

# **EXHIBIT**

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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

**In re:**

**SETTLEMENT FACILITY DOW  
CORNING TRUST**

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**Case No. 00-CV-00005  
(Settlement Facility Matters)**

**Hon. Denise Page Hood**

**DECLARATION OF KIMBERLY SMITH-MAIR REGARDING  
THE MOTION FOR EXPEDITED HEARING AND RELIEF**

I, Kimberly Smith-Mair, declare as follows based upon my recollection and review of certain data and documents:

1. I am the Claims Administrator for the Settlement Facility-Dow Corning Trust (“Settlement Facility” or “SF-DCT”).
2. As Claims Administrator, I have knowledge of past and present procedures implemented to process the Settling Breast Implant Claims in accordance with the terms of the Settlement Facility and Fund Distribution Agreement (“SFA”) and the Claims Resolution Procedures (“Annex A” to the SFA).
3. As Claims Administrator, I have knowledge of all Orders issued by the Court that pertain to the administration and payment of claims submitted to the SF-DCT.
4. As Claims Administrator, I have knowledge of all notices and information posted by the SF-DCT and of notices, letters, and information sent to and received from attorneys of record regarding issues relating to notice, deadlines, and all matters related to assuring the validity of claim submissions and compliance with the procedures, guidelines, and rules of the SF-DCT and of Annex A.

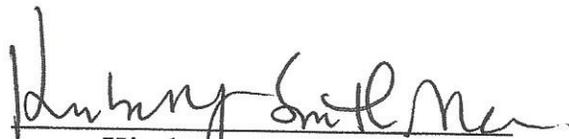
5. I have reviewed and am familiar with the Motion for Extension of Deadline for Filing Claims filed by Mr. Yeon-Ho Kim as Korean Claimants, the Reply to Response of Dow Corning Corporation, the Debtor's Representatives, Claimants' Advisory Committee and Finance Committee to Motion for Extension of Deadline for Filing Claims, and the Motion for Expedited Hearing and Relief ("Motion to Expedite") filed by Mr. Yeon-Ho Kim as counsel for certain Korean Claimants.
6. I am familiar with the December 27, 2017 Stipulation and Order Approving Notice of Closing and Final Deadline for Claims, ECF 1342 (the "Order Approving Notice of Final Deadline").
7. Pursuant to the Order Approving Notice of Final Deadline, the Settlement Facility mailed the Notice of Termination of Settlement Program, Closing of SF-DCT Offices, End of Processing of Breast Implant Claims, Final Deadline for All Claims: June 3, 2019 (the "Notice of Final Deadline") to all claimants, including Korean Claimants, at the address on file with the Settlement Facility and sent the Notice of Final Deadline to each attorney of record, including to Mr. Kim. The Notice of Final Deadline was mailed to Mr. Kim on January 31, 2018. The SF-DCT has no record indicating that the Notice of Final Deadline mailing to Mr. Kim was returned as undeliverable.
8. The Notice of Final Deadline advises, among other things, that all claims must be filed by the final deadline of June 3, 2019. A true and correct copy of the Notice of Final Deadline is attached as Exhibit 1.
9. The SF-DCT posted the Notice of Final Deadline on the homepage of the SF-DCT website on January 31, 2018, which was accessible to the general public. The Notice of Final Deadline was removed from the homepage after the expiration of the final deadline.
10. The Settlement Facility mailed the Notice of Final Deadline to 2,415 Korean Claimants on January 31, 2018.
11. The Notice of Final Deadline was in English and also contains information in six languages – including Korean – that translated copies of the Notice of Final Deadline could be requested by sending an email to the SF-DCT. The SF-DCT received requests for translation from individual claimants, including from individual Korean Claimants. In each case, when a request for translation was received, the SF-DCT provided a translated copy to the individual who requested the translation.

12. The Settlement Facility sent additional reminders directly to Mr. Kim, as counsel for Korean Claimants, of the June 3, 2019 final claims deadline. Attached as Exhibit 2 is a true and correct copy of a March 13, 2019 letter from Ellen Bearicks of the SF-DCT to Mr. Kim regarding “Specific Notice of June 3, 2019 Deadline.” The letter was sent to Mr. Kim at his office address by regular mail and his email address. The SF-DCT has not received any undeliverable mail notices for either the mailed or emailed letter.
13. Attached as Exhibit 3 is a true and correct copy of an April 30, 2019 letter sent to Mr. Kim by email and regular mail reminding him “of the upcoming final deadline for submissions to the Dow Corning settlement program under the Amended Joint Plan of Reorganization.” The letter also stated, among other things: “The June 3, 2019 final submission deadline applies to domestic and foreign claims including claims of Korean Claimants. We are aware that you have a pending appeal but the existence of that appeal does not change the final filing deadline. Submissions that are made by any claimant, including Korean Claimants involved in the appeal, after that deadline will not and cannot be considered.” The SF-DCT did not receive any indication that either the mailed or emailed notice was not delivered.
14. When an attorney requests a password to access the online website portal (MyClaims), the SF-DCT sends an email with a temporary password. This password is system generated and not known by anyone in the SF-DCT. The user logs on to MyClaims using that temporary password and is immediately prompted to create a new password. This password is not stored by the SF-DCT or known by any employee of the SF-DCT. In addition, the SF-DCT does not have the ability to “revoke” someone’s password. The only way access would be interrupted is if (i) the user does not remember the correct password and is locked out after multiple attempts, or (ii) the user changes their email address used to access MyClaims. In either case, the user can, any time, request a new temporary password from the SF-DCT.
15. In addition, the general notices, such as the Notice of Final Deadline, are posted on the SF-DCT website in the public section, which is accessible by anyone.
16. On June 1, 2019, Mr. Kim filed an appeal on several Disease claims. In that appeal he repeatedly referenced “the final deadline of June 3, 2019” approaching. A true and correct copy of Mr. Kim’s June 1, 2019 letter is attached as Exhibit 4.

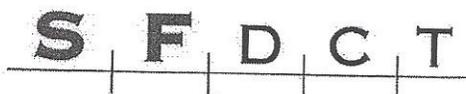
17. The 405 claims referenced by Mr. Kim in the Motion to Expedite indicated that they were signed on December 20, 2021 and were shipped via FedEx to the SF-DCT on December 29, 2021.
18. In addition to the Korean Claimants, 176 claimants submitted claims after the June 3, 2019 deadline. Most of these 176 claimants missed the deadline by a matter of days or weeks. All of these 176 claims have been denied.
19. Mr. Kim previously communicated with the SF-DCT about the deadline for submission of Explant claims. Attached as Exhibit 5 is a true and correct copy of a May 9, 2014 response email from Ann Phillips of the SF-DCT to a May 6, 2014 email from Mr. Kim. Mr. Kim asked if he did not need to file certain Explant Claim Forms by the deadline, and was advised that if an Explant Claim Form was not filed by the deadline to file that claim, "that claim is late and will not be reviewed."

Pursuant to 28 U.S.C. Section 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 18th day of July 2022.

  
Kimberly Smith-Mair

**Exhibit 1 -  
Notice of Final Claim  
Deadline**



**SETTLEMENT FACILITY  
DOW CORNING TRUST**

**DOW CORNING BREAST IMPLANT CLAIMS  
NOTICE OF TERMINATION OF SETTLEMENT PROGRAM,  
CLOSING OF SF-DCT OFFICES  
END OF PROCESSING OF BREAST IMPLANT CLAIMS,  
FINAL DEADLINE FOR ALL CLAIMS: JUNE 3, 2019**

**Please read carefully. This Notice affects your legal rights.**

The Settlement Facility – Dow Corning Trust (“SF-DCT” or Settlement Facility) is the claims office that processes and pays claims in the Dow Corning breast implant settlement. The Dow Corning Plan provides that the settlement program will terminate after 15 years which means that the program will conclude on June 3, 2019. All claims, documents, and submissions must be sent to the Settlement Facility on or before **June 3, 2019**. They must be postmarked on or before **June 3, 2019 or they will not be considered**. There will be no extensions.

You may receive or may have previously received a letter from the Settlement Facility giving you a deadline to cure deficiencies in a claim. The June 3, 2019 final deadline DOES NOT CHANGE any deadline in a letter from the Settlement Facility. If you have any questions about your deadline contact the Settlement Facility. If you do not comply with your deadline, your claim will be denied.

Go to the SF-DCT website or contact the Settlement Facility for information about your claim and rights. The Settlement Facility has posted a Notice with details about: how to apply for either the Expedited Release or Disease Payment, how to apply for an Increased Severity disease claim, how to submit an appeal to the Claims Administrator and Appeals Judge, and how to get claim forms and other information to help you file a claim. All documents and forms are on the websites below or call the Settlement Facility to get any form or document mailed to you. Please keep your address current.

**Settlement Facility Contact Information:**

Phone: 1-866-874-6099

Email: [info@sfdct.com](mailto:info@sfdct.com)

Website: [www.sfdct.com](http://www.sfdct.com) or [www.dcsettlement.com](http://www.dcsettlement.com)

Mailing address: Settlement Facility, P.O. Box 52429, Houston, TX 77052-2429

**Claimants’ Advisory Committee Contact Information:**

Phone: 419-394-0717

Email: [info@tortcomm.org](mailto:info@tortcomm.org)

Website: [www.tortcomm.org](http://www.tortcomm.org)

Facebook: Claimants’ Advisory Committee, Dow Corning Breast Implant Claims

**FINAL DEADLINE: JUNE 3, 2019. NO EXTENSIONS.**

**You may request a translated copy of this Notice by sending an email to [info@sfdct.com](mailto:info@sfdct.com) or in writing to SFDCT, P. O. Box 52429, Houston, Texas 77052**

이메일([info@sfdct.com](mailto:info@sfdct.com))이나 우편(주소: SFDCT, P. O. Box 52429, Houston, Texas 77052)으로 본 통지서의 번역본을 요청할 수 있습니다.

Vous pouvez demander une traduction de cet avis en envoyant un courriel à [info@sfdct.com](mailto:info@sfdct.com) ou en écrivant à SFDCT, P. O. Box 52429, Houston, Texas 77052, USA.

Usted puede solicitar una traducción de este Aviso enviando un correo electrónico a [info@sfdct.com](mailto:info@sfdct.com) o una carta a: SFDCT, P. O. Box 52429, Houston, Texas 77052, USA.

Sie können eine übersetzte Kopie dieser Benachrichtigung bestellen, indem Sie entweder eine E-mail an [info@sfdct.com](mailto:info@sfdct.com) schicken oder einen Brief an SFDCT, P.O. Box 52429, Houston, Texas 77052, USA schreiben.

U kunt de vertaling van deze mededeling opvragen door een e-mail te sturen naar: [info@sfdct.com](mailto:info@sfdct.com) of een brief naar: SFDCT, P. O. Box 52429, Houston, Texas 77052, USA.

Você pode solicitar uma cópia traduzida desta Notificação enviando um e-mail para [info@sfdct.com](mailto:info@sfdct.com) ou escrevendo para SFDCT, P. O. Box 52429, Houston, Texas 77052, USA.

**Exhibit 2 -  
March 13, 2019 letter from SF-  
DCT to Mr. Kim**

S F D C T

SETTLEMENT FACILITY  
DOW CORNING TRUST

P.O. Box 52429  
Houston, Texas 77052

Telephone 713.874.6099  
866.874.6099

KIM YEON-HO INTL LAW OFFICES  
STE 4105 KOREA WORLD TRADE CTR BLDG  
159-1 SAMSUNG-DONG KANGNAM-KU  
SEOUL  
REPUBLIC OF KOREA

**Re: Specific Notice of June 3, 2019 Deadline**

Dear Mr. Kim,

Claimants represented by you, have deficiencies that must be fixed on or before the **June 3, 2019 deadline**, or their claim(s) will be denied. Pursuant to the Notice of Termination of Settlement Program: "All claims, documents and submissions must be sent to the Settlement Facility on or before June 3, 2019", Questions and Answers Regarding the Final Deadline: Q2(2) "If you previously filed a claim with the Settlement Facility and received a letter telling you that you must fix something about that claim before you can be paid, you must submit the documents that fix those problems on or before June 3, 2019...or the claim will be denied and you will not receive a payment on that claim", and Closing Order #1, Paragraph 13: "To be considered by the SF-DCT, any previous requests to claimants by the SF-DCT for documentation must be submitted by June 3, 2019." **There will be no exceptions or extension** of the June 3, 2019 deadline.

You have returned Expedited Release checks without providing additional instructions. The SF-DCT has sent you written notices acknowledging return of those checks (a sample copy of the letters previously sent is attached) You have the following options for each claimant; however, you must take action on or before June 3, 2019:

1. File an Error Correction request. However, you may not submit additional medical records or request a deadline extension with an Error Correction request.
2. Apply for a new disease or condition that manifested after the expiration of the ACTD cure deadline which has expired for each claimant.
3. Request the return of the original Expedited Release Payment

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.

Based on mailing recommendations for Mailing to Korea, Republic of (South Korea), described by the US Postal Service, it appears likely, that certain addresses provided by you are insufficient to ensure mail delivery to the Claimants. As a result, and in order to be acceptable, you must provide addresses in the format as recommended by the US Postal Service, under Conditions for Mailing – Korea, Republic of (South Korea).



**Exhibit 3 -  
April 30, 2019 SF-DCT  
Letter to Mr. Kim**

**S | F | D | C | T**  
**SETTLEMENT FACILITY**  
**DOW CORNING TRUST**

ANN M PHILLIPS  
CLAIMS ADMINISTRATOR

3200 SW FREEWAY SUITE 1500  
HOUSTON, TEXAS 77046

TELEPHONE 713 874-6099

P.O. Box 52429  
HOUSTON, TEXAS 77052

Tuesday, April 30, 2019

Via Electronic and Regular Mail  
KIM YEON-HO INTL LAW OFFICES  
STB 4105 KOREA WORLD TRADE CTR BLDG  
159-1 SAMSUNG-DONG KANGNAM-KU  
SEOUL  
REPUBLIC OF KOREA

In Re Settlement Facility Dow Corning Trust - Settlement Facility Matters (00-CV-0005)

Dear Mr. Kim:

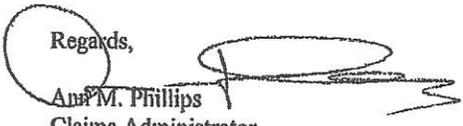
I am writing on behalf of the Finance Committee to remind you of the upcoming final deadline for submissions to the Dow Corning settlement program under the Amended Joint Plan of Reorganization.

The June 3, 2019 final submission deadline applies to domestic and foreign claims including claims of Korean Claimants. We are aware that you have a pending appeal but the existence of that appeal does not change the final filing deadline. Submissions that are made by any claimant, including Korean Claimants involved in the appeal, after that deadline will not and cannot be considered.

I have attached the two orders that Chief Judge Hood has entered that provide protocols related to the termination of settlement facility operations. I urge you to review these orders carefully. They establish clear rules that the Settlement Facility must follow in determining whether it is authorized to review a claim submission and what will be deemed to be a late submission. These Orders apply to all claims – and do not make any exceptions for claims that are the subject of a dispute or appeal. For example: Closing Order 1 expressly provides that any claim submitted after June 3, 2019 must be denied as late. (See paragraph 29.) Paragraph 21 expressly provides that all Proof of Manufacturer submissions made before June 1, 2018 that were determined to be deficient must be cured by submissions postmarked on or before June 3, 2019. Paragraph 25 of Closing Order 1 bars changes to a disease election or rejection of an expedited release payment after June 3, 2019.

If you do not timely submit claim materials for Korean Claimants subject to the appeal, those claims will be denied. There will not be and cannot be any modification to or exception from these rules.

Regards,

  
Ann M. Phillips  
Claims Administrator

cc: Prof. Francis McGovern  
Judge Pamela Harwood

For assistance or questions call the Claims Assistance Program at 1.866.874.6099 (toll free), through electronic mail at [info@sfdct.com](mailto:info@sfdct.com), or go to [www.dcssettlement.com](http://www.dcssettlement.com) on the internet.

**Exhibit 4 -  
Appeal Submitted By Mr. Kim On  
Behalf Of Certain Korean Claimants  
To The SF-DCT**

**Attention: Error Correction and Appeals Department**

**Re: Notice of Status Letter re.Disease Claim**

52  
(SID1036450, SID1035533, SID1035641, SID1036491, SID1036578, SID6462271,  
SID1036339, SID1037073, SID6461875, SID1036771, SID1036450, SID1036453,  
SID1036366, SID1035640, SID6473537, SID1037028, SID6459013, SID6473537,  
SID6474665, SID2783100, SID2783165, SID2783192, SID2783254, SID2783279,  
SID2783364, SID2783373, SID2783407, SID2783416, SID2783427, SID2783464,  
SID2783478, SID2783496, SID2783545, SID2783576, SID2783583, SID2783594,  
SID2783596, SID2783617, SID2783627, SID2783631, SID2783636, SID2783638,  
SID2783640, SID2783641, SID2783655, SID2783656, SID2783684, SID2783698,  
SID2783699, SID2783702, SID2787318, SID2787322)

The SF-DCT determined that the above Claimants' disease claims have not been approved ACTD Option 1 and set the deadline to cure deficiencies of disease claim, which has been expired.

These Notice of Status letters shall not be applicable to the above Claimants.

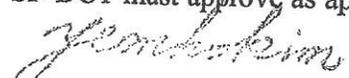
First of all, the Claimants have been on "administrative hold" many years from 2009 to 2015. Also, the whole Korean Claimants filed the Motion for Mediation pending the Appellate Court. Any individual Claimant has not been allowed for submitting a document to cure deficiencies to the SF-DCT from 2009 to 2015. Now that the final deadline of June 3, 2019 approaches, this Error Correction and Appeals Department for appeal became possible and the Claimants take an action according to Closing Order I of the District Court. Therefore, the deadline set to the above Claimants shall be inapplicable and shall be tolled up to the final deadline of June 3, 2019.

In addition, based on the experiences of disease claims, none of breast implants recipients, whether implanted using Dow Corning implant or other manufacturer's implant, were normal like the common people who have received a breast implants surgery. All of implantees of Dow Corning manufactured silicone bags for mammoplasty are sick and in pain, although the level of sickness and pain was different individually. All of them turned out satisfying the eligibility of disease claims with respect to ACTD Option I. Furthermore, all of the Claimants' breasts implanted by Dow Corning implants were disfigured with the symptoms of the ACTD accompanied.

For the particular cases of the Korean Claimants, the Claimants' symptoms for ACTD Option have developed worsened since the submission of disease claims for diseases diagnosed by the examining doctor in 1994 because the symptoms were increasing gradually year by year.

The Claimants request the SF-DCT to designate a Korean doctor who can re-examine the symptoms for the ACTD Option I for clarifying the current state of the above Claimants since the SF-DCT suspected that the diagnosis of the Claimants' doctor was insufficient to prove ACTD Option I. The Claimants want to update the symptoms by a new doctor.

The Notification of Status Letters of the Claimants' disease claim must be withdrawn and the SF-DCT must approve as applied.



Yeon-Ho Kim  
For the above Claimants

**Exhibit 5 -  
May 2014 Emails Between  
Mr. Kim And SF-DCT**

--- Original Message ---

From : "Ann M. Phillips"<APhillips@sfdct.com>  
To : "???"<yhkimlaw@unitel.co.kr>  
Date : 2014/05/09 금요일 오전 1:38:03  
Subject : RE: Request for Info

Mr. Kim, in response to your inquires please see responses below:

- 1) If an Explant Claim Form is not filed by the deadline to file, that claim is late and will not be reviewed. No Explant Claim is assumed to be filed because of "Notification of Status for Rupture Payment Claim around 2009".
- 2) The issue of a re-categorization request is addressed in Annex A Section 6.05(h)(ii) Adjustment to Categories which states in pertinent part that " The Claims Administrator, may adjust the categorization of countries" with agreement of the parties. "...and any re-categorization shall apply to all Claimants .....whose Claims are paid in the year of re-categorization ...".

In order for your request to be considered it must first be submitted to the Finance Committee. "If the Debtor's Representatives and/or the Claimants' Advisory Committee and/or the Finance Committee do not agree to re-categorization" then you "may file a motion in the District Court seeking re-categorization". Because you have already filed a motion in the District Court, the Plan does not provide for simultaneous review (by the Court and the Claims Administrator) of your request. Therefore, after the matter before the Court is resolved, the process prescribed by the Plan may be considered by the Finance Committee.

Also, in a separate electronic email you requested 6.1 claim forms - until the motion you filed is resolved and the process as prescribed by the Plan is followed – your claims must continue to be filed in their current country Category.

Respectfully,

Ann M Phillips

**From:** 김연호 [mailto:yhkimlaw@unitel.co.kr]  
**Sent:** Tuesday, May 06, 2014 6:57 PM  
**To:** Ann M. Phillips  
**Subject:** Request for Info

Dear Mrs.Phillips,

The Korean Claimants received Notification of Status for Rupture Payment Claim around 2009. In it, not only the date of explanation was included but the "proof of evaluation" was indicated as "Acceptable". What I understanding is that they do not have to submit the Explant Claim Form anymore. Is it correct?

In addition, do you consider re-categorization of Korea without the Court's decision? In that case, when do you make it?

I always want to discuss the issues with you including re-categorization. If it is possible for you, I can see en route Washington DC in May and June.

Best regards,  
Yeon Ho Kim  
for the Korean Claimants