

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE )  
JUSTICE PERELL )  
)

WEDNESDAY, THE 24<sup>th</sup>  
DAY OF SEPTEMBER,  
2014

BETWEEN:

GLORIA McSHERRY

Plaintiff

-and-



ZIMMER GMBH, ZIMMER, INC., and ZIMMER OF CANADA LIMITED

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**ORDER**

**THIS MOTION**, made by the Plaintiff, on consent of the Defendants, was heard at Toronto.

**ON READING** the Plaintiff's Motion Record, and on hearing from the parties,

1. THIS COURT ORDERS that this action is certified as a class proceeding against the Defendants.
2. THIS COURT ORDERS that the Class is defined as:

"All persons who were implanted with the Durom acetabular hip implant in Canada, excluding residents of British Columbia and Quebec, and those persons who opt into the class certified by the British Columbia Supreme Court in *Jones et al. v. Zimmer GMBH et al.* (the "Class"), and

All persons who by reason of his or her relationship to a member of the Class are entitled to make claims under any of the Dependants Statutes in Canada as a result of the death or personal injury of such member of the Class (the "Family Class").

"Dependants Statutes means the Family Law Act (Ontario), Fatal Accidents Act (Alberta), Tort-Feasors Act (Alberta), Fatal Accidents Act (Saskatchewan), Fatal Accidents Act (Manitoba), Fatal Accidents Act (New Brunswick), Fatal Accidents Act (P.E.I.), Fatal Injuries Act (Nova Scotia), Fatal Accidents Act (Newfoundland), Fatal Accidents Act (Nunavut), Fatal Accidents Act (Northwest Territories), and Fatal Accidents Act (Yukon)."

3. THIS COURT ORDERS that Gloria McSherry is appointed as the representative plaintiff for the Class and the Family Class, and her counsel, Klein Lyons, is appointed as counsel for the Class and the Family Class ("Class Counsel").
4. THIS COURT DECLARES that the nature of the claims asserted by the Class are in negligence, and that the nature of the relief sought is personal injury damages.
5. THIS COURT ORDERS that the following are certified as common issues:
  - (a) Was the Durom acetabular hip implant defective and/or unfit for its intended use?
  - (b) Did any of the defendants breach a duty of care owed to class members and, if so, to when and how?
  - (c) Does the defendants' conduct warrant an award of punitive damages and, if so, to whom shall they be paid and in what amount?
6. THIS COURT ORDERS that Notice of Certification is approved in substantially the form attached as Schedule A (the "Notice").
7. THIS COURT ORDERS that the Notice shall be published forthwith and in the following manner:
  - (a) Class Counsel shall post the Notice on its website, and shall provide a copy of it to anyone who requests it; and

(b) the Defendants shall mail the Notice to any counsel in Canada who has contacted the Defendants on behalf of a client or clients purporting to have injuries related to the Zimmer Durom Cup, with the exception of counsel whose clients have brought individual claims against one or more of the Defendants in British Columbia or Quebec.

8. THIS COURT ORDERS that class members may opt out of this proceeding by delivering a written request to do so, providing their name and address, to Class Counsel by no later than 84 days from the date of this order.

9. THIS COURT ORDERS that this order is without costs.

*Perell, J.*

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ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

OCT 07 2014

AS DOCUMENT NO.:  
À TITRE DE DOCUMENT NO.:  
PER / PAR:

*MB*

**Schedule A**

# Were you implanted with a Zimmer Durom® Hip Implant?

This notice may affect your rights.

Please read carefully.

The Ontario Superior Court of Justice has certified a class action for people who were implanted with a Durom® acetabular hip implant or “Durom Cup” (“the Durom Cup”). If you, or a family member, were implanted with a Durom Cup, you may be a class member.

## Who are the Class Members?

The Class is defined as: “All persons who were implanted with the Durom acetabular hip implant in Canada, excluding residents of British Columbia and Quebec, and those persons who opt into the class certified by the British Columbia Supreme Court in *Jones et al. v. Zimmer GMBH et al.*” (the “Class”), and “All persons who by reason of his or her relationship to a member of the Class are entitled to make claims under any of the Dependants Statutes in Canada as a result of the death or personal injury of such member of the Class” (the “Family Class”).

The Durom® acetabular hip implant or “Durom Cup” is a device used in hip surgery. It is a prosthetic shell meant to be implanted into a patient’s hip socket, as a component of total hip replacement surgery or hip resurfacing surgery.

## What the Class Action is About?

The lawsuit seeks compensation for class members. It is alleged that the Defendants were negligent in researching, developing, testing, manufacturing, distributing and selling the Durom Cup. The court has not yet made any finding as to the merits of this lawsuit. The Defendants deny the allegations made in the lawsuit.

The representative plaintiff is Gloria McSherry. The law firm representing the Class is Klein Lyons (“Class Counsel”). The Defendants are Zimmer GmbH, Zimmer, Inc. and Zimmer of Canada Limited.

## How Do I Participate, or Exclude Myself?

If you are a class member you do not need to do anything to participate – you are automatically included in the class action. If you *do not* want to be part of this lawsuit, you must notify Class Counsel at the address below, by letter or email, no later than [deadline] providing your name and address and indicating that you do not want to be part of this lawsuit. If you are a class member and do not exclude yourself by that date, you will be bound by a judgment on the common issues, whether favourable or not.

## What are the Financial Consequences?

Class members will be entitled to the benefit of a successful judgment on the common issues. If the action is not successful on the common issues, no class member will be responsible for legal fees or costs.

If the class is successful at the common issues trial, individual class members must prove their respective claims for damages. Class members may be responsible for the costs of proving their respective claims, and may wish to hire a lawyer to assist with damages proceedings. Class Counsel is available to be hired by class members on a contingency basis, but class members may hire another lawyer of their own choosing.

## Do I Need to Pay Anything?

The representative plaintiff has entered into a fee agreement providing that Class Counsel’s legal fee for work on the common issues will be one-third of the amount that class members recover, plus applicable taxes, disbursements and interest. If the class action does not succeed, class members are not responsible for any legal fees or disbursements. The fee agreement must be approved by the court.

## For More Information

Visit [www.kleinlyons.com](http://www.kleinlyons.com) or telephone 1-800-468-4466

Gloria McSherry  
Plaintiff

- and -

Zimmer GMBH et al  
Defendants

Court File No. CV-10-40836500 CP

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Fax: (416) 506-0601

Solicitors for the Plaintiff

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If you are a class member you do not need to do anything to participate – you are automatically included in the class action. If you *do not* want to be part of this lawsuit, you must notify Class Counsel at the address below, by letter or email, no later than **December 17, 2014** providing your name and address and indicating that you do not want to be part of this lawsuit. If you are a class member and do not exclude yourself by that date, you will be bound by a judgment on the common issues, whether favourable or not.

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