UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE:	§	**CASE NO. 00-CV-00005-DT**
	§	**(Settlement Facility Matters)**
SETTLEMENT FACILITY-	§	
DOW CORNING TRUST	§	**Hon. Denise Page Hood**
	§	**Chief Judge**

STIPULATION AND ORDER REGARDING PROTOCOLS FOR PROCESSING MDL DISEASE CLAIMS FOR CLAIMANTS WHO QUALIFY FOR THE DOW CORNING SETTLEMENT PROGRAM

Whereas, the final deadline for submissions to the Dow Corning Settlement Program was June 3, 2019; and

Whereas, the Parties, the Court, and the Finance Committee have considered procedures that are necessary to enable the final review of claims and the termination of the Settlement Program; and

Whereas, to facilitate the timely and orderly termination of the settlement program, the Court has issued Closing Order 1 and Closing Order 2 that address and specify protocols for finalizing the review, evaluation, and payment of claims submitted to the Dow Corning Settlement Program; and

Whereas, Section 4.02(a) of Annex A to the Settlement Facility and Fund Distribution Agreement ("SFA") provides for the review of certain disease claims for Settling Breast Implant Claimants who previously submitted a Disease Compensation Form and required medical documentation to the MDL Claims Office even if those claimants have not submitted a disease claim form to the Settlement Facility ("MDL Disease Claims"); and

Whereas, it is appropriate and necessary to implement protocols governing the review and evaluation of these MDL Disease Claims to ensure timely termination of the operations of the Settlement Facility,

The Parties agree as follows:

A. Relevant Language from Dow Corning Settlement Program and Claims Resolution Procedures, Annex A to the Settlement Facility and Fund Distribution Agreement:

1. Section:

4.01 ***General.*** To apply for compensation, Settling Personal Injury Claimants must submit appropriate forms and documentation required to support a Claim as defined at Section 6.02 for Breast Implant Claimants….

2. Section:

4.02 ***Submissions for Settling Breast Implant Claimants with Prior Filings.***

(a) ***Prior Disease Compensation Form.*** Settling Breast Implant Claimants who submitted a Disease Compensation Form, along with the required medical documentation, to the MDL 926 Claims Office in connection with the Original Global Settlement or the Revised Settlement Program or the Foreign Revised Settlement Program are not required to submit these same forms and supporting documents to apply for compensation under the Disease Payment Option; however, such disease claims will not be processed unless and until (1) the Claimant first submits a "Disease or Expedited Payment Option Claim Form" or (2) all other Disease Claims have been processed. Breast Implant Claimants may submit new or supplemental medical documentation in addition to any disease claim previously filed in the Original

Global Settlement, Revised Settlement Program, or the Foreign Revised Settlement Program.

(b) ***Prior Proof of Manufacturer Documents***. Settling Breast Implant Claimants who submitted a Proof of Manufacturer Form and/or proof of one or more Breast Implants to the MDL 926 Claims Office must complete and submit a Proof of Manufacturer Form and proof specific to the Dow Corning Settlement Program before Proof of Manufacturer will be processed. The Claims Administrator has an obligation, as specified in Section 5.01, to determine that there is acceptable proof of a Dow Corning implant according to Schedule 1 to this Annex A.

3. Section:

7.02 ***Order of Processing.***

(c) ***Other Payment Options.*** The Claims Office will not process Claims for Disease Payment Option benefits unless the Claimant has submitted acceptable (or has only a minor deficiency in) Proof of Manufacturer of an eligible implant.

B. Relevant Term of Closing Order 1 for Final June 3, 2019 Claim Deadline(Establishing Final Cure Deadlines, Revised Claim Review Procedures, and Appeal Deadlines) (ECF 1447):

1. Paragraph**:**

21. Deadline for Proof of Manufacturer Submissions Submitted Before June 1, 2018. Proof of Manufacturer submissions submitted before June 1, 2018 must be completed and have all deficiencies cured by June 3, 2019.

C. MDL Disease Claim Submissions to the Settlement Facility:

The Settlement Facility has advised the Parties that there are 21,016 MDL Disease Claims. None of the MDL Disease Claims have been reviewed. A total of 15,555 MDL Disease Claims had not submitted a Proof of Manufacturer ("POM") form to the Settlement Facility as of the first quarter of 2019. The Settlement Facility further advises that 5,461 of these MDL Disease Claimants did submit a Proof of Manufacturer form and the Settlement Facility has reviewed those POM submissions and advised the claimant of any deficiencies in the POM submission. The Settlement Facility advises that 3,093 of the 5,461 MDL Disease Claimants who submitted POM have Proof of Manufacturer that is either acceptable or has a minor deficiency. The remaining 2,368 MDL Disease Claimants who submitted POM were found to have unacceptable proof.

The following protocols will govern the review and processing of these MDL Disease Claims consistent with the intent of Section 4.02(a) of Annex A:

D. Processing Protocols for MDL Disease Claims:
Treatment of MDL Disease Claims Under Closing Order 1:

1. The Settlement Facility shall review the MDL Disease Claims for the 2,710 MDL Disease Claimants whose POM was reviewed before June 3, 2019 and determined to be acceptable. The Settlement Facility shall apply its standard protocols and issue an NOS letter that specifies a one-year period to cure any deficiencies in the disease claim to all such claimants.
2. Under Closing Order 1 all deficiencies in POM submissions made before June 1, 2018 must be cured through a submission that is postmarked on or before June 3, 2019. If any claimant with an MDL Disease Claim that has deficient POM that was submitted before June 1, 2018 (either a minor deficiency or unacceptable

proof) and submitted timely documents to cure the deficient POM, then that MDL Disease Claim will be reviewed as provided in paragraph 1 above.

3. The Settlement Facility will review all MDL Disease Claims that submitted POM by June 3, 2019 in accordance with the terms of Closing Order 1.
4. The Settlement Facility shall not review MDL Disease Claims if the Proof of Manufacturer was not timely submitted on or before June 3, 2019 or if the Proof of Manufacturer submitted before June 1, 2018 was found to be unacceptable as defined at Annex A, Schedule I, Part I(E) and was not cured by a submission made on or before June 3, 2019.
5. The Settlement Facility shall review MDL Disease Claims where the Proof of Manufacturer was submitted before June 1, 2018 and was found to have a minor deficiency to determine whether the medical records submitted with the disease claim may be used to cure the deficiency.

E. Timing of Processing MDL Disease Claims.

Section 4.02(a) of Annex A provides that such MDL Disease Claims are to be processed after all other disease claims are processed. This provision cannot be interpreted to mean that the Settlement Facility must finalize every other disease claim through cure deadlines and appeals before processing the MDL Disease Claims. Indeed, such a delay would be detrimental to the ability of the Court to effect orderly closure and to determine final distributions, including additional Second Priority Payments, if any, authorized under the terms of the Plan. The purpose of the provision is to avoid undue delay in processing the disease claims that are filed under the

normal Plan procedures. Accordingly, the Settlement Facility shall process the MDL Disease Claims as provided herein.

SO ORDERED.

Dated: September 25, 2019

S/DENISE PAGE HOOD
Denise Page Hood
Chief Judge

SO STIPULATED and AGREED:

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Claimants' Advisory Committee