

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE:	§	CASE NO. 00-CV-00005-DT
	§	(Settlement Facility Matters)
DOW CORNING CORPORATION,	§	
	§	Hon. Denise Page Hood
REORGANIZED DEBTOR	§	

**RESPONSE OF DOW CORNING CORPORATION TO MOTION OF
KOREAN CLAIMANTS FOR THE SETTLEMENT FACILITY TO LOCATE
QUALIFIED MEDICAL DOCTOR OF KOREA AND EITHER PAY FOR THAT
QUALIFIED MEDICAL DOCTOR TO TRAVEL TO KOREA AND CONDUCT THE
DISEASE EVALUATIONS OR HIRE QUALIFIED MEDICAL DOCTOR IN KOREA
TO CONDUCT THE REVIEWS AT THE SETTLEMENT FACILITY'S EXPENSE**

TO THE HONORABLE DENISE PAGE HOOD,
UNITED STATES DISTRICT JUDGE:

Korean Claimants have filed a Motion seeking to compel the Settlement Facility to hire a medical doctor (either in the United States or Korea) to conduct disease evaluations of Korean Claimants at the expense of the Settlement Fund.

The Motion must be denied. The request is not authorized by the Plan Documents and the Korean Claimants are not entitled to have their claims prepared for submission at the expense of the Settlement Fund. All claimants must submit their claims with the requisite medical documentation. There is no exception for Korean Claimants.

1. The Plan as confirmed and as implemented specifies that claimants who wish to assert a disease payment option claim are to submit a claim form along with appropriate documentation supporting the compensable disease claimed. Specifically, the Plan provides two ways to document a claim for Disease Payment Option I: (1) the claimant can submit a statement or diagnosis from a physician board-certified in an appropriate specialty together with the medical records upon

which that statement or diagnosis is based, or (2) the claimant can provide medical records for the Settlement Facility to review. The Plan further clarifies the types of records that the claimant should submit:

A Claimant should submit all records that contain information relevant to the criteria for Disease Payment Option I, including (1) records relating to the relevant signs, symptoms, findings and test results set forth in Disease Payment Option I and (2) records showing the severity of a Claimant's disease or, if applicable, a determination of disability level by either a Qualified Medical Doctor or the Claimant's treating physician. In general, whatever the physician relied upon in arriving at the diagnosis and findings in the statement or diagnosis should be provided. Typically, this might include a patient questionnaire, physical findings obtained from an assistant's notes in the office chart, and certain lab or other test reports. If the doctor needed to review earlier medical records obtained from other physicians to make a definitive statement about the Claimant's condition or disability, then those records must also, if available, be submitted. If, however, based on an examination of the Claimant, the physician has first-hand knowledge of everything that is the basis for his or her opinion, and the statement or diagnosis sets out that knowledge in sufficient detail, it is possible that no additional records will be required.

As used herein, the term "Qualified Medical Doctor" or "QMD" means a physician who is Board-certified (not Board-eligible) in internal medicine, rheumatology (a sub-specialty of internal medicine), neurology, neurological surgery, or immunology who prepares the statement or diagnosis that the Claimant must file in support of a Disease Payment Option I Claim. Only a Board-certified physician can submit the statement or diagnosis of one of the compensable diseases included in Disease Payment Option I. The physician writing a statement or diagnosis of one of the compensable diseases in Disease Payment Option I must be Board-certified in an appropriate specialty. The type of specialty depends on the complaints and symptoms with which a Claimant presents. "Board-certified" means certification in a particular medical specialty by the American Board of Medical Specialists. A Doctor of Osteopathy can be a Qualified Medical Doctor if he or she is Board-certified by the same Board that certifies Medical Doctors. A Doctor of Osteopathy may also submit diagnoses or disease compensation claims so long as his or her certification is within an appropriate specialty.

Claims Resolution Procedures (Annex A to the Settlement Facility and Fund Distribution Agreement), Schedule II, Part A, p. 88.

For Disease Payment Option II the claimant must submit a claim form along with medical documentation as specified for the definition of the claimed disease.

Specifically, the Plan provides that (1) a claimant must file with the claims office all medical records establishing the required findings or laboratory abnormalities; and (2) a claimant must supply all office charts, radiology/pathology reports and test results of the physician who made the required findings or ordered the tests. *Annex A* at 103.

2. Korean claimants note that during negotiations, Dow Corning and the Tort Claimants' Committee agreed to provide information regarding the definition of a Qualified Medical Doctor (QMD) in Korea. In fact, the Plan provides that the Claimants' Advisory Committee and Debtor's Representatives shall specify the categories, degrees or certification of doctors that will qualify as QMDs in Class 6.2 countries. *Annex A* at 89. Korea is classified as a Class 6.2 country.

3. In November 2004 the Claims Administrator requested that the Claimants' Advisory Committee and Debtor's Representatives provide the categories, degrees or certifications of doctors that will qualify as a QMD in Korea. The Debtor's Representatives promptly initiated an inquiry in Korea to determine the types of certifications that would be equivalent to Board certification in the United States. Once that information is received, it will be provided to the Settlement Facility.

4. Korean Claimants allege that in a meeting held on September 27, 2004, the Claims Administrator agreed that the Settlement Facility "shall locate a QMD of Korea and would either pay for the QMD to travel to Korea and conduct disease evaluations or hire a QMD in Korea to conduct the reviews at the Settlement Facility's expense." Motion at 8. Korean Claimants seek by this Motion to compel the Settlement Facility to implement that alleged agreement.

5. No representative of Dow Corning Corporation attended the September 27 meeting so Dow Corning Corporation has no knowledge of the discussion.

However, the Plan does not authorize the Settlement Facility to pay the cost of preparing claimant submissions or the cost of the medical examinations or tests that necessarily must be conducted in order for a claimant to submit a disease option claim. There is one limited situation in which the Settlement Facility can pay for the cost of an examination or testing: specifically, as part of the quality control procedures, the claims office has the authority and obligation to assure an acceptable level of reliability and quality control of claims. As part of that quality control review, the claims office may require the examination of a claimant by a physician selected by the claims office. In the event that the claims office does request such a specific examination or test as part of quality control, then the claims office is to pay the cost of that examination or test from the Settlement Fund. *Settlement Facility and Fund Distribution Agreement* § 5.04(b). This provision would apply only if the claims office were to request an examination as part of quality control procedures, i.e., to determine the reliability of medical documentation from a specific doctor or practice for the purpose of assuring that payment is distributed only to qualified claims.¹ It does not mean that any time the claims office finds a medical submission deficient the claims office can or should pay for an examination, nor does it grant the claims office any authority to pay for examinations for any claim before it is submitted for review -- regardless of the experience that claimant had in the MDL.

6. The Korean Claimants ask the Court to compel the Claims Administrator to “keep her promise.” Whether the Claims Administrator made any “promise” or representation to the Korean Claimants is irrelevant. The Claims Administrator

¹ For example, if the claims office has concerns about the potential fraud stemming from medical documents provided by a particular doctor, and if there are a significant number of other claims potentially affected, then the claims office might require a new examination with a doctor selected by the Settlement Facility of a random sample of such claims to test the reliability of the medical documents prepared by that doctor. The Settlement Facility would have the authority to pay for these exams.

does not have the authority to make agreements or implement procedures that are not permitted by the Plan. Thus, even if the Claims Administrator made representations such as those claimed by the Korean Claimants, the Claims Administrator cannot implement such procedures.

7. The request of the Korean Claimants to compel the appointment of a QMD to conduct medical reviews of Korean Claimants at the expense of the Settlement Facility must be denied.

Respectfully submitted this 28th day of December 2004,

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UNITED STATES DISTRICT COURT
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§ HON. DENISE PAGE HOOD
REORGANIZED DEBTOR §

CERTIFICATE OF SERVICE

I hereby certify that on December 28, 2004 a true and correct copy of the below listed pleading was served via e-mail or telecopy upon the parties listed below.

1. RESPONSE OF DOW CORNING CORPORATION TO MOTION OF KOREAN CLAIMANTS FOR THE SETTLEMENT FACILITY TO LOCATE QUALIFIED MEDICAL DOCTOR OF KOREA AND EITHER PAY FOR THAT QUALIFIED MEDICAL DOCTOR TO TRAVEL TO KOREA AND CONDUCT THE DISEASE EVALUATIONS OR HIRE QUALIFIED MEDICAL DOCTOR IN KOREA TO CONDUCT THE REVIEWS AT THE SETTLEMENT FACILITY'S EXPENSE.

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