

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

MOTION FOR STAY

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I. REASON FOR FILING

The United States of District Court for the Eastern District of Michigan issued Closing Order 5 with respect to the Settlement Facility Dow Corning Trust on June 13, 2022.

Yeon-Ho Kim, the attorney for the Korean Claimants, was not served nor noticed but found it out from a Newsletter of August 16, 2022 of the Claimants' Advisory Committee on August 19, 2022.

Yeon-Ho Kim further found out that Closing Order 5 was loaded on the homepage of the SF-DCT with the list of SID numbers of around 16,000 Claimants who were affected by the Order.

Yeon-Ho Kim discovered from the list that around 1,400 Korean Claimants were included in the list of Closing Order 5.

The affected Korean Claimants filed Notice of Appeal to Closing Order 5 with this Court on August 25, 2022.

The affected Korean Claimants also filed the Motion for Stay Closing Order 5 regarding a confirmed current address with the District Court on August 29, 2022.

According to Rule 8 (2) (A) of Federal Rules of Appellate Procedure, Motion in the Court of Appeals may be made to the court of appeals (i) the motion show that moving first in the district court would be impracticable or (ii) the motion state that, a motion having been made, the district court denied the motion or failed to afford the relief requested and state any reasons given by the district court for its action.

The District Court has not ruled on the motions filed by the Korean Claimants on time. Therefore moving first in the District Court is impracticable.

In addition, the District Court issued Closing Order 5 which is directly affecting the rights of the Korean Claimants under the SF-DCT without any prior notification or a hearing from either the Korean Claimants or the Attorney of Record of the SF-DCT. Therefore the District Court is highly likely to deny the Motion for Stay of Closing Order 5.

Furthermore the District Court denied the Korean Claimants' Motion to Stay the Court's 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 on August 12, 2022.

The Korean Claimants filed Notice of Appeal to the District Court's

Memorandum Opinion and Order on June 29, 2021, pending this Court. (Case No. 21-2655)

The Korean Claimants filed the Motion for Stay to the District Court's Opinion and Order on July 20, 2021. The District Court denied the Motion for Stay on August 12, 2022, nearly a year later.

The facts indicate that moving first in the District Court is impracticable and the District Court would deny the Motion for Stay of Closing Order 5.

Closing Order 5, Notice that Certain Claims without a Confirmed Current Address Shall be Closed and Establishing Protocols for Addressing Payments for Claimants in Bankruptcy, is to direct the SF-DCT to post on its website a list of the SID numbers for those claimants who have been identified as having a "bad address" and those who have not responded to the verification mailing on or before the date that is four weeks after the mailing to those claimants, and to maintain this list on its website for 90 days and if a claimant responds on or before the end of 90-day period the SID number shall be removed from the posted list and to proceed to finalize processing or payment of the claim as appropriate.

Closing Order 5 is basically to direct the SF-DCT that the claim of the affected Korean Claimants shall be **permanently closed** if the Claimant does not respond on or before the end of the 90-days, which was set by the SF-DCT's



website as September 17, 2022.

## II. GROUNDS FOR RELIEF

Pursuant to Fed.R.Civ.P.62(c), stay of proceedings to enforce a judgment or an order can be sought by a losing party.

Whether a stay is granted is required four factors: (1) the likelihood that the party seeking the stay will prevail on the merits of the appeal (2) the likelihood that the moving party will be irreparably harmed absent a stay (3) the prospect that others will be harmed if the court grants the stay and (4) the public interest in granting the stay. *See Grutter v. Bollinger* 247 F.3d 631, 633 (6th Cir. 2001) and *Michigan Coalition of Radioactive Material Users, Inc. v. Griepentrog* 945 F.2d 150, 151 (6th Cir. 1991)

### A. Likelihood to Prevail

Because Closing Order 5 relates to the Appeal of the Korean Claimants (Case No. 21-2665) pending this Court, it is premature that the District Court ruled on Closing Order 5 regarding confirmed current address issue for which the District Court ordered that the claims without a confirmed current address shall be closed by the SF-DCT permanently.

Closing Order 5 was derived from Closing Order 2 (and following Closing

Order 3) with respect to a confirmed current address issue.

The Korean Claimants' appeal (Case No. 21-2665) argued that (1) Closing Order 2 is void (2) Closing Order 2 was to approve wrongdoings of the SF-DCT (3) Closing Order 2 has no founding under the Plan and violates Section 1129 (b) of the Bankruptcy Code (4) the Premise of Sentence of Paragraph 11 of Closing Order 2 was not met (5) the Korean Claimants should be exempted from Closing Order 2 (6) the SF-DCT eliminated the requirement of a valid, confirmed current address on its own.

The reason that this Court did not rule on the Korean Claimants' appeal so far is not clear but it is highly suggestive that the Korean Claimants prevail on the issue of a confirmed current address which was invented by the SF-DCT and the supportive Debtor in 2015 and was approved by the District Court in 2019 through the Orders which were neither noticed nor heard.

The Korean Claimants will prevail on the merits of the appeal because the points made by the Korean Claimants are persuasive.

#### B. Likelihood to be Irreparably Harmed

Closing Order 5 excludes the Claims of one thousand four hundred (1,400) Korean Claimants from processing of the SF-DCT permanently. Closing Order 5 cut off any possibility that the Korean Claimants could receive a base payment

as well as premium payments. The Korean Claimants will be completely denied any rights of compensation by the SF-DCT if Closing Order 5 is not stayed by September 17, 2022, which is the Deadline for a confirmed current address set by the SF-DCT. The likelihood that the Korean Claimants will be irreparably harmed absent a stay is obvious.

#### C. Prospect that Other Claimants Will Be Harmed

The other Claimants will not be harmed. The SF-DCT is supposed to close in 2023. The SF-DCT declared that the Claims for all of Claimants have been filed and the SF-DCT's asset Fund has been counted in full. Therefore the other Claimants will not be harmed because they have been processed and paid or will be paid in full even if this Court grants the stay.

#### D. Public Interest for Stay

Public interest that the Korean Claimants should have been treated equally by the SF-DCT and the Plan must be implemented as originally agreed by the creditors and the debtor and without a delay should be served.

The confirmed current address requirement was not contemplated and was not on table during negotiations for the Proposed Plan between the creditors and the debtor. The confirmed Plan must be implemented. The public interest will be served if this Court grants the stay.

### III. REQUESTED RELIEF

For the foregoing reasons, the affected Korean Claimants request that this Court stay Closing Order 5 with respect to the District Court's direction to the SF-DCT that the Korean Claimants' Claims without a confirmed current address by September 17, 2022 shall be closed permanently.

Date: August 31, 2022

Respectfully submitted,



(signed by) Yeon-Ho Kim  
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**CERTIFICATE OF SERVICE**

I hereby certify that on August 31, 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 long horizontal flourish extending to the right.

Date: August 31, 2022

Signed by Yeon-Ho Kim