Case No: *24-1653*

United States Court of Appeals for the Sixth Circuit

In re: SETTLEMENT DOW CORNING TRUST

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KOREAN CLAIMANTS

Interested Parties - Appellant

v.

DOW SILICONES CORPORATION;DEBTOR'S

REPRESENTATIVES;CLAIMANTS' ADVIOSORY COMMITTEE

Interested Parties - Appellees

FINNACE COMMITTEE

Movant - Appellee

**Petition for Panel Rehearing**

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# I. INTRODUCTION

The Korean claimants ("the Appellant") received Per Curium Judgment for Case No. 24-1653 on February 13, 2025.

Pursuant to Rule 40(a)(1) of Federal Rules of Appellate Procedure, a petition for panel rehearing may be filed within 14 days after entry of judgment. Pursuant to Rule 40(a)(3), the petition must state with particularity each point of law of fact that the petitioner *believes* the court has overlooked or misapprehended, and must argue in support of the petition.

The Korean claimants filed Motion for Order to Correct the Disposition of the Settlement Facility ("the SF-DCT") regarding Korean Claimants ("Motion to Correct") and Motion for Order the SF-DCT to Lift-Off the Address Update and Confirmation Requirement regarding Korean Claimants ("Motion for Lift-Off"). The District Court denied them by ruling that the Korean Claims were denied by the Claims Administrator/the Appeals Judge, which must be final and binding by the languages of the Plan.

This Court ("the Panel of Honorable Sutton, Chief Judge, Readler and Bloomekatz, Circuit Judges") affirmed the District Court's Order on various

reasons and finding of the facts that the Korean claimants *believe* that this Court overlooked or misapprehended.

## II. ARGUMENT FOR THE POINTS THAT THIS COURT OVERLOOKED OR MISAPPREHENDED

### A. Motion to Correct

With respect to Motion to Correct, this Court ruled that the agreement ("the Plan Documents") provides no right to appeal those decisions ("the decisions of the Claims Administrator/the Appeals Judge") in federal court.

The Korean claimants agree.

This Court further ruled that, against the Korean claimants' argument that the District Court violated the clause of the Plan that the Court must enforce the Claims' Administrator/the Appeals Judge's duty to assure consistency and ensure fairness when processing Claims but by failing to do so, the Korean claimants are not among certain parties authorized to ask the Court what is a meaning of consistency and fairness in the Plan and whether the Judge ("the District Court") supervised the Claims Administrator to execute its duty of consistency and fairness under the Plan.

This Court reinforced its reasoning that this case is not among the "certain circumstances" eligible for appeal, and those circumstances include disputes over the "interpretation of substantive eligibility criteria and the designation of categories of deficiencies", but here, the Korean claimants are appealing individualized decisions by the Claims Administrator and the Appeals Judge regarding deficiencies in their claim forms.

To sum up the reasoning and the finding of fact by this Court, the Korean claimants cannot be a party to ask the Court and, even if the Korean claimants could be a party, the appeal cannot be a subject that the Court is able to review.

This Court overlooked the facts on the record.

The Korean claimants, apart from argument that the SF-DCT violated due process which was denied by this Court, argued that the SF-DCT breached its own commitment in a letter of the Acknowledgement of Returned Expedited Release Payment (*see* an example in RE 17154-5, Page ID#34277), "*Apply for a new disease or condition on or before June 3, 2019 that manifested after the expiration of the ACTD cure deadline*". This letter were received by all 109 claimants (*see* all of the letters in RE17154-5, Page ID:#34277-34620. This letter was inserted in each file of the 109 claimants.)

This Court did not rule whether the Claims Administrator/the Settlement Facility failed to respect the commitment in the letter titled Acknowledgement of Returned Expedited Release Payment.

Furthermore, this Court did not rule whether the Korean claimants were not able to appeal the commitment to the Court (Not the Appeals Judge. The Korean claimants appealed to the Appeals Judge) even if the Claims Administrator/the Settlement Facility failed to respect its own commitment and thus breached the commitment. This Court did not rule whether the Korean claimants cannot be a party to ask the Court for the breach of the commitment by the Settlement Facility/the Claims Administrator to a claimant.

If this Court has a question that the Claims ("disease Claims") made on June 1, 2019 was not "new" Claim so the Claims Administrator/the Settlement Facility did not violate or breach the commitment in the letter of Acknowledgement of Returned Expedited Release Payment, the Korean claimants would argue that the Claims were definitely "new" Claim. *First*, the Korean claimants did not attach any document for doctor's diagnosis proving ACTD disease which was claimed and just submitted the form of Claims for the first time of filing around 2012. Therefore there was no way to compare the first filing of Claims with the latter (second) filing of Claims on June 1, 2019 to

figure out whether the second filing of Claims was not "new". *Second*, the Claim for ACTD disease comprises more than twenty symptoms individually to check on the boxes in accordance with the claiming claimant's conditions for qualification of ACTD disease. The Claim for ACTD disease had a variety of kinds in accordance with the claimants' symptoms. Therefore the Claim for ACTD disease must not be defined by the ACTD name of disease checked by the claimants but must be defined by the symptoms that the claimants checked on the boxes to figure out whether the latter Claims for ACTD disease is not "new" and thus same as the previous Claim of ACTD disease. Accordingly, the Korean claimants' Claim of June 1, 2019 for ACTD disease was "new" claim because the Korean claimants did not check on the boxes for symptoms in the first time of filing around 2012. Since the Claims Administrator/the Settlement Facility allowed the 109 Korean claimants to apply for a "new" disease or condition on or before June 3, 2019, and the Korean claimants filed a "new" ACTD disease Claim on June 1, 2019 and therefore this Court must have ruled in favor of the Korean claimants.

**B. Motion for Lift-Off**

With respect to Motion for Lift-Off, this Court ruled that the Korean claimants neither timely objected to nor appealed any of the three closing orders

(Closing Orders 2, 3 & 5) when they were originally issued.

The Korean claimants agree.

This Court further ruled that the Korean claimants plainly were made aware of the status of the various orders, and the Korean claimants knew the district court "retain[ed] exclusive jurisdiction to enter orders in aid of the plan, and the Korean claimants also knew, based on the text of Closing Order 2, that they were "required to keep their address and contact information current with the [Settlement Facility], and the Korean claimants concede that they received notice via the district court's electronic docket at the time the orders were filed, and each order was entered by agreement of the Debtor's Representatives and Claimants' Advisory Committee—the latter of whom represents of all personal injury claimants, including the Korean claimants.

The Korean claimants agree.

Additionally, this Court ruled that nor does the record support *the Korean claimants' allegation of discrimination*.

In this respect, this Court overlooked or misapprehended the facts in

finding from the record.

First, this Court ruled that the address verification procedures applied equally to all claimants and the Settlement Facility has distributed address verification letters to every claimant with an unconfirmed address.

However, it is not true. From the record, it is inconsistent. *First*, this Court relied on the declaration of the Claims Administrator. She is a liar. She was a habitual liar. She submitted many declarations to the District Court whenever the Korean claimants filed a motion with the court. The District Court relied on her declarations only. The contents of her declarations were inconsistent with the facts regarding the Korean claimants.

She even refused to meet the AOR of the Korean claimants in the office of the SF-DCT. She asked the AOR to meet her lawyer, rather than her, if the AOR wanted to tell something to her. Whenever the AOR submitted the files for the Korean claimants or sent an inquiry via letter or email, she held them without responding. Pursuant to her convenience, she only sent the denial of the Claims for the Korean claimants. From these disappointments, the Korean claimants used to file motions with the Court. Then she submitted the Court her declarations including lies and the statements which were not facts. These

happenings were repeated over the decade.

*Second*, the AOR of the Korean claimants found discrimination in processing the Korean Claims. The AOR thought deeply about it. From roots of history of the Debtor, the AOR found discrimination against race and country. What the AOR was disappointed more is that this Court does not want to correct discrimination imposed on the Korean claimants. If discrimination were not corrected eventually in this Court's processing, the Korean claimants will file lawsuits with the Korean Courts against the Debtor which subsidiaries and affiliates are doing business successfully in Korea.

The Korean Courts would surely review the address update and confirmation requirement discriminatorily imposed by the Settlement Facility and approved by this Court.

Above all, the Korean claimants did not agree to the address update and confirmation requirement when they participated in the settlement with the Debtor. The Claimants' Advisory Committee agreed by assuming that it is the representative for the Korean claimants. As the AOR of the Korean claimants found out, the Debtor's Representatives and the Claimants' Advisory Committee keep the transactional relationship where the members of the Claimants

Advisory Committee asked for additional fees with reasonable rates.

Second, this Court ruled that the Settlement Facility did exercise its discretion under Closing Order 2 to require the Korean claimants to confirm their addresses directly even though other claimants could confirm their addresses through submissions of their counsel. This Court authorized the mandate of discretion on the alleged facts that (1) hundreds of letters to the Korean claimants had been returned as undeliverable and (2) their counsel repeatedly refused to cooperate with attempts to confirm his client's address information. This Court further ruled that the Settlement Facility uniformly applied that same mandate to other claimants whenever "more than a negligible percentage of mail sent to addresses provided by counsel had been returned as undeliverable."

*First*, the Settlement Facility did not apply the alleged mandate to other claimants. The Statement of Ellen Beericks in the declaration (R.1595-6 Page ID#28168) was intentionally fabricated to counter the Korean claimants' Motion for Vacating Decision of Settlement Facility Regarding Address Update/Confirmation, which was denied two years ago. Ellen Beericks dug the behind of the AOR by hiring a Korean private investigator in Korea. She secretly moved just like the agent for the Debtor.

She was believed "*racist*" among the Korean claimants. She was believed to have received a bonus from the Debtor for harassing the AOR of the Korean claimants and dedicating to denial of payments to the Korean claimants.

*Second*, as admitted by the Claimants' Advisory Committee in the Motion of the Finance Committee for Order to Show Cause, the Settlement Facility did not request other law firms/attorneys to update their clients' addresses. Without the address update and confirmation requirement to be enforced by Closing Order 2, the Settlement Facility executed the payments by sending checks of the Premium Payments to the law firms/attorneys in the United States.(see RE1703 Page ID:#33110-33128 *4-7)

*Third*, the Claims Administrator even admitted in the declaration that (a) the Dow Silicones team researched email addresses for 2,424 AORs, (b) the SF-DCT emailed the Audit Survey form on September 7, 2021 via Survey Monkey to 1,660 AORs who were issued and had cashed on behalf of a claimant, (c) the SF-DCT received the following results from emailing the Audit Survey: (i) 219 completed Audit Survey forms (13% response rate) (ii) 32 AORs opted-out the survey (iii) 259 email bounce back and (iv) 1,150 no response, (d) the SF-DCT mailed via U.S. Mail, an envelope containing Closing Order 4, the court-mandated Audit Survey form, and a cover letter to each of 4,230 AORs who had

cashed payment from the SF-DCT on behalf of a claimant, and who had not previously responded to the email Audit Survey, (e) from the April 28, 2022 mailing to 4,230 AORs, the SF-DCT received the following result: (i) 1,655 responses (39% response rate) and (ii) 833 pieces of returned mail, (f) the SF-DCT conducted the second mailing which went to 1,899 AORs, (g) the SF-DCT received the following results from the second mailing: (i) 905 responses (48% response rate) and (ii) 22 pieces of returned mail with no forwarding address, and (h) the SF-DCT agreed with the Finance Committee that the list of 814 AORs be included to the Finance Committee's Motion for Order to Show Cause.

The Finance Committee ("The Appellee") admitted that, even among 814 attorney/law firms for which a copy of the Motion and the Audit Survey form have been sent to, 58 of them were undeliverable because of "bad address", 33 of them were either deceased, disbarred, suspended, or no longer in existence, and only 189 of them have received the mailings from the SF-DCT and responded, resulting 534 of them non-responding.(RE.1744 Page ID:#33770-33774, RE.1747 Page ID:#33799-33807)

From the Claims Administrator's statement and the Finance Committee's admission above, the Settlement Facility did not update the addresses of the claimants represented by the law firms/attorneys apparently. But this Court

singled out the AOR of the Korean claimants only to rule that hundreds of letters to the Korean claimants had been returned as undeliverable so the Claims Administrator's discretion against the Korean claimants had no problem.

The finding of the facts that hundreds of letters to the Korean claimants had been returned as undeliverable was the result that this Court overlooked the practices of the Settlement Facility to other law firms/attorneys.

*Fourth*, the Settlement Facility refused to provide the AOR of the Korean claimants the statistics of returned mails. The Settlement Facility concealed the documents regarding address update letters returned while the AOR tried to resubmit the update of the claimants' addresses which were failed confirmation. Without sharing information with the Settlement Facility, the AOR was not able to select the claimants who needed to resubmit address update to the Settlement Facility.

*Finally*, the AOR of the Korean claimants did not repeatedly refuse to cooperate with attempts to confirm the client's address information. This Court misapprehended boldly.

Why should the AOR do it? Only if the address update were successful

meaning being confirmed by the Settlement Facility, the AOR could receive checks for payments from the Settlement Facility. Only if the clients received checks from the Settlement Facility, the AOR could collect his fees from the checks.

Why should the AOR refuse to cooperate with the Settlement Facility? The AOR has been involved in this long-term class action in conjunction with the Debtor's bankruptcy from the beginning in 1999 and knew everybody who participated in the processing. The AOR knew the Settlement Facility before its start of operation in 2004. How and why could the AOR refuse to cooperate with the Settlement Facility?

The AOR submitted the 676 claimants' address update on June 1, 2019 to the Settlement Facility pursuant to its request for address update. The submission was cooperatively executed even when Closing Order 2 issued on March 19, 2019 was not fully enforceable. However, the Settlement Facility rather took the AOR's well-meant submission of the 576 claimants' address update as the basis for denial of payments to the claimants.

If the Settlement Facility had viewed that the AOR's submissions were not satisfied, the Settlement should have given the AOR an opportunity to resubmit

the claimants' address update. But the Settlement Facility did not. This Court absolutely misapprehended that counsel of the Korean claimants repeatedly refused to cooperate with attempts to confirm the claimants' address information.

## III. CONCOLUSION

For the foregoing reasons, the Korean Claimants request this Court to Grant this Petition for Panel Rehearing regarding Case No. 24-1653 in accordance with Rule 40 of Federal Rules of Appellate Procedures.

The AOR of the Korean claimants believes that the Korean Courts do not authorize a Korean corporation which manufactured the defected goods to evade from payment obligations owed to the third world countries' consumers on such basis as their internal country addresses.

If a Korean corporation manufactured the defected goods which were sold to the consumers of third world country such as Ecuador or Bangladesh and found the foreign consumers suffered injury, the Korean Courts do not allow the Korean Corporation to stop payments on the basis of conditions like address update and confirmation requirement, which was not agreed, and plus because there is the AOR of the claimants registered with the Settlement Facility and the AOR is responsible for distributing the funds from the Settlement Facility.

The AOR of the Korean claimants respectfully ask this Court to reconsider this Case for reputation of the US Judicial System.

Date: February 26, 2025

Respectfully submitted,

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