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

KOREAN CLAIMANTS' REPLY TO RESPONSE OF DOW CORNING CORPORATION, THE DEBTOR'S REPRESENTATIVES, CLAIMANTS' ADVISORY COMMITTEE AND FINANCE COMMITTEE TO MOTION FOR VACATING DECISION OF SETTLEMENT FACILITY REGARDING ADDRESS UPDATE/CONFIRMATION

I. INTRODUCTION

The Korean Claimants who filed the Motion for Vacating Decision of Settlement Facility regarding Address Update/Confirmation, through Yeon-Ho Kim ("the attorney"), file this Reply to the Response of Dow Corning Corporation, the Debtor's Representatives and Claimants' Advisory Committee (hereinafter collectively referred to as "Dow Corning") filed on February 26, 2021 and the Response of the Finance Committee which depended on Federal Rule of Civil Procedure 10 (c) [Adoption by Reference, Form of Pleadings].

First of all, Dow Corning contends that the Motion for Vacating must be denied because the requirement of a valid, confirmed current address was mandated by Closing Order 2 and the Settlement Facility must abide by its terms. It is incorrect. The Settlement Facility has applied the Korean Claimants the requirement of a valid, confirmed current address over four years earlier than Closing Order 2. The Settlement Facility applied the requirement under Closing Order 2 retroactive to 2015 with no foundation, which should be a breach of the Plan.

Dow Corning shall not justify the former breach of the Plan with Closing Order 2 which was entered on March 19, 2019.

Second, Dow Corning contends that the Settlement Facility may use many means to determine current confirmed address and Closing Order 2 specifically authorized the Settlement Facility to seek the address verification from a source other than the attorney of record. Dow Corning further contends that the decision of March 3, 2020 of the Settlement Facility that address updates of the Korean Claimants shall be directly confirmed by the Claimants, not by the attorney, is in compliance with Closing Order 2. It is not correct. Such decision of the Settlement Facility is not authorized under the terms of Closing Order 2.

Third, Dow Corning contends that the Korean Claimants should have raised an objection to Closing Order 2 when it was entered - nearly two years ago - on March 19, 2019. It is incorrect. The Korean Claimants have a founding to raise an objection to Closing Order 2 even now.

Fourth, Dow Corning contends that if the Korean Claimants are seeking compensation from the Settlement Fund they must submit the necessary documents and abide by the applicable rules. Dow Corning further contends, mockingly, that if the Korean Claimants do not wish to do so, they are always free to withdraw their claims. It is not correct. The Korean Claimants have submitted the necessary documents pursuant to the SFA and Annex A to the Dow Corning Settlement Facility and Fund Distribution Agreement. Dow Corning's suggestion that the Korean Claimants are free to withdraw their claims is to deny responsibility to the Korean Claimants who have suffered for a long time from the defected silicone implant manufactured in the United States and supplied by Dow Corning Corporation.

Fifth, Dow Corning contends that the Korean Claimants did not have privacy concerns

when they filed their claims because they did provide address information at that time. Dow Corning distorts the point. The Korean Claimants did not want to submit address information to the Settlement Facility when they filed their claims. Address information of the Korean Claimants was merely included, when asked by the Settlement Facility upon filing their claims, for proving that they were a real claimant, not a fake claimant.

Sixth, Dow Corning contends that the Motion for Vacating is barred by the Plan. It is a regular comer to ask the Court to deny the Motions of the Korean Claimants. This Court has never considered it. The Korean Claimants do not want to comment in this Reply.

Seventh, Dow Corning contends that the Korean Claimants are mistaken that June 3, 2019 deadline fixed a final deadline for address updates. It is incorrect. The Settlement Facility clearly indicated in the letter of March 13, 2019 that all deficiencies must be resolved by the June 3, 2019.

Finally, the Settlement Facility expanded the scope of the requirement of a valid, confirmed current address from the Payments after claim review to claims processing. The Settlement Facility did not pay to the Korean Claimants who were eligible if they did not submit a valid, confirmed current address. But now, the Settlement Facility even holds claims processing of the Claimants if they did not submit a valid, confirmed current address upon claims filing in advance. The Settlement Facility applies the requirement of a valid, confirmed current address to the Korean Claimants who filed their claims recently just before the June 3, 2019 deadline of claims filing. The Settlement Facility applied the requirement to the eligible Claimants but now applies to all Claimants whether or not a Claimant is eligible. It is not authorized under the Plan documents. The Korean Claimants request this Court to stop the practice of the Settlement Facility immediately.

II. COUNTERARGUMENT

A. The Motion for Vacating Does Not Seek the Vacate or Amend this Court's Prior Order. The Premise to Apply the Sentence of Paragraph 11 of Closing Order 2 was Not Met.

Dow Corning contends that the address verification requirement is the means by which the Court can obtain maximum assurance that the funds will be received by the eligible claimant and if there is no confirmed address then neither the Court nor the Settlement Facility have any way to determine whether funds distributed will be or actually were received by a claimant.

To support the address verification requirement, Dow Corning alleges that Claimants and attorneys have always been under an obligation to maintain current address information with the Settlement Facility. (*See* page 10 of the Dow Corning's Response) The Korean Claimants have always wondered if there was any legal basis for the Settlement Facility to oblige Claimants and attorneys to submit a valid, confirmed current address of the Claimants. It is overdue to justify the practice of the Settlement Facility that requested the Korean Claimants to maintain a valid, confirmed current address with the initial Claimant Information Guide which was presented by Dow Corning in its Response to this Motion.

Dow Corning was not able to produce evidence other than the initial Claimant Information Guide to prove the address verification requirement to the Korean Claimants. (*See* Exhibit 20,[1] Claimant Information Guide of Class 6.2) However, the Claimant Information Guide even cannot be a basis to impose an obligation to maintain a valid, confirmed current address on Claimants and attorneys. It is merely a guide just as found in shopping malls. In addition, the Clauses (CIG 9-14, 9-15, 10-8, 10-9) of the Claimant

[1] The Korean Claimants submit the full version of Claimant Information Guide of Class 6.2 because Ellen Bearicks did not attach the full version of Claimant Information Guide to her Declaration. (*See* Exhibit E of the Dow Corning's Response)

Information Guide including the URL address, that Ellen Bearicks attempted to prove the address verification requirement to the Korean Claimants, have nothing to do with the requirement of a valid, confirmed current address for the Payments when a Claimant became eligible after claims review by the Settlement Facility. Specifically, (a) CIG 9-14 is about the deadlines to apply for settlement benefits so that it has nothing to do with the payment after the Claimants became eligible for payment (*See* Section 9 – General Deadlines/Delivery Methods/Effective Date/Deadlines to Apply for Settlement Benefits, Part C Deadlines to Apply for Settlement Benefits, Q 9-14 of Exhibit 20, *If I move and forget to notify the Settlement Facility in writing, my Notification of Status letter might take days or weeks to be forwarded to my new address. Will any of the time periods and deadlines be extended because of this?*), (b) CIG 9-15 is about the Participation Form to elect to withdraw or litigate so that it has nothing to do with the payment after the Claimants became eligible for payment (*See* Part C, Q 9-15, *I moved and did not notify the Bankruptcy Court or Settlement Facility of my new address and I missed the deadline to file the Participation Form to elect to withdraw or litigate. Can I file it now?*), (c) CIG 10-8 is about proof of claim so that it has nothing to do with the payment after the Claimants became eligible for payment (*See* Section 10 – Contact Information, Q 10-8, *I moved since I sent my proof of claim to the Bankruptcy Court. Can I e-mail my new address to you or give it to you over the telephone?*), and (d) CIG 10-9 is about proof of claim so that it has nothing to do with the payment after the Claimants became eligible for payment (*See* Q 10-9, *I sent my Proof of Claim form to the Bankruptcy Court in 1997. I have since married and changed my name. How can I update my file with my new married name?*).

More importantly, the Clauses of address update in the Claimant Information Guide are that a Claimant uses to protect her rights on her own and are not that a Claimant is forced to obey to receive the Payment benefits after claims review. In other words, the Settlement Facility mistakenly used the Clauses of address information in the Claimant Information Guide to deny the Payments to the Korean Claimants who became eligible for payments after

claims review of a long period.

To sum up, Dow Corning's contention that the address verification requirement is the means by which the Court can obtain maximum assurance that funds will be received by the eligible claimant and if there is no confirmed address then neither the Court nor the Settlement Facility have any way to determine whether funds distributed will be or actually were received by a claimant is a not only an exaggeration but an excuse for denying the Payments to the Korean Claimants, nearing the closing of Dow Corning Settlement Program.

The assumption of the Settlement Facility, "No valid, confirmed current address, no Payment received by the eligible Claimant", is not applicable to the Korean Claimants.

Dow Corning asserts that when the Settlement Facility issued 30 Premium Payments to counsel for payment to 27 eligible Korean Claimants only one[2] of those 30 payments was cashed by counsel (the attorney) so that it is important for the Settlement Facility to be able to contact those claimants directly at a current address so that they can be informed about the payment and make any necessary arrangements to receive the funds. It is absurd.

First of all, the 30 Premium Payments did not arrive to the attorney's law office. Second, even if it is assumed that the Settlement Facility actually delivered the 30 Premium Payments of 27 eligible Korean Claimants, the attorney does not understand the reason why the Settlement Facility did not mail the Premium Payments of all of the 924 eligible Claimants as stated by Ann Phillips. (*See* paragraph 28 of Exhibit F of the Dow Corning's Response) Dow Corning alleges that because the attorney did not cash the 30 Premium Payments the

[2] Dow Corning mistakenly alleges that only one of the 30 Premium Payments was cashed by counsel. This one (single) Premium Payment has been issued far before the alleged issuance of the 30 Premium Payments. It has nothing to do with the 30 Premium Payments that Dow Corning raises as an issue in its Response.

Settlement Facility must contact those Claimants to inform them the Payments. Had the attorney received and then actually cashed the 30 Premium Payments out, wouldn't the Settlement Facility have asserted that the 27 Claimants were not informed of the Payments?

Most of all, the Korean Claimants firmly believe that the Settlement Facility has been biased against the Korean Claimants. The Settlement Facility was quick to pay to the Class 5 Claimants. The attorney knew it since a dozen of the Class 5 Claimants, through the attorney, filed their claims with medical records identical to the Class 6.2 Claimants. The Class 5 Claimants were accepted easily and furthermore have never been asked by the Settlement Facility to submit a valid, confirmed current address before the Payments. But the Class 6.2 Korean Claimants (the Class 6.1 Korean Claimants after re-categorization of January 1, 2015) were different. If the Settlement Facility had issued and delivered the Premium Payments of all of the eligible 924 Claimants to the attorney and even one of those 924 payments had not been cashed by the attorney, even then, could the Settlement Facility have asserted that it is important for the Settlement Facility to be able to contact those claimants directly at a current address so that they can be informed about the payment and make any necessary arrangements to receive the funds? To repeat, the Settlement Facility was obliged to make the Premium Payments to all of the 924 eligible Claimants promptly as directed by this Court. (*See* Exhibit 8, Order for Second Priority Payments of January 29, 2019)

Dow Corning alleges that the Motion for Vacating asks this Court to eliminate this important procedure leaving the Court and the Settlement Facility with no way to verify that claimants have received the funds. However, the Settlement Facility rather adopted this procedure of address verification to save money of the Funds from paying any Payments including the Premium Payments to the Korean Claimants. The Korean Claim's value was estimated twelve (12) million dollars during the confirmation hearing of the Bankruptcy Court in Bay City, Michigan in 1999 but the Korean Claimants have been paid slightly over

seven (7) million dollars only so far.[3] The reason that the Korean Claimants did not receive that estimated amount, heard from a source working for the bankrupted Dow Corning Corporation during hearing of 1999, is because the Settlement Facility adopted such a procedure as the requirement of a valid, confirmed current address of the Korean Claimants with no foundation under the Plan documents.

The requirement of a valid, confirmed current address is not prescribed in any of documents of the Plan. The requirement of a valid, confirmed current address affected substantive rights of the Korean Claimants because it actually prohibited the eligible Claimants from receiving the Payments including the Premium Payments. There are many eligible Korean Claimants not paid yet, even if they were found "acceptable" after claims review. The requirement of a valid, confirmed current address is not merely a procedure of the Payments. The procedures of claims processing of the Settlement Facility shall be in accordance with the Plan documents. Not only shall the Settlement Facility uphold the provisions of the Plan documents, but the Settlement Facility shall not invent a procedure to affect the rights of the Claimants or decrease the possibility of Claims Payment. The requirement of a valid, confirmed current address was adopted by the Settlement Facility to save money of the Funds on the pretense that the Funds shall be received by the eligible Claimants.

Dow Corning contends that the requirement of a valid, confirmed current address was mandated by Closing Order 2. However, Section C of Closing Order, that claimants and attorneys must notify the SF-DCT of Changes in Address and the SF-DCT may not issue without a confirmed current address, is nearly identical to the paragraph in the letter of the Settlement Facility, received by both the Korean Claimants and the attorney from 2015. (*See*

[3] Over two thousand six hundred thirty (2,630) Korean Claimants filed claims as Class 6.2 with the Settlement Facility. Nearly a sixth of them are Class 6.1 Claimants since the re-categorization of January 1, 2015 of the Finance Committee.

Exhibit 22 [for Claimant] and Exhibit 1 [for attorney]) In other words, the Settlement Facility has begun sending letters titled as "Missing or Invalid Address" massively to the Korean Claimants from 2015. The letter of Missing or Invalid Address included a phrase; After the Address Update/Correcting Form is received and verified, the SF-DCT will reactivate the processing and review of your claim. It means that the Settlement Facility not only has set up the requirement of a valid, confirmed current address inside the Settlement Facility (because it said, "reactivate") but has also applied the requirement to the Korean Claimants from 2015 secretly. The assertion of Dow Corning that the requirement of a valid, confirmed current address was mandated by Closing Order 2 and the Settlement Facility must abide by its terms is just an excuse that the Settlement Facility had breached the Plan documents and violated the rights of the Korean Claimants from 2015.

To repeat, Dow Corning contends that the decision of Settlement Facility regarding address update/confirmation on the Korean Claimants was mandated by Closing Order 2. It is incorrect. The Settlement Facility has applied the requirement of a valid, confirmed current address to the Korean Claimants three or four years earlier than Closing Order 2 without any basis in the Plan documents.

Even assuming that the decision of Settlement Facility of March 3, 2020 was mandated by Closing Order 2, (*See* Exhibit 14, March 3, 2020 Letter of Ann Phillips) the sentence of Paragraph 11, "T[t]he SF-DCT may seek additional confirmation as appropriate, for example, in instances where prior mailings were returned as undeliverable or where prior address confirmations were not accurate", does not support the new condition imposed by the Settlement Facility that the Claimants must directly confirms that they currently reside at the address that the attorney have provided.

First of all, the sentence of Paragraph 11 is so vague and abstract that it should not be interpreted so that it empowers the Settlement Facility to deny address updates by the

attorney and to accept address updates directly confirmed by the Claimants only. The phrase in the sentence, “may seek additional confirmation as appropriate”, does not specify that the Settlement Facility can impose such condition of address updates on the attorney and the Claimants.

Second, even assuming that the sentence of Paragraph 11 includes such application, the premise to apply the sentence to the Korean Claimants, that prior mailings were returned as undeliverable or prior address confirmations were not accurate, must be met. However, it was not. The former Claims Administrator, Ann Phillips, stated in her Declaration of July 20, 2020 (*See* Exhibit F of the Dow Corning’s Response) that of the 924 letters sent to the Korean Claimants, 436 have been returned as undeliverable to date (*See* paragraph 31), and that the SF-DCT conducted an audit of mailings to the Korean Claimants in early 2020 and the audit revealed that of 1,382 claimants represented by the attorney who are eligible for future payments, 600 had correspondence sent to directly to the claimants that has been returned as undeliverable, and that the audit also revealed that 39.2% of mailings to 2,476 claimants with eligible Class 5 and 6 claims were returned as undeliverable, and that the audit also revealed that 50% of the mailings to updated addresses provided by the attorney in January 2018 were returned as undeliverable (*See* paragraph 34). Whether or not the numbers of the Ann Phillips’ statements are accurate, it is obvious that neither were all of the mailings of the Settlement Facility returned as undeliverable nor prior address confirmations by the attorney were inaccurate one hundred percent. The mailings returned as undeliverable must be assessed individually, not on the basis of a rate. The Settlement Facility’s practice that the rates of the mailings returned as undeliverable to the Korean Claimants far exceed the rate of undeliverable mail that the SF-DCT has experienced with other counsel (*See* paragraph 39) must be disclosed to the Korean Claimants. The Settlement Facility must present a chart of comparison of different counsels including the origin of country. The conclusion of the Settlement Facility that the percentage of returned mail from mailings to Claimants represented by the attorney is much higher than the general rate of returned mail that the SF-

DCT has experienced and several mailings have resulted in a 40 to 50 percent return rate (*See* paragraph 38) must be completely analyzed. The Settlement Facility must present a chart of comparison of the general rate and the rate of the Korean Claimants including the origin of country. The Korean Claimants did not agree to the audit and the attorney was not informed of the audit of the Settlement Facility. The Korean Claimants request this Court to order the Settlement Facility to provide the audit documents of the early 2020 in full to the attorney.

In conclusion, the decision of the Settlement Facility of March 3, 2020 that the Korean Claimants should directly confirm that they currently reside at the address that the attorney have provided cannot be justified because the premise to apply the sentence of Paragraph 11 of Closing Order 2 to the Korean Claimants was not met.

Therefore, the Motion for Vacating does not seek to vacate or amend this Court's prior Order, as Dow Corning contends, and even assuming that it can be interpreted that the Korean Claimants seek to vacate or amend this Court's Closing Order 2, the decision of the Settlement Facility of March 3, 2020 that address updates for the Korean Claimants shall be provided directly from a Claimant and the attorney is not allowed to provide address updates for his clients must be withdrawn by the Settlement Facility.

B. Exemption from the Address Verification Requirement is Consistent and Persuasive.

Dow Corning contends that the privacy argument of the Korean Claimants is belied by their own submission. First of all, Dow Corning asserts that the Korean Claimants provided addresses in 2005 and 2006 when the claims were first filed. Dow Corning does not understand how and why the Korean Claimants have ended up submitting their address information to the Settlement Facility in 2005 and 2006. The Settlement Facility asked the attorney to submit Social Security Number ("SSN") to prove that the Korean Claimants were a real claimant not a fake claimant, when the claims were first filed in 2005 and 2006. The

attorney replied that there was no such SSN type (000-00-0000) thing existing in Korea. The Settlement Facility questioned the attorney what is comparable to SSN of the United States in Korea. The attorney said that there was Resident Registration Number ("RRN", 000000-0000000, *See* Exhibit 2). The Settlement Facility asked the attorney to submit RRN instead of SSN. The attorney filed RRN and attached Government-issued Resident Registry to prove RRN of the Claimants. However, the Government-issued Resident Registry happened to include their current address and changed addresses. It is a formality of Government-issued Resident Registry. The Korean Claimants did not want to submit address information to the Settlement Facility when they filed their claim in 2005 and 2006. Furthermore, the Class 5 Claimants that the attorney was representing did not submit address information to the Settlement Facility when they filed the claims in 2005 and 2006. They submitted a Driver License, or a Permanent Resident Card or a US Passport which does not include address information, when they filed the claims in 2005 and 2006. The Class 5 claimants were not required to submit address information to the Settlement Facility. Likewise, the Korean Claimants were not required to submit their address to the Settlement Facility when they filed their claim in 2005 and 2006. But the Settlement Facility used the Government-issued Resident Registry to keep the Korean Claimants' address at its files. The Settlement Facility has exploited the address information in it to ask the Korean Claimants to update their address. The attorney tried to explain the Claims Administrator face to face in the context of address information on several occasions but he was turned down. The assertion of Dow Corning that there is no cogent explanation as to why the Korean Claimants filed address information in 2005 and 2006 and then object to the request for address verification on the basis of privacy is actually a misunderstanding of how and why the Korean Claimants have ended up providing address information to the Settlement Facility. To repeat, the attorney is not allowed to submit a valid, confirmed current address of a Claimant without permission of the Claimant under Personal Information Protection Act of Korea. It is not only the practice but the law. No Court in Korea orders a counsel to update address or submit a valid, confirmed current address of his client even if the Court presides over the case of counsel.

Besides, the Korean Claimants retained the attorney as their counsel. Without counsel, then the Settlement Facility would have a reason or a reasonable basis for asking address information from the Claimants. However, the Korean Claimants were represented by the attorney from 1994 successfully. Under these circumstances, that the Settlement Facility denies the Payments to the eligible Claimants and even holds claims processing itself on the basis of address information is to violate the rights of the attorney.

Dow Corning alleges that it seems that counsel for Korean Claimants objects to the efforts of the Settlement Facility to obtain address verification from the claimant as opposed to counsel. The Korean Claimants do not want to receive a mailing of the Settlement Facility at their home address nor want to update/confirm their address. They marked on "CONFIDENTIAL" when they retained the attorney in 1994 or in 2003 to 2004. They asked the attorney not to send any mailings to their home. Under these circumstances, if the attorney submits their updated or current address without permission to follow the request of the Settlement Facility, the attorney can be charged with a violation of Personal Information Protection Act.

Dow Corning alleges that counsel does not have accurate and complete records of current addresses by his own admission and this conclusion is consistent with the experience of the Settlement Facility because the Settlement Facility's records show that prior address updates provided by counsel have not proven to be accurate. First of all, there is no provision in the laws of Korea that counsel must keep updated and current address of a client. If a Claimant does not give her updated address to the attorney or does not want her address to be updated, it is fine. Besides, there is a plenty of ways for the attorney to communicate with a Claimant. The Korean Claimants have no problem to communicate with counsel over the phone. The attorney's law office is open all the times. On the contrary of the Dow Corning's allegation, the attorney has never admitted that he did not have accurate and complete records of current

address of the Claimants to the Settlement Facility. Dow Corning assumes it by misreading the contentions of the Korean Claimants in the Motion for Premium Payments (ECF No. 1545) and this Motion. Second, whether counsel provided updated address to the Settlement Facility and how many address updates provided by counsel were returned as undelivered, and, more importantly, why such differences took place should be a question as to facts. Dow Corning alleges that the records of the Settlement Facility confirm that counsel has failed and (as the Motion for Vacating admits) refused to provide such information. To clarity the question as to facts, the Korean Claimants request this Court to order the Settlement Facility to provide the attorney with the whole documents of the audit that the Settlement Facility conducted in the early 2020 and the list of mailings of address update/confirmation of the Settlement Facility to the Korean Claimants from 2015.

Dow Corning contends that the Korean Claimants subjected themselves to the jurisdiction of the Court in filing their claims and thereby subjected themselves to the rules and requirements for receiving compensation although the attorney firmly stated that receiving mails from the Settlement Facility would result in psychological harm to the Claimants. First of all, the Settlement Facility modified the rules and requirement under the SFA and the Annex A to the Dow Corning Settlement Facility and fund Distribution Agreement by arbitrarily including the requirement of a valid, confirmed current address in claims processing. (*See* 11 U.S. Code section 1127, “The proponent of a plan may modify such plan at any time before confirmation but may not modify such plan so that such plan as modified fails to meet the requirements of sections 1122 and 1123 of this title”) The requirement of a valid, confirmed current address violates equal treatment. (*See* Section 1123(a)(4), “Notwithstanding any otherwise applicable non-bankruptcy law, a plan shall provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest”) Second, the procedures of verification of a valid, confirmed current address violate equal treatment too. Since the postal system is different country to country, the Settlement

Facility must use the postal system of each country. However, the Settlement Facility adopted only the US Postal Service for verification of address of foreign claimants. The Settlement Facility contemplated the other additional delivery services in Claimant Information Guide.[4] (*See* Exhibit 20)

Q 9-4 What are the acceptable methods to mail or deliver my Participation Form to the Settlement Facility?

Mail or deliver the Participation Form to the Settlement Facility using one (1) of the following three (3) delivery methods:

1. Use a delivery service (e.g., Federal Express, Airborne Express, U.P.S. etc.) and make sure that the airbill or invoice clearly lists the date of mailing as on or before [T.B.D.] if you are withdrawing your claim or on or before [T.B.D.] if you are rejecting settlement and intend to file a lawsuit against DCC Litigation Facility, Inc.: OR
2. Mail the Participation Form by United States certified or registered mail as long as the certified or registered mail is postmarked on or before [T.B.D.] if you are withdrawing your claim or on or before [T.B.D.] if you are rejecting settlement and intend to file a lawsuit against Litigation Facility Inc. Please check with the U.S. Post Office on how to send a certified or registered letter so that it has the correct postmark (for claimants who reside outside of the U.S., the Settlement Facility will rely on the postmark date used by your country's version of "certified" or "registered" mail): OR
3. If you mail the Participation Form by regular U.S. mail or by using a national mail service in the country in which you reside, then the Participation Form must be received by the Settlement Facility by 5:00 p.m. Central Time on or before [T.B.D.] if your withdrawing your claim and on or before [T.B.D.] if you are rejecting settlement and intend to file a lawsuit against DCC Litigation Facility Inc. It is important to mail you Participation Form early enough so that the Settlement Facility receives it on or before the applicable deadline. The postmark date on the envelope will **NOT** be used by the Settlement Facility if you use regular U.S. mail or a national mail service in a country other than the U.S.

Q 9-11 What are the acceptable methods to mail or deliver my Claim Forms to the Settlement Facility?

Mail or deliver the Claim Forms to the Settlement Facility using one (1) of the following three (3) delivery methods:

1. Use a delivery service (e.g., Federal Express, Airborne Express, U.P.S. etc.) and make sure that the airbill or invoice clearly lists the date of mailing as on

[4] Ellen Bearicks did not attach the full version of address-related Clauses of Claimant Information Guide to her Declaration. (*See* Exhibit E of the Dow Corning's Response)

or before the deadline: OR

2. Mail the Claim Forms by U.S. certified or registered mail as long as the certified or registered mail is postmarked on or before the deadline. Please check with the U.S. Post Office on how to send a certified or registered letter so that it has the correct postmark (for claimants who reside outside of the U.S., the Settlement Facility will rely on the postmark date used by your country's version of "certified" or "registered" mail): OR
3. If you mail the Claim Forms by regular U.S. mail or by using a national mail service in the country in which you reside, then the Claim Forms must be received by the Settlement Facility by 5:00 p.m. Central Time on or before the deadline. It is important to mail you Claim Forms early enough so that the Settlement Facility receives them on or before the deadline for the settlement benefit. The postmark date on the envelope will **NOT** be used by the Settlement Facility if you use regular U.S. mail or a national mail service in a country other than the U.S.

The Settlement Facility contemplated other delivery services such as Federal Express, Airborne Express besides the US Postal Service. The Settlement Facility also contemplated a national mail service in the country other than the U.S., in which a claimant resides. However, the Settlement Facility adopted only the US Postal Service for verification of address of foreign claimants. The practice of the Settlement Facility contradicts its own admission in the Claimant Information Guide.

The US Postal Service for verification of address for the Payments is not an equal treatment to the Korean Claimants. In fact, the US Postal Service is not accurate in delivering mailings to the Korean Claimants. Even worse, it is clear that the US Postal Service delivered to the attorney several (three to four) months late under the circumstances that the deadlines to submit a document for cure of a deficiency of claims were critical to protect the rights of the Claimants. Therefore, the requirement of a valid, confirmed current address of the Settlement Facility is violating equal treatment of the Korean Claimants under the Bankruptcy Code, and the procedure for verification of a valid, confirmed current address is violating it as well.

C. The Motion for Vacating is Timely to the Extent that the Korean Claimants Seek to Vacate Closing Order 2.

Dow Corning contends that Korean Claimants easily could have objected to Closing Order 2 in 2019 had they believed that there was a justifiable basis to oppose the Order. Dow Corning asserts that to object to the Order nearly two years after its entry is untenable. First of all, the Korean Claimants do not want to vacate Closing Order 2 which also includes Sections other than Section C (Claimants and Attorneys must notify the SF-DCT of changes in address and the SF-DCT may not issue payments without a confirmed current address), (The Korean Claimants reserve a right to file a motion for relief from Closing Order 2). And, the Korean Claimants were not notified or heard before the Order was entered. A notice of filing a motion must be preceded before hearing. A hearing was not held because there was no notice. The lack of notice and hearing before the Order was entered is a defect of Closing Order 2. Fed. R. Civ. P. section 60(b) prescribes several grounds for relief from a final order. The grounds, (1)(2)(3) of the section, are applicable to section 60(c) which limits a motion made no more than a year after the entry of the order. However, the ground of section 60(b)(4), "The order is void", shall not be applied by the one year limitation. Then, the issue is rather whether the Korean Claimants' request for relief from Closing Order 2 is reasonable under Fed. R. Civ. P. section 60(c)(1), "(1) Timing. A motion under Rule 60(b) must be made within a reasonable time." Dow Corning contends that a motion for relief raised nearly two years after entry of the Order cannot be considered a "reasonable" period of time. However, what constitutes a reasonable time depends on the facts of each case. See *Ghaleb v. American Steamship Company*, No. 18-1742770, Fed. Appx. 249 at 2 (6th Cir. May 9, 2019) The Korean Claimants did not receive a notice of hearing for Closing Order 2. A hearing was not held because of the lack of notice. The Order is void. Therefore, the Motion for Vacating is timely to the extent that the Korean Claimants seek to vacate Closing Order 2 although the Korean Claimants do not want to seek to vacate Closing Order 2 in this Motion.

D. The Letter of the Settlement Facility of March 13, 2019 Eliminated the Requirement of a Valid, Confirmed Current Address under Closing Order 2 On its Own.

Dow Corning contends that the obligation for claimants to provide and for the Settlement Facility to seek address updates is ongoing and does not expire at a filing date and the Korean Claimants are mistaken to the extent that the June 3, 2019 deadline fixed a final date for address updates. This contention is contradictory on its own. On March 13, 2019, the SF-DCT, through Ellen 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 deficiencies as described would be adversely affected, and *all deficiencies must be resolved by the June 3, 2019 deadline or the Claims will be denied*, (*See* Exhibit 9, emphasized in italic), as written by Ellen Bearicks in the following;

> The SF-DCT previously sent you letters requesting an updated address for claimants with an eligible payment, whose mail was returned to the SF-DCT by the Postal Service (a sample copy of the letter previously sent is attached). Without an updated address (***by June 3, 2019***) these claims will not be issued any payments for which they may be eligible. ,…, Although you have received the Notice of Final Filing Deadline June 3, 2019, this letter is specific notice to you that your claimants with deficiencies as described above will be adversely affected if you fail to take action as required by the Notice and Closing Orders. All deficiencies must be resolved by the June 3, 2019 deadline or the claims will be denied.

It is undoubtedly obvious that the Settlement Facility fixed the June 3, 2019 deadline as the final date for address updates of the Korean Claimants. To reinforce its argument, Dow Corning asserts, mockingly, that Korean Claimants have multiple options to provide their current address, for example, for counsel to contact the claimants through cell phones and advise them to provide updated addresses to the Settlement Facility via email, telephone or written correspondence. First of all, if the Settlement Facility keeps denying the Payments by forcing the attorney to submit personal information of a client, then, the attorney is put at risk.

Personal Information Protection Act of Korea does not allow the attorney to provide the client's address to a third party without permission. The Korean Claimants happened to submit their address to the Settlement Facility when they filed their claims in 2005 and 2006. The attorney is not allowed to update their address which has already been submitted to the Settlement Facility without their additional permission. In conclusion, Dow Corning must stop overturning the Settlement Facility's clear demand that address updates must be resolved by June 3, 2019 and then mocking the attorney. Second, Dow Corning contends that there is no excuse for a multi-year dispute over the efficiency of mail service in the United States and Korea. Dow Corning now admits that there has been the dispute over the efficiency of mail service between the United States and Korea for multi-years. Actually, there were many mailings of the Settlement Facility, which have never arrived in Korea. The records about how many mailings of the Settlement Facility were returned as undeliverable are kept at the Settlement Facility only (which were not shared with the attorney) and nobody knows why those mailings were returned as undeliverable. There were several Claimants who told the attorney that they put their mailings of the United States in the box of return mail without opening since their grandchildren could ask them, "What is it, Granma?" There were many Claimants who complained the attorney why he disclosed their address to the United States. The Settlement Facility assumed that if a mailing to a Claimant was returned as undeliverable, the address of the Claimant was not valid and should be updated within ninety (90) days[5]. This assumption is merely a jump to conclusion. Furthermore, there were many cases that the Settlement Facility mailed to wrong address where the Claimant has not lived. More importantly, the mail system of US Postal Service for delivery in Korea is not reliable. It took

[5] How address of the Korean Claimants can be updated within ninety (90) days with the US Postal Service whose mailings including a request of the Settlement Facility for address update/confirmation arrive in Korea three or four months late? However, the Settlement Facility wrote back to the attorney, "We do not agree that any mail delivery issue has deprived you of the opportunity to meet cure deadlines for your clients." (*See* Exhibit 18, July 19, 2020 Letter of Ann Phillips)

at least three to four months for the Settlement Facility's mailings to arrive at the attorney's law office which is extremely open to the public and, in many occasions, the mailings of the Settlement Facility have never arrived to the attorney's law office even though the Claimants notified the attorney that they had received them. The attorney asked the Settlement Facility to use the Federal Express or DHL for mailings to the attorney but the Settlement Facility turned it down. The Settlement Facility presented the Claimant Information Guide as a founding to ask the Claimants to submit a valid, confirmed current address. The Claimant Information Guide contemplated the other mail services besides the US Postal Service. The attorney requested the Settlement Facility to use the Federal Express or DHL for mailings to the attorney. The Settlement Facility turned it down by saying that it would unduly jeopardize the corpus of the Trust and the Settlement Facility did not manipulate any mailing systems in its correspondence with the attorney. (*See* Exhibit 18, July 19, 2020 Letter of Ann Phillips) To follow the Claimant Information Guide shall not be to jeopardize the corpus of the Trust. Whether the Settlement Facility manipulated any mailing systems in its correspondence with the attorney is self-proving in that the Settlement Facility did not use other mailing services besides the US Postal Service to obtain address verification of the Korean Claimants.

III. CONCLUSION

Dow Corning did not provide a basis of denying the request of the Korean Claimants in the Motion. For the reasons above in this Reply and in the Motion, the Korean Claimants request this Court to Grant this Motion for Vacating quickly in light of that this Court has issued Closing Order 3 of March 25, 2021 that set the Deadline for certain Korean Claimants who filed claims that the Settlement Facility did not review yet, to provide a confirmed current address on or before June 30, 2021, which ordered the affected 381 Claimants that there would be no extension of this Deadline. (*See* Exhibit 23, Closing Order 3)

Date: April 2, 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 April 2, 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: April 2, 2021 Signed by Yeon-Ho Kim