

Fact Sheet for MDL 2197, *DePuy ASR Hip Replacement*

Please look on Bloomberg law under “litigation & dockets” and search for a docket by number (last two digits of the year – md – MDL number). You can find the docket number by pulling up a document from that litigation on dropbox. Please download and save all of the documents that relate to payment of common benefit attorney’s fees (including objections to those fees) and anything relevant that relates to the settlement to dropbox under the folder for that litigation (in drop box, go to Lead Lawyers Data – then Committee Appt and Related Orders – then under the litigation name).

When saving documents, please use the following format for the document name: Docket# - date (15.12.01) – and title of the document or why it’s useful.

If you can, for each of the MDLs, please fill out the following information along with anything else that you think I should know about. Next to the information, please indicate the source document so that I can pull it easily.

Settlement Fund amount:

- 2013 Settlement- Apparently the maximum was \$2.475 Billion.
 - **Section 6.3. Aggregate Limit on DePuy’s Funding Obligations**
 - 6.3.1. Assuming exactly 8,000 QUSCs enroll and qualify for PART A Base compensation, DePuy’s **aggregate maximum funding obligation for all aspects of the U.S. Program (both PART A and PART B) and this settlement is limited to a total of Two Billion Four Hundred Seventy-five Million U.S. Dollars** (\$2,475,000,000.00) (“Aggregate Maximum Payment Obligation”). This amount includes the funding for both the PART A Base Award Program and the PART B Bilateral/EIF Supplemental Award Program of the U.S. Program.
 - 6.3.1.1. This amount assumes participation by 8,000 QUSCs. In the event there are fewer than 8,000 QUSCs, the Aggregate Maximum Payment Obligation and Maximum PART B Payment Obligation (defined below) will be subject to proportionate reductions based on how many QUSCs actually participate in the U.S. Program compared to the estimate of 8,000.
 - 6.3.1.2. In the event there are greater than 8,000 QUSCs, the Aggregate Maximum Payment Obligation and Maximum PART B Payment Obligation will be proportionately increased based on the total number of QUSCs compared to the estimate of 8,000.
 - 6.3.2. For the avoidance of doubt, any Net Investment Earnings (as defined in the Escrow Agreement) shall not increase or decrease the Aggregate Maximum Payment Obligation or Maximum PART B Payment Obligation.
 - **Section 6.4. Aggregate Funding Limit for the PART A Base Award Program**
 - 6.4.1. PART A Base Award Program. Assuming exactly 8,000 QUSCs are admitted into the U.S. Program, DePuy shall fund the PART A Base Award Program sufficient to pay the actual Base Awards of those 8,000 QUSCs, but in no event shall it pay more than \$2 Billion into the PART A

Base Award Program for 8,000 QUSCs. PART A Base Award funding and accounting rules are set forth in Article 6. ***The PART A payment obligation for DePuy's for exactly 8,000 QUSCs within the PART A Base Award Program is \$2 Billion minus the reduction amounts for Implantation Length in Section 7.1.2 and Unrepresented Claimants in Section 7.1.3.***

- 6.5.2. The formula for calculating the actual size of the funding of the PART B Award Program is as follows:
 - # QUSCs / 8,000 = \$X / \$475 Million
- 2015 Settlement – Apparently \$309.375 Million
 - **Section 6.3. Aggregate Limit on DePuy's Funding Obligations**
 - 6.3.1. Assuming exactly 1,000 QUSCs enroll and qualify for PART A Base compensation, **DePuy's aggregate maximum funding obligation** for all aspects of the U.S. Program (both PART A and PART B) and this settlement ***is limited to a total of Three Hundred Nine Million Three Hundred Seventy-five Thousand U.S. Dollars (\$309,375,000.00)*** (“Aggregate Maximum Payment Obligation”). This amount includes the funding for both the PART A Base Award Program and the PART B Bilateral/EIF Supplemental Award Program of the U.S. Program, but is subject to reductions.
 - 6.3.1.1. This amount assumes participation by 1,000 QUSCs. In the event there are fewer than 1,000 QUSCs, the Aggregate Maximum Payment Obligation and Maximum PART B Payment Obligation (defined below) will be subject to proportionate reductions based on how many QUSCs actually participate in the U.S. Program compared to the estimate of 1,000.
 - 6.3.1.2. In the event there are greater than 1,000 QUSCs, the Aggregate Maximum Payment Obligation and Maximum PART B Payment Obligation will be proportionately increased based on the total number of QUSCs compared to the estimate of 1,000.
 - 6.3.2. For the avoidance of doubt, any Net Investment Earnings (as defined in the Escrow Agreement) shall not increase or decrease the Aggregate Maximum Payment Obligation or Maximum PART B Payment Obligation.
 - **Section 6.4. Aggregate Funding Limit for the PART A Base Award Program**
 - 6.4.1. PART A Base Award Program. Assuming exactly 1,000 QUSCs are admitted into the U.S. Program, DePuy shall fund the PART A Base Award Program sufficient to pay the actual Base Awards of those 1,000 QUSCs, but in no event shall it pay more than \$250 Million into the PART A Base Award Program for 1,000 QUSCs. The PART A Base Award funding and accounting rules are set forth in Article 6. The PART A payment obligation for DePuy's for exactly 1,000 QUSCs within the PART A Base Award Program is \$250 Million minus the reduction amounts for Implantation Length in Section 7.1.2 and Unrepresented Claimants in Section 7.1.3.

- 6.5.2. The formula for calculating the actual size of the funding of the PART B Award Program is as follows:
 - # QUSCs / 1,000 = \$X / \$59.375 Million
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Amount of settlement that actually went to claimants: I'm not sure that any payments have actually been made yet, certainly not from the 2015 settlement at least. I was able to find the attorney fee structure, though not the actual amounts paid out. Again, because I'm not sure anything has been paid yet. The original period for opting out was "extended" by the judge allowing class members that would've been excluded based on the date they had revision surgery to "elect" into the class. The deadline for this election ended only recently.

Percentage of claimants who "signed on" to the settlement (if you can find it): 98.3% of plaintiffs with claims pending in the MDL **registered**, 143 did not register. Of these, U.S. Claims Processor determined that "well over half" would be eligible to enroll. *Of those determined eligible*, 92% have **enrolled**. (see Doc. 720).

If you can tell, where other settlement funds went (i.e., cy pres awards to charitable organizations (list "charity"), settlement administration costs, atty's fees, reversion to defendant, etc.): unable to find any sort of detailed breakdown, though \$10 Million went to settlement administration costs. (see Doc. 720).

Attorneys' fees to lead lawyers "common benefit funds": percentage (note this information may already be in one of the charts – either under settlements "MDL Settlement Chart Minus Class Actions" or under the excel file, "Nonclass settlements"). Other things I should know? Anything look fishy? Based on the Settlement Agreements themselves, 3% of attorney fees and 1% of costs will go to the common benefit fund.

Objections to lead lawyers' fees: attorney name/law firm, basis for objection

- Aylstock, Witkin, Kreis & Overholtz, PLLC
- Foote, Meyers, Mielke & Flowers
 - "To date, neither AWKO, FMMF nor its litigation group members have reach out for nor requested any of the MDL PSC's work product or assistance. Rather, it is fully anticipated that claims for all clients represented by the undersigned will be prosecuted to completion through the efforts of the undersigned solely. However, as drafted, Case Management Order No. 12 would assess all cases in which AWKO, FMMF and/or its litigation group may have regardless of whether any substantive benefit was conferred by the PSC and willingly accepted by the litigation group. Mere access to work product does not support the levying of an assessment and, in fact, the same may likely be duplicative of what is being discovered and litigated in state court." Doc. 313, p. 4 of 8.
 - This litigation group (the 2 above law firms combined) had a lot of cases against DePuy based on purely state law claims in Illinois state court, and are arguing that they are fully capable of litigating each of their own cases to judgment and are ready to do so. Basically, they argue that simply having

access to the plaintiffs' leadership committee's work-product doesn't mean they should be required to pay the assessment out of any settlement they reach in state court because they will not have used any of the work-product they had access to.

- Additionally, they argue that including their Illinois state court cases in any assessment of common benefit contributions would be beyond the scope of the district court's jurisdiction, as the MDL consolidation process is purely procedural and does not expand the transferee court's jurisdiction, which they argue their Illinois state court cases are outside of.

Anything else: