UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In Re:	)	
Dow Corning Corporation	)	Case No. 00-CV-00005-DT
	)	(Settlement Facility Matters)
Debtor.	)	
	)	Hon. Denise Page Hood
	)	
	)	

REPLY OF KOREAN CLAIMANTS TO RESPONSE OF DOW CORNING CORPORATION AND STATEMENT OF THE CLAIMS ADMINISTRATOR

Dow Corning Corporation("DCC") has filed Response to the Motion of Korean Claimants and the Claims Administrator has filed Statement ("CA Statement") regarding the Motion. Response by DCC and CA Statement are similar in terms of assertion. DCC and the Claims Administrator seek to construe the Plan Documents arbitrarily and unreasonably. DCC and the Claims Administrator seek to violate the agreement made between the Claims Administrator and the Representative of Korean Claimants. Because no assertion by DCC and the Claims Administrator has a basis for rationalizing their non-performance of the agreement, the Motion must be granted.

I. Assertion by DCC is based upon incorrect interpretation of the Plan and is inconsistent

DCC said that the Plan does not authorize the Claims Administrator to make agreements or implement procedures that are not permitted by the Plan. DCC also said that although the Claims Administrator made any promise or representation to Korean Claimants, it is irrelevant to DCC. DCC said that there is one limited situation in which the Settlement Facility can pay for the cost of an examination or testing. As part of the quality control procedures, the claims office may require the examination of a claimant by a physician selected by the claims office. DCC added that Section 5.04(b) of Settlement Facility an d Fund Distribution Agreement would apply only if the claims office were to request and 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. may require the examination of a claimant by a physician selected by the claims office.

1. I want to go back to the history of negotiations with DCC around July,1999. While the hearings of confirmation of Reorganization Plan were processed, DCC representatives including Barbara Houser and Tort Claimants Committee("TCC") members including Diana Pendleton contacted me several times. They listened me what Korean claimants wanted. As I have been solicited by them to vote for the Reorganization Plan from May, 1999, I raised (1) product of manufacturer issue("POM issue") (2) qualified Medical doctor issue("QMD issue"). I had knew that POM standards of MDL-926 were stringent and disease evaluation criteria of MDL-926 were beyond the ability of Korean Claimants because of QMD requirement especially. DCC and TCC agreed to modify Annex A to Settlement Facility and Fund Distribution Agreement to reflect QMD issue of 6.2 Class

countries. It is why a new sentence, "The Plan Proponents of the Claims Advisory Committee and Debtor's Representatives shall specify the categories, degrees or certification that will qualify as Qualified Medical Doctors in Class 6.2 countries", was included into Annex A-92(Refer to Annex A-92 of Exhibit). I was the only representative of claimants of 6.2 Class countries who raised the issue. It can be verified by Diana Pendleton who was the active contact of mine who conveyed negotiation process to DCC representatives, and implemented what we agreed.

2. Although the languages in the new sentence of Annex A-92 are not clear about QMDs for Korean Claimants, the purpose of inclusion was clear. DCC and Claimants Advisory Committee("CAC") shall choose QMDs in Korea. It was undertsood that the claims office, which would be set up after confirmation of Reorganization Plan, shall implement the intent of agreement. That is, if DCC and CAC do not choose QMDs of Korea by themselves, the claims office must do it.

3. DCC said that the Claims Administrator does not have the authority to make agreements or implement procedures that are not permitted by the Plan. It is not true. Because DCC and TCC had made the agreement of July, 1999 with Korean Claimants, the claims office should follow the agreement and if it should be in the form of agreement, the Claims Administrator has the authority to make agreements likewise with Korean Claimants. It is also inconsistent with the assertion by DCC that the claims office may require the examination of a claimant by a physician selected by the claims office as part of quality control procedures(including paying the cost of examination or test). If the claims office may require the examination by a physician selected by the claims office, it means that

making agreements with Korean Claimants is permitted by the Plan. How the Claims Administrator is to require an examination even by a physician selected by the claims office even as a part of quality control procedures, if the Claims Administrator does not have the authority to make agreements with any claimant and/or a representative of claimants who asked for selection of a physician by the claims office? DCC's purpose in processing disease claims is manifest. DCC influences the claims office not to pursue disease claims procedures which DCC does not like, whether or not permitted by the Plan. DCC would hurt the neutrality and fairness of processing disease claims by the claims office eventually.

4. DCC said that in November, 2004, the Claims Administrator requested that CAC and Debtor's representatives provide the categories, degrees or certifications of doctors that will qualify as a QMD in Korea. DCC also said that it promptly initiated an inquiry in Korea to determine the types of certification that would be equivalent to Board certification in the United States. This assertion violates the Plan because QMDs in Class 6.2 countries do not require certification equivalent to Board certification in the United States. The requirement of equivalence to the United States was lifted off. It is why the new sentence of Annex A-92 was included after negotiations with me. Although DCC asserted that DCC initiated an inquiry in Korea, it is just an inquiry and the inquiry is not a way to implement the new sentence of Annex A-92. Rather than an inquiry, DCC and CAC must select QMDs in Korea if DCC objects to the Motion of Korean Claimants. DCC' s inquiry in Korea is just to delay the disease claims processing of Movants with no alternative way feasible to the claims office.

5. DCC said that the Claims Administrator has not authority to make or

implement procedures that are not permitted by the Plan thus shall no power to enter into the agreement with Movants. This assertion is directly contradictory to Section 5.04(b) of the Settlement Facility and Fund Distribution Agreement because Section 5.04(b) gives the Claims Administrator plenary authority and "obligation" to authorize medical examination of claimants and to do so using laboratories and physicians located in the city, region or country of the claimant's residence, as properly pointed out by CAC.

6. Conclusively, the assertions by DCC in response to Motion are inconsistent and impractical. Further, DCC must respect the verbal agreements through the discussions with me during the hearings on July, 1999. DCC should look into the unwritten agreements entered into its representative, Barbara Houser, If a current representative of DCC does not know it, DCC must ask her what she remembered at least, and why she included the new sentence into Annex A-92 and submitted to Judge Arthur Spector for approval on the day of July 28, 1999 nearing to the end of hearings for confirmation of the Plan of Reorganization. I raised the issue of disease claims for Korean Claimants based upon the experiences from MDL 926 claims office concisely. The new sentence of Annex A-92 reflected the agreement, in which the claims office must accommodate the needs of Korean Claimants. DCC must honor the agreement between the Claims Administrator and the Representative of Movants. Thus, the Motion must be granted.

II. Comments on CA Statement

The Claims Administrator, who is in a responsible position to act fairly and neutrally in administrating the claims office and the procedures of disease claims including other claims,

said that she does not interpret the Section 5.04 of the Settlement Facility Agreement as did by CAC and Movants, and that even if the Court find that Plan Documents do authorize the relief sought by the Motion, no agreement was ever made between her and me. The Claims Administrator added that the Motion should be denied solely on legal grounds(which seems not).

1. The Claims Administrator is prejudicing Korean Claimants by submitting the allegations which are not within her personal knowledge. CA Statement said that I has been active in the breast implant litigation for over a decade. I never met Wendy Tracht-Huber during the hearings in 1999 and the subsequent years and I had no information about her. I heard her name only after she was appointed as the Claims Administrator in 2003. Thus, she should have not known that I has been active in the breast implant litigation over a decade. This information should have been obtained from other source, possibly from DCC. If she had known it, she should also have known that Korean Claimants suffered from diseases for over a decade without being paid even a penny.

2. I met her twice after she became in charge of the claims office. The first meeting was around May, 2003. She was only interested in that Korean Claimants participate in the Settlement. When I suggested the issues of POM and disease evaluation to her, her response was always that if Korean Claimants files the application of POM (which means a participation into Settlement), and then she is able to discuss about the issues including QMDs of Korea with me. She acted as a solicitor to capture the participation form. I could not erase impression that she was acting for the benefits of DCC. To open a discussion with her, however, I submitted five claimants' application of POM to her at the conference room of the

claims office in Houston. I received notice letters about POM of five claimants right away. After I came back to Korea, I filed a Motion to object the agreement between DCC and Australian claimants because special treatments of DCC by providing the separate processing in Australia is unfair. The Motion was denied by this Court and now in appeal.

3. When the effective date arrived on June, 2004, I exchanged several e-mails with the Claims Administrator. Again, her interest only was to ask me when I would submit the participation form for other Korean claimants, as shown on the Exhibits attached to CA Statement. I did not have even a single concern about the timing of submission. I had the only one interest in whether Korean Claimants could receive disease compensation. It is true that MDL-926 claims office gave a dozen of Korean claimants who implanted with 3M product the notice of deficiency because of QMD requirement. So, I decided to fly to Houston to meet her. I sent one hundred eighty claimants' participation form with application of POM via the Federal Express before the flight. The meeting was held on September 27, 2004 at the conference room with Diana Pendleton attended. I asked the Claims Administrator that Diana Pendleton should be present because she was the only active contact of mine during hearings in 1999 and knew the situations of Korean Claimants better than anyone else of TCC(subsequently, CAC) and she knew what I would ask. I never added the new items either deleted the items for purpose of negotiation with DCC and TCC, which were (1) POM issue (2) QMD issue. Diana Pendleton brought the her memos with her surely written as of negotiation with me during hearings of July 1999, to my gladness. Also, two employees of the claims office, Mike(I do not know his last name. It appeared that he hesitated to give me his name card) and Annie who is the Korean claims coordinator were present by the order of

the Claims Administrator.

4. I requested the same proposals as the ones in the Motion to the Claims Administrator. Again, she asked whether I would submit the participation form. I answered that I sent one hundred eighty participation forms via the Federal Express. Annie answered the Claims Administrator that she was noticed from a local Federal Express agent that a package from Korea had arrived but was not delivered yet. And then, the Claims Administrator listened me carefully and accepted my proposals. It was very short for her to decide. It was why the meeting was short meeting(about 30 minutes). When the Claims Administrator agreed, Diana Pendleton rephrased the terms of agreement and confirmed it at the end of meeting. The Claims Administrator even stated Mike that he should prepare to fly to Korea soon and he said "yes", while all of us were hearing. CA Statement said that The Claims Administrator told me that the SF-DCT would not pay for QMDs. It is not true. If she had told me like that, I would not have left the claims office early with thirty minutes meeting ended. CA Statement said that the Claims Administrator stated that the sole possible exception would be pursuant to Section 5.04 with respect to quality control. It is not true. There was no discussion nor even a single word pronounced about Section 5.04(b) of the Settlement Facility Agreement. I am frankly admitting that I did not know that Section 5.04 exists in Plan Documents until I was served the response from CAC on January, 2005.

5. I was delighted to leave the claims office with the agreement about disease claims processing for Korean Claimants. I spent a night at the hotel that Annie had made reservation for me and came back home right away. I waited for the action by the Claims Administrator as agreed for more than two months until I requested her when she would act.

And then I received an e-mail of Exhibit F attached to CA statement on November 15, 2004. Her e-mail was to subvert the agreement with me and disregard it without any explanation. There was only a statement that there seemed some confusion as to the obligation of the Settlement Facility. There was no confusion at the meeting. All the people present at the meeting knew it. There was no word of quality control pronounced at the meeting either. CA Statement said that any discussion with me was purely hypothetical. How a figure in a responsible position could make a dialogue with a claimants' representative on the basis of hypothesis?

6. It is puzzling how and why the Claims Administrator suddenly changed her position and repeat the assertions of DCC in CA Statement. The Claims Administrator said that she has made significant efforts to resolve Korean Claimants' issues. I ask what aspects she made for them. Korean Claimants simply request DCC and the Claims Administrator to respect the agreement with their representative. Nothing more and Nothing less.

7. Conclusively, CA Statement is full of untruth and inconsistency. The position of it is a repetition of Response by DCC.

III. Conclusion

This Court should interpret that the Section 5.04(b) of the Settlement Facility and Fund Distribution Agreement authorizes the Claims Administrator to have plenary authority and obligation to authorize medical examinations of Movants thus the agreement between Movants' representative and the Claims Administrator on September 27, 2004 is in reality and and should be observed under the Section 5.04(b) by DCC, CAC and the claims office.

Accordingly, this Motion of Korean Claimants must be granted.

Yeon-Ho Kim
Yeon-Ho Kim International Law Office
Suite 4105, Trade Tower
159 Samsung-dong, Kangnam-ku
Seoul, 135-729, Korea
Tel: 82-2-551-1256,
Cell Phone: 82-11-305-5570
Fax: 82-2-551-5570
e-mail: yhkimlaw@unitel.co.kr

DATED: February 17, 2005

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REQUEST FOR QUICK DECISION

Korean Claimants request this Court to decide on the Motion of Korean Claimants quickly. As of today, 705 claimants filed the participation form and application of POM with the claims office. Other claimants are going to follow. Because of the Motion of Korean Claimants was not decided yet, most Korean Claimants cannot proceed for filing disease claims. Thus, Korean Claimants request this Court to decide upon the Motion of Korean Claimants as soon as possible. In addition, if oral hearing is necessary, it is requested that it be held in the last week of March, 2005.

Yeon-Ho Kim
Yeon-Ho Kim International Law Office
Suite 4105, Trade Tower
159 Samsung-dong, Kangnam-ku

Seoul, 135-729, Korea
Tel: 82-2-551-1256,
Cell Phone: 82-11-305-5570
Fax: 82-2-551-5570
e-mail: yhkimlaw@unitel.co.kr

DATED: February 17, 2005

CERTIFICATE OF SERVICE

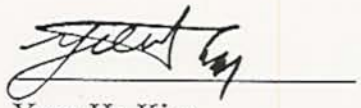
Yeon-Ho Kim, an attorney admitted to practice in this District, hereby certifies that on February 17, 2005 he caused a true copy of the foregoing Motion to be served by overnight courier upon each of the following counsel at the address stated:

Deborah E. Greenspan, Esq.
Dickstein, Shapiro, Morin & Obshinky LLP
2101 L Street, N.W.
Washington D.C. 20037-1526
Tel: 202-861-9100

For Dow Corning Corporation

Dianna Pendleton-Dominguez, Esq.
Blizzard, McCarthy & Nabers LLP
440 Louisiana Street, Suite 1710
Houston, TX 77002
Tel: 281-703-0998
For Claimants' Advisory Committee

Seoul, Korea
Dated: Feb. 17,2005



Yeon-Ho Kim