

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

_____)	
In re:)	Civil Action No. 00-CV-00001
)	MASTER DOCKET
DOW CORNING LITIGATION)	HON. DENISE PAGE HOOD
)	DEMAND FOR JURY TRIAL
_____)	

MASTER COMPLAINT

Plaintiff hereby states a complaint against the Defendant, DCC
Litigation Facility, Inc. (“Facility”) as follows:

PARTIES

1. The plaintiff is a person who has suffered injuries as a result of having been implanted with a product containing or consisting of silicone, silicone gel, and/or an elastomer made of silicone. The entities listed below in paragraphs 2 – 5 (the “Entities”), or one or more of them, by their actions or inactions, proximately caused plaintiff’s injuries. Pursuant to prior orders of the Court, the Facility has assumed the liabilities of the Entities relating to these implants.

2. Corning Incorporated is a New York corporation with its principal place of business in New York.

3. Dow Corning Corporation is a Michigan corporation with its principal place of business in Michigan.

4. Dow Corning Wright Corporation is a Tennessee corporation with its principal place of business in Tennessee.

5. The Dow Chemical Company is a Delaware corporation with its principal place of business in Michigan

JURISDICTION

6. Plaintiff alleges an amount in controversy in excess of \$75,000.00, exclusive of interest and costs.

7. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs and because it is an action between citizens of different states.

8. The Court also has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 in that it arises under the laws of the United States.

9. The Court also has subject matter jurisdiction over this action pursuant to paragraph 1 of the Case Management Order No. 1 entered in the above-captioned litigation.

THEORIES OF RECOVERY

COUNT I

10. The Facility is strictly liable to the plaintiff pursuant to § 402A of the Restatement (Second) of Torts or state law.

COUNT II

11. As a result of the Entities' negligence, the Facility is liable to the plaintiff.

COUNT III

12. As a result of the Entities' failure to furnish adequate warnings and/or instructions, the Facility is liable to the plaintiff.

COUNT IV

13. As a result of the Entities' breach of express and implied warranties, the Facility is liable to the plaintiff.

COUNT V

14. As a result of the Entities' breach of warranty of fitness for a particular purpose, the Facility is liable to the plaintiff.

COUNT VI

15. As a result of the Entities' breach of certain provisions of the Uniform Commercial Code or applicable state law, the Facility is liable to the plaintiff.

COUNT VII

16. As a result of the Entities' breach of certain provisions of the Uniform Commercial Code or applicable law, the Facility is liable to the plaintiff for the Entities' negligence per se.

COUNT VIII

17. As a result of the Entities' failure to comply with provisions of the Food, Drug and Cosmetics Act, the Facility is liable to the plaintiff for the Entities' negligence per se.

COUNT IX

18. The Entities made misrepresentations to the plaintiff that induced plaintiff to act to plaintiff's detriment and the Facility is liable for the Entities' fraud.

COUNT X

19. As a result of the Entities having concealed material facts, the Facility is liable to the plaintiff as a result of their fraud by concealment.

COUNT XI

20. As a result of the Entities' violation of state consumer protection statutes, the Facility is liable to the plaintiff.

COUNT XII

21. As a result of the Entities' false advertising, the Facility is liable to the plaintiff.

COUNT XIII

22. As a result of the Entities' violation of state consumer protection statutes, the Facility is liable to the plaintiff for the Entities' negligence per se.

COUNT XIV

23. The doctrine of *res ipsa loquitur* applies to this litigation.

COUNT XV

24. As a result of the Entities having engaged in a common plan to prevent public awareness of the hazards of implants, the Facility is liable to the plaintiff.

COUNT XVI

25. The Facility is liable to the plaintiff on the basis of the Entities' market share.

COUNT XVII

26. As a result of the Entities having intentionally inflicted emotional distress on the plaintiff, the Facility is liable.

COUNT XVIII

27. As a result of the Entities having negligently inflicted emotional distress on the plaintiff, the Facility is liable.

COUNT XIX

28. The plaintiff's fear of future product failure entitles plaintiff to recover from the Facility.

COUNT XX

29. As a result of the Entities' participation in various joint ventures and/or parent/subsidiary relationships, the Facility is liable to the plaintiff.

COUNT XXI

30. As a result of the Entities' negligent supervision and undertakings relating to testing and/or actual supervision of various joint ventures and/or parent/subsidiary relationships, the Facility is liable to the plaintiff.

COUNT XXII

31. The Entities are liable to the plaintiff as alter egos of their parent/subsidiaries and/or joint ventures.

COUNT XXIII

32. The doctrines of collateral estoppel and *res judicata* apply to this litigation.

COUNT XXIV

33. As a result of the Entities' violations of the Lanham Act, the Facility is liable to the plaintiff.

COUNT XXV

34. As a result of the entities' violations of the Magnuson-Moss Act, the Facility is liable to the plaintiff.

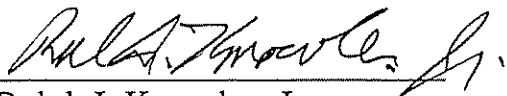
COUNT XXVI

35. Plaintiff seeks a declaration that any limitations on the amount of recovery in compensatory damages of one or more states violate and invade the Constitutions of the state and of the United States.

WHEREFORE, Plaintiff prays fee recovery from Defendant as follows:

- (a) for general and compensatory damages;
- (b) for attorney fees as allowed by law;
- (c) for the costs of this litigation, interest; and
- (d) for such other and further damages and relief as a jury or this Court may deem appropriate.

PLAINTIFF DEMANDS A TRIAL BY JURY


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Dated: August 17, 2004