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MCCANN FITZGERALD

OUR REF

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DATE

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17 July 2020

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

By Email and Post

DePuy International Limited ("DePuy")
ASR ADR Process – Periodic Report

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 to take place in court on 21 July 2020. This is the 11th 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 we will also put a copy on the ADR website (hipadr.ie).

Continued operation of the ADR Process during Covid-19

The ADR Process continues to operate during the current restrictions to support the resolution of ASR claims. Since the onset of the Covid-19 crisis in March, DePuy, through McCann FitzGerald, has taken a number of measures to maintain the smooth functioning of the Process and to ensure the continued progress of the ASR litigation notwithstanding the necessary restrictions introduced by the courts system:

- At the onset of the restrictions, as many firms throughout the country began to operate remotely on 23 March 2020 McCann FitzGerald wrote to Mr Justice O'Neill, the Chairman of the Evaluators, to confirm that it would assist evaluators with any technical queries to ensure they received submissions electronically.

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

- An announcement was placed on the ADR Process website (hipadr.ie) confirming that the Process remained operational and interested parties were invited to telephone solicitors at McCann FitzGerald directly with any queries.
- Where necessary, in certain claims in ADR or in litigation, McCann FitzGerald has liaised with Plaintiffs' solicitors and medical experts to arrange expert assessments by way of video call.
- Many Plaintiffs' law firms and McCann FitzGerald have co-operated constructively and proactively to resolve claims, both within the ADR Process and in litigation during the restrictions and more recently in accordance with the recent statement of President Irvine.

Summary of ASR litigation

1,132 High Court proceedings have been served on DePuy. The cases break down as follows:

- 671 resolved (including 26 to date in 2020, 71 in 2019, 102 in 2018 and 113 in 2017);
- 84 are currently in the ADR Process;
- 3 are currently listed for trial in 2020. (Two other claims were listed for trial earlier this year, prior to the postponement of the personal injuries list. One of those claims has been since resolved however, and the other claim is to be put in for mention later this year by the agreement of the parties, pending possible resolution of the claim.)
- 184 further cases involving revised Plaintiffs are not resolved; and
- 189 Plaintiffs have not undergone any revision surgery.

Update on ADR Process

We have received 266 Form Bs from 81 different solicitor firms and we have resolved 164 of those claims. 80 claims have been evaluated and 1 more evaluation will be made shortly. DePuy has rejected 8 evaluations but all of those claims have since been resolved. Only 4 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, 36 were resolved before endorsement and 20 were ineligible under the terms of the ADR Process. Of the 14 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 currently 70 endorsed claims in the ADR Process that have not yet resolved or gone to evaluation. One firm of solicitors act in 58 of those claims.

The table below shows the cumulative numbers for the ADR Process at each review date:

	27 Jul 2016	27 Sep 2016	6 Jan 2017	12 Apr 2017	3 Oct 2017	10 Apr 2018	24 Jul 2018	17 Dec 2018	22 Jul 2019	13 Dec 2019	Jul 2020
Form Bs received	27	47	119	153	195	222	231	239	257	261	266
Plaintiff solicitor firms	18	27	33	48	58	69	72	74	78	80	81
Ineligible claims	3	5	11	15	17	19	20	20	20	20	20
Form Bs endorsed	7	9	76	95	129	153	160	173	184	191	196
Evaluations	0	2	7	14	25	36	44	53	66	70	80 (1 more awaited)
○ Accepted by DePuy	-	2	7	14	24	36	42	47	58	63	72
○ Accepted by DePuy & Plaintiff	-	2	4	10	15	21	26	29	37	40	44
○ Rejected by Plaintiff	-	-	2	2	9	10	15	17	20	22	27
○ Rejected by DePuy	-	-	-	-	-	-	2	5	5	7	8
○ Awaiting Plaintiff decision	-	-	1	2	-	5	1	1	1	1	1
Resolved claims where Form B received	5	10	18	31	45	78	97	114	148	153	164

New evaluator

Due to the retirement of Mr Vincent Foley SC from the panel of evaluators, McCann FitzGerald wrote to the Chairman of the Bar Council, Mr Micheál P O'Higgins, to request that he nominate a replacement evaluator pursuant to Clause 4.3 of the Process. Mr Declan McGovern SC has since been appointed as an evaluator for all claims with record numbers ending in 6.

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 adjudication.

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

As stated above, we continue to draw Plaintiffs’ representatives’ attention to the continued operation of ADR Process notwithstanding the Covid-19 crisis, and to our client’s willingness to discuss resolution of all eligible claims, through the ADR website, hipadr.ie. Additionally, we continue to publish advertisements in the Law Society Gazette and the Bar Review as we have done since February 2017.

Yours faithfully



McCann FitzGerald