

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

In re:

**SETTLEMENT FACILITY DOW
CORNING TRUST**



**Case No. 00-CV-00005
(Settlement Facility Matters)**

Hon. Denise Page Hood

**MOTION TO ESTABLISH FINAL DISTRIBUTION DEADLINE
REGARDING REPLACEMENT CHECKS FOR SETTLEMENT
CLAIMS IN THE DOW CORNING SETTLEMENT PROGRAM**

For the reasons set forth in the attached memorandum, Dow Silicones Corporation (“Dow Silicones”), the Debtor’s Representatives (the “DRs”), and the Finance Committee (“FC”) (collectively, “Movants”) hereby move to establish the Final Distribution Deadline applicable to reissuance of checks as set forth in Closing Order 2 (Regarding Additional Procedures For Incomplete And Late Claims; Protocols For Issuing Payments; Audits of Attorney Distributions Of Payments; Protocols For Return Of Undistributed Claimant Payment Funds; Guidelines For uncashed Checks And For Reissuance Of Checks; restrictions of Attorney Withdrawals), ECF No. 1482, PageID.24084 (“Closing Order 2”). Closing Order 2 provides that the Court will establish a Final Distribution Deadline after which the Settlement Facility-Dow Corning Trust (“Settlement Facility”) will be prohibited from issuing replacement, checks unless otherwise ordered by the Court. *Id.*, at PageID.24090. As set forth in the attached Memorandum in Support of Motion to

Establish Final Distribution Deadline Regarding Replacement Checks for Settlement Claims in the Dow Corning Settlement Program (“Memorandum”), the final distribution deadline is necessary to enable a final termination of the Settlement Facility and the settlement program. The Movants propose that the Court establish May 15, 2023 as the Final Distribution Deadline applicable to replacement checks as explained in more detail in the Memorandum.

Dated: March 29, 2023

Respectfully submitted,

/s/ Karima Maloney

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In re:

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Hon. Denise Page Hood

**MEMORANDUM IN SUPPORT OF MOTION
TO ESTABLISH FINAL DISTRIBUTION DEADLINE
REGARDING REPLACEMENT CHECKS FOR SETTLEMENT
CLAIMS IN THE DOW CORNING SETTLEMENT PROGRAM**

Dow Silicones Corporation¹ (“Dow Silicones”), the Debtor’s Representatives (the “DRs”), and the Finance Committee (the “FC”) (collectively, “Movants”) respectfully submit this Memorandum in Support of Motion to Establish Final Distribution Deadline Regarding Replacement Checks for Settlement Claims in the Dow Corning Settlement Program.

INTRODUCTION

The Amended Joint Plan of Reorganization of Dow Corning Corporation (the “Plan”) (Exhibit A) became effective on June 1, 2004. The Plan established the

¹ Dow Corning Corporation changed its name to Dow Silicones Corporation effective February 1, 2018.

settlement program through which eligible claimants receive payments as set forth in the Plan and Plan Documents.²

The settlement program received claims over a 15-year period that concluded on June 3, 2019. Since that time, the Settlement Facility – the entity established to process claims – has completed processing the timely submitted claims and has distributed payments to most of the eligible claimants. At this point, the Settlement Facility is finalizing a relatively small number of claims and beginning preparations for closing the Settlement Facility.

As explained more fully below, the Settlement Facility cannot terminate until all payment checks that have been issued have been cashed or have expired. For that reason, the Court directed in Closing Order 2 (Regarding Additional Procedures For Incomplete And Late Claims; Protocols For Issuing Payments; Audits of Attorney Distributions Of Payments; Protocols For Return Of Undistributed Claimant Payment Funds; Guidelines For uncashed Checks And For Reissuance Of Checks; restrictions of Attorney Withdrawals), ECF No. 1482, PageID.24084 (“Closing Order 2”) that there must be a Final Distribution Deadline after which no new payment checks may be issued. *Id.* at PageID.24090. At this time, based on the analysis of the claims that remain open and could be eligible for payment, the

² Capitalized terms have the meaning defined in the Plan and Plan Documents unless otherwise noted herein.

Movants believe that it is most important to establish a Final Distribution Deadline that will preclude issuance of replacement payments after that Deadline. By this Motion, the Movants propose that the Court establish May 15, 2023, as the Final Distribution Deadline after which no replacement checks may be issued.

BACKGROUND

A. Plan Deadlines and Current Status of Claim Payments.

The Plan specifies various deadlines for the submission of different categories of claims to the settlement program. The final deadline for the submission of “disease” and “expedited” claims was June 3, 2019. *See* Dow Corning Settlement Program and Claims Resolution Procedures, Annex A to the Settlement Facility and Fund Distribution Agreement (“Annex A”) (Exhibit B), at § 7.09(b)(i); *id.* at § 6.02(a)(ii)(a); *id.* at § 6.02(f)(1); <https://www.sfdct.com/deadlines> (Exhibit C). The Plan further provides that the operations of the Settlement Facility shall terminate once all Allowed claims are paid, all Claims filed have been liquidated and paid or otherwise finally resolved, and no new timely Claims have been made against the Settlement Facility or the Litigation Facility for two consecutive Funding Periods. Funding Payment Agreement (Exhibit D), at § 2.01(c).

The Settlement Facility has processed all timely filed claims and is now preparing to issue final payments for the remaining Allowed claims. *See* March 29,

2023 Declaration of Kimberly Smith-Mair (“Smith-Mair Declaration), attached hereto as Exhibit E, at ¶¶ 6-7.

All checks issued from the Settlement Fund remain valid and negotiable for a period of six months. *Id.* at ¶ 4. The Settlement Facility and the bank accounts must, therefore, remain open for at least six months after the last check is issued.

B. Uncashed Expired Checks.

The Settlement Facility maintains records of all checks issued to claimants, including those that have not been cashed and are expired. *Id.* at ¶ 9. The Claims Administrator reports that there are approximately 960 checks that were issued throughout the period of the Settlement Facility’s operations and that have expired and have not been cashed. *Id.* at ¶ 10. The vast majority of these uncashed checks – approximately 82 percent – were issued before 2019. *Id.* at ¶ 11. The Settlement Facility must pay a fee to stop payment on each expired check and also must pay a fee to issue a replacement check. *Id.* at ¶ 14.

C. Closing Order Requirement for Final Distribution Deadline.

The Court has issued a series of “closing orders” that outline rules and procedures necessary to facilitate and enable the closure of the Settlement Facility in accordance with the Plan. Closing Order 2 provides that the Court will establish a Final Distribution Deadline to enable final closure of the Settlement Facility. The Final Distribution Deadline – as defined in Closing Order 2 – is the last date upon

which the Settlement Facility may issue any payments – unless specified otherwise in a court order.

The Final Distribution Deadline is necessary to enable the Settlement Facility to terminate its operations. Because checks issued by the Settlement Facility remain valid and negotiable for six months, the Settlement Facility cannot terminate its bank accounts and claim closure procedures until after the expiration of that period. The Final Distribution Deadline is thus a necessary component of the termination process.

D. Conditions Under Which the Settlement Facility May Provide Replacement Checks.

Closing Order 2 provides that requests for replacement checks must be made before June 3, 2019 except in two circumstances. First, a payment check may be replaced if the claimant passed away after the payment check was mailed provided that the request for a replacement check is made and all appropriate probate documents are submitted to the Settlement Facility by the date that is no later than 30 days before the Final Distribution Deadline. Closing Order 2, PageID.24095. Second, a payment check may be replaced if the claimant demonstrates good cause for the replacement. Such requests must be submitted to the Claims Administrator along with a statement of the reasons why the claimant did not cash the check when

it was issued. The Claims Administrator determines whether good cause exists. *Id.* at PageID.24095.

E. Proposed Final Distribution Deadline.

At this time, the parties request that the Court establish a Final Distribution Deadline that prohibits the issuance of replacement checks after May 15, 2023. As provided in Closing Order 2, any claimant who meets the criteria for a replacement check must submit the request no later than 30 days before the Final Distribution Deadline, which would be April 14, 2023 assuming that the Final Distribution Deadline is May 15, 2023. After the Final Distribution Deadline (May 15, 2023), (1) the claimants shall be prohibited from requesting replacement checks after the expiration of the original payment check, (2) the Settlement Facility shall be authorized to distribute replacement checks that were timely requested and shall be prohibited from issuing any other replacement checks for any claim or other payment for any reason and (3) the Settlement Facility shall, after the Final Distribution Deadline, permanently close any remaining claims that have been identified as having failed to cash the payment check before its expiration.

The parties do not request that the Court establish a Final Distribution Deadline as to any other payments because it is not necessary to do so. The Settlement Facility will be able to issue all the remaining claim payments in the

coming months as the payments come due – and those claim payments will be final payments subject to the bar on issuing replacement checks.

CONCLUSION

For the foregoing reason, Dow Silicones Corporation, the Debtor's Representatives, and the Finance Committee respectfully request that the Court establish a Final Distribution Deadline of May 15, 2023 applicable to requests for replacement checks. Because the Settlement Facility is issuing payments on a quarterly basis, the Settlement Facility shall be permitted to *mail* any replacement checks that meet the criteria herein on a regularly scheduled payment date after May 15, 2023 provided that the claimant also meets the other criteria for payment including the requirement that the claimant provide a verified current address.

Dated: March 29, 2023

Respectfully submitted,

/s/ Karima Maloney

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CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2023, I electronically filed the foregoing document with the Clerk of the Court using the ECF System which will send notification of such filing to all registered counsel in this case.

Dated: March 29, 2023

/s/ Deborah E. Greenspan

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