Exhibit A

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,

(signed) Yeon-Ho Kim
Yeon-Ho Kim Int'l Law Office
Suite 4105, Trade Center Bldg.,
159 Samsung-dong, Kangnam-ku
Seoul 135-729 Korea
(822)551-1256
yhkimlaw@naver.com

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

Exhibit B

Case No: *22-1753*

United States Court of Appeals for the Sixth Circuit

In re: SETTLEMENT DOW CORNING TRUST

Debtor

KOREAN CLAIMANTS

Interested Parties - Appellant

v.

DOW SILICONES CORPORATION; DEBTOR'S REPRESENTATIVES;

CLAIMANTS' ADVISORY COMMITTEE

Interested Parties - Appellees

FINANCE COMMITTEE

Movant - Appellee

Reply of Appellant Korean Claimants

Yeon-Ho Kim esq.
Yeon-Ho Kim International Law Office
Suite 4105, Trade Tower, 511 Yeongdong-daero, Kangnam-ku
Seoul 06164South Korea
Tel: +82-2-551-1256
Fax: +82-2-551-5570

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Pages

Cases

Other Authorities

I. REPLY TO INTRODUCTION AND BACKGROUND

In the Response, the Appellees ("Dow Corning Corporation") did not maintain their assertions made in the Response for the Motion to Reopen Time to Appeal (RE1670) and the Motion to Set Aside Closing Order 5 (RE1672) filed with the District Court to impair the images of the Korean Claimants and counsel. However, the Appellants ("the Korean Claimants") maintain because it could be helpful for this Court to understand what was happening between the Korean Claimants and Dow Corning Corporation.

Dow Corning Corporation depicts that counsel and the Korean Claimants committed fraud to cheat the Settlement Facility. But rather Dow Corning Corporation committed fraud to the Korean Claimants from 1997.

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

[1]Barbara Houser

When Korean counsel participated in the hearing for confirmation in 1999, counsel realized the contents of the Proposed Plan were extremely prejudicial to the Class 6.2 Claimants so that counsel wanted to revoke the vote from “accept” to “object.” Surprised by Korean counsel’s move, Dow Corning Corporation proposed some changes in the Proposed Plan. 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 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. Finally, Dow Corning Corporation accepted that the rupture payment of the Class 6.2 Claimants could be upgraded to the rupture payments of the Claims 6.1 Claimants if the Claimants give up the Premium Payments applied to the rupture payments.

However, the commitments made as above were not implemented in the final Plan because while the Korean Claimants did not file a notice of appeal Dow Corning Corporation betrayed their commitments and changed the Proposed Plan’s clauses relevant to the commitments. In accordance with the final

confirmed Plan in 2004, the Settlement Facility has applied severe criteria to the Affirmative Statements of Korean implanting physicians although counsel for Dow Corning Corporation had promised Korean 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.

Dow Corning Corporation asserts (RE1672 Pg ID:#31192-31193), "“From the inception, the settlement program guidelines and this Court have consistently confirmed the obligation of claimants and attorneys to maintain updated and current address information, *See* Closing Order 2, RE No.1482 ("Claimants and attorneys are required to keep their address and contact information current with the SF-DCT.") …. (Claimant Information Guides, made available before the effective Date of the Plan, stating that each claimant has an affirmative obligation to inform the Settlement Facility of any change of address).’”"[2]

[2]Interestingly enough, Dow Corning Corporation does not present Claimant Information Guides as evidence to prove the requirement of address and contact information in this Court. Instead, Dow Corning Corporation presents Order Approving Claim Form Packages as evidence, indicating a site address, https://www.sfdct.com/_sfdct/index.cfm/pom-forms. (*See* the Response, page 9) However, these Packages do not require the Claimants to inform the Settlement Facility of any change of address. The Packages simply made an address box including an email address for newsletter of the Claimants Advisory Committee

This part of address update/confirmation requirements is the dispute between the Korean Claimants and Dow Corning Corporation but Dow Corning Corporation interprets as it wishes. First of all, the above assertion of Dow Corning Corporation contradicts its own admission, "The Settlement Facility's experience demonstrated the **wisdom** of obtaining valid claimant addresses in advance of issuing payments---particularly in the context of a settlement program in operation for almost 20 years."(RE1672 Pg ID:#31194) If from the inception the settlement program guidelines have consistently confirmed the obligation of claimants and attorneys to maintain updated and current address information, Dow Corning Corporation should not have called it "wisdom."[3] The reason that Dow Corning Corporation asserts that the Settlement Facility's experience demonstrated wisdom regarding address update/confirmation is because it is not prescribed in the Plan but was invented by the Settlement Facility. Second, there was no guideline as to address update/confirmation by claimant and attorney from the inception of the settlement program. Dow Corning Corporation points out Claimant Information Guide. (RE1672-8 Pg ID:#31171-31599) However, Claimant Information Guide just urged claimants who filed claim form to notify if they changed address. It was not what Dow Corning Corporation asserts, "the obligation of claimants and attorneys to

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in the Form.

[3]Indeed, it is wisdom of Dow Corning Corporation because the requirement of address update/confirmation enabled the Settlement Facility not to send checks to the attorneys for claimants including the Korean Claimants. Dow Corning Corporation, additionally interesting enough, does not argue in this Court that the Settlement Facility demonstrated the **wisdom** of obtaining valid claimant addresses in advance of issuing payments---particularly in the context of a settlement program in operation for almost 20 years.

maintain updated and current address information."[4]

Dow Corning Corporation further asserts, "This process alerts the represented claimant to check with their counsel to obtain their payment. If the verification mailing to the claimant is returned as undeliverable or does not generate a response then the Settlement Facility may not issue the payment." (RE1672 Pg ID:#31193) Because the Settlement Facility *may* not issue the payment, the Settlement Facility has discretion to issue the payment even to the Korean Claimants who did not update their current address.[5] Dow Corning Corporation now admits that it has a policing power on the relationship of claimant and attorney regarding check of payment. It was not authorized under the Plan. It is also against the practice of each country. Counsel for the Korean Claimants can put the fund of claimant on local court's bond after deducting the attorney fees from check of payment.

Dow Corning Corporation asserts, "Unfortunately, the record reflects *a long history of unreliable or even false information submitted by counsel* for the

[4]In addition, the way for updating and confirming claimants' address by Dow Corning Corporation, so to speak, was not the US Postal Service that the Settlement Facility exclusively used against the request of counsel for the Korean Claimants but a variety of ways for mail delivery including domestic mailing system of foreign countries.

[5]But the Settlement Facility did not use discretion in favor of the Korean Claimants. The Settlement Facility did not send the payments to counsel for the Korean Claimants based upon address update/confirmation. Dow Corning Corporation did not act in good faith regarding counsel let alone denial of the settlement agreement of mediation offered by the Finance Committee.

Korean Claimants demonstrating that the Settlement Facility would not be fulfilling its required role and function if it were to exempt the Korean Claimants from requirements set forth in the Court's Closing Orders. Indeed in denying one of many appeals filed by the Korean Claimants, the Sixth Circuit noted the unreliability of the Korean Claimants' submissions." Dow Corning Corporation further asserts, "In a similar vein, the Claims Administrator's data shows that address information provided by counsel for Movants has been unreliable. … More recently, decisions of the Appeals Judge found significant issues regarding the reliability of substantive claim submissions made by counsel for Movants." (RE1672 Pg ID:#31194-31196) First of all, the late Claims Administrator, David Austern, repeated counsel for the Korean Claimants that the Korean claim files were neatly prepared and organized so that in comparison with the files of other countries the Korean Claimants contributed a cost-saving to the Settlement Facility. When counsel visited the Settlement Facility with Affirmative Statement forms before the effective date of the Plan, Allen Bearicks viewed the forms negatively, different from friendly view of the Claims Administrator, (who suddenly quit later), and counsel for the Korean Claimants had a suspicion that she might be unethically motivated. The Settlement Facility held the Korean Claimants' filings for about three years and then started sending checks for payment to counsel. After being held for about two years, the Finance Committee offered mediation for settlement for the Korean Claimants as a group to counsel but walked away by saying, "*Oops*, the mediation was not authorized by Dow Corning Corporation." In doing these, the Claimants' Advisory Committee did not object and Deborah Greenspan only

played and took control over the matters regarding the Korean Claimants. The former Claims Administrator, the late David Austern, told counsel for the Korean Claimants right before mediation that the management of Dow Corning Corporation who knew the process of reorganization and the role of the Korean Claimants how much the Korean Claimants had contributed to the Proposed Plan's confirmation left the company resulting that there was nobody listening the Korean Claimants so that he was sorry for the Korean Claimants. The Settlement Facility has been digging the back of counsel[6] and the Korean Claimants as an example that the Finance Committee filed the Motion to Show Cause for sanctions on counsel. Since the District Court held chamber conferences with the Parties (the Claims Administrator, the Finance Committee, the Claimants' Advisory Committee) including Dow Corning Corporation's counsel many times,[7] the District Court should have known that the records of Dow Corning Corporation could not describe the whole picture of counsel and the Korean Claimants.

The decisions of the Appeals Judge regarding Affirmative Statements for proof of manufacturer have nothing to do with Closing Order 5. The Korean Claimants do not understand why Dow Corning Corporation produced the

[6]When counsel for the Korean Claimants published an autobiography partly describing the experiences of counsel regarding the Dow Corning class action, Dow Corning Korea Inc., Dow Corning Corporation's regional office, in accordance with an order of Dow Corning Corporation, interpreted the counsel' book in a whole and sent to the headquarter of Dow Group in Michigan, U.S..

[7]Counsel for the Korean Claimants has been constantly worrying about the neutrality and impartiality of court because this Court was supervising the Claims Administrator, the Finance Committee and the Settlement Facility.

decisions of the Appeals Judge as evidence. (RE1676, *See* the Response Page 15, footnote 4) Affirmative Statements were submitted in 2007-2008, about fourteen years ago. The decisions of the Appeals Judge were made only to 98 Claimants out of 2,600 Claimants for whom counsel represented for filing proof of manufacturer claim. In addition, the decisions of the Appeals Judge were regarding affirmative statements with no relation to address update/confirmation of Closing Order 5. Dow Corning Corporation, always acting in bad faith regarding the filings of the Korean Claimants with the District Court,[8] cancelled proof of manufacturer of 98 Claimants. Their appeals to this Court were denied. With respect to over six hundred appeals to the Appeals Judge filed on June 1, 2019, the Appeals Judge did not grant even a single case[9]including the cases regarding Affirmative Statement for proof of

[8]Counsel for Dow Corning Corporation, Deborah Greenspan, corresponded with the District 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 the District Court was supervising the Claims Administrator and the Finance Committee. The email of July 28, 2022 of Dow Corning Corporation's counsel (RE1675-7 Pg ID:#32166-32168) shows that as soon as the Korean Claimants filed the Motion for Expedited Hearing concerning the Motion for Extension of Filing Claim with the District Court, 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, the District Court issued the Order of August 12, 2022 denying both the Motion for Extension and the Motion for Expedited Hearing of the Korean Claimants. Dow Corning Corporation's counsel was given a bigger present for this emailing. Even after the Korean Claimants' counsel warned, "inappropriate", she continued an unnecessary and an inappropriate contact with an email of September 14, 2022 (RE1675-8 Pg ID:#32169-32170) to the Court without the Korean counsel's consent.

[9]In addition, the Appeals Judge held the Korean Claimants' cases for a long time. The Appeals Judge issued Decisions for all of the Korean Claimants' cases in

manufacturer. 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. The basis for denial collected and aided by the Quality Control Department were not changed even counsel submitted the explanations and materials that did not comply with the Quality Control Manager's stereotyped view using Korean websites 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

A. Whether the Appeal Should Be Dismissed as Untimely.

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. Dow Corning Corporation contends 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

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one day, January 25, 2021.(RE1676) The Korean Claimants submitted several hundred of 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 explanations to protect the Affirmative Statements of Korean implanting physicians.

emailed this Court stating "My email address is changed from yhkimlaw@unitel.co.kr to yhkimlaw@naver.com as of June 30, 2022." However, www.unitel.co.kr ceased to operate the service of emailing from June 1, 2022. It was in business until June 30, 2022 but available only for mail backup which meant downloading existing emails of users in the Server. Although counsel emailed the District 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." (RE1675-2 Pg ID:$31948-31957) The fact is supported by another email of counsel. (RE1675-2 Pg ID:#31965-31966) It was sent to Secretary General of the Asia-Pacific Chapter of International Academy of Family Law on June 9, 2022 because 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 District Court on June 24, 2022. (RE1675-2 Pg ID:#31958-31962[10]) The Court or clerk's office "learned" that the email notification was not received and counsel for the Korean Claimants did not receive the notice of Closing Order 5 of June 13, 2022.

[10] 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." (RE1675-2 Pg ID:#31964)

While Dow Corning Corporation asserts that the Korean Claimants' counsel would be deemed to have received notice (either because the email address was operative or because the local rules would deem the notice valid), the Korean Claimants were not able to receive the notice of the June 13, 2022's entry of Closing Order 5. In this regard, Dow Corning Corporation asserts, "t[T]here can be no excusable neglect because counsel clearly failed to provide the requisite email contact in violation of the rules. By his own admission, counsel for the Korean Claimants updated the email address only as of June 30. Not only did counsel fail timely to update his email registration, but he also apparently provided an inaccurate notice to the Court." Dow Corning Corporation presented the rules to prove violation of counsel for the Korean Claimants. The rules that Dow Corning Corporation pointed out are, "Electronic service upon an obsolete e-mail address will constitute valid service if the user has not updated the account profile with the new e-mail address.", "Each filing user is responsible for maintaining valid and current contact information in his or her PACER account.", and "When a user's contact information changes, the user must promptly update his or her PACER account." *See* R3(d) of Electronic Filing Policies and Procedures, Eastern District of Michigan, Updated September 2022. However, counsel for the Korean Claimants updated his PACER account on June 24, 2022. Whether the update is prompt can be a question but relative to the fact that Closing Order 5 was entered suddenly

without a service or a prior notice to counsel, the update of the counsel's PACER account on June 24, 2022 should be deemed 'prompt'. Under R3(d) of Electronic Filing Policies and Procedures, Eastern District of Michigan, electronic service upon an obsolete e-mail address, just like electronic service upon the operation-ceased yhkimlaw@unitel.co.kr, constitutes valid service if counsel has not updated the account profile for the new e-mail address. However, counsel for the Korean Claimants updated his account profile with the new e-mail address, yhkimlaw@naver.com,[11] on June 24, 2022. Therefore, there was no violation. Even if counsel violated the rules of Electronic Filing Policies and Procedures, Eastern District of Michigan, and E.D.Mich.LR 11.2((Failure to Provide Notification of Change of Address), "Every attorney and every party not represented by an attorney must include his or her contact information of his or her e-mail address, and telephone number on the first paper that person files in a case. If there is a change in the contact information, that person promptly must file and serve a notice with the new contact information. The failure to file promptly current contact information may subject that person or party to appropriate sanctions, which may include dismissal, default judgment, and costs.")), those violations do not preclude counsel for the Korean Claimants from being in excusable neglect. In this

[11] The Claims Administrator was aware of yhkimlaw@naver.com. She used it for her emailing to counsel.

respect, the Korean Claimants argue the ruling *in United Coin Meter Co. v. Seaboard C. Railroad*, 705 F.2d 839 (Sixth Cir. 1983) at 846 that an honest mistake "rather than willful misconduct, carelessness or negligence" constitutes an excusable neglect and there is special need to apply Rule 60(b) liberally.

Dow Corning Corporation further asserts, "i[I]t is apparent that counsel failed to fulfill his obligation to monitor the docket." First of all, however, counsel monitored docket activity. Because counsel monitored the docket, counsel was able to update his PACER account on June 24, 2022. The Korean Claimants agree a duty of counsel to monitor the court's docket. In part, counsel for the Korean Claimants carried out a duty to monitor the court's docket so that when the Claimants' Advisory Committee sent the Newsletter of August 16, 2022 to counsel, counsel immediately checked and found that this Court issued Closing Order 5 on June 13, 2022.

The reason that counsel did not update earlier than June 13, 2022, the date of entry of Closing Order 5, was because counsel did not receive a prior notice of filing of Closing Order 5 and was not served by Dow Corning Corporation prior to issuance. Counsel had no idea as to Closing Order 5 without a prior notice. Furthermore, the Claims Administrator used to send counsel a mailing regarding an important development for the Korean Claimants but she did not

as to Closing Order 5 so that counsel had no way to learn except email from the ECF system.

Dow Corning Corporation asserts, ""The case law is clear: counsel's inattention and failure to update his contact address or failure to apprise himself of docket activity cannot be the basis for relief under Rule 60(b)(1). *See Yeschick*, 675 F.3d at 631 (no claim of excusable neglect where counsel"(1) knew that his email address changed from altel.net to windstream.net; (2) was aware that he was not receiving notice of electronic filings in other cases and that motions were expected in *Yeschick*'s case; (3) failed to diligently update his e-mail address; and (4) failed to monitor the docket in *Yeschick*'s case for filings between May 2009 and January 2010."). Counsel's ability to access the electronic docketing system directly" is "within [the attorney's] control."*Id*."" Contrary to the assertion of Dow Corning Corporation that counsel's failure to update his contact address or failure to apprise himself of docket activity cannot be the basis for relief under Rule 6(b)(1), counsel updated the PACER account on June 24, 2022 after *24 days* of the closure of operation of the email address, while counsel in *Yeschick* updated his email address on October 30, 2009 after *four and a half months* from May 15, 2009 of change of the email address. Different from counsel in *Yeschick* where notice of electronic filings in other cases and the motions were expected in *Yeschick*'s case, counsel for the Korean

Claimants did not have any other case except this case as to Dow Corning Settlement Program and no motion-filing was expected against the Korean Claimants or counsel accordingly. In addition, counsel updated his e-mail address on June 24, 2022 and monitored the court's docket activity resulting that counsel found from the Newsletter of August 16, 2022 of the Claimants' Advisory Committee that Closing Order 5 was issued. Even if counsel updated his PACER account after 24 days later from the closure of his email address, the court in *Union Coin* explained that court should apply Rule 60(b) *liberally* if a default judgment was a result of *an honest mistake* rather than willful misconduct, carelessness or negligence. *See United Coin* at 846

"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 "*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.

The Korean Claimants acted in good faith. Rather, the Claims Administrator used to send counsel a mailing regarding an important development for the Korean Claimants but she did not do so as to Closing Order 5. The Korean Claimants appealed to Closing Order 2 which is pending the Sixth Circuit. Closing Order 5 was derived from Closing Order 2 so that there would be no prejudice to Dow Corning Corporation.

B. Whether Closing Order 5 is Valid Order Consistent with the Plan and Bankruptcy Code.

Closing Order 5 is to eliminate the 1,400 Korean Claimants from the list of the eligible Claimants so that they are no longer the claimants before the Settlement Facility because September 17, 2022 for updating and confirming address has passed.

In this regard, Dow Corning Corporation asserts that Closing Order 5 was entered properly as a Stipulated Order. Closing Order 5 should be subject to advance notice and a preliminary hearing. Due process is an upper requirement whether or not the Stipulated Order was in accordance with the Plan and the rules of the District Court. Dow Corning Corporation asserts that the Korean Claimants could have sought reconsideration. If Dow Corning Corporation has thought so, Dow Corning Corporation is better off to drop its objection to the

Korean Claimants' appeal based upon the delay of filing a notice of appeal.

C. Whether Closing Order 5 was Entered for Improper Purpose.

Dow Corning Corporation asserts that the Korean Claimants make a confusing argument that Closing Order 5 was intended to approve wrongful acts of the Settlement Facility and that it is a retroactive authorization of the Settlement Facility's practice. Not that the Korean Claimants make a confusing argument, Dow Corning Corporation feels hurt because of the Korean Claimants' revelation.

As the Korean Claimants pointed out in the Appellant's Brief and the Appellant's Brief of *Case No.21-2665*, Closing Order 5 as well as Closing Order 2 is to formalize the *secret* practice of the Settlement Facility's address update/confirmation. The Korean Claimants who received payments checks from 2008 to 2014 have never been asked by the Settlement Facility to update their address or to be confirmed by the Settlement Facility before mailing checks. However, the Settlement Facility began to ask counsel the Claimants' address update/confirmation from 2015. The Korean Claimants presented evidence in the Brief that the Settlement Facility sent a lot of address update/confirmation letters to counsel from 2015 and then counsel protested the

Claims Administrator and the Quality Control Manager regarding the address update/confirmation requirement.

In this regard, Dow Corning Corporation asserts that the Korean Claimants' notice complaints are ironic considering the entire purpose of obtaining the address information that they have refused to provide is to *facilitate notice* to the claimants of the status of their claims and other important actions of the Settlement Facility. The Dow Corning Corporation's purpose is to police the relationship between counsel and the Korean Claimants. The Korean Claimants are not interested in operation of the Settlement Facility and the status of their claims. The Korean Claimants who suffered from defected goods that Dow Corning Corporation manufactured just want to receive payment checks by empowering counsel to represent before the Settlement Facility. Not that the Korean Claimants refused to provide their address update/confirmation, Dow Corning Corporation exploited the process of address update/confirmation to deny sending payment checks to counsel.

In addition, Dow Corning Corporation assert that the Settlement Facility---which reports to the District Court---is required to implement the claims processing procedures that enable the Court to verify that settlement dollars actually reach the claimants for whom they are intended. Dow Corning

Corporation now admits that the purpose of address update/confirmation is to verity the settlement dollars actually to reach the claimants, which means that whether counsel embezzled the money of claimants should be verified by the Settlement Facility. Dow Corning Corporation filed the Motion to Show Cause against counsel for excessive attorney fees and non-distribution of checks sent to counsel on the basis of return of address confirmation letters in 2017. However, the District Court denied the Motion for Sanctions against counsel. In practice, counsel can put client's money from checks on the Korean court's bond after deducting his attorney fees with local courts and the claimants are able to claim from the courts with interests incurred.

D. Whether Closing Order 5 Implements, is Consistent with, and does not Modify the Plan or Violate the Bankruptcy Code.

Dow Corning Corporation asserts that Closing Order 5 is to implement the Plan and does not modify it. Dow Corning Corporation further asserts that the Claims Administrator shall have the plenary authority and obligation to institute procedures to assure an acceptable level of reliability and quality control of Claims and to assure that payment is distributed only for Claims that satisfy the Claims Resolution Procedures. Closing Order 5 is not to implement the Plan but to eliminate the 1,400 claims-approved Korean Claimants from a possibility of receiving checks. Address update/confirmation before payments is not

prescribed in the Plan. The Settlement Facility invented it during process of claims for last 20 years and applied from 2015. If the requirement of address update/confirmation were included in the Proposed Plan, counsel for the Korean Claimants would not vote for the Plan. Through a Stipulated Order, Dow Corning Corporation formalized the unauthorized (secret) practice of the Settlement Facility regarding address update/confirmation, which is identical to putting a new clause into the Plan. It is a modification of the Plan. The Claims Administrator is not allowed to apply a claims-processing practice unauthorized by the Plan even if she has a plenary authority to assure an acceptable level of reliability not to mention that she has acted as an errand agency of Dow Corning Corporation.

Dow Corning Corporation asserts that nothing in Closing Order 5 limits its application to the Korean Claimants and there is absolutely no basis or evidentiary support for the Korean Claimants' assertion of discrimination or unequal treatment. The 16,000 Claimants affected by Closing Order 5 include the 1,400 Korean Claimants. The other Claimants, non-Korean Claimants of Closing Order 5, are mostly the Claimants who were not represented by an attorney. Dow Corning Corporation admitted that the only counsel unsatisfied with Closing Order 5 is Korean counsel. The reason that no other counsels objected Closing Order 5 is because Closing Order 5 does not apply to their

clients. Not that nothing in Closing Order 5 limits its application to the Korean Claimants, there is no one except counsel for the Korean Claimants to raise a complaint as to Closing Order 5. Whether there is evidentiary support of discrimination or unequal treatment is that Dow Corning Corporation would know exclusively because the Settlement Facility did not share information with counsel including the return rates of address verification letters regarding the Korean Claimants.

Dow Corning Corporation asserts that the fact that the Settlement Facility relies on the U.S. Postal Service to distribute mail to claimants does not constitute a different treatment. Dow Corning Corporation exclusively relies on the U.S. Postal Service to verify whether the Korean Claimants received the payments. The U.S. Postal Service is not reliable because it delivered mails several months late to the Korean Claimants and counsel. It is fairly assumed that there were a lot of mails inaccurately delivered or returned. One example is that when the employees of counsel's law office registered their home address with the Settlement Facility they did not receive any mailing from the Settlement Facility. There should be a lot of non-delivery or return without being delivered. Based upon the U.S. Postal Service's return of inaccurate mailings, the Settlement Facility included the 1,400 Korean Claimants in the list of Closing Order 5. If the Settlement Facility is required for accuracy, Dow

Corning Corporation must have used the Federal Express or the DHL. But the Settlement Facility denied a proposal of counsel to use the Federal Express even though address verification from the Korean Claimants is critical to protect their rights for payments. In addition, the Korean Claimants are foreign claimants so that the Settlement Facility must use the Korean Postal Service. The Settlement Facility violated an equal treatment clause and the fair and equitable standard under the Bankruptcy Code.

E. Whether the Korean Claimants do not and cannot Provide any Evidence to Support the Argument that There is No Factual Basis to Support Closing Order 5.

Dow Corning Corporation asserts that the address verification requirement protects the Settlement Fund assets and the claimants and provides the District Court with assurance that the claimants will receive their payments, no other party has objected to this requirement or questioned its appropriateness, nor did the Settlement Facility need to establish that *all* of the addresses provided by counsel for the Korean Claimants were invalid before requiring that the claimants themselves confirm their address to the Settlement Facility. For the first part of 2019, the Claims Administrator sent letters to counsel to ask for filings for the Korean Claimants regarding address update/confirmation and the claims in deficiency by June 3, 2019. Counsel reluctantly filed the 660 address

update forms and over 600 appeals letters to the Appeals Judge in June 1, 2019. As mentioned above, *all* of 600 appeals to the Appeals Judge were denied on January 25, 2021. In addition, the Settlement Facility put the 660 address update forms in audit immediately. The Claims Administrator who solicited counsel to file anything by June 3, 2019 attested in her Declaration that more than 50% of address update verification letters were returned therefore the Korean Claimants' address updates were not reliable so that *all* of them must be included in the list of Closing Order 5. The Settlement Facility did not treat fairly and equitably in processing the Korean Claims regarding Affirmative Statement. Plus, the Settlement Facility did not share any information with counsel including the result of address verification audit and did not allow counsel to visit the Settlement Facility for meeting the Claims Administrator. When the Korean Claimants did not move, the Settlement Facility solicited counsel to file either claims or address update/confirmation forms. When counsel filed, the Settlement Facility exploited the filings to impose disadvantages on the Korean Claimants. The Korean Claimants filed Motions with the District Court. The grievances of the Korean Claimants have never been resolved by filing Motions. Dow Corning Corporation can do whatever on the basis of the Plan or Stipulated Orders because the Claimants' Advisory Committee is always cooperative but the Korean Claimants did not receive checks that they were supposed to even if their Claims were approved.

F. Whether the Korean Claimants Cannot be Exempted from Closing Order 5.

Dow Corning Corporation asserts that the Korean Claimants cannot demand a settlement without satisfying the same procedural requirements as any other claimant, the Korean Claimants' privacy argument is belied by their own submissions, the Settlement Facility is not requesting address information from counsel but rather from the claimants themselves, the Korean Claimants have availed themselves of the settlement program and thereby subjected themselves the rules and requirements for receiving compensation, the address information is not protected by the attorney-client privilege because the Settlement Facility seeks address verification directly from the Korean Claimants and even if seeking from the lawyer the claimant's provision of a current address to the Settlement Facility does not implicate any privileged communication between an client and a lawyer, and if the Korean Claimants believed that the address requirement was problematic they should have raised this issue when claim forms were initially distributed—nearly 20 years ago. Address information of an individual is strictly protected by the Personal Information Protection Act of Korea. Nobody can divulge the individual's address information without consent. The Korean Claimants contracted with counsel not to disclose anybody including the parties in the U.S. their information including address. When the Korean Claimants filed their Claims, they were not required to submit their

address. The Claim Forms Packages did not require the Korean Claimants to submit their address. The Korean Claimants did not subject themselves of address requirements when they filed their Claims in 2005-2006 because there was no address requirement at that time. The address update/confirmation requirement was used from 2015 by the Settlement Facility and then authorized by the District Court by Closing Order 2 in March 2019. Address information under the Korean laws is protected under the attorney-client privilege. No court asks an attorney to disclose address information of client. Counsel is subject to the Korean laws so that the Settlement Facility is not irrelevant to the Korean laws. Even if Dow Corning Corporation mocks counsel that the Korean Claimants should have raised this issue when claim forms were initially distributed--nearly 20 years ago, there was no such issue of address update/confirmation at that time. There were only the Claims Forms where address box of the Claimants was included along with other claims information.

G. Whether the Korean Claimants' Additional Arguments Relate to Their Complaints about the Settlement Facility and Not to the District Court's Entry of Closing Order 5.

Dow Corning Corporation asserts that the fact that the Settlement Facility ordered counsel that the Korean Claimants' address update had to be provided by June 3, 2019 does not abrogate or amend an order of the District Court. Dow

Corning Corporation and further asserts that the Korean Claimants' other complaints about mail delivery system, the accuracy of the mailing procedures of the Settlement Facility, the refusal of the Settlement Facility to send all mailings by express mail service, the interpretation of the reasons for undeliverable mail, and the citation to the Claimant Information Guides in the Declarations, and the accusation to the Settlement Facility of manipulating the mailing procedures do not have any bearing on the validity of Closing Order 5. Dow Corning Corporation ignores the mistake of the Settlement Facility and rather blames the Korean Claimants for following the requests of the Settlement Facility. The Orders of the District Court regarding the Settlement Facility were based upon consent of Dow Corning Corporation and the Claimants' Advisory Committee. The requirements and the rules of the Settlement Facility are actually those of Dow Corning Corporation imposed on the claims processing. If the Settlement Facility ordered counsel to provide the Korean Claimants' address update by June 3, 2019, it is identical to the order of the District Court. Therefore if the Settlement Facility ordered counsel likewise, the Settlement Facility must abide by. It cannot run from responsibility of mistake. Dow Corning Corporation argued in the District Court that the Claimant Information Guide was the basis for address update/confirmation requirement. But now, Dow Corning Corporation changed the basis for address update/confirmation to the Claim Form Packages which was confirmed in 2002 by the District Court. It

is the result of the Korean Claimants' counsel's strong argument. Likewise, Dow Corning Corporation should have accepted the complaints validly raised by the Korean Claimants regarding address update/confirmation because the Korean Claimants' Claims were approved by the Settlement Facility. If Dow Corning Corporation evades its responsibility for payments to the Korean Claimants by way of the success in the cases pending this Court, it must be a shame since a large corporation is greedy enough not to pay a dime to foreign consumers.

III. CONCLUSION

For the forgoing reasons, the Korean Claimants request that this Court approve the appeal of the Korean Claimants as timely and accept the complaints of the Korean Claimants regarding Closing Order 5.

Date: October 25, 2022

Respectfully submitted,

(signed by) Yeon-Ho Kim
Yeon-Ho Kim Int'l Law Office
Suite 4105, Trade Tower,
511 Yeongdong-daero, Kangnam-ku
Seoul 06164South Korea
Tel: +82-2-551-1256
yhkimlaw@naver.com
For the Korean Claimants

APPENDIX

RE.1667 Motion for Reopening the Time to File Appeal regarding Closing Order 5 Page ID:#30481-30571

RE.1668 Motion to Set Aside Closing Order 5 regarding Korean Claimants Page ID:#30572-30579

RE.1670 Response of Dow Silicones 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 Page ID:#30581-31108

RE.1672 Response of Dow Silicones Corporation, the Debtor's Representatives, the Finance Committee and the Claimants' Advisory Committee to Korean Claimants' Motion to Set Aside Closing Order 5 Page ID:#31177-31651

RE.1674 Reply to Response Dow Silicones 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 Page ID:#31654-30906

RE.1675 Reply to Response Dow Silicones Corporation, the Debtor's Representatives, the Finance Committee and the Claimants' Advisory Committee to Korean Claimants' Motion to Set Aside Closing Order 5 Page ID:#31907-32177

RE.1676 Exhibits to Declaration of Kimberly Smith-Mair Sealed Entry

CERTIFICATE OF SERVICE

I hereby certify that on October 25, 2022, 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.

Date: October 25, 2022 Signed by Yeon-Ho Kim

Form 6. Certificate of Compliance With Type-Volume Limit

Certificate of Compliance With Type-Volume Limit, Typeface Requirements, and Type-Style Requirements

1. This document complies with [the type-volume limit of Fed. R. App. P. [**insert Rule citation; e.g., 32(a)(7)(B)**]] [the word limit of Fed. R. App. P. [**insert Rule citation; e.g. 5(c)(1)**]] because, excluding the parts of the document exempted by Fed. R. App. P. 32(f) [and [**insert applicable Rule citation, if any**]]:

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