MUSINGS

BY MARJORIE KELLY

Dow Corning's One Percent Disaster

A quick lesson in being rationally right, ethically wrong, and bankrupt

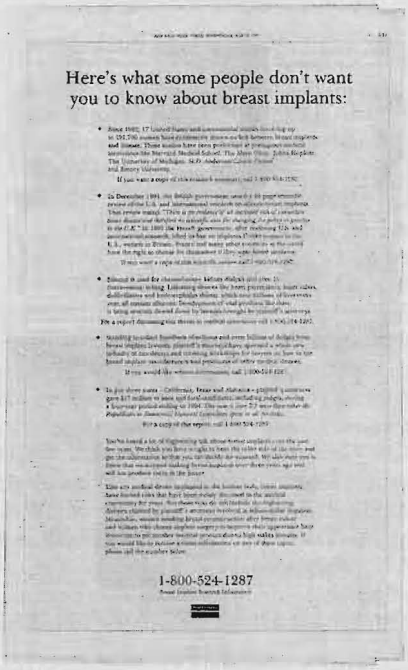
HERE'S THE FIRST figure to remember: $2 billion. That's how much Dow Corning agreed to pay last year in a class action settlement over allegedly unsafe breast implants.

Here's a second figure: $2.14 billion—Dow Corning's total revenue in 1994. (Notice how close the figures are?)

Now here's the last figure: 1 percent. That's how much of Dow Corning's revenue came from breast implants.

This promises to go down in history as one of the more famous equations of business ethics: Ethical missteps in just 1 percent of the business cost an entire year's revenue. Or put another way: Ethical missteps in just 1 percent of the business led to bankruptcy.

Bankruptcy is of course where Dow Corning ended up May 15. It sought protection from creditors under Chapter 11 after it was overwhelmed by literally hundreds of thousands of damage claims. Even the enormous sum of $2 billion—which the company had agreed to pay over thirty years as part of a $4.25 billion industry-wide settlement—was insufficient to cover all claims, a federal judge ruled. So Dow Corning ducked for cover.



Here's what some people don't want you to know about breast implants:

1-800-524-1287

Let them eat cake: Dow Corning's ad in *The New York Times*.

It did so with in-your-face defiance. Days before filing for bankruptcy, the company took out audacious full-page ads in the *Wall Street Journal*, *The New York Times*, and in more than a dozen other papers. "Here's what some people don't want you to know about breast implants," the ads blared, citing studies showing silicone implants to be safe, and insinuating that lawyers had cooked this all up for their own benefit.

It was a gesture full of contempt. With one stroke of its corporate pen, Dow Corning revealed the whole of its attitude toward the breast implant tragedy: The individuals who are suffering simply don't matter. Women who were Dow Corning's customers—now too fatigued to get out of bed, too ill to work—are of no official concern. This is all a legal hoax, and the real victim is Dow Corning.

"The company is in a state of denial," says John Swanson, a former executive who was on the ethics committee at Dow Corning, and who left in part because of his discomfort with this issue. Swanson was manager of internal communications in 1991, when the scandal burst onto the pages of *BusinessWeek* in an article charging Dow Corning with concealing studies that linked implants to cancer.

Those studies clearly had been concealed from Swanson, then a twenty-five-year employee and the only permanent member of the company's Business Conduct Committee. He urged management to suspend manufacture of implants, but to no avail. Instead of stepping forward with a gesture of concern for customers, the company assumed a defensive, legalistic posture. Suspending production would admit fault, and admitting fault would invite lawsuits.

This stance made sense from a rational point of view. Seven large epidemiological studies—including one last year in the prestigious *New England Journal of Medicine*—have indeed failed to show evidence linking silicone implants to disease. But the issue at stake is more than rational. It is an intimate issue of human bodies, and human fear. And it is here that the company stumbled.

"Much of the evidence against implants is anecdotal," says Swanson. "But it's anecdotal evidence in large enough number to cause any company concern." Dow Corning failed to express that concern, even after the evidence proved persuasive enough for the Supreme Court. In January, the high court upheld a $7.3 million jury award to Marion Hopkins, a woman injured by ruptured implants.

Dow Corning itself began admitting in 1993 that implants may not last more than a decade. But that was after saying for years that implants would last a lifetime. As Swanson says, how many women would have gotten implants if they had known they'd need major surgery to replace them every ten years?

> What if management had been gracious and caring instead of deceptive?

"It's like a time bomb ticking inside of you," says attorney Martha Neese, of Maplewood, Minnesota-based Lyons, Sawicki, Neese and Phelps, which represents more than two hundred women in implant litigation. "How can you tell if it's ruptured?" Chillingly, the only reliable test of leakage is an MRI scan, which costs about $1,000, she points out.

If Dow Corning had shown sensitivity to these frightening issues, would it have made things any better? Certainly, it couldn't have made things any worse.

Had the company said early on that implants wouldn't last forever, had it openly shared the negative studies, had it suspended production when concerns first surfaced—had it, in short, been gracious and caring instead of defensive and deceptive—yes, there might have been less fear. There might have been less vengefulness. And things might have turned out differently.