

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

IN RE:

DOW CORNING CORPORATION,

REORGANIZED DEBTOR

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CASE NO. 00-CV-00005-DT

(Settlement Facility Matters)

Hon. Denise Page Hood

**CONSENT ORDER TO ESTABLISH GUIDELINES
FOR DISTRIBUTIONS FROM, AND TO CLARIFY THE
ALLOCATION OF, THE COVERED OTHER PRODUCTS FUND**

Whereas the Claimants' Advisory Committee ("CAC"), Reorganized Dow Corning Corporation ("Dow Corning"), and the Debtor's Representatives (the "DRs") agree as follows:

1. The Amended Joint Plan of Reorganization (the "Plan") was confirmed on November 30, 1999.
2. The Settlement Facility and Fund Distribution Agreement ("SFA") is the Plan Document¹ that allocates funds to be paid by Dow Corning to the Trust for the benefit of Personal Injury Claimants among the various funds and subfunds established by the Plan.
3. The SFA defines the Covered Other Products Fund ("COPF") as a \$36 million Net Present Value (NPV)² sub-fund of the Settlement Fund and provides that the "maximum amount

¹ Unless otherwise defined herein, capitalized terms in this Consent Order shall have the meanings provided in the Plan and the Plan Documents.

² The Covered Other Products Fund is defined in terms of Net Present Value. For purposes of the Plan, the Covered Other Products Fund consists of a nominal amount of money which, when discounted at the rate of 7 percent per annum will equal \$36 million as of the Effective Date of the Plan. The nominal dollar amount that will yield the Net Present Value of \$36 million will therefore differ depending on when the funds are "counted" or "paid out." As of the end of 2006, the nominal value of the Covered Other Products Fund was approximately \$43 million.

payable to Settling Covered Other Product Claimants shall not exceed \$36 million Net Present Value.” SFA § 3.02(b)(ii). Other Products Claimants are classified in Classes 9, 10.1, and 10.2.

4. The Plan Proponents established the COPF at \$36 million NPV based on available data regarding the Proofs of Claim filed, including the historical experience regarding claims against Dow Corning with respect to Covered Other Products, and the anticipated number of Covered Other Products Claimants that would file eligible claims.

5. The Plan Proponents reasonably anticipated that the amount payable to Settling Covered Other Products Claimants under the Plan based on the compensation schedule in Section 6.03(h) of Annex A to the SFA (the “Compensation Schedule”), including Premium Payments, would likely be close to the maximum amount authorized for payment. The expert analysis presented at the Confirmation Hearing concluded that the eligible Other Products Claimants would receive close to \$30 million NPV based on the Compensation Schedule before payment of any Premium Payments.

6. The deadline for submission of Covered Other Products Claims has passed and the number of settling claimants in Classes 9, 10.1, and 10.2 who have submitted claims to the Settlement Facility-Dow Corning Trust (“SF-DCT”) is substantially smaller than estimated. As a result, the qualified Settling Covered Other Products Claimants will be paid the full amount of the compensation to which they are entitled under the Compensation Schedule, including Premium Payments.

7. Section 6.03(i)(ii) of Annex A to the SFA (“Annex A”) provides that if there are available funds, the Claims Administrator and the CAC can establish guidelines to provide for a supplemental payment to unspecified Settling Covered Other Products Claimants whose claims for

Medical Condition Payments are Allowed and who have the “most serious injuries” as determined by the CAC and the Claims Administrator.

8. The CAC and the DRs agree that it is appropriate and feasible to make such supplemental payments (“Additional Payments”) to certain Settling Covered Other Products Claimants. The CAC and the Claims Administrator have, consistent with their obligations under Section 6.03(i)(ii) of Annex A, established a payment grid representing the maximum amounts that the Claims Administrator may distribute as Additional Payments to Settling Other Products Claimants with approved Medical Condition claims (“Maximum Additional Payment”) as well as the Total Maximum Payment (including the Base Payment, the Premium Payment, and any Additional Payment that may be distributed to Settling Other Products Claimants). These amounts – applicable to Covered Other Products Claimants in Class 9 – are set forth on the Maximum Payment Grid attached as Exhibit A. (The amounts payable to Covered Other Products Claimants in Classes 10.1 and 10.2 will be adjusted in accordance with Schedule III to Annex A.) The Total Maximum Payment to be distributed to eligible claimants will incorporate and subsume any Premium Payment that could be paid to eligible Settling Covered Other Products Claimants. The CAC and the Claims Administrator will implement a process to evaluate all Settling Covered Other Products Claimants with Allowed Medical Condition Claims to determine eligibility for payment and to establish the individual payment amount in accordance with the Maximum Payment Grid and Annex A. Individual Settling Covered Other Products Claimants may receive different amounts (not to exceed the Total Maximum Payment established in the Maximum Payment Grid) based on the underlying compensation grid applicable to their claims and the severity of the claimant’s condition. Although the amount to be paid to each individual eligible Settling Covered Other Products Claimant has not been determined, the CAC and the Claims Administrator have determined, based on a review of the

existing claims, that the maximum aggregate amount to be paid to Settling Covered Other Products Claimants (including Base Payments, Additional Payments, and Premium Payments) should not exceed \$15 million (nominal).

9. The SFA specifically contemplates and authorizes the CAC and Dow Corning to amend the SFA upon agreement and states:

This Agreement may be amended to resolve ambiguities, make clarifications or interpretations or to correct manifest errors contained herein by an instrument signed by the Reorganized Dow Corning and the Claimants' Advisory Committee. All other amendments, supplements, and modifications shall require approval of the Court after notice to the Reorganized Dow Corning, the Shareholders, and the Claimants' Advisory Committee and such other notice and hearing as the Court may direct, provided that without the prior written consent of the Reorganized Dow Corning and Claimants' Advisory Committee the Agreement shall not be amended, supplemented or modified if such amendment, supplement, or modification would, directly or indirectly: (i) increase the liquidation value or settlement value of any Claim, or the amount or value of any payment, award or other form of consideration payable to or for the benefit of a Claimant, including, without limitation, any cash payment or other benefits provided to a Claimant, (ii) affect the validity, requirement for or effectiveness of any release of the Released Parties, or any of them, (iii) increase the amount or change the due date of any payment to be made by the Debtor to the Settlement Facility pursuant to the Plan or the Funding Payment Agreement, (iv) affect the right of the Settlement Facility to receive payments pursuant to the Insurance Allocation Agreement, or (v) cause the Trust to no longer qualify as a Qualified Settlement Fund.

SFA § 10.06.

10. The Plan reserves to the CAC, Dow Corning, and the DRs the right to jointly amend or modify the Plan "to remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan." Plan § 11.4.

11. Dow Corning, the DRs, and the CAC have consulted regarding the Premium Payments applicable to Settling Covered Other Products Claimants and the Maximum Payment Grid established by the CAC and the Claims Administrator and hereby agree, pursuant to SFA Section 10.06, to the terms and conditions set forth in this Consent Order.

12. The CAC and the Claims Administrator have established the Maximum Payment Grid with the intent to assure that the eligible Covered Other Products Claimants receive fair and equitable payments consistent with the payments distributed to Breast Implant Claimants for comparable conditions. The Maximum Payment Grid will ensure that Covered Other Products Claimants who have Allowed Medical Condition claims and who are deemed by the CAC and the Claims Administrator to be eligible for an Additional Payment will receive payments that in total substantially exceed the amount specified in the Compensation Schedule.

13. Due to the smaller than anticipated number of Covered Other Products Claimants, the CAC, Dow Corning, and the DRs have determined that the total cost of paying all qualified Covered Other Products Claims (including the Additional Payments, Premium Payments, and administrative costs) will be substantially less than the maximum amount of the COPF.

14. The beneficiaries of the Trust, consisting of all Settling Personal Injury Claimants, will benefit if the funds not needed to pay eligible Covered Other Products Claimants are allocated to the Settlement Fund for use in payment of any and all Settling Claimants and expenses of the SF-DCT. The clarification provided through this Consent Order will ensure that such funds are distributed for the benefit of other beneficiaries of the Trust.

15. No individual Covered Other Products Claimant is identified or can be identified by the Plan as having a right to any specific payment in excess of the amount set forth in the Compensation Schedule.

16. The terms and conditions contained in this Consent Order do not change the substantive eligibility requirements set forth in the Claims Resolution Procedures (Annex A) and do not alter the Compensation Schedule. The Base Payments to be paid to eligible Covered Other Products Claimants will not be reduced. Eligible Covered Other Products Claimants who meet the criteria for

receipt of an Additional Payment will receive payments that exceed the compensation amount established in the Plan. Thus, no identifiable substantive right to specific compensation from the Settlement Option will be affected.

17. The CAC, Dow Corning, and the DRs agree that the terms and conditions contained in this Consent Order are necessary to carry out the provisions of the Plan and the intent of the Plan and the Plan Proponents and to ensure equitable treatment of all Settling Personal Injury Claimants.

WHEREFORE, Dow Corning, the DRs, and the CAC hereby agree and stipulate and it is hereby ADJUDGED, ORDERED AND DECREED as follows:

Jurisdiction

18. This Court has jurisdiction pursuant to 28 U.S.C. § 1334(b) (“the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11”), Section 8.7 of the Plan, and Section 10.08 of the SFA.

Distribution of Additional Payments to Eligible Covered Other Products Claimants

19. The Claims Administrator shall make distributions of Additional Payments to Claimants in Classes 9, 10.1, and 10.2 according to the Maximum Payment Grid attached hereto as Exhibit A. The grid states the Maximum Additional Payment, the Premium Payment, and the Total Maximum Payment (including the Base Payment) available for each category of claim. Consistent with the terms of Annex A, the minimum additional distribution that Claimants with Allowed claims in Classes 9, 10.1, and 10.2 shall receive is the Premium Payment. The Premium Payment shall equal no more than 20 percent of the amount of the applicable Base Payment consistent with the procedure for determination of Premium Payments generally. There is no guarantee that any

Claimant will receive more than the Base Payment plus the Premium Payment. The Claims Administrator and the CAC will determine the information needed from potentially eligible claimants to evaluate their eligibility for an Additional Payment consistent with Annex A. The CAC and the Claims Administrator may adopt additional criteria, consistent with the terms of Annex A, defining gradations of payments between the Premium Payment and the Maximum Additional Payment based on the severity of injury.

20. The maximum amount that the Claims Administrator and the CAC expect to distribute to all eligible Covered Other Products Claimants after payment of administrative costs incurred in connection with the resolution of Other Products Claims plus payment of the amounts due under the Compensation Schedule plus Premium Payments and Additional Payments is \$15 million (nominal). The actual amount distributed to Covered Other Products Claimants may be substantially less than \$15 million (nominal). After the initial evaluation of the claims and before distribution of any Additional Payments, the Claims Administrator shall advise the Court and the DRs of the amount expected to be distributed and of the proposed categorization of claims consistent with Annex A.

21. Nothing in this Consent Order changes or is intended to change the criteria under which claims in Classes 9, 10.1, and 10.2 are evaluated or determined to be eligible or the role of the Claims Administrator and the CAC in determining the amount of the Additional Payment to be paid to individual eligible Covered Other Products Claimants as set forth in Section 6.03(i)(ii) of Annex A.

Clarification of SFA Regarding Distribution of Excess Monies in the COPF

22. The SFA defines the COPF only in terms of the “maximum amount payable” to Eligible Settling Covered Other Products Claimants but does not suggest or mandate that the entire

amount of the fund must be distributed only to claimants in Classes 9, 10.1, and 10.2. In other words, the portion of the \$36 million (NPV) COPF remaining after payment of administrative expenses is the ceiling but not the floor with respect to amounts that may be distributed to claimants in those classes. Annex A indicates that there shall be a distribution of excess monies in the COPF to those Settling Covered Other Products Claimants who have qualified for a Medical Condition Payment and who further are determined by the Claims Administrator and the CAC to be “the most seriously injured.” Annex A, which sets forth the criteria for evaluating and paying claims, provides a mechanism for distribution of excess monies but does not specify guidelines for distribution. To resolve ambiguity in the SFA or between the SFA and Annex A and to clarify the intent of the Plan Proponents, the Covered Other Products Fund shall be defined in the SFA (Section 3.02(b)(ii)) as: “the amount necessary to pay the full amount of the payment set forth at Annex A Section 6.03(h)(i) – (iv) to all Settling Covered Other Products Claimants who timely filed a Class 9 or 10.1 or 10.2 claim form and who satisfy the eligibility requirements set forth in Annex A Section 6.03, plus the aggregate amount of any Premium Payments and Additional Payments under Annex A Section 6.03(i)(ii) that are determined to be due to Settling Covered Other Products Claimants under the guidelines determined by the CAC and the Claims Administrator, plus the costs of administering the Covered Other Products Fund, up to the maximum amount of \$36 million NPV. To the extent \$36 million NPV exceeds the aggregate amount used to pay Settling Covered Other Products Claimants and administrative costs in accordance with the foregoing guidelines, such excess funds shall be and remain part of the general Settlement Fund and shall be made available for the payment of any costs or expenses of the SF-DCT.”

Notice and Hearing

23. A copy of this Other Products Fund Consent Order shall be sent by the DRs, the CAC, and/or the Claims Administrator to all Covered Other Products Claimants who timely filed a claim form with the SF-DCT and to all persons on the Special Service List established in the Chapter 11 case (“Notice Parties”) as promptly as possible following presentment of this Consent Order to the Court.

24. The Notice Parties shall have sixty (60) days from the date of service to object to this Consent Order. If no timely objections are filed, then the CAC and the DRs shall request entry of this Consent Order and this Consent Order shall become effective immediately upon its entry without further order of the Court. If any objection to this Consent Order is timely filed, Dow Corning, the CAC, the DRs and any objectors shall be entitled to submit proposed scheduling orders for further proceedings and a hearing. The Court will consider the merits of any objections to this Consent Order *de novo*.

25. Nothing herein shall affect the operations of the SF-DCT and the SF-DCT shall continue to evaluate and pay eligible Covered Other Products Claimants pursuant to the Compensation Schedule. The Court authorizes the Claims Administrator to make Premium Payments and Additional Payments to eligible claimants in Classes 9, 10.1, and 10.2 without further

order of the Court commencing 11 days after entry of this Consent Order provided that no motion or appeal challenging the Order has been filed.

Date: _____

DENISE PAGE HOOD
United States District Judge

So Stipulated and Agreed:

On Behalf of Dow Corning Corporation
and Debtor's Representatives:

On Behalf of Claimants' Advisory Committee:

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EXHIBIT A

MAXIMUM PAYMENT GRID (All dollar amounts applicable to Class 9 claimants)*

Implant Type	Base Payment	Premium Payment	Maximum Additional Payment	Total Maximum Payment
Chin, Facial, Nasal	\$5,000	\$1,000	\$24,000	\$30,000
Small Joint	\$5,000	\$1,000	\$24,000	\$30,000
TMJ	\$5,000	\$1,000	\$24,000	\$30,000
Testicular and Penile	\$5,000	\$1,000	\$24,000	\$30,000
Large Joint, Hip	\$10,000	\$2,000	\$18,000	\$30,000
Large Joint, Knee	\$7,500	\$1,500	\$21,000	\$30,000
TMJ Enhanced	\$15,000	\$3,000	\$82,000	\$100,000

* For claimants in Classes 10.1 and 10.2, the Claims Administrator shall apply the formula set forth in Schedule III to Annex A to the amounts set forth in the Maximum Payment Grid to determine the appropriate payment amount.