

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

In re:

SETTLEMENT FACILITY DOW CORNING TRUST

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

Hon. Denise Page Hood

**NOTICE OF OBJECTION TO KOREAN CLAIMANTS' SUBMISSION
(ECF NO. 1763)**

Dow Silicones Corporation (“Dow Silicones”)¹, the Debtor’s Representatives (the “DRs”), the Claimants’ Advisory Committee (the “CAC”), and the Finance Committee (the “FC”) (collectively, “Movants”) respectfully submit this Notice of Objection to the Submission of Korean Claimants.

On February 2, 2024, Korean Claimants filed “Exhibit K re Motion for Order To Correct the Disposition of SF-DCT” (“Submission”) along with 10 attachments. *See* ECF No. 1763. This Submission is an attempt to file what is in essence a ‘sur’-sur-reply without leave of court in violation of the rules. The Submission relates to the Motion for Order to Correct the Disposition of the SF-DCT Regarding Korean Claimants (“Motion to Correct”) (ECF No. 1752) in which Korean Claimants seek to have this Court reverse decisions of the Settlement Facility. The Submission

¹ Dow Corning Corporation changed its name to Dow Silicones Corporation on February 1, 2018.

includes a declaration of Korean Claimants' Attorney of Record that purports to refute or respond to the January 12, 2024 Sur-Reply in Further Response of Dow Silicones Corporation, The Debtor's Representatives, The Claimants' Advisory Committee and The Finance Committee to the Korean Claimants' Motion for Order to Correct the Disposition of the SF-DCT Regarding the Korean Claimants ("Sur-Reply") (ECF No. 1756). The declaration asserts that the testimony provided by Kimberly Smith-Mair, the court-appointed Claims Administrator of the SF-DCT, in her declaration in support of the Sur-Reply is 'false'. Submission at PageID.37386-89.

The Movants object to this unauthorized Submission because it does not comply with the rules, it consists primarily of thousands of pages of exhibits that are irrelevant and redundant of prior filings, and most importantly because it contains unwarranted and unsupportable attacks on the veracity of the Claims Administrator's testimony about the procedures and standards of the Settlement Facility. Movants submit that the Court should ignore the Submission, not authorize its filing, and deny any attempt to have the Submission included in the record for consideration of the pending Motion to Correct.

ARGUMENT

I. KOREAN CLAIMANTS' SUBMISSION IS AN UNAUTHORIZED SUR-SUR-REPLY FILED WITHOUT LEAVE OF COURT

Korean Claimants did not seek leave to file the Submission, which is clearly a response to Movants' Sur-Reply, and can only be viewed as an improper sur-sur-reply notwithstanding its title as an 'Exhibit'. Under the federal procedural rules and the local rules, "Parties must first seek leave to file a sur-reply." *Albino-Martinez v. Adducci*, 454 F. Supp. 3d 642, 647 (E.D. Mich. 2020) (quoting *Nett v. Wells Fargo Home Mortg. Inc.*, No. 10-15058, 2011 WL 1519166, at *3 (E.D. Mich. Apr. 20, 2011) and *Fox v. Riverdeep, Inc.*, No. 07-13622, 2009 WL 1506670, at *1 n.1 (E.D. Mich. May 26, 2009)). Movants submit that the Court should prohibit the filing of this "sur-sur-reply".

II. KOREAN CLAIMANTS' SUBMISSION CONTAINS OVER THREE THOUSAND PAGES OF DOCUMENTS THAT ARE DUPLICATIVE, ADMITTEDLY INCOMPLETE, AND IRRELEVANT TO THE ISSUES IN THE MOTION.

The Submission contains thousands of pages of documents that Counsel for Korean Claimants describes as his records (in some cases partial records) including medical records. The records that Counsel maintains, whether complete or partial, are not relevant. The only information that is relevant is that received by the Settlement Facility. The voluminous exhibits are irrelevant for three reasons: first, because they have no bearing on the Settlement Facility's process or the

requirements of Claimants (which is described in the declaration of Ms. Smith-Mair (ECF No. 1756-1 at PageID.34644-48)) and are not pertinent to the issues raised in the Motion to Correct, second, because they are not records of the Settlement Facility – which are the only records that have any bearing on the assertion that the claim submissions were not ready for review; and third because they have no bearing on the indisputable fact that the Motion to Correct is an unauthorized appeal of the Settlement Facility’s decision, which is barred by the Plan. The Court should disregard the voluminous, irrelevant documentation.

III. THE SUBMISSION IS INAPPROPRIATE AND IMPERTINENT AND SHOULD NOT BE ACCEPTED FOR FILING

Counsel for Korean Claimants asserts in his declaration that certain statements made in the Declaration of the Claim Administrator, Ms. Smith-Mair, in support of the Sur-Reply are false. Submission at PageID.37386-89. Specifically, Counsel for Korean Claimants states that the breakdown of the 109 claims at issue based on whether and when medical documentation was submitted to the Settlement Facility is wrong and that Ms. Smith-Mair’s explanation of the procedures applied by the Settlement Facility in processing claims is false and distorts the facts. *Id.* at PageId.37389 at ¶ 20.

Ms. Smith-Mair, in her capacity as the Claims Administrator, prepared the declaration because she has knowledge of the procedures of the Settlement Facility

and has access to all of the claim files in the Settlement Facility's possession. Counsel for Korean Claimants cannot dispute Ms. Smith Mair's rendition of standard Settlement Facility procedures.

It appears that Counsel for Korean Claimants disputes the timing of submission of medical records for 63 of the 109 claimants. *See Id.* at PageID.37388. Ms. Smith-Mair's declaration does not purport to provide the exact time when medical records were provided to the Settlement Facility.

In the declaration, Counsel for Korean Claimants disputes the conclusion in Ms. Smith-Mair's declaration that all 109 claimants submitted medical records before the disease claim review occurred. *See Id.* at PageID.37386. Ms. Smith-Mair's declaration states that the policy of the Settlement Facility is to review disease claims and issue notification of status letters only when there is a submission of medical records that is sufficient to permit a review. *See* ECF No. 1756-1 at PageID.34645-46. The fact that all 109 Korean Claimants received notification of status letters means that the Settlement Facility had received medical records for each of those Korean Claimants. *Id.*

The declaration of Counsel for Korean Claimants does not dispute the statement in Ms. Smith Mair's declaration that each of the 109 Korean Claimants checked box 2B on the disease form which provides "I am making a claim for a Disease Payment. I have obtained all of the medical records and documents required

to support my claim and I am ready to have my disease claim evaluated.” See Exhibit I to Smith-Mair Sur-Reply Dec, at PageId.34650-52.

To the extent that the declaration of Counsel for Korean Claimants asserts that Ms. Smith-Mair’s declaration distorts the facts or is false in its explanation of Settlement Facility procedures or description of records actually received and maintained by the Settlement Facility, that declaration is the type of impertinent and scandalous filing that should be disregarded and removed from the docket.

CONCLUSION

For the foregoing reasons, Dow Silicones Corporation, the Debtor’s Representatives, the Claimants’ Advisory Committee, and the Finance Committee respectfully object to Korean Claimants’ Submission and request that this Court disregard Korean Claimants’ Submission.

Dated: March 6, 2024

Respectfully submitted,

/s/ Karima Maloney

Karima Maloney
Steptoe LLP
717 Texas Avenue
Suite 2800
Houston, TX 77002
Telephone: (713) 221-2382
KMaloney@steptoe.com
Counsel for the Finance Committee

/s/ Deborah E. Greenspan

Deborah E. Greenspan
BLANK ROME LLP
Michigan Bar # P33632
1825 Eye Street, N.W.
Washington, DC 20006
Telephone: (202) 420-2200
Facsimile: (202) 420-2201
Deborah.Greenspan@blankrome.com
*Debtor’s Representative and Attorney
for Dow Silicones Corporation*

/s/ Ernest H. Hornsby

Ernest H. Hornsby
FARMER PRICE LLP
100 Adris Place
Dothan, AL 36303
Telephone: (334) 793-2424
Ernie@farmerprice.com
Claimants' Advisory Committee

/s/ Dianna L. Pendleton-Dominguez

Dianna L. Pendleton-Dominguez
LAW OFFICE OF
DIANNA PENDLETON
401 N. Main Street
St. Marys, OH 45885
Telephone: (419) 394-0717
DPend440@aol.com
Claimants' Advisory Committee

