

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

**In re:**

**SETTLEMENT FACILITY DOW  
CORNING TRUST**



**Case No. 00-CV-00005  
(Settlement Facility Matters)**

**Hon. Denise Page Hood**

**FINANCE COMMITTEE’S REPORT REGARDING THE  
AUDIT SURVEY REQUIRED BY CLOSING ORDER 4 AND  
MOTION FOR DISMISSAL OF THE ORDER TO SHOW CAUSE**

The Finance Committee respectfully submits this Report regarding responses to the Audit Survey received since the Court entered its Order to Show Cause on September 29, 2023 [ECF No. 1737] and Motion for Dismissal of the Order to Show Cause. In making its Report and Motion for Dismissal, the Finance Committee would respectfully show the Court as follows:

1. On March 21, 2023, the Finance Committee filed its Motion for Order to Show Cause with Respect to Law Firms and Counsel who have Failed to Respond to the Audit Survey Required by Closing Order 4 [ECF No. 1697] (“Motion for Order to Show Cause”). The Motion for Order to Show Cause sought an order requiring 814 law firms and attorneys who had failed to respond to the court-mandated Audit Survey form to appear before this Court and show cause why they should not be held in contempt for their failure to provide a response to the Audit Survey form as ordered by this Court on April 1, 2022 in *Closing Order*

*4 Requiring Completion Of Court-directed Audit Survey And Return Of Funds Pursuant To Closing Order 2*, ECF No. 1640, PageID.28794 (“Closing Order 4”).

2. On September 29, 2023, Court entered the Order to Show Cause [ECF No. 1737] (“Order to Show Cause”) commanding 814 attorneys and law firms listed in Sealed Exhibit 1A to the Motion to Show Cause to appear in person on November 28 and 29, 2023 for a hearing. Recognizing that the primary goal of the show cause proceedings was to obtain compliance with the Audit Survey Form requirement, the Court’s Order permitted attorneys or law firms to submit a completed Audit Survey Form to the SF-DCT by Monday, November 13, 2023 in lieu of appearing in person at the show cause hearing. Further, the Order required attorneys or law firms choosing to appear in person instead of submitting a completed Audit Survey form to file a written response with the Court by November 13, 2023. The Order also directed the Finance Committee to mail a copy of the Order, a copy of the Motion and the Audit Survey form to each of the 814 attorney/law firms and to request dismissal of orders to show cause pertaining to attorneys or law firms who responded to the Audit Survey by November 13, 2023.

3. Since the Order to Show Cause issued, the SF-DCT has received 189 Audit Survey Responses.<sup>1</sup> The SF-DCT also received 58 returned mailings marked “undeliverable” containing the Court’s Order, a copy of the Motion, and Audit Survey Form which were addressed to attorneys/firms on the list of 814. The attorney/firm addresses associated with the 58 pieces of undeliverable mail are considered “bad addresses” by the SF-DCT. Historically, the SF-DCT has removed attorneys/firms with bad addresses from its list of those who have failed to respond to the Audit Survey. Accordingly, the 247 attorneys/firms listed on Sealed Exhibit 1 to this motion at Rows 1 through 189 (responses received) and Rows 224 through 282 (bad addresses) should be removed from the show cause proceeding based on those attorneys/firms provision of an Audit Survey or bad address. The Finance Committee respectfully requests dismissal with prejudice of the orders to show cause pertaining to this group.

4. The SF-DCT has also learned of 33 attorneys/firms which are either deceased, disbarred, suspended, or no longer in existence. Based on this information, the Finance Committee believes these attorneys/firms, listed at Rows 190 through 223 on Sealed Exhibit 1 should be removed from the show cause

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<sup>1</sup> One firm on the list of 814, Rogers Towers, P.A., submitted a response to the Audit Survey prior to entry of the show cause order. This firm was included with the group of 814 because the SF-DCT deemed its response to be incomplete, not because it had not complied with the Audit Survey form altogether. This firm provided an amended and complete response before November 13, 2023.

proceedings. The Finance Committee respectfully requests dismissal with prejudice of the orders to show cause pertaining to this group.

5. The Finance Committee has confirmed that no attorney/firm has filed or mailed to the Court a response to the Order to Show Cause as directed by the Court. The Finance Committee knows of attorney/firm who will be in attendance for the show cause hearings.

6. The initial mailing of the Audit Survey form went to 4,230 attorneys/firms. Through the two subsequent Audit Survey mailings and the additional mailing of the Audit Survey to the 814 attorneys/firms in conjunction with the Order to Show Cause, the SF-DCT has received either a response or undeliverable returned mail from 3,668 attorneys/firms. This is 86% of the 4,230 attorneys/firms from whom a completed Audit Survey was required. The Finance Committee believes this represents substantial compliance with the Audit Survey Form requirement. For that reason, and because it does not deem it fruitful to conduct show cause proceedings at this time against attorneys/firms in absentia, the Finance Committee requests dismissal without prejudice of the orders to show cause pertaining to the remaining attorneys/firms listed at Rows 283 through 814 on Sealed Exhibit 1. The Finance Committee reserves its right to re-urge show cause proceedings against any and all firms listed in this group should the Finance Committee determine it appropriate to do so; and should the Finance Committee

have sufficient evidence of non-compliance with Closing Order 4's Audit Survey requirement.

### CONCLUSION

For the foregoing reasons, the Finance Committee respectfully requests: 1) the Court dismiss with prejudice the Order to Show Cause as it pertains to the attorneys/firms listed in rows 1 through 282 of Sealed Exhibit 1; 2) the Court dismiss without prejudice the Order to Show Cause as it pertains to the attorneys/firms listed in rows 283 through 814 of Sealed Exhibit 1; and 3) that the Court cancel the show cause hearings scheduled for November 28 and 29, 2023.

Dated: November 24, 2023

Respectfully submitted,

*/s/ Karima Maloney*

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 24, 2023, I electronically filed the foregoing document with the Clerk of the Court using the ECF System which will send notification of such filing to all registered counsel in this case.

**CERTIFICATE OF CONFERENCE**

I hereby certify that on November 22 and 24, 2023, I conferred with counsel for the CAC and counsel for Dow Silicones Corporation and the Debtor's Representatives. The CAC is unopposed to the Finance Committee's Motion for Dismissal. Dow Silicones Corporation and the Debtor's Representatives do not believe they were given sufficient time to determine their position on the Finance Committee's Motion for Dismissal.

Dated: November 24, 2023

*/s/ Karima Maloney*

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