

Exhibit C

Case No: 21-2665

United States Court of Appeals for the Sixth Circuit

In re: SETTLEMENT DOW CORNING TRUST

KOREAN CLAIMANTS

Interested Parties – Appellant

v.

CLAIMANTS' ADVISORY COMMITTEE; FINANCE COMMITTEE; DOW
SILICONES CORPORATION; DEBTOR'S REPRESENTATIVES

Defendants – Appellees

Brief of Appellant Korean Claimants

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I. STATEMENT IN SUPPORT OF ORAL ARGUMENT

The Korean Claimants filed Motion for Premium Payments on July 6, 2020. Dow Silicones Corporation and Debtor's Representatives filed Response to deny Korean Claimants' Motion on July 20, 2020. The Finance Committee filed Response to deny the Korean Claimants' Motion on July 20, 2020.

The Finance Committee filed Recommendation and Motion for Authorization to Make Second Priority Payments on December 23, 2020. Dow Silicones Corporation and the Debtor's Representatives filed Response to oppose the Finance Committee's Recommendation and Motion on January 27, 2021. The Korean Claimants filed Response to object to the Finance Committee's Recommendation and Motion on January 27, 2021. The Finance Committee filed Reply on February 10, 2021. The Claimants' Advisory Committee filed Reply to support the Finance Committee's Recommendation and Motion on February 10, 2021.

The Korean Claimants filed Motion for Vacating Decision of Settlement Facility regarding Address Update/Confirmation on January 15, 2021. Dow Silicones and Debtor's Representatives, and the Claimants' Advisory Committee filed Response to deny the Korean Claimants' Motion for Vacating

Decision of Settlement Facility regarding Address Update/Confirmation on February 26. The Korean Claimants filed Reply on April 2, 2021.

The District Court issued 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 Decision of the Settlement Facility regarding Address Update/Confirmation on June 24, 2021.

The Korean Claimants appealed on June 28, 2021.

The Korean Claimants did not have a chance to be heard fully for the Motion for Premium Payments and the Motion for Vacating the Decision of Settlement Facility regarding Address Update/Confirmation. In addition, the reasoning of the District Court in the Order denying the Motions for Premium Payments and for Vacating the Decision of Settlement Facility regarding Address Update/Confirmation is based upon Closing Order 2 of March 19, 2019, which has never been served, nor briefed and argued in the District Court. The reasoning of the District Court was unpredictable. Therefore, Korean Claimants request this Court to provide an oral argument.

II. STATEMENT OF JURISDICTION

The United States District Court Eastern District of Michigan has jurisdiction over the Amended Joint Plan of Reorganization of Dow Corning Corporation effective on June 1, 2004 (“the Plan”) to resolve controversies and disputes regarding interpretation and implementation of the Plan and the Plan Documents including the SFA.

On June 24, 2021, the District Court issued 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 Decision of the Settlement Facility regarding Address Update/Confirmation.

The Korean Claimants filed this appeal in a timely manner. The Order of the District Court is the final order which cannot be contested in the District Court. Therefore, the United States Court of Appeals for the Sixth Circuit has jurisdiction over this appeal.

III. STATEMENT OF ISSUES

The first issue is whether the Finance Committee's recommendation to make second premium payments while the Korean Claimants were denied first premium payments is reasonable and should be approved considering that (a) the Finance Committee was not a three-member committee required under the Plan when it recommended to the District Court (b) the Claimants' Advisory Committee supported the Finance Committee's recommendation by breaching a fiduciary duty to Korean Claimants as the agent in fact (c) Finance Committee ignored the Korean Claimants' request for first premium payments (d) the conclusion of the Independent Assessor that there would be a \$172,595,097 surplus of funds even after first and second priority payments is unreliable.

The second issue is whether the District Court's Order to deny the Korean Claimants' Motions for Premium Payments and for Vacating Settlement Facility's Decision on Address Update/Confirmation must be upheld considering that (a) Closing Order 2 of March 2019, the basis for denial of the Korean Claimants' Motions, was not served nor briefed before issuance (b) Closing Order 2 was to impose the Korean Claimants' address update/confirmation obligation that is not in accordance with the Plan and is a violation of the Bankruptcy Code (c) the Korean Claimants must be exempted from address update/confirmation because of laws of Korea that counsel is not allowed without permission of the Claimants (d) address of the Claimants is protected by attorney-client privilege under the US laws (e) the practice of the Settlement Facility that ordered the Korean Claimants address update/confirmation from May 2015 should not be excused by Closing Order 2.

IV. STATEMENT OF CASE

After delaying processing of Korean Claims for many years, the Settlement Facility began sending letters asking valid, current address confirmation from May 2015.(RE1569 Pg ID:#26277-26282) Address update/confirmation to the Korean Claimants has never been raised before May 2015.

Counsel submitted the Settlement Facility the Government-issued Resident Registry (RE1569 Pg ID:#26824) in the year of 2005 and 2006 to prove that the Korean Claimants were not a fake claimant but a real claimant. The Government-issued Resident Registry of the Claimants was submitted pursuant to the request of the Settlement Facility.

The Settlement Facility issued 6.2 Class checks to six hundred sixty one (661) Korean Claimants in 2009. The Settlement Facility did not ask counsel to update their address or that their address had to be confirmed by the Settlement Facility before issuing checks. Accordingly, there was no issue about address update/confirmation at that time. The Settlement Facility did not ask counsel to update the address of his clients either.

The Settlement Facility withdrew the decision on affirmative statements of Korean implanting physicians and then cancelled the approval of manufacturer and put the processing of Korean claims on hold.

The Finance Committee proposed counsel to mediate the Korean claims in 2012. The Finance Committee reached a settlement agreement for 5 million dollars but walked away by saying that Dow Silicones Corporation and Debtor's Representatives did not authorize the mediation. The Finance Committee did not reimburse the expenses and costs incurred during mediation process to counsel and the Korean Claimants.

As soon as the Korean Claimants filed request for re-categorization in 2014, the Finance Committee granted re-categorization of South Korea in 2014 and changed the Korean Claimants not paid by then from 6.2 Class to 6.1 Class. However, the Finance Committee applied the re-categorization from the year of 2015, not 2010, the year of the South Korea's 60 % surpass of GDP per capita of the United States of America. And then, the Settlement Facility quickly issued 6.2 Class checks to five hundred (500) Korean Claimants in 2014. As the result, the Finance Committee made the Settlement Facility save over a million and twenty thousand (1,200,000) dollars and thus those Korean Claimants lost it.

Following re-categorization and quick issuance of checks of 6.2 Class, the Settlement Facility started asking valid, current address confirmation to counsel from May 2015. The Korean Claimants who have been asked for address update/confirmation were randomly chosen by the Settlement Facility whether or not their claim had been approved. From May 2015 to June 3, 2019, six hundred seventy six (676) Korean Claimants were asked for address update/confirmation.

However, the Korean Claimants did not want to submit their updated current address to the Settlement Facility for their personal reasons. From the beginning of 1994, when the client-attorney relationship was established with counsel, the Korean Claimants marked the box of CONFIDENTIAL for participation in the Global Settlement Program. Since then, the Korean Claimants wanted commitment from counsel that their privacy must be kept and counsel must not send a mailing to their home and they wanted to correspond over the phone (cellular phone) if necessary and mailings from the US must not be delivered to their home.

Upon receiving a lot of complaints from the Claimants because the Settlement Facility began sending mailings requesting address update/confirmation to the Korean Claimants from May 2015, counsel wrote two letters to the Settlement Facility.

On June 8, 2017, counsel explained the Settlement Facility that most of the Korean Claimants did not want to receive a letter including the award letter from the Settlement Facility, and did not want their family members including husband to know whether they underwent a breast implant surgery or whether they received the payments in relation to diseases claims due to the surgery, and really wanted counsel to keep their filings confidential to others including the Settlement Facility, and the Claimants protested that counsel had released their address to the Settlement Facility without consent. (RE1569 Pg ID:#26286)

Counsel further explained that counsel was not allowed to release clients' address information ("personal information") without permission under the Personal Information Protection Act of Korea but counsel kept cellular phone number of each Claimant thus had no problem to contact them when necessary including distribution of checks from Settlement Facility.

On July 28, 2017, counsel explained the Settlement Facility in a response letter that the Settlement Facility did not maintain consistency in processing Korean claims and the Korean Claimants did not want to update their address and counsel was not allowed to do so without their permission under the Korean personal information protection laws and counsel must keep the laws of his jurisdiction of Korea. (RE1569 Pg ID:#26288-26289)

Counsel explained additionally that whether further processing would occur for the enclosed Claimants¹ was up to the Settlement Facility and the Korean Claimants would file a Motion to vacate decision of the Settlement Facility by saying that counsel wanted to receive the final letter that the enclosed Claimants failed to comply with the Settlement Facility's request for address update/confirmation and the Settlement Facility determined to stop processing claims of Korean Claimants permanently.

¹ The Settlement Facility enclosed the list of the whole Korean Claimants by suggesting that all of the Korean Claimants should be held processing of their Claim.

Counsel for the Finance Committee warned counsel in a letter of December 2017 that address of one hundred forty eight (148) Korean Claimants randomly chosen by the Settlement Facility failed to update and, if not updated immediately, counsel would face sanctions.

Counsel of the Korean Claimants filed an application form for address update of sixty (60) Claimants out of one hundred forty eight (148) Claimants. Eighty eight (88) Claimants submitted the address update/confirmation form marked “UNCHANGED”

On January 10, 2018, the Finance Committee filed Motion for Entry Order to Show Cause. The Finance Committee sought an Order to return \$370,500 paid to the eighty eight (88) Claimants from counsel pending the District Court. (RE1569 Pg ID:#26291-26298)

On July 25, 2018, Closing Order 1 was docketed on the District Court site. (RE1447 Pg ID:#23937-23950, RE1569 Pg ID:#26300-26313).

On January 14, 2019, this Court dismissed the Korean Claimants’ appeal to the Order of the District Court denying Motions for Reversal of the Settlement Facility’s Product of Manufacturer Decision and Re-Categorization. (RE1569 Pg ID:#26315-26325)

On January 29, 2019, the District Court issued an Order that the Settlement

Facility must promptly execute processing and payments of fifty (50) percents of all Second Priority Payments. (RE1476 Pg ID:#24065-24066)

On March 13, 2019, the Settlement Facility sent a letter titled as Specific Notice of June 3, 2019 Deadline via email and regular mail to counsel indicating that certain Claims would not be issued any payments for which they might be eligible and counsel must provide address in the format as recommended by the US Postal Service and all Claimants eligible for partial premium payments must confirm their current address and partial premium payments could be issued only after the Settlement Facility received address in the proper format described and Korean Claimants with deficiencies as described would be adversely affected if counsel failed to take an action as required by Notice and Closing Orders and all deficiencies must be resolved by the June 3, 2019 deadline or the claims will be denied. (RE1569 Pg ID:#26330-26331, RE1546 Pg ID:#24833-24834)

On March 19, 2019, Closing Order 2 was docketed on the District Court site. (RE1482 Pg ID:#24084-24097) Closing Order 2 has never been served or briefed before issuance.

On April 4, 2019, the Settlement Facility mailed a letter titled as Second Priority Payments-Immediate Action Required including a list of the Korean Claimants to counsel. (RE1569 Pg ID:#26348-26395) This letter was delivered in mid-July 2019. The US Postal Service took over three months to be delivered

to counsel. This letter of the Settlement Facility was delivered to counsel after the deadline of June 3, 2019.

The Claims Administrator testified in the Court's Declaration (RE1569 Pg ID:#26397-26403, RE1545 Pg ID:#24816-24822), "The letter included as an enclosure a form listing 924 claimants. The form was structured so that Mr. Kim could fill in language to confirm whether the identified address for each Claimant was correct or to provide an updated address or to indicate if counsel no longer represented the Claimant. The Address listed on the form for each Claimant was the address that Settlement Facility had on file."

This letter did not explain that the form included in the letter was structured so that counsel could fill in language to confirm whether the identified address for each Claimant was correct or to provide an update address or to indicate if counsel no longer represented Claimants.

The Claims Administrator testified in the Court's Declaration, "Mr. Kim did not return the form sent with the April 4, 2019 mailing." But this letter was not delivered by the deadline of June 3, 2019. It was delivered in mid-July 2019. In addition, the Settlement Facility has already said to counsel in the letter of March 13, 2019 that all Claimants eligible for partial premium payments must confirm their current address with the proper format by the June 3, 2019 deadline. (RE1569 Pg ID:#26330-26331, RE1546 Pg ID:#24833-24834) Even if counsel had returned the form with the April 4, 2019 mailing, it must have been

useless.

On June 3, 2019, counsel submitted address update application/correction form (RE1569 Pg ID:#26405) for six hundred seventy six (676) Korean Claimants that had received a Missing or Invalid Address Notice from May 2015 up to that time. (RE1569 Pg ID:#26281) They were a variety of Claimants. They even included Claimants with no Claim filed. The Settlement Facility required address update/confirmation even to non-filing Claimants who did not submit any claim with a proof of manufacturer.

On January 13, 2020, the Settlement Facility sent counsel a letter titled as Notice of Payment Hold for Invalid Claimant Address by indicating, “Correspondence sent to confirm the updated address, provided by you, was returned as undeliverable.” (RE1569 Pg ID:#26457-26480) This letter was delivered on September 1, 2020, eight months late.

On March 3, 2020, the Settlement Facility sent counsel a letter titled as Closing Order 2 Required Claimant Confirmation of Current Address with a list of the Korean Claimants and Closing Order 2. (RE1569 Pg ID:#26408-26465) This letter was delivered on July 3, 2020, four months later. The US Postal Service took four months for delivery.

This letter indicated on the basis of Closing Order 2 that payments shall be sent to counsel for distribution to the Korean Claimants after the Claimants

directly confirmed that they currently resided at the address that counsel has provided. The Claims Administrator imposed a significant obligation and restricted on counsel that the Korean Claimants must confirm their valid, current address directly to the Settlement Facility.

The Claims Administrator testified in the Court's Declaration, "The Settlement Facility has not received any additional address information for the Korean Claimants since the notification was sent to Mr. Kim in March." Logically, it was impossible to receive any additional address information for the Korean Claimants because not only did the June 3, 2019 deadline expire but the Korean Claimants did not want to update their current address.

The Claims Administrator testified in the Court's Declaration that the Settlement Facility conducted an audit of the Korean Claimants' mailings for address update application/correction form in early 2020. The Claims Administrator also testified that the audit revealed that of 1,382 Claimants who were eligible for future payments, 600 had correspondence sent directly to Claimants that has been returned as undeliverable, 39.2% of mailings to 2,476 Claimants with eligible Class 5 and 6 claims were returned and undeliverable, and 50% of the mailings to updated addresses provided in January 2018 were returned and undeliverable.

Assuming that the Claims Administrator's testimony correctly reflected the audit, the audit was not shared with counsel before submission to the Court. In

addition, the audit was unreliable because data of mailings were based on incorrect delivery or far-late delivery of the US Postal Service to South Korea.

Late delivery of the US Postal Service to Korea is notorious. Many cases may exist that a mailing via the US Postal Service has never been delivered to counsel. Counsel received a lot of calls from the Claimants that they had received a letter from the US (RE1599 Pg ID:#28577) but there was no such letter for those Claimants that were delivered to counsel in many instances.

On June 1, 2020, this Court dismissed the Korean Claimants' appeal to the District Court's Order denying Recognition and Enforcement of Mediation Agreement. (RE 1569 Pg ID:#26482-26494)

On June 6, 2020, counsel filed Motion for Premium Payments. (RE1545 Pg ID:#24488-24490)

On July 19, 2020, counsel protested the Claims Administrator that counsel has experienced non-delivery and late delivery over the years so that counsel must receive letters of the Settlement Facility via the Federal Express rather than the US Postal Service. (RE1569 Pg ID:#26504-26505) The Claims Administrator denied it. (RE1569 Pg ID:26500-26501) The denial was a violation of Section 9 of Claimant Information Guide. (RE1599 Pg ID:#28323-28532)

On December 23, 2020, the Finance Committee filed Recommendation and

Motion for Authorization to Make Second Priority Payments. (RE1560, Pg ID:#25620-25631) This Motion of the Finance Committee is a violation of 4.08 (a) the Settlement Facility and Fund Distribution Agreement. (RE1584 Pg ID:#26656-26695)

On January 15, 2021, the Korean Claimants filed Motion for Vacating Decision of Settlement Facility regarding Address Update/Confirmation (RE1569 Pg ID#26261-26273).

On April 21, 2021, Closing Order 3 was docketed on the District Court site. (RE1598 Pg ID:#28284-28298)

On June 24, 2021, the District Court issued Memorandum Opinion and Order regarding Finance Committee's Motion for Authorization to Make Second Priority Payments, Korean Claimants' Motion for Premium Payments and Korean Claimants' Motion for Order Vacating Decision of Settlement Facility regarding Address Update/Confirmation. (RE1607 Pg ID#28602-28632).

V. SUMMARY OF ARGUMENT

The Korean Claimants argue that the Finance Committee's recommendation to make second priority payments was made in breach of the Plan. The ruling of the District Court that the Court appointed a new member later on time and the

new member did not object to the recommendation and therefore the lack of member composition became moot was not contemplated under the Plan.

The Finance Committee's recommendation was made on the premise that even if second premium payments were paid there must be a virtual guarantee in the funds available for the Settlement Facility. However, the Independent Assessor's report for the Finance Committee is not reliable.

The Claimants' Advisory Committee's support to the Finance Committee's recommendation was a breach of fiduciary duty to Korean Claimants. The Korean Claimants have a standing to object the Finance Committee's recommendation. The District Court should have ruled whether Claimants Advisory Committee was an agent in fact and whether it breached a fiduciary duty.

The District Court's ruling that Closing Order 2 prescribed that any payment including premium payments shall be made only to the Claimants who provided address update/confirmation with the Settlement Facility has no founding under the Plan and violates §1129(b).

Furthermore, Closing Order 2 is void since it was not served and briefed and argued by the Claimants before issuance.

Closing Order 2 was to approve the wrongdoings of the Settlement Facility

done to the Korean Claimants regarding address update/confirmation retroactively, which is not allowed in principal.

Even if Closing Order 2 is in effect, the premise of the sentence of paragraph 11 of Closing Order 2 was not met for the Settlement Facility's decision that the Korean Claimants must directly confirm their address that counsel had provided to the Settlement Facility.

The Settlement Facility's denial to first premium payments is not only a violation of the District Court's Order directing to proceed promptly with payment of 50% percent of all second priority payments but unauthorized.

The Korean Claimants did not want to update their address and counsel could not have submitted their address update/confirmation without permission under Korean laws even if counsel submitted six hundred seventy six (676) Claimants' address update/confirmation form on June 3, 2019.

Counsel should be exempted from the requirement of address update/confirmation of the Korean Claimants under Closing Order 2 because the Korean laws do not allow counsel to client's personal information including address to disclose without permission and address of the Korean Claimants should be a counsel's attorney-client privilege.

Finally, the Settlement Facility eliminated the requirement of a valid,

confirmed current address on its own so that the Korean Claimants are no longer responsible for address update/confirmation.

Therefore, the ruling of the District Court dismissing the Motions of the Korean Claimants should be overturned and the decisions of the Settlement Facility should be cancelled.

VI. ARGUMENTS

A. Finance Committee's Recommendation and Finance Committee's Motion

1. Finance Committee's Recommendation to Make Second Priority Payments breached the Plan

The Standard of review for this argument is an abuse of discretion. (“holding that a bankruptcy court’s legal conclusions regarding the Bankruptcy Code were subject to de novo review, but that interpretation of the terms of a bankruptcy plan were reviewed under an abuse of discretion standard.”, *In re Settlement Facility Dow Corning Trust* 628 F.3d 769 at 5 (Sixth Cir. 2010))

The Finance Committee shall be composed of three members consisting of individuals holding the following positions: Special Master, Appeals Judge, and Claims Administrator. (§4.08 (a) the SFA) The three-member composition is a

requirement for the Finance Committee. If any position of three members is vacant, the Finance Committee's decisions shall be invalid. The position of Special Master was vacant because the Special Master passed away. There were only two members remaining in the Finance Committee when the Finance Committee recommended to the Court.

The Supreme Court ruled with respect to the composition of National Labor Relations Board that the composition of the Board shall not be confused with quorum provision. ("We thus hold that the delegation clause requires that a delegee group maintain a membership three in order to exercise the delegated authority of the Board." *New Process Steel, L.P. v. National Labor Relations Board*, 130 S.Ct. 2635, 687-688 (Supreme Court, 2010); "*New Process Steel* renders the three-member-composition requirement "a threshold limitation" on the scope of the power delegated to the Board by the NLRA; the Board cannot exercise its power through a delegee group if that group has fewer than three members. This statutory mandate is therefore jurisdictional." *National Labor Relations Board v. New Vista Nursing and Rehabilitation*, 719 F.3d 203, 212 (third Cir. 2014))

Like the National Labor Relations Board, the three-member-composition requirement under the Plan should be interpreted a threshold limitation on the

scope of the power delegated to the Finance Committee. §4.08 (c) the SFA, “The Finance Committee shall act by majority vote”, would not modify the three-member-composition requirement of §4.08 (a) the SFA, “The Finance Committee shall be composed of three members consisting of the individuals holding the following positions: the Special Master, a single Appeals Judge, and the Claims Administrator.”

The District Court ruled that the Court has now appointed the Special Master and no member of the Finance Committee has raised any objection to the instant recommendation and therefore any argument that the Finance Committee was not acting in full capacity was moot.

The difference of the Finance Committee and the National Labor Relations Board is whether the Finance Committee is not a statutory entity. The Finance Committee was set up by the agreement of creditors and debtor and debtor’s representatives in bankruptcy setting. In comparison with private sector employees under the National Labor Relations Board, creditors under the Finance Committee should be considered in a bigger weight. Therefore, the three-member-composition requirement should not be moot by a later action of the Court that appointed a new Special Master. The Finance Committee’s Recommendation was flawed so that the District Court’s ruling should be overturned.

2. Finance Committee’s was made on the premise of virtual guarantee but

Independent Assessor's report was not reliable

The Standard of review for this argument is an abuse of discretion.

The conclusion of the Independent Assessor that there would be a \$172,595,097 surplus of funds even after making First and Second Priority Payments and paying administrative expenditures through 2024 is unreliable.

The conclusion was made from claims data of the Settlement Facility. The Finance Committee's recommendation to make second priority payments was based upon the conclusion of the Independent Assessor. What the Independent Assessor has done for report did not include full potential claims pending the Settlement Facility.

For example, the Korean Claimants were two thousand six hundred (2,600) Claimants pending the Settlement Facility. Over five hundred (500) Claimants filed Motion for Extension the Deadline for filing Claim with the District Court. (RE1586 Pg ID#:27065-27072) The Korean Claimants who filed the Motion were not counted by the Independent Assessor for its report.

The Finance Committee recommended to make second priority payments but saved the funds available for distribution of second priority payments by squeezing the Korean Claimants.

The Finance Committee with Claims Administrator overturned the approval of product identification with affirmative statement of Korean implanting physicians. The Finance Committee proposed mediation to counsel and reached a settlement agreement with Korean Claimants but walked away by saying that Dow Corning Corporation and Debtor's Representatives opposed. The Finance Committee caused Korean Claimants to spend a lot of expenses and costs during mediation process and has never reimbursed. The Finance Committee did not apply re-categorization of South Korea based upon change of GDP per capita in accordance with the Plan. In principal, the Finance Committee is responsible for re-categorization of the whole countries of the world for Class allocation (§6.05(h)(ii) the Dow Corning Settlement Program and Claims Resolution Procedures, RE1584 Pg ID:#26936-27052) but has never done it during last sixteen years. The Finance Committee only once accepted re-categorization of South Korea by counsel's filing with the District Court but applied not from the year of surpassing sixty (60) percents of GDP per capita of United States of America but from the year of requesting by counsel. The Korean Claimants lost over one million two hundred thousand (120) dollars.

These decisions of the Finance Committee generated a huge gain to the funds available for distribution of second priority payments. It is a result of the Finance Committee's saving effort of the funds available for distribution of second priority payments.

Furthermore, the Finance Committee did not respect the District Court's Order

of January 29, 2019 that the Settlement Facility was directed to promptly proceed first premium payments. The Settlement Facility denied first premium payment of Korean Claimants on the basis of Closing Order 2. However, Closing Order 2 was issued on March 19, 2019, two months later than the District Court's Order. The Finance Committee authorized the Settlement Facility to apply Closing Order 2 retroactively to deny premium payments to the Korean Claimants.

The Finance Committee hiding behind the Settlement Facility was to protect the interests of Class 5 Claimants in nature. The Finance Committee with Claims Administrator created numerous administrative obstacles against the Korean filings in the Settlement Facility.

History of actions of the Finance Committee with respect to the Korean Claimants has shown that the Finance Committee was biased and the Finance Committee's recommendation to make second priority payments was hasty.

The founding that the Finance Committee relies on for recommendation is not reliable. The conclusion of the Independent Assessor that there would be a \$172,595,097 surplus of funds even after making First and Second Priority Payments and paying administrative expenditures through 2024 is not reliable.

The District Court's ruling that there was a virtual guarantee for paying all claims and expenditures even if second priority payments were made right away

should be overturned because of unsubstantiated assumption based upon the Independent Assessor's report and the Finance Committee's biased recommendation.

3. Korean Claimants has a standing to object Finance Committee's recommendation to make second priority payments

The Standard of review for this argument is de novo review.

The Finance Committee filed Recommendation and Motion for authorization to make second priority payments and served on the Claimants' Advisory Committee. The Finance Committee did not serve on the Korean Claimants. To obtain authorization to distribute second priority payments, the Finance Committee shall serve on the Claimants' Advisory Committee, the Debtor's Representatives, the Shareholders, and all Non-Settling Personal Injury Claimants with pending claims and such parties shall have the opportunity to be heard with the respect to the motion. §7.03 (a) the SFA

The Claimants' Advisory Committee consists of three members to fulfill the functions under the SFA and Litigation Facility Agreement, Funding Payment Agreement, and other Plan Documents. (§4.09 (b) the SFA) Three members are two American lawyers and one Class 5 Claimant unknown whether she is still alive. (RE1584 Pg ID:#26697-26698)

The Claimants' Advisory Committee has extensive powers. The powers of Claimants' Advisory Committee include matters of foreign Claimants' claim even if there is no member with an understanding as to foreign claims.

The Claimants' Advisory Committee acted as an agent in fact for the Korean Claimants although not specifically empowered in writing.

The Claimants' Advisory Committee's agency relationship with the Korean Claimants is supported by the facts that the decisions of the Claimants' Advisory Committee have influenced the Claimants extensively. The Claimants' Advisory Committee has sent out several booklets explaining what benefits the Claimants would receive under the Settlement Program if the Korean Claimants participated in settlement program and how the Claimants could submit the documents for benefit to the Settlement Facility and opened a homepage and SNS and has distributed periodical leaflets.

The Finance Committee's recommendation was not shared with counsel of the Korean Claimants. Counsel asked the Claimants' Advisory Committee to oppose the Finance Committee's Motion. (RE1584 Pg ID:#26808) But the Claimants' Advisory Committee rather supported it.

The Claimants' Advisory Committee breached a fiduciary duty. The District Court relied on Claimants' Advisory Committee's support heavily in ruling in favor of the Finance Committee and therefore the outcome of breach of

fiduciary duty was extremely harmful to the Korean Claimants.

The District Court did not rule whether the Claimants' Advisory Committee was an agent in fact for Korean Claimants. The District Court should have decided it. The District Court rather ruled that the Korean Claimants did not choose to litigate their claims under the Litigation Facility but intend to settle their claims under the SFA and some of their grievances have been resolved by the District Court and the Sixth Circuit of Appeals. Whether the Korean Claimants intended to settle under the SFA has nothing to do with whether the Claimants' Advisory Committee should act as a fiduciary. In addition, any grievances of the Korean Claimants have never been resolved favorably by the District Court. Counsel lost all of Motions filed for the Korean Claimants with the District Court.

The Korean Claimants were not precluded from objecting the Finance Committee's recommendation and Motion to make second priority payments as creditors under Bankruptcy laws. ("W(w)e hold that a creditor or creditors' committee may have derivative standing to initiate an avoidance action where: 1) a demand has been made upon the statutorily authorized party to take action; 2) the demand is declined; 3) a colorable claim that would benefit the estate if successful exists, based on a cost-benefit analysis performed by the court, and 4) the in action is an abuse of discretion ("unjustified") in light of the debtor-in-possession's duties in a Chapter 11 case. A creditor has met its burden to show standing to file an avoidance action if it has fulfilled the first three requirements

and the trustee or debtor-in-possession declined to take action without stating a reason. The burden then shifts to the debtor-in-possession to establish, by a preponderance of the evidence, that its reason for not acting is justified.” *In re The Gibson Group, Inc.* 66 3d 1436, 1440 (Sixth Cir. 1995))

The Korean Claimants had a colorable claim that would benefit the estate if successful exists. The Finance Committee’s Motion to make the second priority payments inevitably lessens the possibility of receiving benefits by the Korean Claims pending the Settlement Facility. Therefore, the Korean Claimants had a standing. The ruling of the District Court should be reconsidered by this Court.

B. Korean Claimants’ Motions

1. Closing Order 2 is void

The Standard of review for this argument is de novo review.

The District Court ruled that on March 29, 2019, the Court entered Closing Order 2 which includes protocols designed and intended to authorize the Settlement Facility to take actions to ensure that Settlement Fund payments are distributed to the Claimants as required by the Plan, Closing Order 2 prohibits the Settlement Facility from issuing payments to the Claimants who cannot be located, the Settlement Facility cannot issue payments to or for the Claimants unless the Settlement Facility has a confirmed current address for such Claimant,

a confirmed current address means an address that has been verified as a mailing address where the Claimant is receiving mail so that the Settlement Facility is able to verify that the Claimant will actually receive the mailed check, this requirement applies both to Claimants who are unrepresented and Claimants who are represented and whose payment check might be mailed to the Claimant's attorney, the Korean Claimants did not appeal this Order to the Sixth Circuit of Appeals, the Settlement Facility is bound by this Order, the Korean Claimants have no authority to appeal any determination by Claims Administrator regarding payment if Claims Administrator and/or the Settlement Facility is not authorized to issue any payment if the requirement in Closing Order 2 is not followed, the Korean Claimants' Motion for Premium Payments is denied as to those Claimants whose address cannot be verified as required by Closing Order 2, the Korean Claimants' Motion for Order Vacating Decision of Settlement Facility regarding Address Update/Confirmation is denied because the Settlement Facility has no authority to issue payments if the requirements of Closing Order 2 is not met, and the Korean Claimants have no authority to appeal any decision made by the Settlement Facility regarding address update/confirmation requirements.

Pursuant to the ruling of the District Court, whether Korean Claimants' Motions are denied hinges on Closing Order 2 as a whole.

In this regard, Appellees contended at the District Court that the Korean Claimants easily could have objected to Closing Order 2 in 2019 had they

believed that there was a justifiable basis to oppose the Order. Appellees alleged that to object to the Order nearly two years after its entry is untenable.

The Korean Claimants were not notified or heard before the Order was entered. Notice of filing a motion must be preceded before hearing. Hearing was not held because there was no notice. The lack of notice and hearing before the Order was entered is a grave defect of Closing Order 2.

Fed. R. Civ. P. section 60(b) prescribes several grounds for relief from a final order. The grounds, (1)(2)(3) of the section, are applicable to section 60(c) which limits a motion made no more than a year after the entry of the order. However, the ground of section 60(b)(4), “The order is void”, shall not be applied by the one year limitation. Then, the issue is rather whether the Korean Claimants’ request for relief from Closing Order 2 is reasonable under Fed. R. Civ. P. section 60(c)(1), “(1) Timing. A motion under Rule 60(b) must be made within a reasonable time.” Appellees contend that a motion for relief raised nearly two years after entry of the Order cannot be considered a “reasonable” period of time. However, what constitutes a reasonable time depends on the facts of each case. (*Ghaleb v. American Steamship Company*, No. 18-1742770, Fed. Appx. 249 at 2 (6th Cir. May 9, 2019))

The Korean Claimants did not receive a notice of hearing for Closing Order 2. A hearing was not held because of the lack of notice. The Order is void. Therefore, The Korean Claimants’ Motion for Vacating Decision of Settlement

Facility regarding Address Update/Confirmation is timely to the extent that the Korean Claimants seek to vacate Closing Order 2. The District Court's ruling that the Korean Claimants did not appeal this Order to the Sixth Circuit of Appeals and the Settlement Facility is bound by this Order should be overturned.

2. Closing Order 2 was to approve wrongdoings of the Settlement Facility

The Standard of review for this argument is an abuse of discretion.

Even if Closing Order 2 is not void and therefore applicable to the Korean claimants, Closing Order 2 was to approve wrongdoings of the Settlement Facility so that it should be ineffective to the extent that it was applied to deny premium payments to the Korean Claimants.

Section C of Closing Order, that claimants and attorneys must notify the Settlement Facility of changes in address and the Settlement Facility may not issue without a confirmed current address, is nearly identical to the paragraph in letters of the Settlement Facility, received by counsel (RE1599 Pg ID:#26277-26282) from May 2015. In other words, the Settlement Facility has begun sending letters titled as "Missing or Invalid Address" massively to counsel and the Korean Claimants from 2015. The letters of Missing or Invalid Address included a phrase; After the Address Update/Correcting Form is received and verified, the Settlement Facility will reactivate the processing and review of

your claim.

It means that the Settlement Facility not only has set up the requirement of a valid, confirmed current address inside the Settlement Facility (because it said, “reactivate”) but has also applied the requirement to the Korean Claimants from May 2015 secretly. The Settlement Facility has applied the requirement of a valid, confirmed current address to the Korean Claimants three or four years earlier than Closing Order 2. Closing Order 2 is retroactive authorization of the Settlement Facility’s practice. It is a principle that laws shall not be applied retroactively.

The District Court ruled that Closing Order 2 includes protocols designed and intended to authorize the Settlement Facility to take actions to ensure that Settlement Fund payments are distributed to the Claimants as required by the Plan, and Closing Order 2 prohibits the Settlement Facility from issuing payments to the Claimants who cannot be located, and the Settlement Facility cannot issue payments to or for the Claimants unless the Settlement Facility has a confirmed current address for such Claimant, and a confirmed current address means an address that has been verified as a mailing address where the Claimant is receiving mail so that the Settlement Facility is able to verify that the Claimant will actually receive the mailed check.

Counsel has always wondered if there was any legal basis for the Settlement Facility to oblige counsel to submit a valid, confirmed current address of the

Claimants.

Closing Order 2 is a product of an overdue attempt to justify the practice of the Settlement Facility unauthorized under the Plan.

Appellees produced at the District Court the Claimant Information Guide of 2004 as the evidence to prove the address verification requirement to the Korean Claimants. (RE1599, Pg ID:#28323-28531)

However, the Claimant Information Guide cannot be a basis to impose an obligation to maintain a valid, confirmed current address on the Korean Claimants. It is merely a guide just as found in a shopping mall. In addition, the relevant Clauses (§9 Q9-14, 9-15, §10 Q10-8, 10-9) of the Claimant Information Guide that Appellees attempted to prove the address verification requirement to the Korean Claimants have nothing to do with the requirement of a valid, confirmed current address for the payments when a Claimant became eligible after claims review by the Settlement Facility. Specifically, (a) Q9-14 is about the deadlines to apply for settlement benefits so that it has nothing to do with the payment after the Claimants became eligible for payment (*"If I move and forget to notify the Settlement Facility in writing, my Notification of Status letter might take days or weeks to be forwarded to my new address. Will any of the time periods and deadlines be extended because of this?"*), (b) Q9-15 is about the Participation Form to elect to withdraw or litigate so that it has nothing to do with the payment after the Claimants became eligible for payment

“I moved and did not notify the Bankruptcy Court or Settlement Facility of my new address and I missed the deadline to file the Participation Form to elect to withdraw or litigate. Can I file it now?”), (c) Q10-8 is about proof of claim so that it has nothing to do with the payment after the Claimants became eligible for payment (*“I moved since I sent my proof of claim to the Bankruptcy Court. Can I e-mail my new address to you or give it to you over the telephone?”*), and (d) Q10-9 is about proof of claim so that it has nothing to do with the payment after the Claimants became eligible for payment (*“I sent my Proof of Claim form to the Bankruptcy Court in 1997. I have since married and changed my name. How can I update my file with my new married name?”*).

In other words, the Settlement Facility has used the above Clauses of the Claimant Information Guide to deny payments to the eligible Korean Claimants from 2015.

The District Court’s ruling that Closing Order 2 prohibits the Settlement Facility from issuing first premium payments to the Korean Claimants should be overturned because the Settlement Facility misapplied the Claimants Information Guide and Closing Order 2 was to approve the wrongdoings of the Settlement Facility as to the requirement of valid, confirmed current address to the Korean Claimants.

The Settlement Facility has been biased against the Korean Claimants. The Settlement Facility was quick to pay to the Class 5 Claimants. Counsel knew it

since a dozen of the Class 5 Claimants, through counsel, filed their claims with medical records identical to the Class 6.2 Claimants. The Class 5 Claimants were accepted easily and furthermore have never been asked by the Settlement Facility to submit a valid, confirmed current address before payment. But the Korean Claimants, whether Class 6.2 Claimants or Class 6.1 Claimants, were different. The Settlement Facility ordered counsel to submit a valid, confirmed current address to issue premium payment's checks for the 924 Claimants who were eligible. (RE1569 Pg ID:#26408-26455)

3. Closing Order 2 has no founding under the Plan and violates §1129(b)

The Standard of review for this argument is de novo review.

The District Court ruled that Closing Order 2 includes protocols designed and intended to authorize the Settlement Facility to take actions to ensure that Settlement Fund payments are distributed to the Claimants as required by the Plan and Closing Order 2 prohibits the Settlement Facility from issuing payments to the Claimants who cannot be located.

Appellees contended at the District Court that the Motion for Vacating asks this Court to eliminate this important procedure leaving the Court and the Settlement Facility with no way to verify that claimants have received the funds.

The procedures of claims processing of the Settlement Facility, however, shall

be in accordance with the Plan. Not only shall the Settlement Facility uphold the provisions of the Plan documents, but the Settlement Facility shall not invent a procedure to affect the rights of the Claimants or decrease the possibility of claim payment. The requirement of a valid, confirmed current address was adopted by the Settlement Facility to save money of the funds² on the pretense that the funds shall be received by the eligible Claimants who were located by the Settlement Facility.

“Under the Bankruptcy Code, a plan may not be confirmed by a court over the objection of a class of creditors unless, among other things, the following requirements are met: (1) under the plan, the class would receive an amount that is equal to or greater to or greater than the amount they would receive if the debtor’s assets were liquidated *see* 11 U.S.C. §1129(a)(7); and (2) the plan is found to be fair and equitable *see* 11 U.S.C. §1129(b)(1). By incorporating the fair and equitable standard in §1129(b) of the Code, Congress codified the “absolute priority rule,” which provides that absent full satisfaction of a creditor’s allowed claims, no member of a class junior in priority to that creditor may receive anything at all on account of their claim or equity interest. *Case v. L.A. Lumber Prods. Co.* 308 U.S.106, 115, 60 S.Ct.184 L.Ed.110(1939)” *In re. Settlement Facility Dow Corning Trust*, 656 F.3d. 668 at 3 (Sixth Cir. 2006)

This Court ruled that the District Court shall not violate §1129(b)’s fair and

² The Korean Claim’s value was estimated twelve(12) million dollars before the Bankruptcy Court in 1999 but the Korean Claimants have been paid about seven(7) million dollars so far.

equitable requirement in interpreting the Plan. (“Although the bankruptcy court did not abuse its discretion by interpreting the plan as requiring the payment of pendency interest at a non-default, fixed rate, the bankruptcy court still may have done so if it construed the plan such a way as to cause it to violate §1129(b)’s fair and equitable requirement.” *Id.* at 6)

The requirement of a valid, confirmed current address affected substantive rights of the Korean Claimants because it actually prohibited the eligible Claimants from receiving payments including premium payments. There are many eligible Korean Claimants not paid although they were found “acceptable” after claims review. The requirement of a valid, confirmed current address is not merely a procedure of the Payments.

To the contrary, the Class 5 Claimants were not required to file a valid, confirmed current address for first premium payments which were finished.

The Settlement Facility adopted such procedures as a valid, confirmed current address to deny premium payments of the Korean Claimants. Closing Order 2 authorized the practice of the Settlement and even expanded the requirement of a valid, confirmed current address to all payments to the Korean Claimants.

The Settlement Facility attempted to stop processing of the Korean Claims without a valid, confirmed current address without a foundation under the Plan.

Therefore, Closing Order 2 should be overturned to the extent that it requires the Korean Claimants to submit a valid, confirmed current address to the Settlement Facility.

4. Premise of Sentence of Paragraph 11 of Closing Order 2 was not met

The Standard of review for this argument is an abuse of discretion.

The sentence of Paragraph 11 of Closing Order 2, “T[t]he SF-DCT may seek additional confirmation as appropriate, for example, in instances where prior mailings were returned as undeliverable or where prior address confirmations were not accurate”, does not support a *new* condition imposed by the Settlement Facility that the Korean Claimants must directly confirm that they currently reside at the address that counsel has provided. The Settlement Facility has applied the requirement of a valid, confirmed current address to Korean Claimants through the letter of March 3, 2020 and directed that the Korean Claimants should directly confirm that they currently reside at the address that counsel has provided. (“Payments will be sent to your office for distribution to the Claimant after the Claimant directly confirms that they currently reside at the address you have provided.” RE1569, Pg ID:#26408)

First of all, the sentence of Paragraph 11 of Closing Order 2 is so vague and abstract that it should not be interpreted so that it empowers the Settlement Facility to deny address updates by counsel and to only accept address updates

directly confirmed by the Claimants. The phrase in the sentence, “may seek additional confirmation as appropriate”, does not specify that the Settlement Facility can impose such condition of address updates on the Korean Claimants and counsel.

Second, even assuming that the sentence of Paragraph 11 includes such application, the premise to apply the sentence to the Korean Claimants, that prior mailings were returned as undeliverable or prior address confirmations were not accurate, must be met. However, it was not. The Claims Administrator testified in her Declaration of July 20, 2020 (RE1595, Pg ID:#28195-28201) that of the 924 letters sent to the Korean Claimants, 436 have been returned as undeliverable to date and that the Settlement Facility conducted an audit of mailings to the Korean Claimants in early 2020, and the audit revealed that of 1,382 Claimants represented by counsel who are eligible for future payments, 600 had correspondence sent to directly to the Claimants that has been returned as undeliverable, and that the audit also revealed that 39.2% of mailings to 2,476 Claimants with eligible Class 5 and 6 claims were returned as undeliverable, and that the audit also revealed that 50% of the mailings to updated addresses provided by counsel in January 2018 were returned as undeliverable.

Whether or not the numbers in the Claims Administrator’s testimony are accurate, it is obvious that neither were all of the mailings of the Settlement Facility returned as undeliverable nor prior address confirmations by counsel

were inaccurate one hundred percents (100%).

The mailings returned as undeliverable must be assessed individually, not on the basis of a rate. The Settlement Facility's practice that the rate of the mailings returned as undeliverable to the Korean Claimants far exceeds the rate of undeliverable mail that the Settlement Facility has experienced with other counsel must be disclosed to counsel. The Settlement Facility must present a chart of comparison of different counsels including the origin of country. The conclusion of the Settlement Facility that the percentage of returned mail from mailings to the Korean Claimants represented by counsel is much higher than the general rate of returned mail that the Settlement facility has experienced and several mailings have resulted in a 40 to 50 percent return rate must be completely disclosed. The Settlement Facility must present a chart of comparison of the general rate and the rate of the Korean Claimants including the origin of country. The Korean Claimants did not agree to the audit and counsel was not informed of the audit of the Settlement Facility. The Korean Claimants request this Court to order the Settlement Facility to provide the audit documents of the early 2020 in full to counsel.

The decision of the Settlement Facility of March 3, 2020 that the Korean Claimants should directly confirm that they currently reside at the address that counsel have provided is arbitrary and the District Court's ruling that did not rule whether the premise of the sentence of paragraph 11 of Closing Order 2 was met by the Settlement Facility should be overturned.

5. Korean Claimants should be exempted from Closing Order 2

The Standard of review for this argument is de novo review.

The Korean Claimants have a reasonable basis for exemption from address verification requirement under Closing Order 2.

Appellees contended at the District Court that the privacy argument of the Korean Claimants is belied by their own submission.

Appellees do not understand how and why counsel has ended up submitting the Korean Claimants' address information to the Settlement Facility in 2005 and 2006. The Settlement Facility asked counsel to submit Social Security Number ("SSN") to prove that the Korean Claimants were not bogus claimants but real claimants when the claims were first filed in 2005 and 2006. Counsel replied that there was no such SSN type (000-00-0000) thing existing in Korea. The Settlement Facility asked counsel what was comparable to SSN of the United States in Korea. Counsel answered that there was Resident Registration Number ("RRN", 000000-0000000, RE1569 Pg ID:#26284). Then, the Settlement Facility asked counsel to submit RRN instead of SSN. Counsel filed RRN and attached Government-issued Resident Registry to prove RRN of the Claimants. However, the Government-issued Resident Registry happened to include the Claimants' current address and previous addresses. It is a formality

of Government-issued Resident Registry.

The Korean Claimants did not want to submit address information to the Settlement Facility when they hired counsel for filing their claim.

Furthermore, the Class 5 Claimants that counsel was representing did not submit address information to the Settlement Facility when they filed the claims in 2005 and 2006. Counsel submitted driver's license, permanent resident card or a US passport for Class 5 Claimants, which does not include address information. The Class 5 claimants were not required to submit address information to the Settlement Facility. Likewise, the Korean Claimants were not required to submit their address to the Settlement Facility when they filed their claim in 2005 and 2006.

But the Settlement Facility used the Government-issued Resident Registry to keep the Korean Claimants' address at its files. The Settlement Facility has exploited the address information in it to ask counsel to update their address from May 2015. Counsel tried to explain the Claims Administrator through meeting in the context of address information on several occasions but proposal for meeting was turned down.

The contention of Appellees that there is no cogent explanation as to why the Korean Claimants filed address information in 2005 and 2006 and then object to the request for address verification on the basis of privacy is actually a

misunderstanding of how and why the Korean Claimants have ended up providing address information to the Settlement Facility.

Counsel is not allowed to submit a valid, confirmed current address of a Claimant without permission of the Claimants under Personal Information Protection Act of Korea. Counsel is not allowed to disclose client's personal information. Address of individual is personal information under Personal Information Protection Act of Korea. In addition, no court in Korea orders counsel to update address of client or submit a valid, confirmed current address of counsel's clients.

Besides, the Korean Claimants retained counsel. Without counsel, then the Settlement Facility would have a reason or a reasonable basis for asking address information from the Claimants. However, the Korean Claimants were represented by counsel from 1994 when Global Breast Implant Settlement Program was proposed. Under these circumstances, that the Settlement Facility denies payments to the eligible Claimants and even holds claims processing itself on the basis of address update/confirmation is a violation of the rights of counsel. Attorney-client privilege should be applied. ("The federal forum is unanimously in accord with the general rule that the identity of a client is, with limited exceptions, not within protective ambit of the attorney-client privilege...Another exception to the general rule that the identity of a client is not privileged arises where disclosure of the identity would be tantamount to disclosing an otherwise protected confidential information." *In re Grand Jury*

Investigation 83-2-35, 723 F.2d 447 at 5, 8 (Sixth Cir. 1983))

Under the New York laws which apply for interpretation of the Plan, address of the Korean Claimants is an attorney-client privilege. (“An a general matter, communication between a lawyer and client, including disclosure of the client’s address, is privileged because it serves the policy of frank revelation by the client to the attorney.” *Elliott Associates, L.P. v. Republic of Peru*, 176.F.R.D.93 (S.D.N.Y. 1997) at 5) When the Korean Claimants hired counsel, they asked counsel not to disclose their address for filing purposes of claims to the Settlement Facility and thus keeping the asking of the Korean Claimants served frank revelation to counsel.

Appellees contended at the District Court that it seemed that counsel for Korean Claimants objected to the efforts of the Settlement Facility to obtain address verification from the Claimants as opposed to counsel.

The Korean Claimants do not want to receive a mailing of the Settlement Facility at their home address nor want to update/confirm their address. They marked on “CONFIDENTIAL” when they retained counsel. They asked counsel not to send any mailings to their home. Under these circumstances, if counsel submits their updated or current address without permission to follow the request of the Settlement Facility, counsel might be charged for a violation of Personal Information Protection Act.

Appellees contended that counsel did not have accurate and complete records of current addresses by his own admission and this conclusion was consistent with the experience of the Settlement Facility because the Settlement Facility's records showed that prior address updates provided by counsel have not proven to be accurate.

There is no provision in the laws of Korea that counsel must keep updated and current address of clients. If a client does not give her updated address to counsel or does not want her address to be updated, it is fine. Besides, there is a plenty of ways for counsel to communicate with clients. The Korean Claimants have no problem to communicate with counsel over the phone. The counsel's law office is open all the times. On the contrary of the Appellees' allegation, counsel has never admitted that he did not have accurate and complete records of current address of the Claimants to the Settlement Facility.

In addition, whether counsel provided updated address to the Settlement Facility and how many address updates provided by counsel were returned as undelivered, and, more importantly, why such differences took place should be a question as to facts. Appellees contended that the records of the Settlement Facility confirm that counsel has failed and refused to provide such information. The Settlement Facility did not provide the records to counsel. Counsel asked the Settlement Facility to provide the whole documents of the audit of the early 2020 and the list of mailings of address update/confirmation of the Settlement Facility sent to the Korean Claimants from 2015. The Settlement Facility denied.

Appellees contended that the Korean Claimants subjected themselves to the jurisdiction of the Court in filing their claims and thereby subjected themselves to the rules and requirements for receiving compensation.

First of all, the Settlement Facility modified the rules and requirement under the SFA and the Annex A to the Dow Corning Settlement Facility and fund Distribution Agreement by arbitrarily including the requirement of a valid, confirmed current address in claims processing. (11 U.S. Code section 1127, “The proponent of a plan may modify such plan at any time before confirmation but may not modify such plan so that such plan as modified fails to meet the requirements of sections 1122 and 1123 of this title”) The requirement of a valid, confirmed current address violates equal treatment. (Section 1123(a)(4), “Notwithstanding any otherwise applicable non-bankruptcy 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”)

Second, the procedures of verification of a valid, confirmed current address violate equal treatment too. Since the postal system is different country to country, the Settlement Facility must use the postal system of each country. However, the Settlement Facility adopted the US Postal Service only for verification of address of the Korean Claimants. The Settlement Facility contemplated the other additional delivery services in Claimant Information

Guide. (RE1599 Pg ID:#28321-28532)

Q 9-4 What are the acceptable methods to mail or deliver my Participation Form to the Settlement Facility?

Mail or deliver the Participation Form to the Settlement Facility using one (1) of the following three (3) delivery methods:

1. Use a delivery service (e.g., Federal Express, Airborne Express, U.P.S. etc.) and make sure that the airbill or invoice clearly lists the date of mailing as on or before [T.B.D.] if you are withdrawing your claim or on or before [T.B.D.] if you are rejecting settlement and intend to file a lawsuit against DCC Litigation Facility, Inc.: OR
2. Mail the Participation Form by United States certified or registered mail as long as the certified or registered mail is postmarked on or before [T.B.D.] if you are withdrawing your claim or on or before [T.B.D.] if you are rejecting settlement and intend to file a lawsuit against Litigation Facility Inc. Please check with the U.S. Post Office on how to send a certified or registered letter so that it has the correct postmark (for claimants who reside outside of the U.S., the Settlement Facility will rely on the postmark date used by your country's version of "certified" or "registered" mail): OR
3. If you mail the Participation Form by regular U.S. mail or by using a national mail service in the country in which you reside, then the Participation Form must be received by the Settlement Facility by 5:00 p.m. Central Time on or before [T.B.D.] if your withdrawing your claim and on or before [T.B.D.] if you are rejecting settlement and intend to file a lawsuit against DCC Litigation Facility Inc. It is important to mail you Participation Form early enough so that the Settlement Facility receives it on or before the applicable deadline. The postmark date on the envelope will **NOT** be used by the Settlement Facility if you use regular U.S. mail or a national mail service in a country other than the U.S.

Q 9-11 What are the acceptable methods to mail or deliver my Claim Forms to the Settlement Facility?

Mail or deliver the Claim Forms to the Settlement Facility using one (1) of the following three (3) delivery methods:

1. Use a delivery service (e.g., Federal Express, Airborne Express, U.P.S. etc.) and make sure that the airbill or invoice clearly lists the date of mailing as on or before the deadline: OR
2. Mail the Claim Forms by U.S. certified or registered mail as long as the certified or registered mail is postmarked on or before the deadline. Please check with the U.S. Post Office on how to send a certified or registered letter so that it has the correct postmark (for claimants who reside outside of the U.S., the Settlement Facility will rely on the postmark date used by your country's version of "certified" or "registered" mail): OR
3. If you mail the Claim Forms by regular U.S. mail or by using a national mail service in the country in which you reside, then the Claim Forms must be received by the Settlement Facility by 5:00 p.m. Central Time on or before the deadline. It is important to mail you Claim Forms early enough so that the Settlement Facility receives them on or before the deadline for the settlement benefit. The postmark date on the envelope will **NOT** be used by the Settlement Facility if you use regular U.S. mail or a national mail service in a country other than the U.S.

The Settlement Facility contemplated other delivery services such as Federal Express, Airborne Express. The Settlement Facility also contemplated a national mail service in the country other than the U.S., in which a claimant resides.

However, the Settlement Facility adopted the US Postal Service only for verification of address of the Korean Claimants. The practice of the Settlement Facility contradicted its own admission in the Claimant Information Guide.

The US Postal Service for verification of address for payments is not an equal treatment to the Korean Claimants.

In fact, the US Postal Service is not accurate in delivering mailings to the

Korean Claimants. Even worse, it is clear that the US Postal Service delivered to counsel's law office several (three to seven) months late under the circumstances that the deadlines to submit a document for cure of a deficiency of claims were critical to protect the rights of the Claimants.

Therefore, the Korean Claimants should be exempted from Closing Order 2 to the extent that the Settlement Facility requires counsel to submit a valid, confirmed current address of the Korean Claimants and the District Court's ruling effectuating Appellees' contentions should be overturned.

6. Settlement Facility eliminated the requirement of a valid, confirmed current address on its own

The Standard of review for this argument is de novo review.

The letter of the Settlement Facility of March 13, 2019 eliminated the requirement of a valid, confirmed current address requirement under Closing Order 2 on its own.

Appellees contended at the District Court that the obligation for claimants to provide and for the Settlement Facility to seek address updates was ongoing and did not expire at a filing date and the Korean Claimants were mistaken to the extent that the June 3, 2019 deadline fixed a final date for address updates.

This contention is contradictory on its own.

On March 13, 2019, the Settlement Facility sent a letter via email and regular mail to counsel addressing that certain Claims would not be issued any payments for which they might be eligible, counsel must provide addresses in the format as recommended by the US Postal Service, all Claimants eligible for partial premium payment must confirm their current addresses, The partial premium payments could be issued only after the Settlement Facility received an address in the proper format described, the Korean Claimants with deficiencies as described would be adversely affected, and *all deficiencies must be resolved by the June 3, 2019 deadline or the Claims will be denied* (RE1569 Pg ID:#24833-24834), as written in the following;

The SF-DCT previously sent you letters requesting an updated address for claimants with an eligible payment, whose mail was returned to the SF-DCT by the Postal Service (a sample copy of the letter previously sent is attached). Without an updated address (**by June 3, 2019**) these claims will not be issued any payments for which they may be eligible. ,..., Although you have received the Notice of Final Filing Deadline June 3, 2019, this letter is specific notice to you that your claimants with deficiencies as described above will be adversely affected if you fail to take action as required by the Notice and Closing Orders. All deficiencies must be resolved by the June 3, 2019 deadline or the claims will be denied.

The Settlement Facility fixed the June 3, 2019 deadline as the final date for address updates of the Korean Claimants undoubtedly.

Nevertheless, after having received address update form of six hundred seventy six (676) Claimants from counsel on June 3, 2019, the Settlement

Facility put the address update forms into audit and then Appellees mockingly contended that Korean Claimants had multiple options to provide their current address, for example, for counsel to contact the claimants through cell phones and advise them to provide updated addresses to the Settlement Facility via email, telephone or written correspondence.

If the Settlement Facility keeps denying the payments by forcing counsel to submit personal information of client, counsel is put at risk. The Personal Information Protection Act of Korea does not allow counsel to provide the client's address to a third party without permission. Counsel happened to submit the Korean Claimants' address to the Settlement Facility when counsel filed their claims in 2005 and 2006. Counsel is not allowed to update their address which has already been submitted to the Settlement Facility without their permission.

Appellees must keep the Settlement Facility's decision that address updates must be resolved by June 3, 2019.

Appellees contended at the District Court that there was no excuse for a multi-year dispute over the efficiency of mail service in the United States and Korea. Appellees admitted that there has been the dispute over the efficiency of mail service between the United States and Korea for multi-years.

Actually, there were many mailings of the Settlement Facility, which have

never arrived in Korea. The records about how many mailings of the Settlement Facility were returned as undeliverable are kept only at the Settlement Facility (which was not shared with counsel) and nobody know why those mailings were returned as undeliverable. There were several Claimants who called counsel that they put their mailings of the United States in the box of return mail without opening envelope. There were many Claimants who complained counsel why counsel disclosed their address to the United States. The Settlement Facility assumed that if mailings to the Korean Claimant were returned as undeliverable, the address of the Claimants was not valid and should be updated within ninety (90) days³. This assumption is nonsense and merely a jump to conclusion.

Furthermore, there were many cases that the Settlement Facility mailed to wrong address where the Claimants did not live. More importantly, the mailing system of US Postal Service for delivery in Korea is not reliable. It took at least three to seven months for the Settlement Facility's mailings to arrive at counsel's law office which is extremely open to the public and, in many occasions, the mailings of the Settlement Facility have never arrived to

³ How address of the Korean Claimants can be updated within ninety (90) days with the US Postal Service whose mailings including a request of the Settlement Facility for address update/confirmation arrive in Korea three or four months late? However, the Settlement Facility wrote back to counsel, "We do not agree that any mail delivery issue has deprived you of the opportunity to meet cure deadlines for your clients." (RE1569 Pg ID:#26500-26502)

counsel's law office although the Claimants notified counsel that they had received them. Counsel asked the Settlement Facility to use the Federal Express or DHL for mailings to counsel but the Settlement Facility turned it down.

The Settlement Facility presented the Claimant Information Guide as the founding to ask counsel and the Korean Claimants to submit a valid, confirmed current address. The Claimant Information Guide contemplated the other mail services besides the US Postal Service. The Settlement Facility declined the counsel's request for using the Federal Express or DHL by saying that it would unduly jeopardize the corpus of the Trust and the Settlement Facility did not manipulate any mailing systems in its correspondence with counsel. (RE1569 Pg ID:#26500-16502) To follow the Claimant Information Guide shall not be to jeopardize the corpus of the Trust. Whether the Settlement Facility manipulated any mailing systems in its correspondence with counsel is self-proving in that the Settlement Facility did not use other mailing services except the US Postal Service to obtain address verification of the Korean Claimants.

VII. Conclusion

For the foregoing reasons, the Korean Claimants request this Court to Overturn the District Court's Order as to the Finance Committee's Motion for Authorization to Make Second Priority Payments, the Korean Claimant's Motion for Premium Payments and the Korean Claimants' Motion for Order Vacating Decision of the Settlement Facility regarding Address

Update/Confirmation and Grant the Motions of the Korean Claimants.

Date: August 31, 2021

Respectfully submitted,



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For the Korean Claimants

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- RE.1599 Korean Claimants' Reply to Response of Dow Silicones Corporation, the Debtor's Representatives and Claimants' Advisory Committee and the Finance Committee to the Motion for Vacating Decision of Settlement Facility regarding Address Update/Confirmation Page ID:#28299-28593
- RE.1607 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 Vacating Decision of the Settlement Facility regarding Address Update/Confirmation Page ID:#28602-28632

CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2021, 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.

A handwritten signature in black ink, appearing to read 'Yeon-Ho Kim', with a long horizontal flourish extending to the right.

Date: August 31, 2021

Signed by Yeon-Ho Kim