

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

IN RE:	§	CASE NO. 00-CV-00005-DT
DOW CORNING CORPORATION,	§	(Settlement Facility Matters)
REORGANIZED DEBTOR	§	Hon. Denise Page Hood

**CONSENT ORDER TO ESTABLISH GUIDELINES FOR DISTRIBUTIONS
FROM THE CLASS 7 SILICONE MATERIAL CLAIMANTS' FUND**

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

1. The Amended Joint Plan of Reorganization ("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 Settlement Facility-Dow Corning Trust ("SF-DCT") for the benefit of Personal Injury Claimants among the various funds and subfunds established by the Plan.
3. The SFA defines the Silicone Material Claimants' Fund as a \$57.5 million NPV subfund within the Settlement Fund. SFA § 3.02(b)(iii). The SFA further provides that the "maximum amount payable to Settling Silicone Material Claimants shall not exceed \$57.5 million Net Present Value." *Id.* Silicone

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

Material Claimants are classified in Class 7. Plan § 3.2.14. Silicone Material Claimants may be referred to in this Consent Order as Class 7 Claimants and their claims as Class 7 Claims. The Silicone Material Claimants' Fund may also be referred to as the Class 7 Fund.

4. The SFA and Annex A to the SFA specify the amounts that can be paid to Settling Silicone Material Claimants. Eligible Silicone Material Claimants are eligible for one of two types of payments: an Expedited Release Payment or a Disease Payment. SFA, Annex A § 6.04(h)(i). In addition, Participating Foreign Gel Claimants receive payments from the Class 7 Fund. *Id.* at § 6.04(g). The Participating Foreign Gel Claimants are eligible only for the Expedited Release Payment. *Id.* at §§ 6.04(h)(vi), 6.04(i).

5. To be eligible for a payment, Silicone Material Claimants must satisfy several criteria. First, the Silicone Material Claimants must submit proof that they have been implanted with a silicone gel breast implant made by one of several specified manufacturers during specified years. *Id.* at § 6.04(b). Second, if they seek a Disease Payment, a Silicone Material Claimant must submit medical documentation demonstrating an eligible medical condition. *Id.* at § 6.04(c). (Silicone Material Claimants who seek only an Expedited Release Payment do not need to submit such medical documentation.) Third, most of the Silicone Material Claimants must demonstrate that they have marshaled recoveries from other

sources outside the Plan. *Id.* at § 6.04(h)(v). (Silicone Material Claimants whose implants were manufactured by Bioplasty, Mentor or Cox-Uphoff are not required to marshal recoveries from other sources. *Id.*)

6. The “marshaling requirement” obligates certain Silicone Material Claimants to seek other sources of compensation and thereby preserve the assets of the Silicone Material Claimants’ Fund for those Silicone Material Claimants who do not have and cannot assert claims against other entities or who have obtained recoveries in an amount less than the amount they could receive from the Silicone Material Claimants’ Fund.

7. Silicone Material Claimants who submit an eligible Disease claim may receive a payment that is no greater than 40% of the Base Payment that would be payable for the same disease under the settlement grid specified for Breast Implant Claimants. *Id.* at § 6.04(h)(iv). The SFA does not specify the amount payable to Silicone Material Claimants who submit an Expedited Release claim but instead provides that such amount shall be established based on the number and type of claims. *Id.* As evidenced by the structure of the compensation provisions of the Plan, an Expedited Release Payment is intended to be substantially smaller than the payment for an eligible Disease claim.

8. The SFA provides that the distribution of any payments for Class 7 Disease claims will be made when all timely Class 7 Disease claims have been

reviewed and evaluated and the time to cure any deficiencies in those claims has passed. *Id.* at § 6.04(h)(iii). This restriction on the distribution of funds is intended to assure equality of treatment – *i.e.*, that Silicone Material Claimants who qualify for the same compensable condition each receives the same amount.

9. The deadline for submission of Class 7 Claims was June 1, 2006. *Id.* at § 6.04(h)(ii). The SF-DCT, therefore, has received all submissions that potentially may be eligible for a distribution from the Silicone Material Claimants' Fund.

10. The SF-DCT has completed the review of all timely Class 7 Claims that the SF-DCT determined meet all the requirements for payment (including the marshaling requirement). The status of those claims is as follows:

a. Expedited Release Claims. In December 2006 the Claims Administrator determined that payments to Expedited Release claimants could be made in the amount of \$600 without materially affecting payments to other eligible claimants. Award letters and payments were issued. To date, approximately 7,216 Class 7 Claimants have been issued an Expedited Release Payment, and their claims have been permanently closed. The remaining Expedited Release claims are those that have a payment deficiency (such as an unresolved probate issue or missing foreign identification).

b. Disease Cash-Out Offer Claims. In December 2006 (and on later dates) the Claims Administrator sent letters to certain Class 7 Claimants and offered them the option of receiving \$3,000 as a Disease Cash-Out Payment as a permanent, final settlement of their Class 7 Claim. To date, approximately 6,076 claimants have been issued the Disease Cash-Out Payment, and these claims have been permanently closed.

c. Participating Foreign Gel Claims. In December 2006 the Claims Administrator approved the payment of an Expedited Release Payment of \$600 for Participating Foreign Gel claims. The notification letter from the SF-DCT to the Participating Foreign Gel Claimants states clearly that this Expedited Release Payment is a final payment that would permanently close the Class 7 Claim. To date, the SF-DCT has issued such final payments to approximately 652 Participating Foreign Gel Claimants.

d. Disease Claims. The SF-DCT has completed the evaluation of all remaining claims submitted by claimants who asserted a Disease claim, have an address validated by the SF-DCT and did not accept (or were not eligible for) the Disease Cash-Out Payment. The deadline for curing deficiencies in the Disease claims that have been processed will expire in November 2015. (There are 2 Disease claims with unexpired cure deadlines. One claim has a deadline in July 2015 and one has a deadline in

November 2015.) The SF-DCT currently has 12 timely Class 7 Disease claims that have not been reviewed because the SF-DCT has not been able to verify the claimant's address or contact information. The SF-DCT commonly requires validation of the claimant's identity and address before commencing review of the claim. If these 12 claimants respond to the SF-DCT and validate their information, then these claims will be reviewed. The SF-DCT has not issued payments to any of the Disease claimants because the SFA prohibits such payments until all Disease claims have been valued, accounted for and finalized.

11. There is a sufficient amount of money remaining in the Class 7 Fund to pay the Disease claims at the maximum amount Allowed of 40% of the Base Payment for Breast Implant Claimants under the equivalent level of the Disease Payment Option Compensation Schedule as well as any Expedited Release claims that have not been paid pending resolution of technical payment deficiencies. After accounting for all payments previously issued, expenses previously incurred and claims processed and not yet paid, the Class 7 Fund has a remaining balance of approximately \$26.5 million (NPV).

12. The CAC, Dow Corning, and the DRs propose to close the Class 7 Fund and enable the payment of the remaining eligible and approved Class 7 Disease claimants – many of whom have been waiting for payment for many years.

The CAC, Dow Corning, and the DRs have reviewed the Class 7 data and have identified one category of claim that is the subject of a dispute concerning “marshaling” that must be addressed before the affected claims can be finally resolved. Accordingly, the CAC, Dow Corning, and the DRs submit this Consent Order setting forth a joint interpretation of the Plan pursuant to Section 5.05 of the SFA that resolves the marshaling dispute and further outlining proposed procedures for closing the Class 7 Fund and distributing funds to eligible Class 7 Claimants.

**Marshaling Disputes and Agreed Plan Interpretation
Regarding Satisfaction of the Marshaling Requirement**

13. The SF-DCT has identified 6,235 Class 7 Claims that potentially do not meet the marshaling requirement (“Disputed Marshaling Claims” or “Disputed Marshaling Claimants”). SFA, Annex A § 6.04(h)(v). The SF-DCT determined that the Disputed Marshaling Claimants had the potential to submit a claim to the MDL Revised Settlement Program (“RSP”) and because these Disputed Marshaling Claimants had the right to submit such a claim under the RSP, they could not have met the marshaling requirement. This determination did not distinguish between claimants based on their registration status in the RSP. The RSP registration status determines which payment options are available to the claimant in the RSP and, thus, is a relevant factor when analyzing whether the claimant has marshaled as required by the Plan.

14. The CAC, Dow Corning, and the DRs have examined the assertions of the Disputed Marshaling Claimants and have agreed that the correct interpretation of the marshaling requirement should take into account the RSP registration status of each Disputed Marshaling Claimant.

15. Section 6.04(h)(v) of Annex A to the SFA provides that:

To be eligible to receive a payment from the Silicone Material Claimants' Fund, Silicone Material Claimants shall be required to marshal recoveries from the manufacturers of their breast implants. Silicone Material Claimants who do not marshal all recoveries from all manufacturers by the deadline for submission of Silicone Material Claims are not eligible to receive a payment. All such recoveries received by or for the benefit of the Silicone Material Claimant shall reduce, on a dollar-for-dollar basis, the amount otherwise Allowable under the terms of this Section 6.04. For purposes of this subparagraph, those Silicone Material Claimants whose sole manufacturers are not released under or are not participating in the Revised Settlement Program and consist specifically of any combination of Bioplasty, Cox-Uphoff, or Mentor shall be deemed to have marshaled all recoveries and there shall be no reduction of the Allowed amount for such Claimants based on any other recovery. Claimants who have both a breast implant made by any combination of Bioplasty, Cox-Uphoff, or Mentor and any breast implant made by any other manufacturer (except a Claimant who is classified as an "Other Registrant" as defined in the Revised Settlement Program with only a post-August 1984 McGhan breast implant, along with any combination of a Bioplasty, Cox-Uphoff, or Mentor breast implant) will be required to marshal all recoveries by such other manufacturers as stated above. The Claims Administrator shall determine whether all recoveries have been marshaled and shall require the Claimant to document the amount of recovery so that the Allowed amount can be calculated.

16. Section 5.05 of the SFA provides that: "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.”

17. Pursuant to Section 5.05 of the SFA, the DRs and the CAC have interpreted and clarified the marshaling requirement as follows: Class 7 Claimants satisfy the marshaling requirement if the claim submitted to the SF-DCT on or before the deadline for submission of Class 7 Claims (June 1, 2006) seeks compensation for a type of claim or payment option that would not have been available to that specific claimant in the RSP or if the claimant in fact submitted all claims to the RSP for which the claimant was potentially eligible. Thus, for example, a claimant who was either an “Other Registrant” or “Late Registrant,” as defined by the RSP, was not eligible to file for the Fixed Benefit Option Disease Payment in the RSP. The Fixed Benefit Option is the equivalent of Disease Payment Option I under the Plan. This Fixed Benefit Option was limited to “Current Disease Claimants.” If a “Late Registrant” or “Other Registrant” submitted a claim to the SF-DCT for Disease Payment Option I, then that claimant will be deemed to have marshaled and may pursue the Disease Payment Option I claim in Class 7. Conversely, because a “Late Registrant” or “Other Registrant” was eligible to seek a payment in the RSP for the Long Term Benefit Option (which is the equivalent of Disease Payment Option II), such claimants were required to “marshal” by filing the Long Term Benefit Option Claim in the RSP.

Such individuals who did not file the Long Term Benefit Option claim in the RSP will not be eligible for a Disease Option II payment from the SF-DCT. Exhibit A sets forth the protocols for determining whether the marshaling requirement is satisfied for all of the Disputed Marshaling Claimants based on their registration status in the RSP and the specific claim asserted with the SF-DCT. Of the 6,235 Disputed Marshaling Claims, a total of 5,006 are eligible for processing in Class 7 under this agreed Plan interpretation and protocols (“Eligible Disputed Marshaling Claims” or “Eligible Disputed Marshaling Claimants”). The list of the Eligible Disputed Marshaling Claimants is maintained by the SF-DCT.

Assets Available for Payment of Eligible Disputed Marshaling Claims

18. The agreed Plan interpretation will permit the SF-DCT to process the Eligible Disputed Marshaling Claims. The processing and payment of these Eligible Disputed Marshaling Claims will not affect the payments to the Disease claimants whose claims have already been processed and approved by the SF-DCT and will not affect potential payments to the 12 Disease claims that have not been reviewed, the potential payments to the 2 Disease claims with unexpired cure deadlines or the payments that have not been issued because of various payment deficiencies.

19. There are sufficient remaining assets in the Class 7 Fund to pay the Eligible Disputed Marshaling Claims after accounting for all of the Class 7 Claims

that have been processed and paid or that are pending payment or that are still potentially eligible for processing. The total maximum value of the Eligible Disputed Marshaling Claims is approximately \$7,518,394 (nominal) (which equates to approximately \$3.6 million (NPV) as of the date on which this Consent Order was filed). The calculation of the maximum value of the Eligible Disputed Marshaling Claims is set forth below.

20. There are 3,614 Eligible Disputed Marshaling Claims that seek an Expedited Release Payment, and there are 1,392 Eligible Disputed Marshaling Claims that seek a Disease Payment. The value of an Expedited Release claim is \$600. The maximum potential aggregate value of the Expedited Release claims is, thus, the product of 3,614 (the number of Expedited Release claims) multiplied by \$600 or \$2,168,400. (This assumes that every Eligible Disputed Marshaling Claimant who filed an Expedited Release claim will pursue the Expedited Release claim.)

21. The SF-DCT has identified every Eligible Disputed Marshaling Claim that asserts a Disease claim and has further conducted an analysis of the submissions of a sample of these claims. It is therefore possible to determine the aggregate value of these claims.

22. The SF-DCT's review of a sample of the Eligible Disputed Marshaling Claims shows that 17% of the Eligible Disputed Marshaling Claims

will not qualify for a disease evaluation. In addition, the SF-DCT has determined that a total of approximately \$1,980,000 would have to be deducted from compensation awards for the Eligible Disputed Marshaling Claimants because of prior payments they received from the MDL for their RSP claim. The average value of a Disease claim submitted by a Domestic Claimant after applying the 40% cap applicable to Class 7 Disease claims is approximately \$6,053.² Accordingly, assuming that every Eligible Disputed Marshaling Claim that asserts a Disease claim is processed and paid (with the exception of the 17% that are not eligible), the aggregate value of the Eligible Disputed Marshaling Claims is determined as follows:

Step 1: Multiply the average value of a Domestic Disease claim of \$6,053 by 1,392 (the number of Disease claims). This yields an aggregate amount of \$8,425,776.

Step 2: Subtract the MDL offset of approximately \$1,980,000 for a net value of \$6,445,776.

Step 3: Multiply \$6,445,776 by 83% (to account for the percentage of claims ineligible for a Disease review) for a final net value of \$5,349,994.

The total maximum value of the Eligible Disputed Marshaling Claims is

² As of March 31, 2015, the SF-DCT had paid a total of \$416,384,054.86 to 27,516 claimants for Class 5 Disease Payment Option I claims. Settlement Facility-Dow Corning Trust Claims Processing Report for the Period Ending March 31, 2015. Thus, the average payment is approximately \$15,132. After applying the 40% cap, the average payment is approximately \$6,053.

\$5,349,994 (for the Disease claims) plus \$2,168,400 (for the Expedited Release claims) for a total of approximately \$7,518,394 (nominal) (or \$3.6 million (NPV)) as of the date this Consent Order is filed.³ (The Parties do not expect all Eligible Disputed Marshaling Claimants to pursue their claims and do not expect that all of those who do pursue the claims will be found eligible for a Disease Payment. Thus, this calculation overestimates the amount that will be required to pay the Eligible Disputed Marshaling Claims.)

23. The amount required to pay the Eligible Disputed Marshaling Claims is less than the amount of remaining funds available for the Class 7 Claims after accounting for all processed and unpaid claims, the remaining unprocessed Disease claims and past administrative expenses.

**Resolution of Disputed Marshaling Claims that are not
Eligible Disputed Marshaling Claims**

24. The 1,229 Disputed Marshaling Claimants that are not Eligible Disputed Marshaling Claimants have previously been found ineligible by the SF-DCT and will be sent an additional notification of status letter advising that they are not eligible (“Ineligible Disputed Marshaling Claims”). These claims are not

³ The NPV of the Class 7 Fund balance (as described in Paragraph 11), which is net of all claims processed and not yet paid, exceeds the NPV of the Eligible Disputed Marshaling Claims and the administrative costs incurred to date (as described in Paragraph 26).

eligible for processing and are permanently denied and closed. The list of the Ineligible Disputed Marshaling Claims is maintained by the SF-DCT.

**Processing Eligible Disputed Marshaling Claims and
Payment of Class 7 Fund to Reserve Account**

25. The Eligible Disputed Marshaling Claims shall be processed by the SF-DCT based on the disease or condition asserted in the claim form that was submitted in 2006, consistent with the SF-DCT's internal processing guidelines, and Eligible Disputed Marshaling Claimants may not amend their claims to seek compensation for a higher level disease or condition. They may provide additional documentation to support the claim that was asserted in 2006 in response to a Notification of Status letter identifying deficiencies or as otherwise requested by the SF-DCT. The SF-DCT shall issue a "Cash-Out Offer" to those Eligible Disputed Marshaling Claimants that meet the criteria for the Cash-Out Payment. Eligible Disputed Marshaling Claimants who accept the Cash-Out Payment will be paid the same amount that was paid to other Class 7 Claimants who accepted the Disease Cash-Out Payment – which is \$3,000. The SF-DCT anticipates that it could take more than a year and possibly up to three years to process the Eligible Disputed Marshaling Claims. The amount of time it will take to process the Eligible Disputed Marshaling Claims will depend on the number of claimants that reject or are not eligible for the Cash-Out Payment and instead undergo a full Disease claim review.

26. To facilitate the payment of Class 7 Disease claims that have been approved and pending payment for several years, the SF-DCT shall create the Class 7 Reserve Account. The Class 7 Reserve Account shall be funded solely from the remaining assets of the Silicone Material Claimants' Fund that have not been expended as of the date this Consent Order is filed. The SF-DCT shall not make any distributions from the Silicone Material Claimants' Fund from the date when this Consent Order is filed until the Court approves this Consent Order, except that the SF-DCT may make distributions after consultation with and approval by the CAC and the DRs to cover previously issued payments (such as reissuing a check) if the Court has not approved the issuance of notice (as described at Paragraphs 54-55) more than 60 days after this proposed Consent Order is filed. The amount paid to the Class 7 Reserve Account shall be equal to the Allowed amount of all Class 7 Claims that have been processed and approved for payment but not yet paid as of the date this Consent Order is filed (including any claims that have payment deficiencies) plus the amount necessary to pay all Eligible Disputed Marshaling Claims based on the claim type elected on the claim form (using the computation methodology described at Paragraphs 20-22 above) plus the amount necessary to cover reasonable administrative costs that the SF-DCT will incur to conclude processing the Class 7 Claims. (The administrative expenses required to complete the processing of the claims that will be eligible for

payment under the terms of this Consent Order should not exceed the administrative costs previously incurred in connection with the Class 7 Fund – *i.e.*, approximately \$7 million.) The Class 7 Reserve Account shall be the sole source of funds for the payment of the remaining Class 7 Claims including the Eligible Disputed Marshaling Claims. When the Class 7 Reserve Account is funded, the Silicone Material Claimants’ Fund shall be deemed paid and closed.

27. Because the Class 7 Reserve Account is funded with assets that are sufficient to pay all Class 7 Claims – both processed and pending – the full amount Allowed under the Plan for Class 7 Claims, the purpose of restricting the distribution of Disease Payments until all Disease claims are processed has been fulfilled. All Disease claims have either been fully evaluated individually – which means that their Allowed amount is known and accounted for – or they have been identified and valued based on the actual, known submissions and paid in the aggregate (to the Class 7 Reserve Account) at an amount that exceeds the aggregate value of the claims. All Class 7 Disease claims will therefore receive the same amount for the same eligible conditions, *i.e.*, 40% of the Base Payment. The Claims Administrator shall track the progress of the Eligible Disputed Marshaling Claims and shall provide periodic reports to the Parties regarding the status of processing and the payments issued or to be issued and any other information that the Parties request.

28. The Parties shall have the right to take all necessary and appropriate actions to facilitate the actions and proceedings authorized by this Consent Order and to address any issues related to the Class 7 Reserve Account and sufficiency of assets.

29. To the extent that there are excess funds in the Class 7 Reserve Account after all claims and administrative expenses are paid, the Claims Administrator shall have discretion to distribute additional funds from the Class 7 Reserve Account to claimants who did not file a timely Proof of Claim or Notice of Intent and who submitted a Class 7 claim form with supporting documentation to the SF-DCT before the third anniversary of the Effective Date and who did not receive a communication from the SF-DCT advising of the procedure for submitting a late claim (“Class 7 Alpha File Claimants”). Such Class 7 Alpha File Claimants may, at the discretion of the Claims Administrator, be given the opportunity to have their claims processed under the terms set forth in the Agreed Order Allowing Certain Late Claimants Limited Rights to Participate in the Plan’s Settlement Facility. Dec. 12, 2007, ECF No. 606. The Claims Administrator shall have discretion to distribute payments to the Class 7 Alpha File Claimants whose claims meet the eligibility criteria applicable to Class 7 Claims, provided that such payments shall not exceed the amounts paid to timely Class 7 Claimants who have applied for the same type of compensation benefit. Any funds remaining in the

Class 7 Reserve Account after such distribution (should the Claims Administrator determine to make such a distribution) will become part of the general Settlement Fund.

30. 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 the 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.

31. 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.

32. The creation of the Class 7 Reserve Account will carry out the purpose and intent of the Plan and will benefit Class 7 Claimants because it will maintain equality of treatment and will permit the SF-DCT to pay the existing eligible Disease claimants promptly instead of requiring them to wait several more years while Class 7 Claims are being evaluated individually.

33. No individual Class 7 Claimant is identified or can be identified as having a right to any specific payment other than the amount that is provided for by this Consent Order.

34. 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 to the SFA) and do not alter the maximum amount payable for Class 7 Disease claims as set forth at Annex A to the SFA Section 6.04(h)(iv). The amount payable to Disease claimants from the Class 7 Reserve Account will be the maximum Allowed and thus no identifiable substantive right to specific compensation will be affected.

35. 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 and timely treatment of Class 7 Claimants.

Procedures for Resolution of Remaining Class 7 Claims by Category

36. In addition to the Disputed Marshaling Claims, Dow Corning, the DRs, and the CAC seek to confirm and document the treatment and final resolution of all other Class 7 Claims. The procedures for final resolution of all Class 7 Claims, including Eligible Disputed Marshaling Claims if and to the extent that they fall within any of these categories, is set forth immediately below.⁴

37. Category 1. Processed but Unpaid Disease Claims (1,556 claims). These claims have been fully processed and are eligible for payment (subject to the requirement that all cure deadlines must be expired before payments may be distributed). Claimants in this category shall be paid from the Class 7 Reserve Account (defined at Paragraph 26) upon expiration of their cure deadline, verification of address by claimant and entry of this Consent Order (subject to the normal processing and payment procedures of the SF-DCT). The SF-DCT has previously sent a letter in the form appended in Exhibit B to each claimant in this category. That letter advises the claimant of the Disease option and severity category approved by the SF-DCT and further states that the final value of the claim will be determined after all Class 7 Claims have been processed. The list of claimants in Category 1 is maintained by the SF-DCT.

⁴ For example, an Eligible Disputed Marshaling Claim might not be payable because of deficiencies that affect payment – such as a “bad address.” Such a claim will be subject to the same procedures for notification and final denial that are being applied to all other claims in the category comprising claims with “bad addresses.”

38. Category 2. Claims Processed, Paid and Closed (13,944 claims).

This category includes claims that have received an Expedited Release or Foreign Gel Payment or accepted the Cash-Out Payment. These claims have been fully processed and a payment has been issued for each claimant. The SF-DCT has previously sent the letter in the form appended in Exhibit C to each claimant that elected an Expedited Release or Foreign Gel Payment on the Class 7 claim form. That letter provides that the claimant's award is final and permanently settles and closes her Class 7 Claim. The SF-DCT has previously sent the letter appended in Exhibit D to each claimant that received the Cash-Out Payment. That letter informed claimants that they are deemed to have accepted the Cash-Out Payment if they cashed or failed to return the check. All claims in this Category 2 have received and cashed their payment check and thus all of these claims have been finally resolved. The SF-DCT will take no further action on these claims. The list of claims in Category 2 is maintained by the SF-DCT.

39. Category 3. Claims Processed, Check Issued but Not Cashed (542 claims). This category includes claims that have been approved and issued a check from the SF-DCT for either an Expedited Release Payment or Cash-Out Payment but the claimant has not cashed the check. The SF-DCT placed a "stop" payment on all such checks. To finally resolve all such claims, the SF-DCT will send a final letter to each such claimant at the last known address advising the claimant to

contact the SF-DCT within 30 days to request that the check be reissued. If the mailing is returned as undeliverable, the SF-DCT will conduct a search for the claimant using its standard methodology for locating claimants. If the claimant either does not respond to the mailing or cannot be located by the SF-DCT, the SF-DCT shall deem the claim abandoned and the claim will be closed. If the claimant responds to the mailing, the SF-DCT shall reissue the payment. This same protocol will be applied to Disease claims once payments are issued for those claims. The list of claims in Category 3 is maintained by the SF-DCT.

40. Category 4. Claims that Cannot be Paid Due to a Bad Address (693 claims). The SF-DCT has already attempted to locate these claimants using its standard search methodology. If a potential address was identified, the SF-DCT sent an address verification form to the claimant. The form of the address verification letter is appended in Exhibit E. If there was no response to that address verification form, then the SF-DCT conducted another search for the claimant. For those claimants who have not been located in at least two separate address searches, the SF-DCT will publish notice of claim numbers on the SF-DCT website. Claimants will have until 90 days after this Consent Order becomes final to respond to the published notice. If there is no response by the deadline, the SF-DCT will close the claim. The claim will be deemed abandoned and not entitled to

receive any payment. The list of claims in Category 4 is maintained by the SF-DCT.

41. Category 5. Claims Processed but Unpaid Due to Probate/Estate Issues (35 claims). These claims cannot be paid because the SF-DCT has not been able to identify or confirm the appropriate payee or personal representative of the estate of the deceased claimant. If the SF-DCT cannot identify an appropriate payee within 180 days of entry of this Consent Order by the Court, the claim will be deemed abandoned and denied. The Claims Administrator shall have discretion to defer the denial of such a claim where there is a potential payee who is either restricted by an order of the applicable court from pursuing the claim with the SF-DCT or who cannot proceed pending an order from the applicable court. Any such deferral shall expire on June 1, 2019. The list of claims in Category 5 is maintained by the SF-DCT.

42. Category 6. Claims Processed but Cannot be Paid Due to Lack of Foreign Identification (89 claims). The claims in this category were submitted by foreign claimants who have not submitted proof of foreign status to the SF-DCT. The SF-DCT has previously sent multiple notices, including a final notice, to these claimants requesting the necessary information and has not received a response. The forms of these notice letters are appended in Exhibits F and G. The SF-DCT has taken all reasonable action to obtain the necessary information and the

claimants have failed to respond. Accordingly, these claims will be deemed abandoned and not eligible for any payment. The list of claims in Category 6 is maintained by the SF-DCT.

43. Category 7. “Failed Pre-Screen” Claims (6,357 claims). All claimants in this category have submitted a claim that is not eligible for processing because of a fundamental deficiency in the claim. None of these claims will be eligible to receive a payment and all of the claims in this category are denied. The list of claims in Category 7 is maintained by the SF-DCT. Specifically, the claims in this category have one or more of the following deficiencies:

a. *Missing Signature*. These claimants submitted a Class 7 claim form but the claim form was missing a signature from the claimant, the personal representative or the attorney of record. The SF-DCT sent at least two letters to these claimants requesting a valid signature and no response has been received. The forms of these letters are appended in Exhibits H, I, and J. Claimants in this category will have until 90 days after this Consent Order becomes final to submit the required signature. If there is no response by that deadline, the claim will be deemed abandoned and permanently closed.

b. *Late Claim Form*. These claimants submitted a Class 7 claim form after the deadline for submitting a Class 7 Claim. The SF-DCT has

previously sent a letter to all such claimants advising that the claim is not timely and therefore cannot be processed or paid. The form of this letter is appended in Exhibit K.

c. Claims Not Eligible Because They Do Not Meet Eligibility

Criteria. These claimants have submitted claims that do not meet the Class 7 eligibility criteria. The SF-DCT has reviewed each claim and determined that the claimant is not eligible for one or more of the following reasons:

(1) the claimant did not have an eligible Class 7 implant, (2) the claimant was implanted outside of the eligible date range, or (3) the claimant had a saline implant. The SF-DCT previously sent all such claimants a notification letter advising that the claim is not an eligible Class 7 Claim. The forms of these letters are appended in Exhibits L, M, and N.

44. Category 8. Claims Not Eligible Because They Failed to Cure Deficiencies/Not Eligible for Expedited Release Payment (765 claims). The claimants in this category submitted a Proof of Manufacturer form and/or a Disease claim form but did not submit either acceptable proof of an eligible implant or acceptable proof of an eligible disease/condition. All claimants in this category received a notification letter from the SF-DCT advising of the claim deficiency and failed to cure the deficiency within the applicable deadline. The forms of these letters are appended in Exhibits O, P, and Q. The claimants seeking

a Disease Payment in this category are not eligible for an Expedited Release Payment because they have previously received payments from other manufacturers that would apply to fully offset the Expedited Release Payment amount. The claims in this category are denied and no payment will be issued. The list of claims in Category 8 is maintained by the SF-DCT.

45. Category 9. Claims that Failed to Submit any Medical Records to Support Disease Claim (206 claims). All claims in this category have failed the SF-DCT pre-screen protocols because the claimants failed to submit any medical records to support their claim for a Disease Payment by the applicable deadline mandated by the Plan. The SF-DCT has sent a letter notifying all such claimants of this deficiency in the claim. The form of this letter is appended in Exhibit R. None of these claimants are eligible for an Expedited Release Payment. The claims in this category are denied and no payment will be issued. The list of claims in Category 9 is maintained by the SF-DCT.

46. Category 10. Claims Not Eligible for Payment Due to Offsets (25,394 claims). All claimants in this category have received a payment from the RSP or another manufacturer in an amount that fully offsets any payment for which the claimant could qualify in Class 7. Thus, none of these claimants are eligible for any payment from the SF-DCT. The SF-DCT has sent a letter notifying some of these claimants that they are not eligible for any payment from Class 7 due to other

payments they received. The form of this letter is appended in Exhibit S. The SF-DCT shall send this letter to any claimants in this category that have not previously received a letter according to the records of the SF-DCT. The claims in this category are barred and no payment will be issued. The list of claims in Category 10 is maintained by the SF-DCT.

Appeal Guidelines for Class 7 Claims

47. To clarify and facilitate the disposition of Class 7 Claims, any Class 7 Claimant (including Disputed Marshaling Claimants) who disputes the determination on her claim in any respect (including timeliness, proof of manufacturer, proof of an eligible condition, and application of offsets) shall have 90 days from the date of the final Notification of Status letter or any other letter from the SF-DCT notifying the claimant of the final determination on the claim to submit a request for error correction. If the claimant is not satisfied with the determination in response to the error correction request, the claimant shall have 90 days to appeal to the Claims Administrator. Any claimant who disputes the determination of the Claims Administrator on appeal shall have 6 months from the date of the letter setting forth the Claims Administrator's determination on appeal to submit an appeal to the Appeals Judge. Any appeal that is submitted to either the Claims Administrator or the Appeals Judge after the applicable deadline will be dismissed as untimely.

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

Jurisdiction

48. This Court has jurisdiction pursuant to 28 U.S.C. Section 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.

Creation of Class 7 Reserve Account

49. The value of the Class 7 Reserve Account based on the computation methodology set forth in Paragraph 26 is approximately \$30,785,500. Accordingly, the Claims Administrator shall establish the Class 7 Reserve Account in the amount of \$30,785,500.

50. The Claims Administrator shall process Eligible Disputed Marshaling Claims in accordance with the terms of the SFA, subject to the terms of this Consent Order.

51. The Claims Administrator shall pay Allowed Class 7 Claims, including Eligible Disputed Marshaling Claims, as the claims are approved, from the Class 7 Reserve Account. At the conclusion of this process, the Claims Administrator shall prepare a final report listing each Class 7 Claim and its final

disposition and shall submit such report to the Court under seal and provide such report to the Parties.

52. Nothing in this Consent Order changes or is intended to change the criteria under which claims in Class 7 are evaluated or determined to be eligible, and all Class 7 Claims, including the Eligible Disputed Marshaling Claims, are bound by and subject to the terms of the Plan and the Plan Documents. Nothing in this Consent Order creates or is intended to create any right to seek judicial review of the determination of the Claims Administrator or the Appeals Judge.

53. This Consent Order shall not be construed as affecting any provision of any Plan Document, including the SFA, with the exception of those provisions specifically applicable to Class 7. Nor does the Consent Order provide a basis for interpreting any other provision of the SFA or other Plan Document.

Notice and Hearing

54. The DRs, the CAC, and/or the Claims Administrator shall send the Notice (substantially in the form that is appended at Appendix 1 to this Consent Order) to all individuals who filed Class 7 Claims (“Notice Parties”) as promptly as possible following issuance of an order authorizing distribution of such notice. The Consent Order will be posted on the SF-DCT website, and the SF-DCT will also distribute the Consent Order to any Class 7 Claimant who requests a copy.

55. The Notice Parties shall have forty-five (45) days from the date of service of the Notice 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. If any objection to this Consent Order is timely filed, Dow Corning, the DRs, the CAC 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*.

Date: _____

DENISE PAGE HOOD
United States District Judge

So Stipulated and Agreed:

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

/s/ Deborah E. Greenspan
Deborah E. Greenspan, Esq.

Dickstein Shapiro LLP
1825 Eye Street, N.W.
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Telephone: (202) 420-2200
Facsimile: (202) 420-2201
GreenspanD@dicksteinshapiro.com

On Behalf of Claimants' Advisory Committee:

/s/ Dianna L. Pendleton-Dominguez
Dianna L. Pendleton-Dominguez, Esq.

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On Behalf of Claimants' Advisory Committee:

/s/ Ernest H. Hornsby
Ernest H. Hornsby, Esq.

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APPENDIX

1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE:

DOW CORNING CORPORATION,

REORGANIZED DEBTOR

CASE NO. 00-CV-00005-DT
(Settlement Facility Matters)

Hon. Denise Page Hood

**NOTICE OF PROPOSED ORDER ESTABLISHING
GUIDELINES FOR DISTRIBUTIONS FROM THE CLASS 7
SILICONE MATERIAL CLAIMANTS' FUND**

You are receiving this notice because you submitted a Class 7 Silicone Material Claimants' Fund claim ("Class 7 Claim") to the Settlement Facility-Dow Corning Trust ("SF-DCT"). The Claimants' Advisory Committee, Dow Corning Corporation, and the Debtor's Representatives (the "Parties") have submitted a proposed *Consent Order to Establish Guidelines for Distributions from the Class 7 Silicone Material Claimants' Fund* ("Proposed Consent Order"). The Proposed Consent Order outlines the procedures for the treatment and final resolution of all Class 7 Claims, the distribution of funds to eligible Class 7 Claimants, and the closing of the Class 7 Silicone Material Claimants' Fund ("Class 7 Fund"). **PLEASE REVIEW THIS NOTICE BECAUSE YOUR CLASS 7 CLAIM MAY BE AFFECTED BY THE PROPOSED CONSENT ORDER.**

Background

The Dow Corning Amended Joint Plan of Reorganization ("Plan") created a subfund out of which all Class 7 Claims are to be paid. The SF-DCT has issued payments to certain Class 7 Claimants – specifically, the claimants who requested Expedited Release or Foreign Gel Payments or who accepted the Cash-Out Offer Payment for a Disease claim. The SF-DCT has not issued payments to claimants with an approved Disease claim or to claimants who may be eligible for payment but who have not provided the SF-DCT with appropriate information to issue payment. The SF-DCT has identified certain Class 7 Claims as "Disputed Marshaling Claims" – which means that they are claims that potentially failed to satisfy the "marshaling requirement" in Class 7. These Disputed Marshaling

Claims have not been processed pending further interpretation of the marshaling requirement.

The Proposed Consent Order sets forth the interpretation of the marshaling requirement and also establishes protocols to address outstanding issues and claims and further provides for the establishment of the “Class 7 Reserve Account” that will be used to pay all remaining Class 7 Claims.

Summary of Provisions of Proposed Consent Order

The Proposed Consent Order provides for the final resolution of all Class 7 Claims. Claims are subject to different procedures depending on their category. This Proposed Consent Order does not change the status of previously processed claims and payments by the SF-DCT in Class 7 except for the Disputed Marshaling Claims discussed below. Following is a general description of the categories of claims:

Category 1 consists of pending Disease claims that have been processed but not paid. Under the Proposed Consent Order, these claims will be paid after the Class 7 Reserve Account is created.

Category 2 consists of claims that have been processed, paid, and permanently closed. These claims do not require any further treatment, and the Proposed Consent Order does not provide any further action with respect to those paid claims. That is, under the Proposed Consent Order, those claimants who have already received payment will not receive any additional payments.

Categories 3 through 5 consist of claims that have been processed but not paid because of a deficiency that prevents the SF-DCT from issuing the payment. Under the Proposed Consent Order, these claims would be deemed closed and not entitled to any payment unless the claimant cures the deficiency within a specified period of time.

Categories 6, 7.b, 7.c, 8, and 9 consist of claims that have been denied as ineligible. The Proposed Consent Order does not provide for any further action with respect to these claims. These claims are denied and not eligible for any payment from the Class 7 Fund.

Category 7.a consists of claims that will be denied unless the claimant cures the deficiency in their claim within 90 days after the Proposed Consent Order becomes

final. If the claimant does not respond by the deadline, the claim will be deemed abandoned and closed.

Category 10 consists of claims that are not eligible for payment because the claimants received payments from other settlements that must be offset from any payment from Class 7. For all claims in this category, the offset exceeds the value of any payment from Class 7. The Proposed Consent Order provides that the SF-DCT will notify these claimants that the claim is denied and not eligible for payment.

Disputed Marshaling Claims: The Proposed Consent Order further interprets the marshaling requirement applicable to Class 7 Claims and, as a result, certain Disputed Marshaling Claims – claims that previously had been identified as potentially ineligible due to a failure to satisfy the marshaling requirement – will be eligible to be processed and paid if approved in accordance with the requirements governing Class 7 Claims. These claims are called “Eligible Disputed Marshaling Claims.” Certain Disputed Marshaling Claims will not be eligible and these claims will be denied.

Class 7 Reserve Account: The Proposed Consent Order directs the SF-DCT to establish a Class 7 Reserve Account that would be used to pay the previously processed but unpaid Disease claims, any eligible processed claims that are unpaid due to deficiencies, and the Eligible Disputed Marshaling Claims.

How to Get a Copy of the Proposed Consent Order

You may review the entire Proposed Consent Order by going to the SF-DCT website at www.sfdct.com and selecting the News link for the Proposed Consent Order. Or, you can request a copy of the Proposed Consent Order by e-mailing info@sfdct.com or calling the SF-DCT at 866-874-6099.

How to Get Information About the Treatment of Your Claim

You can determine the status of your claim and the way in which your claim would be treated under the Proposed Consent Order by going to the SF-DCT website at www.sfdct.com, selecting the Class 7 Claims tab from the Homepage, and entering your SID number where indicated. Alternatively, you may contact the SF-DCT at info@sfdct.com or 866-874-6099.

What Happens Next/What to Do if You Object to the Proposed Consent Order

OBJECTIONS TO THE PROPOSED CONSENT ORDER MUST BE FILED WITH THE COURT BY [DATE]. To file an objection, you must send it to the United States District Court, Eastern District of Michigan, Southern Division at the following address:

Theodore Levin U.S. Courthouse
United States District Court
Office of the Clerk
231 W. Lafayette Blvd.
5th Floor
Detroit, MI 48226

Your objection must reference Judge Denise Page Hood, the case number 00-CV-00005-DT and the proposed *Consent Order to Establish Guidelines for Distributions from the Class 7 Silicone Material Claimants' Fund*.

Additional information about the United States District Court, Eastern District of Michigan can be found by going to its website at www.mied.uscourts.gov or by calling 313-234-5005.

Objections must explain in detail the basis of the objection and the legal support for the objection. The Parties will likely oppose any objection. If you file an objection, you will receive additional information regarding further proceedings related to the objection. If no timely objections are filed, the Parties will request entry of the Proposed Consent Order and the Proposed Consent Order will become effective immediately upon its entry. If objections are filed, the entry of a final Consent Order and payments from the Class 7 Reserve Account will be delayed.

Dated: [DATE]

notice is the best notice practicable, is reasonable, adequate and sufficient and comports with requirements of due process; and

The Settlement Facility-Dow Corning Trust and the Parties are authorized to distribute notice as outlined in the Proposed Consent Order and to utilize funds allocated to the Silicone Material Claimants' Fund to pay for the costs of such notice.

Dated: _____
DENISE PAGE HOOD
United States District Judge