

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re: § CASE NO. 00-CV-00005-DT
§ (Settlement Facility Matters)
DOW CORNING CORPORATION, §
§ Honorable Denise Page Hood
Reorganized Debtor §

**FIFTH NOTICE OF DISPUTED LATE CLAIM
REQUESTS AND PROPOSED SCHEDULING ORDERS**

TO THE HONORABLE DENISE PAGE HOOD, UNITED STATES DISTRICT JUDGE:

Dow Corning Corporation and the Debtor's Representatives ("Dow Corning") and the Claimants Advisory Committee (the "CAC") (collectively, the "Movants") file this Fifth Notice of Disputed Late Claim Requests and Proposed Scheduling Orders, and respectfully state as follows:

1. On January 19, 2006, the Court issued an Order approving certain Procedures for Determining Status of Late Claimants and Late Claim Requests (the "Procedures"). A copy of that Order and the Procedures is attached hereto as **Exhibit A**. Pursuant to the Procedures, the Movants file this notice to (a) identify the late claim requests received by the Movants between October 1 and December 31, 2006 (the "Late Claim Requests") that are in the "Disputed Cause" category¹ under the Procedures, and (b) propose scheduling orders for resolving these disputed Late Claim Requests.

2. As an initial matter, Dow Corning has determined that 18 Late Claim Requests were from persons who actually submitted a *timely* Proof of Claim or Notice of Intent or who do not otherwise raise any timeliness issue.

¹The Disputed Cause category covers Late Claim Requests that (a) made a general request to participate in the Dow Corning settlement program but fail to provide sufficient information to evaluate the requests on the merits, or (b) alleged some discernible reason(s) for the late filing of a Proof of Claim or a Notice of Intent, and at least one of the Movants contends that such reason(s) do not permit the person's late Proof of Claim or late Notice of Intent to be deemed timely filed.

3. The Late Claim Requests submitted by 45 individuals (the “Late Claimants”) or their counsel are classified in the Disputed Cause category (the “Disputed Requests”). The Late Claimants are identified on **Exhibit B** hereto.

4. The Movants reviewed the Disputed Requests to determine the reasons, if any, the Late Claimants assert to be allowed to participate in the Dow Corning settlement program. Ten (10) Late Claimants did not give any specific reason to support their Disputed Requests. The other Late Claimants asserted various disputed reasons for their lateness.

5. The Movants propose to resolve the Disputed Requests pursuant to two scheduling orders. Proposed forms of those orders are attached hereto as **Exhibits C & D**. These proposed orders are similar in form to the scheduling orders the Court has issued for prior groups of late claim requests.

A. FIRST SCHEDULING ORDER

6. The first scheduling order will cover the ten (10) Late Claimants who have not asserted any specific reason why their Late Claim Requests should be allowed. Without such information, these requests cannot be addressed on the merits. The first scheduling order will thus require these Late Claimants to send a Supplemental Statement to the Court at the address listed in paragraph 9(b) below. The Court’s address will also be provided in the first scheduling order.

7. In the Supplemental Statement, these Late Claimants must state in writing all reasons for their lateness.² These Late Claimants must file their Supplemental Statements on the Court-approved form that will be attached to the first scheduling order. The Movants will send

²The deadline for filing a Proof of Claim in the Dow Corning bankruptcy case was January 15, 1997 (or February 14, 1997 for foreign claimants), although the Bankruptcy Court allowed Proofs of Claim filed by November 30, 1999 to be considered timely. The deadline for submitting a Notice of Intent in the Dow Corning bankruptcy case was August 30, 2004.

the Late Claimants a copy of the first scheduling order and a Supplemental Statement form. Upon compliance with the first scheduling order, these Disputed Requests can then be resolved on the merits under the second scheduling order.

8. **If the Court does not receive a Late Claimant's Supplemental Statement by the deadline stated in the first scheduling order, or even if a Supplemental Statement is received late after the deadline, the Court may deny such person's Late Claim Request with prejudice (that is, the Court may permanently rule that the Late Claimant cannot participate in the Dow Corning settlement program) without a hearing or further notice.**

B. SECOND SCHEDULING ORDER

9. The second scheduling order will govern further proceedings on the Disputed Requests and will include the following events:

(a) **Objections** – Either of the Movants may file Objections to the Disputed Requests. A copy of the Objection will be sent to the Late Claimants (and their counsel, if known to the Movants). The Movants will also send a notice (the "Notice") informing the Late Claimants of (i) the deadline for written Responses to be received by the Court, and (ii) the date, time and location of the initial status conference described in paragraph 9(e) below.

(b) **Responses** – Any Late Claimant who contests or opposes an Objection must send a written Response to the Court at the following address³:

U.S. District Court
Dow Corning Litigation Unit
231 W. Lafayette
Detroit, MI 48226

Any Response must be received by the Court no later than the Response deadline stated in the Notice and the second scheduling order. The Late Claimants must file their

³The CAC may file a response to an Objection, and Dow Corning reserves all rights with respect to any such response.

Responses on the Court-approved form that will be attached to the second scheduling order. The Movants will send the Late Claimants a copy of the second scheduling order and a Response form. The Response must state in writing why the Late Claimant does not agree with the Objection and any additional reasons for lateness that the Late Claimant has not previously told the Court in writing. A Late Claimant or her counsel may file a legal memorandum with a Response, but any such memorandum must be received by the Court by the deadline for the Response.

(c) **Failure to File a Response** – If the Court does not receive a Response from a Late Claimant by the deadline stated in the Notice and the second scheduling order, or even if a Response is received late after the deadline, then one of the Movants will file a document with the Court stating that no Response was received. A copy of that document will be sent to the Late Claimant in question and to the Movants. **Based on this document, the Court may deny the Disputed Request with prejudice (that is, the Court may permanently rule that the Late Claimant cannot participate in the Dow Corning settlement program) without a hearing or further notice**, or the Court may set a status conference for further proceedings.

(d) **Replies** – Either of the Movants may file a Reply to any Response no later than the deadline stated in the second scheduling order.

(e) **Initial Status Conference and Initial Status Report** – The Court will hold an initial status conference after the deadline for filing Replies. Ten (10) business days before the initial status conference, Dow Corning will file and send to the Late Claimants (and their counsel, if known) and to the CAC an initial status report containing the following information: (i) the date the Objections were filed and sent to the Late Claimants or their counsel, (ii) a summary of the Late Claimants who filed a Response and those who did not, (iii)

recommended scheduling orders, and (iv) any other information or recommendation that may be helpful to the Court. The initial status conference will give the Court and the parties an opportunity to determine the most efficient way to schedule further proceedings to resolve the Disputed Requests pursuant to additional scheduling orders.

(f) **Additional Scheduling Orders** – Ten (10) business days before the initial status conference, Dow Corning will send proposed scheduling orders to the Late Claimants (and their counsel, if known) and to the CAC. The proposed scheduling orders may set discovery deadlines and the date for a final hearing on each Objection. A Late Claimant is not required to attend the initial status conference if she consents to the proposed scheduling order.

C. SUMMARY

10. The proposed deadlines and other dates in the two scheduling orders described in paragraphs 6-9 above and attached hereto as Exhibits C & D are summarized as follows:

First Scheduling Order:

June 29, 2007	Deadline for Supplemental Statements
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Second Scheduling Order:

September 7, 2007	Deadline for Objections to Disputed Requests
October 12, 2007	Deadline for Responses to Objections
November 9, 2007	Deadline for Replies to Responses
December 3, 2007	Deadline for Initial Status Reports and proposed scheduling orders
December 13, 2007	Initial Status Conference

11. The Movants believe the Disputed Requests can be resolved in a fair and efficient manner under the foregoing procedures and the proposed scheduling orders attached hereto as Exhibits C & D.

Respectfully submitted this 30th day of March, 2007.

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CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2007, a true and correct copy of the foregoing Notice was served by regular first class mail, postage prepaid, on: (i) David Austern, Claims Administrator, SF-DCT, P.O. Box 52429, Houston, TX 77052-2429; and (ii) each Late Claimant and, if known, her counsel.

/s/ David Ellerbe
David Ellerbe