

**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 FOR  
EXPEDITED HEARING FOR MOTION TO REOPEN TIME TO  
APPEAL REGARDING CLOSING OREDER 5 (ECF No.1667)**

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 (ECF No.1681) and assert that the Court should deny the Korean Claimants’ Motion to Reopen and that, if the Court determines it has jurisdiction, grant *only* that portion of the Motion to Expedite that seeks and expedited hearing and determination.

Dow Corning Corporation presented as the founding for the denial of the Korean Claimants’ Motion to Reopen that the Court of Appeals has already stated that the Motion to Reopen was not filed timely and the time to reopen the appeal deadline has passed.

However, whether the Korean Claimants’ Motion to Reopen was not filed timely must be within the jurisdiction of the District Court so that the Court of Appeals’ opinion shall not be the final mandate. In addition, the opinion of the Court of Appeals in *In re Settlement Facility*

*Cow Corning Trust*, Case No. 22-1753, Doc. No. 32-1 (Sixth Cir. Sep. 14, 2022) was based upon not-fully-briefed arguments of the Parties so that the Court of Appeals did not conclude correctly, “*They can no longer move the district court to extend or reopen the time to appeal. Fed. R. App. P. 4(a)(5). As a result, their appeal is untimely and faces dismissal.*”

To strengthen their argument in this regard, Dow Corning Corporation submits the Response of Dow Corning Corporation to the Korean Claimants’ Motion to Reopen Time to File Appeal Closing Order 5, ECF No.1670.

On the contrary, the Korean Claimants submits the Reply of Reply of the Korean Claimants to Response of Dow Corning Corporation, the Debtor’s Representatives, the Finance Committee and the Claimants’ Advisory Committee to the Korean Claimants’ Motion to Reopen Time to File Appeal (Exhibit A) and the Reply of Appellant Korean Claimants (*Case No. 22-1753*). (Exhibit B)

Dow Corning Corporation asserts that if the Court determines it has jurisdiction, the Court can grant *only* that portion of the Motion to Expedite that seeks and expedited hearing and determination. Dow Corning Corporation’s assertion is based upon Fed. R. Civ. P. 62.1(a) [Indicative Ruling on a Motion for Relief that is Barred by a Pending Appeal].

- (a) Relief Pending Appeal. If a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may:
  - (1) defer considering the motion;
  - (2) deny the motion; or
  - (3) state either that it would grant the motion if the court of appeals remands for that purpose or that the motion raises a substantial issue.

On the other hand, Fed. R. App. P. Rule 4(a)(6) prescribes,

(6) Reopening the Time to File an Appeal. The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

- (A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry;
- (B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party received notice under Federal Rule of Civil Procedure 77(d) of the entry, whichever is earlier; and
- (C) the court finds that no party would be prejudiced.

If Dow Corning Corporation is persuasive in their argument that this Court can grant *only* that portion of the Motion to Expedite that seeks an expedited hearing and determination, *meaning* that this Court cannot grant the Motion to Reopen even if the Korean Claimants satisfy the (A) – (C) conditions under Fed. R. App. P. Rule 4(a)(6), it is to preclude this Court from exercising its judicial power. It is also to violate Fed. R. App. P. Rule 4(a)(6) directly. Therefore, Dow Corning Corporation’s argument is not persuasive.

For the foregoing reason, the Korean Claimants request this Court to overlook the arguments of Dow Corning Corporation in the Response and to Grant the Motion to Reopen the Time to File Appeal regarding Closing Order 5, in accordance with the Court’s decision as to the Motion for Expedited Hearing.

Date: November 12, 2022

Respectfully submitted,

(signed) Yeon-Ho Kim  
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**CERTIFICATE OF SERVICE**

I hereby certify that on November 12, 2022, this Motion for Expedited Hearing 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: November 12, 2022

Signed by YeonHo Kim