

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

IN RE: SETTLEMENT FACILITY -  
DOW CORNING TRUST,

SETTLEMENT FACILITY MATTERS.

Case No. 00-00005

Hon. Denise Page Hood

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**ORDER REGARDING MOTIONS FILED BY  
THE KOREAN CLAIMANTS (ECF NOS. 1752, 1757, 1758, 1767, 1776)**

**I. BACKGROUND**

This matter is before the Court on various motions filed by the Korean Claimants represented by Attorney of Record Yeon-Ho Kim: Motion for Order to Correct Disposition of SF-DCT (ECF No. 1752); Motion for Order for the SF-DCT to Lift Off the Address Update and Confirmation (ECF No. 1758); Motion for Order to Allow to File Exhibit K (ECF No. 1767); and Motions to Expedite the rulings of the Motions (ECF Nos. 1757, 1776). Briefs have been filed on these motions.

**II. ANALYSIS**

**A. Plan Provisions and Interpretation**

On June 1, 2004, the Amended Joint Plan of Reorganization (“Plan”) governing the Dow Corning Corporation bankruptcy matter became effective. The Court retains jurisdiction over the Plan “to resolve controversies and disputes

regarding interpretation and implementation of the Plan and the Plan Documents” and “to allow, disallow, estimate, liquidate or determine any Claim, including Claims of a Non-Settling Personal Injury Claimant, against the Debtor and to enter or enforce any order requiring the filing of any such Claim before a particular date.” (Plan, §§ 8.7.3, 8.7.4, 8.7.5) The Plan Documents pertinent to this matter include the Settlement Facility and Fund Distribution Agreement (“SFA”) and the Dow Corning Settlement Program and Claims Resolution Procedures, Annex A to the SFA (“Annex A”).

The Settlement Facility-Dow Corning Trust (“SF-DCT”) implements the claims of those claimants who elected to settle their claims under the Settlement Program of the Plan. (Plan, § 1.131) The SF-DCT was established to resolve Settling Personal Injury Claims in accordance with the Plan. (Plan, § 2.01) The SFA and Annex A to the SFA establish the exclusive criteria by which such claims are evaluated, liquidated, allowed and paid. (SFA, § 5.01) The process for resolution of claims is set forth under the SFA and corresponding claims resolution procedures in Annex A. (SFA, § 4.01) Section 5.05 of the SFA provides that Dow Corning and the CAC may submit joint interpretations and clarifications regarding submissions of claims to the Claims Administrator. (SFA, § 5.05) The Court may approve an amendment to the SFA after notice and hearing as directed

by the Court. (SFA, § 10.06) Dow Corning and the CAC may jointly amend or modify the Plan, upon order of the Court. (Plan, § 11.4) There is no provision under the Plan or the SFA which allows a claimant to submit an issue to be interpreted by the Court or to amend the Plan.

The Plan establishes administrative claim review and appeals processes for Settling Personal Injury claimants. Any claimant who does not agree with the decision of the SF-DCT may seek review of the claim through the error correction and appeal process. (SFA, Annex A, Art. 8) A claimant may thereafter obtain review by the Appeals Judge. (SFA, Annex A, Art. 8) The Plan provides that “[t]he decision of the Appeals Judge will be final and binding on the Claimant.” (SFA, Annex A, § 8.05) Claimants who seek review under the Individual Review Process also have a right to appeal directly to the Appeals Judge. The Plan provides that “[t]he decision of the Appeals Judge is final and binding on both Reorganized Dow Corning and the claimant.” (SFA, Annex A, § 6.02(vi))

Generally, the provisions of a confirmed plan bind the debtor and any creditor. 11 U.S.C. § 1141(a). Section 1127(b) is the sole means for modification of a confirmed plan which provides that the proponent of a plan or the reorganized debtor may modify such plan at any time after confirmation of such plan and before substantial consummation of the plan. 11 U.S.C. § 1127(b).

“In interpreting a confirmed plan courts use contract principles, since the plan is effectively a new contract between the debtor and its creditors.” *In re Dow Corning Corporation*, 456 F.3d 668, 676 (6th Cir. 2006); 11 U.S.C. § 1141(a).

“An agreed order, like a consent decree, is in the nature of a contract, and the interpretation of its terms presents a question of contract interpretation.” *City of Covington v. Covington Landing, Ltd. P’ship*, 71 F.3d 1221, 1227 (6th Cir. 1995).

A court construing an order consistent with the parties’ agreement does not exceed its power. *Id.* at 1228.

The Court has held on several occasions that the Plan provides no right of appeal to the Court by claimants who do not agree with the decisions of the SF-DCT, the Claims Administrator and/or the Appeals Judge. *In re Settlement Dow Corning Trust*, No. 12-10314, 2012 WL 4476647, at \*2 (E.D. Mich. Sept. 28, 2012). Certain parties to the Plan are able to seek review of decisions “regarding the interpretation and implementation of the Plan.” *In re Settlement Facility Dow Corning Trust*, No. 18-1040, 760 F. App’x 406, 412 (6th Cir. Jan. 14, 2019) (citing *In re Clark-James*, No. 08-1633, 2009 WL 9532581, at \*2 (6th Cir. Aug. 6, 2009). The Court has no authority to review substantive decisions regarding particular claims. *Id.*, 760 F. App’x at 412 (The Sixth Circuit affirmed the Court’s finding

that the Korean claimants are not a party to the Plan and the relief sought by the Korean claimants were unavailable under the Plan.).

**B. Motion for Order to Correct Disposition of SF-DCT (ECF No. 1752)**

In the Motion for Order to Correct Disposition of SF-DCT, the 109 Korean Claimants seek a reversal of the decisions by the Claims Administrator and the Appeals Judge that the Korean Claimants did not cure the deficiencies by the Plan deadline. The Korean Claimants filed their proof of manufacturer forms in 2006. In 2009, the Korean Claimants filed their disease payment claim forms with no medical records attached. In January 2015, the SF-DCT sent notification status letter to the Korean Claimants indicating the disease payment claims were not approved. The SF-DCT indicated that the Korean Claimants had one year from the date of the notice to cure the deficiencies in the disease payment claim. The last cure deadline date for any of the 109 Korean Claimants was in July 2017.

In 2018, the SF-DCT sent expedited payment to the Korean Claimants, which were returned by the Korean Claimants to the SF-DCT. The Acknowledgment Letters regarding the returned payments indicated that the cure deadline for the disease claims had expired and that no additional reviews would occur on those previous claims. The Letters advised the claimants' options, including file an error correction, or apply for a claim for a new disease or

condition on or before June 3, 2019, provided that the new disease or condition manifested after the cure deadline expired on the original disease, or request the return of the expedited release payment.

Two years after the cure deadline dates expired in July 2017, the Korean Claimants in 2019 sought an extension of the cure deadline dates to further submit documents to cure the deficiencies of the 109 original claims. The Claims Administrator sent to each of the Korean Claimants a Determination Letter finding that the original cure deadline had expired and that the new submissions could not be considered. The Korean Claimants appealed the Claims Administrator's decisions to the Appeals Judge. The Appeals Judge affirmed the Claims Administrator's decisions and denied the Korean Claimants' appeals for failure to cure the deficiencies by the deadline. The Korean Claimants filed a motion for reconsideration before the Appeals Judge on May 4, 2023. The Appeals Judge issued a decision denying the motion for reconsideration on October 25, 2023. The Motion for Order to Correct Disposition of the SF-DCT was thereafter filed on December 15, 2023 before this Court.

As this Court has previously ruled, the Plan does not provide any provision for the Court to review a claim which was denied by the Claims Administrator. Even if a claim was fully processed and appeals were brought before the Appeals

Judge, the Plan's language is clear and unambiguous that the decision of the Appeals Judge is final and binding on the claimant. The Plan provides for no right of appeal to the Court, nor a right to seek any advisory opinions from the Court. The Court is without authority to review the decision of the SF-DCT, the Claims Administrator or the Appeals Judge. The Korean Claimants' Motion for Order to Correct Disposition of SF-DCT is denied.

**C. Motion for Order for the SF-DCT to Lift Off the Address Update and Confirmation (ECF No. 1758)**

The Korean Claimants in the Motion for the SF-DCT to Lift Off the Address Update and Confirmation Requirement seeks an order relieving the Korean Claimants from having to update their addresses pursuant to various requirements by the SF-DCT, Closing Order 2, Closing Order 3 and Closing Order 5. In 2015, the Korean Claimants assert that the SF-DCT began enforcing address updates and confirmations by individual claimants. Mr. Kim, the Attorney of Record for the Korean Claimants believed that his clients did not have the obligation to update their addresses and confirmations sent by the SF-DCT under the Plan. The Korean Claimants claim that the SF-DCT based the requirements on the Claimant Information Guide, which Mr. Kim asserts is not part of the Plan documents, including the SFA and Annex A. Mr. Kim therefore argues the individual claimants did not have the obligation to update their addresses and receive

confirmations from the SF-DCT. Mr. Kim notes there are no provisions under the SFA and Annex A which impose the address and confirmation procedures on individual claimants.

Mr. Kim also claims that the SF-DCT further based its address and confirmation procedures on the Consent Order to Establish Guidelines for Distributions from the Class 7 Silicone Material Claimants' Fund which required an address update within 90 days from the address requirement notice. Mr. Kim argues that the Korean Claimants had nothing to do with Class 7 because they fall under Class 6.1 or Class 6.2 Claimants. In addition, Mr. Kim had informed the SF-DCT that the Korean Claimants had no obligation to update their addresses and confirmation because Korean law prohibited them from doing so and that they had submitted the Korean Government Issued Resident Registry when they elected to participate in the SF-DCT program.

The SF-DCT denied the Korean Claimants the Fifty Percent of Second Priority Payments pursuant to the Court's January 19, 2019 Order, as well as the basic payments for the claims approved by the SF-DCT. Mr. Kim was not able to receive any checks on behalf of his clients since 2018 because of the address and confirmation requirements.

After Closing Order 2 was issued on March 19, 2019, Mr. Kim submitted address updates for 676 Korean Claimants who had received an address letter request from the SF-DCT by June 1, 2019. The SF-DCT rejected all the Korean Claimants' address forms and imposed a new sanction on Mr. Kim on March 3, 2020 prohibiting him from updating his clients' addresses and requiring each claimant to update the addresses directly to the SF-DCT by calling, emailing or mailing address update forms individually to the SF-DCT. Mr. Kim asserts his power of attorney as to his clients was taken away.

Mr. Kim claims that Closing Order 3, issued on March 25, 2021, stopped all pending filing reviews by the SF-DCT which the Korean Claimants had filed by June 1, 2019 and permanently closed the Korean Claimants' Claims. When Closing Order 5 was issued, the SF-DCT added and posted the Korean Claimants' SID numbers on its website on January 12, 2023. The SF-DCT notified Mr. Kim that all of the Korean Claimants' claims were permanently closed. The amount of approved payments on hold for the Korean Claimants is about Three Million Dollar according to Mr. Kim. The SF-DCT denied the requests of Mr. Kim for the payments including reissuance of the returned checks which had expired.

The Court has entered a series of orders in anticipation of the termination of the SF-DCT after the final deadline of June 3, 2019 for submission of new claims

and supporting materials for claimants. The first order was filed on July 24, 2018—Closing Order 1. ECF No 1447. Closing Order 1 was entered to facilitate the termination of the operations of the SF-DCT, setting forth certain protocols and processing procedures for the anticipated closing. *Id.*, PageID.23938. On March 19, 2019, Closing Order 2 was entered to address procedures and protocols to implement Closing Order 1 and to assist the prompt distribution of funds to claimants and the orderly termination of the SF-DCT. ECF No. 1482, PageID.24085.

The Korean Claimants previously appealed issues related to Closing Order 2 to the Sixth Circuit Court of Appeals. The Sixth Circuit affirmed this Court’s decision, finding that the appeal failed “on the merits because the district court correctly interpreted Closing Order 2 to require the Korean Claimants to confirm their addresses as a condition of receiving payments and permissibly considered the Settlement Facility bound by Closing Order 2.” *See In re Settlement Facility Dow Corning Trust*, Case Nos. 21-2665/22-1750/1753/1771, 2023 WL 2155056, at \*3 (6th Cir. Feb. 22, 2023). The Court will not revisit arguments related to Closing Order 2 raised by the Korean Claimants in this new motion and denies any requests by the Korean Claimants to be exempted from the address requirements in Closing Order 2.

Closing Order 3 was entered on March 25, 2021 to address claims submitted by the June 3, 2019 final deadline to submit claims which did not have confirmed current addresses. ECF No. 1598, PageID.28286. The same procedures and protocols used in the Class 7 Fund were used in Closing Order 3. *Id.* Closing Order 3 stated that if the applicable claimant did not provide directly to the SF-DCT a confirmed current address by June 30, 2021, the claim was deemed abandoned, denied and the claim permanently closed. *Id.* at PageID.28287.

The Korean Claimants did not previously raise any issues with Closing Order 3 with this Court. The Korean Claimants waived any arguments as it relates to Closing Order 3. In addition, for the same reasons set forth in the Sixth Circuit's Order as to Closing Order 2, as it relates to the Korean Claimants, the Court relies on that ruling that the Court had the authority to direct claimants to confirm their addresses. The Court denies any requests by the Korean Claimants that they be exempted from complying with Closing Order 3.

Closing Order 5 is another part of a series of Closing Orders for the purpose of facilitating and completing the operations of the SF-DCT and assuring efficient final distribution of payments as specified under the Plan. ECF No. 1642. To facilitate closure and to preserve assets for distribution, the Court directed the SF-DCT to employ the mechanism previously authorized by the Court in Closing

Order 3. The Settlement Facility was directed to post on its website a list of the SID numbers (claimant identification numbers) for those claimants who have been identified as having a “bad address” and those who have not responded to the verification mailing on or before the date that is four weeks after the mailing to those claimants. The list would be maintained on the SF-DCT website for 90 days. If the claimant did not respond on or before the end of the 90-day period, the claim would be permanently closed. *Id.*, PageID.28803-.28804.

The Korean Claimants filed an appeal before the Sixth Circuit as to Closing Order 5. On February 22, 2023, the Sixth Circuit dismissed the appeal regarding Closing Order 5 as untimely. The Sixth Circuit found there were “no exceptional circumstances” to equitably toll the deadline for filing an appeal. *See In re Settlement Facility Dow Corning Trust*, 2023 WL 2155056, at \*3. The Court finds that the Korean Claimants cannot revive the arguments as to Closing Order 5 and circumvent the Sixth Circuit’s finding that their previous appeal was untimely by filing a new motion before this Court addressing Closing Order 5. In any event, as this Court has previously ruled, based on the Plan documents, the Korean Claimants cannot seek review of the decisions by the Claims Administrator and the Appeals Judge. The Court has no authority to review the Korean Claimants’ requests that were denied by the Claims Administrator and the Appeals Judge.

The Korean Claimants are bound by the language of the Plan documents and the various Closing Orders issued by the Court. The Korean Claimants' Motion for the SF-DCT to Lift Off the Address Update and Confirmation Requirement is denied.

#### **IV. CONCLUSION/ORDER**

For the reasons set forth above,

IT IS ORDERED that the Korean Claimants' Motion for Order to Correct Disposition of SF-DCT (**ECF No. 1752**) is DENIED.

IT IS FURTHER ORDERED that the Korean Claimants' Motion for Order for the SF-DCT to Lift Off the Address Update and Confirmation (**ECF No. 1758**) is DENIED.

IT IS FURTHER ORDERED that the Korean Claimants' Motion for Order to Allow to File Exhibit K (**ECF No. 1767**) is GRANTED at the Court's discretion and the Objections to the filing (**ECF No. 1766**) are OVERRULED.

IT IS FURTHER ORDERED that the Motions to Expedite the rulings of the Motions (**ECF Nos. 1757 and 1776**) are now MOOT.

s/ DENISE PAGE HOOD  
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DENISE PAGE HOOD  
United States District Judge

DATED: July 31, 2024