CLAIMANTS' ADVISORY COMMITTEE
In re: Dow Corning Corporation, Debtor
P.O. Box 61046
Houston, TX 77208-1406

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Via Federal Express and
By E-Mail Submission
July 30, 2004

Honorable U.W. Clemon
United States District Court
Northern District of Alabama
1729 5th Avenue North
882 Hugo L. Black U.S. Courthouse
Birmingham, Alabama 35203

Honorable Denise Page Hood
United States District Court
Eastern District of Michigan
231 West Lafayette Boulevard
Room 235
Detroit, Michigan 48226

Re: Appeals from the Claims Administrator – Position Statement of Claimants' Advisory Committee

Dear Judges Clemon and Hood,

In response to a letter we received from the Honorable Frank Andrews, Appeals Judge for both the RSP and the Settlement Facility – Dow Corning Trust, and pursuant to Ed Gentle's correspondence of June 30, 2004, the Claimants' Advisory Committee ("CAC") in the Amended Joint Plan of Reorganization of Dow Corning Corporation ("Dow Corning Settlement Plan") submit this position statement with regard to the issue of implant identification for Dow Corning breast implants in the RSP. This statement is based on the unique knowledge and role that CAC member, Dianna Pendleton-Dominguez, played in both the RSP and the Dow Corning Settlement Plan.

From 1992-1997, attorney Dianna Pendleton-Dominguez worked on behalf of the Plaintiffs' Steering Committee in MDL 926 on various issues,

including running the PSC's Discovery office in Cincinnati, Ohio, and heading the Claims Assistance Program in the original global settlement and RSP. In the RSP, she was the sole plaintiffs' representative who worked with the then-MDL Claims Administrator Ann Cochran and representatives of Bristol, Baxter and 3M in developing the list of eligible brand and manufacturer names for the RSP. In this capacity, Ms. Pendleton-Dominguez participated in numerous conference calls and meetings to develop the RSP list of brand names identified as Exhibit G to the Revised Settlement Program Notice, MDL Order No. 27 and 27A. Ms. Pendleton-Dominguez was also involved in negotiating the list of eligible brand names in the Dow Corning Settlement Plan.

Development of the RSP List of Brand Names

In 1995, the MDL Claims Administrator held a series of conference calls with representatives of Bristol, Baxter and 3M to identify various brand and manufacturer names that had been listed in medical records and forms in the original global settlement. In addition, representatives of these companies were asked to provide information specific to the implant brands and names associated with each of their respective companies and predecessor companies. These efforts were hampered somewhat because Bristol, Baxter and 3M no longer had ownership in the companies that made breast implants and had to develop the list of brand names based on documents in their possession.

The list of brand names was further supplemented with information supplied by Ms. Pendleton-Dominguez. In the underlying discovery in MDL 926, Ms. Pendleton-Dominguez had compiled an extensive file of research on breast implant identification including a list of brand names, doctor's names affiliated with various manufacturers, and catalog and serial number information. This research included information on brand names that were not associated with Bristol, Baxter and 3M and were therefore not eligible for compensation in the RSP, i.e., Bioplasty, Cox-Uphoff, Mentor, Koken, etc.

Efforts were made to include a representative of other companies where possible, such as Mentor and Dow Corning, so that brand names and names associated with each of these companies could be identified. Some information was obtained from Mentor; however, Dow Corning was not available to participate in this process since it had filed for bankruptcy in May 1995. As a result, Exhibit G was developed without the input of Dow Corning.

References to "Cronin" breast implants

Dr. Thomas Cronin was a plastic surgeon in Houston, Texas who is credited with the "invention" and development of the first silicone gel breast implant in 1962. By 1964, Dow Corning had commercialized silicone gel breast

implants and, throughout most of the 1960s and into the early 1970s, was the only manufacturer of this product. Dr. Cronin continued to pioneer this area of plastic surgery; consequently, plastic surgeons routinely referred to the Dow Corning silicone gel breast implant as "Cronin" implants. When the proposed list of brand names for Dow Corning was developed for the RSP, the name of Cronin was listed as a Dow Corning breast implant based on the best information available at that time to the MDL Claims Administrator, Bristol, Baxter, 3M and the PSC.

Development of acceptable proof of a Dow Corning breast implant

In 1999, the proposed Dow Corning Settlement Plan was submitted to the bankruptcy court in Michigan for confirmation. While the Settlement Plan incorporated most of the terms of the RSP verbatim, one section of the RSP that Dow Corning declined to adopt was the list of brand names associated with Dow Corning. Instead, a list was developed through negotiation in much the same way that RSP's Exhibit G (the list of eligible Bristol, Baxter and 3M brand names) was developed. The end result was that several references on Exhibit G were changed, deleted or modified. The chart below clarifies these changes.

Implant Brands and Manufacturers
(changes made in Dow Corning Settlement Plan are listed in BOLD)

Revised Settlement Program's Covered Brand Names for Dow Corning	**Dow Corning Plan's Covered Brand Names for Dow Corning**
Cronin	**Covered only for years 1963 – 1971**
Dow Corning	Covered
**	Dow Corning Wright, DC or DCW Covered
MFP	**Not covered**
MSI	**Not covered**
Mueller, V. Implanted 1/1/68 to 8/31/74	Covered
NFP (Non-Fixation Patch)	**Not covered**
Silastic	Covered, also SILASTIC covered
Silastic II	Covered, also SILASTIC II covered
Silastic II MSI	Covered, also SILASTIC MSI covered
**	**If the medical or hospital records says only "silastic-type" (lower case) without any additional identifying information (e.g., lot or catalog number) – Not covered**
**	**"silastic" – in all lower case letters – contained in the contemporaneous operative report for breast implantations occurring prior to 1969 provided there is no other information in the Claimant's records inconsistent with a Dow Corning product. This shall be used as a brand name only if the Claimant does not have explant records**

Revised Settlement Program's Covered Brand Names for Dow Corning	Dow Corning Plan's Covered Brand Names for Dow Corning
	demonstrating a unique identifier – Covered
**	**"silastic" – in all lower case letters – for implantations during or after 1969 – Not covered**
Varifil	Covered
V. Mueller Implanted 1/1/68 to 8/31/74	Covered

** Exhibit G did not contain a similar reference as the Dow Corning Settlement Plan, but we assume that any reference to Dow Corning, Dow Corning Wright, DCW, or silastic "lower case" was deemed sufficient for the MDL 926 Claims Office to apply the multiple manufacturer discount.

As noted in the chart above, there were numerous changes made in the Dow Corning Settlement Plan to the list of Dow Corning brand names listed in the RSP's Exhibit G. The two most significant changes were the date limitations for Cronin (1963-1971) and the date and lower case limitations for references to "silastic." The Dow Corning Settlement Plan included a process where claimants with these otherwise "Not Covered" references in their medical records could request an individual review of their proof of manufacturer directly by Dow Corning. This process is described in the Claims Resolution Procedures – Annex A – at Schedule I, Part F, and provides that:

> Reorganized Dow Corning will cooperate fully with the Claims Office, including the staff members working in the Claims Assistance Program and individual Claimants in providing assistance for and acceptance of manufacturer identification of Dow Corning Breast Implants .... Reorganized Dow Corning will also review, at the request of the Claims Office and/or the Claims Assistance Program, Proof of Manufacturer submissions that do not meet the standard for acceptable proof.

This process – referred to as the Individual Review Process – allows claimants whose proof consists of a reference to a Cronin implant post-1971 or a "silastic" implant (all lower case after 1969) to submit their records to Dow Corning to review on a case-by-case basis. In this manner, Dow Corning believed that it could consider all information available to it, including its sales data showing sales to particular doctors and hospitals, to determine if it would accept a claimant's proof submission as proof of a Dow Corning implant. This process has resulted in Dow Corning's acceptance of some post-1971 Cronin and "silastic" (all lower case after 1969) references and rejection for others.

Claimants' Advisory Committee position with respect to Cronin post-1971 and "silastic" (all lower case after 1969) references for RSP claimants

Once Dow Corning has rejected a claimant's post-1971 Cronin or "silastic" proof of manufacturer submission, this is a final statement that the claimant does not have a Dow Corning breast implant. It cannot be changed on appeal to either the Claims Administrator or the Appeals Judge. As a result, the CAC believes that claimants whose compensation was reduced in the RSP based on a post-1971 Cronin reference or a reference to "silastic" (all lower case after 1969) should be entitled to provide the denial of proof letter from the Settlement Facility to the MDL 926 Claims Office and recover the remaining 50% of their RSP award. We believe that this is the only fair result.

In the RSP, Bristol, Baxter and 3M were the final arbiters of whether they would accept or reject a brand or doctor's names as acceptable proof of one of their breast implants. Dow Corning did not have this same opportunity or input on its product brands in the RSP. Now that such a list of covered Dow Corning implants exists, this list should be adopted by the MDL Court and should replace the references to Dow Corning in Exhibit G.

Relief Requested

The Claimants' Advisory Committee therefore respectfully urges the MDL Court to adopt the list of covered Dow Corning implants contained in the Dow Corning Settlement Plan and replace this with the current references to Dow Corning brand names in the RSP's Exhibit G. As a consequence, claimants who received a 50% multiple manufacturer reduction in the RSP based on Exhibit G should be re-evaluated in light of the covered Dow Corning brand names in the Dow Corning Settlement Plan to determine if the multiple manufacturer reduction applies.

Respectfully submitted,

CLAIMANTS' ADVISORY COMMITTEE

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Ernest Hornsby, Esq.
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cc: Elizabeth Trachte-Huber, Claims Administrator for SF-DCT
Hon. Frank Andrews, Appeals Judge
Jean Eliason, Claims Administrator for MDL 926
Debby Greenspan, Debtor's Representative
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Ralph Knowles, Plaintiff's Steering Committee-MDL-926