

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

**FILED**  
SEP 19 2002  
CLERK'S OFFICE  
U.S. DISTRICT COURT  
EASTERN MICHIGAN

IN RE:

**DOW CORNING CORPORATION,**  
  
**DEBTOR.**

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Case No. 95-20512  
(Chapter 11)  
Honorable Denise Page Hood

**ORDER APPROVING PLAN PROPONENTS' MOTION TO APPROVE  
COMPROMISE OF CONTROVERSY WITH THE UNITED STATES OF AMERICA**

The Court has considered the Motion to Approve Compromise of Controversy With the United States of America (the "Motion") filed by the Plan Proponents,<sup>1</sup> and the Court finds and concludes that the settlement proposed in the Motion and set forth fully in Exhibit A thereto ("Settlement Agreement") is fair and in the best interests of the Debtor's estate and its creditors and should be approved under Bankruptcy Rule 9019(a). Accordingly, it is

**ORDERED** that:

1. The Motion is granted.
2. Dow Corning Corporation and the Tort Claimants' Committee are hereby authorized to enter into and perform the Settlement Agreement substantially in the form as it appears in Exhibit A to the Motion.

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<sup>1</sup> Capitalized terms used in this Order shall have the meanings given to them in the Motion, unless otherwise expressly defined herein.

3. Without limiting the full terms of the Settlement Agreement, if the United States approves and signs the Settlement Agreement, then upon the Effective Date of the Plan confirmed by the Bankruptcy Court's order entered on November 30, 1999:

- a. the United States shall withdraw with prejudice the USA Plan Objections and any related motions;
- b. the Plan Proponents shall withdraw the Claim Objections with prejudice and the USA Claims shall be allowed and paid as provided in the Settlement Agreement;
- c. the United States shall withdraw the Claims Appeal with prejudice;
- d. paragraphs 5B-5E of the Confirmation Order, dated November 30, 1999 [Docket 21381] and the Agreed Order entered November 15, 2001 [Docket 26449] are vacated as moot without further order of this Court.<sup>2</sup>

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<sup>2</sup> The Court declines *without prejudice* the parties' request to vacate the Bankruptcy Court's published Opinion, *In re Dow Corning Corp.*, 250 B.R. 298 (Bankr. E.D. Mich. June 22, 2000). The parties may renew their request at any time prior to the Effective Date if they can submit further authority to support their request that the Court vacate the Opinion based on the parties' settlement. At a telephone conference, the parties cited two authorities they argue support their position. The first is 28 U.S.C. § 2106. Section 2106 is inapplicable since it applies to an appellate court reviewing an appeal from a lower court. This Court, having withdrawn the reference to the Bankruptcy Court, is not sitting as an appellate court.

The second authority cited was *Major League Baseball Properties, Inc. v. Pacific Trading Cards, Inc.*, 150 F.3d 149 (2d Cir. 1998). In that case, the Second Circuit also based its authority to vacate a judgment on Section 2106. The Second Circuit also found "exceptional circumstances" based on the test set forth by the Supreme Court in *U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership*, 513 U.S. 18, 26-27 (1994). The parties have not at this time advanced a sufficient "exceptional circumstance" argument as to why Judge Spector's June 22, 2000 Opinion should be vacated based on the parties' settlement.

4. \$529,797.00 of the Debtor's funds held by the United States shall be retained by the United States in addition to the Settlement Amount, and such funds shall be credited against the first and, if necessary, subsequent year's funding obligations under the Plan.

5. The Claims Administrator of the Dow Corning Settlement Facility is authorized and directed to modify the claim forms and participation forms in accordance with, and consistent with, this order and the Settlement Agreement.

6. All further proceedings regarding the Claims Appeal are stayed from the date of this Order through the Effective Date.

7. If the Effective Date does not occur, the Settlement Agreement shall be void unless the Plan Proponents and the United States agree otherwise in writing.

DATED: SEP 19 2002

  
Denise Page Hood  
United States District Judge