

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

**RESPONSE OF CLAIMANTS' ADVISORY COMMITTEE
TO FINANCE COMMITTEE'S RESPONSE TO DOW CORNING
CORPORATION'S AND DEBTOR'S REPRESENTATIVES' MOTION
TO STAY DISTRIBUTION OF SECOND PRIORITY PAYMENTS**

The Claimants' Advisory Committee ("CAC") submits this Response to the Finance Committee's Response to Dow Corning Corporation and the Debtor's Representatives' Motion to Stay Distribution of Second Priority Payments ("Finance Committee Response").

The CAC is deeply disappointed that the Finance Committee, having long ago determined that adequate funding exists to issue 50 percent Premium Payments ("Premiums"), now supports Dow Corning's latest attempt to delay Premium Payments from being paid to claimants. If Premium Payments are stayed pending the outcome of this latest appeal, claimants who have not received any partial Premium Payment will most likely have to wait two or more years until after the end of the settlement program in 2019 to receive anything. This is unfair to those claimants who have waited patiently for payments promised to them over a decade ago.

The Finance Committee does not argue that Dow Corning has satisfied the rigorous standards for obtaining a stay pending appeal. To the contrary, the overwhelming record evidence establishes that it is nearly impossible for unexpected claims to consume the current cash cushion of more than \$300 million in the final months of the settlement. Dow Corning cannot establish a likelihood of reversal or that any party will suffer irreparable harm pending appeal. Moreover, the balance of hardships clearly favors making these long-delayed partial Premium Payments before more Claimants, many of whom are in their eighties, die or lose touch with the SF-DCT.

The Finance Committee states, without evidence, that the prior reversal caused “distress and upset among Claimants because many had not received premium payments while other similarly situated Claimants had” and that halting claims payments caused “administrative hardship at the SF-DCT which took months to resolve.” Finance Committee Response at 2.

First, the CAC is not aware of any claimant who claimed to be distressed that partial Premium Payments were made in 2014-15. To the contrary, claimants have been overwhelmingly happy and supportive that partial Premium Payments were finally being made. Any distress they may have articulated had to do with the sudden stoppage of these payments or that the payments were only partial, instead of full, Premium Payments. It is wrong – even cruel – for the Finance

Committee to use claimants' anger and frustration at the unending litigation to have their Premium Payment approved as a pretext to stop issuing payments now. The CAC agrees that the horizontal inequity of a minority of Claimants remaining unpaid should be remedied, and that time is now. That would be done by *paying* such claims, not delaying them for years pending appeal.

Second, while the reversal did require the SF-DCT to halt payments, the CAC is not aware of any "administrative hardship" that took "months to resolve." Whatever minor administrative disruption there might have been to the Settlement Facility pales next to the injury delay has caused claimants, many of whom have passed away while waiting for the payments the Finance Committee recommended in 2011, and this Court approved in 2013. Further, it would require little effort or time to issue the remaining partial Premium Payments, since the Settlement Facility has acknowledged that it completed such payments to approximately 90% of Claimants in 2014 and 2015. It would take only several months to complete payments to those who have not received any, thus restoring horizontal equity among claimants.

The Independent Assessor, the Finance Committee, and the Court have all concluded that it is virtually impossible for the funding cap to be exceeded in the remaining sixteen months of the settlement process, even with issuance of 50 percent of all Second Priority Payments. Upon denial of Dow Corning's baseless

stay motion, most of the remaining Claimants who have not yet received their 50 percent installments can be promptly paid.

In the exceedingly unlikely event that the Court's well-supported factual ruling is reversed on appeal, the amount of "administrative hardship" caused by briefly pausing the few remaining payments until after the June 2019 claim deadline would be even more minor than whatever disruption the Finance Committee now claims, without record support, occurred in 2015. In the meanwhile, the very horizontal inequity that the Finance Committee now bemoans will have been largely eradicated.

The alternative is essentially to freeze all Premiums until the end of the settlement program, which would cause much more substantial "distress and upset" among Claimants already frustrated by years of delay in obtaining payments that were advertised as a chief benefit of the settlement. Claimants' confidence in the process is certainly not enhanced by having the SF-DCT itself, as part of the Finance Committee, actually advocate to delay claim payments that the Court has already ordered should be made. That result would hardly ensure the "fair claims payment process for all Claimants" that the Finance Committee seeks. It would benefit only Dow Corning by permitting it, yet again, to delay and evade its obligations to settling claimants. We respectfully request that the Court deny the

motion to stay and direct the SF-DCT to immediately process and issue all allowed Second Priority Payments.

CONCLUSION

For the foregoing reasons, the Motion to Stay should be denied.

Dated: New York, New York
February 6, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on February 6, 2018, I electronically filed a copy of the foregoing Response of Claimants' Advisory Committee to Finance Committee's Response to Dow Corning Corporation's and Debtor's Representatives' Motion To Stay Distribution of Second Priority Payments with the Clerk of the Court through the Court's electronic filing system, which will send notice and copies of the aforementioned document to all registered counsel in this case.

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