

**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. Chief Judge Denise Page Hood

**REPLY TO FINANCE COMMITTEE’S RESPONSE TO
SUPPLEMENTAL BRIEF OF YEON HO KIM REGARDING EXHIBIT L**

The Finance Committee filed Exhibit M by saying that it inadvertently filed the Attorneys’ Fees and Expenses provisions of the Claimant Information Guide applicable to Class 5 as Exhibit L and hereby submits M the Attorneys’ Fees and Expenses provisions in the Claimant Information Guides for Classes 6.1 and Class 6.2 Claimants to Docket #1387.

Exhibit L is has no relevance with Attorneys’ Fees and Expenses because it does not include any provision regarding Attorneys’ Fees and Expenses. It only includes provisions on General Deadlines/Delivery Methods/Effective Date/Deadlines to Apply for Settlement Benefits. It has nothing to do with Attorney’s Fees and Expenses. Therefore, Exhibit L is not substitutable with Exhibit M.

The Finance Committee submitted exhibit M and says that notably, Claimant

Information Guide for Class 6.2 makes clear that attorneys may only charge expenses that are *solely attributable to* the Claimant's claim or case under Q11-4 in Claimant Information Guide.

It is urged in the United States' practice of law that attorneys keep a log that indicates each time attorneys incur an expense and to keep own log that associates the date, client name, client number/case number with the client expenses. Attorneys should divide the log into particular topics (copies, postage, facsimile transmissions, experts, consultants, couriers, etc.). Attorneys should keep or scan copies of all receipts, invoices and other expenses in the clients' file. All bank checks written by attorneys should be copied or scanned in the client file. Attorneys should track client expenses using add on devices that attach office equipment (i.e. copiers). Attorneys should track long distance calls by using a manually kept log or "forced account code". (This paragraph was taken from an article titled "How to Document Client Expenses and Attorney's Fee" in "The Law Practice Management Program of the State Bar of Texas" on Google Page)

However, Yeon Ho Kim law office is representing so many Claimants (over 2,600 Claimants). Yeon Ho Kim law office was not able to keep an individual log for the Claimants. Logs for the Claimants have not been kept from the beginning because the Global Settlement Program for Silicone Breast Implant from the Alabama Federal District Court was expected to end quickly in 1994 so Yeon Ho Kim has never thought it to prolong for many years. It was technically impossible for Yeon Ho Kim law office to keep logs for individual Claimants because Yeon Ho Kim law office was understaffed. In addition, Yeon Ho Kim has been working for this Dow Corning Breast Implant Class

Action for over 24 years (from 1994 to 2018). To keep a log for each Claimant for such a long period and divide the log into particular topics and track expenses using devices and track long distance calls, etc. was beyond the capacity of Yeon Ho Kim law office. The way to keep records of expenses that are *solely attributable* to the Claimant's claim or case, suggested under Q11-4 in Claimant Information Guide, will apply to attorneys representing a single or a few Claimants but shall not apply to Yeon Ho Kim law office even if the provision says, "expenses *solely attributable* to the Claimant's claim or case".

Furthermore, the practice of Korean lawyers or Korean law firms does not require them to keep logs of expenses for each Claimant. Neither the regulation of bar associations does. The lawyers just bear the expenses except minimal down payment upon signing up until the end of lawsuits and charge the success fees with no separation of expenses and attorney fees after the lawsuits successfully finished. If the lawyers lose, the expenses incurred by them cannot be recovered. The lawyers do not explain the claimants how much the expenses apply and how the expenses apply to each items of the expenses incurred upon distribution of funds received. This is a practice in Korean bar associations. Yeon Ho Kim law office followed this practice. Yeon Ho Kim received the Claimant Information Guide around 2005 or 2006. Yeon Ho Kim did not read Claimant Information Guide in full at that time. Yeon Ho Kim only knew Q11-4 of Claimant Information Guide which includes, "Certain expenses can be charged against your payment if they are *solely attributable* to your claim or case", when the Claims Administrator sent a letter emphasizing the phrase on June 21, 2017.

The expenses incurred by Yeon Ho Kim law office (nearly a million dollars),

chargeable expenses under Q11-4 of Claimant Informaiton Guide, must be allocated proportionately to the Claimants who received and would receive the checks from the Settlement Facility.

The expenses charged by Yeon Ho Kim to the Claimants are *solely attributable* to the Claimant's claim or case since Yeon Ho Kim's chargeable expenses were spent for all of the Claimants equally and the Claimants were benefitted from the expenses in the entirety.

In this regard, the Finance Committee suddenly changed its requests in its Motions.

In the Motion for Entry of an Order to Show Cause with respect to Yeon Ho Kim, the Finance Committee asked the Court to enter an order why he should not be sanctioned, held in contempt and otherwise required to respond regarding his failure to account for, or return \$370,500 dollars in claims funds.

Basically, the Finance Committee asked the Court to order Yeon Ho Kim to return \$370,500 of the 88 Claimants' claims funds to the Settlement Facility.

In the Motion for Entry of an Order to Show Cause with respect to Yeon Ho Kim's Excessive Attorney's Fees and Expenses, the Finance Committee asked the Court to enter an order why he should not be sanctioned, held in contempt, and otherwise required to respond regarding his practice of charging Claimants excessive amounts in fees and expenses in violation of the SFA.

Basically, the Finance Committee assumed that Yeon Ho Kim law office charged excessive amounts in fees and expenses in violation of the SFA.

In the Addendum filed (Doc No.1399), however, the Finance Committee changed its request as follows;

1. Yeon Ho Kim's law office will submit to a full accounting of claims payments it has received from the SF-DCT. The accounting will be conducted by an independent third-party accounting firm selected by the Court, with recommendations from the parties, and paid for by Yeon Ho Kim's law office.
2. Yeon Ho Kim's law office will provide a full accounting of the legal fees it has charged to the Claimants represented by Yeon-Ho Kim. The accounting will be conducted by an independent third-party accounting firm selected by the Court, with recommendations from the parties, and paid from by Yeon Ho Kim's law office.

First of all, a sudden change of requests in the previous Motions shall not be allowed. In the first Motion, the Finance Committee asked the return of claims funds for the 88 Claimants. This request in the Motion shall not be substituted by the request for full accounting of claims payments from the SF-DCT (the first paragraph of the Finance Committee's request. The SF-DCT itself knows it because it made claims payments on its own.), and for full accounting of the legal fees that Yeon Ho Kim law office charged to the Claimants.

Second, the request in the second Motion (Motion to Show Cause for Excessive Attorneys' Fees and Expenses) shall be DENIED because Yeon Ho Kim law office did not charge excessive attorney fees to the Claimants. Yeon Ho Kim law office charged the percentage within the range of attorneys' fees, 10% - 22.5%, to the Claimants.

The Finance Committee submitted Exhibit E and Exhibit K for proof. The Finance Committee assumed on the basis of Exhibits E and K that Yeon Ho Kim law office charged excessive attorney's fees and expenses.

However, Exhibit E has never been executed by Yeon Ho Kim law office. Yeon Ho Kim law office applied 10% as the attorney fees to the Claimant who submitted Exhibit E to Ellen Bearicks that the Finance Committee knew before filing this Motion.

In addition, Yeon Ho Kim law office charged 10% as the attorney fees and 5% as the expenses to the 88 Claimants (Exhibit A, Response of Yeon Ho Kim Regarding Order to Show Cause, Doc No.1390).

Yeon Ho Kim law office promises the Court to keep the SFA and Claimant Information Guide regarding the attorney's fees and the expenses.

Exhibit K, a letter of Yeon Ho Kim to the Claims Administrator, simply explains how 38%, *if applicable for reimbursement of medical expenses incurred by Yeon Ho Kim law office for explantation and disease evaluation test and diagnosis issuance*, can be divided for attorney's fees and expenses.

The letter says firmly, “Our law firm only charged 10% as the attorney’s fees”.

In addition, the written agreement for settlement of Korean Claims, drafted by the Finance Committee and signed by Yeon Ho Kim following the mediation conference on August 10, 2012, clearly specifies, “In accepting the Korean Claims Payment, Kim agrees that *it is his responsibility to divide the Korean Claims Payment among Exhibit B claimants and further, it is his responsibility to collect any and all legal fees and/or expenses owed to him or any other party by the Exhibit B claimants. The Korean Claims Payment, Kim agrees, includes all such legal fees and expenses*”. (Clause 2.B, Exhibit A to the Memorandum of Understanding, Exhibit 5 of Motion for Recognition and Enforcement of Mediation, Doc No.1271-1)

Yeon Ho Kim is not responsible for responding to the Claims Administrator regarding his attorney’s fees and expenses under the written agreement for settlement with the Finance Committee.

Yeon Ho Kim has asked the Finance Committee to respect the settlement agreement since 2012. The Finance Committee has evaded the responsibility since then by reiterating that Dow Corning Corporation did not authorize it or the agreement was just a draft and not executed.

If the agreement for settlement had been respected by the Finance Committee, the Claims Administrator would not have a right to ask the question regarding attorney’s fees and expenses to Yeon Ho Kim law office and Yeon Ho Kim would not have

responded to the question by the Claims Administrator.

How the Finance Committee which did not respect the settlement agreement with Yeon Ho Kim comes back to Yeon Ho Kim law office and can ask a question for the amounts of attorney's fees and expenses, whose division of the agreed funds (5 million dollars) among the Claimants and collection of attorney's fees and expenses from the Finance Committee is his responsibility, and can file the Motion for full accounting of legal fees that Yeon Ho Kim law office has charged to the Claimants?

Furthermore, this Exhibit K letter's purpose was not what the Finance Committee is seeking in its Motion.

The letter itself was to file a complaint to Claims Administrator's raising a question regarding attorney's fees and expenses without respecting the settlement agreement reached in the mediation conference.

The letter says, "In conclusion, I believe that it is inappropriate for the Claims Administrator to ask me to submit detailed information as to attorney's fees under the circumstances that the SF-DCT flipped over their position on the result of mediation that the SF-DCT is obliged to pay 5 million dollars to settle the Korean Claims".

Yeon Ho Kim has been proposing a meeting to the Claims Administrator many times. The Claims Administrator has declined the proposal for a meeting with him since 2012. Yeon Ho Kim had a legitimacy to complain the Claims Administrator in this letter

because she acted as the attorney in law for the Settlement Facility and pleaded on behalf of the Settlement Facility in the mediation conference.

The letter made clear that the Claims Administrator must respect the mediation result *first* before asking for explanation of the attorney fees and expenses including *address updates*. It is evident from the fact that the Claims Administrator sent the counterpart letter of the Exhibit K, Exhibit J, on June 21, 2017 and sent the letter asking for address updates (Exhibit 3 of the Response of Yeon Ho Kim to the Motion for Entry of an Order to Show Cause with Respect to Yeon Ho Kim, Doc No.1353) on the same day. Therefore, Exhibit K cannot be an evidence to prove the Finance Committee's point that Yeon Ho Kim law office charged excessive attorney's fees and expenses.

In conclusion, the Finance Committee's revised Motion for full accounting of legal fees and expenses should be DEINIED.

Date: March 30, 2018

Respectfully submitted,

(signed) Yeon Ho Kim

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CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2018, this Response to Order to Show Cause 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: March 30, 2018

Signed by Yeon Ho Kim