

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

**F I L E D**  
DEC 23 2004

CLERK'S OFFICE

In Re: § Case No. 00-CV-00005-DT  
§ (Settlement Facility Matters)  
Dow Corning Corporation, §  
§  
Reorganized Debtor. § Hon. Denise Page Hood  
§

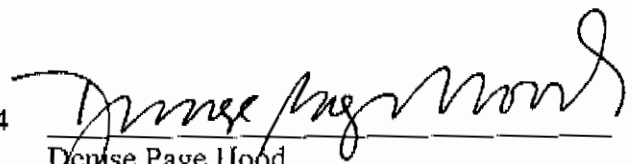
**STIPULATION AND ORDER ESTABLISHING PROCEDURES  
FOR RESOLUTION OF DISPUTES REGARDING RELEASE OF CLAIMS  
AGAINST DOW CORNING AND ELECTION OF SETTLEMENT OPTION**

The Debtor's Representatives and the Claimants' Advisory Committee have presented to the Court agreed procedures for the resolution of disputes arising under the provisions of Section 5.01(a) of Annex A (The Claims Resolution Procedures) to the Settlement Facility and Fund Distribution Agreement. Specifically, these dispute resolution procedures establish a mechanism for resolving any disagreement over whether a prior release of Dow Corning or a prior dismissal or judgment will bar a claimant's claim under the Settlement Option.

After consideration of the agreement of the Debtor's Representatives and the Claimants' Advisory Committee,


IT IS ORDERED that the procedures for the resolution of disputes attached as Exhibit A are hereby approved.

Dated this \_\_\_\_\_ day of **DEC 23 2004**, 2004

  
Denise Page Hood  
United States District Judge

So Stipulated:

FOR DOW CORNING CORPORATION



Deborah F. Greenspan, Esq.  
The Feinberg Group, LLP  
1120 20<sup>th</sup> Street, N.W.  
Suite 740 South  
Washington, DC 20036  
Tel: 202-962-9283  
Fax: 202-962-9290

FOR THE CLAIMANTS' ADVISORY  
COMMITTEE



Dianna Pendleton-Dominguez, Esq.  
Blizzard, McCarthy & Nabers, LLP  
440 Louisiana Street, Suite 1710  
Houston, TX 77002  
Tel: 281-703-0998  
Fax: 713-844-3755

# EXHIBIT A

## **EXHIBIT A TO STIPULATION AND ORDER**

### **SETTLEMENT FACILITY – DOW CORNING TRUST**

#### **PROCEDURE FOR DISPUTES INVOLVING ELIGIBILITY PURSUANT TO SECTION 5.01(a) OF ANNEX A, THE CLAIMS RESOLUTION PROCEDURES, TO THE SETTLEMENT FACILITY AND FUND DISTRIBUTION AGREEMENT**

1. These “Procedures for Disputes Involving Eligibility Pursuant to Section 5.01(a) of Annex A, the Claims Resolution Procedures” (“Procedures”) shall apply to all disputes where the Claimant has elected the Settlement Option and is alleged to have released the Claim against Dow Corning or its Shareholders or had such Claim resolved by final judgment, dismissal or order (collectively referred to herein as “release”), except that these “Procedures” shall not apply to (1) Claims alleging that the Plan does not bar recovery under the Settlement Option where an unrepresented Claimant signed a release in exchange for a payment of less than \$15,000 during the period 1992 through May 15, 1995 and (2) Claims alleging that the release was provided in connection with the Dow Corning Removal Assistance Program.
2. Unless otherwise defined in these Procedures, capitalized terms shall be governed by the definitions in the Plan Documents.
3. Section 5.01(a) of Annex A lists one of the “threshold eligibility criteria” as, “the Claimant (or the Claimant’s predecessor) has not released the Claim against Dow Corning or its Shareholders (or had such Claim resolved by final judgment, dismissal or order)...” Pursuant to this Section, Dow Corning has provided the Settlement Facility with a database identifying all persons whom they assert have given Dow Corning general releases in connection with implant Claims or had such Claims resolved by final judgment, dismissal or order (the “Claims Screen Database”).
4. If the Settlement Facility determines that a name on the Claims Screen Database matches to a Claimant with sufficient specificity, then it shall request a copy of the underlying document from Dow Corning. Dow Corning will provide the Settlement Facility with a complete and legible copy of each release within 30 days from the date of the request, except that Dow Corning shall have 60 days to respond if the Settlement Facility requests more than 500 documents within a 30-day period. If the Settlement Facility does not receive the underlying document that supports the release within the specified time period, then the Settlement Facility shall deem the Claimant eligible as to this specific eligibility criterion.
5. Provided the Settlement Facility has received a copy of the underlying document (obtained from any source) within the applicable time period(s) in paragraph 4 above, the Settlement Facility shall review the document to

determine if the person identified in the document matches with specificity to the Claimant's name (or prior names) in the Settlement Facility database. If there is a match, then the Settlement Facility shall:

- a. enter a preliminary designation of "ineligible" for settlement benefits for that Claimant for the implant identified in the release,
  - b. send the Claimant or Claimant's attorney of record a letter notifying him or her of the preliminary designation that (s)he is not eligible for settlement benefits for the implant identified in the release (the letter shall include language that informs the recipient that the underlying document is subject to confidentiality provisions and should not be disclosed outside of the persons or entities identified in these Procedures),
  - c. provide a copy of the release to the Claimant or the Claimant's attorney of record, and
  - d. advise the Claimant or her attorney of record of these Procedures to object to the release and of the procedure to withdraw the Claim.
6. Claimants or their attorneys of record who were previously informed by the Settlement Facility that they were ineligible to participate based on a release asserted by Dow Corning shall be sent a revised letter with attachments that are consistent with these Procedures. Specifically, the letter shall inform the Claimant or her attorney of record that the Settlement Facility is re-reviewing the releases asserted by Dow Corning pursuant to these Procedures, that upon a re-review the release may not apply or may not bar a Claimant's eligibility to participate in the Settlement Option, and that Claimants may object to the preliminary designation of ineligible pursuant to these Procedures.

7. Claims Administrator Review

The Claims Administrator is authorized to review and resolve the following types of released Claims if there is clear written documentation submitted by the Claimant or Dow Corning that one or more of the following applies:

- a. the Claimant's Claim is for an implant type that is different from the implant type specifically referenced in and covered by the release (i.e., the Claimant has a knee implant claim and the release specifically applies to a breast implant); or
- b. the Claimant's Claim is the same type of implant that is specifically referenced in and covered by the release but the Claimant is seeking compensation for an implant that was received after the date of the release (i.e., the release specifically states that it is for a breast implant implanted in 1978 but the Claimant's Claim is for an

implant implanted in 1984 and involves an implant different from the one specifically referenced in the release); or

- c. the Claimant's Claim is the same type of implant that is specifically referenced in and covered by the release but the Claimant is seeking compensation for another implant that was received prior to the date of the release and the release is clearly limited to the one implant identified in the release (i.e., the release specifically states that it is for an implant implanted in 1984 without releasing other claims and the Claimant documents that she received another eligible implant in 1976); or
  - d. the person identified in the release or underlying document is not the same person as the Claimant.
8. If the Claims Administrator reasonably concludes, based on clear written documentation, that the Claimant's Claim meets the criteria in paragraph 7 above, then the Claimant need not go through the Appeals Judge Review Process outlined in paragraph 10 below to establish her eligibility to seek benefits under the Settlement Option in the Plan (See Settlement Facility and Fund Distribution Agreement, Article VI and Annex A, Article VI). If the Claims Administrator reasonably cannot determine whether the Claimant meets the criteria in paragraph 7 above or determines that the Claimant does not meet the criteria of paragraph 7, then the Claims Administrator shall notify the Claimant so that the Claimant may elect to proceed through the Appeals Judge Review Process outlined below.
9. A) A Claimant who either does not meet the criteria in paragraph 7 above or who meets the criteria in paragraph 7 above but whom the Claims Administrator concludes is ineligible because of a release may use the Appeals Judge Review Process to contest the preliminary determination of ineligibility.
- B) Claimants who wish to contest the Claims Administrator's determination or who wish to use the Appeals Judge Review Process must do so on or before one year from the date of the last letter from the Settlement Facility advising that they are ineligible based on the release in question.

10. Appeals Judge Review Process

The Appeals Judge is authorized to review all objections as specified in paragraphs 7 through 9 above.

- a) To initiate a dispute under paragraph 10 of these Procedures, the Claimant or her attorney of record must submit a letter to the Settlement Facility outlining in detail the reasons why the release is inapplicable and/or why the Claimant should be determined to be

eligible to participate in the Plan ("the objection"). The objection should include any supporting documents and statements. Any such statement shall be signed under penalty of perjury. The Claimant or her attorney of record shall submit a copy of the objection to the Settlement Facility, the Debtor's Representatives and the Claimants' Advisory Committee at the addresses designated in paragraph 11 below. The Claimants' Advisory Committee shall be authorized to provide information to unrepresented Claimants and attorneys of record but will not represent Claimants individually unless separately retained.

- b) If Dow Corning intends to contest the objection, then the Debtor's Representatives shall submit a letter in response ("the response") outlining the reason(s) why the release does apply. The response should include any supporting documents and statements. Any such statement shall be signed under penalty of perjury by a person at Dow Corning or its representative or attorney. The response shall be submitted to the Settlement Facility within 15 business days from the date of the objection. Dow Corning shall provide a copy to the Claimant or her attorney of record, the Settlement Facility, and the Claimants' Advisory Committee. Dow Corning need not respond to the objection. In the event that Dow Corning does not respond, the Appeals Judge shall decide the issue based on the available evidence. Unless the Appeals Judge or the Court determines that the release does not apply to bar the Claim, the Claim shall be ineligible – regardless of whether Dow Corning submits any pleadings.
- c) The Claimant or her attorney of record shall have 15 business days from the date of Dow Corning's response to submit a letter of reply along with any supplemental information and documents. All such supplemental statements shall be signed under penalty of perjury and served on the same parties identified above.
- d) The Settlement Facility shall forward to the Appeals Judge all documents submitted as described above. The Appeals Judge may request additional information from the Claimant's file at the Settlement Facility and from the Claimant or Dow Corning. All such requests and copies of any such documents received shall be provided to the Claimant (or, if represented, to her attorney of record), Dow Corning, Debtor's Representatives, and the Claimants' Advisory Committee (if applicable). The Appeals Judge may conduct any conference or hearing by telephone as he deems necessary or appropriate in his sole discretion. The Appeals Judge shall not have any ex parte conferences with anyone specifically including the Claimant, his or her attorney of record, the Claims Administrator and Settlement Facility staff (unless it is to request the transmission of documents), the Special Master, the Litigation

Facility, Dow Corning, the Shareholders, the Debtor's Representatives, the Claimants' Advisory Committee, the District Court, or any party in the MDL proceedings.

- e) The Appeals Judge has discretion to grant the Claimant and Dow Corning a one-time extension.
- f) The Appeals Judge shall issue a written ruling within 45 days after receipt of all documents determining if the Claimant is eligible to participate in the Plan.
- g) If either party intends to appeal the ruling of the Appeals Judge, it must file a Notice of Appeal with the District Court within 14 business days from the date of the ruling or the ruling will become FINAL and binding and no right of appeal shall be allowed. The District Court shall conduct a *de novo* review. The Federal Rules of Civil Procedure shall apply to all motions and filings before the District Court. The parties will request a briefing schedule in each case.

11. Copies of all submissions shall be sent to the following:

a) Settlement Facility – Dow Corning Trust  
P.O. Box 52429  
Houston, TX 77052

b) Debtor's Representatives:

C/O Deborah E. Greenspan  
The Feinberg Group, LLP  
1120 20<sup>th</sup> Street, N.W.  
Suite 740 South  
Washington, DC 20036

c) Claimants' Advisory Committee  
P.O. Box 61406  
Houston, TX 77208-1406

d) Claimant or her attorney of record.