

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

)	Civil Action No. 00-CV-00001
)	
In re:)	MASTER DOCKET
)	(Litigation Facility Matters)
)	HON. DENISE PAGE HOOD
DOW CORNING LITIGATION.)	
)	

CASE MANAGEMENT ORDER NO. 2

This Case Management Order (“CMO”) No. 2 is entered pursuant to the Amended Joint Plan of Reorganization, as updated June 1, 2004 (the “Plan”), and this Court’s continuing jurisdiction over claims asserted against the DCC Litigation Facility, Inc. (“Facility”), which is predicated, *inter alia*, on Article III of the United States Constitution, the Bankruptcy Code, Proofs of Claim that were previously filed and various provisions of the Plan, including Sections 8.7.1, 8.7.3 and 8.7.8. CMO No. 2 supplements CMO No. 1 and, where noted, modifies and supersedes particular provisions of CMO No. 1. CMO No. 2 governs all personal injury claims brought against the Facility (hereinafter “Opt-Out Claims”). (Note: Capitalized terms not specifically defined in this CMO No. 2 are defined in the Plan.)

1. Required Procedure for Commencing an Opt-Out Claim

(a) Opt-Out Claimants shall commence a Claim by completing, executing under oath and serving the DCC Litigation Facility Notice of Intent to Litigate/Claimant Questionnaire (“Questionnaire”) on or before February 28, 2005, which is 90 days after the November 29, 2004 Election Deadline (except for those Claimants excepted by paragraph 1(e) below). In addition, those Opt-Out Claimants who are required to make a decision to opt out must have done so on or before the Election Deadline.

(b) The Questionnaire shall be served upon the Facility itself at: DCC Litigation Facility, Inc., P.O. Box 2089, Midland, MI 48641-2089. Each Claim shall be assigned a consecutively numbered Claim No. by the Facility, which shall file the first page of each Questionnaire with the Clerk of the Eastern District of Michigan. To be timely served upon the Facility, a Claim must be post-marked on

or before February 28, 2005.

(c) The Questionnaire shall be completed and verified by the Claimant under oath. Claimants shall supplement information provided in the Questionnaire, consistent with Federal Rule of Civil Procedure 26(e). Claimants who previously submitted an MDL-926 questionnaire or who answered equivalent state court interrogatories need only (i) update their prior answers, (ii) respond to those questions that are new on the Litigation Facility Questionnaire, and (iii) sign the verification under oath on the Litigation Facility Questionnaire.

(d) Timely submission of the Questionnaire to the Facility constitutes the initiation of an action for purposes of any statutes of limitations or repose, notwithstanding that the Claimant has not filed a Complaint. Any applicable statute of limitations will thus be tolled from the Effective Date until the date the Questionnaire is due. This Order does not constitute a ruling as to whether or not any statute of limitations or repose applies to any claim.

(e) Absent exceptional circumstances, failure to submit the Questionnaire by February 28, 2005 will forever bar the Opt-Out Claim, except insofar as (1) any such Claim expressly or by default has been preserved as a Settling Personal Injury Claim with the Settlement Facility, or (2) as specified in Paragraph 5(f) of CMO No. 1, which provides that “Each Opt-Out Claimant who is a minor on the Effective Date shall have until the earlier of (i) the date that is one hundred and eighty days after such claimant’s eighteenth birthday or (ii) the fifteenth anniversary of the Effective Date to initiate an action in the manner set forth in subparagraph 5(a) of this order. Each Opt-Out Claimant who has not yet manifested injury on the Effective Date shall have until the earlier of (x) the date that is one hundred an eighty days after such claimant’s illness or symptoms (of sufficient severity to support a disease payment) have become manifest or (y) the fifteenth anniversary of the Effective Date to initiate an action in the manner set forth in subparagraph 5(a) of this order.”

2. Claimants Need Not File a Complaint Now

(a) The requirements in CMO No. 1 that Opt-Out Claimants “shall commence an

action against the Facility by filing a complaint within 60 days of opting out” (Para. 5(a)) and complete a questionnaire with 120 days thereafter (Para. 11(a)) are hereby stricken and replaced by the terms of this CMO No. 2.

(b) Opt-Out Claimants need NOT file an individual complaint to initiate their Claim against the Facility. It is the filing of the Questionnaire with the Facility no later than February 28, 2005, 90 days after the Election Deadline, that initiates the Claim.

(c) Opt-Out Claimants need not file an individual complaint unless and until ordered to do so by the Court, which is anticipated to occur only at such time that an Opt-Out Claim has exhausted pretrial proceedings and is being certified as ready for trial.

3. Sequencing of Pre-trial Procedures

(a) To expedite the progress of the pre-trial procedures set forth in Paragraphs 7 through 11 of CMO No. 1, the Facility shall conduct a preliminary analysis of the Questionnaires within 60 days of the February 28, 2005 deadline for submitting Opt-Out Questionnaires and, after consulting with the Special Master and such Representatives of the Opt-Out Claimants as the Court directs, shall report to the Court and Representatives of the Opt-Out Claimants the numbers and categories of Claims and any other factors that affect pre-trial and common-issue proceedings. At the same time, the Facility shall, after consultation with the Special Master, and Representatives of the Opt-Out Claimants submit to the Court the proposed timing and sequencing of common-issues motions and *Daubert* hearings. Any claimant shall retain his or her right to argue to the District Court the appropriateness or inappropriateness of *Daubert* or other common issue motion practice.

(b) The Court will meet with the parties approximately 30 days after submission of the reports referred to in the preceding paragraph to set forth specific procedures for hearing and resolution of common-issue motions and *Daubert* hearings.

4. Notices and Docketing

(a) The Facility and Opt-Out Claimants shall file motions and papers relating to

common issues and proceedings under the previously-established Master Docket, *In Re: Dow Corning Litigation*, Civil Action No. 00-CV-00001 (E.D. Mich.). Any motions or other papers relating to an individual claimant shall be filed under the Court Identification Claim Specific Number assigned on the Questionnaire.

(b) Notice of pretrial motions and hearings relating to common issues and proceedings shall be served upon the Facility, Representatives of the Opt-Out Claimants, the Special Master, and affected Opt-Out Claimants. Valid notice to an Opt-Out Claimant may be effected by serving counsel (if any) identified on the Questionnaire.

(c) The Settlement Facility shall include a copy of this CMO No. 2 and Questionnaire in the acknowledgment letter sent by the Settlement Facility - Dow Corning Trust to each Opt-Out Claimant.

(d) The Litigation Facility shall send an acknowledgment of receipt of the Questionnaire to the Opt-Out Claimant's attorney, if represented. Otherwise, the acknowledgment will be sent to the claimant.

s/ Denise Page Hood
DENISE PAGE HOOD
United States District Judge

DATED: September 29, 2004