

LAW OFFICES OF
DAVIS, SAPERSTEIN & SALOMON, P.C.

375 CEDAR LANE
TEANECK, NJ 07666-3433

FACSIMILE: (201) 692-0444

Email: lawinfo@dsslaw.com

(201) 907-5000

800 INMAN AVENUE
COLONIA, NJ 07067
(732) 510-1000

39 BROADWAY, SUITE 520
NEW YORK, NY 10006
(212) 608-1917

CERTIFIED CIVIL TRIAL ATTY †
PENNSYLVANIA BAR ■
NEW JERSEY BAR ●
NEW YORK BAR ○
LOUISIANA BAR □
GEORGIA BAR ☒
D.C. BAR △
OF COUNSEL

RACHAEL NASS ●○
BENNETT J. WASSERMAN ●○†

SAMUEL L. DAVIS ●○†
MARC C. SAPERSTEIN ●○○†
GARRY R. SALOMON ●†
STEVEN BENVENISTI ●■†
PAUL A. GARFIELD ●■†
—
LUIS L. HAQUIA ●○†
TERRENCE SMITH ●■
STEVEN H. COHEN ●○
PATRICIA Z. BOGUSLAWSKI ●†
ADAM LEDERMAN ●○
RAYMOND S. CARROLL ●○
ANGELA CERVELLI BENNETT ●
RENEE C. RIVAS ●
DAVID A. DRESCHER ●○
LISA A. LEHRER ●■□
KATE CARBALLO ●○
KEVIN DECIE ●

March 19, 2014

REPLY TO TEANECK

By ECF and Lawyers Service
Honorable Steven C. Mannion
United States Magistrate Judge
MLK Federal Bldg & Courthouse
50 Walnut St.
Newark, NJ 07102

Re: In re: Zimmer Durom Cup Products Liability Litigation
Martin Goldstein v. Zimmer, Inc., et al, case no. 12-6085
Michael and Nadia Kayal v. Zimmer, Inc., et al, case no. 13-5424

Dear Judge Mannion:

I write on behalf of our clients Martin Goldstein and Michael and Nadia Kayal. Both Plaintiffs settled their cases in recent mediations, and both have filed motions to reduce common benefit fund contribution. I received the opposition papers from Plaintiffs' Liaison Counsel this afternoon. Please accept this letter in reply to the motion opposition.

From Mr. Tanner's agenda letter of March 17, 2015 and the opposition submitted today, I understand that the position of Plaintiffs' Liaison Counsel is that some Plaintiffs' counsel have spent a lot of time and a lot of money pursuing liability issue discovery against Defendants. None of that discovery has inured to the benefit of our clients during their recent mediations or those resolved in 2011.

The essential premise of the mediation program has always been one this firm understood did not address liability issues. The process, at least in this firm's experience, focused exclusively on the issues of proximate cause and damages. **This firm has not participated in the discovery effort, obtained deposition transcripts, expert reports or other work product. We did not receive advice or counsel from Liaison Counsel on any aspect of mediation procedure or strategy.**

In fact, plaintiffs' discovery efforts have been effectively rejected by Zimmer for our mediation discussions. **If it did anything, it appears that these efforts may have further entrenched Defendant's mediation strategy.** Zimmer's counsel made it very clear that Zimmer's

mediation position, one that it held fast, was not changing because of other national device settlements, MDL or state discovery or the Durom verdict experience.

In short, Plaintiffs' common issue discovery has had no direct impact or indirect impact on mediation discussions and provided no direct or indirect benefit to this firm's clients. It may have had the unintentional but real adverse effect. Our clients should not be obliged to contribute to the common benefit fund under these circumstances.

Should the Court require a more formal submission in reply to Liaison Counsel's general opposition, we are happy to do so.

Respectfully submitted,
Davis, Saperstein & Salomon, P.C.

/s/ Terrence Smith
For the firm

cc: all counsel by ECF