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

IN RE	§	
	§	
DOW CORNING CORPORATION	§	
	§	
Reorganized Debtor	§	CASE NO: 00-CV-00005-DPH
	§	(Settlement Facility Matters)
	§	Hon.Denise page Hood
	§	
	§	

RESPONSE TO SUGGESTION OF MOOTNESS REGARDING "MOTION FOR RE-CATEGORIZATON 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 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"

I. INTRODUCTION

Dow Corning Corporation("Dow Corning"), the Debtor's Representatives("DRs") and the Claimants' Advisory Committee("CAC") jointly filed a motion to seek a determination that three motions by Korean Claimants currently pending before the Court have been rendered moot by actions taken by the Settlement Facility-Dow Corning Trust("SFDCT") or the Finance Committee. Three motions at issue are: (1)motion for re-categorization (2)motion for reversal of decision of SFDCT with respect to affirmative statements by implanting physicians for Dow Corning product identification (3)motion for finding an evaluating doctor for disease.

With respect to motion(1), the movants(Dow Corning and CAC) allege that (i)Korean claimants

did not follow the procedural requirements to request a re-categorization when they filed the Motion for Re-Categorization by failing to request a re-categorization to the Finance Committee (ii)the only relief remaining from the Motion for Re-Categorization, which is to re-categorize Korea to apply to claimants going forward, has been granted by the Finance Committee (iii)thus the Motion for Re-Categorization is moot and should be dismissed.

With respect to motion(2), the movants allege that (i)SFDCT and the Finance Committee determined that the "hold" previously placed by the Quality Management Department on Korean claims that rely on affirmative statements as POM could be lifted and that-consistent with the obligations of the Plan-the SFDCT could review claims individually to determine whether they satisfy the Claims Resolution Procedures (ii)SFDCT continues to process claims and examine the validity of the claims filed by Korean claimants on an individual basis (iii)the Claims Administrator informed Yeon Ho Kim, the attorney for Korean claimants, that SFDCT is withdrawing the exclusion previously imposed on the claims and that SFDCT will review and process the claims consistent with the Plan of Reorganization (iii)Kim appreciated SFDCT's decision on withdrawal from the exclusion of processing (iv)Kim acknowledged that the SFDCT has eliminated the "hold" and the bar on accepting Affirmative Statements that was the basis for the Motion for Reversal (v)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.

With respect to motion(3), the movants allege that (i)since Korean claimants filed the Motion to Hire QMD over 10 years ago, Kim has located QMDs that SFDCT has confirmed meet the qualifications specified in Annex to the SFA (ii)Kim has successfully obtained numerous disease awards for his clients based on evaluations from these QMDs (iii)Kim has been able to submit medical documentation sufficient to meet the requirements of the Plan (iv)Kim's belief that caused him to raise the "QMD" issue, i.e., the belief that Kim 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 that the motion has been pending with the Court because Kim has successfully obtained

numerous disease awards using QMDs that SFDCT has confirmed meet the requirements of Annex A to the SFA thus the Motion to Hire QMD is moot and should be dismissed.

II. ARGUMENT

A. Motion for Re-Categorization

Korean claimants through Yeon Ho Kim filed the Motion for Re-Categorization on April, 2014. Korean claimants requested the Court (i)to order the Finance Committee to revise Schedule III to include Korea into Category 2 to print the new Schedule III (ii)to order the SFDCT to pay the balance of payments up to 60 percents over 35 percents of the Domestic Amount for Applicable Compensation Level to all of the Korean claimants who have already received compensation (iii)to order SFDCT to apply 60 percents of Domestic Amount for Applicable Compensation Level to the Korean claimants who have not received compensation yet (iv)to order the parties including Dow Corning and the CAC not to influence on SFDCT to give administrative disadvantages to the Korean claimants while processing the claims due to the Motion for Re-Categorization. Korean claimants realized, however, that the change in compensation level for qualified claimants applies only prospectively thus dropped the request No.(ii) on May 12, 2014. Simultaneously, Korean claimants dropped the request No.(iv). As the result, Korean claimants maintained the request No.(i) and No.(iii), and modified the Motion for Re-Categorization accordingly.

While Dow Corning and the CAC filed the Response in Opposition to Motion for Re-Categorization, Korean claimants through Yeon Ho Kim received a letter from the Claims Administrator, Mrs.Ann A.Phillips, on December 5, 2014, indicating that the Court has been informed that Kim's request[meaning the request for Re-Categorization on April 25, 2014] has been reviewed by the Finance Committee and the Parties have not objected and as a result, Kim's request for re-categorization is granted so beginning in calendar year January 2015, South Korea is re-categorized to Category 2. *Ex.1* And then, Kim received a copy of the letter sent to the Court

regarding the request for Re-Categorization from Mrs.Phillips on January 12, 2015. *Ex.2*

However, the letter sent to the Court and Mrs.Phillips's e-mail to Kim does not grant the relief sought by the Motion for Re-Categorization on its face. The Motion seeks the requests No.(i) and No.(iii). Request No.(i) request the Court to order the printing of Schedule III by the Finance Committee that South Korea is now included in Category 2. Either the letter to the Court or the e-mail to Kim never included a commitment likewise. Any of them failed request No.(i) moot.

In addition, the Motion requests the Court to order the SFDCT to apply 60 percents of Domestic Amount for Applicable Compensation Level to the Korean claimants who have not received compensation yet. Even if the change of compensation level due to the change of category applies not retroactively but prospectively, the Motion requests the Court to order SFDCT to apply 60 percents of Domestic Amount for Applicable Compensation Level to Korean claimants who have not received compensation yet(meaning that beginning from the year that GDP per capita of Korea exceeds sixty percents of that of the United States of America, the SFDCT shall apply 60 percents of Domestic for Applicable Compensation Level to Korean claimants). GDP per capita of South Korea began to exceed sixty percents of that of the United States of America from the year of 2012.(See Exhibit 2&3, World Factbook of CIA). To the contrary, the letter to the Court sent by SFDCT indicated, "Therefore, South Korea is re-categorized to Category 2 effective January 2015. Pursuant to the Plan language, Claims paid in 2015 or thereafter will be paid in Class 6.1. Please let me know if you have any questions.", and the e-mail of the Claims Administrator to Kim indicated, "The plan provides that the adjustment of categories 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. Beginning in calendar year January 2015, South Korea is re-categorized to Category 2."

Either the Finance Committee or SFDCT has no authority to defer the year of re-categorization in spite of the year of the exceeding of 60 percents of GDP per capita of the United States of America by Korea, which is 2012, to 2015. The Plan does not clearly specify when the re-

categorization of country shall be implemented. Accordingly, the issues in the Motion for Re-Categorization were not resolved in completion by way of the letter to the Court by SFDCT and the e-mail of the Claims Administrator to Kim.

Furthermore, SFDCT disposed over 500 Korean claims with Category 3 country applied and then mailed the checks for disease compensation of Class 6.2 to Kim on November and December, 2014. As known to everyone, SFDCT is not able to dispose more than 80 claims per month. Following such hurried disposal, SFDCT sent the letter to the Court that South Korea is re-categorized to Category 2 effective January 2015. Had Korean claimants been re-categorized earlier than the date of the letter to the Court, Over 500 Korean claimants could have received the checks of Class 6.1.(Please note that the Motion for Re-Categorization was filed on April, 2014.) Korean claimants are suspicious that Dow Corning and the CAC conspired for this scheme of evasion of the responsibility for applying 60 percents of Domestic Amount for Applicable Compensation Level to Korean claimants. It is manifest that the request No.(iii) of the Motion is not rendered moot because the timing of the change of category was not resolved. Whether SFDCT can apply 60 percents of Domestic Amount for Applicable Compensation Level to Korean claimants from the year of the decision of the Claims Administrator or SFDCT shall apply 60 percents of Domestic Amount for Applicable Compensation Level to Korean claimants from the year that GDP per capita of South Korea exceeds sixty percents of that of the United States of America remains an issue for the Motion for Re-Categorization. Accordingly, either the letter of Mrs.Phillips to the Court or the e-mail of Mrs.Phillips to Kim failed the request No.(iii) in the Motion moot.

B. Motion for Reversal

On September 2011, Korean claimants through Yeon Ho Kim filed the Motion for Reversal of Decision of SFDCT that SFDCT can no longer accept affirmative statements that all Korean medical records were destroyed after ten year period, and for claimants who have yet to file a claim form, no affirmative statements will be accepted as proof of manufacturer, and of the 1,742

claimants who filed claim forms, any claimant previously paid based solely on an affirmative statement is not eligible for further benefits including Premium Payments. Korean claimants requested the Court to order in the following: (i)the decision that SFDCT can no longer accept affirmative statements that medical records were destroyed after ten year period shall be reversed (ii)the decision that SFDCT cannot accept affirmative statements as proof of manufacturer for claimants who have yet to file a claim form shall be reversed (iii)the decision that any claimant of 1,742 claimants who filed claim forms and who were previously paid based solely on affirmative statement is not eligible for further benefits including Premium Payments shall be reversed (iv)the decision that SFDCT will remove the claims where a determination will be made that documents have been altered from processing shall be reversed (v)SFDCT shall not cancel POM approvals for 1,742 claimants and shall expedite the claims processing to pay explants, rupture, and disease compensation by establishing separate processing for Class 6.2 claimants (vi)SFDCT shall not enforce Korean claimants to participate in the Class 6.2 Payment Option which provides USD600 for limited proof of manufacturer (vii)SFDCT shall restructure the employees involved in discriminatory measures including Quality Management Department of SFDCT against Korean claimants (viii)Korean claimants further request the Court to grant all other just relief to prevent SFDCT from disposal of the files of Korean claimants in biased view.

While Dow Corning filed Cross-Motion to Dismiss the Motion for Reversal with the aid of a position paper of SFDCT and the Claims Administrator subsequently filed Cross-Motion to Dismiss the Motion for Reversal, the late Mr.David Austern and the new Claims Administrator, Mrs.Phillips, proposed mediation to resolve the whole issues. The agreement was entered into through the mediator, Professor Francis Mcgovern, in Washington DC on August 10, 2012. Kim yielded his original position which was more than USD 10 million to merely USD 5 million. *Ex.5-10* Memorandum of Understanding was prepared by Mr.Austern and was supposed to be delivered to Kim the following day for review. But Mr.Austern left it to a wrong hotel which Kim did not stay thus Kim lost a chance to review the Memorandum of Understanding. *Ex.11-13* Nevertheless Mr.Austern asked for a new condition, by stating, "While I believe it would be unfair for SFDCT 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." *Ex.14, 15* Kim implemented the condition with Opinion Letter with Notary Certificate by another Korean counsel and Motion for Dismissal of all pending actions in the United States Courts. *Ex.16* Since Mr.Austern was ill, Mrs.Phillips responded, "The Opinion Letter by itself lacks reference to applicable Korean law or other authority that would support your claim as being the liable party...In addition, the un-filed Motion for Dismissal Regarding Korean claimants lacks specific reference to the 'Exhibit B' claimants as any reference to the Korean Court in which a similar Motion was(or will be) filed. The Memorandum calls for a similar Motion filing in a Korean Court or competent jurisdiction. We cannot move forward without these assurances." *Ex.17,18* Kim replied with the revised version of the Opinion Letter and the Motion for Dismissal to meet her requirements. *Ex.19* However, Mrs.Phillips failed to respond over a year. *Ex.20-22* In the meantime, the deadline for explantation claim, June 1, 2014, was approaching and thus Kim asked Mrs.Phillips what was happening to mediation result. If the mediation result were executed as agreed, Korean claimants do not need filing explantation claims. Mrs.Phillips refused to meet Kim too. Mrs.Phillips reiterated the notice on deadline for explantation claim as simply a routine reminder. *Ex.24,25*

And then, Mrs.Phillips abruptly sent an e-mail on January 17, 2014 that SFDCT has determined to withdraw the exclusion previously imposed on the claims with respect to affirmative statements and SFDCT would review and process the claims consistent with the Plan of Reorganization and the claims or documents that did not meet Plan requirements for an acceptable level of reliability will be denied. *Ex.23*

The movants now allege that SFDCT and the Finance Committee determined that the "hold" previously placed by the Quality Management Department on Kim's claims that rely on

Affirmative Statements as POM could be lifted and that SFDCT could review claims individually to determine whether they satisfy the Claims Resolution Procedures and SFDCT continues to process claims and examine the validity of the claims filed by Kim on an individual basis. The movants even allege that the Claims Administrator informed Kim of withdrawing the exclusion previously imposed on Kim's claims and Kim responded by stating that all of Korean claimants would appreciate SFDCT's decision on withdrawal from the exclusion of processing.

In the process of mediation proposed by Mr.Austern and Mrs.Phillips and their runaway from the agreement reached in mediation hearing, Kim was maneuvered and manipulated. They never declared the mediation ended. They prolonged the actions by Kim by alluding that mediation could be finalized. As a result, Kim lost a chance to file explantation claims for many(over 300 hundred) claimants. The determination by SFDCT and the Finance Committee on January 17, 2014 is procedurally flawed.

In addition, the determination by SFDCT and the Finance Committee failed to address all of the requests (i) –(viii) in the Motion for Reversal. Request s (iii), (iv) and (v) were not included in the determination which has lifted the general "hold" that SFDCT had placed on processing Korean claims. Mrs.Phillips added in her e-mail on January 17, 2014 that SFDCT has determined to withdraw the exclusion previously imposed on the claims with respect to affirmative statements and SFDCT would review and process the claims consistent with the Plan of Reorganization and the claims or documents that did not meet Plan requirements for an acceptable level of reliability will be denied.

Although Mrs.Phillips avoided stating directly in her e-mail, the movants now interpret it that SFDCT could review claims individually to determine whether they satisfy the Claims Resolution Procedures and SFDCT continues to process claims and examine the validity of the claims filed by Mr.Kim on an individual claim basis. Such allegation is directly inconsistent with request (v) in particular. Request(v) in the Motion for Reversal requested the Court to order the reversal of decision that SFDCT cancelled POM approvals of 1,742 claimants. If the Court reversed it, all of

1,742 claimants who received the approval of POM from SFDCT revert back to POM approved claimants eligible to receive respective benefit(explantation, rupture and disease) whether previously paid or yet to be paid. However, the movants allege that SFDCT could review claims individually and continue to examine the claims on an individual claim basis. As 1,742 claimants who had been approved "Acceptable" for POM shall not be re-reviewed on an individual basis. Request(v) in the Motion for Reversal was to address 1,742 claimants who had been approved but were later cancelled. Request(v) was not to ask for re-review on an individual basis. The movants allege that because SFDCT is in fact processing claims as requested in the Motion for Reversal, the Motion for Reversal is moot. However, the allegation has no merit on its face.

C. Motion to Hire QMD

Korean claimants through Yeon Ho Kim filed the Motion for Location of QMD on December, 2004. Korean claimants requested the Court to order SFDCT to locate QMD of Korea and either pay for that QMD to travel to Korean and conduct the disease evaluations or hire a QMD in Korea to conduct the reviews at SFDCT's expense. The movants filed the Response in Opposition to the Motion to Hire QMD.

The movants allege that Kim has located QMDs that SFDCT has confirmed meet qualifications specified in Annex to the SFA and Kim has successfully obtained numerous disease awards for his clients based on evaluations from the QMDs and Kim has been able to submit medical documentation sufficient to meet the requirements of the Plan. The movants added that the belief of Kim that he was unable to find a QMD in Korea has been proven unfounded during the time the Motion to Hire QMD has been pending with the Court because Kim has successfully obtained numerous disease awards using QMDs that SFDCT has confirmed meet the requirements of Annex A to the SFA thus the Motion to Hire QMD is moot and should be dismissed.

However, Korean claimants believe that QMD location and hiring requested in the Motion, although it is ten years old, is still active because Yong Park and Kwan Sik Kim are the only two

Korea-licensed doctors who issued disease evaluations to Korean claimants and are no longer available for further disease evaluations, and the finding of the other possible replacement doctors for the claimants who have yet to filed either POM claims or disease claims[1] must not be easy because SFDCT will question whether they meet the requirements of Annex A to the SFA without providing the alternative way to locate QMD in Korea. SFDCT did not declare that all of the Korea-licensed doctors were QMDs. SFDCT has no capacity to evaluate that Korea-licensed doctors and US-licensed doctors have identical qualifications either. Thus even if Kim successfully obtained numerous disease awards using Yong Park and Kwan Sik Kim, the allegation of the movants that the Motion to Hire QMD is moot shall not be justified and thus the request for dismissal by the movants is groundless.

III. CONCLUSION

For the foregoing reasons, Korean claimants respectfully requests that the Court deny the Motion of Dow Corning, the DRs, and the CAC for dismissal of the Korean claimants' Motion for Re-Categorization, the Korean claimants' Motion for Reversal, and the Korean claimants' Motion to Hire QMD.

Date: May 4, 2015

Respectfully submitted,

(signed) Yeon Ho Kim
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For the all Korean Claimants

[1] Over 1,000 claimants have yet to file either POM or disease claims from the record.

CERTIFICATE OF SERVICE

I hereby certify that on May ,2015, I has electronically filed the above document with the Clerk of Court by using ECF system which will notify to all relevant parties of record.

Dated: May 4, 2015 Signed by Yeon Ho Kim

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PROPOSED ORDER DENYING DOW CORNING, THE DRs, AND THE CAC'S MOTION FOR DISMISSAL OF THE MOTION FOR RE-CATEGORIZAITON, THE MOTION FOR REVERSAL, AND THE MOTION TO HIRE QMD OF THE KOREAN CLAIMANTS

The Court has considered the Korean claimants' response to "Motion for Dismissal of the Motion for Re-Categorization, the Motion for Reversal, and the Motion to Hire QMD" filed by Dow Corning, the Debtor's Representatives, and the Claimants' Advisory Committee, and the Court finds and concludes that the Motion for Dismissal of the Korean claimants' Motions should be denied.

ACCORDINGLY, it is hereby ORDERED that Dow Corning, the DRs, and the CAC's Motion for Dismissal of the Motion for Re-Categorization, the Motion for Reversal, and the Motion to Hire QMD filed by the Korean claimants is DENIED.

Date:_____

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DENISE PAGE HOOD

United States District Judge