

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 14/06/2019 2:33:45 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

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



A handwritten signature in blue ink, reading "Warwick Soden".

Dated: 17/06/2019 10:29:53 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.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



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: **Rebecca Lee Jancauskas**
Address: Level 13, 160 Ann Street, Brisbane QLD 4000
Occupation: Australian Legal Practitioner
Date: 14 June 2019

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Filed on behalf of (name & role of party) Maurice Blackburn Pty Limited and Shine Lawyers Pty Limited as Joint Scheme Administrators
Prepared by (name of person/lawyer) Rebecca Jancauskas
Law firm (if applicable) Shine Lawyers
Tel 07 3006 6051 Fax 07 3229 1999
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[Form approved 01/08/2011]

afll

R Jancauskas

I, Rebecca Lee Jancauskas, Australian legal practitioner, of Level 14, 160 Ann Street, Brisbane, in the State of Queensland, affirm:

1. I am a Special Counsel employed by Shine Lawyers Pty Ltd (**Shine**).
2. I was admitted to practice as a solicitor in December 2002 and have been employed by Shine since December 2006.
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. Shine acted for the Second Applicant and a number of Group Members in this proceeding.
5. On 29 June 2016, the Court made orders appointing Maurice Blackburn and Shine Lawyers as joint administrators (**Administrators**) of the Amended Settlement Scheme in this proceeding. On 14 June 2017 the Court approved further amendments to the Amended Settlement Scheme (**the Scheme**). On 21 June 2018, the Court approved additional amendments to the Scheme.
6. Before Shine was appointed as joint administrator, I had conduct of this proceeding on behalf of the Second Applicant. Since Shine was appointed as joint administrator, I have shared responsibility for the administration on behalf of Shine with Ms Janice Mary Saddler, Head of Litigation & Loss Recovery of Shine. I am therefore satisfied I have the knowledge and information to make this affidavit.
7. In this affidavit I use terms that are defined in the Scheme and Settlement Deed.

REPORT OF ROSS NICHOLAS

8. Mr Nicholas presented Shine with a draft report in respect of our costs on 22 May 2019. In his draft report Mr Nicholas observed that Shine's itemised account appeared higher than he would have expected.
9. Shine's Legal Costs Team undertook a further review in light of Mr Nicholas' comments and prepared a revised version of Shine's itemised account.



AFFIDAVIT OF JULIAN SCHIMMEL

10. I have reviewed a draft affidavit of Julian Schimmel that is proposed to be filed on behalf of the Administrators in support of this application (**Mr Schimmel's draft affidavit**).
11. I have informed Mr Schimmel that Shine agrees with the content of his draft affidavit.
12. The purpose of this affidavit is to report to the Court upon the matters that are specific to Shine's role in the Administration.

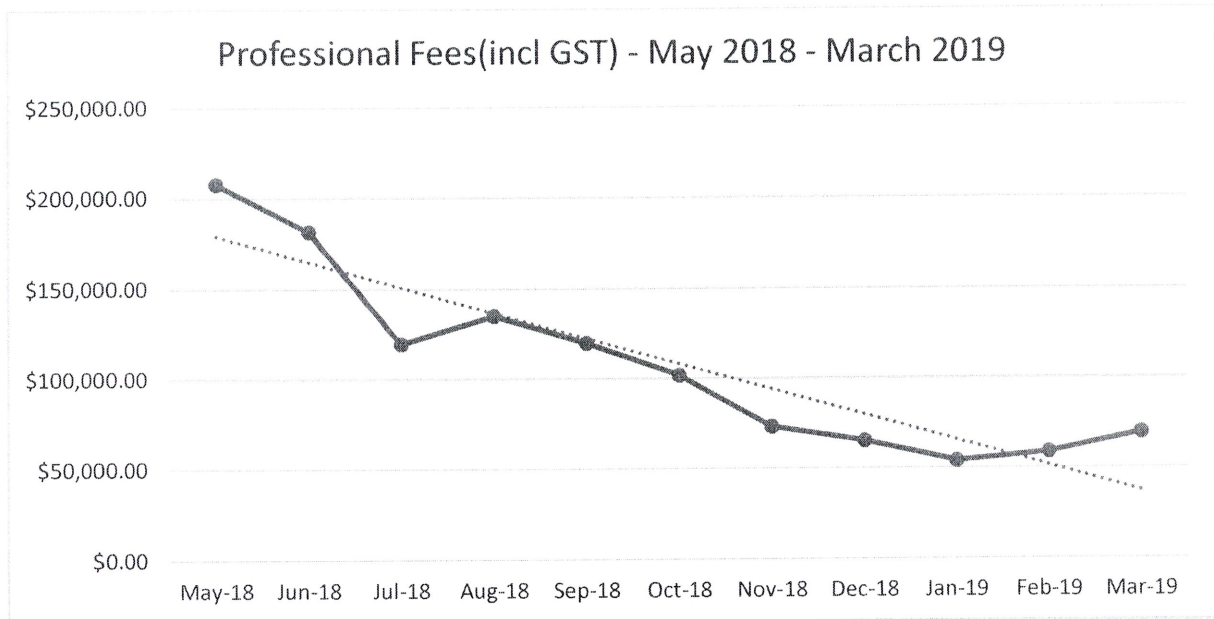
WORK PERFORMED AND ADMINISTRATION COSTS

13. As stated in the 2018 Shine Administration Report, 26 task codes were designed and implemented for the purpose of recording work performed on the settlement administration. Those task codes reflect discrete areas of work that the Administrators are required to perform under the Scheme. Since April 2017, all work done by Shine under clause 13.1 of the Scheme was assigned one of these task codes.
14. Shine is seeking approval of Administration Costs for the period May 2018 to March 2019 (the **2019 Relevant Period**).
15. As was also the case in 2018, I have prepared (with assistance from Anna Fanelli, Solicitor of Shine) a report which, for each of the 26 task codes:
 - (a) sets out the monthly amount of professional fees; and
 - (b) provides a narrative summary of the work undertaken, and a discussion of any patterns or changes in the monthly fees.
16. I refer to this report as the "**2019 Shine Administration Report**", a copy of which is contained in annexure **RLJ-2** to this affidavit.

Administration Costs under clause 13.1 of the Scheme

17. In addition to the information contained in the 2019 Shine Administration Report, I make the following general comments about Administration Costs and the work involved in the administration of the settlement since the first half of 2018.
18. The overall pattern of monthly Administration Costs incurred by Shine is illustrated in the following graph:





19. I agree with Mr Schimmel's draft affidavit where he states those tasks that he regards as the "core" administration work (i.e. work directly related to the progress of claims through the Scheme).
20. This core administration work undertaken by Shine has varied from month to month and there was also a change in the mix of these areas of work over time. This reflects the following matters:
- (a) Between May 2018 and October 2018 costs were high with respect to Individual Assessment (task code 8) as Shine continued to work intensively to progress Individual Assessment claims. This increase in work and costs associated with Individual Assessments is reflected in a corresponding increase in work and costs associated with dealing with Assessors (task code 3) and Reviews (task code 9) from May 2018 to December 2018. This is also reflected in an increase in work and costs associated with payments (task code 19) starting in July 2018 and continuing until December 2018;
 - (b) From November 2018 to March 2019 costs with respect to the Individual Assessment process were lower than in the preceding months;
 - (c) Between July 2018 and November 2018 costs were relatively high with respect to eligibility determinations (task code 2) as Shine dealt with eligibility outstanding determinations. This increase in work and costs associated with eligibility determinations is reflected in a corresponding increase in work and costs associated with sending notices to Group Members from August 2018

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to December 2018 (task code 4) (this includes sending Notices of Eligibility, Notices of Fast Track Resolution and Notices of Individual Assessment election).

21. Shine has now completed 93 individually assessed claims. As at 12 June 2019, Shine still has 32 Individual Assessments to finalise. In May and June 2018 costs were high, which was largely attributable to the work done by Shine in order to contribute to the first 100 individually assessed claims that were incorporated in Mr Atkins' actuarial analysis in June 2018. From July 2018 through to March 2019, costs did not continue to accrue at the same rate and the work relating to Individual Assessments evened out.
22. In her affidavit dated 23 June 2017, Ms Saddler provided information as to the estimates of time and costs that would be incurred by Shine for the period April 2017 to 2019 in relation to general administration work. In respect of those estimates relating to the 2019 Relevant Period I now report as follows:
 - (a) January 2018 to 31 December 2018: Ms Saddler expected that work associated with the general administration would reduce by a further modest amount during this period. This is because Ms Saddler expected all Fast Track Resolution payments would have been paid and some Individual Assessments would have been paid. I anticipated that all Fast Track Resolution payments and some Individual Assessments would be paid by the end of 2018. In relation to this prediction, 94.16% of Fast Track Resolution payments and a significant portion of Individual Assessment claims were finalised by early 2019.
 - (b) Post January 2019: Ms Saddler opined that in 2019 most of the individually assessed claims would be finalised and many would be paid. Therefore, she believed the Administrators would only be responding to and undertaking work in relation to new registrations. This prediction was, in my belief, accurate. As at the date of this affidavit, 74.4% of Shine's Individual Assessment claims have been finalised and 97.6% of Fast Track Resolution claims have been resolved.

Administration Costs under clause 13.2 of the Scheme

23. Clause 13.2 of the Scheme provides for fixed fee amounts to be paid to the Administrators (or their delegates) in relation to specified claim preparation work,




namely the preparation of Eligibility Books and Claim Books and the resolution of Liens.

24. The work involved in preparing an Eligibility Book and resolving Liens is set out in Ms Saddler's affidavit filed in these proceedings on 8 June 2017. The work involved in preparing a Claim Book is set out in my affidavit filed in these proceedings on 18 June 2018.
25. In the present application, Shine seeks approval of Administration Costs under clause 13.2 for:
 - (a) 52 Group Members whose Fast Track Resolution claims have been paid;
 - (b) 65 Group Members whose individually assessed claims have been paid; and
 - (c) five Group Members who were found to be ineligible under the Scheme.

Administration work performed where costs not being sought

26. During the 2019 Relevant Period, 4.56% of the hours of work completed by Shine were not claimed as Administration Costs.
27. Time entries for this "no charge" work are recorded in Shine's monthly itemised accounts with details of the amount of time recorded for each time entry and with the amount of professional fees as \$0.00.
28. This "no charge" work included:
 - (a) work associated with instructing and engaging Mr Ross Nicholas as the independent costs assessor;
 - (b) attempted/unanswered telephone calls: it is Shine's practice to not charge for calls which are not answered, unless a detailed telephone message is left for the Group Member or third party; and
 - (c) administrative tasks such as scanning and photocopying.

Disbursements

29. As noted in Mr Schimmel's draft affidavit, Shine seeks to be reimbursed a total of \$438,231.31 for disbursements paid by Shine during the 2019 Relevant Period. The disbursements consist of the following expenses:


- (a) Counsel fees of \$403,590.00, for Assessors to complete Individual Assessments, Reviews, and opinions relating to Group Members under a legal incapacity and other complex claims;
- (b) Fees for medical records and reports of \$32,586.37; and
- (c) Other miscellaneous expenses of \$2,054.94.

FUTURE WORK AND ADMINISTRATION COSTS


- 30. Mr Schimmel and I have had a number of discussions regarding the future of the settlement administration including costs for the remainder of the administration.
- 31. The content in Section E of Mr Schimmel's affidavit reflects his and my collective views and expectations regarding the future of the settlement administration, and the content of that final section of Mr Schimmel's affidavit was developed as a result of the discussions that he and I have had and it incorporates information that I provided to Mr Schimmel.
- 32. Rather than both Mr Schimmel and I having sections of our respective affidavits that address the future of the settlement administration, we felt that it was preferable for Mr Schimmel's affidavit to canvass future work and costs in relation to the settlement administration as a whole.

Affirmed by the deponent
at Brisbane
in Queensland
on 14 June 2019

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Signature of deponent

Before me:


Signature of witness

An Australian legal practitioner within the meaning
of the *Legal Profession Act* (QLD)

Name of witness: Anna Jane Fanelli
Address of witness: Level 13, 160 Ann Street, Brisbane QLD 4000