

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

IN RE: §
§ **CASE NO. 00-CV-00005-DPH**
DOW CORNING § **(Settlement Facility Matters)**
CORPORATION, §
§
REORGANIZED DEBTOR § **Hon. Denise Page Hood**

**FURTHER RESPONSE OF CLAIMANTS’ ADVISORY COMMITTEE
TO MOTION TO ESTABLISH FINAL DISTRIBUTION DEADLINE
REGARDING REPLACEMENT CHECKS FOR SETTLEMENT
CLAIMS IN THE DOW CORNING SETTLEMENT PROGRAM**

The Claimants’ Advisory Committee (“CAC”) submits this Further Response to Motion to Establish Final Distribution Deadline Regarding Replacement Checks for Settlement Claims in the Dow Corning Settlement Program [ECF No. 1701] (the “Motion”), and respectfully states as follows:

The CAC offers this supplemental submission solely to respond to certain issues introduced in the Reply in Support of Motion to Establish Final Distribution Deadline Regarding Replacement Checks [ECF No. 1707] (“Reply”), namely, (1) the incorrect statement that the CAC never raised its concerns about adequate notice before the Motion was filed, and (2) the remarkable suggestion that the CAC somehow acted inappropriately and outside its role and authority in bringing those concerns to the attention of the Court in its limited objection to the Motion [ECF No. 1705] (“CAC Response”).

First, the Reply's suggestion that the CAC never raised the concerns discussed in the CAC Response is incorrect. The CAC expressed on multiple occasions its concern that claimants be provided with adequate notice of the final deadline to request replacement checks, comparable to the amount of notice provided in connection with other final deadlines in the Dow Corning Settlement. The CAC believes that it is inappropriate to delve into the private details of negotiations among the parties and the Finance Committee. However, a review of contemporaneous notes from various meetings in 2023 and contemporaneous internal communications within the CAC confirms that one or both of the undersigned CAC members raised this issue orally on at least two separate Closing Committee calls in February 2023, as well as in separate telephone conversations with the Appeals Judge and with a member of the Debtor's Representatives. The suggestion that the CAC never raised any objection to the amount of notice being given under the Motion is not accurate.

Second, Movants' suggestion that filing the Response to the Motion was somehow "inconsistent with the CAC's obligations and rights defined by the Plan" (Reply at 3) is astonishing. The CAC's role in the settlement process is to serve as the voice of tort claimants, and advocating for claimants to receive appropriate notice of final deadlines – particularly when claims may be permanently closed – is and has always been an important part of that role. SFA

Section 4.09(c)(v) specifically authorizes the CAC to “file a motion or take any other appropriate actions to enforce or be heard in respect of the obligations in the Plan and in any Plan Document,” which obviously includes advocating for appropriate notice of deadlines to claim benefits under the Plan. No party has suggested in the 20 years of this settlement process that such advocacy is not within the CAC’s bailiwick.

The CAC has endeavored to work cooperatively with the Finance Committee and Debtor’s Representatives and has been able to reach consensus on the vast majority of issues that have arisen in the closing process. But when the CAC’s input on issues it deems important is disregarded, it acts appropriately under the Plan to bring its concerns before the Court for consideration.

It is regrettable that Movants chose to escalate one such disagreement into an unfounded attack on the good faith and legitimacy of the CAC. We urge the Court to focus instead on whether the Motion, filed on March 29, 2023, provided the “adequate notice” mandated by Closing Order 2 by setting a final deadline of April 14, 2023, with no specified method of notice to claimants, to request a replacement check on an approved claim. The CAC’s Response suggests 90 days’ notice and forms of notice used, in different combinations, in one or more prior situations, but the specific amount and form of notice are matters within the Court’s discretion. Whatever the Court decides, the CAC Response was a

responsible exercise of the CAC's duties under the Plan to inform the Court on the issues implicated by matters brought before it.

CONCLUSION

For the foregoing reasons, the Court should disregard the baseless attacks on the CAC and decide the Motion on the merits, and for the reasons stated in the CAC Response, the Motion should be granted with the limited amendments of setting the Final Distribution Date at 120 days following entry of the order granting the Motion and providing the additional notice discussed in the Response.

Dated: New York, New York
April 12, 2023

Respectfully submitted,

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I certify that on April 12, 2023, I electronically filed a copy of the foregoing Further Response to Motion to Establish Final Distribution Deadline Regarding Replacement Checks for Settlement Claims in the Dow Corning Settlement Program through the Court's electronic filing system, which will send notice and copies of the aforementioned documents to all registered counsel in this case.

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