

**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

**REPLY TO THE RESPONSE OF DOW SILICONES CORPORATION, THE
DEBTOR’S REPRESENTATIVES, AND THE CLAIMANTS’ ADVISORY
COMMITTEE TO MOTION FOR EXPEDITED HEARING AND RELIEF**

The certain four hundred five (405) Korean Claimants who filed their respective submission including Claim for Proof of Manufacturer and Claim for Disease Compensation with diagnosis of doctors with the Settlement Facility file this Reply to Response of Dow Corning Corporation, the Debtor’s Representatives, and the Claimants’ Advisory Committee to the Korean Claimants’ Motion for Expedited Hearing and Relief and the Finance Committee’s Joinder in this Response.

I. General Understanding

The certain four hundred five (405) Korean Claimants do not understand why Dow Corning Corporation, the Debtor’s Representatives and the Claimants’ Advisory Committee made such jittery response to the Korean Claimants’ Motion for Expedited Hearing and Relief. The Korean Claimants just requested this Court to hold a hearing expeditiously because the Claims Administrator testified through written statement under oath that the process of Claims would be finished at the last half of the year of 2022. The Korean Claimants believe that the decision of this Court on the matter of the Motion for Extension of Deadline for filing

Claims (ECF No.1586) should be quick since the Claim files of the certain four hundred five (405) Korean Claimants are in danger to be thrown into garbage can in the Settlement Facility.¹ In addition to that, the attorney received the Order of this Court and Joint Stipulation for Approval to Pay Full Payment Long-Term Option Late Claimants based on Recommendation of the Claims Administrator. This Joint Stipulation by Dow Corning Corporation, the Debtor's Representatives and the Claimants' Advisory Committee is equal to a violation of the Dow Corning Corporation's Reorganization Plan which was confirmed by this Court because no Claimant, whether Class 5 Claimants or not, could participate in the Settlement Program unless the Claimant filed the Participation Form until 1999 or until 2003 as "Late Claimant" which was authorized by this Court. The Deadlines for Participation into the Settlement Program of Dow Corning Corporation's Reorganization were the fundamental and irreversible condition to begin the negotiations between the creditors like the Korean Claimants and the debtor, Dow Corning Corporation, for reorganization. It was why the Notice of Deadline for Participation has been disseminated via individual letter or publication or media several and several times before the hearing for confirmation of Dow Corning Reorganization Plan began.

Because the situations were like that, the Korean Claimants rushed to file the Participation Form and receive the SID number to prove that they did not pass by the Deadlines for Participation. I believe that every country's Claimants for Dow Corning Settlement Program did the same to meet the Deadlines and get the SID number.

Now after nearly twenty three (23) years from 1999 to 2022, Dow Corning Corporation, the Debtor's Representatives and the Claimants' Advisory Committee filed the Stipulation (ECF

¹ The attorney for the Korean Claimants witnessed during visits to the Settlement Facility that the files of the Korean Claimants were stacked on shelf in bad shape with no care several years although they have been prepared tears and sweat by the Claimants, Korean doctors, staffs and the attorney himself.

No.1643) to share the money from the Fund which were made only for the creditors who filed Participation Form for Dow Corning Settlement Program by 1999 or the creditors as “NOI Claimants” by 2003 with the Non-Filers (96 individuals) who have never filed Participation Form or the NOI Claim Form. They were “dark” claimants who have never been on table during negotiations of the creditors. Nor did they have the SID number which the Korean Claimants rushed to get in 1999 to protect creditor’s rights to Dow Corning Corporation.

By filing the Joint Stipulation with this Court, Dow Corning Corporation, the Debtor’s Representatives and the Claimants’ Advisory Committee not only violated the fundamental and irreversible condition for the Dow Corning Reorganization Plan but hurt the creditors who participated in the Settlement Program. By knowing that the Plan can be modified by them after all of the creditors have gone away and they are the only parties who can file with this Court under the Plan, they conspired and collaborated to maximize the interests on their own.²

Dow Corning Corporation, the Debtor’s Representatives and the Claimants’ Advisory Committee have no power to modify the Plan against the creditors’ original intent and will that were unanimously understood while they underwent negotiations with the debtor and the debtor’s representatives. If they are free to include the Non-Filers of the Participation Form or “NOI Claims” as the eligible Claimants under the Settlement Program, why they should not include the certain late-filed (405) Korean Claimants as the eligible Claimants? The certain four hundred five (405) Korean Claimants filed the Participation Form timely and received the SID number from the Settlement Facility, didn’t they?

² One of the examples that they conspired and collaborated for their own interests is the tissue-expander Claimants who became included as eligible Claimants. The tissue-expander Claimants were not eligible Claimants under the Plan. This Court authorized them as eligible after they filed with this Court several years later than 2004 when the Settlement Facility began its operation.

II. Basis for Excusable Neglect

Since the Dow Corning Corporation, the Debtor's Representatives and the Claimants' Advisory Committee kindly referred the basis for excusable neglect under Fed. R. Civ. P. 6(b) to (1) the danger to the debtor; (2) the length of the delay and its potential impact on judicial proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the movant and (4) whether the movant acted in good faith, (*Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P' Ship*, 507 U.S.380,395(1995)), the certain four hundred five (405) Korean Claimants set out each element.

A. Danger to Debtor

Even if the Settlement Facility extends the Deadline for filing Claim or the certain (405) Korean Claimants by resulting that they are eligible Claimants and should be processed by the Settlement Facility to find whether their submission for Proof of Manufacturer and Disease Compensation are acceptable, there is no danger to Dow Corning Corporation. The Fund was fixed and enough to compensate all of the Claimants with the SID number even after the Settlement Facility closed. Furthermore the Debtor has no right to reclaim the remaining Fund.

B. Length of Delay and Potential Impact on Judicial Proceedings

After June 3, 2019, the certain four hundred five (405) Korean Claimants filed their submission of Claim for Proof of Manufacturer and Claim for Disease Compensation on December 29, 2021. The Korean Claimants delayed nearly one and half years. This length of delay should not be considered heavily because the Claimants had to prepare the documents for submission to their representing attorney for considerable time and the representing attorney had to spend considerable time to finish up the submitted documents to meet the

requirements for Claims to the Settlement Facility. In particular, this large group of Claimants demanded a lot of preparation periods and detailed information for actual documentation respectively to conduct the final submission to the Settlement Facility. Therefore one and half year delay should not be long in comparison with the length of life of the Settlement Facility, eighteen years from 2004 to 2022. In addition, even if this Court enlarges the time limitation under the Plan, there should be not much impact on the judicial proceedings. The Settlement Facility has the files of submission of the certain (405) Korean Claimants and the only matter remaining now is that the Settlement Facility embarks the process of examination of the Claims to find whether they are acceptable. Staffs are ready and professional too so that there would be no time consuming to carry out the process for Claims.

C. Reason for Delay including Whether it was Within Reasonable Control

First of all, the representing attorney has been engaged in several Motions in this Court and some Motions in appeal. The certain (405) Korean Claimants had no fault in filing Motions and filing appeals. They just followed advices of the representing attorney. Above of all, they are going to believe through advice that the Closing Orders fixing and explaining the Deadlines for Filing Claims under the Plan have not been notified in advance before entering so that the final Deadline of June 4, 2019 was to be somehow extended.

In addition, the Korean Claimants have been in notion that the Settlement Facility offered the settlement in full with the Korean Claimants as a group, although it has not been in force because of Dow Corning Corporation's objection, and a certain four hundred five (405) Korean Claimants did not pay an attention to prepare their documents for Claims until June 3, 2019.

However, the Korean Claimants warned Dow Corning Corporation, the Debtor's Representatives and the Claimants' Advisory Committee in the Motion for Vacating the

Decision of the Settlement Facility regarding Address Update/Confirmation (ECF No.1569) and the following appeal that there were over five hundred (500) Claimants who were going to file Claim with the Settlement Facility so that Dow Corning Corporation, the Debtor's Representatives and the Claimants' Advisory Committee were aware of it well. Therefore the submission of Claims by the certain four hundred five (405) Korean Claimants should not be a sudden attack to them and a surprise to the Settlement Facility.

D. Good Faith

The certain four hundred five (405) Korean Claimants could not file their submission of Claims to the Settlement Facility on time due to COVID-19 quarantine measures enforced by the Government (*See Exhibit 3*). Most clinics including implanting physicians who were responsible for issuing affirmative statement for proof of manufacturer and diagnosis doctors were closed. Although COVID-19 situations started from the last half of 2019 following the reports of the outbreak in Wuhan City in China, the impact from it was pre-dated because the mails of the United Postal System that the Settlement Facility adamantly used for the notice of filing Deadlines to the Korean Claimants and the representing attorney around 2019 arrived at least five to nine months later than they were supposed to be delivered to the Korean Claimants.

Therefore the certain four hundred five (405) Korean Claimants met the conditions for excusable neglect specified in the *Pioneer* case under Fed. R. Civ. P. 6(b).

III. Conclusion

For the forgoing reason, the certain four hundred (405) Korean Claimants request this Court to GRANT this Motion for Expedited Hearing and Relief and GRANT the Motion for Extension of Deadline of Claims of the certain (405) Korean Claimants and order the

Settlement Facility to accept the submission of their Claims and process it in order in accordance with the Plan.

Date: July 20, 2022

Respectfully submitted,

(signed) Yeon-Ho Kim

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CERTIFICATE OF SERVICE

I hereby certify that on July 20, 2022, 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: July 20, 2022

Signed by Yeon Ho Kim