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March 11, 2016

VIA ECF

The Honorable Susan D. Wigenton
United States District Judge
U.S. District Court for the District of New Jersey
Martin Luther King, Jr. Federal Building &
U.S. Courthouse
50 Walnut Street
Newark, NJ 07102

Re: *In re: Zimmer Durom Cup Products Liability Litigation*, 2:09-cv-04414-SDW-SCM

Dear Judge Wigenton:

On behalf of Defendants and Claimants' Liaison Counsel (as identified in the Settlement Agreement previously submitted to Your Honor), we jointly enclose a proposed Case Management Order Regarding Settlement Agreement and proposed letter for Your Honor to send to the state court judges listed on the attached chart. We respectfully request that Your Honor provide other counsel 10 days, to and including March 21, 2016, to submit via letter comments on the proposed Case Management Order and State Court Letter before ruling. If Your Honor would like to discuss the proposed Case Management Order or State Court Letter we would be happy to coordinate a telephonic status conference at Your Honor's convenience.

Very truly yours,

/s/ Andrew L. Campbell

Andrew L. Campbell

cc: All counsel via ECF

Proposed Case Management Order

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IN RE: ZIMMER DUROM HIP CUP
PRODUCTS LIABILITY LITIGATION

2:09-cv-04414-SDW-MCA

MDL-2158

This Document Relates To All Cases

**CASE MANAGEMENT ORDER
REGARDING SETTLEMENT AGREEMENT**

WHEREAS, the Zimmer defendants (collectively “Zimmer”) and Claimants’ Liaison Counsel (“CLC”) have entered into a binding Settlement Agreement (attached as Exhibit A; the “Settlement Agreement”) to resolve cases and claims of United States plaintiffs and claimants who underwent a revision of a Durom Acetabular Component (the “Durom Cup”), including but not limited to cases in this MDL; and,

WHEREAS, Case Management Orders in this MDL require amendment to effectuate the Settlement Agreement; and,

FOR GOOD CAUSE APPEARING,

IT IS THIS _____ day of _____, 2016, ORDERED as follows:

1. Case Management Order No. 1, Section XV. Settlement Period (Oct. 17; “Section XV”), and subsequent Case Management Orders that address and/or implement Section XV, including but not limited to the Third Scheduling Order, ¶ 3 (Oct. 234), are stayed so long as the Settlement Agreement remains in effect.

2. All plaintiffs who currently have cases filed in this MDL, and all future plaintiffs who file cases in this MDL no later than April 29, 2016, shall participate in the process established by the Settlement Agreement, including but not limited to satisfying all deadlines established in the Settlement Agreement. If any individual plaintiff does not participate in the process established by the Settlement Agreement, including satisfying all deadlines established

by the Settlement Agreement, their individual case may be the subject of a dismissal motion by Zimmer.

3. Case-specific discovery that is governed by existing Case Management Orders, including but not limited to the Initial Scheduling Order (Dct. 50), the Third Scheduling Order (Dct. 234), and the Order Clarifying The Third Scheduling Order (Dct. 246), is stayed so long as the Settlement Agreement remains in effect, subject only to the exception listed in paragraph 4.

4. Case-specific discovery may proceed in cases in which an Eligible Claimant has not accepted Zimmer's award amount as described in the Settlement Agreement, and the Eligible Claimant and Zimmer have filed a "Joint Notice of Unsettled Case."

SO ORDERED.

Dated: _____

Honorable Susan D. Wigenton

(EXHIBIT A)

U.S. DUROM CUP SETTLEMENT PROGRAM AGREEMENT

Between

Zimmer, Inc.

And

Claimants' Liaison Counsel

SETTLEMENT AGREEMENT

This binding Settlement Agreement (“**Settlement Agreement**”), entered into on February 11, 2016 (the “**Execution Date**”), is between (i) Zimmer, Inc., and its subsidiaries, parents, affiliates, divisions, nominees, and related entities in which they have an interest or which have an interest in them (collectively, “**Zimmer**”), and (ii) the counsel listed on the signature pages hereto under the heading “Claimants’ Liaison Counsel” (the “**CLC**”). This Settlement Agreement establishes a private settlement program (the “**Settlement Program**”) to resolve actions and claims of U.S. plaintiffs and claimants who were implanted with a Durom Acetabular Component (collectively, “**Claimants**”) and then underwent a Qualified Revision Surgery under the terms set forth below.

RECITALS

A. Claimants allege injuries, losses, and damages as a result of the implantation, use, and removal of the Durom Acetabular Component (the “**Durom Cup**”). Zimmer disputes Claimants’ alleged injuries, losses, and damages, and it denies that the Durom Cup is the cause of any injury, loss, or damage.

B. The CLC, on behalf of and in the best interests of Claimants, and Zimmer wish to avoid the costs, time, and uncertainties inherent in future litigation, and, therefore, enter into this Settlement Agreement establishing the Settlement Program.

C. This Settlement Agreement and the Settlement Program shall not be construed as an admission of liability or culpability by Zimmer whatsoever or as an admission by Claimants who participate in the Settlement Program of a lack of merit in their actions or claims.

D. Therefore, for good and valuable consideration and intending to be legally bound, the CLC and Zimmer agree as follows.

TERMS AND CONDITIONS

I. ELIGIBILITY AND REGISTRATION

A. Eligibility. To be eligible for the Settlement Program, a Claimant must meet the following three requirements:

1. Claimant must be a citizen or legal resident of the United States;
2. Claimant must have been implanted with a Durom Cup in the United States; and
3. Claimant must have had a “**Qualified Revision Surgery**,” which is defined as the removal of his/her Durom Cup during a separate surgery less than nine years (108 months) after the date of implant. Claimants who have had a Qualified Revision Surgery are known as “**Eligible Claimants**.”

Eligible Claimants who have properly registered and completed the categorization process will be eligible for either the Base Award Program or the Fixed Award Program, as set forth in Section II.

For the avoidance of doubt, plaintiffs and claimants who have been implanted with a Durom Cup that has not been removed (“**Unrevised Claimants**”) are not eligible for the Settlement Program. Additionally, plaintiffs and claimants who have settled or adjudicated to final judgment his/her claims against Zimmer are not eligible for the Settlement Program.

B. Registration Of Claimants.

1. **Registration of Represented Claimants.** By April 29, 2016, all counsel representing Eligible Claimants who participate in the Settlement Program (“**Participating Counsel**”) must register each and every U.S. plaintiff or claimant they represent who was implanted with a Durom Cup, regardless of whether the plaintiff or claimant has filed a lawsuit in federal court, state court, or has not filed a lawsuit, and regardless of whether the plaintiff or claimant is eligible for the Settlement Program, by completing and serving upon Zimmer the document titled “Durom Cup Inventory Registration Form,” attached hereto as Exhibit A, which includes a certified declaration of compliance. Participating Counsel has a duty to supplement Exhibit A, and neither Participating Counsel nor any Eligible Claimant of that counsel may participate in the Settlement Program unless Exhibit A is certified as accurate as of May 31, 2016. By June 30, 2016, Zimmer will provide written notice to the CLC of each Participating Counsel’s total number of Claimants and total number of Eligible Claimants. If any Participating Counsel fails to register all Eligible Claimants they represent, Zimmer reserves the right, at its sole discretion, to refuse to accept or provide an alternative categorization under Section III.C, and/or pay any award under this Settlement Program to any or all of that Participating Counsel’s registered Eligible Claimants.

2. **Registration of Unrepresented Claimants.** By April 29, 2016, Eligible Claimants who are not represented by counsel as of the Execution Date (“**Unrepresented Eligible Claimants**”) and who participate in the Settlement Program must register by completing and serving upon Zimmer the document titled “Unrepresented Durom Cup Claimant Registration Form,” attached hereto as Exhibit B, which includes a certified declaration of compliance. By

June 30, 2016, Zimmer will provide written notice to the CLC of the total number of Unrepresented Eligible Claimants.

3. **Settlement Program Website.** To facilitate the registration process, Zimmer will establish a website at the following URL: www.duromsettlement.com. The website will provide details on the terms of the settlement, instructions on how to register a claim and participate in the Settlement Program, and copies of the Exhibits.

II. COMPENSATION

Eligible Claimants will be eligible for either the Base Award Program or the Fixed Award Program as set forth below.

A. Base Award Program. Subject to the terms and conditions herein, Eligible Claimants are eligible for the Base Award Program, unless the Eligible Claimant falls within the Fixed Award Program outlined in Section II.B.

1. **Base Award.** Eligible Claimants under the Base Award Program will receive an award of *\$175,000 per claimant* subject to the reductions, enhancements, and limitations outlined below.

2. **Reductions.** The Base Award of each Eligible Claimant will be subject to reductions in the following set amounts.

(a) ***In vivo length***, or length of time the Durom Cup was implanted, of five years or more will result in the following reductions.

Implant Length from Date of Implant to Qualified Revision Surgery	Reduction
5 years \leq X < 6 years	\$20,000
6 years \leq X < 7 years	\$30,000
7 years \leq X < 8 years	\$50,000
8 years \leq X < 9 years	\$75,000

(b) *Implantation of the Durom Cup after July 22, 2008*, will result in a \$25,000 reduction.

(c) *Claimant’s Age at Implant* of 70 years or older will result in a reduction as follows.

Age on Date of Implant	Reduction
$70 \leq X < 75$ years	\$10,000
$75 \leq X < 80$ years	\$15,000
$X \geq 80$ years	\$30,000

(d) *Durom Cup implanted as part of a revision surgery*, involving the removal of a previously implanted acetabular component, will result in a \$50,000 reduction.

(e) *Unrepresented Claimants* as of the Execution Date will receive a 29% reduction regardless of subsequent representation. The 29% reduction will be applied after the application of all other reductions, enhancements, and limitations.

(f) In no event shall an Eligible Claimant’s total award after application of all other reductions and enhancements exceed the amount of damages he/she is entitled to under federal law, including but not limited to awards that may be affected by the United States Bankruptcy Code.

3. **Enhancements.** The Base Award of each Eligible Claimant will be subject to enhancements in the following set amounts.

(a) *“Bilateral Eligible Claimants,”* defined as Eligible Claimants who have had two Qualified Revision Surgeries on opposite hips, in the Base Award Program will receive a \$75,000 enhancement not subject to any additional reductions or enhancements, *unless* one of the Qualified Revision Surgeries is

subject to the circumstances outlined in Section II.B. If one Qualified Revision Surgery is subject to the circumstances outlined in Section II.B, the Bilateral Eligible Claimant will receive a \$25,000 enhancement and not the \$75,000 enhancement. If both Qualified Revision Surgeries are subject to the circumstances outlined in Section II.B, the Bilateral Eligible Claimant falls within the Fixed Award Program and is not eligible for the Base Award Program.

(b) ***Additional Revision Surgery*** involving the removal and replacement of an acetabular component after the Qualified Revision Surgery and occurring within one year of the Qualified Revision Surgery will entitle an Eligible Claimant to receive a \$50,000 enhancement per additional revision surgery, up to a maximum of two additional revision surgery enhancements (or \$100,000).

(c) ***Dislocations*** requiring medical attention and occurring within one year of the Qualified Revision Surgery will entitle an Eligible Claimant to receive a \$5,000 enhancement per qualifying dislocation, with a maximum of three dislocation enhancements (or \$15,000).

4. **Extraordinary Injury or Loss.** In addition to the Enhancements outlined in Section II.A.3 above, the CLC believes there is good cause for some Eligible Claimants to seek compensation for extraordinary injury or economic loss. Extraordinary injury may be considered if suffered by the Eligible Claimant no more than three days after discharge from hospitalization for and related to the Qualified Revision Surgery.¹

¹ Examples of extraordinary injury include pulmonary embolism and/or deep vein thrombosis, foot drop that persisted for at least 90 days, infection that required surgical debridement or IV antibiotics for a period of at least eight weeks, and myocardial infarction or stroke.

Permanent and severe disability submitted as an extraordinary injury must be supported by a written medical opinion to be considered. If lost wages are submitted as extraordinary economic loss, the lost wages must be supported by proof of employment in the year before the Qualified Revision Surgery and a loss of at least 20% of that year's income. The parties acknowledge that the Settlement Program already includes compensation for ordinary expenses and lost income. Requests for compensation for extraordinary injury or loss shall be made during the categorization process outlined in Section III below. Requests for compensation for extraordinary loss or injury require additional certifications and documentation, as set out in the document titled "Extraordinary Injury Or Loss Claim Form" attached hereto as Exhibit D.

B. Fixed Award Program. Eligible Claimants with one or more of the four circumstances listed below fall within the Fixed Award Program and are excluded from the Base Award Program. Bilateral Eligible Claimants fall within the Fixed Award Program and are excluded from the Base Award Program if both of the Qualified Revision Surgeries are subject to one or more of the four circumstances.

1. **Fixed Award.** Eligible Claimants under the Fixed Award Program will receive a total award of *\$25,000 per Qualified Revision Surgery* and that amount is not subject to any additional reductions or enhancements, except for the reduction for Unrepresented Claimants set forth below. The maximum award for a Bilateral Eligible Claimant under the Fixed Award Program is \$50,000.

2. **Fixed Award Program Qualifying Circumstances.** The four circumstances qualifying an Eligible Claimant for the Fixed Award Program and not the Base Award Program are:

(a) The Qualified Revision Surgery occurred 180 days or less after the date(s) of implant;

(b) The Eligible Claimant died for reasons unrelated to a Qualified Revision Surgery before providing Zimmer with a fully executed Individual Settlement and Release Agreement pursuant to Section VI.A;

(c) The Eligible Claimant may be barred from filing a lawsuit against Zimmer by the applicable statute of limitations; or

(d) The Qualified Revision Surgery occurred as a result of infection, trauma, or other causes unrelated to the Durom Cup.

3. **Unrepresented Claimants** as of the Execution Date will receive a 29% reduction regardless of subsequent representation.

III. CATEGORIZATION

A. Categorization Of Eligible Claimants. After the registration process, each Eligible Claimant must categorize their claim as eligible for either the Base Award Program or the Fixed Award Program, and by May 31, 2016, must complete and serve upon Zimmer the document titled "Categorization and Award Amount Form" attached hereto as Exhibit C. As fully set forth in Exhibit C, each Eligible Claimant must provide to Zimmer complete medical records from the surgeon(s) and the hospital(s) for the implant surgery, the revision surgery, and any subsequent hip procedures. Each Eligible Claimant must specifically identify the records that support the categorization and award amount, including any grounds for enhancement. If an Eligible Claimant alleges entitlement to compensation for extraordinary injury or economic loss under Section II.A.4, he/she must identify the basis for that allegation, provide all documentation and other evidence supporting the allegation, and state specifically the proposed amount of compensation sought, as fully set forth in Exhibit D.

B. Tolling Upon Categorization. Upon request, Zimmer will toll the applicable statute of limitations from the date it receives the Categorization and Award Amount Form to September 15, 2016, subject to any defenses that may have accrued prior to tolling. Nothing in this paragraph shall be construed as reviving a claim that was barred by the applicable statute of limitations prior to service of the Categorization and Award Amount Form and proof of dismissal.

C. Zimmer's Acceptance Of Categorization. By August 1, 2016, Zimmer will notify each Eligible Claimant if it contests his/her categorization or proposed award amount. If Zimmer contests, it will propose an alternative categorization and award amount for each contested Eligible Claimant and an explanation for the categorization and award amount.

D. Claimant's Acceptance Of Contested Categorization. By September 15, 2016, each contested Eligible Claimant must notify Zimmer if he/she accepts Zimmer's findings and proposed categorization and award amount. A Claimant's sole method of notifying Zimmer that he or she accepts Zimmer's award amount is to return a completed "Individual Settlement and Release Agreement" ("Release"), as set forth in Exhibit E, including all exhibits and attachments thereto. Zimmer will provide written notice of each settlement to the CLC within 30 days of receiving the Release. It is a material term of this Settlement Agreement that the sole method of accepting Zimmer's award amount is to provide a completed Release, including each and every exhibit or attachment, without alteration of the terms of the Release and including all required signatures and notarizations. If an Eligible Claimant does not accept Zimmer's offered award amount, the Eligible Claimant may request mediation subject to the terms outlined in Section IV below.

IV. MEDIATION

A. Mediators. If, after completion of the categorization process in Section III, an Eligible Claimant and Zimmer cannot reach an agreement on categorization and award amount, the Eligible Claimant and Zimmer must participate in a mandatory mediation with the assistance of the mediators listed below. All parties may participate in mediation by counsel.

1. Gary H. Larsen, Dickinson & Gibbons, P.A., Sarasota, Florida;
2. Faustin A. Pipal, Jr., Resolute Systems, LLC, Chicago, Illinois; or
3. Alexander S. Polsky, JAMS, Orange, California.

Zimmer will set the date and location of the mediation for scheduling purposes. The Eligible Claimant and Zimmer will split the cost of the mediator and each party is responsible for its own travel expenses.

B. Conditions. On or after September 15, 2016, each Eligible Claimant who has properly registered under Section I and completed the categorization process under Section III can only seek mandatory mediation by completing and serving the document titled “Mediation Request Form” attached hereto as Exhibit F. As fully set forth in Exhibit F, an Eligible Claimant seeking mediation must provide additional records (“Mediation Records”) before a mediation will be scheduled, including (1) all x-rays taken during and between the date of implant and the Qualified Revision Surgery, (2) the first x-rays taken after the Qualified Revision Surgery, (3) physical therapy records from therapy following the date of implant and the Qualified Revision Surgery, (4) all medical records, including any radiology records, from treating physicians and hospitals relevant to the analysis of any collateral injuries claimed, (5) all psychiatry and psychotherapy records relevant to the analysis of any mental or emotional injury claimed, and (6) the Durom Cup or high resolution photographs of the explanted Durom Cup if available. All

mediations under this Section must be scheduled by February 28, 2017, and completed by September 15, 2017, subject to the receipt of the Mediation Records.

C. Limitations. The only issues subject to mediation are as follows:

1. Whether or not a Claimant is eligible for the Settlement Program;
2. Whether or not an Eligible Claimant is eligible for the Base Award Program or the Fixed Award Program;
3. Whether or not an Eligible Claimant under the Base Award Program is subject to a reduction set forth in Section II.A.2;
4. Whether or not an Eligible Claimant under the Base Award Program is entitled to an enhancement set forth in Section II.A.3;
5. Whether or not an Eligible Claimant under the Base Award Program is entitled to compensation for extraordinary injury or economic loss under Section II.A.4, and the amount of compensation for extraordinary injury or economic loss; and
6. Whether or not an Eligible Claimant's total award after application of all other reductions and enhancements exceeds the amount of damages he/she is entitled to under the law.

The amount of the Fixed Award, the Base Award, and the reductions and enhancements are not subject to mediation.

V. PAYMENT OBLIGATIONS

A. Principal Payment Conditions And Obligations. The CLC and Zimmer agree that the purpose of this Settlement Agreement and the Settlement Program is to end nearly the entirety of the litigation involving the Durom Cup. Accordingly, Zimmer's obligation to make any payment under the Settlement Program is conditioned on 90% of registered Eligible Claimants completing the categorization process and accepting Zimmer's offer without

mediation. If less than 90% of registered Eligible Claimants complete categorization and accept Zimmer's offer without mediation, Zimmer has the option, in its sole discretion, *to terminate or enforce* this Settlement Agreement, the Settlement Program, all individual settlement offers made or accepted pursuant to this Settlement Agreement, and all Individual Settlement and Release Agreements. Additionally, if less than 90% of a Participating Counsel's Eligible Claimants complete the categorization process and accept Zimmer's offer without mediation, Zimmer has the option, in its sole discretion, *to terminate or enforce* this Settlement Agreement, the Settlement Program, all individual settlement offers made or accepted pursuant to this Settlement Agreement, and all Individual Settlement and Release Agreements, as to any or all of that Participating Counsel's Eligible Claimants.

Within 30 days of receiving written notice from the CLC that it believes 90% of registered Eligible Claimants have completed categorization and accepted Zimmer's offer without mediation, Zimmer must either: (1) notify the CLC in writing that Zimmer believes the 90% threshold has not been met; or (2) issue written notice that it will make payments within 45 days to all Eligible Claimants who accepted a settlement offer from Zimmer without mediation by submitting an Individual Settlement and Release Agreement.

B. Payment Conditions And Obligations After Mediation. Zimmer's obligation to make any payment under Section IV is conditioned on 67% of Eligible Claimants offered a settlement at mediation accepting Zimmer's offer by September 29, 2017. Within 30 days of receiving written notice from the CLC that it believes 67% of Eligible Claimants who were offered a settlement after mediation have accepted, Zimmer must either: (1) notify the CLC in writing that Zimmer believes the 67% threshold has not been met; or (2) issue written notice that it will make payments within 45 days to all Claimants who accepted a settlement offer from

Zimmer after mediation. Zimmer will pay any remaining settlements reached after the 67% threshold has been met individually and according to the terms outlined in the Individual Settlement and Release Agreement, as set forth below in Section VI.A.

C. Settlement Program Common Benefit Fund. By participating in the Settlement Program, Eligible Claimants and Participating Counsel agree to (1) comply with Case Management Order 3: Order Establishing Common Benefit Fund (“CMO 3”) entered in MDL No. 2158 pending in the United States District Court for the District of New Jersey (the “MDL”), and any Orders entered in furtherance of CMO 3 irrespective of whether the Eligible Claimant has a case pending in the MDL, state court, or is unfiled, (2) consent to the jurisdiction of the MDL Court for that purpose, and (3) permit an assessment up to four percent (4%) of each gross payment to an Eligible Claimant to be withheld by Zimmer and paid into the Common Benefit Fund. If the Eligible Claimant is represented as of the Execution Date, the assessment shall equal four percent (4%), with two percent (2%) deemed to be fees subtracted from the attorneys’ fees portion of the individual fee contracts between Claimants and their attorneys and the remaining two percent (2%) deemed to be costs subtracted from the client portion of the individual fee contracts. If the Eligible Claimant is unrepresented as of the Execution Date, the assessment shall equal two percent (2%).

The CLC, Eligible Claimants, and Participating Counsel reserve the right to petition the MDL Court to change this percentage based on the factors set forth in Model Rule of Professional Conduct 1.5 for determining the reasonableness of a fee, and the CLC and other Participating Counsel may petition the MDL Court for payment from the assessment as compensation for the procurement and administration of the Settlement Program.

VI. PAYMENT OF LIENS, RELEASES, AND CONFIDENTIALITY

A. Payment of Liens. As outlined in greater detail in the Release, each Eligible Claimant who accepts a settlement pursuant to this Settlement Agreement agrees to pay or have paid any liens held by or amounts owed to third parties, whether persons or entities, including any state or federal government entities, arising out of, or related to the Durom Cup, the implant surgery, or the Qualified Revision Surgery.

B. Releases. No later than September 15, 2016, each Eligible Claimant who accepts Zimmer's offer without mediation under Section III must provide Zimmer with a fully executed Release as described in Section III.E. and attached hereto as Exhibit E. Each Eligible Claimant who accepts Zimmer's offer after mediation under Section IV must provide Zimmer with a fully executed Release attached hereto as Exhibit E no later than September 15, 2017. The Release will release, discharge, and finally settle and compromise any and all claims of an Eligible Claimant that relate in any way to the Durom Cup, the implant surgery, or a Qualified Revision Surgery, including but not limited to any claim for personal injuries, death, damage to Claimant's property, emotional distress, or loss of services or consortium against Zimmer and any healthcare providers.

C. Confidentiality. Claimants, Participating Counsel, the CLC, and Zimmer acknowledge that the terms of each individual Release, including the history, background, and related negotiations, such as categorizations and award amounts, shall remain strictly confidential and are not to be discussed between Participating Counsel or disclosed to any person, firm, association, corporation or entity at any time, including but not limited to CLC, legal trade journals, reporting services, the press or media, and/or on any posting on the Internet. Discussions between Participating Counsel, CLC, and/or disclosure of the amount or terms and conditions of any individual Release may only occur upon receipt of written consent from

counsel for Zimmer, or upon receipt of a Court Order, or as set forth in the Release. If Claimants, Participating Counsel, or the CLC receive a request and/or order to disclose any matter covered by an individual Release, Claimants, Participating Counsel, and the CLC agree to give immediate notice to Zimmer and to not disclose the requested information without consent from Zimmer.

VII. WARRANTIES, REPRESENTATIONS, AND STIPULATIONS

A. No Admission Of Liability Or Fault. Nothing in this Settlement Agreement or the Settlement Program constitutes any admission of liability or fault of any kind on the part of Zimmer, or anyone else.

B. Inadmissibility Of Settlement Agreement. Neither this Settlement Agreement nor any of its attachments shall be admissible in evidence in any proceeding, except in an action to enforce the terms of this Settlement Agreement or an individual Release.

C. Drafting And Negotiation. This Settlement Agreement is the product of arm's length negotiations between the CLC and Zimmer. No party shall be deemed to be the drafter of this Settlement Agreement or any provisions hereof. No presumption shall be deemed to exist in favor of or against any party as a result of the preparation or negotiation of this Settlement Agreement.

D. Changes In Law And Severability. This Settlement Agreement shall be binding regardless of any change in the law that might occur after the date that this Settlement Agreement is signed. In case any provision, or any part of any provision, contained in this Settlement Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision (or remaining part of the affected provision) of this Settlement Agreement, but this Settlement Agreement shall be construed as if such invalid, illegal or unenforceable provision (or any part

thereof) had never been contained herein, but only to the extent it is invalid, illegal or unenforceable.

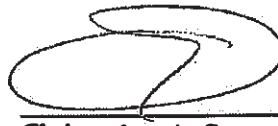
E. **Applicable Law.** This Settlement Agreement shall be interpreted in accordance with the internal laws of the State of Indiana.

F. **Entire Agreement And Reliance.** This Settlement Agreement, including all Exhibits attached hereto, constitutes the entire agreement between the CLC and Zimmer, and replaces and supersedes any prior agreements, written or otherwise. To the extent that there are any conflicts or discrepancies with any prior agreements, this Settlement Agreement, including all Exhibits attached hereto, shall govern. The CLC and Zimmer agree that they have neither received nor relied on any other agreements or promises, other than as contained in this Settlement Agreement.

CLAIMANTS' LIAISON COUNSEL



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Proposed Letter to State Court Judges

[DRAFT LETTER TO STATE COURT JUDGES TO BE SENT BY JUDGE WIGENTON]

Dear State Court Judge,

I oversee the federal multi-district litigation involving the Zimmer Durom Acetabular Component (“Durom Cup”) pending in the United States District Court for the District of New Jersey, *In re: Zimmer Durom Hip Cup Products Liability Litigation*, MDL No. 2158 (the “MDL”). Recently, the Plaintiffs’ settlement counsel and Zimmer entered into a Settlement Agreement intended to resolve all actions and claims of United States plaintiffs and claimants who were implanted with a Durom Cup and subsequently had the Durom Cup removed. To participate in the Settlement Agreement, participating counsel must register into the Settlement Agreement every individual plaintiff or claimant they represent, regardless of whether the plaintiff or claimant has filed a lawsuit in federal court, state court, or has not filed a lawsuit. Participation in the Settlement Agreement does not obligate a claimant to accept a settlement offer; however, registration of a claimant will provide the parties (and the Court if requested) with information about the claim. A copy of the Settlement Agreement is enclosed as Exhibit A. In order to facilitate the success of the Settlement Agreement, I entered a Case Management Order that will require all plaintiffs who have filed cases in the MDL to participate in the Settlement Agreement, and that all pre-trial discovery be stayed so long as the Settlement Agreement remains in effect. A copy of the Case Management Order is enclosed as Exhibit B.

Many of the individual plaintiffs who have filed cases in the MDL are represented by lawyers who also represent plaintiffs who have filed Durom Cup cases in state court. To ensure that the Settlement Agreement has the desired effect of resolving the Durom Cup litigation, I encourage you to consider entering a similar order requiring any individual plaintiff in a Durom Cup lawsuit pending before you to participate in the Settlement Agreement and, to the extent necessary, stay any state court proceedings pending resolution of any individual plaintiff’s Durom Cup case. Of course these case-management decisions are yours, and yours alone. However, I do believe that it is sensible and appropriate that we try to coordinate our efforts to bring this litigation to a global conclusion. The process provided for in the settlement agreement is, in my judgment, the best and most efficient way to achieve this shared objective.

If you have questions about the Settlement Agreement, I would direct you to the Claimants’ Liaison Counsel and counsel for Zimmer who are referenced in the Settlement Agreement. I would also be happy to discuss with you my own experience with the Durom Cup litigation, and my efforts to bring this litigation to a conclusion through the Settlement Agreement.

Very truly yours,

Judge Wigenton

cc: J. Joseph Tanner and Andrew L. Campbell (Faegre Baker Daniels LLP, 300 N. Meridian Street, Suite 2700, Indianapolis, IN 46204)

Plaintiff’s Counsel

Durom Cup Litigation
State Court Actions
Updated March 11, 2016

Caption	Jurisdiction	CauseNumber	Judge Contact Information	Plaintiff's Counsel Contact Information
William Allen, Dennis Botteon, and Gerald Davidson v. Zimmer Holdings, Inc., Johnson Zimmer Inc., Zimmer-Cook Associates, Inc., Zimmer Samudio Ass., Inc., and Does 1-100	San Francisco County Superior Court, California	CGC-12-518536	Honorable Mary Wiss 400 McAllister Street, Department 305 San Francisco, CA 94102-4514 Tel: (415) 551-5737	Tayjes Matthew Shah The Miller Firm 108 Railroad Avenue Orange, VA 22960 Tel: (540) 672-4224
Esther Anaya v. Zimmer, Inc., Intermed Orthopedics, Inc., Rich Cadarette, Doe Corporations 1 to 25 inclusive; and Doe Defendants 26 to 100 inclusive	Los Angeles Superior Court, California	BC549357	Honorable Michelle Court 111 North Hill Street, Department 92 Los Angeles, CA 90012 Tel: (213) 633-1092	Stephen Csengeri Csengeri Law Offices 21250 Hawthorne Blvd. Suite 500 Torrance, CA 90505 Tel: (310) 373-9330
Kathleen Bell, Monica Hildner, and Sandra O'Hara v. Zimmer, Inc., Zimmer US, Inc., Zimmer Holdings, Inc., and Precision Orthopedics, Inc.	12th Judicial Circuit, Sarasota County, Florida	2014-CA-004594 NC	Honorable Rochelle T. Curley 2071 Ringling Blvd. Sarasota, FL 34237 Tel: (941) 861-7970	Altom M. Maglio Maglio Christopher & Toale, PA 1605 Main Street Suite 710 Sarasota, FL 34236 Tel: (941) 952-5242
Kenneth Bender and Lynn Bender v. Zimmer, Inc., Zimmer GmbH, Zimmer US, Inc., and Precision Orthopedics, Inc.	Orange County Circuit Court, Florida	2014-CA-8664-0	Honorable John Marshall Kest 425 North Orange Avenue, Division 39 Orlando, FL 32801 Tel: (407) 836-0443	Calvin Warriner Searcy Denney Scarola Barnhart & Shipley, PA 2139 Palm Beach Lakes Blvd. West Palm Beach, FL 33409 Tel: (561) 686-6300
Peggy Bourque v. Zimmer, Inc., and Precision Orthopedics, Inc.	Sarasota County Circuit Court, Florida	2015 CA 006523 NC	Honorable Brian Iten 2071 Ringling Blvd. Sarasota, FL 34237 Tel: (941) 861-7929	Theodore C. Eastmoore Matthews Eastmoore 1626 Ringling Blvd. Suite 300 Sarasota, FL 34236 Tel: (941) 366-8888
Richard Bustamante v. Zimmer, Inc., Intermed Orthopedics Inc., Ron Thompson, and Doe Corporations 1-25	Los Angeles Superior Court, California	BC547443	Honorable Michelle Court 111 North Hill Street, Department 92 Los Angeles, CA 90012 Tel: (213) 633-1092	Stephen Csengeri Csengeri Law Offices 21250 Hawthorne Blvd. Suite 500 Torrance, CA 90505 Tel: (310) 373-9330
Kevin Carmichael and Shari Carmichael v. Wilkens Medical Corporation, James Wilkens, Bolstad & Associates, Inc., Vernon Bolstad, and Zimmer US, Inc.	Greene County Circuit Court, Missouri	1331-CC01438	Honorable Mark Powell Judicial Courts Facility 1010 North Boonville Springfield, MO 65802 Tel: (417) 868-4074	Brian S. Franciskato Nash & Franciskato Law Firm Two Pershing Square 2300 Main Street, Suite 170 Kansas City, MO 64108 Tel: (816) 221-6600

Caption	Jurisdiction	CauseNumber	Judge Contact Information	Plaintiff's Counsel Contact Information
James Cleaves v. Zimmer Holdings, Inc., Zimmer, Inc., and Zimmer US, Inc.	Sarasota Circuit Court, Florida	2015ca004946	Honorable Rochelle T. Curley 2071 Ringling Blvd. Sarasota, FL 34237 Tel: (941) 861-7970	Charles Telfair, IV Lutz Bobo Telfair Dunham & Gabel One Sarasota Tower Two North Tamiami Trail Suite 500 Sarasota, FL 34236 Tel: (941) 951-1800
Aaron Dahlstrom and Nancy Dahlstrom v. Howmedica Osteonics Corporation d/b/a Stryker Orthopaedics, Zimmer, Inc., Zimmer Holdings, Inc., Zimmer Orthopaedic Surgical Products, Inc., Jill Doe Manufacturers (1-10), Jack Doe Wholesalers (1-10), Jake Doe Sellers (1-10), Jane Doe Distributors and Marketers (1-10), Jim Doe Health Care Providers (1-10), and Jean Doe (1-10)	Bergen County Superior Court, New Jersey	L-5372-14	Honorable Robert P. Contillo 10 Main Street Room 115 Hackensack, NJ 07601 Tel: (201) 527-2615	Joshua S. Kincannon Keefe Bartels 170 Monmouth Street Red Bank, NJ 07701 Tel: (732) 224-9400
Robert Jeffrey Davidson v. Matthew T. Poppa, Zimmer, Inc., Zimmer US, Inc., and Zimmer Holdings, Inc.	Johnson County Circuit Court, Missouri	15JO-CC00041	Honorable William B. Collins Johnson County Justice Center 101 West Market St. Warrensburg, MO 64093 Tel: (660) 422-7413	Brian S. Franciskato Nash & Franciskato Law Firm Two Pershing Square 2300 Main Street, Suite 170 Kansas City, MO 64108 Tel: (816) 221-6600
Randall J. DeHayes and Vicki L. DeHayes v. Zimmer Holdings, Inc., Zimmer Inc., Zimmer GmbH, and Precision Orthopedics Inc.	Seminole County Judicial Circuit Court, Florida	12ca4237-10-G	Honorable Michael Rudisill Seminole County Courthouse 301 North Park Ave. Sanford, FL 32771 Tel: (321) 665-4218	Calvin Warriner Searcy Denney Scarola Barnhart & Shipley, PA 2139 Palm Beach Lakes Blvd. West Palm Beach, FL 33409 Tel: (561) 686-6300

Caption	Jurisdiction	CauseNumber	Judge Contact Information	Plaintiff's Counsel Contact Information
Joyce Estrella v. Zimmer, Inc., Zimmer Holdings, Inc., Zimmer Cook Associates, Inc., Zimmer Intermed, Inc., Zimmer XCEL Medical, Damon Cook, Varojan Dehbanian, Mike Favalea, Brian Husher, Brian Jones, Roger Probasco, Phil Mosser, David Raih, Christopher A., and Does 1 through 100	Los Angeles County Superior Court, California	BC602371	Honorable Howard L. Halm 111 North Hill Street Department 93 Los Angeles, CA 90012 Tel: (213) 633-1093	Justin Heim Napoli Shkolnik, LLP 525 South Douglas Street, Suite 260 El Segundo, CA 90245 Tel: (310) 331-8224
Eric Gross and Rosalba Melgoza v. Mitchell B. Sheinkop M.D., Mitchell B. Sheinkop M.D., Ltd., Rush University Medical Center, Rush Health, Midwest Orthopaedics at Rush LLC, Zimmer Technology Inc., Zimmer Holdings Inc., Zimmer US Inc., Zimmer Inc., Zimmer CEP USA Inc., Zimmer Germany GmbH, and Zimmer Daniel Associates	Cook County Circuit Court, Illinois	2011L005575	Honorable Janet Adams Bosnahan Cook County Circuit Court, Illinois Richard J. Daley Center 50 West Washington, Room 2207 Chicago, IL 60602 (Handling pre-trial matters for <i>Gross</i> and <i>Willis</i>) Tel: (312) 603-6058	Peter Cantwell Cantwell & Cantwell 30 North LaSalle Street Suite 2850 Chicago, IL 60602 Tel: (312) 373-3000
Diane D. Herringer v. Zimmer, Inc., and Precision Orthopedics, Inc.	Circuit Court, 13th Judicial Circuit, Hillsborough County, Florida	15-CA-006802	Honorable Emmett Battles George E. Edgecomb Courthouse 800 E. Twiggs Street, Room 101 Tampa, FL 33602 Tel: (813) 272-6972	Joseph H. Saunders Saunders & Walker, PA P.O. Box 1637 Pinellas Park, FL 33780-1637 Tel: (727) 579-4500
Walter Hobbs v. Zimmer, Inc., Zimmer Cook Associates, Inc., Derek House, D.J. Schenone, Doe Corporations 1 to 25 inclusive, and Doe Defendants 26 to 100 inclusive	Siskiyou County Superior Court, California	SCCVPO14-01088	Rotating Assignments 311 4th St., Room 206 Yreka, CA 96094 Tel: (530) 842-8238	Stephen Csengeri Csengeri Law Office 21250 Hawthorne Blvd. Suite 500 Torrance, CA 90505 Tel: (310) 373-9330

Caption	Jurisdiction	CauseNumber	Judge Contact Information	Plaintiff's Counsel Contact Information
Amanda J. Howard v. Zimmer, Inc., Precision Orthopedics, Inc., and Zimmer GmbH	Ninth Judicial Circuit, Orange County, Florida	2014-CA-7449	Honorable John E. Jordan 425 North Orange Avenue Orlando, FL 32801 Tel: (407) 836-4709	Calvin Warriner Searcy, Denney, Scarola Barnhart & Shipley, PA 2139 Palm Beach Lakes Blvd. West Palm Beach, FL 33409 Tel: (561) 686-6300
Frances Johnson v. Zimmer, Inc., Zimmer Holdings, Inc., Zimmer Cook Associates, Zimmer Intermed, Inc., Zimmer Xcel Medical, and Does 1-100	Los Angeles Superior Court, California	BC566089	Honorable Howard L. Halm 111 North Hill Street Department 93 Los Angeles, CA 90012 Tel: (213) 633-1093	Brian J. Panish Panish Shea & Boyle, LLP 11111 Santa Monica Blvd. Suite 700 Los Angeles, CA 90025 Tel: (310) 477-1700
Thomas McAllister, Harold Arnold, Norman Bakkala, Lee Bohner, Rosario Cook, Bonnie Cooper, Leonard Covell, Christopher Erb, David Feeney, Steve Gibson, Linda Goodrich, Alex Hezeltine, Ginger Johnson, Gary Kline, Uronika Knighton, Cynthia Mercer, Trudie Millerburg, William Montooth, Thomas Odekirk, Susan Sargent, Dennis Sobolik, Barry Sullivan, William Brian Thomas, Shirley Ann Verkerke, and Lyron Woodard v. Zimmer, Inc., Zimmer Intermed, Inc., Varojan Dehbanian, Brian Husher, and Does 1-100	Los Angeles County Superior Court, California	BC444834	Honorable Amy D. Hogue Superior Court of California, County of Los Angeles Central Civil West Courthouse Dept. 307 600 South Commonwealth Ave. Los Angeles, CA 90005 (On temporary assignment to California Court of Appeals) Tel: (213) 351-7507 Honorable Ann I. Jones Superior Court of California, County of Los Angeles Central Civil West Courthouse Dept. 307 600 South Commonwealth Ave. Los Angeles, CA 90005 (On temporary assignment) Tel: (818) 256-1805	Gibbs Henderson Waters Kraus & Paul LLP 3219 McKinney Avenue Dallas, TX 75204 Tel: (214) 357-6244

Caption	Jurisdiction	CauseNumber	Judge Contact Information	Plaintiff's Counsel Contact Information
Charlene Wilson Murphy v. Zimmer, Inc., Intermed Orthopedics, Inc., Rich Cadarette, Doe Corporations 1 to 25 inclusive; and Doe Defendants 26 to 100 inclusive	Los Angeles Superior Court, California	BC554359	Honorable Howard L. Halm 111 North Hill Street Los Angeles, CA 90012 Tel: (213) 633-1093	Stephen Csengeri Csengeri Law Offices 21250 Hawthorne Blvd. Suite 500 Torrance, CA 90505 Tel: (310) 373-9330
Enrique Palmer and Rose Palmer v. Zimmer, Inc., Zimmer Deptula, Inc., and Simon Casoria	Palm Beach County Circuit Court, Florida	50 2012 CA 006397	Honorable Jeffrey Gillen 205 North Dixie Hwy. West Palm Beach, FL 33401 Tel: (561) 355-6386	Calvin Warriner Searcy Denney Scarola Barnhart & Shipley, PA 2139 Palm Beach Lakes Boulevard West Palm Beach, FL 33409 Tel: (561) 686-6300
Michael Santas, Ronald Richards, Christopher Hudecek, Rebecca Mitchell, Steve Zimmerman, Marc Laulhere, Kelvin Pittman, Robin Garland, Frank Ganser, Veronica Norcross, Connie Alvis, Karen Iverson, Patrick Schock, Kathleen D. Simpson, Cheryl Suhr, Denise Whitmer, John Blakemore, Dannie Britt, Connie Niebruegge, Elizabeth Pierce, Caren Hoadley, Paul Scoville, Lynn Margenau, Vernon Dawkins, and Kendall Paynter v. Zimmer, Inc., Zimmer MidAmerica, Inc, Gentry Medical Solutions, Inc., and DOES 1 through 5, inclusive	St. Clair County Circuit Court, Illinois	11-L-136	Honorable Vincent Lopinot St. Clair County Courthouse 10 Public Square, Room 403 Belleville, IL 62220 Tel: (613) 277-6600	Gibbs Henderson Waters Kraus & Paul, LLP 3219 McKinney Avenue Dallas, TX 75204 Tel: (214) 357-6244
Gary L. Smith v. Zimmer US, Inc., Zimmer, Inc., Zimmer Holdings, Inc., Zimmer Surgical, Inc., Zimmer Daniel, and Zimmer Daniel & Associates	Cook County Circuit Court, Illinois	2015-L-012916	Honorable James O'Hara Richard J. Daley Center, Room 2206 50 West Washington Chicago, IL 60602 Tel: (312) 603-6348	Peter Flowers Meyers & Flowers, LLC 3 North Second Street Suite 300 St. Charles, IL 60174 Tel: (312) 214-1017

Caption	Jurisdiction	CauseNumber	Judge Contact Information	Plaintiff's Counsel Contact Information
Steven Stewart and Jacalyn Stewart v. Zimmer US, Inc., Zimmer Surgical, Inc., Zimmer, Inc., Zimmer Biomet Holdings, Inc., and ABC Corporation, 1 through 99 Unknown Defendants	Common Pleas Court of Clark County, Ohio	16-CV-0148	Unknown 101 N. Limestone St. #112 Springfield, OH 45502	Bryan Stewart Stewart and Stewart Lawyers, Ltd. 104 West Main Street Tipp City, OH 45371 Tel: (937) 506-8804
Marcia Walls v. Zimmer, Inc., and Zimmer Deptula, Inc.	Palm Beach County Circuit Court, Florida	2014CA007690	Honorable Edward L. Artau 205 North Dixie Hwy. West Palm Beach, FL 33401 Tel: (561) 355-6050	Calvin Warriner Searcy Denney Scarola Barnhart & Shipley, PA 2139 Palm Beach Lakes Blvd. West Palm Beach, FL 33409 Tel: (561) 686-6300
Alvin Willis v. Zimmer US, Inc., Zimmer, Inc., Zimmer Holdings, Inc., Zimmer Surgical, Inc., Zimmer Daniel, Zimmer Daniel & Associates, and Zimmer GmbH	Cook County Circuit Court, Illinois	2014 L 450	Honorable Janet Adams Bosnahan Cook County Circuit Court, Illinois Richard J. Daley Center 50 West Washington, Room 2207 Chicago, IL 60602 (Handling pre-trial matters for <i>Gross</i> and <i>Willis</i>) Tel: (312) 603-6058	Peter J. Flowers Meyers & Flowers, LLC 3 North Second Street Suite 300 St. Charles, IL 60174 Tel: (866) 789-0638