

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re: § CASE NO. 00-CV-00005-DT
§ (Settlement Facility Matters)
DOW CORNING CORPORATION, §
§ Honorable Denise Page Hood
Reorganized Debtor §

**MOTION TO ESTABLISH PROCEDURES
TO DETERMINE STATUS OF LATE CLAIMANTS**

TO THE HONORABLE DENISE PAGE HOOD,
UNITED STATES DISTRICT JUDGE:

Dow Corning Corporation, the Debtor's Representatives, and the Claimants Advisory Committee (the "Movants") file this Motion to Establish Procedures to Determine Status of Late Claimants (the "Motion"), and in support thereof respectfully state as follows:

**I.
FACTUAL BACKGROUND**

1. Claimants who filed timely Proofs of Claim are eligible to participate and receive distributions under the Amended Joint Plan of Reorganization (the "Plan"). The Confirmation Order deemed as timely any Proof of Claim filed by November 30, 1999.

2. A claimant who did not timely file a Proof of Claim in the case but on whose behalf a Proof of Claim was timely filed pursuant to Bankruptcy Rule 3005 could file a "Notice of Intent" with the Court, as provided in Bankruptcy Rule 3005, to act on her or his own behalf with respect to such Rule 3005 claim. *See* Annex A § 2.02(b)(i). Such Notice of Intent forms were required to be filed by August 30, 2004. *See id.*

3. A claimant who submitted a late Notice of Intent was sent a letter (a "Late Notice") from the Settlement Facility-Dow Corning Trust ("SF-DCT")—which had been reviewed and approved by the Movants—stating that the claimant was not eligible to participate

in the Plan and, pursuant to Section 2.02(b)(iii) of Annex A, the claimant could appeal this decision to the District Court by filing a motion pursuant to the Federal Rules of Civil Procedure. Appeals were required to be filed within thirty (30) days from the date of the Late Notice. Movants are aware of twelve (12) claimants who, in response to Late Notices sent by the SF-DCT, have sought judicial consideration of their late Notice of Intent status and whose requests have been separately docketed by the Court (Agnes M. Talkington, Delana Davis, Pamela J. Fields, Lauri L. Johnson, Nina S. Jaster, Carolyn A. Bliss, Judith Wilhelm-Echols, Terri Anderson, Angela M. Elliott, Molly A. McKnight, Frances L. Boyd, and Wendy Snyder).

4. Claimants who did not file a timely Proof of Claim may also request leave to allow their late Proof of Claim to be deemed timely filed. At this time, Movants are aware of six motions requesting such relief that have been docketed with the Court under case number 05-CV-00005. *See* Motion of Leslie Ann Gibbons for Order Acknowledging Timely Filing of Implant Proof of Claim (docket #218); Motion of Nancy Davis to be Deemed Eligible Under Class 5 of the Dow (sic) Plan (docket #236); Motion of Brenda G. Mitchell to Establish Eligibility as a Registered Claimant in the Dow Corning Breast Implant Settlement (docket #239); Motion of Kathleen Wright to be Deemed Eligible Under Class 5 of the Dow (sic) Plan (docket #241); Motion of Valerie Brockman to be Deemed Eligible Under Class 5 of the Dow (sic) Plan (docket #254); and Motion of Mary Evelyn Albertson for Admission into Dow Corning Class Action Based on Special Circumstances (docket #264).¹

5. Further, since the Effective Date, the Court has received numerous letters from claimants (or their attorneys of record) who did not timely file a Proof of Claim or a Notice of

¹In addition to these six docketed motions, in November 2004, Movants received a copy of a Motion of Helen Talbott for Authorization to File a Late Claim. This motion does not appear on the bankruptcy case docket (#95-20512) or the Settlement Facility Matters docket (00-CV-00005). However, it does appear among the letters received by the Court, which are referenced in paragraph 5 above.

Intent. Many of those letters present a general request to participate in the Plan, without any reference to whether the claimant filed a timely Proof of Claim or Notice of Intent or any explanation of why the claimant failed to comply with a relevant filing deadline. Other letters to the Court make a more specific request to be permitted to file a late Proof of Claim or Notice of Intent and be eligible to seek compensation under the Plan. The Court will likely receive additional such letters in the future.

6. Anticipating that motions and letters such as those identified in the foregoing paragraphs 3-5 (collectively, "Late Claim Requests") would be sent to or filed with the Court, Movants filed a Stipulation and Order Deferring Responses to Motions for Leave to File Late Proofs of Claim or Late Notices of Intent (the "Stipulation") in July 2005. The Stipulation stated Movants' intent to develop and recommend omnibus procedures to address Late Claim Requests in an efficient and uniform manner. Pursuant to the Stipulation, which the Court signed on July 29, 2005, the deadlines to respond to pending Late Claim Requests have been deferred until further notice after the Court establishes procedures to resolve such requests as well as future Late Claim Requests. This Motion proposes such procedures.

II.
RELIEF REQUESTED:
THE ESTABLISHMENT OF PROCEDURES FOR THE
CONSISTENT RESOLUTION OF LATE CLAIM REQUESTS

7. This Court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of title 11. *See* 11 U.S.C. § 105(a). Pursuant to section 105, Movants request that the Court implement procedures for the processing, scheduling and adjudication of pending and future Late Claim Requests.

8. The establishment of administrative procedures to address Late Claim Requests is necessary and appropriate to maintain consistency in their resolution. The adoption of the

procedures outlined below would provide all affected parties proper notice and an opportunity to respond and be heard; prevent piecemeal litigation; and promote the uniform treatment of all Late Claim Requests.

A. Categories of Late Claim Requests

9. Movants have identified certain common elements in the Late Claim Requests that Movants have received to date. Based on these common facts and/or legal issues, Late Claim Requests can be grouped into the following categories:

(a) **Sufficient Cause**: Movants agree the person has taken undisputed timely steps to comply with a prescribed deadline but due to circumstances beyond her/his control was unable to file a Notice of Intent or Proof of Claim by any of the relevant deadlines.

(b) **Disputed Cause**: The person's Late Claim Request (a) makes a general request to participate in the Plan but fails to provide sufficient information to evaluate the request on the merits, or (b) alleges some discernible reason(s) for the late filing of a Proof of Claim or a Notice of Intent, and at least one of the Movants contends that such reason(s) do not permit the person's late Proof of Claim or late Notice of Intent to be deemed timely filed.

B. Process for Classifying Late Claim Requests

10. Movants shall jointly review and classify all Late Claim Requests (including those identified in paragraphs 3-5 above and those that are submitted to the Court before or after the filing of this Motion) into one of the two categories described in paragraph 9 above. Movants' duty to review and classify Late Claim Requests is limited to those that Movants receive directly from the Court (e.g., the letters described in paragraph 5 above or motions that are filed electronically with the Court and served upon Movants by electronic mail) and those

that the claimant or the claimant's counsel file with or submit to the Court *and* serve upon Movants by first class mail, postage prepaid, to the following addresses²:

Debtor's Representatives
P.O. Box 7500
Midland, Michigan 48641-7500

Claimants' Advisory Committee
P.O. Box 665
St. Marys, Ohio 45885

11. Movants shall initially determine whether each Late Claim Request should be classified in the "Sufficient Cause" category or the "Disputed Cause" category. If Movants cannot jointly agree that a Late Claim Request shall be placed in the "Sufficient Cause" category, such Late Claim Request shall be classified in the "Disputed Cause" category.

12. Movants request that the SF-DCT be authorized and directed to provide the Movants and the late claimant or her/his counsel with such information in the SF-DCT's possession that is relevant to the review, classification and disposition of Late Claim Requests. To assist Movants' evaluation of Late Claim Requests, Movants should be authorized to request information and/or documentation from the SF-DCT, the MDL 926 Claims Office, the MDL 926 Court, the Bankruptcy Court, Daticon Inc. (but only if the requested information or documentation is unavailable from any of the foregoing sources), and other entities concerning a late claimant's efforts to file a Proof of Claim or Notice of Intent in the Dow Corning bankruptcy case. If a late claimant asserts that she/he timely submitted directly to Dow Corning a Proof of Claim, a Notice of Intent, or other documentation related to a claim in the Dow Corning bankruptcy case and specifically identified by the claimant (e.g., by document type, date of submission, etc.), then upon written request to the Debtor's Representatives at the address

²In the event a Late Claim Request is erroneously submitted to the SF-DCT rather than the Court, the SF-DCT will forward it to the Court and the Court can send a copy to the Movants under the procedures the Court currently employs to send other Late Claim Requests to the parties.

provided in paragraph 10 above, Dow Corning will research its records and provide a copy of such Proof of Claim, Notice of Intent, or other documentation, if any, to the requesting claimant or her/his counsel and to the CAC within twenty (20) business days of the Debtor's Representatives' receipt of such request.

13. All persons or entities who receive information about a late claimant pursuant to the preceding paragraph shall maintain the confidentiality of any such information. In any proceedings before the Court involving a Late Claim Request that is classified in the "Disputed Cause" category, any party may submit to the Court any information received pursuant to the preceding paragraph regarding such Late Claim Request; provided, that any such submission shall be made by a notice filed under seal with the Court with service upon Movants and the person who submitted such Late Claim Request (or her/his counsel of record, if any).

C. Procedures for Resolving Classified Late Claim Requests

14. After Late Claim Requests have been classified into one of the categories identified in paragraph 9 above pursuant to the procedures in subpart II.B above, Movants recommend that they be resolved in accordance with the following processes, based on the relevant category.

(a) **Sufficient Cause:** For Late Claim Requests that are classified in the "Sufficient Cause" category, Movants will periodically submit proposed stipulated orders to the Court that will deem each affected claimant's Proof of Claim or Notice of Intent (depending on the nature of the relevant Late Claim Request) to be deemed timely filed. The Movants will serve the SF-DCT with a copy of each such order entered by the Court and, within ten (10) business days after such service, the SF-DCT shall send each affected claimant (or, as applicable, the counsel for such claimant) a written notice that her/his Proof of Claim or Notice of Intent (as

applicable) is deemed timely and is eligible for processing according to the procedures applicable to timely Proofs of Claim or timely Notices of Intent, as the case may be.

(b) **Disputed Cause:** Any Late Claim Request that becomes classified in the “Disputed Cause” category shall initiate a contested matter under Bankruptcy Rule 9014 and be governed accordingly.

If the Court enters an order granting this Motion by December 30, Movants will use their best efforts to file, by January 27, 2006, a stipulation (a) identifying the Late Claim Requests that Movants have received through December 9 and have classified in the “Disputed Cause” category, and (b) proposing a related scheduling order(s) for the Court’s consideration of such Late Claim Requests and any responses or objections thereto filed by Movants or other interested parties.³ Hearings related to a Late Claim Request will be in person before the Court; provided that, subject to the Court’s approval, a scheduling order may permit claimants and/or their counsel to participate by telephone in hearings before the Court related to a Late Claim Request, without prejudice to the Movants’ ability to appear in person. Upon filing each stipulation, Movants shall serve a copy thereof, together with a copy of the Court’s Order approving this Motion, on the affected claimants and/or their attorneys. **The requirement for Movants or other interested parties to respond to Late Claim Requests in this category should continue to be deferred until the Court issues a relevant scheduling order after consideration of Movants’ stipulation.** Movants shall serve the scheduling order pertinent to any specific Late Claim Request(s) on the affected claimant or her/his counsel within ten (10) business days after the entry thereof.

³With respect to Late Claim Requests Movants receive after December 9 that are classified in the “Disputed Cause” category, Movants shall file a similar stipulation on a quarterly basis after the entry of an order approving this Motion and shall serve such stipulation and a copy of the Court’s Order granting this Motion on each affected claimant and/or the claimant’s counsel.

If either of the Movants objects to a Late Claim Request in the Disputed Cause category on grounds that the claimant has failed to provide sufficient information to support such Late Claim Request, the claimant or her/his counsel may file additional supportive information with the Court, subject to further review thereof and objection by the Movants.

15. Adoption of the procedures outlined herein will promote consistency in the resolution of Late Claim Requests, avoid piecemeal litigation, and safeguard proper notice. Based on the foregoing, the relief requested in this Motion should be granted.

16. Movants reserve their right to supplement and/or amend this Motion from time to time in light of additional Late Claim Requests Movants receive after the filing of this Motion.

17. Any person who is determined or deemed, under the procedures set forth above, to have a timely filed Proof of Claim shall be deemed to be a Settling Personal Injury Claimant (as defined in the Plan). Any person who is determined or deemed, under the procedures set forth above, to have a timely filed Notice of Intent may be eligible to participate in the SF-DCT subject to a mutually agreeable resolution of the parties and/or an order of the Court on the pending Motion of Dow Corning Corporation to Establish Procedure to Assist the Claims Administrator to Identify and Match Notices of Intent to Rule 3005 Claims in Accordance with Amended Joint Plan.

18. As certified below, Movants have served a copy of this Motion on all parties who have filed or submitted a Late Claim Request.

WHEREFORE, Movants request that the Court approve the procedures proposed herein for the processing and resolution of Late Claim Requests, enter the proposed Order attached hereto as **Exhibit A**, and grant such other and further relief as may be just and proper.

Respectfully submitted this 12th day of December, 2005.

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CERTIFICATE OF SERVICE

I hereby certify that on December 12 2005, a true and correct copy of the foregoing Motion was served by regular first class mail, postage prepaid, on: (i) David Austern, Claims Administrator, SF-DCT, P.O. Box 52429, Houston, TX 77052-2429; and (ii) the parties listed on the attached Service List.

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EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re: § CASE NO. 00-CV-00005-DT
§ (Settlement Facility Matters)
DOW CORNING CORPORATION, §
§ Honorable Denise Page Hood
Reorganized Debtor §

**ORDER ESTABLISHING PROCEDURES
TO DETERMINE STATUS OF LATE CLAIMANTS**

On December 12, 2005, Dow Corning Corporation, the Debtor’s Representatives, and the Claimants Advisory Committee (collectively, the “Movants”) filed their Motion to Establish Procedures to Determine Status of Late Claimants (the “Motion”), proposing procedures to address Late Claim Requests (as defined in the Motion) that have been, or in the future will be, filed with or submitted to the Court. Having considered the Motion and any responses by claimants or their counsel, the Court finds and concludes that the procedures proposed in the Motion (the “Procedures”) will promote consistency in the resolution of Late Claim Requests, avoid piecemeal litigation, and safeguard proper notice. Accordingly, it is hereby

ORDERED that the Motion is granted; and it is further

ORDERED that the Procedures set forth in Exhibit A to this Order are approved and shall govern the procedures for processing and resolving all pending and future Late Claim Requests; and it is further

ORDERED that any requirement for Movants or other interested parties to respond to Late Claim Requests shall be deferred until further order of the Court.

Dated: _____

Denise Page Hood
United States District Judge

EXHIBIT A

PROCEDURES FOR DETERMINING STATUS OF LATE CLAIMANTS AND LATE CLAIM REQUESTS

A. Classification of Late Claim Requests

1. The Claimants' Advisory Committee and the Debtor's Representatives (the "Parties") will jointly evaluate all Late Claim Requests and classify them into one of the following categories:

(a) **Sufficient Cause:** The Parties agree the late claimant has taken undisputed timely steps to comply with a prescribed deadline but due to circumstances beyond her/his control was unable to file a Notice of Intent or Proof of Claim by any of the relevant deadlines.

(b) **Disputed Cause:** The Late Claim Request (a) makes a general request to participate in the Plan but fails to provide sufficient information to evaluate the request on the merits, or (b) alleges some discernible reason(s) for the late filing of a Proof of Claim or a Notice of Intent, and at least one of the Parties contends that such reason(s) do not permit the person's late Proof of Claim or late Notice of Intent to be deemed timely filed.

2. The Parties' duty to review and classify Late Claim Requests is limited to those that the Parties receive directly from the Court (e.g., claimant letters received by the Court and delivered to the Parties or motions filed electronically with the Court and served upon the Parties by electronic mail) and those that the claimant or the claimant's counsel file with or submit to the Court *and* serve upon the Parties by first class mail, postage prepaid, to the following addresses¹:

Debtor's Representatives
P.O. Box 7500
Midland, Michigan 48641-7500

Claimants' Advisory Committee
P.O. Box 665
St. Marys, Ohio 45885

3. If the Parties cannot jointly agree that a Late Claim Request shall be placed in the "Sufficient Cause" category, such Late Claim Request shall be classified in the "Disputed Cause" category.

4. The Settlement Facility-Dow Corning Trust ("SF-DCT") is authorized and directed to provide the Parties and each late claimant or her/his counsel with such information in the SF-DCT's possession that is relevant to the review, classification and disposition of Late Claim Requests. To assist the Parties' evaluation of Late Claim Requests, the Parties are

¹In the event a Late Claim Request is erroneously submitted to the SF-DCT rather than the Court, the SF-DCT will forward it to the Court and the Court will send a copy to the Movants under the procedures the Court currently employs to send other Late Claim Requests to the Parties.

authorized to request information and/or documentation from the SF-DCT, the MDL 926 Claims Office, the MDL 926 Court, the Bankruptcy Court, Daticon Inc. (but only if the requested information or documentation is unavailable from any of the foregoing sources), and other entities concerning a late claimant's efforts to file a Proof of Claim or Notice of Intent in the Dow Corning bankruptcy case. If a late claimant asserts that she/he timely submitted directly to Dow Corning a Proof of Claim, a Notice of Intent, or other documentation related to a claim in the Dow Corning bankruptcy case and specifically identified by the claimant (e.g., by document type, date of submission, etc.), then upon written request to the Debtor's Representatives at the address provided in paragraph 2 above, Dow Corning will research its records and provide a copy of such Proof of Claim, Notice of Intent, or other documentation, if any, to the requesting claimant or her/his counsel and to the Claimants' Advisory Committee within twenty (20) business days of the Debtor's Representatives' receipt of such request.

5. All persons or entities who receive information about a late claimant pursuant to the preceding paragraph shall maintain the confidentiality of any such information. In any proceedings before the Court involving a Late Claim Request that is classified in the "Disputed Cause" category, any party may submit to the Court any information received pursuant to the preceding paragraph regarding such Late Claim Request. Any such submission shall be made by a notice filed under seal with the Court and served upon the Parties at the addresses provided in paragraph 2 above and the person who submitted such Late Claim Request (or her/his counsel of record, if any).

B. Procedures for Resolving Late Claim Requests

6. After the Parties have classified the Late Claim Requests into one of the categories identified in paragraph 1 above, the Late Claim Requests shall be resolved in accordance with the following processes:

(a) **Sufficient Cause**: For Late Claim Requests that are classified in the "Sufficient Cause" category, the Parties will periodically submit proposed stipulated orders to the Court that will deem each affected claimant's Proof of Claim or Notice of Intent (depending on the nature of the relevant Late Claim Request) to be deemed timely filed. The Parties will serve the SF-DCT with a copy of each such order entered by the Court and, within ten (10) business days after such service, the SF-DCT shall send each affected claimant (or, as applicable, the counsel for such claimant) a written notice that her/his Proof of Claim or Notice of Intent (as applicable) is deemed timely and is eligible for processing according to the procedures applicable to timely Proofs of Claim or timely Notices of Intent, as the case may be.

(b) **Disputed Cause**: Any Late Claim Request that becomes classified in the "Disputed Cause" category shall initiate a contested matter under Bankruptcy Rule 9014 and be governed accordingly.

By February 28, 2006, the Parties will file with the Court a stipulation (a) identifying the Late Claim Requests that the Parties have received through December 9, 2005 and have classified in the "Disputed Cause" category, and (b) proposing a related scheduling order(s) for the Court's consideration of such Late Claim Requests and any responses or objections thereto filed by the Parties or other interested parties. After February 28, 2006, the Parties will file similar stipulations with the Court on a quarterly basis covering all Late Claim

Requests that the Parties have classified in the Disputed Cause category within each quarter. Upon filing each stipulation, the Parties shall serve a copy thereof, together with a copy of these Procedures and the Court's Order approving them, on the affected claimants and/or their attorneys. The Parties shall serve the scheduling order pertinent to any specific Late Claim Request(s) on the affected claimant or her/his counsel within ten (10) business days after the entry thereof.

If either of the Parties objects to a Late Claim Request in the Disputed Cause category on grounds that the claimant has failed to provide sufficient information to support such Late Claim Request, the claimant or her/his counsel may file additional supportive information with the Court, subject to further review thereof and objection by the Parties.

Hearings related to a Late Claim Request in the Disputed Cause category will be in person before the Court; provided that, subject to the Court's approval, a scheduling order may permit claimants and/or their counsel to participate by telephone in hearings before the Court, without prejudice to the Parties' ability to appear in person.

C. Effect of Determination that a Proof of Claim or Notice of Intent was Timely Filed or is Deemed to be Timely Filed

7. Any person who is determined or deemed, under the procedures set forth above, to have a timely filed Proof of Claim shall be deemed to be a Settling Personal Injury Claimant (as defined in the Amended Joint Plan of Reorganization for Dow Corning Corporation). Any person who is determined or deemed, under the procedures set forth above, to have a timely filed Notice of Intent may be eligible to participate in the SF-DCT subject to a mutually agreeable resolution of the parties and/or an order of the Court on the pending Motion of Dow Corning Corporation to Establish Procedure to Assist the Claims Administrator to Identify and Match Notices of Intent to Rule 3005 Claims in Accordance with Amended Joint Plan.