

**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**

**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 Response to Motion to Establish Final Distribution Deadline Regarding Replacement Checks for Settlement Claims in the Dow Corning Settlement Program [ECF 1701] (the “Motion”), and respectfully states as follows:

INTRODUCTION

The CAC agrees that it is appropriate to set a Final Distribution Deadline pursuant to Closing Order 2, so that the wind-down of operations at the Settlement Facility – Dow Corning Trust (“SF-DCT”) can proceed. However, the Motion would set a Final Distribution Deadline (May 15, 2023) that would provide claimants and attorneys with little to no notice before the April 14, 2023 deadline to file a request for a replacement check (30 days *before* the Final Distribution Deadline). Failing to provide notice of a final deadline is not only unfair to

claimants, it is contrary to the 90-day notice period and the publication notice process that all parties have consistently proposed and the Court has adopted in its Closing Orders when claims will be permanently closed. Indeed, it is contrary to Closing Order 2 itself, which requires “appropriate” notice.

The CAC brought this issue to the attention of the Finance Committee, Dow Silicones Corporation, and the Debtor’s Representatives (“Movants”) before the Motion was filed, but the dates were not adjusted. The CAC therefore objects to the Motion to the limited extent of requesting that the Final Distribution Deadline be set 120 days after entry of the order granting the Motion, so as to provide 90 days’ notice of the deadline to file requests for replacement checks, and that the SF-DCT provide specific notice of the deadline to affected claimants as discussed below.¹

RESPONSE

As set forth in the Motion, Closing Order 2 [ECF No. 1482] states that the Court will establish a Final Distribution Deadline sometime after the June 3, 2019 claim filing deadline. Closing Order 2 specifically provides: “The final distribution deadline will be set forth in an order and will be posted on the SF-DCT

¹ The Motion states that “the parties” request the Court to establish May 15, 2023 as the Final Distribution Date. Motion at 6. However, the parties to this settlement are Dow Silicones Corporation, the Debtor’s Representatives, and the CAC.

website *so that claimants and attorneys receive appropriate notice.*” Closing Order 2, ¶ 12 (emphasis added).

Closing Order 2 specifies two situations in which replacement checks may be requested – where the claimant passed away after the check was issued, or in other circumstances establishing good cause. In either case, requests for replacement checks, accompanied by all necessary explanation or documentation, must be submitted 30 days *before* the Final Distribution Deadline. *Id.* at ¶ 19.

The Motion requests that the Final Distribution Deadline be set at May 15, 2023, which would set the deadline for submitting requests for replacement checks at April 14, 2023. Even assuming the Motion were to be granted this week, attorneys and claimants would have less than two weeks to submit fully documented requests for replacement checks. Moreover, the motion fails to provide any means of notice to affected claimants and their counsel. In all prior Closing Orders, the SF-DCT was directed to post SID numbers on its website and/or provide written notice to affected claimants (*e.g.*, Closing Order 2 which directed the SF-DCT to send a letter to all 381 affected claimants informing them of the deadline). In addition, the CAC was directed to disseminate information about the Closing Order on its website and through its electronic newsletter. The Motion provides no time and no procedure to give notice to the affected claimants.

This would not constitute the “appropriate notice” mandated by Closing Order 2. The CAC submits that “appropriate notice” should be notice

consistent with recent past practice in the SF-DCT. In various closing orders and consent orders supported by the parties and Finance Committee over the past eight years, it has been considered paramount to provide claimants with ample time to respond before their claims were permanently closed:

- In the Consent Order for Class 7 [ECF No. 1227], ¶ 40, claimants were given appropriate notification of the need to provide current address information. The SF-DCT was directed to post information to its website that allowed claimants to respond within 90 days after the Consent Order became final.
- In Closing Order 3 [ECF No. 1598], at 4-5, 381 claimants were given over 90 days to provide a confirmed current address to the SF-DCT, and the SF-DCT was ordered to mail a letter to all 381 claimants.
- In Closing Order 5 [ECF No. 1642], ¶ 6, claimants who had a “bad address” were given 90 days to contact the SF-DCT after their SID was posted on the SF-DCT website. As a result, in the Notice of Posting of SIDs dated January 12, 2023, claimants were given 90 days to contact the SF-DCT and provide a current address.

In view of this consistent practice in establishing deadlines in connection with the final stages of the Dow Corning Settlement, a period of no more than 10 days cannot constitute the “appropriate notice” required by Closing Order 2. Fairness requires that claimants and counsel be provided with at least 90

days' notice of the final day to request a replacement check, which requires that the actual Final Distribution Date be set 120 days following entry of the order granting the Motion. In addition, the CAC believes that, consistent with past practice, in addition to posting the Final Distribution Date order on the SF-DCT website as required by Closing Order 2, (1) individual notice of the deadline should be mailed to the approximately 960 claimants affected by the deadline, and (2) the website posting should include the SIDS for these claimants. In addition, the CAC will publicize the deadline through its website and newsletter.

Allowing adequate time and notice will not interfere with closing of the SF-DCT, since it is anticipated to remain open through the first quarter of 2024. The deadline and further notice proposed by the CAC would accommodate this time frame and allow the SF-DCT to close on this schedule. With this adjustment to the schedule and further notice, the CAC would support granting of the Motion.

CONCLUSION

For the foregoing reasons, 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 above.

Dated: New York, New York
April 3, 2023

Respectfully submitted,

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I certify that on April 3, 2023, I electronically filed a copy of the foregoing 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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