

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

| | | |
|-------------------------|---|-------------------------------|
| IN RE: | § | CASE NO: 00-CV-00005-DT |
| | § | (Settlement Facility Matters) |
| DOW CORNING CORPORATION | § | |
| | § | |
| Reorganized Debtor | § | |
| | § | |
| | § | Hon. Denise Page Hood |

**RESPONSE TO FINANCE COMMITTEE’S MOTION FOR ENTRY OF AN ORDER
TO SHOW CAUSE WITH RESPECT TO YEON HO KIM**

I. INTRODUCTION

The Finance Committee filed this Motion on January 10, 2018.

The Settlement Facility of Dow Corning Trust (“the SFDCT”) sent Yeon Ho Kim an individual letter asking address updates for certain claimants of 148 claimants over a year.

Yeon Ho Kim did not respond to these individual address update letters.

In the meantime, Yeon Ho Kim sent several e-mails to the Claims Administrator, Ann Phillips, to ask for the payment of five million dollars in accordance with the settlement agreement reached between the Finance Committee and Yeon Ho Kim. Yeon Ho Kim requested Ann Phillips to have a meeting in Houston. Ann Phillips declined.

All of a sudden, the SFDCT mailed individual checks of the Claimants to Yeon Ho Kim. Even a check for the Claimants has never arrived from the SFDCT over last four years since

the last check arrived on December 2010. Yeon Ho Kim requested Ann Phillips to have a meeting in Houston. She declined too. Yeon Ho Kim cashed them out and distributed to the Claimants who asked for payments.

The SFDCT mailed individual checks of the Claimants to Yeon Ho Kim again. At this time, However, Yeon Ho Kim returned the checks to the SFDCT via FedEx. Yeon Ho Kim filed the Motion for Enforcement of Mediation Agreement with the Court.

On May 16, 2017¹ Yeon Ho Kim received a letter from the SFDCT (Exhibit 1). It said, “If you were unable to locate the Claimants to distribute the Payment awards, returning the amounts intended for this Claimant, until current address information can be obtained, is required. Pursuant to the Settlement Facility and Fund Distribution Agreement Article X Section 10.09, all funds in the Settlement Facility are in the custody of the Court until the funds have actually been paid to and received by a Claimant”.

On June 8, 2017, Yeon Ho Kim sent Ellen Bearicks a letter via the FedEx (Exhibit 2). It said, “First of all, the Korean Claimants do not want me to update their addresses. Secondly, the address information is personal information protected under the Korean laws thus I must get the Claimants’ permission which is not possible. I have no problem to contact them and to distribute the payments, however, because I have their smart phone numbers. Therefore, it is not true that I cannot locate the enclosed Claimants so I cannot distribute the payments to them”.

On June 21, 2017, Yeon Ho Kim received a letter from the Claims Administrator, Ann Phillips (Exhibit 3). It said, “This letter responds to your letter to Ellen Bearicks of June 8, 2017. First, the establishment of residence entitles a person to certain legal protections in the

¹ Even if it was post marked on May 16, 2017, it was delivered to Yeon Ho Kim about two weeks later because it was an international mail.

US and is a prerequisite to confirming a person's identity. A claimant does not have the fundamental right to make a claim without establishing residence....Claimants have an affirmative obligation to update their address with the Settlement Facility. Recent changes to the SFDCT's Address Procedures will allow you, as the Attorney of Record, to complete the enclosed Address Form for your claimants. No further processing will occur for those claims where you have failed to comply with SFDCT's written requests for current address information for the claimants on the enclosed list".

On July 28, 2017, Yeon Ho Kim sent Ann Phillips a letter via the FedEx (Exhibit 4). It said, "First of all I submitted their original addresses with the supporting Government's documents when I filed their claims of either the POM or the disease claims around 2004-2006. Therefore, the indication in your letter that they failed the establishment of residence is unsubstantiated and has no basis. They are entitled to making a claim because they established their residence at that time. Second, the enclosed 132 Claimants are not Class 7 Claimants so they have nothing to do with the Class 7 Consent Order that you are referring to. Third, you said in your letter that the SFDCT must maintain consistency in processing a claim. However, the SFDCT did not maintain consistency in processing claims of the Korean Claimants. It is why I filed several Motions with the Court. You submitted supporting declarations to the Court for Dow Corning and the Claimants' Advisory Committee which abandoned advisory functions to the Korean Claimants by accusing me and the Korean Claimants before the Court. The members of the Advisory Committee were even laughing behind me. Nonetheless, the SFDCT asserts that the Korean Claimants must meet basic administrative Plan criteria. If the SFDCT wants to establish consistency in processing claims of the Korean Claimants, it needs to withdraw the cancellation of the POM approvals that it made and further respect the agreement of settlement in mediation with me in 2012. You were there in the mediation conference. You must have read the written agreement signed by me. After over fourteen years passed by since they had submitted their proof of addresses with the Government-issued documents in 2004-2006, how the SFDCT dare to declare that the

enclosed Claimants failed to execute an affirmative obligation to update their addresses with the SFDCT? Fourth, I explained Ellen Bearicks that the enclosed Claimants do not want to update their addresses and I am not allowed to do so without their permissions under the Korean personal information protection laws. Fifth, whether further processing will occur for the enclosed Claimants is up to the SFDCT. However, I will file the Motion to vacate the SFDCT's decision to hold processing of claims of the enclosed Claimants with the Court. In that regard, I want to receive the final letter that the SFDCT determined to stop processing of the claims of the enclosed Claimants permanently. Once again, I ask you and the SFDCT withdraw the cancellation of the POM approvals and respect the mediation result. If you want a meeting to share an opinion with me, I will be highly delighted".

On December 21, 2017, Yeon Ho Kim received an e-mail attached by a letter from Karima Maloney, the attorney of the Finance Committee, the SFDCT (Exhibit 5 & 6). It said, "Correspondence mailed by the SFDCT to the 148 Claimants on the attached list was returned undeliverable with no available forwarding addresses. The SFDCT sent written requests for updated addresses for the Claimants. Address update/correction forms for the Claimants meeting the SFDCT requirements have not been received. The SFDCT has confirmed that the claim payment checks on the attached list have all been cashed. Therefore, it is reasonable to assume that current address information for the Claimants is available. You have not provided this information, despite the SFDCT's requests. On June 8, 2017, you indicated in correspondence with the SFDCT that you will not provide updated address information for the Claimants on the attached list because the Claimants do not wish to receive mail from the SFDCT. On June 21, 2017, the SFDCT responded to you in a letter that outlined the SFDCT's requirement of valid address information for each Claimant. Without valid address information for each Claimant, the SFDCT has no confirmation that the claims payments were in fact distributed to the Claimants. If you have been unable to locate a Claimant to distribute the claim payment, **you are required to return the funds intended for the Claimant.** Please be aware that if updated address information for the 148 Claimants

is not received or the claim payments intended for the 148 Claimants are not returned in full within fifteen (15) days of the date of this letter, the Finance Committee of the SFDCT will seek from the US District Court of the Eastern District of Michigan an order to show cause why your firm should not be held in contempt or otherwise sanctioned for failure to return the funds or verify that the funds have been distributed to the Claimant. I have reserved time for a Show Cause hearing, should the Court grant our motion, before Chief Judge Denise Page Hood on January 32, 2018 at 2:00 p.m., in Detroit, Michigan. The Claims on the attached list are on HOLD and any applicable future claim payments, including Premium Payments, will not be made until the updated address information for the Claimants has been received. Any questions regarding this matter may be directed to me at kmaloney@skv.com or (713)221-2382”.

On December 20, 2017,² Yeon Ho Kim sent Karima Maloney an e-mail (Exhibit 5). It said, “I will update the address of the claimants. It will take time. I will finish it be Feb.20. Please confirm. By the way, when do you expect the Court to issue the order on motion for premium payment that you filed?”

On December 22, 2017, Yeon Ho Kim received an e-mail from Karima Maloney (Exhibit 5). It said, “We do not agree to February 20, 2018. As stated in my letter, please provide the updated addresses or return the funds by January 4, 2018 (15 days following the date of my letter). I do not know when the Court will rule on the Finance Committee’s motion for premium payments”.

On December 27, 2017, Yeon Ho Kim sent Karima Maloney a letter via the FedEx, titled as **Notice of Actions in Korea against the Finance Committee** (Exhibit 7). It said, “As you are aware, the Finance Committee and I reached to the agreement through mediation where

² Korea advances one day earlier than the US.

the SFDCT shall pay 5 million dollars to settle the Korean claims on September 2012. The majority of three members of the Finance Committee were involved in the mediation. Therefore, the Finance Committee itself held a mediation conference. The Finance Committee reached to a verbal agreement with me at that conference. The written agreement was delivered to me and I signed on the agreement and sent back to both the ex-Claims Administrator and the current Claims Administrator. However, the current Claims Administrator mailed checks for only partial Korean Claimants to me *suddenly*. Even if I cashed out the checks, it does not mean that I released the Finance Committee's obligations from the agreement of mediation. I will not allow the Finance Committee to walk away from the liabilities of mediation agreement. Despite the Finance Committee failed to get an approval from Dow Corning, I am preparing for filing lawsuits against the Finance Committee in Korea which can be both civil and criminal under the laws of Korea. Since the Michigan Eastern District Court did not rule on the Motion for Enforcement of the Mediation Agreement, the option of filing civil and criminal lawsuits in Korea remains to me".

On January 3, 2018, Yeon Ho Kim sent Address update/correction forms of the 148 Claimants to Karima Maloney via the FedEx including a cover letter (Exhibit 8). It said, "As you requested for updated addresses of 148 Korean Claimants attached to your letter dated December 20, 2017, I enclose their re addresses *most recently updated on our record* (Some of them are same as their previous addresses and some of them different from their previous addresses)".

II. ARGUMENT

Karima Maloney, the attorney of the Finance Committee, received Address update/correction forms for the 148 Claimants. Yeon Ho Kim sent the forms via the FedEx to her on January 3, 2018.

Out of the 148 Claimants, the 60 Claimants reported Yeon Ho Kim the changes of their addresses previously submitted to the SFDCT on his firm's record (Exhibit 9). Yeon Ho Kim filled out the new addresses in the Address update/correction forms for them and sent them to Karima Maloney. The list of the 60 Claimants as follows;

| Claimant | SID | Claim Payments | Payment Date | Payment Amount |
|-------------|---------|----------------|--------------|----------------|
| Claimant 1 | 1035531 | Disease | 12/18/2014 | \$3,500 |
| Claimant 2 | 1035532 | Disease | 12/18/2014 | \$3,500 |
| Claimant 3 | 1035591 | Disease | 11/24/2014 | \$3,500 |
| Claimant 4 | 1035597 | Disease | 10/23/2014 | \$6,000 |
| Claimant 5 | 1035614 | Disease | 11/24/2014 | \$3,500 |
| Claimant 6 | 1035619 | Disease | 12/18/2014 | \$3,500 |
| Claimant 7 | 1035668 | Disease | 10/23/2014 | \$3,500 |
| Claimant 8 | 1035815 | Disease | 11/24/2014 | \$3,500 |
| Claimant 9 | 1035851 | Disease | 12/18/2014 | \$3,500 |
| Claimant 10 | 1035884 | Disease | 12/18/2014 | \$3,500 |
| Claimant 11 | 1036086 | Disease | 12/18/2014 | \$3,500 |
| Claimant 12 | 1036157 | Disease | 12/18/2014 | \$3,500 |
| Claimant 13 | 1036232 | Disease | 12/18/2014 | \$3,500 |
| Claimant 14 | 1036246 | Disease | 12/18/2014 | \$3,500 |
| Claimant 15 | 1036250 | Disease | 10/23/2014 | \$3,500 |
| Claimant 16 | 1036272 | Disease | 12/18/2014 | \$3,500 |
| Claimant 17 | 1036288 | Disease | 10/23/2014 | \$3,500 |
| Claimant 18 | 1036308 | Disease | 12/18/2014 | \$3,500 |
| Claimant 19 | 1036360 | Disease | 12/18/2014 | \$3,500 |
| Claimant 20 | 1036421 | Disease | 12/18/2014 | \$3,500 |
| Claimant 21 | 1036431 | Disease | 12/18/2014 | \$3,500 |
| Claimant 22 | 1036446 | Disease | 11/24/2014 | \$3,500 |
| Claimant 23 | 1036449 | Disease | 10/23/2014 | \$3,500 |
| Claimant 24 | 1036465 | Disease | 12/18/2014 | \$3,500 |
| Claimant 25 | 1036469 | Disease | 12/18/2014 | \$3,500 |
| Claimant 26 | 1036577 | Disease | 12/18/2014 | \$3,500 |

| | | | | |
|-------------|---------|---------|------------|---------|
| Claimant 27 | 1036594 | Disease | 12/18/2014 | \$3,500 |
| Claimant 28 | 1036662 | Disease | 11/24/2014 | \$3,500 |
| Claimant 29 | 1036679 | Disease | 12/18/2014 | \$3,500 |
| Claimant 30 | 1036735 | Disease | 12/18/2014 | \$3,500 |
| Claimant 31 | 1036742 | Disease | 11/24/2014 | \$3,500 |
| Claimant 32 | 1036916 | Disease | 12/18/2014 | \$3,500 |
| Claimant 33 | 1037058 | Disease | 11/24/2014 | \$3,500 |
| Claimant 34 | 1038450 | Disease | 11/24/2014 | \$3,500 |
| Claimant 35 | 1038478 | Disease | 12/18/2014 | \$3,500 |
| Claimant 36 | 1038481 | Disease | 12/18/2014 | \$3,500 |
| Claimant 37 | 1695533 | Disease | 10/23/2014 | \$3,500 |
| Claimant 38 | 2783160 | Disease | 2/27/2015 | \$3,500 |
| Claimant 39 | 2783475 | Disease | 2/27/2015 | \$3,500 |
| Claimant 40 | 2783499 | Disease | 2/27/2015 | \$3,500 |
| Claimant 41 | 2783559 | Disease | 2/27/2015 | \$3,500 |
| Claimant 42 | 2783611 | Disease | 2/27/2015 | \$3,500 |
| Claimant 43 | 6459549 | Disease | 12/18/2014 | \$3,500 |
| Claimant 44 | 6460367 | Disease | 12/18/2014 | \$3,500 |
| Claimant 45 | 6460444 | Disease | 12/18/2014 | \$3,500 |
| Claimant 46 | 6460632 | Disease | 12/18/2014 | \$3,500 |
| Claimant 47 | 6461579 | Disease | 10/23/2014 | \$3,500 |
| Claimant 48 | 6462214 | Disease | 12/18/2014 | \$3,500 |
| Claimant 49 | 6473706 | Disease | 12/18/2014 | \$3,500 |
| Claimant 50 | 6473709 | Disease | 12/18/2014 | \$3,500 |
| Claimant 51 | 6474340 | Disease | 12/18/2014 | \$3,500 |
| Claimant 52 | 6474551 | Disease | 12/18/2014 | \$3,500 |
| Claimant 53 | 1035686 | Disease | 12/16/2016 | \$6,000 |
| Claimant 54 | 1035806 | Disease | 12/16/2016 | \$6,000 |
| Claimant 55 | 1035902 | Disease | 12/16/2016 | \$6,000 |
| Claimant 56 | 1036283 | Disease | 12/16/2016 | \$6,000 |
| Claimant 57 | 1036314 | Disease | 12/16/2016 | \$6,000 |
| Claimant 58 | 1037123 | Disease | 12/16/2016 | \$6,000 |
| Claimant 59 | 1036472 | Explant | 8/13/2009 | \$3,000 |
| | 1036472 | Disease | 12/18/2014 | \$3,500 |

| | | | | |
|-------------|---------|---------|-----------|---------|
| Claimant 60 | 2783202 | Rupture | 7/13/2009 | \$7,000 |
| | 2783202 | Explant | 8/30/2010 | \$3,000 |
| | 2783202 | Disease | 2/27/2015 | \$3,500 |

Out of the 148 Claimants, however, the 88 Claimants in this Motion did not report Yeon Ho Kim's law firm the changes of their addresses previously submitted to the SFDCT. They maintained the same addresses on his firm's record.³ Accordingly, Yeon Ho Kim sent Karima Maloney their Address update/correction forms after having filled out "the New Address: *Not Changed*" (Exhibit 10).

The Finance Committee's condition in Karima Maloney's letter, "*if updated address information for the 148 Claimants is not received*" was met because she received Address update/correction forms of all of the 148 Claimants.

There is no basis for this Motion.

The Finance Committee seeks an order to show cause why Yeon Ho Kim should not be sanctioned, held in contempt, and otherwise required to respond regarding his failure to account for, or return \$370,050 in claims funds. This is the genuine intention of the Finance Committee. Yeon Ho Kim takes the Finance Committee's threat to divert the disputes and to evade the obligations and the liabilities under the settlement agreement reached with him.

As a matter of fact, the Finance Committee is liable for failure to respect the settlement agreement reached with Yeon Ho Kim and the Korean Claimants. The Finance Committee must show cause why the Finance Committee failed to respect the settlement agreement

³ The 88 Claimants maintain the cellular [smart] phone numbers. Therefore, there is no problem for Yeon Ho Kim to contact them.

through mediation with Yeon Ho Kim and the Korean Claimants.

The Finance Committee has the authority with respect to distribution of funds and review of claims operations and shall have the authority to bring actions on behalf of the Trust and to defend the Settlement Facility, the Trust, the Claims Administrator, the Financial Committee, and any agents or employees of the Trust, including actions to enforce obligations in the Plan Documents. *See* SFA Clause 4.08 Finance Committee

In fact, the Finance Committee has general powers over the SFDCT's rights and obligations.

The Finance Committee proposed to mediate to settle the Korean claims to Yeon Ho Kim and a mediation conference was held and the Finance Committee offered five million dollars to Yeon Ho Kim for settlement at the mediation conference and Yeon Ho Kim accepted it and the Parties attending the conference reached to the settlement agreement and all of the Parties shook hands, and then Yeon Ho Kim received the written agreement reflecting the verbal agreement at the mediation conference from the Finance Committee and signed on it and sent back to the Finance Committee. Actually the settlement agreement was consummated.

However, the Finance Committee did not respect the settlement agreement. Yeon Ho Kim requested the Finance Committee to execute the payments of five million dollars in accordance with the settlement agreement. Yeon Ho Kim filed the Motion for Recognition and Enforcement of Mediation on December 15, 2016. The Finance Committee said in the Response to the Motion that no agreement was ever executed.

Before the Finance Committee seeks an order to show cause why the Yeon Ho Kim should not be sanctioned, held in contempt, and otherwise required to respond his failure to account for, or return \$370,050 in claims funds, the Finance Committee must show cause

why the Finance Committee should not be sanctioned, held in contempt, and otherwise required to respond its failure to account for, or pay \$5,000,000 immediately after the settlement agreement was consummated with the interests accrued from September, 2012.

III. CONCLUSION

For the foregoing reasons, Yeon Ho Kim and the Korean claimants respectfully request that the Court deny this Motion for Entry of an Order to Show Cause with respect to Yeon Ho Kim and enter an order to show cause why the Finance Committee should not be sanctioned, held in contempt, and otherwise required to pay five million dollars in accordance with the settlement agreement to Yeon Ho Kim.

Date: January 14, 2018

Respectfully submitted,

(signed) Yeon Ho Kim

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For the Korean Claimants

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| Reorganized Debtor | § | |
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| | § | Hon. Denise Page Hood |

**PROPOSED ORDER DENYING THE FINANCE COMMITTEE’S MOTION FOR
ENTRY OF AN ORDER TO SHOW CAUSE WITH RESPECT TO YEON HO KIM**

The Court has considered the Yeon Ho Kim’s Response to “Motion for Entry of an Order to Show Cause with respect to Yeon Ho Kim” filed by the Finance Committee, and the Court finds and concludes that this Motion should be denied.

Further, The Court finds that the settlement agreement drafted by the Finance Committee and signed by Yeon Ho Kim is effective and binding to the Finance Committee and the Finance Committee is obliged to pay five million dollars to Yeon Ho Kim.

ACCORDINGLY, it is hereby ORDERED that the Finance Committee’s Motion for Entry of an Order to Show Cause with respect to Yeon Ho Kim is dismissed.

Date: _____

DENISE PAGE HOOD

United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that on January 14, 2018, this Response to the Motion has been electronically filed with the Clerk of Court using ECF system, and the same has been notified to all of the relevant parties of record.

Dated: January 14, 2018

Signed by Yeon Ho Kim