

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

**IN RE:**

**SETTLEMENT FACILITY-  
DOW CORNING TRUST**

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§ **CASE NO. 00-CV-00005-DT**  
§ **(Settlement Facility Matters)**  
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§ **Hon. Denise Page Hood, Chief Judge**  
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**CLOSING ORDER 1 FOR FINAL JUNE 3, 2019 CLAIM DEADLINE  
(ESTABLISHING FINAL CURE DEADLINES, REVISED CLAIM REVIEW PROCEDURES,  
AND APPEAL DEADLINES)**

Whereas the Claimants’ Advisory Committee (“CAC”), the Reorganized Debtor (Dow Silicones Corporation (“Dow Corning”)<sup>1</sup>, and the Debtor’s Representatives (the “DRs”) agree as follows:

1. The Amended Joint Plan of Reorganization (the “Plan”) was confirmed on November 30, 1999.
2. The Settlement Facility and Fund Distribution Agreement (“SFA”) is the Plan Document<sup>2</sup> that allocates funds to be paid by Dow Corning to the Settlement Facility – Dow Corning Trust (“SF-DCT”) for the benefit of Settling Personal Injury Claimants and establishes the general structure and parameters of the claims resolution process. The Dow Corning Settlement Program and Claims Resolution Procedures – Annex A to the SFA (“Annex A”) – is

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<sup>1</sup> Reorganized Dow Corning Corporation changed its name to Dow Silicones Corporation effective February 1, 2018. For the Court’s and parties’ convenience, Dow Silicones Corporation will be referred to as Dow Corning herein.

<sup>2</sup> Unless otherwise defined herein, capitalized terms in this Agreed Order shall have the meanings provided in the Plan and the Plan Documents.

the Plan Document that outlines the detailed criteria for evaluating and paying claims of Settling Personal Injury Claimants.

3. All Breast Implant claims are classified in Plan Classes 5, 6.1 and 6.2. Class 5 consists of claimants who are deemed to be “Domestic” claimants. Classes 6.1 and 6.2 cover claimants residing in different countries outside the United States. The final deadline for submission of new claims and supporting materials for claimants in Classes 5, 6.1 and 6.2 (as explained more fully below) is June 3, 2019.

4. The Parties – Dow Corning, the DRs, the CAC and the FC – wish to facilitate efficient termination of the operations of the SF-DCT and have identified certain protocols and processing enhancements to achieve that goal as set forth in this Closing Order 1.

5. Closing Order 1 is consistent with the Plan and the general authority and obligations of the Claims Administrator with respect to claims processing procedures.

6. The Parties wish to memorialize the procedures herein to ensure clarity and consistency with the Plan, and to provide guidance to claimants. Accordingly, the Parties have set forth the procedures and the reasons therefor in this Closing Order 1.

## **BACKGROUND**

7. The SFA and Annex A specify the criteria for the payment of claimants who elected the settlement option and further provide certain guidelines for processing such claims including guidelines relevant to the order of processing, content of notification letters, definitions of deficiencies, and deadlines for claimants to submit additional materials to cure certain deficiencies.

8. The SFA authorizes and instructs the Claims Administrator to adopt and implement administrative procedures as appropriate to enable the proper review and evaluation

of claims consistent with the Plan and to assure efficient processing operations. *See* SFA Article V. Accordingly, during the operation of the settlement program, the Claims Administrator has continued to refine and implement procedures to address numerous issues and to maximize efficient operations.

**9.** The Plan provides that the final deadline for submission of Disease or Expedited Release claims for claimants classified in Classes 5, 6.1 and 6.2 is June 3, 2019. (To be timely, a submission must be postmarked on or before June 3, 2019.)

**10.** The deadlines for filing Rupture and Explant claims for claimants in Classes 5, 6.1 and 6.2 were June 1, 2006 and June 2, 2014 respectively. Some claimants timely submitted Rupture and/or Explant claims along with supporting documentation but have not yet submitted a Proof of Manufacturer form or documentation or such Proof of Manufacturer form and/or documentation is deficient. These claims remain eligible for processing and payment provided a timely and acceptable Proof of Manufacturer form and supporting documents are submitted by June 3, 2019. For Rupture and Explant claims this procedure applies only to timely submitted Rupture and Explant claims. It does not affect or change the claim filing deadlines for Rupture and Explant claims. Rupture and/or Explant claims submitted after June 1, 2006 and June 2, 2014 respectively are late and are denied.

**11.** To be eligible for an Expedited Release payment or payment for an eligible Disease, Rupture or Explant claim, claimants must submit a Proof of Manufacturer form and supporting documents demonstrating implantation with a Dow Corning Breast Implant. Annex A, Section 5.01(f). To be eligible for compensation, a claimant must submit benefit claim forms and documentation to support the claim as specified in Annex A. Annex A, Section 4.01. A benefit claim means a claim for Disease/Expedited Release, and/or Rupture, and/or Explant.

**12.** The Plan provides for termination of the Settlement Facility after timely claims have been processed and all necessary funding has been provided. SFA Section 10.03.

**13.** The Court has previously authorized, and the SF-DCT has distributed, a notice informing claimants of the June 3, 2019 final deadline for filing new Disease or Expedited Release claims and for filing submissions and any documentation necessary to support claims (the “Notice”). *Stipulation and Order Approving Notice of Closing and Final Deadline for Claims*, (Dec. 27, 2017). The Notice advised that to be considered by the SF-DCT, any previous requests to claimants by the SF-DCT for documentation must be submitted by June 3, 2019 or, if applicable, a specific date set by the SF-DCT in a Notification of Status letter.

**14.** During the course of its operations, the SF-DCT has employed certain internal work flow procedures and protocols to guide claim processing activities. The SF-DCT generally has reviewed claim submissions in three “stages.” In general terms, the SF-DCT has first conducted a “pre-screen” to evaluate certain eligibility criteria and then, if appropriate, a full review and finally a payment review to confirm that the claim meets the payment criteria. At each stage, the claimant could receive a letter advising of different deficiencies in the claim or information that the SF-DCT needs to finalize and pay the claim. Generally, if the SF-DCT found a deficiency at any of these “stages,” the claim would be put on hold until the claimant provided a response with the requested information. The letter that is sent to a claimant after the SF-DCT reviews the substantive submission for Proof of Manufacturer or for a specific benefit (Disease/Expedited Release, Rupture, Explant) is called a Notification of Status letter.

**15.** Annex A to the SFA specifies certain deadlines for claimants to cure deficiencies in their claims. These deadlines run from the date of the Notification of Status letter. Claimants have one year to cure deficiencies in a Disease claim and 6 months to cure deficiencies in a

Rupture or Explant claim. Annex A does not contain a specific deadline to cure deficiencies in a Proof of Manufacturer submission other than the final deadline and termination process.

**16.** The SF-DCT has applied the relevant 6 month and one year cure deadlines for Rupture, Explant and Disease claims primarily to the deficiencies that are listed at Sections 7.05 and 7.06 of Annex A. In practice, the SF-DCT has typically not imposed deadlines to cure other deficiencies – such as deficiencies in Proof of Manufacturer, or documentation necessary for payment, or deficiencies noted in the “pre-screen” process, or deficiencies in the claim form itself.

**17.** The Plan does not prohibit the imposition of additional deadlines to cure deficiencies in any component of the claim submissions.

**18.** The Plan sets forth a procedure for the administrative appeal of a decision of the SF-DCT: If a claimant believes that there was an error in processing her claim, she may submit a request for an “error correction.” A claimant may also appeal to the Claims Administrator. If the Claims Administrator denies the appeal, the claimant may appeal to the Appeals Judge. The Plan does not by its terms specify any deadlines on submitting requests for error correction or appeal other than the termination of the Settlement Facility. Annex A, Article VIII. In practice, the SF-DCT has first conducted the error correction review when a claimant appeals to the Claims Administrator.

**19.** The Plan expressly provides for the adoption of procedures as necessary to process claims. Section 5.01 of the SFA provides that: “This Settlement Facility Agreement and the annexed Claims Resolution Procedures establish specific guidelines for submitting and processing Claims. The Claims Administrator shall have discretion to implement such additional

procedures and routines as necessary to implement the Claims Resolution Procedures consistent with the terms of this [SFA] and subject to the provisions of Section 5.05 of the [SFA].”

**20.** Section 5.05 of the SFA provides that: “The Claims Administrator shall obtain the consent of the Debtor’s Representatives and the Claimants’ Advisory Committee regarding the interpretation of substantive eligibility criteria and the designation of categories of deficiencies in claims submissions .... The Debtor’s Representatives and Claimants’ Advisory Committee are authorized to provide joint written interpretations and clarifications to the Claims Administrator and the Claims Administrator is authorized to rely on those joint written statements.”

#### **PROCEDURES FOR FINAL RESOLUTION OF CLAIMS: CLOSING ORDER 1**

Consistent with the foregoing provisions of the Plan Documents and to achieve the purposes set forth above (*see* ¶¶ 4, 6, *supra*), the Parties set forth the following agreed procedures and deadlines:

**21. Deadline for Proof of Manufacturer Submissions Submitted before June 1, 2018.** Proof of Manufacturer submissions submitted before June 1, 2018 must be completed and have all deficiencies cured by June 3, 2019. The SF-DCT has previously sent Notification of Status or other letters identifying such deficiencies to all claimants who submitted a Proof of Manufacturer form or related Proof of Manufacturer documents (documents to support Proof of Manufacturer) before June 1, 2018 (“POM Deficiency”). To avoid any confusion about the final filing deadline in light of the fact that the Plan did not specify a specific “cure deadline” for Proof of Manufacturer submissions, the SF-DCT will send a letter to each individual claimant who, before June 1, 2018, submitted a Proof of Manufacturer form or documentation to support Proof of Manufacturer that was found deficient. The letter will specify that the final deadline to

cure any POM Deficiency is June 3, 2019. If the claimant fails to submit documents on or before June 3, 2019 that cure the POM Deficiency, the claim will be denied.

**22. Proof of Manufacturer Submitted On or After June 1, 2018.** Proof of Manufacturer submissions submitted on or after June 1, 2018 and on or before June 3, 2019 will be consolidated with the benefit form. Generally, many claimants have submitted a Proof of Manufacturer Form and have delayed submitting a benefit form until the SF-DCT determined whether the Proof of Manufacturer was acceptable. By consolidating the review, the SF-DCT will be able to expedite and simplify the review and notification process. The consolidation process and the process of notifying claimants of the need to submit all components of the claim is set forth below.

**23. Consolidation of Claim Review and Notification of Status.** To facilitate the process of final resolution of claims, the SF-DCT shall implement a unified claims review procedure so that all components of a claim – including the “pre-screen,” the Proof of Manufacturer, the benefit claim and any known factors related to payment of the claim – are reviewed at the same time. Once that consolidated review is completed, the SF-DCT shall provide a single Notification of Status letter to the claimant. The Notification of Status letter shall identify all deficiencies in the consolidated claim. (For these purposes, consolidated claim means all forms and supporting documents necessary to approve and pay a claim – including Proof of Manufacturer (form and supporting documentation); the underlying benefit (Disease/Expedited or, where relevant, Rupture and/or Explant form and supporting documentation); and necessary payment information such as estate information.) If there are deficiencies in the consolidated claim, the Notification of Status letter shall list all such deficiencies.

**24. Final Deadline for Curing All Claim Deficiencies for Filings after June 1, 2018.**

**1. Final Deadline for Disease/Expedited Release Claims.**

**a.** Disease claims: Claimants who submit a disease claim must cure (fix) all deficiencies listed in their Notification of Status letter on or before the date that is one year from the date of the Notification of Status letter. This deadline applies to all deficiencies in the Proof of Manufacturer, and Disease claim and/or any deficiencies affecting payment.

**b.** Expedited Release claims: Claimants who elect the Expedited Release option must cure (fix) all deficiencies listed in their Notification of Status letter on or before the date that is 6 months from the date of the Notification of Status letter. This deadline applies to all deficiencies in the Proof of Manufacturer and/or the Expedited Release claim and any/or deficiencies affecting payment.

**2. Final Deadline for Curing Timely Submitted Rupture and Explant Claims.** Claimants who timely submitted a Rupture and/or Explant claim (*i.e.*, on or before June 1, 2006 for Rupture and June 2, 2014 for Explant) but did not submit a Proof of Manufacturer form and/or supporting documents for Proof of Manufacturer must submit the Proof of Manufacturer form and supporting documents by June 3, 2019. If a Proof of Manufacturer form and supporting documents are timely submitted, the SF-DCT will review the Proof of Manufacturer submission together with the timely filed Rupture and/or Explant claim. The SF-DCT will send a single Notification of Status letter identifying all deficiencies in the Proof of Manufacturer submission, the Rupture and/or Explant submission, and any other known deficiencies including any that affect payment. Claimants must cure (fix) all deficiencies listed in the Notification of Status letter on or before the date that is 6 months from the date of the

Notification of Status letter. If such claimant also submits a Disease claim on or before June 3, 2019, the Notification of Status letter shall also list all deficiencies in the Disease claim. The deadline to cure (fix) the deficiencies in the Disease claim and Proof of Manufacturer shall be one year from the date of the Notification of Status letter.

If such claimant does not submit a Disease claim but instead submits an Expedited Release claim, the deadline to cure (fix) deficiencies in the Expedited Release claim shall be the date that is 6 months from the date of the Notification of Status letter, so that there will be a single deadline to cure deficiencies in the Expedited Release claim, the Proof of Manufacturer submission, the Explant and/or Rupture claim, and deficiencies that affect payment.

**25. Deadline for Changing Claim Election and/or Electing Increased Severity.**

Claimants may change their Disease election or reject an Expedited Release Payment on or before June 3, 2019. A claimant may not change an election for Expedited Release to Disease or seek to submit a different claim after June 3, 2019. A claimant may not submit an Increased Severity claim after June 3, 2019.

**26. Procedure for Partial Submissions/Notification of Procedures.** If a claimant submits only a Disease or Expedited Release claim form OR only supporting documents OR only a Proof of Manufacturer form OR only supporting documents (and has not submitted a timely benefit claim), the SF-DCT shall send an acknowledgment letter to the claimant. The acknowledgment letter shall advise the claimant that the SF-DCT will not review the submission until the remainder of the claim is submitted and that the claimant must submit the remainder of the claim by June 3, 2019. For example, if a claimant submits a Proof of Manufacturer form and/or supporting documents for Proof of Manufacturer (and does not submit and has not previously submitted a benefit claim – *i.e.*, Disease, Expedited Release, Rupture, or Explant), the

letter will advise the claimant of the receipt of the Proof of Manufacturer submission and will further advise that the SF-DCT will not review the Proof of Manufacturer submission until the claimant submits a Disease or Expedited Release claim form and supporting documents. (If the claimant has previously submitted a benefit claim form and supporting documents, the Proof of Manufacturer and benefit claim will be reviewed as provided above.) Similarly, if a claimant submits a Disease or Expedited Release claim form and supporting documents but does not submit or has not previously submitted a Proof of Manufacturer form and supporting documents, the SF-DCT letter will acknowledge the receipt of the Disease or Expedited claim and advise the claimant that the SF-DCT will not review the Disease or Expedited claim until the claimant submits the Proof of Manufacturer form and supporting documents. The letter shall also inform the claimant that if the Disease or Expedited claim or the Proof of Manufacturer submission (as applicable) is not submitted by June 3, 2019, the claim will be denied.

**27. Claim Denials – Incomplete Claims.** The SF-DCT shall deny claims that are incomplete, as described below, as of June 3, 2019. The following submissions shall be defined as incomplete claims:

**a.** The only submission consists of a Proof of Manufacturer form with no supporting documents and no benefit form.

**b.** The only submission consists of Proof of Manufacturer documents but no Proof of Manufacturer form and no benefit form.

**c.** The claimants submitted a Disease claim form but did not submit any supporting documents.

**d.** The only submission consists of medical records but the claimant did not submit a benefit form and/or a Proof of Manufacturer form.

e. The only submission made was a Proof of Claim form submitted in the bankruptcy case and the claimant never submitted any Proof of Manufacturer form or benefit form.

**28. Claim Denials – Failure to Cure.** The SF-DCT shall deny all deficient claims that are not cured by the applicable deadline. The cure deadline for claims that are submitted to the SF-DCT before June 1, 2018 is June 3, 2019 unless the SF-DCT has sent a Notification of Status letter for a Disease claim with an earlier deadline. The applicable cure deadline for claims submitted on or after June 1, 2018 will be specified in the Notification of Status letter.

**29. Claim Denials – Late Claims.** The SF-DCT shall deny Proof of Manufacturer and benefit claim forms and documents that are postmarked on or after June 4, 2019.

**30. Claim Procedures.** The SF-DCT shall continue to apply its standard procedures for determining eligibility, processing benefit claims, and for providing an Expedited Release option for a claimant who submits a deficient Disease claim but who otherwise meets all eligibility requirements.

**31. Deficiencies Identified After Notification of Status Letter.**

**1. Death of Claimant:** If the SF-DCT learns that a claimant has passed away after the SF-DCT has sent a Notification of Status letter to the claimant, the SF-DCT shall provide a new Notification of Status letter to the attorney of record or to the claimant's last known address that identifies that information and documentation that the SF-DCT will need in order to complete and pay the claim (if eligible). The new Notification of Status letter shall provide a deadline for responding and providing that information. If at the time the SF-DCT learns of the death of a claimant, the original cure deadline is six months or more in the future, then the SF-DCT may apply the original cure deadline. If the original cure deadline is less than

6 months in the future, then the SF-DCT may specify a new deadline that is 6 months after the notice of the death of the claimant to provide the necessary information.

**2. Identification of Processing Error by SF-DCT.** If the SF-DCT determines that it made an error in processing the claim and as a result failed to list a deficiency in the Notification of Status letter sent to the claimant, then the SF-DCT shall, consistent with current procedures, issue a new Notification of Status letter identifying that deficiency and establishing the deadline to cure that newly identified deficiency. The new cure deadline shall apply only to the deficiency that was not previously identified due to a processing error. The deadline for curing the previously identified deficiencies shall not be changed.

**3. Identification of Missing Payment Related Information.** If, after the Notification of Status letter is sent, the SF-DCT learns of a payment related deficiency other than the death of a claimant – such as a change in attorney or missing TIN, the SF-DCT shall issue another Notification of Status letter identifying the deficiency and providing a deadline for curing that deficiency. If at the time the new Notification of Status letter is sent the original cure deadline is more than 60 days in the future, then the original cure deadline shall apply to the new deficiency. If at the time the new Notification of Status letter is sent the original cure deadline is 60 days or less in the future, then the cure deadline for the new deficiency shall be the date that is 60 days from the date of the new Notification of Status letter.

**32. Content of Notification of Status Letters.** The Notification of Status letters shall include a list of all deficiencies (as explained herein), an explanation of the appeal process and the appeal deadline (which will apply only after the SF-DCT conducts the final review and issues a final decision on the claim), the applicable deadline for curing deficiencies (as provided herein), and shall further explain that the claimant may not reject an Expedited Release payment

and instead claim a Disease payment or withdraw the claim and seek to submit a new claim after June 3, 2019, and the letter shall contain language advising that there is an obligation to inform the SF-DCT immediately of the death of a claimant.

**33. Appeal Deadlines.** The SF-DCT shall issue a final claim determination letter after the expiration of the applicable cure deadline. The final claim determination letter shall advise the claimant of the final decision on the claim and shall explain the appeal process. The deadline for the appeal shall be 60 days from the date of the final claim determination letter. If a claimant appeals to the Claims Administrator and is not satisfied with the Claims Administrator decision, the claimant may then appeal to the Appeals Judge. The deadline for an appeal to the Appeals Judge shall be 60 days after the decision of the Claims Administrator. The decisions of the Appeals Judge are final and no further appeals are permitted.

WHEREFORE, the Parties hereby agree and stipulate and it is hereby ADJUDGED, ORDERED AND DECREED as follows:

### **JURISDICTION**

This Court has jurisdiction pursuant to 28 U.S.C. § 1334(b) (“the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11”), Section 8.7 of the Plan, and Section 10.08 of the SFA.

### **ADOPTION OF CLOSING ORDER 1**

Closing Order 1 set forth herein is approved and the Claims Administrator is authorized to take all necessary actions to implement Closing Order 1.

This Order supersedes and replaces any prior Order specifying any claim submission procedure or processing procedure that is inconsistent with Closing Order 1.

Nothing in this Order shall be construed as modifying any provision of any Plan Document, including, but not limited to the SFA or Annex A.

SO ORDERED.

Dated: July 25, 2018

S/DENISE PAGE HOOD

Denise Page Hood  
Chief Judge

SO STIPULATED and AGREED:

BLANK ROME LLP

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