EXHIBIT 2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In Re:

DOW CORNING CORPORATION, Debtor. _____/	Civil Action No. 00-CV-00001 Master Docket (Litigation Facility Matters) The Honorable Denise Page Hood
Carole P. Edwards v. DCC Litigation Facility Inc.	MIE#: 05-CV-30142
Diane Russell v. DCC Litigation Facility Inc.	MIE#: 05-CV-30158 (N.D. Ga. No. 93-CV-1687)
Loisan Thompson v. DCC Litigation Facility Inc.	MIE#: 05-CV-30159

DCC LITIGATION FACILITY, INC.'S MOTION AND INCORPORATED MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT OF PREVIOUSLY SETTLED CLAIMS

Pursuant to Federal Rule of Civil Procedure 56(c), DCC Litigation Facility, Inc. ("Litigation Facility") moves for summary judgment on purported opt-out claims that were fully settled and released prior to Dow Corning Corporation's Chapter 11 case. There is no genuine issue as to any material fact that these released claims are barred by the plain language of Litigation Facility Agreement and hornbook rules for interpretation and enforcement of contracts and settlements. In support of its Motion, the Litigation Facility states:

1. In 1992 and 1993, Carole Edwards, Diane Russell, and Loisan Thompson ("Released Claimants") settled and extinguished their breast implant claims by executing releases barring all claims "now known or unknown by [the claimant], arising from the use of the breast implant product[s] and any procedure related thereto."

2. Despite this undisputed fact, the Released Claimants have initiated lawsuits in this Court regarding the very same breast implant claims that were fully released over one decade ago.

3. Because these claims were unequivocally released and settled, summary judgment should be granted.

4. As further support for this Motion, the Litigation Facility adopts and incorporates by reference its Memorandum of Law in Support of Its Motion for Summary Judgment Of Previously Settled Claims, which is attached and incorporated hereto.

December 6, 2005

Respectfully submitted,

/s/Timothy J. Jordan
Lamont E. Buffington (P27358)
Timothy H. Jordan (P46098)
1000 Woodbridge Street
Detroit, MI 48207
(313) 446-5531
tjordan@garanlucow.com

John Donley
Renee D. Smith
KIRKLAND & ELLIS LLP
200 East Randolph Drive
Chicago, IL 60601
Telephone: (312) 861-2000
Facsimile: (312) 861-2200

Attorneys for DCC Litigation Facility, Inc.

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DCC LITIGATION FACILITY, INC.'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT OF PREVIOUSLY SETTLED CLAIMS

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Exhibit A	Affidavit of Nicole Abenth
	(Abenth Aff. Ex. 1: 10/12/92 DCC Claim Report Form)
	(Abenth Aff. Ex. 2: 10/29/92 letter from M. Goetterman to J. Halpern)
	(Abenth Aff. Ex. 3: 11/5/92 Receipt and Release (Edwards))
	(Abenth Aff. Ex. 4: 11/25/92 letter from M. Goetterman to C. Edwards)
	(Abenth Aff. Ex. 5: 6/9/92 DCC Claim Report Form)
	(Abenth Aff. Ex. 6: 11/27/92 letter from P. Barnes to D. Russell)
	(Abenth Aff. Ex. 7: 12/7/92 Receipt and Release (Russell))
	(Abenth Aff. Ex. 8: 12/10/92 letter from P. Barnes to D. Russell)
	(Abenth Aff. Ex. 9: 3/19/93 letter from P. Barnes to L. Thompson)
	(Abenth Aff. Ex. 10: 3/23/93 Revised Receipt and Release (Thompson))
	(Abenth Aff. Ex. 11: 3/31/93 letter from P. Barnes to L. Thompson)
Exhibit B	Proof of Claim Number 0221351-00 (Carole Edwards)
Exhibit C	Proof of Claim Number 0463412-00 (Diane Russell)
Exhibit D	Proof of Claim Number 0245810-00 (Loisan Thompson)
Exhibit E	Carole Edwards Participation Form
Exhibit F	Diane Russell Participation Form
Exhibit G	Loisan Thompson Participation Form
Exhibit H	2/25/05 Notice of Intent To Litigate, Claimant Questionnaire (Edwards)
Exhibit I	2/28/05 Notice of Intent To Litigate, Claimant Questionnaire (Russell)
Exhibit J	2/28/05 Notice of Intent To Litigate, Claimant Questionnaire (Thompson)

Statement of the Issue Presented

Is the Litigation Facility entitled to summary judgment on fully settled breast-implant claims that are barred by unambiguous pre-petition releases?

I. INTRODUCTION

Prior to the Dow Corning Corporation Chapter 11 case, purported opt-out claimants Carole Edwards, Diane Russell, and Loisan Thompson (hereinafter "Released Claimants") fully and finally settled their breast implant claims against Dow Corning -- the very same claims they now seek to litigate before this Court -- when they executed releases that extinguished those claims. The plain, unambiguous language of these releases barred all claims "now known or unknown by [the claimant], arising from the use of the breast implant product and any procedure related thereto." There is no genuine issue of material fact regarding the prior settlement of these claims, which are barred by releases. Thus, summary judgment is appropriate. *See* Fed.R.Civ.P. 56(c).

II. JURISDICTION

Each of the Released Claimants submitted timely proofs of claim during Dow Corning's bankruptcy proceedings and also submitted "Participation Forms" electing to opt out of Dow Corning's post-bankruptcy "settlement option." (*See* POC ##s 0221351-00, 0463412-00, 0245810-00, attached hereto as Exs. B, C, D; *see also* C. Edwards, D. Russell, & L. Thompson Participation Forms, attached hereto as Exs. E, F, G.) Consequently, this Court has exclusive jurisdiction over these claims pursuant to the Joint Plan. *See* Am. Jt. Plan Arts. 8.7.7, 8.7.8 (the District Court "will retain exclusive jurisdiction: to determine any and all applications, Claims, adversary proceedings, and contested or litigated matters pending on the Effective Date; [and] to allow, disallow, estimate, liquidate or determine any Claim, including Claims of a Non-Settling Personal Injury Claimant . . ."). *See also* CMO No. 1, ¶ 1(a) ("Jurisdiction over any Opt-Out Cases and any other litigation brought against the Facility will reside in the Eastern District of Michigan"); CMO No. 2 at 1 (recognizing "this Court's continuing jurisdiction over claims

asserted against the DCC Litigation Facility, Inc."); 28 U.S.C. § 1334(b) ("the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11").

III. APPLICABLE LEGAL STANDARDS

A. CHOICE OF LAW

In contrast to diversity cases where the forum state's choice-of-law rules must be applied, there is no definitive rule in the Sixth Circuit as to which choice-of-law provision a court exercising bankruptcy jurisdiction should follow. In particular, district courts within this Circuit "are split on the question of whether bankruptcy courts should follow the choice-of-law rules of federal common law, the forum state, or perhaps a nonforum state." *See In re R.C.S. Engineered Prods. Co. v. Himmelspach*, 168 B.R. 598, 602 (Bankr. E.D. Mich. 1994), *rev'd on other grounds* 102 F.3d 223 (6th Cir. 1996).[1]

However, the conflict-of-laws analysis need not divert this Court for long. Regardless of whether the Court applies the substantive law of Michigan or the laws of Florida or Alabama (where the Released Claimants are domiciled) or any other state with potential relationships to the events at issue, the Released Claimants' instant lawsuits would be precluded under hornbook principles of contract law as applied to releases. In this situation, a "false conflict" exists, and the Court need not reach the choice-of-law issue. *See Williams v. Stone*, 109 F.3d 890, 893 (3d Cir. 1997) ("Under general conflict of laws principles, where the laws of the two jurisdictions would produce the same result on the particular issue presented, there is a 'false conflict,' and the Court should avoid the choice-of-law question."); *see also Barge v. Jaber*, 831 F. Supp. 593,

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[1] *Compare In re AVN Corp.*, 248 B.R. 540, 548 (Bankr. W.D. Tenn. 2000) ("The bankruptcy court generally will apply the choice of law principles of its forum state to determine which state's substantive law should be applied to resolve a multi-state dispute.") *with In re Elder-Beerman Stores Corp.*, 221 B.R. 404, 408 (Bankr. S.D. Ohio 1998) (applying federal choice of law principles) *and In re SMEC, Inc.*, 160 B.R. 86, 90-91 (M.D. Tenn. 1993) (applying "most significant contacts" test).

596 (S.D. Ohio 1993) (where "the result would be identical whether this Court applied Ohio or Kentucky law," we "deem it unnecessary to draw a definitive conclusion in this case with respect to which law is applicable, as we conclude that the courts of either state would reach the same result."); Restatement (Second) Conflicts of Laws § 145, *comment i* ("[w]hen certain contacts involving a tort are located in two or more states with identical local law rules on the issue in question, the case will be treated for choice-of-law purposes as if these contacts were grouped in a single state.").

When such a "false conflict" exists, regardless of whether the Court applies federal or Michigan choice-of-law rules, the Court should apply the substantive law of the forum state. For example, courts have recognized that, under the Restatement (Second) Conflicts of Law "most significant relationship" test,[2] in a false conflict situation, the Court should apply the forum state's substantive law because it is "more streamlined and less time-consuming, since only one body of law need be employed to resolve the dispute." *See Fioretti v. Mass. Gen. Life Ins. Co.*, 53 F.3d 1228, 1234 n.21 (11th Cir. 1995). Similarly, under Michigan's choice-of-law test, where there is no "rational reason" to displace Michigan law, Michigan substantive law should control. *See Watkins & Son Pet Supplies v. Iams Co.*, 254 F.3d 607, 611 (6th Cir. 2001). Because black-letter contract law and principles as applied to releases are the same in all potentially interested states, there is no "rational reason" to displace the law of the forum state, and Michigan substantive law should be applied.

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[2] In connection with a different motion, Plaintiffs' Liaison Counsel recently urged the Court to apply federal choice-of-law rules and observed that the federal common law "follows the most significant relationship test adopted by the Second Restatement of Conflict of Laws §§ 145, 146." *See* 11/15/05 Plaintiffs' Liaison Counsel's Response to Litigation Facility's Motion for Summary Judgment Based on Proof of Manufacture and Statute of Limitations as to Terrie Clark-Rubin, at 1-2 [Dkt. No. 55].

B. SUMMARY JUDGMENT

Summary judgment should be granted where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). A genuine issue of material fact exists when there is "sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986).

The moving party bears the initial responsibility of informing the Court of the basis for its motion and identifying those portions of the record that establish the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The burden of showing that no genuine issue of material fact exists may be discharged by "'showing' -- that is pointing out to the district court -- that there is an absence of evidence to support the nonmoving party's case." *Id.* at 325.

Once the moving party has met its burden, the nonmoving party must go beyond the pleadings and come forward with specific facts to demonstrate that there is a genuine issue for trial. *Id.* at 324. Although the Court must "view all the facts and the inferences drawn therefrom in the light most favorable to the nonmoving party," *United Rentals (N. Am.), Inc. v. Keizer*, 355 F.3d 399, 406 (6th Cir. 2004), the nonmoving party must do more than show that there is some metaphysical doubt as to the material facts to defeat summary judgment. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). It must present significant probative evidence in support of its opposition to defeat the motion for summary judgment. *See Moore v. Philip Morris Cos., Inc.*, 8 F.3d 335, 339-40 (6th Cir. 1993); *see also Anderson*, 477 U.S. at 249-50 ("If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted.").

IV. UNDISPUTED FACTS

Each of the Released Claimants executed a broad release in 1992 or 1993, in which they released Dow Corning and its successors and assigns "from any and all claims, now known or unknown by me, arising from the use of the breast implant product and any procedure related thereto." In addition, each Claimant accepted and retained payment in full settlement of her claims against Dow Corning. The undisputed material facts related to each individual Released Claimant are summarized below.

A. CAROLE EDWARDS (05-CV-30142)

In 1976, Ms. Edwards received silicone breast implants allegedly manufactured by Dow Corning. (2/25/05 Questionnaire, p. 16, attached hereto as Ex. H) In 1992, Ms. Edwards sought assistance from Dow Corning to pay for breast implant removal and replacement surgery. (*See* 10/12/92 DCC Claim Report Form, Affidavit of Nicole Abenth, attached hereto as Exhibit A ("Abenth Aff.") Ex. 1.) Dow Corning's contemporaneously created Claim Report Form notes that Ms. Edwards "wants replacement -- ***will sign release.***" (*Id.*, emph. added)

On October 29, 1992, a Dow Corning customer relations specialist sent a letter to Ms. Edwards' physician, Dr. Halpern, enclosing "a release for the amount of $7,216.00 for [his] patient's signature," and requesting that he have "Ms. Edwards sign the release in the presence of a witness and return it . . . in the envelope provided." Dow Corning explained that, once it received the release, it would "have the check issued for $7,216.00 made payable to [Dr. Halpern] and Ms. Edwards." (10/29/92 letter from M. Goetterman to J. Halpern, Abenth Aff. Ex. 2)

On November 5, 1992, Ms. Edwards signed the "Receipt and Release," which stated in full:

> I, Carol[e] Edwards, the undersigned, whose address is 1407 Oakwood Lane, Plant City, Florida, 33566, do acknowledge the receipt and sufficiency of $7,216.00 to be paid to me or on my behalf, and in consideration of that, ***I release and discharge*** Dow Corning Wright, Dow Corning Corporation, their officers, directors, employees, agents, successors and assigns, ***from any and all claims, now known or unknown by me, arising from the use of the breast implant products and any procedure related thereto***. This release is in settlement of a dispute as to the circumstances and cause of the corrective surgery on or about December 19, 1992.

(11/5/92 Receipt and Release, Abenth Aff. Ex. 3, emph. added)

On November 25, 1992, Dow Corning sent Ms. Edwards a letter stating, "[e]nclosed please find Dow Corning Wright's check in the amount of $7,216.00 ***in settlement of your claim***." (11/25/92 letter from M. Goetterman to C. Edwards, Abenth Aff. Ex. 4, emph. added)) There is no evidence that Ms. Edwards ever attempted to tender back to Dow Corning any portion of the $7,216.00 check, or that she did anything other than accept the settlement by cashing the check.

B. DIANE RUSSELL (05-CV-30158)

In 1977, Ms. Russell received silicone breast implants allegedly manufactured by Dow Corning. (2/28/05 Questionnaire, p. 18, attached hereto as Ex. I) In October 1991, Ms. Russell had her implants removed. (*Id.* at 19) In June 1992, Ms. Russell sought assistance from Dow Corning to pay for a portion of the cost of her removal surgery. (*See* 6/9/92 DCC Claim Report Form, Abenth Aff. Ex. 5)

On November 27, 1992, a Dow Corning customer relations specialist sent Ms. Russell a letter enclosing "a release for the amount of $1,142.06 for [her] signature," and stating that once Dow Corning received the release, it would have a "check issued for $1,142.06 made payable to you." (11/27/92 letter from P. Barnes to D. Russell, Abenth Aff. Ex. 6)

On December 7, 1992, Ms. Russell signed the "Receipt and Release," which stated in full:

> I, Diane Russell, the undersigned, whose address is 5600 Carmichael, #2619, Montgomery, Alabama 36117, do acknowledge the receipt and sufficiency of $1,142.06 to be paid to me or on my behalf, and in consideration of that, ***I release and discharge*** Dow Corning Wright, Dow Corning Corporation, their officers, directors, employees, agents, successors and assigns, ***from any and all claims, now known or unknown by me, arising from the use of the breast implant product and any procedure related thereto***. This release is in settlement of a dispute as to the circumstances and cause of the corrective surgery on October 8, 1991.

(12/7/92 Receipt and Release, Abenth Aff. Ex. 7, emph. added)

On December 10, 1992, Dow Corning sent Ms. Russell a letter stating, "[e]nclosed please find Dow Corning Wright's check in the amount of $1,142.06 ***in settlement of your claim***." (12/10/92 letter from P. Barnes to D. Russell, Abenth Aff. Ex. 8, emph. added) There is no evidence that Ms. Russell ever attempted to tender back to Dow Corning any portion of the $1,142.06 check, or that she did anything other than accept the settlement by cashing the check.

C. LOISAN THOMPSON (05-CV-30159)

In April 1985, Ms. Thompson received silicone breast implants manufactured by Surgitek. (2/28/05 Questionnaire, p. 17, attached hereto as Ex. J) In May 1985, Ms. Thompson had one of her implants removed and replaced with a breast implant allegedly manufactured by Dow Corning. (*Id.* at 18)

On March 19, 1993, a Dow Corning customer relations specialist sent a letter to Ms. Thompson enclosing "a release in the amount of $5,531.00 for [her] signature," and requesting that she "sign the release in both places in the presence of a witness and return it . . . in the envelope provided." Dow Corning explained that, once it received the release, it would "have [its] check issued for $5,531.00 made payable as stated in the release." (3/19/93 letter from P. Barnes to L. Thompson, Abenth Aff. Ex. 9). On March 23, 1993, Ms. Thompson signed a "Receipt and Release," which stated in full:

> I, Lois Thompson, the undersigned, whose address is 3060 S.E. 103rd Lane, Ocala, Florida, do hereby acknowledge the receipt and sufficiency of $5531.00 to be paid to me or on my behalf, and in consideration of that, ***I release and discharge*** Dow Corning Wright, Dow Corning Corporation, their officers, directors, employees, agents, successors and assigns, ***from any and all claims, now known or unknown by me, arising from the use of the breast implant product and any procedure related thereto.*** This release is in settlement of a dispute as to the circumstances and cause of the corrective surgery which is to be scheduled.
>
> I, Lois Thompson, authorize payment of $576.00 directly to Daytona Anesthesiology Association, P.A., $1,525.00 directly to Halifax Hospital, $2,034.00 to Carl W. Lentz, III, M.D., and me and $1,396.00 directly to me.

(3/23/93 Revised Receipt and Release, attached hereto as Ex. 10, emph. added)

In April 1993, Ms. Thompson had both implants removed. (2/28/05 Questionnaire, p. 19, attached hereto as Ex. J) On March 31, 1993, Dow Corning sent Ms. Thompson a letter stating, "[e]nclosed please find Dow Corning Wright's check in the amount of $1,396.00 ***in settlement of your claim.***" (3/31/93 letter from P. Barnes to L. Thompson, Abenth Aff. Ex. 11, emph. added) There is no evidence that Ms. Thompson ever attempted to tender back to Dow Corning any portion of the $1,396.00 paid to her, or the remaining amounts paid to her hospital or physician, or that she did anything other than accept the settlement by cashing the check.

V. ARGUMENT

A. THE PLAN BARS PREVIOUSLY RELEASED CLAIMS

Pursuant to the Litigation Facility Agreement, the DCC Litigation Facility, Inc. ("Litigation Facility") assumed "all liabilities . . . of the Debtor Affiliated Parties now or hereafter arising in connection with, constituting or relating to []Personal Injury Claims of Opt Out Personal Injury Claimants in Classes 5-10.2 . . ." (LFA, Art. 2.03(a); *see also* Jt. Plan Art. 8.1 ("on the Effective Date the Debtor shall be discharged from and its liability shall be extinguished completely in respect of any Claim . . .")) The Litigation Facility has thus stepped into Dow Corning's shoes for purposes of Class 5, domestic breast implant claims, like those

brought by the Released Claimants here. The Litigation Facility assumed the burden of any liabilities Dow Corning had prior to the Chapter 11 proceedings, which are now asserted as opt-out claims. And the Litigation Facility enjoys the benefits of any releases Dow Corning received prior to the Chapter 11 proceedings.

The plain language of the Joint Plan itself specifically excludes claims like those proffered by the Released Claimants. The Plan's definition of "Breast Implant Claims" excludes "any such Claims which were the subject of prepetition final judgments or legally enforceable settlement agreements, which Claims shall be treated as Unsecured Claims in this Plan." (Am. Jt. Plan Art. 1.18(y))

B. THERE IS NO GENUINE ISSUE OF MATERIAL FACT REGARDING THE FULL RELEASE AND SETTLEMENT OF THESE BREAST IMPLANT CLAIMS

In Michigan and elsewhere, settlements are governed by the rules for the enforcement and interpretation of contracts, are highly favored, and will be enforced whenever possible. *See Stefanac v. Cranbrook Educ. Cmty.*, 458 N.W.2d 56, 60 (Mich. 1990) ("the law favors settlements. A party entering into a settlement agreement, offering adequate consideration, is entitled to rely on the terms of the agreement."); *see also Robbie v. City of Miami*, 469 So.2d 1384, 1385 (Fla. 1985). In the instant cases, the undisputed facts show that the settlements accomplished through release have all the hallmarks of enforceable contracts, including the essential elements of offer and acceptance, consideration, and mutual assent to material terms. *See 46th Circuit Trial Court v. Crawford County*, 702 N.W.2d 588, 597 (Mich. App. 2005) ("An acceptance sufficient to create a contract arises where the individual to whom an offer is extended manifests an intent to be bound by the offer . . . through voluntarily undertaking some

unequivocal act sufficient for that purpose.") (citation and quotation omitted).[3] Consequently, the released claims are barred by the Claimants' binding contractual agreements to settle their claims.

"It is well settled that the scope of a release is governed by the intent of the parties as expressed in the release. If the text of the release is unambiguous, the parties' intentions must be ascertained from the plain, ordinary meaning of the language of the release." *Collucci v. Eklund*, 613 N.W.2d 402, 404 (Mich. App. 2000); *see also Wayne J. Griffin Elec., Inc. v. Dunn Constr. Co.*, 622 So.2d 314, 317 (Ala. 1993) ("absent fraud, a release, supported by valuable consideration and unambiguous in meaning, will be given effect according to the intention of the parties from what appears in the four corners of the document itself; and parol evidence is not admissible to impeach or vary its terms"); *Cerniglia v. Cerniglia*, 679 So.2d 1160, 1164 (Fla. 1996) ("where the language of a release is clear and unambiguous a court cannot entertain evidence contrary to its plain meaning").

The releases here are clear, unambiguous, and broad. They unequivocally bar "***any and all claims, now known or unknown by [the claimant], arising from the use of the breast implant product and any procedure related thereto.***" Where, as described above, there is no genuine issue of material fact that the Released Claimants fully and freely released the entirety of their breast implant claims, the plain language of the releases must be enforced. As one court explained in ruling on a similarly unambiguous release:

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[3] *See also Memberworks, Inc. v. Yance*, 899 So.2d 940, 942 (Ala. 2004) ("The requisite elements of [a contract] include: an offer and an acceptance, consideration, and mutual assent to terms essential to the formation of a contract.") (citation and quotation omitted); *Gillespie v. Bodkin*, 902 So.2d 849, 850 (Fla. Dist. Ct. App. 2005) ("Settlements are governed by the law of contracts. Pursuant to contract law, the acceptance of an offer which results in an enforceable agreement must be (1) absolute and unconditional; (2) identical with the term of the offer; and (3) in the mode, at the place, and within the time expressly or impliedly stated within the offer.") (internal citation omitted).

> In the present case, the language of the release evidences a clear intent to settle and to release defendant from liability for "any claim [,] . . . demand, action or cause of action, of any kind whatsoever, known or unknown, which [decedent had] or could have [had] on account of, or in any manner arising out of or connected with, [his] employment." We find no ambiguity in this broad, all-encompassing language. Indeed, the language releasing "any claim . . . of any kind whatsoever" can hardly be interpreted as excluding claims for personal injury.

See Gortney v. Norfolk & W. Ry. Co., 549 N.W.2d 612, 615 (Mich. App. 1996) (internal citations omitted).

"[T]his Court has the authority to enforce settlement agreements through summary proceedings. And when enforcement is determinable solely as a matter of law, a court need not conduct an evidentiary hearing." *Cochran v. Ernst & Young*, 758 F. Supp. 1548, 1551 (E.D. Mich. 1991) (internal citations omitted). Where, as here, the terms of the release are clear and unambiguous, the agreements do not require "any construction or supplementation from extraneous sources," and are ripe for adjudication as a matter of law. *See id.* at 1554.[4]

[4] In addition to signing full releases, the Released Claimants also accepted monies in full settlement of their claims. Therefore, the doctrine of accord and satisfaction provides an additional basis to dismiss the instant lawsuits. *See, e.g., Faith Reformed Church of Traverse City v. Thompson*, 639 N.W.2d 831, 833-34 (Mich. App. 2001).

VI. CONCLUSION

For all of the foregoing reasons, the Litigation Facility respectfully requests the Court to enter an order granting its Motion for Summary Judgment and dismissing the claims of Carole Edwards, Diane Russell, and Loisan Thompson.

December 6, 2005

Respectfully submitted,

/s/ Timothy J. Jordan
Lamont E. Buffington (P27358)
Timothy H. Jordan (P46098)
1000 Woodbridge Street
Detroit, MI 48207
(313) 446-5531
tjordan@garanlucow.com

John Donley
Renee D. Smith
KIRKLAND & ELLIS LLP
200 East Randolph Drive
Chicago, IL 60601
Telephone: (312) 861-2000
Facsimile: (312) 861-2200

Attorneys for DCC Litigation Facility, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on December 7, 2005, I electronically filed the foregoing document with the Clerk of the Court using the ECF System which will send notification of such filing to the following: Leslie J. Bryan and Fredric L. Ellis and I certify that I have mailed by U.S. Mail the document to the following non-ECF participant: Brenda Fulmer (counsel for Carole Edwards) of Alley Clark Greiwe Fulmer, P.O. Box 3127, Tampa, FL 33601-3127.

GARAN LUCOW MILLER, P.C.

/s/ Timothy J. Jordan
LAMONT E. BUFFINGTON (P27358)
TIMOTHY J. JORDAN (P46098)
Attorneys for DCC Litigation Facility, Inc.
1000 Woodbridge Street
Detroit, MI 48207
(313) 446-5531
tjordan@garanlucow.com

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