

**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 EXTENSION OF DEADLINE FOR FILING CLAIM

The Korean Claimants, through their attorney, Yeon-Ho Kim, files this Motion for Extension of Deadline for Filing Claims.

I. Background

The Korean Claimants, who lost an opportunity to file their Claims by June 3, 2019, file this Motion.

The Korean Claimants have been ignored and disregarded by the Settlement Facility (SF-DCT) over the years after the Korean Claimants had decided to participate in the Dow Corning Settlement Program. Although the Korean Claimants filed their Claims from 2005 to 2006 following the Effective Date of Amended Joint Plan of Reorganization, June 1, 2004, the Settlement Facility did not process the Claims of the Korean Claimants timely. The Settlement Facility held the Claims of the Korean Claimants until 2010. The Settlement Facility did not inform the attorney for the Korean Claimants of the reason for delay.

During the period of delay of processing by the Settlement Facility, the Korean Claimants

requested this Court to issue Orders to help speed up the Claims of the Korean Claimants.

On December 15, 2004, the Korean Claimants filed the Motion for the Settlement Facility to locate Qualified Medical Doctor of Korea and either Pay for that Qualified Medical Doctor to Travel to Korea and Conduct the Disease Evaluation or Hire Qualified Medical Doctor in Korea to Conduct the Reviews at the Settlement Facility's Expense with this Court.(Exhibit 1)

On September 26, 2011, the Korean Claimants filed the Motion for Reversal of Decision of SF-DCT regarding Korean Claimants with this Court. This Motion was related to the overturn of the approval of Affirmative Statement of Korean implanting physicians by the Settlement Facility.(Exhibit 2)

Around 2012, the Finance Committee offered mediation to the Korean Claimants and signed a mediation agreement with the Korean Claimants.(Exhibit 3) The Finance Committee overturned the mediation agreement later.

On March 7, 2014, the Korean Claimants filed the Motion for Extension of Deadline of Class 7 Korean Claimants with this Court.(Exhibit 4) This Motion is related to extension of the cut-off date by the surgery date, January 1, 1993, to be eligible for the Class 7 Payments. This Motion was to object the proposed Consent Order submitted by the Plan Proponents, Dow Corning and the Claimants' Advisory Committee.

On April 7, 2014, the Korean Claimants filed the Motion for Re-Categorization of Korea with this Court.(Exhibit 5) This Motion was related to re-categorization of the foreign countries including South Korea because Amended Joint Plan of Reorganization prescribed a discount of the Payments to foreign Personal Injury Claimants on the basis of GDP per capita.

On April 24, 2015, with no progress made as to processing of the Claims of Korean Claimants, Dow Corning, the Debtor's Representatives and the Claimants' Advisory Committee filed the Joint Motion for Mootness regarding Motion for Re-Categorization of Korea, Motion for Reversal of Decision of SF-DCT and Motion for the Settlement Facility to locate Qualified Medical Doctor of Korea.(Exhibit 6)

On December 3, 2015, this Court issued Order Approving Consent Order to Establish Guidelines for Distribution for the Class 7 Silicone Material Claimants' Fund.(Exhibit 7) This Court overruled the objection of the Class 7 Korean Claimants to the proposed Consent Order.

The Class 7 Korean Claimants appealed to this Consent Order.(Exhibit 8)

On November 23, 2016, the United States of Appeals for the Sixth Circuit affirmed the Consent Order to Establish Guidelines for Distribution for the Class 7 Silicone Material Claimants' Fund.(Exhibit 9)

On December 14, 2016, the Korean Claimants filed the Motion for Recognition and Enforcement of Mediation with this Court.(Exhibit 10) This Motion was related to the overturn of the Mediation Agreement by the Finance Committee.

On December 28, 2017, this Court issued Order Granting Joint Motion to Render Moot Motions Filed on Behalf of the Korean Claimants.(Exhibit 11)

The Korean Claimants appealed to this Order granting the Joint Motion to Render Moot the Motions of the Korean Claimants.(Exhibit 12)

On December 12, 2018, this Court issued Order Denying Motion for Recognition and Enforcement of the Mediation Agreement.(Exhibit 13)

The Korean Claimants appealed to this Order denying the Motion for Recognition and Enforcement of the Mediation Agreement.(Exhibit 14)

On January 14, 2019, the United States Court of Appeals for the Sixth Circuit affirmed the Order granting the Joint Motion to Render Moot the Motions of the Korean Claimants.(Exhibit 15)

On June 1, 2020, the United States Court of Appeals for the Sixth Circuit affirmed the Order denying the Motion for Recognition and Enforcement of the Mediation Agreement.(Exhibit 16)

During the course of the above processing of motions and appeals, on July 25, 2018, the Korean Claimants was informed through the Electronic Filing System of the District Court the Closing Order 1 for Final June 3, 2019 Claim Deadline (Establishing Final Cure Deadlines, Revised Claim Review Procedures and Appeal Deadlines).(Exhibit 17)

The Paragraph 29 of the Closing Order 1 prescribed that the SF-DCT shall deny Proof of Manufacturer and benefit claim forms and documents that are postmarked on or after June 4, 2019.

There are more than four hundred Korean Claimants who lost an opportunity to submit their Claim by June 3, 2019.

II. Relief to be Sought

1. Basis for Relief

First of all, the Closing Order 1 has never been argued or briefed by the Claimants. It is

nothing more that the Parties-Dow Corning, the DRs, the CAC and FC-wish to facilitate efficient termination of the operations of the SF-DCT and have identified certain protocols and processing enhancements to achieve that goal as set to claims processing procedures. (See Paragraph 4, the Closing Order 1) There is no clause in the Settlement Facility and Fund Distribution Agreement (Exhibit 18) that the final date of filing Proof of Manufacturer and benefit claim and documents shall be June 3, 2019. Although Paragraph 5 of the Closing Order 1 says that Closing Order 1 is consistent with the Plan and the general authority and obligations of the Claims Administrator with respect to claims processing procedures, the Claims Administrator shall not overlook the benefits of the yet unfiled Claimants who participated in the Settlement Program. The fixing of the deadline of June 3, 2019 for filing the Claims was too hasty.

The Settlement Facility and Trust shall terminate as soon as practicable after the Reorganized Dow Corning's obligation to fund under the Funding Payment Agreement is terminated in accordance with Section 2.01(c) of the Funding Payment Agreement. The Claims Administrator will use her best efforts to substantially complete and terminate the Settlement Facility and Trust within sixty (60) days after such termination of the Funding Payment Agreement. (See 10.03 (a) the Settlement Facility and Fund Distribution Agreement)

The Settlement Facility shall terminate as soon as practicable but it can do only after Dow Corning's obligation to fund shall be in accordance with Section 2.01 (c) of the Funding Payment Agreement.

Section 2.01 (c) of the Funding Payment Agreement (Exhibit 19) reads as follows;

Dow Corning's obligation to fund up to the amount of the applicable Annual Payment Ceiling shall continue until the earlier of (i) the date when all Allowed Claims in each of Classes 5 through 19 and all other obligations of the Settlement Facility and the Litigation

Facility have been paid, all Claims filed have been liquidated and paid or otherwise finally resolved, and no new timely Claims have been made against the Settlement Facility or the Litigation Facility for two consecutive Funding Periods; or (ii) the payment of all amounts required by this Agreement. Upon the occurrence of one or more of the events set forth in the immediate preceding sentence, Dow Corning shall seek confirmation from the Court, after notice to all other Parties and the opportunity for hearing, that Dow Corning funding obligations under this Agreement are terminated.

Whether Dow Corning executed the payment of all amounts required under the Funding Payment Agreement is unclear to the Korean Claimants.

However, Dow Corning should have given notice to the all other Parties including the Korean Claimants and the opportunity for hearing. There were neither notice nor hearing for Termination/Closure prescribed in 10.03 (a) of the Settlement Facility and Fund Distribution Agreement.

Termination/Closure under the Settlement Facility and Fund Distribution Agreement was implemented in the form of the Closing Order 1. There were neither notice nor hearing when the Closing Order 1 was docketed on the Court site.

Accordingly, the Closing Order 1 is ineffective so that the Korean Claimants are not subject to the Paragraph 29 of the Closing Order 1.

In addition, whether The Claims Administrator used her or his best efforts to substantially complete the Claims of the Settlement Facility as prescribed in 10.03 (a) of the Settlement Facility and Fund Distribution Agreement was doubtful.

The Claims Administrator issued the decisions of the Settlement Facility which were not

understandable to the Korean Claimants. The Claims Administrator has declined a proposal for meeting from the attorney for the Korean Claimants over the years. The Korean Claimants filed Motions with this Court to contest the decisions of the Settlement Facility. Furthermore, the hasty decision of the Claims Administrator to close the Settlement Facility rouses a suspicion to fatten the interests of the insurers in the Dow Corning Settlement Program to the Claimants.

The Claims Administrator did not use her best efforts to substantially complete the Claims of the Settlement Facility as prescribed in 10.03 (a) of the Settlement Facility and Fund Distribution Agreement.

Second, the Korean Claimants had their Motions and Appeals pending the Courts when the Closing Order 1 was issued by this Court. Those were dispositive so that either the processing of the Claims of the Korean Claimants in the Settlement Facility could have been changed to a different direction, or the processing of the Claims of the Korean Claimants by the Settlement Facility must have not been necessary anymore, if the Korean Claimants' Motions had been successful. Thus over four hundred Korean Claimants who waited for the outcome of the Appeal to the Motion for Recognition and Enforcement of the Mediation Agreement did not submit their Claim to the Settlement Facility by June 3, 2019. Especially, they were optimistic about the outcome.

2. Relief to be Sought

The Korean Claimants request this Court to extend the deadline of June 3, 2019 to the date of the filing of the remaining Korean Claimants who lost an opportunity to submit their Proof of Manufacturer and benefit forms and documents by June 3, 2019.

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

Motion for Extension of Deadline for Filing Claims and ORDER that the SF-DCT shall not deny Proof of Manufacturer and benefit claim forms and documents just as prescribed under paragraph 29 of the Closing Order 1.

Date: February 3, 2021

Respectfully submitted,

(signed) Yeon-Ho Kim

Yeon-Ho Kim Int'l Law Office

Suite 4105, Trade Center Bldg.,

159 Samsung-dong, Kangnam-ku

Seoul 135-729 Korea

(822)551-1256

yhkimlaw@unitel.co.kr

CERTIFICATE OF SERVICE

I hereby certify that on February 3, 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: February 3, 2021

Signed by Yeon-Ho Kim