

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

IN RE	§	
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DOW CORNING CORPORATION	§	
	§	
Reorganized Debtor	§	CASE NO: 00-CV-00005-DT
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	§	Hon.Denise page Hood
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**MOTION FOR RE-CATEGORIZATION OF KOREA**

**I. INTRODUCTION**

Subsection (h) Compensation, Section 6.05 Foreign Claimants, Article VI Settlement Option of Dow Corning Settlement Program and Claims Resolution Procedures(Annex A to Settlement Facility and Fund Distribution Agreement) provisioned as follows;

(h) *Compensation.* The amount payable to Foreign Claimants who qualify for payment shall be a percentage of the Allowed amount specified in the applicable Compensation Schedule. Such percentage shall be computed based on Schedule III to these Claims Resolution Procedures. The percentage of payment is based on the Claimant’s country of residence.

(i) *Categorization of Countries.* For purposes of determining the applicable compensation, Foreign Claimants shall be classified based on their country of residence. The categorization of countries shall be based on the following formula: Category 1-countries with a common law legal system(Australia, New Zealand, Canada, United Kingdom); Category 2-countries with a per-capita GDP greater than 60 percent of the GDP of the United States, along with countries in the European Union that are not in Category 1; Category 3-countries with a per-capita GDP of between 30 percent and 60 percent of that of the United States; Category 4-countries with a per-capita GDP of less than 30 percent of that of the United States. The per-capita GDP is to be determined by the most current version of The World Factbook(United States Central Intelligence Agency).

- (i) *Adjustment to Categories.* The Claims Administrator, with the agreement of the Claimants' Advisory Committee and the Debtor's Representatives, may adjust the categorization of countries in Schedule III if, due to changed economic conditions, the application of the formula specified at subparagraph(h)(i) above would result in the placement of any country in a category different than that specified on the then current version of Schedule III. Such adjustments shall occur no more than once per calendar year and any re-categorization shall apply to all Claimants residing in such country whose Claims are paid in the year of re-categorization or thereafter. Foreign Claimants who believe that due to changed economic conditions their country of residence is not correctly categorized in accordance with the terms of subparagraph (h)(i) above may submit to the Finance Committee a request for re-categorization. If the Debtor's Representatives and/or the Claimants' Advisory Committee and/or the Finance Committee do not agree to re-categorization, The Foreign Claimant may file a motion in the District Court seeking re-categorization.

The Proponents of the Dow Corning Reorganization Plan vigorously defended the above Subsection with respect to compensation to the Foreign Claimants who have objected to discount of the Foreign Claimants' Claims(Please refer to Exhibit 5).

The Korean Claimants are resided mostly in Korea. Korea is categorized as a Category 3 country in Schedule III. The basis for Category 3 is that a per-capita of Korea is between 30 percent and 60 percent of that of the United States. Korea is neither a country with a common law legal system nor a country in the European Union.

The Korean Claimants want the Court to adjust categorization under Schedule III. Korea shall be re-categorized as a Category 2 country due to changed economic conditions. The Korean Claimants want to receive 60 percent of the Allowed amount specified in the applicable Compensation Schedule.

## **II. ARGUMENT**

### **1. THE AGREEMENT WILL NOT BE MADE**

Under Subsection (h) (i) of Section 6.05 of Article VI, the Korean Claimants may submit to the Finance Committee a request for re-categorization. The Finance Committee is required to get the

agreement from both the Debtor's Representative and the Claimants' Advisory Committee. If any one party out of three parties, the Debtor's Representative, the Claimants' Advisory Committee and the Finance Committee does not agree to re-categorization of Korea, the request for re-categorization by the Korean Claimants shall be dismissed. The Korean Claimants realized through experiences including but not limited to their Responses to the Motion for Reversal of Decision of SF-DCT by the Korean Claimants and their Cross-Motion to Dismiss the Motion and their Responses to the Motion for Extension of Deadline Class 7 Claimants by the Korean Claimants that neither the Debtor's Representatives nor the Claimants' Advisory Committee will agree to the Finance Committee's proposal for re-categorization of Korea requested by the Korean Claimants. The unanimous consent of three parties to the request for re-categorization of Korea is far beyond feasibility. Thus the Korean Claimants files this Motion for Re-Categorization of Korea with the Court which must have jurisdiction over it.

## **2. PER-CAPITA GDP OF KOREA IS GREATER THAN 60 PERCENT**

The World Factbook of the United States Central Intelligence Agency, published in 1999 when the Confirmation Hearing was under way in Bay City, Michigan, shows that a per-capita GDP of Korea was \$13,700 while a per-capita GDP of the United States was \$30,200. The Ratio of per-capita of Korea vs.US was 45.3%(Please refer to Exhibit 4 & 5).

Schedule III(Categorization of Countries for Calculation of Allowed Amount for Eligible Foreign Claims) put Korea into Category 3 because a per-capita GDP of Korea was less than 60 percent of that of the United States.

However, The World Factbook of CIA, published in 2014 which is the most current version of the World Factbook, shows that a per-capita GDP of Korea is \$32,800(2012 estimated) while a per-capita GDP of the United States is \$50,700(2012 estimated). The ratio of per-capita of Korea vs.US is 64.9%(Please refer to Exhibit 2 & 3).

It is obvious that 64.9% is greater than 60% thus Korea must be re-categorized into Category 2.

### III. CONCLUSION

Therefore, the Korean Claimants seek the following measures;

- (a) The Court order the Finance Committee to revise Schedule III to include Korea into Category 2 and to print the new Schedule III:
- (b) The Court order SF-DCT to pay the balance of payments up to 60 percent over 35 percent of the Domestic Amount for Applicable Compensation Level to all of the Korean Claimants who have already received compensation:
- (c) The Court order SF-DCT to apply 60 percent of Domestic Amount for Applicable Compensation Level to the Korean Claimants who have not received compensation yet;
- (d) The Court order the parties including Dow Corning Company and the Claimants' Advisory Committee not to influence on SF-DCT to give administrative disadvantages to the Korean Claimants while processing the Claims due to this Motion for Re-Categorization of Korea.

Date: April , 2014

Respectfully submitted,

(signed) Yeon Ho Kim

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For the above Korean Claimants

**CERTIFICATE OF SERVICE**

I hereby certify that on April ,2014, this Motion has been electronically filed with the Clerk of Court using ECF system, and same has been sent via e-mail to the following parties.

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**LIST OF EXHIBIT**

EXHIBIT 1	Table of Per-Capita GDP of All Countries
EXHIBIT 2	The World Factbook(Korea, 2014)
EXHIBIT 3	The World Factbook(United States, 2014)
EXHIBIT 4	The World Factbook(Korea, 1999)
EXHIBIT 5	The World Factbook(United States, 1999)
EXHIBIT 6	Proponents' Proposed Findings of Fact and Conclusions of Law(Brief filed in 1999)