

# **EXHIBIT 1**

**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**

**DECLARATION OF DIANNA PENDLETON-DOMINGUEZ**

I, Dianna Pendleton-Dominguez, declare as follows based on my personal knowledge:

1. I am an attorney appointed by U.S. District Court Judge Denise Page Hood in this case to serve as a member of the Claimants' Advisory Committee ("CAC"), which was created as successor to the Tort Claimants' Committee following negotiation and confirmation of a global settlement of the bankruptcy of the Dow Corning Corporation (now Dow Silicones). The other members of the CAC are Ernest Hornsby, an attorney, and Sybil Niden Goldrich, a prominent consumer and breast implant rights advocate.

2. I submit this declaration to respond to certain issues raised in the Finance Committee's Joinder 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) ("FC Joinder"). The FC Joinder misstates the role of the CAC and the facts leading to the filing of the underlying motion.

3. The CAC was appointed on May 20, 2004 to represent the interests of claimants in the Dow Corning Settlement. The CAC has two broad roles – as advisor and advocate: First, the CAC is authorized to “advise and assist the Settlement Facility, Claims Administrator, [and] Finance Committee ... regarding all matters of mutual concern.” Settlement Facility and Fund Distribution Agreement (“SFA”) § 4.09(c)(iii). Second, the CAC has an independent role as *advocate* for the interests of tort claimants. SFA Section 4.09(c)(v) provides that “[t]he Claimants’ Advisory Committee ... may 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.”

4. To facilitate both roles, the Finance Committee is required to include the CAC in all meetings and to seek its “input and advice” on “all matters of mutual concern.” SFA § 408(g). The CAC is also to “be provided with copies of all reports, projections, motions, pleadings, or other similar documents concerning the activities of the Settlement Facility.” SFA § 409(c)(iv).

5. Consistent with its role in the settlement, the CAC has since its appointment in 2004 actively consulted with, sought input from, and provided



information to countless individual claimants and law firms that represent claimants. The CAC maintains a website with orders, claim forms, and other information, and communicates with claimants and law firms through a central office and electronic newsletter.

6. Over the years, the CAC has received tens of thousands of telephone calls, email correspondence, and letters from claimants and law firms regarding a range of issues relating to claim qualification, claim processing, pending deadlines, and notice issues. This ongoing communication has been crucial to keep the CAC informed about how claimants and counsel are actually experiencing the settlement process and to identify problems with notice or claims processing. This has led the CAC to raise issues with the Settlement Facility, Finance Committee, and Dow Silicones, most of which have been addressed consensually. Where that is not possible, we have filed motions to address issues that affect claimants generally. The CAC does not represent individual claimants and has never filed a motion on behalf of specific claimants.

7. In addition to receiving calls and correspondence from claimants and law firms, the CAC has also been tasked on numerous occasions over the past 20 years with contacting claimants and law firms directly on behalf of the Settlement Facility. Contact with attorneys who represent claimants is a normal and necessary part of our representation of claimants in this settlement.



8. Closing Order 5, entered on June 13, 2022, directed the Settlement Facility to provide a list of SID numbers on its website for a period of 90 days to permit claimants to submit updated addresses. The Order did not contain a specific deadline for such submissions, since this was dependent on the date the Settlement Facility posted the list to its website. The Claims Administrator, who had only recently been appointed (in February 2021) and is not an attorney, apparently posted the SID numbers on or about June 19, 2022 and counted 90 days after this date to arrive at a deadline of September 17, 2022 – which was a Saturday. This date was posted without input from the CAC. The CAC did not realize the deadline was on a Saturday until we were contacted by law firms on and after September 19, 2023.

9. Starting on September 19, 2022, the CAC received emails and phone calls from several law firms stating that the Settlement Facility had rejected as untimely address confirmations submitted after September 17, 2023 but on or before the next business day – September 19, 2023.

10. The CAC reviewed the Plan language and other relevant information, including Claimant Information Guide Q&As, that provide that deadlines that fall on a Saturday, Sunday, or holiday would default to the next business day. The CAC also requested its counsel, Kramer Levin Naftalis & Frankel LLP (“Kramer Levin”), to conduct legal research on the issue of the applicability of Federal Rule 6(a) and advise the CAC accordingly. We concluded that the Settlement Facility had erred



in calculating the Closing Order 5 deadline as a strict 90 days rather than rolling it forward to the next business day. We relayed this to the Claims Administrator, and we made repeated efforts to correct the deadline error with the Claims Administrator, Debtor's Representatives, and Finance Committee.

11. When it became apparent that the Settlement Facility would not immediately correct the error and apply the Plan language and Federal Rule 6(a), the CAC instructed Kramer Levin to prepare a draft motion to be brought by the CAC to clarify the applicable deadline for Closing Order 5. Kramer Levin prepared the draft motion for the CAC to file in its own name, and it was reviewed only by the CAC, not by or on behalf of any other law firm or claimant. The motion was written to clarify the deadline as it affected *all* claimants who submitted address information after September 17, 2022 and on or before September 19, 2022, a group that the CAC understood comprised approximately three to four dozen claimants. Kramer Levin's time spent researching and drafting the motion was included in its bills for September and October 2022.

12. We provided a draft of the motion to the Finance Committee in November 2022, and, throughout the remainder of 2022 and into 2023, the CAC refrained from filing the motion while it continued to seek resolution of the deadline issue consensually with the Debtor's Representatives and Finance Committee.



13. On January 31, 2023, counsel for Maxine Swaim contacted the CAC to ask about the status of the deadline issue. The CAC indicated that it had prepared a motion to file on behalf of all claimants but was attempting to resolve the issue consensually. Counsel for Ms. Swaim indicated that they would file a motion on behalf of their client in the near future. The CAC sent a copy of our draft motion to counsel for Ms. Swaim as background information and to share our understanding of the issue and the CAC's position on it. We also shared the draft on a similar basis with other counsel that contacted us regarding the deadline issue.

14. Sharing research and drafts with counsel representing members of our constituency is something we have done from time to time over the years and regard as part of our general charge to advocate for tort claimants' interests. It does not constitute representation of specific claimants – we are simply providing background information and an explanation of the CAC's understanding and position on particular issues.

15. On May 25, 2023, counsel for Ms. Swaim filed a motion to clarify the deadline for Closing Order 5. Counsel chose without consulting the CAC to use language from the draft motion in its own motion papers. The CAC then joined in that motion in support of the relief for all claimants similarly affected by the Settlement Facility's denial of their claims.



16. The CAC's efforts on this issue – researching and drafting a potential motion and attempting to resolve the matter through discussions with the parties – were conducted on behalf of *all* claimants potentially affected by the issue. All counsel time billed on the matter went to these general efforts, an ordinary and customary function that the CAC and its counsel have performed with respect to innumerable issues over nearly 20 years. No research or other legal work was performed for Weitz & Luxenberg or any other individual law firm or claimant.

17. The Finance Committee's statement that the CAC acted as a "ghost-writer" for Weitz & Luxenberg (FC Joinder at 3) is therefore incorrect. And its statement that "the CAC was evidently advising Weitz & Luxenberg" (*id.* at 2) merely describes the normal assistance that the CAC has provided to countless claimants and law firms over the years. As described above, consulting with law firms representing claimants about issues that arise in claim processing, including sometimes sharing informative work product, is a core part of the CAC's function. It does not constitute "ghost-writing" for law firms or taking on representation of individual cases. No party has questioned these activities over the two decades the CAC has been playing this role.

18. The CAC has at all times complied with its charge to represent the interests of all claimants generally. The allegation that the CAC has "deviated from its Plan-specified purpose" (FC Joinder at 3) is simply incorrect, although it is



consistent with unfair criticism that the Finance Committee has leveled at the CAC in the context of several recent disputes. It is unfortunate that after nearly 20 years of cooperation and mutual respect, even in situations where the parties have deep disagreements, the Finance Committee has chosen to escalate policy disagreements into attacks on the CAC that reflect a misunderstanding of the CAC's long-settled role. The CAC intends to continue to work towards consensus where its input is welcomed and the parties genuinely seek agreement. But we will also continue to articulate and advocate independent positions on behalf of tort claimants where, for whatever reason, consensus is not possible.

Pursuant to 28 U.S.C. Section 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 19th Day of June, 2023.

  
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Dianna Pendleton-Dominguez