

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

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

**FINANCE COMMITTEE’S MOTION FOR ENTRY OF AN ORDER TO
SHOW CAUSE WITH RESPECT TO WILLIAM RUTH, ESQ.**

The Finance Committee files this Motion to require William Ruth, Esq. to appear before this Court and show cause why he should not be sanctioned, held in contempt and otherwise required to respond as a result of the conduct of his law office which includes: 1) cashing the claim payment check intended for a Claimant Mr. Ruth represented; 2) failing to provide updated address information for the Claimant; 3) failing to provide proof of distribution of claim funds to the Claimant; and 4) failing to return claim funds that were not distributed to the Claimant. In support of this motion, the Finance Committee would respectfully show the Court as follows:

1. On May 15, 1995, Debtor filed a petition for reorganization under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Michigan. On November 30, 1999, the Court entered the Order confirming the Plan of Reorganization of Dow Corning Corporation (“the

Confirmation Order”) and on June 1, 2004 the Amended Joint Plan of Reorganization of Dow Corning Corporation (“the Plan”) became effective. Pursuant to the Plan and the Confirmation Order, the Settlement Facility and Fund Distribution Agreement (“SFA”) became effective on June 1, 2004. *See* Exh. A.

2. The SFA establishes the Settlement Facility (“SF-DCT”), which among other things, assumes liability for and resolves claims of settling Personal Injury Claimants and distributes funds to Claimants with allowed claims. The Court supervises the resolution of Claims under the SFA and is authorized to perform all functions relating to the distribution of funds. *See* Exh. A, SFA § 4.01. The funds distributed by the Settlement Facility are in the custody of the Court until they are *paid to* and *actually received by* a Claimant. *See* Exh. A, SFA § 10.09 (“All funds in the Settlement Facility are deemed in custodia legis until such times as the funds have actually been paid to and received by a Claimant.”).

3. William Ruth, Esq. is the attorney-of-record representing the Claimant, who submitted a claim to the SF-DCT. In that capacity, Mr. Ruth is aware that his client’s election to settle her claims subjects him to the terms of the SFA. *See* Exh. A, § 6.02.

4. The Claimant was determined by the SF-DCT to have an allowed Claim. On the September 24, 2014, the SF-DCT sent a claim payment check in

the amount of \$10,000 to Mr. Ruth's law office for distribution to the Claimant. *See* Exh. B.¹

5. The Claim award notification letter mailed directly to the Claimant by the SF-DCT regarding the claim payment was returned undeliverable, with no forwarding addresses. Valid address information is necessary for the SF-DCT to notify Claimants of their claim payments and confirm receipt of those payments. To perform those functions, the SF-DCT sent written requests to Mr. Ruth for updated addresses for the Claimant, or if the Claimant is deceased, the address of the person with authority to act on behalf of the Claim. Despite these requests, Mr. Ruth failed to provide valid address information for the Claimant.

6. The SF-DCT confirmed that the \$10,000 claim payment check was cashed; therefore, it is reasonable to assume that Mr. Ruth has valid address information for the Claimant and proof of distribution of the claim payment. Nonetheless, Mr. Ruth has failed to provide either in response to written requests by the SF-DCT and counsel for the Finance Committee. *See* Exh. C. In the absence of confirmation that the claim payment was distributed to the Claimant, the SF-DCT sent Mr. Ruth written requests for the return of the funds. Mr. Ruth has also failed to return of the funds. *Id.*

¹ The Claimant's name has been redacted from all exhibits.

7. Because of Mr. Ruth's has failed to provide a valid address for the Claimant, failed to provide proof of distribution to the Claimant, and failed to return the funds, the SF-DCT cannot verify that the \$10,000 claim payment sent to Mr. Ruth has been received by the Claimant.

8. Mr. Ruth has provided a number of explanations regarding the funds in response to the SF-DCT's requests for information. Those explanations include: 1) the check may have been lost because his law office had a practice of not opening correspondence from the SF-DCT; 2) the Claimant is deceased and his law office likely provided the funds to a relative; and 3) the endorsement on the check is not Ruth's signature so the check must have been stolen by his former legal assistant. *See* Exh. D. These differing explanations do not establish what has happened to the \$10,000 claims payment. Further, Mr. Ruth is not relieved of his obligations to distribute funds to the Claimant or return undistributed funds to the SF-DCT.

9. The conduct of Mr. Ruth has diverted SF-DCT's employees from performing their normal duties and necessitated the utilization of counsel, which has caused the SF-DCT to incur unnecessary expense.

10. This Court supervises the distribution of funds from the SF-DCT to Claimants. There can be no dispute that the claim payment funds sent to Mr. Ruth's law office for distribution are in the custody of the Court until those funds

are actually received by the Claimant. *See* Exh. A, § 10.09. Accordingly, the Court is entitled to know with certainty whether the money sent to Mr. Ruth was received by the Claimant. Moreover, if Mr. Ruth was unable to distribute the claim payment to the Claimant, for whatever reason, the Court should require Mr. Ruth to return those funds.

11. While there is not order or injunction requiring Mr. Ruth's compliance with the SF-DCT's requests, his conduct clearly contradicts the SFA and this Court's custody over the funds in question. Therefore, the imposition of civil contempt sanctions is warranted. District courts have inherent power to enforce compliance with orders through civil contempt. *Electrical Workers Pension Trust Fund of Local Union #58, IBEW v. Gary's Elec. Serv. Co.*, 340 F.3d 373, 378 (6th Cir.2003).

12. The Finance Committee asks the Court to enter an order requiring William Ruth, Esq. to appear before this Court on January 31, 2018 at 2:00 p.m., and show cause why he should not be sanctioned, held in contempt, and otherwise required to respond regarding his failure to account for, or return \$10,000 in claims funds. At the hearing, following submission of this and other evidence, the Finance committee will ask that the Court find Mr. Ruth in contempt and enter such sanctions and penalties as the Court deems appropriate.

Dated: January 10, 2018.

Respectfully submitted,

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/s/ Karima G. Maloney

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COUNSEL FOR FINANCE COMMITTEE

CERTIFICATE OF SERVICE

I hereby certify that on January 10, 2018, the foregoing Motion for Entry of An Order to Show Cause has been electronically filed with the Clerk of Court using the ECF system which will send notice and copies of the document to all registered counsel in this case.

By: /s/ Karima G. Maloney

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