

**SETTLEMENT AGREEMENT BETWEEN THE PLAN PROPONENTS AND
THE UNITED STATES**

This Settlement Agreement (“Agreement”) is entered into by and between Dow Corning Corporation, Debtor in Possession, The Official Committee of Tort Claimants in the Dow Corning Chapter 11 bankruptcy proceeding (Dow Corning and the Tort Claimants Committee are collectively referred to as “Plan Proponents”), and by the United States of America, on behalf of the United States Department of Defense, the United States Department of Veterans Affairs, and the Department of Health and Human Services, Indian Health Service and Centers for Medicare and Medicaid Services (formerly the Health Care Financing Administration) (collectively the “United States”).

Recitals

A. Dow Corning Corporation is a debtor in possession in a case filed under chapter 11 of the United States Bankruptcy Code in cause number 95-20512, pending in the United States Bankruptcy Court, Eastern District of Michigan, Northern Division (the “Dow Corning Bankruptcy”).

B. The United States has filed the proofs of claim in the Dow Corning Bankruptcy case listed on Exhibit “A” hereto. These claims were filed on behalf of the Department of Defense, Department of Veterans Affairs, the Department of Health and Human Services, Health Care Financing Administration (now known as the Centers for Medicare and Medicaid Services), and the Indian Health Service. These claims seek reimbursement for payments made (or to be made in the future) and medical services provided (or to be provided in the future) for which the United States alleges that Dow Corning is or may be required to pay pursuant to the Medicare Secondary Payer Statute, 42 U.S.C. § 1395y, and the Medical Care Recovery Act, 42 U.S.C. §§ 2651-2653, and have been designated in the Amended Joint Plan of Reorganization, as amended (the “Plan”) as Class 15 claims. These claims are collectively hereafter called the “Government Claims”.

C. The Plan Proponents have objected to the Government Claims (the “Claim Objections”). In connection with the merits of the Claim Objections, the bankruptcy court issued an opinion entered on June 22, 2000, and reported at *In re Dow Corning Corp.*, 250 B.R. 298 (Bankr. E.D. Mich. 2000), and an order entered on June 23, 2000 (collectively the “Bankruptcy Court Opinion”) disallowing the Government Claims in whole or in part. The Bankruptcy Court Opinion was appealed by the United States to the District Court where it is pending as Civil Case No. 00-CV-73017-DT (the “USA Claims Appeal”).

D. The United States of America, acting through the Civil Fraud Section of the United States Department of Justice, filed a claim asserting claims against Dow Corning pursuant to the False Claims Act, 31 U.S.C. § 3729 et seq., the Program Fraud Civil Remedies Act, 31 U.S.C. § 3801, the Civil Monetary Penalties Statute, 42 U.S.C. § 1320a-7a, and common law causes of action for fraud (the “Civil Fraud Claim”). The Civil Fraud Claim has been disallowed by order entered September 22, 1999.

E. The Plan Proponents filed the Plan in the Dow Corning Bankruptcy pursuant to which Dow Corning Corporation seeks to reorganize under Chapter 11 of the Bankruptcy Code. The United States filed objections to the Plan (the “USA Plan Objections”), which the bankruptcy court overruled. An order confirming the Plan was entered by the bankruptcy court on November 30, 1999 (together with any subsequent order that confirms the Plan, the “Confirmation Order”). The United States then appealed the Confirmation Order (the “USA Plan Appeal”) to the District Court and the United States Court of Appeals for the Sixth Circuit, as did certain other objecting creditors. The Sixth Circuit did not formally consolidate the USA Plan Appeal with the appeals of other creditors, but issued one opinion affirming in part, and remanding for further proceedings, *In re Dow Corning Corp.*, 280 F.3d 648 (6th Cir. 2002). A petition for rehearing and rehearing en banc was filed by the United States and denied on May 3, 2002. The mandate in each of the appeals of the Confirmation Order, including the USA Plan Appeal, has now been issued, and the confirmation proceeding is now pending before the District Court pursuant to the limited remand.

F. The Plan Proponents and the United States have reached an agreement to resolve the Government Claims, the Claim Objections, the USA Claims Appeal, the USA Plan Objections, and the USA Plan Appeal, and desire to set forth their agreement herein.

NOW THEREFORE, the parties hereto agree as follows:

1. On the Effective Date, the Government Claims shall be allowed in the amount of \$9.8 million (the “Agreed Settlement Amount”). The Agreed Settlement Amount shall be paid from the Settlement Fund by wire transfer of immediately available federal funds to accounts designated by the United States within 20 days of the Effective Date of the Plan.
2. On the Effective Date, the United States will withdraw with prejudice the USA Plan Objections and any related motions. During the interval between the execution of this agreement by the parties and the Effective Date, the United States will not further object to the Plan or its confirmation, will not take any action to prosecute the USA Plan Objections or the USA Plan Appeal, and will so advise the District Court. The Plan Proponents will not take any action that materially affects treatment of the Government Claims, other than as provided herein. In the event that the United States, acting

through any department, agency or entity, joins in or supports a contest by any third party of the Confirmation Order, at the District Court or Bankruptcy Court level, through appeal to the United States Court of Appeals, filing an application for writ of certiorari, or by filing an amicus brief in support of a petition for a writ of certiorari in the absence of a request by the Supreme Court, then the Agreed Settlement Amount shall be reduced by 50% (in the event the Plan ultimately becomes effective), and no interest shall be due the United States pursuant to paragraph 11 below. Should certiorari be granted in the case of any third party contest of the Confirmation Order or in any case in which the Supreme Court requests the views of the United States, the United States may without reduction of the Agreed Settlement Amount express its views to the Supreme Court without restriction, by amicus brief or otherwise.

3. On the Effective Date, the USA Claims Appeal, the Claim Objections and the Government Claims will become moot as a result of the implementation of this Agreement. Accordingly, on the Effective Date, Dow Corning and the Tort Claimants Committee shall withdraw their objections to the Government Claims and the United States shall withdraw the USA Claim Appeal. During the interval between the execution of this Agreement by all parties and the Effective Date, the parties shall request that the District Court stay all proceedings related to the USA Claims Appeal, and the parties agree that they shall take no action to prosecute or defend the USA Claims Appeal, the Claim Objections or the Government Claims.
4. In connection with the request for approval of this Agreement, the Plan Proponents and the United States shall jointly request that on the Effective Date the District Court vacate as moot the Bankruptcy Court Opinion. The order of the District Court approving this Agreement shall vacate the Bankruptcy Court Opinion as moot on the Effective Date.
5. Upon receipt of the Agreed Settlement Amount identified in paragraph 1, the United States releases the Plan Proponents and the released parties identified below from any liability on (a) the Government Claims, and (b) any claims that the United States has or hereafter acquires against the released parties described below that arise pursuant to the Medicare Secondary Payer Statute, 42 U.S.C. § 1395y, or the Medical Care Recovery Act, 42 U.S.C. §§ 2651-2653 and relate to payments to or by Dow Corning Corporation, the Settlement Facility or the Litigation Facility. The released parties are Reorganized Dow Corning Corporation, the Shareholders, the Personal Injury Claimants, the Settling Insurers, the Settlement Facility, the Litigation Facility, the Claims Administrator and the other officials, trustees and committees appointed under the Plan, and each of their respective attorneys, employees and officers, heirs, executors, estates, guardians or administrators. This release shall not extend to any of the following: (i) any claim arising

under criminal law; (ii) any criminal, civil or administrative claims, rights or defenses arising under Title 26, United States Code (Internal Revenue Code); (iii) to the extent not already resolved through disallowance of the Civil Fraud Claim, any claims, rights or defenses arising under 31 U.S.C. § 3729 et seq. (False Claims Act), 31 U.S.C. §§ 3801 et seq. (Program Frauds Civil Remedies Act), 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Statute), or any common law cause of action for fraud; (iv) any claims of the United States filed in the Dow Corning Bankruptcy other than the Government Claims; and (v) any claims, rights, or defenses not specifically released or relinquished in this Agreement. This release does not limit or in any way affect any defense or rights that Dow Corning or any other released party has with respect to any of the items (i)-(v) above, and furthermore does not vest any right to appeal, right to seek a waiver, or any other cause of action in any Personal Injury Claimant.

6. Upon receipt of the Agreed Settlement Amount identified in paragraph 1, the United States further releases any claims that the United States has or hereafter acquires that arise pursuant to the Medicare Secondary Payer Statute, 42 U.S.C. § 1395y, against any individuals who have or had both a breast implant manufactured by Dow Corning and a breast implant manufactured by another company (the “Dual Implant Recipients”), and who, as a result of having breast implants manufactured by Dow Corning and another manufacturer, receives or qualifies to receive a reduced payment under the Plan. This release only applies to claims against Dual Implant Recipients arising from payments made from another breast implant settlement facility or trust, breast implant manufacturer or its insurers related to breast implants. Notwithstanding the foregoing release, the United States has not released and may pursue its claims related to payments associated with the removal of silicone gel breast implants against manufacturers of breast implants other than Dow Corning, including, but not limited to, claims asserted in *In re Silicone Gel Products Liability Litig.*, MDL No. 926, CV 92-10000 (N.D. Ala.), or *United States v. Baxter International*, Civ. No. 00-N-0837-S (N.D. Ala.). The release does not apply to amounts the United States recovers prior to court approval of this Agreement and under no circumstances shall the United States be required to return any amounts recovered prior to court approval of this Agreement, whether or not an appeal is pending at the time of such approval. In addition, this release does not apply to claims the United States asserts against Dual Implant Recipients after court approval of this Agreement unless the Dual Implant Recipient asserts the release and demonstrates its applicability prior to the time funds are paid by her or on her behalf to the United States. The parties understand that the United States does not know the identity of the individuals and that it is the responsibility of the Dual Implant Recipients to establish that this provision is applicable to them. Furthermore, this release does not vest any right to

appeal, right to seek a waiver, or any other cause of action in any Dual Implant Recipient.

7. The parties acknowledge that the United States currently holds funds in the amount of \$529,797.00 pending resolution of the Government Claims. The United States shall be entitled to retain such funds in addition to the "Agreed Settlement Amount".
8. In connection with the request for approval of this Agreement, the Plan Proponents and the United States shall jointly request that, on the Effective Date, the District Court shall vacate as moot the order of the bankruptcy court entered on November 15, 2001, entitled "Agreed Order (A) Establishing Periods for Implementation of Provisions of Confirmation Order Regarding Confidentiality of Claimants and Government's Access to Proofs of Claim, and (B) Denying Motion for Civil Contempt Without Prejudice" (the "Agreed Order"). During the interval between the time this Agreement is executed by the parties and the Effective Date, the United States agrees that it shall not act or require any other party to act under the Agreed Order.
9. This Agreement is subject to approval by the court overseeing the Dow Corning Bankruptcy.
10. If the Plan does not or cannot become effective, this Agreement shall be void unless all parties hereto waive in writing this provision. It is the intention of the parties that all of their existing rights shall be restored to them if the Plan does not become effective.
11. If the United States, acting through any department, agency, or entity, has not joined in or supported any contest by any third party of the Confirmation Order, at the District Court or Bankruptcy Court level, through appeal to the United States Court of Appeals, filing an application for writ of certiorari, or by filing an amicus brief in support of a petition for a writ of certiorari in the absence of a request by the Supreme Court, and if the Effective Date of the Plan has not occurred by the third anniversary of the date of the approval of this Agreement by the District Court, the United States shall have the right to receive interest on the Agreed Settlement Amount payable at the same time as the Agreed Settlement Amount at the rate of interest then imposed by 28 U.S.C. § 1961(a) from the date of the approval of this Agreement by the District Court until the Effective Date. Such interest shall be compounded annually.
12. Capitalized terms used in this Agreement shall have the meanings given to them in the Plan, unless otherwise expressly defined herein.

13. This Agreement has been the subject of arms-length, good faith negotiations by parties with equal bargaining capacities, each of which has been represented by counsel. If any issue arises in the interpretation or implementation of this Agreement, no presumption for or against any party hereto shall be made based on authorship hereof.
14. The parties hereto agree to cooperate in seeking an expedited consideration and approval of this Agreement by the District Court

Dow Corning Corporation



By: Gifford E. Brown
Its: CFO
Date: Nov. 6, 2002

The Official Committee of Tort Claimants



By: Ralph I. Knowles, Jr.
Its: Member
Date: Aug. 9, 2002

The United States of America



By: Glenn D Gilbert
Its: Attorney
Date: August 7, 2002

EXHIBIT "A"

<u>Claim Number</u>	<u>Date Filed</u>	<u>Name of Claimant</u>	<u>Amount of Claim</u>
379535-00	01/14/97	United States Department of Defense	\$58,710,039.00
379536-00	01/14/97	United States Department of Defense	
380586-00	01/14/97	United States Department of Defense	
701174-00	06/17/99	United States Department of Defense	
379477-00	01/14/97	United States Department of Defense	
701104-00	06/10/99	Indian Health Services	Unknown
378429-00	01/14/97	Indian Health Services	Unknown
380548-00	01/14/97	Department of Veterans Affairs	Unknown
700979-00	05/28/99	Department of Veterans Affairs	Unknown
381095-00	01/15/97	Health Care Financing Administration	Unknown
701103-00	06/04/99	Health Care Financing Administration	Unknown