Case No. 18-1040

United States Court of Appeals
for the Sixth Circuit

In re: SETTLEMENT FACILITY DOW CORNING TRUST

KOREAN CLAIMANTS
***Interested Parties – Appellants*,**

v.

DEBTOR'S REPRESENTATIVES, DOW SILICONES CORPORATION, CLAIMANTS' ADVISORY COMMITTEE,
Interested Parties – Appellees.

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

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RESPONSE BRIEF OF APPELLEES DEBTOR'S REPRESENTATIVES, DOW SILICONES CORPORATION AND THE CLAIMANTS' ADVISORY 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: 18-1040 Case Name: In re Settlement Facility Dow Corning

Name of counsel: Jeffrey S. Trachtman, Esq.

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 January 11, 2018 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/ Jeffrey S. Trachtman
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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: 18-1040 Case Name: In re Settlement Facility Dow Corning

Name of counsel: Deborah E. Greenspan

Pursuant to 6th Cir. R. 26.1, 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.

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.

The Debtor's Representatives consist of: two who are counsel to Dow Silicones Corporation; one who is counsel to Corning Incorporated; and two who are employees of the Dow Chemical Company.

CERTIFICATE OF SERVICE

I certify that on May 7, 2018 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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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit
Case Number: 18-1040 Case Name: In re Settlement Facility Dow Corning

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 DowDuPont, Inc., which is a publicly owned corporation. Further, various publicly owned corporations may be creditors of Dow Silicones' Chapter 11 bankruptcy estate, but Dow Silicones believes their interests are too attenuated to present any conflict issues here.

CERTIFICATE OF SERVICE

I certify that on May 7, 2018 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.

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STATEMENT IN SUPPORT OF ORAL ARGUMENT

Oral argument is requested. Oral argument will allow the attorneys for the parties to assist the Court by providing additional explanation of the matter, which involves four separate motions filed over the course of a decade.

INTRODUCTION [1]

This appeal arises out of an order of the district court that dismissed three separate motions filed by Korean Claimants as moot and because they requested relief barred by the Dow Corning Amended Joint Plan of Reorganization (the "Plan"). The Korean Claimants are individuals who seek settlement payments from the settlement trust established by the Plan.[2] The settlement trust was established to compensate the eligible personal injury tort claims of individuals (primarily individuals who claim injury resulting from use of a silicone gel breast implant made by Dow Corning) who elected the settlement option under the Plan.

In their motions, the Korean Claimants challenged claim determinations made by the Claims Administrator (who is responsible for reviewing and evaluating claims

[1] On February 1, 2018, Dow Corning Corporation changed its name to Dow Silicones Corporation. *See* 6th Cir. RE 20 & 21. For the Court's and parties' convenience, Appellees will still refer to Dow Silicones as Dow Corning for purposes of this appeal herein.

[2] The Korean Claimants are represented by Yeon-Ho Kim, who filed this appeal and the motions giving rise to the appeal. According to Kim, the Korean Claimants comprise approximately 1,800 breast implant claimants. *See* Korean Claimants Br. at 9, 6th Cir. RE 33-1.

under the settlement program) and also sought to re-categorize Korean claims to a category that provides a higher compensation level. The district court determined that the relief requested was either barred by the Plan or was mooted by subsequent actions of the Claims Administrator that effectively resolved the issues and provided the relief requested.

This appeal involves a convoluted sequence of events that boil down to a disagreement with (1) the substantive evaluation and the timing of categorization of the claims of the Korean Claimants under the Plan and (2) the decision of the Claims Administrator to investigate claim submissions that contain admittedly inaccurate, false or inconsistent statements or information as required by the Plan.[3] Korean Claimants have already received appropriate relief consistent with the Plan and the district court properly dismissed their motions.

STATEMENT OF JURISDICTION

The district court exercised jurisdiction pursuant to 28 U.S.C. § 1334(b) ("the district courts shall have original but not exclusive jurisdiction of all civil

[3] The capitalized terms Appeals Judge, Claimants' Advisory Committee, Claims Administrator, and Finance Committee as used herein have the meaning described in the Plan and Settlement Facility and Fund Distribution Agreement ("SFA"). *See* Plan §§ 1.28, 1.29, 1.67, RE 816-2, Page ID # 12715-12716, 12722; SFA § 4.07, RE 968-2, Page ID # 16380. The Appeals Judge is appointed to perform the administrative function described in the SFA. A claimant who is dissatisfied with a decision by the Claims Administrator may appeal to the Appeals Judge, who is also a member of the Finance Committee. *See id*.

proceedings arising under title 11, or arising in or related to cases under title 11"). This Court has jurisdiction to review the district court's December 28, 2017 final order pursuant to 28 U.S.C. § 1291.

COUNTER-STATEMENT OF ISSUES FOR REVIEW

1. Whether the district court properly found that the Motion for Reversal was moot to the extent it challenged an administrative hold placed on processing certain claims of Korean Claimants when the Claims Administrator had already conducted an audit, re-reviewed and evaluated each claim to determine eligibility for benefits under the terms of the Plan and issued determinations on the claims.

2. Whether the district court properly denied the Motion for Reversal as seeking relief barred by the Plan where the Plan permits appeals of claim decisions only to the Claims Administrator and Appeals Judge, does not permit an appeal of claim decisions to the district court, and requires the Claims Administrator to assure reliability of documentation supporting claims and to authorize payment only for claims that satisfy the Plan criteria.

3. Whether the district court properly found that the Motion for Re-Categorization was moot after the Claims Administrator granted Korean Claimants' request for re-categorization so that the claims of Korean Claimants that had not been paid as of January 1, 2015 were re-categorized to Class 6.1, as requested by Korean Claimants.

4. Whether the district court properly denied Korean Claimants' request to apply the re-categorization retroactively (up to 2-5 years before the Korean Claimants' request was made) when Korean Claimants had conceded that the Plan permits only prospective re-categorization and where the Plan language precludes such relief and unambiguously provides that such re-categorization shall apply only to claims paid in the year of re-categorization.

5. Whether Korean Claimants' have forfeited their appeal with respect to the Motion for Re-categorization by failing to contest the district court's determination of mootness in this appeal.

STATEMENT OF THE CASE AND FACTS

A. Background.

This Court has addressed the history of Dow Corning's bankruptcy proceedings and Plan on multiple occasions. *See*, *e.g.*, *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).

In 1999, Dow Corning and the representatives of the tort claimants—the Tort Claimants' Committee—filed the consensual Plan, which provides a comprehensive settlement program for breast implant claimants. Following appeals, the Plan became effective on June 1, 2004. *See In re Settlement Facility Dow Corning Trust*, 628 F.3d at 771; *see also* Plan, RE 816-2, Page ID # 12700.

The claims of Settling Personal Injury Claimants are reviewed, evaluated and paid by the Settlement Facility—Dow Corning Trust (the "SF-DCT"). The Settlement Facility and Fund Distribution Agreement ("SFA") and the Dow Corning Settlement Program and Claims Resolution Procedures, Annex A to SFA ("Claims Resolution Procedures") prescribe the rules under which settling claims are evaluated and, if eligible, paid. The Claims Administrator administers the claims evaluation process and is charged with ensuring that the processing functions and substantive evaluation of claims accord with the Plan requirements, implementing procedures to assure reliability of claims and documents submitted in support of claims, and detecting and deterring fraud. The Finance Committee oversees the operations of the settlement trust and is responsible for financial matters and for ensuring the preservation of the assets of the trust for the benefit of eligible claimants and other allowed expenditures. *See* Plan §§ 1.29 & 1.67, RE 816-2, Page ID # 12716, 12722.

The Plan prescribes a settlement program that governs the resolution of claims of Breast Implant Claimants who elect settlement. Settling claimants may select among different benefit options and the Plan provides specified payment amounts for each option. To be eligible to receive compensation, a claimant must have timely filed a proof of claim or notice of intent form and further must demonstrate use of a Dow Corning Breast Implant.

The Plan classifies claimants based on their country of residence or citizenship. Breast Implant Claimants who are not citizens or resident aliens of the United States and who did not have their implants inserted in the United States are classified in Plan Class 6.1 or 6.2. Such "Foreign" claims are placed either in Plan Class 6.1 or Plan Class 6.2 based on the GDP per capita of the relevant country compared to the GDP per capita of the United States. Class 6.2 covers claimants who reside in countries with a per capita GDP that is 60% or less than the per capita GDP of the United States. Class 6.1 covers claimants who reside in countries with a per capita GDP per capita that is greater than 60% of the per capita GDP of the United States. *See id*. §§ 3.2.8 & 3.2.9, Page ID # 12741; Claims Resolution Procedures § 6.05(h)(i), RE 968-3, Page ID # 16458. In general, the benefit amounts paid to eligible claimants in Class 6.2 are about 60% of the amount paid to eligible claimants in Class 6.1. When the Plan was confirmed, Korean Claimants (i.e., claimants residing in South Korea) were classified in Class 6.2. *See* Schedule III to Claims Resolution Procedures, RE 968-3, Page ID # 16527; Plan § 3.2.9, Page ID # 12741.

To receive compensation, a claimant is required to demonstrate that she in fact had received and was implanted with a Dow Corning Breast Implant. Claims Resolution Procedures, Page ID # 16426-16427. The Claims Resolution Procedures specify 19 different ways in which a claimant can demonstrate implantation with a

Dow Corning Breast Implant to show the required "proof of manufacturer." Generally, the Plan requires claimants to submit medical records demonstrating the use of a Dow Corning Breast Implant. *See* Schedule I § I(B), Claims Resolution Procedures, RE 968-3, Page ID # 16476-16479. The Plan allows the SF-DCT to accept "affirmative statements" of the implanting physician attesting to use of the Dow Corning Breast Implant to establish proof of implantation with a Dow Corning Breast Implant—but only if the actual medical records are not available. *See id.*, Page ID # 16477. The affirmative statement must include the basis for the physician's statement that Dow Corning Breast Implants were used. A physician might, for example, explain that during the time period in which the claimant received her breast implant, the physician used only products manufactured by Dow Corning. *See id*. The SF-DCT has accepted such affirmative statements provided that there is no other information that contradicts the statement. *See* Letter from Claims Administrator, David Austern, RE 810-6, Page ID # 12317.

This appeal arises out of the district court's dismissal of three motions filed by Korean Claimants: the Motion of Korean Claimants for the Settlement Facility to Locate Qualified Medical Doctor of Korea and Either Pay for that Qualified Medical Doctor to Travel to Korea and Conduct the Disease Evaluations or Hire Qualified Medical Doctor in Korea to Conduct the Reviews at the Settlement Facility's Expense (the "Motion to Hire QMD") (RE 77) filed on December 15,

2004; the Motion for Reversal of Decision of the SF-DCT Regarding Korean Claimants (the "Motion for Reversal") (RE 810) filed on September 26, 2011; and the Motion for Re-Categorization of Korea (the "Motion for Re-Categorization") (RE 965), filed on April 7, 2014 (collectively, the "Underlying Motions"). Dow Corning opposed each of these Underlying Motions as barred by the Plan. The Claimants Advisory Committee ("CAC") opposed the Motion for Re-categorization as barred by the Plan.

On April 24, 2015, Dow Corning, the Debtor's Representatives, and the CAC filed a Suggestion of Mootness Regarding "Motion for Re-Categorization of Korea," "Motion for Reversal of Decision of SFDCT Regarding Korean Claimants," and "Motion of Korean Claimants for the Settlement Facility to Locate Qualified Medical Doctor of Korea and Either Pay for that Qualified Medical Doctor to Travel to Korea and Conduct the Disease Evaluations or Hire Qualified Medical Doctor in Korea to Conduct the Reviews at the Settlement Facility's Expense" (the "Mootness Motion"). *See* RE 1020. The Mootness Motion requested that the district court dismiss all three Underlying Motions as moot in light of the actions taken by the Claims Administrator while the Underlying Motions were pending because those actions effectively provided the substantive relief sought. Korean Claimants opposed the Mootness Motion, arguing that the Underlying Motions were not moot because certain relief had not in fact been obtained.

On December 28, 2017, the district court granted the Mootness Motion and the cross-motions to dismiss the Motion for Reversal filed by Dow Corning and the SF-DCT and further found that the relief sought in the Motion for Reversal and Korean Claimants' request for retroactive application of the re-categorization decision granted by the Claims Administrator are barred by the Plan. Accordingly, the district court dismissed the Underlying Motions. *See* Order, RE 1347, Page ID # 21590-21599.

Korean Claimants appeal the district court's Order with respect to two of the three Underlying Motions. Korean Claimants do not contest and have expressly withdrawn their appeal of the district court's decision on the Motion to Hire QMD. *See* Korean Claimants Br. at 8 ("Korean Claimants do not want to contest the Order of the District Court regarding Motion for STDCT to locate Qualified Medical Doctors of Korea"). The appeal of the dismissal of the Motion to Hire QMD is therefore waived and abandoned. *See Mactec, Inc. v. Bechtel Jacobs Co., LLC*, 346 F. App'x 59, 69 (6th Cir. 2009); *O'Hara v. Brigano*, 499 F.3d 492, 498 (6th Cir. 2007) ("because plaintiffs did not challenge a district court's ruling on a particular issue, any arguments 'pertaining to that ruling are considered abandoned on appeal and thus not reviewable'") (quoting *Boyd v. Ford Motor Co.*, 948 F.2d 283, 284 (6th Cir. 1991)).

B. The Underlying Motions.

1. Motion for Reversal

Korean Claimants filed the Motion for Reversal on September 26, 2011 in response to an August 22, 2011 letter from the Claims Administrator to counsel for Korean Claimants advising that the SF-DCT would no longer accept the affirmative statements presented by Korean Claimants to establish proof of manufacturer and that those Korean Claimants whose claims had been paid previously on the basis of such affirmative statements would not be eligible for further benefits. The Claims Administrator explained in the letter that the determination was based on admissions of counsel for Korean Claimants that the stated basis for the unavailability of actual medical records of implantation was false and that the SF-DCT had obtained evidence that implanting physicians signed the affirmative statements without any basis for concluding that Dow Corning implants were used. *See* RE 810-10, Page ID # 12329-30.

The Motion for Reversal sought an order directing the Claims Administrator to reverse those decisions. Specifically, Korean Claimants requested orders directing the Claims Administrator not to "cancel" prior approvals of proof of manufacturer submissions; to accept Korean Claimants' "affirmative statements" submitted to demonstrate eligibility; not to "remove" claims where the Claims Administrator found that documents submitted to support the claim had been altered;

to expeditiously process Korean Claims; and not to preclude Korean Claimants whose claims had been paid based on an "affirmative statements" from receiving additional payments. Korean Claimants also asked the district court to order the Claims Administrator to expedite the claims process for certain Korean Claimants, not to force Korean Claimants to apply for the $600 expedited payment option, and to order a restructuring to address alleged "discriminatory measures" and to prevent alleged "bias." *See* RE 810, Page ID # 12298.

Dow Corning opposed the Motion for Reversal (RE 817) and both Dow Corning and the SF-DCT moved for its dismissal on the ground that the relief requested is barred by the Plan and contradicts the obligations of the Claims Administrator. *See* Cross-Motion to Dismiss the Korean Claimants' Appeal (styled as "Motion for Reversal of Decision of SF-DCT Regarding Korean Claimants"), RE 816; and Cross-Motion to Dismiss the "Motion for Reversal" Filed by Yeon-Ho Kim, Esq. of a Decision by the Claims Administrator for the Settlement Facility–Dow Corning Trust, RE 820 (collectively, "Cross-Motions to Dismiss Motion for Reversal"). Korean Claimants filed a further response (RE 818) and Dow Corning filed a reply. *See* RE 823.

On January 17, 2014, while the Motion for Reversal was pending, the Claims Administrator informed counsel for Korean Claimants that the SF-DCT had withdrawn the prohibition on accepting affirmative statements previously imposed

and that the SF-DCT continued to review and process all of the Korean Claims consistent with the Plan. *See* Declaration of Ann M. Phillips ("Phillips Dec."), RE 1020-2, Page ID # 17047. This action meant that the SF-DCT would continue to accept affirmative statements unless an individual affirmative statement was demonstrably unreliable – for example, if it was contradicted by other information in the claim records – and would allow future payments of claims that had been approved based on affirmative statements. *See id.*

2. Motion for Re-Categorization

On April 7, 2014, Korean Claimants filed the Motion for Re-Categorization. Korean Claimants requested that the district court order (1) the SF-DCT to adjust the compensation category of South Korea; (2) the SF-DCT to pay additional sums to Korean Claimants who had already been paid; (3) the Finance Committee to revise Schedule III to include Korea into Category 2 (i.e., Class 6.1); and (4) the "parties," including Dow Corning and the CAC, "not to influence [the] SF-DCT to give administrative disadvantages to Korean claimants" while their claims are being processed. *See* RE 965, Page ID # 16265.

The Appellees opposed the Motion for Re-Categorization both because it was procedurally defective under the Plan, which does not permit a request to the district court unless and until a request for re-categorization is presented to and denied by the Finance Committee, and because the Claims Resolution Procedures clearly

provide that a re-categorization applies only prospectively to claims paid in the year of re-categorization and thereafter. *See* RE 967, Page ID # 16343-16344; RE 968, Page ID # 16348, 16354-16357.

Korean Claimants' reply acknowledged that the Motion for Re-categorization was procedurally defective and inconsistent with the Plan's terms. They did not withdraw the motion but did withdraw the requests for an order directed at the role of the "parties" and for retroactive re-categorization. *See* RE 969, Page ID # 16528-16529. Thus, the only requested relief remaining was the request to re-categorize South Korea to Class 6.1 applicable only to claimants paid after the date of the requested order. *Id*., Page ID # 16529-16530.

Shortly before filing the reply, Korean Claimants submitted a re-categorization request to the Claims Administrator, as a member of the Finance Committee. *See* Phillips Dec., RE 1020-2. On December 4, 2014, while the Motion for Re-Categorization was still pending, the Finance Committee granted Korean Claimants' request to re-categorize South Korea. *Id.*, Page ID # 17045-17053. The Finance Committee advised that

> The Plan provides that the adjustment of categories shall occur no more than once per calendar year and any re-categorization shall apply to all Claimants residing in such country whose Claims are paid in the year of re-categorization or thereafter. Beginning in calendar year 2015, South Korean [sic] is re-categorized to Category 2 [Class 6.1].

Id., Page ID # 17052.

C. The Mootness Motion.

On April 24, 2015, Dow Corning, the Debtor's Representatives, and the CAC jointly filed the Mootness Motion. *See* RE 1020. The Mootness Motion asserted that because the relief sought by Korean Claimants in the Motion for Re-Categorization and the Motion for Reversal had been provided, those pending motions should be dismissed as moot as well as for the reasons stated in the original responses and motions to dismiss the respective Underlying Motions.[4]

Korean Claimants opposed the Mootness Motion, contending that the relief sought had not in fact been granted. *See* RE 1025, Page ID # 17228-17229. Korean Claimants argued that the Motion for Reversal was not moot because the SF-DCT had not ceased to deny eligibility on the ground that claim submissions were inconsistent, unreliable, or contained altered or unreliable medical records and because the SF-DCT had not "restructured" its staff as requested by Korean Claimants. Korean Claimants argued that the Motion for Re-Categorization was not moot by recanting their earlier withdrawal of the request to apply the re-categorization retroactively and asserting that the question "remains" whether re-categorization should apply from 2012, 2014 or 2015. RE 1025, Page ID # 17228; RE 1030, Page ID # 17428. Korean Claimants also contended that they sought

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[4] The Mootness Motion also sought dismissal of the Motion to Hire QMD on mootness grounds.

publication of a "revised" Schedule III (which is the one-page document that lists the classification categories of each country) and that the lack of such a revised schedule precludes a finding of mootness. *See* RE 1025, Page ID # 17228; RE 1030, Page ID # 17426.

The district court heard oral argument on December 10, 2015. *See* RE 1401.

D. The District Court's Decision.

On December 28, 2017, the district court granted the Mootness Motion and the Cross- Motions to Dismiss the Motion for Reversal filed by Dow Corning and the Claims Administrator; dismissed the Motion for Re-categorization as moot; dismissed the Motion for Reversal as moot with respect to the imposition of an administrative "hold"; and denied the Motion for Reversal with respect to any request to review decisions of the Claims Administrator. RE 1347. The district court found that Korean Claimants' request in the Motion for Reversal for an order requiring the SF-DCT to process the claims was moot because the SF-DCT had lifted the administrative "hold" on Korean Claims submitted with "affirmative statements" and had in fact processed the bulk of those claims. *Id*., Page ID # 21595. The district court further held that Korean Claimants' request that the district court "reverse" the decisions of the Claims Administrator on multiple Korean Claims (i.e., finding certain claims to be deficient because the supporting documentation was unreliable and thus unacceptable) is barred by the provisions of the Plan that forbid appeals to

the district court of the Claims Administrator's claim decisions. *Id*., Page ID # 21596-21597.

The district court found that Korean Claimants "received the relief sought" in the Motion for Re-Categorization because the Claims Administrator had re-categorized South Korea to Class 6.1 as requested. *Id*., Page ID # 21594. The district court further determined that the Plan bars Korean Claimants' argument that the re-categorization should be applied retroactively, concluding that "[a]ny new request by the Korean Claimants to interpret the Plan and the SFA to retroactively apply the re-categorization to previously paid Korean Claims cannot be considered by the Court." *Id*.

This appeal followed. *See* RE 1350.

SUMMARY OF ARGUMENT

The district court properly dismissed Korean Claimants' motions because they asked for relief that either was forbidden by the Plan or was already provided by the administrative entities responsible for managing claims under the Plan. In the Motion for Reversal, Korean Claimants asked the district court to issue rulings reversing claim determinations made by the Claims Administrator, including determinations that certain claim submissions failed to meet the Plan's requirements of reliability and validity. The district court properly held that such relief is prohibited by the Plan. The Plan grants to the Claims Administrator the sole

authority to determine the validity and eligibility of claims subject only to an appeal to an Appeals Judge. As this Court has previously confirmed, the Plan does not permit claimants to seek a claim determination by the district court. The Korean Claimants' request for an order altering the determinations of the Claims Administrator is in direct contravention of this prohibition.

The Plan further requires the Claims Administrator to undertake procedures to assure that claims meet the Plan's detailed criteria for payment and to identify and address unreliable or potentially fraudulent submissions. The Claims Administrator found that certain submissions of Korean Claimants appeared to contain altered or contradictory medical records as well as records that were obviously unreliable. Korean Claimants' request for an order reversing the decisions of the Claims Administrator with respect to the reliability of claim submissions similarly is prohibited by the Plan's prohibition on appeals to the district court and, in addition, improperly seeks to prohibit the Claims Administrator from carrying out her function and fulfilling her Plan-mandated obligations. The district court also properly dismissed Korean Claimants' request for an order directing the Claims Administrator to process Korean claims and "cancel" its decision to hold the claims pending investigation as moot since the Claims Administrator had lifted that hold and completed its investigation.

In a second motion, Korean Claimants requested the district court to re-categorize South Korea to a higher category that would result in higher payments to claimants. The district court properly found that this motion was mooted after the request for re-categorization was granted by the Claims Administrator while the motion was pending. Korean Claimants do not argue that the Motion for Re-categorization was not mooted. Instead, they contend that the re-categorization should commence in an earlier year and should thus apply to claims that had been paid before the re-categorization request became effective. The Plan unambiguously prohibits retroactive re-categorization and requires instead that the re-categorization shall apply to claims paid in the year of re-categorization and "thereafter." The decision of the district court should be affirmed and, in any event, by failing to challenge the mootness finding on appeal, Korean Claimants have abandoned their right to challenge the district court's order dismissing the Motion for Re-categorization as moot.

STANDARD OF REVIEW

The district court's determination of mootness and legal interpretation of the language of the Plan are reviewed *de novo*. *See Ellis ex rel. Pendergrass v. Cleveland Mun. Sch. Dist.*, 455 F.3d 690, 698 (6th Cir. 2006) (reviewing district court's ruling that motion for sanctions was moot; "[t]his court reviews mootness decisions de novo"); *Dow Corning Corp. v. Claimants' Advisory Comm. (In re*

Settlement Facility Dow Corning Trust), 592 F. App'x 473, 477-78 (6th Cir. 2015) (involving whether certain second priority claimants should receive "premium payments," even when not all higher-priority creditors have been paid). Korean Claimants contend that any findings of fact of the district court should be reviewed under the clearly erroneous standard. The Appellees do not dispute that this is the applicable standard for review of findings of fact to the extent that there are any such findings.

ARGUMENT

A. The District Court Properly Dismissed the Motion for Reversal both on Mootness Grounds and Because the Relief Requested in that Motion is Barred by the Plan.

Korean Claimants' Motion for Reversal was filed in response to the Claims Administrator's determination that certain proof of manufacturer submissions of Korean Claimants did not meet the requisite standards of reliability and veracity and therefore could not be accepted. *See* RE 810; RE 1020-2, Page ID # 17047; RE 810-10, Page ID # 12329-12330. The Claims Resolution Procedures identify acceptable proof of manufacturer evidence and task the Claims Administrator with "determining the acceptability of manufacturer proof." RE 968-3, Page ID # 16475-16479. Based on multiple findings of claim submissions with contradictory supporting documents, obviously altered records, and admissions by counsel for Korean Claimants that certain statements about the availability of medical records

in Korea were untrue, the Claims Administrator advised Korean Claimants that the "affirmative statements" submitted to demonstrate proof of manufacturer were not acceptable under the Plan and that the claims of Korean Claimants would be deferred and held pending investigation and analysis. *See* RE 1020-2, Page ID # 17047; RE 810-10, Page ID # 12328-12330. The Motion for Reversal asked the district court to reverse the decisions of the Claims Administrator both on the substantive eligibility of the claims and the reliability of the supporting documents. *See* RE 810, Page ID # 12298.

The district court properly held that the relief requested is barred by the Plan and that, in addition, the request to reverse the "hold" imposed by the Claims Administrator was mooted by subsequent actions of the Claims Administrator. *See* RE 1347, Page ID # 21595-21597.

The decision of the Claims Administrator to investigate the circumstances of the disputed claim submissions and to institute policies and procedures to assure reliability of the submissions is a key function that is required by the Plan. The Claims Administrator is obligated "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." *See* SFA § 5.04(b), RE 968-2, Page ID # 16388. The Claims Administrator is responsible for conserving the assets of the settlement trust so that only eligible and qualified claims

are paid from the limited fund. The Claims Administrator has an affirmative obligation to assure that claim submissions satisfy the criteria for payment and if the Claims Administrator discovers aberrations in a submission, there is an affirmative obligation to investigate and, if appropriate, deny such a claim. *See id*., Page ID # 16387-16389. In order to fulfill these obligations and conduct a proper investigation, the Claims Administrator placed an administrative hold on certain claims filed by Korean Claimants. *See* RE 1020-2, Page ID # 17047.

After finalizing the investigation, on January 17, 2014, while the Motion for Reversal remained pending, the Claims Administrator informed Korean Claimants that the hold had been lifted. *Id*. The Claims Administrator also informed Korean Claimants that the "exclusion" had been lifted. *See id*., Page ID # 17047, 17054-17056. (The "exclusion" refers to the decision to deny payment (including future payment) to all claims submitted with an affirmative statement as the only form of proof of manufacturer.) The elimination of the "exclusion" meant that the SF-DCT had determined to accept the affirmative statements generally and not to deny payment on such claims based solely on the use of the affirmative statements. The SF-DCT's letter confirmed that it was processing all remaining pending claims. *Id*. Counsel for Korean Claimants acknowledged this communication. *Id*., Page ID # 17056.

The district court properly concluded that the Motion for Reversal was rendered moot with respect to Korean Claimants' request for an order reversing the Claim's Administrator's decision to place a "hold" on Korean claims. Order, RE 1347, Page ID # 21595. The uncontroverted declaration of the Claims Administrator confirms that the hold and the "exclusion" were lifted after the SF-DCT conducted an in depth review and that the SF-DCT was processing all remaining claims. *See* Phillips Dec., RE 1020-2, Page ID # 17047. The SF-DCT's decision to lift the administrative hold and to eliminate the "exclusion" (that barred acceptance of affirmative statements) also effectively granted Korean Claimants' request to allow the use of affirmative statements and to permit the claims previously paid based on affirmative statements to receive future additional payments provided that the claims otherwise met the Plan's qualification criteria and were properly supported.

The district court properly denied the Korean Claimants' Motion for Reversal with respect to the requests to reverse the Claims Administrator's substantive claim determinations (which include the decisions finding certain submissions to be unreliable or potentially fraudulent) because the Plan prohibits appeals to the district court of the Claims Administrator's decisions on the substance of claims and because the Plan requires the Claims Administrator to approve only claims that meet the eligibility criteria and are supported by reliable evidence. The district court correctly concluded that "[i]f the Korean Claimants are now arguing that the Court should

reverse any decision made by the Claims Administrator on the substance of any claim, as opposed to an order reversing the Claims Administrator's placement of a 'hold' on a certain claim," such request for relief must be denied because "the Plan provides that the decision of the Appeals Judge is final and binding and there is no provision allowing a claimant to appeal to or request reversal of any decision by the Appeals Judge." Order, RE 1347, Page ID # 21596-21597.

The Motion for Reversal improperly asked the district court to countermand the determinations of the Claims Administrator. Both the Plan and prior decisions of this Court bar any such request. *See* Claims Resolution Procedures § 8.05, RE 968-3, Page ID # 16473 ("Claimants who disagree with the ruling of the Claims Administrator may appeal to the Appeals Judge…. The decisions of the Appeals Judge will be final and binding on the Claimant."); *accord In re Clark-James*, No. 08-1633, 2009 WL 9532581, at *2 (6th Cir. Aug. 8, 2008) ("The district court properly dismissed Clark-James' complaint…essentially seek[ing] a review of the SF-DCT's determination that she has not submitted sufficient proof to show that her implants had ruptured. But 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."); *In re Settlement Facility Dow Corning Trust, Danielle McCarthy*, No. 12-10314, 2012 WL 4476647, at *2 (E.D. Mich. Sept. 28,

2012) ("The Plan provides no right of appeal to the Court."), *appeal dismissed*, No. 12-2506 (6th Cir. Jan. 28, 2013).

Korean Claimants seek to justify their request for an order "reversing" the decisions of the Claims Administrator by arguing that the Claims Administrator is not permitted to change a claim determination. *See* Korean Claimants Br. at 30-32. There is no basis in the Plan for any such conclusion. Nowhere does the Plan suggest that the Claims Administrator is not permitted to correct a determination – whether it was the result of a simple error or because new information demonstrates that the claim is ineligible. In fact, as noted, the Plan requires that the Claims Administrator assure that payment is distributed only to qualifying claimants. If the Claims Administrator learns that a claim was based on altered documents or that the documents submitted were fabricated or do not in fact apply to the specific claimant, the Claims Administrator's only option is to revoke any prior decision and investigate the claim. *See* SFA § 5.04(a)(i), RE 968-2, Page ID # 16387 (Claims Administrator obligated "to institute claim-auditing procedures and other procedures designed to detect and prevent the payment of fraudulent Claims"); *id.* § 5.04(a)(iii), Page ID #16388 (requiring Claims Administrator to deny claim if she concludes that there has been intentional abuse of the Claims Resolution Procedures or fraud); *id.* § 5.04(b), Page ID # 16388 (Claims Administrator obligated "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."); *id.* § 5.01(a), Page ID # 16385 ("[o]nly those Claims that satisfy the eligibility criteria specified in the Claims Resolution Procedures as applicable are eligible to receive payment….").

Korean Claimants' argument is based entirely on a misinterpretation of SFA § 10.01, which states that "[t]he Settlement Facility is irrevocable. None of the Released Parties, present or future, or their successors in interest may hold any beneficial interest in, or have any reversion to, the income or corpus of the Settlement Facility." RE 968-2, Page ID # 16401. This provision recognizes that – consistent with the fact that the Settlement Fund is designated a Qualified Settlement Fund – the Released Parties may not recoup funds paid into the Settlement Facility and may not have any beneficial interest in the Settlement Fund assets. This provision has absolutely no bearing on, or relevance to, decisions by the Claims Administrator with respect to individual claims evaluations.[5]

[5] Korean Claimants also requested an order prohibiting the SF-DCT from forcing Korean Claimants to accept the $600 expedited payment option and to restructure the SF-DCT staff to avoid discrimination against Korean Claimants. There is nothing in the record that indicates that the SF-DCT was attempting to force acceptance of the referenced option. In fact, the Claims Administrator is only permitted to process such claims if a claimant files a claim form. *See* Claims Resolution Procedures, RE 968-3, Page ID # 16453 ($600 limited proof settlement option is available to Class 6.2 Claimants who, *inter alia*, "file an Option 3 Claim Form").

The SF-DCT continues to fulfill its obligations under the Plan to process claims and examine the validity of the claims filed by Korean Claimants. Phillips Dec., RE 1020-2, Page ID # 17047.[6] The district court properly dismissed and denied the Motion for Reversal on mootness grounds and because Korean Claimants requested relief barred by the Plan. RE 1347, Page ID # 21595-21599.

B. The District Court Properly Dismissed the Motion for Re-Categorization As Moot and Korean Claimants Have Forfeited Their Appeal of the District Court's Dismissal on Mootness Grounds

In the Motion for Re-Categorization, Korean Claimants sought a court order directing the Claims Administrator to reclassify Korea from Plan Class 6.2 (where

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Nor is there anything in the record that indicates that the SF_DCT was discriminating against the Korean Claimants. Korean Claimants cite as evidence of discrimination letters sent by the SF-DCT, signed by staff members, to counsel for Korean Claimants explaining deficiencies in the documentation of specific claims. *See* Supplemental Response to Reply in Support of Suggestion of Mootness, RE # 1030, Page ID # 17429. For example, a letter explains that the SF-DCT could not accept an affirmative statement confirming implantation with a Dow Corning implant allegedly signed by the implanting physician because that physician was not a licensed physician at the time the implantation surgery occurred. *See* RE 1030-1, Page ID # 17434. In other words, Korean Claimants mischaracterize the SF-DCT's implementation of its obligation to assure reliability of supporting documentation as "discrimination." Thus, the request to "restructure" the SF-DCT is nothing more than another request to have the district court reverse the decisions of the Claims Administrator – which is barred by the Plan.

[6] The SF-DCT will continue to examine all claims (including Korean claims) for reliable supporting evidence and potential fraud, and if any claim warrants further investigation to confirm its validity, it will be held pending such investigation in the ordinary course. Phillips Dec., RE 1020-2, Page ID # 17047-17048.

it was classified at the time of Plan confirmation) to Plan Class 6.1. The Claims Administrator granted that request effective January 1, 2015 – while the Motion for Re-Categorization was pending. In response to the Mootness Motion, Korean Claimants asserted that they in fact had not received the relief requested because – they argued – re-categorization should have been made effective either as of 2012 – when South Korea's GDP per capita purportedly first exceeded 60% of the United States' – or, alternatively, in 2014 when the request was submitted. *See* RE 1025, Page ID # 17228-17229. (On appeal, Korean Claimants now argue re-categorization should apply from 2009, 2010, or, alternatively, from 2014. *See* Korean Claimants Br. at 18, 22-24.)

As the district court correctly determined, Korean Claimants obtained the only relief remaining from the Motion for Re-Categorization following Korean Claimants' withdrawal of their request for an order directing the SF-DCT to pay increased amounts to Korean Claimants who already received compensation before re-categorization was granted. *See* Reply to Responses to Motion for Re-Categorization, RE 969, Page ID # 16529-16530). Accordingly, as the district court correctly held, the Motion for Re-Categorization was rendered moot. *See* RE 1347, Page ID # 21592-21594 (citing *Thomas Sysco Food Servs. v. Martin*, 983 F.2d 60, 62 (6th Cir. 1993) ("A case will become moot when the requested relief is granted or no live controversy remains.")); *see also Collins v. Bogan,* 25 F.3d 1047 (Table)

(6th Cir. May 16, 1994) ("The appeal is moot because the requested relief has been granted."); *see also Massey Coal Servs., Inc. v. Victaulic Co. of Am.*, No. 2:06-cv-00535, 2008 WL 11378890, at *4 (S.D. W.Va. 2008) (dismissing claim as moot after request had been withdrawn).

On appeal, Korean Claimants do not challenge the district court's holding that the Motion for Re-categorization is moot. In fact, they do not mention the mootness determination at all in their brief or statement of issues on appeal, and they do not argue that the Motion for Re-Categorization is *not* moot. Their failure to address the specific holding of the district court is grounds for a finding that Korean Claimants have abandoned and forfeited their appeal of the dismissal of the Motion for Re-Categorization. *See Mactec,* 346 F. App'x at 69; *O'Hara,* 499 F.3d at 498.

C. The District Court Properly Interpreted the Plan to Bar the Korean Claimants' Attempt to Renew their Argument for Retroactive Re-Categorization

In the district court, Korean Claimants sought to avoid the mootness determination by attempting to raise the previously withdrawn request for retroactive re-categorization. The district court properly found that the Plan unambiguously bars Korean Claimants' request for retroactive re-categorization.[7]

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[7] The district court's finding of mootness is based on its determination that the request for retroactive re-categorization was a new request raised in the Mootness Motion after having been withdrawn from the Motion for Re-categorization and that it is barred by and thus not viable under the Plan. *See* Order, RE 1347, Page ID #

The Plan established a categorization formula based on the GDP of the country in which the claimant resides. Any country may be re-categorized (to a lower or higher category) based on the formula. The Plan authorizes but does not require the Claims Administrator to re-categorize countries. The Plan allows claimants to submit a request for re-categorization, which may be implemented if agreed to by the Debtor's Representatives, CAC and the Finance Committee. Only if such a request is denied may the claimant file a motion seeking re-categorization. The Plan specifies that any adjustment may occur only once in a calendar year and – even if sought by only one claimant – must apply to all claimants residing in that country whose claims are paid in the year of re-categorization. The sentence reads: "Such adjustments shall occur no more than once per calendar year and any re-categorization shall apply to all Claimants residing in such country whose Claims are paid in the year of re-categorization or thereafter." Claims Resolution Procedures § 6.05(h)(ii), RE 968-3, Page ID # 16458.

Korean Claimants acknowledge this provision but raise a new argument on appeal – asserting that the prospective application of re-categorization applies only where there has not been a request for re-categorization. They argue that because the initial clause of the sentence refers to "such adjustment" and appears immediately

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21594 ("It appears now that the Korean Claimants argue that the revised payment category should apply retroactively to all Korean Claims.").

after the sentence that recognizes that the Claims Administrator may make an adjustment. First, this reading of the language ignores the fact that the Claims Administrator must implement any re-categorization – regardless of how it is initiated. Thus, the obvious and plain reading of the first sentence is simply to recognize the function of the Claims Administrator to effectuate the re-categorization. Second, Korean Claimants' interpretation would abrogate the intent of the provision and violate the Bankruptcy Code. The language mandates equal treatment of claimants residing in the same country – by requiring that a re-categorization must apply to all such claimants, regardless of who initiates the re-categorization. It avoids the inevitable inequality that would arise were the Claims Administrator required to adjust payment levels retroactively to claims paid before the year of re-categorization. If a country were to be re-categorized to a lower payment category, for example, retroactive application would require the Claims Administrator to attempt to recoup funds already paid. Such an effort would likely prove impossible in some cases resulting in unequal treatment. Conversely, if the retroactive re-categorization resulted in an increase in previously distributed payments, the Claims Administrator would have to attempt to locate such claimants and make an additional distribution – again resulting in variation in payments between similarly situated claimants in the same Plan Class.

To read the sentence that assures equal treatment of claimants and mandates application of any adjustment to all similarly situated claimants as applicable *only* if the Claims Administrator voluntarily initiates re-categorization is unreasonable. It would violate the Bankruptcy Code and well-settled principles of contract construction. The Bankruptcy Code "requires that claims of creditors that are members of the same class be treated equally." *In re Dow Corning Corp.*, 280 F.3d 648, 659 (6th Cir. 2002) (citing 11 U.S.C. § 1123(a)(4) ("Notwithstanding any otherwise applicable nonbankruptcy law, a plan shall … provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest."). The Plan language must be interpreted to avoid an unreasonable or unlawful result. "'[A]n interpretation which gives a reasonable, lawful, and effective meaning to all the terms is preferred to an interpretation which leaves a part unreasonable, unlawful, or of no effect.'" *Eastman Kodak Co. v. STWB Inc.*, 232 F. Supp. 2d 74, 91 (S.D.N.Y. 2002) (quoting RESTATEMENT (SECOND) CONTRACTS § 203(a) (1986)); *see also* 11 WILLISTON ON CONTRACTS § 32:11 (4th ed. 2017) ("an interpretation which gives a reasonable, lawful, and effective meaning to all the terms is preferred to an interpretation which leaves a part unreasonable, unlawful, or of no effect"); 28 NEW YORK PRACTICE SERIES, CONTRACT LAW § 10:5 (2017) ("The contract should be

construed to reach a fair and reasonable result…. A construction that leads to unreasonable results should be avoided.") (collecting cases).

The district court properly rejected Korean Claimants' argument for retroactive re-categorization and noted further that to adopt the interpretation advanced by Korean Claimants would be an unlawful modification of the Plan. Order, RE 1347, Page ID # 21594 ("Korean Claimants do not have the authority under the Plan to seek a redrafting of the Plan or seek an interpretation of the Plan. The Plan only provides that Dow Corning and the CAC may jointly amend or modify the Plan, upon order of the Court. (Plan, § 11.4) Any new request by the Korean Claimants to interpret the Plan and the SFA to retroactively apply the re-categorization to previously paid Korean Claims cannot be considered by the Court.").[8]

Korean Claimants' Motion for Re-categorization was thus properly dismissed as moot and the attempt to insert a "retroactivity" argument was properly denied by the district court.

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[8] Korean Claimants' argument in the district court that they have not received a printed version of a revised Schedule III was not raised on appeal and thus has been forfeited. *See supra* at 9. In any event, such argument cannot resurrect their motion. The Finance Committee granted the re-categorization in writing and that decision is binding. Distributing a revised Schedule III will not change the substantive determination and is simply an administrative task that the Finance Committee could undertake if it so chooses.

D. Korean Claimants' Mediation Motion is Not a Proper Issue in this Appeal.

Korean Claimants refer to and discuss at length their December 14, 2016 Motion for Recognition and Enforcement of Mediation (the "Mediation Motion," RE 1271). *See* Korean Claimants Br. at 35-39. In the Mediation Motion, Korean Claimants contend that the Finance Committee agreed to "settle" all of their claims for a lump sum payment of $5 million. Korean Claimants seek an order compelling the Finance Committee to pay this amount to counsel for Korean Claimants who then, presumably, would distribute payments to his clients apparently in his discretion. The Mediation Motion was argued in the district court on March 22, 2018 and remains pending. *See* RE March 22, 2018.

Dow Corning and the CAC oppose the Mediation Motion on multiple grounds. *See* RE 1275. First, and most importantly, the Plan does not permit distribution of Settlement Fund assets in this manner. The Plan allows payment to or for any claimant only if the claim has been reviewed and found eligible for payment under the detailed criteria and procedures set forth in the Plan. *See* SFA § 5.01(a), RE 968-2, Page ID # 16385 (SFA and Claims Resolution Procedures establish the "exclusive criteria" for evaluating and paying claims and "[o]nly those Claims that satisfy the eligibility criteria specified in the Claims Resolution Procedures as applicable are eligible to receive payment"). Settlement Fund assets may not be used to pay claimants in any other way. Second, the document that

Korean Claimants claim constitutes an "agreement" is a draft that was neither signed nor approved by the Claims Administrator or the Finance Committee. The communications surrounding the preparation of this draft make clear that there are no indicia of a binding contract: the document is described and denoted as a draft, the document references multiple issues and conditions that would be necessary if such an agreement were even permitted; and the document makes clear that it is not effective and could not be effective and it makes clear that to be effective it would have to be memorialized in a final fully executed and properly approved document. *See* RE 1275, Page ID # 19353-19356; RE 1271-1, Page ID # 19312-19314, 19327. Further, the essential purpose of the draft mediation document no longer exists since in the almost five years since that draft document was prepared, the SF-DCT completed the processing and payment (or preparation for payment) of almost all Korean claims submitted for evaluation. *See* RE 1275, Page ID # 19360-19362; Declaration of Ann M. Phillips Regarding Korean Claimants' Motion for Recognition and Enforcement of Mediation, RE 1275-3, Page ID # 19484-19485.

The Mediation Motion is simply irrelevant to this appeal. When the district court issues a decision on the Mediation Motion, Korean Claimants may then appeal – if they are dissatisfied with the decision. The issues raised in the Mediation Motion cannot be imported into this appeal and Korean Claimants' arguments related to the purported mediation are not ripe for consideration by this Court. *See United States*

v. Baker, 807 F.2d 1315, 1321 (6th Cir. 1986) ("courts of appeals generally refuse to consider issues not passed upon by lower courts…").

CONCLUSION

For the foregoing reasons, Appellees respectfully request that the Court affirm the December 28, 2017 Order of the district court.

Dated: May 7, 2018

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B). According to the word processing program used to prepare this brief (Microsoft Word), this brief contains 8,095 words.

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CERTIFICATE OF SERVICE

I certify that on May 7, 2018, I electronically filed a copy of the foregoing Response Brief of Appellees Debtor's Representatives, Dow Silicones Corporation and the Claimants' Advisory 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
77	12/15/2004	Motion Of Korean Claimants For The Settlement Facility To Locate Qualified Medical Doctor Of Korea And Either Pay For That Qualified Medical Doctor To Travel To Korea And Conduct The Disease Evaluations Or Hire Qualified Medical Doctor In Korea To Conduct The Reviews At The Settlement Facility's Expense	374-379
810	9/26/2011	Motion for Reversal of Decision of SF-DCT Regarding Korean Claimants	12286-12301
810-6	9/26/2011	Email of August 14, 2009 from D. Austern	12316-12317
810-10	9/26/2011	Letter of August 22, 2011 from A. Phillips	12328-12344
816	10/13/2011	Cross-Motion to Dismiss the Korean Claimants' Appeal (Styled as "Motion For Reversal of Decision of SF-DCT Regarding Korean Claimants")	12686-12698
816-2	10/13/2011	Amended Joint Plan of Reorganization	12700-12774
816-3	10/13/2011	The Amended Joint Plan of Reorganization (con't)	12775-12810
817	10/13/2011	Dow Corning's Opposition to Motion for Reversal of Decision of SF-DCT Regarding Korean Claimants	12973-12976
818	10/21/2011	Korean Claimants' Response to Dow Corning's Cross Motion	12977-12984
820	11/3/2011	Cross-Motion to Dismiss the "Motion for Reversal" Filed by Yeon-Ho Kim, Esq. of a Decision by the Claims Administrator of the SF-DCT	13160-13170
823	11/7/2011	Dow Corning's Reply in Support of Dow Corning's Cross-Motion to Dismiss the Korean Claimants' Appeal	13173-13179
965	4/7/2014	Motion for Re-categorization of Korea	16262-16268
967	4/24/2014	Response of Claimants' Advisory Committee in Opposition to Motion for Recategorization of Korea	16338-16346
968	4/24/2014	Response of Dow Corning Corporation to "Motion for Re-Categorization of Korea" filed by Yeon Ho Kim	16347-16363
968-2	4/24/2014	Settlement Facility and Fund Distribution Agreement	16364-16409
968-3	4/24/2014	Annex A to Settlement Facility and Fund Distribution Agreement	16410-16527

RE#	Filing Date	Document Description	Page ID
969	5/12/2014	Reply to Responses to Motion for Re-categorization of Korea by Dow Corning and Claimants' Advisory Committee	16528-16532
1020	4/24/2015	Joint Motion for Suggestion Of Mootness Regarding "Motion For Re-Categorization Of Korea," "Motion For Reversal Of Decision Of SFDCT Regarding Korean Claimants," And "Motion Of Korean Claimants For The Settlement Facility To Locate Qualified Medical Doctor Of Korea And Either Pay For That Qualified Medical Doctor To Travel To Korea And Conduct The Disease Evaluations Or Hire Qualified Medical Doctor In Korea To Conduct The Reviews At The Settlement Facility's Expense"	17020-17044
1020-2	4/24/2015	Declaration of Ann M. Phillips Regarding Suggestion of Mootness of Korean Motions I	17045-17056
1025	5/3/2015	Response to Suggestion Of Mootness Regarding "Motion For Re-Categorization Of Korea," "Motion For Reversal Of Decision Of SFDCT Regarding Korean Claimants," And "Motion Of Korean Claimants For The Settlement Facility To Locate Qualified Medical Doctor Of Korea And Either Pay For That Qualified Medical Doctor To Travel To Korea And Conduct The Disease Evaluations Or Hire Qualified Medical Doctor In Korea To Conduct The Reviews At The Settlement Facility's Expense"	17225-17236
1030	6/1/2015	Supplemental Response to Reply in Further Support of Suggestion of Mootness	17425-17432
1030-1	6/1/2015	Exhibit to Supplemental Response to Reply in Further Support of Suggestion of Mootness	17433-17438
1271	12/14/2016	Motion for Recognition and Enforcement of Mediation	19277-19286
1271-1	12/14/2016	Exhibits to Motion for Recognition and Enforcement of Mediation	19287-19338
1275	12/28/2016	Opposition of Down Corning Corporation, the Debtor's Representatives and the Claimants' Advisory Committee to Motion for Recognition and Enforcement of Mediation	19344-19370
1275-3	12/28/2016	Declaration of Ann M. Phillips Regarding Korean Claimants' Motion for Recognition and Enforcement of Mediation	19484-19485
1347	12/28/2017	Order Granting Joint Motion to Render Moot Motions Filed on Behalf of the Korean Claimants	21590-21599

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