

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

**FILED**

JUN 10 2004

CLERK'S OFFICE  
U.S. DISTRICT COURT  
EASTERN MICHIGAN

In Re:

DOW CORNING CORPORATION,

Debtor.

CASE NO. 95-20512

Honorable Denise Page Hood

**ORDER RE MOTION TO ESTABLISH PROCEDURES TO  
DETERMINE THE ELIGIBILITY OF CLAIMANTS FILING  
NOTICES OF INTENT AFTER THE CONFIRMATION DATE  
AND WITHIN 90 DAYS AFTER THE EFFECTIVE DATE**

Dow Corning Corporation ("DCC") filed a Motion to Establish Procedures to Determine the Eligibility of Claimants Filing Notices of Intent ("NOI") After the Confirmation Date and Within 90 Days After the Effective Date. The parties have resolved most of the procedures for matching and evaluating NOI Filings. Two issues remain and the Court resolves those issues as set forth below.

DCC has the right to object to any claim or any category of claim that it believes is not eligible under the terms of the Plan or Confirmation Order and to seek enforcement of the terms of the Plan. Settlement Facility and Fund Distribution Agreement ("SFA"), § 4.09(c)(v). DCC has agreed to waive its right to object to these disputed claims not to exceed \$25 million in the aggregate. Because DCC has agreed to such an amount, the Court will enter the \$25 million amount as the "aggregate value trigger," at this time. If the aggregate value exceeds \$25 million, the Court will review the amount at that time.

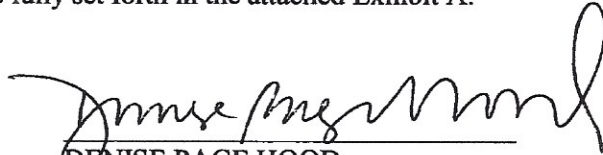
As to the fees for the Claimants' Advisory Committee ("CAC") work, DCC "officially" raised this issue prior to the Effective Date by way of a motion in which DCC sought an

interpretation of the Plan language, and any exhibits, including the SFA. Before and after the filing of the motion by DCC, the parties continuously indicated to the Court that the matter would be resolved. It would be disingenuous to argue that the CAC should now bear the burden of the fees on an issue raised "officially" by the Debtor pre-effective date. Section 11.13 of the Plan provides that a committee's duties continue on any matters related to post-confirmation modification of the Plan. The fee application provision procedures set forth in the Plan are applicable and the Tort Claimant's Committee ("TCC") can seek fees from DCC in the matter raised prior to the Effective Date. This issue relates to the issues which were before the TCC. The Court did not issue an Order regarding the Rule 3005/NOI motion prior to the Effective Date because the parties indicated to the Court they could agree to a procedure. Because the amount of the fees proposed by the parties are in the context of a "settlement" negotiation, the Court will not at this time determine the amount of the fees beyond the first \$10,000 of fees and expenses agreed to by DCC. Counsel for the TCC, CAC or the CAC member monitoring this issue, may apply for their fees beyond \$10,000 relating to the NOI issue raised officially by DCC pursuant to the fee application provisions and procedures of the Plan for the Court's determination under §§ 8.7 and 11.13 of the Plan.

Accordingly,

IT IS ORDERED that DCC's Motion to Establish Procedures to Determine the Eligibility of Claimants Filing Notices of Intent ("NOI") After the Confirmation Date and Within 90 Days After the Effective Date is GRANTED as more fully set forth in the attached Exhibit A.

DATED: **JUN 10 2004**

  
DENISE PAGE HOOD  
United States District Judge



**EXHIBIT A**  
**PROCEDURES FOR MATCHING AND EVALUATING NOI FILINGS**

I. 1) Step 1: Match by Name.

(a) The Settlement Facility will screen all NOI filings to determine whether they can be matched by name or by Social Security number to a Rule 3005 Claim. If the NOI filer matches by name or Social Security number to a Rule 3005 Claim that does not place any restriction on the nature of the claim or the eligibility of the named person, then the Settlement Facility does not need to take any further action and the NOI filer will be deemed eligible to assert a claim provided the NOI filer meets all other Plan requirements. This provision is not intended to preclude matches where the individual may have changed his or her name after the Rule 3005 filing but where the Settlement Facility is able, through standard agreed protocols, to determine that the individual is the same person as the one listed on the Rule 3005 claim.

(b) The Settlement Facility will screen remaining NOI filings to determine if they can be matched to a category of claimants covered by one of the Rule 3005 Claims filed by a company participating in the Revised Settlement Program based on information the Claims Administrator has or may receive. If the NOI filer matches the guidelines in such Rule 3005 Claim, then the Settlement Facility does not need to take any further action and the NOI filer will be deemed eligible to assert a claim provided the NOI filer meets all other Plan requirements.

Any NOI filer matched as described in this Section 1(a) or (b) above will be defined as a "Matched NOI Filer."

2) Step 2: Non-"Matched NOI Filers."

The Settlement Fund will send to NOI filers who are not "Matched NOI Filers" a confidential informational form designed to elicit information that will aid the Claims Administrator in determining whether the NOI filer meets the requirements of any Rule 3005 Claim. The informational form will be designed to allow the Claims Administrator to determine the type of claim likely to be approved for the NOI filer (e.g., litigation, settlement – rupture, disease, etc.), the likelihood of establishing acceptable product identification, and the types of settlement benefits the claimant would be able to document. The informational form will be accompanied by summary information about what is required for an NOI filer to match to a Rule 3005 claim. If there is information in a non-Matched NOI Filer claimant's Settlement Facility file, the Claims Administrator may consider this information in calculating likely aggregate settlement payments to settling Breast Implant claimants who are non-Matched NOI filers. This summary information about what is required will also be posted on the Settlement Facility website.

II. All post-Confirmation NOI filers who are not "Matched NOI Filers" but who previously received letters from the Settlement Facility indicating that they are eligible to participate should be sent new letters indicating that because they filed an NOI instead of a timely Proof of Claim, their final eligibility will be determined after the deadline for the return of

the forms described in Section I.2 above. If the Settlement Facility does not have sufficient information from forms already submitted by such parties, then the Settlement Facility shall mail these claimants the form described in Section I.2 above. The Settlement Facility will also send a letter that will state that any claimant who took action in reliance on having received the prior letter may submit the issue to Judge Hood (either individually or through the assistance of the Claimants' Advisory Committee) for a determination of whether she or he may participate.

III. - Anyone who submitted an NOI pre-Confirmation and falls within Paragraph 10 of the Confirmation Order will be sent correspondence as per the Confirmation Order. Time to respond will be extended to 90 days.

IV. The Court shall set a deadline for the return by NOI filers of the form described in Section 1 above. The deadline shall be 60 days after the deadline for NOI claims to be filed. Upon receipt of the completed form, the Settlement Facility should sort the NOI claims into the relevant classes based on the type of implant, the settlement/litigation option selected, etc. The files need not be reviewed to determine if they qualify for a settlement option at this time, rather they should just be sorted into relevant class and option election categories.

V. With respect to gel or other product claims, if the Claims Administrator determines that the aggregate of such claims is not likely to materially affect other timely claimants in the class, then Dow Corning will not object. If the impact is material, Dow Corning reserves the right to object (but is under no obligation to do so).

VI. The Settlement Facility shall provide to the Claimants' Advisory Committee and the Debtor's Representatives with respect to non- "Matched NOI Filers" who fall into Classes 5, 6.1, or 6.2 information as follows: a summary of the number and type of claims in each class, what option has been selected, the results of comparing the information submitted to the requirements of the Rule 3005 Claims, and the aggregate costs to the Settlement Facility if the claims are allowed at the selected levels. The Settlement Facility shall review the claims submitted for obvious points of disqualification and eliminate these claims from the calculations provided to the parties. The Settlement Facility would be responsible for providing this cost only as to NOI filings that are not "Matched NOI Filers," as specified in Section I above.

VII. NOI claimants who elect litigation shall be transferred to the Litigation Facility for handling and the Litigation Facility reserves the right to contest the NOI claim on any basis, including that the NOI claim fails to match any timely Rule 3005 Claim.

VIII. Dow Corning reserves the right to object to NOI filers if the aggregate settlement payments calculated by the Settlement Facility under Section VI above with respect to post-Confirmation settling non-Matched NOI filers who are not "Matched NOI Filers" appears likely to be material. Materiality would be established if either (i) the District Court determines that permitting participation by such claimants would have a material impact on payments to timely claimants, or (ii) the total aggregate settlement payments calculated for such claimants exceeds \$25



million. (The parties anticipate that the determination of the effect on claimants would be made 10 days after the Claims Administrator completes the analysis and submits it to the parties and the Court.) In such event, the Claimants' Advisory Committee and Dow Corning shall confer in good faith to consider alternatives to resolve the pending objections, failing which they can prosecute the pending objection to Rule 3005 Claims within 60 days of receiving the relevant information from the Settlement Facility.

IX. The Claimants' Advisory Committee may determine whether or not to retain counsel for post-Effective Date work on this issue, but if any counsel is retained, payments for the first \$10,000 of fees and expenses of all such counsel will be paid by Dow Corning. Fees and expenses beyond the agreed to \$10,000 may be submitted for the Court's determination under §§ 8.7 and 11.13 of the Plan and the Plan's fee application procedures. To minimize outside attorneys' fees, TCC/CAC member Dianna Pendleton will monitor implementation of the process described in this agreement and may submit billing outside that permitted by the CAC compensation agreement for the Court's determination under §§ 8.7 and 11.13 of the Plan and the Plan's fee application procedures.

X. Post-Confirmation filers of Proof of Claims will be treated as NOI filers and will be evaluated under the terms of this proposal applicable to all NOI filers.