

**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 on each Class Counsel’s website included in the cover letter for specific terms and conditions applicable to Discretionary Fund claims. The Special Claims Protocol still has to be approved by the Courts.

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 **October 25, 2024**. 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 virtually on October 25, 2024 to voice their objection to the proposed settlement. If you would like to participate in the hearing, please contact Class Counsel for the link. 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 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 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:**

<p><b>KOSKIE MINSKY LLP</b> Barristers and Solicitors 20 Queen Street West Suite 900 P.O. Box 52 Toronto ON M5H 3R3</p> <p><b>Jonathan Ptak</b> <b>Jamie Shilton</b></p> <p>Tel: 1-855-595-2629 Email: <a href="mailto:jptak@kmlaw.ca">jptak@kmlaw.ca</a> <a href="mailto:jshilton@kmlaw.ca">jshilton@kmlaw.ca</a></p> <p><b>STEVENSON WHELTON LLP</b> Barristers and Solicitors 15 Toronto Street Suite 200 Toronto ON M5C 2E3</p> <p><b>J. Daniel McConville</b></p> <p>Tel: 416.599.7900 Email: <a href="mailto:dmconville@swlawyers.ca">dmconville@swlawyers.ca</a></p>	<p><b>KLEIN LAWYERS</b> 100 King Street West Suite 5600 Toronto ON M5X 1C9</p> <p><b>Brent D. Ryan</b> Tel: 604.714.6154 Email: <a href="mailto:bryan@callkleinlawyers.com">bryan@callkleinlawyers.com</a></p> <p><b>SYLVESTRE PAINCHAUD &amp; ET ASSOCIES</b> 740, Avenue Atwater Montréal, Québec, H4C 2G9</p> <p><b>Normand Painchaud</b> <b>Sophie Estienne</b></p> <p>Tel: 514.937.2881 Email: <a href="mailto:n.painchaud@spavocats.ca">n.painchaud@spavocats.ca</a> <a href="mailto:s.estienne@spavocats.ca">s.estienne@spavocats.ca</a></p>
---	---