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MCCANN FITZGERALD

OUR REF

YOUR REF

DATE

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28 July 2023

The Honourable Mr Justice Paul Coffey
The High Court
Four Courts
Inns Quay
Dublin 7

DePuy International Limited ("DePuy")
ASR ADR Process - Periodic Report

By hand and email

Dear Mr Justice Coffey

We write once more on behalf of DePuy pursuant to Clause 2.2 of the ADR Process, ahead of the Court's review of the ADR Process, which is listed for hearing before you on Monday, 31 July 2023. This is the 17th update to Court on the ADR Process. We are sending a copy of this letter by email today to all Plaintiffs' solicitors and to the Chairman of the Evaluators. We will also put a copy on the ADR website (hipadr.ie), which is regularly updated by us on behalf of DePuy.

Summary of ASR litigation

1,173 High Court proceedings relating to the ASR prosthesis have been issued against DePuy. The cases break down as follows:

- 852 are resolved (including 31 in 2023, 45 in 2022, 41 in 2021, 46 in 2020, 71 in 2019, and 102 in 2018);
- 72 are currently in the ADR Process;
- Outside of ADR, there are 103 claims involving revised Plaintiffs which are not resolved; and
- 146 Plaintiffs have not undergone any revision surgery.

4 of the 5 cases listed for trial in 2023 have settled. There no cases currently listed for hearing in 2024.

Stephen Holst (Managing Partner), Catherine Deane (Chair), Roderick Bourke, Niall Powderly, Kevin Kelly, Hilary Marren, Eamonn O'Hanrahan, Helen Kilroy, Judith Lawless, James Murphy, David Lydon, David Byers, Colm Fanning, Paul Lavery, Alan Fuller, Michelle Doyle, Hugh Beattie, Fergus Gillen, Valerie Lawlor, Mark White, Rosaleen Byrne, Eamon de Valera, Joe Fay, Ben Gaffikin, Donal O Raghallaigh, 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, Rory O'Malley, Lisa Smyth, Brendan Slattery, Tom Dane, Catherine Derrig, Megan Hooper, Shane Sweeney, Adam Finlay, Iain Ferguson, Jennifer Halpin, Stuart McCarron, Stephen Proctor, Michael Coonan, Emily Mac Nicholas, Brendan Murphy, Shane O'Brien, Éamon Ó Cuív, Eleanor Cunningham, Gill Lohan, Ciara Ryan, Niall Best, Richard Gill, Douglas McMahon, Laura Treacy, Laura Deignan, Stephen Fuller, Niall McDowell, John Neeson, David O'Dea, Orlaith Sheehy, Sean Carr, Morgan Dunne, Donal Hamilton, Ian Payne. **Consultants:** Catherine Austin, Deirdre Barnicle, Seán Barton, Eleanor MacDonagh (FCA), Terence McCrann, Anna Moran, Peter Osborne, Tony Spratt (ACA). **Company Secretarial and Compliance Services:** Ray Hunt.

Update on ADR Process

The table shows the cumulative numbers for the ADR Process at each review date:

	27 Jul 2016	27 Sep 2016	06 Jan 2017	12 Apr 2017	03 Oct 2017	10 Apr 2018	24 Jul 2018	17 Dec 2018	22 Jul 2019	13 Dec 2019	21 Jul 2020	11 Dec 2020	26 Jul 2021	15 Nov 2021	08 Jul 2022	5 Dec 2022	28 Jul 2023
Form Bs received	27	47	119	153	195	222	231	239	257	261	266	269	276	277	283	288	298
Plaintiff solicitor firms	18	27	33	48	58	69	72	74	78	80	81	82	86	86	88	89	91
Ineligible claims	3	5	11	15	17	19	20	20	20	20	20	20	21	21	18	18	19
Form Bs endorsed	7	9	76	95	129	153	160	173	184	191	196	201	206	207	209	213	220
Evaluations	0	2	7	14	25	36	44	53	66	70	80	84	95	100	105	107	112 <i>4 awaited</i>
Accepted by DePuy	-	2	7	14	24	36	42	47	58	63	72	76	86	91	95	97	101
Accepted by DePuy & Plaintiff	-	2	4	10	15	21	26	29	37	40	44	49	56	58	62	63	65
Rejected by Plaintiff	-	-	2	2	9	10	15	17	20	22	27	27	30	32	33	34	36
Rejected by DePuy	-	-	-	-	-	-	2	5	5	7	8	8	8	9	10	10	10
Awaiting Plaintiff decision	-	-	1	2	-	5	1	1	1	1	1	0	1	1	0	0	0
Awaiting decision of both	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1
Resolved claims where Form B received	5	10	18	31	45	78	97	114	148	153	164	173	187	195	200	203	212

Since the inception of the Scheme, we have received 298 Form Bs from 91 different solicitor firms and we have resolved 212 of those claims. 112 claims have been evaluated and we expect 4 more evaluations to be made shortly. Submissions have been filed by both parties in respect of 3 further cases and we now await the Plaintiff's replying submissions.

DePuy has received Plaintiffs' submissions in 4 cases since the last report to Court. In 14 claims, DePuy is currently arranging its own expert reports in order to prepare its own submissions before proceeding to evaluation.

DePuy has rejected 10 evaluations, all of which have since been resolved. Only 5 claims remain unresolved where a Plaintiff rejected the evaluation.

Of the 78 claims where a Form B has been submitted, but has not been endorsed, 43 were resolved before endorsement and 19 were ineligible under the terms of the ADR Process. Of the 16 other claims that have not yet been endorsed, we either await further medical records, details of special damages or other information, before being able to determine eligibility.

There are currently 56 endorsed claims in the ADR Process that have not yet resolved or gone to evaluation. One firm of solicitors act in 49 of those claims and have delivered submissions in two cases since the last report to Court on 16 December 2022.

Exclusionary criteria in ADR

We have received one ineligible application for ADR since our last report.

Priority cases

We give urgent attention to any case where the Plaintiff's solicitor marks the claim as "*expedited*" on the Form B. The Court has also said that it will hear applications for trial dates in exceptional cases.

Medical records

Where records cannot be found, or where Plaintiffs' solicitors are encountering other difficulties retrieving medical records, we discuss with them how the problem can be overcome. We also offer to collect medical records without expense to the Plaintiff, in cases that appear eligible for the ADR Process and where the Plaintiff's solicitor gives us authorisation(s) signed by the Plaintiff and addressed to the medical service provider(s). We copy collected records to Plaintiffs' solicitors.

Costs in ADR

The offer of €25,000 in respect of a Plaintiff's legal costs on account for any case settled within the ADR Process, remains available. The offer is without prejudice to the right of a Plaintiff to seek higher costs by agreement or, if necessary, on adjudication.

Staffing for ADR

Three Solicitors at McCann FitzGerald LLP, supervised by a Partner and supported by a team of legal executives, work on claims in the ADR Process. These solicitors together with Barristers retained on behalf of DePuy in the litigation, are available to discuss with Plaintiffs' lawyers resolution of any eligible claim.

Information to Plaintiffs' representatives

We continue through the ADR website, hipadr.ie to draw the attention of Plaintiffs' representatives to the ADR Process and to our client's willingness to discuss resolution of all eligible claims.

Yours sincerely

A handwritten signature in blue ink, appearing to read "McCann FitzGerald".

McCann FitzGerald LLP