

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

**In re:** § **Case No. 00-CV-00005**  
§ **(Settlement Facility Matters)**  
§  
**SETTLEMENT FACILITY DOW** §  
**CORNING TRUST** § **Hon. Denise Page Hood**

**FINANCE COMMITTEE’S 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**

The Finance Committee submits this Motion for Order to Show Cause to require the law firms and attorneys who have failed to respond to this Court’s mandated Audit Survey form as further explained in this Motion 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”).

In support of this Motion, the Finance Committee states:

1. The Debtor, Dow Corning Corporation, filed its petition for reorganization under Chapter 11 on May 15, 1995. In 1999, the bankruptcy court entered an order confirming the Amended Joint Plan of Reorganization (“Plan”). The Plan became Effective on June 1, 2004.

2. The Plan established a settlement program which provides for the payment of claims pursuant to specific criteria and rules. The Settlement Facility administers the settlement program and is responsible for collecting, maintaining, and validating data and information submitted in connection with claims seeking compensation. The Settlement Facility is also responsible for distributing payments to eligible claimants.

3. The Court supervises the Settlement Facility and the resolution of Claims under the Settlement Facility and Fund Distribution Agreement (“SFA”) (publicly available at <https://www.sfdct.com/plandocuments>). The Court is the sole entity that can authorize the distribution of funds. *See* SFA §4.01.

4. The settling claims are paid from the Settlement Fund which is a limited fund. The funds are in the custody of the Court until they are *paid to* and *actually received by* a Claimant. *See* SFA §10.09 (“All funds in the Settlement Facility are deemed *in custodia legis* until such time as the funds have actually been paid to and received by a Claimant.”).

5. When claimants are represented by counsel, the Settlement Facility distributes the payments directly to the attorney of record and the attorney is responsible for distributing the funds to the individual claimant.

6. The Court has entered several ‘Closing Orders’ for the specific purpose of facilitating the orderly closure of the Settlement Facility operations and for

assuring that claim payments are distributed to eligible claimants. Closing Order 2 specifically notes the fact that in some cases, where attorneys have not been able to locate a client, they have deposited the settlement check into their law firm account and held the funds. Closing Order 2, ECF No. 1482, at PageID.24087. Closing Order 2 orders such attorneys to return all funds that were paid by the Settlement Facility for a claimant who has not been located. *Id.* In Closing Order 4, this Court ordered the Settlement Facility to undertake a survey process to assure that attorneys follow Closing Order 2.

7. The Court entered Closing Order 4 on April 1, 2022. Closing Order 4 ordered attorneys to respond to a court-mandated one-page Audit Survey form that was designed to determine whether payments issued by the Settlement Facility were disbursed to the eligible claimants. Closing Order 4, ECF No. 1640, at PageID.28795. The attorneys are required to state whether they are still holding any funds that have not been paid to the eligible claimants. Closing Order 4 required attorneys to return funds that have not been disbursed to eligible claimants. *Id.* Closing Order 4 provided deadlines for returning the survey and further provided that the failure to return the survey may result in sanctions. *Id.*, at PageID.28795-28796.

8. As stated in Closing Order 4, the purpose of the Audit Survey form is to confirm that the Settlement Fund assets are distributed for eligible claims and

expenses as provided in the Plan.

9. In accordance with Closing Order 4, the Settlement Facility distributed, by first class mail on April 28, 2022, the Court-mandated Audit Survey form to all attorneys or law firms that had cashed at least one claimant payment. The mailing included Closing Order 4 and the Court-mandated Audit Survey form. The instructions required the survey to be returned to the Settlement Facility by May 28, 2022. *See* Declaration Kimberly Smith Mair attached hereto as Exhibit 1. The Settlement Facility mailed the survey to 4,230 lawyers and law firms.

10. Although not required by Closing Order 4, on June 16, 2022, the Settlement Facility took the additional step of sending a second notice to the attorneys or law firms that failed to respond to the survey distributed on April 28, 2022. The second notice advised that under Closing Order 4, any attorney or firm that failed to respond to the survey could be subject to sanctions. The deadline for responding was July 15, 2022. Declaration of Kimberly Smith-Mair at ¶ 7.

11. The Settlement Facility has identified 814 attorneys/firms that did not respond to either the first or second notice. Declaration of Kimberly Smith-Mair at ¶ 8. Appended as Exhibit 1A to the Declaration of Kimberly Smith-Mair is a list of the attorneys/firms that have not responded to the notice as of the date of this Motion. As a result of the failure to respond, the Settlement Facility cannot confirm that the funds paid to those firms on behalf of their clients have been properly disbursed.

Accordingly, the Finance Committee requests that this Court enter an order requiring the law firms and attorneys listed in Exhibit 1A to the Declaration of Kimberly Smith-Mair appear before this Court on May 17 and 18, 2023 to show cause why they should not be held in contempt for failure to comply with the Court's order. The Finance Committee further requests that this Court direct the Settlement Facility to send such Order to Show Cause to the law firms and attorneys listed in Exhibit 1A. Should the Settlement Facility receive a completed Audit Survey form by mail at PO Box 52429, Houston, Texas, 77027 or email at Info@sfdct.com by **Friday, May 12, 2023** from a law firm or attorney listed in Exhibit 1A, the Finance Committee shall request the Court to dismiss the order to show cause as it applies to that law firm or attorney. An Audit Survey form is considered completed when it includes responses to all survey questions or a written explanation of any inability to provide survey question responses **submitted on the Audit Survey form** and signed under penalty of perjury.

Dated: March 21, 2023

Respectfully submitted,

/s/ Karima Maloney

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 21, 2023, I electronically filed the foregoing document with the Clerk of the Court using the ECF System. A copy of the foregoing pleading will also be mailed to the law firms and attorneys on Exhibit 1A to the Declaration of Kimberly Smith-Mair via first class mail at the address on file with the Settlement Facility.

Dated: March 21, 2023

Respectfully submitted,

/s/ Karima Maloney

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