

EXHIBIT

A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In Re:

Settlement Facility Dow Corning Trust.

Case No. 00-00005
Honorable Denise Page Hood

**AFFIDAVIT OF DEBORAH E. GREENSPAN IN SUPPORT OF DOW CORNING'S
MOTION TO STAY THE COURT'S RULINGS ON THE DISABILITY LEVEL A
AND TISSUE EXPANDER ISSUES PENDING APPEAL**

BEFORE ME, the undersigned authority, personally appeared Deborah E. Greenspan, known to me to be the person whose name is subscribed below, who, after being duly sworn by me, stated:

1. My name is Deborah E. Greenspan. I am over the age of 18, of sound mind and competent to make this Affidavit.
2. I have personal knowledge of all facts herein.
3. I am currently a Partner at Dickstein Shapiro LLP.
4. I submit this Affidavit in support of Dow Corning's Motion to Stay the Court's Rulings on the Disability Level A and Tissue Expander Issues Pending Appeal (the "Motion").

Disability Level A

5. The Settlement Facility-Dow Corning Trust ("SF-DCT") was created pursuant to the Dow Corning Plan of Reorganization, which went effective on June 1, 2004 (the "Effective Date"). The SF-DCT processes the claims of those claimants who elected to settle their claims under the Plan's Settlement Program. The SF-DCT is governed by the Settlement Facility and Fund Distribution Agreement ("SFA") and Annex A to that Agreement (the Claims Resolution Procedures), which contains the exclusive criteria for determining how claims are paid ("CRP Criteria").
6. The Funding Payment Agreement ("FPA") governs Dow Corning's payment obligations under the Plan. The FPA provides that, except for the Initial Payment, Dow Corning is required to make cash payments subject to the payment schedule "only if and to the extent that such payments are required to pay Fundable Expenditures and maintain required reserves, after taking into account the cash held by the Settlement Facility subject to the Annual Payment Ceilings..." FPA § 2.02(b)(iii). "Fundable Expenditures" consist of the Allowed Claims and expenses of the Settlement Facility or the Litigation Facility (a separate facility created by the Plan to defend claims that made

an irrevocable election to litigate rather than claim against the SF-DCT). FPA Recital E. Thus, each additional claim payment by the SF-DCT increases Dow Corning's costs.

7. Dow Corning cannot be required to pay more than \$2.35 billion, Net Present Value as of the Effective Date. FPA § 2.01. Of that total amount, \$400 million Net Present Value is reserved for the Litigation Fund. SFA § 3.02(a). The SFA provides that in the event that the funds are insufficient to pay all First Priority Payments within the aggregate limits of the Settlement Fund, then the Finance Committee shall determine the need to reduce the Allowed amount of claims or to defer payment of claims. SFA § 7.03(c). Thus, any increase in the aggregate payments to claimants increases the risk of a reduction in or deferral of payment for individual claimants who file their claims during the remainder of the settlement program.
8. The SF-DCT has been processing Disease Claims since the Effective Date. The SF-DCT guidelines for determining eligibility for Disability Level A are set forth on the website of the SF-DCT. Those guidelines provide that to qualify for Level A disability, the claimant must demonstrate disability in both vocation *and* self care. ACTD Guidelines, Slide 143, <http://www.dcsettlement.com/resources/ACTD%20guidelines%201%2012%2009.ppt>.
9. Under the Ruling (as defined in the Motion) on the Disability Level A issue, a claimant will be eligible for Disability Level A benefits if she can show functional limitations in *either* vocational activities *or* activities of self-care. The Ruling does not address the components of "self care."
10. The Claims Administrator for the SF-DCT has reported to Dow Corning that there may be in excess of 2,000 individuals whose claims have already been processed and paid and who could become eligible to receive additional payments as a result of the Court's ruling. To determine the actual number of individuals who would be eligible for an additional payment under the Ruling, the SF-DCT will have to review the claims.
11. The Ruling may lead other individuals who are not currently claimants to file additional claims once they learn that the Court has permitted a more relaxed standard for payment of Disability Level A claims than the SF-DCT had previously applied.
12. The difference in the amount payable, per individual Domestic Claimant, between a Level A finding of disability and a Level B finding of disability is \$30,000. The difference in the amount payable, per individual Domestic Claimant between a Level A finding of disability and a Level C finding of disability is \$40,000. CRP § 6.02(d)(vi).
13. The SF-DCT is examining the financial impact of the Ruling but has preliminarily advised Dow Corning that the aggregate cost of paying the existing claimants the increased amount required under the Ruling could measure in the tens of millions. Should new claimants file additional Disability Level A claims (as would be expected), this figure would increase significantly.
14. Because Dow Corning is obligated to make payments if and as the SF-DCT incurs Fundable Expenditures, the Ruling on the Disability Level A issue will result in additional costs to Dow Corning.

15. In addition, the Ruling on the Disability Level A issue will increase costs. Thus, (for the reasons stated above) the Ruling on the Disability Level A issue creates a risk of reducing Base Payments to other claimants and/or reducing or eliminating Premium Payments to eligible claimants.

Tissue Expanders

16. The SF-DCT has been holding in abeyance claims by claimants who seek to be compensated for allegedly receiving “tissue expanders” made by Dow Corning but who do not claim to have a breast implant made by Dow Corning. The majority of these individuals have a breast implant made by a manufacturer other than Dow Corning in addition to a tissue expander that they claim was manufactured by Dow Corning. These individuals seek to obtain the same payments as claimants who can prove that they have been implanted with a Dow Corning Breast Implant. Most of these individuals have filed claims for payment as Class 7 claimants (under the capped Silicone Material Claimants’ Fund). Under the Ruling, these individuals would be eligible for the higher payments allotted to individuals who have Dow Corning Breast Implants.
17. Dow Corning has been informed by the SF-DCT that there are approximately 600 individuals to date who have filed claims seeking compensation for a Dow Corning tissue expander.
18. The difference between a payment under Class 7 to a claimant who has both a tissue expander and a non-Dow Corning implant and the payment amount that would apply if that individual is treated as having a Dow Corning Breast Implant claim is 60 percent of the payment amount set forth in the applicable Disease compensation grid. In other words, a claimant in Class 7 is eligible to receive up to 40 percent of the compensation amount payable to an individual with a Dow Corning Breast Implant. If a claimant with a Dow Corning tissue expander is treated as if she had received a Dow Corning Breast Implant, then that claimant will receive 2.5 times the amount that she would have received as a Class 7 claimant. An individual claimant with the most highly paid disease could receive as much as \$150,000 more under the Ruling than she would have received as a Class 7 claimant.
19. The Claims Administrator has informed Dow Corning that paying the tissue expander claims under the Breast Implant compensation grid could potentially cost the SF-DCT millions of dollars.
20. This figure is likely to increase because it does not account for claimants who may file such claims in the future. The Ruling may lead other individuals who are not currently claimants to file additional claims once they learn that the Court has authorized claimants with tissue expanders to obtain payment equivalent to that allowed for claimants with Dow Corning Breast Implants.


Impossibility of Recovery

21. If a stay of the Rulings is not granted, then Dow Corning faces irreparable financial harm. Even if Dow Corning ultimately prevails on appeal, the SF-DCT will not be able to recover the funds it pays out under the Rulings.
22. In the event of a successful appeal, Dow Corning and the SF-DCT lack the ability to prosecute literally thousands of enforcement actions against individual claimants across the country to recover overpayments.
23. Locating the overpaid claimants would be difficult. Even in the ordinary course of administering payments, the SF-DCT is not able to locate all claimants to whom compensation has been awarded. For example, in many instances claimants move and do not leave a forwarding address.
24. Even if thousands of individual enforcement efforts made economic sense and even if Dow Corning could locate every claimant who was overcompensated, full recovery would still be unlikely because many claimants likely will have already spent the money by the time the court of appeals issues its ruling and would in all probability not have the resources to respond to any judgments that might be obtained.
25. Given these difficulties, any attempt to recoup overpayments would not be feasible. Thus, without a stay of the Rulings, even if Dow Corning and the SF-DCT prevailed on appeal, they would not be able to recover the funds. As a result, for the reasons stated, Dow Corning and the majority of claimants who do not benefit under the Rulings would be irreparably harmed in the absence of a stay.

Premium Payments

26. In particular, the Rulings risk irreparable harm to the majority of claimants who will be eligible for Premium Payments provided that there are sufficient funds as set forth in the Plan.
27. Premium Payments are Second Priority Payments. Breast Implant claimants who have received payments for Rupture and/or Disease are eligible for Premium Payments. Premium Payments may not be distributed to claimants unless and until the Court determines that all other Allowed and allowable claims, including claims subject to resolution under the terms of the Litigation Facility Agreement, have either been paid or adequate provision has been made to assure such payments. SFA §§ 6.01(a) and 7.01(b)(iv).
28. The majority of claimants are potentially eligible for Premium Payments (provided the Plan conditions are met) and would expect such payments in the future. Based on the reports posted on the SF-DCT website, Dow Corning calculates that the aggregate amount of the Premium Payments for which claimants paid as of April 30, 2009 would be eligible is approximately \$200 million. *See Cumulative Payments for All Classes for the period ended April 30, 2009, <http://www.dcsettlement.com>.*

29. The Plan establishes a finite cap on the amount Dow Corning can be required to pay to resolve the tort claims. Thus, any funds paid based on the Rulings necessarily will reduce the amount available to pay other claims, including Premium Payments. Although it is not possible to compute the total cost of the Rulings at this point, payments made in accordance with the Rulings create a risk of depleting the funds available to make the full amount, or any, Premium Payments to the majority of claimants who want and expect such payments. As a result, the Rulings threaten to irreparably harm the majority of claimants who are eligible for such payments.



Deborah E. Greenspan

Subscribed and sworn before me on June 19, 2009 by Deborah E. Greenspan



Notary Public for the State of DISTRICT of Columbia

My commission expires on _____

Penny Chanin
Notary Public District of Columbia
My Commission Expires: March 14, 2011