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.Judge Denise Page Hood

REPLY TO RESPONSE OF DOW CORNING CORPORATION, THE DEBTOR'S REPRESENTATIVES, THE FINANCE COMMITTEE AND THE CLAIMANTS' ADVISORY COMMITTEE TO KOREAN CLAIMANTS' MOTION TO REOPEN TIME TO APPEAL CLOSING ORDER 5

Dow Corning Corporation, the Debtor's Representatives, the Finance Committee and the Claimants' Advisory Committee (hereinafter referred to as "Dow Corning Corporation" collectively) have filed the Response. The Korean Claimants file this Reply to the Response.

To simplify the arguments, the Korean Claimants assert point-to-point in accordance with titles in the Response.

I. Reply to Introduction and Background

Dow Corning Corporation depicts that counsel and the Korean Claimants committed fraud to cheat the Settlement Facility based upon the Declaration of the Claims Administrators and the decisions of the Appeal Judge regarding Affirmative Statement of Korean implanting physicians. In fact, the assertions of Dow Corning Corporation in this regard have nothing to do with this current issue of whether the Motion to Reopen Time to Appeal Closing Order 5

is granted or denied. However, the Korean Claimants want to comment that rather Dow Corning Corporation committed fraud to the Korean Claimants from 1997.

First of all, counsel for Dow Corning Corporation[1] solicited the Korean Claimants' counsel to vote for Dow Corning Corporation's Proposed Reorganization Plan. She invited the Korean counsel to her law firm in Houston. Right before the flight to Houston, however, the Korean Claimants' counsel had to cancel the flight for his personal reason. To return his apology not to be able to show up as promised, the Korean Claimants' counsel let the Korean Claimants to vote for the Proposed Plan.

When the Korean Claimants' counsel participated in the hearing for confirmation in 1999, the counsel realized that the contents of the Proposed Plan were extremely prejudicial to the Class 6.2 Claimants so that the Korean Claimants wanted to revoke the vote from "accept" to "object." Surprised by the Korean Claimants' counsel's move, Dow Corning Corporation proposed some changes in the Proposed Plan in or out of the Bankruptcy Courtroom in Bay City, Michigan. First of all, Dow Corning Corporation denied the offer of the Korean Claimants that the Settlement Facility set up a regional office in South Korea to process the Korean Claims. Second, Dow Corning Corporation offered that the Korean counsel would be included as a member of the Claimants' Advisory Committee which was accordingly reflected in the Proposed Plan that at least one member of the Claimants' Advisory Committee must be a foreign attorney. Third, Dow Corning Corporation offered to mitigate the proof of manufacturer by including an affirmative statement of implanting physician reflecting that the Korean physicians did not usually keep the record of implanting surgery. Finally, Dow Corning Corporation accepted that the rupture payments of Class 6.2 Claimants could be upgraded to the rupture payments of Class 6.1 Claimants if the Claimants give up the Premium Payments applied to the ruptured Claimants.

[1] Babara Houser

However, the commitments proposed as above were not implemented in the final Plan because while the Korean Claimants did not file a notice of appeal to this Court Dow Corning Corporation betrayed their commitments and changed the Proposed Plan's clauses relevant to the commitments way through the Sixth Circuit of Court of Appeals. In accordance with the confirmed Plan, the Settlement Facility has applied severe criteria to the Affirmative Statements of Korean physicians for proof of manufacturer although the counsel for Dow Corning Corporation had promised the Korean Claimants' counsel that there would be no problem in the samples of Affirmative Statement provided, later shown to the Claims Administrator and relevant employees of the Settlement Facility. It turned out that the Korean Claimants and their counsel were cheated by Dow Corning Corporation. Contrary to the accusations that the Korean Claimants and counsel committed fraud to cheat the Settlement Facility, Dow Corning Corporation and relative personnel in charge of the Settlement Facility committed fraud to cheat the Korean Claimants from the beginning which was 1999.

In particular, Dow Corning Corporation, always acting in bad faith regarding the filings of the Korean Claimants with this Court,[2] filed Exhibits under seal that the decisions of the Appeals Judge found significant issues regarding the reliability of substantive claim submissions made by counsel for the Korean Claimants. (*See* page 8 of Response). First of all,

[2] Counsel, Deborah Greenspan, for Dow Corning Corporation corresponded with the Court without consent of the Korean Claimants' counsel to get a court's favor, even if the Korean Claimants' counsel has constantly worried about the impartiality of court because this Court was supervising the Claims Administrator and the Finance Committee. Exhibit J (email of July 28, 2022 of counsel) shows that as soon as the Korean Claimants filed the Motion for Expedited Hearing (ECF No.1644) concerning the Motion for Extension of Filing Claim (ECF No.1586), the counsel sent the clerk, Ann Daley, an email stating, "We thought it might be appropriate to consider setting a hearing to address both." While the clerk did not reply, just like coincidence, this Court issued the Order of August 12, 2022 denying both the Motion for Extension and the Motion for Expedited Hearing. The counsel was given a bigger present for this emailing. Even after the Korean Claimants' counsel warned, "inappropriate", the counsel continued an unnecessary and an inappropriate contact with an email of September 14, 2022 to the Court without consent of the Korean Claimants' counsel. (*See* Exhibit K)

the Appeals Judge did not grant even a single case[3] including the cases regarding Affirmative Statement for proof of manufacturer although the Korean Claimants have filed over six hundred appeals to the Appeals Judge. The appeals of the Korean Claimants included a variety of Claims denied by the Settlement Facility. The Korean Claimants realized that the Appeals Judge just stamped boilerplate so that an appeal to the Appeals Judge was not worthwhile. Second, the basis for denial collected and aided by the Quality Control Department were so absurd that a Korean implanting physician was nineteen years old when he issued the Affirmative Statement to several Korean Claimants. It was found by the Settlement Facility through web search to a Korean web site. The Korean Claimants' counsel submitted contradictory evidence to the Settlement Facility that the implanting physician was a resident of the prominent Hospital at the time of the issuance of Affirmative Statement and was working as the chief doctor. It was one example of stereotype of the Settlement Facility's decisions which were biased against the Korean Claimants. In other cases, several implanting physicians who were in active medical practice became non-existent according to the Settlement Facility's findings where the explanations and materials that the Korean Claimants' counsel submitted did not comply with their stereotyped view with the results of web search. Live doctors became dead or non-existent doctors by the Settlement Facility. By ignoring the new submissions and favoring the explanations of the Settlement Facility, the Appeals Judge has been influenced.

II. Reply to Argument

[3] In addition, the Appeals Judge held the Korean Claimants' cases for a long time, presumably for discussing for conclusion, maybe with the Claims Administrator who has refused the counsel for the Korean Claimants to visit the Settlement Facility for meeting over the years. The Appeals Judge issued Decisions for all of the Korean Claimants' cases in one day, January 25, 2021. (*See* Exhibits under seal) The Korean Claimants submitted appeal letters to the Appeals Judge on June 1, 2019. It took over one and half years for the Appeals Judge for one simple conclusion, "dismiss." The reasoning of the Appeals Judge's Decisions was exactly same as the reasoning of the Settlement Facility although the counsel for the Korean Claimants submitted several explanatory letters to protect Affirmative Statement of the Korean implanting physicians.

This Court issued Closing Order 5 on June 13, 2022. The counsel for the Korean Claimants was not served because the email address of the counsel, yhkimlaw@unitel.co.kr, was not operated since the emailing of the Server, www.unitel.co.kr, ceased to operate on May 31, 2022 (*See* Exhibit E Declaration of Yeon-Ho Kim) therefore the Korean Claimants did not get a notice regarding Closing Order 5 on June 13, 2022. The Korean Claimants filed the Notice of Appeal on August 25, 2022. The Korean Claimants filed the Motion to Stay Closing Order 5 with this Court on August 29, 2022. The Korean Claimants filed the Motion to Stay Closing Order 5 with the Sixth Circuit of Court of Appeals on September 1, 2022.[4] The Korean Claimants filed this Motion to Reopen Time to File Appeal regarding Closing Order 5 on September 15, 2022. The Korean Claimants filed the Motion to Set Aside Closing Order 5 with this Court on September 17, 2022.

This Motion to Reopen should be granted. The Korean Claimants met three requirements of Fed.R.App.P. 4(a)(6).

1. Lack of Notice

The Korean Claimant did not receive notice under F.R. Civil P. 77(d) of the entry of Closing Order 5 within 21 days after entry. In this regard, Dow Corning Corporation asserted that the Korean Claimants' counsel cannot demonstrate lack of notice. Dow Corning Corporation contended that Closing Order 5 was placed on the ECF system on June 13, 2022 so that the counsel received it by yhkimlaw@unitel.co.kr because the counsel emailed this Court stating "My email address is changed from yhkimlaw@unitel.co.kr to yhkimlaw@naver.com as of June 30, 2022." However, as shown in Exhibit E, www.unitel.co.kr operating the email address of yhkimlaw@unitel.co.kr ceased to operate the service of emailing from June 1, 2022. It was in business until June 30, 2022 but available

[4] The Sixth Circuit of Court of Appeals issued the Opinion denying the Motion on September 14, 2022.

only for mail backup which meant downloading existing emails of users in the Server. The announcement of www.unitel.co.kr clearly stated that the email service would be closed on May 31, 2022 and it would provide the service of mail backup of the user's email until June 30, 2022. Although the counsel emailed this Court stating, "My email address would be changed as of June 30, 2022," it is the fact that yhkimlaw@unitel.co.kr was not operated on June 13, 2022 of Closing Order 5 because the announcement of www.unitel.co.kr stated accordingly, "Closing Date of Receiving/Sending Mails : May 31, 2022." (*See* Exhibits 1,2 of Exhibit E) The fact is supported by another email of the counsel. (*See* Exhibit 5 of Exhibit E) It was sent to Secretary General of the Asia-Pacific Chapter of International Academy of Family Law on June 9, 2022 because the counsel was a member of IAFL. The email stated, "My email was changed from yhkimlaw@unitel.co.kr to yhkimlaw@naver.com. It is because the paid email service is no longer in business from June 1, 2022." The Korean Claimants' counsel updated his PACER account and notified to this Court and the Sixth Circuit of Court of Appeals on June 24, 2022. (*See* Exhibits 3,4 of Exhibit E [5]) Contrary to Dow Corning Corporation's assertion that there is no evidence in the record indicating that the Court or clerk's office "leaned" that the email notification was not received, the counsel for the Korean Claimants could not receive the notice of Closing Order 5 entered on June 13, 2022 because yhkimlaw@unitel.co.kr was not operated at that time.

2. Motion to Reopen was filed within 180 days after the Order was entered

The Korean Claimants filed the Motion to Reopen Time to File Appeal on September 15, 2022. In this regard, Dow Corning Corporation asserted that the Motion to Reopen was filed more than 14 days after the counsel for the Korean Claimants admitted receiving notice. The Korean Claimants did not admit a notice of Closing Order 5. Dow Corning Corporation

[5] Counsel for the Korean Claimants thanked in a returning email of June 24, 2022 by saying, "I conducted the process explained by you. Thank you for your instruction." (*See* Exhibit 4 of Exhibit E)

asserted that the undisputed record shows that the Court served notice in compliance with Fed.R.Civil.P.77 based on the registration information provided by the counsel for the Korean Claimants and under the local rules. However, the notice under Fed.R.App.P.4(a)(6)(B) should be a formal notice. Fed.R.Civil P.77(d)(1) prescribes:

> (1) Service. Immediately after entering an order or judgment, the clerk must serve notice of the entry, as provided in Rule 5(b), on each party who is not in defaulting for failing to appear, the clerk must record the service on the docket.
>
> Fed.R.Civil P.5(b)(2)(E) prescribes:
>
> (E) sending to a registered user by filing it with the court's electronic-filing system or sending it by other electronic means that the person consented to in writing-in either of which events service is complete upon filing or sending, but is not effective if the filer or sender learns that it did not reach the person to be served;

In this case, this Court or the clerk's office "learned" that Closing Order 5 did not reach the counsel for the Korean Claimants on June 24, 2022 when the counsel notified the clerk that the email address of the counsel would be changed from yhkimlaw@unitel.co.kr to yhkimlaw@naver.com or on August 29, 2022 when the Korean Claimants filed the Motion to Stay Closing Order 5 with this Court contending that the counsel for the Korean Claimants, the registered user under Fed.R.Civil P.77(d)(1)(E), did not receive the notice of Closing Order 5.[6] Therefore the clerk failed to serve notice of entry and the service of notice was not effective when the clerk "learned" that it did not reach the counsel for the Korean Claimants. The Korean Claimants did not receive notice under Fed.R.Civ.P.77(d) of the entry because the service of notice was not effective. The requirement that the Motion to Reopen Time to File Appeal should be filed within 14 days after the moving party receives notice of the entry cannot be applicable to this case.

"Rule 4(a)(6) has been amended to specify more clearly what type of "notice" of the entry

[6] In the Motion to Stay Closing Order 5 filed with this Court, the Korean Claimants contended, "This Order was not served on the Korean Claimants."

of a judgment or order precludes a party from later moving to reopen the time to appeal. In addition, Rule 4(a)(6) has been amended to address confusion about what type of "notice" triggers the 7-day[7] period to bring a motion to open. … Because Civil Rule 77(d) requires that notice of the entry of an judgment or order be formally served under Civil Rule 5(b), any notice that is not so served will not operate to preclude the reopening of the time to appeal under new subdivision (a)(6)(A). The subdivision now makes clear that only formal notice of the entry of a judgment or order under Civil Rule 77(d) will trigger the 7-day period to move to reopen the time to appeal." *See Phillips v. Lafler*, 2007 U.S.Dist.Lexis 35274 (E.D.Mich. 2007) at 7-8 "In *Bowles v. Russell*, 551 U.S. 205, 127 S.Ct. 2360, L.Ed. 2d 96 (2007), the appellant did not receive timely notice of the judgment. He timely moved for relief under Rule 4(a)(6), and his motion was granted. Under the Rule, the appellant had 14 days from the date of the order granting his motion to file a notice of appeal. However, in its order, the district court erroneously told him that he could file a notice of appeal by a date that was 17 days after entry of the order. The appellant took the court at its word, and filed on the 17th day. Too bad, said the Supreme Court." *See Berg v. Metrish*, 2015 U.S.Dist. Lexis 173020 (E.D.Mich. 2015) at 8. The appellant should have noticed the judgment before he moved for relief. However, the 14-day limitation requirement was not triggered from the date that the appellant became aware of the judgment but rather triggered from the date of his motion granted. It implies that the requirement of Fed.R.App.P. 4(a)(6)(b) that the motion is filed within 14 days after the moving party receives notice should be applied to a "formal notice" under Federal Rule of Civil Procedure 77(d) of the entry, not to *any* notice that Dow Corning Corporation deemed from the Notice of Appeal of the Korean Claimants.

[7] Now is 14-day.

In this case, the Korean Claimants did not receive a "formal notice" under Civil Rue 77(d) from the Court or the Clerk's Office. Dow Corning Corporation asserted that it was deemed that the Korean Claimants received a notice when they filed the Notice of Appeal with this Court on August 25, 2022. Since there was no "formal notice", the 14-day limitation requirement does not apply to the Korean Claimants. Even if the 14-day limitation requirement applied to this case, the Korean Claimants filed the Motion to Stay Closing Order 5 on August 29, 2022. The filing was within 14-day after the notice, allegedly the Notice of Appeal. "Whether or not the motion should be construed hinges on the intent of the movant at the time the motion was filed. If the movant articulates a desire for appellate review, the motion may be construed as one to reopen the time to file an appeal; If the movant's clear desire was to continue proceeding before the district court, then Rule 4(a)(6) construction of the motion is not to be adopted, even if appellate review would more likely provide the movant with the relief he or she desires." *See Chatman v. Metrish*, 2011 U.S.Dist. Lexis 47343 (W.D.Mich. 2011) at 14

The principal basis for the Motion to Stay Closing Order 5 was that the Korean Claimants were not served. The Korean Claimants filed the Motion to Stay Closing Order 5 with the Sixth Circuit at the same time. The Korean Claimants' desire was not to continue proceeding before this Court but draw the cases of the Korean Claimants for appellate review when they were filing the Motion to Stay Closing Order 5 as well as filing the Notice of Appeal. Therefore the assertion of Dow Corning Corporation that the Korean Claimants failed to file the Motion to Reopen within 14 days after notice has no founding.

3. No serious prejudice applied

This Motion to Reopen Time to File Appeal is different from the Motion to Stay Closing Order 5. Although Dow Corning Corporation asserted that the Sixth Court found that a stay of Closing Order 5 would cause harm by disrupting trust operations, the reasoning is not applicable to the Motion to Reopen. The Korean Claimants filed the Notice of Appeal Closing Order 5 for which Dow Corning Corporation was obliged to file their brief by October 22, 2022. The Korean Claimants has already filed the appellant brief. (*See* Exhibit F) The Settlement Facility will continue operating whether or not the Korean Claimants' Motion to Reopen Time to File Appeal is granted. Contrary to the Dow Corning Corporation's assertion that reopening the time to appeal Closing Order 5 would result in uncertainty and would halt ongoing closure activities, disrupt trust operations, cause delay, and increase costs, there would be no such thing taking place because of the Korean Claimants' single appeal. Anyone including Dow Corning Corporation must anticipate an appeal from others if a favorable order or judgment sought was given by court. In addition, the Korean Claimants has filed the Notice of Appeal Closing Order 2 which was the founding of Closing Order 5. Closing Order 2 pending appeal has been fully briefed by both the Korean Claimants and Dow Corning Corporation and the parties just wait for a ruling of the Sixth Circuit. Therefore there is no serious prejudice applied to Dow Corning Corporation and other Claimants whose claims-processing was finished and paid in full.

4. Court's discretion sought

The Korean Claimants satisfied three conditions under Fed.R.App.P.4(a)(6). However, the Korean Claimants must persuade this Court because the court retains discretion to deny a motion to reopen. In this regard, the Sixth Circuit in the Motion to Stay Closing Order 5 explained recently, ""Appellate Rule 4 is not jurisdictional as applied in this case, *See In re*

Indu.Craft.Inc., 749 F.3d 107, 114 (Second Cir. 2014). Rather, it amounts at most to a mandatory claims-processing rule. *See Hamer*, 138 S.Ct. at 17; *Gunter*, 906 F.3d at 492 … To be sure, unlike jurisdictional rules, mandatory claims-processing rules can be waived or forfeited … *Gunter*, 906 F.3d at 492. … Likewise, the Supreme Court has "reserved whether mandatory claims-processing rules may be subject to equitable exceptions." *Hamer*, 138 S.Ct. at 18 n 3. But even if Rule 4 were amenable to equitable exceptions in principle, no such exception would apply in this case. The Korean Claimants say that they did not discover Closing Order 5 until well after it was posted on the district court's electronic docket. That oversight, however, is not the kind of unavoidable delay that could justify tolling an otherwise mandatory deadline. *E.g.*, *Graham-Humpreys v. Memphis Brooks Museum of Art, Inc*., 209 F.3d 552, 560-61 (Sixth Cir. 2000) (Typically, equitable tolling applies only when a litigant's failure to meet a legally-mandated deadline unavoidably arose from circumstances beyond that litigant's control.")"" *See In re Settlement Facility Dow Corning Trust*, 22-1752, Doc.No. 32-2 (Sixth Cir. September14, 2022) at 3

The Sixth Circuit explained that Fed.R.App.P 4 is not jurisdictional in the context of bankruptcy filing, rather at most to a mandatory claims-processing rule, can be waived or forfeited, and may be subject to equitable exceptions. Therefore this Court is able to exercise an equitable decision. Closing Order 5 was derived from Closing Order 2. Closing Order 2 is pending the Appellate Court (Case No. 21-2665) and was fully briefed by the Parties. (*See* Exhibit G) Even if Closing Order 5 becomes reopened for appeal there is no significant prejudice. The Korean Claimants has already filed Notice of Appeal for Closing Order 5. This appeal's briefing schedule was set by the Appellate Court and the Korean Claimants has already filed the Appellant's brief (*See* Exhibit F). Dow Corning Corporation is obliged to file the Appellee's brief by October 21, 2022.[8]

[8] The Korean Claimants have the other two filings pending the Sixth Circuit for appeal to Motion for Extension and Motion for Stay regarding Premium Payments. Dow Corning Corporation has been ordered to file brief by November 4 and 9, 2022. (*See* Exhibit H, I)

Even if the Sixth Circuit explained to the Korean Claimants as above, the Korean Claimants failed to file the Notice of Appeal within thirty days after the entry of Closing Order 5 unavoidably. It was not the case to be blamed enormously just because the Korean Claimants did not discover Closing Order 5 until well after it was posted on the district court's electronic docket. The Korean Claimants did not receive notice under Fed.R.Civ.P.77(d) of the entry of the Closing Order 5. The Server of the Korean Claimants' counsel's email address, yhkimlaw@unitel.co.kr, ceased to operate. The counsel reported the change from yhkimlaw@unitel.co.kr to yhkimlaw@naver.com quickly. Contrary to the contention of Dow Corning Corporation that the counsel for the Korean Claimants had an obligation to keep apprised of the docket if he was not receiving emails, the counsel notified the clerk that the registered email address, yhkimlaw@unitel.co.kr, should be changed to a new email address, yhkimlaw@naver.com, on June 24, 2022. Contrary to the Dow Corning Corporation's assertion that the Second Circuit, In *In re WorldCom., Inc*., 708 F.3d 327 (Second Cir. 2013), held that the district court abused its discretion in reopening the time to appeal when the counsel failed to update his email address in the ECF system required by the local rules, the case of other jurisdiction cannot be a basis of this Court's discretion regarding the Korean Claimants. The counsel for the Korean Claimants updated his address in the ECF system on July 24, 2022. Contrary to Dow Corning Corporation's assertion that the counsel's contradictory assertions and failure to notify the Court timely strongly counsel against granting the Motion to Reopen, the counsel for the Korean Claimants gave a true and correct explanation for why he did not advise the Court earlier or why the counsel advised the Court that the change of the email address would be effective as of June 30. The counsel for the Korean Claimants maintained an active email PACER account and did not violate this Court's rules regarding Electronic Filing Policies and Procedures Rule.

5. Excusable neglect

"If the untimely appeal is still pending in this court [appellate court], the district court should consider the merits of the Rule 60(b) motion and issue an opinion indicating whether it is inclined to grant the motion." *See Lewis v. Alexander*, 987 F.2d 392 (Sixth Cir. 1993) at 396 "A district court may therefore employ Rule 60(b) to permit an appeal outside the time constraints of Fed.R.App.P.4(a)(5)" *See Davenport v. Tribley*, 2011 U.S.Dist. Lexis 15800 (E.D.Mich. 2011) "*Lewis* thus remains good law in this circuit, and the district court in this case erred in concluding otherwise. … Although we concluded that "[t]he district court did not abuse its discretion in refusing to rule that the attorney's misinterpretation of the rules was a 'mistake' within Rule 60(b), "our analysis actually presumed the availability of Rule 60(b) as a basis on which to provide a party with relief from Rule 4(a) in some circumstances."" *See Tanner v. Yukins*, 776 F.3d 434 (Sixth Cir. 2015) at 442. Accordingly, if it were deemed that the Korean Claimants did not file the Motion to Reopen within 14 days after the Korean Claimants received notice under Federal Rule of Civil Procedure 77(d) *See* Fed.R.App.P.4(a)(6)(B), the Korean Claimants argue that this Court may relieve the Korean Claimants to file an appeal to Closing Order 5 on the basis of the Motion to Set Aside Closing Order 5 and the Notice of Appeal filed with this Court. Fed.R.Civ.P. 60(b) provides;

> On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
> (1) mistake, inadvertence, surprise, or excusable neglect;
> (6) any other reason that justifies relief.

The reason that the Korean Claimants did not file the Notice of Appeal timely fits for either excusable neglect or a reason that justifies relief. First of all, the Korean Claimants did not receive a formal notice so that this Court or the Clerk's Office did not serve Closing Order 5 under Fed.R.Civ.P. 77(d). Second, the Korean Claimants filed Notice of Appeal after they became aware of Closing Order 5 on August 25, 2022. Following the Notice of Appeal, the Korean Claimants filed the Motion to Stay the Closing Order 5 with both this Court and the Sixth Circuit. If it were deemed that the Korean Claimants' counsel's failure of notice of change of email address before the date of Closing Order 5 was a mistake on the part of the

counsel for the Korean Claimants, it should be an excusable neglect because the Server (www.unitel.co.kr) for the counsel's emailing stopped operating their business from June 1, 2022 and the counsel notified the clerk the change of email address on June 24, 2022.

""In order to show that relief is appropriate under Rule 60(b)(1) based on "excusable neglect," Debtor [movant] must show both (1) that his conduct in failing timely to act [respond to Creditor's Objection] constituted "neglect" within the meaning of Rule 60(b)(1); and (2) that his "neglect" was excusable."" *In Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership*, 507 U.S. 380, 388, 113 S. Ct. 1489, 123 L. Ed. 74 (1993)

To find whether "neglect" is excusable, a court should take account of all relevant circumstances surrounding the party's omission. First of all, there is no danger of prejudice to Dow Corning Corporation. Because the Settlement Facility will operate until 2023 or the early 2024 and the Settlement Facility will conduct processing claims until then, Dow Corning Corporation would not be prejudiced even if this Motion to Reopen Time to File Appeal is granted. Second, the length of the delay was not meaningful. Since Closing Order 5 was entered on June 13, 2022, the length of the delay should not be meaningful. The Korean Claimants were able to file Notice of Appeal by July 13, 2022, the last day of 30 days for filing a notice of appeal. Third, there was not a potential impact on judicial proceedings. The Settlement Facility would not be impacted because of the Appeal to Closing Order 5. Neither would Dow Corning Corporation. Finally, the reason for delay was out of control of the Korean Claimants. The Korean Claimants were served by the ECF system to yhkimlaw@unitel.co.kr. However, yhkimlaw@unitel.co.kr could not be accessible by Yeon-Ho Kim on June 13, 2022 because emailing of the Server of www.unitel.co.kr was not in service on June 13, 2022. The counsel for the Korean Claimants notified the clerk and Dow Corning Corporation that the Korean Claimants would like to receive notices or correspondences by yhkimlaw@naver.com. The failure of receiving notice of Closing Order 5 by yhkimlaw@unitel.co.kr on June 13, 2022 and the delay of filing within the 30 day

deadline for a notice of appeal were not within control of the counsel for Korean Claimants. The Korean Claimants acted in good faith. The Korean Claimants appealed to Closing Order 2 which is pending the Sixth Circuit. Closing Order 5 was derived from Closing Order 2.

III. Conclusion

For the foregoing reasons, the Korean Claimants request this Court to Grant this Motion to Reopen Time to File Appeal regarding Closing Order 5.

Date: October 5, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 5, 2022, this Reply to the Response 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: October 5, 2022 Signed by Yeon Ho Kim