

1. This Court entered Closing Order 1 For Final June 3, 2019 Deadline (Establishing Final Cure Deadlines, Revised Claims Review Procedures and Appeal Deadlines) (“Closing Order 1”) on July 25, 2018. (ECF Number 1447).

2. This Closing Order 2 addresses procedures and protocols that will assist in the implementation of Closing Order 1 and assist in the prompt distribution of funds to claimants and the orderly termination of the Settlement Facility.

SECTION A. APPEAL PROCEDURES FOR CLAIMS DENIED AS INCOMPLETE OR LATE

3. Closing Order 1 provides specific deadlines for claimants to appeal decisions of the SF-DCT. Paragraph 33 of Closing Order 1 provides that the Settlement Facility-Dow Corning Trust (“SF-DCT”) will issue a final claim determination letter at the conclusion of an applicable cure deadline and further provides that the claimant will have 60 days from the date of that letter to appeal to the Claims Administrator.

4. Under Closing Order 1, the SF-DCT shall deny claims that are incomplete as of the filing deadline of **June 3, 2019** as defined in Paragraph 27 of Closing Order 1 or that are late – meaning that they are submitted with a postmark date after **June 3, 2019**. (See Paragraph 29 of Closing Order 1.)

5. The SF-DCT shall provide to claimants whose claims are denied under Paragraph 27 or 29 of Closing Order 1 a Final Determination Letter for Late and/or Incomplete Claims (“FDL”). The FDL for an incomplete claim shall include an

explanation of the definition of a complete claim. The FDL for incomplete claims and late claims shall explain the process for appealing to the Claims Administrator. **The deadline for any such appeal shall be 60 days after the date of the FDL. Any appeals that are denied by the Claims Administrator may be appealed to the Appeals Judge provided that such appeal is requested in writing to the SF-DCT no later than 60 days after the date on the Claims Administrator's decision letter.**

SECTION B. ATTORNEY OBLIGATION TO NOTIFY THE SF-DCT AND RETURN UNDISTRIBUTED FUNDS

6. The Settlement Fund may be used only for the payment of Allowed Claims of Settling Personal Injury Claimants. *See* Settlement Facility and Fund Distribution Agreement (“SFA”) Section 3.02. The Settlement Facility-Dow Corning Trust website provides copies of Plan Documents at https://www.sfdct.com/_sfdct/index.cfm/court-ordersplan-documents/plan-documents/, including the Settlement Facility and Fund Distribution Agreement, which can be found at: https://www.sfdct.com/_sfdct/resources/Final%20SFA1.pdf.

7. The SFA further provides that all funds in the Trust shall remain under the supervision, custody and jurisdiction of the Court and shall not be property of the payee on the payment check unless and until the payment check is actually cashed by the claimant or other authorized payee and the claimant or authorized payee actually receives the funds. *See* SFA Section 10.09. The following protocols

are designed and intended to authorize the SF-DCT to take actions to ensure that Settlement Fund payments are distributed to claimants as required by the Plan.

8. The Parties have learned that some Attorneys of Record (“AOR”) have received payments from the SF-DCT (payable jointly to the attorney and claimant) but have not been able to locate the claimant or authorized representative of the claimant to whom the funds should be distributed. In many instances, these checks have been deposited into the attorney or law firm’s trust account and have not been distributed to the claimant.

9. Attorneys who receive or have received a claimant settlement payment check from the SF-DCT and who are not able to distribute the funds to the claimant or authorized representative before the expiration date of the check (which is 180 days after the check issuance date) must return the entire amount of such payment (including any portion that the attorney believes should be allocated to fees or expenses) to the SF-DCT. If the claimant or authorized representative is subsequently located, the SF-DCT shall reissue a payment to the AOR, if he/she is still the attorney of record, or to the claimant if the claimant is no longer represented by counsel, subject to certain deadlines for reissuance of checks as provided herein and any other applicable Order. If the claimant’s former AOR has filed a lien, any check issued to the claimant shall be net of any fees and expenses approved by the Lien Judge.

10. An attorney who is unable to locate a claimant for whom a payment has been issued and who has returned the full amount of the payment check to the SF-DCT may apply for payment of allowable fees and expenses through the lien process. (ECF Number 1413). Upon receipt of the returned check or payment, the SF-DCT will send the attorney a copy of the Lien Resolution Procedures and notify the attorney that, to obtain fees or expenses, (s)he must submit a completed lien form to the SF-DCT on or before 30 days from the date the form was sent to the attorney by the SF-DCT. Attorneys, however, can assert a lien at any time prior to receipt of the letter from the SF-DCT as well. *See* Revised Exhibit 1 to Agreed Stipulation and Order: Procedures for the Review of Asserted Liens Against Settling Implant Claimants (ECF Number 1413-1) at Paragraph 4.01a. If the claimant or authorized representative is subsequently located, the SF-DCT shall reissue a payment net of attorney fees and expenses, if any, allowed by the Lien Judge, to the claimant or representative, subject to certain deadlines for reissuance of checks as provided herein and any other applicable Order.

SECTION C. CLAIMANTS AND ATTORNEYS MUST NOTIFY THE SF-DCT OF CHANGES IN ADDRESS AND THE SF-DCT MAY NOT ISSUE PAYMENTS WITHOUT A CONFIRMED CURRENT ADDRESS

11. Claimants and attorneys are required to keep their address and contact information current with the SF-DCT. This enables the SF-DCT to correspond with the claimant and attorney, if a claimant is represented, in a timely manner and to send claimant payments to a current address. In the past the SF-DCT has spent a

significant amount of time and money locating claimants and attorneys who have moved or are otherwise not located at the last known address provided to the SF-DCT. Therefore, the SF-DCT shall not issue payments to or for claimants or an authorized payee unless the SF-DCT has a confirmed, current address for such claimant or authorized payee. A confirmed current address means an address that has been verified as a mailing address where the claimant or authorized payee is receiving mail so that the SF-DCT can assure that the claimant or authorized payee will actually receive the mailed check. This requirement applies both to claimants who are unrepresented and claimants who are represented and whose payment check might be mailed to the claimant's attorney. The SF-DCT may accept confirmation of a claimant's current address provided by the claimant's attorney of record; however, the SF-DCT may seek additional confirmation as appropriate including, for example, in instances where prior mailings were returned as undeliverable or where prior address confirmations were not accurate.

12. The Claims Administrator shall have discretion to implement additional protocols for confirming current addresses and to withhold payment checks where the Claims Administrator concludes that she cannot identify a confirmed current address for the claimant, authorized payee, or attorney of record. The SF-DCT shall continue to employ its standard procedures for researching claimant and attorney addresses and for identifying updated addresses. If the SF-DCT locates a claimant or attorney, the SF-DCT shall issue the payment check subject to the final deadline

for all check distributions. The final distribution deadline will be established by the Court after the claim filing deadline of **June 3, 2019**. **The final distribution deadline will be set forth in an order and will be posted on the SF-DCT website so that claimants and attorneys receive appropriate notice. Unless directed by an Order of the Court, the SF-DCT shall not issue any replacement or other claim or lien payment checks after the final distribution deadline.**

13. As noted above, the SF-DCT has found that over time a large number of attorneys of record and law firms have relocated, changed law firms or law firm names, and/or the attorney of record has retired, passed away or has been subject to state bar sanctions. The SF-DCT shall not mail payments to a lawyer or law firm identified as the attorney of record for the claimant unless the SF-DCT has a confirmed current address for that lawyer or law firm. The Claims Administrator shall have discretion to determine whether an address constitutes a confirmed current address for that lawyer or law firm and to withhold payment checks to an attorney where the Claims Administrator concludes that she does not have a confirmed current address for the lawyer or law firm. In the event that an attorney of record is deceased, disbarred, retired, suspended or does not have a confirmed current address, the SF-DCT shall utilize the following procedures consistent with its past practices:

a. The SF-DCT shall remove the attorney as “Attorney of Record” for all claimants represented by that attorney.

b. The SF-DCT shall send written notice to both the claimant and the attorney. The attorney notice shall be sent to the last known address.

c. The notice to the attorney shall state that he/she is being removed as attorney of record for the claimant and advise the attorney of his/her right to file a lien for allowable fees and expenses and the time limit for filing such a lien.

d. The SF-DCT shall defer all payments to the claimant for 45 days after the date of the notice to allow the attorney an opportunity to file a lien. After 45 days if no lien is filed, the entire payment – with no deduction for fees or expenses – shall be sent to the claimant.

e. Notwithstanding the above procedures, if the law firm has dissolved, but the lead attorney associated with the claimant is active and located at a new address, the SF-DCT shall consider that lead attorney to be the Attorney of Record and shall revise its records to reflect the new address and contact information for that attorney.

SECTION D. AUTHORIZATION FOR THE SF-DCT TO AUDIT PAYMENT DISTRIBUTIONS

14. The SF-DCT shall be authorized to conduct audits of claimant settlement payments issued to lawyers/law firms to determine whether the law firm has distributed the payment(s) and whether the claimant or authorized representative received the appropriate amount of funds. The audit process may include, but is not limited to, requiring the law firm to provide current addresses for claimants, account

for payments identified by the SF-DCT and document the amount paid to the claimant and the amounts retained by the law firm for fees and expenses.

15. The SF-DCT may require lawyers and law firms to confirm distributions to claimants using an electronic data collection form specified by the SF-DCT (such as an Excel spreadsheet provided by the SF-DCT to the lawyer or law firm).

16. If the SF-DCT is not able to confirm that funds were properly distributed to a claimant or authorized representative, the SF-DCT shall notify the Finance Committee and the CAC. The Finance Committee may institute such further procedures as the Finance Committee deems appropriate to obtain confirmation of the proper distribution of the funds. If the Finance Committee is not able to confirm the distribution, the Finance Committee may institute appropriate proceedings before the Court.

SECTION E. RESTRICTION ON ATTORNEY WITHDRAWALS

17. To facilitate the efficient termination of the Settlement Program and to avoid potential prejudice to claimants in the months remaining until the final filing deadline, attorneys of record may not withdraw from representing a claimant except as provided in this Paragraph 17.

a. At any time, a claimant may terminate the representation. If the claimant elects to terminate representation by an attorney of record, the attorney of record may submit a lien request and seek to obtain allowable fees.

b. An attorney of record may seek permission to withdraw from representation by submitting a written request to the Appeals Judge no later than 30 days after entry of this Order. The Appeals Judge may grant a timely submitted request only if the Appeals Judge determines, after consideration of the record, including any submission of the claimant as provided below, that the withdrawal meets the standards of Section 1.16 of the Model Rules of Professional Conduct, which are adopted and incorporated into this Order. Section 1.16 provides in relevant part:

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

- (1) withdrawal can be accomplished without material adverse effect on the interests of the client;
- (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
- (3) the client has used the lawyer's services to perpetrate a crime or fraud;
- (4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;
- (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

- (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client;
- (7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

Model Rules of Prof'l Conduct R. 1.16 (ABA).

c. The following procedure shall apply to requests for withdrawal: The attorney must submit a written request to withdraw to the Appeals Judge. The request must be served on the client (claimant) along with a notice that informs the claimant that she has a right to respond and that the response must be submitted to the Appeals Judge by a specified date that is 14 days after the date the withdrawal request is served on the claimant. For purposes of this paragraph, the date of service shall be the date that the request is mailed to the claimant plus 3 business days. The Appeals Judge may not issue any ruling before the response deadline. The attorney of record must continue to represent the claimant unless and until the Appeals Judge grants the withdrawal request.

d. If a withdrawal request is submitted, the SF-DCT shall notify the claimant that regardless of the status of the attorney of record, all documentation for any claim must be submitted on or before June 3, 2019. The SF-DCT and the Parties may develop further protocols as appropriate and necessary.

SECTION F. DEADLINE TO REQUEST REISSUANCE OF AN EXPIRED CHECK; TREATMENT OF UNCASHED CHECKS

18. **Settlement payment checks expire 180 days after the date of issuance.** A claimant who does not cash a check before the expiration date may request issuance of a new check at any time on or before June 3, 2019. After June 3, 2019, a claimant may request issuance of a new check as provided in paragraphs 19 and 20 below, subject to the final check distribution deadline described above.

19. a) **New Check Procedures if Claimant is Deceased.** The SF-DCT may issue a new check payable to the estate or personal representative of a claimant if the claimant passed away after the original check was mailed, even if the check has expired, provided that the appropriate representative notifies the SF-DCT of the death of the claimant and provides the necessary information about the authorized payee at least 30 days before the final distribution deadline.

b) **New Check Procedures for Good Cause.** The SF-DCT may issue a replacement check for good cause. To request a replacement, the claimant or the attorney for the claimant must notify the SF-DCT thirty days before the final distribution deadline and provide a statement of the reason the claimant is requesting a replacement. The Claims Administrator shall determine whether good cause exists.

**SECTION G. REPLACEMENT PAYMENTS FOR CLAIMANTS WHO
COULD NOT BE LOCATED BEFORE CHECK EXPIRATION**

20. If an attorney was unable to locate a claimant and the attorney of record so notified the SF-DCT as described in Paragraph 10 above, and if the attorney returned all funds to the SF-DCT as provided in Paragraph 10 above, the SF-DCT may issue a replacement check net of attorney fees and expenses, if any, allowed by the Lien Judge to the claimant provided that the claimant notifies the SF-DCT of her current address and requests the replacement check no later than 30 days before the check distribution deadline.

SECTION H. NOTIFICATION OF THIS ORDER

21. The SF-DCT shall post this Order on the SF-DCT website. The Claimants' Advisory Committee shall post this Order on its website and shall further provide information about this Order in its newsletter and on its social media page.

Dated: March 19, 2019

S/DENISE PAGE HOOD

Denise Page Hood
Chief Judge

SO STIPULATED and AGREED

CLAIMANTS' ADVISORY
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