Case No: *25-1004*

United States Court of Appeals for the Sixth Circuit

In re: SETTLEMENT DOW CORNING TRUST

KOREAN CLAIMANTS

Interested Parties - Appellant

v.

DOW SILICONES CORPORATION;DEBTOR'S

REPRESENTATIVES;CLAIMANTS' ADVIOSORY COMMITTEE

Interested Parties - Appellees

FINNACE COMMITTEE

Movant - Appellee

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

Brief of Appellant Korean Claimants

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I. STATEMENT FOR ORAL ARGUMENT

The Korean claimants request an oral argument. The District Court conducted an oral hearing on December 11, 2024 and the Korean claimants submitted the transcript in order. However, if an oral argument is held in this Court, the Korean claimants would present the facts and the reasoning for this appeal more clearly. In addition, this Court made mistakes in finding facts in Per Curiam Judgment of Case No. 24-1653. Those mistakes surely affected its decision in affirming the District Court's Order denying the Korean Claimants' Motions. Therefore an oral argument should be held. Furthermore, the Claimants' Advisory Committee did not appeal the District Court's Order. There must be something which would affect Funding that the Appellees seek to terminate and the Settlement Facility that the Appellees seek to close prematurely. This Court should verify what is going on after the Order.

II. STATEMENT OF JURISDICTION

The District Court has jurisdiction over the Amended Joint Plan of Reorganization of Dow Corning Corporation effective on June 1, 2004 to resolve controversies and disputes regarding interpretation and implementation of the Plan and the Plan Documents including the Funding Payment Agreement

("the FPA") and the Settlement Facility and Fund Distribution Agreement ("the SFA").

Dow Corning (Silicones) Corporation, the Debtor's Representatives and the Finance Committee[1] filed Motion to Terminate Funding Pursuant to Section 2.03(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 on November 15, 2024 (RE.1796).

The Korean claimants filed Cross Motion to Deny Motion to Terminate Funding Pursuant to Section 2.03(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 on November 27, 2024 (RE.1802).

On December 30, 2024, the District Court issued the Order Granting Motion to Terminate Funding Pursuant to Section 2.03(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 (ECF No.1796). (RE.1827)

[1] The Claimants' Advisory Committee did not join in as a party of movants purposely.

The Korean claimants filed the Notice of Appeal in a timely manner. The Order of the District Court is the final order which cannot be contested in the District Court. Therefore, this Court has jurisdiction over this appeal.

III. STATEMENT OF ISSUES

Dow Corning Corporation, the Debtor's Representatives and the Finance Committee filed the 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 with United States District Court Eastern District of Michigan on November 15, 2024. Their purpose for this filing was to terminate Funding to the Settlement Facility Dow Corning Trust ("the SF-DCT") and to terminate the SF-DCT **by March 31, 2025**.

The District Court had consulted with the Movants secretly to fix the date[2], agreed to it with the Movants, and thus urged the Movants to file this Motion on time, which was determined November 15, 2024.

[2] The District Court even ordered the members of the Finance Committee including the Claims Administrator and the Appeals Judge, the Financial Adviser and Independent Assessor to attend the hearing of December 11, 2024 for showing them that the agreement was to be executed accordingly. They sat quietly in the courtroom without being called their names by the staff of the Court. It looked a kangroo court.

The Korean claimants objected the Motion. The Claimants' Advisory Committee[3] objected too. However, the District Court Granted the Motion of the Appellees quickly. There was no doubt that District Court acted quickly because the District Court had already consulted for the Motion with the Movants.

The District Court issued the Order Granting Order Granting Motion to Terminate Funding Pursuant to Section 2.03(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 on December 30, 2024. The District Court authorized the termination of the funding and the closing of the Settlement Facility by March 31, 2025.

Section 2.01(c) of the Funding Payment Agreement provides that the Debtor's

> obligation to fund up to the amount of the applicable Annual Payment Ceiling shall continue until the *earlier* of (i) the date when *all Allowed Claims* in each of Classes 5 through 19 and all other obligations of the Settlement Facility and the Litigation Facility have been paid, all Claims filed have been liquidated and paid *or otherwise finally resolved*, and not new timely Claims have been made against the Settlement Facility or the Litigation Facility for two consecutive Funding Periods; or (ii) the payment of all amounts required by this Agreement.(Emphasis made in italic letters)

Section 10.03 of the Settlement Facility and Fund Distribution Agreement

[3] As found in the Order, the Claimants' Advisory Committee was excluded from discussions with the Movants. However, the Claimants' Advisory Committee did not appeal the District Court's Order.

provides that the SF-DCT,

> shall terminate as soon as possible after the Reorganized Dow Corning's obligation to fund under the Funding Payment Agreement is terminated in accordance with Section 2.01(c) of the Funding Payment Agreement. The Claims Administrator will use his or her best efforts to substantially complete and termination the Settlement Facility and Trust within sixty (60) days after such termination of the Funding Payment Agreement. The Claims Administrator shall seek an order from the District Court confirming that it is appropriate to terminate the Settlement Facility.

The District Court ruled that the conditions under Section 2.01(c)(i) of the Funding Payment Agreement and Section 10.03 of the Settlement Facility and Fund Distribution Agreement were met. The District Court Granted the Motion on the basis that although the Korean Claims were not paid or liquidated, the Korean claimants were "otherwise finally resolved" because the Claims Administrator denied the certain[4] Korean Claims and the Sixth Circuit ruled that the Korean claimants' challenge to such denial was beyond the scope of the Plan and further the Korean claimants did not appeal the Sixth Circuit's ruling to the Supreme Court.

The issue of this appeal is whether "All Allowed Claims" have been paid, and the Korean Claims filed against the SF-DCT were "otherwise finally resolved" by the decisions of the Claims Administrator although they were not paid or liquidated, and the rulings of the District Court and the Sixth Circuit.

[4] The District Court used the word, "certain", to limit the number of the Korean claimants at issue but the whole Korean claimants (over 1,800 claimants) are at issue.

Other than the issue of the interpretation of the phrase of "All Allowed Claims" and "otherwise finally resolved" in the Section 2.01(c)(i) of the Funding Payment Agreement, the Korean claimants raised the issues in the District Court; (i) The Claims Administrator requested the AOR of the Korean claimants to update the addresses of the AOR's clients even after the Closing Order 5 was enforced so it is the strong evidence that the Korean claims were not otherwise finally resolved by the Settlement Facility; (ii) The other phrase in Section 2.01(c)(i) of Funding Payment Agreement, "no *new* timely Claims have been made against the Settlement Facility for two consecutive Funding Periods", was not met because the certain[5] Korean claimants filed *new* claims with the Settlement Facility during the year of 2022.

The Korean claimants filed Cross Motion for Payments in Default.[6] The Payments in Default include the Premium Payments, Claims Approved but not paid without any notice by the Settlement Facility, and Claims Filed but not processed without reasonable basis by the Settlement Facility. The District Court ruled that this renewed request for payment of Claims were previously denied by the Settlement Facility based upon the previous Orders and the ruling of the Sixth Circuit.

The issue in this appeal is whether the Settlement Facility is not obliged to pay the Korean claimants for the Claims which have been approved any longer,

[5] This category of the Korean claimants was 405 claimants.
[6] The amount was provided with Cross Motion and EXHIBIT B.

whatever forms of non-payments were involved in, and is able to terminate the funding and to terminate the Settlement Facility by March 31, 2025 without paying to the Korean claimants.[7]

IV. STATEMENT OF CASE

Dow Corning Corporation, the Debtor's Representatives and the Finance Committee ("the Movants" or "the Appellees") filed 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 Fund Distribution Agreement with the District Court on November 15, 2024. (RE.1796 Page ID#:42200-42633)

In this Motion, the Movants asserted that the FPA provides that Dow Corning's obligation to fund up to the amount of the applicable Annual Payment Ceiling shall continue until the earlier of (i) the date when all Allowed Claims in each of Classes 5 through 19 and all other obligations of the Settlement Facility and the Litigation Facility have been paid, all Claims filed have been liquidated and paid or otherwise finally resolved, and no new timely Claims have been

[7] If this Court affirms the District Court's Oder denying the Korean claimants' Motion ("Cross Motion") for Payments just as Case No.24-1653, the Korean claimants will seek a resolution in Korean Courts and will immediately file suits to collect payments of unpaid Korean Claims (US6,054,350 dollars), which either were approved or were denied processing review, against Dow Silicones Corporation doing business in Korea prosperously, with the Korean Courts.

made against the Settlement Facility or the Litigation Facility for two consecutive Funding Periods; or (ii) the payment of all amounts required by this Agreement." (FPA at Section 2.01(c))

The Movants alleged that the Claims Administrator, the FC, the DRs, the CAC, the Financial Adviser, and the Independent Assessor have all conducted extensive due diligence and their findings demonstrate conclusively that these conditions have been satisfied.[8] The Movants further alleged that the Settlement Facility has processed all timely-filed claims and issued final payments for all Allowed claims and the Financial Adviser has confirmed that all funding payments required of the Reorganized Debtor under the Plan and pursuant to the funding procedures adopted by the Finance Committee have been made timely and that there are no outstanding requests or need for funding payments if the wind down period is completed by the end of March 2025.

By taking the first part of the Clause, the Movants alleged that (A) all Allowed Claims in Classes 5 through 10 have been paid or otherwise resolved, and no new timely claims have been made, (B) all Allowed Claims in Classes

[8] The Movants asserted that these conditions (FPA Section 2.01(c)) have been satisfied. But the Movants did not assert that FPA Section 2.01(c)(ii), "the payment of all amounts required by this Agreement", has been satisfied. All amounts required by the FPA are 2.35 billion dollars. However, the Debtor funded 1.89 billion dollars only. If the District Court's Order is affirmed, the Debtor would earn 460 million dollars, the difference of the amount required by the FPA and the amount funded by the Debtor. A part of 460 million dollars that the Debtor saves through this Order is the Korean claimants' money. It is extortion from the Korean claimants.

11 through 19 have been paid, all claims have been liquidated and paid or otherwise resolved, and (C) all other obligations of the Settlement Facility and Litigation Facility have been paid. The Appellees further alleged that the Settlement Facility should be terminated pursuant to Section 10.03 of the SFA since the SFA provides that the "Settlement Facility and Trust shall terminate as soon as practicable after the Reorganized Dow Corning's obligation to fund under the FPA is terminated in accordance with Section 2.01(c) of FPA." (SFA at Section 10.03(a))

Against the Motion, the Korean claimants filed Cross Motion to Deny 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 Fund Distribution Agreement and for Order to Make Payments in Default to Korean Claimants on November 27, 2024. (RE.1802 Page ID:#42641-42727)

Despite the Movants alleged that all Allowed Claims in Classes 5 through 10 have been paid or otherwise resolved and no new timely claims have been made, neither were the Korean claims (Class 6.2 and Class 6.1) paid nor were otherwise finally resolved. The Settlement Facility is in default of US 6,064,350 dollars on the record. The Korean claimants filed Cross Motion for the Payments in Default.

The Korean claimants asserted that the Korean claims have not been

otherwise finally resolved. The AOR of the Korean claimants sent emails/letters (meaning "the Demand of Payments") to both the Claims Administrator and the Settlement Facility even in October 2024. The Korean claimants further asserted that the phrase, "No new timely claims have been made against the Settlement Facility for two consecutive funding periods", has not been satisfied because many timely-claims were made against the Settlement Facility in the year of 2022.

On the other hand, surprisingly,[9] the Claimants' Advisory Committee filed Response of the Claimants' Advisory Committee to the 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 Fund Distribution Agreement on December 6, 2024. (RE.1806 Page ID:#42738-42743)

[9] The Claimants' Advisory Committee has never worked to resolve the Korean Claims pending the Settlement Facility although the Claimants' Advisory Committee represents the claimants including the Korean claimants. The Claimants' Advisory Committee always stood on the side of the Claims administrator/the Settlement Facility over two decades. This Court ruled in Case No. 24-1653 that each Order was entered by agreement of the Debtor's Representatives and the Claimants Advisory Committee—the latter of whom represents the interests of all personal injury claimants, including the Korean Claimants (*See* page 6 of the Judgment). In return for selling the Korean claimants through Closing Orders 2,3&5, the Claimants' Advisory Committee is asking for price in the Response to this Motion. The Korean claimants were surprised by the Claimants' Advisory Committee's filing of the Response to object this Motion.

The Claimants' Advisory Committee asserted that the Korean appeal[10] has not been finally resolved so that the Korean claims have not been "finally resolved" as required by Section 2.01(c) of FPA and granting the Motion to Terminate before the appeal has been finally resolved would place the risk of having inadequate funds to pay these claims on the Settlement Trust. The Claimants' Advisory Committee suggested in the Response that the Appellees wait for resolution of the pending appeal since the appeal in Case No.24-1653 is fully briefed and will be likely be issued in months, not years[11] and, alternatively, suggested that by way of the phrase, "the payment of all amounts required by this Agreement", the Debtor fund the Settlement Trust in an amount equal to the amount potentially payable to the Korean claims.

Apparently, the Claimants' Advisory Committee asserted that there is a pending issue concerning the CAC's "reasonable rate" as stated by the District Court in the Order.[12]

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[10] Case No. 24-1653

[11] This Court issued Judgment on Case No.24-1653 on February 13, 2025. From the AOR's experiences before this Court, this Court issued its Judgment in five to six months. This one was issued in less than one and half months. A quick ruling by this Court favors the Debtor.

[12] It was found from hearing of Nov.11, 2024 that the Claimants'Advisory Committee demanded the Appellees multi-million dollars by re-calculating with reasonable rates for the services already paid. It was argued by the Movants that the Claimants' Advisory Committee has been paid multi-million dollars for the services from 2004 to 2019, which is 26 percent of the entire staffs budget of the Settlement Facility. The District Court even suggests in the Order that the Movants and the Claimants' Advisory Committee agree for reasonable rates. It is the prize that the Claimants'Advisory Committee contributed to saving 460 million dollars for the Debtor. A part of 460 million dollars is the money of the

The Appellees filed Reply and Response of Dow Silicones Corporation, The Debtor's Representatives and the Finance Committee 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 Fund Distribution Agreement and For Order to Make Payments in Default to Korean Claimants on December 9, 2024. (RE.1807 Page ID:#42744-42773)

The Appellees alleged that the Plan requirements for termination have been met although the Korean claims have not been paid, and the Korean claims are not Allowed claims so the Korean claims have been otherwise finally resolved through incontrovertible declaration testimony that all settlement claims in Classes 5 to 19 have been finally resolved. The Appellees further alleged that to resolve means "to determine or decide", and a final resolution would be any determination or decision that concludes the claim as provided for within the operative framework, and with respect to claims submitted for a settlement payment under the SFA, final resolution means that the Settlement Facility has determined either that the Claim is Allowed or that the Claim cannot be Allowed, and the decision of the Settlement Facility is final and binding and there is no right to appeal that decision to any court, and term, "finally resolved" as used in the FPA, must be interpreted in the context of this prohibition.

Korean claimants. The Claimants' Advisory Committee sold the rights of the claimants including the Korean claimants to the Debtor. The Motion and the Claimants'Advisory Committee's Response were all about the transactions between the Debtor and the Claimants' Advisory Committee.

The Appellees concluded in the Reply that the Korean claims were denied by the Settlement Facility so the Korean claims were not Allowed and were otherwise finally resolved.

In addition, the Appellees alleged that the Korean claimants' ongoing litigation and objections cannot be used to abrogate the termination provision of the Plan since the subject claims are ineligible and barred by the terms of the Plan and the decisions of the District Court and the Sixth Circuit, and although the Korean claimants list 1,884 claims in the Cross Motion for Payment in Default, the Claims Administrator has provided through the Declaration that more than 73 percent of those claims were closed pursuant to Closing Order 5 and slightly more than 21 percent of the claims listed in the Cross Motion were late-filed claims that the Settlement Facility rejected under the terms of the Plan and the remaining claims on the list were either paid or were denied for fraud.[13]

The Appellees alleged in the Reply that the Korean claimants' argument that somehow they submitted "new" claims after the final deadline which prohibits termination is nonsensical and the Korean claimants are not entitled to any payments and their demand for payment of $6,064,350 must be rejected.

[13] The Movants used the term, "fraud", to portrait the Korean claims whenever the Korean claimants filed Motion regarding the unpaid claims. However, the Appellees have been fraudulent to evade from payment obligations to the Korean claimants. In particular, the Claims Administrator has lied so many times in Declarations which were submitted to the District Court. The Settlement Facility even concealed the documents of returned mailings regarding the Korean claimants' addresses update.

The Appellees filed Reply of Dow Silicones Corporation, the Debtor's Representatives and the Finance Committee to the Response of the Claimants' Advisory Committee to the 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 Fund Distribution Agreement on December 9, 2024. (RE.1809 Page ID:#42777-42797)

The Korean claimants filed Reply of the Korean Claimants to Response of Dow Silicones Corporation, the Debtor's Representatives and the Finance Committee to the Korean Claimants' Cross Motion to Deny 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 Fund Distribution Agreement and For Order to Make Payments in Default to Korean Claimants on December 10, 2024. (RE.1812 Page ID:#42814-42823), one day before oral hearing.

The Motion hearing was held on December 11, 2024.[14]

After the hearing, the Claimants' Advisory Committee filed Exhibit 1 (Sur-Reply in Response of the Claimants' Advisory Committee to the Reply of Dow Silicones Corporation, the Debtor's Representatives and the Finance Committee to the Response of the Claimants' Advisory Committee to the Motion to Terminate Funding Pursuant to Section 2.01(c) of the Funding Payment

[14] The transcript was filed in order.

Agreement and to Terminate the Settlement Facility Pursuant to Section 10.03 of the Settlement Facility Fund Distribution Agreement) on December 18, 2024. (RE.1814-1 Page ID:#42829-42842)

The Appellees filed Motion to File Certain Material Under Seal on December 21, 2024. (RE.1815 Page ID:#42895-42921)

The Appellees filed Redacted Version of Document (Reply of Dow Silicones Corporation, the Debtor's Representatives and the Finance Committee to the Response of the Claimants' Advisory Committee to the 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 Fund Distribution Agreement) to be Sealed on December 21, 2024. (RE.1817 Page ID:#42940-42955)

The Appellees filed Motion to Strike, Withdraw, or Otherwise Remove Docketed Reply to Response (ECF NO.1809). (RE.1818 Page ID:#42964-42966)

The Korean claimants filed Motion to Strike, Withdraw, or Otherwise Remove Docketed Reply to Response (ECF No.1811) on December 22, 2024. (RE.1819 Page ID:#42967-42969)

The District Court issued Order Granting Motion for Leave to File Sur-

Reply in Further Response of the Claimants' Advisory Committee to the Reply of Dow Silicones Corporation, the Debtor's Representatives and the Finance Committee to the Response of the Claimants' Advisory Committee to the 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 Fund Distribution Agreement on December 23, 2024. (RE.1820 Page ID:#42970-42971)

The District Court issued Order Granting Motion to Strike, Withdraw, or Otherwise Remove Docketed Reply to Response (ECF NO.1809) on December 23, 2024. (RE.1821 Page ID:#42972)

The District Court issued Order Granting Motion to File Certain Material Under Seal on December 23, 2024. (RE.1822 Page ID:#42973-42974)

The District Court issued Order Granting Motion to Withdraw Reply (ECF NO.1811) on December 23, 2024. (RE.1823 Page ID:#42975)

The Claimants' Advisory Committee filed Sur-Reply in Response of the Claimants' Advisory Committee to the Reply of Dow Silicones Corporation, the Debtor's Representatives and the Finance Committee to the Response of the Claimants' Advisory Committee to the 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 Fund

Distribution Agreement on December 23, 2024. (RE.1824 Page ID:#42976-43039)

The Appellees filed Exhibit 1 (Proposed Findings and Conclusions Regarding and 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 Fund Distribution Agreement) on December 24, 2024. (RE.1825-1 Page ID:#43043-43051)

The District Court issued 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 Fund Distribution Agreement (ECF NO.1796) on December 31, 2024. (RE.1827 Page ID:#43072-43095)

The District Court issued Order Granting Motion for Leave to File Sur-Sur-Reply of Dow Silicones Corporation, the Debtor's Representatives and the Finance Committee in Response to The Sur-Reply of the Claimants' Advisory Committee to the Reply of Dow Silicones Corporation, the Debtor's Representatives and the Finance Committee to the Response of the Claimants' Advisory Committee to the 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 Fund Distribution

Agreement (ECF No.1826) on December 30, 2024. (RE.1828 Page ID:#43096-43097)

The Appellees filed Sur-Sur-Reply of Dow Silicones Corporation, the Debtor's Representatives and the Finance Committee to the Sur-Reply of the Claimants' Advisory Committee to the Reply of Dow Silicones Corporation, the Debtor's Representatives and the Finance Committee to the 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 Fund Distribution Agreement on December 30, 2024. (RE.1829 Page ID:#43098-43110)

The Korean Claimants filed Notice of Appeal to 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 Fund Distribution Agreement (ECF No.1796) on January 1, 2025. (RE.1830 Page ID#:43111-43113)

V. SUMMARY OF ARGUMENT

Although the District Court interpreted Section 2.03(c) of the Funding Payment Agreement unambiguous, the Clauses, Section 2.03(c) of the Funding Payment Agreement and Section 10.03 of the Settlement Facility and Fund Distribution Agreement, are ambiguous in that the terms of "Allowed Claims"

and "Otherwise Finally Resolved" are not clear and can be capable of being interpreted more than one meaning.

Therefore extrinsic evidences to interpret the Clauses must be considered to find the intent of the parties where the Korean Claims were not finally resolved.

Extrinsic evidences such as the testimony and the statements of the Claims administrator, the correspondences between the Korean claimants and the Settlement Facility and the Claimants' Advisory Committee's Response to the Motion and its opinions shall be considered to interpret the Clauses in the FPA and SFA.

The District Court did not interpret the Clauses correctly by assuming that the Clauses are unambiguous, and the Korean claimants cannot appeal to the Court from the decisions of the Claims Administrator and thus the Korean Claims were finally resolved since the Korean claimants' Claims were not paid or liquidated.

Since the District Court Granted Motion to Terminate Funding and to Terminate the Settlement Facility, whether the Order Granting the Motion accords with a correct interpretation of contract is the issue and the Korean claimants argue that it does not. The Korean claimants argue that the conditions of Section 2.03(c) of the FPA and Section 10.03 of the SFA were not met.

The argument of the Korean claimants as to contract interpretation is related to Cross Motion for Payments because the Korean claimants demand the payment for the Claims which have been approved. On the contrary, the Appellees asserted that the Korean Claims were finally resolved by the language of the Plan.

VI. ARGUMENTS

A. The Term of "Allowed Claim" in Section 2.01(c) of the Funding Payment Agreement is Ambiguous

The Standard of review for this argument is an abuse of discretion. The District Court misinterpreted the Clauses in the contract (the Plan documents) so that the District Court abused its discretion.

Section 2.01(c) of the Funding Payment Agreement provides that the Debtor's

> obligation to fund up to the amount of the applicable Annual Payment Ceiling shall continue until the *earlier* of (i) the date when all Allowed Claims in each of Classes 5 through 19 and all other obligations of the Settlement Facility and the Litigation Facility have been paid, all Claims filed have been liquidated and paid *or otherwise finally resolved*, and not new timely Claims have been made against the Settlement Facility or the Litigation Facility for two consecutive Funding Periods; or (ii) the payment of all amounts required by this Agreement.(Emphasis made in italic letters)

Section 10.03 of the Settlement Facility and Fund Distribution Agreement provides that the SF-DCT,

> shall terminate as soon as possible after the Reorganized Dow Corning's obligation to fund under the Funding Payment Agreement is terminated in accordance with Section 2.01(c) of the Funding Payment Agreement. The Claims Administrator will use his or her best efforts to substantially complete and termination the Settlement Facility and Trust within sixty (60) days after such termination of the Funding Payment Agreement. The Claims Administrator shall seek an order from the District Court confirming that it is appropriate to terminate the Settlement Facility.

As far as the Korean claimants are concerned, the phrase in Section 2.01(c) of the FPA, "all Allowed Claims have been paid, all Claims filed have been liquidated and paid or otherwise finally resolved", is ambiguous. Therefore the conditions for terminating funding under the SFA and for terminating the Settlement Facility were not met.

Nevertheless, the District Court ruled that although the certain Korean Claims have not been paid or liquidated, the Claims Administrator denied the Korean Claims, the denial of the Claims Administrator is binding and final, and therefore all Allowed Claims have been otherwise finally resolved.

As shown in EXHIBIT B (Declaration of Yeon-Ho Kim), the Korean Claims in an amount of US6,064,350 dollars have not been paid or liquidated.

The category of the amount which has not been paid[15] is: (i) the premium payments (US1,131,250 dollars of Exhibit 1 of EXHIBIT B); (ii) the unpaid

[15] The Korean claimants asserted in Cross Motion that the amount was in default.

base payments which were processed in 2015 to 2016 (US489,500 dollars of Exhibit 1 of EXHIBIT B); (iii) the unpaid base plus premium payments which were filed in 2019 and already processed (US1,527,600 dollars of Exhibit 2 of EXHIBIT B); and (iv) the unpaid base plus premium payments which were filed but have not been processed (US2,916,000 dollars of Exhibit 3 of EXHIBIT B).[16] (RE.1802-3 Page ID:#42676-42717)

The Korean claimants would like to point out the term of "Allowed" and the term of "otherwise finally resolved" not clear in the meaning so that they are ambiguous.

In this regard, the District Court assumed that the phrase is unambiguous. The District Court opined that the court is to give effect to the intent of the contracting parties as revealed by the language they chose.

On the contrary, the phrase is ambiguous.

""In interpreting a confirmed plan, courts use contract principles since the plan is effectively a new contract between the debtor and its creditors. *See Hills*

[16] The Appellees even analyzed the Korean claimants' Cross Motion that the Korean claimants list 1,884 claims in Cross Motion for Payments in Default and the Claims Administrator has provided through the Declaration that more than 73 percent of those claims were closed pursuant to Closing Order 5 and slightly more than 21 percent of the claims listed in the Cross Motion were late-filed claims that the Settlement Facility rejected under the terms of the Plan and the remaining claims on the list were either paid or were denied for fraud.

Motors, Inc. v. Hawaii Auto. Dealers' Ass'n. 997 F.2d 581, 588 (9th Cir. 1993). State law governs those interpretations, and under long-settled contract law principles, if a plan is unambiguous, it is to be enforced as written, regardless of whether it is in line with parties' prior obligations. *See id*; *see also Breed v. Ins. Co. of N. Am.* 46 N.Y.2d 351, 413 N.Y.S.2d 352, 385 N.E.2d 1280, 1282 (N.Y.1978). A term is deemed ambiguous when it is "capable of more than on reasonable interpretation." *Miller v. United States*, 363 F.3d 999, 1004 (9th Cir. 2004)"" *In re Dow Corning Corp.*, 456 F.3d 688 (6th Cir. July 26, 2006) *7

""A basic principle of contractual interpretation is that "[a] term is deemed ambiguous when it is capable of more than one reasonable interpretation" *In re Eagle-Picher Indus., Inc.*, 447 F.3d 461,463 (6th Cir. 2006). Our court is reasonably well-equipped to determine whether a plan provision is ambiguous-we construe contracts all the time."" *In re Settlement Facility Dow Corning Trust*, 628 F.3d 769 (6th Cir. Dec.17, 2010) *3

"A definition that contains the defined term within it is very likely to be ambiguous." *Id*. *4

First, both the FPA and the SFA lack any definition clause regarding "Allowed Claims" and "Otherwise Finally Resolved". By lacking a definition clause, the terms are neither clear nor unambiguous. It has to be interpreted unfavorably to a party of the FPA and the SFA, the Appellees.

Second, the term of "Allowed Claims" involves two meanings: (i) the Claims[17] which were processed and approved [so called claim-approved level]; (ii) the Claims which have been approved but held on payment [so called payment-approved level].

When a claimant filed the Claim with the Settlement Facility, the claimant was required to select which claim was applied. If she experienced the rupture of her implant, she was able to file the rupture claim by providing evidence that her implant was ruptured. If she wanted to file the explant claim, she was able to file the explant claim by a medical record that she was conducted the surgery of explantation. If she experienced the symptoms for the disease claim, she was able to file the disease claim with diagnosis of a qualified doctor proving that she had such symptoms. Each Claim was reviewed and examined by the Settlement Facility. If the Settlement Facility found a deficiency, the claimant was requested to submit additional evidence for approval of the Claim. When the Settlement Facility was satisfied with the evidence provided by the claimant, the Settlement Facility notified that the Claim was approved. At this stage of processing a Claim, the Settlement Facility called the claim "Allowed Claim". If a Claim became "Allowed Claim", the Settlement Facility sent an award letter and a check for approved payment to the claimant. The Settlement Facility did so until the address update and confirmation requirement came into play in March 2019 by Closing Order 2.

[17] The claimants can file the rupture claim, and/or the explant claim, and/or the disease claim.

The District Court issued Closing Order 2 on March 19, 2019. Closing Order 2, which was stipulated by the Appellees and the Claimants' Advisory Committee, included the address update and confirmation requirement. The District Court issued Closing Order 3 and Closing Order 5 to implement Closing Order 2 with respect to the address update and confirmation requirement. After those Closing Orders came into play, the Settlement Facility did not pay even for the approved Claims, previously "Allowed Claims", to the claimants. The settlement Facility, from 2019, requested the (Korean) claimants to update their addresses and to receive confirmation from the Settlement Facility. Even if the Claim of a claimant was approved with the medical records which were submitted to the Settlement Facility, the Claim was not paid and had to meet the additional requirement, the address update and confirmation requirement, from March 2019. Even if a Claim was "Allowed Claim" before because the Claim passed the review and examination by the Settlement Facility and was finally approved, the Claim was not "Allowed Claim" any longer.

Therefore the term of "Allowed Claim" by the claimants, the AORs, and the Settlement Facility as well had been used for the approved Claim, not for payment after approval. The Settlement Facility may have used the term of "Allowed Claim" only for the Claim that have been both approved and have been confirmed the claimant's address based on Closing Order 2. However, the unanimous usage of the term of "Allowed Claim" was for the Claim which has been approved only.

Furthermore, when the Fund Payment Agreement including Section 2.03(c) was in force in 2004, there was no address update and confirmation requirement included in Closing Order 2. Therefore there was no possibility that the term of "Allowed Claim" in Section 2.03(c) incorporated the address update and confirmation requirement which was the main reason that the Claims Administrator denied payments to the Korean claimants.

To sum up, the term of "Allowed Claims" is capable of more than one reasonable interpretation. It can be the Claim which has been approved or the Claim which has been approved but its payment is on hold due to the address update and confirmation requirement. The Settlement Facility used the term either way in convenience. However, the Appellees use, for the Motion, the term as "Allowed Claim" is the Claim which has been approved and also the claimants' address has been updated and confirmed by the Settlement Facility. It is inconsistent. Therefore the term of "Allowed Claims" in Section 2.03(c) of the Funding Payment Agreement is ambiguous although the District Court ruled that Section 2.03(c) is unambiguous.

B. The Term of "Otherwise Finally Resolved" in Section 2.01(c) of the Funding Payment Agreement is Ambiguous

The Standard of review for this argument is an abuse of discretion. The District Court misinterpreted the Clause in contract, Section 2.03(c) of the Funding Payment Agreement, so that the District Court abused its discretion.

As shown in EXHIBIT B (Declaration of Yeon-Ho Kim), the Korean Claims in an amount of US6,064,350 dollars have not been paid or liquidated. The category of the amount which has not been paid is: (i) the premium payments (US1,131,250 dollars of Exhibit 1 of EXHIBIT B); (ii) the unpaid base payments which were processed in 2015 to 2016 (US489,500 dollars of Exhibit 1 of EXHIBIT B); (iii) the unpaid base plus premium payments which were filed in 2019 and has been already processed (US1,527,600 dollars of Exhibit 2 of EXHIBIT B); and (iv) the unpaid base plus premium payments for which Claims were filed but have not been processed (US2,916,000 dollars of Exhibit 3 of EXHIBIT B). (RE.1802-3 Page ID:#42676-42717)

The District Court ruled that the Claims Administrator denied the Korean Claims, the denial of the Claims Administrator is final and binding, and therefore all Allowed Claims have been "otherwise finally resolved". The District Court further ruled, against the Claimants' Advisory Committee's argument that the Korean claimants' Appeal[18], that the current appeal by the Korean claimants involves Closing Order 5,[19] which provided that the Claims Administrator close Claims where the claimants failed to update addresses, and the current appeal by the Korean claimants does not change the Plan documents' language that there is no right to appeal a denial by the Claims Administrator,

[18] Case No.24-1653. This Court issued Judgment on February 13, 2025.

[19] This statement of the District Court in the Order is an exaggeration. The Claims Administrator has provided testimony that not 100 percent of the Korean Claims but more than 73 percent of those claims was closed pursuant to Closing Order 5.

and the Claims Administrator' denial of the Korean claimants' Claims meets the criteria under the FPA that the Claims are "otherwise finally resolved" since the Korean claimants' Claims currently before the Court were not liquidated or paid.

To simply put, the District Court's ruling is that since the Claims Administrator denied the Korean Claims on the basis that the Korean claimants failed to update their addresses, the Korean Claims were otherwise finally resolved.

The District Court indicated in the Order that the term of "otherwise finally resolved" in Section 2.03(c) of the FPA is unambiguous in that the denial of the Claims Administrator is final and binding on the Korean claimants by the language of the Plan documents. (*See* Order pages 8-10)

On the contrary, the term of "otherwise finally resolved" is ambiguous.

New York law governs the interpretation of the Plan. (Section 6.13 of the Plan)

""A contract should be read as a whole, and every part will be interpreted with reference to the whole; and if possible it will be so interpreted as to give effect to its general purpose." (*Beal Sav. Bank v. Sommer*, 8 N.Y.3d 318, 324-325, 834 N.Y.S.2d 44, 865 N.E.2d 1210 [2007]"" *Ficel Transport, Inc. v. State*, 209 A.D.3d 1153 (October 20, 2022) *3

"A contract is unambiguous if the language it uses has "a definite and precise meaning, unattended by danger of misconception in the purport of the agreement itself, and concerning which there is no reasonable basis for a difference of opinion."" *Id*.

""Conversely, "[a] contract is ambiguous if the provisions in controversy are reasonably or fairly susceptible of different interpretations or may have two or more different meaning" *New York City Off-Track Betting Corp. v. Safe Factory Outlet, Inc.*, 28 A.D.3d 175,177, 809 N.Y.S.2d 70, 73. "The existence of ambiguity is determined by examining the 'entire contract and considering the relation of the parties and the circumstances under which it was executed,' with the wording to be considered "in the light of obligation as a whole and the intention of the parties as manifested thereby."' *Kass v. Kass*, 91 N.Y.2d 554, 566, 673 N.Y.S.2d 350, 356-57, 696 N.E.2d 174, 181 (1998)" *South Road Associates, LLC v. Intern. Business Machines Corp*., 4 N.Y.3d 272 (March 29, 2005) *5

First, "Resolve" is "*solve* or *end a problem or difficulty*." (See https://dictionary.cambridge.org) Pursuant to definition of the word of "Resolve", it has to be "*solve*" or "*end a problem*". However, the Settlement Facility failed to solve in the context of the Korean claims. The Claims Administrator simply denied the Korean claims. Plus the Korean claimants did not end a problem, which is nonpayment of the SFDCT-approved claims. The Korean claimants will continue fighting to "end the problem." The Korean

claimants appealed from the District Court's Order, pending before the Sixth Circuit. Therefore the District Court's interpretation of the phrase, "otherwise finally resolved", is inconsistent with the interpretation of the Cambridge Dictionary.

Second, the District Court's finding that the Korean Claims were "otherwise finally resolved" is inconsistent with the facts as to the Korean Claims which were not paid: (a) The District Court stated in the Order that the current appeal by the Korean claimants[20] involves Closing Order 5, which provided that the Claims Administrator close Clams where the claimants failed to update addresses. However, the Appeal also involves other Orders, Closing Order 2 & Closing Order 3; (b) In addition, the unpaid base payments which were processed in 2015 to 2016 (US489,500 dollars of Exhibit 1 of Exhibit B of Declaration of Yeon-Ho Kim, an issue of the Korean claimants' Cross Motion) have nothing to do with the Closing Order 5. This category of non-payment was that the Settlement Facility failed to pay even though it approved the claims in amount of US489,500 dollars in 2015 to 2016; (c) As admitted by the Appellees, the Korean claims (1,844 claims), which were not resolved so to speak, only take part in 73 percent of the claims in conjunction with Closing Order 5. The other Korean claims have nothing to do with Closing Order 5;[21] and (d) The Korean claimants list 1,884 claims in the Cross Motion for Payment in Default.

[20] Case No. 24-1653

[21] The Claims Administrator has provided through the Declaration that more than 73 percent of those claims were closed pursuant to Closing Order 5.

The Claims Administrator has provided through the Declaration that more than 73 percent of those claims were closed pursuant to Closing Order 5 and slightly more than 21 percent of the claims listed in the Cross Motion were late-filed claims that the Settlement Facility rejected. However, the remaining Claims on the list, which are the majority of the claimants' Claims of US489,500 dollars (Exhibit 1 of Exhibit B of Declaration of Yeon-Ho Kim), were neither the Claims which was closed pursuant to Closing Order 5 nor the Claims which were rejected as late-filed.

To sum up, the term of "otherwise finally resolved" is capable of more than one reasonable interpretation and may have two or more different meaning. As such as the District Court's interpretation, the term of "finally resolved" can mean the denial of the Claims Administrator. Or it can mean the decision of the Sixth Circuit. The District Court emphasized that the Court has no authority to change the language in the Plan that the decision of the Claims Administrator is final and binding on the claimants. Therefore the term of "otherwise finally resolved" in Section 2.03(c) of the Funding Payment Agreement is ambiguous

C. The Extrinsic Evidences Not Permitting Termination of Funding and Termination of the Settlement Facility

The Standard of review for this argument is an abuse of discretion. The District Court was incorrect in finding of facts.

"Extrinsic evidence and parol evidence of the parties' intent may not be

admitted to create ambiguity on its face, and such evidence may be considered where a contract is determined to be ambiguous (*see Brad H. v. City of New York*, 17 N.Y.3d 185-186, 928 N.Y.S.2d 221, 951 N.E.2d 743; *W.W.W. Assoc. v. Giancontieri*, 77 N.Y.2d 163, 565 N.Y.S.2d 440, 443, 566 N.E.2d 639; *Scotto v. Georgoulis*, 89 A.D.3d 718, 932 N.Y.S.2d 120)." *NRT New York, LLC v. Harding*, 131 A.D.3d 952 (Sept.2, 2015) *3

"Extrinsic evidence of the parties' intent may be considered only if the agreement is ambiguous, which is an issue of law for the courts to decide (*see W.W.W. Assoc. v. Giancontieri, supra* at 162, 565 N.Y.S.2d 440, 566 N.E.2d 639)" *Greenfield v. Philles Records, Inc.*, 98 N.Y.2d 562 (Oct.17, 2002) *4

Since the Clause of Section 2.03(c) of the Funding Payment Agreement is ambiguous in the terms of both "Allowed Claims" and "otherwise finally resolved", extrinsic evidence should be considered to determine whether the conditions to terminate funding under the FPA and to termination the Settlement Facility were met although the Korean Claims have not been paid or have not been liquidated.

To find that the Korean Claims have been finally resolved, the District Court primarily relied on the declaration of the Claims administrator. The Claims Administrator testified in the declaration and the District Court copied the testimony to the Order as follows;

> 7. I have reviewed the Settlement Facility records and I can confirm, based on those records, that (1) all Allowed Claims in each of Classes 5 through 10 and all other obligations of the Settlement Facility have been paid (2) all Claims filed have been liquidated and paid or otherwise finally resolved (3) no new timely Claims have been made against the Settlement Facility since June 3, 2019 - which was the final deadline for submission of Disease Claims.
>
> 8. I, along with various staff and consultants, and in conjunction with Independent Assessor, conducted a due diligence process for the purpose of assuring that all timely claims in Classes 5, 6, 6.1, 6.2, 7, 9, 10, 10,1 and 10.2 have been processed and have received a notification of status letter as required by the SFA.

First of all, the statement of the Claims Administrator that *all Allowed Claims* regarding Classes 6.1 and 6.2 have been *otherwise finally resolved* is a lie. The Korean Claims, which have not been paid or liquidated, have not been otherwise finally resolved. The Claims Administrator responded and committed to the AOR of the Korean claimants that the Settlement Facility waits for the decision of the Sixth Circuit when the AOR inquired what was happening regarding the Korean Claims.

Second, the statement of the Claims Administrator that no *new* timely Claims have been made against the Settlement Facility since June 3, 2019 is a lie: (i) The AOR of the Korean claimants have been demanding the payments of Allowed Claims ("the SF-DCT's approved-Claims") many times by writing emails and by sending the Fedex letters (meaning "the Demand of Payments") to both the Claims Administrator and the Settlement Facility. The AOR even sent *the demand of payments letter* in October 2024; (ii) New Korean Claims

(the POM and the disease claims) including a Claim attached as Exhibit A of Yeon-Ho Kim Declaration[22] was filed on December 20, 2021 and following the filing, the SF-DCT requested for address update on April 25, 2022. The SF-DCT requested address update on June 13, 2022 again. In accordance with the SF-DCT's request, the Korean claimants filed address update on September 6, 2022. And then, the Korean claimants filed the copy of ID card on November 22, 2022 (*See* EXHIBIT A of Yeon-Ho Kim Declaration). From this example, a new timely claim was made against the SF-DCT in the year of 2022. If the Korean claim were not a new timely claim, the SF-DCT would not have requested for address update. Therefore the statement of the Claims Administrator that no new timely Claims have been made against the Settlement Facility since June 3, 2019 is a lie.

Finally, apart from the above testimony copied by the District Court, the Claims Administrator provided other lies in the Declaration.: (i) The Claims Administrator stated (*See* 8.a.2) that with respect to Exhibit 1 of Exhibit B of

[22] The District Court ruled that the Korean Claimants' Claims are not "new" because the Claims were previously denied and that the request for updated addresses does not make the Korean Claimants' Claims "new Claims" since the request for updated addresses was ordered by the Court in Closing Order 2 on March 19, 2019 (RE1827 Page ID#:43083). This finding of fact and the interpretation of the District Court is obviously incorrect. (See EXHIBIT A of Yeon-Ho Kim Declaration. RE1802-2 Page ID#:42651-42669) First, this Claim of a particular Korean claimant (the POM and the disease claim) was filed on December 20, 2021 for the first time. The Claim was not previously denied. It was even filed after the deadline of June 3, 2019. Second, the Settlement Facility requested address update on April 26 and June13, 2022 although the Claim was filed after the deadline. The reason for this was that the Claim was "new" Claim. It cannot be an administrative mistake by the Settlement Facility.

Yeon-Ho Kim Declaration, she found that 38 claimants were reviewed and determined to contain fraudulent records. The AOR eliminated the claimants who received the notice of exclusion due to the POM deficiencies. It is a lie.; (ii) The Claims Administrator stated (*See* 8.a.4) that 2 claimants did not cure the POM deficiencies before the cure deadline expired. However, the POM deficiencies do not require the cure deadline. It is a lie.; (iii) The Claims Administrator stated (*See* 8.a.6) that 1 claimant is deceased and the claimant did not provided probate documents required by the rules of the Settlement Facility and, accordingly, the claim was closed. However, the AOR for the claimant did not provide the information of the deceased to the Settlement Facility. There was none of the Korean claimants whose family filed the death certificate with the Settlement Facility. It is a lie.; and (iv) The Claims Administrator stated (*See* 8.b.3) that with respect to Exhibit 2 of EXHIBIT B of Yeon-Ho Kim Declaration, she found that 2 were fully paid. However, the AOR of the Korean claimants eliminated the claimants who were fully paid. It is a lie. The Claims Administrator has been notorious not to be neutral/impartial and independent from the Appellees by submitting numerous Declarations to the Courts.

Based upon the lies above, the Claims Administrator even concluded that the total amount owed to the Korean claimants, US6,064,350 dollars, is clearly incorrect and therefore there are several inconsistencies in EXHIBIT B of Yeon-Ho Kim Declaration.

In addition, the Claimants' Advisory Committee, the party of the Funding

Payment Agreement, asserted that the Korean Claims have not been "finally resolved" as required by Section 2.01(c). The Claimants' Advisory Committee further added that the words "finally resolved" are subject to only one reasonable reading in this context: that the matter has been completely disposed of through settlement, payment, or a final, non-appealable order denying relief, and any other resolution would not be "final" and would still carry the possibility, however remote, of exposure for the Settlement Facility, and this is precisely the situation the FPA is designed to *avoid* - the possibility of liability for the Settlement Facility that Dow Corning would have no remaining obligation to satisfy (*See* RE1806 Page ID#:42739).

"The Fundamental, neutral precept of contract interpretation is that agreements are construed in accord with the parties' intent." *Donohue v. Cuomo*, 38 N.Y.3d 12, 164 N.Y.S.3d. 39, 184 N.E.3d 860 (2022)

The Claimants' Advisory Committee is one of the parties of the agreement, that is, the Funding Payment Agreement. During negotiations with the Dow Corning Corporation and the Debtor's Representatives, The Claimants' Advisory Committee's intent in the context of Section 2.03(c) of the Funding Payment Agreement was, "A[a]ny other resolution would not be final and would still carry the possibility, *however remote*, of exposure for the Settlement Facility, and this is precisely the situation the FPA is designed to *avoid*." The Claimants' Advisory Committee clearly indicated in its Response to the Motion that the Korean claimants' appeal to the Court, however absurd the AOR of the

Korean claimants may be, must not be final for the purpose of interpretation of Section 2.39(c) since the Settlement Facility can be exposed.

The Claimants' Advisory Committee's intent in the FPA should be respected in interpreting Section 2.03(c) because it is one of the parties of the agreement, particularly which represented the creditors against the debtor and the debtor's representatives.

To sum up, extrinsic evidences for interpretation of Section 2.03(c) of the Funding Payment Agreement do not favor the Appellees' Motion to Terminate the Funding in the FPA and to Terminate the Settlement Facility in the SFA. The testimony of the Claims Administrator in the Declaration that all Allowed Claims in each of Classes 5 through 10 have been paid and all Claims filed haven been liquidated and paid or otherwise finally resolved is not reliable because the Korean Claims have not been otherwise finally resolved, and the testimony of the Claims Administrator that no *new* timely Claims have been made against the Settlement Facility since June 3, 2019 is not true because the Settlement Facility received the filing of the Korean claims after the deadline and requested the Korean claimants to submit address update even in the year of 2022. The statements of the Claims Administrator in the Declaration are lies in concluding that the Korean Claims for the Cross Motion were inconsistent with the records of the Settlement Facility. Finally, the Claimants' Advisory Committee's intent as the Party of the FPA and the SFA for the purpose of interpreting Section 2.03(c) of the FPA has not been finally resolved should be

must be respected.[23] Therefore, to terminate funding in the FPA and to terminate the Settlement Facility in the SFA shall not be permitted because the conditions of Section 2.03(c) of FPA and Section 10.03 of the SFA were not met through contract interpretation based on extrinsic evidences.

D. Cross Motion of the Korean Claimants Must be Granted Before Termination of Funding and Termination of the Settlement Facility

The Standard of review for this argument is an abuse of discretion. The District Court misinterpreted the Clause of the FPA and misapplied the Orders and the Rulings of the Courts.

The District Court ruled in the Order that as to the Korean claimants' renewed request for payment of Claims which were previously denied, the Court will again deny this request based on its previous Orders and the Sixth Circuit's ruling on this issue.

As set forth above, the Appellees did not pay premium payments to nearly all of the Korean claimants (US1,131,250 dollars), base payments for approved claims for which were sent the award letter in 2014 to 2015 to the certain

[23] The Claimants' Advisory Committee proposed, alternatively, that if Dow Silicones Corporation funds the Settlement Trust (or places the amount in escrow with the Court) in an amount equal to the amount potentially payable to the Korean Claims, it would both assure that the Settlement Trust is adequately funded and allow for its future funding obligations to be terminated prior to the final resolution of the pending motions and appeal.

Korean claimants (US489,500 dollars), base payments plus premium payments for approved claims for which were filed on June 1, 2019 (US1,527,600 dollars), and base payments plus premium payments for the claims that the Settlement Facility failed to process based on the address update and confirmation requirement in conjunction with Closing Order 5 (US2,916,000 dollars). [US6,064,350 dollars in total]

These payments must have been made by the Settlement Facility. However, the Claims Administrator backed by Dow Silicones Corporation and the Debtor's Representatives denied payments based on her unacceptable decisions as to the Korean claimants' address update and discriminatory measures and bias against the Korean claimants. The Claims Administrator's dispositions on the Korean Claims have been systematic and relentless. To hide them, the Claims Administrator ignored the correspondences with the AOR of the Korean claimants and refused a meeting proposal in the office of the Settlement Facility. She told the AOR to contact her lawyer if the AOR wanted to tell something. The Settlement Facility even concealed the documents in relation to the Korean Claims.

The District Court did not address whether the Claims Administrator or the Settlement Facility acted on the Korean Claims reliably and fairly. The District Court did not execute the duty of supervision in the context of the Korean Claims. The District Court simply relied on the testimony and the statements in the Declarations of the Claims Administrator.

If the Appellees terminate funding in the FPA and terminate the Settlement Facility in the SFA, the Appellees must make the payments in default to the Korean claimants.

VII. CONCLUSION

For the foregoing reasons, the Korean Claimants request this Court to Overturn the District 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 (ECF No. 1796) issued on December 30, 2024, and the Korean Claimants further request this Court to Remand the Order and Instruct the District Court to issue an Order Granting the Korean claimants' Cross Motion to Make Payments in Default.

Date: February 18, 2025

Respectfully submitted,

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APPENDIX

RE.1796 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 Page ID:#42200-42633

RE.1802 Cross Motion to Deny 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 and for Order to Make Payments in Default to Korean Claimants Page ID:#42641-42727

RE.1806 Response of the Claimants' Advisory Committee to the 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 Page ID:#42738-42743

RE.1807 Reply and Response of Dow Silicones Corporation, the Debtor's Representatives and the Finance Committee to the Korean Claimants' Cross Motion to Deny 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 and for Order to Make Payments in Default to Korean Claimants

Page ID:#42744-42773

RE.1809 Reply of Dow Silicones Corporation, the Debtor's Representatives and the Finance Committee to the Response of the Claimants' Advisory Committee to the 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 Page ID:#42777-42797

RE.1802 Reply of the Korean Claimants to Response of Dow Silicones Corporation, the Debtor's Representatives and the Finance Committee to the Korean Claimants' Cross Motion to Deny 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 and for Order to Make Payments in Default to the Korean Claimants Page ID:#42814-42823

RE.1814-1 Sur-Reply in Response of the Claimants' Advisory Committee to the Reply of Dow Silicones Corporation, the Debtor's Representatives and the Finance Committee to the Response of the Claimants' Advisory Committee to the 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 Page ID:#42829-42842

RE.1815 Motion to File Certain Material Under Seal

Page ID:#42895-42921

RE.1817 Redacted Version of Document to be Sealed

Page ID:#42840-42955

RE.1818 Motion to Strike, Withdraw, or Otherwise Remove Docketed Reply to Response (ECF No.1809) Page ID:#42964-42966

RE.1819 Motion to Strike, Withdraw, or Otherwise Remove Docketed Reply to Response (ECF No.1811) Page ID:#42967-42969

RE.1820 Order Granting Motion for Leave to File Sur-Reply in Further Response of the Claimants' Advisory Committee to the Reply of Dow Silicones Corporation, the Debtor's Representatives and the Finance Committee to the Response of the Claimants' Advisory Committee to the 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

Page ID:#42970-42971

RE.1821 Order Granting Motion to Strike, Withdraw, or Otherwise Remove Docketed Reply to Response (ECF No.1809)

Page ID:#42972

RE.1822 Order Granting Motion to File Certain Material Under Seal

Page ID:#42973-42974

RE.1823 Order Granting Motion to Withdraw Reply

Page ID:#42975

RE.1824 Sur-Reply in Response of the Claimants' Advisory Committee to the Reply of Dow Silicones Corporation, the Debtor's Representatives and the Finance Committee to the Response of the Claimants' Advisory Committee to the 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 Page ID:#42976-43039

RE.1825-1 Exhibit 1 Page ID:#43043-43051

RE.1827 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 (ECF No.1796) Page ID:#43072-43095

RE.1829 Order Granting Motion for Leave to File Sur-Sur-Reply of Dow Silicones Corporation, the Debtor's Representatives and the Finance Committee in Response to the Sur-Reply of the Claimants' Advisory Committee to the Reply of Dow Silicones Corporation, the Debtor's Representatives and the Finance Committee to the Response of the Claimants' Advisory Committee to the 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 [ECF

	No.1826]	Page ID:#43096-43097
RE.1829	Sur-Sur-Reply of Dow Silicones Corporation, the Debtor's Representatives and the Finance Committee to the Sur-Reply of the Claimants' Advisory Committee to the Reply of Dow Silicones Corporation, the Debtor's Representatives and the Finance Committee to the Response of the Claimants' Advisory Committee to the 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	Page ID:#43098-43110
RE.1830	Notice of Appeal to 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 (ECF No.1796)	Page ID:#43111-43113
RE.1856	Transcript	Page ID:#34628-34834

CERTIFICATE OF SERVICE

I hereby certify that on February 18, 2025, I have electronically filed the above document with the Clerk of Court by ECF system that will notify to all relevant parties in the record.

Date: February 18, 2025 Signed by Yeon-Ho Kim

Form 6. Certificate of Compliance With Type-Volume Limit

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   /s/ **Yeon Ho Klm**

   Attorney for **Korean claimants (Appellant)**

   Dated: **February 18, 2025**