

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

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

**FINANCE COMMITTEE’S REPLY IN SUPPORT OF ITS MOTION
FOR ENTRY OF AN ORDER TO SHOW CAUSE
WITH RESPECT TO YEON HO KIM**

The Finance Committee respectfully replies to Yeon Ho Kim’s Response to its Motion for Entry of an Order to Show Cause (Doc. No. 1354) (hereinafter “the Response”) as follows:

1. The Response strongly underscores the importance of the Court requiring Mr. Kim to show cause why he should not be held in contempt or otherwise sanctioned for failure to return funds as requested by the SF-DCT. In the Response, Mr. Kim acknowledges that he received multiple requests from the SF-DCT for updated Claimant addresses, and ignored them. (Doc. No. 1354, at 1). Mr. Kim also acknowledges notification of SF-DCT’s requirement that he return all funds that he was unable to distribute to Claimants, yet he has made no returns. (Doc. No. 1354 at 4). The Response further admits that Mr. Kim “cashed out and distributed [Claim payments] to the Claimants *who asked for payments.*” (Doc. No. 1354 at 2) (emphasis added). This statement begs critical questions regarding

hundreds of thousands of dollars in the Court's custody which were entrusted to Mr. Kim, including:

- *Which Claimants received payments and which Claimants did not?*
- *What happened to the Claim payments for Claimants who did not "ask for payment"?*
- *Did Mr. Kim keep the Claim payments of Claimants who failed to ask for their payments?*

2. The Response does not fully explain what happened to the funds sent to Mr. Kim's law office for distribution to the Claimants he represents. He should be required to provide an explanation to the Court during the show cause hearing.

3. As noted in the Response, on January 3, 2018, Mr. Kim answered correspondence from the undersigned regarding cashed Claim payment checks for 148 Claimants. Mr. Kim's letter provided updated address information for sixty (60) of the Claimants. He did not update the address information for the remaining eight-eight (88) Claimants. Instead, Mr. Kim submitted eighty-eight (88) address update/change forms which noted, "not changed." (Doc. No. 1354, Exh. 8).

4. Mr. Kim's provision of the same addresses currently on-file at the SF-DCT for the eighty-eight (88) Claimants did not satisfy the SF-DCT's inquiry. The SF-DCT has received notification from the Korean Postal Service that those same addresses, which were previously used by the SF-DCT to send Claim award

notifications to these Claimants, are invalid. (Exh. 1, Affidavit of Ellen Bearicks, at 2).

5. It is reasonable to conclude that the eighty-eight (88) Claimants with invalid addresses have not received their claim payments, because Mr. Kim has not provided proof of distribution to those Claimants, and Mr. Kim's office has a practice of distributing payments only once a Claimant asks for payment. (Doc. No. 1354 at 2). Without notification of the Claim award from the SF-DCT, (because the mailing was returned), these Claimants would not know to "ask" Mr. Kim for their Claim payments. Further, the SF-DCT has no means of providing notification to a Claimant without a valid address provided by the Attorney of Record.

6. As a result of Mr. Kim's failure to provide updated addresses or proof of distribution, the SF-DCT is unable to confirm that 88 Claimants received \$370,500 distributed as Claim payments. Under the SFA, the funds distributed by the Settlement Facility are in the custody of the Court until they are *paid to* and *actually received by* a Claimant. (Doc No. 1352, Exh A, SFA § 4.01).

7. The Response suggests that Mr. Kim has kept the funds intended for Claimants who have not asked for payment. Those funds are not Mr. Kim's to keep. If Mr. Kim has been unable to make distribution of Claim payments in his

possession for over two years,¹ he should be required to return those funds to the SF-DCT.

8. The Response also attempts to muddy the issue of Mr. Kim's obligation to provided updated addresses for the eight-eight (88) Claimants and return undistributed funds, by referencing an unrelated return of *uncashed* checks to the SF-DCT. On March 29, 2017, Mr. Kim rejected eighty-five (85) \$1,200 Expedited Release awards, and returned the uncashed Claim payment checks. (Exh. 1, Declaration of Ellen Bearicks, at 2). The SF-DCT responded by sending a letter acknowledging return of the expedited release payment for each returned check. The Claim payments checks for the eight-eight (88) Claimants referenced in the instant motion were cashed and have not been returned by Mr. Kim. (Exh. 1, Declarations of Ellen Bearicks, at 2).

9. Finally, the Response makes an irrelevant and baseless argument that the Finance Committee's motion for a show cause order is an attempt to "evade obligations and the liabilities under the settlement agreement...." (Doc No. 1354, at 9). Mr. Kim's Motion for Recognition and Enforcement of Mediation Enforcement, raises his allegation of a settlement agreement with the Finance Committee and is currently pending before the Court. (Doc. No. 1271). The

¹ The most recent payment in the group of 148 Claimants was made in 2015. The others date back as far as 2009. (Doc. No. 1352, at 4-6).

Finance Committee has opposed that motion and filed a response. (Doc. No. 1274). Mr. Kim has not established that those allegations relieve his obligations to provide updated address information for the eight-eight (88) Claimants and return undistributed Claims payments.

For these reasons, the Finance Committee's Motion for Entry of An Order to Show Cause Order With Respect to Yeon Ho Kim (Doc No. 1352) should be granted.

Dated: January 24, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 24, 2018, the foregoing pleading has been electronically filed with the Clerk of Court using the ECF system which will send notice and copies of the document to all registered counsel in this case.

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