

EXHIBIT

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

In re:

**SETTLEMENT FACILITY DOW
CORNING TRUST**

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

Hon. Denise Page Hood

**DECLARATION OF KIMBERLY SMITH-MAIR IN SUPPORT OF
REPLY IN SUPPORT OF MOTION TO ESTABLISH FINAL
DISTRIBUTION DEADLINE REGARDING REPLACEMENT CHECKS**

I, Kimberly Smith-Mair, declare as follows based upon my recollection and review of certain data and documents:

1. I am the Claims Administrator for the Settlement Facility-Dow Corning Trust (“Settlement Facility” or “SF-DCT”).
2. As Claims Administrator, I have knowledge of past and present procedures implemented to process the Settling Breast Implant Claims in accordance with the terms of the Settlement Facility and Fund Distribution Agreement (“SFA”) and the Claims Resolution Procedures (“Annex A” to the SFA).
3. As Claims Administrator, I have knowledge of all Orders issued by the Court that pertain to the administration and payment of claims submitted to the SF-DCT including 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.
4. As Claims Administrator I have direct knowledge of the status of claims submitted to the Settlement Facility.

5. I have reviewed and am familiar with the Motion to Establish Final Distribution Deadline Regarding Replacement Checks for Settlement Claims in the Dow Corning Settlement Program, ECF No. 1701 (“Motion”) and the Response of the Claimants’ Advisory Committee to the Motion to Establish Final Distribution Deadline Regarding Replacement Checks for Settlement Claims in the Dow Corning Settlement Program, ECF No. 1705 (“CAC Response”).
6. I have participated in all meetings of the Closing Committee – defined as the CAC, the Debtor’s Representatives, and the Finance Committee (along with the Financial Advisor and Consultant) during December 2022, and January through March 2023.
7. During the period of December 2022 through March 30, 2023, the subject of the final distribution deadline was included on multiple agendas for the Closing Committee meetings. Specifically, the issue including the timing of the deadline and its scope – was on the meeting agendas for several meetings, including on December 8, 2022, December 15, 2022, December 21, 2022, February 2, 2023, February 9, 2023, February 16, 2023, March 2, 2023, March 8, 2023.
8. During February and March 2023, the Closing Committee reviewed drafts of a joint motion to establish the final distribution date. I have reviewed 5 separate drafts of the motion. As drafts were circulated, the proposed final distribution date changed. The earliest drafts had a proposed final deadline date of April 14, 2023. The specific discussion at the time related to a deadline for all types of payments not just replacement checks. Subsequently, the date was altered to May 1, and then May 8. The last drafts and the one that was filed had a final distribution date of May 15, 2023. Drafts of the proposed motion to establish the final distribution deadline, styled as a joint motion of the CAC, Debtor’s Representatives, and the Finance Committee, including the deadline for replacement payments, were circulated to the Closing Committee including the CAC on February 15, 2023, February 16, 2023, February 26, 2023, March 22, 2023, and March 26, 2023. The final drafts of the Motion – including the dates set forth in the filed version – were circulated to the CAC and other members of the Closing Committee on March 27, 28, and 29, 2023.
9. When I reviewed the drafts, I provided comments consisting either of questions, proposed changes to language, or agreement with the document as drafted.

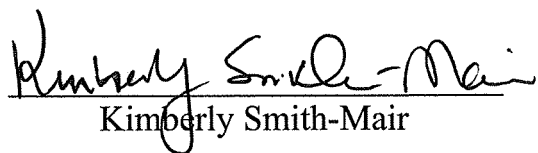
10. When the last draft version was circulated on March 27, 2023, I responded that the draft was acceptable to me. The other members of the Finance Committee also stated their agreement with the document.
11. I did not see any comments from the CAC on any draft that was circulated.
12. The CAC did not raise any issues regarding the final deadline motion in any of the Closing Committee meetings. The only comment made by the CAC was that the deadline should coincide with or be close in time to the end of the response period for claims that were identified as missing address verification. That response deadline is April 12, 2023.
13. The CAC did not raise any issue about: mailing individual notices to claimants with uncashed checks and did not state at any time that a list of these claimants should be posted for 90 days (or for any period of time) on the SF-DCT website.
14. It is incorrect to state that all of the Closing Orders required direct mailings to claimants affected by the Order. The only Closing Order that directed a mailing to claimants was Closing Order 3, which affected a small population of individuals for whom the Settlement Facility did not have a current address. That mailing was consistent with the Settlement Facility's standard address verification process to obtain verified addresses through mailing to the last known address.
15. Closing Order 4 was not directed to claimants. Closing Order 4 relates to the audit survey sent to law firms.
16. No individual notices were sent to claimants affected by Closing Orders 1, 2, or 5.
17. The Settlement Facility routinely posts orders and information on its website.
18. Closing Order 2 was posted on the Settlement Facility website when it was entered by the Court – in March 2019.
19. Closing Order 2 provides that notice of the final distribution deadline shall be posted on the Settlement Facility website. Accordingly, the Settlement Facility will post such notice on its website.
20. To request a replacement check, a claimant can call, write, or email the Settlement Facility for instructions.

21. Pursuant to Closing Order 2, the Settlement Facility must determine whether either of the two conditions for a replacement check applies: (i) whether the claimant passed away after the initial check was issued, or (ii) if “good cause” has been provided for issuance of a replacement check.
22. If the claimant is deceased, the Settlement Facility must review a death certificate and then make a determination of whether the person seeking the replacement is, in fact, an authorized representative, which requires the Settlement Facility to obtain and examine probate documents. That process alone often takes several months.
23. Probate claimants generally are provided 6 months in which to compile and submit the necessary documents.
24. The Settlement Facility has been tracking uncashed payment checks for several years and in connection with finalizing the closure process identified 960 such uncashed checks as of the date the Motion was filed. The vast majority of these uncashed payments – 782 – were issued before 2019. Any of these claimants could have requested a replacement check at any time up until June 3, 2019. Some of these uncashed checks were issued more than ten years ago.
25. In my role as Claims Administrator, I handle requests for replacement checks. I estimate that approximately 50% of the requests for replacement checks are submitted by claimants who have previously received a replacement check that they have failed to cash. In some cases, claimants have requested and failed to cash replacement checks 3 or 4 times.
26. The claimants who currently have checks that were not cashed and are expired received multiple notices about their payments and deadline for resolving any issues with claims or payments. First, they all received notice that they were required to finalize submissions of any type by June 3, 2019. Second, each claimant received a letter advising them of the payment check at the time it was issued. If any such notification letter was returned undeliverable, the Settlement Facility conducted research to identify a new address and sent correspondence to that new address. Third, the Settlement Facility posted Closing Order 2 on its website in March 2019. The Order spells out the conditions for requesting a replacement check.

27. If any claimant wants to know more about requesting a replacement check, they can call the Settlement Facility or send an email or letter requesting information.

Pursuant to 28 U.S.C. Section 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 10th day of April 2023.


Kimberly Smith-Mair