

## **NOTICE TO BRITISH COLUMBIA DEPUY ASR HIP SYSTEM CLASS MEMBERS**

**Are you, or a family member, a resident of British Columbia who underwent a surgery to implant a DePuy ASR™ XL Acetabular Hip System or ASR™ Hip Resurfacing System in Canada?**

**This supplemental notice may affect your rights. Please read carefully.**

A proposed class action lawsuit captioned *Wilson v. DePuy International Ltd., et al.*, Action No. S-116652, was filed in the Supreme Court of British Columbia regarding allegations that the DePuy ASR™ XL Acetabular Hip System or ASR™ Hip Resurfacing System was defective, and that they failed prematurely, requiring revision surgery (“*Wilson Action*”). While not admitting liability, the Defendants agreed to settle the case. The BC Court certified the *Wilson Action* as a class action (“BC Class”) and approved the Amended Settlement Agreement on March 3, 2021 (“Settlement Agreement”). A notice of the settlement approval and process for making claims was published on April 26, 2021. This notice supplements that first notice and describes the process for BC Class members to make additional claims pursuant to a “Most Favoured Class” clause in the Settlement Agreement which may provide for enhanced compensation.

### **Who is in the BC Class and Potentially Eligible to Participate in the Settlement?**

The BC Class is defined as follows:

- (a) BC Resident Opt-Out Subclass: all persons in British Columbia who underwent the surgical implantation of the ASR™ XL Acetabular Hip System or ASR™ Hip Resurfacing System in a surgery occurring in Canada (“ASR Index Surgery”) and who have not timely opted out of this BC ASR Class Action.
- (b) Non-BC Resident Opt-In Subclass: all persons who previously were members of the Ontario ASR Class Action but who opted out of the Ontario ASR Class Action and who timely opted into this BC ASR Class Action.
- (c) All residents of Canada asserting the right to sue the Defendants independently or derivatively by reason of their familial relationship to a Class Member under either the common law of Family Compensation Act applicable to the BC Resident Opt-Out Subclass, or for Non-BC Resident Opt- In Subclass members, those defined pursuant to section 61(1) of the Family Law Act, R.S.O. 1990, c. F.3 ;as amended (or any similar legislation in any of the Canadian provinces and territories or the Civil Law of Quebec).

While this remains to be determined, all members of the BC Class (including those who already opted in but excluding those who have already opted out) may be eligible for compensation under the Most Favoured Class clause.

### **The Terms of the MFC clause**

The Settlement Agreement provided certain compensation to class members who were Eligible Claimants (who had among other things an ASR Revision Surgery) and who submitted a claim under the Settlement Agreement before October 25, 2021

The “Most Favoured Class” clause in the Settlement Agreement provides that “if a Class Member or Derivative Claimant would have received more individual compensation had he or she been a member of” a Quebec ASR Class Action that was settled in 2018 “then the Class member or Derivative Claimant shall be entitled to compensation or additional compensation that puts him or her in the same financial position as if he or she had been a member” of that Quebec Class. Additional terms of the MFC clause can be found in the Settlement Agreement.

A final report was recently issued by the administrator of the Quebec ASR Class Action settlement and a determination must now be made of the impact of that settlement on entitlement of BC Class members who wish to make a claim for enhanced benefits. That determination may depend on the number and types of claims made by BC Class members under the MFC clause and, accordingly, has not yet been made.

Please refer to the Settlement Agreement for specific terms and conditions. It may be found at <https://DePuyASRclassactionBC.ca> or call the Claims Administrator.

### **To Make a Claim**

To be potentially entitled to enhanced compensation pursuant to the Most Favoured Class clause, Class Members must submit a claim for such compensation to the Claims Administrator on or before **May 27, 2022**. The MFC Claim Form can be found on the Administrator’s website at <https://DePuyASRclassactionBC.ca>. Class counsel is available to assist class members in filling out the required claim form. BC Class members who have already submitted claims to the Administrator will still need to complete the MFC Claim Form if they wish to make a claim for enhanced compensation.

A determination as to the availability and extent of enhanced compensation under the MFC clause will be made following the expiry of the MFC Claims Deadline. The Administrator will notify you of that determination if you have submitted an MFC Claim Form on a timely basis.

### **For More Information or to Obtain an MFC Claim Form**

Please contact Class Counsel or the Claims Administrator below:

Class Counsel in *Wilson* Action:

**Klein Lawyers LLP**  
Suite 400  
1385 West 8th Avenue  
Vancouver, BC V6H 3V9  
Telephone: 604-874-7171  
Facsimile: 604-874-7180  
[www.callkleinlawyers.com](http://www.callkleinlawyers.com)

Claims Administrator:

**DePuy BC ASR Class Action Settlement**  
c/o Epiq Class Action Services Canada Inc.  
P.O. Box 507 STN B  
Ottawa ON K1P 5P6  
Telephone: 1-877-797-6678  
Fax: 1-888-842-1332  
Email: [DePuyASRclassactionBC@epiqglobal.ca](mailto:DePuyASRclassactionBC@epiqglobal.ca)  
Website: <https://DePuyASRclassactionBC.ca>