

Exhibit J

SPITZFADEN ET AL VS DOW CORNING CORP ET AL

ROUGH DRAFT OF TRANSCRIPT APRIL 15, 1997 PM

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**CONDENSED TRANSCRIPT AND CONCORDANCE
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BSA **ROUGH DRAFT OF TRANSCRIPT 4/15/97 PM SPITZFADEN ET AL VS DOW CORNING CORP ET AL** MAX(64/16)

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- (1) Q. Good afternoon, Dr. Goldberg.
 (2) A. Good afternoon.
 (3) Q. You are a research scientist, as I
 (4) understand it?
 (5) A. That's correct.
 (6) Q. And the type of scientific research you
 (7) do is expensive, correct?
 (8) A. I beg your pardon?
 (9) Q. The type of research you do is
 (10) expensive; it costs a lot of money to do?
 (11) A. Most research is expensive.
 (12) Q. As the head of the silicone team at the
 (13) University of Florida, and the head of the
 (14) Biomaterials Department, Biomedical
 (15) Engineering Department -
 (16) A. Biomedical Engineering.
 (17) Q. Part of your job is going out and
 (18) procuring and soliciting research funds for
 (19) these various expensive scientific projects,
 (20) correct?
 (21) A. That's correct.
 (22) Q. That's an important part of your job,
 (23) correct?
 (24) A. Well, it doesn't occupy a large
 (25) fraction of my time. It occupies some of my

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- (1) time.
 (2) Q. If we look at your CV that Mr. - CV-2
 (3) that Mr. Pirtle showed, it reflects, right
 (4) in the middle on your first page, current
 (5) research support and funding. We see on
 (6) there, current research support.
 (7) Then you list various
 (8) projects and the funding you've received for
 (9) this year, such as the State of Florida
 (10) grant for two hundred thousand dollars,
 (11) correct?
 (12) A. Correct.
 (13) Q. A DOD, Department of Defense, grant for
 (14) seven hundred fifty thousand dollars?
 (15) A. Correct. Except that my portion of it
 (16) is an eighty thousand dollar portion.
 (17) Q. Then industrial grants on a variety of
 (18) projects, intraocular lenses. Then we get
 (19) down to properties of silicone, mammary
 (20) implants, for a total of four hundred
 (21) seventy-five thousand dollars?
 (22) A. That's correct.
 (23) Q. A part of that four hundred
 (24) seventy-five thousand dollars is the
 (25) research grant from the O'Quinn law firm for

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- (1) your work on breast implants. I believe you
 (2) said forty thousand for this year. Correct?
 (3) A. Forty thousand that Tom Pirtle has
 (4) provided, yes.
 (5) Q. Dr. Goldberg, I believe 1992, I would
 (6) like you to focus on that year for a minute
 (7) with me, all right?
 (8) Q. 1992. That was an important year in
 (9) the breast - a significant year in the
 (10) breast implant - with regard to breast
 (11) implants, correct?
 (12) A. I think it was one of many significant
 (13) years.
 (14) Q. I believe you already told us, when we
 (15) looked at your chart of the rupture studies
 (16) that you plotted, that many of those started
 (17) to come out after 1992, the Goldberg rupture
 (18) analysis. I think all of them, except maybe
 (19) one the Rolland paper, came out after '92,
 (20) correct?
 (21) A. No, actually, the majority of them were
 (22) in '95 and '96.
 (23) Q. But certainly post-dating '92, deCamara
 (24) was '93?
 (25) A. '95 and '96 are after '92, yes, sir.

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- (1) Q. DeCamara was '93, correct?
 (2) A. Correct.
 (3) Q. They start coming out in '92 and '93
 (4) and continue up to this date, right?
 (5) A. But the majority were '95, '96 papers.
 (6) Q. We'll get back in a moment. I believe
 (7) you told me earlier, when we spoke in your
 (8) deposition, that you recall in early 1992,
 (9) in January in particular, there was a lot of
 (10) controversy about breast implants in the
 (11) media - I'm not going to get into the
 (12) content now - but in the media and with
 (13) regard to the FDA. Do you recall that?
 (14) A. There was a good deal in the media,
 (15) which were - which was a response to the
 (16) FDA actions that were being taken at that
 (17) time, yes.
 (18) Q. It was a topic that you were following
 (19) in the news media; you were familiar with
 (20) the controversy at that time. Correct?
 (21) A. Yes, I was familiar with it.
 (22) Q. So, I want to focus right on that time
 (23) period, early '92. Let me ask you first of
 (24) all, before 1992, okay? At any time in or
 (25) before 1992, did you ever write an article

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- (1) or present a paper saying that silicone
- (2) breast implants are unsafe or inadequate?
- (3) A. No, I did not.
- (4) Q. As of 1992, let me ask you about your
- (5) opinion and views about Dow Corning. As of
- (6) that time, is it true that it was your view
- (7) that Dow Corning was one of the leading
- (8) companies manufacturing and selling silicone
- (9) materials?
- (10) A. They were certainly one of the leading
- (11) companies selling silicones, yes, sir.
- (12) Q. More specifically, was it your view at
- (13) this time, that Dow Corning was a leader in
- (14) sophisticated biomaterials and device
- (15) technology?
- (16) A. That statement is true, only insofar
- (17) as it was one of the major manufacturers,
- (18) and they represented to us that they were a
- (19) scientifically sophisticated organization,
- (20) yes.
- (21) Q. You talked about some of the funding
- (22) you've received. We saw some other sources.
- (23) We saw Mr. Pirtle and the O'Quinn firm of
- (24) funding as of 1992.
- (25) Isn't it true that you met

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- (1) with Dow Corning and sought out funding from
- (2) them for scientific research?
- (3) A. Not to my knowledge.
- (4) Q. Well, isn't it true that you
- (5) specifically met with them regarding breast
- (6) implants?
- (7) A. Not to my knowledge.
- (8) Q. Isn't it true that you actually sought
- (9) into the millions of dollars from Dow
- (10) Corning to do research relating to silicone
- (11) breast implants right as of this time? Not
- (12) true?
- (13) A. No, sir. Not to my knowledge.
- (14) Q. Dr. Goldberg, I would like you to take
- (15) a look at Defense Exhibits 181 through 184,
- (16) and tell me if you can identify them as
- (17) correspondence between you and Dow Corning
- (18) regarding research funding in mid to late
- (19) '91, and into January of 1992, sir?
- (20) A. That is correspondence that I had with
- (21) Dow Corning Wright, yes.
- (22) Q. Dow Corning Wright was part of the Dow
- (23) Corning company. It was part of their
- (24) manufacturing department for plastic surgery
- (25) products located in Tennessee, correct?

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- (1) A. That's correct.
- (2) Q. I offer them, Your Honor.
- (3) THE COURT:
- (4) Any objection?
- (5) MR. PIRTLE:
- (6) No.
- (7) THE COURT:
- (8) Let them be admitted.
- (9) BY MR. DONLEY:
- (10) Q. The first one is I put on the screen
- (11) M-181, Dr. Goldberg. Is that a July 12th,
- (12) 1991 letter that you wrote to a Dr.
- (13) McGurk-Burleson at Dow Corning - or Dow
- (14) Corning Wright?
- (15) A. That's correct.
- (16) Q. That's your signature at the bottom?
- (17) A. Absolutely.
- (18) Q. This is on your letterhead at the
- (19) University of Florida, the Gators, right?
- (20) A. That's correct.
- (21) Q. Did you tell Dr. Burleson in this
- (22) letter you understood she would be visiting
- (23) Monday, July 22nd, to review areas of mutual
- (24) research interest?
- (25) A. That was arranged through Dr. Seeger,

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- (1) who is my colleague in vascular surgery, and
- (2) he was the one who arranged for that meeting
- (3) to occur, yes.
- (4) Q. And particularly, the mutual research
- (5) interest you were proposing discussing with
- (6) them related to service modification and
- (7) application for a variety of medical
- (8) devices, including breast implants, correct?
- (9) A. That's not quite correct, if I can
- (10) explain the reason for her visit and our
- (11) discussions with them.
- (12) Q. Did you write this letter, Dr.
- (13) Goldberg, in your own words?
- (14) A. I certainly did.
- (15) Q. Was one of the research areas you
- (16) pointed out mammary implants?
- (17) A. Correct, but the main thing was our
- (18) Hydrograf/hydrophilic polymer service
- (19) modification technology, which they
- (20) expressed to Dr. Seeger an interest in, and
- (21) we agreed to meet with them.
- (22) Q. The answer to my question was yes?
- (23) A. Yes.
- (24) Q. In the next paragraph you talk about a
- (25) multidisciplinary program?

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- (1) A. Correct.
- (2) Q. Chemical and physical characterization,
- (3) biomedical polymers with heavy emphasis upon
- (4) surface interface behavior. That's the
- (5) Hydrograf material you just talked about,
- (6) right?
- (7) A. Yes.
- (8) Q. Exhibit M-181 is a follow-up letter
- (9) you wrote to Mr. Dieck on August 5th, 1981
- (10) at Dow Corning?
- (11) A. Yes.
- (12) Q. Again, your signature?
- (13) A. That's correct.
- (14) Q. There is Mr. Dieck. You told him, did
- (15) you not, that DCW, Dow Corning Wright,
- (16) clearly appears to have emerged as a leader
- (17) in sophisticated biomaterials and device
- (18) technology, and we would certainly be
- (19) interested in establishing a mutually
- (20) beneficial relationship with you?
- (21) A. Yes.
- (22) Q. And then you went on to describe high
- (23) added value products that Dow Corning made,
- (24) correct?
- (25) A. That's correct.

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- (1) Q. That strongly overlapped some of your
- (2) research programs, correct?
- (3) A. That's correct, with particular
- (4) importance on vascular implants and device
- (5) projects.
- (6) Q. Yes another one you mentioned is
- (7) mammary implant studies?
- (8) A. Right.
- (9) Q. With Dr. Mudaz Habal, correct?
- (10) A. Correct.
- (11) Q. Dr. Habal was a plastic surgeon in
- (12) Tampa. You did research on, you mentioned,
- (13) a and rabbit study earlier where you had a
- (14) six-month study with rabbits with a plastic
- (15) surgeon, do you remember that?
- (16) A. We started a study with Dr. Habal back
- (17) in the late '80's, yes.
- (18) Q. Dr. Habal was your research partner on
- (19) that study, correct?
- (20) A. That's correct.
- (21) Q. Dr. Habal, just to identify him for the
- (22) time being, Exhibit M-117 is already in
- (23) evidence. This is an article Dr. Habal
- (24) wrote on silicone breast implants and
- (25) silicones in 1984, just, we'll come back to

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- (1) this, but just to identify it for now.
- (2) A. That looks correct.
- (3) Q. To get back to your letter on August
- (4) 5th to Dow Corning, what you were proposing
- (5) - in this letter you mention you had a
- (6) discussion with the grants, person Dr. Wray,
- (7) at the University of Florida, correct?
- (8) A. Yes.
- (9) Q. And you talked about the possibility,
- (10) in connection with Dow Corning, of
- (11) establishing a more comprehensive research
- (12) relationship. You might even create a DCW
- (13) research center at the University of
- (14) Florida. Is that correct?
- (15) A. That's correct.
- (16) Q. The specific dollar figure you pointed
- (17) out was five hundred thousand per year for
- (18) five years for the center?
- (19) A. That's true.
- (20) Q. So, if I added that together, that
- (21) would be two point five million dollars of
- (22) research funds that you were seeking from
- (23) Dow Corning, or Dow Corning Wright, here and
- (24) late '91, correct?
- (25) A. That was a suggested program, yes.

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- (1) Q. Yes. The suggestion was from you.
- (2) This is your letter, correct?
- (3) A. Well, we had had discussions at the
- (4) university as to what would be appropriate,
- (5) and the majority of that was not mammary
- (6) implant research, however.
- (7) Q. The signature on the letter and the
- (8) words on the letter were your own, correct?
- (9) A. That's correct.
- (10) Q. Now, you didn't hear from the Dow
- (11) Corning people for a little while. Do you
- (12) recall that, now that you've seen these
- (13) letters?
- (14) A. I have completely forgotten that
- (15) correspondence and interaction.
- (16) Q. Let's zoom up. That was August. Let's
- (17) zoom up to January, 1992. Now we have got
- (18) the controversy and the FDA and the
- (19) newspaper coverage going on, right?
- (20) A. Yes.
- (21) Q. This has caught your attention. You
- (22) remembered you had these discussions about
- (23) two and a half million dollars of funding
- (24) from Dow Corning. So you wrote them another
- (25) letter, didn't you?

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- (1) A. Again, I don't recall the letter, but
- (2) if you say so, it must be there.
- (3) Q. Well, it is not my saying so. Here is
- (4) your letter on January 17 of 1992, Exhibit
- (5) M-183, right, to a Mr. Jim Curtis at Dow
- (6) Corning? Is that your letter, sir?
- (7) A. I can't see it well enough. If you
- (8) could blow it up a little. Looks like my
- (9) letter, however.
- (10) Q. That's the letterhead. Can you see
- (11) your signature at the bottom?
- (12) A. Yes, sir.
- (13) Q. We'll zoom it in a little bit.
- (14) January 17th, 1992, highly
- (15) controversial in the news media, right?
- (16) A. Well, I'm not sure whether it was the
- (17) highly controversial or not, but it's 1991.
- (18) Q. You're following up with this man,
- (19) Curtis, now, following up your August 5th
- (20) letter that we just looked at to Dieck,
- (21) right?
- (22) A. Yes, as I usually do.
- (23) Q. Then, now, you are talking about a
- (24) six-month miniature implant study in rabbits
- (25) that's ongoing. This is the study with Dr.

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- (1) Habal you told us about earlier today,
- (2) correct?
- (3) A. That's correct.
- (4) Q. Just so I'm clear on the timing,
- (5) Habal's study had started back in 1988,
- (6) about '88. That's what you told Mr. Pirtle?
- (7) A. About '88, yes.
- (8) Q. You had a rabbit study in '88. It was
- (9) still ongoing at this time in January, 1992,
- (10) correct?
- (11) A. No. We had pretty much finished that
- (12) study, and were collecting the data.
- (13) Q. But it hadn't been written up?
- (14) A. Hadn't been published, no.
- (15) Q. It wasn't published until a year later,
- (16) about 1993, when it was published, correct?
- (17) A. That's correct.
- (18) Q. So, if I'm right on this rabbit study,
- (19) it was a six-month study, six months in the
- (20) animals with the implants, had been ongoing
- (21) since '88.
- (22) You had the data completed,
- (23) but you hadn't written it up yet. You
- (24) hadn't written up the final form of it yet.
- (25) That wasn't going to happen to be published

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- (1) until '93, right?
- (2) A. Yes. That's not unusual.
- (3) Q. So, you still had the opportunity to -
- (4) because research takes time?
- (5) A. Well, collecting it and writing it up,
- (6) and so forth.
- (7) Q. So, the actual write-up of the study
- (8) was pending, and that's what you were
- (9) talking about with Dow Corning, correct?
- (10) A. No, I was talking, in this
- (11) correspondence, evidently, about a
- (12) continuing, continuing project that would
- (13) be a follow-on from this original study.
- (14) Q. You just concluding a six-month study
- (15) on the project involving this rabbit model
- (16) was remarkably timely, correct?
- (17) A. Uh-huh.
- (18) Q. Remarkably timely, at a time when the
- (19) breast implants were very controversial,
- (20) correct?
- (21) A. Well, yes, but. The "but" is that Dow
- (22) Corning Wright indicated to us that they had
- (23) a pillared type of surface, and as a
- (24) consequence, they were interested in the
- (25) evaluation of that surface, and so they were

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- (1) looking for ways to do animal implant
- (2) studies and ways to verify that those
- (3) pillared implants were, in fact, going to be
- (4) better than anything that was available
- (5) today. So, they had brought us to an
- (6) interest in such studies.
- (7) Q. You copied the letter to Dr. Habal,
- (8) your research partner, correct?
- (9) A. That's correct.
- (10) Q. You were still hoping to get, whether
- (11) it was two and a half million dollars, or
- (12) something more or something less, you were
- (13) still hoping to get research money from Dow
- (14) Corning on this project?
- (15) A. I'm always hoping to get money from
- (16) those people with whom we've had contacts.
- (17) Q. Relating to silicone breast implants?
- (18) A. In this case, yes.
- (19) Q. You sent another letter ten days later
- (20) to Mr. Curtis. This is M-184. Right? You
- (21) hadn't heard back from him yet?
- (22) A. I see the letter is mine, but I can't
- (23) read it.
- (24) Q. So, you're pressing him a little bit.
- (25) You're trying to get an answer, aren't you?

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- (1) Actually, he sent you a letter back on
- (2) January 16th, I see. Didn't he?
- (3) A. He sent me a bibliography, yes.
- (4) Q. Now, you're discussing the surface
- (5) modifications of silicones with Dow Corning,
- (6) that project. You're also, again, bringing
- (7) up the subject of the mammary implants and
- (8) research relating to the breast implants,
- (9) right?
- (10) A. Correct.
- (11) Q. You would be glad to discuss these with
- (12) Dow Corning under a mutual secrecy agreement?
- (13) A. Correct.
- (14) Q. Just, by the way, on the mutual secrecy
- (15) agreement, Mr. Pirtle showed you some
- (16) confidential and propriety stamps on
- (17) research documents earlier today, right?
- (18) A. Right.
- (19) Q. Usual, secrecy agreements, that is
- (20) something that happens every day in
- (21) research, and it's normal and appropriate,
- (22) right?
- (23) A. Yes, sir.
- (24) Q. Again, you talked about a concept for a
- (25) new mammary prosthesis material with Mr.

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- (1) very haphazard and coincidental manner,
- (2) which you may or may not want to go into?
- (3) Q. What it was, you met somebody on an
- (4) airplane?
- (5) A. That's correct.
- (6) Q. You started working with this lawyer
- (7) named Allen, who worked for the doctors?
- (8) A. That's correct.
- (9) Q. You knew - he introduced you to Mr.
- (10) Pirtle, didn't he?
- (11) A. This attorney introduced me to Mr.
- (12) Allen, and I consulted for Mr. Allen on
- (13) behalf of doctors that are defendants, which
- (14) we've talked about a bit, and then Mr. Allen
- (15) introduced me to Mr. Pirtle.
- (16) Q. You got your research funding from Mr.
- (17) O'Quinn and Mr. Pirtle, did you not?
- (18) A. I got my research funding through Mr.
- (19) Pirtle.
- (20) Q. You've gotten a total of seventy
- (21) thousand so far, I believe?
- (22) A. Thirty thousand one year; forty
- (23) thousand the second year.
- (24) Q. You've been paid about seventy-five
- (25) thousand in litigation consulting fees as

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- (1) Curtis from Dow Corning?
- (2) A. Yes.
- (3) Q. And Dow Corning, as it turned out, did
- (4) not provide the two point five million
- (5) dollars, did they?
- (6) A. I don't recall this correspondence in
- (7) the first place, but in the second place, I
- (8) don't recall whether there was any further
- (9) follow-up. So I think you will have to tell
- (10) me.
- (11) Q. As far as you know, in your own
- (12) research program, you don't recall - don't
- (13) you think you would remember when you got
- (14) two point five million dollars?
- (15) A. If I had two point five million dollars
- (16) in funding, I would certainly remember that.
- (17) Yes, sir.
- (18) Q. You don't remember getting that amount,
- (19) or any amount, from Dow Corning?
- (20) A. No.
- (21) Q. What happened, then, is you started
- (22) working with a lawyer representing doctors
- (23) in Houston, Texas named Scott Allen, later
- (24) in 1992 or early '93, correct?
- (25) A. I believe it was in, perhaps, '93, in a

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- (1) well?
- (2) A. Something of that sort.
- (3) Q. It is after you got your research
- (4) funding from Mr. O'Quinn that you're here to
- (5) testify as a paid litigation expert in this
- (6) case?
- (7) A. Pardon?
- (8) Q. It is after you got the funding from
- (9) Mr. O'Quinn that you are here to testify,
- (10) correct?
- (11) MR. PIRTLE:
- (12) I object. The question is
- (13) argumentative. It assumes those two things.
- (14) BY MR. DONLEY:
- (15) Q. Before you got the research funding
- (16) from Mr. O'Quinn, you never testified as an
- (17) expert in breast implant cases, correct?
- (18) A. That's correct, but I never had
- (19) occasion to.
- (20) Q. This is your first time here today,
- (21) right?
- (22) A. That's correct.
- (23) MR. DONLEY:
- (24) Your Honor, I'm at a good
- (25) breaking point, if you would like to break