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

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

REPLY TO RESPONSE OF DOW SILICIONES 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 AGREMENT (ECF NO.1827)

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I. INTRODUCTION

Dow Silicones Corporation, the Debtor's Representatives and the Finance Committee ("the Movants") filed their Response to the Korean claimants' Motion to Stay this Court's Order Granting the Movants' 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) on February 28, 2025.

The Korean claimants appealed this Order. The appeal is pending before the Sixth Circuit as Case No. 25-1004. The Korean claimants filed this Motion to Stay on February 3, 2025. The Sixth Circuit issued Per Curium Judgment on Case No. 24-1653 of the Korean claimants on February 13, 2025. To reflect the Sixth Circuit's Judgment, the Korean claimants filed *Revised* Motion to Stay on February 13, 2025. The Movants took an advantage of *Revised* Motion to Stay to extend the deadline for filing a Response, although it was same as Motion to Stay, and filed their Response to the Korean claimants' Motion to Stay on February 28, 2025. Because the Movants' Response was filed after the deadline for submission which is 14 days from serving a motion, the Response of February 28, 2025 shall be denied and must not be considered for this Court to deliberate the Korean claimants' Motion to Stay.

Even if the Movants' Response were accepted by this Court, Dow Silicones Corporation, the Debtor's Representatives and the Finance Committee failed to catch what the Korean claimants asserted in the Appellate Brief submitted to the Sixth Circuit although the Korean claimants filed Exhibit A ("Copy of the Appellate Brief for Case No. 25-1004") with this Court for consideration on February 18, 2025 so the Movants missed the points of the Korean claimants' assertions supporting Motion to Stay.

To clarify this Court the points of the Korean claimants for Motion to Stay, though, the

Korean claimants file this Reply by reflecting the contents of Appellate Brief of Case No. 25-1004 pending before the Sixth Circuit.

II. GROUNDS FOR GRANTING MOTION TO STAY

A. LIKELIHOOD TO PREVAIL

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

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

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

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

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

As far as the Korean claimants are concerned, the phrase in Section 2.01(c) of the FPA, "all Allowed Claims have been paid, all Claims filed have been liquidated and paid or otherwise finally resolved", is ambiguous.

This Court ruled that although the certain Korean Claims have not been paid or liquidated,

the Claims Administrator denied the Korean Claims, the denial of the Claims Administrator is binding and final, and therefore all Allowed Claims have been otherwise finally resolved.

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

The category of the amount which has not been paid[1] is: (i) the premium payments (US1,131,250 dollars of Exhibit 1 of EXHIBIT B); (ii) the unpaid base payments which were processed in 2015 to 2016 (US489,500 dollars of Exhibit 1 of EXHIBIT B); (iii) the unpaid base plus premium payments which were filed in 2019 and already processed (US1,527,600 dollars of Exhibit 2 of EXHIBIT B); and (iv) the unpaid base plus premium payments which were filed but have not been processed (US2,916,000 dollars of Exhibit 3 of EXHIBIT B).[2] (Cross Motion, Page ID:#42676-42717)

The Korean claimants asserted that the term of "Allowed" and the term of "otherwise finally resolved" are not clear in the meaning so that they are ambiguous.

This Court assumed that the phrase is unambiguous. In addition, this Court ruled that the courts have to give effect to the intent of the contracting parties as revealed by the language they chose.

On the contrary, the phrase is ambiguous.

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

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

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

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

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

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

Second, the term of "Allowed Claims" involves two meanings: (i) the Claims[3] which were processed and approved [so called claim-approved level]; (ii) the Claims which have

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

been approved but held on payment [so called payment-approved level].

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

This Court issued Closing Order 2 on March 19, 2019. Closing Order 2 included the address update and confirmation requirement. This Court issued Closing Order 3 and Closing Order 5 to implement Closing Order 2 with respect to the address update and confirmation requirement. After those Closing Orders came into play, the Settlement Facility did not pay even for the approved Claims, previously "Allowed Claims", to the claimants. The settlement Facility, from 2019, requested the claimants to update their addresses and to receive confirmation from the Settlement Facility. Even if the Claim of a claimant was approved with the medical records which were submitted to the Settlement Facility, the Claim was not paid and had to meet the additional requirement, the address update and confirmation requirement, from March 2019. Even if a Claim was "Allowed Claim" since the Claim passed the review

and examination by the Settlement Facility and was finally approved, the Claim was not "Allowed Claim" any longer.

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

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

To sum up, the term of "Allowed Claims" is capable of more than one reasonable interpretation. It can be the Claim which has been approved or the Claim which has been approved but its payment is on hold due to the address update and confirmation requirement. The Settlement Facility used the term either way in convenience. However, the Movants started the term from March 19, 2019 as "Allowed Claim" is the Claim which has been approved and also the claimants' address has been updated and confirmed by the Settlement Facility. It is inconsistent. Therefore the term of "Allowed Claims" in Section 2.03(c) of the Funding Payment Agreement is ambiguous although this Court ruled that Section 2.03(c) is unambiguous.

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

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

This Court ruled that the Claims Administrator denied the Korean Claims, the denial of the Claims Administrator is final and binding, and therefore all Allowed Claims have been "otherwise finally resolved".

This Court further ruled, against the Claimants' Advisory Committee's argument that the Korean claimants' Appeal[4] is pending before the Sixth Circuit, that the current appeal by the Korean claimants involves Closing Order 5,[5] which provided that the Claims Administrator close Claims where the claimants failed to update addresses, and the current appeal by the Korean claimants does not change the Plan documents' language that there is no right to appeal a denial by the Claims Administrator, and the Claims Administrator' denial of the Korean claimants' Claims meets the criteria under the FPA that the Claims are "otherwise finally resolved" since the Korean claimants' Claims currently before the Court were not liquidated or paid.

To simply put, this Court's ruling is that since the Claims Administrator denied the

[4] The Sixth Circuit issued Judgment on this appeal on February 13, 2025.

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

Korean Claims on the basis that the Korean claimants failed to update their addresses, the Korean Claims were otherwise finally resolved.

This Court indicated in the Order that the term of "otherwise finally resolved" in Section 2.03(c) of the FPA is unambiguous in that the denial of the Claims Administrator is final and binding on the Korean claimants by the language of the Plan documents.

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

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

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

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

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

Corp., 4 N.Y.3d 272 (March 29, 2005) *5

First, "Resolve" is "*solve* or *end a problem or difficulty*." (*See* https://dictionary.cambridge.org) Pursuant to definition of the word of "Resolve", it has to be "*solve*" or "*end a problem*". However, the Settlement Facility failed to solve in the context of the Korean claims. The Claims Administrator simply denied the Korean claims. Plus the Korean claimants did not end a problem, which is nonpayment of the SFDCT-approved claims. The Korean claimants will continue fighting to "end the problem." The Korean claimants appealed this Order, which is pending before the Sixth Circuit. Therefore the District Court's interpretation of the phrase, "otherwise finally resolved", is inconsistent with the interpretation of the Cambridge Dictionary.

Second, this Court's finding that the Korean Claims were "otherwise finally resolved" is inconsistent with the facts as to the Korean Claims which were not paid: (a) This Court stated in the Order that the current appeal by the Korean claimants[6] involves Closing Order 5, which provided that the Claims Administrator close Clams where the claimants failed to update addresses. However, the Appeal also involves other Orders, Closing Order 2 & Closing Order 3; (b) In addition, the unpaid base payments which were processed in 2015 to 2016 (US489,500 dollars of Exhibit 1 of Exhibit B of Declaration of Yeon-Ho Kim, an issue of the Korean claimants' Cross Motion) have nothing to do with the Closing Order 5. This category of non-payment was that the Settlement Facility simply failed to pay even though it approved the claims in amount of US489,500 dollars in 2015 to 2016; (c) As stated by the Movants, the Korean claims (1,844 claims), which were not resolved so to speak, only take part in 73 percent of the claims in conjunction with Closing Order 5. The other Korean claims have nothing to do with Closing Order 5;[7] and (d) The Korean claimants list 1,884 claims in

[6] meaning Case No. 24-1653

[7] The Claims Administrator has provided through the Declaration that more than 73 percent of those claims, not 100 percent of the claims, were closed pursuant to Closing Order 5.

the Cross Motion for Payment in Default.

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

To sum up, the term of "otherwise finally resolved" is capable of more than one reasonable interpretation and may have two or more different meaning. As such as this Court's interpretation, the term of "finally resolved" can mean the denial of the Claims Administrator. Or it can mean a future decision of the Sixth Circuit regarding Case No. 25-1004. This Court emphasized that the Court has no authority to change the language in the Plan that the decision of the Claims Administrator is final and binding on the claimants. Therefore the term of "otherwise finally resolved" in Section 2.03(c) of the Funding Payment Agreement is ambiguous.

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

"Extrinsic evidence and parol evidence of the parties' intent may not be admitted to create ambiguity on its face, and such evidence may be considered where a contract is determined to be ambiguous (*see Brad H. v. City of New York*, 17 N.Y.3d 185-186, 928 N.Y.S.2d 221, 951 N.E.2d 743; *W.W.W. Assoc. v. Giancontieri*, 77 N.Y.2d 163, 565 N.Y.S.2d 440, 443, 566 N.E.2d 639; *Scotto v. Georgoulis*, 89 A.D.3d 718, 932 N.Y.S.2d 120)." *NRT New York, LLC v. Harding*, 131 A.D.3d 952 (Sept.2, 2015) *3

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

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

To find that the Korean Claims have been finally resolved, this Court preemptively relied on the declaration of the Claims administrator. The Claims Administrator testified in the declaration as follows;

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

First, the statement of the Claims Administrator that *all Allowed Claims* regarding Classes 6.1 and 6.2 have been *otherwise finally resolved* is inconsistent with the actions taken by the Claims Administrator. The Korean Claims, which have not been paid or liquidated, have not been otherwise finally resolved in the minds of the Claims Administrator. The Claims Administrator responded and committed to the AOR of the Korean claimants that the

Settlement Facility waits for the decisions of the Sixth Circuit when the AOR inquired what was happening regarding the Korean Claims.

Second, the statement of the Claims Administrator that no *new* timely Claims have been made against the Settlement Facility since June 3, 2019 is inconsistent: (i) The AOR of the Korean claimants have been demanding the payments of Allowed Claims ("the SF-DCT's approved-Claims") many times by writing emails and by sending the Fed-ex letters (meaning "the Demand of Payments") to both the Claims Administrator and the Settlement Facility. The AOR even sent *the demand of payments letter* in October 2024; (ii) New Korean Claims (the POM and the disease claims) including a Claim attached as Exhibit A of Yeon-Ho Kim Declaration[8] was filed on December 20, 2021 and following the filing, the SF-DCT requested for address update on April 25, 2022. The SF-DCT requested address update on June 13, 2022 again. In accordance with the SF-DCT's request, the Korean claimants filed address update on September 6, 2022. And then, the Korean claimants filed the copy of ID card on November 22, 2022 (*See* EXHIBIT A of Yeon-Ho Kim Declaration). From this example, a new timely claim was made against the SF-DCT in the year of 2022. If the Korean claim were not a new timely claim, the SF-DCT would not have requested for address update. Therefore the statement of the Claims Administrator that no new timely Claims have been made against the Settlement Facility since June 3, 2019 is inconsistent.

Third, apart from the above testimony, the Claims Administrator provided other

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

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

The Claims Administrator has been notorious not to be neutral/impartial and independent from the Debtor. The Movants rather alleged that this accusation is scurrilous, unsupported and false. The Movants reinforced the allegation by saying that the Claims Administrator is a neutral person appointed by the Court to perform tasks defined in the Plan or directed by this Court. However, the Korean claimants provided the basis and evidence that the Claims Administrator has lied in the context of the Korean claimants' Cross Motion as above. Furthermore, the Claims Administrator refused to accept a proposal for meeting with the AOR of the Korean claimants in the office of the Settlement Facility since she took the position of the Claims Administrator in 2021. The Claims Administrator even told the AOR that if the AOR wanted to say something in person, the AOR must contact her lawyer. The Claims Administrator had no intent to resolve the Claims and explain how to resolve the Claims to the AOR of the Korean claimants. A neutral person should not have avoided a meeting with the representative of the claimants. The Claims Administrator was found in

numerous occasions that the Claims Administrator has been influenced by the Debtor. In addition, the Claims Administrator is not a lawyer to be able to abide by neutrality of position. The AOR asks this Court to audit to verify the allegations of the Movants regarding the neutrality of the Claims Administrator.

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

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

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

The Claimants' Advisory Committee is one of the parties of the Funding Payment Agreement. During negotiations with the Dow Corning Corporation and the Debtor's Representatives, The Claimants' Advisory Committee's intent in the context of Section 2.03(c) of the Funding Payment Agreement was, "A[a]ny other resolution would not be final and would still carry the possibility, *however remote*, of exposure for the Settlement Facility, and

this is precisely the situation the FPA is designed to *avoid*." The Claimants' Advisory Committee clearly indicated in its Response that the Korean claimants' appeal to the Court, however absurd the AOR of the Korean claimants may be, must not be final for the purpose of interpretation of Section 2.39(c) since the Settlement Facility can be exposed.

The Claimants' Advisory Committee's intent in the FPA must be respected in interpreting Section 2.03(c) because it is one of the parties of the agreement, particularly because the Claimants' Advisory Committee represented the personal injury creditors including the Korean claimants.

To sum up, extrinsic evidences for interpretation of Section 2.03(c) of the Funding Payment Agreement do not favor the Motion to Terminate the Funding in the FPA and to Terminate the Settlement Facility in the SFA. The testimony of the Claims Administrator in the Declaration that all Allowed Claims in each of Classes 5 through 10 have been paid and all Claims filed haven been liquidated and paid or otherwise finally resolved is not reliable or trustworthy. The statements of the Claims Administrator in the Declaration are inconsistent in concluding that the Korean Claims for the Cross Motion were inconsistent with the records of the Settlement Facility.

In addition, the Claimants' Advisory Committee's intent as the Party of the FPA and the SFA for the purpose of interpreting Section 2.03(c) of the FPA has not been finally resolved must be respected.[9] Therefore, to terminate funding in the FPA and to terminate the Settlement Facility in the SFA shall not be permitted because the conditions of Section 2.03(c) of FPA and Section 10.03 of the SFA were not met based on extrinsic evidences.

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

4. Conclusion

This Court ruled that the terms of Section 2.01(c) of the FPA are unambiguous. The Korean claimants argue that the terms are ambiguous. The Movants argue in this Motion to Stay that the Korean claimants are not likely to succeed on the merits. The Movants argue that the Claims Administrator denied the Korean Claims and the decision of the Claims Administrator is final an d binding so the Korean Claims were finally resolved. However, the terms of Section 2.01(c) of the FPA must be interpreted by a higher court, the Sixth Circuit. The interpretation of this Court must not be dispositive.

The Korean claimants have likelihood to prevail if the Sixth Circuit decides that the terms of Section 2.01(c) of the FPA are ambiguous regardless of the possibility of appeal to the court regarding the Korean Claims by the Korean claimants. The Motion to Terminate by the Movants does not hinge on whether the Korean Claims were appealable to the court. It hinges on the interpretation of the agreement of the parties, the Claimants' Advisory Committee and the Debtor. Therefore, whether the Korean Claims were appealable to the court would not affect the decision of the Sixth Circuit regarding Case No. 25.1004 heavily, although the Movants adamantly alleged that the Korean Claims were not appealable to the court. Therefore, the Korean claimants have likelihood to prevail in the appeal.

B. IRREPARABLE HARM TO KOREAN CLAIMATS

The Movants assert that the Korean claimants seek compensatory relief, and so, were the Court of Appeals to find that this Court's Termination Order was in error, and that the funding obligations should not be terminated, then the Korean claimants would receive the relief they seek regardless of whether there is a stay.

In this Order, this Court authorized to terminate not only the funding of the FPA but to

terminate the Settlement Facility of the SFA on March 31, 2025. The Korean claimants used to receive compensatory relief, which was a form of checks issued by the Settlement Facility. Therefore, if the Sixth Circuit finds that this Court's Termination was in error after this Order was fully executed without a stay, the Korean claimants are not able to receive compensatory relief from anybody. The Settlement Facility would have gone after the finding of the Sixth Circuit in favor of the Korean claimants,

The allegation of the Movants that the Korean claimants would receive the relief they seek regardless of whether there is a stay is not sensible. Without a stay, the Korean claimants would be harmed irreparably.

C. NO HARM TO SETTLEMENT FACILITY, OTHER CLAIMANTS AND DOW SILICONES

The movants assert that a stay would have significant detrimental effect: the Settlement Facility would continue to incur costs just to maintain staff on the payroll despite the fact that they will have no tasks to perform, thereby harming the Reorganized Debtor which provides funding for operation of the Plan, and a stay would harm the staff of the Settlement Facility who would be required to remain in their positions instead of seeking new jobs or moving on to other endeavors, and it would create uncertainty among claimants who have all been informed of the termination of operations and cessations of communications.

The Settlement Facility would not incur costs since the staffs have already left leaving the Claims Administrator only and the operation costs would not incur because there is no office space after the office of Houston closed, and because there is not a staff left, there is no one who is able to seek other job or to move on to other endeavors. Likewise, the Reorganized Debtor does not provide any funding except maintaining remaining funds held in the Settlement Facility. In addition, other claimants do not care about the termination of

operations of the Settlement Program or the Settlement Facility of Dow Silicones because they had received all compensatory reliefs that they were supposed to receive. The Settlement Facility would not try to communicate with other claimants because it would incur a cost of mailings and further cause other problems detrimental to the reputation of Dow Silicones.

The allegations of the Movants are not sensible.

D. PUBLIC INTEREST CAN BE SERVED

The movants allege that there was no collusion among the Movants and the Claimants Advisory Committee regarding Closing Orders. The movants assert that there can be no tenable claim of unlawful collusion or discriminatory exclusion of the Korean claimants. The movants added that there was a decision of the Sixth Circuit for that matter by ruling that the address update and confirmation requirement was applied equally to the claimants.

All Closing Orders were issued by this Court on the basis of stipulation of the Debtor and the Claimants' Advisory Committee. There was no prior notice to the claimants for Closing Orders. That is collusion. Whether the collusion is unlawful will not be found because the movants concealed information and documents. Closing Orders contributed to saving huge money in funding the Settlement Facility. It turned out 460 million dollars according to the Finance Advisor's report.

The Settlement Facility singled out the Korean claimants because the Korean claimants were many. If the address update and confirmation requirement is successful to deny payments to the Korean claimants, it would save a lot of money for funding the Settlement Facility by Dow Silicones.

The movants were adamant not to concede the deadline for filing the Korean claimants'

motions for contesting Closing Orders. They should not be because they worked so hard to discriminate the Korean claimants on the basis of the address update and confirmation requirement.

The AOR was trapped by the Settlement Facility when the AOR submitted the 696 claimants' addresses update on June 1, 2019, which was a well-meant submission because the Settlement Facility sent the AOR the letters for request of address update just to issue checks before Closing Order 2 was not fully enforced. The Settlement Facility rather used the AOR's submission to deny issuing checks by saying that letters for confirmation were returned undeliverable.

The other evidence of collusion is that the Claimants' Advisory Committee is requesting Dow Silicones to pay the additional fees with alleged reasonable rates. The Korean claimants are watching the result of negotiations between the Debtor and the Claimants' Advisory Committee. This Court suggested in the Order that Dow Silicones agree to the reasonable rates with the Claimants' Advisory Committee.

The movants cannot deny the collusions with the Claimants' Advisory Committee in the context of Closing Orders. The Sixth Circuit just believed and took the statement of Ellen Bearicks who has been hostile to the Korean claimants. This Court did not rule whether the Settlement Facility executed the discriminatory measures against the Korean claimants in any Orders regarding the Korean claimants. This Court simply ruled that the decision of the Claims Administrator/the Appeals Judge is final and binding so the motions of the Korean claimants were not appealable to the court. This Court would know the truth behind the scenes regarding the address update and confirmation requirement and why the Korean Claims were not paid by the Settlement Facility, which has been controlled by Dow Silicones.

The movants allege that there is no public interest to be served by staying the wind down

activities and the public has no interest in forcing the Settlement Facility to remain open and to incur needless expense simply to wait for the Sixth Circuit to decide the claims that the Korean claimants have been dispositively resolved.

Even if the Settlement Facility remains open, there is no possibility to incur needless expenses on the side of the movants. Even if there is a possibility, Case No. 25-1004 pending the Sixth Circuit will be decided in a couple of months after the movants submit the Appellee Brief by March 18, 2025 by viewing that the Sixth Circuit issued Per Curium Judgment of Case No. 24-1853 in less than two months after filing of the Appellee Brief.

On the contrary, if the Korean claimants who are also public, although they are not the US citizens, can have grave interest by staying the wind down process of the Settlement Facility since the Settlement Facility is the only entity to resolve their Claims and the Sixth Circuit would possibly decide differently from this Court.

III. CONCLUSION

For the foregoing reasons, the Korean claimants request this Court to Grant this Motion to Stay until the Sixth Circuit issues Judgment for Case No. 25-1004 pending.

Date: March 4, 2025

Respectfully submitted,

/signed/ Yeon-Ho Kim
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CERTIFICATE OF SERVICE

I hereby certify that on March 4, 2025, this motion has been electronically filed with the Clerk of Court using ECF system, and the same has been notified to all of the relevant parties of record.

Dated: March 4, 2025 Signed by Yeon-Ho Kim