UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

IN RE:	§	**CASE NO. 95-20512**
DOW CORNING CORPORATION,	§	**(Chapter 11)**
REOGANIZED DEBTOR	§	**Hon. Denise Page Hood**

CONSENT ORDER RESOLVING THE MOTIONS OF DOW CORNING CORPORATION TO ESTABLISH PROCEDURE TO MATCH NOTICES OF INTENT TO RULE 3005 CLAIMS AND LIMIT PARTICIPATION IN SETTLEMENT PROGRAM BY NON-MATCHED NOTICE OF INTENT FILERS

This Consent Order (the "NOI Consent Order"), filed by the Claimants' Advisory Committee, Reorganized Dow Corning, and the Debtor's Representatives, resolves disputes regarding the interpretation of the provisions of the Amended Joint Plan of Reorganization relating to the eligibility of individuals who filed timely Notices of Intent ("NOIs") to participate in the Settlement Option under the Amended Joint Plan of Reorganization (the "Plan").

I. BACKGROUND AND FINDINGS

1. Numerous individual claimants filed Notices of Intent ("NOI Filers") expressing their intent to take control of a claim that may have been filed on their behalf, pursuant to Bankruptcy Rule 3005 ("Rule 3005 Claims"), by certain entities (the "Co-Debtors") that at that time could have been co-liable with Dow Corning Corporation ("Dow Corning") on claims relating to breast implants, other implant products, or products containing raw materials manufactured or sold by Dow Corning.

2. The Plan was confirmed on November 30, 1999.

3. On February 11, 2004 Dow Corning filed the pending *Motion of Dow Corning Corporation to Establish Procedure to Assist the Claims Administrator to Identify and Match Notices of Intent to Rule 3005 Claims in Accordance with Amended Joint Plan* ("NOI Motion"). On March 8, 2004 the Tort Claimants' Committee ("TCC") filed its Response to the NOI Motion. On March 15, 2004 Dow Corning filed its Reply to the TCC's Response. On June 10, 2004 this Court entered an *Order re Motion to Establish Procedures to Determine Eligibility of Claimants Filing Notices of Intent After the Confirmation Date and Within 90 Days After the Effective Date*. On August 30, 2006 Dow Corning filed the pending *Amended and Renewed Motion to Limit Participation in Settlement in Program By Non-Matched Notice of Intent Filers* (together with the NOI Motion, the "NOI Motions").

4. Dow Corning and the Debtor's Representatives ("DRs") argued in the NOI Motions that the proper interpretation of Annex A to the Settlement Facility and Fund Distribution Agreement would prohibit NOI Filers from receiving a distribution under the Plan unless the NOI Filer matched to a Rule 3005 Claim by name or satisfied specific definitions set forth in any of the Rule 3005 Claims. Dow Corning and the DRs further argued that NOI Filers were limited to claims as defined and limited in the Rule 3005 Claims – so that no NOI Filer could obtain a payment for a claim that was not specifically identified in the Rule 3005 Claim. The TCC, and later the Claimants' Advisory Committee ("CAC"), contended that all timely NOI Filers were permitted by the Plan to assert in the settlement program any claim arising from their implants and were not restricted by the terms of the Rule 3005 Claims to specific sub-categories of claims.

5. Dow Corning, the DRs, and the CAC (collectively "the Parties") have now reached resolution of the issues raised in the NOI Motions.

II. AGREEMENT OF THE PARTIES

WHEREFORE the Parties hereby agree and stipulate, and it is hereby ADJUDGED, ORDERED AND DECREED, as follows:

A. Terms for Payment of Claims of NOI Claimants.

6. The terms and conditions set forth in this NOI Consent Order shall apply to all "NOI Claimants."

7. The term "NOI Claimants" is defined as: (a) all persons who filed a Proof of Claim ("POC") form after November 30, 1999 and on or before August 30, 2004; (b) all persons who filed an NOI form after November 30, 1999 and on or before August 30, 2004; and (c) all "N-Record" persons who did not respond to Dow Corning's notice pursuant to Paragraph 10 of the Confirmation Order and did not otherwise file a POC or an NOI after November 30, 1999 and on or before August 30, 2004. NOI Claimants include only those persons (a) who do not match to a Rule 3005 Claim as provided in Paragraph 8 below and (b) who are in Classes 5, 6.1, or 6.2.

8. The Settlement Facility-Dow Corning Trust ("SF-DCT") has the continuing obligation to attempt to match NOI Filers to any timely Rule 3005 Claim. Should the SF-DCT determine that an NOI Filer matches to a timely Rule 3005 Claim other than a Rule 3005 Claim filed by Dow Chemical, then that NOI Filer shall not be an NOI Claimant and shall not be subject to the terms of this NOI Consent Order. An NOI Filer shall be determined to "match" to a Rule 3005 Claim for purposes of this NOI Consent Order if the SF-DCT determines, using any available information or identifiers, including Social Security Numbers, that the NOI Filer was listed by name in a timely Rule 3005 Claim. The NOI Filer will also be deemed to "match" to a

Rule 3005 Claim for purposes of this NOI Consent Order if the NOI Filer satisfies the specific provisions and requirements of a non-Dow Chemical Rule 3005 Claim. An NOI Filer will satisfy the specific provisions and requirements of a non-Dow Chemical Rule 3005 Claim if the NOI Filer meets the specific description and terms covering unknown persons on whose behalf the non-Dow Chemical Rule 3005 Claim is filed and to whom the Co-Debtor that filed the non-Dow Chemical Rule 3005 Claim is co-liable with Dow Corning. NOI Claimants who do not match to any Rule 3005 Claim by name or do not match to a non-Dow Chemical Rule 3005 Claim as described above and who have a Dow Corning implant and who assert a Disease Claim (as defined in the Dow Chemical Rule 3005 claims) (collectively, "Non-Matching NOI Claimants") shall be eligible to have their disease or expedited release claims processed by the SF-DCT without regard to the terms of this NOI Consent Order. Any rupture or explant claims asserted by such Non-Matching NOI Claimants shall, however, be subject to the terms of this NOI Consent Order including the limitations on aggregate payments to NOI Claimants.

9. Subject to the terms regarding percentage participation outlined in Paragraph 14 below, each NOI Claimant in Class 5, 6.1, or 6.2 who meets the eligibility criteria for a rupture and/or explant claim payment shall be entitled to receive a Base Payment for a rupture and/or explant claim provided that the aggregate amount payable to all NOI Claimants for rupture and explant claims shall not exceed the sum of $30 million (the "Aggregate NOI Cap") unless the conditions set forth in Paragraph 11 are met.

10. In the event that the aggregate amount payable to eligible NOI Claimants for rupture and explant claims is less than $30 million, the NOI Claimants with Allowed rupture claims shall be entitled to receive a Premium Payment provided that (a) the sum of all Premium Payments paid to NOI Claimants shall not exceed $5 million (the "Premium Payment Subcap");

(b) the sum of the Base Payments and Premium Payments paid to NOI Claimants shall not exceed $30 million; and (c) Premium Payments shall be paid only if and to the extent that Settling Personal Injury Claimants (as defined in the Plan) who are not NOI Claimants receive Premium Payments for rupture claims.

11. In the event that the Aggregate NOI Cap is not sufficient to pay the Base Payments for eligible rupture and explant claims of NOI Claimants, the SF-DCT shall be authorized to pay up to an additional $5 million (the "Excess Cap") for such Base Payments provided that Excess Monies[1] have been allocated, with Court approval, for use by the SF-DCT for payment of SF-DCT expenses and claim payments for Classes 5, 6.1, and 6.2. The Excess Cap shall not exceed the lesser of (a) $5 million or (b) the amount of Excess Monies allocated for payment of claims in and expenses associated with Classes 5, 6.1, and 6.2. No portion of the Excess Cap may be used to pay Premium Payments to NOI Claimants.

12. Notwithstanding the terms of Paragraph 11 above, all NOI Claimants shall be eligible for an Expedited Release or a Disease payment on the same terms as claimants who filed timely Proofs of Claim and such payments will not be limited by or counted against the Aggregate NOI Cap or, as applicable, the Excess Cap.

13. NOI Claimants shall receive the applicable amount specified for rupture and explant claims on the compensation schedules applicable to Classes 5, 6.1, or 6.2 subject to adjustment if the aggregate value of the Allowed rupture and explant claims of NOI Claimants

[1] Excess Monies is defined as the amount equal to the sum of $36 million Net Present Value ("NPV") less the aggregate amount required to pay all eligible Covered Other Products Claimants the full amount of compensation specified in the compensation schedule at Settlement Facility and Fund Distribution Agreement, Annex A Section 6.03(h) plus any additional payment to those Covered Other Products Claimants with Allowed Medical Condition claims who are determined to meet the guidelines for a supplemental payment plus administrative costs of processing and paying Other Products Claims (all computed on an NPV basis).

exceeds the Aggregate NOI Cap and, if applicable, the Excess Cap. The SF-DCT is authorized to (a) pay the rupture payments in installments until the Claims Administrator can determine whether the capped aggregate amount will be sufficient to pay Base Payments to all eligible NOI Claimants at the full amount specified in the applicable compensation schedule and (b) adjust the final payment amount if the Aggregate NOI Cap and, if applicable, the Excess Cap prove to be inadequate to pay the amount specified on the applicable compensation schedule to all eligible NOI Claimants.

14. The Aggregate NOI Cap, the Excess Cap, and the Premium Payment Subcap will be reduced in proportion to the number of NOI Claimants in excess of 1 percent of NOI Claimants who reject the NOI Consent Order by filing timely oppositions to the NOI Motions. Thus, if 51 percent of the NOI Claimants file timely oppositions and do not timely revoke such oppositions, then the Aggregate NOI Cap will be reduced to $15 million; the Excess Cap will be reduced to $2.5 million; and the Premium Payment Subcap will be reduced to $2.5 million. If 1 percent or fewer of NOI Claimants file timely oppositions to the NOI Motions, then the Aggregate NOI Cap, Premium Payment Subcap, and the Excess Cap will not be reduced. For purposes of this Paragraph 14, it shall be deemed that there is a total of 5,000 NOI Claimants.

15. NOI Claimants shall have one year from the date this NOI Consent Order is mailed to NOI Claimants to file their rupture and/or explant claims.

16. NOI Claimants who do not timely file an opposition to this NOI Consent Order as specified in Paragraphs 20(c) and 27 below and who have previously filed rupture and/or explant claims will be deemed timely filed, and all claims of such Claimants shall be processed and paid

promptly following the determination as to any reductions in the Aggregate NOI Cap, the Excess Cap, and the Premium Payment Cap as provided in Paragraph 14.

17. NOI Filers who are in Classes 7, 9, and 10 have been authorized by the Claims Administrator to participate in the Plan's settlement options and are subject to the terms of the Silicone Materials Claimants Fund and the Covered Other Products Fund as appropriate, and the payment of these claims shall not be limited by or counted against the Aggregate NOI Cap or the Excess Cap. NOI Filers in Classes 7, 9, and 10 or their attorneys of record who believe that they did not receive appropriate notice of the opportunity to file substantive claims for benefits may so notify the SF-DCT. If the SF-DCT determines that, in fact, no such notice was sent to such NOI Filers or attorneys of record, then those NOI Filers shall have six (6) months to file claims, measured from the date that the SF-DCT mails claim packages to them.

18. NOI Claimants who affirmatively accept the terms of this NOI Consent Order or fail timely to reject the terms of this NOI Consent Order by filing a written opposition to the NOI Motions no later than sixty (60) days after the date the notice of this NOI Consent Order is mailed shall be deemed "Settling NOI Claimants." Settling NOI Claimants are bound by the terms of this NOI Consent Order, are limited to the rights specified in this NOI Consent Order, and are barred from seeking any other distribution under the Plan, including being barred from seeking allowance of a late Proof of Claim.

B. <u>Procedure for Notice/Objection and Dismissal of NOI Motions</u>.

19. The Parties shall arrange for this NOI Consent Order to be served (as described below) upon all NOI Claimants and their counsel of record as promptly as possible following the expiration of the time for appeal of entry of this NOI Consent Order. The service will go

forward regardless of whether any timely appeals are filed; however, if there are no timely appeals, the content of the mailing to the NOI Claimants will so note. If there are timely appeals, the CAC and the DRs will promptly determine whether resolution of such appeals is feasible and if so will endeavor to resolve such appeals before the mailing. In no event will service be made more than four (4) weeks after the time for appeal has expired except that the CAC and the DRs may agree to delay the service.

20. The materials served will include a notice in the form submitted to the Court explaining the consequences of the NOI Consent Order to the NOI Claimants and the options available to them including, but not limited to, the following:

(a) All NOI Claimants are eligible to participate in the Plan's settlement options according to the terms of the NOI Consent Order.

(b) All NOI Claimants are encouraged to evaluate the NOI Consent Order and may review the NOI Motions on the SF-DCT web site or obtain a copy of the NOI Motions at no charge by calling the toll-free number maintained by the vendor described in Paragraph 22. The vendor shall maintain a list of all requests for the NOI Motions and a record of all mailings in response to such requests, which may be filed under seal, if necessary, to document compliance with the terms of the NOI Consent Order.

(c) Any NOI Claimant who wishes to reject the settlement option set forth in the NOI Consent Order must (i) file a written opposition to the NOI Motions with the Court within sixty (60) days after the date the notice is mailed and (ii) send a copy of the opposition to both the CAC and DRs. Any NOI Claimant who does not reject the

settlement option by complying with the above requirements shall be deemed a Settling NOI Claimant.

(d) An NOI Claimant who wishes to accept the settlement option in the NOI Consent Order is not required to take any action and, after expiration of the sixty (60)-day period, will be deemed to have accepted the terms of the NOI Consent Order.

(e) The SF-DCT shall process and pay the claims of NOI Claimants who are deemed to have accepted the terms of the NOI Consent Order (if eligible and approved) consistent with the terms of this NOI Consent Order.

(f) NOI Claimants who do not timely file an opposition to the NOI Motions will be deemed to have waived any right to participate in the Plan on any terms other than those specified in this NOI Consent Order regardless of the outcome of any subsequent proceedings including proceedings with respect to the NOI Consent Order or NOI Motions.

(g) Settling NOI Claimants may affirmatively accept the terms of this NOI Consent Order by notifying the SF-DCT in writing during the sixty (60)-day period to inform the SF-DCT that they accept the terms of this NOI Consent Order ("Accepting NOI Claimants"). The SF-DCT is authorized to process and pay the claims of such Accepting NOI Claimants (if eligible and approved) consistent with the terms of the NOI Consent Order. Acceptance of the NOI Consent Order is final and binding and may not be revoked.

21. Service of this NOI Consent Order shall also be accompanied by a written recommendation from the CAC in the form submitted to the Court advocating acceptance of the

terms of the NOI Consent Order and outlining the consequences of non-acceptance, including the costs, burdens, risk and delay associated with litigating an opposition to the NOI Motions.

22. Service of this NOI Consent Order will be conducted by a vendor acceptable to both the CAC and the DRs. This vendor will also manage the toll-free line that NOI Claimants may call to request copies of the NOI Motions and will be responsible for mailing the NOI Motions upon request. The vendor will enter into a contract with the SF-DCT for all the necessary services and the SF-DCT will be responsible for payment of all fees and costs of the vendor. The vendor will be responsible for obtaining the service list from the SF-DCT, tracking and confirming that the appropriate package was sent to all persons on the service list at the best available address, tracking returned mail and attempting re-mailing, signing and filing a certificate of service of the NOI Consent Order and related notice with the Court under seal, maintaining the toll-free telephone line, and mailing copies of the NOI Motions as described in Paragraph 20(b). All communications from the vendor shall be made jointly to both the DRs and the CAC. The vendor may subcontract certain services subject to approval of the CAC and the DRs. The CAC and the DRs shall provide agreed protocols for all the above tasks as appropriate. Prior to the mailing the CAC and the DRs shall be permitted to verify that the SF-DCT has provided the correct and appropriate mailing list and shall also resolve any discrepancies in the service list. For the DRs the above-described verification will be conducted by a vendor at Dow Corning's expense. The vendor will be required to sign a confidentiality agreement and will not be permitted to disclose claimant identities to the DRs. The SF-DCT shall periodically report to the CAC and DRs on the status of service of the NOI Consent Order package, including efforts to track returned mail and re-mailing efforts.

C. **Service on Special Service List/Appeals and Objections.**

23. Prior to its entry, the NOI Consent Order was served on all persons listed on the Special Service List maintained by Dow Corning pursuant to case management orders entered in this bankruptcy case. Any objections to the NOI Consent Order by any such person are overruled.

24. This NOI Consent Order shall become a Final Order when it has been entered by the Court and either (a) the time for appeal of the NOI Consent Order has passed and no timely appeals have been filed, or (b) all appeals have been resolved and the NOI Consent Order has not been reversed or vacated or has not been modified and/or remanded in a manner that alters the substantive terms of the NOI Consent Order, or (c) the CAC and the DRs agree jointly that the NOI Consent Order is final for the purposes described in Paragraphs 26 and 28.

25. Once this NOI Consent Order becomes a Final Order (as defined above), the NOI Motions shall be dismissed with prejudice except that the NOI Motions shall not be dismissed with respect to any party who timely files an opposition to the NOI Motions as described in Paragraphs 20(c) and 27.

26. Once this NOI Consent Order becomes a Final Order, Dow Corning shall be deemed to have waived any objection to participation by Settling NOI Claimants in the Plan's settlement options under the terms set forth in this NOI Consent Order.

27. NOI Claimants may reject the settlement option in this NOI Consent Order. An NOI Claimant who wishes to reject the settlement option in this NOI Consent Order must file with the Court a written opposition to the NOI Motions within sixty (60) days after the notice of the entry of this NOI Consent Order is mailed. Such opposition must be served on both the CAC

and the DRs. Claimants who reject the NOI Consent Order and file a timely opposition to the NOI Motions will be required to litigate their eligibility to participate in the Plan's settlement options and obtain a distribution from the SF-DCT individually at their own expense. The CAC will support the NOI Consent Order and therefore will not support any person who files an opposition to the NOI Motions. Objecting NOI Claimants will be ineligible to participate in the settlement option authorized by this NOI Consent Order and will have only such rights to participate in the Plan's settlement options as they establish through litigation. NOI Claimants who file an opposition to the NOI Motions may withdraw such oppositions in writing within forty-five (45) days after the date that they filed their opposition without sacrificing their position, if any, in the processing queue at the time they filed their opposition. The CAC and the DRs will not be required to file any pleadings with respect to the NOI Motions or any opposition to the NOI Motions within that forty-five (45)-day period and shall have sixty (60) days after the expiration of the forty-five (45)-day period to file any replies or other pleadings.

28. If there is an appeal of this NOI Consent Order, Settling NOI Claimants may be paid (if eligible and approved) prior to this NOI Consent Order becoming a Final Order provided that the CAC and the DRs have determined whether any reduction in the Aggregate NOI Cap, the Excess Cap, or the Premium Payment Subcap is required by the terms of Paragraph 14 and if so, the amount of such reduction. The CAC and the DRs expect that such determination will occur within five (5) days after expiration of the forty-five (45)-day deadline for NOI Claimants who file oppositions to the NOI Motions to withdraw such opposition. Nothing herein is intended to waive the obligations or rights of the CAC or the DRs to take action as appropriate to respond to any decision by any court with jurisdiction over the matter rejecting, reversing, remanding or modifying the NOI Consent Order. In the event of a reversal of this NOI Consent

Order, further processing and/or payment of NOI Claimants may be stayed pending further judicial proceedings.

Date:_____

DENISE PAGE HOOD
United States District Judge

So Stipulated and Agreed:

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