

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

IN RE:	§	CASE NO. 95-20512
DOW CORNING CORPORATION	§	(Chapter 11)
REORGANIZED DEBTOR	§	Judge Denise Page Hood

**NOTICE OF HEARING ON MOTION BY DOW CORNING
CORPORATION TO AUTHORIZE DISPOSITION OF CLAIM RECORDS**

NOTICE IS HEREBY GIVEN that on May 10, 2006, Dow Corning filed its **MOTION TO AUTHORIZE DISPOSITION OF CLAIM RECORDS**.

PLEASE TAKE FURTHER NOTICE that the Court has set a hearing on the foregoing Motion on **June 8, 2006, at 9:00 a.m. Eastern Time** in the courtroom of the Honorable Denise Page Hood, Theodore Levin United States Courthouse, 231 West Lafayette Boulevard, Courtroom 237, Detroit, Michigan.

PLEASE TAKE FURTHER NOTICE that any objection to the foregoing Motion must be filed with the Clerk of the Bankruptcy Court no later than **May 25, 2006** and that a copy of any objection must be served no later than **May 25, 2006** upon counsel for Dow Corning Corporation, David Ellerbe, Neligan Foley LLP, 1700 Pacific Avenue, Suite 2600, Dallas, TX 75201, fax 214-840-5301. If no objections are timely filed, the Court may grant the Motion without a hearing.

Dated: May 10, 2006.

Respectfully submitted,

NELIGAN FOLEY LLP

By: /s/ David Ellerbe
David Ellerbe

1700 Pacific Avenue, Suite 2600
Dallas, Texas 75201
214-840-5300
214-840-5301 fax

ATTORNEYS FOR DOW CORNING
CORPORATION

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

IN RE: § CASE NO. 95-20512
§
DOW CORNING CORPORATION § Chapter 11
§
Reorganized Debtor § Honorable Denise Page Hood

MOTION TO AUTHORIZE DISPOSITION OF CLAIM RECORDS

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

Dow Corning Corporation (“Dow Corning”) files this Motion to Authorize Disposition of Claim Records (the “Motion”), and in support thereof respectfully states as follows:

I. BACKGROUND

1. On May 15, 1995, Dow Corning initiated this case by filing a voluntary petition for relief under chapter 11 of the U.S. Bankruptcy Code. Creditors of Dow Corning were required to file proofs of claim against Dow Corning in this case. *See* 11 U.S.C. § 501; Bankruptcy Rule 3003(c).

2. Ordinarily, proofs of claim are filed with and maintained by the Clerk of the Bankruptcy Court (the “Clerk”). However, from the outset of the case, Dow Corning anticipated that hundreds of thousands of implant-related claimants would file proofs of claim. Dow Corning and the Clerk determined that the sheer volume of the claims would create significant administrative burdens for the Clerk in managing this case and other cases. Thus, in 1996, Dow Corning sought and obtained, pursuant to Bankruptcy Code § 105, the bankruptcy court’s appointment of Daticon, Inc. fka Daticon Services, Inc. (“Daticon”) as an agent of the Clerk for the purpose of receiving and docketing all claims in this chapter 11 case. *See* Order Granting Supplemental Application to Retain Daticon Systems, Inc. as Claims Docketing Agent and to

Define Role of Price Waterhouse LLP in Relation to Matrix, dated July 16, 1996, attached hereto as **Exhibit B**.¹

3. Daticon's status as the claims docketing agent ended on May 15, 2005. *See* Notice Regarding Termination of Services By Daticon Systems, Inc. As Claims Docketing Agent, filed on May 10, 2005, attached hereto as **Exhibit C**. From and after May 15, 2005, the Clerk resumed all responsibilities and functions with respect to the docketing of claims in this case.

4. During its tenure as the claims docketing agent for the Clerk, Daticon received over 900,000 proofs of claim and notices of intent related to claims filed under Bankruptcy Rule 3005, including supporting documentation submitted therewith by the claimants. The paper originals of all of these documents are referred to collectively hereafter as the "Claim Records." Daticon currently maintains and stores the Claim Records in approximately 3,500 boxes at a facility in Norwich, Connecticut that was originally leased by Daticon.

5. Based on a process approved by Dow Corning, the Tort Committee, and the other official creditor committees, Daticon routinely created electronic images of the Claim Records as it received them, including all medical records or other documents submitted by the claimants and even the envelopes in which Daticon received the Claim Records. Daticon provided these electronic images to Dow Corning, the Tort Committee and the Unsecured Creditors Committee periodically during the case, and a complete set of the electronically imaged Claim Records has been provided to the Settlement Facility-Dow Corning Trust ("SF-DCT").

6. The Claim Records are official government records and are property of the Clerk. Since Daticon's appointment in July 1996, the eventual transition of the Claim Records to the

¹Pursuant to Local Bankruptcy Rule 9014-1(b)(4), a proposed Order granting this Motion is attached hereto as **Exhibit A**.

Clerk was certain and inevitable. Dow Corning contemplated the transition would coincide with the closing of this bankruptcy case.

7. However, in January 2006, Daticon filed its own bankruptcy case in Connecticut and immediately embarked on selling its business assets. In March 2006, with the approval of its bankruptcy court, Daticon sold substantially all of its assets to Xiotech Corporation. In that sale, Xiotech did not acquire Daticon's contract with Dow Corning, pursuant to which Daticon stores the Claim Records on the Clerk's behalf. However, Daticon assigned to Xiotech the lease for the facility where Daticon currently stores the Claim Records. Xiotech now leases that facility on a month-to-month basis.

8. Xiotech or the landlord of the storage facility may require the immediate removal or other disposition of the Claim Records, with little advance notice to Dow Corning or the Clerk, so Xiotech or the landlord can otherwise use the facility. Similarly, Daticon is in the process of winding up its operations, and it may soon seek to abandon the Claim Records to the Clerk as authorized by section 554(a) of the Bankruptcy Code. In short, the foregoing events and conditions related to Daticon's bankruptcy have hastened a decision about the appropriate disposition of the Claim Records.

II. RELIEF REQUESTED

9. The Clerk has informed Dow Corning that the Clerk has no space to store the approximately 3,500 boxes containing the Claim Records pending the closing of the Dow Corning bankruptcy case. Further, the Clerk has indicated that its task of preparing the massive volume of Claim Records for transmittal to the federal archives center in Chicago, after the Dow Corning bankruptcy case is closed, would be extremely arduous, time-consuming and expensive for the Clerk.

10. To alleviate these burdens on the Clerk, Dow Corning requests authority pursuant to Bankruptcy Code § 105, on behalf of the Clerk, to permanently dispose of the Claim Records by having them shredded according to generally accepted professional standards within the record destruction industry. The confidentiality of the Claim Records will be maintained during the shredding process and, upon completion of the job, Dow Corning will obtain a certificate confirming the destruction of the Claim Records. Dow Corning will pay the cost of this disposition of the Claim Records.

11. A complete set of the electronic images of the Claim Records will be provided to the Clerk for permanent storage and archive purposes. Dow Corning has consulted with the Office of the United States Trustee and with the Clerk concerning this Motion and the proposed disposition of the Claim Records. The U.S. Trustee and the Clerk support this Motion. Further, the Clerk has stated there is precedent for archiving electronic records instead of paper originals, and the Clerk would prefer to receive and ultimately archive the electronic images of the Claim Records and permanently dispose of the paper originals. The Clerk also indicated that the Administrative Office of United States Courts, which supervises all administrative functions of the Clerk's office, does not oppose the destruction of the Claim Records and the archival of the electronic copies, particularly if this Court so approves.

12. Dow Corning has also consulted with the Claimants' Advisory Committee and the Claims Administrator of the SF-DCT, and neither party opposes the destruction of the Claim Records and the provision of electronic images of the Claim Records to the Clerk as proposed in this Motion.

WHEREFORE, Dow Corning Corporation respectfully requests that the Court issue an order (a) authorizing the shredding of the Claim Records, (b) authorizing the Clerk to receive

electronic images of the Claim Records for storage and archival purposes, and (c) granting such other relief as is just and appropriate.

Dated: May 10, 2006.

Respectfully submitted,

NELIGAN FOLEY LLP

By: /s/ David Ellerbe
David Ellerbe

1700 Pacific Avenue, Suite 2600
Dallas, Texas 75201
(214) 840-5300
(214) 840-5301 (fax)

ATTORNEYS FOR DOW CORNING
CORPORATION

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

IN RE: § CASE NO. 95-20512
DOW CORNING CORPORATION §
Reorganized Debtor § Chapter 11
§ Honorable Denise Page Hood

**ORDER GRANTING MOTION TO
AUTHORIZE DISPOSITION OF CLAIM RECORDS**

The Court has considered the Motion to Authorize Disposition of Claim Records (the "Motion") filed by Dow Corning Corporation ("Dow Corning") and the Court finds and concludes that the Motion is meritorious and should be granted. Accordingly, it is hereby ORDERED as follows:

1. The Motion is granted.
2. Dow Corning is authorized, on behalf of the Clerk of the Bankruptcy Court, to cause the Claim Records, as defined in the Motion, to be shredded.
3. The Clerk of the Bankruptcy Court is authorized to receive electronic images of the Claim Records for storage and archival purposes.

Dated: _____

Denise Page Hood
United States District Judge

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

IN RE:
DOW CORNING CORPORATION
DEBTOR

CLERK OF COURT

CASE NO. 95-20512
(Chapter 11)

JUDGE ARTHUR J. SPECTOR

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FILED

**ORDER GRANTING SUPPLEMENTAL MOTION TO RETAIN
DATICON SYSTEMS, INC. AS CLAIMS DOCKETING AGENT
AND TO DEFINE ROLE OF PRICE WATERHOUSE LLP
IN RELATION TO MATRIX**

Came on for consideration the Supplemental Motion to Retain DATICON Systems, Inc. as Claims Docketing Agent and to Define Role of Price Waterhouse LLP In Relation to Matrix (the "Motion") filed by Dow Corning Corporation ("DCC"); and the Court, after reviewing the Motion and finding that notice of the Motion is sufficient and appropriate, is of the opinion that the Motion should be granted. It is therefore

ORDERED that DATICON Systems, Inc. ("DSI") is hereby retained to act as claims docketing agent in the case. As claims docketing agent, DSI shall first develop an acceptable protocol for the docketing of claims. DSI shall develop said protocol in cooperation with DCC and its professionals and the official committees and their professionals. The Court shall approve the protocol developed and/or resolve any disputes; it is further

ORDERED that DSI is hereby retained in the ordinary course of DCC's business to serve as claims docketing agent as of the date of entry of this Order. DSI shall not be required to file fee applications. DCC, however, shall report the amounts paid to DSI on a quarterly basis as part of its ordinary course reporting; it is further

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ORDERED that in its capacity as claims docketing agent, DSI shall be an agent of the Court to provide the services indicated above. DSI is not employed by the United States government, is not an official representative of the United States and shall not act on behalf of the United States. DSI shall not misrepresent these facts to the public; it is further

ORDERED that DSI shall not seek any compensation from the United States government. Rather, the expense of claims administration, including costs associated with obtaining a post office box and all copying costs shall be borne by DCC; it is further

ORDERED that DCC, with Price Waterhouse LLP's ("PW") continued assistance, shall assume the duties of mailing all future notices, pleadings and orders normally served upon the entire creditor body by the Clerk including, but not limited to, proof of claim forms in this case and notice of hearings regarding estimation of claims, approval of a disclosure statement and confirmation of a plan of reorganization; it is further

ORDERED that PW shall continue to maintain the matrix required by Local Rule 2.02. In maintaining the matrix, PW shall adhere to the following procedures:

- a. PW shall maintain at least one address to which parties-in-interest may direct their requested additions, deletions and/or changes to the matrix. PW will pick up all mail from this address on an as needed basis to meet volume;
- b. PW shall make changes and deletions directly to the matrix only upon request from the relevant party-in-interest or its agent, upon updating of DCC's internal records, upon notification from the U.S. Postal Service of an address change, or when patent errors are found therein;
- c. Addition, change or deletion requests received from parties-in-interest by PW will be date-stamped by PW and deemed filed with the Court on such date;
- d. PW shall be responsible for maintaining all original requests for deletions, changes or additions to the matrix in a secure area and for taking appropriate steps to protect the integrity of those original documents from theft, destruction and/or alteration; PW, may in so doing, utilize DCC personnel or facilities;

EXHIBIT C

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

IN RE: § CASE NO. 95-20512
§ (Chapter 11)
DOW CORNING CORPORATION § Judge Denise Page Hood
§
DEBTOR §

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U.S. BANKRUPTCY COURT
E.D. MICH-BAY CITY

**NOTICE REGARDING TERMINATION OF SERVICES BY
DATICON SYSTEMS, INC. AS CLAIMS DOCKETING AGENT AND
FTI CONSULTING, INC. IN RELATION TO CREDITOR MAILING MATRIX**

Effective on July 16, 1996, Dow Corning retained Daticon Systems, Inc. now known as Daticon, Inc. ("Daticon"), to act as the claims docketing agent in this case as the agent of the Bankruptcy Clerk, and Dow Corning retained Price Waterhouse LLP, whose successor is FTI Consulting, Inc. ("FTI"), to maintain the creditor mailing matrix in this case.

PLEASE BE ADVISED that, effective from and after May 15, 2005, Daticon shall cease all responsibilities and operations as the claims docketing agent in this case, and all responsibilities and functions with respect to the docketing of claims shall thereafter be resumed and performed by the Bankruptcy Clerk, located at 111 First Street, Bay City, MI 48708. Daticon shall provide the Bankruptcy Clerk with a final claims register that is current through May 15, 2005, which shall comply with previous court orders regarding claimant confidentiality.

PLEASE BE FURTHER ADVISED that, effective from and after May 15, 2005, FTI shall cease all responsibilities and duties with respect to maintaining the creditor mailing matrix in this case. FTI shall provide the Bankruptcy Clerk and Dow Corning, under seal, with a final creditor mailing matrix that is current through May 15, 2005 based on information made available to FTI.

Dated: May 10, 2005

NELIGAN TARPLEY ANDREWS &
FOLEY LLP

By: David Ellerbe
David Ellerbe w/permission Kenneth

1700 Pacific Avenue, #1700
Dallas, TX 75201
214-840-5300

ATTORNEYS FOR DOW CORNING CORPORATION

Of counsel:

Rozanne M. Giunta
Susan M. Cook
Lambert Leser Isackson Cook &
Giunta, P.C.
309 Davidson Building
916 Washington Avenue
Bay City, MI 48708
989-893-3518
989-894-2232 fax

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

IN RE:	§	CASE NO. 95-20512
	§	
DOW CORNING CORPORATION	§	(Chapter 11)
	§	
REORGANIZED DEBTOR	§	Judge Denise Page Hood

CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2006, true and correct copies of the following items were served by first class mail upon: (i) Sheila Tighe, Clerk of the Bankruptcy Court, 211 W. Fort Street, Suite 2100, Detroit, MI 48226, (ii) Leslie K. Berg, Office of the U.S. Trustee, 211 W. Fort Street, Suite 70, Detroit, MI 48226, (iii) David Austern, Claims Administrator, SF-DCT, P.O. Box 52429, Houston, TX 77052-2429; (iv) the Claimants' Advisory Committee, c/o Dianna Pendleton-Dominguez, 401 N. Main Street, St. Mary's, OH 45885, and (v) counsel for Daticon, Inc., Douglas Skalka, Neubert, Pepe & Monteith, P.C., 195 Church Street, 13th Floor, New Haven, Connecticut 06510:

1. Dow Corning Corporation's Motion to Authorize Disposition of Claim Records.
2. Notice of Hearing on Dow Corning Corporation's Motion to Authorize Disposition of Claim Records.

Dated: May 10, 2006.

Respectfully submitted,

NELIGAN FOLEY LLP

By: /s/ David Ellerbe
David Ellerbe

1700 Pacific Avenue, Suite 2600
Dallas, Texas 75201
214-840-5300
214-840-5301 fax

ATTORNEYS FOR DOW CORNING
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