

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE:

DOW CORNING CORPORATION,

Reorganized Debtor.

§
§
§
§
§
§
§
§

Case No. 00-CV-00005-DT
(Settlement Facility Matters)
See Attached List
Hon. Denise Page Hood

**STIPULATION AND ORDER TO SHOW LEGAL SUPPORT
AND CAUSE WHY REQUEST TO FILE A LATE CLAIM IN THE
DOW CORNING SETTLEMENT FACILITY SHOULD NOT BE DISMISSED**

ATTENTION: This Stipulation and Order applies to all persons who filed a request to participate in the Dow Corning bankruptcy case and the request is dated after June 1, 2007 or received by the Court after June 5, 2007. Please read this Stipulation and Order carefully and note the deadline to file a response should you choose to respond. The deadline is stated in the separate Notice sent to you with this Stipulation and Order.

I. INTRODUCTION.

This is a “Stipulation and Order To Show Legal Support and Cause Why Request To File A Late Claim in the Dow Corning Settlement Facility Should Not Be Dismissed” (“Stipulation and Order”). It applies to all Non-Settling Late Claimants. A Non-Settling Late Claimant is any person who:

- 1) submitted a request to participate in the Dow Corning bankruptcy case that was dated after June 1, 2007 or received by the Court after June 5, 2007, and
- 2) did not timely file a Proof of Claim (“POC”) or a Notice of Intent (“NOI”) in the Dow Corning Corporation (“Dow Corning” or “DCC”) bankruptcy case¹ (hereinafter “Timely Filed Claimant”), and

¹ The deadline for filing a POC in that case was January 15, 1997 (or February 14, 1997 for foreign claimants). The deadline for filing an NOI was August 30, 2004.

3) is not a Settling Late Claimant as defined in the “Agreed Order Allowing Certain Late Claimants Limited Rights to Participate in the Plan’s Settlement Facility” (“Late Claim Settlement Order”), entered on December 12, 2007.

The Settlement Facility-Dow Corning Trust (“SF-DCT”) records show that you are not a Timely Filed Claimant or a Settling Late Claimant. Therefore, you are a Non-Settling Late Claimant and you have received this Stipulation and Order. Your late claim request will be dismissed unless you submit a written response that demonstrates to the Court rare, unique and extraordinary circumstances that give cause why this Court should not dismiss your late claim request.

II. STATUS OF LATE CLAIM REQUEST.

The Claimants’ Advisory Committee (“CAC”), Dow Corning, and the Debtors’ Representatives (collectively, the “Parties”) have agreed and the Court has previously determined that “late claim requests dated after June 1, 2007 or received by the Court after June 5, 2007 are **presumptively without merit** and that the allowance of these late claim requests . . . would unfairly prejudice the interests of Timely Filed Claimants, increase the administrative burdens and costs of the SF-DCT, undermine the SF-DCT’s need for certainty in formulating accurate projections and administering the Settlement Fund, and threaten the important rule of finality inherent in the confirmation of the Plan under the Bankruptcy Code.” Late Claim Settlement Order at ¶ 15 (emphasis added). This Court has also taken judicial notice of the extensive publication and direct mail notices informing potential claimants of the relevant filing deadlines. Accordingly, this Court has determined that **a “showing of excusable neglect by late claimants whose late claim requests were dated after June 1, 2007 or filed after June 5, 2007 is highly unlikely except in rare, unique and extraordinary circumstances”** Late Claim Settlement Order at ¶ 15 (emphasis added).

In light of these findings and due to the importance of conserving Settlement Fund assets and protecting the rights of timely claimants, the Parties stipulate and agree that it is appropriate to specify procedures and guidelines for the submission and litigation of late claim requests submitted by persons who are “Non-Settling Late Claimants,” as defined above. The Parties agree that late claim requests by Non-Settling Late Claimants should be dismissed as presumptively without merit under the findings of the Late Claim Settlement Order unless such Non-Settling Late Claimants demonstrate to the satisfaction of the Court that there could be “rare, unique and extraordinary circumstances” that must be subjected to a full evidentiary hearing.

III. CONCLUSION.

WHEREFORE, it is hereby ADJUDGED, ORDERED and DECREED as follows:

1. The terms and conditions set forth in this Stipulation and Order shall apply to all Non-Settling Late Claimants. If you received a copy of this Stipulation and Order, then you are a Non-Settling Late Claimant and the terms of this Stipulation and Order apply to you.
2. Your late claim request is presumptively without merit, and you have the burden of justifying in writing why your late claim request is the rare, unique and extraordinary exception that should be permitted a full evidentiary hearing and should not be permanently dismissed with prejudice and barred from applying for any compensation.
3. The Parties shall mail this Stipulation and Order to each Non-Settling Late Claimant with a notice that specifies the deadline for a response. You shall have 15 days from the date of the notice to respond in writing to the Court. If you fail to respond by the deadline, your late claim request shall be dismissed with prejudice and you will be barred from applying for any compensation. Please note that this Stipulation and Order does not mean that your underlying injuries, if any, are presumptively without merit; therefore, you should **not** respond with details about your injuries or submit medical records of your injuries. It means that your request to

participate in the Dow Corning settlement program was submitted so late after the deadline that the Court presumes that it is without merit and should not be allowed. If you can demonstrate facts that show rare, unique and extraordinary circumstances, then your response should state and explain those circumstances. If you cannot demonstrate rare, unique and extraordinary circumstances, then you may choose not to file a response and your late claim request will be dismissed with prejudice.

4. Non-Settling Late Claimants who respond in writing but who do not assert rare, unique and extraordinary circumstances shall have their late claim requests dismissed with prejudice. The Court has previously determined and hereby finds that the following excuses for late filing will **not** constitute rare, unique and extraordinary circumstances or provide a sufficient basis to warrant scheduling an evidentiary proceeding to evaluate the late claim request: (a) claims that you did not receive actual notice and/or did not see the published notice of the deadline to file a Proof of Claim or Notice of Intent form in the Dow Corning bankruptcy case or that you were not personally informed about the deadline; (b) you assumed that your prior registration in the MDL settlement was sufficient to establish a timely Proof of Claim or Notice of Intent filing in the Dow Corning bankruptcy case or that you were allegedly confused between the MDL and the Dow Corning bankruptcy case or confused about whether you needed to file a Proof of Claim or Notice of Intent in the Dow Corning bankruptcy case; (c) you discovered a condition allegedly related to a Dow Corning product only after the deadline to file a Proof of Claim or a Notice of Intent; and (d) your attorney failed to timely file a Proof of Claim or Notice of Intent by the deadline to file a Proof of Claim or a Notice of Intent.

5. If the Court finds that a Non-Settling Late Claimant has demonstrated a rare, unique and extraordinary circumstance that could potentially overcome the presumption that all late claim requests of Non-Settling Late Claimants are without merit and cannot satisfy the excusable neglect standard, then the Court will establish a schedule for the litigation and resolution of such

a late claim request. The Court may request that the Parties submit a scheduling order that includes a specified period for additional pleadings.

SO ORDERED.

Dated: May 9, 2008

/s/ Denise Page Hood
Denise Page Hood
United States District Judge

SO STIPULATED:

NELIGAN FOLEY LLP

DICKSTEIN SHAPIRO LLP

By: /s/ David Ellerbe
David Ellerbe
325 N. St. Paul, #3600
Dallas, TX 75201
Tel.: 214-840-5300
Fax: 214-840-5301

By: /s/ Deborah E. Greenspan
Deborah E. Greenspan
1825 Eye Street, N.W.
Washington, DC 20006-5403
Tel.: 202-420-2200
Fax: 202-420-2201

COUNSEL FOR DOW CORNING
CORPORATION

DEBTOR'S REPRESENTATIVE AND
COUNSEL FOR DOW CORNING
CORPORATION

CLAIMANTS' ADVISORY COMMITTEE

By: /s/ Dianna L. Pendleton-Dominguez
Dianna L. Pendleton-Dominguez
Law Office of Dianna Pendleton
401 N. Main Street
St. Marys, OH 45885
Tel.: 419-394-0717
Fax: 419-394-1748

By: /s/ Ernest H. Hornsby
Ernest H. Hornsby
Farmer, Price, Hornsby &
Weatherford, LLP
100 Adris Place
Dothan, AL 36303
Tel.: 334-793-2424
Fax: 334-793-6624