

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.

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