

McCann FitzGerald

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

Tel: +353-1-829 0000

Fax: +353-1-829 0010

Email: inquiries@mccannfitzgerald.com

Dx 31 Dublin

www.mccannfitzgerald.com

MCCANN FITZGERALD

OUR REF

YOUR REF

DATE

DFH\35297278.1

11 December 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 Friday, 13 December 2019. This is the 10th 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, and will also put a copy on the ADR website (hipadr.ie).

The ADR Process continues to support the resolution of ASR claims. 71 settlements have been achieved to date during 2019. No ASR trial opened in 2018. Only one ASR trial opened before the Court in 2019 and it resolved on the first day of the hearing. Only one ASR case is currently listed for trial in 2020.

Summary of ASR litigation

1130 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:

- 645 resolved (including 71 to date in 2019, 102 in 2018 and 113 in 2017);
- 92 are currently in the ADR Process;
- 1 is currently listed for trial;
- 189 further cases involving revised Plaintiffs are not resolved; and
- 203 Plaintiffs have not undergone any revision surgery.

Barry Devereux (Managing Partner), Catherine Deane (Chair), John Cronin, 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, Eamon 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 Sep 2016	6 Jan 2017	12 Apr 2017	3 Oct 2017	10 Apr 2018	24 July 2018	17 Dec 2018	22 July 2019	Dec 2019
Form Bs received	27	47	119	153	195	222	231	239	257	261
Plaintiff solicitor firms	18	27	33	48	58	69	72	74	78	80
Ineligible claims	3	5	11	15	17	19	20	20	20	20
Form Bs endorsed	7	9	76	95	129	153	160	173	184	191
Evaluations	0	2	7	14	25	36	44	53	66	70 (4 more awaited)
○ Accepted by DePuy	-	2	7	14	24	36	42	47	58	63
○ Accepted by DePuy & Plaintiff	-	2	4	10	15	21	26	29	37	40
○ Rejected by Plaintiff	-	-	2	2	9	10	15	17	20	22
○ Rejected by DePuy	-	-	-	-	-	-	2	5	5	7
○ Awaiting Plaintiff decision	-	-	1	2	-	5	1	1	1	1
Resolved claims where Form B received	5	10	18	31	45	78	97	114	148*	153

**The report of 22 July 2019 incorrectly recorded this figure at 153 as it included 5 claims that had exited the ADR Process but which were not in fact resolved.*

We have received 261 Form Bs from 80 different solicitor firms and we have resolved 153 of those claims. 70 claims have been evaluated and 4 more evaluations will be made shortly. DePuy has rejected 7 evaluations but all of those claims have since been resolved. Only 2 claims remain unresolved in which a Plaintiff rejected the evaluation.

Of the 70 claims where a Form B has been submitted but has not been endorsed, 35 were resolved before endorsement and 20 were ineligible under the terms of the ADR Process. Of the 15 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 endorse the claim.

There are 77 endorsed claims that have not yet resolved or gone to evaluation. One firm of solicitors act in 59 of those claims. Since our last report, in one claim (and their third claim overall) that firm filed submissions with the Evaluator. In their second such claim overall, they informed us in March 2019 that they would make responsive submissions but we still await them and their client is over 80 years of age. We have not received a schedule of special damages or submissions in any of their other 57 claims. In most of those claims we confirmed nearly 3 years ago that the claims are eligible for the ADR Process. At least 23 of those claimants are aged 70 or over.

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 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 claimant 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 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 ASR 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, hipadr.ie.

Yours faithfully



McCann FitzGerald