicians.

29. As a result of the Defendants' deceptive acts and practices, the Plaintiffs and class members have suffered loss and damages. The Plaintiffs seek injunctive relief and declaratory relief and damages and statutory compensation pursuant to ss.171 and 172 of the BPCPA on their own behalf and on behalf of class members implanted with the Product in British Columbia.

Plaintiffs' Injuries

30. The Plaintiff, Mr. Jones, underwent hip surgery on January 14, 2008. He was implanted with the Product.

31. His implant failed. He required further surgery on May 11, 2009, in which the Product was removed and a new implant was inserted.

32. Mr. Jones has experienced pain and suffering as a result of the failure of the Product, and the additional surgery. He has incurred, and will continue to incur, loss of employment income and out of pocket expenses.

33. The Plaintiff, Ms. Wilkinson, underwent hip surgery on April 28, 2008. She was implanted with the Product.

34. Her implant failed. She has been advised that she requires further surgery and that the implant must be replaced. She is currently on the waiting list for surgery to remove the Product.

35. Ms. Wilkinson has experienced pain and suffering as a result of the failure of the Product. She will incur further pain when she undergoes replacement surgery. She has incurred, and will continue to incur, loss of employment income and out of pocket expenses.

Causation and Damages

36. As a result of the Defendants' negligence and the Defendants' deceptive acts and practices, the Plaintiffs and class members have suffered and will continue to suffer loss and damage. Such loss and damage was foreseeable by the Defendant. Particulars of the loss and damage suffered by the Plaintiffs and class members which were caused or materially contributed to by the aforementioned acts of the Defendants include:

- (a) pain, suffering, loss of quality and enjoyment of life;
- (b) damages for past and future loss of income; and
- (c) special damages and expenses including medical expenses.

37. The Defendants' conduct was reprehensible and departed to a marked degree from ordinary standards of decent behaviour. The Defendants' reckless disregard for public safety is deserving of punishment and condemnation by means of an award of punitive damages. The Defendants' failure to initiate a recall in Canada, even while calling one in the United States, is particularly worrisome. This case raises issues of general deterrence. A punitive damage award in this case is necessary to express society's condemnation of conduct such as the Defendants', to advance public safety and to achieve the goal of both specific and general deterrence.

Health Care Cost Recovery Act

38. The Plaintiffs and class members have a claim for the recovery of health care costs incurred by provincial health ministries on their behalf. The Plaintiffs plead the *Health Care Cost Recovery Act*, S.B.C. 2008, c.27, and comparable legislation in other provinces.

Jurisdiction

39. The Plaintiffs rely upon ss. 3, 7 and 10 of the *Court Jurisdiction and Proceedings Transfer Act*.

Joint Enterprise

40. The Defendants functioned as a joint enterprise for the promotion and sale of their brands of the Product within Canada. The Defendants dividing among themselves certain responsibilities for the manufacture and marketing of the Product, but each had an independent right and responsibility to ensure the safety of the Product and to ensure that timely and adequate warnings were issued with respect to the Product. Within this joint enterprise, the Defendants individually and jointly researched, tested, developed, marketed, manufactured, imported, promoted, licensed, labeled, monitored adverse reactions to, and placed into the stream of commerce the Product for sale in Canada.

Relief Sought

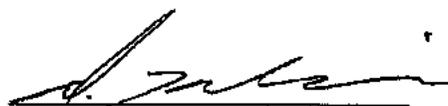
41. The Plaintiffs claim, on their own behalf, and on behalf of class members:

- (a) an order certifying this action as a class proceeding;
- (b) general damages;
- (c) special damages;
- (d) punitive damages;
- (e) declaratory and injunctive relief as well as damages and statutory

compensation available under the BPCPA;

- (f) pre-judgment interest;
- (g) costs; and
- (h) such further and other relief as this Honourable Court may deem just.

Dated: July 27, 2009



Solicitor for the Plaintiff

David A. Klein
Douglas Lennox
Klein Lyons
Barristers & Solicitors
1100 - 1333 W. Broadway
Vancouver, British Columbia
V6H 4C1



No. S-095493
Vancouver Registry

In the Supreme Court of British Columbia

Between

DENNIS JONES AND SUSAN WILKINSON

Plaintiffs

and

ZIMMER GMBH, ZIMMER, INC., and ZIMMER OF CANADA LIMITED

Defendants

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE) Friday, the 2nd day
MR. JUSTICE BOWDEN) of September, 2011.

ON THE APPLICATION of the Plaintiffs Dennis Jones and Susan Wilkinson

coming on for hearing at 800 Smithe Street, Vancouver, British Columbia on February 7, 8 and 9, 2011 and April 26, 2011 and on hearing David A. Klein and Jason Z. Murray, counsel for the Plaintiffs, and Andrew D. Borrell and Peter J. Pliszka, counsel for the Defendants;

without notice coming on for hearing at on ... [dd/mm/yy] and on hearing [name of party/lawyer]

DL

DL

without a hearing and on reading the materials filed by [name of party/lawyer] and [name of party/lawyer]

THIS COURT ORDERS that:

[If any of the following orders are by consent, indicate that fact by adding the words "By consent" to the beginning of the description of the order]

1. The Action is certified as a class proceeding against the Defendants;
2. The Class is defined as:

This is Exhibit F referred to in the affidavit of A. ANITA VERGIS sworn before me, this 20th day of April 2016

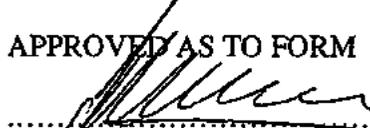
[Signature]
A COMMISSIONER, ETC.

"All persons who were implanted with the Durom acetabular hip implant in Canada";

- 3. Susan Wilkinson is appointed as the Representative Plaintiff for the Class;
- 4. Klein Lyons is appointed as counsel to the Class;
- 5. The following are certified as common issues:
 - a. Was the Durom acetabular hip implant defective and/or unfit for its intended use?
 - b. Did any of the defendants breach a duty of care owed to class members and, if so, when and how?
 - c. Does the defendants' conduct warrant an award of punitive damages and, if so, to whom shall they be paid and in what amount?
 - d. With respect to British Columbia residents, did any of the defendants breach a statutory duty under the *Business Practices and Consumer Protection Act* owed to class members who received the Durom acetabular hip implant in British Columbia and, if so, when and how?
- 6. The parties shall speak to the issue of costs of the plan for notice.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:.

APPROVED AS TO FORM



 Signature of
 party lawyer for the Plaintiffs
 Dennis Jones and Susan Wilkinson

for David A. Klein

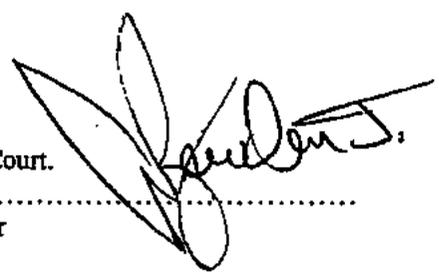


 Signature of
 party lawyer for the Defendants
 Zimmer GMBH, Zimmer Inc., and Zimmer
 of Canada Limited

Andrew D. Borrell

By the Court.

Registrar





No. S-095493
Vancouver Registry

In the Supreme Court of British Columbia

Between

DENNIS JONES AND SUSAN WILKINSON

Plaintiffs

and

ZIMMER GMBH, ZIMMER, INC., and ZIMMER OF CANADA
LIMITED

Defendants

ORDER

Klein Lyons
1100 – 1333 West Broadway
Vancouver, BC V6H 4C1
Telephone: 604-874-7171
Fax: 604-874-7180

(Reference: 29262/JZM)

DYE & DURHAM CORPORATION

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No. S095493
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

DENNIS JONES and SUSAN WILKINSON

PLAINTIFFS

AND:

ZIMMER GMBH, ZIMMER, INC. and ZIMMER OF CANADA LIMITED

DEFENDANTS

RESPONSE TO CIVIL CLAIM

Filed by: DEFENDANTS (the "Defendants")

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 – Defendants' Response to Facts

1. The Defendants have no knowledge of the facts alleged in paragraphs 1 and 2 of the Statement of Claim. Those facts are neither admitted nor denied.
2. With respect to paragraph 4 of the Statement of Claim, Defendants admit that Zimmer, Inc. ("Zimmer"), is an American corporation incorporated in the State of Delaware, and has its principal place of business in the City of Warsaw in the State of Indiana. (The abbreviation, "Zimmer US", as used in the Statement of Claim, is not appropriate for the Defendant, Zimmer Inc., because "Zimmer US" is the corporate name of another company.) Defendants admit that Zimmer manufactures medical devices and that Health

This is Exhibit G referred to in the
 affidavit of A. ANITA VERGIS
 sworn before me, this 20th
 day of April 2016

- 2 -

Canada has issued licenses to Zimmer for medical devices in Classes II and III. Defendants deny any remaining facts in paragraph 4 of the Statement of Claim.

3. With respect to paragraph 5 of the Statement of Claim, Defendants admit that Zimmer GmbH is a Swiss corporation with its principal place of business in Winterthur, Switzerland. Defendants admit that Zimmer GmbH manufactures medical devices and that Health Canada has issued licenses to Zimmer GmbH for medical devices in Classes II and III. Defendants deny any remaining facts in paragraph 5 of the Statement of Claim.
4. With respect to paragraph 6 of the Statement of Claim, Defendants admit that Zimmer of Canada Limited ("Zimmer Canada") is incorporated in Ontario. Zimmer Canada is based in Mississauga, Ontario. Defendants further admit that Zimmer Canada is registered as an extra-provincial company in British Columbia, that its address for service of process is 1500 – 1040 West Georgia Street, Vancouver, British Columbia V6E 4H8, and that it is a wholly-owned subsidiary of Zimmer, Inc. Defendants admit that Zimmer Canada is licenced by Health Canada to import and distribute Class I through III medical devices that are manufactured by other entities, including Zimmer, Inc., and Zimmer GmbH. Defendants deny any remaining facts in paragraph 6 of the Statement of Claim.
5. The facts alleged in paragraphs 7 to 40 of the Statement of Claim are denied.

Division 2 – Defendants' Version of Facts

6. In Response to paragraph 7 of the Statement of Claim:
 - (a) Zimmer GmbH manufactures certain medical devices, including the components of the Durom Hip Resurfacing System and the LDH Metasul Large Diameter Head with Adapter System;
 - (b) Zimmer Canada distributes the Durom Hip Resurfacing System and the LDH Metasul Large Diameter Head with Adapter System in Canada; and
 - (c) Zimmer is the parent company of Zimmer GmbH and Zimmer Canada.

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7. The Durom Hip Resurfacing System and the LDH Metasul Large Diameter Head with Adapter System are used in total hip replacement and hip resurfacing procedures, respectively. Both systems utilize an acetabular cup known as the Durom Acetabular Component ("Durom Cup").
8. The LDH Metasul Large Diameter Head with Adapter System is used in total hip replacement, also called total hip arthroplasty ("THA"). THA is a common medical procedure designed to help relieve pain and improve joint function in people with severe hip degeneration. THA is performed by implanting three components in a patient's hip: (1) a femoral stem inserted into the patient's leg bone (femur), (2) a rounded ball, that fits onto the end of the femoral stem, and (3) a cup that fits into the hip socket (acetabulum) into which the head is placed and rotates.
9. The Durom Hip Resurfacing System is used in hip resurfacing, also called "SRA." This is a bone-conserving procedure that can be an alternative to THA for patients requiring hip replacement surgery, especially those who are younger or active. SRA is performed by implanting an acetabular component into the patient's hip socket and cementing a femoral cap on the patient's femoral stem, which then articulates with the acetabular component.
10. The Durom Cup is a monoblock cup (constructed of a single piece of metal) that is forged out of a cobalt chromium alloy.
11. The LDH Metasul Large Diameter Head with Adapter System and Durom Hip Resurfacing System are both accompanied by detailed surgical technique instructions for use of those devices by the implanting surgeon.
12. All joint replacement surgery, including hip replacement or hip resurfacing surgeries, carry with them a number of risks, including the risk that a subsequent surgery to replace all or part of the implanted medical devices may be necessary. A second surgery to replace some or all of the implanted medical devices is commonly called a revision procedure. The fact that a given patient requires a revision operation does not mean that the hip implant device was defective. Hip revision surgeries are performed for a number

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of reasons including, but not limited to, pain. Post-operative pain may occur for a variety of reasons, many of which are unrelated to the device or any alleged defect in the device. These include, but are not limited to, infection, trauma, dislocation, bone fractures, metal hypersensitivity, improperly sized components, impingement, muscular bruising, psoas tendonitis, and component loosening. Not all post-operative pain experienced by patients who received Durom Cups was caused by loosening of the Durom Cups.

13. Whether and when a revision might occur depends on a multitude of individual patient and surgeon factors including, but not limited to, the following:
- (a) The patient's medical history, including pre-existing conditions and the underlying condition(s) that necessitated the procedure;
 - (b) The patient's morphology, including weight and body mass index, the quality and density of the patient's bone stock, the pelvic and femoral anatomy, and the presence of spinal or musculo-skeletal disease, among other things;
 - (c) The patient's social history and habits, including the use of tobacco, alcohol, and/or drug use;
 - (d) Implant positioning and seating;
 - (e) Proportional implant sizing;
 - (f) Whether the patient is hypersensitive to metal;
 - (g) The patient's use of steroids, by prescription or otherwise;
 - (h) The shape and quality of the patient's acetabulum;
 - (i) The patient's compliance with his/her post-operative directions and plans of care;
 - (j) Whether the patient encountered any post-operative complications or trauma.
 - (k) The surgeon;
 - (l) The surgeon's experience;
 - (m) The philosophy of the surgeon and/or the surgeon's group;
 - (n) Where the surgery is performed;
 - (o) How the surgery is performed (including tools used, how the acetabulum is reamed, the position of the implant, and how the implant is sized);

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- (p) The degree to which the surgeon reviews or relies on written materials (including surgical techniques, instructions for use, or peer-reviewed publications);
 - (q) Whether the surgeon availed him or herself of available training opportunities; and
 - (r) Where and from whom the surgeon received that training, if at all.
14. Further, each patient's clinical experience and clinical outcome with the Durom Cup and subsequent need for revision are unique and also depend on post-operative care and activity of the patient, including whether the patient follows post-operative instructions, attends physical therapy, resumes physical activity too soon or improperly, or returns to behaviours, such as smoking, that adversely affect bone growth and healing.
15. The revision rate for the Durom Cup utilized in surgeries in Canada has not been higher than would be expected or considered reasonable for comparable implanted medical devices. To the extent the revision rates associated with the use of the Durom Cup have been higher than would be expected or considered reasonable for comparable implanted medical devices in locations outside of Canada, specifically certain areas of the United States and certain countries in Europe, the investigations conducted by Zimmer GmbH and Zimmer established that the revisions resulted from the use of particular implanting techniques and not from any defect in the Durom Cup, contrary to the allegations of a defect contained in the Statement of Claim.

Division 3 – Additional Facts

16. None.

Part 2: RESPONSE TO RELIEF SOUGHT

17. The Defendants oppose the granting of the relief sought in paragraphs 41 (a) to (h) of the Statement of Claim.

Part 3: LEGAL BASIS

18. The Defendants deny that the Durom Cup was defective, as alleged or at all. In particular, the Durom Cup did not suffer from any unreasonable risk of failure, including loosening

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or separating from the bone after implantation, as alleged or at all. On the contrary, the Durom Cup was safe and effective when used as intended. The Defendants deny that the Durom Cup was in any way defective.

19. The Defendants deny that they were negligent in the research, development, testing, manufacture, distribution, or sale of the Durom Cup, as alleged in paragraphs 18 and 19 of the Statement of Claim, or at all. The Defendants employed reasonable care and skill in the research, development, testing, manufacture, distribution and sale of the Durom Cup, including but not limited to:
 - (a) adequately testing the safety and efficacy of the Durom Cup;
 - (b) conducting follow-up studies on the safety and efficacy of the Durom Cup after bringing it to market; and
 - (c) monitoring and following up on reports of adverse reactions to the Durom Cup.
20. The Defendants deny that suspension of sales or a recall of the Durom Cup device itself from the market in Canada was warranted or required at any time, contrary to the allegation in paragraph 19 of the Statement of Claim. The Durom Cup device was never withdrawn, nor ever required by Health Canada to be withdrawn, from the Canadian market because the Durom Cup was at all times safe and effective for its intended use.
21. The Defendants deny that they incorrectly blamed failures of the Durom Cup on surgical error. The Durom Cup has had low rates of failure in Canada. Based on extensive investigations the Defendants determined that the most probable cause of many of the failures which have occurred was the use of particular surgical techniques.
22. In the context of events outside of Canada, the Defendants issued a label respecting surgical techniques. The Defendants issued the label in Canada as a precautionary measure.
23. The Defendants at all times complied with all applicable provisions of the Medical Device Regulations.

24. The Defendants deny that the *Business Practices and Consumer Protection Act* applies to any aspect of the distribution, sale or use of the LDH Metasul Large Diameter Head with Adapter System or the Durom Hip Resurfacing System in British Columbia. The Plaintiffs are not consumers, the Defendants are not suppliers, and there is no consumer transaction in relation to the use of the LDH Metasul Large Diameter Head with Adapter System or the Durom Hip Resurfacing System in British Columbia.
25. In the alternative, the Defendants deny that they engaged in any deceptive practice or act as defined in section 4 of the *BPCPA*. The Defendants' marketing brochures, promotional materials, and website with respect to the Durom Cup were at all times truthful, comprehensive, and accurate with respect to the LDH Metasul Large Diameter Head with Adapter System or the Durom Hip Resurfacing System
26. The Defendants deny that the Plaintiffs or any class member has suffered any loss or damages as a result of the Defendants' actions.
27. If the Plaintiffs or any class member suffered any loss or damages, which is denied, the alleged injuries or damages were caused by a modification or alteration of the Durom Cup, a departure from the surgical technique recommended for the implant of the Durom Cup or some other non-negligent failure of the Durom Cup, which was not reasonably foreseeable, and was made or conducted by a person other than the Defendants subsequent to the time of original sale.
28. If the Plaintiffs or any class member suffered any loss or damages, which is denied, the cause of the loss or damage was the use of the product for a purpose, in a manner, or in an activity other than that which was reasonably foreseeable, or was contrary to an express or adequate warning appearing on, attached to, or delivered with, the product. The Plaintiffs knew, or with the exercise of reasonable diligence and care should have known, of such instructions and warnings.
29. If the Plaintiffs or any class member suffered any loss or damages, which is denied, the Defendants warned or otherwise made the Plaintiffs aware of the alleged risks associated

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with the use of the product, and any such risks, to the extent they existed, were not beyond those which would have been contemplated by an ordinary consumer.

30. If the Plaintiffs or any class member suffered any loss or damages, which is denied, the proximate cause of such injuries was the use of the product for a purpose, in a manner, or in an activity other than that which was reasonably foreseeable, or was contrary to an express or adequate warning appearing on, attached to, or delivered with, the product. Plaintiffs knew, or with the exercise of reasonable diligence and care should have known, of such instructions and warnings.
31. The Defendants issued all appropriate and timely warnings in respect of this product to medical practitioners and patients. Further and in any event, any claims by the Plaintiffs for allegedly inadequate warnings are subject to, and barred under, the learned intermediary doctrine.
32. If the Plaintiffs or any class member has suffered any loss or damages as a result of the Defendants' action, which is denied, such Plaintiff or class member has failed to act reasonably in taking steps to mitigate such damages or loss.
33. Further and in the alternative, if this Court should find that any loss or damages allegedly suffered by the Plaintiffs or any class member was caused or contributed to by any act or omission of the Defendants, which is denied, the extent of liability of the Defendants should be reduced in accordance with the degree of contributory negligence which may be attributable to the said Plaintiffs or class member. The Defendants plead and rely on the provisions of the Negligence Act.
34. The Defendants deny that they acted in a reckless or reprehensible manner or that punitive damages should be awarded in this action. Public safety is paramount to the Defendants. At all times, the Defendants acted reasonably and took appropriate precautionary measures. This action does not raise issues of specific or general deterrence.

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35. The Defendants deny that either the Plaintiffs or any class member has a claim for recovery of health care costs incurred by provincial health ministries pursuant to the *Health Care Cost Recovery Act*, comparable legislation in other provinces, or at all.
36. The Defendants deny that they functioned as a joint enterprise for the promotion and sale of the Durom Cup within Canada. In particular the Defendants deny that:
- (a) they divided amongst themselves responsibilities for manufacture, marketing of the Durom Cup;
 - (b) they had independent rights and responsibilities to ensure the safety of the Durom Cup and to ensure the timely and adequate warnings were issued with respect to the Durom Cup; or
 - (c) they individually and jointly researched, tested, developed, marketed, manufactured, imported, promoted, licensed, labelled, monitored adverse reactions to, or placed into the stream of commerce the Durom Cup for sale in Canada
37. The Defendants do not have knowledge of the individual circumstances of each of the members of the class, but depending on those individual circumstances, the Defendants deny that the Court has jurisdiction over all members of the class pursuant to the provisions of the *Court Jurisdiction and Proceedings Transfer Act*, or at all.

Defendants address for service: Fasken Martineau DuMoulin LLP
2900 - 550 Burrard Street
Vancouver, B.C. V6C 0A3

Fax number address for service (if any): n/a

E-mail address for service (if any): n/a

Dated: 09-Dec-2011

ABorrell
Signature of
 Defendant Lawyer for Defendants
ANDREW BORRELL

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any part at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

The Solicitors for the Defendants are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 2900 - 550 Burrard Street, Vancouver B.C. V6C 0A3 Telephone: 604 631 3131 Facsimile: 604 631 3232. (Reference: 265790.00011/ Andrew Borrell and Peter Pliszka)

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

MAY 22 2012

ENTERED

IN THE SUPREME COURT OF BRITISH COLUMBIA

No. S095493
Vancouver Registry

BETWEEN:

DENNIS JONES and SUSAN WILKINSON

Plaintiffs

AND:

ZIMMER GMBH, ZIMMER, INC., and
ZIMMER OF CANADA LIMITED

Defendants

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

BEFORE THE HONOURABLE
MR. JUSTICE BOWDEN

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Monday, the 23rd day of
April, 2012

CASE PLAN ORDER

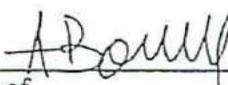
AT A CASE PLANNING CONFERENCE conducted on Thursday, the 23rd day of April, 2012 by The Honourable Mr. Justice Bowden in the presence of David A. Klein and Jason Z. Murray, counsel for the Plaintiffs, and Andrew Borrell, counsel for the Defendants, and Peter J. Pliszka, counsel for the Defendants appearing by telephone;

THIS COURT ORDERS that the parties comply with the attached case plan.

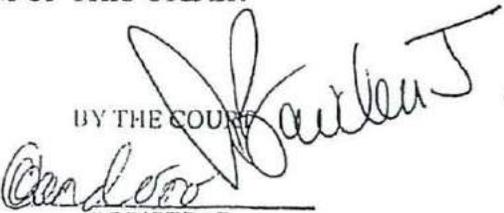
THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER



Signature of
 party lawyer for the Plaintiffs
Jason Z. Murray



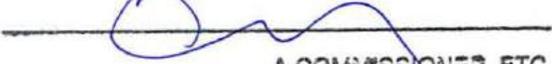
Signature of
 party lawyer for the Defendants
Andrew Borrell

BY THE COURT


REGISTRAR

CHECKED


This is Exhibit H referred to in the
affidavit of A. ANITA VERGIS
sworn before me, this 20th
day of April 2016



A COMMISSIONER, ETC.

By the Court.

Registrar

CASE PLAN

1 Dispute resolution procedures

The parties have discussed resolution options including those under Part 9 of the Supreme Court Civil Rules and have agreed to the following:

	Step	Date by which step to be completed
	Offer to settle	
X	Mediation	Mediation with the Honourable George Adams, pursuant to BC Mediation Regulation, which was commenced on March 7, 2012, will continue on a date to be agreed by the parties prior to October 31, 2012, unless the Plaintiffs' carriage issues in other provinces have not been resolved by that date.
	Special Case	
	Proceeding on point of law	
	Summary trial	
	Summary judgment application	
	Other [identify]	

A party may undertake any of the steps provided for in Part 9 of the Supreme Court Civil Rules whether or not the step is noted above.

2 Document production (Rule 7-1 of the Supreme Court Civil Rules)

The following steps will be completed by the date set out next to each step:

Step	Date by which step to be completed
Delivery of the lists of documents required under Rule 7-1	The Plaintiffs will serve their List of Documents by June 22, 2012. The list shall be in accordance with Rule 7-1. Documents shall be produced on the same dates. The Defendants' Lists of Documents shall be delivered by two instalments: an initial List of Documents shall be served by March 1, 2013, and a List of Documents

	<p>including any additional producible documents shall be served by May 1, 2013. Documents shall be produced on the same dates.</p> <p>Swiss law issues might potentially affect the production of certain documents in this legal proceeding. If such issues arise, the Defendants' counsel shall advise the Plaintiffs' counsel and, if necessary, the Court.</p>
Completion of an electronic document protocol	Documents shall be produced pursuant to the <i>Electronic Evidence Practice Direction, July 1, 2006</i> or a manner agreed by the parties.
Confidentiality Order	The parties consent to the attached confidentiality order. The production of documents by the Defendants will be subject to the terms of the confidentiality order even if the form of that confidentiality order has not yet been signed and entered by the Registry by the time any such production has occurred.
Disclosure in advance of lists of documents required under Rule 7-1	<p>The Defendants shall disclose the following documents by June 22, 2012:</p> <ol style="list-style-type: none">1. All Product Experience Reports submitted to Health Canada relating to the Durom Cup up to June 1, 2012.2. Correspondence between the Defendants and Health Canada relating to:<ol style="list-style-type: none">(a) Zimmer's efforts to obtain and amend the medical licences applicable to the Durom Cup in Canada;(b) The suspension of sales of the Durom Cup in the U.S.;(c) Zimmer's efforts to advise Canadian physicians about the U.S. sales suspension in 2008; and(d) Zimmer's 2009 Field Safety

	<p style="text-align: center;">Notification in Canada.</p> <p>3. Records showing the number of Durom Cups sold in Canada, broken down by hospital and province; and</p> <p>4. The DVD provided to Durom Cup users in November 2009 following the Field Safety Notice.</p>
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3 Examinations for discovery (Rule 7-2 of the Supreme Court Civil Rules)

The following examinations for discovery will be conducted, not exceed the time limits indicated and be completed by the date indicated:

Examination by (party name)	Examination of (party and person name)	Time Limit	Date by which step to be completed
Plaintiffs			Mutually-agreed dates between the date of the Defendants' service of its List of Documents and December 31, 2013.
Defendants			Mutually-agreed dates between the date of the Defendants' service of its List of Documents and December 31, 2013.

4 Applications

The following applications are anticipated:

Application	Date by which application anticipated to be brought
Approval of Notice of Certification	No earlier than thirty (30) days after the British Columbia Court of Appeal has determined the Defendants' appeal of the certification order (if the appeal is dismissed).

A party may bring any other application whether or not that application is noted above.

5 Expert witnesses (Part 11 of the Supreme Court Civil Rules)

[For the following, complete the following Parts 1 and 2 for any expert evidence that the parties anticipate introducing at trial, and if the parties are unable to provide the information required under Part 1 or 2, complete the following Part 3.]

PART 1

Each party may tender the report of, or call to give oral opinion evidence, an expert with the following expertise:

Name of party who intends to call the expert [if expert is being called jointly, specify "Joint"]	Area of Expertise

PART 2

The following steps will be taken by the date set out next to each step:

Step	Date by which step to be completed
Joint expert's report served	
Expert reports served	<p>The Plaintiffs' expert witness reports shall be served no later than March 1, 2014.</p> <p>The Defendants' expert witness reports shall be served no later than June 30, 2014.</p>
Responding expert reports served	
Notices of objection to expert evidence served (Rule 11-6 (10))	
Experts confer and serve report summarizing points of difference	
Other [identify]	
Other [identify]	

PART 3

If the information set out in the foregoing Part 1 or 2 is incomplete, the parties will apply to amend this order to complete the information by[dd/mmm/yyyy].....

6 Witnesses (Rule 7-4 of the Supreme Court Civil Rules)

The following steps will be completed by the date set out next to each step:

Step	Date by which step to be completed
Serve list of witnesses to be called at trial	<p>The Plaintiffs shall serve their list of non-expert witnesses for trial no later than May 1, 2014</p> <p>The Defendants shall serve their list of non-expert witnesses for trial no later than June 30, 2014.</p>
Other <i>[identify]</i>	
Other <i>[identify]</i>	

7 Trial (Part 12 of the Supreme Court Civil Rules)

- (a) Estimated length of the trial: six (6) weeks to sixteen (16) weeks;
- (b) The Plaintiffs will file a Notice of Trial in Form 40 to secure the trial date by Autumn 2014.

8 Other

A Trial Management Conference shall be held approximately twenty-eight (28) days prior to the start of the trial.

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Defendants

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

BEFORE THE HONOURABLE) Monday, the 23rd day of
MR. JUSTICE BOWDEN) April, 2012
)

CONSENT ORDER
(CONFIDENTIALITY OF DOCUMENTS)

AT A CASE PLANNING CONFERENCE conducted on Thursday, the 23rd day of April, 2012 by The Honourable Mr. Justice Bowden in the presence of David A. Klein and Jason Z. Murray, counsel for the Plaintiffs, and Andrew Borrell, counsel for the Defendants, and Peter J. Pliszka, counsel for the Defendants appearing by telephone;

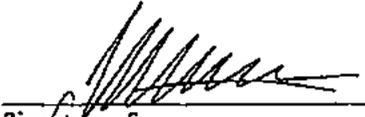
THIS COURT ORDERS that:

1. Klein Lyons shall not utilize any documents disclosed by the Defendants in this action (the "Confidential Documents") or any information contained in Confidential Documents for any purpose other than the conduct of this Action;
2. Klein Lyons shall not reveal the Confidential Documents to expert consultants who are retained to assist Klein Lyons in this Action and any appeal arising

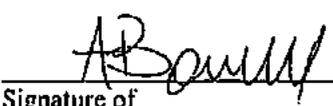
therefrom, unless such expert consultant has first signed the Confidentiality Acknowledgement attached hereto as an Appendix;

- 3. Klein Lyons shall deliver notice to the Defendants at least seven (7) clear days' before filing any pleading, motion material, factum, or any other material, that attaches any of the Confidential Documents or contains any information from Confidential Documents;
- 4. Upon the conclusion of this litigation proceeding, Klein Lyons shall either return to counsel for the Defendants all copies of the Confidential Documents in its possession, or destroy all such copies and provide the Defendants' counsel with confirmation of such destruction; and
- 5. The Supreme Court of British Columbia shall have exclusive jurisdiction over any matter or dispute arising from or relating to the application or enforcement of this Order.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS NOTED ABOVE:



 Signature of
 party lawyer for the Plaintiffs
 Jason Z. Murray



 Signature of
 party lawyer for the Defendants
 Andrew Borrell

By the Court.

Registrar

APPENDIX

No. S095493
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AND:

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Defendants

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c.50

ACKNOWLEDGEMENT

1. I acknowledge that I am about to receive confidential documents disclosed by the Defendants in this Action.
2. I have read the Confidentiality Order governing the restricted use of Confidential Documents in this Action, a copy of which has been provided to me. I understand the Confidentiality Acknowledgement and agree to abide by it.
3. I will not utilize any Confidential Documents or any information contained in Confidential Documents for any purpose other than this Action. Further, I will not reveal the Confidential Documents to, nor discuss any of them with, anyone, except in accordance with the terms of the Confidentiality Order.
4. At the termination of this Action, I will return all Confidential Documents as well as any copies, and documents related to them, whether in hard copy, electronic, or digitized format, to the lawyer who provided the Confidential Documents to me, and I will destroy any summaries or abstracts of them.
5. I agree that the Supreme Court of British Columbia shall have exclusive jurisdiction over any matter or dispute arising from or relating to the application or enforcement of this Confidentiality O, and I voluntarily submit to the jurisdiction of the Supreme Court of British Columbia, as necessary, in relation to all such matters.

Dated: _____
DD/MM/YYYY

Signature

Printed Name



No. S095493
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

DENNIS JONES and SUSAN WILKINSON

Plaintiffs

AND:

ZIMMER GMBH, ZIMMER, INC., and
ZIMMER OF CANADA LIMITED

Defendants

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE
MR. JUSTICE BOWDEN

)
)
)
)

Wednesday, the 26th day of
June, 2013

ON THE APPLICATION of the Plaintiff coming on for hearing at the Courthouse at 800 Smithe Street in Vancouver, British Columbia on June 24 and 26, 2013, and on hearing David A. Klein and Jason Z. Murray, counsel for the Plaintiffs, and Andrew D. Borrell, counsel for the Defendants, and no one appearing for the parties set out in Schedule "A" although served, and on reading the materials filed by the Plaintiffs and Defendants;

THIS COURT ORDERS that:

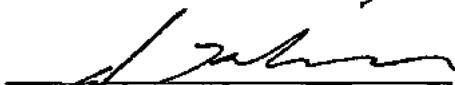
1. the Notice of Application, dated May 31, 2013, be deemed to have been served on the parties set out in Schedule "A" if sent to those parties by regular mail;
2. Notice of Certification is approved in substantially the form attached as Schedule "B";
3. the Opt-In Form for non-resident class members is approved in substantially the form attached as Schedule "C";
4. the Notice of Certification shall be published in the following manner:

This is Exhibit I referred to in the
 affidavit of A. ANITA VERGOS
 sworn before me, this 20th
 day of April 2016

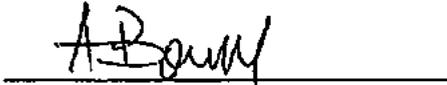
A COMMISSIONER, ETC.

- (a) the health care institutions listed in Schedule "A" shall mail a copy of the Notice of Certification, Opt-In Form and an Explanatory Letter in substantially the form attached as Schedule "D" to the last known address the institution has in its records for each person who received a Zimmer Durom hip implant through the institution;
 - (b) Class Counsel shall mail a copy of the Notice of Certification and Opt-In Form to all known individual class members, or their counsel;
 - (c) Class Counsel shall publish the Notice of Certification and Opt-In Form on their webpage: www.kleinlyons.com/class/zimmerhip;
 - (d) Class Counsel shall mail the Notice of Certification and Opt-In Form to anyone who requests it;
5. the Notice of Certification, Opt-In Form, and Explanatory Letter, shall be translated and published in both the English and French languages;
 6. publication of the Notice of Certification as set out in paragraph 4 shall be made as soon as reasonably possible after the issuance of this Order;
 7. as soon as reasonably possible after the Notice of Certification is mailed, the health care institutions set out in Schedule "A" shall each provide a written report to Class Counsel indicating the number of Class Members to whom Notice of Certification was mailed and the date on which it was mailed;
 8. Any Class Member resident outside of British Columbia may opt into this class proceeding by delivering an Opt-In Form to Class Counsel no later than December 31, 2013 ;
 9. Any Class Member resident in British Columbia may opt out of this class proceeding by providing Class Counsel, no later than December 31, 2013, with a letter or e-mail stating the Class Member's name and address and indicating that the class member wishes to opt out of this lawsuit;
 10. Class Counsel will provide the Defendants with copies of all opt-in forms and opt-out statements received by Class Counsel within seven (7) days of receipt, and
 11. the reasonable costs of the health care institutions for mailing the Notice of Certification shall, on an interim and without prejudice basis, be paid by the Plaintiffs.

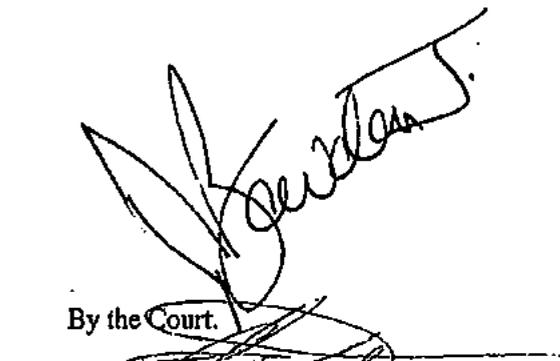
THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER, AND
CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE,
AS BEING BY CONSENT:



Signature of
 party lawyer for the Plaintiffs
David A. Klein



Signature of
 party lawyer for the Defendants
Andrew Borrell


By the Court.

D/ Registrar

Schedule "A"

Were you implanted with a Zimmer Durom® Hip Implant?

This notice may affect your rights.

Please read carefully.

The Supreme Court of British Columbia has certified a class action for people who were implanted with a Durom® acetabular hip implant or "Durom Cup" ("the Durom Cup") in Canada. If you were implanted with a Durom Cup you may be a class member.

Who are the Class Members?

The Class is defined as: "All persons who were implanted with the Durom acetabular hip implant in Canada"

The Durom® acetabular hip implant or "Durom Cup" is an artificial device used in hip surgery. It is a prosthetic shell meant to be implanted into a patient's hip socket, as a component of total hip replacement surgery or hip resurfacing surgery.

What the Class Action Is About

The lawsuit seeks compensation for class members. It is alleged that the Defendants were negligent in researching, developing, testing, manufacturing, distributing and selling the Durom Cup. The Durom Cup is alleged to be defective in that it fails to properly heal or adhere to the surrounding bone. The Durom Cup is alleged to cause patients pain and discomfort, ultimately leading to implant replacement surgeries. For British Columbia residents, the lawsuit also alleges that the Defendants engaged in deceptive acts or practices contrary to the *Business Practices and Consumer Protection Act* and seeks damages under that Act.

The court has not yet made any finding as to the merits of this lawsuit. The Defendants deny the allegations made in the lawsuit.

The representative plaintiff is Susan Wilkinson. The law firm representing the Class is Klein Lyons ("Class Counsel"). The Defendants are Zimmer GmbH, Zimmer, Inc. and Zimmer of Canada Limited.

How do British Columbia Residents Participate?

If you live in British Columbia you do not need to do anything to participate – you are automatically included in the class action. If you do not want to be part of this lawsuit you must notify Class Counsel at the address below, by letter or email, no later than December 31, 2013, providing your name and address and indicating that you do not want to be part of this lawsuit. If you are a class member resident in B.C. and do not exclude yourself by that date you will be included in this lawsuit and will be bound by the court's judgment on the common issues, whether

favourable or not.

How do Persons Outside B.C. Participate?

If you live outside British Columbia, and you want to be included in this class action, you must sign an Opt-In Form, and return it to Class Counsel no later than December 31, 2013. If you opt into this proceeding, you agree to be bound by the findings of the British Columbia court on the common issues, whether favourable or not, and you agree not to pursue related claims anywhere else. You can obtain a copy of the Form from Class Counsel or by visiting their website at www.kleinlyons.com/class/zimmerhip.

There are proposed class actions relating to the Durom Cup filed in Ontario, Quebec, Alberta, New Brunswick and Nova Scotia, but none of these have been certified as a class action and there are no guarantees that they will be certified. Residents of these provinces who want to ensure that they are part of this certified class action can join this lawsuit by completing an Opt-In Form.

What are the Financial Consequences?

Class members will be entitled to the benefit of a successful judgment on the common issues. If the action is not successful on the common issues, no class member will be responsible for legal fees or costs.

If the class is successful at the common issues trial individual class members must prove their own personal claims for damages. Class members may be responsible for the costs of proving their own individual claims, and may wish to hire a lawyer to assist with these further proceedings. Class Counsel is available to be hired by class members on a contingency basis, or class members may hire another lawyer of their own choosing.

Do I Need to Pay Anything?

The representative plaintiff has entered into a fee agreement providing that Class Counsel's legal fee for work on the common issues will be one-third of the amounts class members recover plus applicable taxes, disbursements and interest. If the class action does not succeed, class members are not responsible for any legal fees or disbursements. The fee agreement must be approved by the court.

For more information

For more information about the lawsuit or to obtain an Opt-In Form, visit www.kleinlyons.com/zimmerhip or telephone (604) 874-7171 or 1-800-468-4466 (toll free) email: info@kleinlyons.com

KLEIN · LYONS

Personal Injury & Class Action Law

Vancouver-Toronto | A Partnership of Law Corporations

Suite 400-1335 West 8th Avenue
Vancouver BC | V6H 3V9

Tel: 604.874.7171 | Fax: 604.874.7180
www.kleinlyons.com

**OPT-IN FORM
Zimmer Durom® Hip Implant
Class Action**

If you reside outside of British Columbia, and you want to be included in the class action, *Jones, et al. v. Zimmer GMBH, et al.*, you must fill out this form and return it the following address by no later than the date of trial:

Klein Lyons
Suite 400, 1385 West 8th Avenue
Vancouver, BC V6H 3V9
Fax: (604) 874-7180

1. Please fill in your name and address:

Name

Street

City

Province

Postal Code

() _____
Telephone

E-mail

2. By signing this form, you agree:

(a) to be bound by a judgment of the courts of British Columbia on the common issues in this class action, whether favourable or not. These are:

- (i) Was the Durom Cup defective and/or unfit for its intended use?
- (ii) Did any of the Defendants breach a duty of care owed to class members and, if so, when and how?
- (iii) Does the Defendants' conduct warrant an award of punitive damages, and, if so, to whom should they be paid, and in what amount?
- (iv) With respect to British Columbia residents, did any of the Defendants breach a statutory duty under the *Business Practices and Consumer Protection Act* owed to class members who received the Durom Cup in British Columbia and, if so, when and how.

(b) to not pursue other proceedings, other than this class action, against Zimmer GmbH, Zimmer, Inc. or Zimmer of Canada Limited., with respect to a claim for injuries relating to use of Durom® acetabular hip implant.

X _____

Signature

Date

Schedule "D"

Dear Sir/Madam:

Re: Your Zimmer Durom® Hip Implant

We are the court-appointed Class Counsel in a national class action lawsuit certified by the Supreme Court of British Columbia concerning people who were implanted with a Durom® acetabular hip implant or "Durom Cup" in Canada.

The Durom Cup is alleged to be defective in that it fails to properly heal or adhere to the surrounding bone. The Durom Cup is alleged to cause patients pain and discomfort, ultimately leading to implant replacement surgeries.

The class action does not implicate surgeons, health care providers, or health care institutions.

The enclosed notice may affect your rights – please read it carefully. The Supreme Court of British Columbia has ordered that certain health care institutions mail this letter and the enclosed notice to people who have been implanted with a Durom Cup. Your name and private information has not been disclosed to us and we do not represent you merely by sending you this letter.

If you have any questions about the class action, please contact us at the following address, telephone number and email address:

KLEIN LYONS
Suite 400 – 1385 West 8th Avenue
Vancouver, BC V6H 3V9
Telephone: (604) 874-7171
Fax: (604) 874-7180
Email: info@kleinlyons.com
Website: www.kleinlyons.com

More information can also be found online at www.kleinlyons.com/class/zimmerhip.

Yours very truly,

David A. Klein



No. S095493
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

DENNIS JONES AND SUSAN WILKINSON

PLAINTIFFS

AND:

ZIMMER GMBH, ZIMMER, INC. and ZIMMER OF CANADA LIMITED

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

SEALING AND CONFIDENTIALITY ORDER

BEFORE THE HONOURABLE MR.)
JUSTICE BOWDEN) MONDAY, THE 15th DAY
) OF JULY, 2013
)

ON THE APPLICATION of the defendants, Zimmer GMBH, Zimmer, Inc. and Zimmer of Canada Limited (collectively "Zimmer");

THIS COURT ORDERS THAT:

1. The Order of this court dated June 26, 2013 (the "Sealed Order") shall be sealed by the Registrar of this Honourable Court. The Sealed Order shall be kept under seal by the Registrar of this Court and shall not be made available for inspection by anyone other than the persons listed in paragraph 3 below. The redacted copy of the Sealed Order attached as Schedule

This is Exhibit J referred to in the
 affidavit of A. ANITA VERGIS
 sworn before me, this 20th
 day of April 2016

 A COMMISSIONER, ETC.

“B” to the Notice of Application dated July 10, 2013 shall be filed in the Court file and be available to the public without restriction.

Items to be sealed

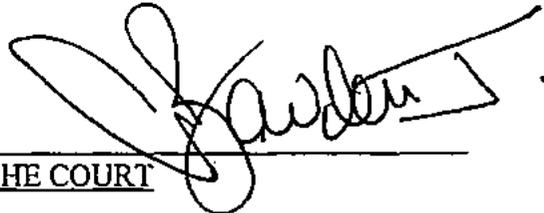
Document Name:	Date filed: <i>(Date on Court Stamp)</i>	Number of copies filed, including any extra copies for the judge.	Duration of sealing order: <i>(to specific date or until further order)</i>	Sought	Granted	
					Yes	No
1) Entire File	Not applicable			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2) <u>Specific Documents:</u> Order dated June 26, 2013,	June 26, 2013		Until further order	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3) <u>Clerk's Notes</u>				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4) <u>Order</u>				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

2. The Plaintiff may serve a copy of the Sealed Order on each of the hospitals subject to that order by delivering a copy of the Sealed Order with Schedule “A” redacted such that only the name of each specific customer that is served with that copy of the Sealed Order will be visible and the names of the other customers listed shall be redacted.

3. Subject to the terms of this Order, access to the Sealed Order shall be restricted to the following persons for the purposes of this action:

- (a) Any Master or Judge of this Court;
- (b) Registry staff of this Court;
- (c) The parties to this action;

- (d) Counsel for the parties including outside counsel and any in-house counsel, and the lawyers, law clerks/paralegals and stenographic and clerical staff employed by such counsel as reasonably necessary to disclose the Seal Document for the purposes of this action.
- 4. No copies of the Sealed Order, either in paper or electronic form, shall be disseminated to anyone not authorized to examine the sealed order pursuant to the terms of this Order, and any and all copies of the Sealed Order shall be used solely for the purpose of this Action and shall be subject to this Order.
- 5. Nothing in this Order shall prevent Zimmer from dealing with the Confidential Information as Zimmer sees fit.
- 6. Any person may apply to this Honourable Court to set aside or vary this Order upon giving fourteen (14) clear days' notice to the lawyers for the parties to this action.



 BY THE COURT

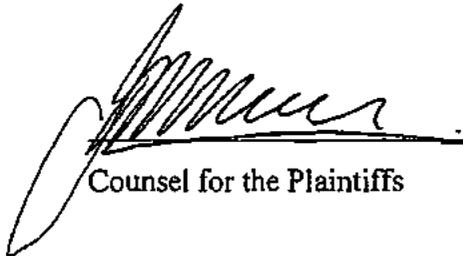


 REGISTRAR

APPROVED AS TO FORM:



 Counsel for Zimmer



 Counsel for the Plaintiffs

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
JUSTICE PERELL)
)

WEDNESDAY,
THE 18th DAY OF,
SEPTEMBER, 2013

BETWEEN:

GLORIA McSHERRY

Plaintiff

-and-

ZIMMER GMBH, ZIMMER, INC., and ZIMMER OF CANADA LIMITED

Defendants



Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the Plaintiff, for an order enforcing the order of Mr. Justice Bowden of the British Columbia Supreme Court, dated June 26, 2013, made in the action *Jones et al. v. Zimmer GMBH et al*, Vancouver Registry No. S09493 (the "Notice Order"), as against certain Ontario hospitals listed in the Notice Order which have not yet complied with it, was heard this day at Toronto.

ON READING the Plaintiff's Motion Record, and on hearing submissions for counsel for the Plaintiff and the Defendants, no one appearing for the hospitals, although duly served,

1. **THIS COURT ORDERS** that the Ontario hospitals listed in the Notice Order shall comply with it.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO.
LE / DANS LE REGISTRE NO.:

SEP. 18 2013

AS DOCUMENT NO.:
A TITRE DE DOCUMENT NO.:

Perell, J.

This is Exhibit K referred to in the
affidavit of A. ANITA VERGIS
sworn before me, this 20th
day of April

164
Gloria McSherry - and - Zimmer GMBH et al
Plaintiffs Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**PROCEEDINGS COMMENCED AT
TORONTO**

ORDER

**KLEIN LYONS
Barristers & Solicitors
100 King Street West
Suite 5600
Toronto, ON M5X 1C9**

Douglas Lennox
L.S.U.C. #40540A

Tel: (416) 506-1944
Fax: (416) 506-0601

Solicitors for the Plaintiff

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT

NO.: 500-17-078456-137

le 22 octobre 2013

PRESENT:

Hon. J. WILFRED CLAUDE DECARIE J.C.

CENTRE DE SANTÉ ET DE SERVICES
SOCIAUX DRUMMOND

-and-

CENTRE DE SANTÉ ET DE SERVICES
SOCIAUX NORD DE LANAUDIÈRE

-and-

CENTRE DE SANTÉ ET DE SERVICES
SOCIAUX SUD DE LANAUDIÈRE (ALSO
OPERATING AS Centre hospitalier Pierre-Le
Gardeur)

-and-

CENTRE DE SANTÉ ET DE SERVICES
SOCIAUX JARDINS ROUSSILLON (ALSO
OPERATING AS Centre hospitalier Anna
Laberge)

-and-

CENTRE DE SANTÉ ET DE SERVICES
SOCIAUX LES ESKERS DE L'ABITIBI (ALSO
OPERATING AS Centre hospitalier Hôtel-Dieu
d'Amos)

-and-

CENTRE DE SANTÉ ET DE SERVICES
SOCIAUX CŒUR DE L'ILE (ALSO
OPERATING AS Hôpital Jean-Talon)

This is Exhibit L referred to in the
affidavit of A ANITA VERGIS
sworn before me, this 20th
day of April 2016

A COMMISSIONER, ETC.

- 2 -

-and-

**CENTRE HOSPITALIER UNIVERSITAIRE DE
SHERBROOKE (CHUS) (ALSO OPERATING
AS Hôpital Fleurimont and Centre hospitalier de
Sherbrooke (Hôtel-Dieu))**

-and-

**CENTRE DE SANTÉ ET DE SERVICES
SOCIAUX DE LAVAL, (ALSO OPERATING AS
Cité-de-la-Santé de Laval)**

Petitioners

-vs-

DENNIS JONES

-and-

SUSAN WILKINSON

Respondents

ZIMMER GMBH

-and-

ZIMMER INC.

-and-

ZIMMER OF CANADA LIMITED

-and-

ZIMMER HOLDINGS INC.

-and-

SPECIALITÉS CHIRURGICALES R.M. INC

-and-

BEN WAINGER

-and-

RICHARD BRUNET

Mises en cause

J U D G M E N T

- [1] THE COURT, seized of the present Respondents' *De Bene Esse* Motion to Homologate a Foreign Judgment Amended (the "MOTION"), renders the present Judgment;
- [2] CONSIDERING the allegations contained in the MOTION and the Affidavit in support thereof;
- [3] CONSIDERING the absence of contestation;
- [4] CONSIDERING the exhibits and evidence herein;
- [5] CONSIDERING that the MOTION is well founded both in fact and in law;
- [6] FOR THE FOREGOING REASONS:
- [7] GRANTS the present Respondents' *De Bene Esse* Motion to Homologate a Foreign Judgment Amended;
- [8] HOMOLOGATES the Judgment dated June 26, 2013 rendered by the Honourable Mr. Justice Bowden in Court file No. S095493 of the Supreme Court of British Columbia;
- [9] ORDERS Petitioners to comply with said Judgment;

PS

[10] THE WHOLE WITHOUT COSTS.

Infancia

COPIE CERTIFIÉE CONFORME AU
DOCUMENT DÉTENU PAR LA COUR

Irrelevance Paveles pces
PERSONNE DÉSIGNÉE PAR LE GREFFIER
EN VERTU DE 44 C.P.A.C

Avez-vous reçu une greffe de prothèse de la hanche Zimmer Durom®?

Le présent avis pourrait avoir une incidence sur vos droits.
Veuillez la lire attentivement.

La Cour suprême de la Colombie-Britannique a autorisé un recours collectif pour les personnes ayant reçu une greffe de prothèse de la hanche comprenant la cupule cotyloïdienne Durom ou « Durom Cup » (la « Durom Cup ») au Canada. Si vous avez reçu une greffe de la prothèse Durom Cup, vous pourriez participer à ce recours.

Qui sont les membres du recours collectif?

Définition des membres du recours collectif : «Toute personne qui a reçu une greffe de prothèse de la hanche comprenant la cupule cotyloïdienne Durom au Canada».

La prothèse de la hanche comprenant la cupule cotyloïdienne Durom ou «Durom Cup» est un dispositif artificiel utilisé en chirurgie de la hanche. Il s'agit en fait d'une coque prothétique destinée à être greffée dans la hanche lors de chirurgies de remplacement total ou de surfacages de la hanche.

Sur quoi porte le recours collectif ?

La poursuite vise à indemniser les membres du recours collectif. Il est allégué que les défendeurs ont été négligents dans la recherche, l'élaboration, l'évaluation, la fabrication, la distribution et la vente de la prothèse Durom Cup. Il est également allégué que la prothèse Durom Cup est défectueuse puisqu'elle ne guérit pas correctement ou n'adhère pas à l'os environnant et/ou entraîne de la douleur et de l'inconfort chez le patient, des conditions qui mènent éventuellement à une chirurgie de remplacement. En ce qui concerne les habitants de la Colombie-Britannique, la poursuite allègue que les défendeurs se sont livrés à des pratiques trompeuses allant à l'encontre de la *Business Practices and Consumer Protection Act* et demande réparation en vertu de cette loi.

La Cour n'a encore rien conclu quant au bien-fondé de la poursuite. Les défendeurs nient les allégations faites dans la poursuite.

La représentante des demandeurs est Mme Susan Wilkinson. Le cabinet d'avocats responsable du recours collectif est Klein Lyons (l'«avocat du groupe»). Les défendeurs sont Zimmer GmbH, Zimmer Inc. et Zimmer of Canada Limited.

De quelle manière les habitants de la Colombie-Britannique peuvent-ils participer?

Si vous habitez la Colombie-Britannique, vous n'avez rien de particulier à faire pour vous joindre au recours collectif – vous y êtes automatiquement inclus. Si vous ne souhaitez pas prendre part au recours, vous devez en

poursuite avant cette date limite, vous serez automatiquement inclus au recours et serez lié par la décision de la Cour sur les questions communes, qu'elle soit en votre faveur ou non.

De quelle manière les personnes qui habitent à l'extérieur de la Colombie-Britannique peuvent-elles participer?

Si vous habitez à l'extérieur de la Colombie-Britannique, et que vous souhaitez vous joindre au recours collectif, vous devez alors signer le Formulaire de participation et le retourner à l'avocat du groupe avant le 31 décembre 2013. Si vous vous joignez à la poursuite, vous acceptez d'être lié par la décision de la Cour de la Colombie-Britannique sur les questions communes, qu'elle soit en votre faveur ou non, et vous acceptez en outre de ne pas donner suite à des réclamations connexes ailleurs. Vous pouvez vous procurer une copie de ce formulaire auprès de l'avocat du groupe ou en consultant leur site Web à l'adresse: www.kleinlyons.com/class/zimmerhip

Des recours collectifs ont également été proposés à l'encontre de la Durom Cup en Ontario, au Québec, en Alberta, au Nouveau-Brunswick et en Nouvelle-Écosse, mais aucun de ces recours n'a encore été autorisé officiellement et il n'y a aucune garantie qu'ils le seront. Les habitants de ces provinces qui souhaitent garantir leur participation au présent recours collectif autorisé peuvent le faire en remplissant le Formulaire de participation.

Quelles sont les conséquences financières?

Les membres du recours collectif auront droit aux bénéfices accordés par un jugement favorable sur les questions communes. Advenant un jugement défavorable sur les questions communes, aucun membre du recours ne sera tenu responsable des frais ou des coûts juridiques.

Si une entente est conclue sur les questions communes, chaque membre individuel du recours collectif doit alors prouver la validité de sa propre réclamation et de ses dommages personnels. Les membres du recours peuvent être tenus responsables des coûts associés à la mise en preuve de leurs réclamations. Ils peuvent également souhaiter retenir les services d'un avocat pour des procédures juridiques supplémentaires. L'avocat du recours collectif peut être provisoirement engagé par les membres du recours, ou bien ils peuvent embaucher un autre avocat de leur choix.

Dols-je payer quelque chose?

Le représentant des demandeurs a conclu une convention d'honoraires prévoyant que les honoraires de l'avocat du groupe pour son travail sur les questions communes soit du tiers de la somme recouvrée par les membres du

This is Exhibit M referred to in the affidavit of A. ANITA KERGIS sworn before me, this 20th day of A.P.M.I.

Who are the Class Members?

The Class is defined as: "All persons who were implanted with the Durom acetabular hip implant in Canada".

The Durom® acetabular hip implant or "Durom Cup" is an artificial device used in hip surgery. It is a prosthetic shell meant to be implanted into a patient's hip socket, as a component of total hip replacement surgery or hip resurfacing surgery.

What the Class Action is About

The lawsuit seeks compensation for class members. It is alleged that the Defendants were negligent in researching, developing, testing, manufacturing, distributing and selling the Durom Cup. The Durom Cup is alleged to be defective in that it fails to properly heal or adhere to the surrounding bone. The Durom Cup is alleged to cause patients pain and discomfort, ultimately leading to implant replacement surgeries. For British Columbia residents, the lawsuit also alleges that the Defendants engaged in deceptive acts or practices contrary to the *Business Practices and Consumer Protection Act* and seeks damages under that Act.

The court has not yet made any finding as to the merits of this lawsuit. The Defendants deny the allegations made in the lawsuit.

The representative plaintiff is Susan Wilkinson. The law firm representing the Class is Klein Lyons ("Class Counsel"). The Defendants are Zimmer GmbH, Zimmer, Inc. and Zimmer of Canada Limited.

How do British Columbia Residents Participate?

If you live in British Columbia you do not need to do anything to participate – you are automatically included in the class action. If you *do not* want to be part of this lawsuit you must notify Class Counsel at the address below, by letter or email, no later than December 31, 2013, providing your name and address and indicating that you do not want to be part of this lawsuit. If you are a class member resident in B.C. and do not exclude yourself by that date you will be included in this lawsuit and will be bound by the court's judgment on the common issues, whether

170
to be included in this class action, you must sign an Opt-In Form, and return it to Class Counsel no later than December 31, 2013. If you opt into this proceeding, you agree to be bound by the findings of the British Columbia court on the common issues, whether favourable or not, and you agree not to pursue related claims anywhere else. You can obtain a copy of the Form from Class Counsel or by visiting their website at www.kleinlyons.com/class/zimmerhip.

There are proposed class actions relating to the Durom Cup filed in Ontario, Quebec, Alberta, New Brunswick and Nova Scotia, but none of these have been certified as a class action and there are no guarantees that they will be certified. Residents of these provinces who want to ensure that they are part of this certified class action can join this lawsuit by completing an Opt-In Form.

What are the Financial Consequences?

Class members will be entitled to the benefit of a successful judgment on the common issues. If the action is not successful on the common issues, no class member will be responsible for legal fees or costs.

If the class is successful at the common issues trial individual class members must prove their own personal claims for damages. Class members may be responsible for the costs of proving their own individual claims, and may wish to hire a lawyer to assist with these further proceedings. Class Counsel is available to be hired by class members on a contingency basis, or class members may hire another lawyer of their own choosing.

Do I Need to Pay Anything?

The representative plaintiff has entered into a fee agreement providing that Class Counsel's legal fee for work on the common issues will be one-third of the amounts class members recover plus applicable taxes, disbursements and interest. If the class action does not succeed, class members are not responsible for any legal fees or disbursements. The fee agreement must be approved by the court.

For more information

For more information about the lawsuit or to obtain an Opt-In Form, visit www.kleinlyons.com/zimmerhip or telephone (604) 874-7171 or 1-800-468-4466 (toll free)
email: info@kleinlyons.com

KLEIN • LYONS

Personal Injury & Class Action Law

Vancouver-Toronto | A Partnership of Law Corporations

Suite 400-1385 West 8th Avenue
Vancouver, BC V6H 3V9

Tel: 604.874.7171 | Fax: 604.874.7188
www.kleinlyons.com



No. S095493
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

DENNIS JONES and SUSAN WILKINSON

Plaintiffs

AND:

ZIMMER GMBH, ZIMMER, INC., and
ZIMMER OF CANADA LIMITED

Defendants

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

CONSENT ORDER

BEFORE A JUDGE OF THE COURT)
Friday, the 29th day of
) May, 2015

ON THE APPLICATION of the Representative Plaintiff without a hearing and by consent;

THIS COURT ORDERS that the opt-in deadline is extended to June 1, 2015

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT
TO EACH OF THE ORDERS NOTED ABOVE:



David A. Klein
Counsel for the Plaintiffs



Peter J. Pliszka ANDREW BORRELL
Counsel for the Defendants



By the Court.

Registrar  This is Exhibit N 19 referred to in the
affidavit of A ANITA VEROS
sworn before me, this 20th
day of April 2016

A COMMISSIONER, ETC

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

Dennis Jones and Susan Wilkinson

Plaintiffs

AND:

Zimmer GMBH, Zimmer, Inc., and Zimmer of Canada Limited

Defendants

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c.50

CONSENT ORDER

KLEIN LAWYERS LLP
400 - 1385 West 8th Avenue
Vancouver, British Columbia
V6H 3V9

Attention: David A. Klein / A. Anita Vergis

Agent: Dye and Durham

Dye & Durham
669 8665-8
May 25, 2015

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE)
JUSTICE PERELL)
)

FRIDAY, THE
13th DAY OF JULY,
2012

BETWEEN:

GLORIA McSHERRY

Plaintiff

-and-



ZIMMER GMBH, ZIMMER, INC., and ZIMMER OF CANADA LIMITED

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the Plaintiff, for an Order granting the Plaintiff carriage of class action litigation in Ontario concerning the Zimmer Durom Cup hip implant was heard on July 5, 2012 at Toronto.

ON READING the Plaintiff's Notice of Motion, the affidavit of Mark Lyons, sworn June 8, 2012, the supplemental affidavit of Mark Lyons, sworn June 15, 2012, the affidavit of Sonya Diesberger, sworn June 8, 2012, the supplemental affidavit of Sonya Diesberger, sworn June 15, 2012, the affidavit of Eric Mets, sworn June 8, 2012, the affidavit of Steven Aldred, sworn June 8, 2012, the affidavit of Karen Griffiths, sworn June 8, 2012, the affidavit of Frank Cristo, sworn June 8, 2012, and the Notice of Motion filed by the plaintiffs in *Mets et al. v. Zimmer Holdings Inc. et al.*, Ontario Court File No. CV-10-413110 CP (the "Mets Action"), and on hearing the submissions of counsel for the Plaintiff in this Action, counsel for the plaintiffs in the Mets Action, and counsel for the Defendants in this Action and the Mets Action, with counsel for the plaintiffs in *D'Anna v. Depuy International, Ltd., et al.*, Ontario Court File No. 52593-10 (the D'Anna Action") and in *Ducharme et al. v. Zimmer Inc., et al.*, Ontario

This is Exhibit 0 referred to in the
affidavit of A. ANITA VERGIS
sworn before me, this 20th
day of April

Court File No. 53708/12 (the "Ducharme Action") served with the Plaintiff's Notice of Motion, but not in attendance on the motion.

1. THIS COURT ORDERS that carriage is granted to Klein Lyons, counsel for the Plaintiff.
2. THIS COURT ORDERS that the Mets Action is stayed.
3. THIS COURT ORDERS that the D'Anna Action is stayed.
4. THIS COURT ORDERS that the Ducharme Action is stayed.
5. THIS COURT DECLARES that no other class proceeding may be commenced in Ontario on behalf of individuals implanted with the Durom Cup with respect to the subject matter of this Action or *Jones et al. v. Zimmer GMBH et al*, British Columbia Action No. S095492 without leave of the court.

ENTERED AT / INSCRIT À TORONTO
 ON / BOOK NO:
 LE / DANS LE REGISTRE NO.:
 SEP 11 2012

AUG 31 2012

Rm. Ittleman

R. Ittleman, Registrar
 Superior Court of Justice

PER / PAR: *R*

Gloria McSherry - and - Zimmer GMBH et al
Plaintiffs Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDINGS COMMENCED AT
TORONTO

ORDER

R

KLEIN LYONS
Barristers & Solicitors
100 King Street West
Suite 5600
Toronto, ON M5X 1C9

David A. Klein
L.S.U.C. #20450N

Douglas Lennox
L.S.U.C. #40540A

Tel: (416) 506-1944
Fax: (416) 506-0601

Solicitors for the Plaintiff

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE)
JUSTICE PERELL)
)

WEDNESDAY, THE 24th
DAY OF SEPTEMBER,
2014

BETWEEN:

GLORIA McSHERRY

Plaintiff

-and-



ZIMMER GMBH, ZIMMER, INC., and ZIMMER OF CANADA LIMITED

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the Plaintiff, on consent of the Defendants, was heard at Toronto.

ON READING the Plaintiff's Motion Record, and on hearing from the parties,

1. THIS COURT ORDERS that this action is certified as a class proceeding against the Defendants.
2. THIS COURT ORDERS that the Class is defined as:

"All persons who were implanted with the Durom acetabular hip implant in Canada, excluding residents of British Columbia and Quebec, and those persons who opt into the class certified by the British Columbia Supreme Court in *Jones et al. v. Zimmer GMBH et al.* (the "Class"), and

Exhibit P referred to in the
Affidavit of A. ANITA VERGIS
sworn before me, this 20th
day of April 2016

A COMMISSIONER, ETC.

All persons who by reason of his or her relationship to a member of the Class are entitled to make claims under any of the Dependants Statutes in Canada as a result of the death or personal injury of such member of the Class (the "Family Class").

"Dependants Statutes means the Family Law Act (Ontario), Fatal Accidents Act (Alberta), Tort-Feasors Act (Alberta), Fatal Accidents Act (Saskatchewan), Fatal Accidents Act (Manitoba), Fatal Accidents Act (New Brunswick), Fatal Accidents Act (P.E.I.), Fatal Injuries Act (Nova Scotia), Fatal Accidents Act (Newfoundland), Fatal Accidents Act (Nunavut), Fatal Accidents Act (Northwest Territories), and Fatal Accidents Act (Yukon)."

3. THIS COURT ORDERS that Gloria McSherry is appointed as the representative plaintiff for the Class and the Family Class, and her counsel, Klein Lyons, is appointed as counsel for the Class and the Family Class ("Class Counsel").
4. THIS COURT DECLARES that the nature of the claims asserted by the Class are in negligence, and that the nature of the relief sought is personal injury damages.
5. THIS COURT ORDERS that the following are certified as common issues:
 - (a) Was the Durom acetabular hip implant defective and/or unfit for its intended use?
 - (b) Did any of the defendants breach a duty of care owed to class members and, if so, to when and how?
 - (c) Does the defendants' conduct warrant an award of punitive damages and, if so, to whom shall they be paid and in what amount?
6. THIS COURT ORDERS that Notice of Certification is approved in substantially the form attached as Schedule A (the "Notice").
7. THIS COURT ORDERS that the Notice shall be published forthwith and in the following manner:
 - (a) Class Counsel shall post the Notice on its website, and shall provide a copy of it to anyone who requests it; and

(b) the Defendants shall mail the Notice to any counsel in Canada who has contacted the Defendants on behalf of a client or clients purporting to have injuries related to the Zimmer Durom Cup, with the exception of counsel whose clients have brought individual claims against one or more of the Defendants in British Columbia or Quebec.

8. THIS COURT ORDERS that class members may opt out of this proceeding by delivering a written request to do so, providing their name and address, to Class Counsel by no later than 84 days from the date of this order.

9. THIS COURT ORDERS that this order is without costs.

Perell, J.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

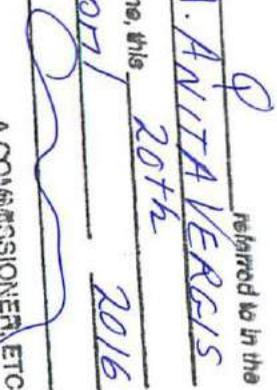
OCT 07 2014

AS DOCUMENT NO.:
À TITRE DE DOCUMENT NO.:

PER / PAR: *[Signature]*

	Last Name	First Name	Date Opt Out Request Received by Class Counsel	Was the Opt-Out Delivered by Other Counsel?	Action in Which Opt Out Request was Delivered
1	Behl	George Murray	Opted out December 9, 2103		Jones
2	Dolphin	Alan	Opted out December 6, 2013		Jones
3	Harshenin	Margo	Opted out February 17, 2014		Jones
4	Hilder	David F.	Opted out December 5, 2013		Jones
5	Jones	David	Opted out December 24, 2013		Jones
6	Laurenson	Michael	Opted out December 5, 2013		Jones
7	Luff	Barrie	Opted out December 19, 2013		Jones
8	Martens	Nelinda	Opted out September 17, 2013		Jones
9	Peet	Martin	Opted out Dec. 18, 2013 & Dec. 12, 2014	c/o Rochon Genova	Jones
10	Peters	John Ross	Opted out November 29, 2013		Jones
11	Quevillon	Pete	Opted out December 28, 2013		Jones
12	Rennie	Helen	Opted out November 30, 2013		Jones
13	Sylvester	Michael	Opted out Dec. 18, 2013 & Dec. 12, 2014	c/o Rochon Genova	Jones
14	Vermette	Gilles	Opted out October 30, 2014		Jones
15	White	Brian A.	Opted out December 24, 2013		Jones

This is Exhibit Q referred to in the affidavit of A. ANITA VERGIS sworn before me, this 20th day of April, 2016


A COMMISSIONER, ETC

Last Name	First Name	Date Opt Out Request Received by Class Counsel	Was the Opt-Out Delivered by Other Counsel?	Action in Which Opt Out Request was Delivered
1 Aldred	Steven	Opted out November 18, 2014	c/o Rochon Genova	McSherry
2 Blanchard	Maurice	Opted out November 18, 2014	c/o Rochon Genova	McSherry
3 Brucks	Allen	Opted out December 16, 2014	c/o Merchant Law Group	McSherry
4 Burden	David	Opted out December 15, 2014	c/o Stevensons LLP	McSherry
5 Couckuyt	Alec	Opted out December 15, 2014	c/o Stevensons LLP	McSherry
6 Cristo	Frank	Opted out November 18, 2014	c/o Rochon Genova	McSherry
7 D'Anna	Peggy	Opted out December 17, 2014	c/o Merchant Law Group	McSherry
8 Day	Rodney	Opted out December 17, 2014	c/o Merchant Law Group	McSherry
9 Dixon	Don	Opted out December 17, 2014	c/o Merchant Law Group	McSherry
10 Ferri	Elaini	Opted out December 15, 2014	c/o Stevensons LLP	McSherry
11 Harding	Kimberly	Opted out November 18, 2014	c/o Rochon Genova	McSherry
12 Hurley	Todd	Opted out December 17, 2014	c/o Merchant Law Group	McSherry
13 Lagace	Marina	Opted out December 16, 2014	c/o Merchant Law Group	McSherry
14 LaRose	Wendell	Opted out December 16, 2014	c/o Merchant Law Group	McSherry
15 Lavee	Myra	Opted out November 18, 2014	c/o Rochon Genova	McSherry
16 Leaman	Philip	Opted out December 15, 2014	c/o Stevensons LLP	McSherry
17 Marcoux	Janet	Opted out December 17, 2014	c/o Merchant Law Group	McSherry
18 Massey	Judith	Opted out November 18, 2014	c/o Rochon Genova	McSherry
19 McGrenere	Patrick	Opted out November 18, 2014	c/o Rochon Genova	McSherry
20 Mets	Eric	Opted out November 18, 2014	c/o Rochon Genova	McSherry
21 Mitchell	John	Opted out December 16, 2014	c/o Merchant Law Group	McSherry
22 Newbigging	Kevin	Opted out December 15, 2014	c/o Stevensons LLP	McSherry
23 Newman	Russell	Opted out November 18, 2014	c/o Rochon Genova	McSherry
24 Nicholson	William	Opted out December 17, 2014	c/o Merchant Law Group	McSherry
25 Parker-Toole	Fay	Opted out December 16, 2014	c/o Merchant Law Group	McSherry
26 Peet	Martin	Dec. 18, 2013 & Dec. 12, 2014	c/o Rochon Genova	McSherry
27 Plourde	Jacqueline	Opted out November 18, 2014	c/o Rochon Genova	McSherry
28 Przybilla	John	Opted out December 16, 2014	c/o Merchant Law Group	McSherry
29 Rafter	James	Opted out December 16, 2014	c/o Stevensons LLP	McSherry
30 Rothman	Lawrence	Opted out December 1, 2014	c/o Rochon Genova	McSherry
31 Rowe	Wallace	Opted out November 18, 2014	c/o Rochon Genova	McSherry
32 Sylvester	Michael	Dec. 18, 2013 & Dec. 12, 2014	c/o Rochon Genova	McSherry
33 Simar	Karnail	Opted out November 18, 2014	c/o Rochon Genova	McSherry
34 Stokes	Daniel	Opted out December 15, 2014	c/o David J. Gillespie	McSherry
35 Svab	Miro	Opted out December 17, 2014	c/o Merchant Law Group	McSherry
36 Welsch	Wayne	Opted out December 17, 2014	c/o Merchant Law Group	McSherry

This is Exhibit A-AMIA-REG-15 referred to in the affidavit of A. AMIA-REG-15 sworn before me, this 10th day of April, 2016.

U.S. DUROM CUP SETTLEMENT PROGRAM AGREEMENT

Between

Zimmer, Inc.

And

Claimants' Liaison Counsel

SETTLEMENT AGREEMENT

This binding Settlement Agreement ("Settlement Agreement"), entered into on February 11, 2016 (the "Execution Date"), is between (i) Zimmer, Inc., and its subsidiaries, parents, affiliates, divisions, nominees, and related entities in which they have an interest or which have an interest in them (collectively, "Zimmer"), and (ii) the counsel listed on the signature pages hereto under the heading "Claimants' Liaison Counsel" (the "CLC"). This Settlement Agreement establishes a private settlement program (the "Settlement Program") to resolve actions and claims of U.S. plaintiffs and claimants who were implanted with a Durom Acetabular Component (collectively, "Claimants") and then underwent a Qualified Revision Surgery under the terms set forth below.

RECITALS

A. Claimants allege injuries, losses, and damages as a result of the implantation, use, and removal of the Durom Acetabular Component (the "Durom Cup"). Zimmer disputes Claimants' alleged injuries, losses, and damages, and it denies that the Durom Cup is the cause of any injury, loss, or damage.

B. The CLC, on behalf of and in the best interests of Claimants, and Zimmer wish to avoid the costs, time, and uncertainties inherent in future litigation, and, therefore, enter into this Settlement Agreement establishing the Settlement Program.

This is Exhibit 5 referred to in the affidavit of A. ANITA VERGIS sworn before me, this 20th day of April 2016

A COMMISSIONER, ETC.

C. This Settlement Agreement and the Settlement Program shall not be construed as an admission of liability or culpability by Zimmer whatsoever or as an admission by Claimants who participate in the Settlement Program of a lack of merit in their actions or claims.

D. Therefore, for good and valuable consideration and intending to be legally bound, the CLC and Zimmer agree as follows.

TERMS AND CONDITIONS

I. ELIGIBILITY AND REGISTRATION

A. **Eligibility.** To be eligible for the Settlement Program, a Claimant must meet the following three requirements:

- 1. Claimant must be a citizen or legal resident of the United States;
- 2. Claimant must have been implanted with a Durom Cup in the United States; and
- 3. Claimant must have had a “**Qualified Revision Surgery,**” which is defined as the removal of his/her Durom Cup during a separate surgery less than nine years (108 months) after the date of implant. Claimants who have had a Qualified Revision Surgery are known as “**Eligible Claimants.**”

Eligible Claimants who have properly registered and completed the categorization process will be eligible for either the Base Award Program or the Fixed Award Program, as set forth in Section II.

For the avoidance of doubt, plaintiffs and claimants who have been implanted with a Durom Cup that has not been removed (“**Unrevised Claimants**”) are not eligible for the Settlement Program. Additionally, plaintiffs and claimants who have settled or adjudicated to final judgment his/her claims against Zimmer are not eligible for the Settlement Program.

B. Registration Of Claimants.

1. **Registration of Represented Claimants.** By April 29, 2016, all counsel representing Eligible Claimants who participate in the Settlement Program (“**Participating Counsel**”) must register each and every U.S. plaintiff or claimant they represent who was implanted with a Durom Cup, regardless of whether the plaintiff or claimant has filed a lawsuit in federal court, state court, or has not filed a lawsuit, and regardless of whether the plaintiff or claimant is eligible for the Settlement Program, by completing and serving upon Zimmer the document titled “Durom Cup Inventory Registration Form,” attached hereto as Exhibit A, which includes a certified declaration of compliance. Participating Counsel has a duty to supplement Exhibit A, and neither Participating Counsel nor any Eligible Claimant of that counsel may participate in the Settlement Program unless Exhibit A is certified as accurate as of May 31, 2016. By June 30, 2016, Zimmer will provide written notice to the CLC of each Participating Counsel’s total number of Claimants and total number of Eligible Claimants. If any Participating Counsel fails to register all Eligible Claimants they represent, Zimmer reserves the right, at its sole discretion, to refuse to accept or provide an alternative categorization under Section III.C, and/or pay any award under this Settlement Program to any or all of that Participating Counsel’s registered Eligible Claimants.

2. **Registration of Unrepresented Claimants.** By April 29, 2016, Eligible Claimants who are not represented by counsel as of the Execution Date (“**Unrepresented Eligible Claimants**”) and who participate in the Settlement Program must register by completing and serving upon Zimmer the document titled “Unrepresented Durom Cup Claimant Registration Form,” attached hereto as Exhibit B, which includes a certified declaration of compliance. By

June 30, 2016, Zimmer will provide written notice to the CLC of the total number of Unrepresented Eligible Claimants.

3. **Settlement Program Website.** To facilitate the registration process, Zimmer will establish a website at the following URL: www.duromsettlement.com. The website will provide details on the terms of the settlement, instructions on how to register a claim and participate in the Settlement Program, and copies of the Exhibits.

II. COMPENSATION

Eligible Claimants will be eligible for either the Base Award Program or the Fixed Award Program as set forth below.

A. **Base Award Program.** Subject to the terms and conditions herein, Eligible Claimants are eligible for the Base Award Program, unless the Eligible Claimant falls within the Fixed Award Program outlined in Section II.B.

1. **Base Award.** Eligible Claimants under the Base Award Program will receive an award of *\$175,000 per claimant* subject to the reductions, enhancements, and limitations outlined below.

2. **Reductions.** The Base Award of each Eligible Claimant will be subject to reductions in the following set amounts.

(a) ***In vivo length,*** or length of time the Durom Cup was implanted, of five years or more will result in the following reductions.

Implant Length from Date of Implant to Qualified Revision Surgery	Reduction
5 years ≤ X < 6 years	\$20,000
6 years ≤ X < 7 years	\$30,000
7 years ≤ X < 8 years	\$50,000
8 years ≤ X < 9 years	\$75,000

(b) *Implantation of the Durom Cup after July 22, 2008*, will result in a \$25,000 reduction.

(c) *Claimant's Age at Implant* of 70 years or older will result in a reduction as follows.

Age on Date of Implant	Reduction
70 ≤ X < 75 years	\$10,000
75 ≤ X < 80 years	\$15,000
X ≥ 80 years	\$30,000

(d) *Durom Cup implanted as part of a revision surgery*, involving the removal of a previously implanted acetabular component, will result in a \$50,000 reduction.

(e) *Unrepresented Claimants* as of the Execution Date will receive a 29% reduction regardless of subsequent representation. The 29% reduction will be applied after the application of all other reductions, enhancements, and limitations.

(f) In no event shall an Eligible Claimant's total award after application of all other reductions and enhancements exceed the amount of damages he/she is entitled to under federal law, including but not limited to awards that may be affected by the United States Bankruptcy Code.

3. **Enhancements.** The Base Award of each Eligible Claimant will be subject to enhancements in the following set amounts.

(a) *"Bilateral Eligible Claimants,"* defined as Eligible Claimants who have had two Qualified Revision Surgeries on opposite hips, in the Base Award Program will receive a \$75,000 enhancement not subject to any additional reductions or enhancements, *unless* one of the Qualified Revision Surgeries is

subject to the circumstances outlined in Section II.B. If one Qualified Revision Surgery is subject to the circumstances outlined in Section II.B, the Bilateral Eligible Claimant will receive a \$25,000 enhancement and not the \$75,000 enhancement. If both Qualified Revision Surgeries are subject to the circumstances outlined in Section II.B, the Bilateral Eligible Claimant falls within the Fixed Award Program and is not eligible for the Base Award Program.

(b) *Additional Revision Surgery* involving the removal and replacement of an acetabular component after the Qualified Revision Surgery and occurring within one year of the Qualified Revision Surgery will entitle an Eligible Claimant to receive a \$50,000 enhancement per additional revision surgery, up to a maximum of two additional revision surgery enhancements (or \$100,000).

(c) *Dislocations* requiring medical attention and occurring within one year of the Qualified Revision Surgery will entitle an Eligible Claimant to receive a \$5,000 enhancement per qualifying dislocation, with a maximum of three dislocation enhancements (or \$15,000).

4. **Extraordinary Injury or Loss.** In addition to the Enhancements outlined in Section II.A.3 above, the CLC believes there is good cause for some Eligible Claimants to seek compensation for extraordinary injury or economic loss. Extraordinary injury may be considered if suffered by the Eligible Claimant no more than three days after discharge from hospitalization for and related to the Qualified Revision Surgery.¹

¹ Examples of extraordinary injury include pulmonary embolism and/or deep vein thrombosis, foot drop that persisted for at least 90 days, infection that required surgical debridement or IV antibiotics for a period of at least eight weeks, and myocardial infarction or stroke.

Permanent and severe disability submitted as an extraordinary injury must be supported by a written medical opinion to be considered. If lost wages are submitted as extraordinary economic loss, the lost wages must be supported by proof of employment in the year before the Qualified Revision Surgery and a loss of at least 20% of that year's income. The parties acknowledge that the Settlement Program already includes compensation for ordinary expenses and lost income. Requests for compensation for extraordinary injury or loss shall be made during the categorization process outlined in Section III below. Requests for compensation for extraordinary loss or injury require additional certifications and documentation, as set out in the document titled "Extraordinary Injury Or Loss Claim Form" attached hereto as Exhibit D.

B. Fixed Award Program. Eligible Claimants with one or more of the four circumstances listed below fall within the Fixed Award Program and are excluded from the Base Award Program. Bilateral Eligible Claimants fall within the Fixed Award Program and are excluded from the Base Award Program if both of the Qualified Revision Surgeries are subject to one or more of the four circumstances.

1. **Fixed Award.** Eligible Claimants under the Fixed Award Program will receive a total award of *\$25,000 per Qualified Revision Surgery* and that amount is not subject to any additional reductions or enhancements, except for the reduction for Unrepresented Claimants set forth below. The maximum award for a Bilateral Eligible Claimant under the Fixed Award Program is \$50,000.

2. **Fixed Award Program Qualifying Circumstances.** The four circumstances qualifying an Eligible Claimant for the Fixed Award Program and not the Base Award Program are:

- (a) The Qualified Revision Surgery occurred 180 days or less after the date(s) of implant;
- (b) The Eligible Claimant died for reasons unrelated to a Qualified Revision Surgery before providing Zimmer with a fully executed Individual Settlement and Release Agreement pursuant to Section VI.A;
- (c) The Eligible Claimant may be barred from filing a lawsuit against Zimmer by the applicable statute of limitations; or
- (d) The Qualified Revision Surgery occurred as a result of infection, trauma, or other causes unrelated to the Durom Cup.

3. **Unrepresented Claimants** as of the Execution Date will receive a 29% reduction regardless of subsequent representation.

III. CATEGORIZATION

A. Categorization Of Eligible Claimants. After the registration process, each Eligible Claimant must categorize their claim as eligible for either the Base Award Program or the Fixed Award Program, and by May 31, 2016, must complete and serve upon Zimmer the document titled "Categorization and Award Amount Form" attached hereto as Exhibit C. As fully set forth in Exhibit C, each Eligible Claimant must provide to Zimmer complete medical records from the surgeon(s) and the hospital(s) for the implant surgery, the revision surgery, and any subsequent hip procedures. Each Eligible Claimant must specifically identify the records that support the categorization and award amount, including any grounds for enhancement. If an Eligible Claimant alleges entitlement to compensation for extraordinary injury or economic loss under Section II.A.4, he/she must identify the basis for that allegation, provide all documentation and other evidence supporting the allegation, and state specifically the proposed amount of compensation sought, as fully set forth in Exhibit D.

B. Tolling Upon Categorization. Upon request, Zimmer will toll the applicable statute of limitations from the date it receives the Categorization and Award Amount Form to September 15, 2016, subject to any defenses that may have accrued prior to tolling. Nothing in this paragraph shall be construed as reviving a claim that was barred by the applicable statute of limitations prior to service of the Categorization and Award Amount Form and proof of dismissal.

C. Zimmer's Acceptance Of Categorization. By August 1, 2016, Zimmer will notify each Eligible Claimant if it contests his/her categorization or proposed award amount. If Zimmer contests, it will propose an alternative categorization and award amount for each contested Eligible Claimant and an explanation for the categorization and award amount.

D. Claimant's Acceptance Of Contested Categorization. By September 15, 2016, each contested Eligible Claimant must notify Zimmer if he/she accepts Zimmer's findings and proposed categorization and award amount. A Claimant's sole method of notifying Zimmer that he or she accepts Zimmer's award amount is to return a completed "Individual Settlement and Release Agreement" ("Release"), as set forth in Exhibit E, including all exhibits and attachments thereto. Zimmer will provide written notice of each settlement to the CLC within 30 days of receiving the Release. It is a material term of this Settlement Agreement that the sole method of accepting Zimmer's award amount is to provide a completed Release, including each and every exhibit or attachment, without alteration of the terms of the Release and including all required signatures and notarizations. If an Eligible Claimant does not accept Zimmer's offered award amount, the Eligible Claimant may request mediation subject to the terms outlined in Section IV below.

IV. MEDIATION

A. Mediators. If, after completion of the categorization process in Section III, an Eligible Claimant and Zimmer cannot reach an agreement on categorization and award amount, the Eligible Claimant and Zimmer must participate in a mandatory mediation with the assistance of the mediators listed below. All parties may participate in mediation by counsel.

1. Gary H. Larsen, Dickinson & Gibbons, P.A., Sarasota, Florida;
2. Faustin A. Pipal, Jr., Resolute Systems, LLC, Chicago, Illinois; or
3. Alexander S. Polsky, JAMS, Orange, California.

Zimmer will set the date and location of the mediation for scheduling purposes. The Eligible Claimant and Zimmer will split the cost of the mediator and each party is responsible for its own travel expenses.

B. Conditions. On or after September 15, 2016, each Eligible Claimant who has properly registered under Section I and completed the categorization process under Section III can only seek mandatory mediation by completing and serving the document titled "Mediation Request Form" attached hereto as Exhibit F. As fully set forth in Exhibit F, an Eligible Claimant seeking mediation must provide additional records ("Mediation Records") before a mediation will be scheduled, including (1) all x-rays taken during and between the date of implant and the Qualified Revision Surgery, (2) the first x-rays taken after the Qualified Revision Surgery, (3) physical therapy records from therapy following the date of implant and the Qualified Revision Surgery, (4) all medical records, including any radiology records, from treating physicians and hospitals relevant to the analysis of any collateral injuries claimed, (5) all psychiatry and psychotherapy records relevant to the analysis of any mental or emotional injury claimed, and (6) the Durom Cup or high resolution photographs of the explanted Durom Cup if available. All

mediations under this Section must be scheduled by February 28, 2017, and completed by September 15, 2017, subject to the receipt of the Mediation Records.

C. Limitations. The only issues subject to mediation are as follows:

1. Whether or not a Claimant is eligible for the Settlement Program;
2. Whether or not an Eligible Claimant is eligible for the Base Award Program or the Fixed Award Program;
3. Whether or not an Eligible Claimant under the Base Award Program is subject to a reduction set forth in Section II.A.2;
4. Whether or not an Eligible Claimant under the Base Award Program is entitled to an enhancement set forth in Section II.A.3;
5. Whether or not an Eligible Claimant under the Base Award Program is entitled to compensation for extraordinary injury or economic loss under Section II.A.4, and the amount of compensation for extraordinary injury or economic loss; and
6. Whether or not an Eligible Claimant's total award after application of all other reductions and enhancements exceeds the amount of damages he/she is entitled to under the law.

The amount of the Fixed Award, the Base Award, and the reductions and enhancements are not subject to mediation.

V. PAYMENT OBLIGATIONS

A. Principal Payment Conditions And Obligations. The CLC and Zimmer agree that the purpose of this Settlement Agreement and the Settlement Program is to end nearly the entirety of the litigation involving the Durom Cup. Accordingly, Zimmer's obligation to make any payment under the Settlement Program is conditioned on 90% of registered Eligible Claimants completing the categorization process and accepting Zimmer's offer without

mediation. If less than 90% of registered Eligible Claimants complete categorization and accept Zimmer's offer without mediation, Zimmer has the option, in its sole discretion, *to terminate or enforce* this Settlement Agreement, the Settlement Program, all individual settlement offers made or accepted pursuant to this Settlement Agreement, and all Individual Settlement and Release Agreements. Additionally, if less than 90% of a Participating Counsel's Eligible Claimants complete the categorization process and accept Zimmer's offer without mediation, Zimmer has the option, in its sole discretion, *to terminate or enforce* this Settlement Agreement, the Settlement Program, all individual settlement offers made or accepted pursuant to this Settlement Agreement, and all Individual Settlement and Release Agreements, as to any or all of that Participating Counsel's Eligible Claimants.

Within 30 days of receiving written notice from the CLC that it believes 90% of registered Eligible Claimants have completed categorization and accepted Zimmer's offer without mediation, Zimmer must either: (1) notify the CLC in writing that Zimmer believes the 90% threshold has not been met; or (2) issue written notice that it will make payments within 45 days to all Eligible Claimants who accepted a settlement offer from Zimmer without mediation by submitting an Individual Settlement and Release Agreement.

B. Payment Conditions And Obligations After Mediation. Zimmer's obligation to make any payment under Section IV is conditioned on 67% of Eligible Claimants offered a settlement at mediation accepting Zimmer's offer by September 29, 2017. Within 30 days of receiving written notice from the CLC that it believes 67% of Eligible Claimants who were offered a settlement after mediation have accepted, Zimmer must either: (1) notify the CLC in writing that Zimmer believes the 67% threshold has not been met; or (2) issue written notice that it will make payments within 45 days to all Claimants who accepted a settlement offer from

Zimmer after mediation. Zimmer will pay any remaining settlements reached after the 67% threshold has been met individually and according to the terms outlined in the Individual Settlement and Release Agreement, as set forth below in Section VI.A.

C. **Settlement Program Common Benefit Fund.** By participating in the Settlement Program, Eligible Claimants and Participating Counsel agree to (1) comply with Case Management Order 3: Order Establishing Common Benefit Fund (“CMO 3”) entered in MDL No. 2158 pending in the United States District Court for the District of New Jersey (the “MDL”), and any Orders entered in furtherance of CMO 3 irrespective of whether the Eligible Claimant has a case pending in the MDL, state court, or is unfiled, (2) consent to the jurisdiction of the MDL Court for that purpose, and (3) permit an assessment up to four percent (4%) of each gross payment to an Eligible Claimant to be withheld by Zimmer and paid into the Common Benefit Fund. If the Eligible Claimant is represented as of the Execution Date, the assessment shall equal four percent (4%), with two percent (2%) deemed to be fees subtracted from the attorneys’ fees portion of the individual fee contracts between Claimants and their attorneys and the remaining two percent (2%) deemed to be costs subtracted from the client portion of the individual fee contracts. If the Eligible Claimant is unrepresented as of the Execution Date, the assessment shall equal two percent (2%).

The CLC, Eligible Claimants, and Participating Counsel reserve the right to petition the MDL Court to change this percentage based on the factors set forth in Model Rule of Professional Conduct 1.5 for determining the reasonableness of a fee, and the CLC and other Participating Counsel may petition the MDL Court for payment from the assessment as compensation for the procurement and administration of the Settlement Program.

VI. PAYMENT OF LIENS, RELEASES, AND CONFIDENTIALITY

A. Payment of Liens. As outlined in greater detail in the Release, each Eligible Claimant who accepts a settlement pursuant to this Settlement Agreement agrees to pay or have paid any liens held by or amounts owed to third parties, whether persons or entities, including any state or federal government entities, arising out of, or related to the Durom Cup, the implant surgery, or the Qualified Revision Surgery.

B. Releases. No later than September 15, 2016, each Eligible Claimant who accepts Zimmer's offer without mediation under Section III must provide Zimmer with a fully executed Release as described in Section III.E. and attached hereto as Exhibit E. Each Eligible Claimant who accepts Zimmer's offer after mediation under Section IV must provide Zimmer with a fully executed Release attached hereto as Exhibit E no later than September 15, 2017. The Release will release, discharge, and finally settle and compromise any and all claims of an Eligible Claimant that relate in any way to the Durom Cup, the implant surgery, or a Qualified Revision Surgery, including but not limited to any claim for personal injuries, death, damage to Claimant's property, emotional distress, or loss of services or consortium against Zimmer and any healthcare providers.

C. Confidentiality. Claimants, Participating Counsel, the CLC, and Zimmer acknowledge that the terms of each individual Release, including the history, background, and related negotiations, such as categorizations and award amounts, shall remain strictly confidential and are not to be discussed between Participating Counsel or disclosed to any person, firm, association, corporation or entity at any time, including but not limited to CLC, legal trade journals, reporting services, the press or media, and/or on any posting on the Internet. Discussions between Participating Counsel, CLC, and/or disclosure of the amount or terms and conditions of any individual Release may only occur upon receipt of written consent from

counsel for Zimmer, or upon receipt of a Court Order, or as set forth in the Release. If Claimants, Participating Counsel, or the CLC receive a request and/or order to disclose any matter covered by an individual Release, Claimants, Participating Counsel, and the CLC agree to give immediate notice to Zimmer and to not disclose the requested information without consent from Zimmer.

VII. WARRANTIES, REPRESENTATIONS, AND STIPULATIONS

A. No Admission Of Liability Or Fault. Nothing in this Settlement Agreement or the Settlement Program constitutes any admission of liability or fault of any kind on the part of Zimmer, or anyone else.

B. Inadmissibility Of Settlement Agreement. Neither this Settlement Agreement nor any of its attachments shall be admissible in evidence in any proceeding, except in an action to enforce the terms of this Settlement Agreement or an individual Release.

C. Drafting And Negotiation. This Settlement Agreement is the product of arm's length negotiations between the CLC and Zimmer. No party shall be deemed to be the drafter of this Settlement Agreement or any provisions hereof. No presumption shall be deemed to exist in favor of or against any party as a result of the preparation or negotiation of this Settlement Agreement.

D. Changes In Law And Severability. This Settlement Agreement shall be binding regardless of any change in the law that might occur after the date that this Settlement Agreement is signed. In case any provision, or any part of any provision, contained in this Settlement Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision (or remaining part of the affected provision) of this Settlement Agreement, but this Settlement Agreement shall be construed as if such invalid, illegal or unenforceable provision (or any part

thereof) had never been contained herein, but only to the extent it is invalid, illegal or unenforceable.

E. Applicable Law. This Settlement Agreement shall be interpreted in accordance with the internal laws of the State of Indiana.

F. Entire Agreement And Reliance. This Settlement Agreement, including all Exhibits attached hereto, constitutes the entire agreement between the CLC and Zimmer, and replaces and supersedes any prior agreements, written or otherwise. To the extent that there are any conflicts or discrepancies with any prior agreements, this Settlement Agreement, including all Exhibits attached hereto, shall govern. The CLC and Zimmer agree that they have neither received nor relied on any other agreements or promises, other than as contained in this Settlement Agreement.

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Crawford

Crawford Class Action Services ("CCAS") is an operating Division of Crawford and Company (Canada) Inc., ("Crawford") a wholly owned subsidiary of Crawford and Company, the largest claims adjudication and risk management firm in the world. Crawford's Canadian Head Office is located at 539 Riverbend Drive, Kitchener, Ontario with 79 claims offices situated across Canada. CCAS offices are located at 180 King Street South, Waterloo, Ontario, 955 Green Valley Crescent, Ottawa, Ontario and 265 North Front Street, Suite 402, Sarnia, Ontario.

Crawford is publicly traded on the New York Stock Exchange. Crawford's extensive mass claims experience, substantial resources, and financial stability ensure Crawford can effectively and efficiently support, sustain and grow our Class Action business.

Our business registration number in Canada is 86822 3538.

CCAS Experience: CCAS has administered or is administering the following seventy (70) class action settlements involving over 500,000 individual claims, including some of the most complex personal injury and corporate financial record evaluations (securities class action settlements) in Canada.

1)	Mangan v Inco	Ontario Class
2)	Hepatitis C (1986-90)	National Class
3)	Hepatitis C EAP 2	National Class
4)	Hepatitis C (Pre 1986, Post 1990)	National Class
5)	Walkerton Compensation Plan	Ontario Class
6)	Cotter v. Levy, Plastimet Fire	Ontario Class
7)	Pondimin Diet Drugs	National Class
8)	Sorbates Price Fixing I	National Class
9)	Sorbates Price Fixing II	Quebec Class
10)	Centerpulse Hip Replacements	Quebec Class
11)	Dow Corning-Ontario Breast Implants	Ontario Class
12)	Shell Polybutylene Pipes	National Class
13)	Fujitsu Defective Hard Drives	National Class
14)	Baycol Cholesterol Drug	National Class
15)	Ponderal Diet Drugs	National Class
16)	Ponderal Diet Drugs	Quebec Class
17)	Bausch and Lomb Eye Lenses	Quebec Class
18)	Maytag Neptune Washing Machines	National Class
19)	Stadol Analgesic Nose Spray	National Class
20)	Capers Hepatitis A	BC Class
21)	Trillium Ecoli	Ontario Class
22)	Behr Wood Sealant	National Class
23)	Cardozo Sexually Transmitted Disease	BC Class
24)	Alberta Government (Social Services)	Alberta Class
25)	Canadian Superior Energy – Securities	National Class
26)	Whistler Cable (Criminal Interest Rate)	BC Class
27)	Indian Residential Schools Notice Administration	National Class
28)	Money Mart Opt Out Administration	Ontario Class
29)	Indian Residential Schools IAP Administration	National Class

This is Exhibit J related to the affidavit of A. ANITA VERA sworn before me, this 20th day of April 2016

30)	Indian Residential Schools CEP Appeal Admin.	National Class
31)	Indian Residential Schools CEP Reconsideration	National Class
32)	Indian Residential Schools CEP Court Appeals	National Class
33)	Indian Residential Schools – Schools Appeals	National Class
34)	Royal Group Technologies – Securities	National Class
35)	CIBC Mutual Fund – Securities	National Class
36)	Conquest Vacations	Ontario Class
37)	Hepatitis C – Pre 86 – Post 90 Alberta	Alberta Class
38)	Tiffany Gate Foods	Ontario Class
39)	Telus/BCE Settlement – Securities	National Class
40)	KPMG Overtime Settlement	National Class
41)	Serzone	National Class
42)	Quebec CHSLD	Quebec Class
43)	GM Defective Intake Manifold Gasket	National Class
44)	Sauer v Ridley (BSE – Mad Cow)	National Class
45)	Honda – Defective Odometers	National Class
46)	Prepulsid	National Class
47)	Indian Residential Schools – Court Appeals	National Class
48)	Hep C Prison Blood	National Class
49)	Newfoundland Breast Cancer	NL and Labrador Class
50)	Stratford Floods	Ontario Class
51)	Zyprexa Defective Drug	National Class
52)	BC School Districts	BC Class
53)	Honda Tire Appeals	National Class
54)	Protective Products of America	National Class
55)	Schedule 1 Facilities	Ontario Class
56)	Kyocera Mita Settlement	Ontario Class
57)	Money Concepts Settlement	National Class
58)	Sheila Morrison Schools	Ontario Class
59)	Indian Residential Schools Personal Credit Administration	National Class
60)	Denny's Restaurants Class Action	BC Class
61)	Bishops College	Quebec Class
62)	Huronina Regional Centres	Ontario Class
63)	Southwestern Regional Centres	Ontario Class
64)	Rideau Regional Centres	Ontario Class
65)	Stadol Analgesic Nose Spray	National Class
66)	Capers Hepatitis A	BC Class
67)	e books Settlement	National Class
68)	GM Retirees Notice program	National Class
69)	W. Ross MacDonald Program	
70)	Insurance Claim Services – Department of Foreign Affairs and international Trade, Canada	

Crawford Class Action Services has handled the following Notice Programs:

1. *Cotter v. Levy*, (Ontario) Class Action Reference

- Published Notice in English print media
- Direct Mail - 9,500 notice pamphlets created and delivered to every residence and business within court approved geographical area.

2. Walkerton (Ontario) Government Alternate Compensation Plan

- Published Notice in English print media
- Direct Mail - 20,000 notice pamphlets created and delivered to every residence and business within court approved geographical area.
- Placement on Administrator's Website

3. Walkerton (Ontario) Class Action Compensation Plan

- Published Notice in English print media
- Direct Mail - 20,000 notice pamphlets created and delivered to every residence and business within court approved geographical area.
- Placement on Settlement Administration Website
- Executed the Objector Administration
- Executed the Opt Out Administration

4. Centerpulse Hip Replacement (Quebec) Class Action Settlement

- Published Notice in English and French print media
- Placement on Settlement Administration Website
- Executed the Objector Administration
- Executed the Opt Out Administration

5. Ponderal (National class) Diet Drug Class Action Settlement

- Published Notice in English print media
- Placement on Settlement Administration Website
- Executed the Opt Out Administration

6. Ponderal (Quebec) Diet Drug Class Action Settlement

- Published Notice in English and French print media
- Placement on Settlement Administration Website
- Executed the Opt Out Administration

7. Bausch and Lomb (Quebec) Class Action Settlement

- Published Notice in English and French print media

- Placement on Settlement Administration Website
- Executed the Objector Administration
- Executed the Opt Out Administration

8. Maytag Neptune Front Loading Washing Machines (National Class) Class Action Settlement

- Published Notice in English and French print media
- Placement on Settlement Administration Website
- Direct mail 100,000 English and French Notices to known class members.
- Executed the Objector Administration
- Executed the Opt Out Administration

9. Capers Hep A (British Columbia) Class Action Settlement.

- Published Notice in English print media
- Placement on Settlement Administration Website
- Executed the Objector Administration
- Executed the Opt Out Administration

10. Caputo (Tobacco) Class Action

- Designed comprehensive Notice Program to reach 5.8 Million Class Members across Canada using print, radio and television media.

11. *Ward v. Attorney General of Canada*

- Designed a comprehensive Notice Program using print media, military association, Canadian, Royal Legion websites and local outreach programs with informational notice kit to reach over 400,000 Canadian, U.K., and U.S. soldiers and civilians who had been present at Canadian Forces Base Gagetown from 1956 to 2005. Notice approved by Supreme Court of Newfoundland and Labrador. Awaiting implementation.

12. Indian Residential Schools – Phase I and Phase II Notice Programs

- Executed Phase I and II IRS Notice Programs across Canada and Territories.
- The most comprehensive notice programs in Canadian Class Action Litigation History.
- 108,298 mailings were sent directly to individuals.
- 96,701 were sent in English/French and 11,597 were in English/French/Inuktitut.
- 16,000 individual notice packages were shipped in bulk to lawyers to mail to clients.
- Of these, 14,500 were in English/French and 1,500 were in English/French/Inuktitut.
- Law firms were sent 568 cover letters with Notices requesting them to alert additional clients. Of these, 545 were in English/French and 23 were in English/French/Inuktitut.
- Relevant organizations were sent 1,440 notice packages requesting assistance reaching out to those in the community they have contact with. Of these, 1,218 were in English/French and 222 were in English/French/Inuktitut.

- Bulk shipments were sent, by request, to community outreach programs for on-the-ground distribution. A total of 30,075 notice packages were requested by community outreach implementers. Of these, 28,075 were in English/French, and 1,800 were in English/French/Inuktitut.
- Executed the Objector Administration
- Executed the Opt Out Administration

13. Amex Bank (Quebec) Class Action – Notice of Authorization

- Published Notice in English print media

14. Boliden Securities – National Class Certification and Settlement

- Published Notice in English and French print media
- Executed the Objector Administration
- Executed the Opt Out Administration

15. *Frey v. BCE Inc.*, 2006 SKQB 328, [2006] 12 W.W.R. 545, 282 Sask. R. 1, 32 C.P.C. (6th) 223

- Designed comprehensive Notice Program to reach 16 Million Class Members across Canada using direct mail, print and internet media.

16. *In re Bernard Vincent Campbell, Sharle Edward Widenmaier, Lenard Roy Link and William A. Heidt v. Attorney General of Canada and the Minister of National Defence.*

- Designed comprehensive Notice Program to reach 2,000 class members across Canada including estates, for injury as a result of/or exposure to chemical or biological warfare compounds between 1940 and 1976.

17. *In re Bill Sauer v. the Attorney General of Canada on behalf of Her Majesty the Queen in Right of Canada as represented by The Minister of Agriculture, John Doe, Jane Doe, and Ridley Inc.*

- Designed and executed comprehensive Notice Program to reach 100,000 commercial farmers of cattle across Canada re BSE or Mad Cow Disease Class Action against the government of Canada.
- Notice placement in English and French print media
- Executed the Objector Administration
- Executed the Opt Out Administration

18. *Donald Berneche Partie Requerante c. Procureur General du Canada (PGC)-et- Ministère de L'Agriculture et de L'Agroalimentaire du Canada (MAAC) -et- Ridley Inc. (Feed-Rite Ltd.) Partie Intimée*

- Designed and executed comprehensive Notice Program to reach 10,000 Quebec commercial farmers of cattle re BSE or Mad Cow Disease Class Action against the government of Canada.
- Notice placement in English and French print media
- Executed the Objector Administration
- Executed the Opt Out Administration

19. Alison Coreless and KPMG LLP Overtime Redress Plan

- Designed and executed comprehensive Notice Program to reach 15,000 current and former employees of KPMG across Canada and Internationally.
- Notice placement in English and French print media
- Notice placement - English and French websites
- Executed the Opt Out Administration

20. *Alison Coreless v. KPMG LLP* (Class Action Settlement)

- Designed and executed comprehensive Notice Program to reach 15,000 current and former employees of KPMG across Canada and Internationally.
- Notice placement in English and French print media
- Executed the Objector Administration
- Executed the Opt Out Administration

21. *Stewart et al. v. General Motors of Canada Limited et al.*

- Designed and executed comprehensive Notice Program to reach 100,000 class members across Canada, including Quebec, in a class action against GM Canada alleging nylon intake manifold gaskets installed in certain GM vehicles were defective
- Notice placement in English and French print media
- Executed the Objector Administration
- Executed the Opt Out Administration

22. *Prepulsid*

- Designed and executed comprehensive Notice Program to reach class members across Canada, including Quebec, in a class action against Johnson and Johnson alleging drug was defective
- Notice placement in English and French print media
- Executed the Objector Administration
- Executed the Opt Out Administration

23. *In re Bill Sauer v. the Attorney General of Canada on behalf of Her Majesty the Queen in Right of Canada as represented by The Minister of Agriculture, John Doe, Jane Doe, and Ridley Inc.*

- Published Notice in English and French print media
- Executed the Opt Out Administration (Quebec only)

24. *Dolmage v. Province of Ontario* (Huron Regional Centre Class Action)

- 4,951 mailings were sent directly to individuals
- 384 notice packages mailed to community agencies
- Executed the Opt Out Administration

25. GM Canada Retirees Health Care Benefit

- 27,937 mailings were sent directly to individuals
- Published Notice in French print media
- Executed the Opt Out Administration

26. Indian Residential Schools – IAP Deadline and TRC Notice

- 89,834 mailings were sent directly to individuals

27. *Clarke v. Province of Ontario* (Rideau Regional Centre Class Action)

- 5,649 mailings were sent directly to individuals
- 327 notice packages mailed to community agencies
- Executed the Opt Out Administration

28. *Bechard v. Province of Ontario* (Southwestern Regional Centre Class Action)

- 2,303 mailings were sent directly to individuals
- 327 notice packages mailed to community agencies
- Executed the Opt Out Administration

29. Money Concepts Settlement

- 1,085 mailings were sent directly to individuals
- Published Notice in English print media
- Executed the Opt Out Administration
- Ongoing Claims Administration

30. *Seed v. Province of Ontario* (W. Ross MacDonald Class Action)

- Over 5,000 mailings were sent directly to individuals – this is an ongoing process as additional putative class members are identified by the defendant
- 28 notice packages emailed to community agencies
- Ongoing Opt Out Administration