

**ZIMMER HOLDINGS, INC.**  
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June 17, 2011

The Honorable Bill Pascrell, Jr.  
Committee on Ways and Means  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Jim McDermott  
Committee on Ways and Means  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Congressmen Pascrell and McDermott:

Please accept this correspondence as the response of Zimmer Holdings, Inc. (“Zimmer”) to your letter, dated May 31, 2011, directed to James Crines, Zimmer’s Executive Vice President, Finance and Chief Financial Officer (the “Letter”).

Prior to furnishing Zimmer’s response to the three questions posed in the Letter, for clarity, we believe it is important that we correct a few factual misstatements that Mr. Pascrell voiced during his questioning of Mr. Crines at the Hearing on May 12, 2011, and which are repeated in the Letter.

In September 2007, Zimmer agreed to pay \$169.5 million (the “Settlement Payment”) to the United States government pursuant to a Settlement Agreement, dated September 27, 2007 (the “Settlement Agreement”), entered into between Zimmer and the United States of America, acting through the United States Department of Justice (“DOJ”) and on behalf of the Office of Inspector General of the Department of Health and Human Services, to fully resolve potential civil liability under claims alleged by the United States government. Please be advised that the \$311 million referenced in the Letter is the collective sum paid by Zimmer and three of the other orthopaedic companies that settled the DOJ’s broad industry investigation on the same date, namely, DePuy Orthopaedics, Inc. (a subsidiary of Johnson & Johnson Corp.), Biomet, Inc., and Smith & Nephew, Inc. A fifth company, Stryker Orthopedics, Inc., also entered into a settlement

arrangement with the United States government on the same date but did not make a settlement payment at that time.

Contemporaneous with its execution of the Settlement Agreement, Zimmer entered into a Deferred Prosecution Agreement (“DPA”) with the United States Attorney’s Office for the District of New Jersey (the “USAO”), pursuant to which Zimmer agreed to be subject to oversight by a federal monitor selected and appointed by the USAO for a period of 18 months. DePuy Orthopaedics, Inc., Biomet, Inc., and Smith & Nephew, Inc. also entered into DPAs with the USAO, while Stryker Orthopedics, Inc. entered into a Non-Prosecution Agreement with the USAO. Pursuant to this arrangement, Zimmer was required to bear all of the expense of its federally-appointed monitor, including fees, costs, and the retention of any consultants, accountants or other professionals who the monitor reasonably believed were necessary to assist in the execution of the monitor’s duties under the DPA (collectively, the “Monitoring Costs”).

Following the consummation of the DPA, the USAO appointed The Ashcroft Group Consulting Services, LLC (“AGCS”) to act as Zimmer’s federal monitor. Zimmer was neither consulted nor did it participate in the selection of its DPA monitor. Zimmer entered into two agreements with AGCS relating to retention of, and payment to, AGCS for its services as Zimmer’s federally-appointed DPA monitor (together referred to as the “Monitor Agreements”). The Settlement Agreement, DPA and Monitor Agreements are publicly available, as each was submitted by Zimmer in accordance with Form 8-K filings with the United States Securities and Exchange Commission.

Zimmer successfully concluded all of its obligations and the DPA expired at the completion of the 18-month term in March 2009. The USAO and DOJ withdrew the complaint against Zimmer and the Monitor Agreements expired.

With the foregoing factual record as context, set forth below is a copy of the three questions posed in the Letter, together with Zimmer’s corresponding response to each.

Question 1: Of the total \$311 million agreement between Zimmer Holdings, Inc. and the U.S. Attorney’s office, what were the amounts allocated for compensatory damages, punitive damages, and the oversight and monitoring agreement performed by the Ashcroft Group Consulting?

Zimmer Response to Question 1: As described above, Zimmer’s Settlement Payment was \$169.5 million, not \$311 million. This civil Settlement Payment was made pursuant to the Settlement Agreement with the United States of America, not the separate DPA entered into contemporaneously between Zimmer and the USAO. The Settlement Agreement was prepared and presented by the DOJ (Washington, D.C.) on behalf of the United States government and it did not stipulate allocation of the Settlement Payment among compensatory damages, punitive damages or otherwise. The Monitoring Costs were not referenced in the Settlement Agreement.

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Question 2: In negotiating and drafting the deferred prosecution agreement with the U.S. Attorney, what consideration, if any, was given by Zimmer to characterize these payments as compensatory or punitive under section 162(f) of the internal revenue code?

Zimmer Response to Question 2: The \$169.5 million civil Settlement Payment was made pursuant to the Settlement Agreement with the United States of America, not the separate DPA entered into between Zimmer and the USAO. Other than the amount of the Settlement Payment, Zimmer had little opportunity to negotiate the terms of the Settlement Agreement. Neither the Settlement Agreement nor the DPA characterized the nature of the Settlement Payment made pursuant to the Settlement Agreement, and the Settlement Agreement made no reference to the Monitoring Costs paid pursuant to the Monitor Agreements.

Question 3: Please explain in more detail the guidance that you received from the Internal Revenue Service regarding deductibility of portions of your settlement payments under the agreement?

Zimmer Response to Question 3: In September 2008, Zimmer and the Commissioner of Internal Revenue entered into a Pre-Filing and Closing Agreement (the "PFA"). The PFA request was initiated by Zimmer pursuant to Rev. Proc. 2007-17 and was formally submitted to the Internal Revenue Service in April 2008. The PFA pertained to the deductibility of the \$169.5 million Settlement Payment and the Monitoring Costs paid (or to be paid) to the federally-appointed monitor, AGCS. After considering the PFA request and concluding its own five-month review, the Internal Revenue Service reached the following conclusions: one-half of the Settlement Payment should be reflected as an IRC section 162(a) expense; one-half of the Settlement Payment should be reflected as a non-deductible payment under IRC section 162(f); and the Monitoring Costs should be deductible under IRC section 162(a).

We trust that the foregoing responses satisfactorily address the questions posed in the Letter.

Sincerely,

Zimmer Holdings, Inc.

By: 

Chad F. Phipps  
Senior Vice President, General Counsel & Secretary

cc: The Honorable Dave Camp  
Chairman  
Committee on Ways and Means  
U.S. House of Representatives