

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

DOW CORNING CORPORATION,
REORGANIZED DEBTOR

§

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

Hon. Denise Page Hood

OPPOSITION OF DOW CORNING CORPORATION,
THE DEBTOR'S REPRESENTATIVES AND THE CLAIMANTS'
ADVISORY COMMITTEE TO YEON HO KIM'S CROSS MOTION
FOR ENTRY OF AN ORDER TO SHOW CAUSE WITH RESPECT
TO THE FINANCE COMMITTEE

For the reasons set forth in the attached brief, Dow Corning Corporation ("Dow Corning"), the Debtor's Representatives (the "DRs") and the Claimants' Advisory Committee (the "CAC") oppose Yeon Ho Kim's Cross Motion for Entry of an Order to Show Cause with Respect to the Finance Committee ("Cross Motion") and respectfully submit that the Cross Motion should be denied.

January 31, 2018

Respectfully submitted,

*On Behalf of Dow Corning Corporation
and the Debtor's Representatives*

*On Behalf of Claimants' Advisory
Committee*

/s/ Deborah E. Greenspan

/s/ Dianna L. Pendleton-Dominguez

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*On Behalf of Claimants' Advisory
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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re:

**DOW CORNING CORPORATION,
REORGANIZED DEBTOR**



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

Hon. Denise Page Hood

**MEMORANDUM IN SUPPORT OF THE OPPOSITION OF DOW
CORNING CORPORATION, THE DEBTOR’S REPRESENTATIVES AND
THE CLAIMANTS’ ADVISORY COMMITTEE TO YEON HO KIM’S
CROSS MOTION FOR ENTRY OF AN ORDER TO SHOW CAUSE WITH
RESPECT TO THE FINANCE COMMITTEE**

Dow Corning Corporation (“Dow Corning”), the Debtor’s Representatives (the “DRs”) and the Claimants’ Advisory Committee (the “CAC”) respectfully request that the Court deny Yeon Ho Kim’s Cross Motion for Entry of an Order to Show Cause with Respect to the Finance Committee (“Cross Motion”).

As stated in the 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 (“FC Response to Cross Motion”), the Cross Motion is duplicative of an assertion made by Mr. Kim in a pending motion that was filed on December 14, 2016. *See* Motion for Recognition and Enforcement of Mediation (Doc. No. 1271) (“2016 Kim Mediation Motion”). In both the 2016 Kim Mediation Motion and the Cross Motion, Mr. Kim (a) seeks to compel the Finance Committee to pay him \$5

million, and (b) asserts that the Finance Committee agreed in a mediation to pay this amount to resolve all of the Korean claims filed by Mr. Kim. The Finance Committee, Dow Corning, the DRs and the CAC opposed the 2016 Kim Mediation Motion, and all the issues have been fully briefed. *See* Opposition of Dow Corning Corporation, the Debtor’s Representatives and the Claimants’ Advisory Committee to Motion for Recognition and Enforcement of Mediation (Doc. No 1275) (“Joint Opposition to 2016 Kim Mediation Motion”).¹ Both the Cross Motion and the 2016 Kim Mediation Motion should be denied for the following reasons set forth in the Joint Opposition to 2016 Kim Mediation Motion:

The Mediation Motion is an effort to compel the Settlement Facility-Dow Corning Trust (the “SF-DCT”) and its Claims Administrator to adopt and implement an unsigned draft mediation document that was rejected more than four years ago. The Mediation Motion must be denied for several reasons:

First, the so-called mediation agreement is simply a draft that was neither signed nor approved by the Claims Administrator or the Finance Committee. By its terms and nature, the document evinces the parties’ intent to memorialize in a final executed document any eventually-agreed upon terms. Clearly, that did not occur.

Second, the provisions of the draft document set forth procedures for the resolution of Korean Claims in a manner that is not permitted by the Dow Corning Amended Joint Plan of Reorganization (the “Plan”). Ex. A. The draft document provides for the payment of a lump sum of \$5 million to resolve all Korean Claims irrespective of their eligibility for payment under the Plan. But the Plan does not permit bulk resolution of claims; it requires

¹ *See also* Finance Committee Response to Motion for Recognition and Enforcement of Mediation (Doc. No. 1274).

individual evaluation of each claim pursuant to the criteria set forth in the Plan. The SF-DCT would not have authority to agree to this purported mediation agreement absent a modification of the Plan.

Third, the essential purpose of the draft mediation document no longer exists and enforcement of its terms would be barred by basic contract principles. In the almost five years since that draft document was prepared, the SF-DCT has completed the processing and payment (or preparation for payment) of all but 11 Korean Claims that have been submitted for evaluation. That is, the claims at issue have been paid (or shortly will be paid) the full amount Allowed under the Plan. The fundamental purpose of the draft mediation document was to resolve the 2,547 Korean Claims. Since they have already been resolved (or were never submitted), the SF-DCT would not obtain any consideration for the payment of the proposed lump sum. Further, if the lump sum were to be paid, the Korean Claimants would receive payments in excess of the amounts Allowed under the Plan in violation of the terms of the Plan.

Memorandum in Support of Joint Opposition to 2016 Kim Mediation Motion, at 1-

2.

CONCLUSION

For the foregoing reasons, the Dow Corning, the DRs and the CAC respectfully request that the Court deny the Cross Motion and deny the 2016 Kim Mediation Motion.

January 31, 2018

Respectfully submitted,

*On Behalf of Dow Corning Corporation
and the Debtor's Representatives*

*On Behalf of Claimants' Advisory
Committee*

/s/ Deborah E. Greenspan

/s/ Dianna L. Pendleton-Dominguez

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CERTIFICATE OF SERVICE

I hereby certify that on January 31, 2018, I electronically filed the foregoing document with the Clerk of the Court using the ECF System which will send notification of such filing to all registered counsel in this case.

Dated: January 31, 2018

/s/ Deborah E. Greenspan

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