UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In Re:

Settlement Facility Dow Corning Trust.

Case No. 00-00005
Honorable Denise Page Hood

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MEMORANDUM OPINION AND ORDER
REGARDING DISABILITY LEVEL A ISSUE

I. BACKGROUND

On June 1, 2004, the Amended Joint Plan of Reorganization ("Plan") became effective governing the Dow Corning Corporation bankruptcy matter. The Court retains jurisdiction over the Plan "to resolve controversies and disputes regarding interpretation and implementation of the Plan and the Plan Documents" and "to allow, disallow, estimate, liquidate or determine any Claim, including Claims of a Non-Settling Personal Injury Claimant, against the Debtor and to enter or enforce any order requiring the filing of any such Claim before a particular date." (Plan, §§ 8.7.3, 8.7.4, 8.7.5) The Plan Documents pertinent to this matter include the Settlement Facility and Fund Distribution Agreement ("SFA") and the Dow Corning Settlement Program and Claims Resolution Procedures, Annex A to the SFA ("Annex A").

The Settlement Facility-Dow Corning Trust ("SF-DCT") implements the claims of those claimants who elected to settle their claims under the Settlement Program of the Plan. (Plan, § 1.131) The SF-DCT was established to resolve Settling Personal Injury Claims in accordance with the Plan. (Plan, § 2.01) The SFA and Annex A to the SFA establish the exclusive criteria by which such claims are evaluated, liquidated, allowed and paid. (SFA, § 5.01) The process for resolution of claims is set forth under the SFA and corresponding claims resolution procedures in Annex A.

(SFA, § 4.01)

Section 5.05 of the SFA provides that the Debtor's Representatives and the CAC may submit joint interpretations and clarifications regarding submissions of claims to the Claims Administrator. The CAC and the Debtor entered into a June 11, 2004 Stipulation and Order Establishing Procedures for Resolution of Disputes Regarding Interpretation of the Amended Joint Plan ("Procedures"). If there is a dispute between the Debtor's Representatives and the CAC, the Claims Administrator may resolve the issue or the issue may be raised before the Court by way of a motion pursuant to the June 11, 2004 Procedures. Section 2.01 of the Procedures provides that "these procedures will apply to disputes arising out of the interpretation or application of the Claims Resolution Procedures–Annex A to the Settlement Facility Agreement–and any claims operations functions set out in the Settlement Facility Agreement." (Plan Interpretation Procedures, § 2.01(a)) After a meet and confer period and submitting the issue before the Claims Administrator, either party may bring the matter before this Court. (Plan Interpretation Procedures, § 2.01(c) and (d)) The SFA and the Procedures authorize only the Debtor's Representatives and the CAC to file a motion to interpret a matter under the SFA. There is no provision under the SFA or the Procedures which allows a claimant to submit an issue to be interpreted before the Court.

In this matter, the CAC initially submitted a Motion for the Disclosure of Substantive Criteria Created, Adopted and/or Being Applied by the Settlement Facility as to its review of disability level A claims if the claimant had documented functional capacity for vocation only or for self-care only. The issue of disclosure has been resolved as noted by subsequent briefs submitted by the Debtor's Representatives and the CAC and, as noted by the parties during oral arguments in this matter. The issue then before the Court is the correct application of the "Disability A" language

under the Plan. (CAC Supplemental Br., p. 2 (Doc. No. 299)) The parties and certain claimants have submitted various briefs and documents in this matter.

II. ANALYSIS

A. Plan Interpretation

Generally, the provisions of a confirmed plan bind the debtor and any creditor. 11 U.S.C. § 1141(a). In interpreting a confirmed plan, courts use contract principles, since the plan is effectively a new contract between the debtor and its creditors. *In re Dow Corning Corporation,* 456 F.3d 668, 676 (6th Cir. 2006); *see, Hillis Motors, Inc. v. Hawaii Auto. Dealers' Ass'n,* 997 F.2d 581, 588 (9th Cir. 1993). State law governs those interpretations, and under long-settled contract law principles, if a plan term is unambiguous, it is to be enforced as written, regardless of whether it is in line with the parties' prior obligations. *In re Dow Corning,* 456 F.3d at 676. A term is deemed ambiguous when it is "capable of more than one reasonable interpretation." *Id.* The Court has no authority to modify this language. Although bankruptcy courts have broad equitable powers that extend to approving plans of reorganization, these equitable powers are limited by the role of the bankruptcy court, which is to "guide the division of a pie that is too small to allow each creditor to get the slice for which he originally contracted." *Id.* at 677-78 (quoting *In re Chicago,* 791 F.2d 524, 528 (7th Cir.1986)). "A bankruptcy court's exercise of its equitable powers is cabined by the provisions of the Bankruptcy Code." *Id.* at 678 (citing *In re Highland Superstores, Inc.*, 154 F.3d 573, 578-79 (6th Cir.1998)).

New York law governs the interpretation of the SFA. (SFA § 10.07) Under New York law, a court must first decide whether the contract is ambiguous. *B.F. Goodrich Co. v. U.S. Filter Corp.*, 245 F.3d 587, 595 (6th Cir. 2001). A contractual provision is ambiguous "whenever it admits of

more than one interpretation 'when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages and terminology as generally understood in a particular trade or business.'" *Id.* (quoting *Space Imaging Europe, Ltd. v. Space Imaging L.P.*, 38 F.Supp.2d 326 (S.D.N.Y. 1999)). A contract is not considered ambiguous when the language has "a definite and precise meaning, unattended by danger of misconception in the purport of the contract itself, and concerning which there is no reasonable basis for a difference of opinion." *Id.* If a court determines that the language of a contract is ambiguous, external evidence of the parties' intent is admissible. *Id.* In assessing issues of contract construction, a court is "to give effect to the intent of the [contracting] parties as revealed by the language they chose to use." *Id.* at 596. When the contractual language is ambiguous "but the extrinsic evidence creates no genuine issue of material fact and permits interpretation of the agreement as a matter of law," the court may so interpret the contract. *Id.* When a court is presented with two conflicting interpretations of a clause in a contract it should look to find an interpretation that gives meaning to all terms of the contract and leaves no clause without meaning. *Id*. Specific language prevails over general language in a contract. *Id*.

B. Application of Disability Level A Criteria

The disease criteria at issue are a result of what the CAC describes as "lengthy, protracted negotiations where each symptom was exhaustively scrutinized before the various entities finally reached agreement." These negotiations were part of the 1994 global settlement between various United States manufacturers of breast implants, suppliers of materials and the Plaintiffs' Steering Committee ("PSC") in the MDL-926, the breast implant multi-district litigation before the United States District Court, Northern District of Alabama, which required claimants to submit detailed

disease claims by September 1994.

A claimant must not only meet the disease criteria but also prove she has a disability based on the severity of her disease or her functional capacity to perform the activities of a vocation, avocation and/or self-care. There are three levels of disability based on the functional capacity test, Levels A, B, and C noted in Exhibit A to Statement of Principles for Global Resolution of Breast Implant Claims, dated September 3, 1993. (CAC Motion (Doc. 76), Ex. 1, Compensation Categories, p. 13) Level A defines total disability as "functional capacity adequate to consistently perform none or only a few of the usual duties or activities of vocation or self-care." This language is contrasted to the language of Levels B and C which require an impact on vocation, avocation *and* self-care. This is the crux of the parties' arguments, whether Level A requires a demonstration of functional capacity for both vocation *and* self-care or functional capacity for vocation *or* self care.

A hallmark of the 1995 global settlement renegotiation was that the disease and disability criteria would remain unchanged. (CAC Motion (Doc. 76), Ex. 2, Revised Settlement Program Notice 1996) During the bankruptcy proceedings, the disease and disability criteria set forth before the MDL-926, the Revised Settlement Program ("RSP"), was adopted in full by the Tort Claimants' Committee ("TCC") and the Debtor as part of the agreement for a plan of reorganization in 1998. (See Annex A, the Claims Resolution Procedures, Option 1 Disease Schedule) It was anticipated by the CAC that this would afford claimants under the SF-DCT, the opportunity to rely on their 1994 submission and the global disease criteria without the need for further delay or expense in reprocessing or reevaluation. The Disease Claimant Information Guide mailed in 2003 adopted verbatim the RSP's Q&A booklet and materials. Claimants were not required to resubmit records. The same rights to appeal were adopted as those set forth in the RSP.

Under the RSP, a claimant could appeal an adverse decision to the MDL Claims Administrator and then to the MDL Court. Until May 13, 1998 appeals to the MDL Court were handled by the MDL Judge, the Honorable Sam C. Pointer, Jr., of the Northern District of Alabama. After May 13, 1998 Judge Pointer assigned Judge Frank Andrews to serve as Appeals Judge. Judge Andrews was designated the Appeals Judge under the Amended Joint Plan as well to provide consistency to the appeals process. Under the RSP the decisions of the Appeals Judge were not made public.

In the third quarter following the June 4, 2004 effective date of the Joint Plan, Notification of Status ("NOS") letters[1] were sent to claimants by the Settlement Facility that seemed to indicate that the disability criteria being applied by the Facility required documentation of functional capacity for vocation *and* self care. The deficiency notices so indicated. The CAC argues this language contradicts the Plan language and the Claimant Information Guide. In October 2004 the Claims Administrator for the SF-DCT copied the CAC and the Debtor's Representatives with an unredacted individual claimant appeals decision entered by Judge Pointer dated September 30, 1997. The decision appeared to provide a relaxed standard for Level A claims, "inclusion of the phrase 'or only few' was intended to provide some relaxation from the standard, by enabling a determination of total disability even though the person might be able to perform a few of the vocation or self-care activities ..." (MDL-926, Case No. 94-11558 (N.D. Ala. Sept. 30, 1997) The CAC argues that correspondence between the MDL Claims Administrator and Judge Pointer and further decision of Judge Andrews appear to have modified the September 30, 1997 order. The CAC's request for this

[1] The Notification of Status letter informs the claimant of the results of the evaluation of the claim. (Annex A, § 7.06)

correspondence and appeals decisions was denied by the SF-DCT Claims Administrator because they were believed to be part of the MDL annotations which the SF-DCT Claims Administrator was not authorized to disclose. The CAC questions the confidentiality of the annotations. The CAC claims it was unaware that the disability language had ever been interpreted or modified by any appeals decision. The Debtor's Representatives also noted that they did not believe there was an order changing the disability guideline. (See memorandum from Deborah Greenspan to Elizabeth Trachte-Huber, dated November 19, 2001) The CAC asserts that any such change in the disease and disability language for Level A was done without the knowledge or input of the CAC or Debtor's Representatives and negates the efforts of the CAC on behalf of the claimants to adhere to the original language of the RSP and the Global Settlement.

The Debtor's Representatives claim that the Plan requires that the SF-DCT adopt and apply the prior interpretations of the MDL Claims Administrator as part of the claims processing function and that to the extent the CAC motion seeks to modify the interpretation of Level A standards, the motion must be denied, procedures for such review and evaluation of individual claims being subject to review and appeal under the provisions for such under the Plan.

The Debtor's Representatives claim that the CAC as Plan Proponents were aware the MDL Claims Office had developed interpretations of the disease and disability criteria under the RSP and that these interpretations had not been disclosed outside of the MDL Claims Office. Those supporting adoption of the Joint Plan anticipated the SF-DCT Claims Administrator would apply the MDL guidelines even as the CAC and others were unaware of the specific interpretations. Under the Joint Plan the Claims Administrator of the SF-DCT was to use the "claims-processing procedures and quality control process applied by the Initial MDL Claims Administrator...The

Claims Administrator is also expressly authorized to rely on procedures and interpretation contained in the Claims Administrator's guidelines and claims-processing system as of February 2003 and is not required to change those procedures and interpretations...." (SFA, § 4.03(a)).

A Joint Order of this Court and the MDL court authorized the MDL-926 Claims Office to provide information and materials, often called the "annotations" to the SF-DCT. The Joint Order required the continuing confidentiality and non-disclosure of those documents to other than claims office staff. Neither the CAC nor Debtor's Representatives have been afforded access to the specific guidelines or processing criteria applied by the MDL-926 Claims Office or the SF-DCT Claims Office at the time the motion was filed.

The Debtor's Representatives note the appeals decision of Judge Pointer which seemed to "relax" the standard under Level A with respect to vocational activity and self-care activity. The opinion stated, "total disability under Level A could be made even though the person might be able to perform a few vocational or self-care activities," interpreting the words "or only few." The Debtor's Representatives argue that the language of Level A was not changed or modified by the decision, that the decision states that the standard articulated had been consistently applied, that "Judge Pointer and the MDL-926 Claims Office simply interpreted and applied the language as written by the parties." The Debtor's Representatives claim Judge Pointer's decision is not contrary to the Plan, but a logical interpretation of the criteria.

The Debtor's Representatives further argue that because the parties adopted the interpretations of the MDL-926, objection to such interpretations must also be denied. Such denial is also appropriate because the Plan itself provides a procedure for review of the applicability of MDL-926 guidelines under Sections 5.05 and 4.03 of the Settlement Facility Agreement, to the

extent that such interpretations have not been addressed as of February 2003 by the MDL Claims Administrator. DCC claims that "reopening" interpretations previously made by the MDL Claims Administrator would be the same as reopening plan negotiations and second guessing each decision of the Claims Office.

There is no dispute that the applicable language at issue under the Plan is the same as that set forth in the RSP, which specifically states as to Disability Level A:

> 6. Severity/Disability Compensation Categories
>
> The compensation level for ACTD/ARS/NAC will be based on the degree to which the individual is "disabled" by the condition, as the individual's treating physician determines in accordance with the following guidelines. The determination of disability under these guidelines will be based on the cumulative effect of the symptoms on the individual's ability to perform her vocational, avocational, or usual self-care activities. In evaluating the effect of the Breast Implant Claimant's symptoms, the treating physicians will take into account the level of pain and fatigue resulting from the symptoms. The disability percentages appearing below are not intended to be applied with numerical precision, but are, instead, intended to serve as a guideline for the physician in the exercise of his or her professional judgment.
>
> A. Death or disability resulting from the compensable condition. *An individual will be considered totally disabled if she demonstrates a functional capacity to consistently perform none or only few of the usual duties or activities of vocation* ***or*** *self-care.*
>
> B. A Breast Implant Claimant will be eligible for category B compensation if she is 35 percent disabled due to the compensable condition. An individual shall be considered 35 percent disabled if she demonstrates a loss of functional capacity which renders her unable to perform some of her usual activities of vocation, avocation *and* self-care, or she can perform them only with regular or recurring severe pain.
>
> C. A Breast Implant Claimant will be eligible for category C compensation if she is 20 percent disabled due to the compensable condition. An individual shall be considered 20 percent disabled if she can perform some of usual activities of vocation, avocation, *and* self-care only with regular or recurring moderate pain.

(Annex A, Schedule II, Part A, Atypical Connective Tissue Disease (ACTD), Atypical Rheumatic Syndrome (ARS), Non-Specific Autoimmune Condition (NAC), No. 6)(italics and emphasis added).

In interpreting the language at issue, the Court must first decide whether the language is ambiguous. The Court must apply the meaning intended by the parties, as derived from the language of the contract in question. *Lopez v. Fernandito's Antique,* 760 N.Y.S.2d 140 (2003). A "written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms." *Greenfield v. Philles Records,* 750 N.Y.S.2d 565 (2002). In searching for the intent of the parties, the goal must be to accord the words of the contract their "fair and reasonable meaning." *Heller v. Pope,* 250 N.Y. 132, 135 (1928). Whether a contractual term is ambiguous must be determined by the court as a matter of law, looking solely to the plain language used by the parties within the four corners of the contract to discern its meaning and not to extrinsic sources. *Kass v. Kass,* 673 N.Y.S.2d 350 (1998).

The Court's interpretation of the language at issue, looking solely to the plain language used by the parties within the four corners of the contract, is that the phrase does not require a claimant to show that the claimant's functional capacity must affect both vocation and self-care. The phrase defines what "totally disabled" means. "Totally disabled" is defined when a claimant "demonstrates a functional capacity adequate to consistently perform none or only few of the usual duties or activities of vocation or self-care." A claimant's "functional capacity" in this phrase is defined such that the claimant must be able to perform "none or only few" of the usual duties or activities of "vocation or self-care." The "none or only few" limits the "duties or activities" of either "vocation" ***or*** "self-care." The word "or" may be used to indicate "the synonymous, equivalent, or substantive character of two words or phrases. *See Hawaiian Airlines, Inc. v. Norris,* 512 U.S. 246, 255 (1994).

The word "or" is also often used in an explanatory sense and may imply substitution, discretion or choice. *State Mut. Life Assur. Co. of Worcester, Mass. v. Heine*, 141 F.2d 741, 746 (6th Cir. 1944). The particle "and" expresses the relationship of addition, connection and signifies that something is to follow in addition to that which precedes. *Id.* The words "or" and "and" are not ordinarily convertible and "a court is never justified in substituting one for the other, unless it is clear from the context that one has been mistakenly used for the other." *Id.* It is not clear from the context of this phrase that the parties mistakenly used the word "or" instead of "and." If the parties intended limitation of "both" vocation and self-care, the parties would have used the term "***and*** self-care" in the phrase. The parties are aware of the difference between the term "or" and the term "and", in light of the two sections, B. and C., following the section A. at issue. The parties used the phrase with the language "and self-care" in both of the following sections.

Although both parties refer to extrinsic evidence to demonstrate the meaning of the phrase, the Court finds that because its interpretation of the phrase is unambiguous, the Court need not review the extrinsic evidence submitted by both parties. As the Debtor's Representatives note in their briefs, at the time the parties were negotiating the Plan and at the time the Plan Proponents eventually agreed to accept the criteria used by the RSP, the Plan Proponents had no first hand knowledge what those criteria were because no one outside the MDL-926 Claims Office had access to the interpretations applied by the MDL-926 Claims Office. (Debtor's Rep.'s Resp. (Doc. No. 100), p. 6) Both parties recognize Judge Pointer's decision. Judge Pointer's decision addressed an individual appeal by a claimant asserting that to be classified as a Level A disability for ACTD a claimant need only show an inability to perform vocational activities without regard to self-care activities. Judge Pointer concluded that "there be limitations with respect to both self-care activities

and vocational activities." (MDL-926, Case No. 94-11558 (N.D. Ala. Sept. 30, 1997)(italics added) The Court is not bound by this interpretation in light of various documents submitted to this Court which indicate that subsequent decisions by the MDL-Claims Administrator and correspondences between the MDL Court and the MDL-Claims Administrator suggest that the decision was not necessarily followed by the MDL-Claims Administrator. In any event, Judge Pointer specifically noted that it was the phrase "or only few" which made the definition ambiguous. At the same time, Judge Pointer noted that the phrase "or only few" was intended to provide some relaxation of the standard to enable a determination of total disability if the person is able to perform "a few of the vocational *or* self-care activities" and does not dispense with the requirement that there be limitations with respect to both self-care activities and vocational activities. However, Judge Pointer does not point to any language from the RSP which requires limitations as to "both" self-care and vocational activities. In any event, Judge Pointer was not requested by the proponents of the RSP to interpret the disability level A terms. The language from the Plan at issue does not show that there is any requirement to limit "both" self-care and vocational activities. This Court is not bound by the interpretation by Judge Pointer because it is contrary to this Court's finding that the language under the Plan at issue is unambiguous.

As noted by both parties, it appears that the MDL-926 changed the way it interpreted this phrase or, as noted by the Debtor's Representatives, the interpretation and application has "evolved." However, the "change" or "evolution" occurred after most of the disease claims had been processed in 1996 and 1997. Based on the Plan's language that the SF-DCT operate using the claims-processing procedures and quality control process applied by the Initial MDL Claims Administrator, the Court finds that any subsequent Questions and Answers entered by the MDL-926 Court

subsequent to February 2003 are not binding on the SF-DCT. (SFA, § 4.03)

C. Related Motions and Documents Submitted by Claimants

The Court notes that many Claimants, by and through their counsel, and by way of *pro se* letters, submitted materials related to the Disability Level A issue. Inasmuch as these Claimants seek review of any decision by the Claims Administrator or the Appeals' Judge, the Plan does not provide such relief nor does the Plan allow for Claimants to seek interpretation of any Plan language. Only the Plan Proponents, in this case the Debtor's Representatives and the CAC, have the authority to seek interpretation of any Plan language.

As noted above, the SF-DCT was established to resolve Settling Personal Injury Claims in accordance with the Plan. (Plan, § 2.01) The SFA and Annex A to the SFA establish the exclusive criteria by which such claims are evaluated, liquidated, allowed and paid. (SFA, § 5.01) Resolution of the claims are set forth under the SFA and corresponding claims resolution procedures in Annex A. (SFA, § 4.01) The Plan establishes administrative claim review and appeals processes for Settling Personal Injury claimants. Any claimant who does not agree with the decision of the SF-DCT may seek review of the claim through the error correction and appeal process. (SFA, Annex A, § 8) A claimant may thereafter obtain review by the Appeals Judge. (SFA, Annex A, § 8) The Plan provides that "[t]he decision of the Appeals Judge will be final and binding on the Claimant." (SFA, Annex A, § 8.05) Claimants who seek review under the Individual Review Process also have a right to appeal directly to the Appeals Judge. The Plan provides that "[t]he decision of the Appeals Judge is final and binding on both Reorganized Dow Corning and the claimant." (SFA, Annex A, § 6.02(vi)) The Plan provides no right to appeal to the Court. The Plan expressly states that the decision of the Appeals Judge is final and binding on both the Reorganized Dow Corning and the

claimants. The Plan's language is clear and unambiguous that the decision of the Appeals Judge is final and binding on the claimants and the Reorganized Dow Corning. The Court has no authority to modify this language. Although bankruptcy courts have broad equitable powers that extend to approving plans of reorganization, these equitable powers are limited by the role of the bankruptcy court, which is to "guide the division of a pie that is too small to allow each creditor to get the slice for which he originally contracted." *In re Dow Corning,* 456 F.3d at 677-78 (quoting *In re Chicago,* 791 F.2d 524, 528 (7th Cir.1986)). "A bankruptcy court's exercise of its equitable powers is cabined by the provisions of the Bankruptcy Code." *Id.* at 678 (citing *In re Highland Superstores, Inc.,* 154 F.3d 573, 578-79 (6th Cir.1998)).

Neither claimants nor their counsel have the authority under the SFA or the Procedures to raise an interpretation issue before the Court. (See, Case No. 00-00005, Doc. No. 627, Memorandum Opinion dated March 31, 2008). Section 5.05 of the SFA provides that the Debtor's Representatives and the CAC may submit joint interpretations and clarifications regarding submissions of claims to the Claims Administrator. If there is a dispute between the Debtor's Representatives and the CAC, the Claims Administrator may resolve the issue or the issue may be raised before the Court by way of a motion pursuant to the June 11, 2004 (Doc. No. 53) Stipulation and Order Establishing Procedures for Resolution of Disputes Regarding Interpretation of the Amended Joint Plan ("Procedures"). Section 2.01 of the Procedures provides that "these procedures will apply to disputes arising out of the interpretation or application of the Claims Resolution Procedures–Annex A to the Settlement Facility Agreement–and any claims operations functions set out in the Settlement Facility Agreement." (Plan Interpretation Procedures, § 2.01(a)) After a meet and confer period and submitting the issue before the Claims Administrator, either party may bring

the matter before this Court. (Plan Interpretation Procedures, § 2.01(c) and (d)) The SFA and the Procedures authorize only the Debtor's Representatives and the CAC to file a motion to interpret a matter under the SFA. There is no provision under the SFA or the Procedures which allows a claimant to submit an issue to be interpreted before the Court.

In this matter, both the Debtor's Representatives and the CAC have raised the issue of interpretation as to the Disability Level A language noted above. The Court has therefore interpreted the language at issue. The Court, however, cannot consider the arguments raised by the Claimants and/or their counsel with regards to this issue.

III. CONCLUSION

For the reasons set forth above, the Court finds that under the Disability Level A definition, functional limitation is not required to be established as to both vocational and self-care activities. The term "or" only requires that the individual must show functional limitations either as to vocation "or" self-care activities.

Accordingly,

IT IS ORDERED that the SF-DCT Claims Administrator apply the Court's interpretation as noted above in the review of the related claims.

IT IS FURTHER ORDERED that the Motion for the Disclosure of Substantive Criteria Created, Adopted and/or Being Applied by the Settlement Facility and Request for Expedited Consideration **(No. 76, filed December 15, 2004)** filed by the Claimants' Advisory Committee is MOOT as RESOLVED between the parties. However, inasmuch as the CAC further requests interpretation of the Plan language at issue in the CAC's Supplement to Motion for the Disclosure of Substantive Criteria Created, Adopted and/or Being Applied by the Settlement Facility

Requesting the Court to Authorize Sharing of Certain Information with MDL 926 **(No. 299, filed January 19, 2006),** the Court GRANTS the motion as more fully set forth above.

IT IS FURTHER ORDERED that the Objection to Notice of Filing of Supplemental Exhibit to Motion for Claimants' Advisory Committee for the Disclosure of Substantive Criteria Created, Adopted and/or Being Applied by the Settlement Facility and Request for Expedited Consideration **(No. 409, filed June 20, 2006)** is MOOT; the Motion to Strike Certain Submissions and Arguments of the Claimants Advisory Committee and Plaintiffs' Counsel from the Record in Connection with the Disability Level A Proceedings **(No. 434, filed September 14, 2006)** is also MOOT given the Court's findings above; and, the Ex Parte Motion to Seal Ex Parte Motion for Leave to File Certain Exhibits Under Seal **(No. 435, filed September 14, 2006)** is GRANTED.

IT IS FURTHER ORDERED that the Motion and Brief Adopting the Motion of the Claimants' Advisory Committee for the Disclosure of Substantive Criteria Created, Adopted and/or Being Applied by the Settlement Facility and Request for Expedited Consideration filed by Dawn M. Barios on behalf of the Spitzfaden Claimants her clients **(No. 89, filed January 7, 2005)** is MOOT.

IT IS FURTHER ORDERED that the Out of Time Motion and Memorandum in Support of Immediately Ordering the Dow Corning Settlement to Evaluate All Level A Disabilities According to the Language Found in the Settlement Document Which Allows a QMD to Apply the Definitions of Either Vocation or Self-Care; Tolling the One Year Deadline for Curing Disease Claim Deficiencies for Helen Bolstorff Until the Decision is Made **(No. 191, filed July 18, 2005)** is MOOT.

IT IS FURTHER ORDERED that the Motion for an Order Requiring the Settlement Facility-

Dow Corning Trust to Apply the Criteria for Level A Disability in Accordance with the Language of the Settlement Documents and Tolling the Deadline to Cure Disease Claim Deficiencies for One (1) Year Following the Court's Ruling on this Motion filed by the law firm of Mitchell, Hurst, Jacobs & Dick, LLP on behalf of its clients **(No. 292, filed January 12, 2006)** is MOOT.

IT IS FURTHER ORDERED that the Joinder of Clients of Doffermyre Shields Canfield Knowles & Devine in Various Motions Related to the Disability "A" Issue **(No. 327, filed March 14, 2006)** is MOOT.

IT IS FURTHER ORDERED that the Claimants' individual letters relating to the Disability Level A issue **(No. 445, filed September 1, 2006; No. 484, filed January 12, 2007)** and similar letters submitted to the Court are MOOT.

/s/ Denise Page Hood
DENISE PAGE HOOD
United States District Judge

DATED: June 10, 2009