Case No. 24-1653

In the United States Court of Appeals For the Sixth Circuit

IN RE: SETTLEMENT FACILITY DOW CORNING TRUST

KOREAN CLAIMANTS
Interested Party – Appellant
v.
DOW SILICONES CORPORATION; DEBTOR'S REPRESENTATIVES;
CLAIMANTS' ADVISORY COMMITTEE
Interested Parties – Appellees

FINANCE COMMITTEE
Movant – Appellee

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

BRIEF OF APPELLEES DOW SILICONES CORPORATION, THE DEBTOR'S REPRESENTATIVES, THE CLAIMANTS' ADVISORY COMMITTEE, AND THE FINANCE COMMITTEE

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

Karima Maloney
Steptoe LLP
717 Texas Avenue
Suite 2800
Houston, TX 77002
(713) 221-2382
Counsel for the Finance Committee

Ernest H. Hornsby
FARMER PRICE LLP
100 Adris Place
Dothan, AL 36303
Telephone: (334) 793-2424
Ernie@farmerprice.com
Claimants' Advisory Committee

Dianna L. Pendleton-Dominguez
LAW OFFICE OF
DIANNA PENDLETON
401 N. Main Street
St. Marys, OH 45885
Telephone: (419) 394-0717
DPend440@aol.com
Claimants' Advisory Committee

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit
Case Number: 24-1653 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 13, 2024 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. NW
Washington, DC 20006

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit
Case Number: 24-1653 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 13, 2024 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. NW
Washington, DC 20006

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit
Case Number: 24-1653 Case Name: In re Settlement Facility Dow Corning

Name of counsel: Karima G. Maloney

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 August 15, 2024 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/ Karima G. Maloney
717 Texas Avenue, Suite 2800
Houston, Texas 77002

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit
Case Number: 24-1653 Case Name: In re: Settlement Facility Dow Corning Tr

Name of counsel: Dianna Pendleton-Dominguez

Pursuant to 6th Cir. R. 26.1, Claimants' 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 August 15, 2024 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/ Dianna Pendleton-Dominguez
401 N. Main St.
St. Marys, OH 45885

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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STATEMENT IN SUPPORT OF ORAL ARGUMENT

Oral argument is requested. This matter involves several underlying motions and 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 AND BACKGROUND

This appeal comes at the end of a two decade long process of implementing and distributing funds for settlement claims under the terms of the Dow Corning Amended Joint Plan of Reorganization (the "Plan").[1] The distribution of assets for settlement claims under the terms of the Plan commenced in 2004, and the final deadline for the submission of settlement claims was June 3, 2019. The Plan established the Settlement Facility (essentially a trust) to review and process claims and to distribute payments to timely eligible claims. The Appellants, the Korean Claimants, are Settling Personal Injury Claimants under the Plan who submitted claims to the Settlement Facility.

This appeal arises out of a July 31, 2024 Order Regarding Motions Filed By the Korean Claimants (ECF Nos. 1752, 1757, 1758, 1767, 1776) ("Order") of the district court denying two substantive motions filed by Korean Claimants (the

[1] Unless otherwise defined, capitalized terms used herein shall have the meaning provided in the Plan defined in Article 1 thereof. *See* Plan, RE 1701-2, Page ID # 32824-32853. On February 1, 2018, Dow Corning Corporation changed its name to Dow Silicones Corporation. Appellees may use either Dow Corning or Dow Silicones in this brief interchangeably, as they refer to the same entity.

Appellants). RE 1783. The Order denied the Korean Claimants' Motion for Order to Correct Disposition of SF-DCT (RE 1752) ("Motion to Correct") and Motion for Order for the SF-DCT to Lift Off the Address Update and Confirmation (RE 1758) ("Motion to Lift") ("collectively, the "Motions"). The Order also granted the Motion for Order to Allow to File Exhibit K (RE 1767) (which was a motion requesting leave to file supporting documents) and denied as moot two Motions to Expedite a decision on the Motion to Correct (RE 1757) and the Motion to Lift (RE 1776). The two substantive motions – the Motion to Correct and the Motion to Lift – asked the district court to overrule determinations of the Settlement Facility denying certain claims filed by Korean Claimants. The Motion to Correct asked the district court to reject the decision of the Settlement Facility regarding 109 claims that were denied because the Korean Claimants failed to respond to the notification that identified deficiencies in the claims that had to be cured by a Plan-specified deadline in order to be eligible for a settlement payment. The Motion to Lift asked the district court to reverse the determinations of the Settlement Facility denying and closing certain claims filed by Korean Claimants because they had failed to comply with the district court order that requires all claimants to provide a verified address in order to be eligible for processing and payment.

As this Court has previously ruled, the Plan bars appeals of Settlement Facility determinations to the district court (or any court). This prohibition is dispositive and

the decision of the district court should be affirmed. In addition, to the extent that the Korean Claimants challenge the orders of the district court setting forth the mandate that the Settlement Facility must obtain a verified address before issuing a claim payment, this Court has previously found that the Korean Claimants are bound by the terms of 'Closing Order 2' – which is the district court Order that set forth the challenged address mandate. *See In re Settlement Facility Dow Corning Trust*, No. 21-2665/22-1750/1753/1771, 2023 WL 2155056, at *3 (6th Cir. Feb. 22, 2023). As their brief on this appeal makes clear, the Korean Claimants are well aware of the prior rulings of this Court and the prohibition on appeals of claim determinations made by the Settlement Facility. Korean Claimants' Br.[2] at 13-14, 22, 34. This is not the first time that the Korean Claimants have sought judicial review of administrative decisions of the Settlement Facility in contravention of the terms of the Plan and in each case, the request has been denied by the district court and affirmed by this Court.[3]

[2] "Korean Claimants Br." refers to the Brief of Appellant Korean Claimants, filed on October 7, 2024. Doc. No. 18.

[3] *See*, *e.g.*, Korean Claimants' Motion for Order of Reversal of SF-DCT Decision Regarding Korean Claimants asking the district court to reverse a decision of the Claims Administrator. RE 810. This Court affirmed the district court's decision denying the Motion finding "[t]o 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." *In re Settlement Facility Dow Corning Tr.*, 760 F. App'x 406, 411-412 (6th Cir. 2019) (internal citations omitted).

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 July 31, 2024 final order pursuant to 28 U.S.C. § 1291. *See* Order, RE 1783. Korean Claimants filed a timely notice of appeal on August 1, 2024. Notice, RE 1784.

COUNTER STATEMENT OF ISSUES FOR REVIEW

1. Whether the Order properly denied the Motions as unauthorized appeals of the decisions of the Claims Administrator where appeals to any court of the determinations of the Claims Administrator and Settlement Facility and Appeals Judge are barred by the Plan and prior decisions of this Court.

2. Should the Order of the district court be affirmed where the district court denied a motion to eliminate the long-standing requirement requiring that claimants provide updated addresses and the requirement that claimants must

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See also, Korean Claimants' Motion for Vacating Decision of Settlement Facility Regarding Address Update/Confirmation requesting to be exempted from the address confirmation requirement. RE 1569. This Court affirmed the district court's decision. *See In re Settlement Facility Dow Corning Trust*, No. 21-2665, WL 2155056, at *3 (6th Cir. Feb. 22, 2023). In denying the Motion, the district court stated that "the Korean Claimants have no authority to appeal any decision made by the Settlement Facility regarding address update and confirmation requirements." Order, RE 1607, Page ID # 28631.
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provide verified addresses in order to receive payment or finalize claim processing where such requirement was imposed by an order of the district court, and where the Korean Claimants failed to object to or appeal that order when it was entered, and where the determination of the Settlement Facility to deny claims that fail to comply with this court ordered requirement has previously been ratified by this Court.

STATEMENT OF THE CASE

I. Background and the Controlling Plan Documents.

This Court has addressed the history of Dow Corning's bankruptcy proceedings and Plan on multiple occasions.[4] Dow Corning filed its petition for reorganization under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Michigan on May 15, 1995. The Plan was confirmed in 1999 and 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 1701-2.

The Plan established an administrative process for the resolution of claims of individuals who assert that they suffered injury as a result of the use of certain

[4] *See, e.g.*, *In re Settlement Facility Dow Corning Trust*, No. 21-2665/22-1750/1753/1771, 2023 WL 2155056 (6th Cir. Feb. 22, 2023); *Korean Claimants v. Claimants' Advisory Committee*, 813 F. App'x 211 (6th Cir. 2020); *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).

implanted medical devices and who elect to resolve their claims through the settlement option. The Korean Claimants made such an election and are thus Settling Personal Injury Claimants. Plan at § 1.159, RE 1701-2, Page ID # 32852. The claims of Settling Personal Injury Claimants are reviewed, evaluated, and paid by the Settlement Facility-Dow Corning Trust (the "Settlement Facility" or "SF-DCT"). The Settlement Facility and Fund Distribution Agreement ("SFA") (RE 1707-3, Page ID # 33163-33207) and the Dow Corning Settlement Program and Claims Resolution Procedures, Annex A to SFA ("Annex A") (RE 1701-3, Page ID # 32926-33042), prescribe the rules under which these settling claims are submitted, individually evaluated, and, if eligible and in compliance with the rules and procedures, paid. This administrative process is the exclusive means for the resolution of Settling Personal Injury Claims. SFA at § 5.01, RE 1707-3, Page ID # 33183; Annex A at Article VIII, RE 1701-3, Page ID #32987-32988. There is no right of appeal to the district court of any claim determination made by the Settlement Facility. *See* Annex A at § 8.05, RE 1701-3, Page ID # 32988; *See also In re Clark-James*, 08-1633, 2009 WL 9532581, at **2, 3 (6th Cir. Aug. 6, 2009) ("the Plan provides no right of appeal to the district court, except to resolve controversies regarding the interpretation and implementation of the Plan and associated documents.").

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 1701-3, Page ID #32940-32974 and 32990-33042. The claim form that all claimants must submit requires claimants to provide and update their address and contact information along with the contact information for the attorney representing the claimant. *See, e.g.* Declaration of Ellen Bearicks Regarding the Motion for Vacating Decision of Settlement Facility Regarding Address Update/Verification ("Bearicks Declaration"), Exhibit 1, Claimant Information Guides Q9-14 and Q9-15, RE 1595-6, Page ID # 28176 (Informing claimants and attorneys that "[y]ou have an affirmative obligation to update your address with the Settlement Facility" and that "it is your responsibility to notify the Settlement Facility of any address change.").

The claims at issue in the Motion to Correct are disease benefit claims. Motion to Correct, RE 1752, Page ID # 33812. The procedures set forth in Annex A require that disease claimants submit a form seeking review of the disease claim and that they

further select one of the compensable disease "categories." Annex A at §§ 4.01, 4.02, RE 1701-3, Page ID # 32939-32940. The Settlement Facility procedures and the procedures set forth in Annex A require the Settlement Facility to review the disease claim and if it is deficient in any way to issue a notification of status letter advising of the deficiencies. *Id*. at § 7.06, Page ID # 32980. Under the terms of the Plan and Annex A, a disease claimant has one year from the date of the notification of status letter to submit documentation to cure any identified deficiencies. *Id*. at § 7.09(b)(ii) Page ID # 32986. If the disease claimant does not cure the deficiency, the Settlement Facility may issue an Expedited Release payment to the claimant. *Id*. at § 7.06(b), Page ID # 32980. The Claimant does have the right to file a new disease claim – but only if the new claim presents a *new* (i.e. different) disease that manifested *after* the original disease claim was found deficient. *Id*. at § 7.09(b)(ii), Page ID # 32986.

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 at § 1.29, RE 1701-2; SFA at §§ 4.02, 5.01, 5.04, RE 1707-3. The Settlement Facility is supervised by the district court. The district court retains jurisdiction over the Plan and is expressly charged with supervising the resolution of claims by the Settlement Facility and resolving "controversies and disputes regarding interpretation and implementation of this Plan and the Plan Documents." Plan at § 8.7.3, RE 1701-2,

Page ID # 32897; SFA at § 4.01, RE 1707-3, Page ID # 33172. The district court retains the express authority to enter orders in aid of the Plan and Plan Documents. Plan at § 8.7.5, RE 1701-2, Page ID # 32897.

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 at § 5.04(b), RE 1707-3, Page ID # 33186.

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), Page ID # 33185-33186 ("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 Plan established the Claimants' Advisory Committee ("CAC") and the Debtor's Representatives ("DRs") to assist in the implementation of the settlement program. *See* Plan at § 1.28, RE 1701-2, Page ID # 32829 (defining 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 at § 4.09(b), RE 1707-3, Page ID # 33181. The CAC and the DRs have the authority to take action to enforce the terms of the Plan, file a motion or take any other appropriate actions to enforce or be heard in respect of the obligations in 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 at § 4.09(c), RE 1707-3, Page ID # 33181-82. The DRs and the CAC have the express authority to interpret substantive eligibility criteria that applies to the settlement program. *Id*. at § 5.05, Page ID # 33187.

II. Wind Down of Settlement Operations And Closing Orders.

The Settlement Facility does not exist in perpetuity: the Plan provides a 16-year period for the submission of claims after which the Settlement Facility is to terminate its operations. *See* Funding Payment Agreement at § 2.01(c), RE 1701-5, Page ID # 33054-55. The final deadline for the submission of "disease" and "expedited" claims was June 3, 2019. *See* Annex A, at § 7.09(b)(i), RE 1701-3, Page ID # 32986; *id*. at § 6.02(a)(ii)(a), Page ID # 32941; *id*. at § 6.02(f)(1), Page ID # 32954. The Settlement Facility has completed the review and processing of the timely claims and is now preparing to terminate its operations.

The district court, which has the obligation to "enter orders in aid of this Plan and the Plan Documents" (Plan at § 8.7.5, RE 1701-2, Page ID # 32897), has issued a series of "closing orders" – setting forth administrative guidelines to enforce claims procedures and to enable and facilitate the closure of the Settlement Facility operations once the requirements for termination are met.[5] These closing orders established deadlines for finalizing claims that had been pending for years and guidelines to enable the Settlement Facility to institute efficient procedures to conclude its operations. One of the two substantive Motions denied by the district court in the Order focuses on Closing Orders 2, 3, and 5.

A. Closing Order 2

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;

[5] *See* Closing Order 1 for Final June 3, 2019 Claim Deadline (Establishing Final Cure Deadlines, Revised Claim Review Procedures, and Appeal Deadlines) ("Closing Order 1"), RE 1447, Page ID # 23937-23950; Closing Order 2, RE 1482, Page ID # 24084-24097; 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 # 28287-28298; Closing Order 4 (Requiring Completion of Court- Directed Audit Survey and Return of Funds Pursuant to Closing Order 2, RE 1640, Page ID # 28794-28796 ("Closing Order 4"); 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 ("Closing Order 5"), RE 1642, Page ID # 28800-28805.

Guidelines For Uncashed Checks and For Reissuance of Checks; Restrictions on Attorney Withdrawals) (RE 1482) ("Closing Order 2") was entered by the district court on March 19, 2019. This Order established guidelines for issuing final payments and for concluding the distribution of payments. Closing Order 2, RE 1482, Page ID # 24084-97. Closing Order 2 provides in relevant part that "the SF-DCT shall not issue payments to or for claimants or an authorized payee unless the SF-DCT has a confirmed, current address for such claimant or authorized payee… to ensure that Settlement Fund payments are distributed to claimants as required by the Plan." *Id*. at Page ID # 24086-24089. The purpose of this requirement, as noted in Closing Order 2, is "so that the SF-DCT can assure that the claimant or authorized payee will actually receive the mailed check." *Id*. at Page ID # 24089. Closing Order 2 grants to the Claims Administrator the discretion to implement protocols for confirming current addresses and to withhold payments where the Claims Administrator concludes that she cannot verify an address. *Id*. There were no objections to or appeals of Closing Order 2.

Although there were no appeals of Closing Order 2, on January 15, 2021, the Korean Claimants filed a Motion for Order Vacating Decision of the Settlement Facility Regarding Address Update/Confirmation ("Motion for Vacating".) Motion for Vacating, RE 1569. The Motion for Vacating requested that the district court vacate the decision of the Settlement Facility requiring Korean Claimants to provide

a valid verified address as required by Closing Order 2. Motion for Vacating, RE 1569, Page ID # 26261-26273. Counsel for Korean Claimants asserted in the Motion for Vacating that his clients did not want to receive communications from the Settlement Facility and that the address information was subject to privacy considerations. On June 24, 2021, the district court denied that motion finding that the Settlement Facility was required to apply the terms of Closing Order 2 and that the Korean Claimants had never objected to or appealed Closing Order 2. 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. The district court stated: "Korean Claimants has [sic] no authority to appeal any determinations by the Claims Administrator regarding payment if the Claims Administrator and/or the Settlement Facility is not authorized to issue any payment if the requirement in Closing Order No. 2 is not followed." *Id*. at Page ID # 28630.

This Court affirmed the decision of the district court holding Korean Claimants' challenges to the District Court's orders "fail on the merits because the district court correctly interpreted Closing Order 2… and permissibly considered the Settlement Facility bound by Closing Order 2." *See In re Settlement Facility Dow Corning Trust*, 2023 WL 2155056, at *3.

B. Closing Order 3

The district court issued 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 (RE 1598) ("Closing Order 3"), on March 25, 2021. Closing Order 3, RE 1598. Korean Claimants did not object to or appeal or even comment on Closing Order 3 when it was entered. Korean Claimants' Br. at 14. The address verification provisions of Closing Order 3 are the same as those in Closing Order 2. Closing Order 3 applied the address requirement to a discrete group of claims identified by the Settlement Facility as claims that could not be processed because there was no valid address for the claimants.

In the July 31, 2024 Order that is the subject of this appeal, the district court determined that Korean Claimants had waived any objection to Closing Order 3 and further concluded that this Court's ruling regarding Closing Order 2 validated the district court's authority to enter Closing Order 3. Order, RE 1783, Page ID # 41108-41109.

C. Closing Order 5

The district court issued 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 on June 13, 2022 ("Closing Order 5"). Closing Order 5, RE 1642. The Korean Claimants did not file any

objection to Closing Order 5 at that time, but instead filed an untimely appeal 73 days after the entry of Closing Order 5. Notice of Appeal, RE 1656. Recognizing that their appeal was untimely, the Korean Claimants filed several other motions seeking to stay its implementation and seeking an extension of time to appeal. The district court denied these motions. *See,* Order Regarding Various Motions filed by the Korean Claimants (ECF Nos. 1658, 1660, 1666, 1667, 1668, 1677). RE 1689.

On February 22, 2023, in a consolidated opinion, this Court dismissed the late appeal regarding Closing Order 5 as untimely, finding that there were "no exceptional circumstances" to equitably toll the deadline for filing an appeal. *See In re Settlement Facility Dow Corning Trust*, 2023 WL 2155056, at *3.

D. Implementation of the Closing Orders

The various requirements set forth in Closing Orders 2, 3, and 5 apply expressly to all Settling Personal Injury Claimants, including the Korean Claimants. During the course of its operations, the Settlement Facility has sent numerous directives and correspondence to all attorneys and claimants reminding them of the obligation to provide the Settlement Facility with address updates and seeking to confirm address information. Bearicks Declaration, RE 1595-6, Page ID # 28166 ("Routine communications of the SF-DCT throughout its operations have reminded claimants and attorneys of the requirement to provide current, updated address information to the SF-DCT"); Declaration of Ann M. Phillips Regarding the Motion

for Premium Payments to Korean Claimants ("Phillips Declaration"), RE 1546-8, Page ID # 24818 ("[T]he SF-DCT has continued to send address verification letters to attorneys and claimants…All payments remain on hold until the SF-DCT obtains a verified address.").

Closing Order 2 directs the Settlement Facility to employ procedures to verify addresses and states that while the Settlement Facility may decide to accept address information provided by counsel, it need not accept such address information. Instead, Closing Order 2 expressly provides that the Settlement Facility may reject address information provided by counsel where previous experience demonstrates that the address information cannot be considered reliable or where it is inconsistent with address information provided by the claimant. Closing Order 2, RE 1482 ("The SF-DCT may accept confirmation of a claimant's current address provided by the claimant's attorney of record; however, the SF-DCT 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."). Closing Order 2 provides discretion to the Claims Administrator "to implement additional protocols for confirming current addresses and to withhold payment checks where the Claims Administrator concludes that she cannot identify a confirmed current address for the claimant, authorized payee, or attorney of record" *Id.* The Settlement Facility found that previous address submissions from

counsel for Korean Claimants were not reliable in part because a significant percentage of mail sent to addresses provided by counsel for Korean Claimants has been returned as undeliverable. As an example, according to the then Claims Administrator, the Settlement Facility sent address verification requests to counsel for 924 Korean Claimants in April 2019 and requested updates. Phillips Declaration, RE 1546-8, Page ID # 24820. Counsel did not respond. *Id*. The Settlement Facility sent request letters directly to the 924 Korean Claimants at the addresses that had been provided previously. *Id*. Only 28 provided responses and 436 were returned as undeliverable at the time the data was compiled. *Id*. Other mailings and inquiries yielded similar results. *Id.* at Page ID # 24820-24821. Accordingly, the Settlement Facility required that verification of addresses be provided directly by the claimants – a procedure that has been employed generally where the submissions by counsel proved to be inaccurate. Bearicks Declaration, RE 1595-6, Page ID # 28168 ("The SF-DCT does not accept address information from counsel where previous address submissions from counsel have proved to be invalid and more than a negligible percentage of mail sent to addresses provided by counsel has been returned as undeliverable.").

In accordance with Closing Order 2, the district court issued Closing Order 3 and Closing Order 5. Both of these orders directed the Settlement Facility to provide notice via publication on the Settlement Facility website of claimants who had failed

to confirm their address and whose claims therefore could not be processed or paid. Closing Order 3 addressed the claims of 381 claimants (including certain Korean Claimants) whose claims could not be fully processed without confirmation that the claimant could be located and could receive communications. Closing Order 3 required the Settlement Facility to publish the list of claimant identification number for period of 90 days and to then permanently close the claims of those claimants who did not respond to the Settlement Facility. RE 1598, Page ID # 28286.

Closing Order 5 addressed claims of claimants whose payments could not be issued because the Settlement Facility did not have a valid address for the claimant. Closing Order 5, RE 1642, Page ID # 28802-28804. The list of affected claimant identification numbers (including those of Korean Claimants) was published on the Settlement Facility website for 90 days. As required by Closing Order 5, the Settlement Facility then permanently closed the claims of those who did not respond. *Id*. at Page ID # 28804. Korean Claimants involved in this current appeal presumably did not comply with Closing Order 5.

III. The Order and Relevant Motions at Issue in This Appeal

A. Motion to Correct (RE 1752), Motion for Order to Allow to File Exhibit K (RE 1767), and Motion to Expedite (RE 1757)

On December 15, 2023, the Korean Claimants filed the Motion for Order to Correct the Disposition of the SF-DCT Regarding the Korean Claimants ("Motion to Correct"). RE 1752. In the Motion to Correct, Korean Claimants sought to appeal

multiple determinations of the Claims Administrator and the Appeals Judge concluding that 109 disease claims filed by Korean Claimants had deficiencies that were not cured by the Plan mandated deadline. As stated in the district court's Order the Settlement Facility reviewed the 109 claims and then (as required by the Plan) sent a Notification of Status Letter to each of the 109 claimants identifying the specific deficiencies in their disease claim. *See* Order, RE 1783, Page ID 41103; *See also* Declaration of Kimberly Smith-Mair in Support of Response of Dow Silicones Corporation, The Debtor's Representatives, The Claimants' Advisory Committee and the Finance Committee to the Korean Claimants' Motion for Order to Correct the Disposition of the SF-DCT Regarding the Korean Claimants ("Smith-Mair Declaration"), RE 1754-5, Page ID # 34263; Smith-Mair Declaration Exhibit 1 ("Notification of Status Letter Example"), RE 1754-5, Page ID # 34267-34275. The Notification of Status letters sent to the 109 Korean Claimants explained that the deadline to cure deficiencies was one year from the date of the Notification of Status letter and in fact provided the date when the claimant was required to submit documents to cure the deficiencies. Notification of Status Letter Example, RE 1754-5, Page ID # 34267-34275. The cure deadline for each of the 109 Korean Claimants expired without the required submissions. Smith-Mair Declaration, RE 1754-5, Page ID # 34263.

In 2017 and 2018 in accordance with the applicable rules, the Settlement Facility issued Expedited Release payments to each of the 109 Korean Claimants. The 109 payments were rejected, and each of the 109 Korean Claimants returned the Expedited Release payments to the SF-DCT. *Id*. In 2018 and 2019 the Settlement Facility issued Acknowledgment Letters to each of the Korean Claimants acknowledging the return of the Expedited Release payment. *Id*. at Page ID # 34263-34264. The Acknowledgment Letters further clearly advised that the cure deadline for the claims had expired and no additional reviews could occur on those claims. *Id.*; Exhibit 2 to Smith-Mair Declaration ("Acknowledgment Letter Example"), RE 1754-5, Page ID # 34277. The Acknowledgment Letters explained the available options to the Korean Claimants under the Plan. Acknowledgment Letter Example, RE 1754-5, Page ID # 34277. The Acknowledgement Letters advised that each claimant could, at that point:

- File an Error Correction. OR
- Apply for a claim for a **new** disease or condition on or before June 3, 2019 provided that the **new** disease or condition manifested after the cure deadline expired on their original disease claim OR
- Request the return of the original Expedited Release Payment.

Id. Annex A defines a 'new' disease as a compensable condition that manifests after the expiration of the cure deadline applied to the original disease claim. Annex A at § 7.09, RE 1701-3, Page ID # 32986-32987.

The Korean Claimants did not exercise any of these options: they did not file an error correction or appeal at that time; they did not request return of the expedited payment; and they did not file claims for a new disease. Smith-Mair Declaration, RE 1754-5, Page ID 34264. Two years after the final cure deadline for these 109 claims expired, at approximately the time of the final deadline for submission of any claim to the SF-DCT, the counsel for Korean Claimants requested an extension of the cure deadline dates for these 109 claims and further submitted forms purporting to provide information to cure the deficiencies for the original disease asserted in the 109 claims. *Id*. In response, the Claims Administrator sent a determination letter to each of the 109 Korean Claimants stating that the cure deadline for their claims had expired and that the submissions could not be considered. *Id*. The Korean Claimants appealed these decisions to the Appeals Judge and the Appeals Judge issued written opinions affirming the decisions of the Claims Administrator. *Id*. The Korean Claimants filed a motion for reconsideration before the Appeals Judge, which was denied on October 25, 2023. The Korean Claimants then filed the Motion to Correct – seeking an order from the district court reversing the decisions of the Claims Administrator and the Appeals Judge.

The district court denied the Motion to Correct in the July 31, 2024 Order, concluding that the relief sought was barred by the Plan. The district court found: "the Plan's language is clear and unambiguous that the decision of the Appeals Judge

is final and binding on the claimant. The Plan provides for no right of appeal to the Court, nor a right to seek any advisory opinions from the Court. The Court is without authority to review the decision of the SF-DCT, the Claims Administrator or the Appeals Judge." Order, RE 1783 at Page ID #41105.

B. Motion to Lift (RE 1758)

On January 24, 2024, the Korean Claimants filed the Motion for Order for the SF-DCT to Lift Off the Address Update and Confirmation. Motion to Lift, RE 1758. In the Motion to Lift, the Korean Claimants asked the district court to relieve the Korean Claimants from the requirement of having to provide a verified current address and to, thus, exempt the Korean Claimants from the terms of the claims processing guidelines and the three Closing Orders requiring address verification for the purpose of assuring appropriate distribution of funds to eligible claimants. *Id.* The district court denied the Motion to Lift in the July 31, 2024 Order on several grounds including the fact that previous appeals addressed the same issues and that the Plan bars appeals of the determination of the Settlement Facility. Order, RE 1783, Page ID # 41107-41111. The district court addressed the arguments regarding each of the three Closing Orders. With respect to Closing Order 2, the district court stated:

> Korean Claimants previously appealed issues related to Closing Order 2 to the Sixth Circuit Court of Appeals. The Sixth Circuit affirmed this Court's decision, finding that the appeal failed "on the merits because the district court correctly interpreted Closing Order 2 to require the

> Korean Claimants to confirm their addresses as a condition of receiving payments and permissibly considered the Settlement Facility bound by Closing Order 2." *See In re Settlement Facility Dow Corning Trust*, Case Nos. 21-2665/22-1750/1753/1771, 2023 WL 2155056, at *3 (6th Cir. Feb. 22, 2023). The Court will not revisit arguments related to Closing Order 2 raised by the Korean Claimants in this new motion and denies any requests by the Korean Claimants to be exempted from the address requirements in Closing Order 2.

Id. at Page ID # 41108.

With respect to the Korean Claimants' arguments regarding Closing Order 3, the district court determined that the Korean Claimants had not objected to Closing Order 3 and consequently had waived any objections to its terms. The district court found:

> The Korean Claimants waived any arguments as it relates to Closing Order 3. In addition, for the same reasons set forth in the Sixth Circuit's Order as to Closing Order 2, as it relates to the Korean Claimants, the Court relies on that ruling that the Court had the authority to direct claimants to confirm their addresses. The Court denies any requests by the Korean Claimants that they be exempted from complying with Closing Order 3.

Id. at Page ID # 41109.

With respect to the Korean Claimants' arguments regarding Closing Order 5, the district court found that the Korean Claimants' effort to avoid the terms of Closing Order 5 was barred for two reasons: first, the district court found that the Korean Claimants' objections to Closing Order 5 were effectively barred by their previous attempt to appeal Closing Order 5 which had been dismissed as untimely. Second, the district court found that the challenge to the application of the address

requirement by the Settlement Facility was an unauthorized appeal of a decision of the Settlement Facility barred by the Plan. *Id*. at Page ID 41110-41111. The district court concluded:

> The Korean Claimants filed an appeal before the Sixth Circuit as to Closing Order 5. On February 22, 2023, the Sixth Circuit dismissed the appeal regarding Closing Order 5 as untimely. The Sixth Circuit found there were "no exceptional circumstances" to equitably toll the deadline for filing an appeal. *See In re Settlement Facility Dow Corning Trust*, 2023 WL 2155056, at *3. The Court finds that the Korean Claimants cannot revive the arguments as to Closing Order 5 and circumvent the Sixth Circuit's finding that their previous appeal was untimely by filing a new motion before this Court addressing Closing Order 5. In any event, as this Court has previously ruled, based on the Plan documents, the Korean Claimants cannot seek review of the decisions by the Claims Administrator and the Appeals Judge. The Court has no authority to review the Korean Claimants' requests that were denied by the Claims Administrator and the Appeals Judge.

Id. at Page ID # 41110. The district court concluded, with respect to the Motion to Lift, that the "Korean Claimants are bound by the language of the Plan documents and the various Closing Orders issued by the Court." *Id*. at Page ID # 41111.

C. Motion to Permit Filing Exhibit K, and Motions to Expedite.

On January 15, 2024 the Korean Claimants filed a Motion for Expedited Relief regarding the Motion to Correct. RE 1757. The Appellees did not oppose this Motion because they did not object to expedited consideration and procedure for disposition. Response of Dow Silicones Corporation, the Debtor's Representatives, the Claimants' Advisory Committee and the Finance Committee to

the Korean Claimants' Motion for Expedited Relief, RE 1762, Page ID # 37380-37383.

On February 2, 2024, the Korean Claimants filed a submission: "Exhibit K re Motion for Order to Correct the Disposition of SF-DCT" along with 10 attachments. RE 1763. On March 7, 2024, the Appellees filed a Notice of Objection to this submission because it did not comply with the rules, consisted primarily of thousands of pages of exhibits that were irrelevant and redundant of prior filings, and because it contained unwarranted and unsupportable attacks on the veracity of the Claims Administrator's testimony about the procedures and standards of the Settlement Facility. Notice of Objection, RE 1766, Page ID # 41017-41024. Subsequently, on March 7, 2024, the Korean Claimants filed a Motion for Order to Allow the Korean Claimants to File Exhibit K Regarding the Motion for Order to Correct the Disposition of the SF-DCT (ECF No. 1752). RE 1767. The Appellees opposed this Motion. RE 1770. In the July 31, 2024 Order, the district court granted the Korean Claimants' Motion for Order to Allow to File Exhibit K and ordered that the Motions to Expedite the Rulings were moot. RE 1783. There is no dispute in this current Appeal regarding the ruling on the Motion for Order to Allow to File Exhibit K.

D. Notice of Appeal

The Korean Claimants filed a timely Notice of Appeal of the July 31, 2024 Order on August 1, 2024. Notice, RE 1784.

SUMMARY OF ARGUMENT

The decision of the district court should be affirmed because the relief requested by Korean Claimants is barred by the Plan and would abrogate the terms of lawful, appropriate, and long-standing court orders that are necessary to assure the appropriate distribution of the limited assets available for Allowed claims. The Plan unequivocally bars judicial review of decisions of the Claims Administrator (Settlement Facility) and Appeals Judge. This Court has previously addressed and ratified the Plan's prohibition on appeals to any court of decisions of the Claims Administrator[6] or Appeals Judge. The underlying motions that are the subject of the district court order on appeal requested that the district court overrule and reverse the decisions of the Claims Administrator. Such relief is barred unequivocally by the Plan.

In addition, in one of the underlying motions denied by the district court – the Motion to Lift - the Korean Claimants sought to challenge the Claims Administrator's implementation of a series of 'Closing Orders' entered by the

[6] For simplicity, this brief uses the term Claims Administrator and Settlement Facility interchangeably when addressing the Plan's prohibition on appeals of the determinations of the Claims Administrator and Appeals Judge.

district court to assure proper distribution of funds to eligible claimants. These Closing Orders set forth specific requirements for verification of the address information of claimants before processing or paying claims. The purpose of the address requirement is to assure that eligible claimants are identified and located so that they can receive the funds and to avoid incurring unnecessary cost and time that would be expended if the Settlement Facility were to process claims for claimants who could never be located or issue payments that could not be delivered. This Court has previously found that the Settlement Facility appropriately determined that it was bound by the terms of Closing Order 2 – which is the Closing Order that first established the address requirements that were then applied to the Korean Claimants' claims.

The Closing Orders at issue in this appeal were entered properly as stipulated orders of the CAC and the DRs, consistent with their obligations and authority under the Plan. The Closing Orders by their terms apply to all claimants – not just Korean Claimants - and the Settlement Facility has been operating under their terms for more than 5 years. There is no basis to invalidate the Closing Orders and to do so at this late date would significantly disrupt the orderly closure of the Settlement Facility and would require substantial work to reconsider claims that have been closed under the terms of the Closing Orders.

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 Plan's terms and the terms of the district court's orders 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, 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 at 216 ("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 F. App'x at 477 ("When reviewing a district court's interpretation of a bankruptcy plan where the district judge did not confirm the plan but has extensive 216 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 A2 ("The District Court Ignored the Clauses of the Plan Documents") and B1 ("Closing Orders 2, 3 and 5 Shall be Void for Lack of Notice"). Korean Claimants' Br. at 26, 31. Korean Claimants assert that the abuse of discretion standard applies to their arguments A1 ("The SF-DCT Violated the Due Process Right") and B2 ("The Address Confirmation Requirement under the Closing Orders Was Applied Discriminatorily and Unfairly Against the Korean Claimants"). Appellees agree that argument A2 – to the extent it involves interpretation of the Plan – is subject to *de novo* review. Argument B1 involves the district court's

interpretation of its own orders and is subject to an abuse of discretion standard of review. The Appellees agree with the standard of review stated by Korean Claimants as to arguments A1 and B2.

ARGUMENT

I. The District Court's Order Should be Affirmed Because the Plain Unambiguous Plan Language Prohibits Appeals of Decisions of the Claims Administrator.

Both the Motion to Correct and the Motion to Lift are unequivocally appeals of decisions of the Claims Administrator barred by the Plan. The Korean Claimants seek to avoid this obvious bar on their Motions and this Appeal by contending – with respect to the Motion to Correct - that the Claims Administrator incorrectly applied the terms of Annex A – which sets forth processing procedures. That is, the Korean Claimants *disagree* with the determination of the Claims Administrator and now seek to challenge it in court in violation of the Plan. There is no other way to characterize their claim. This is clearly barred.

With respect to the Motion to Lift, Korean Claimants seek to avoid the Plan's prohibition on judicial review of the decisions of the Settlement Facility by asserting that the decisions of the Settlement Facility were dictated by invalid Closing Orders. The Korean Claimants assert that the Orders are invalid because they were entered as stipulations of the Plan Proponents (without prior notice). They further assert, in an effort to avoid the Plan's prohibition on appeals, with no factual basis whatsoever, that the Orders discriminate against Korean Claimants.

A. The Plan Bars the Relief Sought in the Motion to Correct

The facts surrounding the Motion to Correct are straightforward: the Korean Claimants submitted disease claim forms and product identification information to the Settlement Facility. Although Korean Claimants profess now that they did not actually intend at that time to submit a disease claim, they had each filled out a form that stated that they sought review of the disease claim. In accordance with the forms submitted, the Settlement Facility processed the disease claims. All of the 109 disease claims were deficient, and the Settlement Facility sent a notification of status letter to each of the claimants advising that they had one year (per the Plan) to cure the deficiencies. The claimants did not submit any documents to cure the deficiencies and therefore – in accordance with the Plan - the Settlement Facility denied the disease claims and provided each Korean Claimant with a payment for an Expedited Release claims (the alternative payment offered to claimants with unsuccessful disease claims.) The Korean Claimants rejected the Expedited Release payments – and returned them to the Settlement Facility. The Settlement Facility acknowledged the return of the checks and advised the claimants that they retained only the right to submit a *new* disease claim – which is defined as a claim for disease that manifests after the denial of the first disease claim. *See* Annex A at § 7.09, RE 1701-3, Page ID # 32986-32987; *See also* Smith-Mair Declaration, RE 1754-5, Page ID # 34263-34264. The Korean Claimants, by their own admission, did not submit new disease claims. *See* Reply to Response Regarding the Motion for Order to

Correct the Disposition of the SF-DCT, RE 1755. Instead, mere days before the final claim submission deadline, they re-submitted the old disease claims that previously had been found deficient and were denied and prohibited by the terms of the Plan. Smith-Mair Declaration, RE 1754-5, Page ID # 34264-34265; *See also* Exhibit A to Sur-Reply in Further Response of Dow Silicones Corporation, the Debtor's Representatives, the Claimants' Advisory Committee and the Finance Committee to the Korean Claimants' Motion for Order to Correct the Disposition of the SF-DCT Regarding the Korean Claimants ("Declaration of Kimberly Smith-Mair ISO Sur-Reply"), RE 1756-1, Page ID # 34645-34648.

The Claims Administrator and the Appeals Judge denied the Korean Claimants' request to reopen the original disease claims or to extend the deadline to cure the deficiencies in those claims as barred by the terms of the Plan. Smith-Mair Declaration, RE 1754-5, Page ID # 34264-34265.

The Motion to Correct sought a district court order directing the Settlement Facility to alter their decision – which, as noted, was mandated by the terms of the Plan. It would be hard to imagine a clearer example of an attempt to appeal the determination of the Settlement Facility. The Korean Claimants argue that the Settlement Facility abused its discretion and violated the due process rights of the Korean Claimants by "mis-applying" the Plan requirements. Korean Claimants' Br. at 24-26. This is exactly the type of challenge that is prohibited by the Plan: Were claimants permitted to appeal every decision with which they disagreed, there would

be no reason for claimants to forego an appeal to the court. And that would mean that claimants could and would appeal every notification letter, every denial, and every determination about eligibility. That is precisely the outcome that the administrative process with the prohibition on appeals to the court is intended to prevent.

Korean Claimants contend that they are not appealing a substantive determination of the Settlement Facility but rather seek to correct a violation of their 'due process rights'. Korean Claimants' Br. at 28. This is a distinction without a difference. The due process right that they assert was violated is undefined. They assert that the Settlement Facility should not have processed the claims (despite the fact that Korean Claimants filed the claims.) *Id*. at 24-26. They assert that the Settlement Facility should have waited until the Korean Claimants submitted more documents. *Id*. at 24. But, as the uncontroverted record demonstrates, the claims filed by Korean Claimants expressly stated that they were 'ready' to be reviewed. The Claims Administrator found that each of the 109 claimants submitted a disease claim form between 2006 and 2010 and each of the 109 claimants checked box 2B on the disease form. Box 2B states: "I am making a claim for a Disease Payment. I have obtained all of the medical records and documents required to support my claim and I am ready to have my disease claim evaluated." Declaration of Kimberly Smith-Mair ISO Sur-Reply, RE 1756-1, Page ID # 34645. This fact alone signifies the intent of the Korean Claimants to submit their disease claims and belies the

argument that the Claims Administrator failed to follow the procedures or somehow otherwise violated an undefined due process right by processing these disease claims. In addition, the uncontroverted record shows that the Settlement Facility had received medical records pertinent to the claims. *Id*. at Page ID #34646-34647. When the Settlement Facility receives only a disease claim form and there are no medical records in the claimant's file, the Settlement Facility does not issue a Notification of Status letter. *Id*. at Page ID #34645-34646. Instead, the Settlement Facility advises the claimant that the disease claim cannot be evaluated until relevant medical records are submitted. *Id*. at Page ID #34645. The undisputed facts show that the Settlement Facility issued Notification of Status letters for all 109 claimants at issue in the Motion to Correct which could not have occurred in the absence of medical records. *Id*. at Page ID # 34646.

The Korean Claimants assert that the Settlement Facility violated their rights and the Plan procedures by determining that the 're-submitted' disease claims could not be reviewed. To the contrary, as explained above, the terms of Annex A expressly *bar* review of a disease claim (such as those at issue here) that was previously found deficient and was not 'cured' by the Plan-mandated deadline. Annex A at § 7.09(b)(ii), RE 1701-3. Korean Claimants' argument is backwards: had the Settlement Facility reviewed those claims, it would have been in violation of the Plan. The Korean Claimants' attempt to avoid this simple truth by ignoring the fact that the Notification of Status letters sent to them by the Settlement Facility

stated that they had the right to file a *new* disease claim later and not that they had the right to file the *same* disease claim again. (A new disease claim is one that manifests after the expiration of the cure deadline for the failed disease claim.) *Id.* The Settlement Facility's adherence to the Plan requirements can hardly constitute a failure to abide by correct process or be deemed a violation of 'due process rights'.

The Korean Claimants complain that the district court erred by failing to address this due process argument. In the district court, the Korean Claimants did not characterize their argument as a 'due process' argument. They asserted only that the Settlement Facility and the Appeals judge willfully disregarded the claims processing rules – an assertion that is devoid of factual support. The district court did not err in failing to address an argument that was not asserted. Further, the fact that it was not asserted in the district court bars its consideration in this Court. *Robinson v. Phelps*, No. 20-6075, 2021 WL 4271910, at *2 (6th Cir. Sept. 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. CAC.*, 813 F. App'x. at 219 ("The Korean Claimants failed to raise any of these issues for the district court to consider, thereby waiving them.") (citations omitted).

To the extent that the Korean Claimants contend that the Motion to Correct is not barred by the Plan's prohibition on appeals by characterizing the claim as one to resolve a controversy regarding interpretation of the Plan, that argument cannot be sustained. The Plan specifically grants to the Plan Proponents the authority to

interpret the Plan requirements and to litigate interpretation questions. Such issues arise when the Settlement Facility requires guidance to interpret a provision of the Plan and litigation can ensue if the Plan Proponents disagree over the proper interpretation. SFA at § 5.05, RE 1707-3, Page ID # 33187.[7] The district court and this Court have determined that only the Plan Proponents retain this right. The Korean Claimants are barred from raising a Plan interpretation question. "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).

B. The Plan and the District Court's Lawful Orders Bar the Relief Sought in the Motion to Lift.

1. The Closing Orders at Issue are Valid Enforceable Orders

In the appeal of the denial of the Motion to Lift, Korean Claimants seek a determination from this Court that three Closing Orders issued by the district court in 2019, 2021, and 2022 are void because they were entered based on stipulations of the CAC and the DRs (the Plan Proponents). Korean Claimants contend that because

[7] "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 at § 5.05, RE 1707-3, Page ID 33187.

there was no notice before the stipulations were entered the Orders are void.[8] Korean Claimants' Br. at 31. Korean Claimants admit that their Attorney of Record received notice via the ECF system when the Closing Orders were entered. Korean Claimants' Br. at 31. The Closing Orders were 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. Plan at § 11.4, 1701-2, Page ID # 32907; Annex A at § 3.01(a), 8.05, RE 1701-3, Page ID # 32936, 32988; SFA at § 5.04(b) and 5.05, RE 1707-3, Page ID # 33186-33187. 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

[8] In an attempt to show support for their argument that Closing Orders 2, 3 and 5 should be deemed void for lack of notice, the Korean Claimants provide an erroneous and misleading citation to a brief filed by the CAC. Korean Claimants' Br. at 33. In the Response of Claimants' Advisory Committee to Motion to Establish Final Distribution Deadline Regarding Replacement Checks for Settlement Claims in the Dow Corning Settlement Program, the CAC filed a brief addressing a proposal to establish a final deadline for the issuances of payments by the Settlement Facility. RE 1705. In that context, they argued that the proposed deadline provided insufficient notice to claimants. In making this argument they contrasted the significant amount of notice provided to claimants affected by Closing Orders 3 and 5 – which allowed affected claimants to cure issues. Korean Claimants' citation to the CAC's argument is misplaced, misleading, and flatly incorrect. The CAC's brief did not assert that there was insufficient notice provided when the Closing Orders were entered.

involved may make the subject matter of the contemplated motion or request a matter of record by stipulated order.").

The district court has the authority and obligation under the Plan to assure an appropriate and orderly process for implementing the Plan and to issue orders in aid of the Plan processes. *See* Plan at § 8.7.5, RE 1701-2, Page ID # 32897) (the court "will retain exclusive jurisdiction … to enter orders in aid of this Plan and the Plan Documents"); *In re Settlement Facility Dow Corning Trust*, 670 F. App'x. at 888 (stating that "[u]nder the Plan, the district court has jurisdiction to, among other things, 'resolve controversies and disputes regarding interpretation and implementation of this Plan and the Plan Documents'" and concluding that a consent order addressing certain procedures for resolving settlement claims "plainly falls within the district court's powers under the Plan."). As noted, this Court previously had occasion to address an appeal involving Closing Order 2 and affirmed the district court's determination that the Settlement Facility was bound by Closing Order 2. There can be no dispute: the Closing Orders are plainly valid and the Korean Claimants' contention that the Closing Orders are void for lack of notice is unsupported and unsupportable.[9]

[9] The Korean Claimants cite *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950) and *In re Chess*, 268 B.R. 150 (W. D. Tenn. 2001), for the basic proposition that "[t]he constitutional standard regarding notice requires that it 'be such as is reasonably calculated to reach interested parties." Korean Claimants Br. at 21-23. Those decisions have no relevance here. The Korean Claimants had

2. The Closing Orders and their Enforcement and Application by the Settlement Facility Serve an Important Purpose Protecting the Plan Assets and the Settlement Facility Appropriately Exercised its Discretion to Require Confirmation Directly from Claimants.

The Korean Claimants' real objection is to the language in Closing Order 2 (implemented in Closing Orders 3 and 5) that allows the Settlement Facility to reject addresses provided by counsel. As the district court stated in explaining this address requirement – it is important to assure that the Settlement Fund assets are distributed appropriately to claimants who can be located and who therefore can receive the funds. *See* Closing Order 2, RE 1482, Page ID # 24088-24091 (Due to previous experience of wasting significant resources locating claimants and attorneys who have moved or were otherwise not located at the last known address provided to the SF-DCT, the district court ordered that "the SF-DCT shall not issue payments to or for claimants or an authorized payee unless the SF-DCT has a confirmed, current address for such claimant or authorized payee."). Closing Order 2 expressly authorized the Settlement Facility to reject addresses provided by counsel where such addresses have proved to be unreliable. The record is replete with sworn

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effective notice in accordance with the applicable rules. Indeed, *In re Chess* rejected a due process claim where the party did not rebut the presumption of receipt of service of process by mail under Fed. R. Bankr. P. 7004(b). *In re Chess*, 268 B.R. at 157. Similarly, *In re Rideout*, 86 B.R. 523 (1988), is not relevant here. *In re Rideout* involved lack of notice of a hearing on Plan confirmation in violation of the applicable rules which has no bearing on the entry of an order based on the stipulation of the parties.

statements from representatives of the Settlement Facility attesting to the unreliability of the address information provided by counsel for Korean Claimants. *See, e.g.*, Bearicks Declaration, RE 1595-6, Page ID # 28169 ("From 2009 to 2020, the SF-DCT sent 1,839 requests for address verification to Korean Claimants eligible for a future payment. The SF-DCT's records show that prior address updates provided by counsel for Korean Claimants have not proven to be accurate.") The Settlement Facility followed the terms of the district court's order in requiring verification of address information from claimants. Closing Order 2, RE 1482, Page ID # 24088-24091. The Settlement Facility requested this verification by sending mailings to the addresses provided by counsel. Bearicks Declaration, RE 1595-6, Page ID # 28168-28169; Phillips Declaration, RE 1546-8, Page ID # 24816-24822. The Settlement Facility confirmed the address information when the claimants responded directly to the mailing. Bearicks Declaration, RE 1595-6, Page ID # 28169; Phillips Declaration, RE 1546-8, Page ID # 24818.

3. The Korean Claimants' Challenge to the Closing Orders is Barred by This Court's Prior Decision Regarding the Korean Claimants' Motion for Vacating

As noted above, on January 15, 2021, the Korean Claimants filed the Motion for Vacating, requesting that the district court vacate all decisions of the Settlement Facility that denied claims or payments based on the address requirement. RE 1569. On June 24, 2021, the district court denied the Motion for Vacating and affirmed the

Settlement Facility's application of Closing Order 2. RE 1607. 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.* at 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*. This Court affirmed the decision of the district court finding that Korean Claimants' challenges to the District Court's orders "fail on the merits because the district court correctly interpreted Closing Order 2… and permissibly considered the Settlement Facility bound by Closing Order 2." *See In re Settlement Facility Dow Corning Trust*, 2023 WL 2155056, at *3. This Court's decision ratifying Closing Order 2 and rejecting the Korean Claimants' previous challenge is conclusive and bars the Korean Claimants attempt once again to dispute the address requirement. "The law of the case doctrine provides that 'when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case." *See Daunt v. Benson*, 999 F.3d 299, 308 (6th Cir. 2021). None of the exceptions to the law of the case doctrine apply here."[A]n exception to the law-of-the-case doctrine allows a court to revisit a prior ruling when there is (1) an intervening change of controlling law; (2) new evidence

available; or (3) a need to correct a clear error or prevent manifest injustice". *Jaiyeola v. Toyota Motor Corp.*, No. 21-1812, 2022 WL 17819776, at *3 (6th Cir. June 16, 2022) (internal citations omitted).

This Court's prior ruling on Closing Order 2 also conclusively bars Korean Claimants' assertions that Closing Orders 3 and 5 are invalid. Further, to the extent that the Motion for Lift can be characterized as an appeal of any of the Closing Orders, such appeals are clearly untimely. Fed. R. App. P. 4(a).

4. The Korean Claimants' Contention that the Closing Orders are Discriminatory is Baseless and Contrary to the Clear Evidence in the Record.

The Korean Claimants assert that the address requirement is applied in a discriminatory manner – essentially that it is being used to deny Korean Claimants' claims but is not applied to other claims. There is no basis for this allegation and no support anywhere in the record for any such assertions.[10] To the contrary, the uncontroverted record shows that the address requirement applies and has been applied across the board to all claims. The Settlement Facility has distributed the same address verification letters to all claimants who do not have a confirmed current

[10] Korean Claimants cite *In re Deepwater Horizon*, 785 F. 3d. 986, 999 (5th Cir. 2015) apparently for the proposition that claimants should be able to appeal decisions to the court. That case is irrelevant: it involved the interpretation of a settlement agreement reached in the context of the litigation over the Deepwater Horizon incident. The Fifth Circuit's decision is based wholly on its interpretation of that agreement, and has no bearing on the application of the Plan and its terms.

address received by the Settlement Facility. *See* Declaration of Kimberly Smith-Mair in Support of the Response of Dow Silicones Corporation, the Debtor's Representatives, the Claimants' Advisory Committee and the Finance Committee to the Korean Claimants' Motion for Order for the SF-DCT Lift Off the Address Update and Confirmation Requirement Regarding the Korean Claimants, RE 1764-12, Page ID # 40867-40868. The process applies uniformly to all law firms and claimants, domestic and foreign. *Id*. at Page ID 40868.

Korean Claimants assert that the application of the address requirement is discriminatory because the Settlement Facility applied the requirement that claimants provide their address directly (rather than through counsel) after finding that a high percentage of addresses provided by counsel were not reliable. Korean Claimants assert that it is unfair to apply the requirement of direct communication to all claimants when the Settlement Facility was only able to 'test' some of the addresses. The Settlement Facility tested all the addresses provided by counsel – including all the addresses initially provided in the claim forms as well as addresses provided by counsel at a later date. *See generally* Phillips Declaration, RE 1546-8, Page ID # 24820-24821. The Settlement Facility found an extremely high rate of invalid addresses and accordingly concluded that addresses provided by counsel were not reliable. This same procedure was applied to addresses provided by other law firms; it was not applied only to Korean Claimants.

Korean Claimants offer no cogent basis for their challenge to the Closing Orders and their refusal to comply with their simple terms. Instead, they have made unsupported, baseless allegations of discrimination and bias against both the Settlement Facility and—in effect—the district court. Korean Claimants' Br. at 34-44. These assertions have no place in the orderly administration of justice.

In sum both the Motion to Correct and the Motion to Lift 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. at 411-412 ("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.

CONCLUSION

For the foregoing reasons, Appellees respectfully request that the Court dismiss and deny this appeal and request that the Court affirm the July 31, 2024 Order of the district court.

CERTIFICATE 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 11,350 words.

Dated: November 6, 2024

/s/ Deborah E. Greenspan

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

Debtor's Representative and
Attorney for Dow Silicones Corporation

CERTIFICATE OF SERVICE

I certify that on November 6, 2024, I electronically filed a copy of the foregoing Brief of Appellees, Dow Silicones Corporation, The Debtor's Representatives, The Claimants' Advisory Committee, and The Finance 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:

Karima Maloney
Steptoe LLP
717 Texas Avenue, Suite 2800
Houston, TX 77002
KMaloney@steptoe.com
Counsel for the Finance Committee

Ernest H. Hornsby
FarmerPrice
100 Adris Place
Dothan, AL 36302
ehornsby@fphw-law.com

Dianna Pendleton-Dominguez
401 N. Main Street
St. Marys, OH 45885
dpend440@aol.com
Counsel for the Claimants' Advisory Committee

Yeon Ho Kim
Law Office
159 Samsung-dong. Kangnam-ku
Suite 4105, World Trade Center Building
Seoul, 00125-0729, South Korea
yhkimlaw@naver.com
Counsel for the Korean Claimants

Dated: November 6, 2024

/s/ Deborah E. Greenspan

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

Debtor's Representative and
Attorney for Dow Silicones Corporation

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

RE #	Filing Date	Document Description	Page ID
810	09/26/2011	Motion for Reversal of Decision of SFDCT Regarding Korean Claimants	12286-12344
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
1482	03/19/2019	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 For Reissuance Of Checks; Restrictions On Attorney Withdrawals)	24084-24097
1546-8	07/20/2020	Declaration of Ann M. Phillips Regarding the Motion for Premium Payments to Korean Claimants	24815-24838
1569	01/15/2021	Motion for Vacating Decision of Settlement Facility Regarding Address Update/Confirmation	26261-26505
1595-6	02/26/2021	Declaration of Ellen Beericks Regarding the Motion for Vacating Decision of Settlement Facility Regarding Address Update/Verification	28164-28193
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 This Order Applies Only To Certain Claims Submitted On Or By June 3, 2019 That Have Not Been Reviewed Because The Claimant's Address Is Not Current And The Claimant Cannot Be Located. If The SF-DCT Has Already Issued	28284-28288

		A Notice Of Status Letter Or Approved The Claim For Payment, This Order Does Not Apply	
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
1640	04/01/2022	Closing Order 4 Requiring Completion of Court-Directed Audit Survey and Return of Funds Pursuant to Closing Order 2	28794-28798
1642	06/13/2022	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	28800-28805
1656	08/25/2022	Notice of Appeal to Closing Order 5 Notice that Certain Claims Without a Confirmed Address Shall be Closed and Establishing Protocols for Addressing Payments for Claimants in Bankruptcy	29376-29378
1689	12/22/2022	Order Regarding Various Motions Filed by the Korean Claimants (ECF No. 1658, 1660, 1666, 1667, 1668, 1677)	32427-32439
1701	03/29/2023	Motion To Establish Final Distribution Deadline Regarding Replacement Checks for Settlement Claims in the Dow Corning Settlement Program	32802-33106
1701-2	03/29/2023	Amended Joint Plan of Reorganization of Dow Corning Corporation	32813-32924
1701-3	03/29/2023	Dow Corning Settlement Program and Claims Resolution Procedures: Annex A To Settlement Facility And Fund Distribution Agreement	32925-33042
1701-5	03/29/2023	Funding Payment Agreement (Classes 5 through 19)	33046-33103

1701-6	03/29/2023	Declaration of Kimberly Smith-Mair in support of Motion to Establish Final Distribution Deadline Regarding Replacement Checks for Settlement Claims in the Dow Corning Settlement	33104-33106
1705	04/03/2023	Response of Claimants' Advisory Committee to Motion to Establish Final Distribution Deadline Regarding Replacement Checks for Settlement Claims in the Dow Corning Settlement Program	33138-33144
1707-3	04/10/2023	Settlement Facility and Fund Distribution Agreement	33147-33207
1752	12/15/2023	Motion for Order to Correct the Disposition of the SF-DCT Regarding the Korean Claimants	33812-33963
1754-5	12/29/2023	Declaration of Kimberly Smith-Mair in Support of Response of Dow Silicones Corporation, the Debtor's Representatives, the Claimants' Advisory Committee and the Finance Committee to the Korean Claimants' Motion for Order to Correct the Disposition of the SF-DCT Regarding the Korean Claimants	34262-34620
1755	01/02/2024	Reply to Response Regarding the Motion for Order to Correct the Disposition of the SF-DCT	34621-34627
1756-1	01/12/2024	Sur-Reply in Further Response of Dow Silicones Corporation, the Debtor's Representatives, the Claimants' Advisory Committee and the Finance Committee to the Korean Claimants' Motion for Order to Correct the Disposition of the SF-DCT Regarding the Korean Claimants	34633-34831
1757	01/15/2024	Korean Claimants' Motion for Expedited Relief re Motion for Order to Correct the Disposition of the SF-DCT	34835-34837
1758	01/24/2024	Motion for Order the SF-DCT to Lift Off the Address Update and Confirmation Requirement Regarding the Korean Claimants	34838-37374
1762	01/29/2024	Response of Dow Silicones Corporation, the Debtor's Representatives, the Claimants'	37380-37383

		Advisory Committee and the Finance Committee to the Korean Claimants' Motion for Expedited Relief	
1763	02/02/2024	Exhibit K re Motion for Order to Correct the Disposition of SF-DCT	37384-40418
1766	03/06/2024	Notice of Objection to Korean Claimants' Submission (ECF No. 1763)	41017-41024
1767	03/07/2024	Motion for Order to Allow the Korean Claimants to File Exhibit K Regarding the Motion for Order to Correct the Disposition of the SF-DCT (ECF No. 1752)	41025-41029
1770	03/08/2024	Response of Dow Silicones Corporation, the Debtor's Representatives, the Claimants' Advisory Committee and the Finance Committee to Motion for order to Allow the Korean Claimants to File Exhibit K Regarding the Motion for Order to Correct the Disposition of the SF-DCT	41052-41054
1776	04/03/2024	Motion for Expedited Decision on Exhibit K Regarding the Motion for Order to Correct the Disposition of the SF-DCT (ECF No. 1752)	41065-41068
1783	07/31/2024	Order Regarding Motions Filed by the Korean Claimants (ECF Nos. 1752, 1757, 1758, 1767, 1776)	41099-41111
1784	08/01/2024	Notice of Appeal to Order Regarding Motions Filed by Korean Claimants (ECF Nos: 1752, 1757, 1758, 1767, 1776)	41112-41114