

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

GLORIA McSHERRY

Plaintiff

-and-

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

Defendants

Proceeding under the *Class Proceedings Act, 1992*

NOTICE OF MOTION

THE PLAINTIFF will make a motion before the Honourable Justice Perell on Monday, April 25, 2016 at 10 am, at the courthouse, 361 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING:

The motion is to be heard orally.

THE MOTION is for an Order

1. Scheduling a hearing (the "Approval Hearing") to approve a proposed settlement agreement and addendum (the "Settlement Agreement") in this certified class action.
2. Approving the form, content and manner of notice to class members of that Approval Hearing as set out in the Settlement Agreement at Schedule B2, as modified by the addendum. For ease of reference, a copy of the form of notice (the "Notice of

Approval Hearing”) is attached as Schedule A to this Notice of Motion, and a copy of an accompanying press release is at Schedule B. As for the means of notice, these are as follows:

- (a) 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.
- (b) Class Counsel shall post a copy of the Notice of Approval Hearing and the Settlement Agreement to their respective websites.
- (c) 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.
- (d) Class Counsel shall issue the media release attached to this Notice of Motion, and the media release will be distributed through Canada Newswire or Market Wired.
- (e) Class Counsel shall publish Notice of Approval Hearing in all publications listed in Schedule K to the Settlement Agreement which are as follows:
 - (i) Globe & Mail
 - (ii) Vancouver Sun
 - (iii) Edmonton Journal
 - (iv) Calgary Herald
 - (v) La Presse (FR)
 - (vi) Montreal Gazette (ENG)
 - (vii) Le Journal de Montreal (FR)
 - (viii) Montreal Metro News
 - (ix) The Star Phoenix (Saskatoon)
 - (x) Regina Leader-Post
 - (xi) Toronto Star
 - (xii) Toronto Metro News
 - (xiii) Sudbury Star
 - (xiv) Hamilton Spectator
 - (xv) Le Soleil
 - (xvi) Le Journal de Quebec

3. Such further and other relief as counsel may advise and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. Section 19(1) of the *Class Proceedings Act*.
2. This class action was certified on September 24, 2014. See *McSherry v. Zimmer GMBH et al*, 2014 ONSC 5527.
3. A companion class action was certified in British Columbia on September 2, 2011. See *Jones v. Zimmer GMBH*, 2011 BCSC 1198; affirmed 2013 BCCA 21
4. There are also proceedings in Quebec. See *Major c. Wainberg*, 2016 QCCS 902.
5. A proposed national settlement agreement has now been reached. The parties wish to co-ordinate hearings in Ontario, British Columbia and Quebec to consider whether this agreement may be approved by the courts, and to provide class members with notice of those hearings so that they may participate, if they wish.
6. The proposed notice provided in the Settlement Agreement is reasonable in the circumstances. Direct notice will be provided to over 1100 class members who have already delivered opt-in requests in this litigation, as well as to all counsel in Canada known to have filed Zimmer Durom Cup related litigation. Furthermore, there will be

substantial paid advertising in newspapers across the country, plus a press release to generate earned media attention, plus internet publication.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The affidavit of Anita Vergis;
2. The affidavit of Gloria McSherry;
3. The affidavit of Dr. Thomas Turgeon; and
4. Such further and other evidence as counsel may advise and this Honourable Court may permit.

April , 2016

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