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March 21, 2016

Via ECF

The Honorable Susan D. Wigenton
U.S. District Court, District of Jew Jersey
Martin Luther King, Jr. Federal Building
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 respectfully submit this letter in objection to the Proposed CMO, Proposed Letter to State Court Judges and the Proposed Settlement Agreement. This firm currently represents multiple Zimmer Durom clients; several of which are filed in the MDL and several of which are filed in Illinois State Court. On behalf of all of our clients, we urge the Court to reject the Proposed CMO.

The Proposed Settlement Agreement was entered into without the consent or authorization of this firm or any clients of this firm. More importantly, the proposed settlement agreement was entered into by parties without authority to enter into such an agreement on behalf of all Plaintiffs. For this reason, and the reasons outlined below, we request that the Court allow these issues to be fully briefed so that the rights of all interested parties may be considered.

The CMO and Proposed Settlement contain language which would require participation in the settlement for all plaintiffs who are represented by an individual firm, or it would impose the draconian sanction of disallowing all plaintiffs represented by that firm. The entry of such a CMO would have unfairly prejudicial effects on cases already in advanced stages of litigation, it would likely create conflicts of interest for Plaintiff's counsel, and it would deprive similarly-situated Plaintiffs equal access to the settlement based upon factors unrelated to the merits of the individual cases. Any process which would deny access to a remedy for one plaintiff based upon the decisions of other plaintiffs who happen to be represented by the same attorney or firm creates an unequal standard which cannot be allowed.

First, the CMO should be rejected because of the unfairly prejudicial effects on cases outside of the MDL. This firm represents Plaintiffs who have already weighed and rejected settlement offers identical to those in the settlement. In at least one of those cases, the plaintiff has advanced to a stage of litigation beyond mediation and settlement conferences with the state court judge. This

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Plaintiff would not accept the terms of the current settlement offer. To force this Plaintiff to submit to a settlement process and have his current case stayed for at least a year (or more) would deprive this Plaintiff of due process and it would negate the substantial progress which has been made without assistance from the common benefit of the MDL. This client would have 3 untenable options: 1) find new counsel at an advanced stage of litigation to avoid being the "holdout plaintiff", 2) submit to a process in which he has no interest and from which he has derived no benefit, or 3) give up. None of these options are viable. All of them are prejudicial.

Second, the CMO will result in conflicts of interest for any counsel representing more than one plaintiff. Any such firm with a client who does not wish to participate (or who may have already considered and rejected settlement terms similar to those presented in the current settlement) will have a conflict. Should the firm release the "holdout client"? Allow the rest of their clients to be disallowed from the settlement due to the decision of another? This will cause clients with legitimate issues which preclude them considering settlement of their cases to be dropped by attorneys with no other choice.

Finally, the entry of the CMO will cause different results for similarly-situated plaintiffs. This is against the concept of fairness upon which any Multi-District Litigation settlement should be based. Consider two plaintiffs with medically similar outcomes – each of whom are represented by two different law firms. Plaintiff A is represented by a firm with ten Durom clients. Plaintiff B is represented by a different firm with ten Durom clients. The only difference is that two of the clients at Plaintiff B's firm do not wish to participate in the settlement. Plaintiff A will settle his case, while Plaintiff B is precluded from settlement. Plaintiff B obtains a different result through no choice of his own. The fact that he is precluded from a remedy by the function of a process which was unforeseeable to him is patently unfair. A settlement in Multi-District Litigation is only fair if it is equally available to all plaintiffs based upon the facts and merits of each case at an individual level.

For all of these reasons, we object to the Proposed CMO, Proposed Settlement Agreement, and Letter to State Judges. Furthermore, we join and incorporate the objections of other Plaintiffs and their counsel which are filed concurrently with this correspondence. We request that the Court reject the Proposed CMO, Proposed Settlement Agreement, and Letter to State Judges and allow briefing and argument to consider the rights of all affected parties. Thank you for your time and consideration.

Very Truly Yours,

Peter J. Flowers, Esq.
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