

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

In re:

DOW CORNING CORPORATION,

Reorganized Debtor



**Case No. 00-CV-00005 –DT
(Settlement Facility Matters)**

Hon. Denise Page Hood

**RESPONSE OF DOW CORNING CORPORATION, THE DEBTOR’S
REPRESENTATIVES, THE CLAIMANTS’ ADVISORY COMMITTEE
AND THE FINANCE COMMITTEE TO KOREAN CLAIMANTS’
MOTION FOR RELEASE OF CERTAIN EXHIBITS**

1. On December 30, 2016, the Finance Committee (“FC”) filed its Recommendation and Motion for Authorization to Make Second Priority Payments (“Motion”).
2. Pursuant to a scheduling order entered by the Court on January 23, 2017 (“Scheduling Order”), Dow Corning Corporation and the Debtor’s Representatives (“DCC/DRs”) and the Claimants’ Advisory Committee (“CAC”) filed responses to the Motion on February 10, 2017 (“Responses”).
3. As part of the Motion and the Responses, the FC, DCC/DRs and the CAC each sought and were granted leave to file certain exhibits under seal, on the grounds that such exhibits contain information concerning confidential financial and statistical information of the Settlement Facility-Dow Corning Trust (“SF-DCT”), confidential projection information belonging to the Independent Assessor

and confidential information belonging to the Revised Settlement Program Claims Administrator.¹

4. The Sealed Exhibits are documents that were prepared in accordance with the terms of DCC's Amended Joint Plan of Reorganization ("Plan") and the Settlement Facility and Fund Distribution Agreement ("SFA") and that are subject to the provisions of Section 10.10 of the SFA.²

5. As set forth in the Motion for Release of Certain Exhibits filed by Korean Claimants ("Exhibit Release Motion"), certain Korean claimants ("Korean Claimants") represented by Mr. Yeon-Ho Kim ("Korean Counsel") have requested

¹ One of the exhibits to the CAC Response is the final report provided by the Revised Settlement Program ("RSP") Claims Administrator to the MDL Court in connection with MDL 926 ("RSP Report," Exhibit 6 to the CAC Response). All the exhibits filed under seal by the FC, DCC/DRs and the CAC but for the RSP Report shall be referred to herein as the "Sealed Exhibits."

² Section 10.10 of the SFA provides that

Copies of all documents, notices, statements, reports, projections, motions, or similar documents provided to any party or to the Claimants' Advisory Committee or the Debtor's Representatives under this Agreement shall be provided on a confidential basis and shall be kept confidential by all other such parties, Claimants' Advisory Committee or Debtor's Representatives unless such information is otherwise publicly available. Such confidential information provided under this Agreement can be used in any proceeding in the Court, the MDL 926 Court, the District Court or any applicable appellate court provided the party using such information takes reasonable steps to protect the confidential nature of the information.

copies of the exhibits filed under seal, in order to file a response to the Motion.³

Exhibit Release Motion at 2-3.

6. The FC, DCC/DRs and the CAC have no objection to providing the Sealed Exhibits to Korean Counsel, provided that Korean Counsel is required to maintain the confidentiality of the Sealed Exhibits. In response to the request of Korean Counsel, the FC, DCC/DRs and the CAC provided to Korean Counsel a proposed stipulation of confidentiality that would require Korean Counsel and Korean Claimants to maintain and protect the confidentiality of the Sealed Exhibits.

7. The proposed stipulation contains the following confidentiality protections for the Sealed Exhibits:

a. Under no circumstances, for any reason whatsoever, can the Sealed Exhibits be used by Korean Counsel for any purpose other than assisting the Court in an inquiry to determine whether it is appropriate to authorize Second Priority Payments.

³ The FC, DCC/DRs and the CAC take no position on whether the Korean Claimants are entitled, under the Plan, the SFA or the Scheduling Order to respond to the Motion. The FC, DCC/DRs and the CAC reserve any and all rights to object to such a response if and when it is filed.

b. Korean Counsel must maintain the Sealed Exhibits as confidential and may not disclose any Sealed Exhibit or the contents of any Sealed Exhibit to any person or entity.

c. If Korean Counsel includes any Sealed Exhibit in any filing, whether in whole or in part, Korean Counsel shall assure that such Sealed Exhibit is filed under seal as provided by the applicable rules.

d. Korean Counsel shall destroy copies of the Sealed Exhibits within thirty (30) days of the completion of all proceedings related to the Motion.

8. Korean Counsel has not agreed to the proposed stipulation. Instead, Korean Counsel proposed alternative terms that are ambiguous and that, in the collective judgment of the FC, DCC/DRs and the CAC, would violate the confidentiality requirements of the Plan and would neither adequately protect the sensitive claimant and settlement information involved nor protect that information from being placed in the public domain. By contrast, the language proposed to Korean Counsel—and in the proposed order attached hereto (“Proposed Order”)—is reasonable, allows Korean Counsel to access required information and has no downside for Korean Counsel so long as he abides by the terms of the Proposed Order.

9. Accordingly, the FC, DCC/DRs and the CAC submit this Response to the Exhibit Release Motion. The FC, DCC/DRs and the CAC have no objection to allowing Korean Counsel to have access to the Sealed Exhibits provided that Korean Counsel is required to maintain the confidentiality of the Sealed Exhibits as set forth above.

10. The FC, DCC/DRs and the CAC respectfully submit the Proposed Order for the Court's consideration. The Proposed Order incorporates in general the terms of confidentiality orders previously entered by the Court with respect to data and information collected and prepared in connection with the implementation of the settlement program, including the requirements that the information only be used to in connection with the specific proceeding, that the information is not provided to any other person or entity and that the information is destroyed at the termination of the proceedings. *See, e.g.*, May 3, 2010 Confidentiality Order Regarding Settlement Facility-Dow Corning Data (Docket # 752), July 16, 2014 Order Governing Confidentiality of Data Provided To The Parties (Docket # 979).

Dated: March 13, 2017

Respectfully submitted,

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

In re:

DOW CORNING CORPORATION,

Reorganized Debtor



**Case No. 00-CV-00005 –DT
(Settlement Facility Matters)**

Hon. Denise Page Hood

**CONFIDENTIALITY ORDER REGARDING EXHIBITS TO
FINANCE COMMITTEE’S RECOMMENDATION AND
MOTION FOR AUTHORIZATION TO MAKE SECOND PRIORITY
PAYMENTS AND RESPONSES OF DOW CORNING
CORPORATION/THE DEBTOR’S REPRESENTATIVES AND
THE CLAIMANTS’ ADVISORY COMMITTEE THERETO**

1. On December 30, 2016, the Finance Committee (“FC”) filed its Recommendation and Motion for Authorization to Make Second Priority Payments (“Motion”).
2. Pursuant to a scheduling order entered by the Court on January 23, 2017, Dow Corning Corporation and the Debtor’s Representatives (“DCC/DRs”) and the Claimants’ Advisory Committee (“CAC”) filed responses to the Motion on February 10, 2017 (“Responses”).
3. As part of the Motion and the Responses, the FC, DCC/DRs and the CAC each sought and were granted leave to file certain exhibits under seal, on the grounds that such exhibits contain information concerning confidential financial and statistical information of the Settlement Facility-Dow Corning Trust (“SF-

DCT”), confidential projection information belonging to the Independent Assessor and confidential information belonging to the Revised Settlement Program Claims Administrator.¹

4. Certain Korean claimants represented by Mr. Yeon-Ho Kim (“Korean Counsel”) have requested copies of the exhibits filed under seal.

5. The Sealed Exhibits are documents that were prepared in accordance with the terms of DCC’s Amended Joint Plan of Reorganization and the Settlement Facility and Fund Distribution Agreement (“SFA”) and that are subject to the provisions of Section 10.10 of the SFA.² The FC, DCC/DRs and the CAC have no objection to providing to Korean Counsel the Sealed Exhibits subject to the terms

¹ One of the exhibits to the CAC Response is the final report provided by the Revised Settlement Program (“RSP”) Claims Administrator to the MDL Court in connection with MDL 926 (“RSP Report,” Exhibit 6 to the CAC Response). All the exhibits filed under seal by the FC, DCC/DRs and the CAC but for the RSP Report shall be referred to herein as the “Sealed Exhibits.”

² Section 10.10 of the Settlement Facility and Fund Distribution Agreement (“SFA”) provides that

Copies of all documents, notices, statements, reports, projections, motions, or similar documents provided to any party or to the Claimants’ Advisory Committee or the Debtor’s Representatives under this Agreement shall be provided on a confidential basis and shall be kept confidential by all other such parties, Claimants’ Advisory Committee or Debtor’s Representatives unless such information is otherwise publicly available. Such confidential information provided under this Agreement can be used in any proceeding in the Court, the MDL 926 Court, the District Court or any applicable appellate court provided the party using such information takes reasonable steps to protect the confidential nature of the information.

of this Stipulated Order. The FC, DCC/DRs and the CAC cannot authorize the provision of the RSP Report to Korean Counsel.

6. To assure compliance with Section 10.10 of the SFA and to preserve the confidentiality of the Sealed Exhibits, the FC, DCC/DRs and the CAC may provide the Sealed Exhibits to Korean Counsel, and Korean Counsel is directed and **Ordered as follows**:

a. Under no circumstances, for any reason whatsoever, can the Sealed Exhibits be used by Korean Counsel for any purpose other than assisting the Court in an inquiry to determine whether it is appropriate to authorize Second Priority Payments.

b. Korean Counsel must maintain the Sealed Exhibits as confidential and may not disclose any Sealed Exhibit or the contents of any Sealed Exhibit to any person or entity.

c. If Korean Counsel includes any Sealed Exhibit in any filing, whether in whole or in part, Korean Counsel shall assure that such Sealed Exhibit is filed under seal as provided by the applicable rules.

d. Korean Counsel shall destroy copies of the Sealed Exhibits within thirty (30) days of the completion of all proceedings related to the Motion.

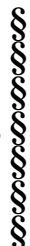
SO ORDERED this ____ day of ____, 2017.

DENISE PAGE HOOD
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE:

DOW CORNING CORPORATION,
REORGANIZED DEBTOR



Case No. 00-CV-00005 -DT
(Settlement Facility Matters)

Hon. Denise Page Hood

CERTIFICATE OF SERVICE

I hereby certify that on March 13, 2017, I electronically filed the *Response of Dow Corning Corporation, the Debtor's Representatives, the Claimants' Advisory Committee and The Finance Committee to Korean Claimants' Motion for Release of Certain Exhibits* with the Clerk of the Court using the ECF system. The persons listed below were sent notification through the ECF system.

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