

**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 DANIEL E. BECNEL, JR. OF  
BECNEL LAW FIRM, LLC**

The Finance Committee files this Motion to require Daniel E. Becnel, Jr. of Becnel Law Firm, LLC 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 four claims payment checks intended for three Claimants represented by the firm; 2) failing to provide the SF-DCT with valid address information for the three Claimants, which is required to confirm the Claimants’ receipt of the claim payments; 3) failing to provide the SF-DCT with proof of distribution of the claim payments to the Claimants; and 4) failing to return to the SF-DCT any claim payment funds that were not distributed to the Claimants. 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. Becnel is the attorney-of-record representing Claimant SID 1067559, Claimant SID 1268875, and Claimant 1000877, (“the Claimants”), who each submitted claims to the SF-DCT. In that capacity, Mr. Becnel is aware that

his clients' election to settle their claims subjects him to the terms of the SFA. *See id.* at § 6.02.

4. The Claimants were determined by the SF-DCT to have allowed claims. Mr. Becnel was sent a \$2,500 Rupture PP claim payment on July 15, 2014 and a \$2,000 Disease PP claim payment on December 11, 2014 for Claimant 1067559. Both checks were cashed on January 8, 2015. *See* Exh. B.<sup>1</sup>

5. Mr. Becnel was sent a \$1,000 Disease PP claim payment for Claimant 1268875 on November 13, 2014. The check was cashed on January 7, 2015. *See* Exh. C.

6. Mr. Becnel was sent a \$500 Disease PP claim payment for Claimant 1000877 on December 11, 2014. The check was cashed on February 4, 2015. *See* Exh. D.

7. The Claim award notification letters mailed directly to the three Claimants by the SF-DCT regarding the 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 for an updated address for the Claimant 1067559 to Mr. Becnel on April

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

15, 2015, February 16, 2016, May 31, 2016, November 15, 2016 and May 18, 2017. *See* Exh. E. These letters further indicated that if the Claimant is deceased, the firm should provide the address of the person with authority to act on behalf of the Claim. *See id.* The SF-DCT sent written requests to Mr. Becnel for updated address information for Claimant 1268875 or her authorized representative on March 5, 2015, May 12, 2016, November 8, 2016 and May 18, 2017. *See* Exh. F. The SF-DCT also sent written requests to Mr. Becnel for updated address information for Claimant 1000877 or her authorized representative on April 16, 2015, February 4, 2016, September 19, 2016, November 26, 2016, March 7, 2017 and May 11, 2017. *See* Exh. G. Despite these repeat requests, Mr. Becnel has failed to provide valid address information for any of the three Claimants.

8. Because the checks for the three Claimants sent to Mr. Becnel were cashed, it is reasonable to assume that his law office has valid address information for the Claimants to facilitate his distribution of funds to them. It is also reasonable to assume that Mr. Becnel's law office has proof of distribution of the claims payments to the Claimants. Nevertheless, Mr. Becnel and the Becnel Law Firm have 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.

9. In the event that Mr. Becnel was unable to distribute the claims payment to Claimant, the SF-DCT and the counsel for the Finance Committee requested in its correspondence that his firm return the undistributed claims funds to the SF-DCT. *See id.* Mr. Becnel has ignored these requests and has failed to return \$6,000 distributed to his law office for the Claimants.

10. Because Mr. Becnel 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 claims payments checks sent to him (and subsequently cashed) have been received by the three (3) Claimants.

11. Mr. Becnel and Becnel Law Firm have not responded to any of the correspondence regarding the claims payments sent by the SF-DCT or the counsel for the Finance Committee.

12. The conduct of the Becnel Law Firm regarding the funds entrusted to it for distribution to the Claimants 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.

13. 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. Becnel for distribution to the Claimants are in the Court's custody and under the Court's supervision until those funds are received by the Claimants. *See* Exh. A at

§ 10.09. Accordingly, the Court is entitled to know with certainty whether the funds were received by the Claimants. Moreover, if Mr. Becnel was unable to distribute the claims payments to the Claimants, the Court should require the Becnel Law Firm to return those funds to the SF-DCT.

14. While there is no order or injunction requiring Mr. Becnel to comply with the SF-DCT's requests, the conduct of his law office clearly contradicts the SFA and this Court's supervision and custody over the \$6,000 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).

15. The Finance Committee respectfully requests that the Court enter an order requiring Mr. Becnel 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 failure to account for or return \$6,000 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. Becnel as the Court deems appropriate.

Dated: May 11, 2018.

Respectfully submitted,

SMYSER KAPLAN & VESELKA LLP

          /s/ Karima G. Maloney          

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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 Daniel Becnel, Jr and the Becnel Law Firm, LLC.

By:           /s/ Karima G. Maloney          

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