

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
Southern Division

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U.S. DISTRICT COURT
N.D. OF ALABAMA

In re:)
SILICONE GEL BREAST IMPLANT)
PRODUCTS LIABILITY LITIGATION)
(MDL 926))

Master File No. CV 92-P-10000-S

HEIDI LINDSEY, et al.,)
Plaintiffs,)

-vs.-)

Civil Action No. CV 94-P-11558-S

DOW CORNING CORP., et al.,)
Defendants.)

ENTERED

SEP 12 1994

ORDER No. 21
(Current Disease Compensation Program--Clarification)

Under its retained jurisdiction to administer the settlement, the court issues this order to clarify the procedures respecting claims under the Current Disease Compensation Program.

The Problem

Under the settlement, claims under the Disease Compensation Program are to be processed under the Ongoing Claims portion of the Program, rather than under the Current Claims portion, unless a signed Registration Form, a signed Claim Form, and the necessary supporting medical documentation are sent to the Claims Office postmarked no later than September 16, 1994. In approving the settlement, the court directed that a claim would be initially processed as a Current Claim if the required supporting medical documentation was sent to the Claims Office for domestic claimants by October 17, 1994 (or for foreign claimants by December 1, 1994). These additional grace periods, however, apply only if the claimant submits a signed Registration and a "complete and signed Claim form" by September 16th.

The question has arisen whether the Claim form submitted by September 16th must, in order to be "complete," indicate (in items #3 and #4 of the form) the disease or medical condition and the severity/disability level for which the claim is made. Many have asked how they could do this--particularly since it must be signed under penalty of perjury--if they must submit the Claim form before receiving the medical report of their examining physician. Should they leave items #3 and #4 blank? Or indicate some disease/severity that may not be supported by the physician's report when it is submitted? Or file an amended Claim form with the medical documentation when it is sent by October 17 (or, for foreign claimants, by December 1)?

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The Resolution

The Claim form must be "complete" to the best of the claimant's knowledge, information and belief at the time it is submitted. If, in order to meet the September 16th deadline for current claims, a claim form must be completed before receiving the physician's statement or diagnosis (or otherwise being informed about what that statement or diagnosis will reflect), the claimant may leave items #3 and #4 blank. In such event, however, the claimant must submit a signed updated Claim form, with items #3 and #4 completed, along with the required medical documentation, by the October 17th (or December 1st) deadline.

The court recognizes that these grace periods will enable more persons to have claims considered under the Current Disease Compensation Program and will consequently result in a longer period of time needed by the Claims Office to process all claims under that Program.

Other Notes

Failure to meet these deadlines—for example, because no signed Claim form is submitted by September 16th or because the medical documentation or the updated Claim form is not submitted by the October 17th (or December 1st) deadline—does not preclude the claimant from participating in the Disease Compensation Program. Rather, the claim will be carried forward for processing under the Ongoing Disease Compensation Program when the necessary information is provided to the Claims Office.

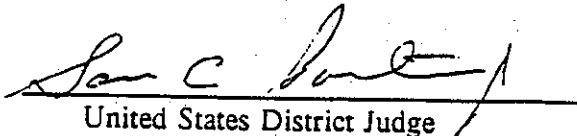
Some claimants who complete a Claim form before receiving a physician's statement or diagnosis may indicate a disease/severity based on what they believe will later be supported by the medical documentation. If, when this medical documentation is later received by them, a different disease or severity level is reflected, they should sign and submit an updated Claim form along with the medical documentation. If the medical documentation establishes the disease and severity shown on the Claim form, there is no need to submit an additional Claim form.

There is no requirement to complete item #5 on the Claim form (age at onset of qualifying symptoms/severity). If, however, the age-at-onset is not established in the medical documentation, the claim will be processed on the basis of the claimant's current age.

Each claimant should, at the time of submitting a claim, know the place and at least approximate date of any breast implantation or explantation, and therefore be able to complete those portions of items #1 and #2 on the Claim form. Failure to provide in items #1 and #2 the name, model, or manufacturer of an implant will not result in automatic rejection of a claim, but the claimant should indicate (on a separate sheet if necessary) her efforts to obtain this information.

The settlement provides that, if so notified by the Claims Office, claimants will have 30 days to supply information needed by it to review a claim. These provisions, however, apply only with respect to minor deficiencies in the required medical documentation. Claimants who fail to submit a signed Claim form by September 16th or to submit the medical documentation required under paragraph 27(b) of the Settlement Notice (and any required amended Claim form) by the October 17th (or December 1st) deadline will not, however, be given additional time for this "deficiency" supplementation under the Current Disease Compensation Program.

This the 12th day of September, 1994.


United States District Judge