

UNITES STATES DISTRICT COURT
 EASTERN DISTRICT OF MICHIGAN
 NORTHERN DIVISION

99-75799

IN RE:)
)
 DOW CORNING CORPORATION,)
)
 Debtor,)

Civil Case No. 99-CV-75924-DT-00-70029-)
)
 (Chapter 11 Case No. 95-20512)

Judge Denise Page Hood

FILED
 2000 MAR 28 A 11:36
 U.S. DIST. COURT
 EAST DIST. MICHIGAN
 DETROIT

Related Appeals

Case Number	Appellant	Filed
99-CV-75380	- US Compel Appeal	11/05/99
00-CV-75799	- United States	12/05/99
99-CV-75922	- Hartley Physicians	12/10/99
99-CV-95923	- New Zealand	12/10/99
99-CV-75923	- Lacy	12/10/99
99-CV-75927	- Australian	12/10/99
99-CV-75929	- Certain Foreign	12/10/99
99-CV-75930	- Off Physicians	12/10/99
99-CV-75958	- Schroeder	12/13/99
99-CV-75959	- Olexa	12/13/99
99-CV-75960	- Jacobs	12/13/99
99-CV-76007	- Shisido	12/15/99
99-CV-76008	- Hustead	12/20/99
99-CV-76009	- Dowd, West	12/15/99
99-CV-76063	- Dow Corning	12/20/99
99-CV-76214	- Dow Chemical	12/30/99
99-CV-76215	- Corning, Inc.	12/30/99
00-CV-70029	- Plan Proponents	01/04/00
00-CV-70076	- Altig	01/06/00
00-CV-70176	- Hartford	01/11/00
00-CV-70177	- Lloyds of London	01/11/00
00-CV-70179	- Korean Claimants	01/11/00

NEVADA APPELLANTS' JOINDER IN MOTION BY THE UNITED STATES
 TO ESTABLISH PROCEDURE FOR ORAL ARGUMENT AND [UNITED STATES']
 OPPOSITION TO PROPONENTS' MOTION [RE] ORAL ARGUMENT PROCEDURE 00-70029

NEVADA APPELLANTS' SEPARATE ARGUMENT FURTHER
 JUSTIFYING ORAL ARGUMENT SCHEDULE AGREED UPON BY
 APPELLANTS AND SUBMITTED BY THE UNITED STATES

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The Nevada Appellants respectfully join in the *Motion By The United States To Establish Procedure For Oral Argument* mailed (and therefore filed) on March 27, 2000. The Nevada Appellants also tender the following separate argument, which further justifies and explains the proposed schedule and order concerning the presentation of oral arguments.¹ As explained in the United States' Motion, the Proponents submitted their own proposed schedule without consultation with the many appellants in this matter. Further, the Proponents were unwilling to spend any time further discussing this matter with the appellants. As a result, after several meetings among various appellants, the proposed schedule contained in the Order Setting Procedure attached to the United States' Motion was prepared and submitted to the Court.² At least among the appellants, some of whom have varied interests, there is agreement on the schedule for oral arguments.

The United States' proposed Order schedules oral arguments concerning the appeals of issues related to the Confirmation Order first, followed by the motion arguments. Unlike the schedule submitted by the Proponents, the schedule submitted by the United States and joined by the Nevada Appellants is consistent with the sequencing of appeal briefs as set forth in the Court's January 24, 2000 Scheduling Order. (where appellants' briefs addressing the Confirmation Order are first in line). It also reflects the normally followed appellate procedure whereby the first appellants speak first, appellees speak second and oral arguments end with rebuttals by appellants. See FRAP 34 (c) which states, "The appellant opens and concludes the argument."

By using their so-called "appeal" of the December 21st Opinion, the Proponents have

¹That proposed schedule is found in the Order Setting Procedure attached to the United States' Motion.

²Participants in these discussions included counsel for the United States, the Physicians' Committee, the Foreign Claimants, the Australian Claimants, the Pennsylvania Claimants, the Public Citizens Litigation Group, and the Nevada Claimants.

attempted to cast themselves in the role of primary "appellants", thereby scheduling themselves to argue first on April 12th. This is entirely inappropriate, in form as well as substance, for several reasons.

First, as discussed in the March 27, 2000 letter from the Nevada Claimants to the Court (responding to the Proponents' letter to the Court), the release/injunction issues referenced by Judge Spector orally and in writing on November 30, 1999 and further explicated in his December 21st Opinion were first timely raised and briefed on February 18, 2000 by the Nevadans, as appellants of the Confirmation Order. That the Proponents chose not to file an answering brief in response to the Nevadans' appellate brief on these issues, but instead chose to make their arguments in the context of "Proponents' Appellants Briefs" (See Tarpley March 13, 2000 letter to Court) should not reverse the normal order of oral arguments.

Second, regarding hearing the Good Faith, Classification and Treatment of Domestic Claims on the first day (4/12) and hearing the Release/Injunction matters on the second day, the Nevada Claimants believe that the overview of the Plan's provisions presented and argued on the first day provides the Court an understanding of the Plan which Judge Spector approved, but indicated that he could not legally confirm if the release/injunction provisions were interpreted as Proponents seek.

The presentations on the first day provide a good backdrop for the presentation of the release/ injunction arguments on the second day. Indeed, the Nevada Claimants do not disagree with the suggestion of Public Citizen's attorney Alan Morrison, Esq. that not only does the United States' suggested scheduling Order provide the most logical framework to present the various arguments, but that the arguments concerning the proposed CMO (Section VIII of the United States' proposed order) might also be moved up to the very end of the first day. This is because the Proponents' justification for the release/injunction is that the "Litigation Facility" and the CMO provide the

parties who lose their rights against Dow Chemical nearly all the same privileges and protections they would obtain from State or Federal Court lawsuits in the parties' home states. To know whether this argument is accurate, oral arguments concerning the "Litigation Facility" and its procedures and protocols might well be heard before the next day's discussion of the release/injunction issues.

Third, there is but one Confirmation Order appealed from: The one entered on November 30th and further explicated by the Court (as he told all he would do) on December 21st. The proponents wish to surgically excise the one provision in the Confirmation Order they like least, and suggest to this Court that life would be a whole lot simpler if this Court would just strike out the interpretation of the Plan which is the saving grace for the **whole** of the Plan that Judge Spector gave five years of his life to. However, the Plan cannot and should not be analyzed in the vacuum suggested by the proponents, not matter how "easy" they say things would be if the Court struck the December 21st Opinion. In order for this Court to determine whether Judge Spector properly exercised his discretion over the Plan as a whole and interpreting it, it should hear arguments concerning the Plan as a whole – including all opinions issued contemporaneously or subsequent to the Plan. The piecemeal approach advocated by the Proponents is neither fair nor workable.

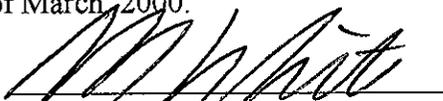
Fourth, while the Proponents now admit that this is really Dow Chemical's bankruptcy, Dow Chemical – which desperately wants its cherished release at all costs – cannot call all the shots. Indeed, at least four (4) separate entities will argue Dow Chemical's position: The Tort Claimants' Committee, Dow Corning, Corning, Inc., and Dow Chemical. Those multiple arguments should come in the normal course and not before the primary appellants in this case are first heard.

Fifth, as argued by the United States in its Motion to Dismiss Appeals from the December 21 Opinion, there is at least some question as to whether the Proponents' "appeal" which they wish

to argue before all others, is timely. A questionable appeal (in timeliness as well as merit) should not take center stage or be first in right.

WHEREFORE, the Nevada Appellants join in the United States' Motion and respectfully request that the Court enter the proposed *Order Setting Procedure For Oral Argument* attached to the United States' Motion filed on March 24, 2000.

Respectfully submitted this 27th day of March, 2000.



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Dated this 27th day of March, 2000.

