

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

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

**RESPONSE OF CLAIMANTS' ADVISORY COMMITTEE TO  
JOINER OF FINANCE COMMITTEE IN THE RESPONSE OF  
DOW SILICONES CORPORATION AND THE DEBTOR'S  
REPRESENTATIVES TO 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**

The Claimants' Advisory Committee ("CAC") submits this Response to Joinder of Finance Committee in the Response of Dow Silicones Corporation and the Debtor's Representatives to 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 No. 1718] (the "Motion"), and respectfully states as follows:

The CAC's views on the Motion are set forth in its Joinder [ECF No. 1720], filed on June 13, 2023.<sup>1</sup> The CAC offers this supplemental submission to respond to certain issues raised in the Finance Committee's Joinder ("FC Joinder") [ECF No. 1722] filed the same day, namely (1) the incorrect assertion that the CAC's counsel served as "ghost-writer" for the Motion, and (2) the remarkable suggestion that the CAC is somehow acting outside its role in advocating for and providing information to tort claimants in the Dow Corning Settlement. This is the second time in recent weeks that the Finance Committee has seen fit to turn a policy disagreement into an inappropriate attack on the role of the CAC, based on incorrect allegations and accompanied by a groundless demand for sanctions.<sup>2</sup>

First, it is not correct, as the FC Joinder suggests (at 3, 5) that the CAC acted as a "ghost-writer" for the Weitz & Luxenberg law firm. Indeed, the

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<sup>1</sup> With respect to the arguments against the Motion contained in Dow Silicones' response [ECF No. 1721], we make two brief observations: (1) Annex A Section 3.02(c)(i) states that the next business day rule for calculating deadlines applies to "*any* deadline in the Claims Resolution Procedures" (emphasis added) – language that claimants and counsel would reasonably understand to apply to *any* deadline in the claims process. (2) The caselaw regarding dates specifically set *by a court* is not relevant here; this situation is unusual in that the deadline was calculated erroneously by the *Settlement Facility* and posted without the parties realizing the error. A number of claimants and counsel nevertheless understood that the next business day rule would apply and thus submitted address updates in the window between Saturday, September 17 and Monday, September 19. Given the confusion, it would be unfair to bar payment of approved claims to parties that reasonably relied on the language of Annex A.

<sup>2</sup> The circumstances of the prior occasion, in which the Finance Committee baselessly accused the CAC of attempting to delay closing of the Settlement Facility and sought disallowance of the CAC's legal fees in connection with the pending motion to establish a deadline regarding replacement checks [ECF No. 1701], are set forth in the CAC's Further Response to that motion [ECF No. 1708], filed on April 12, 2023.

Finance Committee's own allegations refute that accusation. As the FC Joinder states, the CAC provided the draft motion to Finance Committee Member Pamela R. Harwood in *November 2022*, six months before the Motion was filed in May 2023. FC Joinder at 2.

As more fully explained in the accompanying Declaration of Dianna Pendleton-Dominguez ("Pendleton-Dominguez Decl.") (attached hereto as Exhibit 1), the CAC became involved in the issue when lawyers and claimants began contacting it in September 2022 because the Settlement Facility – Dow Corning Trust ("SF-DCT") had rejected their address updates as untimely even though submitted on the first business day after a deadline that fell on a Saturday. The CAC and its counsel researched the issue, concluded that the Plan Documents and Federal Rules both required that the Monday submissions be accepted as timely, and drafted a motion to potentially be filed *by the CAC* if the issue could not be resolved. Counsel's time for researching and drafting the motion was included in its September and October 2022 bills. *See* Pendleton-Dominguez Decl. ¶¶ 8-11.

In an attempt to negotiate a resolution of the issue, the CAC provided the Finance Committee with a copy of the motion in November 2022, as the FC Joinder acknowledges. Although the Finance Committee rejected the CAC's position, the CAC determined at the time not to file the motion, in the hope that further discussions could resolve the issue without motion practice. *See id.* ¶ 12.

Thereafter, in response to requests from Weitz & Luxenberg and other law firms with clients affected by the issue, the CAC provided copies of the draft motion as background information and to explain the CAC's position on the issue. The CAC did not thereby undertake to represent any particular claimants, and Weitz & Luxenberg decided on its own to adopt language from the draft motion in its own Motion. *Id.* ¶¶ 13-15.

The Finance Committee's suggestion that the CAC's actions described above "deviated from its Plan-specified purpose and function," warranting the "sanction" of denial of fees to its counsel (FC Joinder at 3, 5), is shocking. As the CAC explained in its prior filing responding to a similar groundless attack [ECF No. 1708], the CAC's "purpose and function" in the settlement process is to serve as the voice of tort claimants. This has always included advocating globally for the interests of multiple claimants affected by particular issues.

Settlement Facility Agreement ("SFA") Section 4.09(c)(v) specifically authorizes the CAC to "file a motion or *take any other appropriate actions* to enforce or be heard in respect of the obligations in the Plan and in any Plan Document." (Emphasis added). Requesting counsel to research and draft a potential motion concerning the appropriate calculation and enforcement of deadlines to claim benefits under the Plan is squarely within the CAC's role and authority. As Ms. Pendleton-Dominguez explains, the CAC does not represent

individual claimants but has over the years, consistent with its role, sometimes shared its research and views on issues affecting tort claimants with counsel representing particular claimants. *See* Pendleton Decl. ¶ 14.

The Finance Committee argues that it is improper for the CAC to “advocate for law firms that miss the address verification deadline” (FC Joinder at 3), and references another pending dispute in suggesting that it was similarly improper for the CAC to “advocate for law firms who failed to comply with Closing Order 4 through its opposition to the Finance Committee’s Motion for an Order to Show Cause.” *Id.* The Finance Committee thus implies that the CAC’s role is limited to advising and assisting the Settlement Facility and Finance Committee and that *opposing* the Finance Committee’s positions violates that role. This view misconstrues the structure of the Dow Corning Settlement. The CAC was intended to be a co-equal party with Dow Corning and an independent voice for tort claimants. It has the right and indeed the duty to oppose actions and decisions of the Finance Committee and Settlement Facility when they are inconsistent with the Plan Documents, governing law, and fundamental fairness.

For almost 20 years, the CAC has worked cooperatively with all parties to implement this settlement without challenge to its authority to advocate for tort claimants. That advocacy has sometimes led to sharp disagreements, but historically most issues have been resolved without the need for motion practice – and without personal accusations and acrimony. Even when the CAC has had

pointed differences with Dow Silicones over major issues in the case, the parties and counsel have maintained civility and mutual respect and refrained from unfounded accusations of misconduct and bad motive.

For reasons that remain unexplained, under current leadership the Finance Committee has changed course – taking inflexible positions; declining to negotiate compromises over procedural issues, such as notice periods, that in the past have typically been resolved consensually; and harshly criticizing the CAC when it has the temerity to oppose the Finance Committee’s positions. It is particularly alarming that the Finance Committee has made multiple groundless demands for sanctions in an apparent attempt to intimidate the CAC and interfere with its right to retain counsel to support its work. We note in this connection that, at some point, a pattern of repeated frivolous sanctions demands may itself become sanctionable.

This is a regrettable denouement to a successful 20-year settlement process that should be wrapping up with the same mutual respect and cooperation that the parties until recently exhibited. The Finance Committee is entitled to disagree with the CAC and vigorously advocate its positions before this Court, but it does not have the right to vilify the CAC and its counsel for refusing to capitulate to its positions. The CAC stands by its actions and the loyal service that it and its counsel have provided over many years to tort claimants and to this

Court. The Finance Committee's groundless and inflammatory accusations should be disregarded, if not stricken from the record.

**CONCLUSION**

For the foregoing reasons, the Court should disregard the baseless attacks on the CAC and decide the Motion on the merits, and, for the reasons stated in the CAC Joinder, the Motion should be granted.

Dated: New York, New York  
June 20, 2023

Respectfully submitted,

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*Attorneys for the Claimants' Advisory Committee*

I certify that on June 20, 2023, I electronically filed a copy of the foregoing Response to Joinder of Finance Committee in the Response of Dow Silicones Corporation and the Debtor's Representatives to 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, and the accompanying Declaration of Dianna Pendletown-Dominguez, 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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