

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

IN RE	§	CASE NO: 00-CV-00005-DT
	§	
DOW CORNING CORPORATION,	§	(Settlement Facility Matters)
	§	
Reorganized Debtor	§	
	§	Hon. Denise Page Hood

**FINANCE COMMITTEE’S RESPONSE TO DOW CORNING
CORPORATION AND THE DEBTOR’S REPRESENTATIVES’ MOTION
TO STAY DISTRIBUTION OF SECOND PRIORITY PAYMENTS**

The Finance Committee respectfully submits this Response to Dow Corning Corporation and the Debtors Representatives’ (“DC/DRR”) Motion to Stay Distribution of Second Priority Payments (Doc. No. 1361).

The Court’s order granting the Finance Committee’s motion and authorizing fifty percent (50%) priority payments does not specify the timing of distribution of those payments. *See* Doc. No. 1346. Accordingly, the Finance Committee would like to inform the Court of its recommendation that the payments not be distributed immediately. This recommendation is rooted in the experience of the interrupted and partial distribution that occurred after the Court’s December 21, 2013 order authorizing premium payments was reversed by the Sixth Circuit.

After the Court authorized fifty percent (50%) premium payments on December 31, 2013, the Settlement Facility Dow Corning Trust (“SF-DCT”) began distributing premium payments to Claimants while DCC/DR pursued an appeal of

the Court's order. DCC/DR filed its appellate brief regarding premium payments on April 23, 2014 and nine months later, on January 27, 2015, the Sixth Circuit reversed the Court's order authorizing the payments. *In re Settlement Facility Dow Corning Trust*, 592 Fed. App'x. 473 (6th Cir. 2015). The SF-DCT immediately ceased distribution of premium payments once the Sixth Circuit reversed. However, at that time, 50% premium payments had been made to nearly all of the Claimants whose claims were processed prior to January 1, 2014; while claimants whose claims were processed on or after January 1, 2014, received nothing.

The Sixth Circuit's reversal caused distress and upset among Claimants because many had not received premium payments while other similarly situated Claimants had. Also, the reversal interrupted the distribution process midstream, causing administrative hardship at the SF-DCT which took months to resolve. Based on the inequitable and burdensome prior situation, the Finance Committee recommends that distribution of second priority payments occur once there is no possibility for interruption. The Finance committee is concerned about the day-to-day operation of the SF-DCT, as well as ensuring a fair claims payment process for all Claimants. The experience from the last distribution of premium payments counsels that a stay pending appeal is the most prudent course of action.

Dated: February 2, 2018.

Respectfully submitted,

SMYSER KAPLAN & VESELKA LLP

/s/ Karima G. Maloney

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CERTIFICATE OF SERVICE

I hereby certify that on February 2, 2018, the foregoing pleading has been electronically filed with the Clerk of Court using the ECF system which will send notice and copies of the document to all registered counsel in this case.

By: /s/ Karima G. Maloney

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