

**Case No. 22-1771**

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**In the United States Court of Appeals For the Sixth Circuit**

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IN RE: SETTLEMENT FACILITY DOW CORNING TRUST

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KOREAN CLAIMANTS

*Interested Party – Appellant*

v.

DOW SILICONES CORPORATION; DEBTOR’S REPRESENTATIVES

CLAIMANTS’ ADVISORY COMMITTEE

*Interested Parties – Appellees*

FINANCE COMMITTEE

*Movant – Appellee*

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

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**BRIEF OF APPELLEES DOW SILICONES  
CORPORATION AND THE DEBTOR’S REPRESENTATIVES**

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Deborah E. Greenspan

Blank Rome LLP

1825 Eye Street, N.W.

Washington, D.C. 20006

(202) 420-2200

*Counsel for Dow Silicones Corporation  
and Debtor’s Representatives*

## DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTEREST

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UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

### Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit

Case Number: 22-1771

Case Name: In re Settlement Facility Dow Corning Trust

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, one 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 August 31, 2022 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.

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UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

## Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit

Case Number: 22-1771

Case Name: In re Settlement Facility Dow Corning Trust

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.

### CERTIFICATE OF SERVICE

I certify that on August 31, 2022 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 that provided a mechanism for submission of claims and distribution of payments over a multi-year period and involves three separate decisions issued by the district court. Oral argument will allow the attorneys for the parties to assist the Court by providing additional explanation.

## **INTRODUCTION AND BACKGROUND**

This appeal involves a single district court order that addresses three separate motions related to the distribution of funds and payment of claims under the Amended Joint Plan of Reorganization of Dow Corning Corporation (the “Plan”).<sup>1</sup> The Appellants are certain Korean Claimants who elected to settle their claims against the Debtor through the settlement program established in the Plan. The Appellants filed two of the three motions addressed in the district court order that generated the motion to stay which is the subject of this appeal. In those motions, Appellants sought to compel the Settlement Facility (the entity established to review and process claims in the settlement program) to pay their claims despite their failure to comply with certain of the requirements for payment. The Korean Claimants

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<sup>1</sup> Unless otherwise defined, capitalized terms used herein shall have the meaning provided in the Plan. *See* Plan, RE 1595-2. On February 1, 2018, Dow Corning Corporation changed its name to Dow Silicones Corporation. For the Court’s and parties’ convenience, Appellees will refer to Dow Silicones as Dow Corning herein.

contest the requirement that they provide certain address verifications (per the terms of orders of the district court) before payments will be issued. The third motion was filed by the Finance Committee – an entity established in the Plan to undertake certain supervisory and financial management tasks in implementing the Plan.

The district court granted the motion of the Finance Committee – thereby authorizing the distribution of Second Priority Payments (as defined in the Plan). In the same order, the district court denied the two motions filed by the Korean Claimants – in which they sought to “vacate” decisions of the Settlement Facility regarding the review of their claims and to compel the Settlement Facility to issue Second Priority Payments to them. *See* 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, ECF No. 1607 (“June 24, 2021 Order”), Page ID # 28631-28632. On June 28, 2021, the Korean Claimants appealed the decisions regarding all three motions and that appeal is fully briefed and remains pending in this Court. *See* Notice of Appeal, RE 1608; *Korean Claimants v. Claimants’ Advisory Committee, et al.*, Case No. 21-2665 (6th Cir.).

Separately, on July 21, 2021, the Appellants filed, in the district court, Korean Claimants’ Motion to Stay the Court’s Ruling Granting the Finance Committee’s

Motion for Authorization to Make Second Priority Payments, RE 1610 (“Motion to Stay”). The Motion to Stay, the subject of the present appeal, primarily related to that portion of the June 24, 2021 Order that granted the Finance Committee’s motion to distribute Second Priority Payments. The Motion to Stay sought to halt the distribution of Second Priority Payments to other claimants on the theory that such distribution would deplete assets available for the Korean Claimants. The Appellants did not specifically seek a stay with respect to the district court’s denial of the other two motions. The district court denied the Motion to Stay on August 12, 2022 (RE 1651), and the Korean Claimants filed this appeal on August 30, 2022 (RE 1659).

The Settlement Facility has been resolving and paying claims since the Effective Date of the Plan in 2004 and has nearly concluded its operations. At this time, all of the timely filed claims in the settlement program have been processed and all notification of status letters to claimants have been distributed. The Settlement Facility is currently addressing a limited number of claims involving probate issues, evaluating lien claims that have been timely submitted, addressing remaining timely administrative appeals, and conducting reconciliation and due diligence procedures to prepare for termination of the Settlement Facility. The Settlement Facility has completed the distribution of Second Priority Payments to

nearly all claimants. The payments have been distributed on a rolling basis as claimants provide their required address verifications.

The Motion to Stay seeks to halt the distribution of Second Priority Payments – but since these payments are substantially complete, there is no purpose in a stay at this point and there is no relief that could be achieved by a stay. Interested Parties-Appellees Dow Silicones Corporation (“Dow Corning”) and the Debtor’s Representatives (the “DRs”) submit this brief solely to make clear that the appeal of the denial of the stay of distribution of Second Priority Payments has been mooted by the payment of the vast majority of the Second Priority Payments and that there is no basis to stay any other portion of the district court’s June 24, 2021 Order.

### **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”). The Korean Claimants filed a timely notice of appeal on August 15, 2022. RE 1659. This Court has jurisdiction to review the district court’s August 12, 2022 order pursuant to 28 U.S.C. § 1291.

**COUNTER STATEMENT OF ISSUES FOR REVIEW**

1. Whether the Korean Claimants' appeal of the district court's denial of their Motion to Stay the distribution of Second Priority Payments should be dismissed as moot, where the distribution of Second Priority Payments is substantially complete and consequently there is no relief that could be provided.

## **STATEMENT OF THE CASE**

### **A. Background And The Plan Documents.**

This Court has addressed the history of Dow Corning's bankruptcy proceedings and Plan on multiple occasions.<sup>2</sup> Dow Corning filed its petition for reorganization under Chapter 11 of the Bankruptcy Code on May 15, 1995. 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 769, 771 (6th Cir. 2010); *see also* Plan, RE 1595-2.

Tort creditors – such as the Korean Claimants – were provided a settlement option and a litigation option for the resolution of their claims against Dow Corning. The Korean Claimants elected to resolve their claims through the settlement option and are thus Settling Personal Injury Claimants. Plan, RE 1595-2, Page ID # 27912. The claims of Settling Personal Injury Claimants are reviewed, evaluated, and paid

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<sup>2</sup> *See, e.g., Korean Claimants v Claimants' Advisory Committee*, 813 F. App'x. 211 (6th Cir. 2020); *In re Settlement Facility Dow Corning Trust*, No. 18-1040, 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).

by the Settlement Facility-Dow Corning Trust (the “Settlement Facility” or “Settlement Trust”). The Settlement Facility and Fund Distribution Agreement (“SFA”), RE 1595-3, and the Dow Corning Settlement Program and Claims Resolution Procedures, Annex A to SFA (“Annex A”), RE 1592-4, prescribe the rules under which these settling claims are submitted, individually evaluated and, if eligible and in compliance with the rules, paid.

The Claims Administrator appointed by the district court 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 # 27995-27997, 28006, 28008-28010. The SFA 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 Plan established the Claimants’ Advisory Committee (“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 other 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.

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. *See* Plan § 8.7, RE 1595-2, Page ID # 27956-27958; SFA § 4.01, RE 1595-3, Page ID # 27995. The district court performs “all functions relating to the distribution of funds and all determinations regarding the prioritization or availability of payments.” SFA § 4.01, RE 1595-3, Page ID # 27995. The district court supervises and manages the operations of the Settlement Facility through authorizing orders. *See also* Plan § 8.7.5, RE 1595-2, Page ID # 27957 (district court retains jurisdiction “to enter orders in aid of this Plan and the Plan Documents”).

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.

**B. Motions At Issue In The Korean Claimants’ Appeal.**

On July 6, 2020, the Korean Claimants filed a Motion for Premium Payments to Korean Claimants, RE 1545 (“Motion for Premium Payments to Korean Claimants”). In the Motion for Premium Payments to Korean Claimants, the Korean Claimants sought an order compelling the Settlement Facility to issue Premium Payments to Korean Claimants who had *not* provided a current verified address as required by court order. Premium Payments are Second Priority Payments that may be issued to eligible claimants with Allowed claims if authorized by the district court. SFA § 7.03(a), RE 1595-3, Page ID # 28018.

On January 14, 2021, the Finance Committee filed the Finance Committee’s Recommendation and Motion For Authorization to Make Second Priority Payments (“FC SPP Motion”), January 14, 2021, RE 1566, Page ID # 25948-25951. The Korean Claimants filed a response, raising objections to the FC SPP Motion. RE 1583.

On January 15, 2021, the Korean Claimants filed a Motion for Vacating Decision of Settlement Facility Regarding Address Update Confirmation, RE 1569

(“Motion for Vacating). The Motion for Vacating sought an order “vacating” the determination of the Settlement Facility (made pursuant to court order) to require current verified addresses from Korean Claimants before issuing payments.

**C. The District Court’s June 24, 2021 Decision And The Korean Claimants’ 2021 Appeal.**

On June 24, 2021, the district court granted the FC SPP Motion and denied both the Korean Claimants’ Motion for Vacating and Motion for Premium Payments to Korean Claimants. *See* June 24, 2021 Order, RE 1607.

**D. The Korean Claimants’ 2021 Appeal And Motion To Stay.**

The Korean Claimants filed a notice of appeal of the June 24, 2021 Order, RE 1608, and filed their appellant brief on August 31, 2021. Brief of Appellant [sic] Korean Claimants, *Korean Claimants v. Claimants’ Advisory Committee, et al.*, No. 21-2665 (the “2021 Appeal”), Doc. 21-1. The Finance Committee and the CAC each filed briefs in response. *See* Brief of Appellee Finance Committee, *Korean Claimants v. Claimants’ Advisory Committee, et al.*, No. 21-2665, Doc. 24 (October 12, 2021); Brief of Appellee Claimants’ Advisory Committee, *Korean Claimants v. Claimants’ Advisory Committee, et al.*, No. 21-2665, Doc. 23 (October 12, 2021). Dow Corning and the DRs also filed a separate appellee brief, addressing the Korean Claimants’ appeal of the denial of the Korean Claimants’ Motion for Premium Payments and the denial of the Korean Claimants’ Motion for Vacating. Brief of Appellees Dow Silicones Corporation and the Debtors’ Representatives,

*Korean Claimants v. Claimants' Advisory Committee, et al.*, No. 21-2665, Doc. 25 (October 12, 2021). Dow Corning and the DRs took no position on the appeal of the order of the district court granting the Finance Committee's Motion for Authorization to Make Second Priority Payments. *Id.* at pp.23-24.

On July 21, 2021, the Korean Claimants filed the Motion to Stay in the district court. RE 1610. The Motion to Stay requested that the district court stay, under Fed. R. Civ. P. 62(c), its June 24, 2021 Order "regarding the Finance Committee's Motion for authorization to make second priority payments." *Id.*, at Page ID # 28637. The Motion to Stay did not seek to stay the June 24, 2021 Order regarding the denial of the Korean Claimants Motion for Vacating or the Motion for Premium Payments to Korean Claimants. As the basis for the requested stay, Appellants stated: "The Motion of the Finance Committee that this Court granted will result in immediate distribution of the funds to the Class 5 Claimants while the Korean Claimants will never receive a dollar since the Settlement Facility decided that the address of the Korean Claimants was not confirmed and the counsel for the Korean Claimants was not trusted." *Id.*, RE 1610, Page ID # 28640.

The CAC and the Finance Committee filed responses opposing the Motion to Stay. *See* Response of Claimants' Advisory Committee in Opposition to Korean Claimants' Motion to Stay the Court's Ruling Granting the Finance Committee's Motion for Authorization to Make Second Priority Payments Pending Appeal, RE

1614, and The Finance Committee’s Response in Opposition to the Korean Claimants’ Motion to Stay the Court’s Ruling Granting the Finance Committee’s Motion for Authorization to Make Second Priority Payments, RE 1613.

On August 12, 2022, the district court issued an order denying the Motion to Stay based primarily on the finding that the Korean Claimants had not made the necessary showing of a likelihood of success on the merits of their appeal. *See* Order Denying the Korean Claimants’ Motion to Stay the Court’s Ruling 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 1651 (“Order Denying Stay”). The district court addressed each of the other components of the analysis required to evaluate a request for a stay. The district court found that the Korean Claimants had not shown irreparable harm because their assertion that they would not be able to receive Second Priority Payments was purely speculative. *Id.*, RE 1651, Page ID # 29347. The district court found further that a stay would harm other claimants because it would prevent them from receiving their second priority payments. *Id.*, RE 1651, Page ID # 29347-29348. Finally, the district court found that the fourth factor applied in considering a motion to stay – the public interest – did not weigh in favor

of a stay because “the public has a strong interest in implementing a bankruptcy plan.” *Id.*, RE 1651, Page ID # 29348.

On August 30, 2022, the Korean Claimants filed a timely notice of appeal. *See* Notice to Appeal Order Denying the Korean Claimants’ Motion to Stay the Court’s Ruling 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 1659.

### **SUMMARY OF ARGUMENT**

The Motion for Stay sought to prevent the distribution of Second Priority Payments pending appeal. Since the time the Motion for Stay was filed, the Second Priority Payments have been substantially distributed. At this point, the request for a stay is moot – the funds have already been distributed and there is nothing to “stay”. The Appellants have not requested a stay of any other portion of the order and accordingly, the district court judgment should be affirmed.

### **STANDARD OF REVIEW**

Issues involving the grant or denial of a stay (which is directly at issue in this appeal) are reviewed on an abuse of discretion standard. *Rains v. Smith*, No. 17-1229, 2017 WL 11680206, at \*2 (6th Cir. July 28, 2017) (“This court reviews a district’s denial of a stay for an abuse of discretion.”).

To the extent this appeal is moot, “[t]his Court reviews jurisdictional issues *de novo*.” *Demis v. Snizek*, 558 F.3d 508, 512 (6th Cir. 2009); *see also Mwasaru v. Napolitano*, 619 F.3d 545, 549 (6th Cir. 2010) (“[W]e review the threshold jurisdictional question *de novo*.”) (internal quotation omitted).

Issues involving the interpretation of the plain language of the Plan and Plan Documents are reviewed *de novo*. *Korean Claimants v. Claimants’ Advisory Committee*, 813 F. App’x. 211, 216 (6th Cir. 2020) (“The district court’s decision involved the interpretation and application of the plain language of the reorganization plan. Where 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 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).

## **ARGUMENT**

### **I. The Korean Claimants Motion To Stay The District Court's Authorization Of Second Priority Payments Is Moot: Second Priority Payments Have Been Distributed And There Is No Relief That Can Be Provided.**

The Korean Claimants' Motion to Stay requested that the district court stay, under Fed.R.Civ.P.62(c), its June 24, 2021 Order "regarding the Finance Committee's Motion for authorization to make second priority payments." *Id.* at Page ID # 28637. The Korean Claimants argued in their Motion to Stay that they would be irreparably harmed because they "are likely to be ignored and disregarded until the ending day of closing the Settlement Facility if second premium payments are distributed pending appeal." Motion to Stay, RE 1610, Page ID # 28638.

The Second Priority Payments that the Korean Claimants sought to halt in their Motion to Stay have, however, already been issued – as the Korean Claimants acknowledge. *See* Korean Claimants' Br. at 21 ("all of Second Priority Payments were paid out in full")<sup>3</sup>. Checks have been issued, funds disbursed, and those Settling Personal Injury Claimants who were eligible to receive Second Priority Payments and have provided the required information have been paid. As the district court explained in its June 13, 2022 Closing Order 5:

1. The Settlement Facility has completed the first review of all timely submitted benefit claims and has distributed notification of status letters to

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<sup>3</sup> There are a small number of claims that might still be entitled to receive Second Priority Payments if they cure probate or other pending deficiencies.

those claimants. There are no timely filed claims that remain unreviewed. The Settlement Facility currently is finalizing claims that provide information in response to the notification of status letter and is also addressing appeals and lien claims. The process of finalizing claims and addressing appeals and liens and issuing payments is anticipated to be completed during the fourth quarter of 2023.

2. The Settlement Facility is also distributing Second Priority Payments to eligible claimants who previously received a base payment and have verified their current addresses in accordance with Closing Order 2. As required by Closing Order 2, the Settlement Facility distributes the Second Priority Payments after it receives a confirmed current address for the claimant. Between September of 2021 and March of 2022, the Settlement Facility has conducted an address verification process to enable payment of Second Priority Payments.

Closing Order 5, RE 1642, Page ID # 28802. This summary makes clear that the Settlement Facility had completed the bulk of the verification and payment process for claims eligible for Second Priority Payments by the time Closing Order 5 was issued in June 2022. *See also* Order and Joint Stipulation of the Claimants' Advisory Committee and Debtor's Representatives for Approval to pay Full Payment Long-Term Option Late Claimants Based on Recommendation of the Claims Administrator, RE 1643, Page ID # 28809 ("As of the end of September 2022, the [Settlement Facility] will have paid all eligible base payments to timely claimants and will have paid all Second Priority Payments to those eligible for such payments who have properly verified their addresses as required by Closing Order 2").

**A. The Requested Relief Cannot Be Provided And As A Result, This Appeal Is Moot.**

A case is moot “[i]f ‘the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome.’” *Thompson v. DeWine*, 7 F.4th 521 (6th Cir. 2021) (quoting *Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579, 584 (6th Cir. 2006)). Once the parties lose any cognizable interest in the relevant action, then there is no “case or controversy” that can be adjudicated and the action is moot. “‘This case-or-controversy requirement subsists through all stages of federal judicial proceedings, trial and appellate....The parties must continue to have a ‘personal stake in the outcome’ of the lawsuit.’” *Demis*, 558 F.3d, at 512 (quoting *Lewis v. Cont’l Bank Corp.*, 494 U.S. 472, 477-78 (1990)). “The need for continuing vitality is attributed both to Article III and to more openly discretionary doctrines of remedial utility and judicial administration.” 13B CHARLES ALAN WRIGHT & ARTHUR R. MILLER, *Federal Practice and Procedure*, § 3533 (3d ed. 2022).

When a case becomes moot, there is no basis to consider the appeal. *See Davis v. Colerain Township, Ohio*, 51 F.4th 164, 174 (6th Cir. 2022) (“Article III requires a real dispute to exist at all stages of the litigation in order for the plaintiff to remain in court....When later events have eliminated the plaintiff’s injury or made it impossible for the court to grant relief, the case has become moot and a court must dismiss it.”) (citing *Arizonans for Off. Eng. v. Arizona*, 520 U.S. 43, 67 (1997) and *Resurrection Sch. v. Hertel*, 35 F.4th 524, 528 (6th Cir. 2022)).

In this case, while the underlying case is not moot, events occurring during the pendency of the Korean Claimants' Motion to Stay have rendered moot the relief that they sought in the Motion to Stay. The Second Priority Payments have been issued, and it is now not possible for the court to grant the requested relief. In light of the circumstances, this appeal of the denial of the Motion to Stay is moot and should be dismissed. *See, e.g., In re Bell*, No. 19-5316, 2020 WL 12933843, at \*1 (6th Cir. Oct. 15, 2020) (finding appeal moot where property had already been transferred and “[u]nder these circumstances, this court is not able to grant effectual relief. We therefore dismiss as moot the appeal.”); *In re K & D Industrial Services Holding Co., Inc.*, 850 F. App'x 966, 969 (6th Cir. 2021) (finding appeal moot where the appellant no longer has an interest in the matter because assets were transferred during the pendency of the appeal).

**B. There Is No Basis To Stay Other Portions Of The June 24, 2021 Order.**

The Korean Claimants did not expressly ask the district court to stay the portions of the June 24, 2021 Order that denied the Motion for Vacating and the Motion for Premium Payments to Korean Claimants. There is in fact no relief that the Korean Claimants could obtain through a stay with respect to those two motions. The substantive appeal – already pending – is procedurally proper and addresses the Korean Claimants' issues. To achieve the result that the Korean Claimants seek would require issuance of an order directing the Settlement Facility to reverse claim

determinations previously made and a further order directing the Settlement Facility to issue additional payments to the Korean Claimants.

The district court properly denied both motions because they sought orders directing the Settlement Facility to take action in violation of the district court's prior order and because they sought to appeal a decision of the Settlement Facility in violation of the Plan. *See* Brief of Appellees Dow Silicones Corporation and the Debtors' Representatives, *Korean Claimants v. Claimants' Advisory Committee, et al.*, No. 21-2665, Doc. 25 (October 12, 2021). Further, to the extent that the Korean Claimants sought in those motions to challenge a prior district court's order (Closing Order 2) any such challenge was untimely: the Korean Claimants failed to seek timely reconsideration or appeal of that order. To the extent that the Korean Claimants assert that the district court's order is invalid because it was entered as a stipulation of the parties rather through motion practice, such assertion was properly rejected by the district court. Given the agreement of the parties, no motion or hearing was required or necessary. *See id.* at pp. 34-35; 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."). The Motion to Stay was limited to the issue of the distribution of Second Priority Payments to claimants other than the Korean

Claimants and there is no other portion of the June 24 2021 Order that could be the subject of a stay.

### **CONCLUSION**

For the foregoing reasons, Dow Silicones Corporation and the Debtor's Representatives respectfully request that the Court dismiss this appeal as moot.

Dated: November 9, 2022

*/s/ Deborah E. Greenspan*

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Deborah E. Greenspan

BLANK ROME LLP

1825 Eye Street, N.W.

Washington, DC 20006

Telephone: (202) 420-2200

Facsimile: (202) 420-2201

[Deborah.Greenspan@blankrome.com](mailto:Deborah.Greenspan@blankrome.com)

*Debtor's Representatives and*

*Attorneys for Dow Corning Corporation*

**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 4181 words.

Dated: November 9, 2022

*/s/ Deborah E. Greenspan*

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Deborah E. Greenspan

BLANK ROME LLP

Michigan Bar # P33632

1825 Eye Street, N.W.

Washington, DC 20006

Telephone: (202) 420-2200

Facsimile: (202) 420-2201

[Deborah.Greenspan@blankrome.com](mailto:Deborah.Greenspan@blankrome.com)

*Debtor's Representative and*

*Attorney for Dow Silicones Corporation*

## CERTIFICATE OF SERVICE

I certify that on November 9, 2022, 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:

Karima Maloney  
Eugene Zilberman  
Smyser, Kaplan & Veselka  
717 Texas Avenue, Suite 2800  
Houston, TX 77002  
[kmaloney@skv.com](mailto:kmaloney@skv.com)  
[ezilberman@skv.com](mailto:ezilberman@skv.com)  
*Counsel for the Finance Committee*

Jeffrey S. Trachtman  
Kramer, Levin, Naftalis & Frankel  
1177 Avenue of the Americas  
New York, NY 10036  
[JTrachtman@kramerlevin.com](mailto:JTrachtman@kramerlevin.com)

Ernest H. Hornsby  
FarmerPrice  
100 Adris Place  
Dothan, AL 36302

Dianna Pendleton-Dominguez  
401 N. Main Street  
St. Marys, OH 45885  
[dpnd440@aol.com](mailto:dpnd440@aol.com)  
*Counsel for the Claimants' Advisory Committee*

Yeon-Ho Kim  
Yeon-Ho Kim Int'l Law Office  
Suite 4105, Trade Tower,  
511 Yeongdong-daero, Kangnam-ku

Seoul 06164, South Korea  
[yhkimlaw@naver.com](mailto:yhkimlaw@naver.com)  
*Counsel for the Korean Claimants*

Dated: November 9, 2022

*/s/ Deborah E. Greenspan*

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Deborah E. Greenspan

BLANK ROME LLP  
Michigan Bar # P33632  
1825 Eye Street, N.W.  
Washington, DC 20006  
Telephone: (202) 420-2200  
Facsimile: (202) 420-2201  
[Deborah.Greenspan@blankrome.com](mailto:Deborah.Greenspan@blankrome.com)

*Debtor's Representative and  
Attorney for Dow Silicones Corporation*

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

<b>RE #</b>	<b>Filing Date</b>	<b>Document Description</b>	<b>Page ID</b>
96	5/20/2004	Order Authorizing Payment of First Priority Payments Pursuant to Amended Joint Plan of Reorganization	116
965	04/07/2014	Motion for Re-Categorization of Korea	16262-16332
1271	12/14/2016	Motion for Recognition and Enforcement of Mediation	19227-19338
1342	12/27/2017	Stipulation and Order Approving Notice of Closing and Final Deadline for Claims	21544-21551
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
1545	07/06/2020	Motion for Premium Payments to Korean Claimants	2488-24490
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 the Finance Committee's Motion for Premium Payments to Korea Claimants	24912-24914
1566	01/14/2021	Finance Committee Recommendation and Motion for Authorization to Make Second Priority Payments	25944-25956
1569	01/15/2021	Korean Claimants' Motion for Vacating Decision of Settlement Facility Regarding Address Update/Confirmation	26261-26274
1569-2	01/15/2021	Exhibits 1-19 attached to Korean Claimants' Motion for Vacating Decision of Settlement Facility	26276-26505

		Regarding Address Update/Confirmation	
1584	01/27/2021	Response of Korean Claimants to Finance Committee Recommendation and Motion for Authorization to Make Second Priority Payments	26643-26653
1584-2	01/27/2021	Exhibits 1-12 to Response of Korean Claimants to Finance Committee Recommendation and Motion for Authorization to Make Second Priority Payments	26655-27062
1592-3	02/17/2021	Order Confirming Joint Plan of Reorganization as Modified	27521-27528
1592-7	02/17/2021	SF-DCT Deadlines	27708-27710
1592-8	02/17/2021	Stipulation and Order Approving Notice of Closing and Final Deadline for Claims	27711-27719
1592-9	02/17/2021	Declaration of Ellen Bearicks Regarding the Motion for Extension of Deadline for Filing Claim	27720-27729
1592-10	02/17/2021	Declaration of Dianna Pendleton- Dominguez Regarding the Motion for Extension of Deadline for Filing Claim	27730-27732
1592-11	02/17/2021	Response of Korean Claimants' to Finance Committee Recommendation and Motion for Authorization to Make Second Priority Payments	27733-27747
1592-12	02/17/2021	Funding Payment Agreement (Classes 5 through 19) Between Dow Corning Corporation, the Dow Chemical Company, Corning Incorporated, and the Claimants' Advisory Committee	27748-27805
1595	02/26/2021	Response of Dow Silicones Corporation, the Debtors Representatives and the Claimants' Advisory Committee to Korean Claimants Motion for Vacating Decision of Settlement Facility	27839-27871

		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 the Settlement Facility and Fund Distribution Agreement	28031-28148
1595-5	02/26/2021	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)	28149-28163
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, dated July 20, 2020	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	28299-28593

		Regarding Address Update/Confirmation	
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	28602-28632
1608	06/28/2021	Notice of Appeal to 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	28633-28635
1610	07/20/2021	Korean Claimants' Motion to Stay the Court's Ruling Granting the Finance Committee's Motion for Authorization to Make Second Priority Payments	28637-28642
1613	08/03/2021	The Finance Committee's Response in Opposition to the Korean Claimants' Motion to Stay the Court's Ruling Granting the Finance Committee's Motion for Authorization to Make Second Priority Payments	28679-28689
1613-1	08/03/2021	Declaration of Ann B. Phillips	28690-28697
1614	08/03/2021	Response of Claimants' Advisory Committee in Opposition to Korean Claimants' Motion to Stay the Court's Ruling Granting the Finance Committee's Motion for Authorization to Make Second Priority Payments Pending Appeal	28699-28714

1642	06/13/2022	Closing Order 5	28800-28805
1643	06/30/2022	Order and Joint Stipulation of the Claimants' Advisory Committee and Debtor's Representatives for Approval to pay Full Payment Long-Term Option Late Claimants Based on Recommendation of the Claims Administrator	28806-28816
1651	08/12/2022	Order Denying the Korean Claimants' Motion to Stay the Court's Ruling 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	29349-29365
1659	08/30/2022	Notice of Appeal to Order Denying the Korean Claimants' Motion to Stay the Court's Ruling 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	29447-29449