

**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**

**REPLY IN SUPPORT OF SUGGESTION OF MOOTNESS**

Dow Corning Corporation (“Dow Corning”), the Debtor’s Representatives (“DRs”), and the Claimants’ Advisory Committee (“CAC”) submit this *Reply in Support of Suggestion of Mootness*.<sup>1</sup> Yeon Ho Kim (counsel for Korean claimants), the proponent of the motions addressed in the Suggestion of Mootness (“Korean Motions”), filed a *Response to 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 to Travel to Korea and*

---

<sup>1</sup> On April 24, 2015, Dow Corning, the DRs, and the CAC filed 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”* (“Suggestion of Mootness”). Apr. 24, 2015, ECF No. 1020.

*Conduct the Disease Evaluations or Hire Qualified Medical Doctor in Korea to Conduct the Reviews at the Settlement Facility's Expense*” (“Response”). May 3, 2015, ECF No. 1025.

The Response does not contest any of the facts set forth in the Declaration of Ann M. Phillips supporting the Suggestion of Mootness (“Suggestion of Mootness, Ex. 1” or “Declaration Supporting Suggestion of Mootness”). Instead, Mr. Kim argues that the Korean Motions are not moot because in each case, in his view, there is some component of the relief requested from the Court that has not been provided. Response at 4-5, 8-10. In addition, the Response appears to assert new arguments and issues that were not the subject of the original Korean Motions. *Id.* at 4-5. As explained in the Suggestion of Mootness, the Claims Administrator and/or the Finance Committee has provided the relevant substantive relief originally requested and therefore the Korean Motions are moot. *See, e.g., Thomas Sysco Food Servs. v. Martin*, 983 F.2d 60, 62 (6th Cir. 1993) (“A case will become moot when . . . no live controversy remains.”).

### **Motion for Re-Categorization**

Mr. Kim argues that the Motion for Re-Categorization<sup>2</sup> is not moot because the SF-DCT and Finance Committee have not granted his requests that (1) the Finance Committee formally revise Schedule III of Annex A to the Settlement

---

<sup>2</sup> The Motion for Re-Categorization<sup>2</sup> is defined in the Suggestion of Mootness.

Facility and Fund Distribution Agreement (“SFA”) to provide that Korea is a category 2 country and (2) the re-categorization applies to all “Korean claimants who have not received compensation yet.” Response at 3-4. First, the Finance Committee has granted the request for re-categorization and has documented that determination with a letter to the Court and additional correspondence to Mr. Kim. Suggestion of Mootness, Ex. 1. Revising Schedule III of Annex A to the SFA, as Mr. Kim requests, will not affect the substantive categorization of Korea. To the extent Mr. Kim believes that an edited version of Schedule III should be made available, Mr. Kim should request such documentation from the SF-DCT. The substantive relief requested in the Motion for Re-Categorization was granted and the administrative task of revising Schedule III does not affect the determination that the Motion for Re-Categorization is moot. Second, the Finance Committee did in fact determine that the re-categorization would apply to claims that had not yet been compensated – precisely the relief requested. *Id.*

Mr. Kim then asserts issues that arise out of the relief granted by the Finance Committee and were not part of the original motion. First, he challenges the determination of the Finance Committee to commence application of the re-categorization as of January 2015. Response 4-5. Second, he contends that the re-categorization should occur as of the date the GDP of Korea rose to the level that would permit re-categorization. *Id.* These requests for relief were not part of the

Motion for Re-Categorization. Indeed, they are based on actions that occurred after the Motion for Re-Categorization was filed. Suggestion of Mootness at 8. In the Motion for Re-Categorization and his subsequent Reply to Motion for Re-Categorization,<sup>3</sup> Mr. Kim requested that the Court order the SF-DCT to apply the new payment category to all claims that had not yet been paid, and he conceded that the re-categorization applies only prospectively. *Id.* at 8-9. In the Response, Mr. Kim directly contradicts his earlier position that re-categorization applies prospectively and, instead, contends that the Court should order the SF-DCT to apply the revised payment category to all Korean claims retroactively starting in 2012. Response at 4-5. The new arguments that Mr. Kim now asserts cannot be grafted onto the Motion for Re-Categorization to avoid the determination that the Motion for Re-Categorization is moot.

To the extent that Mr. Kim seeks an interpretation of Annex A to the SFA with respect to the issue of timing of re-categorization, he raises an issue of “Plan Interpretation” (i.e., interpretation of Section 6.04(h) of Annex A to the SFA).<sup>4</sup> Only the DRs, the CAC and, in certain limited circumstances, the Claims Administrator may file a motion seeking an interpretation of the Amended Joint

---

<sup>3</sup> Reply to Motion for Re-Categorization is defined in the Suggestion of Mootness.

<sup>4</sup> Mr. Kim seems to acknowledge that the timing of re-categorization is an issue of Plan Interpretation. *See* Response at 4-5 (“The Plan does not clearly specify when the re-categorization of country shall be implemented.”).

Plan of Reorganization's ("Plan") substantive criteria. This Court has confirmed that the Plan does not give that right to claimants. *In re Settlement Facility Dow Corning Trust, Rosalie Maria Quave*, No. 07-CV-12378 at 5-6 (E.D. Mich. Mar. 31, 2008) (“[O]nly the Debtor’s Representatives and the CAC [are authorized] to file a motion to interpret a matter under the SFA. There is no provision under the SFA or the Procedures which allows a claimant to submit an issue to be interpreted before the Court.”). Accordingly, Mr. Kim has received the relief requested in his original Motion for Re-categorization and the Motion for Re-Categorization has been rendered moot. The Claims Administrator has requested that the DRs and the CAC provide an interpretation of the re-categorization process with respect to the timing of implementing the re-categorization and the applicability to claims that have been paid in part. On March 23, 2015, the Claims Administrator informed Mr. Kim of this process. Ex. 1 (Email from Claims Administrator to Mr. Kim).

### **Motion for Reversal**

Mr. Kim argues that the Motion for Reversal<sup>5</sup> is not moot because the Court has not granted his request to reverse the Claims Administrator’s decisions regarding the eligibility of individual claimants. Response at 8 (“[T]he Motion for Reversal requested the Court to order the reversal of decision that SFDCT cancelled POM approvals of 1,742 claimants.”). However, as Mr. Kim

---

<sup>5</sup> The Motion for Reversal is defined in the Suggestion of Mootness.

acknowledges, the SF-DCT has in fact reversed its decision to “cancel” the Proof of Manufacturer (“POM”) approvals of these claims and therefore has provided precisely the relief requested in the Motion for Reversal. *Id.* at 8-9. The SF-DCT is reviewing each such claim individually and will determine whether the POM may be approved in accordance with the terms of the Claims Resolution Procedures (Annex A to the SFA). Suggestion of Mootness, Ex. 1. Therefore, the Motion for Reversal should be dismissed as moot.<sup>6</sup>

### **Motion to Hire QMD**

Mr. Kim argues that that the Motion to Hire QMD<sup>7</sup> is not moot because although he had found two Qualified Medical Doctors (“QMD”) that meet the required qualifications outlined in Annex A to the SFA, both of those physicians “are no longer available for further disease evaluations.” Response at 9-10. Mr. Kim does not provide any support for his assertion that these physicians are no longer able to provide disease evaluations. *Id.* at 10. In any event, as explained in the Declaration Supporting Suggestion of Mootness, the SF-DCT has reviewed and approved over 800 disease claims filed by Mr. Kim. Suggestion of Mootness, Ex. 1. The Korean claimants have been able to submit qualified claims that have been approved and paid. *Id.* The relief requested in the Motion to Hire QMD is based

---

<sup>6</sup> Mr. Kim’s lengthy discussion of a mediation that did not result in a resolution of any issues is irrelevant to the question of mootness.

<sup>7</sup> Motion to Hire QMD is defined in the Suggestion of Mootness.

on the assertion that without the appointment of a QMD at the expense of the SF-DCT, Korean claimants would not be able to submit eligible claims. Suggestion of Mootness at 15. This assertion is belied by the facts: the claims have in fact been processed and approved and the original Motion to Hire QMD is therefore moot.

**Conclusion**

For the foregoing reasons and those set forth in the Suggestions of Mootness, 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: May 14, 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 May 14, 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: May 14, 2015

By: /s/Deborah E. Greenspan