

IN THE SUPREME COURT OF THE UNITED STATES

IN RE: DOW CORNING CORPORATION,
Debtor.

KOREAN CLAIMANTS,
Applicants,

v.

DOW SILICONES CORPORATION,
Respondent.

Application to the Honorable Brett M. Kavanaugh,
Associate Justice of the Supreme Court of the United States,
Circuit Justice for the Sixth Circuit

**EMERGENCY APPLICATION FOR INJUNCTION AND STAY
PENDING PETITION FOR WRIT OF CERTIORARI**

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INTRODUCTION

Applicants, Korean nationals whose claims under the Dow Corning/Dow Silicones mass tort settlement were formally approved yet remain unpaid in whole or in part, respectfully apply to this Court for an emergency injunction and stay pursuant to 28 U.S.C. § 1651 and Supreme Court Rule 23, enjoining the issuance of the Sixth Circuit's mandate and staying the implementation of the district court's order terminating Applicants' settlement positions, pending the filing and disposition of a petition for writ of certiorari.

This application is an emergency. The Sixth Circuit denied Applicants' petition for en banc rehearing on February 17, 2026. The Sixth Circuit then denied Applicants' emergency motion to stay issuance of the mandate on **February 19, 2026**. The Sixth Circuit's mandate may issue as early as February 24, 2026 — within seven days. Once the mandate issues, the district court will implement the termination of settlement positions held by over 2,600 Korean claimants with approved but unpaid claims. That termination will be immediate, permanent, and irreversible. No subsequent court order — including a favorable ruling from this Court — can reinstate terminated settlement positions. The entire purpose of Applicants' forthcoming petition for certiorari will be rendered moot within days absent emergency relief from this Court.

The equities are compelling and the legal questions are substantial. Applicants' cert petition will ask this Court to decide whether a claims administrator may permanently bar payment to thousands of approved international claimants through a procedurally inaccessible address confirmation requirement, and whether a supervising district court may authorize the permanent termination of those claimants' settlement positions without first adjudicating the validity of the payment denials. These questions are of national importance and deserve this Court's consideration — but only if the status quo is preserved long enough for this Court to act.

JURISDICTION

This Court has authority to grant the requested relief under 28 U.S.C. § 1651 (All Writs Act) and Supreme Court Rule 23. A Circuit Justice has authority to issue a stay or injunction pending a petition for certiorari where the applicant demonstrates a fair prospect of certiorari being granted, a reasonable probability of reversal, and irreparable harm.

Hollingsworth v. Perry, 558 U.S. 183, 190 (2010). This Court's jurisdiction over the forthcoming cert petition rests on 28 U.S.C. § 1254(1).

BACKGROUND

A. The Dow Corning Settlement

The Dow Corning Corporation mass tort settlement was established to compensate claimants harmed by silicone breast implants. The settlement facility operates under the supervisory jurisdiction of the United States District Court for the Eastern District of Michigan (Case No. 2:00-mc-00005). A court-appointed claims administrator processes and approves claims.

B. Approved Claims, Zero Payments

Over 2,600 Korean nationals filed claims under the settlement. The breakdown of unpaid claims reveals the systematic and total nature of the failure: approximately 1,400 claimants whose claims were approved received their basic payment but were denied the premium payment to which they were entitled; approximately 400 claimants whose claims were approved received neither basic payment nor premium payment; and the remaining claimants' claims were never processed at all, despite having been submitted. In no case did a Korean claimant receive full payment of their approved entitlement. The claims administrator formally approved the claims, yet the settlement process failed every single Korean claimant at one stage or another.

The reasons for non-payment or partial payment vary by claimant category, but the address confirmation requirement operated as a central and systematic barrier for international claimants. Korean claimants who submitted address update applications in good faith compliance had those applications received but never confirmed by the administrator, resulting in continued denial of payment. The result is total failure across all categories: approximately 1,400 claimants were denied premium payment; approximately 400 claimants were denied both basic and premium payment; and the remainder had their claims left entirely unprocessed. Not one Korean claimant received full payment of their approved entitlement.

C. Proceedings Below

Applicants filed a motion in the district court for an audit of the claims administrator to examine this systematic failure. The district court denied the motion. The Sixth Circuit affirmed (Case No. 25-1373).

Respondent Dow Silicones Corporation then filed a motion to terminate all settlement positions assigned to the settlement facility. The district court granted that motion — permanently extinguishing the approved but unpaid claims of over 2,600 Korean claimants — without any judicial examination of whether the address confirmation denials were procedurally valid. The Sixth Circuit affirmed (Case No. 25-1616).

The Sixth Circuit denied Applicants' petition for en banc rehearing on February 17, 2026. On February 19, 2026, the Sixth Circuit denied Applicants' emergency motion to stay issuance of the mandate in a one-sentence order entered by Chief Judge Sutton, Judge Readler, and Judge Bloomekatz, with no written explanation. *See* Appendix A&B. The mandate may issue as early as February 24, 2026.

D. Inadequate Notice to Korean Claimants

Korean claimants residing in the Republic of Korea were not provided constitutionally adequate notice of Dow Silicones' motion to terminate their settlement positions. Notice was given in English only, through domestic channels not reasonably accessible to foreign nationals, and without translation or international dissemination. Korean claimants had no meaningful opportunity to understand that their approved settlement positions were subject to permanent termination, or to respond effectively. This failure of notice constitutes an independent due process violation and is an additional basis for emergency relief.

STANDARD FOR EMERGENCY RELIEF

To obtain an emergency stay or injunction from a Circuit Justice, an applicant must show: (1) a reasonable probability that this Court will grant certiorari; (2) a fair prospect that the Court will reverse the decision below; (3) a likelihood of irreparable harm absent the stay; and (4) that the balance of equities favors the applicant. *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010); *Conkright v. Frommert*, 556 U.S. 1401 (2009) (Ginsburg, J., in chambers). All four factors are clearly satisfied here.

ARGUMENT

I. THERE IS A REASONABLE PROBABILITY THAT THIS COURT WILL GRANT CERTIORARI.

This case presents at least three substantial questions of federal law that this Court has not resolved and that require resolution as the frequency of international claimants in U.S. class action settlements continues to grow.

First: may a claims administrator in a court-supervised settlement impose a procedural requirement — address confirmation — that functions as an absolute barrier to payment for all international claimants whose claims have already been approved? The answer to this question determines the integrity of the settlement administration process for the growing number of non-U.S. residents who participate in American class action settlements.

Second: does a district court exercising supervisory jurisdiction over a class action settlement fulfill its oversight obligations when it authorizes the termination of thousands of approved, unpaid claims without any judicial examination of whether the payment denials were valid? This question goes to the core of what supervisory jurisdiction means in the class action settlement context.

Third: does the permanent termination of settlement positions held by approved international claimants — based on payment denials resulting from a procedurally inaccessible administrative requirement — violate those claimants' due process rights? The constitutional dimension of this question alone presents a substantial reason for certiorari.

II. THERE IS A FAIR PROSPECT THAT THIS COURT WILL REVERSE.

The decision below is difficult to reconcile with this Court's precedents on the obligations of courts supervising class action settlements and the due process rights of settlement claimants. This Court has made clear that district courts bear ongoing supervisory responsibility for ensuring that approved class action settlements are administered in accordance with their terms and with constitutional requirements. *See Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997); *Devlin v. Scardelletti*, 536 U.S. 1 (2002).

The district court here authorized the permanent termination of over 2,600 approved claims without ever examining whether the administrative mechanism that prevented payment — the address confirmation requirement — was itself valid and properly applied. This is not oversight; it is the absence of oversight. A fair prospect exists that this Court would find such an approach inconsistent with the supervisory obligations that attach when a federal court places its imprimatur on a class action settlement.

Additionally, the application of the address confirmation requirement to Korean claimants in a manner that made compliance effectively impossible for all of them — resulting in universal payment denial despite universal claim approval — raises serious due process concerns that this Court's precedents in *Mullane* and its progeny would likely require to be examined before settlement positions are permanently terminated.

III. IRREPARABLE HARM IS CERTAIN AND IMMINENT ABSENT A STAY.

The irreparable harm here is not speculative — it is mathematically certain and days away. When the Sixth Circuit's mandate issues, the district court will implement the termination of settlement positions. That termination is permanent. There is no mechanism within the settlement to reinstate terminated positions. There is no alternative remedy. If this Court grants certiorari and reverses after the positions are terminated, the reversal will be hollow — the claimants' approved entitlements will be gone and there will be nothing to restore.

Over 2,600 individuals who were formally told by the claims administrator that their claims were approved — that they were entitled to payment — face the permanent extinguishment of those approved entitlements within days. These are not hypothetical future claimants; these are individuals with existing, approved claims. The harm to them is immediate, certain, and irreversible.

By contrast, the harm to Respondent from a stay is minimal. Dow Silicones is a large corporation. A temporary stay of the mandate while this Court considers Applicants' cert petition imposes no irreversible harm on Respondent. The settlement funds designated for Korean claimants are not being disbursed to any other party during this period. Respondent's interest in finalizing the termination of positions does not outweigh the certainty of irreparable harm to over 2,600 approved claimants.

IV. THE BALANCE OF EQUITIES AND THE PUBLIC INTEREST FAVOR A STAY.

The balance of equities is heavily weighted in Applicants' favor. On one side: the permanent loss of approved legal entitlements by over 2,600 Korean nationals. On the other: a temporary delay in finalizing a termination order while this Court considers a petition presenting substantial legal questions. There is no meaningful comparison.

The public interest strongly supports a stay. The integrity of court-supervised class action settlements depends upon confidence that approved claims will be paid and that the administrative process will be fairly and properly applied. When a claims administrator systematically fails to pay over 2,600 approved international claims through a procedurally inaccessible mechanism, and when the supervising court authorizes permanent termination of those claims without any examination of that failure, the public interest — in the integrity of the settlement process and in the fair treatment of international claimants in U.S. courts — demands that this Court have the opportunity to consider the matter before the harm becomes permanent.

**V. KOREAN CLAIMANTS WERE DENIED ADEQUATE NOTICE OF THE
TERMINATION PROCEEDINGS, PROVIDING AN INDEPENDENT BASIS FOR
EMERGENCY RELIEF.**

An independent and compelling basis for emergency relief is the failure to provide Korean claimants with constitutionally adequate notice of the termination proceedings. The Due Process Clause requires notice reasonably calculated to apprise interested parties of the pendency of the action and afford them an opportunity to be heard. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). That standard was not met here.

Notice of the termination motion was provided only in English, through domestic channels not reasonably accessible to foreign nationals residing in Korea. It was not translated into Korean. It was not disseminated through Korean media or any channel directed at Korean claimants. It did not account for the practical reality that Korean claimants living in Korea could not be expected to monitor U.S. legal proceedings in English through channels unavailable to them.

The result is that over 2,600 Korean nationals whose claims were approved now face permanent termination of those approved entitlements without ever having received meaningful notice that such a proceeding was underway, or a genuine opportunity to be heard. The permanent deprivation of property interests without adequate notice is a textbook due process violation. This Court should not permit the mandate to issue and that deprivation to become permanent while this constitutional question awaits resolution.

RELIEF REQUESTED

Applicants respectfully request that this Court:

1. Immediately stay the issuance of the Sixth Circuit's mandate in Case Nos. 25-1373 and 25-1616 pending the filing and disposition of Applicants' petition for writ of certiorari;
2. Enjoin the implementation of the district court's order terminating Applicants' settlement positions pending the filing and disposition of Applicants' petition for writ of certiorari; and
3. Grant such other and further relief as this Court deems just and proper.

Given the seven-day mandate timeline, Applicants respectfully request that this Court act on this application on an emergency basis.

CONCLUSION

For the foregoing reasons, Applicants respectfully request that this Court grant the emergency application for injunction and stay pending certiorari. The stakes could not be higher for Applicants: absent relief, the approved claims of over 2,600 Korean nationals will be permanently extinguished within days, and no subsequent court order can restore them. This Court should preserve the status quo and allow Applicants the opportunity to seek certiorari review of the substantial legal questions this case presents.

Respectfully submitted,



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