

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In Re:

Dow Corning Corporation,

Reorganized Debtor

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§

Case No. 00-CV-00005-DT
(Settlement Facility Matters)

Hon. Denise Page Hood

**OBJECTION TO NOTICE OF FILING OF SUPPLEMENTAL EXHIBIT TO
MOTION OF CLAIMANTS’ ADVISORY COMMITTEE FOR THE
DISCLOSURE OF SUBSTANTIVE CRITERIA CREATED, ADOPTED
AND/OR BEING APPLIED BY THE SETTLEMENT FACILITY
AND REQUEST FOR EXPEDITED CONSIDERATION**

Dow Corning Corporation (“Dow Corning”) respectfully submits this objection to the *Notice of Filing of Supplemental Exhibit to Motion of Claimants’ Advisory Committee for the Disclosure of Substantive Criteria Created, Adopted and/or Being Applied by the Settlement Facility and Request for Expedited Consideration* (the “Supplemental Exhibit”).

Literally on the eve of oral argument, on a matter of great importance that has been pending for over a year and a half, the Claimants’ Advisory Committee (“CAC”) filed as a supplemental exhibit to its motion for disclosure a memorandum prepared by the Claims Administrator and circulated to the CAC and the Debtor’s Representatives regarding the application of the Disability Level A guideline. This memorandum was never intended to be distributed to anyone other than the parties. Moreover, this pleading violates the local rules of civil procedure and the rules of evidence and therefore cannot be considered.

First, the pleading violates local rules on timeliness. *See* Local Rule 7.1(d)(2). The CAC’s original motion, the *Motion of the Claimants’ Advisory Committee for the Disclosure of Substantive Criteria Created, Adopted and/or Being Applied by the Settlement Facility and Request for Expedited Consideration*, was filed on December 15, 2004. Dow Corning

responded to the CAC Motion on January 21, 2005. The rules of this Court provide that a reply brief – or “supplemental exhibit” refers to it – “must be filed . . . not less than 3 days before oral argument.” Local Rule 7.1(d)(2)(C). The Supplemental Exhibit, which the CAC filed less than 1 day before oral argument is therefore untimely and cannot be considered.

Second, the memorandum constitutes unsworn hearsay and as such, may not be considered by this Court. *See* Fed. R. Evid. 802. Dow Corning has not had an opportunity to depose the Claims Administrator and therefore has not been able to gather facts and evidence about the nature and scope of his review of Disability Level A claims.

Third, the purpose of the memorandum was not to provide an unequivocal statement of fact suitable for introduction into evidence. The memorandum constitutes, by the Claims Administrator’s own admission, only the personal, subjective and non-scientific impression of the Claims Administrator and cannot be considered as determinative of any factual questions or any practices of the MDL Claims Office.¹

¹ The CAC, by filing this pleading, has put Dow Corning in the very difficult position of having to respectfully suggest that this Court consider whether it is necessary to hold an evidentiary proceeding or reject the supplemental filing in its entirety.

For the foregoing reasons, the Supplemental Exhibit cannot be considered and should be stricken from the record.

Respectfully submitted this 20th day of June 2006.

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DEBTOR'S REPRESENTATIVE AND
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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 §

CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2006 a true and correct copy of the following pleading was served via electronic mail, telecopy, or overnight mail upon the parties listed below:

**OBJECTION TO NOTICE OF FILING OF SUPPLEMENTAL EXHIBIT TO
MOTION OF CLAIMANTS' ADVISORY COMMITTEE FOR THE
DISCLOSURE OF SUBSTANTIVE CRITERIA CREATED, ADOPTED
AND/OR BEING APPLIED BY THE SETTLEMENT FACILITY
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