

Subj: **Dante**  
Date: 12/31/2003 11:03:44 AM Central Standard Time  
From: [kricco@oplc.org](mailto:kricco@oplc.org)  
To: [DPEND440@aol.com](mailto:DPEND440@aol.com), [Ehornsby@fphw-law.com](mailto:Ehornsby@fphw-law.com)  
File: **dante.pdf** (1070960 bytes) DL Time (TCP/IP): < 1 minute  
*Sent from the Internet (Details)*

Attached are copies of the only documents we could get from the Southern District Clerk's Office in Cincinnati. I don't think these offer any new information, but they were the only copies they could provide to us.

If you need anything else, please let me know.

Kaye Ricco  
Office of Plaintiffs' Liaison Counsel  
The Singer Building  
2008 Second Avenue North  
Birmingham, Alabama 35203

---

This e-mail message may contain privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible for the delivery of it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is prohibited. If you have received this message in error, please contact the sender by reply e-mail, and destroy all copies of the original message. Thank you.



FILE  
30

fc

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

FILED  
KENNETH J. MURPHY  
C.L.E.

1992 MAR 20 P 1:22

U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

In re: Breast Implant Litigation

Master File No. C-1-92-057  
Judge Carl B. Rubin

**PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER  
AND SUPPLEMENTAL MOTION TO RESTRAIN DEFENDANTS AND THEIR COUNSEL  
FROM IMPROPER CONTACTS WITH CLASS MEMBERS**

**IMMEDIATE RELIEF REQUESTED**

On March 11, 1992, Plaintiffs filed a motion with this court requesting it to restrain Defendants and their counsel from improper contacts with class members (docket no. 64). The motion, based on information received by Plaintiffs' counsel in conversations with class members and numerous press reports and articles, identified that Defendants were operating a toll free 800 number wherein misleading and incorrect information was provided to class members. In addition, the motion revealed that the Dow Corning Defendants were seeking releases of liability from class members through their treating physicians in exchange for a nominal sum of money (\$600.00) in Dow's "warranty" exchange program. Plaintiffs set forth the case law which unequivocally established that such contacts with class members were improper. See Plaintiffs' Motion at pp. 3 - 9. To protect the rights of class members and avoid confusion and prejudice, Plaintiffs requested that Defendants be restrained from all such communications and that they be compelled to identify all persons with whom they had communicated since the class action was certified on February 14, 1992.

Edge	_____
Mag.	_____
Journal	_____
Motion #	_____
Issue	_____
Card	_____
N/Som	_____
Docketed	_____

135



Recent actions by the Dow Corning Defendants mandate immediate consideration and protection for class members by this Court. Pursuant to Local Rule 7.1(c)(1), which allows for expedited consideration of a motion, Local Rule 65.1 and Federal Rule of Civil Procedure 65(b), Plaintiffs herein respectfully request that this Court grant a temporary restraining order prohibiting Defendants and, in particular, the Dow Corning Defendants, from any further communications with class members.

MEMORANDUM IN SUPPORT

On March 19, 1992, the Dow Corning defendants held a press conference at which time they indicated their intention to continue soliciting contacts and releases of liability from class members. See Dow Corning Press Release, attached as Exhibit A hereto. Specifically, the press release stated:

McKennon also announced a new program for women who have a medical need to have their Dow Corning implants removed but who cannot afford the necessary surgical procedure.

"More than any other group," McKennon explained, "women in these circumstances would be left without the choice to have their implants removed when a medical need made this procedure necessary. We have now designed a program to help women in that situation."

In explaining the new program, McKennon emphasized the FDA Advisory Panel's recommendation that implants performing satisfactorily need not be removed. As a result, the new program is limited to women with Dow Corning implants "who have agreed with their physician that, for medical reasons, her implant(s) need be [stet] removed, but who cannot afford the procedure. For such patients, we will provide up to \$1200 to support the medical costs of the removal procedure," said McKennon.



Patients with Dow Corning implants who believe they qualify for the program can call the company's Breast Implant Information Center at 1-800-442-5442 to find out more information about the program.

McKennon also stated that Dow Corning will continue its replacement warranty program for women using Dow Corning Silastic II or MSI implants. The program, under appropriate circumstances, provides those women with a replacement device and \$600 in financial support. "Dow Corning will continue that program," explained McKennon, "perhaps by increasing the dollar amount so that patients can purchase a device from other manufacturers."

See Exhibit A at p. 2. Notwithstanding that there is an obvious and gross deficiency in the amount of money the Dow Corning Defendants allegedly are offering to implant recipients,<sup>1/</sup> there are grave, significant flaws with the programs identified above which require immediate and expedited protection by the Court.

I. The Dow Corning Defendants Are Attempting To Secure Releases of Liability From Class Members.

Class members who telephoned Dow Corning's toll free 800 number on March 19, 1992, received conflicting and confusing information on the above-mentioned programs. Although the press release did not mention anything about a release of liability, an operator from the Dow Corning Breast Information Center stated to Carol Poppel, a class member, that she would have to execute a release of liability before any payment could be made. See Exhibit B hereto, Affidavit of Carol Poppel. The release would be provided by Ms. Poppel's treating physician but would include

---

<sup>1/</sup> As evidenced by the affidavits of Carol Scott, and Cletis Scott, attached hereto as Exhibits C and D respectively, the cost of removing the implants is significantly higher than \$1,200.00.



language releasing Dow Corning from all liability regarding the implant as well as releasing the treating physician. Id.

(emphasis added). In return for executing the release, Dow Corning, in its sole discretion, would decide whether to pay for the removal and what amount it deemed appropriate, with a maximum payment of \$1,200. Id. Payment in all cases would be made directly to the physician. Id. The class member would not receive any of the money. Id.

Class member Cletis Scott, spouse of implantee Carol Scott, also telephoned the toll free 800 number on March 19, 1992 and spoke with an operator named "Trudy". See Exhibit D attached hereto, Affidavit of Cletis Scott. He was informed by Dow Corning that a release of liability on behalf of Dow Corning and the treating physician would be required before any payment could be made. Id. In contrast, when Mr. Scott's wife telephoned just minutes later, she was informed by an operator named "Jan" that Dow Corning did not require a release of liability to be eligible for the program and payment. See Exhibit C attached hereto, Affidavit of Carol Scott.

Attempting to settle claims of class members in this manner violates Federal Rule 23(e), which mandates court approval of any compromise or settlement of a class action claim. Dow Corning's payment plan also violates Rule 23(e)'s provision that notice of the proposed settlement "shall be given to all members of the class in such manner as the court directs." In this situation, Dow Corning has not received the approval of the Court to settle



claims of class members nor has it provided Court approved notice of the settlement to class members. It is unilaterally conducting an unmonitored nationwide toll free line, disseminating information and attempting to secure releases of liability without the benefit of representation by Plaintiffs' counsel or the Court's approval. Rule 23(e) was designed to address improper contacts with class members such as the toll free 800 number and "payment" plan of the Dow Corning defendants. The Court should enjoin the Dow Corning defendants from operating the toll free number and compromising claims of class members.

II. The Toll Free 800 Number Is Providing Conflicting And Confusing Information to Class Members.

There are additional examples of conflicting information provided by the Dow Corning Breast Information Center. While the press release states that persons are eligible only if their treating physician determines the explantation is medically necessary, see Exhibit A, class member Carol Poppel was told by Dow Corning representatives that this was not a requirement. See Exhibit B, Affidavit of Carol Poppel at ¶ 3. The representative, "Linda", stated that Ms. Poppel only needed to confirm that she had Dow Corning implants and that this would qualify her to participate in the program. Id. The applicant did not have to establish a "medical need" as the press release claimed. Id.

Third, each of the class members who telephoned Dow Corning's Breast Implant Center were told that they would have to relinquish the implants to Dow Corning following explantation. See Exhibit B at ¶ 3, Exhibit C at ¶ 3. This aspect of Dow



Corning's program is particularly prejudicial to the development of an implant recipient's claim in this class action. Inasmuch as the implants will be major source of information and evidence in support of the implantee's claim, preservation of the implant and proper analysis is crucial to prosecuting the claim. Under Dow Corning's present program, it intends to reclaim the implants for alleged future "testing," with no guarantee that the implants will be preserved for use at trial.

Furthermore, Dow Corning offered to send a package of information to callers about the removal and warranty programs and insisted that callers give the operators their name and address. Notwithstanding that requiring class members to reveal their identity violates the Court's Confidentiality Order of February 20, 1992 (docket no. 17), Dow Corning informed callers that they would be ineligible to participate in the program unless they revealed both their name and their treating physician's name.

The Dow Corning Breast Information Center also told callers that it retained sole discretion to determine whether it will pay for the removal surgery and that this determination is made only after surgery and a report by the treating physician. See Exhibit B, Affidavit of Carol Poppel. This untimely, one-sided procedure gives Dow Corning a tremendous and unfair advantage. By retaining sole discretion to determine what amount, if any, Dow Corning will pay for the explantation procedure, Dow Corning places a breast implant recipient in a perilous financial



position. Inasmuch as the program only applies to women who have a financial need, a unilateral refusal to pay for the explantation once a woman has undergone the procedure would cause grievous and irreparable harm to the financial and emotional well-being of implantees. Breast implant recipients already feel violated and victimized by the devastating physical and emotional damage caused by silicone in their bodies. To undergo further physical pain and anguish based on vague and illusory promises of payment by Dow Corning would be monumentally unfair and wrong.

The information disseminated by the Dow Corning defendants in its toll free 800 number is confusing and misleading to class members. Plaintiffs' counsel herein received dozens of phone calls from class members on March 19 and 20, 1992, following Dow Corning's press conference, asking what the payment program means and when they would be able to receive their check for \$1,200. See Affidavit of Dianna P. McBride, attached as Exhibit E hereto. Based on conversations with these class members, it was evident that they did not understand the underlying and unspoken requirements of the payment program: that they would be required to sign a release of liability and forfeit their rights to keep the implant following surgery. Other class members who telephoned the toll free 800 number had widely varying, disparate accounts of their conversations with Dow Corning's Breast Information Center. Id. Some reported being told that the plan was part of a scientific study by Dow Corning, some reported that Dow Corning told them releases were required while others stated



just the opposite, and some class members were told that the payment program would have no effect on any pending claims or actions against Dow Corning. *Id.*

**III. Federal Rule 65 Authorizes This Court To Enjoin The Dow Corning Defendants From Improper Contacts With Class Members.**

Federal Rule 65 authorizes this Court to issue a temporary restraining order when affidavits and other evidence establish that the applicant will suffer immediate and irreparable harm. To prevail, it must be shown that the applicant is likely to prevail on the merits, that there is no adequate remedy at law, the applicant will suffer irreparable injury, and that the balance of equities favor the applicant. Dayton Christian Schools v. Ohio Civil Rights Commission, 578 F. Supp. 1004, 1016-17 (S.D. Ohio 1984). Plaintiffs herein have clearly met the standards for a temporary restraining order pursuant to Rule 65. See Waldo v. Lake Shore Estates, Inc., 433 F. Supp. 782, 790-91 (E.D. La. 1977); Kleiner v. First National Bank of Atlanta, 99 F.R.D. 77 (N.D. Ga. 1983) (order enjoining defendants from "lobbying campaigns" of prospective class members); and Hawkins v. Holiday Inns, Inc., 1978-1 Trade Cases ¶ 61,838 at 73,493 (W.D. Tenn. 1978) (court granted a restraining order where defendants had sent notice to class members which had the effect of intimidating or coercing them into executing releases).

Based on the sharply conflicting and misleading information the Dow Corning Defendants provided to class members on March 19, 1992, the need for this Court to control the dissemination of



information by Defendants is of primary and immediate concern. Irreparable and immediate harm may be done to class members who unwittingly sign the release, particularly without the benefit of counsel. Severe prejudice may occur to class members who unknowingly forfeit their right to keep the implants following explantation. If Dow Corning is willing to assume financial responsibility for the grievous bodily injury it inflicted on implant recipients, as it claims in its March 19, 1992 press release, it should be compelled to do so in a fair and just manner, supervised by this Court in the form of a medical monitoring fund so that the rights of implant recipients aren't jeopardized or unwittingly signed away by unsuspecting persons.

The payment program announced on March 19, 1992 by Dow Corning is ill-conceived and poorly organized, administered, and operated. The program gives breast implant recipients, particularly those that need immediate medical attention but cannot afford it, false information and false hopes. Implant recipients are led to believe that they will receive \$1,200, when this is clearly incorrect. It also confuses and misleads implant recipients by using the treating physician as the conduit through which releases of liability are executed and payment for the surgery is made to the physician, not to the implant recipient.

Immediate and expedited consideration in the form of a temporary restraining order and permanent injunctive relief is necessary to protect class members herein. Each day the Dow Corning Defendants are permitted to operate the toll free number



could result in thousands of calls by class members who are unaware of their legal rights and who may unknowingly forfeit rights which the class action device is designed to protect. Proper management and control of information and payment of claims should be administered by this Court. The decision of whether to pay a breast implant recipient's surgical and medical costs should not be made unilaterally by Dow Corning, based only on criteria Dow Corning deems relevant. It should be made by observing and complying with proper legal procedures, supervised by this Court, and be based on considerations of fairness to all class members.

For these reasons and as set forth in Plaintiffs' Motion to Restrain Defendants and Their Counsel From Improper Contacts With Class Members, Plaintiffs respectfully request an immediate, expedited hearing on this matter and that the following injunctive relief be awarded:

1. That Defendants be enjoined from any further communications with class members that are not approved by this Court;
2. That Defendants be compelled to identify each class member with whom they have had contact since February 14, 1992, the date this Court certified the class action;
3. That any releases of liability executed after February 14, 1992 be deemed null and void and that all such releases of liability be produced to this Court and to Plaintiffs' Counsel herein;



4. That Defendants be compelled to return any implants received from implant recipients after February 14, 1992;

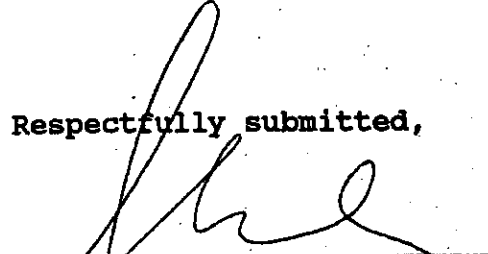
5. That Defendants be compelled to maintain a portion of their existing inventory of silicone gel breast implants; and

6. Payment of all costs and time incurred by Plaintiffs' counsel in preparing this motion.

Proper notice of the filing of this motion was given by hand delivering a copy of the motion to local counsel for each Defendant at 12 p.m., March 20, 1992. Plaintiffs request that this motion be heard and considered today, March 20, 1992.

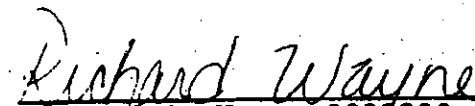


Respectfully submitted,



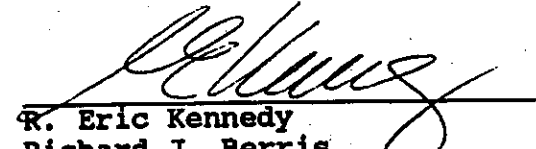
---

Stanley M. Chesley 0030753  
Waite, Schneider, Bayless  
& Chesley Co., L.P.A.  
1513 Central Trust Tower  
Fourth & Vine Streets  
Cincinnati, Ohio 45202  
(513) 621-0267  
Counsel for Plaintiffs



---

Richard S. Wayne 0027390  
Strauss & Troy  
2100 Central Trust Center  
201 East Fifth Street  
Cincinnati, Ohio 45202  
(513) 621-2120  
Counsel for Plaintiffs



---

R. Eric Kennedy  
Richard J. Berris  
Weisman, Goldberg, Weisman &  
Kaufman  
1600 Midland Bldg.  
101 Prospect Avenue, West  
Cleveland, Ohio 44115  
(216) 781-1111  
Counsel for Jeancola  
Plaintiffs



**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Plaintiffs' Motion For A Temporary Restraining Order and Supplemental Motion to Restrain Defendants and Their Counsel From Improper Contacts With Class Members was hand delivered to the counsel listed below at 12 p.m. this 20th day of March 1992:

Ted T. Martin  
Ethna Cooper  
Thompson, Hine & Flory  
Suite 1400  
312 Walnut Street  
Cincinnati, Ohio 45202  
Counsel for Baxter International  
and Baxter Healthcare

Gordon C. Greene  
Bloom & Greene Co., L.P.A.  
1520 Central Trust Center  
201 E. Fifth Street  
Cincinnati, Ohio 45202  
Counsel for McGhan Medical and  
CUI Corp.

James R. Adams  
David C. Olson  
Frost & Jacobs  
2500 Central Trust Center  
201 E. Fifth Street  
Cincinnati, Ohio 45202  
Counsel for Bristol Meyers  
and Surgitek, Inc.

Frank C. Woodside, III, M.D.  
Dinsmore & Shohl  
1900 Chemed Center  
Cincinnati, Ohio 45202  
Counsel for the Dow Corning  
Defendants

Robin E. Harvey  
Benesch, Friedlander, Coplan & Aronoff  
600 Vine Street  
Cincinnati, Ohio 45202  
Counsel for Mentor Corp.

and by telefax at 12 p.m. this 20th day of March 1992, and by ordinary mail, U.S. postage prepaid, this 20th day of March 1992 to the following counsel:

Elizabeth Joan Cabraser  
Andrew P. Lamis  
Lieff, Cabraser & Heimann  
Embarcadero Center West  
275 Battery St., 30th Floor  
San Francisco, CA 94111  
Counsel for the Livingston  
Plaintiffs

Stanley Bernstein  
Kreindler & Kreindler  
100 Park Avenue  
New York, New York 10017  
Counsel for the Livingston  
Plaintiffs



**SERVICE LIST (CONT.)**

L. Richard Rawls  
Palmieri, Tyler, Wiener,  
Wilhelm & Waldron  
2603 Main Street, Suite 1300  
Irvine California 92714  
Counsel for McGhan  
Medical and CUI Corp.

Sanford M. Gage  
Douglas D. Schaffer  
The Law Offices of Sanford  
M. Gage  
945 Wilshire Blvd., # 500  
Beverly Hills, CA 90212  
Counsel for Livingston Plaintiffs

Steve Markl  
Litigation Counsel  
Mentor Corporation  
600 Pine Avenue  
Goleta, California 93117  
Counsel for Mentor Corp.

Debra E. Pole  
Dickson, Carlson, Campillo  
P.O. Box 2122  
120 Broadway, 3rd Floor  
Santa Monica, CA. 90406  
Counsel for Baxter International  
and Baxter Healthcare

John McGoldrick  
Richard M. Eittreim  
McCarter & English  
4 Gateway Center  
100 Mulberry Street  
Newark, New Jersey 07102  
Counsel for Bristol Meyer  
Squibb and Surgitek, Inc.

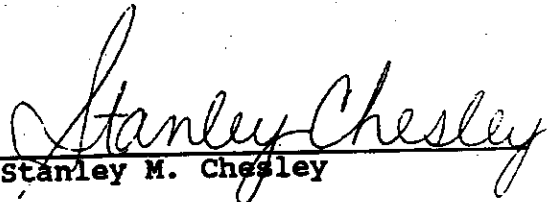
Stuart D. Wechsler  
Andrew D. Friedman  
Wechsler, Skirnick, Harwood,  
Halebian & Feffer  
555 Madison Avenue  
New York, New York 10002

William B. Griffin  
Brobeck, Phleger & Harrison  
One Market Plaza  
Spear Street Tower  
San Francisco, CA 94105  
Counsel for Mentor Corp.

David B. Gold  
Reed Kathrein  
Solomon B. Cera  
595 Market Street, Suite 2300  
San Francisco, CA 94105  
Counsel for Callas and Cohen  
Plaintiffs

Robert J. Hollingsworth  
Cors & Bassett  
1200 Carew Tower  
Cincinnati, OH 45202  
Counsel for Livingston  
Plaintiffs

Herbert B. Newberg  
Kronfeld, Newberg & Duggan  
601 Walnut Street  
Philadelphia, PA 19106  
Counsel for Livingston Plaintiffs

  
Stanley M. Chesley



**DOW CORNING**  
**corporate  
news**

PUBLIC RELATIONS DEPARTMENT  
MIDLAND, MICHIGAN 48840

CONTACT Barbara Carmichael, (202)637-7455  
Scott S. Seeburger, (517)496-4078  
Ed C. Hutchison, (517)496-4578

DATE: March 19, 1992

**Dow Corning Announces \$10 Million Research Fund to  
Continue Study of Silicone Breast Implant Safety; Affirms  
Financial Support for Implant Removal Under Certain  
Conditions; and Announces its Withdrawal from the  
Silicone Breast Implant Market**

Washington, D.C. (March 19, 1992) -- Dow Corning today announced it would establish a \$10 million fund for breast implant research; provide financial support for removal of implants for women who have a medical need for the procedure but who cannot afford to pay for it; and announced it would not re-enter the silicone breast implant market worldwide.

Keith McKennon, Chairman of the Board and CEO of Dow Corning, said the company has established a \$10 million research fund to be audited by the independent accounting firm Price Waterhouse. This fund, along with the interest income it earns, will be used for the sole purpose of funding continuing breast implant research. Price Waterhouse will report periodically how these funds have been spent. This \$10 million was included in the \$10 million charge previously taken by Dow Corning against 1991 earnings.

"The single, most important objective of this research is to answer those remaining questions women may have about their implants," said McKennon. "For example, the February FDA panel agreed that insufficient evidence exists to show any link between implants and systemic diseases of the immune system. The panel also said there is insufficient evidence to prove no



such link exists. Thus, continuing research is obviously important. We agree with the need for more studies, and are committed to fund additional research to provide an expanded scientific base to answer these questions. We will ensure that results of these studies be made available to all interested parties."

McKennon also announced a new program for women who have a medical need to have their Dow Corning implants removed but who cannot afford the necessary surgical procedure.

"More than any other group," McKennon explained, "women in these circumstances would be left without the choice to have their implants removed when a medical need made this procedure necessary. We have now designed a program to help women in that situation."

In explaining the new program, McKennon emphasized the FDA Advisory Panel's recommendation that implants performing satisfactorily need not be removed. As a result, the new program is limited to women with Dow Corning implants "who have agreed with their physician that, for medical reasons, her implant(s) need be removed, but who cannot afford the procedure. For such patients, we will provide up to \$1200 to support the medical costs of the removal procedure," said McKennon.

Patients with Dow Corning implants who believe they qualify for the program can call the company's Breast Implant Information Center at 1-800-442-5442 to find out more information about the program.

McKennon also stated that Dow Corning will continue its replacement warranty program for women using Dow Corning Silastic®II or MSI® implants. The program, under appropriate circumstances, provides those women with a replacement device and \$600 in financial support. "Dow Corning will continue that program," explained McKennon, "perhaps by increasing the dollar amount so that patients can purchase a device from other manufacturers."



Finally, McKennon said that after careful consideration of a variety of factors, Dow Corning has decided not to resume sales or production of breast implants. "In making this announcement," said McKennon, "let me make very clear that Dow Corning remains satisfied that Dow Corning implants produced over the years have filled an important medical need for thousands of women, and did not and do not represent an unreasonable risk. Based on past experience, we believe that the vast majority of women who have our implants will remain satisfied with the device. Our reasons for not resuming production and sales, therefore, are not related to issues of science or safety, but to the existing condition of the marketplace."

"Dow Corning has remained in the silicone breast implant business even though for us, this is a small business. The products represent less than 1% of our revenues and have not been profitable over their history. Given the continued controversial environment surrounding this product, I see no prospect for business improving. Instead, I believe that the future use of this product will be curtailed to a considerable extent. However, women in general and the medical community in particular, are fortunate that two other manufacturers of silicone breast implants supply the product around the world. I believe that both of these manufacturers, Mentor and McGhan Medical, intend to remain in the device business and will provide women and their physicians with a future source of supply for the devices."

McKennon concluded by assuring women with Dow Corning implants that the company "remains fully committed to them as the manufacturer of this device -- we will stand by them, by our commitments to continuing research, and by our other support programs. Let me also assure women and physicians that we will continue to cooperate with the FDA as we develop the test protocols that will guide ongoing research, and we will assure that results of the research will be communicated to all interested parties."



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

\_\_\_\_\_  
In re: Breast Implant Litigation )  
\_\_\_\_\_ )

Master File No. C-1-92-057  
Judge Carl B. Rubin

AFFIDAVIT OF CAROL JUNE POPPEL

STATE OF OHIO )  
 ) SS:  
COUNTY OF HAMILTON )

Carol June Poppel, being first duly cautioned and sworn, does hereby state as follows:

1. I am one of the class members in the above-captioned litigation.

2. On March 19, 1992, it was reported that Dow Corning, a defendant in this litigation, had announced a program offering women with Dow Corning's breast implants up to \$1200.00 to cover the cost of having the implants surgically removed. It was also reported that Dow Corning was encouraging women who believed that they qualified for this program to call a toll-free number, 1-800-442-5442, for more information.

3. Since I currently have breast implants manufactured by Dow Corning, I called this telephone number and spoke to a Dow Corning representative who identified herself as Linda. I was told that, in order to be eligible for such a payment, I would have to be otherwise unable to pay for removal and would have to show that my doctor and I both agreed on removal of the breast implants. She emphasized that my doctor did not have to say that removal was medically necessary. I was also told payments would be made directly to my doctor, but only post-surgery, after he confirmed that I had Dow Corning implants. She said Dow Corning would be happy to receive the implants from my doctor after surgery if I didn't want them. Finally, I was told that, in order to be eligible for such a payment, I would have to execute a release that would free Dow Corning from any liability for problems related to the removal of the implants.

PLAINTIFF'S  
EXHIBIT  
B



4. This affidavit is based on my personal knowledge.  
FURTHER AFFIANT SAYETH NAUGHT.

Carol J. Poppel

STATE OF OHIO            )  
                                  ) SS  
COUNTY OF HAMILTON    )

Sworn to before me and subscribed in my presence, a Notary Public  
for said State and County, this 19 day of March, 1992.

Carol A. Asimus  
Notary Public

CAROL A. ASIMUS  
Notary Public, State of Ohio  
My Commission Expires May 7, 1992







implants far exceeds the \$1200.00 being offered by Dow Corning.

5. This affidavit is based on my personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.

Carol Jean Scott

STATE OF OHIO            )  
                                  ) SS  
COUNTY OF HAMILTON    )

Sworn to before me and subscribed in my presence, a Notary Public for said State and County, this 19 day of March, 1992.

Carol A. Asimus  
Notary Public

CAROL A. ASIMUS  
Notary Public, State of Ohio  
My Commission Expires May 7, 1992







5. This affidavit is based on my personal knowledge.  
FURTHER AFFIANT SAYETH NAUGHT.

Clotis Scott

STATE OF OHIO            )  
                                  ) SS  
COUNTY OF HAMILTON    )

Sworn to before me and subscribed in my presence, a Notary Public  
for said State and County, this 19 day of March, 1992.

Carol A. Asimus  
Notary Public

CAROL A. ASIMUS  
Notary Public, State of Ohio  
My Commission Expires May 7, 1992



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

In Re: Breast Implant                    )     Master File No. C-1-92-057  
Litigation                                 )     Carl B. Rubin, Judge  
  )

AFFIDAVIT OF DIANNA P. MCBRIDE, ESQ.

Dianna P. McBride, being first duly cautioned and sworn, and based on personal information, knowledge and belief do hereby state as follows:

1. I am attorney in the law firm of Waite, Schneider, Bayless & Chesley Co., L.P.A.

2. Attached as Exhibit A to Plaintiff's Motion for Temporary Restraining Order is a true and accurate copy of the Press Release issued by Dow Corning Corporation on March 19, 1992. At the request of Plaintiff's counsel herein, Dow Corning Corporation telefaxed a copy of the Press Release to the offices of Waite, Schneider, Bayless & Chesley, Co., L.P.A., on March 19, 1992.

3. On March 19 and 20, 1992, I received numerous phone calls from class members inquiring about the March 19, 1992 Dow Corning Press Release. Specifically the class members inquired about when they would receive their check for \$1,200.00. Based on these conversations and the questions asked by class members, it was evident that they did not understand the \$1,200.00 payment program and were confused by Dow Corning's Press release.

4. Other class members who telephoned me stated that they had telephoned the toll free 800 number of the Dow Corning Breast Information Center on March 19, 1992. Accounts of these telephone conversations with Dow Corning revealed widely varying and disparate information being disseminated about the payment program, whether releases of liability would be required, and the eligibility requirements for participation in the program.

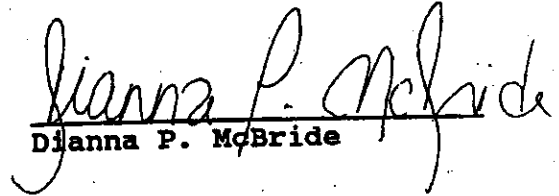
5. On March 19, 1992 I telephoned the Dow Corning Breast Information Center and spoke with an operator named Linda. She repeatedly insisted that I provide her with my name and address, which I refused to do, and with the name of my treating physician. She stated that releases of liability would be required to participate in the program and that these releases would be provided and handled by my treating physician. She would not go into further detail about the release on the telephone but stated



that she would be happy to send a package of information about the program if I would provide my name and address.

This affidavit is based on my personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.

  
Dianna P. McBride

STATE OF OHIO            )  
                                  )    ss  
COUNTY OF HAMILTON

Sworn to before me and subscribed in my presence, a Notary Public for said County and State, this 20th day of March, 1992.

  
Susan M. Amend  
Notary Public

SUSAN M. AMEND  
Notary Public, State of Ohio  
My Commission Expires July 7, 1994



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

FILED  
KENNETH J. MURPHY  
IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION  
1992 MAR 30 P 4:20  
U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WEST DIV CINCINNATI

1

IN RE: : CIVIL NO. C-1-92-057  
BREAST IMPLANT LITIGATION : Cincinnati, Ohio  
: Fri., March 27, 1992

HEARING BEFORE  
THE HONORABLE CARL B. RUBIN, JUDGE  
AND  
THE HONORABLE SANDRA BECKWITH, JUDGE

Judge	10
Mag.	
Journal	
Motion #	
Issue	
Card	
N/S	
Docketed	

For the plaintiffs: Stanley M. Chesley, Esq.  
Diana McBride, Esq.  
Waite, Schneider, Byles & Chesley  
1513 Central Trust Tower  
Cincinnati, Ohio 45202

Richard S. Wayne, Esq.  
Strauss & Troy  
2100 Central Trust Center  
Cincinnati, Ohio 45202

For the defendants: Frank C. Woodside, III., Esq.  
Nancy Lawson, Esq.  
Dinsmore & Shohl  
1900 Chemed Center  
Cincinnati, Ohio 45202

166



IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

In Re: Biscuit Implant

vs.

Case: 0:1991-57

HEARING ON Prelim. Injunction

FILED  
MAR 27 1992  
KENNETH J. MURPHY, Clerk  
CINCINNATI, OHIO

- Argument of Counsel.
- Testimony presented by \_\_\_\_\_
- Matter taken under submission.
- Court ordered in open Court that \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

Present: Judge: Carl B. Rubin  
Deputy Clerk: SM [unclear]  
Court Reporter: B [unclear]

Judge 10  
Mag. \_\_\_\_\_  
Journal \_\_\_\_\_  
Motion # \_\_\_\_\_  
Issue \_\_\_\_\_  
Card \_\_\_\_\_  
N/S \_\_\_\_\_  
Docketed 33

Date: 3/27/92

162

