

DOMESTIC HEALTH INSURER SETTLEMENT AGREEMENT

Between

DOW CORNING CORPORATION

AND

THE SETTLING HEALTH INSURERS

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: _____, 1999

DOMESTIC HEALTH INSURER SETTLEMENT AGREEMENT

THIS DOMESTIC HEALTH INSURER SETTLEMENT AGREEMENT (the "Agreement") is entered into by and among Dow Corning Corporation, a Michigan corporation ("Dow Corning"), the Domestic Health Insurers which have, or pursuant to the Plan (as defined herein) are deemed to have, executed this Agreement (the "Settling Health Insurers"), pursuant to the Amended Joint Plan of Reorganization (the "Plan") dated as of February 4, 1999 in case number 95-20512 in the United States Bankruptcy Court for the Eastern District of Michigan, Northern Division (the "Court"). Certain of the Settling Health Insurers are parties to this Agreement in both their individual and representative capacities as administrators or representatives of certain self-funded health care plans and/or other entities or affiliates.

RECITALS

- A. On May 15, 1995, Dow Corning filed a petition for reorganization under Chapter 11 of the Bankruptcy Code in the Court (the "Chapter 11 Case").
- B. Many of the Personal Injury Claimants have been or will be provided health insurance benefits under insurance coverage provided by the Settling Health Insurers.
- C. The Settling Health Insurers filed proofs of claim against Dow Corning for payments made or to be made to or on behalf of Personal Injury Claimants.
- D. The Parties hereto wish to settle claims that the Settling Health Insurers have asserted in the past or may assert in the future against Dow Corning and other designated parties and against Personal Injury Claimants as a result of payments made or to be made or benefits provided or to be provided by the Settling Health Insurers to Personal Injury Claimants that involve or relate to Personal Injury Claims, all upon the terms and conditions herein set forth.
- E. The Parties acknowledge that this Agreement implements certain provisions of the Plan. Thus, this Agreement is conditioned upon (i) the entry of the Confirmation Order by the Court and (ii) the Effective Date occurring.

ARTICLE I DEFINITIONS

1.01 *Incorporation of Definitions.* All capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings assigned to them in the Plan.

1.02 *Additional Definitions.* When used in this Agreement, the following capitalized terms shall have the respective meanings set forth below. Whenever the context requires, such terms shall include the singular as well as the plural number, the masculine gender shall include the feminine, and the feminine gender shall include the masculine.

(a) “Allocation Schedule” means the schedule which sets forth the allocation formula for the Settlement Amount, which schedule will be agreed to by the Settling Health Insurers and provided to Dow Corning, each Settling Health Insurer or its designated agent, if any, and each Class 14 Claimant, subject in each case to the confidentiality restrictions set forth in Section 5.04 of this Agreement. Any dispute among Class 14 Claimants and/or the Settling Health Insurers regarding the Allocation Schedule shall be resolved by the Court. Any other Released Party or any other person or entity seeking disclosure of the Allocation Schedule must execute a written agreement to be bound by the confidentiality restrictions of Section 5.04 of this Agreement.

(b) “Allowed Claim” means any proof of claim filed by a Settling Health Insurer that (i) was filed on or before the Claims Bar Date and (ii) is listed on Exhibit A to this Agreement; provided that such claim shall be conditionally “allowed” as of the date of entry of the Confirmation Order, subject only to the occurrence of the Effective Date, and that, as of the Effective Date of the Plan, any claim objection as to such claim is deemed dismissed with prejudice.

(c) “Claims Bar Date” means January 15, 1997.

(d) “Class 14 Claimant” means any domestic commercial and non-governmental health insurance company, health maintenance organization, employee benefit plan or other self-funded plan domiciled in the United States that provides, or has provided, health coverage benefits (including payments, benefits or coverage pursuant to a health insurance policy or a health benefit program) and which either directly or indirectly through an administrator filed a proof of claim against Dow Corning on or before the Claims Bar Date.

(e) “Class 14 Opt Out Claimant” means any Class 14 Claimant who affirmatively elects to “opt out” of or not participate in the settlement provided by this Agreement by written notice delivered to Dow Corning on or before the Election Deadline.

(f) “Class 14 Settlement Amount” shall be \$40,000,000.00.

(g) “Election Deadline” means March 19, 1999.

(h) “Insured Lives” means individuals provided health care coverage by a domestic commercial and non-governmental health insurance company, health maintenance organization, an employee benefit plan or self-funded plan domiciled in the United States.

(i) “Participant Fraction” means a fraction, the numerator of which is the aggregate number of Insured Lives represented by the Settling Health Insurers and the denominator of which is the aggregate number of Insured Lives represented by all Class 14 Claimants.

(j) “Parties” means all Settling Health Insurers and Dow Corning.

(k) “Personal Injury Claim” and “Personal Injury Claimant” shall have the meaning provided in the Plan.

(l) “Released Parties” shall have the meaning provided in the Plan.

(m) “Releasing Party” means each Settling Health Insurer and all of its Represented Plans.

(n) “Represented Plans” are those self-funded health care coverage plans and/or entities for which Settling Health Insurers were administrators or representatives on the Claims Bar Date and which fail to elect timely to opt out of, or not participate in, this Agreement. The Represented Plans shall be deemed to be Parties to this Agreement and subject to the terms hereof. Each Settling Health Insurer shall maintain a list of all of its Represented Plans as of the date its Claim becomes an Allowed Claim. Disclosure of the Represented Plans shall only occur when, and to the extent, necessary to resolve a dispute as to whether a Personal Injury Claimant is covered by a Represented Plan and shall be subject to the confidentiality provisions of Section 5.04. In the event of any such dispute, the Claims Administrator of the Settlement Facility shall be entitled to receipt of information regarding the Represented Plan or Plans in question and shall be entitled to advise a Personal Injury Claimant if she is covered by a Represented Plan or a Settling Health Insurer.

(o) “Settlement Amount” means the total amount due to Settling Health Insurers under this Agreement. The Settlement Amount shall be calculated by multiplying the Participant Fraction times the Class 14 Settlement Amount.

(p) “Settling Health Insurer” means a Class 14 Claimant, including its Represented Plans, which has an Allowed Claim and which is, or is deemed to be, a party to this Agreement, and which is not a Class 14 Opt-Out Claimant. In this Agreement, the term “Settling Health Insurer” shall be construed in a manner that encompasses a Settling Health Insurer’s Represented Plans.

ARTICLE II CONDITIONS OF THIS AGREEMENT

2.01 *Obligation to Pay Settlement Amount and Provide Releases.* The obligation of Dow Corning to pay the Settlement Amount, and the obligation of the Releasing Parties to honor the releases under Section 4.01, shall become binding and valid obligations of each Party, fully enforceable against that Party as to its terms, on the date on which the last of the following conditions shall occur; provided, however, that, if the conditions in subsections (a), (b), and (c) of this Section have not been satisfied on or before the date subsection (d) is satisfied, this Agreement shall become void and thereafter be of no force and effect:

(a) The Class 14 Claimants who wish to become, or are deemed to be, Settling Health Insurers shall have delivered evidence reasonably satisfactory to Dow Corning demonstrating that the Settling Health Insurers represent at least two-thirds of the U.S. commercial and non-

governmental health care insurer market measured in Insured Lives. Such evidence may include evidence provided in connection with the consolidated breast implant litigation pending in the United States District Court for the Northern District of Alabama (the “MDL-926 RSP”). For purposes of determining whether the condition contained in this Section 2.01(a) has been satisfied, Insured Lives represented by Settling Health Insurers shall be measured as of December 31, 1994 in accordance with the procedures used for reaching the settlement between and among the “Settling Defendants” and the “Insurers” in the MDL-926 RSP, provided, however, that in the event there has been a material change in the commercial and non-governmental health care consumer market since December 31, 1994, the provisions of Section 2.02(e) shall apply. For purposes of determining the U.S. commercial and non-governmental health care insurer market measured in Insured Lives, Dow Corning shall make the determination based on Insured Lives measured as of December 31, 1996, which Dow Corning has determined to be 188,500,000. Notwithstanding the above defining the process and data for the measurement of Insured Lives, (i) the parties may agree to accept reasonably equivalent evidence of Insured Lives with respect to Settling Health Insurers that did not submit evidence of Insured Lives in connection with the MDL-926 RSP, and (ii) if a Settling Health Insurer fails to provide evidence concerning the number of Insured Lives it covers in accordance with this Section 2.01(a), such Settling Health Insurer shall be deemed to have 2000 covered lives.

(b) The Class 14 Claimants who wish to become, or are deemed to be, Settling Health Insurers shall have delivered evidence satisfactory to Dow Corning demonstrating that the Settling Health Insurers represent at least seventy-five percent (75%) of the aggregate number of Insured Lives represented by all Class 14 Claimants. For purposes of determining whether the condition contained in this Section 2.01(b) has been satisfied, Insured Lives shall be measured as of December 31, 1994 as provided above.

(c) The Tort Claimants’ Committee shall have the right to reject this Agreement and thereby to preclude it from becoming effective. Such right to reject must be exercised by notice thereof delivered to the Debtor and to Settling Health Insurers on or before April 5, 1999. Such right to reject and thereby to preclude the effectiveness of this Agreement shall not be exercised unreasonably.

(d) The Confirmation Order is entered and the Effective Date occurs.

2.02 Irrevocable Commitment to Settle; Determination of Insured Lives; Election to Opt Out of Agreement.

(a) Subject to the satisfaction of the conditions set forth in Section 2.01 of this Agreement, at any time after the Court’s approval of the Disclosure Statement and prior to the Election Deadline, each Class 14 Claimant shall be entitled to advise Dow Corning of its intention to settle under the terms of this Agreement by delivering a written, irrevocable commitment to participate in the settlement provided by this Agreement. Prior to, or simultaneously with, the delivery of such an irrevocable commitment to settle, such Class 14 Claimant shall provide Dow Corning with evidence regarding the number of Insured Lives it represents. Evidence of Insured

Lives previously provided which satisfies the provisions of Section 2.01(a) shall satisfy the requirements of this Section 2.02(a).

(b) The Settling Health Insurers and Dow Corning shall monitor progress towards satisfaction of the conditions set forth in Section 2.01(a) and (b) as irrevocable commitments to settle are received. As soon as the conditions in Section 2.01(a) and (b) have been satisfied, Dow Corning shall notify all Class 14 Claimants who have delivered written commitments to settle under this subsection of the satisfaction of such conditions. At any time, Class 14 Claimants may, following a good faith determination on their part that the conditions of either Section 2.01(a) or Section 2.01(b) or both would be satisfied by the participation in the settlement of Class 14 Claimants which have delivered written irrevocable commitments to settle, deliver to Dow Corning evidence that this is the case. Dow Corning shall immediately in good faith review such evidence and, within 20 business days after receipt of such evidence, shall advise the Class 14 Claimants providing such evidence of its agreement or disagreement as to whether said condition or conditions have been satisfied. If Dow Corning makes a determination that the condition or conditions have been satisfied or agrees with such a determination, its determination or agreement shall become irrevocable. If Dow Corning determines that such condition or conditions have not been satisfied or disagrees with the Class 14 Claimants as to the satisfaction of said condition or conditions, the parties shall attempt to negotiate an appropriate resolution of any dispute concerning Dow Corning's disagreement. In the absence of such resolution, the Court shall determine whether such condition or conditions have been satisfied.

(c) Class 14 Claimants which have not delivered irrevocable written commitments to settle shall have until March 31, 1999 to opt out of the provisions of this Agreement by providing Dow Corning with written notice of their election to opt out. Class 14 Claimants which have not delivered irrevocable commitments to settle but which do not timely elect to opt out shall be deemed to have elected to settle under the terms of this Agreement.

(d) To the extent the conditions set forth in Section 2.01(a), (b), and (c) are not satisfied prior to the Election Deadline, Dow Corning shall determine whether such conditions have been satisfied as soon as practicable after the Election Deadline. Dow Corning shall notify all Class 14 Claimants of the satisfaction of the conditions in Section 2.01(a), (b), and (c), or the failure to satisfy such conditions on or before April 8, 1999. In the event Dow Corning notifies the Class 14 Claimants of the failure to satisfy the conditions of Section 2.01(a), (b), and (c), the Class 14 Claimants shall retain the right to cast a ballot rejecting the Plan and to submit any objections to the Plan or confirmation regardless of whether the Class 14 Claimants had provided an "irrevocable commitment to settle."

(e) If the Settling Health Insurers believe the condition in Section 2.01(a) was not satisfied due to the use of different dates for measuring Insured Lives represented by Settling Health Insurers and the insurer market generally, Dow Corning and the Settling Health Insurers shall attempt to reconcile the data to fairly determine whether the condition can be satisfied. If either the Settling Health Insurers or Dow Corning believe there has been a material change in the commercial market

since 1994, Dow Corning and the Settling Health Insurers shall attempt to address such a change to fairly determine whether the condition was satisfied.

(f) Dow Corning shall have the right, in its sole discretion, to allow a Class 14 Opt-Out Claimant to change its election and thereafter settle under the terms of this Agreement, provided that such Claimant's request to change its election is received by Dow Corning prior to the Effective Date. The Participant Fraction shall be changed accordingly.

ARTICLE III PAYMENT OF SETTLEMENT AMOUNT

3.01 *Payment of Settlement Amount.* On the Effective Date, Dow Corning shall pay the Settlement Amount to the Settling Health Insurers in accordance with instructions provided by them. The Settlement Amount shall be in cash and will be allocated among the Settling Health Insurers in the manner set forth in the Allocation Schedule. Dow Corning shall be entitled to rely on the Allocation Schedule in making payments under this Agreement. Payment shall be made in accordance with Section 11.5 of the Plan.

ARTICLE IV RELEASES, EQUITABLE RELIEF

4.01 *Releases.* Upon payment of the Settlement Amount, each Releasing Party hereby releases, acquits, and forever discharges (a) the Released Parties from any and all claims or causes of action, suits, controversies, demands, damages and claims for damages of every kind and character whatsoever, in law, equity, or otherwise, both to person and property, on a theory of subrogation or otherwise, for recovery of payments made or benefits provided, in the past, present or future, relating to the Personal Injury Claims and (b) each Personal Injury Claimant from any and all claims or causes of action, suits, controversies, claims, demands, damages and claims for damages of every kind and character whatsoever, in law, equity, or otherwise, both to person and property, on a theory of reimbursement or otherwise, for recovery on account of payments made or benefits provided by a Settling Health Insurer in the past, present or future, relating to Personal Injury Claims except that each Releasing Party shall retain its (v) rights, if any, to recovery from (i) a Physician or a Health Care Provider with regard to a malpractice claim and/or (ii) a Personal Injury Claimant some or all of any payment made to such Personal Injury Claimant by any Physician or Health Care Provider with regard to a malpractice claim; (w) rights, if any, to recovery from a Settling Physician or a Settling Health Care Provider with regard to a Malpractice Claim; (x) rights, if any, to recover some or all of any payment made or promised to be made with respect to a LTCI claim from a Personal Injury Claimant; (y) contractual rights between a Settling Health Insurer or Represented Plan and a Settling Health Care Provider or Settling Physician in connection with the provision of covered benefits or services; and (z) rights, if any, to recovery from a Personal Injury Claimant some or all of any payment made by a third party, other than the Released Parties or the Settlement Facility, and not otherwise under the Plan, relating to Personal Injury Claims.

4.02 *Equitable Relief.* The Parties expressly covenant and agree that they will suffer irreparable damage for which recovery of money damages would be inadequate in the event that any of the provisions of this Agreement are not performed or are otherwise breached and that each Party shall be entitled as a matter of right (without the need to prove actual damages) to an injunction or injunctions and other relief to prevent a breach and to secure the enforcement of such provision. Resort to such equitable relief, however, shall not constitute a waiver of any other rights or remedies that a party seeking such relief may have.

ARTICLE V REPRESENTATIONS AND CONFIDENTIALITY

5.01 *Authority of Settling Health Insurers.* Each Settling Health Insurer severally:

(a) represents and warrants to each Released Party that it has the legal authority and is duly authorized to bind itself to all of the terms of this Agreement, including, without limitation, the releases described in Article IV, and that the execution of this Agreement does not violate any other agreement or laws, rules or regulations, and no other consents are required; and

(b)(i) represents and warrants to each Released Party that it has the legal authority and is duly authorized to bind its Represented Plans to all of the terms of this Agreement, including, without limitation, the releases described in Article IV, and that the execution of this Agreement does not violate any other agreement or laws, rules or regulations, and no other consents are required; or

(b)(ii) agrees to indemnify and hold the Released Parties harmless from and against any claims asserted by one of its Represented Plans, to the extent that such claims conflict in any way with the terms of this Agreement.

5.02 *Authority of Dow Corning.* Dow Corning represents to the Settling Health Insurers that, subject to Court approval, it has the legal power and authority to enter into and perform all of its obligations under this Agreement, and that the execution of this Agreement does not violate any other agreement or laws, rules or regulations, and no other consents are required.

5.03 *Survival of Representations.* The representations and warranties of the Settling Health Insurers and Dow Corning as set forth in this Article V shall survive after this Agreement is consummated.

5.04 *Confidential Information.* The Parties agree that they will:

(a) make use of the information regarding Insured Lives and Represented Plans furnished by the Settling Health Insurers only in connection with this Agreement;

(b) hold the information on Insured Lives and Represented Plans furnished by the Settling Health Insurers confidential (except to the extent legally compelled by subpoena, civil

investigative demand or otherwise, of which such party will provide the relevant Settling Health Insurer(s) with reasonable prior notice, to the extent possible) and maintain strict control of such list and information to avoid any dissemination, whether intentional or inadvertent, not permitted by subsection (a).

ARTICLE VI MISCELLANEOUS

6.01 *Notices.* All notices, requests and other communications to any Party to this Agreement shall be made in writing and mailed (by registered or certified mail or overnight courier) or delivered by hand to such Party at the address listed on Exhibit ____ hereto or to such other address as such Party may hereafter specify in writing.

6.02 *Benefit of Agreement.* Nothing in this Agreement, express or implied, confers on any person, other than the Parties, the Released Parties, the Personal Injury Claimants, and their respective successors and assigns, any benefit or any legal or equitable right, remedy, or claim under this Agreement. By entering into this Agreement, the Parties create no greater rights on behalf of any other Party, Released Party or Personal Injury Claimant than those that otherwise would exist, except as specifically set forth herein. Neither this Agreement nor any exhibit, document, or instrument delivered hereunder, nor any statement in this Agreement constitutes an admission of any liability on behalf of any Party or Released Party, nor an admission of coverage or a waiver of any Releasing Party's (or Releasing Party's subsidiary's) rights, if any, to assert that coverage for silicone breast implant claims does not arise under liability policies issued to any Released Party.

6.03 *Counterparts.* This Agreement may be executed in multiple counterparts, all of which shall constitute a single agreement and shall contain the entire agreement of the Parties. All prior negotiations, statements, or representations are superseded and displaced by this Agreement.

6.04 *Captions.* Article and Section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

6.05 *Governing Law.* The interpretation and construction of this Agreement shall be governed by applicable federal law or the laws of the State of Michigan without regard to Michigan conflicts of law principles.

6.06 *Jurisdiction.* Any judicial proceeding brought against any Party on any dispute arising out of this Agreement shall be brought in the Court and, by execution and delivery of this Agreement, each Party irrevocably submits to and accepts for itself and, if applicable, its Represented Plans, the exclusive jurisdiction of the Court.

6.07 *Amendments.* This Agreement may not be changed orally, but only by an agreement in writing signed by each Party.

EXECUTED on _____, 199____.

DOW CORNING CORPORATION

By: _____
Name: _____
Title: _____

SETTLING HEALTH INSURERS

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