

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 ) Friday this 29th day  
) of April, 2016  
)  
)

**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 29th day of April, 2016, and on hearing counsel for Plaintiffs, David A. Klein, and counsel for the Defendants, Andrew Borrell, 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 a date to be scheduled by the parties 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.

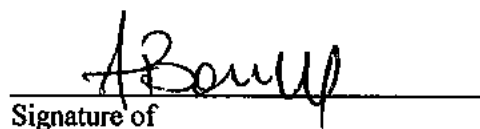
4. The proposed manner of publishing the Hearing Notice as described in Schedule "3", is approved (the "Notice Plan").

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

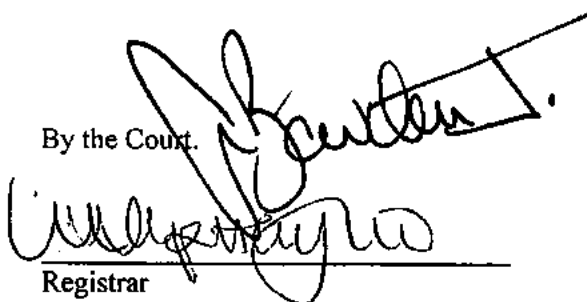
THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS NOTED ABOVE:



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**

**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")

A handwritten signature in black ink, appearing to be a stylized 'J' or 'K' followed by a flourish.

**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;

- 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 independantly 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 Releases, 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 (f).

(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 Releasers 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 Releasers 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 8<sup>th</sup> Avenue  
Vancouver, BC V6H 3V9  
Telephone: 604-874-7171  
Facsimile: 604-874-7180  
Email: [dklein@callkleinlawyers.com](mailto: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](mailto: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](mailto: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 LESPERADUE  
Merchant Law Group LLP

Date: April 13, 2016

By: [Signature]

Printed: PHILIPPE TRUDEL

PROVINCIAL HEALTH INSURERS:

Date: November 24, 2015

By: [Signature]

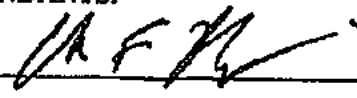
Printed: David Klein

Its: Solicitor



Date: November 23, 2015

DEFENDANTS:

By: 

Printed: Chad F. Phipps

Its: Senior Vice President,  
General Counsel & Secretary

**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

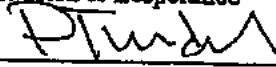
By: 

Printed: DOUGLAS LENNOCK

Date: 13 AVRIL 2016

QUEBEC CLASS COUNSEL:

Trudel Johnston & Lesperance

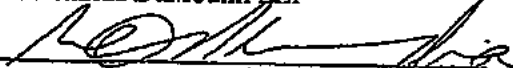
By: 

Printed: PHILIPPE TRUDEL

Date: April 11, 2016

DEFENDANTS' COUNSEL:

Fasken Martineau DuMoulin LLP

By: 

Printed: Peter Pliszka

Date: April 8, 2016

PROVINCIAL HEALTH INSURERS:

By: 

Printed: DOUGLAS LENNOX

Its: COUNSEL



**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 \_\_\_\_\_

**Section F: Revision Medically Contraindicated**

Has the Claimant's doctor recommended a revision, but also advised the Claimant that a revision is medically contraindicated and/or would be life threatening?

Yes  No

If you checked "Yes," please submit a Physician's Declaration completed and signed by your physician with this form and complete the remainder of Section F. If you checked "No," please skip to Section G.

Identify the name and address of the doctor who advised the Claimant, the date of discussion, and the medical condition(s) that prevents the Claimant from having the surgery. Please state whether the Claimant has been advised that the condition(s) will permanently prevent the Claimant from having revision surgery, as opposed to delaying a revision surgery.

\_\_\_\_\_  
Date(s) of Discussion (MM/DD/YYYY)

\_\_\_\_\_  
Doctor

\_\_\_\_\_  
Address

\_\_\_\_\_  
Medical condition(s):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Section G: Claimant's Immediate Family Information**

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

If the Claimant had at least one Revision Surgery to remove a Durom Cup, 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 revision surgery or surgeries to remove 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 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 8<sup>th</sup> Avenue  
 Vancouver, BC V6H 3V9  
 Telephone: 604-874-7171  
 Facsimile: 604-874-7180  
[www.kleinlyons.com](http://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](http://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 8<sup>th</sup> Avenue  
Vancouver, BC V6H 3V9  
Telephone: 604-874-7171  
Facsimile: 604-874-7180  
[www.callkleinlawyers.com](http://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](http://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

**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** 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 8<sup>th</sup> Avenue  
Vancouver, BC V6H 3V9  
Telephone: 604-874-7171  
Facsimile: 604-874-7180  
[www.kleinlyons.com](http://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](http://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 8<sup>th</sup> Avenue  
Vancouver, BC V6H 3V9  
Telephone: 604-874-7171  
Facsimile: 604-874-7180  
[www.callkleinlawyers.com](http://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](http://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

Klein Lawyers LLP  
 Suite 400  
 1385 West 8<sup>th</sup> Avenue  
 Vancouver, BC V6H 3V9  
 Telephone: 604-874-7171  
 Facsimile: 604-874-7180  
[www.kleinlyons.com](http://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](http://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 Zinner 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 8<sup>th</sup> Avenue  
Vancouver, BC V6H 3V9  
Telephone: 604-874-7171  
Facsimile: 604-874-7180  
[www.callkleinlawyers.com](http://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](http://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 )  
MR. JUSTICE BOWDEN ) day, the th day of  
)  
)  
)

**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 Releasors from the Released Claims. The Releasors 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:

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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 Releasors from the Released Claims. The Releasors 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

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**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:

---

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#### 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:

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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 our 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 8<sup>th</sup> Avenue  
Vancouver, BC V6H 3V9  
Telephone: 604-874-7171  
Facsimile: 604-874-7180  
[www.kleinlyons.com](http://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](http://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 8<sup>th</sup> Avenue  
Vancouver, BC V6H 3V9  
Telephone: 604-874-7171  
Facsimile: 604-874-7180  
[www.kleinlyons.com](http://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](http://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 8<sup>th</sup> Avenue  
Vancouver, BC V6H 3V9  
Telephone: 604-874-7171  
Facsimile: 604-874-7180  
[www.kleinlyons.com](http://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](http://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:

<b>Complication</b>	<b>Payment</b>
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.




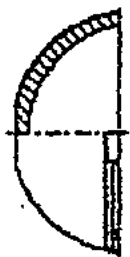
The compensation that you are eligible to receive as a member of the settlement class will be determined based on your status on September 1, 2015. This is referred to as the “Eligibility Deadline.” You are required to submit your claim and the documentation required elsewhere in this Settlement Agreement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

<b>REF</b> 01.00214.050	EDI: 0100214050	 <b>Zimmer</b>
<b>LOT</b> 2420836	 2013-03 Qty: 001	
Metasul® Durom® Acetabular Component uncemented 50/ #44 Code J		
CoCrMo (Protasul®-21WF) ISO 5832-12		
C.P. Titanium (Protasul®-Ti) ISO 5832-2		
		
*HB4401002140501/130902420836000F*		
Zimmer GmbH, CH-8404 Winterthur, Switzerland / www.zimmer.com		25855v02 - 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.

## 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 *Major 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 the *Major* 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 *Major* 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 *Major* 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 *Major* 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 *Major* 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

Trudel Johnston & Lespérance  
 750, Côte de la Place d'Armes  
 Bureau 90  
 Montréal QC H2Y 2X8

**For Additional Information and a Copy of the Settlement Agreement:**

Class Counsel in *Jones* and *McSherry* Actions

Class Counsel in *Major* Action:

**Klein Lawyers LLP**  
 Suite 400  
 1385 West 8<sup>th</sup> Avenue  
 Vancouver, BC V6H 3V9  
 Telephone: 604-874-7171  
 Facsimile: 604-874-7180  
[www.callkleinlawyers.com](http://www.callkleinlawyers.com)

**Trudel Johnston & Lespérance**  
 750, Côte de la Place d'Armes  
 Bureau 90  
 Montréal QC H2Y 2X8  
 Telephone: 514 871-0800  
 Facsimile: 514 871-8800  
[www.trudeljohnston.com](http://www.trudeljohnston.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 (*Major 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 *Major* 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 *Major* Action:

**Klein Lawyers LLP**  
Suite 400  
1385 West 8<sup>th</sup> Avenue  
Vancouver, BC V6H 3V9  
Telephone: 604-874-7171  
Facsimile: 604-874-7180  
[www.callkleinlawyers.com](http://www.callkleinlawyers.com)

**Trudel Johnston & Lespérance**  
750, Côte de la Place d'Armes  
Bureau 90  
Montréal QC H2Y 2X8  
Telephone: 514 871-0800  
Facsimile: 514 871-8800  
[www.trudeljohnston.com](http://www.trudeljohnston.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

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**ORDER MADE AFTER APPLICATION**

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KLEIN LAWYERS  
400 – 1385 West 8<sup>th</sup> Avenue  
Vancouver, British Columbia  
V6H 3V9

(Reference 29262/AAV)