EXHIBIT 7

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

/

OPINION AND ORDER ON MOTION FOR RECONSIDERATION ON THE ORDER TO SHOW CAUSE SUBMITTED BY THE FINANCE COMMITTEE

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 ("SF-DCT") (ECF No. 1697). On March 31, 2023, the Claimants Advisory Committee ("CAC") filed a Motion for Reconsideration of the Order to Show Cause, which the Court granted on April 20, 2023 and allowed further briefing. (ECF Nos. 1703, 1709)

On April 1, 2022, the Court entered Closing Order 4 Requiring Completion of Court-directed Audit Survey and Return of Funds Pursuant to Closing Order 2. (ECF No. 1640). 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. (ECF No. 1640, PageID.28795.) 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.

The instructions required the survey to be returned to the Settlement Facility by May 28, 2022. (Declaration Kimberly Smith Mair, Ex. 1) The survey was mailed to 4,230 lawyers and law firms. 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 to the second notice was July 15, 2022. (*Id.* at ¶ 7) The Settlement Facility has identified 814 attorneys/firms that did not respond to either the first or second notice. (*Id.* at ¶ 8; Ex. 1A) The Finance Committee requested an order to show cause why the identified attorneys/firms should not be held in contempt for failure to comply with the Court's Closing Order 4.

The CAC responds that it supports the goal of recovering any undelivered settlement payments held by lawyers, as intended by both the Settlement Plan and Closing Order 4, and understands that the requested order to show cause is intended to accomplish that without unduly burdening the Settlement Facility. The CAC argues that a mass survey and contempt proceeding on the scale proposed by the order to

show cause, reaching back over two decades of claim payments to require, in many cases, responses with respect to long-closed claim files, appears to be unprecedented. The CAC has concerns regarding the efficacy and fairness of this novel procedure, which it previously shared with the Finance Committee in response to a draft of the order to show cause motion. The CAC raises three reasons for its opposition of the order to show cause.

The CAC's first reason is that based on its experience over the past two decades in this settlement and three decades in the breast implant litigation, there are legitimate reasons that could explain why the Settlement Facility did not receive responses from a significant number of firms and lawyers included in its mailings. The CAC believes that before taking any further steps to enforce compliance with Closing Order 4, the Settlement Facility should update and verify the current addresses of non-responding law firms in a manner similar to what it has done with updating claimant addresses before claims were closed. (See Closing Order 2, ECF No. 1482). The CAC claims that just as the Settlement Facility has experienced a high volume of claimants who have moved and did not provide a forwarding address, many law firms have likewise closed, merged with other firms, changed names, been dissolved, or moved–some of them long ago. Forwarding addresses are valid with the U.S. Postal Service for only six months. If a law firm changed its address years ago, the audit survey would not

have been forwarded to the new address, and might or might not have been returned to the Settlement Facility as undeliverable or a bad address. The CAC further claims that law firms that had no further claim submissions pending with the Settlement Facility would have had no reason to update their address. The CAC asserts that it is not appropriate to assume, as the order to show cause motion does, that all of the firms listed in the motion received the mailing but declined to respond. The CAC is aware from its prior experience on this issue in this settlement and from numerous calls to the CAC and updates in attorney names for the CAC's newsletter over two decades that many attorneys who initially handled claims with the SF-DCT in the early 2000s have either retired, passed away, are now physically or mentally disabled, changed law firms, or their firm has merged or dissolved into separate law firms. In addition, some attorneys have been suspended or removed from practicing law and therefore are no longer at the address listed in the SF-DCT system. All of this is to be expected in a settlement that has spanned 30 years: The MDL-926 settlement started in 1993, the Dow Corning bankruptcy proceedings began in 1995, and the SF-DCT mailed claim forms to Settling Claimants in 2003. Any or all of these events could explain why a law firm or attorney may not have received the audit survey. The CAC believes that an investment in updating and verifying addresses prior to taking any further steps would have the most positive effect on the response rate from the remaining firms

instead of mailing an order to show cause to addresses or law firms that may well be defunct. The SF-DCT has an existing protocol for claimant address issues, i.e., researching a claimant's address using two or more sources. This same protocol can be applied to updating law firm addresses, and this can be accomplished quickly and efficiently without undue burden on the Settlement Facility. The CAC did just that in 2017-2018, when the SF-DCT's Quality Assurance Department requested its assistance in contacting attorneys who received the first round of Premium Payments, for which claimant address verification had not been required. The CAC reached out to law firms by sending an email to the last known attorney email address, and followed up at the last known attorney phone number. If the attorney was not immediately reached, the CAC entered the name in a search engine and reviewed online state bar attorney records. According to the CAC, this process was simple, efficient, and productive. When contacted by the CAC, the vast majority of law firms responded promptly with documentation about payment distributions. A similar process here could yield an updated contact list within 30 days for further outreach. The CAC – with limited resources – was able to obtain results for virtually all of the law firms contacted in 2017-2018. The CAC claims that the SF-DCT, with several staff members who have largely completed claim processing, has greater capacity than the CAC to contact law firms directly in the same manner that was requested of the

CAC. In addition, the CAC has offered to assist the SF-DCT in this process and believes that direct mailings to targeted groups of firms with updated addresses could be completed within 30 days.

Second, the CAC believes that, before escalating to an Order to Show Cause, the SF-DCT should build on the updated address research described above to conduct individualized outreach, providing non-responsive firms with specific information to assist them in responding, including claimant name, SID number, payment date, payment amount, and the type of claim payment that was approved. The CAC claims that providing the same information now to non-responding firms will substantially enhance their ability to respond with useful information, given the many years that have elapsed since many firms received payments. Without any of these specifics, and given the passage of time, the CAC believes it was likely difficult or even impossible for some law firms to respond meaningfully to what appears to be an unprecedented survey in a mass tort bankruptcy settlement that spanned decades. The CAC suggests that the task will be more manageable if the SF-DCT prioritizes the relatively smaller number of firms that received the largest amounts. The CAC's review of the current list of 800-plus non-responding firms (some of which are listed more than once at different addresses), 13 firms (those receiving at least $1 million) account for approximately $41 million of the $71 million in payments made to this list of firms,

and the top 79 firms (those receiving at least $100,000) account for nearly $59 million – 83% of the amount sent to the firms listed in Exhibit 1A. The CAC claims that in contrast, 294 firms were paid $5,000 or less, for a total of only approximately $648,000 – mostly for Expedited Release Payments, Foreign Gel Claimant Payments, or Disease Cash-Out Payments, for which no attorney fees were allowed, and most of which were paid in 2006. The CAC cites the example that more than 300 of the 800-plus law firms received a single payment over the 20-year life of the SF-DCT. 76 firms received a single payment of $600, which was the amount of the Foreign Gel Claimant Payment in Class 7 made in 2006, 17 years ago (from which no attorney fees were permitted), and 33 of these firms are located outside of the U.S. Likewise, 27 law firms received a single payment of $3,000, the amount of the Disease Cash Out Payment in Class 7 that was made in 2006-2007, and, of these, 11 are located outside of the U.S. The CAC questions the value of using SF-DCT resources – and seeking contempt sanctions – to pursue law firms that received a single nominal payment 16-17 years ago and never had another claim with the SF-DCT.

The CAC's third reason is that it is further concerned about the appropriateness of threatening to hold hundreds of law firms in contempt en masse without individualized showings that they in fact disregarded a court order. While the CAC agrees that any firm actually receiving the survey should have responded, it is likely

that many such firms no longer exist or moved long ago. The CAC believes the Order to Show Cause Motion creates the unfortunate impression of a widespread problem when in fact the bulk of the remaining listed firms may never have received the prior mailings.

The CAC claims that while Closing Order 4 is clear, the mere failure of a firm on the list to respond to a further mass mailing is not clear and convincing evidence that it received and ignored that order. The CAC believes that no attorney or firm should be held in contempt without an individualized showing that the Order to Show Cause was delivered to a current address of an active firm. The CAC notes that the proposed mailing list filed under seal includes several changes and additions from the prior list provided, giving rise to the possibility that firms or attorneys may be held in contempt based on failing to respond to the first mailing sent to them – and without any verification that the new address is current or accurate.

The Finance Committee replies that the 814 attorneys who received Closing Order 4 but failed to submit the Audit Survey, are not attorneys with addresses that generated undeliverable mail. (Smith-Mair Reply Decl. at ¶20) The Finance Committee claims that the show cause proceedings are now necessary, following the exhaustive Audit Survey process, to ensure the Settlement Fund's assets are properly accounted for by closing. The Finance Committee states that it is "paradoxical and

confusing" that the CAC, which "purports" to represent the interests of claimants, is advocating on behalf of lawyers who have potentially "flouted" Closing Order 4 rather than cooperating with recovery of claimant funds. The Finance Committee does not agree with the CAC that excluding attorneys based on when they received settlement checks and the total amount of the checks they received should be excluded asserting that it is inappropriate for the Finance Committee to cherry-pick who may be held accountable for non-compliance and who may not.

The Finance Committee argues that the CAC's proposal to invest additional resources in updating and verifying attorney addresses, emails, and phone numbers ignores the substantial time and resources the Settlement Facility and others have already invested researching attorney contact information and obtaining Audit Survey responses. The Settlement Facility hired outside vendors to research attorney email addresses and to build a platform to email the Audit Survey. (*Id.* at ¶¶8-9.) Dow Silicones provided and managed a group of paralegals to research email addresses for 2,424 attorneys. (*Id.* at ¶9). The Finance Committee asserts that with these efforts, it was able to email the Audit Survey to 1,660 attorneys. (*Id.* at ¶10.) In addition, the Settlement Facility mailed Closing Order 4 and the Audit Survey again to attorneys who either had not responded to the emailed survey, or for whom an email address could not be located. (*Id.* at ¶¶16-19.) The Finance Committee further asserts that

after each mailing, the list of non-responsive attorneys was narrowed by removing attorneys whose addresses generated returned mailed with no forwarding information, and by removing attorneys who provided an explanation of their inability to complete the Audit Survey. (*Id.* at ¶20.) The Finance Committee goes on to state that the CAC's "gripe" that there is more that should be done is unfounded in the face of these extensive efforts. The Finance Committee states that the additional procedures proposed by the CAC would unduly burden the SF-DCT, which is operating with a reduced staff fully occupied with administrative tasks associated with its closing. (*Id.* at ¶24.) The Finance Committee argues that the CAC's assertion that the SF-DCT should be required to conduct individualized outreach to attorneys to provide them with SID numbers, claimant names, and other details would overburden the SF-DCT and is wholly unnecessary because Closing Order 4 explicitly provides any attorney with questions about the Audit Survey may call or email the Settlement Facility. (ECF No. 1640, PageID.28796.)

As to the CAC's claim that scores of attorneys who either never received Closing Order 4, are deceased, no longer practicing, or have destroyed old files, will be unfairly held in contempt, the Finance Committee argues that the more likely outcome is that the vast majority of attorneys will complete the Audit Survey to

resolve the matter and avoid appearing at the hearing, as permitted by the proposed order. The Finance Committee claims that those who appear at the hearing, will not automatically be held in contempt as the CAC insinuates and that the CAC cannot presume attorneys will be held in contempt in absentia. Any contempt decisions are for the Court. The Finance Committee's argues that the CAC's "speculative fears" can be managed by the applicable proof and evidentiary requirements and do not present a valid basis to deny the Finance Committee's Motion.

The Finance Committee requests that the Court clarify the roles of the Finance Committee, the CAC, and Dow Silicones and the Debtor's Representatives as they relate to the closing process.

As noted by the Court in its Order granting the CAC's Motion for Reconsideration, 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. The Court is disappointed by the tone in the briefs on this issue and the lack of effective communication between the parties.

In light of the posture of this matter where claims have been reviewed and the SF-DCT is in the winding down phase and staff has been reduced accordingly, the CAC's proposal is no longer feasible. It may have been at an earlier stage of this process and it could have been resolved before the proposed Order to Show Cause was

submitted to the Court if the parties had meaningful exchanges on how to resolve this issue. In the Court's view, the Order to Show Cause is the more efficient way to handle this matter at this time, especially since the CAC had originally agreed to the entry of Closing Order 4.

Regarding the Financial Committee's request to clarify the roles of the Financial Committee, the CAC, and Dow Silicones and the Debtor's Representatives as they relate to the closing process, the Court notes that the Settlement Facility and Fund Distribution Agreement ("SFA") is between the reorganized Debtor and the ***Claimants' Advisory Committee***. As a signatory to the SFA, the CAC has the authority to ensure that the terms of the SFA are executed according to its understanding of the purpose and the terms in the SFA. Article 4.09 of the SFA governing the Finance Committee specifically directs the Finance Committee to consult with the Debtor's Representatives and the CAC:

> **(g) *Consultation with the Debtor's Representatives and Claimants' Advisory Committee.***
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> The Debtor's Representatives and Claimants' Advisory Committee ***shall*** attend and participate in the meetings of the Finance Committee. The Finance Committee ***shall*** consult with and seek the input and advice of the Debtor's Representatives and Claimants' Advisory Committee on ***all*** matters of mutual concern and ***shall*** notify the Debtor's Representatives and Claimants' Advisory Committee of any proposed decisions, recommendations or actions of the Finance Committee before the Finance Committee finalizes such proposed decisions, recommendations or actions.

SFA, Art. 4(g)(emphasis added). Both the Debtor's Representatives and the CAC are "authorized to advise and assist the Settlement Facility, Claims Administrator, Finance Committee, Litigation Facility, Financial Advisor, and Independent Assessor regarding all matters of mutual concern and as further specified herein or in the Litigation Facility Agreement or in any other Plan Documents." SFA, Art. 4.09(c)(iii). In addition, both the "Debtor's Representatives and the Claimants' Advisory Committee ***shall*** be provided with copies of all reports, projections, motions, pleadings, or other similar documents concerning the activities of the Settlement Facility." SFA, Art. 4.09(c)(iv)(emphasis added). Also, both the CAC and the DR, "may file a motion or take any other appropriate actions to enforce or be heard in respect of the obligations in the Plan and in any Plan Document." SFA, Art. 4.09(c)(v).

It is clear from the SFA that the CAC must be involved in and informed of all aspects of the activities of the Settlement Facility and the Finance Committee. The SFA defines the CAC's duties and authorities. It is not necessary for the Court to further clarify the CAC's role during the closing process. As a signatory to the SFA, the CAC has a significant role in ensuring the purpose of the SFA is accomplished through the closing of the Facility.

After reviewing the parties' arguments, although the CAC does not agree with the issuance of the Order to Show Cause to attorneys as to Closing Order 4, the Court will issue such in a separate order and move forward with the process proposed by the Finance Committee.

Accordingly,

IT IS ORDERED that although the Claimants' Advisory Committee's Motion for Reconsideration (ECF No. 1703) has been granted, the requested relief is DENIED.

IT IS FURTHER ORDERED that the Order to Show Cause Stay is LIFTED. The Order to Show Cause as to Closing Order 4 will be entered.

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

DATED: September 29, 2023