

FEDERAL COURT OF AUSTRALIA
DePuy LCS ® Duofix™ knee implants class action

If you want to claim compensation – complete a Claim Form.

If you do not want to participate in the class action – complete an Opt Out Notice.

DEPUY LCS DUOFIX KNEE IMPLANTS CLASS ACTION

In March 2010 a representative proceeding (class action) was commenced in the Federal Court of Australia by Pamela Casey against DePuy International Ltd and Johnson & Johnson Medical Pty Ltd. The class action arises from the alleged failure of DePuy LCS Duofix femoral components (**LCS Duofix knee implant**) used in total knee replacement surgery.

The Federal Court has ordered that this notice be published for the information of “Group Members” in the class action, who are people who were surgically implanted with an LCS Duofix knee implant by a doctor in Australia.

If you do not understand this notice or you have any questions, you should seek legal advice. If you have any questions or you need advice, please do *not* contact the Federal Court.

WHAT IS A CLASS ACTION?

A class action is a claim brought by one person (known as the **Applicant**) in their own right and on behalf of other people (known as **Group Members**) who have similar claims against the same defendant/s (known as the **Respondent/s**).

WHAT IS OPT OUT?

The Applicant in a class action does not need to seek permission from Group Members to start a class action on behalf of Group Members. In this case, Group Members are automatically participants in the class action if they were implanted with an LCS Duofix knee implant in Australia. However, Group Members can cease to be involved in the class action by opting out of it.

Group Members who do not opt out of the class action:

- will be bound by the proposed settlement (discussed below);
- can make a claim for compensation through the settlement;
- cannot bring their own individual legal case against the Respondents if their claim for compensation through the class action is unsuccessful.

Group Members who do opt out of the class action:

- cannot make a claim for compensation through the proposed settlement;
- can bring their own individual legal case against the Respondents if they wish.

This notice gives Group Members the opportunity to opt out of the class action if they wish.

SETTLEMENT OF THE CLASS ACTION

On 29 August 2012, the settlement of the class action was reached. However, legal procedure requires the Applicant to seek approval from the Federal Court before the settlement of the class action can be implemented.

This notice therefore provides Group Members with information about the proposed settlement and what must be done to claim compensation as part of the settlement.

Group Members who opt out of the class action will not be able to claim compensation as a result of the settlement.

TERMS OF THE SETTLEMENT

Details of the settlement are contained in a “Liability Protocol” and a “Compensation Protocol”. You can obtain copies of these documents from the website of Maurice Blackburn Lawyers or by requesting a copy (contact details for Maurice Blackburn are below).

The Liability Protocol and Compensation Protocol contain a detailed regime for dealing with claims for compensation by Group Members whose LCS Duofix knee implant has failed or fails in the future for the reason described below. A summary of the regime in these protocols is as follows:

Step 1: Liability

Group Members will be entitled to compensation if alumina particles from their LCS Duofix knee implant caused or causes abnormal wear of their knee implant. The Liability Protocol contains the procedure for assessing whether this occurred.

Step 2: Compensation

Group Members who are entitled to compensation will be compensated for the following:

- “non economic loss”, which is compensation for pain and suffering and loss of enjoyment of life;
- “gratuitous care”, which is compensation for gratuitous domestic care and assistance provided by, for example, a family member;
- lost income or leave entitlements and lost superannuation entitlements associated with lost income;
- out-of-pocket expenses such as medical or hospital, pharmaceutical, equipment, travel and accommodation, physiotherapy and commercial care expenses; and
- interest on out-of-pocket expenses.

Assessment of the amount of compensation for non economic loss and gratuitous care will depend on the categories described on the next page of this notice. Compensation for financial losses (such as lost income or out-of-pocket expenses) will be individually determined for all Group Members pursuant to the Compensation Protocol.

The estate of a deceased person is entitled to make a claim under the settlement regime, however the compensation entitlements of an estate are limited to financial losses up to the date of death and \$7,500 for non economic loss and gratuitous care.

Category	Description	Non economic loss and gratuitous care	Financial losses
A	<p>Any Eligible Group Member who does not meet the criteria for Categories B, C or D</p> <p>This category includes Eligible Group Members who underwent revision of their LCS Duofix knee implant but did not undergo any other surgical procedures</p> <p>This category also includes Eligible Group Members who are not able to undergo revision surgery due to medical reasons</p>	\$30,000	Individual assessment
B	Any Eligible Group Member who has undergone revision surgery plus one other surgical procedure (for example, an arthroscopy, synovectomy, arthroscopic biopsy) consequent on their LCS Duofix knee implant	\$40,000	Individual assessment
C	Any Eligible Group Member who has undergone revision surgery plus two or three other surgical procedures consequent on their LCS Duofix knee implant	\$65,000	Individual assessment
D(i)	Any Eligible Group Member who has undergone revision surgery plus four or more other surgical procedures consequent on their LCS Duofix knee implant	Individual assessment	Individual assessment
D(ii)	Any Eligible Group Member who has undergone more than one revision surgery consequent on their LCS Duofix knee implant	Individual assessment	Individual assessment
D(iii)	Any Eligible Group Member who has experienced extraordinary and significant complications or injury in excess of that to which Eligible Group Members in Category A, B or C would experience as a result of failure of an LCS Duofix knee implant	Individual assessment	Individual assessment

LEGAL REPRESENTATION AND COSTS

Costs of the class action

As part of the settlement, the Respondents have agreed to pay a significant portion of Pamela Casey's costs of bringing the class action which are owing to Maurice Blackburn. A portion of her costs remain unpaid and if the settlement is approved by the Federal Court, Group Members who receive compensation will be required to contribute a relatively small amount of their compensation to meet the shortfall until it is extinguished.

The contribution will range from \$900 for Category A Group Members to \$2,300 for Category D Group Members.

Costs of making individual compensation claims under the settlement

You are not obliged to use a lawyer to make a claim for individual compensation under the settlement arrangements, however it may be in your interests to obtain assistance from a lawyer.

You may choose to engage Maurice Blackburn, or you may use a lawyer of your choosing.

If your claim is successful, the Compensation Protocol provides for the Respondents to pay a certain amount of legal fees for processing your individual compensation claim. This may cover some or all of the legal costs you incur in making your claim. If your legal costs exceed the amount that the Respondents have agreed to pay, payment of the excess amount will depend upon the arrangements you make with your lawyer.

COURT APPROVAL OF THE SETTLEMENT

The Applicant will seek approval of the settlement in the Federal Court of Australia in Sydney on 2 November 2012. Group Members may attend this hearing if they wish. Group Members who wish to *oppose* the settlement must file with the Federal Court *and* provide to Maurice Blackburn Lawyers no later than 22 October 2012 a written outline of their reasons for opposing the settlement together with any affidavit evidence that they wish to rely upon.

If the settlement is approved, the Liability Protocol and Compensation Protocol will be implemented and will bind all Group Members who have not opted out.

YOUR OPTIONS AND WHAT YOU NEED TO DO

	Option	Action that needs to be taken
1	Claim compensation through the class action settlement	<p>You must complete the attached Claim Form and return it to Maurice Blackburn or Norton Rose Australia:</p> <p>(a) by 31 May 2013 if your LCS Duofix knee implant was revised <u>before</u> 31 August 2012</p> <p>(b) otherwise, by (i) 31 May 2013 or (ii) within six months of your revision surgery or you becoming aware that you are not able to undergo revision surgery for medical reasons, whichever is later</p> <p>Do <u>not</u> complete the attached Opt Out Notice</p>
2	Opt out of the class action	<p>You must complete the attached Opt Out Notice and send it to the Federal Court of Australia so that it is received by the Court on or before 15 October 2012</p> <p>If you opt out, you will not be able to make a claim for compensation through the settlement. However, you will be able to start your own individual legal case against the Respondents if you wish</p> <p>Do <u>not</u> complete the attached Claim Form</p>

If you do nothing, you will be bound by the class action outcome. However, in order to be able to receive compensation you will need to submit a Claim Form.

If you are unsure whether you are a Group Member, you should contact Maurice Blackburn Lawyers or seek independent legal advice.

FURTHER INFORMATION / CONTACT DETAILS

If you are unsure how this notice affects your rights or if you require further information you can contact Maurice Blackburn Lawyers.

Copies of the Liability Protocol, Compensation Protocol and this notice are available from Maurice Blackburn Lawyers.

Claim Forms should be sent to Maurice Blackburn Lawyers or Norton Rose Australia.

Maurice Blackburn Lawyers
(Lawyers for Pamela Casey)

Mail: PO Box A266, Sydney South NSW 1235
Telephone: (02) 9261 1488
Fax: (02) 9261 3318
Website: www.mauriceblackburn.com.au
Email: depuyclassaction@mauriceblackburn.com.au
Reference: 3015608

Norton Rose Australia
(Lawyers for the Respondents)

Mail: GPO Box 3872, Sydney NSW 2001
Telephone: (02) 9330 8000
Fax: (02) 9330 8111
Reference: 2698008

Opt Out Notices should be sent to the Federal Court of Australia.

Federal Court of Australia

Mail: Locked Bag A6000, Sydney South NSW 1235
Telephone: (02) 9230 8567
Website: www.fedcourt.gov.au
Reference: ACD 10 of 2010

USE THIS FORM IF YOU WISH TO CLAIM COMPENSATION
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**Casey v DePuy International Limited and Johnson & Johnson Medical Pty Ltd
DePuy LCS ® Duofix™ knee implants class action
Federal Court of Australia, Proceeding ACD 10 of 2010**

CLAIM FORM

I confirm that I have been surgically implanted with a DePuy LCS Duofix femoral component (**LCS Duofix knee implant**). I now give notice that I wish to make a claim for compensation under the proposed settlement scheme.

I acknowledge that my claim will involve a two step process: first, determining whether I am eligible to receive compensation and, secondly, if so, determining the amount of compensation.

I acknowledge that personal information, medical records and other documents, including my explant (and any tissue), if available, will need to be shared with DePuy International Ltd and Johnson & Johnson Medical Pty Ltd, their lawyers and organisations acting on their behalf for the purposes of this Liability Protocol and, if appropriate, the Compensation Protocol, and I provide my consent to same.

Note: If you were implanted with an LCS Duofix knee implant in each knee, please use a separate Claim Form for each LCS Duofix knee implant.

Name:

Date of birth:

Address:

Date that my LSC Duofix knee implant was inserted:

Knee (left or right):

Surgeon:

Hospital:

Product (if known)

Lot:

Code:

Date that my LSC Duofix knee implant was removed:

Surgeon:

Hospital:

Location of my removed LSC Duofix knee
implant:

Name and address of my lawyer (if
applicable):

Signed:

Date:

Note: the Claim Form must be provided to Maurice Blackburn (PO Box A266, Sydney South NSW 1235) or Norton Rose Australia (GPO Box 3872, Sydney NSW 2001):

- (1) if the LCS Duofix knee implant was revised on or before 31 August 2012: no later than 31 May 2013; or
- (2) if the LCS Duofix knee implant was revised after 31 August 2012: no later than (a) 31 May 2013 or (b) six months after the date on which Group Member's LCS Duofix knee implant was revised (whichever is later); or
- (3) if the LCS Duofix knee implant is not able to be revised for medical reasons: no later than (a) 31 May 2013 or (b) six months after the Group Member became aware that their LCS Duofix knee implant requires revision due to Abnormal Wear and is not able to be revised (whichever is later).

**USE THIS FORM IF YOU WISH TO OPT OUT OF THE CLASS ACTION
AND YOU DO NOT WISH TO CLAIM COMPENSATION**

Form 21
Rule 9.34

Opt out notice

No. ACD 10 of 2010

Federal Court of Australia
District Registry: Australian Capital Territory
Division: General

Pamela Casey

Applicant

DePuy International Limited and Another

Respondents

(Name) _____, a group member in this representative proceeding, gives notice under section 33J of the *Federal Court of Australia Act 1976*, that they are opting out of the representative proceeding.

Date:

Signature: _____

Name of person signing: _____

Capacity of person signing: Group Member / Lawyer for the Group Member

Filed on behalf of _____
Prepared by _____
Law firm _____
Tel _____ Fax _____
Email _____
Address for service
(include state and postcode) _____