

**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**

**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**

The Finance Committee, the Claimant’s Advisory Committee, Dow Silicones Corporation, and the Debtor’s Representatives (collectively, the “Movants”) submit this Motion for Order to Show Cause to require law firms that have failed to respond to this Court’s mandated Audit Survey form 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 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 Movants state:

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 (“AOR”) and that lawyer/law firm 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 firms 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 law firms 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 AORs follow Closing Order 2.

7. The Court entered Closing Order 4 on April 1, 2022. Closing Order 4 ordered lawyers/law firms to respond to a court-mandated one-page Audit Survey 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 Audit Survey requires lawyers/law firms to state whether they are still holding any funds that have not been paid to the eligible claimants they have represented. Closing Order 4 also requires lawyers/law firms 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 to all lawyers/law firms that had cashed at least one claimant payment. The SF-DCT used the addresses provided by the AORs and maintained at the SF-DCT for the mailing. The mailing included Closing Order 4, the court-mandated Audit Survey, and a notification letter. The envelope containing the mailing was specially marked to read “IMPORTANT COURT ORDER ENCLOSED.” The instructions included required the survey to be returned to the Settlement Facility by May 28, 2022. The Audit Survey packet was sent to 4,230 AORs. *See* Declaration of Kimberly Smith-Mair at ¶ 6 attached hereto as Exhibit 1.

10. From the April 28, 2022 mailing, returned mailed 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 lawyer/law firm had a “bad” address on file with the SF-DCT. *Id.* at ¶ 8.

11. 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 later attempts to gain compliance with Closing Order 4, the SF-DCT developed a 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. *Id.* at ¶ 10.

12. Although not required by Closing Order 4, on June 16, 2022, the Settlement Facility took the additional step of sending a second Audit Survey packet to AORs that failed to respond to the survey distributed on April 28, 2022. *Id.* at ¶ 9. Following this second effort, approximately 814 lawyer/law firms did not submit a survey or generate returned mail with a bad address. *Id.* at ¶ 12.

13. On March 28, 2023, the Court entered an Order to Show Cause (ECF No. 1699) directed at the 814 lawyers/law firms that failed to respond to the Audit Survey. Following entry of that order, nearly 200 audit survey responses were received and numerous other AORs were determined to be deceased, defunct, disbarred, suspended, or to have a “bad” addresses. *Id.* at ¶ 13.

14. Upon a motion of the Finance Committee, the Court dismissed the show cause proceeding with prejudice with respect to approximately 290 AORs, and dismissed without prejudice the show cause proceedings with respect to approximately 530 AORs. *Id.* at ¶ 15. *See also* Order Dismissing Order to Show Cause and Cancelling Show Cause Hearings, ECF No. 1746, at PageID.33799.

15. The Movants now request show cause proceedings with respect to a sub-group of the 530 AORs who have failed to submit completed Audit Surveys as explained further below.

16. The SF-DCT has identified lawyers/law firms who received \$50,000 or more in claims payment checks and do not have a “bad address” on file. Sixty-nine law firms met this criteria. *See* Declaration of Kimberly Smith-Mair at ¶ 16.

17. On December 18, 2023, the SF-DCT began conducting extensive research into each of the 69 firms to confirm that they are still operating and to confirm each firm’s physical address. This research involved internet-based Google searches, reverse address look-ups, searches on State Bar websites, and searches within SF-DCT’s SAM database. *Id.* at ¶ 17.

18. The SF-DCT also placed calls or sent emails to the firms with online contact information to verify the current physical address, to obtain the name of a person to whom a mailing could be addressed for immediate review, and to advise of the necessity of a response to a forthcoming Audit Survey mailing. *Id.* at 17.

19. Of the 69 firms researched, several were removed from SF-DCT’s list of non-complying AORs, due to the provision of an Audit Survey, or because the SF-DCT learned that the AORs were deceased, disbarred, suspended, defunct, or had a “bad” address.

20. On January 15, 2024, the SF-DCT sent Audit Survey packets to 20

firms whose addresses had been confirmed through the SF-DCT's research and had still not submitted Audit Surveys. The packets, which included a notification letter, Closing Order 4, and an Audit Survey, were sent to the 20 firms via FedEx signature-required shipment. *Id.* at ¶ 19.

21. As of the date of this motion, there are 5 law firms, listed in Exhibit 2, that received \$50,000 or more in claims payments and failed to respond to the Audit Survey sent on January 15, 2024. *Id.* at 20. 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. *Id.* at ¶ 19. *See also* Exhibit 2.

22. As a result of these 5 law firms' failure to respond, the Settlement Facility cannot confirm that the funds paid to those firms on behalf of their clients have been properly distributed. *See* Declaration of Kimberly Smith-Mair at ¶ 21. Accordingly, the Movants request that this Court enter an order requiring the law firms listed in Exhibit 2 appear before this Court on March 27, 2024 to show cause why they should not be held in contempt for failure to comply with the Court's order. The Movants further request that this Court direct the Finance Committee to send such Order to Show Cause, this Motion, and an additional Audit Survey to the law

firms listed in Exhibit 2. 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, March 22, 2024 from a law firm on Exhibit 2, the Movants shall request the Court to dismiss the order to show cause as it applies to that law firm. 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 7, 2024

Respectfully submitted,

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**UNITED STATES DISTRICT COURT  
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**CERTIFICATE OF SERVICE**

I hereby certify that on March 7, 2024, 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 lawyers/law firms listed on Exhibit 2 via FedEx signature-required shipment using the address on file with the Settlement Facility.

Dated: March 7, 2024

Respectfully submitted,

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