

HONORABLE DENISE PAGE HOOD

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

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

MOTION OF NITA BALDWIN
TO TOLL THE SIX-MONTH DEADLINE
FOR CURING RUPTURE DEFICIENCY

COMES NOW Nita Baldwin, by and through her undersigned counsel of record and requests that the Court toll the six-month deadline for curing deficiencies in rupture claims. In support of her motion, Ms. Baldwin shows the following.

Background

1. Following a left-side mastectomy and bilateral breast reconstruction, Mrs. Baldwin was implanted with a A340 cc. round, low profile Silicone breast implant@ on the left side and a A305 cc@ [implant] on the right side on January 12, 1982. Enclosed and marked as Exhibit A is a copy of the operative report.

2. These implants eventually failed. Please see Exhibit B, which contains Dr. Selwyn Cohen=s October 22, 1986, letter to the claimant=s insurance company for preapproval of her implant replacement due to leaking implants; his November 3, 1986, chart note regarding suspected bilateral leaking implants; and the November 3, 1986, consent forms signed by claimant for her surgery.

3. Ms. Baldwin claims that Dow Corning paid for her second set of implants because her first set of implants failed, and therefore her first set of implants were Dow Corning implants, although they not specifically identified as such in her records.

4. Her second set were implanted on November 25, 1986. These are clearly identified as Dow Corning implants. See Exhibit C for the operative report and doctor=s notes describing the replacement implants.

5. Mrs. Baldwin had her second set of implants removed on January 19, 1993. See the doctor=s operative note which is Exhibit D.

6. Mrs. Baldwin contends that she experienced a rupture of at least one implant in both sets of Dow Corning implants. She filed a rupture claim in the Dow Corning settlement on or around May 3, 2003. See Exhibit E.

7. On November 22, 2004, the Dow Corning Settlement Facility mailed Mrs. Baldwin a Notification of Status letter on her rupture claim saying her claim was deficient. See Exhibit F.

8. Mrs. Baldwin timely filed¹ a request for participation in the Independent Review Process and submitted all her supporting documentation (since Dow Corning does not have access to claimants' files) along with her request. (See Exhibit G which is a copy of the request form and the accompanying cover letter.)

9. To date, Mrs. Baldwin has not received a response to her request for Independent Review.

10. The stated deficiency cure deadline in Mrs. Baldwin's November 22, 2004, Notification of Status letter (Exhibit F) was May 21, 2005. As that deadline approached, and since no response had been received on her request for participation in the Independent Review Process, Mrs. Baldwin's attorney emailed the Dow Corning Settlement Facility on May 11, 2005. A copy of that email and the Settlement Facility's response is attached hereto as Exhibit H. As the Court can see, the Trust gave a new cure deadline of June 15, 2005.²

11. As soon as Mrs. Baldwin's attorney received notice from the Trust regarding her new cure deadline, additional time was requested which would be equal to the delay from the time claimant submitted her request to the date of any revised notification of status. For example, even if Mrs. Baldwin were to received a notification of status letter *today*, June 10, 2005, she would not have time to respond before the cure deadline of

¹ The letter indicates that the request for Independent Review should be filed within 60 days of *receipt* of the NOS (which was November 29, 2004). Claimant sent her request and additional documents on January 19, 2005. Same were received by the claims office on January 24, 2005. Mailing receipts are included in Exhibit G.

² Claimant has no idea how the Trust arrived at this new deficiency cure deadline.

June 15, 2005. However, if claimant's motion were granted, she would have an additional 137 days in which to respond (assuming receipt today of an updated notification of status letter) *i.e.* a new cure deadline of October 24, 2005. See Exhibit I to this motion, the claimant's request for additional time, which has gone unanswered by the claims department.

Request for Relief of Joinder of Similar Motions

Mrs. Baldwin is aware that other claimants are similarly situated and joins the pending motions before this Court filed by claimants represented by Doffermyre Shields Canfield Knowles & Devine (January 21, 2005); claimant Deborah DeSanto; the Claimants Advisory Committee; claimant VanLandingham; and other pending motions before the Court regarding cure deadlines. As the Court is aware, the cure deadline for a rupture deficiency is six months. If the relief requested by these claimants is not granted, the claims facility, or the reviewers in the Independent Review Process, merely have to wait until after the NOS deficiency cure deadline before sending any response to a claimant's cure documentation in order to defeat the cure. This moving claimant has been waiting almost five months for a response to her cure documents. Even if she were to receive a response today, tomorrow, or any of the five days remaining in her cure period, she clearly would have no time to respond.

Mrs. Baldwin respectfully requests that she be granted an extension of her deficiency cure deadline equal to the time beginning when the Settlement Facility received her cure documents (January 24, 2005) to the date of its responding NOS letter (as yet not received). In other words, the cure deadline should be tolled pending review under the Independent Review Process.

DATED this 10th day of June, 2005.

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INDEX TO EXHIBITS

Exhibit No.	Description
A	1982 surgical note for first implant surgery
B	October 22, 1986, letter; doctor's notes and Consent form for second implant surgery
C	Doctor's notes and operative report of second implant surgery (November 3, 1986)
D	Operative record of January 1993 surgery to Remove second set of implants
E	Claimant's completed rupture claim form
F	November 22, 2004, Notification of Status letter
G	Claimant's request for participation in the Independent Review Process plus cover letter and certified mail receipts
H	Email (dated May 11, 2005) to the claims office regarding the approaching deficiency cure deadline and the SFDCT response (dated May 12, 2005)
I	Second email to the claims office dated June 9, 2005, requesting additional time in which to cure her deficiency

CERTIFICATE OF SERVICE

The undersigned certifies that an original and one copy of the foregoing Motion of Nita Baldwin to Toll the Six-Month Deadline for Curing Rupture Deficiency was sent via UPS Next Day Air this 10th day of June, 2005, to The Honorable Denise Page Hood, addressed as follows:

Honorable Denise Page Hood
United States District Court
Eastern District of Michigan
231 West Lafayette Boulevard
Room 235
Detroit MI 48226

With copies provided via email and regular First Class Mail, postage prepaid, to the following parties, pursuant to the Court's May 23, 2005, Order Regarding Service List:

For the Claimants' Advisory Committee:

Claimants' Advisory Committee
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