# DOW CORNING SETTLEMENT PROGRAM AND CLAIMS RESOLUTION PROCEDURES

## ANNEX A
## TO SETTLEMENT FACILITY AND FUND DISTRIBUTION AGREEMENT

**(f)** The Claimant submits acceptable Proof of Manufacturer, as set forth in Schedule I, Part I and/or II or III, or section 6.04 (e), as applicable, of these Claims Resolution Procedures.

**5.02** ***Family Members.*** Participation by a Claimant also constitutes participation by that person's estate and the Consortium Claims of family members shall be deemed released by the treatment afforded the primary Claimant, as specified at Section 5.4.1.4 of the Plan. Children Direct Claims are unaffected by a primary Claimant's election to settle and shall be treated pursuant to the terms of the Litigation Facility Agreement. Notwithstanding the foregoing, all Family Member Claims, including Children Direct Claims, related to Claims in Classes 6A, 6B, 6C and 6D shall be deemed released by the treatment afforded the primary Claimant under the terms of their respective settlement agreement or option.

## ARTICLE VI
## SETTLEMENT OPTIONS

**6.01** ***General.*** This section describes the criteria for Settling Personal Injury Claimants to obtain compensation. A Claimant who is eligible for both the Settlement Program for Breast Implant Claimants and the Settlement Program for Other Products Claimants is eligible to apply for compensation from both programs for each of his/her covered products. Claimants who are eligible for or receive compensation as a Breast Implant Claimant or an Other-Product Claimant are not eligible to apply for compensation under the Settlement Program for Silicone Material Claimants.

**6.02** ***Settlement Program For Eligible Domestic Dow Corning Breast Implant Claimants -- Classes 5, 6.1, and 6.2.***

**(a)** ***Summary of Payment Options.*** Settling Breast Implant Claimants who have been implanted with one or more Breast Implants and satisfy the eligibility criteria of Section 5.01 ("Eligible Breast Implant Claimants") may participate in and receive compensation from any and all of the following options:

**(i)** ***Explantation Payment Option.*** A one-time payment of $5,000 will be paid to all Eligible Breast Implant Claimants whose Breast Implant(s) has/have been or is/are explanted after December 31, 1990 and on or before the tenth anniversary of the Effective Date.

**(ii)** ***Disease or Expedited Release Payment Option.***

**a.** Eligible Breast Implant Claimants may elect compensation for Disease Payment Option benefits based either on the disease definitions listed in the Original Global Settlement (Disease Payment Option I) or on the criteria set forth in the Long Term Benefit Schedule of the Revised Settlement Program (Disease Payment Option II) any time on or before the fifteenth anniversary of the Effective Date.

**b.** Eligible Breast Implant Claimants may instead release all present and future Claims to receive Disease Payment Option benefits (but not

Rupture or Explantation Payment Option benefits) and receive an Expedited Release Payment of $2,000 upon providing acceptable proof of implantation of a Dow Corning Breast Implant.

**(iii)** ***Rupture Payment Option.*** An Eligible Breast Implant Claimant whose Breast Implant(s) has/have been or is/are explanted on or before the second anniversary of the Effective Date and who submits acceptable proof that her Dow Corning silicone gel Breast Implant is ruptured will be compensated a Base Payment of $20,000 and an additional Premium Payment of $5,000, subject to the terms of the Settlement Facility Agreement.

**(b)** ***Eligibility Criteria Applicable to All Options: Proof of Manufacturer.***

**(i)** ***Form.*** Except as provided at Section 4.02(b), Eligible Breast Implant Claimants who want to participate in the Dow Corning Settlement Program must submit to the Claims Office a Proof of Manufacturer Form and supporting documentation, as defined in Schedule I, Part I.

**(ii)** ***Proof.*** All Breast Implant Claimants must submit acceptable proof of a Dow Corning Breast Implant to receive benefits. The standards of acceptable proof of a Dow Corning Breast Implant are set forth at Schedule I, Part I to these Claims Resolution Procedures.

**(iii)** ***Multiple Manufacturer Claims.*** Breast Implant Claimants who participated in the Revised Settlement Program or the Foreign Revised Settlement Program and received a fifty (50)-percent reduction in compensation because they asserted they had or have a Dow Corning Breast Implant must satisfy the Proof of Manufacturer requirements for a Dow Corning Breast Implant set forth at Schedule I, Part I of this Annex A to be eligible under this Dow Corning Settlement Program. Such Claimants who have a deficiency in their Proof of Manufacturer submission will be directed to the Claims Assistance Program (defined at Section 7.01(e)). The Claims Assistance Program may submit the Proof of Manufacturer documentation to Reorganized Dow Corning for review and/or to the appropriate manufacturer in the Revised Settlement Program for consideration of payment.

**(c)** ***Explantation Payment Option: Specific Eligibility Criteria and Terms.*** A one-time payment of $5,000 will be paid to Eligible Breast Implant Claimants on proof of removal of a Dow Corning Breast Implant after December 31, 1990 and on or before the tenth anniversary of the Effective Date. A Claimant may receive payment under the Explantation Payment Option in addition to payments under the other compensation options available in the Dow Corning Settlement Program.

**(i)** The amount of compensation available under the Explantation Payment Option will not vary based on the amount of actual expense involved or the number of Dow Corning implants removed.

**(ii)** Breast Implant Claimants whose Dow Corning Breast Implant(s) was/were explanted during 1991 shall not be entitled to an Explantation Payment if they received a replacement silicone gel breast implant during that explantation procedure. Claimants

whose Dow Corning Breast Implant(s) were removed after January 1, 1992 shall not be entitled to an Explantation Payment if they received a replacement silicone gel breast implant either during that explantation surgical procedure or in any subsequent procedure.

**(iii)** Breast Implant Claimants who had their implants removed and replaced with saline implants are eligible to claim Explantation Payment Option benefits.

**(iv)** Explant Assistance Program: Breast Implant Claimants who want to have their Dow Corning Breast Implant removed but do not have the funds to pay for the surgery may request the Claims Office to make arrangements to compensate the appropriate persons or entities (up to a maximum of $5,000) directly. The Claims Office shall be authorized to develop appropriate guidelines for direct payment to the appropriate person or entity who provided the explantation service upon receipt from the Claimant and surgeon of all required documentation, including a signed release. The Claims Office shall obtain from the Claimant a signed release releasing the Claims Office, the Debtor, Reorganized Dow Corning, the Claimants Advisory Committee, Debtor's Representatives, and the Released Parties from any claims or actions arising out of the explant procedure. (Such release will not affect the Claimant's ability to recover benefits under this Settlement Program.) If the cost of explantation is less than the $5,000 Explantation Payment Option benefit, the Claims Office shall pay the difference between the actual cost and $5,000 to the Breast Implant Claimant. Prior to disbursing payment for the surgery to the appropriate persons or entities, the Claims Office shall obtain from the explanting surgeon and, if applicable, the pathologist, any information necessary for the Explantation Payment Option Form and, if applicable, the Rupture Payment Option Form on behalf of the Breast Implant Claimant and an agreement to cooperate with her and the Claims Office to provide information relevant to these benefits. Claimants will not be denied an Explantation Payment if they participated in this direct payment procedure but were not explanted by the deadline for the Explantation Payment Option solely because the surgeon failed timely to return documents and/or releases. Claimants will not be denied a Rupture Payment if they participated in this direct payment procedure but were not explanted by the deadline for the Rupture Option solely because the surgeon failed to timely return documents and/or releases.

**(v)** Reorganized Dow Corning may, at its discretion, provide a list of surgeons who have advised Reorganized Dow Corning of a willingness to perform explantation surgeries for up to $5,000. If such surgeon agrees, the Claims Office shall be authorized to release the names of such surgeons to Claimants. Should any Claimant elect to use any such surgeon and/or to arrange for payment of such surgeon through the Claims Office as provided at subparagraph (iv) above, then the Claimant must execute a release releasing the Claims Office, the Debtor, Reorganized Dow Corning, the Claimants Advisory Committee, Debtor's Representatives, and the Released Parties from any liability or claim arising out of such surgery (except that such release will not affect the Claimant's ability to recover benefits under this Settlement Program). Prior to releasing payment for the surgery to the appropriate persons or entities, the Claims Office shall obtain from the explanting surgeon and, if applicable, from the pathologist information necessary for the Explantation Payment Option Form and, if applicable, the Rupture Payment Option Form on behalf of the Breast Implant Claimant and an agreement to

cooperate with her and the Claims Office to provide information relevant to these benefits.

**(vi)** To obtain benefits under the Explantation Payment Option the Claimant must submit proof of explantation. Proof of explantation must contain or indicate the date of the explantation surgery and may be made by any of the following means:

**a.** an itemized hospital bill;
**b.** the bill from the explanting surgeon;
**c.** the surgical report;
**d.** an insurance company's statement of benefits;
**e.** contemporaneous hospital records (including the hospital pathology report);
**f.** the explanting surgeon's contemporaneous office notes;
**g.** a pre-operative medical document, together with confirmation from a medical provider or insurance company that surgery actually took place as scheduled; or
**h.** the presence of the implant recipient's name on the list provided by Dow Corning to the Settlement Facility of confirmed participants in the Removal Assistance Program.

**(vii)** The Claims Office will not inquire about the Breast Implant Claimant's reason for choosing to have her Breast Implant(s) removed and will not deny benefits to Breast Implant Claimants based on the reason for explantation.

**(viii)** Each Eligible Breast Implant Claimant may receive only one payment under the Explantation Payment Option, regardless of the number of qualifying surgeries or implants.

**(d)** ***Disease Payment Option.*** Eligible Breast Implant Claimants will receive benefits under the Disease Payment Option upon proof, on or before the fifteenth anniversary of the Effective Date, of having developed a Covered Condition defined in Disease Payment Option I, Schedule II, Part A (the Disease Schedule of the Original Global Settlement which is called the Fixed Amount Benefit Schedule of the Revised Settlement Program), or a Covered Condition defined in Disease Payment Option II, Schedule II, Part B (the Long-Term Benefit Disease Schedule of the Revised Settlement Program).

**(i)** ***Disease Payment Options Defined.*** Disease Payment Option I consists of the compensable diseases and conditions defined in the Original Global Settlement and the Fixed Amount Benefit Schedule of the Revised Settlement Program. Disease Payment Option II consists of the compensable diseases and conditions defined in the Long-Term Benefit Schedule of the Revised Settlement Program.

The criteria for qualifying for benefits under Disease Payment Option II are much stricter than those under Disease Payment Option I. No claims based solely on atypical or "like" presentations of disease are compensable for Systemic Lupus, Systemic Sclerosis, or Polymyositis/Dermatomyositis under Disease Payment Option II. A Breast Implant Claimant must clearly suffer from those diseases exactly as defined in Schedule II, Part B. Breast Implant Claimants who meet the criteria under Disease Payment Option II and who also have additional signs, symptoms or conditions which are not

required for that disease category will still be eligible for compensation under Disease Payment Option II. Only four of the Covered Conditions in Disease Payment Option I — Lupus, Scleroderma, Polymyositis, and Dermatomyositis — are included in Disease Payment Option II. One additional Covered Condition — General Connective Tissue Symptoms (GCTS) — is contained in Disease Payment Option II. Although many of these GCTS symptoms are somewhat similar to symptoms and findings contained in the ANDS and ACTD categories of Disease Payment Option I, the symptoms listed in the GCTS category have stringent qualifications and requirements.

**(ii)** ***Election of Disease Payment Option/Designation of Application of Covered Condition.*** The Disease or Expedited Release Payment Option Claim Form distributed to Claimants will instruct Claimants to identify the particular Covered Condition for which they seek benefits.

**(iii)** ***Processing Protocol for Disease Payment Option Claims.***

**a.** Claims asserting Systemic Sclerosis, Systemic Lupus, Polymyositis or Dermatomyositis and GCTS shall be reviewed, categorized and paid based on the following protocol:

**1.** The Claims Office shall evaluate the Claim under both Disease Payment Option I and Disease Payment Option II.

**2.** The Claims Office will send to each such Breast Implant Claimant or, if represented, to her attorney of record a Notification of Status letter (as described at Section 7.06). The Notification of Status letter shall advise the Claimant of the following:

**(1)** All Covered Condition(s) evaluated and approved.

**(2)** The Disease Payment Option in which each approved Covered Condition falls.

**(3)** The compensation level approved.

**(4)** Any deficiencies in any Covered Condition the Claimant identified on the Claim Form based on both Disease Payment Options regardless of whether the Claim is approved for any Covered Condition, as well as any deficiencies in any Covered Condition evaluated by the Claims Office.

**3.** If the Claims Office determines that such Claim has any deficiency under Disease Payment Option II, then the Claimant shall have one year from the date of the Notification of Status letter to cure that Disease Payment Option II deficiency. If the deficiency is not cured within the one year period, then the Claim will automatically be designated a Disease Payment Option I Claim, and the Allowed amount of compensation provided under Disease Payment Option I for that Claim will be reduced by 25 percent from the amount

specified on the Disease Payment Option I Compensation Schedule and otherwise allowable.

4. At any time during the one year period for cure of the deficiency the Claimant may elect to proceed under Disease Payment Option I instead of Disease Payment Option II. If such election is made prior to the expiration of the one year period then payments issued under Disease Payment Option I will not be reduced.

5. If the Claim is not approved under either Disease Payment Option, then the Claimant shall have an opportunity to cure the deficiency as specified at Section 7.09.

**b.** All other Disease Payment Option Claims shall be reviewed, categorized and paid based on the following protocol:

1. All other Disease Payment Option Claims shall initially be evaluated under Disease Payment Option I.

2. The Claims Office will send to such Breast Implant Claimant or, if represented, to her attorney of record a Notification of Status letter (as described at Section 7.06). The Notification of Status letter shall advise the Claimant of the following:

**(1)** any Covered Condition approved under Disease Payment Option I;

**(2)** the compensation level approved; and

**(3)** any deficiencies in any Covered Condition the Claimant identified on the Claim Form but which is not approved.

3. If the Claimant has any deficiency in the Disease Payment Option I Claim and elects to proceed under Disease Payment Option I, then the Claimant shall have one year from the date of the Notification of Status letter to cure any deficiencies in the Claim as provided in Section 7.09.

**(iv)** ***Effect of Election Among Disease Payment Options.*** Eligible Breast Implant Claimants who elect compensation under Disease Payment Option I or whose claims are automatically designated Disease Payment Option I Claims may not, in the future, receive benefits under Disease Payment Option II.

**(v)** ***Multiple Manufacturer Reduction.*** Eligible Breast Implant Claimants who opted out of the original global settlement or the Revised Settlement Program and received compensation from either Bristol, Baxter or 3M outside of the Revised Settlement Program shall be deemed to have acceptable proof of a Bristol, Baxter or 3M breast implant for purposes of the Plan and the Multiple Manufacturer Reduction. Eligible Breast Implant Claimants whose Disease Payment Option Claims are approved

shall have the Allowed amount of their Claim reduced by fifty (50) percent if they also have acceptable proof of implantation of a silicone gel breast implant manufactured by or attributed to Bristol, Baxter or 3M (as such manufacturers are described and defined in Exhibit G to the Revised Settlement Program, which Exhibit G is set forth in relevant part at Schedule I, Part III, Section C). The fifty (50)-percent reduction shall apply to all Breast Implant Claimants regardless of whether they recovered benefits in the Revised Settlement Program or whether they recovered any payments in settlement or judgment, including but not limited to payments recovered as an opt-out to the Revised Settlement Program.

**(vi)** ***Compensation Schedule for Disease Payment Option I.*** Compensation for approved Disease Payment Option I benefits will be paid under the schedule below, subject to the provisions of the Funding Payment Agreement and the Settlement Facility Agreement. Each Eligible Breast Implant Claimant may receive payment for only one compensable condition under Disease Payment Option I, except as provided at subparagraph (viii) below.

**DISEASE PAYMENT OPTION I COMPENSATION SCHEDULE**

| Original Global Settlement Criteria (Fixed Amount Benefit Schedule of the Revised Settlement Program) Disability/Severity Level for Covered Conditions | Dow Corning Breast Implant and no Bristol, Baxter or 3M silicone gel breast implant | | |
|---|---|---|---|
| | Base Payment | + Premium Payment | = Total Payment |
| A | $50,000 | + $10,000 | = $60,000 |
| B | $20,000 | + $4,000 | = $24,000 |
| C or D | $10,000 | + $2,000 | = $12,000 |

**(vii)** ***Pre-existing Conditions for Disease Payment Option I Claims.***

**a.** Claimants shall not be eligible to receive compensation for a Covered Condition that became manifest prior to the implantation of a Breast Implant except as provided in this subsection.

**b.** Under the ACTD category in Disease Payment Option I, no symptom is considered for purposes of establishing ACTD if it existed before the date of first implantation with a Breast Implant.

**c.** A Breast Implant Claimant who, before her first breast implantation, had a Covered Condition listed on the Disease Payment Option I schedule is eligible for benefits if that condition increased in severity after implantation with a Breast Implant. The amount of the benefit will be the difference between the amount Allowed for the new disease and disability/severity level and the amount that would have been allowed for the pre-existing condition.

**d.** It is the intention of the provision to adopt and follow the protocols employed by the MDL 926 Claims Office to determine Claims with pre-existing conditions.

**(viii)** ***Increased Severity for Disease Payment Option I Claims.*** If before the fifteenth anniversary of the Effective Date an approved Disease Payment Option I Claimant documents an increase in the severity of her condition that meets the criteria for Severity Level A under Disease Payment Option I, that Claimant shall be entitled at that time to apply for an additional payment from the Settlement Facility based on that Severity Level A Condition. The maximum amount for which that Claimant may qualify is the difference between the maximum Allowable payment amount for Level A (which amount would be $60,000 if the full Premium Payment of twenty (20) percent of the Base Payment were Allowed) and the amount previously Allowed for the Claim. This additional payment shall be classified and paid as a Second Priority Payment and will be paid from the Increased Severity Fund, subject to the limitations of that Fund as set forth in Section 3.02(b)(i) of the Settlement Facility Agreement, and subject to the requirements for the distribution of Premium Payments as specified in the Settlement Facility Agreement.

**(ix)** ***Compensation Schedule for Disease Payment Option II.*** Compensation for approved Disease Payment Option II Claimants will be paid according to the Disease Payment Option II Schedule below, subject to the terms of the Funding Payment Agreement and the Settlement Facility Agreement. Each Eligible Breast Implant Claimant may receive payment for only one Covered Condition under Disease Payment Option II, except as provided at subparagraph (xi) below.

**DISEASE PAYMENT OPTION II COMPENSATION SCHEDULE**

| Long-Term Benefit Schedule of the Revised Settlement Program: Covered Condition: Disease or Symptomology/ Compensation Level | Dow Corning Breast Implant and no Bristol, Baxter or 3M silicone gel breast implant | | |
|---|---|---|---|
| | Base Payment | + Premium Payment | = Total Payment |
| Scleroderma (SS) or Lupus (SLE); Compensation Level A | $250,000 | + $50,000 | = $300,000 |
| Scleroderma (SS) or Lupus (SLE); Compensation Level B | $200,000 | + $40,000 | = $240,000 |
| Scleroderma (SS) or Lupus (SLE); Compensation Level C | $150,000 | +$30,000 | = $180,000 |
| General Connective Tissue Symptoms (GCTS), Polymyositis (PM) or Dermatomyositis (DM); Compensation Level A | $110,000 | + $22,000 | = $132,000 |
| General Connective Tissue Symptoms (GCTS); Compensation Level B | $75,000 | + $15,000 | = $90,000 |

**(x)** ***Pre-existing Conditions for Disease Payment Option II Claims.*** Benefits may not be obtained for a Covered Condition if the qualifying symptoms existed before the date of the first implantation with a Breast Implant.

**(xi)** ***Increased Severity for Disease Payment Option II Claims.*** If, before the fifteenth anniversary of the Effective Date, an approved Disease Payment Option II Claimant documents a Covered Condition under Disease Payment Option II that would entitle her to a larger payment than previously Allowed, the Claimant is eligible to apply for an additional payment in an amount equal to the difference between the new amount Allowable and any amount previously Allowed under this Schedule. This additional payment shall be classified and paid as a Second Priority Payment.

**(e)** ***Rupture Payment Option.*** To qualify for the Rupture Payment Option a Breast Implant Claimant must meet the requirements listed below:

**(i)** ***Definition.*** "Rupture" means the failure of the elastomer envelope(s) surrounding a silicone-gel Breast Implant to contain the gel (resulting in contact of the gel with the body), not solely as a result of "gel bleed", but due to a tear or other opening in the envelope after implantation and prior to the explantation procedure.

**(ii)** ***Eligibility.*** To be eligible under the Rupture Payment Option, Eligible Breast Implant Claimants must submit:

**a.** acceptable proof of implantation with one or more Dow Corning silicone gel Breast Implants in accordance with Schedule I, Part I and;

**b.** documentation that a Dow Corning silicone gel Breast Implant has been removed; and

**c.** documentation, as specified at subparagraph (v) below, showing that the removed Dow Corning silicone gel Breast Implant was ruptured as defined above.

**(iii)** ***Rupture Proof.***

**a.** Breast Implant Claimants explanted prior to January 1, 1992 must submit a contemporaneous operative or pathology report documenting the Rupture.

**b.** Breast Implant Claimants explanted on or after January 1, 1992 and on or before the Effective Date must submit a contemporaneous operative report and, if available, a pathology report together with a statement as to whether the ruptured implants have been preserved and, if so, the name and address of the custodian.

**c.** **1.** Breast Implant Claimants explanted after the Effective Date must submit a contemporaneous operative report and, if available, a contemporaneous pathology report. In addition, the Claimant must provide a statement from the explanting surgeon (or other appropriate professional approved by the Claims Office) affirming that, in his or her opinion, the Rupture did not occur during or after the explantation procedure. This statement must describe the