Court File No. 13-CV-490112-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE JUSTICE GLUSTEIN	))))	Friday, THE 25th DAY OF OCTOBER, 2024

B E T W E E N :

STEVEN DALTON DINE

Plaintiff

- and -

BIOMET, INC., BIOMET ORTHOPEDICS, LLC, BIOMET MANUFACTURING CORP., BIOMET US RECONSTRUCTION, LLC AND BIOMET CANADA INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER
(Settlement Approval)

THIS MOTION, made by the representative Plaintiff for approval of the settlement of this action pursuant to s. 29 of the *Class Proceedings Act, 1992* in accordance with the terms of the Settlement Agreement dated July 18, 2024, was heard this day in Toronto.

WHEREAS this action was certified as a class proceeding by Order dated December 18, 2015;

UPON READING the Plaintiff's motion record, and upon hearing the submissions of counsel for the Plaintiff and counsel for the Defendants, and upon being advised that the parties consent to this order,

THIS COURT ORDERS AND DECLARES that:

1. The definitions set out in the Settlement Agreement, which is attached as Schedule A, apply to and are incorporated into this Order.

2. The settlement of the action, as set out in the Settlement Agreement, is fair, reasonable, and in the best interests of the Class Members, and is hereby approved.

3. The Defendants shall pay the amounts required under the Settlement Agreement, subject to the Right of Termination set out in Section 8 of the Settlement Agreement.

4. The form and content of the Notice of Approval of Settlement to Class Members shall be substantially in the form which appears at Schedule F and Schedule F.1 to the Settlement Agreement.

5. The Class Members shall be given notice of this order in accordance with the plan attached as Schedule G to the Settlement Agreement.

6. The notification plan described in paragraphs 4 and 5 of this order satisfies the requirements of s. 17 of the *Class Proceedings Act, 1992*.

7. The Settlement Agreement and this Order are binding upon each Class Member, whether or not such person receives or claims compensation, including persons who are minor or are mentally incapable.

8. Verita Global LLC is hereby appointed as Claims Administrator.

9. Upon the Effective Date, the Releasees are forever and absolutely released by the Releasors from the Released Claims. The Releasors are barred from making any claim or taking or continuing any proceedings arising out of or relating to the Released Claims against any other person, corporation, or entity (including, without limitation, any health care professionals, health care providers, or health care facilities) that might claim damages and/or contribution and indemnity and/or other relief under the provisions of the *Negligence Act* or other comparable provincial legislation and any amendments thereto, the common law, Quebec civil law, or any other statute, for any relief whatsoever, including relief of a monetary, declaratory, or injunctive nature, from one or more of the Releasees.

10. This Court shall have continuing jurisdiction over the implementation and enforcement of the Settlement Agreement.

11. This action is hereby dismissed without costs and with prejudice.

J.

JUSTICE GLUSTEIN

CANADIAN M2a 38, M2a MAGNUM and ReCAP FEMORAL RESURFACING SYSTEM CLASS ACTION

NATIONAL SETTLEMENT AGREEMENT

between:

STEVEN DALTON DINE

(the "**Ontario Plaintiff**")

and

CONSEIL POUR LA PROTECTION DES MALADES

(the "**Quebec Plaintiff**")

and

BIOMET INC., BIOMET ORTHOPEDICS LLC, BIOMET MANUFACTURING CORP., BIOMET U.S. RECONSTRUCTION LLC and BIOMET CANADA INC.

(the "**Defendants**")

WHEREAS:

(a) the **Ontario Plaintiff** commenced an action by Notice of Action dated October 4, 2013 and Statement of Claim dated November 4, 2013 in the Ontario Superior Court of Justice bearing Court File No. CV-13-490112-CP (the "**Ontario Proceeding**");

(b) the **Ontario Proceeding** was certified as a national class action by Order dated December 18, 2015, bearing citation *Dine v. Biomet*, 2015 ONSC 7050, and the Ontario Court appointed the **Ontario Plaintiff** as the representative plaintiff in the **Ontario Proceeding**;

(c) the **Quebec Plaintiff** commenced Action No. 500-06-000745-154 in the Superior Court of Quebec ("**Quebec Proceeding**", and with the **Ontario Proceeding**, the "**Proceedings**"), which was stayed by Judgment dated September 23, 2016, bearing citation *Conseil pour la protection des malades c. Biomet Canada inc.*, 2016 QCCS 4574, pending the outcome of the **Ontario Proceeding**;

(d) the **Quebec Proceeding** has not been authorised (certified) as a class action;

(e) the **Defendants** deny liability in respect of the claims alleged in the **Proceedings**, and believe that they have good and reasonable defences in respect of the merits in the **Proceedings**;

(f) the **Defendants** assert that they would actively pursue these defences in respect of the merits at trials if the **Ontario Plaintiff** or **Quebec Plaintiff** continued the **Proceedings** against them;

(g) the **Defendants**, **Ontario Plaintiff** and **Quebec Plaintiff** (as defined below) (collectively the "**Parties**") have negotiated and agreed to enter into this **Settlement Agreement** to avoid the further expense, inconvenience and burden of this litigation, and to achieve final resolution of all claims asserted or that could have been asserted against the **Defendants** by the **Ontario Plaintiff** and **Quebec Plaintiff**, on their own behalf or on behalf of the **Class** (as defined below) (collectively the "**Plaintiffs**") or the respective **Provincial Health Insurers** (as defined below), and to avoid the risks inherent in

uncertain, complex and protracted litigation, and thereby to put this controversy to rest;

(h) counsel for the **Parties** have engaged in extensive arms-length settlement discussions, negotiations and mediations in respect of this **Settlement Agreement**;

(i) as a result of these settlement discussions, negotiations and mediations, the **Parties** have entered into this **Settlement Agreement** which embodies all of the terms and conditions of the settlement between the **Parties**, subject to the approval of the **Ontario Court** (defined below);

(j) the **Defendants** do not admit through execution of this **Settlement Agreement** any of the conduct alleged in the **Proceedings** or that the **Defendants** are liable for the injuries alleged, and neither this **Settlement Agreement** nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by or evidence against the **Defendants** or evidence of the truth of any of the allegations against the **Defendants** in the **Proceedings**;

(k) the **Plaintiffs**, the **Provincial Health Insurers**, and their respective counsel have reviewed and fully understand the terms of this **Settlement Agreement** and, based on their analyses of the applicable facts and law, and having regard to the burdens and expense in prosecuting the **Proceedings**, including the risks and uncertainties associated with trials and appeals, the **Plaintiffs**, the **Provincial Health Insurers**, and their

counsel have concluded that this **Settlement Agreement** is fair, reasonable and in the best interests of the **Plaintiffs**, the **Class Members** (defined below), and the **Provincial Health Insurers**;

(l) the **Defendants** are entering into this **Settlement Agreement** in order to achieve a final and nationwide resolution of all claims pertaining to a **Biomet Device** (as defined below) that have been asserted or that could have been asserted against them by the **Plaintiffs** or the **Provincial Health Insurers** in the **Proceedings** or otherwise, and to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation;

(m) the **Parties** therefore wish to, and hereby do, finally resolve on a national basis, without admission of liability, all of the **Proceedings** against the **Defendants**; and

(n) for the purposes of settlement only and contingent on orders by the **Courts** as provided for in this **Settlement Agreement**, the **Plaintiffs** have consented to a dismissal of the Ontario Proceeding, and a discontinuance of the Quebec **Proceeding**, and release of all claims that have been or could have been asserted against the **Releasees** (defined below).

NOW THEREFORE, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the **Parties** that the **Proceedings** be settled on the following terms and conditions.

SECTION 1 – DEFINITIONS

1. For the purpose of this **Settlement Agreement**, including the Recitals and Schedules hereto:

(a) ***Account*** means an interest-bearing trust account under the control of the **Claims Administrator** at a Schedule 1 chartered Canadian bank. All interest accrued will be added to the fund used to compensate **Approved Claimants**.

(b) ***Approval Hearing*** means the hearing on the motion before **Ontario Court** for the approval of the **Settlement Agreement**.

(c) ***Approved Claimant*** means a **Class Member** or **Derivative Claimant** whose claim has been approved for payment by the **Claims Administrator**.

(d) ***Bilateral Revision*** means that a **Class Member** had a **Biomet Device** implanted in both the left and right hips and has undergone surgery or surgeries to remove the **Biomet Device** from both the left and right hips.

(e) ***Biomet Device*** means any of the **M2a 38**, **M2a Magnum** or **M2a Recap**, or any combination thereof, only when implanted in Canada and used as a metal-on-metal hip implant system.

(f) ***Claimant Declaration*** means the form attached as **Schedule A**.

(g) ***Claims Administrator*** means the entity appointed to administer the **Settlement Agreement**.

(h) ***Claims Deadline*** means the day that is 270 days after the date on which the **Notice of Settlement Approval** is disseminated to the Class.

(i) ***Class Counsel Fees*** means the fees and applicable taxes or charges of **Class Counsel** specified in Section 9 of this **Settlement Agreement**.

(j) ***Class Counsel*** means Koskie Minsky LLP, Stevenson Whelton LLP, Klein Lawyers LLP and Sylvestre Painchaud et associés.

(k) ***Class Member*** or ***Class*** means any person who was implanted in Canada with a **Biomet Device**, and who:

(i) was implanted at Grace General Hospital (Winnipeg), Winnipeg Grace General Hospital (Wininpeg), Health Sciences Centre (Winnipeg), Santa Cabrini Hospital (Montreal), and Hospital Maisonneuve-Rosemont (Montreal), and did not opt out of the **Ontario Proceedings** on or before August 8, 2019, for all class members except for those who were residents of the province of Quebec, and on or before December 5, 2019 for Class members who were residents of the province of Quebec; or

(ii) was implanted at any other hospital in Canada and did not opt out of the **Ontario Proceeding** on or before May 31, 2017, unless their opt out form was validated by Order of the Ontario Superior Court of Justice dated March 8, 2019;

and shall include all other persons who by reason of a personal relationship to a person described above have standing pursuant to section 61(1) of the *Family Law Act* (Ontario) or equivalent legislation in other provinces and territories, and has not opted out of the Ontario Proceeding on or before May 31, 2017.

This definition excludes any **Derivative Claimants** related to a person who opted out in accordance with the deadlines set out in sub paragraphs (i) and (ii) above.

(l) ***Complication*** means any of the conditions listed in **Schedule H** to this **Settlement Agreement** assoicated with or related to a **Revision Surgery**.

(m) ***Courts*** means the Ontario Superior Court and Superior Court of Quebec.

(n) ***Defendants' Counsel*** means Davies Ward Phillips & Vineberg LLP.

(o) ***Derivative Claimant(s)*** means all residents of Canada asserting the right to sue the Defendants independently or derivatively by reason of their familial relationship to a **Class Member** who has undergone a **Single Revision** or **Bilateral Revision**, or is **Medically Precluded** from undergoing a **Revision Surgery**, and shall mean for the purposes of this **Settlement Agreement** a **Principal Caregiver** or a **Minor Child** of a **Class Member**.

(p) ***Disbursements*** means funds paid out by **Class Counsel** for expenses incurred in connection with the **Proceedings**.

(q) ***Discretionary Fund*** means the funds in the amount of $750,000 to be paid by the **Defendants** to the **Claims Administrator**, and distributed in accordance with the **Special Claims Protocol** referred to in section 4.2.11 below.

(r) ***Effective Date*** means the later of the date on which a **Final Order** has been received from (i) the **Ontario Court** approving this **Settlement Agreement**, or (ii) the **Quebec Court** recognising the **Final Order** of the **Ontario Court** approving this **Settlement Agreement** and discontinuing the **Quebec Proceeding**.

(s) ***Extraordinary Expense Pool*** means the amount of $50,000 established by this **Settlement Agreement** to compensate **Class Members** who demonstrate to the **Claims Administrator** that they have incurred extraordinary expenses in accordance with the terms hereof.

(t) ***Final Order(s)*** means the final orders entered by the **Ontario Court** in respect of the approval of this **Settlement Agreement** and from the **Quebec Court** recognising the **Final Order** of the **Ontario Court** approving this **Settlement Agreement** and discontinuing the **Quebec Proceeding**, once the time to appeal such orders has expired without any appeal being taken, or if an appeal from a **Final Order** is taken, once there has been affirmation of the approval of this **Settlement Agreement** and of the **Quebec Court**'s order recognising said affirmation upon a final disposition of all appeals.

(u) ***Index Surgery*** means the surgical implantation of a **Biomet Device** in a surgery on a hip occuring in Canada.

(v) ***Initial Deposit*** means the sum of $5 million (USD) paid by the **Defendants** into the Account, which includes $750,000 for the **Discretionary Fund**.

(w) ***In Vivo Time*** means the total amount of time during which the **Biomet Device** was implanted, starting from the date of the implantation and ending on the date of **Revision Surgery**.

(x) ***Label*** means the peel-and-stick label from a **Biomet Device** that is ordinarily affixed to the medical record or operative report from an **Index Surgery**.

(y) ***M2a 38*** means the medical device system and components known in Canada as the M2a Acetabular System or M2a 38, including the components and parts that were licensed in Canada under Medical Device Licence #62943.

(z) ***M2a Magnum*** means the medical device system and components known in Canada as the M2a Magnum System (which may include a Magnum femoral head or a Selex femoral head), including the components and parts that were licensed in Canada under Medical Device Licence #66287 or #69328.

(aa) ***M2a Recap*** means the medical device system and components known in Canada as the ReCap Resurfacing Hip System, M2a Recap or

ReCapFemoral Resurfacing System, including the components and parts that were licensed in Canada under Medical Device Licence #63799 or #72082.

(bb) ***Medically Precluded*** means a **Class Member** for whom a **Revision Surgery** was determined to be necessary within 12 years and 1 day of the **Index Surgery**, but who was unable to undergo a **Revision Surgery** due to the existence of a medical condition, as demonstrated pursuant to section 4.4 below.

(cc) ***Minor Child*** and ***Minor Children*** means the child or children of a **Class Member** who has undergone a **Single Revision**, **Bilateral Revision**, or is **Medically Precluded** from undergoing **Revision Surgery**, who was or are less than eighteen years of age when the **Class Member** underwent a **Single Revision**, **Bilateral Revision**, or was first **Medically Precluded** from undergoing **Revision Surgery**.

(dd) ***Notice and Administration Costs*** means fees, costs, applicable taxes, and any other amounts incurred for the approval, implementation and operation of this **Settlement Agreement**, including the costs of notices, the costs of translation of the notice, and the fees and expenses of the **Claims Administrator**, but excluding all costs, fees and expenses to administer and distribute the Discretionary Fund, **Class Counsel Fees** and **Disbursements**, and excluding any costs and disbursements associated with the **Reconsideration Officer** (which shall instead be paid in accordance with **Schedule I**).

(ee) ***Notice of Approval Hearing*** means the form of notice agreed to by the **Parties**, as set forth in **Schedule B**, or such other form as may be approved by the **Courts**, that informs the **Class** of the date and location of an **Approval Hearing**, the principal elements of this **Settlement Agreement**, and the process by which **Class Members** may object to the **Settlement Agreement**.

(ff) ***Notice of Settlement Approval*** means the form of notice, agreed to by the **Parties** and set forth in **Schedule F** and **Schedule F.1** or such other form as may be approved by the **Ontario Court**, that informs the **Class** of the approval of this **Settlement Agreement**.

(gg) ***Ontario Court*** means the Ontario Superior Court of Justice.

(hh) ***Ontario Proceeding*** means the action commenced by the **Plaintiff** by Notice of Action dated October 4, 2013 and Statement of Claim dated November 4, 2013 in the Ontario Superior Court of Justice bearing Court File No. CV-13-490112-CP.

(ii) ***Parties*** means the **Defendants**, **Ontario Plaintiff**, and **Quebec Plaintiff**.

(jj) ***Plaintiffs*** means the **Ontario Plaintiff** and **Quebec Plaintiffs**.

(kk) ***Principal Caregiver*** means an adult spouse, child, grandchild, parent, grandparent, brother or sister of a **Class Member**, who provided care for the **Class Member** who underwent a **Single Revision**, **Bilateral Revision**, or is **Medically Precluded** from undergoing a **Revision Surgery**.

(ll) ***Proceedings*** means the **Ontario Proceeding** and **Quebec Proceeding**.

(mm) ***Product Identification*** (also known as the "catalogue number") means the number on the peel-and-stick **Label** from a Biomet Device that is affixed to the medical record from a claimant's implant surgery (sometimes called the implant operative report).

(nn) ***Provincial Health Insurers*** means all provincial and territorial Ministries of Health or their equivalents and/or provincial and territorial plans funding medical services throughout Canada pursuant to applicable legislation as listed in **Schedule K**, and **Provincial Health Insurer Release** means a release in the form attached hereto as **Schedule L**.

(oo) ***Public Litigation Funder*** means the Ontario Class Proceedings Fund and/or the Quebec Fonds d'Aide aux Actions Collectives, as applicable. For a claimant resident in Quebec at the time of their claim, the applicable **Public Litigation Funder** is the Fonds d'Aide aux Actions Collectives. For a claimant resident outside of Quebec at the time of their claim, the applicable **Public Litigation Funder** is the Class Proceedings Fund.

(pp) ***Qualified Revision Surgery Claimant*** means a claimant who has had a **Revision Surgery** or who has a **Scheduled Revision Surgery,** and who satisfies each of the following criteria:

(i) They were implanted with a **Biomet Device** in Canada;

(ii) They have had or will have a **Revision Surgery** that did not or will not take place within 180 days after the **Index Surgery**; and

(iii) Their **Revision Surgery** was not or is not necessitated by infection or trauma, unless medical records establish that the claimant would likely have required the revision regardless of the infection or trauma.

(qq) ***Quebec Court*** means the Superior Court of Quebec.

(rr) ***Quebec Proceeding*** means the action commenced by the **Quebec Plaintiffs** in the Superior Court of Quebec, Action No. 500-06-000745-154.

(ss) ***Reconsideration Officer*** means the independent person to be agreed on by **Class Counsel** and **Defendants Counsel**, or appointed by the **Ontario Court** at its discretion (or absent agreement by **Counsel**), and thereafter retained by the **Claims Administrator**, to oversee the settlement administration process and make final and nonappealable decisions with respect to the adjudication of any claim decisions of the **Claims Administrator**.

(tt) ***Released Claims*** means any and all manner of claims, demands, actions, suits, civil law and statutory liabilities, and causes of action relating in any way to any conduct alleged in the subject matter of the **Proceedings**, or which could have been alleged relating in any way to the subject matter of the **Proceedings**, from the beginning of time to the date hereof, whether indirect or direct, class, individual, or otherwise in nature, whether personal or subrogated, damages whenever incurred, liabilities of any nature

whatsoever, including interest, costs, expenses, penalties and lawyers' fees that the **Releasors**, or any one of them, whether directly or indirectly, representatively, derivatively, or in any other capacity, had, have or may have against the **Releasees** from the beginning of time to the date hereof relating in any way to any conduct alleged or which could have been alleged in the subject matter of the **Proceedings** from the beginning of time to the date hereof, whether known or unknown, including any claims, demands, actions, suits, civil law or statutory liabilities, or causes of actions which any of the **Releasors** may assert against any person or entity that could or does result in a claim over against the **Releasees** or any of them for contribution, indemnity in common law, or equity, or under the provisions of the *Negligence Act* or equivalent legislation relating in any way to any conduct alleged in the subject matter of the **Proceedings**, or which could have been alleged relating in any way to the subject matter of the **Proceedings**, from the beginning of time to the date hereof, in all cases only where related in any way to a **Biomet Device** or a component thereof, including but not limited to the use, purchase, implantation, or revision of a **Biomet Device** or a component thereof.

(uu) ***Releasees*** means, jointly and severally, the **Defendants** and their respective present and former parents, subsidiaries, affiliates, officers, directors, employees, insurers, agents, attorneys, servants, and representatives, and the successors, heirs, executors, administrators, trustees and assigns of each of the foregoing, as well as any other person, corporation or entity, including without limitation any health care

processionals, health care providers, and hospitals or other health care facilities, against whom a **Releasor** has asserted or could have asserted a **Released Claim**.

(vv) ***Releasors*** means, jointly and severally, the **Plaintiffs** and **Class Members**, including all **Derivative Claimants**, and their respective successors, heirs, executors, administrators, trustees and assigns, and their affiliated, predecessor, successor and related companies or entities, as applicable.

(ww) ***Revision Surgery*** means an operation to remove a **Biomet Device** or a component thereof.

(xx) ***Scheduled Revision Surgery*** means that, as of the **Claims Deadline**, the claimant has been: (i) scheduled to receive a **Revision Surgery** but the **Revision Surgery** has not occurred as of 270 days after the date on which the **Notice of Settlement Approval** was disseminated; or (ii) indicated by a physician as requiring a **Revision Surgery** and the **Revision Surgery** has been planned, even if the date and time has not yet been finalized, in either case evidenced by the claimant submitting to the **Claims Administrator** by the **Claims Deadline**:

(i) Documentation from a hospital or physician confirming the claimant has been scheduled to receive a **Revision Surgery** but the **Revision Surgery** has not occurred as of 270 days after the date on which the **Notice of Settlement Approval** was disseminated; or

(ii) a properly executed Physician's Declaration in the form of **Schedule D** attached to this **Settlement Agreement**, which confirms that: (i) the **Revision Surgery** has been scheduled as of the **Claims Deadline**; or (ii) the claimant has been indicated by a physician as requiring a **Revision Surgery** as of the **Claims Deadline** and the **Revision Surgery** has been planned (even if the date and time have not yet been finalized), in either case including the date on which the need for a **Revision Surgery** was indicated.

(yy) ***Settlement Agreement*** means this Agreement, including the Recitals and Schedules thereto.

(zz) ***Settlement Amount*** means the aggregate amount payable by the **Defendants** pursuant to Section 4 of this **Settlement Agreement**.

(aaa) ***Single Revision*** means either that (i) a **Class Member** had a **Biomet Device** implanted into one hip that and subsequently underwent a **Revision Surgery** to remove that **Biomet Device** from that hip, or (ii) a **Class Member** had **Biomet Devices** implanted into each the left and right hip and subsequently underwent a **Revision Surgery** to remove only one of the implanted **Biomet Devices** from one of the hips.

(bbb) ***Special Claims Protocol*** shall mean the protocol applicable to claims against the **Discretionary Fund**, and shall be determined by **Class Counsel** and approved by the **Ontario Court**.

(ccc) ***Submission Deadline*** shall mean:

(i) For a **Qualified Revision Surgery Claimant** who has had a **Revision Surgery** as of 90 days before the **Claims Deadline**, the **Submission Deadline** shall be the **Claims Deadline**.

(ii) For a **Class Member** who has not yet undergone a **Revision Surgery** as of the **Claims Deadline** but who, as of the **Claims Deadline**, has a **Scheduled Revision Surgery**, the **Submission Deadline** shall be 90 days after the **Revision Surgery**.

(iii) For a **Qualified Revision Surgery Claimant** who has undergone a **Revision Surgery** within 90 days of the **Claims Deadline**, the **Submission Deadline** shall be 90 days after the **Revision Surgery**.

(iv) For an **Unrevised** claimant who is **Medically Precluded**, the **Submission Deadline** shall be the **Claims Deadline**.

(v) For an **Unrevised** claimant who is not **Medically Precluded**, the **Submission Deadline** shall be the **Claims Deadline**.

The **Submission Deadline** is the deadline by which a **Class Member** claiming under this **Agreement** must submit the requisite documents in support of their claim, as set out in section 4.4 below.

(ddd) ***Subsequent Deposit*** means further amounts paid by the **Defendants** into the **Account** after the **Initial Deposit**.

(eee) ***Unrevised*** means that a **Class Member** has not undergone a **Revision Surgery** and does not have a **Scheduled Revision Surgery** as of the **Claims Deadline**.

SECTION 2 – CALCULATION OF DEADLINES AND CONDITION PRECEDENT

1. If any deadline identified in this **Settlement Agreement** falls on a weekend or statutory holiday in Ontario or Quebec, the deadline shall occur on the following weekday that is not a statutory holiday in Ontario or Quebec.

2. Subject to section 8.1 below, this **Settlement Agreement** shall be null and void and of no force or effect unless the **Ontario Court** approves this **Settlement Agreement**, the **Quebec Court** recognises the **Final Order** of the **Ontario Court** approving this **Settlement Agreement** and discontinues the **Quebec Proceeding**, and the orders so made have become **Final Orders** and the **Effective Date** has occurred.

SECTION 3 – SETTLEMENT APPROVAL

3.1. Best Efforts

1. The Parties shall use their best efforts to effect this settlement and to secure the prompt, complete and final dismissal with prejudice of the **Ontario Proceeding** and the discontinuance of the **Quebec Proceeding** against the **Defendants**.

3.2. Motion Approving Notice

1. At a time mutually agreed to by the **Parties** after the **Settlement Agreement** is executed, the **Ontario Plaintiff** shall bring a motion before the **Ontario Court** for an order substantially in the form attached at **Schedule B** approving the Notice of the Approval Hearing.

2. After the Notice of the Approval Hearing has been approved by **Ontario Court**, the **Claims Administrator** and **Class Counsel**, as applicable, shall disseminate the Notice of Approval Hearing to the **Class** set out in **Schedule B**, or as otherwise amended on consent of the parties or as ordered by the Court. Pursuant to the **Defendants'** obligations in section 4.2.12 of the **Settlement Agreement**, the **Defendants** will pay the cost of dissemination of notice up to $150,000. If **Class Counsel** determines that expenditures on notice above $150,000 are in the best interests of the **Class**, such amounts may be drawn from the **Discretionary Fund**.

3.3. Motion for Approval

1. After the **Ontario Court** issues an order substantially in the form attached as **Schedule B**, or as otherwise amended on consent of the parties or as ordered by the Court, the **Ontario Plaintiff** shall file a motion in the **Ontario Court** for an order approving this **Settlement Agreement**. The order shall be substantially in the form attached at **Schedule C**, or as otherwise amended on consent of the parties or as ordered by the Court.

2. After the **Ontario Court** has issued an order approving this **Settlement Agreement** in the form attached at **Schedule C** (or as otherwise amended on consent of the parties or as ordered by the Court), the **Quebec Plaintiff** shall file a motion in the **Quebec Court** for an order recognising the **Final Order** of the **Ontario Court** approving this **Settlement Agreement** and discontinuing the **Quebec Proceeding** without costs.

3.4. Effect of Court's Approval Order

1. Subject to the **Ontario Court's** approval, the order approving this **Settlement Agreement** shall:

(a) approve this **Settlement Agreement** and order the **Parties** and all **Class Members** who have not validly opted out to comply with it;

(b) declare that this **Settlement Agreement** constitutes a "transaction" pursuant to Article 2631 of the Civil Code of Quebec, which is binding on the **Parties** and all **Class Members**, including those resident in Quebec;

(c) declare that this **Settlement Agreement** is reasonable, fair, adequate and in the best interests of the **Class**;

(d) order publication of the Notice of Settlement Approval as well as the form, contents and method of its dissemination;

(e) confirm the appointment of the **Claims Administrator**;

(f) enter such other orders as are needed to effect the terms of this **Settlement Agreement**; and

(g) enjoin all **Class Members** (other than those who have validly opted out) entitled to benefits hereunder from asserting or continuing to prosecute claims against **Defendants** or any other **Releasee**, as well as any **Released Claim** that such **Class Member** has, had or may have in the future.

3.5. Publication of Notice of Settlement Approval

1. After the **Settlement Agreement** has been approved by the **Ontario Court**, and after the **Quebec Proceeding** as been discontinued by the **Quebec Court**, the **Claims Administrator** and **Class Counsel**, as applicable, shall disseminate the Notice of Settlement Approval to the **Class** set out in **Schedule F** and **Schedule F.1**, or as otherwise amended on consent of the parties or as ordered by the Court. Pursuant to the **Defendants'** obligations in section 4.2.12 of the **Settlement Agreement**, the **Defendants** will pay the cost of dissemination of notice up to $150,000. If **Class Counsel** determines that expenditures on notice above $150,000 are in the best interests of the **Class**, such amounts may be drawn from the **Discretionary Fund**.

SECTION 4 – SETTLEMENT BENEFITS

4.1. Applicable Currency

1. Except where stated expressly to the contrary, all monetary amounts provided herein, including all amounts due to **Approved Claimants**, are stated and payable in Canadian dollars.

2. The **Parties** agree that the **Defendants** shall make all payments to the **Claims Administrator** in U.S. dollars by wire transfer, and the **Claims Administrator** shall promptly convert the payment funds to Canadian dollars no later than one business day after receipt of the funds from **Defendants**.

4.2. Payment of Settlement Amount

1. An individual is eligible for recovery under this **Settlement Agreement** only if:

(a) they are a **Class Member**;

(b) they are a **Qualified Revision Surgery Claimant**, **Medically Precluded**, **Unrevised**, or allocated amounts from the **Discretionary Fund** pursuant to section 4.2.9 below;

(c) in the case of a **Medically Precluded Class Member**, the claim is supported by either (i) an affidavit from a qualified physician in Canada detailing the medical condition that precludes the claimant from receiving a **Revision Surgery**, or (ii) medical records or other medical reports that clearly indicate that the claimant is **Medically Precluded** from undergoing **Revision Surgery**; and

(d) the claimant complies with the following before the applicable **Submission Deadline**:

(i) The claimant must submit to the **Claims Administrator Product Identification** that confirms the reference number (sometimes referred to as “catalogue number”) and lot number of the Biomet Device that was implanted, where the reference/catalogue number is as follows (or is a number which the **Parties** agree is a qualifying reference/catalogue number):

(1) The claimant must submit a **Product Identification** for both a femoral head and a one-piece acetabular cup.

The following reference/catalogue numbers correspond to **femoral heads** used with the **M2a Magnum**:

157442	S031138
157444	S031140
157446	S061138
157448	S061140
157450	S121138
157452	S121140
157454	S331138
157456	S331140
157458	S661138
157460	S661140
S001138	S991138
S001140	S991140

The following reference/catalogue numbers correspond to the **acetabular cups** used with the **M2a Magnum**:

US157844	US257844
US157846	US257846
US157848	US257848
US157850	US257850
US157852	US257852
US157854	US257854
US157856	US257856
US157858	US257858
US157860	US257860
US157862	US257862
US157864	US257864
US157866	US257866

The following reference/catalogue numbers correspond to the **femoral heads or caps** used with the **M2a Recap**:

157238	157256	157341	US 157343	157145	US 157140
157239	157257	157342	US 157344	157146	US 157141
157240	157258	157343	US 157345	157147	US 157142
157241	157259	157344	US 157346	157148	US 157143
157242	157260	157345	US 157347	157149	US 157144
157243	US 157239	157346	US 157348	157150	US 157145
157244	US 157241	157347	US 157349	157151	US 157146
157245	US 157243	157348	US 157350	157152	US 157147
157246	US 157245	157349	US 157351	157153	US 157148
157247	US 157247	157350	US 157352	157154	US 157149
157248	US 157249	157351	US 157353	157155	US 157150
157249	US 157251	157352	157138	157156	US 157151
157250	US 157253	157353	157139	157157	US 157153
157251	US 157255	US 157338	157140	157158	US 157154
157252	US 157257	US 157339	157141	157159	US 157155
157253	157338	US 157340	157142	157160	US 157156
157254	157339	US 157341	157143	US 157138	US 157157
157255	157340	US 157342	157144	US 157139	

The following reference/catalogue numbers correspond to the **acetabular cups** used with the **M2a Recap**:

157844	157944	130846	130846 HA	157438
157846	157946	130848	130848 HA	157440
157848	157948	130850	130850 HA	157442
157850	157950	130852	130852 HA	157444
157852	157952	130854	130854 HA	157446
157854	157954	130856	130856 HA	157448
157856	157956	130858	130858 HA	157450
157858	157958	130860	130860 HA	157452
157860	157960	130862	130862 HA	157454
157862	157962	130864	130864 HA	157456
157864	157964	130866	130866 HA	157458
157866	157966	130868	130868 HA	157460

The following reference/catalogue numbers correspond to the **femoral heads** used with the **M2a 38**:

11-173660
11-173661
11-173662
11-173663
11-173664
11-173665
11-173666

The following reference/catalogue numbers correspond to **acetabular cups** used with the **M2a 38**:

15-105048	15-106048	RD118848
15-105050	15-106050	RD118850
15-105052	15-106052	RD118852
15-105054	15-106054	RD118854
15-105056	15-106056	RD118856
15-105058	15-106058	RD118858
15-105060	15-106060	RD118860
15-105062	15-106062	RD118862
15-105064	15-106064	RD118864
15-105066	15-106066	RD118868
15-105068	15-106068	RD118870
15-105070	15-106070	

(2) Where a **Product Identification** submitted by a claimant specifies a reference/catalogue number which is listed above, except that it includes or excludes an alphabetical prefix (e.g. "US"), the **Claims Administrator** shall deem the claimant to have submitted qualifying **Product Identification** for that component.

(ii) If the **Parties** are unable to agree that a number which is not listed under section 4.1.1(d)(i) is a qualifying reference/catalogue number, the **Plaintiffs** or the **Defendants** may bring a motion to the **Ontario Court** to request a direction that the number be considered a qualifying reference/catalogue number.

(iii) Subject to section 4.2.1(d)(iv), a claimant shall submit **Product Identification** in the form of the **Label** from the **Biomet Device** that is ordinarily affixed to the medical record or operative report from the **Index Surgery**.

(iv) If, and only if, a claimant is unable to obtain the **Label** because the **Index Surgery** hospital could not locate it, then the claimant may provide the following to prove that they received a **Biomet Device**:

(1) If the **Biomet Device** has been explanted and still exists, the claimant must provide (1) a color photograph of the **Biomet Device** that shows the identification numbers on the edge of the **Biomet Device**, and (2) a Physician Declaration confirming the implantation with a **Biomet Device** and the date of the implantation; or

(2) If the claimant is unable to obtain a photograph because the **Biomet Device** is not within the claimant's possession, custody, or control, the claimant must provide (1) a copy of the **Index Surgery** operative report from the hospital where

the claimant was implanted, which confirms that the claimant was implanted with a Biomet Device, and (2) a Physician Declaration confirming that the claimant was implanted with a **Biomet Device** and the date of implantation.

2. With the exception of: (i) **Provincial Health Insurers**, which are entitled to compensation under this **Settlement Agreement** as provided in section 4.2.9; and (ii) **Public Litigation Funders**, which are entitled to a levy on awards paid to Class Members as set out below, only **Class Members** who have submitted all the necessary information to the **Claims Administrator** by the applicable **Submission Deadline** shall be entitled to receive compensation under this **Settlement Agreement**. For all claimants, "necessary information" includes a completed Claimant Declaration attached at **Schedule A** and the information described in sections 4.2 and 4.4.

3. As described below and in the Claimant Declaration, certain claimants will also be required to submit a properly executed Physician's Declaration in the form of **Schedule D**.

4. The amount of recovery for any **Class Member** otherwise eligible for recovery under sections 4.2.1 and 4.2.2 above shall be established as of the later of the date the Claim Declaration and any other documentation required by the **Claims Administrator** pursuant to the terms of this **Settlement Agreement** is submitted by the **Class Member** to the **Claims Administrator**.

5. The **Defendants** agree to pay amounts in accordance with this **Settlement Agreement**, in full satisfaction of all of the **Released Claims** against the **Releasees**,

contingent on dismissal of the **Claims** of the **Class Members** in the **Ontario Proceeding** and discontinuance of the **Quebec Proceeding**.

6. The **Class Members** shall be compensated as follows, less their (i) respective share of any **Class Counsel Fees** that the **Court** may award to **Class Counsel** in accordance with section 9.1.1(b) of the **Settlement Agreement** (and any individual legal fees as agreed between a **Class Member** and counsel individually retained by the **Class Member**), and (ii) the levy payable to the applicable **Public Litigation Funder**:

(a) **Class Members** who are **Unrevised** and not **Medically Precluded** from undergoing a **Revision Surgery** each receive $500;

(b) **Class Members** who are **Unrevised** and are **Medically Precluded** from undergoing a **Revision Surgery** each receive $45,000;

(c) Subject to paragraph (f), **Qualified Revision Surgery Claimants** who have undergone a **Single Revision** each receive $75,000;

(d) Subject to paragraph (f), **Qualified Revision Surgery Claimants** who have undergone **Bilateral Revision** each receive $90,000;

(e) Subject to paragraph (f), **Qualified Revision Surgery Claimants** who have: (i) undergone a **Single Revision** and who have experienced one or more **Complications** will receive additional funds up to $40,000; and (ii) undergone a **Bilateral Revision** and who have experienced one or more **Complications** will receive additional funds of up to $50,000. The amount

to which such a **Claimant** may be entitled for a **Complication** is set out in **Schedule H**.

(f) **Class Members** who underwent a **Revision Surgery** for a purpose other than explanting a **Biomet Device** or component thereof are not entitled to compensation provided in paragraphs (a) to (e) above.

(g) **Class Members** who underwent a **Single Revision** or a **Bilateral Revision**, or who are **Medically Precluded** from undergoing a **Revision Surgery**, will be reimbursed for expenses they incurred in connection with the **Biomet Device**, upon submission of all documentation required by **Schedule A** and **Schedule E** of this **Settlement Agreement** and approval from reimbursement from the **Claims Administrator**, as follows:

(i) **Class Members** who do not have receipts to support their claimed expenses will each receive up to $750;

(ii) **Class Members** who have receipts documenting their claimed expenses will each receive the amount of those documented expenses, up to a cap of $2,500;

(iii) **Class Members** who believe they have incurred extraordinary expenses in connection with a **Biomet Device** may apply for reimbursement from the **Extraordinary Expense Pool**. **Class Counsel Fees** and a levy to the applicable **Public Litigation Funder** will be deducted from any **Extraordinary Expense Pool** award, in accordance with section 9.1.1(b). If the total amount of approved

claims payable from the **Extraordinary Expense Pool** exceeds $50,000 each reimbursable claim will be reduced on a *pro rata* basis. If the total amount of approved **Disbursements** from the **Extraordinary Expense Pool** is less than $50,000 the **Claims Administrato**r shall refund the difference to the **Defendants**.

(h) **Derivative Claimants** shall be compensated as follows:

(i) The **Principal Caregiver** of a **Qualified Revision Surgery Claimant** or **Medically Precluded Class Member** is entitled to $4,500. If there is more than one **Principal Caregiver**, all **Principal Caregivers** shall share this amount equally. **Principal Caregivers** of **Unrevised Class Members** are not entitled to any amounts under this **Settlement Agreement**.

(ii) All **Minor Children** of any particular **Qualified Revision Surgery Claimant** or **Medically Precluded Class Member** shall be entitled to, in total amongst them, $4,500. **Minor Children** of **Unrevised Class Members** are not entitled to any amounts under this **Settlement Agreement**.

(iii) For clarity, **Derivative Claimants** who are related to a person who opted out of the **Proceedings** in accordance with the deadlines set out in section 1(l) above are not entitled to recover under this **Settlement Agreement**.

(i) **Class Members** may be entitled to compensation pursuant to the terms of the **Special Claims Protocol** applicable to the **Discretionary Fund**.

7. **Qualified Revision Surgery Claimants** and **Medically Precluded Class Members** are in all cases subject to the following reductions from the amounts payable pursuant to paragraph 4.2.6 above:

In Vivo Time	Cumulative Reduction of Total Amount
7 years, 1 day	5%
8 years, 1 day	10%
9 years, 1 day	20%
10 years, 1 day	30%
11 years, 1 day	40%
12 years and 1 day and beyond	No compensation subject to section 4.2.11 below concerning the **Discretionary Fund**.

8. For **Qualified Revision Surgery Claimants** whose **Revision Surgeries** occurred more than 10 years and 1 day but less than 12 years following an **Index Surgery** at which a **Biomet Device** was implanted, the claimant is not entitled to compensation unless the claimant submits medical records (such as office visit or examination records, operative reports, or pathology reports) or a **Physician's Declaration** that establishes that one or more of the following was found intra-operatively to the **Revision Surgery**:

(a) Adverse local tissue reaction (“ALTR”) or adverse reaction to metal debris (“ARMD”), including:

(i) Necrotic tissue or muscle necrosis;

(ii) Pseudotumor (whether solid, mass-like, or cystic);

(iii) Aseptic lymphocyte dominated vasculitis-associated lesion ("ALVAL");

(iv) Abductor muscle deterioration or damage; or

(v) Osteolysis.

(b) Both (i) and (ii):

(i) One or more of:

(1) Trunnionosis; or

(2) Histiocytic reaction; AND

(ii) Pre-revision blood cobalt or chromium levels, either of which exceed the following thresholds:[1]

	Serum (µg/L)	**Serum (nmol/L)**	**Whole Blood (µg/L)**	**Whole Blood (nmol/L)**
Cobalt	4.1 µg/L	69.5 nmol/L	3.948 µg/L	67 nmol/L
Chromium	4.2 µg/L	81 nmol/L	2.576 µg/L	49.5 nmol/L

(c) Pre-revision blood cobalt or chromium levels, either of which exceed the following thresholds:[2]

	Serum (µg/L)	**Serum (nmol/L)**	**Whole Blood (µg/L)**	**Whole Blood (nmol/L)**
Cobalt	10 µg/L	169.5 nmol/L	9.14 µg/L	154.9 nmol/L
Chromium	10 µg/L	192.3 nmol/L	5.94 µg/L	114.2 nmol/L

[1] If the documentation submitted with the claim does not specify whether the cobalt or chromium level was measured in serum or in whole blood, the threshold for serum will apply.
[2] If the documentation submitted with the claim does not specify whether the cobalt or chromium level was measured in serum or in whole blood, the threshold for serum will apply.

9. Each **Provincial Health Insurer** will receive $15,000 for each **Revision Surgery** (i) that takes place before 12 years and 1 day following the **Index Surgery**, (ii) that takes place within the territorial jurisdiction of the **Provincial Health Insurer**, and (iii) for which a **Class Member** has submitted a proper and approved claim for recovery under this **Settlement Agreement**.

10. In addition to any other amounts to which he may be entitled under this **Settlement Agreement**, and subject to the approval of the **Ontario Court**, the **Ontario Plaintiff** shall receive a $7,500 honorarium that the **Claims Administrator** shall pay from the **Account** within 60 days following the **Effective Date**. No other **Class Member** or **Derivative Claimant** is entitled to any honorarium under this **Settlement Agreement**.

11. It shall be the responsibility of the **Claims Administrator** to award amounts to **Class Members** and **Provincial Health Insurers** (if applicable) from the **Discretionary Fund**. The **Special Claims Protocol** applicable to claims against the **Discretionary Fund** shall be determined by **Class Counsel** and approved by the **Ontario Court**. The **Public Litigation Funders** shall be entitled to levies on the **Discretionary Fund** in accordance with, as applicable, *Class Proceedings*, O. Reg. 771/92; *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives*, f-3.2.0.1.1, r. 2; and the *Code of Civil Procedure*, CQLR c C-25.01.

12. All **Notice and Administration Costs** shall be paid by the **Defendants**. **Notice Costs** shall not exceed a maximum of $150,000. Notwithstanding the foregoing, if **Class Counsel** determine that additional expenditures on notice are in the best interests of the **Class**, such expenditures may be drawn from the **Discretionary Fund**.

13. Within 30 days of the **Effective Date**, the **Defendants** shall pay the **Initial Deposit** into the **Account**.

14. The **Claims Administrator** shall pay **Class Counsel** for **Class Counsel Fees** and **Disbursements** owing under section 9.1.1 of the **Settlement Agreement** from the **Account** and the levy payable to the applicable **Public Litigation Funder**.The **Claims Administrator** may also draw upon the **Account** to pay the **Notice and Administration Costs**.

15. The **Claims Administrator** shall make determinations as to the entitlement of **Approved Claimants** prescribed by sections 4.2.6 to 4.2.10 of the **Settlement Agreement**. It shall pay those entitlements from the **Account** to the **Approved Claimants**, or their legal representative or counsel, less the **Class Counsel Fees** prescribed by section 9.1.1(b) of this **Settlement Agreement** and less the levy payable to the applicable **Public Litigation Funder**.

16. At the same time the **Claims Administrator** pays each **Approved Claimant**, the **Claims Administrator** shall also remit from the **Account** to **Class Counsel** the **Class Counsel Fees**, if any, prescribed by section 9.1.1(b) of this **Settlement Agreement**, as well as the levy payable to the applicable **Public Litigation Funder**.

17. If the amount in the **Account** falls below $500,000 (CDN), the **Claims Administrator** shall notify the **Defendants**. **Defendants** shall make a **Subsequent Deposit** of $1 million (USD) into the **Account** within 30 business days following receipt of such notice.

18. Once the **Claims Administrator** determines that all amounts owing under this **Settlement Agreement** have been paid, the **Claims Administrator** shall notify the **Defendants** and **Class Counsel**. If there are residual funds in the **Account** at the time of this notification, **Defendants' Counsel** and **Class Counsel** shall confer within 10 business days and, if Class Counsel and Defendants' Counsel agree that all amounts owing under the Settlement Agreement have been paid, within 30 days of such agreement, such funds and any interest accrued thereon shall be immediately returned to the **Defendants** by the **Claims Administrator**. If there is any disagreement about the operation of this section, the **Ontario Plaintiff** or the **Defendants** may request that the disagreement be summarily adjudicated by the **Ontario Court**.

19. The **Claims Administrator** will maintain the funds received pursuant to this **Settlement Agreement** in the **Account**. All interest accrued will be added to the funds used to compensate **Approved Claimants**.

20. The **Claims Administrator** shall maintain the **Account** and shall not pay out funds from the **Account** in a manner inconsistent with the provisions of this **Settlement Agreement** except by **Court** order made on notice to, or on the consent of **Defendants' Counsel** and **Class Counsel**.

4.3. Appointment and Role of Claims Administrator

1. The **Parties** will agree on a **Claims Administrator** to be appointed by the **Ontario Court** for the purpose of administering this **Settlement Agreement**.

2. The **Claims Administrator** shall make a determination as to whether each **Class Member** who seeks payment under the **Settlement Agreement** is an **Approved**

Claimant. If such person is an **Approved Claimant**, the **Claims Administrator** shall determine the amount of funds due to the **Approved Claimant** under the **Settlement Agreement**. The **Claims Administrator** shall be subject to removal by the **Ontario Court** for cause.

3. The **Claims Administrator** shall sign and adhere to a confidentiality statement, in a form satisfactory to the **Parties**, by which it agrees to keep confidential any information concerning **Class Members** or **Defendants**. Further, the **Claims Administrator** shall institute and maintain procedures to ensure that the identity of all **Class Members** and all information regarding any claims and submissions will be kept strictly confidential.

4. The **Claims Administrator** shall administer all monies payable under the **Settlement Agreement**, except as specifically provided for herein, and process all claims of **Class Members** and **Provincial Health Insurers** in accordance with the terms of this **Settlement Agreement**.

5. The funds payable under the **Settlement Agreement** that **Defendants** are required to submit to the **Claims Administrator** under the **Settlement Agreement** shall be held in an **Account**. The **Claims Administrator** shall distribute payments in accordance with the terms of the **Settlement Agreement**. Funds submitted to the **Claims Administrator** shall be maintained and invested in a manner consistent with that of a prudent and reasonable administrator.

6. The **Defendants** shall retain a reversionary interest in all funds provided to the **Claims Administrator** and all interest earned on such funds, other than the **Discretionary Fund** and **Notice and Administration Costs**. If any funds remain in the

Claims Administrator's trust account by the date of the agreement of **Class Counsel** and **Defendant's** Counsel described in section 4.2.18, other than those funds comprising the **Discretionary Fund** or in respect of **Notice and Administration Costs**, such funds and any interest accrued thereon shall be immediately returned to **Defendants' Counsel**, less any funds that have been approved for payment to an **Approved Claimant** but have not yet been paid out.

7. The **Claims Administrator** shall offer all of its services to **Class Members** in both English and French.

8. The **Claims Administrator** shall report monthly to **Class Counsel** and **Defendants' Counsel**, in a format substantially the same as that set out in **Schedule J** to this **Settlement Agreement**.

9. The **Claims Administrator** shall retain all records relating to each **Class Member's** claim and any funds disbursed from the **Account**. **Defendants' Counsel**, the **Defendants**, and the **Releasees**, as well as their respective insurers may, at their expense and upon providing seven days' written notice to **Class Counsel**, inspect the **Claims Administrator's** records. Any **Party** inspecting such records under this paragraph shall maintain the confidentiality of the records to the extent necessary to protect the identity and privacy of the **Class Members**. Nothing in this paragraph shall prelcude the **Claims Administrator** from making accessible to **Class Counsel** or **Defendants' Counsel** all records relating to each **Class Member's** claim at any time and on an ongoing, rolling basis, nor shall this paragraph preclude **Defendants' Counsel** from agreeing to a process for such sharing with the **Claims Administrator**.

10. All submissions, requests or motions made by the **Claims Administrator** to the **Ontario Court** must be served at least 15 days prior to the proposed date for the hearing of the request or motion.

4.4. Claims and Claimants

1. In order to recover under this **Settlement Agreement**, **Class Members** must electronically file, hand-deliver, email or mail a properly executed Claimant Declaration in the form attached as **Schedule A** along with a Physician's Declaration (if applicable) in the form attached as **Schedule D** such that they are received by the **Claims Administrator** no later than 5:00 p.m. Pacific Time on the applicable **Submission Deadline**.

2. For a **Class Member** who has not yet undergone a Revision Surgery as of 270 days after the date on which the Notice of Settlement is disseminated but who, as of that date, has a **Scheduled Revision Surgery**, to recover under this **Settlement Agreement**, the **Class Member** must electronically file, hand-deliver, email or mail, either:

(a) Documentation from a hospital or physician confirming the claimant has been scheduled to receive a **Revision Surgery** but the **Revision Surgery** has not occurred as of 270 days after the date on which the **Notice of Settlement Approval** was disseminated; or

(b) a properly executed Physician's Declaration in the form of **Schedule D** attached to this **Settlement Agreement**, which confirms that: (i) the **Revision Surgery** has been scheduled as of the **Claims Deadline**; or (ii) the claimant has been indicated by a physician as requiring a **Revision**

Surgery as of the **Claims Deadline** and the **Revision Surgery** has been planned (even if the date and time have not yet been finalized), in either case including the date on which the need for a **Revision Surgery** was indicated.

The Physician's Declaration or hospital documentation referred to in sections 4.4.2(a) and 4.4.2(b) above must be received by the **Claims Administrator** no later than 5:00 p.m. Pacific Time on the **Claims Deadline**. For clarity, such a **Class Member** must also hand-deliver, email or mail a properly executed Claimant Declaration in the form attached as **Schedule A** along with a Physician's Declaration (if applicable) in the form attached as **Schedule D** such that they are received by the **Claims Administrator** no later than 5:00 p.m. Pacific Time on the day that is 90 days after their **Scheduled Revision Surgery** takes place (defined above in section 1(yy)(ii) as the **Submission Deadline**).

3. To recover as **Medically Precluded**, the **Class Member** must electronically file, hand-deliver, email or mail, either:

(a) a Physician's Declaration in the form attached as **Schedule D** that confirms that the claimant is **Medically Precluded** from undergoing **Revision Surgery**; or

(b) medical records or other medical reports that explicitly state that the claimant is **Medically Precluded** from undergoing **Revision Surgery**.

The Physician's Declaration or medical records or other medical reports referred to in this section 4.4.3 must be received by the **Claims Administrator** no later than 5:00 p.m. Pacific Time on the **Submission Deadline**.

4. To recover from the **Extraordinary Expense Pool**, a **Class Member** must hand-deliver, email or mail a properly executed **Extraordinary Expense Pool Claim Form** in the form attached as **Schedule E**, and any supporting documentation, such that it is received by the **Claims Administrator** no later than 5:00 p.m. Pacific Time on the applicable **Submission Deadline**.

5. No later than 60 days from the date that the **Claims Administrator** receives a completed version of **Schedule A** to this **Settlement Agreement** from a **Class Member**, the **Claims Administrator** shall notify the **Class Member** and relevant **Provincial Health Insurer** whether they or it will receive payment under this **Settlement Agreement**, or, if the **Class Member** will not receive payment, the **Claims Administrator** shall inform that **Class Member** of the reason(s) why the claim was rejected.

6. If the **Claims Administrator** determines that the materials submitted by a **Class Member** are deficient, the **Claims Administrator** shall notify the **Class Member** in writing of the deficiency and shall provide the **Class Member** with 90 days to rectify the deficiency by delivering further or amended materials. The **Claims Administrator** shall have discretion to extend this deadline by up to 30 days, on request by the **Class Member**, where the **Class Member** demonstrates extenuating circumstances, but only one such extension may be granted to a particular **Class Member**, after which any further extension(s) shall only be granted on consent of the **Defendants**, which consent shall not unreasonably be withheld.

7. The **Claims Administrator** shall determine and certify, in its sole discretion, whether a claim for compensation under **Schedule A** to this **Settlement Agreement** has been properly made. If a **Class Member** or the **Defendants** disagrees with the decision

of the **Claims Administrator**, reconsideration of the decision by the **Reconsideration Officer** may be requested in accordance with the Reconsideration Protocol outlined in **Schedule I**. A **Claims Administrator's** decision will be deemed received ten days after it is mailed or emailed to a **Class Member**.

8. Pursuant to **Schedule I**, all reconsiderations will be decided by the **Reconsideration Officer**. All decisions rendered by the **Reconsideration Officer** shall be final and not subject to further review or appeal.

9. After approving a claim for payment made by a **Class Member**, the **Claims Administrator** shall promptly pay the Approved Claimant or their legal representative or counsel, the applicable **Public Litigation Funder**, and where applicable, the Provincial Health Insurer. However, payment under the **Settlement Agreement** shall not be made to an **Approved Claimant** until the **Approved Claimant** satisfies the requirements of sections 4.2 and 4.4 and any other conditions in this **Settlement Agreement**.

10. **Class Members** and **Class Counsel** agree to secure all authorizations from **Provincial Health Insurers** necessary to faciliate the fulfillment of the terms of the **Settlement Agreement**.

11. Within 30 days after receiving notice that they will receive payment under the **Settlement Agreement**, a **Class Member** is required to make best efforts to return any explanted **Biomet Device** or component thereof, if it is in their possession, custody or control, to **Defendants' Counsel** at the address below, or to make best efforts to enable a third party to return the explanted **Biomet Device** or component thereof to **Defendants**'

Counsel, and the **Defendants** shall compensate the **Class Member** for the reasonable costs of that return.

12. Within 30 days after the **Effective Date**, **Class Counsel** will return to **Defendants' Counsel** any and all explanted **Biomet Devices** and any other explanted medical device(s) manufactured by any of the **Defendants** that are in the possession, custody or control of **Class Counsel** within 30 days after the **Effective Date**.

SECTION 5 – DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST

5.1. Settlement Distribution

1. Any **Settlement Amounts** held by the **Claims Administrator** shall be held in trust for the benefit of **Class Members**, the **Public Litigation Funders**, and **Provincial Health Insurers**, and after the **Effective Date**, shall only be paid in accordance with the provisions of this **Settlement Agreement**.

5.2. Monies in the Account

1. In no event shall the **Defendants** have any responsibility, financial obligations, or liability whatsoever with respect to the investment, distribution, use or administration of monies in the **Account**, including but not limited to the costs and expenses of such investment, distribution, use and administration, and **Class Counsel Fees**, except to the extent the **Defendants** are required to make the **Initial Deposit** or **Subsequent Deposit(s)** into the **Account** under this **Settlement Agreement**.

5.3. Taxes and Interest

1. All interest earned on funds in the **Account** shall become and remain part of the **Account**.

2. The **Claims Administrator** shall bear all risks related to investment of the funds in the **Account**.

3. All taxes payable on any interest that accrues on the funds in the **Account** shall be the responsibility of the **Claims Administrator**, who shall be solely responsible to fulfill all tax reporting and payment requirements arising from the **Settlement Amount** in the **Account**, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect of the income earned by the **Settlement Amount** shall be paid from the **Account**.

4. The **Defendants** shall have no responsibility to make any tax filings related to the **Account** and shall have no responsibility to pay tax on any income earned by the funds in the **Account** or pay any taxes on the monies in the **Account**.

SECTION 6 – OBJECTIONS

6.1. Procedure to Object or to Submit Contentions

1. **Class Members** can object to the **Settlement Agreement** or submit contentions relative to said agreement. At the time that approval of the **Ontario Court** of the **Notice of Approval Hearing** is sought, the **Ontario Plaintiff** will seek approval of the following protocol for **Class Members** who wish to object or submit contentions to this **Settlement**

Agreement, the whole with the goal to facilitate documentation and timely communication of objections and contentions:

(a) A **Class Member** may object to the approval of the **Settlement Agreement** or submit contentions by sending a written objection by email to **Class Counsel**. **Class Counsel** is required to forward all objections and contentions to **Defendants' Counsel** within 48 hours after receipt by email at the addresses listed below.

(b) Objections and contentions should be received by **Class Counsel** before 5:00 p.m. Pacific Time on a date that is 14 days before the date of the **Approval Hearing** which will be reported to the **Ontario Court** in a timely manner.

(c) A **Class Member** who wishes to object to the approval of the **Settlement Agreement** or to submit contentions should state:

(i) the full name, current mailing address, telephone number and email address of the person who is objecting or submitting a contention;

(ii) a brief statement of the nature and reasons for the objection or contention;

(iii) a declaration that the person believes he or she is a member of the **Class** and the reason for that belief including, if available, the part, reference, catalogue and lot numbers of their **Biomet Device(s)**;

(iv) whether the person intends to appear at the relevant **Approval Hearing** or intends to appear by counsel and, if by counsel, the name, address, telephone number and email address of counsel; and

(v) a declaration that the foregoing information is true and correct.

2. For all objections or contentions received five days before the **Approval Hearing** **Class Counsel** shall, no later than three days before the date of the relevant **Approval Hearing**, report to the **Court**, by affidavit, with a copy to counsel for the **Defendants**, the names of persons who objected and copies of any objections. All other objections or contentions will be reported on a timely manner.

SECTION 7 – RELEASES AND DISMISSALS

7.1. Release of Releasees

1. Upon the **Effective Date**, and in consideration of the payment of the **Settlement Amount** and for other valuable consideration set forth in the **Settlement Agreement**, the **Releasors** forever and absolutely release the **Releasees** from the **Released Claims**, including all claims, actions, causes of action, suits, debts, duties, accounts, bonds, covenants, contracts, and demands whatsoever relating in any way to any conduct alleged in the subject matter of the **Proceedings**, or which could have been alleged relating in any way to the subject matter of the **Proceedings**, in either case from the beginning of time to the date hereof. For the consideration provided herein, the **Releasors** agree not to make any claim or take or continue any proceedings relating in any way to any conduct alleged in the subject matter of the **Proceedings**, or which could have been

alleged relating in any way to the subject matter of the **Proceedings**, in either case from the beginning of time to the date hereof, against any other person, corporation, or entity (including, without limitation, any health care professionals, health care providers, and hospitals or other health care facilities) that might claim damages and/or contribution and indemnity and/or other relief under the provisions of the *Negligence Act* (Ontario) or other comparable provincial legislation and amendments thereto, the common law, equity, Quebec civil law, or any other statute, for any relief whatsoever, including relief of a monetary, declaratory, or injunctive nature, from one or more of the **Releasees** in relation to the **Released Claims**.

2. Without limiting any other provisions herein, each **Class Member** who has not affirmatively opted out of the **Proceedings**, whether or not they submit a claim or receive an award, will be deemed by this **Settlement Agreement** completely and unconditionally to have released and forever discharged the **Releasees** from any and all **Released Claims**, including all claims, actions, causes of action, suits, debts, duties, accounts, bonds, covenants, contracts, and demands whatsoever relating in any way to any conduct alleged in the subject matter of the **Proceedings**, or which could have been alleged relating in any way to the subject matter of the **Proceedings**, from the beginning of time to the date hereof.

3. Each **Class Member** who has not affirmatively opt outed of the **Proceedings**, whether or not they or it submits a claim or otherwise receives an award, will be forever barred and enjoined from continuing, commencing, instituting, or prosecuting any action, litigation, investigation, or other proceeding in any court of law or equity, arbitration, tribunal, proceeding, governmental forum, administrative forum, or any other forum,

directly, representatively or derivatively, asserting against any of the **Defendants** or **Releasees** any **Released Claims** covered by this **Settlement Agreement**.

4. The **Provincial Health Insurers** shall each execute and deliver a **Provincial Health Insurer Release** to **Class Counsel** forthwith following execution of this **Settlement Agreement**, which **Class Counsel** will forward to **Detendants' Counsel** to be held in escrow pending court approval of this **Settlement Agreement**.

7.2. No Further Claims

1. The **Releasors** shall not now or hereafter institute, continue, maintain, or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim, or demand against any **Releasees**, or against any other person who may claim contribution or indemnity from any **Releasees** in respect of any **Released Claim**. The **Parties** agree that no **Class Members** shall recover, directly or indirectly, any sum from the **Defendants** or the **Releasees** other than those authorized under the **Settlement Agreement** in connection with a **Biomet Device**. In the event that the **Releasors** have made or should make any claims or demands or threaten to commence any actions, claims or class actions or make any complaints against the **Releasees** arising out of the **Released Matters**, this **Release** may be raised as an estoppel and complete bar to any such claim, demand, action, class action, or complaint.

7.3. Dismissal and Discontinuance of the Proceedings

1. The Ontario **Proceeding** shall be dismissed with prejudice and without costs as against the **Defendants**, and the **Quebec Proceeding** shall be discontinued without costs.

SECTION 8 – TERMINATION OF SETTLEMENT AGREEMENT

8.1. Right of Termination

1. The **Defendants** shall have the right to terminate this **Settlement Agreement** if:

   (a) the **Ontario Court** declines to approve this **Settlement Agreement** or any term or part thereof deemed material by the **Defendants**, or the **Quebec Court** declines to recognise the **Final Order** of the **Ontario Court** approving this **Settlement Agreement** and to discontinue the **Quebec Proceeding** without costs;

   (b) any order approving the **Settlement Agreement** does not become a **Final Order**;

   (c) any judgment recognising the **Final Order** of the **Ontario Court** approving this **Settlement Agreement** does not become a **Final Order**;

   (d) any judgment discontinuing the **Quebec Proceeding** does not become a **Final Order**;

   (e) the form and content of any of the **Final Orders** approved by the **Ontario Court** or **Quebec Court** do not materially comply with the terms of this **Settlement Agreement**, or as otherise agreed by the Parties; or

(f) Defendants' Counsel does not receive a duly executed Provincial Health Insurer Release from each of the Provincial Health Insurers prior to the approval by the Ontario Court of this Settlement Agreement.

2. To exercise a right of termination, the **Defendants** shall deliver a written notice of termination to **Class Counsel**. Upon delivery of such a written notice, this **Settlement Agreement** shall be terminated and, except as provided for in sections 8.2 and 8.3, it shall be null and void and have no further force or effect, shall not be binding on the **Parties**, and shall not be used as evidence or otherwise in any litigation.

8.2. If Settlement Agreement is Terminated

1. If this **Settlement Agreement** is not approved by the **Ontario Court**, is terminated in accordance with its terms, or otherwise fails to take effect for any reason:

(a) any order approving this **Settlement Agreement** shall be set aside and declared null and void and of no force or effect, and anyone shall be estopped from asserting otherwise;

(b) all negotiations, statements, and proceedings relating to the settlement and the **Settlement Agreement** shall be deemed to be without prejudice to the rights of the **Parties**, and the **Parties** shall be deemed to be restored to their respective positions existing immediately before it was executed; and

(c) all funds in the **Account** (including accrued interest and the **Discretionary Fund**) shall be returned to **Defendants' Counsel** within 10 days after the

date of termination, except for the non-reversionary amounts set out in 8.2.1(d).

(d) The **Defendants** shall remain responsible for **Notice and Administration Costs** incurred by the **Claims Administrator** up to the date that the **Settlement Agreement** is terminated in accordance with its terms, subject to the $150,000 cap set out in section 4.2.12 above.

8.3. Survival of Provisions After Termination

1. If this **Settlement Agreement** is not approved by the **Ontario Court**, is terminated in accordance with its terms, or otherwise fails to take effect for any reason, the provisions of this section, sections 8.2, 11, 12.1 to 12.13 and 12.15 to 12.17, and the Recitals, Definitions, and Schedules applicable thereto shall survive the termination and continue in full force and effect.

SECTION 9 – LEGAL FEES AND DISBURSEMENTS

9.1. Class Counsel Fees

1. **Class Counsel** will be compensated as follows:

(a) the sum of $1,250,000.00 (CAD) payable by the **Defendants**, representing a contribution towards **Class Counsel Fees**, **Disbursements**, and applicable taxes;

(b) **Class Counsel Fees** payable by **Class Members**, which may be determined and approved by the **Ontario Court**. Such **Class Counsel Fees** shall be deducted by the **Claims Administrator** from the settlement

awards to **Approved Claimants** and paid to **Class Counsel**. For certainty, this **Settlement Agreement** is not conditional on the **Court's** approval of any **Class Counsel Fees** and **Disbursements**, and in no circumstances shall the **Defendants** be required to contribute more than $1,250,000.00 (CAD) inclusive of all applicable taxes as their contribution towards **Class Counsel Fees** and **Disbursements**, subject to **Court** approval; and

(c) additional legal fees and disbursements related to an individual claim, which may be agreed upon by a claimant and a lawyer (including **Class Counsel**).

9.2. Procedure

1. **Class Counsel** will bring a motion, with notice to **Defendants' Counsel**, to the **Ontario Court** for (i) determination and approval of **Class Counsel Fees** and **Disbursements** payable by the **Class Members**, and (ii) the honourarium for the **Ontario Plaintiff**, at the time **Class Counsel** seeks approval of this **Settlement Agreement**. The **Defendants** shall take no position on the **Class Counsel Fees** and **Disbursements** sought by Class Counsel.

2. **Class Counsel Fees** and **Disbursements** payable pursuant to section 9.1.1 may be paid out of the **Account** only after **Class Counsel** obtains the approval of the **Ontario Court**. **Class Counsel Fees** and **Disbursements** shall be paid in the manner prescribed by sections 4.2.6, 4.2.14 and 4.2.16 of the **Settlement Agreement**.

3. **Class Members** who have retained, or in the process of making a claim do retain, lawyers to assist them in making their individual claims in this **Settlement Agreement** shall be responsible for the legal fees and expenses of such lawyers.

4. **Class Members** are responsible for their own costs in filing and perfecting their claims under this **Settlement Agreement**. **Defendants** are not responsible for these costs and expenses.

5. **Defendants** shall make a deposit in an amount not to exceed the amount set forth in section 9.1.1(a) to enable the **Claims Administrator** pay approved **Class Counsel Fees** and **Disbursements** up to the amounts set forth in that section within 14 days of the **Court's** approval of **Class Counsel Fees** and **Disbursements**. However, if the award of **Class Counsel Fees** and **Disbursements** is appealed, **Class Counsel** agrees to return to the **Account** such **Class Counsel Fees** and **Disbursements** paid from the **Account** until such award is final without the possibility of further appeal at which time the payment will be returned to **Class Counsel**.

SECTION 10 – ADMINISTRATION AND IMPLEMENTATION

10.1. Mechanics of Administration

1. Except to the extent provided for in this **Settlement Agreement**, the mechanics of the implementation and administration of this **Settlement Agreement** shall be determined by agreement of the Parties, or by the **Ontario Court** on motion brought by the **Parties**, or the Claims Administrator, or any one of them.

10.2. Notices Required

1. The bilingual Notice of Approval Hearing and the bilingual Notice of Settlement Approval are to be approved by the **Ontario Court** prior to dissemination.

2. **Class Counsel** and **Defendants' Counsel** will jointly prepare the bilingual Notice of Approval Hearing and the Notice of Settlement Approval, substantially in the form attached in **Schedule B**, **Schedule F**, and **Schedule F.1** as well as a plan for dissemination of the notices as set out in **Schedule G**.

SECTION 11 – NO ADMISSION OF LIABILITY

1. The **Parties** agree that whether or not this **Settlement Agreement** is approved by the **Ontario Court** or is terminated, this **Settlement Agreement** and anything contained herein, and any and all negotiations, documents, discussions, and proceedings associated with this **Settlement Agreement**, and any action taken to carry out this **Settlement Agreement**, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing of liability by the **Releasees**, or of the truth of any of the claims or allegations made in the **Proceedings** or in any other pleading filed by the **Plaintiffs**.

2. The **Parties** further agree that whether or not this **Settlement Agreement** is approved by the **Ontario Court** or is terminated, neither this **Settlement Agreement** nor any document relating to it shall be offered in evidence in any action or proceeding in any court, agency, or tribunal, except to seek court approval of this **Settlement Agreement** or to give effect to and enforce the provisions of this **Settlement Agreement**.

SECTION 12 – MISCELLANEOUS

12.1. Motions for Directions

1. The **Ontario** and **Quebec Plaintiffs**, **Class Counsel**, **Claims Administrator**, **Provincial Health Insurers** or **Defendants** may apply to the **Ontario Court** for directions in respect of the implementation and administration of this **Settlement Agreement**.

2. All motions contemplated by this **Settlement Agreement**, including applications to the **Ontario Court** for directions, shall be on notice to the **Parties**.

12.2. Releasees have no liability for administration

1. The **Releasees** shall have no responsibility for and no liability whatsoever with respect to the administration of the **Settlement Agreement**. All such responsibility lies with the **Claims Administrator**.

12.3. Headings, etc.

1. In this **Settlement Agreement**, the division of the **Settlement Agreement** into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this **Settlement Agreement**. The terms “this Settlement Agreement”, “the Settlement Agreement”, “hereof”, “hereunder”, “herein”, “hereto” and similar expressions refer to this **Settlement Agreement** and not to any particular section or portion of this **Settlement Agreement**.

12.4. Ongoing Jurisdiction

1. Subject to the specific references to the role of the **Quebec Court** in this **Settlement Agreement**, the **Ontario Court** shall retain exclusive jurisdiction over all matters relating to the implementation and enforcement of this **Settlement Agreement**.

12.5. Governing Law

1. Except as expressly provided otherwise, this **Settlement Agreement** shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.

12.6. Entire Agreement

1. This **Settlement Agreement** and the Schedules attached hereto constitute the entire agreement among the **Parties**, and supersede any and all prior and contemporaneous understandings, undertakings, negotiations, representations, communications, promises, agreements, agreements in principle, and memoranda of understanding in connection herewith. The **Parties** agree that they have not received or relied on any agreements, representations, or promises other than as contained in this **Settlement Agreement**. None of the **Parties** shall be bound by any prior obligations, conditions, or representations with respect to the subject matter of this **Settlement Agreement**, unless expressly incorporated herein. This **Settlement Agreement** may not be modified or amended except in writing and on consent of all **Parties** hereto, and any such modification or amendment must be approved by the **Ontario Court**.

12.7. Survival

1. The representations and warranties contained in this **Settlement Agreement** shall survive its execution and implementation.

12.8. Counterparts

1. This **Settlement Agreement** may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement. This **Settlement Agreement** may be delivered and is fully enforceable in either original or other electronic form provided that it is duly executed.

12.9. Negotiated Agreement

1. This **Settlement Agreement** has been the subject of negotiations and discussion among the **Parties**, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this **Settlement Agreement** shall have no force and effect. The **Parties** further agree that the language contained or not contained in previous drafts of this **Settlement Agreement**, or any agreement in principle, shall have no bearing upon the proper interpretation of this **Settlement Agreement**.

12.10. Dates

1. Dates referred to in this **Settlement Agreement** may be altered with the written consent of the **Parties** and with the approval of the **Ontario Court**.

12.11. French Translation

1. The **Parties** acknowledge that they have required and consented that the **Settlement Agreement**, including Schedules, be prepared in English and French.

2. The English version of the **Settlement Agreement** is authoritative in Ontario (and is authoritative as to all **Class Members** in any province or territory of Canada except Quebec), and the French and English versions of the **Settlement Agreement** have equal force in Quebec (and are authoritative as to all **Class Members** who reside in Quebec). A French translation of the **Settlement Agreement** and all schedules, protocols and final notices pursuant to this **Settlement Agreement** shall be paid for by the **Defendants**.

12.12. Confidentiality

1. The **Parties** agree that no public statements shall be made regarding these **Proceedings** or their settlement that are in any way inconsistent with the terms of the **Settlement Agreement**.

2. In particular, the **Parties** agree that any public statements regarding these **Proceedings** will indicate that the settlement has been negotiated and agreed by the **Parties** and approved by the **Ontario Court** without any admissions or findings of liability or wrongdoing and without any admissions or conclusions as to the truth of any of the facts alleged in the **Proceedings**, all of which are specifically denied.

12.13. Recitals

1. The Recitals to this **Settlement Agreement** form part of the **Settlement Agreement**.

12.14. Schedules

1. The Schedules annexed hereto form part of this **Settlement Agreement** and are:

Schedule A – Claimant Declaration

Schedule B – Order on Notice of Approval Hearing

Schedule C – Order on Approval of Settlement Agreement

Schedule D – Physician's Declaration

Schedule E – Extraordinary Expense Pool Claim Form

Schedule F – Short-Form Notice to Class Members of Settlement Approval

Schedule F.1 – Long-Form Notice to Class Members of Settlement Approval

Schedule G – Plan for Dissemination of Class Notices

Schedule H – List of Complications and Corresponding Payment Amounts

Schedule I – Reconsideration Protocol

Schedule J – Form of Monthly Reporting by Claims Administrator

Schedule K – List of Provincial Health Insurers and applicable legislation

Schedule L – form of Provincial Health Insurer Release

12.15. Acknowledgements

1. Each of the **Parties** hereby affirms and acknowledges that:

   (a) they or a representative of the **Party** with the authority to bind the **Party** with respect to the matters set forth herein has read and understood the **Settlement Agreement**;

   (b) the terms of this **Settlement Agreement** and the effects thereof have been fully explained to them or the **Party's** representative by their or its counsel;

   (c) they or the **Party's** representative fully understands each term of the **Settlement Agreement** and its effect; and

   (d) no **Party** has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other **Party** with respect to the first **Party's** decision to execute this **Settlement Agreement**.

12.16. Authorized Signature

1. Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this **Settlement Agreement**.

12.17. Notice

1. Where this **Settlement Agreement** requires a **Party** to provide notice or any other communication or document to another, such notice, communication, or document shall

be provided by email, or letter by overnight delivery to the representatives for the **Party** to whom notice is being provided, as identified below:

(a) For **Plaintiffs**, **Provincial Health Insurers** and **Class Counsel**:

KOSKIE MINSKY LLP
Barristers and Solicitors
20 Queen Street West
Suite 900
P.O. Box 52
Toronto ON M5H 3R3

Jonathan Ptak
Jamie Shilton

Tel: 416.977.8353
Email: jptak@kmlaw.ca
jshilton@kmlaw.ca

STEVENSON WHELTON LLP
Barristers and Solicitors
15 Toronto Street
Suite 200
Toronto ON M5C 2E3

J. Daniel McConville

Tel: 416.599.7900
Email: dmcconville@swlawyers.ca

KLEIN LAWYERS
100 King Street West
Suite 5600
Toronto ON M5X 1C9

Brent Ryan
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Email: bryan@callkleinlawyers.com

SYLVESTRE PAINCHAUD ET ASSOCIÉS
740, Avenue Atwater
Montréal, Québec, H4C 2G9

Normand Painchaud
Sophie Estienne

Tel: 514.937.2881
Email: n.painchaud@spavocats.ca
s.estienne@spavocats.ca

(b) For the **Defendants** and **Defendants' Counsel**:

DAVIES WARD PHILLIPS & VINEBERG LLP
155 Wellington Street West
Toronto ON M5V 3J7

Derek D. Ricci
Chantelle Cseh

Tel: 416.367.7471
Email: dricci@dwpv.com
ccseh@dwpv.com

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DATED AT TORONTO, ONTARIO this 18th day of July, 2024

KOSKIE MINSKY LLP

DATED AT TORONTO, ONTARIO this 18th day of July, 2024

WHELTON HIUTIN LLP (formerly STEVENSON WHELTON LLP)

DATED AT TORONTO, ONTARIO this ■ day of ■, 2024

■
KLEIN LAWYERS

DATED AT MONTREAL, QUEBEC this 18th day of July, 2024

(s) SYLVESTRE PAINCHAUD ET ASSOCIÉS

■
SYLVESTRE PAINCHAUD ET ASSOCIÉS

DATED AT TORONTO, ONTARIO this 18th day of July, 2024

KOSKIE MINSKY LLP

DATED AT TORONTO, ONTARIO this ■ day of ■, 2024

■
STEVENSON WHELTON LLP

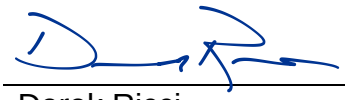
DATED AT TORONTO, ONTARIO this 18th day of July, 2024

KLEIN LAWYERS
BRENT D. RYAN

DATED AT TORONTO, ONTARIO this ■ day of ■, 2024

■
SYLVESTRE PAINCHAUD ET ASSOCIÉS

DATED AT TORONTO, ONTARIO this 18th day of July, 2024



Derek Ricci
DAVIES WARD PHILLIPS &
VINEBERG LLP

Schedule A

Claimant Declaration

CLAIMANT DECLARATION

CANADIAN M2a 38, M2a MAGNUM and ReCAP FEMORAL RESURFACING SYSTEM METAL-ON-METAL CLASS ACTION

This form must be completed and returned to the Claims Administrator by electronic filing, email, mail or in person no later than **[date]**

I am making a claim either myself or through counsel:

☐ as a Claimant who was implanted with any of the M2a 38, M2a Magnum or ReCap Femoral Resurfacing System, or any combination thereof, implanted in Canada and used as a metal-on-metal hip implant system ("**Biomet Device**").

☐ as the Representative (a person who is the personal representative of a Claimant who is deceased or under a legal disability) of a Claimant.

Section A: Claimant Information

First Name Middle Last Name

Date of Birth (dd/mm/yyyy) Gender: ☐ Male ☐ Female ☐ Other

Address

City Province/Territory Postal Code

Daytime Phone Number Cellular Phone Number

Email Current Provincial Health Insurance Number ("**PHN**") (if applicable)

Did the Claimant's province of residence change since the time that the Claimant received a Biomet Device?

☐ Yes ☐ No

If you checked "Yes," please list the Claimant's other province(s) of residence and their Provincial Health Insurance Number(s) for those province(s):

Section B: Personal Representative

Are you completing this form as someone with the legal capacity to act on behalf of the Claimant *(i.e.*, an individual with power of attorney, an estate representative, etc.)?

☐ Yes ☐ No

If "Yes", please complete the remainder of Section B with information about yourself. If "No," skip to Section C.

First Name | Middle | Last Name

Date of Birth (dd/mm/yyyy)

Address

City | Province/Territory | Postal Code

Email | Date of Death of the Claimant (if applicable) (dd/mm/yyyy)

Daytime Phone Number | Cellular Phone Number

Relationship to Claimant:

Please attach the documents that grant you the legal authority to act on behalf of the Claimant to this form (i.e. Power of Attorney, Last Will and Testament, Letters of Administration, etc.). If the Claimant is deceased, please also attach a copy of the Claimant's death certificate to this form.

☐ Power of Attorney

☐ Certificate of Incapacity

☐ Letters of Administration

☐Will

☐ Death Certificate

☐ Grant of Probate

☐ Other. Please explain_____

Section C: Lawyer Information (if applicable)

Lawyer Last Name Lawyer First Name

Name of Law Firm

Address

Phone Number Email

Section D: Biomet Device Implant Information

Location of the Device: ☐ Right ☐ Left ☐ Bilateral

Implant Date (Right)_____
(dd/mm/yyyy)

Name of Hospital_____

Surgeon _____

Implant Date (Left)_____
(dd/mm/yyyy)

Name of Hospital_____

Surgeon _____

Identification stickers and operative report(s) for your Biomet Device(s) must be submitted with this Claimant Declaration.

Section E: Revision Information

Has the Claimant undergone a revision surgery or surgeries to remove the Biomet Device(s)?

☐ Yes ☐ No

If you checked "No," please skip to Section F below.

Location of Revision: ☐ Right ☐ Left ☐ Bilateral

Implant Revision Date (Right) _____
(dd/mm/yyyy)

Name of Hospital_____

Surgeon _____

Implant Revision Date (Left)_____
(dd/mm/yyyy)

Name of Hospital_____

Surgeon _____

Section F: Revision Medically Precluded

Has the Claimant's doctor recommended a revision, but also advised the Claimant that a revision is medically precluded?

☐ Yes ☐ No

If you checked "Yes," please submit with this form either: (i) medical records of other medical reports that explicitly state that you are medically precluded from undergoing revision surgery; or (ii) Physician's Declaration completed and signed by your physician. Complete the remainder of Section F.

If you checked "No," please skip to Section G.

Identify the name and address of the doctor who advised the Claimant, the date of discussion, and the medical condition(s) that prevents the Claimant from having the surgery. Please state whether the Claimant has been advised that the condition(s) will permanently prevent the Claimant from having revision surgery, as opposed to delaying a revision surgery.

_____
Date(s) of Discussion (MM/DD/YYYY)

_____
Doctor

_____
Address

Medical condition(s): _____

_____

_____

_____

Section G: Claimant's Immediate Family Information

Complete this section if the Claimant had a revision surgery or is medically precluded from having revision surgery.

If the Claimant had at least one Revision Surgery to remove a Biomet Device, please answer the following:

Did an adult spouse, child, grandchild, parent, grandparent, brother or sister provide the Claimant with care to assist in the Claimant's recovery after their revision surgery or surgeries to remove the Biomet Device(s)?

☐ Yes ☐ No

If you checked "Yes," list the family member's or members' name(s) and their relationship to the Claimant:

Name(s) of Family Member(s)	Relationship(s) to Claimant

Did the Claimant have children under the age of 18 who lived with them on the date of their revision surgery to remove the Biomet Device(s)?

☐ Yes ☐ No

If you checked "Yes," list the names and dates of birth:

Name	DOB: (dd/mm/yyyy)
Name	DOB: (dd/mm/yyyy)

If the Claimant is medically precluded from undergoing a revision surgery, please answer the following:

Did an adult spouse, child, grandchild, parent, grandparent, brother or sister provide the Claimant with care to assist in the Claimant's recovery after their surgery or surgeries to implant the Biomet Device(s)?

☐ Yes ☐ No

If you checked "Yes," list the family member's or members' name and their relationship(s) to the Claimant:

Name(s) of Family Member(s)	Relationship(s) to Claimant

Did the Claimant have children under the age of 18 who lived with them on the date of their surgery to implant the Biomet Device(s)?

☐ Yes ☐ No

If you checked "Yes," list the names and dates of birth of those children:

Name	DOB: (dd/mm/yyyy)
Name	DOB: (dd/mm/yyyy)

Section H: Post-Revision Complications

Did the Claimant's revision surgery or surgeries cause any of the following? If so, state the date on which the complication occurred.

	Date (dd/mm/yyyy)
Second Revision (surgery to remove a replacement hip implant that had been implanted as part of a Revision Surgery because the replacement hip device failed)	
Third Revision (surgery to remove a replacement hip implant that had been implanted as part of a Second Revision because the replacement hip device failed)	
Infection (any infection in the revised hip that is diagnosed within 30 days after a Revision Surgery and determined to have been caused by the Revision Surgery)	
Femoral Fracture (fracture of femur that occurs during a Revision Surgery or as a result of the Revision Surgery, and does not include fracture that results from trauma that occurs before or after the Revision Surgery)	
Dislocation (complete disassociation of femoral head and acetabular cup that occurs within 6 weeks of the Revision Surgery)	
Blood Clot (diagnosis made within 72 hours of a Revision Surgery of pulmonary embolism or deep vein thrombosis that resulted from a Revision Surgery)	
Stroke (cerebrovascular incident or insult occurring within 72 hours of a Revision Surgery and determined to have been caused by the Revision Surgery)	
Heart Attack (myocardial infarction or cardiac arrest occurring within 72	

hours of a Revision Surgery and determined to have been caused by the Revision Surgery)	
Permanent Nerve Damage (nerve damage [including but not limited to meralgia paresthetica and foot drop caused by peroneal nerve damage] resulting from a Revision Surgery that is permanent as established by medical records or a Physician's Declaration, or that has persisted for 18 months or more.	
Death (class member died within 72 hours after a Revision Surgery as a result of the Revision Surgery)	
Lost Wages (economic loss supported by documentary evidence showing income loss in excess of 20% of the claimant's aggregate gross income for the two highest earning years in the four years preceding the Revision Surgery)	

To make a Post-Revision Complication claim (EXCEPT for a Lost Wages claim), you must submit the following with this form:

A) A Physician's Declaration documenting each complication; OR

B) Medical records or other medical reports, including operative reports, relating to each complication.

To make a Lost Wages claim, you must submit documentary evidence showing Post-Revision income loss in excess of 20% of the Claimant's aggregate gross income for the two highest earning years in the four years preceding the Revision Surgery. This documentary evidence shall include:

A) Income tax statements, T4s, Notices of Assessment, or similar documents from a recognized tax authority; OR

B) Employment records from before and after the Revision Surgery, meaning paystubs, employment letters, and similar documents.

Section I: Out-of-Pocket Expenses

Complete this section only if the Claimant had a revision surgery or is medically precluded from undergoing revision surgery.

☐ Check here if the Claimant purchased his or her Biomet Device(s) with his or her own funds (i.e., the cost of the implant was not paid by an insurer). If you checked the box, attach all receipts or other documentation reflecting the amount paid by the Claimant for the Biomet Device(s) to this form.

Did the Claimant (who has been revised or is medically precluded from undergoing a revision) incur any other out-of-pocket expenses in connection with a revision surgery, post-revision complications, or medical treatment?

☐ Yes ☐ No

If you checked "No," skip to Section J. If you checked "Yes," please answer the following:

Are these claimed out-of-pocket expenses $2,500 or less?

☐ Yes ☐ No

If you checked "No," and you wish to seek reimbursement for the expenses you incurred that are greater than $2,500, you may complete and submit the Extraordinary Expense Pool Claim Form. Please note that you are required to provide receipts substantiating all of your out-of-pocket expenses if you seek reimbursement totaling more than $2,500. If you choose to complete the Extraordinary Expense Pool Claim Form, please attach the receipts substantiating the expenses you seek to recover up to $2,500 to this Claimant Declaration and attach the receipts substantiating any additional expenses you seek to recover to the Extraordinary Expense Pool Claim Form.

If you checked "Yes" above, or you seek to recover no more than $2,500 in out-of-pocket expenses, do you have receipts to substantiate the expenses you incurred?

☐ Yes ☐ No

If "Yes," please attach your receipts to this form. If "No," please state the approximate total of the expenses you incurred: $_____

The maximum amount which may be reimbursed for out-of-pocket expenses which are not documented by receipts is $750.

Section J: Declaration

I solemnly declare that:

The Claimant was implanted with one or more of M2a 38, M2a Magnum or ReCap Femoral Resurfacing System, or any combination thereof, in Canada that was used as a metal-on-metal hip implant system ("**Biomet Device**"). The Claimant wishes to make a claim for compensation in this class action.

Attached are copies of the Claimant's implant and revision (if applicable) operative reports, medical records and documentation which include identifying catalogue and lot numbers of the Claimant's Biomet Device(s). All complete operative reports, medical records and documentation have been submitted. If the information has not been submitted, it is because it is not available or within the Claimant's possession, custody, or control and cannot be obtained from the hospital or physician where treatment occurred.

If I am not submitting copies of the Claimant's Biomet Device(s) peel-and-stick labels as product identification, it is because the hospital at which the Claimant's implant surgery occurred could not provide me with the labels because they are not in the Claimant's hospital medical records.

If I am not submitting a photograph of the Claimant's Biomet Device(s) in lieu of the Claimant's Biomet Device(s) peel and-stick labels, I cannot submit a photograph because the Claimant's Biomet Device(s) is not within the Claimant's or my possession, custody, or control.

I make this declaration believing it to be true, and knowing that it is of the same legal force and effect as if it were made under oath.

_____ _____

Signature of Claimant or Representative Date

Please note: All pages of this Declaration and supporting documents must be submitted to the Claims Administrator on or before the applicable Submission Deadline

Schedule B - Order on Notice of Approval Hearing

Court File No. CV-13-490112-CP

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE	)	DAY, THE DAY
JUSTICE	)	OF , 2024

BETWEEN:

STEPHEN DALTON DINE

Plaintiff

-and-

BIOMET INC., BIOMET ORTHOPEDICS LLC, BIOMET MANUFACTURING CORP., BIOMET U.S. RECONSTRUCTION LLC and BIOMET CANADA INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION by the Plaintiff for an order approving the form of notice that will advise class members of the hearing to approve the proposed settlement, as well as the manner of publicizing such notice, was heard this day in Toronto.

UPON BEING ADVISED that the Plaintiff and the Defendants have entered into the Settlement Agreement attached hereto as Schedule "1" and that the Defendants have consented to the terms of this Order, **THIS COURT ORDERS AND DECLARES** that:

1. For the purposes of this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.

2. The motion for approval of settlement in this proceeding shall be heard on **[date]** at the court house at Osgoode Hall, 130 Queen Street West, Toronto, Ontario (the "**Approval Hearing**").

3. The form and content of the short-form and long-form hearing notices, substantially in the form attached hereto as Schedule “2” and Schedule "3" is approved (the “**Notices of Approval Hearing**”). The Notices of Approval Hearing shall be available in both English and French.

4. The proposed manner of publicizing the Hearing Notice as described in Schedule “4”, is approved (the “**Notice Plan**”).

5. Verita Global LLC is hereby appointed as the “**Notice Administrator**”, and shall disseminate the Notices of Approval Hearing in accordance with the Notice Plan.

6. The Hearing Notice and the Notice Plan constitute fair and reasonable notice to the class of the Approval Hearing.

7. Any Class Member may submit an objection or contention to the Settlement Agreement in accordance with the following procedure:

(a) A Class Member may object to the approval of the Settlement Agreement or submit a contention by sending a written objection by email to counsel for the Plaintiff and the class (“**Class Counsel**”). Class Counsel is required to forward all objections and contentions to Defendants’ counsel within 48 hours after receipt by email at the addresses listed below.

(b) Objections and contentions should be received by Class Counsel before 5:00 p.m. Pacific Time on a date that is 14 days before the date of the Approval Hearing which will be reported to the Court in a timely manner.

(c) A Class Member who wishes to object to the approval of the Settlement Agreement or to submit contentions should state:

(i) the full name, current mailing address, telephone number and email address of the person who is objecting or submitting a contention;

(ii) a brief statement of the nature and reasons for the objection or

contention;

(iii) a declaration that the person believes he or she is a member of the Class and the reason for that belief including, if available, the part, reference, catalogue and lot numbers of their Biomet Device(s);

(iv) whether the person intends to appear at the relevant Approval Hearing or intends to appear by counsel and, if by counsel, the name, address, telephone number and email address of counsel; and

(v) a declaration that the foregoing information is true and correct.

8. For all objections or contentions received five days before the **Approval Hearing**, **Class Counsel** shall, no later than three days before the date of the relevant **Approval Hearing**, report to the **Court**, by affidavit, with a copy to counsel for the **Defendants**, the names of persons who objected and copies of any objections. All other objections or contentions will be reported on a timely manner.

Schedule "1": Settlement Agreement

Schedule "2": Notice of Approval Hearing (Short Form)

Were you, or a family member, implanted with a M2a 38, M2a Magnum or ReCap Femoral Resurfacing System Hip Implant, or any combination thereof, in Canada, which was used as a metal-on-metal hip implant system?

This notice may affect your rights. Please read carefully.

Several individuals in Canada started class action lawsuits, alleging that the M2a 38, M2a Magnum or ReCap Femoral Resurfacing System hip implants, or any combination thereof, implanted in Canada and used as a metal-on-metal hip implant system (referred to as the "**Biomet Device**") were defective, and that they failed prematurely. The Defendants deny these claims. The Ontario Superior Court of Justice certified a class action on December 18, 2015 in the case of *Dine v. Biomet et al.* Additionally, a proposed class action was filed in Quebec as *Conseil pour la protection des malades c. Biomet Canada inc.*

The Defendants, while not admitting liability, have agreed to a settlement of these lawsuits. For a copy of the settlement agreement, or for more information, please contact Class Counsel listed below.

Who is Included?

The proposed settlement applies to all persons who were implanted with a Biomet Device in Canada who have not opted out of the *Dine* action, their estates and certain family members.

What does the Settlement Provide?

If the settlement is approved, eligible class members who submit all required forms and documentation within the timelines set out in the Settlement Agreement will receive compensation, less deductions for legal fees and levies to Public Litigation Funders.

Eligible class member payments will depend on various individual factors including when the implants were done and whether the implants were revised and when that revision took place. Some individual claims may also be awarded from a discretionary fund established by the Settlement Agreement.

Any remaining funds from the settlement, if applicable, will be distributed to third parties approved by the Ontario Court after necessary legal levies have been paid to Public Litigation Funders. Additionally, the settlement includes provisions for payment to public health insurers.

Upon approval by the Courts, Class Members will have the option to file claims and submit required forms and documentation electronically, by hand, via email, or by mail.

The settlement provides for a Discretionary Fund, which will make other compensation available to eligible Class Members. Please refer to the Special Claims Protocol at [WEBSITE] for specific terms and conditions applicable to Discretionary Fund claims.

The settlement also provides for payment to public health insurers. Please refer to the settlement agreement for specific terms and conditions.

What are your Legal Rights and Options?

A motion to approve the settlement agreement is scheduled to be heard by the Ontario Superior Court of Justice in Toronto on **[date]**. Class Counsel will also ask the court to approve payments of fees and disbursements on each approved award for their work in connection with the proceedings, and the payment by the defendants of a contribution to their fees and disbursements.

Class members have several options at this stage:

1. **Do nothing –** Class members who support the settlement do not have to do anything right now. Please note that by doing nothing, class members give up any right to object to the settlement and the right to sue the Defendants on their own.

2. **Submit a contention or objection** – If class members do not wish to attend the hearing but wish to explain why they do not support the proposed settlement, they can submit a contention or objection. Your contention or objection will be delivered to the Court by Class Counsel.

3. **Participate in the hearing** – class members can attend the hearing in person on [date] to voice their objection to the proposed settlement. The Court will decide if class members will be permitted to make oral submissions at the time of the hearing. To be eligible to participate, class members must have submitted their contentions or objections prior to the hearing.

Contentions or objections need not adhere to a formal format but should be submitted in writing to Class Counsel at least 14 days before the hearing and should include:

(a) The full name, current mailing address, telephone number, and email addressof the person who is submitting a contention or objecting;

(b) A brief statement of the nature and reasons for the contention or objection;

(c) A declaration that the person believes he or she is a member of the Class and the reason for that belief including, if available, the catalogue and lot numbers of their Biomet Device;

(d) Whether the person intends to appear at the Approval Hearing or intends to appear by counsel, and if by counsel, the name, address, telephone number, and email address of counsel; and

(e) A declaration that the foregoing information is true and correct.

Are Class Members responsible for Legal Fees?

Under the terms of the Settlement Agreement, the Defendants have agreed to pay Class Counsel the sum of $1.25 million as a contribution towards Class Counsel Fees, Disbursements and applicable taxes.

Class Counsel will be asking the court to approve Class Counsel Fees and Disbursements of 25 percent to be deducted from payments made to eligible Class Members (less the amounts paid by the Defendants) in respect of the work performed and disbursements incurred in the class action and to obtain the Settlement.

Further legal fees, disbursements, and taxes in order to assist each individual claimant to submit a claim in the settlement may also be payable in an amount to be agreed upon as between the Class Member and counsel. Class Counsel undertake not to charge in excess of 8.3 percent to assist with the Class Member's claim.

For Additional Information and a Copy of the Settlement Agreement:

<table>
<tr>
<td>

KOSKIE MINSKY LLP
Barristers and Solicitors
20 Queen Street West
Suite 900
P.O. Box 52
Toronto ON M5H 3R3

Jonathan Ptak
Jamie Shilton

Tel: 416.977.8353
Email: jptak@kmlaw.ca
jshilton@kmlaw.ca

</td>
<td>

KLEIN LAWYERS
100 King Street West
Suite 5600
Toronto ON M5X 1C9

Brent Ryan
Tel: 604-874-7171
Email: bryan@callkleinlawyers.com

</td>
</tr>
<tr>
<td>

STEVENSON WHELTON LLP
Barristers and Solicitors
15 Toronto Street
Suite 200
Toronto ON M5C 2E3

J. Daniel McConville

Tel: 416.599.7900
Email: dmcconville@swlawyers.ca

</td>
<td>

SYLVESTRE PAINCHAUD ET ASSOCIÉS
740, Avenue Atwater
Montréal, Québec, H4C 2G9

Normand Painchaud
Sophie Estienne

Tel: 514.937.2881
Email: n.painchaud@spavocats.ca
s.estienne@spavocats.ca

</td>
</tr>
</table>

Schedule "3": Notice of Approval Hearing (Long Form)

Were you, or a family member, implanted with a M2a 38, M2a Magnum or ReCap Femoral Resurfacing System Hip Implant, or any combination of these, in Canada, which was used as a metal-on-metal hip implant system?

This notice may affect your rights. Please read carefully.

Several individuals in Canada started class action lawsuits, alleging that the M2a 38, M2a Magnum or ReCap Femoral Resurfacing System hip implants, or any combination thereof, implanted in Canada and used as a metal-on-metal hip implant system (referred to as the "**Biomet Device**"), were defective and failed prematurely when implanted in patients in Canada. The Defendants deny these claims. The Ontario Superior Court of Justice certified a class action on December 18, 2015, in the case of *Dine v. Biomet et al.* Additionally, a proposed class action was filed in Quebec under *Conseil pour la protection des malades v. Biomet Canada inc.*

The Defendants, while not admitting liability, have agreed to a settlement of these lawsuits. For a copy of the settlement agreement, or for more information, please contact Class Counsel listed below.

A motion to approve the settlement agreement is scheduled to be heard by the Ontario Superior Court of Justice in Toronto on [date]. Class Counsel will also ask the court to approve an award of fees and disbursements for their work in connection with the proceedings during the hearing. Class members have several options at this stage:

1. **Do nothing –** Class members who support the settlement do not have to do anything right now. Please note that by doing nothing, class members give up any right to object to the settlement and the right to sue the Defendants on their own.

2. **Submit a contention or objection** – If class members do not wish to attend the hearing but wish to explain why they do not support the proposed settlement, they can submit a contention or objection. Your contention or objection will be delivered to the Court by Class Counsel.

3. **Participate in the hearing** – class members can attend the hearing in person on [date] to voice their objection to the proposed settlement. The Court will decide if class members will be permitted to make oral submissions at the time of the hearing. To be eligible to participate, class members must have submitted their contentions or objections prior to the hearing.

Contentions or objections need not adhere to a formal format but should be submitted in writing to Class Counsel and the Ontario Court at least 5 days before the hearing and should include:

a) The full name, current mailing address, telephone number, and email address of the person who is submitting a contention or objecting;

b) A brief statement of the nature and reasons for the contention or objection;

c) A declaration that the person believes he or she is a member of the Class and the reason for that belief including, if available, the catalogue and lot numbers of their Biomet Device;

d) Whether the person intends to appear at the hearing or intends to appear by counsel, and if by counsel, the name, address, telephone number, and email address of counsel; and

e) A declaration that the foregoing information is true and correct.

What this Notice Contains

Basic Information

1. Why did Class Members get this Notice?
2. What is a Class Action?
3. What is this lawsuit about?
4. Why is there a settlement?

Who is Included in the Settlement?

5. Who is included in the proposed settlement?

Proposed Settlement Benefits

6. What does the proposed settlement provide?
7. How will the lawyers be paid?

The Lawyers Representing Class Members

8. Who are Class Counsel, lawyers for the class?

Making Your Views Known

9. How do Class Members tell the court if they approve of, or object to, the proposed Settlement?

The Approval Hearing

10. When and where will the court decide whether to approve the proposed Settlement?
11. Do Class Members have to attend the hearing?
12. May Class Members speak at the hearing?
13. What if Class Members do nothing?

Basic Information

1. Why did Class Members get this Notice?

The Ontario Court has authorized this Notice to inform Class Members about the proposed settlement and their options before the Court decides whether to give final approval to the proposed settlement. This notice explains the lawsuits, the proposed settlement, and Class Members' legal rights.

2. What is a Class Action?

In a class action, one or more people called a "Representative Plaintiffs" sue on behalf of those who have similar claims. All of these people are called a "Class" or "Class Members". The courts resolve the issues for everyone affected by the class action, except for those whose excluded themselves, or "opt out" of the lawsuit.

3. What is this lawsuit about?

The class actions relate to the M2a 38, M2a Magnum or ReCap Femoral Resurfacing System hip implants, or any combination thereof, implanted in Canada and used as a metal-on-metal hip implant system. The Representative Plaintiffs claim that they were defective and failed prematurely when implanted in patients in Canada.

4. Why is there a settlement?

The plaintiffs and the defendants have agreed to a proposed settlement of the class actions. The proposed settlement is not binding unless approved by the court. By agreeing to settle the lawsuit, the parties avoid the costs, uncertainty, and delay of going to trial and obtaining judgment, and the risks associated with being unsuccessful at trial. In this case, it also means that class members will not need to testify in court.

The plaintiffs and the lawyers for the class ("Class Counsel") believe that the proposed settlement is fair, reasonable, and in the best interests of the Class.

Who is Included in this Settlement?

5. Who is included in the proposed settlement?

The proposed settlement applies to all persons who were implanted with a Biomet Device in Canada who have not opted out of the *Dine v. Biomet et al.* action, their estates and certain family members.

Proposed Settlement Benefits

6. What does the proposed settlement provide?

If the settlement is approved, eligible class members who submit all required forms and documentation within the timelines set out in the Settlement Agreement will receive

compensation.

Individual Payments to Class Members:

Claim Category	**Quantum**
Unrevised Claimant (not Medically Precluded)	$500
Unrevised Claimant (Medically Precluded)	$45,000
Single Revision for Qualified Revision Surgery Claimant	$75,000
Bilateral Revision for Qualified Revision Surgery Claimants	$90,000

"Qualified Revision Surgery Claimant" means a class member who, as of the Claims Deadline, was implanted with a Biomet Device in Canada and: (i) has had a revision surgery; (ii) has been scheduled for a revision surgery; or (iii) was indicated by a physician as requiring a revision surgery and the revision surgery is planned, even if the date and time have not yet been finalized. The revision must have taken place, or take place, at least 180 days after the Index Surgery and not have been required because of infection or trauma, unless medical records establish that the claimant would likely have required the revision regardless of the infection or trauma.

"Medically Precluded" means a Class Member for whom a Revision Surgery was determined to be necessary within 12 years and 1 day of the Index Surgery, but who was unable to undergo a Revision Surgery due to the existence of a medical condition.

The Settlement Agreement provides that for Qualified Revision Surgery Claimants and Medically Precluded Class Members are in all cases subject to the following reductions:

In Vivo Time	**Cumulative Reduction of Total Amount**
7 years, 1 day	5%
8 years, 1 day	10%
9 years, 1 day	20%
10 years, 1 day	30%
11 years, 1 day	40%

12 years and 1 day and beyond	No compensation unless provided for from the Discretionary Fund

The settlement agreement also provides for:

a) A Discretionary Fund to be distributed to Class Members pursuant to a Special Claims Protocol to be approved by the Ontario Court;

b) Additional compensation for certain defined complications;

c) Compensation for certain out-of-pocket expenses; and

d) Compensation for family members who provided care in certain circumstances.

Please refer to the Special Claims Protocol at [WEBSITE] for specific terms and conditions applicable to Discretionary Fund claims.

Any remaining funds from the settlement, if applicable, will be distributed to third parties approved by the Ontario Court after necessary legal levies have been paid to the Class Proceedings Fund or the Fonds d'aide aux actions collectives, as applicable. Additionally, the settlement includes provisions for payment to public health insurers.

Upon approval by the Courts, Class Members will have the option to file claims and submit required forms and documentation electronically, by hand, via email, or by mail.

For class members resident outside of Quebec, a 10% levy on each award will be paid to the Class Proceedings Fund. For class members resident in Quebec, a 10% levy on each award will be paid to the Fonds d'aide aux actions collectives.

7. How will the lawyers be paid?

Under the terms of the Settlement Agreement, the Defendants have agreed to pay Class Counsel the sum of $1.25 million as a contribution towards Class Counsel Fees, Disbursements and applicable taxes.

Class Counsel will be asking the court to approve Class Counsel Fees and Disbursements of 25 percent to be deducted from payments made to eligible Class Members (less the amounts paid by the Defendants) in respect of the work performed and disbursements incurred in the class action and to obtain the Settlement.

Further legal fees, disbursements, and taxes in order to assist each individual claimant to submit a claim in the settlement may also be payable in an amount to be agreed upon as between the Class Member and counsel. Class Counsel undertake not to charge in excess of 8.3 percent to assist with the Class Member's claim.

The Lawyers Representing Class Members

8. Who are class Counsel, lawyers for the class?

Class Counsel are the law firms Koskie Minsky LLP, Stevenson Whelton LLP, Klein Lawyers LLP, and Sylvestre Painchaud & Et Associes.

The Approval Hearing

9. When and where will the court decide whether to approve the proposed Settlement?

The Ontario Court will hold a hearing on [date] to decide whether to approve the proposed Settlement and Class Counsel's request for legal fees and disbursements. Class Members may attend the hearing in person and ask to speak but attendance is not required.

10. Do Class Members have to attend the hearing?

No. Class Counsel will answer any questions the Court may have. If class members with so observe, they are welcome to attend. Class Members may also have their own lawyer attend at their own expense.

11. May Class Members speak at the hearing?

Class Members may ask the Court for permission to speak at the approval hearing.

12. What if Class Members do nothing?

If Class Members do nothing, they are choosing by default, not to object to the proposed settlement. The Settlement Approval Hearing will proceed, and the court will consider whether the settlement is fair, reasonable, and in the best interest of the Class, and whether Class Counsel's fees should be approved. If class members agree with the settlement, nothing further is required.

For Additional Information and a Copy of the Settlement Agreement:

KOSKIE MINSKY LLP Barristers and Solicitors 20 Queen Street West Suite 900 P.O. Box 52 Toronto ON M5H 3R3 **Jonathan Ptak** **Jamie Shilton** Tel: 416.977.8353 Email: jptak@kmlaw.ca jshilton@kmlaw.ca	**KLEIN LAWYERS** 100 King Street West Suite 5600 Toronto ON M5X 1C9 **Brent D. Ryan** Tel: 604.714.6154 Email: bryan@callkleinlawyers.com **SYLVESTRE PAINCHAUD & ET ASSOCIES** 740, Avenue Atwater Montréal, Québec, H4C 2G9

STEVENSON WHELTON LLP Barristers and Solicitors 15 Toronto Street Suite 200 Toronto ON M5C 2E3 **J. Daniel McConville** Tel: 416.599.7900 Email: dmcconville@swlawyers.ca	**Normand Painchaud** **Sophie Estienne** Tel: 514.937.2881 Email: n.painchaud@spavocats.ca s.estienne@spavocats.ca

Schedule "4" - Notice Plan

The Notice of Approval Hearing (short form and long-form) and the Notice of Settlement Approval (short form and long-form) (collectively the "**Notices**") will be disseminated by the following means:

1. Class Counsel will send the Notices by mail or email to all class members who have contacted Class Counsel regarding this action and provided their contact information.

2. Class Counsel shall post a copy of the Notices and the Settlement Agreement to their respective websites.

3. Class Counsel shall issue the media release attached hereto as Schedule 5 with the Notice of Approval Hearing, and the media release will be distributed through Canada Newswire.

4. The Administrator shall arrange for publication of the information contained in the Short-Form Notice on various social media platforms including Facebook, Instagram, and LinkedIn.

5. In addition to the above, for Notice of Settlement Approval (Short-Form and Long-Form), the parties will reasonably cooperate on dissemination of notice to the Class through hospitals in Canada and/or by the Administrator based on Class Member contact information provided by hospitals. If required, the Plaintiffs will bring a motion to facilitate the dissemination of notice through hospitals and/or to facilitate the dissemination of notice by the Administrator using Class Member contact information provided by hospitals. The Defendants will reasonably cooperate with the Plaintiffs in this motion, and the Parties agree that no costs will be sought from the other Party in connection with the motion.

Schedule "5"-Media Release

M2a 38, M2a Magnum or ReCap Femoral Resurfacing System Metal-on-Metal Hip Implant Class Action Settlement

Subject to court approval, a settlement has been reached in the certified class actions involving Canadians who were implanted in Canada with the M2a 38, M2a Magnum or ReCap Femoral Resurfacing System hip implants, or any combination thereof, that was used as a metal-on-metal hip implant system ("**Biomet Devices**"). A class action has been certified in Ontario (*Dine v. Biomet et al*) and was filed in Quebec (*Conseil pour la protection des malades c. Biomet Canada inc.*)

The settlement applies to "all persons who were implanted with the Biomet Devices in Canada", their estates and certain family members.

The defendants do not admit liability, but have agreed to a settlement providing compensation to class members with certain injuries upon approval after receipt of supporting documentation, less deductions for legal fees and levies to public litigation funders. Public health insurers are also entitled to compensation under the settlement agreement. Please refer to the settlement agreement for compensation details.

A motion to approve the settlement agreement will be heard by the Ontario Superior Court of Justice in Toronto on **[date]**. At the hearing, Class Counsel will also ask the courts to approve payment of its fees and disbursements for its work in connection with the actions.

Class members who do not oppose the settlement do not need to appear at the hearings to indicate their desire to participate in the settlement. Class members who oppose the settlement or who want to assert contentions relative to the settlement have the right to present arguments to the courts or to object to the settlement, including by delivering a written submission to Class Counsel on or before **[date]**. A class member who wishes to object to the settlement or submit contentions should provide in their objection or contention the following information: (a) the full name, current mailing address, telephone number, and email address of the person objecting; (b) a brief statement of the reasons for the objection; (c) a declaration that the person believes he or she is a member of the Class, and the reason for that belief, including, if available, the catalogue and lot numbers of their Biomet Device(s); (d) whether the person intends to appear at the relevant approval hearing or intends to appear by counsel, and, if by counsel, the name, address, telephone number, and email address of his or her counsel; and (e) a declaration that the foregoing information is true and correct.

For additional information and a copy of the settlement agreement, contact:

KOSKIE MINSKY LLP Barristers and Solicitors 20 Queen Street West Suite 900 P.O. Box 52 Toronto ON M5H 3R3 **Jonathan Ptak** **Jamie Shilton** Tel: 416.977.8353 Email: jptak@kmlaw.ca jshilton@kmlaw.ca	**KLEIN LAWYERS** 100 King Street West Suite 5600 Toronto ON M5X 1C9 **Brent Ryan** Tel: 604-874-7171 Email: bryan@callkleinlawyers.com
STEVENSON WHELTON LLP Barristers and Solicitors 15 Toronto Street Suite 200 Toronto ON M5C 2E3 **J. Daniel McConville** Tel: 416.599.7900 Email: dmcconville@swlawyers.ca	**SYLVESTRE PAINCHAUD ET ASSOCIÉS** 740, Avenue Atwater Montréal, Québec, H4C 2G9 **Normand Painchaud** **Sophie Estienne** Tel: 514.937.2881 Email: n.painchaud@spavocats.ca s.estienne@spavocats.ca

Schedule C – Order on Approval of Settlement Agreement

Court File No. CV-13-490112-CP

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE JUSTICE	))	DAY, THE DAY OF , 2024

BETWEEN:

STEPHEN DALTON DINE

Plaintiff

-and-

BIOMET INC., BIOMET ORTHOPEDICS LLC, BIOMET MANUFACTURING CORP., BIOMET U.S. RECONSTRUCTION LLC and BIOMET CANADA INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the representative Plaintiff for approval of the settlement of this action pursuant to s. 29 of the *Class Proceedings Act,* in accordance with the terms of the Settlement Agreement dated **[date]** was heard this day in Toronto.

UPON READING the Plaintiff's motion record, and upon hearing the submissions of counsel for the Plaintiff and counsel for the Defendants, and upon being advised that the parties consent to this order,

THIS COURT ORDERS AND DECLARES that:

1. The definitions set out in the Settlement Agreement, which is attached as Schedule A, apply to and are incorporated into this Order.

2. The settlement of the action, as set out in the Settlement Agreement, is fair, reasonable, and in the best interests of the Class Members, and is hereby approved.

3. The Defendants shall pay the amounts required under the Settlement Agreement, subject to the Right of Termination set out in Section 8 of the Settlement Agreement.

4. The form and content of the Notice of Approval of Settlement to Class Members shall be substantially in the form which appears at Schedule F and Schedule F.1 to the Settlement Agreement.

5. The Class Members shall be given notice of this order in accordance with the plan attached as Schedule G to the Settlement Agreement.

6. The notification plan described in paragraphs 4 and 5 of this order satisfies the requirements of s. 17 of the *Class Proceedings Act.*

7. The Settlement Agreement and this Order are binding upon each Class Member, whether or not such person receives or claims compensation, including persons who are minor or are mentally incapable.

8. **[Appointee]** is hereby appointed as Claims Administrator.

9. Upon the Effective Date, the Releasees are forever and absolutely released by the Releasors from the Released Claims. The Releasors are barred from making any claim or taking or continuing any proceedings arising out of or relating to the Released Claims against any other person, corporation, or entity (including, without limitation, any health care professionals, health care providers, or health care facilities) that might claim damages and/or contribution and indemnity and/or other relief under the provisions of the *Negligence Act* or other comparable provincial legislation and any amendments thereto, the common law, Quebec civil law, or any other statute, for any relief whatsoever, including relief of a monetary, declaratory, or injunctive nature, from one or more of the Releasees.

10. This Court shall have continuing jurisdiction over the implementation and enforcement of the Settlement Agreement.

11. This action is hereby dismissed without costs and with prejudice.

Schedule D

Physician's Declaration

In completing this Form, you may consider the patient's medical records, charts, reports, diagnostic films, medical history, or other sources of information that physicians regularly and routinely rely upon in their practice. By signing this Form, you certify that all opinions set forthbelow are offered to a reasonable degree of medical probability. In other words, by signing this form you certify that you are of the opinion that the conclusions set out in this Form have a probability greater, but not significantly higher, than 50%.

1. PHYSICIAN BACKGROUND

_____ _____ _____
(First Name) (Middle Initial) (Last Name)

_____
(Office Address)

_____ _____ _____
(City) (Province) (Postal Code)

_____
(Area Code & Telephone Number)

Check whether you are a/an:

☐ Orthopedic surgeon
☐ General Practitioner
☐ Other.....

College of Physicians and Surgeons Registration Number:_____

2. PATIENT INFORMATION

State the name and birth date of the patient for whom you are providing the information contained in this Physician Declaration Form.

_____ _____ _____
(First Name) (Middle Initial) (Last Name)

_____
(Birth Date MM/DD/YYYY)

Are you one of the patient's treating physicians?

☐ Yes ☐ No

If "Yes", state your role in the patient's medical care and treatment relative to theirM2a 38, M2a Magnum or ReCap Femoral Resurfacing System metal-on-metal implant:

_____

_____

3. IMPLANT INFORMATION

State the reference and catalogue numbers that correspond to the patient's M2a 38, M2a Magnum or ReCap Femoral Resurfacing System Metal-on-Metal Implant(s)

Date of Implantation (Right) _____
(DD/MM/YYYY)

Implant Reference/Catalogue Numbers _____
(if available)

Implant Lot Number _____
(if available)

Date of Implantation (Left) _____
(DD/MM/YYYY)

Implant Reference/ Catalogue Numbers_____
(if available)

4. REVISED PATIENT OR PATIENT INDICATED OR SCHEDULED FOR REVISION

Has the patient been indicated for a revision surgery to replace the M2a 38, M2a Magnum or ReCap Femoral Resurfacing System?

☐ Yes ☐ No

If "Yes," please answer the remaining questions in section 4. If "No," please skip to section 7.

Date of the indication:_____
(DD/MM/YYYY)

Has a revision surgery been scheduled? ☐ Yes ☐ No

If "Yes," date/time on which the surgery is scheduled:_____

(MM/DD/YYYY)

If "No", do you certify that the revision surgery is planned, even if the date and time have not yet been finalized? ☐ Yes ☐ No

If the revision surgery has been scheduled, has the surgery occurred? ☐ Yes ☐ No

If "Yes," date on which the revision surgery took place:_____
(DD/MM/YYYY)

Describe all reason(s) a revision surgery for the M2a 38, M2a Magnum or ReCap Femoral Resurfacing System was indicated and identify all testing or films taken and the results that support this diagnosis:

_____

_____

_____

5. UNREVISED PATIENT WHERE REVISION SURGERY IS PRECLUDED

If a revision surgery has not been scheduled or will not take place, is there a medical condition that prevents the patient from undergoing a revision surgery ("Precluded" / "Preclusions")? ☐ Yes ☐ No

If "Yes," describe the Preclusion(s) that prevent(s) replacement of the M2a 38, M2a Magnum or ReCap Femoral Resurfacing System, and state whether the Preclusion(s) is/are temporary or permanent:

_____

_____

_____

Provide the date on which you determined that a revision surgery for the patient was Precluded: _____
(DD/MM/YYYY)

6. COMPLICATIONS RESULTING FROM REVISION SURGERY

☐ Check here if the patient underwent a revision surgery or surgeries to remove their M2a 38, M2a Magnum or ReCap Femoral Resurfacing System implants.

If you checked the box above, and the patient sustained any of the following complications during or after their revision surgery, please state the date(s) on which the complication(s) occurred:

Complication	Date(s)
Infection (any infection in the revised hip that is diagnosed within 30 days after a Revision Surgery and determined to have been caused by the Revision Surgery)	
Permanent Nerve Damage (nerve damage [including but not limited to meralgia paresthetica and foot drop caused by peroneal nerve damage] resulting from a Revision Surgery that is permanent as established by medical records or a Physician's Declaration, or that has persisted for 18 months or more.	
Second Revision (surgery to remove a replacement hip implant that had been implanted as part of a Revision Surgery because the replacement hip device failed)	
Blood Clot (diagnosis made within 72 hours of a Revision Surgery of pulmonary embolism or deep vein thrombosis that resulted from a Revision Surgery)	
Stroke (cerebrovascular incident or insult occurring within 72 hours of a Revision Surgery and determined to have been caused by the Revision Surgery)	
Third Revision (surgery to remove a replacement hip implant that had been implanted as part of a Second Revision because the replacement hip device failed)	
Death (class member died within 72 hours after a Revision Surgery as a result of the Revision Surgery)	
Femoral Fracture (fracture of femur that occurs during a Revision Surgery or as a result of the Revision Surgery, and does not include fracture that results from trauma that occurs before or after the Revision Surgery)	
Dislocation (complete disassociation of femoral head and acetabular cup that occurs	

within 6 weeks of the Revision Surgery)	
Lost Wages (economic loss supported by documentary evidence showing income loss in excess of 20% of the claimant's aggregate gross income for the two highest earning years in the four years preceding the Revision Surgery)	
Heart Attack (myocardial infarction or cardiac arrest occurring within 72 hours of a Revision Surgery and determined to have been caused by the Revision Surgery)	

Please attach medical records to this form that confirm that the complication(s) noted above occurred. Such medical records may include, but are not limited to, operative reports, pathology reports, office records, and/or discharge summaries.

7. DECLARATION

I affirm that the foregoing representations are true and correct.

Executed on _____, 20___.

By: _____
Signature of Physician

_____
Print Name

Schedule E

Extraordinary Expense Pool Claim Form

M2a 38, M2a Magnum and ReCap Femoral Resurfacing System Metal-on-Metal Hip Implant Class Action

The Settlement Agreement provides for the potential reimbursement of out-of-pocket expenses in excess of $2,500 in connection with a revision surgery, post-revision complications, or medical treatment for claimants who have undergone a revision surgery or are medically precluded from undergoing a revision surgery.

If you have undergone a revision or are medically precluded from undergoing a revision and you wish to seek reimbursement for the out-of-pocket expenses you incurred that exceed $2,500, please complete this form, attach the required receipts, and submit it along with your Claimant Declaration.

Please provide information below relating to each out-of-pocket expense you incurred, the total cost of which exceeds $2,500. For each expense described below, please attach a receipt reflecting the expense to this form. Unsubstantiated expenses will not be considered for reimbursement. Please note:

1. The total extraordinary expense fund under the Settlement Agreement ("**Extraordinary Expense Pool**") is $50,000;
2. If the total amount of approved claims payable from the fund exceeds $50,000, then each approved claim will be reduced on a pro-rata basis; and
3. Payments will not be made to claimants who are approved to receive payment from the Extraordinary Expense Pool until after all requests for reimbursement from the Extraordinary Expense Pool have been assessed.

Date	Paid To	Type of Expense	Amount

Total Amount Claimed: $_____

Schedule F

Notice to Class Members of Settlement Approval (Short-Form)

Were you, or a family member, implanted with a M2a 38, M2a Magnum or ReCap Femoral Resurfacing System, or any combination thereof, used as a Metal-on-Metal Hip Implant in Canada?

This notice may affect your rights. Please read carefully.

Several individuals in Canada started class action lawsuits, alleging that the M2a 38, M2a Magnum, or ReCap Femoral Resurfacing System hip implants, or any combination thereof, implanted in Canada and used as a metal-on-metal hip implant system (referred to as a "**Biomet Device**"), were defective, and failed prematurely. The Defendants deny these claims. The Ontario Superior Court of Justice certified a class action on December 18, 2015, in the case of *Dine v. Biomet et al.* Additionally, a proposed class action was filed in Quebec under the name *Conseil pour la protection des malades c. Biomet Canada inc.*

These actions have now been settled, and the courts have approved the settlement. For a copy of the Settlement Agreement, please contact Class Counsel or the Claims Administrator at the address below.

Who is Included?

The settlement applies to all persons who were implanted with a Biomet Device in Canada who have not validly opted out of the *Dine v. Biomet et al.* action, their estates and certain family members.

What does the Settlement Provide?

Eligible class members who submit all required forms and documentation within the timelines set out in the Settlement Agreement will receive compensation, less deductions for legal fees and levies to Public Litigation Funders.

Eligible class member payments will depend on various individual factors including when the implants were done and whether the implants were revised and when that revision took place. Some individual claims may also be awarded from a discretionary fund established by the Settlement Agreement.

Any remaining funds from the settlement, if applicable, will be distributed to third parties approved by the Ontario Court after necessary legal levies have been paid to Public Litigation Funders. Additionally, the settlement includes provisions for payment to public health insurers.

To Make a Claim

In order to obtain benefits under this Settlement Agreement, Class Members must electronically file, hand-deliver, email or mail a completed Claimant Declaration along with a Physician's Declaration (if applicable) before the applicable deadlines. These forms can be found on the Claims Administrator's website [website].

For Class Members who are unrevised, medically precluded from having a revision surgery, or have had a revision surgery as of [90 days before Claims Deadline], all required documents in support of their claim must be submitted on [Claims Deadline].

For Class Members who have not yet had a revision surgery but as of the Claims Deadline have a scheduled revision surgery, or have been indicated by a physician as requiring a revision surgery and the revision surgery has been planned (even if the date and time have not yet been finalized), a claim must be submitted by [Claims Deadline]. All further required documents in support of their claim must be submitted within 90 days of the scheduled revision surgery.

For Class Members who have undergone a revision surgery [between 90 days before the Claims Deadline and the Claims Deadline], all required documents in support of their claim must be submitted within 90 days after the revision surgery.

Are Class Members responsible for Legal Fees?

Under the terms of the Settlement Agreement, the Defendants have agreed to pay Class Counsel the sum of $1.25 million as a contribution towards Class Counsel Fees, Disbursements, and applicable taxes.

The Court also approved additional amounts to be deducted from payments made to eligible Class Members.

Any further legal fees, disbursements, and taxes would only be payable if an eligible class member agrees with their lawyer that those amounts will be paid.

For More Information or to Obtain a Claim Form

Please contact Class Counsel or the Claims Administrator at the address below:

[NTD: insert Claims Administrator details.]

KOSKIE MINSKY LLP
Barristers and Solicitors
20 Queen Street West
Suite 900
P.O. Box 52
Toronto ON M5H 3R3

Jonathan Ptak
Jamie Shilton

Tel: 416.977.8353
Email: jptak@kmlaw.ca
jshilton@kmlaw.ca

STEVENSON WHELTON LLP
Barristers and Solicitors
15 Toronto Street
Suite 200
Toronto ON M5C 2E3

J. Daniel McConville
Tel: 416.599.7900
Email: dmcconville@swlawyers.ca

KLEIN LAWYERS
100 King Street West
Suite 5600
Toronto ON M5X 1C9

Brent Ryan
Tel: 604.714.6154
Email: bryan@callkleinlawyers.com

SYLVESTRE PAINCHAUD ET ASSOCIÉS
740, Avenue Atwater
Montréal, Québec, H4C 2G9

Normand Painchaud
Sophie Estienne
Tel: 514.937.2881
Email: n.painchaud@spavocats.ca
s.estienne@spavocats.ca

Schedule F.1

Notice to Class Members of Settlement Approval (Long Form)

Were you, or a family member, implanted with a M2a 38, M2a Magnum or ReCap Femoral Resurfacing System Hip Implant, or any combination of these, in Canada, which was used as a metal-on-metal hip implant system?

This notice may affect your rights. Please read carefully.

Several individuals in Canada started class action lawsuits, alleging that the M2a 38, M2a Magnum, or ReCap Femoral Resurfacing System hip implants, or any combination thereof, implanted in Canada and used as a metal-on-metal hip implant system (referred to as the "Biomet Device"), were defective and failed prematurely when implanted in patients in Canada. The Defendants deny these claims. The Ontario Superior Court of Justice certified a class action on December 18, 2015, in the case of *Dine v. Biomet et al.* Additionally, a proposed class action was filed in Quebec under *Conseil pour la protection des malades v. Biomet Canada inc.*

The Defendants, while not admitting liability, have agreed to a settlement of these lawsuits. For a copy of the settlement agreement, or for more information, please contact Class Counsel listed below.

These actions have now been settled, and the courts have approved the settlement. For a copy of the Settlement Agreement, please contact Class Counsel or the Claims Administrator at the address below.

What this Notice Contains

Basic Information

1. Why did Class Members get this Notice?
2. What is a Class Action?
3. What is this lawsuit about?
4. Why is there a settlement?

Who is Included in the Settlement?

5. Who is included in the settlement?
6. How is eligibility determined?

What are Class Members entitled to under the Settlement?

7. What does the settlement provide?
8. How will the lawyers be paid?

Making a Claim

9. Who is the Claims Administrator?
10. How can Class Members make a claim?
11. What if I decide not to have a Scheduled Revision Surgery?
12. What if I must cancel a Scheduled Revision Surgery because I am medically unable to proceed?
13. Can the Claims Deadline be extended for any reason?
14. Can the Submission Deadline be extended for any reason?

The Lawyers Representing Class Members

15. Who are Class Counsel, lawyers for the class?

Basic Information

1. Why did Class Members get this Notice?

The Ontario Court has authorized this Notice to inform Class Members about the approval of the Settlement Agreement in these Class Actions. This notice explains the lawsuits, the settlement, and Class Members' legal rights.

2. What is a Class Action?

In a class action, one or more people called a "Representative Plaintiffs" sue on behalf of those who have similar claims. All of these people are called a "Class" or "Class Members". The courts resolve the issues for everyone affected by the class action, except for those whose excluded themselves, or "opt out" of the lawsuit.

3. What is this lawsuit about?

The class actions relate to the M2a 38, M2a Magnum, or ReCap Femoral Resurfacing System hip implants, or any combination thereof, implanted in Canada and used as a metal-on-metal hip implant system. The Representative Plaintiffs claim that they were defective and failed prematurely when implanted in patients in Canada. The Defendants deny these claims, and the Court has not decided whether the claims are correct.

4. Why is there a settlement?

The plaintiffs and the defendants have agreed to a settlement of the class actions. By agreeing to settle the lawsuit, the parties avoid the costs, uncertainty, and delay of going to trial and obtaining judgment, and the risks associated with being unsuccessful at trial. In this case, it also means that class members will not need to testify in court.

The Representative Plaintiffs and the lawyers for the class ("Class Counsel") believe the settlement is fair, reasonable, and in the best interests of the Class. The Ontario Court has agreed.

Who is Included in this Settlement?

5. Who is included in the proposed settlement?

The settlement applies to all eligible class members who were implanted with a Biomet Device in Canada who have not opted out of the *Dine v. Biomet et al.* action, their estates and certain family members.

6. How is eligibility determined?

To be eligible for compensation, Class Members must have been implanted with a Biomet Devise in Canada.

In order to participate, Class Members must provide Product Identification that confirm the reference number (sometimes referred to as "catalogue number") and lot number of the device that

was implanted, in addition to other documents required by the Settlement Agreement. Product Identification confirms that Class Members were implanted with a Biomet Device. Product Identification can be found on the peel-and-stick label (the "Label") from the Biomet Device that should be affixed to the medical record from the implant surgery (sometimes called the implant operative report). Class Members can obtain a copy of their implant surgery medical record from the hospital where the implant surgery occurred or from a physician. To be eligible for settlement, the reference/catalogue number on the Label must be as follows (or be a number which the Parties agree is a qualifying reference/catalogue number, or a number directed by the Court):

- The claimant must submit a **Product Identification** for both a femoral head and a one-piece acetabular cup.

- The following reference/catalogue numbers correspond to **femoral heads** used with the **M2a Magnum**:

157442	S031138
157444	S031140
157446	S061138
157448	S061140
157450	S121138
157452	S121140
157454	S331138
157456	S331140
157458	S661138
157460	S661140
S001138	S991138
S001140	S991140

- The following reference/catalogue numbers correspond to the **acetabular cups** used with the **M2a Magnum**:

US157844	US257844
US157846	US257846
US157848	US257848
US157850	US257850
US157852	US257852
US157854	US257854
US157856	US257856
US157858	US257858
US157860	US257860
US157862	US257862
US157864	US257864
US157866	US257866

- The following reference/catalogue numbers correspond to the **femoral heads or caps** used with the **M2a Recap**:

157238	157256	157341	US 157343	157145	US 157140
157239	157257	157342	US 157344	157146	US 157141
157240	157258	157343	US 157345	157147	US 157142
157241	157259	157344	US 157346	157148	US 157143
157242	157260	157345	US 157347	157149	US 157144
157243	US 157239	157346	US 157348	157150	US 157145
157244	US 157241	157347	US 157349	157151	US 157146
157245	US 157243	157348	US 157350	157152	US 157147
157246	US 157245	157349	US 157351	157153	US 157148
157247	US 157247	157350	US 157352	157154	US 157149
157248	US 157249	157351	US 157353	157155	US 157150
157249	US 157251	157352	157138	157156	US 157151
157250	US 157253	157353	157139	157157	US 157153
157251	US 157255	US 157338	157140	157158	US 157154
157252	US 157257	US 157339	157141	157159	US 157155
157253	157338	US 157340	157142	157160	US 157156
157254	157339	US 157341	157143	US 157138	US 157157
157255	157340	US 157342	157144	US 157139	

- The following reference/catalogue numbers correspond to the **acetabular cups** used with the **M2a Recap**:

157844	157944	130846	130846 HA	157438
157846	157946	130848	130848 HA	157440
157848	157948	130850	130850 HA	157442
157850	157950	130852	130852 HA	157444
157852	157952	130854	130854 HA	157446
157854	157954	130856	130856 HA	157448
157856	157956	130858	130858 HA	157450
157858	157958	130860	130860 HA	157452
157860	157960	130862	130862 HA	157454
157862	157962	130864	130864 HA	157456
157864	157964	130866	130866 HA	157458
157866	157966	130868	130868 HA	157460

- The following reference/catalogue numbers correspond to the **femoral heads** used with the **M2a 38**:

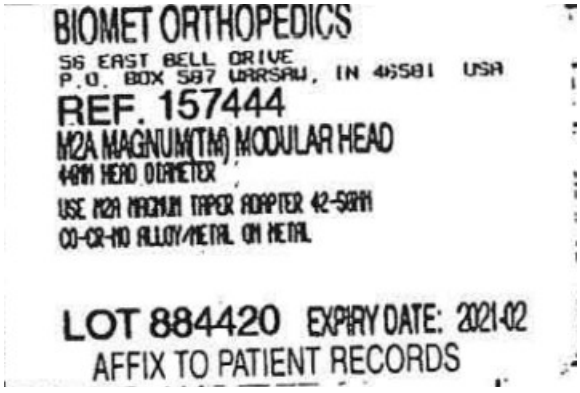
11-173660
11-173661
11-173662
11-173663
11-173664
11-173665
11-173666

- The following reference/catalogue numbers correspond to **acetabular cups** used with the **M2a 38**:

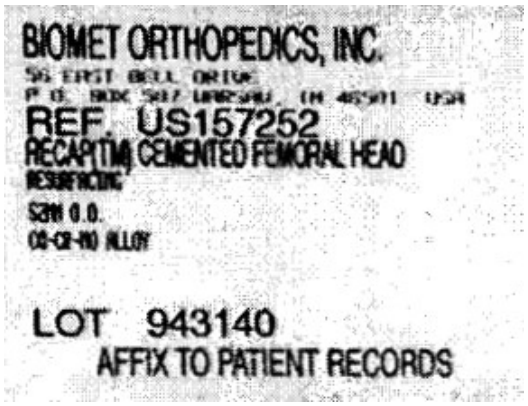
15-105048	15-106048	RD118848
15-105050	15-106050	RD118850
15-105052	15-106052	RD118852
15-105054	15-106054	RD118854
15-105056	15-106056	RD118856
15-105058	15-106058	RD118858
15-105060	15-106060	RD118860
15-105062	15-106062	RD118862
15-105064	15-106064	RD118864
15-105066	15-106066	RD118868
15-105068	15-106068	RD118870
15-105070	15-106070	

- Where a **Product Identification** submitted by a claimant specifies a reference/catalogue number which is listed above, except that it includes or excludes an alphabetical prefix (e.g. "US"), the **Claims Administrator** shall deem the claimant to have submitted qualifying **Product Identification** for that component.

The images below are *examples* of Product Identifications. Please note that not all product labels are identical to the example provided below, but they are all similar to it. This example is provided to help Class members identify the location of the reference and lot numbers of their device to assist them in determining whether they may be eligible for settlement.







If a Class Member is unable to obtain the Label because their implant surgery hospital could not locate it in their hospital medical records, then they may provide the following to prove that they received a Biomet Device:

a) If the Biomet Device has been explanted from the Class Member's body and it still exists, they must provide (1) a color photograph of the Biomet Device that shows the identification numbers on the edge of the Biomet Device, and (2) a Physician Declaration confirming that they were implanted with a Biomet Device and the date of the implantation;

OR

b) If Class Members cannot obtain a photograph because the Biomet Device is not within their possession, custody, or control, they must provide (1) a copy of their implant surgery operative report from the hospital where they were implanted, which confirms that they were implanted with a Biomet Device, and (2) a Physician Declaration confirming that they were implanted with a Biomet Device and the date of implantation.

What are Class Members entitled to under the Settlement?

7. What does the settlement provide?

Eligible class members who submit all required forms and documentation within the timelines set out in the Settlement Agreement will receive compensation.

Individual Payments to Class Members:

Claim Category	**Quantum**
Unrevised Claimant (not Medically Precluded)	$500
Unrevised Claimant (Medically Precluded)	$45,000
Single Revision for Qualified Revision Surgery Claimant	$75,000
Bilateral Revision for Qualified Revision Surgery Claimants	$90,000

"Qualified Revision Surgery Claimant" means a class member who, as of the Claims Deadline, was implanted with a Biomet Device in Canada and: (i) has had a revision surgery; (ii) has been scheduled for a revision surgery; or (iii) was indicated by a physician as requiring a revision surgery and the revision surgery is planned, even if the date and time have not yet been finalized. The revision must have taken place, or take place, at least 180 days after the Index Surgery and not have been required because of infection or trauma, unless medical records establish that the claimant would likely have required the revision regardless of the infection or trauma.

"Medically Precluded" means a Class Member for whom a Revision Surgery was determined to be necessary within 12 years and 1 day of the Index Surgery, but who was unable to undergo a Revision Surgery due to the existence of a medical condition.

The Settlement Agreement provides that for Qualified Revision Surgery Claimants and Medically Precluded Class Members are in all cases subject to the following reductions:

In Vivo Time	**Cumulative Reduction of Total Amount**
7 years, 1 day	5%
8 years, 1 day	10%

9 years, 1 day	20%
10 years, 1 day	30%
11 years, 1 day	40%
12 years and 1 day and beyond	No compensation unless provided for from the Discretionary Fund

The Settlement Agreement also provides for:

a) A Discretionary Fund to be distributed to Class Members pursuant to a Special Claims Protocol and approved by the Ontario Court;

b) Additional compensation for certain defined complications;

c) Compensation for certain out-of-pocket expenses; and

d) Compensation for family members who provided care in certain circumstances.

Any remaining funds from the settlement, if applicable, will be distributed to third parties approved by the Ontario Court after necessary legal levies have been paid to Public Litigation Funders. Additionally, the settlement includes provisions for payment to public health insurers.

8. How will the lawyers be paid?

Under the terms of the Settlement Agreement, the Defendants have agreed to pay Class Counsel the sum of $1.25 million as a contribution towards Class Counsel Fees, Disbursements, and applicable taxes.

The Court also approved additional amounts to be deducted from payments made to eligible Class Members.

Any further legal fees, disbursements, and taxes would only be payable if an eligible class member agrees with their lawyer that those amounts will be paid.

Making a Claim

9. Who is the Claims Administrator?

The Claims Administrator for this Class Action is [claims administrator]. The Claims Administrator can be contacted at: [**contact information**].

10. How can Class Members make a claim?

In order to recover under this Settlement Agreement, Class Members must electronically file, hand-deliver, email or mail a completed Claimant Declaration along with a Physician's Declaration (if applicable) before the applicable deadlines. These forms can be found on the Claims Administrator's website [website].

For Class Members who are unrevised, medically precluded from having a revision surgery, or have had a revision surgery as of [90 days before Claims Deadline], all required documents in support of their claim must be submitted on [Claims Deadline].

For Class Members who have not yet had a revision surgery but, as of the Claims Deadline, have a scheduled revision surgery or have been indicated by a physician as requiring a revision surgery that has been planned (even if the date and time have not yet been finalized), a claim must be submitted by [Claims Deadline]. All further required documents in support of their claim must be submitted within 90 days of the date on which the scheduled revision surgery takes place.

For Class Members who have undergone a revision surgery [between 90 days before the Claims Deadline and the Claims Deadline], all required documents in support of their claim must be submitted within 90 days after the revision surgery.

A "Scheduled Revision Surgery" means that the claimant has been scheduled to receive a Revision Surgery, or a Revision Surgery has been planned (even if the date and time have not yet been finalized), but the Revision Surgery has not occurred as of 270 days after the date on which the Notice of Settlement Approval was disseminated, evidenced by the claimant submitting to the Claims Administrator by the Claims Deadline documentation in the form of:

a) Documentation from a hospital or physician confirming the claimant has been scheduled to receive a Revision Surgery but the Revision Surgery has not occurred as of 270 days after the date on which the Notice of Settlement Approval was disseminated; or

b) a properly executed Physician's Declaration in the form attached to the Settlement Agreement, which confirms that: (i) the Revision Surgery has been scheduled as of the Claims Deadline; or (ii) the claimant has been indicated by a physician as requiring a Revision Surgery as of the Claims Deadline and the Revision Surgery has been planned (even if the date and time have not yet been finalized), in either case including the date on which the need for a Revision Surgery was indicated.

If a Class Member has been scheduled to receive a Revision Surgery as of the Claims Deadline or indicated as requiring a Revision Surgery that has been planned (even if the date and time have not yet been finalized), then the determination of the compensation owed to them will be postponed until the Scheduled Revision Surgery occurs, provided that they submit on the Claims Deadline and within 90 days after the Revision Surgery occurs the documentation or

Physician's Declaration referred to above.

11. What if I decide not to have a Scheduled Revision Surgery?

If a Revision Surgery is not scheduled, or is cancelled and not rescheduled because the Class Member has decided not to have the Scheduled Revision Surgery, the Class Member may receive compensation under the Settlement Agreement as an unrevised claimant. In that case, the Class Member must submit a Claimant Declaration on or before the Claims Deadline setting out that they are unrevised.

12. What if I must cancel a Scheduled Revision Surgery because I am medically unable to proceed?

If the Revision Surgery cannot occur due to a documented medical condition, Class Members may be eligible to receive compensation under the Settlement Agreement as an unrevised claimant for whom revision is medically precluded. In that case, Class Members must submit the appropriate documentation that reflects this status (as defined in the Settlement Agreement) on or before [the Claims Deadline] and their compensation will be determined.

The Lawyers Representing Class Members

13. Who are class Counsel, lawyers for the class?

Class Counsel are the law firms Koskie Minsky LLP, Stevenson Whelton LLP, Klein Lawyers LLP, and Sylvestre Painchaud & Et Associes.

For Additional Information and a Copy of the Settlement Agreement:

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Schedule G

Plan for Dissemination of Class Notices

The Notice of Approval Hearing (Short Form and Long Form) and the Notice of Settlement Approval (Short Form and Long Form) (collectively, the "Notices") shall be disseminated by the following means:

1. Class Counsel shall send copies of the Notices by mail or email to all class members who have contacted Class Counsel regarding this action and provided their contact information.

2. Class Counsel shall post copies of the Notices and the Settlement Agreement to their respective websites.

3. The Administrator shall arrange for publication of the information contained in the Short-Form Notice on various social media platforms including Facebook, Instagram, and LinkedIn.

4. In addition to the above, for Notice of Settlement Approval (Short-Form and Long-Form), the parties will reasonably cooperate on dissemination of notice to the Class through hospitals in Canada and/or by the Administrator based on Class Member contact information provided by hospitals. If required, the Plaintiffs will bring a motion to facilitate the dissemination of notice through hospitals and/or to facilitate the dissemination of notice by the Administrator using Class Member contact information provided by hospitals. The Defendants will reasonably cooperate with the Plaintiffs in this motion, and the Parties agree that no costs will be sought from the other Party in connection with the motion.

Schedule H

List of Complications and Corresponding Payment Amounts

Complication	Single Claimant	Bilateral Claimant
Infection (any infection in the revised hip that is diagnosed within 30 days after a Revision Surgery and determined to have been caused by the Revision Surgery)	$10,000	$12,500
Permanent Nerve Damage (nerve damage [including but not limited to meralgia paresthetica and foot drop caused by peroneal nerve damage] resulting from a Revision Surgery that is permanent as established by medical records or a Physician's Declaration, or that has persisted for 18 months or more.	$20,000	$25,000
Second Revision (surgery to remove a replacement hip implant that had been implanted as part of a Revision Surgery because the replacement hip device failed)	$20,000	$25,000
Blood Clot (diagnosis made within 72 hours of a Revision Surgery of pulmonary embolism or deep vein thrombosis that resulted from a Revision Surgery)	$10,000	$12,500
Stroke (cerebrovascular incident or insult occurring within 72 hours of a Revision Surgery and determined to have been caused by the Revision Surgery)	$40,000	$50,000
Third Revision (surgery to remove a replacement hip implant that had been implanted as part of a Second Revision because the replacement hip device failed)	$40,000	$50,000

Death (class member died within 72 hours after a Revision Surgery as a result of the Revision Surgery)	$40,000	$50,000
Femoral Fracture (fracture of femur that occurs during a Revision Surgery or as a result of the Revision Surgery, and does not include fracture that results from trauma that occurs before or after the Revision Surgery)	$16,000	$19,000
Dislocation (complete disassociation of femoral head and acetabular cup that occurs within 6 weeks of the Revision Surgery)	$12,000	$15,000
Lost Wages (economic loss supported by documentary evidence showing income loss in excess of 20% of the claimant's aggregate gross income for the two highest earning years in the four years preceding the Revision Surgery)	$12,000	$25,000
Heart Attack (myocardial infarction or cardiac arrest occurring within 72 hours of a Revision Surgery and determined to have been caused by the Revision Surgery)	$40,000	$50,000
CAP	**$40,000**	**$50,000**

Schedule I

Reconsideration Protocol

The following procedure shall apply to any challenge of a decision made by the Claims Administrator that is brought by a Class Member, Class Counsel or the Defendants under the Settlement Agreement concerning the ability of the Class Member to recover under the Settlement Agreement:

1. An independent person will be retained by the Claims Administrator at the direction of and following agreement between Class Counsel and Defendants' Counsel, or the direction of the Ontario Court, to decide requests for reconsideration of decisions made by the Claims Administrator ("**Reconsideration Officer**"). Subject to the direction of the Ontario Court, the Reconsideration Officer shall be a senior litigation lawyer (20+ years' experience) or retired judge, associate judge or deputy judge (or their equivalent).

2. In discharging their duties under the Settlement Agreement, the Reconsideration Officer shall at all times act in a fair, equitable and impartial manner, and shall avoid conflicts of interest.

3. A party seeking reconsideration must submit to the Claims Administrator a written statement setting out the nature of, and the reasons for, the reconsideration (the "**Reconsideration Statement**"). A Reconsideration Statement must be received by the Claims Administrator within 30 days of the date on which the Claims Administrator issued the impugned determination, failing which the Claims Administrator's decision is final and binding.

4. Upon receipt of the **Reconsideration Statement**:

   (a) The Claims Administrator shall contact the Reconsideration Officer and ask the Reconsideration Officer to provide a pre-estimate of its fee for conducting the reconsideration.

   (b) **If a Class Member Submits a Reconsideration Statement:** The Claims Administrator shall send a copy of the Reconsideration Statement together with the applicable records submitted by the Class Member to the Defendants for review and consideration. The Defendants shall then inform the Claims Administrator of whether they agree or disagree with the Class Member's position within 30 days following receipt of the Reconsideration Statement. If the Defendants agree with the Class Member's position, the Claims Administrator shall issue a new claim determination reflecting the parties' agreement, and no costs will be payable by the Defendants. If the Defendants disagree with the Class Member's position, the parties shall notify the Claims Administrator and the Claims Administrator shall submit the Reconsideration Statement and related records to the Reconsideration Officer for review.

   (c) **If the Defendants Submit a Reconsideration Statement:** The Claims Administrator shall send a copy of the Reconsideration Statement together with the applicable records submitted by the Class Member to the Class Member for review and consideration. The Class Member shall then inform the Claims Administrator of whether they agree or disagree with the Defendants' position within 30 days following the receipt of the Reconsideration Statement. If the Class Member agrees with the Defendants' position, the Claims Administrator shall issue a new claim determination reflecting the parties' agreement, and no costs will be payable by the Class Member. If the Class Member disagrees with the Defendants' position, the parties shall notify the Claims Administrator and the Claims Administrator shall submit the Reconsideration Statement at issue to the Reconsideration Officer for review.

5. If the Reconsideration Statement is submitted to the Reconsideration Officer:

   (a) **If a Class Member Seeks Reconsideration:** as a condition precedent to contesting a decision of the Claims Administrator, the Class Member seeking reconsideration shall provide to the Claims Administrator (for forwarding to the Reconsideration Officer) a cheque payable to the Reconsideration Officer in an amount representing 75% of the Reconsideration Officer's pre-estimated fee and disbursements for conducting the reconsideration. As a precondition to contesting such reconsideration, the Defendants shall provide to the Claims Administrator (for forwarding to the Reconsideration Officer) a cheque payable to the Reconsideration Officer in an amount representing 25% of the Reconsideration Officer's pre-estimated fee and disbursements for conducting the reconsideration.

   (b) **If the Defendants Seek Reconsideration:** as a condition precedent to contesting a decision of the Claims Administrator, the Defendants seeking reconsideration shall provide to the Claims Administrator (for forwarding to the Reconsideration Officer) a cheque payable to the Reconsideration Officer in an amount representing the entirety of the Reconsideration Officer's pre-estimated fee and disbursements for conducting the reconsideration.

6. A party responding to a Reconsideration Statement shall have the right to submit to the Reconsideration Officer a Responding Reconsideration Statement setting out the nature of, and the reasons for, its objection to the reconsideration within 30 days following written confirmation by the Reconsideration Officer to the parties of receipt of the Reconsideration Statement.

7. Neither the Reconsideration Statement nor the Responding Reconsideration Statement shall exceed 2,000 characters, inclusive of headers, footnotes, schedules and appendices.

8. The decision of the Reconsideration Officer shall be based solely on the records submitted by the Class Member to the Claims Administrator as of the Claims Deadline and Submission Deadline (subject to any applicable extensions of time), the parties' written submissions, and the prior decision of the Claims Administrator. No additional records may be submitted on Reconsideration and there will be no oral hearing on any reconsideration. The Reconsideration shall be conducted entirely in writing.

9. The decision of the Reconsideration Officer shall be final and binding on the Parties. There shall be no right of appeal from the decision.

10. Upon disposing of the reconsideration:

   (a) **If a Class Member Submits a Reconsideration Statement:** the Reconsideration Officer shall order the unsuccessful party to pay to the successful party within 30 days following release of the reconsideration decision a reasonable and proportional amount of legal fees and disbursements on a partial indemnity basis, unless the Reconsideration Officer determines that success was divided equally, in which case neither party shall be required to pay costs. In addition, if the Reconsideration Officer's fees and disbursements exceed the amount of pre-estimated costs paid by the parties to a reconsideration in advance, then the Reconsideration Officer shall order the unsuccessful party to pay any outstanding balance within 30 days following the release of the reconsideration decision, unless the Reconsideration Officer determines that success was divided equally, in which case the additional costs shall be payable equally by the parties to the reconsideration.

(b) **If the Defendants Submit a Reconsideration Statement:** regardless of which party is successful in the reconsideration, the Defendants shall cover their own costs and pay to the Class Member within 30 days following release of the reconsideration decision a reasonable and proportional amount of legal fees and disbursements on a partial indemnity basis. In addition, if the Reconsideration Officer's fees and disbursements exceed the amount of pre-estimated costs paid by the Defendants in advance of the reconsideration, then the Defendants shall pay any outstanding balance within 30 days following the release of the reconsideration decision.

SCHEDULE J

Form of Monthly Reporting by Claims Administrator

*An Excel spreadsheet, substantially in the form of the table set out below, will be provided to the **Claims Administrator** by the **Parties**.*

Description	This Month	As of [Current Reporting Date]	Comments
Number of Claims Paid			
Total Paid to Claimants *(Includes Claimant award, Class Counsel Fees, payments to Public Litigation Funders and Derivative Claimants). Excludes payments to Provincial Health Insurers, Notice and Admin Costs and Honoraria.*	$ -		
Total Paid to Provincial Health Insurers	$ -		
Total Paid re Notice and Administration Costs	$ -		
Total Paid re Honoraria	$ -		
Total Paid Out of Settlement Account *(Includes Claimant award, Class Counsel Fees, payments to Public Litigation Funders and Derivative Claimants, Honoraria and payments to the Provincial Health Insurers, as well as Notice and Admin Costs).*	$ -		
Balance of Settlement Account			

Description	This Month	As of [Current Reporting Date]	Comments
Unrevised Claims (and not medically precluded)	**This Month**	**As of [Current Reporting Date]**	
Number of Claims Paid			
Total Paid to Claimants *(Includes Claimant award, Class Counsel Fees, payments to Public Litigation Funders and Derivative Claimants). Excludes payments to Provincial Health Insurers and Honoraria.*	$ -		
Average Amount Paid to Claimants *Total Paid to Claimants (Includes Claimant award, Class Counsel Fees, payments to Public Litigation Funders and Derivative Claimants). Excludes payments to Provincial Health Insurers and Honoraria.*	$ -		
Single Revised Claims (includes Claimants with bilateral implants who underwent only one revision surgery)	**This Month**	**As of [Current Reporting Date]**	
Number of Claims Paid			
Total Paid to Claimants *(Includes Claimant award, Class Counsel Fees, payments to Public Litigation Funders and Derivative Claimants). Excludes payments to Provincial Health Insurers and Honoraria.*	$ -		
Average Amount Paid to Claimants *Total Paid to Claimants (Includes Claimant award, Class Counsel Fees, payments to Public Litigation Funders and Derivative Claimants). Excludes payments to Provincial Health Insurers and Honoraria.*	$ -		

Description	This Month	As of [Current Reporting Date]	Comments
Bilateral Revised Claims	**This Month**	**As of [Current Reporting Date]**	
Number of Claims Paid			
Total Paid to Claimants *(Includes Claimant award, Class Counsel Fees, payments to Public Litigation Funders and Derivative Claimants). Excludes payments to Provincial Health Insurers and Honoraria.*	$ -		
Average Amount Paid to Claimants *Total Paid to Claimants (Includes Claimant award, Class Counsel Fees, payments to Public Litigation Funders and Derivative Claimants). Excludes payments to Provincial Health Insurers and Honoraria.*	$ -		
Medically Precluded Claims	**This Month**	**As of [Current Reporting Date]**	
Number of Claims Paid			
Total Paid to Claimants *(Includes Claimant award, Class Counsel Fees, payments to Public Litigation Funders and Derivative Claimants). Excludes payments to Provincial Health Insurers and Honoraria.*	$ -		
Average Amount Paid to Claimants *Total Paid to Claimants (Includes Claimant award, Class Counsel Fees, payments to Public Litigation Funders and Derivative Claimants). Excludes payments to Provincial Health Insurers and Honoraria.*	$ -		

Description	This Month	As of [Current Reporting Date]	Comments
Number of Claims Decided by Administrator But Not Paid *(Ready to be paid, but insufficient funds available.) Includes those claims whose Reconsideration periods have NOT yet expired and those where a reconsideration is pending.*		**As of [Current Reporting Date]**	
Total decisions rendered for which payment has not been issued			
Unrevised Claims *(and not medically precluded)*			
Single Revised Claims *(includes Claimants with bilateral implants who underwent only one revision surgery)*			
Bilateral Revised Claims			
Medically Precluded Claims			
Total Funds Due to Claimants *(Includes Claimant award, Class Counsel Fees, payments to Public Litigation Funders and Derivative Claimants). Excludes payments to Provincial Health Insurers and Honoraria.*		$ -	
Number of Claims Being Reviewed by Administrator (*includes all review statuses* ***other than*** *Approved, Payment Approved, Reconsideration in progress, and Rejected)*		**As of [Current Reporting Date]**	

Description	This Month	As of [Current Reporting Date]	Comments
Unrevised Claims (and not medically precluded)			
Single Revision Surgery Claims			
Bilateral Revised Claims			
Medically Precluded Claims			
Rejected claims whereby claimant provided product identification stickers for an eligible Biomet Device		**As of [Current Reporting Date]**	
Rejected claims whereby claimant provided product identification stickers for an eligible Biomet Device			
Reconsiderations		**As of [Current Reporting Date]**	
Reconsiderations - In Progress			
Reconsiderations - Withdrawn			
Reconsiderations - Granted			

Description	This Month	As of [Current Reporting Date]	Comments
Reconsiderations - Denied			
Payments to Provincial Health Insurers		**As of [Current Reporting Date]**	
BC			
ON			
QC			

SCHEDULE "K": LIST OF PROVINCIAL HEALTH INSURERS

Province/ Territory	Ministry / Department	Legislation	Right of Recovery
Nova Scotia	Minister of Health and Wellness Department of Health and Wellness	*Health Services and Insurance Act*, RSNS 1989, c 197	"cost of the care, services and benefits"
New Brunswick	Minister of Health Executive Council	*Medical Services Payment Act*, RSNB 1973, c M-7 *Health Services Act*, RSNB 2014, c 112 *Hospital Services Act*, RSNB 1973, c. H-9	"entitled services"
Prince Edward Island	Minister of Health and Wellness	*Health Services Payment Act*, RSPEI 1988, c H-2 *Hospital and Diagnostic Services Insurance Act*, RSPEI 1988, c H-8	"basic health services" "insured services"
Newfoundland and Labrador	Minister of Health and Community Services	*Medical Care and Hospital Insurance Act*, SNL 2016 c M-5.01	"insured services"
Ontario	Minister of Health and Minister of Long-Term Care	*Health Insurance Act*, RSO 1990 c H 6	"insured services"
Manitoba	Minister of Health, Seniors and Active Living	*Health Services Insurance Act*, CCSM, 2015 c H35	"insured services"
Saskatchewan	Minister of Health	*The Health Administration Act*, SS 2014, c E-13.1	"health services"
Quebec	Régie de l'assurance maladie du Québec	*Health Insurance Act*, 2017 CQLR c A-29	"insured services"

Province/ Territory	**Ministry / Department**	**Legislation**	**Right of Recovery**
		Hospital Insurance Act, CQLR c A-28	
Yukon	Minister of Health and Social Services	*Hospital Insurance Services Act*, RSY 2002, c 112 *Health Care Insurance Plan Act*, RSY 2002, c.107 *Travel for Medical Treatment Act*, RSY 2002, c. 222.	"insured services" "insured health services" "travel expenses"
Northwest Territories and Nunavut	Minister of Health and Social Services	*Hospital Insurance and Health and Social Services Administration Act*, RSNWT 1998, c T-3 *Medical Care Act*, R.S.N.W.T. 1988, c.M-8	"insured services"
Alberta	Minister of Health	*Crown's Right of Recovery Act*, SA 2009, c C-35	"the Crown's cost of health services"
British Columbia	Minister of Health	*Healthcare Costs Recovery Act*, SBC 2008 c. 27	"health care services"

SCHEDULE "L": PROVINCIAL HEALTH INSURER CONSENT AND RELEASE

WHEREAS the legislation applicable to the Provincial Health Insurer executing this release, as set out in Schedule K to the Settlement Agreement defined below (the **"Act")**, permits a direct or subrogated claim (a **"Claim")** for the recovery of the costs for insured services, costs of care or analogous terms that have been incurred in the past and that may be incurred in the future and as further described in the Act and its regulations**;**

AND WHEREAS proceedings were commenced in Ontario and Quebec against Biomet Inc., Biomet Orthopedics LLC, Biomet Manufacturing Corp., Biomet U.S. Reconstruction LLC and Biomet Canada Inc. (collectively, the **"Defendants")** on behalf of a proposed class of Canadian residents who were implanted with Biomet Devices (as defined in the Settlement Agreement) (the **"Proceedings");**

AND WHEREAS pursuant to a Settlement Agreement dated [date] (the **"Settlement Agreement")** the Proceeding and all of the present and future claims of Class Members (as defined in the Settlement Agreement) relating to Biomet Devices are to be fully resolved, on a national basis, without admission of liability;

AND WHEREAS the Provincial Health Insurer (as defined in the Settlement Agreement) hereby consents to the Settlement Agreement;

AND WHEREAS pursuant to the Settlement Agreement, Class Members will have an opportunity to submit individual claims for settlement benefits;

IN CONSIDERATION OF payments to be made under the Settlement Agreement to the Provincial Health Insurers as good and valuable consideration, the receipt and sufficiency of which are hereby irrevocably acknowledged, the undersigned on behalf of the applicable Provincial Health Insurer (hereinafter "Releasor"), releases any and all manner of claims which the Provincial Health Insurer ever had, now has or hereafter can, shall or may have pursuant to provincial or territorial legislation that permits the recovery of healthcare costs or medical expenses from third parties, whether known or unknown, past or future, direct or indirect or subrogated, relating in any way to the design, manufacture, sale, distribution, labelling, and/or use of the Biomet Devices by Class Members, including the conduct in the subject matter of the Proceedings, and including all subrogated and/or direct claims in respect of Class Members that were or could have been brought for the cost of medical care or treatment provided to Class Members, as well as medical screening or monitoring, arising from the conduct alleged in the subject matter of the Proceedings, or relating in any way to the subject matter of the Proceedings, against the Releasees (as defined in the Settlement Agreement).

AND THE RELEASOR ACKNOWLEDGES and agrees that s/he has not been induced to execute this Release by reason of any representation or warranty of any nature or kind whatsoever and that there is no condition express or implied or collateral agreement affecting the said release.

AND FOR THE SAID CONSIDERATION the Releasor covenants and agrees not to make a claim or to commence or take proceedings against any of the Releasees, including any person, firm, partnership, business or corporation who or which might claim contribution from, or to be indemnified by the Releasees, in respect of those matters to which this release applies.

AND IT IS UNDERSTOOD that the Releasees, and each of them, do not admit any liability to the Releasor or others and that such liability is specifically and expressly denied.

IN **WITNESS WHEREOF** the Releasor has hereunto set his/her hand and seal this day of , 2024.

Witness	Printed Name of Statutorily Designated Official for the Provincial Health Insurer on behalf of [Province]
	Signature of Statutorily Designated Official for the Provincial Health Insurer on behalf of [Province]

STEVEN DALTON DINE Plaintiff	and	BIOMET, INC. ET AL. Defendants	Court File No. 13-CV-490112-00CP

Double Click on mouse to Add space for Third Party

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1*

ORDER
(Settlement Approval)

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Lawyers for the Plaintiff

Electronically issued / Délivré par voie électronique : 31-Oct-2024
Toronto Superior Court of Justice / Cour supérieure de justice

Court File No./N° du dossier du greffe : CV-13-00490112-00CP

Court File No. 13-CV-490112-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE JUSTICE GLUSTEIN	))))	Friday, THE 25th DAY OF OCTOBER, 2024

B E T W E E N :

STEVEN DALTON DINE

Plaintiff

- and -

BIOMET INC., BIOMET ORTHOPEDICS LLC, BIOMET MANUFACTURING CORP., BIOMET U.S. RECONSTRUCTION, LLC and BIOMET CANADA INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER
(Approval of the Special Claims Protocol)

THIS MOTION, made by the representative Plaintiff for approval of the Special Claims Protocol, was heard this day in Toronto via Zoom videoconference.

WHEREAS this action was certified as a class proceeding by Order dated December 18, 2015;

AND WHEREAS an agreement to settle the action (the "**Settlement Agreement**") was executed by the parties on July 18, 2024;

AND WHEREAS the Settlement Agreement provides for the establishment of a Discretionary Fund and further provides that the protocol for distribution of the Discretionary Fund shall be as determined by Class Counsel and approved by the Court;

AND WHEREAS Class Counsel has designed a protocol for the distribution of the Discretionary Fund (the "**Special Claims Protocol**") and seeks this Court's approval of that Protocol;

AND WHEREAS this Court has approved the Settlement Agreement in a separate order dated October 25, 2024;

UPON READING the Plaintiff's motion record, and upon hearing the submissions of counsel for the Plaintiff and counsel for the Defendants, and upon being advised that the Defendants do not oppose this order,

THIS COURT ORDERS AND DECLARES that:

1. The Special Claims Protocol, which is attached as Schedule B, sets out a fair and reasonable method for the distribution of the Discretionary Fund, and is hereby approved.
2. Verita Global LLC is hereby appointed Claims Administrator for the Special Claims Protocol.
3. This Court shall have continuing jurisdiction over the implementation and enforcement of the Special Claims Protocol.

J.

JUSTICE GLUSTEIN

SPECIAL CLAIMS PROTOCOL

Canadian Biomet M2a 38, M2a Magnum and ReCap Femoral Resurfacing Svstem Class Action Settlement

I. GENERAL

1. Subject to Section 2, this protocol (the "**Protocol**") imports the definitions used in the Canadian National Biomet M2A/Magnum Class Action Settlement Agreement (the "**Settlement Agreement**").

2. The following definitions apply to this **Protocol** only:

    a. "**Additional Notice Budget**" means the funds which **Class Counsel** may draw from the **Discretionary Fund** for additional expenditures on notice to the Class, where **Class Counsel** determines that such expenditures are in the best interests of the Class in accordance with Sections 3.2.2 and 3.5.1 of the **Settlement Agreement**.

    b. "**Administration Costs**" means all costs to administer and distribute the **Discretionary Fund**, including the costs and professional fees of the **Claims Administrator**;

    c. "**Class Counsel Fees**" means an amount not to exceed $187,500, being 25% of the **Discretionary Fund**, plus $24,375 for HST, for which **Class Counsel** will seek approval by the **Ontario Court**;

    d. "**Final Deadline**" means March 31, 2031; and

    e. "**Secondary Distribution**" means the amounts that may be allocated to **Class Members**, up to a maximum total of $100,000, in the event that there are funds remaining following distribution to **Approved Discretionary Fund Claimants**.

3. **Administration Costs** may be withdrawn from the **Discretionary Fund** by the **Claims Administrator** as payments to the **Claims Administrator** become due.

4. The **Claims Administrator** shall pay the **Class Counsel Fees** in the amount approved by the **Ontario Court** within 10 days of the date on which the **Initial Deposit** is paid into the **Account** by the **Defendants**.

5. **Class Counsel** may draw on the **Additional Notice Budget**, in an initial amount up to $50,000, at any time between the exhaustion of the Defendants' contribution to the costs of disseminating notice pursuant to the **Settlement Agreement** and the **Final Deadline**.

6. If **Class Counsel** determines that it is in the best interests of the Class that the **Additional Notice Budget** be greater than $50,000, **Class Counsel** shall bring a motion to the **Ontario Court** for approval of such additional notice expenditures. The **Defendants** do not have standing to make submissions at any such hearing.

7. Where a **Class Member** retains **Class Counsel** to bring a claim under this **Protocol**, **Class Counsel** may charge a contingency fee up to 8.3% of the **Class Member's** total recovery, plus HST, disbursements, and HST on disbursements, pursuant to a retainer with the **Class Member**.

8. If this **Protocol** does not adequately cover a matter relevant to the determination of a claim, the **Claims Administrator** shall seek directions from **Class Counsel**, who will consider the matter by analogy to the terms of the **Settlement Agreement**.

II. ELIGIBILITY

9. An **Approved Discretionary Fund Claimant** must be one of the following:

   a. A **Class Member** who otherwise meets the definition of **Qualified Revision Surgery Claimant**, but whose **Revision Surgery** is over 12 years and under 16 years following their **Index Surgery** (a "**12-16 Year Claimant**");

   b. A **Class Member** who otherwise meets the definition of **Qualified Revision Surgery Claimant**, but who has not had a **Revision Surgery** and does not have a **Scheduled Revision Surgery** as of the **Claims Deadline**, and whose **Revision Surgery** occurs no later than 12 years after their **Index Surgery** (a "**Late Index Surgery Claimant**"); and/or

   c. A **Class Member** who is **Unrevised** and has high levels of metal ions as set out below (a "**Metal Ion Claimant**").

10. In order to be an **Approved Discretionary Fund Claimant**, a **Class Member** must meet the following requirements, to be reviewed and assessed by the **Claims Administrator** in the same manner set out in the **Settlement Agreement**:

    a. A **12-16 Year Claimant** must meet the causation requirements applicable to a 10-12 Year **Qualified Revision Surgery Claimant** under Section 4.2.8 of the **Settlement Agreement**, except that their **Revision Surgery** occurred more than 12 years and less than 16 years and one day following the **Index Surgery**.

    b. A **Late Index Surgery Claimant** must meet the causation requirements applicable to a 10-12 year **Qualified Revision Surgery Claimant** under Section 4.2.8 of the **Settlement Agreement**.

c. A **Metal Ion Claimant** provide medical records dated at least 180 days after their **Index Surgery** with blood test results indicating cobalt or chromium levels which exceed any of the following thresholds:

	Serum (µg/L)	**Serum (nmol/L)**	**Whole Blood (µg/L)**	**Whole Blood (nmol/L)**
Cobalt	10 µg/L	169.5 nmol/L	9.14 µg/L	154.9 nmol/L
Chromium	10 µg/L	192.3 nmol/L	5.94 µg/L	114.2 nmol/L

11. A claimant who makes a claim as an **Unrevised Class Member** under the **Settlement Agreement** may also claim under this **Protocol** as a **Metal Ion Claimant**, but may not claim as a **12-16 Year Claimant** or as a **Late Index Surgery Claimant**.

12. Deadlines apply to claims made under this **Protocol**. Sections 1(h), 1(xx), and 1(ccc), defining "**Claims Deadline**", "**Scheduled Revision Surgery**", and "**Submission Deadline**", apply to this **Protocol** with necessary modifications. In particular:

    a. The term "**12-16 Year Claimant**" in this **Protocol** shall apply in the place of the term "**Qualified Revision Surgery Claimant**" in the **Settlement Agreement**.

    b. The **Submission Deadline** for a **Late Index Surgery Claimant** is 90 days after the claimant's **Revision Surgery**.

    c. The **Submission Deadline** for a **Metal Ion Claimant** is the **Claims Deadline**.

    d. For a claimant who has not had a **Revision Surgery** and does not have a **Scheduled Revision Surgery** as of the **Claims Deadline**, and whose **Revision Surgery** occurs no later than 16 years after the **Index Surgery**, the **Submission Deadline** shall be 90 days after the claimant's **Revision Surgery**.

13. Section 4.4.6 of the **Settlement Agreement** applies to claims made under the **Protocol**, except that further extensions, following the one at the discretion of the **Claims Administrator**, may only be granted by **Class Counsel**.

14. Notwithstanding anything in this **Protocol**, no claims may be received by the **Claims Administrator** following the **Final Deadline**.

III. COMPENSATION FOR APPROVED DISCRETIONARY FUND CLAIMANTS

15. The compensation payable to **Approved Discretionary Fund Claimants** will be determined by the allocation of points, and payments made based on those points as outlined below.

16. **Approved Discretionary Fund Claimants** will each be allocated a Basic Points Allocation ("**BPA**") as follows (the "**Point Matrix**"):

Category	Subcategory	Basic Points Allocation
METAL ION CLAIMANTS		
Metal Ion Claimants	N/A	24
LATE INDEX SURGERY CLAIMANTS		
Late Index Surgery Claimants	N/A	280
Late Index Surgery Complications (Single Revision Claimants)	Infection	38
	Permanent Nerve Damage	75
	Second Revision	75
	Blood Clot	38
	Stroke	150
	Third Revision	150
	Death	150
	Femoral Facture	60
	Dislocation	45
	Lost Wages	45
	Heart Attack	150
Late Index Surgery Complications (Bilateral Revision Claimants)	Infection	47
	Permanent Nerve Damage	94
	Second Revision	94
	Blood Clot	47
	Stroke	187
	Third Revision	187
	Death	187
	Femoral Fracture	71
	Dislocation	56
	Lost Wages	94
	Heart Attack	187
12-16 YEAR CLAIMANTS		
12-16 Year Claimants	N/A	200
12-16 Year Complications (Single Revision Claimants)	Infection	27
	Permanent Nerve Damage	54
	Second Revision	54
	Blood Clot	27
	Stroke	107
	Third Revision	107
	Death	107
	Femoral Facture	43
	Dislocation	32
	Lost Wages	32

Category	Subcategory	Basic Points Allocation
	Heart Attack	107
12-16 Year Complications (Bilateral Revision Claimants)	Infection	34
	Permanent Nerve Damage	67
	Second Revision	67
	Blood Clot	34
	Stroke	134
	Third Revision	134
	Death	134
	Femoral Fracture	51
	Dislocation	40
	Lost Wages	67
	Heart Attack	134

17. The **BPA** for Metal Ion Claimants will not be subject to a time-based reduction.

18. The **BPA** for approved **Late Revision Claimants** and **Complications** for **Late Revision Claimants** will be subject to the following reductions:

Implant In Vivo Time	Cumulative Reduction
In vivo 10 years, 1 day	0%
In vivo 11 years, 1 day	14.28….%[1]
In vivo 12 years and 1 day and beyond	Claimant may qualify as a **12-16 Year Claimant**

19. The BPA for approved **12-16 Year Claimants** and **Complications** for **12-16 Year Claimants** will be subject to the following reductions:

Implant In Vivo Time	Cumulative Reduction
In vivo 12 years, 1 day	0%
In vivo 13 years, 1 day	20%
In vivo 14 years, 1 day	40%
In vivo 15 years, 1 day	60%
In vivo 16 years and 1 day and beyond	No compensation

[1] The **Claims Administrator** shall apply a cumulative reduction equivalent to 1/7 of the BPA for **Late Revision Claimants** and **Complications** for **Late Revision Claimants**.

20. The **Claims Administrator** shall calculate each **Approved Discretionary Fund Claimant**'s **Final Point Value** as follows:

BPA for Revision Surgery * time-based reduction percentage

+

BPA for Complications * time-based reduction percentage

+

BPA for Metal Ions

21. The maximum amounts to which approved **12-16 Year Claimants** and **Late Index Surgery Claimants** may be entitled are as follows:

Category	Implant In Vivo Time	Maximum Compensation for Revision Surgery	Maximum Compensation for Complications (Total for All Complications)
Late Index Surgery Claimants	10-11 years	$52,500	$35,000
	11-12 years	$45,000	$30,000
12-16 Year Claimants	12-13 years	$37,500	$25,000
	13-14 years	$30,000	$20,000
	14-15 years	$22,500	$15,000
	15-16 years	$15,000	$10,000

22. The maximum amount to which an approved **Metal Ion Claimant** may be entitled is $4,500.

IV. DISTRIBUTION OF THE DISCRETIONARY FUND

23. The Discretionary Fund shall be distributed as follows:

a. First, to satisfy the **Class Counsel Fees** in the amount approved by the **Ontario Court**;

b. Second, to pay **Administration Costs**;

c. Third, to pay any amount of the **Additional Notice Budget** drawn upon by **Class Counsel**;

d. Fourth, to pay the levy to the Ontario Class Proceedings Fund pursuant to *Class Proceedings*, O. Reg. 771/92;

e. Fifth, to pay awards to **Approved Discretionary Fund Claimants**;

f. Sixth, if there are funds remaining after steps 1-5, to satisfy amounts payable in any **Secondary Distribution**;

g. Seventh, if there are funds remaining after steps 1-6, to pay the levy to the Quebec Fonds d'Aide aux Actions Collectives pursuant to the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives*, f-3.2.0.1.1, r. 2; and the *Code of Civil Procedure*, CQLR c C-25.01;

h. Eighth, if there are funds remaining after steps 1-7, **Class Counsel** shall recommend to the **Quebec Court** and **Ontario Court** that such amounts be divided between the **Provincial Health Insurers** in shares which are proportional to the total compensation awarded to **Approved Discretionary Fund Claimants** who resided within the territorial jurisdiction of each **Provincial Health Insurer** at the time of the **Revision Surgery** (or **Index Surgery**, in the case of an **Unrevised Metal Ion Claimant**).

24. The **Claims Administrator** will assess claims to the **Discretionary Fund** within sixty (60) days of receipt of a completed **Claimant Declaration** in accordance with Section 4.4 of the **Settlement Agreement**. The **Claims Administrator** shall provide notice to all **Approved Discretionary Fund Claimants** of the **Final Point Value** attributable to their claim.

25. The **Claims Administrator** shall calculate the compensation payable to each **Approved Discretionary Fund Claimant** by dividing the funds remaining in the **Discretionary Fund**, less any distributions authorized by this **Protocol**, *pro rata* among all **Approved Discretionary Fund Claimants** based on their **Final Point Value**, subject to the maximums listed in Sections 21 and 22 of this **Protocol**.

26. Notwithstanding Section 25 of this **Protocol**, the **Claims Administrator** shall not pro-rate the **Final Point Value** or compensation awarded to **Late Index Surgery Claimants**.

27. Within 60 days following the **Claims Deadline**, the **Claims Administrator** shall report to **Class Counsel** on:

a. The funds remaining in the **Discretionary Fund**;

b. The number of claims made to date under this **Protocol**;

c. The number of claims approved to date under this **Protocol**;

d. The total aggregate Final Point Value calculated for approved claimants to date under this **Protocol**; and

e. The total aggregate compensation calculated to date for approved claimants under this **Protocol**.

28. Following receipt of the **Claims Administrator's** report pursuant to Section 27 of this **Protocol**, **Class Counsel** may direct the **Claims Administrator** to pay up to 50% of the compensation awarded to each **Approved Discretionary Fund Claimant**, based on the **Claims Administrator's** *pro rata* calculations as of the date of the report.

29. At any time following the delivery of the report described in Section 27 of this **Protocol**, **Class Counsel** may request that the **Claims Administrator** deliver a report containing the same information. At their discretion, following receipt of the report, **Class Counsel** may direct the **Claims Administrator** to pay further amounts to **Approved Discretionary Fund Claimants**, based on the **Claims Administrator's** *pro rata* calculations as of the date of the report.

30. The **Claims Administrator** shall reserve amounts equal to 10% of each distribution to **Approved Discretionary Fund Claimants** pursuant to Sections 28-29 of this **Protocol** to pay the levy to the Ontario Class Proceedings Fund pursuant to *Class Proceedings*, O. Reg. 771/92. No distribution pursuant to Section 28 or 29 of this **Protocol** shall be made until the Law Foundation of Ontario has been given an opportunity to review and confirm the calculation of the reserve. If there is any dispute or question as to the calculation of the reserve, the Law Foundation of Ontario and **Class Counsel** shall arrange for an appearance before the **Ontario Court** to resolve the issue, and no amounts shall be distributed to **Class Members** pending that appearance.

31. Within 15 days following the **Final Deadline**, the **Claims Administrator** shall provide to **Class Counsel** an anonymized summary of the **Discretionary Fund** accounting ("**Final Discretionary Fund Report**"). Such accounting shall include:

a. The funds remaining in the **Discretionary Fund**;

b. The total number of claims made under this **Protocol**;

c. The total number of claims approved under this **Protocol**;

d. The total aggregate Final Point Value calculated for approved claimants under this **Protocol**;

e. The total aggregate compensation calculated for approved claimants under this **Protocol**; and

f. The levy payable to the Ontario Class Proceedings Fund pursuant to *Class Proceedings*, O. Reg. 771/92, including amounts reserved pursuant to Section 30 of this **Protocol**.

32. Following receipt of the **Final Discretionary Fund Report**, **Class Counsel** shall consider whether a **Secondary Distribution** is economically feasible, and shall provide directions to the **Claims Administrator** as to the **Secondary Distribution**. The categories of **Class Members** who may be eligible to receive amounts via a **Secondary Distribution** are at the discretion of **Class Counsel**, but may include:

    a. **Class Members** who otherwise met the definition of **Qualified Revision Surgery Claimant**, **12-16 Year Claimant**, or **Late Index Surgery Claimant**, except that they failed to satisfy the causation requirements in section 4.2.8 of the **Settlement Agreement**;

    b. **Approved Discretionary Fund Claimants**, to whom additional amounts may be paid, notwithstanding the maximums listed in Sections 21 and 22 of this **Protocol** (if applicable); and/or

    c. Other **Class Members** with exceptional circumstances.

33. **Class Counsel** shall report to the **Claims Administrator** as to whether a **Secondary Distribution** will be made within 15 days following receipt of the **Final Discretionary Fund Report**.

34. If there are amounts available to make payments to the Quebec Fonds d'Aide aux Actions Collectives and the **Provincial Health Insurers** pursuant to Subsections 23(g)-(h) of this **Protocol**, the **Claims Administrator** shall report on the amounts proposed to be paid to the Fonds d'Aide aux Actions Collectives and each **Provincial Health Insurer** to **Class Counsel** for approval.

35. **Class Counsel** may seek the direction of the **Ontario Court** if there is any uncertainty as to the appropriate distribution of the balance of the Discretionary Fund in accordance with this **Protocol** and the **Settlement Agreement**. The **Defendants** do not have standing to make submissions at any such hearing.

36. Upon written approval from **Class Counsel** or court order, the **Claims Administrator** shall make the final distribution payments pursuant to Sections 23 and 25 of this **Protocol**.

37. If payments to **Class Members** under this **Protocol** are made by cheque, and if a claimant does not cash a cheque within 6 months of the date of the cheque, the claimant shall forfeit the right to compensation and the funds shall revert to the **Discretionary Fund**.

38. If the **Discretionary Fund** is in a positive balance after 190 days from the date of the final distribution described in Section 36 of this **Protocol**, (whether by reason of tax refunds, un-cashed cheques, or otherwise), the **Claims Administrator** shall report to and seek direction from **Class Counsel** as to the allocation of the remaining funds.

STEVEN DALTON DINE Plaintiff	and	BIOMET INC. ET AL. Defendants	Court File No. 13-CV-490112-00CP

Double Click on mouse to Add space for Third Party

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1*

ORDER
(Approval of the Special Claims Proto

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Electronically issued / Délivré par voie électronique : 31-Oct-2024
Toronto Superior Court of Justice / Cour supérieure de justice

Court File No./N° du dossier du greffe : CV-13-00490112-00CP

Court File No.: 13-CV-490112-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE	)	FRIDAY, THE 25th
	)	
	)	
JUSTICE GLUSTEIN	)	DAY OF OCTOBER, 2024

B E T W E E N :

STEVEN DALTON DINE

Plaintiff

- and -

BIOMET, INC., BIOMET ORTHOPEDICS, LLC, BIOMET MANUFACTURING CORP., BIOMET US RECONSTRUCTION, LLC and BIOMET CANADA INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER
(NOTICE OF SETTLEMENT FOR CERTAIN HOSPITALS)

THIS MOTION, made by the Plaintiff for an order requiring certain hospitals to disseminate the notice of settlement for class members who were implanted with any of the M2a 38, the M2a Magnum or the ReCap Femoral Resurfacing System (collectively the "Biomet Devices") at these hospitals, was heard remotely by the court at 361 University Avenue, Toronto, Ontario.

ON READING the plaintiff's hospital notification motion record and supplementary motion record, and on hearing the submissions of the lawyers for the parties,

1. **THIS COURT ORDERS** that service of the plaintiff's motion record on the hospitals listed in Schedule 'A' is validated and deemed effective 5 days after the motion record was couriered.

2. **THIS COURT ORDERS** that the Hospitals shall, within 90 days of receipt of the order:

(a) check their records and databases to identify each person implanted at the Hospital with a Biomet Device to confirm each person's identified address and health insurance number, if it is reasonably possible to do so, and mail a copy of the Notice of Settlement and Explanatory Letter attached as Schedule "B" hereto to the identified address set out above; and

(b) compile a list of the individuals set out in (a) above including contact information for those individuals, and deliver that list to Verita Global LLC (the "Administrator").

3. **THIS COURT ORDERS** that the Hospitals shall be reimbursed for their reasonable costs to carry out the terms of this order by the Administrator in accordance with the Settlement Agreement.

4. **THIS COURT ORDERS** that there shall be no cost of this motion.

J.

SCHEDULE 'A'		
1.	Alberta Health / Foothills Hospital	Edmonton AB
2.	Annapolis Valley Health	Kenetville NS
3.	Arno Smit M.D., FRCSC	White Rock, BC
4.	C.H. Regional. de Rimouski	Rimouski QC
5.	C.H.R. de Lanaudière	St-Charles-Borromée QC
6.	Capital District Health - Bethune Building	Halifax NS
7.	Centre Hospitalier Baie des Chaleurs	Maria QC
8.	CH Legardeur	Terrebonne QC
9.	Chicoutimi Hospital	Chicoutimi QC
10.	CHUS/Sherbrooke	Sherbrooke QC
11.	CIUSSS de l'Estrie - CHUS Hôpital Fleurimont	Sherbrooke QC
12.	CIUSSS de l'Estrie - CHUS Hôtel-Dieu de Sherbrooke	Sherbrooke QC
13.	COHPA/Peterborough Regional Health Centre	Peterborough ON
14.	COHPA/Ross Memorial Hospital	Lindsay ON
15.	COHPA/Royal Victoria Hospital	Barrie ON
16.	COHPA/York Central Hospital	Richmond Hill ON
17.	Credit Valley Hospital	Mississauga ON
18.	CSSS De Bauce/Centre Hospitalier Beauce-Etchemin	Saint-Georges QC
19.	CSSS de Bauce/CSSS de Beauce	Beauceville ON
20.	CSSS de Lac St Jean Est (Hôpital d'Alma)	Alma QC
21.	CSSS Domaine du Roy	Roberval QC
22.	CSSS du Saurel-Tracy Courte Duree	Sorel QC

23.	CSSS Haute Yamaska Grandy/Centre Hospitalier de Granby	Granby QC
24.	CSSS Haute Yamaska/Granby	Granby QC
25.	CSSS Montmagny	Montmagny QC
26.	CSSS Pierre de Saurel Court Duree	Sorel-Tracy QC
27.	CSSS Sud Ouest Verdun/Hospital de Verdun	Verdun QC
28.	Dartmouth General Hospital	Halifax NS
29.	Etobicoke General Hospital	Etobicoke ON
30.	Fraser Health Authority/Ridge Meadows Hospital c/o Langley Memorial Hospital	Langley BC
31.	Fraser Health Authority/Ridge Meadows Hospital c/o Peace Arch District Hospital	White Rock BC
32.	Fraser Health Authority/Ridge Meadows Hospital c/o Royal Columbian Hospital	Langley BC
33.	Grace General Hospital	Winnipeg MB
34.	Grand River Hospital	Kitchener ON
35.	Health Sciences Centre	Winnipeg MB
36.	Healthcare MAT MGT/St. Joseph Hospital	London ON
37.	HLD-CSSS Alphonse-Desjardins Hôtel-Dieu De Levis	Levis QC
38.	Hôpital d'Àrthabaska	Victoriaville QC
39.	Hôpital De L'Enfant-Jesus	Québec QC
40.	Hôpital Maisonneuve-Rosemont	Montréal QC
41.	Hôpital Pierre-Boucher	Longueuil QC
42.	Hôpital Sainte-Croix	Drummondville QC
43.	Hospital Saint François D'Assise	Québec QC

44.	Hôtel-Dieu de Gaspé	Gaspé QC
45.	Hôtel-Dieu de Québec	Québec QC
46.	Hôtel-Dieu de Québec	Québec QC
47.	Jewish General Hospital	Montréal QC
48.	Mississauga General Hospital	Mississauga ON
49.	Montfort General Hospital	Ottawa ON
50.	Mount Sinai Hospital	Toronto ON
51.	Nanaimo Health/Campbell River Hospital	Campbell River BC
52.	Niagara Health/St. Catherine's Complex GNG SITE/Hôtel-Dieu NHS - Welland Site	Welland ON
53.	Niagara Hlth/St Catharine's Complex/Hôtel-Dieu Hospital	St. Catharines ON
54.	North York General Hospital	Toronto ON
55.	Orillia Soldier's Memorial Hospital	Orillia ON
56.	Ottawa General Hospital	Ottawa ON
57.	Queen Elizabeth Hospital	Halifax NS
58.	Queensway-Carleton Hospital	Nepean ON
59.	Rouge Valley Health System	Scarborough ON
60.	Royal Alexandria Hospital	Edmonton AB
61.	Royal Jubilee Hospital	Victoria BC
62.	Saint Catherine's General Hospital	St. Catharines ON
63.	Santa Cabrini Hospital	Montréal QC
64.	Scarborough General Hospital	Scarborough ON
65.	Scarborough Grace Hospital	Scarborough ON
66.	Services Médicaux Nicholas Duval	Vimont QC

67.	Services Médicaux Nicolas Duval	Vimon Laval QC
68.	South Lake Regional Health Centre	Newmarket ON
69.	Sunnybrook Medical Centre	Toronto ON
70.	Sunnybrook/Orthopaedic & Arthritic	Toronto ON
71.	Thunder Bay Regional Hospital	Thunder Bay ON
72.	University Health/Toronto Western Hospital	Toronto ON
73.	University Hospital	London ON
74.	UBC Hospital	Vancouver BC
75.	Valley Regional Hospital	Kentville NS
76.	Victoria General Hospital	Burnaby BC
77.	Western Regional Health Board	Kentville NS
78.	William Osler Health/Brampton Civic Hospital	Brampton ON

SCHEDULE "B"

Dear Sir/Madam,

Re: Biomet Metal on Metal Hip Implant

We, together with Koskie Minsky LLP and Klein Lawyers, are the court-appointed Class Counsel in a national class action certified by the Ontario Superior Court of Justice on December 18, 2015 on behalf of people who were implanted in Canada with a M2a 38, M2a Magnum or the ReCap Femoral Resurfacing System (the "Biomet Devices"). We are working with Sylvestre Painchaud + associés with respect to Biomet Devices in Quebec.

We are writing to you because you have been identified by hospital records as an individual who may have been implanted with a Biomet Device, and you have not opted-out of the class action.

A settlement of the class action lawsuit has been approved by the Ontario Superior Court, and the court has ordered this letter and the enclosed notice be mailed by health care institutions to people who have been implanted with a Biomet Device. You may be eligible to make a claim for compensation in this settlement.

The enclosed notice of settlement may affect your rights. Please read it carefully.
If the reader of this letter is not the patient but the next of kin of a now deceased patient, we are sorry for your loss and apologize for bringing this to your attention. We wanted to make you aware, however, that estate representatives may be able to claim on behalf of the deceased patient. Please contact class counsel for further information in this regard.

The fact that you have received this letter does not necessarily mean that you are a class member or that we are representing you to submit a claim on your behalf in the settlement. Please contact one of the class counsel firms below if you have any questions.

Yours very truly,

Madame, Monsieur,

Objet : Implant de hanche Biomet Métal sur Métal

Nous sommes, en collaboration avec Koskie Minsky LLP et Klein Lawyers, les avocats désignés par la cour pour représenter le groupe dans le cadre d'une action collective nationale autorisée par la Cour supérieure de justice de l'Ontario le 18 décembre 2015, au nom des personnes qui ont été implantées au Canada avec un M2a 38, M2a Magnum ou le système de resurfaçage fémoral ReCap (les « Dispositifs Biomet »). Nous travaillons avec Sylvestre Painchaud et Associés pour les cas liés aux Dispositifs Biomet au Québec.

Nous vous écrivons, car les dossiers hospitaliers indiquent que vous pourriez avoir reçu un implant Biomet, et vous n'avez pas choisi de vous exclure de l'action collective.

Une entente de règlement de cette action collective a été approuvé par la Cour supérieure de justice de l'Ontario, et la cour a ordonné que cette lettre ainsi que l'avis ci-joint soient envoyés par les établissements de santé aux personnes ayant reçu un implant Biomet. Vous pourriez être éligible à soumettre une réclamation pour obtenir une indemnisation dans le cadre de ce règlement.

L'avis de règlement joint pourrait affecter vos droits. Veuillez le lire attentivement.

Si le destinataire de cette lettre n'est pas le patient, mais plutôt l'héritier d'un patient décédé, nous vous présentons nos sincères condoléances et vous prions de bien vouloir excuser la présente démarche. Nous souhaitons néanmoins vous informer que les représentants de la succession pourraient avoir la possibilité de soumettre une réclamation au nom du patient décédé. Veuillez contacter les avocats de l'action collective pour plus d'informations à ce sujet.

Le fait que vous ayez reçu cette lettre ne signifie pas nécessairement que vous êtes membre du groupe ni que nous vous représentons pour soumettre une réclamation en votre nom dans le cadre du règlement. Veuillez contacter l'un des cabinets d'avocats mentionnés ci-dessous si vous avez des questions.

Veuillez agréer, Madame, Monsieur, l'expression de nos salutations distinguées.

STEVEN DALTON DINE Plaintiff	and	BIOMET INC. ET AL. Defendants	Court File No. 13-CV-490112-00CP

Double Click on mouse to Add space for Third Party

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 199*

ORDER
(NOTICE OF SETTLEMENT FOR CERTAIN HOSPITAL

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Toronto Superior Court of Justice / Cour supérieure de justice

Court File No./N° du dossier du greffe : CV-13-00490112-00CP

Court File No. 13-CV-490112-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE JUSTICE GLUSTEIN	))))	Friday, THE 25th DAY OF OCTOBER, 2024

B E T W E E N :

STEVEN DALTON DINE

Plaintiff

- and -

BIOMET INC., BIOMET ORTHOPEDICS LLC, BIOMET MANUFACTURING CORP., BIOMET U.S. RECONSTRUCTION, LLC and BIOMET CANADA INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER
(Approval of Fees, Disbursements, Honourarium, and Payments to Public Litigation Funders)

THIS MOTION, made by Class Counsel for an order approving the legal fees payable to Class Counsel with respect to these proceedings, an honorarium to the Plaintiff, and for payments to the Class Proceedings Fund and Fonds d'aide aux actions collectives, was heard on Friday, October 25, 2024 via Zoom videoconference.

WHEREAS the settlement agreement in this action was executed on July 18, 2024 (the "**Settlement Agreement**") and was approved by this court on October 25 , 2024;

WHEREAS the Special Claims Protocol applicable to the administration of the Discretionary Fund was approved by this court on October 25, 2024;

AND UPON HEARING the submissions of counsel for the Plaintiff, and upon reading the materials filed, the motion record of Class Counsel, and the factum of Class Counsel,

THIS COURT ORDERS AND DECLARES that:

1. The definitions set out in the Settlement Agreement apply to and are incorporated into this Order.

2. Class Counsel's retainer agreement with the Plaintiff is hereby approved.

3. The contribution by the Defendants to Class Counsel Fees and Disbursements under section 9.1 of the Settlement Agreement is hereby approved.

4. The $65,000 in costs in the cause awarded by The Honourable Justice Edward P. Belobaba on February 9, 2016 are deemed to have been incorporated into the Defendants' contribution to Class Counsel Fees and Disbursements under section 9.1 of the Settlement, and no further amounts remain payable in the cause;

5. Class Counsel Fees are payable by Approved Claimants and are fixed at 25% of each Approved Claimant's award (less the fee portion of the contribution towards Class Counsel Fees and Disbursements made pursuant to paragraph 3, and less the fee portion of the costs awarded to the Plaintiff earlier in the proceeding), plus taxes.

6. The Claims Administrator shall deduct 25% from each Approved Claimant's award, plus taxes, and pay the deducted amount to Class Counsel, less the holdback for the fee portion of the contribution towards Class Counsel Fees and Disbursements made pursuant to paragraph 3 of this Order and less the fee portion of the costs awarded to the Plaintiff earlier in the proceeding.

7. The quantum of the holdback referred to in paragraphs 5 and 6 of this Order shall be reduced by the amounts of any disbursements incurred by Class Counsel in connection with the implementation of the Settlement Agreement (excluding disbursements specific to any individual claim), which shall be approved by separate order of the Court.

8. The Claims Administrator shall distribute the amount held back pursuant to paragraphs 6-7 of this Order to Approved Claimants on a *pro rata* basis within 30 days of being advised that an agreement has been reached between Defendants' Counsel and Class Counsel that no further

amounts are owing under pursuant to section 4.2.18 of the Settlement Agreement, subject to the Court's order with respect to disbursements as referred to in paragraph 7 of this Order.

9. Class Counsel Fees on the Discretionary Fund are fixed at 25% plus HST, being $187,500 plus $24,375 for HST.

10. Payments of the following amounts to the Law Foundation of Ontario and the Fonds d'aide aux actions collectives are hereby approved and are directed to be made as follows:

(a) From the monies recovered by Class Counsel under paragraph 3 of this Order, Class Counsel shall reimburse the Law Foundation of Ontario for amounts advanced in this case, totalling $752,569.86, and shall reimburse the Fonds d'aide aux actions collectives for amounts advanced in *Conseil Pour La Protection Des Malades c. Biomet* (No. 500-06-000745-154) in the amount of $9,986.50;

(b) Except in respect of an Approved Claim submitted by a Class Member resident in Quebec at the time of their claim, the Administrator shall deduct from each award made to an Approved Claimant 10% of the net value of their award, after payment to Class Counsel of amounts payable under paragraph 5, and pay the deducted amount to the Law Foundation of Ontario in accordance with Regulation 771/92 of the *Law Society Act*.

(c) For Approved Claimants resident in Quebec at the time of their claim, the Administrator shall deduct from each award made to an Approved Claimant the percentage specified at section 1(3) of the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives,* f-3.2.0.1.1, r. 2 and the *Code of Civil Procedure,* CQLR c C-25.01 of the net value of their award, after payment to Class Counsel of amount payable under paragraph 5, and pay the deducted amount to the Fonds d'aide aux actions collectives.

11. The levies on the Discretionary Fund payable to the Law Foundation of Ontario pursuant to Regulation 771/92 of the *Law Society Act*, and to the Fonds d'aide aux actions collectives pursuant to the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions*

collectives, f-3.2.0.1.1, r. 2 and the *Code of Civil Procedure*, CQLR c C-25.01, shall be calculated in accordance with the Special Claims Protocol.

12. Class Counsel's motion for an honourarium to the the Plaintiff of $7500, in accordance with section 4.2.10 of the Settlement Agreement, is dismissed without costs.

J.

JUSTICE GLUSTEIN

STEVEN DALTON DINE Plaintiff	and	BIOMET INC. ET AL. Defendants	Court File No. 13-CV-490112-00CP

Double Click on mouse to Add space for Third Party

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto
Proceeding under the *Class Proceedings Act, 1*

ORDER
(Approval of Fees, Disbursements & Honourarium)

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Court File No./N° du dossier du greffe : CV-13-00490112-00CP

CITATION: Dine v. Biomet Inc., 2024 ONSC 5949
COURT FILE NO.: CV-13-490112-00CP
DATE: 20241028

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: STEVEN DALTON DINE, Plaintiff

AND:

BIOMET INC., BIOMET ORTHOPEDICS LLC, BIOMET MANUFACTURING CORP., BIOMET U.S. RECONSTRUCTION, LLC and BIOMET CANADA INC., Defendants

BEFORE: Glustein J.

COUNSEL: *Jonathan Ptak, Jamie Shilton, Daniel McConville, Brent Ryan, Sophie Estienne, and Kayrouz Abou Malhab* for the plaintiff

Derek Ricci, Chantelle Cseh, and Henry Machum, for the defendants

HEARD: October 25, 2024

REASONS FOR DECISION

NATURE OF MOTION AND OVERVIEW

[1] The plaintiff, Steve Dalton Dine ("Dine") brings four motions to the court:

(i) **A motion for approval of the settlement agreement executed on July 18, 2024 (the "Settlement Agreement")**, seeking, on consent, orders (a) for a declaration that the Settlement Agreement is fair, reasonable, and in the best interests of the class, (b) approving the Settlement Agreement pursuant to s. 29 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (the "*CPA*"), (c) approving the form, content, and manner of distribution of the proposed notice of settlement approval, and (d) approving Verita Global LLC ("Verita") as the administrator of the claims process pursuant to the Settlement Agreement.

(ii) **A motion for approval of the $750,000 Discretionary Fund (the "Discretionary Fund") established under the Settlement Agreement (the "Special Claims Protocol"**), seeking orders (a) for a declaration that the Special Claims Protocol is fair, reasonable, and in the best interests of the class, (b) approving the Special Claims Protocol pursuant to s. 29 of the *CPA*, and (c) appointing Verita as the administrator of the Special Claims Protocol.

(iii) **A motion for approval of fees, disbursements, honorarium, and payments to public litigation funders**, seeking orders (a) approving the retainer agreement between Class Counsel[1] and the plaintiff, (b) approving the defendants' contribution of $1,250,000 to Class Counsel fees and disbursements pursuant to section 9.1 of the Settlement Agreement, (c) approving Class Counsel fees on awards made under the Settlement Agreement and in respect of the Discretionary Fund, (d) approving a $7500 honorarium to Dine, to be paid by the defendants, (e) providing that the Class Proceedings Fund ("CPF") is entitled to: (1) the amount of any direct financial support paid under section 59.3 of the *Law Society Act*, R.S.O. 1990, c. 43, excluding any amount repaid by the plaintiff, and (2) 10% of the amount of the award or settlement funds, if any, to which each class member is entitled, excluding awards made to class members resident in Quebec, and (f) providing that the Fonds d'aide aux actions collectives (the "Fonds") is entitled to a levy on the award or settlement funds, if any, to which each class member resident in Quebec is entitled pursuant to the Settlement Agreement.

(iv) **A motion for orders relating to notice to be provided by 78 hospitals listed in Schedule "A" to the notice of motion (the "Hospitals")**, seeking orders: (a) validating service of the plaintiff's motion record on the Hospitals by regular mail or courier and deeming service effective five days after the date the motion record was mailed or couriered, (b) that the Hospitals shall, within 90 days of receipt of the order, for each individual implanted at a Hospital with any of the M2a 38, the M2a Magnum or the ReCap Femoral Resurfacing System (collectively the "Biomet Devices") (1) check their records and databases to identify each person implanted at the Hospital with a Biomet Device to confirm each person's identified address and health insurance number, if it is reasonably possible to do so, and mail a copy of the Notice of Settlement and Explanatory Letter attached as Schedule "B" to the notice of motion to the identified address, and (2) compile a list of the individuals set out in subpara. (1) above including contact information for those individuals, and deliver that list to Verita, and (c) that the Hospitals be reimbursed by Verita for the Hospitals' reasonable costs to carry out the terms of this in accordance with the Settlement Agreement.

[2] The defendants (collectively, "Biomet") consent to the first motion. The other motions are unopposed.

[3] For the reasons that follow, I grant the relief sought, except for the honorarium claimed by Dine.

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[1] Class Counsel is a consortium comprised of Koskie Minsky LLP, Whelton Hiutin LLP, Klein Lawyers, and Sylvestre Painchaud et Associés.

FACTS

[4] There are no contested facts before the court on this motion. Consequently, I adopt the facts either taken *verbatim* or paraphrased from the plaintiff's factum or affidavit evidence.

Background to the action

[5] A hip implant consists of a set of artificial components that are used to replace part or all of the natural hip joint. The initial procedure to replace a natural hip joint is called the "index" surgery. Any further operation that involves a removal from, exchange with, or addition to an existing device is called a "revision" surgery.

[6] Between 2003 and 2014, Biomet marketed a range of hip implant systems which used metal-on-metal ("MoM") articulating components, three of which are at issue in this proceeding: the M2a 38, M2a Magnum and ReCap Femoral Resurfacing System (each a "Biomet Device").

[7] Over time, some patients who were implanted with a Biomet Device suffered from pain, discomfort, and metal-related pathologies, and some had to undergo extremely invasive "revision" surgeries, wherein part or all of their implants were removed and replaced.

The Biomet Devices

[8] The three Biomet Devices were each approved for sale by Health Canada by the issuance of medical device licences between 2003-2006. Over 4000 implant systems were sold across Canada. About half of these sales occurred in 2009-2011, with sales tapering off to just a handful in 2014 when sales ended.

[9] In February 2015, two of the Biomet Devices were issued a "hazard alert" in Australia. However, in Canada, the Biomet Devices remained under approval by Health Canada until sales ended in 2014. Health Canada confirmed that the Biomet Devices met the "safety and effectiveness" requirements of the Medical Device Regulations as late as in November 2013, which is after this case was commenced.

[10] Other MoM hip implant cases (discussed in more detail below) involved devices which had been recalled in Canada.

The Plaintiff

[11] In 2006, Dine was implanted with a Biomet Device. Subsequently, he suffered continuous, intense, and increasing pain. In 2008, Dine underwent surgery to replace his implant with a different Biomet Device. However, he continued to experience excruciating hip pain. On March 15, 2013, Dine underwent another revision surgery to replace his Biomet Device with a non-MoM implant.

History of the Proceeding

Commencement and certification

[12] On October 4, 2013, Dine commenced this class action, which alleged that the Biomet Devices were negligently designed. The defendants deny the allegations against them.

[13] The certification proceedings were vigorously contested by both sides. The plaintiff served a voluminous certification record which included an affidavit from Dine, an expert report from Dr. Stephen Graves (the "Graves Report"), and further evidence including informational materials for the Biomet Devices.

[14] The defendants filed voluminous materials in response, including:

(i) a record for a motion seeking production of the plaintiff's medical records,

(ii) a statement of defence, and

(iii) a notice of motion for summary judgment, seeking dismissal of the plaintiff's claims on the basis that the Biomet Devices were not negligently designed.

[15] Following a scheduling motion brought by the plaintiff, Justice Belobaba directed that the summary judgment motion could proceed after the certification motion.

[16] The parties filed extensive further evidence on the certification motion:

(i) The plaintiff filed additional class member affidavits.

(ii) The defendants served an extensive responding motion record, including an affidavit from David Schroeder, a Vice-President with Biomet, as well as two expert reports. The defendants filed a third expert report, as well as an affidavit from another Biomet Vice-President concerning the regulatory history of the Biomet Devices.

[17] Cross-examinations were held in August 2015. The plaintiff cross-examined the three defence experts and two Biomet Vice-Presidents, while the defendants cross-examined Dine and Dr. Graves. As discussed below, Dine found his cross-examination “difficult”, since it involved highly invasive questions (though not improper) about personal health issues.

[18] In September 2015, the defendants brought a motion to strike the Graves Report, to be heard concurrently with the certification motion. Soon after, the plaintiff delivered his reply certification record, enclosing a reply expert report prepared by Dr. Graves.

[19] Following a three-day hearing, on December 18, 2015, Belobaba J. certified this action as a class proceeding. The following class was certified:

(i) All persons who were implanted in Canada with metal-on-metal hip implant systems known as the M2a 38, the M2a Magnum and the ReCap Femoral Resurfacing System; and

(ii) All other persons who by reason of a personal relationship to an implant patient have standing pursuant to section 61(1) of the *Family Law Act* or equivalent legislation in other provinces and territories.

[20] Despite granting certification, Justice Belobaba acknowledged the defendants' evidence on the purported safety of the Biomet Devices, and wrote that "the defendants may well prevail when the merits are fully adjudicated": *Dine v. Biomet*, 2015 ONSC 7050, at para. 18.

[21] Justice Belobaba declined to decide the motion to strike the Graves Report, holding that there was sufficient evidence to satisfy the "some basis in fact" standard in the report's absence: *Dine*, at paras. 62-64.

[22] On June 17, 2016, the defendants' motion for leave to appeal was dismissed by the Divisional Court: *Dine v. Biomet*, 2017 ONSC 4039 (Div. Ct.).

The Quebec Proceeding

[23] On June 19, 2015, the Conseil pour la Protection des Malades ("CPM") commenced a class action in the Quebec Superior Court through its counsel, Sylvestre Painchaud et Associés, on behalf of persons implanted in Quebec with a Biomet Device (the "Quebec Action").

[24] On September 23, 2016, the Quebec Court stayed the Quebec Action.

[25] Dine, CPM, and their counsel subsequently agreed to form a consortium to prosecute the within proceeding.

[26] Because the class is national in scope, there is no separate Quebec settlement. Upon approval of the Settlement Agreement, CPM will move for (i) homologation of this court's order under the Quebec *Code of Civil Procedure*, and (ii) discontinuance of the Quebec Action.

Notice of certification

[27] Disseminating notice of certification to the class was a complex undertaking that required numerous motions across Ontario, Quebec, and Alberta.

[28] The plaintiff implemented a national direct notice plan, which required all of the hospitals that had implanted Biomet Devices to send certification notices directly to the class members. This plan required the plaintiff to bring multiple motions in Ontario, Quebec and Alberta in 2016-2019.

[29] In addition, the plaintiff brought a further motion (i) requiring hospitals to preserve class members' medical records, (ii) requiring hospitals to send a letter from Class Counsel to class

members advising, *inter alia*, of the need to preserve their own records, and (iii) ordering Quebec's provincial health insurer to disclose class member contact information to Quebec Class Counsel.

[30] The process through which notice was provided to the class was complex and protracted. However, it enabled Class Counsel to build up extensive and detailed lists of class members who contacted them in response to notices sent to them by their hospitals. In total, as of July 2024, Class Counsel's combined contact lists included about 2100 individuals, with whom Class Counsel has maintained communication by providing regular updates.

[31] In addition, the Class Counsel firms all adopted a practice of requesting that revised class members who contacted them provide authorizations enabling Class Counsel to obtain their medical records for the purposes of the proceeding. Class Counsel's review of these records provided insight into the ranges of health impacts experienced by revised class members.

The discovery process

[32] Negotiations between the plaintiff and the defendants concerning the discovery plan were protracted and complex, given the massive volume of potentially relevant documents.

[33] In the discovery plan, the defendants agreed to disclose all documents produced in the numerous U.S. proceedings that had been consolidated through the federal multi-district litigation procedure ("MDL") and in a Florida proceeding, as well as a range of other documents specific to Canada. Between fall 2017 and fall 2018, the defendants produced the documents that had been disclosed in the U.S. proceedings. Approximately 1.5 million such documents were disclosed. The additional documents specific to Canada numbered approximately 153,000.

[34] In an effort to reduce the costs of hosting such an immense database, the plaintiff sought to obtain access to the production database maintained by plaintiffs' counsel in the U.S. In collaboration with the plaintiff in this proceeding, in February 2019, U.S. plaintiffs' counsel brought a motion before the Florida state court in Sarasota County to enable Class Counsel to access their production database. Class Counsel attended the hearing of that motion, and on May 10, 2019, the Florida Court granted the order, subject to a number of conditions precedent.

[35] Ultimately, in light of the steps necessary to fulfil the conditions set by the Florida Court, as well as disagreements between U.S. counsel for Biomet and U.S. plaintiffs' counsel regarding the mechanics by which the U.S. productions would be shared, in May 2020, Class Counsel determined that it was not feasible to rely on the production database maintained by U.S. counsel.

[36] Through 2020, the plaintiff continued efforts to make the document review process more manageable in collaboration with a Canadian document management company, Heuristica Discovery Counsel LLP ("Heuristica"). In late 2020 and early 2021, the plaintiff obtained and reviewed the transcripts and exhibits from two trials that had been conducted in the U.S. Later in 2021, these exhibits were provided to Heuristica, which used algorithmic software to identify a subset of conceptually similar documents across the 1.5 million productions from the U.S.

proceedings. Throughout this process, Class Counsel reviewed a massive volume of documents in order to prepare for discoveries, and ultimately for trial.

[37] In September 2022, the parties scheduled dates for oral examinations for discovery. Then, in October 2022, the parties agreed to engage in mediation.

Settlement discussions and mediation

[38] The parties agreed to a mediation before Linda R. Rothstein, a leading member of the Ontario bar. Ms. Rothstein has successfully mediated a number of class actions, resulting in court-approved settlements.

[39] In advance of the mediation, the plaintiff disclosed medical records for 35 revised class members to the defendants. The parties exchanged mediation briefs in April, 2023.

[40] The first mediation session took place between May 1-3, 2023. While some progress was made, an agreement could not be reached. The plaintiff agreed to provide further information concerning known class members who had undergone revision surgeries, and concerning any information maintained by the provincial health insurers.

[41] Further mediation dates with Ms. Rothstein were held on October 11-12, 2023. Again, despite further progress, an agreement was not reached.

[42] At a further mediation session with Ms. Rothstein on November 29, 2023, the parties reached an agreement-in-principle ("AIP").

[43] While the AIP was a major milestone, significant work toward the completion of a full settlement agreement remained to be done. From December 2023 through to July 2024, the parties exchanged numerous offers and counter-offers to resolve challenging issues such as the causation criteria applicable to class members whose revision surgeries occurred more than 10 years following the index surgery, which required review of scientific publications and class member medical records. The final version of the Settlement Agreement was concluded on July 18, 2024.

Biomet Device Litigation in Foreign Jurisdictions

[44] Over the course of the litigation in this proceeding, the plaintiff closely monitored developments in litigation over the same devices in foreign jurisdictions.

[45] In 2014, Biomet agreed to settle the suits that had been consolidated through the MDL (the "U.S. MDL Settlement").

[46] In 2020, federal jury trials were held in Missouri (*Bayes et al. v. Biomet, Inc. et al.*, or "*Bayes*") and Iowa (*Nicholson et al. v. Biomet, Inc. et al.*, or "*Nicholson*"). In both cases, the juries issued plaintiff verdicts, finding in *Bayes* that the M2a Magnum was negligently designed,

and finding in *Nicholson* that the same implant was defectively designed: *Bayes v. Biomet, Inc.*, 2021 WL 3330911 (E.D. Missouri); *Nicholson v. Biomet, Inc.*, 537 F.Supp.3d 990 (N.D. Iowa).

[47] Biomet challenged these verdicts before the trial judges and on appeal. Both verdicts were upheld: *Nicholson v. Biomet, Inc.*, 46 F.4th 757 (8th Cir. 2022); *Bayes v. Biomet, Inc.*, 55 F.4th 643 (8th Cir. 2022).

[48] However, on June 28, 2023, a court in the Netherlands reached the opposite conclusion in a case brought by fifteen plaintiffs against Biomet for injuries alleged to have been caused by the Biomet Devices. In *Stevens et al. v. Biomet et al.*, Rotterdam Court, 12 June 2023, C/10/461497 HA ZA 14-1051 (et al.) ("*Stevens*") the Rotterdam court dismissed all fifteen claims, finding at paras. 5.16, 5,20, 5.22-5.23, and 5.23-5.27 that during the relevant period (2004-2009), *inter alia*:

(i) Revision rates for the devices were comparable to the rates for non-MoM alternatives.

(ii) Long-term effects of chromium/cobalt particles from MoM hip implants were unknown.

(iii) The precise cause of inflamed tissue masses proximate to an implant ("pseudotumors") was unknown, and such issues were often attributed to patient-specific factors including the correct placement of the device by the operating surgeon.

(iv) While there was a general acceptance of some of the disadvantages of using MoM for hip implants, there was an overall favourable risk-to-benefit ratio when considering the advantages of the materials as well as issues with the non-MoM alternatives.

[49] The source of scientific evidence for the court's conclusions in *Stevens* was a panel of three neutral, court-appointed experts, rather than litigation experts proffered by the parties: at para. 4.10. Based on the experts' joint report, the court concluded, at para. 5.34:

> [I]t follows from the expert report that Biomet's MoM hip prostheses were "state of the art" in the relevant period, and that any known disadvantages of their use were taken for granted. That the distinct products making up the prosthesis were defective at the time… has not been established by the expert report.

[50] In reaching this conclusion, the court in *Stevens* applied the "strict liability" standard. As the court explained, under this standard, a producer is strictly liable "as soon as a product put into circulation by him shows a defect and thereby causes damage", unless "the state of scientific and technical knowledge at the time he put the product into circulation made it impossible to detect the existence of the defect": at paras. 3.1-3.4.

Scientific Views of the Comparative Performance of the Biomet Devices

[51] The Biomet Devices belong to the broader class of MoM hip implants. Since the mid-2010s, MoM has largely been phased out in favour of other materials. More than a decade of scientific research has demonstrated that failure rates vary between MoM devices, and that certain devices are considerably more likely to fail than are the Biomet Devices.

[52] The Australian Orthopaedic Association and the federal government of Australia operate a registry of joint replacement devices (the "Australian Registry") which, *inter alia*, tracks the performance of specific devices over time. In his certification decision, Belobaba J. relied significantly on the Australian data, as presented in the Graves Report: *Dines*, at paras. 24-29.

[53] In its 2023 report, the Australian Registry reported on two of the Biomet Devices, as well as on the DePuy ASR and Zimmer Durom, which, as set out below, were also the subjects of class action settlements. Per the Australian Registry, at 10 and 15 years, the Biomet Devices performed materially better than these comparators and the MoM category as a whole:

Manufacturer	**Femoral Head Component**	**Acetabular Cup Component**	**5-Year Cumulative Revision Rate**	**10-Year Cumulative Revision Rate**	**15-Year Cumulative Revision Rate**
DePuy	ASR	ASR	24.9%	45.3%	51.7%
All MoM Devices			11.6%	22.5%	28.6%
Zimmer	Metasul	Durom	5.6%	13.3%	18.3%
Biomet	M2a	M2a	6.5%	11.4%	15.9%
Biomet	M2a Magnum	ReCap	4.3%	8.5%	12.1%

[54] In 2019, Finnish researchers published results from a long-term study of thousands of patients who had received MoM hip implants (the "Finnish Study"). The revision rates for the Biomet, Zimmer, DePuy, and all MoM devices described in the Finnish Study were similar to those published by the Australian Registry.

[55] Revision rates for the Stryker Rejuvenate device, which was also the subject of a settled Canadian class action, as set out below, were not tracked in the Australian Registry or in the Finnish Study. However, available evidence indicates that those rates were very high. Dr. Graves, the plaintiff's expert for the certification motion herein, also provided a report concerning the Stryker Rejuvenate and another Stryker device for the Ritlop and Lackner class action. Dr. Graves noted that the two devices "had very similar technologies" and were "very similar in design". According to the Australian Registry, the other Stryker device – the ABG II – had a revision rate of 10.4% at just 3 years, and a revision rate of 14.5% at 5 years. These rates massively exceeded the revision rates for the Biomet Devices over the same time period.

[56] Canadian authorities do not prescribe standards for failure rates of hip implants.

[57] A U.K. authority, the National Institute for Clinical Excellence ("NICE"), has published such standards. From 2000-2014, when the Biomet Devices were available in Canada, NICE's position was that "the best prostheses… demonstrate a revision rate… of 10% or less at 10 years".

[58] The data from the Australian Registry and Finnish Study suggest that the revision rates for the Biomet Devices range from about 8.5% to 14% at ten years, rates which are within or close to the NICE benchmark, and which are considerably lower than the 22.5% to 35% revision rates for MoM devices generally as well as the 45% to 60% revision rates for the DePuy ASR.

[59] In 2014, NICE published updated guidance which recommended that a hip implant should only be used if it has a revision rate of 5% or less at 10 years.

MoM Hip Implant Class Actions: The Canadian Context

[60] The Settlement Agreement in this case follows several other settlements in other MoM hip implants class actions.

[61] These settlements were reached (and approved) in the following cases:

(i) *Jones v. Zimmer*, which concerned the Zimmer Durom device (the "Zimmer Durom Settlement"): Class counsel was Klein Lawyers LLP, part of the Class Counsel consortium in this case. Like the devices at issue in the other cases (but unlike the Biomet Devices), the Zimmer Durom was recalled by Health Canada following reports of increased rates of revision surgeries. In 2016, the Zimmer Durom Settlement was approved by the courts of B.C., Ontario, and Quebec: *Jones v. Zimmer GMBH*, 2016 BCSC 1847; *McSherry v. Zimmer GmbH*, 2016 ONSC 4606; *Major c. Zimmer inc.*, 2016 QCCS 3093.

(ii) *Wilson v. Depuy International Ltd.*, which concerned the DePuy ASR MoM hip implant (the "BC DePuy Settlement"): Klein Lawyers LLP was also class counsel in this case. The DePuy ASR had been subject to a worldwide recall following reports of extremely high revision rates. The BC DePuy Settlement was approved by the BC Supreme Court on July 16, 2018: *Wilson v. Depuy International Ltd.*, 2018 BCSC 1192.

(iii) *Ritlop and Lackner v. Stryker Canada*, which involved the Stryker Rejuvenate device (the "Stryker Rejuvenate Settlement"): Class counsel in this case were Koskie Minsky LLP, Klein Lawyers LLP, and Whelton Hiutin LLP, all members of the Class Counsel consortium in this case. Like the Zimmer Durom and DePuy ASR devices, the Stryker Rejuvenate had been recalled in Canada. Justice Belobaba approved the Stryker Rejuvenate Settlement on January 6, 2020.

(iv) *Crisante v. DePuy Orthopaedics* (the "Ontario DePuy Settlement"), an Ontario case which also involved the DePuy ASR: Class counsel in this case was Whelton

Hiutin LLP. Justice Belobaba approved the Ontario DePuy Settlement on May 21, 2021: *Crisante v. DePuy Orthopaedics*, 2021 ONSC 3703.

[62] Certain basic concepts appear in some or all of the precedent settlements, and also appear in (or are relevant to the comparison with) the Settlement Agreement. These include:

(i) base compensation to each class member who received a MoM device in one hip and then underwent a revision surgery ("single revision"),

(ii) higher base compensation to each class member who received MoM devices in both hips and then underwent revision surgeries in both hips ("bilateral revision"),

(iii) compensation for post-revision complications such as further revisions, heart attacks/strokes, lost wages, and infections,

(iv) time-based reductions in compensation corresponding with the number of years between the index surgery and revision surgery,

(v) age-based reductions in compensation corresponding with the claimant's age when the index surgery occurred,

(vi) eligibility cutoffs for claimants whose revision surgeries occurred after a certain number of years following their index surgeries,

(vii) compensation for unrevised class members, including class members who were indicated for revision but whose health status precluded the revision surgery ("medically precluded"),

(viii) compensation for family members of revised class members, and

(ix) compensation for out-of-pocket expenses.

[63] The precedent settlements and the Settlement Agreement share many of these basic concepts.

The Settlement Agreement

[64] The Settlement Agreement provides the following benefits to class members, *inter alia*:

(i) a claims-made settlement structure with no aggregate cap on compensation,

(ii) up to $75,000 in compensation for single revision class members (or up to $90,000 for bilateral revisions), subject to time-based reductions,

(iii) up to an additional $40,000 for complications following a revision surgery (up to $50,000 for bilateral revision claimants),

(iv) compensation for class members whose revision surgeries occurred up to 12 years after their MoM devices were originally implanted,

(v) a simplified claims process with no requirement to prove causation of revision surgeries which occurred during the first ten years of implantation, and low-barrier causation criteria for revision surgeries which occurred between 10-12 years of implantation,

(vi) compensation for principal caregivers and minor children of class members,

(vii) compensation for class members who are medically precluded from undergoing a revision surgery, and for other class members who have not had revision surgeries,

(viii) compensation for out-of-pocket expenses associated with a revision surgery,

(ix) compensation for certain other class members available through a separate and discrete $750,000 fund, the Special Claims Protocol which covers (a) class members whose revision surgeries occurred up to 16 years after their MoM devices were originally implanted, and (b) class members who have not had revision surgeries, but who are experiencing high levels of metal ions in their blood, and

(x) compensation for the Ontario Health Insurance Plan and all other Provincial Health Insurers of $15,000 for each revision surgery which occurred within 12 years of the index surgery.

Dissemination of Notice of the approval hearing

[65] Pursuant to a court order dated July 31, 2024, broad notice of the proposed settlement and approval hearing was disseminated through a variety of means, including direct notice to the thousands of class members from Class Counsel, electronic notice through over 6 million impressions on social media websites, a press release, and other means.

Objections

[66] Four objections were received by Class Counsel out of a potential class of over 4000 individuals. The objections raised concerns about:

(i) the payment by class members (rather than by the defendants) of 25% of the final settlement for legal fees,

(ii) the quantum of the settlement in comparison to the U.S. settlement,

(iii) deductions for *in vivo* time between the initial and revision surgeries because some class members may not have known that they should consult with a doctor until later on in the life of their implant,

(iv) a request to “ban” Biomet due to the effects on class members and Biomet’s alleged misrepresentations,

(v) insufficient compensation for an unrevised class member whose doctor has recommended revision surgery, and

(vi) entitlement to compensation for revision surgery limited to those surgeries which took place more than 180 days following the index surgery.

Evidence relevant to fee approval

[67] Upon approval of the Settlement Agreement, the defendants will contribute $1.25 million toward Class Counsel's fees and disbursements.

[68] The retainer agreement (the "Retainer") provides as follows with respect to counsel fees:

> In the event of Success in the Action, the Lawyers shall be paid from the Recovery an amount for fees which is the greater of:
>
> (a) a percentage of the total value of any Recovery, plus applicable taxes and a proportionate share of any interest accruing on the Recovery. The above percentage will be calculated based on a 35% fee of the first $25,000,000.00 or any part thereof, 25% of the second $25,000,000.00 or any part thereof, and 10% of any additional amounts, and
>
> (b) four times the Base Fee.

[69] $752.569.86 of the $1.25 million amount will be used to repay the CPF for the funding advanced. A further $22,245.03 will be applied to the disbursements incurred by Class Counsel which were not covered by the CPF. Thus, Class Counsel will share in $475,185.11 as the fee portion of the defendants' contribution.

[70] The amount remaining following repayment of disbursements will be applied to reduce fees payable by claimants. The administrator will hold back a portion of fees payable to Class Counsel until the amount held back equals the sum of (i) the residue of the defendants' contribution to Class Counsel fees and disbursements and (ii) the total of the fee portions of the costs awards made earlier in the proceeding. Disbursements incurred in connection with the implementation of the settlement will be reviewed by the court following the distribution process and the approved amount will be deducted from the withheld amount, with the balance of all held back funds then divided *pro rata* among approved claimants.

[71] The defendants' contribution to Class Counsels' fees and disbursements was substantially larger than was obtained in any of the precedent settlements:

(i) Zimmer Durom Settlement: $500,000 (costs) + $500,000 (disbursements): *McSherry v. Zimmer GmbH*, 2016 ONSC 4606, at para. 39,

(ii) BC DePuy Settlement: $275,000 (fees) + $50,000 (disbursements): *Wilson v. Depuy International Ltd.*, 2018 BCSC 1192 at para. 43, and

(iii) Stryker Rejuvenate Settlement: $550,000 (fees and disbursements): Stryker Rejuvenate Settlement Agreement at p. 27, s. 9.1.1.

[72] This larger contribution to costs and disbursements results in a larger offset against fees payable by class members, resulting in a benefit to the class.

[73] As was the case in connection with the Stryker Rejuvenate Settlement, and in line with the total fee approved in connection with the Zimmer Durom Settlement, Class Counsel in this case have undertaken not to charge more than an additional 8.3% to class members who retain Class Counsel to make a claim under the Settlement Agreement or the Special Claims Protocol.

Evidence relevant to the request for honorarium

[74] In the statement of claim and his certification affidavit, Dine was required to disclose personal health information regarding the revision surgeries he underwent, including disclosure of his use of pain medication and sleeping pills, impacts on relationships with family and friends, and his long-term disability and early retirement.

[75] Dine was the only class member who was cross-examined. During the cross-examination on his certification affidavit, counsel for the defendants referred to Dine's body mass index, suggesting to him that he would be characterized as someone who is "extremely obese". Counsel repeatedly asked Dine to confirm the time periods when he was, in counsel's terms, "extremely obese", and questioned Dine on his diabetes and asthma, as well as on his use of medications, including Ventolin (a steroid), Dilaudid (an opioid pain medication), and sleeping pills.

[76] In their factum for the certification motion, the defendants argued that what they described as Dine's "extreme obesity, diabetes, asthma and hypertension" may have contributed to the revision surgeries and other health consequences he had suffered.

[77] Honoraria were awarded in the other MoM cases:

(i) In approving the Ontario DePuy Settlement, Belobaba J. awarded $10,000 each to two representative plaintiffs, noting that each had "agreed to provide and be cross-examined on highly personal medical and employment records: *Crisante v. DePuy Orthopaedics*, 2021 ONSC 3703 at para. 40.

(ii) Justice Belobaba also approved $10,000 honoraria to the two representative plaintiffs in connection with his approval of the Stryker Rejuvenate Settlement: Stryker Fee Approval Order.

(iii) In connection with the approval of the Zimmer Durom Settlement, an honorarium of $10,000 was awarded to a representative plaintiff by the BC court, and additional honoraria of $5000 were awarded by the Ontario court to the representative plaintiff and a heavily involved class member in the Ontario action: *Jones v. Zimmer GMBH*, 2016 BCSC 1847 at para. 62; *McSherry v. Zimmer GmbH*, 2016 ONSC 4606 at para. 54; Ontario McSherry Approval Order.

Evidence relevant to appointment of Verita as the Administrator of the claims process

[78] On June 12, 2024, Verita was introduced as the unified operating brand for RicePoint Administration Inc., Kurtzman Carson Consultants LLC, and Gilardi & Co.

[79] By order of the court dated July 31, 2024, Verita was appointed notice administrator for the dissemination of the notice for the hearing of the motion for approval of the Settlement Agreement.

[80] Including the time during which it operated under the RicePoint brand, Verita has been appointed administrator on more than 160 class action settlements.

[81] In particular, while operating under the RicePoint brand, Verita was appointed administrator of the settlement in *Crisante v. DePuy* (the "Ontario DePuy Settlement"). The *Crisante v. DePuy* case also involved MoM hip implants. As the administrator, Verita received and reviewed thousands of pages of medical records submitted for class members' claims, confirmed whether the correct device had been implanted and whether revision surgeries had taken place, and assessed claims for complications and income loss.

Evidence relevant to the order sought against the Hospitals

[82] This action was certified as a class action by order of Justice Belobaba on December 18, 2015 (the "Certification Order").

[83] On November 10, 2016, Justice Belobaba made a further order (the “Hospital Notice Order”) that Hospitals deliver notice of certification and other information to individuals in the same manner as sought in the present motion before the court.

[84] The Hospitals delivered notice of certification, and an explanatory letter in the same manner set out in the Hospital Notice Order.

[85] Class Counsel received communications from a number of class members or potential class members as a result of that hospital notice program from 2016 onward, and Quebec counsel received contact information from Quebec's provincial health insurer, the Regie de l'assurance maladie du Quebec ("RAMQ"), of potential class members.

[86] Class Counsel have compiled significant lists of email and mailing addresses for class members or potential class members.[2]

ANALYSIS

Issue 1: Settlement Agreement Approval (including the Special Claims Protocol)

[87] I first review the applicable law and the apply the law to the present case.

The applicable law

[88] The law governing settlement approval in class actions is not contested. I summarize the relevant principles as follows:

(i) A settlement of a class action is not binding unless approved by the court: s. 29(2) of the *CPA*.[3]

(ii) To approve a settlement, the court must find that, in all of the circumstances, the settlement is fair, reasonable, and in the best interests of the class as a whole: *Mancinelli v. Royal Bank of Canada*, 2017 ONSC 2324 at para. 36.

(iii) The overarching question is whether the settlement falls within a zone of reasonableness; this allows for a range of acceptable outcomes depending upon the subject matter of the litigation and the nature of damages: *Sheridan Chevrolet v. Valeo S.A.*, 2021 ONSC 3555 at para. 4; *McKillop and Bechard v. HMQ*, 2014 ONSC 1282 at para. 23.

(iv) To determine whether the settlement is reasonable, "[t]he supervising court must compare the settlement with what would probably be achieved at trial, discounting for any defences, legal or evidentiary hurdles or other risks that would have to be confronted and overcome if the matter were to proceed to trial": *Brown v. Canada (Attorney General)*, 2018 ONSC 3429 at para. 12.

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[2] At the hearing, Class Counsel advised that (i) they have more than 2000 class members on their contact list and (ii) more than 160 class members have specifically contacted Class Counsel expressing interest in making a claim under the Settlement Agreement. Class Counsel further advised at the hearing that they anticipate approximately 4000 total class members.

[3] As it appeared on March 15, 2013. Amendments to the *CPA* took effect in October 2020. However, pursuant to the transitional provisions of the amended *CPA* (see s. 39(1)), the previous version of the *CPA* continues to apply to actions which were commenced before the amendments took effect, such as the present action.

(v) The court must also examine the fairness and reasonableness of the scheme of distribution under the settlement: *McKay v. Rowe et al*., 2024 ONSC 137 at para. 31.

[89] In *Parsons v. Canadian Red Cross* Society, [1999] O.J. No. 3572 (S.C.J.) at paras. 71, 72 and 92, Winkler J. (as he then was) identified a number of factors which courts may consider in this analysis:

(i) the likelihood of recovery or success,

(ii) the amount and nature of discovery evidence,

(iii) settlement terms and conditions,

(iv) the recommendation and experience of counsel involved,

(v) future expense and likely duration of litigation,

(vi) recommendation of neutral parties, if any,

(vii) the number and nature of objections,

(viii) presence of good faith and the absence of collusion,

(ix) degree and nature of communications by counsel and plaintiff with class members,

(x) the dynamics of, and positions taken during, the negotiations, and

(xi) the risks of not unconditionally approving the settlement.

[90] As Winkler J. noted in *Parsons*, “it is likely that one or more of the factors will have greater significance than others and should accordingly be attributed greater weight in the overall approval process": at para. 73.

Application of the law to the present case

[91] In the present case, I agree with the plaintiff’s submission that the most important factors to consider are the likelihood of success, terms of settlement and future delays if the litigation is required to continue. I address each of these factors below, as well as ancillary factors which also support approval of the Settlement Agreement.

(i) Likelihood of success

[92] There was considerable litigation risk if the action proceeded to trial. The litigation was highly contested and the particular risks related to the Biomet Devices were unique since those devices performed better than the other MoM devices at issue in the other MoM class actions.

[93] I rely on the following factors:

(i) In *Stevens*, the claims of 15 plaintiffs were dismissed, and that decision was based on a lower strict liability standard. As I discuss above, the Rotterdam court reviewed and considered expert evidence from a panel of three neutral, court-appointed experts, rather than litigation experts proferred by the parties. Consequently, its decision could have been highly persuasive at a common issues trial in the present case, particularly when the present class action would have also required a higher threshold to establish negligence.

(ii) A common issues court in the present case may have given little or no weight to the US litigation in *Bayes* and *Nicholson* as they were jury decisions without reasons. The appellate decisions were based only on the very high threshold for interfering with a jury verdict.

(iii) The risk profile of the Biomet Devices is significantly different than the other MoM devices. Scientific evidence on the Biomet Devices suggests that (a) the Biomet Devices have tended to have lower revision rates than other MoM hip devices and (b) the revision rates for the various Biomet Devices range from slightly below to somewhat above the most prominent regulatory standard applicable at the time that the Biomet Devices were being sold in Canada, being the 2000 NICE standards. Consequently, a common issues court could have (as in *Stevens*) relied on this revision data.

(iv) In negligent design cases, the conduct of a manufacturer is typically assessed according to the standard that existed at the time of distribution of the product and without the benefit of hindsight, and by comparing the foreseeable risk at that time as against the foreseeable utility. Thus, even if the plaintiffs could establish that the NICE standards applied to devices sold in Canada, it is likely that the more forgiving 2000 standard would apply. The fact that the revision rates for the Biomet Devices range from slightly below to somewhat above the applicable NICE benchmark weighed significantly on the plaintiff's risk analysis, and made the case much more challenging.

(v) The Biomet Devices were never subject to a recall or regulatory action in Canada (unlike the precedent cases in which there was some form of recall or regulatory action in Canada). To the contrary, Health Canada confirmed that the Biomet Devices met the "safety and effectiveness" requirements of the *Medical Device Regulations* as late as in November 2013. While the position of a regulator is not dispositive of liability, "[c]ompliance with regulatory and industry standards can be useful evidence of reasonable conduct": *Andersen v. St. Jude Medical, Inc*., 2012 ONSC 3660, at para. 101.

While the plaintiff could have relied on health alerts issued in Australia for the Biomet Devices, the lack of such an alert by Health Canada raised significant litigation risk.

(vi) Aggregate damages were not certified as a common issue. Consequently, there was a risk that the class could succeed on the common issues but lose at individual trials since every class member would have to prove that their damages were caused by the implant of the Biomet Device (let alone the cost and time such individual trials would require).

[94] Based on the above factors, I find that there was significant litigation risk if the matter had proceeded to a common issues trial.

(ii) Terms of settlement

[95] I find that the Settlement Agreement is within the zone of reasonableness. Despite the increased risk, the parties reached a settlement largely consistent with the other MoM settlements and significantly improved in many areas. I rely on the factors discussed below.

(a) The benefits of a claim-based settlement

[96] As a claims-made settlement structure, there is no aggregate cap on compensation. There are at least three advantages to this model as compared to the aggregate fund model:

(i) Aggregate fund settlements create a risk that class member compensation may be proportionately reduced if more class members come forward that are expected, or if the seriousness of class member injuries as a group are different than expected. Here, it is unknown exactly how many class members have had revision surgeries due to, *inter alia*, the absence of a national registry in Canada which would track revisions in the manner of the Australian Registry. Avoiding the risk of oversubscription is therefore a significant benefit to the class.

(ii) Because there is no risk of proportionate reductions in compensation, a claims-made settlement can specify exactly how much compensation will be payable to approved claimants. This makes it easier for class members to understand the value of their claims and provides them with significant and valuable certainty.

(iii) Under a claims-made settlement, compensation can be paid out as claims are determined. By contrast, in an aggregate fund settlement, compensation can only be paid out after the end of the claims period, when all claims have been received and determined. Under the Settlement Agreement, each claim is required to be decided within 60 days of receipt, and (subject to any request for reconsideration) will be paid out according to a monthly payment schedule.

(b) The base compensation for revised class members is within the zone of reasonableness.

[97] The base compensation under the Settlement Agreement, $75,000 for a single revision, is comparable to the amount available under the Zimmer Durom Settlement ($70,000), notwithstanding that the revision rates for the Zimmer Durom were higher than those for the Biomet Devices, and that the Zimmer Durom had been recalled, while the Biomet Devices were not.

[98] While the base compensation in the Settlement Agreement is lower than it was in the Stryker Rejuvenate Settlement and the two Depuy settlements, this reflects the fact that the devices at issue in those cases had much higher revision rates and were recalled in Canada.

[99] Further, as set out above, the plaintiff faced tremendous risk at a common issues trial owing to, *inter alia*, the low revision rates observed in the Biomet Devices and Health Canada's favourable assessment. Against the risks and in this context, the base compensation under the Settlement Agreement is an excellent result.

[100] Finally, the Settlement Agreement has features which are superior to the precedents: it extends the eligibility window beyond the precedents; it reduces and eliminates, respectively, the time and age-based reductions in compensation in the precedents; and it provides compensation to unrevised class members.

(c) Compensation reductions for years of performance have been improved.

[101] With the exception of the Ontario DePuy Settlement, which involved the most failure-prone device, all of the precedent settlements have included terms which reduced compensation based on the number of years between the index surgery and the revision surgery. While the Settlement Agreement shares this structure, its time-based reductions have been improved in terms of:

(i) Magnitude: Under the Settlement Agreement, compensation payable to a claimant whose Biomet Device was revised between its ninth and tenth year will be reduced by 20%. By contrast, under the Stryker Rejuvenate Settlement and BC DePuy Settlement, compensation for a claimant whose device survived for the same duration was reduced by 30% and 32%, respectively.

(ii) Interval before Reductions: In the Settlement Agreement, time-based reductions begin at year 7. By contrast, time-based reductions in the Zimmer Durom Settlement and the BC DePuy Settlement began at years 4 and 6, respectively.

[102] Further, unlike the Stryker Rejuvenate Settlement and the BC DePuy Settlement, the Settlement Agreement does not include terms which reduce compensation on the basis of age. For class members who received their implant at age 80, those settlements reduced compensation by 15% and 12%, respectively. The Settlement Agreement avoids such reductions entirely.

(d) Eligibility cutoff dates are more extended under the Settlement Agreement than in prior MoM settlements

[103] The precedent settlements, including the Ontario DePuy Settlement, all included terms which restricted class member eligibility based on the number of years between the index and revision surgeries. These eligibility cutoffs reflect the fact that, for all hip implants, the probability that a revision will be required increases over time; accordingly, with the passage of time, it becomes less likely that a revision is attributable to device-specific issues, rather than to the general experience with artificial hip implants. In his decision to approve the Zimmer Durom Settlement, Perell J. noted (*McSherry v. Zimmer GmbH*, 2016 ONSC 4606, at para. 47):

> Medical devices are not perfect and may fail for reasons other than negligent manufacture. Setting a deadline by reference to whether or not the patient had or scheduled revision surgery is reasonable and reflects the increased difficulty a Class Member would have in proving causation with the passage of time after the medical device has been implanted.

[104] Consistent with this, the UK authority, NICE, has only prescribed performance standards up to the 10-year mark, both in the 2000 and 2014 versions of its guidelines. There are no standards against which to measure the performance of devices past the 10-year mark. Accordingly, after that point, it is more challenging to conclude that device failures are occurring at abnormal rates.

[105] A defendant is only liable for injuries caused by its negligence. In this case as well as the precedents, the eligibility cut-off functions as a proxy for proof of causation. Up to a certain point (here, 10 years), causation is deemed, and the claimant need not show any specific proof of causation. After 10 years, the claimant needs to satisfy some causation criteria, reflecting the increased difficulty of proving causation after that point.

[106] The ultimate eligibility cut-offs in the precedent settlements function as the points at which the likelihood that a revision was caused by a defect was overwhelmed by the likelihood that the revision was caused by other factors; here however, the plaintiff was successful in negotiating an expanded window of eligibility through the Discretionary Fund and Special Claims Protocol, which will provide compensation to claimants whose devices lasted up to 16 years.

[107] In the Stryker Rejuvenate Settlement and BC DePuy Settlement, no class member whose implant lasted ten or more years was eligible for compensation. In the Ontario DePuy Settlement, the cut-off was eleven years. The eligibility cut-off for the Zimmer Durom Settlement operated somewhat differently, but it effectively restricted eligibility to class members whose devices lasted between 5-11 years, depending on the date of the index surgery.

[108] The 12-year eligibility cut-off in the Settlement Agreement improves on all of the precedents – including the settlements involving devices which had significantly higher revision rates than the Biomet Devices.

(e) Benefits for class members whose Biomet Devices have not been revised (and who are not medically precluded)

[109] This term is absent from the Stryker Rejuvenate Settlement and the BC DePuy Settlement, under which unrevised class members received no compensation, and is consistent with the Zimmer Durom Settlement.

[110] Under the Ontario DePuy Settlement, an unrevised class member could only obtain compensation by submitting evidence which demonstrated that they had suffered "serious and prolonged" psychological distress relating to fear of metallosis or other related health risks: *Crisante v. DePuy Orthopaedics*, 2021 ONSC 3703 at para. 28.

[111] Since the approval of the settlements in the precedent cases, jurisprudential developments have substantially impacted the viability of claims on behalf of individuals whose implants have not been revised.

[112] In *Palmer v. Teva Canada Limited*, 2024 ONCA 220, the Court of Appeal reaffirmed that being subjected to conduct that contributes to an increased risk of damage is not, in itself, compensable under the law of negligence: at para. 47. The court also struck out claims for psychological injury resulting from the fear of having ingested a toxic chemical, concluding that pleadings of "prolonged basis shock, worry, great mental distress and anxiety since learning of the [product recall]" did not exceed the "ordinary fortitude" standard: at para. 66.

[113] Given the law reaffirmed in *Palmer*, the plaintiff would have faced significant challenges in establishing that unrevised class members are entitled to compensation due to the mere fact of having been implanted with a Biomet Device.

(f) Comparison to the US MDL Settlement

[114] While there was higher compensation under the US MDL Settlement, the latter reflected Biomet's overall litigation exposure in the US both for litigation risk (which was not materially different) and potential monetary liability (which was materially different due to the risk of massive jury awards).

[115] Further, there are several respects in which the Settlement Agreement distributes compensation on broader and fairer terms than did the U.S. MDL Settlement. For example:

(i) Compensation for claimants whose Biomet Devices lasted between 10 and 12 years was reduced by 90% under the U.S. MDL Settlement, whereas the same claimants' compensation would only be reduced by 30% and 40%, respectively, under the Settlement Agreement;

(ii) The U.S. MDL Settlement provided no compensation to unrevised claimants; and

(iii) Estate claimants were only entitled to 10% of the base amount payable to revision claimants (US$20,000), whereas estate claimants under the Settlement Agreement have access to the same process and same compensation as living claimants.

(g) The Special Claims Protocol provides important compensation

[116] In addition to the claims-made settlement structure described above, the Settlement Agreement provides that the defendants will pay $750,000 toward the establishment of the Discretionary Fund, the distribution of which will be determined by Class Counsel. To this end, Class Counsel have designed the Special Claims Protocol which provides compensation to the following groups, who were excluded from the precedent settlements:

(i) Unrevised class members with high blood levels of cobalt or chromium;

(ii) Class members, if any, whose index surgery occurred in late 2013 or 2014 and whose revision surgery occurred within 12 years, but after the claims deadline in the Settlement Agreement; and

(iii) Class members whose revision surgeries occurred 12-16 years after their index surgery.

[117] None of the precedent settlements provided compensation for high metal levels, despite concerns raised by some objectors to those settlements. The Special Claims Protocol will ensure that concerned class members will be able to recover for this issue (in addition to recovery as unrevised class members under the terms of the Settlement Agreement).

[118] The second category in the Special Claims Protocol protects against the possibility that a revised class member, due to the timing of their index and revision surgeries, may slip through the cracks of the eligibility criteria in the Settlement Agreement. While it is unclear whether any such individuals exist, these terms ensure that no class member is unfairly excluded on this basis.

[119] The third category provides a further extension of the eligibility window to those class members whose revision surgeries occurred up to 16 years after their index surgeries. This extends eligibility far beyond the precedent settlements.

[120] Further, after all individual claims are assessed, if there are any remaining funds a secondary distribution of $100,000 is available to other class members, with any outstanding balance (if it arises) to be paid to the Fonds and then (if any funds remain available) to provincial health insurers.

[121] The Special Claims Protocol will compensate claimants who were excluded under the other settlements and is a fair scheme for distributing the Discretionary Fund.

[122] All of the above benefits provide additional compensation to class members who would not otherwise have received benefits under the Settlement Agreement. For the above reasons, the Special Claims Protocol is fair and reasonable.

(iii) Avoidance of lengthy delays

[123] The Settlement Agreement avoids the lengthy delays that would have been incurred if the matter had proceeded to a common issues trial.

[124] Had the plaintiff pursued litigation and succeeded at a common issues trial, compensation for class members would still be many years away. Class Counsel estimates that oral discoveries, preparation of expert reports, trial proceedings and appeals, a s. 25 motion to determine the process for individual issues, and appeals of those decisions, and then claims by individual class members, would take at least 5-6 years.

[125] Based on the timelines in the Settlement Agreement, if approval is granted compensation can begin flowing in spring 2025. Given the age of the class members, this is another factor that supports approval.

(iv) Additional factors supporting approval of the Settlement Agreement

[126] I rely on the following additional factors which support approval of the Settlement Agreement:

(i) Settlement was reached after extensive documentary discovery. Approximately 1.5 million documents were disclosed from the US proceedings. The additional documents specific to Canada numbered approximately 153,000. Detailed records for many class members were obtained from the RAMQ to provide information as to those class members who required revision surgeries.

(ii) Settlement is recommended by experienced Class Counsel, many of whom were counsel in the comparable MoM litigation.

(iii) Settlement was reached after hard-fought, fully briefed, arm's length negotiations over six days between counsel with the assistance of a senior, experienced mediator. A further 8 months of hard-fought negotiations were required to arrive at an executed Settlement Agreement after the AIP was reached.

(iv) Settlement was reached in good faith.

(v) Consideration of objections

[127] Only four objections were received after a thorough notice program. With respect to the concerns summarized at para. 66 above, I find:

(i) The defendants are not required to pay legal fees on a settlement of a class action. The Retainer Agreement provides for payment by class members.

(ii) While settlements are often higher in the United States because of its different legal system, the Settlement Agreement must be considered on the basis of the

applicable Canadian legal principles and comparable MoM settlements, which demonstrate that it falls well within the zone of reasonableness with considerable additional benefits to class members.

(iii) Deductions for *in vivo* time between the initial and revision surgeries are based on scientific principles as it is more difficult to establish causation when there is a longer *in vivo* time, and such deductions have been a component of all MoM settlements (and were improved under the present Settlement Agreement).

(iv) While many class members will be frustrated as a result of their personal experience, a request to "ban" Biomet due to the effects on class members and Biomet's alleged misrepresentations is not available as a court remedy and cannot be considered as no liability is admitted under the Settlement Agreement.

(v) Unrevised class members have a more difficult claim because revision takes place based on medical recommendations which have determined that the first MoM failed. Nevertheless, the Settlement Agreement compensates unrevised class members.

(vi) Revisions prior to six months are excluded since they would not arise from prolonged friction over time which is the basis for the causation claim of the class members.

(vi) Conclusion

[128] There has been significant variation in the MoM settlements in terms of the base compensation available, time and age-based compensation reductions, and entitlement to compensation for family members and unrevised claimants. These variations reflect not just differing levels of litigation risk, but also the principle that there may be multiple ways in which a fair and reasonable settlement can be fashioned, and that all of the components of a settlement are to be considered holistically, to determine whether the settlement falls within the "zone of reasonableness".

[129] For the above reasons, the Settlement Agreement (including the Special Claims Protocol) is fair, reasonable, and in the best interests of the class. It provides substantial compensation to a broader section of the class than any of the past precedents, despite significant litigation risks. Consequently, I approve the Settlement Agreement and the Special Claims Protocol under s. 29 of the *CPA*.

Issue 2: Fee approval

[130] I first review the applicable law and then apply the law to the facts of the present case.

The applicable law

[131] In determining whether to approve Class Counsel's request for legal fees and the retainer agreement, the court must determine whether those fees are fair and reasonable in all of the circumstances. The factors to be considered are well established and include the following (as set out in *Smith Estate v. National Money Mart Company*, 2013 ONCA 233 at para. 80):

(i) the legal and factual complexities of the action,

(ii) the risks undertaken, on both the merits and prospects of certification,

(iii) the degree of responsibility assumed by class counsel,

(iv) the monetary value of the matters at issue,

(v) the importance of the issues to the class members,

(vi) the skill and competence demonstrated by class counsel throughout the action,

(vii) the results achieved,

(viii) the ability of the class to pay and the class's expectation of legal fees, and

(ix) the opportunity cost to class counsel in the expenditure of time in pursuit of the litigation.

[132] In assessing the reasonableness of legal fees, courts must consider risk to class counsel together with the access to justice principles underlying the *CPA*: *Gagne v. Silcorp Ltd.*, [1998] O.J. No. 4182 (C.A.) at pp. 9-10.

[133] Legal fees do not only reward counsel for successful results, but "also encourage counsel to take on difficult and risky class action litigation": *Abdulrahim v. Air France*, 2017 ONSC 512 at para. 9.

[134] The retainer agreement ought to be the start of the court’s analysis: *Commonwealth Investors Syndicate v. Laxton*, [1994] B.C.J. No. 1690 9cA) at para. 47.

[135] Fee awards in the order of 33.3% of the settlement amount have been deemed to be "presumptively valid" on their face, subject to the terms of a retainer agreement: *Cannon v. Funds for Canada Foundation*, 213 ONSC 7684 at paras. 3, 10.

Application of the law to the present case

[136] Class Counsel seek a fee of 25% which is consistent with the Retainer Agreement, the authorities, the class counsel fees awarded in the precedent cases, and the risk undertaken and results achieved. In particular, Class Counsel seeks approval of:

(i) the defendants' contribution of $1.25 million for Class Counsel fees and disbursements,

(ii) contingency fee payments of 25% on all amounts awarded to approved claimants under the Settlement Agreement (less the holdback as set out at paras. 69-70 above, and

(iii) a contingency fee of 25% on the Discretionary Fund.

[137] I address each of these issues below.

(i) Approval of the Defendants' Contribution to Fees and Disbursements

[138] Under the Settlement Agreement, the defendants will contribute $1.25 million toward Class Counsel's fees and disbursements. The allocation of those funds is set out at para. 69 above. The holdback and distribution process is set out at para. 70 above.

[139] Class counsel obtained a larger contribution from the defendants than in any of the precedent settlements. This larger contribution to costs and disbursements results in a larger offset against fees payable by class members, resulting in a benefit to the class.

[140] For the above reasons, I approve the payment of $1.25 million by the defendants as their contribution to fees and disbursements.

(ii) Class counsel fees and individual legal fees

(a) Approval of the fees model

[141] The proposed legal fee model separates the payment of a fee to Class Counsel for work done during the common issues stage and with respect to settlement implementation from the payment of any further fees pursuant to a retainer between a class member and their lawyer (including, if the class member chooses, Class Counsel).

[142] As was the case with the Stryker Rejuvenate Settlement, and in line with the total fee approved in connection with the Zimmer Durom Settlement, Class Counsel in this case have undertaken not to charge more than an additional 8.3% to class members who retain Class Counsel to make a claim under the Settlement Agreement or the Special Claims Protocol.

[143] The proposed model has a number of benefits for claimants:

(i) It preserves litigation autonomy for claimants who wish to retain a different lawyer.

(ii) Claimants who choose to self-represent in the claims process do not pay fees in connection with the preparation and submission of their individual claims.

(iii) Claimants who choose to retain Class Counsel will not pay fees greater than 33.3% as a result of the undertaking given by Class Counsel.

[144] For the above reasons, I approve the same model in the present case.

(b) Approval of class counsel fees on awards under the Settlement Agreement[4]

[145] Class Counsel seeks approval of a 25% contingency fee on all awards issued under the Settlement Agreement. The principles of fee approval strongly support approval of this request.

(1) The contingency fee sought is reasonable

[146] Class Counsel's request is consistent with precedent. This is the same fee percentage and model of class counsel and individual fees which was approved in connection with the Stryker Rejuvenate Settlement: *Wilson v. Depuy International Ltd.*, 2018 BCSC 1192; Stryker Fee Approval Order.

[147] On the Zimmer Durom Settlement, the BC court approved in bulk individual retainers which provided for payment of 33.3% fees: *Jones v. Zimmer GmbH*, 2016 BCSC 1847 at paras, 29, 60.

[148] Those awards, and Class Counsel's request here, are consistent with the well-accepted view that one-third contingency fees are "standard" in the class action settlement context: *Cannon*, at para. 11, *Oberski v. General Motors LLC*, 2024 ONSC 4281, at para. 53.

(2) The litigation raised significant risk

[149] The Settlement Agreement was achieved despite high litigation risk. When this action commenced, there had been no settlements of MoM hip cases in Canada. As evidenced by the heavily contested certification motion in this case, the defendants were prepared to vigorously defend the safety and efficacy of their products.

[150] The present case developed more risks on the merits than the MoM precedents, given, *inter alia*, the lack of recall action in Canada and the comparatively lower revision rates observed in the Biomet Devices. This case was highly risky when it was commenced, and, as the *Stevens* litigation in the Netherlands demonstrated, remained highly risky on the merits.

[151] This has also been a complex case. From the initial research into hip implants at case commencement, to the preparation of expert reports at the certification stage, to the notice stage and motions brought in three provinces, to engagement with U.S. counsel for documentary

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[4] In this subsection, I address fees for awards under the Settlement Agreement but excluding the Discretionary Fund (which I address in the subsection below).

discoveries, through to ongoing review of scientific publications to inform settlement negotiations, Class Counsel has managed complicated procedures and difficult substantive issues.

(3) Actual costs incurred by Class Counsel

[152] In addition, Class Counsel has expended extensive time and resources to vigorously advance the action through many complex stages. The four Class Counsel firms have incurred thousands of hours, valued at a total of $4,369,108.50. The 25% fee is reasonable given the hours expended to date, as well as the ongoing work that will be required following settlement approval which relate to the implementation of the settlement for the class as a whole.

(4) Fees sought are lower than the Retainer Agreement

[153] Further, the 25% Class Counsel fee sought on this motion will, based on Class Counsel's estimates, result in a lower fee than the amount for which Class Counsel would be entitled to seek approval under the Retainer Agreement (given the provision for 35% fees on the first $25 million recovered).

[154] The fees sought by Class Counsel are consistent with the expectations of the class, and are supported by Dine. The notice of settlement approval hearing described Class Counsel's fee request. The total fee (being 25% in class counsel fees plus 8.3% for those who retain the Class Counsel firms to act on their individual claim) is consistent with the ordinary practice in personal injury litigation, which is generally undertaken on a contingency basis and in which 33% fees are presumptively valid.

[155] Notwithstanding the risks and complexities of this case, Class Counsel negotiated a resolution which will provide substantial compensation more broadly and fairly than in any of the precedents.

[156] Consequently, I approve Class Counsel fees on awards under the Settlement Agreement.

(c) Approval of fees on the Discretionary Fund

[157] Class Counsel seek approval of a 25% fee on the Discretionary Fund established under the Settlement Agreement. The Discretionary Fund is a non-reversionary fund, and will allow class members whose claims fall within the criteria of the Settlement Agreement – including those whose implants which lasted up to 16 years, and those with high metal levels in their blood – to obtain compensation. No similar fund was obtained in connection with the previous settlements, and it offers significant benefits to the class.

[158] This fee model is used for the Discretionary Fund because it is an "all-in", non-reversionary fund which covers compensation, administrative expenses, and legal fees, as compared to the claims-made structure of the Settlement Agreement.

[159] Awarding class counsel fees as a straight percentage of the total fund available to the class is common and judicially well-accepted, having become the usual manner for the payment of class counsel fees: *Endean v. The Canadian Red Cross Society; Mitchell v. CRCS*, 2000 BCSC 971 at para. 38.

[160] By way of further example, Belobaba J. approved a fee of 30% on the global fund established by the Ontario DePuy Settlement: *Crisante v. DePuy Orthopaedics*, 2021 ONSC 3703, at paras. 33-36.

[161] Similar to fees for claims under the Settlement Agreement, Class Counsel have undertaken not to charge more than an additional 8.3% to class members who retain Class Counsel to make a claim under the Special Claims Protocol.

[162] For the same reasons set out above with respect to the 25% fee on awards under the Settlement Agreement, I approve Class Counsel's request for a 25% fee on the Discretionary Fund.

Issue 3: The honorarium

[163] I first review the applicable law and then apply the law to the present case.

[164] For the reasons that follow, I do not grant the honorarium sought on behalf of Dine.

The applicable law

[165] The availability of honoraria was recently addressed by the Court of Appeal in *Fresco v. Canadian Imperial Bank of Commerce*, 2024 ONCA 628, which affirmed the Divisional Court's decision in *Doucet v. Royal Winnipeg Ballet*, 2023 ONSC 2323.

[166] In *Fresco*, the court held that "honoraria should be reserved for exceptional cases where such an award will serve access to justice": at para. 106.

[167] In *Fresco*, the court at para. 108 adopted the comments of Strathy J. (as he then was) in *Baker Estate v. Sony BMG Music (Canada Inc*.) 2011 ONSC 7105, that this type of payment "is exceptional and rarely done… It should not be done as a matter of course" and "compensation should not be awarded simply because the representative plaintiff has done what is expected of him or her. It should be reserved for cases…where the contribution of the representative plaintiff has gone well above and beyond the call of duty."

[168] Similarly, at para. 109, the court in *Fresco* adopted the comments of Winkler J. (as he then was) in *Sutherland v. Boots Pharmaceutical Plc.*, (2002), 21 C.P.C. (5th) 196 (Ont. S.C.), where he stated:

> [W]here a representative plaintiff benefits from the class proceeding to a greater extent than the class members, and such benefit is as a result of the extraneous compensation paid to the representative plaintiff rather than the damages suffered

> by him or her, there is an appearance of a conflict of interest between the representative plaintiff and the class member.

[169] Finally, the court in *Fresco* noted, at para. 111, that "[f]actors that might qualify as exceptional circumstances could include exposure to a real risk of costs or significant personal hardship in connection with the prosecution of the action." The court set out, at para. 111, the example (cited in *Doucet*, at para. 58) of a representative plaintiff in an abuse case who "put their personal experience forward, reliving their trauma, while relieving other class members from having to do so."

Application of the law to the present case

[170] Dine seeks an honorarium of $7500 to be paid by the defendants. I do not find that the evidence before the court meets the strict standard required under *Fresco* and *Doucet*.

[171] The plaintiff led evidence that he was required to disclose personal medical information because of his role as a representative plaintiff. However, in any class action involving medical devices, or (on an even broader scale) any case raising health issues, a representative plaintiff would expect to be examined as to any pre-existing conditions that may be relevant to causation, since a defendant may rely on individual issues of causation to submit that the proposed class action is not suitable for certification.

[172] Consequently, as the representative plaintiff, Dine was required to answer questions about his obesity, diabetes and asthma, as well as on his use of medications, including Ventolin (a steroid), Dilaudid (an opioid pain medication), and sleeping pills. The defendants were entitled to rely on that evidence in their certification factum to submit that such individual factors may have contributed to the revision surgeries and other health consequences he has suffered.

[173] However, I do not accept the plaintiff's submission that answering health questions is a "personal hardship" justifying the exceptional nature of an honorarium. In the example of "personal hardship" set out in *Doucet* at para. 58, a representative plaintiff in an abuse case must "put their personal experience forward, reliving their trauma, while relieving other class members from having to do so." That person suffers personal hardship by taking on the role of a representative plaintiff.

[174] However, if the plaintiff's position in the present case is accepted, any person who acts as a representative plaintiff in a case involving any health issue, whether for defective medical devices, hazardous pharmaceutical products, or large-scale medical negligence cases, could all claim honoraria since they would be required (as would any other plaintiff in any similar civil action) to disclose medical information. Such a result is not consistent with the "personal hardship" standard set by the court in *Fresco*, which requires evidence of individual suffering or privation.

[175] The plaintiff submits that the quantum of an honorarium may reflect the amount of personal hardship, such that the $7500 requested in the present case would be a lower amount given that Dine was cross-examined on medical issues. I do not agree.

[176] In *Fresco*, the court held that the exceptional threshold of personal "hardship" had to be established before a court could order any honorarium, based on *Doucet* and the conclusions of Justices Strathy and Winkler in the relevant case law. Consequently, unless such hardship can be established, no honorarium, no matter how nominal, ought to be awarded.

[177] The plaintiff relies on the awards of honoraria to representative plaintiffs in other MoM settlements (summarized at para. 77 above). However, those honoraria were all ordered prior to the decision in *Fresco*, which set out the "exceptional circumstances" test applicable to the award of an honorarium to a representative plaintiff.

[178] For the above reasons, I reject the request for an honorarium to Dine. As Winkler J. held in *Sutherland*, at para. 22, I find that "the work of" Dine in the present case was "commendable." He participated in all steps of the litigation and was an excellent representative for the interests of the class members. However, commendable work as a representative plaintiff is not sufficient to obtain an honorarium. There are no exceptional circumstances of personal hardship supporting the rare circumstance where an honorarium can be ordered.

Issue 4: Order against the Hospitals

[179] Class Counsel has significant lists of email and mailing addresses for class members or potential class members, and has already delivered notice to those lists in accordance with the July 31, 2024 order. As discussed above, the information to compile those lists was based on (i) the information Class Counsel have compiled from the RAMQ and (ii) communications from a number of class members or potential class members as a result of that hospital notice program from 2016 onward.

[180] However, only the Hospitals at which the Biomet Devices were implanted hold the complete lists of class members. Consequently, in order to distribute notice of the Settlement Agreement as widely as possible to ensure that class members receive notice of the settlement, a further hospital notice program is appropriate.

[181] A solicitor-client relationship exists between Class Counsel and the class members. As such, the provision of class member contact information to Class Counsel does not attract confidentiality concerns in this context.

[182] The specific device name, size, lot number, serial number, and bar code implanted into each class member is available to the Hospitals, and may be readily located in their records. The Hospitals have also previously created the list set out above following the Hospital Notice Order.

[183] The Hospitals do not oppose the order and will be reimbursed for reasonable costs of the proposed hospital notice program.

[184] For the above reasons, I grant the relief sought against the Hospitals with respect to the proposed notice program.

Issue 5: *Ancillary relief*

[185] I also grant the ancillary relief of appointing Verita as administrator of the claims process under the Settlement Agreement and the Special Claims Protocol.

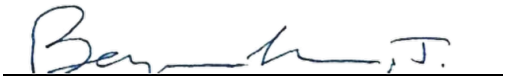
[186] Verita is a highly-experienced class action administrator and has particular experience with MoM settlements. They capably managed the notice process related to the settlement of the action.

[187] The task of administering the Settlement Agreement and Special Claims Protocol will involve similar steps to those taken by Verita in its prior administration of the Ontario DePuy Settlement. Verita can successfully administer the Settlement Agreement in this class action, as well as the Special Claims Protocol.

[188] The proposed form, content and manner of distribution of the notice of settlement approval are consistent with the process already approved by this court. Consequently, I approve the notice of settlement approval and the plan for dissemination of class notices.

ORDER AND COSTS

[189] For the above reasons, I grant the relief sought by the plaintiff, except for the honorarium sought on behalf of Dine. The plaintiff shall provide the court with clean copies of draft orders (in Word format and without Case Center page references) for my review and signature.



GLUSTEIN J.

Date: 20241028

CITATION: Dine v. Biomet Inc., 2024 ONSC 5949
COURT FILE NO.: CV-13-490112-00CP
DATE: 20241028

ONTARIO

SUPERIOR COURT OF JUSTICE

STEVEN DALTON DINE

Plaintiff

AND:

BIOMET INC., BIOMET ORTHOPEDICS LLC, BIOMET MANUFACTURING CORP., BIOMET U.S. RECONSTRUCTION, LLC and BIOMET CANADA INC.

Defendants

REASONS FOR DECISION

Glustein J.

Released: October 28, 2024