

# EXHIBIT D

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

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

**DECLARATION OF JONATHAN ROSEN**

I, Jonathan Rosen, hereby declare and affirm as follows:

1. I submit this Declaration in conjunction with the Opposition of Dow Coming Corporation ("DCC"), the Debtor's Representatives and the Shareholders to the Finance Committee's Recommendation and Motion for Authorization to Make Second Priority Payments. I am fully familiar with the facts set forth herein.

**A. PROFESSIONAL BACKGROUND**

2. I am an attorney admitted to practice law in New York, New Hampshire, Massachusetts and South Africa.

3. Since 2009, I have been self-employed as an arbitrator, mediator, and expert witness servicing the insurance and reinsurance industries. Based on my industry experience, I am certified as both an umpire and arbitrator by ARIAS.US and am certified on CPR's Panel of Distinguished Neutrals. My office is located at 1133 Broadway, Suite 600, New York, NY 10010.

4. From 1994 through mid-2003, I served as Executive Vice President and Reinsurance Counsel of The Home Insurance Company ("The Home") and Risk Enterprise Management Limited, where I was responsible for the reinsurance operations of those entities.

5. After The Home entered liquidation in mid-2003, I was appointed Chief Operating Officer of The Home Insurance Company In Liquidation (“HICIL”) and served in that capacity through 2008. While at HICIL, I had responsibility for the claims, reinsurance, actuarial, and legal departments. I continue to maintain a consulting relationship with HICIL.

6. I also was instrumental in founding and served as a board member of the Association of Insurance and Reinsurance Run-Off Companies (“AIRROC”) from 2004 through 2011. I was a chairman of AIRROC from 2008 through 2010.

7. Finally, during my tenure at HICIL I was appointed: (a) as an Authorized Representative of the New Hampshire Insurance Commissioner (“Commissioner”) to assist the New Hampshire Insurance Department (“Department”) regarding certain insurance company restructurings, rehabilitations, and liquidations of entities other than HICIL that fell under the Department’s regulatory control; and (b) as a Special Representative of the Commissioner on the Task Force and regulatory working group charged by the National Association of Insurance Commissioners (“NAIC”) to develop and produce a revised Insurers Rehabilitation and Liquidation Model Act, an initiative in which I was actively involved and which ultimately led to adoption by the NAIC plenary in 2005 of the Insurer Receivership Model Act.

8. As part of my position at HICIL, I was responsible for determining the appropriate standard for how and when to distribute limited asset funds to claimants with different levels of priority.

9. A copy of my resume is attached as Attachment 1.

## **B. SCOPE OF ENGAGEMENT**

10. I have been engaged to address, within the context of the proposed Second Priority Payments, when an administrator charged with distributing a limited asset (or a capped

amount of money) to qualified claimants may prudently effect distributions to claimants, including claimants in the same and on different priority levels.

### **C. MATERIALS RELIED UPON**

11. In forming the opinions set forth in this Declaration, I have relied on the following:

- Amended Joint Plan of Reorganization (June 1, 2004).
- Settlement Facility and Fund Distribution Agreement (June 1, 2004).
- Report of Independent Assessor End of Second Quarter 2016 (October 18, 2016).
- *In re Settlement Facility Dow Corning Trust*, 592 Fed. Appx. 473, 480 (6th Cir. 2015).
- Reply to Dow Corning Submission Regarding Authorization of Second Priority Payments (November 21, 2016).
- Finance Committee's Recommendation and Motion for Authorization to Make Second Priority Payments (December 30, 2016).

### **D. ANALYSIS**

12. As Chief Operating Officer of HICIL, I was required, in the context of the regulatory scheme established in New Hampshire that governs insurance company liquidations, to consider the mandated distribution priorities. That included determining whether sufficient funds were or would be available to pay higher priority classes of creditors before lower priority creditors could be paid and the extent of partial distributions that could be prudently made to creditors within a higher priority class, recognizing that all creditors within that class are required to receive equal treatment.

13. In the Home liquidation, the statutory scheme governing the order of distribution establishes that “every claim in each class shall be paid in full or adequate funds retained for the payment before the members of the next class receive any payment.” N.H. Rev. Stat. Ann. § 402-C:44. The statute also provides that “[n]o subclasses shall be established within any class.” Id.

14. The reason for this statutory standard is self-evident: In a proceeding involving a limited fund, administrators must be certain that sufficient funds are available to ensure that all creditors within a class who are entitled to distribution are treated equally and that all higher priority creditors are paid in full before they make distributions to lower priority creditors. That certainty was established in the Home insolvency through the statutory language requiring that either every claim in the class be paid in full or adequate funds be retained for the payment. That statutory mandate, in my view, accords with the language in the Plan which provides exactly the same two options: all higher priority claims or claims within the same class must be paid or their payment must be assured (or, as articulated by the Sixth Circuit, ‘virtually guaranteed’).

15. In my experience as respects long tail mass tort exposures, until a final bar date, future claim filings are uncertain and unpredictable. Accordingly, in considering the propriety of interim distributions (both as to timing and amount), there needs to be a “virtual guaranty” that despite such uncertainty and unpredictability no impermissible subclasses/preferences will result and the priority scheme will not be violated. Without such a high standard an administrator runs the risk of shortchanging higher priority creditors by paying lower priority creditors or preferring creditors within a class, both of which are antithetical to the administrator’s charge.

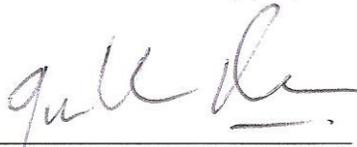
## **E. CONCLUSION**

16. In the present instance, the delta between the projected bar date claims filing incidence and the potential universe of claimants is extremely wide. In my view, that delta creates sufficient uncertainty and unwarranted risk of impermissible subclasses/preferences

resulting and the priority scheme being violated if the Second Priority Payments are authorized. Accordingly, it is my respectful opinion that it would not be prudent to authorize that payment.

I declare that the foregoing statements are true and correct to the best of my knowledge, information and belief.

Executed on February 10, 2017.

A handwritten signature in cursive script, appearing to read "Jonathan Rosen", written over a horizontal line.

Jonathan Rosen

# ATTACHMENT 1

**JONATHAN ROSEN**  
**ARBITRATION, MEDIATION and EXPERT WITNESS SERVICES**  
**1133 BROADWAY, SUITE 600**  
**NEW YORK, NEW YORK 10010**  
**TEL: (212) 677 4228 (H)**  
**(646) 330 5128 (W)**  
**(917) 626 2645 (Cell)**  
**jonrosen55@aol.com**

## OVERVIEW

Prominent senior executive in the insurance and reinsurance industry, with recognized operational and legal acumen. Certified both as an arbitrator and an umpire by **ARIAS•U.S.** in recognition of industry expertise, with concomitant appointment in over two hundred insurance and reinsurance related disputes. Certified on CPR's Panel of Distinguished Neutrals. Appointed an Authorized Representative of the New Hampshire Insurance Commissioner to provide expertise in property/casualty and life insurance company restructurings, rehabilitations and liquidations and designated as a Special Representative of the New Hampshire Insurance Department for various regulatory initiatives. Designated as an expert witness in federal and state court litigations on insurance and reinsurance related matters. Current consultant to The Home Insurance Company In Liquidation.

## EMPLOYMENT

August 2003 - Chief Operating Officer  
December 2008 **The Home Insurance Company In Liquidation** – New York, NY

Operational head of Claims, Reinsurance and Legal business units.

1994-July 2003 { Executive Vice President:  
**Risk Enterprise Management, Ltd.** – New York, NY  
Executive Vice President and Reinsurance Counsel:  
**The Home Insurance Company** – New York, NY

Member of Executive Management team and operational head of multi-disciplined Reinsurance Department with responsibility over a multi-billion dollar highly complex reinsurance portfolio encompassing legal, claims, finance, accounting, underwriting and actuarial dedications. In conjunction, formed and led a captive legal resource servicing the multiple reinsurance needs of The Home Insurance Company and its affiliates and various affiliated entities of the Zurich Financial Services Group. Handled scores of reinsurance arbitrations as lead counsel in that capacity.

## PREVIOUS PRACTICE EXPERIENCE

1993-1994 Partner:  
**Peabody & Arnold** – Boston, MA  
1990-1993 Partner:  
**Ober, Kaler, Grimes & Shriver** – New York, NY

1988-1990 1986-1988	Senior Associate: <b>Carter, Ledyard &amp; Milburn</b> – New York, NY
	Senior Associate: <b>Finley, Kumble, Wagner, et al.</b> – New York, NY
1985-1986	Associate: <b>Kroll &amp; Tract</b> – New York, NY
1984-1985 1980-1985	Associate: <b>Seyfarth, Shaw, et al.</b> – New York, NY
	Associate & Partner: <b>Bowens Attorneys</b> – Johannesburg, South Africa

Depth of experience as outside counsel in a full spectrum of insurance and reinsurance arrangements, including dispute resolution through arbitration and litigation, on and off-shore formations, licensing and accreditations, the development and introduction of insurance products and programs throughout the United States, the preparation and negotiation of contracts covering a broad range of insurance and reinsurance transactions and the preparation of insurance and reinsurance wordings.

#### INDUSTRY ACTIVITIES & PUBLICATIONS

Served on NAIC advisory committees and working groups involved in the preparation of model legislation and regulation. Written and spoken extensively on insurance and reinsurance related subjects in various industry publications and at numerous conferences. Developed and maintains professional relationships with arbitrator community, regulatory authorities, prominent industry spokespersons and local and national trade associations.

#### COURT ADMISSIONS

2006 U.S. District Court, District of New Hampshire  
2005 New Hampshire Supreme Court  
1995 Massachusetts Supreme Judicial Court  
1993 U.S. Court of Appeals, Second Circuit  
1993 U.S. District Court, Northern District of New York  
1985 U.S. District Court, Southern & Eastern Districts of New York  
1985 New York Appellate Division, First Department  
1982 Supreme Court of South Africa

#### EDUCATIONAL BACKGROUND

University of Witwatersrand – Johannesburg, South Africa:  
1981 Higher Diploma in Tax Law  
1979 Bachelor of Laws  
1977 Bachelor of Commerce

**OFFICER AND DIRECTOR DESIGNATIONS**

2015-Present	SOBC Insurance Limited: Vice President
2009-2015	Reinsurance Mediation Institute: Director
2004-2011	Association of Insurance and Reinsurance Run-Off Companies: Director (Chairman – 2008 through 2010)
2003-Present	Cityvest International Limited: President and Director
2003-Present	Cityvest Reinsurance Limited: President and Director
2002-Present	13-21 East 22 <sup>nd</sup> Street Residence Corp.: Director and current President (since 2008)