Case No: 23-*1936*

United States Court of Appeals for the Sixth Circuit

In re: SETTLEMENT FACILITY DOW CORNING TRUST

KOREAN CLAIMANTS,

Interested Party-Appellant,

v.

DOW SILICONES CORPORATION, et al.,

Interested Parties-Appellees,

and

FINANCE COMMITTEE,

Movant-Appellee.

On Appeal from the United District Court
for the Eastern District of Michigan

Brief of Appellant Korean Claimants

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit
Case Number: 23-1936 Case Name: In re: Settlement Facility Dow Corning Tr

Name of counsel: Yeon-Ho Kim

Pursuant to 6th Cir. R. 26.1, Appellant the Korean Claimants
Name of Party
makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

No.

CERTIFICATE OF SERVICE

I certify that on April 8, 2014 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/ Yeon-Ho Kim
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This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

TABLE OF CONTENTS

I. Statement as to Oral Argument page 5

II. Statement as to Jurisdiction

1. Whether the Order of the District Court is a Bankruptcy Matter pages 5-10

2. Whether this Order is Appealable to the Sixth Circuit pages 10-13

III. Statement of Issues pages 13-14

IV. Statement of Case pages 14-19

V. Summary of Argument pages 19-20

VI. Arguments

1. This Order shall be void pages 20-22

2. This Order has no founding under the Plan and violates §1129(b) pages 22-24

3. The Claims Filed with The Settlement Facility are Not Dischargeable pages 24-26

VII. Conclusion page 26

VIII. Appendix

TABLE OF AUTHORITIES

Cases Page

Case v. L.A. Lumber Prods. Co.,
308 U.S.106, 115, 60 S.Ct.184 L.Ed.110 (1939)………………...23

Connecticut Nat'l Bank v. Germain,
503 U.S. 249, 253, 112 S. Ct. 1146, 117 L. Ed. 2d 391 (1992)……….....13

Grogan v. Garner,
498 U.S. 279, 111 S.Ct. 654, 112 L.Ed.2d 755(1991)……………25

Huntington Nat'l Bank v. Richardson (*In re Cyberco Holdings, Inc.*),
734 F.3d 432, 437 (6th Cir. 2013)………………………………..10

In re Chess,
268 B.R. 150 (W. D. Tenn. 2001)…..……………………………22

In re Integrated Resources,
3F.3d 49, 53 (2nd Cir. 1993)………..…………………………11

In re Rideout,
86 B.R. 523 (N.D. Ohio. 1988)………..…………………….......21

In re Settlement Facility Dow Corning Trust,
656 F.3d. 668 (Sixth Cir. 2006)…..……………………………23

Mullane v. Central Hanover Bank & Trust Company,
339 U.S. 306 70 S.Ct.652, 94 L. Ed. 865 (1950).………………..21

United States v. Kras,
409 U.S. 434, 93 S.Ct. 631, 34 L.Ed.2d 626 (1973)……………..25

Other Authorities

28 U.S.C. § 158………………………………………………………..12
11 U.S.C. § 1291……………………………………………………12

11 U.S.C. § 1292……………………………………………………………12
11 U.S.C. § 1129...…………………………………………...14,20,22,23
Fed. R. Civ. P…………………………………………………………….21
11 U.S.C. § 1141...………………………………………………………..24
11 U.S.C. § 523…………………………………………………………25,26

I. STATEMENT AS TO ORAL ARGUMENT

The Korean Claimants ("the Appellants") do not want to ask this Court to hold an oral argument. However, if this Court decides that an oral argument is necessary, the Korean Claimants will follow it.

II. STATEMENT AS TO JURISDICTION

1. Whether the Order of the District Court is a Bankruptcy Matter

The Clerk of this Court issued the Order to Show Cause why the Korean Claimants' appeal should not be dismissed because the Order of the District Court that the Korean Claimants appealed from is not a final order so that the Order is not appealable to this Court. The Korean Claimants filed an answer to the Order to Show Cause. After deliberation, this Court issued the Order to Withdraw the Order to Show Cause and ordered the Korean Claimants to address the matter of this Court's jurisdiction in the merits briefing. This Court opined that it is not entirely clear that this Order of the District Court is a bankruptcy matter given that this case exists as a product of the Amended Joint Plan of Reorganization and was defined in that agreement as an independent action "under the exclusive jurisdiction of the District Court."

The Order of the District Court is Joint Stipulation and Agreed Order for Procedures for Addressing Requests to Reissue Payments and to Establish the Final Distribution Date for Such Claims.

The authority of the District Court for this Order is based upon § 8.7 the Amended Joint Plan of Reorganization. ("Notwithstanding entry of the Confirmation Order or the occurrence of the Effective Date, the Court and, as applicable, the District Court, will retain exclusive jurisdiction: § 8.7.1 to determine any Disputed Claims, § 8.7.3 to resolve controversies and disputes regarding interpretation and implementation of this Plan and the Plan Documents, § 8.7.5 to enter orders in aid of this Plan and the Plan Documents including, without limitation, appropriate orders to protect the Debtor, the Reorganized Debtor, the Released Parties, the Parties, the Tort Committee and any of the Joint Ventures and Subsidiaries from actions prohibited under this Plan and to enforce the terms of the Funding Payment Agreement.")

In addition, the authority of the District Court also derived from the Settlement Facility Agreement (called "the Settlement Facility and Fund Distribution Agreement," or "the SFA"). The Settlement Facility Agreement means the agreement between the Reorganized Debtor and the Claimants' Advisory Committee pursuant to which the Settlement Facility shall be established and

governed (§1.155 the Plan) and the Settlement Facility means the facility to be established in accordance with § 6.11.3 of the Plan[1] and the Settlement Facility Agreement pursuant to which the Claims of Settling Personal Injury Claimants will be satisfied. (§1.154 the Plan)

The purposes of the Settlement Facility are: (i) to assume liability for and to liquidate and resolve claims of Settling Personal Injury Claimants and Settling Other Claimants and to pay expenses and costs in accordance with the terms of the Plan and the Settlement Facility Agreement and the Dow Corning Settlement Program and Claims Resolution Procedures; (ii) to supervise the receipt, holding and investing of funds paid to the Trust in accordance with the terms of the Funding Payment Agreement and the Settlement Facility Agreement; (iii) to distribute funds paid to the Settlement Facility to Claimants with Allowed Claims and for administrative and other expenses in accordance with the terms of the Funding Payment Agreement, the Litigation Facility Agreement, the Depository Trust Agreement, and the Settlement Facility Agreement; and (v) to assure that the Trust qualifies as a Qualified Settlement

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[1] "Unless the Settlement Facility and the Litigation Facility shall have been earlier established, the Reorganized Debtor shall cause the Settlement Facility and the Litigation Facility to be established and shall deliver the Funding Payment Agreement (together with the initial cash payment of $985 million plus any interest as provided by the Funding Payment Agreement) and the LTCI Indemnities in full release, satisfaction and discharge of the Personal Injury Claims and LTCI Other Claims."

Fund pursuant to § 468B of the Internal Revenue Code and the Treasury Regulations. (§ 2.01 the SFA)

Therefore, the Settlement Facility was mostly to process the Claims filed with the Settlement Facility by the Claimants who had participated in the settlement program other than the litigation program and was to resolve the Claims.

The resolution of Claims under the terms of the Settlement Facility Agreement and Claims Resolution Procedures shall be supervised by the District Court. The District Court shall have the authority to act in the event of disputes or questions regarding the interpretation of Claim eligibility criteria, management of the Claims Office or the investment of funds by the Trust. The District Court shall perform all functions relating to the distribution of funds and all determinations regarding the prioritization or availability of payments. (§ 4.01 the SFA)

Since the District Court supervises the Settlement Facility, the District Court issued this Order by adhering to the proposal and the stipulation from the Finance Committee(“FC”), the Debtor’s Representative and Dow Silicones Corporation(“DCC”), and the Claimants’ Advisory Committee(“CAC”). The District Court did not disseminate a notice to the Claimants who filed their claims with the Settlement Facility before the issuance of this Order nor hold a

hearing.

This Order, Joint Stipulation and Agreed Order for Procedures for Addressing Requests to Reissue Payments and to Establish the Final Distribution Date for Such Claims, is one of the Orders that the District Court have routinely issued based upon the joint proposal and stipulation of the Finance Committee, Debtor's Representative and Dow Silicones Corporation, and the Claimants' Advisory Committee for the purposes of closing the Settlement Facility, that the Korean Claimants believe that the closing is premature.[2]

This Order was an integral part of the Orders for closing of the Settlement Facility which is an arm to resolve the claims of creditors in bankruptcy that participated in the Reorganization Plan.

Therefore, it is logical that this Order was able to be issued because of the Amended Joint Plan of Reorganization and the SFA.

On the other hand, all matters relating to the validity, interpretation and

[2] The Settlement Facility did not pay the payments for approved claims amounting over three million dollars to the Korean Claimants alleging that the address was not updated and even the updated addresses failed to be confirmed by the Settlement Facility.

operation of the Settlement Facility shall be the exclusive jurisdiction of the District Court. (§ 10.08 the SFA)

Since § 8.7 the Amended Joint Plan of Reorganization prescribes that the District Court will retain exclusive jurisdiction, all matters relating to the validity, interpretation and operation of the Settlement Facility shall be the exclusive jurisdiction of the District Court.

The District Court functioned as the appellate court of the Bankruptcy Court for confirmation of the Amended Joint Plan of Reorganization. Under the Plan and the SFA, however, the District Court excluded the Bankruptcy Court and took the exclusive jurisdiction after confirmation.

Therefore, the appeal from this Order does not exist as an independent action from a bankruptcy matter even if the District Court have exclusive jurisdiction.

2. Whether this Order is Appealable to the Sixth Circuit

Even if this case is a bankruptcy matter, a final order (judgment) only is immediately appealable as a matter of right while an interlocutory order may be appealed only with the permission of the appellate court, which is not applicable

to this case.

A final order is defined as an order of a decision that finally disposes of discrete disputes within the larger case. *Huntington Nat'l Bank v. Richardson* (*In re Cyberco Holdings, Inc*.) 734 F.3d 432, 437 (6th Cir. 2013)

In Bankruptcy, an order is considered either final or interlocutory based on the degree of action that must be taken following the entry of the order. The general standard used by most courts is that a final order must completely resolve all of the issues pertaining to a discrete claim, including issues as to the proper relief. *In re Integrated Resources*, 3F.3d 49, 53 (2nd Cir. 1993) An interlocutory order does not finally determine a cause of action and simply determines a specific matter related to the bankruptcy case and requires the court to take further action to adjudicate the matter.

In bankruptcy, however, finality is construed more liberally and pragmatically because little benefit would be achieved by deferring an appeal until the entire case is resolved. Instead, an appeal that addresses specific disputes before the bankruptcy case concludes is more efficient and expedites the resolution of the case as a whole.

This case, an appeal from the Order of the District Court, is with respect to Clause 1 in the Order. ("Checks that expired before June 3, 2019 shall not be eligible for a request for reissuance. There is no basis to find "good cause" to reissue such payments. The claimants have had a minimum of four years and in some cases more than a decade to request reissuance. Given the passage of time, there is no basis for a claim of "good cause" that would justify a replacement check and, accordingly, claims for which checks were issued before June 3, 2019 but were not cashed shall be permanently closed.")

Due to this Clause of the Order, the Korean Claimants were prohibited from requesting for reissuance of checks which expired before June 3, 2019 to the Settlement Facility. On the other hand, this Clause does not require the District Court to take a further action to adjudicate the matter that the Korean Claimants request the Settlement Facility for replacement checks.

Therefore, this Order is not interlocutory but final. Accordingly, this case that appealed from this Order is appealable to this Court.

However, 28 U.S.C.A. § 158(d) contains significant gaps in the Court of Appeals' jurisdiction over bankruptcy matters decided by the district court. Section 158(b) does not grant the Court of Appeals' jurisdiction over an appeal

from an order entered into the first instance by the District Court. Instead, the Court of Appeals can review an order only if it has jurisdiction under 11 U.S.C.A §§ 1291 and 1292. The Supreme Court held that § 1291 confers jurisdiction over an appeal in bankruptcy cases from the final decision of the District Court acting in any capacity. *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253, 112 S. Ct. 1146, 117 L. Ed. 2d 391 (1992)

As a result, it is clear that the Court of Appeals' jurisdiction over orders of the District Court in bankruptcy is identical with the Court of Appeal's appellate jurisdiction in conventional civil appeals, regardless of where the proceeding originates or the capacity in which the District Court acts.

Therefore, as far as this Order should be interpreted as a final order, whether it was issued in the bankruptcy setting or it was deemed as an independent action under the SFA, this Order is appealable to this Court.

III. STATEMENT OF ISSUES

The checks that the Korean Claimants had received from the Settlement Facility expired before June 3, 2019. Some of the Korean Claimants with the checks requested the replacement checks but did not receive any reply from the Settlement Facility. Some of the Korean Claimants with the checks did not

request the replacement checks.

This Order of the District Court specified that checks that expired before June 3, 2019 shall not be eligible for a request for reissuance.

The issue is whether this Order is effective in the absence of notice and hearing before issuance. The issue is whether this Agreed Order by the CAC, the FC, and DCC and the Debtor's Representative is effective even if the Stipulation violated 11 U.S.C. § 1129(b).

The final issue is whether the claims of the Korean Claimants were discharged from the debt of the debtor ("the Reorganized debtor, Dow Silicones Corporation") because this Order authorized the Settlement Facility to permanently close the claims that the checks expired before June 3, 2019 and whether the Korean Claimants would not have the right to request the Settlement Facility to issue the replacement checks and accordingly, the Settlement Facility is not obliged to issue the replacement checks to the Korean Claimants.

IV. STATEMENT OF CASE

Around two hundred (200) Korean Claimants received checks for payments, which expired before June 3, 2019. Some of them sent the checks back to the

Settlement Facility but did not receive replacement checks. The Settlement Facility did not answer to whether they were eligible for replacement checks. The Settlement Facility held the returned checks without doing anything for years. Some of the Korean Claimants were holding the checks that they received from the Settlement Facility, which expired before June 3, 2019.

By the way, the District Court issued this Order, Joint Stipulation and Agreed Order for Procedures for Addressing Requests to Reissue Payments and to Establish the Final Distribution Date for Such Claims, on October 4, 2023. (RE.1740 Page ID:#33754-33759)

Previously, the District Court issued a series of Orders for closing the Settlement Facility.

The District Court issued Closing Order 1 on July 25 2018 which specified that the Settlement Facility would not accept the claims after June 3, 2019 and the deadline for filing a claim was June 3, 2019.(RE.1447 Page ID:#23937-23950)

And then, the District Court issued Closing Order 2 on March 19, 2019 which specified that the Claimants would not receive any payment without updating the address and confirmation individually from the Settlement Facility. (RE.1482 Pg ID:#24084-24097)

The Settlement Facility has been imposing the address update and confirmation requirement on the Korean Claimants from 2015. The District Court actually affirmed this unfounded practice of the Settlement Facility regarding the Claimants' address by Closing Order 2.

Even after Closing Order 2, the Settlement Facility did not impose, or loosely imposed, the requirement on the US Claimants and other foreign Claimants.

The Claims Administrator indicated in the Declaration that a large portion of the 4,230 US law firms or counsels did not update their address by implying that the Claimants that they were representing did not update their address either. (RE.1711-2 Pg ID:#33277-33283)

However, the Korean Claimants updated their address by filing the Address Update/Confirmation form from 2015 (before Closing Order 2) to June 1, 2019 (after Closing Order 2). But the Settlement Facility denied the Korean Claimants' address update as a whole. Accordingly, the Korean Claimants did not receive the checks from the Settlement Facility since 2018.

Following Closing Order 2, the District Court issued Closing Order 3 on March 25, 2021 which specified that any Claim pending, whose Claimants did not update the address, shall not be processed because the Settlement Facility was not going to pay anyhow. (RE.1598 Pg ID:#28284-28298). The Korean Claimants were targeted by Closing Order 3 because the Settlement Facility did

not accept the Korean Claimants' address update.

Following Closing Order 3, the District Court issued Closing Order 4 on April 1, 2022 which specified that law firms and counsels who received a check from the Settlement Facility must submit the Settlement Facility the Survey Form filled out to state whether the check received was distributed to the Claimant that law firms and counsels represented. (RE.1640 Pg ID:#28794-28795) The Korean Claimants submitted the Survey Form.

The Finance Committee ("Movant-Appellee") filed the Motion to Show Cause against 824 law firms and counsels out of 4,230 law firms and counsels that the Settlement Facility requested to submit the Survey Form. The District Court issued the Order to Show Cause against 824 law firms and counsels which failed to respond. (RE.1699 Pg ID:#32495-32496, RE.1709 Pg ID:#33214-33218)

While the Settlement Facility was processing the Survey, the Settlement Facility revealed that most of the US law firms and counsels did not update their address and consequently, their Claimants ("their clients") did not update their address.

However, the Settlement Facility pressed the Attorney of Record ("the AOR") to update the address of the Korean Claimants and finally, refused to send the checks for the payments for the approved Claim.

Extraordinarily, the Finance Committee reduced to 5 law firms from 824 law firms and counsels and likewise, the District Court issued the Order to Show Cause against the 5 law firms and counsels only. (RE.1769 Pg ID:#41050-41051) The Finance Committee eventually filed the Motion for Dismissal of the Motion to Show Cause against the 5 law firms and the District Court granted. (RE. 1771 Pg ID:#41055-41060, RE1772 Pg ID:#41061)

The District Court gave immunity through a series of Orders to Show Cause and to Dismiss the Motions to Show Cause of the Finance Committee with respect to Closing Order 4 to the 824 law firms and counsels. Most of them are the US Claimants in effect.

To the contrary, the Settlement Facility and the District Court, the supervisory organ of the Settlement Facility, imposed the requirement on the Korean Claimants strictly, resulting that the Korean Claimants were not able to receive the payments from the Settlement Facility since the Settlement Facility denied the Address Update Form that the Korean Claimants submitted.

Following Closing Order 4, the District Court issued Closing Order 5 on June 13, 2022 which specified that the Claimants who did not update the address and receive individual confirmation from the Settlement Facility shall be permanently closed. (RE.1642 Pg ID:#28800-28804) The Korean Claimants' address update was not confirmed and accordingly, the Claims of the Korean Claimants were permanently closed. The Settlement Facility hung the list of the

Korean Claimants on the homepage after the District Court issued Closing Order 5. In fact, the Korean Claims were excluded from the Settlement Facility completely.

Finally, the District Court issued this Order on October 4, 2023 without assigning a numerical order. This Order specified that checks that expired before June 3, 2019 shall not be eligible for a request for reissuance and there is no basis to find "good cause" to reissue such payments because the claimants have had a minimum of four years and accordingly, claims for which checks were issued before June 3, 2019 but were not cashed shall be permanently closed. (RE.1740 Pg ID:#33754-33759)

V. SUMMARY OF ARGUMENT

The District Court issued a series of Orders since 2019. These Orders had no notice prior to issuance and also had no hearing for the Claimants as to whether the Claimants would be affected and how much their credits and rights under the Plan could be impaired.

The District Court received joint stipulations from the CAC, the FC, and DCC and the Debtor's Representative occasionally and then issued the Orders.

These Orders inflicted the Korean Claimants who have participated in the settlement program rather than the litigation program.

These Orders invented various hurdles to the Korean Claimants.

Had the Korean Court processed the claims caused by the defected goods manufactured in South Korea, the Korean Court would not treated the claimants of a third world country like Bangladesh discriminatorily by later making hurdles to the foreign claimants.

This Order of Joint Stipulation and Agreed Order for Procedures for Addressing Requests to Reissue Payments and to Establish the Final Distribution Date for Such Claims belongs to the same category.

This Order has no founding under the Plan and violates §1129(b).

In addition, this Order is void since it was not served and briefed and argued by the Claimants before issuance.

Furthermore, this Order is ineffective in that the claims of the Korean Claimants were discharged from the debt of the debtor with no basis under the Plan.

VI. ARGUMENTS

1. This Order Shall be Void

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

The District Court issued this Order to prohibit the Korean Claimants from receiving the replacement checks by specifying that checks that expired before June 3, 2019 shall not be eligible for a request for reissuance.

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

This Order is a result of due process violation. This Order has not been noticed to the Korean Claimants before issuance nor noticed after issuance.

"“The Supreme Court addressed the relationship between notice and the Fourteenth Amendment in *Mullane v. Central Hanover Bank & Trust Company*, 339 U.S. 306 70 S.Ct.652, 94 L. Ed. 865 (1950)… The Court went on to hold: An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The notice must be of such nature as reasonably to convey the required information, and it must afford a reasonable time for those interested to make their appearance…Accordingly, the Court must conclude that the total absence of notice to the *Hahns*

concerning the Hearing on Confirmation, and the various deadlines, renders the "Order Confirming Plan" violative of the Fifth Amendment."" (*See In re Rideout*, 86 B.R. 523 (N.D. Ohio. 1988))

This Order is void because it has not been noticed to the Korean Claimants before issuance nor noticed after issuance.

"“Under Rule(b)(4), if a judgment is void, it must be vacated. Lack of notice and sufficient service of process leading ultimately to lack of due process properly renders a judgment void. The constitutional standard regarding notice requires that it “be such as is reasonably calculated to reach interested parties."" (*See In re Chess*, 268 B.R. 150 (W. D. Tenn. 2001))

Therefore, this Order must be vacated regarding the Korean Claimants due to violation of due process.

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

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

The District Court ruled that checks that expired before June 3, 2019 shall not be eligible for a request for reissuance and there is no basis to find “good cause” to reissue such payments and, given the passage of time, there is no basis for a claim of “good cause” that would justify a replacement check and, accordingly,

claims for which checks were issued before June 3, 2019 but were not cashed shall be permanently closed. This Order was designed to prohibit the Settlement Facility from issuing replacement checks and leaving the Korean Claimants empty-handed.

The procedures of claims processing of the Settlement Facility, however, shall be in accordance with the Plan. Not only shall the Settlement Facility uphold the provisions of the Plan documents, but the Settlement Facility shall not invent a procedure to affect the rights of the Claimants or decrease the possibility of claim payment without a basis to be blamed on the Claimants. The possibility that the Claimants receive the checks from the Settlement Facility shall not be rid when the Settlement Facility exists.

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

Corning Trust, 656 F.3d. 668 at 3 (Sixth Cir. 2006)

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

This Order actually prohibits the eligible Claimants from receiving payments. There are many eligible Korean Claimants unpaid just because they did not cash the checks before one hundred eighty (180) days[3] passed by.

Therefore, This Order should be overturned to the extent that checks that expired before June 3, 2019 shall not be eligible for a request for reissuance.

3. The Claims Filed with The Settlement Facility are Not Dischargeable

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

This Order of the District Court specified that claims for which checks were issued before June 3, 2019 but were not cashed shall be permanently closed.

[3] The settlement facility allowed only 180 days for cashing out checks to the Claimants.

The meaning of "permanently closed" is not clear because the Order did not illustrate. However, the Claims filed with the Settlement Facility were discharged from the debt of the Reorganized Debtor because of this Order.

Section 1141(d) of the Bankruptcy Code discharges the debtor any debt that arose before the date of confirming the Plan. Because the debtor ("Dow Corning Corporation") was not an individual debtor but was a corporate debtor, the Korean Claimants as the creditors could not bring the exception from dischargeabiliy under Section 523(a)(2) of the Bankruptcy Code, which excludes the dischargeability of debt if the debtor committed false pretenses, a false representation, or actual fraud. The debtor committed a false representation to the Korean Claimants during the confirmation hearings held in 1999 by making commitments that the Korean Claimants would be taken care in priority and would receive compensation in full. Dow Corning Corporation wanted to defend the proposed Reorganization Plan that the Korean Claimants objected.

However, a debtor has no constitutional or "fundamental" right to a discharge in bankruptcy. (*Grogan v. Garner*, 498 U.S. 279 111 S.Ct. 654, 112 L.Ed.2d 755(1991), by referring to *United States v. Kras*, 409 U.S. 434, 445–446, 93 S.Ct. 631, 637–638, 34 L.Ed.2d 626 (1973))

"A central purpose of the Bankruptcy Code is to provide a procedure by which certain insolvent debtors can reorder their affairs, make peace with their

creditors, and enjoy a new opportunity in life with a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt. But in the same breath that we have invoked this fresh start policy, we have been careful to explain that the Act limits the opportunity for a completely unencumbered new beginning to the honest but unfortunate debtor." (*Id.* at 5)

Therefore, even if Section 523(a)(2) in the Bankruptcy Code is inapplicable to the debtor ("Dow Corning Corporation"), the dischargeability of the debt against the Korean Claimants under the Plan is not fundamental or absolute.

In addition, there is no Clause in the Plan regarding specifying checks for payment to the Claimant, which were issued before June 3, 2019 but not cashed out. The Plan did not prescribe that claims for which checks were issued before June 3, 2019 but were not cashed shall be permanently closed. The meaning of "permanently closed" is a discharge from the debt owed to the Korean Claimants. Therefore, this Order abused a discretion interpreting the Plan and should be overturned.

VII. CONCLUSION

For the foregoing reasons, the Korean Claimants request this Court to Overturn the District Court's Joint Stipulation and Agreed Order for Procedures for Addressing Requests to Reissue Payments and to Establish the Final Distribution Dated for Such Claims and Remand it to the District Court to allow

the affected Korean Claimants to request the Settlement Facility for the replacement checks.

Date: April 8, 2024

Respectfully submitted,

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/s/ **Yeon-Ho Kim**

Attorney for **Korean Claimants**

Dated: **April 8, 2024**

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I hereby certify that on April 8, 2024, 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: April 8, 2024

/s/ Yeon-Ho Kim

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ADDENDUM DESIGNATING RELEVANT DOCUMENTS IN THE DISTRICT COURT DOCKET (2:00-mc-00005)

RE.1740 Joint Stipulation and Agreed Order for Procedures for Addressing Requests to Reissue Payments and Establish the Final Distribution Date for Such Claims

Page ID:#33754-3375

RE.1447 Closing Order 1 for Final June 3, 2109 Claim Deadline (Establishing Final Cure Deadlines, Revised Claim Review Procedures, and Appeal Deadlines)

Page ID:#23937-23950

RE.1482 Closing Order 2 (Regarding Additional Procedures For Incomplete and Late Claims; Procedures 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 Withdrawls)

Page ID:#24084-24097

RE.1598 Closing Order 3 Notice That Certain Claims Will Be Permanently Barred and Denied Payment Unless a "Confirmed Current Address" Is Provided to the SF-DCT on or before June 30, 2021

This Order Applies Only to Certain Claims Submitted On or By June 3, 2019 that Have Not Been Reviewed Because the Claimant's Address Is Not Current and the Claimant Cannot Be Located. If the SF-DCT Has Already Issued a Notice of Status Letter Or Approved the Claim For Payment, This Oder Does Not Apply

Page ID:#28284-28298

RE.1640 Closing Order 4 Requiring Completion of Court-Directed Audit Survey And Return of Funds Pursuant to Closing Order 2

Page ID:#28794-28795

RE.1642 Closing Order 5
Notice That Certain Claims without A Confirmed Current Address Shall Be Closed And Establishing Protocols For Addressing Payments For Claimants In Bankruptcy

Page ID:#28800-28804

RE.1699 Order to Show Cause Page ID:#32495-32496

RE.1709 Order Granting Motion for Reconsideration (No.1703)

Page ID:#33214-33218

RE.1711-2 Declaration of Kimberly Smith-Mair In Support of Reply In Support of Motion For Order To Show Cause With Respect To Law Firms And Counsel , Who Have Failed to Respond to the Audit Survey Required By Closing Order 4

Page ID:#33277-33283

RE.1769 Order to Show Cause

Page ID:#41050-41051

RE.1771 Joint Motion for Dismissal of Order To Show Cause

Page ID:#41055-41059

RE.1772 Order Dismissing Order to Show Cause

Page ID:#41061