

EXHIBIT 1

RE: statement of position

보낸사람 : "Ann M. Phillips"<APhillips@sfdct.com>

보낸날짜 : 2012/08/03 금요일 오전 6:57:33

받는사람 : <mcgovern@law.duke.edu> <yhkimlaw@unitel.co.kr>

참조 : "_David Austern - CRMC External Address"<daustern@claimsres.com>

첨 : SFDCT Position Paper-Kim80212_f_.pdf [67.93KB]

Professor McGovern,

Attached is the SF-DCT Response and Position Paper regarding this matter.

Sincerely,

Ann M. Phillips
SF-DCT
Claims Administrator

From: 김연호 [mailto:yhkimlaw@unitel.co.kr]

Sent: Thursday, July 19, 2012 2:32 AM

To: mcgovern@faculty.law.duke.edu; mcgovern@law.duke.edu

Cc: _David Austern - CRMC External Address; Ann M. Phillips

Subject: statement of position

Dear Prof.Mcgovern,

I was informed and agreed with Mr.David Austern that our case regarding the administrative hold and the dismissal of all the Korean claims by SFDCT shall be submitted to you for mediation. I also agreed with Mr.Austern that I must submit the statement of position to you. Accordingly, I submit the enclosed statement of position and the attachments via this e-mail. Please note that the begging points are changed from the Motion to the Court by considering Dow Coming's answers but are similar with the Motion in facts and grounds for begging.

Thank you very much.

Best Regards,
Yeon-Ho Kim



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AUGUST 2, 2012

BY ELECTRONIC MAIL

To: Professor Francis McGovern
Mediator

CC: Yeon-Ho Kim
Attorney at Law

IN RE: YEON-HO KIM CLAIMANTS

**SETTLEMENT FACILITY – DOW CORNING TRUST POSITION PAPER IN RESPONSE TO MOTION
FOR REVERSAL OF DECISION OF SFDCT REGARDING KOREAN CLAIMANTS**

1. In 2006, following substantial analysis, the SF-DCT agreed to accept Affirmative Statements provided for claimants represented by Korean attorney Kim ("Kim") for approximately 1,400 claimants in Class 6.2. Later, the SF-DCT reversed the approval of POM when we were informed by Kim that the statements were not factual and were submitted merely "as a formality". The SF-DCT's earlier decision to accept Affirmative Statements for Kim's claimants was predicated upon Kim's assertion that medical records in Korea are routinely destroyed after ten years. Subsequently, the SF-DCT discovered that Kim had misled the SF-DCT with respect to this destruction practice. The SF-DCT thus was compelled to review the credibility of the statements that had been relied upon to establish foreign medical practices. In addition, the explanations provided by Kim as his basis for establishing which of his claimants had Dow Corning implants and which had implants manufactured by another provider did not meet the standards set by the Dow Corning Plan for proof of Dow Corning products. Thus, the SF-DCT had no option but to reverse the original approval of POM Claims based on Affirmative Statements.

Additionally, the SF-DCT has reasonable evidence that certain medical records submitted by Kim in support of POM, Rupture and Explant Claims have been altered and/or fabricated. The amount of time necessary to audit these records in an attempt to identify those records which are reliable places an undue burden on the resources of the SF-DCT.

In September 2011, Kim filed a MOTION (The "MOTION") FOR REVERSAL OF DECISION OF SFDCT REGARDING KOREAN CLAIMANTS, which is pending before Judge Hood. With this document the SF-DCT will provide a summary and history of Claims submitted by Kim and the internal claim investigation process in which the SF-DCT has engaged. Next, to provide a more thorough explanation, the SF-DCT will respond to Kim's arguments outlined in the "Motion" and discuss why these arguments hold no merit. Finally we will conclude with some options and possible directions to resolve this matter for this significant group of claimants who have not had the means to establish the manufacturer of the breast implants they received.

2. In the "Motion", Kim describes his perception of the agreements made with SF-DCT Claims Administrators, both past and current, and the audit and investigation process that ultimately resulted in the

SF-DCT decision in August 2011 to no longer accept Affirmative Statements of manufacturer for his clients. Though the SF-DCT did perform two extensive investigative audits of Claims filed by Kim, the decision regarding Affirmative Statements was made only after the SF-DCT received written confirmation from Kim that the statements were prepared as a "formality" and were not "factual". Additionally, Kim admitted that he had no documentation of manufacturer proof for the majority of his claimants and described the "pre-screening process" that he deployed to determine which of his claimants should file claims with the Inamed Settlement and those that should file claims with the SF-DCT.

Notwithstanding Kim's allegations, no person at the SF-DCT has knowledge of Kim's implications that an agreement was made- apparently pre-confirmation- to waive the requirements of the Dow Corning Plan for Korean claimants. Therefore, in the absence of proof of Dow Corning manufacturer, Claims Administrator, Ann Phillips, extended a one time offer to process the Kim claims as Option 6.2.3, the Limited Proof of Manufacturer Expedited Payment Option payable at \$600(USD).

At some point Kim filed 1,742 Claims at the SF-DCT, primarily in Class 6.2. Most notable about these claims is the lack of contemporary operative records to establish proof of Dow Corning manufacturer for the prosthesis used in the claimant surgeries. Acceptable proof of Dow Corning manufacturer is required before any additional Claim Review can be performed or benefits approved and paid. In lieu of such reports, over 86% (89% in Class 6.2) of the claimants had Affirmative Statements of manufacturer to support the Proof of Manufacturer (POM) Claim requirement. While the Dow Corning Plan allows the use of Affirmative Statements, no other law firm has employed this high of a percentage of Affirmative Statements to support POM.

The numbers of Claims filed, by Kim, by Class, are:

1. 1,583 Class 6.2 claims; POM for 1,402 is documented by an Affirmative Statement. (88 paid 6.2 Option 3.)
2. 138 Class 7 claims; POM for 85 is documented by an Affirmative Statement.
3. 13 Class 5 claims; POM for 10 is documented by an Affirmative Statement.
4. 1 Class 6.1 claim
5. 7 Class 10.2 claims

Pursuant to the Dow Corning Plan, the Claims of the Class 6.2 Claimants were placed in a separate processing queue for Proof of Manufacturer (POM) review, which began in 2003. Initially the only delays in Claims processing were a result of time necessary to translate the POM documentation which was submitted in the Korean language. The SF-DCT sent notices of acceptable POM starting in 2003. In July 2005, both the POM Review department and Disease Review Department requested that Quality Management Department perform an audit of claims filed by Kim after each Department identified concerns with the type of documentation they were reviewing. After an initial pre-screening, the Quality Management Department agreed that there was reason to proceed with a more extensive audit and subsequently the claims were placed on Administrative Hold in order to complete the audit process.

The audit investigative process for these claims occurred during 2006 – 2008, and included translation of over 1,200 claimant files, and letters, as well as face - to - face meetings with Kim. A more detailed accounting of the investigative process is outlined in the following section of this document. In January 2009, the SF-DCT concluded the investigation and began to review and pay claims.

In January 2010, the Rupture and Explant Department requested that Quality Management perform an audit of Claims filed. Once again in April 2010, Quality Management placed the Claims on Administrative Hold during the audit investigation process.

In July 2010, the Quality Management Department requested that the Claims Administrator review six files with acceptable Dow Corning POM where there was evidence in the records submitted for Explant and Rupture Claims that the so-called acceptable POM determination was invalid. The POM determination was reversed and Kim was sent written notification of the decisions for each claimant.

Kim appealed the decision to reverse the POM to both the Claims Administrator, David Austern, and subsequently to the Appeals Judge, Frank Andrews. These appeals were denied.

In August 2011, Claims Administrator, Ann Phillips, sent Kim notice that in light of his admission that the Affirmative Statements submitted for manufacturer proof were not factual, the SF-DCT could no longer accept Affirmative Statements as acceptable proof of Dow Corning manufacturer for his claims.

The SF-DCT has evidence that certain files contain fabricated and/or altered records submitted for Rupture and Explant Claims; however, this portion of the investigative audit was not completed.

3. A Quality Management audit of filed Kim claims performed during 2006 - 2008 identified problems with some of the submitted Affirmative Statements and subsequently an Administrative Hold was placed on the processing of the Proof of Manufacturer for Kim claims in Class5, 6.1 and 6.2 Option 2 pending translation of documents. A description of some of the more compelling problems found during this audit period is further detailed below:

1. Submitted with many SF-DCT claims was a document titled "Application for Silicone Class Preliminary Fund Form" - a document completed for Kim by the claimants. These documents had the name of surgical facilities, implanting physicians and dates of implantation removed through the use of correction fluid. When confronted with these discrepancies (and apparent deliberate elimination of conflicting information), Kim admitted removing conflicting information, stating that the Forms were completed by the clients who had "unclear memory", while "correct" information came from the physician statements. The SF-DCT noted that the implant surgeries occurred within five years of the claimants completing the Application Form. The same is not true of the physicians who signed the Affirmative Statements of POM. These statements were signed by the physicians ten to twenty years after the claimant's surgery date.
2. There were discrepancies between the Affirmative Statements submitted to the SF-DCT and the Registration Forms filed for the same claimants with the MDL-926 Claims Office. These discrepancies included claims in which the SF-DCT and the MDL Claims Office were provided with different dates of implant (including different years), different facilities (including facilities located in different cities and countries) for the same implant.
3. There were statements submitted, written years after the alleged implant surgery date that contained Dow Corning catalog and lot numbers along with the following statement, "The certificate of product for surgery was based on hospital records." The SF-DCT requested that Kim provide a copy of the contemporaneous hospital records or, in lieu of records, an explanation of why the hospital records were not submitted to the SF-DCT. Kim responded that no official hospital records were available because the facility, Seoul National University Hospital, discarded them after ten years. According to Kim, the hospital had explained that a synopsis of the surgery, not the entire surgical record, was put into the hospital's computer system but could not be printed and was "read-only". Because of the number of claimants affected, Austern requested a written statement from hospital authorities to the effect that they did not have a print function for the medical records in question and additionally, offered to consider supplying the necessary funds to program an application to add such a print function to their system. No such written statement was ever submitted by Kim.
4. There were statements that contained Dow Corning catalog and lot numbers that were not available in the implant surgery years. When questioned about this, Kim did not respond.
5. There were photographs of removed implants which did not contain the characteristics of implants manufactured by Dow Corning; however, the accompanying Affirmative statement stated they were Dow Corning implants.

In April 2008, Kim met with representatives of the SF-DCT to discuss the results to date of the investigation process. Kim was apprised of ongoing concerns found in POM documents and Disease Claim Review documents. In a written statement, Kim responded; "claims by physician statements are not perfect"; "But the bottom line for processing specific claims of specific lawyer is trust. If I had bogus claims, I would not have spent fourteen years from 1994 – 2008 filing claims."

With respect to all claims, the SF-DCT is obligated to remain a neutral party and can only approve POM claims that meet the requirements of the Dow Corning Plan. We cannot approve claims based on whether or not we can "trust" the individual attorney.

In April 2008, Kim requested that Claims Administrator David Austern assist him in seeking a Settlement for all Korean Claims, or in absence of a Settlement to set up a separate Korean settlement facility as agreed to for Australian Claims.

In June 2008, Austern informed Kim that he had checked with members of both Dow Corning and the Claimant's Advisory Committee (CAC) concerning the matter of settlement for Korean claims and that both parties rejected that offer. While they were prepared to settle all Korean claims before the Plan Confirmation for \$12 million (USA dollars), they would no longer, after Plan Confirmation, consider a settlement for all Korean claims.

In January 2009, the SF-DCT agreed to waive prior concerns and accept the Affirmative Statements as manufacturer proof of a Dow Corning product for 1505 claimants represented by Kim Based on reports from Kim, medical records were not available for these claims. The statement of manufacturer replicated for all claimants stated "Basis: The hospital records such as an operation chart were destroyed after 10 years' storage period. It is possible, however, to confirm that products used for the above patient were Dow Corning since only Dow Corning products were used back then in this facility". The SF-DCT agreed that because of record retention policies in Korea, we would accept the Affirmative Statements of Manufacturer as acceptable proof that met the requirements of the Dow Corning Plan.

On the basis of acceptable POM, the SF-DCT began to review and pay claims to Kim in 2009. The following represents a summary of paid claims.

claim class	Explant	Rupture	expedited payment	Disease	Class 7	Class Grand Total
5 Total	\$8,250	\$20,000	\$0	\$50,000	\$0	\$78,250
6.1 Total	\$0	\$0	\$0	\$6,000	\$0	\$6,000
6.2 Total	\$856,500	\$1,743,000	\$53,400	\$1,454,250	\$0	\$4,107,150
7 Total	\$0	\$0	\$0	\$0	\$138,000	\$138,000
10.2 Total	\$0	\$0	\$0	\$0	\$0	\$0
Payment Type Grand Total	\$864,750	\$1,763,000	\$53,400	\$1,510,250	\$138,000	TOTAL PAID: \$4,329,400

Number of Claimants Paid	300	250	89	392	46
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Note that these settlements were a small fraction of the pending Kim claims.

In March 2009, Kim once again requested that Austern approach the Parties and seek a global settlement for all Korean Claims. In addition, Kim requested that the SF-DCT stop sending award letters to claimants. He requested that the SF-DCT send the award letters only to him and he would convey the results to each claimant

"in accordance with individual circumstances". The SF-DCT agreed to delay sending award letters to claimants for a period of three months following the approval.

In October 2009, Austern informed Kim that the parties stated that they were still unwilling to consider a global settlement.

In April 2010, Austern requested a written explanation from Kim of why medical records were available for Rupture and Explant claims when reportedly all Korean medical records were destroyed after a ten year period. Austern also described several serious concerns about the reliability of the contemporaneous operative records that the SF-DCT had received. The SF-DCT had reason to suspect that on at least three occasions the medical records were fabricated.

In May 30, 2010, Kim responded that when writing the affirmative statement he drafted for physicians' signatures, "I sought the advice from American attorneys such as Dianne Pendleton. I received advice that I had to provide the reason for the non-existence of medical records for POM thus reasoned the basis for non-existence that the Medical Statue of Korea permits the destruction of medical records after ten years from the date of surgery. I am not sure whether all the physicians observed the Statue...I simply included into the statement the phrase-The hospital records such as an operative chart were destroyed after ten years." "The simple answer is that I had to provide the basis for the non-existence of operative charts thus I took the reason from the Korean Statue after receiving advice from American attorneys. There should be no factual implications....Ten years storage period was simply a formality in writing affirmative statement by (first-time) implanting physicians."

A September 21, 2010, David Austern MEMORANDUM (to Francis McGovern, Frank Andrews, Debbie Greenspan, Dianna Pendleton-Dominguez, Ernie Hornsby) Re: Kim, outlined the problems the SF-DCT had detected as a result of investigation of Claims submitted by Kim. In addition to the problems with submission of Rupture and Explant Claims and records submitted to resolve deficiencies in POM and reason to suspect that at least some of the medical records were fabricated, twenty-five percent of award letters sent to claimants were returned from Korea as undeliverable, additionally the SF-DCT received two reports from Kim claimants who telephoned the SF-DCT to complain that they had not been paid. They had been informed by Kim that the SF-DCT had not paid the claims. In each case Kim had been sent payment over eight months earlier. Austern stated in the Memorandum that the SF-DCT was considering whether we could accept any Affirmative Statement from the law firm and was additionally considering barring the law firm from filing future claims, as well as removing the law firm as the attorney of record for pending claims.

The SF-DCT has determined that Kim's explanation of how he obtained the Affirmative Statements submitted for POM was neither credible nor reliable and, more importantly, did not meet the Dow Corning Plan requirements for Affirmative Statements.

In August 22, 2011 Claims Administrator, Ann Phillips, sent written notification to Kim that the SF-DCT had determined that the Affirmative Statements submitted to establish proof of Dow Corning as the manufacturer were now considered unreliable and therefore, did not meet the standards set by the Dow Corning Plan for acceptable proof of Dow Corning implants. Phillips reminded Kim of the option of submitting a claim for Limited Proof of Manufacturer in Class 6.2.3, the alternative for claimants who attested to receiving Dow Corning implants, but could not provide the documentation required by the settlement plan to establish the manufacturer of their breast implants.

4. Conclusion

- a) The explanation provided by Kim of how POM was determined for his claimants does not meet the Dow Corning Plan requirements for acceptable POM.
- b) Kim has failed to provide credible evidence of how he determined which claimants received implants manufactured by Dow Corning. Kim's explanation that starting in 1994 he prescreened claimants according to their manufacturer after determining the ratio of products

imported to Korea (300 claimants to the Inamed Settlement and 1,300 to Dow Corning) does not meet the Dow Corning Plan requirements for acceptable manufacturer proof.

- c) For Kim, Affirmative Statements submitted for claimants were considered a formality and had little or no basis in fact.
- d) In the absence of acceptable POM, the only option for those claimants who do not have any evidence of Dow Corning as the manufacture is Class 6.2 Option 3 *Limited Proof of Manufacturer Expedited Payment Settlement*, which allows claimants to submit a statement attesting to their use of a Dow Corning Breast Implant and provides for a \$600.00 payment for limited proof of manufacture. This option was offered for 606 eligible claimants in August 2011. (Note: Many Claimants are excluded from this option because they did not file a Proof of Claim on or before the February 14, 1997 bar date, Plan requirement for Class 6.2.Option 3)
Total estimated payout for Class 6.2.3 is: \$363, 600.00.
- e) During the audit investigation performed in 2010, the SF-DCT found reasonable evidence of records submitted by the law firm for Rupture and Explant claims that were fabricated and/or altered. In December 2010, Austern informed Kim that the SF-DCT was considering barring the law firm from filing future claims, as well as removing the firm from pending claims. The investigation of the over 1,500 claims was not completed until August 2011. Following the August 2011 Notification regarding POM, the audit investigation was suspended. However, the SF-DCT would resume this investigation pursuant to a mediation agreement that contemplates the processing of Rupture and Explant claims, or any new POM claims submitted by the law firm.

5. Possible Alternatives

- a) Kim has 1,621 Class 6.2 claimants who have not received any payment. If an agreement could be reached that allowed the SF-DCT to waive the February 14, 1997 bar date for filing a Proof of Claim, the result would be that an additional 1,015 claimants could file a Class 6.2 Option 3 (which requires no proof of manufacture) claim.
Total estimated payout would be \$972,600.00.
- b) The Dow Corning Plan does contain the Option 4: *Limited Disease Payment Option* for Class 6.2 claimants who filed a timely Proof of Claim or Notice of Intent and are unable to provide Proof of Manufacturer as specified at Annex A, Schedule I because (1) all documents constituting acceptable Proof of Manufacturer were destroyed as a result of a verifiable war or natural disaster (e.g., fire, earthquake) that occurred before the Effective Date, and (2) the claimant's implanting physician or other qualified individual is either deceased or cannot be located. This Option allows for an Option 1 Disease Claim Review only. Any approved claims are paid at 30 percent of the amount payable to domestic Breast Implant Claimants for any of the eligible conditions under Disease Option I.
- c) In light of the questionable reliability of the documentation in the claimant files, the SF-DCT has the following stipulations:
 - a. The SF-DCT will not accept any future claim filings for claimants represented by Kim, who have not filed claim forms. The SF-DCT will remove Kim as attorney of record for these claims. The Claimants may file claims on their own behalf or find alternative representation.

- b. Any claimants previously paid claims with an Affirmative Statement as manufacturer proof are considered "Paid in Error" and will not be eligible for Second Priority Premium Payments.
- c. Claimants that filed a claim in Class 5 or 6.1 and have only an Affirmative Statement as manufacturer proof will receive no further processing. There is no option in these classes for Claimants without acceptable POM documentation.
- d. Class 7 claims will be processed according to the acceptable implant date range described in the Plan Documents.
- e. Any Class 6.2. Claimant with an Affirmative Statement of Manufacturer, who received a payment for any other claim, is not eligible for Class 6.2.4.

EXHIBIT 2

Reply(positionpaper)

보낸사람 : yhkimlaw

보낸날짜 : 2012/08/07 화요일 오전 10:05:01

받는사람 : <mcgovern@law.duke.edu> <APhillips@sfdct.com>

참조 : <daustern@claimsres.com>

Reply(positionpaper).pdf [115.56KB]

EXHIBITK.pdf [245.26KB]

Professor McGovern,

Attached is the Kim's Reply regarding this matter.

Sincerely,

Yeon-Ho Kim

REPLY TO SFDCT'S RESPONSE

SFDCT sent a position paper in Response to Motion for Reversal of Decision of SFDCT regarding Korean claimants on August 3, 2012. SFDCT summarized the history and procedures, countered the arguments of Kim, and concluded that there should be no change in the decisions made in the letter dated August 22, 2011.

Kim believes that some contents in the Response are based upon the truth but most of contents in the Response are misleading as follows: (1) The delay of processing the files of Korean claimants is due to translation, and SFDCT kept the rules of Dow Corning Plan (2) Kim's assertion that medical records in Korea are routinely destroyed after ten years is not factual.

I. PREMISES

During the hearings held from January 1999 to October 1999 before the Bankruptcy Court in Bay City, Mrs. Barbara Houser, the leading attorney of Dow Corning at that time, frequently contacted Kim to induce the withdrawal of Kim's objection to the Reorganization Plan from Kim. She contacted Kim in or out of the Courtroom herself or in some other occasions used Mrs. Diana Pendleton, a member of the Tort Committee. Kim knew that Mrs. Pendleton functioned a messenger to Mrs. Houser in dealing with Kim and Korean claimants. Mrs. Pendleton told Kim on numerous occasions that she acted to benefit Korean claimants and she was ready to help and added that any request to Dow Corning could be delivered to her.

Even before the hearings began, Mrs. Houser contacted Kim from her law firm in Houston to solicit the votes of Korean claimants in favor of Reorganization Plan. Kim promised to meet her to discuss the details for negotiations but one day before the flight to Houston, Kim's mother suddenly passed away thus Kim apologized Mrs. Houser of the cancellation of meeting and instead Kim voted in favor of Reorganization Plan.

When Kim arrived at Bay City in 1999 to attend the hearings, however, Kim was informed by the attorneys on the side of claimants that Kim made a stupid decision in favoring the Reorganization Plan. Thus Kim decided to withdraw voting to change from favor to objection and filed the Motion with the Court. Mrs. Houser adamantly objected to the Motion and argued that the voting could not be changed in nature. Kim argued

that the votes of Korean claimants were mistaken and Korean claimants should have been treated differently.

In the middle of hearings, Kim drew a few concessions from Mrs. Houser, actually from Dow Corning as follows: (1) Among four members of CAC, at least one foreign attorney shall be included in CAC. Mrs. Pendleton committed Kim that Kim is the strongest candidate by saying that she was certain that Kim is a member of CAC in the position of foreign attorney (2) Class 6.2 shall establish Option 3 which gives USD600 to any claimants of 6. 2 Class who has no proof of product of Dow Corning as long as filed as claimants in MDL-926 Claims Office (3) Expedited payment to disease claims was elevated to USD1200 from USD600 in consideration that 6. 2. 3 Option was established. (4) Qualified Medical Doctor requirements for disease payment were alleviated to meet Kim's concerns (5) Most importantly, Proof of Manufacturer, the threshold of payments in the entirety, was the main topic in numerous discussions between Kim and Mrs. Houser. Kim and Mrs. Houser agreed in verbal mode that POM requirements in Dow Corning Plan were the most critical so that they shall not be modified but Korean claimants including other 6. 2 Class claimants shall be favorably treated in examination for POM by SFDCT because Korean claimants were discounted by 35 percents in nature.

In addition, Kim requested to build a separate claims processing office in Korea because the files of Korean claimants were written in Korean and the expenses to be borne for translation shall be significant. Mrs. Houser answered that a separate claims processing office in Korea only is economically unsustainable so proposed that SFDCT would receive the files written in Korean. Kim agreed thus the contents reflecting the agreement were included in the Reorganization Plan. In furtherance of the agreement, SFDCT hired an employee in 2004 who was a US citizen fluent in Korean.

One other thing that Kim requested to Mrs. Houser was the overall settlement for Korean claimants just as the settlement with Australian claimants. Mrs. Houser denied to consider Kim's proposal for the settlement. Australian claimants reached, however, to an agreement for settlement with Dow Corning during the appeal process of the Reorganization Plan.

In any event, Mrs. Houser committed Kim that Korean claimants shall be treated favorably in examination of product identification. While Kim confronted SFDCT that

affirmative statements of Korean claimants should not be accepted as POM in 2008, Kim placed a phone call to Judge Houser to ask her to explain SFDCT what she agreed with Kim. Kim received an e-mail from her Clerk that she could not take a phone call and advised Kim to ask the attorneys of Dow Corning. Kim understood Judge Houser's position thus argued before the Court that SFDCT was urged to call Judge Houser to know whether Kim's statement is right or wrong.

Nevertheless, SFDCT reversed its own decisions with no explanation with no explanation to Korean claimants. SFDCT should honor the verbal commitments of a Dow Corning's attorney who left from the case. SFDCT is responsible for verifying the assertions that Kim and a leading attorney reached an agreement to treat Korean claimants favorably in examination for POM. This favorable treatment is noted to apply to all of the 6. 2 Class claimants.

II. DELAY OF PROCESSING

SFDCT alleged that the claims of 6. 2. Class were placed in separate processing for POM. SFDCT further alleged that POM review began in 2003. These allegations are no basis and against the truth.

Kim was permitted to submit the files of claims in Korean by the agreement with Mrs. Houser. This agreement was included in the Reorganization Plan in writing. To meet the agreement, SFDCT hired Annie O'Brien who is a US citizen in July 2004. Before her employment, nobody could read the Korean language in claim files. Kim met Claims Administrator in the Houston Office on June 18, 2003 and submitted five claims to her to know whether POM could be approved.

The allegation of SFDCT that SFDCT began in 2003 is not true. Nobody could read the claim files of Korean claimants at that time. Annie was hired in July 2004.

Kim filed the claims of POM from September 2004 to August 2006. Because it took a lot of time to receive the signatures from each implanting physician by sending a claimant to a respective physician, Kim could file the claims of POM over two years. Kim received the approval letters from the end of 2005. Kim received around 600 approval letters of POM by the end of 2006.

SFDCT alleged that the only delays in claims processing were a result of time necessary to translated the POM documentation which was submitted in the Korean language. It is the ridiculous excuse for delay. SFDCT should receive the claim files in Korean and the translation into English is the responsibility of SFDCT. In addition, SFDCT hired an employee fluent in Korean. SFDCT is not to blame the claim files submitted in the Korean language.

SFDCT further alleged that Quality Management Department, which was never known to Kim and Korean claimants before Administrative Hold, placed the claims on Administrative Hold in July 2005. SFDCT alleged that the audit investigative process for the claims occurred during 2006-2008 and included translation of over 1,200 claimant files as well as face to face meeting with Kim. SFDCT alleged that the Quality Management Department identified five problems detailed in page three in the Position Paper in the Response. SFDCT alleged that SFDCT concluded the investigation in January 2009.

Through admissions by SFDCT itself, it is obvious that SFDCT spent over five years from 2003 to January 2009 to begin the processing of claims of POM of Korean claimants and to conclude the investigation. Over five years!! SFDCT spent five years to identify five problems in the claims(1,200 claims) of Korean claimants!!

These delays of processing were deliberate and implied the intention of SFDCT. SFDCT added again that the audit investigative process included translation of over 1,200 claimant files. Kim reminds SFDCT that translation into English is the job burdened upon SFDCT which shall not blame that the claim files were filed in the Korean language.

These delays of processing of Korean claims manifest that SFDCT never placed the claims of Korean claimants in a separate processing queue for POM although SFDCT alleged that it did it in the Position Paper. Kim proposes the Court and the Mediator to ask SFDCT to submit the detailed reports regarding the separate processing of 6.2 Class.

III. INCONSISTENCIES

Kim visited SFDCT in April and October, 2008 and met Claims Administrator and Allen Bearicks.

During the meeting of April 2008, Kim was explained by both that the claims of Korean claimants had the problems as detailed in page three in the Response.

Kim and his staff, Mr. Byun, responded to the first problem in sincerity and honesty that the use of fluid correction was executed by Mr. Byun because the statements by the claimant in Application for Silicone Class Preliminary Fund Form were found incorrect.

Kim and Mr. Byun responded to the second problem that the date and the facility in discrepancies between affirmative statements and Registration Form were found on occasion but it was because the memories by the claimants at the time of filing in 1994 with MDL-926 Office and the statements of implanting physicians at the later stage were inconsistent thus Kim was obligated to follow the affirmative statements by the implanting physicians.

Kim and his staff responded to the third problem that contemporaneous hospital records did not exist because the hospitals routinely destroyed the records after ten years from surgery and this practice of destruction was born from the fact that the Korean Medicine Law did not require the hospitals to keep the records for more than ten years. Kim further responded that the hospital records were destroyed but the synopsis of hospital records were made and stored in the computer thus this kind of internal records of hospital never went to the public which was not subject to print out and kept "read-only".

Kim proposed Claims Administrator to contact one individual physician(his name is Dr. Roh Tae-Suk, a plastic surgeon of Young Dong Severance Hospital) to verify whether Kim's statement about why print out was impossible by giving Claims Administrator his phone number and e-mail address. But Kim found that Claims Administrator never contacted Dr. Roh.

Kim responded to the fourth problem that Kim himself was curious about how the implanting doctors(although not many) issued affirmative statements where Dow Corning catalog and lot numbers that were not available in implanting years was identified but later explained pursuant to the statement of the implanting physician that the physician mistook it for the records of a different patient upon issuing affirmative statements.

Finally, Kim and his staff responded to the fifth problem that the photographs of removed implants which did not contain the characteristics of Dow Corning products were explained by the explanting physician that the physician found the Dow Corning characteristics upon surgery, which was not yet accepted by SFDCT.

During the meeting of October 2008, Kim and Mr. Byun were explained by Claims Administrator and Ellen Bearicks that the examination reports of disease issued by Korean doctors, Park Yong and Kim Kwan Sik, were not credible because the all of reports were identical and only two doctors were not able to examine over 1,200 claimants. Kim responded that Dr. Park and Dr. Kim actually examined all the patients and issued the disease reports. Claims Administrator proposed Kim that Kim was able to send ten claimants who should be selected by SFDCT to a Korean doctor who was a member of the American Board of Doctors. Kim accepted the proposal. Kim sent ten claimants to Dr. Park Seong Hoi. Dr. Park examined the claimants from the end of 2008 to the beginning of 2009 and sent his reports to SFDCT. SFDCT bore the expenses of disease examination by Dr. Park.

After SFDCT received the disease reports from Dr. Park, SFDCT began to send award letters along with the checks from March 2009. This flow of movement by SFDCT indicates that the review of POM was related to the review of the claims of disease along with rupture and explant.

SFDCT admitted in page four of the Response, "In January 2009, SFDCT agreed to waive prior concerns and accept the Affirmative Statements as manufacturer proof of a Dow Corning product for 1505 claimants represented by Kim based upon reports from Kim, medical records were not available fro these claims".

SFDCT alleged that Quality Management Department performed once again an audit of Claims of Rurpure and Explant in January 2010 and placed the claims on Administrative Hold. SFDCT asked a written explanation to Kim why medical records were available for Rupture and Explant claims although affirmative statements included a phrase, "Medical records were destroyed because ten yeas passed by".

However, the destruction of medical records after ten years is a routine practice of Korean plastic surgeons. Kim explained Claims Administrator in numerous occasions

that the reasons for destruction of medical records were several. Some physicians attempted to evade income taxes by destroying the records in view that IRS might investigate into the hospital facilities, some physicians moved their surgery facilities frequently so that they never carried the records associated with the previous facilities, and some physicians never tended to surgery records for the patients. Anyhow, Korean plastic surgeons were not responsible for producing the hospital records to carry out the claims in connection with Silicone implants, which were good to Dow Corning.

Although Kim explained Claims Administrator in person or through the exchange of e-mails that the destruction of the medical records after ten years was to provide with the basis why the medical records did not exist, SFDCT mistook the explanation by Kim as the reason for the overruling of previous decision that SFDCT agreed to waive prior concerns and accept the Affirmative Statements as POM for 1505 claimants represented by Kim. SFDCT alleged that the destruction of medical records after ten years is not factual because Kim admitted that the inclusion of the phrase, "Medical records does not exist because the medical records were destroyed after ten years passed by" was not a fact. Kim never admitted it and then simply provided with the history for the inclusion of the phrase.

Ten years of period is the legal obligation that surgical physicians must observe under the Medicine law of Korea. However, plastic surgeons do not observe it because of various reasons. When the contemporaneous hospital records were requested to the implanting plastic surgeons through claimants, the surgeons responded that they did not have them because they destroyed or could not find where the records were located. Kim requested the surgeons through the claimants or Kim himself to instead issue the affirmative statements because the hospital records did not exist and requested to provide with the basis for non-existence of the records. To include the whole and various reasons why the surgeons did not keep the hospital records at the time of issuance of affirmative statement, the phrase of ten years for which the hospital records shall be kept under the law was included.

SFDCT alleged that SFDCT discovered first time that the phrase in the affirmative statement, "Medical records were destroyed after ten years", was inconsistent with the fact. Kim explained, however, SFDCT through Claims Administrator and Ellen Bearicks on many occasions that ten years of period in the affirmative statement reflected the Korean Medicine Law where all the surgery records shall be kept for ten

years. In addition, Kim explained SFDCT that the Korean plastic surgeons destroyed the implant surgery records to evade the taxes, or simply did not care to the keeping of the records.

SFDCT reviewed the explanations by Kim and decided to agree to waive prior concerns and accept the affirmative statements by Kim. Five problems found through the audit from 2006-2008 included the third problem, where SFDCT admitted, "The SF-DCT requested that Kim provide a copy of the contemporaneous hospital records or, in lieu of records, an explanation of why the hospital records were not submitted to the SF-DCT. Kim responded that no official hospital records were available because the facility, Seoul National University Hospital, discarded them after ten years". From reading itself, SFDCT and Kim discussed and SFDCT accepted the explanation of Kim as to ten years of period. If ten years of period for the reason of destruction of hospital records was not mentioned at anytime during Administrative Hold from 2006-2008, SFDCT would not have summarized up the third problem from the audit investigative process.

Accordingly, the decisions of SFDCT on August 22, 2011 that SFDCT determined that affirmative statements submitted to establish POM of Dow Corning were now considered unreliable and therefore did not meet the standards of Dow Corning Plan is to overrule the prior decisions and is inconsistent with the prior decisions where SFDCT agreed to waive prior concerns and accept affirmative statement as POM.

Furthermore, the decisions of SFDCT violated the commitments of Claims Administrator that once the notice of approval letter to the claimants was given, there should be no cancellation.

IV. MISCELLANEOUS

SFDCT alleged that Kim sought a global settlement for all Korean claimants in April 2008 and March 2009. SFDCT implicated in the Response that Kim knew material defects in his claims thus tried to seek a global settlement. SFDCT should be reminded that Kim and Korean claimants sought a global settlement from the beginning of the Reorganization Plan which Dow Corning filed with the Court in 1999. Kim believed that other global settlements included in the Reorganization Plan such as Canadian and Australian Settlement favored Canadians and Australians because SFDCT is not involved in the decisions of payment to the claimants. Although Korean claimants

requested for a global settlement, Kim was routinely denied by Dow Corning which has fundamental prejudices over Korean claimants. Thus SFDCT shall be ashamed of the allegation that Kim sought a global settlement to hide the problems of claims.

SFDCT alleged that a couple of claimants called SFDCT that they had not been paid although the checks were delivered eight months ago. It is not true. As all the claimants whose records were current were paid, this allegation is to defame Kim's sincerity and reputation by itself. Kim asked SFDCT to establish a separate processing office or dispatch employees to verify the explanations by Kim by contacting the interested hospitals or plastic surgeons. SFDCT denied it and as of now SFDCT trusted a couple of grunting claimants who called SFDCT. SFDCT should respect a foreign attorney such as Kim who exerted many years to let Dow Corning survive from liquidation and enable SFDCT to afford many employees during the current time of economic difficulties.

Audit or investigation into the files of claimants by SFDCT was never contemplated in Dow Corning Plan and thus never came into play during the hearings for the Reorganization Plan. SFDCT deliberately manipulated so-called "Administrative Hold" which was not authorized in Dow Corning Plan. Korean claimants lost opportunities to participate into the Rupture claims because the deadline for filing was set within three years from the Effective Date of the Reorganization Plan. While Administrative Hold was current from 2006-2008, the deadline for filing the claims of Rupture by Korean claimants lapsed. This is the damages by the manipulation of Administrative Hold of SFDCT.

Dated: August , 2012

Respectfully submitted,

(signed) *Yeon-Ho Kim*

LIST OF EXHIBIT

EXHIBIT K

Copy of e-mail of around September 2010 from Kim

EXHIBIT 3

Mediation

☐ 보낸사람 : "David Austern"<daustern@claimsres.com>

보낸날짜 : 2012/08/08 수요일 오전 10:16:57

받는사람 : "WW" <yhkimlaw@unitel.co.kr>"<yhkimlaw@unitel.co.kr>

참조 : "Francis McGovern"<mcgovern@law.duke.edu> "Ann Phillips"<APhillips@sfdct.com>

Mr. Kim: On Thursday, we will start the mediation at 10:00 am instead of the 9:00 am start time I gave you. Please call (202-498-0204) if you have any questions.

Sent from my iPad

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EXHIBIT 4

Re: mediation 관련메일 보기

보낸사람 : "David Austern"<daustern@claimsres.com>주소록에 추가

보낸날짜 : 2012/09/25 화요일 오전 7:20:07

받는사람 : "김연호" <yhkimlaw@unitel.co.kr>주소록에 추가

참조 : "APhillips@sfdct.com" <APhillips@sfdct.com>주소록에 추가

Sorry about the delay. Longer e-mail and attachment to follow either tomorrow or Thursday. I was unaware you had communicated with Professor McGovern.

Sent from my iPad

On Sep 23, 2012, at 7:58 PM, "김연호" <yhkimlaw@unitel.co.kr> wrote:

Dear Mr.Austern and Dear Mrs.Phillips,

I did not receive any information from you since the mediation of last August. As you are aware, an agreement during mediation was reached between the Korean Claimants through me and SF-DCT through you. However, no other action following the agreement was yet made on your side. I sent a couple of e-mails to the mediator, Professor McGovern. He did not answer. Please let me know whether you honor the agreement from mediation. I am looking forward to hearing from you.

Best regards,
Yeon-Ho Kim
for Korean Claimants

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EXHIBIT 5

Mediation

☐ 보낸사람 : "David Austern" <daustern@claimsres.com>

보낸날짜 : 2012/09/28 금요일 오전 1:37:15

받는사람 : "김연호" <yhkimlaw@unifel.co.kr>

참조 : "Ann M. Phillips" <APhillips@sfdct.com>

📎 SKMBT_36012092705450.pdf [132.7KB]

Please see the attached. An earlier version of this was hand delivered to you on August 11th by me to your hotel in Washington. I'm sure it was delivered because I delivered it myself, the desk clerk confirmed you were staying there, and he wrote your room number on the envelope. In any event, here is a slightly edited version of that document. Please give me your comments, if any. Note: This Memorandum of Understanding HAS NOT BEEN APPROVED IN FINAL FORM BY THE FINANCE COMMITTEE.

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DRAFT

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("Memorandum") entered into on -
_____ between Yeon-Ho Kim ("Kim") and the Finance
Committee of the Settlement Facility – Dow Corning Trust ("SF-DCT")
(collectively, "the Parties") is made pursuant to a negotiated resolution of claims
that have been filed by Kim with the SF-DCT and which are listed on Exhibit B to
this Memorandum (the "Korean Claims").

A. The Parties have agreed to resolve the Korean Claims pursuant to which, and
subject to the terms of the Release attached as Exhibit A to this Memorandum
and all of which Release terms are incorporated herein by reference, the SF-
DCT will pay to Kim the sum of five million dollars U.S. (\$5,000,000) (the
"Korean Claims Payment") to resolve the Korean Claims which are listed on
Exhibit B.

B. Kim has represented that he is authorized to accept the Korean Claims Payment
on behalf of the Korean Claimants and that the Release attached as Exhibit A is
fully binding on the Exhibit B claimants, and that he is authorized to execute the
Release on behalf of the Exhibit B claimants.

- C. The Parties agree that distribution of the Korean Claims Payment to the Exhibit B claimants, as well as the distribution of attorneys' fees and expenses due to Kim or others, will be Kim's responsibility and will be undertaken by Kim pursuant to Korean law. The Parties further agree that the SF-DCT will have no responsibility or liability to any person or entity with respect to the distribution of the Korean Claims Payment.
- D. The SF-DCT agrees that the Korean Claims Payment does not include any Common Benefit funds authorized by the United States District Court for the Eastern District of Michigan, Northern Division, to be paid to Kim.
- E. Kim agrees for himself and the Korean Claimants that he will take whatever steps are necessary to dismiss any pending actions or appeals, and that he will file in the Courts of the United States and Korea any pleadings or other documents that are necessary to effectuate the purposes of this Memorandum.

Yeon-Ho Kim, for himself and
all Exhibit B claimants

Ann Phillips, for the
Finance Committee

EXHIBIT A

**SETTLEMENT FACILITY – DOW CORNING TRUST
RELEASE FOR KOREAN CLAIMANTS REPRESENTED BY
YEON-HO KIM AND SETTLED PURSUANT TO THE
MEMORANDUM OF UNDERSTANDING DATED _____
BETWEEN YEON-HO KIM AND THE SETTLEMENT FACILITY – DOW
CORNING TRUST**

1. Recitals

- A. On May 15, 1995, Dow Corning Corporation filed a petition for reorganization under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Michigan, Northern Division (references to Dow Corning include the Reorganized Debtor). Thereafter, an Amended Joint Plan of Reorganization of Dow Corning Corporation dated as of February 4, 1999, as further amended, modified or supplemented from time to time (the "Plan"), in case number 95-20512 was Confirmed pursuant to the Bankruptcy Code. As part of the Confirmation Order, the Settlement Facility – Dow Corning Trust ("SF-DCT") was established on March 27, 2001 to administer the financial operations required under the Reorganized Plan. Among the Plan documents is the Settlement Facility Agreement that describes the procedures for paying claims.
- B. On April 2, 2004, an Order was entered establishing June 1, 2004 as the "Effective Date" of the Plan. It was further ordered that the SF-DCT, as of the Effective Date, was authorized to make payments to allowed claimants and such other payments as were authorized pursuant to the

Plan and/or the Settlement Facility Agreement. The payment described in this Release is made pursuant to the Settlement Facility Agreement.

- C. Yeon-Ho Kim ("Kim") represents and agrees that he is an attorney admitted to practice in Korea. He also warrants that he represents the SF-DCT claimants with unsettled claims attached as Exhibit B (hereinafter, "Exhibit B Claimants") to the Memorandum of Understanding dated _____ between Kim and the SF-DCT Finance Committee. Kim further represents that pursuant to Korean law, he is authorized to accept the payment described below on behalf of the Exhibit Claimants and, further, that he is authorized to execute this Release on their behalf and that such execution will irrevocably bind the Exhibit B claimants to the terms of this Release.
- D. Kim and the SF-DCT Finance Committee agree that this Release or covenant not to claim or sue releases any and all Exhibit B Claimants including, but not limited to personal injury and wrongful death claims filed with the SF-DCT pursuant to the Settlement Facility Agreement by Kim on behalf of the Exhibit B claimants.
- E. The "Korean Claims Payment" for all claims subject to this Release is five million US dollars (\$5,000,000).

2. RELEASE

- A. Kim accepts receipt of the Korean Claims Payment on behalf of all Exhibit B claimants as full settlement of all of the claims filed with the SF-DCT by the Exhibit B claimants. Kim understands that there will be no further payments of any kind by the SF-DCT to Exhibit B claimants. Kim further releases the spouses, heirs, representatives, successors or assigns of all Exhibit B claimants, known or unknown. Kim understands that this release extends to all rights

of the Exhibit B claimants against the SF-DCT whether based in tort, contract, fraud or any other legal or equitable theory, whether possessed by Exhibit B claimants now or in the future.

- B. In accepting the Korean Claims Payment, Kim agrees that it is his responsibility to divide the Korean Claims Payment among the 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.
- C. Kim declares and represents that no promise or inducement other than the payment of the Korean Claims Payment has been made to him or the Exhibit B claimants in connection with this Release, and that this Release contains the entire agreement between Kim on behalf of himself, his law firm, and the Exhibit B claimants. Kim further declares and represents that the terms of this Release are not a mere recital but are contractual and are to be interpreted, construed and enforced under the Plan and the laws of the State of New York. Kim also declares and represents that all disputes relating to or arising under this Release shall be heard by the United States District Court for the Eastern District of Michigan, Northern Division, and specifically, before the Honorable Denise Page Hood.
- D. Kim declares, represents and agrees that for himself and the Exhibit A claimants, and as further consideration of the Settlement Payment, he will take whatever steps are necessary to dismiss any pending actions or appeals, and that he will file in the Courts of the United States and Korea any pleadings or other documents that are necessary to effectuate the purposes of this Release.
- E. Kim declares and represents for himself and the Exhibit B claimants that this Release has been entered into in good faith and that he will cooperate with the SF-DCT and the SF-DCT Finance

Committee in any proceedings to determine the good faith of this Release. Kim further declares and represents for himself and the Exhibit B claimants that no change or alteration of the language of this Release is effective unless expressly agreed to and acknowledged in writing by both the SF-DCT Finance Committee and Kim.

- F. In addition to the foregoing, pursuant to Section 6.05 of the [Settlement Fund Agreement], the acceptance by Kim for himself and the Exhibit A claimants of the Korean Claims Payment shall be deemed to serve as additional documentation of the Release of the SF-DCT and the SF-DCT Finance Committee , and the Released Parties, as specified in Section 8.3 of the Amended Joint Plan of Reorganization referenced in Paragraph 1. A. above

Yeon-Ho Kim, on behalf of himself
And all Exhibit A claimants

Date

Ann Phillips, for the Finance Committee

Date

EXHIBIT 6

EXHIBIT B

☐ 보낸사람 : "David Austern"<daustern@claimsres.com>

보낸날짜 : 2012/09/29 토요일 오전 2:27:59

받는사람 : "김연호"<yhkimlaw@unitel.co.kr>

참조 : "Ellen Bearicks"<ebearick@sfdct.com> "Ann M. Phillips"<APhillips@sfdct.com>

📎 EXHIBIT B.pdf [105.83KB]

Please see the attached and let me know if your list is the same as our list.

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EXHIBIT B

Korean Claimants

EXHIBIT 7

Re: mediation result 관련메일 보기

보낸사람 : "Francis McGovern"<mcgovern@law.duke.edu>주소록에 추가

보낸날짜 : 2012/10/16 화요일 오후 3:59:34

받는사람 : "김연호" <yhkimlaw@unitel.co.kr>주소록에 추가

참조 : "daustern@claimsres.com" <daustern@claimsres.com>, "APhillips@sfdct.com" <APhillips@sfdct.com>주소록에 추가

Please assist Mr. Kim in any way possible. Thank you.

Sent from my iPad

On 16 Oct, 2012, at 8:42 AM, "김연호" <yhkimlaw@unitel.co.kr> wrote:

Dear Mr.Austern,
Dear Mrs.Phillips,

I consented to your draft for Agreement and sent an approval e-mail as to the Exhibit B attached to the Agreement. Because I could not pick the draft up at the hotel in Washington, although I checked from the front desk several times(You might mistake the Washington Hotel for the Washington Court Hotel where I stayed), I would like to urge you to proceed quickly to make up for the delay since last August.

I wonder when I can receive the execution of payment. Please expedite it and let me know the exact date of the payment and how you are going to transfer the money, where I should ask you the way that I want.

I look forward to hear from you.

Best Regards,
Yeon-Ho Kim

EXHIBIT 8

RE: mediation result

☐ 보낸사람 : "David Austern"<daustern@claimsres.com>

보낸날짜 : 2012/10/20 토요일 오전 3:47:21

받는사람 : "김연호"<yhkimlaw@unitel.co.kr> <APhillips@sfdct.com>

참조 : <mcgovern@law.duke.edu>

Mr. Kim:

There are certain conditions that must be adhered to pursuant to our Agreement before payment can be made. I will explain this in a longer e-mail to follow tomorrow or early next week.

From: 김연호 [mailto:yhkimlaw@unitel.co.kr]

Sent: Tuesday, October 16, 2012 2:42 AM

To: daustern@claimsres.com; APhillips@sfdct.com

Cc: mcgovern@law.duke.edu

Subject: mediation result

Dear Mr.Austern,
Dear Mrs.Phillips,

I consented to your draft for Agreement and sent an approval e-mail as to the Exhibit B attached to the Agreement. Because I could not pick the draft up at the hotel in Washington, although I checked from the front desk several times. (You might mistake the Washington Hotel for the Washington Court Hotel where I stayed), I would like to urge you to proceed quickly to make up for the delay since last August.

I wonder when I can receive the execution of payment. Please expedite it and let me know the exact date of the payment and how you are going to transfer the money, where I should ask you the way that I want.
I look forward to hear from you.

Best Regards,
Yeon-Ho Kim

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EXHIBIT 9

mediation result

☐ 보낸사람 : "David Austern"<daustern@claimsres.com>

보낸날짜 : 2012/10/21 일요일 오전 2:22:35

받는사람 : "김연호"<yhkimlaw@unitel.co.kr>

참조 : <APhillips@sfdct.com> <mcgovern@law.duke.edu>

Mr. Kim:

In response to your October 11th e-mail, we need the following before we can make the payment referenced in the e-mail:

You made a number of representations in the Agreement. While I believe it would be unfair for the SF-DCT to insist on proof of each representation, we do require you to demonstrate that "... pursuant to Korean law, [you] are authorized to accept the payment described ... " in the Agreement. (See paragraph B of the Memorandum of Understanding.) An opinion letter from another Korean counsel or a statement from the authority that regulates the conduct of Korean attorneys would be sufficient.

You further represented that you would dismiss all pending actions in the United States Courts in order to effectuate the purposes of the Release. No such dismissals have been filed.

We do not have a signed (by you) copy of the Memorandum of Understanding or the Release.

We will continue to discuss this matter with the Creditors and the CAC, we need the documents referred to above as a first step.

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EXHIBIT 10

Re: mediation result 관련메일 보기

보낸사람 : "Francis McGovern"<mcgovern@law.duke.edu>주소록에 추가

보낸날짜 : 2012/10/26 금요일 오후 10:10:23

받는사람 : "김연호" <yhkimlaw@unitel.co.kr>주소록에 추가

참조 : "David Austern" <daustern@claimsres.com>주소록에 추가

Done

Sent from my iPad

On 26 Oct, 2012, at 2:22 AM, "김연호" <yhkimlaw@unitel.co.kr> wrote:

Dear Professor McGovern,
Thank you for your reply. I wish that I can receive a money promptly. As the value of U.S. dollars vs.the Korean currency is dwindling, the quicker payment will help the Korean Claimants. Please remind Mr.Austern of what I need.
Best Regards,
Yeon-Ho Kim

--- Original Message ---

From : "Francis McGovern"<mcgovern@law.duke.edu>

To : "김연호" <yhkimlaw@unitel.co.kr>

Cc : daustern@claimsres.com, APhillips@sfdet.com

Date : 2012/10/26 금요일 오전 10:59:56

Subject : Re: mediation result

Thanks

Sent from my iPad

On 24 Oct, 2012, at 5:04 PM, "김연호" <yhkimlaw@unitel.co.kr> wrote:

Dear Mr.Austern,
Dear Mrs.Phillips,

Pursuant to your e-mail dated October 20, three documents are attached to this e-mail.

First is an opinion letter from another Korean attorney, whose translation into English was notarized.

Second is the draft of Motion for Dismissal regarding Korean Claimants. Please comment whether it is O.K. from the standpoints of SF-DCT. If you say that it is O.K., I will electronically file it with the Michigan Eastern District Court immediately.

Third is the last pages of signed copy of both Memo of Understanding and Release that you drafted and I consented.

If you have any question or further instruction to the above, please let me know promptly. Please let me know your projected date of payment.

I look forward to hearing from you.

Best Regards,
Yeon-Ho Kim

EXHIBIT 11

Re: Kim cases

보낸사람 : "Francis McGovern" <mcgovern@law.duke.edu>

보낸날짜 : 2014/07/31 목요일 오전 11:01:00

받는사람 : "김연호" <yhkimlaw@unitel.co.kr>

참조 : "Ann M. Phillips" <APhillips@sfdct.com>
"harwoodpamela@gmail.com" <harwoodpamela@gmail.com>

We had a discussion both at the status conference and today with Judge Pamela Harwood, the replacement for Judge Frank Andrews. We have scheduled a meeting with Judge Hood for September 18 when we are hopeful that the issues you have raised can be resolved. Ann Phillips, Judge Harwood, and I will be in touch with you as soon as we know any future developments in your cases. Thank you for your inquiry.

Sent from my iPad

On 30 Jul, 2014, at 6:52 pm, "김연호" <yhkimlaw@unitel.co.kr> wrote:

Dear Prof.McGovern,

I always thank you for assisting me for the matter of Dow Corning Silicone lawsuits. I wonder whether a status conference with the Court last time had a discussion about mediation for the Korean Claimants. Would you guide me for mediation?

Sincerely yours,

Yeon Ho Kim

— Original Message —

From : "Francis McGovern" <mcgovern@law.duke.edu>

To : "김연호" <yhkimlaw@unitel.co.kr>

Cc : "Ann M. Phillips" <APhillips@sfdct.com>

Date : 2014/06/12 목요일 오후 9:45:04

Subject : Re: Kims

Thank you for your email. We have a status conference with the Court next week, and I will raise your request at that time.

Sent from my iPad

On 11 Jun, 2014, at 11:21 PM, "김연호" <yhkimlaw@unitel.co.kr> wrote:

Dear Professor McGovern,

Thank you for your kind e-mail. It is very exiting to hear from you. I thanks to Professor Feinberg. I am greatly fortunate to know that you are one of his good friends.

I do not have any appeal pending before the Appeals Judge. For a matter at the next status conference, please consider reactivating a mediation. It should be the best award to me. I do not want to go back to Settlement Facility. I am so tired of haggling with it. Please mediate for quick resolutions for the issues.

Best Regards,

EXHIBIT 12

RE: Korean Claims

☐ 보낸사람 : "Ann M. Phillips"<APhillips@sfdct.com>

보낸날짜 : 2015/03/05 목요일 오전 1:55:06

받는사람 : "???"<yhkimlaw@unitel.co.kr>

Mr. Kim,

The prior mediation is not an option and the Parties advised that post Confirmation mediations are not authorized by the Plan.

Regards,

Ann M Phillips

From: 김연호 [mailto:yhkimlaw@unitel.co.kr]

Sent: Tuesday, March 03, 2015 6:17 PM

To: Ann M. Phillips

Subject: Re: Korean Claims

Dear Mrs. Phillips,

I thank for your kind explanation.

I understand your points: (1) You have no authority to negotiate beyond the scope of the Plan (2) You ask me to write requests, only if those are within the scope of the Plan. I am frustrated because I do not completely understand which requests are out of the scope and which requests are within the scope. Maybe I am ignorant but isn't it possible that I see you to discuss a mediation for Korean claims? As you know, the previous mediation failed to be implemented because I refuse to receive the Court order to dismiss all Korean claims from the Korean Court, which I found the way for the Order if SF-DCT or Dow Corning agrees to receive the service of process by designating a representative in Korea.

Best Regards,

Yeon Ho Kim

--- Original Message ---

From : "Ann M. Phillips"<APhillips@sfdct.com>

To : "Yhkimlaw@Unitel. Co. Kr (yhkimlaw@unitel.co.kr)"<yhkimlaw@unitel.co.kr>

Date : 2015/03/03 화요일 오전 2:45:10

Subject : Korean Claims

Dear Mr. Kim,

If a meeting would be of any value I would certainly schedule one however, the issues you have raised in your email are not within the scope of the Claims administrator's authority to negotiate. First, Class 7 is a Fixed Fund with Plan criteria and requirements. I have no authority outside the scope of the Plan to negotiate terms for Korean claims. You also reference Premium Payments, there are Plan and Court Ordered directives that must be followed. Therefore, I am unable to negotiate terms. To be clear, it is outside the scope of my authority to renegotiate aspect of the Plan that do not benefit you. The opportunity for negotiating the terms of the Plan was pre-Plan Confirmation. If you have requests that are within the scope of the Plan, those requests must be made in writing in order to protect you and the claimants you represent. Thank you for your understanding.

Regards,

Ann M Phillips

From: 김연호 [mailto:yhkimlaw@unitel.co.kr]
Sent: Sunday, March 01, 2015 7:21 PM
To: Ann M. Phillips
Subject: Re:

Dear Mrs. Phillips,

I would like to meet you regarding Korean Claimants. I know that you mentioned before that you did not want to see me anymore. I wonder whether you are still in the same position. I would like to ask for resolutions of Class 7, the remaining claimants, premium payments, etc., for which I believe a meeting more beneficial to me. I want to receive possible schedules in your convenience, provided that you accept my request for meeting. I promise that I do not raise any inconvenience in this matter.

Best Regards,
Yeon Ho Kim

— Original Message —

From : "Ann M. Phillips" <APhillips@sfdct.com>
To : "Yhkimlaw@Unitel. Co. Kr (yhkimlaw@unitel.co.kr)" <yhkimlaw@unitel.co.kr>
Date : 2015/01/12 월요일 오후 10:41:14
Subject :

Mr. Kim,

Attached for your records is a copy of the letter sent to the Court regarding your request for Re-Categorization.

Ann M. Phillips
Claims Administrator
SF-DCT

EXHIBIT 13

RE: Korean Claimants

보낸사람 : "Greenspan, Deborah" <DGreenspan@blankrome.com>

보낸날짜 : 2016/07/01 금요일 오전 6:37:35

받는사람 : "김연호" <yhkimlaw@unitel.co.kr>

Mr. Kim

First, let me repeat as clearly as I can that the roles of David Austern (who is deceased) and Francis McGovern with respect to your claims regarding or against Dow Corning have always been that of neutral court appointees and never as representatives or agents of Dow Corning. Neither I nor Dow Corning ever gave either of them authority to enter into settlement negotiations with you. Neither I nor Dow Corning had any knowledge of the mediation in Washington until after the fact when Mr. Austern advised us, and the CAC, of the mediation during a subsequent conference call. We were very much surprised and consistently objected to any such offer or agreement as beyond the authority of the Finance Committee.

It is my understanding that you have submitted your claims to SFDCT under the terms of the Plan of Reorganization as negotiated, drafted, confirmed and upheld on appeal many years ago. Eligibility to participate in that process was the basis for the resolution of your claims and became binding upon final confirmation of the Plan. Any liability that Dow Corning may have had for those claims has been discharged and those claims can only be resolved under the terms of the confirmed Plan of Reorganization. As a result, there is today no legal basis for, and Dow Corning has no interest in, any further negotiations with you.

Deborah Greenspan | Blank Rome LLP

1825 Eye Street NW | Washington, DC 20006

Phone: 202.420.3100 | Fax: 202.420.2201 | Email: dgreenspan@BlankRome.com

From: 김연호 [mailto:yhkimlaw@unitel.co.kr]

Sent: Tuesday, June 28, 2016 10:33 PM

To: Greenspan, Deborah

Subject: Korean Claimants

Dear Mrs. Greenspan,

Basically, I want to open a negotiation for settlement for the Korean Claimants. As you are aware, Mr. Austern under your authorization proposed me to settle in 2012. He even drafted the Memo of Understanding which included the terms that we reached into agreement. In addition, it was mediated by Prof. McGovern, a member of the Financial Committee. Now, you do not respect it by saying that Mr. Austern played it by himself. It must be a joke. How the Claims Administrator could lead it himself without the commitment of Dow Corning as well as you, the lead attorney who has represented Dow Corning Reorganization Plan over twenty years? What about Prof. McGovern? Could he act by himself without a communication with you during mediation? Did you really know nothing about settlement negotiation?

I urge you to be responsible. You must be responsible because you have the power to persuade Dow Corning. Can you imagine how much in trouble I have been since the Memo of Understanding for Settlement went to public since Mr. Austern sent me? Please let Dow Corning accept my proposal for settlement to finalize it. Settlement cannot be reprived because I am

under pressure from the clients, many Claimants, severely.

Mr.Greenspan, please think of me just as you were in my shoes,

Sincerely,

Yeon Ho Kim