Exhibit J

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

RESPONSE OF KOREAN CLAIMANTS TO FINANCE COMMITTEE'S RECOMMENDATION AND MOTION FOR AUTHORIZATION TO MAKE SECOND PRIORITY PAYMENTS

The Korean Claimants file this Response to object to the Finance Committee's Recommendation and Motion for Authorization to Make the Second Priority Payments ("the Finance Committee's Motion"). The Korean Claimants request this Court to dismiss the Finance Committee's Motion.

I. Standing of the Korean Claimants

To obtain authorization to distribute Second Priority Payments, the Finance Committee shall file a recommendation and motion with the District Court requesting authorization to distribute Second Priority Payments. The recommendation and motion shall be served on the Claimants' Advisory Committee, the Debtor's Representatives, the Shareholders, and all Non-Settling Personal Injury Claimants with pending Claims, and such parties shall have the opportunity to be heard with the respect to the motion. See 7.03 (a) Settlement Facility and Fund Distribution Agreement ("the SFA", Exhibit 1). The Claimants' Advisory Committee is supposed to be served and to be heard in the Motion.

The Claimants' Advisory Committee consists of three members to fulfill the functions described in the SFA and in the Litigation Facility Agreement, the Funding Payment Agreement, and other Plan Documents. *See* 4.09 (b) the SFA.

Three members are a Claimant and two lawyers. (Exhibit 2)

The Claimants' Advisory Committee shall attend the meetings of the Finance Committee, shall be authorized to advise and assist the Settlement Facility, Claims Administrator, Finance Committee, Litigation Facility, Finance Advisor, and Independent Assessor regarding all matters of mutual concerns, shall be provided with copies of all reports, projections, motions, pleading or other similar documents concerning of the Settlement Facility, and may file a motion or take any other appropriate actions to enforce or be heard in respect of the Claimants' Advisory Committee subject to approval by the Finance Committee as specified at Article VIII in the SFA. See 4.09 (c) the SFA. The Claimants Advisory Committee has vast powers under the SFA.

The authority of the Claimants' Advisory Committee ranges from the US Claimants to the foreign Claimants although none of the members of the Claimants' Advisory Committee are a foreigner or have a foreign background.

The reason for these vast powers under the SFA is because the Claimants' Advisory Committee is a committee designed by the Plan ("the Amended Joint Plan of Reorganization") to protect and work for the interests of the Personal Injury Claimants.

1.28 "Claimants' Advisory Committee" means those persons selected pursuant to the terms of the Settlement Facility Agreement to represent the interests of Personal Injury Claimants after the Effective Date. (Amended Joint Plan of Reorganization, Exhibit 3)

Accordingly, the Claimants' Advisory Committee functions as the agent in fact of the Claimants who participated in the Dow Corning Settlement Program, although not specifically empowered in writing.

The agency relationship with the Claimants is supported by the facts that the decisions of the Claimants' Advisory Committee have influenced the Claimants extensively. To confess the powers and the responsibilities, the Claimants' Advisory Committee has sent out several booklets explaining what benefits the Claimants would receive under the Settlement Program if the Claimants participated in settlement and how the Claimants could submit the documents for benefit to the Settlement Facility and opened the homepage and the SNS and has distributed periodical leaflets to explain the review process of the Settlement Facility and the transition of the Claims.

With respect to the Finance Committee's Motion, the Claimants' Advisory Committee was served and is to be heard.

The Korean Claimants were not served and not specified to be served. *See* 7.03 (a) the SFA

However, the Korean Claimants do not want the Claimants' Advisory Committee to act as the agent in fact for the Finance Committee's Motion.

In addition, the Korean Claimants are not precluded from filing an action as the creditors under the Bankruptcy laws.

> "W(w)e hold that a creditor or creditors' committee may have derivative standing to initiate an avoidance action where: 1) a demand has been made upon the statutorily authorized party to take action; 2) the demand is declined; 3) a colorable claim that would benefit the estate if successful exists, based on a cost-benefit analysis performed by the court, and 4) the in action is an abuse of discretion ("unjustified")

> in light of the debtor-in-possession's duties in a Chapter 11 case. A creditor has met its burden to show standing to file an avoidance action if it has fulfilled the first three requirements and the trustee or debtor-in-possession declined to take action without stating a reason. The burden then shifts to the debtor-in-possession to establish, by a preponderance of the evidence, that its reason for not acting is justified." *See In re The Gibson Group, Inc*. 66 3d 1436, 1440 (Sixth Cir. 1995)

The Korean Claimants, through their attorney, Yeon-Ho Kim, requested both the Debtor's Representatives and the Claimants' Advisory Committee to take action to object to the Finance Committee's Motion. (Exhibit 4)

But the Claimants' Advisory Committee rather supported it in their Response.

The Korean Claimants have a colorable claim that would benefit the estate if successful exists. The Finance Committee's Motion to make the Second Priority Payments, when many Claims are pending the Settlement Facility for review, inevitably lessens the possibility of receiving benefits under the Settlement Program.

The Korean Claimants request this Court to dismiss the Finance Committee's Motion. If successful, the Funds available for distribution to the unsolved Claims of the Claimants including the Korean Claimants will be intact so that the Korean Claimants' objection to the Finance Committee's Motion would benefit the estate.

Therefore, the Korean Claimants have a standing in this Motion.

II. History of Actions of Finance Committee with respect to Korean Claimants

The Korean Claimants have been hurt by the Finance Committee over the years because the Finance Committee did not act properly under the SFA and the Dow Corning Settlement Program and Claims Resolution Procedures.

First, the Finance Committee filed the Cross Motion to Dismiss the Korean Claimants' Motions including the Motion for Reversal of the SF-DCT's Decisions on Affirmative Statement. (Exhibit 5) The Motion was accepted by this Court. And then, the Finance Committee submitted the Brief to the Appellate Court upon appeal of the Korean Claimants. (Exhibit 6) The efforts of the Korean Claimants to get an approval of Affirmative Statement became futile. The Korean Claimants have suffered including the waste of time of six years and a lot of expenses.

Second, the Finance Committee has solicited the Korean Claimants into mediation process pending the Cross Motion. The Finance Committee, however, overturned the Mediation Agreement drafted on its own and signed by the Korean Claimants. (Exhibit 7) Then, the Finance Committee filed with this Court the Response to dismiss the Korean Claimants' Motion for Recognition and Enforcement of Mediation Agreement. The Courts, the District Court and the Appellate Court, accepted the Finance Committee's seeking. While seeking the dismissal of the Korean Claimants' Motion, the Finance Committee presented numerous lies to the Courts including Declaration of the Claims Administrator, suggesting that the Claims of the Korean Claimants were processed and nearly finished for the Payments. (Exhibit 8) The Korean Claimants have suffered including the waste of time of many years and a lot of expenses.

Third, the Finance Committee did not reimburse expenses and costs incurred by the Korean Claimants for preparing, submitting, attending and finalizing the mediation agreement. The Finance Committee made the Korean Claimants spend the hired attorney's fees for the mediation. The Finance Committee did not pay expenses and costs unnecessarily incurred to the Korean Claimants.

Fourth, the Finance Committee did not apply the change of Class for the Korean Claimants (from Class 6.2 to Class 6.1) in accordance with 6.05 (h) (ii) Dow Corning

Settlement Program and Claims Resolution Procedures. (Exhibit 9) The Korean Claimants were supposed to level up to Class 6.1 in 2009 from Class 6.2 because South Korea surpassed sixty (60) percents of GDP per capita of the US GDP per capita years earlier than 2009 but the Finance Committee applied the change of Class for the Korean Claimants from the year of 2015. The Finance Committee before having received the request for re-categorization from the Korean Claimants has withheld the application of re-categorization of Foreign Claimants over the years and then claimed to the Korean Claimants that the re-categorization of foreign countries under Schedule III of Dow Corning Settlement Program and Claims Resolution Procedures shall be applicable proactively, beginning from the request of the Claimant arrived. The Korean Claimants lost over a million dollars because the Finance Committee has withheld the application for re-categorization.

The Finance Committee has been prejudiced and biased from the perspective of the Korean Claimants. These views have resonated through the whole process of Korean Claims pending the Settlement Facility. The Korean Claimants object to the Finance Committee's Recommendation and Motion for Authorization to Make Second Priority Payments.

III. Basis for Objection

First, the Finance Committee shall be composed of three members consisting of individuals holding the following positions: the Special Master, a single Appeals Judge, and the Claims Administrator. *See* 4.08 (a) the FSA. Three members are a requirement for composition of the Finance Committee. If any position of three members is vacant, the Finance Committee's decisions shall be invalid.

The position of the Special Master is vacant. (Exhibit 10) There are only two members in the Finance Committee. The Finance Committee lacks a standing. Therefore, this Finance Committee's Motion shall be dismissed.

Even if not exactly applicable to the composition of the Finance Committee, the Supreme Court suggested with respect to the composition of National Labor Relations Board, which was similarly prescribed just as the Finance Committee, that the composition of the Committee [the Board] shall not be confused with quorum provision;

> "In sum, we find that the Board **quorum** requirement and the three-**member** delegation clause should not be read as easily surmounted technical obstacles of little to no import. Our reading of the statute gives effect to those provisions without rendering any other provision of the statute superfluous: The delegation clause still operates to allow the Board to act in panels of three, and the group **quorum** provision still operates to allow any panel to issue a decision by only two **members** if one **member** is disqualified. Our construction is also consistent with the Board's longstanding practice with respect to delegee groups. We thus hold that the delegation clause requires that a delegee group maintain a membership of three in order to exercise the delegated authority of the Board. We are not insensitive to the Board's understandable desire to keep its doors open despite vacancies. Nor are we unaware of the costs that delay imposes on the litigants. If Congress wishes to allow the Board to decide cases with only two **members**, it can easily do so. But until it does, Congress' decision to require that the Board's full power be delegated to no fewer than three **members**, and to provide for a Board **quorum** of three, must be given practical effect rather than swept aside in the face of admittedly difficult circumstances. Section 3(b), as it currently exists, does not authorize the Board to create a tail that would not only wag the dog, but would continue to wag after the dog **died.**" *See New Process Steel.,L.P. v. National Labor Relations Board*, 130 S.Ct. 2635, 687-688 (Supreme Court, 2010)

> "The Supreme Court's recent decision in *New Process Steel* indicates that § 153(b)'s three-**member**-composition requirement is jurisdictional. In that case, the Board had delegated its power to a three-**member** delegee group. Three days after the delegation became effective, the term expired for one of the three **members** of the delegated group. This left the group with only two **members**. 130 S.Ct. at 2638–39. The Supreme Court held that § 153(b)'s three-**member**-composition requirement meant that the "two remaining Board **members** cannot exercise" the authority of the Board. *Id.* at 2638, 2644 ("We thus hold that the delegation clause requires that a delegee group maintain a membership of three in order to exercise the delegated authority of the Board."). The presence of three Board **members** in a delegee group is a necessary condition for the Board to exercise its power to adjudicate a matter before it. *New Process Steel* renders the three-**member**-composition requirement "a threshold limitation" on the scope of the power delegated to the Board by the NLRA: the Board cannot exercise its power through a delegee group if that group has fewer than three **members**. This statutory mandate is therefore jurisdictional." *See National Labor Relations Board v. New Vista Nursing and Rehabilitation*, 719 F.3d 203, 212 (third Cir. 2014)

The three-member-composition requirement is a threshold limitation on the scope of the power delegated to the Finance Committee by the SFA. The Provision of SFA, 4.08 (c) Decisions. “The Finance Committee shall act by majority vote”, would not modify the three-member-composition requirement under 4.08 (a) Membership SFA. “The Finance Committee shall be composed of three members consisting of the individuals holding the following positions: the Special Master, a single Appeals Judge, and the Claims Administrator”.

Second, the Korean Claimants did not receive 50% Second Priority Payments even if this Court had finally approved the 50% Second Priority Payments in 2018. By delaying the Second Priority Payments to the Korean Claimants, the Finance Committee determined that the Korean Claimants’ addresses were not updated nor confirmed.

The Korean Claimants filed the Motion for Premium Payments. (Exhibit 11)

The Finance Committee is responsible for paying 50% Second Priority Payments immediately.

This Court ordered that the Settlement Facility is authorized and directed to proceed promptly with the processing and payment of 50 percent of all Second Priority Payments, as and when allowed for payment under the terms of the Plan, and subject to other existing or future orders governing distribution of claim payments, the Settlement Facility’s processing protocols and procedures, and the Finance Committee’s responsibility under Section 7.02 (b) of the Settlement Facility Agreement to establish procedures to verify the allowed amount of each claim certified for payment. (Exhibit 12)

The Finance Committee has ignored the responsibility for the 50% Premium Payments to the Korean Claimants. While the Finance Committee did not execute the responsibility, the Finance Committee has filed this Recommendation and Motion for Authorization to Make

Second Priority Payments.

The failure of 50% Second Priority Payments to the Korean Claimants shall be one of the basis for the objection of the Korean Claimants. The Finance Committee's Motion will not be helpful to the Korean Claimants at all because even if this Court accepted this Motion the Finance Committee would not pay the Second Priority Payments to the Korean Claimants.

Third, the Finance Committee's Motion would deprive the Korean Claimants of the funds likely distributed to the Korean Claimants whose Claims are pending the Settlement Facility.

The conclusion of the Independent Assessor that there would be a $172,595,097 surplus of funds even after making First and Second Priority Payments and paying administrative expenditures through 2024 is unreliable from the view of the Korean Claimants, who have suffered from a long delay of Payments by the Settlement Facility.

Therefore, this Finance Committee's Motion should be dismissed.

For the forgoing reasons, the Korean Claimants request this Court to dismiss the Finance Committee's Recommendation and Motion for Authorization to Make Second Priority Payments with prejudice.

Date: January 27, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 27, 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 27, 2021 Signed by Yeon-Ho Kim

List of Exhibits

Exhibit	1	Settlement Facility and Fund Distribution Agreement
	2	CAC Homepage Copy
	3	Amended Joint Plan of Reorganization
	4	Email
	5	Court Order for Finance Committee's Cross Motion
	6	Finance Committee's Brief
	7	Mediation Agreement
	8	Claims Administrator's Declaration
	9	Dow Corning Settlement Program and Claims Resolution Procedures, Annex to the SFA
	10	CAC Newsletter
	11	Motion for Premium Payments
	12	Court Order for Second Priority Payments

Exhibit 10

CLAIMANTS' ADVISORY COMMITTEE
Dow Corning Breast Implant / Bankruptcy Settlement
Volume 17, No. 2, February 18, 2020

Like or Follow us on Facebook at:
https://www.facebook.com/ClaimantsAdvisoryCommittee

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This is the 166th e-newsletter (Vol. 17, No. 2) from the Claimants' Advisory Committee (CAC) in the Dow Corning bankruptcy Settlement Plan. You were sent a copy of the newsletter because our records show that you requested to be on the mailing list. If you wish to unsubscribe, click here or to reply to this newsletter, send an email to: info@tortcomm.org. **Please do not hit "Reply" to this email address.** To contact the CAC, use the email address: info@tortcomm.org or dpend440@aol.com.

IN MEMORIAM: SPECIAL MASTER FRANCIS MCGOVERN

We are greatly saddened to share with you that Special Master Francis McGovern, who has been actively involved in the breast implant litigation since 1992, passed away suddenly on February 14, 2020. McGovern graduated from Yale University in 1967 and received a J.D. in 1973 from the University of Virginia. He served as a Captain in the U.S. Marine Corps from 1968 – 1971. In 1997, he was appointed as a Professor of Law at Duke University School of Law and a Visiting Professor of Law at the University of California at Berkeley, School of Law. He was the President of the Academy of Court-Appointed Masters, and on the Executive Committee of the American Arbitration Association, a member of the Mass Torts Commission for the American Bar Association, and on numerous other executive committees and conferences. He was appointed as a Special Master, Court Expert, Mediator, or Neutral in over 80 cases and mass torts over the last forty years. He is also the author of over 30 law review articles and two books.

He was appointed as a Special Master in MDL-926 by Chief Judge Sam C. Pointer, Jr. and helped facilitate the global settlement and the Revised Settlement Program. In 1997, he was appointed as Mediator in the Dow Corning bankruptcy proceeding. When the Dow Corning Settlement