

**F I L E D**

**FEB 18 2005**

**CLERK'S OFFICE  
DETROIT**

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

**In re:  
  
Dow Corning Corporation,  
  
Reorganized Debtor**

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§**

**Case No. 00-CV-00005-DT  
(Settlement Facility Matters)  
  
Hon. Denise Page Hood**

**STIPULATION AND ORDER ESTABLISHING  
PROCEDURES FOR THE REVIEW OF ASSERTED LIENS  
AGAINST SETTLING IMPLANT CLAIMANTS**

Pursuant to Section § 7.02(a)(iii) of the Settlement Facility and Fund Distribution Agreement ("SFA"), the Finance Committee has the authority to "seek orders from the District Court ... establishing procedures for distributing payments involving liens or disputed payees." The Finance Committee, Debtor's Representatives, and Claimants' Advisory Committee have presented to the Court this agreed Stipulation and Order that adopts the "Procedures for the Review of Asserted Lien Claims Against Settling Implant Claimants."

The Court retains jurisdiction over the assets of the SF-DCT and has authority to resolve controversies and disputes regarding interpretation of the Amended Joint Plan of Reorganization and Plan Documents. See Amended Joint Plan § 8.7.3. See also SFA §§ 4.01 and 10.09.

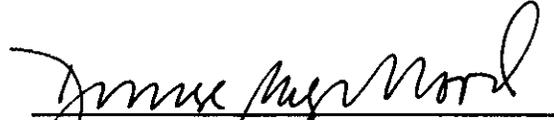
After consideration of the agreement of the Finance Committee, Debtor's Representatives and Claimants' Advisory Committee,

IT IS ORDERED that the Procedures for the Review of Asserted Lien Claims Against Settling Implant Claimants attached as Exhibit 1 hereto are hereby approved.

IT IS FURTHER ORDERED that these Procedures modify and supersede the Court's prior Order dated August 7, 2003, and these Procedures shall control.

IT IS FURTHER ORDERED that the fact that the Lien Judge has a current or prior association with the SF-DCT or the Finance Committee shall not be considered a conflict and shall not be an impediment to the Lien Judge's service.

Dated this FEB 18 2005 day of \_\_\_\_\_ 2005.

  
Denise Page Hood  
United States District Judge

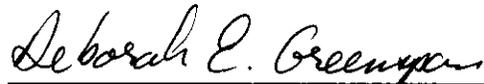
SO STIPULATED:

FOR THE FINANCE COMMITTEE:

  
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FOR DOW CORNING CORPORATION:

FOR THE CLAIMANTS' ADVISORY COMMITTEE:

  
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**EXHIBIT 1 TO AGREED STIPULATION AND ORDER**  
**PROCEDURES FOR THE REVIEW OF ASSERTED**  
**LIEN CLAIMS AGAINST SETTLING IMPLANT CLAIMANTS**

Section 1. Preamble

- 1.01 The Procedures for the Review of Asserted Lien Claims Against Settling Implant Claimants ("Procedures") shall apply to correspondence received by either the Dow Corning Claims Administration Facility (CAF) during the pendency of the bankruptcy proceedings (May 15, 1995 – June 1, 2004)<sup>1</sup> or the Settlement Facility-Dow Corning Trust (SF-DCT) or CAF prior to the termination of the SF-DCT that purports to assert a lien against the recovery of a Settling Personal Injury Claimant. 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 a 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 asserted against Claimants who assert claims against the Litigation Facility.

Section 2. Definitions

- 2.01 Unless otherwise defined in these Procedures, capitalized terms in these Procedures shall be governed by the definitions in the Amended Joint Plan of Reorganization ("Plan") and the Plan Documents.
- 2.02 References to the terms "Claimant" or to "Alleged Lienholder" shall include the duly authorized legal representatives of each.
- 2.03 In determining the maximum amount that may be subject to an Alleged Lienholder's claim, if the Claimant is unrepresented, then, for purposes of these Procedures only, "Allowed Amount" means the amount of payment the SF-DCT has determined should be awarded a Claimant on his/her claim(s). If the Claimant has an Attorney of Record and the Attorney of Record is not also the Alleged Lienholder, then "Allowed Amount" shall mean the amount of payment the SF-DCT has determined should be awarded a Claimant on his/her claim(s), less the applicable attorney fees and allowed expenses.

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<sup>1</sup> Dow Corning has provided the SF-DCT with data indicating claims for which a potential lien has been asserted.

### Section 3. Lien Judge.

- 3.01 The Court previously appointed Frank Andrews as the Lien Judge. Any successor Lien Judge shall be appointed by the Court upon recommendation of the Finance Committee. The Claimants' Advisory Committee and Debtor's Representatives shall have the right to comment upon the recommendation of the Finance Committee.
- 3.02 The fact that the Lien Judge has a current or prior association with the 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 or a Claimant and any Alleged Lienholder shall be considered a conflict of interest and will preclude the Lien Judge from serving in that dispute. In the event of such a conflict, the Alleged Lienholder will be advised of the right to file a motion directly with the District Court and the motion will be filed and heard de novo by the District Court under applicable federal and local rules.

### Section 4. Notice Process/Proof of Lien

- 4.01
  - a. Upon receipt of an Alleged Lienholder claim, the SF-DCT shall send a Notice -- via Certified, first-class mail -- and Proof of Lien form (Exhibit 1 to these Procedures) to the Alleged Lienholder. The SF-DCT shall send the Notice and Proof of Lien to the Alleged Lienholders who are identified in the data provided to the SF-DCT by the CAF. The Alleged Lienholder must return the completed Proof of Lien form and supporting documentation to the SF-DCT within 30 days from the date of the Notice from the SF-DCT.
  - b. The Claims Administrator may grant a one-time extension of time to the Alleged Lienholder.
  - c. Proof of Lien forms that contain incomplete information shall be returned to the Alleged Lienholder with a notice that the form cannot be accepted until the Alleged Lienholder completes the form. The Alleged Lienholder shall have 15 days from the date of the SF-DCT letter returning the incomplete form to complete and return the form.
  - d. If the Alleged Lienholder fails to comply with Sections 4.01(a) or 4.01(c), the Alleged Lienholder shall be barred from asserting the lien. In such event the SF-DCT shall notify the Alleged Lienholder that the lien may not be pursued with the SF-DCT. The Alleged Lienholder shall have 30 days from the date of the letter from the SF-DCT to file a Notice of Appeal to the District Court under the standard articulated in Rule 60 of the Federal Rules of Civil Procedure. If the District Court determines that the Alleged Lienholder has met the burden in FRCP 60, then the Alleged Lienholder's claim shall be processed by the SF-DCT pursuant to these Procedures.

- e. If the Alleged Lienholder does not submit a timely Proof of Lien and does not file a timely Notice of Appeal, or has had its appeal to the District Court dismissed or denied, then the SF-DCT shall process and pay the Claimant's claim without regard to the asserted lien, and shall have no further obligation, if one ever existed, to the Alleged Lienholder.
- 4.02 a. Upon receipt of the Proof of Lien form and supporting documentation, if any, the SF-DCT shall provide a copy to the Claimant, or to the Claimant's Attorney of Record if the Claimant is represented, along with a copy of these Procedures and a Notice of Objection or Resolution of Lien form (Exhibit 2 to these Procedures). If the Claimant wishes to contest the asserted lien, (s)he must do so by returning a completed Notice of Objection form to the SF-DCT no later than 45 days from the date of the letter.
- b. If the Claimant fails to file the Notice of Objection or Resolution of Lien form, as specified at Section 4.02(a) above, then the SF-DCT shall be authorized to honor the asserted lien (but is not required to do so if the lien is otherwise deficient or invalid) and pay the Claimant's claim minus the Alleged Lienholder's lien amount.
- c. If the Claimant submits the Notice of Objection or Resolution of Lien form and informs the SF-DCT that (s)he consents to the lien and lien amount or has resolved the lien, the SF-DCT is authorized to withhold the agreed amount from the Claimant's payment.
- d. If the Claimant submits an objection on the Notice of Objection or Resolution of Lien form, the SF-DCT shall provide a copy of the form to the Alleged Lienholder. In addition, the SF-DCT shall forward the Proof of Lien and Notice of Objection or Resolution of Lien forms along with supporting documentation to the Lien Judge for resolution, as specified at Section 6 below.
- 4.03 The Alleged Lienholder shall not be entitled to any information regarding the Claimant or her claim that the SF-DCT or the Lien Judge determines is confidential, including information on the Allowed Amount of the Claimant's claim.

#### Section 5. Payment Pending Resolution of Lien

- 5.01 If the asserted lien amount is less than the amount of the Claimant's Allowed payment, then the SF-DCT shall pay the undisputed portion of the Allowed payment to the Claimant without delay, pending the resolution of any asserted lien.

#### 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, including ruling on the merits based solely upon the materials provided.

- 6.02 The Lien Judge shall permit no form of discovery between the parties; however, the Lien Judge may seek additional information and documents from the parties, the SF-DCT, and/or other sources at his/her discretion.
- 6.03. The Lien Judge is not required to return any documents. Copies will not be made available, and all documents received by the Lien Judge will be destroyed 6 months after the dispute has been resolved.
- 6.04 In making a determination of attorney fees and expenses that are part of an Alleged Lienholder 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 an Alleged Lienholder claim.
- 6.05 If an Alleged Lienholder is seeking to recover an amount for expenses incurred that are part of an Alleged Lienholder claim (exclusive of any expenses incurred in the implementation of these 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 the Claimant Information Guide for Class 5 Breast Implant Claims and as further supplemented by Court Order.<sup>2</sup> All expenses must be reasonable in relation to the work performed and the result obtained.
- 6.06 Any award of attorney fees and/or expenses sought by a former attorney of the Claimant's Alleged Lienholder 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. The Lien Judge shall have discretion to reduce the amount of attorney fees based on the amount of work performed and the value of services provided. 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.
- 6.07 Within 90 days (or such longer period as circumstances require) of the receipt of documents identified in Section 4.02(d) above, the Lien Judge shall issue a written decision which shall be sent to the SF-DCT. The SF-DCT shall be responsible for providing the Lien Judge's decision to the Alleged Lienholder and the Claimant. The SF-DCT shall serve the decision within 10 days of its issuance.
- 6.08 If the Lien Judge makes an award requiring payment to an Alleged Lienholder, the time to appeal set forth in Section 7 below has expired, and neither party has filed a timely appeal, then the SF-DCT shall issue payment as specified by the Lien Judge. The SF-DCT will issue separate checks to the Claimant and to the Alleged Lienholder.

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<sup>2</sup> See Agreed Order Adopting Q&A's Regarding Article IX of Annex A, The Claims Resolution Procedures, July 22, 2004.

#### Section 7. Appeals.

- 7.01 Either 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.
- 7.02 Failure to appeal within this time shall result in either the dismissal of the asserted lien or recognition of the validity of the lien in whole or in part as appropriate based on the decision of the Lien Judge. The SF-DCT shall be entitled to pay the Claimant the appropriate portion of the Allowed claim based on the decision of the Lien Judge.
- 7.03 The SF-DCT shall be entitled to pay the Claimant the appropriate portion of the Allowed claim based on the decision of the District Court after all appeals are exhausted or after the time for appeals has expired.

#### Section 8. Fees.

- 8.01 The Lien Judge shall be paid by the SF-DCT at the Court -approved hourly rate. If the Court appoints as a successor Lien Judge, an individual who is a salaried employee of the SF-DCT, then such Lien Judge shall not be paid any amount other than the approved salary.

#### Section 9. Jurisdiction and statute.

- 9.01 The District Court shall exercise continuing jurisdiction over these Procedures.
- 9.02 The Federal Arbitration Act shall not apply to Alleged Lienholder claims.

#### Section 10. Deadlines

- 10.01 For purposes of these Procedures the computation of days shall include Saturday, Sunday, and federal holidays if the time period is more than 20 days. If the time period is 20 days or less, the computation of days shall exclude Saturday, Sunday, and federal holidays. If the time period -- regardless of whether it is greater than, equal to or less than 20 days -- would end on a Saturday, Sunday, or federal holiday, then the ending date shall be the next business day after the Saturday, Sunday, or federal holiday.
- 10.02 To comply with a deadline a submission must be postmarked by the date of the deadline.

## PROOF OF LIEN FORM

**Deadline: You must complete and return this Proof of Lien form within 45 days of the date of the accompanying letter from the SF-DCT.**

1. Name of Person / Entity Asserting a Lien	
2. Address of Person / Entity Asserting a Lien	
3. Telephone Number	
4. Name and address (if known) of Claimant against whom you are asserting a lien.	
5. Proof of Claim number, SID number and SSN number of Claimant against whom you are asserting a lien (if known):	
6. Describe the basis upon which you are asserting the lien (attach additional paper if necessary).	
7. Total amount of the lien you are asserting. (Failure to provide an amount will result in the return of this form to you with a short deadline to provide an amount or method of calculating an amount or the lien will not be honored by SF-DCT.) (a) Principal: _____; (b) Interest: _____; (c) Fees/expenses: _____ TOTAL: _____.	
8. Do you have supporting documents? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, provide a copy of the documents (please keep a copy for your files). <b>DO NOT SEND ORIGINAL DOCUMENTS.</b>	
<b>CERTIFICATION</b>	
I declare under penalty of perjury that the above information and statements are true, correct and accurate.	
_____ Signature of person asserting the lien	_____ Date signed
_____ Printed name	_____ Position

Settlement Facility – Dow Corning Trust  
P.O. Box 52429  
Houston, TX 77052-2429  
(866) 874-6099

Dear [NAME]

The Settlement Facility – Dow Corning Trust ("SF-DCT") acknowledges receipt of your correspondence in which you assert a lien against a tort Claimant who has elected to participate in the Settlement Option. The Settlement Facility and Fund Distribution Agreement ("SFA") provides at Section 10.09 that:

10.09 No Execution. All funds in the Settlement Facility are deemed *in custodia legis* until such times as the funds have actually been paid to and received by a Claimant, and no Claimant or any other party can execute upon, garnish or attach the Settlement Facility in any manner or compel payment from the Settlement Facility of any Claim. Payment of Claims will be governed solely by the Plan, this Settlement Facility Agreement, the Claims Resolution Procedures, and the Funding Payment Agreement.

While the SF-DCT is not legally obligated to recognize your asserted lien, the United States Court of the Eastern District of Michigan entered an Order dated \_\_\_\_\_, 2004 establishing "Procedures For The Review of Asserted Liens Against Settling Implant Claimants" ("Procedures"). A copy of the Procedures is attached. Please review them as they contain important information and deadlines that affect your asserted lien claim. Also enclosed is a "Proof of Lien" form which you are required to complete and return to the SF-DCT on or before **45** days from the date of this letter. Failure to timely return the form will result in the denial of your ability to proceed on the lien claim with the SF-DCT.

The SF-DCT is not able to answer questions about the validity of the lien or provide you with any information concerning whether the Claimant has filed a claim or is entitled to recover any compensation at this time.

SETTLEMENT FACILITY – DOW CORNING TRUST

Enclosures

Dear [Claimant Name],

The Settlement Facility – Dow Corning Trust (SF-DCT) has received a Proof of Lien form in which the Alleged Lienholder has identified you as a person against whom they are asserting a lien. A copy of the Proof of Lien form and any supporting documentation provided to the SF-DCT is attached.

The United States District Court for the Eastern District of Michigan has entered an Order approving "Procedures For The Review of Asserted Lien Claims Against Settling Implant Claimants" ("Procedures"). A copy of the Procedures is attached. Please review them as they contain important information and deadlines that affect your claim. Also enclosed is a "Notice of Objection or Resolution of Lien" form which you are required to complete and return to the SF-DCT on or before 60 days from the date of this letter. **Failure to timely return the form may result in the recognition of the lien claim by the SF-DCT and the reduction in any approved payment you may be entitled to from the SF-DCT.**

The SF-DCT is not able to answer questions about the validity of the lien or provide you with any information about the Alleged Lienholder other than what is attached.

SETTLEMENT FACILITY – DOW CORNING TRUST

Enclosures

## NOTICE OF OBJECTION OR RESOLUTION OF LIEN

**Deadline.** You must complete and return this Notice of Objection or Resolution of Lien form within 60 days of the date of the accompanying letter from the SF-DCT.

1. **YOUR NAME.** Please place a label or clearly write or type your name and SID here.

2. **OBJECTION TO LIEN.**

- 2A. I object to and dispute the validity of the lien.
- 2B. I agree that the lien is valid, but I object to the amount of the lien asserted.

If you checked Box 2B, what is the amount of the lien that you believe is appropriate: \_\_\_\_\_

**If you checked Box 2A or Box 2B above, you must provide a written statement and documentation that supports your position. Failure to do so may result in the recognition of the lien by the SF-DCT.**

3. **RESOLUTION OR AGREEMENT TO LIEN.**

- 3A. I agree to the lien amount and acknowledge and agree that the SF-DCT is authorized to withhold the lien amount from my approved payment, consistent with the Plan Documents.
- 3B. I have reached a separate agreement with the Alleged Lienholder as to the appropriate amount of the lien. The SF-DCT is authorized to withhold \$ \_\_\_\_\_ from my approved payment. (The Alleged Lienholder must send a signed statement confirming agreement.)

4. **SIGNATURE.** I declare under penalty of perjury that the above information and statements are true, correct and accurate.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Settlement Facility – Dow Corning Trust  
P.O. Box 52429  
Houston, TX 77052-2429  
(866) 874-6099