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MCCANN FITZGERALD

OUR REF

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DATE

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22 July 2019

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 once more on behalf of DePuy under Clause 2.2 of the ADR Process ahead of the Court's review of the ADR Process on Wednesday, 24 July 2019. This is the 9th periodic update 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).

The ADR Process continues to support the resolution of ASR claims. 47 settlements have been achieved to date during 2019. Only one ASR trial has opened before the Court in 2019 and it resolved on the first day of the hearing. No ASR trial even opened in 2018.

Summary of ASR litigation

1127 High Court proceedings have been served on DePuy. Approximately two thirds of cases involving revised plaintiffs have been resolved. The cases break down as follows:

- 622 resolved (including 47 to date in 2019, 102 in 2018 and 113 in 2017)
- 94 are currently in the ADR Process
- 1 is listed for trial
- 203 further cases involving revised plaintiffs are not resolved
- 207 plaintiffs have not undergone any revision surgery

Barry Devereux, John Cronin, Catherine Deane, 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, Michelle Doyle, Hugh Beattie, Fergus Gillen, Valerie Lawlor, Mark White, Rosaleen Byrne, Eamon de Valera, Joe Fay, Ben Gaffikin, Donal O Raghallaigh, Karyn Hart, 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, Stephen Holst, 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.

Consultants: Catherine Austin, David Clarke, 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 cumulative numbers for the ADR Process at each review date:

| | 27 July 2016 | 27 Sept 2016 | 6 Jan 2017 | 12 Apr 2017 | 3 Oct 2017 | 10 Apr 2018 | 24 July 2018 | 17 Dec 2018 | July 2019 |
|--|--------------|--------------|------------|-------------|------------|-------------|--------------|-------------|------------------------|
| Form Bs received | 27 | 47 | 119 | 153 | 195 | 222 | 231 | 239 | 257 |
| Plaintiff solicitor firms | 18 | 27 | 33 | 48 | 58 | 69 | 72 | 74 | 78 |
| Ineligible claims | 3 | 5 | 11 | 15 | 17 | 19 | 20 | 20 | 20 |
| Form Bs endorsed | 7 | 9 | 76 | 95 | 129 | 153 | 160 | 173 | 184 |
| Evaluations | 0 | 2 | 7 | 14 | 25 | 36 | 44 | 53 | 66 (4 more awaited) |
| ○ Accepted by DePuy | - | 2 | 7 | 14 | 24 | 36 | 42 | 47 | 58 |
| ○ Accepted by DePuy and Plaintiff | - | 2 | 4 | 10 | 15 | 21 | 26 | 29 | 37 |
| ○ Rejected by Plaintiff | - | - | 2 | 2 | 9 | 10 | 15 | 17 | 20 |
| ○ Rejected by DePuy | - | - | - | - | - | - | 2 | 5 | 5 |
| ○ Awaiting Plaintiff decision | - | - | 1 | 2 | - | 5 | 1 | 1 | 1 |
| ○ Awaiting DePuy decision | - | - | - | - | - | - | - | - | 3 |
| Resolved claims where Form B received | 5 | 10 | 18 | 31 | 45 | 78 | 97 | 114 | 153 |

We have received 257 Form Bs from 78 different solicitor firms and we have resolved 153 of these claims. 66 claims have been evaluated and 4 more evaluations will be made shortly. DePuy has rejected five evaluations. Only 1 claim where the evaluation was rejected by either party remains unresolved to date. The increase of 13 evaluations since our last report to the Court on 17 December 2018 is the largest increase between any two reports. The 39 claims where a Form B was received which have resolved since the most recent report is also the largest increase between any two updates to the Court.

Of the 73 claims where a Form B has been submitted but has not been endorsed, 20 were ineligible under the terms of the ADR Process and 35 were resolved before endorsement. Of the 18 other claims that have not yet been endorsed, we either await further medical records or details of special damages before being able to endorse the claim.

There are 70 endorsed claims that have not yet resolved or gone to evaluation. One firm of solicitors act in 58 of those claims. Since our last report, in one claim (and their second claim overall) that firm filed submissions with the Evaluator and we responded to those submissions on behalf of DePuy on 15 March 2019. That firm indicated that they intend to reply to DePuy's replying submissions, but they have not done so in the intervening 4 months. We have not received a schedule of special damages or submissions in any of the other 58 of those claims. In most of those claims we confirmed over 2 and a half years ago that the claims are eligible for the ADR Process. 23 of those claimants are aged 70 or over. That firm has issued a motion to vary the terms of the ADR Process and in which a small number of their clients whose claims have been endorsed in the ADR Process have sworn Affidavits. The motion is due to be heard later this year.

Exclusionary criteria in ADR

We have not received an application for ADR in an ineligible claim since our last report.

Priority cases

We give urgent attention to any case where the claimant'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 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 and 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 on account 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 by agreement or, if necessary, on taxation.

Staffing for ADR

Three McCann FitzGerald solicitors, supervised by a partner and supported by a team of legal executives, work 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 one-page advertisements since February 2017 in the Law Society Gazette and the Bar Review and through the ADR website.

Yours faithfully



McCann FitzGerald