

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FILED
MAR 10 2008
CLERK'S OFFICE
DETROIT

IN RE:) Case No. 00-cv-00005 DPH
) (Settlement Facility Matters)
DOW CORNING CORPORATION,)
) Hon. Denise Page Hood
Reorganized Debtor.)
) **RESPONSE TO ORDER TO SHOW CAUSE**
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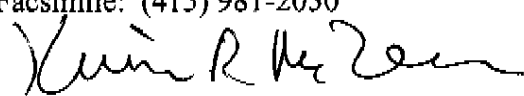
TO: The Honorable Denise Page Hood, Claims Administrator, Settlement Facility

COMES NOW, Kevin McLean and responds to this Court's Order to Show Cause as follows:

Attached hereto as Exhibit A is a true and correct copy of my declaration responsive to this order to show cause.

Attached hereto as Exhibit B is a true and correct copy of the declaration of William C. DeGarmo responsive to this order to show cause.

Attached hereto as Exhibit C is a true and correct copy of the declaration of Nicole Foston responsive to this order to show cause.

/s/ Kevin R. McLean
LAW OFFICES OF BELLI & McLEAN.
473 Jackson Street, Second Floor
San Francisco, California 94111
Telephone: (415) 981-0100
Facsimile: (415) 981-2050

ATTORNEYS FOR CLAIMANTS

San Francisco, CA
DATED: March 8, 2008

EXHIBIT "A"

Declaration of Kevin McLean

I, Kevin McLean declare as follows:

1. I am an Attorney duly licensed to practice in the Courts in the State of California. I have represented forty-two (42) women in the Dow Corning Breast Implant litigation, most of them since 1993. The following is of my own personal knowledge and I can competently testify to it under oath if called upon to do so.
2. During the time I have represented the Dow breast implant women I have actively litigated and filed lawsuits for many clients against Dow Corning, as well as, many of the clients' Doctors, most of these lawsuits beginning in 1993. My firm actively litigated cases in Federal Court and State Courts around the country incurring over five (5) million dollars in costs, up to the point of Dow filing for bankruptcy protection.
3. During the time until Dow filed for bankruptcy protection, our firm incurred costs which included assembling medical records to comply with the 1994 filing deadline in the MDL settlement.. The costs spent during that time by me specific to the Dow Corning breast implant clients included paying for Doctor visits, as well as, travel expenses for these clients. My firm also spent many tens of thousands of dollars for all the litigation materials generated by these lawsuits, participated in the Plaintiff's steering committees, both on the State and Federal level, attended the various hearings and conferences held in San Diego, California, Houston, Texas, and Birmingham Alabama, retained expert witnesses on many cases, all of which directly benefited my Dow Corning Breast Implant Clients.
4. After Dow filed for Bankruptcy protection, further costs were incurred on behalf of these clients to keep current with the bankruptcy litigation, and ultimately, preparing files and proofs of claims forms and numerous other documents and Doctors' reports of which this Court is aware.
5. I hired paralegals as independent contractors and the costs accumulated by them for working on these cases was as independent contractors and not overhead for my firm.
6. During the time that I have been representing these women we have had numerous meetings, telephone conversations, correspondence, contact with their Doctors, and conversations concerning filing of paperwork and receipt of settlement monies. I have received permission from all of my clients to sign their names to claim forms and other documents necessary to prosecute their case as well as endorse their names on settlement drafts.

7. Attached as Exhibit 1 to this declaration is a copy of the letter I sent to the SFDCT on May 30, 2006 wherein I specifically referenced the clients' agreement to my signing their names to documents and claim forms.
8. The State Bar is investigating a complaint made against me by a former breast implant client, Kathleen Strahorn. That client claims that I did not turn her file over to her after she fired me, and I have disputed that claim, and in any case have sent an additional copy of her file to her. She also made a claim that I failed to fight the lien placed on her case by the Estate of Melvin Belli. That lien was filed by the Estate of Melvin Belli several months after I was dismissed as her attorney, and therefore I believe her claim is frivolous. This complaint is currently still open, and I have heard nothing further from the State Bar to date.
9. I have not closed my office or turned off my telephones. I also did not fail to respond to inquiries by the staff at the Settlement Facility. The only contact I believe I received from one of the attorneys were two (2) emails sent to an address I do not regularly monitor. However, in May 2007 I did respond to the inquires concerning Marilyn Cresci, see the email response attached as Exhibit 2.
10. Subsequent to my sending the email, I received a phone call from the claims administrator inquiring about the Marilyn Cresci case. During that conversation I informed the claims administrator that Marilyn Cresci had agreed to accept \$15,000.00 as her share of the existing settlement monies. The claims adjustor thanked me for the information and hung up pleasantly. To this date, I have not been aware of any complaint Ms. Cresci has lodged concerning costs as we went through that issue extensively. Ms. Cresci was aware of her settlement checks and had given me permission to sign her name on her checks and accept \$15,000.00.
11. I also had contact with the claims office in response to the letter submitted on May 15, 2007, which I attached as Exhibit 3. During the summer of 2007 I had several conversations with the claims office concerning the women listed in this letter and provided further information that I had available. The most recent contact I had with the claims office concerned former client Susan Ribera. I had conversations with someone named Monica from the claims office both in December 2007 and January 2008 wherein I became aware for the first time that Susan Ribera was making a claim that I took excessive fees in her case. The amount of costs in question are approximately \$3,600.00 of which I have claims in excess of \$25,000.00 on her case. She has entered into discussion with me to resolve this issue. As far as the \$10,000.00 award in the

Susan Ribera case, she has elected to return that money to the settlement facility and, according to Monica, the claims administrator, has agreed to accept this return of funds. Ms. Ribera has told me she intends to provide additional medical records that I do not have in my possession. I had conversations with Ms. Ribera concerning her settlement and was given permission to sign her name to settlement checks as well as claim forms and other documents.

12. The only other former client that I see the list attached to the OSC would be Margaret Lower. Ms. Lower has only received \$5,000.00 to date in way of settlement monies. The amount of the lien from William DeGarmo is more than Ms. Lower has been awarded. When other costs owed by her are factored in she would receive nothing as most of the other Dow claimants who have been awarded less than \$20,000.00. I entered into an agreement with Ms. Lower to take \$1,500.00 for costs and have paid her \$3,500.00 of the monies received. I had conversations with Margaret Lower wherein she gave me permission to sign her name to settlement checks as well as claim forms and other documents. To date, I have not been made aware of any complaint Ms. Lower has concerning our agreement to reduce my costs on her case to \$1,500.00.
13. I have not received complaints from any other clients listed in the OSC. I have attempted to contact them to get their permission to waive the attorney client privilege concerning their cases. To date, I have received permission from Regina Warsaw, Kathleen Resare, Terry Steele, Julain DiMaggio, Rosiland Spencer. Attached as Exhibit 4 are true and correct copies of letters from these clients. They all confirm that they gave me permission to sign their names to checks, claim forms, and other documents. They also confirm that we negotiated the costs on their cases and that they are aware of recoverable costs under the settlement, and that I compromised my claims to their satisfaction.
14. Attached as Exhibit 5 is a letter from my client, Edith Haulter. In it she too confirms that she gave me permission to sign her name to checks, claim forms and other documents to prosecute her case. She also confirms that the claims office sent a settlement draft to her which included funds subject to my claim for cost reimbursement. I am still Ms. Haulter's attorney of record and have received no complaint from her. She informs me that she did not request the claims office to send her a check without my name on it. It is my understanding that under the terms of the settlement agreement both of our names should have been on that draft.

Signed under penalty and perjury this 8th day of March 2008 in Woodside,
CA.

A handwritten signature in black ink that reads "Kevin R. McLean". The signature is written in a cursive style with a horizontal line underneath the name.

Kevin R. McLean

EXHIBIT "1"

LAW OFFICES
OF

Belli & McLean

**473 Jackson Street, Second Floor
San Francisco, CA 94111
www.bellilaw.com**

**(415) 981-0100
(415) 981-2050 – Facsimile**

May 15, 2007

SAN FRANCISCO

Melvin M. Belli
(1907-1996)

Kevin R. McLean

SILICON VALLEY

DD: 650-261-0200
Dir. Fax: 650-261-9025

BEVERLY HILLS
120 El Camino Drive,
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Beverly Hills, CA 90212

Kevin R. McLean

OF Council

Alexander J. Perez

WASHINGTON D.C.

111 Rockville Pike
Suite 980
Rockville, MD 20850
(301) 738-5700
(301) 738-5708 – Fax

Belli, Weil & Grozban
Melvin M. Belli
(1907-1996)

Henry E. Weil

SFDCT
3100 Main Street, Suite 700
HOUSTON, TX 77002

RE: REQUEST FOR RE-REVIEW FOR DISEASE AND/OR RUPTURE

Dear Claims Office:

I am attaching various medical records and reports for the Claimants listed below. I am requesting review of their disease and/or rupture claims and am providing this additional documentation.

Jacklyn Wise

Attached is a communication from Dr. Wallace re MRI results as well as the MRI results from Dr. London.

Talesa Shores

Attached is medical documentation confirming that Claimant had a gel bleed in her right breast and rupture in her left, as well as documentation regarding her disease.

Gertrude Dever

Enclosed please find a medical report supporting her claim for rupture. It clearly shows that she suffered from gel bleed.

Page Two

Roma Parsons

Enclosed please find medical records supporting her claim for rupture.

Regina Warsaw

Please review the rupture documentation attached.

Very truly yours,

KEVIN R. McLEAN

KRM/sv

EXHIBIT "2"

To print this page, select the Print option from the File menu.

Close

From: info@bellilaw.com
To: DPEND440@aol.com
Cc:
Subject: RE: Fwd: Your client, Marilyn Cresci, SID 1114283
Date: 05/27/2007
Time: 3:16 PM PDT

Attachments:

Please accept my apologies for not responding to your e-mail earlier. For some reason, it was sent to an e-mail account that I do regularly monitor. I've had some personal problems and health issues that have left me with a minimum staff. My cell phone is 415-602-7577 and my toll free # is 1-800-981-1849. If you would be so kind to call me at any of these numbers I would appreciate the chance to discuss the issues raised in your e-mail. To be clear, I have been unaware of these issues until today. I look forward to hearing from you.

>----- Original Message -----
>From: DPEND440@aol.com
>To: info@bellilaw.com
>Sent: Mon, 7 May 2007 20:59:09
>
>Dear Mr. McClean,
>
>I am forwarding the email that I sent to your law
>firm on May 1, 2007, and
>request the courtesy of a reply, particularly since
>Ms. Cresci's benefit
>payment checks will soon expire.
>
>Sincerely,
>
>Dianna Pendleton-Dominguez
>Claimants' Advisory Committee
>
>
>
>
>
>***** See what's
>free at <http://www.aol.com>.

To print this page, select the Print option from the File menu.

Close

EXHIBIT "3"

BELLI & McLEAN
473 Jackson Street, Second Floor
San Francisco, CA 94111
Telephone: (415) 981-0100
Facsimile: (415) 981-2050
www.bellilaw.com

May 30, 2006

Sent Via Federal Express

Claims Office
SFDCT Settlement
3100 Main Street
Suite 700
Houston, TX 77002

RE: Class 7 Claim Forms

Dear Claims Office:

Enclosed please find my clients Class 7 claim forms. I have signed each form with client permission as well as approval from the claims office. If you have any questions, please contact me at the number above.

Thank you.

Very truly yours,

KEVIN R. McLEAN

KRM/sf
Enclosures

EXHIBIT "4" (Coming Under Separate Cover)

EXHIBIT "5" (Coming Under Separate Cover)

EXHIBIT "B"

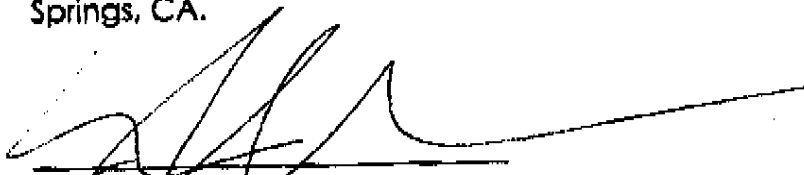
DECLARATION OF WILLIAM DEGARMO

I, William DeGarmo declare as follows:

1. I am an attorney duly licensed to practice in the Courts in the State of California. The following is of my own personal knowledge and I can competently testify to it under oath if called upon to do so.
2. During the period of 1997 through 1999, I had a partnership with Kevin McLean concerning funding for the Belli & McLean Dow Corning Breast Implant litigation. During the time of my involvement with the Dow Corning Breast Implant litigation, I provided \$300,000.00 to cover costs incurred by Belli & McLean to continue prosecuting their Dow Corning cases. The costs included: monies for paralegals, physician visits, review and reports, file preparation, contact with clients in reviewing files, copying, telephone bills, as well as file storage.
3. All of the money that I put into the forty-two (42) Dow cases directly relates to those Belli & McLean clients with Dow Corning implants. The case costs were approximately \$6,500.00 per client during my involvement in this litigation and I have an agreement with Belli & McLean to get those case costs returned from each client's settlement.
4. I am aware of the settlements accepted by the twenty-five (24) clients who have been paid to date, and realize that my lien for costs, in addition to the costs paid by Kevin McLean both before and after my involvement, exceed the monies recovered by most of the clients. Therefore, I have compromised my liens on these cases substantially.
5. I am aware that during the time of my involvement with the Dow Corning Breast Implant litigation, clients all gave permission to Kevin

McLean to sign all claim forms and endorse all checks that were necessary to complete the prosecution of their case.

Signed under penalty and perjury this 7th day of March 2008 in Palm Springs, CA.



William DeGarmo

EXHIBIT "C"

I, Nicole Foston, hereby declare and state:

I am employed in the City and County of San Francisco. I am over the age of eighteen and make the following based upon my own knowledge except as to the matters stated on information and belief and as to those, I believe them to be true. If called upon I could and would competently testify to the matters stated herein.

I have been a paralegal/legal assistant independent contractor for several years and have done work for Kevin McLean on the implant cases. Prior to my own business, I have been employed by the Law Offices of Melvin M. Belli off and on since 1983 and later for Mr. McLean. As such, I have worked on the MDL Breast Implant litigation since 1992. I am familiar with the claims and the litigation that has taken place over the 16 years that these matters have been active in both state and federal courts.

I was involved in the filing of the Class 5 Dow claims with the Claims Office. Over the course of 16 years, I have personally spoken with all of Mr. McLean's clients. They have each been apprised of the status of the litigation, the stay, the bankruptcy filing, and the costs associated and incurred, and have given their permission for the signing of forms and checks throughout the years. The number of 800-981-1849 has been consistently used as the breast implant telephone number since 1992.

I have sought confirmation from doctors and hospitals for acceptable proofs of manufacturer, explant, and proof of rupture on behalf of Mr. McLean's clients. I am aware that the Claims Office standards of proof have changed throughout the years. I have communicated these changes to the clients. Additionally, I have personally communicated to clients the changes in anticipated recovery amounts as well as the costs associated with this litigation.

I have reviewed thousands of pages of medical records and reports. I have reviewed thousands of pages of Claims Office guidelines, booklets, orders as well as pleadings throughout the course of this litigation. Early on, I have summarized depositions of treating physicians and experts in the cases that were set for trial. I have spoken with experts over the years that were retained individually and globally. I have spoken with defense counsel and other plaintiffs counsel involved in the Breast Implant litigation and claims.

I have arranged for medical evaluations of Dow clients, travel for Mr. McLean for the cases which were litigated in California, filing fees, jury fees, computer and equipment upgrade for newer technology necessary to manage these cases, copying of medical records, claims, postage and overnight courier services, the hiring and supervision of teams of independent contractors for analysis of claims, the review of contractor bills, and have personally been involved in storage of the files while the cases were stayed. From the time of Mr. DeGarmo's investing \$300,000 into the implant cases to take the firm to the Class 5 claims filing, there was an additional \$420,000 incurred for costs over the next 8 years. This was for work on each case and were rounded down to \$10,000 per claimant. In 2006, before distributing monies to clients, we reviewed our costs and lowered each claimant's costs due to \$10,000 for bookkeeping purposes because of the lowered settlement recoveries as a result of the Dow bankruptcy.

I declare that the foregoing is true and correct and executed this ^{9th}9 day of March 2008 at San Francisco, California.

