

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In Re:

**DOW CORNING CORPORATION,
Reorganized Debtor.**

**Civil Action No. 00-CV-00005-DT
Honorable Denise Page Hood**

**ORDER DENYING MOTION FOR TEMPORARY RESTRAINING ORDER
and
NOTICE OF HEARING**

I. BACKGROUND

Coy Holstein, an attorney representing certain Claimants before the Settlement Facility Dow Corning Trust (“SFDCT”), filed the instant Motion for Temporary Restraining Order seeking an Order enjoining Theresa Holstein, Mr. Holstein’s former wife, from contacting Mr. Holstein’s clients, disclosing in any pleading or document in any venue the names and personal information regarding Mr. Holstein’s clients, and asserting any lien or interest in the recoveries or awards of any SFDCT Claimant.

Mr. Holstein claims Theresa Holstein filed liens against recoveries granted to certain SFDCT Claimants, which are more specifically intended to be liens against attorney fees connected to recoveries owed to SFDCT Claimants. Because Theresa Holstein claims she did not render any professional services to the Claimants, Mr. Holstein claims she is not allowed to file any liens against the recoveries from the SFDCT.

Mr. Holstein further claims that Theresa Holstein has disclosed the names of certain SFDCT Claimants within the Commonwealth of Kentucky, Kenton Circuit Court and continues

to threaten to disclose the names and other pertinent information in violation of this Court's orders regarding confidentiality. Mr. Holstein alleges Theresa Holstein has intercepted mail correspondence between SFDCT Claimants and their counsel and has endangered the safety and financial security of certain SFDCT Claimants by making improper use of the U.S. mails and by making misrepresentations to the SFDCT.

II. ANALYSIS

A. Temporary Restraining Order

Rule 65(b) of the Federal Rules of Civil Procedures provides the Court with authority to issue a temporary restraining order as follows:

A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required. ...

Fed.R.Civ.P. 65(b).

Fed.R.Civ.P. 65(b) is clear that the possibly drastic consequences of a restraining order mandate careful consideration by a trial court faced with such a request. 1966 Advisory Committee Note to 65(b). Before a court may issue a temporary restraining order, it should be assured that the movant has produced compelling evidence of irreparable and imminent injury and that the movant has exhausted reasonable efforts to give the adverse party notice. *Fuentes v. Shevin*, 407 U.S. 67 (1972); *Boddie v. Connecticut*, 401 U.S. 371 (1971); *Sniadach v. Family Finance Corp.*, 339 U.S. 337 (1969); 11 Wright & Miller, Federal Practice and Procedure § 2951 at 504-06 (1973). Other factors such as the likelihood of success on the merits, the harm to

the non-moving party and the public interest may also be considered. 11 Wright & Miller at § 2951 at 507-08.

As to the attorney certification requirement, the applicant's attorney has not certified in writing the efforts, if any, which have been made to give the notice of this motion to Theresa Holstein nor set forth the reasons supporting any claim that notice should not be required.

Addressing the irreparable injury requirement, it is well settled that a plaintiff's harm is not irreparable if it is fully compensable by money damages. *Basicomputer Corp. v. Scott*, 973 F.2d 507, 511 (6th Cir. 1992). However, an injury is not fully compensable by money damages if the nature of the plaintiff's loss would make damages difficult to calculate. *Id.* at 511-512.

The Court notes that neither Mr. Holstein nor Theresa Holstein are parties or Claimants before the Court. It does not appear that Mr. Holstein is seeking monetary damages based on his motion. Based on the motion and brief filed by Mr. Holstein, the Court does not appear to have any authority based on the Amended Joint Plan of Reorganization ("Plan") or any other Order entered by this Court over the actions by Theresa Holstein, except for any lien claims set forth in the Procedures for the Review of Asserted Lien Claims Against Settling Implant Claimants. Section 8.7 of the Plan expressly states that this Court retains jurisdiction to resolve controversies and disputes regarding the interpretation and implementation of this Plan and the Plan Documents, including the Depository Trust and Settlement Facility and Trust Agreement ("SFA"), and, to enter orders regarding the Plan and Plan Documents. (Plan, § 8.7.3, 8.7.4, 8.7.5) The Plan provides for the establishment of the SFDCT, which is governed by the SFA. (Plan, § 1.131) The SFDCT was established to resolve Settling Personal Injury Claims in accordance with the Plan. (Plan, § 2.01) The SFA and Annex A to the SFA establish the exclusive criteria by which such claims are evaluated, liquidated, allowed and paid. (SFA, §

5.01) Resolution of the claims are set forth under the SFA and corresponding claims resolution procedures in Annex A, which is performed by this Court. (SFA, § 4.01)

The Court may have subject matter jurisdiction pursuant to 28 U.S.C. § 1334(b) over any post-confirmation lien appeal if the parties invoke the Lien Review Procedures because the Lien Judge's decision could conceivably have an effect on the estate being administered in bankruptcy. *See In re Wolverine Radio Co.*, 930 F.2d 1132, 1141 (6th Cir. 1991); *Browning v. Levy*, 283 F.3d 761, 773 (6th Cir. 2002). The Court retains jurisdiction to interpret and enforce confirmed plans of reorganization. *See In re Thickstun Bros. Equip. Co., Inc.*, 344 B.R. 515, 522 (6th Cir. B.A.P. 2006); *In re Beta Int'l, Inc.*, 210 B.R. 279, 284 (E.D. Mich. 1996). The Lien Review Procedures provide that a "party may appeal the decision of the Lien Judge by filing a Notice of Appeal with the District Court within 14 days of the date of the notice from the SF-DCT providing the decision of the Lien Judge." (Lien Review Procedures, § 7.01) The Court reviews *de novo* the Lien Judge's findings of fact and conclusions of law. 28 U.S.C. § 157(c)(1).

The Court's review of its docket fails to show that any lien appeal has been filed under the Lien Review Procedure involving Mr. Holstein and Theresa Holstein. The Order submitted by Mr. Holstein in support of his motion is an Order issued by the District Court in the Northern District of Alabama in the *In re Silicone Gel Breast Implant Products Liability Litigation (MDL-920)*. (Case No. 92-10900, N.D. Ala.) Even if the Court had authority to enforce the MDL Order, it appears that the Order involves disclosures made by claimants before the MDL and orders the attorneys involved in the MDL not to disclose certain information. The Order does not speak to actions made by third parties who are not before the MDL.

Based on the above, the Court finds that because the Court does not have authority over actions by Theresa Holstein, other than through the Lien Procedures Review in this matter, the

Court is unable to issue a Temporary Restraining Order in this matter. If Mr. Holstein can show the Court has authority to issue a Preliminary Injunction in this matter, the Court will hold a hearing on the Preliminary Injunction motion.

III. CONCLUSION

Accordingly, for the reasons set forth above,

IT IS ORDERED that the Ex Parte Motion for Temporary Restraining Order (**Docket No. 572**) is DENIED.

IT IS FURTHER ORDERED that Mr. Holstein a supplemental brief with any appropriate documents to support his Motion for a Preliminary Injunction as noted above by **October 1, 2007**.

IT IS FURTHER ORDERED that the Movants serve Theresa Holstein with a copy of this Order, the Motion for Preliminary Injunction and any supplemental brief by **October 1, 2007**. If Mr. Holstein submits a supplemental brief by the October 1, 2007 date, Theresa Holstein and any interested party before this Court may file a response to the Motion for Preliminary Injunction by **October 12, 2007**.

IT IS FURTHER ORDERED that if Mr. Holstein files a supplemental brief by October 1, 2007, hearing on the Motion for Preliminary Injunction will be held on **Thursday, October 18, 2007, 9:00 a.m.**

/s/ Denise Page Hood
DENISE PAGE HOOD
United States District Judge

DATED: September 21, 2007

TIME OF ISSUANCE: 9:50 a.m.

THE CLERK SHALL FILE THIS ORDER FORTHWITH