

Case No.: 22-1753

United States Court of Appeals for the Sixth Circuit

In re: SETTLEMENT FACILITY DOW CORNING TRUST

Debtor

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KOREAN CLAIMANTS

Interested Parties - Appellant

v.

DOW SILICONES CORPORATION; DEBTOR'S REPRESENTATIVES;  
CLAIMANTS' ADVISORY COMMITTEE

Interested Parties - Appellees

FINANCE COMMITTEE

Movant – Appellee

REPLY TO RESPONDENTS' RESPONSE TO MOTION FOR STAY

Yeon-Ho Kim  
Yeon-Ho Kim International Law Office  
Suite 4105, Trade Center Building  
159 Samsung-dong, Kangnam-ku  
Seoul 135-729 Korea  
Tel: +82-2-551-1256

The Respondents set out several contentions which did not reflect the truth in their Response. This kind of contentions has not been unfamiliar during the process of several Motions that the Korean Claimants have filed with United States of District Court for the Eastern District of Michigan. It is necessary for the Korean Claimants to file this Reply to the Response.

To simplify the arguments that the Korean Claimants want to make, the Korean Claimants assert point-to-point in accordance with titles in the Response.

I. Reply to Introduction and Background

There is no comment.

II. Reply to Preliminary Statement

Closing Order 5 has not been served before issuance nor heard. Closing Order 5 was taken after Closing Order 2 whose legitimacy was challenged pending this Court.

The District Court required verification of each Claimant's current address but this requirement has not been agreed nor consented in the confirmed Plan. If the District Court had needed to assure proper distribution of the Settlement Fund assets by way of a confirmed current address, it should have guided the Plan proponents to include that clause in the Plan. The District Court simply

issued a series of Closing Orders without a notice and a hearing to modify the Plan.

Closing Order 5 like other Closing Orders is not an administrative measure directing the SF-DCT to follow once all timely Claims have been liquidated and paid or otherwise resolved. Closing Order 5 is actually to get rid of the basic rights of the Korean Claimants under the SF-DCT as creditors. Therefore Closing Order 5 is a substantive measure of the District Court taking away due process of the Korean Claimants who were duly represented by the Attorney of Record of the SF-DCT.

Yeon-Ho Kim, the Attorney of Record of the SF-DCT, subscribed the Newsletter of the Claimants' Advisory Committee. The Respondents allege that Closing Order 5 was discussed in the Newsletters of June 15, 2022, June 21, 2022, July 6, 2022 and August 16, 2022.

However, Yeon-Ho Kim did not receive the Newsletters of June 15, 2022, June 21, 2022 and July 6, 2022 of the Claimants' Advisory Committee. (*See* Appendix 1, Photocopy of Yeon-Ho Kim's [yhkimlaw@naver.com](mailto:yhkimlaw@naver.com) email box<sup>1</sup>)

Yeon-Ho Kim received the Newsletter of August 16, 2022 only. (*See* Appendix 1. The email list shows that Claimants Advisory Committee

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<sup>1</sup> There is no email arrived from the Claimants' Advisory Committee at those dates. (*See* the list of emails)

Newsletter Volume 19, No.6 arrived on August 16, 2022 at 09:28 local time.)

There is also a record on Appendix 1 that the Korean Claimants filed Notice of Appeal on August 26, 2022 at 12:36 local time, which should be timely.

The Respondents contend that Yeon-Ho Kim listed as counsel of record for Korean Claimants on the ECF system of the District Court cannot assert excusable neglect due to his unawareness that Closing Order 5 was issued on June 13, 2022.

However, Yeon-Ho Kim did not receive the notice sent electronically to the email address of Yeon-Ho Kim ([yhkimlaw@naver.com](mailto:yhkimlaw@naver.com)) for Closing Order 5.

Whether Yeon-Ho Kim received Closing Order 5 through the ECF system on June 13, 2022 can be easily verified if the Respondents ask the District Court which is accessible by the Respondents.

Yeon-Ho Kim found through the Newsletter of August 16, 2022 of the Claimants' Advisory Committee that the District Court issued Closing Order 5 and then went to the website of the SF-DCT<sup>2</sup> and downloaded it.

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<sup>2</sup> The Respondents implied that Yeon-Ho Kim subscribed the website of the SF-DCT and accordingly, Yeon-Ho Kim should have known the issuance of Closing Order 5 on June 13, 2022. However, Yeon-Ho Kim and the staffs of the law office do not open the website of the SF-DCT. In addition, Yeon-Ho Kim did not ask The SF-DCT to issue the ID and the Password to access to the files of each Claimant. Yeon-Ho Kim did not subscribe the website of the SF-DCT. Anyone can



### III. Reply to Summary

First, the Korean Claimants filed the notice of appeal within 30 days from the awareness of Closing Order 5. Closing Order 5 was issued on June 13, 2022 but it was not served at that date. The Korean Claimants found the issuance of Closing Order 5 on August 19, 2022 (*at least* on August 16, 2022 when the Newsletter of June 13, 2022 of the Claimants' Advisory committee arrived in the mail box of Yeon-Ho Kim). Therefore the Notice of Appeal of August 25, 2022 was filed timely.

Second, although the Korean Claimants filed the Motion for Stay with the District Court, to proceed first in the District Court under Rule 8 (2) of Federal Rules of Appellate Procedure is impracticable. The Korean Claimants did not receive the ruling on the Motion for Stay for Case No. 21-2665 pending this Court from filing with the District Court for nearly one year.

Third, if the Motion for Stay is denied by this Court, the Korean Claimants will be harmed irreparably because Closing Order 5 directed the SF-DCT to close the Claims of the Korean Claimants which were *mostly* included in the list of the SID numbers with bad address and non-responding address on the website of the SF-DCT.

The Respondents allege that the underlying dispute over claimant addresses

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open the website of the SF-DCT.

is already the subject of another fully briefed appeal and if the Korean Claimants prevail on that appeal, the District Court will be able to fashion adequate relief.

This allegation is a sugar-coating because Closing Order 5 was to eliminate the process of Claims of the Korean Claimants from the SF-DCT *permanently* and to implement to close the SF-DCT which consumes \$460,000 a month quickly. There is no way for the District Court to fashion adequate relief even if the Korean Claimants win in Case No. 21-2665 pending this Court. If the Respondents contemplated so, the Respondents should not have filed the request for Closing Order 5 with the District Court.

#### IV. Reply to Brief Background of the Plan and Closing Order 5

The Respondents stated brief background of the Plan and Closing Order 5 as they wanted.

The Confirmed Plan agreed by the creditors did not include any provision regarding a confirmed current address of the Claimants to be paid after a long process of examination on documents in the SF-DCT.

Verification of the Claimants' current address by the SF-DCT has been challenged for several years. The practice of the SF-DCT to ask the Claimants to respond whether they live at the address which happened to be provided

during submission of documents for eligibility began in 2015.

The District Court approved the practice of the SF-DCT in 2019 through Closing Order 2. Closing Order 5 is to implement Closing Order 2 pending this Court. Serious violations of the confirmed Plan and the District Court's disinterest to the newly invented practice of the SF-DCT for a confirmed current address enabled the practice of the SF-DCT from 2015 into dare forms of Closing Order 2, 3, and 5 eliminating the Korean Claimants' right of payments permanently. (*See* Appendix 2, the Appellant Brief of Case No. 21-2665)<sup>3</sup>

#### V. Reply to Argument

The Korean Claimants did not receive notice of Closing Order 5 on June 13, 2022. ECF of the District Court did not reach to the email box of Yeon-Ho Kim. The Respondents can easily verify it through an inquiry to the District Court. The unawareness of counsel after the arrival of notice is not an issue to find whether the Korean Claimants filed Notice of Appeal timely.

This Motion for Stay should be considered on merits whether or not the Korean Claimants have already filed the Motion for Stay with the District Court. The Korean Claimants did not file the Motion for Stay with this Court on the

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<sup>3</sup> The Respondents reiterated their arguments in the Response of Case No. 21-2665 so the Korean Claimants request this Court to refer to.



speculation that the District Court would deny the Motion and would not do so promptly.

The Korean Claimants are under irreparable harm if Closing Order 5 is implemented by the SF-DCT on September 17, 2022.

The Korean Claimants have moved first in the District Court on August 29, 2022, three days earlier than the Motion with this Court. This Court issued a procedural order to make the Respondents to respond but the District Court did not although the District Court received the same Motion earlier. This difference itself suggests the evidence that moving first in the District Court would be impracticable to the Korean Claimants. There is nothing in the intent of the Korean Claimants, as the Respondents alleged.

The Respondents, with respect to four factors for Motion for Stay, contend that the Korean Claimants are not likely to succeed on appeal. The Respondents impair their own assertion that the District Court would fashion adequate relief if the Korean Claimants win in Case No. 2665 pending this Court and therefore there is no need that this Court considers the Motion for Stay for the Korean Claimants.

Closing Order 5 is identical to Closing Order 2 regarding the issue of a confirmed current address so that the Korean claimants are likely to succeed on appeal of Closing Order 5 since the foundations of the Korean Claimants in the



Appellate Brief of Case No. 21-2665 are persuasive.

The Respondents contend that many Korean Claimants have already provided their current contact information and have thus complied with Closing Order 5 in accordance with Declaration of the Claims Administrator.

The Claims Administrator prohibited the Attorney of Record of the SF-DCT from providing the Claimants' current address in 2020. When Yeon-Ho Kim submitted over 600 Claimants' current address on June 1, 2019, the SF-DCT disrespected and categorized all of them into "bad address", which is subjected to Closing Order 5 now. The Claims Administrator has never explained why the SF-DCT has done so and has refused a meeting of Yeon-Ho Kim over the years.

Yeon-Ho Kim have been managing over 2,600 Claimants' Claims. The Claims Administrator stated in her Declaration that the 33 Claimants included in the list of Closing Order 5 have provided their current contact information only.

The Respondents allege on the basis of the Declaration that *many* Korean Claimants have complied with Closing Order 5. It is not *many*. Around 1,400 Claimants were included in the list of bad address at the website of the SF-DCT. Yeon-Ho Kim is managing around 2,600 Claimants' Claim.

The Respondents have always misled the District Court to win regarding several Motions filed by the Korean Claimants.

The Respondents contend that the SF-DCT is not terminating on September 17, 2022 and the Korean Claimants may seek relief at a later date if they suffer irreparable harm without a stay. The Korean Claimants raised the issue of a confirmed current address to the SF-DCT from 2015 and filed Motions to correct with the District Court from 2017. All of them were denied. In addition, Closing Order 5 is to get rid of whole process of Claims for the Korean Claimants from the SF-DCT permanently. That the Korean Claimants may seek relief at a later date without stay is just a wishful thought.

The Respondents contend that other Claimants including the SF-DCT and Dow Corning Corporation would bear harm and delay if this Court grants the stay. It is obvious that the SF-DCT and the Dow Corning Corporation worry about the costs to maintain the SF-DCT because other Claimants have been paid in full except the Korean Claimants.

The SF-DCT and the Finance Committee have offered Yeon-Ho Kim a mediation to settle the Korean Claims as a group in 2012. As this Court knows, Dow Corning Corporation denied the agreed settlement entered into between the Korean Claimants and the Finance Committee. The Claimants' Advisory Committee did not object to it. If Dow Corning Corporation and the SF-DCT worry about the excess costs for maintenance of the SF-DCT if this Court grants the stay of Closing Order 5, the Korean Claimants offer a settlement for the Korean Claims as a group reflecting the (drafted) settlement agreement of 2012 so that even if a stay of Closing Order 5 is granted there would be a harm and

delay to the SF-DCT and Dow Corning Corporation not to mention other Claimants.

The Respondents contend that the Plan did not purport to and indeed cannot define the detailed administrative operational procedures necessary to implement the terms of a confirmed current address but the Claims Administrator shall have discretion to develop and define necessary detailed procedures. The Respondents further contend that the District Court deemed the address verification requirement to be necessary to assure that funds will be received by the eligible claimant. The Respondents assert that it is the public interest.

However, the public interest is that the creditors under the Plan receive payments when their Claims were acceptable. The address verification of the Korean Claimants is to enforce the AOR of the SF-DCT to violate the Personal Information Protection Act of Korea. In practice, the attorney can take care of the funds when the payments from the SF-DCT arrived. If the Claimants were not located or not responding to the attorney, the attorney is able to put the remaining funds excluding attorney fees and expenses applied to the Claimant on public bond with a local court. The local court oversees the funds until the Claimant appears and claim the fund held by the Court.

The SF-DCT is overreaching its power by policing whether the AOR embezzles the funds of the Claimants. If the SF-DCT wanted to exercise that

power, the Plan proponents must have included the precise provision regarding a confirmed current address in the proposed Plan.

## VI. Conclusion

For the foregoing Reply to the Respondents' Response and Requested Relief for Motion for Stay filed, the Korean Claimants request this Court to grant a stay of Closing Order 5 to the extent that the Korean Claimants' Claims without a confirmed current address by September 17, 2022 shall be closed permanently.

Date: September 8, 2022

Respectfully submitted,



(signed by) Yeon-Ho Kim  
Yeon-Ho Kim Int'l Law Office  
Suite 4105, Trade Center Bldg.,  
159 Samsung-dong, Kangnam-ku  
Seoul 135-729 Korea  
Tel: +82-2-551-1256  
[yhkimlaw@naver.com](mailto:yhkimlaw@naver.com)



**CERTIFICATE OF SERVICE**

I hereby certify that on September 8, 2022, I have electronically filed the above document with the Clerk of Court by ECF system that will notify to all relevant parties in the record.

A handwritten signature in black ink, appearing to read 'Yeon-Ho Kim', with a stylized, cursive script.

Date: September 8, 2022

Signed by Yeon-Ho Kim