

Case No. 18-2446

United States Court of Appeals for the Sixth Circuit

In re: SETTLEMENT FACILITY DOW CORNING TRUST

KOREAN CLAIMANTS
Interested Party – Appellant,

v.

**CLAIMANTS’ ADVISORY COMMITTEE; FINANCE
COMMITTEE; DOW SILICONES CORPORATION**
Defendants – Appellees.

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

**MOTION OF APPELLEES DOW SILICONES CORPORATION, THE
CLAIMANTS’ ADVISORY COMMITTEE, AND THE FINANCE
COMMITTEE TO EXPEDITE APPEAL**

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MOTION TO EXPEDITE

Pursuant to Rule 27(f) of the Sixth Circuit Rules, appellees Dow Silicones Corporation (“Dow Silicones”), the Claimants’ Advisory Committee (the “CAC”), and the Finance Committee (collectively, “Appellees”) hereby move for expedited consideration and argument at the earliest possible date following completion of briefing of the above captioned appeal.

Appellees have consulted with counsel for appellants who has not agreed to this motion.

MEMORANDUM

This appeal involves one of the last remaining open disputes relating to a long-standing comprehensive settlement program established to resolve the 1995 bankruptcy of the Dow Corning Corporation (“Dow Corning”).¹ The Dow Corning Amended Joint Plan of Reorganization (the “Plan”) was established to resolve claims of individuals who allege injuries as a result of the use of various implanted medical devices including silicone gel breast implants. The Plan provides for the resolution of claims through one of two mechanisms: litigation against a Litigation Facility or settlement with a Settlement Facility pursuant to

¹ On February 1, 2018, Dow Corning Corporation changed its name to Dow Silicones Corporation. *See* RE 1383.

prescribed criteria. The litigation claims have all been resolved. The claimants who elect the settlement option are paid from a capped Settlement Fund. The settlement program commenced operations on June 1, 2004 and will cease accepting claims on June 3, 2019. *See* Annex A to Settlement Facility and Fund Distribution Agreement, Dow Corning Settlement Program and Claims Resolution Procedures (“Claims Resolution Procedures”) § 7.09(b)(i), RE 1275-7, Page ID #19614; *see also* Stipulation and Order Approving Notice of Closing and Final Deadline for Claims, RE 1342. Once the final timely settlement claims are processed and paid, the settlement program will terminate, funding obligations will cease, and the administrative structures established to implement the settlement program and pay claims will close. *See* Settlement Facility and Fund Distribution Agreement (“Agreement”) §10.03, RE 1275-6, Page ID #19544-45.

The settlement program cannot terminate, however, if there are pending disputes over the disposition of the assets of the Settlement Fund. In this dispute, Korean Claimants (appellants) assert that they are owed a lump-sum payment of \$5 million for their claims as a result of an alleged agreement between Korean Claimants and the Finance Committee – an entity created by the Plan to oversee distributions from the Settlement Fund. *See* Agreement § 4.08, RE 1275-6, Page ID #19523-26; Order, RE 1461, Page ID #24003. The CAC, Dow Silicones and the Finance Committee dispute the claim of entitlement to this payment on

multiple grounds including that it is forbidden by the Plan itself. *See* RE 1274, 1275. The District Court denied the Korean Claimants' motion to enforce this alleged agreement (RE 1461) and the Korean Claimants brought this appeal.

Appellees seek an expedited hearing and consideration of this matter because this dispute must be resolved before the amounts due to eligible Korean Claimants may be finally determined and paid and before the settlement program may be terminated. The settlement program is supervised by Chief Judge Denise Page Hood, *see* SFA 4.01, RE 1275-6, Page ID #19517, and is operated by a court appointed claims administrator, a staff of claims reviewers, a financial advisor, investment managers, a trustee bank, a paying agent, a court appointed special master, and a court appointed appeals judge. All of these functions are paid for from the capped Settlement Fund. *See* SFA §§ 4.02, 4.03, 4.04, 4.07, 4.10 & 7.02, RE 1275-6, Page ID #19517-23, 19527, 19537-38. While the issue raised in this appeal remains pending, many of these functions – which are necessary to review and pay claims and to hold and invest funds – must remain in place and operative. The fees and costs associated with these functions will continue to be paid from the capped Settlement Fund. *See* Agreement §§ 3.01, 3.02, 10.03, RE 1275-6, Page ID #19515-17, 19544.

Sixth Circuit Rule 27(f) provides that a motion to expedite an appeal may be granted upon a showing of “good cause.” 6th Cir. Rule 27(f). *See also* Fed. R.

App. P. 2 (“On its own or a party’s motion, a court of appeals may – to expedite its decision or for other good cause – suspend any provision of these rules in a particular case and order proceedings as it directs, except as otherwise provided in Rule 26(b).”). Good cause to expedite consideration of this appeal is present. This is currently the last appeal that could delay final distributions in this 24-year-old bankruptcy case and prevent a cost-effective termination of the settlement program and all of its functions.² Expedited consideration of this appeal will serve the public interest in efficient judicial administration, appropriate use of Settlement Fund assets, prompt distribution of settlement funds to claimants, and closure of the bankruptcy case.

² There is another appeal filed by Korean Claimants that has been fully briefed and argued and is pending decision by the panel. *See Korean Claimants v. Debtor’s Representatives, et al.*, No. 18-1040. Appellees anticipate a decision is likely before termination of the settlement program begins.

CONCLUSION

For the foregoing reasons, Appellees respectfully move this Court for expedited consideration of this appeal.

Dated: January 9, 2019

Respectfully submitted,

On Behalf of Dow Silicones Corporation

On Behalf of Claimants' Advisory Committee:

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CERTIFICATE OF COMPLIANCE

I certify that this motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2). According to the word processing program used to prepare this brief (Microsoft Word), this motion contains 846 words. This motion also complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because the motion has been prepared in a proportionally spaced typeface in 14 point Times Roman style.

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CERTIFICATE OF SERVICE

I certify that on January 9, 2019, I electronically filed a copy of the foregoing motion, through the Court's electronic filing system, which will send notice and a copy of this motion to all registered counsel in this case, as follows:

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