

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

IN RE:

**SETTLEMENT FACILITY-
DOW CORNING TRUST**

**CASE NO. 00-MC-00005-DT
(Settlement Facility Matters)**

Hon. Denise Page Hood



**NOTICE OF DOW SILICONES CORPORATION AND
THE DEBTOR'S REPRESENTATIVES IN CONNECTION WITH
THE FINANCE COMMITTEE'S REPORT REGARDING THE
AUDIT SURVEY REQUIRED BY CLOSING ORDER 4 AND
MOTION FOR DISMISSAL OF THE ORDER TO SHOW CAUSE**

Dow Silicones Corporation (“Dow Silicones”) and the Debtor’s Representatives respectfully submit this notice in connection with the November 24, 2023 *Finance Committee’s Report Regarding the Audit Survey Required by Closing Order 4 and Motion for Dismissal of the Order to Show Cause*, (ECF No. 1744, PageID.33770) (the “Finance Committee Report and Motion for Dismissal”).

On March 21, 2023, the Finance Committee filed the *Finance Committee’s Motion for Order to Show Cause with Respect to Law Firms and Counsel who have Failed to Respond to the Audit Survey Required by Closing Order 4*, (ECF No. 1697) (the “Finance Committee Motion for Order to Show Cause”). The Finance Committee Motion for Order to Show Cause requested that the Court enter an order requiring 814 law firms and attorneys to show cause why they should not be held in

contempt for failure to comply with the Court's *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"). Finance Committee Motion for Order to Show Cause Order, ECF No. 1697, PageID.32468. On March 28, 2023, the Court entered an *Order to Show Cause* on March 28, 2023 (ECF No. 1699, PageID.32495).

On March 31, 2023, the Claimants' Advisory Committee ("CAC") filed a motion for reconsideration and responded to the Motion with certain objections. *See Motion to Reconsider and Vacate Order to Show Cause and Response of Claimants' Advisory Committee to Finance Committee's Motion for Order to Show Cause with Respect to Law Firms and Counsel Who Have Failed to Respond to the Audit Survey Required by Closing Order 4*, (ECF No. 1703, PageID.33110) ("CAC's Response"). On April 4, 2023, the Finance Committee filed a *Notice of Timeline for Mailing of Materials Required by the Order to Show Cause (ECF No. 1699)*, (ECF No. 1706, PageID.33145).

On April 20, 2023, the Court issued an *Order Granting Motion for Reconsideration (No. 1703)*, (ECF No. 1709, PageID.33214), which granted the CAC's Motion for Reconsideration, stated that the Court would reconsider the Finance Committee's Motion for an Order to Show Cause and the CAC's Response, and stayed the Order to Show Cause until further review. *Id.* at PageID.33218.

On April 24, 2023, the Debtor’s Representatives and Dow Silicones filed the *Notice of Dow Silicones Corporation and the Debtor’s Representatives of Concurrence in Finance Committee’s Motion for Order to Show Cause with Respect to Law Firms and Counsel Who Have Failed to Respond to the Audit Survey Required by Closing Order 4 (ECF No. 1697)*, (ECF No. 1710, PageID.33219) (the “Debtor’s Representatives and Dow Silicones Notice”), which confirmed that the Debtor’s Representatives and Dow Silicones concurred in the Finance Committee’s Motion for Order to Show Cause. *Id.* at PageID.33220. The Debtor’s Representatives and Dow Silicones Notice stated:

The Motion is before this Court to determine the appropriate action. It simply asks the Court to issue the order to show cause so that the Court can then review responses and determine what action, if any, is warranted with respect to lawyers and firms that have not responded to an order of this Court. It is not the province of the Finance Committee or the parties to make that determination. We are confident that the Court will determine the fair and appropriate response and will not impose unreasonable or unwarranted sanctions.

Id. at PageID.33221-33222. On April 25, 2023, the Finance Committee filed a *Reply in Further Support of Finance Committee’s Motion for Order to Show Cause with Respect to Law Firms and Counsel Who Have Failed to Respond to the Audit Survey Required by Closing Order 4*, (ECF No. 1711, PageID.33224). The Finance Committee argued that the Court should grant its Motion for Order to Show Cause and that the CAC’s proposed procedures were “unnecessary given the thorough and

fair steps already taken to obtain Audit Survey responses, are unduly burdensome on the SF-DCT, and would lead to disparate treatment of attorneys in a manner inconsistent with Closing Order 4.” *Id.* at PageID.33225-33230.

On September 29, 2023, the Court issued its *Opinion and Order on Motion for Reconsideration on the Order to Show Cause Submitted by the Finance Committee*, (ECF No. 1737, PageID.33732) (the “September 29 Opinion and Order”). The September 29 Opinion and Order denied the CAC’s motion for reconsideration and lifted the Order to Show Cause Stay. *Id.* at PageID.33745. The Court explained that “[i]n the Court’s view, the Order to Show Cause is the more efficient way to handle this matter at this time, especially since the CAC had originally agreed to the entry of Closing Order 4.” *Id.* at PageID.33743.

On November 24, 2023, the Finance Committee filed the Finance Committee Report and Motion for Dismissal (ECF No. 1744). The Finance Committee Report and Motion for Dismissal advises that 189 (23 percent) of the 814 attorneys/firms subject to the Order to Show Cause responded to the Order to Show Cause and that 58 notices were returned as undeliverable, and that 33 attorneys on the original list were either deceased, no longer in existence, disbarred, or suspended from the practice of law. *Id.* at PageID.33772-33773. The total “response rate” including the actual responses, the undeliverable notices, and the attorneys who are no longer able to practice law is 34 percent. The Finance Committee proposes that the Order

to Show Cause with respect to these 280 attorneys/firms be dismissed. *Id.* The Finance Committee further proposes dismissal (without prejudice) as to the remaining 534 attorneys/firms, apparently based on the view that there is no point in pursuing the Order to Show Cause proceeding this week since these firms will not be in attendance at the hearing. *See id.* at PageID.33773.

The Debtor's Representatives and Dow Silicones agree that it is appropriate and consistent with the Court's Order to dismiss the Order to Show Cause with respect to those 189 attorneys/firms who timely responded to the Order to Show Cause and those 58 attorneys/firms who could not be located because the mailing was returned as undeliverable. The Debtor's Representatives and Dow Silicones further agree with the proposal to dismiss the Order to Show Cause with respect to those attorneys/firms who have been determined to be deceased, disbarred, suspended, or no longer in existence.

Based on the statistics provided by the Finance Committee, the Order to Show Cause had a response rate of approximately 34 percent (including the undeliverable mail and lawyers that are no longer practicing law). The vast majority of the firms – 534 attorneys/firms, or approximately 66 percent – did not respond at all. Their lack of response cannot be deemed “compliance” with the Order to Show Cause. The Debtor's Representatives and Dow Silicones submit that it would be appropriate for the Court to determine the next step with respect to these remaining non-

responsive attorneys/firms, and respectfully suggests that it might be helpful to gather further information about these non-responsive attorneys/law firms. To the extent it is helpful, we note that some of the non-responsive law firms on this list are large national firms and there is no apparent reason for a lack of response.

The objective of the survey process required by Closing Order 4 was to assure that the funds that were paid for the benefit of claimants were in fact distributed to the claimants. Closing Order 4 was conceived after the Settlement Facility and the parties received information indicating that funds were not always distributed to the claimants. We believe this is an important objective and one that should not be abandoned. We further believe – notwithstanding the importance of the goal of assuring distribution of funds to the rightful recipients – that the failure to respond to a Court order is a serious issue and that it should have consequences to the offending lawyers/firms.

In light of the fact that the Court has already granted the Finance Committee's motion to dismiss the Order to Show Cause, Dow Silicones and the Debtor's Representatives respectfully request that the Court consider options for an appropriate remedy for the approximately 66 percent of lawyers/firms who failed to respond to the Court's order. We propose that the Court schedule a conference or hearing via remote technology to discuss the issues and procedures.

Dated November 27, 2023

Respectfully submitted,

/s/ Deborah E. Greenspan

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

In re:

**SETTLEMENT FACILITY DOW
CORNING TRUST**



Case No. 00-CV-00005

Hon. Denise Page Hood

CERTIFICATE OF SERVICE

I hereby certify that on November 27, 2023, I electronically filed the foregoing document with the Clerk of the Court using the ECF System which will send notification of such filing to all registered counsel in this case.

Dated: November 27, 2023

/s/ Deborah E. Greenspan

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