Case No. 18-1040

United States Court of Appeals
for the Sixth Circuit

In re: SETTLEMENT FACILITY DOW CORNING TRUST

KOREAN CLAIMANTS,
Interested Parties – Appellants,

v.

DEBTOR'S REPRESENTATIVES; DOW SILICONES CORPORATION; CLAIMANTS' ADVISORY COMMITTEE; FINANCE COMMITTEE
Defendants – Appellees.

On Appeal from the United States District Court
for the Eastern District of Michigan

BRIEF OF APPELLEE FINANCE COMMITTEE

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit
Case Number: 18-1040 Case Name: In re Settlement Facility Dow Corning

Name of counsel: Karima Maloney, Esq.

Pursuant to 6th Cir. R. 26.1, Finance Committee
Name of Party
makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

No.

CERTIFICATE OF SERVICE

I certify that on May 8, 2018 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/Karima Maloney
700 Louisiana Street, Suite 2300
Houston, Texas 77002

This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

6th Cir. R. 26.1
DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTEREST

(a) **Parties Required to Make Disclosure.** With the exception of the United States government or agencies thereof or a state government or agencies or political subdivisions thereof, all parties and amici curiae to a civil or bankruptcy case, agency review proceeding, or original proceedings, and all corporate defendants in a criminal case shall file a corporate affiliate/financial interest disclosure statement. A negative report is required except in the case of individual criminal defendants.

(b) **Financial Interest to Be Disclosed.**

(1) Whenever a corporation that is a party to an appeal, or which appears as amicus curiae, is a subsidiary or affiliate of any publicly owned corporation not named in the appeal, counsel for the corporation that is a party or amicus shall advise the clerk in the manner provided by subdivision (c) of this rule of the identity of the parent corporation or affiliate and the relationship between it and the corporation that is a party or amicus to the appeal. A corporation shall be considered an affiliate of a publicly owned corporation for purposes of this rule if it controls, is controlled by, or is under common control with a publicly owned corporation.

(2) Whenever, by reason of insurance, a franchise agreement, or indemnity agreement, a publicly owned corporation or its affiliate, not a party to the appeal, nor an amicus, has a substantial financial interest in the outcome of litigation, counsel for the party or amicus whose interest is aligned with that of the publicly owned corporation or its affiliate shall advise the clerk in the manner provided by subdivision (c) of this rule of the identity of the publicly owned corporation and the nature of its or its affiliate's substantial financial interest in the outcome of the litigation.

(c) Form and Time of Disclosure. The disclosure statement shall be made on a form provided by the clerk and filed with the brief of a party or amicus or upon filing a motion, response, petition, or answer in this Court, whichever first occurs.

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STATEMENT REGARDING ORAL ARGUMENT

Appellee believes that oral argument is not needed. This appeal presents straightforward legal issues which are neither factually nor legally complex. Therefore, the Court's decisional process would not be significantly aided by oral argument.

STATEMENT OF JURISDICTION

The district court exercised jurisdiction pursuant to 28 U.S.C. § 1334 ("Bankruptcy cases and proceedings"). This Court has jurisdiction to review the district court's final order pursuant to 28 U.S.C. § 1291. *See Order Granting Joint Motion to Render Moot Motions Filed on Behalf of the Korean Claimants*, RE 1347, Page ID ## 21590–21599.

COUNTER-STATEMENT OF ISSUES FOR REVIEW

1. Whether the district court erred in finding that the Plan does not provide for the retroactive application of re-categorization payments.

2. Whether the district court erred in finding that the Plan barred its consideration of the Korean Claimants' appeal of the Claims Administrator's decisions related to concerns that previously accepted Korean Claims were supported by fraudulent or inaccurate documentation and thus ineligible for payment.

3. Whether the district court erred in finding that the Settlement Facility-Dow Corning Trust's (the "SF-DCT") decisions to grant the Korean Claimants' request to lift an administrative "hold" on Korean Claims and to process those claims mooted the Korean Claimants' motion seeking the identical relief.

INTRODUCTION

This appeal arises out of the district court's order which dismissed as moot two motions filed by Appellants the Korean Claimants to the extent those motions sought relief that was granted by the SF-DCT, and denied those motions to the extent that they requested relief barred by the Dow Corning Corporation ("Dow Corning") Amended Joint Plan of Reorganization (the "Plan"). *Order Granting Joint Motion to Render Moot Motions Filed on Behalf of the Korean Claimants*, RE 1347, Page ID # 21590–99. The district court did not err in its ruling.

For over a decade, Korean Claimants represented by Mr. Yeon Ho Kim ("Korean Counsel") submitted affirmative statements to establish Proof of Manufacturer—one of the threshold eligibility requirements for payment of their Breast Implant Claims.[1] The SF-DCT accepted these affirmative statements in lieu of other preferred methods of Proof of Manufacturer—including hospital records that specify Dow Corning as the brand name or manufacturer and certified copies of Claimants' medical records—based on Korean Counsel's representation that such records were destroyed by Korean hospitals and physicians after 10 years. The SF-DCT subsequently discovered, based on Korean Counsel's own words and actions, that his representations concerning the destruction of Korean medical records were not true and that he had submitted potentially fraudulent, and

[1] Breast Implant Claims submitted by Korean Counsel are herein referred to as "Korean Claims."

therefore unacceptable, documentation to support Korean Claims. Based on this discovery, and consistent with her authority and obligations under the Plan, the Claims Administrator decided to institute certain safeguards and to place an administrative "hold" on Korean Claims to conduct an in-depth review and investigation into these claims.

Rather than availing themselves of the appeals process prescribed by the Plan, the Korean Claimants filed a purported motion in the district court through which they sought to appeal the Claims Administrator's eligibility decisions. The Plan plainly and unambiguously precludes a Claimant from appealing the Claims Administrator's decision to the district court. Further, the SF-DCT subsequently granted the Korean Claimants' request to lift the administrative hold placed on Korean Claims and began processing those claims. The district court properly denied the Korean Claimants' "motion" as an unauthorized appeal and dismissed the motion as moot.

Shortly after filing their unauthorized appeal, the Korean Claimants again bypassed the Plan's requirements and filed a motion requesting that the district court re-categorize Korea from a Category 3 country whose Claimants are entitled to receive 35% of the amount received by Domestic Claimants, to a Category 2 country whose Claimants are entitled to receive 60% of that amount and that the court apply the re-categorization decision retroactively to previously paid Korean

Claims. After recognizing their error, the Korean Claimants submitted a request for re-categorization to the Finance Committee as the Plan requires. The Finance Committee granted that request and adjusted South Korea from Category 3 to Category 2. The district court did not err in concluding that the Finance Committee's decision to grant the Korean Claimants' request for re-categorization mooted their motion. Moreover, the district court correctly found that the Plan precluded retroactive application of the Finance Committee's re-categorization decision.

For the reasons stated herein, Appellee the Finance Committee respectfully requests that this Court affirm the district court's order. The district court correctly found that the Korean Claimants received the requested relief permitted under the Plan, and properly denied Korean Claimants' request for relief that was plainly and unambiguously barred by the Plan's terms.

STATEMENT OF THE CASE

A. Background

This court has extensively discussed the history of Dow Corning's bankruptcy proceedings and Plan. *See e.g.*, *In re Settlement Facility Dow Corning Trust*, 592 F. App'x 473, 475–76 (6th Cir. 2015); *Dow Corning Corp. v. Claimants' Advisory Comm. (In re Settlement Facility Dow Corning Trust)*, 628 F.3d 769, 771 (6th Cir. 2010); *In re Dow Corning Corp.*, 456 F.3d 668, 671–73

(6th Cir. 2006); *In re Dow Corning Corp.*, 86 F.3d 482, 485–87 (6th Cir. 1996). Thus, the Finance Committee describes only the facts relevant to the instant appeal.

B. Dow Corning's Amended Joint Plan of Reorganization

On May 15, 1995, Dow Corning filed a petition for reorganization under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Michigan. On November 30, 1999, the district court entered the Order confirming the Plan of Reorganization of Dow Corning Corporation ("the Confirmation Order"), and on June 1, 2004, the Plan became effective. Pursuant to the Plan and the Confirmation Order, the Settlement Facility and Fund Distribution Agreement ("SFA") became effective on June 1, 2004.

The SFA establishes the SF-DCT, which among other things, assumes liability for and resolves claims of settling Personal Injury Claimants, and distributes funds to Claimants with allowed claims. SFA § 2.01, Page ID # 12817.[2] The Finance Committee is comprised of the Claims Administrator, the Special Master, and the Appeals Judge, and "is responsible for financial management of the SF-DCT." Plan § 1.67, Page ID # 12722. The Claimants'

[2] All citations to the Plan, SFA, and Annex A to the SFA (collectively referred to herein as the "Plan Documents") refer to Exhibits A–C to *Dow Corning's Cross Motion to Dismiss*, RE 816. Subsequent citations to the Plan Documents will include only a citation to the relevant section and Page ID number. All capitalized terms, unless otherwise defined herein, maintain the meanings assigned in the Plan Documents.

Advisory Committee ("CAC") represents Claimants' interests, and the Debtor's Representatives represent Dow Corning's interest. SFA § 4.09, Page ID ## 12829–30. The CAC and Debtor's Representatives are authorized, among other things, to advise and assist the SF-DCT, Claims Administrator, and Finance Committee with "all matters of mutual concern," and to "file any motion or take any other appropriate actions to enforce or be heard in respect of the obligations in the Plan and in any Plan Document."

C. The Korean Claimants' *Motion for Reversal of Decision of SFDCT Regarding Korean Claimants*

1. Background

Annex A to the SFA ("Annex A") outlines the Claims Resolution Procedures, which with the SFA, establishes the "exclusive criteria for evaluating, liquidating, allowing and paying Claims." SFA § 5.01, Page ID # 12831. Under the SFA, the Claims Administrator is obligated to ensure that payments are distributed to Claimants in accordance with the SFA's terms. SFA § 5.04(b), Page ID # 12834. To this end, the Claims Administrator is charged with determining whether a Claim meets the eligibility criteria for payment and ensuring that qualifying Claims are processed consistent with the Claims Resolution Procedures. *Id.* The SFA also grants the Claims Administrator "discretion to implement such additional procedures as . . . necessary to process the Settling Breast Implant

Claims in accordance with the terms of this [SFA] and the Claims Resolution Procedures." *Id.*

Only claims that satisfy the applicable eligibility criteria outlined in the Claims Resolution Procedures are eligible for payment. SFA § 5.01(a), Page ID # 12831. Because "[a]ll Breast Implant Claimants must submit acceptable proof of a Dow Corning Breast Implant to receive benefits," Annex A § 6.02(b)(ii), Page ID # 12872, the submission of an "acceptable" Proof of Manufacturer is one of the "threshold eligibility criteria for all settling claimants." Annex A § 5.01(f), Page ID # 12871; *see also id.* at §§ 6.02(b), Page ID 12872; 6.02I(iv)(a)(1)–(2), Page ID # 12880. Schedule I, Part I to Annex A sets forth several specific types of acceptable proof, including hospital records and a certified copy of the Claimant's medical records. *See id.* at § 6.02(b)(ii), Page ID # 12872; Schedule I, Part I, B(5), Page ID # 12922.

Relevant here, Schedule I permits a Claimant to submit an affirmative statement from the Claimant's implanting physician (or a responsible person at the treating facility where the implantation took place) but only if hospital records or certified copies of the Claimant's medical records are unavailable. Schedule I, Part I, B(5), Page ID # 12922. The implanting physician or responsible person must attest that the Claimant was implanted with a Dow Corning Breast Implant and provide the basis supporting that conclusion. *Id.* The affirmative statement must

also outline what steps were taken to secure the medical records and explain why such records were unavailable. *Id.* No affirmative statement can rest on unacceptable proof, which includes a Claimant's "own recollection" of the brand name or manufacturer of her breast implants. *Id.*, *see also id.* at Exhibit E, Page ID# 12926.

Finally, the SFA grants the Claims Administrator the "plenary authority" and imposes on her the obligation to ensure that there is an "acceptable level of reliability and quality control of Claims" and that payment is made only for claims that satisfy the Claims Resolution Procedures. SFA § 5.04(b), Page ID # 12834. The Claims Administrator is authorized and obligated to "institute claim-auditing procedures and other procedures designed to detect and prevent the payment of fraudulent Claims." SFA § 5.04(a)(i), Page ID # 12833. The Claims Administrator is further obligated to institute review proceedings in the event of fraud or abuse of the Claims Resolution Procedures. SFA § 5.04(a)(iii), Page ID # 12834. If fraud or abuse is found after a review, "the Claims Administrator *shall* deny the Claim." *Id.* (emphasis added).

2. The Claims Administrator Places an Administrative "Hold" on and Institutes a Review-and-Audit of Korean Claims After Discovering That Some Korean Claims Contained Discrepancies

The issues involving Korean Claimants' use of affirmative statements to satisfy the Proof of Manufacturer requirement date back over a decade. Ex. C to

Motion for Reversal, RE 810-3, Page ID ## 12308–09. The SF-DCT, as it had done with other Foreign Claimants, accepted affirmative statements for Korean Claims based on Korean Counsel's representation that Korean medical records were destroyed after a 10-year period. Ex. H to *Motion for Reversal*, RE 810-8, Page ID ## 12321–22. Based on these representations, the SF-DCT approved Proof of Manufacturer for over 1,700 Korean Claims, 1,488 of which were supported by affirmative statements. Ex. F to *Motion for Reversal*, RE 810-6, Page ID ## 12317.

In 2006, however, the SF-DCT became aware of some irregularities found in documentation submitted with Korean Claims and began investigating "discrepancies in the Affirmative Statements submitted as manufacturer proof for a large percentage of [Korean] claims." Ex. C to *Motion for Reversal*, RE 810-3, Page ID ## 12308. Although the SF-DCT approved over 1,700 Korean Claims in 2009, *see* Ex. F to *Motion for Reversal*, RE 810-6, Page ID # 12317, the SF-DCT's investigation into these discrepancies continued. Ex. H to *Motion for Reversal*, RE 810-8, Page ID ## 12321–24.

The SF-DCT's subsequent investigations revealed that Korean Counsel's explanation concerning the destruction of Korean medical records was misleading. *Id.* Despite representing that such medical records were destroyed after 10 years, Korean Counsel was later able to submit medical records that were almost 20 years

old when required to cure identified deficiencies. *Id.* at # 12322. In addition, the SF-DCT discovered that Korean Counsel used correction fluid to eliminate conflicting information (a practice Korean Counsel admitted to using). *Id.*; *see also* Ex. G to *Motion for Reversal*, RE 810-7, Page ID # 12319. As a result of these and other findings, the SF-DCT informed Korean Counsel that it was considering whether to continue accepting affirmative statements from his office. *Id.* at # 12324.

By letter dated August 22, 2011, the SF-DCT informed Korean Counsel of its decision to institute several safeguards and place a "hold" on the Korean Claims supported by affirmative statements. Ex. J to *Motion for Reversal*, RE 810-10, Page ID ## 12329–30. As outlined in the August 22 letter, the SF-DCT's decision was based on several grounds, including: (1) prior acceptance of affirmative statements were based on Korean Counsel's explanation that Korean medical records were destroyed after 10 years, which proved to be false based on Korean Counsel's own admission; (2) Korean physicians signed affirmative statements prepared by Korean Counsel without any basis for concluding that Dow Corning products were in fact implanted in the Claimants for whom the affirmative statements were used; and (3) Korean Counsel's other offered explanations to establish that Claimants used Dow Corning productions, including "claimant recollection" was deemed unreliable. *Id.*

Consequently, the SF-DCT decided that it could no longer accept affirmative statements as Proof of Manufacturer for Korean Claimants who had not yet filed claims; that the 1,742 Korean Claimants who had filed claims based on affirmative statements and been paid were not eligible for Premium Payments; and that it must remove from processing—*i.e.*, placed under an administrative "hold"—any claims supported by altered documents. *Id.*

3. The Korean Claimants' Motion

On September 26, 2011, in response to the SF-DCT's August 11 decision letter, the Korean Claimants filed their *Motion for Reversal of Decision of SFDCT Regarding Korean Claimants*. *Motion for Reversal*, RE 810, Page ID ## 12286–300. In their Motion for Reversal, the Korean Claimants appealed the Claims Administrator's decisions to: refuse acceptance of affirmative statements to support their claims and future Korean Claims; "cancel" the claims of 1,742 Korean Claimants; declare that Korean Claimants who had received payment were ineligible to receive future Premium Payments; and place previously accepted Korean Claims on an administrative hold. *Id.* at # 12298.[3] The Korean Claimants argued, without supporting citations to the Plan, that the Claims Administrator's

[3] The Korean Claimants also requested that: "SFDCT shall not enforce Korean claimants to participate in the Class 6.2 Payment Option which provides USD600 payment for limited proof of manufacturer"; and "SFDCT shall restructure the employees involved in discriminatory measures including Quality Management Department of SFDCT against Korean claimants." *Motion for Reversal*, RE 810, Page ID # 12298.

alleged broken promises, failure to meet their expectations, and abuse of power entitled them to their requested relief. *Id.* at ## 12293–97.

Both Dow Corning and the SF-DCT filed Cross-Motions to Dismiss the Korean Claimants' Motion for Reversal, contending that the "motion" constituted an unauthorized and impermissible appeal of the Claims Administrator's decisions that could not be considered by the district court under the Plan. *Dow Corning Cross-Motion to Dismiss*, RE 816, Page ID ## 12686–12698;[4] *SF-DCT Cross-Motion to Dismiss*, RE 820, Page ID ## 13160–13170. Even if the Motion was properly before the district court, they continued, it should nevertheless be dismissed because the Claims Administrator's decision to reject claims that did not meet the Plan's eligibility requirements—namely, submission of acceptable Proof of Manufacturer—was the result dictated by the Plan's clear and unambiguous terms. *Dow Corning Cross-Motion to Dismiss*, RE 816, Page ID ## 12692–94; *SF-DCT Cross-Motion to Dismiss*, RE 820, Page ID ## 13165–67.

In response, the Korean Claimants conceded that the Plan bars appeals of individual Claimants, but argued that this bar did not apply to preclude them from collectively challenging the Claims Administrator's decision. *Korean Claimants'*

[4] Dow Corning also filed an *Opposition to Motion for Reversal of Decision of SFDCT Regarding Korean Claimants*, challenging the Motion for Reversal on the same grounds asserted in its Cross-Motion to Dismiss. *Dow Corning's Opposition*, RE 817, Page ID ## 12973–12976.

Response to Cross-Motion to Dismiss, RE 818, Page ID # 12978. They further argued that their motion did not seek a review of an adverse decision, but rather "a new interpretation of [the Plan's] eligibility criteria," which, they contended, was reviewable by the district court. *Id.* at ## 12978–81.

Dow Corning, in reply, argued that the Korean Claimants misconstrued the Plan's provisions in two ways. *Dow Corning Reply*, RE 823, Page ID # 13173. First, after asserting that the Korean Claimants' appeal did not raise an issue of plan interpretation, Dow Corning argued that Claimants do not have a right under the Plan to seek such interpretations from the district court. *Id.* at ## 13173–76. The Plan reserves that right to the CAC, the Debtor's Representative, and in limited circumstances, to the Claims Administrator. *Id.* Second, Dow Corning continued, nothing in the Plan purports to limit its bar of Claimant appeals to those filed by individual Claimants. *Id.* at ## 13177–78.

4. The SF-DCT Grants the Korean Claimants' Request to Lift the Administrative "Hold" and Begins to Process Korean Claims Pursuant to the Plan's Terms

On January 17, 2014, the Claims Administrator informed Korean Counsel by email that the SF-DCT had decided to "withdraw the exclusion previously imposed on [Korean Claims] with respect to Affirmative Statements," thereby lifting the administrative hold previously imposed on such claims. App'x C to Ex. 1 to *Joint Motion Suggesting Mootness*, RE 1020-2, Page ID # 17055. Korean

Counsel was further informed that Korean Claims, including those supported by affirmative statements, would be reviewed and processed consistent with the Plan and that "[c]laims or documents that do not meet Plan requirements for acceptable level of reliability will be denied." *Id.* Korean Counsel acknowledged receipt of the Claims Administrator's January 17 email, responding that "[a]lll [sic] of the Korean Claimants will appreciate to [sic] your decision on withdrawal from the exclusion of processing." *Id.* at 17056.

D. The Korean Claimants' *Motion for Re-Categorization of Korea*

1. Background

Under the SFA, compensation to Foreign Claimants, like the Korean Claimants, is computed based on Schedule III to Annex A. Annex A § 6.05(h), Page ID # 12903. As reflected in Schedule III, qualifying Foreign Claimants are to receive a percentage of the corresponding settlement amounts offered to Domestic Claimants based on the Foreign Claimant's country of residence. *Id.* Countries are placed into one of four categories based on the following formula:

> Category 1 — countries with a common law legal system (Australia, New Zealand, Canada, United Kingdom); Category 2 — countries with a per-capita GDP greater than 60% of the GDP of the United States, along with countries in the European Union that are not in Category 1; Category 3 — countries with a per-capita GDP of between 30 percent and 60 percent of that of the United States; Category 4 — countries with a per-capita GDP of less than 30 percent of that of the United States.

Id. § 6.05(h)(i), Page ID # 12903. Foreign Claimants residing in a Category 1 or Category 2 country received 60% of the amount offered to Domestic Claimants; and Foreign Claimants residing in a Category 3 or Category 4 country received 35% of the amount offered to Domestic Claimants. Annex A, Schedule III, Page ID # 12972. At the time that the Plan was executed, Korea was listed as a Category 3 country. *Id.* A country's relative per-capita GDP must be determined using "the most current version of The World Factbook (United States Central Intelligence Agency)." Annex A § 6.05(h)(i), Page ID # 12903.

Recognizing that "changed economic conditions" may warrant adjustments to Schedule III, Annex A provides two mechanisms by which such adjustments can be made. *Id.* at § 6.05(h)(ii). First, Annex A grants the Claims Administrator discretion to adjust the categorization of countries provided that both the CAC and the Debtor's Representatives agree to such adjustment. *Id.* Second, Annex A permits a Foreign Claimant to first make a request for re-categorization to the Finance Committee. *Id.* If the Debtor's Representative, CAC, and/or Finance Committee refuse the request, Annex A allows the Foreign Claimant to file a motion for re-categorization in the district court. *Id.*

Adjustments are allowed only once per calendar year and "any re-categorization shall apply to all Claimants residing in such country whose Claims are paid in the year of re-categorization or thereafter." *Id.*

2. The Korean Claimants' Motion

On April 7, 2014, bypassing the Plan's requirement to first submit a re-categorization request to the Finance Committee, the Korean Claimants filed their *Motion for Re-Categorization of Korea*. *Motion for Re-Categorization*, RE 965, Page ID ## 16262–16268. The Korean Claimants argued that because Korea's GDP was then 60% of the United States' GDP, Korea should be re-categorized from a Category 3 country to a Category 2 country under the Plan. *Id.* at # 16264–65. Accordingly, the Korean Claimants sought an order requiring: (1) the Finance Committee to re-categorize Korea to a Category 2 country and to revise Schedule III to reflect this change; (2) the SF-DCT to retroactively compensate Korean Claimants under Category 2 who previously received compensation under Category 3; and (3) the parties, including Dow Corning and the CAC not to "influence on SF-DCT to give administrative disadvantages to the Korean Claimants" while their Claims were processed. *Id.* at # 16265.

The CAC and Dow Corning filed responses to the Korean Claimants' Motion for Re-Categorization. *CAC Response*, RE 967, Page ID ## 16338–46; *Dow Corning Response*, RE 968, Page ID ## 16347–61. The CAC and Dow Corning lodged similar challenges to the Motion, arguing that: (1) it was procedurally improper because the Korean Claimants failed to first request re-categorization from the Finance Committee as dictated by the Plan; and (2)

substantively improper because (i) the Plan did not provide for retroactive payments to Claimants who have already received compensation, and (ii) there was no need for the district court to prevent the CAC or Dow Corning from influencing the SF-DCT, nor did it have the authority to do so under the Plan. *See CAC Response*, RE 967, Page ID ## 16343–45; *Dow Corning Response*, RE 968, Page ID ## 16357–60.

In their reply brief, the Korean Claimants admitted that they failed to follow the Plan's procedures, and appended an email request for re-categorization that they submitted to the Finance Committee on April 25, 2014. Reply, RE 969, Page ID ## 16528–33. They also conceded that the Plan barred retroactive payments to any Korean Claimants, and dropped their requested relief concerning the parties' alleged influence on claims. *Id.* at # 16529.

3. The Finance Committee Grants the Korean Claimants' Request for Re-Categorization

On December 4, 2014, the Claims Administrator notified Korean Counsel that the Finance Committee had reviewed their request for re-categorization and granted the request. App'x. B to Ex. 1 to *Joint Motion Suggesting Mootness*, RE 1020-2, Page ID ## 17045–56. Therefore, per the Plan's provisions, Korea would be re-categorized to a Category 2 country "[b]eginning in calendar year January 2015." *Id.* The Claims Administrator provided similar notice to the district court by letter dated December 3, 2014. App'x A to Ex. 1 to *Joint Motion*

Suggesting Mootness, RE 1020-2, Page ID # 17050 ("Therefore, South Korea is re-categorized to Category 2 effective January 2015.").

E. The Joint Suggestion of Mootness Regarding Korean Claimants' Motions

On April 24, 2015, Dow Corning, the Debtor's Representatives, and the CAC filed the *Suggestion of Mootness Regarding "Motion for Re-Categorization of Korea," "Motion for Reversal of Decision of SFDCT Regarding Korean Claimants," and "Motion of Korean Claimants for the Settlement Facility to Locate Qualified Mediate Doctor of Korea."* *Joint Motion Suggesting Mootness*, RE 1020, Page ID ## 17020–43. In their Joint Motion, the Movants argued that the Finance Committee's decision to grant the Korean Claimants' request to re-categorize Korea from a Category 2 country to a Category 3 country mooted their Motion for Re-Categorization. *Id.* at ## 17031–32. Likewise, they argued that the SF-DCT's decisions to lift the administrative hold placed on claims filed by Korean Counsel and to resume processing those claims mooted their Motion for Reversal.[5] *Id.* at ## 17033–37.

In response, the Korean Claimants again conceded that the change in compensation that results from re-categorization "applies only prospectively." *Response to Joint Motion Suggesting Mootness*, RE 1025, Page ID # 17227.

[5] The Movants also maintained, as asserted in Dow Corning's Cross-Motion to Dismiss, that the Motion for Reversal should be dismissed as an unauthorized appeal of the Claims Administrator's decision. *Id.* at # 17034 n.5.

Contradicting this concession, however, the Korean Claimants argued that their Motion for Re-Categorization was not moot because the Finance Committee's decision did not resolve whether re-categorization should take effect in 2012, the year that Korea's GDP per capita exceeded 60% of the United States' GDP per capita—*i.e.*, whether the re-categorization decision should apply retroactively. *Id.* at ## 17228–29. The Korean Claimants also claimed that the Motion for Re-Categorization remained viable because the Finance Committee did not agree to print a revised version of Schedule III that reflected Korea as a Category 2 country. *Id.* at # 17228. Finally, the Korean Claimants argued that the SF-DCT's decision to lift the hold did not moot their Motion for Reversal because the decision did not reverse the decision to "cancel" the Proof of Manufacturer approvals of 1,742 previously filed claims. *Id.* at # 17233.

The Movants contended in reply that the Korean Claimants received all the relief they requested in their Motion for Re-Categorization—namely, that Korea would be re-categorized to a Category 2 country and that this payment category would apply to all Korean Claims that had not been paid. *Reply in Support of Joint Motion Suggesting Mootness*, RE 1026, Page ID ## 17317–18. To the extent the Korean Claimants' sought an interpretation of the appropriate timing of payments made to Foreign Claimants whose claims had been re-categorized, the Movants

argued that the Korean Claimants did not have the ability under the Plan to seek such interpretation. *Id.* at # 17318–19.[6]

On June 1, 2015, the Korean Claimants filed a *Supplemental Response to Reply of Suggestion of Mootness* in which they stated that they "[did] not request the Court to order re-categorization to apply to all Korean claims retroactively," but instead requested that the district court order that re-categorization applied to all Korean claims which had not been paid. *Supplemental Response*, RE 1030, Page ID # 17428. They next reiterated that they requested in their Motion for Reversal that the SF-DCT reinstate its decision to approve the 1,742 claims previously placed on hold, rather than re-review them on an individual basis. *Id.* at # 17429.

F. The District Court's Decision

On December 10, 2015, the district court held oral argument on the *Joint Suggestion of Mootness Regarding Korean Claimants' Motions*. Minute Entry, December 10, 2015; *see also* Hearing Transcript, RE 1401, Page ID # 23315–48. At the hearing, the district court took the motion under advisement. *Id.*

On December 28, 2017, the district court issued an order granting the Joint Motion Suggesting Mootness and the Cross-Motions to Dismiss. *Order Granting*

[6] The Movants informed the district court of the Claims Administrator's request to the Debtor's Representative and CAC that they provide an interpretation on the timing issue potentially raised by the Korean Claimants' Response. *Id.* at # 17319; *see also* Ex. 1 to *Joint Reply*, RE 1026-1, Page ID # 17324.

Joint Motion, RE 1347, Page ID ## 21590-99. The district court first concluded that the Claims Administrator's decision to grant the Korean Claimants request for re-categorization rendered the identical request made in their Motion for Re-Categorization moot. *Id.* at ## 21592–94. In so doing, the district court found that the Plan did not permit retroactive application of re-categorization and that the Korean Claimants lacked the ability under the Plan to seek a Plan amendment or interpretation that provides for such retroactive application. *Id.* at # 21594.

The district court next concluded that the Claims Administrator's decision to lift the "hold" placed on Korean Claims mooted the Korean Claimants' request for this relief in its Motion for Reversal. *Id.* at # 21595. Finally, the district court denied any relief sought as to any substantive decision on any Korean Claim. *Id.* at # 21597. After noting that the Korean Claimants failed to avail themselves of the Plan-prescribed appeals process, the district court found that the SFA did not provide the Korean Claimants with a means to appeal or otherwise challenge the eligibility decision in the district court.[7] *Id.* at ## 21596–97. The district court therefore denied the Korean Claimants' Motion for Reversal. *Id.* at # 21599.

[7] The district court also found that the Korean Claimants' request for an order requiring the SF-DCT to appoint and pay for a Qualified Medical Doctor in Korea to evaluate the Korean disease claims was mooted as to previous claims and denied as to new claims. *Order Granting Joint Motion*, RE 1347, Page ID # 21597–99. The Korean Claimants do not challenge this decision, *see* Appellant Brief at 8, and thus, it is not the subject of this appeal.

On January 7, 2018, the Korean Claimants filed a notice of appeal to challenge the district court's December 28, 2017 order. *Notice of Appeal*, RE 1350, Page ID ## 21657–60. Appellee the Finance Committee now timely files its response.

STATEMENT OF ARGUMENT

The district court correctly found that the Finance Committee's decision to re-categorize Korea from a Category 3 country to a Category 2 country mooted the Korean Claimants' Motion for Re-Categorization which sought the same relief, and that the re-categorization decision could not apply retroactively under the Plan. The district court also correctly found that to the extent the Korean Claimants used the Motion for Reversal to appeal the Claims Administrator's eligibility decisions, such appeal must be denied under the Plan's plain and unambiguous terms. Finally, the district court did not err in concluding that the Claims Administrator's decisions to lift the administrative hold placed on Korean Claims and to begin processing those claims mooted the Motion for Reversal which also sought that relief.

The Korean Claimants challenge the district court's order on several meritless grounds. To support the Motion for Re-Categorization, the Korean Claimants first argue that the district court erred in characterizing their request as one for retroactive application of the Claims Administrator's re-categorization

decision. Fatal to their appeal, however, is the fact that the Korean Claimants do not challenge the district court's finding that the Motion for Re-Categorization is moot. Consequently, any challenge to the district court's mootness determination has been waived on appeal.

Even if the Korean Claimants could properly challenge the district court's finding, the district court correctly concluded that the Finance Committee's decision to re-categorize Korea from a Category 3 country to a Category 2 country mooted the Korean Claimants' motion seeking the exact same relief. In so doing, the district court properly found that the Plan provides only for prospective application of the Claims Administrator's re-categorization decision. It also correctly declined any "new request" by the Korean Claimants to interpret the Plan to allow for retroactive application of the re-categorization determination. Thus, this Court, like the district court, should reject any attempt by the Korean Claimants to rewrite the Plan to permit retroactive application of the Claims Administrator's re-categorization decision.

In support of the Motion for Reversal, the Korean Claimants contend that the Claims Administrator's initial decision to approve a Claimant's Proof of Manufacturer documents is irrevocable. Therefore, they argue, the Claims Administrator must reverse its decision to "cancel" its approval the Proof of

Manufacturer for 1,742 previously accepted Korean Claims. This argument finds no support in the Plan and is otherwise without merit.

First, though couched as a "motion" the Korean Claimants have filed an unauthorized and impermissible appeal of the Claims Administrator's decision, which is barred by the Plan's clear and unambiguous terms. Second, the Plan not only authorizes the Claims Administrator to deny claims that fail to meet the Plan-prescribed eligibility requirements, it obligates the Claims Administrator to do so. Moreover, the Claim's Administrator did not cancel any Korean Claims, but rather put an administrative hold on such Claims to ensure that they were free from fraud and otherwise satisfied the Plan's eligibility requirements—again, as she was obligated to do under the Plan. The Claims Administrator subsequently lifted this hold to permit processing of Korean Claims, thereby mooting the Korean Claimants' request for this relief in their motion. The district court therefore correctly denied and dismissed as moot the Korean Claimants' Motion for Reversal.[8]

[8] The Korean Claimants also challenge the district court's alleged failure to rule on their Motion for Recognition and Enforcement of Mediation as an abuse of discretion. *See* Appellant Brief at 35–38. In addition, Korean Claimants make several references to other unrelated motions filed and proceedings held before the district court, including motions to show cause. *See* Appellant Brief at 21. These motions—which have not resulted in final appealable orders and are not referenced in the Korean Claimants' Notice of Appeal—are not the subject of, and thus, are irrelevant to this appeal. *See* 28 U.S.C. § 1291 (providing "[t]he courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have

The meritless arguments and contentions in the Korean Claimants' opening brief, which is devoid of citations to case law and other legal authorities, does nothing to call the district court's order into question. The district court's order should therefore be affirmed.

STANDARD OF REVIEW

This Court has on several occasions articulated the standard of review that applies to the district court's interpretation of Plan documents in the Dow Corning bankruptcy proceedings. *See In re Settlement Facility Dow Corning Trust*, 592 F. App'x at 477–78; *In re Settlement Facility Dow Corning Trust*, 517 F. App'x 368, 372 (6th Cir. 2013); *Settlement Facility Dow Corning Trust*, 628 F.3d at 771–72. Where, as here, the district court's interpretation is confined to the Plan documents, without reference to extrinsic evidence, this Court conducts a *de novo* review. *Settlement Facility Dow Corning Trust*, 592 F. App'x at 478.

This Court also reviews *de novo* the district court's decision regarding mootness. *Kerr for Kerr v. Comm. of Social Security*, 874 F.3d 926, 930 (6th Cir. 2017) (citation omitted). "A federal court lacks jurisdiction to consider any case or issue that has lost its character as a present, live controversy and thereby becomes

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jurisdiction of appeals from all final decisions of the district courts of the United States"); *Isert v. Ford Motor Co.*, 461 F.3d 756, 760 (6th Cir. 2006) (observing that noncompliance with Federal Rule of Appellate Procedure's requirement to "designate the . . . order or orders . . . being appealed" is "fatal to an appeal" (alteration and internal quotation marks omitted) (discussing Fed. R. App. P. 3(c))).

moot." *Id.* (internal quotation marks and citations omitted). "Mootness results when events occur during the pendency of a litigation which render the court unable to grant the requested relief." *Carras v. Williams*, 807 F.2d 1286, 1289 (6th Cir. 1986). "Because the requested relief will not be forthcoming, the plaintiff will no longer have an interest in the outcome which justifies a federal court's decision on the underlying factual and legal issues." *Id.*

ARGUMENT

A. The District Court Properly Rejected the Korean Claimants' Request for Retroactive Application of the SF-DCT's Re-Categorization Decision

The Korean Claimants did not challenge the district court's dismissal of the Motion for Re-Categorization as moot. *Order Granting Joint Motion*, RE 1347, Page ID # 21599. Mootness neither is referenced in the Korean Claimants' statement of the issues regarding the Motion for Re-Categorization nor do the Korean Claimants articulate any argument or provide any legal support to challenge the district court's mootness determination in their opening brief. Consequently, the Korean Claimants have waived this issue on appeal. *See Barrett v. Detroit Heading, LLC*, 311 F. App'x 779, 796 (6th Cir. 2009) (concluding "because [appellant] failed to identify . . . an issue in its 'statement of the issues presented for review,' we deem it waived"); *Dog Pound, LLC v. City of Monroe, Mich.*, 558 F. App'x 589, 593 (6th Cir. 2014) ("[T]he appellant is required to

articulate an argument in support of its claim in its opening brief in order to preserve that claim on appeal." (relying on Fed. R. App. P. 28(a)(8)).

Even assuming the Korean Claimants did challenge the district court's mootness finding—which they failed to do—the district court's finding on this point should be affirmed on appeal. The Korean Claimants requested that Korea be re-categorized to a Category 2 country. *Motion for Re-Categorization*, RE 965, Page ID ## 16265. The Finance Committee granted this request and re-categorized Korea per the Plan's terms. App'x. A & B to Ex. 1 to *Joint Motion Suggesting Mootness*, RE 1020-2, Page ID ## 17050, 17052. Because the Korean Claimants received the relief requested in their Motion for Re-Categorization, the district court correctly found that the motion was moot. *See Carras*, 807 F.2d at 1289–90.

The Korean Claimants instead challenge the district court's finding that the Plan does not allow for retroactive application of the Claims Administrator's re-categorization decision. *See* Appellee Brief at 24. The Korean Claimants' baseless challenge to the district court's correct finding should fail.

The Claims Administrator is under no obligation to re-categorize a country. Annex A § 6.05(h), Page ID # 12903. Instead, the Plan grants the Claims Administrator, with the agreement of the CAC and the Debtor's Representatives, the discretion to adjust a country's categorization when warranted by changed economic circumstances. *Id.* If the Claims Administrator decides to exercise that

discretion to re-categorize a country, that decision "*shall* apply to all Claimants residing in such country whose claims are paid *in the year of re-categorization or thereafter*." *Id.* at § 6.05(h)(ii) (emphasis added). Thus under the plain and unambiguous terms of the Plan, re-categorization payments apply proactively, not retroactively as urged by the Korean Claimants.

The Korean Claimants argue that re-categorization should apply beginning in 2010[9] when Korea's changed economic conditions could have supported re-categorization, or in April 2014 when they filed the Motion for Re-Categorization—eight months *before* the Claims Administrator's decision to grant the Korean Claimants re-categorization request. *See* Appellant Brief at 24. The Korean Claimants, by definition, seek retroactive application of the Claims Administrator's decision to past claims. *See* Black's Law Dictionary (10th ed. 2014) (defining retroactive as "extending in scope or effect to matters that have occurred in the past"). Such an application plainly contravenes the unambiguous Plan language, and must therefore be rejected.

Under a charitable reading of the Korean Claimants' contentions, it could be said that their argument raises a timing issue of when re-categorization should take effect. *See* Appellant Brief at 29. But any timing argument fails for two reasons.

[9] Korean Claimants claim that re-categorization should apply beginning in 2009, but only provide World Factbook data beginning in 2010. *See* Appellant Brief at 24, 27.

First, the Korean Claimants attempt to read into the Plan a new rule that the time of changed economic conditions or the time a Foreign Claimant requests re-categorization triggers application of re-categorization fails because it constitutes an impermissible amendment or modification to the Plan. Only Dow Corning or the CAC, upon the district court's approval, can modify or amend a Plan Document. SFA § 10.06; *see also* Plan § 10.06, Ex. C to *Dow Corning Cross-Motion*, RE 816-3, Page ID # 12793 ("[Dow Corning and the Tort Committee] may, upon order of the Court, jointly amend or modify this Plan in accordance with section 1127(b) of the Bankruptcy Code."). Moreover, the Korean Claimants cannot use these judicial proceedings to manufacture new terms to include in the Plan. *See Perez v. Aetna Life Ins. Co.*, 150 F.3d 550, 557 (6th Cir. 1998) (en banc) (observing "the basic principle of contract law that courts are not permitted to rewrite contracts by adding additional terms").

Second, in making this timing argument, the Korean Claimants seek an interpretation of the Plan documents that would limit section 6.05(h)(ii)'s requirement that re-categorization applies to Claims paid "in the year of re-categorization or thereafter," to instances where the "Claims Administrator adjusts categorization of countries voluntarily." Appellant Brief at 29. There is no support in the Plan for this novel interpretation.

More fundamentally, Claimants, like the Korean Claimants, have no right under the Plan to seek interpretation from the court. *See In re Settlement Facility Dow Corning Trust, Mary O'Neil*, No. 00-00005, 2008 WL 907433, at *3 (E.D. Mich. Mar. 31, 2008) ("The SFA and the Procedures authorize only the Debtor's Representatives and the CAC to file a motion to interpret a matter under the SFA. There is no provision under the SFA or the Procedures which allows a Claimant to submit an issue to be interpreted before the Court."). Instead, the right to seek an interpretation of the Plan is reserved for the Debtor's Representative, the CAC, and in limited instances, the Claims Administrator. *See* SFA § 5.05, Page ID # 12835; *see also* Procedures for Resolution of Disputes Under 5.05 of the SFA § 2.01(c)–(d), Ex. A to *Reply in Support of Dow Corning's Cross-Motion*, RE 823-1, Page ID ## 13184–85 (outlining procedure for CAC or Debtor's Committee to seek resolution of disputed issues of Plan interpretation in the district court); *Mary O'Neil*, 2008 WL 907433, at *3. Thus, any baseless timing argument should be dismissed.

Korean Claimants have failed to challenge the district court's finding that their Motion for Re-Categorization is moot. Accordingly, this issue has been waived on appeal. *See* Fed. R. App. P. 28(a); *see also Barrett*, 311 F. App'x at 796; *Dog Pound*, 558 F. App'x at 593. Should the Court nevertheless consider the

issues tethered to this moot motion, the Korean Claimants' attempt to solicit novel interpretations of and import new rules into the Plan should be summarily rejected.

B. The District Court Did Not Err in Refusing to Consider the Korean Claimants' Unauthorized Appeal of the Claims Administrator's Eligibility Decision

Though styled as a "motion," the Korean Claimants' Motion for Reversal was an impermissible and unauthorized appeal of the SF-DCT's eligibility decisions which were prompted by the Korean Claimants' submission of altered, and thus unreliable, documentation. *See Motion for Reversal*, RE 810, Page ID # 12298. The district court therefore properly refused to consider the Korean Claimants' unauthorized appeal. *Order Granting Joint Motion*, RE. 1347, Page ID # 21599.

Article 8 of Annex A sets forth the appeals process available to Claimants who wish to dispute the Claims Administrator's decision. Annex A, Article VIII, Page ID # 12917–18. Section 8.04 allows a Claimant to file an appeal with the Claims Administrator who must conduct a *de novo* review of the Claimant's benefit status. Annex A, § 8.04, Page ID #12917. Section 8.05 provides that a Claimant may also appeal an adverse decision to the Appeals Judge who will review the record and claim file in deciding the appeal. *Id.* The decision of the Appeals Judge is "final and binding on the Claimant." *Id.* As this Court has found previously, the Plan does not authorize a Claimant to appeal the decision of the

Claims Administrator or the Appeals Judge to the district court.[10] *See In re Clark-James*, No. 08–1633, 2009 WL 9532581, at *2 (6th Cir. Aug. 6, 2009) ("The district court properly dismissed [claimant's] complaint [because claimant] essentially seeks a review of the SF–DCT's [eligibility] determination. . . . But the Plan provides no right to appeal to the district court."); *see also In re Settlement Facility Dow Corning Trust*, No. 12-10314, 2012 WL 4476647, at *2 (E.D. Mich. Sept. 28, 2012) *appealed dismissed*, No. 12-2506 (6th Cir. Jan. 28, 2013) ("The Plan's language is clear and unambiguous that the decision of the Appeals Judge is final and binding on the claimants and the Reorganized Dow Corning. The Plan provides no right of appeal to the Court."); *In re Settlement Facility Dow Corning Trust, Jodi Iseman*, No. 09-CV-10799, 2010 WL 1247910 at *4 (E.D. Mich. Mar. 25, 2010) ("Even if [claimant had] sought . . . review by the Appeals Judge, the Plan's language is clear and unambiguous that the decision of the Appeals Judge is final and binding . . . The Plan provides no right to appeal to the Court. Allowing the appeal to go forward . . . would be a modification of the Plan language. The Court has no authority to modify this language."); *Mary O'Neil*, 2008 WL 907433 at *4 ("The Plan provides no right to appeal to the Court and expressly sets forth

[10] Section 6.02(e)(vi) outlines the Individual Review Process for Certain Rupture Claims. Annex A § 6.02(e)(vi), Page ID # 12882. This section, like section 8.05, grants qualifying Claimants a right of appeal to the Appeals Judge, whose decision is "final and binding on both Reorganized Dow Corning and the Claimant." *Id.*

that the decision of the Appeals Judge is final and binding on both the Reorganized Dow Corning and the claimants.").

On appeal, the Korean Claimants contend that the SF-DCT's initial determination to accept the affirmative statements is irrevocable. *See* Appellate Brief at 30–33. Therefore, they argue, the SF-DCT could not "cancel" previously accepted claims. *See id.* at 32. But neither the Plan provision they cite concerning the irrevocability of the *Settlement Facility*, *see* SFA § 10.01, Page ID # 12847, nor any other Plan provision supports the Korean Claimants' contention. Further, the fact remains that the Korean Claimants seek in this Court, as they did in the district court, to appeal the SF-DCT's decision. Such appeal is plainly and unambiguously barred by the Plan. The Korean Claimants' appeal to this Court must therefore be dismissed. *See Clark-James*, 2009 WL 9532581 at *2.

It also bears emphasizing that the Claims Administrator did not "cancel" the previously accepted claims. Rather, the Claims Administrator decided to investigate and re-review previously accepted claims to ensure that they were eligible for payment and not tainted by fraud or other abuses after Korean Counsel's own words and actions cast grave doubt over the reliability of documentation he submitted with Korean Claims. Ex. J to *Motion for Reversal*, RE 810-10, Page ID ## 12329–30; Ex. 1 to *Joint Motion Suggesting Mootness*, RE 1020-2, Page ID # 17047. When the Claims Administrator determined that

certain Korean Claims were submitted with demonstrably false documentation—including records covered with correction fluid and records supported by physicians who did not exclusively use Dow Corning products as misrepresented in the affirmative statements—she denied such claims in the first instance or denied future Premium Payments to Claimants who already received payment. Not only was the Claims Administrator authorized to take this action, the Plan obligated her to do so. *See* SFA § 5.04(a)(iii), Page ID # 12834. The Claims Administrator therefore acted consistent with her obligations under the Plan to ensure that all claims met the Plan's threshold eligibility requirements, including the requirement that all claims be supported by acceptable Proof of Manufacturer to receive payment. SFA § 5.04(b), Page ID # 12834; Annex A § 5.01(f), Page ID # 12870.

The Korean Claimants filed an unauthorized appeal of the Claims Administrator's decision disguised as a motion in the district court. This district court properly rejected the Korean Claimants' attempt to circumvent the Plan's plain and unambiguous provisions.

C. The District Court Correctly Found that the Claims Administrator's Decisions to Lift the Administrative "Hold" Placed on Korean Claims and Process Those Claims Mooted the Korean Claimants' Motion That Sought Identical Relief

The district court did not err in concluding that the Motion for Reversal was moot. *Order Granting Joint Motion*, RE 1347, Page ID # 21599. After

discovering that several Korean Claims were supported by unreliable documentation, the SF-DCT removed certain claims that appeared to have such unreliable documentation, placing these claims under an administrative "hold." Ex. J to *Motion for Reversal*, RE 810-10, Page ID ## 12329–30; *see also* Ex. 1 to *Joint Motion Suggesting Mootness*, RE 1020-2, Page ID # 17047. The Korean Claimants then filed the Motion for Reversal, seeking an order from the district court that required the SF-DCT to reverse its decision to "remove the claims where a determination will be made that documents have been altered from processing." *Motion for Reversal*, RE 810, Page ID # 12298.

Subsequently, the SF-DCT lifted the "hold" and began to process the claims previously subject to the hold on an individual basis in accordance with the Plan's eligibility requirements.[11] App'x C to Ex. 1 to *Joint Motion Suggesting Mootness*, RE 1020-2, Page ID # 17055. Thus, the Claims Administrator, consistent with her obligations under the Plan, has reviewed and will continue to review all Claims,

[11] For example, the Claims Administrator has requested additional information for claims raising questions of whether the physician who signed the POM actually performed the implantation at the facility represented in the POM. *See* Ex. 3 to *Supplemental Response to Joint Motion Suggesting Mootness*, RE 1030-3, Page ID ## 17447, 17449, 17451. She has also denied claims submitted with altered or fabricated records, such as documents covered in correction fluid or with a patient's named crossed out and a Claimant's name added. *See id.* Exs. 3 & 6, RE 1030-3 & 6, Page ID ## 17448, 17469.

including Korean Claims supported by affirmative statements, to ensure that such Claims satisfy Plan's eligibility requirements for payment.

Korean Counsel contemporaneously acknowledged that the SF-DCT lifted the hold, *see id.* at Page ID # 17056, and conceded this fact in briefing to the district court. *Motion for Reversal,* RE 1025, Page ID # 17232 ("[T]he [Korean Claimants] now interpret it that SFDCT could review claims individually . . . and SFDCT continues to process claims and examine the validity of claims"). Accordingly, the district court did not err in concluding that the SF-DCT's decision to grant Korean Claimants the relief sought in their Motion for Reversal mooted their Motion. *See Carras*, 807 F.2d at 1289–90.

CONCLUSION

For the reasons herein stated, the Finance Committee respectfully requests that the Court affirm the district court's December 28, 2017 order.

Dated: May 8, 2018.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-face volume limitation of Rule 32(a)(7)(B) of the Federal Appellate Rules of Procedure. According to Microsoft Word, the word processing program used to prepare this brief, this brief contains 10,479 words.

/s/ Karima G. Maloney
Karima G. Maloney

CERTIFICATE OF SERVICE

I certify that on May 8, 2018, I electronically filed a copy of the foregoing Brief of Appellee the Finance Committee with the Clerk of Court through the Court's electronic filing system, which will send notice and a copy of this brief to all registered counsel in this case.

/s/ Karima G. Maloney
Karima G. Maloney

ADDENDUM DESIGNATING RELEVANT DOCUMENTS
IN THE DISTRICT COURT DOCKET (00-00005)

RE#	DESCRIPTION	PAGE ID #
810	Motion for Reversal of SF-DCT Regarding Korean Claimants	12286-12301
810-3	Exhibit C to Motion for Reversal of SF-DCT Regarding Korean Claimants	12307-12309
810-5	Exhibit E to Motion for Reversal of SF-DCT Regarding Korean Claimants	12313-12315
810-6	Exhibit F to Motion for Reversal of SF-DCT Regarding Korean Claimants	12316-12317
810-7	Exhibit G to Motion for Reversal of SF-DCT Regarding Korean Claimants	12318-12319
810-8	Exhibit H to Motion for Reversal of SF-DCT Regarding Korean Claimants	12320-12324
810-10	Exhibit J to Motion for Reversal of SF-DCT Regarding Korean Claimants	12328-12344
816	Cross-Motion to Dismiss the Korean Claimants' Appeal (Styled as "Motion for Reversal of Decision of SFDCT regarding Korean Claimants")	12686-12698
816-2	Exhibit A, Part 1: Amended Joint Plan of Reorganization	12700-12774
816-3	Exhibit A, Part 2: Amended Joint Plan of Reorganization	12775-12810
816-4	Exhibit B: Settlement Facility and Fund Distribution Agreement between Dow Corning Corporation and the Claimants' Advisory Committee	12811-12855
816-5	Exhibit C: Dow Corning Settlement Program and Claims Resolution Procedures, Annex A to Settlement Facility and Fund Distribution Agreement	12856-12930
816-6	Exhibit C, Part 2: Dow Corning Settlement Program and Claims Resolution Procedures, Annex A to Settlement Facility and Fund Distribution Agreement	12931-12972
817	Dow Corning's Opposition to Motion for Reversal of Decision of SFDCT regarding Korean Claimants	12973-12976

RE#	DESCRIPTION	PAGE ID #
818	Response to Dow Corning's Cross Motion	12977-12984
820	Cross-Motion to Dismiss the "Motion for Reversal" Filed by Yeon-Ho Kim, Esq. of a Decision by the Claims Administrator of the Settlement Facility-Dow Corning Trust	13160-13170
823	Reply in Support of Dow Corning's Cross-Motion to Dismiss the Korean Claimants' Appeal	13173-13179
823-1	Exhibit A to Reply in Support of Dow Corning's Cross-Motion to Dismiss the Korean Claimants' Appeal	13180-13185
965	Motion for Re-Categorization of Korea	16262-16268
967	Response of Claimants' Advisory Committee in Opposition to Motion for Recategorization of Korea	16338-16346
968	Response of Dow Corning Corporation to "Motion for Re-Categorization of Korea" Filed by Yeon Ho Kim	16347-16363
969	Reply to Responses to Motion for Re-Categorization of Korea by Dow Corning and Claimants' Advisory Committee	16528-16532
969-1	Exhibit 7: Reply to Responses to Motion for Re-Categorization of Korea by Dow Corning and Claimants' Advisory Committee	16533
1020	Suggestion of Mootness regarding "Motion for Re-Categorization of Korea," "Motion for Reversal of Decision of SFDCT regarding Korean Claimants," and "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"	17020-17043
1020-2	Exhibit 1 to Suggestion of Mootness regarding "Motion for Re-Categorization of Korea," "Motion for Reversal of Decision of SFDCT regarding Korean Claimants," and "Motion of Korean Claimants for the Settlement Facility to Locate Qualified Medical Doctor of Korea and Either Pay for that Qualified Medical Doctor to	17045-17056

RE#	DESCRIPTION	PAGE ID #
	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"	
1025	Response to Suggestion of Mootness regarding "Motion for Re-Categorization of Korea," "Motion for Reversal of Decision of SFDCT regarding Korean Claimants", and "Motion for Korean Claimants for the Settlement Facility to Locate 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"	17225-17235
1026	Reply in Support of Suggestion of Mootness	17315-17322
1026-1	Exhibit 1 to Reply in Support of Suggestion of Mootness	17323-17324
1030	Supplemental Response to Reply in Support of Suggestion of Mootness	17425-17432
1030-3	Exhibit 3 to Supplemental Response to Reply in Support of Suggestion of Mootness	17446-17452
1030-6	Exhibit 6 to Supplemental Response to Reply in Support of Suggestion of Mootness	17466-17469
1347	Order Granting Joint Motion to Render Moot Motions Filed on Behalf of the Korean Claimants	21590-21599
1350	Notice of Appeal to Order Granting Joint Motion to Render Moot Motions Filed on Behalf of the Korean Claimants	21657-21660
1401	Transcript of Motions Hearing held on 12/10/2015	23315-23348