

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

**IN RE:** § **CASE NO. 00-CV-00005-DT**  
§ **(Settlement Facility Matters)**  
**DOW CORNING** §  
**CORPORATION,** §  
§  
**REORGANIZED DEBTOR** § **Hon. Denise Page Hood**

**FINANCE COMMITTEE’S MOTION FOR ENTRY OF AN ORDER TO  
SHOW CAUSE WITH RESPECT TO HERALD J. A. ALEXANDER OF  
THE MATHIS LAW FIRM P.C.**

The Finance Committee files this Motion to require Herald J. A. Alexander of The Mathis Law Firm P.C. to appear before this Court and show cause why he should not be sanctioned, held in contempt, and otherwise required to respond regarding the conduct of The Mathis Law Firm P.C., which includes: 1) cashing the claim payment check intended for a Claimant represented by Mr. Alexander; 2) failing to provide the SF-DCT with valid address information for the Claimant, which is necessary to confirm Claimant’s receipt of the claim payment; 3) failing to provide the SF-DCT with proof of distribution of the claim payment to the Claimant; and 4) failing to return to SF-DCT any claim payment funds that were not distributed to the Claimant. In support of this motion, the Finance Committee would respectfully show the Court as follows:

1. On May 15, 1995, Debtor filed a petition for reorganization under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Michigan. On November 30, 1999, the Court entered the Order confirming the Plan of Reorganization of Dow Corning Corporation (“the Confirmation Order”) and on June 1, 2004 the Amended Joint Plan of Reorganization of Dow Corning Corporation (“the Plan”) became effective. Pursuant to the Plan and the Confirmation Order, the Settlement Facility and Fund Distribution Agreement (“SFA”) became effective on June 1, 2004. *See* Exh. A.

2. The SFA establishes the Settlement Facility (“SF-DCT”), which among other things, assumes liability for and resolves claims of settling Personal Injury Claimants and distributes funds to Claimants with allowed claims. The Court supervises the resolution of Claims under the SFA and is authorized to perform all functions relating to the distribution of funds. *See* Exh. A at § 4.01. The funds distributed by the Settlement Facility are in the custody of the Court until they are *paid to* and *actually received* by a Claimant. *See id.* at § 10.09 (“All funds in the Settlement Facility are deemed in custodia legis until such times as the funds have actually been paid to and received by a Claimant.”).

3. Herald J. A. Alexander of The Mathis Law Firm P.C. is the attorney-of-record representing Claimant SID 1226689, (“the Claimant”), who submitted a

claim to the SF-DCT. In that capacity, Mr. Alexander is aware that his client's election to settle her claims subjects him to the terms of the SFA. *See id.* at § 6.02.

4. The Claimant was determined by the SF-DCT to have an allowed Claim. On July 29, 2015, the SF-DCT sent a \$5,000 Disease claim payment check to Mr. Alexander at The Mathis Law Firm P.C. for distribution to the Claimant. On August 4, 2015, the check was cashed. *See* Exh. B.<sup>1</sup>

5. The Claim award notification letter mailed directly to the Claimant by the SF-DCT regarding the claim payment was returned undeliverable, with no forwarding addresses. Valid address information is necessary for the SF-DCT to notify Claimants of their claim payments and confirm receipt of those payments. To perform those functions, the SF-DCT sent written requests to Mr. Alexander on September 1, 2015, May 12, 2016, November 7, 2016 and May 17, 2017 for an updated address for the Claimant, or if the Claimant is deceased, the address of the person with authority to act on behalf of the Claim. *See* Exhs. C, D, E and F. Despite these requests, Mr. Alexander failed to provide valid address information for the Claimant.

6. Because the check sent to Mr. Alexander was cashed, it is reasonable to assume that Mr. Alexander has valid address information for the Claimant to

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<sup>1</sup> The Claimant's name has been redacted from all exhibits for privacy.

facilitate his distribution of funds to her. It is also reasonable to assume that Mr. Alexander has proof of distribution of the claim payment to the Claimant. Nevertheless, Mr. Alexander has failed to provide this information in response to multiple written requests for that information by the SF-DCT and counsel for the Finance Committee. *See* Exhs. E, F and G.

7. In the event that The Mathis Law Firm P.C. was unable to distribute the claims payment to Claimant, the SF-DCT and the counsel for the Finance Committee requested in its correspondence that Mr. Alexander return the undistributed claims funds to the SF-DCT. *See id.* Mr. Alexander ignored these requests and has failed to return \$5,000 distributed to his law office for the Claimant.

8. Because Mr. Alexander has failed to provide a valid address for the Claimant, failed to provide proof of distribution to the Claimant, and failed to return the funds, the SF-DCT cannot verify that the \$5,000 claim payment sent to Mr. Alexander (and subsequently cashed) has been received by the Claimant.

9. Mr. Alexander and The Mathis Firm have not responded to any of the correspondence regarding the \$5,000 claim payment sent by the SF-DCT or the counsel for the Finance Committee.

10. The conduct of Mr. Alexander with respect to the funds entrusted to his law office for the Claimant has diverted SF-DCT's employees from performing

their normal duties and necessitated the utilization of counsel, which has caused the SF-DCT to incur unnecessary expense.

11. This Court supervises the distribution of funds from the SF-DCT to Claimants. There can be no dispute that the claim payment funds sent to Mr. Alexander for distribution to the Claimant are in the Court's custody and under the Court's supervision until those funds are received by the Claimant. *See* Exh. A at § 10.09. Accordingly, the Court is entitled to know with certainty whether the money sent to Mr. Alexander was received by the Claimant. Moreover, if Mr. Alexander was unable to distribute the claim payment to the Claimant, the Court should require Mr. Alexander to return those funds to the SF-DCT.

12. While there is no order or injunction requiring The Mathis Law Firm P.C. or Mr. Alexander's compliance with the SF-DCT's requests, Mr. Alexander's conduct clearly contradicts the SFA and this Court's custody over the funds in question. Therefore, the imposition of civil contempt sanctions is warranted. District courts have inherent power to enforce compliance with orders through civil contempt. *Electrical Workers Pension Trust Fund of Local Union #58, IBEW v. Gary's Elec. Serv. Co.*, 340 F.3d 373, 378 (6th Cir.2003).

13. The Finance Committee respectfully requests that the Court enter an order requiring Herald J.A. Alexander of the Mathis Law Firm P.C. to appear before this Court on June 14, 2018 at 9:30 a.m. and show cause why he should not

be sanctioned, held in contempt, and otherwise required to respond regarding their failure to account for or return \$5,000 in claims funds. At the hearing, following submission of this and other evidence, the Finance committee will ask that the Court enter such sanctions and penalties against Mr. Alexander as the Court deems appropriate.

Dated: May 11, 2018.

Respectfully submitted,

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/s/ Karima G. Maloney

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*(E.D. Mich. admitted)*

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COUNSEL FOR FINANCE COMMITTEE

**CERTIFICATE OF SERVICE**

I hereby certify that on May 11, 2018, the foregoing Motion for Entry of An Order to Show Cause has been electronically filed with the Clerk of Court using the ECF system which will send notice and copies of the document to all registered counsel in this case. A copy of this motion was also sent via email and certified mail to Herald J.A. Alexander at The Mathis Law Firm P.C.

By: /s/ Karima G. Maloney  
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