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 RESPONSE OF DOW CORNING CORPORATION, THE DEBTOR'S REPRESENTATIVES, THE FINANCE COMMITTEE AND THE CLAIMANTS' ADVISORY COMMITTEE TO KOREAN CLAIMANTS' MOTION TO STAY THE COURT'S MEMORANDUM OPINION REGARDING TOW ORDERS TO SHOW CAUSE AGAINST ATTORNEY YEON-HO KIM AND VARIOUS MOTIONS FILED BY THE KOREAN CLAIMANTS

Dow Corning Corporation, the Debtor's Representatives, the Finance Committee and the Claimants' Advisory Committee (hereinafter referred to as "Dow Corning Corporation" collectively) has filed their Response. It is necessary for the Korean Claimants to file this Reply to the Response.

To simplify the arguments that the Korean Claimants want to make, the Korean Claimants assert point-to-point in accordance with titles in the Response.

I. Reply to Introduction

The Motion for Stay should be granted because the Korean Claimants have established the factors to justify a stay and a stay would not be detrimental to the SF-DCT, the debtor, the Finance Committee, and the Claimants' Advisory Committee and other Claimants.

The Korean Claimants are likely to prevail on the merits of the appeal.[1]

Dow Corning Corporation asserts, "it [a stay] would delay the closure of the Settlement Facility by well over a year and would generate significant costs at the expense of Dow Silicones".

On the other hand, Dow Corning Corporation asserts, "there is no basis for statement that the Settlement Facility will close in June 2023. In fact, the Settlement Facility will continue operations until it completes the resolution of all pending claims and will at that point terminate as provided in the Plan. This point is not expected to be reached until late 2023 or early 2024. See Exhibit K, September 6, 2022 Declaration of Kimberly Smith-Mair".(page 18 of Response)

The assertions of Dow Corning Corporation are contradictory. If the SF-DCT will continue operations at least until 2023 or early 2024, a stay would not delay the closure of the SF-DCT by well over a year because it is September, 2022. If the SF-DCT will continue operations at least until 2023 or early 2024, a stay would not generate significant costs to the SF-DCT because the staffs of the SF-DCT have already reviewed the Korean files that have the same affirmative statement for proof of manufacturer and the same doctor's diagnosis for disease payment as they examined for last several years from 2004.

Dow Corning Corporation asserts differently by circumstances to mislead this Court, which seems a habit.

II. Reply to Background

[1] The Korean Claimants respect this Court's rulings. But the Korean Claimants have a different view whether the 405 Korean Claimants had the basis of "excusable neglect".

The Plan and the Settlement Facility Agreement do not specify a deadline. Annex A to the SFA specifies the deadline for filing a disease claim like other claims. Even in Annex A, June 3, 2019 is not specified. Annex A regarding deadline for filing a disease claim specifies, "the fifteenth anniversary of the Effective Date".

Dow Corning Corporation asserts that the 15-year anniversary of the Effective Date was June 3, 2019. The Plan and the Plan documents are an agreement of the Parties. A claimant does not know the Effective Date. The Effective Date is an abstract term. The Deadline for filing a disease claim has not been certain from the face of the agreement of the Parities as well as claimants.

The reason that this Court authorized the distribution of notice of the June 3, 2019 deadline (Exhibit E) is not because of a gentleman-type act of Dow Corning Corporation to claimants but because of having known that the Plan does not specify that June 3, 2019 is the deadline for filing.

The fact that the Claims Administrator rejected a review of 176 claimants and 405 Korean claimants, which are not many and if excluding deficient claimants are just a few to be eligible for payment, does not reflect that Dow Corning Corporation has **reminded** the claimants (who did not file by December 27, 2017's Stipulation and Order) of what their payments were waiting if they file by June 3, 2019.

Dow Corning Corporation asserts that the relief requested by the Korean Claimants would result in a Plan modification prohibited by the Bankruptcy Code and the Plan. However, as far as the deadline for filing is concerned, the Plan itself speculated that it could be extended.

Annex to SFA section 6.02(f) says;

(f) Expedited Release Payment Option. Eligible Breast Implant Claimants may elect to receive compensation of $2,000 for a complete release of their right to participate in the Disease Payment Option. Breast Implant Claimants who elect this Expedited Release Payment Option will (if eligible) be allowed to recover under the Explantation Payment Option and the Rupture Payment Option. (i) **Duration. The Expedited Release Payment Option will be available until the third anniversary of the Effective Date**, except as provided at paragraph (iii) below and at Section 7.09 below. **The Claims Administrator shall have the discretion to extend the Expedited Release Payment Option for an additional time period.**

Section 6.02(f) of Annex to SFA is with respect to expedited payment for disease claim. The deadline for expedite disease payment was June 3, 2007 in accordance with Dow Corning Corporation's calculation. But it was extended to June 3, 2019, twelve years longer. Nobody believes that the Claims Administrator decided it alone in discretion. The Plan proponents agreed.

Dow Corning Corporation asserts that the Korean Claimants contend that the deadline may be modified. The Korean Claimants do not request Dow Corning Corporation to modify the Plan. The Korean Claimants request to apply the Plan in accordance with the spirit and the meaning of the Plan if the precise wording does not exist.

III. Reply to Argument

Dow Corning Corporation asserts that the Korean Claimants are not likely to prevail in the appeal because the excusable neglect standard would not permit their late filings.

However, the Korean Claimants have the basis for prevailing.

First, the addition of 400 new claims would not increase funding required to pay claims and administrative costs and thus increase the funding obligations of Dow Corning Corporation. As Dow Corning Corporation admitted, the SF-DCT will not close by 2023 or early 2024 and will continue operations for claims. 400 new claims are not incur administrative costs because the SF-DCT would not have to hire new staffs for 400 new claims. The existing staffs are ready and professional to review the files of 400 new claims. The staffs are familiar with the Korean files because the files are very similar. In addition, 400 new claims must hurdle over eligibility of claim. Therefore, Dow Corning Corporation exaggerates the funding obligations which Funds of 1.67 billion dollars remain even after the second priority payments completed.

Dow Corning Corporation asserts that to allow these 400 late claims would be unfair to other claimants. Other claimants under SF-DCT have been paid in full. They would not be unfair. Other claimants who missed the deadline or who decided not to submit a late claim because they understood that the deadline had passed would not be unfair if these 400 late claims were allowed but rather would be fair and happy since they can file a motion for extension like 400 late claims. Dow Corning Corporation can argue not to accept them in motion if they do not conform to "excusable neglect".

Dow Corning Corporation asserts that the addition of 400 new claims for processing would extend the operations of the SF-DCT by more a year-likely two years. However, the SF-DCT will continue operations at least until 2023 or early 2024. Because the SF-DCT will continue operations at least until 2023 or early 2024, the addition of 400 new claims would not extend the operations of the SF-DCT by more a year-likely two years. In addition, the staffs of the SF-DCT have already reviewed the Korean files that have the same affirmative statement for proof of manufacturer and the same doctor's diagnosis for disease payment as they have examined for last several years from 2004. The SF-DCT would finish processing 400 new claims quickly once it begins.

Delay of 400 new claims was outside the control of the Korean Claimants. They waited for the Court's ruling regarding motion for recognition and enforcement of mediation offered by the Finance Committee by June 2020. They encountered the Covid-19 pandemic situations. The clinics which should issue an affirmative statement for proof of manufacturer and the doctors who were requested to issue diagnosis for disease have closed from the beginning of 2019. To prepare the documents to file with the SF-DCT needed significant time to exchange communications among the claimants, doctors and the attorney. In addition, the mails of the SF-DCT including notice of June 3, 2019 Deadline arrived to the claimants and the attorney at least five or nine months later than they were supposed to be delivered. Delay of 400 new claims was outside of the control of 400 new Claimants.

Dow Corning Corporation asserts that Covid-19 situations have no basis because the deadline of June 3, 2019 was well before the onset of the Covid-19 pandemic. First, the onset of the Covid-19 pandemic is different from the Covid-19 pandemic of the US. Pre-pandemic warnings and quarantines in fact started overlapping with June 3, 2019. In addition, most of 400 claimants received the notice of June 3, 2019 deadline after June 3, 2019.

Dow Corning Corporation asserts that there is no irreparable harm to Korean Claimants because the SF-DCT will continue operations until it completes the resolution of all pending claims. Dow Corning Corporation contended so far that if the SF-DCT continues operations because of new claims it would generate excess costs so that the SF-DCT must close quickly. Dow Corning Corporation contends now that the SF-DCT will continue operations until it completes the resolution of all pending claims so that it rejected 400 new claims and a stay pending appeal is not necessary because there is no irreparable harm.

There is irreparable harm to Korean Claimants if a stay is not allowed. Claims were rejected and the SF-DCT is closing and the appeal process has just begun. Irreparable harm

has already taken place.[2]

Dow Corning Corporation asserts that a stay would put the SF-DCT in a state of indefinite limbo requiring it to maintain staff and incur excess costs for an unknown period. Dow Corning Corporation asserts on the other hand that the SF-DCT will continue operations until it completes the resolution of all claims and will at that point terminate as provided in the Plan and this point is not expected to be reached until late 2023 or early 2024.(See page 18 of Response)

From the assertion of Dow Corning Corporation, they do not know exactly when the SF-DCT closes. They vaguely know that SF-DCT incurs costs that they believe excessive. It is why Dow Corning Corporation asserts, "at that point..as provided in the Plan", and "is not expected to be reached until..".

However, Dow Corning Corporation pleads to the Court that the SF-DCT should maintain staff and incur excess costs for an unknown period, and if a stay is allowed the SF-DCT would be in a state of indefinite limbo. The fact that Dow Corning Corporation asserts that the SF-DCT will continue operations at least until 2023 or early 2024 requires to maintain staff and incur costs, whether deemed excess or not, for maintaining the office of the SF-DCT. A stay would not affect the SF-DCT to maintain staff and incur excess costs for an unknown period. A stay would not change a state of the SF-DCT.

To be in a state of indefinite limbo, the SF-DCT should have maintained even if it were not

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[2] Dow Corning Corporation asserted in Motion for Stay of Closing Order 5 that if the Korean Claimants prevail in the appeal, the District Court will address the adequate relief. Dow Corning Corporation did not assert it in this Motion for Stay of Extension for Deadline of Filing Claim. The Reason is that Dow Corning Corporation knows and realizes that there is nothing that even the Court can do for the Korean Claimants when the Korean Claimants prevail in the appeal after the SF-DCT closed.

required to maintain. Dow Corning Corporation declared that the SF-DCT would continue operations at least until 2023 or early 2024. If so, a stay would not harm Dow Corning Corporation and the SF-DCT not to mention other claimants.

Dow Corning Corporation asserts that staying the completion of the SF-DCT activities pending appeal would not serve the public interest. However, Dow Corning Corporation asserts, "the SF-DCT will continue operations until it completes the resolution of all pending claims".(See page 18 of Response) A stay pending appeal would not impede the SF-DCT activities so that the SF-DCT can continue operations including activities to complete the resolution of all pending claims. In addition, the public interest, which includes implementing a bankruptcy plan, would enable the SF-DCT to continue operations even when a stay pending appeal was allowed. There is no hindrance on the part of the SF-DCT because of a stay.

IV. Conclusion

For the foregoing Reply to Dow Corning Corporation's Response and Requested Relief for Motion for Stay filed, the Korean Claimants request this Court to grant a stay regarding Motion for Extension of Filing Claim.

Date: September 14, 2022

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@naver.com

CERTIFICATE OF SERVICE

I hereby certify that on September 14, 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: September 14, 2022

Signed by Yeon Ho Kim