

# Exhibit D

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

**In re:**

**SETTLEMENT FACILITY DOW  
CORNING TRUST**

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

**Hon. Denise Page Hood**

**DECLARATION OF KIMBERLY SMITH-MAIR  
IN SUPPORT OF 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**

I, Kimberly Smith-Mair, declare as follows based upon my recollection and review of certain data and documents:

1. I am the Claims Administrator for the Settlement Facility-Dow Corning Trust ("Settlement Facility" or "SF-DCT").
2. As Claims Administrator, I have knowledge of past and present procedures implemented to process the Settling Breast Implant Claims in accordance with the terms of the Settlement Facility and Fund Distribution Agreement ("SFA") and the Claims Resolution Procedures ("Annex A" to the SFA).
3. As Claims Administrator, I have knowledge of all Orders issued by the Court that pertain to the administration and payment of claims submitted to the SF-DCT.
4. As Claims Administrator, I have knowledge of all notices and information posted by the SF-DCT and of notices, letters, and information sent to and received from attorneys of record regarding issues relating to notice, deadlines, and all matters related to assuring the validity of claim submissions and compliance with the procedures, guidelines, and rules of the SF-DCT and of Annex A.

5. I have reviewed and am familiar with the Motion For Order to Correct the Disposition of the SF-DCT Regarding the Korean Claimants (“Motion to Correct”) filed by Mr. Yeon-Ho Kim as counsel for certain Korean Claimants. The Motion to Correct involves 109 Korean Claimants who filed disease claims with the SF-DCT.
6. Under the terms of the Claims Resolution Procedures, every claimant receives a Notification of Status letter advising the claimant of the results of the claim review and identifying any deficiencies in the claim. Annex A at § 7.06.
7. Each of the 109 Korean Claimants at issue in the Motion to Correct received a Notification of Status letter identifying deficiencies in their disease claim. Under the terms of the Claims Resolution Procedures, claimants asserting a disease claim have one year from the date of the Notification of Status letter to cure those deficiencies. Annex A at § 7.09(b)(ii). The Notification of Status letters sent to the 109 Korean Claimants each explained the one-year cure deadline and provided the date when the claimant was required to submit documents to cure the deficiencies. Attached hereto as Exhibit 1 is a true and correct copy of an example of a Notification of Status Letter that each Claimant received
8. The Claims Resolution Procedures provide that to be compensable, a disease claim must meet the eligibility criteria set forth in the Plan. Consequently, any claim that does not meet the eligibility criteria is deficient and must be denied if not cured timely. The Court’s July 25, 2018 Closing Order 1 reiterated the Plan requirements and states that the “SF-DCT shall deny all deficient claims that are not cured by the applicable deadline.” ECF No. 1447 (“Closing Order 1”).
9. The cure deadline for each of the 109 Korean Claimants expired without the required submissions. That is, none of the 109 Korean Claimants submitted the necessary documents to cure the deficiencies by the applicable deadline. The last cure deadline date for any of the 109 Korean Claimants expired in July 2017.
10. In 2017 and 2018 in accordance with the applicable rules, the SF-DCT then issued expedited payments to each of the 109 Korean Claimants. The Korean Claimants each returned the expedited payment. Between 2018 and 2019 the SF-DCT sent a letter to each of the Korean Claimants acknowledging the return of the expedited payment. These



Acknowledgment Letters stated that the cure deadline had passed and no additional reviews could occur on their previous claim. The Acknowledgment Letters further provided the options available to the Korean Claimants under the Plan. Each claimant could, at that point:

- File an Error Correction. OR
- Apply for a claim for a **new** disease or condition on or before June 3, 2019 provided that the new disease or condition manifested after the cure deadline expired on their original disease claim OR
- Request the return of the original Expedited Release Payment.'

Attached hereto as Exhibit 2 is a true and correct copy of an example of an Acknowledgement Letter that each Claimant received.

11. The Korean Claimants did not seek error correction or appeal at that time. A claimant who disagrees with the decision of the SF-DCT may seek a review by the Claims Administrator and then, if that appeal is rejected, may appeal the decision to the Appeals Judge. Annex A at §§ 8.04 and 8.05.
12. Two years after the final cure deadline expired, at approximately the time of the final deadline for submission of any claim to the SF-DCT, the counsel for Korean Claimants requested an extension of the cure deadline dates for these 109 claims and further submitted forms purporting to provide information to cure the deficiencies in at least some of the 109 original disease claims.
13. The cure deadline is fixed by the Plan and cannot be extended by the Claims Administrator. Consistent with the Plan provisions, the request to extend the cure deadlines and to submit supplemental documents after the expiration of the cure deadline was denied by the Claims Administrator. Each of the 109 Korean Claimants received a determination letter from the Claims Administrator ("Determination Letter"). As the Plan provides, and as further stated in Closing Order 1 each of the Korean Claimants was informed of the right to appeal within 60 days from the date of the letter of the Claims Administrator denying the appeal. Attached hereto as Exhibit 3 is a true and correct copy of an example of a Determination Letter that each Claimant received.
14. Mr. Yeon-Ho Kim appealed these decisions to the Appeals Judge.

15. The Plan provides that the “decision of the Appeals Judge will be final and binding on the Claimant.” Annex A at § 8.05.
16. The Appeals Judge issued written opinions notifying each of the Korean Claimants that the decisions of the Claims Administrator were affirmed and that the appeals were denied due to the failure to cure by the cure deadline. Attached hereto as Exhibit 4 is a true and correct copy of an example of a written opinion that each Claimant received.
17. On May 4, 2023, Mr. Yeon-Ho Kim filed a motion for reconsideration of the denial of the appeals on behalf of the 109 Korean Claimants. The Plan does not provide a procedure for reconsideration of final appeals decisions.
18. On October 25, 2023, the Appeals Judge issued an order denying the motion for reconsideration.
19. Attached hereto as Exhibit 5 are true and correct copies of (1) Acknowledgment Letters, (2) Determination Letters issued by the Claims Administrator, and (3) determinations denying claimant’s appeals issued by the Appeals Judge concerning Korean Claimants No. 1-25.
20. Attached hereto as Exhibit 6 are true and correct copies of (1) Acknowledgment Letters, (2) Determination Letters issued by the Claims Administrator, and (3) determinations denying claimant’s appeals issued by Appeals Judge concerning Korean Claimants No. 26-55.
21. Attached hereto as Exhibit 7 are true and correct copies of (1) Acknowledgment Letters, (2) Determination Letters issued by the Claims Administrator, and (3) determinations denying claimant’s appeals issued by Appeals Judge concerning Korean Claimants No. 56-81.
22. Attached hereto as Exhibit 8 are true and correct copies of (1) Acknowledgment Letters, (2) Determination Letters issued by the Claims Administrator, and (3) determinations denying claimant’s appeals issued by Appeals Judge concerning Korean Claimants No. 82-109.

Pursuant to 28 U.S.C. Section 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 21<sup>st</sup> day of December 2023.

  
Kimberly Smith-Mair