

Wednesday the 16th day of December 2015
BEFORE MR JUSTICE CROSS

BETWEEN

CHRISTOPHER GAFFNEY

PLAINTIFF

AND

DEPUY INTERNATIONAL LIMITED

DEFENDANT

The Applicant's Notice of Motion dated the 6th day of November
2015 for:

1. An Order pursuant to Order 56A Rule 2 (1) (i) of the Rules of the Superior Courts 1986 as amended and/or the inherent jurisdiction of this Honourable Court inviting the parties to use an ADR process to settle or determine the above entitled proceedings and the proceedings listed in the schedule to the Notice of Motion hereto ("**the Proceedings**")
2. An Order pursuant to Order 56A Rule 2(2) of the Rules of the Superior Courts 1986 as amended and/or the inherent jurisdiction of this Honourable Court adjourning the Proceedings currently listed and directing that no other cases against the Defendant in the litigation be listed for hearing until the parties to the Proceedings have had an opportunity to consider the invitation to use an ADR process and/or giving such further directions as are necessary to facilitate the effective use of the ADR process
3. Strictly without prejudice to any of the foregoing reliefs an Order pursuant to the inherent jurisdiction of this Honourable Court providing for parallel directions in relation to the case management of the Proceedings and in particular
 - (a) An Order directing that six "pathfinder" cases ("**the Pathfinder cases**") be listed for hearing

between March – July 2016 those cases to be agreed by the parties or in default of agreement to be determined by the Court

- (b) An Order pursuant to the inherent jurisdiction of this Honourable Court for a stay to be granted in respect of each of the Proceedings pending the determination of the Pathfinder cases by the High Court
- (c) Further or alternatively an Order pursuant to the inherent jurisdiction of this Honourable Court directing that no further steps be taken in the Proceedings pending the determination of all of the Pathfinder cases
- (d) Such ancillary directions in relation to case management of the Pathfinder cases and in particular in relation to discovery as necessary

4. Such further or other order as to the Court deems fit

5. An order providing for the costs of this application

having been at hearing before the Court on the 13th day of November 2015 and on this day in the presence of Counsel and Solicitors mentioned hereafter

And on the application of Counsel for the Applicant

IT WAS ORDERED that the proceedings herein be reported by a shorthand writer

Whereupon and on reading said Notice of Motion the Affidavit of John C O Shaughnessy and Affidavit of David Hurley both filed on the 6th day of November 2015 Affidavit of Christopher Gaffney and Affidavit of Peter McDonnell both filed on the 12th day of November 2015 the Affidavit of Ernest

Cantillon filed on the 13th day of November 2015 Affidavit of Dominic Creedon filed on the 16th day of November 2015 (in proceedings bearing High Court Record Number 2011 2015P) Affidavit of Cian O Carroll to be filed sworn on the 13th day of November 2015 Second Affidavit of David Hurley filed on the 11th day of December 2015 Affidavit of Katie Foy filed on the 15th day of December 2015 (in proceedings bearing High Court Record Number 2012 5572P) and the Affidavit of Peter McDonnell to be filed sworn on the 16th day of December 2015 and the documents and exhibits respectively referred to therein the submissions in writing and the Draft Outline of an Alternative Dispute Resolution Process (Fourth Version)

And upon hearing the submissions of Counsel for the Applicant being the Defendant in the above entitled proceedings and Counsel for the Plaintiff Counsel for Cian O Carroll Solicitors Counsel for Ernest Cantillon Solicitors Counsel for Peter McDonnell & Associates and the submissions of Peter McDonnell Sean Lynch and Raymond Bradley Solicitors in person

And Counsel for T J Brabazon & Company Counsel for Fintan O Reilly & Company Counsel for Moloney & Company Counsel for McNerney & Company Counsel for Martina Ryan & Company (formerly Thomas Ryan & Company) Counsel for Liam Staunton & Company Counsel for McMahon O'Brien Tynan and Solicitor for Pearts Solicitors on behalf of Robert J Baylor & Company and David Punch & Company announcing appearances to the Court

And the Court considering it appropriate and having regard to all the circumstances herein

The Court Doth Approve the Alternative Dispute Resolution Process a copy of which is annexed to and deemed to be part of this Order


And thereupon

IT IS ORDERED pursuant to Order 56A Rule 2(1) (i) of the Rules of the Superior Courts that the parties in this litigation be and they hereby are invited to use the said Alternative Dispute Resolution Process to settle or determine the above entitled proceedings and the proceedings listed in the schedule to the Notice of Motion herein (“the Proceedings”)

And the Court refusing to adjourn any of the Proceedings currently listed for trial

IT IS ORDERED pursuant to Order 56A Rule 2(2) of the Rules of the Superior Courts that no further Proceedings in the litigation be listed for hearing pending the First Report herein save and except by application to this Court (Cross J)

And IT IS ORDERED that the Solicitors present in court this day either in person or by Counsel hereinbefore mentioned or set forth in the schedule to this Order be and they hereby are made Notice Parties to this motion and that the Applicant do pay to the Plaintiff and to the said Notice Parties their costs of this Motion when taxed and ascertained


REGISTRAR
05/01/16

McCann FitzGerald
Solicitors for the Applicant

SCHEDULE

Solicitors present by Counsel this day but not announcing appearances to the Court

Garrett Fortune & Company Solicitors

Matos Solicitors

Frank Ward & Company Solicitors

Mary McAveety Solicitor

DEPUY ASR AND ASR XL ORTHOPAEDIC PRODUCTS IRISH LITIGATION

ALTERNATIVE DISPUTE RESOLUTION PROCESS
APPROVED BY THE HONOURABLE MR JUSTICE CROSS

16 DECEMBER 2015

Approved by Order of Mr Justice Cross
dated the 16th day of December 2015
R O'Connell
Registrar.

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1. **Introduction**

- 1.1 This alternative dispute resolution process (the "Process") shall be open to any claimant who seeks compensatory damages in accordance with Irish law (the "Claimant") from DePuy International Limited and its associated companies ("DePuy") in respect of the early revision of an implant in him or her of either a DePuy ASR Hip Resurfacing product or ASR XL Total Hip Replacement product ("ASR Product") that was the subject of a voluntary recall by DePuy in August 2010 and where the claim meets the criteria set out in this document.
- 1.2 The Process provides for the appointment of retired High Court or Supreme Court judges, or senior counsel with experience of personal injuries litigation, who will issue written, non-binding and neutral evaluations of claims submitted on behalf of Claimants which evaluations ("Evaluation" or "Evaluations") may be accepted by DePuy and the Claimant in full and final settlement of the Claimant's claim subject to the provisions of the Process.
- 1.3 DePuy and Claimants availing of the Process will make good faith and reasonable efforts to resolve claims without any unnecessary delay.
- 1.4 The Process is not intended to supplant or inhibit on-going or newly initiated without prejudice settlement discussions between the parties in any claim.
- 1.5 Instead, and in aid of settlement efforts, the Process is intended on a without admission of liability basis to offer Claimants a speedy means of having a neutral and non-binding evaluation of a claim without the Claimant having to prove liability so that, if DePuy accepts the Evaluation, the claim can be resolved at the earliest possible time.
- 1.6 This Process is provided without prejudice to the Claimant's right of access to the Courts under the Constitution of Ireland or right to an effective remedy under the European Convention of Human Rights.

2. **Approval of the Court**

- 2.1 The Process was approved by The Honourable Mr Justice Cross on 16 December 2015 and shall be put into effect without unnecessary delay.
- 2.2 DePuy's solicitors (McCann FitzGerald) will produce a written report every 6 months, or such lesser period as fixed by the Court, which they will give to the Court's registrar, copying all known Claimants' solicitors.
- 2.3 The report will set out the following information:
- (a) the number of cases that have entered the Process;
 - (b) the number of cases that are awaiting Evaluation;
 - (c) the number of Evaluations that have been made;
 - (d) the number of Evaluations that have lapsed;
 - (e) the number of Evaluations that have been accepted by both Claimants and DePuy; and
 - (f) a summary of any changes to the Process that have taken place in the period in accordance with clause 11.

3. Claim Criteria

3.1 A claim qualifies to enter the Process if:

- (a) the index operation implanting the ASR Product in the Patient occurred in Ireland and
- (b) the Claimant underwent revision surgery in Ireland within 10 years of the index operation but not earlier than 180 days after the index operation.

3.2 DePuy shall not agree under clause 5.5 below to a claim entering the Process if in DePuy's opinion:

- (a) the claim is statute barred pursuant to the Statute of Limitations 1957 (as amended);
- (b) the Claimant has not obtained Injuries Board authorisation under section 32 of the Personal Injuries Assessment Board Act 2003;
- (c) the claim relates exclusively to a revision necessitated by:
 - (i) dislocation;
 - (ii) trauma;
 - (iii) infection;
 - (iv) fracture of the femoral head; or
 - (v) any issue relating to the femoral stem;
- (d) the claim is not sufficiently pleaded or particularised, or if sufficient medical records and other essential details have not been given by the Claimant's solicitors to McCann FitzGerald.

4. The Evaluators

4.1 For the purposes of giving effect to the Process, a panel of ten persons, being retired High Court or Supreme Court judges or senior counsel experienced in personal injuries law, will be appointed to constitute a panel of Evaluators (each of which persons will be referred to in this document as the "Evaluator").

4.2 Within 14 days of the approval of the Process, McCann FitzGerald will write to the Chairman of the Bar Council, copying all known Claimants' solicitors, asking him or her to nominate and invite ten possible appointees to become members of the panel of Evaluators.

4.3 Casual vacancies on the panel shall be filled from nominees of the Chairman of the Bar Council so that a panel of not more than ten Evaluators can be maintained at any time.

4.4 The Chairman of the Bar Council may choose to write to possible appointees in terms of the letter scheduled hereto ("Form A"), amended as he or she sees fit.

4.5 Evaluators must not have acted for or against DePuy in ASR Product claims.

- 4.6 Where an Evaluator is unable to devote sufficient time to dealing with Evaluations within the time frames envisaged by this document he or she shall resign and shall be replaced by another individual nominated in accordance with the provisions above.
- 4.7 When the panel has been constituted, its members shall select from among their number a member (the "Chairman of the Evaluators") for the purposes specified hereunder.
- 4.8 The names and business contact details, including email addresses, of the Chairman of the Evaluators and each of the other Evaluators, together with a copy of this Process, shall be sent by email by McCann FitzGerald to all known Claimants' solicitors.

5. The Process

5.1 For the purpose of the Process only:

- (a) the Claimant will not be required to establish that the ASR Product supplied to him or her was defective within the meaning of the EC Product Liability Directive ("the Directive") or that DePuy was negligent, provided the Claimant proves that the ASR Product required early revision by reason of it being an ASR Product;
- (b) DePuy will not raise any of the defences otherwise available to it under Article 7 of the Directive; and
- (c) DePuy will not raise any defence as to causation based upon surgical technique or error causing or contributing to the early failure of the ASR Product and the Evaluator shall evaluate damages and costs on the assumption that surgical technique or error did not cause or contribute to the early failure of the ASR Product.

5.2 The Evaluators shall agree and publish to all known Claimants' solicitors the method set out in clause 5.3 so that Claimants' solicitors and DePuy may identify without difficulty which Evaluator is intended to deal with a Claimant's application under the Process.

5.3 The relevant Evaluator shall be identified by reference to the last digit of the High Court Record number in the proceedings between the Claimant and DePuy as follows:

- (a) [Name of Evaluator A] will deal with applications from Claimants with High Court proceedings' record number ending in 0;
- (b) [Name of Evaluator B] will deal with applications from Claimants with High Court proceedings' record number ending in 1;
- (c) [Name of Evaluator C] will deal with applications from Claimants with High Court proceedings' record number ending in 2;
- (d) [Name of Evaluator D] will deal with applications from Claimants with High Court proceedings' record number ending in 3;
- (e) [Name of Evaluator E] will deal with applications from Claimants with High Court proceedings' record number ending in 4;
- (f) [Name of Evaluator F] will deal with applications from Claimants with High Court proceedings' record number ending in 5;
- (g) [Name of Evaluator G] will deal with applications from Claimants with High Court proceedings' record number ending in 6;

- (h) [Name of Evaluator H] will deal with applications from Claimants with High Court proceedings' record number ending in 7;
 - (i) [Name of Evaluator I] will deal with applications from Claimants with High Court proceedings' record number ending in 8; and
 - (j) [Name of Evaluator J] will deal with applications from Claimants with High Court proceedings' record number ending in 9.
- 5.4 A Claimant may avail of the Process by completing a standard short form with essential details of the claim (which shall be entitled "Form B", the form of which is scheduled hereto) and by his or her solicitors submitting that to McCann FitzGerald (ref: DFH).
- 5.5 Where DePuy's advisors are of the opinion that they have sufficient information, including sufficient copy medical and surgical records, to form a view as to whether the claim meets the eligibility criteria of the Process and to form a view about the validity and value of the claim, McCann FitzGerald will endorse Form B at the place indicated at the bottom of the form and return the form to the Claimant's solicitors.
- 5.6 The Claimant's solicitor shall then send to the designated Evaluator the completed Form B together with the following documents:
- (a) a complete set of pleadings;
 - (b) a complete set of relevant medical records which cover the period prior to the index surgery, following the index surgery, prior to the revision surgery and following the revision surgery; and
 - (c) a schedule of special damages claimed together with supporting documentary evidence.
- 5.7 The Claimant's solicitors may also send to the Evaluator any other documents which they consider are relevant to the Evaluation. Such documents may include:
- (a) a condition and prognosis report, dealing also with causation where relevant;
 - (b) a concise witness statement from the Claimant, if desired; and
 - (c) concise written submissions.
- 5.8 Following submission of documents to the Evaluator, the Claimant's solicitors without delay shall send to McCann FitzGerald a copy of all documents which they have sent to the Evaluator.
- 5.9 DePuy and McCann FitzGerald shall not use for the purpose of briefing experts any of these documents that have not been previously disclosed without the permission in writing of the Claimant's solicitors or unless and until those documents are disclosed by the Claimant's solicitors under SI 391 of 1998.
- 5.10 McCann FitzGerald may submit to the Evaluator on behalf of DePuy such reports or concise written submissions as they consider relevant to the claim, and without delay shall send to the Claimant's solicitors a copy of those documents which they have sent to the Evaluator.
- 5.11 The Claimant's solicitors shall not use for the purpose of briefing experts any of these documents that have not been previously disclosed without the permission in writing of

McCann FitzGerald or unless and until those documents are disclosed by McCann FitzGerald on behalf of DePuy under SI 391 of 1998.

- 5.12 DePuy envisages that in cases involving uncomplicated revision surgery it will rarely be necessary for it to obtain expert reports for submission to the Evaluator, but it may do so if so advised.
- 5.13 Following receipt of documents referred to in clauses 5.6, 5.7 and 5.10 (where applicable), and in advance of commencing the Evaluation, the Evaluator shall write by email or otherwise to the Claimant's solicitor and to McCann FitzGerald saying that he or she will commence the Evaluation within fourteen days unless either side intends to submit any additional report or reports or concise submissions. The submission of an additional report or reports or concise written submissions shall be done only where a party's solicitors judge that to be essential, given the importance that Evaluations be done as speedily as possible.
- 5.14 Any further reports or concise submissions shall be submitted to the Evaluator without unnecessary delay and shall be subject *mutandis mutatis* to the same disclosure obligations and conditions as are set out in clauses 5.8 to 5.11 above.
- 5.15 All documents received by either the Claimant's solicitors or McCann FitzGerald under clauses 5.8 and 5.10, for the purposes of the Evaluation, are to be returned to the other party's solicitors following conclusion of the Evaluation process.
- 5.16 Evaluations shall be conducted ordinarily only by way of a review of the documents referred to above. It is envisaged that in most cases Evaluations should be completed within 6 weeks following receipt by the Evaluator of a completed Form B from the Claimant's solicitors though where a holiday season intervenes, or where additional documents or concise submissions are given to the Evaluator, this period may be longer. The efficiency of the Process will also depend on Claimants' solicitors and McCann FitzGerald ensuring that documents are submitted to the Evaluator without unnecessary delay and in a manner that enables the Evaluator to review the documents efficiently. In particular, documents sent to the Evaluators should be properly copied and collated so that they may be reviewed without difficulty.
- 5.17 Where Form B records that the Claimant desires an Evaluation at the earliest possible opportunity (due to ill-health or for another stated reason) this request will be accommodated in so far as is practicable.
- 5.18 The Process is not a judicial or arbitral procedure. However, in cases where a Claimant wishes to tell the Evaluator about what he or she has undergone, or where the Evaluator may find it helpful to hear from a Claimant, from a representative of DePuy or from an expert about technical or other issues, the Evaluator may decide whether and in what manner he or she will meet such person(s). It is envisaged that this discretion shall be exercised very sparingly as the Process is intended to avoid unnecessary cost and delay.
- 5.19 Where exceptionally the Evaluator decides to meet a Claimant, a representative of DePuy or an expert, the Evaluator shall notify both the Claimant's solicitor and McCann FitzGerald by email at least seven days beforehand, giving details of the venue and time of the proposed meeting, and a solicitor and, if desired, a counsel for both the Claimant and DePuy may attend that meeting and ask any questions of the Claimant, the representative of DePuy or expert and make concise oral submissions to the Evaluator.
- 5.20 Such meeting shall not be in the nature of a judicial or arbitral hearing and shall be informal and as brief as possible.

6. Evaluation of Damages

- 6.1 The Evaluator, at the earliest possible opportunity, shall write simultaneously to the Claimant's solicitors and to McCann FitzGerald with his or her written non-binding Evaluation recorded in a form in terms of Form C (which is scheduled hereto), which will set out the Evaluator's conclusion as to the amount of damages (if any), including the amount, if any, of Courts Act interest evaluated.
- 6.2 The Evaluation is not intended to express a reasoned analysis of the claim. It shall be a non-binding monetary evaluation, based on the material submitted to the Evaluator and on any oral account or submissions that the Evaluator may chose to hear, and shall be made without legal responsibility on the Evaluator's part to anybody.
- 6.3 An Evaluation of damages including Courts Act interest made by the Evaluator shall be limited to compensatory damages and interest in accordance with Irish law.

7. Entitlement to and Evaluation of Costs

- 7.1 If the Evaluation is accepted by the Claimant and DePuy, the Claimant shall be entitled to High Court party and party costs in respect of the Claimant's legal proceedings and in respect of the Evaluation, to be taxed by the High Court Taxing Master in accordance with the Rules of the Superior Courts, in default of agreement.
- 7.2 Where an Evaluation is not accepted by a Claimant or by DePuy and where the Claimant is subsequently awarded party and party costs in the litigation, or if as part of a subsequent settlement DePuy agrees that the Claimant shall recover High Court party and party costs, those costs shall include the Claimant's party and party costs in respect of the Evaluation, to be taxed by the High Court Taxing Master in accordance with the Rules of the Superior Courts, in default of agreement.
- 7.3 If the Evaluation is accepted by the Claimant and DePuy, DePuy shall hold harmless and indemnify the Claimant in respect of any other defendant's entitlement against the Claimant for costs in the proceedings where those costs were incurred by such defendant in the defence of a medical, nursing or hospital service provided by it in connection with the ASR product implanted in the Claimant that subsequently required revision.
- 7.4 The fees (plus VAT if applicable) of the Evaluator and any reasonable expenses of the Evaluator shall be borne by DePuy.

8. Lapse, acceptance and enforcement of Evaluations

- 8.1 If either the Claimant or DePuy does not accept in writing the Evaluation within 45 days (or later if the parties agree in writing) of the date of the Evaluation as recorded by the Evaluator in Form C, the Evaluation shall be deemed lapsed and the Claimant may continue existing proceedings.
- 8.2 The manner of acceptance of an Evaluation by a Claimant and DePuy shall be by way of an exchange of letters or emails between the parties' solicitors indicating unequivocally that the Evaluation has been accepted by the Claimant and by DePuy.
- 8.3 Any acceptance by DePuy of an Evaluation shall be without admission of liability.
- 8.4 Where an Evaluation has been accepted by both the Claimant and DePuy, and where any enactment or Rule of Court requires that a settlement of this claim must be approved by the Court, then that enactment or Rule of Court shall apply. The plaintiff's recoverable costs in

such circumstances shall include party and party costs in respect of the ruling of the settlement and, if necessary, the seeking of a wardship order in respect of the damages payable pursuant to the accepted Evaluation.

8.5 Where an Evaluation has been accepted by both the Claimant and DePuy, and on provision by the Claimant's solicitor to McCann FitzGerald of a signed settlement agreement in the terms of Form D (which is scheduled hereto), DePuy shall pay any sum of damages and interest evaluated by the Evaluator in the Evaluation and the Claimant's Evaluation costs to the Claimant within 28 days of the written communication of acceptance by the Claimant's solicitors or by McCann FitzGerald, whichever is later in time. DePuy shall also pay the party and party costs in the Claimant's legal proceedings 28 days after agreement is reached about the amount of such costs or after completion of taxation.

8.6 Any accepted Evaluation may be enforced in existing or new proceedings.

8.7 In the event that an Evaluation is not accepted by the parties, DePuy shall be entitled to make a lodgement to the amount of the Evaluation only. However, nothing shall prejudice the right of DePuy to make a lodgment where additional particulars are served, or otherwise by Order of the Court.

9. Stay of proceedings

9.1 Following the submission of a completed Form B by the Claimant's solicitors to McCann FitzGerald, the Claimant and DePuy shall not take any active steps (including the making or increase of a lodgement by DePuy) in existing proceedings concerning the claim, or shall not issue new proceedings regarding an ASR Product, before an Evaluation has been issued by the Evaluator and the Evaluation has lapsed pursuant to clause 8.1.

10. Confidentiality

10.1 The Process and Evaluation will be confidential to the Evaluator, the Claimant, DePuy, their legal representatives and witnesses in every case.

10.2 In every case, the Evaluation, any documents produced for or prepared in connection with the Process and any oral statements or other communications made in the Process by any party (save where such oral statements or other communications were already in the public domain prior to the Process) will remain and be kept confidential and not disclosed to any third party.

10.3 The outcome of Evaluation may not be referred to in any proceedings save in respect of enforcement of the Evaluation if accepted.

11. Amendment of the Process

11.1 Claimants' solicitors or DePuy or an Evaluator may propose in writing to the Chairman of the Evaluators an amendment to the Process to enhance its efficiency and its acceptability to Claimants and their solicitors and to DePuy.

11.2 Following consultation with the Evaluators, the Chairman of the Evaluators may recommend such amendment or a variation thereof in a written communication to McCann FitzGerald, who shall notify all known Claimants' solicitors of the recommended amendment. In the event of a written objection or objections to the recommended amendment within 14 days thereafter, McCann FitzGerald shall seek the approval of the Court to the recommended amendment on notice to the objecting party or parties.

- 11.3 If the proposed amendment is approved by the Court, the amendment to the Process shall take effect and McCann FitzGerald shall give all known Claimants' solicitors written notice of changes to the Process.
12. **Termination of the Process**
- 12.1 DePuy may terminate this Process on giving 45 days' written notice to the Court, to the Evaluators and to the solicitors of Claimants that are participating in the Process.
- 12.2 Any such termination is without prejudice to the validity and enforceability of any Evaluations that have been accepted by both DePuy and Claimants.
- 12.3 In the event of such termination, DePuy shall pay €3,500 plus VAT to any Claimant that has submitted a Form B, endorsed by McCann FitzGerald, and that is awaiting an Evaluation, in respect of the Claimant's Evaluation costs. For the avoidance of any doubt, no such payment shall be made where a Claimant withdraws from the Process following the submission of a completed Form B.

16 DECEMBER 2015

Form A – Draft Letter to Potential Evaluator

DATE

Draft letter to proposed Evaluator from Chairman of the Bar Council

**Alternative Dispute Resolution Process
DePuy ASR & ASR XL Orthopaedic Products Irish Litigation**

Dear Sir [Madam]

I have been asked to nominate ten retired judges of the Superior Courts or senior counsel experienced in personal injuries practice to act as Evaluators in the above ADR Process (copy of which is enclosed).

Please let me know whether you would be willing to accept appointment as an Evaluator and so to be included in a list of Evaluators that would be circulated to all Claimants' solicitors and to DePuy's solicitors, McCann FitzGerald.

Please note that it is essential that an Evaluator has not acted for or against DePuy in the above litigation.

You will see that the Process is intended to be essentially a paper-only neutral evaluation of claims where the Evaluator makes a brief non-binding Evaluation of damages and any Courts Act interest that may be awardable. The Evaluator may decide to convene a meeting in a case but the Process envisages that this would discretion would be used very sparingly. The Evaluation is without any liability or assumption of responsibility on the part of the Evaluator, who would be indemnified in respect of his or her role by DePuy.

DePuy will also be responsible for the Evaluator's fee which will be €3,500 plus VAT (if applicable) per Evaluation.

Please let me know if you wish to accept this appointment.

Yours faithfully

Chairman of the Bar Council

Form B – Application Form

DePuy ASR – Alternative Dispute Resolution Process

FORM B

Claimant Details

Name		
Address		
Date of Birth		
Occupation		
ASR-IRL Patient Number		
Claimant's Solicitor Name		
Claimant's Solicitor's Address		
Claimant's Solicitor's Reference		
Hip implanted <i>(please tick the appropriate box)</i>	Left	<input type="checkbox"/>
	Right	<input type="checkbox"/>
	Bilateral	<input type="checkbox"/>
The Claimant seeks an expedited Evaluation of their Claim	<input type="checkbox"/>	
<i>If yes, please provide a reason</i>		

Index Surgery Details

Date of Index Surgery		
Type of Surgery <i>(please tick the appropriate box)</i>	ASR Hip Resurfacing	<input type="checkbox"/>
	ASR XL Total Hip Replacement	<input type="checkbox"/>
	Other	<input type="checkbox"/>
Hospital		
Surgeon		

Revision Surgery Details

Date of Revision Surgery	
--------------------------	--

Evaluator Use Only

Evaluator Name: _____

Date Received by Evaluator: _____

Without Prejudice

Hospital	
Surgeon	

Previous Claim Details

Date of Injuries Board Authorisation	
Has the Claimant received payments from the Without Prejudice Reimbursement Program	Yes <input type="checkbox"/> No <input type="checkbox"/>
Date of Personal Injuries Summons	
Title of Proceedings	
Record Number	
Special Damages Claimed <i>(please enclose a schedule of special damages itemising and vouching the amount claimed)</i>	€

Authorisation

Claimant

I, _____ [Claimant Name] hereby submit my claim to the DePuy ASR Alternative Dispute Resolution Process (the "Process") for evaluation on a without prejudice basis. I have read and accept the terms of the Process.

Signed

Claimant or Claimant's solicitor's signature

Date

DePuy International Limited

DePuy International Limited hereby agree to the submission of the above claim to the DePuy ASR Alternative Dispute Resolution Process for evaluation on a without prejudice basis.

Signed

*Duly authorised for and on behalf of
DePuy International Limited*

Date

Evaluator Use Only

Evaluator Name: _____

Date Received by Evaluator: _____

Form C – Form of Evaluation Decision

DATE

To Name and address
and reference of Claimant's solicitors

McCann FitzGerald
Solicitors
Riverside One
Sir John Rogerson's Quay
Dublin 2.
[Ref: DFH/RJB]

Name of case

Title of proceedings

Dear Sirs

I evaluate the Claimant's claim for damages and Courts Act interest (if any) at [insert].

This Evaluation is made by me without liability or assumption of responsibility to any party. The Evaluation is made pursuant to the terms of the Alternative Dispute Resolution Process dated [•], which was approved by the Court on [•].

Please note that if the Claimant and DePuy do not accept in writing the Evaluation within 45 days of today's date (or later if the parties agree in writing), the Evaluation will be deemed lapsed under the terms of the Process.

I will arrange to have shredded [or I will return to the relevant solicitors] documents submitted to me. I will keep a copy of the completed Form B and this letter for my records.

Yours faithfully

[Name of Evaluator]

Form D – Draft Settlement Agreement

[•] No. [•] P

[THE HIGH COURT]

[TITLE OF PROCEEDINGS]

SETTLEMENT AGREEMENT

This Settlement Agreement is dated the [•] day of [•] [2015]

PARTIES

Between:

- (1) DePuy International Limited of St Anthony's Road, Leeds, LS11 8DT, England ("DePuy"); and
- (2) [Claimant Name] of [•] (the "Claimant")
- (3) DePuy and the Claimant are together referred to as "The Parties"

RECITALS

- (A) The Claimant underwent [left/right/bilateral] ASR hip surgery on [•] (the "Primary Surgery").
- (B) The Claimant underwent a revision of his [left/right/bilateral] hip ASR implant on [•] (the "Revision Surgery").
- (C) On 24 August 2010 DePuy undertook a voluntary recall of the ASR TM Hip Resurfacing and ASR TM XL Acetabular System (the "Voluntary Recall").
- (D) The Claimant allegedly suffered injury loss and/or damage arising from the Primary Surgery which led to the need to perform the Revision Surgery (the "Loss and/or Damage").
- (E) The Claimant brought a claim against DePuy for compensation in respect of the Loss and/or Damage (the "Claim").

AGREED TERMS

UPON THE AGREEMENT OF THE PARTIES:

1. Payment

- 1.1 DePuy shall pay to the Claimant the total sum of €[•] ([•] thousand euros) in full and final settlement of the Claim (the "Agreed Sum"). The Agreed Sum is to be paid within 28 days of the date of this Settlement Agreement, by way of bank transfer to the Claimant's

Solicitor's client account, the details of which have been notified to McCann FitzGerald, as solicitors for DePuy.

1.2 For the avoidance of doubt, DePuy shall pay the Agreed Sum to the Claimant without any admission of liability. Payment of the Agreed Sum is made solely on its own behalf but is in full extinguishment of the Claimant's rights or cause(s) of action (if any) against DePuy or any other person or entity in respect of the losses and/or damage. It is not, and shall not be represented or construed by the Claimant as, an admission of liability, product deficiency or any wrongdoing on the part of DePuy or any other person or entity.

2. Full and Final Settlement and Indemnity

2.1 Payment of the Agreed Sum shall be made and accepted in full and final settlement of any and all claims, demands and causes of action which the Claimant may have or claim to have against DePuy or any parent, subsidiary, associated, any affiliated company of DePuy (the "DePuy Companies"), or any other person or entity, in respect of the Loss and/or Damage, to include any claim for reimbursement of:

- (a) any expenses incurred by the Claimant; and
- (b) the costs of any privately funded medical testing or treatment received by the Claimant before the date of this Agreement under DePuy's voluntary reimbursement programme administered by Broadspire UK of Tempus, 249 Midsummer Boulevard, Milton Keynes MK9 1YA.

2.2 The Claimant shall not make or continue a claim against any other person in respect of the Loss and/or Damage and shall indemnify DePuy against any liability, claim, cost of proceedings DePuy incurs arising out of or in connection with the Claimant claiming against any other person in respect of the Loss and/or Damage.

2.3 For the avoidance of doubt, no liability attaches to the surgeon who performed the Primary Surgery.

3. Confidentiality

3.1 The terms of this Settlement Agreement are confidential, without prejudice and without admission of liability.

3.2 The fact of settlement and terms of this Settlement Agreement, and the substance of all negotiations in connection with it, are strictly confidential to the Parties, their legal advisers and insurers, who shall not disclose them to, or otherwise communicate them to, any Third Party, other than to any court, government or other authority to the extent necessary for compliance with a lawful obligation by the party disclosing it and to the extent necessary to any other professional adviser to that party in connection with the giving or receiving of advice in relation to such disclosure.

12.4 The Claimant further agrees to keep confidential all circumstances connected with the settlement of his/her Claim and any information made known or available to him/her in connection therewith and in connection with the Voluntary Recall and will undertake not to disclose any aspect of this Settlement Agreement.

4. Costs

4.1 DePuy shall pay the Claimant's reasonable costs, to be taxed in default of agreement.

5. **Miscellaneous**

5.1 This Settlement Agreement constitutes and expresses the entire agreement between the Parties pertaining to the subject matter contained herein and supersedes all prior and contemporaneous oral or written agreements, representations, understandings and the like between the Parties.

6. **Governing law and jurisdiction**

6.1 This Settlement Agreement shall be governed by, and construed in accordance with, Irish law. Any dispute arising out of or in connection with, or concerning the carrying into effect of, this Settlement Agreement shall be subject to the exclusive jurisdiction of the Courts of Ireland, and the parties hereby submit to the exclusive jurisdiction of that court for these purposes.

This Settlement Agreement has been entered into on the date stated at the beginning of it.

Signed by [Claimant Name] (the "Claimant")

.....

Date

.....

Signed by

.....
for and on behalf of **DePuy International Limited**

.....
Position held:

Date

.....

ANNEX A

CONFIDENTIALITY AGREEMENT

I, [•] of, [•] will preserve the privileged and confidential nature of this Settlement and Confidentiality Agreement dated _____ and the contents therein, and confirm that neither the Settlement and Confidentiality Agreement nor its contents will be referred to in any media statement or otherwise publicised, nor divulged or otherwise distributed to the public, media or otherwise.

Signed by [•] (the "Claimant")

.....

Date

.....

A COPY WHICH I ATTEST

B. Cook

.....
FOR REGISTRAR