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**MCCANN FITZGERALD**

OUR REF

YOUR REF

DATE

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27 July 2021

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 Wednesday, 28 July 2021. This is the 13<sup>th</sup> update on the ADR Process and the third 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](http://hipadr.ie)). That website is updated regularly.

**Summary of ASR litigation**

1,134 High Court proceedings have been served on DePuy. The cases break down as follows:

- 715 are resolved (including 23 to date in 2021, 46 in 2020, 71 in 2019, and 102 in 2018);
- 68 are currently in the ADR Process;
- 6 cases are currently listed for trial: 3 cases are currently listed for trial in 2021 and a further 3 cases are listed for trial in 2022.
- 158 further cases involving revised plaintiffs are not resolved; and
- 187 plaintiffs have not undergone any revision surgery.

Barry Devereux (Managing Partner), Catherine Deane (Chair), Terence McCrann, Roderick Bourke, Niall Powderly, Kevin Kelly, Hilary Marren, Eamonn O'Hanrahan, Helen Kilroy, Judith Lawless, James Murphy, David Lydon, David Byers, 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 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, 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, Laura Deignan, Stephen Fuller, Niall McDowell, John Neeson, David O'Dea, Orlaith Sheehy.

**Consultants:** Catherine Austin, Seán Barton, Ambrose Loughlin, Eleanor MacDonagh (fCA), Lonan McDowell, Anna Moran, Peter Osborne, Tony Spratt (ACA).

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**Update on ADR Process**

The ADR Process continues to operate during the current restrictions to support the resolution of ASR 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	21 Jul 2020	11 Dec 2020	[26] Jul 2021
<b>Form Bs received</b>	27	47	119	153	195	222	231	239	257	261	266	269	<b>276</b>
<b>Plaintiff solicitor firms</b>	18	27	33	48	58	69	72	74	78	80	81	82	<b>86</b>
<b>Ineligible claims</b>	3	5	11	15	17	19	20	20	20	20	20	20	<b>21</b>
<b>Form Bs endorsed</b>	7	9	76	95	129	153	160	173	184	191	196	201	<b>206</b>
<b>Evaluations</b>	0	2	7	14	25	36	44	53	66	70	80	84	<b>95</b> <b>(5 awaited)</b>
<b>Accepted by DePuy</b>	-	2	7	14	24	36	42	47	58	63	72	76	<b>86</b>
<b>Accepted by DePuy &amp; claimant</b>	-	2	4	10	15	21	26	29	37	40	44	49	<b>56</b>
<b>Rejected by claimant</b>	-	-	2	2	9	10	15	17	20	22	27	27	<b>30</b>
<b>Rejected by DePuy</b>	-	-	-	-	-	-	2	5	5	7	8	8	<b>8</b>
<b>Awaiting claimant decision</b>	-	-	1	2	-	5	1	1	1	1	1	0	<b>1</b>
<b>Resolved claims where Form B received</b>	5	10	18	31	45	78	97	114	148	153	164	173	<b>187</b>

We have received 276 Form Bs from 86 different solicitor firms and we have resolved 187 of those claims. 95 claims have been evaluated and 5 more evaluations will be made shortly.

DePuy has also received claimants' submissions in 4 further cases and DePuy is reviewing recently received expert reports and arranging additional reports 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 6 claims remain unresolved in which a claimant rejected the evaluation.

Of the 70 claims where a Form B has been submitted but has not been endorsed, 40 were resolved before endorsement and 21 were ineligible under the terms of the ADR Process. Of the 9 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 53 endorsed claims in the ADR Process that have not yet resolved or gone to evaluation. One firm of solicitors act in 48 of those claims and has delivered submissions in one case this year.

#### **Exclusionary criteria in ADR**

We have received one application for ADR in an ineligible claim since our last report, as pursuant to clause 3.2(a) in DePuy's opinion the claim is statute barred pursuant to the Statute of Limitations Act 1957 (as amended).

#### **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](http://hipadr.ie).

Yours faithfully



**McCann FitzGerald**