

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

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

**MOTION FOR VACATING DECISION OF SETTLEMENT FACILITY
REGARDING ADDRESS UPDATE/CONFIRMATION**

I. Background

The Korean Claimants, through Yeon-Ho Kim (“the attorney”), files this Motion to vacate the decisions of the Settlement Facility (“the SF-DCT”) regarding address update/confirmation.

After the delay of processing the Korean Claims for many years, the SF-DCT has started to send letters asking valid address confirmation to both the Claimants and the attorney from around May, 2015. (Exhibit 1)

Actually, the Korean Claimants submitted their current addresses in the year of 2005 till 2006. The Claimants submitted the address with the Government-issued Resident Registry. (Exhibit 2)

The Korean Claimants did not receive any notice from the SF-DCT for many years (from

June, 2004 to 2009). The SF-DCT did not correspond to the attorney either.

Accordingly, there was no issue about address update/confirmation. The SF-DCT did not ask the attorney to update the address of the Claimants either.

The SF-DCT has started asking for valid address confirmation to the attorney from around May, 2015.(Exhibit 1)

However, the Korean Claimants did not want to submit their updated addresses to the SF-DCT for their personal reasons. From the beginning of 1994, when the client-attorney relationship was established, most of the Claimants marked the box of CONFIDENTIAL for participation in the Global Settlement Program. Since then, many Claimants wanted a commitment from the attorney that their privacy must be kept, and the attorney must not send a mail (including letter) to their home and they wanted to correspond over the phone (a later version, “smart phone”) if necessary, and all of the correspondence from the US must not be delivered to their home.

Upon receiving a lot of complaints from many clients (“the Claimants”), initiated by the SF-DCT when the SF-DCT has started the mailing of address update/confirmation around from May 2015, the attorney wrote two letters to the SF-DCT.

On June 8, 2017, the attorney explained Mrs. Ellen Bearicks, Quality Control Manager, that most of the Korean Claimants did not want to receive a letter including the award letter from the SF-DCT, and did not want their family members including the husband to know whether they underwent a breast implant surgery or whether they received the payments in relation to diseases claims due to the surgery, and really want the attorney to keep their filings confidential to others including the SF-DCT, and protested that the attorney had released their addresses to the SF-DCT. (Exhibit 3)

The Attorney further explained Mrs. Bearicks that the attorney was not allowed to release address information (“personal information”) of the clients without permission under the Personal Information Protection Act of Korea but the attorney kept cellular phone number of the Claimants thus had no problem to contact them when necessary.

On July 28, 2017, the attorney explained the Claims Administrator, Mrs. Ann Phillips, in a response letter, that the SF-DCT did not maintain consistency in processing the claims of the Korean Claimants, and the attorney had explained Mrs. Bearicks in a response letter to her letter that the Claimants did not want to update their addresses and the attorney was not allowed to do without their permission under the Korean personal information protection laws, and the attorney must keep the laws of his jurisdiction of Korea. (Exhibit 4)

The attorney further explained that whether further processing would occur for the enclosed Claimants¹ was up to the SF-DCT, and the Korean Claimants would file a Motion to vacate the decisions of the SF-DCT by adding that the attorney liked to receive from the SF-DCT the final letter that the enclosed Claimants failed to comply with the SF-DCT’s written requests for current address and thus the SF-DCT determined to stop processing of the Claims of the Korean Claimants permanently.

The Claims Administrator did not respond to this letter of the attorney.

However, the Korean Claimants followed the SF-DCT’s letter around December, 2017. The 60 Claimants out of 148 Claimants that the SF-DCT had picked up sent the updated addresses to the SF-DCT through the attorney. They allowed the attorney to update their addresses. The 60 Claimants have accepted their payments before the update of the address.

¹ The SF-DCT enclosed the list of the whole Korean Claimants by suggesting that all of the Korean Claimants should be held processing of their Claim.

On January 10, 2018, the Finance Committee filed the Motion for Entry Order to Show Cause. In this Motion, the Finance Committee sought an order to return \$370,500 paid to the 88 Claimants to the SF-DCT. (Exhibit 5) The 88 Claimants submitted the address update/confirmation form marked “UNCHANGED”.

On July 25, 2018, Closing Order 1 for Final June 3, 2019 Claim Deadline (Establishing Final Cure Deadlines, Revised Claim Review Procedures, and Appeal Deadlines) was docketed on the Court site.(Exhibit 6)

On January 14, 2019, the US Court of Appeals for the Sixth Circuit² dismissed the Korean Claimants’ appeal to this Court’s Decisions on the Motions seeking the reversal of POM decisions of the SF-DCT and the re-categorization of South Korea from the year that South Korea’s GDP per capita actually surpassed sixty percents of the GDP per capita of the US, not from the year that the Finance Committee determined the year of 2015 proper. (Exhibit 7)

On January 29, 2019, this Court ordered that the SF-DCT is directed to proceed promptly with the processing and payment of 50 percent of all Second Priority Payments.(Exhibit 8)

On March 13, 2019, the SF-DCT, through Mrs. Bearicks, sent a letter via email and regular mail to the attorney indicating that certain Claims would not be issued any payments for which they might be eligible, the attorney must provide addresses in the format as recommended by the US Postal Service, all Claimants eligible for a Partial Premium Payment must confirm their current addresses, Partial Premium Payments could be issued only after the SF-DCT received an address in the proper format described, the Korean Claimants with

² Circuit Judge John Rogers commented during hearing of December 4, 2018, “The Korean Claimants did not get what they were supposed to get.”

deficiencies as described would be adversely affected if the attorney failed to take an action as required by the Notice and Closing Orders, and all deficiencies must be resolved by the June 3, 2019 deadline or the Claims will be denied.(Exhibit 9)

On March 19, 2019, Closing Order 2 (Regarding Additional Procedures for Incomplete and Late Claims: Protocols for Issuing Payments: Audits of Attorney Distributions of Payments: Protocols for Return of Undistributed Claimant Payment Funds: Guidelines for Uncashed Checks and for Reissuance of Checks: Restrictions on Attorney Withdrawal) was docketed on the Court site.(Exhibit 10)

On April 4, 2019, the SF-DCT sent a letter under the title as Second Priority Payments-Immediate Action Required including a list of the Korean Claimants to the attorney.(Exhibit 11)

This letter was delivered in the mid-July, 2019. The US Postal Service took over three months to be delivered to the attorney.

With respect to this letter, Mrs. Phillips indicated in the Declaration (Exhibit 12, submitted as Exhibit G, July 20, 2020 Declaration of Ann Phillips, in the Motion for Premium Payments to Korean Claimants), “The letter included as an enclosure a form listing 924 claimants. The form was structured so that Mr. Kim could fill in language to confirm whether the identified address for each claimant was correct or to provide an updated address or to indicate if counsel no longer represented the claimant. The Address listed on the form for each claimant was the address that the SF-DCT had on file.”

Obviously, this letter was delivered to the attorney after the deadline of June 3, 2019. (Exhibit 9, Letter of Ellen Bearicks of March 3, 2019. *See* the last paragraph, “All deficiencies must be resolved by June 3, 2019 deadline or the Claims will be denied.”)

In addition, this letter did not have any explanation why the SF-DCT sent to the attorney suddenly. There was no idea to anybody that the form included in the letter was structured so that the attorney could fill in language to confirm whether the identified address for each claimant was correct or to provide an update address or to indicate if counsel no longer represented the claimant.

Mrs. Phillips indicated in the above Declaration, “Mr. Kim did not return the form sent with the April 4, 2019 mailing.”

But this letter was not delivered until the deadline of June 3, 2019 so that the address update/confirmation of the Claimants must have been useless even if the attorney had returned the form to the SF-DCT.

On June 3, 2019, however, separately from the SF-DCT’s letter of April 4, 2019, the attorney submitted the SF-DCT the address update/correction form filled out by the attorney for the 676 Korean Claimants who allowed him to update their addresses. The 676 Claimants had already received a notice of the SF-DCT at least once that their addresses were invalid. (Exhibit 13) Accordingly, a variety of Claimants were included in the 676 Claimants let alone the Claimants with no Claim filed. In view of the non-filing Claimants, it was odd that the SF-DCT wanted to confirm the address of the non-filing Claimants who did not even submit Claim including the POM to the SF-DCT.

The Korean Claimants’ address update or correction submission of June 3, 2019 was the second bulk of address update. And it must be final because June 3, 2019 was the deadline. (Exhibit 9, Letter of Ellen Bearicks of March 3, 2019. “All deficiencies must be resolved by June 3, 2019 deadline or the Claims will be denied.”)

Nevertheless, Mrs. Phillips indicated in the Declaration (Exhibit 12), “The SF-DCT has not received any additional address information for Korean Claimants since the notification (*meaning* a letter of March 3, 2020) was sent to Mr. Kim in March.”

On March 3, 2020, the SF-DCT, through Mrs. Phillips, sent a letter titled as Closing Order 2 Required Claimant Confirmation of Current Address with a list of the Korean Claimants and Closing Order 2.(Exhibit 14) This letter was delivered to the attorney on July 3, 2020. The US Postal Service took four months to be delivered.

This letter indicated that the payments shall be sent to the attorney (referring to as “your office”) for distribution to the Claimants after the Claimants directly confirmed that they currently resided at the address that the attorney has provided.

It is an unreasonable decision that because the SF-DCT did not have updated addresses of the Claimants in mailing files the SF-DCT could not receive updated addresses directly from the Claimants.

This letter invalidated the attorney’s address update/correction for the Claimants as a matter of fact. Mrs. Phillips has sternly committed that address update/correction by the attorney could not be accepted and the Claimants must confirm their addresses directly to the SF-DCT.

Mrs. Phillips indicated in the Declaration (Exhibit 12), “The SF-DCT has not received any additional address information for Korean Claimants since the notification was sent to Mr. Kim in March.”

Any additional address information for Korean Claimants from the Claimants could not be received because not only did the deadline of June 3, 2019 expire but also the Korean

Claimants did not want to update their address.

Mrs. Phillips indicated in the Declaration that the SF-DCT conducted an audit of mailings to Korean Claimants in early 2020.

The audit looks contributing to the decision of the SF-DCT of March 3, 2020.

Anyhow, Mrs. Phillips added in the Declaration that the audit revealed that of 1,382 claimants who were eligible for future payments, 600 had correspondence sent directly to the claimants that has been returned as undeliverable, 39.2% of mailings to 2,476 claimants with eligible Class 5 and 6 claims were returned and undeliverable, and 50% of the mailings to updated addresses provided in January 2018 were returned and undeliverable.

Assuming that Mrs. Phillips' statements correctly reflected the audit, the audit was not shared with the attorney whatsoever. In addition, the audit was unreliable because the data of mailings were based on incorrect delivery or far-late delivery of the US Postal Service to South Korea. The Korean Claimants ask the SF-DCT to deliver the audit to the attorney.

On May 13, 2020, the SF-DCT sent a letter titled as Notice of Payment Hold for Invalid Claimant Address for the 24 Korean Claimants to the attorney. (Exhibit 15) This letter was delivered on September 1, 2020. The US Postal Service took nearly four months to be delivered.

Late delivery of the US Postal Service to Korea has been notorious. There should be more cases that the mailing files of the Korean Claimants at the SF-DCT were kept incorrectly and falsely. There might exist many cases for the Claimants and the attorney that the mailing of the US Postal Service have never been delivered. The attorney has received a lot of calls from the Claimants over the years that they had received a letter from the SF-DCT

but there was no letter for Claimants delivered to the attorney.

This letter of May 13, 2020 indicated that the SF-DCT acknowledged the receipt of an updated address but a notice was hereby provided that no payment for the Claimants would be issued without confirmed current addresses.

On June 1, 2020, the US Court of Appeals for the Sixth Circuit ³dismissed the Korean Claimants' appeal to this Court's Decisions on the Motion for Recognition and Enforcement of Mediation Agreement because the Agreement was not finalized. (Exhibit 16)

On June 6, 2020, the Korean Claimants filed the Motion for Premium Payments. (Exhibit 17)

On July 19, 2020, the attorney sent a letter to Mrs. Phillips that the attorney has experienced non-delivery and late delivery over the years so that the attorney proposed the SF-DCT to use the Federal Express to the attorney rather than the US Postal Service. (Exhibit 18)

On July 27, 2020, Mrs. Phillips declined the proposal. (Exhibit 19)

II. Relief to be Sought

1. Basis for Relief

³ Circuit Judge Chad Readler said during hearing as of January 29, 2020 that the Korean Claimants did not receive their share from Dow Corning. It was a similar version with Circuit Judge John Rogers during hearing for the appeal to this Court's decision for the Motion for Reversal of the SF-DCT Decisions regarding the POM as of December 4, 2018.

(1) The Korean Claimants do not want to update their address submitted to the SF-DCT

The Korean Claimants do not want to update their address submitted to the SF-DCT. The reasons that the attorney found out were mostly personal.

First of all, they do not want to be hurt psychologically because of the letters sent by the SF-DCT. They feel shameful to have underwent silicone breast surgery while young. Their sufferings from the defect of silicone material have been tremendous but they almost forgot their wounds and anguish from the defected goods and feel stable now. The letters from the SF-DCT asking for address update is just a reminder of past sufferings. There are many Claimants who called and complained to the attorney why they should receive the letters from the SF-DCT that they have not known well. They asked the attorney for the SF-DCT not to send a letter to their home.

Second, they are afraid that the letter of SF-DCT let the family members including husband and their children know whether wife/mama received silicone breast surgery. As a grandmother now, they are extremely careful for their grand children not to know their plastic surgery. They want their silicone breast surgery secret.

Third, there are many cases that the Claimants returned the letters of SF-DCT without opening it. And then, they called the attorney and asked that everything for this participation in Dow Corning Settlement shall be taken care of by the attorney and filed complaint with the attorney that if the letter from the US, whether the SF-DCT or Dow Corning, were delivered to their home over and over they would even withdraw from participation in the Dow Corning Settlement Program.

(2) The attorney did the best to fulfill address update/confirmation to the SF-DCT

The attorney is not allowed the address of the Claimants to submit to the SF-DCT unless the Claimants have permitted specifically. The Personal Information Protection Act of Korea where the attorney is subject to is clear and strict. Nobody can disclose the personal information including address.

Nevertheless, the attorney submitted address update/correction for the Claimants twice to the SF-DCT, in January, 2018 (148 Claimants) and in June, 2019 (676 Claimants). By the urging of the attorney, the Claimants (676 Claimants), having received the notice for address update from the SF-DCT from 2015 to 2018, allowed the attorney to submit their address. It is not warranted that they are correct because they might have told wrong address to the attorney and the attorney were updating their address occasionally only when the Claimants asked for it.

(3) The SF-DCT put the deadline for the address update as of June 3, 2019

The SF-DCT indicated in the letter of March 13, 2019 to the attorney that all deficiencies including missing or invalid address for the Claimants must be resolved by June 3, 2019. Otherwise, the Claims will be **denied**. Following the letter of the SF-DCT of March 13, 2019, the attorney submitted the 676 Claimants' address update form signed by the attorney.

The SF-DCT suggested through the Declaration of Ann Phillips that the Claimants must submit additional address information but the suggestion is contradictory to the letter of the SF-DCT of March 13, 2019.

2. Relief to be Sought

As the history of address update/confirmation to the Korean Claimants has shown, the SF-DCT's decisions on address update has been one-way process and a strike move to the

attorney.

The attorney has asked the Claims Administrator of the SF-DCT a meeting to explain situations of the Korean Claimants several times but was declined. Mrs. Phillips suggested the attorney that if the attorney wanted to meet he should communicate in writing only. The attorney wrote but was always declined.

Therefore, there is no way to resolve the SF-DCT's decisions on address update/confirmation but for filing this Motion with the Court.

The SF-DCT's actions regarding address update/confirmation to the Korean Claimants are arbitrary and unsubstantiated.

In view of the Korean Claimants, the decisions of the SF-DCT in the following on the basis of address update/confirmation must be vacated.

- (1) The processing of the Korean Claims shall be performed. The SF-DCT must lift the hold;
- (2) The Payments for the Claimants whose Claims were accepted shall be paid immediately;
- (3) The 50% Second Priority Payments shall be promptly paid as this Court directed;
- (4) The letter of the SF-DCT of March 3, 2020 that the address update of the Korean Claimants is directly confirmed by the Claimants, not by the attorney, shall be withdrawn;
- (5) The other relief which is appropriate for the Korean Claimants not to be harmed from the address update/confirmation process shall be made by the SF-DCT.

For the foregoing reasons, the Korean Claimants request this Court to GRANT this

Motion for Vacating Decisions of Settlement Facility Regarding Address Update/Confirmation.

Date: January 15, 2021

Respectfully submitted,

(signed) Yeon-Ho Kim

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CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2021, this Motion has been electronically filed with the Clerk of Court using ECF system, and the same has been notified to all of the relevant parties of record.

Dated: January 15, 2021

Signed by Yeon-Ho Kim