

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

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

**OMNIBUS RESPONSE OF CLAIMANTS' ADVISORY COMMITTEE TO SEVEN
ADDITIONAL MOTIONS SEEKING RELIEF IN THE FORM OF TOLLING AND/OR
EXTENSION OF CURE DEADLINES FOR CLAIM SUBMISSIONS**

AND

**OMNIBUS MOTION OF CLAIMANTS' ADVISORY COMMITTEE FOR RELIEF
ON BEHALF OF ALL SETTLING CLAIMANTS WHOSE CURE DEADLINE(S)
HAVE ALREADY RUN OR ARE ABOUT TO RUN WITHIN THE NEXT SIX MONTHS**

Seven additional motions have now been filed seeking relief based on cure deadlines which either have already run or are about to run within the next several months.¹ These motions are in addition to four other pending motions which have previously been briefed seeking the same or similar relief with regard to tolling cure deadlines and/or requests for re-review of claim deficiencies.² The

¹ The seven motions are: 1) Plaintiffs' Motion For Expedited Consideration For Tolling Of Disease Deficiencies And Request For Six Month Extension For Curing Past and Future Disease Deficiencies, filed May 27, 2005 by Motley Rice; 2) Plaintiffs' Motion For Expedited Consideration For Tolling Of Disease Deficiencies And Request For Six Month Extension For Curing Past And Future Disease Deficiencies, filed May 31, 2005 by Siegel, Kelleher & Kahn; 3) Motion and Memorandum In Support of [Claimant Name Redacted] To Toll The One Year Deadline For Curing Disease Claim Deficiencies, filed June 6, 2005 by Doffermyre Shields Canfield Knowles & Devine; 4) Motion [#2] and Memorandum In Support Of [Claimant Name Redacted] To Toll The One Year Deadline For Curing Disease Claim Deficiencies, filed June 6, 2005 by Doffermyre Shields Canfield Knowles & Devine (this motion was later withdrawn); 5) Motion and Memorandum In Support Of [Claimant Name Redacted] To Toll The Six Month Deadline For Curing Rupture Deficiencies, filed June 6, 2005 by Doffermyre Shields Canfield Knowles and Devine; 6) Motion of Nita Baldwin To Toll The Six-Month Deadline For Curing Rupture Deficiency, filed June 13, 2005 by the Law Office of Thomas R. Dreiling; and 7) Motion and Memorandum In Support of To Toll [sic] The One Year Deadline For Curing Disease Claim Deficiencies, filed June 17, 2005 by Provost Humphrey Law Firm, LLP.

² The four pending motions are: 1) Motion of [Claimant Name Redacted] To Toll The Six Month Deadline For Curing Rupture Deficiencies, filed January 21, 2005 by Doffermyre Shields Canfield Knowles &

CAC is informed based on numerous conversations and contacts with law firms active in this litigation that additional motions are about to be filed on behalf of hundreds of other claimants whose cure deadlines are also approaching in the upcoming months. Rather than respond to each individual motion as it is filed – which will likely prove expensive and time consuming for the Settlement Trust and will undoubtedly cause a backlog for the Court’s docket in this case -- the CAC believes that the best course of action is to file this Motion seeking the Court to provide relief on a global basis to all Settling Claimants whose claim has been reviewed and found deficient to date by the Settlement Facility. Specifically, the CAC requests that this Court use its inherent and explicit supervisory authority over the Settlement Trust to take the following action:

1. Void the enforcement of all cure deadlines that any Settling Claimant has received for a claim found deficient by the Settlement Facility including those cure deadlines that have already expired and those about to expire in the upcoming months;
2. Temporarily suspend the issuance of new deficiency Notification of Status letters that would trigger cure deadlines to run (nothing however would prevent the issuance of award letters and payment for approved claims);

Devine; 2) Motion of the CAC To Toll The Cure Deadline For All Requests For Re-Review That Are Pending More Than 21 Days, filed February 7, 2005 by the Claimants’ Advisory Committee; 3) Motion of Deborah DeSanto For 60 Day Extension To Cure Her Explant And Rupture Deficiencies Based On Special Circumstances, filed February 25, 2005 by the Law Offices of Richard DeSanto; and 4) Motion Of Tamara Vanlandingham To Toll The Six Month Deadline For Curing Rupture Deficiencies, filed March 16, 2005 by Siegel, Kelleher & Kahn.

3. Direct the Settlement Facility to develop and release information to claimants that provides specific answers and guidelines for submitting and processing claims similar to the Q&A's that were recently promulgated by the MDL 926 Claims Administrator and Court;
4. Allow claimants who have already been notified of an alleged deficiency in their claim submission the opportunity to submit new information consistent with the agreed-upon claims criteria and new Q&A's that the Claims Administrator will promulgate in conjunction with the parties and the Court;
5. Direct that the disability "A" disease claims should be interpreted consistent with the way the these claims were processed in the Revised Settlement Program from January 1996 to October 1997; and
6. Re-review all claims previously found deficient consistent with the new Q&A's to be developed and the disability A interpretation that was applied in the RSP pre-October 1997.

MEMORANDUM IN SUPPORT OF MOTION

In support of this Response and Motion, the CAC hereby adopts and incorporates by reference herein its prior *Motion For The Disclosure of Substantive Criteria Created, Adopted And/Or Being Applied By The Settlement Facility and Request For Expedited Consideration*, its Reply brief to this *Motion*,

and the *Motion of the Claimants' Advisory Committee To Toll The Cure Deadline For All Requests For Re-Review That Are Pending More Than 21 Days* and the CAC's Reply brief to that *Motion*. The CAC states as follows:

1. Several months ago, based on growing concerns about the claims processing backlogs and activities at the Settlement Facility, the CAC and Debtor's Representatives requested that an outside claims audit be conducted. The audit was done by ARPC and a written report was recently provided to the Court, Finance Committee, Debtor's Representatives and CAC. The audit report has not been publicly released so the CAC is unable to provide specific examples in this Motion and Memorandum in support; however, we believe it is fair to state that the audit conclusions support the relief being sought herein.
2. At the April 7, 2005 hearing before the Court, argument on the pending *CAC Motion for Disclosure of Substantive Criteria* was deferred until July 21, 2005 so that the audit could proceed and the parties could have adequate time to evaluate the results and determine how best to proceed with the pending motions. We believe this schedule is achievable; however, in light of the urgency of the expiration of the one-year cure deadlines for disease claims that are being triggered in June 2005, the CAC believes that it is important for the Court to take immediate action to address the substantial harm that will result to claimants in this situation.

3. For the past several months, the CAC has been gathering data and documentation on approved RSP disease claims to compare processing outcomes with that in the Settlement Option. We believe that sufficient information exists to demonstrate that consistency in claims outcomes between the two claims office – particularly with regard to disability “A” disease claims – is not occurring.
4. Since the CAC filed its *Motion For The Disclosure Of Substantive Criteria* in January 2005, the Claims Administrator resigned and a successor Claims Administrator, David Austern, has been appointed. The successor Claims Administrator’s appointment was effective May 23, 2005 – one month ago. The CAC fully supports the ongoing efforts of the successor Claims Administrator to address the myriad and seemingly herculean claims processing problems at the Settlement Facility. This motion should not be interpreted to be critical of him or his efforts in any way. We recognize that the problems at the Settlement Facility are significant and that he has not yet had adequate time to implement all of the necessary changes; however, we are compelled to file this motion now given that hundreds of cure deadlines are and will continue to run unless immediate relief is granted.
5. In the Revised Settlement Program, the Plaintiff representatives filed a *Motion adopting the CAC’s Motion For Disclosure of*

Substantive Criteria and sought similar relief. Thereafter, the MDL-926 Claims Administrator promulgated a lengthy set of Q&A's concerning one of the nine disease conditions (General Connective Tissue Symptoms), which were adopted by the MDL 926 Court on April 20, 2005. A copy of the MDL Court's Order of April 20, 2005 is attached hereto as Exhibit 1. At an informal status conference on June 3, 2005, the MDL 926 Claims Administrator indicated that she was working on additional Q&A's on several Long Term Benefit Schedule diseases (or Disease Option 2 claims in the Dow Corning Settlement Option); however, she did not have a schedule for the completion of these and other Q&A's on disease claims. The CAC applauds the MDL Claims Administrator for making this information available in the MDL proceedings and her willingness to promulgate additional Q&A's. We note that MDL claimants' rights have not been prejudiced because of the lack of information on submitting disease claims in the MDL because they do not have any deadline to cure a deficiency in a claim submission. As noted below, the substantive rights of Dow Corning claimants are being adversely affected by the lack of adequate information to date on correct claim criteria.

6. The new MDL 926 Q&A's have been provided to the successor Claims Administrator. We do not know at this time whether these

Q&A's will be recognized and accepted by the Settlement Facility.
This matter is under consideration.³

7. There are significant backlogs in claims processing at the Settlement Facility for virtually every type of claim. Requests for re-review to cure deficiencies have also experienced significant time delays and backlogs. These backlogs and delays have seriously prejudiced the ability of claimants to fairly and effectively pursue their claims.
8. June 1, 2005 was the one-year anniversary of the Effective Date. The CAC is informed that hundreds of claimants are and will continue to see their one-year cure deadline for disease claims run out each month in June, July and continuing through the next 6 months. Simply stated, this translates to hundreds – perhaps thousands of claims which may be permanently extinguished because claimants were not provided with either adequate information about the correct claims criteria prior to the submission of their claim or were provided with partial and incomplete information, on an individual claimant-by-claimant basis to those fortunate enough to have been able to reach one of only two nurse reviewers in the Claims Assistance Program, and then received the information only after their cure deadline began to run.

³ The CAC notes that the former Claims Administrator did not promulgate any disease Q&A's since claim form packages were mailed in February 2003. To the contrary, the CAC submitted dozens of proposed disease Q&A's and proposed questions that sought answers, but the former Claims Administrator declined to provide the answers or adopt any of the Q&A's.

9. The specific examples presented by the Motley Rice motion further heighten the CAC's concern about processing and alleged claim deficiencies for claims in the Settlement Option. For example, Exhibit 9 is a Notification of Status letter for a claimant whose disability level is approved but whose disease symptom for "documented sleep disturbances" in Atypical Connective Tissue Disease was found deficient because "the Claimants' medical record(s) must document multiple instances of interference with normal sleep pattern, or an adequate description of the interference with the normal sleep pattern." This is the only deficiency and the only thing apparently keeping the claimant from receiving compensation for \$10,000. The underlying medical record that references this symptom is dated July 29, 1994 and contains a notation of "sleep disturbances" (plural). The CAC is unable to understand what more a claimant or her physician would have to include to adequately document sleep disturbances. Common sense and experience dictates that claimants have not scheduled expensive doctor's appointments to report the loss of only one night's sleep. It is also contrary to our experience in reviewing medical records to expect a treating doctor to describe in any more particularity what the sleep disturbance is. Suffice it to say that the claimant reported she was unable to sleep on multiple occasions. Indeed, the claimant's record in question used the plural of "sleep

disturbances.” Moreover, we believe it is important for the Court to understand the following:

- ▶ claimants are having great difficulty getting their treating doctors to cooperate and provide the medical records and clarifying report particularly given the lengthy interval between the time the report was first written in 1994 and today – a difference of 11 years⁴,

- ▶ doctors who served as QMD’s previously are increasingly unwilling to do so given the problem created when the SFDCT sent out letters in early 2005 advising claimants that their QMD was, for some unknown reason, deemed “unreliable” or “unacceptable by the SFDCT,”

- ▶ there are real and often substantial costs incurred by claimants for follow-up doctor’s appointment that are not related to treatment but solely to ask the doctor to write something more descriptive on sleep disturbances in the claimants’ records (descriptions that the doctor would not otherwise include in the record but for the Settlement Facility’s dogmatic and unreasonable insistence on over-interpreting what we believe is a straightforward symptom of “sleep disturbances”,

- ▶ the claimant must also pay for a second clarifying letter and the costs of obtaining the medical records – costs which are likely to exceed several hundreds of dollars -- solely to obtain an additional sentence or

⁴ The SFDCT requires both the clarifying letter from the QMD and the underlying medical records for the office visit. In instances where the QMD has simply written a clarifying report without seeing the claimant again, the SFDCT then denies the claim because it apparently requires the doctor to conduct a new examination on the sleep disturbance symptom!

two on the nature of how the claimant is unable to sleep. These expenses are not justified given the relatively modest recovery amounts in the Plan.

10. Pending the outcome of the various audits and reviews that are being conducted and pending a full evaluation of the audit and the implementation of corrective steps, the CAC urges this Court to take immediate action to afford claimants relief as described herein.

Respectfully submitted,

FOR THE CLAIMANTS'
ADVISORY COMMITTEE

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Omnibus Response of the Claimants' Advisory Committee To Seven Additional Motions Seeking Relief In The Form Of Tolling And/Or Extension Of Cure Deadlines For Claim Submissions and the Omnibus Motion of the Claimants' Advisory Committee For Relief On Behalf Of All Settling Claimants Whose Cure Deadline Has Already Run Or Is About To Run Within The Next Six Months has been sent via U.S.P.S. overnight mail this 25th day of June, 2005 and an electronic copy will be served on all moving parties, the Debtor's Representatives and Finance Committee on June 27, 2005.

Dianna Pendleton-Dominguez