Case No. 21-2665

In the United States Court of Appeals
For the Sixth Circuit

IN RE: SETTLEMENT DOW CORNING TRUST

KOREAN CLAIMANTS
Interested Parties – Appellant

v.

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

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

BRIEF OF APPELLEES DOW SILICONES CORPORATION AND THE DEBTOR'S REPRESENTATIVES

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DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTEREST

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit Case Number: 21-2665 Case Name: Korean Claimants v. Claimants' Advisory Committee et al

Name of counsel: Deborah E. Greenspan

Pursuant to 6th Cir. R. 26.1, Dow Silicones Corporation
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:

Yes.

See answer to No. 2.

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:

Yes.

Dow Silicones Corporation is owned by The Dow Chemical Company, a wholly-owned subsidiary of Dow, Inc. Further, various publicly owned corporations may be creditors of Dow Silicones' Chapter 11 bankruptcy estate, but Dow Silicones believes their interests are too attenuated to present any conflict issues here.

CERTIFICATE OF SERVICE

I certify that on October 12, 2021 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/ Deborah E. Greenspan
Blank Rome LLP, 1825 Eye St., N.W
Washington DC 20006

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.

6CA-1
8/08

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit
Case Number: 21-2665 Case Name: Korean Claimants v. Claimants' Advisory Committee et al

Name of counsel: Deborah E. Greenspan

Pursuant to 6th Cir. R. 26.1, The Debtor's Representatives
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.
The Debtor's Representatives consist of one counsel for Corning Incorporated, two in house counsel for The Dow Chemical Company and Deborah E. Greenspan.

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:

Yes.

See separate Disclosure of Corporate Affiliations and Financial Interest filed by Dow Silicones Corporation.

CERTIFICATE OF SERVICE

I certify that on October 12, 2021 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.

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STATEMENT IN SUPPORT OF ORAL ARGUMENT

Oral argument is requested. This matter involves interpretation of a complex plan of reorganization and oral argument will allow the attorneys for the parties to assist the Court by providing additional explanation.

INTRODUCTION

This appeal arises out of an order of the district court denying two motions filed by Korean Claimants (the Appellants).[1] These two motions challenged determinations of the Settlement Facility—the entity that was established in the Dow Corning Amended Joint Plan of Reorganization (the "Plan") to process settlement claims.[2] This is the fourth time that Korean Claimants have filed an appeal in this Court disputing the administrative procedures and decisions of the Settlement Facility or the actions of the persons and entities appointed by the district court to

[1] Unless otherwise defined, capitalized terms used herein shall have the meaning provided in the Plan defined in Article 1 of the Plan. *See* Plan, RE 1592-2, Page ID # 27885-27913.

[2] Appellees the Dow Silicones Corporation and the Debtor's Representatives respond only to the Korean Claimants' appeal of the denial of two motions filed by Korean Claimants'—the Motion for Premium Payments to Korean Claimants, RE 1545 ("Motion for Premium Payments") and the Motion for Vacating Decision of Settlement Facility Regarding Address Update Confirmation, RE 1569 ("Motion for Vacating). Appellees Dow Silicones and the Debtor's Representatives take no position in this response on the Korean Claimants' appeal of the order of the district court granting the Finance Committee's Motion for Authorization to Make Second Priority Payments, RE 1566.

administer the evaluation and payment of claims.[3] This appeal has no more validity than the previous appeals.

Korean Claimants are individuals who have elected to settle claims through the Settlement Facility.[4] The two motions that give rise to this appeal challenge the Settlement Facility's application of the district court's order requiring it to confirm that a claimant can be located and notified of a payment through an address verification process before actually mailing the payment.[5]

The district court's order—entitled Closing Order 2—was entered on March 19, 2019 in anticipation of and to facilitate the impending termination of the

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[3] *See Korean Claimants v. Claimants' Advisory Comm.*, 813 F. App'x. 211 (6th Cir. 2020) (appeal of denial of motion disputing the court appointed Finance Committee's refusal to implement an alleged mediation); *In re Settlement Facility Dow Corning Tr.*, 760 F. App'x. 406 (6th Cir. 2019) (appeal of denial of motion asserting that the Settlement Facility wrongly placed a hold on claims due to questions about the veracity of documents submitted in support of the claims and motion challenging the Finance Committee's determination regarding the date upon which Korean Claimants are "recategorized" under the Plan); *In re Settlement Facility Dow Corning Tr.*, 670 F. App'x. 887 (6th Cir. 2016) (appeal of denial of motion seeking modification of the date-based eligibility criteria for recovery in Class 7 and further disputing the district court's authority to interpret the Plan).

[4] On February 1, 2018, Dow Corning Corporation changed its name to Dow Silicones Corporation. For the Court's and parties' convenience, Appellees Dow Silicones Corporation and the Debtor's Representatives will still refer to Dow Silicones as Dow Corning herein.

[5] The Korean Claimants have filed one additional motion—still pending in the district court—raising similar complaints and seeking an extension of the claim filing deadline as a remedy. Motion for Extension of Deadline for Filing Claim, RE 1586.

settlement program. It includes guidelines directing the Settlement Facility to verify contact information for claimants to help ensure that payments will actually be received by the eligible recipient. Closing Order 2 was stipulated and agreed to between the Claimants' Advisory Committee (the "CAC") and the Debtor's Representatives (the "DRs"), the entities with express authority granted by the Plan to interpret the terms of the Plan and whose consent is required for purposes of establishing guidelines for submission and evaluation of claims.

In two belated motions, one of which was filed 16 months after the entry of Closing Order 2 and the other nearly two years after the entry of Closing Order 2, the Korean Claimants asserted that the Settlement Facility should not require current address information from claimants (notwithstanding the terms of Closing Order 2). In both motions, the Korean Claimants sought an order compelling the Settlement Facility to issue payments without obtaining the necessary verification of address. The district court denied the motions, finding that Closing Order 2 applies and that the Settlement Facility may not issue the payments absent receipt of valid *current* contact information.

This appeal, and this entire dispute, is an argument over the requirement affirmed in the district court's decision that individual Korean Claimants must confirm their current contact information directly because the prior address information provided by counsel had proven unreliable. Counsel for Korean

Claimants asserts, and has asserted for several years, that the Settlement Facility does not need addresses and should be required to rely on the addresses provided by counsel in the claim forms filed fifteen years ago. Closing Order 2 forbids the Settlement Facility from relying on those old addresses and provides a clear explanation of the reasons for requiring current verified address information before issuing payments. Despite the many protestations of Korean Claimants, the verification requirement is simple and is not burdensome: Korean Claimants need only contact the Settlement Facility—either by telephone, email, or mail—and provide their current address. Once they do so, the Settlement Facility will be able to issue any payments for which they are eligible.

STATEMENT OF JURISDICTION

The district court exercised jurisdiction pursuant to 28 U.S.C. § 1334(b) ("the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11"). This Court has jurisdiction to review the district court's June 24, 2021 final order pursuant to 28 U.S.C. § 1291. *See* RE 1607. Korean Claimants filed a timely notice of appeal on June 28, 2021. *See* Notice of Appeal, RE 1608.

COUNTER STATEMENT OF ISSUES FOR REVIEW

1. Whether the district court abused its discretion by denying the Motion for Premium Payments, which seeks to compel the Settlement Facility to issue the first 50% of Allowed Premium Payments in violation of the order of the district court requiring a verification of address before distributing monies from the fixed assets of the settlement fund.

2. Whether the district court properly denied the Motion for Premium Payments because it is an unauthorized appeal of a decision of the Claims Administrator, which is barred by the Plan.

3. Whether the district court properly denied the Motion for Vacating, which seeks an order directing the Settlement Facility to ignore the order of the district court requiring a verification of address of a claimant before distributing funds to such claimant from the fixed assets of the settlement fund.

4. Whether the district court properly denied the Motion for Vacating because it is an unauthorized appeal of the decision of the Claims Administrator, which is barred by the Plan.

STATEMENT OF THE CASE

A. Background—the Plan and Settlement Program

This Court has addressed the history of Dow Corning's bankruptcy proceedings and Plan on multiple occasions. *See, e.g., Korean Claimants v Claimants' Advisory Committee,* 813 F. App'x. 211 (6th Cir. 2020); *In re Settlement Facility Dow Corning Trust,* 2019 WL 181508 (6th Cir. Jan. 14, 2019)*; In re Settlement Facility Dow Corning Trust*, 592 F. App'x. 473 (6th Cir. 2015); *Dow Corning Corp. v. Claimants' Advisory Comm. (In re Settlement Facility Dow Corning Trust)*, 628 F.3d 769 (6th Cir. 2010); *In re Dow Corning Corp.*, 280 F.3d 648 (6th Cir. 2002); *In re Dow Corning Corp.*, 86 F.3d 482 (6th Cir. 1996).

In 1999, Dow Corning and the representatives of the tort claimants—the Tort Claimants' Committee—filed the consensual Plan, which provides a comprehensive settlement program for breast implant claimants as well as individuals with certain other implanted medical devices. Following appeals, the Plan became effective on June 1, 2004. *See In re Settlement Facility Dow Corning Trust*, 628 F.3d at 771; *see also* Plan, RE 1592-2.

The Plan provides the means for resolution of Personal Injury Claims through either a litigation option or a settlement option. Claimants who elect the settlement option are Settling Personal Injury Claimants. Plan, RE 1592-2, Page ID #27912. The claims of Settling Personal Injury Claimants are reviewed, evaluated and paid

by the Settlement Facility—Dow Corning Trust (the "Settlement Facility" or "Settlement Trust"). The Settlement Facility and Fund Distribution Agreement ("SFA") and the Dow Corning Settlement Program and Claims Resolution Procedures, Annex A to SFA ("Annex A") prescribe the exclusive rules under which these settling claims are individually evaluated and, if eligible, paid.

Claimants are classified in the Plan based on whether they are "domestic" or "foreign." Plan §§ 3.2.7, 3.2.8 and 3.2.9, RE 1595-2, Page ID #27915. Foreign is defined as "a Claim that (a) is held by a Person who is neither a United States citizen nor a resident alien of the Greater U.S., and (b) arises from a medical procedure performed outside the Greater U.S." *Id.* at §1.68, Page ID #27896. Foreign claimants are further classified into Class 6.1 or Class 6. 2 based on their country of residence. *See* Annex A, § 6.05(h)(i), RE 1595-4, Page ID #28079.

The Claims Administrator appointed by the district court under the terms of the SFA is responsible for overseeing the processing and payment of Claims by the Settlement Facility in accordance with the terms of the SFA. *See* Plan § 1.29, RE 1595-2, Page ID #27890; SFA §§ 4.02, 5.01, 5.04, RE 1595-3, Page ID #27995-97, 28006, 28008-10. The SFA also provides for the appointment of the Finance Committee—which is responsible for oversight of financial matters of the Settlement Fund and has specific responsibilities regarding the verification and Allowance of claim payments. *See* SFA § 4.08, RE 1595-3, Page ID #28001-28004.

The Settlement Facility, the Finance Committee, the Claims Administrator, as well as the procedures for the distribution of funds, are supervised by the district court. The district court performs "all functions relating to the distribution of funds and all determinations regarding the prioritization or availability of payments, specifically including all functions related to Articles III [Transfer of Assets], VII [Payment Distribution Procedures], and VIII [Financial Management] herein." SFA § 4.01, RE 1595-3, Page ID #27995. The district court retains jurisdiction over the Plan to, *inter alia*, "resolve controversies and disputes regarding interpretation and implementation of this Plan and the Plan Documents." Plan, § 8.7.3, RE 1595-2, Page ID #27957.

Claims of Settling Personal Injury Claimants are paid from the Settlement Fund which is a limited fund of up to $1.95 billion (Net Present Value). *See* Plan § 5.3, RE 1595-2, Page ID #27920; SFA § 3.02(a), RE 1595-3, Page ID #27993-27994. The Settlement Fund may be used only to pay Allowed claims of Settling Personal Injury Claimants along with related administrative expenses. SFA § 3.02(a)(ii), RE 1595-3, Page ID #27994. There are two types of settlement payments for Allowed claims: First Priority Payments and Second Priority Payments. Second Priority Payments are comprised of three types of payments. *See* SFA § 7.01(a), RE 1593-3, Page ID #28013. The Second Priority Payment type relevant in this appeal is the Premium Payment. A Premium Payment is a supplemental payment that may

be paid to qualified claimants who received a First Priority Payment for a disease or rupture claim arising from the use of a Dow Corning Breast Implant. *See* SFA § 6.01(a), RE 1593-3, Page ID #28010. Second Priority Payments may be paid only if authorized by the district court in accordance with conditions specified in the Plan. *See* SFA § § 7.01(c)(iv) and 7.03(a), RE 1593-3, Page ID #28014, 28018.

To receive settlement payments, claimants must satisfy specific criteria and submit supporting documents and records. The SFA states:

> The Claims Office shall process Settling Personal Injury Claims payable from the Settlement Fund in accordance with the Claims Resolution Procedures outlined in Annex A. This Settlement Facility Agreement and Annex A shall establish the exclusive criteria for evaluating, liquidating, allowing and paying Claims, … Only those Claims that satisfy the eligibility criteria specified in the Claims Resolution Procedures as applicable are eligible to receive payment, …

SFA § 5.01(a), RE 1595-3, Page ID #28006.

To qualify for payment, a settling claimant must submit a signed claim form and specified supporting proof, including acceptable proof of manufacturer (proving the use of an eligible implant) and appropriate documentation establishing the elements of the particular benefit option selected. Annex A details the documentation that must be submitted to demonstrate proof of manufacturer and the medical documentation that is required to support each of the different compensation options, including test results, diagnoses, findings, and symptoms. *See* Annex A at Articles V and VI and at Schedules I and II, RE 1595-4, Page ID #28046-28079 and

28096-28147. The claim form that all claimants must submit requires the claimant to provide her address and contact information along with the contact information for the attorney representing the claimant. https://www.sfdct.com/_sfdct/index.cfm/disease-claim-forms/ (last accessed on October 12, 2021); https://www.sfdct.com/_sfdct/index.cfm/pom-forms/ (last accessed on October 12, 2021).

The Settlement Facility must assure that claims meet the necessary criteria, that the supporting documentation is reliable, and that funds are distributed only to eligible claimants. "The Claims Administrator shall have the plenary authority and obligation … to assure that payment is distributed only for Claims that satisfy the Claims Resolution Procedures." SFA §5.04(b), RE 1595-3, Page ID #28009.

To assure that only qualified claimants are paid and that the Settlement Fund assets are not distributed inappropriately, the Settlement Facility has the affirmative obligation to institute procedures to deter and identify fraud or any abuse of the claims process. *Id.* at §5.04(a); RE 1595-3, Page ID #28008-28009 ("The Claims Administrator … shall institute proceedings for appropriate review and relief in the event of fraud or abuse of the Claims Resolution Procedures."). The SFA provides that "[t]he District court shall have authority to enforce these provisions as appropriate." *Id.*

The assets of the Settlement Fund are maintained under the supervision and control of the Court until the claimant actually receives the funds. *See* SFA § 10.09, RE 1595-3, Page ID #28024 ("All funds in the Settlement Facility are deemed *in custodia legis* until such times as the funds have actually been paid to and received by a Claimant, ..."). The Court thus has the plenary authority (and the obligation) to manage the distribution of funds and to institute procedures to assure that qualified claimants actually receive the funds and that the limited assets of the Settlement Funds are not "lost" or otherwise diverted.

These requirements protect the limited Settlement Fund assets, assure the equitable treatment of claimants, and prevent incorrect or invalid distributions.

The Plan established the CAC and the DRs to assist in the implementation of the Plan's settlement program. *See* Plan § 1.28, RE 1595-2, Page ID #27889 (defining the CAC to mean "those persons selected pursuant to the terms of the [SFA] to represent the interests of Personal Injury Claimants after the Effective Date."); SFA §4.09, RE 1595-3, Page ID #28004. The CAC and the DRs have the authority to take action to enforce the terms of the Plan, participate in meetings of the Finance Committee, and provide advice and assistance on all matters being considered by the Finance Committee, the Settlement Facility, the Claims Administrator and others court-appointed persons. SFA §4.09(c), RE 1595-3, Page ID #28004-28005. The CAC and the DRs have the authority and the obligation to

provide interpretations of the Plan when requested by the Claims Administrator. If the CAC and the DRs agree on an interpretation, their decision is final and binding. Section 5.05 of the SFA, entitled "Interpretation of Criteria/Consent of Parties," provides:

> The Claims Administrator shall consult with and obtain the advice and consent of the Claimants' Advisory Committee and the Debtor's Representatives regarding any additions or modifications to guidelines for the submission of Claims. The Debtor's Representatives and Claimants' Advisory Committee are authorized to provide joint written interpretations and clarifications to the Claims Administrator and the Claims Administrator is authorized to rely on those joint written statements.

SFA §5.05. RE 1595-3, Page ID #28010. Only the CAC and the DRs may decide or litigate any issue of Plan interpretation. *In re Settlement Facility Dow Corning Tr.*, No. 07-CV-12378, 2008 WL 905865, 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.").

The district court supervises and manages the operations of the Settlement Facility through authorizing orders. For example, in 2004, the district court authorized issuance of First Priority Payments. Order Authorizing Payment of First Priority Payments Pursuant to Amended Joint Plan of Reorganization, RE 96. The

district court issues annual orders prescribing and authorizing the budget for the operation of the Settlement Facility. *See, e.g.*, Order Approving 2006 Budget, RE 278; Order Approving 2007 Budget, RE 476; Order Approving 2021 Budget, RE 1558. The district court routinely issues orders specifying and directing procedures for managing the claims resolution and payment process. *See, e.g.*, Amended Stipulation and Order Establishing Procedures for the Review of Asserted Liens Against Settling Implant Claimants, RE 1413. The district court has issued multiple orders addressing the appointment of personnel to fulfill roles identified in the Plan. *See, e.g.*, RE 1241, Approving Stipulation to Appoint Successor Paying Agent for the Settlement Facility-Dow Corning Trust Claim Payments and to Amend the Depository Trust Agreement, RE 1590; Order Approving Appointment of Nancy M. Blount as Special Master for Closing and Kimberly D. Smith Mair as the Successor Claims Administrator for the Settlement Facility-Dow Corning Trust. As the final deadline for submission of settlement claims approached, the district court issued several orders necessary to manage the process of closing the Settlement Facility. The district court issued an order in December 2017 mandating the distribution of a final notice to all claimants of the deadline for submission of claims and support for claims. *See* Stipulation and Order Approving Notice of Closing and Final Deadline for Claims, RE 1342. The district court has issued a series of "Closing Orders"—setting forth administrative guidelines to enable the closure of the Settlement Facility

operations once the requirements for termination are met. *See* Closing Order 1 for Final June 3, 2019 Claim Deadline (Establishing Final Cure Deadlines, Revised Claim Review Procedures, and Appeal Deadlines), RE 1447; Closing Order 2 (Regarding Additional Procedures for Incomplete and Late Claims; Protocols for Issuing Payments; Audits of Attorney Distributions of Payments; Protocols for Return of Undistributed Claimant Payment Funds; Guidelines for Uncashed Checks and Reissuance of Checks; Restrictions of Attorney Withdrawals) ("Closing Order 2"), RE 1482; Closing Order 3 (Notice that Certain Claims will be Permanently Barred and Denied Payment Unless a "Confirmed Current Address" is Provided to the SF-DCT on or before June 30, 2021) ("Closing Order 3"), RE 1598, Page ID #28287.

B. Orders Pertinent to this Appeal

This appeal primarily involves the validity, interpretation, and application of Closing Order 2. Closing Order 2, which addresses several aspects of the finalization of the claims processing operations and subsequent termination of the Settlement Facility, was submitted to the district court as a stipulation of the CAC and the DRs. This appeal involves only the provision of Closing Order 2 that prohibits the Settlement Facility from issuing "payments to or for claimants or an authorized payee unless the [Settlement Facility] has a confirmed, current address for such claimant or authorized payee." Closing Order 2, RE 1482, Page ID #24089.

Closing Order 2 describes this provision as "designed and intended to authorize the SF-DCT to take actions to ensure that Settlement Fund payments are distributed to claimants as required by the Plan." *Id.* at Page ID #24087. As noted in Closing Order 2, the Settlement Facility has expended considerable time and money attempting to locate claimants and attorneys who have moved. Closing Order 2 at ¶ 11, RE 1482, Page ID #24088-24089.

Closing Order 2 defines a "confirmed current address" as "an address that has been verified as a mailing address where the claimant or authorized payee is receiving mail so that the [Settlement Facility] can assure that the claimant or authorized payee will actually receive the mailed check." *Id.* at Page ID #24089. The Order authorizes the Settlement Facility to determine the most reliable source of address verification and to accept address information from both attorneys and claimants—again, depending on the reliability of the information.

> The [Settlement Facility] may accept confirmation of a claimant's current address provided by the claimant's attorney of record; however, the [Settlement Facility] may seek additional confirmation as appropriate including, for example, in instances where prior mailings were returned as undeliverable or where prior address confirmations were not accurate.

Id.

The district court entered and docketed Closing Order 2 on March 19, 2019. RE 1482. The Settlement Facility and the CAC both posted Closing Order 2 on their respective websites. *See* https://www.sfdct.com/_sfdct/index.cfm/news/ (last

accessed October 10, 2021); http://www.tortcomm.org/courtorders.shtml (last accessed October 10, 2021). Korean Claimants admit that they did not object to or appeal Closing Order 2. Korean Claimants' Br., at 33-34.

The second order that is pertinent to this appeal is the district court's Order Authorizing Fifty Percent of Second Priority Payments, RE 1476 (the "Fifty Percent SPP Order"). In the Motion for Premium Payments, Korean Claimants asserted that the Settlement Facility has the obligation to pay the first fifty percent of Premium Payments regardless of whether it has a verified current address for the claimant. The Motion for Premium Payments, in effect, asks the district court to order the Settlement Facility to ignore the terms of Closing Order 2. The Fifty Percent SPP Order was entered on January 29, 2019 and expressly incorporates the terms of other orders governing the distribution of payments. It authorizes the Settlement Facility to pay fifty percent of Second Priority Payments "as and when allowed for payment under the terms of the Plan" "*subject to other existing or future orders governing distribution of claim payments,* the [Settlement Facility's] claims-processing protocols and procedures, and the Finance Committee's responsibility under Section 7.02(b) of the Settlement Facility Agreement to establish procedures to verify the allowed amount of each claim certified for payment." RE 1476, Page ID #24065-24066 (emphasis added).

C. The Address Verification Process Under Closing Order 2

Claimants and attorneys have always been under an obligation to provide and maintain current address information with the Settlement Facility. The initial Claimant Information Guides, which were published and made available before the Effective Date of the Plan and have been posted on the Settlement Facility website, state clearly that each claimant has an affirmative obligation to inform the Settlement Facility of any change of address. *See* February 26, 2021 Declaration of Ellen Bearicks ("Bearicks Dec.") RE 1595-6, Page ID #28166, 28176-28193, at ¶ 7 and at Exhs. 1-3 (CIG 9-14, 9-15, 10-8, 10-9); https://www.sfdct.com/_sfdct/index.cfm/how-to-file-a-claim-for-benefits/claimant-information-guide-cig-by-class/ (last accessed October 10, 2021).

The head of Quality Management for the Settlement Facility testified in her declaration that "the [Settlement Facility] has sent numerous directives and correspondence to attorneys and claimants reminding them of the obligation to provide the [Settlement Facility] with address updates and seeking to confirm address information." Bearicks Dec. at ¶13, RE 1595-6, Page ID #28167. She further testified that "[r]outine communications of the [Settlement Facility] throughout its operations have reminded claimants and attorneys of the requirement to provide current, updated address information to the [Settlement Facility]. Bearicks Dec. at ¶ 8, RE 1595-6, Page ID #28166. The Settlement Facility has

employed mass mailings specifically focused on notifying and reminding claimants and attorneys of the need to provide updated current addresses. The Settlement Facility also employs a routine procedure to request an address verification whenever a claimant calls the Settlement Facility. *Id*. at ¶ 20, RE 1595-6, Page ID #28168. The Settlement Facility accepts address updates provided by telephone, or by email, or by mail. *Id*. at ¶ 28-30, RE 1595-6, Page ID #28169. Thousands of claimants and hundreds of attorneys of record have complied with the Settlement Facility's address update requests. *Id*. at ¶ 22, RE 1595-6, Page ID #28168. The Settlement Facility maintains records of all address updates and all mailings including all mailings that are returned as undeliverable. *Id*. at ¶¶ 10-11, RE 1595-6, Page ID #28167.

As required by Closing Order 2, the Settlement Facility has implemented procedures to verify claimant and attorney addresses before issuing payments. *See* Declaration of Ann M. Phillips, dated July 20, 2020 ("Phillips Dec.") at ¶¶ 11-19, RE 1595-7, Page ID #28194-28217. These address verification procedures are employed for all claims at the point in time when the claim is eligible for payment and the address information has not been updated or verified within the prior 90 days. *Id*. at ¶ 13, Page ID #28197.

To verify addresses, the Settlement Facility mails an address verification request to claimants and, where applicable, their attorneys. *Id*. All payments remain

on hold until the Settlement Facility obtains a verified address. *Id*. at ¶ 14, Page ID #28197. The Settlement Facility determines whether the address information received is reliable and constitutes a proper verification. *Id*. at ¶ 15, Page ID #28197. For example, if the claimant's attorney of record and the claimant submit different address information, the Settlement Facility will accept the address provided by the claimant. *Id*. at ¶ 16, Page ID #28197.

As mandated by Closing Order 2, the Settlement Facility may and does employ additional verification procedures if there is reason to conclude that address information provided by the attorney is not reliable. Based on the directives and guidance in Closing Order 2, the Settlement Facility will not accept address information provided by counsel where previous experience demonstrates that the address information cannot or should not be considered reliable. *Id*. at ¶ 17, Page ID #28197. For example, the Settlement Facility does not accept address information from counsel or claimants where previous address submissions have proven to be invalid—as demonstrated by conflicting address information and/or where a significant portion of the addresses provided by counsel have proven to be invalid (which is based primarily on the percentage of mail returned as undeliverable). *Id*. at ¶17-19, Page ID #28197; Bearicks Dec. at ¶24, RE 1595-6, Page ID #28168.

D. Settlement Facility Data Regarding Address Verification for Korean Claimants

The Settlement Facility determined, based on its historical experience, that the address information provided by counsel for Korean Claimants was not reliable and therefore the terms of Closing Order 2 authorized (indeed *required*) it to obtain address verification directly from the claimants. The record shows that between 2009 and 2020, the Settlement Facility sent 1,839 separate requests for address verification to various Korean Claimants eligible for a future payment. Bearicks Dec. at ¶ 33, RE 1595-6, Page ID #28169. The Settlement Facility may send more than one verification request to the same claimant. Bearicks Dec. at ¶18, RE 1595-6, Page ID #28168. The Settlement Facility's data show that on multiple occasions, a high percentage of address verification mailings sent to Korean Claimants using the address information provided by counsel for Korean Claimants has been returned as undeliverable. *See* Phillips Dec. at ¶¶ 22, 31, 33, 38, RE 1595-7, Page ID #28198-28200. The sworn declarations of the Claims Administrator and the head of Quality Management at the Settlement Facility state that several address verification mailings sent to Korean Claimants—including mailings that were undertaken based on addresses that counsel characterized as "updated"—have resulted in a 40 to 50 percent return rate, which they state is significantly greater than the rate of undeliverable mail that the Settlement Facility has experienced generally. *Id*. at ¶ 38, Page ID #28200-24821; Bearicks Dec. at ¶34, RE 1595-6, Page ID #28169.

E. The Underlying Motions filed by Korean Claimants

Korean Claimants filed two motions asserting that the Settlement Facility improperly required Korean Claimants to provide current verified addresses before issuing payments and that therefore Korean Claimants have been deprived of payments to which they are entitled. Both motions were filed more than a year after the district court entered Closing Order 2 and, in fact, the Motion for Vacating was filed almost two years after the entry of Closing Order 2.[6]

1. Korean Claimants' Motion For Premium Payments

The Korean Claimants filed the Motion for Premium Payments to Korean Claimants on July 6, 2020. RE 1545. The Motion for Premium Payments sought an

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[6] To date, Korean Claimants have filed six motions in the district court (in addition to the two motions at issue in this appeal) challenging the operation of the Settlement Facility or disputing terms of the Plan or orders of the district court. *See* Motion for Extension of Deadline for Filing Claim, RE 1586 (Feb. 3, 2021) (pending in the district court and seeking extension of the final claims filing deadline mandated by the Plan and by the district court); Motion for Re-Categorization of Korea, RE 965 (Apr. 7, 2014) (disputing the time period selected by the Claims Administrator for recategorization of the Korean Claims to a Plan Class that will result in higher payments); Motion for Extension of Deadline of Class 7 Claimants, RE 958 (Mar. 7, 2014) (disputing the deadline set in the Plan that defined eligible Class 7 claims); Motion for Reversal of Decision of SF-DCT Regarding Korean Claimants, RE 810 (Sept. 26, 2011) (challenging the decision of the Settlement Facility regarding the reliability of certain settlement submissions of Korean Claimants); Motion for Cross-Motion for Entry of Order to Show Cause with Respect to the Finance Committee, RE 1357 (Jan. 17, 2018) (challenging the Finance Committee's determination that the Plan does not permit them to agree to payment of a lump sum to Korean Claimants); Motion For Recognition and Enforcement of Mediation, RE 1271 (asserting that the Finance Committee was obligated to issue payments for claims that had not been evaluated under the Plan mandated criteria).

order compelling the Settlement Facility to make Premium Payments to Korean Claimants who had not provided a current verified address as required by Closing Order 2. The CAC, Dow Silicones, and the DRs jointly opposed the Motion for two reasons: first, because payments to Korean Claimants, like payments to all other claimants, can be made only in accordance with the Plan and the orders of the district court and the uncontroverted record showed that counsel for Korean Claimants had not complied, or caused his clients, Korean Claimants, to comply with Closing Order 2; and second, because the Motion for Premium Payments is an unauthorized appeal of a determination of the Claims Administrator that is prohibited by the Plan. *See* RE 1546. The Finance Committee opposed the Motion for Premium Payments on similar grounds. *See* RE 1547. The district court held a hearing on the Motion for Premium Payments on February 25, 2021.

2. Motion For Order Vacating Decision Of The Settlement Facility Regarding Address Update/Confirmation

The Korean Claimants filed the Motion for Vacating on January 15, 2021. RE 1569. The Motion for Vacating sought an order "vacating" the determination of the Settlement Facility to request current verified addresses from Korean Claimants before issuing payments. Korean Claimants did not dispute that they had not provided address verification information as requested by the Settlement Facility and required by Closing Order 2. Rather, they argued that—unlike all other claimants—the Korean Claimants should not be required to provide address

information. Korean Claimants asserted that "the Korean Claimants did not want to submit their updated addresses to the SF-DCT" and "did not want to receive a letter including the award letter from the SF-DCT." *Id.* at Page ID #26262. Korean Claimants argued that it was a violation of their privacy rights to provide address information to the Settlement Facility and that receipt of mail from the Settlement Facility would result in psychological harm. *Id.*

The CAC, Dow Silicones, and the DRs opposed the Motion for Vacating on several grounds: first, while couched as a request to revoke administrative determinations of the Settlement Facility, in reality the Motion for Vacating improperly sought to vacate or amend Closing Order 2. Second, to the extent the Motion for Vacating was tantamount to a challenge to the validity of Closing Order 2, it was untimely. Third, the rationale for seeking to avoid the verification requirements—*i.e.,* that it violated privacy rights—was inconsistent with prior submissions of Korean Claimants. Fourth, that the Motion for Vacating was an unauthorized appeal to the district court of a determination made by the Claims Administrator that is prohibited by the Plan. *See* RE 1595. The Finance Committee opposed the Motion for Vacating on similar grounds. *See* RE 1596.

Korean Claimants filed a reply on April 2, 2021. In their reply brief, Korean Claimants raised additional arguments: they alleged that the address verification requirement is in reality an attempt to avoid paying Korean Claimants, that the

Settlement Facility's application of this process to Korean Claimants amounts to discrimination, and that Closing Order 2 is a modification of the Plan in violation of the Bankruptcy Code. Korean Claimants further disputed the basis for the Settlement Facility's conclusion set forth in the declarations of the Claims Administrator and the head of Quality Management at the Settlement Facility that it was necessary to seek address verifications from the claimants because the address information provided by counsel has not proven to be accurate. Korean Claimants' Reply to Response of Dow Corning Corporation, The Debtor's Representatives, Claimants' Advisory Committee and Finance Committee to Motion for Vacating Decision of the Settlement Facility Regarding Address Update/Confirmation ("Reply"), RE 1599, Page ID #28304-28305. The district court did not hold a hearing on the Motion for Vacating.

F. The District Court's Decision

On June 24, 2021, the district court denied both the Motion for Premium Payments and the Motion for Vacating. Memorandum Opinion and Order Regarding the Finance Committee's Motion for Authorization to Make Second Priority Payments, The Korean Claimants' Motion for Premium Payments and The Korean Claimants' Motion for Order Vacating Decision of the Settlement Facility Regarding Address Update/Confirmation, RE 1607 ("June 24 Order"). In denying the Motion for Premium Payments, the district court affirmed the Settlement

Facility's application of Closing Order 2. The district court determined that the Settlement Facility "is bound by [Closing Order 2] and if it cannot properly verify a claimant's address as required by that Order, then no payment is authorized to issue to any claimant whose address cannot be verified." *Id.*, Page ID #28630. The district court noted that Korean Claimants failed to appeal Closing Order 2 at the time it was entered and further concluded that the Korean Claimants have no authority to appeal any determinations by the Claims Administrator regarding payment. *Id.*

Applying the same reasoning, the district court also denied the Motion for Vacating. The district court again affirmed the Settlement Facility's application of Closing Order 2. The district court determined that the Settlement Facility has no authority to issue payments if the requirements of Closing Order 2 are not met and that the Korean Claimants have no authority to appeal any decision made by the Settlement Facility regarding address update and confirmation requirements. *Id.* at Page ID #28631.

SUMMARY OF ARGUMENT

The decision of the district court should be affirmed because the relief requested is barred by the Plan and would abrogate the terms of a lawful, appropriate, and long-standing court order that is necessary to assure the appropriate distribution of the limited assets available for Allowed claims. Even if the relief requested were permitted under the Plan, the decision of the district court should be affirmed for the

further reason that the Korean Claimants failed to file a timely motion: they sought to contest the district court's order after it had been in place—and operative—for well over a year.

The Plan establishes detailed and exclusive criteria for the determination of Allowed claims. It further obligates the district court and the Settlement Facility that administers claims to implement procedures to verify the validity of claim submissions and assure that funds are distributed only to and received by the eligible recipients. These provisions assure the equitable treatment of claims and protect the interests of all claimants by maintaining equal treatment of claimants and preserving the assets of the limited settlement fund.

The district court order at issue—Closing Order 2—prescribes simple procedures designed to achieve these stated Plan requirements: it requires the Settlement Facility to confirm current contact information for claimants with Allowed claims so that claimants can receive proper advance notice of the resolution of their claims and the payments to be issued, thereby helping to assure that the funds will be disbursed properly. Many of the claimants submitted their claims in the early phase of the settlement program—over 15 years ago. The contact information they were required to submit with their claims is in many cases no longer valid. The district court cannot reasonably distribute tens or hundreds of millions of dollars of assets from the settlement fund without confirming that the claimants can receive

the payment. The district court's mandate in Closing Order 2 is well within the scope of the Court's authority and appropriately and necessarily protects the claimants and the limited fund.

The order was entered properly as a stipulated order of the CAC and the DRs consistent with their obligations and authority under the Plan.

Korean Claimants did not object to or appeal the order when it was entered, and the Settlement Facility has been operating under the terms of the order for more than two years. Korean Claimants' extremely belated challenge is unreasonable and not permissible under applicable rules and case law. Indeed, elimination of the requirement at this stage would disrupt the orderly Settlement Facility operations and result in misdirected payments—thereby risking a loss of assets. The uncontroverted record before the district court established the reasonable basis for the Settlement Facility's determination and its application of the terms of the Closing Order 2. The district court acted correctly in concluding that its own order was applied appropriately by the Settlement Facility.

The Korean Claimants' challenge to the Settlement Facility's application of the order is nothing more than an appeal of a decision of the Claims Administrator—which is unequivocally barred by the Plan and by prior determinations of this Court. The order in no way modifies any provision of the Plan; nor does it violate any

provision of the Bankruptcy Code: by its express terms the order applies equally to all claimants.

The Korean Claimants seek to either avoid the requirements of the order or vitiate the portion of the order at issue. To exempt the Korean Claimants alone from the simple requirements of the order would result in disparate treatment of claimants and risk loss of assets. To invalidate the portion of the order at issue would prevent the district court from fulfilling its Plan-mandated obligations.

Korean Claimants offer no cogent bases for their challenge to the terms of the order and their refusal to comply with its simple terms. Instead, they have made unsupported, baseless allegations of discrimination and bias against both the Settlement Facility and—in effect—the district court. These assertions have no place in the orderly administration of justice.

The decision of the district court finding that the relief requested was barred by the Plan and that the Settlement Facility properly and necessarily applied the terms of the district court's order should be affirmed.

STANDARD OF REVIEW

This appeal involves the district court's interpretation of its own prior orders as well as interpretation of the requirements of the Plan. Issues involving the proper interpretation of the district court's orders are reviewed under the abuse of discretion standard. *See Hankins v. City of Inkster, Michigan*, 832 F. App'x. 373, 378 (6th Cir.

2020) ("We review a district court's interpretation and enforcement of its own orders under an abuse-of-discretion standard") (citation omitted); *Denhof v. City of Grand Rapids, Michigan*, 797 Fed.Appx. 944, 947 (6th Cir. 2019) ("Because the district court, in most instances, is best suited to interpret its own orders, we review its interpretation under an abuse of discretion standard.") (citation omitted); *Michigan v. City of Allen Park,* 954 F.2d 1201, 1213 (6th Cir. 1992) ("[A]n appellate court should accord deference to a district court's construction of its own earlier orders, if that construction is reasonable.") (citation omitted). To find an abuse of discretion, the Court "must be left with a 'definite and firm conviction' that the district court committed a clear error of judgment in the conclusion it reached upon a weighing of the relevant factors." *Denhof,* 797 Fed.Appx. at 947 (citation omitted).

Issues involving the interpretation of the plain language of the Plan and Plan Documents, and the scope of the district court's jurisdiction under the Plan, are reviewed *de novo*. *Korean Claimants v. CAC*, 813 F. App'x. 211, 216 (2020) ("The district court's decision involved the interpretation and application of the plain language of the reorganization plan. Where, as here, the district court's interpretation is confined to the Plan documents without reference to extrinsic evidence, we review *de novo*.") (internal citation omitted); *In re Settlement Facility Dow Corning Trust*, 592 Fed.Appx. 473, 477 (2015) ("When reviewing a district court's interpretation of a bankruptcy plan where the district judge did not confirm the plan but has extensive

knowledge of the case, we grant the district court significant deference with respect to its assessment of extrinsic evidence…However, we evaluate *de novo* a district court's interpretation that does not rely on extrinsic evidence."); *In re Settlement Facility Dow Corning Tr.*, 670 F. App'x. 887, 888 (6th Cir. 2016) ("We review *de novo* whether the district court had jurisdiction to enter the Consent Order.") (citation omitted).

Korean Claimants assert that the *de novo* review standard applies to their arguments B1 ("Closing Order 2 is Void"), B3 ("Closing Order 2 has no founding under the Plan and violates §1129(b)"), B5 ("Korean Claimants should be exempted from Closing Order 2"), and B6 ("Settlement Facility eliminated the requirement of a valid, confirmed current address on its own"). Korean Claimants' Br. at 31, 38, 44, 52. To the extent that the district court addressed any of these arguments, Appellees Dow Silicones and the DRs agree that Arguments B1 and B3 may be subject to *de novo* review, but submit that the abuse of discretion standard applies to Arguments B5 and B6.

ARGUMENT

I. The District Court's Interpretation Of Its Own Order And Determination That The Settlement Facility Had Properly Applied That Order Was Not An Abuse Of Discretion And Is Supported Amply By The Uncontroverted Record.

The district court's decision necessarily interprets its own order and, by denying the motion, the district court determined that the Settlement Facility had properly applied and interpreted the terms of Closing Order 2. Korean Claimants do not directly argue that the district court abused its discretion in interpreting its own order. They impliedly contest the district court's decision by arguing that the Settlement Facility did not have a proper basis for applying the requirements of Closing Order 2. They then challenge the validity of the order on several grounds, assert an improper motivation for entering the order, dispute the Settlement Facility's application of the order, and further assert that the address verification requirement in the order violates Korean law, bankruptcy law, and attorney-client privilege.

Closing Order 2 delegates to the Settlement Facility the determination of how to obtain address verifications and permits the Settlement Facility to assess the reliability of information provided by counsel in determining how best to verify addresses. The uncontroverted record demonstrates that the Settlement Facility seeks address verification from claimants and their lawyers simultaneously—and that the Settlement Facility evaluates the responses to determine whether the information

submitted is reliable. *See* Phillips Dec. at ¶¶ 12-19, RE 1595-7, Page ID #28196-28197, Bearicks Dec. at ¶¶ 23-24, RE 1595-6, Page ID #28168. The uncontroverted record further demonstrates that the Settlement Facility applies the same procedures to all claimants—and that the procedures applied to Korean Claimants and counsel are precisely the same as the procedures applied to all claimants. *See* Phillips Dec. at ¶12, RE 1595-7, Page ID #28196-28197 ("On April 4, 2019, after Closing Order 2 was entered, SF-DCT sent a mailing to *all* claimants eligible at that time to receive a Premium Payment requesting confirmation of the claimant's current address.") (emphasis added).

The record provides ample—and indeed compelling—basis for the Settlement Facility to conclude that it was authorized and obligated under the terms of Closing Order 2 to require Korean Claimants to respond directly to address verification requests. The Settlement Facility's obligation is to undertake procedures to achieve the expressly stated purpose of "assur[ing] that the claimant or authorized payee will actually receive the mailed check" (Closing Order 2 at ¶ 11, RE 1482 at Page ID #24089)—which means that the address information must be current and must be collected at the time of payment. The record demonstrates that the Settlement Facility has attempted for years to obtain accurate updated claimant addresses from counsel for Korean Claimants so that the Settlement Facility can provide appropriate notice of claim awards consistent with its standard procedures—but with little

success. Counsel for Korean Claimants has consistently failed to provide the necessary address information despite multiple requests. Counsel admits that he has in fact resisted providing addresses. *See* Phillips Dec. at Exhibits A-F, RE 1595-7, Page ID #28202-28215; Korean Claimants' Br. at 11-12. Given the lengthy history of attempts to obtain accurate contact information for Korean Claimants and counsel's failure and refusal to provide such information, the district court properly concluded that the Settlement Facility had a reasonable basis to seek confirmation of addresses directly from the Korean Claimants before issuing payments, consistent with and as directed in Closing Order 2. A failure to seek such confirmation would have violated Closing Order 2 and would risk the very outcome that Closing Order 2 was intended to avoid: a failure to distribute the funds to the eligible claimant—because the claimant cannot be located or did not receive notification of the payment and therefore did not know to contact her counsel to obtain the payment.

Although Korean Claimants appear to dispute or question the data outlined in the sworn declarations of the Claims Administrator and the head of Quality Management, they do not provide any contrary evidence. They dispute the conclusion drawn by the Settlement Facility and the district court that the consistently high percentage of undeliverable mail means that the address information provided by counsel is sufficiently unreliable to warrant further procedures to obtain contact information consistent with the obligation to assure that

claimants are notified of and will receive the payments to which they are entitled. Significantly, Korean Claimants make clear that their counsel will not provide or cause his clients to provide the required address information. Under those circumstances, the Settlement Facility had no option under Closing Order 2 other than to withhold the payments requested in the Motion for Premium Payments and any other payments at issue in the Motion for Vacating pending receipt of a current verified address for the claimants. The district court's decision, which ratifies the Settlement Facility's application and interpretation of Closing Order 2 with respect to both motions, cannot be deemed an abuse of discretion.

II. Closing Order 2 Is A Valid Order, Consistent With The Plan And Bankruptcy Code.

A. Closing Order 2 Was Entered Properly As A Stipulated Order Of The Parties.

Korean Claimants argue that Closing Order 2 is "void" because it was entered without notice or hearing. Korean Claimants' Br. at 20, 31-34. Korean Claimants did not assert this argument in their opening motion in the district court. In their reply brief they attempt to justify their belated filing by saying stating "to the extent" they seek to vacate the order as void for lack of notice and hearing, their motion is timely. Reply, RE 1599, Page ID #23815. Even if properly raised on appeal, the argument has no legal basis. Closing Order 2 was stipulated and agreed to by the two parties—the CAC and the DRs—with express authority granted by the Plan to

interpret the Plan's terms and whose consent is required for purposes of establishing guidelines for distribution of Settlement Fund assets. Given the agreement of the parties, no motion or hearing was required or necessary. *See* E.D. Mich. L.R. 7.1 (a)(1) ("…If the movant obtains concurrence, the parties or other persons involved may make the subject matter of the contemplated motion or request a matter of record by stipulated order."). Throughout the operation of the Settlement Facility, the district court has entered multiple stipulated orders—like Closing Order 2—to implement the Plan and manage the operations of the Settlement Facility. There is no legal basis to find that Closing Order 2 is "void" simply because the district court did not hold a hearing before entering a stipulated order. Had Korean Claimants sought clarification or amendment of Closing Order 2, they could have submitted a motion for reconsideration or clarification at the time of its entry. They failed to do so and, as noted below, for that reason alone have no basis to contest its terms now. There is no basis to find that the district court's entry of Closing Order 2 without a hearing was invalid or an abuse of discretion.

B. Closing Order 2 Is An Appropriate And Necessary Mechanism To Fulfill The District Court's Obligations Under The Plan.

Korean Claimants assert that Closing Order 2 was intended to "approve" wrongful acts of the Settlement Facility and that it is a "retroactive authorization of the Settlement Facility's practice." Korean Claimants' Br. at 35. Korean Claimants assert, with no evidentiary basis or citation, that the Settlement Facility invented the

address verification process in an effort to avoid paying Korean Claimants and thereby save funds. They assert that this action deprives Korean Claimants of their substantive rights—i.e., the right to receive payment. Korean Claimants' Br. at 40. They assert—contrary to the sworn statements submitted by the Claims Administrator and the head of Quality Management—that the Settlement Facility did not apply this address verification requirement to Class 5 (*i.e.,* United States) claims. *See* Bearicks Dec. at ¶¶ 11, 13, RE 1595-6, Page ID #21866-28167; Phillips Dec. at ¶12, RE 1595-7, Page ID #28196; Korean Claimants' Br. at 37-38. Korean Claimants do not and cannot offer any factual support for these allegations.

This argument is a shocking attack on the motive of the district court in issuing Closing Order 2. This baseless and improper accusation should be dismissed summarily. Closing Order 2 was entered by the district court exercising its responsibility to implement the terms of the Plan and to assure the proper distribution of the Plan assets (as explicitly stated in the order). Korean Claimants' dissatisfaction with the Settlement Facility has no bearing on the issue on appeal—*i.e.,* whether the district court's denial of the Motion for Premium Payment and the Motion for Vacating should be reversed.

C. Closing Order 2 Implements, is Consistent With, Does Not Modify the Plan or Violate the Bankruptcy Code.

Korean Claimants assert that Closing Order 2 was an impermissible modification of the Plan and that it raises issues of equal treatment in violation of Bankruptcy Code Sections 1123 and 1127. Korean Claimants Br. at 49.[7] Korean Claimants do not and could not cite any language in the Plan that is "modified" by Closing Order 2. They assert instead that the adoption of administrative and procedural terms that were not expressly stated in the Plan constitutes a modification. *See, id*.

Closing Order 2 specifies the administrative procedures that the district court deemed necessary to implement certain Plan requirements. The address verification requirement gives the district court maximum assurance that funds will be received by the eligible claimant. If there is no confirmed address, then neither the district court nor the Settlement Facility has any way to notify claimants of payments or to determine whether funds distributed will be or actually were received by a claimant. Adoption of procedures that implement the terms of the Plan are not modifications: they assure compliance. The Plan does not purport to, and indeed cannot, define the detailed administrative procedures that will be necessary to implement its terms. In

[7] Arguments relating to equal treatment and modification appear in various sections of the Korean Claimants' brief. *See* Korean Claimants' Br. at 27-28, 34-35, 37, 40, 49, 51.

fact, to the contrary, the Plan quite clearly instructs the Claims Administrator, under the supervision of the district court, to develop and define necessary detailed procedures. *See* SFA § 5.01(a), RE 1595-3, Page ID #28006 ("The Claims Administrator shall have discretion to implement such additional procedures and routines as necessary to implement the Claims Resolution Procedures …."); SFA § 5.05(b), RE 1595-3, Page ID #28006 ("The Claims Administrator shall institute procedures … and shall develop claims-tracking and payment systems as necessary to process the Settling Breast Implant Claims in accordance with the terms of this Settlement Facility Agreement …."); SFA § 5.04(b), RE 1595-3, Page ID #28009 ("The Claims Administrator shall have the plenary authority and obligation to institute procedures to assure an acceptable level of reliability and quality control of Claims and to assure that payment is distributed only for Claims that satisfy the Claims Resolution Procedures.").

Korean Claimants' citation to 11 U.S.C. § 1127(b) to support the assertion that Closing Order 2 is an improper modification of the Plan is misplaced. Section 1127(b) outlines requirements for pre-confirmation modifications and generally prohibits modification after "substantial consummation" of a plan of reorganization. The Plan, of course, was consummated years ago. A violation of Section 1127(b) post consummation would occur only where there is, in fact, a modification that effects a material change in the rights of creditors. "[T]he restrictions on

modification imposed by § 1127(b) apply only when a proposed change to a confirmed plan would constitute a meaningful alteration." Bankruptcy Code Manual, §1127:9 (5th ed. 2021) (citations omitted). *See also In re Terex Corp.*, 984 F.2d 170, 173 (6th Cir. 1993) (holding that §1127(b) is not implicated where a court interprets a plan to determine the appropriateness of an interest award); *In re Motors Liquidation Company,* 539 B.R. 676, 682 (Bankr. S.D. N.Y. 2015) (bankruptcy court's decision to enter an injunction pending appeal to delay trust distributions is not an impermissible modification of plan).

Section 1127(b) does not apply: Closing Order 2 does not modify any provision of the Plan; nor does it affect the substantive requirements for an eligible claim.

Korean Claimants further assert that the supposed modification of the Plan for a "requirement of a valid, confirmed current address violates equal treatment." Korean Claimants' Br. at 49 (citing Section 1123(a)(4)). While the Korean Claimants do not explain the basis for this argument, it appears that they are asserting, without any evidentiary support, that these address verification procedures are applied only to Korean Claimants. Korean Claimants' Br. at 38. Nothing in Closing Order 2 limits its application to Korean Claimants and, to the extent that Korean Claimants assert that the Settlement Facility sought to treat Korean

Claimants differently than other claimants—specifically Class 5 claimants[8]—this assertion is belied by the uncontroverted record: the declarations of the Claims Administrator and the head of Quality Management make clear that the procedures at issue are applied uniformly. *See* Phillips Dec. at ¶¶ 11-19, 1595-7, Page ID #28196-28197; Bearicks Dec. at ¶¶12-31, Re 1595-6, Page ID #28167-28169. There is absolutely no basis for and there is no evidence to support the Korean Claimants' assertion of discrimination or unequal treatment. Closing Order 2 applies to all claimants—not just Korean Claimants—and prohibits the Settlement Facility from issuing "payments to or for claimants or an authorized payee unless the [Settlement Facility] has a confirmed, current address for such claimant or authorized payee." Closing Order 2, RE 1482, Page ID #24089; *see also* Bearicks Dec. at ¶¶ 8-30, RE 1595-6, Page ID #28166-28169.

Similarly, Korean Claimants assert that the address verification requirement in Closing Order 2 violates the fair and equitable standard of 11 U.S.C. §1129(b) because it "prohibit[s] the eligible Claimants from receiving payments including premium payments." Korean Claimants' Br. at 40. This argument is wholly inapplicable. First, the Plan was confirmed over 20 years ago in accordance with the Bankruptcy Code. *See* Plan, RE 1592-2, Page ID #27885-27913. Second, to the

[8] Class 5 claimants are "domestic"—essentially United States claimants. Plan at § 3.2.7, RE 1595-2, Page ID # 27915.

extent Korean Claimants are attempting to argue that the address verification requirement of Closing Order 2 somehow violates the fair and equitable standard by treating Korean Claimants disparately, the argument fails for the same reasons articulated above: Closing Order 2 neither modifies the Plan nor singles out Korean Claimants. It applies equally to all claimants.

Korean Claimants further contend that the fact that the Settlement Facility relies on the U.S. Postal Service to distribute mail to claimants, including Korean Claimants, constitutes unequal treatment. Korean Claimants' Br. at 51. They contend that the Settlement Facility should not use the U.S. Postal Service but instead should use the postal systems of each country. Korean Claimants' "postal service" assertion amounts to a complaint about the timeliness of the postal delivery system. They offer no evidence that there is a better system or that Korean Claimants receive different treatment from the U.S. Postal Service than other claimants. More significantly, Korean Claimants do not explain how or even assert that the use of the U.S. Postal Service somehow constitutes an abuse of discretion by the district court that would mandate a reversal of the district court's decision.

D. Closing Order 2 Is Unambiguous: Its Application Is Fully Supported In The Uncontroverted Record.

Korean Claimants assert that Closing Order 2 is vague and that the prerequisite for requiring address verification directly from Korean Claimants was not met. Korean Claimants' Br. at 41-42. Korean Claimants assert that the

permissive authorization is not sufficiently clear and that the use of the word "may" does not mean that the Settlement Facility "can" seek additional address confirmation. Korean Claimants' Br. at 42. (The sentence at issue provides that the Settlement Facility "may seek additional confirmation as appropriate." Closing Order 2, RE 1482, Page ID #24089). The word "may" in this context means that the Settlement Facility is authorized to take action—it does not mean, as Korean Claimants appear to imply, that the Settlement Facility does not have permission to require address verifications. *See MAY*, Black's Law Dictionary (11th ed. 2019) ("1. To be permitted").

Korean Claimants then assert that the Settlement Facility did not have a proper basis to invoke the address verification requirements even if the language of Closing Order 2 were to be interpreted to permit such action. Korean Claimants dispute the testimony of the Claims Administrator as invalid because Korean Claimants did not have an opportunity to analyze the "audit" referred to in the declaration. Korean Claimants' Br. at 42. They assert that the Settlement Facility was required to provide the underlying data (in the form of a comparison chart) showing that the rate of undeliverable mail among Korean Claimants is higher than the rates experienced with other counsel or with respect to other claimants. *Id.* at 43. They suggest that the Settlement Facility must analyze each mailing and each claimant to determine

whether the address is invalid and cannot rely on a "rate" of undeliverable mail to justify the determination to seek verification directly from claimants. *Id.*

Closing Order 2 does not specify all the factors that might cause the Settlement Facility to conclude that address verifications provided by counsel may be deemed unreliable. It does, however, provide specific examples, which include evidence of prior undeliverable mailings based on address verifications provided by counsel and other evidence of prior inaccurate verifications. The structure and context of the relevant sentence makes clear that the inquiry is focused on the reliability of information provided by counsel and not the reliability of an individual address.

As explained above, the evidence submitted to the district court unequivocally supports the Settlement Facility's decision to require verification of addresses directly from Korean Claimants. Not only does the evidence of the extremely high rate of undeliverable mail demonstrate that the address information is unreliable, counsel for Korean Claimants has refused consistently to provide current address information. The district court had an ample record from which to conclude, as it did, that the Settlement Facility's determination was proper and mandated by Closing Order 2.

E. Korean Claimants Cannot Be Exempted From Closing Order 2.

Korean Claimants assert that they should be exempted from the requirements of Closing Order 2 because they do not want to provide their address information and wish to preserve their privacy. To achieve this relief, the district court would have to amend or waive the applicable provisions of Closing Order 2 as to Korean Claimants, resulting in disparate treatment among claimants in violation of the Bankruptcy Code. *See* 11 U.S.C. § 1123(a)(4) (a plan is required to "provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest.").

Moreover, Korean Claimants' privacy argument is belied by their own submissions: they admit that they provided addresses (as required by the forms and for classification purposes) in 2005 and 2006 when the claims were first filed. Korean Claimants' Br. at 9. But there is no cogent explanation as to why providing updated address information is problematic now when it was acceptable earlier.

If certain individual Korean Claimants have privacy concerns, counsel could have contacted the clients by phone or text to advise them to contact the Settlement Facility.

F. Korean Claimants' Arguments Based On Korean Law And Attorney Client Privilege Are Inapplicable And Irrelevant.

Korean Claimants argue that "Counsel is not allowed to submit a valid, confirmed current address of a Claimant without permission of the Claimants under Personal Information Protection Act of Korea." Korean Claimants' Br. at 46. Korean Claimants have availed themselves of the settlement program—knowing and, in fact, expecting that they ultimately would receive a determination from the Settlement Facility and a payment. They subjected themselves to the jurisdiction of the district court (which is acting as both the bankruptcy court and the district court) in filing their claims and thereby subjected themselves to the rules and requirements for receiving compensation. *See Langenkamp v. Culp*, 498 U.S. 42, 45 (1990) ("Respondents filed claims against the bankruptcy estate, thereby bringing themselves within the equitable jurisdiction of the Bankruptcy Court"); *In re Dow Corning Corp.*, 287 B.R. 396, 412 (E.D. Mich. 2002) ("…Claimants have submitted themselves to this Court's jurisdiction by participating in this bankruptcy action. When a creditor submits to bankruptcy court jurisdiction by filing a proof of claim in order to collect its debt, the creditor is subject to the court's orders….). Korean Claimants cannot both take advantage of the settlement program and also avoid its requirements.

Korean Claimants dispute this argument contending that the requirements of the settlement program have changed (in their view) by requiring address

verification. But the requirements have not changed: all claimants are asked to provide address information when filing a claim form. All that is required now is the provision of updated address information. Closing Order 2 is not and cannot be deemed a substantive "change" in the program.

Korean Claimants raise a new argument, not submitted to the district court, in support of their position that Korean Claimants should be exempted from the requirements of Closing Order 2. They assert that the address information is protected by the attorney-client privilege and therefore counsel cannot divulge the information absent express permission. Korean Claimants' Br. at 46-47. First, since this argument was not raised in the district court it should not be considered on appeal. *Robinson v. Phelps*, No. 20-6075, 2021 WL 4271910, at *2 (6th Cir. September 2, 2021) ("[W]e generally will not review issues if they are raised for the first time on appeal absent exceptional circumstances.") (internal citation omitted); *Korean Claimants v. Claimants' Advisory Comm.*, 813 F. App'x. 211, 219 (6th Cir. 2020) ("The Korean Claimants failed to raise any of these issues for the district court to consider, thereby waiving them.") (citations omitted).

In any event, this argument, too, lacks merit.[9] Korean Claimants are not in the midst of litigation: they are submitting claims to a claims processing entity in

[9] Korean Claimants' own actions undermine the credibility of their confidentiality and privacy arguments. Counsel for Korean Claimants filed on the *public* docket a listing of certain Korean Claimants' names and addresses. This is hardly consistent

an effort to obtain compensation as permitted by the Plan. To obtain compensation, they have to submit complete claim forms—including their contact information—and follow the requirements of the Plan, the Settlement Facility and the district court. If a claimant declines to provide information because she believes it might waive the attorney client privilege then she need not file a claim. Moreover, a client's address generally is not subject to attorney-client privilege. *See* Paul R. Rice, Attorney-Client Privilege in the United States, December 2020 Update, 1 § 6:20 ("The attorney-client privilege does not shield information that the client provided to the attorney 'not in confidence, as a factual basis for the request for legal advice, but only as incidental to the establishment of the relationship.' Therefore, a client's whereabouts—his address or telephone number—generally are not protected by the privilege. An attorney must disclose such information unless it can be demonstrated that the client consulted the attorney for the purpose of seeking advice about the legal implications of his whereabouts.") (citations omitted); *Integrity Ins. Co. v. American Centennial Ins. Co.*, 885 F.Supp. 69, 73–74 (S.D.N.Y.1995) ("There is no absolute bar against disclosure of a client's address.") (citation omitted).

The Sixth Circuit case cited by Korean Claimants, *In re Grand Jury Investigation 83-2-35*, 723 F.2d 447 (6th Cir. 1983), addresses the application of

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with the asserted need for privacy. *See* Motion for Vacating at Exh. 11, RE 1569-2, Page ID # 26348-26395.

privilege to the identity—not the location—of the client and is not applicable. The other case cited—*Elliott Associates, L.P. v. Republic of Peru*, 176 F.R.D. 93, (S.D.N.Y. 1997) is not pertinent. Applying New York law, the court in *Elliott Associates* held that a lawyer could refuse to divulge the address of a *non-party* client in an unrelated action. The court's decision cites—and appears to rely on—a case in which the court held that a client's address was deemed privileged where the location of the client was communicated for the specific purpose of receiving legal advice concerning relocation. *Id.*, at 98 (citing *Matter of Grand Jury Subpoenas Served Upon Field*, 408 F.Supp. 1169 (S.D.N.Y.1976)).

The case law cited provides no basis to preclude the application of Closing Order 2. If it were applicable, then Korean Claimants should have raised this issue at the time when claim forms were initially distributed – more than 15 years ago. They have always been under an obligation to disclose their address and residence to file their claims and for classification purposes and the requirement of a current address only facilitates payments. *See* Plan §§ 3.2.7, 3.2.8 and 3.2.9, RE 1595-2, Page ID #27915; Annex A, § 6.05(h)(i), RE 1595-4, Page ID #28079. There is no basis to argue that the address information must be withheld on privilege grounds.

Korean Claimants assert that Korean law does not require their counsel to keep updated and current addresses of clients, and that Korean Law prohibits their counsel from disclosing their addresses without their permission. Korean Claimants'

Br. at 21, 48. This case and the claims asserted by Korean Claimants are governed by applicable United States law, not Korean law. Whether Korean law does or does not require claimants to disclose their addresses is irrelevant.

None of these arguments has any bearing on whether the district court's decision was an abuse of discretion. Should any individual Korean Claimant assert a hardship with respect to the receipt of mail and wish to seek relief—perhaps by requesting that contact be made through a means other than the mail—that individual could apply to the district court or, as noted above, counsel could provide to the individual the telephone number and email address of the Settlement Facility so that the claimant can provide the address information directly.

G. The Korean Claimants' Additional Arguments Relate To Their Complaints About The Settlement Facility And Not To The District Court's Denial Of Their Motions.

In a rather convoluted argument, Korean Claimants assert that the Settlement Facility eliminated the requirement for address verification by sending a letter to the counsel for Korean Claimants that stated that address updates had to be provided by June 3, 2019. Korean Claimants' Br. at 53. Of course, a letter from the Settlement Facility cannot and does not abrogate or amend an order of the district court—particularly an order that was entered after the date of the letter.

Korean Claimants also recite a litany of complaints about the mail delivery system, the accuracy of the mailing procedures of the Settlement Facility, the refusal

of the Settlement Facility to send all mailings by express mail service, the interpretation of the reasons for undeliverable mail, the citation to the claimant information guides in the declarations and further accuse the Settlement Facility of manipulating the mailing procedures. Korean Claimants' Br. at 36, 42-43, 51-52, 56. None of these complaints has any bearing on the district court's decision denying the motions or on the validity of Closing Order 2.

H. Korean Claimants' Challenge To Closing Order 2 Is Untimely.

Korean Claimants do not and cannot dispute that they failed to object to or appeal the entry of Closing Order 2. Had Korean Claimants wished to object to, seek reconsideration or clarification of, or appeal Closing Order 2, they could have done so in March 2019 when it was entered. They failed to do so. The Motion for Vacating was filed nearly two years after the entry of Closing Order 2 and the Motion for Premium Payments—in which the Korean Claimants assert that Closing Order 2 should not be applied—was filed 16 months after the entry of Closing Order 2. Korean Claimants do not offer (nor could they offer) any explanation for this delay. Instead they present a circular argument: because there was no hearing before its entry, Closing Order 2 is void and therefore the delay in submitting any objection is reasonable.

Civil practice rules and procedures are structured to provide an orderly process and to achieve resolution of matters within a reasonable period of time. To

that end, the rules prescribe various deadlines for motions seeking relief from the court. A motion for reconsideration, for example, must be filed within 14 days after the entry of the order at issue. *See* E.D. Mich. L.R. 7.1(h). The rules and case law demonstrate that the motions were egregiously and unreasonably late and for that reason along, the district court's order should be affirmed. For example, although Closing Order 2 is not a "judgment" the rules and case law governing requests for relief from a judgment provide context for considering the timeliness of Korean Claimants' objection to Closing Order 2. Federal Rule of Civil Procedure 60 provides that a request for relief from a judgment must be raised within a reasonable time—in most cases within one year. *See* Fed. R. Civ. P. 60(c)(1) (stating that a motion under Fed. R. Civ. P. 60(b) must be made within a reasonable time—and motions under Fed. R. Civ. P 60(b)(1), (2), and (3) must be made no more than a year after the entry of the judgment or order or the date of the proceeding); *Yarbrough v. Warden, Lebanon Correctional Inst.,* No. 16-4083, 2017 WL 3597427, at *2 (6th Cir. May 25, 2017) ("A Rule 60(b)(1) motion must be filed within one year of the challenged judgment."). An objection raised nearly two years after entry of an order cannot be considered a "reasonable" period of time. *See Gresham v. Johnson*, No. 13-10351, 2015 WL 5729072, at *1 (E.D. Mich. Sept. 30, 2015) (holding that relief was unavailable under any subsection of Fed. R. Civ. P. 60(b), as plaintiff had filed twenty months after the court issued its judgment); *Johnson v.*

Genesee County, No. 12-CV-10976, 2015 WL 6671521, at *2 (E.D. Mich. Nov. 2, 2015) ("…Plaintiff sat on his right to seek relief from judgment for nearly two years . . . The Court finds insufficient basis in the facts and circumstances presented here to excuse Plaintiff's tardy filing of his Rule 60(b)(6) Motion").

Citing *Ghaleb v. American Steamship Company*, No. 18-1742770, F. App'x. 249, 250 (6th Cir. 2019), Korean Claimants contend that "what constitutes a reasonable time depends on the facts of each case." Korean Claimants' Br. at 33. *Ghaleb* provides no basis to conclude that the Korean Claimants' delay is reasonable. In *Ghaleb*, this Court affirmed the district court's decision to deny a motion to set aside a final judgment under Fed. R. Civ. P. 60(b)(3) on the grounds that the motion was made *five months* after the final judgment, was based on facts that had been in that attorney's "possession for more than two years" and "was not legally complex." *Id.*

The facts here demonstrate that Korean Claimants' delay in objecting to Closing Order 2 is unreasonable under any standard. Korean Claimants' brief is replete with descriptions of, correspondence with and complaints to the Settlement Facility long before they filed their motions. Korean Claimants admit that they were notified by the Settlement Facility of Closing Order 2 and the need to submit verified addresses in accordance with Closing Order 2. Korean Claimants' Br. at 14; Phillips Dec. Exhibit F, RE 1595-7, Page ID #28214-28215. They had the "facts" in their

possession more than a year before they filed the Motion for Premium Payments and waited nearly two years to file the Motion for Vacating. There is no basis upon which to conclude that the delay is reasonable or justifiable.

III. The District Court's Determination Denying The Motions Should Be Affirmed Because The Plain Unambiguous Plan Language Prohibits Appeals To The District Court Of Decisions Of The Claims Administrator.

Under the Plan, appeals to the district court of decisions of the Claims Administrator are expressly and unambiguously barred. The provisions of the Plan are binding on claimants as a matter of federal bankruptcy law. *See* 11 U.S.C. § 1141(a) ("the provisions of a confirmed plan bind . . . any creditor . . . whether or not such creditor . . . has accepted the plan"). The Plan was expressly intended to prohibit judicial review of determinations by the Claims Administrator in the context of the settlement program. "There is no provision under the Plan or the SFA which allows a claimant to submit an issue to be interpreted by the Court or to amend the Plan." *In re Settlement Facility Dow Corning Trust*, No. 00-00005, 2017 WL 7660597, at *1 (E.D. Mich. Dec. 28, 2017), aff'd 760 F. App'x. 406 (6th Cir. 2019).

The Motion for Premium Payments disputes the determination of the Claims Administrator regarding whether individual claimants have met the criteria for obtaining Premium Payments under the terms of the Plan and the district court's authorizing orders. The Motion for Vacating disputes the determination of the Claims Administrator regarding the standards for issuing payments for individual

claimants. Both motions are properly viewed as invalid attempts to appeal the Claims Administrator's decisions—an action that this Court has previously determined is unequivocally barred by the Plan. *See In re Settlement Facility Dow Corning Trust*, 760 F. App'x. 406, 411-412 (6th Cir. 2019) ("To the extent the Korean Claimants seek to challenge any substantive decisions of the Claims Administrator with respect to any particular claims, such review is beyond the scope of the plan. 'The Plan provides no right of appeal to the Court.'") (quoting *In re Settlement Facility Dow Corning Tr.*, No. 12-10314, 2012 WL 4476647, at *2 (E.D. Mich. Sept. 28, 2012)). Korean Claimants' disagreement with decisions regarding claims "are decisions for the Claims Administrator and the Appeals Judge selected under the terms of the plan, and not the district court" and thus their effort to "seek review of substantive decisions regarding particular claims . . . is contrary to the terms of the plan." *In re Settlement Facility Dow Corning Trust*, 760 F. App'x. at 412.

The decision of the district court denying the two motions on the additional ground that they are unauthorized appeals of decisions of the Claims Administrator is supported and mandated by the plain language of the Plan as previously interpreted by this Court. On appeal, Korean Claimants offer no argument why, as with prior motions, this does not bar the relief they seek in their present motions. Accordingly, the decision of the district court should be affirmed.

CONCLUSION

For the foregoing reasons, Appellees Dow Silicones Corporation and the DRs respectfully request that the Court affirm the June 24, 2021 Order of the district court dismissing the Korean Claimants' Motion for Vacating and the Korean Claimants' Motion for Premium Payments.

Dated: October 12, 2021

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STATEMENT OF COMPLIANCE

I certify that this brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B). According to the word processing program used to prepare this brief (Microsoft Word), and excluding the parts of this brief exempted by Fed. R. App. P. 32(f), this brief contains 12,949 words.

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CERTIFICATE OF SERVICE

I certify that on October 12, 2021 I electronically filed a copy of the foregoing Brief of Appellees, the Debtor's Representatives and Dow Silicones Corporation, through the Court's electronic filing system, which will send notice and a copy of this brief to all registered counsel in this case, as follows:

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ADDENDUM DESIGNATING RELEVANT DOCUMENTS IN THE DISTRICT COURT DOCKET (E.D. MICH. NO. 00-00005)

RE #	Filing Date	Document Description	Page ID
96	05/20/2004	Order Authorizing Payment of First Priority Payments Pursuant to Amended Joint Plan of Reorganization	116
278	12/23/2005	Order Approving 2006 Budget	3968
476	12/21/2006	Order Approving 2007 Budget	7375-7376
810	09/26/2011	Motion for Reversal of Decision of SF-DCT Regarding Korean Claimants	12286-12344
958	03/07/2014	Motion for Extension of Deadline of Class 7 Claimants	15939-15945
965	04/07/2014	Motion for Re-Categorization of Korea	16262-16332
1241	01/26/2016	Approving Stipulation to Appoint Successor Paying Agent for the Settlement Facility-Dow Corning Trust Claim Payments and to Amend the Depository Trust Agreement	18991-18992
1271	12/14/2016	Motion For Recognition and Enforcement of Mediation	19277-19338
1342	12/27/2017	Stipulation and Order Approving Notice of Closing and Final Deadline for Claims	21544-21551
1357	01/17/2018	Cross-Motion for Entry of Order to Show Cause with Respect to the Finance Committee	22010-22015
1413	04/13/2018	Amended Stipulation and Order Establishing Procedures for the Review of Asserted Liens Against Settling Implant Claimants	23407-23424
1447	07/25/2018	Closing Order 1 for Final June 3, 2019 Claim Deadline (Establishing Final Cure Deadlines, Revised Claim Review Procedures, and Appeal Deadlines).	23937-23950
1476	01/29/2019	Order Authorizing Fifty Percent Of Second Priority Payments	24065-24066
1482	03/19/2019	Closing Order 2 (Regarding Additional Procedures for Incomplete and Late	24084-24097

		Claims; Protocols for Issuing Payments; Audits of Attorney Distributions of Payments; Protocols for Return of Undistributed Claimant Payment Funds; Guidelines for Uncashed Checks and Reissuance of Checks; Restrictions of Attorney Withdrawals)	
1545	07/06/2020	Motion for Premium Payments to Korean Claimants	24488-24490
1546	07/20/2020	Response of Dow Silicones Corporation, the Debtors Representatives and the Claimants' Advisory Committee to Motion for Premium Payments to Korea Claimants	24491-24518
1547	07/20/2020	Response of Finance Committee's Motion for Premium Payments to Korea Claimants	24912-24914
1558	12/21/2020	Order Approving 2021 Budget	24927
1566	01/14/2021	Finance Committee's Motion for Authorization to Make Second Priority Payments	25944-26233
1569	01/15/2021	Korean Claimants' Motion for Vacating Decision of Settlement Facility Regarding Address Update/Confirmation	26261-26505
1569-2	01/15/2021	Exhibit 11 to Korean Claimants' Motion for Vacating Decision of Settlement Facility Regarding Address Update/Confirmation	26347-26395
1586	02/03/2021	Motion for Extension of Deadline for Filing Claim	27065-27348
1590	02/11/2021	Order Approving Appointment of Nancy M. Blount as Special Master for Closing and Kimberly D. Smith Mair as the Successor Claims Administrator for the Settlement Facility-Dow Corning Trust.	27377-27379
1595	02/26/2021	Response of Dow Silicones Corporation, the Debtors Representatives and the Claimants' Advisory Committee to Korean Claimants Motion for Vacating	27839-27871

		Decision of Settlement Facility Regarding Address Update/Confirmation	
1595-2	02/26/2021	Amended Joint Plan of Reorganization	27873-27984
1595-3	02/26/2021	Settlement Facility and Fund Distribution Agreement	27985-28030
1595-4	02/26/2021	Annex A to Settlement Facility and Fund Distribution Agreement	28031-28148
1595-6	02/26/2021	Declaration of Ellen Bearicks Regarding The Motion For Vacating Decision of Settlement Facility Regarding Address Update/Confirmation	28164-28193
1595-7	02/26/2021	Declaration of Ann M. Phillips Regarding The Motion For Premium Payments to Korean Claimants	28194-28217
1596	02/26/2021	Response of Finance Committee to Korean Claimants Motion for Vacating Decision of Settlement Facility Regarding Address Update/Confirmation	28218-28219
1598	03/25/2021	Closing Order 3 (Notice that Certain Claims will be Permanently Barred and Denied Payment Unless a "Confirmed Current Address" is Provided to the SF-DCT on or before June 30, 2021)	28284-28298
1599	04/02/2021	Korean Claimants' Reply to Response of Dow Silicones Corporation, the Debtors Representatives and the Claimants' Advisory Committee to Korean Claimants Motion for Vacating Decision of Settlement Facility Regarding Address Update/Confirmation	28299-28593
1607	06/24/2021	Memorandum Opinion and Order Regarding the Finance Committee's Motion for Authorization to Make Second Priority Payments, The Korean Claimants' Motion for Premium Payments and the Korean Claimants' Motion for Order Vacating Decision of the Settlement Facility Regarding Address Update/Confirmation	28602-28631

1608	06/28/2021	Notice of Appeal to Order Regarding the Finance Committee's Motion for Authorization to Make Second Priority Payments, the Korean Claimants' Motion for Premium Payments and the Korean Claimants' Motion for Order Vacating Decision [sic] of the Settlement Facility Regarding Address Update/Confirmation	28633