

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE:

DOW CORNING CORPORATION,

REORGANIZED DEBTOR

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CASE NO. 00-CV-00005-DT
(Settlement Facility Matters)

Hon. Denise Page Hood

RESPONSE TO MOTION OF CLAIMANTS' ADVISORY COMMITTEE
FOR AN EXTENSION OF THE JUNE 1, 2006 DEADLINE
FOR CERTAIN GROUPS OF CLAIMANTS

Dow Corning Corporation ("Dow Corning") respectfully submits this response to the *Motion of the Claimants' Advisory Committee for an Extension of the June 1, 2006 Deadline for Certain Groups of Claimants* (the "CAC Motion").

On May 31, 2006 the Claimants' Advisory Committee ("CAC") filed the CAC Motion seeking a one-year extension of the June 1, 2006 filing deadline under the Amended Joint Plan of Reorganization (the "Plan") for certain groups of claimants. The June 1 deadline applied to claims for rupture (in Classes 5, 6.1, and 6.2), all claims for benefits in Class 7 (silicone material), and all claims for benefits in Classes 9 and 10 (domestic/foreign Other Products) benefits. Specifically, the CAC requests an extension of the deadline for (1) conditional Notice of Intent ("NOI") claimants, (2) late claimants whose claims have been allowed by the parties and/or the Court, (3) disputed release claimants, (4) claimants who did not undergo explantation surgery prior to the June 1, 2006 deadline for various reasons, and (5) claimants whose medical records are in the

possession of the Settlement Facility-Dow Corning Trust ("SF-DCT") or Dow Corning. As set forth below, Dow Corning believes that it is appropriate to grant an extension for certain claimants based on the claim status information and /or instructions provided to them by the SF-DCT. Such an extension requires the agreement of both the Debtor's Representatives and the CAC, and this should be accomplished through a stipulation. There is, however, no basis to warrant an extension of the firmly established Plan deadlines for other claimants, and therefore the CAC's motion with respect to those claimants must be denied.

Argument

During the implementation of the SF-DCT individuals were assigned to a status of "eligible" or "ineligible" in the claims data system. Those claimants designated as ineligible were told that they were ineligible by the SF-DCT or were, at times, told not to file any claim forms. Because they were informed that they were ineligible, quite reasonably, they did nothing to preserve their potential rights to seek benefits. If it is determined that in fact certain of these claimants should instead be deemed eligible, then it is reasonable and fair to provide these individuals with the opportunity to file for the benefits that they missed due to their designation as ineligible. Therefore, Dow Corning believes that a limited extension of the deadline to file a claim should be granted in these limited circumstances, as set forth below.

1. NOI Claimants.

“Conditional NOI claimants” have been advised (at least in some cases) by the SF-DCT not to file claim forms on the grounds that they were not eligible for benefits. “Conditional NOI claimants” are defined to include any individual who filed a timely NOI and who was deemed to be an unmatched NOI claim (i.e., not covered by a Rule 3005 Claim filed by a Co-Debtor on behalf of specifically named individuals), as well as Paragraph 10 Claimants who have been deemed “conditional NOI claimants” by the parties. The Debtor’s Representatives and the CAC are in the process of addressing the status of NOI claims and, to the extent that “conditional NOI claimants” are ultimately allowed to obtain rupture benefits, it would be inequitable to impose an already-passed deadline to file claims on those claimants. However, a one-year extension is unnecessary. These claimants simply do not need an entire year to complete and file a claim form. Rather, Dow Corning believes that a 6-month extension from the date notice is provided to these claimants advising them that they can file a claim (if such a determination is made) is appropriate. Such an extension would provide a reasonable amount of time for these claimants to submit a claim form to the SF-DCT.

2. Late Claimants.

Dow Corning agrees that a limited extension is appropriate for late claimants who were initially informed by the SF-DCT that their claims were not timely but after investigation were subsequently found to be timely. Likewise, Dow Corning agrees

that a limited extension is appropriate for late claimants who are reclassified as timely in the future. Dow Corning believes that granting a 6-month extension from the date notice is provided to these claimants advising them that they can file a claim for a benefit option that expired on June 1, 2006 is more than sufficient. These claimants simply do not need a full year to complete and submit one claim form.

In the event that the Court authorizes other individuals to file late claims (i.e., individuals who were not found to be timely claimants but instead are authorized to file a late claim), the request for an extension should be denied or, at least, deferred until such time (if ever) that the issue arises. Unlike the late claimants who were misinformed and who in reality filed timely claims, these late claimants by definition sat on their rights and failed to file appropriate documents despite the fact that they were provided appropriate notice of the February 14, 1997 bar date imposed in the Dow Corning Chapter 11 Case. These claimants cannot reasonably expect the parties to amend the Plan to adjust filing deadlines when the reason they were unable to submit a claim on a timely basis is because of their own inaction. There is no reason to allow additional claimants to participate in distributions from limited funds and to thereby potentially affect distributions to timely, eligible claimants.

3. Disputed Release Claims.

Dow Corning agrees that a limited extension is appropriate for “disputed release claimants”. “Disputed release claimants” are those claimants who were initially

advised by the SF-DCT that they were ineligible for benefits because they had executed a pre-petition release of claims against Dow Corning or the shareholders and then disputed the applicability of the release, but who were subsequently found to be eligible under the terms of the *Stipulation and Order Establishing Procedures for Resolution of Disputes Regarding Release of Claims Against Dow Corning and Election of Settlement Option* (dated December 23, 2004) or by order of this Court. Each “disputed release claimant” has the option of contesting the release through the Court-approved procedures or separately by a motion in this Court. In the event that a “disputed release claimant” is found to be eligible to file a claim, the claimant should be granted a limited time period within which to file a rupture claim or a claim for benefits in Class 7 or Class 9, whichever is applicable. Dow Corning believes that a 6-month extension from the date notice is provided to these claimants advising them that they can file a claim for a benefit option that expired on June 1, 2006 is a fair and reasonable amount of time for these claimants to file a claim form.

4. Explant Assistance Program.

With respect to claimants who did not undergo explantation surgery by the June 1, 2006 deadline because they claim they had difficulty locating a surgeon or paying for the surgery, the CAC’s request for an extension must be denied. There is absolutely no basis to modify the firmly established Plan requirements and grant an extension for these claimants. The CAC’s vague assertion that claimants did not have surgery

because of “problems experienced by the SF-DCT in implementing the Explant Assistance Programs” cannot support an extension. *See* CAC Motion at 2-3, 9-10.

Under the guidance of the successor Claims Administrator, the SF-DCT instituted a program to reach out and process quickly all the Explant Assistance Program claims and to assist in the expedition of payment to doctors.¹ If the claimant was unable to find a doctor to participate, the claimant had the option of paying the doctor upfront and seeking reimbursement. There was nothing to bar the claimant from filing on time. We do not know where the CAC gets the idea that the number of claims approved is “far below [the CAC’s] expectations.” CAC Motion at 10-11. To our knowledge, there were no specific projections or expectations.

5. Medical Records.

Finally, Dow Corning objects to the CAC’s request for an extension on behalf of claimants whose medical records are in the possession of Dow Corning or the SF-DCT. Neither Dow Corning nor the SF-DCT has the obligation to undertake an extensive, time-consuming search for documents relating to an individual claimant or to inform the claimant that documents exist to support her claim. If a claimant knows that she has had an implant removed, it is *her* responsibility to timely submit a claim form and documentation supporting her claim. However, if a claimant cannot obtain documents,

¹ One of the issues that the SF-DCT tried to address was that some doctors were not willing to accept a “promise” of payments. The fact that a doctor has refused to participate in the Explant Assistance Program is not within the control of the SF-DCT or the parties and has nothing to do with the terms of the Plan.

she may ask the SF-DCT to locate documents in its or Dow Corning's possession. The SF-DCT has in fact made numerous such requests to Dow Corning. Dow Corning has always responded to these requests and has timely provided such documents since before the Effective Date, despite the fact that there is only a small percentage of claimants for whom Dow Corning has located documents.² However, there is nothing in the Plan that requires Dow Corning or the SF-DCT to shoulder the burden of ensuring that potential claimants file claims on a timely basis. Accordingly, the request for an extension for these claimants must be denied.

² In a review of over 30 boxes of documents, Dow Corning found materials that affected 11 claims.

Conclusion

For the foregoing reasons, a limited 6-month extension from the date notice is provided to the claimant that she can file a claim should be allowed for “conditional NOI claimants”, late claimants, and “disputed release claimants” as specified above. Dow Corning objects, however, to any extension for claimants who had difficulty locating a qualified surgeon or paying for the explantation surgery and for claimants whose medical records are in the possession of the SF-DCT or Dow Corning. There is simply no basis to warrant an extension in those circumstances.

Respectfully submitted this 21st day of June 2006.

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UNITED STATES DISTRICT COURT
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§ (Settlement Facility Matters)
DOW CORNING CORPORATION, §
§ HON. DENISE PAGE HOOD
REORGANIZED DEBTOR §

CERTIFICATE OF SERVICE

I hereby certify that on June 21, 2006 a true and correct copy of the following pleading was served via electronic mail, telecopy, or overnight mail upon the parties listed below:

RESPONSE TO MOTION OF CLAIMANTS' ADVISORY COMMITTEE
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FOR CERTAIN GROUPS OF CLAIMANTS

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