
**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION**

IN RE:

DOW CORNING CORPORATION

DEBTOR

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**CASE NO. 95-20512
(CHAPTER 11)**

Judge Arthur J. Spector

AMENDED JOINT PLAN OF REORGANIZATION

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INTRODUCTION

Dow Corning Corporation, a Michigan corporation, the Debtor in the above-captioned chapter 11 Case, and the Official Committee of Tort Claimants (the “**Tort Committee**”) propose the following Amended Joint Plan of Reorganization pursuant to the provisions of chapter 11 of the Bankruptcy Code. For purposes hereof, any term used in an initially capitalized form in this Plan of Reorganization shall have the defined meaning ascribed to it in either section 101 of the Bankruptcy Code or Article One hereof unless the context otherwise requires.

Reference is hereby made to the Disclosure Statement, as hereinafter defined, of the Debtor, which discusses the history of the Debtor, its business, management, properties, and other assets. The Disclosure Statement also provides a summary of this Plan. **YOU ARE URGED TO READ THE DISCLOSURE STATEMENT WITH CARE IN EVALUATING HOW THIS PLAN WILL AFFECT YOUR CLAIM(S).**

ARTICLE ONE

DEFINITIONS

Unless the context otherwise requires, when used in this Plan, the following terms shall have the respective meanings set forth below. Whenever the context requires, such terms shall include the singular as well as the plural number, the masculine gender shall include the feminine, and the feminine gender shall include the masculine. Any specific references to promissory notes, deeds of trust, or other instruments of indebtedness or security shall include any amendments, modifications and extensions thereto. Nothing contained in this Plan shall constitute an admission or denial by any party of either liability for or the validity,

priority, or extent of any Claim, Lien, or Security Interest asserted against the Debtor or against any third party.

1.1 **“Administrative Claim”** means a Claim for payment of an administrative expense of a kind specified in section 503(b) of the Bankruptcy Code and referred to in section 507(a)(1) of the Bankruptcy Code including, without limitation, the actual, necessary costs and expenses of preserving the Debtor’s estate and operating the Debtor’s business including Current Obligations, compensation for professional services and reimbursement of expenses awarded under sections 330(a) or 331 of the Bankruptcy Code, and all fees and charges assessed against the Debtor’s estate under chapter 123 of Title 28, United States Code.

1.2 **“Allowance Date”** means the date on which a Claim becomes an Allowed Claim.

1.3 **“Allowed”** means, with respect to a Claim, all or a portion thereof (a) that has been agreed to by the Claimant and the Debtor, (b) that has been allowed by Final Order, (c) that has been estimated for purposes of allowance pursuant to section 502(c) of the Bankruptcy Code, (d) that either (i) is listed in the schedules, other than a Claim that is listed as “disputed,” “contingent,” or “unliquidated,” or (ii) the proof of which has been timely filed pursuant to the Bar Order or filed pursuant to any other Final Order, or otherwise deemed timely filed under applicable law, and as to which either (x) no objection to its allowance has been filed within the periods of limitation fixed by this Plan or by any Final Order, or (y) any objection to its allowance has been settled or withdrawn or has been decided by a Final Order, or (z) with respect to Products Liability Claims treated therein, has been approved for payment pursuant to the Settlement Facility Agreement or the Litigation Facility Agreement, or (e) that is expressly allowed in this Plan.

1.4 **“Assumed Third Party Claims”** is defined in section 8.5 hereof.

1.5 **“Assumed Warranties”** means the warranty obligations of DCC with respect to those products itemized in **Exhibit “B”** to this Plan.

1.6 **“Australia Breast Implant Settlement Claimants”** means the holders of Foreign Breast Implant Personal Injury Claims, Silicone Material Claims and Raw Material Breast Implant Claims who currently reside in Australia or who received Breast Implants in Australia and who timely elect to participate in Class 6D.

1.7 **“Australia Breast Implant Settlement Option”** means that certain agreement, styled the Dow Corning Settlement Option Regarding the Voluntary Australian Subclass, pursuant to which the treatment of Class 6D Claimants will be implemented.

1.8 **“Australia Breast Implant Optional Settlement Fund”** means the fund established pursuant to the Australia Breast Implant Settlement Option for the payment of Claims of Australia Breast Implant Settlement Claimants.

1.9 **“Bank Loan Claims”** means those Claims arising pursuant to agreements between the Debtor and (a) Bank of New York dated February 18, 1994, (b) Bank of Tokyo Trust Company dated May 26, 1994, (c) Comerica Bank dated February 24, 1994, (d) Credit Lyonnais dated November 16, 1992, and amended November 16, 1992, and December 31, 1992, (e) First National Bank of Chicago dated July 12, 1993, (f) Nippon Life Insurance dated October 5, 1988, and (g) Bank of America National Trust and Savings Association as Administrative Agent dated November 3, 1993.

1.10 **“Bankruptcy Code”** means the Bankruptcy Reform Act of 1978, as amended, principally codified in 11 U.S.C. § 101 *et seq.*

1.11 “**Bankruptcy Rules**” means the Rules and Forms of Practice and Procedures in Bankruptcy promulgated under 28 U.S.C. § 2075, as amended, and the local rules of the Court, as applicable to chapter 11 cases, together with all amendments and modifications from time to time thereto.

1.12 “**Bar Date**” means January 15, 1997 (or February 14, 1997, for Foreign Claimants who continuously maintained their residence outside of the United States, its territories and Puerto Rico during the period from September 15, 1996, through November 15, 1996), the date set in the Bar Order as the last day for filing any and all proofs of claim in this Case, or such other date as may apply to a particular Claim pursuant to an order of the Court.

1.13 “**Bar Order**” means the order of the Court, entered on July 29, 1996, setting the Bar Date and approving the method of notification of the Bar Date.

1.14 “**B.C. Class Action Fund**” means the fund established pursuant to the B.C. Class Action Settlement Agreement for the payment of Claims of B.C. Class Action Settlement Claimants.

1.15 “**B.C. Class Action Settlement Agreement**” means that certain agreement, styled the Dow Corning British Columbia and Other Provinces Breast Implant Litigation Settlement Agreement, between the B.C. Class Action Settlement Claimants (which potentially includes Claimants who reside in provinces of Canada other than Quebec and Ontario), as plaintiffs, and Dow Corning and others, as defendants, pursuant to which the class action pending in the British Columbia court is resolved.

1.16 “**B.C. Class Action Settlement Claimants**” means the parties designated as “Settling Claimants” in the B.C. Class Action Settlement Agreement.

1.17 “**Breast Implant**” means all silicone gel and saline-filled breast implants with silicone elastomer envelopes manufactured and either sold or otherwise distributed by the Debtor.

1.18 “**Breast Implant Claims**” means all Claims (including Claims asserted by or on behalf of Claimants with Unmanifested Claims and Unborn Breast Implant Claimants), demands, suits, causes of actions, proceedings or any other rights or asserted rights to payment heretofore, now or hereafter asserted against the Debtor, any Released Parties, the Settlement Facility or the Litigation Facility, based upon or in any manner arising from or related to (a) a Breast Implant, (b) the research and development, manufacture, distribution, advertising, sale, provision, recommendation, insertion, use or removal of any raw materials and/or finished products manufactured by the Debtor, comprising all or part of a Breast Implant, (c) the processing, adjustment, defense, settlement, payment, negotiation, or handling of any Claims, demands, suits, proceedings or causes of action based upon or relating in any way to a Breast Implant, or (d) the failure to warn, disclose or provide information concerning, the alleged fraud or misrepresentation regarding, or the failure to take remedial action with respect to, a Breast Implant, including, without limitation, (i) those for death or personal injuries, including emotional distress, (ii) those of any Person against whom any claim, demand, proceeding, suit or cause of action based upon or in any manner arising from or relating to any of the matters enumerated or described in (a), (b), (c) and/or (d) above has been, is or may be asserted (including, without limitation, rights of indemnity, whether contractual or otherwise, contribution Claims and subrogation Claims), (iii) those for damages, including punitive damages, (iv) those for attorneys’ fees and other expenses, fees or costs, (v) those for any possible economic loss or loss of consortium, (vi) those for damage to reputation, and (vii) those for any equitable remedy, but excluding Claims (x) brought by the Debtor, its Joint Ventures or Subsidiaries and (y) any such Claims which were

the subject of prepetition final judgments or legally enforceable settlement agreements, which Claims shall be treated as Unsecured Claims in this Plan. In this Plan, Breast Implant Claims are either Breast Implant Personal Injury Claims or Breast Implant Other Claims, as those terms are defined herein.

1.19 “**Breast Implant Other Claim**” means any Breast Implant Claim asserted by the holder of an Other Claim.

1.20 “**Breast Implant Personal Injury Claim**” means any Breast Implant Claim asserted by a Personal Injury Claimant.

1.21 “**Breast Implant User**” means any Person who at any time elected to undergo or otherwise underwent surgery for placement of a Breast Implant regardless of whether such Person is now living or using a Breast Implant.

1.22 “**Business Day**” means any day other than a Saturday, Sunday or “Legal Holiday,” as that term is defined in Bankruptcy Rule 9006(a).

1.23 “**Case**” means the case under chapter 11 of the Bankruptcy Code commenced by DCC on May 15, 1995.

1.24 “**Case Interest Rate**” means, for any Unsecured Claim, the Federal judgment rate provided in 28 U.S.C. § 1961 in effect on the Petition Date (6.28%), compounded annually on each anniversary of the Petition Date.

1.25 “**Case Management Order**” means the order to be entered by the District Court pursuant to which the Claims of Non-Settling Personal Injury Claimants shall be resolved, which order shall be in substantially the form negotiated and agreed to by the Debtor, the Shareholders and the Tort Committee and attached as an exhibit to the Litigation Facility Agreement.

1.26 “**Children Direct Claims**” means the Personal Injury Claims asserted by or on behalf of children of Breast Implant Users, Other Products Users and Non-Dow Corning Breast Implant Users alleging that such Claims arose from exposure to the mother’s Breast Implants, Other Product, Non-Dow Corning Breast Implants, or the component parts thereof.

1.27 “**Claimant**” means a Person or Governmental Unit that asserts a Claim against Dow Corning.

1.28 “**Claimants’ Advisory Committee**” means those persons selected pursuant to the terms of the Settlement Facility Agreement to represent the interests of Personal Injury Claimants after the Effective Date.

1.29 “**Claims Administrator**” means that Person responsible to oversee the processing and payment of Claims by the Settlement Facility in accordance with the terms of the Settlement Facility Agreement.

1.30 “**Co-Defendant**” means a Person, other than a Shareholder-Affiliated Party, Physician, Health Insurer, Government Payor or Health Care Provider, who is named and/or aligned as a co-defendant with the Debtor in any legal proceeding in any way relating to a Breast Implant, a Non-Dow Corning Breast Implant, or Other Product, including, without limitation, Baxter Healthcare Corp., Baxter International, Inc., Minnesota Mining & Manufacturing Co., and Bristol-Myers Squibb Company.

1.31 “**Co-Defendant Claim**” means any Other Claim asserted by a Co-Defendant.

1.32 “**Commercial Committee**” means the Official Committee of Unsecured Creditors for the Debtor appointed by the United States Trustee to represent the interests of creditors asserting Unsecured Claims against the Debtor in the Case, as such committee may be reconstituted from time to time.

1.33 “**Confirmation Date**” means the date of the entry of the Confirmation Order.

1.34 “**Confirmation Order**” means the order(s) of the Court and/or the District Court confirming this Plan.

1.35 “**Consortium Claims**” means the Claims asserted by the spouse, parents, child or other individual relating to or claiming some personal relationship to a Breast Implant User derivative of the Claims of the Breast Implant User to the extent such Claims are recognized by applicable state or provincial law.

1.36 “**Convenience Claim**” means an Unsecured Claim (other than a Public Debt Claim) in an amount of \$10,000.00 or less, inclusive of interest accrued thereon after the Petition Date through the later to occur of the Effective Date or the Allowance Date at the Case Interest Rate; *provided*, that if the holder of an Unsecured Claim in an amount greater than \$10,000.00 shall make an election to reduce such Claim to \$10,000.00, such Claim shall be treated as a Convenience Claim for all purposes. Such election shall be made on the ballot for accepting or rejecting the Plan, completed and returned within the time fixed by order of the Court. Making this election shall be deemed to be a waiver by such electing holder of any right to participate in Class 4 as to any and all Claims held by such holder.

1.37 “**Corning**” means Corning Incorporated.

1.38 “**Court**” means the United States Bankruptcy Court for the Eastern District of Michigan, Northern Division, or any court or tribunal subsequently constituted to adjudicate matters arising under the Bankruptcy Code or any other bankruptcy laws promulgated by the Congress of the United States.

1.39 “**Coverage-in-Place Policies**” means those general liability or products liability insurance policies naming DCC as an insured in effect on or before the Confirmation Date upon which any claim may

be made with respect to any Products Liability Claim and with respect to which coverage remains available for such Claims as of the Effective Date of the Plan.

1.40 “**Covered Other Products**” means those “Other Products” listed in Schedule I, Part II of the Claims Resolution Procedures, attached as Annex “A” to the Settlement Facility Agreement, for which settlements are available under the Settlement Facility.

1.41 “**Current Obligations**” means (a) all accounts payable and other liabilities or obligations of the Debtor that arose or accrued in the ordinary course of the Debtor’s business during the Case and (b) any taxes that were incurred subsequent to the Petition Date and became or become legally due and payable by the Debtor subsequent to the Petition Date and prior to the Effective Date.

1.42 “**DCC**” means Dow Corning.

1.43 “**DCC Guaranty Claims**” means the Claims arising with respect to guaranty agreements entered into between DCC and various lenders, guaranteeing certain of the financial obligations of certain of the Subsidiaries.

1.44 “**Debtor**” means Dow Corning.

1.45 “**Debtor Actions**” means any and all claims, causes of action, and enforceable rights of the Debtor against third parties (other than Insurance Debtor Actions) including, without limitation, claims of the Debtor for recovery of or based upon or in any manner arising from or related to damages, general or exemplary (or both), or other relief relating to (or based upon) (a) indebtedness owing to the Debtor, (b) fraud, negligence, gross negligence, willful misconduct, or any other tort actions, (c) breaches of contract, (d) violations of federal or state securities laws, (e) violations of applicable corporate laws, (f) breaches of fiduciary or agency duties, (g) disregard of the corporate form or piercing the corporate veil

or other liability theories, and (h) any other claim of the Debtor to the extent not specifically compromised or released pursuant to this Plan or an agreement referred to, or incorporated into this Plan.

1.46 “**Debtor Action Recoveries**” means the rights of the Debtor to any and all proceeds or other relief from (a) any award, judgment, relief, or other determination rendered or made as to any Debtor Action or (b) any compromise or settlement of any Debtor Action.

1.47 “**Debtor-Affiliated Parties**” means the Debtor, the Reorganized Debtor, the Joint Ventures and Subsidiaries, and their respective Representatives.

1.48 “**Depository Trust**” means the trust established pursuant to the Settlement Facility Agreement for the purpose of (i) receiving, holding and investing funds provided pursuant to the Settlement Facility Agreement, (ii) issuing payments and disbursing funds as provided in the Settlement Facility Agreement and (iii) qualifying as a “Qualified Settlement Fund” pursuant to applicable provisions of the Internal Revenue Code.

1.49 “**Disallowed Claim**” means any Claim (or any portion thereof) against the Debtor that has been disallowed pursuant to (a) Final Order, (b) final determination pursuant to the terms of the Settlement Facility or the Litigation Facility, or (c) the applicable provisions of this Plan and/or the Bankruptcy Code including, without limitation, any indemnity Claims, contribution Claims or subrogation Claims disallowed pursuant to section 502(e) or section 509, respectively, of the Bankruptcy Code.

1.50 “**Disclosure Statement**” means the Amended Joint Disclosure Statement regarding this Plan, including all annexes, exhibits, and schedules attached thereto and referenced therein (and the exhibits, if any, to any such annexes, exhibits, and schedules), prepared by the Proponents pursuant to section 1125

of the Bankruptcy Code and approved by the Court, as such Disclosure Statement may be amended and modified from time to time.

1.51 “**Disputed Claim**” means any Claim against the Debtor to which an objection is timely filed as provided in section 11.1 of this Plan or that is listed as disputed on the Debtor’s schedules and that has not been resolved either by Final Order or by final determination of entitlement to payment pursuant to the terms of the Settlement Facility Agreement or the Litigation Facility Agreement.

1.52 “**Distribution Record Date**” means the close of business on the Effective Date.

1.53 “**District Court**” means the United States District Court for the Eastern District of Michigan.

1.54 “**Domestic**” means, with respect to a Personal Injury Claim, a Claim that is not a Foreign Claim.

1.55 “**Domestic Health Insurer**” means a Health Insurer domiciled in the United States who (a) has provided payments, benefits or coverage to any Claimant with respect to a Personal Injury Claim, which Claimant was at such time a resident of the Greater U.S. or (b) has provided payments, benefits or coverage to any Claimant pursuant to any insurance policy, plan, or program governed by the laws of the Greater U.S. or subdivisions thereof.

1.56 “**Domestic Health Insurer Settlement Agreement**” means that certain agreement styled the Domestic Health Insurer/Dow Corning Corporation Settlement Agreement between Dow Corning and certain Domestic Health Insurers pursuant to which Domestic Health Insurers are provided an opportunity to compromise and settle their claims.

1.57 “**Dow Chemical**” means The Dow Chemical Company.

1.58 “**Dow Corning**” means Dow Corning Corporation, a Michigan corporation, the debtor and debtor-in-possession in the Case, and including any entities merged with or into it as of the Petition Date.

1.59 “**Effective Date**” means the first Business Day (a) that is at least 11 days after the Confirmation Date; (b) on which no stay of the Confirmation Order is in effect; and (c) on which all conditions to effectiveness of this Plan have occurred or been waived.

1.60 “**Environmental Laws**” means (a) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601 *et seq.*, (b) the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendment of 1984, 42 U.S.C. § 6901 *et seq.*, (c) the Clean Air Act, 42 U.S.C. § 7401 *et seq.*, (d) the Clean Water Act of 1977, 33 U.S.C. § 1251 *et seq.*, (e) the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*, (f) all other laws (including the common law) of any Governmental Units relating to air pollution, water pollution, noise control and/or the handling, discharge, existence, disposal or recovery of on-site or off-site hazardous, toxic or dangerous waste, substances or materials, as each of the foregoing may be amended from time to time, and (g) the ordinances, rules, regulations, orders, notices of violation, requests, demands and requirements issued or promulgated by such Governmental Units in connection with such statutes and laws.

1.61 “**Estimated Amount**” means the maximum amount at which the Court or the District Court, pursuant to section 502(c) of the Bankruptcy Code, at the request of the Proponents estimates any Claim or class of Claims against the Debtor that is contingent, unliquidated or disputed, including, without limitation, any Personal Injury Claim or class thereof for the purpose of (a) allowance, (b) distribution, (c)

confirming this Plan pursuant to section 1129 of the Bankruptcy Code, (d) voting to accept or reject this Plan pursuant to section 1126 of the Bankruptcy Code and Bankruptcy Rule 3018(a), or (e) any other proper purpose.

1.62 “**Estimation Order**” means an order of the Court or the District Court that determines, among other things, the Estimated Amount of any Claim or class of Claims against the Debtor for any purpose.

1.63 “**Existing Debt Instruments**” means all promissory notes, debentures and any other instruments evidencing indebtedness of the Debtor on the Effective Date for money borrowed prior to the Petition Date.

1.64 “**Family Member Claims**” shall mean, collectively, all applicable Consortium Claims and Children Direct Claims.

1.65 “**Final Order**” means an order, judgment, ruling or decree issued by the Court, the District Court or other court having jurisdiction of the same, that has not been reversed, stayed, modified or amended, and as to which the time to appeal has expired, and as to which no appeal, reargument, petition for certiorari, or rehearing is pending or as to which any right to appeal, reargue, petition for certiorari or seek rehearing has been waived in writing, or if an appeal, reargument, petition for certiorari, or rehearing thereof has been denied, the time to take any further appeal or to seek certiorari or further reargument or rehearing has expired.

1.66 “**Finance Committee**” means the committee comprised of the Claims Administrator, the Special Master (of the Litigation Facility), and the Appeals Officer (of the Settlement Facility) that is responsible for financial management for the Settlement Facility, including preparing recommendations to

the District Court regarding the release of funds for payment of Claims resolved in the Settlement Facility and the Litigation Facility.

1.67 “**Foreign**” means, with respect to a Personal Injury Claim, a Claim that (a) is held by a Person who is neither a United States citizen nor a resident alien of the Greater U.S., and (b) arises from a medical procedure performed outside the Greater U.S.

1.68 “**Foreign Health Insurer**” means a Health Insurer which is not a Domestic Health Insurer.

1.69 “**Funding Payment Agreement**” means that agreement executed among the Reorganized Debtor, the Shareholders, the Settlement Facility, the Litigation Facility and the Claimants’ Advisory Committee which provides for the Reorganized Debtor’s obligation to fund the Settlement Facility and/or the Litigation Facility from the Effective Date through and including the date of termination of the Settlement Facility and/or the Litigation Facility.

1.70 “**General Contribution Claim**” means any Other Claim asserted by a Person other than a Co-Defendant, a Health Insurer, a Physician, a Health Care Provider, a Government Payor or a Shareholder-Affiliated Party.

1.71 “**Government Payor**” means a Governmental Unit that has paid or provided medical benefits with respect to a Personal Injury Claim. For purposes of this definition, “Governmental Unit” shall include, without limitation and in addition to those entities identified in section 101(27) of the Bankruptcy Code, any governmental program that pays for claims by Physicians or Health Care Providers on behalf of Personal Injury Claimants who qualify to receive benefits under such program.

1.72 “**Government Payor Claim**” means any Other Claim asserted by a Government Payor.

1.73 “**Greater U.S.**” means the geographical areas comprised of the United States, Puerto Rico, any of the territories or possessions of the United States, and any United States military facility.

1.74 “**Health Care Provider**” means any Person, other than a Physician, that is a hospital, health care facility or like provider, or other health care professional.

1.75 “**Health Care Provider Claim**” means any Other Claim asserted by a Health Care Provider.

1.76 “**Health Insurer**” means a Person, including a health benefit plan, who provides or has provided payments, benefits or coverage pursuant to an insurance policy or program to any Claimant with respect to a Personal Injury Claim.

1.77 “**Health Insurer Claim**” means any Other Claim asserted by a Health Insurer.

1.78 “**Indenture**” means the master indenture between Reorganized DCC and the Indenture Trustee, containing terms and conditions usual and customary for instruments of that type, under which, together with the Senior Note Supplemental Indenture and the Subordinated Note Supplemental Indenture, the Senior Notes and the Subordinated Notes will be issued.

1.79 “**Indenture Trustee**” means the Person designated in the Indenture to serve as trustee for the holders of the Senior Notes and the Subordinated Notes.

1.80 “**Insurance Allocation Agreement**” means that agreement between the Debtor and Dow Chemical dated as of February 16, 1998, as thereafter amended.

1.81 “**Insurance Company**” means any insurance company or insurance broker providing Insurance Coverage to DCC for liability arising from or related to Products Liability Claims.

1.82 “**Insurance Coverage**” means the insurance coverage, not reduced to settlement proceeds, available to DCC with respect to Products Liability Claims under any Insurance Policy.

1.83 “**Insurance Debtor Actions**” means all claims, causes of action and enforceable rights of DCC against any Insurance Company arising from or related to (a) any such Insurance Company’s failure to provide Insurance Coverage under any Insurance Policy; (b) the refusal of any Insurance Company to compromise and settle any claim pursuant to any such Insurance Policy; or (c) the interpretation or enforcement of the terms of any such Insurance Policy.

1.84 “**Insurance Debtor Action Recoveries**” means the rights of DCC to any and all proceeds, including any interest or income earned thereon, and other relief from (a) any award, judgment, relief, or other determination entered or made as to any Insurance Debtor Actions; (b) any and all amounts payable by a settling Insurance Company under any insurance settlement agreement; and (c) any and all proceeds of any Insurance Policy paid or payable with respect to Products Liability Claims.

1.85 “**Insurance Policy**” means any general liability or products liability insurance policy naming DCC as an insured in effect on or before the Confirmation Date upon which any Claim may be made with respect to any Products Liability Claim.

1.86 “**Intercompany Claim**” means any claim held by the Debtor against one of the Joint Ventures or one of the Subsidiaries or any Claim held by one of the Joint Ventures or by one of the Subsidiaries against the Debtor.

1.87 “**Interest**” means the common stock in the Debtor.

1.88 “**Joint Ventures**” means, collectively, (a) Hemlock Semiconductor Corporation, (b) SDC Technologies, Inc. (and its subsidiaries), and (c) Dow Corning Toray Silicone Co., Ltd.

1.89 “**Litigation Facility**” means the Claims resolution facility to be established in accordance with section 6.11.3 of this Plan wherein Claims asserted by Non-Settling Personal Injury Claimants, certain Claims in Classes 11 through 17, and LTCI Claims will be administered.

1.90 “**Litigation Facility Agreement**” means that agreement between the Reorganized Debtor and the DCC Litigation Facility, Inc. pursuant to which the Litigation Facility shall be established and governed.

1.91 “**Litigation Protocol**” means the litigation procedures described in section 6.1 of the Plan.

1.92 “**London Market Insurers**” means those certain underwriters at Lloyd’s, London and those certain London Market Insurance Companies who are party to that Settlement Agreement Between Dow Corning Corporation and certain London Market Insurers approved by order of the Court entered on March 25, 1996.

1.93 “**LTCI Claims**” means all Claims, demands, suits, causes of action, proceedings or any other rights or asserted rights to payment heretofore, now or hereafter asserted against the Debtor, any Released Parties, or the Litigation Facility, whether or not reduced to judgment, based upon or in any manner arising from or related to (a) LTCI Products, (b) the research and development, manufacture, distribution, advertising, sale provision, recommendation, insertion, use or removal of any raw materials and/or finished products manufactured by the Debtor, comprising all or part of an LTCI Product, (c) the processing, adjustment, defense, settlement, payment, negotiation or handling of any claims, demands, suits, proceedings or causes of action based upon or relating in any way to the LTCI Products, or (d) the failure to warn, disclose or provide information concerning, the alleged fraud or misrepresentation regarding, or the failure to take remedial action with respect to, the LTCI Products, including, without limitation, (i) those

for death or personal injuries, including emotional distress, (ii) those of Persons against whom any claim, demand, proceeding, suit or cause of action based upon or in any manner arising from or relating to any of the matters enumerated or described in (a), (b), (c) and/or (d) above has been, is or may be asserted (including, without limitation, rights of indemnity, whether contractual or otherwise, and contribution Claims and subrogation Claims), (iii) those for damages, including punitive damages, (iv) those for attorneys' fees and other expenses, fees or costs, (v) those for any possible economic loss or loss of consortium, (vi) those for damage to reputation, and (vii) those for any equitable remedy, but excluding those claims brought by the Debtor, its Joint Ventures, or Subsidiaries. In this Plan, LTCI Claims are either LTCI Personal Injury Claims or LTCI Other Claims, as those terms are defined herein.

1.94 “**LTCI Indemnities**” means the contractual indemnity agreements (and related guaranty agreements) from the manufacturers and/or distributors of LTCI Products, indemnifying DCC against the LTCI Claims.

1.95 “**LTCI Other Claim**” means any LTCI Claim asserted by an Other Claimant.

1.96 “**LTCI Personal Injury Claim**” means any LTCI Claim asserted by a Personal Injury Claimant.

1.97 “**LTCI Products**” means long-term contraceptive implants containing levonorgestrel.

1.98 “**LTCI User**” means any Person who at any time has utilized an LTCI Product regardless of whether such Person is now living or now using an LTCI Product.

1.99 “**Mahlum Claimants**” means all Personal Injury Claimants who have Mahlum Claims.

1.100 “**Mahlum Claims**” means all Personal Injury Claims against a Shareholder-Affiliated Party held by the plaintiffs in *Mahlum v. Dow Corning Corp., et al.*, Case No. CV 93-05941 (Nev. Dist. Ct., Washoe Co., Nevada).

1.101 “**Malpractice Claims**” means Claims that are not affected by the releases of Settling Physicians and Settling Health Care Providers under the Plan. Solely for purposes of Sections 8.3 and 8.5 of the Plan, “Malpractice Claim” shall have the meaning given to that term by applicable non-bankruptcy law, except that it shall exclude those Claims by Personal Injury Claimants against Settling Physicians and Settling Health Care Providers that are based on, related to, arising out of, or derived from injuries, illnesses or conditions allegedly resulting from (i) characteristics or alleged characteristics (as defined below) of Breast Implants or Other Products (including component parts thereof), silicone or other implant materials; (ii) failure to warn, make disclosure or provide adequate information to obtain informed consent, regarding the characteristics or alleged characteristics of Breast Implants, Other Products, silicone or other implant materials; or (iii) failure to use an alternative breast implant or other product, or sale, provision, distribution or selection of Breast Implants, Other Products, silicone or other implant materials, where the Claim is based on the characteristics or alleged characteristics of Breast Implants or Other Products. For the sole purpose of interpreting and applying this definition, the following are the “alleged characteristics” of Breast Implants and Other Products:

- (1) that gel can bleed or leak through the shell of the Breast Implant;
- (2) that gel can migrate within the body;
- (3) that Breast Implant or Other Product materials will degrade or deteriorate;

- (4) that Breast Implants can break or rupture even though they are not subjected to significant trauma, surgical or otherwise;
- (5) that Breast Implants impede detection of other diseases, including, without limitation, breast cancer; and
- (6) that Breast Implants, Other Products, silicone or other implant materials cause diseases or combinations of conditions, symptoms or injuries, or are otherwise inherently defective.

Notwithstanding any of the foregoing, Malpractice Claims will not exclude claims for any injuries, diseases, illnesses or conditions allegedly resulting from or claimed as an element of damages in connection with (x) leakage or rupture of a Breast Implant or other complication or injury resulting from performance of implant surgery or other medical procedures in breach of the applicable standard of care; (y) express misrepresentation of the risks disclosed in the applicable product inserts; provided, however, nothing herein shall be interpreted to imply that misrepresentation of risks disclosed in applicable product inserts necessarily constitutes a breach of the applicable standard of care or a failure to obtain informed consent; or (z) the implantation of loose silicone gel by the Settling Physician.

1.102 “**Miscellaneous Raw Material Claims**” means (i) all Raw Material Implant Claims and (ii) those Raw Material Breast Implant Claims which are not classified in Class 7.

1.103 “**Net Present Value**” or “**NPV**” means the value of an amount of money to be paid in the future or over a period of time that has been adjusted or discounted to reflect that amount as of a single earlier date. When used in this Plan, the discount rate for calculating Net Present Value is 7% compounded annually; and the date used for such adjustment is the Effective Date.

1.104 “**Non-Dow Corning Breast Implant**” means all silicone gel and saline-filled breast implants made with silicone and/or polyurethane envelopes manufactured and sold by third parties for which the Debtor manufactured and/or supplied silicone raw materials.

1.105 “**Non-Dow Corning Breast Implant User**” means any Person who at any time has utilized only a Non-Dow Corning Breast Implant regardless of whether such Person is now living or now using a Non-Dow Corning Breast Implant.

1.106 “**Non-Dow Corning Implant**” means all medical devices (other than Non-Dow Corning Breast Implants) intended for implant into humans manufactured and sold by third parties for which the Debtor manufactured and/or supplied silicone raw materials.

1.107 “**Non-Dow Corning Implant User**” means any Person who at any time has utilized a Non-Dow Corning Implant regardless of whether such Person is now living or now using a Non-Dow Corning Implant.

1.108 “**Non-Settling Co-Defendants**” means those Co-Defendants who are not Settling Co-Defendants.

1.109 “**Non-Settling Health Care Providers**” means those Health Care Providers who are not Settling Health Care Providers.

1.110 “**Non-Settling Personal Injury Claimants**” means those Personal Injury Claimants (other than Claimants in Classes 6A, 6B, 6C and 6D) who are not Settling Personal Injury Claimants.

1.111 “**Non-Settling Physicians**” means those Physicians who are not Settling Physicians.

1.112 “**Official Committees**” means the Tort Committee, the Commercial Committee, and the Physicians’ Committee, collectively.

1.113 “**Ontario Breast Implant Settlement Agreement**” means that certain agreement, styled the Dow Corning/Ontario Breast Implant Litigation Settlement Agreement, between the Ontario Class Action Settlement Claimants, as plaintiffs, and Dow Corning and others, as defendants, pursuant to which the class action pending in the Ontario court is resolved.

1.114 “**Ontario Class Action Fund**” means the fund established pursuant to the Ontario Breast Implant Settlement Agreement for the payment of Claims of Ontario Class Action Settlement Claimants.

1.115 “**Ontario Class Action Settlement Claimants**” means the parties designated as “Settling Claimants” in the Ontario Breast Implant Settlement Agreement.

1.116 “**Other Claim**” means any Breast Implant Claim, Other Products Claim, Raw Material Breast Implant Claim, Miscellaneous Raw Material Claim or LTCI Claim asserted by any Person or Governmental Unit, other than a Personal Injury Claimant.

1.117 “**Other Priority Claim**” means any Claim which, if Allowed, would be entitled to priority under section 507(a)(2) through (7) of the Bankruptcy Code.

1.118 “**Other Products**” means metal, silicone or silicone-containing products, other than Breast Implants and raw materials used in the manufacture of a Non-Dow Corning Breast Implant or a Non-Dow Corning Implant, manufactured by the Debtor or any of its Joint Ventures or Subsidiaries for implant into humans, including, but not limited to: (a) reconstruction and aesthetic surgery products (including custom implants) such as facial components, nasal and chin implants, testicular and penile implants, or medical treatments, (b) orthopedic products such as for use in legs, hips, knees, ankles, wrists, hands, fingers, toes and wrists, (c) silicone temporomandibular joint (TMJ) implants using medical grade or HP sheeting, the Wilkes implant or Silastic Block, (d) medical products for use in the head, heart or eyes, and (e) fluids.

The inclusion of fluids among Other Products is not an admission of any Dow Corning responsibility for, or the potential for Allowance of Claims relating to, silicone injections.

1.119 “**Other Products Claims**” means all Claims, demands, suits, causes of action, proceedings or any other rights or asserted rights to payment heretofore, now or hereafter asserted against the Debtor, any Released Parties, the Settlement Facility or the Litigation Facility, whether or not reduced to judgment, based upon or in any manner arising from or related to (a) the Other Products, (b) the research and development, manufacture, distribution, advertising, sale, provision, recommendation, insertion, use or removal of any raw materials and/or finished products manufactured by the Debtor, comprising all or part of the Other Products, (c) the processing, adjustment, defense, settlement, payment, negotiation or handling of any claims, demands, suits, proceedings or causes of action based upon or relating in any way to the Other Products, or (d) the failure to warn, disclose or provide information concerning, the alleged fraud or misrepresentation regarding, or the failure to take remedial action with respect to, the Other Products, including, without limitation, (i) those for death or personal injuries, including emotional distress, (ii) those of Persons against whom any claim, demand, proceeding, suit or cause of action based upon or in any manner arising from or relating to any of the matters enumerated or described in (a), (b), (c) and/or (d) above has been, is or may be asserted (including, without limitation, rights of indemnity, whether contractual or otherwise, contribution Claims and subrogation Claims), (iii) those for damages, including punitive damages, (iv) those for attorneys’ fees and other expenses, fees or costs, (v) those for any possible economic loss or loss of consortium, (vi) those for damage to reputation, and (vii) those for any equitable remedy, but excluding those Claims (x) brought by the Debtor, its Joint Ventures or Subsidiaries, and (y) any such Claims which were the subject of prepetition final judgments or legally enforceable settlement

agreements, which Claims shall be treated as Unsecured Claims in this Plan. In this Plan, Other Products Claims are either Other Products Personal Injury Claims or Other Products Other Claims, as those terms are defined herein.

1.120 “**Other Products Other Claims**” means any Other Products Claim asserted by an Other Claimant.

1.121 “**Other Products Personal Injury Claims**” means any Other Products Claim asserted by a Personal Injury Claimant.

1.122 “**Other Products User**” means any Person who at any time elected to undergo surgery for placement of an Other Product regardless of whether such Person is now living or now using an Other Product.

1.123 “**Participating Foreign Gel Claimants**” mean those Claimants who (i) assert Raw Material Breast Implant Claims arising from or related to the use or implantation of a Non-Dow Corning Breast Implant which was manufactured by an Entity that is domiciled or has its manufacturing facilities outside the Greater U.S. and that used medical grade gel systems purchased from Dow Corning in the manufacture of such implant and (ii) timely elect to settle their Claims pursuant to the terms of the Settlement Facility Agreement.

1.124 “**Participation Form**” means that form to be mailed to all Personal Injury Claimants by the Settlement Facility as soon as practicable after the Effective Date (or, in the event of an appeal raising a Release/Funding Issue, in accordance with section 7.4 of this Plan) pursuant to which such Personal Injury Claimants will be given the opportunity to elect to settle or litigate their Claims under the terms of the Settlement Facility Agreement or the Litigation Facility Agreement, as applicable.

1.125 “**Personal Injury Claim**” means a Claim asserted by a Personal Injury Claimant.

1.126 “**Personal Injury Claimant**” means a Person who asserts a Breast Implant Claim, an Other Products Claim, a Silicone Material Claim, a Raw Material Breast Implant Claim, a Miscellaneous Raw Material Claim or an LTCI Claim as or on behalf of a Breast Implant User, an Other Products User, a Non-Dow Corning Breast Implant User, a Non-Dow Corning Implant User or an LTCI User, or as or on behalf of a child, husband, wife or other individual related to or claiming some other personal relationship with a Breast Implant User, an Other Products User, a Non-Dow Corning Breast Implant User or an LTCI User.

1.127 “**Petition Date**” means May 15, 1995, the date the Debtor filed the petition commencing the Case.

1.128 “**Physician**” means any Person licensed to practice medicine by a Governmental Unit.

1.129 “**Physician Claim**” means any Other Claim asserted by a Physician.

1.130 “**Physicians’ Committee**” means the Official Committee of Physician Creditors, the committee appointed by the United States Trustee to represent the interests of Physicians holding Claims in the Case, as such committee may be reconstituted from time to time.

1.131 “**Plan**” means this Amended Joint Plan of Reorganization proposed by the Proponents, and any and all modifications and/or amendments thereto.

1.132 “**Plan Documents**” means the Indenture, the Senior Note Supplemental Indenture, the Subordinated Note Supplemental Indenture, the Settlement Facility Agreement, the Dow Corning Settlement Program and Claims Resolution Procedures, the Litigation Facility Agreement, the Funding Payment Agreement, the Insurance Allocation Agreement, the Quebec Breast Implant Settlement

Agreement, the Ontario Breast Implant Settlement Agreement, the B.C. Class Action Settlement Agreement, the Australia Breast Implant Settlement Option, the Domestic Health Insurer Settlement Agreement and all other documents and exhibits as the same may be amended, modified, supplemented, or restated from time to time, that aid in effectuating this Plan, which documents and exhibits shall be filed by the Proponents with the Court on or before the Plan Documents Filing Date.

1.133 “**Plan Documents Filing Date**” means the date for the filing of the Plan Documents which shall be either (a) a date, as determined by the Proponents, that is as soon as practicable, but that in no event is later than 30 calendar days before the deadline for filing objections to confirmation of the Plan or (b) such other date (or dates) determined by the Court.

1.134 “**Plan Documents Review Center**” means the offices of DCC located at 2200 W. Salzburg Road, Midland, Michigan, 48611, and such other location or locations designated by the Proponents, at which any party in interest may review the Plan Documents as filed.

1.135 “**Plan Interest Rate**” means the interest rate for deferred payments under the Plan, which rate shall be determined, based upon then-existing market rates, as of the Effective Date.

1.136 “**Prepetition Judgment Claim**” means a Personal Injury Claim against the Debtor evidenced by a written judgment entered before the Petition Date that was not yet subject to a Final Order as of the Petition Date.

1.137 “**Priority Tax Claim**” means any Claim against the Debtor that, if Allowed, would be entitled to a priority in payment under section 507(a)(8) of the Bankruptcy Code.

1.138 “**Products Liability Claims**” means, collectively, Breast Implant Claims, Other Products Claims, Silicone Material Claims, Raw Material Breast Implant Claims, Miscellaneous Raw Material Claims and LTCI Claims.

1.139 “**Proponents**” means the joint proponents of the Plan, Dow Corning and the Tort Committee.

1.140 “**Pro Rata**” or “**Pro Rata Shares**” means the same proportion an Allowed Claim in a particular Class bears to the aggregate amount of all Allowed Claims in such Class.

1.141 “**Public Debt Claims**” means those Claims arising pursuant to (a) the Debtor’s Medium Term Notes, Series A, having various maturities from August 10, 1995, through March 1, 2001, bearing interest at 8.55% per annum, (b) the Debtor’s 9d% Debentures due February 1, 2008, or (c) the Debtor’s 8.15% Debentures due October 15, 2029.

1.142 “**Quebec Breast Implant Settlement Agreement**” means that certain agreement, styled the Dow Corning/Quebec Breast Implant Litigation Settlement Agreement, between the Quebec Class Action Settlement Claimants, as plaintiffs, and Dow Corning and others, as defendants, pursuant to which the class action pending in the Quebec court is resolved.

1.143 “**Quebec Class Action Fund**” means the fund established pursuant to the Quebec Breast Implant Settlement Agreement for the payment of Claims of Quebec Class Action Settlement Claimants.

1.144 “**Quebec Class Action Settlement Claimants**” means the parties designated as “Settlement Class Members” in the Quebec Breast Implant Settlement Agreement.

1.145 “**Raw Material Breast Implant Claims**” means all Claims (including Claims asserted by or on behalf of Unmanifested Claimants and Unborn Breast Implant Claimants), demands, suits, causes

of actions, proceedings or any other rights or asserted rights to payment heretofore, now or hereafter asserted against the Debtor, any Released Parties, the Settlement Facility or the Litigation Facility, based upon or in any manner arising from or related to (a) a Non-Dow Corning Breast Implant, (b) the research and development, manufacture, distribution, advertising, sale, provision, recommendation, insertion, use or removal of any raw materials manufactured by the Debtor, comprising all or part of materials used in the manufacture of a Non-Dow Corning Breast Implant, (c) the processing, adjustment, defense, settlement, payment, negotiation, or handling of any claims, demands, suits, proceedings or causes of action based upon or relating in any way to a Non-Dow Corning Breast Implant, or (d) the failure to warn, disclose or provide information concerning, the alleged fraud or misrepresentation regarding, or the failure to take remedial action with respect to, any raw material comprising all or part of a Non-Dow Corning Breast Implant, including, without limitation, (i) those for death or personal injuries, including emotional distress, (ii) those of any Person against whom any claim, demand, proceeding, suit or cause of action based upon or in any manner arising from or relating to any of the matters enumerated or described in (a), (b), (c) and/or (d) above has been, is or may be asserted (including, without limitation, rights of indemnity, whether contractual or otherwise, contribution Claims and subrogation Claims, (iii) those for damages, including punitive damages, (iv) those for attorneys' fees and other expenses, fees or costs, (v) those for any possible economic loss or loss of consortium, (vi) those for damage to reputation, and (vii) those for any equitable remedy, but excluding (x) Claims brought by the Debtor, its Joint Ventures or Subsidiaries and (y) any such Claims which were the subject of prepetition final judgment or executed settlement agreements, which Claims shall be treated as Unsecured Claims in this Plan.

1.146 “**Raw Material Breast Implant Personal Injury Claim**” means a Raw Material Breast Implant Claim asserted by a Personal Injury Claimant.

1.147 “**Raw Material Implant Claims**” means all Claims (including Unmanifested Claims), demands, suits, causes of actions, proceedings or any other rights or asserted rights to payment heretofore, now or hereafter asserted against the Debtor, any Released Parties, the Settlement Facility or the Litigation Facility, based upon or in any manner arising from or related to (a) a Non-Dow Corning Implant, (b) the research and development, manufacture, distribution, advertising, sale, provision, recommendation, insertion, use or removal of any raw materials manufactured by the Debtor, comprising all or part of materials used in the manufacture of a Non-Dow Corning Implant, (c) the processing, adjustment, defense, settlement, payment, negotiation, or handling of any claims, demands, suits, proceedings or causes of action based upon or relating in any way to a Non-Dow Corning Implant, or (d) the failure to warn, disclose or provide information concerning, the alleged fraud or misrepresentation regarding, or the failure to take remedial action with respect to, any raw material comprising all or part of a Non-Dow Corning Implant, including, without limitation, (i) those for death or personal injuries, including emotional distress, (ii) those of any Person against whom any claim, demand, proceeding, suit or cause of action based upon or in any manner arising from or relating to any of the matters enumerated or described in (a), (b), (c) and/or (d) above has been, is or may be asserted (including, without limitation, rights of indemnity, whether contractual or otherwise, contribution Claims and subrogation Claims), (iii) those for damages, including punitive damages, (iv) those for attorneys’ fees and other expenses, fees or costs, (v) those for any possible economic loss or loss of consortium, (vi) those for damage to reputation, and (vii) those for any equitable remedy, but excluding (x) Claims brought by the Debtor, its Joint Ventures or Subsidiaries, (y) any such

Claims which were the subject of prepetition final judgment or executed settlement agreements, which Claims shall be treated as Unsecured Claims in this Plan and (z) any Claims based on silicone injections.

1.148 “**Raw Material Implant Personal Injury Claim**” means a Raw Material Implant Claim asserted by a Personal Injury Claimant.

1.149 “**Released Claim**” means any Claim waived or released in accordance with section 8.3 of this Plan.

1.150 “**Released Parties**” is defined in section 8.3 of this Plan.

1.151 “**Reorganized Debtor**” or “**Reorganized Dow Corning**” means DCC on and after the Effective Date, which entity shall be, and the Confirmation Order shall so provide, the successor to DCC.

1.152 “**Representatives**” means the current and former officers, directors, agents, attorneys and employees of an Entity.

1.153 “**Retiree Benefit Claims**” means claims for payments to any Entity or Person for the purpose of providing or reimbursing payments for retired employees of Dow Corning and their spouses and dependents, for medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability or death under any plan, fund, or program established by Dow Corning prior to the Petition Date.

1.154 “**Secured Claim**” means any Claim, including interest, fees and charges as determined pursuant to section 506(b) of the Bankruptcy Code, against the Debtor that is (a) secured in whole or in part as of the Petition Date by a Lien on any of the assets or property of the Debtor, which Lien is valid, perfected and enforceable under applicable law and is not subject to avoidance under the Bankruptcy Code or applicable non-bankruptcy law, but only to the extent of the value of the assets or property

securing any such Claims, or (b) subject to setoff under section 553 of the Bankruptcy Code, but only to the extent of the amount subject to such setoff.

1.155 “**Senior Note Supplemental Indenture**” means the supplemental indenture to the Indenture under which, together with the Indenture, the Senior Notes will be issued.

1.156 “**Senior Notes**” means those promissory notes of the Reorganized Debtor to be issued under the Indenture, having the terms and conditions substantially as contemplated by **Exhibit “D”** hereto.

1.157 “**Settlement Facility**” means the Claims resolution facility to be established in accordance with section 6.11.3 of this Plan pursuant to which the Claims of Settling Personal Injury Claimants will be satisfied.

1.158 “**Settlement Facility Agreement**” means that agreement, called the “Settlement Facility and Fund Distribution Agreement,” between the Reorganized Debtor, the Claimants’ Advisory Committee and the Trustee of the Depository Trust pursuant to which the Settlement Facility shall be established and governed.

1.159 “**Settling Co-Defendants**” means those Co-Defendants who timely elect to settle their Claims as provided in the Plan.

1.160 “**Settling Health Care Providers**” means the Health Care Providers in Class 13 who timely elect to settle their Claims against the Debtor, together with those Health Care Providers who do not timely elect to litigate the allowability of their Claims against the Debtor.

1.161 “**Settling Insurers**” means those Insurance Companies listed on **Exhibit “A”** hereto that have reached settlements with Dow Corning, and any Insurance Companies that may reach a settlement

with Dow Corning, on or before the Confirmation Date, providing for a release of the Insurance Company or an injunction against prosecution of claims against the Insurance Company.

1.162 “**Settling Personal Injury Claimants**” means those Personal Injury Claimants (other than Claimants in Classes 6A, 6B, 6C and 6D) who elect to settle their Claims under the terms of the Settlement Facility, together with those Personal Injury Claimants who do not timely return an Election Form.

1.163 “**Settling Physicians**” means the Physicians in Class 12 who timely elect to settle their Claims against the Debtor, together with those Physicians who do not timely elect to litigate the allowability of their Claims against the Debtor.

1.164 “**Shareholder-Affiliated Parties**” means the Shareholders and their past and present Affiliates (other than the Debtor-Affiliated Parties) and their respective Representatives.

1.165 “**Shareholder Claim**” means any Other Claim asserted by a Shareholder-Affiliated Party.

1.166 “**Shareholders**” means Corning, Dow Chemical (which holds its Interest through a wholly-owned subsidiary, Dow Holdings, Inc.), and Dow Holdings, Inc.

1.167 “**Silicone Material Claims**” means all Raw Material Breast Implant Claims arising from or related to the use or implantation of a Non-Dow Corning Breast Implant which was manufactured by an Entity that is domiciled or has its manufacturing facilities in the United States and that purchased medical grade gel systems from Dow Corning.

1.168 “**Spitzfaden Claimants**” means all Personal Injury Claimants who have Spitzfaden Claims.

1.169 “**Spitzfaden Claims**” means all Personal Injury Claims against a Shareholder-Affiliated Party held by the eight named plaintiffs and by any absent former class members in *Spitzfaden v. Dow Corning Corp., et al.*, Case No. 92-2589 (Civil Dist. Ct., Orleans Parish, Louisiana).

1.170 “**Subordinated Claim**” means any Claim asserted against the Debtor that is determined to be subordinated in right of payment to Unsecured Claims against the Debtor under sections 509 and/or 510 of the Bankruptcy Code or under other applicable law.

1.171 “**Subordinated Note Supplemental Indenture**” means the supplemental indenture to the Indenture under which, together with the Indenture, the Subordinated Notes will be issued.

1.172 “**Subordinated Notes**” means those promissory notes to be distributed to the holders of Subordinated (Class 21) Claims, having a maturity date of the tenth anniversary of the Effective Date and bearing interest at the Plan Interest Rate (payable semi-annually in arrears).

1.173 “**Subsidiaries**” means all of the subsidiary corporations of the Debtor.

1.174 “**Tort Committee or Tort Claimants’ Committee**” means the Official Committee of Tort Claimants, the committee appointed by the United States Trustee to represent the interests of Persons holding Personal Injury Claims in the Case, as such committee may be reconstituted from time to time.

1.175 “**Unborn Breast Implant Claimants**” means the children born after the Confirmation Date to Breast Implant Users.

1.176 “**Unmanifested Claim**” means a Personal Injury Claim of a Claimant who, as of the Effective Date, has not suffered any injury alleged to have been caused, in whole or in part, by a product of the Debtor.

1.177 “**Unsecured Claim**” means any Claim against the Debtor, other than a Products Liability Claim, that is neither secured nor entitled to a priority under the Bankruptcy Code or any order of the Court, including, without limitation, any Claim arising from the rejection of an executory contract or

unexpired lease under section 365 of the Bankruptcy Code and any Personal Injury Claim that was the subject of a prepetition Final Order or a legally enforceable settlement agreement.

ARTICLE TWO

UNCLASSIFIED CLAIMS

2.1 **Administrative Claims.** The holder of an Allowed Administrative Claim shall receive an amount equal to the unpaid portion of such Allowed Administrative Claim either (a) as soon as practicable following the Effective Date, or, if later, the Allowance Date, or (b) upon such terms as may be agreed to in writing by such Claimant and the Reorganized Debtor; provided, however, that any Current Obligations shall be paid in full in the ordinary course of business in accordance with the terms and conditions of any agreement relating thereto.

2.2 **Priority Tax Claims.** The Reorganized Debtor shall pay the holders of Allowed Priority Tax Claims the Allowed amount of such Claims pursuant to the provisions of section 1129(a)(9)(C) of the Bankruptcy Code in equal annual installments commencing on the first anniversary of the Effective Date, or, if later, the Allowance Date, with the final payment of the unpaid balance thereof to be made on the sixth anniversary of the date of assessment of the tax, together with interest thereon at the Plan Interest Rate (or such other interest rate as the Court may approve) from and after the Effective Date, or, if later, the Allowance Date, until the date of final payment; provided, however, that the Reorganized Debtor shall have the right to pay any Allowed Priority Tax Claim, or any unpaid balance of such Claim, in full, at any time after the Effective Date, without premium or penalty.

ARTICLE THREE

CLASSIFICATION OF CLAIMS AND INTERESTS

3.1 **Classification.** Section 3.2 hereof sets forth a designation of classes of Claims and Interests. A Claim or Interest is classified in a particular class only to the extent that the Claim or Interest qualifies within the description of the class and is classified in a different class to the extent the Claim or Interest qualifies within the description of that different class. If a Claim is acquired or transferred, the Claim shall be placed in the class in which it would have been placed if it were owned by the original holder of such Claim.

3.2 **Classes.** For purposes of this Plan, Claims against or Interests in the Debtor are grouped in the following classes in accordance with section 1122(a) of the Bankruptcy Code:

3.2.1 **Class 1 S** Other Priority Claims.

3.2.2 **Class 2 S** Secured Claims.

3.2.3 **Class 3 S** Convenience Claims.

3.2.4 **Class 4 S** Unsecured Claims that are not classified in any other Class.

3.2.5 **Class 4A S** Prepetition Judgment Claims.

3.2.6 **Class 4B S** DCC Guaranty Claims.

3.2.7 **Class 5 S** Domestic Breast Implant Personal Injury Claims.

3.2.8 **Class 6.1** – Category 1 and 2 Foreign Breast Implant Personal Injury Claims
(other than Claims in Classes 6A, 6B, 6C and 6D).

3.2.9 **Class 6.2** – Category 3 and 4 Foreign Breast Implant Personal Injury Claims.

- 3.2.10 **Class 6A** – Quebec Class Action Settlement Claims.
- 3.2.11 **Class 6B** – Ontario Class Action Settlement Claims.
- 3.2.12 **Class 6C** – B.C. Class Action Settlement Claims.
- 3.2.13 **Class 6D** – Australia Breast Implant Settlement Claims.
- 3.2.14 **Class 7 S** Silicone Material Claims (other than Claims in Classes 6B, 6C, 6D and 8).
- 3.2.15 **Class 8** – Miscellaneous Raw Material Claims (other than Claims in Classes 6B, 6C, 6D and 7).
- 3.2.16 **Class 9 S** Domestic Other Products Personal Injury Claims.
- 3.2.17 **Class 10.1** – Category 1 and 2 Foreign Other Products Personal Injury Claims.
- 3.2.18 **Class 10.2** – Category 3 and 4 Foreign Other Products Personal Injury Claims.
- 3.2.19 **Class 11** – Co-Defendant Claims.
- 3.2.20 **Class 12** – Physician Claims.
- 3.2.21 **Class 13** – Health Care Provider Claims.
- 3.2.22 **Class 14** – Domestic Health Insurer Claims.
- 3.2.23 **Class 14A** – Foreign Health Insurer Claims.
- 3.2.24 **Class 15** – Government Payor Claims.
- 3.2.25 **Class 16** – Shareholder Claims.
- 3.2.26 **Class 17** – General Contribution Claims.

- 3.2.27 **Class 18** – LTCI Personal Injury Claims.
- 3.2.28 **Class 19** – LTCI Other Claims.
- 3.2.29 **Class 20** – Intercompany Claims.
- 3.2.30 **Class 21** – Subordinated Claims.
- 3.2.31 **Class 22** – Environmental Claims.
- 3.2.32 **Class 23** S Retiree Benefit Claims.
- 3.2.33 **Class 24** – Interests in the Debtor.

Except with respect to Convenience Claims, which shall not be aggregated, if a Creditor has more than one Claim in the same class, such Claims shall be aggregated and treated as a single Claim. If a Creditor has Claims in different classes, such Claims shall be aggregated only within the same class and not between classes.

ARTICLE FOUR

TREATMENT OF CLAIMS NOT IMPAIRED UNDER THE PLAN

4.1 **Other Priority Claims S Class 1.** All Allowed Other Priority Claims shall be paid by the Reorganized Debtor either (a) in full, in cash, as soon as practicable after the Effective Date, or, if later, the Allowance Date, or (b) upon such terms as may be agreed to in writing by a Claimant and the Reorganized Debtor.

4.2 **Secured Claims S Class 2.** Class 2 shall contain separate subclasses for each Secured Claim. Each subclass is deemed to be a separate class for all purposes under the Bankruptcy Code.

The legal, equitable and contractual rights of holders of Allowed Secured Claims in any subclass of Class 2 will either (a) not be altered by this Plan or (b) at the option of the Debtor, be treated in any other manner that will result in such Allowed Secured Claims being deemed unimpaired under section 1124 of the Bankruptcy Code.

4.3 **Convenience Claims S Class 3.** Holders of Allowed Convenience Claims shall receive as soon as practicable after the Effective Date, or, if later, the Allowance Date, payment of their Allowed Claims in full in cash.

4.4 **DCC Guaranty Claims S Class 4B.** The holders of Allowed DCC Guaranty Claims shall retain their Claims, if any, against Reorganized Dow Corning, and this Plan shall leave unaltered the legal, equitable and contractual rights to which such Claims entitle the holders thereof.

4.5 **Environmental Claims S Class 22.** The holders of Claims, other than Disallowed Claims, arising under Environmental Laws shall retain their Claims, if any, against Reorganized Dow Corning, and this Plan shall leave unaltered (a) the legal, equitable and contractual rights to which such Claims entitle the holders thereof, and (b) the rights and obligations of the Debtor, and any other holder of such Claims during the Case, pursuant to any settlement approved by a Final Order of the Court entered before the Confirmation Date.

4.6 **Retiree Benefits Claims S Class 23.** The holders of Allowed Retiree Benefit Claims shall not be impaired and shall not have their rights altered by this Plan. Retiree Benefit Claims shall be deemed to be Allowed Claims and shall be paid, performed and honored by the Reorganized Debtor in full when due in accordance with their terms notwithstanding any other contrary provision of the Plan or the Confirmation Order; *provided, however*, that the rights of retirees shall be subject to modification or

termination as provided by the terms of the existing benefit plans and the terms of the collective bargaining agreements, consistent with applicable law.

ARTICLE FIVE

TREATMENT OF CLASSES IMPAIRED UNDER THE PLAN

5.1 **Unsecured Claims S Class 4.** Each Allowed Unsecured Claim in Class 4 shall include interest thereon from the Petition Date through the Effective Date at the Case Interest Rate, and such fees, costs and expenses (including prepayment penalties or liquidated damages), but only to the extent such fees, costs and expenses are Allowable under applicable law. Each holder of an Allowed Class 4 Claim will receive, as payment in full, on or as soon as practicable following the Effective Date, or if later, the Allowance Date, the sum of (a) a cash payment equal to the lesser of 24% of each such holder's Allowed Class 4 Claim or a pro rata share of \$315.6 million and (b) Senior Notes in a principal amount equal to the balance of such holder's Allowed Class 4 Claim. The terms of the Senior Notes are set forth in **Exhibit "D"** to this Plan.

In the event the Court determines that the treatment of Class 4 does not satisfy the requirements of either section 1129(a)(7) or 1129(b) (in the event confirmation is sought pursuant to section 5.18 of this Plan) of the Bankruptcy Code, the Proponents shall propose amendments to the Plan to ensure its compliance with the applicable requirements of section 1129 of the Bankruptcy Code, and thereafter request confirmation of the Plan, as amended. To the extent distributions in respect of any Allowed Class 4 Claims are not made on the Effective Date, interest shall accrue on the unsatisfied portion of such Allowed Class 4 Claim from the Effective Date until the date on which distribution is actually made in

respect thereof at the rate set for the initial issuance of Senior Notes under the Plan, compounded on each interest payment date under the Senior Notes so issued. All such interest shall be paid in cash at the time distributions in respect of such Claim are made.

5.2 **Prepetition Judgment Claims S Class 4A.** Unless a different treatment is agreed to by the Class 4A Claimant and the Debtor prior to the Confirmation Date, on the Effective Date, the post-confirmation injunction provided in the Confirmation Order shall be deemed modified to the limited extent required to allow the exhaustion of any post-judgment appellate activity in connection with any Prepetition Judgment Claim. In such appeals, the Litigation Facility will be substituted for the Debtor as a party thereto. The appeals shall be prosecuted in the appellate courts of the respective jurisdictions in which the judgments were entered. If the final resolution of the appeal is in favor of the holder of a Prepetition Judgment Claim, the amount of the judgment, as finally determined on appeal (whether by settlement, remittitur or affirmance), shall be treated and paid in cash and Senior Notes in the same manner as Allowed Class 4 Claims under the Plan. If any such case is settled prior to decision on appeal, the Reorganized Debtor shall receive a credit as payments are made or notes are paid against its obligations under the Funding Payment Agreement for all amounts paid by it in respect of such Claims. If the appeal results in an order remanding the matter for new trial as to liability and/or damages, the holder of the Prepetition Judgment Claim shall have her Claim resolved in accordance with the terms of the Litigation Facility Agreement. The limited modification of the post-confirmation injunction provided above shall not otherwise affect or limit the effect of the release and injunction provisions of sections 8.3 through 8.5 of the Plan.

5.3 **Domestic and Foreign Personal Injury ClaimsS Classes 5 through 10.2.** At Closing, the Reorganized Debtor will, in full release, satisfaction and discharge of all Claims in Classes 5 through 10.2, cause the following to occur: (a) the execution and delivery of the Settlement Facility Agreement and the Litigation Facility Agreement, thereby establishing the Settlement Facility and the Litigation Facility for Claim liquidation and payment, (b) the execution and delivery of the Funding Payment Agreement (which provides, subject to its terms, for total scheduled payments of up to \$3,172,000,000 with a Net Present Value as of the Effective Date of \$2.35 billion), together with the initial cash payment of \$985 million as required therein and any interest accrued on \$905 million of the initial payment as provided in the Funding Payment Agreement, and (c) the execution and delivery of the Quebec Breast Implant Settlement Agreement, the Ontario Breast Implant Settlement Agreement, the B.C. Class Action Settlement Agreement, the Australia Breast Implant Settlement Option (together with any payments then due under each such agreement).

Except as otherwise provided in this Plan, the funds paid with respect to Personal Injury Claims will be paid to the Depository Trust. All assets (including but not limited to funds and interests in insurance proceeds) of the Settlement Facility shall be received, held, invested and disbursed by the Depository Trust on behalf of the Settlement Facility. Whenever this Plan refers to the Settlement Facility receiving, holding, investing, disbursing or otherwise dealing with assets, it shall be deemed to refer to actions taken by the Trustee of the Depository Trust at the instruction of the Finance Committee as provided in the Settlement Facility Agreement.

The Settlement Facility and the Litigation Facility will assume full responsibility for resolving all Personal Injury Claims in Classes 5 through 10.2 (other than Claims in Classes 6A, 6B, 6C and 6D)

pursuant to the Settlement Facility Agreement and the Litigation Facility Agreement, as applicable; for making payments on account of those Personal Injury Claims in Classes 5 through 10.2 (other than Claims in Classes 6A, 6B, 6C and 6D) that become Allowed Personal Injury Claims under the conditions set forth in the Settlement Facility Agreement or the Litigation Facility Agreement; for collecting, investing and distributing funds for the benefit of Personal Injury Claimants; for fulfilling all other obligations under the Settlement Facility Agreement, the Litigation Facility Agreement and the Funding Payment Agreement; and for paying the costs and expenses of the Settlement Facility and the Litigation Facility, all as set forth more fully in the Settlement Facility Agreement and the Litigation Facility Agreement.

5.4 **Treatment of Classes 5 through 10.2 (Other Than Classes 6A, 6B, 6C and 6D).**

Except as set forth in section 5.2, and subject to section 7.4, of this Plan, each Personal Injury Claimant in Classes 5 through 10.2 (other than Claimants in Classes 6A, 6B, 6C and 6D) shall be afforded the option, during the six-month period following the Effective Date, to elect to settle or to opt out of the settlement options under the Settlement Facility. Depending on the election made, those Claimants shall be treated as follows:

5.4.1 **Treatment of Settling Personal Injury Claimants.** Settling Personal Injury Claimants shall receive payment of their Allowed Claims in accordance with the terms, provisions and procedures contained in the Settlement Facility Agreement. The various treatments for the Claims are the following:

5.4.1.1 **Breast Implant Users.** Breast Implant Users may select up to three compensation options. All Breast Implant Users are eligible to receive, subject to the qualification criteria: (i) either (a) an expedited payment, for which the only qualification

criterion is the use of a Dow Corning Breast Implant, or (b) a payment for specified eligible disease/disability (in accordance with the schedule of symptoms and conditions in the Settlement Facility's "**Grid**," and (ii) an explant payment and/or (iii) a rupture payment. Breast Implant Claimants qualifying for payment under the Grid are entitled to apply for an additional payment (the "**Increased Severity Payment**") from the Settlement Facility.

5.4.1.2 **Other Products Users.** Other Products Users with Covered Other Products Claims are eligible for two mutually exclusive compensation options: (i) an expedited payment or (ii) a payment for specified eligible medical conditions in accordance with the schedule of symptoms and conditions in the Grid. Other Products Users who receive payments based on the Grid may, depending on their particular symptoms and conditions, be eligible for a supplemental payment if funds are available within the \$36 million (Net Present Value) fund dedicated to settlement of Other Products Personal Injury Claims. Other Products Users whose Claims do not arise from Covered Other Products will have their Claims treated and paid, to the extent Allowed, through the Litigation Facility.

5.4.1.3 **Silicone Material Claims.** Claimants with Silicone Material Claims in Class 7, whose Non-Dow Corning Breast Implants were manufactured in the United States with medical grade gel systems purchased from Dow Corning, shall receive payment from a \$57.5 million (Net Present Value) fund allocated as provided in the Settlement Facility Agreement. (Breast Implant Claimants and Other Products Claimants are not eligible for compensation as a Silicone Material Claimant.)

5.4.1.4 **Family Member Claims.** The Claims of family members of a Personal Injury Claimant are comprised of the Consortium Claims and the Children Direct Claims. The treatment of a Personal Injury Claimant (referred to as the “**Primary Claimant**”) who is a Breast Implant User, an Other Products User or a Non-Dow Corning Breast Implant User under this Plan shall be cumulative of the Consortium Claims of any spouse, child or other individuals related to, or who have some other personal relationship with the Primary Claimant. The Consortium Claims of such related parties shall be governed by the election to settle or litigate made by, and shall be deemed released by the treatment afforded the Claims of, the Primary Claimants under the Plan.

Children Direct Claims shall not be affected by the election of the Primary Claimant to settle through the Settlement Facility, but shall be treated in the Litigation Facility pursuant to the terms of the Litigation Facility Agreement and the holders of Children Direct Claims shall be deemed Non-Settling Personal Injury Claimants.

Settling Personal Injury Claimants shall (i) not be subject to the litigation conducted in accordance with the terms of the Litigation Facility Agreement, (ii) be entitled to the payment under the settlement option(s) for which they qualify irrespective of any otherwise adverse determination in the Litigation Protocol, and (iii) be deemed to have waived or modified their rights in litigation, including the right to trial by jury, as provided in the Settlement Facility Agreement.

5.4.2 **Treatment of Non-Settling Personal Injury Claimants.** Non-Settling Personal Injury Claimants, including all Miscellaneous Raw Material Implant Personal Injury Claimants in Class 8 (other than Participating Foreign Gel Claimants) and all Children’s Direct Claimants, shall

have their Claims and Assumed Third Party Claims resolved under the terms of the Litigation Facility Agreement and the related Case Management Order(s). Each Non-Settling Personal Injury Claimant shall (a) be subject to the Litigation Protocol and (b) not receive any payment if (and to the extent) the Claim is disallowed pursuant to the litigation procedures constituting the Litigation Protocol. All Non-Settling Personal Injury Claimants shall retain the right to adjudicate their Claim through litigation (including trial by jury), subject, however, to the provisions of the Plan and the Litigation Facility Agreement.

5.5 **Treatment of Class 6A.** Claimants in Class 6A shall be treated as follows:

5.5.1 **Treatment of Quebec Class Action Settlement Claimants.** Claimants in Class 6A shall receive payment of their Claims pursuant to the Quebec Breast Implant Settlement Agreement from the Quebec Class Action Fund administered by a claims administrator under the direct supervision of the court of Quebec in which such action is pending. The Reorganized Debtor shall receive a credit as payments are made against its obligations under the Funding Payment Agreement for all amounts paid by it to the Quebec Class Action Fund. The Class 6A Claims will be paid pursuant to a grid contained in the Quebec Breast Implant Settlement Agreement, approved by the Quebec court, which is generally consistent with the treatment of other Class 6.1 Claimants and of the Claimants in Classes 6B, 6C and 6D. Claimants in Class 6A shall (a) not be subject to the Disease Litigation Protocol, (b) be entitled to the payment under the Quebec Breast Implant Settlement Agreement irrespective of any otherwise adverse determination in the Litigation Protocol, and (c) be deemed to have waived or modified their rights in litigation, including the right to trial by jury.

Class 6A Claimants who have timely opted out of the class action in Quebec shall become Class 6.1 Claimants under this Plan. In the event the Quebec Breast Implant Settlement Agreement is not approved by the Court, Class 6A Claimants shall be treated as Class 6.1 Claimants under this Plan.

5.5.2 Treatment of Claims of Family Members of Quebec Class Action Settlement Claimants. Immediate family members of a Quebec Class Action Settlement Claimant who have themselves timely filed proofs of claim in this Case shall litigate the allowability of their Claims under the terms of the Litigation Facility Agreement.

5.6 Treatment of Class 6B. Claimants in Class 6B shall be treated as follows:

5.6.1 Treatment of Ontario Class Action Settlement Claimants. Claimants in Class 6B shall receive payment of their Claims pursuant to the Ontario Breast Implant Settlement Agreement from the Ontario Class Action Fund administered by a claims administrator under the direct supervision of the court of Ontario in which such action is pending. The Reorganized Debtor shall receive a credit as payments are made against its obligations under the Funding Payment Agreement for all amounts paid by it to the Ontario Class Action Fund. The Class 6B Claims will be paid pursuant to a grid contained in the Ontario Breast Implant Settlement Agreement, approved by the Ontario court, which is generally consistent with the treatment of other Class 6.1 Claimants and of the Claimants in Classes 6A, 6C and 6D. Claimants in Class 6B shall (a) not be subject to the Disease Litigation Protocol, (b) be entitled to the payment under the Ontario Breast Implant Settlement Agreement irrespective of any otherwise adverse determination in the Litigation

Protocol, and (c) be deemed to have waived or modified their rights in litigation, including the right to trial by jury.

Class 6B Claimants who timely opted out of the class action in Ontario and who have not timely elected to become Ontario Class Action Settlement Claimants shall be treated as Class 6.1, 7 or 8 Claimants, as applicable, under this Plan. In the event the Ontario Breast Implant Settlement Agreement is not approved by the Court, the Class 6B Claimants shall be treated as Class 6.1, 7 or 8 Claimants under this Plan, as applicable.

5.6.2 Treatment of Claims of Family Members of Ontario Class Action Settlement Claimants. The Ontario Breast Implant Settlement Agreement provides for resolution of the Claims of Family Members. Family Member Claims will be resolved out of the payments to the Ontario Class Action Fund. The Claims of such Family Members shall be deemed released by the treatment under the Ontario Breast Implant Settlement Agreement.

5.7 Treatment of Class 6C. Claimants in Class 6C shall be treated as follows:

5.7.1 Treatment of B.C. Class Action Settlement Claimants. Claimants in Class 6C shall receive payment of their Claims pursuant to the B.C. Class Action Settlement Agreement from the B.C. Class Action Fund administered by a claims administrator under the direct supervision of the court of British Columbia in which such action is pending. The Reorganized Debtor shall receive a credit as payments are made against its obligations under the Funding Payment Agreement for all amounts paid by it to the B.C. Class Action Fund. The Class 6C Claims will be paid pursuant to a grid contained in the B.C. Class Action Settlement Agreement, approved by the British Columbia court, which is generally consistent with the treatment of other

Class 6.1 Claimants and of the Claimants in Classes 6A, 6B and 6D. Claimants in Class 6C shall (a) not be subject to the Litigation Protocol, (b) be entitled to the payment under the B.C. Class Action Settlement Agreement irrespective of any otherwise adverse determination in the Litigation Protocol, and (c) be deemed to have waived or modified their rights in litigation, including the right to trial by jury.

Potential Class 6C Claimants who either (i) are residents of British Columbia and timely opt out of the B.C. Class Action or (ii) are residents of Canadian provinces other than British Columbia, Quebec or Ontario and do not timely opt to be included as a Settlement Class Member in the B.C. Class Action shall be treated as Class 6.1 or 8 Claimants, as applicable, under this Plan.

If, in the view of Dow Corning, the number of opt-outs is excessive or the number of opt-ins is insufficient, it may withdraw from the settlement. In the event Dow Corning withdraws from the settlement or the B.C. Class Action Settlement Agreement is not approved by the British Columbia court or by the Court, the Class 6C Claimants shall be treated as Class 6.1, 7 or 8 Claimants under this Plan, as applicable.

5.7.2 **Treatment of Family Member Claims Related to Class 6C Claims.** The treatment of Claims in Class 6C shall be cumulative of the treatment of Family Member Claims related thereto, and the Claims of such Family Members shall be deemed released by the treatment of Class 6C Claimants under the B.C. Class Action Settlement Agreement.

5.8 **Treatment of Class 6D.** Claimants in Class 6D shall be treated as follows:

5.8.1 **Treatment of Australia Breast Implant Settlement Claimants.** Claimants in Class 6D shall receive payment of their Claims pursuant to the Australia Breast Implant Settlement Option from the Australia Breast Implant Optional Settlement Fund administered by a claims administrator supervised by Trustees appointed pursuant to the Australia Breast Implant Settlement Option. The Reorganized Debtor shall receive a credit as payments are made against its obligations under the Funding Payment Agreement for all amounts paid by it to the Australia Breast Implant Optional Settlement Fund. The Class 6D Claims will be paid in a manner which is generally consistent with the treatment of other Class 6.1 Claimants and of the Claimants in Classes 6A, 6B and 6C. Claimants in Class 6D shall (a) not be subject to the Litigation Protocol, (b) be entitled to the payment under the Australia Breast Implant Settlement Option irrespective of any otherwise adverse determination in the Litigation Protocol, and (c) be deemed to have waived or modified their rights in litigation, including the right to trial by jury.

Class 6D Claimants who fail to timely elect to participate as Australia Breast Implant Settlement Claimants on the ballot provided to such Claimants shall be treated as Class 6.1, 7 or 8 Claimants, as applicable, under this Plan.

If (i) the level of elections by potential Class 6D Claimants fails to reach agreed minimum participation levels, or (ii) the Court declines to approve the Australia Breast Implant Settlement Option, the Claimants who have elected to participate as Class 6D Claimants shall be treated as Class 6.1, 7 or 8 Claimants under this Plan, as applicable.

5.8.2 **Treatment of Family Member Claims Related to Class 6D Claims.** The treatment of Claims in Class 6D shall be cumulative of the treatment of Family Member Claims

related thereto, and the Claims of such Family Members shall be deemed released by the treatment of Class 6D Claimants under the Australia Breast Implant Settlement Option.

5.9 **Funding the Settlement Facility, the Litigation Facility, the Quebec Class Action Fund, the Ontario Class Action Fund, the B.C. Class Action Fund and the Australia Breast Implant Optional Settlement Fund for Payment of Personal Injury Claims.** The Settlement Facility, the Litigation Facility, the Quebec Class Action Fund, the Ontario Class Action Fund, the B.C. Class Action Fund and the Australia Breast Implant Optional Settlement Fund shall be funded pursuant to the terms of the Funding Payment Agreement. The Reorganized Debtor shall receive a credit as payments are made against its obligations under the Funding Payment Agreement for all amounts paid by it to the Quebec Class Action Fund, the Ontario Class Action Fund, the B.C. Class Action Fund and the Australia Breast Implant Optional Settlement Fund.

5.10 **Treatment of Attorney's Fees of Settling Personal Injury Claimants.** The fees and expenses of attorneys representing any of the Settling Personal Injury Claimants (other than Claimants in Classes 6A, 6B, 6C and 6D, whose rights shall be governed by the settlement agreements applicable to those classes) who receive payment from the Settlement Facility will be borne by such Claimants based on applicable state law and the individual arrangements made between them and their attorneys, subject to the following limitations:

5.10.1 The fees charged by individually-retained attorneys to a Settling Personal Injury Claimant shall not exceed the sum of:

- (a) 10% of the first \$10,000 paid to such Claimant;
- (b) 22.5% of the next \$40,000 paid to such Claimant; and

(c) 30% of the amount in excess of \$50,000 paid to such Claimant.

5.10.2 Amounts paid pursuant to either the Expedited Payment Option or the Explant Payment Option under the Settlement Facility shall not be counted as amounts paid to a Settling Personal Injury Claimant for purposes of this section and no fees shall be paid with respect to such amounts.

5.11 **Treatment of Punitive Damages.** Claims for punitive or exemplary damages in connection with Products Liability Claims, whether asserted by Personal Injury Claimants, Physician Claimants, or any other Claimants, shall not be Allowed.

5.12 **Venue for Liquidation of Foreign Personal Injury Claims.** If a Claimant in any of Classes 6.1, 6.2, 8, 10.1 and 10.2 is a Non-Settling Personal Injury Claimant, the manager of the Litigation Facility shall have the option, but not the obligation, of seeking to have the Claim held by such Claimant referred to the jurisdiction of the courts of the Claimant's domicile for liquidation pursuant to principles of *forum non conveniens*. Upon conclusion of the liquidation procedures, the Claimant shall be paid (subject to the terms of the Funding Payment Agreement) the Allowed amount of the Claim (converted to U.S. dollars at the then prevailing exchange rate) pursuant to the terms of the Litigation Facility Agreement, the Settlement Facility Agreement and the Funding Payment Agreement.

5.13 **Other Claims Related to Implants S Classes 11 through 17.** Each class of Claims in Classes 11 through 17 shall receive treatment as follows:

5.13.1 **Claims in Class 11.** Notwithstanding any other provision of the Plan, Claimants in Class 11 shall have the option to elect to settle their Claims against the Debtor or to litigate the allowability of such Claims. Settling Co-Defendant Claimants shall release all Claims (including but

not limited to contribution Claims) against the Debtor-Affiliated Parties and the Shareholder-Affiliated Parties arising from or relating to Products Liability Claims and, in exchange, the Debtor-Affiliated Parties and the Shareholder-Affiliated Parties shall release all Claims (including but not limited to contribution Claims) the Debtor-Affiliated Parties and/or the Shareholder-Affiliated Parties may have against a Settling Co-Defendant Claimant: (i) arising from or relating to any Claims that are discharged, released and/or enjoined pursuant to the Plan; and (ii) for any amount that was paid by any of the Debtor-Affiliated Parties or Shareholder-Affiliated Parties that if not so paid would have been a Products Liability Claim or would have been a Claim arising from or relating to a Products Liability Claim. The parties shall exchange the releases described in this section 5.13.1 on the Effective Date or as soon thereafter as may be practicable. To the extent a Personal Injury Claimant asserts a Product Liability Claim against a Debtor-Affiliated Party and/or Shareholder-Affiliated Party and a Claim against a Settling Co-Defendant Claimant in a single action that has been or will be transferred to the District Court, the Claims against the Debtor-Affiliated Party and/or the Shareholder-Affiliated Party shall be severed from the Claim against the Settling Co-Defendant Claimant and the Claim against the Settling Co-Defendant Claimant shall be tried in the court from which such Claim was transferred. Co-Defendant Claimants who do not elect to settle by the voting deadline shall have their Claims estimated for distribution on or before the Effective Date. The Estimated Amount of any such Claims will be paid (subject to the terms of the Settlement Facility Agreement and the Funding Payment Agreement) by the Claims Administrator on, or as soon as practicable after, the Effective Date. If not estimated for distribution on or before the Effective Date, such Claims will be

channeled to the Litigation Facility for purposes of Claim liquidation and paid (subject to the terms of the Settlement Facility Agreement and the Funding Payment Agreement) when Allowed. For purposes of this section 5.13.1, a “Claim” against a non-Debtor party shall have the meaning contained in 11 U.S.C. §101(5).

5.13.2 **Claims in Classes 12 and 13.** Claimants in Class 12 (Physician Claims) and Class 13 (Health Care Provider Claims) shall have the option to elect to settle their Claims against the Debtor or to litigate the allowability of such Claims. Claimants in Classes 12 and 13 who do not affirmatively elect to litigate shall be deemed to have settled their Claims. Settling Physicians and Settling Health Care Providers shall release all Claims against the Debtor and the Released Parties in exchange for the protection of the release and, to the extent applicable, the injunctive provisions of sections 8.3 through 8.5 of the Plan. The Claims held by Non-Settling Physicians and Non-Settling Health Care Providers will be channeled to the Litigation Facility and paid (subject to the terms of the Settlement Facility Agreement and the Funding Payment Agreement) when Allowed.

5.13.3 **Claims in Class 14.** Domestic Health Insurers shall have the option, pursuant to the terms of the Domestic Health Insurer Settlement Agreement, to either (a) settle their claims against the Debtor and the Released Parties or (b) litigate the allowability of their Claims and receive that treatment provided in section 6.05 of the Litigation Facility Agreement. All Domestic Health Insurers who do not timely elect to litigate their Claims will be deemed to have settled their Claims and shall be subject in all respects to the terms of the Domestic Health Insurer Settlement Agreement.

Each Domestic Health Insurer that elects to settle, or is deemed to have elected to settle, will receive its proportionate share of a cash settlement fund. The amount of the settlement fund will be determined and distributed as provided in the Domestic Health Insurer Settlement Agreement which generally provides for distribution based upon the proportionate number of “insured lives” of each settling Domestic Health Insurer. The Reorganized Debtor shall receive a credit against its obligations under the Funding Payment Agreement for all amounts paid pursuant to the Domestic Health Insurer Settlement Agreement.

Except as otherwise set forth in the Domestic Health Insurer Settlement Agreement, payments under the Domestic Health Insurer Settlement Agreement will be in full satisfaction and release of all Claims of each settling Domestic Health Insurer against the Debtor and the Released Parties. The Domestic Health Insurer Settlement Agreement generally requires all Domestic Health Insurers who elect to settle (or that are deemed to have elected to settle) to release each Personal Injury Claimant from any and all Claims, based on a theory of subrogation, reimbursement or otherwise, for recovery of payments made or benefits provided by them, in the past, present or future, relating to Products Liability Claims.

In the event the Domestic Health Insurer Settlement Agreement does not become effective, all Domestic Health Insurer Claims shall be treated in accordance with section 6.05 of the Litigation Facility Agreement.

5.13.4 **Claims in Class 14A.** Foreign Health Insurer Claims shall be treated in accordance with section 6.05 of the Litigation Facility Agreement.

5.13.5 **Claims in Classes 15 and 17.** Unless a different treatment is agreed to by the Proponents and the affected Claimants, the Proponents shall seek to have the Claims in Classes 15 and 17 estimated for distribution on or before the Confirmation Date. The Estimated Amount of any such Claims will be paid (subject to the terms of the Settlement Facility Agreement and the Funding Payment Agreement) by the Claims Administrator on, or as soon as practicable after, the Effective Date. If not estimated for distribution on or before the Confirmation Date, such Claims will be channeled to the Litigation Facility for purposes of Claim liquidation and paid (subject to the terms of the Settlement Facility Agreement and the Funding Payment Agreement) when Allowed.

5.13.6 **Claims in Class 16.** Except as provided in sections 6.16.5 and 6.16.6 of the Plan, all Shareholder Claims shall be released in consideration of the provisions contained in section 6.16 of the Plan.

5.14 **LTCI-Related Claims S Classes 18 and 19.** At Closing, the Reorganized Debtor will, in full release, satisfaction and discharge of all Claims in Classes 18 and 19 and all Assumed Third Party Claims related to such Classes, cause the assignment of the LTCI Indemnities to the Litigation Facility. The Litigation Managers will assume full responsibility for resolving Claims in Classes 18 and 19 pursuant to the Litigation Facility Agreement. The sole remedy available to Class 18 and 19 Claimants shall be the Litigation Facility's enforcement of the LTCI Indemnities.

5.15 **Intercompany Claims S Class 20.** The amount of each Allowed Intercompany Claim shall include interest accrued thereon after the Petition Date through the Effective Date at the Case Interest Rate. Each Subsidiary or Joint Venture of the Debtor holding an Allowed Claim in Class 20 will retain its

right to payment from the Debtor; provided, however, that the Reorganized Debtor will make no cash payment on account of such Allowed Claim. On the Effective Date the Class 20 Claimants shall effect an offset of their Claims against any obligation owing to the Debtor. To the extent a Class 20 Claim is not satisfied in full by such setoff, the balance of such Claim shall be satisfied by credits for future royalty obligations owing to the Reorganized Debtor or for future sales of product and/or services by the Reorganized Debtor made in the ordinary course of post-Effective Date business of the Reorganized Debtor and such Subsidiary or Joint Venture.

5.16 **Subordinated Claims S Class 21.** Each Subordinated Claim shall include interest accrued thereon after the Petition Date through the later to occur of the Effective Date or the Allowance Date at the Case Interest Rate, which total sum shall be the Allowed Subordinated Claim. Each Claimant holding an Allowed Subordinated Claim will receive, as soon as practicable following the Effective Date, or, if later, the Allowance Date, a Subordinated Note in a principal amount equal to the amount of the Allowed Subordinated Claim.

5.17 **Holders of Interests S Class 24.** The Shareholders shall retain their Interests in the Reorganized Debtor.

5.18 **Cramdown.** If any impaired class of Claims fails to accept this Plan as required by section 1126 of the Bankruptcy Code or in accordance with voting procedures established by the Court, the Debtor shall have the right, independent of the Tort Committee, to request that the Court confirm this Plan in accordance with section 1129(b) of the Bankruptcy Code. The Tort Committee will support confirmation of this Plan in accordance with section 1129(b) as it relates to Classes 5 through 10.2 unless

it reasonably determines that its fiduciary duty to its constituency as a whole requires it to oppose such confirmation.

ARTICLE SIX

MEANS FOR IMPLEMENTATION OF PLAN

6.1 **Litigation Protocol.** The procedures for resolving Claims of Non-Settling Personal Injury Claimants and other Claims that are not settled under the Plan are described in the Litigation Facility Agreement. In addition, the Litigation Facility Agreement provides that the Case Management Order has been approved by the parties and will be entered by the District Court. Pursuant to the terms of the Litigation Facility Agreement, attempts will be made to resolve Claims of Non-Settling Personal Injury Claimants and other Claims that are not settled under the Plan, failing which the right of individual Claimants to proceed to jury trial, if required by law, on their Claims will be preserved.

6.2 **Settlement Regarding Allocation of Insurance Proceeds and Coverage.** To facilitate consummation of the Plan, and in partial consideration of the releases and the injunctive provisions of sections 8.3 and 8.4 of the Plan, Dow Chemical has agreed to a settlement regarding the allocation, as between it and Dow Corning, of the proceeds and coverage afforded under the various shared insurance arrangements in accordance with the terms of the Insurance Allocation Agreement. The Court shall consider approval of the Insurance Allocation Agreement at the hearing on confirmation of the Plan.

6.3 **Resolution of Other Claims to Insurance Settlement Proceeds.** A number of Insurance Companies, Physicians, Health Care Providers, and Government Payors have asserted claims against or interests in amounts paid or payable by Settling Insurers pursuant to settlement agreements reached with Dow Corning. Dow Corning will seek, as part of the Confirmation Order or pursuant to an

adversary proceeding to be heard concurrently with confirmation, a determination that Dow Corning's rights and interests in such amounts paid or payable by the Settling Insurers are superior to the competing claims of all other claimants except Dow Chemical, as provided in the Insurance Allocation Agreement, and the rights of Hoechst Marion Roussel, Inc., as provided in a settlement agreement approved by the Bankruptcy Court on January 25, 1996. Consequently, if Dow Corning is successful, the Confirmation Order or another order or judgment entered concurrently with the Confirmation Order will disallow any competing claims to amounts paid or to be paid by the Settling Insurers pursuant to settlement agreements with Dow Corning, other than the rights of Dow Chemical pursuant to the Insurance Allocation Agreement and the rights of Hoechst Marion Roussel, Inc. as provided in a settlement agreement approved by the Bankruptcy Court on January 25, 1996.

6.4 **Settlement of Certain Foreign Claims.** To facilitate consummation of the Plan, the Court shall consider approval of the Quebec Breast Implant Settlement Agreement, the Ontario Breast Implant Settlement Agreement, the B.C. Class Action Settlement Agreement and the Australia Breast Implant Settlement Option at the hearing on confirmation of the Plan.

6.5 **Settlement with Domestic Health Insurers.** To facilitate consummation of the Plan, the Court shall consider approval of the Domestic Health Insurer Settlement Agreement at the hearing on confirmation of the Plan.

6.6 **Filing and Payment of Allowed Administrative Claims.** All requests for the payment of administrative expenses pursuant to section 503(b)(1) of the Bankruptcy Code, including applications for the compensation of professionals, shall be filed with the Court no later than 75 days after the Effective Date or at such time as the Court may otherwise order. The Reorganized Debtor will have 60 days after

the deadline for filing requests for the payment of administrative expenses to file objections to any such requests. The Reorganized Debtor shall cause all Allowed Administrative Claims to be paid in accordance with section 2.1 of this Plan.

6.7 **Funding of Plan Payments.** Payments of cash to be made pursuant to the Plan will be made as provided in the Plan, the Funding Payment Agreement, the Quebec Breast Implant Settlement Agreement, the Ontario Breast Implant Settlement Agreement, the B.C. Class Action Settlement Agreement, and the Australia Breast Implant Settlement Option, as applicable. Unless otherwise provided in an order of the Court, all cash payments shall be made in United States dollars.

6.8 **Resolution of Rights to Recover Against Settlement Facility.** A number of Claimants in Classes 14, 14A and/or 15 assert rights to recover from the Settlement Facility if the Settlement Facility pays Allowed Claims of Settling Personal Injury Claimants without notice to or an adjudication of competing rights of such Class 14, 14A and/or 15 Claimants to such settlement amounts. Dow Corning will seek, as part of the Confirmation Order or pursuant to an adversary proceeding to be heard concurrently with confirmation, a determination that any such right to recover against the Settlement Facility shall be cut off by the payment of an Allowed Claim of a Settling Personal Injury Claimant and that the sole remedies available to such Class 14, 14A and/or 15 Claimant shall be (a) to pursue a recovery directly from the Settling Personal Injury Claimant, or (b) injunctive or other equitable relief from the MDL 926 Court (to the extent such relief is available under applicable law) with respect to the Settlement Facility's payment of an Allowed Claim to any Settling Personal Injury Claimant whom the Class 14, 14A, and/or 15 Claimant timely identifies in connection with its filed proof of claim.

6.9 **Payment to United States Trustee.** All fees due to the United States Trustee pursuant to 28 U.S.C. § 1930(a) shall be paid by the Reorganized Debtor as and when they become due and shall be based on the Reorganized Debtor's total disbursements, including ordinary course of business disbursements as well as disbursements made under the Plan, but shall not include distributions by the Settlement Facility and the Litigation Facility to the ultimate recipients. Such fee obligations shall not terminate until the Case is converted or dismissed, or until the Case is no longer pending upon entry of a final decree closing the Case, whichever shall first occur.

6.10 **Closing.** One or more closings (each, a "**Closing**" and collectively, the "**Closings**") shall be conducted in the offices of DCC, or at such other location(s) designated by the Proponents, at 10:00 o'clock a.m. on one or more Business Days selected by the Proponents on, or as soon as practicable after, the Effective Date (each, a "**Closing Date**" and collectively, the "**Closing Dates**") for the purpose of making the distributions to holders of Allowed Claims provided for in the Plan. As soon as practicable after the conditions to the Effective Date in section 7.2 have been satisfied or waived in accordance with section 7.3, the Proponents shall give written notice of the applicable Closing Date to the other Official Committees and any Claimant that will be directly involved in a Closing. Separate Closing Dates may be scheduled for different Classes of creditors treated under this Plan to the extent necessary, in the sole discretion of the Proponents. All references in this Plan to a Closing or a Closing Date shall refer to the effectuation of the distribution to the holders of Allowed Claims in a particular Class provided for in the Plan or the date prescribed therefor pursuant to this section 6.8, as the case may be. (Although this provision is intended to afford all parties-in-interest the flexibility to efficiently conclude the transactions contemplated by the Plan, the Proponents intend, if at all possible, to conduct a single Closing.)

6.11 **Debtor's Obligations at Closing.** The following shall occur at the Closings:

6.11.1 **Payment, Cure and Reinstatement or Setoff of Allowed Secured Claims.**

The Reorganized Debtor shall pay or make provision for the prompt payment to the holders of Allowed Secured Claims an amount equal to all overdue principal installments and accrued and unpaid interest, if any, on the Allowed Secured Claims as of the Closing Date, and the Allowed Secured Claims shall thereby be reinstated, without premium or penalty. Alternatively, if an Allowed Secured Claim consists of an amount subject to setoff under section 553 of the Bankruptcy Code, the holders of such Allowed Secured Claims shall effect such setoffs on the Effective Date or, if later, the Allowance Date.

6.11.2 **Satisfaction of Allowed Unsecured Claims.** The Reorganized Debtor shall cause the distribution of cash, with respect to Allowed Claims in Class 3, and cash and Senior Notes, with respect to Allowed Claims in Class 4 (and Class 4A, if applicable), to be made as provided in sections 4.3, 5.1 and 5.2 of this Plan.

6.11.3 **Satisfaction of Personal Injury Claims (Other than Claims in Classes 6A, 6B, 6C and 6D) and LTCI Other Claims.** Unless the Settlement Facility and the Litigation Facility shall have been earlier established, the Reorganized Debtor shall cause the Settlement Facility and the Litigation Facility to be established and shall deliver the Funding Payment Agreement (together with the initial cash payment of \$985 million plus any interest as provided by the Funding Payment Agreement) and the LTCI Indemnities in full release, satisfaction and discharge of the Personal Injury Claims and LTCI Other Claims.

6.11.4 **Satisfaction of Personal Injury Claims in Class 6A.** The Reorganized Debtor shall execute and deliver the Quebec Breast Implant Settlement Agreement (together with any payment[s] then due thereunder to the Quebec Class Action Fund).

6.11.5 **Satisfaction of Personal Injury Claims in Class 6B.** The Reorganized Debtor shall execute and deliver the Ontario Breast Implant Settlement Agreement (together with any payment[s] then due thereunder to the Ontario Class Action Fund).

6.11.6 **Satisfaction of Personal Injury Claims in Class 6C.** The Reorganized Debtor shall execute and deliver the B.C. Class Action Settlement Agreement (together with any payment[s] then due thereunder to the B.C. Class Action Fund).

6.11.7 **Satisfaction of Personal Injury Claims in Class 6D.** The Reorganized Debtor shall execute and deliver the Australia Breast Implant Settlement Option (together with any payment[s] then due thereunder to the Australia Breast Implant Optional Settlement Fund).

6.11.8 **Satisfaction of Other Claims Related to Implants.** If such Claims have been timely resolved or estimated for allowance, the Reorganized Debtor shall cause the distribution of cash and Senior Notes with respect to Allowed Claims of Non-Settling Co-Defendants in Class 11, and of Claimants in Classes 15 and 17 in accordance with sections 5.13.1 and 5.13.5 of this Plan.

6.11.9 **Satisfaction of Settling Domestic Health Insurer Claims.** Provided the Domestic Health Insurer Settlement Agreement has become effective, the Reorganized Debtor shall consummate the transactions contemplated by that agreement.

6.11.10 **Satisfaction of Allowed Subordinated Claims.** The Reorganized Debtor shall cause all Allowed Subordinated Claims to be satisfied in accordance with section 5.16 of this Plan.

6.11.11 **Amendment of Corporate Charter.** The Reorganized Debtor shall amend its corporate charter to prohibit the issuance of nonvoting equity securities.

6.11.12 **Contemporaneous Nature of Transactions at Closing.** All transactions consummated at the Closing shall be deemed to be contemporaneous transactions. All documents and consideration which were required to be exchanged at Closing shall be deemed contemporaneously exchanged among the parties.

6.12 **Documentation.** The Proponents shall prepare all documentation to be executed in connection with this Plan or the Closing, subject to any necessary Court approval.

6.13 **Merger; Choice of Law.** All obligations of the Debtor to all Claimants shall be merged into this Plan and the documents executed by the Reorganized Debtor at Closing and delivered to the respective affected Claimants. All such obligations of the Reorganized Debtor shall be evidenced by this Plan and such executed and delivered documents. Unless otherwise provided therein, such documents shall be governed by and construed in accordance with the laws of the State of New York and applicable federal law.

6.14 **Other Obligations of the Reorganized Debtor.** The Reorganized Debtor shall:

6.14.1 review all Claims other than Personal Injury Claims filed against the estate and, if advisable, object to Claims;

6.14.2 investigate, prosecute, settle, or dismiss all Debtor Actions and Insurance Debtor Actions not otherwise released under this Plan. The Reorganized Debtor shall be entitled

to receive all Debtor Action Recoveries and Insurance Debtor Action Recoveries. All such proceeds related to Personal Injury Claims shall be paid to the Settlement Facility or the Litigation Facility, as applicable, as provided in this Plan and the Plan Documents; and

6.14.3 perform all of its obligations under the Plan Documents, including, without limitation, those obligations provided in the Settlement Facility Agreement, the Litigation Facility Agreement and the Funding Payment Agreement.

6.15 **Board of Directors of the Reorganized Debtor.** The board of directors of DCC shall continue to serve as the initial board of directors of the Reorganized Debtor.

6.16 **Shareholders' Contribution.** In order (a) to facilitate the consummation of the Plan and the funding of the Settlement Facility and the Litigation Facility, and (b) to provide additional sources for funding the Plan as required by the Funding Payment Agreement, the Shareholders have agreed to make certain financial accommodations, and the Debtor and the Shareholders have agreed to resolve certain Claims asserted against the Debtor by the Shareholder-Affiliated Parties. In exchange for the consideration contributed to the Plan by the Shareholders, the Shareholder-Affiliated Parties will be entitled to, and shall benefit from, the provisions of sections 6.16.5 and 6.16.6 and the releases and injunctions provided in sections 8.3 and 8.4 of the Plan. The agreements between the Debtor and the Shareholders include the following:

6.16.1 **Insurance Settlement.** Dow Chemical has agreed to the allocation of the proceeds and coverage afforded under the various shared insurance arrangements as provided in section 6.2 of the Plan.

6.16.2 **Shareholder Revolving Credit Facility.** Dow Chemical and Corning will enter into the Funding Payment Agreement, which shall contain provisions obligating Dow Chemical and Corning to make available to the Reorganized Debtor a ten-year revolving credit facility in the aggregate amount of \$300 million for years one through five after the Effective Date, and decreasing by \$50 million per year in years six through ten after the Effective Date. Dow Chemical and Corning will each contribute one-half of any funds advanced or borrowed under the facility. The facility will have a final maturity at the end of year ten, at which time the Reorganized Debtor will be required to repay all amounts not previously repaid in accordance with the amortization schedule, and no funds will be available under the facility thereafter. The facility will be available to lend funds to the Reorganized Debtor in the event the Reorganized Debtor does not have sufficient funds to meet its obligation to fund the Plan in accordance with the Funding Payment Agreement. The Reorganized Debtor will be obligated to repay all amounts advanced by Dow Chemical and Corning with interest, and will be permitted to prepay at any time.

6.16.3 **Release of Shareholder Claims.** Except as provided in sections 6.16.5 and 6.16.6 of the Plan and in the Litigation Facility Agreement with respect to the Mahlum Claims and the Spitzfaden Claims, the Shareholder Claims shall be deemed released on the Effective Date of the Plan.

6.16.4 **Shareholder Support of Plan.** The Shareholders have agreed to support the Plan, which calls for substantial payments for disease Claims of Settling Personal Injury Claimants without requiring the Settling Personal Injury Claimants to prove that the Claimants' diseases were caused by a silicone implant manufactured by the Debtor.

6.16.5 **Mahlum Claims**. In the event the Mahlum Claims are settled prior to the Effective Date, all amounts paid by Dow Chemical pursuant to the agreement providing for the settlement such claims shall constitute Allowed Class 16 Claims, and Dow Chemical shall be reimbursed such amounts in full, together with interest (calculated in the same manner as for Class 4 Claims), by the Claims Administrator from funds maintained by the Settlement Facility. Reimbursement shall be made on the same basis and with the same priority as “Premium Payments” under the Settlement Facility Agreement. Any such settlements shall include a release of any corresponding Claims against the Debtor-Affiliated Parties and the Shareholder-Affiliated Parties. In the event the existing judgment with respect to the Mahlum Claims is affirmed on appeal, the judgment shall be paid by Dow Chemical. Dow Chemical may pursue reimbursement from Dow Corning, as a Class 16 Claim, of the amounts paid as provided in the Litigation Facility Agreement.

In the event the Mahlum Claims remain pending as of the Effective Date: (i) any unresolved Mahlum Claims shall be subject to the channeling injunction provisions of section 8.5 of the Plan and shall be deemed transferred to the District Court for resolution in accordance with the Claims resolution procedures contained in and contemplated by the Litigation Facility Agreement; provided, however, that such Claims shall not be transferred pursuant to section 8.5 of the Plan unless the existing judgment is reversed and remanded for retrial, and (ii) any judgment, award or settlement in respect of the Mahlum Claims shall be paid as provided in the Litigation Facility Agreement.

6.16.6 **Spitzfaden Claims**. All amounts paid or to be paid by Dow Chemical to the eight named Spitzfaden Claimants pursuant to the letter agreement between counsel for such parties

dated April 12, 1999 shall constitute Allowed Class 16 Claims, and Dow Chemical shall pay said amounts in full as provided in the agreement referred to above and shall be reimbursed such amounts in full, together with interest (calculated in the same manner as for Class 4 Claims), by the Claims Administrator from funds maintained by the Settlement Facility. Reimbursement shall be made on the same basis and with the same priority as “Premium Payments” under the Settlement Facility Agreement. Any such settlements shall include a release of any corresponding Claims against the Debtor-Affiliated Parties and the Shareholder-Affiliated Parties.

All unresolved Spitzfaden Claims that are held by Spitzfaden Claimants who timely elect to opt out of the Settlement Facility and that remain pending as of the Effective Date, other than those held by the eight named Spitzfaden Claimants, shall be subject to the channeling injunction provisions of section 8.5 of the Plan and shall be deemed transferred to the District Court for resolution in accordance with the Claim resolution procedures contained in and contemplated by the Litigation Facility Agreement; provided, however, that such Spitzfaden Claims shall not be transferred unless the existing judgment entered in Phase I proceedings is resolved by a Final Order after exhaustion of all appeals, and then only if the judgment is affirmed against Dow Chemical and in favor of the holders of such Spitzfaden Claims. The existing appeal with respect to such Spitzfaden Claims shall proceed (even if a lump sum settlement of the Spitzfaden Claims held by the eight named Spitzfaden Claimants is reached) unless the Louisiana appellate courts, on a sua sponte basis, dismiss the appeal as moot. Any judgment, award or settlement in respect of a Spitzfaden Claim transferred to the Litigation Facility shall be paid as provided in the Litigation Facility Agreement.

For those Spitzfaden Claimants whose Claims are to be resolved through the Settlement Facility, the Claims Office will deem the submission date by the first Spitzfaden Claimant as the submission date for all other Spitzfaden Claimants; provided, however, that nothing in this section shall extend any deadlines provided for in the Plan or the Plan Documents (e.g., opt-out, rupture, silicone materials, etc.), or materially delay the processing or payment of any other Claims under the Settlement Facility Agreement.

The Shareholders' obligations in this section 6.16 are subject to the conditions (unless waived by the Shareholders) that (a) the conditions set out in sections 7.1 and 7.2 of the Plan shall have been satisfied and (b) no amendment or modification to the Plan (including the release and injunction provisions) shall have occurred that is adverse to the Shareholders in any respect.

ARTICLE SEVEN

CONDITIONS PRECEDENT

7.1 **Conditions to Confirmation.** Confirmation of the Plan shall not occur unless and until each of the following conditions shall have been satisfied or waived in accordance with section 7.3 of this Plan:

7.1.1 The Court or the District Court, as appropriate, shall have entered an Estimation Order(s) with respect to any Estimated Amount(s) that are necessary for confirmation of the Plan;

7.1.2 The District Court shall have entered the Case Management Order;

7.1.3 The Confirmation Order shall provide that the settlement provisions provided in section 5.4.1 of the Plan are binding on all Settling Personal Injury Claimants;

7.1.4 The Confirmation Order shall approve and provide for the implementation of the Insurance Allocation Agreement;

7.1.5 The Confirmation Order shall approve and provide for the implementation of the Domestic Health Insurer Settlement Agreement;

7.1.6 The Confirmation Order shall approve and provide for the implementation of the other Plan Documents;

7.1.7 The Confirmation Order shall effect the release of certain Claims and the injunction against the prosecution of the Released Claims against those third parties, including the Shareholder-Affiliated Parties, as described in sections 8.3 and 8.4 of the Plan, and shall provide for the channeling injunction with respect to Assumed Third Party Claims described in section 8.5 of the Plan; and

7.1.8 The Confirmation Order shall be in form and substance reasonably acceptable to the Proponents and the Shareholders.

7.2 **Conditions to the Effective Date.** Notwithstanding any other provision of the Plan or the Confirmation Order, the Effective Date shall not occur unless and until each of the following conditions shall have been satisfied or waived in accordance with section 7.3 of this Plan:

7.2.1 No timely-filed appeal shall have been taken from the Confirmation Order challenging, directly or indirectly, the validity and enforceability of the releases and injunctions described in sections 8.3 and 8.4 of the Plan and/or the limits of required funding as set forth in the Funding Payment Agreement for the release, satisfaction and discharge of all claims in Classes 5 through 19 of the Plan (collectively, the '**Release/Funding Issues**'), or, if such an appeal

regarding any Release/Funding Issue shall have been filed, such appeal shall have been denied or dismissed and such releases and injunctions and such limits of required funding shall have been affirmed in all respects pursuant to a Final Order;

7.2.2 The Debtor shall have received from the Internal Revenue Service (“**IRS**”) a ruling reasonably satisfactory to Dow Corning and its tax counsel regarding the following matters: (i) the Depository Trust will be treated as a qualified settlement fund within the meaning of section 468B of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder; (ii) the payments to be made with respect to Claims Allowed through the procedures provided therefor in the Litigation Facility will be fully deductible by the Reorganized Debtor at the time of (or before) each such disbursement; and (iii) such other matters as tax counsel for Dow Corning may reasonably require; and

7.2.3 The Indenture shall have been qualified under the Trust Indenture Act of 1939, as amended, by the Securities and Exchange Commission.

7.3 **Waiver of Conditions.** Any condition set forth in sections 7.1 or 7.2 of this Plan may be waived by the Proponents and the Shareholders.

7.4 **Escrow of Payments to Settlement Facility Pending Appeal.** Notwithstanding section 7.2.1 of the Plan, in the event an appeal is filed from the Confirmation Order that does not raise a Release/Funding Issue and does not result in a stay of the effect of the Confirmation Order, Reorganized DCC shall consummate the Plan.

If the appeal does raise a Release/Funding Issue: (a) DCC and the Tort Committee will cooperate in seeking an expedited appeal thereof, and (b) if there is no stay of the Confirmation Order pending

appeal, DCC shall timely pay to the Settlement Facility that portion of the initial cash payment of \$985 million and such other subsequently available funds which Reorganized DCC is obligated to pay under the terms of the Funding Payment Agreement.

The funds paid to the Settlement Facility shall be held in escrow pending the outcome of the appeal, with any interest accruing thereon to be held as part of the fund. During the pendency of the appeal, the Settlement Facility shall commence those operations necessary and appropriate to begin processing Claims promptly after the Effective Date. Funds may be withdrawn for payment of the administrative expenses of the Settlement Facility and/or the Litigation Facility that are incurred during the pendency of the appeal. If the appeal does not result in a reversal of the Confirmation Order, the remaining escrowed funds, including the accrued interest thereon, shall, upon termination of the appeal, be disbursed in accordance with the Plan. If the appeal results in the reversal of the Confirmation Order, the remaining escrowed funds, including the accrued interest thereon, shall be returned to DCC.

ARTICLE EIGHT

EFFECTS OF PLAN CONFIRMATION

8.1 **Discharge.** Except as otherwise expressly provided in this Plan or in the Confirmation Order, on the Effective Date the Debtor shall be discharged from and its liability shall be extinguished completely in respect of any Claim and Debt, whether reduced to judgment or not, liquidated or unliquidated, contingent or noncontingent, asserted or unasserted, fixed or not, matured or unmatured, disputed or undisputed, legal or equitable, known or unknown, that arose from any agreement of the Debtor entered into or obligation of the Debtor incurred before the Confirmation Date, or from any conduct of the Debtor prior to the Confirmation Date, or that otherwise arose before the Confirmation Date,

including, without limitation, all interest, if any, on any such Claims and Debts, whether such interest accrued before or after the date of commencement of the Case, and including, without limitation, all Claims and Debts based upon or arising out of Breast Implant Claims, Other Products Claims, Raw Material Breast Implant Claims, Miscellaneous Raw Material Claims, LTCI Claims, and from any liability of the kind specified in sections 502(g), 502(h), and 502(i) of the Bankruptcy Code, whether or not a proof of claim is filed or is deemed filed under section 501 of the Bankruptcy Code, such Claim is Allowed under section 502 of the Bankruptcy Code, or the holder of such Claim has accepted this Plan.

Without limiting the generality or effect of the foregoing, on the Effective Date, all Existing Debt Instruments shall be deemed canceled, extinguished, retired and of no further force and effect, in all events without any further action on the part of the Debtor or any other entity. The holders of Existing Debt Instruments shall thereafter have no rights arising from or relating to such Existing Debt Instruments, except the rights provided pursuant to this Plan; *provided, however*, that no distribution under this Plan shall be made to or on behalf of the holder of any Allowed Claim evidenced by such Existing Debt Instruments unless or until such Existing Debt Instruments are surrendered to the Reorganized Debtor pursuant to, or the holder has otherwise complied with, section 10.6 of this Plan.

8.2 **Vesting.** Except as otherwise expressly provided in this Plan or in the Confirmation Order, on the Effective Date the Reorganized Debtor shall be vested with all of the property of the estate free and clear of all Claims, Liens, encumbrances, charges and other interests of Creditors and Shareholders, and shall thereafter hold, use, dispose or otherwise deal with such property and operate its business free of any restrictions imposed by the Bankruptcy Code or by the Court. All Debtor Actions and, except to the extent the same are transferred to the Settlement Facility or the Litigation Facility, all Insurance Debtor

Actions are hereby preserved for the benefit of the Reorganized Debtor, the proceeds of which shall be used, as necessary for funding obligations to either the Settlement Facility or the Litigation Facility, except as otherwise provided in settlements approved by prior order of the Court or approved by the Court in connection with confirmation of this Plan. Prosecution and settlement of the Debtor Actions and the retained interest in any Insurance Debtor Actions shall be the exclusive responsibility of the Reorganized Debtor. The Reorganized Debtor shall have sole and absolute discretion over whether to prosecute or settle such causes of action.

8.3 **Release.** Except as otherwise expressly provided in this Plan and in this section 8.3, in consideration of (a) the promises and obligations of the Debtor-Affiliated Parties under the Plan, including the establishment and funding of the Settlement Facility, the Litigation Facility, the Quebec Class Action Fund, the Ontario Class Action Fund, the B.C. Class Action Fund and the Australia Breast Implant Optional Settlement Fund, (b) the undertakings of the Shareholders pursuant to section 6.16 of the Plan, (c) the undertakings of the Settling Insurers pursuant to their respective settlements with the Debtor, and (d) the release of Claims against the Debtor-Affiliated Parties by the Settling Physicians and Settling Health Care Providers, on the Effective Date (i) all Persons who have held, hold, or may hold Products Liability Claims, whether known or unknown, shall be deemed to have forever waived and released all such rights or Claims, whether based upon tort or contract or otherwise, that they heretofore, now or hereafter possess or may possess against the Debtor-Affiliated Parties, the Shareholder-Affiliated Parties, the Settling Insurers, and, to the extent released by the Debtor under the settlement agreements with such Settling Insurers, the respective predecessors, successors, officials, shareholders, subsidiaries, divisions, affiliates, representatives, attorneys, merged or acquired companies or operations or assigns of the Settling Insurers,

and (ii) all Persons who hold, may hold or may have held Personal Injury Claims shall be deemed to have forever waived and released all such rights or Claims, whether based upon tort or contract or otherwise, that they heretofore, now or hereafter possess or may possess against the Settling Physicians (except for Malpractice Claims) or the Settling Health Care Providers (except for Malpractice Claims) (all such parties released by this section 8.3, including, without limitation, the Debtor-Affiliated Parties, the Shareholder-Affiliated Parties, the Settling Insurers and, to the extent released by the Debtor under the settlement agreements with such Settling Insurers, the respective predecessors, successors, officials, shareholders, subsidiaries, divisions, affiliates, representatives, attorneys, merged or acquired companies or operations or assigns of the Settling Insurers, and, except for Malpractice Claims, the Settling Physicians and Settling Health Care Providers, being collectively called the “**Released Parties**”), in each case based upon or in any manner arising from or related to (v) the raw materials and/or finished products manufactured or distributed by the Debtor, including a Breast Implant, an Other Product, an LTCI Product, or the raw materials comprising part of a Non-Dow Corning Breast Implant or a Non-Dow Corning Implant, (w) the research and development, manufacture, distribution, advertisement, sale, provision, recommendation, insertion, use or removal of any raw materials and/or finished products manufactured or distributed by the Debtor, including a Breast Implant, an Other Product, an LTCI Product or the raw materials comprising part of such products or a Non-Dow Corning Breast Implant or a Non-Dow Corning Implant, (x) the processing, adjustment, settlement, payment, defense, negotiation or handling of any Claims, demands, suits, causes of action or proceedings, based upon or relating in any way to any raw materials and/or finished products manufactured or distributed by the Debtor, including a Breast Implant, an Other Product or an LTCI Product, or the raw materials comprising part of a Non-Dow Corning Breast

Implant or a Non-Dow Corning Implant, (y) the failure to warn, disclose or provide information concerning, the alleged fraud or misrepresentation regarding, or the failure to take remedial action with respect to, any raw materials and/or finished products manufactured or distributed by the Debtor, including a Breast Implant, an Other Product or an LTCI Product, or the raw materials comprising part of a Non-Dow Corning Breast Implant or a Non-Dow Corning Implant, or (z) contingent Claims against any of the Released Parties for liability, if any, otherwise arising from the future payment by the Debtor, the Reorganized Debtor or either the Settlement Facility and the Litigation Facility in potential derogation of the lien rights or rights of subrogation held with respect to the Claims of any direct Claimant against any of the Released Parties, including, without limitation, (a) those for death or personal injuries, including emotional distress, (b) those of any Person against whom any Claim, demand, proceeding, suit or cause of action based upon or in any manner arising from or relating to any of the matters enumerated or described in (v), (w), (x), (y) and/or (z) above has been or may be asserted (including, without limitation, rights of indemnity, whether contractual or otherwise, contribution Claims and subrogation Claims), (c) those for damages, including punitive damages, (d) those for attorneys' fees and other expenses, fees or costs, (e) those for any possible economic loss or loss of consortium, (f) those for damages to reputation, and (g) those for any equitable remedy.

The parties who are Released Parties in this section 8.3 shall be deemed released by the Quebec Class Action Settlement Claimants, the Ontario Class Action Settlement Claimants, the B.C. Class Action Settlement Claimants and the Australia Breast Implant Settlement Claimants, and shall be entitled to receive executed releases pursuant to, respectively, the Quebec Breast Implant Settlement Agreement, the Ontario

Breast Implant Settlement Agreement, the B.C. Class Action Settlement Agreement and the Australia Breast Implant Settlement Option.

Except as otherwise expressly provided in this Plan and the Plan Documents, the release under this section 8.3 shall further operate, as between all Released Parties, as a mutual release of all Products Liability Claims, including, but not limited to, all Claims between any Shareholder-Affiliated Parties. Further, save and except for the preservation of all rights in insurance arrangements described below, Dow Corning shall be deemed to have released any Claims for contribution or indemnity it may have against any of the Released Parties. However, the release under this section 8.3 will not affect contribution, indemnity, subrogation, or other claims of non-settling Insurance Companies against Settling Insurers.

This section 8.3 shall not operate as a release or waiver of any Malpractice Claim held against a Settling Physician or a Settling Health Care Provider by a Settling Personal Injury Claimant. Malpractice Claims, if any, asserted by Settling Personal Injury Claimants shall be resolved in the courts where actions based on such Claims have been (or may be) filed. Moreover, this section 8.3 shall not operate as a release or waiver in favor of the Settling Physicians and the Settling Health Care Providers of the rights or Claims of Non-Settling Personal Injury Claimants. Such rights and Claims shall be preserved, subject to section 8.5 of this Plan. This section 8.3 shall not operate as a release or waiver of those Claims preserved under the Domestic Health Insurer Settlement Agreement.

Further, this section 8.3 and the injunction contained in section 8.4 are not intended to release, impair or otherwise affect the terms of any Coverage-in-Place Policies or other undertakings of any of the Settling Insurers under their respective settlement agreements with the Debtor, or to release, impair or otherwise affect the rights of the Shareholder-Affiliated Parties in respect of any policy of insurance, except

as expressly set forth (a) in the orders entered by the Court with respect to the settlement agreement between the Debtor and a Settling Insurer or (b) in the settlement described in section 6.2 of this Plan.

The Representatives of the Debtor, the Joint Ventures and the Subsidiaries shall be deemed indemnified and held harmless by the Reorganized Debtor with respect to the Claims hereby released to the fullest extent available under applicable statute and the bylaws of the Reorganized Debtor.

The foregoing release provisions are an integral part of this Plan and are essential to its implementation.

8.4 **Permanent Injunction Against Prosecution of Released Claims.** Except as otherwise expressly provided in this Plan, for the consideration described in section 8.3 above, on the Effective Date all Persons who have held, hold, or may hold Released Claims, whether known or unknown, and their respective agents, attorneys, and all others acting for or on their behalf, shall be permanently enjoined on and after the Effective Date from (a) commencing or continuing in any manner, any action or any other proceeding of any kind with respect to any Released Claim against the Debtor-Affiliated Parties, the Shareholder-Affiliated Parties, the Settlement Facility, the Litigation Facility, the Settling Physicians, the Settling Health Care Providers, the Settling Insurers, and, to the extent released by the Debtor under the settlement agreements with such Settling Insurers, the respective predecessors, successors, officials, shareholders subsidiaries, divisions, affiliates, representatives, attorneys, merged or acquired companies or operations or assigns of the Settling Insurers, or any Representative of each such party (collectively, the “**Parties**”) or the property of the Parties, (b) seeking the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree, or order against the Parties or the property of the Parties, with respect to any Released Claim, (c) creating, perfecting, or enforcing any encumbrance

of any kind against the Parties or the property of the Parties with respect to any Released Claim, (d) asserting any setoff, right of subrogation, or recoupment of any kind against any obligation due to the Parties with respect to any Released Claim, and (e) taking any act, in any manner and in any place whatsoever, that does not conform to or comply with provisions of this Plan, or the Settlement Facility Agreement and the Litigation Facility Agreement. Notwithstanding this section 8.4, each Non-Settling Personal Injury Claimant shall be entitled to continue or commence an action against the Litigation Facility in which the Non-Settling Personal Injury Claimant shall be entitled to a jury trial for the sole purpose of obtaining a judgment as permitted by the Litigation Facility Agreement, thereby liquidating such Non-Settling Personal Injury Claimant's Claim so that it may be paid with other Allowed Personal Injury Claims in the ordinary course of the operations of the Litigation Facility, consistent with the provisions of the Litigation Facility Agreement. The holder of any such judgment shall be enjoined from executing against the Litigation Facility or its assets.

In the event any Person takes any action that is prohibited by, or is otherwise inconsistent with the provisions of sections 8.3 or 8.4 of this Plan, then, upon notice to the Court by an affected Released Party, the action or proceeding in which the Claim of such Person is asserted shall automatically be transferred to the Court (or, as applicable, the District Court) for enforcement of the provisions of sections 8.3 and 8.4 of this Plan.

The foregoing injunctive provisions are an integral part of this Plan and are essential to its implementation.

8.5 **Channeling Injunction for Certain Claims.** Claims, if any, asserted by Non-Settling Personal Injury Claimants against the Settling Physicians and the Settling Health Care Providers (other than

Malpractice Claims) shall be subject to the channeling injunction provisions of this section 8.5 in the event that jurisdiction over such Claims is transferred, as Claims “related to” this Case, to the District Court. If such transfer is not effected, the relief provided in this section is not effective as to Claims that are not transferred, and such Claims shall be resolved by the procedures applicable in the courts where actions based on such Claims have been (or may be) filed. In the event that any such Claims against a Settling Physician or Settling Health Care Provider are transferred to the District Court for liquidation, they shall be subject to the following Claims resolution procedures. In addition, subject to the provisions of sections 6.16.5 and 6.16.6 of this Plan, any of the Mahlum Claims and Spitzfaden Claims that are unresolved as of the Effective Date shall be subject to the channeling injunction provisions and the Claims resolution procedures specified in this section 8.5. All Claims transferred pursuant to this section 8.5 are called the **“Assumed Third Party Claims”**.

8.5.1 **Resolution and Trial Procedures.** All Assumed Third Party Claims shall be processed, settled, tried and otherwise resolved in accordance with the Claims resolution procedures (including trial by jury) provided in or contemplated by the Litigation Facility Agreement. To facilitate such resolution, each Assumed Third Party Claim shall be joined and consolidated with the corresponding Claim against the Debtor, if any, in order that the Assumed Third Party Claim and any corresponding Claim against the Litigation Facility as successor to the Debtor will be resolved jointly and concurrently through the procedures contained in the Litigation Facility Agreement.

8.5.2 **Trial Venue.** Nothing contained herein shall limit the power and authority of the District Court to set trial venue for Personal Injury Claims against the Settling Physicians or the

Settling Health Care Providers in the District Court or in the district court in the district in which the Claim arose, in accordance with 28 U.S.C. § 157(b)(5), except that, as contemplated by the Litigation Facility Agreement, an Assumed Third Party Claim will be tried together with any corresponding Claim against the Litigation Facility as successor to the Debtor.

8.5.3 **No Delay in Claim Resolution.** Claim resolution under the Litigation Facility Agreement shall commence following the Effective Date of the Plan in accordance with the terms of the Litigation Facility Agreement and shall not be delayed or postponed pending adjudication of the transfer to the District Court of any Assumed Third Party Claim.

8.5.4 **Injunction.** All Persons who have held, hold or may hold Assumed Third Party Claims, whether known or unknown, and their respective Representatives, shall be permanently enjoined on and after the Effective Date from (a) commencing or continuing in any manner any action or any other proceeding of any kind against any Settling Physician, Settling Health Care Provider, or their property, based on, arising out of, or relating to any Assumed Third Party Claims, except as permitted by this Plan and the Litigation Facility Agreement, and (b) asserting any right or Claim, or taking any other act, in any manner or in any place, against any Settling Physician or Settling Health Care Provider in respect of a Assumed Third Party Claim that does not conform to or comply with this Plan and the Litigation Facility Agreement. The foregoing injunction provisions are an integral part of this Plan and are essential to its implementation.

8.6 **Supplemental Release and Injunction for Certain Settling Insurers.** The release and injunction provided in sections 8.3 and 8.4 shall, with respect to the London Market Insurers and TIG Insurance Company, include, without limitation, the prohibition against the commencement, continuation

and/or enforcement of claims against (a) the London Market Insurers with respect to all Claims arising from or related to the development, manufacture and/or sale of any products by DCC, as well as certain environmental claims, all as described in the Order Authorizing and Approving Compromise and Settlement With the London Market Insurers entered on March 25, 1996, and (b) TIG Insurance Company with respect to pollution claims under the Excess Policy, as defined and released in the Settlement Agreement attached as Exhibit “1” to the Order Authorizing and Approving Compromise and Settlement With TIG Insurance Company and Other Insurers entered on March 25, 1996.

8.7 **Retention of Jurisdiction.** Notwithstanding entry of the Confirmation Order or the occurrence of the Effective Date, the Court and, as applicable, the District Court, will retain exclusive jurisdiction:

8.7.1 to determine any Disputed Claims;

8.7.2 to determine requests for payment of Claims entitled to priority under section 507(a)(1) of the Bankruptcy Code, including compensation of and reimbursement of expenses of parties entitled thereto;

8.7.3 to resolve controversies and disputes regarding interpretation and implementation of this Plan and the Plan Documents;

8.7.4 to resolve all actions involving the Depository Trust in accordance with the Settlement Facility Agreement;

8.7.5 to enter orders in aid of this Plan and the Plan Documents including, without limitation, appropriate orders (which may include contempt or other sanctions) to protect the Debtor, the Reorganized Debtor, the Released Parties, the Parties, the Tort Committee and any

of the Joint Ventures and Subsidiaries from actions prohibited under this Plan and to enforce the terms of the Funding Payment Agreement;

8.7.6 to modify this Plan pursuant to section 11.4 of this Plan;

8.7.7 to determine any and all applications, Claims, adversary proceedings, and contested or litigated matters pending on the Effective Date;

8.7.8 to allow, disallow, estimate, liquidate or determine any Claim, including Claims of a Non-Settling Personal Injury Claimant, against the Debtor and to enter or enforce any order requiring the filing of any such Claim before a particular date;

8.7.9 to determine any and all pending motions for the rejection of executory contracts or leases, and to hear and determine, and if need be to liquidate, any and all Claims arising therefrom;

8.7.10 over actions either to enforce or to challenge the validity and enforceability of the releases and injunctions referred to in sections 8.3 through 8.6 of this Plan;

8.7.11 subject to section 8.5, to hear matters relating to the Assumed Third Party Claims as contemplated by the Litigation Facility Agreement; and

8.7.12 to enter a final decree closing the Case.

Nothing within this section 8.7 shall preclude the Reorganized Debtor from seeking the entry of an order closing the Case, upon motion after notice to the Finance Committee and the Claimants' Advisory Committee, both of which shall be created under the Settlement Facility Agreement. Any order closing the Case shall provide that the Court (i) shall retain jurisdiction to enforce by injunctive relief or otherwise the Confirmation Order, any other orders entered in the Case and the contractual obligations created by the

Plan and the Plan Documents and (ii) shall retain all other jurisdiction and authority granted to it under the Plan and the Plan Documents. Nothing within this section 8.7 shall impair or alter the Reorganized Debtor's power to act without Court authority on and after the Effective Date.

8.8 **Failure of Court to Exercise Jurisdiction.** If the Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising out of the Case, including the matters set forth in this Article Eight, this Article Eight shall not diminish, control, prohibit or limit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such matter.

8.9 **Term of Injunction or Stay.** Unless otherwise provided, all injunctions or stays provided for in the Case pursuant to sections 105 or 362 of the Bankruptcy Code in effect on the Confirmation Date shall remain in full force and effect until the Effective Date. The injunctive provisions of sections 524 and 1141 of the Bankruptcy Code and those contained in the foregoing sections 8.4 through 8.6 are permanent and shall not be affected by this provision.

8.10 **Release of Official Committees and Estate Professionals.** Upon the Effective Date, the Tort Committee, the Commercial Committee, the Physicians Committee, and each of their respective members, representatives and professionals, and all other professionals retained in the Case pursuant to § 327 of the Bankruptcy Code shall be deemed released from all claims and causes of action relating to the bankruptcy estate of Dow Corning or that have been or could be asserted by any party in interest in the Case or any Person acting on behalf of such party in interest.

8.11 **Insurance Settlements Unaffected.** This Plan does not modify the terms of any settlement agreement between the Debtor and any of the Settling Insurers. This provision does not limit

the Debtor's ability to assert that this Plan establishes, liquidates, or creates losses payable or reimbursable under the terms of such agreements. This Plan does not limit the Settling Insurers' ability to contest the Debtor's claims for payment or reimbursement under the terms of such agreements.

ARTICLE NINE

TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

9.1 **Assumed Warranties.** All warranty contracts with respect to the products listed on **Exhibit "B"** hereto shall be assumed by the Reorganized Debtor on the Effective Date.

9.2 **Assumed Collective Bargaining Agreements.** The Debtor's collective bargaining agreements with any union, including those with the United Steelworkers of America, AFL-CIO-CIC, and Local 12934 of the United Steelworkers of America, AFL-CIO-CIC, and all employee benefit plans related to such collective bargaining agreements, and any and all obligations and liabilities thereunder or related thereto shall be deemed assumed by the Reorganized Debtor on the Effective Date.

9.3 **Assumed Employee and Retiree Benefit Plans.** To the extent such agreements or plans have not been previously assumed pursuant to this Court's order dated August 11, 1995, all employee and retiree benefit plans shall be deemed assumed by the Reorganized Debtor on the Effective Date.

9.4 **General; Assumed if Not Rejected.** Subject to the requirements of section 365 of the Bankruptcy Code, all executory contracts (other than pre-Petition Date settlement agreements relating to Personal Injury Claims, which shall be treated as Class 4 Claims herein), or unexpired leases of the Debtor that have not been rejected by order of the Court or are not the subject of a motion to reject pending on

the Confirmation Date shall be deemed assumed by the Reorganized Debtor on the Effective Date. If any party to an executory contract or unexpired lease that is being assumed pursuant to this Article Nine objects to such assumption, the Court may conduct a hearing on such objection on any date that is either mutually agreeable to the parties or fixed by the Court. All payments to cure defaults that may be required under section 365(b)(1) of the Bankruptcy Code shall be made by the Reorganized Debtor. In the event of a dispute regarding the amount of any such payments, or the ability of the Debtor to provide adequate assurance of future performance, the Debtor will make any payments required by section 365(b)(1) after the entry of the Final Order resolving such dispute.

9.5 **Claims for Contract Rejection.** All proofs of claim with respect to Claims arising from the rejection of executory contracts or unexpired leases pursuant to section 9.4 above must be filed with the Court within 30 days after the Effective Date or such Claims shall be barred. If any order providing for the rejection of an executory contract or unexpired lease (other than rejection effected pursuant to section 9.4 above) did not provide a deadline for the filing of Claims arising from such rejection, proofs of claim with respect thereto must be filed within 30 days after the later to occur of (a) the Effective Date or, (b) if the order is entered after the Effective Date, the date of entry of such order, or such Claims shall be barred.

ARTICLE TEN

PROVISIONS RELATING TO PLAN DISTRIBUTIONS

10.1 **Distribution Shall be Made Only to Holders of Allowed Claims.** Except as otherwise provided in this Article Ten, distributions under this Plan shall be made only to the holders of Allowed

Claims or to holders of Assumed Third Party Claims liquidated in the Litigation Facility. Until a Disputed Claim becomes an Allowed Claim, the holder of that Disputed Claim shall not receive the consideration otherwise provided to the Claimants under this Plan. If necessary in determining the amount of a Pro Rata distribution due to the holders of Allowed Claims in any class other than Classes 5 through 15 and Class 17 (with respect to which classes any deferment or reduction in payment shall be governed by the Funding Payment Agreement and, as applicable, the Settlement Facility Agreement or the Litigation Facility Agreement), the Reorganized Debtor shall make the Pro Rata calculation as if all Disputed Claims were Allowed Claims in the full amount claimed or in the Estimated Amount. When a Disputed Claim in any class other than Classes 5 through 19 becomes an Allowed Claim, the Reorganized Debtor shall make distributions with respect to such Allowed Claim, together with any Allowable interest accrued on the amount of each such distribution to the date thereof, net of any setoff contemplated by the order, if any, allowing such Claim and/or any required withholding of applicable federal and state taxes. If the Court disallows or allows in a reduced amount any Disputed Unsecured Claim, any cash and accrued interest thereon otherwise distributable with respect to the disallowed Claim (or the disallowed portion thereof) will become property of the Reorganized Debtor and the affected Claimant shall have no further rights against the Debtor or the Reorganized Debtor with respect to such disallowed Claim or portion of such disallowed Claim.

10.2 **Distributions to Holders of Allowed Bank Loan Claims.** Distributions provided for in this Plan on account of Allowed Bank Loan Claims shall be made either (a) if such agency relationship exists, to the agent bank for holders of Bank Loan Claims under the applicable credit agreement for further distribution to such holders, or (b) if no agent bank exists, directly to the holders of Bank Loan Claims.

Any such distribution made by an agent bank will be made pursuant to the applicable credit agreement. Notwithstanding anything to the contrary contained in this Plan, the delivery by or on behalf of the Reorganized Debtor to an agent bank of the consideration to be distributed under this Plan to holders of Allowed Bank Loan Claims arising pursuant to the agreement under which such agent bank serves in such capacity shall fully satisfy and discharge the Reorganized Debtor's obligations to distribute such consideration to such holders. Senior Notes delivered to an agent bank pursuant to this section 10.2 will be issued in such denominations and registered in such names as may be requested by such agent bank in a writing delivered to the Debtor on the Effective Date.

10.3 **Distributions to Holders of Allowed Public Debt Claims.** Distributions provided for in this Plan on account of Allowed Public Debt Claims shall be made to the indenture trustee for holders of Public Debt Claims for further distribution to such holders. Any such distribution made by an indenture trustee will be made pursuant to the applicable indenture. Notwithstanding anything to the contrary contained in this Plan, the delivery by or on behalf of the Reorganized Debtor to an indenture trustee of the consideration to be distributed under this Plan to holders of Allowed Public Debt Claims arising pursuant to the indenture under which such indenture trustee serves in such capacity shall fully satisfy and discharge the Reorganized Debtor's obligations to distribute such consideration to such holders. Senior Notes delivered to an indenture trustee pursuant to this section 10.3 will be issued (subject to section 10.7) in such denominations and registered in such names as may be requested by each indenture trustee in a writing delivered to the Debtor at least two business days prior to the Effective Date.

10.4 **Distributions to Holders of Other Allowed Claims.** The Reorganized Debtor, or such third-party disbursing agents as the Reorganized Debtor may employ in its sole discretion, will make all

distributions of cash, Senior Notes and Subordinated Notes required under this Plan, except for distributions made by agent banks or indenture trustees pursuant to sections 10.2 and 10.3, respectively. The Reorganized Debtor and any such third-party disbursing agent will serve as disbursing agents under this Plan without bond, and the Reorganized Debtor and any such third-party disbursing agent may employ or contract with other entities to assist in or make the distributions required by this Plan.

10.5 **Distribution Record Date; Suspension of Transfer of Claims.** As of the Distribution Record Date, the transfer registers for all Existing Debt Instruments maintained by the Debtor or its agents (including agent banks and indenture trustees) shall be closed. The Reorganized Debtor and any third-party disbursing agents (including agent banks and indenture trustees) shall have no obligation to recognize the transfer of any Existing Debt Instruments occurring after the Distribution Record Date, and shall be entitled to recognize and deal only with holders of record of Existing Debt Instruments as of the Distribution Record Date.

10.6 **Surrender of Existing Debt Instruments.** As a condition precedent to receiving any distribution pursuant to the Plan on account of an Allowed Bank Loan Claim or Allowed Public Debt Claim evidenced by an Existing Debt Instrument, the holder of such Claim shall surrender the applicable Existing Debt Instrument to the Reorganized Debtor pursuant to a letter of transmittal furnished by the Reorganized Debtor (either directly or through an agent bank or an indenture trustee). Such letter of transmittal shall be accompanied by instructions for the proper completion, execution and delivery thereof, and shall specify that delivery of such Existing Debt Instrument will be effected, and risk of loss and title thereto will pass, only upon the proper delivery of such Existing Debt Instrument with the letter of transmittal in accordance with such instructions. Such letter of transmittal shall also include, among other provisions, customary

provisions with respect to the authority of the holder of the applicable Existing Debt Instrument to act and the authenticity of any signatures required on the letter of transmittal. All surrendered Existing Debt Instruments shall be marked as canceled and delivered to the Reorganized Debtor.

In addition to any requirements under the applicable credit agreement or indenture, any holder of an Allowed Claim evidenced by an Existing Debt Instrument that has been lost, stolen, mutilated or destroyed shall, in lieu of surrendering such Existing Debt Instrument, deliver to the Debtor or the Reorganized Debtor (a) evidence satisfactory to the Debtor or the Reorganized Debtor of the loss, theft, mutilation or destruction and (b) such security or indemnity as may be required by the Debtor or the Reorganized Debtor to hold it and its agents harmless from any damages, liabilities or costs incurred in treating such individual as a holder of such Existing Debt Instrument. Upon compliance with this paragraph by a holder of a Claim evidenced by an Existing Debt Instrument, such holder shall, for all purposes of this Plan, be deemed to have surrendered such Existing Debt Instrument in accordance with the provisions of this section 10.6.

Any holder of an Existing Debt Instrument that fails to surrender or to be deemed to have surrendered such Existing Debt Instrument within one year after the Effective Date shall have its claim for a distribution pursuant to the Plan on account of the Claim evidenced thereby discharged and shall be forever barred from asserting any such claim against the Reorganized Debtor or its property.

10.7 **Fractional Amounts.** The calculation of Senior Notes to be distributed to the holders of Allowed Unsecured Claims may mathematically entitle the holder of such Claim to a fractional interest in such Senior Notes. Notwithstanding such entitlement, all Senior Notes issued by the Reorganized Debtor to holders of Allowed Unsecured Claims pursuant to the Plan will be issued and distributed only in

denominations of \$1,000. To the extent any holder would be entitled to a fractional denomination of Senior Notes but for this provision, the denomination of Senior Notes to be issued to such holder shall be rounded downward to eliminate such fractional amount and the Reorganized Debtor shall distribute to such holder, in lieu of such fractional amount, cash in an amount equal to such fractional amount.

ARTICLE ELEVEN

MISCELLANEOUS PROVISIONS

11.1 **Objection to Claims.** Objections to Claims as to which no objection is pending as of the Confirmation Date may be filed solely by the Debtor or the Reorganized Debtor.

11.2 **Survival of Certain Corporate Indemnification Obligations.** Any obligations, rights or agreements of the Debtor to indemnify its past or present officers, directors, and employees pursuant to its Articles of Incorporation, bylaws, board of directors resolutions, and applicable statutes in respect of any Claims, demands, suits, causes of actions or proceedings based upon any act or omission related to service with or for or on behalf of the Debtor at any time prior to the Effective Date shall be deemed assumed by the Reorganized Debtor on the Effective Date and will not be discharged or impaired by confirmation or consummation of this Plan, but will survive unaffected by this Plan and will be performed and honored by the Reorganized Debtor.

11.3 **Procedures for Distributions; Unclaimed Distributions of Certain Claimants (Other Than Claimants in Classes 5 Through 19).** Except as provided in section 11.5 of this Plan or otherwise provided for in this Plan, the Plan Documents, or a Final Order of the Court, distributions to be made under this Plan to Claimants holding Allowed Claims in any class other than Classes 5 through 19 shall be made by the Reorganized Debtor by first class, United States mail, postage prepaid to (a) the latest mailing

address set forth in a Proof of Claim filed with the Court by or on behalf of such Claimant or (b) if no such Proof of Claim has been timely filed, the mailing address set forth in the Schedules filed by the Debtor in the Case, as amended. The Reorganized Debtor shall not be required to make any other effort to locate or ascertain the address of the holder of any Claim. The Debtor will seek the inclusion in the Confirmation Order of a provision requiring any third-party paying agent charged with making distributions to holders of the Debtor's public debt instruments (including, if applicable, the indenture trustees therefor) to advise the Reorganized Debtor from time to time as to the identity of the persons, including the holders of Public Debt Claims, who are entitled to unclaimed distributions with respect to their Claims. Based upon such advice, the Reorganized Debtor will file with the Bankruptcy Court, on the second, third and fourth anniversaries of the Effective Date, listings of persons who are entitled to unclaimed distributions in respect thereof. Subject to the provisions of section 10.6 hereof, if such Person comes forward within five years of the Effective Date, such distribution, together with any interest attributable to such amount, will be paid or distributed to such Person. Subject to the provisions of section 10.6 hereof, if such Person fails to come forward and claim the distribution within five years of the Effective Date, any such distribution and any accrued interest thereon will become the property of the Reorganized Debtor and the affected Claimant shall have no further rights against the Debtor or the Reorganized Debtor.

11.4 **Modification of Plan.** The Proponents reserve the right, in accordance with the Bankruptcy Code, to jointly amend, modify or withdraw this Plan prior to the entry of the Confirmation Order. After the entry of the Confirmation Order, the Proponents may, upon order of the Court, jointly amend or modify this Plan in accordance with section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry

out the purpose and intent of this Plan. If Dow Corning proposes to amend or modify the Plan in any respect that does not adversely affect Claimants in Classes 5 through 10.2, the Tort Committee will not unreasonably withhold its consent.

11.5 **Payment Dates.** Unless otherwise agreed by the Reorganized Debtor and the recipient of a distribution under the Plan, whenever any payment to be made under this Plan is due on a day other than a Business Day, such payment will instead be made on the next Business Day, with interest to the extent expressly contemplated by the Plan or any applicable agreement, indenture or instrument. Unless otherwise agreed by the Reorganized Debtor and the recipient of a distribution under the Plan, (a) cash payments in excess of \$250,000 to be made by the Debtor pursuant to the Plan shall be made by wire transfer, provided the payee shall have delivered specific wire transfer instructions to the Reorganized Debtor not less than five Business Days prior to the date on which such payment is to be made, and (b) all other cash payments to be made by the Debtor pursuant to this Plan shall be made, at the option of the Reorganized Debtor, by a check or wire transfer.

11.6 **Severability.** In the event of a successful collateral attack on any provision of the Plan (i.e., an attack other than through a direct appeal of the Confirmation Order), the remaining provisions of the Plan shall remain binding on all other parties.

11.7 **Tax Identification Numbers.** Prior to receiving any distribution under this Plan, all Claimants shall provide the Reorganized Debtor or, as applicable, the Settlement Facility or Litigation Facility with written notification or confirmation of their respective federal tax identification numbers or social security numbers or, with respect to Foreign Claimants, a certificate of foreign status.

11.8 **No Professional Fees or Expenses.** No professional fees or expenses will be paid by the Debtor or the Reorganized Debtor with respect to any Claim except as specified in this Plan or as Allowed by Final Order of the Court.

11.9 **Post-Confirmation Professional Fees and Expenses.** All professional fees and expenses incurred by the Debtor or the Reorganized Debtor after the Effective Date shall be paid in the ordinary course of business of the Debtor or the Reorganized Debtor. The Court shall retain jurisdiction to resolve any dispute with respect to the payment of any such fees or expenses upon application by the affected professional.

11.10 **Headings.** The headings of the articles, paragraphs, and sections of this Plan are inserted for convenience only and shall not affect the interpretation hereof.

11.11 **Time.** In computing any period of time prescribed or allowed by this Plan, the day of the act, event, or default from which a designated period of time begins to run shall not be included. The last day of the period so computed shall be included so long as it is a Business Day or, when the act to be done is the filing of a paper in Court, so long as it is not a day on which weather or other conditions have made the Clerk's office inaccessible, in which event the period runs until the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than 11 days, any day that is not a Business Day shall be excluded in the computation.

11.12 **Notices.** All notices or requests in connection with this Plan shall be made in writing and will be deemed to have been given when received by mail addressed to:

Dow Corning Corporation
2200 West Salzburg Road
Midland, Michigan 48611
Attention: James R. Jenkins, Esq.,
General Counsel

Tort Claimants Committee
Doffermyre, Shields, Canfield & Knowles
1355 Peachtree Street, Suite 1600
Atlanta, Georgia 30309
Attention: Ralph Knowles, Esq.

With a copy to:

Sheinfeld, Maley & Kay, P.C.
1700 Pacific Avenue, Suite 4400
Dallas, Texas 75201-4618
Attention: Barbara J. Houser, Esq.

With a copy to:

Kramer Levin Naftalis & Frankel LLP
919 Third Avenue
New York, New York 10022-3850
Attention: Kenneth H. Eckstein, Esq.

All notices and requests to Persons holding any Claim or Interest shall be sent to them at their last known address or to the last known address of their attorney of record. The Debtor and any such holder of a Claim or Interest may designate in writing any other address for purposes of this section 11.12, which designation will be effective upon actual receipt by the Debtor or the Reorganized Debtor, or by the holder of a Claim or Interest, as applicable.

11.13 **Committees.** The duties of the Official Committees will terminate on the Effective Date except with respect to any appeal of an order in the Case, fee applications, and any matters related to any proposed post-confirmation modification of this Plan.

11.14 **Successors and Assigns.** The rights, benefits and obligations of any Person named or referred to in this Plan will be binding upon, and will inure to the benefit of, the heir, executor, administrator, successor or assign of such Person.

DATED: February 4, 1999.

DOW CORNING CORPORATION

By: _____
Gary E. Anderson
President

SHEINFELD, MALEY & KAY, P.C.

By: _____
Barbara J. Houser

1700 Pacific Avenue, Suite 4400
Dallas, Texas 75201-4618
Telephone: (214) 953-0700
Facsimile: (214) 953-1189

**ATTORNEYS FOR DOW CORNING
CORPORATION**

**OFFICIAL COMMITTEE OF TORT
CLAIMANTS**

By: _____

**KRAMER LEVIN NAFTALIS &
FRANKEL LLP**

By: _____
Kenneth H. Eckstein

919 Third Avenue
New York, New York 10022-3850
Telephone: (212) 715-9100
Facsimile: (212) 715-8000

**ATTORNEYS FOR OFFICIAL
COMMITTEE OF TORT CLAIMANTS**

EXHIBIT “A”
(to Amended Joint Plan of Reorganization):

SETTLING INSURERS
(Dow Corning Corporation)

EXHIBIT "A"

**SETTLING INSURERS
(Dow Corning Corporation)**

A.C.E. Insurance Company

Allstate Insurance Company, successor-in-interest to Northbrook Excess and Surplus Insurance Company formerly known as Northbrook Insurance Company (collectively, "**Allstate**")

Algemene Verzekering Maatschappij Diligentia N.V. Te Amsterdam

AIU Insurance Company, American Home Assurance Company, Birmingham Fire Insurance Company of the State of Pennsylvania, Lexington Insurance Company and National Union Fire Insurance Company of Pittsburgh, PA (collectively, the "**AIG Member Companies**")

Allianz Verischerungs, A.G.

American Centennial Insurance Company

American Empire Surplus Lines Insurance Company (as managing agent for Transport Indemnity Company)

American Guarantee and Liability Insurance Company

American Re-Insurance Company

Arab Insurance Group (BSC)

Brittany Insurance Company Limited

Centennial Insurance Company

Certain insurance companies doing business in the European Insurance Market who are party to that Settlement Agreement Between Dow Corning Corporation and Certain European Market Insurers approved by order of the Court entered on March 25, 1996

Employers Mutual Casualty Company

European Reinsurance Company of Zurich (formerly known as European General Reinsurance Company)

Employers Insurance of Wausau, a Mutual Company

Federal Insurance Company

Haftpflichtverband Der Deutschen Industrie

Hartford Accident and Indemnity Company, Hartford Fire Insurance Company, Nutmeg Insurance Company, First State Insurance Company, First State Underwriters Agency of New England Reinsurance Corp., Twin City Fire Insurance Company and Excess Insurance Company (collectively, the “**Hartford Companies**”)

Insurance Company of North America, CIGNA Specialty Insurance Company, f/k/a California Union Insurance Company, CIGNA Property and Casualty Insurance Company, f/k/a Aetna Insurance Company, Pacific Employers Insurance Company, St. Paul Mercury Insurance Company, as a member company of AFIA, and Cravens, Dargan & Company, Pacific Coast, as managing general agents for Central National Insurance Company of Omaha

Lloyd’s, London and certain London Market Insurance Companies (collectively, the “**London Market Insurers**”)

Ludgate Insurance Company, Ltd.

National Casualty Company

Nationale-Nederlanden Schadeverzekering Maatschappij N.V.

The North River Insurance Company, United States Fire Insurance Company, and International Surplus Lines Insurance Company (collectively, the “**North River Companies**”)

Prudential Reinsurance Company and Gibraltar Casualty Company

Republic Insurance Company

Royale Belge I.R.S.AD’ Assurances

Royal Indemnity Company

Seguros Comercial America, S.A. de C.V. (formerly known as Seguros LaComercial, S.A.)

Stonewall Insurance Company

Swiss Re-Insurance Company of Zurich

TIG Insurance Company, individually and as successor in interest to American Surety Company, the Transamerica Insurance Company and the Transamerica Premier Insurance Company (collectively, “**TIG**”)

Travelers Casualty & Surety Company (formerly known as The Aetna Casualty & Surety Company)

X.L. Insurance Company, Ltd.

Zurich Insurance Company, Zurich International Ltd. (collectively, “**Zurich**”)

EXHIBIT “B”

(to Amended Joint Plan of Reorganization):

**ASSUMED WARRANTIES S
CONSTRUCTION PRODUCTS
(Dow Corning Corporation)**

EXHIBIT “B”

ASSUMED WARRANTIES S CONSTRUCTION PRODUCTS (Dow Corning Corporation)

AllGuard™ Concrete/Masonry Sealer
AllGuard™ Elastomeric Waterproof Coating
AllGuard™ Primer
Dow Corning® FC Parking Structure Sealant
Dow Corning® NS Parking Structure Sealant
Dow Corning® SL Parking Structure Sealant
Dow Corning® 123 Silicone Seal
Dow Corning® 399 Silicone Vinyl Window Sealant
Dow Corning® 499 Silicone Sash Sealant
Dow Corning® 756 Silicone Building SealantSHP
Dow Corning® 786 Mildew Resistant Silicone Sealant
Dow Corning® 790 Silicone Building Sealant
Dow Corning® 791 Silicone Perimeter Sealant
Dow Corning® 795 Silicone Building Sealant
Dow Corning® 799 Silicone Glass & Metal Building Sealant
Dow Corning® 888 Silicone Joint Sealant
Dow Corning® 888-SL Self-leveling Silicone Joint Sealant
Dow Corning® 890-SL Self-leveling Silicone Joint Sealant
Dow Corning® 899 Silicone Glazing Sealant
Dow Corning® 902 RCS Joint Sealant
Dow Corning® 902 RCS Primer
Dow Corning® 980 Silicone Insulating Glass Sealant
Dow Corning® 982 Silicone Insulating Glass Sealant
Dow Corning® 983 Silicone Glazing & Curtainwall Adhesive/Sealant
Dow Corning® 984 Silicone Insulating Glass Sealant
Dow Corning® 986 Silicone Insulating Glass Sealant
Dow Corning® 995 Silicone Structural Adhesive
Dow Corning® 999A Silicone Building & Glazing Sealant
Dow Corning® 1200 Prime Coat
Dow Corning® 1205 Prime Coat
Dow Corning® 1593 Cleaner/Primer
Dow Corning® 3-0117 Silicone Insulating Glass Sealant
Dow Corning® 3-2306 Silicone Based Elastomer
Dow Corning® 3-5000 Silicone Roof Coating
Dow Corning® 3-7392 Silicone Window & Door Sealant
Trade Mate® Silicone Glazing Sealant
Trade Mate® HVAC/R Sealant
Trade Mate® Paintable Glazing Sealant
Trade Mate® Tile & Ceramic Sealant
Trade Mate® Shower Enclosure Sealant
Trade Mate® Professional Plumber’s Sealant
Trade Mate® Plastic, Metal & Masonry Sealant
Trade Mate® Silicone Sealant/Adhesive
Trade Mate® Glass Block Sealant

EXHIBIT “C”

(to Amended Joint Plan of Reorganization):

CALCULATION OF CLASS 4 COMMERCIAL CLAIMS

EXHIBIT "C"

CLASS 4 CLAIM SUMMARY

	Principal and Interest on Petition Date	Interest Accrual at 6.28% (through 6/30/99)	Total Principal and Interest (6/30/99)
Short-Term Loans/Revolver			
Revolver-BofA	\$100.8	\$28.9	\$129.7
Revolver-BofA	50.1	14.3	64.4
Revolver-BofA	110.6	31.7	142.3
Revolver-BofA	115.6	33.1	148.7
Loans and Public Debt Claims			
1995 Medium Term Notes	\$5.0	\$1.4	\$6.5
1996 Medium Term Notes	10.0	2.9	12.9
1998 Medium Term Notes	10.0	2.9	12.9
2001 Medium Term Notes	9.5	2.7	12.3
9.375% Debentures (due 2008)	77.0	22.0	99.0
8.15% Debentures (due 2029)	50.3	14.4	64.7
Nippon Life (3.0B Yen-payable in Yen)	23.0	6.6	29.6
Credit Lyonnais	25.4	7.2	32.5
First National Bank of Chicago	7.2	2.0	9.2
Bank of New York	20.2	5.7	25.9
Comerica	10.0	2.9	12.9
Bank of Tokyo Term	20.3	5.7	26.0

	Principal and Interest on Petition Date	Interest Accrual at 6.28% (through 6/30/99)	Total Principal and Interest (6/30/99)
Other Debt			
Trade Payables	61.6	17.6	79.1
Forward Contracts	24.3	6.9	31.2
Swaps	47.9	13.7	61.6
Pre-Petition Personal Injury Settlements	31.3	8.9	40.2
Miscellaneous Claims	200.0	57.2	257.2
Total	\$1,010.1	\$288.8	\$1,298.9

EXHIBIT “D”

(to Amended Joint Plan of Reorganization):

SUMMARY OF TERMS OF SENIOR NOTES

EXHIBIT “D”

SUMMARY OF TERMS OF SENIOR NOTES

Issuer	Dow Corning Corporation (“Dow Corning” or the “Company”)
Securities Offered	Senior Unsecured Notes (the “Senior Notes”)
Minimum Denomination	\$1000 (Fractional interests shall be paid in cash at the Effective Date.)
Maturity	Ten years from the Effective Date (as defined in the Plan)
Rating	Dow Corning will use its commercially reasonable best efforts to obtain, prior to the issuance of the Senior Notes, an investment grade rating on the Senior Notes issued pursuant to the Plan of “Baa3” or higher by Moody’s Investors Service, Inc. or “BBB minus” or higher by Standard & Poor’s Rating Services, a division of The McGraw-Hill Companies, Inc. Dow Corning will also use its commercially reasonable best efforts to obtain a preliminary indication from the rating agencies of a rating for the Senior Notes prior to the confirmation hearing.
Interest Rate	<p>The interest rate on the Senior Notes (the “Interest Rate”) will be set based on a certain basis point spread (the “Senior Note Spread”) above 10-year U.S. Treasury securities as of the Effective Date. The Senior Note Spread and the make-whole spread (collectively, the “Rate Spreads”) shall be determined as follows:</p> <ol style="list-style-type: none">a. Not later than the fifteenth business day before the date on which the Effective Date is reasonably expected by the Proponents (following consultation with the Committee) to occur (the “Expected Effective Date”), the financial advisors to the Debtor and the Committee retained in the Chapter 11 proceedings (the “Interest Rate Parties”) shall select an independent nationally recognized underwriter of investment grade debt securities (the “Independent Underwriter”). If the Interest Rate Parties cannot agree on a single Independent Underwriter, then each of the Interest Rate Parties shall select an Independent Underwriter. If the Proponents’ reasonable expectation regarding the date on

which the Effective Date will occur changes, the Expected Effective Date for purposes of this rate-setting mechanism shall be adjusted accordingly.

- b. Not later than the tenth business day before the Expected Effective Date, the Interest Rate Parties shall meet to try to agree on the Rate Spreads. If the Interest Rate Parties cannot agree on the Rate Spreads by the tenth business day before the Expected Effective Date, then they shall refer the matter to the Independent Underwriter(s) and shall inform the Independent Underwriter(s) of their respective views of the Rate Spreads.
- c. If the Interest Rate Parties have agreed on a single Independent Underwriter, that underwriter shall, not later than the third business day and no sooner than the fifth business day before the Expected Effective Date, set the two Rate Spreads based on its consideration of the Rate Spreads on comparable securities in the market at such time (the “Compromise Rate Spreads”), subject to the provisions of paragraph e. below.
- d. If the Interest Rate Parties have not agreed on a single Independent Underwriter and instead have each selected an Independent Underwriter, then each underwriter so selected shall, not later than the third business day and no sooner than the fifth business day before the Expected Effective Date, advise the Interest Rate Parties of its view of the correct Rate Spreads. If the Independent Underwriters’ Rate Spreads are between the Interest Rate Parties’ Rate Spreads, then the average of the Rate Spreads set by the two Independent Underwriters shall be the Compromise Rate Spreads. If any of the Independent Underwriters’ Rate Spreads is higher than the high Rate Spread or lower than the low Rate Spread selected by the Interest Rate Parties, then, before averaging the Independent Underwriters’ Rate Spreads for purposes of this paragraph, the applicable Independent Underwriters’ Rate Spread will be reduced to the high Rate Spread (or increased to the low Rate Spread) selected by the Interest Rate Parties.
- e. In the case of a single Independent Underwriter, if both of the Rate Spreads set by the Independent Underwriter are between the Rate Spreads selected by the Interest Rate Parties, the Rate

Spreads set by the Independent Underwriter will be the Compromise Rate Spreads. If either or both of the Independent Underwriter's Rate Spreads are above the high Rate Spread or below the low Rate Spread selected by the Interest Rate Parties, the applicable Compromise Rate Spread(s) shall be the high or low Rate Spread(s) set by the Interest Rate Parties, as the case may be. In no event shall either of the Rate Spreads be higher than the high Rate Spread, or lower than the low Rate Spread, selected by the Interest Rate Parties.

Interest Payment Dates

Interest will be payable semi-annually, commencing on a date specified in the indenture for the Senior Notes not later than six months after the Effective Date.

Ranking

The Senior Notes will rank senior to or *pari passu* with all existing and future unsecured indebtedness of the Company.

Security

The Senior Notes will be senior unsecured obligations of Dow Corning; *provided, however*, that as set forth in Annex D-1, should the Company secure other indebtedness, the Senior Notes will be equally and ratably secured.

Call Provisions

The Senior Notes, at the Debtor's sole option,

(a) will not be redeemable at any time prior to their maturity; or

(b) will be redeemable in whole or in part at any time and from time to time, at the option of the Debtor, at a redemption price equal to the greater of (i) 100% of the principal amount of the Senior Notes to be redeemed or (ii) the sum of the present values of the remaining scheduled payments of principal and interest thereon (exclusive of interest accrued to the date of redemption) discounted to the date of redemption on a semiannual basis (assuming a 360-day year consisting of twelve 30-day months) at the then current yield to maturity for Treasury securities with a maturity closest to the maturity date for the Senior Notes, plus a certain number of basis points to be determined in accordance with the above provisions regarding the setting of the interest rate on the Senior Notes (the "make-whole spread"), plus, in each case, accrued and unpaid interest on the principal amount being redeemed to the date of redemption.

Covenants	As set forth in Annex D-1.
Events of Default	As set forth in Annex D-2.
Exchange Act Registration	The Company shall prepare and file a registration statement with the Securities and Exchange Commission prior to the Effective Date to effect the registration of the Senior Notes under the Securities Exchange Act of 1934, and shall use its reasonable best efforts to cause the registration statement to become effective no later than the Effective Date.
Exchange Listing	The Company shall prepare and file an application to list the Senior Notes on the New York Stock Exchange and shall use its reasonable best efforts to cause the Senior Notes to be approved for listing (subject to notice of issuance) no later than the Effective Date.
Securities Act Registration Rights	The Company will enter into a registration rights agreement with those holders in whose hands the Senior Notes will not be freely tradeable as of the Effective Date.
Governing Law	New York

Covenants

Payment of Principal, Premium and Interest on Securities. The Company, for the benefit of the Senior Notes, will duly and punctually pay the principal of and interest on the Senior Notes in accordance with the terms of the Senior Notes and this Indenture.

Maintenance of Office or Agency. (a) The Company will maintain in each Place of Payment for the Senior Notes an office or agency where Senior Notes may be presented or surrendered for payment, where Senior Notes may be surrendered for registration of transfer or exchange, and where notices and demands to or upon the Company in respect of the Senior Notes and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices, and demands may be made or served at the Corporate Trust Office, and the Company hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices and demands.

(b) The Company may also from time to time designate one or more other offices or agencies where the Senior Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided, however, that no such designation or rescission will in any manner relieve the Company of its obligation to maintain an office or agency in each Place of Payment for Senior Notes for such purpose. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

Money for Senior Notes Payments to be Held in Trust. (a) If the Company shall at any time act as its own Paying Agent with respect to the Senior Notes, it will, on or before each due date of the principal of or any premium or interest on the Senior Notes, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the principal and any premium and interest so becoming due until such sums shall be paid to such Person or otherwise disposed of as herein provided and will promptly notify the Trustee of its action or failure to so act.

(b) Whenever the Company shall have one or more Paying Agents for the Senior Notes, it will, prior to each due date of the principal of or any premium or interest on the Senior Notes, deposit with the Paying Agent a sum sufficient to pay such amount, such sum to be held as provided by the Trust Indenture Act, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of its action or failure to so act.

(c) The Company will cause each Paying Agent for the Senior Notes other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent will agree with the Trustee, subject to the provisions of this Section, that such Paying Agent will (i) comply with the provisions of the Trust Indenture Act applicable to it as a Paying Agent and (ii) during the continuance of any default by the

Company (or any other obligor upon the Senior Notes) in the making of any payment in respect of the Senior Notes, and upon the written request of the Trustee, forthwith to pay the Trustee all sums held in trust by such Paying Agent for payment in respect of the Senior Notes.

(d) The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Company Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Company or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent will be released from all further liability with respect to such money.

(e) Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of or any premium or interest on any of the Senior Notes and remaining unclaimed for two years after such principal, premium or interest has become due and payable will be paid to the Company upon a Company Request (or, if then held by the Company, will be discharged from such trust); and the Holder of such Senior Notes will thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, will thereupon cease; provided, however, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in a newspaper published in the English language, customarily published on each Business Day and of general circulation in the Borough of Manhattan, The City of New York, notice that such money remains unclaimed and that, after a date specified therein, which will be not less than 30 calendar days from the date of such publication, any unclaimed balance of such money then remaining will be repaid to the Company.

Payment of Taxes and Other Claims. The Company will pay or discharge or cause to be paid or discharged, before the same shall become delinquent, (a) all taxes, assessments, and governmental charges levied or imposed on the Company or any Subsidiary of the Company or upon the income, profits or property of the Company or any Subsidiary of the Company, and (b) all lawful claims for labor, materials, and supplies, in each case which, if unpaid, would by law become a lien upon the property of the Company or any Subsidiary of the Company and would have a Material Adverse Effect; provided, however, that (x) the Company will not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge, or claim the amount, applicability, or validity of which is being contested in good faith by appropriate proceedings, and (y) any failure to pay any such tax, assessment, charge, or claim shall not constitute a breach of this Section if such failure (i) was not willful and (ii) does not and will not result in any Material Adverse Effect.

Maintenance of Properties. The Company will cause all properties used or useful in the conduct of its business or the business of any Subsidiary of the Company to be maintained and kept in good condition, repair and working order and supplied with all necessary equipment and will cause to be made all necessary repairs, renewals, replacements, betterments and improvements thereof; provided, however,

that nothing in this Section will (i) require the Company to take any action that it determines in good faith to be contrary to its best interests, so long as the failure to take such action will not have a Material Adverse Effect or (ii) prevent the Company from taking any action that it determines in good faith to be in its best interests, so long as the taking of such action will not have a Material Adverse Effect.

Existence. Subject to the covenant entitled “Company May Consolidate, Etc., on Certain Terms,” the Company will, and will cause each of its Subsidiaries to do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter or statutory), and franchises; provided, however, that, except with respect to the preservation of the Company's existence, nothing in this Section will (i) require the Company to take any action that it determines in good faith to be contrary to its best interests, so long as the failure to take such action will not have a Material Adverse Effect or (ii) prevent the Company from taking any action that it determines in good faith to be in its best interests, so long as the taking of such action will not have a Material Adverse Effect.

Compliance with Laws. The Company will, and will cause each of its Subsidiaries to, comply with all applicable federal, state, local, or foreign laws, rules, regulations, or ordinances, including, without limitation, such laws, rules, regulations, or ordinances relating to pension, environmental, employee, and tax matters, to the extent that, in the aggregate, the failure so to comply would have a Material Adverse Effect.

Statement by Officers as to Default. The Company will deliver to the Trustee within thirty (30) days after the end of each calendar quarter following the date hereof, an Officer's Certificate signed by either the Chief Executive Officer, the Chief Financial Officer, or the Controller of the Company stating whether or not to the knowledge of such person after due inquiry the Company is in default in the performance and observance of any of the terms, provisions, and conditions of this Indenture (without regard to any period of grace or requirement of notice provided hereunder) and/or whether an event which has a Material Adverse Effect has occurred, and, if the Company is in default, specifying all such defaults and the nature and status thereof of which such person may have such knowledge.

Financial Reporting. To the extent the Company is required to file periodic reports with the Commission pursuant to Section 13 or 15(d) of the Exchange Act, the Company shall provide copies to the Trustee of each Annual Report on Form 10-K, each Quarterly Report on Form 10-Q, and each Current Report on Form 8-K that is filed by the Company with the Commission within 15 days of the filing of the same. To the extent that the Company is not required to file such periodic reports with the Commission, the Company shall provide copies to the Trustee of consolidated audited financial statements (including notes) of the Company covering the most recently completed fiscal year as soon as available but not later than 120 days after the end of the fiscal year until this Indenture terminates and shall also provide quarterly unaudited financial statements (including notes to the extent prepared) within 45 days after the end of each quarter as long as the Senior Notes are outstanding.

Company May Consolidate, etc., on Certain Terms. The Company covenants that it will not merge or consolidate with any other corporation or sell or convey (including by way of lease) all or

substantially all of its assets to any person, unless (i) either the Company or one of its wholly-owned subsidiaries shall be the continuing corporation, or the successor corporation or the person which acquires by sale or conveyance substantially all the assets of the Company (if other than the Company or one of its wholly-owned subsidiaries) shall be a corporation or entity organized under the laws of the United States of America or any State thereof and shall expressly assume the due and punctual payment of the principal of and interest on all the Senior Notes, according to their tenor, and the due and punctual performance and observance of all of the covenants and conditions of the Indenture to be performed or observed by the Company, by supplemental indenture reasonably satisfactory to the Trustee, executed and delivered to the Trustee by such corporation or entity, and (ii) the Company or such successor corporation or entity, as the case may be, shall not, immediately after such merger or consolidation, or such sale or conveyance, be in default in the performance of any such covenant or condition.

"Material Adverse Effect" means a material adverse effect on the business, assets, financial condition or results of operations of the Company (taken together with its Subsidiaries as a whole).

"Subsidiary" means, as applied with respect to any Person, any corporation, partnership or other business entity of which, in the case of a corporation, more than 50% of the issued and outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether at the time capital stock of any other class or classes of such corporation has or might have voting power upon the occurrence of any contingency), or, in the case of any partnership or other legal entity, more than 50% of the ordinary voting equity capital interests, is at the time directly or indirectly owned or controlled by such Person, by such Person and one or more of its Subsidiaries, or by one or more of such Person's other Subsidiaries.

Limitation on Liens. So long as any of the Senior Notes remain outstanding and unpaid, the Company will not itself, and will not permit any Domestic Subsidiary to, incur, issue, assume or guarantee any indebtedness for money borrowed evidenced by notes, bonds, debentures or other similar evidences of indebtedness (such notes, bonds, debentures or other similar evidences of indebtedness being hereinafter called "Debt"), secured by a Mortgage on any Principal Domestic Manufacturing Property of the Company or any Domestic Subsidiary, or any shares of stock of any Domestic Subsidiary, without effectively providing that the Senior Notes (together with, if the Company shall so determine, any other Debt of the Company or such Domestic Subsidiary then existing or thereafter created which is not subordinated to the Senior Notes) shall be secured equally and ratably with (or prior to) such secured Debt, so long as such secured Debt shall be so secured, unless, after giving effect thereto, the aggregate amount of all such secured Debt then outstanding plus all Attributable Debt of the Company and its Domestic Subsidiaries in respect of Sale and Leaseback Transactions (as that term is defined in the covenant regarding Limitation on Sale and Lease-Back herein) entered into after the date of this Indenture (other than Sale and Leaseback Transactions permitted herein) would not exceed 10% of Consolidated Net Tangible Assets; provided, however, that this Section shall not apply to, and there shall be excluded from secured Debt in any computation under this Section, Debt secured by:

- i. Mortgages of the Company or any Domestic Subsidiary existing at the time of this Indenture;
- ii. Mortgages on property or any shares of stock (or other equity interest) or arising out of any Debt of any entity existing at the time such entity was merged into the Company or became a Domestic Subsidiary;
- iii. Mortgages in favor of the Company or any Subsidiary;
- iv. Mortgages in favor of the United States of America, any State of the United States of America, or any subdivision, agency, department or other instrumentality thereof, to secure progress, advance or other payments pursuant to any contract or provision of any statute;
- v. Mortgages on property or shares of stock (or other equity interest) existing at the time of acquisition thereof (including acquisition through merger or consolidation) or to secure the payment of all or any part of the purchase price or construction cost thereof or to secure any Debt incurred prior to, at the time of, or within 180 days after, the acquisition of such property or shares or the completion of any such construction for the purpose of financing all or any part of the purchase price or construction cost thereof;
- vi. Mortgages of carriers, warehousemen, mechanics and materialmen incurred in the ordinary course of business for sums not yet due or being contested in good faith;
- vii. Mortgages arising by reason of any judgment, decree or order of any court, so long as any appropriate legal proceedings which may have been duly initiated for the review of such judgment, decree or order shall not have been finally terminated or so long as the period within which such proceedings may be initiated shall not have expired; or pledges or deposits to secure payment of workers' compensation or other insurance, good faith deposits in connection with tenders, contracts (other than contracts for the payment of money) or leases, deposits to secure public or statutory obligations, deposits to secure or in lieu of surety or appeal bonds, or deposits as security for the payment of taxes;
- viii. Mortgages in connection with the issuance of tax-exempt industrial development or pollution control bonds or other similar bonds issued pursuant to Section 103(b) of the Internal Revenue Code of 1986, as amended or as hereafter amended, to finance all or any part of the purchase price of or the cost of constructing, equipping or improving property; *provided* that such Mortgages shall be limited to such property acquired (including personal property) or

constructed or such improvement and to theretofore substantially unimproved real property on which such construction or improvement is located; and *provided, further*, that the Company and its Domestic Subsidiaries may further secure all or any part of such purchase price or the cost of construction of such improvements and personal property by an interest on additional property of the Company and its Domestic Subsidiaries only to the extent necessary for the construction, maintenance and operation of, and access to, such property so acquired or constructed or such improvement;

- ix. Mortgages in favor of any customer arising in respect of partial, progress, advance or other payments made by or on behalf of such customer for goods produced for or services rendered to such customer in the ordinary course of business not exceeding the amount of such payments;
- x. any extension, renewal or replacement (or successive extensions, renewals or replacements), as a whole or in part, of any Mortgage referred to in the foregoing clauses (a) to (i), inclusive; *provided*, that (i) such extension, renewal or replacement Mortgage shall be limited to all or a part of the same property or shares of stock (or other equity interest) that secured the Mortgage extended, renewed or replaced (plus improvements on such property) and (ii) the principal amount of the Debt secured by such Mortgage shall not exceed the principal amount of Debt so secured at the time of such extension, renewal or replacement.
- xi. Mortgages for taxes or assessments or governmental charges or levies not yet due or delinquent or which can thereafter be paid without penalty, or which are being contested in good faith by appropriate proceedings; landlord's liens on property held under lease, and tenants' rights under leases; easements; and any other Mortgages of a nature similar to those hereinabove described in this clause (k) which do not, in the opinion of the Company, materially impair the use of such property in the operation of the business of the Company or a Domestic Subsidiary or the value of such property for the purposes of such business.

Limitation on Sale and Lease-Back. The Company will not itself, and it will not permit any Domestic Subsidiary to, enter into any arrangement with any bank, insurance company or other lender or investor (not including the Company or any Subsidiary) or to which any such lender or investor is a party, providing for the leasing by the Company or a Domestic Subsidiary for a period, including renewals, in excess of three years of any Principal Domestic Manufacturing Property which has been or is to be sold or transferred, more than 180 days after the acquisition thereof or the completion of construction and commencement of full operation thereof, by the Company or any Domestic Subsidiary to such lender or investor or to any person to whom funds have been or are to be advanced by such lender or investor on

the security of such Principal Domestic Manufacturing Property (herein referred to as a “Sale and Leaseback Transaction”) unless either:

(a) the Attributable Debt of the Company and its Domestic Subsidiaries in respect of such Sale and Leaseback Transaction and all other Sale and Leaseback Transactions entered into after the date of this Indenture (other than Sale and Leaseback Transactions permitted herein), plus the aggregate amount of Debt secured by Mortgages on Principal Domestic Manufacturing Properties then outstanding (excluding any such Debt secured by Mortgages covered in clauses (i) through (xi) of the covenant entitled “Limitation on Liens”) without equally and ratably securing the Senior Notes, would not exceed 10% of Consolidated Net Tangible Assets, or

(b) the net proceeds of the sale of the Principal Domestic Manufacturing Property are at least equal to the fair value (as determined by the Board of Directors of the Company) of such property.

“*Attributable Debt*” means, as to any particular lease under which any person is at the time liable, at any date as of which the amount thereof is to be determined, the total net amount of rent required to be paid by such person under such lease during the remaining term thereof (after giving effect to any extensions at the option of the lessee), discounted from the respective due dates thereof to such date at the rate per annum borne by the Senior Notes compounded semi-annually. The net amount of rent required to be paid under any such lease for any such period shall be the amount of rent payable by the lessee with respect to such period, after excluding amounts required to be paid on account of maintenance and repairs, insurance, taxes, assessments, water rates and similar charges. In the case of any lease which is terminable by the lessee upon the payment of a penalty, such net amount shall also include the amount of such penalty, but no rent shall be considered as required to be paid under such lease subsequent to the first date upon which it may be so terminated.

“*Consolidated Net Tangible Assets*” means the aggregate amount of assets (less applicable reserves and other properly deductible items) after deducting therefrom (a) all current liabilities (excluding any thereof constituting Funded Debt by reason of being renewable or extendible) and (b) all goodwill, trade names, trademarks, patents, unamortized debt discount and expense and other intangibles, all as set forth on the most recent consolidated balance sheet of the Company and its consolidated Subsidiaries and computed in accordance with generally accepted accounting principles.

“*Domestic Subsidiary*” means any Subsidiary of the Company (i) substantially all of the property of which is located, and substantially all of the business of which is carried on, within the United States of America (excluding its territories and possessions and the Commonwealth of Puerto Rico), and (ii) which (A) owns or operates one or more Principal Domestic Manufacturing Properties or (B) owns capital stock of another Domestic Subsidiary; except that a Subsidiary which is primarily engaged in the business of a finance company or insurance company shall not constitute a Domestic Subsidiary.

“*Funded Debt*” means all indebtedness for money borrowed having a maturity of more than 12 months from the date as of which the amount thereof is to be determined or having a maturity of less than 12 months but by its terms being renewable or extendible beyond 12 months from such date at the option of the borrower.

“*Mortgage*” means any mortgage, pledge, lien, charge, security interest, conditional sale or other title retention agreement or other similar encumbrance.

“*Principal Domestic Manufacturing Property*” means any building, structure or other facility, together with the land upon which it is erected and fixtures comprising a part thereof, used primarily for manufacturing or warehousing and located in the United States of America, owned or leased by the Company or any Domestic Subsidiary, the gross book value (without deduction of any depreciation reserves) of which on the date as of which the determination is being made exceeds 1.5% of Consolidated Net Tangible Assets, other than any such building, structure or other facility or portion thereof or any such land or fixture (i) which is financed by obligations issued by a State, a Territory, or a possession of the United States, or any political subdivision of any of the foregoing, or the District of Columbia, the interest on which is excludable from gross income of the holders thereof pursuant to the provisions of the Section 103(a)(1) of the Internal Revenue Code (or any successor of such provision) as in effect at the time of the issuance of such obligations, or (ii) which, in the opinion of the Board of Directors of the Company is not of material importance to the total business conducted by the Company and its subsidiaries as an entirety.

Events of Default

Events of Default. “Event of Default” with respect to the Senior Notes means each one of the following events which shall have occurred and be continuing (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) default in the payment of any installment of interest upon any of the Senior Notes as and when the same shall become due and payable, and continuance of such default for a period of 30 days; or

(b) default in the payment of all or any part of the principal on any of the Senior Notes as and when the same shall become due and payable either at maturity, upon redemption, by declaration or otherwise; or

(c) default in the performance, or breach, of any covenant or warranty of the Company in respect of the Senior Notes (other than a covenant or warranty in respect of the Senior Notes a default in whose performance or whose breach is elsewhere in this Section specifically dealt with), and continuance of such default or breach for a period of 90 days after there has been given by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the holders of at least 25% in principal amount of the outstanding Senior Notes affected thereby, a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a “Notice of Default” hereunder; or

(d) there is outstanding a payment default(s) under the Funding Payment Agreement in excess of \$100,000,000 (except that if the Company is in good faith contesting the existence of such payment default before a court of competent jurisdiction, then, only if such payment default shall have been established by Final Order of such court) and such default continues for 30 days after notice thereof and (1) Standard & Poor’s Rating Services, a division of The McGraw-Hill Companies, Inc., has issued a rating on the Senior Notes of below “BB minus” and (2) Moody’s Investors Service has issued a rating below “Ba3.”

(e) Debt of the Company, or any Domestic Subsidiary, is not paid within any applicable grace period after final maturity or is accelerated by the holders thereof because of a default, the total amount of such Debt unpaid or accelerated exceeds \$100,000,000 or its foreign currency equivalent and such default continues for 10 days after the notice thereof; or

(f) any judgment or decree for the payment of money in excess of \$100,000,000 is rendered against the Company or any Domestic Subsidiary and is not discharged and either (A)

an enforcement proceeding has been commenced by any creditor upon such judgment or decree or (B) there is a period of 60 days following such judgment or decree during which such judgment or decree is not discharged, waived or the execution thereof stayed and, in the case of (B), such default continues for 10 days after the notice thereof; or

(g) a court having jurisdiction in the premises shall enter a decree or order for relief in respect of the Company in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee or sequestrator (or similar official) of the Company or for any substantial part of its property or ordering the winding up or liquidation of its affairs, and such decree or order shall remain unstayed and in effect for a period of 60 consecutive days; or

(h) the Company shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or consent to the entry of an order for relief in an involuntary case under any such law, or consent to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee or sequestrator (or similar official) of the Company or for any substantial part of its property, or make any general assignment for the benefit of creditors.

