

**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

**JOINT MOTION FOR AUTHORIZATION
TO DISPOSE OF CLAIM RECORDS MAINTAINED BY
THE SETTLEMENT FACILITY-DOW CORNING TRUST**

For the reasons set forth in the attached memorandum, Dow Silicones Corporation (“Dow Silicones”), the Debtor’s Representatives (the “DRs”), the Claimants’ Advisory Committee (the “CAC”), and the Finance Committee (collectively, the “Movants”) bring this Joint Motion for Authorization to Dispose of Claim Records Maintained by the Settlement Facility-Dow Corning Trust (“Motion”).

On May 15, 1995, Dow Corning Corporation filed a voluntary petition for relief under Chapter 11 of the U.S. Bankruptcy Code. On June 1, 2004, the Amended Joint Plan of Reorganization of Dow Corning Corporation (“Plan”) became Effective. The Plan established the Settlement Facility–Dow Corning Trust (“Settlement Facility”) whose purpose is to process claims submitted for compensation under the Plan’s settlement program. The Settlement Facility has

been in operation for over 20 years and during that time has received, compiled, and stored hundreds of thousands of documents including claim forms, medical records, and correspondence submitted by individuals seeking to assert claims for compensation from the settlement program (“Claim Files”). The documents maintained by the Settlement Facility also include certain documents provided to the Settlement Facility by the MDL 926 Claims Office when the MDL Claims Office completed its operations (“Non-Claim MDL Files”). These Non-Claim MDL Files are not relevant to any claims submitted to the Settlement Facility.

For the reasons set forth in the attached memorandum, Movants respectfully request that the Court (1) authorize the Settlement Facility to arrange for the appropriate and confidential destruction of all hard copy Claim Files as soon as practicable; (2) authorize the Settlement Facility to arrange for the appropriate and confidential destruction of the Non-Claim MDL Files as soon as practicable; (3) authorize the Settlement Facility to destroy all electronic Claim Files and to disable the claims database after the Settlement Facility terminates its operations; (4) authorize the Settlement Facility to provide to the Court a file in a searchable format containing certain limited information about the disposition of claims throughout the operation of the Settlement Facility; and (5) grant such other relief as is appropriate.

Dated: April 2, 2023

Respectfully submitted,

/s/ Karima Maloney

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**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

**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR
AUTHORIZATION TO DISPOSE OF CLAIM RECORDS MAINTAINED
BY THE SETTLEMENT FACILITY-DOW CORNING TRUST**

Dow Silicones Corporation (“Dow Silicones”), the Debtor’s Representatives (the “DRs”), the Claimants’ Advisory Committee (the “CAC”), and the Finance Committee (collectively, “Movants”) submit this Memorandum in support of the Joint Motion for Authorization to Dispose of Claim Records Maintained by the Settlement Facility-Dow Corning Trust.

Background

On May 15, 1995, Dow Corning Corporation filed a voluntary petition for relief under Chapter 11 of the U.S. Bankruptcy Code. On June 1, 2004, the Amended Joint Plan of Reorganization of Dow Corning Corporation (“Plan”) became Effective.¹ The Plan established the Settlement Facility–Dow Corning Trust (“Settlement Facility”) whose purpose is to process claims submitted for

¹ Unless otherwise defined, capitalized terms used herein shall have the meaning provided in the Plan.

compensation under the Plan's settlement program. The Settlement Facility has been in operation for over 20 years and during that time has received, compiled, and stored hundreds of thousands of documents including claim forms, medical records, and correspondence submitted by individuals seeking to assert claims for compensation from the settlement program ("Claim Files"). The documents maintained by the Settlement Facility also include certain documents provided to the Settlement Facility by the MDL 926 Claims Office when the MDL Claims Office completed its operations ("Non-Claim MDL Files"). These Non-Claim MDL Files are not relevant to any claims submitted to the Settlement Facility.

The Settlement Facility has, since its inception, created electronic images of the Claim Files including all submissions it received from claimants, attorneys, and medical providers as part of its routine procedures for the intake and review of claims. The Settlement Facility has not created electronic images of the Non-Claim MDL Files that were not relevant to claims submitted to the Settlement Facility.

The Settlement Facility is currently storing 13,570 boxes of Claim Files. As noted, all of the documents in those boxes have been scanned and are stored electronically in the Settlement Facility's claim database. The Settlement Facility is also storing boxes of Non-Claim MDL Files that have no use with respect to the Settlement Facility claims process and that were given to the Settlement Facility with no claim or request for their return.

The cost of storing these hard copy files is \$140,000 annually. There is no funding to cover the cost of storage of these documents once the Settlement Facility is closed. The scanned images of the claim submissions are currently maintained in the claims processing database. The images comprise one terabyte of electronic information. Without the database structure, the images cannot be accessed or searched.

In assessing the proper way to address the voluminous claim records – both in paper and electronic form – the Finance Committee consulted with the Clerk’s Office of the United States District Court for the Eastern District of Michigan. The Clerk’s Office has consulted with the Administrative Office of the United States Courts and has advised the Finance Committee that the Claim Files, whether in hard copy or electronic format, are *not* court records and therefore do not need to be preserved and archived. The Clerk’s Office has further advised that a searchable database of the final disposition of all the claims will provide a sufficient and appropriate record for the Court’s purposes.

Relief Requested

The Claim Files contain medical information and other data personal to individual claimants. Because the Settlement Facility does not need the hard copy Claim Files or the Non-Claim MDL Files for any purpose before final termination and because it would be burdensome and costly for the documents to be transferred

to the court or court archives for storage, Movants request authorization to destroy the Claim Files and the Non-Claim MDL Files as soon as practicable. The destruction will be conducted by a qualified vendor in accordance with generally accepted procedures that will assure that confidentiality of all documents is maintained. At the end of the process, the records destruction facility will be required to provide a certificate confirming the confidential destruction of the documents.

The Settlement Facility will maintain the database and the electronic Claim Files until its termination. Once the Settlement Facility terminates operations, the database and the electronic Claim Files have no use and may at that point be destroyed.

Wherefore, Dow Silicones, the DRs, the CAC, and the Finance Committee request that the Court (1) authorize the Settlement Facility to arrange for the appropriate and confidential destruction of all hard copy Claim Files as soon as practicable; (2) authorize the Settlement Facility to arrange for the appropriate and confidential destruction of the Non-Claim MDL Files as soon as practicable; (3) authorize the Settlement Facility to destroy all electronic Claim Files and to disable the claims database after the Settlement Facility terminates its operations; (4) authorize the Settlement Facility to provide to the Court a file in a searchable format

containing certain limited information about the disposition of claims throughout the operation of the Settlement Facility; and (5) grant such other relief as is appropriate.

Dated: April 2, 2023

Respectfully submitted,

/s/ Karima Maloney

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Hon. Denise Page Hood

CERTIFICATE OF SERVICE

I hereby certify that on April 2, 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: April 2, 2023

/s/ Deborah E. Greenspan

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