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.Judge Denise Page Hood

REPLY TO RESONSE OF DOW SILICONES CORPORATION, THE DEBTOR'S REPRESENTATIVES, THE CLAIMANTS' ADVISORY COMMITTEE AND THE FINANCE COMMITTEE TO MOTION TO STAY THE COURT'S ORDER REGARDING MOTIONS FILED BY THE KOREAN CLAIMANTS

The Korean claimants file this Reply to the Response of Dow Silicones Corporation, the Debtor's Representatives, the Claimants' Advisory Committee and the Finance Committee ("the Respondents") to the Motion to Stay this Court's Order regarding Motions filed by the Korean claimants (ECF Nos.1752, 1757, 1758, 1767, 1776) pending appeal in the United States Court of Appeals for the Sixth Circuit.

The Respondents filed the Response on September 9, 2024. The Reply, if filed, is due on September 16, 2024. (E.D.Mich.L.R.7.1(e)(1)(B))

A. What Would the Korean Claimants Suffer in the Absence of Stay?

The Respondents argue that there is no substantive action regarding any of the Korean claims at issue that would be taken in the absence of a stay because the claims at issue have already been denied and there is no further action that would or could be taken on the claims.

What the SF-DCT denied and the Claims Administrator (including the Appeals Judge)

affirmed is: (a) the SF-DCT's denial of processing the 109 Claimants' disease claim and (b) the SF-DCT's denial of lift-off the address update and confirmation requirement.

In the absence of stay, the SF-DCT (which is not in operation now) will not process the 109 Korean claims and furthermore, would not process and pay for the WHOLE Korean claims including the 109 claims on the basis of Closing Orders 2, 3 and 5.

These Closing Orders were set in place two or four years after the SF-DCT's disposition of denial to process the 109 claimants' claim. If the Motion to Stay were granted, what the SF-DCT should do? The SF-DCT should revive the processing of the 109 disease claims and should issue the replacement checks to the relevant claimants among the 109 claimants.

Likewise, in the absence of stay, the SF-DCT will not process and pay to the WHOLE Korean claims on the basis of Closing Orders 2, 3 and 5. The SF-DCT will not process the remaining POM claims and disease claims, which were filed on June 1, 2019, and continue "hold" on approval on the basis of Closing Order 3, and will not send the check to the WHOLE Korean claimants on the basis of Closing Orders 2 and 5. If the Motion to Stay were granted, what the SF-DCT should do? The SF-DCT should process the claims for approval and should issue the check.

By the way, what the SF-DCT in the context of the Korean claims is doing now? The SF-DCT awaits the court's decision regarding the Korean claims. It means that the SF-DCT did not finalize the Korean claims as to either the 109 Korean claimants (re ECF No.1752) or the WHOLE Korean claimants (re ECF No.1758). The SF-DCT is conducting substantive actions *internally* with respect to the Korean claims, contemplating that the courts' decision, including this Court and the Sixth Circuit, comes out soon.

Therefore, the allegation of the Respondents that there is no substantive action regarding

the Korean claims at issue that would be taken in the absence of stay is groundless.

Furthermore, in the absence of stay, the SF-DCT will close following the Dow Silicones Corporation's planned schedule under the Funding Payment Agreement (*See* § 2.01 (c)(i)) because the company feels losing money vainly due to the existence of the SF-DCT. If the SF-DCT closes, both the 109 Korean claims and the WHOLE Korean claims should be "permanently closed." (Even if the Korean claimants contest the meaning of "permanently closed." under Closing Orders in the Sixth Circuit)

This Motion to Stay has merits in the following.

B. The Respondents Mischaracterized the Underlying Motions and This Court Did Too.

The Respondents mischaracterized the Motions filed by the Korean claimants, which underlie this Motion to Stay.

First of all, the Motion to Correct (ECF No.1752) sought the court's finding of mistakes by the SF-DCT in sending the Notification of Status Letter identifying a specific deficiency in the disease claim. The 109 (actually less than 109) claimants did not submit the document for proving disease symptoms to the SF-DCT in 2009. They just submitted the form of disease claim. The form had the boxes to check to elect a kind of disease payments (either the expedited payment without the proof of manufacturer[700 dollars], or expedited payment with the proof of manufacturer[1200 dollars], or regular payment with both the proof of manufacturer and the document for proving disease symptoms[over 6000 dollars]). They checked on the box for the regular payment. Why did they submit the form of disease claim in 2009 even though they did not prepare because they were the LATE claimants under Rule 3005 and yet have the document for proving disease symptoms? The former Claims Administrator requested the AOR to submit them because they passed the examination of

proof of manufacturer and the submission of the disease claim form could be helpful for the SF-DCT statistically. Of course, the AOR checked on the box electing the regular payment. And then, what happened? The SF-DCT held the 109 claimants' disease claim form without any notice to the AOR over six years. In 2015, the SF-DCT suddenly sent the Notification of Status Letter by saying that the one-year deadline for cure from the notice should be applied. The Notification of Status Letter said that the SF-DCT has reviewed the disease symptoms but found a deficiency. The 109 claimants did not submit any document for proving disease symptoms but the SF-DCT said that it reviewed it. The SF-DCT alleged that the SF-DCT reviewed the disease symptoms of the 109 claimants.

The SF-DCT was not allowed to send the Notification of Status Letter because of the lack of the document for proving disease symptoms and because there was nothing for the SF-DCT to review in the context of disease claim.

Why did the SF-DCT send the Notification of Status Letter illegitimately? (I assume that the SF-DCT made mistakes in sending the Notification of Status Letter because the Claims Administrator in the Declaration attached the files of proof of manufacturer rather than the files of disease claim of the 109 claimants, implying that there was none of the document for proving disease symptoms submitted in 2009) It was a benefit to the SF-DCT because the Notification of Status Letter could quicken the deadline for cure by one year from the notice.

What should the SF-DCT have done instead? The SF-DCT should have requested to submit the document for proving disease symptoms since the 109 claimants checked on the box electing the regular payment but the document for proving disease symptoms was not attached (or missing).

Such process by the SF-DCT is definitely illegitimate because it encroached on the right for compensation of the 109 claimants.

Furthermore, After the 109 claimants returned the check for expedited payment (1200 dollars) in 2017 and 2018, the SF-DCT sent the Acknowledge Letter to the claimants. In the Acknowledge Letter, the SF-DCT indicated that the claimants were allowed to submit the disease claims by June 2019 provided that disease symptoms become later found or the conditions were developed into disease symptoms. They followed the instruction and submitted the disease claim form (again) and the document for proving disease symptoms on June 1, 2019. At this time, the SF-DCT denied their disease claim by saying that the deadline for cure (one year from 2015) expired. (They filed appeals to both the Claims Administrator and the Appeals Judge but ALL of them were denied.) They complied with the instruction of the SF-DCT. However, the SF-DCT betrayed the instruction in the Acknowledge Letter on its own.

Such process by the SF-DCT is definitely illegitimate because the SF-DCT breached its own commitment in the Acknowledgement Letter.

The Motion to Correct (ECF No. 1752) was to seek the court's decision on the illegitimacies committed by the SF-DCT. The Respondents mischaracterized the Motion to Correct as a challenge to the decisions of the Claims Administrator and the Appeals Judge, which is not appealable to the court. This court mischaracterized the Motion to Correct too. The 109 Korean claimants requested this court to correct the disposition of SF-DCT which was obviously illegitimate. The 109 Korean claimants do not agree that the court should let go whatever actions the SF-DCT took because the court does not have authority over the claimants' claim and the Claims Administrator has authority and discretion. The court is supposed to take action for justice. The Clause that the decision of the Appeals Judge will be final and binding on the claimant (§ 8.05 Annex A to the SFA) shall not mean that the court is blind on illegitimate actions of the SF-DCT. The Clause applies when the SF-DCT acted in accordance with justice. This court must cure the illegitimacies committed by the SF-DCT.

Second, the Motion to Lift (phrased by the Korean claimants as "Lift-Off") (ECF No.1758) sought the court's finding of discriminatory treatments in the context of the address update and confirmation requirement imposed on the WHOLE Korean claimants. The Sixth Circuit affirmed Closing Order 2 by opining that the Korean claimants were bound by the terms of Closing Order 2 and thus they are bound by the requirement to provide their verified address as the condition to payment – as set forth in Closing Order 2. *In re Settlement Facility Dow Corning Trust,* No. 21-2665, 2023 WL 2155056 (6th Cir. 2023)

The Korean claimants did not challenge Closing Orders including Closing Order 2 in the underlying Motion because the appellate court affirmed this court's Closing Order 2. (Other Orders like Closing Orders 3 or 5 were not affirmed substantively and the Korean claimants' appeal from Closing Order 5 was dismissed due to superficial reason [notice of appeal overdue] that the Respondents did not waive)

What kind of discriminatory treatments by the SF-DCT were executed against the Korean claimants in the context of the address update and confirmation requirement?

First, the handling of the SF-DCT in the context of the address update and confirmation was discriminatory. The 676 Korean claimants received the request for address update from 2015 to 2019. (except around 130 claimants under the Show Cause Order). They submitted the address update on June 1, 2019. The form for the 676 claimants' address update via the Fedex arrived at the SF-DCT on June 3, 2019. On March 3, 2020, the SF-DCT by way of the former Claims Administrator sent a letter taking away the AOR's right of address update for the claimants. The letter said that individual claimants must update their own address *directly* to the SF-DCT.

Technically, it was impossible to confirm ("verify") the 676 Korean claimants' updated address within such short periods (from June 2019 to March 2020). In particular, the Covid-

19 outbreak began January 2020. An international mail from the US to South Korea could not return back to the SF-DCT within such periods. In particular, a large volume of international mails to the 676 Korean claimants could not return back to the SF-DCT within such periods. (The AOR verified it from the Korean Postal Authority)

However, the SF-DCT through the Declaration of a Quality Control Manager said that over 30 percent of mails to the 676 Korean claimants were returned. So the SF-DCT determined that the whole address update for the 676 claimants was not reliable and likewise, ALL of Korean claims which have been already approved including the premium payment must not be paid unless the direct address update by individual claimants (calling, emailing, or sending personal letter to the SF-DCT) was received by the SF-DCT.

The Korean claimants challenged the decision of the SF-DCT to this court but unsuccessful. This court denied the various Motions regarding the Korean claimants' address update and confirmation requirement on the basis of Closing Order 2 which was issued by consent of the Respondents *only* just before June 3, 2019, the final deadline for claims, when the AOR was really busy due to working for meeting the filing deadline for claims and had no extra time to contemplate the meaning of address update and confirmation requirement inserted in Closing Order 2.

Second, the Korean claimants reluctantly accepted Closing Orders 2 as the law since the Sixth Circuit affirmed it. So the Korean claimants did regarding Closing Orders 3 and 5.

By the way, afterward, the Korean claimants found out from briefs and documents filed with this court, which were delivered through the ETF, a lot of discriminatory treatment by the SF-DCT.

The SF-DCT sent the check for the first-half Second Priority Payment in 2019 to the

other claimants including the US claimants without requesting them for their address update. However, the SF-DCT did not send the check for the first-half Second Priority Payment to the Korean claimants by saying that the Korean claimants failed to submit their address update. It is discriminatory.

Furthermore, the SF-DCT requested a submission of the Survey form on the basis of Closing Order 4 to ALL of the AORs listed in the SF-DCT. Over 4200 attorneys and law firms were supposed to receive the Survey form. However, Over 3400 attorneys and law firms (except 814 attorneys and law firms) turned out "bad address". The SF-DCT was not able to deliver the Survey form to them. (Nevertheless, the SF-DCT sent the check of the last-half Second Priority Payment to them in 2022) The claimants represented by them, whose number must be huge, did not submit their address update *vice versa* because their attorney and law firm failed to update their own address. The claimants represented by them turned out "bad address". So the SF-DCT revealed that the SF-DCT did not request the address update to either the attorneys and law firms or the claimants represented by them.

However, the SF-DCT kept requesting the Korean claimants to update their address from 2015. Even if the 676 Korean claimants who were actually requested for address update submitted their address update, the SF-DCT treated them as "bad address" and furthermore, ALL of Korean claimants' address was treated as "bad address" and turned down sending the check for the first-half and last-half Second Priority Payment. (The SF-DCT even listed ALL of Korean claimants as "bad address" on the home page under Closing Orders 3 and 5)

While the SF-DCT did not request the address update and confirmation to the other claimants including the US claimants, the SF-DCT denied the 676 Korean claimants' address update and treated ALL of the Korean claimants' address as "bad address". It is definitely discriminatory.

In addition, there are other discriminatory treatments which were revealed by the SF-DCT on its own. The Korean claimants are searching and are going to submit to the courts.

The Motion to Lift (ECF No. 1758) was to seek the court's decision on the acceptability of discriminatory treatments committed by the SF-DCT in the context of address update and confirmation requirement. The Respondents mischaracterized the Motion to Lift as a challenge to the decision of the Claims Administrator which is not appealable to the court and furthermore, a challenge to Closing Orders including Closing Order 2 which was affirmed by the Sixth Circuit. This court mischaracterized it too and issued the Order denying the Motions underlying this Motion to Stay.

The Korean claimants (re Motion ECF No.1758) request this court to decide whether the practice of discriminatory treatments by the SF-DCT against the Korean claimants is acceptable. The Korean claimants do not agree that this court can let go whatever actions the SF-DCT took because this court does not have authority over the claimants' claim and the Claims Administrator has sole authority and discretion. The court is supposed to hear and decide on the merits for justice. If the court does not rule on discriminatory actions committed by the SF-DCT, why is the court worth existing? This court must step in and cure discriminatory treatments committed by the SF-DCT.

For the foregoing reasons, the Korean claimants file this Reply to the Response of the Respondents to the Motion to Stay the court's Order regarding Motions filed by the Korean Claimants (ECF Nos.1752 and 1758) and respectfully request for Grant the Motion to Stay.

Date: September 12, 2024 Respectfully submitted,

(signed) Yeon-Ho Kim

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CERTIFICATE OF SERVICE

I hereby certify that on September 12, 2024, this Reply 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: September 12, 2024 Signed by Yeon-Ho Kim