

CANADA

PROVINCE OF QUEBEC

In re: Silicone Gel Breast Implants  
Products Liability Class Action  
Litigation in Quebec  
This Agreement Relates to Class Action

Authorized in the  
Following Matter:

MANON DOYER,

Petitioner,

v.

DOW CORNING CORPORATION and  
DOW CORNING CANADA, INC.,

Respondents.

PROVINCE OF QUEBEC

Superior Court

District of Montreal

(Class Action)

No.: 500-06-000013-934

Honourable Mr. Justice Daniel H. Tingley

**DOW CORNING/QUEBEC BREAST IMPLANT  
LITIGATION SETTLEMENT AGREEMENT**  
Amending  
The "Quebec/Ontario Dow Corning Breast Implant  
Litigation Settlement Agreement," Dated May 14, 1998

This Amendment ("Amendment") is entered into by and between the undersigned parties to amend certain provisions of the "Quebec/Ontario Dow Corning Breast Implant Litigation Settlement Agreement," executed on May 14, 1998 ("Prior Agreement").

**WHEREAS**, the Quebec Class Action, as defined below, was authorized and through Settlement Class Counsel, as defined below, the representative plaintiff in that action conducted negotiations with Dow Corning, as defined below, and on May 14, 1998, together with the representative plaintiff and settlement counsel in a class action in Ontario, entered into the Prior Agreement;

**WHEREAS**, the Quebec Class Action was subsequently noticed pursuant to the Prior Agreement and the period for opting out of the Quebec Class Action expired;

**WHEREAS**, on May 21, 1998, the Provincial Health Insurer of Quebec agreed to waive and withdraw claims against Dow Corning and/or the Released Parties, as defined below, pursuant to the Prior Agreement;

WHEREAS, on July 10, 1998, the Quebec Court, as defined below, approved the Prior Agreement;

WHEREAS, on November 9, 1998, Dow Corning, among other parties, filed with the U.S. Bankruptcy Court, as defined below, the Proposed Joint Disclosure Statement, as defined below, that superseded all prior proposed disclosure statements filed in the U.S. Bankruptcy Case, as defined below; and

WHEREAS, each of the representative plaintiffs and their counsel in the class actions in Quebec and Ontario sought, and Dow Corning agreed, to enter into a distinct and separate agreement regarding each of the Quebec Class Action and the class action in Ontario;

NOW THEREFORE, in consideration of the mutual covenants contained herein, intending to be legally bound hereby, and subject to the approval of the Quebec Court and the U.S. Bankruptcy Court, Manon Doyer, individually and in her capacity as class representative of the Settlement Class, as defined below, and Dow Corning, by and through their respective counsel, agree as follows:

1. All capitalized terms in this Amendment shall have the respective meanings given them in this Amendment.
2. The Prior Agreement is hereby amended, superseded and replaced by the following:

This Agreement is a final settlement agreement made by and between Manon Doyer, individually and in her capacity as class representative of the Settlement Class (referred to herein as "Plaintiff"), and Dow Corning Corporation and Dow Corning Canada, Inc. and their predecessors, successors, subsidiaries and assigns (collectively referred to herein as "Dow Corning") providing for settlement of the Dow Corning Breast Implant Claims, as defined below, pursuant to the terms and conditions set forth below, subject to the approval of the Quebec Court and the U.S. Bankruptcy Court.

WHEREAS, the Quebec Class Action has been authorized against Dow Corning and noticed;

WHEREAS, Settlement Class Counsel, as defined below, have sought to authorize class proceedings against The Dow Chemical Company by bringing a motion in the Quebec Class Action;

WHEREAS, Dow Corning, notwithstanding its consent to this Agreement, has denied and continues to deny the claims of the Plaintiff and the members of the Quebec Class, and the claims of other plaintiffs in other actions in this and other jurisdictions, has denied and continues to deny any wrongdoing or liability of any kind and anywhere to the Plaintiff or to the members of the Quebec Class and has raised and/or intends to continue to raise numerous defenses;

WHEREAS, based upon an analysis of the facts and the law applicable to claims of the Settlement Class and taking into account, among other things, the extensive burdens and expense of litigation, including the risks and uncertainties associated with protracted trials and appeals, as well as the fair, cost-effective and assured method of resolving claims of the Settlement Class provided in this Agreement, the benefits to be provided to Dow Corning Breast Implant Recipients, as defined below, in the Confirmed Plan of Reorganization, as defined below, and the relevant and respective differences in the various jurisdictions, Plaintiff and Settlement Class Counsel have concluded that this Agreement provides substantial benefits to the Settlement Class and is fair, reasonable and in the best interests of the Settlement Class;

WHEREAS, Dow Corning has similarly concluded that this Agreement is beneficial in order to avoid the time, risk and expense of defending multiple and protracted litigation, and to resolve finally and completely the pending and potential claims of the Settlement Class;

WHEREAS, the Parties, as defined below, intend by this Agreement to resolve all present and future claims, known or unknown, of all Settlement Class Members, as defined below, arising out of or relating in any way, directly or indirectly, to Dow Corning Breast Implants;

NOW THEREFORE, subject to the approval of the Quebec Court and the U.S. Bankruptcy Court, this Agreement embodies the terms of the resolution of the Dow Corning Breast Implant Claims brought against Dow Corning and/or the Released Parties in the Province of Quebec, Canada, including present and future claims, known or unknown, against Dow Corning and/or the Released Parties arising out of or relating in any way, directly or indirectly, to Dow Corning Breast Implants, as defined below.

## AGREEMENTS

### 1. DEFINITIONS

As used in this Agreement, including all exhibits hereto, or internally in the definitions hereinafter set forth, the following defined terms have the following meanings. Where the context so indicates or requires, each defined term stated in the singular includes the plural, and each defined term stated in the plural includes the singular. Where the context so indicates or requires, feminine pronouns and female references include the masculine, and masculine pronouns and male references include the feminine.

- 1.1. "Affidavit of Unrepresented Settlement Class Member" means the document of that title attached as Exhibit E-3 hereto.
- 1.2. "Agreement" means this final settlement agreement titled the "Dow Corning/Quebec Breast Implant Litigation Settlement Agreement," made

by and between the Parties, including the preceding recitals and the following Exhibits hereto:

- Exhibit A: A-1: Compensation Schedule
- A-2: Medical Conditions List
- Exhibit B: Notice of Approval and Effective Date
- Exhibit C: Method of Dissemination of Notices
- Exhibit D: Claims Administration Procedures
- Exhibit E: E-1: Registration & Claim Form
- E-2: Solicitor's Certificate of Independent Legal Advice
- E-3: Affidavit of Unrepresented Settlement Class Member
- E-4: Release of Dow Corning and the Released Parties
- E-5: Laperriere Product Identification
- Exhibit F: (a) Withdrawal of the Dow Chemical Quebec Motion for Authorization (English Version)
- (b) Withdrawal of the Dow Chemical Quebec Motion for Authorization (French Version)

- 1.3. "Amendment" means this Agreement.
- 1.4. "Approved Claimant" means an Eligible Claimant, as defined below, whose claim the Claims Administrator, as defined below, has approved for payment as an Expedited Settlement Claim, a Rupture Claim, an Explanation Claim, a Current Claim or an Ongoing Claim, all as defined below, in accordance with the procedures set forth in this Agreement, including Exhibit D hereto.
- 1.5. "Approved Current Claimant" means an Eligible Claimant whose claim the Claims Administrator has approved for payment as a Current Claim, in accordance with the procedures set forth in this Agreement, including Exhibit D hereto.
- 1.6. "Approved Expedited Settlement Claimant" means an Eligible Claimant whose claim the Claims Administrator has approved for payment as an Expedited Settlement Claim, in accordance with the procedures set forth in this Agreement, including Exhibit D hereto.
- 1.7. "Approved Explanation Claimant" means an Eligible Claimant whose claim the Claims Administrator has approved for payment as an Explanation Claim, in accordance with the procedures set forth in this Agreement, including Exhibit D hereto.
- 1.8. "Approved Ongoing Claimant" means an Eligible Claimant whose claim the Claims Administrator has approved for payment as an Ongoing Claim, in accordance with the procedures set forth in this Agreement, including Exhibit D hereto.

- 1.9. **“Approved Rupture Claimant”** means an Eligible Claimant whose claim the Claims Administrator has approved for payment as a Rupture Claim, in accordance with the procedures set forth in this Agreement, including Exhibit D hereto.
- 1.10. **“Breast Implants”** means any and all silicone-gel and/or saline-filled mammary prostheses with silicone elastomer envelopes.
- 1.11. **“Claims Administrator”** means the person or entity agreed upon by the Parties and appointed by the Quebec Court, as provided in Paragraph 6.3, below, and any employees of such person or entity.
- 1.12. **“Compensation Schedule”** means the schedule of that title setting forth the ratios and amounts to be used by the Claims Administrator to calculate the compensation to be paid to Approved Claimants, which schedule is attached as Exhibit A-1 hereto.
- 1.13. **“Confirmed Plan of Reorganization”** means a plan of reorganization confirmed by the U.S. Bankruptcy Court that is substantially in conformance with the Proposed Joint Disclosure Statement and that (1) provides for a separate subclass of claimants from Quebec whose claims will be administered and paid in accordance with this Agreement and (2) does not materially change the way that breast implant recipients are treated under the Proposed Joint Disclosure Statement with respect to the joint proposed plan of reorganization.
- 1.14. **“Current Claim”** means a claim for compensation in respect of a Designated Medical Condition, as defined below, made by the Registration and Claim Deadline, in accordance with the provisions and procedures set forth in Exhibit D hereto.
- 1.15. **“Designated Medical Condition”** means the diseases and medical conditions defined in Section II of the Medical Conditions List, as defined below. Designated Medical Conditions do not include Rupture or Explantation, both as defined below.
- 1.16. **“Dow Chemical Quebec Motion For Authorization”** means the motion filed by Manon Doyer in the Quebec Class Action on September 20, 1995 attempting to add The Dow Chemical Company as a class defendant in the Quebec Class Action.
- 1.17. **“Dow Corning Breast Implant”** means any Breast Implant developed, designed, manufactured, fabricated, marketed, sold, distributed or otherwise placed into the stream of commerce by Dow Corning.
- 1.18. **“Dow Corning Breast Implant Claims”** means any and all claims including assigned claims, whether known or unknown, asserted or unasserted,

regardless of the legal theory upon which such claims are founded, that are or may be asserted in any way, directly or indirectly, now or in the future by or on behalf of any and/or all Settlement Class Members against Dow Corning and/or the Released Parties arising out of or relating to Breast Implants, or any other claims arising out of the subject matter of this Agreement and/or the subject matter of the Quebec Class Actions, including, without limitation: (1) any and all claims of personal, corporal, material, economic and/or bodily injury or damage, or death, or emotional, mental and/or moral harm, (2) any and all claims for medical monitoring and claims for injunctive or declaratory relief, (3) any and all wrongful death or survival actions, and (4) any and all claims for exemplary and/or punitive damages.

- 1.19. **“Dow Corning Breast Implant Recipients”** means persons in whose bodies one or more Dow Corning Breast Implants have been or are now implanted, regardless of whether such Dow Corning Breast Implants have been or in the future may be removed.
- 1.20. **“Dow Corning Settlement Facility”** means the “Settlement Facility” as that term is defined in the Confirmed Plan of Reorganization, or such other entity that assumes the responsibilities of the Settlement Facility under the terms of the Confirmed Plan of Reorganization.
- 1.21. **“Effective Date Of This Agreement”** means the earliest date by which all of the following have occurred: (1) this Agreement has been executed by all of the Parties hereto, (2) the Quebec Court’s Judgment Approving This Amendment has been entered, (3) the time to appeal, if appeals lie, from such judgment has expired, and all appeals, if any, from such judgment have been exhausted, and (4) the Confirmed Plan of Reorganization has become effective by its terms.
- 1.22. **“Eligible Claimant”** means any Settlement Class Member who is a Dow Corning Breast Implant Recipient, except those excluded below, who timely and properly takes the actions required under this Agreement to present an Expedited Settlement Claim, an Explanation Claim, a Rupture Claim, a Current Claim or an Ongoing Claim, in accordance with the provisions and procedures set forth in this Agreement, including Exhibit D hereto. Eligible Claimants include any Eligible Claimant’s personal representative or estate; but Eligible Claimants do not include any Settlement Class Member who, pursuant to means other than this Agreement, has (1) accepted or accepts compensation from Dow Corning and/or the Released Parties with respect to Dow Corning Breast Implants, (2) released, by settlement, judgment, court order or otherwise, Dow Corning and/or the Released Parties with respect to Dow Corning Breast Implants, or (3) has had dismissed any of her actions against Dow Corning and/or the Released Parties with respect to Dow Corning Breast Implants.

- 1.23. “**Expedited Settlement Claim**” means an “Expedited Settlement Claim” as that term is described in Subparagraph 6.1(i), below, and Paragraphs 3.1 and 5.1 of Exhibit D hereto.
- 1.24. “**Explantation**” means “Explantation” as that term is defined in Paragraph III.B.2 of Exhibit A-2 hereto.
- 1.25. “**Explantation Claim**” means a claim for one-time compensation for one or more Explantations.
- 1.26. “**Final Claim Deadline**” means the date sixty-six (66) months after the Registration Claim Deadline.
- 1.27. “**Laperriere Product Identification**” means a letter from Mr. Real Laperriere provided for in Subparagraph 2.2(ii) of Exhibit D hereto and as described in Exhibit E-5 hereto.
- 1.28. “**Licensed Medical Specialist**” means a “Licensed Medical Specialist” as that term is defined in Paragraph I.C of Exhibit A-2 hereto.
- 1.29. “**Medical Conditions List**” means the “Medical Conditions List” subtitled the “Medical Conditions and Characteristics: Outline of Definitions and Classification Criteria,” attached as Exhibit A-2 hereto.
- 1.30. “**Method of Dissemination of Notices**” means the document of that title attached as Exhibit C hereto.
- 1.31. “**Notice of Approval and Effective Date**” means the notice titled “Notice of Approval and Effective Date” advising members of the Quebec Class of the Quebec Court’s Judgment Approving This Amendment and the Effective Date Of This Agreement, as set forth in Exhibit B hereto or in a form otherwise mutually acceptable to the Parties.
- 1.32. “**Ongoing Claim**” means a claim for compensation in respect of a Designated Medical Condition made before the Final Claim Deadline, in accordance with Exhibit D hereto.
- 1.33. “**Parties**” means collectively the Plaintiff and Dow Corning.
- 1.34. “**Product Identification Documentation**” means “Product Identification Documentation” as that term is defined in Paragraph 2.2 of Exhibit D hereto. Product Identification Documentation includes Laperriere Product Identification.
- 1.35. “**Prior Agreement**” means the settlement agreement titled the “Quebec/Ontario Dow Corning Breast Implant Litigation Settlement Agreement” executed by all parties thereto on May 14, 1998.

- 1.36. “Proposed Joint Disclosure Statement” means the “Joint Disclosure Statement with Respect to Joint Plan of Reorganization,” the original form of which was filed with the U.S. Bankruptcy Court by Dow Corning, among other parties, on November 9, 1998.
- 1.37. “Quebec Court” means the Superior Court for the District of Montreal in the Province of Quebec, Canada.
- 1.38. “Quebec Court’s Judgment Approving This Amendment” means the judgment entered by the Quebec Court approving this Amendment, as described in Paragraph 2.1, below.
- 1.39. “Quebec Class” means all persons who, in Quebec, received Dow Corning Breast Implants or who received Dow Corning Breast Implants elsewhere than in Quebec and who were residing in Quebec on August 1, 1998.
- 1.40. “Quebec Class Action” means the class action proceeding filed on September 26, 1993 in Quebec Superior Court as *Manon Doyer v. Dow Corning Corporation & Dow Corning Canada, Inc.*, No. 500-06-000013-934.
- 1.41. “Registration & Claim Deadline” means the date eighteen (18) months after the first publication of the Notice of Approval and Effective Date or such other date as may be approved by the Quebec Court.
- 1.42. “Registration & Claim Form” means the form of that title attached as Exhibit E-1 hereto or a similar form otherwise mutually acceptable to the Parties.
- 1.43. “Release of Dow Corning and the Released Parties” means the form of that title attached as Exhibit E-4 hereto.
- 1.44. “Released Parties” means Dow Corning Corporation, Dow Corning Canada, Inc., The Dow Chemical Company, Corning Incorporated, Dow Holdings, Inc., Dow Chemical Canada, Inc., and, for each of the aforementioned, their predecessors, successors, subsidiaries, officers, directors, employees, divisions, affiliates, representatives, attorneys and assigns, and the “Settling Insurers,” as that term is defined in the Confirmed Plan of Reorganization.
- 1.45. “Rupture” means “Rupture” as that term is defined in Paragraph III.B.1 of Exhibit A-2 hereto.
- 1.46. “Rupture Claim” means a claim for one-time compensation for one or more Ruptures.



- 1.47. “Settlement Amount” means the “Settlement Amount” as that term is defined in Paragraph 4.1, below.
- 1.48. “Settlement Class” or “Settlement Class Members” means all members of the Quebec Class (1)(a) who did not exercise their rights to opt out of the Quebec Class on or before July 10, 1998, (b) who have not been deemed to have opted out of the Quebec Class under section 1008 of the *Quebec Code of Civil Procedure*, or, (c) if they did exercise their rights to opt out, who also exercise their rights to opt back into the Quebec Class pursuant to this Agreement and (2) who elect to participate in this Agreement by filing a Registration & Claim Form.
- 1.49. “Settlement Class Counsel” means the law firm of Lauzon Bélanger in Montreal, Quebec, which firm acts on behalf of the Plaintiff and shall continue acting on behalf of the Plaintiff with respect to all acts or consents pursuant to this Agreement. (Nothing in this Agreement shall preclude Settlement Class Counsel from representing or acting on an individual basis on behalf of any individual Settlement Class Member for the purpose of preparing and submitting an individual claim under this Agreement and entering into a separate mandate and/or fee agreement for that purpose.)
- 1.50. “Severity/Disability Categories” means Categories A, B, C and D set forth in the Compensation Schedule and defined in the Medical Conditions List with respect to each of the Designated Medical Conditions.
- 1.51. “Subrogation Claims” means “Subrogation Claims” as that term is defined in Paragraph 5.2, below.
- 1.52. “Supporting Medical Documentation” means “Supporting Medical Documentation” as that term is defined in Paragraph 2.4 of Exhibit D to this Agreement.
- 1.53. “U.S. Bankruptcy Case” means the case under Chapter 11 of the U.S. Bankruptcy Code commenced by Dow Corning Corporation on May 15, 1995, Case No. 95-20512 for the reorganization or liquidation of Dow Corning Corporation, including all proceedings therein, now pending in the U.S. Bankruptcy Court.
- 1.54. “U.S. Bankruptcy Court” means the U.S. Bankruptcy Court for the Eastern District of Michigan, Northern Division, or such other court as is administering the U.S. Bankruptcy Case.

## 2. QUEBEC APPROVAL

### 2.1. The Quebec Court's Judgment Approving This Amendment

Within ten (10) days after the Parties have executed this Amendment, the Parties shall advise the Quebec Court of the Amendment and shall request entry of a judgment of approval that subject to the Quebec Court's approval shall:

- (i) approve this Amendment and order Dow Corning, Settlement Class Counsel and all members of the Quebec Class to comply with it;
- (ii) acknowledge that, in comparison to the Prior Agreement, this Amendment serves to increase the benefits available to Settlement Class Members and that as a result it is not necessary to re-notice to the members of the Quebec Class the terms of this Amendment;
- (iii) declare that this Amendment constitutes a "transaction" that is binding upon the Parties and upon all members of the Quebec Class;
- (iv) declare that, subject to sections 1007 and 1008 of the *Quebec Code of Civil Procedure*, any member of the Quebec Class who did not opt out from the Settlement Class by July 10, 1998 or, who, having opted out, opts back in by submitting a Registration & Claim Form to the Claims Administrator on or before the Registration & Claim Deadline, shall be bound by this Amendment;
- (v) declare that this Amendment, including all Exhibits hereto, is reasonable, fair and in the best interests of the Quebec Class;
- (vi) declare that the Quebec Class Action is fully and finally resolved in all respects; and
- (vii) order publication, after the Effective Date Of This Agreement, of the Notice of Approval and Effective Date at Dow Corning's expense.

### 2.2. Notice of the Quebec Court's Approval and Effective Date Of This Agreement

- (i) Subject to the Quebec Court's approval, the form of the Notice of Approval and Effective Date shall be as set forth in Exhibit B to this Agreement.
- (ii) Within fifteen (15) days after the Effective Date Of This Agreement, the Settlement Class Counsel shall disseminate the Notice of Approval and Effective Date to Quebec Class Members in accordance with the

Method of Dissemination of Notices, and Dow Corning shall pay the costs of such dissemination.

3. **EFFECTIVE DATE OF THIS AGREEMENT**

This Agreement shall become effective on the Effective Date Of This Agreement, as that term is defined in Paragraph 1.21, above. The Parties hereto will have no rights or obligations hereunder prior to the Effective Date Of This Agreement.

4. **CONSIDERATION TO BE PROVIDED BY DOW CORNING**

In consideration of the releases and other consideration to be provided by the Plaintiff and Settlement Class Members pursuant to Section 5, below, after the Effective Date Of This Agreement, Dow Corning will cause the payments described in Paragraph 4.1, below, to be made, and will provide the waiver of limitation defenses set forth in Paragraph 4.3, below.

4.1. **Scheduled Payment of the Settlement Amount**

The "Settlement Amount" is thirty-seven million two hundred fifty thousand dollars in United States currency (\$US 37,250,000.00); that amount is to be paid by the Dow Corning Settlement Facility to the Claims Administrator on trust for the Settlement Class Members pursuant to the following schedule:

- (i) an initial payment of two million seven hundred fifty thousand dollars in United States currency (\$US 2,750,000.00) to be made within forty-five (45) days of the Effective Date Of This Agreement (such payment being referred to herein as the "Initial Payment");
- (ii) a second payment of nine million five hundred thousand dollars in United States currency (\$US 9,500,000.00) to be made on or before the date one (1) calendar year after the date of the Initial Payment;
- (iii) a third payment of nine million five hundred thousand dollars in United States currency (\$US 9,500,000.00) to be made on or before the date two (2) calendar years after the date of the Initial Payment;
- (iv) a fourth payment of five million two hundred fifty thousand dollars in United States currency (\$US 5,250,000.00) to be made on or before the date three (3) calendar years after the date of the Initial Payment;
- (v) a fifth payment of four million seven hundred fifty thousand dollars in United States currency (\$US 4,750,000.00) to be made on or before the date five (5) calendar years after the date of the Initial Payment; and

- (vi) a sixth payment of five million five hundred thousand dollars in United States currency (\$US 5,500,000.00) to be made on or before the date seven (7) calendar years after the date of the Initial Payment.

The Settlement Amount constitutes the entire principal to be allocated pursuant to this Agreement for the payment of Expedited Settlement Claims, Explantation Claims, Rupture Claims, Current Claims, Ongoing Claims, Settlement Class Counsel fees, costs, disbursements and administration costs. Except only as necessary to the dissemination of notices pursuant to this Amendment and the cost of translation of this Amendment including the Exhibits, in no event shall Dow Corning, the Released Parties or the Dow Corning Settlement Facility make or be called upon to make any additional payment above and beyond the Settlement Amount. In no event shall the schedule of the payments of the Settlement Amount be accelerated.

#### 4.2. Maintenance in Trust and Administration of the Settlement Amount

The Settlement Amount will be held in trust and administered by the Claims Administrator pursuant to the terms of this Agreement and under the supervision of the Quebec Court.

#### 4.3. Waiver of Limitation Defenses as to Settlement Class Members

Only for the benefit of and with respect to Settlement Class Members making claims under this Agreement, Dow Corning and/or the Released Parties release and waive any defenses to Dow Corning Breast Implant Claims that they now have or may have in the future based on any statute of limitation or repose, prescription period or any other limitation or prescription defense.

*Provided*, however, that nothing in this Agreement shall constitute or be deemed to constitute a waiver by Dow Corning and/or the Released Parties of defenses to any claims or matters based on statutes of limitation or repose, prescription periods or any other limitation or prescription defense with respect to any person who is not a Settlement Class Member.

### 5. CONSIDERATION TO BE PROVIDED BY THE SETTLEMENT CLASS

In consideration of the undertakings entered into by Dow Corning as described in Section 4, above, the Plaintiff and Settlement Class Members will provide Dow Corning and the Released Parties with the releases and other consideration set forth in this Section 5.

#### 5.1. Release of Dow Corning Breast Implant Claims

- (i) As set forth in Section 2, above, prior to the Effective Date Of This Agreement, Settlement Class Counsel will request entry of a judgment approving this Amendment.

- (ii) Upon the Effective Date Of This Agreement, by virtue of this instrument every Dow Corning Breast Implant Claim is conclusively compromised, settled, released and discharged, and the Settlement Class Members forever release and discharge Dow Corning and all Released Parties from any past, present and future claims, actions, demands and liabilities of any nature whatsoever relating to Breast Implants.
- (iii) Within thirty (30) days after the Effective Date Of This Agreement, Settlement Class Counsel will withdraw the Dow Chemical Quebec Motion for Authorization, using a form substantially identical to that set forth as Exhibit E-2 hereto.
- (iv) Prior to her receipt of any funds from the Settlement Amount, each Settlement Class Member shall execute a release in a form substantially identical to the "Release of Dow Corning and the Released Parties" set forth as Exhibit E-4 hereto, which release shall be delivered by the Claims Administrator to Dow Corning.

5.2. Other Third-Party Subrogation Claims

In cases where there are unresolved claims or liens by third parties for payments made or services rendered to Settlement Class Members relating to Dow Corning Breast Implants, including, but not limited to, subrogation claims and liens of health care providers and insurers, whether public or private (collectively referred to herein as "Subrogation Claims"), the Settlement Class Member involved shall provide the Claims Administrator with notice of such Subrogation Claims. The Claims Administrator shall pay or otherwise extinguish such Subrogation Claims from the amount payable under this Agreement to the Approved Claimant on whose behalf such Subrogation Claims arose, prior to disbursing the balance of such payment to the Approved Claimant. In the event such Subrogation Claims are not extinguished or paid, and in the event Dow Corning and/or the Released Parties are subjected to claims by third parties for payment of such Subrogation Claims, Settlement Class Members on whose behalf such claims or liens arose shall then fully hold harmless, reimburse and indemnify Dow Corning and/or the Released Parties in the amount of any such liability, together with interests, costs and counsel fees, on an extrajudicial basis in Quebec.

5.3. Third-Party Contribution or Indemnity Claims

Settlement Class Members who commence or continue litigation against any person or entity who may make a claim over or who may make a claim in warranty, including, but not limited to, a claim for contribution and/or indemnity against Dow Corning and/or any Released Party, shall limit the value and right of recovery of such claim against such person or entity to the quantum of damages, interest, costs and all losses and other compensation

proven and apportioned against such person or entity, severally and not jointly with Dow Corning and/or any Released Party. In the event that litigation commenced or continued by a Settlement Class Member against any such person or entity results in a claim over, a claim in warranty or judgment against Dow Corning and/or any Released Party to pay any amount to any party, such Settlement Class Member shall then fully hold harmless, reimburse and indemnify Dow Corning and/or the Released Party for the full amount of such claim over, claim in warranty, or judgment, together with any interest, exclusive of counsel fees, costs and disbursements incurred by Dow Corning and/or the Released Parties in the defense of such claims. Settlement Class Members shall submit themselves to the ongoing jurisdiction of the Quebec Court with respect to any such future claims.

## 6. ADMINISTRATION OF SETTLEMENT AMOUNT

### 6.1. Entitlements of Approved Claimants

Only Approved Claimants shall be entitled to receive payment for an Expedited Settlement Claim, an Explantation Claim, a Rupture Claim, a Current Claim, or an Ongoing Claim.

- (i) Approved Claimants who have registered and submitted an Expedited Settlement Claim by the Registration & Claim Deadline and pursuant to the provisions and procedures set forth in Exhibit D hereto shall be entitled to receive two thousand dollars in Canadian currency (\$CND 2,000).
- (ii) Approved Claimants who have registered and submitted an Explantation Claim by the Registration & Claim Deadline and pursuant to the provisions and procedures set forth in Exhibit D to this Agreement shall be entitled to receive five thousand dollars in Canadian currency (\$CND 5,000). An Eligible Claimant who wishes to have her Dow Corning Breast Implant(s) removed and does not have the funds to pay for the procedure may apply to the Claims Administrator before the Registration & Claim Deadline for a direct payment not to exceed \$CND 5,000 to be made to the surgeon chosen by the claimant to perform the explantation procedure to cover all costs of the explantation procedure. (If the costs of the explantation procedure are less than \$CND 5,000, the claimant shall receive the difference between the actual cost of the procedure and \$CND 5,000.)
- (iii) Approved Claimants who have registered and submitted a Rupture Claim by the Registration & Claim Deadline and pursuant to the provisions and procedures set forth in Exhibit D hereto shall be entitled to receive twelve thousand dollars in Canadian currency (\$CND 12,000).

- (iv) Approved Claimants who have a Designated Medical Condition and who have registered and submitted a Current Claim by the Registration & Claim Deadline and pursuant to the provisions and procedures set forth in Exhibit D hereto shall be entitled to receive payment and compensation in accordance with the ratios or amounts indicated in the Compensation Schedule.
- (v) Approved Claimants who have a Designated Medical Condition and who have registered by the Registration & Claim Deadline and submitted an Ongoing Claim by the Final Claim Deadline and pursuant to the provisions and procedures set forth in Exhibit D hereto shall be entitled to receive payment and compensation in accordance with the ratios indicated in the Compensation Schedule. Payments for Ongoing Claims will be made following the Final Claim Deadline.

## 6.2. Court Authority Over the Settlement Amount

The Quebec Court shall retain ongoing authority to do the following:

- (i) upon motion of Settlement Class Counsel, to allocate from the Settlement Amount Settlement Class Counsel fees to be approved by the Quebec Court and to be paid to Settlement Class Counsel or as the Quebec Court directs;
- (ii) upon motion of Settlement Class Counsel or the Claims Administrator, to transfer amounts between those set aside for the payment of Current Claims and those set aside for the payment of Ongoing Claims, as the Quebec Court may deem necessary or appropriate; and
- (iii) to order that money be held in reserve for the benefit of Approved Ongoing Claimants as the Quebec Court may deem necessary or appropriate.

## 6.3. The Claims Administrator

At the approval hearing held by the Quebec Court, as described in Section 2, above, the Plaintiff will propose a Claims Administrator and a Claims Administrator to be agreed upon by the Parties and appointed by the Quebec Court for the purposes of, under the authority of the Quebec Court, processing and classifying the Registration & Claim Forms, Product Identification Documentation, Supporting Medical Documentation and Releases of Dow Corning and the Released Parties, assigning the status of Approved Claimant to Eligible Claimants and paying such Approved Claimants, all as provided in this Agreement, including the provisions and procedures set forth in the Claims Administration Procedures.

- (i) The Claims Administrator shall be required to administer the Settlement Amount and process claims in accordance with this Agreement, including the provisions and procedures set forth in the Claims Administration Procedures set forth in Exhibit D hereto.
- (ii) The Claims Administrator shall be bilingual and, for purposes of convenience, shall have offices established in the province of Quebec.
- (iii) The Claims Administrator shall prepare and submit to the Quebec Court for approval, budgets for the organization and operation of the administration of the claims procedures hereunder.
- (iv) The Claims Administrator and any employee of the Claims Administrator assisting in the processing of claims shall be required to sign a confidentiality statement by which such employees shall agree to keep confidential any information concerning members of the Quebec Class and shall institute procedures to assure that the identity of all members of the Quebec Class and all information regarding their claims will be kept confidential and not be provided to persons except as required by law and as otherwise may be permitted by this Agreement.
- (v) The Claims Administrator shall be subject to removal by the Quebec Court for cause.

## 7. EXCLUSIVE REMEDY

### 7.1. Sole Remedy

This Agreement provides the sole, exclusive remedy for any and all Settlement Class Members with respect to Dow Corning Breast Implant Claims. Neither Dow Corning nor any of the Released Parties shall be subject to liability or expense of any kind to any Settlement Class Member with respect to any Dow Corning Breast Implant Claim except as provided herein. Upon the Effective Date Of This Agreement, each of the Settlement Class Members shall be barred forever from continuing, initiating, asserting or prosecuting any Dow Corning Breast Implant Claim other than pursuant to this Agreement.

### 7.2. Exclusive Participation

Dow Corning and certain other Released Parties are currently defendants in class action proceedings related to breast implants pending in Quebec, Ontario and British Columbia. To the extent an individual would be entitled to participate in more than one settlement agreement related to Dow Corning and/or any Released Parties, such individual will be permitted to participate to only one such settlement based on her "principal geographic nexus" determined as follows:



- (i) If an individual or her authorized attorney filed a proof of claim form with the U.S. Bankruptcy Court indicating a Canadian residence address, the province or territory of such residence will establish the individual's principal geographic nexus;
- (ii) If the individual filed no proof of claim form as described above, but resided in Canada on August 1, 1998, the province or territory of such residence will establish her principal geographic nexus;
- (iii) If the individual filed no proof of claim form as described above and did not reside in Canada on August 1, 1998, the province or territory within Canada where the individual first received Dow Corning Breast Implants will establish her principal geographic nexus; and
- (iv) If none of the above criteria establish the individual's principal geographic nexus, the Canadian province or territory in which the individual first registers as a settlement participant will establish her principal geographic nexus.

An individual having a principal geographic nexus in Quebec will be entitled to participate only in the Quebec settlement; an individual having a principal geographic nexus in Ontario will be entitled to participate only in the Ontario settlement; and an individual having a principal geographic nexus in a province or territory other than Ontario or Quebec will be entitled to participate only in the British Columbia settlement.

8. **REASONABLE BEST EFFORTS**

The Parties hereto will use their reasonable best efforts to secure the appropriate court orders and approvals necessary to implement and effectuate this Agreement.

9. **RETENTION OF RECORDS AND RIGHT OF REVIEW**

The Claims Administrator shall be required to retain all records relating to the compensation of claims. For purposes of the U.S. Bankruptcy Case and the recovery of insurance proceeds by Dow Corning and/or the Released Parties, Dow Corning and/or the Released Parties may, upon reasonable notice and at their own expense, inspect Claims Administrator records, including Settlement Class Members' medical records. Such a review of records shall not constitute or be deemed to constitute a waiver of the physician-patient privilege of any member of the Quebec Class for any other purpose or as to any other communication or documents, and shall not affect the eligibility of any claims. Dow Corning's counsel and Dow Corning's insurers shall maintain the confidentiality of opt-out and claims information to the extent necessary to protect the identity and privacy of individual members of the Quebec Class.

## 10. MISCELLANEOUS

### 10.1. Ongoing Authority of the Courts

The Quebec Court shall retain continuing jurisdiction (1) over the Quebec Class Action and any individual actions pertaining to Dow Corning Breast Implants commenced by Settlement Class Members against Dow Corning and/or Released Parties, (2) over all Parties named or described herein, including, but not limited to, all Settlement Class Members and Dow Corning, and (3) over this Agreement, to, *inter alia*, assure that all disbursements are properly made, enforce the releases provided for herein, determine appeals regarding claims decisions and interpret and enforce this Agreement's terms, conditions and obligations. The U.S. Bankruptcy Court shall retain jurisdiction (1) over Dow Corning, the Released Parties, the Dow Corning Settlement Facility and Settlement Class Members who filed proofs of claim in the U.S. Bankruptcy Case or are otherwise subject to the jurisdiction of the U.S. Bankruptcy Court, and (2) over this Agreement to enforce the releases provided for herein, to assure that all payments by the Settlement Facility are properly made, and to resolve disputes related to the implementation; provided, however, that the U.S. Bankruptcy Court shall not retain jurisdiction, if any, over the administration or distribution of the Settlement Amount paid.

### 10.2. Submissions to the Courts by the Claims Administrator

The Claims Administrator shall report the results of processing all requests for all Expedited Settlement Claims, Explanation Claims, Rupture Claims, Current Claims and Ongoing Claims to the Quebec Court, Settlement Class Counsel, Dow Corning's Counsel and as requested by the U.S. Bankruptcy Court.

The Claims Administrator shall be required to serve upon Settlement Class Counsel and Dow Corning's Counsel submissions, requests or motions made to the Quebec Court or to the U.S. Bankruptcy Court no later than fifteen (15) days prior to the date of the hearing thereon.

### 10.3. Entire Agreement and Term

This Agreement, including all Exhibits attached hereto, constitutes a single integrated written contract that expresses the entire agreement and understanding between the Parties. This Agreement supersedes all prior communications, negotiations and understandings between the Parties and their representatives regarding the matters addressed by this Agreement. Except as explicitly set forth in this Agreement and/or the judgments or orders of the Quebec Court or the U.S. Bankruptcy Court approving this Agreement, there are no representations, warranties, promises or

inducements, whether oral, written, expressed or implied, that in any way affect or condition the validity of this Agreement or alter its terms.

Except as expressly set forth herein, the failure or invalidation of any particular provision of this Agreement will not in any way affect the validity of or performance by any Party pursuant to any other provision.

This Agreement will have perpetual existence and may be amended only by a subsequent written instrument executed by the Parties and approved by the Quebec Court.

#### 10.4. Agreement Binding on Successors

This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns, including without limitation any trustee appointed in the U.S. Bankruptcy Case, and any substantively consolidated entity of which Dow Corning Corporation's estate may form a part and any successor or assign under the Confirmed Plan of Reorganization.

#### 10.5. No Waiver, Admission or Prejudice

Except as otherwise expressly provided in this Agreement, by entering into this Agreement, none of Dow Corning, the Released Parties, the Plaintiff or the Settlement Class Members has waived or will be deemed to have waived any rights, obligations, privileges or positions that have been asserted or might in the future be asserted in connection with any claim, matter or person outside the scope of this Agreement.

Neither the existence nor the terms of this Agreement may be referred to, introduced or used, directly or indirectly, in any litigation or proceeding as evidence of any admission by Dow Corning and/or the Released Parties regarding product identification, fault, liability, causation, level of damages and/or any other issue.

Nothing in this Agreement shall prejudice or in any way interfere with the rights of Dow Corning, the Released Parties, the Plaintiff or the Settlement Class Members to pursue any rights and remedies they have or in the future may have in connection with any claim, matter or person outside the scope of this Agreement.

#### 10.6. Notices

All communications to be provided pursuant to or in connection with this Agreement either by the Plaintiff and/or Settlement Class Members to Dow Corning or by Dow Corning to the Plaintiff and/or Settlement Class Members shall be in writing and shall be delivered personally or sent by

registered mail or overnight delivery service, costs prepaid to the Parties at the addresses set forth below, or to such other individuals and addresses as the Plaintiff or Dow Corning may designate in writing from time to time.

If to the Plaintiff and/or Settlement Class Members:

Att'n: Dow Corning/Quebec Settlement Counsel  
LAUZON BÉLANGER  
511, Place D'Armes  
Bureau 200  
Montreal PQ H2Y 2W7  
CANADA  
Telephone: 514-844-4646  
Facsimile: 514-844-7009

If to Dow Corning:

Att'n: Dow Corning/Quebec Counsel  
GASCO LELARGE  
1080 Beaver Hall Hill  
Suite 2100  
Montreal PQ H1Z 1S8  
CANADA  
Telephone: 514-397-0066  
Facsimile: 514-397-0393

#### 10.7. Transaction

This Agreement is a transaction in virtue of Article 2631 of the *Civil Code of Quebec* and Article 1025 of the *Quebec Code of Civil Procedure*.

#### 10.8. French Translation

A French translation of this Agreement and all Exhibits attached hereto shall be prepared and shall be made available to the members of the Quebec Class. In the event there are any differences between the two versions of this Agreement, the English version shall take precedence. The cost of translating this Agreement and all Exhibits attached hereto will be paid by Dow Corning.

#### 10.9. French Language Clause

Les parties ont convenues que cette Entente soit rédigée en anglais.

10.10. Headings

Titles or headings contained in this Agreement are included only for ease of reference and have no substantive effect.

10.11. Execution

This Agreement may be executed by each Party in counterparts, each of which will be deemed an original and all of which, when so executed and taken together, will constitute one and the same instrument.

10.12. Authority

The individuals who have executed this Agreement on behalf of the Parties expressly represent and warrant that they are fully authorized to sign on behalf of the Parties for the purpose of duly binding the Parties, subject, in the case of Dow Corning, to approval by the U.S. Bankruptcy Court as contemplated herein.

IN WITNESS WHEREOF, the Plaintiff and Dow Corning have caused this "Dow Corning/Quebec Breast Implant Litigation Settlement Agreement," consisting of twenty-one (21) pages and twelve (12) exhibits to be executed by their respective duly authorized representatives as of the date(s) set forth below.

Settlement Class Counsel for Quebec  
Dated January 15, 1999

LAUZON BÉLANGER in Montreal

Per: 

Yves Lauzon

Counsel for Dow Corning Corporation  
Dated January 15, 1999

GASCO LELARGE in Montreal

Per: 

Robert Gasco

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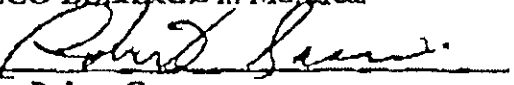
Settlement Class Counsel for Quebec  
Dated January 15, 1999

LAUZON BÉLANGER in Montreal

Per:   
Yves Lauzon

Counsel for Dow Corning Corporation  
Dated January 15, 1999

GASCO LELARGE in Montreal

Per:   
Robert Gasco