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**MCCANN FITZGERALD**

OUR REF

YOUR REF

DATE

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24 July 2018

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

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

By Hand

Dear Mr Justice Cross

We write on behalf of DePuy under Clause 2.2 of the ADR Process and for the Court's review of the ADR Process on Friday, 27 July 2018.

We will send a copy of this letter by email today to all plaintiffs' solicitors and to the chairman of the Evaluators.

**Summary of ASR litigation**

1108 High Court proceedings have been served on DePuy. Over 50% of cases involving revised plaintiffs have been resolved. The cases break down as follows:

- 540 resolved (including 68 to date in 2018)
- 110 are currently in the ADR Process
- 9 are listed for trial
- 232 further cases involving revised plaintiffs are not resolved
- 217 plaintiffs have not undergone any revision surgery

Barry Devereux, John Cronin, Catherine Deane, Paul Heffernan, Terence McCrann, Roderick Bourke, 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, Brendan Slattery, Tom Dane, Catherine Derrig, Megan Hooper, Shane Sweeney, Adam Finlay, Iain Ferguson, Jennifer Halpin, Stuart McCarron, Stephen Proctor, Michael Coonan, Stephen Holst, Emily Mac Nicholas, Brendan Murphy, Shane O'Brien, Éamon Ó Cuív, Eleanor Cunningham, Gill Lohan, Ciara Ryan.

**Consultants:** Rosaleen Byrne, David Clarke, Annette Hogan, Ambrose Loughlin, Eleanor MacDonagh (FCA), Lonan McDowell, Anna Moran, Peter Osborne, Michael Ryan (FCA), Tony Spratt (ACA).

**Update on ADR Process**

The table below shows the status of the ADR Process before each review date:

<i>(all figures are cumulative)</i>	27 July 2016	27 Sept 2016	6 Jan 2017	12 Apr 2017	3 Oct 2017	10 Apr 2018	24 July 2018
<b>Form Bs received</b>	27	47	119	153	195	222	231
<b>Plaintiff solicitor firms</b>	18	27	33	48	58	69	72
<b>Ineligible claims</b>	3	5	11	15	17	19	20
<b>Form Bs endorsed</b>	7	9	76	95	129	153	160
<b>Evaluations</b>	0	2	7	14	25	36 (6 awaited)	44 (7 awaited)
○ Accepted by DePuy	-	2	7	14	24	36	42
○ Accepted by DePuy and Plaintiff	-	2	4	10	15	21	26
○ Accepted by DePuy but rejected by Plaintiff	-	-	2	2	9	10	15
○ Rejected by DePuy	-	-	-	-	-	-	2
○ Awaiting Plaintiff decision	-	-	1	2	-	5	1
<b>Resolved claims where Form B received (including settlements by negotiation)</b>	5	10	18	31	45	78	97

We have received 231 Form Bs from 72 different firms and we have resolved 97 of these claims. 44 claims have been evaluated and 7 more evaluations will be made shortly. DePuy has accepted all but two evaluations. Only six claims where evaluations were rejected remain unresolved to date.

Of the 71 claims that have not been endorsed, 20 were ineligible under the terms of the ADR Process and 21 were resolved before endorsement. Of the 30 other claims that are not endorsed, we have arranged or are seeking to arrange settlement discussions in five claims and in most of the other claims we either await further medical records or details of special damages before being able to endorse the claim.

There are 86 endorsed claims that have not resolved or gone to evaluation. Malcomson Law act in 59 of those claims. Since our last report, Malcomson Law have provided submissions in one case and we delivered DePuy's submissions in that case today.

### **Exclusionary criteria in ADR**

We have concluded that 20 of the 231 cases where we received a Form B are excluded under the rules of the ADR Process: 6 of these cases did not have the necessary Injuries Board authorisations; in 2 cases the claimant had not undergone revision surgery; in 2 cases the claimant underwent revision surgery less than 180 days or more than 10 years after the index operation; and in 1 case the claimant's revision surgery took place outside Ireland.

In the 9 other cases, we concluded in light of the evidence available that the claimant's revision surgery was due exclusively to infection (5), stem loosening (1), dislocation (1) or trauma (1). These are exclusionary criteria under Clause 3.2 (c) (i)-(v). However, in each such case we will carefully examine any other medical evidence or records which the claimant's solicitor draws to our attention in support of admitting the claim.

### **Medical records**

Where records cannot be found or where claimants' 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 claimant in cases that appear eligible for the ADR Process where the claimant's solicitor gives us signed authorisation(s) addressed to the medical service provider(s). We copy collected records to claimants' solicitors.

### **Costs in ADR**

The offer of €25,000 in respect of a plaintiff's legal costs, expenses and VAT for any case settled within the ADR Process following endorsement of Form B remains available. The offer is without prejudice to any right of a plaintiff to seek higher costs on taxation or by agreement.

### **Staffing for ADR**

Three McCann FitzGerald solicitors, supervised by a partner and supported by a team of legal executives, work full time on claims in the ADR Process. These solicitors, the other solicitors working on the DePuy litigation in this firm and 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 to draw plaintiffs' representatives' attention to the ADR Process, and to our client's willingness to discuss resolution of all eligible claims, through recurring one-page advertisements since February 2017 in the Law Society Gazette and the Bar Review and through the ADR website.

Yours faithfully

  
McCann FitzGerald