

**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**

**ORDER APPROVING CONSENT ORDER TO
ESTABLISH GUIDELINES FOR DISTRIBUTION FROM
THE CLASS 7 SILICONE MATERIAL CLAIMANTS' FUND**

I. BACKGROUND

This matter is before the Court on a request to enter the proposed “Consent Order to Establish Guidelines for Distribution From the Class 7 Silicone Material Claimants’ Fund” submitted by the Plan Proponents, Reorganized Dow Corning Corporation (“Dow Corning”) and the Claimants’ Advisory Committee (“CAC”). (Doc. No. 1027, Proposed Order) On June 2, 2015, the Court entered an Order authorizing the distribution of the Notice to Class 7 Claimants. (Doc. No. 1031) The Plan Proponents served the Class 7 Claimants with the Notice, which required objections be filed to the proposed Consent Order by July 27, 2015. The Court allowed the Plan Proponents to submit a response by September 15, 2015 to the Objections and any reply to the response to be filed by October 2, 2015. (Doc. No.

1106)

The Court's docket indicates that there was one submission filed on behalf of 289 Korean Claimants (Doc. No. 1076) and 84 individual Claimants' submissions filed in response to the proposed Class 7 Consent Order (22 of the individual submissions were filed after the July 27, 2015 deadline date to file objections). Of the individual submissions, 40 Claimants have withdrawn their submissions. (Doc. Nos. 1032-1052; 1057-1074; 1076-1083; 1085-1105; 1107-1121; 1124; 1127-1134; 1138-1168; 1174-1193; 1196-1198; 1203-1207)

A hearing on the matter was held before the Court on October 20, 2015. Counsel for Dow Corning, the CAC and the Korean Claimants appeared at the hearing. Individual Claimants Wilma (Hyden) Pugh, Donna Garza, and Wendy Lee Smith also appeared at the hearing. The Plan Proponents submitted a supplemental brief following the hearing addressing the issues raised at the hearing and the late-filed submissions. (Doc. Nos. 1201, 1210-1211, 1213)

II. REASON FOR THE PROPOSED CONSENT ORDER

The Settlement Facility-Dow Corning Trust ("SF-DCT") completed its review of the Class 7 claims in late 2014. The SF-DCT determined that 6,235 claimants failed to "marshal" recoveries based on their failure to file or pursue claims with the Multi District Litigation 926 Claims Office ("MDL 926"), and, therefore, were not

entitled for processing or payment. The SF-DCT defined all claims in this category as the “Disputed Marshaling Claims.” The CAC disputed the SF-DCT’s interpretation of marshaling, but after conducting an extensive review and analysis of the Class 7 claims in question, the CAC and Dow Corning agreed to the interpretation of the marshaling requirement as it pertains to the “Disputed Marshaling Claims.” The Plan Proponents have now submitted the proposed Consent Order which clarifies the meaning of the marshaling requirement with respect to a claimant’s participation in the MDL 926 settlement, that a claimant whose claim was barred by the terms of the MDL settlement cannot be deemed to have “failed” the marshaling requirement. The Plan Proponents argue that if the proposed Consent Order is approved, the SF-DCT will be able to issue payments almost immediately to the 1,556 Class 7 Claimants whose disease claims have already been approved and will be able to process the 5,006 Class 7 Claims that would become “Eligible Disputed Marshaling Claims.”

III. ANALYSIS

A. Korean Claimants

The 289 Korean Claimants object to the proposed consent order asserting that the term “marshaling” is not defined under the Plan. The Korean Claimants argue that there are other resources available for marshaling, such as filing other lawsuits against other manufacturers or sending letters to the other manufacturers. The Korean

Claimants also argue that neither the Court nor the parties have jurisdiction to interpret terms for the Settlement Facility. The Korean Claimants further argue that as to 71 Korean claimants who were implanted in 1992-93, outside the Class 7 defined date, the proposed consent order creates a new class since the 71 claimants are not eligible under the proposed consent order.

In response, the Plan Proponents assert that as to the Korean Claimants' arguments, there is nothing in the proposed Consent Order which changes the criteria for a Class 7 Claim. The Plan Proponents argue that the proposed Consent Order reflects the agreed definition of "marshaling" submitted by the Plan Proponents. The term "marshaling" is not defined under the Plan. They also argue that the proposed Consent Order is not detrimental to the Korean Claimants since their rights under the substantive criteria under the Plan do not change and the proposed Consent Order does not create a new class.

B. Wilma Pugh and Wendy Lee Smith

Ms. Pugh did not specifically address which portion of the proposed consent order she objects to, but noted that although she received checks and payments from other manufacturers, she is still waiting for another \$15,000 payment from yet another manufacturer. She recounted to the Court the problems she had with her previous attorney and how hard it has been for her since she received the implants, which were

eventually explanted.

Ms. Smith indicated that if she had been told about the dangers of silicone, she would have never have had implants. Ms. Smith recounted the many lawyers she has consulted with regarding her implants. Ms. Smith argued that the value placed on the implants she would receive is not fair to her. Ms. Smith indicated to the Court that she would continue to be an advocate for eliminating dangerous products and for fair compensation for injuries from those products.

The CAC, a proponent of the proposed Consent Order, responded that it must abide by the terms of the Plan. The CAC noted that it is unable to do anything about the actions of the individual Claimants' lawyers. The CAC further noted that there is confusion between the two settlements, the MDL and the Dow Corning bankruptcy settlements, but that the CAC has attempted to explain the differences in its newsletters and on its website. The CAC is aware of the toxic data sheet which was received in 1994 during the Dow Corning bankruptcy proceedings. The CAC's efforts today are to ensure that thousands of claimants receive the payments they have been waiting for over the years. The CAC, in this proposed Consent Order, is attempting to gain approval for certain claimants to be paid for the limited purpose set forth in the proposed Consent Order.

C. Donna Garza

Ms. Garza indicated that she could not find a lawyer who would represent her. She received a \$3,000 check, but thought it was part of an installment payment. Ms. Garza states she had no access to information until she obtained access to the internet. Ms. Garza seeks more information about her records on file before the MDL or the Settlement Facility. Ms. Garza also seeks appointed counsel.

The Plan Proponents submitted records from the SF-DCT indicating that Ms. Garza accepted the Disease Cash-Out Payment offer. (Doc. No. 1213/Sealed) The letter from the SF-DCT to Ms. Garza stated in bold print that by accepting the offer and cashing the \$3,000 check, Ms. Garza agreed to fully settle her Class 7 Claim and that the \$3,000 payment would be her only payment. The SF-DCT received notice on November 8, 2008 that Ms. Garza cashed the \$3,000 Disease Cash-Out Payment Check. The Plan Proponents argue Ms. Garza is not entitled to any further remedy.

D. Omnibus Response to Remaining Objectors

The Plan Proponents argue that none of the individual claimants who submitted statements in response to the Notice have asserted any objection to any of the terms or provisions of the proposed Consent Order. The individual claimants instead raise other issues: seeking to supplement their claim submission; asking for an update on the status of their claim; raising arguments about substantive terms of the Plan (increase in compensation amount); requesting guidance on their options; and, seeking

additional compensation, even though they had received full payment under the expedited release offer. The Plan Proponents claim that the proposed Consent Order will provide significant benefit to the vast majority of claimants by expediting payment of all currently approved Class 7 Claims and by enabling over 5,000 claimants to have their claims evaluated by the SF-DCT.

At the hearing, the CAC informed the Court that it had contacted the individual Claimants who submitted responses and further explained to them the terms of the proposed Consent Order. The CAC indicated that it also explained to the individual Claimants their options and the procedures not only under the proposed Consent Order, but also under the Class 7 Claims procedures.

E. The Court's Jurisdiction and Review

On June 1, 2004, the Amended Joint Plan of Reorganization ("Plan") governing the Dow Corning Corporation bankruptcy matter became effective. 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 Dow Corning and the CAC may submit joint interpretations and clarifications regarding submissions of claims to the Claims Administrator. (SFA, § 5.05) The Court may approve an amendment to the SFA after notice and hearing as directed by the Court. (SFA, § 10.06) Dow Corning and the CAC may jointly amend or modify the Plan, upon order of the Court. (Plan, § 11.4) There is no provision under the Plan or the SFA which allows a claimant to submit an issue to be interpreted by the Court or to amend the Plan.

Having reviewed the proposed Consent Order and the Objectors’ written and oral arguments, the Court finds that the proposed Consent Order is a proper modification of the Plan submitted by Dow Corning and the CAC as set forth in § 11.4

of the Plan. The proposed Consent Order does not define the term “marshaling,” therefore the interpretation set forth in the proposed Consent Order and the corresponding procedures is reasonable. The Plan Proponents reasonably reached their interpretation of marshaling and the procedures to be followed after reviewing the issues related to the Class 7 marshaling claims extensively and in consultation with each other and the SF-DCT. Even though the Plan does not provide for individual Claimants to submit a proposed interpretation to the Court, none of the individual Claimants object to any specific term or provision of the proposed Consent Order. The Korean Claimants’ arguments do not specifically object to the terms of the proposed Consent Order, but rather seek to alter the terms of the confirmed Plan as it relates to the Class 7 Korean Claimants. The proposed Consent Order does not specifically change the substantive criteria under Class 7. The Court finds that the proposed Consent Order submitted by the Plan Proponents is a reasonable interpretation of the disputed term “marshaling”. The Court further finds that the proposed Order sets forth reasonable procedures to evaluate and pay the Class 7 Claims.

IV. CONCLUSION

For the reasons set forth above,

IT IS ORDERED that the proposed Consent Order To Establish Guidelines For

Distributions From the Class 7 Silicone Material Claimants' Fund (**Doc. No. 1027**) is APPROVED by the Court. The Objections to the entry of the proposed Consent Order are overruled and denied.

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

DATED: December 3, 2015