

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

<b>IN RE:</b>	§	
	§	
	§	<b>Case No. 00-CV-00005-DT</b>
	§	<b>(Settlement Facility Matters)</b>
	§	<b>See Attached List</b>
<b>DOW CORNING CORPORATION,</b>	§	<b>Hon. Denise Page Hood</b>
	§	
<b>Reorganized Debtor.</b>	§	
	§	

**STIPULATION AND ORDER TO SHOW LEGAL SUPPORT  
AND CAUSE WHY REQUEST TO FILE A LATE CLAIM IN THE  
DOW CORNING SETTLEMENT FACILITY SHOULD NOT BE DISMISSED**

**ATTENTION: This Stipulation and Order applies to all persons who filed a request to participate in the Dow Corning bankruptcy case and the request is dated after June 1, 2007 or received by the Court after June 5, 2007. Please read this Stipulation and Order carefully and note the deadline to file a response should you choose to respond. The deadline is stated in the separate Notice sent to you with this Stipulation and Order.**

**I. INTRODUCTION.**

This is a “Stipulation and Order To Show Legal Support and Cause Why Request To File A Late Claim in the Dow Corning Settlement Facility Should Not Be Dismissed” (“Stipulation and Order”). It applies to all Non-Settling Late Claimants. A Non-Settling Late Claimant is any person who:

- 1) submitted a request to participate in the Dow Corning bankruptcy case that was dated after June 1, 2007 or received by the Court after June 5, 2007, and
- 2) did not timely file a Proof of Claim (“POC”) or a Notice of Intent (“NOI”) in the Dow Corning Corporation (“Dow Corning” or “DCC”) bankruptcy case<sup>1</sup> (hereinafter “Timely Filed Claimant”), and

---

<sup>1</sup> The deadline for filing a POC in that case was January 15, 1997 (or February 14, 1997 for foreign claimants). The deadline for filing an NOI was August 30, 2004.

3) is not a Settling Late Claimant as defined in the “Agreed Order Allowing Certain Late Claimants Limited Rights to Participate in the Plan’s Settlement Facility” (“Late Claim Settlement Order”), entered on December 12, 2007.

The Settlement Facility-Dow Corning Trust (“SF-DCT”) records show that you are not a Timely Filed Claimant or a Settling Late Claimant. Therefore, you are a Non-Settling Late Claimant and you have received this Stipulation and Order. Your late claim request will be dismissed unless you submit a written response that demonstrates to the Court rare, unique and extraordinary circumstances that give cause why this Court should not dismiss your late claim request.

## **II. STATUS OF LATE CLAIM REQUEST.**

The Claimants’ Advisory Committee (“CAC”), Dow Corning, and the Debtors’ Representatives (collectively, the “Parties”) have agreed and the Court has previously determined that “late claim requests dated after June 1, 2007 or received by the Court after June 5, 2007 are **presumptively without merit** and that the allowance of these late claim requests . . . would unfairly prejudice the interests of Timely Filed Claimants, increase the administrative burdens and costs of the SF-DCT, undermine the SF-DCT’s need for certainty in formulating accurate projections and administering the Settlement Fund, and threaten the important rule of finality inherent in the confirmation of the Plan under the Bankruptcy Code.” Late Claim Settlement Order at ¶ 15 (emphasis added). This Court has also taken judicial notice of the extensive publication and direct mail notices informing potential claimants of the relevant filing deadlines. Accordingly, this Court has determined that **a “showing of excusable neglect by late claimants whose late claim requests were dated after June 1, 2007 or filed after June 5, 2007 is highly unlikely except in rare, unique and extraordinary circumstances . . . .”** Late Claim Settlement Order at ¶ 15 (emphasis added).

In light of these findings and due to the importance of conserving Settlement Fund assets and protecting the rights of timely claimants, the Parties stipulate and agree that it is appropriate to specify procedures and guidelines for the submission and litigation of late claim requests submitted by persons who are “Non-Settling Late Claimants,” as defined above. The Parties agree that late claim requests by Non-Settling Late Claimants should be dismissed as presumptively without merit under the findings of the Late Claim Settlement Order unless such Non-Settling Late Claimants demonstrate to the satisfaction of the Court that there could be “rare, unique and extraordinary circumstances” that must be subjected to a full evidentiary hearing.

### **III. CONCLUSION.**

WHEREFORE, it is hereby ADJUDGED, ORDERED and DECREED as follows:

1. The terms and conditions set forth in this Stipulation and Order shall apply to all Non-Settling Late Claimants. If you received a copy of this Stipulation and Order, then you are a Non-Settling Late Claimant and the terms of this Stipulation and Order apply to you.
2. Your late claim request is presumptively without merit, and you have the burden of justifying in writing why your late claim request is the rare, unique and extraordinary exception that should be permitted a full evidentiary hearing and should not be permanently dismissed with prejudice and barred from applying for any compensation.
3. The Parties shall mail this Stipulation and Order to each Non-Settling Late Claimant with a notice that specifies the deadline for a response. You shall have 15 days from the date of the notice to respond in writing to the Court. If you fail to respond by the deadline, your late claim request shall be dismissed with prejudice and you will be barred from applying for any compensation. Please note that this Stipulation and Order does not mean that your underlying injuries, if any, are presumptively without merit; therefore, you should **not** respond with details about your injuries or submit medical records of your injuries. It means that your request to

participate in the Dow Corning settlement program was submitted so late after the deadline that the Court presumes that it is without merit and should not be allowed. If you can demonstrate facts that show rare, unique and extraordinary circumstances, then your response should state and explain those circumstances. If you cannot demonstrate rare, unique and extraordinary circumstances, then you may choose not to file a response and your late claim request will be dismissed with prejudice.

4. Non-Settling Late Claimants who respond in writing but who do not assert rare, unique and extraordinary circumstances shall have their late claim requests dismissed with prejudice. The Court has previously determined and hereby finds that the following excuses for late filing will **not** constitute rare, unique and extraordinary circumstances or provide a sufficient basis to warrant scheduling an evidentiary proceeding to evaluate the late claim request: (a) claims that you did not receive actual notice and/or did not see the published notice of the deadline to file a Proof of Claim or Notice of Intent form in the Dow Corning bankruptcy case or that you were not personally informed about the deadline; (b) you assumed that your prior registration in the MDL settlement was sufficient to establish a timely Proof of Claim or Notice of Intent filing in the Dow Corning bankruptcy case or that you were allegedly confused between the MDL and the Dow Corning bankruptcy case or confused about whether you needed to file a Proof of Claim or Notice of Intent in the Dow Corning bankruptcy case; (c) you discovered a condition allegedly related to a Dow Corning product only after the deadline to file a Proof of Claim or a Notice of Intent; and (d) your attorney failed to timely file a Proof of Claim or Notice of Intent by the deadline to file a Proof of Claim or a Notice of Intent.

5. If the Court finds that a Non-Settling Late Claimant has demonstrated a rare, unique and extraordinary circumstance that could potentially overcome the presumption that all late claim requests of Non-Settling Late Claimants are without merit and cannot satisfy the excusable neglect standard, then the Court will establish a schedule for the litigation and resolution of such

a late claim request. The Court may request that the Parties submit a scheduling order that includes a specified period for additional pleadings.

SO ORDERED.

Dated: May 9, 2008

/s/ Denise Page Hood  
Denise Page Hood  
United States District Judge

SO STIPULATED:

NELIGAN FOLEY LLP

DICKSTEIN SHAPIRO LLP

By: /s/ David Ellerbe  
David Ellerbe  
325 N. St. Paul, #3600  
Dallas, TX 75201  
Tel.: 214-840-5300  
Fax: 214-840-5301

By: /s/ Deborah E. Greenspan  
Deborah E. Greenspan  
1825 Eye Street, N.W.  
Washington, DC 20006-5403  
Tel.: 202-420-2200  
Fax: 202-420-2201

COUNSEL FOR DOW CORNING  
CORPORATION

DEBTOR'S REPRESENTATIVE AND  
COUNSEL FOR DOW CORNING  
CORPORATION

CLAIMANTS' ADVISORY COMMITTEE

By: /s/ Dianna L. Pendleton-Dominguez  
Dianna L. Pendleton-Dominguez  
Law Office of Dianna Pendleton  
401 N. Main Street  
St. Marys, OH 45885  
Tel.: 419-394-0717  
Fax: 419-394-1748

By: /s/ Ernest H. Hornsby  
Ernest H. Hornsby  
Farmer, Price, Hornsby &  
Weatherford, LLP  
100 Adris Place  
Dothan, AL 36303  
Tel.: 334-793-2424  
Fax: 334-793-6624

<b>Letter Code</b>	<b>Claimant Name</b>
A1212	Mooney-Parker, Lottie
A1214	Bane, Nancy F.
A1215	Cribbins, Gail
A1216	Zylstra, Joyce
A1218	Hutchinson, Janice
A1219	Henderson, S.D
A1222	Brockman, Susan
A1223	Wakefield, Joy Lynne
A1225	Dansby, N June
A1229, A1251	Fortenberry, Rinda
A1231	Monozon, Leona
A1236	Roy, Deborah
A1240	Friedberg, Beth
A1242	Ballew, Ellen
A1243	Smith, Gloria
A1245	Lendon, Yvonne
A1246	Cozzarelli, Monica
A1247	Dettling, Donna
A1249	Eberle, Hiltrud
A1250	Ortiz, Ruth
A1253, A1320, A1329	Ferreira, Cheryl E.
A1256	Jackson, Angela
A1257	Fischer, Patricia
A1258	Powers, Roxanne
A1259	Cannon, Susan
A1260	Meseth, Maria
A1261	James, Jamie
A1262	Dillon, Linda
A1264	Wells, Sherry
A1265	Thompson, Hazel
A1266	Jackson, Stephanie
A1268	Jones, Diane
A1269	Barker, Diana
A1270	Mitchell, Barbara
A1271	Williams, Sharon
A1273	Patti, Linda
A1275	Lozen, Lori
A1276, A1278	Seagraves, Sherre
A1277	Hairston, Elaine
A1279	Smith, Barbara
A1281	Pinkerton, Pamela
A1282	Homan, Debra
A1283	Fortune, Judy
A1285	Jacobsohn, Barbara

A1286	Reynolds, Linda
A1287	Williford, Lou
A1288	West, Betty
A1289	Delguzzi, Angela
A1290	Pedrozzi, Magali
A1291	Burroughs, Jean Elizabeth
A1294	Reith, Sedonna
A1295	Buckman, Rachel
A1296	McCants, Kim
A1297	McCartney, Kay
A1298, A1332	Barfield, Betty
A1300	Lanam, Diana
A1301	Sanders, Joan
A1303	Kritzeck, Jacqueline
A1304	Krysch, Ollie
A1305	Paton, Deborah
A1306	Asher, Diane
A1309	Maloney, Sharon
A1310	Billings, Sherry
A1311	Brant, Kristen
A1312	Szybko, Valentine
A1313	Fuller (Fisk), Mary
A1314	Brown, Glenda
A1315	Sitoski, Christine
A1316	Stephens, Meleta
A1317	Hilton, Roberta
A1319	Jones, Ella
A1321	Miner, Leslie
A1323	Randell, Genene
A1324	Bartridge, Christine
A1328	Doe, Kathryn
A1330	McCann, Elizabeth
A1331	Luker, Marie
A1333	Crawford, Lila
A1334	Bennett, Mary
A1335	Thelen, Janet