

**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

**MOTION FOR ORDER THE SF-DCT TO LIFT OFF THE ADDRESS UPDATE AND  
CONFIRMATION REQUIREMENT REGARDING THE KOREAN CLAIMANTS**

I. Background

The SF-DCT has been imposing the address update and confirmation requirement on the Korean claimants for a long time.

The SF-DCT began to impose the requirement from around 2015. (Exhibit A) The attorney of record (“AOR”) believed that his clients did not have the obligation to update the address and to receive confirmation individually from the SF-DCT under the Plan (Exhibits B,C,D) upon receiving letters requesting their address update and confirmation.

The SF-DCT through declaration of the head of Quality Management (Ellen Bearicks, Exhibit E) declared, “The Claimant Information Guide provide information to claimants about substantive requirements for claims submissions and directions to claimants about communications with the SF-DCT. In particular, the Claimant Information Guide inform claimants and attorneys that ‘[y]ou have an affirmative obligation to update your address with the Settlement Facility’ and that it ‘is your responsibility to notify the Settlement Facility of

any address change.””

The SF-DCT interpreted the clause (Q 9-15) in the Claimant Information Guide (Exhibit F) that the SF-DCT could impose the AOR the obligation to update the address for their claimants and to receive confirmation individually from the SF-DCT.

The AOR believed that the Claimant Information Guide was not a part of the Plan documents and even if it were, the clause had nothing do to with the claimants’ obligation to update their addresses and confirmation from the SF-DCT.

The SF-DCT through declaration of the Claims Administrator (Ann Phillips, Exhibit G) further declared, “The SF-DCT has the obligation under the SFA and Annex A to the SFA to implement procedures to ensure distribution of Settlement Fund assets only in accordance with the terms of the SFA and applicable Orders. To that end, the SF-DCT has maintained procedures for several years to track claimant addresses to assure that eligible claimants receive their payments.”

The SF-DCT construed the SFA (Exhibit C) and Annex A to the SFA (Exhibit D) that the SF-DCT could impose the obligation to update the claimants’ addresses on the AOR and the claimants and the claimants must receive confirmation individually from the SF-DCT.

The AOR found that there was no clause in the SFA and Annex to the SFA that a claimant must update address and must receive confirmation of the address from SF-DCT.

Furthermore, the SF-DCT asserted at the bottom of the letters requesting the claimants address update and confirmation to the AOR (Exhibit A), “Pursuant to the Consent Order to Establish Guidelines for Distributions from the Class 7 Silicone Material Claimants’ Fund, you must return the enclosed Address Update Correction form within 90 days from the date

of this notice. After 90 days from this final notice, you claim will be permanently closed and no funds will be placed in reserve for you.” The SF-DCT explained that the Class 7 Order was the basis for the claimants’ obligation to update their addresses.

The AOR believed that the Korean claimants had nothing to do with Class 7 because ALL of the Korean claimants who had received letters requesting address update and confirmation were Class 6.1 or Class 6.2 claimants.

In addition, the AOR indicated the SF-DCT the problem regarding address update and confirmation in the letters of 2017 to the head of Quality Management Department and the Claims Administrator (Exhibit H) that the Korean claimants had no obligation to update their addresses to be confirmed individually by the SF-DCT because of the Korean law prohibiting from doing it, the claimants’ dislikes of address update and confirmation from the SF-DCT, and their accomplished submissions of the Korean-Government-issued Resident Registry (Exhibit I) upon participation into the SF-DCT program.

The SF-DCT, however, denied the Korean claimants the fifty percent (50%) of second priority payments ordered by this court on January 19, 2019 (Exhibit J) as well as the basic payments for the claims approved by the SF-DCT. The AOR could not receive any check for the payments from the SF-DCT since around 2018. (Exhibit K)

On March 19, 2019, the SF-DCT set up the Closing Order 2. (Exhibit L) The Closing Order 2 included a provision (paragraphs 11 to 13) for the above Plan-unauthorized practices of the SF-DCT regarding the claimants’ address update and confirmation.

Well before the Closing Order 2 in place, the Korean claimants had received letters for their address update and confirmation from the SF-DCT. The SF-DCT chose the claimants whose address must be updated and individually confirmed among around two thousand six

hundred (2,600) claimants. (Exhibit A)

Although the AOR and the Korean claimants believed differently, the AOR submitted the address update forms for around one hundred fifty (150) claimants who had received an address update request letter from the SF-DCT in 2018. Following it, the AOR submitted the address update forms for six hundred seventy six (676) claimants who had received an address update request letter from the SF-DCT on June 1, 2019. (Exhibit M)

The SF-DCT, however, rejected ALL of the Korean claimants' address update forms. (Exhibit G) In addition, the SF-DCT imposed a **new** sanction on the attorney on March 3, 2020 that the AOR was prohibited from updating his clients' addresses and on the claimants that they must update their addresses **directly** by contacting the SF-DCT through either calling, or emailing, or mailing address update forms individually to the SF-DCT. (Exhibit N) The AOR's power of attorney regarding address update for clients was taken away.

Furthermore, the SF-DCT set up the Closing Order 3 on March 25, 2021. (Exhibit O) The SF-DCT stopped ALL of pending filings' review, whatever claims (POM claims, disease payments claims) the Korean claimants filed. The Korean claimants filed their claims on June 1, 2019 and therefore many Korean claimants' claim review was on hold and the Korean claimants' claims were permanently closed.

Nevertheless, the SF-DCT asked the AOR to confirm with the claimants their current addresses on September 23, 2021 although the AOR had been prohibited from updating the claimants' addresses since March 3, 2020. (Exhibit P)

Furthermore, the SF-DCT set up the Closing Order 5 on June 13, 2022. (Exhibit Q, subsequently added a new list of affected SID numbers on January 12, 2023) The SF-DCT linked ALL of the Korean claimants' SID numbers on the homepage of the SF-DCT.

The deadline for updating addresses by the Korean claimants under the Closing Order 5 elapsed. The SF-DCT notified the AOR that ALL of the Korean claimants' claims were permanently closed. (Exhibit R)

The amount of approved payments on hold due to the address update and confirmation requirement is about three million dollars. The SF-DCT denied the request of the AOR for the payments including reissuance of the returned checks which expired.

## II. Reasons for Relief

The AOR found that the SF-DCT did not impose, or loosely imposed, the address update and confirmation requirement on the US claimants including the Class 5 claimants. It was even more so if the claimants retained an attorney and the AOR was on record of SF-DCT. The Finance Committee admitted that several thousand checks for the second priority payments to the US claimants were returned. (*See* ECF No.1697, Motion for Order to Show Cause)

The AOR believes that the SF-DCT did not ask the foreign claimants of the other countries to update and confirm their addresses in full.

The SF-DCT imposed the requirement on the Korean claimants four-year earlier than the Closing Order 2 took place and extremely stricter than on the US claimants and the other countries' foreign claimants. It is a sanction on both the AOR and the Korean claimants.

The Korean legal practices, both under the law and the practice, allow an attorney to deposit unpaid sums of the client's share in the Korean court if the attorney was not able to distribute the clients for any reason. The Korean court shall send a notice of the deposit to the client after verifying addresses of the depository on its own. (If the depository deceased, the

notice is given to the heirs) Therefore the payment checks sent to the AOR for the Korean claimants can be distributed to the claimants eventually.

Most of Korean claimants do not want to receive a letter or a correspondence directly from the US court or the SF-DCT. They want the AOR to defend the issues raised with the SF-DCT and this court.

Finally, the Personal Information Protection Act of Korea does not allow the attorney to disclose the client's address to the opposing party without consent.

### III. Relief to be Sought

For the forgoing reasons, the Korean claimants request this court to Grant this motion for Order the SF-DCT to lift off the address update and confirmation requirement regarding the Korean claimants.

Alternatively, the AOR request this court to Allow the Korean claimants to file a lawsuit with the Korean courts against the debtor, its affiliates, and their subsidiaries doing business in Korea for collection of the SF-DCT-approved payments provided that this court dismiss this motion for Order to lift off the address update and confirmation requirement from the SF-DCT. (§10.08 of the SFA stipulates that this court has the exclusive jurisdiction over the SF-DCT)

Date: January 24, 2024

Respectfully submitted,

(signed) Yeon Ho Kim  
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**CERTIFICATE OF SERVICE**

I hereby certify that on January 24, 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 24, 2024

Signed by Yeon-Ho Kim



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Proposed Order

It is Ordered that the Korean claimants' motion to lift off the address update and confirmation requirement of the SF-DCT regarding the Korean claimants is Granted.

S/DENISE PAGE HOOD  
DENISE PAGE HOOD  
United States District Judge

DATED: