UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re: **SETTLEMENT FACILITY DOW CORNING TRUST**	§	**Case No. 00-CV-00005** **(Settlement Facility Matters)** **Hon. Denise Page Hood**

RESPONSE OF DOW SILICONES CORPORATION, THE DEBTOR'S REPRESENTATIVES, THE CLAIMANTS' ADVISORY COMMITTEE AND THE FINANCE COMMITTEE TO THE KOREAN CLAIMANTS' MOTION FOR ORDER FOR THE SF-DCT TO LIFT OFF THE ADDRESS UPDATE AND CONFIRMATION REQUIREMENT REGARDING THE KOREAN CLAIMANTS

For the reasons set forth in the attached memorandum, Dow Silicones Corporation ("Dow Silicones"),[1] the Debtor's Representatives (the "DRs"), the Claimants' Advisory Committee ("CAC"), and the Finance Committee ("FC") (collectively, "Respondents") hereby oppose Korean Claimant's Motion for Order for the SF-DCT to Lift Off the Address Update and Confirmation Requirement Regarding the Korean Claimants, ECF No. 1758 ("Motion to Lift") and respectfully submit that the Motion to Lift should be denied.

[1] As Dow Silicones Corporation previously advised the Court, Dow Corning Corporation changed its name to Dow Silicones Corporation on February 1, 2018.

Dated: February 7, 2024

Respectfully submitted,

/s/ Karima Maloney
Karima Maloney
Steptoe LLP
717 Texas Avenue
Suite 2800
Houston, TX 77002
Telephone: (713) 221-2382
KMaloney@steptoe.com
Counsel for the Finance Committee

/s/ Deborah E. Greenspan
Deborah E. Greenspan
BLANK ROME LLP
Michigan Bar # P33632
1825 Eye Street, N.W.
Washington, DC 20006
Telephone: (202) 420-2200
Facsimile: (202) 420-2201
Deborah.Greenspan@blankrome.com
Debtor's Representative and Attorney for Dow Silicones Corporation

/s/ Ernest H. Hornsby
Ernest H. Hornsby
FARMER PRICE LLP
100 Adris Place
Dothan, AL 36303
Telephone: (334) 793-2424
Ernie@farmerprice.com

Claimants' Advisory Committee

/s/ Dianna L. Pendleton-Dominguez
Dianna L. Pendleton-Dominguez
LAW OFFICE OF
DIANNA PENDLETON
401 N. Main Street
St. Marys, OH 45885
Telephone: (419) 394-0717
DPend440@aol.com

Claimants' Advisory Committee

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In re: **SETTLEMENT FACILITY DOW CORNING TRUST**	§	**Case No. 00-CV-00005** **(Settlement Facility Matters)** **Hon. Denise Page Hood**

MEMORANDUM IN SUPPORT OF THE RESPONSE OF DOW SILICONES CORPORATION, THE DEBTOR'S REPRESENTATIVES, THE CLAIMANTS' ADVISORY COMMITTEE AND THE FINANCE COMMITTEE TO THE KOREAN CLAIMANTS' MOTION FOR ORDER FOR THE SF-DCT TO LIFT OFF THE ADDRESS UPDATE AND CONFIRMATION REQUIREMENT REGARDING THE KOREAN CLAIMANTS

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CONCISE STATEMENT OF ISSUES PRESENTED

1. Should the Court reverse its previous decisions, affirmed by the Sixth Circuit, and exempt Korean Claimants from the requirements of its Closing Orders governing the implementation of the Amended Joint Plan of Reorganization?

   Respondents' Answer: No

2. Should the Court deny the Motion to Lift in accordance with its previous denials of the same arguments?

   Respondents' Answer: Yes

3. Should the Court exempt the Korean Claimants from the requirements of the Plan and the Closing Orders in violation of Section 1123(a)(4) of the Bankruptcy Code?

   Respondents' Answer: No

4. Should the Court deny the Korean Claimant's request to amend the confirmed and consummated Amended Joint Plan of Reorganization by exempting them its discharge and release?

   Respondents answer: Yes

CONTROLLING OR MOST APPROPRIATE AUTHORITY

- Closing Order 2, (Regarding Additional Procedures For Incomplete And Late Claims; Protocols For Issuing Payments; Audits of Attorney Distributions of Payments; Protocols For Return of Undistributed Claimant Payment Funds; Guidelines For Uncashed Checks and For Reissuance of Checks; Restrictions on Attorney Withdrawals), ECF No. 1482

- Closing Order 3, Notice that Certain Claims Will Be Permanently Barred and Denied Payment Unless a "Confirmed Current Address" Is Provided To The SFDCT On Or Before June 30, 2021, ECF No. 1598

- Closing Order 5, Notice that Certain Claims Without a Confirmed Current Address Shall be Closed for Establishing Protocols for Addressing Payments for Claimants in Bankruptcy, ECF No. 1642

- Dow Corning Amended Joint Plan of Reorganization

- Settlement Facility and Fund Distribution Agreement

- Dow Corning Settlement Program and Claims Resolution Procedures, Annex A

- Bankruptcy Code 11 U.S.C. § 1123(a)(4)

- Bankruptcy Code 11 U.S.C. § 1127(b)

- Bankruptcy Code 11 U.S.C. § 1141(a)

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- Memorandum Opinion and Order Regarding the Finance Committee's Motion for Authorization to Make Second Priority Payments, the Korean Claimants' Motion for Premium Payments and the Korean Claimants' Motion for Order Vacating Decision of the Settlement Facility Regarding Address Update/Confirmation, ECF No. 1607 (June 24, 2021)

- Order Regarding Various Motions filed by the Korean Claimants (ECF Nos. 1658, 1660, 1666, 1667, 1668, 1677), ECF No. 1689 (Dec. 29, 2022)

- *In re Dow Corning Corp.*, 287 B.R. 396 (E.D. Mich. 2002)

- *Korean Claimants v. Claimants' Advisory Committee,* 813 Fed. Appx. 211 (6th Cir. 2020)

- *In re Settlement Facility Dow Corning Trust*, No. 00-00005, 2017 WL 7660597 (E.D. Mich. Dec. 28, 2017), aff'd 760 Fed. Appx. 406 (6th Cir. 2019)

- *In re Settlement Facility Dow Corning Trust*, 760 Fed. Appx. 406 (6th Cir. 2019)

- *In re Settlement Facility Dow Corning Tr.*, No. 21-2665, 2023 WL 2155056, (6th Cir. Feb. 22, 2023)

Dow Silicones Corporation ("Dow Silicones")[1], the Debtor's Representatives (the "DRs"), the Claimants' Advisory Committee (the "CAC"), and the Finance Committee (the "FC") (collectively, "Respondents") respectfully submit this Memorandum of Law in support of their Response to the Motion for Order for the SF-DCT to Lift Off the Address Update and Confirmation Requirement Regarding the Korean Claimants, ECF No. 1758 ("Motion to Lift") filed by the Korean Claimants ("Movants") and request the Court deny the Motion to Lift.

INTRODUCTION

The Motion to Lift asks this Court to exempt Korean Claimants from the terms of the Plan and this Court's various Closing Orders that implement the Dow Corning Amended Joint Plan of Reorganization ("Plan") [2] (Exhibit A) terms and provide clear instruction to the Settlement Facility-Dow Corning Trust ("SF-DCT" or "Settlement Facility"). These arguments are not new. This Court has previously rejected the Korean Claimants' efforts to vacate and avoid this Court's Closing Orders that establish and affirm procedures that the Settlement Facility must follow to implement the requirements of the Plan. The Korean Claimants have appealed each

[1] Dow Corning Corporation changed its name to Dow Silicones Corporation on February 1, 2018.
[2] Capitalized terms have the meaning defined in the Plan and Plan Documents unless otherwise noted herein.

of those decisions and, in each case, the Sixth Circuit has affirmed this Court's decision on the merits or found the appeal procedurally defective.

The Motion to Lift should be denied – for all the same reasons this Court denied the previous motions. These arguments have been fully and finally adjudicated and the Korean Claimants do not cite, nor could they cite, any basis whatsoever to consider these issues again.

BACKGROUND

Previous Motions and Appeals

1. Plan and Applicable Orders

This Court is, of course, familiar with the relevant facts. The Plan became effective nearly 20 years ago on June 1, 2004. The Court retained the jurisdiction and obligation under the Plan to implement its terms and supervise the operation of the Settlement Facility established to receive and pay the claims of Settling Person Injury Claims – such as those of the Korean Claimants. The procedures for the submission of claims for benefits and for the review and resolution of such claims are set forth in the Settlement Facility and Fund Distribution Agreement ("Settlement Facility Agreement" or "SFA") (Exhibit B) and the Dow Corning Settlement Program and Claims Resolution Procedures, Annex A to the SFA ("Annex A" or the "Claims Resolution Procedures") (Exhibit C).

Beginning in 2018, this Court began issuing Closing Orders to ensure the orderly conclusion of the Settlement Facility operations. The Closing Orders

relevant to the Motion to Lift are Closing Order 2, entered on March 19, 2019 (ECF No. 1482, attached as Exhibit D), Closing Order 3, entered on March 25, 2021 (ECF No. 1598, attached as Exhibit E), and Closing Order 5, entered on June 13, 2022 (ECF No. 1642, attached as Exhibit F). Closing Order 2 provides in relevant part that "the SF-DCT shall not issue payments to or for claimants or an authorized payee unless the SF-DCT has a confirmed, current address for such claimant or authorized payee" "to ensure that Settlement Fund payments are distributed to Claimants as required by the Plan." Closing Order 2, PageID.24086-89 at ¶¶ 11, 7. Closing Order 3 identified individual claimants in Classes 5, 6.1, and 6.2 whose claims could not be processed because the Settlement Facility had no valid address. Closing Order 3, PageID.28286 at ¶ 8. Closing Order 3 directed the Settlement Facility to publish the list of such claimants and to provide them a 90-day period in which to provide the necessary information. *Id*. at PageID.28287. At the expiration of the 90-day period, the claims of those who failed to respond were closed. *Id*., PageID.28286 at ¶ 8. Closing Order 5 directed the Settlement Facility to publish the claimant identifications for those claimants whose claims had been fully processed but had failed to provide a verified address to enable payment. The Settlement Facility was directed to provide a 90-day period for those claimants to respond and then to close the claims of those who failed to do so. Closing Order 5, PageID.28803-04 at ¶ B6.

2. Prior Decisions Addressing Closing Order 2's Address Update Requirement[3]

More than three years ago, Korean Claimants filed a Motion for Vacating Decision of Settlement Facility Regarding Address Update/Confirmation ("Motion for Vacating"). ECF No. 1569. That Motion challenged the requirement in Closing Order 2 affirming and requiring that the Settlement Facility assure that a claimant has a valid, confirmed address before issuing a payment.

On June 24, 2021, after full briefing including the submission of declarations and several hundred of pages of exhibits, this Court issued a Memorandum Opinion and Order Regarding the Finance Committee's Motion for Authorization to Make Second Priority Payments, the Korean Claimants' Motion for Premium Payments and the Korean Claimants' Motion for Order Vacating Decision of the Settlement Facility Regarding Address Update/Confirmation. ECF No. 1607, attached as Exhibit G. The Korean Claimants filed a timely appeal. ECF No. 1608. The Sixth Circuit affirmed this Court's decision, finding that the appeal failed "on the merits because the district court correctly interpreted Closing Order 2 to require the Korean Claimants to confirm their addresses as a condition of receiving payments and permissibly considered the Settlement Facility bound by Closing Order 2." *See In*

[3] Respondents incorporate by reference all of Respondents' prior responses discussed herein. ECF Nos. 1595 and 1596.

re Settlement Facility Dow Corning Tr., No. 21-2665, 2023 WL 2155056, at *3 (6th Cir. Feb. 22, 2023). The Sixth Circuit's decision is attached as Exhibit H.

3. Motion Practice Regarding Closing Order 3

The Court issued Closing Order 3 on March 25, 2021. ECF No. 1598. Korean Claimants did not object to or appeal or even comment on Closing Order 3 when it was entered. Of course, the address verification provisions of Closing Order 3 are the same as those in Closing Order 2 – which was addressed in detail by this Court and the Sixth Circuit.

4. Motion Practice Regarding Closing Order 5[4]

This Court issued Closing Order 5 on June 13, 2022. The Korean Claimants did not file any objection to Closing Order 5 at that time, but instead filed an untimely appeal to Closing Order 5 – 73 days after its entry. ECF No. 1656. Recognizing that their appeal was untimely, the Korean Claimants filed several other motions seeking to stay its implementation and seeking an extension of time to appeal.[5] On December 29, 2022, after full briefing, the District Court issued the

[4] Respondents incorporate by reference all of Respondents' responses discussed herein. ECF Nos. 1662, 1664, 1670, 1671, 1672, and 1681.

[5] On August 29, 2022, the Korean Claimants filed a Motion to Stay the Court's Ruling Regarding Closing Order 5. ECF No. 1658. On September 6, 2022, the Korean Claimants also filed a Motion to Stay Closing Order 5 in the Sixth Circuit. *See* Case No. 22-1753, ECF No. 12. The Sixth Circuit denied the Motion to Stay. *Id*. at ECF No. 32. On September 15, 2022, the Korean Claimants voluntarily dismissed their Motion to Stay (ECF No. 1666) "most likely because the Sixth Circuit Court of Appeals issued an Order on September 14, 2022 denying the Korean

Order Regarding Various Motions filed by the Korean Claimants (ECF Nos. 1658, 1660, 1666, 1667, 1668, 1677). ECF No. 1689, attached as Exhibit I. The Court granted the Motion for Voluntary Dismissal of Motion to Stay the Closing Order 5 (ECF No. 1666), dismissed the Motion to Stay Closing Order 5 (ECF No. 1658), denied the Motion to Reopen the Time to File Notice of Appeal ("Motion to Reopen") (ECF No. 1667), and rendered Moot the Motion for Expedited Hearing as to Motion to Reopen (ECF No. 1677). ECF No. 1689. In the decision on the Motion to Reopen, the Court found that the Korean Claimants' did not meet the requirements to reopen the time to appeal under Fed. R. App. P. 4(a)(6), finding that the Korean Claimants did not timely file an appeal and reopening would be "prejudicial to the trust operations, the ongoing closure activities, and would further delay the ongoing closing activities." *Id*. at PageID.32433.

On February 22, 2023, in a consolidated opinion, the Sixth Circuit dismissed the appeal regarding Closing Order 5 as untimely. The Sixth Circuit found there were "no exceptional circumstances" to equitably toll the deadline for filing an

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Claimants' motion to stay filed before the Sixth Circuit." *See* ECF No. 1689 at n.1. On September 15, 2022, the Korean Claimants filed a Motion to Reopen the Time to File Appeal Regarding Closing Order 5. ECF No. 1667. On September 17, 2022, the Korean Claimants filed a Motion to Set Aside Closing Order 5. On October 22, 2022, the Korean Claimants filed a Motion for Expedited Hearing or to Rule re Motion to Reopen the Time to File Appeal Regarding Closing Order 5. ECF No. 1677.

appeal. *See In re Settlement Facility Dow Corning Tr.*, No. 21-2665, 2023 WL 2155056, at *3.

5. The Implementation of The Closing Orders

The various requirements set forth in Closing Orders 2, 3, and 5 apply to all Settling Personal Injury Claimants. Numerous declarations of the Claims Administrator and the Quality Manager of the Settlement Facility submitted in responses to prior motions filed by Korean Claimants establish the procedures and guidelines applicable to all claims. First, the Settlement Facility guidelines (set forth in Claimant Information Guides and made available to all claimants and attorneys) have made it clear that Claimants and attorneys are under an obligation to maintain current address information with the Settlement Facility.[6] *See* Exhibit J, February 26, 2021 Declaration of Ellen Bearicks ("Bearicks Feb. 26 Dec"), at ECF No. 1595-6, Page ID.28167, ¶ 7. During the course of its operations, the Settlement Facility has sent numerous directives and correspondence to all attorneys and claimants reminding them of the obligation to provide the Settlement Facility with address updates and seeking to confirm address information. *Id*. at Page ID.28167, ¶ 8; *see also* Exhibit K, July 20, 2020 Declaration of Ann M. Phillips[7] ("Phillips July 20

[6] The Respondents incorporate the statements from Bearicks Feb. 26 Dec. *See* ECF No. 1595-6.
[7] The Respondents incorporate the statements from Phillips July 20 Declaration. *See* ECF No. 1546-8.

Declaration"), ECF No. 1546-8, PageID.24817-18, ¶¶ 11-14. Thousands of claimants and hundreds of attorneys of record have complied with SF-DCT's address update requests. Bearicks Feb. 26 Dec. at Page ID.28168, ¶ 22.

Closing Order 2 states the Settlement Facility may reject address information provided by counsel where previous experience demonstrates that the address information cannot be considered reliable or where it is inconsistent with address information provided by the claimant. *See* Closing Order 2, Section C, ¶ 12 ("[t]he Claims Administrator shall have discretion to implement additional protocols for confirming current addresses and to withhold payment checks where the Claims Administrator concludes that she cannot identify a confirmed current address for the claimant, authorized payee, or attorney of record"); Phillips July 20 Dec. at PageID24818, ¶ 17-18; Bearicks Feb. 26 Dec. at PageID.28168, ¶ 24. Further, comporting with the terms of Closing Order 2, the Settlement Facility does not accept address information from counsel where previous address submissions from counsel have proved to be invalid and more than a negligible percentage of mail sent to addresses provided by counsel has been returned as undeliverable. Phillips July 20 Dec. at PageID24818, ¶¶ 17-18; Bearicks Feb. 26 Dec. at PageID.28168, ¶ 24.

After Closing Order 2 was entered, the SF-DCT sent a mailing to all claimants eligible at that time to receive a Premium Payment requesting confirmation of the claimant's current address. Phillips July 20 Dec. at PageID.24817-18, ¶ 12.

Thereafter, the SF-DCT continued to send address verification letters to attorneys and claimants. *Id*. at PageID.24818, ¶13. The SF-DCT conducted these address verifications when a claim was eligible for payment and the SF-DCT had not received address information for the claimant within the prior 90 days. *Id*. All payments remained on hold until the SF-DCT obtained a verified address. *Id*. at ¶14. *See also* Bearicks Feb. 26 Dec. at PageID.26169, ¶ 27. The Settlement Facility has sent such address verification letters in accordance with Closing Order 2 to Korean Claimants. Bearicks Feb. 26 Dec. at PageID.28169, ¶ 33.[8] Other than counsel for Korean Claimants, no other lawyers have disputed the obligation of the Settlement

[8] The Settlement Facility has employed multiple different procedures to confirm addresses and to determine which addresses are no longer valid. Bearicks Feb. 26 Dec. at PageID.28167, ¶ 14. In some instances, the Settlement Facility conducted its address verification through a mass mailing – identifying the mail that was returned as undeliverable and then taking steps to locate those claimants. *Id*. at ¶ 15. In other cases, the Settlement Facility has conducted more targeted mailing to individuals and law firms. *Id*. at ¶ 16. Once the Settlement Facility determines that an address is not valid – primarily because mail is returned as undeliverable – the Settlement Facility researches available databases in an effort to locate claimants. *Id*. at ¶ 17. If that research yields a "lead" then the Settlement Facility will send an address verification mailing to that newly identified address. Bearicks Feb. 26 Dec. at PageID.28168, ¶ 18. The address verification mailing asks the claimant to contact the Settlement Facility either in writing or by telephone to confirm the current address. *Id*. at ¶ 19. In addition, whenever a Settlement Facility staff member speaks to a claimant by telephone, the standard procedure is to ask for address verification on that call. *Id.* at ¶ 20. The Settlement Facility then documents verification of address information – either confirming the address already on file or updating the address in light of the information received from the claimant. *Id*. at ¶ 21.

Facility to assure correct address information for claimants. *See* Exhibit L, Declaration of Kimberly Smith-Mair ("Smith-Mair Dec"), ¶ 11.

In accordance with Closing Order 2, this Court issued Closing Order 3 and Closing Order 5. Both of these orders directed the Settlement Facility to provide notice via publication on the website, of claimants who had failed to confirm their address and whose claims therefore could not be processed or paid. Closing Order 3 addressed the claims of 381 claimants whose claims could not be fully processed without confirmation that the claimant could be located and could receive communications. Closing Order 3 at ¶ 8. The Order required the Settlement Facility to publish the list of claimant identification number for period of 90 days and to then permanently close the claims of those claimants who did not respond to the Settlement Facility. *Id*. at PageID.28286-87. The Settlement Facility received 66 responses to Closing Order 3 and their claims were processed. Smith-Mair Dec at ¶ 8.

Closing Order 5 addressed claims of claimants whose payments could not be issued because the Settlement Facility did not have a valid address for the claimant. *See generally* Closing Order 5. The list of affected claimant identification numbers was published for 90 days, and 1,273 claimants responded by providing their address information and their payments were processed. Smith-Mair Dec. at ¶ 9. As required by the Order, the Settlement Facility then closed the claims of those who

did not respond. Closing Order 5 required that the claims for those claimants who did not respond after 90 days were to be closed. Closing Order 5 at PageID.28803-04, at ¶ B6.

ARGUMENT

A. THE MOTION TO LIFT MUST BE DENIED BECAUSE IT IMPROPERLY SEEKS TO RELITIGATE ISSUES ALREADY DECIDED AFTER FULL ADJUDICATION BEFORE THIS COURT AND THE SIXTH CIRCUIT

This Court has previously considered arguments raised by Korean Claimants challenging the terms of the relevant Closing Orders and has found that the Closing Orders properly implement the terms of the Plan and are necessary to assure that the Settlement Fund assets are distributed appropriately and ensure finality of claim processing. *See* ECF No. 1607, PageID.28629-31; *See* ECF No. 1689, PageID.32438. All the decisions issued by this Court with respect to challenges mounted by Korean Claimants with respect to the Closing Orders and in particular the address verification requirement have been affirmed on appeal. The Motion to Lift raises exactly the same arguments asserted and rejected in all the prior motions and appeals. The Korean Claimants point to no change in law or new fact that would warrant revisiting the issues and could not do so in any event at this late date. *See e.g.* Fed. R. Civ. P. 60 (governing relief from judgments). The issues raised in the Motion to Lift have been fully and finally resolved.

B. THE MOTION TO LIFT MUST BE DENIED BECAUSE IT SEEKS DIFFERENT TREATMENT FOR KOREAN CLAIMANTS IN VIOLATION OF SECTION 1123(a)(4) of the BANKRUPTCY CODE

To achieve the relief that the Korean Claimants seek, the Court would have to amend or waive the applicable provisions of Closing Order 2, Closing Order 3, and Closing Order 5 as to the Korean Claimants. Such an action would result in disparate treatment among claimants in violation of the Bankruptcy Code. *See* 11 U.S.C. § 1123(a)(4) (a plan is required to "provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest."). The Bankruptcy Code "requires that claims of creditors that are members of the same class be treated equally." *In re Dow Corning Corp.*, 280 F.3d 648, 659 (6th Cir. 2002) (citing 11 U.S.C. § 1123(a)(4)).

C. KOREAN CLAIMANTS' MOTION TO LIFT MUST BE DENIED AS AN UNAUTHORIZED APPEAL PROHIBITED BY THE PLAN

The Motion to Lift must also be denied because it is an impermissible appeal of the decision of the Settlement Facility to close the claims of the Korean Claimants for failure to abide by the terms of this Court's Closing Orders. The Plan specifically, unequivocally, and unambiguously bars appeals of the decisions of the Claims Administrator or Appeals Judge to this or any other court. *See Claims Resolution Procedures*, at Article VIII, § 8.05. The provisions of the Plan are binding on claimants as a matter of federal bankruptcy law. *See* 11 U.S.C. § 1141(a)

("the provisions of a confirmed plan bind . . . any creditor . . . whether or not such creditor . . . has accepted the plan"); *see also, In re Settlement Facility Dow Corning Trust*, 760 Fed. Appx. 406, 411-412 (6th Cir. 2019) ("To the extent the Korean Claimants seek to challenge any substantive decisions of the Claims Administrator with respect to any particular claims, such review is beyond the scope of the plan. 'The Plan provides no right of appeal to the Court.'") (quoting *In re Settlement Facility Dow Corning Tr.*, No. 12-10314, 2012 WL 4476647, at *2 (E.D. Mich. Sept. 28, 2012)); *In Re Clark-James v. Settlement Facility Dow Corning Trust*, No. 08-1633, 2009 WL 9532581, *2, 3 (6th Cir. 2009) (holding that the district court properly dismissed plaintiff's complaint as she was "essentially seek[ing] a review of the SF-DCT's determination that she has not submitted sufficient proof to show that her implants had ruptured. But the Plan provides no right of appeal to the district court, except to resolve controversies regarding the interpretation and implementation of the Plan and associated documents."), aff'g No. 07-CV-10191 (E.D. Mich. Mar. 31, 2008).

The Korean Claimants' disagreement with decisions regarding claims "are decisions for the Claims Administrator and the Appeals Judge selected under the terms of the plan, and not the district court" and thus their effort to "seek review of substantive decisions regarding particular claims . . . is contrary to the terms of the plan." *In re Settlement Facility Dow Corning Trust*, 760 Fed. Appx. At 412. "There

is no provision under the Plan or the SFA which allows a claimant to submit an issue to be interpreted by the Court or to amend the Plan." *In re Settlement Facility Dow Corning Trust*, No. 00-00005, 2017 WL 7660597, at *1 (E.D. Mich. Dec. 28, 2017), aff'd 760 Fed. Appx. 406 (6th Cir. 2019).

D. THE KOREAN CLAIMANTS' REASONS FOR SEEKING EXEMPTION FROM THE ADDRESS VERIFICATION REQUIREMENT ARE INCONSISTENT AND UNPERSUASIVE AND HAVE ALREADY BEEN REJECTED

As already noted, the arguments set forth in the Motion to Lift have been raised in some form in prior motions and resolved by this Court. We briefly address these arguments here.

The Korean Claimants' argument that the Claimant Information Guides should not be considered Plan Documents (and, therefore, in the view of the Korean Claimants, not binding) was previously considered and rejected by this Court almost three years ago when the Court denied the Motion for Vacating. *See* ECF No. 1599 at PageID.28302-04; *See* ECF No. 1607. The initial Claimant Information Guides, which were published and made available before the Effective Date of the Plan and have also been posted on the Settlement Facility website, state clearly that each claimant has an affirmative obligation to inform the Settlement Facility of any change of address. *See* Bearicks Feb. 26 Dec., PageID.28166 at ¶ 7.

The Korean Claimants' argument "the Korean claimants had no obligation to update their addresses to be confirmed individually by the SF-DCT because of the

Korean law prohibiting from doing it, the claimants' dislikes of address update and confirmation from the SF-DCT, and their accomplished submissions of the Korean-Government-issued Resident Registry … upon participation into the SF-DCT program" (Motion to Lift at PageID.34840-42) was raised in prior motions and resolved in this Court's prior decisions. ECF No. 1569 at PageId.26262, 26270-71, ECF 1599 at PageID.28300, 28309-10; ECF No. 1607 at PageID.28631. "Claimants have submitted themselves to this Court's jurisdiction by participating in this bankruptcy action. When a creditor submits to bankruptcy court jurisdiction by filing a proof of claim in order to collect its debt, the creditor is subject to the court's orders and any discharge order pursuant to 11 U.S.C. § 524." *See In re Dow Corning Corp.*, 287 B.R. 396, 412 (E.D. Mich. 2002).

The Korean Claimants' unsupported assertion that "the SF-DCT did not impose, or loosely imposed, the address update and confirmation requirement on the US claimants including the Class 5 claimants" (Motion to Lift at PageID.34842) was also previously raised in prior motions and resolved in this Court's prior decisions. *See* ECF No. ECF No. 1607, PageID.28630. The Closing Orders require the Settlement Facility to apply their terms to all claimants and law firms, domestic and foreign, and the Settlement Facility has done so. Smith-Mair Dec. ¶ 10.

The Korean Claimants raise the argument that the letters sent to the claimants regarding the missing or invalid addresses ("Address Letters") were unclear because

they include a note to Class 7 Claimants. *See* Motion to Lift at PageID.34839-40. However, the Address Letters very clearly state that the specific claimant's address information may not be valid and correct address information is required before **any** claims can be processed or potential payments can be made. *See, e.g.*, Exhibit A to Motion to Lift at PageID.34852.

There is no basis to reconsider any of these arguments.

E. THE KOREAN CLAIMANTS' REQUEST THAT THE COURT RELEASE THEM FROM THE EFEFCT OF THE PLAN'S DISCHARGE AND RELEASE MUST BE DENIED

The Korean Claimants ask this court to amend the Plan by eliminating the discharge and release terms as to the Korean Claimants. The Plan was consummated over a decade ago and may not at this point be modified.[9] 11 U.S.C. § 1127(b) ("The proponent of a plan or the reorganized debtor may modify such plan at any time after confirmation of such plan and before substantial consummation of such plan"). The SFA itself prohibits modification of any of its terms absent written agreement of the Reorganized Dow Corning and the Claimants' Advisory Committee and/or approval by the Court. SFA § 10.06; *See also Korean*

[9] *See Korean Claimants v. Claimants' Advisory Committee*, 813 Fed. Appx. 211, 218 (6th Cir. 2020) ("The Bankruptcy Code limits modification of a confirmed plan when the plan has been substantially consummated. . . . The record indicates that the Plan – which became effective in 2004 – has been substantially consummated.").

Claimants v. Claimants' Advisory Committee, 813 Fed. Appx. 211, 218 (6th Cir. 2020) ("As Korean Claimants are neither plan proponents nor the reorganized debtor, they have no ability to initiate a modification."). The district court cannot amend or alter the terms of a confirmed plan of reorganization. *In re Clark-James*, 2009 WL 9532581, at *2 ("the district court had no authority to modify the Plan, equitable or otherwise"); *In re MCorp Fin., Inc.*, 137 B.R. 219, 228 (Bankr. S.D. Tex. 1992) (section 1127 provides that "only the proponent of a chapter 11 plan can seek to have it modified," and a court "cannot, *sua sponte*, modify the chapter 11 plan.") (internal citations omitted); *see also Goodman v. Phillip R. Curtis Enterprises, Inc.*, 809 F.2d 228, 234 (4th Cir. 1987) ("Under § 1127(b), post-confirmation modification can only be initiated by the proponent of a plan or a reorganized debtor.").

A bankruptcy court's confirmation of a reorganization plan discharges the debtor from any debt that arose before the date of the confirmation, regardless of whether proof of the debt is filed, the claim is disallowed, or the plan is accepted by the claim's holder. 11 U.S.C. § 1141(d)(1)(A). A "claim" includes any "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured[.]" 11 U.S.C. § 101(5)(A). The provisions of the Plan are binding on claimants as a matter of federal bankruptcy law. *See* 11 U.S.C. § 1141(a)

("the provisions of a confirmed plan bind . . . any creditor . . . whether or not such creditor . . . has accepted the plan"). The Court has no power or authority to modify the Plan and to alter the discharge and release provided to the Debtor and Released Parties.

CONCLUSION

For the foregoing reasons, Dow Silicones Corporation, the Debtor's Representatives, the Finance Committee, and the Claimants' Advisory Committee respectfully request that the Court deny the Motion to Lift.

Dated: February 7, 2024

Respectfully submitted,

/s/ Karima Maloney
Karima Maloney
Steptoe LLP
717 Texas Avenue
Suite 2800
Houston, TX 77002
Telephone: (713) 221-2382
KMaloney@steptoe.com
Counsel for the Finance Committee

/s/ Deborah E. Greenspan
Deborah E. Greenspan
BLANK ROME LLP
Michigan Bar # P33632
1825 Eye Street, N.W.
Washington, DC 20006
Telephone: (202) 420-2200
Facsimile: (202) 420-2201
Deborah.Greenspan@blankrome.com
Debtor's Representative and Attorney for Dow Silicones Corporation

/s/ Ernest H. Hornsby
Ernest H. Hornsby
FARMER PRICE LLP
100 Adris Place
Dothan, AL 36303
Telephone: (334) 793-2424
Ernie@farmerprice.com
Claimants' Advisory Committee

/s/ Dianna L. Pendleton-Dominguez
Dianna L. Pendleton-Dominguez
LAW OFFICE OF
DIANNA PENDLETON
401 N. Main Street
St. Marys, OH 45885
Telephone: (419) 394-0717
DPend440@aol.com
Claimants' Advisory Committee

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:	§	**Case No. 00-CV-00005**
SETTLEMENT FACILITY DOW CORNING TRUST	§	**Hon. Denise Page Hood**

CERTIFICATE OF SERVICE

I hereby certify that on February 7, 2024, I electronically filed the foregoing document with the Clerk of the Court using the ECF System which will send notification of such filing to all registered counsel in this case.

Dated: February 7, 2024

/s/ Deborah E. Greenspan

Deborah E. Greenspan
BLANK ROME LLP
Michigan Bar # P33632
1825 Eye Street, N.W.
Washington, DC 20006
Telephone: (202) 420-2200
Facsimile: (202) 420-2201
Deborah.Greenspan@blankrome.com
Debtor's Representative and Attorney for Dow Silicones Corporation