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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE:	§	
	§	CASE NO. 00-CV-00005-DT
DOW CORNING CORPORATION,	§	(Settlement Facility Matters)
	§	
REORGANIZED DEBTOR	§	Hon. Denise Page Hood
	§	

STIPULATION TO APPOINT DAVID AUSTERN AS SUCCESSOR CLAIMS ADMINISTRATOR FOR THE SETTLEMENT FACILITY-DOW CORNING TRUST

Background

The Amended Joint Plan of Reorganization (the "Plan") establishes that a Claims Administrator shall be responsible to oversee the processing and payment of claims by the Settlement Facility Dow Corning Trust (the "SF-DCT") in accordance with the terms of the Settlement Facility and Fund Distribution Agreement (the "Settlement Facility Agreement" or "SFA"). Plan at § 1.29.

In general, the Claims Administrator is responsible for:

> (i) supervising processing of claims resolved under the terms of this Settlement Facility Agreement and the Claims Resolution Procedures and overseeing all aspects of the Claims Office including the Quality Control Supervisor and the Operations Manager, (ii) preparing and distributing periodic reports documenting the activity of the Claims Office, including detailed reports on Claims submissions and resolutions, and (iii) serving as a member of the Finance Committee and specifically performing periodic analyses and estimates regarding the costs and projected costs of processing and resolving claims subject to the terms of this Agreement and any matter of contingency that could affect the sufficiency of funds for payment of allowed claims. The Claims Administrator shall seek the input and advice of the Claimants' Advisory Committee and the Debtor's Representatives on all matters of mutual concern

and as specified at Section 5.05.

SFA at § 4.02(a). *See also* SFA at § 4.02 (e) ("General Powers of the Claims Administrator").

After serving as the Claims Administrator for more than four years, Elizabeth Wendy Trachte-Huber concludes her tenure on April 22, 2005. The Settlement Facility Agreement gives the Claimants' Advisory Committee ("CAC") and the Debtor's Representatives the responsibility and authority jointly to select a successor Claims Administrator subject to the approval of this Court:

> In the event that the Claims Administrator resigns or is removed from office or is otherwise unable to perform the functions of the Claims Administrator, a successor Claims Administrator shall be selected by the Debtor's Representatives and the Claimants' Advisory Committee, subject to the approval of the District Court.

Settlement Facility Agreement at § 4.02(b). The Debtor's Representatives and the CAC have selected David Austern to be the successor Claims Administrator and have submitted this Stipulation to approve the selection of David Austern as successor Claims Administrator.

Qualifications of Claims Administrator

The Settlement Facility Agreement sets forth the requirements for the qualifications of the Claims Administrator. He or she is to be "(i) an individual over the age of 35 whose experience and background are appropriate for the responsibilities

hereunder, and (ii) at the time of the appointment and at all times during the terms of service, independent." SFA at § 4.02(c).

As set forth below and in the accompanying affidavit of David Austern attached hereto as Exhibit A (the "Austern Aff."), Mr. Austern satisfies these criteria and is well-qualified to serve as the successor Claims Administrator.

Mr. Austern 's experience and background make him particularly qualified for the responsibilities he would assume as Claims Administrator of the SF-DCT. Few, if any, individuals have such extensive experience in running claims facilities. Mr. Austern's expertise and experience are well recognized. Mr. Austern has served as General Counsel for the Manville Personal Injury Settlement Trust (the "Manville Trust") since 1987. *Id.* at Ex. 1. Additionally, since May 2000 he has been President of the Claims Resolution Management Corporation ("CRMC"), which processes asbestos personal injury claims, contribution claims, and indemnity claims for the Manville Trust and the Pacor Trust. *Id.* Prior to that time, Mr. Austern had also been an Assistant United States Attorney in Washington, D.C., an Assistant District Attorney in New York, and an attorney in private practice. He has also taught as an Adjunct Professor and Lecturer at several law schools, and is a graduate of the University of Pennsylvania and of Yale Law School. *Id.*

Mr. Austern is also uniquely qualified because of his existing experience with the SF-DCT. In January and February 2005, he conducted a thorough management review of the SF-DCT, which is currently in the process of implementing various recommendations that he made. As a result of this experience, Mr. Austern is already familiar with (i) the Plan, the Settlement Facility Agreement and other implementing documents, (ii) the claims staff, and (iii) the issues that have arisen during the implementation.

The CAC and the Debtor's Representatives thus agree that Mr. Austern's appointment will protect the SF-DCT from a prolonged transition period since his experience will allow him to assume the position of Claims Administrator without significant additional preparation and since his prompt appointment will avoid a lengthy search process.

Mr. Austern's appointment will therefore allow the SF-DCT to move forward without interruption so that the main task of reviewing and paying qualified claims can proceed expeditiously.

Mr. Austern is also "independent" as required by the Settlement Facility Agreement. SFA at § 4.02(c). As set forth in his accompanying affidavit, none of the situations set forth in the Settlement Facility Agreement which would preclude a candidate from being found "independent" applies to Mr. Austern.

The compensation to be paid to Mr. Austern as Claims Administrator is set forth in a proposed contract for consulting services. The fees cover services to be provided by Mr. Austern and a minimum of two additional individuals from the CRMC whom Mr. Austern will select to assist in various tasks. Pursuant to the proposed contract, payment will be made directly to the CRMC or to Mr. Austern directly for deposit to the CRMC. Mr. Austern will not personally receive compensation by the SF-DCT. The parties expect that Mr. Austern's fees, including expenses, will be comparable to or less than total costs currently being paid.

Day-to-day operations and directives will continue to be carried out under the supervision of the Claims Administrator by the Claims Operations Manager and other senior management staff of the SF-DCT. As Claims Administrator, Mr. Austern will establish the directives and provide guidance and instruction to the Claims Operations Manager and staff. Under the terms of the agreement Mr. Austern will devote as much time as necessary to assure that the Settlement Facility is functioning properly. Under the terms of the contract for consulting services, Mr. Austern's appointment as Claims Administrator will extend for a one-year period, subject to renewal. The contract provides for termination by either party before the end of the one-year period.

The audit process at the SF-DCT that has been commenced by Analysis Research Planning Consulting ("ARPC") will continue.

The Debtor's Representatives and the CAC have therefore submitted this Stipulation to the Court to approve the selection of David Austern as successor Claims Administrator effective May 23, 2005.

Respectfully submitted this 23rd day of May 2005.

So Stipulated:

FOR DOW CORNING CORPORATION

By: _____

Deborah E. Greenspan, Esq.
Dickstein Shapiro Morin & Oshinsky LLP
2101 L Street, N.W.
Washington, DC 20037
Tel: 202-861-9100; Fax: 202-887-0689
E-mail: GreenspanD@dsmo.com

FOR THE CLAIMANTS' ADVISORY COMMITTEE

By: _____

Dianna L. Pendleton-Dominguez, Esq.
401 North Main Street
St. Marys, OH 45885
Tel: 281-703-0998; Fax: 419-394-1748
E-mail: DPEND440@aol.com

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In Re:

DOW CORNING CORPORATION,

Reorganized Debtor.

Civil Action No. 00-CV-00005-DT
Honorable Denise Page Hood

_____/

ORDER APPROVING STIPULATION APPOINTING DAVID AUSTERN AS SUCCESSOR CLAIMS ADMINISTRATOR FOR THE SETTLEMENT FACILITY-DOW CORNING TRUST

After consideration of the agreement of the Debtor's Representatives and the CAC, it is hereby ORDERED that:

1. David Austern's selection as successor Claims Administrator effective May 23, 2005 is hereby approved.

2. The Finance Committee is directed to authorize the Settlement Facility-Dow Corning Trustee to execute the approved Consulting Agreement with David Austern and to perform their respective obligations thereunder.

3. All actions taken at any time by David Austern as the Claims Administrator (or by any employees, agents, or independent contractors engaged by Mr. Austern as the Claims Administrator or appointed or hired to perform services in assisting the Claims Administrator) in implementing the Settlement Facility and in collecting, collating, processing, evaluating, and paying claims shall be performed in accordance with the terms of the Plan and the Plan Documents (as defined in the Plan); and

4. The actions taken by David Austern described in the preceding paragraph 3 shall constitute judicial actions of this Court and shall be protected, to the maximum extent allowable by law, by the doctrine of judicial immunity. The relief granted in this paragraph shall be effective from this date until the Claims Administrator resigns, is terminated or the Consulting Agreement expires and is not renewed.

DATED: MAY 25 2005

DENISE PAGE HOOD
United States District Judge

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In Re:	§	
	§	**Case No. 00-CV-00005-DT**
Dow Corning Corporation,	§	**(Settlement Facility Matters)**
	§	
Reorganized Debtor	§	**Hon. Denise Page Hood**
	§	

AFFIDAVIT OF DAVID T. AUSTERN IN SUPPORT OF STIPULATION AND PROPOSED AGREED ORDER APPOINTING DAVID AUSTERN AS SUCCESSOR CLAIMS ADMINISTRATOR FOR THE SETTLEMENT FACILITY-DOW CORNING TRUST

	§
STATE OF	§
COUNTY OF	§
	§

David T. Austern, being duly sworn, deposes and says:

1. I make this affidavit in support of the Stipulation and Proposed Agreed Order Appointing David Austern As Successor Claims Administrator For the Settlement Facility-Dow Corning Trust.

2. I have personal knowledge of the matters set forth herein.

3. I have served as General Counsel for the Manville Personal Injury Settlement Trust (the "Manville Trust") since 1987.

4. Since May 2000, I have also served as President of the Claims Resolution Management Corporation ("CRMC"), which processes asbestos personal injury claims, contribution claims, and indemnity claims for the Manville Trust and the Pacor Trust.

5. A copy of my resume is attached hereto as Exhibit 1.

6. In January and February 2005, I conducted a management review of the Settlement Facility-Dow Corning Trust. As a result of this experience , I am familiar with (i) the Plan, the Settlement Facility Agreement and other implementing documents, (ii) the claims staff, and (iii) certain issues that have arisen during implementation.

7. I have reviewed the provisions in the Settlement Facility and Trust Distribution Agreement (the "SFA") regarding the qualifications for being Claims Administrator and the requirements for independence of the Claims Administrator as set forth in Section 4.02(c) of the SFA, and I satisfy those requirements.

8. I declare under penalty of perjury, under the laws of the District of Columbia , that the foregoing is true and correct.

FURTHER AFFIANT SAYETH NOT.

Executed this 22nd day of April [] 2005.

David T. Austern

Subscribed and sworn to before
me this 22nd day of [April] 2005.

Notary Public in the County of Fairfax

My commission expires:
7-31-06

DOCSNY.145729.4

EXHIBIT A-1

DAVID T. AUSTERN

Office: 3110 Fairview Park Dr.
P.O. Box 12003
Falls Church, Virginia 22042
(703) 204-9300
(703) 205-6249 FAX

Home: 4984 Rockwood Parkway, N.W.
Washington, D.C. 20016
(202) 362-7903

Education

Law School: Yale University, LL.B. 1964
Awarded C. LaRue Munson Prize

College: University of Pennsylvania, B.A. 1961
Graduated with Honors

Professional History

May 2000 – Present **President**
Claims Resolution Management Corporation ("CRMC")

This corporation is a subsidiary of the Manville Personal Injury Settlement Trust (the "Trust") and processes asbestos personal injury claims, contribution claims, and indemnity claims for that Trust and the Pacor Trust. The CRMC employs forty-five people and operates as an independent asbestos claims processing entity.

1987 - Present **General Counsel**
Manville Personal Injury Settlement Trust and the

Chief legal officer for the Trust. General Counsel's Office employs three lawyers and support personnel and is responsible for representing the Trust and the CRMC in litigation and providing corporate and institutional legal advice.

1985 - 1987 **Director of Education**
Association of Trial Lawyers of America, Washington, D.C.

Areas of responsibility included recruiting faculty, planning and supervising the Association's twelve annual substantive law programs and six annual, week-long trial practice training colleges; editing and publishing the Association's legal books, audio and video tapes, and other publications; managing the Association's substantive law research request services; and organizing the Association's conventions and meetings.

1973 - 1985 **Partner**
Goldfarb, Singer & Austern, private practice of law, Washington, D.C.

Principal areas of practice included general corporate matters, commercial and personal injury litigation for both plaintiffs and defendants of product liability and legal malpractice claims, and representation of national trade associations.

1969 - 1973 **Assistant United States Attorney**
Washington, D.C.

General civil and criminal trial experience. Served for one year as Chief of Grand Jury Section and one year as Chief of Felony Trial Section.

1964 - 1968 **Assistant District Attorney**
New York County District Attorney's Office

General criminal trial experience. Served for one year on joint Federal/State Organized Crime Task Force.

Teaching Experience

1984 - Present Adjunct Professor of Law
American University Law School

1982, 1986, 1990 Lecturer, National Judicial College

1969 - 1984 Adjunct Professor of Law
Georgetown University Law Center

1969 – 1997 Bar Review Lecturer for Civil Procedure and Legal Ethics
BAR/BRI Bar Review Course for twelve states

Publications

Street Law: An Introduction to Law for The Layman, West Publishing Company, 1975

Uniform Rules of Criminal Procedure: Comparison and Analysis, American Bar Association Press, 1977 (with David Epstein)

The Crime Victim's Handbook, Viking/Penguin, 1987

Government, Ethics, and Managers: A Guide To Solving Ethical Dilemmas in The Public Sector, Praeger, 1990 (with Sheldon Steinberg)

1983 - 1988 Ethics, monthly column for Trial Magazine

Positions

1996 – Present	President, National Center for Victims of Crime
1987 – 1991	Chair, American Bar Association Victims Committee