

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 Relates To:
PRODUCTS LIABILITY LITIGATION) All Cases
(MDL-926))

ORDER NO. 9

This order is entered as a result of discussions at a conference under Rule 16 held in Birmingham, Alabama, on December 3, 1992, and to deal with various matters that have occurred since that date. It 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.

1. Service.

(a) Attached is a revision of Exhibit B to Order No. 5. This exhibit reflects a change of national counsel for CooperSurgical, Inc., The Cooper Companies, Inc., and McGhan NuSil Corporation, and a correction in the address where Union Carbide Corp. and Union Carbide Chemicals and Plastic Co., Inc. may be served.

(b) When serving pleadings, motions, and other papers that may affect physicians, hospitals, and other medical providers--whether or not parties to litigation--counsel are requested to mail an additional informational copy to:

Franklin M. Tatum, II, Esq.
Wright, Robinson, McCammon,
Osthimer & Tatum
411 East Franklin Street
Richmond, VA 23219
(804)783-1119

Mr. Tatum is acting in a coordinating role on behalf of a group of insurers for physicians and hospitals throughout the country. Note that serving Mr. Tatum does not constitute service on any particular medical provider; sending him a copy of papers is intended solely to enhance coordination.

2. Amendment of Order No. 8. The terms of Order No. 8 (regulating communications between Baxter Healthcare and implant recipients) are modified in the following respects:

(a) The terms of Order No. 8, with the modifications contained below, are made applicable to all "National" defendants.

(b) Paragraph 3 (relating to recording of oral communications) is modified to permit a defendant to conduct unrecorded conversations with an unrepresented recipient if the recipient so requests. When contacted, a defendant shall advise that, as a safeguard against possible disputes regarding the contents of such communications, the court has ordered that such communications be electronically recorded unless the person requests that they not be recorded. If the recipient requests that the conversation not be recorded, the recording will cease; but the defendant will, after the conversation has been completed, send to the recipient a neutrally-worded letter, similar in import to that previously approved for Baxter, cautioning that the defendant cannot give legal advice to the recipient and that the recipient may wish to consider obtaining separate legal advice or contacting Plaintiffs' National Liaison Counsel.

3. Baxter's Claim of Hardship Regarding Other Silicone Studies. Baxter's claim of undue hardship in producing tests and studies of possible effects of silicone on the human body from products other than breast implants will be considered after plaintiffs have been afforded an opportunity to inspect (after suitable depositions) maintenance and organization of records at two of Baxter's facilities.

4. Claims of Privilege and Other Protection Against Disclosure. Initial briefs from the parties regarding Dow's claims of privilege and work product protection relating to the "Griffin Bell" documents are due by December 31, 1992. Plaintiffs' initial brief regarding other claims by defendants of privilege or protection against disclosure is due by December 31, 1992, and defendants' reply briefs are due by January 8,

1993. Further briefs, to the extent permitted by the court, will be due by January 15, 1993.

5. Other rulings. The court announced on the record at the December 3, 1992, conference its rulings on several miscellaneous matters and has entered separate orders in particular cases on matters such as motions to dismiss, motions to remand, motions for summary judgment, etc.

This the 11th day of January, 1993.

/s/ Sam C. Pointer, Jr.
United States District Judge