
**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION**

IN RE: §
§
DOW CORNING CORPORATION § **CASE NO. 95-20512**
§ **(CHAPTER 11)**
DEBTOR §
§

AMENDED JOINT PLAN OF REORGANIZATION

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upon or relating in any way to a Non-Dow Corning Implant, or (d) the failure to warn, disclose or provide information concerning, the alleged fraud or misrepresentation regarding, or the failure to take remedial action with respect to, any raw material comprising all or part of a Non-Dow Corning Implant, including, without limitation, (i) those for death or personal injuries, including emotional distress, (ii) those of any Person against whom any claim, demand, proceeding, suit or cause of action based upon or in any manner arising from or relating to any of the matters enumerated or described in (a), (b), (c) and/or (d) above has been, is or may be asserted (including, without limitation, rights of indemnity, whether contractual or otherwise, contribution Claims and subrogation Claims), (iii) those for damages, including punitive damages, (iv) those for attorneys' fees and other expenses, fees or costs, (v) those for any possible economic loss or loss of consortium, (vi) those for damage to reputation, and (vii) those for any equitable remedy, but excluding (x) Claims brought by the Debtor, its Joint Ventures or Subsidiaries, (y) any such Claims which were the subject of prepetition final judgment or executed settlement agreements, which Claims shall be treated as Unsecured Claims in this Plan and (z) any Claims based on silicone injections.

1.147 “**Raw Material Implant Personal Injury Claim**” means a Raw Material Implant Claim asserted by a Personal Injury Claimant.

1.148 “**Released Claim**” means any Claim waived or released in accordance with section 8.3 of this Plan.

1.149 “**Released Parties**” is defined in section 8.3 of this Plan.

1.150 “**Reorganized Debtor**” or “**Reorganized Dow Corning**” means DCC on and after the Effective Date, which entity shall be, and the Confirmation Order shall so provide, the successor to DCC.

1.151 “**Representatives**” means the current and former officers, directors, agents, attorneys and employees of an Entity.

the Closing Date, and the Allowed Secured Claims shall thereby be reinstated, without premium or penalty. Alternatively, if an Allowed Secured Claim consists of an amount subject to setoff under section 553 of the Bankruptcy Code, the holders of such Allowed Secured Claims shall effect such setoffs on the Effective Date or, if later, the Allowance Date.

6.11.2 **Satisfaction of Allowed Unsecured Claims.** The Reorganized Debtor shall cause the distribution of cash, with respect to Allowed Claims in Class 3 and Allowed Claims in Class 4 (and Class 4A, if applicable), to be made as provided in sections 4.3, 5.1 and 5.2 of this Plan.

6.11.3 **Satisfaction of Personal Injury Claims (Other than Claims in Classes 6A, 6B, 6C and 6D) and LTCI Other Claims.** 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.

6.11.4 **Satisfaction of Personal Injury Claims in Class 6A.** The Reorganized Debtor shall execute and deliver the Quebec Breast Implant Settlement Agreement (together with any payment[s] then due thereunder to the Quebec Class Action Fund).

6.11.5 **Satisfaction of Personal Injury Claims in Class 6B.** The Reorganized Debtor shall execute and deliver the Ontario Breast Implant Settlement Agreement (together with any payment[s] then due thereunder to the Ontario Class Action Fund).

necessary for funding obligations to either the Settlement Facility or the Litigation Facility, except as otherwise provided in settlements approved by prior order of the Court or approved by the Court in connection with confirmation of this Plan. Prosecution and settlement of the Debtor Actions and the retained interest in any Insurance Debtor Actions shall be the exclusive responsibility of the Reorganized Debtor. The Reorganized Debtor shall have sole and absolute discretion over whether to prosecute or settle such causes of action.

8.3 **Release.** Except as otherwise expressly provided in this Plan and in this section 8.3, in consideration of (a) the promises and obligations of the Debtor-Affiliated Parties under the Plan, including the establishment and funding of the Settlement Facility, the Litigation Facility, the Quebec Class Action Fund, the Ontario Class Action Fund, the B.C. Class Action Fund and the Australia Breast Implant Optional Settlement Fund, (b) the undertakings of the Shareholders pursuant to section 6.16 of the Plan, (c) the undertakings of the Settling Insurers pursuant to their respective settlements with the Debtor, and (d) the release of Claims against the Debtor-Affiliated Parties by the Settling Physicians and Settling Health Care Providers, on the Effective Date (i) all Persons who have held, hold, or may hold Products Liability Claims, whether known or unknown, shall be deemed to have forever waived and released all such rights or Claims, whether based upon tort or contract or otherwise, that they heretofore, now or hereafter possess or may possess against the Debtor-Affiliated Parties, the Shareholder-Affiliated Parties, the Settling Insurers, and, to the extent released by the Debtor under the settlement agreements with such Settling Insurers, the respective predecessors, successors, officials, shareholders, subsidiaries, divisions, affiliates, representatives, attorneys, merged or acquired companies or operations or assigns of the Settling Insurers, and (ii) all Persons who hold, may hold or may have held Personal Injury Claims shall be deemed to have forever waived and released all such rights or Claims, whether based upon tort or contract or otherwise, that they heretofore, now or hereafter possess or may possess against the Settling Physicians (except for

Malpractice Claims) or the Settling Health Care Providers (except for Malpractice Claims) (all such parties released by this section 8.3, including, without limitation, the Debtor-Affiliated Parties, the Shareholder-Affiliated Parties, the Settling Insurers and, to the extent released by the Debtor under the settlement agreements with such Settling Insurers, the respective predecessors, successors, officials, shareholders, subsidiaries, divisions, affiliates, representatives, attorneys, merged or acquired companies or operations or assigns of the Settling Insurers, and, except for Malpractice Claims, the Settling Physicians and Settling Health Care Providers, being collectively called the "**Released Parties**"), in each case based upon or in any manner arising from or related to (v) the raw materials and/or finished products manufactured or distributed by the Debtor, including a Breast Implant, an Other Product, an LTCI Product, or the raw materials comprising part of a Non-Dow Corning Breast Implant or a Non-Dow Corning Implant, (w) the research and development, manufacture, distribution, advertisement, sale, provision, recommendation, insertion, use or removal of any raw materials and/or finished products manufactured or distributed by the Debtor, including a Breast Implant, an Other Product, an LTCI Product or the raw materials comprising part of such products or a Non-Dow Corning Breast Implant or a Non-Dow Corning Implant, (x) the processing, adjustment, settlement, payment, defense, negotiation or handling of any Claims, demands, suits, causes of action or proceedings, based upon or relating in any way to any raw materials and/or finished products manufactured or distributed by the Debtor, including a Breast Implant, an Other Product or an LTCI Product, or the raw materials comprising part of a Non-Dow Corning Breast Implant or a Non-Dow Corning Implant, (y) the failure to warn, disclose or provide information concerning, the alleged fraud or misrepresentation regarding, or the failure to take remedial action with respect to, any raw materials and/or finished products manufactured or distributed by the Debtor, including a Breast Implant, an Other Product or an LTCI Product, or the raw materials comprising part of a Non-Dow Corning Breast Implant or a Non-Dow Corning Implant, or (z)

contingent Claims against any of the Released Parties for liability, if any, otherwise arising from the future payment by the Debtor, the Reorganized Debtor or either the Settlement Facility and the Litigation Facility in potential derogation of the lien rights or rights of subrogation held with respect to the Claims of any direct Claimant against any of the Released Parties, including, without limitation, (a) those for death or personal injuries, including emotional distress, (b) those of any Person against whom any Claim, demand, proceeding, suit or cause of action based upon or in any manner arising from or relating to any of the matters enumerated or described in (v), (w), (x), (y) and/or (z) above has been or may be asserted (including, without limitation, rights of indemnity, whether contractual or otherwise, contribution Claims and subrogation Claims), (c) those for damages, including punitive damages, (d) those for attorneys' fees and other expenses, fees or costs, (e) those for any possible economic loss or loss of consortium, (f) those for damages to reputation, and (g) those for any equitable remedy.

The parties who are Released Parties in this section 8.3 shall be deemed released by the Quebec Class Action Settlement Claimants, the Ontario Class Action Settlement Claimants, the B.C. Class Action Settlement Claimants and the Australia Breast Implant Settlement Claimants, and shall be entitled to receive executed releases pursuant to, respectively, the Quebec Breast Implant Settlement Agreement, the Ontario Breast Implant Settlement Agreement, the B.C. Class Action Settlement Agreement and the Australia Breast Implant Settlement Option.

Except as otherwise expressly provided in this Plan and the Plan Documents, the release under this section 8.3 shall further operate, as between all Released Parties, as a mutual release of all Products Liability Claims, including, but not limited to, all Claims between any Shareholder-Affiliated Parties. Further, save and except for the preservation of all rights in insurance arrangements described below, Dow Corning shall be deemed to have released any Claims for contribution or indemnity it may have against any of the Released Parties. However,

the release under this section 8.3 will not affect contribution, indemnity, subrogation, or other claims of non-settling Insurance Companies against Settling Insurers.

This section 8.3 shall not operate as a release or waiver of any Malpractice Claim held against a Settling Physician or a Settling Health Care Provider by a Settling Personal Injury Claimant. Malpractice Claims, if any, asserted by Settling Personal Injury Claimants shall be resolved in the courts where actions based on such Claims have been (or may be) filed. Moreover, this section 8.3 shall not operate as a release or waiver in favor of the Settling Physicians and the Settling Health Care Providers of the rights or Claims of Non-Settling Personal Injury Claimants. Such rights and Claims shall be preserved, subject to section 8.5 of this Plan. This section 8.3 shall not operate as a release or waiver of those Claims preserved under the Domestic Health Insurer Settlement Agreement.

Further, this section 8.3 and the injunction contained in section 8.4 are not intended to release, impair or otherwise affect the terms of any Coverage-in-Place Policies or other undertakings of any of the Settling Insurers under their respective settlement agreements with the Debtor, or to release, impair or otherwise affect the rights of the Shareholder-Affiliated Parties in respect of any policy of insurance, except as expressly set forth (a) in the orders entered by the Court with respect to the settlement agreement between the Debtor and a Settling Insurer or (b) in the settlement described in section 6.2 of this Plan.

The Representatives of the Debtor, the Joint Ventures and the Subsidiaries shall be deemed indemnified and held harmless by the Reorganized Debtor with respect to the Claims hereby released to the fullest extent available under applicable statute and the bylaws of the Reorganized Debtor.

The foregoing release provisions are an integral part of this Plan and are essential to its implementation.