

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOTHERN DIVISION**

IN RE	§	
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DOW CORNING CORPORATION	§	
	§	
Reorganized Debtor	§	CASE NO: 00-CV-00005-DT
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	§	Hon.Denise page Hood
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MOTION FOR RECOGNITION AND ENFORCEMENT OF MEDIATION

I. INTRODUCTION

The late Claims Administrator, Mr. David Austern, and the current Claims Administrator, Mrs. Ann Phillips, had proposed to settle the claims initially to the Korean Claimants around June 2012.

The Korean Claimants and the SF-DCT agreed to carry out mediation to resolve the issues and the Motions of the Korean Claimants before the District Court. The Korean Claimants and the SF-DCT reached to an agreement through mediation conference held in Washington DC on August 10, 2012 in that the SF-DCT would pay US 5 million dollars to the Korean Claimants and the Korean Claimants would withdraw and dismiss their claims from the SF-DCT.

The agreement of mediation placed no requirement for recognition and enforcement such as the approval from Dow Corning Corporation or the Finance Committee or the Claimants Advisory Committee. Actually, the sole mediator was a leading member of the Finance Committee, Professor Francis McGovern.

After the agreement of mediation was entered into, the Korean Claimants asked the Claims Administrator of the SF-DCT to execute the agreement on several occasions.

However, the Claims Administrator repeated the same answer that Dow Corning Corporation did not either authorize or approve mediation. The SF-DCT denied respecting the agreement of mediation. The SF-DCT breached the agreement of mediation.

It is why the Korean Claimants come to file this Motion.

II. PROCESS OF MEDIATION

The mediation between the Korean Claimants and the SF-DCT has been processed in the following order;

- The SF-DCT proposed the Korean Claimants to initiate mediation to settle the Korean claims before the SF-DCT and the Motions filed by the Korean Claimants before the District Court through the late Claims Administrator, David Austern, and the current Claims Administrator, Mrs. Ann Phillips, around June 2012;
- The SF-DCT recommended Professor Francis McGovern as the sole mediator. The Korean Claimants agreed to its recommendation for selecting the mediator;
- The SF-DCT sent its Response and Position Paper to the mediator on August 3, 2012(See Exhibit 1);
- The Korean Claimants sent the Reply to the mediator on August 7, 2012(See Exhibit 2);
- The mediation conference was held in Washington DC on August 10, 2012 10:00(See Exhibit 3);

- The SF-DCT and the Korean Claimants agreed to settle the claims at the mediation conference(See Exhibit 4). It was agreed that the SF-DCT should pay 5 million dollars to settle the whole claims of the Korean Claimants and the Korean Claimants should withdraw and dismiss the whole claims. The mediator confirmed the agreement;
- The SF-DCT sent the agreement of mediation in writing in the form of the Memorandum of Understanding to the Korean Claimants on September 28, 2012(See Exhibit 5);
- The SF-DCT sent the list of the Korean Claimants(about 2,600) who would release their claims to the Korean Claimants on September 29, 2012(See Exhibit 6);
- The Korean Claimants sent the Memorandum of Understanding signed by their Representative, Yeon Ho Kim, to the late Claims Administrator, David Austern, and the mediator confirmed it on October 16, 2012(See Exhibits 7 & 8, Refer to "Please assist Mr. Kim in any way possible. Thank you");
- The Korean Claimants sent the documents which met the conditions in the Memorandum of Understanding for the release of 5 million dollars on October 26, 2012 (See Exhibits 9 &10);
- The Korean Claimants was informed that a discussion would take place at the status conference on July 31, 2014(See Exhibit 11);
- The Korean Claimants was informed by the Claims Administrator, Mrs. Ann Phillips, that the prior mediation is not an option and the Parties advised that post Confirmation mediations are not authorized by the Plan on March 5, 2015(See Exhibit 12);
- On July 1, 2016, the representative of the Dow Corning Corporation, Deborah Greenspan, informed the representative of the Korean Claimants, Yeon Ho Kim, "

First, let me repeat as clearly as I can that the roles of David Austern (who is deceased) and Francis McGovern have always been that of neutral court appointees and never as representatives or agents of Dow Corning and neither I nor Dow Corning ever gave either of them authority to enter into settlement negotiations with you. Neither I nor Dow Corning had any knowledge of the mediation in Washington until after the fact when Mr. Austern advised us, and the CAC, of the mediation during a subsequent conference call. We were very much surprised and consistently objected to any such offer or agreement as beyond the authority of the Finance Committee" (See Exhibit 13).

III. ARGUMENTS

1. Mediation was finalized and the Agreement of Mediation Became Effective

It is obvious from the process of mediation that the SF-DCT had proposed mediation to settle the Korean Claimants' claims to the Korean Claimants pending the SF-DCT. The proposition included the Motions filed by the Korean Claimants before the Court.

It implicated that the Finance Committee agreed to it too. A leading member of the Finance Committee became the sole mediator. The Claimants Advisory Committee was not mentioned in the process of mediation but it looked that it did not object to it.

The mediation was carried out. The SF-DCT and the Korean Claimants agreed to settle the claims in mediation process. The Basic terms agreed by the parties were that the SF-DCT should pay 5 million dollars to the Korean Claimants and the Korean Claimants should withdraw or dismiss

the claims before the SF-DCT and the Motions before the Court. The detailed terms of the agreement of mediation were drawn into writing in the Memorandum of Understanding which was exchanged each other on the later stage. The Korean Claimants signed on it and sent back to the SF-DCT.

It is not necessary for the agreement of mediation to be signed by both parties to be effective so the signing of the SF-DCT was not required.

Therefore, the mediation of agreement between the SF-DCT and the Korean Claimants was finalized and became effective.

2. Dow Corning Corporation has no authority over the SF-DCT

Dow Corning Corporation objected to the agreement of mediation carried out by the SF-DCT.

The representative of Dow Corning Corporation, Deborah Greenspan, through an e-mail to the representative of the Korean Claimants, contended that the late David Austern and Professor Francis McGovern, the mediator as well as a member of the Finance Committee, were not given authority to enter into mediation by either her or Dow Corning Corporation.

The Claims Administrator of the SF-DCT, Mrs. Ann Phillips, manifested in her e-mail that mediation was not an option. The SF-DCT itself upset the proposal and the agreement of mediation which had been entered into at the mediation conference. The SF-DCT breached the agreement of mediation by justifying the opposition to mediation by Dow Corning Corporation.

The SF-DCT is independent of Dow Corning Corporation. The SF-DCT must respect the agreement of mediation with the Korean Claimants which had been finalized whether or not Dow Corning Corporation contended that it did not give authority over negotiation or mediation.

In addition, the Claims Administrator is not the employee of Dow Corning Corporation. The Claims Administrator must act independently thus must execute the agreement of mediation which had been proposed by the SF-DCT. Since the agreement of mediation has been effective, the SF-DCT is obliged to respect it.

The reason that the SF-DCT did not respect the agreement of mediation with the Korean Claimants is just because of the intrusion into decision-making of the SF-DCT.

The Court must step into to resolve this disarray in mediation.

IV. CONCLUSION

Therefore, the Korean Claimants seek the following measures;

- (a) The Court order the SF-DCT to respect the agreement of mediation and execute it pursuant to the terms under the Memo of Understanding signed;
- (b) The Court order Dow Corning Corporation not to either influence the decision-making process of the SF-DCT in terms of mediation by the SF-DCT or not to deny the agreement of mediation signed and effective;
- (c) The Court order the SF-DCT to declare that mediation is effective;
- (d) The Court order the SF-DCT to implement the terms of the agreement of mediation in a positive way;

(e) The Court order Dow Corning Corporation, Debtors' Representatives, the Claimants Advisory Committee and the Finance Committee to recognize and enforce the agreement of mediation.

Date: December 15, 2016

Respectfully submitted,

(signed) Yeon Ho Kim

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For the Korean Claimants

CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2016, this Motion has been electronically filed with the Clerk of Court using ECF system, and the same has been sent via e-mail to the following parties.

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(signed) Yeon Ho Kim

LIST OF EXHIBIT

EXHIBIT 1

EXHIBIT 2

EXHIBIT 3

EXHIBIT 4

EXHIBIT 5

EXHIBIT 6

EXHIBIT 7

EXHIBIT 8

EXHIBIT 9

EXHIBIT 10

EXHIBIT 11

EXHIBIT 12

EXHIBIT 13