

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

LEONARD GREEN
CLERK

JOSEPH T. SIEVERING
(513) 564-7015
www.ca6.uscourts.gov

Filed: September 16, 2005

George H. Tarpley
James L. Stengel
James C. Schroeder
Jill K. Schultz
Yeon-Ho Kim
Stephen H. Weiner
Jeffery Trachtman

RE: 03-1999
InRe:Dow Corning vs.
District Court No. 95-20512

Enclosed is a copy of an order which was entered today in the above-styled case.

Very truly yours,
Leonard Green, Clerk

Joseph T. Sievering
Case Manager

Enclosure
cc: Honorable Denise Page Hood
Mr. David J. Weaver
certified copies

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

SEP 16 2005

LEONARD GREEN, Clerk

In re: DOW CORNING CORPORATION,)
)
 Debtor.)
 -----)
 KOREAN CLAIMANTS,)
)
 Appellants;)
)
 v.)
)
 DOW CORNING CORPORATION; THE DOW)
 CHEMICAL COMPANY; CORNING)
 INCORPORATED; OFFICIAL COMMITTEE OF)
 TORT CLAIMANTS,)
)
 Appellees.)

ORDER

Before: NORRIS, COOK, and GRIFFIN, Circuit Judges.

The Korean Claimants in this bankruptcy proceeding appeal a post-confirmation order approving the processing and settlement of claims by certain Australian claimants. The appellees move to dismiss the appeal pursuant to the doctrine of equitable mootness. The Korean Claimants oppose the motion to dismiss.

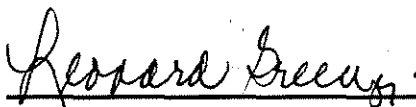
The doctrine of equitable mootness, or equitable estoppel, arises from the “growing number of cases outside this circuit [that] recognize that ‘a plan of reorganization, once implemented, should be disturbed only for compelling reasons.’” *City of Covington v. Covington Landing Ltd. P’ship*, 71 F.3d 1221, 1225 (6th Cir. 1995), quoting *In re UNR Indus.*, 20 F.3d 766, 769 (7th Cir.), cert. denied, 513 U.S. 999 (1994); see also *In re Metromedia Fiber Network, Inc.*, 416 F.3d 136 (2d Cir.

2005); *In re U.S. Airways Group, Inc.*, 369 F.3d 806 (4th Cir. 2004); *In re Continental Airlines, Inc.*, 91 F.3d 553 (3d Cir. 1996), *cert. denied*, 519 U.S. 1057 (1997); *In re Manges*, 29 F.3d 1034 (5th Cir. 1994), *cert. denied*, 513 U.S. 1152 (1995). This court recently adopted the standard utilized by the Fifth Circuit to determine whether an appeal should be dismissed for equitable mootness. *In re American HomePatient, Inc.*, — F.3d —, 2005 WL 1949548, at *3 (6th Cir. Aug. 16, 2005). Under this test, the court considers the following three factors: “(1) whether a stay has been obtained; (2) whether the plan has been ‘substantially consummated’; and (3) whether the relief requested would affect either the rights of parties not before the court or the success of the plan.” *City of Covington*, 71 F.3d at 1225, *citing In re Manges*, 29 F.3d at 1039.

The Korean Claimants did not seek or obtain a stay pending appeal of either the implementation of the Plan of Reorganization or the settlement with the Australian Claimants, and both the Plan and the settlement have now been substantially consummated. There is no effective relief that could be granted by this court that would not have a substantial, adverse impact on parties not before the court.

Therefore, the motion to dismiss the appeal as moot is **GRANTED**.

ENTERED BY ORDER OF THE COURT



Clerk