

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

<p><b>In re:</b></p> <p><b>Dow Corning Corporation,</b></p> <p><b>Debtor.</b></p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p><b>Case No. 00-CV-00005-DT</b> <b>(Settlement Facility Matters)</b></p> <p><b>HON. DENISE PAGE HOOD</b></p>
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 U.S. DISTRICT COURT  
 EASTERN DISTRICT OF MICHIGAN  
 DETROIT

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

<p><b>In re:</b></p> <p><b>Silicone Gel Breast Implant Products Liability Litigation (MDL 926)</b></p> <p><b>Heidi Lindsey, et al.,</b></p> <p><b>-vs.-</b></p> <p><b>Dow Corning Corp., et al.,</b></p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p><b>Master File No. CV 92-P-10000-S</b></p> <p><b>Civil Action No. CV 94-P-11558-S</b></p> <p><b>HON. EDWIN L. NELSON</b></p>
<p align="right"><b>Plaintiffs,</b></p> <p align="right"><b>Defendants.</b></p>		

**AGREEMENT AND ORDER APPROVING AGREEMENT  
TO ARBITRATE REGARDING  
DOW CORNING SETTLEMENT FACILITY  
ACCESS TO MDL 926 CLAIMS OFFICE MATERIALS**

This arbitration agreement is among Dow Corning Corporation, the Tort Claimants' Committee (collectively, the "Plan Proponents") and Bristol-Myers Squibb Company, Baxter International Inc., Minnesota Mining and Manufacturing Company, Union Carbide Chemical & Plastics Co., and Union Carbide Corporation (collectively, the "MDL 926 Settling Defendants").

1. In accordance with the terms of the Amended Joint Plan of Reorganization of Dow Corning Corporation dated February 4, 1999 ("the Plan"), the Plan Proponents wish to assure that the Dow Corning Settlement Facility has access to and use of MDL 926 Claims Office Materials (as defined at Annex A).

2. The MDL 926 Settling Defendants are willing to provide the Dow Corning Settlement Facility with access to and the ability to use the MDL 926 Claims Office Materials, but believe that an appropriate level of compensation should be paid to the MDL 926 Settling Defendants to offset the costs incurred in the development and preparation of such Materials. Dow Corning disagrees with the position of the MDL 926 Settling Defendants (since Dow Corning has already provided substantial funding to the MDL 926 Claims Office), and the parties have been unable to agree on the concept of or amount of such compensation.

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3. The MDL 926 Settling Defendants and the Plan Proponents agree to be bound by the process outlined in paragraph 4 below for determining whether any compensation is to be paid by the Dow Corning Settlement Facility to the MDL 926 Settling Defendants for access to and use of the MDL 926 Claims Office Materials, and if so, the amount of such compensation.

4. The MDL 926 Settling Defendants and the Plan Proponents agree to resolve the matter of compensation for access to and use of the MDL 926 Claims Office Materials through binding arbitration as follows:

- The arbitrator shall be Edgar Gentle, Escrow Agent for the MDL 926 Fund.
- The arbitrator shall have discretion to award an amount to the MDL 926 Settling Defendants that is not less than \$0 and not more than \$4 million.
- In determining the amount of compensation, if any, the arbitrator shall consider all pertinent information, including, among other things, the nature of the materials transferred, as well as the costs and logistics of copying materials for use by both the MDL 926 Claims Office and the Dow Corning Settlement Facility.
- The parties shall submit arbitration statements to the arbitrator simultaneously, and each party shall have an opportunity to submit follow-up statements responding to the initial statements. The arbitrator shall establish the schedule for such submissions, after consultation with the parties, and shall be entitled to request additional information from the parties. There shall be no ex parte communications with the arbitrator as to the subject of the arbitration.
- The arbitrator shall, if the parties so request, itemize compensation due, if any.

5. In the event that the arbitrator determines that the Dow Corning Settlement Facility must pay any amount for access to and use of MDL 926 Claims Office Materials, such payment shall be made only if the Plan becomes Effective, only after the Effective Date and, in such event, no later than 60 (sixty) days after the Effective Date of the Plan.

6. Upon execution of this arbitration agreement by the parties, and approval by the MDL 926 Court and the United States District Court for the Eastern District of Michigan, Judge Denise Page Hood (the "Dow Corning Court"), the MDL 926 Claims Office shall make available to the Dow Corning Claims Administrator and Dow Corning Settlement Facility staff or employees all MDL 926 Claims Office Materials. The Dow Corning Claims Administrator shall use such MDL 926 Claims Office Materials as necessary and appropriate to implement the Plan. The MDL 926 Claims Office's substantive review guidelines (*i.e.*, the annotations and interpretations of the substantive eligibility criteria of the Revised Settlement Program), however, may be disclosed only to the Dow Corning Claims Administrator and Dow Corning Settlement Facility staff or employees. It is further understood that the confidentiality and non-admissibility of Claims Office determinations and payments will remain fully protected under existing MDL 926 Court Orders, including but not limited to Paragraph 25(b) of the Revised Settlement Program Class Notice. The confidentiality of all claimant materials submitted by MDL 926 claimants to the MDL 926 Claims Office shall be protected in accordance with existing orders of the MDL 926 Court, as may be modified by joint order of the MDL 926 Court

and the Dow Corning Court. All materials submitted by claimants in the Dow Corning Corporation Chapter 11 proceedings shall be protected by the confidentiality provisions of the Plan, orders of the United States Bankruptcy Court for the Eastern District of Michigan, and orders of the Dow Corning Court.

7. The Plan Proponents represent that they have authority to enter into this arbitration agreement. Because the MDL 926 Settling Defendants wish to assure the authority of the Dow Corning Settlement Facility to make any payment awarded to them as a result of this arbitration process, as a condition to its becoming effective, this arbitration agreement shall be approved by an order of the Dow Corning Court.

8. The MDL 926 Settling Defendants represent that they have authority to enter into this arbitration agreement. The MDL 926 Settling Defendants shall provide assurances from the MDL 926 Claims Administrator (who has custody of the MDL 926 Claims Office Materials) and the MDL 926 Court, that the terms of this arbitration agreement are acceptable and enforceable.

9. This arbitration agreement shall resolve all monetary claims between Dow Corning Corporation and the MDL 926 Settling Defendants as to use of the MDL Claims Office and MDL Claims Office Materials as of the effective date of this agreement (except for claims that may arise as a result of a computational error or similar mistake discovered after the date of this agreement but before the latter of December 31, 2001 or a final decision by the arbitrator), except that Dow Corning Corporation reserves the right to assert whatever separate claim, if any, it might have against Minnesota Mining and Manufacturing Company ("3M") under the Fourth Amendment to Addendum to Escrow Agreement, dated as of June 23, 1998, and 3M asserts that any such claim has expired by its terms, and 3M further reserves all of its rights and defenses to any such claim. The arbitrator shall not consider any such claim or defenses in this arbitration, by way of set-off or otherwise.

10. Any award under this arbitration agreement shall be paid by and may be enforced only against the Dow Corning Settlement Facility after the Effective Date of the Plan, and there shall be no recourse against Dow Corning Corporation, the Tort Claimants' Committee, the Finance Committee, or any Released Party as defined in the Plan.

11. This arbitration agreement may be executed in multiple counterparts, all of which shall constitute a single agreement.

IN WITNESS WHEREOF, the parties below have executed the arbitration agreement as of February 15, 2001:

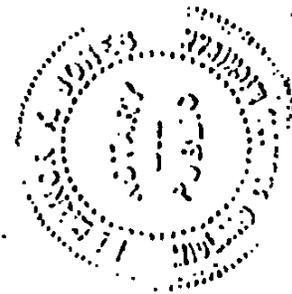
**DOW CORNING CORPORATION**

By: *John C. Rothhaar*  
Name: John C. Rothhaar  
Title: Secretary and General Counsel

Attested

By: *Eleanor K. Jones*  
Name: Eleanor K. Jones  
Title: Administrative Assistant

Notary Expires: September 30, 2003



**TORT CLAIMANTS' COMMITTEE**

By: Ralph I. Knowles, Jr.  
Name: Ralph I. Knowles, Jr.

**BRISTOL-MYERS SQUIBB CO.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BAXTER INTERNATIONAL INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MINNESOTA MINING AND  
MANUFACTURING CO.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**UNION CARBIDE CHEMICAL &  
PLASTICS CO.;  
UNION CARBIDE CORPORATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**APPROVED, SO ORDERED**

\_\_\_\_\_  
The Honorable Denise Page Hood  
United States District Court Judge

Dated: \_\_\_\_\_

**APPROVED, SO ORDERED**

\_\_\_\_\_  
The Honorable Edwin L. Nelson  
United States District Court Judge

Dated: \_\_\_\_\_

**TORT CLAIMANTS' COMMITTEE**

By: \_\_\_\_\_  
Name: \_\_\_\_\_

**BRISTOL-MYERS SQUIBB CO.**

By: Richard M. Fittreim  
Name: Richard<sup>VM</sup> Fittreim  
Title: Attorney for Bristol-Myers Squibb Co.

**BAXTER INTERNATIONAL INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MINNESOTA MINING AND  
MANUFACTURING CO.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**UNION CARBIDE CHEMICAL &  
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**UNION CARBIDE CORPORATION**

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Title: \_\_\_\_\_

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The Honorable Denise Page Hood  
United States District Court Judge

Dated: \_\_\_\_\_

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\_\_\_\_\_  
The Honorable Edwin L. Nelson  
United States District Court Judge

Dated: \_\_\_\_\_

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Title: \_\_\_\_\_

Attested

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Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TORT CLAIMANTS' COMMITTEE

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Name: \_\_\_\_\_

BRISTOL-MYERS SQUIBB CO.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

BAXTER INTERNATIONAL INC.

By: Peter W. Morgan  
Name: Peter W. Morgan  
Title: Attorney

MINNESOTA MINING AND  
MANUFACTURING CO.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

UNION CARBIDE CHEMICAL &  
PLASTICS CO.;  
UNION CARBIDE CORPORATION

By: \_\_\_\_\_  
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Title: \_\_\_\_\_

APPROVED, SO ORDERED

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The Honorable Denise Page Hood  
United States District Court Judge

**TORT CLAIMANTS' COMMITTEE**

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Name: \_\_\_\_\_

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Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BAXTER INTERNATIONAL INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MINNESOTA MINING AND  
MANUFACTURING CO.**

By: Miles N. Ruthberg  
Name: Miles N. Ruthberg  
Title: Attorney

**UNION CARBIDE CHEMICAL &  
PLASTICS CO.;**  
**UNION CARBIDE CORPORATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**APPROVED, SO ORDERED**

\_\_\_\_\_  
The Honorable Denise Page Hood  
United States District Court Judge

Dated: \_\_\_\_\_

**APPROVED, SO ORDERED**

\_\_\_\_\_  
The Honorable Edwin L. Nelson  
United States District Court Judge

Dated: \_\_\_\_\_

**TORT CLAIMANTS' COMMITTEE**

By: \_\_\_\_\_  
Name: \_\_\_\_\_

**BRISTOL-MYERS SQUIBB CO.**

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Title: \_\_\_\_\_

**BAXTER INTERNATIONAL INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MINNESOTA MINING AND  
MANUFACTURING CO.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**UNION CARBIDE CHEMICAL &  
PLASTICS CO.;  
UNION CARBIDE CORPORATION**

By:   
Name: \_\_\_\_\_  
Title: WILLIAM A. KOWICH  
PARTNER, KELLEY DRYE &  
WATSON LLP

**APPROVED, SO ORDERED**

\_\_\_\_\_  
The Honorable Denise Page Hood  
United States District Court Judge

Dated: \_\_\_\_\_

**APPROVED, SO ORDERED**

\_\_\_\_\_  
The Honorable Edwin L. Nelson  
United States District Court Judge

Dated: \_\_\_\_\_

**TORT CLAIMANTS' COMMITTEE**

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Name: \_\_\_\_\_

**BRISTOL-MYERS SQUIBB CO.**

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**BAXTER INTERNATIONAL INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

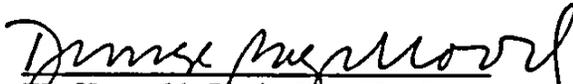
**MINNESOTA MINING AND  
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**UNION CARBIDE CHEMICAL &  
PLASTICS CO.;  
UNION CARBIDE CORPORATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**APPROVED, SO ORDERED**



The Honorable Denise Page Hood  
United States District Court Judge

Dated: FEB 21 2001

**APPROVED, SO ORDERED**

\_\_\_\_\_  
The Honorable Edwin L. Nelson  
United States District Court Judge

Dated: \_\_\_\_\_

**ANNEX A  
TO ARBITRATION AGREEMENT  
MDL 926 CLAIMS OFFICE MATERIALS**

MDL 926 Claims Office Materials include the following:

1. "MDL 926 Settlement Fund" software, produced during the period 1994-2001 by Jose Tennenbaum Services and/or ARPC, together with written documentation of such software, associated tables, and all databases containing claimant data, including data regarding processing and resolution of claims.
2. All manuals, memoranda, lists, summaries, checklists, guidelines, or other materials explaining or defining the methods for processing claims, the interpretation of guidelines or eligibility requirements, the interpretation of definitions, the interpretation of acceptable or unacceptable documents, including manuals and materials relating to the evaluation of long-term disease claims. [Note: Although the MDL 926 Claims Office shall provide access to these and other MDL 926 Claims Office Materials, the MDL 926 Claims Office shall not be responsible for organizing any MDL 926 Claims Office Materials in any particular way for production. The manner of access shall be as agreed upon by the Dow Corning Claims Administrator and the MDL 926 Claims Administrator.]
3. All manuals, memoranda, lists, summaries, checklists, guidelines, or other materials regarding the detection of fraud or potential fraud in claims.
4. All materials relating to doctors or other persons or entities who have been determined by the MDL 926 Claims Office to present problems for the processing of claims.
5. All claimant files.
6. All equipment, furniture, and supplies purchased by the MDL 926 Claims Office, except that the Dow Corning Settlement Facility shall not have access (after the Settlement Facility and MDL 926 Claims Office cease to share space) to equipment, furniture, and supplies designated for use by the MDL 926 Claims Office.