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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
DETROIT DIVISION

F I L E D
JUL 05 2005
CLERK'S OFFICE
DETROIT

In re:)	Case No. 00-CV-00005
)	(Settlement Facility Matters)
DOW CORNING CORPORATION)	
)	HON. DENISE PAGE HOOD

**MOTION AND MEMORANDUM IN SUPPORT OF
CLAIMANT BETH BOGERT'S REQUEST TO TOLL THE ONE YEAR DEADLINE FOR
CURING DISEASE CLAIM DEFICIENCIES AND REQUEST FOR SIX MONTH
EXTENSION FOR CURING PAST AND FUTURE DISEASE DEFICIENCIES**

Beth Bogert (SID 0239516), through her counsel Bos & Glazier, P.L.C., respectfully requests that this Court toll the one year deadline for curing deficiencies in her disease claim and allow a six month extension for curing past and future disease deficiencies. In support of her motion, Ms. Bogert states the following:

1. Ms. Bogert submitted her disease claim for ACTD, disability level A on July 28, 2003.
2. On August 26, 2004, the Settlement Facility - Dow Corning Trust ("SF-DCT") mailed Ms. Bogert a Notification of Status (NOS) regarding her disease claim.
3. The NOS letter stated that Ms. Bogert's claim was deficient. The disease portion (ACTD) of Ms. Bogert's claim was approved, however, the compensation (disability) level was not approved at level A, but was instead approved at the lower level C. The NOS, attached as Exhibit A, stated:

In order for the SF-DCT to approve Level A, you need to submit documentation of your daily life and limitations in performing your usual activities of vocation and self-care. Your documents must demonstrate a functional capacity to consistently perform none or only few of the usual duties or activities of vocation and self-care.

(Page 5, Disease Claim Review: Notification of Status Letter - Class 5 dated 8/26/05 regarding Beth Bogert, Exhibit A.)

4. The NOS letter also stated that the deadline to cure the deficiency in Ms. Bogert's claim is August 26, 2005.

5. The SF-DCT was contacted after receipt of the NOS letter and an appointment was made for a nurse to call and discuss the claim with regard to the requirements to cure the deficiency, *prior* to contacting Ms. Bogert's treating physicians to get a supplemental report to cure the deficiency. During the telephone conversation with the nurse from the SF-DCT, the nurse simply reiterated the statements contained in Ms. Bogert's NOS.

6. We believe that the SF-DCT has been overly harsh in their evaluation of disease claims in general and of Ms. Bogert's claim in particular. Of this firm's 19 clients that have actually *received a response* to their disease claims, 17 have been reduced or outright denied in disability level.

7. The Motion of Claimants' Advisory Committee for the Disclosure of Substantive Criteria Created, Adopted and/or Being Applied by the Settlement Facility and Request for Expedited Consideration is currently pending, which requests the Court to order the SF-DCT to disclose all substantive, non-published criteria that they are applying in their review of disease claims.

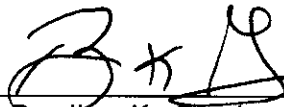
8. It would be unfair and prejudicial to Ms. Bogert to insist that she spend time and money in attempting to cure any deficiency in her disease claim, by way of obtaining additional documentation from her medical providers, until a decision has been rendered with regard to the pending motion and the claimants learn of any revisions to the criteria in proving a disability level to the SF-DCT.

WHEREFORE, we respectfully request that this Court direct Beth Bogert's disease claim cure deadline be tolled until a) the Court hears the Claimants' Advisory Committee' pending motion regarding the disclosure of substantive criteria, and determines whether the SF-DCT has applied the proper criteria in reviewing disease claims; and b) until all substantive, non-published criteria are made publicly available to all claimants by the SF-DCT. In addition, we request that Ms. Bogert be allowed a six month extension for curing past and future disease deficiencies.

BOS & GLAZIER, P.L.C.

Date: June 29, 2005

By:



Bradley K. Glazier (P33523)

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SETTLEMENT FACILITY
DOW CORNING TRUST

P.O. Box 52429
 Houston, Texas 77052

Telephone 713.874.6099
 866.874.6099

August 26, 2004



SID: 0239516

BUCHANAN & BOS
 C/O BOS & GLAZIER PLC
 990 MONROE AVENUE NW
 GRAND RAPIDS, MI 49503
 UNITED STATES OF AMERICA

Disease Claim Review: Notification of Status Letter - Class 5
Re: BETH Y BOGERT

We have completed the review of your Disease Claim. This Notification of Status (NOS) letter provides you with a recap of your Claim activity to date and the results of our disease review.

Disease Claim Review Results

Disease Reviewed	Disease Approved	Compensation Level Approved	Eligible for Payment
Atypical Connective Tissue Disease (ACTD) Option 1	Yes	C	Yes

To be eligible for any Disease Claim payment you must have both an approved Disease and a Compensation level.

Recap of Claim Activity

Your Proof of Manufacturer:

You submitted documents that reflect you were implanted with the following breast implants:

Implant #	Date of Implantation	Manufacturer	Type of Proof	Proof Evaluation
1	04/30/1980	Dow Corning	Hospital records of the implant surgery	ACCEPTABLE
2	04/30/1980	Dow Corning	Hospital records of the implant surgery	ACCEPTABLE

EXHIBIT A

DS-5050

For assistance or questions call the Claims Assistance Program at 1.866.874.6099 (toll free)
 Or go to www.dcsettlement.com on the internet

You have one year from the date of the original Notification of Status letter to cure any deficiency in your Disease Claim. If you do not cure the deficiency within this deadline, then you will be **barred** from receiving payment for the same disease claim in the future. You may, however, submit another disease claim for a "new compensable condition that manifests after the conclusion of the one-year period..."

Annex A, §7.09(b)(ii)

Please read this letter carefully to understand the deficiencies in your Disease Claim. If you have questions or would like to schedule a time to speak about your Disease Claim, call Claims Assistance at the toll free number 1-866-874-6099. It is important for you to proceed with obtaining additional medical records while you wait for Claims Assistance to schedule a time to speak with you about your claim.

Your deadline to cure the deficiencies in your Disease Claim is August 26, 2005

Disease Claim Deficiencies - General:

You applied for ACTD. To determine what deficiencies we noted in your Disease Claim, please carefully read the attached "Disease Claim Deficiencies - General." Each of these deficiencies must be cured before your claim can be approved.

Disease Claim Deficiencies - Symptoms:

We have also provided you with specific deficiencies on the symptoms found in your file in the attached "Disease Claim Deficiencies - Symptoms." You may not need to cure all of these deficiencies as long as you submit additional medical records that adequately document enough symptoms to qualify. (For example, you may have 8 eligible symptoms noted in your medical records which are all deficient, but you do not need to cure all 8 symptom deficiencies; you only need 5 non-duplicative symptoms to qualify for ACTD.)

Disease Claim Deficiencies – Compensation:

In addition to meeting the requirements for the disease and specific symptoms, you must also provide documentation for a severity/disability level in order to be eligible for payment. The section of this Notification of Status letter labeled "Disease Claim Deficiencies – Compensation" details any deficiencies for your severity/disability level. If you are not approved for a compensation level or are approved at a level lower than you requested, this section will give you specific information about your deficiencies.

Actions you may take if you are eligible for payment:

- Accept payment for any Disease Payment Claim by completing the Supplemental Disease Review Form and returning it to the Settlement Facility. To receive payment you must be approved for both Disease and a Compensation Level and be eligible for a payment according to the chart on the first page of this NOS letter; **or**
- On or before one year from the date of the original Notification of Status letter, you can submit additional medical records to cure your deficiencies. To avoid confusion and possibly another review of your claim before you are ready, please do not send your records until you have collected all of them needed to cure the deficiencies; **or**
- If you do not take any action listed in the two options above, then we will automatically issue payment to you for any approved Disease Claim at the end of the Cure Deadline. (If you wish to receive payment earlier, please read the first action statement in this section.)

Actions you may take if you have deficiencies in your Disease Claim:

- On or before one year from the date of the original Notification of Status letter, you can submit additional medical records to cure your deficiencies; **or**
- If you do not cure your deficiencies before the Cure Deadline, then you will be barred from receiving payment for the same disease claim in the future. You may, however, choose the Expedited Release Payment (and waive all right to submit a Disease claim) or submit another disease claim for a "new compensable condition that manifests after the conclusion of the one-year period."

Claims Assistance Program

If you have questions or would like to schedule a time to speak about your Disease claim, call Claims Assistance at the toll free number 1-866-874-6099, or through electronic mail at info@sfdct.com. It is important for you to proceed with obtaining additional medical records while you wait for Claims Assistance to schedule a time to speak about your claim.

When submitting additional information to be reviewed in your Disease Claim, complete the enclosed "Supplemental Disease Review Form" in its entirety. Attach any medical records or other documents to this form. Please write your name and SID on any documents you submit.

Submit all Disease Claim correspondence to:
Disease Claim Review
The Settlement Facility- Dow Corning Trust
P.O. Box 52429
Houston, Texas 77052

Sincerely,

Claims Operations
Settlement Facility - Dow Corning Trust

CC:

Encl: Supplemental Disease Review Form

NOTIFICATION OF STATUS DISEASE CLAIM REVIEW

Date: August 26, 2004	Cure Deadline: August 26, 2005
Name: BETH Y BOGERT	SID: 0239516

Atypical Connective Tissue Disease (ACTD)/ Atypical Rheumatic Syndrome (ARS)/ Non-specific Autoimmune Condition (NAC)

Review of Disease Claim for Option 1 ACTD

General Requirements

No Deficiencies

<u>Group</u>	<u>Symptoms in each Group</u>	<u>Status</u>
<u>Group I:</u>	Keratoconjunctivitis Sicca	Approved
<u>Group II:</u>	Immune Mediated Skin Rash Myalgia Serological abnormalities	Deficient Approved Approved
<u>Group III:</u>	Burning pain/ Loss of function Colitis or Bowel irritability Chronic Fatigue Documented Arthralgia Documented Neurological symptoms Persistent low grade fever or night sweats Lymphadenopathy Pathological findings Sleep disturbance	Approved Approved Approved Approved Approved Approved Approved Approved Approved Approved

To qualify for ACTD/ARS/NAC, you need one of the following combinations of approved signs and symptoms:

1. Any two symptoms from Group I.
2. Any one symptom from Group I, plus any one symptom from Group II.
3. Any three symptoms from Group II.
4. Any two symptoms from Group II, plus any one (non-duplicative) symptom from Group III.
5. Any five non-duplicative symptoms from Group I, II, or III.

Deficiencies in your ACTD Claim

DISEASE CLAIM DEFICIENCIES - GENERAL

The General Requirements Criteria contains no deficiencies.

DISEASE CLAIM DEFICIENCIES - SYMPTOMS

The Disease portion of your claim has been approved.

Review of Compensation Information for ACTD

Compensation Level Approved in Disease Review:

C

DISEASE CLAIM DEFICIENCIES - COMPENSATION

LEVEL A DISABILITY:

Dr. Raymond Weitzman on 1994-07-19 assigned or described Level A, total disability; however, you need to submit adequate documentation about your daily life and limitations in performing your usual activities of

- vocation and self-care
- to confirm this level.

In order for the SF-DCT to approve Level A, you need to submit documentation of your daily life and limitations in performing your usual activities of vocation and self-care. Your documents must demonstrate a functional capacity to consistently perform none or only few of the usual duties or activities of vocation and self-care.

Based on the deficiency noted above, you were approved at a lower compensation level.

You have until the Cure Deadline to cure your compensation deficiencies. If you are unable to cure your deficiencies by that date, the Settlement Facility will mail the payment you are eligible for. If you do not wish to cure your deficiencies for the higher level please advise us and the Settlement Facility will immediately authorize the payment you are eligible for. (Please note that before any payments can be made, you must have acceptable Proof of Manufacturer for at least one eligible implant.)

SUBMISSION OF ADDITIONAL INFORMATION

Disease claim decisions are based on the most current information available in your record. Submission of additional information could result in a change in your approval status if the additional information shows that you no longer meet the settlement criteria for a previously credited symptom/finding or compensation level.

QUALITY CONTROL FOR CLAIMS

The Settlement Facility-Dow Corning Trust has the obligation and authority to assure an acceptable level of reliability and quality control of Claims and to assure that payments are made only to Claimants whose Claims meet the Settlement Program's criteria. We may require that your disease and/or disability submission be re-confirmed, at our expense, by another independent examination by a physician we select prior to approving a payment. If re-confirmation is requested on your Claim, you will receive a separate letter addressing this process.

REQUIREMENTS FOR PAYMENT

Please note that references to approval within this NOS letter only refer to the fact that your disease claim meets the Plan disease requirements and criteria. To be eligible for payment, your claim must meet the definition for eligible claims as set forth in Article V of Annex A. If your claim does not meet all of the listed criteria, you may not be eligible for payment.

ACTD General Definitions

Physician qualification:

The physician who prepares the statement or diagnosis for an ACTD claim must be a Qualified Medical Doctor (QMD). A QMD is a physician who is board certified in internal medicine, rheumatology, neurology, neurological surgery, or immunology by the American Board of Medical Specialists (ABMS).

Please Note: A Doctor of Osteopathy (D.O.) can serve as a QMD if he or she is board certified by the American Board of Medical Specialists (ABMS) or the American Osteopathic Board (AOB) in the appropriate specialty.

Treating Physician:

A "treating physician" is a physician who has seen, examined, and treated you on several occasions, and not a physician who has seen you only for the purposes of getting an evaluation to make a Claim under the Settlement Program. A treating physician is not able to write an affidavit; rather the Settlement Facility will review a treating physician's medical records.

Classical Rheumatoid Arthritis:

If you have been diagnosed with Classical Rheumatoid Arthritis (CRA) you are still eligible for compensation under Atypical Connective Tissue Disease/Atypical Rheumatic Syndrome/Non-specific Autoimmune Condition (ACTD/ARS/NAC). However, you cannot be credited with Group I Polyarthrititis, Group II Serological Abnormalities-Rheumatoid Factor, or Group III Arthralgias.

Documented:

The term "documented" means that a symptom is based on reliable information other than simply a Claimant's complaint or oral history. Thus, to show that a symptom is "documented", a Claimant must submit one of the following:

- Proof of verification of the symptom through physical examination.
- A statement from the QMD revealing that (s)he questioned the Claimant sufficiently about the symptom and concluded that the complaint is valid.
- Medical records reflecting that the Claimant had complained about the symptom on other occasions.

Pre-existing Symptom:

A symptom will not be considered for the purposes of establishing ACTD, if it existed before the date of first implantation with a breast implant. The only time this deficiency can be credited is if there is an error in your medical records.

Duplicate Symptoms:

Although your NOS letter might reflect deficiencies for the same symptom in two different Groups, you can only receive credit toward compensation in one Group. For instance, you may receive credit for dry eyes in Group I (Keratoconjunctivitis Sicca) and dry mouth in Group III, but because dry mouth is also included in Group I, Keratoconjunctivitis Sicca you will only receive credit for either dry eyes or mouth, not both.

Increased Severity Payments:

If before the fifteenth anniversary of the Effective Date, you can submit documentation that your condition has increased to a Severity Level A, then you can apply for an additional payment based on that Severity Level A condition. You will receive the difference between the maximum allowed for Level A, and what you have already been paid. **This additional payment shall be classified as a Second Priority Payment and will be paid from the Increased Severity Fund at the end of the Settlement Program.**

Cure Deadline:

The Cure Deadline is one year from the date of the first Notification of Status (NOS) letter. You must submit all additional information that you want the Settlement Facility to review for your Disease Claim by that date.

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FOR THE EASTERN DISTRICT OF MICHIGAN
DETROIT DIVISION

In re:)	Case No. 00-CV-00005
)	(Settlement Facility Matters)
DOW CORNING CORPORATION)	
)	HON. DENISE PAGE HOOD

CERTIFICATE OF SERVICE

Bradley K. Glazier states that he is the attorney for claimant Beth Bogert, with regard to the above-captioned matter, and that on the 1st day of July, 2005, he served Motion and Memorandum in Support of Claimant Beth Bogert's Request to Toll the One Year Deadline for Curing Disease Claim Deficiencies and Request for Six Month Extension for Curing Past and Future Disease Deficiencies on the following person(s):

For the Claimants' Advisory Committee

Dianna Pendleton-Dominguez
P.O. Box 655
St. Mary's, Ohio 45885

For the Debtor's Representatives

Deborah E. Greenspan
Dickstein Shapiro Morin & Oshinsky LLP
2101 L Street, N.W.
Washington, DC 20037

For the Finance Committee

Claims Administrator
Settlement Facility - Dow Corning Trust
3100 Main Street, Suite 700
Houston, TX 77002

Service was made by first class mail on this date.



Bradley K. Glazier