

EXHIBIT 2

**“Order” in Case No. CV 94-P-11558-S, MDL 926
Dated Nov. 23, 1994**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
Southern Division

FILED

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

In re:

SILICONE GEL BREAST IMPLANTS
PRODUCTS LIABILITY LITIGATION
(MDL 926)

HEIDI LINDSEY, et al.,

Plaintiff;

-vs-

DOW CORNING CORP., et al.,

Defendants.

*Duplicate
300347
w/stamp*

Case No. CV 94-P-11558-S

ENTERED

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ORDER

By Order dated April 11, 1994 the Court appointed Edgar C. Gentle, III to serve as the Escrow Agent for the Preliminary Payment, as defined in Order No. 15 herein, with Mr. Gentle to serve under the terms of an Escrow Agreement to be approved at a later date by Settlement Class Counsel, the Signatory Defendants and the Court. Subsequently, by Order dated October 26, 1994, the Court appointed the Investment Committee for the Settlement Fund, as defined in the Settlement Agreement constituting an Exhibit to Order No. 15. The initial members of the Investment Committee are Edgar C. Gentle, III, Chairman; Don Springmeyer, Plaintiffs' Representative; and Todd M. Poland, Defendants' Representative.

This Order defines the terms under which the Escrow Agent and the Investment Committee are to serve the Court in this case.

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Edgar C. Gentle, III is hereby appointed as the Escrow Agent for the Settlement Fund, with Mr. Gentle to serve under the terms of the Escrow Agreement attached hereto as Exhibit A and incorporated herein by reference. The Court hereby approves the Escrow Agreement, making it binding upon Settlement Class Counsel and the Signatory Defendants.

The Court hereby authorizes, empowers and directs the Escrow Agent to serve a copy of the so-approved Escrow Agreement and written notice thereof upon all other Settling Defendants, as defined in Order No. 15 and 16, by First Class certified mail, with the written notice to inform the other Settling Defendants that, if a Settling Defendant does not file an objection to the terms of the Escrow Agreement with the Court within thirty (30) days after such service, the Escrow Agreement shall also be binding upon such Settling Defendant.

The Investment Committee is hereby charged with the duty of aiding the Court in its supervision and monitoring of the custody and investment management of Settlement Fund assets. In addition, the Plaintiffs' and Defendants' Representatives on the Investment Committee (the "Investment Committee Party Representatives") are authorized to supervise and monitor Settlement Fund disbursements by the Escrow Agent in accordance with Exhibit A to the Escrow Agreement. In discharging these duties, the Investment Committee shall carry out the following tasks for the Court:

(i) The selection of a Settlement Fund investment consultant (the "Investment Consultant"), to aid the Court and the Investment

Committee (a) in establishing a Settlement Fund statement of investment policy, objectives and guidelines; (b) in selecting Settlement Fund investment manager(s) (the "Investment Manager(s)") and custodian/master trustee(s) (the "Custodian/Master Trustee(s)"); (c) in reviewing the performance of the Investment Manager(s) and Custodian/Master Trustee(s) over time; (d) in measuring and evaluating Settlement Fund investment performance; and (e) in carrying out additional investment-related tasks as the Court and the Investment Committee may deem appropriate. The Investment Committee is hereby authorized, empowered and directed by the Court to publish a form of notice for prospective Investment Consultant bidders in the form of Exhibit B, which is attached hereto and is incorporated herein by reference, once in the Wall Street Journal and once in the Pensions and Investment Age, with the out-of-pocket expenses thereof to be borne by the Preliminary Payment. Thereafter, the Court and the Investment Committee shall reduce the number of prospective Investment Consultant bidders to a finite, manageable number of bidders, not to be less than twenty (20) (the "Investment Consultant Bidders"). As soon thereafter as practicable, the Escrow Agent shall send the form of request for proposal, which is attached hereto as Exhibit C and incorporated herein by reference (the "Request for Proposal"), and which is hereby approved by the Court, to the Investment Consultant Bidders, and the Escrow Agent and the Investment Committee shall proceed to select an Investment Consultant from among the Investment

Consultant Bidders under the terms of the Request for Proposal, and subject to Court approval;

(ii) With the assistance of the Investment Consultant, and subject to Court approval, the preparation of (a) a Settlement Fund statement of investment policy, objectives and guidelines; and (b) a custody, accounting, investment and disbursement management organizational structure, for the Settlement Fund;

(iii) With the assistance of the Investment Consultant, and subject to Court approval, the selection of Settlement Fund Investment Manager(s) and Custodian/Master Trustee(s), and possibly other agents, to accomplish the necessary investment management and disbursement functions of the Settlement Fund;

(iv) The periodic review of the performance of the Settlement Fund's Investment Consultant, Investment Manager(s), and Custodian/Master Trustee(s), and other Settlement Fund agents selected by the Court and the Investment Committee, and to report the results of such reviews to the Court, Settlement Class Counsel and Signatory Defendants' Counsel;

(v) The performance of the Settlement Fund disbursement supervisory and monitoring duties delegated by Settlement Class Counsel and Signatory Defendants' Counsel to the Investment Committee Party Representatives in Exhibit A to the Escrow Agreement; and

(vi) The completion of all other tasks that are reasonably related to the Investment Committee's duty of aiding the Court in

its supervision and monitoring of the Settlement Fund's investment management and disbursements.

The performance by the Investment Committee of the duties and tasks set forth in this Order shall constitute judicial actions of this Court and be protected, to the maximum extent allowed by law, by the doctrine of judicial immunity. Notwithstanding the foregoing, the judicial immunity granted to the Investment Committee by this provision shall not apply to the Escrow Agent's performance of his duties under the Escrow Agreement, which is governed by the standard of care described in numbered Paragraph 8 of the Escrow Agreement.

The Court finds that reasonable legal fees charged by the Investment Committee members, while serving as such, together with out-of-pocket expenses reasonably incurred by the Investment Committee in discharging its duties and tasks recited hereunder, constitute Preliminary Payment and Settlement Fund investment and disbursement expenses, which may be paid from the Preliminary Payment and the Settlement Fund. Upon Court approval, the Investment Committee members will receive, as compensation from the Settlement Fund, hourly fees according to the schedule of hourly fees for each Investment Committee member communicated to the Court, Settlement Class Counsel and the Signatory Defendants' Counsel. These hourly fees shall not exceed \$175 per hour, without further Order of the Court. In addition, upon Court approval, the Investment Committee and its members shall be reimbursed for all

out-of-pocket expenses reasonably incurred in carrying out the Investment Committee's duties set forth in this Order.

In carrying out its duties, the Investment Committee and its members shall act by unanimous decision to the extent practicable. However, if a unanimous decision of the Investment Committee's members cannot be reached, the Investment Committee may act upon the joint decision of the Investment Committee Party Representatives; provided, however, that the Escrow Agent, as the third Investment Committee member, if he provides the Investment Committee Party Representatives with written notice immediately after such a joint Investment Committee Party Representatives' decision of his intent to seek Court reconsideration thereof, may, within five (5) days after such a decision, seek reconsideration of the decision by the Court. If such reconsideration is not timely noticed and so requested by the Escrow Agent, or if it is denied by the Court, or if it is not acted upon by the Court within thirty (30) days after reconsideration is requested, such a joint decision of the Investment Committee Party Representatives shall be the final and binding decision of the Investment Committee in all respects. Moreover, if the Escrow Agent timely provides written notice to the Investment Committee Party Representatives of his intent to seek Court reconsideration of their joint decision and he timely seeks reconsideration thereof, such a joint decision shall be deemed to be stayed pending its resolution under the Court reconsideration process described above.

If the Investment Committee Party Representatives cannot agree upon an Investment Committee decision, the Investment Committee shall seek instructions from the Court.

The Investment Committee shall hold periodic formal regular meetings, at such time intervals as it deems to be appropriate, but no less frequently than every calendar quarter. In addition, the Investment Committee shall have formal special meetings at the call of any Investment Committee member. The Court or its representative, Signatory Defendants or their representatives, and Settlement Class Counsel shall be invited to participate in all such formal regular or special meetings. The Investment Committee, to the extent practicable, shall so obtain the advice and counsel of the Court, Settlement Class Counsel and the Signatory Defendants. However, the Investment Committee shall be solely responsible for making Investment Committee decisions.

Notice of each Investment Committee formal regular or special meeting shall be given by the Chairman to the other two Investment Committee Members, the Court, and to Settlement Class Counsel and Signatory Defendants' Counsel at least five (5) days before the day on which the meeting is to be held, with the notice to contain an agenda of the proposed topics to be considered at the meeting. Investment Committee members, the Court, Settlement Class Counsel and Signatory Defendants may attend such meetings telephonically, and the Investment Committee shall make reasonable provision for such attendance. All formal Investment Committee meetings shall be

held at such place or places as may be agreed to by the Investment Committee from time to time.

At every formal meeting of the Investment Committee, the Chairman or, in his absence, a meeting Chairman chosen by both Investment Committee Party Representatives, shall act as Chairman. At each meeting of the Investment Committee, any Investment Committee business may be transacted and may be properly brought before the meeting, whether or not such business is stated in the notice of such meeting. The order of business at all formal meetings of the Investment Committee shall be determined by the Chairman, unless both Investment Committee Party Representatives shall otherwise determine.

At each formal meeting of the Investment Committee, it shall be necessary for both Investment Committee Party Representatives to be present to constitute a quorum for the transaction of any business.

In addition to having formal regular or special meetings, the Investment Committee members may conduct informal meetings to facilitate their discharge of the duties and tasks assigned to them by this Order. At each regular or special formal meeting, the Chairman of the Investment Committee or his designee shall report the results of all informal meetings held since the previous formal meeting.

Any Investment Committee member may resign at any time by giving the Court, Settlement Class Counsel, Signatory Defendants' Counsel and the other Investment Committee members at least thirty


(30) days advance notice, with the acceptance of such resignation not being necessary to make it effective. In addition, with or without cause, (i) the Chairman of the Investment Committee may be removed by the Court or by a joint decision of Settlement Class Counsel and the Signatory Defendants; (ii) the Plaintiffs' representative on the Investment Committee may be removed by Settlement Class Counsel; and (iii) the Defendants' representative on the Investment Committee may be removed by the Signatory Defendants.

A vacancy on the Investment Committee because of death, disability, resignation, removal or any other cause shall be filled, (i) in the case of the Chairman, by the Court; (ii) in the case of the Plaintiffs' Representative, by Settlement Class Counsel through written notice to the Court and all other Investment Committee members; and (iii) in the case of the Defendants' Representative, by the Signatory Defendants through written notice to the Court and all other Investment Committee members. Notwithstanding the foregoing, if the replacement Plaintiffs' or Defendants' Representative is not selected in accordance with the foregoing provisions within ten (10) days after the resignation or termination of the previous representative on the Investment Committee, the Court shall select the replacement Investment Committee member.

The Investment Committee Chairman or his designee shall keep or cause to be kept, in books provided for that purpose, minutes of all formal or informal meetings of the Investment Committee, and

shall be the custodian of the records of the Investment Committee. The Chairman or his designee shall supply minutes of each Investment Committee formal or informal meeting to the Court, Settlement Class Counsel, Signatory Defendants' Counsel and the Investment Committee members within ten (10) days after each such meeting of the Investment Committee.

Dated: November 22, 1994


Sam C. Pointer, Jr., United
States District Judge