

# U.S. ASR HIP SETTLEMENT

MDL 2197

Claims Administration Procedure (“CAP”)			
CAP Number	3	Effective Date	3/12/15
Subject	Claims Processor Review and Notice Process for PART B Extraordinary Injury Fund (“EIF”) Claims		

- 1. Purpose.** This Procedure describes the process by which the Claims Processor will review claim submissions and issue notices for PART B Extraordinary Injury Fund (“EIF”) claims. The Claims Processor has established this procedure to facilitate the processing of PART B EIF claims in an efficient, fair, and friendly manner, with the goal of providing the claimant with full information about each claim’s status as early as possible and providing an opportunity for the claimant to respond. Capitalized terms not defined in this CAP shall have the same meanings given to such terms in the Settlement Agreement.
- 2. EIF Eligibility.** To be eligible for an award on any EIF claim, the claimant must be a Qualified U.S. Claimant (“QUSC”). A QUSC is an Enrolled U.S. Program Claimant who met the Eligibility Requirements of Section 2.1 of the Settlement Agreement and was determined to be eligible for a PART A Award or who was deemed to be a QUSC and eligible for a PART A Award by DePuy’s representatives pursuant to Section 5.1.5 of the Settlement Agreement.
- 3. Description of EIF Claims.** As provided in Article 8 of the Settlement Agreement, the PART B Program “is established as a means to provide supplemental awards to QUSCs who have incurred specified, unique, or extraordinary injuries in connection with their ASR Hip Implants, ASR Revision Surgery, or a subsequent Covered Re-Revision Surgery. QUSCs who claim an award under the PART B Award Program and whose Claim Package and Additional Claim Information, if any, demonstrate to a reasonable degree of medical certainty that the QUSC is entitled to an award under the PART B Award Program, may receive a supplemental award under the PART B Program.” Claimants may make EIF claims for the Past or Future injuries described in Article 8 of the Settlement Agreement and in the PART B Award Schedule. Claimants may make EIF claims for Past injuries for the delineated injuries that occurred before April 1, 2014. Claimants may make EIF claims for Future injuries for the delineated injuries that occurred on or after April 1, 2014, and no more than two years after the ASR Revision Surgery. The PART B Award Schedule sets out the matrices for Past and Future EIF claims, required documentation, and applicable reductions and limitations.
- 4. Filing EIF Claims.** To submit an EIF claim for a Past injury under PART B of the Settlement Program, claimants were required to submit a Green Claim Form along with all required documentation on or before September 30, 2014. To submit an EIF claim for a Future injury under PART B of the Settlement Program, claimants must submit a Green Claim Form and all required documentation within 90 days of the respective claim’s accrual.

5. ***Burden of Proof and Burden of Production.*** As described in Section 8.2.6 of the Settlement Agreement, claimants have the burden of proof and burden of production with respect to the contemporaneous Medical Records submitted in the Claims Package and any additional contemporaneous Medical Records submitted for establishing that the criteria has been met for any PART B Award.
6. ***Required and Permitted Documentation.*** Claimants should carefully review and comply with the documentation requirements for each Past and Future Matrix Level claim submitted. The Claims Processor shall evaluate each claim based on these documents. Claimants must submit medical records contemporaneous with the initial onset, diagnosis, treatment, and/or occurrence of the medical condition at issue as evidence of the medical conditions described in the Settlement Agreement. There is no discovery process involved in the evaluation or determination of PART B Awards. There are no depositions, no written discovery, and no hearings or trials in connection with the filing or evaluation of PART B claims. Claimants may not submit affidavits, expert reports, depositions, transcripts, or medical articles in support of an EIF claim. If claimants submitted documents in support of an EIF claim as part of their PART A claim, they do not have to submit those documents again. Instead, claimants may submit a letter identifying the location within the claim file of any documents that they believe are required or pertinent to each EIF claim. Pursuant to Section 4.1.5 of the Settlement Agreement, claimants may submit additional documentation (including, but not limited to, tax returns and W-2 statements) for the limited purpose of proving lost wages or loss of earnings under Matrix Levels VI and VII.
7. ***Issuance of an EIF Claim Notice.*** The Claims Processor will issue an EIF Claim Notice to claimants to inform them of the status or outcome of their filed EIF claim(s), following the review of each EIF claim or, in the case of an appeal, after the Special Master's or Claims Administrator's review. The EIF Claim Notice will contain information regarding the Claims Processor's or Special Master's findings, including details on any eligible, denied, or incomplete findings, and the next steps available to claimants. Depending on the completeness of the claim and the applicable stage of the EIF review process, the EIF Claim Notice will contain one of the following five determination types for each claim: (a) Deficiency Determination; (b) Preliminary Determination; (c) Final Determination; (d) Special Master Determination; or (e) Claims Administrator Determination. **PLEASE NOTE: The Claims Processor will issue a separate EIF Claim Notice for each EIF claim filed by each claimant.**
8. ***Initial Claims Review.*** The Claims Processor will conduct an initial review of each EIF claim to determine whether all required documents are present.
  - (a) ***If the Documentation is Not Sufficient.*** If the Claims Processor finds that documentation is not sufficient to determine EIF eligibility, the Claims Processor will issue a Deficiency Determination, which will provide claimants with a 60-day deadline for providing the requested documentation. Following receipt of a claimant's response, or after expiration of the 60-day deadline with no response, the Claims Processor will review the claim and issue a Preliminary Determination, reflecting an eligibility or denial determination.

- (b) ***If the Documentation is Sufficient.*** If the Claims Processor finds a claim eligible, the Claims Processor will issue a Preliminary Determination, which will provide the claimant with a 45-day deadline for responding. The claimant may accept the award if the claimant agrees with the Preliminary Determination or may contest the award and submit additional records. If the claimant accepts the award, the Claims Processor will place the claim in line for payment unless the Green Claim Form is not complete, in which case the claimant must complete the Green Claim Form before the Claims Process will place the claim in line for payment.
9. ***Failure to Make a Timely Response to a Preliminary Determination.*** The Preliminary Determination will contain a 45-day deadline to respond. Failure to respond by the deadline will result in the claimant being deemed to have accepted the findings of the Preliminary Determination and being prohibited from appealing such findings to the Special Master.
10. ***Second Review and Final Determination Notice Issuance.*** The Claims Processor will conduct a second review of any claim where the claimant contested the Preliminary Determination. Following that review, the Claims Processor will issue a Final Determination as to the medical determination/value of the claim. The Final Determination will inform the claimant of the right to appeal. If the claimant does not appeal the Final Determination, the Claims Processor will place the claim in line for payment if the claim is eligible.
11. ***Failure to Make a Timely Response to a Final Determination.*** The Final Determination will contain a 30-day deadline to respond. Failure to respond by the deadline will result in the claimant being deemed to have accepted the findings of the Final Determination and being prohibited from appealing such findings to the Special Master.
12. ***Appeal of Final Determination Notice and Record on Appeal.*** Claimants may appeal the Final Determination to the Special Master, who shall be assigned to claims at random, if they disagree with the Claims Processor's findings. The Settlement Agreement provides that the Special Master will review, for an abuse of discretion, whether the Final Determination was correct based solely on the records submitted to the Claims Processor prior to the Claims Processor's issuance of the Final Determination and the terms of the Settlement Agreement. Claimants may not submit any new or additional evidence in connection with any appeal. Unless the Claims Processor appeals the finding of the Special Master to the Claims Administrator, after the Special Master issues a decision, the Claims Processor will issue an amended determination notice consistent with the findings of the Special Master.
13. ***Claims Processor Appeal.*** The Claims Processor may appeal the finding of the Special Master to the Claims Administrator within 30 days following written notification from the Special Master on the outcome of the claimant's appeal to the Special Master.
14. ***Review by the Claims Administrator.*** If a timely appeal is made to the Claims Administrator, the Claims Administrator will determine whether the award determination by the Claims Processor and/or Special Master was correct based on the documentation submitted to the Claims Processor prior to the Claims Processor's award determination and

the terms of the Settlement Agreement. The finding of the Claims Administrator will be final, binding, and non-appealable. After the Claims Administrator's decision, the Claims Processor will issue an amended determination notice consistent with the findings of the Claims Administrator.

**15. *Authority of Claims Processor or Claims Administrator to Correct Awards.*** Pursuant to Section 16.5 of the Settlement Agreement, if the Claims Processor or Claims Administrator learns or determines that all or any part of an award or determination of ineligibility or denial of an award was incorrect, the Claims Processor shall issue a revised determination.

**16. *Change from Eligible to Ineligible During Contest.*** If during a contest or appeal, the Claims Processor discovers that a claimant previously found eligible for an award is not eligible, the Claims Processor will issue a new Preliminary Determination denying the claim, which shall afford the claimant all contest and appeal rights attendant to the claim as if the original Preliminary Determination had been a denial.

**17. *Duration of the CAP.*** This CAP shall apply to all claims processed after the Effective Date stated above and shall terminate only upon cancellation or modification by its signatories.

**APPROVED:  
Claims Administrator**

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By: /s/ James J. McMonagle

Date: 3/12/15

**Claims Processor**

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By: /s/ Lynn C. Greer

Date: 3/12/15

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