

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

**IN RE:** § **CASE NO. 00-CV-00005-DT**  
§ **(Settlement Facility Matters)**  
**DOW CORNING** §  
**CORPORATION,** §  
§  
**REORGANIZED DEBTOR** § **Hon. Denise Page Hood**

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

The Finance Committee files this Motion to require Yeon Ho Kim to appear before this Court and show cause why he should not be sanctioned, held in contempt and otherwise required to respond as a result of the conduct of his law office which includes: 1) cashing the claim payment checks intended for 88 Claimants Mr. Kim represents; 2) failing to provide updated address information for 88 Claimants; 3) failing to provide proof of distribution of claim funds to 88 Claimants; and 4) failing to return claim funds that were intended for 88 Claimants. In support of this motion, the Finance Committee would respectfully show the Court as follows:

1. On May 15, 1995, Debtor filed a petition for reorganization under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Michigan. On November 30, 1999, the Court entered the Order confirming the Plan of Reorganization of Dow Corning Corporation (“the

Confirmation Order”) and on June 1, 2004 the Amended Joint Plan of Reorganization of Dow Corning Corporation (“the Plan”) became effective. Pursuant to the Plan and the Confirmation Order, the Settlement Facility and Fund Distribution Agreement (“SFA”) became effective on June 1, 2004. *See* Exh. A.

2. The SFA establishes the Settlement Facility (“SF-DCT”), which among other things, assumes liability for and resolves claims of settling Personal Injury Claimants and distributes funds to Claimants with allowed claims. The Court supervises the resolution of Claims under the SFA and is authorized to perform all functions relating to the distribution of funds. *See* Exh. A, SFA § 4.01. The funds distributed by the Settlement Facility are in the custody of the Court until they are *paid to* and *actually received by* a Claimant. *See* Exh. A, SFA § 10.09 (“All funds in the Settlement Facility are deemed in custodia legis until such times as the funds have actually been paid to and received by a Claimant.”).

3. Yeon-Ho Kim is the attorney-of-record representing a number of Claimants located in Korea. In that capacity, Mr. Kim is aware that his clients’ election to settle their claims subjects him to the terms of the SFA. *See* Exh. A, § 6.02.

4. After determining that 148 Claimants represented by Mr. Kim had allowed Claims, the SF-DCT sent claim payment checks to Mr. Kim’s law office for distribution to those Claimants.

5. Claim award notification letters mailed directly to the 148 Claimants by the SF-DCT regarding the claim payments referenced above were returned undeliverable, with no forwarding addresses. Valid address information is necessary for the SF-DCT to notify Claimants of their claim payments and confirm receipt of those payments. To perform those functions, the SF-DCT sent written requests to Mr. Kim for updated addresses for the 148 Claimants. Mr. Kim ignored the SF-DCT's requests.

6. The SF-DCT has confirmed that each claim payment check sent to Mr. Kim for the 148 Claimants has been cashed. Therefore, it is reasonable to assume that Mr. Kim has valid address information for each Claimant and proof of distribution of claim payments to each Claimant.

7. On December 20, 2017, Counsel for the Finance Committee made a written request for updated addresses for the 148 Claimants or return of the claims payment funds for those Claimants without valid addresses. *See* Exh. B. Mr. Kim responded on January 3, 2018, providing updated addresses for only 60 Claimants. As a result, the SF-DCT continues to have invalid addresses for the remaining 88 Claimants, listed in the table below.<sup>1</sup> Additionally, Mr. Kim has not returned any funds.

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<sup>1</sup> Claimant names have been removed.

<b>Claimant</b>	<b>SID</b>	<b>Claim Payments</b>	<b>Payment Date</b>	<b>Payment Amount</b>
Claimant 1	735310	Disease	12/18/2014	\$3,500
Claimant 2	735315	Disease	1/15/2015	\$3,500
Claimant 3	1035526	Disease	12/18/2014	\$3,500
Claimant 4	1035535	Disease	11/24/2014	\$3,500
Claimant 5	1035553	Explant	10/23/2014	\$3,000
Claimant 6	1035568	Disease	12/18/2014	\$3,500
Claimant 7	1035573	Disease	12/18/2014	\$3,500
Claimant 8	1035599	Disease	11/24/2014	\$3,500
Claimant 9	1035613	Disease	12/18/2014	\$3,500
Claimant 10	1035678	Disease	12/18/2014	\$3,500
Claimant 11	1035679	Disease	11/24/2014	\$3,500
Claimant 12	1035750	Disease	10/23/2014	\$3,500
Claimant 13	1035776	Disease	10/23/2014	\$3,500
Claimant 14	1035798	Disease	12/18/2014	\$3,500
Claimant 15	1035817	Disease	11/24/2015	\$7,000
Claimant 16	1035862	Disease	12/18/2014	\$3,500
Claimant 17	1035866	Disease	12/18/2014	\$3,500
Claimant 18	1035869	Disease	12/18/2014	\$3,500
Claimant 19	1035882	Disease	11/24/2015	\$3,500
Claimant 20	1035887	Disease	12/18/2014	\$3,500
Claimant 21	1035964	Disease	12/18/2014	\$3,500
Claimant 22	1035975	Disease	12/18/2014	\$3,500
Claimant 23	1036020	Disease	12/18/2014	\$3,500
Claimant 24	1036033	Disease	10/23/2014	\$3,500
Claimant 25	1036044	Disease	12/18/2014	\$3,500
Claimant 26	1036062	Disease	12/18/2014	\$3,500
Claimant 27	1036087	Disease	12/18/2014	\$3,500
Claimant 28	1036176	Disease	12/18/2014	\$3,500
Claimant 29	1036263	Disease	10/23/2014	\$3,500
Claimant 30	1036265	Disease	12/18/2014	\$3,500
Claimant 31	1036309	Disease	12/18/2014	\$3,500

Claimant 32	1036313	Disease	12/18/2014	\$3,500
Claimant 33	1036364	Disease	11/24/2014	\$3,500
Claimant 34	1036415	Disease	10/23/2014	\$3,500
Claimant 35	1036492	Disease	12/18/2014	\$3,500
Claimant 36	1036614	Disease	12/18/2014	\$3,500
Claimant 37	1036627	Disease	11/24/2014	\$3,500
Claimant 38	1036653	Disease	10/23/2014	\$3,500
Claimant 39	1036706	Disease	12/18/2014	\$3,500
Claimant 40	1036713	Disease	11/24/2014	\$3,500
Claimant 41	1036776	Disease	12/18/2014	\$3,500
Claimant 42	1036870	Disease	10/23/2014	\$3,500
Claimant 43	1036901	Disease	12/18/2014	\$3,500
Claimant 44	1036908	Disease	12/18/2014	\$3,500
Claimant 45	1036927	Disease	10/23/2014	\$3,500
Claimant 46	1036938	Disease	10/23/2014	\$3,500
Claimant 47	1036993	Disease	12/18/2014	\$3,500
Claimant 48	1037035	Disease	12/18/2014	\$3,500
Claimant 49	1037060	Disease	2/27/2015	\$10,000
Claimant 50	1037079	Disease	12/18/2014	\$3,500
Claimant 51	1037087	Disease	12/18/2014	\$3,500
Claimant 52	1037093	Disease	12/18/2014	\$3,500
Claimant 53	1038484	Disease	12/18/2014	\$3,500
Claimant 54	2746180	Disease	12/18/2014	\$3,500
Claimant 55	2783097	Disease	2/27/2015	\$3,500
Claimant 56	2783311	Disease	2/27/2015	\$3,500
Claimant 57	2783386	Disease	2/27/2015	\$3,500
Claimant 58	2783563	Disease	2/27/2015	\$3,500
Claimant 59	2783642	Disease	2/27/2015	\$3,500
Claimant 60	2787316	Disease	2/27/2015	\$3,500
Claimant 61	6459176	Disease	12/18/2014	\$3,500
Claimant 62	6459701	Disease	11/24/2014	\$3,500
Claimant 63	6459778	Disease	10/23/2014	\$3,500
Claimant 64	6461229	Disease	10/23/2014	\$3,500

Claimant 65	6461317	Disease	12/18/2014	\$3,500
Claimant 66	6461540	Disease	12/18/2014	\$3,500
Claimant 67	6461967	Disease	12/18/2014	\$3,500
Claimant 68	6473444	Rupture	11/24/2014	\$7,000
Claimant 69	6474567	Disease	12/18/2014	\$3,500
Claimant 70	6474668	Disease	12/18/2014	\$3,500
Claimant 71	1035805	Disease	12/16/2016	\$6,000
Claimant 72	1035871	Disease	12/16/2016	\$6,000
Claimant 73	1035888	Disease	12/16/2016	\$6,000
Claimant 74	1036361	Disease	12/16/2016	\$6,000
Claimant 75	1036464	Disease	12/16/2016	\$6,000
Claimant 76	1036709	Disease	12/16/2016	\$6,000
Claimant 77	1035583	Disease	12/16/2016	\$6,000
Claimant 78	1035671	Disease	12/16/2016	\$6,000
Claimant 79	2783392	Disease	12/16/2016	\$6,000
Claimant 80	2783395	Disease	12/16/2016	\$6,000
Claimant 81	1036287	Explant	8/13/2009	\$3,000
Claimant 82	1036287	Disease	12/18/2014	\$3,500
Claimant 83	1036303	Explant	6/17/2009	\$3,000
	1036303	Rupture	6/17/2009	\$7,000
	1036303	Disease	12/18/2014	\$3,500
Claimant 84	1038480	Explant	3/30/2010	\$3,000
	1038480	Disease	12/18/2014	\$3,500
Claimant 85	2783569	Explant	12/16/2010	\$3,000
	2783569	Disease	2/27/2015	\$3,500
Claimant 86	6461865	Explant	8/13/2009	\$3,000
	6461865	Disease	12/18/2014	\$3,500
Claimant 87	6474810	Explant	4/27/2015	\$3,000
	6474810	Disease	4/27/2015	\$3,500
Claimant 88	6491601	Explant	1/30/2015	\$3,000
	6491601	Disease	12/18/2014	\$3,500

8. Because Mr. Kim's has failed to provide valid addresses for the 88 Claimants (or proof of fund distribution) and has failed to return the funds, the SF-DCT cannot verify that \$370,500 in claims payments have been received by the intended Claimants.

9. The conduct of Mr. Kim has diverted SF-DCT's employees from performing their normal duties and necessitated the utilization of counsel, which has caused the SF-DCT to incur unnecessary expense.

10. This Court supervises the distribution of funds from the SF-DCT to Claimants. There can be no dispute that the claim payment funds sent to Mr. Kim's law office are in the custody of the Court until those funds are actually received by the Claimants. *See* Exh. A, § 10.09. Accordingly, the Court is entitled to know with certainty whether the funds sent to Mr. Kim have been received by the Claimants. Moreover, if Mr. Kim was unable to distribute claim payments to Claimants, the Court should require Mr. Kim to return those funds.

11. While there is no order or injunction requiring Mr. Kim's compliance with the SF-DCT's requests, his conduct clearly contradicts the SFA and the Court's custody over the funds in question. Therefore, the imposition of civil contempt sanctions is warranted. District courts have inherent power to enforce compliance with orders through civil contempt. *Electrical Workers Pension Trust*

*Fund of Local Union #58, IBEW v. Gary's Elec. Serv. Co.*, 340 F.3d 373, 378 (6th Cir. 2003).

12. The Finance Committee asks the Court to enter an order requiring Yeon Ho Kim to appear before this Court on January 31, 2018 at 2:00 p.m., and 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. At the hearing, following submission of this and other evidence, the Finance committee will ask that the Court find Mr. Kim in contempt and enter such sanctions and penalties as the Court deems appropriate.

Dated: January 10, 2018

Respectfully submitted,

SMYSER KAPLAN & VESELKA LLP

          /s/ Karima G. Maloney          

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COUNSEL FOR FINANCE COMMITTEE



**CERTIFICATE OF SERVICE**

I hereby certify that on January 10, 2018, the foregoing Motion for Entry of An Order to Show Cause has been electronically filed with the Clerk of Court using the ECF system which will send notice and copies of the document to all registered counsel in this case.

By: */s/ Karima G. Maloney* \_\_\_\_\_  
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