

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

IN RE: SETTLEMENT FACILITY -
DOW CORNING TRUST,

SETTLEMENT FACILITY MATTERS.

Case No. 00-00005

Hon. Denise Page Hood

**ORDER DENYING MOTIONS TO STAY PENDING APPEAL
AND MOTION FOR AN AUDIT**

This matter is before the Court on a Motion to Stay and Renewed Motion to Stay the Court's Order Regarding Motions Filed by the Korean Claimants. (ECF Nos. 1834, 1836) A response by Dow Silicones Corporation, the Debtor's Representatives and the Finance Committee (collectively, the "Respondents") was filed. (ECF No. 1840) The Korean Claimants filed a reply. (ECF No. 1844) The Korean Claimants also filed a Motion for an Order to Audit the Neutrality and Independence of the Claims Administrator, which the Court requires no response. (ECF No. 1852)

On December 30, 2024, the Court entered an Order Granting Motion to Terminate Funding Pursuant to Section 2.01© 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) The Korean Claimants filed a Notice of Appeal to the Sixth Circuit Court of Appeals

on January 1, 2025. (ECF No. 1830) The Korean Claimants seek a stay of the December 30, 2024 Order pending appeal.

Rule 8(a) of the Federal Rules of Appellate Procedure provides that a party seeking a stay of an order must first request a stay from the district court. In considering a motion for a stay pending appeal, the district court must balance the following factors: (1) the likelihood that the party seeking the stay will prevail on the merits of the appeal; (2) the likelihood that the moving party will be irreparably harmed absent a stay; (3) the prospect that others will be harmed if the court grants the stay; and (4) the public interest in granting the stay. *Serv. Emp. Int'l Union Local 1 v. Husted*, 698 F.3d 341, 343 (6th Cir. 2012) (quoting *Mich. Coal. of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 153 (6th Cir. 1991)). These four factors “are interconnected considerations that must be balanced together.” *Coal. to Defend Affirmative Action v. Granholm*, 473 F.3d 237, 244 (6th Cir. 2006). The moving party has the burden of showing that a stay is warranted. *Serv. Emp. Int'l Union Local 1*, 698 F.3d at 343; *Michigan State A. Philip Randolph Inst. v. Johnson*, 833 F.3d 656, 661–62 (6th Cir. 2016).

As to the likelihood of success on the merits, the term at issue on the appeal by the Korean Claimants is found in The Funding Payment Agreement (“FPA”), Section 2.01(c) which 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 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.

(FPA, § 2.01(c)) (italics added).

The Korean Claimants assert that the term “otherwise finally resolved” in Section 2.01(c) of the FPA as it relates to the Korean Claimants’ Claims has not been met since no payments were made on their Claims. The Korean Claimants further assert that in the mind of the Claims Administrator, their Claims have not been “finally resolved” since the Claims Administrator requested address updates long after the Closing Order 5 deadline. The Korean Claimants argue that the Claims Administrator indicated it would wait for the result of the Korean Claimants’ appeal, which should include the current appeal to the Sixth Circuit.

The Respondents respond that the Court properly interpreted the term “otherwise finally resolved” in its Order as it relates to the Korean Claimants. They argue that termination is not based on receipt of payment by every claimant because the Plan provides procedures and deadlines for reviewing claims including detailed eligibility criteria. Because not all claims are eligible for payment and a

claim may be resolved in other ways which do not include a payment, then those claims are “otherwise finally resolved.”

The Court addressed the Korean Claimants’ various arguments in its Order. (ECF No. 1827, PageID.43081-43084) As to the term “otherwise finally resolved,” the Court stated:

The express language of the FPA does not support the Korean Claimants’ position that because they have not been paid, the FPA cannot be terminated. The Claims by certain Korean Claimants were “otherwise finally resolved” by the Claims Administrator’s denial of those certain claims and the Sixth Circuit’s ruling that the Korean Claimants’ challenge to such denial was beyond the scope of the Plan. The Korean Claimants did not appeal the Sixth Circuit’s ruling to the Supreme Court. Orders and judgments become final when “the availability of appeal has been exhausted and lapsed, and the time to petition for certiorari has passed.” *Deja Vu v. Metro. Gov’t of Nashville & Davidson Cnty., Tennessee*, 421 F.3d 417, 421 (6th Cir. 2005). The Court finds that 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.”

Id., PageID.43082. The Court further stated,

The Claims Administrator’s denial of the Korean Claimants Claims meets the criteria under the FPA that Claims are “otherwise finally resolved” since the Korean Claimants’ Claims currently before the Court were not liquidated or paid. The Korean Claimants’ Claims were “otherwise finally resolved” by the denial because there is no right to appeal from the Claims Administrator’s decision.

Id., PageID.43085.

Based on the Court’s ruling above, its previous rulings as to the Korean Claimants’ various motions, and the Sixth Circuit’s rulings that the Korean

Claimants are not entitled to appeal the decisions of the Claims Administrator and Appeals Judge denying their claims, nor are the Korean Claimants authorized to challenge the Court's Closing Orders, the Court finds that the Korean Claimants are not likely to prevail on the merits on appeal. *See* latest Sixth Circuit Opinion, ECF No. 1835, *In re Settlement Facility Dow Corning Trust*, Case No. 24-1653 (6th Cir. Feb. 13, 2025); Mandate Issued March 7, 2025, ECF No. 1845.

As to the Korean Claimants argument that they will suffer an irreparable harm, courts generally consider three factors: 1) the substantiality of the injury alleged; 2) the likelihood of its occurrence; and 3) the adequacy of the proof provided. *Mich. Coal of Radioactive Material Users, Inc.*, 945 F.2d at 153. A party is not irreparably harmed by the denial of a motion to stay or preliminary injunction when the only harm suffered is the payment of monetary expenses necessarily expended during the course of litigation and when other corrective relief will be available at a later date. *See Renegotiation Bd. v. Bannerkraft Clothing Co.*, 415 U.S. 1, 24 (1973); *Mich. Coal. of Radioactive Material Users*, 945 F.2d at 154.

The injury alleged by the Korean Claimants is that because the Settlement Facility is no longer operating based on the Court's Order, they are likely to be irreparably harmed. The Respondents assert that the Korean Claimants seek compensatory relief and that if the Court of Appeals were to find that the Court's

Order was in error, the Korean Claimants would receive the relief they seek regardless of whether a stay is issued.

The only harm to be suffered by the Korean Claimants is the monetary payment of their claims under the Plan. Such payment is not certain, in light of this Court's ruling, along with the previous rulings by the Sixth Circuit of Appeals. There is also no immediate relief available to the Korean Claimants. As noted by the Respondents, if the Court of Appeals were to find that the Court's Order was entered in error, the Korean Claimants would receive the relief they seek regardless of whether a stay is issued. The Korean Claimants have failed to show that their harm is imminent and irreparable.

As to the factor that others will be harmed if the Court grants the stay, the Court finds that the Settlement Facility and the Reorganized Debtor would be harmed in that funding of the Settlement Facility operations would continue where the claims deadlines have passed, and various Closing Orders have been entered to permanently close the Settlement Facility.

There is public interest in claimants being properly paid under a Bankruptcy Plan of Reorganization. On the other hand, there is also public interest in claimants following all the protocols and procedures of a Plan of Reorganization in order to be properly paid. There is also public interest in implementing and finally resolving a Plan of Reorganization under the terms of such Plan.

Weighing all the factors set forth above, the Court finds that the Korean Claimants have not met their burden for the Court to issue the stay pending the Korean Claimants' appeal. The Court denies the Korean Claimants' Motion to Stay Pending Appeal for the reasons stated above and in previous Orders.

Accordingly,

IT IS ORDERED that the Korean Claimants' Motion to Stay and Renewed/Revised Motion to Stay pending appeal (**ECF Nos. 1834 and 1836**) are DENIED.

IT IS FURTHER ORDERED that the Korean Claimants' Emergency Motion to Expedite Relief on Motion to Stay (**ECF No. 1847**) is MOOT.

IT IS FURTHER ORDERED that the Korean Claimants' Motion for an Order to Audit the Neutrality and Independence of the Claims Administrator (**ECF No. 1852**) is DENIED. Nothing in the Plan documents provide for such an audit and, as noted above and in prior orders issued by this Court and the Sixth Circuit Court of Appeals, the Korean Claimants (nor any other claimant), are authorized to appeal the decisions of the Claims Administrator.

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

DATED: April 1, 2025