

Case No: 23-1936

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, et al.,

Interested Parties-Appellees,

and

FINANCE COMMITTEE,

Movant-Appellee.

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

Reply Brief of Appellant Korean Claimants

Yeon Ho Kim
Yeon-Ho Kim International Law Office
Suite 4105, Trade Tower
511 Yeongdong-daero, Kangnam-ku
Seoul 06164 South Korea
Tel: +82-2-551-1256
Email: yhkimlaw@naver.com

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I. INTRODUCTION

The Korean Claimants (“the Appellants”) were served with the Appellees’ Brief on May 7, 2024 in local time. This court ordered that the *optional* Reply Brief be filed no later than 21 days from the Appellee’s Brief.

The Korean Claimants did not want to rebut the legal arguments of the Appellees’ Brief because the Appellate Brief already filed with this court included arguments that the Korean Claimants wanted to raise for appeal.

Upon service, however, the Korean Claimants found facts presented in the Appellees’ Brief false so that the Korean Claimants wanted to correct the facts alleged by the Appellees.

The Korean Claimants knew that the Appellees had a habit of lying. They have always succeeded in persuading the District Court to issue various Orders in favor of them and mostly disfavoring the Korean Claimants on the basis of lies and distortions that they presented to the District Court.

This Order that the Korean Claimants decided to appeal from belonged to the same category that the Korean Claimants found for many years.

A series of Orders for closing the SF-DCT (the Settlement Facility-Dow Corning Trust) issued by the District Court have not been contested nor objected because the US Claimants had already received the distribution of the funds from the SF-DCT as much as they could under the Plan and the SFA.

No other group of the foreign Claimants had an interest in the closing Orders issued almost twenty years after the operation of the SF-DCT. The other reason that the other foreign Claimants were not active would be because they were not a large group of the Claimants of a foreign country just as the Korean Claimants.

II. FACTS TO BE CORRECTED

The Appellees allege in the Brief that the Korean Claimants either did not seek replacement checks during that period of time [*more than four and half years before the date of the Order*] or did not provide the requisite information necessary to authorize a replacement check during that period of time and there is no further action that could or will occur with respect to the status of these claims. (Appellees' Brief at 7) ¹

¹ The Appellees add that the reason that the Korean Claimants will not receive payment is because they failed to cash their checks and nothing more. (Appellees' Brief at 21)

In addition, the Appellees allege that 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 and thus they can hardly claim that their lack of attention to cashing payment checks is a result of some statement [*false representations to the Korean Claimants*] allegedly made in 1999. (Appellees' Brief at 31)

To rebut this unfounded allegation regarding facts, the Korean Claimants submit this court Appendix of the documents of Nos.4-6 which were letters mailed by the SF-DCT. (Pg ID:#40-210)

The SF-DCT sent letters to the AOR ("Attorney of Record") and clearly admitted that it received the request for replacement checks expired (180 days from the issuance) from the Korean Claimants. Even the date of letters was November 14, 2023.

Although not a full copy of 200 Korean Claimants regarding replacement checks, the Korean Claimants sent letters to request replacement checks to the SF-DCT years before this Order. (Pg ID:#2-39)

The SF-DCT held the letters for years without responding.

The SF-DCT did not issue replacement checks either during that period of four and a half years before June 3, 2019. After years that the SF-DCT failed to act on the requests for replacement checks, the District Court issued this Order that the expired checks issued before June 3, 2019 are not eligible for replacement.

And then, the SF-DCT mailed letters (Nos.4-6 Pg ID:#40-210) to the Korean Claimants on November 14, 2023 by saying that the requests for replacement checks were made and postmarked October 23, 2023 and October 30, 2023. (Even if the Korean Claimants sent letters postmarked October 23, 2023 and October 30, 2023, it does not change the situation because the Korean Claimants requested for replacement checks for years before this Order.)

Furthermore, the Appellees allege in the Brief that they note that in their summary of argument the Korean Claimants assert, without support or explanation, that the Order discriminates against Korean Claimants and, 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. (Appellees' Brief at 28) ²

² The Appellees assert that the fact that the Korean Claimants did not receive a payment is irrelevant to the finality of the discharge. (Appellees' Brief at 31)

What the SF-DCT has done to the Korean Claimants discriminatorily exceeds the worthiness for mentioning.

The SF-DCT held the letters of the Korean Claimants for years without responding. The SF-DCT discriminated the Korean Claimants by this failure itself. The SF-DCT was quick to respond for other Claimants' letters but did not respond to the Korean Claimants' letters. (The Claims Administrator turned down the proposals for meeting with the AOR for a decade)

The Appellees allege in the Brief that 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 and 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. (Appellees' Brief at 33)

However, the Claims Administrator of the SF-DCT presented the facts falsely to the District Court. This appeal is related to the Motion for Correction of the SF-DCT's Disposition regarding the Korean Claimants pending the District

Court as far as the 109 Korean Claimants are concerned. The Claims Administrator submitted the Declaration to the District Court but it turned out that she has presented false statements regarding the Korean Claimants. (Nos.7,8. Pg ID:#211-224) Her statements presented in the form of Declaration were many but most of them were false in facts regarding the Korean Claimants. The District Court admitted them, however. The Appellees filed the Motion to exclude the Declaration of the AOR because the AOR of the Korean Claimants challenged the veracity of the SF-DCT and the Claims Administrator.

The Appellees' assertion that this Order applies to all claims and does not apply only to the Korean Claimants does not deter discrimination upon the Korean Claimants by the SF-DCT.

VII. CONCLUSION

For the foregoing reasons, the Korean Claimants request this court to Overturn the District Court's Joint Stipulation and Agreed Order for Procedures for Addressing Requests to Reissue Payments and to Establish the Final Distribution Dated for Such Claims and Remand to the District Court regarding replacement checks.

Date: May 9, 2024

Respectfully submitted,

/s/ Yeon-Ho Kim

Yeon-Ho Kim

Yeon-Ho Kim Int'l Law Office

Suite 4105, Trade Tower,

511 Yeongdong-daero, Kangnam-ku

Seoul 06164 South Korea

Tel: +82-2-551-1256

Email: yhkimlaw@naver.com

CERTIFICATE OF COMPLIANCE

I hereby certify that this reply brief complies with the type-volume limitations of Fed.R.App.P.32(a)(7)(B). According to Microsoft Word which was used for typing this reply brief, this brief's number is 1,155 words.

Date: May 9, 2024

/s/ Yeon-Ho Kim

Yeon-Ho Kim

Yeon-Ho Kim Int'l Law Office

Suite 4105, Trade Tower,

511 Yeongdong-daero, Kangnam-ku

Seoul 06164 South Korea

Tel: +82-2-551-1256

Email: yhkimlaw@naver.com

CERTIFICATE OF SERVICE

I hereby certify that on May 9, 2024, I have electronically filed the above document with the Clerk of Court by ECF system that will notify to all relevant parties in the record.

Date: May 9, 2024

/s/ Yeon-Ho Kim
Yeon-Ho Kim
Yeon-Ho Kim Int'l Law Office
Suite 4105, Trade Tower,
511 Yeongdong-daero, Kangnam-ku
Seoul 06164 South Korea
Tel: +82-2-551-1256
Email: yhkimlaw@naver.com