

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

**IN RE SETTLEMENT FACILITY MATTERS,**

**CASE NO. 00-X-0005**

**Dow Corning Corporation,**

**HONORABLE DENISE PAGE HOOD**

**Reorganized Debtor.**

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**THE O'QUINN FIRM'S RESPONSE TO  
ORDER TO SHOW CAUSE**

**Introduction**

1. The O'Quinn Firm<sup>1</sup> files this response to the Court's April 5, 2007 Order to Show Cause (Docket No. 508).

2. The O'Quinn Firm did not charge interest on clients' litigation expenses nor did it otherwise violate this Court's order. While clients' settlement sheets show the interest incurred on the expenses of litigation, that interest was never charged to the client. The settlement sheets reflected the interest incurred (but not charged) primarily because the settlement sheets are used by the O'Quinn Firm as internal control documents to track all expenses, regardless of whether those expenses were charged to the client. And, as shown below, the settlement sheets show that clients did not pay interest on expenses.

3. The O'Quinn Firm did not violate the terms of the Court's Order. The O'Quinn Firm should not be held in contempt.

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<sup>1</sup> The O'Quinn Firm refers to the O'Quinn Law Firm and O'Quinn & Laminack.

**The O'Quinn Firm Did Not Charge Interest on Expenses**

4. In October 2005, the O'Quinn Firm was made aware of the Agreed Order Adopting Additional Q&A Pursuant to Article IX of Annex A, the Claims Resolution Procedures (the "Order") (Docket No. 231). The O'Quinn Firm fully complied with the Order in all respects. *Exhibit D.*

5. In the course of settling cases, the O'Quinn Firm provided its clients various documents reflecting the accrual of all litigation expenses and disbursement of settlement proceeds. *Exhibit D.* Those documents included an internal settlement sheet as well as accompanying attachments reflecting specific expenses. *Exhibit A.* The settlement sheet and accompanying attachments served two purposes:

- i) to provide clients with all relevant information concerning their case, including the disbursement of funds and the accrual of all expenses, even if those expenses were not charged to the client; and
- ii) to be used internally by the O'Quinn Firm as a control document for accounting and other purposes.

*Exhibit D.*

6. Again, with the settlement sheet and attachments, the O'Quinn Firm intended to show the clients all expenses incurred by them, regardless of whether those expenses were charged to the client. *Id.* The interest charged by a bank for the money borrowed to pay for litigation expenses was an expense of litigation as the clients agreed in their contracts to repay the O'Quinn Firm for that interest. *Id.* Thus, the settlement sheet reflected the interest incurred by borrowing from a bank for the particular client's expenses. *Id.* However, though the settlement sheets and attachments reflected the interest incurred by the client, the O'Quinn Firm did not charge this to the client. *Id.*

7. A review of *Exhibit A*, which is an actual settlement statement with the client's name redacted, will show that the O'Quinn Firm did not charge its clients interest on litigation expenses. *Exhibit A* reflects a settlement on February 21, 2007 of \$20,000.00. *Exhibit A*. The fourth page of *Exhibit A* shows all expenses incurred by the client; this page does not reflect which expenses were actually charged to the client. *Id.* The third page of *Exhibit A* reflects the amount of money borrowed from Bank of America to pay the client's expenses and the interest accrued for the payment of those expenses, which interest was \$9.98. *Id.* This page does not show which expenses were actually charged to the client. *Id.* Page 1, on the other hand, sets out the expenses actually charged to the client as it is a breakdown of the settlement funds, fees, expenses, and disbursements.

8. As the "Expenses" category of page 1 of *Exhibit A* shows, the \$9.98 was not charged as an expense to the client. *Exhibit A*. Page 1 does reflect, under "Fees," interest of \$9.98. *Id.* However, this was not an additional charge to the client. *Id.* Instead, as shown below, the settlement sheet reflected that a portion of the fees was assigned as interest for internal accounting purposes only. *Exhibit D*. This does not mean the client was actually charged interest on her expenses. *Exhibit D*.

9. The O'Quinn Firm was entitled to a total fee of \$3,250.00 by order of this Court. That is because as order of this Court provides attorneys are entitled to a contingent fee of 10% of the first \$10,000.00 recovered and 22.5% of the next \$40,000.00. On a settlement of \$20,000.00, that worked out to \$1,000.00 (10% of \$10,000.00) plus \$2,250.00 (22.5% of \$10,000.00) for a total of \$3,250.00. As both pages 1 (under "Fees") and 2 (under "Less Attorney Fees") of the settlement sheet show, the total amount of attorneys fees charged to the client was the proper amount of \$3,250.00. *Exhibit A*. Page 1 does show that a portion of the

“Fees” was assigned to cover the interest charges the O’Quinn Firm by the bank. *Id.* However, this assignment of a portion of its fees as interest was for internal accounting purposes only. *Exhibit D.* This internal assignment did not result in an additional charge to the client. *Id.* The \$9.98 interest was therefore never charged as an expense to the client. *Id.*

10. As shown by a client’s actual settlement sheet, the O’Quinn Firm did not charge clients interest on expenses. The O’Quinn Firm did not violate this Court’s order. The O’Quinn Firm should not be held in contempt.

**Interest on Advances, Which Were Only for Medical or Living Expenses  
And Not Litigation Expenses, Was Properly Charged**

11. The only interest ever charged to clients subject to this Court’s order was interest on advances made to a client for medical or living expenses if those advances were not expenses of litigation. As the O’Quinn Firm confirmed with the Plaintiffs’ Committee prior to charging any such interest, this did not violate the Court’s Order.

12. During the course of representing clients, the O’Quinn Firm occasionally advanced or loaned money to a client for reasonably necessary medical and living expenses. *Exhibit D.* This practice is allowed by the Rules of Professional Conduct governing Texas lawyers, which provide that an attorney may properly advance to a client “reasonably necessary medical and living expenses, the repayment of which may be contingent on the outcome of the matter.” TEX. DISCIPLINARY R. PROF’L CONDUCT 1.08(d). The types of expenses for which the O’Quinn Firm made advances included mortgage payments, utility bills, medications and legal bills unrelated to this case. *Exhibit D.* When advances were made for medical treatment, the medical treatment was not an expense of litigation because it was not for the purpose of

furthering the client's case.<sup>2</sup> *Exhibit D*. It was the firm's practice to make such advances only after the client had agreed in writing that the O'Quinn Firm would borrow money from its bank and the client would repay the amount borrowed plus whatever interest the bank had charged. *Id*. And, the O'Quinn Firm made direct advances to the client only if a provider would not take a letter of protection from the firm. *Id*.

13. In settling its cases, the O'Quinn Firm properly charged interest to the client as those advances were not for expenses of litigation. *Id*. The O'Quinn Firm understood the Court's Order to preclude charging interest only on expenses of litigation, but did not prohibit the O'Quinn Firm from charging the client interest for advances made to the client that did not concern the prosecution of the suit. *Id*.

14. To confirm that charging interest on advances for medical and living expenses was acceptable under the Court's Order, in November 2005, Rick Laminack of the O'Quinn Firm discussed this very issue with Ernie Hornsby, one of the members of the Plaintiffs' Committee in the Dow Bankruptcy. *Id*. Mr. Hornsby confirmed that a client may be charged interest on advances if the money was not for litigation expenses and the client had signed an agreement that they would pay interest on any advance, which was consistent with the practice of the O'Quinn Firm. *Id*. Mr. Hornsby further indicated that he had discussed the issue with Dianna Pendleton, one of the other members of the Plaintiffs' Committee, and she was in agreement with this understanding. *Id*.

15. The O'Quinn Firm's understanding has subsequently been confirmed by Mr. David Austern, Claims Administrator of the Settlement Facility Dow Corning Trust. In

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<sup>2</sup> That medical or living expenses were not expenses of litigation is consistent with this Court's Order defining for clients expenses as "things your attorney has paid out of his/her pocket on your behalf to further your claim." Court Approved Questions and Answers, Attorneys Fees and Expenses, Q5.

January 2007, Mr. Austern asked for an explanation of the O'Quinn Firm's policy regarding expenses, advances and interest as related to the distribution of Dow settlement proceeds. In response, on January 30, 2007, Mr. Laminack sent Mr. Austern a letter explaining that:

- the O'Quinn Firm does not charge the clients interest on expenses; and
- the O'Quinn Firm does charge interest it has been charged by the bank for money advanced or loaned to the client for reasonably necessary medical or living expenses that are not litigation expenses.

*Exhibit B.* Mr. Austern responded in writing to the effect that he believed charging interest on advances for which the O'Quinn Firm paid interest did not violate the Court's Order. *Exhibit C.* Mr. Austern further indicated his belief that, if the Order were interpreted to prohibit interest on advances, then the Order should be amended to permit such interest charges. *Id.*<sup>3</sup>

16. As confirmed by Mr. Austern and Mr. Hornsby, the medical and living expenses for which the O'Quinn Firm provided advances to clients did not constitute an expense of litigation because those expenses did not further the client's claim. Thus, the charging of interest on advances for reasonably necessary medical and living expenses did not violate the Court's Order prohibiting charging of interest on expenses involved in handling a claimant's case. The O'Quinn Firm should not be held in contempt.

#### **Evidence**

17. In support of this response, the O'Quinn Firm relies on the following exhibits:

- Exhibit A: Client's settlement sheet and accompanying attachments with the client's name redacted;
- Exhibit B: Correspondence dated January 30, 2007 from Richard Laminack to David Austern;

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<sup>3</sup> In the event the Court construes the Order to prohibit charging interest on advances, any violation by the O'Quinn Firm was wholly inadvertent and it requests an amendment to the Court's Order as suggested by Mr. Austern..

- Exhibit C: Correspondence dated February 7, 2007 from David Austern to Richard Laminack and Dana Morris; and
- Exhibit D: Affidavit of Richard N. Laminack.

**Conclusion**

18. The O'Quinn Firm did not charge clients interest on expenses incurred in handling a claimant's case. The O'Quinn Firm did not violate the Court's Order of October 6, 2005. The O'Quinn Firm should not be held in contempt.

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 20th day of April, 2007, a true and correct copy of the foregoing instrument was forwarded via notice of electronic filing to the following ECF registrant and/or via telecopier and/or U.S. Mail, postage pre-paid, *to-wit*:

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