IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOTHERN DIVISION

IN RE:	§	CASE NO: 00-CV-00005-DT
	§	(Settlement Facility Matters)
DOW CORNING CORPORATION	§	
	§	
Reorganized Debtor	§	
	§	
	§	Hon.Judge Denise Page Hood

***REVISED* MOTION TO STAY THE COURT'S ORDER GRANTING MOTION TO TERMINATE FUNDING PURSUANT TO SECTION 2.01(c) OF THE FUNDING PAYMENT AGREEMENT AND TO TERMINATE THE SETTLEMENT FACILITY PURSUANT TO SECTION 10.03 OF THE SETTLEMENT FACILITY AND FUND DISTRIBUTION AGREMENT (ECF NO.1827)**

The Korean claimants file this *Revised* Motion to Stay this Court's Order Granting Motion to Terminate Funding Pursuant to Section 2.01(c) of the Funding Payment Agreement and to Terminate the Settlement Facility Pursuant to Section 10.03 of the Settlement Facility and Fund Distribution Agreement, filed by Dow Silicones Corporation (the re-organized Dow Corning Corporation), the Debtor's Representatives and the Finance Committee (ECF NO.1796), pending appeal in the United States Court of Appeals for the Sixth Circuit.

The Sixth Circuit issued Judgment on Appeal from this Court' Order, Case No.24-1653. This *Revised* Motion reflects the facts and the opinion of the Judgment.

This Court issued the Order on December 30, 2024.

Pursuant to Fed.R.Civ.P.62 (c), stay of proceedings to enforce a judgment or an order can be sought by a losing party. Pursuant to E.D.Mich.L.R.7.1(a)(1), the Korean claimants must ascertain whether the contemplated Motion will be opposed by the Dow Silicones

Corporation, the Debtor's Representatives and the Finance Committee. It is apparent that they do not agree so it is unnecessary for the procedure for concurrence to take place.

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

A. Likelihood to Prevail

The Korean claimants' appeal is pending the United States Court of Appeals for the Sixth Circuit (Case No. 25-1004). The issue is: (1) Whether the Korean claimants are not able to appeal to the Court regarding their claims because the Plan Documents stipulate that the decisions of the Claims Administrator/the Appeals Judge are final and binding on the Korean claimants, (2) The Clause, "otherwise finally resolved", in Section 2.01(c) of the Funding Payment Agreement was met because by way of Closing Order 5 that the Claims Administrator put all of the Korean claimants on the website on the Settlement Facility as "bad address", (3) Even if the Claims Administrator continuously requested the Korean claimants the address update after Closing Order 5 (including Closing Order 3) was enforced, whether the Korean claims became "otherwise finally resolved" with no payment made, (4) Whether there has been no claim-filing with two consecutive periods of funding in Section 2.01(c) of the Funding Payment Agreement.

First of all, the Plan Documents are ambiguous on the term, "otherwise finally resolved". The case law regarding interpretation of contract under the New York State laws said that the term of contract is not ambiguous only when there is no possibility that the term cannot be

read more than two meanings. The Court interpreted the term, "otherwise finally resolved", not ambiguous because the Korean claimants are not allowed to appeal to the Court. The Court concluded that the Korean Claims were otherwise finally resolved although the Korean claimants were not paid.

The interpretation of contract shall be done by the court. This Court has power to interpret contract. However, this Court is simply possessing a bankruptcy court role as long as the interpretation of the Plan Documents is concerned. The final say about the interpretation of the Plan Documents should be done by a higher court. The Korean claimants appealed the Order of this Court to the Appellate Court (Case No.25-1004).

Whether the Korean claims were otherwise finally resolved is not certain. Whether the term, "otherwise finally resolved", in Section 2.01(c) of the Funding Payment Agreement is unambiguous is not determinative on the face of the Clause.

Furthermore, the Claims Administrator's misstatement letting the Court rule that the Korean claims were finally resolved in the Declaration must be addressed, which this Court failed to do so. The Korean claimants pointed out in the briefing and the verbal pleading in the hearing. This Court simply ignored them.

The Claims Administrator requested the AOR of the Korean claimants to update his clients' address to be paid several times by way of numerous letters to the claimants and personal emails to the AOR long after the Closing Order 5 was enforced and the Korean claimants did not update their addresses by the deadline (60 days from posting) under Closing Order 5. This is clear evidence that the Korean claims were not finally resolved in the mind of the Claims Administrator.

In addition, the Claims Administrator stated the AOR in the emails that the Settlement

Facility waits for the result of the Korean claimants' appeal, which should include Case No. 25-1004 is pending before the Sixth Circuit, although the Case is related to termination of funding and the Settlement Facility.

B. Likelihood to be Irreparably Harmed

The Order mandates that the funding under the Funding Payment Agreement and the Settlement Facility are terminated on March 31, 2025. It is not likely that the Sixth Circuit issue its ruling on the Korean claimants' appeal (Case No. 25-1004) by then. Since the Settlement Facility is no longer operating by the Order, the Korean claimants are likely to be irreparably harmed.

C. Prospect that Other Claimants Will be Harmed

The other claimants will not be harmed since they have received the payments in full under the Plan Documents. The Korean claimants are the only group of the claimants left not paid by the Settlement Facility.

D. Public Interest for Stay

The Korean claimants are suffering from the defected goods manufactured by Dow Corning Corporation for over three decades from the early nineties to the present time. The Korean claimants hoped to be paid if they followed the request of Dow Corning Corporation, the Debtor's Representatives, the Claimants' Advisory Committee and the Finance Committee and participated in the settlement program. However, they betrayed their commitment. They colluded with each other to enforce Closing Order 2 regarding address update and confirmation requirement, to enforce Closing Order 3 and Closing Order 5 to exclude the Korean claimants from being paid. In conjunction with the collusion, the Claims

Administrator denied ALL of address updates and confirmation submitted by the AOR. It was easy for the Claims Administrator to designate all of the Korean claimants' addresses as "bad address". The Claims Administrator denied the request of the AOR to show how and what basis the Claims Administrator concluded that the address updates by the AOR were not reliable. The Claims Administrator even refused to meet the AOR in the office of the Settlement Facility. The Claims Administrator had no intention to resolve the Korean claims even before the Motion for Order to Terminate the Settlement Facility was filed.

The Korean claimants object to terminate the funding and the Settlement Facility before the Sixth Circuit decides on Case No. 25-1004. Only if the Settlement Facility operates, the Korean claimants can hope to wait for the final say from the Sixth Circuit regarding Case No. 25-1004. Even if the Court waits until the Sixth Circuit issues its opinions on the Korean claimants' appeals, there would be no public interest affected by the delay of termination of the funding, which does not affect the interest of Dow Corning Corporation, the Debtor's Representatives and the Finance Committee, and termination of the Settlement Facility.

But without the stay of the Order, the Korean claimants will be enormously affected by the Order which is about to be enforced completely by March 31, 2025. A public interest can be served if the Court Grants this Motion.

For the foregoing reasons, the Korean claimants file this Motion to Stay.

Date: February 13, 2025

Respectfully submitted,

(signed) Yeon-Ho Kim

Yeon-Ho Kim Int'l Law Office
Suite 4105, Trade Tower
159 Samsung-dong, Kangnam-ku
Seoul 06164 Korea
+82-2-551-1256
yhkimlaw@naver.com

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	§	Honorable Denise Page Hood

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Proposed Order

It is Ordered that the Korean claimants' Motion to Stay the Order Granting Motion To Terminate Funding Pursuant to Section 2.01(c) of The Funding Payment Agreement And To Terminate The Settlement Facility Pursuant to Section 10.03 of The Settlement Facility and Fund Distribution Agreement, filed by Dow Corning Corporation, the Debtor's Representatives and the Finance Committee (ECF NO. 1796), is Granted

S/DENISE PAGE HOOD
DENISE PAGE HOOD
United States District Judge

DATED:

CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2025, this motion has been electronically filed with the Clerk of Court using ECF system, and the same has been notified to all of the relevant parties of record.

Dated: February 13, 2025 Signed by Yeon-Ho Kim