

Exhibit B

**SETTLEMENT FACILITY
AND FUND DISTRIBUTION AGREEMENT**

Between

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

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

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

EFFECTIVE DATE: JUNE 1, 2004

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**SETTLEMENT FACILITY
AND FUND DISTRIBUTION AGREEMENT**

RECITALS

A. On May 15, 1995, Debtor filed a petition for reorganization under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Michigan, Northern Division.

B. The Plan provides, among other things, for the resolution of certain Personal Injury Claims through a Settlement Facility.

C. Pursuant to order of the Court entered in the Case on November 30, 1999 (the “Confirmation Order”), the Plan was confirmed.

D. Pursuant to the Plan and the Confirmation Order, this Agreement establishes the Settlement Facility, the purposes of which are specified at Article II.

NOW, THEREFORE, in accordance with the Plan and the Confirmation Order, it is agreed as follows:

**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 in the Plan, the Disclosure Statement, the Dow Corning Settlement Program and Claims Resolution Procedures, the Depository Trust Agreement, the Funding Payment Agreement, the Litigation Facility Agreement, and the Bankruptcy Code — in that order. All definitions in the Plan Documents and the Bankruptcy Code are incorporated herein by reference.

1.02 *Original Global Breast Implant Settlement Agreement* — means the Agreement filed in the United States District Court for the Northern District of Alabama on March 29, 1994 in the Case of Lindsey v. Dow Corning, et al., Civ. Act. No. CV 94-P-11558-S (MDL 926).

1.03 *Initial MDL 926 Claims Administrator* — means that individual appointed by the MDL 926 Court in 1994 to serve as the administrator of the MDL 926 Claims Office.

1.04 *MDL 926 Claims Administrator* — means any individual appointed by the MDL 926 Court to serve as Claims Administrator after the Honorable Ann Cochran.

1.05 *MDL 926 Claims Office* — means the claims office established by the MDL 926 Court to receive and process claims under the terms of the Original Global Breast Implant Settlement Agreement and the Revised Settlement Program.

1.06 *MDL 926* — means the multi-district litigation captioned In re Silicone Gel Breast Implants Products Liability Litigation consolidated in the United States District Court for the

Northern District of Alabama pursuant to 28 U.S.C. § 1407 by Order of the Judicial Panel on Multi-District Litigation dated June 26, 1992.

1.07 MDL 926 Court — means the Judge and Court with jurisdiction over MDL 926 and over the MDL 926 Claims Office.

1.08 Quality Control Supervisor — means the individual or entity employed by the Claims Office to establish procedures to assure accurate and consistent application of Claims eligibility criteria and processing protocols. This Quality Control Supervisor may be the same individual or entity that is employed by the MDL 926 Claims Office to perform data management and quality control functions.

1.09 Revised Settlement Program — means the Program established under the jurisdiction of the MDL 926 Court in Order No. 27 (Civ. Act. No. CV 94-P-11558-S, December 22, 1995) and as modified or amended by subsequent Orders of the MDL 926 Court or procedures of the MDL 926 Claims Office.

1.10 Special Master — means the Special Master appointed by the District Court under the terms of the Case Management Order and Litigation Facility Agreement.

ARTICLE II PURPOSE AND MANAGEMENT

2.01 Purpose. The purposes of the Settlement Facility are: (i) to assume liability for and to liquidate and resolve claims of Settling Personal Injury Claimants and Settling Other Claimants and to pay expenses and costs in accordance with the terms of the Plan and this Agreement and the Dow Corning Settlement Program and Claims Resolution Procedures (“Claims Resolution Procedures”) (Annex A to this Settlement Facility Agreement), subject to and without exceeding the available assets of the Settlement Fund as set forth at Section 3.02; (ii) to supervise the receipt, holding and investing of funds paid to the Trust (as defined in Section 2.05) in accordance with the terms of the Funding Payment Agreement and this Settlement Facility Agreement; (iii) to distribute funds paid to the Settlement Facility to Claimants with Allowed Claims and for administrative and other expenses in accordance with the terms of the Funding Payment Agreement, the Litigation Facility Agreement, the Depository Trust Agreement, and this Agreement; and (iv) to assure that the Trust qualifies as a Qualified Settlement Fund pursuant to § 468B of the Internal Revenue Code and the Treasury Regulations promulgated thereunder.

2.02 Management of Claims Resolution. The claims resolution functions for Settling Personal Injury Claims shall be administered by a Claims Administrator as described in Article IV. The Claims Administrator shall exercise the powers and obligations set forth in this Settlement Facility Agreement and shall assure the distribution of payments to Claimants in accordance with the terms of this Agreement.

2.03 Allocation and Distribution of Funds. The distribution and payment of funds to Settling Personal Injury Claimants and to Claimants whose Claims are resolved by the Litigation Facility

shall be administered by the Claims Administrator, the Special Master, and the Finance Committee as defined herein and in the Litigation Facility Agreement.

2.04 Maintenance of Actions. As specified at Section 4.08, the Finance Committee shall have the authority to file any action, suit, or proceeding on behalf of the Trust or to enforce the obligations set forth in the Funding Payment Agreement. The Finance Committee shall also defend and arrange for the defense of any action, suit, or proceeding brought against the Trust, the Claims Administrator, the Finance Committee, or any agent or employee of the Trust.

2.05 Establishment of Depository Trust. To effectuate the terms of this Agreement, a Depository Trust (“the Trust”) has been established pursuant to the Second Amended and Restated Depository Trust Agreement dated as of June 1, 2004 (the “Depository Trust Agreement”). The Trust is governed by the Depository Trust Agreement. Whenever the Plan Documents use the term “Settlement Facility” it shall be deemed to mean the Trust unless the reference is to operational activities of the Claims Office, Claims Administrator, or the Finance Committee.

(a) Deposit and Payment of Funds/Assumption of Liabilities. All funds that are to be paid for Claims in Classes 5 through 17 pursuant to the Plan Documents shall be paid to the Trust as depository. Notwithstanding any contrary provision of applicable law, the Trustee shall invest all funds that are deposited in the Trust as specified in the Depository Trust Agreement. All funds that are to be paid by the Settlement Facility pursuant to the Plan Documents shall be paid by the Trust. All liabilities and obligations that are to be assumed by the Settlement Facility pursuant to the Plan Documents shall be assumed by the Trust but only to the extent that funds to be paid to the Settlement Facility are available to satisfy the assumed liabilities and obligations.

ARTICLE III TRANSFER OF ASSETS

3.01 Source of Funds. The Debtor has executed and delivered a Funding Payment Agreement and an Insurance Allocation Agreement. Assets shall be transferred to the Settlement Facility in accordance with the terms of the Funding Payment Agreement and the Insurance Allocation Agreement. All assets received by the Settlement Facility shall be administered, held and distributed in accordance with the terms of this Agreement and the Funding Payment Agreement.

3.02 Allocation of Funds. The funds received under the terms of the Funding Payment Agreement shall be distributed to Claimants and allocated for administrative and other expenses and costs in accordance with the terms of this Agreement, the Claims Resolution Procedures, and the Plan.

(a) Definition of Litigation Fund and Settlement Fund.

(i) Litigation Fund. Of the aggregate funds paid under the terms of the Funding Payment Agreement, an amount up to the aggregate sum of \$400 million Net Present Value shall be defined as the “Litigation Fund.” The aggregate amount paid to resolve all Non-Settling Personal Injury Claims, Assumed Third Party Claims, Class 12 Claims, and, to the extent provided in the Litigation Facility Agreement, Litigated

Shareholder Claims, plus defense and administrative costs associated with resolving Claims under the terms of the Litigation Facility Agreement, including fees of the Special Master and defense costs for the resolution of Claims in Classes 4A and 11-17 (such defense costs and other costs and fees shall collectively be defined for purposes of this Settlement Facility Agreement as “Litigation Facility Expenses”), shall not exceed the Litigation Fund. The assets comprising the Litigation Fund shall be paid only if and as required to liquidate and resolve Claims subject to resolution under the Litigation Facility Agreement and to pay expenses of the Litigation Facility. The Litigation Fund shall be reserved for the payment of Non-Settling Personal Injury Claims, Assumed Third Party Claims, Claims of Claimants in Class 12, and, to the extent provided in the Litigation Facility Agreement, Litigated Shareholder Claims, and Litigation Facility Expenses, except that the Litigation Fund may be accessed for purposes of payment of portions of certain Claims of Settling Personal Injury Claimants Allowed under the terms of this Agreement under the conditions outlined at Sections 7.01 and 7.03 below.

(ii) Settlement Fund. All monies paid to the Settlement Facility under the terms of the Funding Payment Agreement, and all earnings thereon, if any, except the Litigation Fund, shall be defined as the “Settlement Fund.” The Settlement Fund shall be reserved for the resolution of Settling Personal Injury Claims and all Other Claims not subject to the Litigation Fund and all costs and administrative expenses of the Settlement Facility (not including costs and expenses of the Litigation Facility) and shall not be used or accessible for any other reason. Specifically, the Settlement Fund shall be used for payment of the Allowed amount of Claims of Settling Claimants in Classes 5-10, 6A, 6B, 6C, 6D and, to the extent provided in the Litigation Facility Agreement, Litigated Shareholder Claims, and for the Allowed amount of obligations described at Sections 6.16.5 and 6.16.6 of the Plan, and for payment of the Allowed amount of Claims in Classes 4A and 11-17 to the extent provided in the Plan and the Litigation Facility Agreement. To the extent any such obligations are paid directly by the Reorganized Dow Corning, as specified in the Funding Payment Agreement and the Plan, such amount(s) shall be offset against the amounts to be paid by the Reorganized Dow Corning to the Settlement Facility, as provided in the Funding Payment Agreement. The Claimants’ Advisory Committee must consent to the settlement of any Claim in Classes 11, 13, 14, 15, or 17 that is channeled to the Litigation Facility for resolution and such consent shall not unreasonably be withheld.

(b) Subfunds.

(i) Increased Severity Fund. The Increased Severity Fund is a subfund within the Settlement Fund. Such Fund defines the maximum aggregate amount that may be paid to Settling Breast Implant Claimants whose Claims are resolved under Disease Payment Option I and who are eligible to receive payment for Increased Severity, as specified at Annex A Section 6.02(d)(viii). The Increased Severity Fund shall not exceed \$15 million Net Present Value.

(ii) Covered Other Products Fund. The Covered Other Products Fund is a subfund within the Settlement Fund. The sum of \$36 million Net Present Value shall be

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

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

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

ARTICLE IV FACILITY ADMINISTRATION

4.01 *Court Supervision.* The resolution of Claims under the terms of this Settlement Facility Agreement and the Claims Resolution Procedures and the functions in this Article IV (as specified in this Article IV) and the functions in Articles V and VI herein shall be supervised by the District Court. The District Court shall have the authority to act in the event of disputes or questions regarding the interpretation of Claim eligibility criteria, management of the Claims Office or the investment of funds by the Trust. The District Court shall perform all functions relating to the distribution of funds and all determinations regarding the prioritization or availability of payments, specifically including all functions related to Articles III, VII, and VIII herein.

4.02 *Appointment of Claims Administrator.*

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) *Term of Service.*

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

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

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

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

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

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

(h) *Indemnification.*

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

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

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

4.03 Establishment of Claims Office/Claims-Processing Functions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.08 Finance Committee.

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

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

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

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

of processing and resolving Claims subject to the Litigation Facility Agreement; (2) develop recommendations for submission to the District Court regarding the release of funds payable from the Settlement Fund and the Litigation Fund, as specified at Article VII herein; (3) review proposed settlements of Non-Settling Personal Injury Claims to determine the adequacy of funds for payments of such Claims and to assure processing, litigation and resolution of Non-Settling Personal Injury Claims within the allotted Litigation Fund; (4) develop recommendations for submission to the District Court regarding the necessity for deferrals or reductions in Claim payments;

(iii) the Finance Committee shall, as specified in the Depository Trust Agreement, (1) direct the paying agent to disburse payments for Allowed Claims or for other purposes approved in accordance with this Settlement Facility Agreement; and (2) in connection with the annual budget process, recommend and establish salaries, benefits, fees and expenses of the staff as specified at Sections 4.02(e) and 7.03(e) and as consistent with the Litigation Facility Agreement. The Finance Committee shall receive all reports and audits regarding Claims resolution in the Settlement Facility and the Litigation Facility, including results of quality control reviews and appeals, and may request and arrange for any additional reports or reviews.

(c) *General Powers.*

(i) The Finance Committee shall have the authority to hire and shall hire accountants, and auditors, along with the Financial Advisor, as necessary, and shall have the authority to hire such experts and consultants as necessary to prepare the projections and analyses specified at Section 5.03 and to authorize the hiring of such bankers and/or investment managers as may be necessary and appropriate, subject to the approval of the District Court.

(ii) The Finance Committee shall have the authority to bring actions on behalf of the Trust and to defend the Settlement Facility, the Trust, the Claims Administrator, the Finance Committee, and any agents or employees of the Trust, including actions to enforce obligations in the Plan Documents. Subject to the approval of the District Court, the Finance Committee shall have the authority from time to time, if and when it determines that it needs legal advice and assistance, to retain, and pay reasonable fees for, counsel to perform tasks necessary for the Finance Committee to fulfill its duties and obligations under the Settlement Facility and Fund Distribution Agreement and the other Plan Documents.

(iii) The Finance Committee shall procure such general liability and other insurance as necessary and as required by law with respect to the employees and staff performing the claims administration functions. The Claims Administrator may purchase and maintain reasonable amounts and types of insurance, including insurance on behalf of an individual who is or was a Claims Administrator, Appeals Judge, Special Master, and/or member of the Finance Committee, against liability asserted against or incurred by such individual in that capacity or arising from his or her status as a Claims Administrator, Appeals Judge, Special Master, employee or agent provided that the costs of such insurance are reasonable. The cost of such coverage shall be paid from the Settlement Fund.

(d) Meetings. The Finance Committee shall meet on a schedule as necessary or as may be directed by the District Court (but not less than once each quarter) to act in accordance with Sections 4.08(b) and 4.08(c), to conduct all appropriate activities of the Finance Committee and to make determinations required for the orderly and prompt payment of Allowed Claims. Meetings may occur by teleconference or in person at the discretion of the Committee.

(e) Decisions. The Finance Committee shall act by majority vote.

(f) Compensation. The members of the Finance Committee shall be compensated as provided herein from the Settlement Fund. The compensation shall be specified in an order of the District Court. Specifically, the Claims Administrator shall be paid an annual salary as determined in accordance with Section 4.02(f) and shall be reimbursed for reasonable out-of-pocket expenses associated with performing the duties of the Claims Administrator, which include duties as a member of the Finance Committee. The Appeals Judge shall be compensated at a reasonable rate established by the District Court, as specified at Section 4.07, and shall be reimbursed for reasonable out-of-pocket expenses associated with performing duties as Appeals Judge, which include duties as a member of the Finance Committee. The Special Master shall be compensated at a reasonable rate established by the District Court after notice to and comment by the Claimants' Advisory Committee and the Debtor's Representatives and the opportunity for comment during the annual budget process for services performed as a member of the Finance Committee and for reasonable expenses associated with performing duties as a member of the Finance Committee. Payment for compensation and expenses of the members of the Finance Committee for services performed as members of the Finance Committee shall be made from the Settlement Fund as specified at Article VIII of this Settlement Facility Agreement. Payment for compensation and expenses of the Special Master in his capacity as Special Master and not as a member of the Finance Committee shall be charged to the Litigation Fund as specified herein.

(g) Consultation with the Debtor's Representatives and Claimants' Advisory Committee. The Debtor's Representatives and Claimants' Advisory Committee shall attend and participate in the meetings of the Finance Committee. The Finance Committee shall consult with and seek the input and advice of the Debtor's Representatives and Claimants' Advisory Committee on all matters of mutual concern and shall notify the Debtor's Representatives and Claimants' Advisory Committee of any proposed decisions, recommendations or actions of the Finance Committee before the Finance Committee finalizes such proposed decisions, recommendations or actions.

(h) Indemnification. If any member of the Finance Committee, or former member of the Finance Committee, is or may be a party in any action, suit, or proceeding by reason of their membership on the Finance Committee or in their individual capacities as Claims Administrator, Appeals Judge or Special Master, or by reason of serving or having served in any capacity at the request of and on behalf of the Settlement Facility or the Finance Committee, he or she shall be indemnified by the Settlement Facility against reasonable expenses, costs and fees (including reasonable attorneys' fees), judgments, awards, costs, amounts paid in settlement, and liabilities of all kinds incurred by the Finance Committee member in connection with or resulting from such action, suit, or proceeding, with respect to the actions at issue, if he or she acted in good faith and in a manner the Finance Committee member reasonably believed to be in, or not opposed to, the best interests of the Settlement Facility. All such amounts shall be paid from the Settlement Fund. If the Finance Committee or any member of the Finance Committee is named

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

4.09 Debtor's Representatives and Claimants' Advisory Committee.

(a) Debtor's Representatives. The Debtor or the Reorganized Dow Corning as appropriate shall appoint representatives to perform all functions of the Debtor's Representatives as described herein.

(b) Claimants' Advisory Committee. The Special Master shall appoint a Claimants' Advisory Committee consisting of three (3) members to fulfill the functions described herein and in the Litigation Facility Agreement, the Funding Payment Agreement, and other Plan Documents. Notwithstanding this provision, if prior to the Effective Date the Special Master reasonably concludes that additional members of the Claimants' Advisory Committee are necessary for the Claimants' Advisory Committee to fulfill these duties, the Special Master has discretion to appoint up to a total of five (5) members, of which additional members at least one shall be a non-U.S. Claimant (or their attorney or other representative). No member of the Claimants' Advisory Committee may be a bankruptcy lawyer.

(c) Purpose and Function.

(i) The Debtor's Representatives and the Claimants' Advisory Committee shall attend and participate in the meetings of the Finance Committee as specified at Section 4.08(g).

(ii) The Debtor's Representatives and the Claimants' Advisory Committee shall be authorized to participate in proceedings in the MDL 926 Court and/or meetings with the MDL 926 Claims Administrator related to the functions, procedures and operations of the MDL 926 Claims Office and the Revised Settlement Program. The Tort Claimants' Committee or the Claimants' Advisory Committee (as appropriate) and Dow Corning or the Reorganized Dow Corning shall seek any necessary orders permitting the Debtor's Representatives and the Claimants' Advisory Committee to participate in such MDL proceedings.

(iii) The Debtor's Representatives and the Claimants' Advisory Committee shall be authorized to advise and assist the Settlement Facility, Claims Administrator, Finance Committee, Litigation Facility, Financial Advisor, and Independent Assessor regarding all matters of mutual concern and as further specified herein or in the Litigation Facility Agreement or in any other Plan Documents.

(iv) The Debtor's Representatives and the Claimants' Advisory Committee shall be provided with copies of all reports, projections, motions, pleadings, or other similar documents concerning the activities of the Settlement Facility.

(v) The Claimants' Advisory Committee and/or the Debtor's Representatives may file a motion or take any other appropriate actions to enforce or be heard in respect of the obligations in the Plan and in any Plan Document.

(d) **Compensation.** The members of the Claimants' Advisory Committee shall be compensated by the Settlement Facility at reasonable hourly rates established by the District Court. The Settlement Facility shall promptly pay all reasonable out-of-pocket expenditures of the Claimants' Advisory Committee subject to approval by the Finance Committee as specified at Article VIII.

(e) **Claimants' Advisory Committee Professionals.** From time to time, if and when the Claimants' Advisory Committee determines that it needs professional advice and assistance beyond the expertise of the Claimants' Advisory Committee members, it may retain professionals to perform specific tasks necessary for the Committee to fulfill its duties and obligations under the Settlement Facility Agreement, the Funding Payment Agreement, and the Plan Documents. Except under extraordinary circumstances, the Claimants' Advisory Committee shall submit a budget in advance of retention of the professionals indicating the purpose of such retention as well as a proposed budget specifying tasks, hourly rates, and total cost. If the Reorganized Dow Corning agrees, then the reasonable fees of such professionals shall be Fundable Expenditures and will be paid by the Settlement Facility, subject to approval by the District Court. In the absence of agreement, the Claimants' Advisory Committee may apply to the District Court for authority to hire such professionals for the purpose, time period and within the budget that the District Court determines to be appropriate and reasonable. Should extraordinary circumstances arise which do not permit a budget to be submitted in advance of the retention of professionals for the purposes and in the manner outlined above, the Claimants' Advisory Committee shall exercise its best efforts to budget the expenses and fees for the retention of the professionals and submit them for approval as soon as practicable, but in no event later than fourteen (14) days after the retention of the professionals.

(f) **Successors.**

(i) The Reorganized Dow Corning shall appoint successor Debtor's Representatives at its discretion.

(ii) The members of the Claimants' Advisory Committee shall appoint a successor member upon the resignation or death of one of its members.

4.10 Special Master. The Special Master shall serve as a member of the Finance Committee, as specified at Section 4.08(a). At the request of the Debtor's Representatives or the Claimants' Advisory Committee and with the agreement of both the Debtor's Representatives and the Claimants' Advisory Committee, the Special Master or Appeals Judge may consult with and assist the Claims Administrator for the purpose of ensuring and facilitating an efficient and fair operation of the Settlement Facility consistent with the terms of this Settlement Facility Agreement. The Special Master or Appeals Judge shall be compensated at a reasonable rate established by the District Court for such services.

ARTICLE V
PRINCIPLES/REQUIREMENTS FOR RESOLUTION OF CLAIMS
OF SETTLING PERSONAL INJURY CLAIMANTS/IMPLEMENTATION
OF CLAIMS RESOLUTION PROCEDURES

5.01 *Claims Resolution Procedures/Eligibility Guidelines.*

(a) The Claims Office shall process Settling Personal Injury Claims payable from the Settlement Fund in accordance with the Claims Resolution Procedures outlined in Annex A. This Settlement Facility Agreement and Annex A shall establish the exclusive criteria for evaluating, liquidating, allowing and paying Claims, except as modified in accordance with Sections 5.05 and 10.06. Claims that satisfy the eligibility criteria specified in the Claims Resolution Procedures shall be paid as specified at Section 7.02 of this Agreement. Only those Claims that satisfy the eligibility criteria specified in the Claims Resolution Procedures as applicable are eligible to receive payment, except to the extent that the Reorganized Dow Corning accepts Claims through the individual Proof of Manufacturer Review or the Individual Review Process for Rupture Claims, as specified at Schedule I, Part I.F. and Section 6.02(e)(vi) of the Claims Resolution Procedures, respectively, or otherwise. This Settlement Facility Agreement and the annexed Claims Resolution Procedures establish specific guidelines for submitting and processing Claims. The Claims Administrator shall have discretion to implement such additional procedures and routines as necessary to implement the Claims Resolution Procedures consistent with the terms of this Agreement and subject to the provisions of Section 5.05 of the Settlement Facility Agreement.

(b) The Claims Administrator shall institute procedures and staff training and shall develop claims-tracking and payment systems as necessary to process the Settling Breast Implant Claims in accordance with the terms of this Settlement Facility Agreement and the Claims Resolution Procedures, subject to Section 5.05 of this Agreement.

(c) The Claims Administrator shall institute procedures, claims-processing protocols and staff training and shall develop claims-tracking, analysis and payment systems as are necessary to process Settling Other Products Claims and Silicone Material Claims in accordance with the terms of this Settlement Facility Agreement and the Claims Resolution Procedures and subject to the provisions of Section 5.05 of this Settlement Facility Agreement.

5.02 *Maintenance of Claims Office Staff and Procedures.* The Claims Administrator shall oversee and supervise the Claims Operations Manager and the Claims Office processing functions.

5.03 *Reporting Functions of Claims Administrator/Provision of Claims Data to Debtor.*

(a) **Reports.** On a monthly basis the Finance Committee shall cause to be prepared and provided to the District Court, the Financial Advisor, the Independent Assessor, the Debtor's Representatives, the Shareholders, and the Claimants' Advisory Committee reports containing, at a minimum, a summary of Claims broken down as appropriate by the categories of:

- Domestic Breast Implant Claimants
- Foreign Breast Implant Claimants

- Other Products Claimants
- Silicone Material Claimants.

The summaries shall contain:

- (i)** the number of Settling Personal Injury Claims and Non-Settling Personal Injury Claims submitted, reviewed and approved for payment;
- (ii)** the settlement categories into which the Settling Personal Injury Claims fall (both the condition asserted, as applicable, and approved), including, at a minimum:
 - a.** the number of Rupture Claims,
 - b.** the number of Rupture Claims based on medical contraindication and their disposition,
 - c.** the number of Expedited Release Payment Option Claims,
 - d.** the number of Disease Payment Option Claims (by Covered Condition, Disease Payment Option, and severity level),
 - e.** the number and type of Medical Condition Claims,
 - f.** the number of Explantation Payment Option Claims,
 - g.** the number and amount of First Priority Payments paid in the period and the number and amount of Second Priority Payments paid in the period,
 - h.** a chart showing the breakdown of Claims in the Revised Settlement Program based on their current data available to the Finance Committee and showing the corresponding breakdown of Settlement Facility Claims,
 - i.** the number of Breast Implant Claimants requesting compensation under the Increased Severity Fund and the amounts paid; the number of Claimants requesting compensation for increased severity outside the Increased Severity Fund and the amounts paid;
- (iii)** the disposition of the Settling and Non-Settling Personal Injury Claims by category;
- (iv)** the number of appeals to the Claims Administrator, the Appeals Judge, and to Dow Corning under the Individual Review Process for Rupture Claims, as specified at Annex A Section 6.02(e)(vi), and the disposition of appeals;
- (v)** the number of Claims sent to the Reorganized Dow Corning for review of Product Identification and the disposition of these Claims;
- (vi)** the number of Claims with deficiencies by category of Claim and type of deficiency;
- (vii)** the number of remaining pending Settling and Non-Settling Personal Injury Claims and any information known about the Claims;
- (viii)** the total amount paid, by category, with respect to Settling and Non-Settling Claims (in the aggregate, not individually) from the Effective Date to the end of the

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

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

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

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

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

5.04 *Quality Control and Audit Procedures.*

(a) *Prevention and Detection of Fraud.*

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE VI CLAIMS RESOLUTION OPTIONS/ELECTION PROCESS/ORDERING

6.01 Settlement Payment Options Defined.

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

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

(b) *Other Products Claimants.* Settling Covered Other Products Claimants are eligible for two separate compensation options, each of which is mutually exclusive: (a) the Expedited Release Payment Option OR (b) the Medical Condition Payment Option. The eligibility criteria and documentation required to qualify for each of these compensation options are specified in the Claims Resolution Procedures.

(c) *Silicone Material Claimants.* Settling Silicone Material Claimants are eligible for the Silicone Material Claimant Payment Option. The eligibility criteria and documentation required to qualify for this settlement option are specified in the Claims Resolution Procedures. Breast Implant Claimants and Other Products Claimants are not eligible to receive compensation under the Silicone Material Claimant Payment Option.

6.02 *Election Process: Right to Elect Settlement or Litigation.*

(a) *Personal Injury Claimants.* Certain Personal Injury Claimants are permitted under the Plan to elect to settle their Claims under the terms of this Agreement or to litigate their Claims under the terms of the Litigation Facility Agreement. The procedures for electing to settle or litigate are specified in the Claims Resolution Procedures.

(b) *Physician Claimants.*

(i) As soon as possible after the deadline for Personal Injury Claimants to elect to settle or litigate, the Claims Administrator shall provide to Physician Claimants a list of Non-Settling Personal Injury Claimants along with an election form setting forth the process by which Physician Claimants may elect to settle or litigate their Claims. The election form shall permit the Physician Claimants to elect to settle conditionally, subject to right of revocation defined at (ii) below, or to litigate. To be timely the election form must be received by the Claims Administrator or postmarked — by certified mail or by an overnight delivery service — on the date that is not more than forty-five (45) calendar days after the Claims Administrator serves the list of Non-Settling Personal Injury Claimants. Any Physician Claimant who fails timely to return the form shall be deemed to have elected to settle conditionally.

(ii) The election to settle shall be conditional until the date thirty (30) calendar days from the date of service of the order of the District Court resolving the motion to transfer to the District Court claims of Non-Settling Personal Injury Claimants against the Physician Claimant who has made the conditional election to settle (“Motion to Transfer”). Thereafter, such election to settle shall be final unless it has been timely revoked. A Physician Claimant may revoke the conditional election to settle only by submitting to the Claims Administrator a notification of revocation. To be timely the notification of revocation must be received by the Claims Administrator no later than thirty (30) calendar days after the date of service of the District Court’s order resolving such Motion to Transfer.

(c) *Class 13 Claimants.*

(i) As soon as possible after the deadline for Personal Injury Claimants to elect to settle or litigate, the Claims Administrator shall provide to the Class 13 Claimants

(“Health Care Providers”) a list of Non-Settling Personal Injury Claimants along with an election form setting forth the process by which Health Care Providers may elect to settle or litigate their Claims. The election form shall permit the Health Care Providers to elect to settle conditionally, subject to right of revocation defined at (ii) below, or to litigate. To be timely the election form must be received by the Claims Administrator or postmarked — by certified mail or by an overnight delivery service — on the date that is not more than forty-five (45) calendar days after the Claims Administrator serves the list of Non-Settling Personal Injury Claimants. Health Care Providers who fail timely to return the form shall be deemed to have elected to settle conditionally.

(ii) The election to settle shall be conditional until the date thirty (30) calendar days from the date of service of the order of the District Court resolving the motion to transfer to the District Court claims of Non-Settling Personal Injury Claimants against the Health Care Provider who has made the conditional election to settle (“Motion to Transfer”). Thereafter, such election to settle shall be final unless it has been timely revoked. A Health Care Provider may revoke the conditional election to settle only by submitting to the Claims Administrator a notification of revocation. To be timely the notification of revocation must be received by the Claims Administrator no later than thirty (30) calendar days after the date of service of the District Court’s order resolving such Motion to Transfer.

6.03 *Submission of Claims Forms/Selecting Settlement Payment Options.* In accordance with the Claims Resolution Procedures, the Claims Office shall distribute to Personal Injury Claimants Claim Forms by which Claimants can elect one or more settlement options.

6.04 *Resolution of Claims.* The Claims Administrator shall determine whether the Claims are eligible based on the eligibility criteria set forth in Annex A and shall process the Claims according to the terms and conditions set forth in Annex A.

6.05 *Payment of Claims/Execution of Releases.* If the Claim qualifies for payment under the selected settlement option, the Claims Office shall provide to the Claimant a Notification of Status letter specifying the settlement amount for which the Claimant qualifies, as more specifically described in the Claims Resolution Procedures. If the Claimant qualifies for and accepts the Allowed payment amount, the Claims Office shall authorize the Claim for payment. Payments shall be distributed in accordance with the terms of Article VII. The payment draft or check shall be printed on a document that specifies and clearly advises the Claimant that endorsement and cashing of the check or draft shall be deemed to serve as additional documentation of the release of the Debtor and the Released Parties, as specified at Section 8.3 of the Plan, and, further, of the release of the Settlement Facility for any and all Claims or liability, including Consortium Claims. The Settlement Facility shall retain all canceled checks and shall provide them (or copies) to the Reorganized Dow Corning and/or the Shareholders upon request if required in connection with any claim or action involving the Reorganized Dow Corning or Shareholders, including, but not limited to, any proceedings involving Insurers. The Reorganized Dow Corning and Shareholders shall, to the extent possible, maintain the confidentiality of the Claimants.

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

7.01 *Timing of Disbursements/Prioritization of Payments.*

(a) *Categories of Payment Defined.*

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

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

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

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

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

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

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

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

(c) *Priority of Payment for Claims.*

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

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

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

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

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

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

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

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

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

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

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

7.02 *Distribution to Claimants.*

(a) *Distribution of Payments to Claimants.*

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

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

subject to the provisions of Section 7.01(b)(iii), and shall establish procedures to assure verification of and appropriate accounting for such payments.

(iii) Authority to Distribute. The Trustee is initially designated as paying agent. The Finance Committee may designate an alternative paying agent provided that the Finance Committee can demonstrate to the District Court that such transfer of responsibilities will satisfy the qualification criteria of the Depository Trust Agreement and will not result in any delay in payments to Claimants or affect the Claimants' prompt receipt of payment. The paying agent shall arrange for the distribution of payments to Claimants upon the direction of the Finance Committee and the District Court and in accordance with the terms of this Settlement Facility Agreement, the Litigation Facility Agreement, and the Funding Payment Agreement. The timing of all distributions shall be determined by the Claims Administrator except as provided in the Litigation Facility Agreement with respect to Litigation Fund payments. The Finance Committee shall have the authority to seek orders from the District Court generally authorizing distributions of First Priority Payments without separate orders regarding each such distribution and establishing procedures for distributing payments involving liens or disputed payees.

(b) Verification of Allowed Amount for Settling Claims. The Finance Committee is responsible for establishing procedures to verify the Allowed amount of each Claim certified for payment so that the correct payments are issued.

(c) Set-Off for Prior Payment. The Claims Administrator shall adjust the Allowed amount to deduct the amount of any payments previously made to the Claimant or to the Claimant's physician or other health care provider under the Dow Corning Removal Assistance Program, or any payments in prior partial settlements between Dow Corning and the Claimant not resulting in a general or full release. Dow Corning shall be responsible for providing to the Claims Administrator adequate information as determined by the Claims Administrator or the District Court to determine whether such set-offs apply. The Claims Administrator shall be entitled to rely on the list of prior payments provided by Dow Corning as of the Effective Date.

(d) Installment Payments.

(i) If, at any time, the funds available are inadequate to pay Allowed Claims in their respective Allowed amounts due to the timing of the Debtor's payment obligations under the Funding Payment Agreement, the Finance Committee, in consideration of the analysis and recommendation of the Independent Assessor, shall recommend, subject to the approval of the District Court, proportional payments (i.e., installment distributions) on account of such Allowed Claims so that all such Allowed Claims are paid in the same proportions.

(ii) The Finance Committee, in consideration of the analysis and recommendation of the Independent Assessor, shall determine, based on financial considerations, the need for installment distributions for Settling Breast Implant Disease Payment Claims Allowed (1) under Disease Payment Option I in an amount greater than \$25,000, or (2) under Disease Payment Option II in an amount greater than \$100,000.

(e) *Allowed Amount of Foreign Claims.*

(i) Subject to section (e)(ii), the Allowed amount for resolution of Foreign Claimants who elect to settle shall be computed in accordance with the terms of Schedule III to the Claims Resolution Procedures.

(ii) The Claims Administrator may re-categorize countries as set forth in section 6.05(h)(ii) of the Claims Resolution Procedures.

(iii) The Notice of Status letter to each Foreign Claimant shall afford the Claimant the option to receive payment of their Claim, if accepted, in either U.S. Dollars or their local currency, subject to the applicable regulations governing banking institutions, subject to adequate procedures to assure that the Settlement Facility is protected against fluctuations in the exchange rate.

(iv) The payment documentation provided to Foreign Claimants shall include the statement that payments are being made on account of general damages.

(f) *Notice to Non-Settling Claimants in Classes 13-15/Rights of Derivative Claimants.*

(i) Non-Settling Claimants in Classes 13, 14, 14A, and 15 (“Derivative Claimants”) may submit to the Claims Administrator a request for notification regarding the resolution of the Claims of any individual Settling Personal Injury Claimant for which the Derivative Claimant asserts a contractual or statutory reimbursement claim. The Claims Administrator shall — in writing — notify the Derivative Claimant of the approval for payment of such Settling Personal Injury Claimant’s Claim provided:

- a.** the Derivative Claimant has identified the Settling Personal Injury Claimant with sufficient particularity to enable the Claims Administrator to identify the relevant Claimant, and
- b.** the Derivative Claimant provides to the Claims Administrator a written request identifying the Settling Personal Injury Claimant and the name and address of the person representing the Derivative Claimant to be notified.

(ii) The Claims Administrator shall not, as a result of this notification procedure, delay payment to the Settling Personal Injury Claimant. Without limiting the rights, if any, of Derivative Claimants under applicable law, nothing in this paragraph grants or shall be deemed to grant to Derivative Claimants any right to interfere with, delay or stop payment to any Settling Personal Injury Claimant or establishes or shall be deemed to establish any entitlement by the Derivative Claimant to any portion of the payment to the Settling Personal Injury Claimant.

(iii) Nothing in this Settlement Facility Agreement affects the rights under applicable law, if any, of the Derivative Claimants to commence any separate proceeding to recover directly from the Settling Personal Injury Claimant payment received from the Settlement Facility.

7.03 Requirements/Procedure for District Court Approvals.

(a) Payment of Second Priority Payments. To obtain authorization to distribute Second Priority Payments, the Finance Committee shall file a recommendation and motion with the District Court requesting authorization to distribute Second Priority Payments. Such recommendation and motion shall be accompanied by a detailed accounting of the status of Claims payments and distributions under the terms of the Settlement and Litigation Facilities, including a detailed accounting of pending Claims and projections and analysis of the cost of resolution of such pending Claims as described in Section 7.01(d). The recommendation and motion shall be served on the Claimants' Advisory Committee, the Debtor's Representatives, the Shareholders, and all Non-Settling Personal Injury Claimants with pending Claims, and such parties shall have the opportunity to be heard with respect to the motion. The parties agree to cooperate in expedited procedures for review and resolution of issues under this subsection and consent to an expedited hearing. If the District Court rules that all Allowed and allowable First Priority Claims and all Allowed and allowable Litigation Payments have been paid or that adequate provision has been made to assure such payment (along with administrative costs) based on the available assets, then the Second Priority Payments, or some portion thereof, may be distributed, unless the order of the District Court is stayed or reversed on appeal. The parties agree that any appeal of an order of the District Court regarding the provisions of this subsection shall be on an abuse of discretion standard.

(b) Conditions and Authorization for Access to Litigation Fund for Payment of First Priority Payments. In the event that the Settlement Fund lacks sufficient funds in the aggregate to pay in full all First Priority Payments, then the District Court may, commencing on the fourth anniversary of the Effective Date, authorize the use of the funds defined as the Litigation Fund to pay First Priority Payments. Such use of the Litigation Fund may occur only upon an order of the District Court. In determining whether such an order should issue, the District Court should determine whether the remaining assets of the Litigation Fund (i.e., the Litigation Fund after accounting for payment of First Priority Payments on a Net Present Value basis) will be adequate to pay all Claims subject to the Litigation Fund. To obtain authorization to distribute Litigation Fund assets for payment of First Priority Payments, the Finance Committee shall file a recommendation and motion with the District Court. Such recommendation and motion shall specify the amount required to satisfy the Allowed First Priority Payments and contain a full accounting of the assets and obligations of the Settlement Facility that supports a conclusion that, absent access to the Litigation Fund, the First Priority Payments due and payable could not be made. The recommendation shall also state any projected future need to access the Litigation Fund for future First Priority Payments. The recommendation and motion shall be served on the Claimants' Advisory Committee, the Debtors' Representatives, the Shareholders and all Claimants who have elected treatment in the Litigation Facility and whose Claims have not been paid in full. If the District Court authorizes the use of any portion of the Litigation Fund for payment of First Priority Payments, and such determination is not stayed or reversed on appeal, then the Finance Committee may authorize such distributions of First Priority Payments, and the amounts so distributed shall be deducted on a Net Present Value basis from the aggregate amount of the Available Litigation Funds to compute the remaining Available Litigation Funds. In no event shall the Finance Committee act inconsistently with an order of the District Court.

(c) *Authorization for Reductions in Allowed Amount.*

(i) Subject to review and order of the District Court, the Finance Committee, in consideration of the analysis and recommendation of the Independent Assessor, shall determine the need to reduce the amount payable to Claimants or to defer payments based upon the projections described at Section 7.01(d). The Allowed amount of Claims may be reduced only if: (1) the Finance Committee, subject to the approval of the District Court, concludes, based on the projections, that a reduction is necessary to pay in full all First Priority Payments or (2) the Finance Committee, subject to the approval of the District Court, concludes, based on the projections, that a reduction is necessary to assure equitable distributions to Claimants within the aggregate limits of the Settlement Fund, the Litigation Fund or Other Products Fund as applicable. To obtain authorization to reduce amounts payable, the Finance Committee shall submit to the District Court a recommendation including all projections and analyses supporting the Finance Committee's recommendation.

(ii) In the event that a reduction is imposed and subsequent projections demonstrate that all Allowed Claims can be paid in full or can be paid in an amount less than the full Allowed amount but greater than the reduced amount previously Allowed, then the Finance Committee, subject to the approval of the District Court, shall make a further distribution to Claimants to assure payment in full or up to the amounts achievable consistent with the limits on the Settlement Fund or the Litigation Fund as applicable.

(iii) In the event the Finance Committee, in consideration of the analysis and recommendation of the Independent Assessor, determines that there is a need for a reduction in payment, the Finance Committee's recommendation to the District Court shall include a proposed method of reducing Claim payments consistent with the terms of this article regarding the prioritization of Claim payments.

(d) *Submission of Annual Financial Audit.* On an annual basis the Finance Committee shall submit to the District Court for approval and to the Claimants' Advisory Committee, the Debtor's Representatives, and the Shareholders annual audited financial statements detailing the payments distributed and allocated to the Settlement Fund and the Litigation Fund and the remaining amounts payable to the Settlement Fund and the Litigation Fund. Such audits shall be prepared by a recognized national firm of independent public accountants selected by the Financial Advisor and Finance Committee, subject to approval by the District Court, and shall include a statement of disbursements allocated to each such Fund and a statement of the Net Present Value of payments to the Settlement Facility in the aggregate and Net Present Value of payments made and allocated to the Litigation Fund, and such audits shall comply with the terms of Section 8.05.

(e) *Salaries, Compensation, and Administrative Expenses.* Within forty-five (45) days of the Effective Date and on an annual basis thereafter, the Finance Committee shall submit to the District Court for approval, with copies to the Claimants' Advisory Committee, the Debtor's Representatives, and the Shareholders proposed guidelines for payment of all salaries, compensation, and expenses associated with the operation of the Claims Office, the Litigation Facility, and the Finance Committee, including financial management, investment, and audit

functions, along with an annual proposed budget for all such costs and expenses. In preparing the proposed annual guidelines, the Finance Committee shall adopt procedures to assure reasonable administrative expenses consistent with the guidelines and costs of operating the MDL 926 Claims Office, and the Finance Committee shall for this purpose consult with the MDL 926 Court.

ARTICLE VIII FINANCIAL MANAGEMENT

8.01 *Establishment of Funds and Accounts/Requests for Payment.* The Depository Trust Agreement establishes initial accounts which may be divided at the instruction of the Finance Committee as necessary to hold, manage, invest and distribute funds in accordance with this Agreement.

8.02 *Payment of Administrative Expenses.* The Finance Committee shall establish a procedure to assure that the Trust shall disburse salaries, compensation payments, and expenses, approved in accordance with Section 7.03(e), on a bi-weekly schedule. The Finance Committee may direct the disbursement of such salaries and expenses as have been approved in accordance with Section 7.03(e) without separate order of the District Court. The members of the Finance Committee shall submit monthly statements and requests for reimbursement of expenses and for compensation to the District Court which requests shall include sufficient detail to permit the District Court to determine the reasonableness of the requests. The Special Master shall provide separate statements to the District Court for services performed under the Litigation Facility Agreement and Case Management Order. Compensation for the Special Master's services under the Litigation Facility Agreement and the Case Management Order shall be allocated to the Litigation Fund; compensation for the Special Master's services as a member of the Finance Committee shall be allocated to the Settlement Fund. The Trust will distribute payment upon approval of the District Court. Such monthly statements shall be provided to the Debtor's Representatives and the Claimants' Advisory Committee. The Finance Committee shall authorize distributions for all other expenses, including Claims Office operating expenses and compensation and expenses for the Claimants' Advisory Committee subject to the provisions of Sections 4.09(d) and 7.03(e).

8.03 *Source of Payments.* Except as provided in Section 7.03(b), all liabilities with respect to Claims subject to resolution by the Settlement Facility and all expenses of the Settlement Facility shall be payable solely from the Settlement Fund. All liabilities subject to payment from the Litigation Fund and all expenses of resolving such Claims, including costs and fees incurred in litigating Claims, shall be payable solely from the Litigation Fund.

8.04 *Investment.* Investments of monies held in the Trust shall be administered in accordance with the specifications of the Depository Trust Agreement.

In determining investments to be held by the Trust, due regard shall be given to safety of principal and to production of reasonable amounts of current income. The Finance Committee shall not be under any obligation to invest Trust assets for capital appreciation, in view of the purposes for which the Trust was created, but is not prohibited from so doing.

8.05 Accounting Statements and Audit.

(a) As soon as practicable on or about the commencement of each Fiscal Year, the Finance Committee shall cause to be prepared budget and cash flow projections covering such Fiscal Year and such succeeding Fiscal Years for which the Finance Committee determines such projections are practicable and appropriate.

(b) The Financial Advisor shall cause to be prepared at the end of each Fiscal Year an annual accounting containing financial statements of the Trust and the Settlement Facility as of the end of such Fiscal Year, including, without limitation, a balance sheet, a statement of receipts and disbursements (which, as to the Claims, shall be presented in the aggregate and not by individual Claims and shall also describe all amounts paid to or by the Trust), a statement of profit and loss prepared on an accrual basis, and a supplementary schedule of investments and assets listing both principal and income, audited by a recognized national or regional firm of independent public accountants selected by the Financial Advisor and the Finance Committee, subject to approval of the District Court, and reported on by such firm as to fairness of presentation in accordance with generally-accepted accounting principles consistently applied. Such statements shall be submitted to the District Court and shall be provided to the Claimants' Advisory Committee, the Debtor's Representatives, and the Shareholders, as specified at Section 7.03(d).

(c) The Financial Advisor shall cause to be prepared at the end of each of the first three quarters of each Fiscal Year a quarterly accounting containing unaudited financial statements of the Trust and the Settlement Facility as of the end of such quarter, including, without limitation, a balance sheet, a statement of receipts and disbursements (which, as to the Claims, shall be presented in the aggregate and not by individual Claims and shall also describe all amounts paid to or by the Trust, a statement of profit and loss prepared on an accrual basis, and a supplementary schedule of investments and assets listing both principal and income reported on, subject to normal year-end adjustments — as to fairness of presentation in accordance with generally-accepted accounting principles consistently applied — by the Trust or by an accountant or financial officer or agent regularly employed by the Settlement Facility.

(d) The Finance Committee shall submit the annual and quarterly accounting required by this Settlement Facility Agreement to the District Court, the Claimants' Advisory Committee, the Debtor, and the Shareholders. The annual accounting shall be filed as soon as available but in no event later than ninety (90) days following the end of each Fiscal Year. The quarterly accounting shall be filed as soon as available but in no event later than forty-five (45) days following the end of the quarter of the Fiscal Year to which such accounting relates.

8.06 Tax Matters. The Finance Committee shall direct the Trustee to timely file such income tax and other returns and statements as are required to comply with applicable provisions of the Internal Revenue Code and the Treasury Regulations promulgated thereunder, and of any state law and the regulations promulgated thereunder. The Trust shall be responsible for paying taxes and any other obligations or liabilities of any and all kinds whatsoever that at any time are lawfully levied, assessed upon or become payable in respect of the Trust or its funds. The Trust shall make any election and provide any information as may be necessary to qualify as a Qualified Settlement Fund. The Trust shall not take any action, or omit to take any action, that could adversely affect the Trust's qualification as a Qualified Settlement Fund. Even if

permitted by the Treasury Regulations governing Qualified Settlement Funds, no election shall be filed by or on behalf of the Trust for the Trust to be treated as a grantor trust for federal income tax purposes.

ARTICLE IX MISCELLANEOUS

9.01 *Settlement Discussions; Inadmissibility.* Establishment of this Settlement Program, discussions leading to the Settlement Program and payments under the Program do not constitute any admission of fault, liability or damages, and such discussions, this Agreement, the Claims Resolution Procedures, and all offers and other communications from the Claims Office to Claimants concerning settlement offers, and information concerning settlement payments in individual cases or in the aggregate shall not be admissible or discoverable for any purpose in any judicial, mediation or arbitration proceeding. Discussions and/or offers made in connection with the resolution of a Claim hereunder shall be confidential and shall not be disclosed to other Claimants or their counsel or to any other Entity.

9.02 *Costs.* The Settlement Facility and Claimants shall each bear their own costs, expenses, and attorneys' fees in connection with the Claims Resolution Procedures.

ARTICLE X GENERAL PROVISIONS

10.01 *Irrevocability.* The Settlement Facility is irrevocable. None of the Released Parties, present or future, or their successors in interest may hold any beneficial interest in, or have any reversion to, the income or corpus of the Settlement Facility.

10.02 *Recordation.* This Agreement shall be recorded in such places as the Finance Committee, Claimants' Advisory Committee, or Debtor's Representatives shall deem necessary or advisable.

10.03 *Termination/Closure.*

(a) *Termination Date.* The Settlement Facility and Trust shall terminate as soon as practicable after the Reorganized Dow Corning's obligation to fund under the Funding Payment Agreement is terminated in accordance with Section 2.01(c) of the Funding Payment Agreement. The Claims Administrator will use his or her best efforts to substantially complete and terminate the Settlement Facility and Trust within sixty (60) days after such termination of the Funding Payment Agreement. The Claims Administrator shall seek an order from the District Court confirming that it is appropriate to terminate the Settlement Facility.

(b) *Closure of the Settlement Facility.* Upon termination of the Settlement Facility under this Agreement, the Claims Administrator shall remain authorized to wind up the affairs of the Settlement Facility and the Trust, and thereafter, the Claimants' Advisory Committee shall be authorized to dispose of the balance, if any, of funds in the Settlement Facility after payment of or adequate provision for any remaining Settlement Facility or Trust expenses. Any such funds shall be distributed, if cost effective, pro rata to the holders of Allowed Claims previously

paid to Claimants eligible under this Agreement by the Settlement Facility, or, if such distribution would not be cost effective, to a neutral medical research institute or university, selected by the Finance Committee after consulting with the Claimants' Advisory Committee.

10.04 Severability. Should any provision of this Agreement and Annex A to the Agreement (except those described in the next sentence) be held unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any and all other provisions of this Agreement, and the unenforceable provision shall be reformed, modified or replaced by such provision or provisions as the Court or the District Court, as appropriate, may approve upon joint motion by the Debtor and the Claimants' Advisory Committee. Notwithstanding the foregoing, the following provisions of this Agreement are not severable: (i) provisions concerning and establishing the amount payable for any Settling Personal Injury 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) provisions concerning the release of the Released Parties, or any of them, (iii) provisions concerning the amount or due date of any payment to be made by the Reorganized Dow Corning to the Settlement Facility pursuant to the Plan or the Funding Payment Agreement, (iv) provisions concerning the right of the Trust on behalf of the Settlement Facility to receive payments pursuant to the Insurance Allocation Agreement, and (v) any provision that, if modified or deleted, would cause the Trust to no longer qualify as a Qualified Settlement Fund.

10.05 Headings; References. The headings of the Table of Contents, Articles and Sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. Any reference herein to an Article or Section shall be deemed to refer to the applicable Article or Section of this Agreement unless otherwise expressly stated herein. Any reference to an Exhibit, Annex, or Schedule shall be deemed to refer to the applicable Exhibit, Annex, or Schedule attached hereto, all such Exhibits, Annexes, and Schedules being incorporated herein and made a part hereof by this reference.

10.06 Amendments. 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.

10.07 Governing Law. This Settlement Facility Agreement shall be governed by and construed in accordance with the law of the state of New York without regard to conflicts of law principles.

10.08 Jurisdiction. Except as specifically provided herein, all matters relating to the validity, interpretation and operation of this Settlement Facility shall be under the exclusive jurisdiction of the District Court.

10.09 No Execution. All funds in the Settlement Facility are deemed *in custodia legis* until such times as the funds have actually been paid to and received by a Claimant, and no Claimant or any other party can execute upon, garnish or attach the Settlement Facility in any manner or compel payment from the Settlement Facility of any Claim. Payment of Claims will be governed solely by the Plan, this Settlement Facility Agreement, the Claims Resolution Procedures, and the Funding Payment Agreement.

10.10 Confidentiality. Copies of all documents, notices, statements, reports, projections, motions, or similar documents provided to any party or to the Claimants' Advisory Committee or the Debtor's Representatives under this Agreement shall be provided on a confidential basis and shall be kept confidential by all other such parties, Claimants' Advisory Committee or Debtor's Representatives unless such information is otherwise publicly available. Such confidential information provided under this Agreement can be used in any proceeding in the Court, the MDL 926 Court, the District Court or any applicable appellate court provided the party using such information takes reasonable steps to protect the confidential nature of the information. Notwithstanding this Section 10.10, the Debtor's Representatives shall be permitted to distribute any such materials to the Debtor and the Shareholders.

10.11 Notices. All notices, reports, or documents required by or authorized under this Settlement Facility Agreement to be provided to the parties or others shall be in writing and shall be sent to the following persons or entities at the following addresses until any such person or entity gives written notice of a change of address:

If to the Shareholders:

The Dow Chemical Company
2030 Dow Center
Midland, Michigan 48674
Attention: General Counsel

Corning Incorporated
One Riverfront Plaza
Corning, New York 14831
Attention: General Counsel

If to Dow Corning:

Dow Corning Corporation
2200 West Salzburg Road
P.O. Box 994
Midland, Michigan 48686-0994
Attention: General Counsel

With a copy to:

The Feinberg Group, LLP
1120 20th Street, N.W.
Suite 740 South
Washington, DC 20036-3437
Attention: Deborah E. Greenspan, Esq.

If to the Claimants' Advisory Committee:

Blizzard, McCarthy & Nabers, LLP
440 Louisiana
Suite 1710
Houston, TX 77002-1689
Attention: Dianna L. Pendleton-Dominguez, Esq.

If to the Debtor's Representatives:

The Feinberg Group, LLP
1120 20th Street, N.W.
Suite 740 South
Washington, DC 20036-3437
Attention: Deborah E. Greenspan, Esq.

If to the Trustee:

Wells Fargo Bank, National Association
1445 Ross Avenue; MAC T5303-022
Dallas, TX 75202
Attention: Lon P. LeClair

If to the Finance Committee:

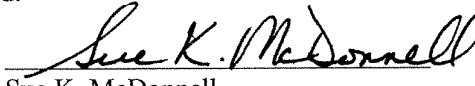
Settlement Facility-Dow Corning Trust
3100 Main Street, Suite 700
Houston, TX 77002
Attention: Elizabeth Wendy Trachte-Huber, Finance Committee Member

IN WITNESS WHEREOF, on June 1, 2004 Dow Corning has caused this Settlement Facility Agreement to be executed by a duly authorized officer or representative of Dow Corning and attested to by another duly authorized officer or representative of Dow Corning, and the Claimants' Advisory Committee has executed this Settlement Facility Agreement by its duly authorized representatives.

DOW CORNING CORPORATION

By: 
Name: Gary E. Anderson
Title: Chairman

Attested:

By: 
Name: Sue K. McDonnell
Title: Vice President, General Counsel &
Secretary

CLAIMANTS' ADVISORY COMMITTEE

By: _____
Name: Sybil Niden Goldrich
Title: Member

By: _____
Name: Dianna Pendleton-Dominguez
Title: Member

By: _____
Name: Ernest H. Hornsby
Title: Member

**Acknowledged and approved:
OFFICIAL COMMITTEE OF TORT
CLAIMANTS**

By: _____
Name: Ralph I. Knowles

IN WITNESS WHEREOF, on June 1, 2004 Dow Corning has caused this Settlement Facility Agreement to be executed by a duly authorized officer or representative of Dow Corning and attested to by another duly authorized officer or representative of Dow Corning, and the Claimants' Advisory Committee has executed this Settlement Facility Agreement by its duly authorized representatives.

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By: *Sybil Niden Goldrich*
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Title: Member

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Name: Dianna Pendleton-Dominguez
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Secretary

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Title: Member

By: Gianna Pendleton-Dominguez
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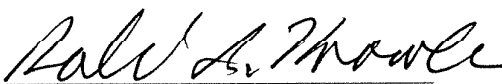
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