

**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 MEMORANDUM OPINION REGARDING TWO ORDERS TO
SHOW CAUSE AGAINST ATTORNEY YEON-HO KIM AND VARIOUS MOTIONS
FILED BY THE KOREAN CLAIMANTS**

Yeon-Ho Kim, the attorney for the Korean Claimants, files this Motion to stay this Court's ruling with Memorandum Opinion and Order regarding Two Orders to Show Causes against Attorney Yeon-Ho Kim and Various Motions Filed by the Korean Claimants pending appeal to the United States Court of Appeals for the Sixth Circuit.

This Court issued Memorandum Opinion and Order regarding Two Orders to Show Causes against Attorney Yeon-Ho Kim and Various Motions Filed by the Korean Claimants ("This Order") on June August 12, 2022.

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 Debtor, the Debtor's Representatives, the Claimants' Advisory Committee.¹ It is obvious that they oppose it so

¹ The Korean Claimants do not file the Motion for Stay the Court's Order regarding Cross Motion for Show Cause with respect to the Finance Committee (ECF No.1357) and the Court's Order

that 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 affected Korean Claimants' appeal is pending the United States Court of Appeals for the Sixth Circuit (Case No. 22-1750). The issue is whether the Korean Claimants can prove the "excusable neglect" standard. (*See In re Settlement Facility Dow Corning Trust* 2009 WL 4506433 (E.D.Mich. 2009))

Whether the Korean Claimants had "excusable neglect" has to be analyzed on the basis of (1) the danger to the debtor (2) the length of the delay and its potential impact on judicial proceedings (3) the reason for the delay, including whether it was within the reasonable control of the movant, and (4) whether the movant acted in good faith. (*See Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P' Ship*, 507 U.S.380,395(1995))

a. Danger to Debtor

regarding Motion for Exclusion from Cross Motion (ECF No.1378). This Motion for Stay is only with respect to the Court's Order regarding the Korean Claimants' Motion for Extension of Deadline for Filing Claim (ECF No.1586).

Even if the SF-DCT extends the Deadline for filing Claim of the certain (405) Korean Claimants by resulting that they are eligible Claimants and should be processed by the SF-DCT to find whether their submission for Proof of Manufacturer and Disease Compensation are acceptable, there is no danger to the Debtor, Dow Corning Corporation. The Fund was fixed and enough to compensate all of the Claimants with the SID number even after the SF-DCT closed.

In addition, all of the Claimants' files' review has been finished so that there is no possibility that the SF-DCT would cause the processing of the other Claimants' Claims delayed or cause the payments to them postponed because the Korean Claimants.

b. Length of Delay and Potential Impact on Judicial Proceedings

After June 3, 2019, the certain four hundred five (405) Korean Claimants filed their submission of Claim for Proof of Manufacturer and Claim for Disease Compensation on December 29, 2021. The Korean Claimants passed the Deadline nearly one and half years.

This length of delay should not be considered heavily because the affected Korean Claimants had to prepare the documents of their Claim for submission to their representing attorney (Yeon-Ho Kim) for considerable time and the representing attorney had to spend considerable time to finish up the submitted documents to meet the requirements for Claims to the SF-DCT.

In particular, this large group of Claimants demanded a lot of preparation periods and detailed information for actual documentation individually and respectively to conduct the final submissions to the SF-DCT. Therefore one and half year delay should not be long in comparison with the length of life of the SF-DCT, eighteen years from 2004 to 2022.

In addition, even if this Court enlarges time limitation under the Plan, there should be not much impact on the judicial proceedings. The SF-DCT has the files of submission of the certain (405) Korean Claimants and the only matter remaining now is that the SF-DCT embarks the process of examination of the Claims to find whether they are acceptable.

The staffs of the SF-DCT are ready and also professional so that there would be no time-consuming on the part of the SF-DCT to carry out the process for the Korean Claimants' Claims. There would be no hindrance for the SF-DCT to close as scheduled even if the SF-DCT is allowed to process the affected Korean Claimants' Claim files.

c. Reason for Delay including Whether it was Within Reasonable Control

First of all, the representing attorney has been engaged in several Motions in this Court and some Motions in appeal. The certain (405) Korean Claimants had no fault in filing Motions and filing appeals. They just followed advices of the representing attorney. Above of all, they could argue that the Closing Order 1 fixing the Deadlines for Filing Claims under the Plan and the Plan itself have not been fully acknowledged by them in advance because they did not fully understand English. Furthermore they were not notified with Closing Order 1.

In addition, the Korean Claimants have been aware over the years that the SF-DCT offered the settlement in full with the Korean Claimants as a group although it has not been in force because of the Debtor's objection. Therefore the Korean Claimants by this Court's Order regarding Extension of Deadline for Filing Claim did not pay an attention to prepare their documents for Claims until June 3, 2019.

However, during filing various Motions with this Court, the representing attorney warned Dow Corning Corporation, the Debtor's Representatives and the Claimants' Advisory Committee that there were over five hundred (500) Claimants who were going to file Claim

with the SF-DCT so that Dow Corning Corporation, the Debtor's Representatives and the Claimants' Advisory Committee have been aware of future filings before the Deadline. Therefore the submission of Claims by the certain four hundred five (405) Korean Claimants should not be a sudden attack nor a surprise to the SF-DCT.

d. Good Faith

The affected Korean Claimants could not file their submission of Claim to the SF-DCT on time due to COVID-19 quarantine measures enforced by the Government (See Appendix). Most clinics including implanting physicians who were responsible for issuing affirmative statement for proof of manufacturer and diagnosis doctors were closed. Although COVID-19 situations started from the last half of 2019 following the reports of the outbreak in Wuhan City in China, the impact from it was pre-dated because the mails of the United Postal System that the Settlement Facility adamantly used for the notice of filing Deadlines to the Korean Claimants and the representing attorney around 2019 arrived at least five to nine months later than they were supposed to be delivered to the Korean Claimants.

Therefore the basis for "excusable neglect" under the *Pioneer* case was met so that the affected Korean Claimants under this Court's Order regarding Extension of Deadline for Filing Claim (ECF No.1586) is likely to prevail on the merits of appeal.

B. Likelihood to be Irreparably Harmed

The SF-DCT will close in June 2023. It is not certain that the Appellate Court would rule on the Korean Claimants' appeal (Case No. 22-1750) until then.

Since the SF-DCT said in the letter to the Attorney of Record that their Claims would not be processed, the affected Korean Claimants are likely to be irreparably harmed. If the SF-DCT

closed, there is no place or a person that the Korean Claimants can depend on for Claims processing. Therefore the Korean Claimants will be completely denied any rights of compensation under the Plan unless this Court's Order is not stayed immediately.

C. Prospect that Other Claimants Will Be Harmed

The other Claimants will not be harmed. The SF-DCT is supposed to close in 2023. The SF-DCT declared that the Claims for all of Claimants have been filed and counted in full. The Other Claimants were paid almost in full. Therefore the other Claimants will not be harmed even if this Court grants the stay.

D. Public Interest for Stay

Public interest that the affected Korean Claimants should have been treated equally by the SF-DCT and this Court must execute a supervisory authority to implement the Plan should be served if this Court grants the stay.

To implement the Plan, the Korean Claimants who had participated in the Dow Corning Reorganization should be paid. They met the Deadlines from 1997. They were not lazy in protecting their rights so that they responded to several requests from the Debtor and the SF-DCT from 1997. Therefore they have to be reconsidered by this Court for public interest that the Plan should be implemented so that the creditors who had participated in the Dow Corning Reorganization plan and had followed every instruction requested by the Debtor for reorganization should be somehow paid from the SF-DCT.

The Public interest will be served if this Court grants the stay.

II. Conclusion

For the foregoing reasons, the affected Korean Claimants request that this Court stay the Order regarding Extension of Deadline for Filing Claim.

Date: August 30, 2022

Respectfully submitted,

(signed) Yeon-Ho Kim
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UCERTIFICATE OF SERVICE

I hereby certify that on August 30, 2022, 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: August 30, 2022

Signed by Yeon-Ho Kim