

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

In Re:

Settlement Facility Dow Corning Trust,

Case No. 00-X-00005

Honorable Denise Page Hood

MDL-926 Settlement Fund,

Movant.

**MEMORANDUM OPINION AND ORDER REGARDING THE MOTION FOR
RESOLUTION OF LIEN CLAIMS AGAINST SETTLEMENT FACILITY-DOW
CORNING TRUST PAYMENTS FILED BY THE MDL-926 SETTLEMENT FUND**

I. BACKGROUND

On June 1, 2004, the Amended Joint Plan of Reorganization (“Plan”) submitted by the then-Debtor Dow Corning and the Tort Claimants’ Committee became effective. Section 8.7 of the Plan provides that this Court retains jurisdiction to resolve controversies and disputes regarding the interpretation and implementation of the Plan 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 Settlement Facility-Dow Corning Trust (“SF-DCT”), which is governed by the Settlement Fund and Distribution Agreement (“SFA”). (Plan, § 1.131) The SF-DCT 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. (SFA, § 4.01)

The Plan establishes administrative claim review and appeals process for Settling Personal Injury claimants. Any claimant who does not agree with the decision of the SF-DCT may seek

review of the claim through the error correction and appeal process. (SFA, Annex A, Art. 8) A claimant may thereafter obtain review by the Appeals Judge. (SFA, Annex A, Art. 8) The Plan provides that “[t]he decision of the Appeals Judge will be final and binding on the Claimant.” (SFA, Annex A, § 8.05) Claimants who seek review under the Individual Review Process also have a right of appeal directly to the Appeals Judge. The Plan provides that “[t]he decision of the Appeals Judge is final and binding on both Reorganized Dow Corning and the claimant.” (SFA, Annex A, § 6.02(vi)) The Plan provides no right of appeal to the Court and expressly sets forth that the decision of the Appeals Judge is final and binding on both the Reorganized Dow Corning and the claimants.

On June 30, 2005, the Court entered an Amended Stipulation and Order Establishing Procedures for the Review of Asserted Liens Against Settling Implant Claimants (“Lien Procedures”). The MDL-926 Settlement Fund has asserted certain liens against the SF-DCT. The Lien Judge named in this Court’s Lien Procedures is the Honorable Frank Andrews. Because Judge Andrews has fiduciary roles in both the Revised Settlement Program in MDL-926 (“RSP MDL-926”) and the SF-DCT, the parties in this case initially agreed that the SF-DCT Claims Administrator, David Austern, act as the Lien Judge reviewing the MDL-926 Settlement Fund’s asserted liens against the SF-DCT. The MDL-926 Settlement Fund thereafter alleged that Mr. Austern also has a conflict of interest in ruling on the MDL-926 Settlement Fund liens.

The parties in this case, after a telephone status conference with the Court and the MDL-926 Escrow Agent, agreed that this Court address the lien claims asserted by the MDL-926 Settlement Fund. The Court entered an Order on June 18, 2007 governing the briefing of the MDL-926 Settlement Fund lien claims matter. The Court’s June 18, 2007 Order states that the threshold issue of “standing or any legal basis to assert a lien against Settling Claimants” will be addressed first.

The MDL-926 Settlement Fund filed its Motion for Resolution of Lien Claims Against Settlement Facility - Dow Corning Trust Payments to Claimants on June 29, 2007. Opposition briefs were filed by the Reorganized Debtor Dow Corning Corporation (“DCC”), the Claimants’ Advisory Counsel (“CAC”) of the SF-DCT and the Plaintiffs’ Steering Committee in the MDL-926 (“PSC MDL-926”). The MDL-926 Settlement Fund filed a reply brief.

II. FACTS

In 1994, a Global Settlement in the amount of \$4.2 billion before the United States District Court for the Northern District of Alabama was approved settling claims of women who received silicone gel breast implants prior to June 1, 1993. DCC was part of the Global Settlement. The Global Settlement did not come to fruition. In 1995, DCC filed a voluntary petition for reorganization, under chapter 11 of the Bankruptcy Code, in the Bankruptcy Court for the Eastern District of Michigan. A Revised Settlement Program (“RSP”) was agreed to by Bristol, Baxter, 3M and McGhan & Union Carbide (“RSP Defendants”) and approved by the MDL-926 court. The MDL-926 began making payments on claims in 1996.

Payment of claims identifying RSP implants and Dow Corning implants on the Proof of Manufacturer form (“POM”) completed by the RSP claimants were reduced by fifty percent (50%) under the RSP. The MDL-926 Claims Office did not reduce the RSP benefits paid to claimants who indicated “unknown” manufacturers’ implants on the form. These RSP claims were paid 100% under the RSP. Many RSP claimants received their payments before the DCC Amended Joint Plan of Reorganization was approved by the Bankruptcy Court on February 4, 1999 and effective June 1, 2004. When the SF-DCT began receiving and processing claims, claimant information was shared between the SF-DCT and the MDL-926 Claims Office. Upon learning that some of the

MDL-926 claimants who were paid 100% by the RSP also applied to the SF-DCT, the MDL-926 filed liens with the SF-DCT against these claimants' payments. The MDL-926 Settlement Fund claims that these claimants should not be allowed to "double dip" by receiving full payment from the SF-DCT.

The MDL-926 Settlement Fund claims that at the invitation of the SF-DCT, specifically through the previous Claims Administrator, Elizabeth Wendy Trachte-Huber, the MDL-926 Settlement Fund was to file written notices of 193 lien claims against the funds due to Lien Claimants before the SF-DCT pursuant to the Court's June 30, 2005 Order. (Eliason Aff., ¶¶ 9-10) The MDL-926 filed a Proof of Lien for 69 of the MDL 926 Liens. Of the 69 MDL 926 Liens, 5 have been paid by SF-DCT, 4 were withdrawn by the MDL 926, one (1) is a duplicate and one was added in June 2007, leaving 60 lien claims as of September 2007. Of the 60 lien claims, SF-DCT claims that 17 are not ripe or are on "fraud hold", leaving 43 MDL 926 Lien Claims which SF-DCT has indicated to the MDL 926 Settlement Fund are ripe for decision by this Court.¹

The MDL-926 Settlement Fund claims that the SF-DCT has failed to pay the MDL-926 liens, including those liens where the Lien Claimant or the Lien Claimant's counsel has given notice of consent to the MDL-926 and one MDL-926 Lien which the SF-DCT agreed on December 6, 2006 to honor. The MDL-926 Settlement Fund claims that the SF-DCT's honoring of the one MDL-926 Lien on December 6, 2006 was in violation of the Lien Procedure, Section 4.02(b). The MDL-926 further claims that the SF-DCT has failed to provide the MDL-926 with any claimant objection or other response to the MDL-926 Settlement Fund liens as required by the Lien Procedures, Section

¹ These were the number of lien claims before the SF-DCT at the time of the filing of this motion.

4.02(d). As a result, the MDL-926 Settlement Fund claims that it was at a disadvantage in its preparation of its Motion and Brief.

The MDL-926 Settlement Fund claims that during the May 17, 2007 conference call² with this Court, Ralph Knowles, for the MDL-926, agreed to provide as much detail as possible for each MDL-926 Lien in this submission. Mr. Edward Gentle, Escrow Agent for the MDL-926, wrote a June 4, 2007 letter to Mr. Austern, the SF-DCT Claims Administrator, to provide Mr. Gentle any Lien Claimant responses as required by Section 4.02(d) of the Lien Procedures. On June 19, 2007, the SF-DCT declined to provide the documents, with the Claimant Advisory Committee's indication that the motion at issue before the Court was a preliminary proceeding on the validity of the MDL-926 Liens. The MDL-926 Settlement Fund claims that they are "unaware of any other Lienholder being so treated by SF-DCT, in contravention of its own rules." (MDL-926 Motion, p. 3) The MDL-926 Settlement Fund claims that this "unfortunate development renders our compliance with Mr. Knowles' granular presentation request impossible, and it prevents us from fully and fairly describing the equitable basis for the MDL 926 Liens, most of which is factually specific to each Lien Claimant." (MDL-926 Motion, p. 3)

The MDL-926 Settlement Fund claims that the SF-DCT is ready to pay the 60 current Lien Claimants and is awaiting the resolution of the lien issues, subject to ripeness and "fraud" issues for 17 of the 60 current Liens. The MDL-926 Settlement Fund served the remaining 43 ripe current Lien Claimants with its motion and brief, in accordance to the Court's June 19, 2007 Order establishing these proceedings.

The CAC and the Debtor's Representative indicate in their responses that pursuant to the

² The Court calendar notes a May 22, 2007 telephone conference.

May 22, 2007 Telephone Conference call with the SF-DCT parties and the MDL-926 Escrow Agent and Claims Administrator, along with the RSP PSC-926 member, it was agreed by all that the motion be filed by the MDL-926 Settlement Fund would address the initial common threshold issue of standing or any other legal basis to assert the lien against the Settling Claimants in the Dow Corning Case as set forth in the June 18, 2007 Order. It is noted that this Order was reviewed by the MDL-926 Escrow Agent and the SF-DCT parties before the Court's entry of the Order.

The only issue before the Court is as noted in the June 18, 2007 Order—the threshold issue of “standing or any legal basis to assert a lien against Settling Claimants.” The facts underlying the 43 current claims, including the submissions regarding these claimants by the MDL-926 Settlement Fund, are not relevant to the discussion. The issue of whether the SF-DCT has followed the Lien Procedures with regards to providing the MDL-926 Settlement Fund documentation regarding responses by SF-DCT Claimants to the MDL-926 Liens is also not relevant to this discussion.

In its reply, the MDL-926 Settlement Fund agreed it did not specifically address the “standing” issue noted in the Court's June 17, 2007 Order but did address the “or” portion of the June 17, 2007 Order—“*or any legal basis to assert a lien against Settling Claimants in the Dow Corning case.*” (June 17, 2007 Order, p. 2, ¶3)

Based on the Court's June 17, 2007 Order, to which all parties agreed, the Court will address the initial threshold issue of “standing or any legal basis to assert a lien against Settling Claimants in the Dow Corning case.” (June 17, 2007 Order, p. 2, ¶3)

III. ANALYSIS

A. Standing

Standing is a jurisdictional matter and is a threshold question to be resolved by the court

before the court may address any substantive issues. *Planned Parenthood Ass'n v. City of Cincinnati*, 822 F.2d 1390, 1394 (6th Cir. 1987). Article III of the United States Constitution limits the federal courts' jurisdiction to "cases and controversies." In *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), the United States Supreme Court set forth three elements to establish standing: 1) that he or she suffered an injury in fact, which is both concrete and actual or imminent; 2) that the injury is caused by defendants' conduct; and 3) that it is likely, as opposed to speculative, that the injury will be redressed by a favorable decision. *Lujan*, 504 U.S. at 560-61. The party seeking redress "bears the burden of demonstrating standing and must plead its components with specificity." *Coyne v. American Tobacco Co.*, 183 F.3d 488, 494 (6th Cir. 1999)(citing *Valley Forge Christian College v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 472 (1982)).

The CAC argues that the Escrow Agent has no standing or authority to act in dual and conflicting capacities, as a neutral MDL-926 Claims Office and as a collection arm of the RSP Defendants seeking to recover money on behalf of the RSP Defendants. The CAC also argues that the Escrow Agent has no authority to take legal action against claimants on behalf of the MDL-926 Settlement Fund. Because the RSP Defendants funded the settlement, the CAC argues that the MDL-926 Settlement Fund itself has no real stake in the outcome. The RSP Defendants have not appeared in this proceeding to seek payment of monies. The CAC claims that the MDL-926 Settlement Fund is simply an escrow bank account disbursing monies to claimants made in settlement of those claims. The CAC argues that the MDL-926 Settlement Fund is but an administrative funding agent in the process and that the alleged injury here, if any, is entirely borne by the RSP Defendants themselves. The CAC further states that the Escrow Agent did not receive

authorization from the Investment Committee to file liens and the instant motion. The SF-DCT SFA only allows “set-offs” to payments previously made to a claimant or the claimant’s physician or other health care provider under the Dow Corning Removal Assistance Program, or any payments in prior partial settlement between Dow Corning and the claimant not resulting in a general or full release. (SFA, §§ 5.01 and 7.02(c)).

The RSP PSC-MDL 926 argues that the Escrow Agent and the MDL-926 Settlement Fund have no standing in that the MDL Settlement Plan has no provision requiring the “payback” of any monies to the MDL Fund. If the MDL Settlement Fund overpaid any of its claimants, the MDL Settlement Program does not provide any authority for the MDL Settlement Fund to pursue any monies from the claimants. The RSP PSC MDL-926 further argues that because Dow Corning was not a participant in the RSP and no one involved in the RSP knew at the time the RSP was entered into in 1995 what would become of the claims against Dow Corning, there was no requirement in the MDL Settlement Plan that an MDL-926 claimant reimburse the MDL-926 Settlement Fund for future benefits received by an MDL-926 claimant under any Dow Corning plan. The DCC Plan of Reorganization in the Bankruptcy Court was not approved until 1999 and many of the RSP claimants were paid by the time the DCC Plan became effective in 2004.

Although it agreed that its initial brief did not address the standing issue, the MDL-926 Settlement Fund argues in its reply brief that based on the Court’s Lien Procedures, it has standing to argue its liens before the Court. The MDL-926 Settlement Fund further argues that it and the Escrow Agent have not received any indication from the MDL-926 Court that its actions seeking redress from the SF-DCT are not authorized. The MDL-926 Fund claims that it and the Escrow Agent have the responsibility to properly manage and disburse the monies contained in the Fund.

The MDL-926 Settlement Fund therefore has a responsibility to attempt to retrieve monies overpaid to claimants. The Escrow Agent is required to disburse monies from the MDL-926 Settlement Fund only in accordance with the terms of the Escrow Agreement and those disbursements must be made in accordance with Disbursement Schedules. (Escrow Agreement, ¶ 4(d)) Payments which are in excess of the Disbursement Schedules are the province of the Escrow Agent to attempt to remedy.

The Escrow Agreement indicates that the Escrow Agent has “oversight” of the funds which the Escrow Agent argues allows him to pursue reimbursement of overpaid funds from the RSP claimants who have been paid by the MDL-926 Settlement Fund and have then sought benefits from the SF-DCT Settlement Fund. The Escrow Agent is attempting to seek such reimbursement through the liens filed with the SF-DCT. The MDL-926 Settlement Fund admits in its reply that there was no vote by the Investment Committee regarding the instant motion. The MDL-926 Settlement Fund does not fully respond to the question of whether the RSP Defendants (3M, Bristol, Baxter) agreed to the filing of the instant motion or to pursue the liens before the SF-DCT. The MDL-926 Settlement Fund does not indicate whether the RSP Defendants have any knowledge of the actions taken by the Escrow Agent regarding the liens filed with the SF-DCT and the filing of this motion. There is also no indication by the MDL-926 Settlement Fund that the MDL-926 Settlement Fund is an entity that can sue or be sued.

The MDL-926 Settlement Fund turns the CAC and RSP PSC’s arguments around, claiming that neither the CAC nor the RSP PSC have standing to argue this matter. The MDL-926 Settlement Fund notes that the CAC does not administer the SF-DCT nor is it authorized to represent individual claimants under the SFA. See SFA, § 4.09(c). The MDL-926 Settlement Fund asserts that the RSP PSC MDL-926 was formed to direct the litigation with respect to breast implants in the MDL-926

Court and, without expressly so stating in its reply brief, infers that the RSP PSC MDL-926 should not appear before this Court. The MDL-926 Settlement Fund “suggests” that the “Lien Real Parties in Interest”—the SF-DCT Claimants, should be invited to appear and express their position on the MDL-926 lien.

The June 18, 2007 Order of this Court directed the MDL-926 Claims Office to send a copy of the motion and brief to all Settling Claimants. The June 18, 2007 Order further states that the CAC shall assist in coordinating a response by the Settling Claimants and that nothing in the Order precludes an individual Settling Claimant from filing a response to the MDL-926 Settlement Fund’s motion. The individual Settling Claimants have notice of the motion and were in fact invited to file responses and appear for the hearing if they so chose.

Applying the standing factors set forth by the Supreme Court—as to the first factor—whether the MDL-926 Settlement Fund suffered an injury in fact, which is both concrete and actual or imminent—the MDL-926 Settlement Fund suffered an injury in fact if it overpaid certain claimants. The MDL-926 Settlement Fund does not argue that RSP claimants were not entitled to payment under the RSP provisions when they initially submitted their claims. The MDL-926 Settlement Fund only argues that it overpaid certain RSP claimants because they *later* filed a claim with the SF-DCT. The MDL-926 Settlement Fund does not point to any provision under either the RSP Plan or the DCC Plan which requires a paid RSP claimant to return any overpaid funds to the MDL-926 Settlement Fund. As argued by the RSP PSC MDL-926, the RSP claimants had already been paid even before the DCC Plan was approved and became effective. The RSP Plan, therefore, could not have based its payment procedures on any provisions on a DCC Plan which was not in existence at the time the RSP claimants were paid. The MDL-926 Settlement Fund cannot show injury based

on an unanticipated occurrence in the future. Any claimed injury was not concrete, actual or imminent at the time the MDL-926 Settlement Fund paid the RSP claimants or at the time the RSP Plan went into effect since the status of any DCC Plan was not finalized.

Regarding the second factor—that the injury is caused by the SF-DCT’s conduct—it is clear that because the SF-DCT was not in existence at the time the RSP went into effect, the SF-DCT could not have caused the injury, which the MDL-926 Settlement Fund argues is the overpayment to the RSP claimants. The RSP claimants may have caused the injury if they in fact had reason to know they also had Dow Corning implants and did not so notify the MDL-926 Settlement Fund (which the Fund so notes in their motion). However, such a claim would then be against those individual claimants, not the SF-DCT. The MDL-926 Settlement Fund has not shown that this Court has jurisdiction over any fraud or breach of contract claim the MDL-926 Settlement Fund may have against the RSP claimants or that this is the proper forum for such a claim.

The third factor is whether it is likely, as opposed to speculative, that the injury will be redressed by a favorable decision. Because the Court finds the MDL-926 Settlement Fund is unable to meet the first two factors, it is merely speculative that the injury, as argued by the MDL-926 Settlement Fund, could be redressed by a favorable decision.

The MDL-926 Settlement Fund does not address the three factors noted above in its reply brief but argues that because this Court has a Lien Procedure in place, the MDL-926 Settlement Fund is properly before the Court. The Lien Procedure entered by this Court states:

These Procedures apply solely and exclusively to asserted lien claims against settling claimants. More Specifically, these Procedures apply to disputes between: (1) Personal Injury Claimants who elect to settle their claim in the SF-DCT and whose claims have been reviewed and (1) determined to be eligible and (2) had an Allowed Amount determined (referred to generally in these Procedures as “claimants”),

and (2) persons or entities who assert the right to receive all or portion of the payment(s) to Claimants from the SF-DCT (referred to generally in these Procedures as “Alleged Lienholder”). Alleged Lienholder claims do not include claims regarding the distribution of assets in a probate estate or a marital estate and do not include claims against Claimants who assert claims against the Litigation Facility.

(Lien Procedures, § 1.01)

The MDL-926 Settlement Fund has not pointed to any contractual or any other right to a portion of the payments made to SF-DCT claimants. The MDL-926 Settlement Fund cannot point to any language in the RSP Plan nor to any documents signed by the RSP claimants which entitles the MDL-926 Settlement Fund to seek recovery of any monies if the RSP claimant at some point in time discovers that the RSP claimant also had a Dow Corning implant. The MDL-926 Settlement Fund’s theory that it should recover 50% of what it had already paid to the RSP claimants because the RSP claimants are now before the SF-DCT is not supported by any of the RSP documents submitted by the parties. The SF-DCT and Dow Corning were not part of the RSP. The RSP claimants who received payment from the MDL-926 Settlement Fund did not “promise” to repay the MDL-926 Settlement Fund if at any time the RSP claimants eventually discovered that an “unknown” implant was in fact a Dow Corning implant.

There may well have been fraud before the RSP but that issue is between the RSP and the RSP claimant as previously noted. In some cases, the RSP claimant may receive a windfall when the RSP claimant receives a payment from the SF-DCT. However, the MDL-926 Settlement Fund cannot point to any contract or agreement between the RSP, the MDL-926 Settlement Fund and the RSP claimant wherein the RSP claimant agrees to repay the RSP sometime in the future if the RSP claimant later decides to file a claim before the SF-DCT.

The MDL-926 Settlement Fund cannot show that it has a “right to receive all or a portion

of the payment(s) to Claimants from the SF-DCT” as required under the Lien Procedures. The MDL-926 cannot meet the constitutional requirement of standing nor the standing required under the Lien Procedures entered by this Court.

B. Equitable Lien

The only other issue before this Court, as set forth in the Court’s June 18, 2007 Order, is whether the MDL-926 Settlement Fund has “any legal basis to assert a lien against Settling Claimants in the Dow Corning case.” As argued by the MDL-926 Settlement Fund, it is proceeding under this portion of the Order and that is the reason why it did not address the “standing” issue in its initial Motion and Brief. The remaining issue is if the MDL-926 Settlement Fund cannot meet the standing requirement under the Constitution and under the Lien Procedures, whether the MDL-926 Settlement Fund has an “equitable lien” against the SF-DCT claimants’ payments before the SF-DCT.

In addressing the “equitable lien” issue, all the parties cite Texas law in this case because the SF-DCT is located in Texas. The MDL-926 Settlement Fund admits in its reply brief that, “Yes, MDL 926 is asserting only an equitable lien with respect to its right to SF-DCT funds due claimants as set forth in its Brief.” (Reply Br., p. 14, ¶ 30)

The party asserting an equitable lien must establish three elements: 1) that there exists an express or implied agreement between the parties demonstrating a clear intent to create a security interest in order to secure an obligation between them; 2) that the parties intended specific property to secure the payment; 3) and that there is no adequate remedy at law. *In re RONFIN Series C Bonds Sec. Interest Litig.*, 183 F.3d 366, 371 (5th Cir. 1999).

The MDL-926 Settlement Fund cannot meet the first element that there exists an express or

implied agreement between the MDL-926 Settlement Fund and the SF-DCT claimants. As noted above, the MDL-926 Settlement Fund has not pointed to any portion of the RSP or any documents signed by the RSP claimants showing an express or implied agreement between them demonstrating a clear intent to create a security interest in any RSP claimant's settlement funds they may receive or have received from the SF-DCT.

The second element cannot be met in that the MDL-926 Settlement Fund has not shown that the MDL-926 Settlement Fund and the RSP claimants intended a specific property—here future payments from any other sources involving the RSP claimants' implants, including any SF-DCT payments—to secure any repayment to the RSP if later the RSP claimants discovered that the “unknown” implants were DCC implants.

As to the adequate remedy at law element—the MDL-926 Settlement Fund may have a fraud claim (or lawsuit) against the individual RSP claimants but not in this forum before this Court.

The MDL-926 Settlement Fund cannot prevail on its argument that it has an equitable lien against the SF-DCT claimants' payments from the SF-DCT.

C. Agreed to Liens

The MDL-926 Settlement Fund claims that of the five liens that are “ripe” for this Court's decision, where either the parties or their attorneys agreed to the liens, such an agreement, if “crystal clear” between the MDL-926 Settlement Fund and the SF-DCT claimants, should be honored by the SF-DCT. The CAC, RSP PSC MDL-926 and DCC did not address this issue.

If the SF-DCT claimants agreed to the liens, this could constitute a “new” agreement between the MDL-926 Settlement Fund and the SF-DCT claimants. The SF-DCT will honor the parties' new agreement.

IV. CONCLUSION

For the reasons set forth above,

IT IS ORDERED that the Motion for Resolution of Lien Claims Against Settlement Facility-Dow Corning Trust Payments filed by the MDL-926 Settlement Fund (**Docket No. 539, filed June 29, 2007**) is GRANTED to the extent that the Court has “resolved” the issue but DENIED in that the MDL-926 Settlement Fund cannot show standing or that it has an equitable lien against the SF-DCT’s claimants’ payments from the SF-DCT.

/s/ Denise Page Hood

DENISE PAGE HOOD
UNITED STATES DISTRICT JUDGE

Dated: August 8, 2008

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on this date, August 8, 2008, by electronic means and/or first class U.S. mail.

S/Sakne Srour

Deputy Clerk