

# **EXHIBIT 1**

**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  
JOINT MOTION FOR ORDER TO SHOW CAUSE WITH RESPECT  
TO LAW FIRMS THAT 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 (“AORs”).

5. 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.
6. In accordance with Closing Order 4, I supervised the preparation and mailing of the Audit Survey packet. 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, and a notification letter to 4,230 AORs who had cashed at least one settlement payment from SF-DCT on behalf of a claimant, and who had not previously submitted an 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](mailto:info@sfdct.com) and include “Audit Survey Question” in the subject line. You may also call the SF-DCT direct at 866-874-6099.”
7. The SF-DCT created status codes to track responses to the Audit Survey mailing and returned mail in its SAM database. The SF-DCT also used a spreadsheet to track responses.
8. From the April 28, 2022 mailing, the Settlement Facility received over 1600 completed Audit Surveys and over 800 pieces of returned mail. When returned mail including a forwarding address for an AOR was received, SF-DCT staff updated the AOR’s address in SF-DCT’s files and mailed the Audit Survey packet to the updated address. The SF-DCT also received returned mail for AORs with no forwarding address. These addresses were considered “bad” addresses and coded as such.
9. On June 16, 2022, the SF-DCT performed a second mailing to AORs that included Closing Order 4, the Audit Survey, and a notification letter. The second mailing went to 1,899 AORs.
10. As part of an effort to exclude AORs who had already submitted an Audit Survey, as well as defunct law firms and deceased or retired lawyers from attempts to gain compliance with Closing Order 4, the SF-

DCT developed the practice of removing from the mailing list of non-complying AORs: 1) any law firms that are “dissolved” or no longer in existence; 2) any sole practitioner who is deceased, disbarred or otherwise unable to practice; 3) any lawyer/law firm with a “bad” address on file; and 4) any lawyer/law firm that provided to SF-DCT a completed Audit Survey. This practice has been used by the SF-DCT each time it has conducted Audit Survey mailings.

11. In response to the second mailing, the SF-DCT received over 900 completed Audit Surveys and approximately 20 pieces of returned mail with no forwarding address.
12. Following the second mailing, the SF-DCT compiled a list of 814 AORs who, despite having been mailed the Audit Survey packet twice, had not submitted a completed survey to the SF-DCT.
13. On March 28, 2023, the Court entered an Order to Show Cause directing the 814 AORs on the SF-DCT’s non-compliance list to appear before the Court and show cause why they should not be held in contempt for their failure to submit an Audit Survey as ordered in Closing Order 4. The Order also directed the Finance Committee to mail a copy of the Order to Show Cause, a copy of the Motion for Entry of the Order to Show Cause, and the Audit Survey to each of the 814 AORs. Further, the Order directed the Finance Committee to request dismissal of orders to show cause pertaining to any AORs who managed to submit an Audit Survey before the show cause hearing date.
14. Following the mailing directed by the Court, the SF-DCT received nearly 200 Audit Survey responses, determined that approximately 60 AORs had “bad” addresses, and learned that approximately 30 AORs were either deceased, disbarred, suspended, or no longer in existence.
15. On November 27, 2023, the Court granted a motion filed by the Finance Committee which requested dismissal with prejudice of the show cause order entered against the approximately 290 AORs referenced above, and dismissal without prejudice of the show cause order entered against the remaining approximately 530 AORs.
16. From the group of approximately 530 AORs that were dismissed without prejudice, the SF-DCT identified AORs who received \$50,000

or more in claims payments and who did not have a “bad” address on file with the SF-DCT. There were 69 AORS that met this criteria.

17. On December 18, 2023, the SF-DCT began researching each of the 69 AORs to confirm that each firm was still in business and to confirm a physical addresses for each firm. This research involved internet-based Google searches, reverse address look-ups, searches on State Bar websites, and searches within SF-DCT’s SAM database. From the online research, physical addresses for each firm were obtained. Where phone number listings were available, phone calls were placed to the firms to verify the current physical address and obtain the name of a person to whom a mailing should be addressed for immediate review. SF-DCT staff placing these calls also informed the AORs that a court-ordered Audit Survey had previously been sent and not returned, and that an additional copy of the Audit Survey would be sent via overnight delivery for review and completion. If SF-DCT was unable to make phone contact, the SF-DCT representative left a message requesting a return phone call. Or, if an email address was available, the SF-DCT sent an email providing the same information that was provided via phone.
18. Of the 69 AORs the SF-DCT researched, 49 AORs were removed from the SF-DCT’s non-compliance list because either the AOR completed an Audit Survey form after the SF-DCT made phone or email contact; the SF-DCT learned the AOR was deceased, dissolved, disbarred, or suspended; or the AOR was determined to have a “bad” addresses.
19. On January 15, 2024, the SF-DCT sent to each of the remaining 20 AORs an envelope containing a notification letter, Closing Order 4, and the court-ordered Audit Survey. The envelopes were sent via FedEx signature-required shipment.
20. As of the date of this declaration, 5 of the 20 AORs have failed to submit the court-ordered Audit Survey that was shipped to their physical address on January 15, 2024. As indicated in Exhibit 2, each of the 5 AORs signed for receipt of the Audit Survey package within days of the FedEx shipments going out. Specifically, Leesfield & Partners and Sidley Austin Brown & Wood signed for receipt of their respective FedEx package on January 17, 2024. Likewise, Morgan & Morgan and Young & Parker signed for receipt of their respective FedEx package on January 18, 2024. Finally, Atkins E L and Associates signed for receipt

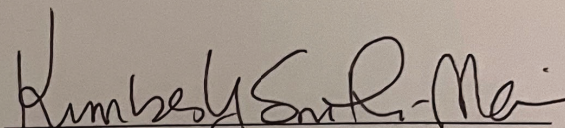


of its FedEx package on January 16, 2024.

21. The SF-DCT has received no explanation for the 5 AORs' failures to submit Audit Survey forms. Further, without the completed surveys, the SF-DCT has been unable to verify that claims payments provided to these AORs were distributed to the claimants represented by these firms.

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

Executed this 7<sup>th</sup> day of March 2024.

  
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Kimberly Smith-Mair