

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)

MOTION AND MEMORANDUM IN SUPPORT
OF AND
TO TOLL THE SIX MONTH DEADLINE
FOR CURING RUPTURE DEFICIENCIES
[REDACTED]

Come now (SID) and (SID

), by and through their undersigned counsel of record (DSCKD), and request that the Court toll the six month deadline for curing deficiencies in their rupture claims and those of all other claimants who are similarly situated. In support of their Motion, Ms. and Ms. show the following:

1. In July, 1978, Ms. received breast implants manufactured by Dow Corning Corporation.

2. Ms. had those implants in her body until they were removed in 1991.

3. In August, 1978, Ms. received breast implants manufactured by Dow Corning Corporation.

4. Ms. [REDACTED] had those implants in her body until they were removed in 1989.

5. Ms. [REDACTED] and Ms. [REDACTED] each contend that at least one of their Dow Corning implants was “ruptured” as that term is used in the Amended Joint Plan of Reorganization.

6. Ms. [REDACTED] and Ms. [REDACTED] submitted their rupture claims on May 23, 2003.

7. On November 10, 2004, the SF-DCT mailed Ms. [REDACTED] and Ms. [REDACTED] Notification of Status (NOS) letters on their rupture claims.

8. Those NOS letters said that both claims were deficient.

9. On November 22, 2004, in an effort to cure the perceived deficiencies, an error correction letter and a request to participate in the Individual Review Program (IRP) were submitted to the SF-DCT on behalf of Ms. [REDACTED]. A request for review of additional rupture information with additional documents attached and an IRP request were filed on behalf of Ms. [REDACTED].

10. On January 25, 2005, the SF-DCT sent a letter stating that both claimants’ rupture documents had been forwarded to Dow Corning for IRP review and that their rupture cure deadlines were both amended from May 9, 2005 until June 19, 2005.

11. On March 3, 2005, DSCKD sent an e-mail to the SF-DCT inquiring about the status of Ms. [REDACTED]'s error correction request and Ms. [REDACTED]'s request for re-review.

12. On March 4, 2005, the SF-DCT responded by e-mail that both requests were reviewed and denied. DSCKD subsequently received letters from the SF-DCT confirming this for both claimants.

13. On March 17, 2005, DSCKD filed an appeal to the Claims Administrator on behalf of Ms. [REDACTED] and an error correction request on behalf of Ms. [REDACTED].

14. On March 29, 2005, the SF-DCT sent a letter stating that they had conducted an error correction review of Ms. [REDACTED]'s rupture claim and determined that no error was made.

15. On April 5, 2005, the SF-DCT sent a letter stating that Dow Corning had rejected Ms. [REDACTED]'s rupture claim on IRP review.

16. On April 6, 2005, the SF-DCT sent a letter stating that Ms. [REDACTED]'s appeal to the Claims Administrator was denied.

17. On April 7, 2005, the SF-DCT sent a letter stating that Dow Corning had rejected Ms. [REDACTED]'s rupture claim on IRP.

18. On April 7, 2005, DSCKD filed an appeal to the Claims Administrator regarding Ms. [REDACTED]'s rupture deficiency.

19. On April 15, 2005, DSCKD filed an appeal to the appeals judge regarding Ms. [REDACTED]'s rupture claim. To date, we have not received any response to that appeal.

20. On April 22, 2005, the SF-DCT sent a letter stating that Ms. [REDACTED]'s appeal to the Claims Administrator was denied.¹

21. On April 29, 2005, DSCKD filed an appeal to the appeals judge regarding Ms. [REDACTED]'s rupture claim. To date, we have not received any response to that appeal.

22. Ms. [REDACTED] and Ms. [REDACTED] both have an approaching cure deadline of June 19, 2005. Their appeals to the appeals judge have been pending for over one month with no response.

23. Ms. [REDACTED] and Ms. [REDACTED] have followed the appeals process set out in the Plan documents and have responded promptly to each decision of the SF-DCT with regard to their claims. Nevertheless, it appears that they will not receive a decision on their final appeals to the appeals judge prior to their cure

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deadline. We understand that appeals to Judge Andrews from decisions of the prior Claims Administrator, Wendy Trachte-Huber, may be re-reviewed by the new Claims Administrator, David Austern, before they are reviewed by Judge Andrews. We also understand that there may be a backlog of appeals due to the recent transition in the Claims Administrator position.

WHEREFORE, Ms. _____ and Ms. _____ respectfully request that this Court direct that their rupture cure deadlines be tolled so that they are able to complete the appeals process and receive final rulings from the appeals judge before their cure deadlines expire.

This the 6th day of June, 2005.

/s/Leslie J. Bryan
Leslie J. Bryan

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CERTIFICATE OF SERVICE

I hereby certify that on June 6, 2005, I electronically filed the foregoing MOTION AND MEMORANDUM IN SUPPORT OF AND TO TOLL THE SIX MONTH DEADLINE FOR CURING RUPTURE DEFICIENCIES [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.

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/s/ Leslie J. Bryan _____

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and