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## COURT URGED TO OVERTURN OPINION ENCOURAGING MORE LAWSUITS

*(In Re Dow Corning Corp.)*

The Washington Legal Foundation (WLF) this week filed a brief appealing a U.S. Bankruptcy Court opinion that would needlessly prolong class-action litigation over silicon breast implants.

A few years ago, faced with thousands of claims over the implants, Dow Corning Corp. filed for bankruptcy. A plan was drafted that would end the litigation and provide a settlement fund for claimants. Part of the plan was that claimants would not be able to sue Dow Corning's parent companies, Dow Chemical Co. and Corning, Inc. The Bankruptcy Court ruled, however, that claimants who opposed the plan would still be able to sue the parent companies.

In its brief, filed with the U.S. District Court for the Eastern District of Michigan, WLF argued that the Bankruptcy Court's ruling would result in years of additional lawsuits against Dow Chemical Co. and Corning, Inc., and would threaten the viability of the bankruptcy plan.

"Dow Corning and the claimants carefully negotiated the settlement plan to release Dow Chemical Co. and Corning, Inc., from future lawsuits," said WLF Counsel Jeffrey S. Burk. "The vast majority of claimants accepted the plan, but that delicate settlement is jeopardized by the Bankruptcy Court's opinion and the likelihood of a new round of litigation."

The Bankruptcy Court ruled that a release of third parties from future litigation in bankruptcy cases is unlawful. Yet several courts, including U.S. Courts of Appeal in the First, Second, Fourth, and District of Columbia Circuits, have found such releases acceptable when appropriate or necessary to reach and preserve a settlement plan. WLF maintained that such a release was warranted in this case.

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