UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: **DOW CORNING CORPORATION,** **REORGANIZED DEBTOR**	§	**CASE NO. 00-CV-00005-DPH** **(Settlement Facility Matters)** **Hon. Denise Page Hood**

SUGGESTION OF MOOTNESS REGARDING "MOTION FOR RE-CATEGORIZATION OF KOREA," "MOTION FOR REVERSAL OF DECISION OF SFDCT REGARDING KOREAN CLAIMANTS," AND "MOTION OF KOREAN CLAIMANTS FOR THE SETTLEMENT FACILITY TO LOCATE QUALIFIED MEDICAL DOCTOR OF KOREA AND EITHER PAY FOR THAT QUALIFIED MEDICAL DOCTOR TO TRAVEL TO KOREA AND CONDUCT THE DISEASE EVALUATIONS OR HIRE QUALIFIED MEDICAL DOCTOR IN KOREA TO CONDUCT THE REVIEWS AT THE SETTLEMENT FACILITY'S EXPENSE"

Dow Corning Corporation ("Dow Corning"), the Debtor's Representatives ("DRs"), and the Claimants' Advisory Committee ("CAC") seek a determination that certain motions currently pending before the Court have been rendered moot by actions taken by the Settlement Facility-Dow Corning Trust ("SF-DCT") or the Finance Committee. All of these motions were filed by Yeon Ho Kim, counsel to many Korean claimants. First, on April 7, 2014, Mr. Kim filed a Motion for Re-Categorization of Korea ("Motion for Re-Categorization") requesting that the Court order (1) the Finance Committee to adjust the compensation category of Korea for purposes of determining the applicable amount of compensation for

eligible Korean claimants, (2) the SF-DCT to pay additional sums to Korean claimants who have already been paid, and (3) the "parties," including Dow Corning and the CAC, "not to influence [the] SF-DCT to give administrative disadvantages to Korean claimants" while their claims are being processed.

After Dow Corning and the CAC filed their responses to the Motion for Re-Categorization, Mr. Kim filed a reply recognizing that the request was procedurally defective because it did not comport with the Amended Joint Plan of Reorganization ("Plan") requirement that such a request first be submitted to the Finance Committee and that any re-categorization of a country applies only prospectively. Mr. Kim then submitted the re-categorization request to the Claims Administrator, as a member of the Finance Committee, pursuant to the Plan requirement. The Finance Committee has now granted Mr. Kim's request to re-categorize Korea. The Finance Committee's decision grants the relief sought by Mr. Kim and therefore the Court should dismiss the Motion for Re-Categorization as moot.

Second, Mr. Kim filed a letter with the Court on March 21, 2014 ("Letter") requesting that the Court rule on a previous appeal filed by Mr. Kim, styled as a "Motion for Reversal of Decision of SFDCT regarding Korean Claimants" ("Motion for Reversal"). The Motion for Reversal requested that the Court reverse a decision by the SF-DCT's Claims Administrator declining to accept Affirmative

Statements as Proof of Manufacturer ("POM") from Mr. Kim's clients and finding Mr. Kim's clients who received benefits on the basis of Affirmative Statements ineligible for further benefits, including Premium Payments. In addition to the grounds for dismissal set forth in Dow Corning's and the SF-DCT's responses to the Motion for Reversal, the Motion for Reversal should be dismissed as moot because the SF-DCT – after conducting an audit of affected claims – has lifted the "hold" that it had placed on processing Korean claims pending investigation of certain submissions. The SF-DCT has been processing and continues to process Korean claims. Because the SF-DCT is in fact processing claims as requested in the Motion for Reversal, the Motion for Reversal is moot.

Third, on December 15, 2004, Mr. Kim filed a Motion of Korean Claimants for the Settlement Facility to Locate Qualified Medical Doctor of Korea and Either Pay for that Qualified Medical Doctor to Travel to Korea and Conduct the Disease Evaluations or Hire Qualified Medical Doctor in Korea to Conduct the Reviews at the Settlement Facility's Expense ("Motion to Hire QMD"). The Motion to Hire QMD requests the Court to compel the SF-DCT to locate and hire a medical doctor (either in the United States or Korea) to conduct disease evaluations of Korean claimants at the expense of the SF-DCT.

Mr. Kim appears to have made this request based on his belief that he would be unable to locate a Qualified Medical Doctor ("QMD") as required by Annex A

to the Settlement Facility and Fund Distribution Agreement ("SFA"). Mr. Kim filed the Motion to Hire QMD over 10 years ago. Since the Motion to Hire QMD was filed, Mr. Kim has succeeded in obtaining numerous disease awards for his clients. This shows that his basis for filing the Motion to Hire QMD is moot. Thus, in addition to the grounds for dismissal set forth in Dow Corning's response to the Motion to Hire QMD, the Motion to Hire QMD should be dismissed as moot.

The grounds for this Motion are set forth more fully in the accompanying Memorandum.[1]

Dated: April 24, 2015

Respectfully submitted,

By: /s/ Dianna L. Pendleton-Dominguez
(with permission)

LAW OFFICE OF DIANNA PENDLETON
401 N. Main Street
St. Marys, OH 45885
Telephone: (419) 394-0717
Facsimile: (419) 394-1748
DPEND440@aol.com

Claimants' Advisory Committee

By: /s/ Deborah E. Greenspan
Deborah E. Greenspan
Michigan Bar #P33632

DICKSTEIN SHAPIRO LLP
1825 Eye Street, N.W.
Washington, DC 20006-5403
Telephone: (202) 420-2200
Facsimile: (202) 420-2201
GreenspanD@dicksteinshapiro.com

Debtor's Representative and Attorney for Dow Corning Corporation

[1] Pursuant to Section 4.09(c)(v) of the SFA, Dow Corning and the CAC may file a motion to enforce the provisions of the Plan.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: **DOW CORNING CORPORATION,** **REORGANIZED DEBTOR**	§	**CASE NO. 00-CV-00005-DPH** **(Settlement Facility Matters)** **Hon. Denise Page Hood**

MEMORANDUM OF LAW IN SUPPORT OF SUGGESTION OF MOOTNESS REGARDING "MOTION FOR RE-CATEGORIZATION OF KOREA," "MOTION FOR REVERSAL OF DECISION OF SFDCT REGARDING KOREAN CLAIMANTS," AND "MOTION OF KOREAN CLAIMANTS FOR THE SETTLEMENT FACILITY TO LOCATE QUALIFIED MEDICAL DOCTOR OF KOREA AND EITHER PAY FOR THAT QUALIFIED MEDICAL DOCTOR TO TRAVEL TO KOREA AND CONDUCT THE DISEASE EVALUATIONS OR HIRE QUALIFIED MEDICAL DOCTOR IN KOREA TO CONDUCT THE REVIEWS AT THE SETTLEMENT FACILITY'S EXPENSE"

STATEMENT OF ISSUE PRESENTED

Should the Court dismiss as moot motions requesting relief from the Settlement Facility-Dow Corning Trust ("SF-DCT") and the Finance Committee when the SF-DCT and Finance Committee have already granted the relief sought by the motions?

STATEMENT OF CONTROLLING AUTHORITY

Thomas Sysco Food Servs. v. Martin, 983 F.2d 60 (6th Cir. 1993)

INTRODUCTION

Dow Corning Corporation ("Dow Corning"), the Debtor's Representatives ("DRs"), and the Claimants' Advisory Committee ("CAC") seek a determination that certain motions currently pending before the Court have been rendered moot by actions taken by the Settlement Facility-Dow Corning Trust ("SF-DCT") or the Finance Committee. All of these motions were filed by Yeon Ho Kim, counsel to many Korean claimants. First, on April 7, 2014, Mr. Kim filed a Motion for Re-Categorization of Korea ("Motion for Re-Categorization") requesting that the Court order (1) the Finance Committee to adjust the compensation category of Korea for purposes of determining the applicable amount of compensation for eligible Korean claimants, (2) the SF-DCT to pay additional sums to Korean claimants who have already been paid, and (3) the "parties," including Dow Corning and the CAC, "not to influence [the] SF-DCT to give administrative disadvantages to Korean claimants" while their claims are being processed. *See* Motion for Re-Categorization at 4, Apr. 7, 2014, ECF No. 965.

After Dow Corning and the CAC filed their responses to the Motion for Re-Categorization, Mr. Kim filed a reply recognizing that the request was procedurally defective because it did not comport with the Amended Joint Plan of Reorganization ("Plan") requirement that such a request first be submitted to the Finance Committee and that any re-categorization of a country applies only

prospectively. Reply to Responses to Motion for Re-Categorization of Korea by Dow Corning and Claimants' Advisory Committee ("Reply to Motion for Re-Categorization"), May 12, 2014, ECF No. 969. Mr. Kim then submitted the re-categorization request to the Claims Administrator, as a member of the Finance Committee. Ex. 1 (Declaration of Ann M. Phillips), Appendix B. Pursuant to Annex A to the Settlement Facility and Fund Distribution Agreement ("SFA"), the Finance Committee granted Mr. Kim's request to re-categorize Korea as a Category 2 country. *Id*., Appendices A, B. The Finance Committee's decision grants the relief sought by Mr. Kim and therefore the Court should dismiss the Motion for Re-Categorization as moot.

Second, Mr. Kim filed a letter with the Court on March 21, 2014 ("Letter") requesting that the Court rule on a previous appeal filed by Mr. Kim, styled as a "Motion for Reversal of Decision of SFDCT regarding Korean Claimants" ("Motion for Reversal"). Letter, Mar. 21, 2014, ECF No. 964. The Motion for Reversal requested that the Court reverse a decision by the SF-DCT's Claims Administrator declining to accept Affirmative Statements as Proof of Manufacturer ("POM") from Mr. Kim's clients and finding Mr. Kim's clients who received

benefits on the basis of Affirmative Statements ineligible for further benefits, including Premium Payments.[2] Motion for Reversal, Sept. 26, 2011, ECF No. 810.

In January 2014, the SF-DCT completed a review of a sample of the Korean claims and notified Mr. Kim that the "hold" on claims relying on Affirmative Statements as POM had been lifted. Ex. 1 (Declaration of Ann M. Phillips), Appendix C. The SF-DCT also advised Mr. Kim that it would process his claims in accordance with the terms of the Plan. *Id.*, Appendix C. Mr. Kim acknowledged the SF-DCT's decision. *Id.*, Appendix C. The SF-DCT's decision grants the relief sought by the Motion for Reversal. Therefore, in addition to the grounds for dismissal set forth in Dow Corning's and the SF-DCT's responses to the Motion for Reversal, the Motion for Reversal should be dismissed as moot because the SF-DCT – after conducting an audit of affected claims – has lifted the general "hold" that it had placed on processing Korean claims pending investigation of certain submissions. The SF-DCT has been processing and continues to process Korean claims. Ex. 1 (Declaration of Ann M. Phillips). Because the SF-DCT is in fact processing claims as requested in the Motion for Reversal, the Motion for Reversal is moot.

[2] Annex A to the SFA sets forth the types of proof required to establish acceptable POM. Affirmative Statements from the implanting physician attesting that the claimant was implanted with a Dow Corning implant are acceptable to establish POM under certain circumstances. Ex. 3 (SFA, Annex A), Schedule I, Part I.B.5.

Third, on December 15, 2004, Mr. Kim filed a Motion of Korean Claimants for the Settlement Facility to Locate Qualified Medical Doctor of Korea and Either Pay for that Qualified Medical Doctor to Travel to Korea and Conduct the Disease Evaluations or Hire Qualified Medical Doctor in Korea to Conduct the Reviews at the Settlement Facility's Expense ("Motion to Hire QMD"). Motion to Hire QMD, Dec. 15, 2004, ECF No. 77. The Motion to Hire QMD requests that the Court compel the SF-DCT to locate and hire a medical doctor (either in the United States or Korea) to conduct disease evaluations of Korean claimants at the expense of the SF-DCT. *Id*. at 4-5.

Mr. Kim appears to have made this request based on his belief that he would be unable to locate a Qualified Medical Doctor ("QMD") as required by Annex A to the SFA. *Id*. at 3 ("The Movants raised the issue because the Movants had an experience in MDL-926 that disease claims were not accepted by their claim office for the reason of QMD defficiency [sic]."). Mr. Kim filed the Motion to Hire QMD over 10 years ago. Since the Motion to Hire QMD was filed, Mr. Kim located QMDs that the SF-DCT has confirmed meet the required qualifications as outlined in Annex A to the SFA. Ex. 1 (Declaration of Ann M. Phillips). Mr. Kim has submitted disease claims supported by medical evidence from these QMDs that meet the criteria of the Plan. *Id*. The SF-DCT has approved numerous disease claims based on evaluations from these QMDs. *Id*. This shows that his basis for

filing the Motion to Hire QMD is moot. Thus, in addition to the grounds for dismissal set forth in Dow Corning's response to the Motion to Hire QMD, the Motion to Hire QMD should be dismissed as moot.

ARGUMENT

I. The Motion For Re-Categorization Is Moot And Therefore Should Be Dismissed.

Mr. Kim did not follow the procedural requirements to request a re-categorization when he filed the Motion for Re-Categorization. *See* Response of Dow Corning Corporation to "Motion for Re-Categorization of Korea" Filed by Yeon Ho Kim ("Response to Motion for Re-Categorization") at 11-12, Apr. 24, 2014, ECF No. 968. Instead of requesting a re-categorization from the Finance Committee, Mr. Kim filed the Motion for Re-Categorization with the Court requesting that the Court order the Finance Committee to adjust the compensation category of Korea to a Category 2 country and for other relief not permitted by the Plan. *See* Motion for Re-Categorization at 4. After Mr. Kim filed his Reply to Motion for Re-Categorization, he submitted a request to the Claims Administrator, as a member of the Finance Committee, to re-categorize Korea as a Category 2 country. Ex. 1 (Declaration of Ann M. Phillips). Per section 6.05(h)(ii) of Annex to the SFA, the Finance Committee granted Mr. Kim's request to re-categorize Korea as a Category 2 country. *Id*., Appendices A, B.

In his Reply to Motion for Re-Categorization, Mr. Kim withdrew his requests that the adjustment to the compensation category apply retroactively and for a Court order directed at the roles of the "parties." Reply to Motion for Re-Categorization at 1-2. The only requested relief remaining from the Motion for Re-Categorization is the request to re-categorize Korea to apply to claimants going forward. *Id*. The Finance Committee has now granted this relief.[3] Ex. 1 (Declaration of Ann M. Phillips), Appendix A. Thus, the Motion for Re-Categorization is moot and should be dismissed. *See*, *e.g.*, *Thomas Sysco Food Servs. v. Martin*, 983 F.2d 60, 62 (6th Cir. 1993) ("To satisfy the case or controversy requirement, an actual controversy must exist at all stages of review, and not simply on the date the action is initiated. . . . A case will become moot when the requested relief is granted or no live controversy remains."); *Collins v. Bogan*, No. 93-2565, 1994 U.S. App. LEXIS 11543, at *1 (6th Cir. May 16, 1994) ("The appeal is moot because the requested relief has been granted.").

[3] The re-categorization of Korea as a Category 2 country does not prohibit the Finance Committee from re-categorizing Korea back to a Category 3 country if warranted by the procedures set forth in Annex A to the SFA. *See* Ex. 3 (SFA, Annex A), § 6.05(h).

II. The Motion For Reversal Is Moot And Therefore Should Be Dismissed.

A. Background.

On September 26, 2011, Mr. Kim filed the Motion for Reversal in response to an August 22, 2011 letter from the Claims Administrator of the SF-DCT advising him that: (1) the SF-DCT would no longer accept Affirmative Statements as POM from Mr. Kim's clients; (2) those of Mr. Kim's clients who had not submitted a claim form must submit other acceptable POM; and (3) those who had received benefits on the basis of Affirmative Statements would not be eligible for further benefits, including Premium Payments.[4] Motion for Reversal, Ex. J.

In response to the Motion for Reversal, Dow Corning filed a Cross-Motion to Dismiss the Korean Claimants' Appeal Styled as "Motion for Reversal of Decision of SFDCT Regarding Korean Claimants" and an Opposition to Motion

[4] According to the August 22 letter, the Claims Administrator's decision was based on the following factors: (1) prior acceptance of Affirmative Statements for approximately 1,400 of Mr. Kim's clients was due to his assertion that medical records in Korea were routinely destroyed after 10 years, an assertion that Mr. Kim has admitted was false; (2) substantial if not overwhelming evidence that Korean physicians signed the Affirmative Statements "without any basis for concluding that Dow Corning products were, in fact, used for those patients' implants"; and (3) Mr. Kim's explanation that he relied upon "claimant recollection" to determine that his clients had Dow Corning implants was "unreliable" and does not meet Plan criteria for establishing POM. Motion for Reversal, Ex. J. The Claims Administrator also advised Mr. Kim that claims submitted on behalf of his clients that were supported by altered documents would not be processed. *Id*.

for Reversal of Decision of SFDCT Regarding Korean Claimants.[5] Oct. 13, 2011, ECF No. 816; Oct. 13, 2011, ECF No. 817. Mr. Kim filed a "Response to Dow Corning's Cross[-]Motion," and Dow Corning subsequently filed a Reply in Support of Dow Corning's Cross-Motion to Dismiss the Korean Claimants' Appeal. Oct. 21, 2011, ECF No. 818; Nov. 11, 2011, ECF No. 823. The SF-DCT also filed a Cross-Motion to Dismiss the "Motion for Reversal" Filed by Yeon-Ho Kim, Esq. of a Decision by the Claims Administrator of the Settlement Facility-Dow Corning Trust. Nov. 3, 2011, ECF No. 820. Mr. Kim then filed the Letter with the Court on March 21, 2014 requesting that the Court rule on his previously filed Motion for Reversal.

[5] As outlined in Dow Corning's Cross-Motion to Dismiss, the Motion for Reversal should be dismissed because, by its terms, it is an unauthorized appeal of the Claims Administrator's decision. The SFA and prior rulings of this Court expressly bar appeals of claims decisions to this Court. *See, e.g.*, *In re Settlement Facility Dow Corning Trust, Danielle McCarthy*, No. 12-cv-10314 at 2-3 (E.D. Mich. Sept. 28, 2012) ("The Plan provides no right of appeal to the Court."), *appeal dismissed*, 12-2506 (6th Cir. Jan. 28, 2013); *In re Settlement Facility Dow Corning Trust, Marlene Clark-James*, 08-1633 at 3 (6th Cir. Aug. 8, 2008) ("The district court properly dismissed Clark-James' complaint . . . essentially seek[ing] a review of the SF-DCT's determination that she has not submitted sufficient proof to show that her implants had ruptured. [T]he Plan provides no right of appeal to the district court, except to resolve controversies regarding the interpretation and implementation of the Plan and associated documents."), *aff'g* No. 07-CV-10191 (E.D. Mich. Mar. 31, 2008); *In re Settlement Facility Dow Corning Trust, Jodi Iseman*, No. 09-CV-10799 at 4 (E.D. Mich. Mar. 25, 2010) ("The Plan provides no right to appeal to the Court. Allowing the appeal to go forward . . . would be a modification of the Plan language. The Court has no authority to modify this language.").

B. The Motion For Reversal Is Moot Because The SF-DCT Has Already Granted The Relief Sought By The Motion.

The SFA gives the Claims Administrator "discretion to implement such additional procedures . . . as necessary to process the Settling Breast Implant Claims in accordance with the terms of this Settlement Facility Agreement and the Claims Resolution Procedures." Ex. 2 (SFA), § 5.01(b); *id.* at § 5.04(b) (authorizing and obligating the Claims Administrator "to institute procedures to assure an acceptable level of reliability and quality control of Claims and to assure that payment is distributed only for Claims that satisfy the Claims Resolution Procedures").

The SF-DCT instituted the safeguards and "hold" on Mr. Kim's claims consistent with its authority and obligations under the Plan. Ex. 1 (Declaration of Ann M. Phillips). After putting the claims on hold, the Finance Committee and the SF-DCT engaged in an in-depth review and investigation of a sample of the Korean claims. *Id*. Based on that review and investigation, the SF-DCT and Finance Committee determined that the "hold" previously placed by the Quality Management Department on Mr. Kim's claims that rely on Affirmative Statements as POM could be lifted and that – consistent with the obligations of the Plan – the SF-DCT could review claims individually to determine whether they satisfy the Claims Resolution Procedures. *Id*. The SF-DCT continues to process claims and

examine the validity of the claims filed by Mr. Kim on an individual claim basis.[6] *Id*. In an e-mail exchange on January 17, 2014, the Claims Administrator informed Mr. Kim that the SF-DCT is "withdraw[ing] the exclusion previously imposed on [his] claims" and that "[the SF-DCT] will review and process [his] claims consistent with the Plan of Reorganization." *Id*., Appendix C. Mr. Kim responded by stating that all "of the Korean Claimants will appreciate [the SF-DCT's] decision on withdrawal from the exclusion of processing." *Id*., Appendix C.

In other words, Mr. Kim acknowledged that the SF-DCT has eliminated the "hold" and the bar on accepting Affirmative Statements that was the basis for the Motion for Reversal. The Korean claims continue to be processed and paid pursuant to the Claims Resolution Procedures. Thus, the relief sought in the Motion for Reversal has already been implemented, and the Motion for Reversal should be dismissed as moot. *See*, *e.g.*, *Thomas Sysco Food Servs.*, 983 F.2d at 62 ("To satisfy the case or controversy requirement, an actual controversy must exist at all stages of review, and not simply on the date the action is initiated. . . . A case will become moot when the requested relief is granted or no live controversy

[6] As the SF-DCT is now examining Mr. Kim's claims on an individual claim basis, it has continued to "hold" those claims that present circumstances that trigger fraud concern. In other words, the SF-DCT, as it would any other claim, continues to "hold" claims submitted by Mr. Kim where the claim's specific, individual circumstances warrant a fraud "hold." Ex. 1 (Declaration of Ann M. Phillips).

remains."); *Collins v. Bogan*, 1994 U.S. App. LEXIS 11543 at *1 ("The appeal is moot because the requested relief has been granted.").

III. The Motion to Hire QMD Is Moot And Therefore Should Be Dismissed.

A. Background.

On December 15, 2004, Mr. Kim filed the Motion to Hire QMD requesting the Court to compel the SF-DCT to locate and hire a medical doctor (either in the United States or Korea) to conduct disease evaluations of Korean claimants at the expense of the SF-DCT. Motion to Hire QMD at 4-5. Dow Corning and the CAC filed responses, and the Claims Administrator filed a supplemental statement.[7] Mr. Kim then filed a reply reiterating his argument and requests for relief. Reply of Korean Claimants to Response of Dow Corning Corporation and Statement of the Claims Administrator ("Reply of Korean Claimants"), Dec. 23, 2005, ECF No. 122.

[7] Response of Dow Corning Corporation to Motion of Korean Claimants for the Settlement Facility to Locate Qualified Medical Doctor of Korea and Either Pay for that Qualified Medical Doctor to Travel to Korea and Conduct the Disease Evaluations or Hire Qualified Medical Doctor in Korea to Conduct the Reviews at the Settlement Facility's Expense ("Response to Motion to Hire QMD"), Dec. 29, 2004, ECF No. 80; Response of Claimants' Advisory Committee to Motion of Korean Claimants for the Settlement Facility to Locate Qualified Medical Doctor of Korea and Either Pay for that Qualified Medical Doctor to Travel to Korea and Conduct the Disease Evaluations or Hire Qualified Medical Doctor in Korea to Conduct the Reviews at the Settlement Facility's Expense, Jan. 11, 2005, ECF No. 94; Statement of the Claims Administrator of the Settlement Facility-Dow Corning Trust Regarding the Motion of Korean Claimants, Feb. 2, 2005, ECF No. 107.

B. The Motion To Hire QMD Is Moot Because The Basis Underlying The Motion Has Proven To Be Moot.

Annex A to the SFA outlines guidelines to be used in the evaluation of claims for the disease payment option. Ex. 3 (SFA, Annex A), Schedule II, Part A. These guidelines require a determination by a QMD under certain circumstances. *Id*. It appears that Mr. Kim based his request that the SF-DCT appoint a QMD to conduct disease evaluations on the belief that he would be unable to locate a QMD that meets the requirements of Annex A to the SFA. Motion to Hire QMD at 3; Reply of Korean Claimants at 2 (stating that the "QMD issue" was raised because the "disease evaluation criteria of MDL-926 were beyond the ability of Korean Claimants because of QMD requirement especially").

Since Mr. Kim filed the Motion to Hire QMD over 10 years ago, he has located QMDs that the SF-DCT has confirmed meet the qualifications specified in Annex to the SFA. Ex. 1 (Declaration of Ann M. Phillips). Mr. Kim has successfully obtained numerous disease awards for his clients based on evaluations from these QMDs. *Id*. Mr. Kim has been able to submit medical documentation sufficient to meet the requirements of the Plan. *Id*. In other words, Mr. Kim's belief that caused him to raise the "QMD issue," i.e., the belief that he would be unable to find a QMD that met the requirements of Annex A to the SFA, has been proven to be unfounded during the time the motion has been pending with the Court because Mr. Kim has successfully obtained numerous disease awards using

QMDs that the SF-DCT has confirmed meet the requirements of Annex A to the SFA. Thus, the Motion to Hire QMD is moot and should be dismissed. *See*, *e.g.*, *Thomas Sysco Food Servs.*, 983 F.2d at 62 ("To satisfy the case or controversy requirement, an actual controversy must exist at all stages of review, and not simply on the date the action is initiated. . . . A case will become moot when the requested relief is granted or *no live controversy remains*.") (emphasis added).[8]

[8] Mr. Kim further states that the Claims Administrator and the CAC, at a meeting in 2004, not only agreed to appoint a QMD, but also agreed that the SF-DCT would hire the QMD to conduct the evaluations at the SF-DCT's expense. Motion to Hire QMD at 4. As outlined in Dow Corning's Response to Motion to Hire QMD, the Plan does not authorize the SF-DCT to pay the cost of preparing claimant submissions or the cost of the medical examinations or tests that necessarily must be conducted in order for a claimant to submit a disease option claim. Response to Motion to Hire QMD at 4.

CONCLUSION

For the foregoing reasons, Dow Corning, the DRs, and the CAC respectfully request that the Court dismiss the Motion for Re-Categorization, the Motion for Reversal, and the Motion to Hire QMD.

Dated: April 24, 2015

Respectfully submitted,

By: /s/ Dianna L. Pendleton-Dominguez
(with permission)

LAW OFFICE OF DIANNA PENDLETON
401 N. Main Street
St. Marys, OH 45885
Telephone: (419) 394-0717
Facsimile: (419) 394-1748
DPEND440@aol.com

Claimants' Advisory Committee

By: /s/ Deborah E. Greenspan
Deborah E. Greenspan
Michigan Bar # P33632

DICKSTEIN SHAPIRO LLP
1825 Eye Street, N.W.
Washington, DC 20006-5403
Telephone: (202) 420-2200
Facsimile: (202) 420-2201
GreenspanD@dicksteinshapiro.com

Debtor's Representative and Attorney for Dow Corning Corporation

CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2015, I electronically filed the foregoing document with the Clerk of the Court using the ECF System which will send notification of such filing to all counsel of record.

Dated: April 24, 2015 By: /s/ Deborah E. Greenspan

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: **DOW CORNING CORPORATION,** **REORGANIZED DEBTOR**	§	**CASE NO. 00-CV-00005-DPH** **(Settlement Facility Matters)** **Hon. Denise Page Hood**

PROPOSED ORDER GRANTING DOW CORNING'S SUGGESTION OF MOOTNESS REGARDING "MOTION FOR RE-CATEGORIZATION OF KOREA," "MOTION FOR REVERSAL OF DECISION OF SFDCT REGARDING KOREAN CLAIMANTS," AND "MOTION OF KOREAN CLAIMANTS FOR THE SETTLEMENT FACILITY TO LOCATE QUALIFIED MEDICAL DOCTOR OF KOREA AND EITHER PAY FOR THAT QUALIFIED MEDICAL DOCTOR TO TRAVEL TO KOREA AND CONDUCT THE DISEASE EVALUATIONS OR HIRE QUALIFIED MEDICAL DOCTOR IN KOREA TO CONDUCT THE REVIEWS AT THE SETTLEMENT FACILITY'S EXPENSE"

The Court has considered the *Suggestion of Mootness Regarding "Motion for Re-Categorization of Korea," "Motion for Reversal of Decision of SFDCT Regarding Korean Claimants,"* and *"Motion of Korean Claimants for the Settlement Facility to Locate Qualified Medical Doctor of Korea and Either Pay for that Qualified Medical Doctor to Travel to Korea and Conduct the Disease Evaluations or Hire Qualified Medical Doctor in Korea to Conduct the Reviews at the Settlement Facility's Expense"* (Doc. No. 810 in 00-CV-00005-DT, Doc. No. 965 in 00-CV-00005-DT, Doc. No. 77 in 00-CV-00005-DT), and the Court finds

and concludes that the Suggestion of Mootness is meritorious and should be granted.

ACCORDINGLY, it is hereby ORDERED that:

The Suggestion of Mootness is GRANTED in all respects; and

The *Motion for Re-Categorization of Korea*, the *Motion for Reversal of Decision of SF-DCT Regarding Korean Claimants*, and the *Motion of Korean Claimants for the Settlement Facility to Locate Qualified Medical Doctor of Korea and Either Pay for that Qualified Medical Doctor to Travel to Korea and Conduct the Disease Evaluations or Hire Qualified Medical Doctor in Korea to Conduct the Reviews at the Settlement Facility's Expense* are DENIED.

Dated: _____ _____
DENISE PAGE HOOD
United States District Judge