

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

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

**FINANCE COMMITTEE’S MOTION FOR
ENTRY OF AN ORDER TO SHOW CAUSE WITH
RESPECT TO YEON HO KIM’S EXCESSIVE ATTORNEY’S FEES**

The Finance Committee files this Motion to require Yeon Ho Kim to appear before this Court and show cause why he should not be sanctioned, held in contempt, and otherwise required to respond as a result of the conduct of his law office, namely, that his law office charged Claimants unauthorized and excessive amounts in fees and expenses. In support of this motion, the Finance Committee would respectfully show the Court as follows:

1. On May 15, 1995, Debtor filed a petition for reorganization under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Michigan. On November 30, 1999, the Court entered the Order confirming the Plan of Reorganization of Dow Corning Corporation (“the Confirmation Order”), and on June 1, 2004, the Amended Joint Plan of Reorganization of Dow Corning Corporation (“the Plan”) became effective.

Pursuant to the Plan and the Confirmation Order, the Settlement Facility and Fund Distribution Agreement (“SFA”) became effective on June 1, 2004. *See* Exh. A.

2. The SFA establishes the Settlement Facility (“SF-DCT”), which among other things, assumes liability for and resolves claims of settling Personal Injury Claimants, and distributes funds to Claimants with allowed claims. The Court supervises the resolution of Claims under the SFA and is authorized to perform all functions relating to the distribution of funds. *See* Exh. A, SFA § 4.01. 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. *See* Exh. A, SFA § 10.09 (“All funds in the Settlement Facility are deemed in *custodia legis* until such times as the funds have actually been paid to and received by a Claimant.”).

3. Yeon-Ho Kim is the attorney-of-record representing a number of Claimants primarily located in Korea. In that capacity, Mr. Kim is aware that he is bound by the SFA to cap his recovery of fees. *See* Exh. B, Annex A to the SFA, Art. IX, § 9.01. Specifically, section 9.01(a) provides:

The fees charged by individually-retained attorneys to a Claimant who elects to participate in the Dow Corning Settlement Program shall not exceed the sum of:

- (i) 10 percent of the first \$10,000 paid to such Claimant;
- (ii) 22.5 percent of the next \$40,000 paid to such Claimant; and
- (iii) 30 percent of the amount in excess of \$50,000 paid to such Claimant.

4. By order dated July 16, 2004, this Court adjusted the attorney fee schedule applicable to counsel for Class 6.1 Claimants. *See* Exh. C. The Court's Order capped the recoverable fees for individually retained attorneys for Class 6.1 Claimants as follows: "(i) 10 percent of the first \$6,000 paid to such Claimants; (ii) 22.5 percent of the next \$24,000 paid to such Claimant; and (iii) 30 percent of the amount in excess of \$30,000 paid to such Claimant."¹

5. Despite the clear and unambiguous limitations that the SFA places on the amount in fees that an individually retained attorney can recover, the SF-DCT has learned that Yeon-Ho Kim has established the impermissible practice of charging Claimants an excessive fee in violation of the SFA's terms.

6. In or around March 2017, a Claimant identified herein as SID No. 2783411, contacted the SF-DCT to raise concerns about the 38% fee deducted from her claim of \$6,000 by her individually retained attorney, Yeon-Ho Kim. In addition to raising her concerns, SID No. 2783411 submitted the Compensation Payment Application and Pledge (the "Agreement") that Mr. Kim used to sign up new Claimants. *See* Exh. E. Although the SFA caps an individually retained attorney's recovery of fees to 10% on the first \$6,000 for Class 6.1 Claimants, like SID No. 2783411, the Agreement states that Mr. Kim is entitled to deduct a **38%** fee from the Claim award. The Agreement also requires Claimants to conceal "any

¹ Similarly, on April 8, 2005, this Court issued an order adjusting the fee schedule applicable to counsel for Class 6.2 Claimants as follows: "(i) 10 percent of the first \$3,500 (U.S.) [,] (ii) 22.5 percent of the next \$14,000 (U.S.), and 30 percent of any amount over \$17,500 (U.S.)." Exh. D.

information related to the compensation payment [from] external parties such as a third person.” *Id.*

7. On March 13, 2017, the SF-DCT sent Mr. Kim a letter in which it addressed the concerns raised by SID No. 2783411 regarding Mr. Kim’s 38% deduction from her Claim award. *See* Exh. F. Specifically, the SF-DCT reminded Mr. Kim that the maximum fee allowed for a \$6,000 claim was 10% or \$600.00 (USD). In addition, the SF-DCT observed that while certain types of costs incurred on a Claimant’s behalf are recoverable, including medical evaluation expenses, expenses incurred to obtain copies of medical records, court costs, and travel costs, such costs must be “solely attributable to [a Claimant’s] claim or case.” The SF-DCT concluded by requesting that Mr. Kim adjust his fee schedule to comply with the fee schedule contained in the Plan documentation, which includes the SFA.

8. Two days later, Mr. Kim responded to the SF-DCT’s March 13, 2017 letter. *See* Exh. G. He admitted that he had a “special agreement” with SID No. 2783411. Further, and despite the SF-DCT’s duty to ensure that no Claimants are charged fees in excess of what is permitted under the SFA, Mr. Kim charged that it

was “inappropriate and unreasonable for [the SF-DCT] to be involved in the dispute of the fee and the expenses.”² *Id.*

9. On June 21, 2017, the SF-DCT sent Mr. Kim another letter, reiterating that his practice of charging clients a 38% fee was not permitted under the SFA. *See* Exh. J. The SF-DCT also addressed the allegation that Mr. Kim charged his clients a \$200 filing fee, when in fact, the SF-DCT did not charge Claimants a fee to file a claim. The SF-DCT requested that Mr. Kim confirm in writing that his law firm was complying with the fee schedule dictated by the SFA for all of his clients. The SF-DCT further cautioned Mr. Kim that if he continued to violate the SFA, it would bring his violations to the Court’s attention.

10. Finally, on July 18, 2017, Mr. Kim responded to the SF-DCT with a self-serving letter in which he attempted to justify the excessive fee that he routinely charges Claimants. Exh. K. Specifically, Mr. Kim admitted that, as a practice, he charges clients a 38% percent fee, but that only 10% of that fee is retained as attorney’s fees and the remaining 28% is for recoverable expenses. Notably, however, Mr. Kim refused to provide any documentation to support his purported breakdown of fees (absent a face-to-face meeting with the SF-DCT), and

² On March 16, 2017, the SF-DCT sent Mr. Kim an amended letter that included reference to the adjusted attorney fee schedule implemented pursuant to the Court’s July 16, 2014 Order, a copy of which was attached thereto. *See* Exh. H. In response, Mr. Kim reiterated his position that the SF-DCT should not be involved “in disputes over the fees and the expenses with [his] clients.” Exh. I.

maintained his position that it was “inappropriate” for the SF-DCT to seek such documentation.

11. It appears that Mr. Kim has established a practice of deducting an excessive 38% fee from Claimant’s recovery, which violates the SFA’s terms. Mr. Kim’s conduct has diverted SF-DCT’s employees from performing their normal duties and necessitated the utilization of counsel, which has caused the SF-DCT to incur unnecessary expenses.

12. This Court supervises the distribution of funds from the SF-DCT to Claimants. There can be no dispute that the claim payment funds sent to Mr. Kim’s law office are in the custody of the Court until those funds are actually received by the Claimants. *See* Exh. A, § 10.09. Accordingly, the Court is entitled to know with certainty whether funds sent to Mr. Kim have been inappropriately deducted from such funds in excess of the SFA’s limits, and therefore, in violation of the SFA’s terms. Moreover, if Mr. Kim impermissibly withholds funds from Claimants’ recovery to which he is not entitled, the Court should require Mr. Kim to return those funds.

13. While there is no order or injunction requiring Mr. Kim’s compliance with the SF-DCT’s requests, his conduct clearly contradicts the SFA and the Court’s custody over the funds in question. Therefore, the imposition of civil contempt sanctions is warranted. District courts have inherent power to enforce

compliance with orders through civil contempt. *Elec. Workers Pension Trust Fund of Local Union #58, IBEW v. Gary's Elec. Serv. Co.*, 340 F.3d 373, 378 (6th Cir. 2003).

14. The Finance Committee respectfully requests that the Court enter an order requiring Yeon Ho Kim to appear before this Court on March 22, 2018 at 9:30 a.m., and show cause why he should not be sanctioned, held in contempt, and otherwise required to respond regarding his practice of charging Claimants excessive amounts in fees and expenses in violation of the SFA. At the hearing, following submission of this and other evidence, the Finance Committee will ask that the Court find Mr. Kim in contempt and enter such sanctions and penalties as the Court deems appropriate.

Respectfully submitted,

SMYSER KAPLAN & VESELKA LLP

/s/ Karima G. Maloney

Karima G. Maloney

Texas Bar No. 24041383

(E.D. Mich. admitted)

700 Louisiana Street, Suite 2300

Houston, Texas 77002

(713) 221-2382 (telephone)

kmaloney@skv.com

COUNSEL FOR FINANCE COMMITTEE

CERTIFICATE OF SERVICE

I hereby certify that on March 7, 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.

By: /s/ Karima G. Maloney
SMYSER KAPLAN & VESELKA LLP
Texas Bar No. 24041383
(*E.D. Mich. admitted*)
700 Louisiana Street, Suite 2300
Houston, Texas 77002
(713) 221-2382 (telephone)
kmaloney@skv.com
COUNSEL FOR FINANCE COMMITTEE