

**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 GILMER SADLER INGRAM
SUTHERLAND & HUTTON**

The Finance Committee files this Motion to require a representative¹ of Gilmer Sadler Ingram Sutherland & Hutton to appear before this Court and show cause why the law firm should not be sanctioned, held in contempt and otherwise required to respond regarding its conduct which includes: 1) cashing two (2) claims payment checks intended for a Claimant represented by the firm; 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

¹The SF-DCT understands that Robert J. Ingram, the attorney at Gilmer Sadler Ingram Sutherland & Hutton who originally handled the claims at issue, is deceased.

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. Gilmer Sadler Ingram Sutherland & Hutton (“the law firm”) is the attorney-of-record representing Claimant SID 0951227, (“the Claimant”), who submitted claims to the SF-DCT. In that capacity, the law firm is aware that its client’s election to settle her claims subjects it to the terms of the SFA. *See id.* at § 6.02.

4. The Claimant was determined by the SF-DCT to have allowed claims for Rupture PP and Disease PP. On October 14, 2014 a \$2,500 Rupture PP claim payment check and a \$2,000 Disease PP claim payment check were sent to Gilmer Sadler Ingram Sutherland & Hutton for distribution to the Claimant. On November 24, 2014, both checks were cashed. *See Exh. B.*²

5. The Claim award notification letters mailed directly to the Claimant by the SF-DCT regarding the two (2) 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 to Gilmer Sadler Ingram Sutherland & Hutton on May 6, 2015, February 4, 2016, May 18, 2016, November 16, 2016, and May 25, 2017. *See Exhs. C, D, E, F and G.* These letters further

² The Claimant’s name has been redacted from all exhibits for privacy.

indicated that if the Claimant is deceased, the law firm should provide the address of the person with authority to act on behalf of the Claim. *See id.* Despite these repeat requests, Gilmer Sadler Ingram Sutherland & Hutton has failed to provide valid address information for the Claimant.

6. Because the checks sent to Gilmer Sadler Ingram Sutherland & Hutton were cashed, it is reasonable to assume that the firm has valid address information for the Claimant to facilitate its distribution of funds to her. It is also reasonable to assume that the firm has proof of distribution of the claim payments to the Claimant. Nevertheless, Gilmer Sadler Ingram Sutherland & Hutton 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 Gilmer Sadler Ingram Sutherland & Hutton was unable to distribute the claims payment to Claimant, the SF-DCT and the counsel for the Finance Committee requested in its correspondence that the law firm return the undistributed claims funds to the SF-DCT. *See id.* The law firm has ignored these requests and has failed to return \$4,500 distributed to it for the Claimant.

8. Because Gilmer Sadler Ingram Sutherland & Hutton 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 two

(2) claims payments checks sent to the law firm (and subsequently cashed) have been received by the Claimant.

9. Gilmer Sadler Ingram Sutherland & Hutton has not responded to any of the correspondence regarding the claims payments sent by the SF-DCT or the counsel for the Finance Committee. On February 9, 2018, an employee of the law firm replied to an email inquiry from the Claimants' Advisory Committee ("CAC") regarding the claims payments. The employee stated that he would "look into the issue" and get back with the CAC the following week. *See* Exh. I. No further communication from Gilmer Sadler Ingram Sutherland & Hutton was received.

10. The conduct of Gilmer Sadler Ingram Sutherland & Hutton with respect to the funds entrusted to it 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 Gilmer Sadler Ingram Sutherland & Hutton 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 funds were received by the Claimant. Moreover,

if the law firm was unable to distribute the claims payments to the Claimant, the Court should require it to return those funds to the SF-DCT.

12. While there is no order or injunction requiring Gilmer Sadler Ingram Sutherland & Hutton to comply with the SF-DCT's requests, its conduct clearly contradicts the SFA and this Court's supervision and custody over the \$4,500 in question. 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 a representative of Gilmer Sadler Ingram Sutherland & Hutton to appear before this Court on June 14, 2018 at 9:30 a.m. and show cause why it should not be sanctioned, held in contempt, and otherwise required to respond regarding its failure to account for or return \$4,500 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 Gilmer Sadler Ingram Sutherland & Hutton as the Court deems appropriate.

Dated: May 11, 2018.

Respectfully submitted,

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 /s/ Karima G. Maloney

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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 Gilmer Sadler Ingram Sutherland & Hutton.

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