SUPPLEMENTAL EXHIBIT 13

Memorandum dated 6/9/2006 from D. Austern to the parties

S F D C T

SETTLEMENT FACILITY

DOW CORNING TRUST

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MEMORANDUM

TO: The Parties

FROM: David Austern

DATE: June 9, 2005

RE: Issues Concerning Option 1 ACTD Disability Level A Guidelines

I. Introduction

Numerous motions have been filed in the United States District Court seeking judicial relief from alleged outcome differences of ACTD Level A claims as between the MDL Claims Office and the SF-DCT. Argument on these motions is scheduled for later this month. I suggested to the Debtor's Representatives and the Claimants' Advisory Committee (the CAC) (the Parties) that it might be useful if I prepared a report concerning (1) how one might explain the numerous complaints about processing differences between the SF-DCT and the MDL Claims Office, and (2) my recommendations as to what the SF-DCT ACTD Level A claims processing rules should be. Because my recommendations concerning ACTD Level A claims almost certainly exceed my authority to make processing changes (and arguably may usurp the authority of others), a brief review of the SF-DCT Claims Administrator's responsibilities and direction is useful, particularly as they concern the instant matter.

Section 4.03(a) of the Settlement Facility Agreement (SFA) instructs that the Claims Administrator is responsible for insuring that the SF-DCT applies the appropriate processing and evaluation guidelines described in the Plan. This same section mandates the Claims Administrator to rely on the processing guidelines compiled by the MDL Claims Administrator as of 2003, and gives the SF-DCT Claims Administrator the discretion to modify SF-DCT claims processing procedures or interpretations to conform to such MDL modifications after 2003. However, the SF-

DCT Claims Administrator is not required to conform SF-DCT claims processing procedures to such post-2003 MDL modifications.

Section 4.03(a) also contains a sentence that seems to summarize its intent: "It is expressly intended that the Settling Breast Implant Claims shall be processed in substantially the same manner in which claims filed with the MDL 926 Claims Office under the Revised Settlement Program were processed except to the extent criteria or processing guidelines are modified by this Settlement Facility Agreement or the Claims Resolution Procedures, or this Section 4.03, and that the Claims Office shall manage its operations to the extent feasible as they have been conducted under the Revised Settlement Program."

Section 5.05 of the SFA requires the Claims Administrator to consult with and obtain the advice and consent of the Parties regarding any additions or modifications to substantive eligibility criteria, among other things, in claims submissions to the extent such interpretations have not previously been addressed (as of February 2003) by the MDL Claims Administrator. The same section provides that, in the event of a dispute between the Debtor's Representatives and the CAC, the SF-DCT Claims Administrator may determine the issue or apply to the District Court for consideration of the matter. Exhibit A to the June 10, 2004 Stipulation and Order Establishing Procedures For Resolution of Disputes Regarding Interpretation of the Amended Joint Plan establishes procedures for seeking Debtor's Representatives and CAC views (and responses) with respect to Plan interpretation issues.

These provisions and others create the following mandate for the Claims Administrator.

- The SF-DCT should process claims in substantially the same manner in which similar claims were processed by the MDL Claims Office (except where criteria or processing guidelines were modified by the SFA);

- The SF-DCT should manage all of its operations to the extent feasible in the same manner as such operations were conducted by the MDL;

- The SF-DCT is authorized to rely on the processing guidelines compiled by the MDL Claims Administrator as of February 2003;[1]

- There is no requirement that the SF-DCT alter its procedure to conform to MDL modifications that occurred after February 2003.[2]

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[1] The Debtor's Representatives appear to believe that the MDL processing guidelines that existed on November 30, 1999, the date of the Plan Confirmation Order, are the MDL processing guidelines on which the SF-DCT should rely.

[2] Section 7.01(c) of Annex A to the SFA requires the SF-DCT to institute procedures to assure consistency of processing and of application of criteria in determining eligibility and to ensure fairness in claims processing.

If the instructions to the SF-DCT with respect to the application of MDL processing guidelines appear to be inconsistent or confusing, an agreement among the Parties as to which MDL processing guidelines should be employed by the SF-DCT would ameliorate or even eliminate any such confusion. However, there is no such agreement. It is inappropriate for me to reveal the positions of the Debtor's Representatives or the CAC that had been communicated to me by them, particularly where these communications have taken place (almost exclusively by telephone) in the absence of the other side. However, I do not believe it breaches the implicit confidentiality of any such conversations if I report that there appears to be a disconnect between the Parties as to how MDL claims were processed, and when such processing guidelines were changed.

In addition, the Plan contains many references to the SF-DCT adhering to MDL processing rules, even to the extent of requiring the SF-DCT to approve automatically a disease claim that was approved at the MDL at the same level (so-called MDL "pass throughs"). As noted below, many of these MDL pass throughs receive an ACTD Level A award by the SF-DCT while other SF-DCT claimants with the exact same proof and disability statements are denied a Level A award based solely on the fact that the MDL changed its processing guidelines only after almost all of its ACTD Level A claims had been processed.

The history of the MDL ACTD Level A processing guidelines with respect to Level A claims is short and relatively easy to understand.

II. MDL 926 ACTD Level A Processing Guidelines

At MDL inception, all processing guidelines (not just ACTD Level A claims) were unrecorded. Former MDL employees who are now employed at the SF-DCT, some of whom were among the first employees at the MDL, have reported to me that the initial MDL processing guidelines were based on oral history and verbal communications between and among claim reviewers. Later, the MDL Claims Administrator issued processing "guidelines" that were written in the margins of memoranda addressed to her by the claims reviewers. Still later, some formality was adopted when the processing guidelines were recorded in memoranda from the MDL Claims Administrator to her staff.[3]

When discussing the ACTD Level A claims MDL guideline procedures history, it is important to be sure everyone understands what "disability" means in the ACTD Level A claims context. Annex A of the SFA defines an Option 1 Level A claim as one filed by an individual who is dead or totally disabled. A totally disabled person is one who demonstrates a functional capacity adequate to consistently perform none or only a few of the usual duties or activities of vocation or self-care. Of course, the purpose of this memorandum is to address the question of whether a loss of both vocation *and*

[3] However, not all MDL guidelines were in written form and when the SF-DCT facility was established, some MDL processing guidelines were "adopted" based on the memory of the SF-DCT staff who had worked at the MDL.

self-care activities or duties is required to qualify for ACTD Level A compensation, or whether the loss of only vocation *or* self-care is required. Vocation has been defined by both the MDL Claims Office and the SF-DCT as including the inability to work, attend school, or perform household activities (sometimes referred to as "homemaking"). Self-care disability includes the inability to perform the activities associated with dressing, feeding, bathing, grooming or toileting. For both vocation and self-care, the disability must relate to a condition that is compensable under the Plan.

Note that in each case, vocation and self-care, a claimant can qualify for ACTD Level A disability if she can still perform a few of the usual duties of vocation or self-care. For instance, with respect to vocation, a claimant who because of a compensable condition has stopped working full-time but works a few hours a week from a home office, and does so because she has to schedule rest times, could qualify as a Level A claim based on her inability to work. Similarly, an ICU nurse who is unable to remain employed because of joint pain and fatigue, but is able to work part-time, might qualify for a Level A vocational disability.

With respect to self-care, to qualify for Level A disability, a claimant must be unable to perform at least two areas of self-care. Thus, if a claimant cannot dress or groom herself, she would qualify for a Level A claim.[4]

The MDL Claims Office processed and approved claims beginning in 1996. Between 1996 and 1999 the MDL Claims Office processed and approved 23,561 ACTD claims.[5] The claims, listed by the year in which the claims were processed and approved, are as follows:

Year	No. of Claims
1996	11,134
1997	12,205
1998	169
1999	53

During this period the MDL Claims Office approved 14.3% of these claims as Level A ACTD claims.[6]

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[4] Over time, the MDL 926 Claims Office altered its self-care disability rules to require disability in all five areas of self-care, reduced this requirement to three areas, and then reduced it again to two areas.

[5] An additional 14 claims were processed and approved between 2000 and 2005.

[6] These statistics have been reviewed with the MDL Claims Office. MDL claims were not always paid during the year they were processed and approved.

To date, the SF-DCT has completed the reviews of 12,941 ACTD claims and has approved at Level A approximately 5% of such claims.[7] The fact that the MDL Claims Office approved ACTD Level A claims at a rate nearly three times higher than the SF-DCT has approved such claims has been the subject of the motions filed in the District Court alleging that the SF-DCT is not adhering to the MDL ACTD Level A processing guidelines.

Unquestionably, the MDL Claims Office presently requires an ACTD Level A claimant to establish that she can consistently perform none or only a few of the usual duties or activities of vocation *and* self-care. A November 8, 2005 Order (No. 270) of the United States District Court, Northern District of Alabama (Southern Division) approved certain proposed Questions and Answers to be distributed to MDL claimants and their attorneys. Among these questions and answers were the following:

Q 2-5: My doctor said I was totally disabled from my job. Why didn't you approve me for "A" disability?

A 2-5: Level "A" disability pertains to both vocation and self-care. To qualify for Level 'A', you must demonstrate disability in both areas.

However, this has not been the processing rule for MDL ACTD Level A claims from MDL inception, and for a period of time the MDL processed and approved ACTD Level A claims where claimants could demonstrate that they were unable to perform none or only a few of the usual duties or activities of vocation <u>or</u> self-care.

The change in the processing rules followed a September 30, 1997 Order of the United States District Court, Northern District of Alabama (Southern Division). In the case before the Court ([redacted]), Judge Pointer held that the claimant, who had appealed from a decision of the MDL Claims Administrator, was entitled to a Level C rather than a Level A award. The claimant's physician had not addressed the claimant's capacity to perform self-care activities. On appeal, the claimant argued that the physician's finding that the claimant was unable to perform vocational activities was enough to qualify her for a Level A award.

In examining the MDL settlement, Judge Pointer found the MDL Plan language in question – "An individual will be considered totally disabled if she demonstrates a functional capacity adequate to perform none or only few of the usual duties or activities of vocation or self-care" – contained "some ambiguity or inconsistency." Judge Pointer went on to note that "[H]ad the words 'or only few' been omitted, the meaning would have been clear, namely a requirement that there be limitations affecting both vocational and self-care activities." The Court then held that the inclusion of the words "or only few" was intended to permit a Level A award even where a claimant could perform a few vocational or self-care activities. In addition, a claimant had to establish a loss of vocational *and* self-care activities. Thereafter, the

[7] SF-DCT April 30, 2006 Claims Processing Report.

Court found that the MDL Claims Administrator had "consistently" applied such an interpretation in ACTD Level A claims.

Implicit and arguably explicit in this last judicial finding is that the MDL Claims Office consistently awarded ACTD Level A compensation only where a claimant had both self-care and vocational functional incapacity, at least to some extent. The evidence is to the contrary and consists of the following:

- All SF-DCT employees who were formerly employed at the MDL state that prior to Judge Pointer's Order noted above, the MDL awarded Level A compensation to ACTD claims where the claimants' disabilities resulted in an inability to perform all or none of the activities of self-care *or* vocation. The MDL did not require a loss of vocation and self-care activities.

- A review of the MDL files the SF-DCT has been given supports the statement in the previous bullet point. Indeed, it is almost impossible to find an MDL claim processed prior to the Judge Pointer Order where a claimant was denied Level A compensation because the claimant did not have a loss of both vocation and self-care.[8]

- So ingrained was the MDL practice of looking to *either* vocation *or* self-care in awarding Level A disability that even after Judge Pointer's Order, for a period of several months stretching well into the first quarter of 1998, the MDL continued to make Level A awards based on *either* vocation *or* self-care activity loss.[9]

Based on conversations I have had during the past 15 months with the Parties, I believe that as of the Plan Confirmation (and even later), the Parties may have had different views with respect to the history of MDL ACTD Level A processing. I believe that as of the date of the Confirmation Order, the Debtor's Representatives believed that the MDL processed ACTD Level A claims as Judge Pointer's Order directed *and* that the MDL always had processed the claims in that manner (as Judge Pointer's Order appears to state). Conversely, I believe the CAC was of the view that the MDL processed claims in the manner described in the bullet points that appear above and, that the MDL always had processed the claims in this manner.

Ultimately, well after entry of Judge Pointer's Order, the MDL changed its processing practices and required statements concerning a claimant's loss of activities with respect to vocation *and* self-care. During 2002, when the SF-DCT was formulating claim review procedures in accordance with the practices of the MDL, it was the "*and*" requirement of vocation *and* self-care with respect to ACTD Level A

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[8] By way of example, the following SF-DCT claims were each awarded ACTD Level A compensation by the MDL with evidence of a loss of only vocation (and no evidence of self-care activities): SID Nos. 6218573, 6202638, 0299076, 6187603, 6187211, 0963517, 0238238, 0268859, 6241478, 0227847.

[9] MDL Claim [redacted] and MDL Claim [redacted] were approved and paid after the date of Judge Pointer's Order, and each claim was awarded Level A ACTD compensation with evidence of a loss only of vocation activities.

compensation that was communicated to the SF-DCT. Unfortunately, before the MDL changed the processing rules and communicated the "new" rules to the SF-DCT, the MDL had processed and approved approximately 99% of all of the ACTD Level A claims that the MDL has ever processed.

It is not surprising, therefore, that many MDL claimants and their attorneys who submitted claims to the SF-DCT seeking the same ACTD Level A compensation that they had received at the MDL for claims that in all respects were the same as claims submitted to the MDL, were surprised to learn that they did not qualify for such Level A compensation because there was no evidence (in most cases) of a loss of self-care activities. Indeed, the overwhelming plurality of all medical statements submitted in support of MDL claims did not even address self-care because there was substantial evidence of a loss of vocational activities, and such loss was sufficient to qualify a claimant for ACTD Level A compensation.

Thus, claimants who received MDL ACTD Level A awards based on a loss of vocational activities but with no proof of a loss of any self-care activities, and who then file with the SF-DCT, will receive a Level A award at the SF-DCT (as an MDL pass through). Claimants who did not file with the MDL but who have exactly the same factual and medical proof showing a loss of vocational activities as the MDL claimants, will not receive an SF-DCT ACTD Level A award if they have not established they have a loss of self-care activities. Where the prior MDL claimants and the SF-DCT claimants are represented by the same lawyer, it is no wonder that such lawyers are disappointed (or have a less benign reaction) when their SF-DCT claim does not receive a Level A award. They argue, rightly so I believe, that their SF-DCT claim would have been approved at the MDL as a Level A, at least if it had been filed before 1998.

I have received over a score of complaints from attorneys whose ACTD claim has been awarded ACTD Level B (or lower) compensation by the SF-DCT notwithstanding submission of the same type of evidence that was submitted to the MDL that resulted in a Level A award by the MDL Claims Office. In the words of a number of these plaintiffs' attorneys, the Dow Corning Bankruptcy Settlement was "sold" to them based on the understanding that the SF-DCT would resolve claims in the same manner as they had been resolved by the MDL Claims Office, and that has not been the case. [10]

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[10] Because the SF-DCT is not technically a party to the numerous Level A "appeals" filed with Judge Hood, I have not received all such motions. The Parties, however, have been cooperative in forwarding to me pleadings where the SF-DCT may not have been served. Nonetheless, I cannot represent that I have seen all of the motions filed in court which complain of the SF-DCT practices with respect to ACTD Level A awards. I have reviewed many of them, however, and I have spoken with many of the lawyers who have filed such motions. Almost invariably, they have presented evidence that their clients were awarded ACTD Level A compensation by the MDL and when they filed a similar claim with the exact same evidence on behalf of an SF-DCT claimant, the SF-DCT awarded Level B compensation because the claimant was missing evidence of a loss of self-care activities (or, in a few cases, a loss of vocation). This is not to say, however, that there are not other deficiencies that the SF-DCT has discovered with respect to some of these claims. The Parties should know that were the SF-DCT to change its processing guidelines and adopt the processing guidelines that existed at the MDL Claims Office prior to 1998 with respect to ACTD Level A compensation, some of the claims addressed in the motions before Judge Hood with respect to this matter would nonetheless be denied because of other deficiencies.

SUPPLEMENTAL EXHIBIT 14

Letter dated 6/9/2006 from L. Bryan to the Finance Committee

DOFFERMYRE SHIELDS CANFIELD KNOWLES & DEVINE, LLC

TRIAL ATTORNEYS

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June 9, 2006

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David Austern
Claims Administrator
Settlement Facility – Dow Corning Trust
3100 Main Street, Suite 700
Houston, Texas 77002

Dear Francis, Frank, and David:

I am writing the three of you in your capacities as the Finance Committee responsible for the Dow Corning Trust. As you know, there are a number of motions pending before Judge Hood that relate to whether the Settlement Facility is properly applying the criteria for Option I Level "A" disability. Judge Hood is scheduled to hear those motions on June 20.

I understand that David, as Claims Administrator, has prepared a report that analyzes the issue of how claims for Option I Level "A" were evaluated in MDL-926 and how those claims are evaluated in the SF-DCT. I further understand that

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the report has been provided to the Debtor's Representatives, who are adverse parties in connection with the pending motions.

I am therefore writing to request that a copy of David's report be furnished to all counsel with motions pending related to this issue. I have consulted with other counsel responsible for those motions and am authorized to state that Rhett Klok, Brad Glazier, Rob Steinhaus, Priscilla Farris, and Dawn Barrios, join this request.

Sincerely,

Leslie J. Bryan

LJB/dlv

cc: Deborah A. Greenspan
Ernest H. Hornsby
Dianna Pendleton

SUPPLEMENTAL EXHIBIT 15

Declaration of Dianna Pendleton-Dominguez

SUPPLEMENTAL EXHIBIT 15A

Printout of Dow Corning's Website page (www.implantclaims.com) dated 3/4/1999

DECLARATION OF DIANNA PENDLETON-DOMINGUEZ

I affirm and state under oath that the following statements are true and accurate to the best of my knowledge:

1. My name is Dianna Pendleton-Dominguez, and I am an attorney licensed to practice in Ohio (1987) and Texas (1997). I was appointed to serve on the Claimants' Advisory Committee in the action, *In re Dow Corning Corporation, Reorganized Debtor*, Case No. 00-CV-00005-DP (Settlement Facility Matters).

2. When the parties received the June 9, 2006 Memorandum from David Austern concerning his Disability A findings, counsel representing plaintiffs in related motions requested that we forward a copy to them. I and other members of the CAC suggested that counsel should make a written request to David Austern for release of the Memorandum because we believed it was given to the parties confidentially. Thereafter, Leslie Bryan sent a letter to the Finance Committee requesting a copy of the Memorandum.

3. On June 16, 2006, it was relayed to me by CAC member, Ernie Hornsby, that he had spoken with David Austern about Ms. Bryan's request to release the Memorandum. As soon as I was informed that consent for release of the Memorandum has been given, I provided a copy to plaintiffs' in the related motions and began to draft a Notice of Supplemental Exhibit for filing with the Court.

4. I spoke with Deborah Greenspan, a member of the Debtor's Representatives, on several occasions on Thursday, June 15 and Friday, June 16 about the hearing scheduled for June 20th. Ms. Greenspan indicated that she had several conference calls scheduled with the Debtor's Representatives and that she would contact me following these calls to determine if the parties could consensually resolve the Disability A issue prior to the hearing.

5. My last call from Ms. Greenspan was at 5:30 p.m. Eastern Time on Friday, June 16th. She stated that the Debtor's Representatives intended to go forward with the hearing on the 20th. The Notice of Supplemental Exhibit was filed on the next business day. As soon as it was filed, I spoke with Ms. Greenspan to let her know that it had been filed so that she knew about it before she left the office for the day.

6. After the June 9, 2006 Memorandum was issued, Deborah Greenspan, Ernie Hornsby and myself spoke with David Austern about it on at least two occasions. At no time during these conversations – either jointly with Mr. Austern or separately with just Ms. Greenspan and the CAC – did Ms. Greenspan raise any concern that the Memorandum was flawed or unreliable. To my knowledge, at no time has Ms. Greenspan or the Debtor's

Representatives ever suggested that a "statistically significant sampling" of approved Disability A claims be performed or that Mr. Austern should interview Ann Cochran regarding the history of the Disability A processing annotations.

7. Attached to this Declaration as Exhibit A is a true and accurate copy of a document that I personally printed from the Dow Corning breast implant issues website on March 4, 1999. This document is a record kept by me in the regular course of business, and I have direct knowledge regarding this.

8. The Claims Administrator has reported to the CAC and Debtor's Representatives in our weekly status calls the preliminary findings on the review of 414 of these claims: 47 errors or 11% of the 414 disease option 1 claims had errors in the SF-DCT's review; 15 of of the 47 errors – or 3.6% of the 414 claims should have been paid at the Disability A level using the standard of "vocation and self-care" but were improperly denied; 140 claimants of the 414 – or 34% — would qualify for Disability A compensation based on vocational disability alone (identical to the standard applied to MDL 926 disease option 1 claims). Another 147 of the 414 – or 35.5% -- had disability statements based on homemaking activities alone which could qualify for vocational disability if the claimant did not otherwise work outside of the home; and 16 claimants of the 414 – or 3.9% would qualify for Disability A based compensation based on self-care disability alone (identical to the standard applied to MDL 926 disease option 1 claims).

9. The Claims Administrator also reported in these same status conference calls that a significant percentage of the 414 claims completed thus far – or 69% -- relied on disability statements from Qualified Medical Doctor reports ("QMD Reports") written in 1994 for the original global settlement.

Dianna Pendleton-Dominguez

Dianna Pendleton-Dominguez

Date: June 28, 2006

Dow Corning Corporation Chapter 11 Information

DOW CORNING

For information on Dow Corning's bankruptcy, contact the Dow Corning Bankruptcy Information Line at 1-800-651-7030.

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What's Next

Dow Corning Corporation and the Tort Claimants Committee, representing women with breast implant claims and other product liability claimants, have requested that the Bankruptcy Court approve a Disclosure Statement, which describes a proposed consensual Plan of Reorganization to settle the breast implant controversy.

This $3.2 billion settlement provides a wide variety of payment options to personal injury claimants who have filed a proof of claim in Dow Corning's Chapter II case. Once the Disclosure Statement is approved by U.S. Bankruptcy Court Judge Arthur Spector of the Eastern District of Michigan, it will be mailed to claimants. Claimants will be asked to vote "yes" or "no" on the plan. If claimants approve the plan and the Bankruptcy Court confirms it, women with Dow Corning breast implant claims and other product liability claimants will receive another mailing offering them various options to settle or litigate.

Key features of this plan include:

- The plan offers both "base" settlement amounts as well as "premium" payments. The base payments for disease are equivalent to payments in the Revised Settlement Plan (RSP) offered by other breast implant manufacturers. That plan has already been overwhelmingly accepted by women with silicone breast implants. If sufficient funds are available to make premium payments, the Dow Corning plan will pay women at higher levels than the RSP.
- A woman may qualify for either the Expedited Release Payment Option or the Disease Payment Option. Either of these two options may also be combined with payments for implant removal surgery ($5,000) and a ruptured implant ($20,000), if a woman qualifies for those additional options.
- There are eight different compensation levels for disease payments, ranging from $10,000 to $250,000. Women may qualify for disease payments by meeting one of two sets of criteria: 1) the criteria contained in the proposed 1994 Original Global Settlement of all breast implant claims which is equivalent to the Fixed Benefit Option of the current Revised Settlement Program (RSP); or 2) criteria contained in the RSP for the Long Term Benefit Option. These criteria will be explained in detail in

materials mailed to women who have a breast implant claim. Women qualifying for this option are also eligible for a 20 percent premium payment if funds are available for that payment.

- Women who filed a claim in either the Original Global Settlement or the Revised Settlement Program (RSP) offered by other breast implant manufacturers may re-use their documentation in applying for the disease option payment. Those who did not participate in the Original Global Settlement or the RSP will need to submit medical documentation demonstrating that they meet the plan criteria.
- The rupture payment option of $20,000 will be available for two years after the plan takes effect. Women qualifying for this option are also eligible for a $5,000 premium payment if funds are available for that payment.
- Women who have had a Dow Corning implant removed after Dec. 31, 1990, can receive an explantation payment of $5,000. This program will be available to all women for up to ten years after the effective date of the plan.
- The expedited payment of $2,000 will be available for the first three years of the plan to those women who wish to settle quickly rather than file now or later for a disease claim. As noted above, women selecting this option may also qualify for additional payments for rupture and implant removal surgery.
- A woman whose medical condition changes after she has been compensated for that condition can qualify for an additional payment during the life of the program.
- Women with no current medical condition have up to 15 years to file a disease claim if their condition changes, and up to ten years to receive a payment for implant removal.
- Certain women with breast implants made by other U.S. manufacturers involving Dow Corning material may qualify for up to 40 percent of an expedited or disease payment.
- As in all previous settlement plans, a woman still maintains her right to a jury trial, should she choose not to settle.
- The litigation process may first include a common issues hearing on whether or not silicone breast implants cause systemic disease.
- Claims will be processed through the Dow Corning Settlement Program Claims Office using an already existing claims processing facility. The facility will utilize the same processing procedures and personnel as the claims office established in the Multi-District Litigation Court under the Revised Settlement Plan (RSP).
- This plan includes settlements with women in all provinces in Canada and in Australia and New Zealand. The settlements were jointly negotiated with attorneys representing women with breast

implants in those countries. The agreements, along with the entire plan, must be approved by U.S. Bankruptcy Judge Arthur Spector.

- Non-U.S. women and other non-U.S. product liability claimants will be eligible for payments under this plan. The plan applies a formula like those used in other similar settlements which provide women and other claimants outside the U.S. with payments that vary from 35 percent to 60 percent of U.S. payments.

Dow Corning believes this plan is financially manageable. The settlement will be funded through the company's operating cash flow, the substantial amount of insurance proceeds to which the courts have ruled the company is entitled, supplemented with an appropriate amount of debt. Dow Corning's shareholders, Dow Chemical and Corning, Inc., have made available the proceeds of joint insurance and a $300 million revolving loan facility to make additional funds available if necessary.

The next steps regarding this plan include:

- Judge Spector's ruling on the Disclosure Statement.
- Mailing of the plan and Disclosure Statement to all claimants.
- A 60-day solicitation period for voting on the plan.
- A hearing to confirm the plan.

A confirmation hearing could be concluded by Judge Spector by mid 1999. Once the confirmation order becomes final, we would hope to implement the plan shortly thereafter.

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SUPPLEMENTAL EXHIBIT 16

Letters dated 4/19/05 and 9/7/05 from J. Eliason to Chief Judge U.W. Clemon (redacted)

Claims Administrator's Office
Breast Implant Settlement
P.O. Box 56666
Houston, Texas 77256

Telephone 1/800/600-0311
Fax 1/713/951-9427

April 19, 2005

CONFIDENTIAL AND IN CAMERA
VIA FEDERAL EXPRESS

The Honorable U. W. Clemon
Chief Justice of the United States District Court
Northern District of Alabama
1729 5th Avenue North
Birmingham, Alabama 35203

RE: **MDL 926 Claims Office; Plaintiffs' Motion for Disclosure of Substantive Criteria Adopted and/or Being Applied by the MDL 926 Claims Office; Case No. 92-C-10000-S**

Dear Judge Clemon:

As we discussed last week, the purpose of this correspondence is to explain my understanding of the differences in treatment of claims by the MDL 926 Claims Office and the Settlement Facility – Dow Corning Trust and to recommend a method to provide additional information on claims processing to all claimants in MDL 926.

After reviewing the materials submitted to Your Honor and the parallel motion submitted to Judge Hood, it became clear that the Settlement Facility – Dow Corning Trust is not applying the current claims processing guidelines followed by the MDL 926 Claims Office at this time. In early February, I informed Administrator Trachte-Huber of this difference and received a response that the Settlement Facility – Dow Corning Trust is not required to follow post-February 2003 annotations. [1]

The February 2003 date is relevant because, at that time, the MDL 926 Claims Office was applying a higher standard to level A disability claims than it did when the vast majority of Fixed Benefit payments were reviewed and approved or than is being applied today. Over 95% of fixed benefit payments were reviewed under a different standard that is being applied by the Settlement Facility – Dow Corning Trust. As a result, although the Settlement Facility – Dow Corning Trust appears to be accurately applying the standard that was in place at the MDL 926 Claims Office in February 2003, the Tort Claimants' Committee is also correct in stating that the Settlement Facility – Dow Corning Trust is applying a more difficult standard to these claims than the MDL 926 Claims Office did. I informed Rich Eittreim and Leslie Bryan, the Defendants' and Plaintiffs' Representatives on the Quality Assurance Advisory Committee, of this difference as a result of the February 2003 date. Ms. Bryan confirmed that the February 2003 date for following the Claims Office's annotation was agreed to by the parties in the Dow Corning bankruptcy, but without knowledge that it would result in any differences in standards from those applied by the Claims Office.

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[1] The Claims Office has continued to provide the Claims Administrator for the Settlement Facility – Dow Corning Trust with any updates to the Annotations.

As we also discussed, it is my position that the claimants should receive additional information that would help them determine whether they may meet criteria for compensation from the Revised Settlement Program. In order to disseminate the information to all claimants, I would recommend that we publish additional Questions and Answers regarding the various diseases and compensation levels applicable to the Revised Settlement Program. In contrast to the annotations, which are internal documents that change as needed to comply with Orders and Opinions of the Court and the Appeals Judge as well as to address changes in medical practices, Questions and Answers are entered by Order of the Court. As such, they cannot change except by further Order of the Court. Traditionally, the Questions and Answers have been submitted to the parties for review and comment and, after approval by the parties, they are submitted to the Court for its review.

In order to provide additional information to claimants, the Claims Office has prepared the draft Questions and Answers regarding General Connective Tissue Symptoms (GCTS). These questions consisted of questions asked of the Claims Officers by claimants and/or their attorneys during Requests for Assistance. The Claims Office prepared the GCTS Questions and Answers first because that is the most commonly reviewed disease at this time. The Claims Office proposed to prepare Questions and Answers regarding Lupus (SLE) on the Long-Term Benefit Schedule because this would be the second most commonly reviewed disease at this time. Using this rationale, we would then prepare Questions and Answers regarding Scleroderma on the Long-Term Benefit Schedule or the disability levels on the Fixed Benefit Schedule. If Your Honor would like us to alter this prioritization, we would be happy to do so.

It was a pleasure meeting with you last week and is my continuing pleasure to serve as the Claims Administrator for the Revised Settlement Program.

Yours very truly,

Jean M. Eliason

JME/ms

Claims Administrator's Office
Breast Implant Settlement
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Houston, Texas 77256

Telephone 1/800/600-0311
Fax 1/713/951-9427

September 7, 2005

CONFIDENTIAL AND IN CAMERA
VIA FEDERAL EXPRESS

The Honorable U. W. Clemon
Chief Justice of the United States District Court
Northern District of Alabama
1729 5th Avenue North
Birmingham, Alabama 35203

RE: **MDL 926 Claims Office – Settlement Facility – Dow Corning Trust Collaboration Issues; Case No. 92-C-10000-S**

Dear Judge Clemon:

The purpose of this correspondence is to update the previous February 28, 2005 memorandum and April 17, 2005 letter regarding certain joint issues of the MDL 926 Claims Office and the Settlement Facility – Dow Corning Trust ("SF-DCT"). These previous materials are attached. The issues addressed in this correspondence include (i) the Level A disability issue, (ii) a new issue of the possible withdrawal of claims from the Revised Settlement Program to allow the claimants to receive payment for their Silicone Materials Claims in SF-DCT, and (iii) overpayments by MDL 926 (and possibly SF-DCT).

I. Level A Disability Issues

As I previously noted in my April 17, 2005 letter, after reviewing the materials submitted to Your Honor and the parallel motion submitted to Judge Hood, it became clear that the SF – DCT is not applying the current claims processing guidelines followed by the MDL 926 Claims Office at this time. In early February, I informed former Administrator Trachte-Huber of this difference and received a response that the SF – DCT is not required to follow post-February 2003 MDL 926 annotations. [1]

The February 2003 date is relevant because, at that time, the MDL 926 Claims Office was applying a more difficult standard to level A disability claims than it did when the vast majority of Fixed Benefit payments were reviewed and approved or than is being applied today. Over 95% of fixed benefit payments were reviewed under a different standard than is being applied by the SF – DCT. As a result, although the SF – DCT appears to be accurately applying the standard that was in place at the MDL 926 Claims Office in February 2003, the SF-DCT Tort Claimants' Committee is also correct in stating that the SF – DCT is applying a more difficult standard to these claims than the MDL 926 Claims Office did. I informed Rich Eittreim and Leslie Bryan, the Defendants' and Plaintiffs' Representatives on the MDL 926 Quality Assurance Advisory Committee,

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[1] The MDL 926 Claims Office has continued to provide the Claims Administrator for the SF – DCT with any updates to the Annotations.

of this difference as a result of the February 2003 date. Ms. Bryan confirmed that the February 2003 date for following the MDL 926 Claims Office's annotation was agreed to by the parties in the Dow Corning bankruptcy, but without knowledge that it would result in any differences in standards from those applied by the Claims Office.

Please note that Administrator David Austem has informed me that he is preparing a memorandum discussing this disparity which he will be sharing with me shortly. If anything in his memorandum differs from my current understanding of the issue, I will let Your Honor know as soon as possible.

As we also discussed, it is my position that the claimants should receive additional information that would help them determine whether they may meet criteria for compensation from the Revised Settlement Program (sometimes, "RSP"). As a result, I have drafted Questions and Answers regarding the fixed disease disability levels. These Questions and Answers have been disseminated to the parties and are awaiting comments. The Defendants' Representatives have approved the Questions and Answers but the Plaintiffs' Representatives have not provided any specific comments.

Redacted

Redacted

As always, let me know if you have any questions. I appreciate the opportunity to work with you on this matter.

Yours very truly,

Jean M. Eliason

JME/ms
Attachments

SUPPLEMENTAL EXHIBIT 17

Excerpts from "Report on the Audit of The Processes and Procedures of The Settlement Facility - Dow Corning Trust" by ARPC, July 2005

Report on the Audit of
The Processes and Procedures of
The Settlement Facility-Dow Corning Trust

July 2005

Analysis Research Planning Consultants

1220 19th Street, NW Suite 700

Washington, DC 20036

- Claims filing and retrieval
- Claims review: POM, Explant, Rupture, Option 1, Option 2
- POM training
- Timesheet entry
- Timesheet processing
- Payroll processing

3.2 Compliance with the MDL-926 Annotations

The ARPC Audit Team used the Facility's claims review documentation in the actual review of claim decisions. The documentation review was a full review of all source documents. This review was a detailed, line-by-line review of Annotations against sources. A list of documents is provided in below.

- Contents of the original 14 boxes sent from the MDL in 2001
- Numerous ad hoc submissions of documents from the MDL during 2002 – 2004
- Memos recording interactions between the facilities and decisions made through 2005
- Annex A of the Settlement Agreement
- The Claimant Information Guide
- Internal Facility decision memos
- Medeval documentation (MDL processing system)
- Court orders

The team also interviewed Judge Ann Cochran, the original Claims Administrator of the MDL-926 facility, late in the process. The interview covered some specific areas related to the development of the Annotations.

3.3 Claims Review Accuracy

Redacted

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7.9 Additional Observations and Recommendations

ARPC noted several additional claims review findings, each of which is discussed below. These findings include observations regarding process issues, policy problems and definitions.

Level A Disability. The Audit Team found that changes to the Annotations have been made over time. In 1997 at the MDL, Judge Pointer indicated that the claimant must demonstrate total disability in both areas. Twice in 2004, the MDL changed the definition of total disability regarding self care. These changes would result in disease claims paid at the Facility that may have been paid at a lower compensation level at the MDL. This observation is important in understanding why certain claimants may be classified and therefore paid differently between the two organizations.

REDACTED