

**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.Judge Denise Page Hood

**REPLY TO RESPONSE REGARDING THE MOTION FOR ORDER TO CORRECT
THE DISPOSITION OF THE SF-DCT**

I. Alleged Facts To Be Corrected

The SF-DCT alleged (second paragraph, page 6, memorandum) that counsel for the 109 Korean Claimants requested the SF-DCT to extend the deadline for filing after one-year cure deadline passed by. However, the counsel has never asked the SF-DCT for extension. It was not necessary for asking because the counsel was notified by the SF-DCT that the claimants could file disease claims by June 3, 2019. And the claimants filed them on June 1, 2019.

The SF-DCT alleged (second paragraph, page 2, memorandum) that the 109 disease claims filed by the Korean claimants had ‘deficiencies’ that were not cured by the Plan mandated deadline. However, the 109 Korean claimants had not filed disease claims before the SF-DCT sent them the Notification of Status letter. They filed the disease claims forms but did not submit medical records which could prove disease claims so that ‘deficiencies’ were not able to exist.

The SF-DCT alleged (second paragraph, page 2, memorandum) that the 109 Korean claimants failed to submit corrective documents within the one-year cure period. However, it was not necessary for them to file corrective documents because they had not filed disease claims. The SF-DCT treated them as if they filed disease claims but the 109 Korean claimants did not file disease claims with medical records until June 1, 2019.

The SF-DCT alleged (second paragraph, page 5, memorandum) that all of the claims were reviewed and found to have deficiencies. However, the 109 Korean claimants did not file disease claims with medical records. It was impossible for the SF-DCT to review all of the disease claims and to find to have deficiencies.

The SF-DCT alleged (third paragraph, page 5, memorandum) that in 2017 and 2018 in accordance with the applicable rules, the SF-DCT issued expedited payments to each of the 109 Korean claimants. However, the SF-DCT did not have such applicable rules that the SF-DCT could send expedited release payments to the claimants who did not file the disease claims and medical records. The SF-DCT should have waited for filing of the medical records for disease claims until the final deadline of June 3, 2019. The strategy of the SF-DCT was to quicken the filing deadline of disease claims from the 109 Korean claimants. The SF-DCT violated the rule that the deadline for filing disease claims was June 3, 2019.

The SF-DCT alleged (first paragraph, page 6, memorandum) that the Acknowledgement Letters stated that the cure deadline for the disease claims had expired and that no additional reviews could occur on those previous claims. However, the 109 Korean claimants had not filed disease claims with medical records so that there should be no cure deadline for disease claims.

II. Counter-Argument

A. This Motion is Not an Appeal from the Decisions of the Appeals Judge

The SF-DCT alleged (third paragraph, page 7, memorandum) that this motion to correct the dispositions of the Claims Administrator and the Appeals Judge regarding the 109 Korean claimants is an appeal of the decisions of the Appeals Judge which is expressly prohibited by the plan.

This motion is, however, to correct that the SF-DCT breached its rules and practices regarding filings of the claimants of disease claims and the SF-DCT willfully disregarded the rules and practices although the AOR for the Korean claimants pointed out that either the Claims Administrator or the Appeals Judge or the Finance Committee must correct the breach of rules and practices voluntarily.

The SF-DCT alleged (second paragraph, page 9, memorandum) that this motion to correct is nothing more than an attempt to appeal an adverse decision and is plainly barred by the Plan and this court's prior rulings.

This motion is, however, to urge the SF-DCT to respect its own commitment in the Acknowledgement of Returned Expedited Release Payment letters to the 109 Korean claimants, "the following options remain available: 2. Apply for a new disease or condition on or before June 3, 2019 that manifested after the expiration of the ACTD cure deadline."

This motion is, in addition, to relieve from the violation of good faith committed by the SF-DCT in that the SF-DCT promised the 109 Korean claimants to apply for a new disease or condition on or before June 3, 2019 but decided that their disease claims were filed after the expiration of the cure deadline when they filed their disease claims actually on June 1, 2019.

B. The 109 Korean Claimants Did Not Fail to Cure Deficiencies

The SF-DCT alleged (first paragraph, page 10, memorandum) that the Korean claimants admitted that they did not cure their disease claims by the applicable cure deadline (by indicating Motion to Correct at 1-2) and alleged that it seemed that they contended that the letter sent by the Settlement Facility to acknowledge the return of the expedited payments indicated that they had the right to file corrections to their disease claims at any time up until June 3, 2019.

The SF-DCT mistakenly interpreted, however, the wording of the Motion at 1-2 in that the Korean claimants have never admit that they did not cure their disease claims by the applicable deadline. The Korean claimants did not file with the medical records to prove the disease claims so that there was no original specific disease claim that the SF-DCT was able to review. Therefore it was not necessary for the claimants to cure their disease claims. The SF-DCT assumed that the 109 Korean claimants filed their disease claims and sent them the Notification of Status letters. Once again, the SF-DCT tried to quicken the final deadline of June 3, 2019 for filing disease claims by assuming that the claimants filed their disease claims. It was the breach of the rules and practices established in the SF-DCT. Since there was no original specific disease claims filed by the 109 Korean claimants, there was no cure deadline which could be applied to them. The SF-DCT just assumed that they filed their disease claims.

The SF-DCT alleged (first and second paragraphs, page 10, memorandum) that the letter (indicating the Acknowledgement of Returned Expedited Release Payment letter) clearly states that the only options claimants have after the cure deadline has expired are to (1) file an error correction, or (2) apply for a **new** disease or condition on or before June 3, 2019 that manifested after the expiration of the previous cure deadline, or (3) request the return of the original expedited release payment (indicating Smith-Mair Dec. at 10) but the Korean claimants did not exercise any of these options: they did not file an error correction or appeal at that time; they did not request return of the expedited release payment; and they did not file

claims for a new disease, and instead, two years after the expiration of their cure deadlines, they submitted Supplemental Disease Review Forms in an effort to cure some of the original disease claims. (indicating Smith-Mair Dec. at 12)

The 109 Korean claimants did not, however, file disease claims with the medical records so that there was no **new** disease or condition that could allegedly manifest after the expiration of the previous cure deadline. The SF-DCT just assumed that they filed their disease claims with the medical records and their disease or condition could be manifested after the expiration of the cure deadline, which would be deemed **new** from the SF-DCT's eyes.

The SF-DCT blames the Korean claimants that they did not file for a new disease and instead, two years after the expiration of their cure deadlines, they submitted Supplemental Disease Review Forms in an effort to cure some of the original disease claims.

The SF-DCT attached, however, the Supplemental Disease Review Forms to its Acknowledgement of Returned Expedited Release Payment letters (*See* Exhibit E, Return Check Supplemental Disease Review Form). The Korean claimants just used them for the purpose of filing when they submitted the SF-DCT their disease claims on June 1, 2019, which was the first time that they filed their disease claims with medical records. They did not admit that the filing of June 1, 2019 for the disease claims was to prove a **new** disease or condition that manifested after the expiration of their alleged cure deadlines.

C. The SF-DCT Violated a Clause in the Plan (supplemental argument)

As a supplemental argument, the 109 Korean claimants would like to argue that the SF-DCT violated a clause in Dow Corning Settlement Program and Claims Resolution Procedures, Annex to Settlement Facility and Fund Distribution Agreement.

§ 6.02(f) of Annex clearly provides that eligible breast implant claimants may elect to receive compensation of \$2,000 (in case of the Korean claimants, \$1,200) for a complete release of their right to participate in the Disease Payment Option. The SF-DCT may not elect this Expedited Release Payment Option for the claimants. The SF-DCT elected this Option for the 109 Korean claimants who had elected the Disease Payment Option of § 6.02 (d) and even filed their Disease Payment Option Forms. Nevertheless, the SF-DCT sent the expedited release payment checks and award letters to them. The SF-DCT violated the Clause of the Plan. This court must sanction the SF-DCT sternly. In addition, this court is requested to rule that the SF-DCT's actions regarding the 109 Korean claimants' expedited release payments has no founding in the Plan so that the Acknowledgement of Returned Expedited Release Payment letters and the dispositions of the Claims Administrator and the Appeals Judge saying that "deficiencies" of their disease claims were not remedied before the expiration of its cure deadline are null and void.

III. Conclusion

The SF-DCT's Response that the Finance Committee, the Debtor's Representative and Dow Corning Corporation and the Claimants' Advisory Committee joined in unanimity has no basis for justification denying the 109 Korean claimants' legitimate and reasonable motion to correct the dispositions of the Claims Administrator and the Appeals Judge regarding their disease claims and therefore this court is requested to Grant this motion for Order.

Date: January 2, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 2, 2024, 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: January 2, 2024

Signed by Yeon-Ho Kim