

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

FILED
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U.S. DIST. COURT
EAST DISTRICT
OF MICHIGAN
PETROIT

In Re:

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Case No. 00-CV-00005-DT
(Settlement Facility Matters)
HON. DENISE PAGE HOOD

Dow Corning Corporation

Debtor.

ORDER REGARDING LIEN DISPUTE RESOLUTION PROCEDURES

On June 30, 2003, the Court considered the proposed procedures concerning resolution of lien disputes between claimants and certain third parties. The Court finds that the procedures for resolving lien disputes are fair, reasonable, and provide for an efficient and cost effective voluntary resolution of such disputes.


The Court hereby approves and adopts the Provisions for Resolution of Disputes of Third Party Claims as set forth in the attachment to this Order.

The Court hereby appoints Frank Andrews to serve as Lien Judge until further Order of this Court.

The Settlement Facility - Dow Corning Trust shall distribute a copy of this Order together with the attachment to all claimants who have liens asserted against their claims

The Court reserves the right to amend or modify the lien dispute procedures from time to time as circumstances may dictate.

Dated: AUG 07 2003


DENISE PAGE HOOD
United States District Judge

SETTLEMENT FACILITY-DOW CORNING TRUST
PROVISIONS FOR RESOLUTION OF DISPUTES
RELATING TO THIRD PARTY CLAIMS

Section 1. Preamble

- 1.01. These Provisions for Resolution of Disputes Relating to Third Party Claims ("Provisions") have been adopted by order of the United States District Court for the Eastern District of Michigan ("Court") as an adjunct to the operations of the Settlement Facility-Dow Corning Trust ("SF-DCT"), as provided in Paragraph 7.02(a)(ii) of the Settlement Facility and Fund Distribution Agreement ("SFA").¹
- 1.02. These Provisions apply solely and exclusively to Third Party Claims.
- 1.03. Third Party Claims are those disputes arising between: (1) Personal Injury Claimants or their authorized representatives who elect to settle their claim against Dow Corning in SF-DCT (referred to generally in these Provisions as "Claimants"), and (2) persons who assert the right (including any lien rights or lien claims) to receive all or a portion of the payment(s) made by the SF-DCT to Claimants (referred to generally in these Provisions as "Alleged Lienholders").
- 1.04. Third Party Claims do not include those disputes regarding the distribution of assets in a probate estate or a marital estate.
- 1.05. The use of these Provisions by Claimants or Alleged Lienholders (referred to collectively as the Parties") is voluntary. The Provisions will be used only upon the Parties' agreement to use them. In the absence of the Parties' use of the Provisions to resolve a Third Party Claim, SF-DCT will comply with the terms of either: (1) a written agreement between the Parties, or (2) a written and final order of a court, arbitrator, or other dispute resolution entity with proper authority over the dispute and the Parties.

Section 2. Definitions

- 2.01. Unless otherwise defined in these Provisions, capitalized terms in these Provisions shall be governed by the definitions in the Amended Joint Plan of Reorganization for Dow Corning Corporation ("Plan") and the SFA.
- 2.02. References to a Claimant or to an Alleged Lienholder shall include, where appropriate, the legal representatives of each.

¹SFA § 7.02(a)(iii), *Authority to Distribute*. The Finance Committee may designate the Trustee as paying agent. The paying agent shall arrange for the distribution of payments to Claimants upon the direction of the Finance Committee and the District Court and in accordance with the terms of this Settlement Facility Agreement and the Funding Payment Agreement. The timing of all distributions shall be determined by the Claims Administrator. The Finance Committee shall have the authority to seek orders from the District Court generally authorizing distributions of First Priority Payments without separate orders regarding each such distribution and establishing procedures for distributing payments involving liens or disputed payees.

Section 3. Lien Judge.

- 3.01. The Finance Committee, with input from the Claimants' Advisory Committee and the Debtor's Representatives, shall recommend an individual to be appointed as the Lien Judge. The recommendation shall be submitted to the Court for consideration and approval.
- 3.02. The fact that the Lien Judge has a current or prior association with SF-DCT or the Finance Committee shall not be considered a conflict and shall not be an impediment to the Lien Judge's service.
- 3.03. The existence of a personal or business affiliation between the Lien Judge and any Claimant or Alleged Lienholder shall be considered a conflict of interest and will preclude the Lien Judge from serving in that dispute.

Section 4. Notice by SF-DCT

- 4.01. Upon receipt of written notice of a Third Party Claim, SF-DCT shall promptly send a letter to the Claimant (or her attorney of record), with a copy to the Lien Judge, notifying her that a Third Party Claim has been asserted. The letter shall provide, at a minimum, the following information:
 - a. name and address of the Claimant;
 - b. name and address of the party that filed the Third Party Claim;
 - c. a copy of the Third Party Claim;
 - d. information about and a copy of the Dispute Resolution Procedures ("Procedures") approved by the Lien Judge, including the voluntary nature of these Provisions;
 - e. information about how and when to proceed to resolve the Third Party Claim; and
 - f. any other information or documents that SF-DCT determines should be included.
- 4.02. SF-DCT shall send a letter to the party that filed a Third Party Claim, with a copy to the Lien Judge, including the following information:
 - a. information about and a copy of the Procedures;
 - b. information about how and when to proceed to resolve the Third Party Claim;
 - c. information about the voluntary nature of these Provisions; and
 - d. any other information or documents that SF-DCT determines should be included.
- 4.03. The Alleged Lienholder shall not be entitled to any information regarding the Claimant or her claim that SF-DCT or the Lien Judge determines is confidential, including information on the approved payment amount.

Section 5. Action by Lien Judge

- 5.01. Within thirty days of the Lien Judge's receipt of the SF-DCT letter, the Lien Judge shall notify the Parties in writing regarding their right to elect to use these Provisions and the Procedures to resolve the Third Party Claim.
- 5.02. The Lien Judge's notice shall inform the Parties that his authority will commence upon

his receipt of a written agreement from each of the Parties to use these Provisions and the Procedures to resolve the Third Party Claim. The Lien Judge will provide the Parties with a form by which each Party may indicate its written agreement.

- 5.03. Within ninety days (or such longer period as circumstances require) of the Lien Judge's initial notice to the Parties, the Lien Judge will issue a final, binding, non-appealable written ruling.

Section 6. Dispute Resolution Procedures

- 6.01. The Lien Judge may use any commonly accepted form of dispute resolution appropriate to the nature of the dispute, at the sole discretion of the Lien Judge or his or her appointee.
- 6.02. The Lien Judge may obtain any information regarding the Personal Injury Claim and the Third Party Claim from any relevant source.
- 6.03. The Lien Judge shall permit the Parties to submit in writing:
- written statements or positions, subject to a page limit to be established by the Lien Judge;
 - any relevant evidence; and
 - rebuttal written statements, positions, or evidence
- 6.04. Any written materials that one party submits to the Lien Judge must be simultaneously provided by the submitting party to the other party.
- 6.05. The Lien Judge shall permit no form of discovery.
- 6.06. Any document submitted to the Lien Judge will not be returned. Copies will not be made available, and all documents received by the Lien Judge will be destroyed six months after the dispute has been resolved.
- 6.07. In making a determination of attorney fees and expenses that are part of a Third Party Claim, the Lien Judge may take into account the changing terms of the various breast implant class settlements including the different procedures and funds for payment of attorney fees and how this may affect a Third Party Claim.
- 6.08. If an Alleged Lienholder is seeking to recover an amount for expenses incurred that are part of a Third Party Claim (exclusive of any expenses incurred in the implementation of these Provisions or the Procedures, which shall not be allowed in any event), the Alleged Lienholder must provide written documentation of the dates, amounts, and invoices for such expenses. Allowable expenses incurred by an attorney as Alleged Lienholder are those identified in Q11-4 and its response in the Claimant Information Guide for Class 5 Breast Implant Claims.² All expenses must be reasonable in relation

² Q11-4. What expenses can my attorney deduct from any payments I receive from the Settlement Facility? [Response]: Certain expenses – if allowable under applicable state law and the individual arrangement between you and your attorney – can be charged against your payment if they are solely attributable to your claim or case. Chargeable expenses are limited to the following types of cost incurred

to the work performed and the result obtained.

- 6.09. Any award of attorney fees and/or expenses included in a Third Party Claim will be determined according to the attorney fee provisions in Paragraph 5.10 of the Plan as confirmed by the Court, the applicable fee agreement, or applicable state law, whichever is lowest; provided, that the Lien Judge may award attorney fees lower than the fee limitations in the Plan or may award no attorney fees. The fact that an attorney filed a Proof of Claim form or other registration form alone shall not be grounds for the award of attorney's fees without credible evidence of actual work done on behalf of the Claimant.
- 6.10. If the Lien Judge makes an award requiring payment to an Alleged Lienholder, then SF-DCT will issue separate checks to the Claimant and the Alleged Lienholder.

Section 7. Appeals.

- 7.01. All decisions rendered by the Lien Judge are final, binding, and not appealable.

Section 8. Fees.

- 8.01. The fees for the Parties' use of the services of the Lien Judge shall be \$125 per Party, to be paid directly by the Parties to the Lien Judge, except in the instance in which SF-DCT issues payment on behalf of the Claimant to the Lien Judge from the claim payment payable to the Claimant, in accordance with the provisions of Paragraph 8.04.
- 8.02. The Lien Judge may require a Party to pay the fees required by Paragraph 8.01 within thirty days after the Parties submit their signed written agreements to use these Provisions and the Procedures.
- 8.03. If an Alleged Lienholder has not paid its fees by the deadline set by the Lien Judge (or immediately thereafter) following the Parties' submission of their signed written agreements to use these Provisions and the Procedures, the Lien Judge shall notify SF-DCT. The Lien Judge shall treat the non-payment as a default and notify the Parties that the Third Party Claim shall be disallowed.
- 8.04. If a Claimant has not paid her or his fees by the deadline set by the Lien Judge following the Parties' submission of their signed written agreements to use these Provisions and the Procedures, the Lien Judge shall abate the dispute resolution process until SF-DCT has determined whether the Claimant's Personal Injury Claim will be approved for payment. If the Claimant's Personal Injury Claim is approved for payment by SF-DCT, then the Claimant's fee will be paid by SF-DCT to the Lien Judge from the proceeds of the Claimant's portion of such claim. If the Claimant's Personal Injury Claim is not approved for payment by SF-DCT, then SF-DCT will notify the Parties that the Alleged Lienholder's Third Party Claim is moot.

on your behalf: medical evaluation expenses, expenses incurred in obtaining copies of your medical records, medical bills paid on your behalf, court costs, court reporter expenses, expert witness fees, expenses of medical witnesses, and travel costs incurred for depositions or court appearances in your case

Section 9. Jurisdiction and statute.

9.01. The Court shall exercise jurisdiction over these Provisions and the Procedures.

9.02. The Federal Arbitration Act shall not apply.

Revised 04-30-03