IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In Re:

Dow Corning Corporation

(Settlement Facility Matters)

Case No. 00-00005
Honorable Denise Page Hood

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DOW CORNING'S MEMORANDUM REGARDING EXTRINSIC EVIDENCE OF THE MEANING OF "BREAST IMPLANT" AND "TISSUE EXPANDER"

The Sixth Circuit Court of Appeals has found that the meaning of "Breast Implant," a defined term in the Dow Corning Plan of Reorganization ("Plan"), is ambiguous because it includes the term "breast implant" without defining that lower-case term. (Dec. 17, 2010 COA 6 Slip Op. at 6) Accordingly, the Sixth Circuit ordered this remand to assess extrinsic evidence regarding the meaning and use of the terms "breast implant" and "tissue expander." (*Id.*)[1]

The evidence about how people actually used and understood these terms in the ordinary course − as opposed to after-the-fact litigation advocacy − is overwhelming and undisputed. The only evidence in the record shows that the term "breast implant" refers to a silicone implant intended to permanently replace or augment breast tissue, designed to be natural looking, with no projecting metal tubes. (JI-8, Jakubczak Aff. ¶¶ 5, 11, 12)[2] The undisputed record evidence further shows that the term "tissue expander" describes a completely different device that is used temporarily to grow a tissue pocket large enough to hold a breast implant, by injecting increasing

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1 Due to the 10-page limit, this Memorandum addresses extrinsic evidence only, not arguments and evidence regarding Plan terms (which are incorporated by reference from prior briefing filed by Dow Corning Corp. ("Dow Corning") in this Court and the Sixth Circuit). When cited here, the parties' Sixth Circuit briefs are abbreviated with the party's abbreviated name, followed by "COA 6 Br." or "COA 6 Reply Br.," and the page. Appendix B to this Memorandum provides the definitions of Plan terms "Breast Implant" and "Other Products."

2 Pursuant to this Court's February 17, 2011 order, the parties filed a Joint Index relating to this remand on March 15, 2011. Numbered entries in the Joint Index are cited here as JI-1, JI-2, etc.

amounts of saline into the tissue expander through a metal tube easily accessible through the skin, after which the expander is removed and replaced with a breast implant. (*Id.* ¶¶ 6, 8-10) The record evidence is undisputed that doctors and medical professionals consider breast implants and tissue expanders distinct products, with distinct uses. (*Id.* ¶ 12) The evidence is likewise undisputed that the FDA regulates breast implants and tissue expanders as separate products with separate designs and functions. (*Id.* ¶ 13) So is the evidence that Dow Corning marketed breast implants and tissue expanders as distinct products. (*Id.* ¶¶ 6, 10-11) And the only evidence in the record about patients' understanding of these terms shows that patients have been told that a tissue expander is a distinct product, designed and tested differently from breast implants, due primarily to the tissue expander's short-term purpose and use. (*Id.* ¶ 13)

Tissue expander claimants and the lawyers who currently represent the Claimants' Advisory Committee ("CAC") had every opportunity during the confirmation hearing to challenge these established meanings and to assert that tissue expanders are in fact breast implants. If they ***had*** made such a challenge, perhaps they could have provided some justification why patients with tissue expanders − which were never associated with autoimmune disease allegations or substantial liability claims − should be entitled to the same recoveries (up to $300,000) available to breast implant recipients under the Plan. They did not. The only evidence introduced at the confirmation hearing was Dr. Dunbar's expert report classifying tissue expanders as "Other Products" (JI-7), a category distinct from breast implants and entitled to various, much lesser remedies under the Plan. That evidence was jointly sponsored by Dow Corning and the CAC's predecessor in interest, the Tort Claimants' Committee. It was admitted into evidence and was not controverted by any other evidence.

The CAC relies on the negotiated compensation guidelines in other settlements involving different parties and in different courts, in which the parties to those settlements specified

recoveries for tissue expander products, and contends that those agreements in those separate actions should control the definition of the terms here. But these heavily-lawyered definitions and compensation terms and wholly separate agreements tell us nothing about the everyday, ordinary usage of the terms "breast implant" and "tissue expander" by patients and doctors. *See Constr. Interior Sys., Inc. v. Marriott Family Rests., Inc.*, 984 F.2d 749, 756 (6th Cir. 1993) (confirmed plan must be construed according to its "plain, ordinary meaning"); *Bridgeport Music, Inc. v. Dimension Films*, 410 F.3d 792, 798 (6th Cir. 2005) ("commonly accepted" definitions are controlling). The fact that the parties to those agreements felt it necessary to explicitly list tissue expander products in their definitions and compensation terms and the fact that Dow Corning's Plan did ***not*** adopt that language proves Dow Corning's point: that the use of "breast implant" here retains its ordinary meaning, which excludes "tissue expander."

DISCUSSION

I. THE EVIDENCE IS UNDISPUTED THAT (1) THE MEDICAL COMMUNITY, (2) FDA, (3) PATIENTS AND (4) DOW CORNING ALL USED AND UNDERSTOOD THE TERMS "BREAST IMPLANT" AND "TISSUE EXPANDER" TO MEAN DIFFERENT THINGS.

The entirety of the extrinsic evidence shows that doctors, the FDA, patients and Dow Corning all understood and used "breast implant" to mean something different from "tissue expander." That evidence comprises three things. First, Dow Corning provided an affidavit from Gene Jakubczak, its medical device operations manager who had 29 years experience relating to the design and function of Dow Corning medical devices and who interacted with doctors, nurses and the FDA. (JI-8 ¶¶ 3, 4) The CAC submitted no affidavit. Second, Dow Corning submitted evidence, including language from the FDA-issued "Breast Implant Consumer Handbook," reflecting that patients were apprised that the two products were classified, regulated and understood as different products with different designs and uses. (*Id.* ¶ 13) The CAC submitted no controverting evidence. Third, Dow Corning's product literature

describes tissue expanders as either "tissue expanders" or "tissue expander implants," while describing breast implants as "breast implants." (JI-2 & JI-3) As the unrebutted Jakubczak affidavit establishes, Dow Corning marketed breast implants and tissue expanders as separate products, each with its own distinct characteristics, design and function; tissue expanders were used to promote short-term tissue growth and then were replaced with an actual breast implant intended for permanent implantation. (JI-8 ¶¶ 8, 10, 11)

***Medical Professionals*.** Patients get breast implants and tissue expanders, and learn about them, from doctors. As established by the Jakubczak affidavit, doctors, nurses and other medical professionals consider "tissue expanders to be a product separate and distinct from a breast implant." (JI-8 ¶ 12) In the medical field, "[i]t is generally understood that the term 'breast implant' is used to refer solely to the implant device designed for long-term implantation in the breast." (*Id.*) The CAC has submitted no contrary evidence.[3]

***FDA*.** The FDA has always treated tissue expanders and breast implants as distinct devices. (JI-8 ¶ 13) The FDA first classified breast implants as Class II medical devices in 1976, then reclassified them in 1988 into a more highly regulated category, Class III. (*Id.*) By contrast, the FDA has always treated tissue expanders as unclassified medical devices. (*Id.*) FDA has described a "tissue expander" as "a device intended for temporary (less than 6 months)

[3] Two medical journal articles that the CAC cited to the Sixth Circuit − which, in any event, are hearsay − do not provide evidence that doctors regarded "tissue expanders" as "breast implants." The first article does not mention tissue expanders but merely reports a rare instance when a patient had her breast implants removed two weeks after implantation due to anaphylactic shock. (CAC COA 6 Br. at 26, citing Uretsky article) Nothing in the article refutes Dow Corning's evidence establishing the differences between breast implants and tissue expanders. The fact that a breast implant was occasionally removed shortly after implantation due to an infection or other causes does not change the fact that the fundamental purpose of breast implants − long term implantation − was categorically different from the purpose of tissue expanders − temporary facilitation of tissue and skin growth. To use an analogy, there may be a handful of permanent hip implants that are removed from patients a few weeks after surgery due to infection, but that doesn't change the fact that hip implants intended for permanent implantation are understood to be fundamentally different products from short-term products such as splints or patches intended for short-term use and removal. The second article addressed only "inflammatory reactions," not serious autoimmune diseases, and, more importantly, expressly stated that its conclusions "can be considered valid only for McGhan expanders." (*Id.* at 31 (citing Copeland article); DCC COA 6 Reply Br. at 14 n.8)

subdermal implantation to stretch the skin for surgical applications, specifically to develop surgical flaps and additional tissue coverage." (73 Fed. Reg. 78239, Dec. 22, 2008) Similarly, an FDA publication entitled "Saline, Silicone Gel, and Alternative Breast Implants" clearly distinguishes breast implants from tissue expanders, stating that "'this guidance document does not address tissue expanders, which are unclassified devices for temporary use.'" (JI-8 ¶ 13, quoting 2003 Guidance Document) The CAC has presented no evidence to rebut Dow Corning's proof that the FDA defines, classifies and treats breast implants differently than tissue expanders.

Patients. As stated in Chief Judge Batchelder's concurrence, "if one hundred average Americans were approached on the street and asked to define a breast implant, none would describe a tissue expander." (COA 6 Slip Op. at 13, Batchelder, C.J., concurring in part and dissenting in part) This is because a tissue expander is a device inserted temporarily to promote tissue growth over a matter of weeks − as opposed to a smooth-surfaced, subdermal implant designed to feel like, and permanently replace or augment, natural breast tissue. As the FDA's "Breast Implant Consumer Handbook" told patients:

> tissue expanders, which are silicone shells filled with saline, are regulated by FDA in a different way than breast implants. This is because tissue expanders are intended for general tissue expansion for a maximum of 6 months, after which, they are to be removed. Because of this, the design specifications (e.g., thinner shell) and preclinical recommendations are different for tissue expanders than for breast implants.

(JI-8 ¶ 13, quoting 2004 Handbook) Accordingly, and as Judge Batchelder noted, "[o]nly lawyers and others who favor hyper-technical definitions *might* be inclined to include tissue expanders in the definition of breast implants." (COA 6 Slip. Op. at 13, emphasis in original)

The CAC's dearth of evidence is notable for its failure to provide, among other things:

- Any testimony or evidence from the confirmation hearing reflecting a discussion of treating tissue expanders as breast implants.
- Any other competent evidence reflecting that patients understood a "tissue expander" to be a "breast implant."

Lacking any evidence that doctors, regulators or patients share its "hyper-technical" definition of "breast implant," the CAC falls back on its lawyers' assertions about what claimants supposedly "were told" or "expected." (CAC COA 6 Br. at 3-5) Tellingly, none of these assertions has any evidentiary basis or record cite. And it is well-established that "lawyers' statements and arguments are not evidence." *Hall v. Vasbinder*, 563 F.3d 222, 230 (6th Cir. 2009).

Dow Corning. Dow Corning considered "tissue expanders and breast implants to be separate and distinct products with different characteristics, uses, and functions." (JI-8, Jakubczak Aff. ¶ 11) Dow Corning's marketing always differentiated between the two products and did not treat a "tissue expander" as a "breast implant" or vice-versa. (*Id.* ¶ 11) In contrast to breast implants, tissue expanders were not marketed by Dow Corning for permanent use. (*Id.* ¶¶ 6, 8-10) Their sole function is to stretch skin over a period of weeks in preparation for the tissue expander's later replacement with an actual breast implant intended for permanent use. (*Id.* ¶¶ 6, 8, 10) Unlike breast implants, which have no metal fill valves and are designed to be natural looking (*id.* ¶ 5), tissue expanders contain a palpable valve used to insert increasing volumes of saline to foster skin growth during the tissue expanders' weeks of use. (*Id.* ¶¶ 8-9)

The two examples of Dow Corning product literature in the record support Dow Corning's position. The first is a brochure that describes a Dow Corning tissue expander as a "Silastic Tissue Expander" and nowhere contains the phrase "breast implant." (JI-2) The second is a surgical label that describes a Dow Corning tissue expander as a "Tissue Expander Implant" and notes that its "shape" is "breast design." (JI-3) This label simply describes the design of the product; it does not characterize the product as a "breast implant."

II. THE UNDISPUTED CONFIRMATION HEARING RECORD SHOWS THAT ALL PARTIES KNEW THAT TISSUE EXPANDERS WERE "OTHER PRODUCTS," AS OPPOSED TO "BREAST IMPLANTS."

The undisputed confirmation hearing record shows that the Plan Proponents − Dow Corning and the CAC's predecessor, the Tort Claimants' Committee − classified tissue expanders as "Other Products," not "breast implants." The sole evidence on this point is the expert report of mass tort expert and economist Dr. Frederick Dunbar. (JI-7) Dr. Dunbar's report identified and categorized various Dow Corning products and estimated the number of claims likely associated with each. These categorizations and cost estimates were vital to assess whether the Plan was feasible and could satisfy the designated payouts in the various defined claim categories. The highest payments were for the "Breast Implant" category (Plan § 1.17, *see* Appendix B hereto), with disease payments up to $300,000 as well as other enhancements. This made sense, because the chapter 11 filing had been precipitated by the massive number of lawsuits alleging that breast implants cause autoimmune disease. The Plan separately defined, and provided much lesser settlement or litigation remedies for, "Other Products," many of which, such as tissue expanders, were not alleged to cause systemic disease. Claimants with a Dow Corning tissue expander could assert a claim under Class 7 if they had breast implants made by certain manufacturers other than Dow Corning or could elect litigation if they did not.[4] (JI-23)

The Dunbar report expressly listed tissue expanders as one of several "Other Products." (JI-7) The report thus demonstrated that the Plan Proponents did ***not*** view tissue expanders as

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[4] The category of "Other Products" includes two sub-categories: "covered" and "uncovered." Over seventy-five expressly enumerated types of "Other Products" are covered by a settlement option. (DCC COA 6 Br. at 30) Various additional "Other Products" are not necessarily enumerated in the Plan and are treated as "uncovered," meaning they do not have a settlement option but can pursue their claim via post-emergence litigation. (*Id.* at 13) The uncovered subset of "Other Products" includes tissue expanders. The CAC asserts that tissue expanders must be "breast implants" because the Proof of Claim form used by personal injury claimants does not contain a separate category for tissue expanders and no category other than "breast implants" could cover tissue expanders. (CAC COA 6 Br. at 11-12) This is wrong. As quoted in the CAC's own brief, Choice 11 on the form says "Other," a category that includes tissue expanders as "Other Products."

simply another category of breast implant. Rather, they sponsored undisputed evidence before Judge Spector establishing that tissue expanders are an entirely different product.

Unable to dispute the report's substance, the CAC has tried to undermine it by painting Dr. Dunbar as an advocate whose evidence was purportedly proffered just by Dow Corning. (JI-13 at 6, claiming the report was "prepared *solely* by Dow Corning and *its* expert (emphasis added)) But as Judge Spector repeatedly stated, Dr. Dunbar was not merely Dow Corning's witness; he was the ***Plan Proponents'*** witness.[5] Next, the CAC has contended that Dr. Dunbar's report was not actually admitted at the confirmation hearing. (CAC COA 6 Br. at 37) Again the CAC is wrong. The confirmation hearing transcript shows that the report was admitted.[6]

Dr. Dunbar's analysis did not incorporate an estimate of the cost of paying tissue expander claimants the payment amounts (up to $300,000) prescribed for "Breast Implant" claimants. Accordingly, to accept the CAC's interpretation of "tissue expanders" now would create the prospect of multiple millions of dollars of new recoveries against the Plan's fixed settlement cap that were never approved in the confirmation process, creating a threat that legitimate breast implant claimants' recoveries could be curtailed.

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5 *See In re Dow Corning Corp.*, 237 B.R. 364, 369 n.4 (Bankr. E.D. Mich. 1999) (Dunbar "was called to testify *by the Proponents* to establish that the $400 million Litigation Facility would be adequate")(emphasis added); *In re Dow Corning Corp*., 255 B.R. 445, 502 (Bankr. E.D. Mich. 2000) ("The Bankruptcy Court was very impressed *by the Proponents' witness* on this issue − Mr. Dunbar." (emphasis added)).

6 6/29/99 Tr. at 150, 160-61, Record Entry No. 19685, *In re Dow Corning*, No. 95-20512 (admitting Dr. Dunbar's entire expert notebook); *see also* JI-7 (Dunbar Analysis). Because the CAC did not question whether Dr. Dunbar's report was admitted into evidence before their Sixth Circuit brief, the transcript of the confirmation hearings was not made part of the record. That transcript is not in dispute, however, and can be the subject of judicial notice or added to the record. The CAC also makes much of the words "preliminary and unchecked" in the Dunbar report's header. (CAC COA 6 Br. at 37) But this boilerplate disclaimer appears on every page of the report, even the copy admitted at the confirmation hearing. The fact neither the CAC nor other Plan Proponents struck this boilerplate header when it was admitted into evidence does not change the fact that it is the ***only*** evidence in the record regarding the meaning of "tissue expander."

III. THE FACT THAT OTHER SETTLEMENT PROGRAMS EXPRESSLY DEFINED "TISSUE EXPANDERS" AS "BREAST IMPLANTS" − WHILE THE DOW CORNING PLAN DID NOT − SUPPORTS DOW CORNING'S DEFINITION.

The CAC seeks to bring "tissue expander" within the definition of "breast implant" by arguing that other breast implant settlement programs have done so. (CAC COA 6 Br. at 9, citing Inamed, Mentor and Bioplasty settlements)[7] But the parties to those settlement agreements chose to expressly include tissue expanders in the compensation terms applicable to "breast implants" for purposes of those settlements.[8] All that shows is that those parties believed they needed express, specific language to permit "tissue expanders" to be treated in the same way as "breast implants" for purposes of those settlements. The absence of similar language in the Dow Corning Plan − which the CAC or its predecessors could have negotiated for, but did not − means that the term "breast implants" must follow its normal meaning here, which excludes "tissue expanders." As Judge Batchelder stated, the three other settlements cited by the CAC "are strong evidence that tissue expanders were ***not*** intended to be included in the Plan definition; the fact that other manufacturers' tissue expanders were repeatedly and expressly listed indicates that all relevant parties understood that the two products were different, and knew how to write an inclusive definition." (COA 6 Slip. Op. at 15, emphasis in original)

The CAC makes a similar argument with respect to the Revised Settlement Program (RSP) reached in the 1990s in the MDL-926 case between plaintiffs and various breast implant manufacturers other than Dow Corning. Space does not permit the repetition here of Dow Corning's briefing to the Sixth Circuit regarding what aspects of the RSP are and are not

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7 These hearsay documents are not part of the record and were gratuitously and improperly cited by the CAC in its Sixth Circuit brief. Nevertheless, Dow Corning will address them here.

8 The very first page of the Mentor settlement notice explicitly says that "the terms 'breast implant' and 'implant' include . . . also include 'tissue expanders.'" (CAC COA 6 Br. at 9, citing Notice at 1 n.1) Likewise, the first full paragraph on the second page of the judicial order certifying the Inamed settlement states that the definition of "breast implant" *as used in that Order*, includes "tissue expanders." (*Id.* at 9-10, citing Order at 2)

germane to the Dow Corning Plan (*see* DCC COA 6 Br. at 34-36 and Reply Br. at 15-19 incorporated by reference herein).[9] Briefly, however, the RSP did ***not*** treat Dow Corning tissue expanders as "breast implants" for purposes of applying the 50% "multiple manufacturer reduction." That is, if an RSP plaintiff had two sets of implants over time − for example, one set of Dow Corning breast implants and a later set of Heyer-Schulte breast implants − then Heyer-Schulte's settlement payment would be reduced by 50 percent. In contrast, if an RSP plaintiff had one set of Dow Corning ***tissue expanders***, and a later set of Heyer-Schulte breast implants, there was no reduction in the settlement payment. (JI-4) As this Court found in its 2009 opinion, "[t]he tissue expanders made by Dow Corning did not trigger the 50% reduction in benefits as did breast implants lending credibility to DCC's claim that even under the RSP tissue expanders were not considered 'Breast Implants.'" (JI-16, June 10, 2009 Op. at 10)

CONCLUSION

Dow Corning respectfully requests a ruling that "tissue expanders" are not "breast implants," a necessary included term within the definition of "Breast Implant" under § 1.17 of the Plan, and accordingly that tissue expander claims do not qualify for settlements available for "Breast Implant" claims.

March 29, 2011

Respectfully submitted,
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[9] To the extent that the CAC asserts that because certain tissue expander products were compensable under the RSP, Dow Corning tissue expander products should be compensable as Breast Implants under the Plan, that argument supports Dow Corning's plain meaning interpretation of breast implant. The tissue expander products compensable in the RSP were specifically listed by name under the product identification guidelines. There was no determination that the term breast implant includes tissue expander products in general.

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CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2011, I electronically filed the foregoing document with the Clerk of the Court using the ECF System which will send notification of such filing to all counsel of record.

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APPENDIX A

Agreed Joint Index of
Materials Relating to Tissue Expander Remand

Tab No.	Dkt. No.	Date	Description
1	**40**	**07/19/2004**	**Motion Of Claimants' Advisory Committee To Interpret The Amended Joint Plan Section 1.17 Regarding The Definition Of "Breast Implant"**
2	40 (Ex. 1)	00/00/0000	**Exhibit 1 to Dkt. 40**: Dow Corning Wright Silastic Tissue Expander H.P. Pamphlet
3	40 (Ex. 2)	00/00/0000	**Exhibit 2 to Dkt. 40**: Dow Corning Wright Tissue Expander Implant Product Label
4	40 (Ex. 3)	01/25/2002	**Exhibit 3 to Dkt. 40**: E-mail From V. Willard at SF-DCT to D. Greenspan and D. Pendleton re Tissue Expanders
5	40 (Ex. 4)	06/22/2004	**Exhibit 4 to Dkt. 40**: Excerpt From Hearing Before Claims Administrator Elizabeth W. Trachte-Huber
6	**51**	**07/19/2004**	**Motion Of Dow Corning Corporation For A Determination That Tissue Expanders Do Not Constitute Breast Implants For Purposes Of Eligibility For Settlement Benefits Under The Dow Corning Amended Joint Plan Of Reorganization**
7	51 (Ex. A)	06/23/1999	**Exhibit A to Dkt. 51**: Dunbar Exhibit "Reported Proofs Of Claim For Covered Other Products (Includes EI Overlap)"
8	51 (Ex. B)	07/16/2004	**Exhibit B to Dkt. 51**: Affidavit Of Eugene Jakubczak In Support Of The Motion Of Dow Corning Corporation For A Determination That Tissue Expanders Do Not Constitute Breast Implants For Purposes Of Eligibility For Settlement Benefits Under The Dow Corning Amended Joint Plan Of Reorganization

Tab No.	Dkt. No.	Date	Description
9	51 (Ex. A to Ex. B)	06/00/1985 00/00/0000	**Exhibit A to Ex. B to Dkt. 51**: The Mentor Becker Expander / Mammary Prosthesis Product Pamphlet (06/00/1985 *and* CUI Gel-Saline Filled Adjustable Mammary Prosthesis Gibney RDL-Xpand Product Pamphlet (00/00/0000)
10	**53**	**06/11/2004**	**Stipulation And Order Establishing Procedures For Resolution Of Disputes Regarding Interpretation Of The Amended Joint Plan**
11	53 (Ex. A)	06/11/2004	Exhibit A To Stipulation And Order Establishing Procedures For Resolution Of Disputes Regarding Interpretation Of The Amended Joint Plan - Procedures For Resolution Of Disputes Under Section 5.05 Of The Settlement Facility Agreement And For Other Disputes Regarding The Dow Corning Plan Of Reorganization
12	**55**	**08/09/2004**	**Response Of Dow Corning To Motion Of Claimants' Advisory Committee To Interpret Amended Joint Plan Section 1.17 Regarding The Definition Of "Breast Implant"**
13	**57**	**08/09/2004**	**Response Of Claimants' Advisory Committee To Motion Of Dow Corning Corporation For A Determination That Tissue Expanders Do Not Constitute Breast Implants For Purposes Of Eligibility For Settlement Benefits Under The Dow Corning Amended Joint Plan Of Reorganization**
14	57 (Ex. 1)	11/00/1979	**Exhibit 1 to Dkt. 57**: Article: Barry P. Uretsky, et al., "Augmentation Mammaplasty Associated With A Severe System Illness", Annals of Plastic Surgery, Vol. 3, No. 5, 445-447
15	57 (Ex. 2)	00/00/0000	**Exhibit 2 to Dkt. 57**: Implant Proof Of Claim Form
16	**673**	**06/10/2009**	**Memorandum Opinion and Order Regarding Tissue Expander Issue by Judge Hood**
17	**687**	**09/09/2004**	**Transcript Of Hearing Before The Honorable Denise Page Hood**

Tab No.	Dkt. No.	Date	Description
18	**688**	**06/22/2004**	**Transcript Of Hearing Before Claims Administrator Elizabeth W. Trachte-Huber**
19	**700**	**10/13/2009**	**Expedited Stipulated Motion To Supplement and Clarify The Record filed By DCC and CAC**
20	700 (Ex. A)	02/04/1999	**Exhibit A to Dkt. 700**: Amended Joint Disclosure Statement With Respect To Amended Joint Plan Of Reorganization dated February 4, 1999 **(Document Available Upon Request)**
21	700 (Ex. B)	06/01/2004	**Exhibit B to Dkt. 700**: Amended Joint Plan Of Reorganization dated February 4, 1999 (as updated June 1, 2004) **(Document Available Upon Request)**
22	700 (Ex. C)	06/01/2004	**Exhibit C to Dkt. 700**: Settlement Facility And Fund Distribution Agreement Between Dow Corning Corporation and The Claimants' Advisory Committee **(Document Available Upon Request)**
23	700 (Ex. D)	06/01/2004	**Exhibit D to Dkt. 700**: Dow Corning Settlement Program And Claims Resolution Procedures - Annex A To Settlement Facility And Fund Distribution Agreement **(Document Available Upon Request)**
24	**6th Cir.**	**10/14/2009**	**Brief Of Appellant Dow Corning Corporation**
25	**6th Cir.**	**11/13/2009**	**Brief Of Appellee Claimants' Advisory Committee**
26	**6th Cir.**	**11/30/2009**	**Reply Brief Of Appellant Dow Corning Corporation**
27	**6th Cir.**	**12/17/2010**	**Sixth Circuit Opinion**

APPENDIX B

EXCERPTS FROM DOW CORNING AMENDED JOINT PLAN OF REORGANIZATION

"Breast Implant" means all silicone gel and saline-filled ***breast implants*** with silicone elastomer envelopes manufactured and either sold or otherwise distributed by the Debtor. (Plan § 1.17, emphasis added)

"Other Products" means metal, silicone or silicone-containing products, other than Breast Implants and raw materials used in the manufacture of a Non-Dow Corning Breast Implant or a Non-Dow Corning Implant, manufactured by the Debtor or any of its Joint Ventures or Subsidiaries for implant into humans, including, but not limited to: (a) reconstruction and aesthetic surgery products (including custom implants) such as facial components, nasal and chin implants, testicular and penile implants, or medical treatments, (b) orthopedic products such as for use in legs, hips, knees, ankles, wrists, hands, fingers, toes and wrists, (c) silicone temporomandibular joint (TMJ) implants using medical grade or HP sheeting, the Wilkes implant or Silastic Block, (d) medical products for use in the head, heart or eyes, and (e) fluids. The inclusion of fluids among Other Products is not an admission of any Dow Corning responsibility for, or the potential for Allowance of Claims relating to, silicone injections. (Plan § 1.117)