

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

IN RE: SETTLEMENT FACILITY -
DOW CORNING TRUST,

SETTLEMENT FACILITY MATTERS.

Case No. 00-00005

Hon. Denise Page Hood

ORDER GRANTING MOTION FOR RECONSIDERATION (No. 1703)

On March 29, 2023, the Court entered an Order to Show Cause (ECF No. 1699) granting the Motion for an Order to Show Cause filed by the Finance Committee of the Settlement Facility Dow Corning Trust (ECF No. 1697). On March 31, 2023, the Claimants Advisory Committee filed a Motion for Reconsideration of the Order to Show Cause. (ECF No. 1703)

The Local Rules of the Eastern District of Michigan provide that any motion for reconsideration of non-final orders must be filed within 14 days after entry of the order. E.D. Mich. LR 7.1(h)(2). No response to the motion and no oral argument are permitted unless the Court Orders otherwise. E.D. Mich. LR 7.1(h)(3). Motions for reconsideration may be brought upon the following grounds:

(A) The court made a mistake, correcting the mistake changes the outcome of the prior decision, and the mistake was based on the record and law before the court at the time of its prior decision;

(B) An intervening change in controlling law warrants a different outcome; or

(C) New facts warrant a different outcome and the new facts could not have been discovered with reasonable diligence before the prior decision.

E.D. Mich. LR 7.1(h)(2). A motion for reconsideration is not a vehicle to re-hash old arguments, or to proffer new arguments or evidence that the movant could have brought up earlier. *Sault Ste. Marie Tribe v. Engler*, 146 F.3d 367, 374 (6th Cir. 1998)(motions under Fed.R.Civ.P. 59(e) “are aimed at *re* consideration, not initial consideration”)(citing *FDIC v. World Universal Inc.*, 978 F.2d 10, 16 (1st Cir.1992)).

The CAC asserts that it was not a signatory to nor did it provide its concurrence in the Motion for Order to Show Cause and that the Court erred in ruling on the motion without giving the CAC a chance to file a response within the 14-day period required for responses under the Local Rules. The CAC asserts that it has significant concerns about the motion based on its decades of experience in the Dow Corning litigation, bankruptcy, and settlement, which it shared with the Finance Committee and Debtors’ Representatives prior to the filing of the Finance Committee’s motion. (ECF No. PageId.33119) The CAC claims that the arguments raised in its response may alter the issuance of the Order to Show Cause, warranting reconsideration of such.

The Court made a mistake in issuing the Order to Show Cause prior to the expiration of the 14-day time when a party may respond under the Local Rules. E.D. Mich. LR 7.1(e)(1)(A). The Court was under the impression that the parties agreed to the Order to Show Cause, based upon the various discussions on how to enforce Closing Order 4, which was filed on April 1, 2022. (ECF No. 1640) Although the CAC asserts it shared with the Finance Committee and the Debtors' Representatives its concerns as to the issuance of the Order to Show Cause, none of the parties—the Finance Committee, the Debtors' Representatives nor the CAC—shared such with the Court during those discussions held over several months. During these discussions, including discussions on the time line, how much time the Settlement Facility required to send out the packet to the attorneys, and dates for the hearings, the CAC did not indicate it opposed the proposed Order to Show Cause. The Court mistakenly believed that the CAC, having knowledge of the proposed Order to Show Cause, apparently agreed to such.

The Motion for an Order to Show Cause filed by the Finance Committee also did not indicate that any of the parties opposed the motion or whether the parties conferred as required by E.D. Mich. LR 7.1(a)(1) which states as follows:

[T]he movant must ascertain before filing whether the contemplated motion ... will be opposed. To accomplish this, the movant must confer with the other parties and other persons entitled to be heard on the motion in good faith and in a manner that reasonably explains the basis

for the motion and allows for an interactive process aimed at reaching agreement on the matter or those aspects of the matter that can be resolved without court intervention, given the nature of the contemplated motion. The conference must be held sufficiently in advance of filing the motion to allow a good faith interactive exchange aimed at resolving the matter. If the movant obtains concurrence, the parties or other persons involved may make the subject matter of the contemplated motion or request a matter of record by stipulated order.

If concurrence is not obtained, LR 7.1(a)(2) provides that the motion *must state*:

(A) there was a conference between attorneys or unrepresented parties and other persons entitled to be heard on the motion in which the movant explained the nature of the motion or request and its legal basis and requested but did not obtain concurrence in the relief sought;

(B) despite reasonable and timely efforts specified in the motion or request, the movant was unable to conduct a conference; or

(C) concurrence in the motion has not been sought because of the emergent nature of the relief requested in the motion; or

(D) concurrence in the motion has not been sought because the movant or nonmovant is an incarcerated prisoner proceeding pro se.

E.D. Mich. LR 7.1(a)(2).

The Court grants the CAC's Motion for Reconsideration and will reconsider the Finance Committee's Motion for an Order to Show Cause, along with the CAC's Response as set forth in its submission. The Finance Committee may file a reply to the CAC's Response.

Accordingly,

IT IS ORDERED that the Claimants' Advisory Committee's Motion for Reconsideration (ECF No. 1703) is GRANTED.

IT IS FURTHER ORDERED that the Court will reconsider the Finance Committee's Motion for an Order to Show Cause, along with the Claimants' Advisory Committee's Response set forth in its submission. The Finance Committee may file a reply to the response within five (5) days from the entry of this Order.

IT IS FURTHER ORDERED that the Order to Show Cause is STAYED until the Court further reviews the Motion, the Response and any reply filed. The matter will be determined without a hearing. E.D. Mich. LR 7.1(f)(2).

s/ Denise Page Hood
DENISE PAGE HOOD
United States District Judge

DATED: April 20, 2023