Case No: *25-1004*

United States Court of Appeals for the Sixth Circuit

In re: SETTLEMENT DOW CORNING TRUST

KOREAN CLAIMANTS

Interested Parties - Appellant

v.

DOW SILICONES CORPORATION;DEBTOR'S

REPRESENTATIVES;CLAIMANTS' ADVIOSORY COMMITTEE

Interested Parties - Appellees

FINNACE COMMITTEE

Movant - Appellee

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

Reply Brief of Appellant Korean Claimants

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I. Introduction

The Korean Claimants ("the Appellant") were served with the Appellees' Brief on February 18, 2025. This court ordered that the *optional* Reply Brief be filed no later than 21 days from the Appellee's Brief.

The Korean Claimants want to rebut the arguments in the Appellees' Brief that "Allowed Claims" are defined in the Plan and "Allowed Claims" means payment-approved claims only.

The Korean Claimants want to rebut the argument in the Appellee's Brief that all Allowed Korean Claims were "Otherwise Finally Resolved". The Appellees argue that among US 6,064,350 dollars in the Korean Claimants' Cross Motion, US 489,500 dollars are 109 Korean Claims that did not cure the deficiency of documents for proving the Claims. On the contrary, US 489,500 dollars are claims-approved payments in 2015 to 2016. Therefore, the claims related to US 489,500 dollars were not paid or otherwise finally resolved even though the Appellees assume that the other category of US 6,064,350 dollars was finally resolved.

The Korean Claimants also want to rebut the argument of the Appellees that

the Korean Claimants attacked the Claims Administrator and, in turn, the District Court. The Korean Claimants knew that the Appellees had a habit of lying. The Appellees have always succeeded in persuading the District Court to issue various Orders in favor of them and heavily disfavoring the Korean Claimants on the basis of lies and distortions that the Claims Administrator presented to the District Court.

The Appellees argue that the District Court issued Closing Order 2 and Closing Order 5 respectively, the Closing Orders included the address update and confirmation requirement, this Court affirmed Closing Order 2 and the appeal of the Korean Claimants regarding Closing Order 5 was untimely, and therefore Cross Motion of the Korean Claimants asking for payments in default is repetitive and baseless.

The Korean Claimants want to emphasize that the Claims Administrator applied the address update and confirmation requirement discriminatorily against the Korean Claims. In this regard, the Korean claimants filed Motion for Order to Audit the Neutrality and Independence of the Claims Administrator with the District Court.(RE1852 Page ID:#43402-43406) If the District Court accepts the position of the Korean Claimants regarding audit, the Korean Claimants are willing to withdraw any motion, appeal, or objection with respect

to the Settlement Facility and simply walk away.

II. Definition of "Allowed Claims"

The Appellees argue that while the Korean Claimants contend that term Allowed is ambiguous because it could have two meanings, Allowed is defined in the Plan with respect to the Product Liability Claims (*i.e.*, the claims of the Korean Claimants) as a claim that "has been *approved for payment* pursuant to the Settlement Facility or the Litigation Facility Agreement". Plan at Section 1.3

This argument is baseless.

First, the issue here is to interpret Section 2.01(c) of the FPA regarding the conditions for termination of funding and Section 10.3 of the SPA regarding the conditions for termination of the Settlement Facility. This issue has nothing to do with the Plan. The Plan is a separate agreement from the FPA and the SFA. The definition Clause in the Plan shall not be borrowed for interpretation of the FPA and the SFA. In addition, the phrase, "has been *approved for payment*", does not incorporate the address update and confirmation requirement when the Plan was signed by the Parties in 2004 and was confirmed by this Court. The Address update and confirmation requirement was imposed by Closing Order 2

when it was issued by the District Court on March 19, 2019.

Second, Section 1.3 of the Plan defines,

> "Allowed" means, with respect to a Claim, all or a portion thereof (a) that has been agreed to by the Claimant and the Debtor; (b) that has been allowed by Final Order; (c) that has been estimated for purposes of allowance pursuant to section 502(c) of the Bankruptcy Code; (d) that either (i) is listed in the schedules, other than a Claim that is listed as "disputed," "contingent," or "unliquidated," or (ii) the proof of which has been timely filed pursuant to the Bar Order or filed pursuant to any other Final Order, or otherwise deemed timely filed under applicable law, and as to which either (x) no objection to its allowance has been filed within the periods of limitation fixed by this Plan or by any Final Order, or (y) any objection to its allowance has been settled or withdrawn or has been decided by a Final Order, or (z) *with respect to Products Liability Claims treated therein, has been approved for payment pursuant to the Settlement Facility Agreement or the Litigation Facility Agreement*, or (e) that is expressly allowed in this Plan.

However, Section 1.3 of the Plan, even if the Plan should be considered as a part of the FPA and the SFA for the purpose of interpretation of Section 2.01(c) of FPA and Section 10.3 of the SFA, only refers to "Allowed" that has been approved for payment *pursuant to the SFA*. Section 1.3 of the Plan does not refer to "Allowed" that has been approved for payment *pursuant to the Order of the District Court* such as Closing Order 2 and Closing Order 5.

The Appellees erroneously take it for granted that the Order of the District Court should be a part of the FPA whatever the Order of the District Court

means. However, Closing Order 2 was issued on March 19, 2019, fifteen years later from the Plan and the FPA. The Appellees apply the Order of the District (Closing Order 2 and Closing Order 5 that deny the payments to the Korean Claimants on the basis of the address update and confirmation requirement) retroactively to interpret Section 2.01(c) of the FPA and Section 10.3 of the SFA. This application is baseless.

Third, the Appellees argue, to evade that Section 1.3 of the Plan did not refer to the Order of the District Court to include a claim that has been approved for payment as "Allowed", that the guidelines issued by the Settlement Facility stated unequivocally that the claimants have ongoing obligation to inform the Settlement Facility of any change of address. However, the Claimant Information Guide that the Appellees use for this argument cannot be a basis to impose the claimants an obligation to update their addresses. The Claimant Information Guide is simply a guide to *advise* the claimants to update their contact information if the Settlement Facility needs to contact a claimant when something necessary for the Settlement Facility to contact happens during processing a claims from 2004. If the claimants had had an obligation to update their addresses pursuant to the Claimant Information Guide, the District Court would not have issued Closing Order 2 on March 19, 2019, fifteen years later,

that the claimants are required to update their addresses.[1]

Finally, the Appellees argue that there is a good reason for the address update and confirmation requirement: it is important to assure that a claimant can be located before sending payments. To the extent that the payments are mailed to unrepresented claimants, the claim payments could easily be diverted and cashed to by ineligible persons if they are sent to invalid addresses. To the extent that payment are mailed to law firms for distribution, and the claimant cannot be located, the Settlement Facility incurs significant cost if payments have to be "stopped" and reissued and risk that payments could still be cashed by ineligible persons.(*See* page 36 of the Appellees' Brief)

However, this argument is ridiculous. All the Korean Claimants are represented claimants. Therefore, the representing lawyer is able to cash checks for the claimants, whether the claimants can be located or not. There is no unnecessary cost to incur by assuming that payments have to be "stopped" and reissued. Furthermore, there is no risk that payments could still be cashed by

[1] The Appellees rely on declaration of Ellen Bearicks. She used to be a Manager of the Settlement Facility. However, she was not reliable. She has been hostile and discriminatory against the Korean claimants. She was found an employee of Dow Silicones Corporation disguising a Manager of the Settlement Facility by some knowledgeable Korean claimants who have researched her background.

ineligible persons.[2]

The Settlement Facility under influence of Dow Silicones Corporation manipulated the address update and confirmation requirement not to pay for approved Claims to the Korean claimants. The Korean Claimants are suspicious that even the District Court colluded with that scheme although the Judge has been aware of it through periodic meetings with the Claims Administrator (four times a year).

The Appellees further argue that some of the Claims of the Korean Claimants were closed without payment because the Claimants failed to provide the address information required by the Closing Orders.

This argument is extremely absurd. The Korean Claimants filed and submitted their address information when they submitted their claims from 2006 to 2019 by attaching the Government-Issued Resident Registry that includes a claimant's current address. In addition, the Korean Claimants filed and

[2] The representing lawyer is eligible for cashing checks (payments) because checks are issued by joint name of the claimants and the representing lawyer. The Settlement Facility prohibits the representing lawyer from withdrawing the representation. The District Court ordered in Closing Order 2 that any representing lawyer is not permitted to withdraw from representation for claimant.

submitted their *updated* address information on June 1, 2019 pursuant to the letters of the Settlement Facility. The number of the claimants that submitted the *updated* address information is 676 claimants. The Settlement Facility that determined not to pay to the Korean claimants anymore simply denied the submission of the address information required by the Closing Orders.

Conclusively, the argument of the Appellees that the Plan requirements for termination have been met because "Allowed Claims" have been paid and "All Claims" have been otherwise finally resolved has no merit and no basis.

III. Whether *All* Korean Claims were "Otherwise Finally Resolved"

The Appellees argue that a claim that has not been Allowed and paid is "finally resolved" under the administrative settlement program once it completes the claims review process including the payment requirements as applicable, the prohibition on appeals from decisions of the Settlement Facility means that under the terms of the Plan, the determination of the Settlement Facility is the final resolution of the claim and the term "finally resolved" as used in the FPA must be interpreted in the context of this prohibition, and the claims of the Korean Claimants have been finally resolved within the meaning of the FPA and therefore do not pose any impediment to termination.

To support the above argument, the Appellees analyzed the amounts in the Cross Motion of the Korean Claimants.(*See* pages 45-47 of the Appellees' Brief) The Appellees argue that the Korean Claimants assert that $6,064,350 is owed to them, of that amount, nearly half ($2,916,000) is attributed by the Korean Claimants to approximated 400 "claims" that were not filed by the Plan mandated deadline, a significant portion of the total amount claimed consists of claims that were closed pursuant to Closing Orders 2, 3 and 5 because they were claims that did not meet the verified address requirement, and *the remainder of the dollar amount allegedly owed is attributable to approximately 109 disease claims that were found deficient but were never cured*. The Appellees conclusively argue that the Korean Claimants simply failed to submit necessary documents and information.

However, this argument of the Appellees that all Korean Claims were finally resolved has a defect by itself.

Of $6,064,350 that is claimed for payment in the Cross Motion, $489,500 has nothing to do with 109 disease claims that were found deficient but were never cured as the Appellees alleged. This 109 disease claims were separately determined by this Court in Case No. 24-1653 and Case No. 23-1936.

This $489,500 claims were approved claims in 2015 to 2016. The Settlement Facility simply did not send checks to the approved-claimants. It was by an administrative error of the Settlement Facility. The Settlement Facility did not raise an issue about it. The Settlement Facility even submitted the District Court the declaration of the Claims Administrator in 2019 that the Korean Claims have been fully paid (*not knowing that this $489,500 claims were not paid*) and there was no claim left unpaid. However, it was a mistake and an error by the Settlement Facility.

Afterward, the Settlement Facility decided that the Korean Claimants could not be paid the Premium Payments and the Base Payments *for the claims filed on June 1, 2019*. So the $489,500 claims in 2015 and 2016 have nothing to do with the 109 disease claims that were found deficient but were never cured.

Therefore, all Korean Claims were not "otherwise finally resolved". The argument of the Appellees that all Claims of the Korean Claimants have been finally resolved within the meaning of the FPA and therefore do not pose any impediment to termination has no merit and no basis.

IV. Whether the Claims Administrator Is Neutral and Independent and the Claims Administrator and the District Court Are Free From Criticism

The Appellees argue that the Claims Administrator provided factual testimony in a declaration, the Claims Administrator did not purport to interpret the terms of the Plan, the various disputes, emails, arguments, assertions and late submissions of the Korean Claimants do not constitute "claims", even if they were claims, such submissions cannot be constituted "*timely*" since they admittedly were submitted long after the June 3, 2019 filing deadline, the Funding Periods are defined in the FPA by specific time period, and it is inappropriate for the Korean Claimants to continue to disparage the Claims Administrator, and in turn, the District Court because there is no basis for these allegations and in fact this Court has consistently found that there has been no discrimination against the Korean Claimants.

The point that the Appellees make by the above arguments is that the Claims Administrator is neutral and independent because she was appointed by the District Court and is defined as such in the FPA and thus her declaration must be factual testimony that this Court should believe as true.

If the Appellees are so confident about factual testimony of the Claims Administrator, the Appellees are encouraged to hand over the materials of Korean Claimants' address update and the Claims Administrator's confirmation held in the Settlement Facility. If the Korean Claimants receive those materials,

the Korean Claimants will walk away. To hide those materials from the Korean Claimants in interest is the showing that the Claims Administrator is not neutral and independent in acting as the Claims Administrator.

In this regard, the Korean claimants filed Motion for Order to Audit the Neutrality and Independence of the Claims Administrator with the District Court.(RE1852 Page ID:#43402-43406) If the District Court (or this Court) accepts the position of the Korean Claimants regarding audit, the Korean claimants are willing to withdraw any motion, appeal, or objection with respect to the Settlement Facility and simply walk away permanently. In addition, the Korean Claimants are willing to bear the cost of audit.

The Appellees argue that this Court affirmed Closing Order 2 and decided the Korean Claimants' appeal from Closing Order 5 untimely. The Appellees further argue that this Court ruled, "*Nor does the record support the Korean Claimants' allegations of discrimination. The Address verification procedures applied equally to all claimants….In the end, the Korean Claimants received the same treatment as any other similarly positioned claimant*."

Because the Claims Administrator is discriminatory and biased against the Korean Claimants, the Claims Administrator's testimony regarding the Korean

Claimants is not reliable. However, this Court did not have any other refutable evidence for conclusion as above and therefore the conclusion as above is not definitive.

Since the Claims Administrator is not neutral and independent, she deserves being disparaged by the Korean Claimants. She did not even act to preclude a suspicion from the Korean Claimants although the AOR requested many times for her explanation why *all* 676 claimants' address update that has been submitted on June 1, 2019 was denied by her. She just acted like an employee that must listen to an instruction/order from somewhere that is definitely Dow Silicones Corporation.

Even though the Claims Administrator is not neutral and independent, she continued corresponding with the AOR for the Korean Claimants even after the various deadlines for filing under Closing Orders, pretending that she could do a favor. She assumed that her actions would be changed by decisions of this Court and the District Court where the Korean Claimants' appeal and motion were pending. She could not act for herself even though the Plan Documents provided authority to oversee the Settlement Facility and discretion as to Claims. It is strong evidence that the Claims Administrator was influenced although the Appellees argue that she is neutral and independent.

In turn, the District Court had a meeting with the members of the Finance Committee including the Claims Administrator periodically, meaning four times a year. Although the Korean Claimants filed many motions with the District Court, the Judge pretended that she was neutral and independent while she just met the members of the Finance Committee (*Appellee*) and discussed the motions of the Korean Claimants before hearing. They met in the chamber before hearing. The Judge stepped out the chamber where the AOR for the Korean Claimants was waiting for hearing in the courtroom. The Claims Administrator and other members of the Finance Committee walked around to the courtroom, pretending that nothing happened and they waited for the Court's decision. It happened whenever hearing was held for the Korean Claimants' motion. This must be a kangroo court. It is not a surprise that this Court declares "mistrial".

The AOR for the Korean Claimants trusted the District Court but the Court betrayed the trust of the Korean Claimants.

The Korean Claimants requested the District Court through motions to verify whether the dispositions of the Claims Administrator regarding the Korean Claimants' address update and confirmation requirement were acceptable from the eyes of the Court but the Court simply ignored the request for information

whether the Korean Claimants' address update submitted were treated equally and fairly. The District Court denied the Korean Claimants' motions by ruling that the Plan does not allow a claimant to either appeal to the Court or receive an opinion from the Court. The Korean Claimants even requested the result of each 676 claimants' address update that the AOR submitted on June 1, 2019. The District Court flatly denied it.

The Claims Administrator was not neutral and independent. It is a violation of the Plan Documents. The District Court is not free from criticism as long as the Korean Claims are concerned. The Judge has been biased against the Korean Claimants. The District Court abandoned its responsibility for observing the Plan Documents.

V. Conclusion

For the foregoing reasons, the arguments of the Appellees have no merit and no basis and therefore the Korean Claimants request this Court to Overturn the District Court's Order Granting the Motion to Terminate Funding pursuant to Section 2.03(c) of the Fund Payment Agreement and to Terminate the Settlement Facility pursuant to Section 10.3 of the Settlement Facility and Fund Distribution Agreement and Denying the Korean Claimants' Cross Motion and to Grant the Korean Claimants' Cross Motion for Order to Make Payments in

Default Amounting US6,064,350 dollars to the Korean Claimants.

Date: April 1, 2025

Respectfully submitted,

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APPENDIX

RE1852	Motion for Order to Audit the Neutrality and Independence of the Claims Administrator	Page ID:#43402-43406

CERTIFICATE OF COMPLIANCE

I hereby certify that this reply brief complies with the type-volume limitations of Fed.R.App.P.32(a)(7)(B). According to Microsoft Word which was used for typing this reply brief, this brief's number is 3,232 words.

Date: April 1, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on April 1, 2025, 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 1, 2025

/s/ Yeon-Ho Kim

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