

**QUESTIONS AND ANSWERS REGARDING SIGNIFICANT DIFFERENCES  
BETWEEN THE MDL 926 REVISED SETTLEMENT PROGRAM AND THE  
DOW CORNING SETTLEMENT**

**1. Why is there more than one settlement program for women who have been injured by breast implants?**

In 1994, all of the major manufacturers of breast implants negotiated with representatives of injured women for what was called a Global Settlement. This was approved by the federal court in Birmingham, Alabama, which had jurisdiction over a large number of federal lawsuits known as MDL (or "multidistrict litigation") 926. The Global Settlement was intended to provide a settlement mechanism for all claims for damages caused by breast implants, while allowing all women who claim to be injured by breast implants to settle their claims or to reject the settlement and pursue litigation.

When claims were submitted under the terms of the Global Settlement, it quickly became obvious that too many women had submitted settlement claims to allow for payments at the amounts promised. It also became obvious that too many women had rejected the settlement and elected to pursue litigation on their own. The parties resumed negotiations in an effort to reach a new solution. During the course of the negotiations, on May 15, 1995, the first and most significant manufacturer of breast implants, Dow Corning Corporation, sought bankruptcy protection in its home state of Michigan. Over the next several months, the other major manufacturers, principally Baxter Healthcare Corporation, Bristol-Myers, and 3M Corporation, continued to negotiate, but were unable to reach agreement. Ultimately, the manufacturers made a proposal, which became known as the Revised Settlement Program (RSP), that the federal court in Birmingham approved in December 1995 and allowed to be offered to the women as an option for resolving their claims. For details about the history of the Revised Settlement Program, please see Breast Implant Litigation Notice, paragraph 6, approved by the Court Dec. 22, 1995 for distribution to breast-implant recipients as the Court's official notice. The Revised Settlement Program has been the vehicle for claims resolution ever since and will expire on December 15, 2010.

In the meantime, attorneys for injured women negotiated with Dow Corning in bankruptcy for a settlement of their claims. The Dow Corning settlement program is part of Dow Corning's plan of reorganization for emerging from Chapter 11 bankruptcy. It was approved by the federal court in Detroit in 1999 and began operation on June 1, 2004. It will last until June 1, 2019. While modeled on the Revised Settlement Program, the Dow Corning settlement has several important and significant differences.

The two settlement programs operate from separate claims offices, with separate claims administrators and separate staff. Both are located in Houston, Texas. You can contact the RSP office at 1(800)600-0311 or [www.claimsoffice-926.com](http://www.claimsoffice-926.com) and the Dow Corning settlement office at 1(866)874-6099 or [www.dcssettlement.com](http://www.dcssettlement.com).

**2. What is the biggest difference between the RSP and the Dow Corning settlements?**

The two settlements cover different manufacturers of breast implants. The RSP provides benefits to women injured by breast implants manufactured by Baxter Healthcare Corporation, Bristol-Myers, or 3M Corporation, as well as some of their affiliated companies. The Dow Corning Settlement is intended to provide benefits to recipients of Dow Corning implants and to a limited extent, certain recipients of implants

made by other manufacturers who used Dow Corning materials in their implants. These limited benefits are known as Class 7 benefits in the Dow Corning bankruptcy. Read on for more information on claiming these benefits and the deadlines.

Because many women had implants from more than one manufacturer, they may be eligible to take part in both programs, though the levels of participation will vary depending on manufacturer.

To participate in either program, a claimant must prove that her breast implants were made by a manufacturer participating in the settlement. In the Dow Corning case a claimant must also have filed certain forms by deadlines that have already passed (see Questions 5 & 6 below). Both settlements have very specific requirements for the kind of proof that is needed. Unfortunately, some manufacturers are not covered by any settlement program.

***3. How can I tell if my implants were Baxter, Bristol-Myers, or 3M products that would qualify me to participate in the RSP?***

Baxter, Bristol-Myers and 3M became involved in the breast implant litigation because, in varying ways, they acquired other companies that either had sold or were selling breast implants as part of their operations. The actual manufacturers made several different implant types (silicone gel, saline, or a combination of the two called bilumen implants) and styles (textured or smooth surface, different shapes and profiles, *etc.*) that were sold either under that company's name or a marketing name, sometimes chosen for the inventor. For example, Baxter implants were labeled Heyer-Schulte, after the name of the manufacturer Baxter acquired. Bristol-Myers is responsible for implants sold under the name of Surgitek, the original product of Medical Engineering Corporation. Medical Engineering Corporation also marketed a variety of polyurethane foam implants under names such as Optimam, Replicon, and Meme. McGhan implants were a 3M product until 1984.

Exhibit G to the RSP Notice, available from the RSP Claims Office ([www.claimsoffice-926.com](http://www.claimsoffice-926.com)), is a comprehensive lists of all the implants covered under that settlement.

***4. I had implants covered by the RSP; under what circumstances could I also participate in the Dow Corning settlement?***

If you received your implants after January 1, 1976, and they were Baxter or Bristol silicone gel-filled devices, you could potentially qualify for limited benefits in the Dow Corning settlement if you filed the appropriate claim form with the Dow Corning settlement no later than June 1, 2006. If you have not already submitted a claim, it is too late to do so now. These claims are based on the belief that the raw silicone in your devices was originally made by Dow Corning at its plant and supplied to other companies (for which Baxter and Bristol are responsible under the RSP). The recovery for those claims will be limited and cannot be anymore than 40% of the amount that a Dow Corning implant recipient would receive. It is anticipated that it may actually be less. Additional information is available from the Dow Corning settlement office at [www.dcsettlement.com](http://www.dcsettlement.com) or the Claimants' Advisory Committee at [www.Tortcomm.org](http://www.Tortcomm.org).

**5. Are there deadlines for participating in the RSP and the Dow Corning Settlements?**

Yes, there are deadlines that affect your ability to participate in the settlements. Compliance or non-compliance with the deadlines in both settlements affects not only eligibility to participate, but also the level and availability of certain benefits to which you may be entitled. The important deadlines for the RSP occurred in the 1990s while the Dow Corning deadlines began to run in 2004 when the Plan of Reorganization became "effective." All applicable deadlines required women with claims to send a form by mail to an appropriate office or processing center.

For claimants with Dow Corning implants, the Dow Corning settlement has two pivotal dates. If you filed a bankruptcy proof of claim against Dow Corning no later than 60 days after receiving official notice of the Michigan Court's order of November 30, 1999 confirming the reorganization plan, you are eligible to participate. Second, if you are covered by what is called a Rule 3005 Proof of Claim and you also filed a Notice of Intent form before August 30, 2004, you are also eligible to apply for benefits.

Registration deadlines for the RSP have additional significance in that they affect the scope of benefits to which you may be entitled. If you are eligible for the RSP, you must know whether you are classified as a 'Current' claimant, 'Other' registrant, or 'Late' registrant.

Current Claimants are those women who registered by September 16, 1994, filed a disease compensation form by October 17, 1994, and submitted proof of a covered implant by December 16, 1996. Many women are current claimants even though they have done little or nothing to obtain benefits in the past 12 years. Thus, if you are unsure about your relationship to the RSP, it is a good idea to call the Claims Office and confirm your registration and classification before taking any other action.

Other Registrants include women who registered by March 1, 1995 but do not qualify as Current Claimants. Other Registrants also include women who (1) opted out of the Global Settlement to sue a manufacturer, (2) then decided forego the lawsuit and apply for settlement benefits in the RSP, and (3) applied for RSP benefits by filing an election form no later than December 16, 1996.

Late registrants are those who signed up after March 1, 1995. If you believe that you received an implant covered in the RSP, and are now calling the RSP Claims Office for the first time to register for benefits, you would be a Late registrant.

**6. What if I have not taken any action and I have Dow Corning implants?**

If you think you had or have Dow Corning implants, but have not filed a Proof of Claim (POC) or a Notice of Intent (NOI) form in the Dow Corning bankruptcy case, you are no longer eligible for benefits. You should call your own attorney or call the Office of Plaintiffs' Liaison Counsel at (205)252-6784 or the Settlement Facility – Dow Corning Trust at (866)874-6099 for general information about your situation. You may also obtain information about the Dow Corning settlement at [www.dcsettlement.com](http://www.dcsettlement.com), [www.Tortcomm.org](http://www.Tortcomm.org) or via e-mail at [info@sfdct.com](mailto:info@sfdct.com).

**7. How do the RSP and the Dow Corning Settlement differ in the monetary benefits that they provide to eligible participants?**

The two programs do not differ in the *kind* of assistance that they provide: eligible claimants may recover monetary awards from the RSP and the Dow Corning program.

However, it's not as simple as demonstrating that you have or have had breast implants. These awards are defined benefits that cover certain conditions or diseases; or the events of implant rupture and implant removal, also called explantation. Examples of covered diseases include systemic lupus erythematosus (SLE), scleroderma, and polymyositis. Medical records will be needed to support any claims you may make in either the RSP or the Dow Corning settlement.

While both the RSP and the Dow Corning settlement were set up to provide compensation for certain diseases, ruptures, and explantations, the conditions and award amounts vary between the two programs, sometimes with different amounts for the same illness or event, as well as different guidelines that you must follow in order to qualify. This results in some complexity in the type of paperwork and medical records that you must submit to the appropriate claims office.

**8. How do the two settlement programs handle disease benefits?**

First, the RSP and the Dow program provide awards for diseases and conditions that are mainly rheumatological and neurological. Conditions such as cancer are not covered.

Rheumatological diseases covered by both the RSP and the Dow programs include scleroderma and systemic lupus erythematosus (SLE). In addition, both programs also provide compensation for several bodily symptoms that have been experienced in various combinations by women with breast implants. These combinations are referred to by terms such as 'atypical' or 'mixed' or 'general' disease.

Each settlement employs two different frameworks for providing disease benefits. In the RSP, these are called the Fixed Benefit schedule and the Long-Term Benefit schedule. In the Dow Corning program, they are called Option 1 and Option 2. Option 1 in the Dow settlement is based on the Fixed Benefit schedule in the RSP, while Dow Corning's Option 2 is based on the RSP's Long-Term Benefit schedule. Scleroderma and lupus are covered under both the Fixed and Long-Term Benefit schedules in the RSP, as well as Option 1 and Option 2 in the Dow Corning program, although the criteria for compensation varies between the schedules.

For these disease benefits, the actual dollar amounts of the awards in both settlements are determined by the 'severity level' of the person seeking benefits. This refers to how disabled you are as a result of your condition. Each level is referred to by a letter, with Level A being the highest level of severity, corresponding to death or total disability; and Level C generally being the lowest.

**9. What are the main features of the RSP Fixed Benefit schedule and Dow Corning Option 1 disease benefits?**

Both the RSP Fixed Benefit Schedule and Option 1 of the Dow Corning program provide benefits for polymyositis, dermatomyositis, primary sjogren's syndrome, mixed connective tissue disease, atypical connective tissue disease, and atypical neurological syndrome. In addition, the RSP covers atypical rheumatic syndrome and certain nonspecific autoimmune conditions.

Fixed disease benefits in the RSP are only available to women registered as Current claimants (see Question 5). Option 1 (or Option 2 see below) disease benefits in the Dow Corning program are open to any claimant eligible to participate.

The basic award amounts in Dow Corning Option 1 are the same as those in the RSP Fixed Benefit; Level C (\$10,000), Level B (\$20,000), and Level A (\$50,000). Both the RSP and Dow Corning provide enhanced amounts in certain situations. In the RSP, a Fixed benefit means that you cannot qualify for more money if your illness worsens, however, your award could have been enhanced in limited circumstances if you could prove that one of your covered implants ruptured (see Question 12 below).

By contrast, in Dow Corning Option 1, you may be entitled to an additional payment known as a "premium payment", ranging from \$2,000 at Level C to \$10,000 at Level A if there are sufficient funds available to make premium payments. The decision on whether premium payments can or will be paid will be made at a later date by the federal court in Detroit. Also, if you are approved in Option 1 at Level C or B, but worsen during the life of the program to Level A, and can document the increase in disability severity you may be eligible for an increased severity award which may be paid when premium payments are approved.

**10. What are the main features of the RSP Long-term Benefit schedule and Dow Corning Option 2?**

In addition to scleroderma and lupus, both the RSP Long-term Benefit schedule and Option 2 of the Dow Corning program cover polymyositis, dermatomyositis, and general connective tissue symptoms.

Award amounts are higher in the RSP Long-Term benefit and Dow Corning Option 2 than the Fixed Benefit schedule and Option 1.

Qualification under the Long-term Benefit schedule or Option 2, as the case may be, is more difficult than the Fixed Benefit schedule or Option 1. In both settlements, you must demonstrate that the qualifying symptoms that entitle you to an award were observed within i) the same 24-month period within ii) the five-year period before submission of your disease claim. For Dow Corning claimants, there is an unresolved issue pending before the federal court in Detroit of whether this 5-year period has been extended. Generally, you must also provide affirmative statements that certain disqualifying medical symptoms are absent, as well as statements that the qualifying illness did not occur before your first breast implantation.

In the RSP, the Long-term schedule is the only disease benefit available to Other and Late registrants. Both Option 1 and Option 2 in the Dow Corning program are open to all claimants eligible to participate.

If you obtain a disease benefit in the Long-term schedule or under Option 2, and then the qualifying illness worsens, increasing your disability, you can receive an additional benefit at the higher level during the life of both settlements. However, in the Dow Corning settlement increased severity payments are classified as second priority payments and may not be paid, if at all, until much later in the settlement.

**11. I am a participant in the RSP, but am unable to qualify medically for disease benefits. Can I get a release payment for having eligible implants?**

No. You may have heard about the Expedited Release payment of \$2,000 available to claimants in the Dow Corning settlement. This benefit enables participants who are unable or unwilling to prove that they qualify for disease benefits to receive an award in exchange for releasing their disease claims against Dow Corning. There was a comparable benefit in the RSP, but it is no longer available.

If your RSP status is as a Current claimant or Other registrant, you may have already received an Advance payment of either \$5,000 (for Current claimants) or \$1,000 (for Other registrants), as an "advance" on your disease benefit award. Now that you are unable to fully qualify for disease, you do not have to return this money to the RSP. Also, if you are a Current claimant or Other registrant, you may be entitled to an explantation benefit (see below).

**12. My implants broke; how do the RSP and the Dow Corning settlements deal with rupture?**

Both programs provide compensation for the rupture of silicone gel-filled devices, but not saline-filled implants. The rupture benefits under the two programs have marked differences.

The RSP provides enhanced benefits for certain disease claimants who had ruptures, but does not provide rupture payments as a stand-alone benefit. Rupture Benefits were only available to Current Claimants (i) who elected and qualified for disease benefits under the Fixed Benefit schedule; and (ii) submitted proof of rupture no later than December 16, 1996. Increased payments for rupture were \$15,000 at Level C; \$30,000 at Level B; and \$50,000 at Level A.

By contrast, implant rupture is a stand-alone benefit in the Dow Corning settlement. It is \$20,000, (subject to a 50% reduction if you also were paid for a rupture enhanced disease claim in the RSP) regardless of whether or not you qualify for a disease benefit at any severity level (there may also be a future premium payment of \$5,000). The deadline for submission of a rupture benefit claim form in the Dow Corning settlement was June 1, 2006. Basically, medical documentation that the elastomer shell of an implant was found to be already broken before surgical removal of the implant is required, but other means of proof are available.

**13. My doctor has told me that my breast implants need to be taken out, do these programs pay for removal surgery?**

If you have or are able to prove that one of the manufacturers is Dow Corning or is a participant in the RSP, both settlements provide an Explantation benefit. With the cost of explantation surgery ranging from \$5,000 to \$20,000, neither available program will likely cover the full cost.

Unfortunately, if you are contacting the RSP for the first time as a Late Registrant, the \$3,000 explantation benefit is unavailable. However, if you are a Current Claimant or Other Registrant, and have your covered implant(s) removed anytime between April 1, 1994 and December 15, 2010, you may be awarded the \$3,000 on submission of the appropriate medical proof.

Upon proof that you had at least one Dow Corning-made implant that was surgically removed after December 31, 1990, and anytime before June 1 of 2014, you are eligible for the \$5,000 explantation benefit established in the Dow Corning program.

**14. I had breast implants covered by the RSP, as well as one made by Dow Corning, can I get benefits from both settlements?**

You are entitled to participate in both settlement programs. However, each program will only pay 50% of that to which you are otherwise eligible.

**15. I have never experienced any problems with my breast implants until now, and know for a fact that I am not registered with either settlement. What do these programs have available for someone like me?**

If you are sick, it is worth your while to investigate which company made your implants and on that basis, look into the available disease benefits. You should review a copy of Exhibit E.1., a document distributed by the RSP Claims Office ([www.claimsoffice-926.com](http://www.claimsoffice-926.com)) that is a good introduction to the symptomology of rheumatological and autoimmune disorders. It is drafted for the Long-term benefits schedule in the RSP, and thus is also applicable to Option 2 in the Dow Corning program. It also reflects the more rigorous proof requirements of both of these frameworks, and it will help you assess your chances for qualifying for disease benefits.

You have until December 2010 to seek benefits from the RSP, but since you will be a Late Registrant you can only seek benefits under the Long-term Benefit schedule.

If your implants were made by Dow Corning, you face the additional hurdle of being ineligible at this point to take part in the program. You can write a letter to Judge Hood's office asking to be allowed into the settlement as a Late claimant. Because the deadlines for you to file a proof of claim (POC) or notice of intent (NOI) form in the Dow Corning bankruptcy have passed you should seek legal advice from your own attorney on what you can do, or call the Office of Plaintiff's Liaison Counsel for general information. You may also visit the website for the Dow Corning settlement at [www.dcsettlement.com](http://www.dcsettlement.com) or the website for the Claimants' Advisory Committee at [www.Tortcomm.org](http://www.Tortcomm.org). Finally, you may contact the Dow Corning settlement Claims Assistance office at [info@sfdct.com](mailto:info@sfdct.com).

