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MCCANN FITZGERALD

OUR REF

YOUR REF

DATE

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19 October 2016

Solicitors acting on behalf of Plaintiffs in
the DePuy litigation

BY POST

DePuy ADR Process

Costs

Medical Records

Non-compensatory damages

Queries by solicitors

Dear Sirs

Following the hearing of the Court on 4 October, our client has instructed us to notify all solicitors acting for claimants of the following steps to encourage uptake of the ADR Process and to expedite payment towards claimants' costs.

Costs

DePuy will pay to you on behalf of your client a fixed sum of €25,000 in respect of your client's costs, expenses and VAT if the case is settled following endorsement by McCann FitzGerald of the Form B and before completion of the ADR Process i.e. not later than 45 days after an Evaluation has been issued. The payment will be made whether the case is settled before or after the Evaluator issues the Evaluation. Such payment will be made at the same time as the damages are paid i.e. within 28 days of delivery to McCann FitzGerald of the signed settlement agreement.

If you consider that your client's recoverable costs, expenses and VAT are higher than €25,000, DePuy nonetheless will pay that sum to you on behalf of your client as provided above and you may submit a bill of costs which McCann FitzGerald will review and revert with a written response within 28 days of receiving the bill of costs. Your client may then proceed to taxation (or mediation)

Barry Devereux, Ronan Molony, Lonan McDowell, John Cronin, Catherine Deane, Paul Heffernan, Terence McCrann, Roderick Bourke, Ambrose Loughlin, Niall Powderly, Kevin Kelly, Hilary Marren, Eamonn O'Hanrahan, Roy Parker, Patricia Lawless, Helen Kilroy, Judith Lawless, James Murphy, David Lydon, David Byers, Seán Barton, Colm Fanning, Paul Lavery, Alan Fuller, Claire Lenny, Maureen Dolan, Michelle Doyle, Hugh Beattie, Fergus Gillen, Valerie Lawlor, Mark White, Eamon de Valera, Joe Fay, Ben Gaffikin, Donal O Raghallaigh, Karyn Harty, Philip Andrews, Barrett Chapman, Mary Brassil, Audrey Byrne, Shane Fahy, Georgina O'Riordan, Adrian Farrell, Michael Murphy, Aidan Lawlor, Darragh Murphy, Brian Quigley, Conor O'Dwyer, Stephen FitzSimons, David Hurley, Philip Murphy, Fiona O'Beirne, Garreth O'Brien, Gary McSharry, Alan Heuston, Josh Hogan, Richard Leonard, Jenny Mellerick, Rory O'Malley, Lisa Smyth, Tom Dane, Catherine Derrig, Megan Hooper, Shane Sweeney, Adam Finlay, Iain Ferguson, Jennifer Halpin, Stuart McCarron, Stephen Proctor.

Consultants: Timothy Bouchier-Hayes, Rosaleen Byrne, Elva Carbery, David Clarke, Annette Hogan, Eleanor MacDonagh (FCA), Jane Marshall, Peter Osborne, Michael Ryan (FCA), Tony Spratt (ACA).

of the party and party costs of the proceedings, including of the claimant's Evaluation costs, in the event of disagreement about such costs. The sum of €25,000 paid to you on behalf of your client would be offset against any costs awarded on taxation or otherwise agreed.

We should add that in light of claimants' solicitors concerns about delays in taxation, our client will be willing to participate in mediation of costs claims in any resolved ASR cases.

Medical records

DePuy recognises that not all possibly relevant records may be necessary in every case, depending on the facts of the case, what the claimant alleges and the amount of damages being claimed. DePuy has instructed us to seek to agree medical records on as pragmatic a basis as possible.

In all cases, we do need to see the records from your client's original hip implant operation and the revision operation. We use these records to check the reason for the revision and to evaluate pain and suffering undergone.

Where your client claims continuing pain and suffering, his or her up to date treatment records, including GP records, are very important so that we can review the complaints and assess causes or contributory causes of the complaints.

Similarly, where your client claims for significant future loss of earnings and care, his or her medical records from a significant period may be essential, depending on the facts of the case and the sums being claimed. This is because previous medical history may be highly relevant to the cause(s) of your client's condition as well as prognosis. Full details of claimed special damages are also necessary.

DePuy recognises that practical difficulties arise in collecting medical records. We have written again to the representatives of the hospitals and surgeons about the need to improve the provision of medical records in ASR cases and we would welcome any suggestions of other ways in which we might be of assistance to you in collecting records.

Where records cannot be found or where you are encountering other difficulties we will be glad to discuss that with you, by telephone or otherwise, and to see whether the problem can be overcome.

Non-compensatory damages

Our client wishes to set out again the position about such damages. Cases claiming non-compensatory damages (described variously by claimants' representatives as "aggravated", "exemplary" or "punitive" damages) are not excluded from the ADR Process. The Evaluator may only assess compensatory damages however. All claimants in the ADR Process will get an independent evaluation of the case for compensatory damages without having to prove liability. Claimants may accept the Evaluation in full and final settlement of the claim against DePuy (this would mean that the claimant could not further pursue a claim for non-compensatory damages, if claimed), or reject the Evaluation and proceed with the litigation, with its attendant costs and risks.

Our client will not in any circumstances agree to pay non-compensatory damages.

Queries by solicitors

If you have any queries in respect of the ADR Process, please do not hesitate to call us on 01 607 1258. Information is also available on www.hipadr.ie

Yours faithfully


McCann FitzGerald