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Monday, March 21, 2016

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Via ECF

The Honorable Susan D. Wigenton
U.S. District Court, District of NJ
Martin Luther King, Jr. Federal Building
& U.S. Courthouse
50 Walnut Street
Newark, NJ 07102

Re: Civil Action No. 2:09-cv-04414-DFW-SCM; *In Re: Zimmer Durom
Hip Cup Products Liability Litigation*; MDL-2158

Dear Judge Wigenton:

We represent the following Plaintiff(s) in the above-referenced matter:

Plaintiffs	Case Number
Bernasconi, Gerald	2:14-cv-02493
Geddings, John	2:15-cv-07839
Potter, Beth	2:15-cv-01494
Reilly, Christina	2:14-cv-01910
Schwartz-Clements, Robin	2:14-cv-01783
Wilkinson, Robert	2:15-cv-02349
Wilson, Donald	2:14-cv-01911
Zetocka, Patricia	2:15-cv-4137

Pursuant to your Order of March 14, 2016 [Doc. 844], these Plaintiff(s) hereby object to the Case Management Order Regarding Settlement Agreement and Proposed Letter to State Court Judges attached to the correspondence sent to the Court by Andrew Campbell, counsel for Zimmer, on March 11, 2016 [Doc. 843]. Specifically, above-referenced Plaintiff(s) in this MDL join and adopt the arguments set forth in the letter brief submitted by Plaintiffs' co-liaison counsel, Waters & Kraus, on March 21, 2016. On the basis of those arguments, we ask that the Court: (1) **not** enter the Proposed Case Management Order Regarding Settlement Agreement; and (2) **not** circulate the Proposed Letter to State Court Judges.

♦ TRIAL ATTORNEYS ♦

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We are highly concerned by the March 11, 2016 letter provided to this Court by Zimmer. First, we had no role nor adequate representation in the negotiation and formulation of the proposed settlement program. The “Claimant’s Liaison Counsel,” as referred to by Zimmer, is a fictitious creature of Zimmer’s design. It did not and does not speak for the above-referenced clients. Indeed, the Plaintiff’s Liaison Counsel (“PLC”) expressed its objections to this proposed settlement program. Despite these objections, Zimmer filed a supposedly “joint” letter to this Court without any mention of the PLC’s objections. Now, Zimmer would have this Court adopt a settlement program for which none of the above-referenced Plaintiffs had any role in nor adequate representation for negotiating.

In addition, while we understand that Zimmer would like to know every actual and potential plaintiff for the purposes of budgeting a dollar amount for its total potential liability, requesting an attorney to identify to Zimmer the names and medical information for unfiled clients presents concerns regarding both privacy *and* conflict of interest. First and foremost, a person who is represented but has yet to file a public lawsuit has a right both to not be identified if they so desire and to the privacy of their medical information. Zimmer’s desire to calculate its liability does not overcome the individual citizen’s right to privacy. Additionally, if a client with an unfiled case practices his or her constitutional right of privacy and requests to not be identified, then the settlement program would put undersigned’s representation of such client in conflict with the representation of clients with filed cases. Because this program would both violate a citizen’s right to privacy *and* create a conflict scenario for any attorney with unfiled cases, this settlement program should not be countenanced by the Court.

We also represent numerous clients in various state courts around the country. These state-court plaintiffs’ cases are outside the jurisdiction of this Court. That Zimmer would have these independent courts stay their cases, let alone for 18 months, for a settlement program such state-court plaintiffs had no role in nor representation for negotiating defies common sense and the constitutional rights of each state-court plaintiff. Further, Zimmer’s draft “state court letter” incorrectly implies that the proposed settlement program was the product of joint negotiations between the PLC and Zimmer. It refers to the already fictitious Claimant’s Liaison’s Counsel as the “Plaintiffs’ settlement counsel” despite the entity being concocted out of thin air and despite Zimmer’s knowledge that the actual PLC objects to the settlement agreement.

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If the Court is inclined to enter the Proposed Case Management Order Regarding Settlement Agreement and circulate the Proposed Letter to State Court Judges over these objections, the above referenced MDL Plaintiff(s) hereby join in Waters & Kraus's request for a formal hearing in front of the Court on these important matters. Additionally, because undersigned's state court plaintiffs' cases have been implicated, undersigned requests a formal hearing in front of the Court on behalf of such state court plaintiffs, as well.

For the reasons stated herein, in addition to the arguments put forth by the PLC, the above-referenced MDL Plaintiffs, as well as all state-court plaintiffs represented by undersigned counsel object to the proposed settlement agreement and the proposed letter to state court judges.

Thank you in advance for your consideration.

Respectfully,

/s/ Brian S. Franciskato

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