

**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

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

The Finance Committee, as did always to Yeon Ho Kim and the Korean Claimants, distorts the facts and presents unsubstantiated allegations in its Response. The Finance Committee has been successful to cheat the Court in relation to the Korean Claims and Yeon Ho Kim to some extent. Now the Finance Committee presented the following allegations in its Response.

First, the Finance Committee alleges that Yeon Ho Kim is seeking to enforce an unsigned draft document that was never approved or executed by the Finance Committee.

This allegation is incorrect.

The Finance Committee drafted MEMORANDUM OF UNDERSTANDING including EXHIBIT A: SETTLEMENT FACILITY – DOW CORNING TRUST RELEASE FOR KOREAN CLAIMANTS REPRESENTED BY YEON-HO KIM AND SETTLED

PURSUANT TO THE MEMORANDUM OF UNDERSTANDING DATED \_\_\_ BETWEEN YEON-HO KIM AND THE SETTLEMENT FACILITY – DOW CORNING TRUST. (See Exhibit 1) The Finance Committee sent it to Yeon Ho Kim. Yeon Ho Kim signed on it and sent it back to the Finance Committee. Therefore, it was signed.

The Finance Committee alleges that Exhibit 1 was not approved.

This allegation is incorrect.

Two of three members of the Finance Committee, the Special Master and the Claims Administrator, agreed to the settlement of Exhibit 1, where the SFDCT should pay Yeon Ho Kim, the representative of the Korean Claimants, five million dollars and the SFDCT would have no responsibility or liability to any person or entity with respect to the distribution of the Korean Claims payment. Since the Special Master, Professor Francis McGovern, acted as the sole mediator, and the Claims Administrator, Ann Phillips, acted as the representative of the SFDCT, the two members of the Finance Committee led the mediation process and agreed to the settlement of Exhibit 1. Since the majority of the members of the Finance Committee agreed, the Exhibit 1 was approved by the Finance Committee.

The Finance Committee alleges that Exhibit 1 was not executed.

This allegation is incorrect.

Exhibit 1 was drafted on the basis of the verbal agreement reached between the Finance Committee and Yeon Ho Kim in the mediation conference held in Washington DC on August 10, 2010. Exhibit 1 was written by the ex-Claims Administrator, David Austern, and was reviewed by the Claims Administrator, Ann Phillips. The Special Master, Francis McGovern, finalized it before sending it to Yeon Ho Kim. Since Exhibit 1 was drafted, reviewed and by

finalized by the two members of Finance Committee, the Finance Committee executed Exhibit 1 upon being signed by Yeon Ho Kim, the counterpart of Exhibit 1. The signature on Exhibit 1 was to be made by Ann Phillips for the Finance Committee. Ann Phillips received the signed Exhibit 1 from Yeon Ho Kim. Yeon Ho Kim is certain that Ann Phillips does not lie about it. Since Ann Phillips for the Finance Committee was supposed to sign on Exhibit 1, the Finance Committee executed Exhibit 1 when she received the signed Exhibit 1 from Yeon Ho Kim. Following the receipt of Exhibit 1, she never indicated Yeon Ho Kim that the Finance Committee did not want her to sign on it. She only explained that Dow Corning Corporation did not authorize it.

In this regard, the Finance Committee alleges by reference of court cases that mediation does not result in a full agreement because an out-of-court settlement must be adequately described in a signed writing.

This allegation diverts the assertions stated in the Cross Motion.

Yeon Ho Kim stated that the Finance Committee reached to a verbal agreement for settlement of the Korean Claims. Then, Yeon Ho Kim stated that the Finance Committee reached to a written agreement reflecting the verbal agreement and the written agreement is Exhibit 1. Yeon Ho Kim does not seek the execution of mediation only. Yeon Ho Kim seeks the obligations and the liabilities from “the contract”, entered into through the verbal and the written agreements. Whether or not the agreements for settlement of the Korean Claims were reached through mediation, the agreements are binding because the counter-offer<sup>1</sup> of five million dollars to settle the Korean Claims was made by the Finance Committee and the counter-offer was accepted by Yeon Ho Kim, resulting the consent of the Parties.

---

<sup>1</sup> It is a counter-offer because Yeon Ho Kim offered eight million dollars to the Finance Committee.

Second, the Finance Committee alleges that the Plan of Reorganization does not provide for group settlements and it requires individual evaluation of each claim therefore the settlement that Yeon Ho Kim seeks to enforce cannot be achieved absent a plan modification.

This allegation is absurd.

The Finance Committee should have known the clauses of the Plan of Reorganization. The Finance Committee and the SFDCT should have approved the Claims of the Korean Claimants, which did not receive a notice from the SFDCT, if the Finance Committee had found the proposal for group settlement to Yeon Ho Kim impossible to be implemented.

In addition, either the Korean Claimants or Yeon Ho Kim does not care about whether the Finance Committee or the SFDCT is able to provide for group settlements. The Finance Committee is responsible for the payment of five million dollars agreed with the Korean Claimants. Whether the Finance Committee can make that money for payment to the Korean Claimants pursuant to the Plan of Reorganization is up to the Finance Committee. The Finance Committee is obliged to pay because it agreed to pay, which has nothing to do with the Plan of Reorganization.

The fact that the Finance Committee proposed settlement to Yeon Ho Kim without fully understanding the clauses of the Plan of Reorganization reinforces the necessity of entry of an order to show cause why the Finance Committee should be sanctioned, held in contempt and otherwise required to pay five million dollars.

Third, the Finance Committee alleges that nearly all claims made by the Korean Claimants have been processed and paid and enforcement of the settlement agreement results in double payment to those individuals.

This allegation is false.

David Austern, the ex-Claims Administrator, wrote the an e-mail to Yeon Ho Kim on August 14, 2009 as follows: (Exhibit 2)

With respect to the POM claims you sent, a few observations: We have performed a POM review on 1,815 claims you have submitted. Of these, 1,488 (82%) were based on affirmative statements, a hugely greater number than any other group of claims submitted to us. Nonetheless, we have approved POM for 1,762 of the claims, an approval rate of 97% or approximately 8% higher than the average POM approval rate for all claims submitted to the Facility. (By the way, 274 of the 1,762 approved claims do not have a Claim Form and we will need such a form before a further review of these claims.) For your records, we show you have also submitted 1,504 Disease Claim Forms, 1,504 Rupture Forms, and 498 Explant Forms.

In addition to the 1,762 approved POM claims, there are 66 additional claims pending translation.

We have approved all but 53 of the affirmative statement basis POMs — after spending one year reviewing them. These 53 claims had certain inconsistencies in the claim files. We did not "take back" the "acceptable" POM determination but we did write to you and request additional information before proceeding with their further review (i.e., Disease review). We need further explanation for these claims -- and don't forget, we need Claim Forms for 274 of the POM approved claims noted above.

Ann Phillips wrote a letter to Yeon Ho Kim on August 2011 as follows; (Exhibit 3)

Note also that for claimants who have yet to file a claim form, no Affirmative Statements will be accepted as proof of manufacture. Of the 1742 claimants who filed claim forms, any claimant previously paid based solely on an Affirmative Statement is not eligible for further benefits, including Premium Payments. A list of those claimants will be sent by the Quality Management Department shortly. Claims where, a determination has/will be made that documents have been altered will be removed from processing.

Ann Phillips filed the Declaration of Ann M. Phillips regarding Suggestion of Mootness of Korean Motions with this Court on April 23, 2015 as follows; (Exhibit 4)

15. As of December 31, 2014, Mr. Kim has successfully obtained awards for approximately 860 Disease Claims.

To sum up the above paragraphs, Yeon Ho Kim filed 1,815 Claims. The SFDCT approved for 1,762 of the claims. As of December 31, 2014, however, Yeon Ho Kim obtained awards for approximately 860 Disease Claims only. The 1,762 Claims subtracted by the 860 Claims did not receive any individual notice from the SFDCT.

Therefore, the allegation that nearly all claims made by the Korean Claimants have been processed and paid is a big lie. If not a lie, it is only an internal assumption of the SFDCT to disguise that the Korean Claims were finished, which is not true.

Aside from the Korean claims made to the SFDCT, Yeon Ho Kim keeps hundreds of Korean Claimants who did not make any claim to the SFDCT yet.

The Finance Committee is winding down the process for the Korean Claimants without completing the payments. The Finance Committee lied to the Court that nearly all claims made by the Korean Claimants have been processed and paid.

The Finance Committee is lying for evading the obligations and liabilities from the settlement agreement. Furthermore, it attacked Yeon Ho Kim on the basis of baseless beliefs by filing the Motion for an order to show cause why he should not be sanctioned, held in contempt and otherwise required to respond as a result of conduct of his law office related to claim funds for the 88 Claimants.

The Finance Committee is not reliable and trustworthy as shown as above. Both the Finance Committee and the SFDCT are biased and prejudiced in processing the Korean Claims.

For the foregoing reasons, Yeon Ho Kim request the Court not to take into account the three allegations in the Response of the Finance Committee and to GRANT an order for show cause to appear in this Court on March 22, 2018 and why the Finance Committee should not sanctioned, held in contempt and otherwise required to pay five million dollars to Yeon Ho Kim, the representative of the Korean Claimants, in accordance with the settlement agreement.



Date: January 28, 2018

Respectfully submitted,

(signed) Yeon Ho Kim

Yeon Ho Kim Int'l Law Office

Suite 4105, Trade Center Bldg.,

159 Samsung-dong, Kangnam-ku

Seoul 135-729 Korea

(822)551-1256

[yhkimlaw@unitel.co.kr](mailto:yhkimlaw@unitel.co.kr)

**CERTIFICATE OF SERVICE**

I hereby certify that on January 28, 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 28, 2018

Signed by Yeon Ho Kim