IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
(DETROIT DIVISION)

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

REDACTED TO REMOVE CLAIMANT INFORMATION

PLAINTIFFS' MOTION FOR EXPEDITED CONSIDERATION FOR TOLLING OF RUPTURE DEADLINE; REQUEST FOR SIX MONTH EXTENSION FOR CURING PAST AND FUTURE DEFICIENCIES; AND TO COMPEL THE ACCEPTANCE OF EXPERT AFFIDAVITS IN REGARDS TO PROOF OF RUPTURE CLAIMS

TO: **THE HONORABLE DENISE PAGE HOOD**

Comes now Plaintiffs, through Plaintiffs' counsel, Robert D. Steinhaus, Esq. of Siegel, Kelleher & Kahn, and requests that this Court use its inherent powers and authority as the judge supervising the implementation of the Amended Joint Plan of Reorganization of Dow Corning Corporation to order:

1. For an Order granting disclosure of substantive criteria created, adopted and/or being applied by the Claims Administrator for the Settlement Facility;
2. For an Order granting a six month extension on the deadline to submit a rupture claim;
3. For an Order providing a six month extension for curing all past and present deficiencies including an immediate tolling of all cure deadlines during the pendency of this motion;
4. For an Order directing the Claims Administrator to consider expert proof in regard to the issue of rupture

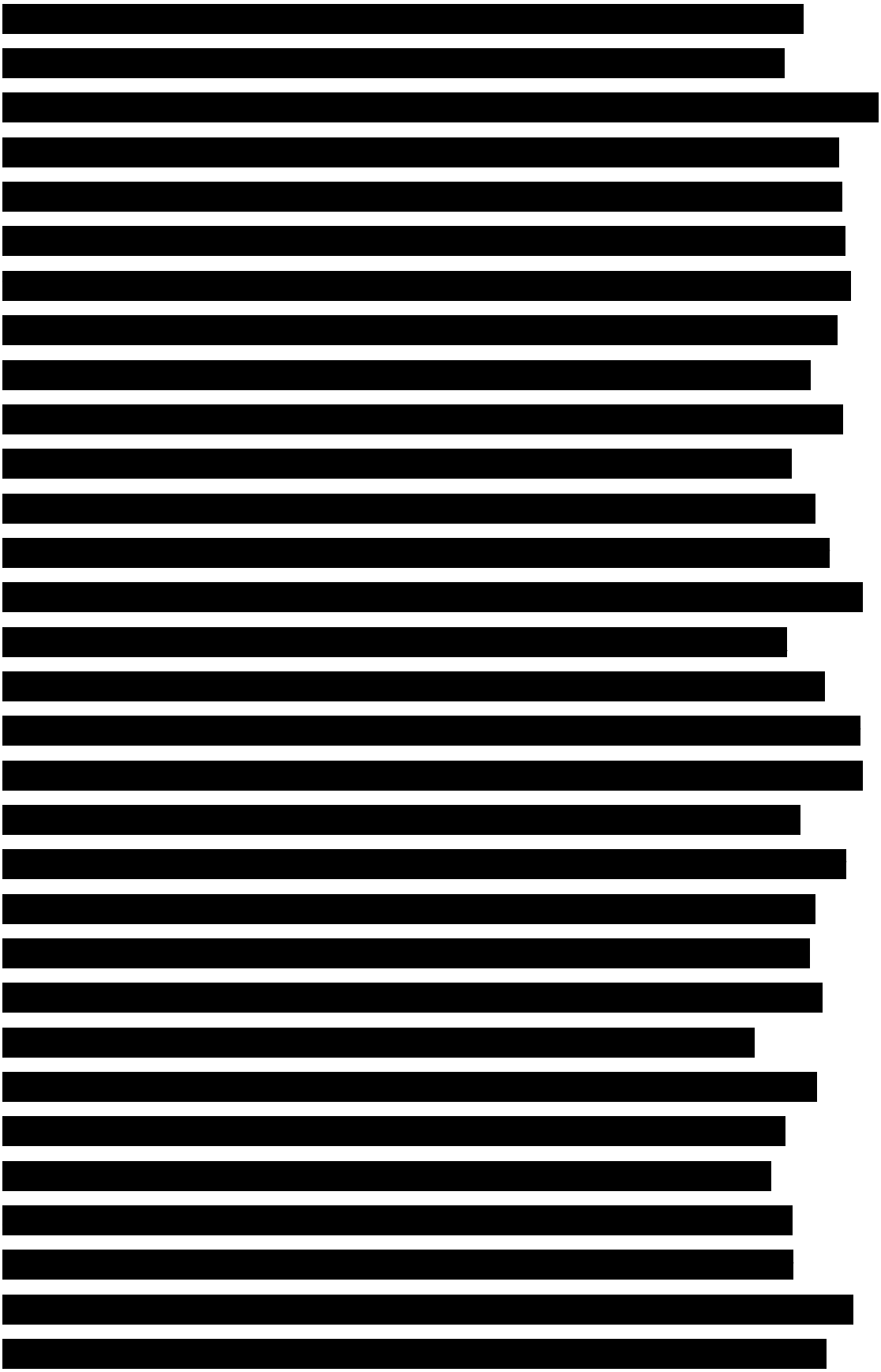
regardless of whether the experts' examination was contemporaneous with the explantation or whether the expert is a medical doctor.

In light of the upcoming deadline to submit a rupture claim as well as the fact claims processing is ongoing and cure deadlines have begun to run for some claimants affected by the outcome of this motion, Plaintiffs respectfully request the Court to expedite consideration of this motion and for other equitable relief.

As the Court is aware, the deadline to file rupture claims is set to expire on June 1, 2006. In order for Claimants to receive rupture compensation, they must have undergone explantation. As the Court is also aware, there are pending motions and litigation centered on the processing and payment of various benefits (including but not limited to disease compensation) under the Amended Joint Plan. Since explantation surgery is almost always considered elective, it is often not covered by health insurance and therefore the cost must be born either by the claimant or in certain circumstances under the EAP. It should be noted that under the EAP, a surgeon is required to wait until after explantation to be paid. In Western New York I am aware of only one (1) surgeon who is willing to do so. The economic picture in Western New York as well as all across the country is also not positive, and therefore, many claimants including but not limited to the following: [redacted]

[redacted], are awaiting their disease compensation payments in order to finance their explantation. In light of the problems associated with the disease compensation process, explantation cannot occur prior to the June 1, 2006 deadline for many claimants. It should also be noted that some claimants have only recently received their disease compensation payments and the timing of those payments will not permit those women to have their explantation surgery prior to the deadline.

Additionally, in light of the litigious history of breast augmentation, there are few plastic surgeons who are willing to get involved and accordingly, there are a number of women including but not limited to: [redacted]

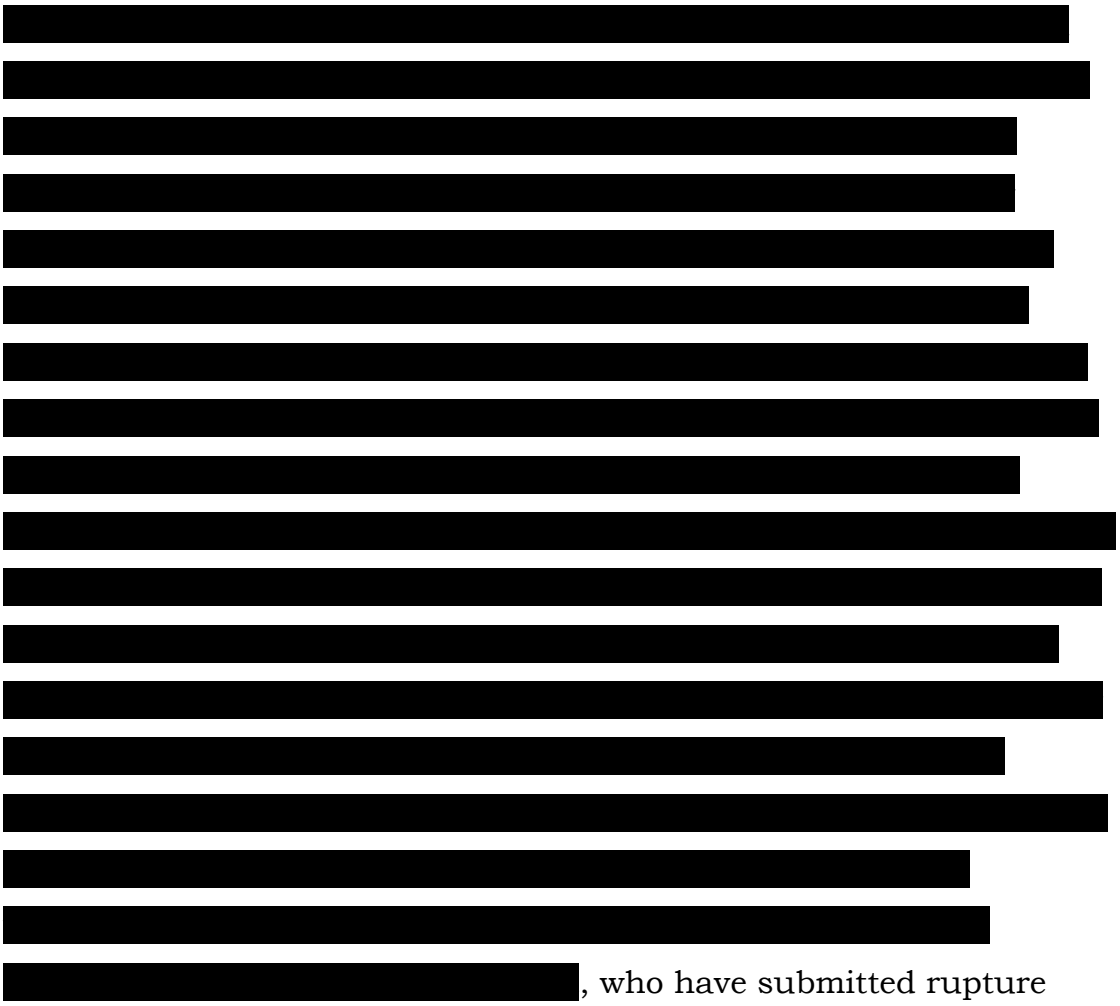


[redacted] who are scheduled (or are awaiting a date) to have their implants removed, but who's surgery will not occur until after the June 1, 2006 deadline.

Shirley G. Coyne previously filed a pro se motion requesting an extension of the June 1, 2006 rupture deadline. I would direct the Court to Ms. Coyne's letter filed on May 22, 2006 wherein she advised that she was withdrawing her motion based upon the claims administrator agreeing to extend her deadline to August of 2006.

Accordingly and in light of the prior practices of the Settlement Facility in regards to the processing of claims and the vast number of women adversely affected, I request that the deadline to submit a rupture claim be extended for six (6) months.

There are also a large number of women including but not limited to: [redacted]



, who have submitted rupture claims prior to June 1, 2006 but who's claims are being arbitrarily denied. An untenable injustice is being visited upon these Claimants in that timing of their explantation controls the level of proof they are required to show in order to be entitled to rupture compensation. For Claimants who underwent explantation prior to January 1, 1992, an operative report alone was sufficient to establish a rupture claim. After January 1, 1992 and prior to June 1, 2004 Claimants needed to submit an operative report AND pathology report which both supported a claim of rupture. After June 1, 2004 Claimants must submit an operative report AND a pathology report AND a statement by their surgeon that among other things attests that the rupture did not occur during surgery. To treat similarly situated claimants differently based solely upon when their implants were removed is

fundamentally unfair and provides for unequal treatment of these women under the law.

Furthermore, the substantive criteria created, adopted and/or being applied by the Claims Administrator for the Settlement Facility is not fully known. As stated above, at different points in time different forms of proof were required for the same relief; however, in circumstances where the operative report and pathology report were inconsistent with each other, the Settlement Facility has given deference to whichever report supports a non-rupture. (See Exhibit A annexed hereto and made a part hereof). This inconsistent treatment necessitates disclosure of the substantive criteria being utilized and a tolling of the cure deadlines to permit claimants a full and fair opportunity to obtain benefits.

The final issue relative to this motion has to do with the Settlement Facility's refusal to accept expert proof of rupture. Many of our clients including but not limited to: [redacted], have operative and/or pathology reports which do not address or inconsistently address whether a rupture is present. This may be due in part to the fact that the definition of what constitutes a "rupture" under the plan either did not exist at the time of explantation or was never provided to the surgeons and/or pathologists and therefore their choice of verbiage most certainly shouldn't be outcome determinative of entitlement under the plan. For many of these women, we retained a pre-eminent expert on breast

implants, Pierre Blais, Ph.D., who examined the implants and issued comprehensive reports in instances where he was able to positively establish a rupture. Dr. Blais affidavits were submitted to the settlement facility as proof of rupture and yet those claims have been almost universally rejected either on the premise that Dr. Blais's examination was not contemporaneous with the explantation or because he is not a medical doctor. See Exhibit "A" attached hereto and made a part hereof.

I would point out that Dr. Blais's opinions have been repeatedly accepted by the Settlement Facility on the issue of product identification and to unilaterally and without logical explanation dismiss his opinions on rupture is arbitrary, inconsistent and inappropriate. Furthermore, since the issue Dr. Blais is addressing is a defect in a product, a medical license is irrelevant to the determination. As such, dismissal of his opinions on this basis alone is arbitrary and unsupportable. Similarly, to dismiss his opinions based solely on the timing of the inspection is also arbitrary absent a showing of material change in the product between the time of explantation and the inspection. I have been informed that the Settlement Facility has accepted expert opinions when a photograph is submitted along with a statement that the implants were in substantially the same condition at the time of explantation. This arbitrary determination is without evidentiary basis in law or equity.

Accordingly, it is submitted that in instances where no contrary expert proof is submitted, that the opinions of Dr. Blais be considered on the issue of rupture.

This the 31st day of May, 2006.

_____/s/_____
Robert D. Steinhaus, Esq.
RSteinhaus@skklaw.com
Siegel, Kelleher & Kahn
Attorneys for Claimants
426 Franklin Street
Buffalo, New York 14202
(800) 888-5288

CERTIFICATE OF SERVICE

I hereby certify that on May 31, 2006, I electronically filed the foregoing **PLAINTIFFS' MOTION FOR EXPEDITED CONSIDERATION FOR TOLLING OF RUPTURE DEADLINE; REQUEST FOR SIX MONTH EXTENSION FOR CURING PAST AND FUTURE DEFICIENCIES; AND TO COMPEL THE ACCEPTANCE OF EXPERT AFFIDAVITS IN REGARDS TO PROOF OF RUPTURE CLAIMS** (REDACTED) with the Clerk of the Court using the ECF system. I further certify that I have emailed the foregoing to each of the following individuals. I further certify that I have provided an un-redacted version to the Court and to the Claims Administrator.

For the Claimants' Advisory Committee:
Dianna Pendleton-Dominques, Esquire
dpend440@aol.com
P.O. Box 665
St. Marys, Ohio 45885

For the Debtor's Representatives
Deborah E. Greenspan, Esquire
Dickstein Shapiro Morin & Oshinsky, LLP
2101 L Street, N.W.
Washington, D.C., 20037
GreenspanD@dsmo.com

For the Finance Committee
David Austern, Esquire
Claims Administrator
Settlement Facility-Dow Corning Trust
3100 Main Street, Suite 700
Houston, Texas 77002
daustern@claimsres.com

This 31st day of May, 2006

_____/S/_____
Robert D. Steinhaus
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Siegel, Kelleher & Kahn
426 Franklin Street
Buffalo, New York 14202
800-888-5288

INDEX TO EXHIBITS

Exhibit No.	Description
A	NOS from July 8, 2005

EXHIBIT A

S F D C T
SETTLEMENT FACILITY
DOW CORNING TRUST

3100 MAIN STREET, SUITE 700
HOUSTON, TEXAS 77002

P.O. BOX 52429
HOUSTON, TEXAS 77052

July 8, 2005

MR. DENNIS A KAHN
SIEGEL, KELLEHER & KAHN
426 FRANKLIN STREET
BUFFALO, NY 14202
UNITED STATES OF AMERICA

Re: **– Error Correction Review**

Dear Mr. Kahn:

We have completed the Error Correction Review for the above-referenced Claimant's Class 5 - Rupture evaluation and determined that an error was not made.

Upon review of the file it was noted that the December 12, 2004 Report from Dr. Pierre Blais does not meet the criteria for Rupture Proof per the Settlement Facility and Fund Distribution Agreement (SFA), Annex A, Article VI, Section 6.02 (e) (iii) (b). Additionally, the April 30, 1993 Operative Note indicates that the Claimant's right Breast Implant was ruptured; however, the April 30, 1993 Surgical Pathology Report indicates "gel bleed". This is Unacceptable Rupture Proof per the SFA, Annex A, Article VI, Section 6.02 (e) (vii) (d).

You have the right to file an Appeal with the Claims Administrator; however, all documentation regarding your request for an Error Correction Review must have been previously submitted to the SF-DCT. If you choose to file an Appeal, additional documentation will not be allowed and the Appeal will be limited to the specific benefit status contained in the April 28, 2005 Notification of Status letter. In order to file an Appeal, you must submit a letter to the SF-DCT clearly marked "Appeal to Claims Administrator" stating the reasons why you disagree with our decision.

Sincerely,

Error Correction and Appeals Department
Settlement Facility - Dow Corning Trust