

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

IN RE:

**SETTLEMENT FACILITY-
DOW CORNING TRUST**

**CASE NO. 00-CV-00005-DT
(Settlement Facility Matters)**

**Hon. Denise Page Hood
Chief Judge**

**STIPULATION AND ORDER REVISING PROCEDURE AND TERMS
FOR RESOLUTION OF CERTAIN DISPUTES INVOLVING
ELIGIBILITY PURSUANT TO SECTION 5.01(a) OF ANNEX A TO THE
SETTLEMENT FACILITY AND FUND DISTRIBUTION AGREEMENT**

Whereas the Claimants' Advisory Committee (CAC), Dow Silicones Corporation (DSC), and the Debtor's Representatives (DRs) (collectively, the "Parties") agree as follows:

1. On December 23, 2004, the Court entered an agreed order that established procedures for resolving disputes over whether a prior release or dismissal will bar a claim submitted under the Settlement Option. Stipulation and Order Establishing Procedures for Resolution of Disputes Regarding Release of Claims Against Dow Corning and Election of Settlement Option ("Original Stipulation and Order"). The Original Stipulation and Order provides guidelines for determining whether in fact the release signed by individual claimants covered the claim asserted under the settlement program. Paragraph 1 of Exhibit A to the

Original Stipulation and Order identified two categories of disputes about whether a release bars a settlement option claim that were excepted from the resolution procedures. Specifically, Paragraph 1 excepted from the resolution procedures (1) Claims alleging that the Plan does not bar recovery under the Settlement Option where an unrepresented Claimant signed a release in exchange for a payment of less than \$15,000 during the period 1992 through May 15, 1995 and (2) Claims alleging that the claim is not barred because the release was provided in connection with the Dow Corning Removal Assistance Program. The categories of claims excepted from the resolution procedures are defined as “Paragraph 1 Claims.”¹ During the course of the implementation of the settlement program, the SF-DCT has identified 105 Paragraph 1 Claims. The claimants who assert the Paragraph 1 Claims and have disputed that their claims are barred by the terms of the Plan are listed on Schedule A (“Schedule A Claims or Schedule A Claimants”).

2. The final deadline for claimants in Classes 5, 6.1, and 6.2 to submit claims for settlement benefits is June 3, 2019. The Parties and the Finance Committee have, under the supervision of the Court, undertaken to prepare for termination of the Settlement Facility operations and the Court has entered orders to

¹ On March 16, 2006, the CAC filed the *Motion of Claimants’ Advisory Committee for Declaratory Relief that the “Receipt and Release” Document Solicited by the Dow Corning Legal Department from Unrepresented Claimants from 1992-1995 as Part of the Removal Assistance Program (or Represented as Part of Such Program) is Not a General Release* (Doc. No. 332) (the “Motion for Declaratory Relief”) asserting arguments regarding the status of releases that allegedly were obtained from individuals who sought to participate in the Removal Assistance Program.

facilitate completion of claim review and resolution as quickly as possible after the final filing deadline and to ensure the timely completion of distribution of Settlement Fund assets to claimants.

3. The Parties agree that the cost, time and resources that would be consumed in litigation of the disputes regarding each of the Schedule A Claims are significant. The Parties further agree that such litigation would consume substantial Settlement Fund assets and could affect the timely termination of the Settlement Facility which in turn could affect the ability of eligible claimants to receive their final settlement payments. Accordingly, to conserve Settlement Fund assets and to ensure timely distribution of payments to claimants, the Parties have agreed to permit the Schedule A Claimants limited rights to participate in the settlement program under the terms and procedures set forth herein.

**LIMITED SETTLEMENT OPTION FOR RESOLUTION OF RELEASE
DISPUTES ARISING FROM “SCHEDULE A CLAIMS”**

4. The individuals identified on Schedule A shall be eligible to participate in the “Limited Settlement Option.” All Schedule A Claimants have previously made submissions to the Settlement Facility.

5. To be eligible for payment, the Schedule A Claimants must meet the eligibility criteria set forth in Annex A to the Settlement Facility and Fund Distribution Agreement (“Annex A”), including, specifically, the criteria in Section 5.01 (b)-(f) of Annex A (and excepting Section 5.01 (a)).

6. To be eligible for payment, the Schedule A Claimants must submit a complete settlement benefit claim (as defined in Closing Order 1, ECF Number 1447) postmarked no later than June 3, 2019. Some of the Schedule A Claims have already submitted a complete claim. A complete claim is defined in Closing Order 1 as a submission that includes benefit forms for proof of manufacturer and for disease or expedited release along with the supporting documentation. (Closing Order 1, Paragraph 26.)

7. The Schedule A Claimants shall be eligible to receive compensation for a Disease or Expedited Release benefit claim only. The Schedule A Claimants shall not be eligible to receive compensation for a Rupture or Explant benefit claim.

8. To be eligible for payment for a Disease or Expedited Release benefit claim, the Schedule A Claimant must satisfy all of the criteria applicable to Disease or Expedited Release claims set forth in the Plan and Plan Documents. The Disease or Expedited Release claim of the Schedule A Claimants shall be processed and evaluated under the same rules, procedures and protocols that are applied by the Settlement Facility to all other Disease or Expedited Release claims.

9. The amount of compensation paid to a Schedule A Claimant who is determined to be eligible for a Disease or Expedited Release claim shall be the amount specified in Annex A for the specific type and class of Disease or Expedited

Release Claim and shall not be reduced as a result of the prior payment made to or for the benefit of the claimant by Dow Corning before the bankruptcy case was filed.

10. A Schedule A Claimant may reject this Limited Settlement Option and pursue litigation **solely** on the issue of whether Section 5.01(a) of Annex A bars their claim in the settlement program. A Schedule A Claimant who wishes to litigate their dispute regarding the preclusive effect of the prior release must submit written notification to the Court no later than 15 days after receiving the Notice defined below and must, in order to pursue the claim that the release does not bar a claim in the settlement program, initiate such litigation by filing a complaint in the United States District Court for the Eastern District of Michigan no later than June 3, 2019. Any such complaint must be filed under the Caption: In re Settlement Facility-Dow Corning Trust, Case No. 00-CV-00005 (Settlement Facility Matters). The Schedule A Claimant shall bear all costs of initiating litigation and filing the complaint. The CAC shall not represent such claimant in litigation.

11. In the event that the Settlement Facility receives a submission before June 3, 2019, from an individual who is not a Schedule A Claimant but is a Paragraph 1 Claimant, the Settlement Facility shall notify the Parties. If the Parties agree that the individual meets the criteria for a Schedule A Claimant then such individual shall be added to Schedule A and shall be entitled to the options and benefits to which Schedule A Claimants are entitled under and subject to the terms of this Stipulation

and Order. To be eligible to be added to Schedule A, a claimant must be a Paragraph 1 Claimant as defined herein and must dispute the application of the prior release to bar a settlement benefit submission under the settlement program.

PROCEDURE FOR IMPLEMENTATION OF LIMITED SETTLEMENT OPTION

12. Upon entry of this Stipulation and Order, the Settlement Facility shall send to each Schedule A Claimant a Notice. The Notice shall explain that Schedule A Claimants have three options: Option 1: Accept the Limited Settlement Option and pursue a Disease or Expedited Release benefit as provided herein; Option 2: Litigate their dispute, which will require the claimant to prove that the prior release does not bar the settlement option claim. The Notice shall further explain that if the claimant succeeds in litigation, the claimant would be permitted to file the same Disease or Expedited Release settlement benefit claim that will be provided under Option 1 and that the claimant would only receive payment if the claim satisfies the eligibility criteria in the Plan. The Notice shall explain that such claimant could also seek in litigation the ability to argue that the prior release does not bar a rupture or explain claim in the settlement program. The Notice shall further notify the individual of the procedures set forth above in Paragraph 7. Option 3: Take no action – in which case the claim will be deemed abandoned and not eligible after the June 3, 2019 filing deadline. The Notice shall provide that a Schedule A Claimant

who wishes to litigate the dispute must send a written notification to the Court no later than 15 days after the date of the Notice advising the Court of her election to litigate and that litigation must be filed in the United States District Court no later than June 3, 2019. The Notice shall further explain that the CAC shall not represent the claimant.

13. The Settlement Facility shall, as soon as possible after distribution of the Notice, distribute a notification of status letter or an acknowledgment letter (as appropriate) advising the Schedule A Claimant of the status of their prior submissions and the actions that the Schedule A Claimant must take to pursue their benefit claim should they elect to pursue the Limited Settlement Option.

14. If a Schedule A Claimant submits a complete claim postmarked on or before June 3, 2019, the Settlement Facility shall process the claim and issue payment if the Schedule A Claimant meets the eligibility criteria for a Disease or Expedited Release benefit.

15. If a Schedule A Claimant fails to submit a complete claim postmarked on or before June 3, 2019, and fails timely to initiate litigation as provided herein, then the claim shall be denied, subject to the normal rights of appeal to the Claims Administrator and the Appeals Judge as provided in the Plan and in the Closing Orders.

16. The Settlement Facility shall post this Order on its website.

DISMISSAL

The Motion for Declaratory Relief (Doc. No. 332) is hereby DISMISSED with prejudice.

SO ORDERED.

Dated: March 14, 2019

S/DENISE PAGE HOOD

Denise Page Hood
Chief Judge

SO STIPULATED and AGREED

CLAIMANTS' ADVISORY
COMMITTEE

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