

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

In re: DOW CORNING CORPORATION,

Case No. 95-20512  
Chapter 11

Debtor.

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW**  
**REGARDING CONFIRMATION OF THE JOINT PLAN OF REORGANIZATION**

Pursuant to F.R.Bankr.P. 7052, the Court enters the following findings of fact and conclusions of law with respect to the contested matter of the confirmation of the Amended Joint Plan of Reorganization dated February 4, 1999, as modified on July 28, 1999 and supplemented on July 30, 1999 ("Plan") of the Debtor and the Official Committee of Tort Claimants, hereafter jointly referred to as the "Proponents." Any finding of fact shall constitute a finding of fact even if it is stated as a conclusion of law, and any conclusion of law shall constitute a conclusion of law even if it is stated as a finding of fact.

On June 28, 1999, this Court commenced the hearing to consider confirmation of the Plan as then formulated. The Court reviewed and considered: the Joint Plan; the Disclosure Statement; the Plan Documents; the pleadings and memoranda filed in connection with the confirmation issues, including all objections to confirmation and responses thereto; the testimony of witnesses, the exhibits and other evidence received at the confirmation hearing; and the many arguments relating thereto.

Preliminary conclusions of law:

A. The United States District Court for the Eastern District of Michigan has jurisdiction over this case and the matter of the confirmation of the Plan pursuant to 28 U.S.C. § 1334(a).

B. The District Court referred its jurisdiction over bankruptcy cases generally, including this case, as permitted by 28 U.S.C. § 157(a) by E.D. Mich. LR 83.50.

C. This is a core proceeding. 28 U.S.C. § 157(b)(2)(L).

D. The form, content and manner of notice provided in connection with the Plan afforded due process, including adequate notice and opportunity to be heard to all known and unknown claimants and to all other parties whose rights are or may be affected by the Plan, and satisfied the requirements of the United States Constitution, the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

**Findings of fact:**

1. The Proponents comply with the applicable provisions of title 11 of the United States Code. 11 U.S.C. § 1129(a)(2). See the separate opinion to be issued later for further explication of this finding.

2. The Plan has been proposed in good faith and not by any means forbidden by law. 11 U.S.C. § 1129(a)(3). See the separate opinion issued contemporaneously herewith entitled “Opinion on Good Faith” for further explication of this finding.

3. Any payment made or to be made by the Proponents or by a person issuing securities or acquiring property under the Plan, for services or for costs and expenses in or in connection with the case, or in connection with the Plan and incident to the case, has been approved by, or is subject to the approval of, the Court as reasonable. 11 U.S.C. § 1129(a)(4).

4. The Proponents have disclosed the identities and affiliations of any individuals

proposed to serve, after confirmation of the Plan, as directors, officers, or voting trustees of the Debtor or a successor to the Debtor under the Plan. 11 U.S.C. § 1129(a)(5)(A)(i).

5. The appointment to, or continuance in, such office of the individuals referred to in the previous finding is consistent with the interests of creditors and equity security holders and with public policy. 11 U.S.C. § 1129(a)(5)(A)(ii).

6. The Proponents have disclosed the identities of any insiders that will be employed or retained by the Reorganized Debtor, and the nature of any compensation for such insiders. 11 U.S.C. § 1129(a)(5)(B).

7. There is no governmental regulatory commission with jurisdiction, after confirmation of the Plan, over the rates of the Debtor. 11 U.S.C. § 1129(a)(6).

8. With respect to each impaired class of claims or interests, each holder of a claim or interest of such class has accepted the Plan; or will receive or retain under the Plan on account of such claim or interest property of a value, as of the effective date of the Plan, that is not less than the amount that such holder would so receive or retain if the Debtor were liquidated under chapter 7 of this title on such date. 11 U.S.C. § 1129(a)(7). See In re Dow Corning Corp., 237 B.R. 380, 34 B.C.D. 982 (Bankr. E.D. Mich. 1999) with respect to claims in Class 4, and the separate opinion to be issued later with respect to claims in other classes.

9. Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the Plan provides that, with respect to a claim of a kind specified in §§ 507(a)(1) or 507(a)(2) of title 11 United State Code, on the effective date of the Plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim. 11 U.S.C. § 1129(a)(9)(A). See the separate opinion issued contemporaneously

herewith entitled “Opinion on 11 U.S.C. § 1129(a)(9) Objections” for further explication of this finding.

10. Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the Plan provides that, with respect to a class of claims of a kind specified in 11 U.S.C. §§ 507(a)(3), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7), each holder of a claim of such class will receive, if such class has accepted the Plan, deferred cash payments of a value, as of the effective date of the Plan, equal to the allowed amount of such claim; or if such class has not accepted the Plan, cash on the effective date of the Plan equal to the allowed amount of such claim. 11 U.S.C. § 1129(a)(9)(B).

11. Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the Plan provides that, with respect to a claim of a kind specified in 11 U.S.C. § 507(a)(8), the holder of such claim will receive on account of such claim deferred cash payments, over a period not exceeding six years after the date of assessment of such claim, of a value, as of the effective date of the Plan, equal to the allowed amount of such claim. 11 U.S.C. § 1129(a)(9)(C). See the separate opinion issued contemporaneously herewith entitled “Opinion on 11 U.S.C. § 1129(a)(9) Objections” for further explication of this finding.

12. At least one class of claims that is impaired under the Plan has accepted the Plan, determined without including any acceptance of the Plan by any insider. 11 U.S.C. § 1129(a)(10).

13. Confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtor or any successor to the Debtor under the Plan. 11 U.S.C. § 1129(a)(11). See separate opinion to be issued later for further explication of this

finding.

14. All fees payable under 28 U.S.C. § 1930, as determined by the Court at the hearing on confirmation of the Plan, have been paid or the Plan provides for the payment of all such fees on the effective date of the Plan. 11 U.S.C. § 1129(a)(12).

15. The Plan provides for the continuation after its effective date of payment of all retiree benefits, as that term is defined in 11 U.S.C. § 1114, at the level established pursuant to subsection 11 U.S.C. § 1114(e)(1)(B) or 11 U.S.C. § 1114(g), at any time prior to confirmation of the Plan, for the duration of the period the Debtor has obligated itself to provide such benefits. 11 U.S.C. § 1129(a)(13).

16. Not every impaired class of claims or interests accepted the plan. 11 U.S.C. § 1129(a)(8).

17. The Proponents requested the Court to confirm the Plan notwithstanding the failure to satisfy 11 U.S.C. § 1129(a)(8). 11 U.S.C. § 1129(b)(1).

18. With respect to Class 4, the Plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the Plan, equal to the allowed amount of such claim. 11 U.S.C. § 1129(b)(2)(B)(i).

19. With respect to Class 15, the Plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the Plan, equal to the allowed amount of such claim. 11 U.S.C. § 1129(b)(2)(B)(i).

20. With respect to Class 18, the Plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the Plan, equal to the allowed amount of such claim. 11 U.S.C. § 1129(b)(2)(B)(i).

21. The Settling Physicians, the Settling Insurers, Corning, Inc. and The Dow Chemical Company will all make important contributions to the reorganization as part of a confirmed Plan.

22. The release and injunction provisions with respect to the Settling Physicians, Settling Insurers, Corning, Inc. and The Dow Chemical Company are essential to reorganization pursuant to this Plan.

23. A large majority of the creditors impacted by the release and injunction provisions approved the Plan.

24. There is a close connection between the claims of the Settling Physicians, the Settling Insurers, Corning, Inc. and The Dow Chemical Company on the one hand and the claims against the Debtor on the other hand.

25. The Plan provides for the payment of all of the claims affected by the release and injunction provisions of the Plan.

**Conclusions of law:**

D. The Plan complies with the applicable provisions of title 11 United States Code. 11 U.S.C. § 1129(a)(1). See separate opinion to be issued later with respect to this issue.

E. With respect to Class 4, the Plan does not discriminate unfairly. 11 U.S.C. § 1129(b)(1).

F. With respect to Class 15, the Plan does not discriminate unfairly. 11 U.S.C. § 1129(b)(1). See separate opinion, entitled “Cramdown of Class 15,” issued contemporaneously herewith, for further explication of this conclusion.

G. With respect to Class 18, the Plan does not discriminate unfairly. 11 U.S.C. § 1129(b)(1). See separate opinion, entitled “Cramdown of Class 18,” issued contemporaneously

