

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

In re:

**SETTLEMENT FACILITY DOW
CORNING TRUST**

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

Hon. Denise Page Hood

**DECLARATION OF KIMBERLY SMITH-MAIR IN SUPPORT OF
REPLY IN SUPPORT OF 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**

I, Kimberly Smith-Mair, declare as follows based upon my recollection and review of certain data and documents:

1. I am the Claims Administrator for the Settlement Facility-Dow Corning Trust (“Settlement Facility” or “SF-DCT”).
2. As Claims Administrator, I have knowledge of past and present procedures implemented to process the Settling Breast Implant Claims in accordance with the terms of the Settlement Facility and Fund Distribution Agreement (“SFA”) and the Claims Resolution Procedures (“Annex A” to the SFA).
3. As Claims Administrator, I have knowledge of all Orders issued by the Court that pertain to the administration and payment of claims submitted to the SF-DCT including Closing Order 4 Requiring Completion Of Court-directed Audit Survey And Return Of Funds Pursuant To Closing Order 2, ECF No. 1640.
4. As Claims Administrator, and as a member of the Finance Committee, I have knowledge of all notices and information posted by the SF-DCT and of notices, letters, and information sent to and received from attorneys of record.

**Reply ISO Mt Show
Cause**

Exhibit 2

Case No. 00-CV-00005

exhibitsticker.com

5. I have participated in meetings of the Closing Committee—defined as the CAC, the Debtor’s Representatives, and the Finance Committee (along with the Financial Advisor and Consultant) since 2020. These meetings have been held at different frequencies, but typical occur weekly.
6. During 2019, the Closing Committee added to its meeting agenda the development of an Audit Survey for attorneys of record (“AORs”) who had received and cashed at least one settlement payment in order to identify settlement payments that had not been delivered to claimants, and to encourage the distribution of those payments to claimants or, if distribution could not be accomplished, to direct AORs to return those funds to the SF-DCT.
7. On April 29, 2021, at the CAC’s request, the development of an email platform to send the Audit Survey to the appropriate AORs was added to the Closing Committee meeting agenda. This Audit Survey topic continued to be included on Closing Committee meeting agendas every week thereafter through July 2022.
8. On May 27, 2021, the first draft of the Audit Survey form was circulated. At the same time, as requested by the CAC, the Settlement Facility began working with an outside vendor to research and find email addresses for the AORs intended to receive the Audit Survey form. The outside vendor was not successful in finding reliable email addresses for those AORs who did not already have email addresses on file with the SF-DCT.
9. Next, Dow Silicones (“DS”) and the Debtor’s Representative (“DR”) offered to engage a team of paralegals to research email addresses of AORs who did not have an email address on file with the SF-DCT. The Settlement Facility accepted the offer. The DS team researched email addresses for 2,424 AORs. While the email address research was conducted, the SF-DCT continued to work with an outside vendor to build a platform to email the Audit Survey form.
10. Using the results of the DS team’s research and the existing email data for AORs on file, the SF-DCT emailed the Audit Survey form on September 7, 2021 via Survey Monkey to 1,660 AORs who were issued and had cashed at least one settlement payment check on behalf of a claimant. The recipients were directed to respond to the survey in 30 days.

11. Sending the Audit Survey through the email was the specific request of the CAC, which insisted email was the best way to reach AORs and the method most likely to obtain a response.
12. The SF-DCT received the following results from emailing the Audit Survey:
 - 219 completed Audit Survey forms (13% response rate)
 - 32 AORs opted-out of the survey (meaning they opted-out of receiving emails from Survey Monkey)
 - 259 email bounce backs
 - 1,150 no response
13. Due to the poor response rate and the fact that SF-DCT did not have email addresses for all AORs who cashed settlement payments (even after the research of an outside vendor and the paralegals managed by Dow Silicones), the Closing Committee continued to discuss and develop procedures for mailing a hard copy of the Audit Survey form. The planned recipients of the mailing included AORs who either were not included in the email survey (because the Settlement Facility did not have an email address) or who were included in the email survey but did not respond. The mailing would be sent to AORs at their current address on file with SF-DCT. This mailing process was also discussed at two Status Conferences with the Court held on December 9, 2021 and March 17, 2022.
14. On April 1, 2022, Closing Order 4 was entered requiring AORs to respond to a court-mandated one-page Audit Survey designed to determine whether payments issued by the Settlement Facility were disbursed to the eligible claimants.
15. In accordance with Closing Order 4, I supervised the preparation and mailing of the Audit Survey packet. The Settlement Facility relies on the U.S. Mail to conduct its business, including the important work of distributing millions of dollars in settlement payments.
16. On April 28, 2022, using the addresses provided by AORs and maintained on file, the SF-DCT mailed via U.S. Mail, an envelope containing Closing Order 4, the court-mandated Audit Survey form, and a cover letter to each of 4,230 AORs who had cashed at least one settlement payment from SF-

DCT on behalf of a claimant, and who had not previously responded to the email Audit Survey. The envelope was specially marked to read “IMPORTANT COURT ORDER ENCLOSED” in red, bolded lettering. The instructions provided in the mailing specified, in accordance with Closing Order 4, that the survey must be returned to the Settlement Facility by May 28, 2022. Additionally, Closing Order 4, which was enclosed, provided: “Failure to return this audit survey may result in sanctions. If you have questions about the audit survey you may direct them to info@sfdct.com and include “Audit Survey Question” in the subject line. You may also call the SF-DCT direct at 866-874-6099.”

17. The SF-DCT created status codes to track responses to the Audit Form mailing and returned mail in its SAM database. The SF-DCT also used a spreadsheet to track responses. During the thirty days preceding the due date for Audit Surveys, the SF-DCT received several calls and emails from AORs requesting claimant names, check dates, and check amounts to assist them in responding to the survey. Every request received was fulfilled within a day or two. The SF-DCT also received emails, calls, and letters from retired attorneys and widows of attorneys stating that they were unable to complete the survey. Based on these communications explaining an inability to complete the Audit Survey, the SF-DCT coded the applicable AORs as having provided a response to the survey in SF-DCT’s tracking system. The SF-DCT also received emails, calls and letters from attorneys advising the relevant law firm was dissolved. Similarly, based on these communications, the applicable AORs were coded in the tracking system to reflect a response to the Audit Survey had been provided.
18. From the April 28, 2022 mailing to 4,230 AORs, the Settlement Facility received the following results:
 - 1,655 responses (39% response rate)
 - 833 pieces of returned mail

Returned mail that included a forwarding address prompted SF-DCT staff to update the AOR’s address in SF-DCT’s files and mail the Audit Survey packet to the updated address. Returned mail that did not include a forwarding address meant the addressee had a “bad” address on file with the SF-DCT.

19. On June 16, 2022, following lengthy discussions with the Closing Committee, a second mailing to AORs was performed. The second mailing included Closing Order 4, the Audit Survey, a notification letter advising that any firm that failed to return a completed Audit Survey form by July 15, 2022 could be subject to sanctions, and that any questions about the survey could be directed to the SF-DCT at a dedicated email address provided in the letter. The second mailing went to 1,899 AORs. This number included only those AORs who had not provided a response to the first mailing and did not have a “bad” address on file at SF-DCT. As part of an effort to exclude defunct law firms and deceased or retired attorneys from our outreach, AORs that generated return mail with no forwarding address (i.e. a “bad” address) during the first mailing were excluded from the second mailing. The Facility received the following results from the second mailing:
 - 905 responses (48% response rate)
 - 22 pieces of returned mail with no forwarding address.
20. The list of 814 AORs included as Sealed Exhibit 1A to the Finance Committee’s Motion for Order to Show Cause includes only those AORs who were either mailed or both emailed and mailed an Audit Survey, and who have not responded to the SF-DCT with a completed form or an explanation of an inability to complete the Audit Survey form. The list of 814 does not contain AORs with “bad” addresses.
21. I am familiar with the CAC’s newsletters which are emailed to an extensive list of attorneys who represent claimants and are posted on the CAC’s website. On at least September 13, 2021, April 5, 2022, June 15, 2022, July 6, 2022, and August 16, 2022 the CAC’s newsletters advised AORs about the Audit Survey Form requirement and warned that failure to comply with the requirement could result in the imposition of sanctions by the District Court.
22. The CAC, like the other members of the Closing Committee, was provided advance notice of the Finance Committee’s intention to file a Motion for Order to Show Cause addressing attorneys who had been mailed Closing Order 4 and the court-mandated Audit Survey form and failed to respond. As reflected in their newsletters dating back to September 13, 2021, the CAC was aware that sanctions may be sought

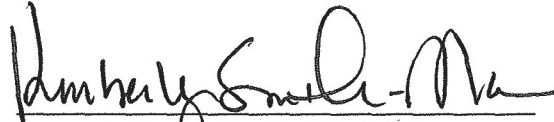
against AORs who failed to comply with the Audit Survey required by Closing Order 4.

23. The Finance Committee incorporated into its pleadings the CAC's request that the proposed order filed with the Finance Committee's Motion for Order to Show Cause include an additional opportunity for AORs to complete the Survey Audit form and avoid appearing for a show cause hearing. During a closing committee meeting, a member of the CAC indicated the CAC would raise concerns with the Motion for Order to Show Cause at the March 16, 2023 Status Conference with the Court. Accordingly, the Finance Committee emailed the CAC two days before the Status Conference to advise the Motion for Order to Show Cause would be filed on March 21, 2023—five days after the Status Conference. The CAC did not respond to this email. The CAC did not ask to add their issue regarding the motion to the agenda prepared for the Court for the Status Conference, and they never indicated they planned to file an objection to the Motion for Order to Show Cause. Had we known, the Finance Committee would have added the issue to the agenda. During the Status Conference, the CAC did not raise any concerns regarding the motion. After the Status Conference, the Finance Committee concluded the CAC was no longer pursuing their concerns and had no reason to believe CAC would file an opposition to the Motion for Order to Show Cause.
24. I have read the Motion to Reconsider and Vacate Order to Show Cause and Response of Claimants' Advisory Committee to 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 ("CAC Response"). The CAC's contention in its Response that the SF-DCT should invest in updating and verifying addresses by researching email addresses and phone numbers in order to conduct individualized outreach to confirm AOR addresses would place a tremendous burden on the SF-DCT and impose additional costs. At this juncture, the SF-DCT has a reduced staff which is fully occupied with various administrative tasks associated with the closure of the Settlement Facility. Likewise, the proposal in the CAC Response that the SF-DCT conduct individualized outreach to AORs to provide them with claimant name, SID number, payment date, payment amount, and type of claim payment to aid the completion of the Audit Survey would over burden SF-DCT's limited staff and delay the closing of the Settlement Facility. If any

AOR wants more detailed information to complete the Audit Survey, they can call the SF-DCT or send an email requesting information as indicated in Closing Order 4.

Pursuant to 28 U.S.C. Section 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 25th day of April 2023.



Kimberly Smith-Mair