

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOTHERN DIVISION**

IN RE:	§	CASE NO: 00-CV-00005
	§	(Settlement Facility Matters)
SETTLEMENT FACILITY	§	
DOW CORNING TRUST	§	
	§	
	§	
	§	Hon. Judge Denise Page Hood

**CROSS-MOTION TO DENY MOTION TO TERMINATE FUNDING
PURSUANT TO SECTION 2.01(C) OF THE FUNDING PAYMMENT
AGREEMENT AND TO TERMINATE THE SETTLEMENT FACILITY
PURSUANT TO SECTION 10.03 OF THE SETTLEMENT FACILITY
AND FUND DISTRIBUTION AGREEMENT AND FOR ORDER TO
MAKE PAYMENTS IN DEFAULT TO KOREAN CLAIMANTS**

The Korean claimants oppose the Motion to Terminate Funding pursuant to Section 2.01(c) of the Funding Payment Agreement and to Termination the Settlement Facility pursuant to Section 10.03 of the Settlement Facility and Fund Distribution Agreement by the Finance Committee, Debtor’s Representative and Dow Silicones Corporation (“the Movants”) (“the Motion” ECF No.1796), and move to seek an Order to Make Payments in Default by the Movants to the Korean claimants.

The grounds for this Cross-Motion are set forth in the following:

I. REQUIREMENTS FOR TERMINATION WERE NOT MET

In accordance with section 2.01(c)(i) of the Funding Payment Agreement, Dow Corning's obligation to fund can be terminated the date when all allowed claims in each of Classes 5 through 19 and all other obligations of the Settlement Facility ("the SF-DCT") and the Litigation Facility have been paid, all claims filed have been liquidated and paid or otherwise finally resolved, and no new timely claims have been made against the Settlement Facility or the Litigation Facility for two consecutive funding periods.

And in accordance with section 10.03(a) of the Settlement Facility and Fund Distribution Agreement, the Settlement Facility and Trust can be terminated as soon as practicable after the Reorganized Dow Corning's obligation to fund under the Funding Payment Agreement is terminated in accordance with section 2.01(c) of the Funding Payment Agreement.

First of all, all allowed claims in Class 6.1 and 6.2 have not been paid. The Korean claimants belonging to either Class 6.1 or 6.2 have been denied the payments although their claims were approved. How much the claims of the Korean claimants have not been paid is shown in EXHIBIT B.

Second, all claims filed have not been liquidated and paid *or otherwise finally resolved*. The Korean claimants have been denied the payments. The Korean claimants through Yeon-Ho Kim have been demanding the payments of allowed claims to the Movants many times by writing emails to the Claims Administrator of the SF-DCT and by sending the Fedex letters to the SF-DCT.

The Movants just denied responding to any correspondences that the Korean claimants sent. Even the last email/letter (meaning “the Demand of Payments”) sent to both the the Claims Administrator and the SF-DCT took place in October 2024. Therefore, all claims filed by the Korean claimants who have not been paid have not been *otherwise finally resolved*.

Finally, the phrase, “No new timely claims have been made against the Settlement Facility or the Litigation Facility for two consecutive funding periods”, was not satisfied. For example, a new claim was made against the SF-DCT on December 20, 2021. The SF-DCT requested for address update on April 25, 2022. The SF-DCT requested for address update again on June 13, 2022. Following the requests, the Korean claimant filed address update on September 6, 2022. And then, the Korean claimant filed the copy of ID card on November 22, 2022 (See EXHIBIT A). From this example, a new timely claim was made against the SF-DCT in the year of 2022. If the claim were not a new timely claim, the SF-DCT would not have requested for address update. Two consecutive funding periods from 2022 (the year of the new timely claim) reach to 2024 (the year of this Motion) since the funding was made on the yearly basis. There were many cases as same as the above example. Therefore, the phrase was not satisfied.

In conclusion, the requirements for termination under section 2.01(c) of the Funding Payment Agreement and section 10.03(a) of the Settlement Facility and

Fund Distribution Agreement have not been met so this Motion by the Movants must be denied.

II. PAYMENTS IN DEFAULT BY THE MOVANTS

First of all, the Movants did not pay premium payments to the Korean claimants. The premium payment (“the Second Priority Payment”) was executed two times in 2019 and in 2021 respectively. 10% of the base payment was applied each time so 20% of the base payment must be paid for premium payment. Therefore, the Korean claimants must be paid 20% of the base payment from the disease payment for which the claims were approved by the SF-DCT.¹ The premium payment that the Korean claimants were not paid is shown in Exhibit 1 of EXHIBIT B attached. The total amount is US1,131,250 dollars.

Second, the Movants did not pay the base payment for approved claims to the Korean claimants who had received the award letter or the notice of approval of the disease claim in 2014 to 2015. The Movants held the base payments without any explanation in 2014 to 2015. The amount of the base payment not received is US489,500 dollars as shown in Exhibit 1 of EXHIBIT B attached.

¹ The Korean claimants gave up the premium payment from the rupture payment by negotiation with the representatives of Dow Corning.

Third, the Movants did not pay the base payment to the 213 Korean claimants in Exhibit 2 of EXHIBIT B attached. These Korean claimants submitted their claims to the SF-DCT on June 1, 2019 just prior to the deadline for filing a claim. The SF-DCT reviewed and notified them that their claims for disease payment were approved as the level “C” (See the last five pages of Exhibit 2 of EXHIBIT B). The SF-DCT requested them to submit the ID card. The Korean claimants submitted the copy of the Korean Government-issued National Resident Registration card. These Korean claimants were eligible for the premium payment too. Therefore, these Korean claimants must be paid the base amount for the disease payment plus 20% of the base payment as the premium payment. The list of the 213 Korean claimants who received the notice of approval and the amount are attached as Exhibit 2 of EXHIBIT B. The total amount is US1,527,600 dollars (the base payment plus the premium payment).

Finally, the Movants did not process the claims of the 405 Korean claimants in Exhibit 3 of EXHIBIT B attached. The Movants suddenly stopped processing for the 405 Korean claimants and held their claims until now. The Korean claimants submitted the POM and the full copy of medical records to prove the disease claim. The claims of the 405 Korean claimants were above the level of approval adopted by the SF-DCT. Even if the level of the disease claim were the lowest level (the disease level “C”), the 405 Korean claimants must be paid the base payment of Class 6.1 for the disease claim plus 20% of the base payment

as the premium payment. The list of the 405 Korean claimants and the amount are attached as Exhibit 3 of EXHIBIT B. The total amount is US2,916,000 dollars (the base payment plus the premium payment).

The total amount of above payments is US6,064,350 dollars (=1,131,250+489,500+1,527,600+2,916,000). The Movants including the SF-DCT did not pay US6,064,350 dollars to the Korean claimants. As the Movants filed this Motion to Terminate the Funding and the SF-DCT, the payments become in status of default.

Therefore, the Korean claimants move to seek this Court's Order to make the payments of US6,064,350 dollars in default by the Movants and file this Cross-Motion.

III. CONCLUSION

For the foregoing reasons, the Korean claimants respectfully request that this Court Grant the Korean claimants' Cross-Motion to Deny the Movants' Motion and to Order to Make the Payments in Default by the Movants to the Korean claimants.

Date: November 28, 2024

Respectfully submitted,

(signed) Yeon-Ho Kim
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Proposed Order Granting the Korean Claimants’ Cross-Motion

The Court has considered the Korean Claimants’ Cross-Motion to Deny the Finance Committee, the Debtor’s Representative and Dow Silicones Corporation’s Motion to Terminate the Funding pursuant to Section 2.01(c) of the Funding Payment Agreement and to Terminate the Settlement Facility pursuant to Section 10.03(a) of the Settlement Facility and Fund Distribution Agreement, and the Court finds and concludes that the Cross-Motion is meritorious and should be granted.

ACCORDINGLY, it is hereby ORDERED that:

The Cross-Motion is GRANTED in all respects.

Dated: _____

Signed by/ _____
DENISE PAGE HOOD
United States District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on November 28, 2024, this motion 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: November 28, 2024

Signed by Yeon-Ho Kim