

**McCann FitzGerald LLP**

Riverside One  
Sir John Rogerson's Quay  
Dublin 2  
D02 X576

Tel: +353-1-829 0000

Email: [inquiries@mccannfitzgerald.com](mailto:inquiries@mccannfitzgerald.com)

Dx 31 Dublin

[www.mccannfitzgerald.com](http://www.mccannfitzgerald.com)

**MCCANN FITZGERALD**

OUR REF

YOUR REF

DATE

DFH\46516430.1

25 July 2022

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

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

By Hand

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 Wednesday, 27 July 2022. This is the 15<sup>th</sup> update on the ADR Process and the fifth report delivered following the onset of the Covid-19 pandemic. We are sending a copy of this letter by email today to all Plaintiffs' solicitors and to the Chairman of the Evaluators and we will also put a copy on the ADR website ([hipadr.ie](http://hipadr.ie)), which is regularly updated.

**Summary of ASR litigation**

1,134 High Court proceedings have been served on DePuy. The cases break down as follows:

- 783 are resolved (including 17 to date in 2022, 41 in 2021, 46 in 2020, 71 in 2019, and 102 in 2018);
- 67 are currently in the ADR Process;
- 2 cases are currently listed for trial in 2022.
  - 5 other cases were listed for trial in 2022, of which 4 were resolved before trial and one resolved after the first day of hearing.
- 123 further cases involving revised Plaintiffs are not resolved; and
- 159 Plaintiffs have not undergone any revision surgery.

Stephen Holst (Managing Partner), Catherine Deane (Chair), Terence McCrann, Roderick Bourke, Niall Powderly, Kevin Kelly, Hilary Marren, Eamonn O'Hanrahan, Barry Devereux, 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, 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, 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, Eamon 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, Ambrose Loughlin, Eleanor MacDonagh (FCA), Anna Moran, Peter Osborne, Tony Spratt (ACA).

Update on ADR Process

The ADR Process continues to operate during the current restrictions to support the resolution of ASR claims. The table below 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	8 Jul 2022
<b>Form Bs received</b>	27	47	119	153	195	222	231	239	257	261	266	269	276	277	283
<b>Plaintiff solicitor firms</b>	18	27	33	48	58	69	72	74	78	80	81	82	86	86	88
<b>Ineligible claims</b>	3	5	11	15	17	19	20	20	20	20	20	20	21	21	18
<b>Form Bs endorsed</b>	7	9	76	95	129	153	160	173	184	191	196	201	206	207	209
<b>Evaluations</b>	0	2	7	14	25	36	44	53	66	70	80	84	95	100	105 (4 awaited)
<b>Accepted by DePuy</b>	-	2	7	14	24	36	42	47	58	63	72	76	86	91	95
<b>Accepted by DePuy &amp; Plaintiff</b>	-	2	4	10	15	21	26	29	37	40	44	49	56	58	62
<b>Rejected by Plaintiff</b>	-	-	2	2	9	10	15	17	20	22	27	27	30	32	33
<b>Rejected by DePuy</b>	-	-	-	-	-	-	2	5	5	7	8	8	8	9	10
<b>Awaiting Plaintiff decision</b>	-	-	1	2	-	5	1	1	1	1	1	0	1	1	0
<b>Resolved claims where Form B received</b>	5	10	18	31	45	78	97	114	148	153	164	173	187	195	200

We have received 283 Form Bs from 88 different solicitor firms and we have resolved 200 of those claims. 105 claims have been evaluated and we expect 4 more evaluations to be made shortly.

DePuy has received Plaintiffs' submissions in 7 further cases since the last report to Court. In 8 claims, DePuy is currently arranging its own expert reports and/or awaiting further information from Plaintiff's solicitors where necessary, in order to prepare its own submissions before proceeding to evaluation. DePuy is also finalising its submissions in two other claims.

DePuy has rejected 10 evaluations of which 9 have since been resolved. Only 4 claims remain unresolved in which a Plaintiff rejected the evaluation.

Of the 74 claims where a Form B has been submitted, but has not been endorsed, 40 were resolved before endorsement and 18 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 51 endorsed claims in the ADR Process that have not yet resolved or gone to evaluation. One firm of solicitors act in 45 of those claims and have delivered submissions in four cases since the last report to Court in November 2021.

#### **Exclusionary criteria in ADR**

We have received one application for ADR in an ineligible claim since our last report, as pursuant to clause 3.1(b), the Plaintiff was revised more than 10 years after index surgery.

In light of the judgment of Ms Justice Donnelly in the Court of Appeal, in the case entitled *Joseph Creedon -v- DePuy International Limited* dated 9 November 2021, DePuy will consider requests to waive the exclusionary criteria set out at clause 3.2 (b), namely that a claim is ineligible for the ADR Process by virtue of the Plaintiffs' failure to obtain Injuries Board Authorisation.

#### **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 signed authorisation(s) 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 as well as the other solicitors working

on the ASR litigation in this firm, 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**

As stated above, we continue to draw the attention of Plaintiffs' representatives to the continued operation of ADR Process, notwithstanding the Covid-19 crisis and to DePuy's willingness to discuss resolution of all eligible claims through the ADR website, [hipadr.ie](http://hipadr.ie).

Yours sincerely



McCann FitzGerald LLP