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MCCANN FITZGERALD

OUR REF

YOUR REF

DATE

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9 December 2020

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

By Email

**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 11 December 2020. This is the 12th update on the ADR Process and the second report delivered following the onset of the Covid-19 pandemic. 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). That website is updated regularly.

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 and has largely been unaffected by the pandemic. As mentioned in the previous ASR report, since the onset of the Covid-19 crisis in March 2020, DePuy, through McCann FitzGerald, has taken a number of measures to maintain the smooth functioning of the Process during Covid-19 to include:

- At the start 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 say that it would assist evaluators with any technical queries to ensure they received submissions electronically.
- We announced on the ADR Process website (hipadr.ie) that the Process remained operational and inviting interested parties to telephone solicitors at McCann FitzGerald directly with any queries.

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

- In some cases expert medical assessments took place by way of video call.
- Law firms and barristers act in for plaintiffs and McCann FitzGerald increasingly conducted the negotiation of claims by video or telephone call.

Summary of ASR litigation

1,133 High Court proceedings have been served on DePuy. The cases break down as follows:

- 687 are resolved (including 42 to date in 2020, 71 in 2019, 102 in 2018 and 113 in 2017);
- 78 are currently in the ADR Process;
- 1 case is currently listed for trial in 2021. (Five cases were listed for trial in 2020. Three of those cases resolved before trial, one case was resolved after 4 days of trial, and one other case remains unresolved.)
- 178 further cases involving revised plaintiffs are not resolved; and
- 189 plaintiffs have not undergone any revision surgery.

Update on ADR Process

We have received 269 Form Bs from 82 different solicitor firms and we have resolved 173 of those claims. 84 claims have been evaluated and 2 more evaluations will be made shortly. In a further 4 cases, the claimants' solicitors have said recently that they wish to provide a replying submission prior to the Evaluation in accordance with Clause 5.13 of the Process.

DePuy has also received claimants' submissions in 9 further cases and DePuy expects to be in a position to file replying submissions with the Evaluator in 4 of those claims by the end of the current Court term. In the remaining 5 claims, DePuy is reviewing recently received medical records and special damages, and arranging medical examinations where necessary, in order to prepare its replying submissions as soon as possible.

DePuy has rejected 8 evaluations but all of those claims have since been resolved. Only 4 claims remain unresolved in which a claimant rejected the evaluation.

Of the 68 claims where a Form B has been submitted but has not been endorsed, 37 were resolved before endorsement and 20 were ineligible under the terms of the ADR Process. Of the 11 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.

There are currently 61 endorsed claims in the ADR Process that have not yet resolved or gone to evaluation. One firm of solicitors act in 54 of those claims and has delivered submissions in 11 of its claims this year.

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	21 Jul 2020	11 Dec 2020
Form Bs received	27	47	119	153	195	222	231	239	257	261	266	269
Plaintiff solicitor firms	18	27	33	48	58	69	72	74	78	80	81	82
Ineligible claims	3	5	11	15	17	19	20	20	20	20	20	20
Form Bs endorsed	7	9	76	95	129	153	160	173	184	191	196	201
Evaluations	0	2	7	14	25	36	44	53	66	70	80	84 (2 more awaited)
Accepted by DePuy	-	2	7	14	24	36	42	47	58	63	72	76
Accepted by DePuy & claimant	-	2	4	10	15	21	26	29	37	40	44	49
Rejected by claimant	-	-	2	2	9	10	15	17	20	22	27	27
Rejected by DePuy	-	-	-	-	-	-	2	5	5	7	8	8
Awaiting claimant decision	-	-	1	2	-	5	1	1	1	1	1	0
Resolved claims where Form B received	5	10	18	31	45	78	97	114	148	153	164	173

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 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 claimants' solicitors.

Costs in ADR

The offer of €25,000 in respect of a claimant'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

Sent by email and accordingly bears no signature

McCann FitzGerald