UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In Re:

DOW CORNING CORPORATION,

Debtor.

HON. DENISE PAGE HOOD

Case Nos. **99-CV-75924-DT**
99-CV-75925-DT
99-CV-75958-DT
99-CV-75960-DT
99-CV-76214-DT
99-CV-76215-DT
00-CV-70029-DT

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OPINION DENYING MOTION FOR RECONSIDERATION

The Court previously entered an Opinion dated November 13, 2000 in the above-captioned matters confirming the Amended Joint Plan of Reorganization proposed by the Debtor Dow Corning Corporation and the Official Committee of Tort Claimants and affirming in part and reversing in part the Bankruptcy Court's opinions related to its Confirmation Order.[1] The Class Five Nevada Claimants timely filed a Motion for Reconsideration of the Court's November 13, 2000 Opinion.[2] The Lacy Appellants, Helene D. Schroeder, and Marti Jacobs joined in the Class Five Nevada Claimants' Motion for

[1] The Court has issued an Amended Opinion Relating to Appeals From and Motions Regarding the Bankruptcy Court's November 30, 1999 Confirmation Order to correct typographical errors only.

[2] The Class Five Nevada Claimants also filed a Motion to Stay the Case pending the Court's ruling on the Motion for Reconsideration which was withdrawn by the Class Five Nevada Claimants pursuant to an agreement entered into by the parties. (Docket No. 33, filed December 6, 2000)

Reconsideration.[3]

The Local Rules of the Eastern District of Michigan provide that any motion for reconsideration shall be served not later than 10 days after entry of such order. No response to the motion and no oral argument thereon shall be allowed unless the Court, after filing of the motion, otherwise directs. The Local Rule further states:

> (3) **Grounds**. Generally, and without restricting the discretion of the Court, motions for rehearing or reconsideration which merely present the same issues ruled upon by the Court, either expressly or by reasonable implication, shall not be granted. The movant shall not only demonstrate a palpable defect by which the Court and the parties have been misled but also show that a different disposition of the case must result from a correction thereof.

E.D. Mich. LR 7.1(g)(3).

The Court finds that the motion presents the same issues ruled upon by the Court, either directly or by implication. Although some of the language used in the November 13, 2000 Opinion could be construed to suggest that the individual Shareholders, Dow Chemical Co. and Corning, Inc., could be *named defendants* should a claimant choose not to enter into the Settlement Facility, this Court's Opinion clearly indicated that "[t]he Plan provides for *claims* against the Debtor and the non-debtors to be channeled to the Litigation Facility if the claimants choose not to enter into the Settlement Facility. The release and injunction provisions do not apply to claimants who choose to bring their *claims* against the

[3] The Court notes that these motions were filed beyond the ten days required under E.D. Mich. LR 7.1(g). The Lacy Appellants' memorandum was filed on December 14, 2000 (Case No. 99-CV-75925-DT, Docket No. 25). Helene Schroeder's Motion was filed on December 6, 2000 (Case No. 99-CV-75958-DT, Docket No. 21). Marti Jacobs' Motion was filed on December 7, 2000 (Case No. 99-CV-75960-DT, Docket No. 32).

Debtor and the non-debtors via the Litigation Facility." *Opinion Relating to Appeals From and Motions Regarding the Bankruptcy Court's November 30, 1999 Confirmation Order*, p. 46 (November 13, 1999)(emphasis added).

The Court and the parties were on notice and were aware of the express language in the various documents under the Plan and the Case Management Order that the named defendant would be the Litigation Facility should the claimants choose to pursue their claims against the Debtor and/or its Shareholders (other than through the Settlement Facility). The Amended Joint Disclosure Statement states, "[c]laims channeled to the Litigation Facility shall be asserted solely against the Litigation Facility." (Amended Joint Disclosure Statement, p. 85) The Litigation Facility Agreement states that the Litigation Facility "assumes and shall be directly and exclusively liable for any and all liabilities, ..., of the Debtor Affiliated Parties ..." (Litigation Facility Agreement, ¶ 2.03(a)) The Case Management Order indicates, "the [Litigation] Facility is the defendant in place of Dow Corning and the Shareholders." *Case Management Order*, ¶ 6(a). The Court notes that all these documents were provided to the Claimants who had ample opportunity to review the documents. This Court allowed the parties to comment on the Case Management Order. There were no specific arguments brought before this Court nor the Bankruptcy Court regarding the language that the Litigation Facility would be the named defendant in place of Dow Corning or its Shareholders. The Plan documents clearly provide that the Claimants would have the opportunity to litigate their *claims* against Dow Corning and its Shareholders. The *claims* against Dow Corning and its Shareholders remain viable in the Litigation Facility.

As the Bankruptcy Court found, and as affirmed by this Court, the evidence was overwhelming that the funding of the Litigation Facility is more than sufficient to pay all personal injury claims, resolved through

litigation, in full. *Opinion Relating to Appeals From and Motions Regarding the Bankruptcy Court's November 30, 1999 Confirmation Order*, pp. 83-85 (November 13, 1999)(emphasis added).

The Class Five Nevada Claimants have failed to demonstrate a palpable defect by which the Court and the parties have been misled. The Class Five Nevada Claimants have also failed to show that a different disposition of the case would result if the Court were to rule in their favor. The Motion for Reconsideration is DENIED.

/s/
DENISE PAGE HOOD
United States District Judge

DATED: February 5, 2001