

**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 **October 25, 2024**. 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 virtually on October 25, 2024 to voice their objection to the proposed settlement. If you would like to participate in the hearing, please ask 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 and the Ontario Court 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 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.
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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?

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

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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?
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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 who 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:

| <u>Claim Category</u> | <u>Quantum</u> |
|---|----------------|
| 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:

| <u>In Vivo Time</u> | <u>Cumulative Reduction of Total Amount</u> |
|-------------------------------|---|
| 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.

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.

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 **October 25, 2024** to decide whether to approve the proposed Settlement and Class Counsel's request for legal fees and disbursements. Class Members may attend the hearing virtually 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 wish to 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:

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