

**SETTLEMENT FACILITY
AND FUND DISTRIBUTION AGREEMENT**

Between

**DOW CORNING CORPORATION AND
THE CLAIMANTS' ADVISORY COMMITTEE**

PURSUANT TO THE
AMENDED JOINT PLAN OF REORGANIZATION OF
DOW CORNING CORPORATION
DATED FEBRUARY 4, 1999

REORGANIZED DEBTOR IN CHAPTER 11 CASE NO. 95-20512
IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

EFFECTIVE DATE: JUNE 1, 2004

defined as the Covered Other Products Fund. The maximum amount payable to Settling Covered Other Products Claimants shall not exceed \$36 million Net Present Value. Of the aggregate \$36 million, the sum of \$6 million Net Present Value shall be defined as a "Premium Payment" for purposes of priority of distribution under Section 7.01.

(iii) *Silicone Material Claimants' Fund.* The Silicone Material Claimants' Fund is a subfund within the Settlement Fund. The sum of \$57.5 million Net Present Value shall be defined as the Silicone Material Claimants' Fund. The maximum amount payable to Settling Silicone Material Claimants shall not exceed \$57.5 million Net Present Value.

3.03 *Assumption of Liabilities/Payments.* (i) The Settlement Facility assumes and shall be exclusively liable for any and all liabilities, present or future, whether such liabilities are liquidated, non-liquidated, contingent or non-contingent, asserted or unasserted, fixed or not fixed, matured or un-matured, disputed or un-disputed, legal or equitable, known or unknown of Debtor now or hereafter arising in connection with or relating to Claims of Settling Personal Injury Claimants and Other Claims; (ii) The Reorganized Dow Corning shall promptly take all appropriate action to transfer to the Litigation Facility any lawsuit or action that may be or has been filed against the Reorganized Dow Corning and that arises from any Claim subject to the provisions of Section 8.4 of the Plan. The Reorganized Dow Corning shall be reimbursed by the Settlement Facility from the Litigation Fund for any reasonable expenses, costs, fees, liabilities, or judgments arising out of or incurred in connection with any such Claim provided that the Reorganized Dow Corning has taken prompt action to transfer the Claim as described above. Nothing in this provision shall be construed to limit or affect the effectiveness or scope of the channeling injunction.

ARTICLE IV FACILITY ADMINISTRATION

4.01 *Court Supervision.* The resolution of Claims under the terms of this Settlement Facility Agreement and the Claims Resolution Procedures and the functions in this Article IV (as specified in this Article IV) and the functions in Articles V and VI herein 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, specifically including all functions related to Articles III, VII, and VIII herein.

4.02 *Appointment of Claims Administrator.*

(a) *Claims Administrator/Definition of Function.* The initial Claims Administrator shall be Elizabeth Wendy Trachte-Huber. The Claims Administrator shall be agreed upon by the Tort Claimants' Committee or the Claimants' Advisory Committee and the Debtor or the Debtor's Representatives, subject to approval of the District Court, to perform the functions herein. With respect to claims administration functions, the Claims Administrator shall be

supervised by the District Court. The Claims Administrator shall be obligated by the terms of the appointment to perform such functions and assume such obligations and responsibilities as specified herein. In general, and as specified more fully in this Settlement Facility Agreement and Annex A to this Agreement, the Claims Administrator shall be responsible for: (i) supervising processing of Claims resolved under the terms of this Settlement Facility Agreement and the Claims Resolution Procedures and overseeing all aspects of the Claims Office including the Quality Control Supervisor and the Operations Manager, (ii) preparing and distributing periodic reports documenting the activity of the Claims Office, including detailed reports on Claims submissions and resolutions, and (iii) serving as a member of the Finance Committee and specifically performing periodic analyses and estimates regarding the costs and projected costs of processing and resolving Claims subject to the terms of this Agreement and any matter or contingency that could affect the sufficiency of funds for payment of Allowed Claims. The Claims Administrator shall seek the input and advice of the Claimants' Advisory Committee and the Debtor's Representatives on all matters of mutual concern and as specified at Section 5.05.

(b) *Successor Claims Administrator.* In the event that the Claims Administrator resigns or is removed from office or is otherwise unable to perform the functions of the Claims Administrator, a successor Claims Administrator shall be selected by the Debtor's Representatives and the Claimants' Advisory Committee, subject to approval of the District Court. If the Debtor's Representatives and the Claimants' Advisory Committee are unable to agree on a successor Claims Administrator, the Finance Committee shall propose a successor, subject to the approval of the District Court after notice to the Debtor's Representatives and Claimants' Advisory Committee and opportunity for a hearing.

(c) *Qualifications of Claims Administrator.* The Claims Administrator (or successor Claims Administrator) shall be (i) an individual over the age of 35 whose experience and background are appropriate for the responsibilities hereunder, and (ii) at the time of appointment and at all times during the term of service, independent. The Claimants' Advisory Committee and the Debtor's Representatives may agree to waive certain qualification requirements. For purposes of this Settlement Facility Agreement, a person is not independent if such person:

(i) is or was at any time a holder or a representative of a holder of any Claim against the Debtor or any other Released Party;

(ii) has or had a relationship with the holder of any Claim against the Debtor or any Released Party such that the person's impartiality in serving as a Claims Administrator could reasonably be questioned;

(iii) is a holder of any equity interest (other than interests held indirectly through publicly-traded mutual funds) in the Debtor or any other Released Party;

(iv) is or was at any time an officer, director, employee or agent of the Debtor or any other Released Party or related to any of the foregoing, or otherwise is or was an "insider," as defined in the Bankruptcy Code, with respect to the Debtor or any other Released Party;

(v) is an investment banker, financial advisor, accountant or attorney or related to any of the foregoing, for the Debtor or any other Released Party, or an officer,

director, employee or agent of any person or entity that provides (or at any time since January 1, 1990, has provided) investment banking, financial advice, accounting or legal services to the Debtor or any other Released Party or related to any of the foregoing;

(vi) represents as an attorney, agent or otherwise (or at any time since January 1, 1990, has represented as an attorney, agent or otherwise) any interest whatsoever adverse to the interests of the Debtor or any other Released Party, of the holders of a class of any Claims against the Debtor or any other Released Party, or of the holders of any equity interests in the Debtor or any other Released Party;

(vii) is or was at any time a stockholder, officer, director, employee, consultant or agent of the holder of any Claim against the Debtor or any other Released Party; or

(viii) is or was at any time since January 1, 1990, an investment banker, financial advisor, accountant or attorney for the holder of any Claim against the Debtor or any other Released Party, or an officer, director, employee or agent of any person or entity that provides or provided investment banking, financial advice, accounting or legal services to the holder of any Claim against the Debtor or any other Released Party.

(d) *Term of Service.*

(i) ***Term.*** The Claims Administrator shall serve for the duration of the Settlement Facility, subject to death, resignation or removal.

(ii) ***Removal.*** The Claims Administrator may be removed from office for cause by the District Court.

(e) ***General Powers of the Claims Administrator.*** The Claims Administrator — or his or her delegate — shall have the power to hire and shall hire and appoint such staff and other appropriate agents, including the Quality Control Supervisor and/or any persons or entities performing Claim audit functions under this Settlement Facility Agreement, as necessary to carry out the functions of the Claims Administrator under this Settlement Facility Agreement. Except as provided at Section 4.02(f) below, salaries, fees, budgets, and payment terms for any staff, contractors, or auditors shall be determined by the Finance Committee, subject to the provisions of Section 7.03(e). The Claims Administrator shall not have authority to subcontract claims-processing functions without the consent of the Debtor's Representatives and the Claimants' Advisory Committee and the approval of the District Court. Subject to the direction of the Finance Committee and the approval of expenditures by the District Court, the Trust shall have the authority to enter into such contracts or agreements as may be necessary to operate the Claims Office, to hire staff and contractors and/or to obtain services and equipment and shall have the authority to serve all functions of an employer.

(f) ***Compensation of Claims Administrator.*** The compensation for the Claims Administrator, including periodic increases, shall be established by the District Court after notice to and opportunity for comment by the Debtor's Representatives and the Claimants' Advisory Committee during the annual budget process using the compensation established for the MDL

926 Claims Administrator as a guideline. In addition, the Claims Administrator shall be reimbursed for his or her reasonable out-of-pocket expenses incurred in the performance of his or her duties subject to approval by the District Court. All such compensation and expenses shall be paid from the Settlement Fund. The Trust will promptly reimburse the Claims Administrator for such reasonable out-of-pocket expenses.

(g) *Liability of Claims Administrator.* Prior to implementation of the Plan, the Debtor and the Tort Claimants' Committee shall seek an order from the MDL 926 Court and/or the District Court designating the actions of the Claims Administrator, staff and agents in collecting, processing, evaluating and paying Claims as judicial actions of the court protected, to the maximum extent allowable by the law, by the doctrine of judicial immunity. If the MDL 926 Court and/or the District Court do not enter such order, then the Claims Administrator shall not be liable for his or her acts or omissions or those of any agent or employee of the Settlement Facility or the Claims Office unless the Claims Administrator acted with gross negligence or willful misconduct with respect to the acts or omissions or in the selection or retention of any such agent or employee.

(h) *Indemnification.*

(i) If the Claims Administrator or former Claims Administrator is or may be a party in any action, suit, or proceeding by reason of the Claims Administrator being or having been a Claims Administrator of the Settlement Facility, or by reason of the Claims Administrator serving or having served in any capacity at the request of and on behalf of the Settlement Facility, the Claims Administrator shall be indemnified by the Settlement Facility against reasonable expenses, costs and fees (including reasonable attorneys' fees), judgments, awards, costs, amounts paid in settlement, and liabilities of all kinds incurred by the Claims Administrator in connection with or resulting from such action, suit, or proceeding, with respect to the actions at issue, if he or she acted in good faith and in a manner the Claims Administrator reasonably believed to be in or not opposed to the best interests of the Settlement Facility.

(ii) If the Claims Administrator, staff, or agents are named in any action relating to their duties, then the Finance Committee is authorized to retain counsel and arrange for payment of reasonable expenses, costs and fees (including reasonable attorneys' fees) incurred by or on behalf of the Settlement Facility, Claims Administrator, staff, or agents in connection with any such action, suit, or proceeding, provided the Claims Administrator agrees to repay such amount if it shall be determined ultimately that the Claims Administrator is not entitled to be indemnified by the Settlement Facility.

(i) *Insurance.* Subject to the approval of the District Court after notice to the Debtor's Representatives and the Claimants' Advisory Committee, the Claims Administrator may purchase and maintain reasonable amounts and types of insurance, including insurance on behalf of an individual who is or was a Claims Administrator, employee, or agent of the Settlement Facility against liability asserted against or incurred by such individual in that capacity or arising from his or her status as a Claims Administrator, employee, or agent.

4.03 Establishment of Claims Office/Claims-Processing Functions.

(a) **Claims Office.** All Settling Personal Injury Claims shall be reviewed, processed and resolved by the Claims Office, which shall be administered by the Claims Administrator. As more specifically described herein, the Claims Office shall operate using the claims-processing procedures and quality control process applied by the Initial MDL Claims Administrator. The Claims Administrator has discretion to modify those procedures to conform to procedures or interpretations established by the MDL 926 Claims Office any time after the Confirmation Date. The Claims Administrator is also expressly authorized to rely on procedures and interpretations contained in the Claims Administrator's guidelines and claims-processing system as of February 2003 and is not required to change those procedures and interpretations. It is expressly intended that the Settling Breast Implant Claims shall be processed in substantially the same manner in which claims filed with the MDL 926 Claims Office under the Revised Settlement Program were processed except to the extent criteria or processing guidelines are modified by this Settlement Facility Agreement or the Claims Resolution Procedures, or this Section 4.03, and that the Claims Office shall manage its operations to the extent feasible as they have been conducted under the Revised Settlement Program. The Claims Administrator, the Claimants' Advisory Committee and the Debtor's Representatives shall seek all necessary orders from the MDL 926 Court authorizing the use of the MDL 926 Claims Office materials and any other orders necessary to implement the provisions of this Settlement Facility Agreement. The Finance Committee shall enter into such agreements as are necessary and appropriate to arrange for payment for use of the MDL 926 Claims Office and to assure appropriate processing schedules. The Settlement Facility shall pay the costs and expenses of the Claims Office in accordance with the directives of the Finance Committee, subject to approval of the District Court and subject to the terms of this Agreement. The Claims Administrator, the Claimants' Advisory Committee, and the Debtor's Representatives shall have authority to cooperate with the MDL 926 Claims Office in an effort to maintain consistent interpretations as appropriate.

(b) **Claims Operations Manager.** A Claims Operations Manager shall be selected by the Claims Administrator, subject to input from the Finance Committee, the Claimants' Advisory Committee and the Debtor's Representatives and to the approval of the District Court. The Claims Operations Manager shall, subject to the review, supervision and direction of the Claims Administrator, assume responsibility for the management of staff and daily operations of the Claims Office functions relating to or concerning the processing and resolution of Claims.

4.04 Financial Advisor. The Finance Committee working with the Debtor and the Tort Claimants' Committee (the Debtor and the Tort Claimants' Committee collectively, the "Plan Proponents") or the Debtor's Representatives and the Claimants' Advisory Committee shall select a Financial Advisor, which appointment shall be subject to the approval of the District Court. The Financial Advisor shall be a large, reputable institution or entity with experience and expertise in financial management and shall have primary responsibility for overseeing the investment of all funds paid to and held by the Trust, for providing investment instructions to the Trust, for overseeing the preparation of financial statements as specified at Sections 7.03(d), 7.03(e), and 8.04, and for the accounting statements and audit as specified at Section 8.05. The Financial Advisor will be responsible for determining the available assets of the Trust, including the available funds in the Litigation Fund and the Settlement Fund, and for matching the assets to claim payment needs as determined by the Independent Assessor (as defined in Section 4.05 below).

(a) **Compensation.** The Financial Advisor shall be paid reasonable compensation commensurate with the tasks performed and with reasonable and customary rates for the services provided.

(b) **Access to Data.** The Financial Advisor shall have access to all data and reports necessary to fulfill tasks of the Financial Advisor, including reports and data prepared by the Independent Assessor.

(c) **Successors.** Any successor Financial Advisor shall be selected in the manner specified in Section 4.04.

4.05 Independent Assessor. The Finance Committee working with the Plan Proponents or the Debtor's Representatives and the Claimants' Advisory Committee shall select an independent third party, hereinafter the Independent Assessor, to oversee and make recommendations concerning the development of projected funding requirements under Section 7.01(d) and the assessment of the availability or adequacy of assets in the Litigation Fund and the Settlement Fund for purposes of Section 7.02(d) and Sections 7.03(a), (b), and (c). In addition, the Independent Assessor will provide the Finance Committee with any reports necessary pursuant to Section 4.08(b)(ii). The appointment of the Independent Assessor is subject to approval of the District Court.

(a) **Compensation.** The Independent Assessor shall be paid reasonable compensation commensurate with the tasks performed and with reasonable and customary rates for the services provided.

(b) **Staff.** Subject to the standard budget process, the Independent Assessor may hire such staff or consultants as are necessary to carry out his or her duties and responsibilities. The Independent Assessor is not required to use the Financial Advisor to provide assistance to the Independent Assessor in the performance of his or her duties but may do so as he or she deems necessary and appropriate.

(c) **Access to Data.** The Independent Assessor shall have access to all data and reports necessary to fulfill the tasks of the Independent Assessor, including data and reports prepared by the Financial Advisor.

(d) **Successor.** Any successor Independent Assessor shall be selected in the manner specified at Section 4.05.

4.06 MDL 926 Claims Administrator. At the request of the Claims Administrator, the MDL 926 Claims Administrator may, subject to the approval of the MDL 926 Court, serve as a consultant to the Claims Administrator, the Claims Office, and the District Court to assist in the efficient and accurate operation of the Settlement Facility. The Claims Administrator may establish, in cooperation with the MDL 926 Claims Administrator, the Claimants' Advisory Committee, and the Debtor's Representatives a reasonable schedule for consultation with the MDL 926 Claims Administrator. It is expressly intended that the Initial MDL 926 Claims Administrator is authorized to provide substantive guidance, information and training to the Claims Administrator and the Claims Operations Manager. It is also expressly intended that the Claims Administrator and the Claims Operations Manager will seek the guidance provided by

the Initial MDL 926 Claims Administrator and will adopt and abide by the Initial MDL 926 Claims Administrator's protocols as specified at Section 4.03 (unless modified expressly by this Settlement Facility Agreement or subsequently by written agreement of the Claimants' Advisory Committee and the Debtor's Representatives) to ensure consistent protocols as applicable.

4.07 Appeals Judge. The initial Appeals Judge shall be Frank Andrews, the existing appeals officer appointed by the MDL 926 Court to review and decide appeals from decisions of the MDL 926 Claims Administrator. The Appeals Judge shall be approved by the District Court. The Appeals Judge shall perform the functions as a member of the Finance Committee as specified herein and as the Appeals Judge as specified in the Claims Resolution Procedures. Any successor or additional Appeals Judge(s) shall be selected by the Claimants' Advisory Committee and the Debtor's Representatives, subject to approval by the District Court for purposes of this Settlement Facility Agreement, and shall serve as an officer of the court(s). If the Claimants' Advisory Committee and the Debtor's Representatives are unable to agree on a successor or additional Appeals Judge, the Finance Committee shall select the successor, subject to the approval of the District Court. The Appeals Judge shall be an attorney and shall satisfy the qualification criteria specified for the Claims Administrator at Section 4.02(c). The Appeals Judge shall be compensated at a reasonable rate established by the District Court after notice to the Claimants' Advisory Committee and the Debtor's Representatives and the opportunity for comment during the annual budget process. The Appeals Judge will be reimbursed for any reasonable out-of-pocket expenses incurred in the performance of the duties described herein and in the Claims Resolution Procedures. All such compensation and expenses shall be paid from the Settlement Fund. The Appeals Judge may be removed for cause by the District Court.

4.08 Finance Committee.

(a) **Membership.** The Finance Committee shall be composed of three members consisting of the individuals holding the following positions: the Special Master, a single Appeals Judge, and the Claims Administrator.

(b) **Authority With Respect to Distribution of Funds and Review of Claims Operations.** Subject to the approval and supervision of the District Court and as specified more fully in this Settlement Facility Agreement:

(i) the Finance Committee shall (1) select the Financial Advisor (as provided at Section 4.04) who shall in turn select any investment managers under the procedures specified in the Depository Trust Agreement to oversee the investment of the assets paid to the Settlement Facility under the terms of the Funding Payment Agreement; and (2) provide direction to the Financial Advisor regarding liquidity needs of the Trust and tax planning and supervise the Financial Advisor to assure that the investment management and other tasks assigned to the Financial Advisor are performed in accordance with this Settlement Facility Agreement and the Depository Trust Agreement;

(ii) in conjunction with the Independent Assessor, the Finance Committee shall (1) in accordance with the provisions of Section 7.01, conduct the analysis and projections necessary to determine the availability of funds for payment of all categories of Claims, including periodic analyses and estimates regarding cost and projected costs

period covered by the report, and from the end of the prior month to the end of the period covered by the report; and

(ix) the number of Claims with multiple manufacturers (Bristol, Baxter, 3M) and the number of such claims subject to the fifty (50)-percent multiple manufacturer reduction.

The Finance Committee, the Independent Assessor, the Financial Advisor, the Claimants' Advisory Committee, the Debtor's Representatives, or the District Court may request any additional reports. Prior to the Effective Date reports will be provided to the Independent Assessor and the Financial Advisor as reasonably necessary for them to perform their tasks. As soon as practicable, and prior to the production of the first reports, the Claims Administrator shall present a proposed format for the reporting to the Claimants' Advisory Committee and the Debtor's Representatives for their review and comment. Prior to the Effective Date, the Claims Administrator shall provide periodic reports to the Plan Proponents on the status of claims processing.

The Claims Administrator shall maintain (but shall not file with any court) records of all individual payments and settlements concerning Claims. The Claims Office shall provide such records to the Debtor's Representatives and the Claimants' Advisory Committee in computer readable format. The records shall include the dates of implantation, proof of manufacturer, the amount and date of payments distributed and settlement options approved and denied. Such records shall be redacted to preserve Claimant confidentiality.

(b) *Requests for Data.* The Reorganized Dow Corning and Shareholders along with their Insurers shall at their request and expense, and pursuant to procedures approved by the Claims Office, be afforded access to and permitted to inspect all documentation and other supporting evidence submitted by any Settling Claimants who have been paid as may be necessary for the Debtor and the Shareholders to receive benefits under insurance policies. The Reorganized Dow Corning, Shareholders, and Insurers shall maintain the confidentiality of the Claims information to protect the identity of the Claimants.

5.04 *Quality Control and Audit Procedures.*

(a) *Prevention and Detection of Fraud.*

(i) The Claims Administrator and Claims Operations Manager shall have the authority and obligation to institute claim-auditing procedures and other procedures designed to detect and prevent the payment of fraudulent Claims. To the extent applicable and otherwise consistent with this Settlement Facility Agreement, it is intended that the Claims Administrator will generally apply and maintain any procedures established by the MDL 926 Claims Administrator to detect fraudulent claims. Nothing herein is intended to limit the authority and discretion of the Claims Administrator to institute other appropriate procedures.

(ii) To deter potential fraud, all Claims must be signed under penalties of perjury. The submission of fraudulent Claims will violate the criminal laws of the United

States including the criminal provisions applicable to Bankruptcy Crimes, 18 U.S.C. § 152, and subject those responsible to criminal prosecution in the federal courts.

(iii) The Claims Administrator shall institute proceedings for appropriate review and relief in the event of fraud or abuse of the Claims Resolution Procedures. If any review supports a finding of intentional abuse of the Claims Resolution Procedures or fraud, the Claims Administrator shall deny the Claim.

(iv) The District Court shall have authority to enforce these provisions as appropriate.

(b) **Quality Control/General.** The Claims Administrator shall have the plenary authority and obligation to institute procedures to assure an acceptable level of reliability and quality control of Claims and to assure that payment is distributed only for Claims that satisfy the Claims Resolution Procedures. Such procedures shall include the authority to require (as a condition to payment of a Claim) the examination of a Claimant, or the review of a Claim, by a physician selected by the Claims Office or to require additional laboratory testing of the Claimant conducted by a laboratory selected by the Claims Office. The Claims Office shall use its best efforts to identify laboratories and physicians who are qualified and who are located in the city, region, or country of the Claimant's residence so as to minimize the travel time and expenses for re-evaluation and re-testing. The Claims Office shall bear the expense of any such examination or testing conducted at the request of the Claims Office. Such procedures shall include the authority to obtain independent operation audits.

(c) **Quality Control Supervisor.** The Claims Administrator shall maintain a Quality Control Supervisor. The Quality Control Supervisor shall institute procedures to evaluate the claims-processing functions to assure that Claims are processed accurately and in accordance with the Claims Resolution Procedures. The Quality Control Supervisor may, to the extent applicable, use procedures applied in the Revised Settlement Program to assure appropriate quality control. The Quality Control Supervisor may simultaneously be employed by the MDL Claims Office. The Quality Control Supervisor may, with the approval of the Finance Committee, employ independent auditors to review Claims operations. The Claimants' Advisory Committee and the Debtor's Representatives may participate in a joint training session for the purpose of implementing procedures and guidelines in the Dow Corning Settlement Program.

(d) **Quality Control — Operations and Procedures.** The Claims Administrator shall institute mechanisms and shall cause the Quality Control Supervisor to develop and maintain procedures to assure that all procedures and claims-processing protocols applied by the Initial MDL 926 Claims Administrator as interpreted by the Settlement Facility as of February 2003 with respect to the Revised Settlement Program are applied by the Claims Office with respect to the Breast Implant Claims except to the extent modified by this Settlement Facility Agreement and the Claims Resolution Procedures, except as modified by written agreement of the Claimants' Advisory Committee and the Debtor's Representatives and provided to the Claims Administrator.

(e) **Quality Control/Operations Audits.** To assure the accuracy of claims-processing functions, the Claims Administrator shall have prepared periodic quality control/operations audits conducted by an internal Quality Control Supervisor and by outside auditors. The audits

shall be designed to evaluate the accuracy and consistency of application of the eligibility criteria and the accuracy of Claims payments, including review of supporting documentation.

(f) Claim Audits. The Claims Administrator may have conducted, by an independent auditor, random audits to verify evidence and supporting documentation (including medical records and medical evidence) submitted by randomly-selected Claimants in connection with the Claims Resolution Procedures and may audit individual Claims, or groups of Claims.

5.05 Interpretation of Criteria/Consent of Parties. The Claims Administrator shall obtain the consent of the Debtor's Representatives and Claimants' Advisory Committee regarding the interpretation of substantive eligibility criteria and the designation of categories of deficiencies in Claim submissions (to the extent such interpretations and designations have not previously been addressed as of February 2003 by the Initial MDL 926 Claims Administrator in connection with the Revised Settlement Program). The Claims Administrator shall consult with and obtain the advice and consent of the Claimants' Advisory Committee and the Debtor's Representatives regarding any additions or modifications to guidelines for the submission of Claims. The Debtor's Representatives and Claimants' Advisory Committee are authorized to provide joint written interpretations and clarifications to the Claims Administrator and the Claims Administrator is authorized to rely on those joint written statements. In the event of a dispute between the Debtor's Representatives and the Claimants' Advisory Committee, the Claims Administrator may determine the issue or apply to the District Court for consideration of the matter. There shall be no modification of any substantive eligibility criteria specified herein or in Annex A through the appeals process or otherwise, except as expressly provided in this Section 5.05 and in Section 10.06 herein.

ARTICLE VI CLAIMS RESOLUTION OPTIONS/ELECTION PROCESS/ORDERING

6.01 Settlement Payment Options Defined.

The provisions of this Article describe the settlement options for resolving Claims subject to the terms and conditions of this Agreement and the Claims Resolution Procedures. Allowed Claims will be paid in accordance with the applicable compensation level described in the Claims Resolution Procedures and subject to the terms of this Agreement.

(a) Breast Implant Claimants. Settling Breast Implant Claimants may select up to three compensation options. All Settling Breast Implant Claimants are eligible to receive (subject to the qualification criteria): (a) a one-time Explantation Payment, (b) a one-time Rupture Payment, and (c) either (i) a payment for an eligible Covered Condition (under the Disease Payment Option) OR (ii) an Expedited Release Payment. Breast Implant Claimants with Allowed Claims who receive payment under the Disease Payment Option shall be entitled to apply for an additional payment under the applicable Disease Compensation Schedule as defined in the Claims Resolution Procedures. Allowed Claims for Rupture and Disease may also receive a Premium Payment if the District Court determines that sufficient funds are available to make such payment consistent with the terms of this Agreement.

**ARTICLE VII
FUND ALLOCATION/PAYMENT DISTRIBUTION PROCEDURES/
COURT APPROVALS**

7.01 *Timing of Disbursements/Prioritization of Payments.*

(a) *Categories of Payment Defined.*

(i) *First Priority Payments.* Payments identified on the Settlement Grid, Annex B hereto, as Expedited Release Payments (for both Settling Breast Implant and Covered Other Products Claims), Explantation Payments, Disease Base Payments (for Breast Implant Claims), Rupture Base Payments (for Breast Implant Claims), Medical Condition Payments for Covered Other Products, and Silicone Material Payments, along with related administrative costs, are defined as “First Priority Payments.” Payments to be distributed to or for the benefit of Allowed Claims of Settling Claimants in Classes 4A, 6A, 6B, 6C and 6D, Classes 14 and 15 (as described at Article III), and, to the extent provided in the Litigation Facility Agreement, Litigated Shareholder Claims shall also be defined as First Priority Payments.

(ii) *Settlement Fund Other Payments.* Payments for Allowed Claims of Non-Settling Claimants in Classes 11, 13, 14, 14A, 15 and 17 along with related administrative costs shall be defined as Settlement Fund Other Payments and shall be First Priority Payments.

(iii) *Second Priority Payments.* Payments identified on the Settlement Grid as “Premium Payments” for Breast Implant Disease Payment Option Claims and Rupture Payment Option Claims and for Covered Other Products Claims and payments for increased severity of disease or disability under the Breast Implant Disease Payment Option (for both Disease Payment Option I and Disease Payment Option II) as outlined shall be defined as Second Priority Payments. Payments made to Class 16 Claimants in respect of the obligations in Sections 6.16.5 and 6.16.6 of the Plan that are to be paid by the Settlement Facility shall also be defined as Second Priority Payments.

(iv) *Litigation Payments.* Payments to be distributed to Non-Settling Personal Injury Claims, Allowed Claims of Claimants in Class 12, Assumed Third Party Claims, and, to the extent provided in the Litigation Facility Agreement, Litigated Shareholder Claims along with Litigation Facility Expenses shall be defined as “Litigation Payments.”

(b) *General Principles Regarding Distribution of the Settlement Fund and the Litigation Fund.*

(i) The Settlement Fund is to be distributed in accordance with the terms of this Agreement and the guidelines specified at Section 7.03 regarding the prioritization of payments. Second Priority Payments shall only be made as specified at Section 7.01(c) and/or Section 7.03(a).

(ii) The Litigation Fund is to be distributed in accordance with the terms of this Agreement, the Litigation Facility Agreement, and the Case Management Order. The Litigation Fund shall be used solely for the payment of Litigation Payments (as defined herein), except that the Litigation Fund may be used to pay First Priority Payments under the conditions set forth at Section 7.03(b).

(iii) Distributions from the Settlement Fund and the Litigation Fund shall not exceed the aggregate amount of each such Fund as defined herein.

(c) ***Priority of Payment for Claims.***

(i) ***General Principles.*** All categories of payment are subject to reduction if necessary to assure payment in full of First Priority Payments (subject to the limits of the Settlement Fund and the Litigation Fund). The Settlement Fund and the Litigation Fund shall be distributed in accordance with the priorities stated below.

(ii) ***First Priority Payments/Settlement Fund Other Payments.*** The Claims Administrator shall distribute First Priority Payments in respect of Allowed Claims as soon as reasonably practicable following approval. The Claims Administrator shall distribute payments in respect of Allowed Settlement Fund Other Payments as soon as reasonably practicable following Allowance.

(iii) ***Litigation Payments.*** Litigation Payments shall be paid solely from the amount defined as the Litigation Fund and shall not in the aggregate exceed the Litigation Fund. Litigation Payments are subject to deferral or reduction in the event that the District Court determines, after submission of a recommendation and findings of the Finance Committee, that payment of all Allowed or allowable Non-Settling Personal Injury Claims would exceed the aggregate amount of the Litigation Fund.

(iv) ***Second Priority Payments.*** Premium Payments shall be deemed "Second Priority Payments." Second Priority Payments may not be distributed unless and until the District Court determines that all other Allowed and allowable Claims, including Claims subject to resolution under the terms of the Litigation Facility Agreement, have either been paid or adequate provision has been made to assure such payments.

(v) ***Timing.*** Nothing herein shall be interpreted as limiting the discretion of the Finance Committee with the approval of the District Court to pay lower priority payments and higher priority payments contemporaneously, so long as the ability to make timely payments of higher priority claims is reasonably assured.

(d) ***Procedures for Determining Assets Available for Distribution to Claimants.***

(i) ***Settlement Facility Projections.*** In conjunction with the Independent Assessor, the Finance Committee shall, commencing the first quarter after the conclusion of the opt-out process and on a quarterly basis thereafter or at the request of the District Court, prepare projections of the likely amount of funds required to pay in full all pending, previously Allowed but unpaid and projected future First Priority Payments.

Such projections shall, to the extent known or knowable, be based upon and take into account all data (as of the date of the analysis) regarding (i) the number of Claims filed with the Settlement Facility, (ii) the rate of Claim filings in the Settlement Facility, (iii) the average resolution cost of Claims in the Settlement Facility, (iv) the pending Claims in the Settlement Facility, and (v) projected future filings with the Settlement Facility. Such projections shall also state the anticipated time period for the resolution and payment of such Claims.

Projections made during the first twelve (12) months of the operation of the Settlement Facility may take into account, in addition to the above, the claims resolution experience of the MDL 926 Claims Office. These projections are not a pre-requisite to paying First Priority Payments, and nothing in this subsection is intended to delay the payment of First Priority Payments in respect of Allowed Claims.

(ii) *Litigation Projections.* In conjunction with the Independent Assessor, the Finance Committee shall, at the request of the Manager or the District Court, and in any event no less than quarterly, commencing the first quarter after conclusion of the opt-out process, prepare projections of the likely amount of funds required in order to pay all Claims and expenses subject to the Litigation Fund. Such projections shall be based upon and take into account all data regarding (i) Claims paid from the Litigation Fund, (ii) expenses incurred, (iii) pending Claims, (iv) projected number of Claims certified or likely to be certified for trial, (v) past and projected costs of litigating claims certified for trial and (vi) past and projected future resolution costs of Claims in pre-trial settlements. On the basis of such projections, the Finance Committee shall state the funds projected to be available for the payment of unpaid Claims subject to the Litigation Fund (“Available Litigation Funds”) taking into account any projected need to access the Litigation Fund for purposes of payment of First Priority Payments pursuant to Section 7.03(b). The projection shall also state the estimated time period for the resolution of such Claims.

(iii) *Distribution of Reports.* The projections described above in subparagraphs (d)(i) and (d)(ii) shall be provided to the District Court, the Debtor’s Representatives, the Shareholders, and the Claimants’ Advisory Committee.

7.02 *Distribution to Claimants.*

(a) *Distribution of Payments to Claimants.*

(i) *Claims Resolved by Settlement Facility.* First Priority Payments and Settlement Fund Other Payments shall be distributed as soon as practicable after approval of the Allowed Claim.

(ii) *Claims Resolved by Litigation Facility.* The Litigation Facility Manager shall on a monthly basis notify the Finance Committee of the Allowed amount of Claims resolved by the Litigation Facility. The Finance Committee shall direct the paying agent to distribute payments for Allowed Claims resolved by the Litigation Facility,