UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE:

SETTLEMENT FACILITY MATTERS,

Case No. 00-00005

Dow Corning Corporation,

Honorable Denise Page Hood

Reorganized Debtor.

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ORDER REGARDING OBJECTIONS FILED TO THE ENTRY OF CONSENT ORDER TO ESTABLISH GUIDELINES FOR DISTRIBUTIONS FROM, AND TO CLARIFY THE ALLOCATION OF, THE COVERED OTHER PRODUCTS FUND

On July 25, 2007, the Claimants' Advisory Committee ("CAC") and the Debtor's Representatives ("DR") submitted a proposed Consent Order to Establish Guidelines for Distributions from, and to Clarify the Allocation of, the Covered Other Products Fund. Exhibit A to the Order sets forth a maximum payment grid applicable to Class 9 Claimants. The proposed Consent Order was served on all interested claimants who have filed claims in the Settlement Facility Dow Corning Trust ("SFDCT"). Three objections were filed to the entry of the Order. The Objectors were: Kathryn Cooper of Hawaii, Cleo Fitzgerald of Washington, and Theresa Triffon of California. A notice of hearing on the Consent Order was served on the Objectors. The hearing was held on October 18, 2007 and the Objectors were allowed to appear by telephone. Cleo Fitzgerald and Theresa Triffon presented their arguments during hearing. The Objections presented in writing and during the hearing are summarized as follows:

Cleo Fitzgerald:

- Ms. Fitzgerald stated that expedited payments are not included in the grid and that she could not obtain her medical records.
- Ms. Fitzgerald did not fully understand the binding nature of selecting the Expedited Release Payment option.

- Under this option, claimants may not have had ample time to identify, request and secure medical records.
- Paragraph 6 of the Order states that due to the lack of claimant response under classes 9, 10.1 and 10.2, the number is substantially smaller than estimated. Based on this, the Expedited Release Payment option should be reconsidered. The claimant should be able to return the $1,000 payment or have it deducted from any new compensation aware if applicable.
- Allow Other products class 9 and 10 claimants to submit an error correction procedure for filing an incorrect option of Expedited Release Payment and be able to submit a request for review of additional medical condition.

Theresa Triffon:

- Ms. Triffon stated that her objection was related to the technicalities of the process, that the claimants have been treated unjustly, that the initial notice was not adequate because there was insufficient information provided to opt in or out and that the burden of proof is impossible.
- The excess funds noted in the Order is arbitrary and unfair exclusion of certain classes of "other" implants. She believes that a significant percent of these excess funds are due to "illegitimate," arbitrary and injustice of excluding those categories
- The Claims Assistance Program did not give persons in the categories of "other products" adequate notice. The Claims Administration failed in their responsibility to act in good faith towards those persons who were unjustly excluded. The Claims Administration has had the medical records for years.
- There was inadequate notice because of the "type" of other implant they received. The Claims Administrator should have done whatever research necessary to deal with the issue of claimants attempting to obtain records about "other products," such as silastic or silicone based implants, particularly custom implants.
- The Claims Administration failed to provide data to the claimants regarding whether they should opt out or not.
- The other category claimants unfairly had to make a decision to opt out or not when they did not have sufficient information.
- Lack of pre-review prior to determining whether to opt out or not.
- Provide just settlement to other implants.

Kathryn Cooper:

- The proposal does not follow the original information provided to the claimants in the Amended Joint Disclosure Statement and information meetings held on February 23, 2006 in Honolulu, Hawaii.
- The Order is a revised distribution plan which only pays a portion of the funds originally allocated to the claimants of these classes.
- Section 22 of the Order is contrary to what was stated in the Amended Joint Disclosure Statement. Previously, the remaining amounts were to be disbursed to other product claimants. There was supposed to be no excess funds. Now, it is considered excess funds.

At the hearing, counsel for the DR summarized the relevant provision of the Amended Joint Plan of Reorganization ("Plan") and the provisions set forth in the proposed Consent Order. Counsel argued that the Objectors' statements had no bearing on the entry of the Order. Counsel stated that the expedited release provision was guided by the Plan limitations and that the "Covered Other Products" was defined in the disclosure statements presented to the claimants during the balloting period. If the claimants were not satisfied by the settlement options before the Settlement Facility, the claimants had the option to pursue litigation, which they did not.

The Settlement Facility and Fund Distribution Agreement ("SFA") defines "Covered Other Products Fund" as a $36 million Net Present Value sub fund based on expert testimony during the Plan Confirmation hearings. Although the amount to be paid to each individual eligible Settling Covered Other Products Claimant has not been determined, based upon a review of the existing claims, the CAC and the DR claim that the maximum aggregate amount to be paid to Settling Covered Other Products Claimants should not exceed $15 million. The CAC and the DR indicate that they have the right to jointly amend or modify the Plan, upon order of the Court. (Plan, § 11.4) The CAC and the DR have conferred regarding the Premium Payments and Maximum Payment Grid and have attached the Grid as an exhibit to the order. Since the funds needed to pay eligible

Covered Other Products Claims will be substantially less than the maximum amount of the Covered Other Products Fund, the excess funds should be allocated to the Settlement Fund for use in payment of any and all Settling Claimants and expenses of the SFDCT. Annex A indicates that there shall be a distribution of excess monies in the Covered Other Products Fund to those Settling Covered Other Products Claimants who have qualified for a Medical Condition Payment and who further are determined by the Claims Administrator and the CAC to be "the most seriously injured." Any excess funds shall be and remain in part of the general Settlement Fund and shall be made available for the payment of any costs or expenses of the SF-DCT.

Having reviewed the proposed Consent Order and the Objectors' written and oral arguments, the Court finds that the proposed Consent Order is a proper modification of the Plan between the CAC and the DR as set forth in § 11.4 of the Plan. The CAC and the DR reasonably based their conclusion that the maximum aggregate amount to be paid to Settling Covered Other Products Claimants should not exceed $15 million after reviewing the claims currently before the SFDCT. Because the funds needed to pay eligible Covered Other Products Claims will be substantially less than the maximum amount of the Covered Other Products Fund of $36 million, the CAC and the DR's proposal that the excess funds should be allocated to the Settlement Fund for use in payment of any and all Settling Claimants and expenses of the SFDCT is a reasonable use of the excess funds.

Accordingly,

IT IS ORDERED that the proposed Consent Order To Establish Guidelines For Distributions From, And To Clarify The Allocation Of, The Covered Other Products Fund submitted by the CAC and the DR **(Docket No. 549)** is ENTERED and FILED as an Order of the Court. The Objections **(Docket Nos. 573, 579 and 583)** are denied.

/s/ DENISE PAGE HOOD
DENISE PAGE HOOD
United States District Judge

DATED: December 12, 2007