
LITIGATION FACILITY AGREEMENT

Between

**DOW CORNING CORPORATION
AND
DCC LITIGATION FACILITY, INC.**

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

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

EFFECTIVE DATE: _____, 1999

TABLE OF CONTENTS

RECITALS	LF-1
ARTICLE I	
DEFINITIONS	LF-2
1.01 Incorporation of Definitions	LF-2
ARTICLE II	
STRUCTURE OF LITIGATION FACILITY	LF-2
2.01 Management	LF-2
2.02 Purposes of the Litigation Facility	LF-2
2.03 Assumption of Liabilities and Related Matters	LF-3
2.04 Cooperation by Debtor and Manager	LF-5
2.05 Maintenance and Disposition of Litigation Materials	LF-6
2.06 Maintenance of Debtor's and Other Released Parties' Privileges and Confidential Information	LF-6
2.07 Joint Defense	LF-7
ARTICLE III	
MANAGER	LF-7
3.01 Number	LF-7
3.02 Selection	LF-7
3.03 Term of Service; Resignation and Removal of the Manager	LF-8
3.04 Appointment of Successor Manager	LF-8
3.05 Liability of Manager	LF-8
3.06 Compensation and Expenses of Managers	LF-8
3.07 Insurance	LF-9
3.08 Reliance by Entities Dealing with Litigation Facility	LF-9
3.09 Bond	LF-9
ARTICLE IV	
FINANCIAL MANAGEMENT	LF-9
4.01 Accounts	LF-9
4.02 Investments	LF-9
4.03 Powers of the Manager	LF-10
4.04 Accounting	LF-11
4.05 Reporting	LF-12
4.06 Tax Matters; Tax Payments	LF-13

ARTICLE V

CLAIMS RESOLUTION PROCEDURES S GENERALLY LF-13

- 5.01 Purpose LF-13
- 5.02 Overview LF-13
 - (a) Claims in Classes 5 Through 10 and Corresponding Assumed Third Party Claims LF-13
 - (b) LTCI Claims LF-15
 - (c) Claims in Classes 11, 15 and 17 LF-15
 - (d) Claims in Classes 12 and 13 LF-15
 - (e) Claims in Classes 14 and 14A LF-16
 - (f) Claims in Class 16 LF-16
- 5.03 Exclusivity of Claims Resolution Procedures LF-16

ARTICLE VI

CLAIMS RESOLUTION PROCEDURES S STEPS FOR PROCESSING CLAIMS .. LF-16

- 6.01 Processing Steps LF-16
- 6.02 Motion Practice LF-17
- 6.03 Litigation Procedures LF-17
 - (a) Jurisdiction LF-17
 - (b) Case Management Orders LF-17
 - (c) Sequencing of Claims Resolution LF-18
 - (d) Litigation LF-18
 - (e) Special Master LF-19
 - (f) Conflicts LF-20
 - (g) Litigation Privileges LF-20
- 6.04 LTCI Claims LF-20
- 6.05 Claims in Classes 11 through 15 and 17 LF-20
- 6.06 Claims in Class 16 LF-21
 - (a) Class 16 Claims Based on Judgment LF-21
 - (b) Class 16 Claims based on Pre-Effective Date Settlements LF-21
- 6.07 Indirect Claims LF-22

ARTICLE VII

PAYMENT OF CLAIMS AND RELATED MATTERS LF-22

- 7.01 Payment of Opt Out Claims LF-22
 - (a) No Punitive Damages LF-22
 - (b) No Supersedeas Bond Required of Litigation Facility LF-22
 - (c) Payment of Allowed Claims in Classes 11 through 15 and 17 LF-22
 - (d) Payment of Administrative Costs LF-22
 - (e) Interest on Judgments LF-22

7.02	Payment of Litigated Shareholder Claims	LF-23
7.03	Notice of Payment.	LF-23
7.04	Settlement Discussions; Nonadmissibility	LF-23
7.05	Costs	LF-23
7.06	General Release	LF-23
7.07	Withdrawal of Claims	LF-23
7.08	Consultation with Debtor and Shareholders	LF-23

ARTICLE VIII

GENERAL PROVISIONS	LF-24
8.01 Irrevocability	LF-24
8.02 Recordation	LF-24
8.03 Termination	LF-24
8.04 Severability	LF-24
8.05 Headings, References	LF-24
8.06 Amendments	LF-25
8.07 Governing Law	LF-25
8.08 Location	LF-25
8.09 Benefit of Agreement	LF-25
8.10 No Execution	LF-25

LITIGATION FACILITY AGREEMENT

THIS LITIGATION FACILITY AGREEMENT (the "Agreement") between Dow Corning Corporation, a Michigan corporation, and DCC Litigation Facility, Inc., a Delaware corporation, establishes the Litigation Facility pursuant to the Amended Joint Plan of Reorganization of Dow Corning Corporation dated as of February 4, 1999, as further amended, modified or supplemented from time to time (the "Plan"), in case number 95-20512 in the United States Bankruptcy Court for the Eastern District of Michigan, Northern Division.

RECITALS:

A. On May 15, 1995, Dow Corning Corporation (hereinafter "Debtor" or "Dow Corning") filed a petition for reorganization under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Michigan, Northern Division (references to Dow Corning include the Reorganized Debtor).

B. The Plan provides, among other things, for the resolution of certain Personal Injury Claims, all LTCI Claims and certain other Claims pursuant to a Litigation Facility.

C. The Plan was confirmed pursuant to order of the Court entered in the Case on _____, 1999 (the "Confirmation Order").

D. DCC Litigation Facility, Inc. (the "LF Corporation") is a corporation organized under the laws of the State of Delaware for the sole purpose of entering into this Agreement and acting in accordance with this Agreement and the Case Management Orders (as defined herein). Dow Corning is the sole shareholder of LF Corporation. The Articles of Incorporation and Bylaws of LF Corporation provide that LF Corporation shall have a single officer (the "LF Corporation Officer") and a board of directors selected by Dow Corning.

E. The Confirmation Order provides, among other things, that (i) any "opt-out litigation" on behalf of Non-Settling Personal Injury Claimants, and any litigation with respect to any other Litigation Facility Obligations (as defined herein), shall be brought only against LF Corporation, acting as the Litigation Facility, and that no other Person may be sued or named as a defendant in such litigation; and (ii) under no circumstances shall the corporate form of LF Corporation be disregarded.

F. Pursuant to the Plan and the Confirmation Order, this Agreement establishes the Litigation Facility.

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

ARTICLE I DEFINITIONS

1.01 *Incorporation of Definitions.* Unless the context otherwise requires, all capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings assigned to them in the Plan, the Disclosure Statement, the Settlement Facility and Fund Distribution Agreement (the “Settlement Facility Agreement”), the Funding Payment Agreement or the Bankruptcy Code, in that order, which definitions are incorporated herein by this reference for all purposes.

ARTICLE II STRUCTURE OF LITIGATION FACILITY

2.01 *Management.* LF Corporation shall act as the Litigation Facility subject to, and in accordance with, this Agreement. The Litigation Facility shall be administered by the LF Corporation Officer, who shall serve as the manager of the Litigation Facility, appointed by Debtor, subject to the approval of the Court as described in Article III hereof. The Litigation Facility shall be managed exclusively for the benefit of Debtor and its Shareholders. The Litigation Facility shall be subject to the oversight of Debtor.

2.02 *Purposes of the Litigation Facility.* The sole purposes of the Litigation Facility are:

(a) to assume liability for, defend, liquidate and resolve within the Litigation Fund (defined in Section 7.01 of this Agreement and in Section 3.02(a)(i) of the Settlement Facility Agreement) Personal Injury Claims of Opt Out Personal Injury Claimants in Classes 5 through 10.2 and Class 12 in accordance with this Agreement;

(b) to assume liability for, defend, and to administer the liquidation of all LTCI Claims (Classes 18 and 19) in accordance with this Agreement;

(c) to assume liability for, defend, liquidate and resolve within the maximum aggregate funding obligation to Classes 5 through 19 specified in the Funding Payment Agreement (i) any Claim in Classes 11, 15 and 17 that was not Allowed or estimated for distribution on or before the Confirmation Date, and (ii) Claims in Classes 13, 14 and 14A held by Claimants who have elected or are obligated, pursuant to the Plan, to litigate such Claims under this Agreement;

(d) to liquidate, defend, and resolve within the Litigation Fund all Assumed Third Party Claims in accordance with this Agreement;

(e) to assume liability for and to liquidate and resolve all Class 16 Claims in accordance with this Agreement; and

(f) to assume liability for and to liquidate and resolve all Spitzfaden Claims that are held by Spitzfaden Claimants who timely elect to opt out of the Settlement Facility, other than those held by the eight named Spitzfaden Claimants, in accordance with this Agreement and the Plan (also referred to herein as the “Litigated Shareholder Claims”).

The Litigation Facility will not engage in any trade or business other than the resolution of Claims as provided herein.

2.03 *Assumption of Liabilities and Related Matters.*

(a) The Litigation Facility hereby assumes and shall be directly and exclusively liable for any and all liabilities, present or future, whether such liabilities are liquidated or nonliquidated, contingent or noncontingent, asserted or unasserted, fixed or not, matured or unmatured, disputed or undisputed, legal or equitable, known or unknown, of the Debtor Affiliated Parties now or hereafter arising in connection with, constituting or relating to (i) Personal Injury Claims of Opt Out Personal Injury Claimants in Classes 5 through 10.2 (which include Claims against the Debtor held by Spitzfaden Claimants who timely elect to opt out of the Settlement Facility), (ii) all LTCI Claims (Classes 18 and 19), (iii) any Claim in Classes 11, 15 and 17 that was not Allowed or estimated for distribution on or before the Confirmation Date, (iv) to the extent not otherwise settled or disallowed, Claims in Classes 12, 13 14 and 14A held by Claimants who have elected or are obligated, pursuant to the Plan, to litigate such Claims under this Agreement, (v) Class 16 Claims, and (vi) all Assumed Third Party Claims, with the exception that:

(1) The Claims of holders of pre-petition settlements listed on Exhibit A shall be treated and paid in cash and Senior Notes in the same manner as Allowed Class 4 Claims under the Plan. The payment made on these Claims shall not reduce (1) the maximum aggregate funding obligation to Classes 5 through 19 specified in the Funding Payment Agreement or (2) the Litigation Fund.

(2) The holders of Claims listed on Exhibit B assert a legally binding pre-petition settlement agreement with the Debtor. The Debtor disputes these Claims. Any such Claims that are resolved prior to the Effective Date, or legally determined to be subject to legally binding pre-petition settlement agreements, shall be treated and paid in cash and Senior Notes in the same manner as Allowed Class 4 Claims under the Plan. The payment made on these Claims will not reduce (1) the maximum aggregate funding

obligation to Classes 5 through 19 specified in the Funding Payment Agreement, or (2) the Litigation Fund. If it is determined that any such Claim is not subject to a legally binding pre-petition settlement, then it will be treated as a Class 5 Claim under the Plan.

(3) Unless a different treatment is agreed to by the Class 4A Claimant and the Debtor prior to the Effective Date, upon a final resolution of the appeal in favor of the holder of a Pre-Petition Judgment Claim, such Claim shall be treated and paid in cash and Senior Notes in the same manner as Allowed Class 4 Claims under the Plan. If the Class 4A Claim is settled prior to decision on appeal, the Reorganized Debtor will receive a credit against its obligations under the Funding Payment Agreement for all amounts paid by it in respect of Allowed Class 4A Claims, but such payments will not reduce the Litigation Fund. If the Claim is not settled and the appeal is in favor of the holder of a pre-petition judgment Claim, the amount of the judgment, as finally determined on appeal, shall be treated and paid in cash and Senior Notes in the same manner as Allowed Class 4 Claims under the Plan, and shall not reduce (1) the maximum aggregate funding obligation to Classes 5 through 19 specified in the Funding Payment Agreement, or (2) the Litigation Fund. If the appeal results in an order remanding the matter for new trial as to liability and/or damages, the Claim shall be treated as a Class 5 Claim under the Plan.

(b) All unresolved Spitzfaden Claims that remain pending as of the Effective Date, other than those held by the eight named Spitzfaden Claimants, shall be transferred to the Litigation Facility as and to the extent provided in the Plan and shall be resolved by the Litigation Facility in accordance with this Agreement and the Plan, unless the holder of such Claim elects or is deemed to have elected treatment under the Settlement Facility Agreement. Except as otherwise provided in this Agreement, Litigated Shareholder Claims shall be resolved in the same manner as Opt Out Personal Injury Claims and Spitzfaden Claimants who elect to have their Claims resolved pursuant to this Agreement will be given treatment equivalent to the treatment afforded to other similarly situated Opt Out Personal Injury Claimants. Without limiting the generality of the foregoing, (i) the Manager shall immediately assume responsibility for defense of the Spitzfaden Claims (other than those held by the eight named Spitzfaden Claimants), whether or not all appellate issues relating to the Spitzfaden Claims have been resolved as of the Effective Date, (ii) 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 plaintiffs is reached) unless the Louisiana appellate courts, on a sua sponte basis, dismiss the appeal as moot, (iii) Spitzfaden Claims transferred to the Litigation Facility shall be subject to the then existing judgment as to Phase I proceedings, and the plaintiffs to such judgment shall have the benefit of the judgment to the extent that the Phase I judgment has been affirmed and applies to those plaintiffs, except that the Litigation Facility will in all respects be substituted for the Shareholder Affiliated Party against whom the judgment was entered, (iv) the Spitzfaden Claims shall remain subject to the procedures specified herein for adjudication of all unresolved issues, including specific causation, common issue motion practice and damages. Prior to resolution of the pending appeal, Spitzfaden Claimants who are parties to that appeal may raise

with the Louisiana appellate courts the issue of whether the Phase I judgment decided general causation, and neither Dow Chemical nor the Manager will object to that issue being raised, but will not thereby waive and will retain and reserve any rights to argue their positions with respect to the merits of such issue. If the appellate courts decide that issue by a Final Order, such determination shall be binding on all affected parties once all appeals are exhausted. If the general causation issue is not so decided through the Louisiana appellate process, (but the appellate process otherwise upholds the Phase I judgment against Dow Chemical and in favor of the Spitzfaden Claimants who are former class members, thereby resulting in the transfer of the affected Spitzfaden Claims pursuant to the Plan), such Spitzfaden Claimants may ask the District Court (which shall apply Louisiana law) to resolve the issue of whether general causation was decided in the Phase I verdict. Any motion requesting such determination shall not be heard until (x) at or after the general causation proceeding specified in section 6.02 hereof if the District Court conducts such a proceeding or, if the district Court declines to conduct such a proceeding, after the date of such a ruling, and (y) after the expiration of Election Deadline under the Settlement Facility. If there is an appeal of the District Court decision on that motion, the parties will agree to an expedited appeal. Litigated Shareholder Claims shall be consolidated with the associated or related Claim of the Spitzfaden Claimant against the Debtor, and they shall be resolved in tandem to maximize the efficient processing of the Claims. Allowed Litigated Shareholder Claims will be paid as provided in section 7.02 of this Agreement.

Any references in this Agreement to “Opt Out Personal Injury Claims,” “Opt Out Claims,” “Claims in Class 5” and similar terms shall, unless the context clearly requires otherwise, include Litigated Shareholder Claims.

(c) To the extent an Assumed Third Party Claim corresponds or relates to a Claim against Debtor which is also processed by the Litigation Facility, they shall be consolidated and resolved in tandem to maximize the efficient processing of such Claims. A Claim by a Personal Injury Claimant against a defendant for an Assumed Third Party Claim is “related” or “corresponds” if it seeks recovery for substantially the same injury. However, an Assumed Third Party Claim shall be resolved hereunder regardless of whether it corresponds or relates to a Claim against Debtor. Except as provided hereafter, the Litigation Facility shall not be liable for Assumed Third Party Claims.

(d) All Claims which are to be assumed and/or handled by the Litigation Facility are collectively referred to herein as the “Litigation Facility Obligations.”

(e) The Manager shall conserve and protect the Litigation Facility estate and optimize use of and return on its assets so as to enable him or her to satisfy all Opt Out Personal Injury Claims economically within the Litigation Fund.

2.04 *Cooperation by Debtor and Manager.* Debtor shall allow the Manager access to and use of such nonprivileged Claims files and other nonprivileged documents relating to the Litigation Facility Obligations as are under Debtor's custody or control to allow the Manager to evaluate such Claims. The Manager shall (i) use his or her best efforts to utilize, to the fullest extent possible, previously developed discovery materials including without limitation, the discovery records in MDL 926 that are located in the MDL 926 document depository (the "MDL discovery") as a means of providing any discovery ordered or permitted in connection with resolving any Litigation Facility Obligations, without calling upon Debtor or any other Released Party, or their present or former officers, directors, employees, agents or representatives, (ii) attempt, through court rulings or consensual procedures, to consolidate and coordinate pre-trial discovery and/or trial proceedings, to achieve efficiency and minimize the expense to the Litigation Facility without compromising the ability of the facility to properly litigate or settle cases and (iii) otherwise use his or her best efforts to minimize the need for Debtor and the other Released Parties, and their present or former officers, directors, employees, agents, or representatives to appear in connection with resolving any Litigation Facility Obligation. Debtor shall furnish reasonable cooperation to the Litigation Facility, including providing evidence. The Manager shall cooperate with Debtor or its assigns, and provide Debtor or its assigns such information about the Litigation Facility Obligations as Debtor or its assigns may reasonably request, to enable Debtor or its assigns to respond to or deal with matters relating to the Case, including, without limitation, assistance in making insurance claims and resolving tax claims.

2.05 *Maintenance and Disposition of Litigation Materials.* Debtor shall maintain documents and materials assembled in connection with any pre-Confirmation Date litigation, including documents and materials assembled, produced or preserved as a result of discovery obligations in any court having jurisdiction thereof, for a period of at least three (3) years after the Effective Date. Upon the expiration of such period, Debtor shall deliver to the Manager those documents and materials that he or she may reasonably request for his or her use in resolving Litigation Facility Obligations. After such delivery, (i) any documents or materials remaining in Debtor's possession may, with timely notice to the Court and other interested parties, be disposed of in a manner it elects, and (ii) the Manager shall dispose of any documents or materials delivered to him or her by Debtor without the prior written consent of the Debtor. Nothing in this paragraph shall prevent any tort claimant, following receipt of the notice described above, from filing motions and obtaining court orders requiring the preservation of documents which may contain relevant evidence or might lead to the discovery of relevant evidence.

2.06 *Maintenance of Debtor's and Other Released Parties' Privileges and Confidential Information.* The Litigation Facility is authorized to assert any and all applicable privileges on behalf of the Debtor and the Shareholders. The Litigation Facility shall maintain as privileged and confidential all privileged and confidential information furnished to the Litigation Facility by Debtor or any other Released Party or any officer, employee, agent of or attorney for Debtor and any other Released Party, including, without limitation, all privileged and confidential information concerning Implants and raw materials used in the manufacture of Dow Corning and Non-Dow Corning Breast Implants and the distribution thereof, the history of the conduct of Debtor's or such Released Party's business, and Debtor's or such Released Party's defense strategy and settlement history in litigation involving Litigation Facility Obligations. The

Litigation Facility shall not voluntarily waive any privilege available to it or Debtor or any other Released Party or disclose any privileged and confidential information of Debtor or any other Released Party without the prior written consent of Debtor or such Released Party, respectively. The Litigation Facility shall promptly notify Debtor and any other Released Party upon the Litigation Facility's receipt of any subpoena or other discovery request for confidential or privileged information of Debtor or such Released Party and shall cooperate with Debtor and such Released Party in complying with, objecting to or otherwise responding to such subpoena or other discovery request. Debtor and the other Released Parties shall remain the sole owners of their respective privileges, and no such privilege shall pass to or be owned by the Litigation Facility or the Manager. Furnishing of information by Debtor or any other Released Party in accordance with this Agreement shall not be deemed a waiver of any applicable privilege.

2.07 *Joint Defense.* Pursuant to Section 8.5 of the Plan, Assumed Third Party Claims have been channeled to the Litigation Facility for resolution. To facilitate efficient and effective resolution of the Litigation Facility Obligations:

(a) Common Counsel shall be retained to defend the Litigation Facility Obligations. Such counsel shall be selected by the Manager. All defense costs for common counsel shall be paid by the Litigation Facility, subject to the review and limits specified in paragraph 6.03(e) of this Agreement. Such counsel shall defend the Dow Corning product, regardless of the person or entity against whom the Claim at issue is made and shall not attempt to shift or allocate liability or damages between the parties jointly represented.

(b) The defendants to the Assumed Third Party Claims shall be permitted to retain separate counsel in lieu of or in addition to common counsel, but the costs of their separate counsel shall be borne exclusively by them and not by the Litigation Facility. All such separate counsel shall be allowed to appear and be heard at any of the steps comprising the Claims Resolution Procedures (as defined herein) and to control the defense and resolution of such Assumed Third Party Claim.

(c) The defendants to the Assumed Third Party Claims shall cooperate in the defense of the Claims and shall maintain all privileges and information in the same manner and to the same extent as set forth in Sections 2.04, 2.06 and 6.03(g) of this Agreement. If the applicable rules of evidence so provide, a tort claimant may offer this subsection into evidence at the trial of the case, but only insofar as it is relevant in assessing the testimony of a witness who has an obligation to cooperate pursuant to this subsection.

To the maximum extent possible without compromising the Litigation Facility's effective and efficient resolution of the Litigation Facility Obligations, the Manager, Debtor, and the Released Parties (who provide information to the Manager), and the defendants to the Assumed Third Party Claims shall negotiate and implement joint defense agreements and other coordinated claim resolution procedures,

which shall include items (a) through (c) above and shall protect all privileged and confidential information furnished to or shared with the Manager as provided in Section 6.03(g) of this Agreement.

ARTICLE III MANAGER

3.01 *Number.* There shall be one Manager of the Litigation Facility.

3.02 *Selection.* The Manager shall be the LF Corporation Officer, as selected from time to time by the board of directors of the LF Corporation in the exercise of its discretion, subject to approval by the Court.

3.03 *Term of Service; Resignation and Removal of the Manager.*

(a) The Manager shall serve for the duration of the Litigation Facility, subject to his or her earlier death, resignation or removal.

(b) The Manager may resign at any time by written notice to Debtor and the Court, specifying the date when such resignation shall take effect. The Manager shall attempt, where possible, to give notice of resignation not less than ninety (90) days before such resignation is to take effect.

(c) The Manager may be removed from office by the board of directors of the LF Corporation for any reason or no reason. In addition, the Court, on its own motion, may remove from office any Manager who has acted in serious dereliction of his or her duties under this Agreement.

3.04 *Appointment of Successor Manager.*

(a) In the event of a death, resignation, incapacity to serve as determined by the Court or removal of a Manager prior to the expiration of his or her term, a successor Manager shall be selected by Debtor, subject to Court approval, within sixty (60) days after such death, resignation or removal. If the successor Manager is not approved by the Court, Debtor shall select another Manager within forty-five (45) days after the entry of an order by the Court disapproving the first selection.

(b) Upon the acceptance of office by any successor Manager, all rights, titles, duties, powers and authority of the predecessor Manager under this Agreement shall be vested in and

undertaken by the successor Manager without any further act being required. No successor Manager shall be liable personally for any act or omission of his or her predecessor.

3.05 *Liability of Manager.* The Manager shall owe a fiduciary duty to LF Corporation, the Debtor and the Shareholders. The Manager and any employees of the Litigation Facility shall not be liable for any act or omission of any agent or employee of the Litigation Facility unless the Manager acted with gross negligence, willful misconduct or in a breach of fiduciary duty in the selection or retention of such agent or employee. No action, suit or proceeding of any kind may be brought against any Manager, other than a suit by Dow Corning for gross negligence, willful misconduct, or breach of fiduciary duty. Subject to the foregoing, all actions taken and determinations made by the Manager, unless otherwise provided in (or unless materially contrary to the provisions of) this Agreement, the Plan or a Final Order, shall be final and binding upon all Entities having any interest in the Litigation Facility.

3.06 *Compensation and Expenses of Managers.* The Manager shall receive as compensation for his or her services an annual fee of \$_____ per year (payable twice monthly). The compensation may be adjusted from time to time by the Debtor, subject to approval of the Court. In addition, the Manager shall be reimbursed for his or her reasonable expenses incurred in the performance of his or her duties. Compensation of the Manager and reimbursement of his or her expenses shall be paid by the Claims Administrator from the Litigation Fund, subject to the review and limits specified in paragraph 6.03(e) of this Agreement.

3.07 *Insurance.* With the approval of the Finance Committee, the Manager may purchase and maintain reasonable amounts and types of insurance, including, insurance on behalf of an individual who is or was a Manager, employee, or agent of the Litigation Facility against liability asserted against or incurred by such individual in that capacity or arising from his or her status as a Manager, employee, or agent.

3.08 *Reliance by Entities Dealing with Litigation Facility.* Any Entity dealing with a Manager may rely in good faith upon any certificate or other instrument signed by such Manager, or upon any certificate or other instrument signed by any agent of a Manager whose authority is evidenced by a certificate or other instrument signed by such Manager, without the necessity of further inquiry by such Entity into the authority of such Manager or agent to act on behalf of the Litigation Facility.

3.09 *Bond.* The Manager shall not be required to post any bond or other form of surety for his or her performance as Manager unless ordered by the Court.

ARTICLE IV FINANCIAL MANAGEMENT

The following sets forth the provisions dealing with the financial management of the Litigation Facility all of which shall be consistent with, and subject to, the terms of the Plan, and the Settlement Facility Agreement.

4.01 *Accounts.* All funds delivered to the Litigation Facility shall be deposited in an account maintained by, and in the name of, the LF Corporation, and shall be handled exclusively to implement the provisions of this Agreement. The Manager shall establish such funds and accounts with such Persons as he or she shall, in his or her discretion, deem necessary or advisable for carrying out the purposes of the Litigation Facility.

4.02 *Investments.* Investments of monies held by the Litigation Facility shall be administered in the manner in which individuals of ordinary prudence, discretion and judgment would act in the management of their own affairs.

In determining investments to be held by the Litigation Facility, due regard shall be given by the Manager to safety of principal and to production of reasonable amounts of current income. The Manager shall not be under any obligation to invest Litigation Facility assets for capital appreciation, in view of the purposes for which the Litigation Facility was created.

4.03 *Powers of the Manager.*

(a) Pursuant to the Confirmation Order, subject to the limitations set forth in this Agreement and subject to the provisions and limitations of the Plan, and the Settlement Facility Agreement, the Manager shall have the power to take any and all actions as in the sole judgment and discretion of the Manager are necessary or advisable to effectuate the purposes of the Litigation Facility, including without limitation, each power expressly granted in Section 4.03(b) of this Agreement and any power reasonably incidental thereto.

(b) Subject to the other provisions of this Agreement, the Manager shall have the power:

(1) to receive cash and other additions to the Litigation Facility from any source and to hold, administer, and distribute such additions as part of the Litigation Facility; provided, that any action resulting in a disbursement or expenditure or a commitment to make a disbursement or expenditure from the Litigation Facility in excess of \$100,000.00, shall require approval by the Debtor;

(2) to invest and reinvest any funds of the Litigation Facility as provided in this Agreement;

(3) to compromise, adjust, mediate or otherwise arbitrate, sue on or defend, or otherwise deal with, recommend settlement of or litigate to final judgment (including appeals) Litigation Facility Obligations. The Manager may employ and compensate legal counsel, expert witnesses, and other parties deemed by the Manager to be qualified as experts in connection therewith, and reimburse other witnesses for expenses;

(4) to rely upon any affidavit, certificate, letter, notice, telegram, or other paper, or upon any telephone conversation or other oral communication, believed by the Manager to be genuine and sufficient and upon any other evidence believed by the Manager to be genuine and sufficient, and to be protected and saved harmless in respect of all payments or distributions made hereunder if made in good faith and without actual notice or knowledge of the changed condition or status of any person receiving payments or other distributions upon a condition;

(5) to indemnify the Manager, employees and agents of the Litigation Facility, to purchase insurance in accordance with such Section 3.05; and to meet the obligations of the Litigation Facility under the Claims Resolution Procedures;

(6) to hire such employees, experts, counsel, and agents as deemed necessary by the Manager for the proper administration of the Litigation Facility and to compensate such employees, experts, counsel and agents for their services;

(7) to acquire, own, lease and convey, such real and personal properties, in such locations as the Manager may deem necessary or desirable for the proper administration of the Litigation Facility, but not for purposes of the investment of Litigation Facility assets;

(8) to adopt and amend by-laws and other rules and procedures not inconsistent with this Agreement or the Plan, as the Manager may deem necessary or desirable for the governance or administration of the Litigation Facility; provided, that in the event of an inconsistency between the by-laws and this Agreement, this Agreement shall govern;

(9) to supervise and administer the Claims Resolution Procedures for the resolution of Litigation Facility Obligations;

(10) to defend against and pay all costs and fees (including attorneys' fees) of the defense of any and all claims that relate to the operations of the Litigation Facility, the actions of the Manager, employees, and agents, and, subject to review and approval of the Special Master, the Litigation Facility Obligations or any joint defense arrangements made pursuant to Section 2.09 hereof;

(11) in cooperation with the Settlement Facility, Debtor and any affected Released Party, to assert the enforceability of the releases and injunctions referred to in Sections 8.3, 8.4 and 8.5 of the Plan; and, to the extent applicable, the discharge referred to and described in Section 8.1 of the Plan, and defend any adverse decision relating thereto. The Released Parties, or any of them, may also assert, defend and appeal such matters; and

(12) to do all other acts and things not inconsistent with the provisions of this Agreement or the Plan that the Manager may deem reasonably necessary or desirable for the proper management of the Litigation Facility, in the same manner and to the same extent as individuals might or could do with respect to their own property, subject to the limitations of applicable law governing the conduct of fiduciaries.

4.04 *Accounting.*

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

(b) The Manager shall cause to be prepared at the end of each Fiscal Year an annual accounting containing financial statements of the Litigation Facility as of the end of such Fiscal Year, including, without limitation, a balance sheet of the Litigation Facility, a statement of receipts and disbursements (which, as to the Litigation Facility Obligations, shall be presented in the aggregate and not by individual Claim and shall also describe all amounts paid to or by the Manager), a statement of profit and loss prepared on an accrual basis, and a supplementary schedule of investments and assets, listing both principal and income, audited by a recognized national or regional firm of independent public accountants selected by the Manager, and reported on by such firm as to fairness of presentation in accordance with generally accepted accounting principles consistently applied.

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

4.05 *Reporting.*

(a) The Manager shall cause the annual and quarterly accounting required by Section 4.04 of this Agreement to be filed with the Court, the Special Master, the Claims Administrator, Debtor, the Shareholders, and the Claimants' Advisory Committee. The annual accounting shall be filed as soon as available, but in no event later than ninety (90) days following the end of each Fiscal Year. The quarterly accounting shall be filed as soon as available, but in no event later than forty-five (45) days following the end of the quarter of the Fiscal Year to which such accounting relates.

(b) Simultaneously with the filing of each accounting, the Manager shall cause to be prepared and filed with the Court, the Special Master, the Claims Administrator, Debtor, the Shareholders and the Claimants' Advisory Committee (i) a report containing a summary of the number of resolved Litigation Facility Obligations and the total amount paid with respect thereto (in the aggregate, not individually) from the Effective Date to the end of the period covered by the accounting, and (ii) a certification of the Manager that, to the best of his or her knowledge, all such payments were made in accordance with the terms of this Agreement and the Settlement Facility Agreement.

(c) The Manager shall maintain (but shall not file with the Court) records of all individual payments, arbitration awards, judgments and settlements. In addition, at the request either of Debtor or the Shareholders, the Manager shall cause to be prepared and furnished to Debtor and the Shareholders (but shall not file with the Court) an operational audit of the Litigation Facility, confirming the proper evaluation, resolution and payment of Claims by the Manager and containing such other matters and details as Debtor or the Shareholders may reasonably request.

(d) All materials required to be filed with the Court by this Section 4.05 shall be available for inspection by the public according to procedures established by the Court, but the Litigation Facility's records of individual payments, arbitration awards, and settlements shall not be furnished to, or otherwise available for inspection by, the public or any claimant; provided, that Debtor may inspect and make copies of such records during the Litigation Facility's normal business hours. The Special Master may also have access to the record of individual Claim resolutions, but shall hold such information in confidence and not disclose it to anyone without express written permission from the Debtor.

4.06 *Tax Matters; Tax Payments.* The Manager shall timely file such income tax and other returns and statements as are required to comply with applicable provisions of the IRC and the Treasury Regulations promulgated thereunder, and of any state law and the regulations promulgated thereunder. The Litigation Facility shall be responsible for paying taxes and any other obligations or liabilities of any and all kinds whatsoever that at any time are lawfully levied, assessed upon or become payable in respect of the

Litigation Facility or its estate. Such liabilities shall be approved by the Finance Committee upon request of the Manager.

ARTICLE V CLAIMS RESOLUTION PROCEDURES S GENERALLY

5.01 *Purpose.* The procedures set forth in this Article V and in Articles VI and VII and such other procedures as may be approved in Case Management Orders with respect to the Litigation Facility (collectively, the “Claims Resolution Procedures”) establish the procedures for the submission, evaluation, processing, liquidation, allowance and payment, or disallowance of Litigation Facility Obligations. The purpose of the Claims Resolution Procedures is to provide an orderly process for resolving and liquidating all Litigation Facility Obligations consistent with the objectives of the Plan and within the Litigation Fund. The Claims Resolution Procedures shall be administered by the Manager with approval of the Special Master and the District Court (as defined herein) as provided in this Agreement.

5.02 *Overview.* The Claims Resolution Procedures are generally described as follows:

(a) *Claims in Classes 5 Through 10.2 and Corresponding Assumed Third Party Claims.* Claims in Classes 5 through 10.2 (including Class 4A Claims that, as provided in Section 2.02(a), are resolved hereunder as Claims in Classes 5 through 10.2) and Assumed Third Party Claims related to such Classes will be processed sequentially under the following steps:

(1) Claimants holding Children Direct Claims, Miscellaneous Raw Material Claims and Other Products Claims which are not Covered Other Products Claims have no settlement offer, but have only the litigation option. All other Claimants in Classes 5 through 10.2 will be given the opportunity to “opt out” of the settlement track and pursue their individual Claims through litigation against the Litigation Facility. The LF Corporation shall be the only defendant in any such litigation. The decision to opt out must be made by the Election Deadline (as defined in section 3.02(c)(i) of the Claims Resolution Procedure document attached as Annex A to the Settlement Facility Agreement). As provided in section 3.01(b) of the Claims Resolution Procedures document (Annex A to the Settlement Facility Agreement), the Claim Administrator will develop a notice package to go to Claimants in Classes 5 through 10.2 which will notify them of their opt out rights and the procedures and timetable for exercising these rights. Notwithstanding the foregoing, Claimants in Classes 6A - 6D shall have their “opt out” rights, if any, controlled by the terms of the settlement agreement applicable to their class.

(2) Following the expiration of the Election Deadline, all of the Opt Out Personal Injury Claimants will have their Claims consolidated for pre-trial purposes before the United States District Court for the Eastern District of Michigan (the “District Court”).

During the period in which the cases are consolidated, the District Court, acting with the assistance of the Special Master, will:

(i) establish and implement procedures for the organization and presentation of claims, including the filing of complaints and other materials designed to establish the basis for the claim;

(ii) finalize and implement Case Management Orders (as defined herein) which will establish the specific procedures and timetables for the resolution of claims in the Litigation Facility;

(iii) establish guidelines for and coordinate all pretrial discovery:

(iv) Conduct any common issue motion practice, including any consolidated Daubert procedure;

(v) finalize and implement pretrial settlement procedures for individual or group claim reviews, mediation, arbitration, etc.; and

(vi) establish guidelines for and coordinate the certification of cases for trial on the merits.

(3) A Special Master shall be appointed to assist the District Court in developing, implementing and monitoring the procedures set forth herein.

(4) Settlements, whether handled on an individual or a group basis, shall be recommended initially by the Manager of the Litigation Facility, but must be approved by Dow Corning and reviewed by the Special Master. This review by the Special Master is designed to ensure a fair distribution of the Litigation Fund. In evaluating proposed settlements the Special Master shall consult with the other members of the Finance Committee who oversee the Litigation Fund.

(5) Payment of approved settlements and final judgments resulting from trials shall be made by the Claims Administrator pursuant to guidelines to be developed by the Finance Committee. In the event that the Litigation Fund is believed to be insufficient to pay in full all Litigation Facility Obligations, and related costs and expenses, the Special Master shall participate together with the Manager and the representatives of the Opt Out Claimants to develop an equitable method of making pro rata payments to the Opt Out Claimants. No such proposal shall provide for or contemplate use of more than the Litigation Fund. Their recommendation shall be presented to and, after notice and hearing, considered by the District Court. The Claims Administrator shall have no liability to

Claimants for payments made pursuant to the procedures approved in this Section. Payments made to Claimants pursuant to such procedures shall not be recoverable by the Litigation Facility.

Payment of settlements and final judgments in respect of Litigated Shareholder Claims that are approved or entered after the Litigated Shareholder Claims have been transferred to the Litigation Facility will be paid as provided in section 7.02 of this Agreement.

(b) *LTCI Claims.* LTCI Claims (Classes 18 and 19) and any Assumed Third Party Claims related to such classes will be liquidated by tendering the defense thereof to (and enforcing the indemnity obligations of) the party or parties obligated to indemnify the Litigation Facility (as Debtor's assignee) for LTCI Claims under the applicable LTCI Indemnities relating thereto.

(c) *Claims in Classes 11, 15 and 17.* Claims in Classes 11, 15 and 17 that were not Allowed or estimated for distribution on or before the Confirmation Date and any Assumed Third Party Claims related to such classes shall be resolved by litigation, subject to the same joint discovery and docketing procedures that are applicable to the litigation of other Claims as discussed above.

(d) *Claims in Classes 12 and 13.* To the extent not settled or disallowed, Claims in Classes 12 and 13 held by Claimants who have elected or are required, pursuant to the Plan, to litigate such Claims under this Agreement and any Assumed Third Party Claims related to such classes shall be resolved by litigation, subject to the same joint discovery and docketing procedures that are applicable to the litigation of other Claims as discussed above.

The Litigation Facility shall file a motion (or motions) seeking to transfer to the District Court claims (other than Malpractice Claims) made by Non-Settling Personal Injury Claimants against Claimants in Classes 12 (Physicians) and 13 (Health Care Providers) who have conditionally elected to settle as described in Sections 6.02(b) and 6.02(c) of the Settlement Facility Agreement.

If the motion to transfer is granted as to particular Physician or Health Care Provider Claimants, then the transferred claims of Non-Settling Personal Injury Claimants ("Assumed Third-Party Claims") will be resolved pursuant to the Claims Resolution Procedures described in the Litigation Facility Agreement.

(e) *Claims in Classes 14 and 14A.* To the extent not settled or disallowed, Claims in Classes 14 and 14A held by Claimants who have elected or are required, pursuant to the Plan, to litigate such Claims under this Agreement and any Assumed Third Party Claims related to such

classes shall be resolved by litigation, subject to the same joint discovery and docketing procedures that are applicable to the litigation of other Claims as discussed above.

(f) *Claims in Class 16.* Claims in Class 16 shall receive the treatment provided in section 6.06 of this Agreement.

5.03 *Exclusivity of Claims Resolution Procedures.* Claimants are obligated to resolve their Claims and their Assumed Third Party Claims exclusively under the Claims Resolution Procedures described herein and cannot pursue their Claim or their Assumed Third Party Claim or the collection thereof under the Settlement Facility Agreement or in any other action or proceeding.

ARTICLE VI CLAIMS RESOLUTION PROCEDURES S STEPS FOR PROCESSING CLAIMS

6.01 *Processing Steps.* The following provisions of this Article VI describe the various processing steps for resolving Claims against the Debtor and Assumed Third Party Claims. Unless otherwise stated, Opt Out Claims in Classes 5 through 10.2 (including Class 4A Claims that, as provided in Section 2.02(a), are resolved hereunder as Claims in Classes 5 through 10.2) and corresponding Assumed Third Party Claims related to such classes shall be processed sequentially under each step of the Claims Resolution Procedures described below. LTCI Claims (Classes 18 and 19) and Assumed Third Party Claims related to such classes shall be resolved as provided in Section 6.04. Claims in Classes 11 through 15, and 17 and Assumed Third Party Claims related to such classes shall be resolved as provided in Section 6.05. The Manager shall aggressively litigate the Litigation Facility Obligations when reasonable settlements cannot be obtained. The Manager shall be responsible for negotiating and recommending settlements when, in his or her judgment, such settlements facilitate preserving the Litigation Fund and timely and efficiently resolving the Litigation Facility Obligations. Claims in Class 16 shall be resolved as provided in section 6.06 of this Agreement.

6.02 *Motion Practice.* Any party to the Claims treated in this Article VI may proceed with dispositive motion practice with respect to any such Claim independently of, or concurrently with, the processing steps in the Claims Resolution Procedures. Based on the guidelines set forth in the Case Management Orders to be developed by the District Court in cooperation with the parties and the Special Master, the District Court will entertain any consolidated motion practice, including any Daubert motion. Daubert and other common issue motions shall not be heard by the District Court sooner than 270 days following the Election Deadline. Any claimant shall retain his or her right to argue to the District Court the appropriateness or inappropriateness of Daubert or other common issue motion practice.

6.03 *Litigation Procedures.*

(a) *Jurisdiction.* The litigation procedures set forth herein governing all of the Litigation Facility Obligations shall be administered by and under the jurisdiction of the District Court in accordance with the Case Management Order and any further orders entered by the District Court as provided below.

(b) *Case Management Orders.* Promptly after the expiration of the Election Deadline, the Manager, the Debtor, the Special Master, and such representatives of the Opt Out Claimants as the District Court shall approve, shall finalize and present to the District Court further case management orders (together with the initial Case Management Order, collectively the “Case Management Orders”). The Case Management Orders shall establish procedures to ensure that the Litigation Fund is sufficient to resolve all Opt Out Personal Injury Claims and to pay the costs of defense and of administering the Litigation Facility. In that regard, the Case Management Orders will provide procedures for organizing the Opt Out Claims to be dealt with by the Litigation Facility, describe the procedures and substance of any common issue motion practice, describe the procedures for obtaining information from the Claimants concerning the nature and support for their Claims, describe the procedure and timetables for pretrial discovery and pretrial claim resolution procedures including alternative dispute resolution procedures such as mediation, etc., and describe the procedures and conditions for certifying individual cases for trial. The Case Management Orders will be consistent with the terms of the Plan and this Agreement. The Case Management Orders will also address the following factors:

(1) procedures to ensure the fair distribution of the Litigation Fund to Opt Out Claimants;

(2) the payment of defense costs so as to ensure a fair allocation of the Litigation Fund among the administration of the Litigation Facility, the defense of the Opt Out Claims and the payment of Opt Out Personal Injury Claimants who establish an entitlement thereto;

(3) procedures for the certification of individual cases for trial, and/or the administration of pretrial procedures that gives due consideration to the availability of witnesses, defense counsel and their support personnel, the burden imposed on the reorganized Dow Corning for such matters, the merits of the case, when the case was filed, and any hardship on the plaintiff which a delay of the case would cause. The parties to the Case Management Orders retain the right to move the Court to modify the Case Management Orders.

(c) *Sequencing of Claims Resolution.* Following the expiration of the Election Deadline and the approval of a Case Management Order, the District Court will take the following steps in sequence toward the resolution of the Opt Out Claims:

(1) The District Court will handle the pretrial motion practice involving any common issues;

(2) During and after resolution of these motions, the District Court shall provide for and implement pretrial settlement procedures designed to provide a settlement opportunity for as many Claims as possible; and

(3) When the pre-trial motion practice has been completed, a case may be certified for trial if it has completed the pre-trial settlement procedures.

(d) *Litigation.* Based on procedures and conditions set forth in the Case Management Orders or other order of the District Court, individual cases shall be certified for trial. In general, venue for the trial of individual cases shall be either in the Federal District Court for the Eastern District of Michigan or in the federal court in the district in which the Claim arose. In selected cases originally filed in state court and not removed pre-petition, the case may be remanded to state courts recommended by the Special Master and approved by counsel for all parties to the case (including the Litigation Facility). All legal requirements articulated in prior Sixth Circuit decisions must be met for any cases remanded pursuant to this subsection. The District Court will retain authority over all consolidated pretrial proceedings. Upon conclusion of these proceedings and pretrial resolution procedures, and upon the recommendation of the Special Master, the District Court may certify individual cases for trial and will apply the factors set forth below. The District Court will consider, *inter alia*, the following factors with respect to determining when and how individual cases shall be certified for trial:

(1) allowance for the determination of any appeals from any rulings by the District Court with respect to significant Daubert or other common issues;

(2) the need to ensure that all Litigation Facility Obligations and related costs and expenses can be paid within the Litigation Fund;

(3) the limited available resources of the Litigation Facility to simultaneously defend and resolve multiple Opt Out Claims, including consideration of the availability of witnesses, defense counsel, and support personnel, and the burden imposed by multiple simultaneous defenses on the reorganized Dow Corning. The Special Master and the District Court shall specifically preserve the ability of the Litigation Facility to prepare for and effectively try each case certified for trial. It is the intent of this subsection that issues of trial readiness, the feasibility of defending litigation and the flow of cases through the trial docket do not act to compromise the ability of the Litigation Facility to litigate or settle cases;

- (4) the settlement history, both of Opt Out cases as a whole and individual cases in particular;
- (5) the date of the filing of the case at issue relative to other cases which may be awaiting trial;
- (6) the merits of the case at issue, relative to other cases awaiting trial;
- (7) the readiness of the case for trial;
- (8) judicial efficiency; and
- (9) hardship (severity of ailment, etc.)

In addition to the foregoing and the applicable provisions of the Case Management Orders, cases will be remanded only to those courts which have agreed to be bound by the Case Management Orders.

(e) *Special Master.* As provided in section 5.02(a)(3) of this Agreement, a Special Master shall be appointed to assist the District Court in the administration of Opt Out litigation. The initial Special Master shall be Francis McGovern. The Special Master shall make reasonable recommendations which shall ensure that the Litigation Fund is sufficient to resolve all of the Litigation Facility Obligations, the costs of defense, and the costs of administering the Litigation Facility. The Special Master shall be responsible for implementing the Case Management Orders so as to achieve these goals.

The Special Master shall be replaced for cause upon motion by the Manager, the Debtor or any party to the Opt Out Claims. In the event that the Special Master is replaced, resigns or is otherwise unable to fulfill his responsibilities, the District Court shall develop procedures for the selection of a new Special Master and shall thereafter designate a new Special Master. The compensation of the Special Master shall be set by the District Court and paid by the Claims Administrator from the Litigation Fund.

The Special Master (with District Court approval) will review and, applying customary standards of reasonableness, approve all requests for payment of defense costs or the Manager's budget relating to the administrative costs, including defense costs, of the Litigation Facility. In determining whether or to what extent to approve such costs or such budgets, the Special Master shall provide reasonable assurances that the total costs over the life of the Litigation Facility bear a reasonable relationship to the aggregate Litigation Fund and the preservation of that fund for paying Opt-Out Claims. The Special Master, in reviewing requests for payment of costs, may, upon application, pay an enhanced fee if justified in the Special Masters' sole discretion on the

basis of the efficient, expeditious, and economical resolution of cases without the necessity of litigation, or may pay a lower fee if the Special Master believes that the Litigation Facility or the lawyers have failed to expeditiously, efficiently and economically resolve claims without resort to litigation.

(f) *Conflicts.* The Litigation Facility may retain as common counsel any attorney previously retained by Dow Corning and/or its Shareholders in connection with implant related matters.

(g) *Litigation Privileges.* All otherwise privileged information furnished to the Litigation Facility (for purposes of conducting litigation or settlement activities) by Dow Corning or any other Released Party or an officer, employee, agent or attorney for Dow Corning and any other Released Party (including, without limitation, all privileged and confidential information concerning implants and raw materials used in the manufacture of Dow Corning and Non-Dow Corning Breast Implants and the distribution thereof, the history of the conduct of Dow Corning's or such Released Parties' business, and Dow Corning's or such Released Parties' defense strategy and settlement history in litigation involving Litigation Facility Obligations) shall continue to be protected under the applicable privilege.

6.04 *LTCI Claims.* The Litigation Facility shall liquidate all LTCI Claims (Classes 18 and 19) and any Assumed Third Party Claims related to such classes as soon as administratively practicable by tendering the defense thereof to (and enforcing the indemnity obligations of) the parties or parties obligated to indemnify the Litigation Facility (as Debtor's assignee) for LTCI Claims under the applicable LTCI indemnities relating thereto. The sole source of payment of LTCI Claims shall be the LTCI indemnities, and the Manager shall not use the Litigation Fund to pay any LTCI Claims.

6.05 *Claims in Classes 11 through 15 and 17.* Claims in Classes 11 through 15 and 17 and any related Assumed Third Party Claim which have not been otherwise resolved pursuant to the Plan or settlement agreements entered into with Claimants in these classes, and which have been channeled to the Litigation Facility for resolution, shall be dealt with in accordance with the terms of the Case Management Orders. Unless otherwise provided by the Case Management Orders or other order of the District Court, the Claims in Classes 11 through 15 and 17 shall be subject to the same questionnaire and discovery process as for Claims in Classes 5 through 10.2, as described in Section 6.03 hereof. In addition, such Claims shall be subject to any common issue motion practice, as described in Section 6.02 and 6.03 hereof. The Claims in Classes 11 through 15 and 17 shall also be subject to the sequencing and trial certification procedures described in Section 6.03 hereof.

The Litigation Facility shall file a motion (or motions) seeking to transfer to the District Court claims (other than Malpractice Claims) made by Non-Settling Personal Injury Claimants against Claimants in Classes 12 (Physicians) and 13 (Health Care Providers) who have conditionally elected to settle as described in Sections 6.02(b) and 6.02(c) of the Settlement Facility Agreement.

The Claimants' Advisory Committee shall support the motion(s) to transfer. Settling Physicians and Settling Health Care Providers will be required to join in the motion(s) to transfer and cooperate with the Litigation Facility by providing non-confidential lists and other information on the transferred claims. The Litigation Facility, the Settling Physicians, and the Settling Health Care Providers must each bear their own costs incurred in connection with the motion to transfer.

If the motion to transfer is granted as to particular Physician or Health Care Provider Claimants, then the transferred claims of Non-Settling Personal Injury Claimants ("Assumed Third-Party Claims") will be resolved pursuant to the Claims Resolution Procedures described in the Litigation Facility Agreement.

If any motion to transfer is denied, then the claims for which transfer was not granted shall proceed in the court where they were brought and will be the responsibility of the Physician(s) or Health Care Provider(s), as applicable; the Litigation Facility shall not be required to participate therein.

6.06 *Claims in Class 16.*

(a) *Class 16 Claims Based on Judgment.* In the event Dow Chemical has paid a judgment on account of the Mahlum Claims prior to the transfer of the Claims to the Litigation Facility, all Shareholder Claims based on or arising out of the payment of that judgment shall be resolved under the terms of this Agreement and the Case Management Orders. Dow Chemical shall be entitled to assert against the Reorganized Debtor all Claims based on contribution, indemnity or otherwise available to Dow Chemical under applicable law on account of the payment of such judgment. Any Shareholder Claims that become Allowed will be paid by the Reorganized Debtor, and not from the Settlement Fund or the Litigation Fund.

(b) *Class 16 Claims Based on Pre-Effective Date Settlements.* 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 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. In the event the Mahlum Claims are settled prior to the Effective Date, all amounts paid by Dow Chemical to the Mahlum Claimants to settle such Claims shall constitute Allowed Class 16 Claims and shall be reimbursed as provided in section 6.16.5 of the Plan.

6.07 *Indirect Claims.* Claims for subrogation, contribution, or indemnity in Classes 11 through 15 and 17 (collectively, "Indirect Claims") shall be subject to the following additional limitations:

(a) the Litigation Facility shall not be required to pay both a primary claim (as used herein, “primary claim” means all Claims in Classes 5 through 10.2, except Indirect Claims) and the related Indirect Claims based on the primary claim; and

(b) the Litigation Facility shall not pay, in respect to any primary claim and related Indirect Claim, in the aggregate, more than the Allowed amount of the primary claim or the proportional share thereof ultimately determined payable by the District Court.

ARTICLE VII PAYMENT OF CLAIMS AND RELATED MATTERS

7.01 *Payment of Opt Out Claims.* If a settlement of an Opt-Out Claim is approved as provided in Article VI or such Claim is reduced to judgment following the entry of a Final Order (collectively the “Resolved Opt Out Claims”), such Claims shall be presented by the Manager to the Claims Administrator for payment from the Litigation Fund (as defined in Section 3.02(a)(i) of the Settlement Facility Agreement) in accordance with Sections 7.01 and 7.02 of the Settlement Facility Agreement and the procedures approved in Section 5.02(a)(5) of this Agreement.

(a) *No Punitive Damages.* No punitive damages shall be Allowed or paid on any Claim against the Litigation Facility.

(b) *No Supersedeas Bond Required of Litigation Facility.* No supersedeas bond or similar security shall be required of the Litigation Facility with respect to any appeal of any matter arising out of the resolution of the Opt Out Claims herein.

(c) *Payment of Allowed Claims in Classes 11 through 15 and 17.* When Claims in Classes 11 through 15 and 17 become Allowed and are due and payable, the Claims Administrator shall forthwith make such payments to the extent that funds are or become available with which to make such payments as provided in the Plan and the Settlement Facility Agreement. Allowed Shareholder claims in Class 16 shall be paid as provided in section 6.06 of this Agreement and 6.16.5 of the Plan.

(d) *Payment of Administrative Costs.* The Manager shall obtain funds from the Claims Administrator for the payment of approved defense costs and any other approved administrative costs of the Litigation Facility.

(e) *Interest on Judgments.* Claims paid pursuant to this section which have been reduced to judgment and evidenced by a Final Order shall include interest thereon as required by applicable law.

7.02 *Payment of Litigated Shareholder Claims.* The amount of a final judgment or settlement of any Spitzfaden Claim, other than those held by the eight named Spitzfaden Claimants, shall be paid by the Claims Administrator on the same basis and with the same priority as settlements or final judgments of Opt Out Personal Injury Claims, as provided in section 7.01 of this Agreement.

7.03 *Notice of Payment.* No Allowed Claim or liquidated third party Claim will be paid until notice is given to Commercial Health Insurers, or Government Payors, who have actually filed a subrogation or reimbursement claim in the Claimant's case. In order to establish entitlement to such a claim the minimum proofs set forth on Exhibit I must be met. Any dispute concerning entitlement to a subrogation or reimbursement claim will be resolved by the District Court.

7.04 *Settlement Discussions; Nonadmissibility.* The Claims Resolution Procedures, the deliberations of the Manager and the staff of the Litigation Facility (including deliberations with Released Parties against whom Assumed Third Party claims have been asserted), all offers and other communications from the Litigation Facility to Claimants concerning settlement offers, and information concerning settlement payments and awards in individual cases or in the aggregate shall not be admissible or discoverable for any purpose in any judicial, mediation or arbitration proceeding involving the merits of any specific Claim or Claims or for any other purpose in any context whatsoever. Settlement discussions and/or offers made in connection with the resolution of a Claim under any step of the Claims Resolution Procedures or otherwise shall be confidential and shall not be disclosed to other Claimants or their counsel or any other Entity.

7.05 *Costs.* Except as provided herein and under the joint defense agreements described in Section 2.09, the Litigation Facility, the Released Parties as against whom Assumed Third Party Claims are asserted, and Claimants shall each bear their own costs, expenses, and attorneys' fees in connection with the Claims resolution process.

7.06 *General Release.* As a condition of any settlement with a Claimant, the Litigation Facility shall obtain a general release of those Persons and their property deemed to be released pursuant to Section 8.3 of the Plan. In addition, any settlement of a Claim by a Personal Injury Claimant shall provide for a release of any corresponding Claim, such as a family member or other derivative type Claim.

7.07 *Withdrawal of Claims.* A Claimant may withdraw a Claim at any time on written notice to the Manager. The Claim may not be reasserted.

7.08 *Consultation with Debtor and Shareholders.* At the request of the Debtor or any Shareholder and upon reasonable advance notice, the Manager shall meet with them to discuss the status of the Claims Resolution Procedures and the Litigation Facility's strategies for resolving Claims by litigation and the other methods prescribed by the Claims Resolution Procedures.

ARTICLE VIII GENERAL PROVISIONS

8.01 *Irrevocability.* This Agreement is irrevocable.

8.02 *Recordation.* This Agreement shall be recorded in such places as Debtor or the Manager shall deem necessary or advisable.

8.03 *Termination.*

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

(b) Upon termination of the Litigation Facility under this Agreement, the Manager shall remain authorized to wind up the affairs of the Litigation Facility, and thereafter, the balance, if any, of the Litigation Facility assets, after payment of or adequate provision for any remaining Litigation Facility expenses, shall be distributed to the Debtor, subject, however, to the terms of the Funding Payment Agreement and the Settlement Facility Agreement.

8.04 *Severability.* Should any provision of this Agreement (except those described in the next sentence) be held unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any and all other provisions of this Agreement, and the unenforceable provision shall be reformed, modified or replaced by such provision or provisions as the Court may approve upon motion by Debtor. Notwithstanding the foregoing, the following provisions of this Agreement are not severable; (i) the specific procedures and conditions of the Claims Resolution Procedures, including, without limitation, the various steps of the Claims resolution process and the independence of such steps, (ii) provisions concerning the release of the Released Parties, or any of them, at such time as a Claim is settled by the Manager, and (iii) provisions concerning the amount or, due date of any payment to be made by Debtor pursuant to the Plan or the Funding Payment Agreement.

8.05 *Headings, References.* The headings of the Table of Contents, Articles and Sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. Any reference herein to an Article or Section shall be deemed to refer to the applicable Article or Section of this Agreement unless otherwise expressly stated herein. Any reference to an Exhibit or Schedule shall be deemed to refer to the applicable Exhibit or Schedule

attached hereto, all such Exhibits and Schedules being incorporated herein and made a part hereof by this reference.

8.06 *Amendments.* All amendments, supplements and modifications shall require approval of the Court after notice to Debtor, the Shareholders and the Claimants' Advisory Committee and such other notice and hearing as the Court may direct; provided, that, without Debtor's, the Shareholders' and the Claimants' Advisory Committees' prior written consent, this Agreement shall not be amended, supplemented or modified if such amendment, supplement or modification would, directly or indirectly; (i) have a material adverse effect on the Litigation Facility estate or on the Debtor or its Shareholders, or would otherwise change the specific procedures and conditions of the Claims Resolution Procedures, including, without limitation, the various steps of the Claims resolution process and the independence of such steps, (ii) affect the validity, requirement for or effectiveness of any release of the Released Parties, or any of them, or (iii) increase the amount or, change the due date of any payment to be made by Debtor pursuant to the Plan or the Funding Payment Agreement.

8.07 *Governing Law.* THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF MICHIGAN WITHOUT REGARD TO MICHIGAN CONFLICTS OF LAW PRINCIPLES.

8.08 *Location.* The Litigation Facility shall maintain its principal office in the Eastern District of Michigan.

8.09 *Benefit of Agreement.* Except as expressly set forth in this Agreement, nothing in this Agreement confers on any Entity, other than the Debtor; its successors and assigns and the Shareholders, any benefit or any legal or equitable right, remedy, or claim.

8.10 *No Execution.* All funds in the Litigation Facility are deemed *in custodia legis*, and no Claimant or any other party can execute upon, garnish or attach the Litigation Facility estate in any manner or compel payment from the Litigation Facility of any Litigation Facility Obligation. Payment of Litigation Facility Obligations will be governed solely by the Plan, this Agreement and the Claims Resolution Procedures specified herein, the Settlement Facility Agreement and the Funding Payment Agreement.

IN WITNESS WHEREOF, Debtor and the LF Corporation have caused this Agreement to be executed by duly authorized officers or representatives and, in the case of the Debtor, attested by another duly authorized officer of Debtor, all as of _____, 1999.

DCC LITIGATION FACILITY, INC.

By: _____

Name: _____

Title: _____

DOW CORNING CORPORATION

Attest:

By: _____

Name: _____

Title: _____

EXHIBIT “A”

**Litigation Facility Agreement
(Prepetition Settlements)**

**CONFIDENTIAL
(PER TERMS OF SETTLEMENT AGREEMENTS)**

EXHIBIT ‘B’

**Litigation Facility Agreement
(Disputed Settlements)**

**CONFIDENTIAL
(PER COURT’S ORDER REGARDING
CLAIM CONFIDENTIALITY)**

EXHIBIT ‘T’

Litigation Facility Agreement

(Requirements for Payment of Subrogation or Reimbursement Claim)

In order to receive payment for a Subrogation or Reimbursement Claim a Subrogation Claimant must meet all of the following requirements, to the extent such requirements are consistent with governing law:

1. Identify by name and social security number the individual Claimant whose medical expenses gave rise to the Subrogation Claim.
2. Show that the implant(s) of the Claimant with respect to whose claim subrogation is being sought was (were) manufactured by DCC.
3. Prove that the items and services for which payment was made under the plan or policy were necessitated by the implantation of a DCC product, i.e., that the DCC implant was the proximate cause of the condition necessitating the items and services the payment for which gave rise to the Subrogation Claim.
4. Identify the actual dollar amount of the Subrogation Claim, and the specific items and services for which such amounts were paid.
5. Show that the Claimant was covered under a plan or policy of the Subrogation Claimant at the time the medical expenses were incurred with respect to which subrogation is being sought.
6. Show that the terms of the plan or policy in effect at the time the Subrogation Claim arose provide the plan or insurer with subrogation rights against a third party payor and not merely reimbursement rights against recoveries by the covered individual.
7. Show that medical expenses that give rise to the Subrogation Claim were properly payable under the terms of the plan or policy (e.g., were the expenses medically necessary, were the amounts paid reasonable and customary, were the amounts paid not subject to copayments and deductibles, were the items and services provided for non-cosmetic purposes or that the plan or policy paid for cosmetic procedures).

8. Show that the coordination of benefits (“COB”) provision does not state that the amounts claimed as subject to subrogation were properly the payment obligation of another plan or policy, and that no other third party payor has paid all or part of the Subrogation claim.
9. Identify whether managed care contracts existed to reduce the amount of the Subrogation Claim and identify whether such amounts were properly calculated.
10. Identify any copayment or deductible amounts which were paid by the claimant with respect to the items and services for which subrogation is being sought, and whether the Claimant has been reimbursed for those amounts from other sources.
11. Show that the state law governing Subrogation Claim allowed for the policies to be issued which grant the insurer the right to be subrogated to the claims of the covered individual against a tortfeasor. If the Subrogation Claimant is an ERISA Plan, show that the Plan’s language provides for the subrogation rights being asserted.
12. Show that the state law governing the Subrogation Claim allows for the insurer to recover by way of subrogation the amounts paid for the medical expenses of the Claimant. For example, does the state law allow for subrogation by an insurer if (a) the underlying claimant is not made whole, whether or not the recovery is for more than the amount of medical expenses at issue, (b) the contract provides for subrogation rights whether or not the Claimant has been fully compensated for her or his loss or (c) the underlying claimant has not included medical expenses as an element of damages and/or medical expenses are not in fact part of the recovery by the underlying claimant.
13. Show that in fact the Subrogation Claimant is entitled to subrogation with respect to the Claimant under such applicable state law.
14. Show that the Subrogation Claim has not been resolved, waived, assigned or released by any agreement with Commercial Health Insurers or Government Payors.