

McCann FitzGerald LLP

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

Tel: +353-1-829 0000
Email: inquiries@mccannfitzgerald.com
Dx 31 Dublin
www.mccannfitzgerald.com

MCCANN FITZGERALD

OUR REF

YOUR REF

DATE

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14 December 2022

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 Friday, 16 December 2022. This is the 16th 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 litigation¹

1,176 High Court proceedings have been issued against DePuy. The cases break down as follows:

- 812 are resolved (including 45 in 2022, 41 in 2021, 46 in 2020, 71 in 2019, and 102 in 2018);
- 69 are currently in the ADR Process;
- Outside of ADR, there are 138 claims involving revised Plaintiffs which are not resolved; and
- 157 Plaintiffs have not undergone any revision surgery.

7 cases were listed for trial in 2022, of which 4 were resolved before trial and 3 resolved after the first day of hearing. There are 4 cases listed for trial in 2023.

¹ Given we are approaching the seventh anniversary of the ADR Scheme's inception, we recently carried out a comprehensive audit of our files. The above figures were calculated based on adjustments made to our tracking system following the audit.

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, 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, Ambrose Loughlin, Eleanor MacDonagh (FCA), Anna Moran, Peter Osborne, Tony Spratt (ACA).

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
Form Bs received	27	47	119	153	195	222	231	239	257	261	266	269	276	277	283	288
Plaintiff solicitor firms	18	27	33	48	58	69	72	74	78	80	81	82	86	86	88	89
Ineligible claims	3	5	11	15	17	19	20	20	20	20	20	20	21	21	18	18
Form Bs endorsed	7	9	76	95	129	153	160	173	184	191	196	201	206	207	209	213
Evaluations	0	2	7	14	25	36	44	53	66	70	80	84	95	100	105	107 (6 awaited)
Accepted by DePuy	-	2	7	14	24	36	42	47	58	63	72	76	86	91	95	97
Accepted by DePuy & Plaintiff	-	2	4	10	15	21	26	29	37	40	44	49	56	58	62	63
Rejected by Plaintiff	-	-	2	2	9	10	15	17	20	22	27	27	30	32	33	34
Rejected by DePuy	-	-	-	-	-	-	2	5	5	7	8	8	8	9	10	10
Awaiting Plaintiff decision	-	-	1	2	-	5	1	1	1	1	1	0	1	1	0	0
Resolved claims where Form B received	5	10	18	31	45	78	97	114	148	153	164	173	187	195	200	203

We have received 288 Form Bs from 89 different solicitor firms and we have resolved 203 of those claims. 107 claims have been evaluated and we expect 6 more evaluations to be made shortly.

DePuy has received Plaintiffs' submissions in no further cases since the last report to Court. In 18 claims, DePuy is currently arranging its own expert reports 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 where a Plaintiff rejected the evaluation.

Of the 75 claims where a Form B has been submitted, but has not been endorsed, 41 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.

New evaluator

Due to the retirement of Mr Justice Finnegan from the panel of evaluators, we wrote to the Chair of the Bar Council, Sara Phelan SC, to request that she nominate a replacement evaluator pursuant to Clause 4.3 of the Process. She appointed Ms Miriam Reilly SC as an evaluator for all claims with record numbers ending in 1.

Exclusionary criteria in ADR

We have not received an 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 that reads "McCann FitzGerald". The signature is written in a cursive, flowing style.

McCann FitzGerald LLP