Case No. 23-1936

In the United States Court of Appeals For the Sixth Circuit

IN RE: SETTLEMENT FACILITY DOW CORNING TRUST

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

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

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

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit
Case Number: 23-1936 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 November 3, 2023 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: 23-1936 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 November 3, 2023 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
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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: 23-1936 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 November 2, 2023 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.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit
Case Number: 23-1936 Case Name: In re Settlement Facility Dow Corning

Name of counsel: Dianna L. Pendleton-Dominguez

Pursuant to 6th Cir. R. 26.1, Claimants' Advisory 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 May 6, 2024 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.

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

STATEMENT IN SUPPORT OF ORAL ARGUMENT

Appellants have not requested oral argument. Appellees suggest that oral argument might assist this Court in evaluating the jurisdictional issues.

INTRODUCTION AND BACKGROUND

This appeal comes near 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 (essentially a trust) to review and process claims and to distribute payments to timely eligible claims. The Appellants, the Korean Claimants, are Settling Personal Injury Claimants under the Plan who submitted claims to the Settlement Facility.

In this appeal, Korean Claimants challenge the October 4, 2023 Joint Stipulation and Agreed Order for Procedures for Addressing Requests to Reissue Payments and to Establish the Final Distribution Date for Such Claims ("Order"). The Order directs the Settlement Facility to close claims of individuals that had

[1] Unless otherwise defined, capitalized terms used herein shall have the meaning provided in the Plan defined in Article 1 thereof. *See* Plan, RE 1701-2, Page ID # 32824-32853. 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.

received payment but had failed to cash those payment checks for over four years (before June 3, 2019) and had not submitted an eligible request for a replacement check. The Order further establishes a final distribution deadline for certain claimants who still had uncashed payment checks issued after the June 3, 2019 date. Order, RE 1740, Page ID # 33757-58. The Korean Claimants did not seek reconsideration of the Order but instead filed a notice of appeal two weeks after the Order was entered. Notice, RE 1741.

The Korean Claimants assert that approximately 200 individuals were affected by the Order because they had received payment checks before June 3, 2019 and had not cashed those payment checks or submitted eligible requests for replacement checks by the date of the Order. Korean Claimants Br., Doc. No. 24, at 14-15. [2] In accordance with the Order, all such claims were closed.

As explained below, the Appellees assert that the Order is final within the meaning of 28 U.S.C. § 1291, and that this Court has jurisdiction to consider this appeal. On the merits, the Order should be affirmed and the appeal dismissed.

STATEMENT OF JURISDICTION

This Court raised an initial jurisdictional question and issued an Order to Show Cause directed to Appellants on November 29, 2023. Order, Doc. No. 17.

[2] "Korean Claimants Br." refers to the corrected Brief of Appellant Korean Claimants, filed on April 8, 2024. Doc. No. 24.

The Order to Show Cause directed the Korean Claimants to show cause why the appeal should not be dismissed for lack of jurisdiction. This Court noted that the case from which the appeal arose was still open therefore it was not clear whether the Order was final for purposes of 28 U.S.C. 1291. *Id*. at 1. On December 3, 2023, the Korean Claimants responded to the Order to Show Cause and asserted that the question of finality should be analyzed under the less stringent bankruptcy standard. Response to Order to Show Cause, Doc. No. 18, at 2. On March 6, 2024, this Court ordered the parties to address the jurisdictional question in the merits briefs. Order, Doc. No. 20. In the Order to Show Cause and the Briefing Order, the Court noted that it was not clear whether the bankruptcy standard should apply here because it was not clear whether this is a bankruptcy matter. *Id*.; Order, Doc. No 17.

To assist in the analysis, Appellees provide additional background and history regarding the Plan and its implementation as well as a history of prior proceedings in this Court addressing various district court orders and decisions entered in the same case.

The Plan is implemented through a series of Plan Documents, which include the Settlement Facility and Fund Distribution Agreement ("SFA") and the Funding Payment Agreement ("FPA"). SFA, RE 1707-3; FPA, RE 1701-5. The SFA establishes the method and procedures for resolving claims of personal injury claimants who had submitted proof of claim in the bankruptcy case. The SFA

establishes the Settlement Facility, which is assigned to perform the functions necessary to process and pay claims in accordance with the Plan and the Plan Documents. SFA, at Article II, RE 1707-3, Page ID # 33169-70. The FPA sets forth the terms for the Debtor and Reorganized Debtor to provide funding to resolve the claims of personal injury claimants. FPA, at Article II, RE 1701-5, Page ID # 33053-62. The Plan provides that the district court shall retain jurisdiction after the Effective Date of the Plan "to resolve controversies and disputes regarding interpretation and implementation of the Plan and the Plan Documents;" "to enter orders in aid of this Plan and the Plan Documents;" and "to allow, disallow, estimate, liquidate or determine any Claim…." Plan, at §§ 8.7.3, 8.7.5, 8.7.8, RE 1701-2, Page ID # 32897. The Plan thus grants to the district court jurisdiction to enter orders as necessary to implement and resolve controversies and disputes regarding the SFA. Plan, at § 8.7.3, RE 1701-2, Page ID # 32897. The district court's functions are further spelled out in the SFA. The SFA provides that the district court shall supervise all aspects and functions of the Settlement Facility, including "all functions relating to the distribution of funds and all determinations regarding the prioritization or availability of payments." SFA § 4.01, RE 1707-3, Page ID # 33172. The SFA provides that the district court shall have exclusive jurisdiction over the operation of the Settlement Facility except as provided otherwise in the SFA. *Id*. at § 10.08, Page ID # 33201.

Before the Effective Date of the Plan, nearly 24 years ago, the district court established a district court case solely for matters relating to the Settlement Facility Agreement. Order, RE 1, Page ID # 1. The district court directed that any orders and documents related to the Settlement Facility Agreement were to be filed in this case.[3] *Id*. Specifically, the order states:

> The Amended Joint Plan of Reorganization of Dow Corning Corporation, dated February 4, 1999, as amended and modified (the "Plan") and the Settlement Facility and Fund Distribution Agreement (the "Settlement Facility Agreement"), a subsidiary document incorporated into the Plan, provide for the Court to enter orders from time to time for matters relating to the Settlement Facility Agreement. Accordingly,
>
> **IT IS ORDERED** that orders and documents relating to the Settlement Facility Agreement be filed under **Case No. 00-CV-00005-DT**.[4]

Id.

The Order that is the subject of this Appeal was filed in this specific case number – as required by the district court's order. Although this case is technically separate from the original bankruptcy case, it exists solely for the purpose of implementing and supervising the administrative requirements to process, evaluate, and pay eligible claims of personal injury claimants under the Plan. There is no separate lawsuit and, in fact, while the district court has the jurisdiction to interpret

[3] The district court withdrew the reference from the bankruptcy court on December 17, 2001. The bankruptcy case was maintained as a separate case (case number 95-20512 (Bankr. E.D. Mich.)) until it was closed on September 23, 2019.

[4] As this Court noted in its correspondence with the parties, the case appears under the following docket number: 2:00-mc-00005.

the SFA and to make certain determinations about the disbursement of funds, the district court does not have any authority to review the Settlement Facility's claims decisions. Plan, at § 8.05, RE 1701-3, Page ID 32988.

The Order at issue in this appeal follows and implements an earlier order of the district court – Closing Order 2. Closing Order 2 was entered by the district court in 2019. Closing Order 2 provided that the Settlement Facility could not issue replacement checks to individual claimants who failed to cash their payment checks before their expiration (after 180 days) unless the claimant met one of two specific circumstances: the Settlement Facility could provide a replacement check only if the claimant showed "good cause" or when the claimant passed away after the check was issued. 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 # 24095. Closing Order 2 also provided that the district court would establish a final distribution deadline after which no more checks could be issued. Claimants with expired checks had a minimum of four and a half years to seek replacement checks under Closing Order 2 before the district court entered the Order at issue in this appeal.

The Order that is the subject of this appeal established the final distribution deadline and further provides that as of the date of the Order (1) checks issued more than four years earlier – *i.e*., before June 3, 2019 – are not eligible for replacement and (2) claimants who had previously received replacement checks that they failed to cash cannot request another replacement. Order, RE 1740. at Page ID # 33757-58. The Order was necessary to enable the Settlement Facility to terminate its operations on time – and notes that the Settlement Facility has completed processing all claims and cannot complete closure of its operations until all outstanding checks are cashed or have expired and all bank accounts reconciled and closed. *Id*. at Page ID # 33756. According to Korean Claimants, all of the checks issued to Korean Claimants involved in this appeal were issued more than four and a half years before the date of the Order. Korean Claimants Br. at 13-14. The Korean Claimants either did not seek replacement checks during that period of time or did not provide the requisite information necessary to authorize a replacement check during that period of time. There is no further action that could or will occur with respect to the status of these claims.

This Court's Order of March 6, 2024 sought briefing on whether the case from which this appeal arises is a bankruptcy case to which a "less stringent" test of finality applies. Doc. No. 20. An order is final for purposes of 28 U.S.C. § 1291 when it ends the litigation on the merits and there is nothing further for the district

court to do other than enter judgment. *Cunningham v. Hamilton Cnty., Ohio*, 527 U.S. 198, 203-04 (1999). In the bankruptcy context, the determination of finality is applied to discrete proceedings within the bankruptcy case. Thus, generally, where an order in a bankruptcy case finally disposes of a discrete dispute in a proceeding – even though the larger case is still open and active – the order may be appealed. *In re Dow Corning Corp.,* 86 F.3d 482, 488 (6th Cir. 1996), as amended on denial of reh'g and reh'g en banc (June 3, 1996) citing *In re Saco Local Dev. Corp.,* 711 F.2d 441, 444 (1st Cir.1983). In *Ritzen Grp., Inc. v. Jackson Masonry, LLC*, 589 U.S. 35 (2020), the Supreme Court affirmed this Court's evaluation of finality within the context of a bankruptcy case. Appeals from decisions in a bankruptcy case "lie[] from 'final judgments, order, and decrees' entered by the bankruptcy court in 'cases and proceedings'". *Id*. at 35. That is, the appeal is not from the "case" but rather from an order resolving a discrete dispute – through a proceeding – within the case. *Id*. The order is final if it fixes the rights of the parties. *Id*. at 42.

The instant appeal presents a somewhat unique situation: The case from which the appeal arose is separate from the bankruptcy case, but it exists solely for the administration of the bankruptcy case. This case has been in existence for nearly 24 years, and during that time, there have been numerous appeals to this Court regarding decisions or orders of the district court entered in this case, including appeals related

to stipulations and Closing Orders similar in nature to the Order in this appeal.[5] This Court previously has characterized the case from which this appeal arises as a "bankruptcy matter." *See In re Settlement Facility Dow Corning Trust*, No. 21-2665, 2023 WL 2155056, at *3 (6th Cir. Feb. 22, 2023).

Appellees believe that the Order at issue is final under the circumstances of this case consistent with 28 U.S.C. § 1291. The Order on appeal was entered after motion practice and implements the terms of a prior order. It is final because it permanently closes the claims of the affected claimants and there is no further action to be taken. There is no further litigation or judgment to be entered that could affect these claims.

It may be relevant, for purposes of assessing finality, to consider the current status of the implementation of the Plan and the Settlement Facility. The Settlement Facility has completed the review of all timely claims, issued final claim payments, and denied and closed claims that were not found to be eligible for payment for any reason. *See* Order, RE 1740, Page ID # 33756; Declaration of Kimberly Smith-Mair in Support of Motion to Establish Final Distribution Deadline Regarding Replacement Checks for Settlement Claims in the Dow Corning Settlement, RE 1701-6, Page ID # 33104-06. The Settlement Facility is now in the process of

[5] *See* Case Nos. 22- 1753; 22-1750; 21-2665; 18-2446; 18-1040; 13–2456; 09-1827; 09-1830.

terminating its operations. *Id*. at Page ID # 28800. The Settlement Facility's lease for office space terminates on June 30, 2024; the staff has been reduced to a small number that is needed to collate all final data, address the disposition of property, prepare a final accounting of claims to submit to the district court, and terminate trust and banking institutions. The district court has authorized the destruction of paper claim files and has conducted a final due diligence survey to assure that payments issued to counsel for the benefit of claimants have been properly distributed to claimants. *See* Closing Order 4 Requiring Completion of Court-Directed Audit Survey and Return of Funds Pursuant to Closing Order 2, RE 1640, Page ID # 28794-98; Order Granting Joint Motion For Authorization to Dispose Of Claim Records Maintained By The Settlement Facility-Dow Corning Trust, RE 1736, Page ID # 33729-31.

Accordingly, for the reasons set forth above, Appellees submit that the Order is final within the meaning of 28 U.S.C. 1291 and therefore this Court has jurisdiction to address this appeal.

COUNTER STATEMENT OF ISSUES FOR REVIEW

1. Whether this Court should find that an order that was stipulated to by the parties authorized by the Plan and entered by the district court with the authority and obligation to issue orders as necessary to implement the Dow Corning Amended

Joint Plan of Reorganization and the Settlement Facility Agreement is void because the district court did not hold a hearing before entry of the Order.

2. Whether the Order violates due process where the district court had entered an order advising that such action closing claims and terminating payments would be taken more than four years before entry of the Order, and where the Korean Claimants had notice of motions and responses filed by the parties addressing the issue of the precise timing of a final distribution deadline that would result in closing all remaining claims that had failed to cash their checks for multiple years, and where Korean Claimants were served with the Order as provided in the rules via the ECF system.

3. Whether the Order violates Section 1129(b) of the bankruptcy code because, as a result of the Order, individuals who had failed to cash their settlement checks or to seek replacement checks will not receive a payment.

4. Whether the district court abused its discretion by entering the Order because the Plan did not specify that replacement checks could not be reissued four years after the final claim deadline.

5. Whether the discharge granted to the debtor by the Plan is affected by the district court's determination to terminate payments for claimants who have failed to cash their checks more than four years after the final claim deadline.

6. Whether the Korean Claimants can in this appeal challenge the discharge in bankruptcy as to Korean Claimants 25 years after entry of the confirmation order and almost 20 years after the Effective Date based on an unsupported assertion of false representations about payment amounts allegedly made during Plan confirmation to Korean Claimants.

STATEMENT OF THE CASE

I. Background And The Controlling Plan Documents.

This Court has addressed the history of Dow Corning's bankruptcy proceedings and Plan on multiple occasions.[6] 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).

The Plan established an administrative process for the resolution of claims of individuals who assert that they suffered injury as a result of the use of certain

[6] *See, e.g.*, *Korean Claimants v. Dow Silicones Corp., et al,* Case Nos. 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*, No. 18-1040, 2019 WL 181508 (6th Cir. Jan. 14, 2019); *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).

implanted medical devices. The Korean Claimants elected to resolve their claims through the settlement option in the Plan and are thus Settling Personal Injury Claimants. Plan at § 1.159, RE 1701-2, Page ID # 32852. The claims of Settling Personal Injury Claimants are reviewed, evaluated, and paid by the Settlement Facility-Dow Corning Trust (the "Settlement Facility" or "Settlement Trust"). The SFA, RE 1707-3, Page ID # 33163-33207, and the Dow Corning Settlement Program and Claims Resolution Procedures, Annex A to SFA (RE 1701-3, Page ID # 32926-33042), prescribe the rules under which these settling claims are submitted, individually evaluated, and, if eligible and in compliance with the rules, paid. This administrative process is the exclusive means for the resolution of Settling Personal Injury Claims. SFA at § 5.01, RE 1707-3, Page ID # 33183; Annex A, Article VIII, RE 1701-3, Page ID #32987-88. There is no right of appeal to the district court of any claim determination made by the Settlement Facility. *See 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.").

The Settlement Facility is managed by the Claims Administrator and supervised by the district court. The district court retains jurisdiction over the Plan and is expressly charged with supervising the resolution of claims by the Settlement Facility, entering or enforcing any order requiring the filing of any Claim before a

particular date, and resolving "controversies and disputes regarding interpretation and implementation of this Plan and the Plan Documents." Plan, at §§ 8.7.3, 8.7.8, RE 1701-2, Page ID # 32897; SFA § 4.01, RE 1707-3, Page ID # 33172. The Plan established a Finance Committee – consisting of the individuals appointed by the district court – to manage the administration of certain aspects of the Settlement Facility. Plan, at § 1.67, RE 1701-2, Page ID # 32836.

The Plan established the Claimants' Advisory Committee ("CAC") and the Debtor's Representatives ("DRs") to assist in the implementation of the settlement program. *See* Plan, at § 1.28, RE 1701-2, Page ID # 32829 (defining 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 § 4.09(b), RE 1707-3, Page ID # 33181. The CAC and the DRs have the authority to take action to enforce the terms of the Plan, file a motion or take any other appropriate actions to enforce or be heard in respect of the obligations in the Plan, participate in meetings of the Finance Committee, and provide advice and assistance on all matters being considered by the Finance Committee, the Settlement Facility, the Claims Administrator, and other court-appointed persons. SFA, at § 4.09(c), RE 1707-3, Page ID # 33181-82.

II. Wind Down of Settlement Operations And Closing Orders.

The Settlement Facility does not exist in perpetuity: the Plan provides a 16 year period for the submission of claims after which the Settlement Facility is to terminate its operations. *See* FPA, at § 2.01(c), RE 1701-5, Page ID # 33054-55. The final deadline for the submission of "disease" and "expedited" claims was June 3, 2019. *See* Annex A, at § 7.09(b)(i), RE 1701-3, Page ID # 32986; *id*. at § 6.02(a)(ii)(a), Page ID # 32941; *id*. at § 6.02(f)(1), Page ID # 32954. As noted, the Settlement Facility has completed the review and processing of the timely claims and is now preparing to terminate its operations as specified in the Plan.

The district court, which has the obligation to "enter orders in aid of this Plan and the Plan Documents" (Plan at § 8.7.5, RE 1701-2, Page ID # 32897), has issued a series of "closing orders" – setting forth administrative guidelines to enable the closure of the Settlement Facility operations once the requirements for termination are met.[7] These closing orders established deadlines for finalizing claims that had

[7] *See* 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, 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

been pending for years and guidelines to enable the Settlement Facility to institute efficient procedures to conclude its operations.

Closing Order 2 – which was entered on March 19, 2019 – established guidelines for issuing final payments and for concluding the distribution of payments. Closing Order 2, RE 1482, Page ID # 24084-97. Closing Order 2 provides that the Court will establish a Final Distribution Deadline to enable final closure of the Settlement Facility. *Id*. at Page ID # 24090. The Final Distribution Deadline – as defined in Closing Order 2 – is the last date upon which the Settlement Facility may issue any payments – unless specified otherwise in a court order. *Id*.

The Final Distribution Deadline is necessary to enable the Settlement Facility to terminate its operations. Because checks issued by the Settlement Facility remain valid and negotiable for six months, the Settlement Facility cannot terminate its bank accounts and wind down all operations until after the expiration of that period. The Final Distribution Deadline is thus a necessary component of the termination process. Closing Order 5, RE 1642, Page ID # 28800 ("Whereas to complete the orderly termination of the Settlement Facility it is necessary to establish protocols to guide the final disposition of certain claims for which final payment cannot

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

efficiently be issued for various reasons and to establish guidelines for addressing claim payments for claimants in bankruptcy").

Closing Order 2 required that requests for replacement checks can be made after June 3, 2019 in only two limited circumstances. Closing Order 2, RE 1482, Page ID # 24095. First, a payment check may be replaced if the claimant passed away after the payment check was mailed provided that the request for a replacement check is made and all appropriate probate documents are submitted to the Settlement Facility by the date that is no later than 30 days before the Final Distribution Deadline. *Id*. Second, a payment check may be replaced if the claimant demonstrated good cause for the replacement. *Id*. Such requests must be submitted to the Claims Administrator along with a statement of the reasons why the claimant did not cash the check when it was issued. *Id*. The Claims Administrator determines whether good cause exists. *Id*.

The Korean Claimants filed a Motion for Order Vacating Decision of the Settlement Facility Regarding Address Update/Confirmation, which focused on vacating Closing Order 2, on January 15, 2021. Motion, RE 1569, Page ID # 26261-73. The district court denied that motion (RE 1607) and this Court affirmed that denial on appeal. *See In re Settlement Facility Dow Corning Trust*, No. 21-2665, 2023 WL 2155056, at *3 (6th Cir. Feb. 22, 2023) (holding Korean Claimants' challenges to the District Court's orders "fail on the merits because the district court

correctly interpreted Closing Order 2… and permissibly considered the Settlement Facility bound by Closing Order 2.").

III. The Order at Issue in This Appeal

On March 29, 2023, Dow Silicones, the Debtor's Representatives, and the Finance Committee moved to establish the Final Distribution Deadline applicable to reissuance of checks as set forth in Closing Order 2. RE 1701. Several months later, the parties submitted a proposed stipulated order to the district court. RE 1738. The District Court entered the Order on October 4, 2023. RE 1740. The Order was published on the ECF system and was thereby served on Korean Claimants.

The Order implements the terms of Closing Order 2 by prohibiting replacement of checks that were issued more than 4 and a half years earlier and by providing a 30-day period for claimants with checks issued after the final filing date (June 3, 2019) to submit requests for replacement checks based on the standards in Closing Order 2. The Order established December 1, 2023 as the Final Distribution Deadline applicable to all expired uncashed checks.

The Korean Claimants did not seek reconsideration of the Order and did not file any motion or objection when the initial motion was filed on March 29, 2023. The Korean Claimants filed a Notice of Appeal regarding the Order on October 18, 2023. Notice, RE 1741.

SUMMARY OF ARGUMENT

The Order is final within the meaning of 28 U.S.C. 1291 and therefore may be considered on appeal. The Order is a final order in that it finally terminates the claims of those individuals who failed to cash their payment checks or seek replacements for multiple years (such as Korean Claimants). There is no further action to be taken in the district court.

The Order was properly entered as a stipulation between the parties designated in the Plan to represent the interests of the claimants and the debtor. The district court is not required to hold a hearing before entering an order. The Order was stipulated and agreed to by the parties – the CAC, the DRs – who have express authority granted by the Plan to interpret the Plan's terms and whose consent is required for purposes of establishing guidelines for distribution of Settlement Fund assets – along with the Finance Committee. Given the agreement of the parties, no motion or hearing was required or necessary. *See* E.D. Mich. L.R. 7.1 (a)(1) ("…If the movant obtains concurrence, the parties or other persons involved may make the subject matter of the contemplated motion or request a matter of record by stipulated order."). Throughout the operation of the Settlement Facility, the district court has entered multiple stipulated orders — like this Order and Closing Order 2 — to implement the Plan and manage the operations of the Settlement Facility. There is no legal basis to find that the Order is "void" simply because the district court did

not hold a hearing before entering a stipulated order. Had Korean Claimants sought clarification or amendment of the Order, they could have submitted a motion for reconsideration or clarification at the time of its entry. They failed to do so and have no basis to contest its terms now. The district court's entry of the Order without a hearing was proper and valid.

Korean Claimants incorrectly assert that they did not receive notice of the Order. Korean Claimants Br. at 21. The Korean Claimants had notice of the district court's intent to conclude the issuance of replacement checks when an earlier order – Closing Order 2 – was entered four and half years before the entry of the Order at issue here. In addition, the Korean Claimants received notice via the ECF system of the Motion To Establish Final Distribution Deadline Regarding Replacement Checks for Settlement Claims in the Dow Corning Settlement Program. RE 1701. That motion pre-dates the Order by over six months. Korean Claimants thus had ample notice of the request to establish the final distribution deadline and close claims with expired checks and could have submitted their own motion or objections at that time. In addition, of course, Korean Claimants received notice of the Order via ECF when it was entered. Order, RE 1740. They chose to forego the opportunity to seek reconsideration. Instead, they filed the instant appeal. Notice, RE 1741. Korean Claimants' contention that the Order is void for lack of notice is contrary to the facts. These arguments provide no basis to determine that the Order is void.

The Korean Claimants' apparent argument that the bankruptcy discharge is somehow rendered inapplicable to the specific claimants who failed to cash their checks is untenable. The discharge in bankruptcy is afforded to the debtor once a Plan is confirmed and all creditors are bound by that discharge regardless of whether they actually take action to receive a distribution from the debtor's estate. Here the claimants had the right to seek a distribution provided that they submitted timely claims demonstrating their eligibility. Once they did so, and the Settlement Facility issued a payment, it is their responsibility to cash the payment check. Their failure to do so is not the responsibility of the Settlement Facility and cannot affect the discharge granted to the debtor 20 years ago. To the extent that the Korean Claimants assert that the bankruptcy discharge is invalid as to them because of an alleged representation made to Korean Claimants during confirmation, such an argument must fail. The bankruptcy discharge is final – and any argument about its propriety had to be raised at the time of confirmation via an appeal of the confirmation order – not 25 years after its entry. The reason the Korean Claimants will not receive payment is because they failed to cash their checks and nothing more. The Korean Claimants' argument that the Order violates the fair and equitable standard of the bankruptcy code is inapposite. The Korean Claimants' reliance on Section 1129(b) is misplaced: that provision does not apply to these circumstances; it applies to confirmation with respect to dissenting impaired classes.

Korean Claimants contend that the Order is invalid because the Plan itself does not provide that claims with uncashed checks will be terminated four years after the issuance of the checks. This argument must be rejected. A bankruptcy plan need not specify every single administrative step required to implement the terms of the plan. Here, the Plan delegates to the district court and the Settlement Facility the obligation and authority to develop the detailed administrative guidelines for the operation of the Settlement Facility. It is not possible for a plan that operates over a 20 year period to contain specific language about every administrative detail or process that might be necessary or arise. The failure to state in the Plan a specific deadline for submission of requests for new checks (which itself is not specifically provided for in the Plan) is not a basis to invalidate the Order. Korean Claimants cannot, of course, contend that the Settlement Facility must remain "open" until such time as Korean Claimants decide to request a replacement check – however long that may take. The Plan provides a fixed period of time for the submission of claims and for the debtor to provide funding to satisfy those claims. That period of time expired nearly 5 years ago.

The district court has properly carried out its obligation to provide guidance for the management and termination of the Settlement Facility through various orders including the Order at issue in this appeal. The Order is a valid exercise of the district court's supervisory obligations.

The appeal should be denied.

STANDARD OF REVIEW

This appeal involves the process by which the district court entered a stipulated order, issues of notice of the order under the applicable rules and case law, and whether any bankruptcy code provisions or discharge in bankruptcy are violated or affected by the failure of a claimant to cash a payment check.

Issues involving the interpretation of the plain language of the Plan, Plan Documents, and provisions of the bankruptcy code (including finality of discharge) are reviewed *de novo*. *Korean Claimants v. Claimants' Advisory Committee*, 813 F. App'x. 211, 216 (6th Cir. 2020) ("The district court's decision involved the interpretation and application of the plain language of the reorganization plan. Where the district court's interpretation is confined to the Plan documents without reference to extrinsic evidence, we review *de novo*.") (internal citation omitted); *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). Issues of law are reviewed *de novo*. *See Sofco Erectors, Inc. v. Trustees of Ohio Operating Engineers Pension Fund*, 15 F.4th 407, 418 (6th Cir. 2021) ("We review questions of law *de novo*.") (citing *Sherwin-Williams Co. v. N.Y. State Teamsters Conf. Pension & Ret. Fund*, 158 F.3d 387, 393 (6th Cir. 1998)).

Appellees submit that the Korean Claimants' contention that the Order was improperly entered should be reviewed under an abuse of discretion standard. This argument is based on the district court's determination to accept a stipulation of the parties named in the Plan and its application of the local rules. *See S.S. v. Eastern Kentucky University*, 532 F.3d 445, 451 (6th Cir. 2008) ("The interpretation and application of local rules 'are matters within the district court's discretion, [and] the district court's decision is reviewed for abuse of discretion.'") (*quoting Wright v. Murray Guard, Inc.*, 455 F.3d 702, 714 (6th Cir. 2006)).

ARGUMENT

I. The Order is Valid, Within the Scope of the District Court's Authority, and Consistent with Applicable Law.

The Korean Claimants advance multiple arguments to attack the validity of the Order, none of which has any merit. They contend that the Order is void because the Korean Claimants allegedly did not have notice or an opportunity to be heard before entry of the Order. Korean Claimants Br. at 20-22. They further contend that the Order violates the "fair and equitable" standard of Section 1129 of the Bankruptcy Code – basically because the Order terminates the affected claims. *Id*. at 22-24. They contend that the Order constitutes an abuse of discretion because the Plan did not provide that replacement checks would be unavailable four and half years after an initial check was issued and not cashed. *Id*. at 26. Korean Claimants further argue that the discharge in bankruptcy granted to the debtor was in some way

invalid as to Korean Claimants – because of statements they allege were made during the confirmation process. *Id*. at 24-26.

A. The Court's Entry Of The Stipulated Order Was Proper And The Order Is Not Void

The Korean Claimants argue that the Order is "void" and a "due process violation" because there was no hearing and "it has not been noticed to the Korean Claimants before issuance nor noticed after issuance." *Id*. at 21-22. This assertion is patently incorrect.

First, Korean Claimants received ample notice that the parties planned to address and establish the Final Distribution Deadline because this process was outlined in 2019 in Closing Order 2 and because the parties engaged in motion practice seeking to establish that Deadline beginning over 6 months before the Order was entered. *See, e.g.*, Motion, RE 1701, Page ID #32802-11. (At this time, Korean Claimants had the opportunity to file objections or motions but they failed to do so.) Second, Korean Claimants received notice via the ECF system when the Order was entered. Fed. R. Civ. P. 5(b)(2(E). Further, as required by the Order, the Order was posted on the Settlement Facility's website on October 4, 2024. Korean Claimants obviously received notice because they filed this appeal within two weeks of the date of the Order's entry. They had the opportunity to, but did not, submit a motion for reconsideration with the district court.

Even if the Korean Claimants had not received notice as described above, there is no requirement that every order issued must be preceded by "notice and a preliminary hearing". *See Link v. Wabash R.R. Co.*, 370 U.S. 626, 632 (1962). The district court properly entered the Order as a stipulated order of the CAC and the DRs (with the concurrence of the Finance Committee) consistent with their obligations and authority under the Plan. Where the parties agree, there is no need for any motion or hearing. *See* E.D. Mich. L.R. 7.1(a)(1) ("…If the movant obtains concurrence, the parties or other persons involved may make the subject matter of the contemplated motion or request a matter of record by stipulated order.").

There is no basis to find that the Order is void simply because there was no hearing and there is no basis to argue that Korean Claimants did not have notice. The district court unquestionably had the power and authority under the Plan to issue the Order. *See* Plan at § 8.7.5, RE 1701-2, Page ID # 32897) (the court "will retain exclusive jurisdiction … to enter orders in aid of this Plan and the Plan Documents"); *In re Settlement Facility Dow Corning Trust*, 670 F. App'x. 887 (6th Cir. 2016) (stating that "[u]nder the Plan, the district court has jurisdiction to, among other things, 'resolve controversies and disputes regarding interpretation and implementation of this Plan and the Plan Documents'" and concluding that consent order "plainly falls within the district court's powers under the Plan."). The Order

is plainly valid and the Korean Claimants' contention that the Order is void is unsupported and unsupportable.[8]

B. The Order Does Not Violate The Fair And Equitable Standard Of 11 U.S.C. §1129(b)

The Korean Claimants cite the fair and equitable standard of 11 U.S.C. § 1129(b) as somehow providing a basis to invalidate the Order, citing *In re Dow Corning Corp*., 456 F.3d 668, 672 (6th Cir. 2006). Section 1129(b) applies to the standards for confirmation of a plan and sets forth the requirements for confirming a plan where there are impaired classes that have not accepted the plan. Section 1129(b) is inapplicable here.

It appears that Korean Claimants are asserting that the fact that a claimant who fails to cash a check, and therefore receives no payment, is somehow unfair. Korean Claimants assert that the Order "prohibits the eligible Claimants from receiving payments [because] [t]here are many eligible Korean Claimants unpaid just because

[8] The Korean Claimants cite *Mullane v. Central Hanover Bank & Trust Co*., 339 U.S. 306 (1950) and *In re Chess*, 268 B.R. 150 (W. D. Tenn. 2001), for the basic proposition that "[t]he constitutional standard regarding notice requires that it 'be such as is reasonably calculated to reach interested parties." Korean Claimants Br. at 21-23. Those decisions have no relevance here. As described above, the Korean Claimants had effective notice in accordance with the applicable rules. Indeed, *In re Chess* rejected a due process claim where the party did not rebut the presumption of receipt of service of process by mail under Fed. R. Bankr. P. 7004(b). *In re Chess*, 268 B.R. at 157. The Korean Claimants' other citations are likewise not relevant here. *See In re Rideout*, 86 B.R. 523 (1988) (total absence of notice to creditors, as required under rules, concerning hearing on confirmation of plan of reorganization rendered order confirming plan violative of due process).

they did not cash the checks before one hundred eighty (180) passed by." Korean Claimants Br. at 24. This is incorrect: the Order terminates the issuance of replacement checks not after 180 days (which is when checks typically expire under ordinary banking convention) but rather more than four years after the check was issued. Order, RE 1740, Page ID # 33757. There is nothing unfair about terminating claims with expired checks after years of inaction. The responsibility for cashing checks rests with the Korean Claimants. The Korean Claimants could have cashed the checks when they were issued. They could have requested replacement checks during the multiple years after the checks expired. But they did not do so. In fact, Korean Claimants do not even contend that the claimants are prepared now to submit documentation demonstrating the "good cause" for their failure to cash the checks that is required by Closing Order 2. The Order is intended by its terms to facilitate the final closure of the Settlement Facility operations as contemplated by the Plan. This can hardly be deemed unfair.

We note that in their summary of argument the Korean Claimants assert, without support or explanation, that the Order discriminates against Korean Claimants. To be clear, the Order does not apply only to Korean Claimants – it applies to all claims with expired checks issued before the final claim filing deadline of June 3, 2019.

II. The Korean Claimants' Argument That The Bankruptcy Discharge Does Not Apply To Claimants Who Failed To Cash Their Check Is Fundamentally Incorrect.

A bankruptcy court's confirmation of a reorganization plan discharges the debtor from any debt that arose before the date of the confirmation, regardless of whether proof of the debt is filed, the claim is disallowed, or the plan is accepted by the claim's holder. 11 U.S.C. § 1141(d)(1)(A). A "debt" includes "liability on a claim." 11 U.S.C. § 101(12). A "claim" includes any "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured[.]" 11 U.S.C. § 101(5)(A). The provisions of the Plan are binding on claimants as a matter of federal bankruptcy law. *See* 11 U.S.C. § 1141(a) ("the provisions of a confirmed plan bind . . . any creditor . . . whether or not such creditor . . . has accepted the plan"). Importantly, "the provisions of a confirmed plan bind the debtor and each creditor . . . whether or not such creditor has objected to, has accepted, or has rejected the plan." 11 U.S.C. § 1327(a). Where a plaintiff asserts claims that were discharged under a defendant's bankruptcy plan, those claims must be dismissed. *See Farrier v. Leicht*, No. 20-3528, 2020 WL 13017227, at *3 (6th Cir. Nov. 24, 2020).

To the extent that the Korean Claimants are asserting that the bankruptcy discharge is ineffective as to the Korean Claimants who failed to cash their checks,

the argument must fail. It is contrary to the plain meaning of the bankruptcy discharge and the plain language of 11 U.S.C. § 1141. The Plan discharges all claims against the Debtor (Dow Corning) that arose from its conduct before the Plan's confirmation in 1999 regardless of whether the claim is paid when the Plan is implemented. *See* Plan § 8.1, RE 1701-2, Page ID # 32887-88. The Plan released certain claims, including all Persons who have held, hold, or may hold Products Liability Claims, Personal Injury Claims, against the Debtor. *Id*. § 8.3, Page ID # 32889-92. It also permanently enjoins the prosecution of any Released Claims. *Id*. § 8.4, Page ID # 32893-84. The Korean Claimants' claims against Dow Corning arise from conduct that occurred before the Bankruptcy Plan was confirmed in 1999. "Confirmation of a plan of reorganization by the bankruptcy court has the effect of a judgment by the district court and res judicata principles bar relitigation of any issues raised or that could have been raised in the confirmation proceedings." *In re Chattanooga Wholesale Antiques, Inc.*, 930 F.2d 458, 463 (6th Cir. 1991) citing *Miller v. Meinhard–Commercial Corp.*, 462 F.2d 358, 360 (5th Cir.1972); cf. *Stoll v. Gottlieb*, 305 U.S. 165, 170–71 (1938). "Without this rule there would be no finality to confirmed plans." *Id*.

Further, a Plan which includes a permanent injunction, as is the case here, prohibits any party who may have held, holds, or may hold Released Claims on the Effective Date of the Plan from "commencing, conducting, or continuing any action

against [the debtor] for monetary recovery on account of any claim arising prior to the closing of transactions under the plan." *Farrier*, 2020 WL 13017227, at *3. Here, the Korean Claimants were parties to and involved in the bankruptcy and they cannot now raise claims that the bankruptcy discharge does not apply. *Id*. The fact that the Korean Claimants did not receive a payment is irrelevant to the finality of the discharge.

The Korean Claimants allege that the debtor made false representations during confirmation (25 years ago) and state that even if the fraud exception in Section 523(a)(2) of the Bankruptcy Code is inapplicable, the dischargeability of the debt against the Korean Claimants under the Plan is not fundamental or absolute. Korean Claimants Br. at 25-26. While the argument is not entirely clear, to the extent that the Korean Claimants seek to assert that there were alleged false representations made in 1999 when the Plan was confirmed by the bankruptcy court – and that this somehow affects the Korean Claimants' decision not to cash their checks – the argument is a non sequitur. Any concerns about the Plan or the basis for Plan terms could have and must have been raised in 1999 during confirmation. The simple fact is that Korean Claimants received but failed to cash their checks and then compounded that failure by foregoing the opportunity to seek replacement checks for multiple years. They can hardly claim that their lack of attention to cashing payment checks is a result of some statement allegedly made in 1999.

The one case the Korean Claimants cite, *Grogan v. Garner*, 498 U.S. 279 (1991), to support the claim that a debtor has no constitutional or fundamental right to a discharge in bankruptcy, is irrelevant and wholly inapplicable. *Grogan* addresses the standard of proof for claims under Section 523(a) of the bankruptcy code, which provides that an individual debtor does not receive a discharge in bankruptcy for obligations for money obtained by actual fraud. This case has no bearing here. As Korean Claimants admit, Dow Corning was not an individual debtor. And of course, their unsupported allegation that certain promises about payment were made to Korean Claimants does not constitute actual fraud. Korean Claimants' assertion that a representation was made that they would receive payment in full has nothing to do with their failure to cash checks – which is the reason they have not received payment. The Korean Claimants' arguments for an exception to the discharge are unsupported and should be denied.

To the extent that the Korean Claimants argue that the Order is an abuse of discretion because the Plan does not provide that checks issued before June 3, 2019 would expire and not be payable, this argument fails. A Plan cannot and need not address every administrative detail of distribution. The Plan does not purport to, and indeed cannot, define the detailed administrative procedures that will be necessary to implement its terms. The SFA and the Plan provide that the district court retains supervisory authority over the Settlement Facility and the distribution of assets of

the Settlement Fund precisely to address the myriad of detailed issues that can arise when tens of thousands of claims are processed through an administrative system over two decades. Plan at § 8.7.5, RE 1701-2, Page ID # 32897). Additionally, the SFA instructs the Claims Administrator, under the supervision of the district court, to develop and define necessary detailed procedures. See SFA § 5.01(a), RE 1707-3, Page ID # 33183 ("The Claims Administrator shall have discretion to implement such additional procedures and routines as necessary to implement the Claims Resolution Procedures …."); SFA § 5.01(b), RE 1707-3, Page ID # 33183 ("The Claims Administrator shall institute procedures … and shall develop claims-tracking and payment systems as necessary to process the Settling Breast Implant Claims in accordance with the terms of this Settlement Facility Agreement …."); SFA § 5.04(b), RE 1707-3, Page ID # 33186 ("The Claims Administrator shall have the plenary authority and obligation to institute procedures to assure an acceptable level of reliability and quality control of Claims and to assure that payment is distributed only for Claims that satisfy the Claims Resolution Procedures."). The Korean Claimants' arguments that the Order is an abuse of discretion because the Plan does not specify the exact terms for terminating outstanding expired payments is contrary to the structure of the Plan and common sense. It is unsupportable.

CONCLUSION

For the foregoing reasons, Appellees respectfully request that the Court dismiss and deny this appeal and affirm the Joint Stipulation and Agreed Order for Procedures for Addressing Requests to Reissue Payments and to Establish the Final Distribution Date for Such Claims.

Dated: May 6, 2024

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CERTIFICATE 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 7,995 words.

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CERTIFICATE OF SERVICE

I certify that on May 6, 2024, I electronically filed a copy of the foregoing Brief of Appellees, Dow Silicones Corporation, The Debtor's Representatives, The Claimants' Advisory Committee, 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
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
1569	01/15/2021	Motion for Vacating Decision of Settlement Facility Regarding Address Update/Confirmation	26261-26505
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 Claim For Payment, This Order Does Not Apply	28284-28288
1607	06/24/2021	Memorandum Opinion and Order Regarding The Finance Committee's Motion For Authorization To Make Second Priority Payments, The Korean Claimants' Motion For Premium Payments And The Korean Claimants' Motion For Order Vacating	28602-28632

		Decision Of The Settlement Facility Regarding Address Update/Confirmation	
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
1701	03/29/2023	Motion To Establish Final Distribution Deadline Regarding Replacement Checks for Settlement Claims in the Dow Corning Settlement Program	32802-33106
1701-2	03/29/2023	Amended Joint Plan of Reorganization of Dow Corning Corporation	32813-32924
1701-3	03/29/2023	Dow Corning Settlement Program and Claims Resolution Procedures: Annex A To Settlement Facility And Fund Distribution Agreement	32925-33042
1701-5	03/29/2023	Funding Payment Agreement (Classes 5 through 19)	33046-33103
1701-6	03/29/2023	Declaration of Kimberly Smith-Mair in support of Motion to Establish Final Distribution Deadline Regarding Replacement Checks for Settlement Claims in the Dow Corning Settlement	33104-33106
1707-3	04/10/2023	Settlement Facility and Fund Distribution Agreement	33147-33207
1736	09/29/2023	Order Granting Joint Motion for Authorization to Dispose of Claim Records Maintained by the Settlement Facility-Dow Corning Trust	33729-33731
1738	10/03/2023	Joint Stipulation and Agreed Order for Procedures for Addressing Requests to Reissue Payments and to Establish the Final Distribution Date for Such Claims	33746-33752
1740	10/04/2023	Joint Stipulation and Agreed Order for Procedures for Addressing Requests to Reissue Payments and to Establish the Final Distribution Date for Such Claims	33754-33759

1741	10/18/2023	Notice of Appeal to Joint Stipulation and Agreed Order for Procedures for Addressing Requests to Reissuance Payments and to Establish the Final Distribution Date for Such Claims (ECF No. 1740)	33760-33762