

FILED

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

JUN 16 2004
CLERK'S OFFICE
U.S. DISTRICT COURT
EASTERN MICHIGAN

IN RE:

§

CASE NO. ~~95-20512~~

DOW CORNING CORPORATION

§

§

(Chapter 11)

DEBTOR

§

§

Judge Denise Page Hood

§

**STIPULATION AND ORDER ESTABLISHING PROCEDURES FOR RESOLUTION
OF DISPUTES REGARDING INTERPRETATION OF THE AMENDED JOINT PLAN**

The Plan Proponents have presented to the Court agreed procedures for the resolution of disputes arising under the provisions of Section 5.05 of the Settlement Facility and Fund Distribution Agreement (SFA) and for the resolution of any dispute regarding the interpretation of the Amended Joint Plan that does not fall within the scope of Section 5.05 of the SFA.

After consideration of the agreement of the Plan Proponents,

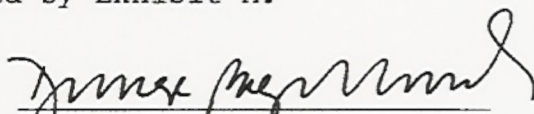
IT IS ORDERED that the procedures for the resolution of disputes attached as Exhibit A are hereby approved,

IT IS FURTHER ORDERED that the procedures may be amended only with the agreement of the Plan Proponents or, after the Effective Date, the agreement of the Debtor's Representatives and the Claimants Advisory Committee,

IT IS FURTHER ORDERED that the Orders of March 2 and March 3 entitled "Order Approving the Procedure for Resolution of Disputes Under the Provisions of Settlement Facility and Fund Distribution Agreement §5.05" and "Amended Order Approving the Procedure for

Resolution of Disputes Under the Provisions of Settlement Facility and Fund Distribution

Agreement §5.05" are hereby superseded by Exhibit A.



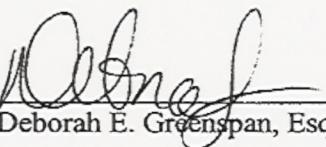
Denise Page Hood
United States District Judge

Dated:

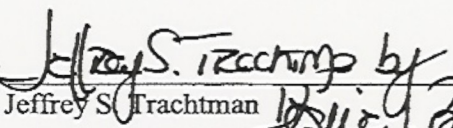
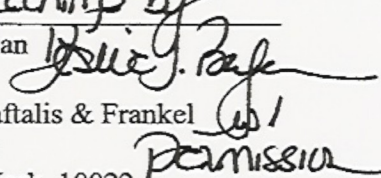
So Stipulated:

FOR THE DEBTOR
DOW CORNING CORPORATION

FOR THE OFFICIAL COMMITTEE
OF TORT CLAIMANTS

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permissio

**EXHIBIT A TO STIPULATION AND ORDER
ESTABLISHING PROCEDURES FOR RESOLUTION OF
DISPUTES REGARDING INTERPRETATION OF
THE AMENDED JOINT PLAN**

**PROCEDURES FOR RESOLUTION OF DISPUTES
UNDER SECTION 5.05 OF THE SETTLEMENT FACILITY AGREEMENT
AND FOR OTHER DISPUTES REGARDING THE DOW CORNING
PLAN OF REORGANIZATION**

Whereas

1.01. Authority provided by Settlement Facility and Fund Distribution Agreement (SFA) § 5.05.

- (a) Interpretation of eligibility criteria and categories of deficiencies.

SFA § 5.05 provides that the Claims Administrator shall obtain the consent of the Debtor's Representatives and Claimants' Advisory Committee regarding the interpretation of substantive eligibility criteria and the designation of categories of deficiencies in Claim submissions (to the extent such interpretations and designations have not previously been addressed by the Initial MDL 926 Claims Administrator in connection with the Revised Settlement Program).

- (b) Changes to guidelines for submissions of claims.

SFA § 5.05 requires the Claims Administrator to consult with and obtain the advice and consent of the Claimants' Advisory Committee and the Debtor's Representatives regarding any additions or modifications to guidelines for the submission of Claims.

- (c) Authority of Claims Administrator to resolve disputes.

SFA § 5.05 provides that, in the event of a dispute between the Debtor's Representatives and the Claimants' Advisory Committee, the Claims Administrator may determine the issue or apply to the District Court for consideration of the matter. The provision prohibits the use of the appeals process or other processes to effect a modification of any substantive eligibility criteria specified in SFA or in Annex A, except as expressly provided in SFA §§ 5.05 and 10.06.

2.01. Disputes regarding interpretations of Portions of the Settlement Facility Agreement and Annex A.

(a) In general, and as anticipated in Section 5.05 of the Settlement Facility Agreement, these procedures will apply to disputes arising out of the interpretation or application of the Claims Resolution Procedures – Annex A to the Settlement Facility Agreement – and any claims operations functions set out in the Settlement Facility Agreement.

(b) In the event that the Plan Proponents, or after the Effective Date, the Debtor's Representatives and the Claimants Advisory Committee (each individually a "Party" and collectively "the Parties") do not agree as to whether these procedures apply to a particular dispute, then the issue of whether

the procedure applies will be submitted to the District Court for determination in accordance with Part 2.01(d) below or either Party may elect to submit the issue to the District Court under Part 3.01 below.

(c) Submission of issue to Claims Administrator.

1. In the event the Claims Administrator determines that an issue has arisen under Paragraph 2.01(a) herein that requires the Parties' input, the Claims Administrator shall notify the parties in writing. The notification shall identify the issue, and the reason that the Claims Administrator believes the Parties' input is necessary, and any additional material deemed appropriate by the Claims Administrator. Upon receipt of such notification, the Parties shall have ten (10) days during which they can meet and confer either in person or by telephone. If they agree as to the resolution of the issue, they shall notify the Claims Administrator. As required by the Plan, the Claims Administrator shall then apply the Parties' agreement to the issue in question.

2. In the event that, after the meet and confer period, the parties are unable to agree, they shall notify the Claims Administrator that they have been unable to reach agreement and thereby invoke the remaining provisions of these dispute resolution procedures. The Claims Administrator shall notify the parties that these dispute resolution procedures are in effect. The notification will grant the parties 14 days to submit simultaneous written statements to the Claims Administrator and to the opposing party stating their respective positions. The submission shall provide a proposed interpretation including any supporting documentation and written materials. The Parties may submit to the Claims Administrator any evidence (testimonial or documentary) that the parties believe is relevant to the Claims Administrator's determination. The submission shall be served on the opposing Party at the same time and by the same means by which the materials are provided to the Claims Administrator.

3. Within 14 business days of the date of the submissions, the Claims Administrator shall have the option of scheduling a conference with the parties. The proceedings before the Claims Administrator may be in person or by teleconference. The Claims Administrator will determine whether an in person hearing is required and so notify the Parties at the time the conference is scheduled. The Claims Administrator may request additional written submissions from the Parties. The conference will be held within 14 days of the submissions. At the conference, the parties shall present their arguments and any evidence to the Claims Administrator.

4. The Claims Administrator shall, within 15 days of the conference, either issue a decision on the merits or shall advise the parties in writing that she does not intend to issue a decision. The Claims Administrator shall provide a copy to the Court.

(d) Submission to Court.

1. In the event that the Claims Administrator issues a decision on the disputed issue, either party may file a motion seeking a determination of the issue in the United States District Court. Such a motion shall be filed within 15 business days of the date of the decision of the Claims Administrator. The District Court will address the issue de novo. The party filing the motion shall file a Notice containing the estimate of time, exhibits and witnesses required for the motion consistent with the Fourth Amended Case Management and Administrative Order that has governed the bankruptcy proceedings. The opposing party shall have 15 days to respond to the motion. The proceedings shall be conducted as set forth in subparagraphs 3 and 4 below.

2. In the event that the Claims Administrator notifies the Parties that she has determined not to issue a decision then the parties shall, within 15 days of the date of such notice from the Claims Administrator, file cross motions for a District Court determination of the disputed issue. The parties shall also file a notice containing the estimate of time, exhibits and witnesses required for the motions consistent with the Fourth Amended Case Management and Administrative Order that has governed the bankruptcy proceedings. Each party shall have 15 days after the initial motion is filed to submit a response. In the event that the Court requests data from the Claims Administrator or Finance Committee, such data shall be provided to the Parties, and the Parties and the Court shall have the right to obtain clarification of such data. This provision contemplates an informal transfer of data.

3. The Plan Proponents, and the Debtor's Representatives and Claimants' Advisory Committee consent to the referral of any motion described above to a Magistrate Judge selected by the District Court. The parties further consent to the special designation of a Magistrate Judge pursuant to 28 U.S.C. § 636 (in the discretion of the District Court) to conduct proceedings regarding the disputes subject to Section 2.01 of these Procedures and to enter a judgment which shall be appealable to the United States Court of Appeals for the Sixth Circuit in the same manner as an appeal from any other judgment of a district court.

4. The District Court or Magistrate Judge shall enter a ruling within 30 days after the hearing on the matter and not later than 60 days after the submission.

5. Nothing in these procedures shall affect the appellate rights of the parties. To the extent permissible, the parties agree that the standard of review for any findings of the District Court arising out of Section 2.01 of this agreement shall be clearly erroneous.

3.01. Disputes regarding interpretation of Plan Documents other than the Claims Resolution Procedures.

(a) Any dispute regarding the interpretation of Plan Documents other than the Claims Resolution Procedures (Annex A) may be submitted to the District Court for resolution by filing a motion identifying the dispute and seeking appropriate relief. Such Motions will be served on the Claimants' Advisory Committee and the Debtor's Representatives. The dispute shall be treated as a contested matter under Federal Rule of Bankruptcy Procedure 9014 and applicable local rules.

(b) Nothing in this Section 3.01 shall affect the appellate rights of the parties.

4.01. General.

All capitalized terms herein shall have the meaning set forth in the Amended Joint Plan or in the Plan Documents.