

Authorized by the Ontario Superior Court of Justice
**NOTICE OF INTENT TO DISCONTINUE PROPOSED
ZIMMER BIOMET EXPLOR MODULAR RADIAL HEAD
SYSTEM CLASS ACTION**

THIS IS AN **IMPORTANT NOTICE** FOR **ZIMMER BIOMET EXPLOR MODULAR RADIAL HEAD SYSTEM** RECIPIENTS THAT **MAY AFFECT LEGAL RIGHTS**

IMPORTANT NOTICE

This is notice of an important development in a proposed class action on behalf of all individuals who were surgical recipients of the ExploR Modular Radial Head System with ExploR Screw which prematurely failed or is in the process of failing or have the Device implanted.

A. Background

The proposed class proceeding filed with the Ontario Superior Court of Justice on January 14, 2022, identified as *Koss v Zimmer Biomet Holdings, Inc. et al.*, Court File No. CV-22-00675252-00CP (the “Koss lawsuit”), **will be discontinued effective the date of the order**. This order is dated February 16, 2024.

The Koss lawsuit alleges negligence by Zimmer Biomet Holdings Inc., Biomet Orthopedics LLC, Zimmer Biomet Canada Inc., and Zimmer CAS in the design, constructing, manufacturing, inspecting, testing, and marketing of the ExploR Modular Radial Head System with ExploR Screw (trial number 418098, part number 11-210099) used in patient elbow replacement operations and their failure to warn patients and/or surgeons and other healthcare providers of the inherent dangers and risks in using its Device.

The Defendants deny these allegations.

B. The Proposed Class

The proposed class proceeding advanced claims on behalf of putative class members defined as all persons:

- i. who were surgical recipients of the ExploR Modular Radial Head System with ExploR Screw (trial number 418090, part number 11-210099) which prematurely failed or is in the process of failing or has the Device Implanted or, in the alternative, individuals who were surgical recipients of the Device in which the proposed representative Plaintiff had implanted (the “Patient Class”); and
- ii. all individuals who are entitled, by virtue of their relationship to a member of the Class, to assert claims pursuant to the *Family Law Act* and equivalent legislation from other Canadian jurisdictions (the “Family Class”).

C. Implications on Limitation Periods

Persons who believe that they come within the defined proposed classes above, **SHOULD TAKE NOTICE THAT** applicable and remaining limitation periods, if any, for bringing a claim which were “tolled” (i.e. paused) as of January 14, 2022, will resume running **12 months following the date of the order**. On the expiry of the limitation period a person’s right to sue may be extinguished. Such persons should take notice that the limitation period for bringing a claim, if there is any time left within it, will recommence running on **12 months following the date of the order**. If those persons do not commence their own actions within the applicable limitation period(s), then they may be prohibited from pursuing any claims they may have against the Defendants.

D. Action Required

As a result, surgical recipients of the ExploR Modular Radial Head System with ExploR Screw which prematurely failed or is in the process of failing or have the Device implanted wishing to claim compensation should seek legal advice and must commence their individual actions before their respective limitation period(s) expire. Failure to do so may restrict one’s ability to pursue a claim for compensation.

E. Contact for Further Information

Do not call the Courthouse with any questions about this Notice. For further information regarding this proposed class proceeding and Notice of Intent to Discontinue, please visit <https://www.gluckstein.com/class-actions/zimmer-biomet-explor-modular-radial-head-class-action> or contact:

Jordan D. Assaraf, Gluckstein Lawyers, biometclassaction@projects.filevine.ca
Tel: (416) 408-4252