

**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 OF THE KOREAN CLAIMANTS IN SUPPORT OF CROSS MOTION FOR  
ENTRY OF AN ORDER TO  
SHOW CAUSE WITH RESPECT TO THE FINANCE COMMITTEE**

The Finance Committee distorts facts and presents unsubstantiated allegations in its Response to the Cross Motion for Entry of Order to Show Cause with respect to the Finance Committee.

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 baseless.

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 for the Korean Claimants. He signed on it and sent it back to the Finance Committee. Therefore, it was not a draft. It was executed.

Now, the Finance Committee alleges that Exhibit 1 was not approved.

This allegation is baseless too.

Two of three members of the Finance Committee, the Special Master and the Claims Administrator, agreed to settle the Korean Claims pending the SFDCT as in Exhibit 1, where the SFDCT should pay the Korean Claimants five million dollars and the SFDCT would have no responsibility or liability to any Korean Claims pending the SFDCT. Since the Special Master, Professor Francis McGovern, acted as the sole mediator, and the Claims Administrator, Ann Phillips, acted as the representative for the SFDCT, the two members of the Finance Committee administered the mediation process and agreed to settle the Korean Claims in accordance with 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 baseless.

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

was drafted, reviewed and finalized by two members of the Finance Committee, the Finance Committee executed Exhibit 1 upon being signed by Yeon Ho Kim, the counterpart of signature.

The signature on Exhibit 1 was to be made by the Ann Phillips, the Claims Administrator, for the Finance Committee. She received the signed Exhibit A from Yeon Ho Kim. Since She was supposed to sign on Exhibit 1 for the Finance Committee, the Finance Committee executed Exhibit 1 when she received the signed Exhibit 1 from Yeon Ho Kim.

Following the receipt of the signed 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 Silicones 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 issues raised in the Cross Motion.

The Korean Claimants asserted in that Motion that the Finance Committee reached to a verbal agreement for settlement of the Korean Claims, the Finance Committee reached to a written agreement reflecting the verbal agreement, and the written agreement was Exhibit 1.

The Korean Claimants does not seek 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 for settlement are binding because the counter-

offer<sup>1</sup> of five million dollars to settle the Korean Claims pending the SFDCT was made by the Finance Committee and the counter-offer was accepted by the Korean Claimants, resulting consent of the Parties.

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 should not have proposed a group settlement for the Korean Claims pending the SFDCT if it had been impossible to be implemented.

In addition, the Korean Claimants do not concern whether the Finance Committee or the SFDCT is able to provide for group settlements. The Finance Committee is responsible for payment of five million dollars because it agreed with the Korean Claimants to settle their Claims pending the SFDCT. 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's problem.

The fact that the Finance Committee proposed a group settlement to the Korean Claimants without fully understanding the Clauses of the Plan of Reorganization reinforces a 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.

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<sup>1</sup> It is a counter-offer because the Korean Claimants offered eight million dollars to the Finance Committee first.

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 POM Claims. The SFDCT approved for 1,762 POM claims. Up until December 31, 2014, however, Yeon Ho Kim obtained awards for approximately 860 Disease Claims only. The 1,762 POM Claims subtracted by the 860 Claims did not receive any individual notice from the SFDCT even if disease evaluation diagnosis by qualified medical doctors approved by the SFDCT had been submitted to the SFDCT. There have no significant mailings of checks from the SFDCT since then.

Accordingly, several hundreds of Korean Claims are pending the SFDCT with no payments even now.

Furthermore, Yeon Ho Kim has over four hundred Claimants who have not filed their Claims yet with the SFDCT because those Korean Claimants were included in the group settlement reached with the Finance Committee (2,618 Claimants in total, See EXHIBIT B Korean Claimants of Exhibit 1). In other words, aside from the Korean Claims previously filed with the SFDCT, Yeon Ho Kim keeps hundreds of Korean Claimants who wait for execution of the settlement agreements.

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.

The Finance Committee is winding down the process for the Korean Claimants without completing the payments.

The Finance Committee is lying for evading the obligations and liabilities from the settlement agreements. In addition, the Finance Committee filed the Motion for an Order to Show Cause Why He should not be Sanctioned, Held in Contempt and otherwise required to

respond regarding his failure to account for, or return \$370,500 in claims funds of 88 Korean Claimants on the basis of baseless assumptions.

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

For the foregoing reasons, the Korean Claimants request this Court not to take into account the three allegations in the Response of the Finance Committee and to GRANT the Cross Motion for Entry of an Order to Show Cause with respect to the Finance Committee.

Date: February 25, 2018

Respectfully submitted,

(signed) Yeon Ho Kim

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for the Korean Claimants

**CERTIFICATE OF SERVICE**

I hereby certify that on February 25, 2018, this Reply in support of Cross Motion filed by the Korean Claimants 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: February 25, 2018

Signed by Yeon Ho Kim