

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

FILED  
MAY 25 2023  
CLERK'S OFFICE  
U.S. DISTRICT COURT

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

**MOTION OF CLAIMANT MAXINE LOUISE SWAIM'S COUNSEL TO CLARIFY  
CLOSING ORDER 5'S DEADLINE FOR QUALIFYING CLAIMANTS TO CONFIRM  
ADDRESSES AND SUBMIT ESTATE DOCUMENTS**

TO THE HONORABLE DENISE PAGE HOOD  
UNITED STATES DISTRICT JUDGE:

Claimant Decedent Maxine Louise Swaim's Counsel submits this Motion to Clarify Closing Order 5's Deadline for Qualifying Claimants to Confirm Addresses and Submit Estate Documents (the "Motion"), and respectfully states as follows:

Closing Order 5 (ECF No. 1642), entered on June 13, 2022, directed the SF-DCT to post a list of Claimants who had qualified for payments but had not responded to prior requests to confirm their addresses – setting a 90-day deadline following the posting for Claimants to contact the SF-DCT or have their claims permanently closed. The 90-day deadline fell on a Saturday – September 17, 2022 – and thus, under both Fed. R. Civ. P. 6(a) and the Dow Corning Plan, responses should have been deemed timely if received on the next business day, Monday September 19, 2022. Relying on this rule, Counsel for Claimant Decedent Maxine Louise Swaim contacted the SF-DCT on Monday September 19, 2022, to provide the necessary information.

However, upon information and belief the Settlement Facility has informed counsel that the SF-DCT intends to treat claimants responding on Monday, September 19 as untimely, closing their files and permanently depriving them of claims payments for which they otherwise would have qualified. Upon information and belief the Claimants Advisory Committee objected

to this departure from published rules and prior practice and consulted with the Finance Committee and Debtor's Representatives in an to attempt to resolve this issue. Because the Finance Committee has indicated that it will adhere to its decision to close the files of claimants responding on Monday, September 19, Claimant Decedent Maxine Louise Swaim hereby moves to clarify and confirm that the Federal Rules and the Dow Corning Plan require that these contacts be treated as timely under Closing Order 5.

The grounds for this Motion are more fully set forth in the accompanying Memorandum in Support.

Counsel for Claimant Decedent Maxine Louise Swaim contacted the SF-DCT in order to meet and confer with respect to this Motion, however, the SF-DCT did not respond to our inquiry nor did we obtain their concurrence in the relief sought. Additionally, as stated above the Claimants Advisory Committee tried to resolve this matter with the Finance Committee to no avail.

A proposed Order is attached hereto.

Dated: New York, New York  
May 24, 2023

Respectfully submitted,

WEITZ & LUXENBERG P.C.,



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*Attorneys for the Claimant*

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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

**MEMORANDUM IN SUPPORT OF MOTION OF CLAIMANT DECEDENT MAXINE  
LOUISE SWAIM TO CLARIFY CLOSING ORDER 5'S  
DEADLINE FOR QUALIFYING CLAIMANTS TO SUBMIT ESTATE DOCUMENTS  
AND CONFIRM ADDRESSES**

Claimant Decedent Maxine Louise Swaim's Counsel respectfully submits this Memorandum in Support of Claimant Decedent's Motion to Clarify Closing Order 5's Deadline for Qualifying Claimants to Submit Estate Documents and Confirm Addresses.<sup>1</sup>

**Preliminary Statement**

Federal Rule of Civil Procedure 6(a) and Annex A to the Settlement Facility Agreement ("SFA") both expressly require that any claim deadline falling on a weekend be extended to the next business day. The Settlement Facility's refusal to follow this express and customary rule in calculating the final day on which claimants may submit Estate documents and confirm addresses under Closing Order 5 is arbitrary, capricious, unfair, and needlessly invites litigation that may prolong winding down of the Dow Corning Settlement. This Court is empowered to resolve disputes regarding Claim eligibility and management of the Settlement Facility. *See* SFA § 4.01. Claimant Decedent's Counsel respectfully requests that the Court enter

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<sup>1</sup> Capitalized terms not defined herein have the meanings assigned in the Dow Corning Plan and Plan Documents.

an order clarifying Closing Order 5 and properly permitting qualifying claimants who contacted the Facility on September 19, 2022, to receive the benefits for which they have already qualified.

### **Background**

Closing Order 5 (ECF No. 1642) follows up on earlier Closing Orders that had directed efforts to update claimant addresses and to submit proper Estate documents to assure that payments reach the intended beneficiaries, conserve settlement assets, and move the settlement process towards conclusion. The Order notes that the SF-DCT had completed its first review of all timely submitted benefit claims and was also in the process of completing Second Priority Payments to eligible claimants who had verified a current address. Closing Order 5 at 3. The Order outlines various steps that the SF-DCT has taken to update and verify the addresses of qualifying claimants and sets forth further steps to bring the process to a conclusion:

- The SF-DCT is directed to post a list on its website with the SID numbers (claimant identification numbers) of claimants who have qualified for benefits payments but have been identified as having a “bad address” or failed to respond to the most recent verification mailing. *Id.* at 4.
- The SF-DCT is to maintain the list on its website for 90 days. Claimants who respond within the 90-day period would be removed from the list and their claims released for processing and payment. *Id.* at 5.
- However, “[i]f the claimant does not respond on or before the end of the 90-day period, the claim shall be permanently closed.” *Id.*

The SF-DCT posted the list of claimants on its website on June 13, 2022, and noted that the 90-day period would end on September 17, 2022, which was a Saturday. Counsel for Claimant Decedent Maxine Louise Swaim, had previously conducted an internet search and learned of Claimants demise and that of her spouse as well. Thereafter, Counsel attempted to

contact Ms. Swain's family on several occasions with no success. Counsel did not have the name of a potential Heir nor any demographic information to verify the Claimant's address. Therefore, Counsel's office filed a lien to protect their fee and expense interests in this claim, because the impending deadline of September 19<sup>th</sup> was approaching. However, in the eleventh hour the Claimant Decedent's Estate Representative contacted Counsel and forwarded the necessary Address and Estate documents which we had been seeking. Counsel assuming that this Saturday deadline would be treated as expiring on the next business day, contacted the SF-DCT on Monday, September 19<sup>th</sup>, 2022. However, the SF-DCT indicated that these responses will be deemed untimely under Closing Order 5 and thus Claimants file will be permanently closed without payment.

### Argument

Counsel acted reasonably in contacting the SF-DCT on the Monday following the running of the 90-day deadline, as we had been unable to contact any Estate Representative prior to that date, and the SF-DCT should be required to treat these responses as timely, for several reasons:

*First*, and dispositively, Fed. R. Civ. P 6(a)(1) provides that "in computing any time period specified in these rules, in any local rule *or court order*, or in any statute that does not specify a method of computing time, . . . if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday." (Emphasis added.) While upon information and belief the Finance Committee has indicated its view that this rule applies only to the filing of pleadings, Rule 6 is not so limited – on its face it applies to any circumstances in which a court order requires that "*an act* may or must be done within a specified time." Rule 6(b) (governing extensions) (emphasis added). Closing Order 5 is a court order, and thus the 90-day deadline provided therein, which otherwise

“would end on a Saturday,” must, as a matter of law, be construed to run until “the next day that is not a Saturday, Sunday, or legal holiday.”

Rule 6 “govern[s] the computation of any period if an order does not expressly state how to compute a time limit.” *In re Lien Appeals*, 2006 WL 3147747, at \*2 (E.D. Mich. Oct. 31, 2006) (Hood, J.) (Because Lien Review Procedures order was “silent” as to whether day of mailing decision was counted in 14-day deadline to appeal lien decision, Rule 6 dictates that time starts to run the day after mailing). Here, similarly, Closing Order 5 was silent as to the calculation of the 90-day deadline, and thus Rule 6 governs, mandating that the deadline not expire until the first business day *after* the ninetieth day.

*Second*, SFA Annex A – the Plan document that governs processing and payment of claims – similarly provides that if “any deadline in the Claims Resolution Procedures falls on a Saturday, Sunday or federal holiday, the next business day shall be the applicable Deadline.” Annex A § 3.02(c)(i). Upon information and belief the Finance Committee has indicated that it does not view the deadline established by Closing Order 5 as being part of the Claims Resolution Procedures, but the SFA expressly provides that “[t]he Claims Administrator shall have discretion to implement such additional procedures and routines as necessary to implement the Claims Resolution Procedures consistent with the terms of this Agreement.” SFA § 5.01(a). Claimants and their attorneys thus would reasonably assume that this type of deadline, would be part and parcel of the process of implementing the governing procedures and processing claims, and would be subject to Annex A’s time-calculation rule – itself customary and consistent with Rule 6.

*Finally*, claimants were told from the beginning, in the Claimant Information Guide booklet, that this was the rule under the Claims Resolution Procedures:

What if a deadline falls on a Saturday, Sunday or federal holiday?

If a deadline falls on a Saturday, Sunday or federal holiday, the deadline is the next business day.

Claimant Information Guide Q9-12.

Claimant Decedent's Counsel has long understood that the SF-DCT follows Rule 6 and Annex A and has not been aware of any claim or filing being rejected as untimely based on a deadline occurring on a weekend or holiday, when the necessary filing was received on the following business day. Indeed, there are many examples of deadlines (both those in the Plan and those established later by order) being extended past the defined time-period so as to expire on the next business day:

- The original final claims deadline (June 1, 2019) fell on a Saturday, and was thus extended to Monday June 3.
- The original explant claim deadline (June 1, 2014) fell on a Sunday, and was thus extended to Monday, June 2.
- The one-year deadline for NOI claimants to file rupture and explant claims, announced in a letter to claimants dated October 19, 2007, was extended to October 20, 2008, because October 19, 2008 was a Sunday. Significantly, this was *not* a deadline included in the original Plan documents, but a newly negotiated deadline implemented through a Consent Order.

Upon information and belief the Finance Committee has informed Dianna Pendleton-Dominguez, for the Claimant's Advisory Committee ("CAC") that, while the Settlement Facility has generally followed Rule 6, there is one example where it has not: The one-year deadline for curing claim deficiencies has supposedly been enforced strictly even when the period expired on a weekend or holiday. Claimant's Counsel was not aware of any of our claim's being rejected on this basis. But even if any have, that would not justify further disregard of the governing rule, but rather suggests that any claims improperly denied in violation of the Plan and Rule 6 should be re-opened for consideration on the merits. Either way, abandoning the otherwise

consistently followed governing rule now, at the eleventh hour, to exclude Claimant Decedent's claim would be inconsistent, contrary to the Federal Rules and the Plan, and simply unfair.

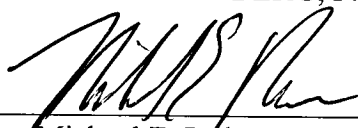
**Conclusion**

For the reasons stated above, Claimant Decedent's Counsel respectfully requests that the Court enter an order, in the form attached hereto, clarifying that Claimants including Claimant Decedent Maxine Louise Swaim whose Estate Representative contacted the SF-DCT through her Counsel on Monday, September 19, 2022 acted timely under Closing Order 5, and grant such further relief as justice requires.

Dated: New York, New York  
May 24, 2023

Respectfully submitted,

WEITZ & LUXENBERG, P.C.,



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*Attorneys for the Claimant Decedent*



**CERTIFICATE OF SERVICE**

I certify that on May 24, 2023, I filed a copy of the foregoing Motion to Clarify Closing Order 5's Deadline for Qualifying Claimants to Confirm Addresses and Submit Estate Documents along with a supporting memorandum, and a proposed order to the United States District Court of the Eastern District of Michigan and the Settlement facility-Dow Corning Trust via Federal Express.

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