

## NOTICE OF FILING

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### Details of Filing

Document Lodged:	Affidavit - Form 59 - Rule 29.02(1)
File Number:	NSD213/2011
File Title:	Tammy Maree Stanford & Anor v DePuy International Limited & Anor
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



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Dated: 26/06/2017 8:48:06 AM AEST

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Form 59

Rule 29.02(1)

## Affidavit

No. NSD 213 of 2011

Federal Court of Australia

District Registry: New South Wales

Division: General

**Tammy Stanford** and Another

Applicants

**DePuy International Limited** and Another

Respondents

Affidavit of: **Julian Klaus Schimmel**

Address: Level 32, 201 Elizabeth Street, Sydney NSW 2000

Occupation: Australian Legal Practitioner

Date: 23 June 2017

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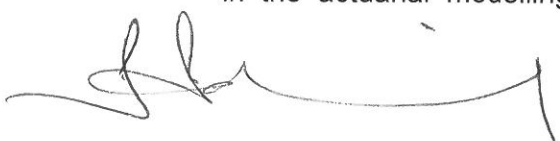
Document number	Details	Paragraph	Page
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A handwritten signature in black ink, appearing to be "Julian Klaus Schimmel".

A handwritten signature in black ink, appearing to be "W. A. S. O.". It is located at the bottom right of the page.

I, Julian Klaus Schimmel, Australian legal practitioner, of Level 32, 201 Elizabeth Street, Sydney, in the State of New South Wales, affirm:

1. I am a Principal employed by Maurice Blackburn Pty Limited (**Maurice Blackburn**). Maurice Blackburn acted for the first applicant and a number of Group Members in this proceeding and on 29 June 2016 Maurice Blackburn together with Shine Lawyers were by the Court as joint Administrators of the settlement of this proceeding. On 14 June 2017, Maurice Blackburn and Shine were added as parties to the proceeding for the limited purpose of exercising the liberty granted in order 2(c) made by the Court on 29 June 2016.
2. This affidavit is made pursuant to the orders made on 14 June 2017 and in support of the application for orders approving payment of some of the Administration Costs for work performed to date in implementing the settlement. This affidavit is made by way of supplementary evidence to my affidavit affirmed on 8 June 2017 (**my first affidavit**). I have adopted the defined terms used in my first affidavit in this supplementary affidavit.
3. Except where otherwise indicated I make this affidavit from my own knowledge. Where I give evidence based on information provided to me by other people or on my review of documents, that evidence is true to the best of my knowledge, information and belief.
4. The remainder of this affidavit is structured as follows:
  - (a) **Section A** – I provide an overview of the evidence regarding the estimated Administration Costs that were incorporated in the actuarial modelling that was tendered in support of the settlement approval application;
  - (b) **Section B** – I summarise the work done and costs incurred by Maurice Blackburn on a monthly basis from 1 June 2016 until 31 January 2017. At the start of this section I also discuss the reasons why some Administration Costs associated with the application for settlement approval were not incorporated in the component of costs that were the subject of the costs sought to be approved in that application;
  - (c) **Section C** – I discuss the Administration Costs that might be expected in the future, and I do so with reference to the estimates that had been incorporated in the actuarial modelling and with reference to significant timeframes for



completion of major elements of settlement administration work and to the nature and scope of work to be done in the future.

**A ACTUARIAL CONSIDERATION OF ADMINISTRATION COSTS**

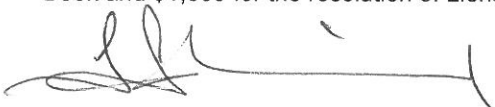
5. An expert report of an actuary, Geoff Atkins, dated 17 June 2016 was tendered in support of the application for settlement approval. As is set out in Table 5.1 on page 13 of Mr Atkins' report, the actuarial modelling took into account Administration Costs totalling approximately \$26 million (that being the total of the "Expenses" and "Fund Admin Cost" columns that appear on page 13). In a letter dated 23 June 2016 (that was annexure JKS-135 to my affidavit affirmed on 23 June 2016 in support of settlement approval and is now annexed to this affidavit and marked **JKS-145**), Mr Atkins elaborated on his calculation of the total estimate of \$26 million for Administration Costs, which comprised:

- (a) \$19.776 million for "Expenses" associated with the assessment of individual claims;
- (b) \$5.85 million for "Fund Admin Costs", consisting primarily of professional fees calculated in accordance with the hourly rates in clause 13.1 of the scheme for general Administration Costs – this included:
  - (i) \$250,000 for June 2016; and
  - (ii) \$5.60 million (being \$5.85 million less \$250,000) from July 2016 until the end of the settlement administration.

6. The amount of \$19.776 million for "Expenses" incorporated the major elements of costs associated with the preparation of individual claims, including significant disbursements such as medical records and other expert reports and the costs of external Assessors who are engaged for the purpose of determining all individually assessed claims. The amount is comprised of:

- (a) Professional fees calculated according to the scale in clause 13.2 of the scheme, on the assumption that 80% of the total estimated 2,018 claims would undergo individual assessment (resulting in fees of approximately \$11.3 million at a fixed scale amount of \$7,000 per claim<sup>1</sup>) and that 20% of claimants

<sup>1</sup> The total of \$7,000 comprises \$1,000 for preparation of an Eligibility Book, \$5,000 for preparation of a Claim Book and \$1,000 for the resolution of Liens.



would elect to receive the Fast Track Resolution (resulting in fees of approximately \$1 million at a fixed scale amount of \$2,500 per claim<sup>2</sup>);

- (b) Disbursements of \$500 per claim for medical records, totaling approximately \$1 million;
- (c) Disbursements of \$1,500 per individually assessed claim for medical reports, totaling approximately \$2.4 million;
- (d) Disbursements of \$2,500 per individually assessed claim for the costs of Assessors, totaling approximately \$4 million.

7. As was stated by Mr Atkins in his 23 June 2016 letter, the "Fund Admin Costs" of \$5.85 million incorporated in Mr Atkins' actuarial modelling was calculated using a blended hourly rate of \$550 per hour and assumptions regarding hours of work each month over the life of the settlement administration. As was stated by Mr Atkins on page 4 of his letter, the total amount of \$5.85 million was "broad-brush" and was not based on any business plans or budget, and while in my view it was not possible at the time of seeking settlement approval to predict the amount of general Administration Costs with accuracy, it was appropriate to factor in an estimated allowance for these costs into Mr Atkins' modelling. At the time of seeking settlement approval in June 2016, I did not know whether the actual costs incurred pursuant to clause 13.1 of the scheme were likely to exceed or be less than the amounts that Mr Atkins calculated.

8. Importantly, however, Mr Atkins' estimate did assume that the amount incurred each quarter would gradually reduce after the first year, and again each subsequent year on an incremental basis until it plateaued from the fifth year of the operation of the scheme. Mr Atkins' assumption regarding the reduction in general Administration Costs was consistent with my expectations about how the scheme would operate in practice, and I had discussed this expectation with Mr Atkins in the context of the preparation of his report. Mr Atkins' assumption is also consistent with the evidence that I gave in paragraph 95 of my affidavit affirmed on 8 June 2017, with the benefit of having supervised the implementation of the Amended Settlement Scheme and establishment of the processes and systems that I considered to be necessary over the past 12 months. I will discuss in greater detail below the future Administration

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<sup>2</sup> The total of \$2,500 comprises \$1,000 for preparation of an Eligibility Book, \$500 for consultation with a Group Member regarding election of the Fast Track Resolution and \$1,000 for the resolution of Liens.

Costs that might be expected to be incurred during the remainder of the operation of the settlement.

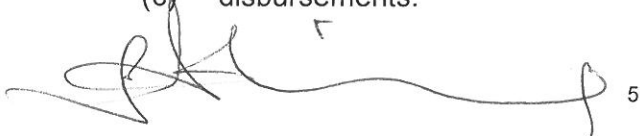
**B SUMMARY OF ADMINISTRATION COSTS**

9. The monthly professional fees accrued and disbursements incurred by Maurice Blackburn during the period from 1 June 2016 to 31 January 2017 (**Relevant Period**) for the work detailed in my 8 June 2017 Affidavit and this affidavit are as follows (inclusive of GST):

Month	Professional Fees	Disbursements	Sub-Total
Jun 2016	\$347,966.30	\$222,851.98	\$570,818.28
Jul 2016	\$201,689.40	\$128,519.72	\$330,209.12
Aug 2016	\$192,296.50	\$2,430.10	\$194,726.60
Sep 2016	\$230,899.90	\$508.75	\$231,408.65
Oct 2016	\$163,268.60	\$1,159.15	\$164,427.75
Nov 2016	\$238,757.20	\$44,163.69	\$282,920.89
Dec 2016	\$167,149.40	\$43,668.28	\$210,817.68
Jan 2017	\$127,658.30	\$10,397.91	\$138,056.21
<b>Total</b>	<b>\$1,669,685.60</b>	<b>\$453,699.58</b>	<b>\$2,123,385.18</b>

10. In Annexure **JKS-146**, I have set out a monthly summary for the Relevant Period of the areas of work performed for which professional fees are sought and the disbursement were incurred. The tasks described in each month have been ordered by the approximate amount of time spent on each task with the task having most time spent on it being listed first. These monthly summaries are stratified by reference to:

- (a) work done by lawyers;
- (b) work done by non-lawyers; and
- (c) disbursements.



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### **Administration Costs associated with the application for settlement approval**

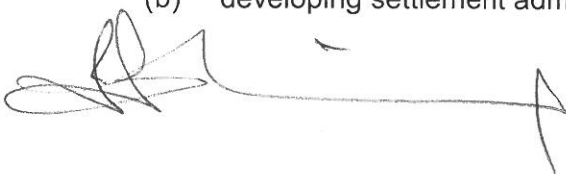
11. In addition to the summaries of settlement administration work done on a monthly basis, I make the following general comments regarding the Administration Costs incurred in June 2016.
12. In its invoice for June 2016, Maurice Blackburn seeks approval of \$570,818 in Administration Costs. As discussed in more detail below, most of these costs were incurred in relation to the application for approval of the settlement and ancillary work including servicing a large volume of inquiries by Group Members in relation to the settlement and the application for settlement approval. The total costs comprised:
  - (a) \$347,966 in professional fees; and
  - (b) \$222,851 in disbursements, which largely consisted of:
    - (i) experts' fees totalling \$143,467; and
    - (ii) counsel's fees totalling \$71,962.
13. Maurice Blackburn's invoice for Administration Costs in July 2016 also includes disbursements of \$112,475 for counsel fees associated with the application for approval of the settlement.
14. Maurice Blackburn's costs associated with the settlement approval application (being the June 2016 invoice of \$570,818 plus the disbursement of \$112,475 for counsel fees in Maurice Blackburn's July 2016 invoice) comprise approximately one third of the Administration Costs of \$2.12 million for which approval is currently sought.
15. The application for settlement approval culminated in a hearing before the Honourable Wigney J on 24 June 2016, with evidence in support of the application for approval having been filed on or around 17 June 2016. In light of the complexity of the issues that arose in the application, the evidence that was filed in support of the settlement approval application was unusually expansive, consisting of:
  - (a) two confidential opinions from senior counsel;
  - (b) four affidavits from the applicants' solicitors;



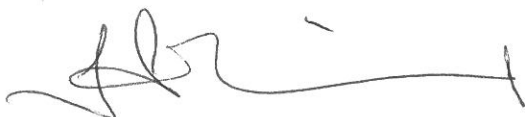
- (c) four expert reports in the areas of clinical orthopaedics, biostatistics, actuarial analysis and legal costs.
16. At the time of preparing the application for settlement approval and, specifically, the approval of costs that was subsequently reflected in order 3(a) made on 29 June 2016, it was not practicable to incorporate Maurice Blackburn's costs for June 2016 due to the timetable for filing evidence as mentioned above, and the time that was needed in order to prepare and finalise the expert report of Ross Nicholas which was tendered in support of the application for approval of costs. For this reason, Mr Nicholas' expert report only considered Maurice Blackburn's costs up to 31 May 2016, and Shine's costs up to 9 May 2016. I also note that invoices for some of the disbursements (particularly counsel fees and expert fees) were only received towards the end of June 2016, and in the case of counsel fees some were not paid until July 2016.
17. Maurice Blackburn's June 2016 costs of applying for the approval order were therefore not included in the costs that were approved by the Court on 29 June 2016. However, as is commonly the case in the settlement of class actions, in the settlement scheme for this proceeding Administration Costs were defined to include the costs of applying for settlement approval. This means that these costs are subject to Court approval by virtue of clause 13.1 of the Amended Settlement Scheme, and that the reasonableness of these costs would (in practice) need to be supported by a report from an independent costs expert.

**Additional work for which payment is not sought**

18. In addition to the professional fees and disbursements for which approval is sought, Maurice Blackburn staff have carried out Administration work for which payment is not sought and will not be sought.
19. During the Relevant Period a total of 256 hours of work was performed by lawyers and non-lawyers at Maurice Blackburn that was recorded as "no charge". Of this, 52 hours were performed by lawyers and the remaining 204 hours by non-lawyers. This work included:
- (a) instructing and liaising with the costs expert, Ross Nicholas in relation to the preparation of his expert report for settlement approval;
- (b) developing settlement administration processes;



- (c) data management;
  - (d) testing of IT developments;
  - (e) resourcing, including the transfer of the settlement administration to a specialised team in Melbourne, and in this regard I note that Maurice Blackburn's settlement administration team is now based in Maurice Blackburn's Melbourne office.
20. This work was not put forward for consideration by the independent costs expert, Ross Nicholas because I exercised a discretion not to seek payment of these costs.
21. In addition to the professional fees mentioned above, Maurice Blackburn's internal IT staff have spent significant time developing the IT systems that are being used in the settlement administration. These include the following:
- (a) Settlement Website (as described in paragraph 39 of my first affidavit);
  - (b) Online Registration Form (as described in paragraphs 41 to 42 of my first affidavit);
  - (c) Online Database (as described in paragraphs 45 to 50 of my first affidavit);
  - (d) Questionnaire (as described in paragraphs 66 to 78 and 123 to 126 of my first affidavit);
  - (e) Document Sharing Facility (as described in paragraphs 61 to 62 of my first affidavit);
  - (f) MB Online Database (as described in paragraphs 78 to 81 of my first affidavit).
22. Maurice Blackburn's IT staff record the time that they spend developing IT systems for specific cases such as this settlement administration. During the Relevant Period, Maurice Blackburn's IT staff spent 990 hours developing the systems and IT architecture described above. In addition, 568 hours were spent up to 31 May 2016 (for example in relation to development of the Online Registration Form and Settlement Website, which commenced in April 2016).
23. Although on one hand Maurice Blackburn's IT staff have the benefit of their experience and expertise in developing IT systems in other cases, including the settlement of the Black Saturday bushfires class action mentioned in the next



paragraph below, on the other hand the IT infrastructure mentioned above is bespoke and highly customised for use in the settlement administration for the ASR class action, and the infrastructure itself is not able to be used directly in any other cases. Although it cannot be quantified, in my view the development of these IT systems and infrastructure provides benefits to the settlement administration by way of improved efficiency and therefore reduced costs.

24. In previous settlement administrations, courts have approved payment of settlement administration costs incurred as a result of time spent by technical IT specialists in developing IT infrastructure that is used in these settlement administrations. These cases include:

- (a) *Gray v Cash Converters International Limited (No 2)* [2015] FCA 1109: the judgment itself does not discuss payment of these costs, however I am aware through discussions with my colleagues that the administration costs in that case included work done by IT staff;
- (b) *Matthews v Ausnet Electricity Services Pty Ltd and others (Ruling No 40)* [2015] VSC 131 at [17].

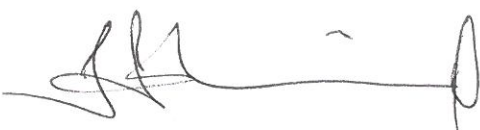
25. In the administration of the settlement of the ASR class action, clause 13.1(d) of the Settlement Scheme provides for work done by litigation technology consultants to be paid at an hourly rate of \$240.

26. Despite the significant amounts of time spent by Maurice Blackburn's IT staff in preparing the IT facilities mentioned above, several months ago I made the decision not to seek payment of any of the costs incurred by IT consultants as provided by the Settlement Scheme, although time spent by lawyers and paralegals who worked together with the IT staff is incorporated in the Administration Costs for which approval is sought.

## **C FUTURE ADMINISTRATION COSTS**

27. As was noted above, the actuarial modelling tendered in support of the settlement approval application incorporated the following estimates of Administration Costs totalling approximately \$26 million:

- (a) \$19.776 million for claim preparation costs, including the costs of external Assessors engaged for the purpose of assessing individually assessed claims;



- (b) \$250,000 for Administration Costs in June 2016; and
  - (c) \$5.60 million (being \$5.85 million for "Fund Admin Costs" less \$250,000 for June 2016) for general Administration Costs, consisting only of professional fees, from July 2016 until the completion of the settlement administration.
28. In this section of my affidavit I provide an overview of overall Administration Costs, taking into account:
- (a) Administration Costs for which payment is sought in this application; and
  - (b) factors impacting on Administration Costs that might be incurred in the future.
29. By way of summary, I consider that:
- (a) based on current data and analysis of claims progress, the *overall* Administration Costs (including both general Administration Costs as well as claim preparation costs) are likely to be less than the \$26 million that Mr Atkins took into account for the purpose of his modelling;
  - (b) claim preparation costs are likely to be substantially less than the \$19.776 million calculated by Mr Atkins – this is due to the higher than expected rate of election by Group Members of the Fast Track Resolution leading to lower disbursements and lower professional fees;
  - (c) Administration Costs associated with the application for settlement approval were substantially more than the \$250,000 incorporated by Mr Atkins for June 2016;
  - (d) it is difficult for the Administrators to quantify accurately the general Administration Costs to be incurred in the future, and despite the fact that a majority of claims will be assessed and paid more quickly than I anticipated at the time of seeking settlement approval, it is possible that (subject to Court approval) general Administration Costs calculated pursuant to clause 13.1 of the scheme will ultimately exceed the \$5.60 million that was incorporated by Mr Atkins for the purpose of his modelling.
30. In discussing the general Administration Costs to be incurred in the future, I do not provide an estimate of future costs. Instead, I discuss factors that will impact on the amount of costs, and in my view these factors indicate that general Administration



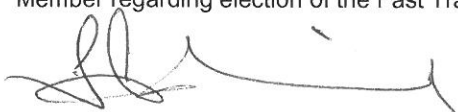
Costs that will accrue in the future will for the most part accrue at a lesser rate than the costs incurred to date. These factors include the timeframes for completion of major components of Administration work, and the nature and scope of the work done to date and in the future.

### **Claim preparation costs**

31. For the purpose of this affidavit I revisited Mr Atkins' estimate and prepared an updated estimate based on the higher than expected rate of election of the Fast Track Resolution.
32. Whereas Mr Atkins estimated these costs to be \$19.776 million, if rate of election of the Fast Track Resolution is maintained at approximately the same level as is currently the case, these costs are likely to be approximately \$10.34 million, comprising:
- (a) Professional fees calculated according to the scale in clause 13.2 of the scheme, on the assumption that 25% of the total estimated 2,018 claims will undergo individual assessment (resulting in fees of approximately \$3.5 million at a fixed scale amount of \$7,000 per claim<sup>3</sup>) and that 75% of claimants will elect to receive the Fast Track Resolution (resulting in fees of approximately \$3.78 million at a fixed scale amount of \$2,500 per claim<sup>4</sup>);
  - (b) Disbursements of \$500 per claim for medical records, totaling approximately \$1 million;
  - (c) Disbursements of \$1,500 per individually assessed claim for medical reports, totaling approximately \$0.76 million;
  - (d) Disbursements of \$2,500 per individually assessed claim for the costs of Assessors, totaling approximately \$1.26 million – I note, however, that the Administrators have not yet negotiated any fixed fee amount with the lawyers who are contemplated as performing the role of Assessor, although based on my understanding of the amounts paid to assessors in the Black Saturday bushfires class action, I expect that the final negotiated amount will approximate the amount of \$2,500 used for the purpose of this calculation.

<sup>3</sup> The total of \$7,000 comprises \$1,000 for preparation of an Eligibility Book, \$5,000 for preparation of a Claim Book and \$1,000 for the resolution of Liens.

<sup>4</sup> The total of \$2,500 comprises \$1,000 for preparation of an Eligibility Book, \$500 for consultation with a Group Member regarding election of the Fast Track Resolution and \$1,000 for the resolution of Liens.



33. Maurice Blackburn has not yet sought recovery of any claim preparation costs, except for the amount of \$92,601 for medical records (for which there is an allowance of \$1 million as outlined in paragraph 32(b) above).
34. In this application, Shine seeks payment of:
- (a) \$220,550 for professional fees according to the scale in clause 13.2;
  - (b) \$103,102 in disbursements for medical records.

#### **Administration Costs in June 2016**

35. As discussed above, Maurice Blackburn's Administration Costs include the following costs that were mostly related to the application for settlement approval:
- (a) \$570,818 for June 2016; and
  - (b) \$112,475 for counsel fees in July 2016.
36. These costs, totalling \$683,293, constitute approximately one third of the total amount of Administration Costs sought by Maurice Blackburn in this application. Approximately half of the total amount is comprised of disbursements for counsel and expert fees.
37. In addition, based on my review of materials provided to me by Shine, I understand that the total amount of Shine's invoices for work from 10 May 2016 until 30 June 2016 is approximately \$166,800 in professional fees, with no disbursements.
38. The total amount referable to the period where a substantial proportion of work related to the application for settlement approval in June 2016 is therefore approximately \$850,000.
39. Although Maurice Blackburn's costs plus Shine's costs substantially exceed the \$250,000 allowed by Mr Atkins in his modelling, these are one-off costs that will not be replicated. The reasons for the high amount of costs for the settlement approval application were discussed above and relate primarily to the scope and complexity of the evidence that needed to be prepared, particularly in light of the nature of objections raised by some Group Members in relation to the settlement, the substantial volume of inquiries from Group Members, the work done to put Group Members' concerns before the Court in a comprehensive manner and the work (which needed to be supported by further work from experts and detailed

submissions) in amending the original version of the Settlement Scheme (where it was possible and reasonable to do so) to meet the concerns raised by Group Members (for example in relation to several of the eligibility criteria).

40. At the time that Mr Atkins prepared his expert report, I did not (and was not able to) have an appreciation of the level of costs that would ultimately be incurred in seeking settlement approval.

#### **Current and future amounts for general Administration Costs**

41. In this section I consider the general Administration Costs already incurred and which may be incurred in the future, and I do so with reference to the \$5.60 million allowed by Mr Atkins from July 2016 until the end of the settlement administration.

42. Excluding the following:

- (a) \$570,818 for June 2016 and \$112,475 for July 2016 on the bases that these are unique, one-off costs that were largely associated with settlement approval and that these costs were separately considered in paragraphs 35 to 40 in the preceding section above; and
- (b) \$92,601 in disbursements for medical records on the basis that these are incorporated in the estimate for claim preparation costs as discussed in paragraph 33 above,

the remainder of Maurice Blackburn's general Administration Costs during the Relevant Period comprise:

- (c) \$1.32 million in professional fees;
  - (d) \$28,243 in disbursements for miscellaneous expenses including costs incurred by Crawford & Company (Australia) Pty Ltd in sending the Further Notice to Group Members in accordance with orders 4 to 8 on 29 June 2016, external and internal photocopying services, interstate and intra-city travel, postage and courier fees, transcript fees and telephone charges.
43. In addition, based on my review of materials provided to me by Shine, I understand that Shine's comparable costs for the period from 1 July 2016 until 31 March 2016 are approximately \$1.057 million including disbursements.



44. Given the way in which Mr Atkins qualified his use of the estimate of \$5.60 million as discussed in paragraph 7 above, I do not see Mr Atkins' allowance of \$5.60 million as being a "budget" for general Administration Costs. Nevertheless I note that in total approximately \$2.4 million of the \$5.60 million has been "spent".
45. In relation to future Administration Costs, based on my consideration of the progress of the settlement administration and work done to date, as well as timeframes for the ongoing administration of the settlement and the implications of those timeframes for ongoing work, my current expectations regarding costs are as follows:
- (a) **February 2017 to June 2017** – Maurice Blackburn's professional fees will be broadly similar to the fees incurred on a monthly basis from June 2016 to January 2017, taking into account:
- (i) reductions in Administration Costs due to set up costs having been front end loaded as discussed in my first affidavit and as discussed below, with the result that most of the processes and systems are now up and running;
  - (ii) the confounding effect of the significant work involved in preparing the Administrators' report to the Court and interlocutory application.
- (b) **July 2017 to March 2018** – Maurice Blackburn's professional fees will reduce to some extent when compared to the fees incurred on a monthly basis from June 2016 to January 2017, although I am not able to quantify the extent of the reduction in Administration Costs;
- (c) **March 2018 to December 2018** – Maurice Blackburn's professional fees will further reduce compared to the fees incurred on a monthly basis from July 2017 to March 2018 – the main reason for this is that (as discussed below) by March 2018 I expect that most if not all of the Fast Track Resolutions for the current cohort of 1,700 registered Group Members will have been paid, so the Administrators' work will be primarily directed at finalising the claims of the much smaller number of Group Members who will undergo individual assessment, which will give rise to a reduced level of general administration work. On the other hand, during some of this period it is likely that the Administrators will need to:



- (i) work with Mr Atkins in order to carry out the functions contemplated in clauses 10.4 and/or 10.6 of the Settlement Scheme, and this might also involve additional work in relation to financial and accounting aspects of the settlement; and
  - (ii) provide another report to the Court, including for the purpose of seeking orders pursuant to clause 10.6(b) of the Settlement Scheme;
- (d) **December 2018 onwards** – I expect further reductions in Maurice Blackburn's professional fees because by this time I hope that all individually assessed claims in the current cohort of 1,700 Group Members will have received their first payment instalment and potentially even their final payment, so the Administrators' work will be primarily directed at processing the relatively small number of new claims that will have been registered on a rolling basis;
- (e) **Disbursements generally** – most of the disbursements incurred in the administration of the settlement are likely to relate to claim preparation and, as such, were taken into account in the discussion in paragraphs 31 to 34 above, and the disbursements that relate to general settlement administration work are relatively modest amounts for sundry expenses such as those discussed in paragraph 42(d), which average approximately \$4,000 per month for Maurice Blackburn. The one exception to this is counsel's fees for any reports to the Court, although the amount of these fees are likely to be substantially less than those involved in the settlement approval application, particularly because the Administrators have not briefed Senior Counsel and because the scope of the work is less.

46. In the next sub-sections of this affidavit, I provide evidence regarding my expectations of the following:

- (a) timeframes for resolving claims;
- (b) work that is likely to taper off and is therefore not likely to be replicated to the same extent as has been the case in the first seven months of the settlement administration;
- (c) areas of work where there will be ongoing Administration Costs under clause 13.1 of the Settlement Scheme.



***Anticipated timeframes for resolving claims***

47. As was noted in my first affidavit, at the present time:

- (a) 1,722 Group Members have registered their claims;
- (b) 964 eligibility determinations have been made;
- (c) 651 Group Members have elected to receive the Fast Track Resolution; and
- (d) 335 Group Members have received payment of their Fast Track Resolution.

48. Based on my consideration of progress made to date (as set out in my first affidavit) and my expectation of work to be done from this point onwards, I expect that:

- (a) by the end of 2017, eligibility determinations will have been completed for the remaining 758 Group Members in the current cohort of registrants;
- (b) by the end of March 2018, payments of the Fast Track Resolution will have been made on a rolling basis to most if not all of the Group Members in the current cohort of 1,722 registrants who are assessed as eligible and who elect to receive the Fast Track Resolution. This will mean that approximately 1,250 Group Members (that is, an additional 915 Group Members) will have received final payment (subject to any upwards adjustment) by that time, with further Fast Track Resolution payments of \$50 million to \$55 million expected to have been paid (in addition to the \$13.5 million that has already been paid as stated in paragraph 23(h) of my first affidavit).

49. These estimates are based on:

- (a) requests for medical records being processed by hospitals and surgeons at around the same rate as they currently are;
- (b) elections of the Fast Track Resolution being made by eligible Group Members within 42 days of being sent their Notice of Eligibility, and the rate of election being 75%;
- (c) among those Group Members who elect the Fast Track Resolution, the resolution of their liens continues at an average of 1-4 weeks, as it has for those resolved to date;




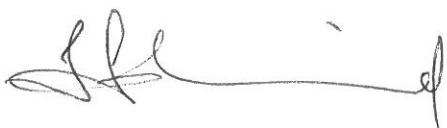
- (d) payments of the Fast Track Resolution continue to be processed within 2-6 weeks of Liens being resolved, provided that Group Members provide payment details and those payment details being accurate.
50. Once the majority of Fast Track Resolutions for the existing cohort of registrants has been paid, I expect that general Administration Costs will reduce significantly. This is because:
- (a) work involved in setting up systems and process will have tapered off as described in paragraph 87 below; and
- (b) the ongoing administration work, as described in paragraph 54 below, will reduce.
51. Based on the same assumption as outlined above regarding the rate of election of the Fast Track Resolution, this means that there will be approximately 400 Group Members who undergo individual assessment. The Administrators will have completed some of the assessments of these claims by the end of 2017, however I expect that this work will continue during the first half of 2018.
52. Potentially eligible Group Members can continue to register their claims until June 2023, however as indicated in paragraph 94 of my first affidavit, new registrations are being lodged at a low rate and I expect this to continue. Work involved in processing the claims of new registrants will therefore be readily absorbed by the Administrators and should not have a significant impact on the timeframes discussed above.

***Work that is likely to taper off***

53. As I said in paragraph 95(c) of my first affidavit, I expect that Administration Costs will taper off because work involved in establishing various systems, processes, precedents and templates and workflows has been completed. In particular, I expect that Administration Costs will begin to taper off from July 2017. The areas of settlement administration work that I expect will not be replicated to the same extent are as follows:
- (a) **Development of IT infrastructure** – this includes the construction of the Settlement Website, Online Registration Form; Online Database; Questionnaire; Document Sharing Facility and MB Online Database. Although Maurice Blackburn does not seek approval for payment of time spent by IT

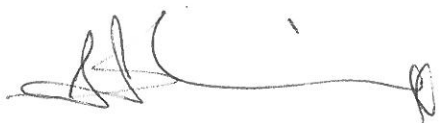
staff, a significant amount of time was spent by lawyers and paralegals in working with IT staff in relation to the needs of the settlement administration, monitoring this work and testing the developments. With the exception of IT infrastructure that will need to be developed for the individual assessment processes, the development of these systems is largely complete, and ongoing professional fees will be limited to the development of certain reporting tools and managing updates or amendments to the current systems. It is expected that these fees will be less than has been spent over the Relevant Period for which approval is currently sought.

- (b) **Development of the Protocol and various templates and precedents** – minor amendments to the Protocol may be required from time to time as the settlement administration progresses but this is not expected to be significant and would form part of the ongoing Committee functions. In addition, while the Administrators are yet to develop some of the templates and precedents for use in the individual assessment process, most of the templates and precedents have been settled.
- (c) **Development of internal processes and workflows** – with the exception of the individual assessment processes which are in the process of being finalised, the work done in relation to internal processes and workflows for registration, eligibility assessment, election of the method of assessment, payments and others will not continue at the same rate. There will be time spent refining these processes but this will be significantly less than time spent to date.
- (d) **Capturing and interrogating Group Member data** – at the time of the settlement approval and in the months following, there was significant work done by the administration staff in ensuring deficiencies in group member data were rectified, all group member data was up to date and being managed in a consistent manner. This type of work will continue throughout the settlement administration but will mostly be on an individual Group Member basis and therefore be far less time consuming.
- (e) **Group Member registration and allocations** – in the first few months of the settlement administration, there was significant work in reviewing registrations and preparing and finalising allocations to the four firms. This work has been completed, with new registrants giving rise to work at much lower level.



### ***Ongoing administration work***

54. General administration work (as opposed to claim preparation work) that will be ongoing and will therefore give rise to ongoing general Administration Costs include the following:
- (a) Committee functions including preparation of materials for consideration at Committee meetings and attendance at meetings;
  - (b) maintenance of the Online Database and updating Group Member details on the Online Database as individual Group Members' claims progress through the assessment process – this is an essential function because it allows the Administrators to monitor the progress of individual claims, follow up on outstanding / incomplete aspects of claim preparation, keep track of payments made to Group Members (which will enable financial and accounting functions to be performed, including provision of accurate data to the actuarial expert for the purpose of the functions in clauses 10.4 and 10.6 of Settlement Scheme) and so on;
  - (c) screening of claims giving rise to a Deemed ASR Revision including consideration of the applicability of clause 5.7 of the Settlement Scheme;
  - (d) processing applications for interim payments, although I do not expect many of these on an ongoing basis;
  - (e) eligibility determinations;
  - (f) managing allocation of claims to the Assessors, and managing the flow of materials to and from the Assessors;
  - (g) sending notices to Group Members, including the Notice of Eligibility, Notice of Fast Track Assessment and Notice of Assessment;
  - (h) receiving, processing and recording elections to receive the Fast Track Resolution or undergo individual assessment;
  - (i) processing of payments to Group Members;
  - (j) financial and accounting aspects, including auditing of data and managing the various Settlement Accounts;



- (k) in the case of Maurice Blackburn, ongoing liaison with DBH and, in the case of Shine, ongoing liaison with LAM;
  - (l) liaison with third parties in relation to general issues arising from the settlement administration (as opposed to dealings relating to the preparation of individual claims), including high volume surgeons and hospitals, Centrelink, the Department of Human Services, private health insurers, the Department of Veterans Affairs among others;
  - (m) responding to general inquiries by Group Members.
55. I again note that as more and more claims in the existing cohort of 1,722 registrants are finalised, the volume of work involved will commensurately decrease.
56. In addition to the above categories of general administration work that will continue on an ongoing basis, I expect that there are additional categories of work that might arise from time to time. The most notable areas of occasional administration work are:
- (a) engagement of Mr Atkins in order to determine the level at which pro rata instalment payments and final payments can be made to Group Members in accordance with clauses 10.4 and 10.6 of the Settlement Scheme. This will also include significant work in carrying out an audit of the Administrators' data concerning compensation figures for Fast Track payments and amounts payable to individually assessed Group Members in order to ensure accurate calculations of pro rata payments to individually assessed Group Members and any top up payments that might be made to Group Members at a later time. My opinion regarding the importance and necessity of the latter area of work is informed by my understanding of similar work that needed to be done in the settlement administration for the Black Saturday Bushfires class action;
  - (b) future reports to the Court and any future interlocutory applications that are made, including in relation to orders pursuant to clause 10.6 of the Settlement Scheme;
  - (c) engagement of expert tax advisors in order to provide advice to the Administrators regarding the tax implications of interest earned on the Settlement Accounts, and any necessary deals with the Australian Tax Office that might arise.



57. Lastly, as I mentioned above, the final remaining major area where processes and systems are not yet complete (albeit they are well advanced) is in relation to the individual assessment process. This will continue to give rise to ongoing work particularly over the next couple of months. This includes:

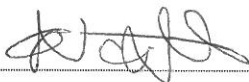
- (a) finalisation of processes, workflow, templates and precedents;
- (b) final selection of the Assessors followed by appropriate training and briefing of the Assessors in order to ensure that they are each taking a consistent approach to their function.

#### UPDATE TO GROUP MEMBERS

58. Following the case management hearing on 14 June 2017, the Administrators coordinated an update to the Settlement Website and a letter to be sent to all registered Group Members. Maurice Blackburn sent this update letter to all its allocated group members as well as those allocated to DBH. In the update to the Settlement Website and in the letter to Group Members, the Administrators noted that the proceeding had been listed on 14 June 2017 and was adjourned to 28 June 2017 and the Administrators undertook to provide a further update after the part-heard hearing on 28 June 2017. My first affidavit and Ms Saddler's affidavit were also posted on the Settlement Website, and the letter invited Group Members to access the Settlement Website if they wished to review those materials.

Affirmed by the deponent  
at Sydney  
in New South Wales  
on 23 June 2017

Before me:

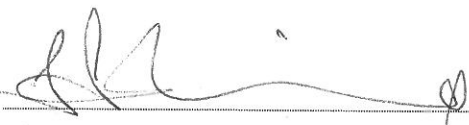


Signature of witness

An Australian legal practitioner within the meaning  
of the *Legal Profession Uniform Law* (NSW)

Name of witness: Elizabeth Vasta

Address of witness: Level 32, 201 Elizabeth Street Sydney NSW 2000

)   
)  
) Signature of deponent  
)  
)

**Certificate Identifying Annexure JKS-145**

No. NSD 213 of 2011

Federal Court of Australia

District Registry: New South Wales

Division: General

**Tammy Stanford** and Another

Applicants

**DePuy International Limited** and Another

Respondents

This is the annexure identified as **JKS-145** referred to in the affidavit of **JULIAN KLAUS SCHIMMEL** affirmed at Sydney on 23 June 2017.

Before me



Elizabeth Vasta

Lawyer with a current practising certificate

23 June 2016

Mr Ben Slade  
Maurice Blackburn  
Level 32  
201 Elizabeth St  
SYDNEY NSW 2000

Dear Mr Slade

## ASR Class Action – Scheme Expenses

In response to your request of 22 June 2016, this letter provides a more detailed explanation of the scheme expense projections included in my report “ASR Class Action – Actuarial Advice on Settlement Scheme” dated 17 June 2016. This letter should be read in conjunction with that report to put the scheme expense projections in the appropriate context.

In my report the total amount of estimated scheme expenses is \$62 million comprising \$36 million in respect of pre-settlement expenses and \$26 million in respect of expenses after the settlement date.

The pre-settlement expenses were advised by Maurice Blackburn. The projection of costs after the settlement date was made by me. The remainder of this letter explains the projected \$26m of scheme expenses after the settlement date.

### Components of the Expenses

I have modelled the expenses in two parts – that related to the processing and assessment of individual claims, and that related to overall management of the scheme.

The individual claim component is intended to include:

- Legal fees to the four firms responsible for dealing with claims
- Fees paid to the independent assessors
- Disbursements for obtaining evidence such as medical records
- The cost of expert reports that may be required, including medical reports.

### Individual claim expenses

I have assumed a lower level of expenses for claims accepting the Fast Track resolution and a higher level for claims proceeding to assessment. For simplicity, a single average figure is used for all the assessed claims regardless of the severity group.

Thu 23 June 2016 12:48 PM

bjm:MB16L\_160622\_SCHEME EXPENSES.DOCX

#### Sydney

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The Rocks, NSW 2000

#### Melbourne

Tel +61 3 8080 0900  
Level 3, 30 Collins Street  
Melbourne, VIC 3000

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Level 5, 79 Queen Street  
Auckland 1010

**Table 1 –Expenses for Individual Claims**

Claim Severity	Claims #	Cost per	
		Claim	Total Cost
		(\$)	(\$000)
Fast Track	404	3,000	1,211
Low	810	11,500	9,313
Medium	610	11,500	7,014
High	195	11,500	2,239
	2,018		19,776

The total estimated future expenses for individual claims are \$20 million.

The average expense per claim has been estimated after considering the following items:

- Claim administration, Eligibility Book preparation and Claim Book preparation.
- Disbursements associated with collecting medical and other records.
- Cost of expert reports for the purpose of preparing Claim Books and assessing claims.
- Assessor fees.

The first item will be payable to the firm (one of the four firms specified) responsible for each claim, while the other three amounts are payable to other providers.

### Administration, Eligibility Books and Claim Books

#### Fast Track Claims

I have assumed average future expenses in respect of Claim Administration and Eligibility Books for Fast Track Claims of \$2,500 as follows:

- \$1,000 in respect of preparation of an Eligibility Book for a Group Member as set out in clause 13.2 of the Scheme.
- \$500 in respect of consulting with a Group Member regarding their decision to accept Fast Track resolution as set out in clause 13.2 of the scheme.
- \$1,000 in respect of resolution of liens as set out in clause 13.2.

#### Assessed Claims

I have assumed future expenses in respect of Administration, Eligibility Books and Claim Books for assessed claims of \$7,000 as follows:

- \$1,000 in respect of preparation of an Eligibility Book for a Group Member as set out in clause 13.2 of the Scheme.
- \$5,000 in respect of preparation of a Claim Book for a Group Member as set out in clause 13.2 of the Scheme.
- \$1,000 in respect of resolution of liens as set out in clause 13.2.

## Medical Records

I have assumed an average amount of \$500 for all Group Members regardless of the method of settlement in respect of obtaining appropriate medical and other records necessary to determine eligibility for the scheme.

## Expert Reports

I have assumed an average cost for relevant expert reports of \$1,500 per assessed claim. It is my understanding that an expert report generally costs of the order of \$2,000 to \$3,000. An average cost of \$1,500 per claim implies roughly three out of every four applicants will require an expert report of some description (recognising that some applications may require no expert reports, while others may require multiple reports).

## Assessor Fees

Based on discussions with Maurice Blackburn I have assumed future assessor fees of \$2,500 for each assessed claim.

## Cost of Reviews and Disputes

No explicit allowance has been made for any costs relating to reviews or disputes (clause 9 of the scheme). These average costs are intended to be sufficient to cover review costs noting that a low rate of review is expected.

## Scheme and Fund Administration

There will be expenses involved with overall management of the scheme that are not attributable to dealing with individual claims. This work will include the functions stated in clause 2.2(b), developing necessary computer software applications, appointing the panel of assessors, management of the settlement fund including investments, maintaining financial and other records, reporting to and seeking relevant approvals from the court and generally monitoring progress of the scheme.

I have assumed the following costs in respect of administering the scheme:

**Table 2 – Scheme Admin Costs**

Year	(\$000)
Jun-16	250
2016/17	2,000
2017/18	1,000
2018/19	800
2019/20	600
2020/21	400
2021/22	400
2022/23	400
<b>Total</b>	<b>5,850</b>

Significant costs would be expected in the set-up phase, with costs then reducing as work becomes routine and the number of claims being processed reduces. There will be some element of fixed costs which the scheme will continue to incur regardless of the number of claims

remaining, and there will be costs related to the finalisation and winding up. It is for this reason that I have estimated a minimum cost of \$100,000 per quarter even in the final quarters of the scheme.

These estimates are broad-brush and are not based on any business plans or budgets provided by Maurice Blackburn. At an average legal fee rate of say \$550 per hour, the costs during the first full year would be equivalent to about 300 hours per month, reducing to about 60 hours per month during the last three years of the scheme.

The amount shown for June 2016 is to allow for costs after the agreement to the pre-settlement costs amount and before the scheme administration begins in earnest.

## Conclusion

Overall, I have estimated total future scheme expenses of \$26 million comprising:

- \$20 million in respect of future individual claim expenses; and
- \$6 million in respect of future overall scheme and fund administration expenses.

The actual fund administration expenses cannot be known with certainty due to the uncertain nature of the scheme both in terms of the number of applications to the scheme and the uncertain nature of the costs that will be incurred.

The expense estimate is about 10% of the total settlement amount of \$250m. If the estimate is incorrect by \$5 million either way the impact would be that the compensation available to claimants would move up or down by 2% of their assessed compensation amount.

## ASR Class Action – Actuarial Report

It has been drawn to my attention that the second paragraph of Section 3.3 of my report “ASR Class Action – Actuarial Advice on Settlement Scheme” dated 17 June 2016 incorrectly refers to 362 future eligible claimants to the scheme over the period 31 December 2014 to 31 December 2022. This paragraph should read:

*“Based on the projection models, I estimate a further 706 revision surgeries will be performed over the seven year period 31 December 2014 to 31 December 2022. These revisions represent 629 eligible claimants to the scheme. Therefore, I estimate that the total pool of eligible claimants will be 2,350 as shown in Table 3.1 below.”*

I note that Table 3.1 correctly represents the projected number of eligible claimants and all other figures shown in my report are correct.

Please do not hesitate to contact me if anything in this letter requires clarification.

Yours sincerely

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

Geoff Atkins

**Fellow of the Institute of Actuaries of Australia**

**Certificate Identifying Annexure JKS-146**

No. NSD 213 of 2011

Federal Court of Australia

District Registry: New South Wales

Division: General

**Tammy Stanford** and Another

Applicants

**DePuy International Limited** and Another

Respondents

This is the annexure identified as **JKS-146** referred to in the affidavit of **JULIAN KLAUS SCHIMMEL** affirmed at Sydney on 23 June 2017.

Before me



Elizabeth Vasta

Lawyer with a current practising certificate

**MONTHLY PROFESSIONAL FEES ACCRUED AND DISBURSEMENTS INCURRED BY  
MAURICE BLACKBURN FROM 1 JUNE 2016 TO 31 JANUARY 2017**

---

**Administration Costs in June 2016**

1. The professional fees and disbursements incurred during this period largely related to the settlement approval application.

***Professional fees in June 2016***

2. The total professional fees for work carried out between 1 June 2016 and 30 June 2016 were \$347,966.30, being a total of 690.4 hours spent.
3. Professional fees incurred by *lawyers* during this period totalled \$251,703.10, with a total of 416.9 hours spent on the following and similar tasks:
  - (a) Preparing for settlement approval hearing including preparation of interlocutory application, affidavits and supporting material and liaising with Counsel;
  - (b) Liaising with independent experts in preparation for settlement approval, including reviewing multiple reports and evidence;
  - (c) Attendance at Court for settlement approval hearing;
  - (d) Liaising with respondents in preparation for settlement approval hearing;
  - (e) Responding to and providing direction to non-lawyers regarding group members enquiries in relation to settlement approval and opposition to settlement and preparing proposed script to respond to enquiries;
  - (f) Liaising with Shine Lawyers and DBH in preparation for settlement approval;
  - (g) Finalising drafting of the Amended Settlement Scheme, including consideration of various issues, impacts and implementation of proposed scheme (which led to some late amendments to the proposed scheme designed to better serve those Group Members whose circumstances would otherwise fall outside of the scheme criteria);
  - (h) Drafting and settling various correspondence to group members, including further notice to group members and registration confirmation;

- (i) Managing financial aspects, including legal, tax and practical issues associated with management of accounts;
  - (j) Preliminary work in preparation for processing claims under settlement scheme, including reviewing and finalising group member data and maintaining records;
  - (k) Settling and finalising updates to website for group members.
4. Professional fees incurred by *non-lawyers* during this period totalled \$96,263.20, with a total of 273.5 hours spent on the following and similar tasks:
- (a) Responding to group members enquiries in relation to settlement approval and opposition to settlement, assisting with preparation of proposed script to respond to enquiries and maintaining group member enquiry spreadsheet;
  - (b) Assisting with the preparation for settlement approval hearing including preparation of affidavits and supporting material and preparing briefs for Counsel;
  - (c) Assisting with preparation for processing claims under settlement scheme, including interrogating and reviewing group member data and obtaining records;
  - (d) Registering group members online who completed paper registration and maintaining group member information spreadsheet regarding registration;
  - (e) Assisting with preparation of various correspondence to group members, including the further notice to group members and registration confirmation;
  - (f) Capturing group member data in internal database in preparation for settlement administration;
  - (g) Assisting with preparation for settlement administration, including reconciling spreadsheets, transferring data and updating internal database;
  - (h) Analysing data and statistics regarding group member enquiries, including before and after notice of proposed settlement sent to group members;
  - (i) Assisting with updates to website for group members; and

- (j) Drafting group member questionnaire in preparation for settlement administration.

#### ***Disbursements in June 2016***

- 5. Total disbursements for work carried out or invoiced between 1 June 2016 and 30 June 2016 totalled \$222,851.98, these were made up of:
  - (a) \$73,260.00 to Costs Plus for preparation of expert report regarding costs;
  - (b) \$62,507.50 to Finity for actuarial services provided in relation to preparation of expert evidence;
  - (c) \$47,685.00 to John Sheahan QC, Counsel, for preparation and appearance at Settlement Approval Hearing;
  - (d) \$24,277.25 to Zoe Hillman, Counsel, for preparation and appearance at Settlement Approval Hearing;
  - (e) \$7,700 to Ross Crawford Medical for preparing of expert report regarding settlement approval;
  - (f) \$2,470.71 to E-Law for case room and user hosting fees for Settlement Approval Hearing;
  - (g) \$1,375.00 to NuLegal for e-trial service fees;
  - (h) \$1,514.74 to Auscript Australasia Pty Ltd to obtain court transcript;
  - (i) \$743.69 for travel expenses;
  - (j) \$488.75 to Law in Order for photocopying and scanning charges;
  - (k) \$484.00 to various health care providers provides for supplying group member medical records; and
  - (l) Miscellaneous administrative disbursements, including telephone calls, photocopying, courier charges and CabCharges totalling \$345.34.

#### **Administration Costs in July 2016**

- 6. The professional fees and disbursements incurred during this period related both to the settlement approval application and implementation of the settlement.

### ***Professional fees in July 2016***

7. The total professional fees for work carried out between 1 July 2016 and 31 July 2016 were \$201,689.40, being a total of 412 hours spent.
8. Professional fees incurred by lawyers during this period were \$125,481.40, being a total of 195.5 hours on the following and similar tasks:
  - (a) Responding to and providing direction to non-lawyers regarding group members enquiries in relation to settlement approval and opposition to settlement and ongoing maintenance of script to respond to enquiries;
  - (b) Drafting brochure regarding settlement administration process, an abbreviated version of which was later sent to group members who elected to undergo individual assessment;
  - (c) Developing, implementing and monitoring internal processes for the assessment of claims, including bespoke IT system requirements and client database management;
  - (d) Drafting internal procedure documents, including processes for requesting medical records, registration and explant preservation;
  - (e) Ongoing liaising with independent experts, including actuaries and costs assessor as well as occupational therapists for the purpose of establishing a panel of experts in accordance with clause 7.6 of the Settlement Scheme;
  - (f) Amending, reviewing and interrogating group member details in order to prepare for settlement administration;
  - (g) Preparing and reviewing proposed settlement administration protocols;
  - (h) Reviewing issues following registration process and group member quality assurance of database;
  - (i) Preparing further distribution of further notice to group members and reviewing issues to refine and improve assessment process;
  - (j) Ongoing liaison with DBH, including developing processes regarding allocation of tasks and group members;
  - (k) Development of workflow processes and resourcing;

- (l) Developing and finalising precedent assessment documents, including group member questionnaire and notice of eligibility;
  - (m) Ongoing liaison with Shine, including establishing settlement committee, allocation of workload and decision making
  - (n) Drafting and settling various correspondence to group members, including further updates following settlement approval hearing;
  - (o) Managing financial aspects, including legal, tax and practical issues associated with management of accounts; and
  - (p) Developing and reviewing liens processes including Medibank's interest; and
  - (q) Undertaking research regarding potential appeals processes in light of anecdotal feedback that some group members were considering an appeal against the settlement approval orders made on 29 June 2016.
9. Professional fees incurred by *non-lawyers* during this period were \$76,208.00, being a total of 216.5 hours spent on the following and similar tasks:
- (a) Responding to group members enquiries in relation to settlement approval and opposition to settlement and maintaining and updating a log of group member enquiries;
  - (b) Assisting with development of precedent assessment documents, including group member enquiries following settlement approval hearing and hard copy registration process;
  - (c) Assisting with preparation of various correspondence to group members, including further updates following settlement approval hearing;
  - (d) Registering group members online who complete paper registration, maintaining group member information spreadsheet regarding registration and sending, receiving, organising and filing registration forms;
  - (e) Developing and implementing updates to internal database to capture required information to assist with processing claims, including liaising with IT;
  - (f) Capturing, updating and amending group member data in internal database;

- (g) Analysing data and statistics and maintaining database to ensure quality assurance and consistency;
- (h) Drafting further amendment to website regarding duplicate registrations;
- (i) Preparing, reviewing and maintaining spreadsheet regarding medical records requests.

#### ***Disbursements in July 2016***

10. Total disbursements for work carried out or invoiced between 1 July 2016 and 31 July 2016 totalled \$128,519.72, these were made up of:
- (a) \$112,475.00 to Duncan Graham for preparation of settlement approval hearing, including providing opinion on settlement;
  - (b) \$7,877.79 to Crawford and Company for sending the further notice to group members in accordance with Court orders made on 29 June 2016;
  - (c) \$4,950.00 to Sarah Whitehouse for preparation of expert report regarding proposed group member questionnaire;
  - (d) \$1,498.86 to Law in Order for photocopying and scanning charges;
  - (e) \$1,012.00 to Nu legal for e-trial services; and
  - (f) Miscellaneous administrative disbursements, including telephone calls, photocopying, CabCharges, and USB totalling \$706.07.

#### **Administration Costs in August 2016**

##### ***Professional fees in August 2016***

11. The total professional fees for work carried out between 1 August 2016 and 31 August 2016 were \$192,296.50, being a total of 415.1 hours spent.
12. Professional fees incurred by *lawyers* for this period were \$104,789.30, being a total of 166.5 hours spent on the following and similar tasks:
- (a) Preparation for settlement administration including group member questionnaire, estates, capacity issues and eligibility assessment;

- (b) Reviewing and amending settlement administration precedents, including workflow documents, questionnaire, settlement information brochure, settlement scheme and protocol, glossary of terms and notice of eligibility;
- (c) Ongoing liaison with Shine, including establishing settlement committee, allocation of workload and decision making;
- (d) Managing financial aspects, including settlement sum transfer, interest calculations and receipt of settlement funds and processing payments to applicants and other reimbursement payments;
- (e) Reviewing legislation in respect to assessment of damages in regards to individual assessment process;
- (f) Reviewing medical records held by group members in order to consider materials required for preparation of Eligibility Books and considering potential issues including the implications of hospital practices regarding destruction of medical records;
- (g) Responding to and providing direction to non-lawyers regarding group members enquiries;
- (h) Reviewing opt-out notice from Federal Court and Crawford and Co reimbursement programme and impact on eligibility;
- (i) Drafting internal procedure documents, including processes for contacting legal representatives, authorities, issues with third parties representation;
- (j) Responding to group member inquiries regarding recovery of legal costs, settlement administration process and objections; and
- (k) Developing file management structure.

13. Professional fees incurred by *non-lawyers* during this period were \$87,507.20 being a total of 248.6 hours spent on the following and similar tasks:

- (a) Maintaining group member data in Online Database, including merging various historical data with new claimant registration data;
- (b) Responding to group members enquiries in relation to process, time frame and next steps and maintaining group member enquiry spreadsheet;

- (c) Assisting group members with registration issues and resolving technical difficulties with online registration process;
- (d) Registering group members online who complete paper registration, maintaining group member information spreadsheet regarding registration and sending, receiving, organising and filing registration forms;
- (e) Reviewing data contained in spread sheet regarding group member implant and revision and updating client data base;
- (f) Analysing data and statistics and maintaining database to ensure quality assurance and consistency;
- (g) Assisting in preparation of list of group members with Medibank Private liens;
- (h) Preparing schedule regarding group member allocation to law firms and identifying potential issues;
- (i) Investigating deemed revision claims in order to conduct questionnaire;
- (j) Assisting in process regarding 'do not destroy' hospital requests;
- (k) Amending and updating various internal documents including group members enquiries, weekly registration checklist, hard copy questionnaires, deemed revision verification document;
- (l) Investigating and interrogating differences in historical legislation of prosthesis lists focusing on femoral stems; and
- (m) Perusing and collating opt-out notices.

#### ***Disbursements in August 2016***

14. Total disbursements for work carried out or invoiced between 1 August 2016 and 31 August 2016 totalled to \$2,430.10, these were made up of:
  - (a) \$753.50 to E-Law for relativity data and project management;
  - (b) \$478.50 to Nu legal for e-trial service fees;
  - (c) \$308.28 to Law in Order for photocopying and scanning charges;

- (d) \$106.21 to various health care providers for supplying group member medical records; and
- (e) Miscellaneous administrative disbursements, including telephone calls, courier fees and CabCharges, totalling \$783.61.

#### **Administration Costs in September 2016**

#### ***Professional fees in September 2016***

- 15. The total professional fees for work carried out between 1 September 2016 and 30 September 2016 were \$230,899.90, being a total of 486.6 hours spent..
- 16. Professional fees incurred by *lawyers* during this period total \$129,347.90, with a total of 198.1 hours spent on the following and similar tasks:
  - (a) Ongoing development of workflow processes and resourcing, including developing internal procedures regarding deemed revision process and corresponding issues regarding questionnaire, completing and reviewing eligibility books, and obtaining ATO records;
  - (b) Responding to and providing direction to non-lawyers regarding group members enquiries in relation to deemed revisions, eligibility determinations and ongoing maintenance of script to respond to enquiries;
  - (c) Preparing for commencement of assessing claims for eligibility;
  - (d) Overseeing issues and next steps arising in preparation for group member questionnaire, estates, capacity issues and eligibility assessment;
  - (e) Responding to group member inquiries regarding updates, progress and next steps;
  - (f) Drafting, reviewing and amending authority packs in order to request medical records for group members including estates and group members under legal incapacity;
  - (g) Liaising with health care providers following closure of Crawford and Co reimbursement programme;
  - (h) Preparing and reviewing data for Medibank regarding negotiations and resolution of liens;

- (i) Reviewing legislation and cases in respect to assessment of damages, incapacity and estate issues;
  - (j) Ongoing liaison with Shine, including establishing settlement committee, allocation of workload and decision making; and
  - (k) Liaising with Norton Rose Fulbright Australia (NRFA) regarding various processes including resolution of liens, disposal of implants, and deeds of release.
17. Professional fees incurred by *non-lawyers* during this period total \$101,552.00 with a total of 288.5 hours spent on the following and similar tasks:
- (a) Responding to group members enquiries in relation to processes, time frame and next steps and maintaining group member enquiry spreadsheet;
  - (b) Reviewing, updating and testing functions to questionnaire fields in preparation for provision of questionnaire to group members;
  - (c) Resolving final allocation list and circulation to firms;
  - (d) Assisting with drafting authority forms and researching required documentation in order to request records from private health insurers, government agencies and other third parties;
  - (e) Developing requirements for IT systems following eligibility stage;
  - (f) Assisting with legal research and reviewing cases regarding gratuitous care for the purpose of individual assessment process and issues regarding legal incapacity;
  - (g) Assisting with drafting internal procedures including deemed revision process and flow charts and preparation of eligibility cover sheets
  - (h) Importing data into internal client database in preparation for pre-filling online questionnaire;
  - (i) Identifying high volume health care providers in preparation for various medical record requests, reviewing priority group member requests and preparing data to request medical records;

- (j) Sorting, filing and updating client database regarding hard copy questionnaires and op-out notices;
- (k) Preparing checklist regarding required documents for estates and group members under legal incapacity;
- (l) Completing monthly registration tasks; and
- (m) Training various paralegals regarding reviewing group member medical records and preparing eligibility cover sheet.

#### ***Disbursements in September 2016***

- 18. Total disbursements for work carried out or invoiced between 1 September 2016 and 30 September 2016 totalled \$508.75, these were made up of:
  - (a) \$227.21 to Law in Order for photocopying and scanning charges; and
  - (b) Miscellaneous administrative disbursements, including telephone calls and CabCharges, totalling \$281.54.

#### **Administration Costs in October 2016**

##### ***Professional fees in October 2016***

- 19. The total professional fees for work carried out between 1 October 2016 and 31 October 2016 were \$163,268.60, being a total of 357.7 hours spent.
- 20. Professional fees incurred by *lawyers* during this period total \$84,737.40, with a total of 134.6 hours spent on the following and similar tasks:
  - (a) Ongoing development of internal procedures and process documents regarding requesting medical records for claim preparation, reviewing and screening authorities, group members under legal incapacity, eligibility book preparation and individual assessment;
  - (b) Reviewing list of medical record requests, drafting list of proposed recipients and considering potential issues;
  - (c) Responding to and providing direction to non-lawyers regarding group members enquiries;

- (d) Updating, testing and resolving issues regarding online registration database and questionnaire;
- (e) Responding to group member inquiries regarding updates, progress, capacity issues and next steps;
- (f) Liaising with health care providers regarding medical records requests;
- (g) Ongoing liaison with Shine, including establishing settlement committee, allocation of workload and decision making;
- (h) Reviewing NDIS and Centrelink procedures and considering impact on group member claims;
- (i) Reviewing and settling various precedent letters;
- (j) Updating and reviewing workflow and priorities;
- (k) Liaising with DBH regarding settlement process and allocation of tasks;
- (l) Liaising with NRFA regarding medical records request process, resolution of liens and confirming eligibility criteria; and
- (m) Developing Collaborate electronic database regarding file sharing with law firms.

21. Professional fees incurred by *non-lawyers* during this period total \$78,531.20 with a total of 223.1 hours spent on the following and similar tasks:

- (a) Responding to group members enquiries in relation to process, time frame and next steps and maintaining group member enquiry spreadsheet;
- (b) Administering deemed revision verification form to group members;
- (c) Completing monthly registration tasks and finalising allocation of group members to law firms;
- (d) Drafting templates and finalising questionnaire including landing and ending pages and various fields;

- (e) Generating list of group members with ASR revision that had not registered, preparing mail out (including DBH group members) and contacting group members regarding registering before deadline;
- (f) Reviewing, sending, organising and screening authorities and resolving issues;
- (g) Updating group member data on spread sheet in preparation for bulk update onto database and reviewing data from questionnaire feeds into database;
- (h) Processing, reviewing and updating internal database regarding hardcopy registrations;
- (i) Reviewing and testing online questionnaire and resolving issues;
- (j) Preparing group member data regarding proceeding to eligibility phase and various estate claims in order to request required documentation; and
- (k) Assisting with legal research and reviewing cases regarding gratuitous care for the purpose of individual assessment process and reviewing ATO legislation regarding requirements.

#### ***Disbursements in October 2016***

- 22. Total disbursements for work carried out or invoiced between 1 October 2016 and 31 October 2016 totalled \$1,159.15, these were made up of:
  - (a) \$545.90 for travel expenses; and
  - (b) Miscellaneous administrative disbursements, including telephone calls and photocopying, totalling \$613.25.

#### **Administration Costs in November 2016**

##### ***Professional fees in November 2016***

- 23. The total professional fees for work carried out between 1 November 2016 and 30 November 2016 were \$238,757.20, being a total of 481.2 hours spent.
- 24. Professional fees incurred by *lawyers* during this period total \$157,304.40, with a total of 249.8 hours spent on the following and similar tasks:

- (a) Determining eligibility of group members;
- (b) Committee meeting to resolve various issues including eligibility, determinations, consideration of determinations referred to the Committee, late registrations, reviews, allocations to the four firms, communication with group members and liens;
- (c) Developing process to assess group members who have undergone potential Deemed ASR Revision;
- (d) Managing and facilitating process for requesting medical records;
- (e) Developing and facilitating process for preparation of eligibility books and eligibility assessment;
- (f) Responding to and providing direction to non-lawyers regarding group member enquiries in relation to settlement administration and phone interviews for questionnaire;
- (g) Managing development of and resolving issues in relation to group member database;
- (h) Considering and resolving settlement administration issues including eligibility determination, eligibility audits, workflow for medical record requests and assessment of deemed revision cases;
- (i) Managing development of group member administration portal to track claim progress;
- (j) Ongoing liaison with Shine Lawyers regarding resolution of liens and eligibility determinations;
- (k) Managing process for and considering issues in relation to claims delegated to DBH;
- (l) Managing and developing process for dealing with group members under a legal incapacity;
- (m) Reviewing and collating received medical records in preparation for progressing group member claims;
- (n) Auditing eligibility determinations of Shine group members;

- (o) Preparation of agenda for committee meeting;
  - (p) Managing process for completion of online and hardcopy questionnaire for group members;
  - (q) Managing process for sending and receiving group member authorities;
  - (r) Liaising with health care providers regarding the provision of medical material for eligibility determinations;
  - (s) Preparing for handover of settlement of administration from Sydney to Melbourne office and reviewing resourcing needs of settlement administration;
  - (t) Drafting and amending Notice of Fast Track Resolution;
  - (u) Developing and managing process for late registration applicants;
  - (v) Liaising with Department of Human Services and managing process regarding the resolution of liens;
  - (w) Research in relation to requirements for application for financial management orders and guardianship orders for group members under legal incapacity;
  - (x) Reviewing and amending Settlement Information Brochure;
  - (y) Amending proposal for design and structure of Collaborate portal; and
  - (z) Amending and inputting data into eligibility assessment tracking spreadsheet.
25. Professional fees incurred by *non-lawyers* during this period total \$81,452.80 with a total of 231.4 hours spent on the following and similar tasks:
- (a) Preparing Notices of Eligibility in preparation for sending to group members;
  - (b) Preparing list of registered group members in accordance with different firm allocations;
  - (c) Responding to group members enquiries in relation to process, questionnaire, time frame and next steps and maintaining group member enquiry spreadsheet;
  - (d) Liaising with medical providers regarding the provision of medical material for eligibility assessment;

- (e) Compiling list of record requests and authorities received in October in preparation for sending out high volume requests to surgeons and hospitals;
- (f) Collating finalised eligibility books for senior lawyer review;
- (g) Reviewing and maintaining spreadsheet regarding eligibility books;
- (h) Preparing, reviewing and maintaining spreadsheet regarding medical records requests;
- (i) Assisting with development of process for receiving authority documents from group members;
- (j) Preparing eligibility determinations for audit by Shine lawyers;
- (k) Analysing data in regards to group member registration;
- (l) Preparing lists of registered group members to send to NRFA for information regarding deeds of release;
- (m) Assisting with development of group member settlement administration database;
- (n) Reviewing returned authorities to assess adequacy of information for claim progression;
- (o) Reviewing spreadsheet of record requests to hospitals, spreadsheet of hospital contact details and template letters to hospitals; and
- (p) Drafting internal process document regarding preparation of and distributing hardcopy questionnaires.

***Disbursements in November 2016***

26. Total disbursements for work carried out or invoiced between 1 November 2016 and 30 November 2016 totalled \$44,163.69, these were made up of:
- (a) \$41,970.09 to various health care providers for supplying group member medical records;
  - (b) \$1,175.90 for travel expenses;
  - (c) \$106.04 to Law in Order for photocopying and scanning charges; and

- (d) Miscellaneous administrative disbursements, including telephone calls, photocopying, courier fees, postal charges and CabCharges, totalling \$911.66.

#### **Administration Costs in December 2016**

#### ***Professional fees in December 2016***

- 27. The total professional fees for work carried out between 1 December 2016 and 31 December 2016 totalled \$167,149.40, being a total of 354.2 hours spent.
- 28. Professional fees incurred by *lawyers* during this period total \$91,610.20, with a total of 139.6 hours spent on the following and similar tasks:
  - (a) Updating and reviewing consolidated list and considering issues regarding allocation to firms;
  - (b) Reviewing settlement administration documents and materials for preparation to make eligibility determinations;
  - (c) Ongoing liaison with Shine regarding eligibility book preparation and reviewing eligibility coversheets and determinations for the purposes of auditing claims;
  - (d) Reviewing medical records received and considering next steps including eligibility determination by Senior Lawyers;
  - (e) Reviewing eligibility cover sheets and relevant materials and making eligibility determination;
  - (f) Ongoing development of internal procedures and process documents, including, ASR Revision verification forms, resolution of liens, preparation of schedule of claimants who elected fast track and ready to proceed to liens phase, and reviewing legal issues arising from NDIS for group members under legal incapacity;
  - (g) Liaising with private health insurers regarding information required and resolution of liens;
  - (h) Ongoing liaison with DBH lawyers regarding preparation of eligibility books and requirements;

- (i) Allocating and supervising tasks provided to non-lawyers and providing feedback;
  - (j) Managing financial aspects in regards to interest calculations and receipt of settlement funds including financial management orders;
  - (k) Attending Federal Court regarding delivery of reasons;
  - (l) Reviewing and testing Collaborate electronic database and drafting proposed amendments to structure; and
  - (m) Responding to group member enquiries regarding updates, progress, capacity issues and next steps.
29. Professional fees incurred by *non-lawyers* during this period total \$75,539.20 with a total of 214.6 hours spent on the following and similar tasks:
- (a) Responding to group members enquiries in relation to general process, deemed revision process, authorities, questionnaires, time frame and next steps and maintaining group member enquiry spreadsheet;
  - (b) Drafting eligibility notices, fast track notices and explant preservation letters to group members;
  - (c) Monitoring, preparing and updating client data, including preparing for bulk upload to internal database and updating medical record requests;
  - (d) Updating precedent documents including deemed revision verification form, medical record requests and internal process manuals;
  - (e) Drafting precedents and generating schedule of fast track elections regarding resolution of liens;
  - (f) Reviewing hard copy authorities, completing audit of authorities on electronic spread sheet and processing hard copy registration forms;
  - (g) Preparing and finalising memorandum regarding functions of settlement administration protocols and settlement distribution scheme;
  - (h) Assisting with research regarding ATO requirements; and
  - (i) Processing and sorting medical record invoices.

### ***Disbursements in December 2016***

30. Total disbursements for work carried out or invoiced between 1 December 2016 and 31 December 2016 totalled \$43,668.28, these were made up of:
- (a) \$42,283.45 to various health care providers for supplying group member medical records;
  - (b) \$488.82 to Law in Order for photocopying and scanning charges; and
  - (c) Miscellaneous administrative disbursements, including telephone calls, photocopying, courier fees, and postal charges, totalling \$896.01.

### **Administration Costs in January 2017**

#### ***Professional fees in January 2017***

31. The total professional fees for work carried out between 1 January 2017 and 31 January 2017 were \$127,658.30, being a total of 248.6 hours spent.
32. Professional fees incurred by *lawyers* during this period total \$92,493.50, with a total of 148.7 hours spent on the following and similar tasks:
- (a) Reviewing progress and status of claim including eligibility determinations, senior lawyer referral, status of audit, elections, allocating eligibility books to paralegals, notices to be issued to group members and reviewing resolution of liens;
  - (b) Developing, reviewing and testing Collaborate online database and drafting manual;
  - (c) Liaising with NRFA regarding process for resolving Medicare liens and other third party claims;
  - (d) Liaising with Shine regarding various issues including interim payments, liens process, audits process, monthly payments, legal incapacity and estate issues;
  - (e) Considering process regarding tracking medical record requests and resolution of liens on client data base systems;

- (f) Developing document exchange platform between law firms, setting up precedent file management systems, drafting instructions and procedures;
- (g) Reviewing medical records and considering next steps;
- (h) Responding to and providing direction to non-lawyers regarding group members enquiries in relation to authorities including estate matters and general enquires regarding status of claim;
- (i) Responding to group member enquiries regarding elections following receipt of Notice of Eligibility;
- (j) Drafting various precedents to private health insurers and researching payment requirements regarding Medicare liens under bulk payment agreements;
- (k) Generating monthly payment schedule and preparing process for recording and processing payments to group members;
- (l) Liaising with DBH lawyers regarding deemed revision process and preparing eligibility claim book process;
- (m) Reviewing upcoming election expiry dates and updating claims regarding deemed individual assessment elections;
- (n) Reviewing and developing process regarding interim payment applications and drafting precedents;
- (o) Developing and updating process regarding group members with legal incapacity and estate claims including comparing processes with other class actions;
- (p) Drafting minutes and preparing agenda regarding settlement administration committee meeting;
- (q) Reviewing of settlement administration documents by Melbourne team in anticipation of commencing on distribution scheme.

33. Professional fees incurred by *non-lawyers* during this period total \$35,164.80 with a total of 99.9 hours spent on the following and similar tasks:

- (a) Reviewing and amending process regarding procedures for settlement administration process;
- (b) Responding to various group member enquires regarding interim payment applications, withdrawals and deemed revisions;
- (c) Requesting, updating and chasing medical record requests from healthcare providers including processing invoices;
- (d) Raising issues with supervisors regarding group member enquiries, questionnaire, preparation of eligibility books and authorities;
- (e) Reviewing status of group member questionnaires and assessing whether following up is required;
- (f) Drafting fast track notices to group members following election;
- (g) Filing hard copy authorities, medical records and questionnaires and updating IT systems;
- (h) Updating and reviewing schedule regarding resolution of liens;
- (i) Sending letters to various group members regarding deemed revision;
- (j) Reviewing and amending group member enquiries process document;
- (k) Reviewing documents required for legal incapacity claims in order to process payment; and
- (l) Handover to Melbourne team and conferences regarding settlement administration process.

***Disbursements in January 2017***

34. Total disbursements for work carried out or invoiced between 1 November 2016 and 30 November 2016 totalled \$10,397.91, these were made up of:
- (a) \$7,757.33 to various health care providers for supplying group member medical records;
  - (b) \$1,850.49 to Law in Order for photocopying and scanning charges; and

- (c) Miscellaneous administrative disbursements, including telephone calls, photocopying, postal charges and CabCharges, totalling \$790.09.