

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

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| In re: |) | Master File No. |
| |) | CV 92-P-10000-S |
| SILICONE GEL BREAST IMPLANTS |) | |
| PRODUCTS LIABILITY LITIGATION |) | This document relates |
| (MDL 926) |) | to all cases |
| |) | |
| |) | |

ORDER No. 28
Dow Chemical Motion to Reconsider

On December 2, 1993, this court entered an interlocutory order granting the motion for summary judgment filed by Dow Chemical ("Chemical"). On April 25, 1995, the court vacated that Order. Before the court is Chemical's Motion to reconsider its April 25, 1995, order.

Chemical disputes some factual recitations contained in the April 25, 1995, order. The only new evidence presented by Chemical relates to its contention that 360 fluid and 200 fluid are not comparable—this, however, is a factual issue in genuine dispute. Chemical also reasserts factual allegations that it presented during briefing for its motion for summary judgment. These facts have been weighed according to summary judgment standards, and the court continues to conclude that under these standards a genuine dispute exists except with respect to one matter. The reference to the Dow Corning library is hereby deleted from the earlier opinion—a deletion, however, that does not affect the prior ruling denying summary judgment. While the Court does not alter the other recitals of factual matters contained in the prior opinion, it should be emphasized that these recitals are made in the context of Rule 56 standards—whether a genuine dispute exists—and should not be viewed as establishing those facts as being without substantial controversy under Rule 56(d).

Chemical again argues that the proper scope of inquiry under Restatement (2d) of Torts § 324A would be research and testing that was specifically performed on breast implants. The court has already

rejected that argument. Chemical also reasserts its previously rejected legal and public policy arguments. It presents no support for any contention of a change in law.

There being no new evidence or a change in law, and the court concluding that its legal analysis was correct, it is hereby ORDERED that Chemical's motion for reconsideration is DENIED, and the court's Order of April 25, 1995, denying summary judgment, is hereby CONFIRMED. As noted, that order, denying summary judgment on a "global basis," is interlocutory, and Chemical may reassert its motion for summary judgment in a particular case based on the law of the particular jurisdiction.

This the 26th day of December, 1995.

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

Service:
Plaintiffs' Liaison Counsel
Defendants' Liaison Counsel