

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
Southern Division

[FILED AND ENTERED: SEPT. 15, 1992]

IN RE:) MASTER FILE No. CV 92-P-10000-S
)
SILICONE GEL BREAST IMPLANTS) (THIS DOCUMENT RELATES TO:
PRODUCTS LIABILITY LITIGATION) ALL CASES)
(MDL-926))

Order No. 5
(Revised Case Management Order)

ON JULY 20-21, 1992, AND AUGUST 21, 1992, CONFERENCES WERE HELD PURSUANT TO RULE 16 IN BIRMINGHAM, ALABAMA. THIS ORDER IS ENTERED AS A RESULT OF DISCUSSIONS AT THOSE CONFERENCES. IT SUPPLEMENTS AND, TO THE EXTENT INCONSISTENT, SUPERSEDES ALL PRIOR ORDERS AND APPLIES TO ALL CASES THAT HAVE BEEN OR ARE SUBSEQUENTLY FILED IN, REMOVED TO, OR TRANSFERRED TO THIS COURT AS PART OF THE SILICONE GEL BREAST IMPLANT LITIGATION, INCLUDING ANY CASES INVOLVING OTHER IMPLANT PRODUCT LIABILITY CLAIMS CONSIDERED SUITABLE FOR INCLUSION IN THIS LITIGATION. A COPY OF EXHIBIT A TO THIS ORDER WILL BE FILED AND DOCKETED IN EACH SUCH CASE.

Caution: The terms of this order automatically apply to cases transferred to the Northern District of Alabama under 28 U.S.C. § 1407 once the transfer order from the JPMDL has been filed in this court. Until that time (including the time a conditional transfer order is pending), the terms of this order do not apply to a case filed in another district unless that court so orders.

1. **Admission of Counsel.** ATTORNEYS ADMITTED TO PRACTICE AND IN GOOD STANDING IN ANY UNITED STATES DISTRICT COURT ARE HEREBY PERMITTED TO APPEAR PRO HAC VICE IN THIS LITIGATION WITHOUT NEED FOR ANY OTHER MOTION, ORDER, OR PAYMENT OF FEE. ASSOCIATION OF LOCAL COUNSEL IS NOT REQUIRED.

2. **Pretrial Consolidation.** ALL CASES IN THIS LITIGATION ARE CONSOLIDATED FOR PRETRIAL PURPOSES. THIS IS NOT A DETERMINATION THAT ANY OF THESE ACTIONS SHOULD BE CONSOLIDATED FOR TRIAL, AND DOES NOT HAVE THE EFFECT OF MAKING ANY ENTITY A PARTY TO AN ACTION IN WHICH IT HAS NOT BEEN NAMED AND SERVED.

3. **Filing of Papers with Court.** THE PURPOSE OF THE FOLLOWING INSTRUCTIONS IS TO REDUCE THE TIME AND EXPENSE OF DUPLICATE FILINGS OF DOCUMENTS THROUGH USE OF A MASTER CASE FILE, WHILE AT THE SAME TIME NOT CONGESTING THE MASTER CASE WITH MISCELLANEOUS PLEADINGS AND ORDERS THAT ARE OF INTEREST ONLY TO THE PARTIES DIRECTLY AFFECTED BY THEM. IT IS NOT INTENDED THAT A PARTY WOULD LOSE ANY RIGHTS BASED ON A FAILURE TO FOLLOW THESE INSTRUCTIONS.

(A) **Master Docket and File.** THE CLERK WILL MAINTAIN A MASTER DOCKET AND CASE FILE UNDER THE STYLE "IN RE SILICONE GEL BREAST IMPLANTS PRODUCT LITIGATION (MDL-926)" AS MASTER FILE NUMBER CV 92-P-10000-S. ORDERS, PLEADINGS, MOTIONS, AND OTHER DOCUMENTS BEARING A CAPTION SIMILAR TO THAT OF THIS ORDER WILL, WHEN DOCKETED AND FILED IN THE MASTER CASE, BE DEEMED AS DOCKETED AND FILED IN EACH INDIVIDUAL CASE TO THE EXTENT APPLICABLE AND WILL NOT ORDINARILY BE SEPARATELY DOCKETED OR PHYSICALLY FILED IN SUCH INDIVIDUAL CASES. HOWEVER, THE CAPTION MAY ALSO CONTAIN A NOTATION INDICATING WHETHER THE DOCUMENT RELATES TO ALL CASES OR ONLY TO SPECIFIED CASES.

(B) **Separate Filing.** A DOCUMENT THAT RELATES ONLY TO A SPECIFIC CASE AND WOULD NOT BE OF INTEREST EXCEPT TO THE PARTIES DIRECTLY AFFECTED BY IT--SUCH AS AN AMENDED COMPLAINT ADDING A PARTY OR A MOTION TO DISMISS A PARTY--SHOULD BEAR THE CAPTION AND CASE NUMBER OF THAT CASE RATHER THAN OF THE MASTER CASE FILE. SUCH A DOCUMENT WILL BE DOCKETED AND FILED IN THAT CASE AND NOT IN THE MASTER CASE FILE. PLEASE NOTE THAT CASES REMOVED OR TRANSFERRED TO THIS COURT ARE ASSIGNED A NEW CASE NUMBER IN THIS COURT.

(C) **Address; Number of Copies.** WHEN FILING DOCUMENTS WITH THE COURT, SEND ONLY ONE SIGNED ORIGINAL TO THE CLERK, U. S. DISTRICT COURT, FEDERAL COURTHOUSE, BIRMINGHAM, AL 35203. DOCUMENTS SHOULD BE STAPLED ONCE AND SHOULD NOT HAVE "BLUE BACKS" OR OTHER COVER SHEETS. UNLESS SPECIFICALLY REQUESTED BY THE COURT, DO NOT SUBMIT ADDITIONAL COPIES TO THE CLERK OR SEND INFORMATIONAL COPIES TO THE JUDGE'S CHAMBERS.

(1) **Telephone Numbers.** THE TELEPHONE NUMBER FOR THE DOCKET CLERK HANDLING THESE CASES IS (205)731-2038. ACCESS TO PACER (A COMPUTERIZED SERVICE FOR OBTAINING DOCKET INFORMATION) IS (205)731-3502. THE GENERAL TELEPHONE NUMBER FOR THE CLERK'S OFFICE IS (205)731-1701.

(2) **FAX.** LITIGANTS MAY TRANSMIT DOCUMENTS TO THE CLERK BY FAX **only if advance approval** IS GIVEN BY THE UNDERSIGNED. THIS APPROVAL SHOULD BE REQUESTED ONLY IN EXIGENT CIRCUMSTANCES WHERE TRANSMISSION BY OTHER METHODS IS NOT FEASIBLE. THE CLERK'S FAX NUMBER IS (205)731-0742.

(D) **Briefs; Correspondence.** SEND TO THE JUDGE'S CHAMBERS (ROOM 882, FEDERAL COURTHOUSE, BIRMINGHAM, ALABAMA, 35203) ANY BRIEFS, CORRESPONDENCE, AND OTHER SIMILAR MATERIALS THAT ARE NOT DUE TO BE DOCKETED. SEND ONLY ONE COPY. DO NOT SEND A COPY OF SUCH MATERIALS TO THE CLERK.

(1) **Telephone Number.** THE TELEPHONE NUMBER FOR THE JUDGE'S CHAMBERS IS (205)731-1709.

(2) **FAX.** LITIGANTS MAY TRANSMIT DOCUMENTS TO THE JUDGE'S CHAMBERS BY FAX **only if advance approval** IS GIVEN BY THE UNDERSIGNED. THIS APPROVAL SHOULD BE REQUESTED ONLY IN EXIGENT CIRCUMSTANCES WHERE TRANSMISSION BY OTHER METHODS IS NOT FEASIBLE. THE CHAMBER'S FAX NUMBER IS (205)731-2243.

(E) **Discovery Documents.** PURSUANT TO RULE 5(D), DISCOVERY REQUESTS AND RESPONSES ARE NOT TO BE FILED WITH THE CLERK OR SENT TO THE JUDGE'S CHAMBERS EXCEPT WHEN SPECIFICALLY SO ORDERED BY THE COURT OR TO THE EXTENT NEEDED IN CONNECTION WITH A MOTION.

(F) **Computer Files.** COUNSEL USING COMPUTERS TO PREPARE DOCUMENTS SENT TO THE CLERK OR TO THE JUDGE'S CHAMBERS ARE ASKED TO RETAIN COMPUTER-READABLE TEXT FILES OF THESE DOCUMENTS. THE COURT CONTEMPLATES THAT PROCEDURES WILL BE ESTABLISHED FOR MAINTAINING AN ELECTRONIC LIBRARY OF THESE FILES FOR QUICK AND INEXPENSIVE ACCESS BY OTHER LITIGANTS AND INTERESTED PARTIES.

4. **Service of Original Complaints; Amendments Adding Parties.**

(A) **Acceptable Service.** EXHIBIT B IS A LIST OF THE "NATIONAL DEFENDANTS"--THAT IS, THOSE ENTITIES THAT HAVE FREQUENTLY BEEN NAMED AS DEFENDANTS IN THESE CASES FILED THROUGHOUT THE UNITED STATES--SHOWING ALSO THEIR NATIONAL COUNSEL AND (ACCORDING TO THEIR COUNSEL) THE STATE(S) IN WHICH THEY ARE INCORPORATED, IN WHICH THEY HAVE THEIR PRINCIPAL PLACE OF DOING BUSINESS, AND IN WHICH THEY WILL OR MAY CONTEST PERSONAL JURISDICTION. TO ELIMINATE DISPUTES OVER SERVICE OF PROCESS AND REDUCE THE EXPENSE OF SUCH SERVICE, THESE DEFENDANTS HAVE AGREED TO ACCEPT SERVICE OF PROCESS IN THESE CASES (WITHOUT, HOWEVER, WAIVING ANY OBJECTIONS TO PERSONAL JURISDICTION OR VENUE) IF A COPY OF THE SUMMONS AND COMPLAINT IS SENT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE PERSON OR ADDRESS SHOWN IN THE FIFTH COLUMN OF EXHIBIT B. THIS AGREEMENT APPLIES TO ANY CASE INVOLVING SILICONE GEL PRODUCT LIABILITY CLAIMS FILED IN ANY FEDERAL DISTRICT COURT OR IN ANY STATE COURT OF GENERAL JURISDICTION.

(B) **Extension of Time to Serve.** NOTWITHSTANDING THE PROVISIONS OF RULE 4(J), PLAINTIFFS SHALL HAVE THIRTY DAYS AFTER THE DATE OF THIS ORDER (OR, IF LATER, THIRTY DAYS AFTER THE DATE A CASE IS SUBSEQUENTLY FILED IN, REMOVED TO, OR TRANSFERRED TO THIS COURT) IN WHICH TO EFFECT SERVICE ON DEFENDANTS.

(C) **Leave to Add Parties.** UNTIL OTHERWISE DIRECTED, PLAINTIFFS ARE GRANTED

LEAVE, WITHOUT NEED FOR ANY SPECIAL MOTION OR ORDER, TO ADD OTHER PLAINTIFFS TO ANY PENDING (OR SUBSEQUENTLY FILED, REMOVED, OR TRANSFERRED) CASE IF ALL PLAINTIFFS IN THE CASE (1) WILL BE REPRESENTED BY THE SAME COUNSEL (OR IF COUNSEL FOR EXISTING PLAINTIFFS CONSENT TO THE INTERVENTION), (2) ALL PLAINTIFFS ARE SUING THE SAME DEFENDANTS, AND (3) ALL PLAINTIFFS HAD THEIR IMPLANT(S) PERFORMED IN THE SAME STATE. THE PURPOSE OF THIS AUTHORIZATION IS TO AVOID UNNECESSARY FILING FEES AND THE DELAYS INHERENT IN 28 U.S.C. § 1407 TRANSFERS. THE JOINDER OF SUCH PARTIES WILL NOT BE VIEWED AS AFFECTING SUBSEQUENT MOTIONS BY EITHER PLAINTIFFS OR DEFENDANTS FOR SEPARATE TRIALS UNDER RULE 42(B). PLAINTIFFS CHOOSING TO ADD PARTIES UNDER THIS AUTHORIZATION ARE, TO THE EXTENT CLAIMS ARE MADE AGAINST ANY OF THE "NATIONAL DEFENDANTS" LISTED IN EXHIBIT B, REQUESTED TO SEND A COPY OF THE AMENDED COMPLAINT TO SUCH AGENT OR ADDRESS IN ADDITION TO SERVING LIAISON COUNSEL AS SPECIFIED IN PARAGRAPH 5(A).

5. **Service of Other Documents.**

(A) **National Liaison Counsel.** SERVICE OF ALL ORDERS, PLEADINGS (OTHER THAN THE ORIGINAL SUMMONS AND COMPLAINT), MOTIONS, BRIEFS, AND OTHER DOCUMENTS WILL BE EFFECTIVE ON ALL PARTIES WHEN MADE ON THE FOLLOWING PERSONS WHO, AS PROVIDED IN ORDER NO. 2, HAVE BEEN DESIGNATED AS NATIONAL LIAISON COUNSEL:

(1) NATIONAL LIAISON CO-COUNSEL FOR PLAINTIFFS:

MR. FRANCIS H. HARE, JR.
HARE, WYNN, NEWELL & NEWTON
SUITE 800, MASSEY BUILDING
290 NORTH 21ST STREET
BIRMINGHAM, AL 35203
TELEPHONE: (205)328-5330
FAX: (205)323-8276 OR 324-2165

MR. J. MICHAEL REDIKER
RITCHIE & REDIKER
312 NORTH 23RD STREET
BIRMINGHAM, AL 35203
TELEPHONE: (205)251-1288
FAX: (205)324-7830

(2) NATIONAL LIAISON COUNSEL FOR DEFENDANTS:

MR. FRANK C. WOODSIDE, III
DINSMORE & SHOHL
1900 CHEMED CENTER
255 EAST FIFTH STREET
CINCINNATI, OH 45202
TELEPHONE: (513)977-8266
FAX: (513)977-8141

DOCUMENTS RECEIVED BY LIAISON COUNSEL BY 11:59 P.M. ON THURSDAY OF ANY WEEK ARE CONSIDERED SERVED AS OF 4:00 P.M. ON FRIDAY OF THAT WEEK. LIAISON COUNSEL ARE RESPONSIBLE FOR PROMPTLY DISTRIBUTING COPIES TO THE PARTIES FOR WHOM THEY ARE ACTING AS LIAISON COUNSEL ON A "NEED TO KNOW" BASIS AND FOR PROVIDING A CONVENIENT,

INEXPENSIVE MEANS BY WHICH ANY OTHER PARTIES FOR WHOM THEY ARE ACTING CAN OBTAIN COPIES IF DESIRED.

(B) Additional Service.

(1) Defaults; Sanctions. MOTIONS CLAIMING DEFAULT OR SEEKING OTHER PENALTIES OR SANCTIONS AGAINST A PARTY FOR FAILURE TO TAKE SOME ACTION WITHIN A TIME PERIOD MEASURED FROM THE DATE OF SERVICE OF A DOCUMENT MUST ALSO BE SERVED ON COUNSEL OF RECORD FOR THAT PARTY (OR, IF THE PARTY IS LISTED IN EXHIBIT B, ON THE NATIONAL COUNSEL FOR THAT PARTY).

(2) Informational Copies. IF A DOCUMENT AFFECTS ONLY A PARTICULAR PARTY OR A PARTICULAR CASE--FOR EXAMPLE, A MOTION SEEKING TO DISMISS A PARTY IN A CASE OR TO REMAND A CASE TO STATE COURT--SERVICE OF AN ADDITIONAL COPY UPON COUNSEL OF RECORD FOR THAT PARTY OR IN THAT CASE (OR, FOR THOSE DEFENDANTS LISTED ON EXHIBIT B, THEIR NATIONAL COUNSEL FOR THIS LITIGATION) IS ENCOURAGED, BUT NOT REQUIRED.

(C) Computer Files. COUNSEL USING COMPUTERS TO GENERATE DOCUMENTS SERVED ON OTHER PARTIES ARE ASKED TO RETAIN COMPUTER-READABLE TEXT FILES OF THESE DOCUMENTS. IT IS CONTEMPLATED THAT PROCEDURES WILL BE ESTABLISHED FOR MAINTAINING A LIBRARY OF SUCH MATERIALS FOR QUICK AND INEXPENSIVE ACCESS BY OTHER LITIGANTS AND INTERESTED PARTIES.

6. Master Pleadings; Motions; Orders.

(A) Master/Sample Complaints. PLAINTIFFS' NATIONAL STEERING COMMITTEE HAS FILED IN CV 92-P-10000-S (1) A MASTER COMPLAINT CONTAINING ALLEGATIONS THAT WOULD BE SUITABLE FOR ADOPTION BY REFERENCE IN INDIVIDUAL CASES AND (2) A SAMPLE COMPLAINT ILLUSTRATING HOW ALLEGATIONS FROM THE MASTER COMPLAINT CAN BE INCORPORATED INTO AN INDIVIDUAL CASE.

THE ALLEGATIONS OF THE MASTER COMPLAINT ARE NOT DEEMED AUTOMATICALLY INCLUDED IN ANY PARTICULAR CASE. HOWEVER, IN ORDER TO AVOID POSSIBLE PROBLEMS WITH STATUTES OF LIMITATIONS OR DOCTRINES OF REPOSE, IT SHALL BE DEEMED (EXCEPT TO THE EXTENT A PLAINTIFF THEREAFTER FILES AN AMENDED COMPLAINT DISAVOWING SUCH CLAIMS AND THEORIES OR LIMITS ITS CLAIMS AND THEORIES TO THOSE CONTAINED IN AN AMENDED COMPLAINT) THAT AS OF THIS DATE, FOR CASES NOW PENDING IN THIS COURT (OR AS OF THE DATE OTHER CASES ARE FILED IN, REMOVED TO, OR TRANSFERRED TO THIS COURT) A MOTION IS FILED IN EACH SUCH CASE TO AMEND THE COMPLAINT TO ADD ANY POTENTIALLY APPLICABLE CLAIMS AND THEORIES FROM THE MASTER COMPLAINT NOT CONTAINED IN THE COMPLAINT ACTUALLY FILED IN THAT CASE.

(B) Master Answers. BY OCTOBER 15, 1992, EACH ENTITY LISTED IN EXHIBIT B WILL FILE IN CV 92-P-10000-S A MASTER ANSWER THAT INCORPORATES ITS DEFENSES IN LAW OR FACT TO CLAIMS MADE AGAINST IT IN THE VARIOUS ACTIONS THAT ARE PRESENTLY PENDING IN THIS LITIGATION, INCLUDING ANY CROSS-CLAIMS IT MAKES AGAINST OTHER

DEFENDANTS. THE ANSWER WILL NOT ATTEMPT TO PROVIDE A CROSS-REFERENCE TO PARTICULAR PARAGRAPHS OR COUNTS OF THE VARIOUS COMPLAINTS. THE ANSWER WILL, HOWEVER, IN A "GENERIC" MANNER ADMIT OR DENY (INCLUDING DENIALS BASED ON LACK OF INFORMATION AND BELIEF) THE ALLEGATIONS TYPICALLY INCLUDED IN CLAIMS OR CROSS-CLAIMS MADE AGAINST IT AS WELL AS MAKE SUCH ADDITIONAL ALLEGATIONS AS ARE APPROPRIATE TO ITS DEFENSES OR CROSS-CLAIMS. THIS MAY BE DONE THROUGH ALLEGATIONS SUCH AS "IT ALLEGES . . . THAT IT IS INCORPORATED IN STATE A; THAT IT HAS ITS PRINCIPAL PLACE OF BUSINESS IN STATE B; THAT DURING THE PERIOD FROM (DATE) TO (DATE) IT MANUFACTURED, SOLD, AND DISTRIBUTED PRODUCTS INTENDED TO BE USED IN BREAST IMPLANT PROCEDURES; THAT THESE PRODUCTS WERE INTENDED TO BE USED ONLY BY TRAINED, KNOWLEDGEABLE PHYSICIANS AND WERE ACCCOMPANIED BY WARNINGS AND INSTRUCTIONS THAT ADEQUATELY EXPLAINED SUCH RISKS AS WERE INHERENT AND UNAVOIDABLE IN THE PRODUCTS; THAT THESE PRODUCTS WERE NOT UNREASONABLY DANGEROUS, WERE SUITABLE FOR THE PURPOSES FOR WHICH THEY WERE INTENDED, AND WERE DISTRIBUTED WITH ADEQUATE AND SUFFICIENT WARNINGS; THAT IT IS WITHOUT KNOWLEDGE OR INFORMATION AT THIS TIME SUFFICIENT TO FORM A BELIEF AS TO ANY AVERMENT THAT ONE OF ITS PRODUCTS WAS USED IN THE IMPLANT PROCEDURE ON WHICH THE PLAINTIFF'S COMPLAINT IS BASED; THAT TO THE EXTENT THE PLAINTIFF MAKES A CLAIM FOR X (OR UNDER STATUTE Y) IT IS NOT LIABLE BECAUSE . . . ; ETC."

(1) WHEN SO FILED IN CV 92-P-10000-S, THESE ANSWERS CONSTITUTE AN ANSWER IN EACH CONSTITUENT CASE NOW PENDING OR WHEN HERAFTER FILED IN, REMOVED TO, OR TRANSFERRED TO THIS COURT EXCEPT TO THE EXTENT THE DEFENDANT LATER FILES A SEPARATE ANSWER IN AN INDIVIDUAL CASE.

(2) A DEFENDANT NOT LISTED IN EXHIBIT B MAY ALSO FILE A MASTER ANSWER IN CV 92-P-10000-S BY OCTOBER 15, 1992, OR WITHIN 45 DAYS AFTER THE FIRST CASE IN WHICH IT IS NAMED AS A DEFENDANT IS FILED IN, REMOVED TO, OR TRANSFERRED TO THIS COURT.

(C) **Refinement of Pleadings.** IT IS ANTICIPATED THAT AN AMENDED, MORE SPECIFIC COMPLAINT AND ANSWER MAY BE REQUIRED BEFORE A CASE IS SCHEDULED FOR TRIAL OR REMANDED TO A TRANSFEROR COURT, BUT THAT AMENDMENTS OF PLEADINGS PRIOR TO THAT TIME SHOULD GENERALLY BE AVOIDED.

(D) **Motions; Orders.** A MOTION, BRIEF, OR RESPONSE THAT HAS POTENTIAL EFFECT ON MULTIPLE PARTIES (E.G., DOCUMENTS SUBMITTED IN CONNECTION WITH A MOTION FOR PARTIAL SUMMARY JUDGMENT ASSERTING THAT PUNITIVE DAMAGES ARE NOT RECOVERABLE WITH RESPECT TO IMPLANTS PERFORMED IN STATE A) WILL BE DEEMED MADE IN ALL SIMILAR CASES ON BEHALF OF, AND AGAINST, ALL PARTIES SIMILARLY SITUATED EXCEPT TO THE EXTENT SUCH OTHER PARTIES TIMELY DISAVOW SUCH A POSITION. ADDITIONAL MOTIONS, BRIEFS, OR RESPONSES ADDRESSED TO SUCH ISSUES SHOULD NOT BE FILED OR SUBMITTED BY OTHER PARTIES EXCEPT TO THE EXTENT NEEDED BECAUSE OF INADEQUACY OF THE ORIGINAL PAPERS, TO PRESENT UNIQUE FACTS, OR A DIFFERENCE IN POSITIONS. ORDERS RESOLVING SUCH MOTIONS WILL LIKEWISE BE DEEMED AS MADE WITH RESPECT TO ALL PARTIES SIMILARLY SITUATED UNLESS THE ORDER INDICATES OTHERWISE.

(E) **Motions under Rule 11 and Rule 56.** NO MOTION SHALL BE FILED UNDER RULE

11 OR RULE 56 WITHOUT LEAVE OF COURT.

(F) **Effort to Resolve Without Court Intervention.** ANY MOTION RELATING TO DISCOVERY OR ANY OTHER SUBJECT ON WHICH ACCORD OF AFFECTED PARTIES MIGHT REASONABLY BE EXPECTED SHALL CONTAIN A CERTIFICATE THAT THE MOVANT HAS CONFERRED WITH OTHER AFFECTED PARTIES AND MADE A GOOD FAITH EFFORT TO RESOLVE THE DISPUTE WITHOUT NEED FOR COURT INTERVENTION.

7. **Discovery.**

(A) **Concepts and Objectives.** THE PLAN FOR DOCUMENT PRODUCTION, INTERROGATORIES, REQUESTS FOR ADMISSION, AND DEPOSITIONS HAS BEEN DEVELOPED BASED ON THE FOLLOWING PRINCIPLES: (1) DISCOVERY SHOULD BE CONDUCTED ON THE ASSUMPTION THAT THERE MAY BE A SEPARATE TRIAL OF EACH CASE (FEDERAL OR STATE); (2) ADDITIONAL "TRUE DISCOVERY" WILL NOT BE NEEDED WITH RESPECT TO MANY POTENTIAL WITNESSES WHO HAVE PREVIOUSLY TESTIFIED IN DEPOSITIONS OR IN TRIALS; (3) VIDEO-TAPED DEPOSITIONS (WHICH ARE ALSO STENOGRAPHICALLY RECORDED) SHOULD BE TAKEN FOR POTENTIAL USE AS TRIAL TESTIMONY OF ALL PERSONS WHOSE TESTIMONY WILL LIKELY BE NEEDED IN A NUMBER OF TRIALS, THEREBY ENABLING TRIALS TO BE CONDUCTED IN DIFFERENT COURTS AT THE SAME TIME WITHOUT COMPLICATIONS ARISING FROM UNAVAILABILITY OF WITNESSES; (4) THROUGH USE OF A JOINT PLAINTIFF-DEFENDANT FEDERAL-STATE LIBRARY, ALL PARTIES IN ANY FEDERAL OR STATE COURT SHOULD HAVE QUICK AND INEXPENSIVE ACCESS TO, AND THE ABILITY TO RETRIEVE, (A) ALL EXISTING AND FUTURE DEPOSITIONS, INTERROGATORIES, REQUESTS FOR ADMISSION, AND TRIAL TRANSCRIPTS IN TEXT-READABLE AND SEARCHABLE COMPUTER FILES AND (B) ALL POTENTIALLY RELEVANT DOCUMENTS FROM THE DEFENDANTS AND OTHER SOURCES THAT ARE LIKELY TO BE USED DURING DEPOSITIONS OR AT TRIAL IN MORE THAN A SINGLE CASE; (5) CLAIMS OF CONFIDENTIALITY AND USE OF "PROTECTIVE" ORDERS RESTRICTING USE OF MATERIALS SHOULD BE KEPT TO AN ABSOLUTE MINIMUM; (6) SOME DISCOVERY WILL BE "NATIONAL" IN SCOPE (I.E., POTENTIALLY NEEDED IN VARIOUS CASES THROUGHOUT THE COUNTRY), WHILE OTHER DISCOVERY WILL BE "REGIONAL" (E.G., DEPOSITIONS FROM PLASTIC SURGEONS PERFORMING NUMEROUS IMPLANTS) AND STILL OTHER DISCOVERY WILL BE "CASE-SPECIFIC" (E.G., DEPOSITIONS OF PLAINTIFFS AND THEIR TREATING OR EXAMINING PHYSICIANS); (7) THE PLAN SHOULD BE DESIGNED TO ACCOMMODATE COORDINATED, COST-EFFICIENT DISCOVERY IN BOTH FEDERAL AND STATE COURTS; AND (8), IN ORDER TO MINIMIZE UNNECESSARY BURDENS AND EXPENSE OF REDUNDANT DISCOVERY, PARTIES SHOULD NOT SUBMIT DOCUMENT REQUESTS, INTERROGATORIES, REQUESTS FOR ADMISSION, AND NOTICES OF DEPOSITIONS WITHOUT FIRST DETERMINING THAT THE MATERIALS ARE NOT AVAILABLE IN THE LIBRARY OR ARE INADEQUATE.

(B) **Plaintiffs' Steering Committee.** THE COURT HAS APPOINTED A PLAINTIFFS' NATIONAL STEERING COMMITTEE TO COORDINATE DISCOVERY AND OTHER PRETRIAL PROCEEDINGS ON BEHALF OF THE VARIOUS PLAINTIFFS. THE LIST OF THESE ATTORNEYS IS ATTACHED AS EXHIBIT C. THE COURT RESERVES THE RIGHT TO CHANGE THESE APPOINTMENTS FROM TIME TO TIME AS APPROPRIATE.

(1) IT IS RECOGNIZED THAT THERE ARE, AND LIKELY WILL CONTINUE TO BE, DISAGREEMENTS AMONG PLAINTIFFS WITH RESPECT TO VARIOUS PRETRIAL MATTERS, PARTICULARLY WITH RESPECT TO THE PLANNING FOR TRIAL AND AS TO WHETHER CLASS

ACTIONS OR CONSOLIDATED TRIALS MAY BE APPROPRIATE. THE DESIGNATION OF THE STEERING COMMITTEE IS NOT INTENDED TO PRECLUDE THE PRESENTATION TO THE COURT OF DIVERGENT VIEWS FROM WITHIN THE STEERING COMMITTEE OR BY ATTORNEYS FOR PLAINTIFFS WHO DISAGREE WITH POSITIONS TAKEN UNANIMOUSLY BY THE STEERING COMMITTEE. HOWEVER, COUNSEL FOR INDIVIDUAL PLAINTIFFS SHOULD NOT REPEAT ARGUMENTS, PRESENTATIONS, OR ACTIONS OF THE STEERING COMMITTEE.

(2) THE STEERING COMMITTEE MAY ORGANIZE ITSELF INTO SUB-COMMITTEES AND MAY DESIGNATE ADDITIONAL COUNSEL TO ASSIST IN PERFORMING ITS RESPONSIBILITIES.

(3) AT LEAST IN STATES IN WHICH A SUBSTANTIAL NUMBER OF IMPLANT CASES HAVE BEEN OR MAY BE INSTITUTED (WHETHER IN FEDERAL OR STATE COURT), THERE WILL ALSO BE A STATE (OR LOCAL) LIAISON COUNSEL OR STEERING COMMITTEE, WITH RESPONSIBILITIES FOR SIMILAR COORDINATION IN MANAGEMENT OF DISCOVERY THAT IS PRIMARILY STATE-WIDE OR LOCAL, SUCH AS DISCOVERY FROM SURGEONS OR HOSPITALS WHICH HAVE BEEN INVOLVED IN MANY IMPLANT AND EXPLANT/REMOVAL PROCEDURES. IT IS EXPECTED THAT, IF A PERSON OR COMMITTEE IS ESTABLISHED BY THE STATE COURTS TO COORDINATE IMPLANT LITIGATION WITHIN THAT STATE, THE SAME ATTORNEYS SHOULD ORDINARILY BE DESIGNATED TO PERFORM SIMILAR FUNCTIONS FOR THE FEDERAL CASES FILED IN THAT STATE.

(C) **Joint Depository.** A JOINT PLAINTIFFS-DEFENDANTS FEDERAL-STATE DOCUMENT DEPOSITORY AND LIBRARY WILL BE MAINTAINED IN THE UNITED STATES COURTHOUSE AT 100 EAST FIFTH STREET, CINCINNATI, OHIO, 45202 (TELEPHONE: 513-684-6688; FAX: 513-684-5853) AND SUPERVISED BY TINA J. CROWE. THE DEPOSITORY WILL STORE ALL MATERIALS PRODUCED BY PARTIES AND THIRD-PARTIES THAT MAY BE NEEDED IN MORE THAN A SINGLE CASE, INCLUDING DOCUMENTS, INTERROGATORIES, REQUESTS FOR ADMISSION, REQUESTS FOR PRODUCTION OF DOCUMENTS, DEPOSITIONS, TRIAL TRANSCRIPTS, AND SIMILAR MATERIALS. THESE MATERIALS WILL BE MADE AVAILABLE TO LITIGANTS IN ANY FEDERAL OR STATE CASE INVOLVING IMPLANT PRODUCT LIABILITY CLAIMS. IT IS ANTICIPATED THAT MATERIALS IN THE DEPOSITORY SHOULD BE AVAILABLE FROM THE DEPOSITORY FOR SUCH DISTRIBUTION BY DECEMBER 1, 1992.

(1) THE EXPENSES OF THE DEPOSITORY, INCLUDING THE COSTS OF IMAGING OF DOCUMENTS AND THE COMPENSATION PAID TO MS. CROWE TO THE EXTENT NOT PAYABLE AS AN EMPLOYEE OF THE FEDERAL JUDICIARY, SHALL BE INITIALLY DIVIDED EQUALLY BETWEEN THE PLAINTIFF'S NATIONAL STEERING COMMITTEE AND THE NATIONAL DEFENDANTS LISTED IN EXHIBIT B.

(2) REIMBURSEMENT OF THESE EXPENSES MAY BE OBTAINED BY IMPOSING USER FEES, BUT THESE FEES WILL BE KEPT TO THE MINIMUM NECESSARY TO FUND THE COSTS OF THE DEPOSITORY INCURRED BY REASON OF THIS LITIGATION. THE DEPOSITORY WILL NOT BE CONDUCTED AS A "PROFIT-CENTER."

(3) PLAINTIFFS' STEERING COMMITTEE HAS INDICATED THAT IT EXPECTS TO ESTABLISH ADDITIONAL REGIONAL ELECTRONIC DEPOSITORIES.

(D) **Numbering.** ALL MATERIALS WILL BE UNIQUELY IDENTIFIED BY A PREFIX OF AS MANY AS THREE LETTERS AND A PAGE NUMBER OF AS MANY AS NINE DIGITS. THIS COMBINATION OF LETTERS AND DIGITS SHOULD THEN BE USED THROUGHOUT THE DISCOVERY PROCESS AND AT TRIALS WHENEVER REFERRING TO A PARTICULAR DOCUMENT OR PAGE. ALL REASONABLE EFFORTS SHOULD BE MADE TO AVOID HAVING THE SAME PAGE BEING ASSIGNED MORE THAN ONE SUCH IDENTIFYING NUMBER EXCEPT WHEN THERE IS A NEED TO ACCOUNT FOR DIFFERENT COPIES OF THE SAME DOCUMENT OR PAGE, FOR EXAMPLE BECAUSE OF SPECIAL NOTATIONS BEING PLACED ON A DOCUMENT.

(E) **Documents.**

(1) DOCUMENTS PRODUCED BY THE PLAINTIFFS, DEFENDANTS, AND THIRD-PARTIES PURSUANT TO RULES 33, 34, AND 45 WILL BE SUBMITTED TO THE DEPOSITORY, AS WILL A COPY OF INTERROGATORIES (AND RESPONSES), REQUESTS FOR ADMISSION (AND RESPONSES), DEPOSITIONS, TRIAL TRANSCRIPTS, AND OTHER SIMILAR MATERIALS.

(2) THE "MANUFACTURER" DEFENDANTS HAVE BEEN DIRECTED TO SUBMIT TO THE DEPOSITORY BY SEPTEMBER 15, 1992, THE DOCUMENTS PREVIOUSLY REQUESTED FROM THEM; AND THE "SUPPLIER" DEFENDANTS ('21' INTERNATIONAL HOLDINGS, GENERAL ELECTRIC, AND UNION CARBIDE) HAVE BEEN DIRECTED TO SUBMIT TO THE DEPOSITORY BY OCTOBER 15, 1992, THE DOCUMENTS REQUESTED FROM THEM.

(A) SOME ADDITIONAL TIME MAY BE NEEDED BY SOME DEFENDANTS TO PRODUCE SOME OF THE REQUESTED DOCUMENTS. THESE ARE TO BE SUBMITTED AS SOON AS POSSIBLE AFTER THE DUE DATES.

(B) THE DOCUMENTS TO BE PRODUCED INCLUDE ALL NON-PRIVILEGED MATERIALS THAT ARE POTENTIALLY RELEVANT IN ANY OF THE CASES OR THAT ARE REASONABLY CALCULATED TO LEAD TO RELEVANT EVIDENCE. AFTER THE PRODUCTION HAS BEEN ACCOMPLISHED, THE PLAINTIFFS' NATIONAL STEERING COMMITTEE AND THE PARTICULAR DEFENDANT WILL PREPARE A JOINT STATEMENT DESCRIBING THE NATURE AND SCOPE OF THE DOCUMENTS PRODUCED THAT CAN SERVE AS THE FUNCTIONAL EQUIVALENT OF A RULE 34 REQUEST AND RESPONSE, ENABLING OTHER LITIGANTS TO UNDERSTAND WHAT HAS BEEN PRODUCED.

(C) EACH DEFENDANT SHALL FILE BY NOVEMBER 1, 1992, A LIST OF ANY OTHERWISE RELEVANT DOCUMENTS THAT ARE NOT PRODUCED BASED ON A PRIVILEGE OR A PROTECTION (SUCH AS FOR WORK-PRODUCT MATERIALS). DOCUMENTS MAY BE WITHHELD ONLY IF PRIVILEGED OR PROTECTED AGAINST DISCLOSURE IN EACH COURT (FEDERAL OR STATE) IN WHICH THEY HAVE BEEN SUED.

(D) THE OBJECTIVE THAT DEFENDANTS PRODUCING DOCUMENTS UNDER THIS PLAN BE RELIEVED OF REDUNDANT REQUESTS FROM PLAINTIFFS IN OTHER FEDERAL AND STATE CASES CAN BE ACCOMPLISHED ONLY IF PLAINTIFFS CAN BE REASONABLY CONFIDENT THAT ALL POTENTIALLY RELEVANT DOCUMENTS ARE EITHER PRODUCED OR ARE SPECIFICALLY IDENTIFIED AS

WITHHELD PURSUANT TO A LEGITIMATE CLAIM OF PRIVILEGE OR PROTECTION AGAINST DISCLOSURE. A DEFENDANT'S FAILURE TO EITHER PRODUCE OR IDENTIFY AS WITHHELD A RELEVANT DOCUMENT WILL BE VIEWED BY THE COURT AS A SERIOUS INFRACTION OF ITS ORDERS, JUSTIFYING APPROPRIATE SANCTIONS UNLESS EXCEPTIONAL CIRCUMSTANCES JUSTIFY ITS FAILURE. UPON LEARNING THAT THERE ARE ANY ADDITIONAL RELEVANT DOCUMENTS IN ITS POSSESSION OR UNDER ITS CONTROL WHICH HAVE NOT BEEN PRODUCED OR IDENTIFIED, A DEFENDANT IS UNDER AN OBLIGATION TO PROMPTLY MAKE KNOWN THE EXISTENCE OF THE DOCUMENTS (INCLUDING THE REASON FOR ITS FAILURE) AND SUBMIT THE DOCUMENTS TO THE DEPOSITORY OR, IF WITHHELD UNDER A CLAIM OF PRIVILEGE OR PROTECTION, IDENTIFY THE DOCUMENTS.

(3) PLEADINGS, INTERROGATORIES, TRIAL TRANSCRIPTS, AND SIMILAR MATERIALS WILL, TO THE EXTENT FEASIBLE, BE STORED IN COMPUTERIZED TEXT-READABLE AND SEARCHABLE FORMAT. DEPOSITIONS WILL BE STORED BOTH IN THE FORM OF TEXT-READABLE AND SEARCHABLE COMPUTER FILES AND ON VIDEO-TAPE. OTHER DOCUMENTS SUCH AS LETTERS, REPORTS, PHOTOGRAPHS, ETC. (INCLUDING THOSE APPENDED TO A DEPOSITION) WILL BE "IMAGED" UNDER A CONTRACT WITH DOCUQUEST APPROVED BY THE COURT IN ORDER NO. 4 AND THEN MADE AVAILABLE TO LITIGANTS ON CD-ROM DISKS OR OTHER SUITABLE MEDIA UNLESS, BECAUSE OF THE NATURE OF THE MATERIALS, THEY ARE UNLIKELY TO BE USED IN OTHER THAN A SINGLE CASE (E.G., MEDICAL HISTORY RECORDS OF A PARTICULAR PLAINTIFF).

(4) A SUMMARY WILL BE PREPARED BY PLAINTIFFS' NATIONAL STEERING COMMITTEE AND REVIEWED BY THE DEFENDANTS, WHICH IDENTIFIES BY NUMBER AND DESCRIBES (IN NEUTRAL WORDS THAT WOULD BE SUITABLE FOR USE BY A COURT IN PREPARING A LIST OF EXHIBITS) THE VARIOUS DOCUMENTS. THIS SUMMARY WILL BE PREPARED IN A COMPUTERIZED DATA-BASE FORMAT AND MADE AVAILABLE TO ALL PARTIES, WHO THEN MAY ADD PRIVATE, WORK-PRODUCT COMMENTS AS SEPARATE FIELDS IN THEIR OWN COPY OF THE DATA-BASE.

(5) ALL "PROTECTIVE" ORDERS PREVIOUSLY ENTERED IN ANY OF THE CASES PART OF MDL-926 UNDER RULE 26(C) ARE (WITH THE EXCEPTION OF THOSE DESIGNED TO KEEP CONFIDENTIAL THE IDENTITY AND MEDICAL CONDITION OR HISTORY OF PLAINTIFFS OR PUTATIVE CLASS MEMBERS) HEREBY VACATED AND VOIDED EFFECTIVE NOVEMBER 15, 1992. ANY PARTY SEEKING TO IMPOSE RESTRICTIONS ON ACCESS TO OR USE OF ANY MATERIALS UNDER RULE 26(C) SHALL FILE BY NOVEMBER 1, 1992, A MOTION IDENTIFYING WITH PARTICULARITY THE MATERIALS FOR WHICH THE PROTECTION IS SOUGHT AND THE PROPOSED TERMS AND CONDITIONS OF ANY SUCH PROTECTION. IF MATERIALS ARE SUBJECT TO A PROTECTIVE ORDER ENTERED BY ANOTHER COURT IN A CASE THAT IS NOT PART OF MDL-926, THE AFFECTED PARTIES ARE EXPECTED TO WAIVE, TO THE EXTENT FEASIBLE, ANY RIGHTS UNDER SUCH ORDERS TO KEEP SUCH MATERIALS CONFIDENTIAL AND, IF NECESSARY, TO SEEK RELIEF FROM THE COURT IN WHICH THE PROTECTIVE ORDER WAS ENTERED. TO THE EXTENT ANY MATERIALS REMAIN OR BECOME SUBJECT TO A PROTECTIVE ORDER, THAT FACT WILL BE INDICATED IN A SEPARATE FIELD ON THE SUMMARY DESCRIBED IN PARAGRAPH (4) ABOVE.

(6) TINA J. CROWE, SUPERVISOR OF THE DEPOSITORY, WILL PREPARE

AND MAKE AVAILABLE BEFORE DECEMBER 1, 1992, AN INFORMATIONAL BOOKLET EXPLAINING HOW MATERIALS CAN BE OBTAINED FROM THE DEPOSITORY.

(7) EACH PARTY SHALL PRESERVE ALL DOCUMENTS AND OTHER RECORDS AND EXHIBITS POTENTIALLY RELEVANT TO THE SUBJECT MATTER OF THIS LITIGATION. SUBJECT TO FURTHER ORDER OF THE COURT, PARTIES MAY CONTINUE ROUTINE ERASURES OF COMPUTERIZED DATA PURSUANT TO EXISTING PROGRAM, BUT THEY SHALL (A) NOTIFY OPPONING COUNSEL ABOUT SUCH PROGRAMS AND (B) PRESERVE ANY PRINTOUTS OF SUCH DATA. REQUESTS FOR RELIEF FROM THIS DIRECTIVE WILL RECEIVE PROMPT ATTENTION FROM THE COURT. THE PARTIES ARE TO CONFER AND ATTEMPT TO AGREE ON ARRANGEMENTS FOR THE PRESERVATION OR DISPOSITION OF EXPLANTED/REMOVED MATERIALS.

(F) **Depositions.**

(1) **Schedule.**

(A) **National Defendants.** DEPOSITIONS OF CURRENT AND FORMER EMPLOYEES OF THE "NATIONAL" DEFENDANTS MAY COMMENCE AFTER OCTOBER 15, 1992, AND ARE TO BE COMPLETED BY MARCH 31, 1993. THESE SHOULD BE TAKEN ON THE ASSUMPTION THEY MAY BE USED AS TRIAL TESTIMONY. THEY SHOULD BE RECORDED BOTH ON VIDEO-TAPE AND STENOGRAPHICALLY, WITH A COMPUTER DISK IN TEXT-READABLE FORM ALSO BEING OBTAINED. THE DIRECT EXAMINATION SHOULD BE MADE BY THE PARTY WHO WOULD MOST LIKELY BE PRESENTING THE TESTIMONY OF THAT PERSON AT TRIAL. IF A POTENTIAL DEPONENT HAS NOT PREVIOUSLY TESTIFIED IN A DEPOSITION OR AT TRIAL, IT MAY BE APPROPRIATE TO ARRANGE FOR A "DISCOVERY" DEPOSITION BY OPPONING PARTIES PRIOR TO THE "TRIAL-TYPE" DEPOSITION.

(B) **Plaintiffs.** DEPOSITIONS OF PLAINTIFFS MAY COMMENCE AFTER DECEMBER 1, 1992. FOR MOST OF THESE, THE PRINCIPAL PURPOSE WILL BE FOR "DISCOVERY" PURPOSES AND WILL LIKELY BE NOTICED BY DEFENDANTS AFTER THE PLAINTIFF HAS ANSWERED INTERROGATORIES PROVIDING "CORE INFORMATION" ABOUT THE PLAINTIFF'S CONDITION AND CLAIMS OF DAMAGE. THE PARTIES ARE GIVEN LEAVE TO CONDUCT THESE DEPOSITIONS BY VIDEO-TAPE RECORDING (PROVIDED A STENOGRAPHIC RECORD IS ALSO MADE), BUT THERE IS NO REQUIREMENT FOR VIDEO-TAPING. NO CUT-OFF DATE CAN BE ESTABLISHED AT THIS POINT IN VIEW OF THE POTENTIAL FOR ADDITIONAL CASES AND THE LACK OF CERTAINTY AS TO TRIAL DATES.

(C) **National Experts.** DEPOSITIONS OF "NATIONAL" EXPERTS--THOSE WHOSE TESTIMONY MAY BE USED IN DIFFERENT TRIALS AROUND THE COUNTRY--MAY COMMENCE AFTER MARCH 31, 1993, AND SHOULD BE COMPLETED BY MAY 31, 1993. THESE SHOULD BE TAKEN ON THE ASSUMPTION THEY MAY BE USED AS TRIAL TESTIMONY. THEY SHOULD BE RECORDED BOTH ON VIDEO-TAPE AND STENOGRAPHICALLY, WITH A COMPUTER DISK IN TEXT-READABLE FORM ALSO BEING OBTAINED. THE DIRECT EXAMINATION SHOULD BE MADE BY THE PARTY WHO WOULD MOST LIKELY BE PRESENTING THE TESTIMONY OF THAT

PERSON AT TRIAL. IF A POTENTIAL DEONENT HAS NOT PREVIOUSLY TESTIFIED IN A DEPOSITION OR AT TRIAL, IT MAY BE APPROPRIATE TO ARRANGE FOR A "DISCOVERY" DEPOSITION BY OPPOSING PARTIES PRIOR TO THE "TRIAL-TYPE" DEPOSITION. IT IS RECOGNIZED THAT SUPPLEMENTAL DEPOSITIONS MAY BE NEEDED FROM TIME TO TIME, FOR EXAMPLE IF THERE IS A CHANGE IN THE STATE-OF-KNOWLEDGE REGARDING IMPLANTS AND THEIR CONSEQUENCES.

(D) **Plastic Surgeons; Hospitals.** DEPOSITIONS OF SURGEONS AND HOSPITAL PERSONNEL INVOLVED IN IMPLANT OR EXPLANT/REMOVAL PROCEDURES, SOME OF WHOM MAY BE NAMED AS DEFENDANTS IN SOME CASES, MAY COMMENCE AFTER MAY 31, 1993. THESE DEPOSITIONS ARE LIKELY TO HAVE TWO PHASES OR ASPECTS--FIRST, GENERAL INFORMATION THAT IS NOT PLAINTIFF-SPECIFIC (E.G., EDUCATION, WHAT THEY KNEW OR WERE TOLD ABOUT IMPLANT MATERIALS AND WHEN, WHAT THEY USUALLY ADVISED PATIENTS, ETC.) AND SECOND, PARTICULAR INFORMATION THAT IS PLAINTIFF-SPECIFIC. IT IS ANTICIPATED THAT THIS GENERAL INFORMATION WOULD BE OBTAINED IN A TRIAL-TYPE VIDEO-TAPED DEPOSITION FOR POTENTIAL USE IN ALL APPROPRIATE CASES AND THAT THIS COULD BE ACCOMPLISHED DURING SUMMER 1993. SOME PLAINTIFF-SPECIFIC DEPOSITIONS MIGHT BE CONDUCTED AS EARLY AS SUMMER 1993, BUT THE TIME REQUIRED FOR ALL OF THESE WILL DEPEND UPON THE NUMBER OF PROCEDURES PERFORMED BY THE DEONENT AND THE POTENTIAL TRIAL DATES FOR A PARTICULAR PLAINTIFF.

(E) **Treating Physicians.** DEPOSITIONS OF PHYSICIANS WHO HAVE TREATED PLAINTIFFS MAY COMMENCE IN SOME CASES AS EARLY AS JUNE 1993. THE TIME REQUIRED TO COMPLETE THESE WILL BE SET AS POTENTIAL TRIAL DATES ARE DETERMINED FOR PARTICULAR CASES.

(F) **Defendant's Examining or Consulting Physicians.** DEPOSITIONS OF PHYSICIANS WHO EXAMINE PLAINTIFFS UNDER RULE 35 ON THE REQUEST OF A DEFENDANT OR WHO MAY OTHERWISE BE CALLED BY A DEFENDANT TO EXPRESS OPINIONS REGARDING A PLAINTIFF'S CONDITION SHOULD ORDINARILY BE TAKEN AFTER THE DEPOSITIONS OF THE PLAINTIFF'S TREATING PHYSICIANS. IN SOME CASES THIS MIGHT OCCUR AS EARLY AS AUGUST 1993. THE TIME REQUIRED TO COMPLETE THESE WILL BE SET AS POTENTIAL TRIAL DATES ARE DETERMINED FOR PARTICULAR CASES.

(G) **Other Witnesses.** DEPOSITIONS OF OTHER PERSONS (E.G., MEMBERS OF PLAINTIFF'S FAMILY) WILL BE SCHEDULED BASED ON THE POTENTIAL DATES OF PARTICULAR CASES. IT IS NOT EXPECTED THAT ANY OF THESE WOULD COMMENCE BEFORE JUNE 1993. IF A DEPOSITION IS NEEDED TO PROVIDE THE EVIDENTIARY FOUNDATION FOR ADMISSIBILITY OF DOCUMENTS (E.G, UNDER EVIDENCE RULE 803(6) AS EVIDENCE OF THE TRUTH OF ASSERTIONS CONTAINED IN A BUSINESS RECORD), IT IS EXPECTED THAT, TO SAVE COSTS, THIS WOULD BE ACCOMPLISHED EITHER BY A TELEPHONIC DEPOSITION OR BY A DEPOSITION UNDER RULE 31.

(2) **Method of Examination.** WHEN TAKING DEPOSITIONS FOR

POTENTIAL USE IN A NUMBER OF CASES: (A) START WITH FULL EXAMINATION (DIRECT, CROSS, AND REDIRECT) ON THE MATTERS OF GENERAL INTEREST BEFORE PROCEEDING INTO ANY ADDITIONAL INTERROGATION THAT IS PLAINTIFF-SPECIFIC; (B) AVOID IDENTIFYING ITEMS SUCH AS "I'M MARY SMITH AND I'M REPRESENTING JANE DOE" THAT COULD BE CONFUSING WHEN THE DEPOSITION IS USED IN OTHER CASES; AND (C) DO NOT REPEAT EXAMINATION MERELY TO MAKE IT SPECIFIC TO A PARTICULAR CASE. FOR EXAMPLE, IF DR. DON JONES TESTIFIES THAT HE DIDN'T TELL ANY OF HIS PATIENTS THAT THERE WAS A RISK THAT X MIGHT HAPPEN, DON'T ASK HIM FOR THE SAME INFORMATION ABOUT EACH INDIVIDUAL PLAINTIFF.

(3) **Objections.** EVEN IN DEPOSITIONS TAKEN PRIMARILY FOR USE AT TRIAL, IT IS RARELY NECESSARY TO STATE OBJECTIONS TO QUESTIONS DURING THE DEPOSITION. MOST OBJECTIONS CAN--AND SHOULD--BE MADE FOR THE FIRST TIME AT TRIAL WHEN A DEPOSITION IS OFFERED. ANY OBJECTIONS THAT ARE MADE DURING THE DEPOSITION MUST BE STATED CONCISELY AND IN A NON-ARGUMENTATIVE AND NON-SUGGESTIVE MANNER, SUCH AS WOULD BE APPROPRIATE IF THE EXAMINATION WAS CONDUCTED BEFORE A JUDICIAL OFFICER. A PARTY MAY INSTRUCT A DEONENT NOT TO ANSWER A QUESTION ONLY WHEN NECESSARY TO PRESERVE A PRIVILEGE, TO ENFORCE A LIMITATION ON EVIDENCE IMPOSED BY THE COURT, OR TO PRESENT A MOTION UNDER RULE 30(D).

(4) **Number of Examiners.** COUNSEL SHOULD EXERCISE SELF-RESTRAINT BY NOT ATTENDING DEPOSITIONS THAT CAN BE FAIRLY CONDUCTED BY OTHERS HAVING A SIMILAR INTEREST. ONE OR TWO ATTORNEYS ARE TO BE DESIGNATED BY EACH SIDE TO CONDUCT THE PRINCIPAL EXAMINATION OF THE DEONENT. WHILE OTHER COUNSEL MAY ASK ADDITIONAL QUESTIONS, THESE SHOULD BE LIMITED TO MATTERS NOT ALREADY COVERED, AND IT IS PREFERABLE THAT THESE ADDITIONAL QUESTIONS BE ASKED BY THE SAME COUNSEL WHO HAVE CONDUCTED THE PRIOR EXAMINATION. IT WILL BE PERMISSIBLE TO TAKE PERIODIC RECESSES DURING A DEPOSITION IN ORDER FOR EXAMINING COUNSEL TO CONSULT WITH THEIR COLLEAGUES ABOUT ADDITIONAL LINES OF EXAMINATION, BUT SUCH RECESSES SHOULD NOT BE USED TO "COACH" THE DEONENT.

(5) **Disputes during Depositions.** COUNSEL SHOULD ATTEMPT TO RESOLVE DISPUTES ARISING DURING DEPOSITIONS WITHOUT NEED FOR COURT INTERVENTION. DISPUTES THAT CANNOT BE SO RESOLVED MAY, IF THEY MIGHT RESULT IN THE NEED TO CONDUCT A SUPPLEMENTAL DEPOSITION, BE RAISED WITH THIS COURT BY TELEPHONE, EITHER TO THE UNDERSIGNED (205-731-1709) OR TO MAGISTRATE JUDGE ELIZABETH CAMPBELL (205-731-0364). IT IS EXPECTED THAT DISPUTES BETWEEN THE PARTIES SHOULD BE ADDRESSED TO THIS COURT RATHER THAN TO THE DISTRICT COURT IN WHICH THE DEPOSITION IS BEING CONDUCTED, AND THAT THE UNDERSIGNED WILL EXERCISE THE POWERS CONFERRED BY 28 U.S.C. § 1407(B) TO DEAL WITH DISPUTES INVOLVING NON-PARTY DEONENTS.

(6) **Use at Trial.** A DEPOSITION TAKEN PURSUANT TO THIS PLAN (INCLUDING, WHEN FILED IN THE DOCUMENT DEPOSITORY, DEPOSITIONS PREVIOUSLY TAKEN IN THESE CASES AND DEPOSITIONS PREVIOUSLY OR SUBSEQUENTLY TAKEN IN ANY OTHER SILICONE GEL IMPLANT LITIGATION IN FEDERAL OR STATE COURTS) SHALL BE

CONSIDERED AS SATISFYING THE REQUIREMENTS OF RULE 32(A) FOR USE AT TRIAL IN ANY FEDERAL COURT ACTION INVOLVING SILICONE GEL IMPLANTS (SUBJECT TO MEETING THE CONDITIONS STATED IN ONE OF THE NUMBERED PARAGRAPHS OF THAT SUBDIVISION) AGAINST ANY ENTITY THAT--

(A) AT THE TIME THE DEPOSITION IS TAKEN IS A PARTY IN ANY CASE THEN CONSOLIDATED IN THIS COURT UNDER CV 92-P-10000-S, OR

(B) AFTER THE DEPOSITION IS TAKEN BECOMES A PARTY IN ANY CASE CONSOLIDATED IN THIS COURT UNDER CV 92-P-10000-S, UNLESS WITHIN 45 DAYS AFTER FIRST BECOMING A PARTY IT FILES WITH THIS COURT A WRITTEN REQUEST THAT ONE OR MORE SPECIFICALLY IDENTIFIED DEPOSITIONS NOT BE USED IN THE CASE(S) IN WHICH IT IS A PARTY. IF SUCH A REQUEST IS FILED, OTHER PARTIES WANTING TO USE THE DEPOSITION(S) IN THE CASE MAY THEREAFTER NOTICE THE DEPONENT FOR A SUPPLEMENTAL DEPOSITION, INCLUDING ONE BY TELEPHONE OR ON WRITTEN QUESTIONS UNDER RULE 31. IN SUCH DEPOSITIONS THE DEPONENT SHOULD FIRST BE ASKED WHETHER HE OR SHE REAFFIRMS THE TESTIMONY PREVIOUSLY GIVEN. IF THE ANSWER IS "YES," FURTHER EXAMINATION OF THE DEPONENT SHOULD BE LIMITED TO ISSUES AND ITEMS NOT COVERED IN THE ORIGINAL DEPOSITION.

THE PARTIES TO THIS LITIGATION ARE HEREBY ENJOINED FROM RAISING, WITH RESPECT TO ANY DEPOSITION USABLE AGAINST THEM IN FEDERAL COURT ACTIONS, ANY OBJECTION IN ANY STATE COURT ACTION INVOLVING SILICONE GEL IMPLANTS TO THE USE OF THE DEPOSITION BASED UPON THE FACT THAT THE DEPOSITION WAS NOT TAKEN IN THE STATE COURT ACTION. ANY REQUEST FOR RELIEF FROM THIS INJUNCTION MUST BE FILED WITH THIS COURT WITHIN 30 DAYS FROM THE DATE THE DEPOSITION IS FILED IN THE DEPOSITORY OR FROM THE DATE IT FIRST BECOMES A PARTY IN THIS LITIGATION.

THESE PROVISIONS DO NOT PRECLUDE OBJECTIONS TO USE OF A DEPOSITION PREMISED UPON THE AVAILABILITY OF THE DEPONENT TO BE CALLED IN PERSON, NOR DO THEY PRECLUDE OBJECTIONS TO THE ADMISSIBILITY OF PARTICULAR ITEMS OF TESTIMONY IN A DEPOSITION ON EVIDENTIARY GROUNDS SUCH AS RELEVANCE, HEARSAY, ETC.

TO FACILITATE USABILITY OF DEPOSITIONS IN STATE COURT ACTIONS INVOLVING ENTITIES THAT ARE NOT AND MAY NEVER BE PARTIES IN THE FEDERAL CASES, THE PARTIES ARE ENCOURAGED, IF NO OTHER PROCEDURES HAVE BEEN ESTABLISHED BY THE STATE COURTS, TO ISSUE "CROSS NOTICES" OF DEPOSITIONS TO THE ADDITIONAL STATE-COURT PARTIES.

(G) **Interrogatories.**

(1) **To Plaintiffs.** THE NATIONAL DEFENDANTS WILL, AFTER CONFERRING WITH PLAINTIFFS' NATIONAL STEERING COMMITTEE, FILE BY OCTOBER 15, 1992, A SINGLE MASTER SET OF INTERROGATORIES AND DOCUMENT REQUESTS DESIGNED TO ELICIT (TO THE EXTENT NOT PREVIOUSLY OBTAINED) FROM EACH NAMED PLAINTIFF (BUT NOT FROM PUTATIVE CLASS MEMBERS) "CORE" INFORMATION NEEDED TO CONDUCT AN

EFFICIENT DEPOSITION OF THE PLAINTIFF. WHILE PLAINTIFFS MAY BE ASKED TO IDENTIFY POTENTIAL "FACT" WITNESSES RELATING TO LIABILITY OR DAMAGE CLAIMS, THEY ARE NOT TO BE ASKED SO-CALLED CONTENTION INTERROGATORIES. PLAINTIFFS ARE TO SERVE ANSWERS AND MAKE DOCUMENTS AVAILABLE BY NOVEMBER 15, 1992 (OR WITHIN 30 DAYS AFTER THE CASE IS FILED IN, REMOVED TO, OR TRANSFERRED TO THIS COURT AS A PART OF CV 92-P-10000-S), BUT THE PARTIES ARE GRANTED LEAVE TO AGREE (AND ARE EXPECTED TO AGREE) ON APPROPRIATE EXTENSIONS OF TIME, TAKING INTO ACCOUNT THE NUMBER OF PLAINTIFFS THAT A PARTICULAR LAW FIRM MAY BE REPRESENTING AND THE TIME WHEN COUNSEL WOULD REALISTICALLY BE READY TO PROCEED WITH A DEPOSITION OF A PARTICULAR PLAINTIFF.

(2) **To Defendants.** PLAINTIFFS' NATIONAL STEERING COMMITTEE WILL, AFTER CONFERRING WITH COUNSEL FOR EACH OF THE NATIONAL DEFENDANTS, SERVE BY MARCH 31, 1993, A SET OF INTERROGATORIES DIRECTED TO THAT DEFENDANT. THESE INTERROGATORIES SHOULD BE LIMITED TO QUESTIONS ELICITING INFORMATION (E.G., ITS RELATIONSHIP TO OTHER DEFENDANTS AND TRADE ORGANIZATIONS TO WHICH THE DEFENDANT BELONGS) THAT MIGHT REASONABLY BE EXPECTED TO BE USED AS EVIDENCE AT A TRIAL. SO-CALLED CONTENTION INTERROGATORIES WILL NOT BE ALLOWED. GIVEN THE LIMITED PURPOSE OF THESE INTERROGATORIES, DEFENDANTS SHOULD BE ABLE TO SERVE THEIR ANSWERS WITHIN 30 DAYS AFTER BEING SERVED WITH THE INTERROGATORIES.

(H) **Additional Discovery Requests.** THE PARTIES WILL CONFER CONCERNING, AND ATTEMPT IN GOOD FAITH TO AGREE UPON, ANY ADDITIONAL DISCOVERY REQUESTS NOT DESCRIBED ABOVE. THE COURT EXPECTS THAT ANY SUCH REQUESTS SHOULD NOT SEEK INFORMATION ALREADY OBTAINED AND AVAILABLE FROM THE DEPOSITORY ABSENT GOOD CAUSE TO BELIEVE THAT THE AVAILABLE INFORMATION IS INADEQUATE OR INCORRECT.

(I) **Deadlines Imposed by Other Courts.** ORDERS ISSUED BY OTHER COURTS IMPOSING DATES FOR INITIATION OR COMPLETION OF DISCOVERY ARE, WHEN A CASE IS REMOVED OR TRANSFERRED TO THIS COURT, VACATED AND REPLACED BY THE SCHEDULE PROVIDED IN THIS ORDER.

(J) **Exceptional Cases.** ANY PARTY MAY MOVE FOR RELIEF FROM THE PRESCRIBED DISCOVERY SCHEDULE WHEN MERITED BY SPECIAL CIRCUMSTANCES, SUCH WHEN A PLAINTIFF IS "IN EXTREMIS" OR TO OBTAIN INFORMATION PERTINENT TO CRITICAL PRELIMINARY ISSUES (E.G., FORUM NONS CONVENIENCE ISSUES RESPECTING CLAIMS BY FOREIGN PLAINTIFFS).

(K) **Special Master.** PURSUANT TO RULE 53(A), THE COURT HEREBY APPOINTS FRANCIS E. McGOVERN AS SPECIAL MASTER FOR THE PURPOSE OF ASSISTING THIS COURT IN THE FAIR AND EFFICIENT COORDINATION OF DISCOVERY CONDUCTED IN FEDERAL COURT WITH THAT CONDUCTED IN THE VARIOUS STATE COURTS IN WHICH SIMILAR CASES ARE OR MAY HEREAFTER BE FILED.

8. **Class Actions.** IN ORDER NO. 3 THIS COURT EXTENDED INDEFINITELY THE TIME WITHIN WHICH PUTATIVE CLASS MEMBERS CAN ELECT TO EXCLUDE THEMSELVES FROM THE CLASS ACTION THAT WAS PREVIOUSLY CERTIFIED BY THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO IN DONNA DANTE ET AL. V. DOW CORNING CORP. ET AL, (No. 1:92-057), WHICH IS NOW PENDING IN THIS COURT AS CASE NO. CV 92-P-10060-S. THIS COURT HAS NOT

DETERMINED WHETHER THE CLASS CERTIFICATION IN DANTE WILL BE RETAINED, VACATED, OR MODIFIED, OR WHETHER A CLASS SHOULD BE CERTIFIED IN ANY OF THE OTHER CASES IN WHICH SUCH A REQUEST HAS BEEN OR MAY HEREAFTER BE MADE. SUCH DECISIONS WILL BE MADE AT A FUTURE DATE, WITH APPROPRIATE NOTIFICATION BEING GIVEN TO PERSONS TO BE AFFECTED THEREBY. UNDER CURRENT LAW, STATUTES OF LIMITATIONS ARE PROBABLY CONSIDERED AS TOLLED FOR MEMBERS OF THE DANTE CLASS DURING THE PENDENCY OF THE CLASS CERTIFICATION.

9. **Trial(s).** THIS COURT HAS NOT YET MADE ANY DETERMINATION WHETHER ANY CASES SHOULD BE CONSOLIDATED FOR TRIAL, WHETHER SOME ISSUES SHOULD BE TRIED SEPARATELY FROM OTHERS, WHETHER ANY CASES SHOULD BE TRANSFERRED TO THIS COURT UNDER 28 U.S.C. § 1404 OR 1406, ETC. FOR PLANNING PURPOSES, HOWEVER, IT IS ANTICIPATED THAT SOME CASES MIGHT BE READY FOR TRIAL ON LIABILITY AND DAMAGES AS EARLY AS--BUT, ABSENT EXTENUATING CIRCUMSTANCES, NOT EARLIER THAN--FALL 1993. THERE IS THE POSSIBILITY THAT SOME SPECIAL ISSUES, SUCH AS THE RESPONSIBILITY OF ONE DEFENDANT FOR THE ACTIONS OF ANOTHER, MIGHT BE READY FOR SEPARATE TRIAL PRIOR TO THAT TIME.

THIS THE 15TH DAY OF SEPTEMBER, 1992.

SAM C. POINTER, JR. /S/
UNITED STATES DISTRICT JUDGE

ATTACHMENTS:

- A--ABBREVIATED ORDER FOR FILING IN INDIVIDUAL CASES
- B--INFORMATION CONCERNING NATIONAL DEFENDANTS
- C--PLAINTIFFS' NATIONAL STEERING COMMITTEE

EXHIBIT A

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
Southern Division**

IN RE:) MASTER FILE No. CV 92-P-10000-S
)
SILICONE GEL BREAST IMPLANTS) (THIS DOCUMENT IS TO BE
PRODUCTS LIABILITY LITIGATION) FILED IN ALL CASES)
(MDL-926))

**Order
(Adopting Master Case Management Order)**

THE DOCKETING AND FILING OF THIS ORDER IN A CASE SIGNIFIES THAT IT HAS BEEN CONSOLIDATED FOR PRETRIAL PURPOSES AS A PART OF THE SILICONE GEL BREAST IMPLANTS PRODUCT LIABILITY LITIGATION AND THAT THE PROVISIONS OF ORDER NO. 5 (REVISED CASE MANAGEMENT ORDER) ENTERED ON SEPTEMBER 15, 1992, IN CV 92-P-10000-S APPLY TO THE CASE.

THIS THE 15TH DAY OF SEPTEMBER, 1992.

UNITED STATES DISTRICT JUDGE

EXHIBIT C

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