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
MONCIE RASMUS, JR. ESQ.

The Finance Committee files this Motion to require Moncie Rasmus, Jr. Esq.

Esq. to appear before this Court and show cause why he should not be sanctioned,

held in contempt, and otherwise required to respond regarding the following

activities: 1) cashing the claim payment check intended for a Claimant he

represents; 2) failing to provide the SF-DCT with valid address information for the

Claimant, which is necessary to confirm the Claimant's receipt of her claim

payment; 3) failing to provide the SF-DCT with proof of distribution of the claim

payment to the Claimant; and 4) failing to return to SF-DCT any claim payment

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 at § 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 id.* at § 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.   Moncie Rasmus, Jr. is the attorney-of-record representing the Claimant[1] listed in the chart below, who submitted a claim to the SF-DCT.   In that

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[1] The Claimant's name is excluded from this filing to maintain her privacy. The Claimant is identified by her "SID" number.

capacity, Mr. Rasmus is aware that his client's election to settle her claim subjects him to the terms of the SFA. *See id.* at § 6.02.

4.   The Claimant was determined by the SF-DCT to have an allowed Claim. On the date indicated in the chart below, the SF-DCT sent a Disease Partial Premium Payment check to Mr. Rasmus for distribution to the Claimant.

	Claimant SID	Payment Type	Payment Amount	Payment Date
1	0324508	Disease Partial Premium Payment	$1,000	10/14/2014

5.   The SF-DCT has confirmed that the check listed in the chart above was cashed.

6.   The Claim award notification letters mailed by the SF-DCT directly to the listed Claimant was returned as "undeliverable," with no forwarding address. 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. Rasmus for an updated address for the Claimant, or if the Claimant is deceased, the address of the person with authority to act on behalf of the Claim. *See e.g.* Exh. B. Mr. Rasmus has failed to respond to these numerous requests. As a result, the $1,000 payment, which was cashed by Mr. Rasmus's law office, has not been accounted for as requested by the SF-DCT.

7.   Because the check sent to Mr. Rasmus was cashed, it is reasonable to assume that Mr. Rasmus has valid address information for the Claimant to facilitate his distribution of funds to her.   It is also reasonable to assume that Mr. Rasmus has proof of distribution of the claim payment to the Claimant. Nevertheless, Mr. Rasmus has failed to provide this information in response to multiple written requests by the SF-DCT and counsel for the Finance Committee. *See e.g.* Exhs. B and C.

8.   In the event that Mr. Rasmus was unable to distribute the claim payment to the Claimant, the SF-DCT and the counsel for the Finance Committee requested in its correspondence that he return the undistributed claims funds to the SF-DCT. *See id.*   Mr. Rasmus has not returned any funds to the SF-DCT.

9.   Because Mr. Rasmus 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 $1,000 sent to his law firm (and subsequently cashed) has been received by the Claimant.

10.   Mr. Rasmus's conduct with respect to the funds entrusted to him for distribution to the Claimant 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.

11.   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. Rasmus for distribution to the Claimant are in the Court's custody and under the Court's supervision until those funds are received by the Claimant. *See* Exh. A at § 10.09.   Accordingly, the Court is entitled to know with certainty whether the monies sent to Mr. Rasmus were received by the Claimant.   Moreover, if Mr. Rasmus was unable to distribute the claim payment to the Claimant, the Court should require him to return those funds to the SF-DCT.

12.   While there is no order or injunction requiring Mr. Rasmus's compliance with the SF-DCT's requests, Mr. Rasmus subjected himself to the requirements of the SF-DCT and SFA when he filed claims on behalf of the Claimant and 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).

13.   The Finance Committee respectfully requests that the Court enter an order requiring Mr. Rasmus to appear before this Court on May 9, 2019 at 9:30 a.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 $1,000

in claims funds. At the hearing, following submission of this and other evidence,

the Finance committee will ask that the Court enter such sanctions and penalties

against Mr. Rasmus as the Court deems appropriate.

Dated: April 10, 2019.

Respectfully submitted,

SMYSER KAPLAN & VESELKA LLP

/s/ Karima G. Maloney

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CERTIFICATE OF SERVICE

I hereby certify that on April 10, 2019, 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. A copy of this motion was also sent on April 11, 2019 via certified mail to Moncie Rasmus, Jr. in Houston, Texas.

By: */s/ Karima G. Maloney*
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