UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE:		
DOW CORNING CORPORATION,	§	**Case No. 00-CV-00005 –DT (Settlement Facility Matters)**
REORGANIZED DEBTOR	§	**Hon. Denise Page Hood**

OMNIBUS RESPONSE TO OBJECTIONS AND SUBMISSIONS RESPONDING TO CONSENT ORDER TO ESTABLISH GUIDELINES FOR DISTRIBUTIONS FROM THE CLASS 7 SILICONE MATERIAL CLAIMANTS' FUND

Dow Corning Corporation, the Debtors' Representatives, and the Claimants Advisory Committee (the "Movants") submit this *Omnibus Response to Objections and Submissions Responding to Consent Order to Establish Guidelines for Distributions from the Class 7 Silicone Material Claimants' Fund.* For the reasons set forth in the accompanying *Brief in Support of Omnibus Response to Objections and Submissions Responding to Consent Order to Establish Guidelines for Distributions from the Class 7 Silicone Material Claimants' Fund*, the objections

should be rejected and the Consent Order to Establish Guidelines for Distributions from the Class 7 Silicone Material Claimants' Fund should be approved.

Dated: September 15, 2015

Respectfully submitted,

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
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IN RE:		
DOW CORNING CORPORATION,	§	**Case No. 00-CV-00005 –DT (Settlement Facility Matters)**
REORGANIZED DEBTOR	§	**Hon. Denise Page Hood**

BRIEF IN SUPPORT OF THE OMNIBUS RESPONSE TO OBJECTIONS AND SUBMISSIONS RESPONDING TO CONSENT ORDER TO ESTABLISH GUIDELINES FOR DISTRIBUTIONS FROM THE CLASS 7 SILICONE MATERIAL CLAIMANTS' FUND

Dow Corning Corporation, the Debtor's Representatives, and the Claimants' Advisory Committee ("CAC") (collectively, the "Movants") file this *Brief in Support of the Omnibus Response to Objections and Submissions Responding to Consent Order to Establish Guidelines for Distributions from the Class 7 Silicone Material Claimants' Fund* ("Omnibus Response"). This Omnibus Response addresses all submissions received by the Court in response to the proposed *Consent Order to Establish Guidelines for Distributions from the Class 7 Silicone Material Claimants' Fund* ("Consent Order") and not subsequently withdrawn. The Movants respectfully state as follows:

1. In order to resolve eligibility disputes involving more than 6,000 Class 7 claimants and to enable immediate distribution of benefits to over 1,500 approved Class 7 claimants, the Movants agreed to the Plan interpretation that is

set forth in the Consent Order. The Plan interpretation resolves a dispute about the parameters of the requirement that Class 7 claimants must marshal recoveries from other sources in order to be eligible to receive benefits. If the Consent Order is approved, over 5,000 Class 7 claimants who were found to be ineligible based on a failure to marshal recoveries will now be eligible to have their claims evaluated.

2. The Movants filed the Consent Order on May 22, 2015, and on June 2, 2015, the Court authorized the distribution of the *Notice of Proposed Order Establishing Guidelines for the Distributions from the Class 7 Silicone Material Claimants' Fund* ("Notice") to Class 7 claimants to advise them of the Consent Order. The Notice established a deadline of July 27, 2015 for filing any objections to the Consent Order.

3. On June 12, 2015, the Settlement Facility-Dow Corning Trust ("SF-DCT") distributed the Notice to all individuals who had filed a Class 7 claim with the SF-DCT. The SF-DCT mailed the Notice to 55,742 claimants and/or law firms. To help Class 7 claimants evaluate the Consent Order, the SF-DCT posted the Consent Order on its web site, provided information to Class 7 claimants who called the SF-DCT helpline, and set up a system through the website where claimants could link to the particular provisions of the Consent Order that apply to their claim. The SF-DCT also provided translations for foreign claimants who requested information in their own language.

4. The SF-DCT has reported that approximately 19 percent of the notices mailed were returned because the claimant or law firm has moved and has not provided a forwarding address to the SF-DCT. The SF-DCT identified claimants with returned notices who were eligible for further processing, employed its standard procedures for obtaining updated addresses for such claimants, and sent them address verification requests.

5. The Court received submissions from a total of 83 individuals, as well as one submission on behalf of 71 Korean claimants.[1] Some submissions were styled as objections and others as letters in response to the Notice. Of those submissions, 21 were filed after the July 27, 2015 deadline. As of the date of this filing, September 15, 2015, twenty-five claimants had withdrawn their submissions.[2]

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[1] Of the submissions that were not subsequently withdrawn, *see* n.2, *infra*, four submissions were duplicated with submissions that were identical (Submission of A. van Germent Claes, Docket #1048, Pg. ID 17532-39 and Docket #1059, Pg. ID 17577-84; Submission of S. Sommer, Docket #1046, Pg. ID 17525 and Docket #1057, Pg. ID 17570; and Submission of R. Gunter Anderson, Docket #1052, Pg. ID 17550-65 and Docket #1063, Pg. ID 17595-610) or virtually identical (Submission of H. Licitra, Docket #1081, Pg. ID 17750-56 and Docket #1133, Pg. ID 17970-77).

Four individuals who did not subsequently withdraw their submissions submitted multiple submissions or supplements thereto (Submission of L. Puryear, Docket #1077, Pg. ID 17724-27 and Docket #1132, Pg. ID 17961-69; Submission of W. Smith, Docket #1035, Pg. ID 17490-494 and Docket #1141, Pg. ID 18026-31; Submission of J. Meoli, Docket #1073, Pg. ID 17679-81 and Docket #1131, Pg. ID 17955-60); and Submission of I. Mader (Docket # 1115, Pg. ID 17896-98 and Docket #1168, Pg. ID 18091-98).

[2] The following submissions were withdrawn (citation refers to original submission): Submission of E. Willcock (Docket #1065, Pg. ID 17620-21), Submission of L. Boyd (Docket #1078, Pg. ID 17729-30), Submission of A.

This Omnibus Response addresses all the submissions that have not been withdrawn, regardless of timeliness.

Background/Terms of the Consent Order

The Amended Joint Plan of Reorganization (the "Plan") established the Silicone Material Claimants' Fund ("Class 7 Fund") to address certain claims submitted by breast implant patients whose devices were made not by Dow Corning Corporation ("Dow Corning") but by one or more specified companies and that were implanted during a defined time period – January 1, 1976 to January 1, 1992. The Plan prescribes the specific eligibility criteria for inclusion in Class 7. The Plan further prescribes the benefits available to Class 7 claimants. Class 7 claimants are eligible to receive one of two types of payments: an expedited release payment or payment for a disease claim. The Plan provides that Class 7

Copeland (Docket #1071, Pg. ID 17668-75), Submission of A. Huddleston (Docket #1039, Pg. ID 17504), Submission of N. Martelino (Docket #1091, Pg. ID 17802-03), Submission of K. Morrow (Docket #1086, Pg. ID 17777-83), Submission of B. Swift (Docket #1103, Pg. ID 17847-53), Submission of R. Taylor Thomas (Docket #1038, Pg. ID 17501-03), Submission of J. Brown (Docket #1072, Pg. ID 17676-78), Submission of S. Garton (Docket #1093, Pg. ID 17807-08), Submission of C. Hansen (Docket #1074, Pg. ID 17682-83), Submission of V. Hovden (Docket #1047, Pg. ID 17526-31), Submission of L. Koenig (Docket #1037, Pg. ID 17498-500 and 1127, Pg. ID 17947-48), Submission of C. McDonald (Docket #1088, Pg. ID 17786-89), Submission of D. Messer (Docket #1044, Pg. ID 17520-22), Submission of E. Kelley Ray (Docket #1068, Pg. ID 17631-59), Submission of L. Smith (Docket #1049, Pg. ID 17540-42), Submission of S. Waters (Docket #1051, Pg. ID 17545-49), Submission of I. Barnett (Docket #1066, Pg. ID 17622-28), Submission of L. Flores (Docket #1050, Pg. ID 17543-44), Submission of S. Wilson (Docket #1069, Pg. ID 17660-65), Submission of L. Victor (Docket #1064, Pg. ID 17611-19), Submission of M. Mickus (Docket #1120, Pg. ID 17917-20), Submission of M. Buchwald (Docket #1114, Pg. ID 17894-95) and Submission of M. Pickel (Docket #1125, Pg. ID 17943-44).

claimants who assert a disease claim are eligible to receive a payment up to 40 percent of the payment for which similarly-qualified claimants with Dow Corning implants would be eligible. The expedited release payment for Class 7 claimants is $600 (as determined by the Claims Administrator for the SF-DCT). The Class 7 Fund is a sub-fund of the Settlement Fund and is capped at $57.5 million (net present value).

To be eligible for a Class 7 payment, claimants were required to submit their claim forms and supporting documentation by June 1, 2006. Settlement Facility and Fund Distribution Agreement ("SFA"), Annex A (hereinafter "Annex A"), Section 6.04(h)(ii). In addition, claimants were required to "marshal" recoveries from other sources (such as the manufacturer of their breast implants). Claimants who did not marshal all recoveries from other manufacturers by the deadline for submission of their Class 7 claims are not eligible to receive a payment. Annex A, Section 6.04(h)(v).

The Plan prohibits the distribution of payments for Class 7 disease claims until all Class 7 disease claims are evaluated. The purpose of this prohibition is to ensure that all eligible Class 7 disease claims are paid at the same *pro rata* amount from the capped Class 7 Fund. Thus, the SF-DCT must determine the full value of all Class 7 disease claims so that it can determine the amount that can be paid to each claimant (up to the 40-percent cap).

The SF-DCT commenced evaluating Class 7 claims after the June 1, 2006 filing deadline and, by late 2014, had completed the review of the claims that it had determined were eligible for processing. During the course of evaluating the claims, the SF-DCT determined that 6,235 claimants had failed to "marshal" recoveries based on their failure to file or pursue claims with the MDL 926 Claims Office and, thus, were not eligible for processing or payment. The SF-DCT defined all claims in this category as the "Disputed Marshaling Claims." The Disputed Marshaling Claims include both expedited release claims and disease claims. Certain of these claimants disputed the SF-DCT's determination that they were not eligible and appealed the denial to the Claims Administrator. The CAC was contacted by a number of these claimants and their attorneys. The CAC disputed the SF-DCT's interpretation of marshaling and proposed that the issue be resolved through the process set forth in the *Stipulation and Order Establishing Procedures for Resolution of Disputes Regarding Interpretation of the Amended Joint Plan*. The Disputed Marshaling Claims remain unresolved and, as a result, the SF-DCT cannot distribute any payments to Class 7 disease claimants. After conducting an extensive review and analysis of the Class 7 claims in question, the Movants agreed to the interpretation of the marshaling requirement as it pertains to the Disputed Marshaling Claims.

The Consent Order sets forth the Movants' joint interpretation (pursuant to Section 5.05 of the SFA) of the marshaling requirement with respect to a claimant's status in the MDL 926 settlement process. This Plan interpretation resolves the marshaling dispute so that the vast majority of the "Disputed Marshaling Claims" will be eligible for review, evaluation and, where appropriate, payment. The Consent Order also provides agreed procedures for establishing a Reserve Account for the payment of claims and for closing the Class 7 Fund so that payments can be distributed promptly to approved Class 7 Claimants – many of whom have been awaiting payment for several years.

Specifically, the Consent Order clarifies the meaning of the marshaling requirement with respect to a claimant's participation in the MDL 926 settlement. The SF-DCT had interpreted the marshaling requirement to bar any claimant who had not submitted a claim to the MDL 926 Claims Office. The interpretation set forth in the Consent Order distinguishes claimants based on whether they had a viable MDL 926 claim for the specific disease category identified in the claim submitted to the SF-DCT. An individual who did not have a viable MDL claim could not marshal recovery from the MDL settlement. Accordingly, the interpretation set forth in the Consent Order provides, simply, that a claimant whose claim was barred by the terms of the MDL settlement cannot be deemed to have "failed" the marshaling requirement.

The Consent Order does not alter the substantive treatment of any Class 7 claim and does not change any of the eligibility or payment criteria. The Consent Order would establish a Class 7 Reserve Account – funded with sufficient assets to pay all claims in full – so that the SF-DCT can begin distributing payments as claims are qualified. Therefore, if the Consent Order is approved by the Court, the SF-DCT will be able to issue payments almost immediately to the 1,556 claimants whose disease claims have already been approved and will be able to process the 5,006 claims that would become "Eligible Disputed Marshaling Claims." The Consent Order demonstrates that the agreed funding for the Reserve Account is available from the assets of the Settlement Fund and will be more than sufficient to pay all eligible Class 7 claims.

Submissions Filed in Response to Notice of the Consent Order

The Notice provided that any claimant who objects to the Consent Order must submit the objection in writing on or before July 27, 2015. The Court received and docketed submissions from a total of 83 individuals as well as one submission on behalf of 71 Korean claimants. Of these, 21 were filed after the deadline. In addition, 25 claimants have withdrawn their submissions.[3]

As discussed in detail below, while some of the submissions were entitled "objection," none of the submissions from individual claimants objects to the

[3] *See* n.2, *supra*.

Consent Order or any of its terms or provisions. Rather, to the extent that they state any complaint, it is a complaint about the treatment of their claim under the Plan unrelated to any of the terms of the Consent Order. One claimant objects to the fact that the Consent Order does not change the SF-DCT's determination that she is not eligible because she has failed to marshal. The submission on behalf of 71 Korean claimants objects to the fact that the Consent Order does not expand the Class 7 eligibility criteria to allow these 71 already denied claimants to pursue Class 7 claims.

Following is a breakdown of the responding claimants grouped by the specific Class 7 category (as set forth in the Consent Order) applicable to each such claimant. Exhibit 1 is the *Declaration of Ann M. Phillips in Support of Omnibus Response to Objections and Submissions Responding to Proposed Consent Order to Establish Guidelines for Distributions from the Class 7 Silicone Material Claimants' Fund* ("Phillips Dec."). The declaration along with the attachment to the declaration ("Phillips Dec. Attachment") confirm the categorization of each responding claimant.

Category 1 (6 claimants). These claimants have submitted disease claims that have already been approved for payment. *See* Phillips Dec. Attachment at p. 1. None of these claimants asserts any objection to the Consent Order. The

Consent Order will enable the SF-DCT to pay these claims immediately after it goes into effect.

Category 2 (11 claimants). These claimants have submitted and received payment for an expedited release claim. *See Id.* at pp. 1-2, 5. The Consent Order has no effect on these claims, each of which has been fully resolved in accordance with the terms of the Plan.

Category 7 (10 claimants). These claimants have implants that are not eligible for Class 7 benefits. *Id*. at pp. 2, 5. For example, a claimant who had only a saline implant would not be eligible and would be considered a "Category 7" claim. The Consent Order does not affect the treatment of these claims – because it does not alter the eligibility criteria set forth in the Plan. Each of these claimants would have the right to contest the factual basis for the SF-DCT's determination that they do not have an eligible implant.

Category 8 (2 claimants). These claimants failed to cure deficiencies in their claims by the applicable cure deadline. *Id*. Consistent with the Plan and the policies of the SF-DCT, deficient claims are denied if they fail to cure the deficiency within the allotted time. The Consent Order does not alter this process or these determinations.

Category 10 (20 claimants). These claimants received a payment from the MDL Settlement that is equal to or greater than the payment the claimant would be

eligible to receive for her specific Class 7 claim. *Id*. at pp. 3-4, 5-6. The Plan requires the SF-DCT to reduce the amount of compensation that would be allowed for a Class 7 claim by the amount that the claimant received from other sources (*i.e.*, the amount that the claimant "marshaled"). Annex A, Section 6.04(h)(v). This reduction is on a dollar-for-dollar basis. Thus, if the claimant received $50,000 from the MDL settlement and is eligible (absent that MDL recovery) for a total of $20,000 from the SF-DCT, then the SF-DCT must subtract $50,000 from $20,000. In this example, the claimant would not receive any payment from the SF-DCT. The Consent Order does not change the clear requirement in the Plan for such reduction and, thus, does not affect these claims. (Such claimants had or will have the right to challenge the factual information upon which the SF-DCT relies.)

Disputed Marshaling Claims (9 claimants). All of these claims have previously been denied by the SF-DCT for a failure to marshal. *Id*. at pp. 4, 6. Under the Consent Order, 7 of these claimants will now be eligible to have their claims processed and, if they meet the applicable Plan criteria, paid. The other 2 claims are not eligible because they have failed to marshal under the guidelines set forth in the Consent Order. Thus, the Consent Order does not change the treatment of these 2 claims – both of which have already been denied.

Korean Claims. Counsel for certain Korean Claimants filed an objection on behalf of 71[4] Korean claimants whose Class 7 claims have been denied because the claimants do not meet the eligibility requirements for inclusion in Class 7. *See Objection to the Proposed Consent Order to Establish Guidelines for Distributions from the Class 7 Silicone Material Claimants' Fund*, Docket #1076, Pg. ID 17708-23 ("Korean Objection"). Specifically, these claimants acknowledge that they did not receive their implants during the prescribed time period of January 1, 1976 to January 1, 1992. *See* Korean Objection at pp. 5-6. The Korean claimants complain that the Consent Order retains the eligibility criteria in the Plan and, thus, the 71 claimants previously determined to be ineligible would still be ineligible if the Consent Order is approved. This is not an objection to the Consent Order – which does not change any of the eligibility criteria mandated by the Plan. The Korean Objection is an objection to the terms of the Plan, and the time for making an objection to the Plan was during the confirmation process over 16 years ago.

As the above discussion demonstrates, the Consent Order does not change any of the substantive criteria governing Class 7 claims and none of the responding claimants will be affected adversely by the Consent Order. The only consequence

[4] Although the text of the Korean Claimants' objection references 71 Korean claimants, the list appended to the objection includes 289 individuals and at the end of the list states that there are "over 2,670 claimants." Based on the Movants' understanding of the submission on behalf of Korean claimants, the number 2,670 likely refers to all of the claims in all Plan classes – not just Class 7 – and that there are 71 Korean claimants whose Class 7 claims have been denied by the SF-DCT.

of the Consent Order is to facilitate prompt payment of approved claims and to allow the SF-DCT to process some claims that previously had been denied based on a failure to meet the marshaling requirement as originally interpreted by the SF-DCT.

Substantive Statements Set Forth in Submissions

None of the individual claimants who submitted statements in response to the Notice has asserted any objection to any of the terms or provisions of the proposed Consent Order. Not one of the individual claimants who submitted responses contends that the Consent Order should not be entered. The claimants instead raise other issues: some have requested an opportunity to supplement their claim submission; others have asked for an update on the status of their claim; others have raised arguments about substantive terms of the Plan; and others have requested guidance on their options. Only one of the individual claimants who submitted a statement in response to the Notice raises any specific concern: that claimant states that she objects to the decision on her specific claim that she has "failed" the marshaling requirement. But that claimant does not object to any terms of the proposed Consent Order. Rather, she asserts that she has, in fact, complied with the marshaling requirement based on her attempts to contact the manufacturer of her implants. Nothing in the Consent Order changes the treatment of this claim. This claimant is in the Disputed Marshaling category, and the SF-

DCT has previously deemed her claim ineligible for a failure to marshal recoveries from other sources. The Consent Order does not change her status. *See* Submission of R. Willerson, Docket #1100, Pg. ID 17836-39.

Following is a summary of the types of statements made in the submissions of individual claimants:[5]

Requests for Payment. Two claimants simply requested that they receive payment. *See* Exhibit 2, p. 1. All of these claimants will receive a payment if the proposed Consent Order is approved.

Request for Translation. Four claimants requested a translation of the Notice document. *Id*. The SF-DCT has provided the translation to each of these claimants.

Provided Medical Records or Other Information Potentially Pertinent to Processing Claim. Eleven claimants provided updated medical records or other claim-related or health information. *Id*. at pp. 1-2. The SF-DCT can review these submissions as appropriate.

Submit Argument that Compensation Amounts Should be Increased. Ten claimants objected to the amount of their original compensation or requested additional compensation. *Id*. at p. 2. The Consent Order does not alter the

[5] Exhibit 2 organizes each individual submission based on the substance of the letter. Note that the count of claimants set forth in the text includes submissions Filed after the July 27, 2015 deadline.

compensation criteria or amounts – which are prescribed by the Plan. Thus, any objection to the amount of compensation is an untimely objection to the terms of the confirmed Plan and not to the Consent Order.

Submission Contesting the SF-DCT Determination on Claim. Eight claimants disputed the substantive determination of their claim or sought reconsideration thereof, that is, they contested the SF-DCT's evaluation of the disease claim as set forth in the notification of status letter sent to the claimant. *Id*. at pp. 2-3. These claimants do not object to the Consent Order but, rather, contest the SF-DCT's substantive determination under the terms of the Plan. In some cases the claimants dispute the factual determination of the SF-DCT. These claimants had and may still have the right to appeal the determination of the SF-DCT to the Claims Administrator and to the Appeals Judge. Other claimants challenge the eligibility terms of the Plan. Of course, claimants cannot now raise objections to the terms of the Plan which has been confirmed and effective for over 10 years.

None of the remaining responding claimants challenged the Consent Order but instead raised various different issues with respect to their specific claims or posed questions about the settlement terms or sought specific guidance. For example: some want a status update, additional information or documentation, or other assistance from the Court; some asked to be included in the settlement or to

be allowed to maintain the claim. (All such claimants are already included in the settlement program.) Still, others ask why they never received a settlement payment. *See*, *e.g.*, Submission of P. Beckingham, Docket #1033, Pg. ID 17482-85, Submission of P. DiPucchio Docket #1150, Pg. ID 18053-55; *see also* Exhibit 2 at pp. 3-4.

Some claimants have requested action or information that is not consistent with the status of their claim. Two claimants ask for information about filing a claim and obtaining payment. Both of these claimants have already filed claims and received payment for an expedited release claim. *See*, *e.g.*, Submission of S. Crockett, Docket #1070, Pg. ID 17666-67. Another believes she submitted all appropriate documentation and wants to remain in the case. *See* Submission of B. Ro, Docket #1119, Pg. ID 17914-16. This claimant, too, has already received full payment for her expedited release claim.

Other claimants allege that they never had implants of any kind, provide updated contact information to the Court, seek an extension of time to file an objection or purport to object with no supporting basis or rationale. *See* Exhibit 2 at pp. 3-4.

None of these submissions provides any basis to reject the Consent Order. The claimants who dispute the evaluation of their claim by the SF-DCT do not raise any issue with the Consent Order but, instead, improperly seek to re-open

arguments about the terms of the Plan that were fully resolved when the Plan was confirmed or seek to challenge procedures of the SF-DCT that are dictated by the Plan for these and all other claimants.

The Consent Order will provide significant benefit to the vast majority of claimants – by expediting payment of all currently approved Class 7 claims and by enabling over 5,000 claimants to have their claims evaluated by the SF-DCT. All other Class 7 claimants will retain their current status and all approved disease claimants will receive the maximum amount payable for Class 7 disease claims under the Plan.

Objection Filed by Certain Korean Claimants

The "Class 7 Korean Claimants" do not object to any specific term or provision of the Consent Order; rather, they purport to object to the Consent Order on the ground that interpretation of the marshaling requirement constitutes an improper modification of the Plan.[6] The Class 7 Korean Claimants appear to argue that the interpretation of the marshaling requirement with respect to the status of claimants in the MDL 926 settlement alters the meaning of the term marshaling because there are other ways in which a claimant could marshal recoveries. But the interpretation set forth in the Consent Order is simply an interpretation that addresses the issues posed by the initial denial of the Disputed Marshaling

[6] As demonstrated above and as explained in the Consent Order, the Consent Order does not affect or alter any specifically identifiable rights of any Class 7 claimant.

Claimants based solely on the failure of these claimants to submit claims to the MDL 926 settlement. It does not purport to identify the different ways in which a claimant could marshal recoveries. If any of these claimants had "marshaled" recoveries by pursuing litigation against the manufacturer of the implant, then the claimant would not be listed in the "Disputed Marshaling Group."

After arguing that the interpretation of the marshaling requirement should not be permitted because it is a "modification" of the Plan, the Class 7 Korean Claimants then assert that the Consent Order should not be approved because it does not go far enough to modify the Plan: the Class 7 Korean Claimants contend that the Consent Order is not "justified" because it does not expand the implantation date range that defines Class 7 claimants. Ironically (in light of the initial objection described above), the Class 7 Korean Claimants argue that the Movants should modify the Plan to change the fundamental eligibility criteria for Class 7.

The "objection" filed by the Class 7 Korean Claimants is not an objection at all. The Class 7 Korean Claimants improperly use the opportunity to respond to the Consent Order to re-assert arguments made in the *Motion for Extension of Deadline of Class 7 Claimants* ("Motion for Extension") filed by the same Class 7 Korean Claimants on March 7, 2014. The SF-DCT denied the Class 7 claims submitted by these 71 claimants because these claimants, by their own admission,

did not have their implants inserted before January 1, 1992 as required by the Plan. Korean Objection at p. 5. (A claimant who does not satisfy the date criteria does not meet the definition of a Class 7 claimant.[7]) In the Motion for Extension and again in the "objection" in response to the Consent Order, the Class 7 Korean Claimants whose claims were properly denied seek to alter the Plan's requirement that the implant must have been inserted by January 1, 1992.[8] The Class 7 Korean

[7] As the Movants asserted in their responses to the Motion for Extension, the Class 7 Korean Claimants' Motion for Extension – and the "objection" to the Consent Order – are nothing more than an unauthorized appeal of a decision of the Claims Administrator. See *Motion to Dismiss and Response to the Appeal Filed by Korean Claimants Styled as a "Motion for Extension of Deadline of Class 7 Claimants"* Filed by Dow Corning and *Response of Claimants' Advisory Committee in Opposition to Motion for Extension of* Deadline for Class 7 Claimants. The District Court and the Court of Appeals explicitly and repeatedly have held that the Plan language does not permit individual claimants to appeal decisions of the SF-DCT, Claims Administrator, or Appeals Judge to this Court. See, e.g., In re Settlement Facility Dow Corning Trust, Danielle McCarthy, No. 12-cv-10314 at 2- 3 (E.D. Mich. Sept. 28, 2012) ("The Plan provides no right of appeal to the Court."), appeal dismissed, 12-2506 (6th Cir. Jan. 28, 2013); In re Settlement Facility Dow Corning Trust, Marlene Clark-James, 08-1633 at 3 (6th Cir. Aug. 8, 2008) ("The district court properly dismissed Clark-James' complaint . . . essentially seek[ing] a review of the SF-DCT's determination that she has not submitted sufficient proof to show that her implants had ruptured. [T]he Plan provides no right of appeal to the district court, except to resolve controversies regarding the interpretation and implementation of the Plan and associated documents."), aff'g No. 07-CV-10191 (E.D. Mich. Mar. 31, 2008).

[8] The Class 7 Korean Claimants mistakenly contend that the January 1, 1992 date is the date on which the manufacturers stopped making implants. They assert that the date should be changed to allow for the fact that it would take some time to "transport" these implants to Korea. Korean Objection, p. 5. But the January 1, 1992 date is not, as they contend, based on dates of manufacture. The January 1, 1992 date was intended to provide a substantial "cushion" after Dow Corning stopped selling silicone gel to other breast implant manufacturers. The vast majority of the Class 7 Korean Claimants allege implantation with Cox Uphoff implants. Dow Corning stopped selling gel to Cox Uphoff almost 10 years before the January 1, 1992 date. *See*, *e.g.*, *Safety of Silicone Breast Implants* (S. Bondurant *et al*. eds., Institute of Medicine, Committee on Safety of Silicone Breast Implants, 1999) at pp. 75-76 (Dow Corning supplied silicone gel to Cox

Claimants' attempt to equate the interpretation of the marshaling requirement with respect to the Disputed Marshaling Claims with their effort to change the eligibility requirements for Class 7 membership is untenable. The Plan interpretation addresses an ambiguity in the application of the marshaling requirement to the Disputed Marshaling Claimants – it does not change the requirement that all Class 7 claimants must marshal other recoveries. The Class 7 Korean Claimants, in contrast, seek in their "objection" to amend a clear, unambiguous term of the Plan that defines the individuals who are in Class 7.[9] The Korean Objections do not state any real objection to the Consent Order and seek instead to alter the terms of a confirmed Plan. Therefore, the Korean Objection must be rejected.

The Consent Order Provides a Significant Benefit to Class 7 Claimants and Should be Approved

Over 1,500 Class 7 claimants who have approved disease claims have waited for years (in some cases) to receive their payment. The SF-DCT cannot distribute those payments until the treatment of the Disputed Marshaling Claims is

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Uphoff from 1976 to 1983; Dow Corning supplied silicone gel to Bioplasty in 1987 and 1988).

[9] The Class 7 Korean Claimants contend that the fact that the Movants submitted the Consent Order to the Court for approval and sent notice of the Consent Order to all Class 7 claimants shows that it is a Plan modification. In other words, if the Consent Order really was a Plan interpretation pursuant to Section 5.05 of the SFA, then the Movants could have merely submitted the Consent Order to the Claims Administrator. As is clear from the Consent Order, the Movants seek the Court's approval to implement procedures to close the Class 7 Fund and to finally resolve all categories of Class 7 claims. The Movants' interpretation of the marshaling requirement enables the conclusion of the Class 7 Fund and, thus, is the predicate for the determinations set forth in the Consent Order.

resolved. The Consent Order resolves the treatment of the Disputed Marshaling Claims and provides the mechanism for prompt distribution to approved Class 7 claims. The vast majority of the Disputed Marshaling Claims will be evaluated for payment, and all Class 7 claims will receive the maximum payment permitted by the Plan. The Consent Order thus provides significant benefit to Class 7 claimants and does not alter any substantive right of any Class 7 claimant. For the foregoing

reasons, the Movants respectfully request that the Court approve the Consent Order.

Dated: September 15, 2015

On Behalf of Dow Corning Corporation and Debtor's Representatives:

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE:		
DOW CORNING CORPORATION,	§	**Case No. 00-CV-00005 -DT (Settlement Facility Matters)**
REORGANIZED DEBTOR	§	**Hon. Denise Page Hood**

CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2015, a true and correct copy of the *Omnibus Response to Objections and Submissions Responding to Consent Order to Establish Guidelines for Distributions from the Class 7 Silicone Material Claimants' Fund* and the *Brief in Support of Omnibus Response to Objections and Submissions Responding to Consent Order to Establish Guidelines for Distributions from the Class 7 Silicone Material Claimants' Fund* were served via electronic mail or first-class mail upon the persons listed below, which list includes all individuals who submitted a response of any type to the Court regarding the proposed Consent Order to Establish Guidelines for Distributions from the Class 7 Silicone Material Claimants' Fund (Doc. No. 1027).

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