

**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 JOSEPH J. HOCHBEIN, ESQ.**

The Finance Committee files this Motion to require Joseph J. Hochbein, Esq. 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 his law office which includes: 1) cashing two claim payment checks intended for a Claimant represented by Mr. Hochbein; 2) failing to provide the SF-DCT with valid address information for the Claimant, which is required to confirm Claimant’s receipt of the claim payments; 3) failing to provide the SF-DCT with proof of distribution of the claim payments to the Claimant; and 4) failing to return to the 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. Mr. Hochbein is the attorney-of-record representing Claimant SID 0681509, (“the Claimant”), who submitted claims to the SF-DCT. In that capacity, Mr. Hochbein 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 allowed claims. Accordingly, the SF-DCT sent to Mr. Hochbein a \$2,500 Rupture PP claim payment on September 16, 2014 and a \$2,000 Disease PP claim payment check on January 15, 2015. On September 29, 2014 the Rupture PP claim payment check was cashed and on January 30, 2015, the Disease PP claim payment check was cashed. *See* Exh. B.¹

5. The Claim award notification letters mailed directly to the Claimant by the SF-DCT regarding the two claim payments were returned as 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. Hochbein on May 14, 2015, February 2, 2016, September 21, 2016, March 7, 2017, and May 11, 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, F, and G. Despite these repeat requests, Mr. Hochbein failed to provide valid address information for the Claimant.

6. Because the checks sent to Mr. Hochbein were cashed, it is reasonable to assume that his law office has valid address information for the Claimant to

¹ 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. Hochbein's law office has proof of distribution of the claim payments to the Claimant. Nevertheless, Mr. Hochbein has failed to provide this information in response to multiple written requests from the SF-DCT and counsel for the Finance Committee. *See* Exhs. E, F, G and H.

7. In the event that Mr. Hochbein was unable to distribute the claim payment to Claimant, the SF-DCT and the counsel for the Finance Committee requested in its correspondence that he return the undistributed claims funds to the SF-DCT. *See id.* Mr. Hochbein ignored these requests and has failed to return \$4,500 distributed to his office for the Claimant.

8. Because Mr. Hochbein 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 two claim payment checks sent to Mr. Hochbein (and subsequently cashed) have been received by the Claimant.

9. Mr. Hochbein has not responded to any of the correspondence regarding the claims payments sent by the SF-DCT or the counsel for the Finance Committee.

10. The conduct of Mr. Hochbein with respect to the funds entrusted to him for distribution to 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. Hochbein 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. Hochbein was received by the Claimant. Moreover, if Mr. Hochbein was unable to distribute the claim payment to the Claimant, the Court should require him to return those funds to the SF-DCT.

12. While there is no order or injunction requiring Mr. Hochbein's compliance with the SF-DCT's requests, his conduct clearly contradicts the SFA and this Court's custody over the \$4,500 at issue. 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 Joseph J. Hochbein, Esq. 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 his law office's failure to account for or return \$4,500 in claims payment 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. Hochbein as the Court deems appropriate.

Dated: May 11, 2018.

Respectfully submitted,

SMYSER KAPLAN & VESELKA LLP

 /s/ Karima G. Maloney

Karima G. Maloney

Texas Bar No. 24041383

(E.D. Mich. admitted)

700 Louisiana Street, Suite 2300

Houston, Texas 77002

(713) 221-2382 (telephone)

kmaloney@skv.com

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 certified mail to Joseph J. Hochbein.

By: /s/ Karima G. Maloney
SMYSER KAPLAN & VESELKA LLP
Texas Bar No. 24041383
(E.D. Mich. admitted)
700 Louisiana Street, Suite 2300
Houston, Texas 77002
(713) 221-2382 (telephone)
kmaloney@skv.com
COUNSEL FOR FINANCE COMMITTEE