

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re:

SETTLEMENT FACILITY DOW CORNING TRUST

Case No. 00-CV-00005
(Settlement Facility Matters)

Hon. Denise Page Hood

**RESPONSE OF DOW SILICONES CORPORATION,
THE DEBTOR'S REPRESENTATIVES AND THE CLAIMANTS'
ADVISORY COMMITTEE TO YEON HO KIM'S MOTION FOR
EXCLUSION OF DOW CORNING CORPORATION, THE DEBTOR'S
REPRESENTATIVES AND THE CLAIMANTS' ADVISORY
COMMITTEE FROM YEON HO KIM'S CROSS MOTION FOR ENTRY
OF AN ORDER TO SHOW CAUSE WITH RESPECT TO THE FINANCE
COMMITTEE**

For the reasons set forth in the attached brief, Dow Silicones Corporation (“Dow Silicones”),¹ the Debtor’s Representatives (the “DRs”) and the Claimants’ Advisory Committee (the “CAC”) oppose Yeon Ho Kim’s Motion for Exclusion of Dow Corning Corporation, the Debtor’s Representatives and the Claimants’ Advisory Committee from Yeon Ho Kim’s Cross Motion for Entry of an Order to Show Cause with Respect to the Finance Committee (“Motion for Exclusion”) and respectfully submit that the Motion for Exclusion should be denied.

¹ As Dow Silicones Corporation previously advised the Court, Dow Corning Corporation changed its name to Dow Silicones Corporation on February 1, 2018.

February 20, 2018

*On Behalf of Dow Silicones
Corporation and the Debtor's
Representatives*

/s/ Deborah E. Greenspan

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Respectfully submitted,

*On Behalf of Claimants' Advisory
Committee*

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Joint Plan of Reorganization (“Plan”) (Doc. #1275-2)) or Plan Documents.² The Settlement Facility Agreement (“SFA”) (Doc. #1275-6) Section 4.09 provides that the CAC and/or the DR’s “may file a motion or take any other appropriate actions to enforce or be heard in respect of the obligations in the Plan and in any Plan Document.” SFA §4.09(c)(v).

Mr. Kim contends that Respondents have no interest in the Cross Motion for Entry of an Order to Show Cause with Respect to the Finance Committee (the “Cross Motion,” Doc. # 1357) because the Cross Motion seeks sanctions only against the Finance Committee. This is plainly wrong: the Cross Motion seeks an order compelling the Finance Committee to implement an unsigned purported mediation agreement by paying \$5 million to Mr. Kim.³ This payment, were it to

² Unless otherwise defined, capitalized terms used herein shall have the meaning provided in the Plan.

³ This is precisely the same relief sought in Mr. Kim’s earlier Motion for Recognition and Enforcement of Mediation (the “2016 Kim Mediation Motion,” Doc. # 1271). Dow Silicones, the DRs and the CAC opposed the 2016 Kim Mediation Motion (*see* Opposition of Dow Corning Corporation, the Debtor’s Representatives and the Claimants’ Advisory Committee to Motion for Recognition and Enforcement of Mediation (Doc. No 1275) (“Joint Opposition to 2016 Kim Mediation Motion)), as did the Finance Committee (*see* Finance Committee Response to Motion for Recognition and Enforcement of Mediation (Doc. No. 1274)). Respondents incorporate herein the entire record on the 2016 Kim Mediation Motion, including the Joint Opposition to the 2016 Kim Mediation Motion and exhibits thereto. The Cross Motion should be dismissed for the same reasons set forth in the Joint Opposition to 2016 Kim Mediation Motion.

be made, would come from the Settlement Fund.⁴ As explained in the Opposition of Dow Corning Corporation, the Debtor's Representatives and the Claimants' Advisory Committee to Yeon Ho Kim's Cross Motion for Entry of an Order to Show Cause with Respect to the Finance Committee (Doc. # 1372) and in the Joint Opposition to 2016 Kim Mediation Motion, any such payment would violate the Plan.⁵

Respondents have the indisputable right to take action to ensure that the Plan is properly implemented and that monies are distributed from the Settlement Fund strictly in accordance with the terms of the Plan and Plan Documents. There is

⁴ As used herein, "Settlement Fund" has the meaning set forth in Section 3.02 of the SFA. The "Settlement Fund" is a capped fund that is to be used to pay certain classes of claims including all Settling Personal Injury Claims in Classes 5, 6.1 and 6.2. SFA §3.02(a)(ii) (Doc. #1275-6).

⁵ The Plan provides for the indemnification of the Finance Committee. The SFA provides that any member of the Finance Committee:

shall be indemnified by the Settlement Facility against reasonable expenses, costs and fees (including reasonable attorneys' fees), judgments, awards, costs, amounts paid in settlement, and liabilities of all kinds incurred by the Finance Committee member in connection with or resulting from such action, suit, or proceeding, with respect to the actions at issue, if he or she acted in good faith and in a manner the Finance Committee member reasonably believed to be in, or not opposed to, the best interests of the Settlement Facility.

SFA § 4.08(h) (Doc. #1275-6). "All such amounts shall be paid from the Settlement Fund." *Id.*

simply no credible argument that they can be “excluded” from responding to the Cross Motion.

CONCLUSION

For the foregoing reasons, Dow Silicones Corporation, the DRs and the CAC respectfully request that the Court deny the Motion to Exclude, Cross Motion, and 2016 Kim Mediation Motion.

February 20, 2018

Respectfully submitted,

*On Behalf of Dow Silicones
Corporation and the Debtor's
Representatives*

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CERTIFICATE OF SERVICE

I hereby certify that on February 20, 2018, 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 registered counsel in this case.

Dated: February 20, 2018

/s/ Deborah E. Greenspan

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