

Case No. 21-2665

In the United States Court of Appeals for the Sixth Circuit

IN RE: SETTLEMENT FACILITY 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**

**JOINT RESPONSE OF APPELLEES DOW SILICONES CORPORATION, THE
DEBTOR'S REPRESENTATIVES, THE CLAIMANTS' ADVISORY
COMMITTEE AND THE FINANCE COMMITTEE TO APPELLANTS'
MOTION FOR EXPEDITED HEARING**

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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: 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 Coming 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 July 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
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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.

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 July 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
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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 Cl. v. Cl. Advisory Cmte et al.

Name of counsel: Jeffrey S. Trachtman, Esq.

Pursuant to 6th Cir. R. 26.1, Clamaints' Advisory Committee
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.

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

No.

CERTIFICATE OF SERVICE

I certify that on June 30, 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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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.

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 Cl. v. Cl. Advisory Cmt et al.

Name of counsel: Karima G. Maloney and Sydney Scott

Pursuant to 6th Cir. R. 26.1, Finance Committee
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.

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:

No.

CERTIFICATE OF SERVICE

I certify that on July 8, 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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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.

INTRODUCTION

Dow Silicones Corporation (“Dow Corning”),¹ the Debtor’s Representatives (“DR’s”), the Claimants’ Advisory Committee (“CAC”), and the Finance Committee (“FC”) (collectively, “Respondents”) respectfully submit this joint response to the Motion For Expedited Hearing, Doc. No. 47 (“Motion for Expedited Hearing”), filed by Appellants the Korean Claimants (“Movants” or the “Korean Claimants”). For the reasons set forth below, while Respondents are of course prepared to proceed with argument at any time the Court so directs, Respondents submit that the reasons set forth by Movants to support the request to expedite provide an incorrect and disputed rendition of the facts and the issues on appeal. The Movants have not presented and cannot present any argument that they face the sort of significant and irreparable harm that courts generally require in order to expedite an appeal or hearing.

BACKGROUND

The Motion for Expedited Hearing was filed in this appeal (Case No. 21-2665), but it appears Movants may intend, in addition, to seek expedited hearings in four other appeals currently pending in this Court. The various appeals arise out

¹ On February 1, 2018, Dow Corning Corporation changed its name to Dow Silicones Corporation. For convenience, Respondents will still refer to Dow Silicones as Dow Corning. Unless otherwise defined, capitalized terms herein have the meanings provided in the Amended Joint Plan of Reorganization, RE 1595-2 (“Plan”).

of orders of the United States District Court for the Eastern District of Michigan regarding the implementation of the settlement program in the Dow Coming Amended Joint Plan of Reorganization (the “Plan”). In those appeals, the Movants have disputed determinations of the district court (i) addressing the obligations of the Korean Claimants to submit certain information in order to qualify for compensation under the settlement program in the Plan, (ii) ordering the closure of claims that failed to comply with court orders, and (iii) authorizing the distribution of “Second Priority Payments” to thousands of Claimants under the terms of the Plan. Four of the appeals have been fully briefed. *See* Case Nos. 21-2665, 22-1750, 22-1753, 22-1771. An additional appeal – filed on December 29, 2022 (Case No. 22-2167) – is still in the briefing process.

The Movants do not cite to any rules or case law in support of their Motion for Expedited Hearing. The basis for seeking expedited argument is, essentially, that they believe – as is obvious by the fact that they filed appeals – that the district court’s rulings are in error.

ARGUMENT

Respondents do not seek any delay in the resolution of any of the appeals filed by the Korean Claimants and have no objection to the expeditious resolution of the appeals, which Respondents believe have no merit. The Korean Claimants Motion for Expedited Hearing, however, provides no basis for granting the relief requested.

The Korean Claimants simply assert that “the Appellant, who has been denied a payment over four years (2018-2023) with no interest incurred under the Plan and desperately needs a quick resolution on payments from the [Settlement Facility], respectfully request this honorable Court to hold a hearing for the final resolution as soon as possible.” Motion to Expedite at 3. The Korean Claimants’ motion also notes the pendency of their other appeals, but in doing so misstates that Respondents’ Appellee briefs in case No 22-2167 is due on February 8, 2023 when it is actually not due until March 10, 2023. *See* Case No. 22-2167, Doc. 3.

The Sixth Circuit rules provide that a party may move to expedite an appeal and also to expedite oral argument. 6 Cir. R. 27(f) and 6 Cir. R. 34(c)(1). A movant seeking to expedite an appeal must show good cause. 6 Cir. R. 27(f). The rule addressing motions to expedite hearings does not set forth a specific standard – but instead provides examples of the types of appeals that generally may warrant an expedited hearing. The listed categories of appeals all involve situations where the issues by their nature often require an expedited review – such as appeals involving injunctive relief, habeas petitions, contempt orders – where a delay could result in significant and irreparable harm. *See* 6 Cir. R. 34(c)(2). *See also* 7 Bus. & Com. Litig. Fed. Cts. § 69:118 (5th ed.) (“An expedited date for oral argument usually will be granted upon a showing of good cause which, in the context of commercial appeals, may arise in an appeal from a preliminary or permanent injunction, in which

delay would cause manifest injury.”). The examples set forth in 6 Cir. R. 34(c) provide instructive guidance and indicate that the basis for expediting an argument date cannot rest on a movant’s simple assertion that they have the better argument and want a resolution. Respondents of course dispute the Movants’ position: Respondents have argued that the appeals have no merit and Respondents further assert that the Korean Claimants have not been, as they assert, “denied a payment for four years.” In fact, as set forth in the appellees’ briefs, to the extent the Korean Claimants have not received certain payments it is because they refused to provide the information mandated by the district court in order to qualify for a payment. The Korean Claimants’ assertion does not demonstrate good cause.

CONCLUSION

The Respondents respectfully submit that, while Respondents are prepared to proceed with argument at any time the Court so directs, Respondents dispute the characterization of the actual dispute: there is no basis to find that the Korean Claimants face irreparable harm.

Dated: January 25, 2023

Respectfully submitted,

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STATEMENT OF COMPLIANCE

I certify that this response complies with the type-volume limitations of Fed. R. App. P. 27(d)(2). According to the word processing program used to prepare this brief (Microsoft Word) and excluding the parts of this response exempted by Fed. R. App. P. 32(f), this brief contains 899 words.

Dated: January 25, 2023

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CERTIFICATE OF SERVICE

I certify that on January 25, 2023, I electronically filed a copy of the foregoing Response of Appellees the Debtor's Representatives, Dow Silicones Corporation, Finance Committee and Claimants' Advisory Committee 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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Dated: January 25, 2023

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