

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOTHERN DIVISION**

IN RE:	§	CASE NO: 00-CV-00005-DT
	§	(Settlement Facility Matters)
DOW CORNING CORPORATION	§	
	§	
Reorganized Debtor	§	
	§	
	§	Hon.Chief Judge Denise Page Hood

**KOREAN CLAIMANTS' MOTION TO STAY THE COURT'S RULING GRANTING
THE FINANCE COMMITTEE'S MOTION FOR AUTHORIZATION
TO MAKE SECOND PRIORITY PAYMENTS**

Yeon-Ho Kim, the attorney for the Korean Claimants, files this Motion to stay this Court's ruling granting the Finance Committee's Motion for authorization to make second priority payments pending appeal to the United States Court of Appeals for the Sixth Circuit.

This Court issued the Memorandum Opinion and Order regarding the Finance Committee's Motion for authorization to make second priority payments on June 24, 2021.

Pursuant to Fed.R.Civ.P.62(c), stay of proceedings to enforce a judgment or an order can be sought by a losing party. Pursuant to E.D.Mich.L.R.7.1(a)(1), the Korean Claimants must ascertain whether the contemplated Motion will be opposed by the Finance Committee. From the Claimants' Advisory Committee's announcement after the issuance of the Order, however, this Motion will be opposed by the Finance Committee. Therefore, the procedure for concurrence is not necessary.

I. Argument

Whether a stay is granted is required four factors: (1) the likelihood that the party seeking the stay will prevail on the merits of the appeal (2) the likelihood that the moving party will be irreparably harmed absent a stay (3) the prospect that others will be harmed if the court grants the stay and (4) the public interest in granting the stay. *See Grutter v. Bollinger* 247 F.3d 631, 633 (6th Cir. 2001) and *Michigan Coalition of Radioactive Material Users, Inc. v. Griepentrog* 945 F.2d 150, 151 (6th Cir. 1991)

A. Likelihood to Prevail

The Finance Committee's decision for authorizing to make second priority payments was made only by two members although the Finance Committee is required to have three members. This Court decided that the lack of one member was moot because a new member was appointed by this Court later of time and the new member did not oppose the decision of the Finance Committee to make second priority payments. The Korean Claimants do not agree to the Court's opinion so that the Korean Claimants are likely to prevail on the merits of the appeal because a breach of the Settlement Facility Agreement on composition of committee and its operative requirements cannot be excused.

B. Likelihood to be Irreparably Harmed

The Settlement Facility and the Finance Committee did not give any chance to the Korean Claimants. The Settlement Facility cut off any possibility that the Korean Claimants could receive first premium payments. The Finance Committee filed the Motion for second premium payments and this Court granted. Second premium payments are the last payments that the Finance Committee can file to pay to the Class 5 Claimants. Since the Finance Committee as well as the Settlement Facility have been working for the Class 5 Claimants in nature, the Korean Claimants are likely to be ignored and disregarded until the ending day of closing the Settlement Facility if second premium

payments are distributed pending appeal. The likelihood that the Korean Claimants will be irreparably harmed absent a stay is obvious.

C. Prospect that Other Claimants Will Be Harmed

The other Claimants including Class 5 Claimants will not be harmed. Even if harmed, it can be minimal. The Settlement Facility is supposed to close by June 2022. And the final deadline for filing claims lapsed on June 1, 2019, two years ago. All of claims for all of Claimants have been filed and counted in full. There is no claim which has not been taken into account by the Finance Committee. The funds held by the Settlement Facility exceed the funds necessary for distributing second premium payments. Therefore, the other Class 5 Claimants waiting for distribution of second premium payments that the Finance Committee moved to make will not be harmed meaningfully because they will be paid by June 2022 eventually even if this Court grants the stay.

D. Public Interest for Stay

The Korean Claimants served the reorganization of Dow Corning Corporation. As more than 40 percents of 6.2 Class, the Korean Claimants conceded to the Proposed Dow Corning Reorganization Plan. If the Korean Claimants had sought the objection to the Proposed Plan, Dow Corning Corporation would have entered into liquidation.

However, Dow Corning Corporation and the Debtors' Representative betrayed the Korean Claimants by ignoring several verbal commitments made during confirmation hearings in 1999. Under influence of the insurers internally connected with Dow Corning Corporation, the Settlement Facility raised numerous technical issues in processing the Korean claims and denied the eligibility of the Korean Claimants based on technicality.

The Korean Claimants received around 7 million dollars in total while Dow Corning Corporation estimated 12 million dollars for the Korean claims before the Bankruptcy Court in 1999.

The Settlement Facility should have treated the Claimants' file equally and applied the clauses of Settlement Program and Claims Resolution Procedures rightfully. Equal treatment of creditors is the basic principle under the Bankruptcy Code but the Settlement Facility violated the principle by manipulating the rules and procedures set up under the the Plan documents. The Finance Committee let it happen with no responsibility taken.

The Motion of the Finance Committee that this Court granted will result in immediate distribution of the funds to the Class 5 Claimants while the Korean Claimants will never receive a dollar since the Settlement Facility decided that the address of the Korean Claimants was not confirmed and the counsel for the Korean Claimants was not trusted.

The Public interest will be served if this Court grants the stay because the equal treatment under the Bankruptcy Code will be carried out while the Class 5 Claimants are not disproportionately harmed pending appeal.

II. Conclusion

For the foregoing reasons, the Korean Claimants request that the Court stay the Order regarding the Finance Committee's Motion for authorization to make second priority payments that was issued on June 24, 2021.

Date: July 20, 2021

Respectfully submitted,

(signed) Yeon-Ho Kim
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CERTIFICATE OF SERVICE

I hereby certify that on July 20, 2021, this Motion has been electronically filed with the Clerk of Court using ECF system, and the same has been notified to all of the relevant parties of record.

Dated: July 20, 2021

Signed by Yeon-Ho Kim