

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

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

**JOINDER OF CLAIMANTS' ADVISORY COMMITTEE IN
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:

The Claimants' Advisory Committee ("CAC") submits this Joinder to the 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 (ECF 1718) (the "Motion"), and respectfully states as follows:

The CAC agrees with the movant that Federal Rule of Civil Procedure 6(a); the language in Section 3.02(c)(i) of Annex A To Settlement Facility And Fund Distribution Agreement ("Annex A"); and Question and Answer 9-12 in the Claimant Information Guide (Class 5 and 6.1) are all applicable and require the same result, *i.e.*, that the deadline for responding to Closing Order 5 was Monday, September 19, 2022.

The Tort Claimants' Committee in the Dow Corning bankruptcy expressly bargained to include the language and intent of Rule 6(a)(1) in the Plan as it applies to deadlines. That rule states 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 the next day that is not 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.” Fed. R. Civ. P. 6(a)(1) (emphasis added). This rule is expressly incorporated in the Plan Documents: “If the Election Deadline or 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)(1).

The agreement to have the Plan follow Rule 6(a)(1) provided certainty to claimants, attorneys of record, and the Settlement Facility – Dow Corning Trust (“SF-DCT”) about the accurate deadlines that would apply in different circumstances. In fact, it was deemed so important that it was included in the Claimant Information Guide sent to all claimants in 2003, so that they would know in advance how to calculate any deadline in the Plan. Question 9-12 in the Class 5 and 6 Claimant Information Guide states: “Q9-12. What if a Deadline falls on a Saturday, Sunday or federal holiday? A. If a deadline falls on a Saturday, Sunday or federal holiday, the deadline is the next business day.”

Consistent with Annex A and the guidance included in the Claimant Information Guide, this method of determining deadlines was applied to all deadlines of which the CAC was aware in the nearly 20 years since the Plan went into effect in 2004.

Closing Order 5 was entered on June 13, 2022. It directed the SF-DCT “to post on its website a list of the SID numbers (claimant identification numbers)” of claimants for whom an updated address was required, and to maintain this list for 90 days to permit claimants to contact the SF-DCT. Closing Order 5 did not provide a specific deadline date, but left that for the SF-DCT to calculate based on the date it posted the SID numbers on its website. The SF-DCT posted the claim numbers with a deadline date of September 17, 2022, which was a

Saturday. However, in so doing, it failed to apply the requirements of Fed. R. Civ. P. 6(a)(1) as incorporated in Annex A, which made the applicable deadline Monday, September 19, 2022.

On September 19, 2022, the next business day after the Saturday deadline set by the SF-DCT, the CAC began receiving calls and email correspondence from claimants and law firms that stated that their submissions dated that same day – September 19, 2022 – had been rejected by the SF-DCT as untimely. When the CAC inquired about this, the SF-DCT stated that it would not recognize Rule 6(a)(1) or the Plan language for the deadline for Closing Order 5. The CAC has tried unsuccessfully to have the SF-DCT recognize the correct deadline. During this process, the SF-DCT disclosed – for the first time – that it had not applied the next business day deadline rule to some cure deadlines. The CAC had been unaware of this situation beforehand and has expressed its disagreement with the SF-DCT’s disregard of Plan language. In any event, this undisclosed divergence from express Plan language and otherwise universal past practice cannot excuse applying the incorrect deadline for responses to Closing Order 5.

Conclusion

For the reasons stated above, the CAC joins in the Motion and respectfully requests that the Court enter an order granting the Motion and clarifying that claimants contacting the SF-DCT individually or through counsel on Monday, September 19, 2022 acted timely under Closing Order 5; directing the SF-DCT to accept all submissions postmarked on or before September 19, 2022 as timely; and granting such further relief as justice requires.

Dated: New York, New York
June 13, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on June 13, 2023, I electronically filed a copy of the foregoing Joinder of Claimants' Advisory Committee in Motion of Claimant Maxine Louse Swaim's Counsel to Clarify Closing Order 5's Deadline for Qualifying Claimants to Confirm Addresses and Submit Estate Documents with the Clerk of the Court through the Court's electronic filing system, which will send notice and copies of the aforementioned documents to all registered counsel in this case.

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