

Date: 19990216
Docket: C954330
Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

HELEN HARRINGTON, as representative Plaintiff

PLAINTIFFS

AND:

**DOW CORNING CORPORATION,
DOW CORNING CANADA INC.,
DOW CHEMICAL COMPANY,
DOW CORNING WRIGHT CORPORATION ET AL**

DEFENDANTS

REASONS FOR JUDGMENT

OF THE

HONOURABLE MR. JUSTICE E.R.A. EDWARDS

Counsel for the Plaintiffs:

Deborah A. Acheson, Q.C.,
David A. Klein,
Mark R. Steven and
Kevin W. Whitley

Counsel for the "Dow" Defendants:

Derek J. Mullan, Q.C.

Place and Date of Hearing:

Victoria, B.C.
February 11, 1999

[1] This is an application pursuant to s. 35 of the **Class Proceedings Act** to approve a settlement between the plaintiff class and the "Dow" defendants in this action.

[2] The settlement agreement concluded between the parties forms part of Dow's Plan of Reorganization and is subject to confirmation of that plan by a U.S. Bankruptcy Court. Under the settlement Dow agrees to pay U.S. \$25,126,797.94 by annual installments to an independent claims administrator which will determine the entitlement of individual claimants in accordance with an elaborate formula which is part of the settlement agreement.

[3] Prospective claimants are women in the plaintiff class which includes women in all provinces and territories of Canada except Quebec and Ontario. Some of these claimants will have the option of pursuing claims in the U.S.A. This settlement agreement, while not identical to those already approved in parallel Quebec and Ontario class actions, has been designed to provide equivalent outcomes regardless of whether a claim by a Canadian claimant is made in this action, Quebec, Ontario or the U.S.A.

[4] In addition to counsel for the parties, counsel representing women in other provinces with claims under this settlement have reviewed it and filed affidavits supporting the settlement.

[5] Ms. Harrington, the representative plaintiff and Ms. Gladu, representative of the non-resident subclass, support the settlement.

[6] The settlement will be widely advertised to ensure potential claimants, not yet known to the parties, are made aware of it. They will have 60 days from approval of the settlement to initiate claims. Those claimants already known to the parties will be sent detailed information about the settlement.

[7] This court can only approve or reject the settlement, not modify it. Rejection would mean some members of the plaintiff class (those not yet registered) would effectively be barred from any recovery, since their claims could not be pursued against the approximately U.S. \$3 billion fund of Dow assets in the American bankruptcy.

[8] This court's approval of the settlement does not necessarily mean it will come into effect. It may be terminated by the parties in certain circumstances. It will not take effect if claimants in the U.S.A. reject the settlement there in an impending vote.

[9] If the settlement does come into effect claimants will likely be paid beginning late in the year 2000. Some will be paid in yearly installments as money is paid from the Dow

bankruptcy fund. The estates of deceased women may pursue claims and will receive payments of installments due after claimants' deaths.

[10] Since the settlement will be widely advertised and its details will be readily available to anyone interested, there is no point in elaborating them in these reasons.

[11] I am satisfied on the basis of the material presented and my own consideration of the settlement agreement that it has been reached as a result of arms length negotiations between the parties. I find the settlement as presented to the court fair, reasonable and in the best interests of the plaintiff class. I approve the settlement argument, entered as an exhibit in this case, pursuant to s. 35(1) of the **Class Proceedings Act**. The terms of approval are those detailed in the settlement agreement.

[12] Considering notice, as I must, pursuant to s. 35(5), I am satisfied the advertising and dissemination of the settlement agreement to prospective claimants, in accordance with its terms and the statements of counsel, meet the requirement of s. 20 of the **Act**.

[13] During the course of oral submissions on February 11, 1999, counsel handed to me and I approved a form of order endorsed by the parties. It substantially reflects the relief

sought in the Notice of Motion and will permit the settlement to proceed in accordance with its terms. I need not set out the terms of that order in these reasons.

[14] I have separately released reasons approving the fees of class counsel for negotiating this settlement.

"E.R.A. Edwards, J."
THE HONOURABLE MR. JUSTICE E.R.A. EDWARDS