

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

In re:

**SETTLEMENT FACILITY DOW
CORNING TRUST**



**Case No. 00-CV-00005
(Settlement Facility Matters)**

Hon. Denise Page Hood

**FINANCE COMMITTEE’S JOINDER IN THE RESPONSE OF DOW
SILICONES CORPORATION AND THE DEBTOR’S REPRESENTATIVES
TO MOTION OF CLAIMANT MAXINE LOUISE SWAIM’S COUNSEL TO
CLARIFY CLOSING ORDER 5’S DEADLINE FOR QUALIFYING
CLAIMANTS TO CONFIRM ADDRESSES AND SUBMIT ESTATE
DOCUMENTS (ECF NO. 1718)**

Pursuant to Federal Rule of Civil Procedure 10 (c), the Finance Committee joins in, adopts, and incorporates by reference the arguments, authorities, and evidence cited in the Response of Dow Silicones Corporation and The Debtor’s Representatives to Motion of Claimant Maxine Louise Swaim’s Counsel to Clarify Closing Order 5’s Deadline for Qualifying Claimants to Confirm Addresses and Submit Estate Documents filed on June 13, 2022 (“Response of Dow Silicones”).

In addition to the arguments, authorities, and evidence cited in the Response of Dow Silicones, the Finance Committee believes the Court should also be aware that the Claimants’ Advisory Committee (“CAC”) and its retained attorney have interjected themselves into this dispute as advocates for the law firm representing Ms. Swaim.

The CAC contacted the Finance Committee to request the SF-DCT excuse Weitz & Luxenberg’s failure to provide the required information regarding Ms. Swaim before the 90-day deadline passed. *See* Exh. 1, June 13, 2023 Declaration of Pamela R. Harwood at ¶5. Moreover, the CAC took the additional step of drafting the initial pleading that was apparently modified and filed by Weitz & Luxenberg as the Motion of Claimant Maxine Louise Swaim’s Counsel to Clarify Closing Order 5’s Deadline for Qualifying Claimants to Confirm Addresses and Submit Estate Documents (“Motion to Clarify Closing Order 5”) (ECF No. 1718). *See* *Id.* at ¶6-8. Specifically, on November 3, 2022, a CAC member emailed to Finance Committee member Pamela R. Harwood a draft motion titled “Motion to Clarify Closing Order 5 Deadline For Qualifying Claimants to Confirm Addresses” in an effort to convince the SF-DCT to give Weitz & Luxenberg’s late submission a pass. *Id.* at ¶6. This draft motion was to all appearances prepared by the CAC’s retained counsel, Jeffrey Trachtman, (and consequentially paid for by SF-DCT funds), not the attorneys at Weitz & Luxenberg. *Id.* With the exception of information specifically related to Ms. Swaim, the CAC’s draft motion is nearly identical to the Motion to Clarify Closing Order 5 filed by Weitz & Luxenberg. *Id.* at ¶8. Additionally, the CAC was evidently advising Weitz & Luxenberg regarding its correspondence with the SF-DCT about the September 17, 2022 deadline. In email correspondence dated September 21, 2022, an employee of Weitz & Luxenberg informed the SF-DCT that

the law firm’s submission did not miss the deadline because “[t]he deadline was on a Saturday so it defers to Monday. I confirmed this with CAC and they were calling to advise [SF-DCT].” *See* Response of Dow Silicones, Exh. D, June 13, 2023 Declaration of Kimberly Smith-Mair at ¶ 29.

This marks yet another disturbing occasion when the CAC has deviated from its Plan-specified purpose and function in order to advocate for law firms who have failed to comply with SF-DCT or Court-ordered requirements.¹ *See* SFA §4.09(c). The CAC serving as “ghost-writer” for law firms that miss the address verification deadline does not enforce any obligation of the Plan and it certainly cannot be construed as providing advice and assistance to the Claims Administrator, the Settlement Facility or Finance Committee – when presented in the form of a motion objecting to a decision of the Claims Administrator and seeking an unauthorized appeal of such decision. *Id.*

It is also relevant to the Court’s evaluation of Weitz & Luxenberg’s claims in the Motion to Clarify Closing Order 5 that not only did it miss the September 17, 2022 deadline to provide a verified address for Ms. Swaim (or her estate representative), but it also appears to have lost track of Ms. Swaim for an over seven year period, during which it cashed a claim payment sent to it for distribution to Ms.

¹ The CAC similarly advocated for law firms who failed to comply with Closing Order 4 through its opposition to the Finance Committee’s Motion for an Order to Show Cause. *See* ECF No. 1703.

Swaim. Closing Order 4 required Weitz & Luxenberg to complete an Audit Survey regarding distribution of funds to Claimants. *See* ECF No. 1640. On its Audit Survey response, Weitz & Luxenberg indicated that it had retained claims payments which it had yet to distribute to certain claimants. *See* Exh. 2. Weitz & Luxenberg provided an attachment to the survey, which listed the claimants for which it was holding undistributed funds. *Id.* Absent from the attachment is any mention of a December 11, 2014, \$1,000 claim payment to Maxine Louise Swaim. *Id.* Weitz & Luxenberg cashed the \$1,000 claim payment for Ms. Swaim on December 29, 2014. *See* Exh. 3. However, Ms. Swaim had passed away five months earlier on July 14, 2014. *See* Response of Dow Silicones, Exh. D, June 13, 2023 Declaration of Kimberly Smith-Mair at ¶ 21. According to the Motion to Clarify Closing Order 5, Weitz & Luxenberg did not have contact information for her estate until “the eleventh hour” before September 19, 2022. *See* ECF No. 1718, Page Id.33296. This begs the critical question: what happened to Ms. Swaim’s December 11, 2014 claims payment? Weitz & Luxenberg was unable to determine for years that Ms. Swaim was deceased, and was unable to locate an estate representative; yet, it cashed her 2014 claims payment, failed to return the undistributed funds, and failed to include those funds in their audit survey response. These facts cast serious doubt on Weitz & Luxenberg’s justification for missing the September 17, 2022 address verification deadline.

CONCLUSION

The Finance Committee respectfully requests that the Court deny the Motion to Clarify Closing Order 5.

Additionally, either Mr. Trachtman or a member of the CAC provided Weitz & Luxenberg with a copy of the motion drafted by Mr. Trachtman. If a member or members of the CAC gave the motion drafted by their counsel to Weitz & Luxenberg, it is a clear violation of their role under the Plan. Based on this conduct, the Court should sanction the CAC by rejecting their invoices submitted to the Court for work performed relative to the advocacy for Weitz & Luxenberg.

Dated: June 13, 2023

Respectfully submitted,

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DOW CORNING TRUST

CERTIFICATE OF SERVICE

I hereby certify that on June 13, 2023, the foregoing pleading 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.

By: /s/ Karima G. Maloney

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