**Exhibit C**

**(Copy of filed Appellee Brief for Case No.25-1004 pending the Sixth Circuit)**

**Case No. 25-1004**

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# In the United States Court of Appeals For the Sixth Circuit

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IN RE: SETTLEMENT FACILITY DOW CORNING TRUST

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

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

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

---

Deborah E. Greenspan
Blank Rome LLP
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*Debtor's Representative and Attorney for Dow Silicones Corporation and the Finance Committee*

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

# Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit
Case Number: 25-1004 Case Name: In re: Settlement Facility Dow Corning Trust

Name of counsel: Deborah E. Greenspan

Pursuant to 6th Cir. R. 26.1, The Debtor's Representatives
*Name of Party*

makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No.

The Debtor's Representatives consist of one counsel for Corning Incorporated, one in house counsel for The Dow Chemical Company and Deborah E. Greenspan.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

Yes.

See separate Disclosure of Corporate Affiliations and Financial Interest filed by Dow Silicones Corporation.

CERTIFICATE OF SERVICE

I certify that on January 7, 2025 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/ Deborah E. Greenspan
Blank Rome LLP, 1825 Eye St. NW
Washington, DC 20006

This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

# Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit
Case Number: 25-1004 Case Name: In re: Settlement Facility Dow Corning Trust

Name of counsel: Deborah E. Greenspan

Pursuant to 6th Cir. R. 26.1, Dow Silicones Corporation
*Name of Party*

makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

Yes.

See answer to no. 2.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

Yes.

Dow Silicones Corporation is owned by The Dow Chemical Company, a wholly-owned subsidiary of Dow, Inc.

CERTIFICATE OF SERVICE

I certify that on January 7, 2025 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/ Deborah E. Greenspan
Blank Rome LLP, 1825 Eye St. NW
Washington, DC 20006

This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

# Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit
Case Number: 25-1004 Case Name: In Re Settlement Facility Dow Corning

Name of counsel: Karima G. Maloney

Pursuant to 6th Cir. R. 26.1, Finance Committee
Name of Party
makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

No

CERTIFICATE OF SERVICE

I certify that on January 7, 2025 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/ Karima G. Maloney
717 Texas Avenue, Suite 2800
Houston, Texas 77002

This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

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## STATEMENT REGARDING ORAL ARGUMENT

Appellees do not request oral argument but are of course prepared to participate in oral argument.

## INTRODUCTION AND BACKGROUND

This appeal comes at the end of a two decade long process of implementing and distributing funds for settlement claims under the terms of the Dow Corning Amended Joint Plan of Reorganization (the "Plan").[1] The distribution of assets for settlement claims under the terms of the Plan commenced in 2004, and the final deadline for the submission of settlement claims was June 3, 2019. The Plan established the Settlement Facility-Dow Corning Trust (the "Settlement Facility" or "SF-DCT")[2] to review and process claims and to distribute payments to timely eligible claims submitted by Settling Personal Injury Claimants. The Appellants, the Korean Claimants, are Settling Personal Injury Claimants under the Plan who submitted claims to the Settlement Facility. The Plan also established the Litigation Facility as the entity responsible for defending litigated claims asserted against Dow

[1] Unless otherwise defined, capitalized terms used herein shall have the meaning provided in the Plan defined in Article 1 thereof. *See* Plan, RE 1796-1, Page ID # 42252-42281. On February 1, 2018, Dow Corning Corporation changed its name to Dow Silicones Corporation. Appellees may use either Dow Corning or Dow Silicones in this brief interchangeably, as they refer to the same entity.

[2] The Settlement Facility was organized as a trust pursuant to the Depository Trust Agreement. *See* Second Amended and Restated Depository Trust Agreement ("DTA") § 2.03, RE 1796-6, Page ID # 42585.

Corning. In accordance with the Plan, both the Litigation Facility and the Settlement Facility were funded with an Initial Payment and, as needed, through additional Funding Payments specified in the Funding Payment Agreement ("FPA").

This appeal arises out of a December 30, 2024 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) ("Termination Order"). RE 1827. The Termination Order granted the Appellees' November 15, 2024 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 ("Motion to Terminate"). RE 1796. The Motion to Terminate was filed in accordance with the Plan to terminate the funding obligations of Dow Silicones and to "wind-down" the Settlement Facility because all timely filed claims in relevant Plan Classes have been resolved, and all actions required under the Plan to distribute assets and pay administrative expenses have been completed. The district court agreed and held that "the conditions for the termination of funding required by the Plan and the Funding Payment Agreement have been met." Termination Order, RE 1827, Page ID # 43091.

## STATEMENT OF JURISDICTION

The district court exercised jurisdiction pursuant to 28 U.S.C. § 1334(b) ("the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11"). This Court has jurisdiction to review the district court's December 30, 2024 final order pursuant to 28 U.S.C. § 1291. *See* Termination Order, RE 1827. Korean Claimants filed a timely notice of appeal on January 1, 2025. Notice, RE 1830.

## COUNTER STATEMENT OF ISSUES FOR REVIEW

1. Should the district court's Termination Order be affirmed because the conditions for termination of funding and wind down of the Settlement Facility set forth in the Plan have been satisfied based on the unequivocal and uncontroverted evidentiary record demonstrating that all claims in the relevant Plan classes have been finally resolved within the meaning of the Plan?

2. Should the Termination Order be affirmed when the only objection to termination is based on Korean Claimants' disagreement with the outcome of their claims – which disagreements have been the subject of and rejected in prior litigation and appeals?

## STATEMENT OF THE CASE

### I. The Bankruptcy Plan

Background. This Court has addressed the history of Dow Corning's bankruptcy proceedings and Plan on multiple occasions.[3] Dow Corning filed its petition for reorganization under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Michigan on May 15, 1995. The Plan was confirmed in 1999 and became effective on June 1, 2004. *See In re Settlement Facility Dow Corning Trust*, 628 F.3d 769, 771 (6th Cir. 2010); *see also* Plan, RE 1796-1.

The Plan created several Plan Classes defining different categories of Personal Injury Claims or claims related to Personal Injury Claims.[4] The Plan Classes for Personal Injury Claims are defined by product type and country of residence (or country of implantation for implanted medical devices). The termination provision relevant to this appeal (described below) relates to Plan Classes 5 through 19. The Appellants are classified in Plan Class 6.1 although a portion of their claims may be

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[3] *See, e.g.*, *In re Settlement Facility Dow Corning Trust*, No. 21-2665/22-1750/1753/1771, 2023 WL 2155056 (6th Cir. Feb. 22, 2023); *Korean Claimants v. Claimants' Advisory Committee*, 813 F. App'x 211 (6th Cir. 2020); *In re Settlement Facility Dow Corning Trust*, 592 F. App'x 473 (6th Cir. 2015); *Dow Corning Corp. v. Claimants' Advisory Comm. (In re Settlement Facility Dow Corning Trust)*, 628 F.3d 769 (6th Cir. 2010); *In re Dow Corning Corp.*, 280 F.3d 648 (6th Cir. 2002); *In re Dow Corning Corp.*, 86 F.3d 482 (6th Cir. 1996).

[4] Related claims include health insurer claims, government payor claims, co-defendant claims, and physician claims.

classified in Plan Class 6.2. Korean Claimants' Br. at 13. There have been no objections to or appeals of the Termination Order from any individual or entity classified in any other relevant Plan Class.[5]

Plan Classes 6.1 and 6.2 comprise claimants who assert implantation with a breast implant manufactured by Dow Corning and who are "Foreign" claimants as defined in the Plan.[6] Plan Class 6.1 includes claimants who reside in a country that is classified as category 1 or 2 at Annex A to the Settlement Facility and Fund Distribution Agreement ("SFA"). *See* Dow Corning Settlement Program and Claims

[5] The Plan Classes relevant to this Appeal are Plan Classes 5 through 19. Classes 5, 6, 6A, 6B, 6C, 6D, 6.1, 6.2, 7, 9, 10, 10.1 and 10.2 cover Personal Injury Claims involving breast implants and other implanted devices. The classes are defined by the product type and the country of residence of the individual claimant. Class 8 covers tort claims involving certain "raw materials." Classes 6A, 6B, and 6C cover claims addressed in three class action settlements in Canada. These class action settlements were supervised by, and under the jurisdiction of, courts in Quebec, Ontario, and British Columbia, respectively. Each of these settlements was administered by an independent claims administration entity and each was finalized and closed pursuant to orders issued by the pertinent courts in Canada. Class 6D covers certain class actions asserted in Australia and this class was paid and the matter closed under Australian procedures at the time of the Effective Date. Class 11 covers "Co-Defendant" claims (Plan at § 3.2.19, RE 1796-1, Page ID # 42284); Class 12 covers Physician Claims (*Id.*); Class 13 covers Health Care Provider Claims (*Id.*); Class 14 covers Domestic Health Insurer Claims (*Id.*); Class 14A covers Foreign Health Insurer Claims (*Id.*); Class 15 covers Government Payor Claims (*Id.*); Class 16 covers Shareholder Claims (*Id.*); Class 17 covers General Contribution Claims (*Id.*); Class 18 covers LTCI (long term contraceptive implant) Personal Injury Claims (*Id.*); and Class 19 covers LTCI Other Claims (*Id.*).

[6] A Foreign claim is a claim held by a Person who (a) is neither a United States citizen nor a resident alien of the Greater U.S., and (b) arises from a medical procedure performed outside the Greater U.S. *Id.* at Page ID # 42264.

Resolution Procedures, Annex A to SFA ("Annex A") at § 6.05(h)(i) and Schedule III, RE 1796-5, Page ID ## 42509, 42578. Plan Class 6.2 includes claimants who reside in a country that is classified as category 3 or 4. *Id*. The Korean Claimants were originally classified in Plan Class 6.2 but were reclassified to Plan Class 6.1 by the Claims Administrator in 2015. *See In re Settlement Facility Dow Corning Tr.*, 760 F. App'x 406, 410 (6th Cir. 2019). (The country classification is based on the GDP of each country and claimants in countries designated as category 1 or 2 receive 60% of the value paid to Domestic claimants for the same benefit type and claimants in countries designated as categories 3 or 4 receive 35% of the Domestic value. *See* Annex A at Schedule III, RE 1796-5, Page ID # 42578. In addition, claimants in Plan Class 6.2 have several settlement options not available to other claimants with Dow Corning breast implants.)

The Plan provides two options for the resolution of Personal Injury Claims. Personal Injury Claimants could elect to settle their claims through a settlement program administered by the Settlement Facility or could elect to litigate their claims by filing a case against an entity created for the purpose of responding to litigation – the Litigation Facility.[7] The Korean Claimants elected the settlement option. They

[7] One class of tort claims – Class 8 Miscellaneous Raw Material Claims – was not eligible for the settlement option and was required to resolve claims through litigation. Certain "Other Products" – *i.e.* products that were not breast implants classified in Classes 9 and 10 but not defined as "Covered Other Products" also were required to resolve claims through litigation.

are therefore Settling Personal Injury Claimants. Plan at § 1.159, RE 1796-1, Page ID # 42280.

## II. Establishment of Settlement Facility and Litigation Facility

To resolve Personal Injury Claims, the Plan required Dow Corning to establish a Settlement Fund and a Litigation Fund to be administered by a Settlement Facility and a Litigation Facility, respectively, to liquidate and, to the extent Allowed, pay the claims of settling claimants and non-settling claimants.

Dow Corning established the Settlement Facility before the Effective Date. By Order dated November 29, 2000, the district court opened case number 00-CV-00005 (the "Settlement Facility Case") and ordered that all orders and documents relating to the Settlement Facility be filed in that case. Order Regarding Case Number for Matters Relating to the Settlement Facility Agreement, RE No. l.

Dow Corning established the DCC Litigation Facility, Inc.[8] before the Effective Date. On January 1, 2000, the Court opened case no. 00-MC-00001 in the district court (the "Litigation Facility Case") under which cases against the Litigation Facility were to be filed. Plaintiffs who sought to resolve claims against

[8] The Plan defines "Litigation Facility" to mean "DCC Litigation Facility, Inc., the DCC subsidiary established to administer and defend against Claims asserted by Non-Settling Personal Injury Claimants, certain Claims in Classes 11 through 17, and LTCI Claims." Plan at § 1.88, RE 1796-1, Page ID # 42266.

Dow Corning through litigation were required by the Plan to initiate lawsuits in that case.

## III. Governance and Oversight

The Claims Administrator appointed by the district court under the terms of the SFA oversees the processing and payment of claims by the Settlement Facility in accordance with the terms of the SFA. *See* Plan at § 1.29, RE 1796-1, Page ID # 42258; SFA at §§ 4.02, 5.01, 5.04, RE 1796-3, Page ID ## 42421-42424, 42432, 42434-42436. The SFA specifies that the Claims Administrator must be "at the time of the appointment and at all times the term of service, independent" and must have no relationship in any capacity to Dow Corning or any Released Party. SFA at § 4.02(c), RE 1796-3, Page ID # 42422. The Claims Administrator is supervised by the district court. *Id.* at 4.02(a), Page ID # 42421.

The SFA provides for the appointment of the Finance Committee, of which the Claims Administrator is a member, which is responsible for oversight of financial matters of the Settlement Fund and has specific responsibilities regarding the verification and Allowance of claim payments. *See* SFA at §§ 4.02, 4.08, RE 1796-3, Page ID # 42421-42424, 42427-42430.

The SFA also provides for an "Independent Assessor" – an independent third party - appointed by the Court, who is to assist the Finance Committee in analyzing

the claim filings. SFA at § 4.05, RE 1796-3, Page ID # 42426. In addition, the Independent Assessor provides the Finance Committee with certain reports. *Id.*

The Financial Advisor appointed by the Cout under the Plan has the primary responsibility for overseeing the investment of all funds paid to and held by the Trust, for providing investment instructions to the Trust, for overseeing the preparation of financial statements as specified at Sections 7.03(d), 7.03(e), and 8.04, and for the accounting statements and audit as specified at Section 8.05. *Id.* at § 4.04, Page ID ## 42425-42426. The Financial Advisor is "responsible for determining the available assets of the Trust, including the available funds in the Litigation Fund and the Settlement Fund, and for matching the assets to claim payment needs as determined by the Independent Assessor". *Id.*

The Settlement Facility, the Finance Committee, the Claims Administrator, the Financial Advisor, as well as the procedures for the distribution of funds, are appointed and supervised by the district court. The district court performs "all functions relating to the distribution of funds and all determinations regarding the prioritization or availability of payments, specifically including all functions related to Articles III [Transfer of Assets], VII [Payment Distribution Procedures], and VIII [Financial Management] herein." *Id.* at § 4.01, Page ID # 42421. The district court retains jurisdiction over the Plan to, *inter alia*, "enter orders in aid of the Plan and the Plan Documents" and to "resolve controversies and disputes regarding

interpretation and implementation of this Plan and the Plan Documents." Plan at §§ 8.7.3, 8.7.5, RE 1796-1, Page ID # 42325.

The Plan also established the Claimants' Advisory Committee ("CAC") and the Debtor's Representatives ("DRs") to assist in the implementation of the Plan's settlement program. *See Id*. at § 1.28, Page ID # 42257 (defining the CAC to mean "those persons selected pursuant to the terms of the [SFA] to represent the interests of Personal Injury Claimants after the Effective Date"); SFA at § 4.09(b), RE 1796-3, Page ID # 42430-42431.

## IV. Funding Terms

The FPA governs Dow Corning's funding requirements with respect to Personal Injury Claims. *See* Plan at § 1.70 and § 5.3, RE 1796-1, Page ID ## 42264, 42288; FPA at Recitals, RE 1796-2, Page ID # 42358. The FPA requires Dow Corning to pay an Initial Payment of $985 million plus accrued interest on $905 million of the Initial Payment to the Settlement Facility on or before the Effective Date; and to make, or cause to be made, additional funding payments to the Settlement Facility up to a maximum of $3.172 billion ($2.35 billion NPV as of the Effective Date) over a 16-year period after the Effective Date. Plan at § 5.3, RE 1796-1, Page ID # 42288; FPA at § 2.01, RE 1796-2, Page ID # 42360. The $2.35 billion NPV amount is a funding cap and is divided between the Settlement Fund and the Litigation Fund. The Litigation Fund was allocated $400 million NPV of

the capped aggregate amount and the Settlement Fund was allocated $1.95 billion NPV of the capped aggregate amount. *See* SFA at § 3.02(a)(ii), RE 1796-3, Page ID # 42420.

The FPA establishes 16 Funding Periods commencing on the first anniversary of the Effective Date of the Plan. Each Funding Period is defined as a specific 12-month period commencing on the relevant anniversary of the Effective Date. Funding Period 1, for example, commenced on June 1, 2005 (the one-year anniversary of the Effective Date). FPA at § 2.01(b), RE 1796-2, Page ID # 42362. Funding Period 2 commenced on June 1, 2006 – the second anniversary of the Effective Date. The last Funding Period (Funding Period 16) commenced on June 1, 2020.

Section 2.01(b) of the FPA sets forth Annual Payment Ceilings for the 16 Funding Periods. *Id*. The Annual Payment Ceilings define the maximum amount that Dow Corning could be required to pay for each Funding Period. *Id*. Insurance Proceeds received by Dow Corning were paid to the Settlement Fund immediately upon receipt and were credited against the appropriate Annual Payment Ceiling.[9] The FPA requires the Claims Administrator to deliver to Dow Corning each month

[9] The FPA provides for a further credit – called a Time Value Credit – in the event that the insurance proceeds were received in advance of a payment obligation. The Time Value Credits were applied to adjust the Annual Payment Ceilings according to a specified formula. FPA at § 2.01(c)(ii), RE 1796-2, Page ID # 42361.

a "Projected Funds Notice" and an "Actual Expenditures Notice". *Id*. at § 2.02(a) and (b), Page ID ## 42363-42364. Dow Corning was required to make payments pursuant to the schedule provided in Section 2.01(b) "*only if and to the extent* that such payments are required to pay Fundable Expenditures[10] and maintain required reserves, after taking into account the cash held by the Settlement Facility and subject to the Annual Payment Ceilings set forth in that schedule (as adjusted)." *Id.* at § 2.02(b)(iii) (emphasis added), Page ID ## 42363-42364. Dow Corning was required to make a payment only if the Actual Expenditures Notice showed that the Settlement Fund assets at the time were not sufficient to pay all amounts in the Notice and maintain the required reserve.[11] If the assets were sufficient to pay the amounts in the Actual Expenditures Notice and to maintain the reserves then Dow Corning was not required to make any funding payments.

Dow Corning paid the Initial Payment and the accrued interest specified in the FPA to the Settlement Facility before the Effective Date, as confirmed by a Stipulation and Order dated May 10, 2004 (*In re Dow Corning Corp.*, Case No. 95-20512, ECF No. 29203 (Bankr. E.D. Mich. May 10, 2004)). *See* FPA at § 2.01(a), RE 1796-2, Page ID # 42360. ("The full amount of the Initial Payment including

[10] Fundable Expenditures are defined as Allowed Claims and expenses of the Settlement Facility and the Litigation Facility. *Id*. at Recital E, Page ID # 42358.
[11] The reserve amount is defined in the FPA as the greater of $1 million or three months' expenses of the Settlement Facility. *Id*. at § 2.02(a), Page ID # 42363.

interest was paid as confirmed by the Stipulation and Order dated May 10, 2004."). "Since the Effective Date, Dow Corning… has made all funding payments to the Settlement Facility that have become due and payable under the terms of the [FPA]."[12] November 10, 2024 Declaration of Brian Chmiel Court Appointed Financial Advisor in Support of 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 ("Chmiel Declaration"), RE 1796-4, Page ID # 42459; *see also* Termination Order, RE 1827, Page ID 43091 ("the Court finds that the conditions for the termination of funding required by the Plan and the Funding Payment Agreement have been met."). The assets are held by the Trustee, and remain in the custody and under the jurisdiction of the district court until they are distributed to eligible claimants (or for approved expenses) in accordance with the Plan. SFA at § 10.09, RE 1796-3, Page ID # 42450. The Financial Advisor and the Finance Committee, subject to the jurisdiction of the district court, have the sole authority to

[12] The Plan Proponents and the Finance Committee along with the Financial Advisor established a procedure under which Dow Silicones paid funds in advance so that the Settlement Facility had assets from which to pay claims. To achieve this, the Financial Advisor and Claims Administrator identified Fundable Expenditures that would become payable each month during the following quarter so that funding would align with payments issued. *Id*. at § 2.02(a) and (b), Page ID ## 42363-42364; SFA at §§ 4.04, 4.05, 4.08(b), 5.03, RE 1796-3, Page ID ## 42425-42426, 42428, 42432-42434.

manage those assets. The distribution of assets for Settling Personal Injury Claims is supervised by the district court. Both the Settlement Facility and the Litigation Facility have operated throughout the duration of the Plan pursuant to annual administrative budgets approved by the district court.

## V. Processing and Payment of Claims Submitted to the Settlement Facility

The claims of Settling Personal Injury Claimants – including those of Korean Claimants – were reviewed, evaluated, and paid by the Settlement Facility. The SFA (RE 1796-3, Page ID ## 42412-42456) and Annex A (RE 1796-5, Page ID # 42462-42578), prescribe the rules under which these settling claims are submitted, individually evaluated, and, if eligible and in compliance with the rules and procedures, paid. This administrative process is the exclusive means for the resolution of Settling Personal Injury Claims. SFA at § 5.01, RE 1796-3, Page ID # 42432; Annex A at Article VIII, RE 1796-5, Page ID #42523-42524. There is no right of appeal to the district court of any claim determination made by the Settlement Facility. *See* Annex A at § 8.05, RE 1796-5, Page ID # 42524; *See also In re Clark-James*, 08-1633, 2009 WL 9532581, at **2, 3 (6th Cir. Aug. 6, 2009) ("the Plan provides no right of appeal to the district court, except to resolve controversies regarding the interpretation and implementation of the Plan and associated documents.").

Breast Implant Claimants who chose the settlement option could seek compensation for up to three types of claims: explant, rupture and either disease or expedited release. Plan at § 5.4.1.1, RE 1796-1, Page ID # 42290. The settlement program was structured to allow claimants to submit disease claims over a 16-year period.[13] Individuals whose disease or qualified medical condition manifested at any time during that period could file a claim. The claim filing deadline for disease claims was June 3, 2019. Annex A at § 7.09(b)(1), RE 1796-5, Page ID # 42522-42523. The claim review process requires the Settlement Facility to determine whether the claim was timely filed (i.e. in accordance with deadlines established in the Plan) and whether the claim meets the eligibility criteria for settlement in accordance with the terms of the Plan. If the claim does not meet any of these criteria, the claimant is afforded an opportunity to cure the deficiencies within the cure deadline set forth in the Plan or in applicable Court orders. If the claim remains deficient after the expiration of the cure deadline, the claimant has the right to appeal the decision to the Claims Administrator and thereafter to the Appeals Judge – who is a neutral individual appointed by the district court. In addition, a claimant who

[13] The deadline for Explant claims was the 10th anniversary of the Effective Date and the deadline for Rupture claims was the second anniversary of the Effective Date. Annex A at §§ 7.09(a)(i) and 7.09(c)(i), RE 1796-5, Page ID ## 42522-42523. The deadline for Expedited Release claims was the third anniversary of the Effective Date but that deadline was extended to coincide with the deadline for disease claims per a determination of the Claims Administrator. *Id*. at § 6.02(f)(1), RE 1796-5, Page ID # 42490.

filed a deficient disease claim has the right to bring a new disease claim provided that the new disease manifested after the expiration of the deadline for curing the original disease. Annex A at § 7.09(b)(ii), RE 1796-5, Page ID # 42522. Further, the Settlement Facility provided expedited release payments for claimants whose disease claim was deficient and not cured. Claimants have multiple opportunities, therefore, to demonstrate eligibility for payment.

The Settlement Facility continued to receive claims until the final disease claim filing deadline of June 3, 2019. Thereafter, the Settlement Facility completed the review of all timely claims and issued determinations on such claims.

The district court issued a series of "Closing Orders" starting in 2018 (approximately a year before the final claim filing deadline) to facilitate closure of the Settlement Facility.[14] The Closing Orders provided for notice to all claimants of

[14] Closing Order 1 for Final June 3, 2019 Claim Deadline (Establishing Final Cure Deadlines, Revised Claim Review Procedures, and Appeal Deadlines) ("Closing Order 1"), RE 1447, Page ID # 23937-23950; Closing Order 2 (Regarding Additional Procedures For Incomplete And Late Claims; Protocols For Issuing Payments; Audits of Attorney Distributions of Payments; Protocols For Return of Undistributed Claimant Payment Funds Guidelines For Uncashed Checks and For Reissuance of Checks; Restrictions on Attorney Withdrawals) ("Closing Order 2"), RE 1482, Page ID # 24084-24097; Closing Order 3 (Notice that Certain Claims will be Permanently Barred and Denied Payment Unless a "Confirmed Current Address" is Provided to the SF-DCT on or before June 30, 2021) ("Closing Order 3"), RE 1598, Page ID # 28287-28298; Closing Order 4 (Requiring Completion of Court-Directed Audit Survey and Return of Funds Pursuant to Closing Order 2, RE 1640, Page ID # 28794-28796 ("Closing Order 4"); Closing Order 5, Notice that Certain Claims Without a Confirmed Current Address Shall be Closed and Establishing

the impending deadlines, streamlined processing of claims (in which the Settlement Facility was directed to process all components of a claim at the same time instead of piecemeal), defined deadlines for administrative appeals and for curing certain deficiencies, and provided additional guidance governing payment.

The guidelines for claimants have always included requirements that claimants maintain updated contact information. Because the Plan provides opportunities for payment for different categories of claims with different filing deadlines and the possibility of an additional payment – called a Premium Payment – at a later date, it was essential for the Settlement Facility to ensure that claimants could be located in order to assure that Settlement Fund assets were properly distributed. As the final claim deadline became imminent, the district court entered Closing Order 2 – reiterating this requirement and directing the Settlement Facility to continue the procedures to assure current claimant contact information. Closing Order 2 provides in relevant part that "the SF-DCT shall not issue payments to or for claimants or an authorized payee unless the SF-DCT has a confirmed, current address for such claimant or authorized payee… to ensure that Settlement Fund payments are distributed to claimants as required by the Plan." Closing Order 2, RE 1482, Page ID # 24086-24089. The district court's Closing Orders provided detailed

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Protocols for Addressing Payments for Claimants in Bankruptcy ("Closing Order 5"), RE 1642, Page ID # 28800-28805.

guidance to the Settlement Facility to facilitate the ultimate cessation of claim review and payment and termination of operations.

This Court has reviewed various of these Closing Orders including Closing Order 2 - in prior appeals filed by Korean Claimants and has upheld their validity and application to Settling Personal Injury Claimants. *In re Settlement Facility Dow Corning Trust*, No. 21-2665/22-1750/1753/1771, 2023 WL 2155056 (6th Cir. Feb. 22, 2023) (affirming the application of Closing Order 2 which governs the requirement for securing verified addresses to permit payment… and dismissing the late appeal regarding Closing Order 5 as untimely finding that there were "no exceptional circumstances" to equitably toll the deadline for filing an appeal); *In re: Settlement Facility Dow Corning Trust*, 2025 WL 488635 at *3-4 (affirming the district court's decision that the Korean Claimants were bound by the Closing Orders, including the requirement to submit a confirmed, current address for claimants in order to receive payments and the Korean Claimants' challenges to the requirements on both notice and discriminatory application grounds failed).

## VI. Termination of Funding and Settlement Facility Required by Plan Documents

The FPA provides that Dow Silicones' obligations to provide funding shall terminate once all Allowed claims are paid, all Claims filed have been liquidated and paid or otherwise finally resolved, and no new timely Claims have been made against the Settlement Facility or the Litigation Facility for two consecutive Funding

Periods. FPA at § 2.01(c), RE 1796-2, Page ID ## 42362-42363. Specifically, the FPA states:

> 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 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. Upon the occurrence of one or more of the events set forth in the immediately preceding sentence, Dow Corning shall seek confirmation from the Court, after notice to all other Parties and the opportunity for hearing, that Dow Corning's funding obligations under this Agreement are terminated.

*Id*.

The SFA provides for termination of the Settlement Facility upon termination of Dow Corning's funding obligation. Specifically, Section 10.03 of the SFA states:

> (a) Termination Date. The Settlement Facility and Trust shall terminate as soon as practicable 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 terminate 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.
>
> (b) Closure of the Settlement Facility. Upon termination of the Settlement Facility under this Agreement, the Claims Administrator shall remain authorized to wind up the affairs of the Settlement Facility and the Trust, and thereafter, the Claimants' Advisory Committee shall be authorized to dispose of the balance, if any, of funds in the Settlement Facility after payment of or adequate provision for any

> remaining Settlement Facility or Trust expenses. Any such funds shall be distributed, if cost effective, pro rata to the holders of Allowed Claims previously paid to Claimants eligible under this Agreement by the Settlement Facility, or, if such distribution would not be cost effective, to a neutral medical research institute or university, selected by the Finance Committee after consulting with the Claimants' Advisory Committee.

SFA at § 10.03, RE 1796-3, Page ID # 42448-42449.

The DTA[15] provides for termination of the Trust following the termination of funding obligations:

> 7.03 Termination Of Trust. If the funds in the Escrow Account are distributed under Section 6.08(b), the Trust shall terminate as soon as practicable after the funds are distributed and a final accounting is rendered under Section 6.08(c). In all other cases, the Trust shall terminate as soon as practicable after Dow Corning's obligation to fund under the Funding Payment Agreement is terminated in accordance with Section 2.01(d)[16] of the Funding Payment Agreement, and the Trustee shall cooperate with the Claims Administrator, the Claimants' Advisory Committee and the Debtor's Representatives in the termination of the Trust and winding up its affairs as provided in Section 10.03 of the Settlement Facility Agreement and the distribution of any remaining assets of the Trust as provided by Section 10.03 of the Settlement Facility Agreement. Dow Corning and the Tort Committee or Dow Corning and the Claimants' Advisory Committee, after the

[15] The DTA has been amended several times throughout the course of the litigation. *See* Order Approving Stipulation to Appoint Successor Paying Agent for the Settlement Facility-Dow Corning Trust Claim Payments and to Amend the Depository Trust Agreement, RE 1241 (Jan. 26, 2016); Order Approving Stipulation to Appoint Successor Trustee for the Settlement Facility - Dow Corning Trust Claim Payments and to Amend the Depository Trust Agreement, RE 1630 (Nov. 1, 2021); Order Approving Stipulation to Amend Annex A-2.2 (Fee Schedule for the Paying Agent) to the Second Amended and Restated Depository Trust Agreement, RE 1735 (Sept. 29, 2023).

[16] Although this provision cites Section 2.01(d) of the FPA, there is no such section and this citation is a typographical error. The operative provision of the FPA is 2.01(c).

> Claimants' Advisory Committee has replaced the Tort Committee as a party to this Trust Agreement, will deliver a joint Trustee Direction to the Trustee when this Section 7.03 becomes operative.

DTA at § 7.03, RE 1796-6, Page ID # 42604.

## VII. Resolution of All Claims

The FC, the DRs, and the CAC have, with the assistance of the Independent Assessor and the consulting firm engaged to assist in claim audits, conducted extensive due diligence to confirm that all claims that have been timely submitted to the Settlement Facility have been resolved. The declarations of the Claims Administrator and the Independent Assessor confirm that the Settlement Facility has reviewed and resolved every Settling Personal Injury Claim timely submitted. November 15, 2024 Declaration of Kimberly Smith-Mair in Support of 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 ("Smith-Mair Declaration"), RE 1796-7, Page ID ## 42625-42630 ("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 [the Claims Administrator] confirm[s] that all eligible claimants who complied with the deadlines imposed by the Plan and procedures required by Court Order were sent a payment check."); November 12, 2024 Declaration of John Wills, Court Appointed Independent Assessor in Support

of 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, RE 1796-8, Page ID ## 42632-42634 ("[b]ased on the claim and financial data, [the Independent Assessor] conclude[d]… that all timely claims that are eligible for payment and that have met the requirements established by the Court for payment have been sent a payment… [and] there are no pending outstanding claims remaining to be paid"); Chmiel Declaration, RE 1796-4, Page ID ## 42459-.42460 ("As Financial Advisor, [he] confirm[ed] that all payments due for Class 14…Class 15… [and Class 16]" have been made). The Settlement Facility also issued letters of denial for claims that were submitted late – after the applicable claim filing deadlines.[17]

[17] All litigation against the Litigation Facility has also been resolved. The Court entered a series of Case Management Orders that governed the procedures for pre-trial proceedings with respect to all cases filed against the Litigation Facility. Lawsuits were filed and addressed in accordance with the Case Management Orders. Ultimately, all cases filed were either dismissed or settled. Between September 2015 and September 2016, the district court dismissed the last four remaining lawsuits against the Litigation Facility. *See Ezra v. DCC Litigation Facility, Inc.*, Case No. 05-cv-30469-DPH, ECF Nos. 113, 114 (E.D. Mich. Sept. 30, 2015); *Miller v. DCC Litigation Facility, Inc.*, Case No. 05-cv-30133-DPH, ECF Nos. 88, 89 (E.D. Mich. Sept. 29, 2016); *Gatza v. DCC Litigation Facility, Inc.*, Case No. 05-cv-30496, ECF Nos. 167, 168 (E.D. Mich. Sept. 29, 2016); *Sutherland v. DCC Litigation Facility, Inc.*, Case No. 05-cv-30276, ECF Nos. 119, 120 (E.D. Mich. Sept. 29, 2016). Three of the plaintiffs appealed the dismissals, the Sixth Circuit affirmed the dismissals and the U.S. Supreme Court denied a petition for a writ of certiorari. *Ezra*, Case No. 05-cv-30469-DPH, ECF Nos. 117, 120; *Gatza*, Case No. 05-cv-30496, ECF Nos. 173, 176; *Sutherland*, Case No. 05-cv-30276, ECF No. 121; *Sutherland v DCC Litigation Facility, Inc.*, Case No. 16-2397, ECF Nos. 49-1, 55

## VIII. The Termination Order and Relevant Briefing Related to the Motion to Terminate

On November 15, 2024, the Appellees filed the Motion to Terminate. RE 1796. The Appellees submitted declaration testimony and documentation in support of the Motion to Terminate. The record submitted in support of the Motion to Terminate confirms that any claims in all Plan Classes relevant to the termination provision of the FPA (Plan Classes 5-19) have been finally resolved. As noted, the Appellees supported the Motion to Terminate with declaration testimony from the Claims Administrator, Financial Advisor, and Independent Assessor. That uncontroverted testimony establishes that all claims have been paid or otherwise resolved. The Settlement Facility processed and paid or resolved without payment Settling Personal Injury Claims in Plan Classes 5, 6, 6.1, 6.2, 7, 9, 10, 10.1 and 10.2. *See supra* at 21-22. The Settlement Fund assets paid for the settlement of the

(6th Cir.). On September 29, 2023, the Court denied motions from these four plaintiffs to reopen the cases. *See Ezra*, Case No. 05-cv-30469-DPH, ECF No. 132 (E.D. Mich. Sept. 29, 2023); *Miller*, Case No. 05-cv-30133-DPH, ECF No. 99 (E.D. Mich. Sept. 29, 2023); *Gatza*, Case No. 05-cv-30496, ECF No. 188 (E.D. Mich. Sept. 29, 2023); *Sutherland*, Case No. 05-cv-30276, ECF No. 138 (E.D. Mich. Sept. 29, 2023). One plaintiff appealed. *Sutherland*, Case No. 05-cv-30276, ECF No. 138 (E.D. Mich. Sept. 29, 2023), aff'd sub nom., *Sutherland v. DCC Litigation Facility, Inc.*, Case No. 23-1976 (6th Cir. June 27, 2024). The Sixth Circuit affirmed. *Id.* The U.S. Supreme Court denied a petition for a writ of certiorari. *Sutherland*, Case No. 05-cv-30276, ECF No. 138 (E.D. Mich. Sept. 29, 2023), aff'd sub nom., *Sutherland v. DCC Litigation Facility, Inc.*, Case No. 23-1976 (6th Cir. June 27, 2024), petition for writ of certiorari denied, *Sutherland v. DCC Litigation Facility, Inc.*, Case No. 24-348 (U.S. Nov. 18, 2024).

Canadian claims in Classes 6A, 6B, and 6C. *See* FPA at § 2.10, RE 1796-2, Page ID ## 42368-42369. The payment for the Australian Breast Implant Settlement Option was made via stipulation as of the Effective Date and recorded as a credit against Dow Corning's funding obligations in the FPA. In addition, Settlement Fund assets paid for the resolution of Government Payor Claims (Class 15) and Domestic Health Insurer Claims (Class 14). Settlement Fund assets paid 50% of the Second Priority payments for Class 16 (Shareholder Claims). The claims in all other Plan Classes relevant to the termination provision in the FPA were resolved through mutual releases, dismissal, waiver, indemnity (Plan Classes 11,12, 13, 17, 18, 19). Motion to Terminate, RE 1796, Page ID ## 42228-42234. Claims in Plan Class 8 and claims that elected litigation were resolved through litigation against the Litigation Facility. *Id*. at Page ID # 42227.

On November 27, 2024, the Korean Claimants filed a 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 (ECF No. 1802) ("Cross-Motion"). RE 1802. The Cross-Motion raised three issues: First, the Korean Claimants contended that the conditions for termination have not been met because some of the Korean Claimants had not received payment. *Id*. at Page ID # 42642. Second, they

contended that because they have continued to make "demands of payments" on claims previously denied and closed, those resolved claims are somehow not "otherwise finally resolved." *Id*. at Page ID ##42642-42643. Third, they contended that the funding periods extend beyond the period of time defined in the Plan and that Korean Claimants' submission of questions or address information or disputes constitutes new "claim filings" within the meaning of Section 2.01(c) of the FPA. *Id*. at Page ID # 42643.

On December 9, 2024, the Appellees filed a Reply and Response to the Cross-Motion. RE 1807. The Claims Administrator submitted a declaration confirming that the Settlement Facility had addressed all of the Claims raised by the Korean Claimants and confirming the basis for their denial. *See* December 9, 2024 Declaration of Kimberly Smith-Mair in Support of the Reply and Response 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 ("Smith-Mair Reply Declaration"), RE 1807-1, Page ID ## 42771-42773. On December 10, 2024, the Korean Claimants filed a Reply to the Appellees' Reply and Response. RE 1812. On December 11, 2024, the district court held a hearing on the

Motion to Terminate. On December 30, 2024, the district court issued the Termination Order[18] granting the Motion to Terminate, finding that

> the conditions for the termination of funding required by the Plan and the Funding Payment Agreement have been met. Dow Silicones complied and met its funding obligations to the Settlement Facility and the Litigation Facility under the Plan and the Funding Payment Agreement. The [Appellees] properly supported their 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.

Termination Order, RE 1827, Page ID #43091. The district court found that: (1) "the FPA can be terminated even if certain Claims were not paid because they were denied by the Claims Administrator and thereby 'otherwise finally resolved'"; (2) the Korean Claimants have not raised "new" demands of payments because they are the "same Claims which were previously denied by the Claims Administrator"; and (3) the Funding Periods stipulated by the FPA ended on June 1, 2021. Termination

[18] On December 6, 2024, CAC filed a Response 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. RE 1806. The CAC's Response stated support for the Motion to Terminate but suggested consideration of a delay in implementation and further requested additional fees for prior work of the CAC. These issues are not pertinent here. On December 9, 2024, the Appellees filed a Reply to the CAC's Response. RE 1809. On December 23, 2024, the CAC filed a Sur-Reply. RE 1824. On December 30, 2024, the Appellees filed a Sur-Sur-Reply. RE 1829. The CAC has not appealed the Termination Order.

Order, RE 1827, Page ID ## 43082-43084. On January 1, 2025, the Korean Claimants filed a timely Notice of Appeal of the Termination Order. RE 1830.

On February 2, 2025, the Korean Claimants filed a 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 Agreement (ECF No. 1827) ("Motion to Stay"). RE 1834. On February 13, 2025, the Korean Claimants filed a 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 Agreement (ECF No. 1827) ("Revised Motion to Stay"). RE 1836. On February 26, 2025, the Appellees filed a Response to the Korean Claimants' Revised Motion to Stay. RE 1840. On March 3, 2025, the Korean Claimants filed a Reply to the Appellees' Response. RE 1844. As of the filing date of this brief, the district court had not ruled on the Revised Motion to Stay.

## SUMMARY OF ARGUMENT

The decision of the district court should be affirmed. The Plan prescribes the conditions for termination of funding and wind down of the Settlement Facility. The FPA governs the termination of funding. That FPA states that funding shall

terminate on "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 made against the Settlement Facility or the Litigation Facility for two consecutive Funding Periods." FPA at § 2.01(c), RE 1796-2, Page ID ## 42362-42363.

The Plan language is unambiguous and mandatory and the evidentiary record that demonstrates that these conditions have been met is straightforward, uncontroverted, and clear. The obligation to provide funding for distribution of payments pursuant to the Plan ends when all claims in all relevant Plan Classes have been resolved and there are no additional actions that can be taken with respect to those claims. The uncontroverted testimony of the Claims Administrator, the Independent Assessor, and the Financial Advisor – all independent neutrals appointed by the district court to provide specified services with respect to the implementation of the Plan – confirms that the conditions to terminate funding have been satisfied. All Allowed claims that could be paid have been paid. All other claims have been finally resolved either through payment or otherwise.

The Plan does not require that all claim submissions must in fact be paid in order to terminate funding and to wind down the Settlement Facility. The first clause of the termination provision addresses Allowed claims. The Plan defines an

Allowed claim as a claim that has been approved for payment. A claim that is eligible might not be approved for payment. For example, a claim of a deceased person would not be approved for payment in the absence of a legal representative. Other claims might not be approved for payment if they do not submit the documentation necessary to qualify for payment – such as a verified address or a foreign claimants identification document – required by applicable court order.

The second clause – "all claims filed have been liquidated and paid or otherwise finally resolved" – makes clear that a claim need not be paid to be resolved. There would be no need to the term "otherwise finally resolved" if funding could be terminated only if all filed claims were paid.

The language must be interpreted to give meaning to all provisions. The term "otherwise finally resolved" must have a meaning that is not limited to "payment". The term resolved means to determine or decide. A final resolution would be one that is achieved at the end of the applicable process. In the context of the resolution of Settling Personal Injury Claims, a claim that is payable is finally resolved when it is paid. A claim that is not payable is finally resolved when it completes the process of review and evaluation in the Settlement Facility and – if requested – any administrative appeals through the Appeals Judge. A claim can be finally resolved because it was found deficient, or not eligible for payment under the terms of the Plan or applicable Court orders and not cured within the allowed cure period. A

claim can be finally resolved if it was submitted after the Plan mandated deadline and therefore is not eligible for consideration. This is, of course, the only reasonable interpretation: in the context of this case, where there are hundreds of thousands of claims, there could never be a requirement that prohibits closure until every single claim is paid.

The declarations submitted in support of the Motion to Terminate set forth the plain facts: all claims have been addressed and resolved. Some have been paid, and some have been resolved "otherwise". The Korean Claimants' argument that the language is ambiguous is unsupportable. There is no ambiguity. The terms are plain, clear, and defined in the Plan or are commonly understood terms that are to be given their plain meaning under principles of contract construction.

The Korean Claimants' real dispute centers on their disagreement with decisions of the Settlement Facility. Despite the Plan's prohibition on judicial review of these decisions, the Korean Claimants have filed motions in the district court contesting every decision of the Settlement Facility. In each case, the district court has denied the motion and in each case this Court has affirmed the district court. The specific claims identified by Korean Claimants in their Cross Motion and their objection to the Termination Order include three categories of claims:

1. Claims that were submitted more than two years after the claim filing deadline. These claims were denied as untimely.

2. Claims that were denied payment because Korean Claimants failed to provide the necessary information required by the district court and the Settlement Facility to assure proper payment.
3. Claims that were denied as deficient disease claims due to a lack of qualifying medical documentation and were not timely cured.

The substantive disputes with respect to each of these categories of claims have been the subject of motions and appeals and in each case, the district court and this Court have rejected the arguments of Korean Claimants.

The decision of the district court should be affirmed.

## STANDARD OF REVIEW

This appeal involves the district court's interpretation of its own prior orders as well as interpretation of the requirements of the Plan. Issues involving the proper interpretation of the district court's orders are reviewed under the abuse of discretion standard. *See Hankins v. City of Inkster, Michigan*, 832 F. App'x. 373, 378 (6th Cir. 2020) ("We review a district court's interpretation and enforcement of its own orders under an abuse-of-discretion standard") (citation omitted); *Denhof v. City of Grand Rapids, Michigan*, 797 Fed.Appx. 944, 947 (6th Cir. 2019) ("Because the district court, in most instances, is best suited to interpret its own orders, we review its interpretation under an abuse of discretion standard.") (citation omitted); *Michigan v. City of Allen Park,* 954 F.2d 1201, 1213 (6th Cir. 1992) ("[A]n appellate court

should accord deference to a district court's construction of its own earlier orders, if that construction is reasonable.") (citation omitted). To find an abuse of discretion, the Court "must be left with a 'definite and firm conviction' that the district court committed a clear error of judgment in the conclusion it reached upon a weighing of the relevant factors." *Denhof,* 797 Fed.Appx. at 947 (citation omitted).

Issues involving the interpretation of the plain language of the Plan, Plan Documents, and the scope of the district court's jurisdiction under the Plan, are reviewed *de novo*. *Korean Claimants v. CAC*, 813 F. App'x at 216 ("The district court's decision involved the interpretation and application of the plain language of the reorganization plan. Where, as here, the district court's interpretation is confined to the Plan documents without reference to extrinsic evidence, we review *de novo*.") (internal citation omitted); *see also In re Settlement Facility Dow Corning Trust*, 592 F. App'x at 477 ("When reviewing a district court's interpretation of a bankruptcy plan where the district judge did not confirm the plan but has extensive knowledge of the case, we grant the district court significant deference with respect to its assessment of extrinsic evidence…However, we evaluate *de novo* a district court's interpretation that does not rely on extrinsic evidence."); *In re Settlement Facility Dow Corning Tr.*, 670 F. App'x 887, 888 (6th Cir. 2016) ("We review *de novo* whether the district court had jurisdiction to enter the Consent Order.") (citation omitted).

## ARGUMENT

### I. The Plan Requirements for Termination Have Been Met: All Allowed Claims Have Been Paid and All Claims Have Been "Otherwise Finally Resolved"

The Plan, SFA, and FPA are governed by and construed in accordance with New York law. Plan at, § 6.13, RE 1796-1, Page ID # 42309; SFA at § 10.07, RE 1796-3, Page ID # 42450; FPA at § 5.08, RE 1796-2, Page ID # 42377. Under New York law, the parties' intent governs the interpretation of a contract. *Glob. Reinsurance Corp. of Am. v. Century Indem. Co.*, 22 F.4th 83, 94 (2d Cir. 2021). That intent is ascertained from the plain meaning of the language employed in the agreement. *Id*. Words and phrases are given their "plain, ordinary, popular and non-technical meanings." *Tigue v. Commercial Life Ins. Co.*, 631 N.Y.S.2d 974, 975 (1995). New York courts "construe words of ordinary import with their usual and commonly understood meaning" and look to dictionary definitions to determine the ordinary meaning of words in a contract. *Yaniveth R. ex rel. Ramona S. v. LTD Realty Co.*, 27 N.Y.3d 186, 192 (2016).

Korean Claimants assert that because the claims they identify in their submissions were not paid, the conditions for termination are not met. Their contention is that termination cannot occur unless and until all of their claims are paid. They further contend that the term Allowed is ambiguous because it could have two meanings. One meaning – they assert – would define Allowed as requiring

only that the claim satisfied the eligibility requirements set forth in the SFA. The other meaning – they assert – is that the term Allowed incorporates the procedures for payment. *See* Korean Claimants' Br. at 5 and 6. Because they contend that the term is ambiguous, they argue that it can only be interpreted with reference to extrinsic evidence. Korean Claimants suggest that "[e]xtrinsic 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." Korean Claimants' Br. at 23. Of course, even assuming, *arguendo*, that the Court were to find that the term Allowed is ambiguous, extrinsic evidence would consist primarily of testimony or other documents of the Parties to the Plan at the time it was drafted.

The Korean Claimants' argument is contrary to the plain language of the FPA, the Plan, and the SFA. Allowed is defined in the *Plan* with respect to the Product Liability Claims (*i.e.*, the claims of the Korean Claimants) as a claim that "has been *approved for payment* pursuant to the Settlement Facility Agreement or the Litigation Facility Agreement". Plan at § 1.3, RE 1796-1, Page ID # 42253. There is no ambiguity – the definition in the Plan incorporates the payment criteria – and is not limited to the underlying eligibility criteria.

A claim is not approved for payment if it is missing requirements for payment. For example, the claim of a deceased individual cannot be approved for payment if there is no legal representative identified. Similarly, the claim of a claimant who cannot be located (because they have not provided a verified address) cannot be approved for payment. Were the Korean Claimant's argument to be adopted and applied literally, the Plan might never terminate. Accordingly, the argument that the district court must consider extrinsic evidence in order to interpret the meaning of Allowed in the context of the termination provision of the FPA must be rejected.

The reasonableness of this definition and its application cannot be overstated. At the outset of its operations, the Settlement Facility established guidelines to enable it to communicate with claimants and to issue payments properly. The requirement that the Settlement Facility take steps to assure that claim payments are issued to and received by eligible claimants is not only within the scope of the authority outlined in the SFA, it is an obligation. The SFA *requires* the claims administrator to institute procedures to prevent the payment of fraudulent claims and to assure that only eligible claimants are paid. SFA at Article V, RE 1796-3, Page ID ## 42434-42435. The guidelines issued by the Settlement Facility stated unequivocally that claimants have the ongoing obligation to inform the Settlement Facility of any change of address. *See* Claimant Information Guide at Q9-14 and Q9-15 attached as Exhibit 1 to February 26, 2021 Declaration of Ellen Bearicks

Regarding the Motion for Vacating Decision of Settlement Facility Regarding Address Update/Verification, RE 1595-6, Page ID.28176. There is a good reason for this requirement: it is important to assure that a claimant can be located before sending payments. To the extent that the payments are mailed to unrepresented claimants, the claim payments could easily be diverted and cashed by ineligible persons if they are sent to invalid addresses. To the extent that payments are mailed to law firms for distribution, and the claimant cannot be located, the Settlement Facility incurs significant cost if payments have to be "stopped" and reissued and risk that payments could still be cashed by ineligible persons. Accordingly, the Korean Claimants' contention that the term Allowed does not incorporate payment requirements must be rejected.

The Korean Claimants' dispute centers around Closing Orders issued by the district court that applied the long-standing mandate that claimants keep the Settlement Facility informed of their current addresses and contact information. Closing Order 2 reinforced the requirement that the Settlement Facility avoid sending payments for claimants who could not be located by prohibiting the Settlement Facility from issuing payments to claimants who had not provided a current confirmed address. *See* Closing Order 2, RE 1482, Page ID ## 24088-24089. The requirements of Closing Order 2 were applied in subsequent Closing Orders. Some of the claims of Korean Claimants were closed without payment because the

Claimants failed to provide the address information required by the Closing Orders. This Court has repeatedly confirmed the validity and application of Closing Order 2 and the other Closing Orders that implemented the address requirement terms. *In re: Settlement Facility Dow Corning Trust*, 2025 WL 488635 at *3-4 (affirming the district court's decision that the Korean Claimants were bound by the Closing Orders, including the requirement to submit a confirmed, current address for claimants in order to receive payments and the Korean Claimants' challenges to the requirements on both notice and discriminatory application grounds failed); *In re Settlement Facility Dow Corning Trust*, 2023 WL 2155056, at *3 (holding that "the district court correctly interpreted Closing Order 2 to require the Korean Claimants to confirm their addresses as a condition of receiving payments"). The Korean Claimants' disagreement does not and cannot affect the plain meaning of the term Allowed in the FPA.

Korean Claimants' argument that the term "otherwise finally resolved" is ambiguous is similarly unsupportable. The term "resolved" has a plain, unambiguous meaning: resolve means "to determine or decide". RESOLVE, Black's Law Dictionary (12th ed. 2024). A final resolution would be any determination or decision that concludes the claim as provided for within the operative framework – which in this case is the Plan.

A claim submitted for settlement under the Settlement Facility Agreement that is eligible and approved for payment is Allowed and is finally resolved when paid. A claim that has not been Allowed and paid is "finally resolved" under the administrative settlement program once it completes the claim review process including the payment requirements, as applicable. Accordingly, a claim is finally resolved without payment when the Settlement Facility completes its review function, is either found deficient and it not cured through the administrative appeal process or, if approvable, the Claimant fails to provide the information necessary to be "approved for payment". There is no further procedure permitted by the Plan – the decision of the Settlement Facility is final and binding and there is no right to appeal that decision to any court. Annex A at § 8.05, RE 1796-5, Page ID # 42524.

For example, claimants who never filed the necessary forms to generate a claim review cannot have an Allowed claim once the final filing deadlines passed. Such claims are finally resolved. Claims that are ineligible claims or deficient (and not cured) are finally resolved under the terms of the Plan. Claims that were not submitted on time in accordance with the Plan deadlines are not eligible for Allowance and are finally resolved. Claims that are fraudulent and therefore not in compliance with the requirements for settlement compensation cannot be Allowed and are finally resolved.

The prohibition on appeals from decisions of the Settlement Facility means that under the terms of the Plan, the determination of the Settlement Facility is the final resolution of the claim and the term "finally resolved" as used in the FPA *must* be interpreted in the context of this prohibition. Basic contract law principles require that terms in a contract be interpreted within the context of the agreement as a whole to give meaning to all of its terms. "If the document as a whole 'makes clear the parties' over-all intention, courts examining isolated provisions should then choose that construction which will carry out the plain purpose and object of the agreement.'" *Glob. Reinsurance*, 22 F. 4th at 83, quoting *Lockheed Martin Corp. v. Retail Holdings, N.V.*, 639 F.3d 63, 69 (2d Cir. 2011) (quoting *Kass v. Kass*, 91 N.Y.2d 554, 567 (1998)); *Yonkers Contracting Co. v. Romano Enterprises of New York, Inc.*, 835 N.Y.S.2d 363, 365 (2007) ("A contract should not be interpreted in such a way as would leave one of its provisions substantially without force or effect")*; Helmsley–Spear, Inc. v. New York Blood Center*, 687 N.Y.S.2d 353, 357 (1999) ("Courts should construe a contract so as to give meaning to all of its language and avoid an interpretation that effectively renders meaningless a part of the contract"). The term final resolution as used in the FPA with respect to settling claims cannot be interpreted to eviscerate the finality of the administrative claim determination process and superimpose on the Plan a requirement for exhaustion of judicial remedies that are prohibited by the Plan. The claims of the Korean

Claimants have been finally resolved within the meaning of the FPA and therefore do not pose any impediment to termination.

## II. Korean Claimants' Dispute with the Terms of the Plan and Attacks on the Claims Administrator and District Court are Inappropriate and Irrelevant

The Korean Claimants' real dispute is with the outcome of their claims – much of which is due in significant part to their own failure to submit timely claims and documents. The Korean Claimants make what can only be described as a series of circular arguments as well as arguments based on assertions that have been rejected repeatedly by this Court and unsupportable allegations that the Claims Administrator's declaration consists of "lies".

The Korean Claimants again assert that the payment requirements that are delineated in Closing Order 2 were wrongfully applied in a discriminatory manner to Korean claims. As noted, their dispute with Closing Order 2 and its application to various claims through subsequent Closing Orders have been litigated and rejected. *See supra* at 36.

The Korean Claimants contend that because they continue to dispute the decisions of the Settlement Facility the claims are not "finally resolved". They assert that "the "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 SF-DCT-approved

claims. The Korean claimants will continue fighting to "end the problem."" Korean Claimants' Br. at 9.

This of course makes no sense. The term "otherwise finally resolved" can only refer to determinations of the Settlement Facility (with respect to Settling Personal Injury Claims). Final resolution does not and cannot depend on whether the claimant agrees with the outcome. It can only mean that the Settlement Facility has completed all required reviews and determined that the claim is not eligible for payment.

They assert that final resolution requires a final non appealable court order and that the claims cannot be finally resolved unless and until there is a judicial determination. Korean Claimants' Br. at 40. Of course, this argument is contrary to the plain terms of the Plan which prohibit judicial review of decisions of the Settlement Facility. *See supra*. at 14. To support their argument, the Korean Claimants refer to the CAC's filing in response to the Motion to Terminate suggesting that it might be appropriate to wait until the then-pending appeal in this Court (Case No. 24-1653), is resolved before terminating funding and closing the Settlement Facility. Korean Claimants' Br. at 15. The district court rejected the CAC's suggestion that it was appropriate to wait – based on the Plan's prohibition on appeals to any court of decisions of the Settlement Facility. Termination Order, RE 1827, Page ID # 43084-43085. In any event, the argument is now moot because

this Court has since ruled on the appeal in Case No. 24-1653 that was pending and subject of the CAC's concern finding, consistent with the district court, that the Plan prohibits appeals of decisions of the Settlement Facility and accordingly, final resolution cannot require a final judicial determination.[19] *See In re Settlement Facility Dow Corning Tr.*, 2025 WL 488635, at *2. Notably, this Court's decision on the appeal cited by the CAC reaffirmed the finding that decisions of the Settlement Facility may not be appealed to any court. *Id*. at *1-2 (affirming that there is no right to appeal substantive decisions by the Claims Administrator and Appeals Judge as to individual claims in federal court and such review is beyond the scope of the plan).

In support of their argument that extrinsic evidence must be considered in interpreting the term otherwise finally resolved, the Korean Claimants complain that the district court relied inappropriately on testimony of the Claims Administrator. Korean Claimants' Br. at 36-42. The Claims Administrator provided factual testimony in a declaration. The Claims Administrator did not purport to interpret the terms of the Plan. They contend that the testimony of the Claims Administrator is "inconsistent", implying that it should not be relied on as a basis for finding that the

[19] The Korean Claimants do not have any pending substantive motions in the district court and there are no appeals pending other than this appeal of the termination order. In other words, there are no pending court proceedings that could be cited as the basis to find that the Korean Claims are not finally resolved even if a pending court proceeding were a basis on which to conclude that claims are not finally resolved.

Korean Claims are "finally resolved". *See, e.g.*, Korean Claimants' Br. at 37-38 (asserting that the Claims Administrator's declaration stating that no new timely claims have been filed is "inconsistent" and that in fact the termination requirement that "no new timely Claims have been made against the Settlement Facility or the Litigation Facility for two consecutive Funding Periods" has not been satisfied). Korean Claimants contend that because they have submitted numerous disputes, additional information, and even late claims after the close of the filing deadlines these filings constitute "new claims" within the meaning of the FPA. This argument has no merit. First, the various disputes, emails, arguments, assertions, and late submissions – do not constitute "claims". Second, even if they were claims, such submissions cannot be considered "*timely*" since they admittedly were submitted long after the June 3, 2019 filing deadline.[20] Third, the Funding Periods are defined in the FPA by specific time period. The last Funding Period ended June 1, 2021. The Funding Periods are not defined by submissions and the fact that submissions were made after that date does not change the definition of a Funding Period.

Korean Claimants assert that the Claims Administrator is wrong in stating that all claims have been finally resolved because at one time the Claims Administrator noted in correspondence to counsel for Korean Claimants that she could not discuss

[20] Korean Claimants admit that their submissions were made in 2022 – more than three years after the final filing deadline.

an issue that he had submitted to this Court in an appeal. Korean Claimants' implication is that somehow this statement is evidence that the Claims Administrator believed that final resolution requires a final non appealable court order. The statement of the Claims Administrator means no such thing.

The Korean Claimants argue that the Claims Administrator's breakdown of the Korean Claims that have not received payment is wrong or inconsistent with their own records. They state, for example, that the Claims Administrator noted certain claims that had not cured proof of manufacturer deficiencies (which is the reason the claim could not be approved). Korean Claimants dispute that there are any such claims on their list and that at any rate there is no deadline to cure proof of manufacturer.[21] The Claims Administrator's declaration reflects the information contained in the records of the Settlement Facility and Korean Claimants' attempt to dispute the characterization of a handful of claims – without support – hardly renders the Claims Administrator's declaration unreliable.

The Korean Claimants further assert that the Claims Administrator is not truly neutral and has lied in her declaration and therefore the statements in that declaration should not be relied upon for a determination that Korean Claims are finally

[21] Their contention that there is no deadline to cure Proof of Manufacturer is incorrect. Closing Order 2 imposed a deadline for curing deficiencies in Proof of Manufacturer submissions – to enable the Settlement Facility to complete processing the pending claims. Closing Order 2, RE 1482, Page ID ## 24085-24086.

resolved. The Korean Claimants' bald assertions that the Claims Administrator "lied" and is notoriously not neutral are inappropriate and baseless. It is inappropriate for the Korean Claimants to continue to disparage the Claims Administrator, and in turn, the district court. There is no basis for these allegations and in fact this Court has consistently found that there has been no discrimination against the Korean Claimants. *See, e.g.*, *In re Settlement Facility Dow Corning Trust*, 2025 WL 488635, at *3 ("Nor does the record support the Korean Claimants' allegations of discrimination. The address verification procedures applied equally to all claimants… In the end, the Korean Claimants received the same treatment as any other similarly positioned claimant.").

## III. The Termination Order Should be Affirmed Because the Subject Claims are Ineligible and Barred By the Terms Of The Plan And Decisions of the District Court and The Sixth Circuit

It is perhaps relevant to explain the nature of the claims at issue – that Korean Claimants assert should be paid. Korean Claimants assert that $6,064,350 is owed to them.[22] Korean Claimants' Br. at 13. Of that amount, nearly half ($2,916,000) is attributed by Korean Claimants to approximately 400 "claims" that were not filed by the Plan mandated deadline. These submissions are not claims. They are simply late submissions that are barred by the deadline prescribed in the Plan. Korean

[22] Some of these claims appear to have been sent payment but the checks ultimately went stale and were not eligible for reissue.

Claimants have already litigated (and lost) their dispute over the denial of these late submissions. They cannot now revisit the determination on these claims by recharacterizing the issue as a contract interpretation issue. *In re Settlement Facility Dow Corning Trust*, 2023 WL 2155056 at *3 ("In Case No. 22-1750 [regarding Korean Claimants' 400 claims], the district court correctly concluded that the final deadline to file claims was an unambiguous plan term to which settling claimants agreed and which it therefore had no authority to modify.").

A significant portion of the total amount claimed consists of claims that were closed pursuant to Closing Orders 2, 3, and 5 because they were claims that did not meet the verified address requirement and so could not be paid. *See* Smith-Mair Reply Declaration, RE 1807-1, Page ID ## 42771-42773. The Korean Claimants had only to submit a verified address in order to satisfy this requirement and they failed to do so. The Korean Claimants have previously litigated and lost their disagreement with this requirement. *See supra* at 18.

The remainder of the dollar amount allegedly owed is attributable to approximately 109 disease claims that were found deficient but were never cured. That is, the Korean Claimants failed to submit documents to cure these deficient claims and further rejected the alternative expedited payment that was offered by the Settlement Facility. This dispute was also the subject of prior litigation and arguments asserted by the Korean Claimants were rejected. *In re: Settlement*

*Facility Dow Corning Trust*, 2025 WL 488635 at *2 (affirming denial of the Motion for Order to Correct the Disposition of the SF-DCT Regarding the Korean Claimants finding that judicial review was barred by the Plan and stating that the 109 Korean Claimants had 1 year to cure deficiencies and failed to do so and returned expedited release payments uncashed).

The Korean Claimants simply failed to submit necessary documents and information – and for that reason their claims were found deficient and denied. They have challenged each and every one of these decisions and can hardly complain that they have not had sufficient process. These claims are not eligible for payment and cannot be the basis for holding up termination of the Settlement Facility. The record is clear: the requirements for termination have been satisfied and the district court's order should be affirmed.

It is important to note two additional statements in the Korean Claimants' brief. First, they state that because Dow Silicones has not paid the full amount of the cap, the company has not complied with the alternative provision for termination which is that all amounts due have been paid and that the funds belong to Korean Claimants. *See* Korean Claimants' Brief at fn. 8. Of course, this assertion is belied by the terms of the Plan. Dow Silicones is obligated only to pay the amount necessary for Fundable Expenditures. The Plan does not require the company to pay the full amount of the cap. Second, they state that if their appeal is denied they will

seek to file litigation in Korea seeking recovery of the amount "owed" by the company. *See* Korean Claimants' Br. at fn. 7. But of course, the amount owed is defined by the Plan and the decisions of the independent neutral persons and entities that are charged with implementing the Plan under the supervision of the district court. Dow Silicones – notwithstanding the allegations of Korean Claimants – had no role in evaluating claims or determining their status. Those determinations are made by the independent Claims Administrator and other neutrals appointed and supervised by the district court.

## CONCLUSION

For the foregoing reasons, Appellees respectfully request that the Court dismiss and deny this appeal and request that the Court affirm the December 30, 2024 Termination Order of the district court.

## STATEMENT OF COMPLIANCE

I certify that this brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B). According to the word processing program used to prepare this brief (Microsoft Word), and excluding the parts of this brief exempted by Fed. R. App. P. 32(f), this brief contains 12,285 words.

Dated: March 18, 2025

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## CERTIFICATE OF SERVICE

I certify that on March 18, 2025, I electronically filed a copy of the foregoing Brief of Appellees, Dow Silicones Corporation, The Debtor's Representatives, and the Finance Committee, through the Court's electronic filing system, which will send notice and a copy of this brief to all registered counsel in this case, as follows:

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

| RE # | Filing Date | Document Description | Page ID |
|---|---|---|---|
| 1 | 11/29/2000 | Order Regarding Case Number for Matters Relating to the Settlement Facility Agreement | 1 |
| 1241 | 1/26/2016 | Order Approving Stipulation to Appoint Successor Paying Agent for the Settlement Facility-Dow Corning Trust Claim Payments and to Amend the Depository Trust Agreement | 18991-18992 |
| 1447 | 07/25/2018 | Closing Order 1 for Final June 3, 2019 Claim Deadline (Establishing Final Cure Deadlines, Revised Claim Review Procedures, and Appeal Deadlines) | 23937-23950 |
| 1482 | 03/19/2019 | Closing Order 2 (Regarding Additional Procedures For Incomplete And Late Claims; Protocols For Issuing Payments; Audits Of Attorney Distributions Of Payments; Protocols For Return Of Undistributed Claimant Payment Funds; Guidelines For Uncashed Checks And For Reissuance Of Checks; Restrictions On Attorney Withdrawals) | 24084-24097 |
| 1595-6 | 02/26/2021 | Declaration of Ellen Bearicks Regarding the Motion for Vacating Decision of Settlement Facility Regarding Address Update/Verification | 28164-28193 |
| 1598 | 03/25/2021 | Closing Order 3 Notice That Certain Claims Will Be Permanently Barred And Denied Payment Unless A "Confirmed Current Address" Is Provided To The SF-DCT On Or Before June 30, 2021 This Order Applies Only To Certain Claims Submitted On Or By June 3, 2019 That Have Not Been Reviewed Because The Claimant's Address Is Not Current And The Claimant Cannot Be Located. If The SF-DCT Has Already Issued A Notice Of Status Letter Or Approved The | 28284-28288 |

| RE # | Filing Date | Document Description | Page ID |
|---|---|---|---|
| | | Claim For Payment, This Order Does Not Apply | |
| 1630 | 11/1/2021 | Order Approving Stipulation to Appoint Successor Trustee for the Settlement Facility - Dow Corning Trust Claim Payments and to Amend the Depository Trust Agreement | 28780-28782 |
| 1640 | 04/01/2022 | Closing Order 4 Requiring Completion of Court-Directed Audit Survey and Return of Funds Pursuant to Closing Order 2 | 28794-28798 |
| 1642 | 06/13/2022 | Closing Order 5. Notice that Certain Claims without a Confirmed Current Address shall be Closed and Establishing Protocols for Addressing Payments for Claimants in Bankruptcy | 28800-28805 |
| 1735 | 9/29/2023 | Order Approving Stipulation to Amend Annex A-2.2 (Fee Schedule for the Paying Agent) to the Second Amended and Restated Depository Trust Agreement | 33728 |
| 1796 | 11/15/2024 | 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 | 42200-42240 |
| 1796-1 | 11/15/2024 | Amended Joint Plan of Reorganization of Dow Corning Corporation | 42241-42352 |
| 1796-2 | 11/15/2024 | Funding Payment Agreement | 42353-42410 |
| 1796-3 | 11/15/2024 | Settlement Facility and Fund Distribution Agreement | 42411-42456 |
| 1796-4 | 11/15/2024 | Declaration of Brian Chmiel Court Appointed Financial Advisor in Support of 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 | 42457-42460 |

| RE # | Filing Date | Document Description | Page ID |
|---|---|---|---|
| 1796-5 | 11/15/2024 | Dow Corning Settlement Program and Claims Resolution Procedures, Annex A to SFA | 42461-42578 |
| 1796-6 | 11/15/2024 | Second Amended and Restated Depository Trust Agreement | 42579-42623 |
| 1796-7 | 11/15/2024 | Declaration of Kimberly Smith-Mair in Support of 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 | 42624-42630 |
| 1796-8 | 11/15/2024 | Declaration of John Wills, Court Appointed Independent Assessor in Support of 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 | 42631-42634 |
| 1802 | 11/27/2024 | 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 (ECF No. 1802) | 42641-42717 |
| 1806 | 12/6/2024 | 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 | 42738-42743 |
| 1807 | 12/9/2024 | Reply and Response of Dow Silicones Corporation, the Debtor's Representatives, | 42744-42768 |

| RE # | Filing Date | Document Description | Page ID |
|---|---|---|---|
| | | 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 | |
| 1807-1 | 12/9/2024 | Declaration of Kimberly Smith-Mair in Support of the Reply and Response 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 | 42769-42773 |
| 1809 | 12/9/2024 | 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 | 42777-42797 |
| 1812 | 12/10/2024 | 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 | 42814-42823 |

| RE # | Filing Date | Document Description | Page ID |
|---|---|---|---|
| | | Agreement and for Order to Make Payments in Default to the Korean Claimants | |
| 1824 | 12/23/2024 | 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 | 42976-43039 |
| 1827 | 12/30/2024 | 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) | 43072-43095 |
| 1829 | 12/30/2024 | Sur-Sur-Reply of Dow Silicones Corporation, the Debtor's Representatives, and the Finance Committee to the 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 | 43098-43110 |
| 1830 | 1/1/2025 | 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 | 43111-43113 |

| RE # | Filing Date | Document Description | Page ID |
|---|---|---|---|
| | | Facility and Fund Distribution Agreement (ECF No. 1796) | |
| 1834 | 2/2/2025 | 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 Agreement (ECF No. 1827) | 43176-43183 |
| 1836 | 2/13/2025 | 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 Agreement (ECF No. 1827) | 43194-43200 |
| 1840 | 2/26/2025 | Response of Dow Silicones Corporation, the Debtor's Representatives, and the Finance Committee to the Korean Claimants' 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 Agreement (ECF No. 1827) | 43258-43282 |
| 1844 | 3/3/2025 | Reply to Response of Dow Silicones Corporation, the Debtor's Representatives, and the Finance Committee to the Korean Claimants' 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 Agreement (ECF No. 1827) | 43303-43327 |