

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

In Re:

**DOW CORNING CORPORATION,
Reorganized Debtor.**

**Civil Action No. 00-CV-00005-DT
Honorable Denise Page Hood**

ORDER GRANTING PERMANENT INJUNCTION

I. BACKGROUND

On November 15, 2005, John L. Piechota, as administrator for Mavis I. Piechota, deceased, filed an action, naming the Settlement Facility-Dow Corning Trust (“SF-DCT”) in a California state court. Mr. Piechota seeks an order from the California court to compel the SF-DCT to accept the validity of Ms. Piechota’s claim. On January 6, 2006, Dow Corning Corporation, the Debtor’s Representatives and the Claimants’ Advisory Committee (“Movants”) jointly moved for an issuance of a Temporary Restraining Order, and for the Court to consider, on a consolidated basis, the Movants’ Motion for preliminary and permanent injunctive relief. A hearing on the Motion for Temporary Restraining Order and Motion to Consolidate Motions for Preliminary and Permanent Injunctions was held on January 12, 2006. Mr. Piechota did not file a response to the Motion and did not appear at the hearing. The Court granted the Movants’ Motion for Temporary Restraining Order and Motion to Consolidate Motions for Preliminary and Permanent Injunctions in an Order filed January 12, 2006, setting a hearing date for the Motions for Preliminary and Permanent Injunctions for January 26, 2006.

On January 17, 2006, Mr. Piechota filed a document entitled, “Opposition to the Motion for (1) Issuance of Temporary Restraining Order and Preliminary and Permanent Injunction Enforcing Plan Injunction and Staying Proceedings Commenced by John L. Piechota in

California Superior Court Relating to Claims under the Settlement Facility and (2) Consolidating Court's Consideration of Requests for Preliminary and Permanent Injunction." The Movants filed a Reply to Mr. Piechota's Opposition papers on January 19, 2006.

II. ANALYSIS

A. Standard Regarding Preliminary and Permanent Injunctions

Four factors must be balanced and considered before the Court may issue a preliminary injunction pursuant to Fed. R. Civ. P. 65(a): 1) the likelihood of the plaintiff's success on the merits; 2) whether plaintiff will suffer irreparable injury without the injunction; 3) the harm to others which will occur if the injunction is granted; and 4) whether the injunction would serve the public interest. *In re Delorean Motor Co.*, 755 F.2d 1223, 1228 (6th Cir. 1985); *In re Eagle-Pitcher Industries, Inc.*, 963 F.2d 855, 858 (6th Cir. 1992); *N.A.A.C.P. v. City of Mansfield, Ohio*, 866 F.2d 162, 166 (6th Cir. 1989). The standard for a permanent injunction is essentially the same as for a preliminary injunction except that a plaintiff must show actual success on the merits rather than a mere likelihood of success on the merits. *Amoco Prod. Co. v. Village of Gambell, AK*, 480 U.S. 531, 546 n.12 (1987); *United States v. Miami Univ.*, 91 F. Supp. 2d 1132, 1147 (S.D. Ohio 2000).

B. Actual Success on the Merits

The Movants argue that according to the confirmed Amended Joint Plan of Reorganization ("Plan") dated February 4, 1999, updated and effective as of June 1, 2004, this Court retained exclusive jurisdiction over the matters raised by Mr. Piechota's state court action pursuant to sections 8.7.3, 8.7.4, 8.7.5, 8.7.8 and 8.7.10 of the Plan. Mr. Piechota does not address this factor in his Objections, other than indicating he is not a party to the motion because the case involves the Estate of Mavis I. Piechota.

Section 8.7 of the Plan expressly states that this Court retains jurisdiction to resolve controversies and disputes regarding the interpretation and implementation of this Plan and the Plan Documents, including the Depository Trust and Settlement Facility and Trust Agreement (“SFA”), and to enter orders regarding the Plan and Plan Documents. (Plan, § 8.7.3, 8.7.4, 8.7.5) Section 8.3 of the Plan provides that any party who holds a Products Liability Claim, whether known or unknown, shall be deemed to have forever waived and released all such rights or Claims against the Debtor. (Plan, § 8.3) Section 8.4 of the Plan states that on the Effective Date, all persons who have held Released Claims shall be permanently enjoined from commencing or continuing in any manner, any action with respect to such Released Claim against the Debtor and the Settlement Facility. (Plan, § 8.4) A Released Claim is defined as any Claim waived or released under § 8.3 of the Plan. (Plan, § 1.148) The Confirmation Order provides that the District Court shall retain exclusive jurisdiction over all matters specified in § 8.7 of the Plan.

The Plan provides for the establishment of the SF-DCT, which is governed by the SFA. (Plan, § 1.131) The SF-DCT was established to resolve Settling Personal Injury Claims in accordance with the Plan. (Plan, § 2.01) The SFA and Annex A to the SFA establish the exclusive criteria by which such claims are evaluated, liquidated, allowed and paid. (SFA, § 5.01) Resolution of the claims are set forth under the SFA and corresponding claims resolution procedures in Annex A, which is performed by this Court. (SFA, § 4.01)

The Depository Trust Agreement (“DTA”) establishes a settlement trust fund (“Trust”) for the payment of claims under the SFA. (DTA, § 2.03(b)) The DTA provides that this Court has exclusive jurisdiction over all actions involving the Trust and its assets. (DTA, § 7.11)

Based on the Confirmation Order, the Plan, the SFA and the DTA, this Court has exclusive and continuing supervisory jurisdiction over Mr. Piechota's claim filed in a California court, *In re Mavis I. Piechota*, Case No. KP009538. Mr. Piechota claims in the California action that the decedent submitted proof-of-claim forms and medical records to Daticon Systems, Inc., the official claims docketing agent in the bankruptcy action, in support of the decedent's claim against Dow Corning arising from a surgery performed in 1975. Mr. Piechota seeks to compel the SF-DCT Claims Administrator to accept the proof of claim form, standing alone, as evidence to establish eligibility for a settlement payment from the Trust assets.

Mr. Piechota's only argument relating to the merits of the Movants' arguments is that he is not the proper party to this Motion. In California, a decedent's estate is *not* a legal entity. It is simply a collection of the decedent's assets and it has no capacity to sue, or to be sued. Any suit must be brought by, or against, the executors or administrators. *See CCP § 369 and Estate of Bright v. Western Air Lines*, 104 CA2d 827, 828-829, 232 P2d 523, 524 (1954). Mr. Piechota's argument that he is not the proper party to the motion is without merit. The Petition filed before the Superior Court of the State of California County of Los Angeles, East District, Case No. KP009538, entitled "The Estate of: Mavis I. Piechota, Decedent," was filed and signed under the penalty of perjury, by John L. Piechota, Administrator. Based on the Petition submitted as an exhibit by the Movants, it is clear that Mr. Piechota, as the administrator of the Estate of Mavis I. Piechota, filed the Petition before the California court. Under California law, CCP § 369, Mr. Piechota, as the administrator of the Estate, has the authority to bring or defend a suit on behalf of the Estate. Mr. Piechota is a proper party to the Motions before this Court.

The Court finds that the Movants have prevailed on the merits—that this Court has exclusive supervisory authority over the Plan and exclusive authority to interpret the Plan. The

Movants meet the first factor for the Court to issue a permanent injunction—that they have actually succeeded on the merits.

C. Irreparable Injury Without the Injunction to the Movants

As to the irreparable injury factor, it is well settled that a plaintiff's harm is not irreparable if it is fully compensable by money damages. *Basicomputer Corp. v. Scott*, 973 F.2d 507, 511 (6th Cir. 1992). However, an injury is not fully compensable by money damages if the nature of the plaintiff's loss would make damages difficult to calculate. *Id.* at 511-512.

In this case, the Movants have shown they would be irreparably harmed if Mr. Piechota is allowed to proceed before the California court since this Court has the exclusive authority over the implementation and interpretation of the Plan. Mr. Piechota has not shown that the California court has the authority to make any determinations over the Petition filed by Mr. Piechota. Monetary damages will not fully compensate the Movants' harm because the harm involves an action which violates the procedures set forth in the Plan and the Order of Confirmation. The Plan provides for the uniform resolution of personal injury claims submitted to the SF-DCT. The purpose of the Plan confirmed during the bankruptcy proceedings is to resolve personal injury claims pursuant to a set amount set forth in the Plan. Commencing litigation against the SF-DCT in multiple fora depletes the funds and violates the injunction against such litigation set forth in the Plan and the Order of Confirmation.

D. Harm to Others

A permanent injunction will not harm Mr. Piechota because he will still be able to pursue the Estate's claim before the SF-DCT, pursuant to the procedures set forth in the Plan and the SFA. Mr. Piechota did not address this factor in his Objections. Mr. Piechota has failed to show he and others would be harmed if the permanent injunction is issued in this case.

E. Public Interest

The public in this case has an interest in ensuring compliance with the Plan and the bankruptcy laws enacted by Congress. The Reorganized Debtor went through the bankruptcy process pursuant to the appropriate bankruptcy laws, negotiated a Joint Plan with the Tort Claimants' Committee, which resulted in the confirmation of the Plan by the bankruptcy court. The public also has an interest in resolving personal injury claims which, in this case, is available before the SF-DCT.

F. Weighing the Factors

Weighing the factors set forth above, the Court finds that the Movants are entitled to a permanent injunction enjoining Mr. Piechota from going forward with the Petition he filed before the California court relating to the claim before the SF-DCT.

III. CONCLUSION

For the reasons set forth above,

IT IS ORDERED that the Motion for Permanent Injunction, consolidated with the Motion for Preliminary Injunction (**Docket No. 281, filed January 6, 2006**) is GRANTED. Mr. Piechota is ordered to cease any further acts to seek or obtain relief against the SF-DCT in the California court relating to the claim of the Estate before the SF-DCT.

/s/ DENISE PAGE HOOD
DENISE PAGE HOOD
United States District Judge

DATED: January 26, 2006