

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

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

ORDER No. 40D

Remand to Transferor Courts

Pursuant to the order of the Judicial Panel on Multidistrict Litigation that became effective November 25, 1997, the cases listed in the appendix to this order are hereby remanded to the Transferor Courts shown in the appendix subject to the following terms and conditions:

(a) All claims against Dow Corning Corp. and Dow Corning Wright (including any crossclaims or third-party claims by defendants against Dow Corning Corp. or Dow Corning Wright) are, to the extent not previously dismissed, severed and not remanded. Such claims are hereby administratively closed in this court and dismissed without prejudice to the institution and pursuit of such claims in the United States District and Bankruptcy Courts for the Eastern District of Michigan in accordance with procedures established in those courts. This court will, however, retain jurisdiction to vacate such dismissals and reopen such claims against Dow Corning on written motion if filed within 30 days after reorganization proceedings of Dow Corning are dismissed or within 30 days after the Eastern District of Michigan determines that reopening of such cases against Dow Corning is the procedure to be followed in liquidating such claims.

(b) All claims by any party against The Dow Chemical Company, Inc. and Dow Holdings Inc. are, to the extent not previously dismissed or transferred, severed and transferred to the United States District Court for the Eastern District of Michigan. Any requests for transfer of such claims to another federal court or for remand of such claims to state court will be determined by the Eastern District of Michigan.

(c) As explained in Order No. 30 and Order No. 30G, all claims against the following companies have been dismissed with prejudice: Bioplasty, Inc.; Bio-Manufacturing, Inc.; Cabot Medical Corporation; Corning, Inc.; Foamex Products, Inc.; General Felt Industries, Inc.; Knoll International Holdings, Inc.; Recticel Foam Corporation; Scotfoam Corporation; Scott Paper Company; Surgitek, Inc.; '21' International Holdings, Inc; '21' Foam Company, Inc.; and Uroplasty, Inc.

(d) Any claims against Mentor Corporation; Mentor Polymer Technologies, Inc.; Mentor O&O, Inc.; Mentor H/S, Inc.; Mentor Urology, Inc.; Mentor International, Inc.; and Teknar Corp. relating to breast implants implanted before June 1, 1993, are dismissed with prejudice.

(e) All claims against General Electric Company have been dismissed with prejudice pursuant to Order No. 38. The plaintiffs in the remanded cases have, by failure to respond to Order No. 40, disavowed any participation in any appeal pursued with respect to Order No. 38.

(f) Any claims against Union Carbide Corporation based on its 1990-1992 ownership of McGhan NuSil Corporation will be remanded to the indicated transferor courts, but will be subject to dismissal by

such courts as to any plaintiff who, though eligible, failed to timely opt out of the Revised Settlement Program. All other claims against Union Carbide Corporation, as well as all claims against Union Carbide Chemicals and Plastics Company, Inc., have been dismissed with prejudice pursuant to Order No. 37, and the plaintiffs in the remanded cases have, by failure to respond to Order No. 40, disavowed any participation in any appeal pursued with respect to Order No. 37.

(g) All claims against Bristol-Myers Squibb Co., Medical Engineering Corp., Baxter Healthcare Corp., Baxter International Inc., Minnesota Mining and Manufacturing Co. ("3M"), and their subsidiaries are remanded to the indicated transferor courts, but will be subject to dismissal by such courts as to any plaintiff who, though eligible, failed to timely opt out of the Revised Settlement Program.

(h) All claims against Inamed Corp. and McGhan Medical Corp. are remanded to the indicated transferor courts. Unless such companies default in payment of their obligations under the Revised Settlement Program ("RSP"), such claims will be subject to dismissal in the transferor courts as to any plaintiff eligible to participate in the RSP who did not timely opt out of the RSP.

(i) All claims against other defendants not described in paragraphs (a) through (h) above are remanded to the indicated federal courts.

(j) Further proceedings in the transferor courts after remand will be governed, in general and to the extent applicable, by the orders previously entered in MDL 926 and Master File No. CV 92-P-10000-S.

(1) Each plaintiff must, within 60 days after remand, serve upon the defendants in the case a completed questionnaire as previously prescribed by this court. This requirement does not apply if the plaintiff has previously served such a questionnaire on the defendants (or previously answered interrogatories seeking similar information) and such information is accurate and complete.

(2) Any motions for transfer under 28 U.S.C. § 1404 or § 1406, or for remand to state court, will be decided by the transferor court after remand.

(3) The provisions of Order No. 30, Order No. 30F, and Order No. 30G will apply to such further proceedings, including paragraph 8 of Order No. 30 which imposes an assessment on recoveries for "common benefit" services and expenses.

(4) The temporary injunction against certain settlement discussions, previously entered by this court, was vacated effective September 1, 1997.

(5) The deposition testimony of the members of the National Science Panel, appointed under Orders No 31 and 31D, will, when taken, be admissible and usable to the same extent as if taken before remand of the case.

(6) This court has previously transmitted to many of the courts to which cases are being remanded a copy of Order No. 30 and the various orders listed in Appendix A to Order No. 30 with which the courts should be made aware. The parties in the remanded cases are directed to ascertain from the courts whether such courts have previously received such orders and, if not, to contact the Clerk of this court to obtain, for transmittal to the remand courts, a "package" of such orders. Later orders of general interest would include Order No. 31* (National Science Panel), Order No. 36 (on-going studies), Order No. 37 (partial summary judgment for Union Carbide), Order No. 38 (summary judgment for General Electric). These orders, including the stipulation regarding objections to

documents and the appendices to that stipulation, can also be obtained through the Internet at www.fjc.gov/BREIMLIT/mdl926.htm.

This order will be filed in Master File CV 92-P-10000-S and in each of the cases listed in the appendix.

This the 2nd day of December, 1997.

/s/ Sam C. Pointer, Jr.

Chief Judge Sam C. Pointer, Jr.

Service: Plaintiffs' Liaison Counsel
Defendants' Liaison Counsel

Exhibit to Order No. 40D—Cases remanded to Transferor Courts

Transferor Court	ALN Case No.	Short Caption
ALS	1:93-00780	CV94-10684 KENNEDY v. AESTHETECH
ARE	4:92-00054	CV92-10091 JOHNSTON, ET AL. v. SURGITEK INC., ET AL.
ARE	4:93-00026	CV93-10505 SHULTZ v. MCGHAN MEDICAL
ARE	4:93-00330	CV93-11735 DWYER v. MCGHAN MEDICAL CORP.
CAC	2:93-05508	CV93-13726 HADAWAY v. DOW CORNING
CAC	2:96-05018	CV96-12486 AXEL v. MINNESOTA MINING MANUFACTURING
CAN	3:92-03754	CV92-11048 DUREN v. DOW CORNING
CAN	3:92-04735	CV93-10192 PINSON v. DOW CORNING
CAN	3:92-05016	CV93-10332 BAILEY v. DOW CORNING
CAN	3:93-00048	CV93-10718 POWERS v. HEYER-SCHULTE
CAN	3:93-02951	CV93-13732 KENNER v. BAXTER HEALTHCARE
CT	3:95-01167	CV95-10888 HOEFLEIN v. DOW CORNING
DC	1:96-02571	CV97-10075 LANE v. MCGHAN MEDICAL
FLM	3:97-00381	CV97-10493 CLEATOR v. BRISTOL-MYERS
FLM	3:97-00393	CV97-10608 HANBY v. BRISTOL-MYERS SQUIBB
FLM	3:97-00511	CV97-10628 GRANT v. MINNESOTA MINING MANUFACTURING
FLM	6:97-00597	CV97-10497 YOUNGS v. BRISTOL-MYERS
FLM	8:92-01158	CV92-10459 HAGER v. DOW CORNING CORP.
FLM	8:92-01463	CV92-10936 Y.S.B. v. MCGHAN MEDICAL
FLM	8:92-01953	CV93-10036 MURPHY v. MCGHAN MEDICAL
FLM	8:93-00203	CV93-10727 FLEENOR v. MCGHAN MEDICAL
FLM	8:93-00432	CV93-11196 MIDKIFF v. MCGHAN MEDICAL CORP.
FLM	8:93-01517	CV93-13465 DIAZ v. MCGHAN MEDICAL
FLM	8:93-01550	CV93-13493 BECK v. MCGHAN MEDICAL
FLM	8:93-01577	CV93-13514 BOUILLON v. MEDICAL ENGINEERING
FLM	8:93-01649	CV93-13973 VAN BEUREN v. MCGHAN MEDICAL
FLM	8:93-01856	CV93-14187 HANCOCK v. MCGHAN MEDICAL
FLM	8:93-01972	CV94-10040 BINGHAM v. MCGHAN MEDICAL
FLM	8:93-02095	CV94-10332 NEISLER v. DOW CORNING
FLM	8:94-00028	CV94-10741 ALLEN v. MCGHAN MEDICAL
FLM	8:94-00044	CV94-11176 DELOSH v. MCGHAN MEDICAL
FLM	8:94-00575	CV94-12731 KELLY v. MCGHAN MEDICAL
FLM	8:94-00579	CV94-12735 DAVIS v. MCGHAN MEDICAL
FLM	8:94-00584	CV94-12740 DAVIS v. MCGHAN MEDICAL
FLM	8:94-00587	CV94-12743 HEALD v. MCGHAN MEDICAL
FLM	8:94-00589	CV94-12745 HUNNICUTT v. MCGHAN MEDICAL
FLM	8:96-01400	CV96-12448 SUZANNE C. COLE v. MINNESOTA MINING & MANU.
FLN	3:93-30173	CV93-12043 MONTGOMERY v. MCGHAN MEDICAL
FLN	3:93-30179	CV93-12049 MONTOUR v. SURGITEK

FLN	3:93-30231	CV93-12096	BATES v. COX-UPHOFF INTERNATIONAL
FLN	3:93-30313	CV93-12642	ALMOND v. MCGHAN MEDICAL
FLN	3:93-30334	CV93-12650	MILLER v. SURGITEK
FLN	3:93-30338	CV93-12654	RICHARD v. MCGHAN MEDICAL
FLN	3:93-30370	CV93-13010	ADAMS v. MCGHAN MEDICAL
FLN	3:93-30419	CV93-13523	JOHNSON v. DOW CORNING
FLN	3:93-30437	CV93-13757	DUKE v. BAXTER HEALTHCARE
FLN	3:93-30441	CV93-13530	ISAACS v. MCGHAN MEDICAL
FLN	3:93-30443	CV93-13532	CRUMPLER v. MCGHAN MEDICAL
FLN	3:93-30448	CV93-13537	BECKERT v. MCGHAN MEDICAL
FLN	3:93-30449	CV93-13538	GOSS v. MCGHAN MEDICAL
FLN	3:93-30450	CV93-13539	ADZIMA v. MCGHAN MEDICAL
FLN	3:93-30454	CV93-13543	MELVIN v. MCGHAN MEDICAL
FLN	3:93-30457	CV93-13546	BACKER v. MCGHAN MEDICAL
FLN	3:93-30460	CV93-13549	CRAIG v. MCGHAN MEDICAL
FLN	3:93-30537	CV93-14193	KASHUK v. BRISTOL-MYERS
FLN	3:97-00060	CV97-10329	TATUM v. MCGHAN MEDICAL
GAM	5:93-00299	CV93-13559	CHILDERS v. MCGHAN MEDICAL
GAN	1:92-03069	CV93-12352	LENA WATSON v. MCGHAN MEDICAL CORP.
GAN	1:93-02051	CV93-13793	ALLISON v. MCGHAN MEDICAL
KS	2:93-02342	CV93-13028	GOODELL v. MCGHAN MEDICAL
LAE	2:94-01071	CV94-12507	STUARD v. BAXTER HEALTHCARE
LAE	2:94-01102	CV94-12511	LEONARD v. DOW CORNING
LAM	3:94-00389	CV94-13063	BARR v. AESTHETECH
LAM	3:94-00512	CV94-13379	BLADES v. AESTHETECH
LAM	3:94-00802	CV94-13776	LALUMANDIER v. AESTHETECH
LAW	5:93-01251	CV93-13058	JAMISON v. DOW CORNING
LAW	5:93-01343	CV93-13591	TAYLOR v. SURGITEK
LAW	5:93-01822	CV93-14270	LLOYD v. INAMED
LAW	5:93-01878	CV94-10380	ADAMS v. MCGHAN MEDICAL
LAW	5:94-00099	CV94-10962	WHITMAN v. MCGHAN MEDICAL
LAW	5:94-00697	CV94-13126	JACKSON v. MINNESOTA MINING & MANUFACTURI
LAW	6:94-00524	CV94-12538	TISDALE v. AMERICAN HEYER-SCHULTE
MD	1:92-03325	CV93-10928	WILEY v. MCGHAN MEDICAL CORP.
MIE	2:96-72086	CV96-12258	SAYBOLT v. MCGHAN MEDICAL
MN	0:97-00243	CV97-10339	PECORE-TURCOTTE v. AMERICAN HEYER-SCHULTE
MOE	4:93-00034	CV93-11574	BORGFIELD v. MCGHAN MEDICAL
MSS	1:96-00274	CV96-12219	SISBARRO v. MCGHAN MEDICAL
MSS	2:92-00075	CV92-10899	ROSALIE QUAVE v. DOW CORNING CORPORATION
MSS	2:93-00270	CV93-13855	FREEMAN v. MCGHAN MEDICAL
MSS	3:93-00385	CV93-12788	FRAISER v. MCGHAN MEDICAL
MSS	3:93-00386	CV93-12789	SANDERS v. MCGHAN MEDICAL
MSS	3:93-00393	CV93-12796	PENNINGTON v. MCGHAN MEDICAL
MSS	3:93-00633	CV93-14052	CALOWAY v. MEDICAL ENGINEERING

MSS	3:94-00497	CV94-14178	BRELAND v. MCGHAN MEDICAL
MSS	3:95-00329	CV95-13243	GORMAN v. MCGHAN MEDICAL
MSS	3:95-00602	CV95-12957	ROSAMUND v. DOW CHEMICAL
MSS	3:97-00055	CV97-10150	TIBLIER v. MCGHAN MEDICAL
MSS	3:97-00056	CV97-10151	NELSON v. MCGHAN MEDICAL
MSS	5:93-00096	CV93-14128	BETTY MAXWELL v. MCGHAN MEDICAL CORPORATION
MSS	5:93-00097	CV93-14129	ELSIE RICHTER v. MCGHAN MEDICAL CORP.
MSS	5:95-00116	CV95-11945	SANDERS v. DOW CHEMICAL
MT	9:96-00027	CV96-12490	GRILLO v. BRISTOL-MYERS SQUIBB
NCW	1:93-00188	CV93-13621	HARKINS v. MCGHAN MEDICAL
NCW	1:93-00196	CV93-13629	NEEDHAM v. MCGHAN MEDICAL
NM	1:92-00525	CV92-10577	OLSON v. MCGHAN MEDICAL CORP., ET AL.
NM	1:92-00885	CV92-10978	DAVIS v. MCHGAN MEDICAL
NM	1:92-00916	CV92-10982	GILMER v. MCGHAN MEDICAL
NM	1:92-01164	CV93-10123	FINNELL v. MCGHAN MEDICAL
NM	1:93-00197	CV93-11264	GOLDBERG v. MCGHAN MEDICAL CORP.
NM	1:93-00570	CV93-11954	CHANCE v. CUI
NM	1:93-00573	CV93-12286	ROSSAERT v. MCGHAN MEDICAL
NM	1:93-00696	CV93-13640	ZANNES v. MCGHAN MEDICAL
NM	1:93-01417	CV94-11974	MOORE v. MCGHAN MEDICAL
NM	1:94-00757	CV94-14201	HERMAN v. MCGHAN MEDICAL
NM	6:92-00619	CV92-10584	STOVER v. MCGHAN MEDICAL CORP., ET AL.
NM	6:92-00921	CV93-11664	MOORE v. MCGHAN MEDICAL CORP.
NM	6:92-01261	CV93-10648	GUNNELL v. MCGHAN MEDICAL
NV	2:93-00036	CV93-10767	GOODNOUGH v. DOW CORNING
NV	2:93-00451	CV93-13076	PINCOLINI v. AMERICAN HOSPITAL SUPPLY
NV	2:94-00259	CV94-12249	LUBAWY v. INAMED
NV	3:92-00825	CV93-10463	MACHADO v. AMERICAN HOSP.
NV	3:93-00406	CV93-14335	NICHOLS-REEVES v. MEDICAL ENGINEERING
NV	3:93-00516	CV93-14337	FORURIA v. AMERICAN HEYER-SCHULTE
NV	3:93-00625	CV93-14347	BURK v. CUI
NV	3:93-00651	CV93-14350	MCADAM v. MCGHAN MEDICAL
NYE	1:93-00156	CV93-10649	VALENTI v. MENTOR
NYE	1:93-00289	CV93-10654	SCIRE v. DOW CORNING WRIGHT
NYE	1:94-00133	CV94-11256	BREEN v. DOW CORNING WRIGHT
NYE	1:94-03418	CV94-14019	LEVINAS v. DOW CORNING
NYS	1:92-04523	CV92-10594	LAZAROV v. DOW CORNING CORP.
NYS	1:93-00774	CV93-11122	DE HOUST v. AMERICAN HEYER-SCHULTE CORP.
NYS	1:93-01671	CV94-12286	LAZAROV v. INAMED
NYS	1:94-04284	CV94-14048	HARTWELL v. DOW CORNING
OKW	5:95-01533	CV96-10606	BEST v. DOW CORNING
OKW	5:95-01534	CV96-10607	BLACK v. CUI
OKW	5:95-01538	CV96-10611	BROWN v. BIOPLASTY
OKW	5:95-01539	CV96-10612	FERGUSON v. DOW CORNING

OKW	5:95-01540	CV96-10613	BRANCH v. DOW CORNING
OKW	5:95-01547	CV96-10617	DRAPER v. DOW CORNING
OKW	5:95-01560	CV96-10618	HERNANDEZ v. CUI
OKW	5:95-01561	CV96-10619	HILLEARY v. DOW CORNING
OKW	5:95-01565	CV96-10622	KELLEY v. SILVERSTEIN
OKW	5:95-01568	CV96-10624	PADGETT v. DOW CORNING
OKW	5:95-01569	CV96-10625	PAIGE v. CUI
OKW	5:95-01578	CV96-10628	SAMMONS v. AESTHETECH
OKW	5:95-01581	CV96-10631	REYNOLDS v. SILVERSTEIN
OKW	5:95-01582	CV95-19221	SCHWARZ v. SILVERSTEIN
OKW	5:95-01584	CV96-10633	THOMSON v. MEDICAL ENGINEERING
OKW	5:95-01615	CV96-10636	RICHARDSON v. DOW CORNING
OKW	5:95-01622	CV96-10640	SCOGGIN v. MCGHAN MEDICAL
OKW	5:95-01624	CV96-10641	SMITH v. 3M
OKW	5:95-01625	CV96-10642	MAYBERRY v. DOW CORNING
OR	3:93-01565	CV94-13266	LACHNER v. MCGHAN MEDICAL
PAE	2:93-06795	CV94-12052	HOGBEN v. MCGHAN MEDICAL
PAW	2:91-00922	CV92-10243	BOLEA v. MINNESOTA MINING & MFG. CO.
PAW	2:94-00502	CV94-12939	RIESTER v. DOW CORNING
PAW	2:96-00048	CV96-11923	FALBO v. DOW CHEMICAL
SC	0:94-00272	CV94-12064	WILLIAMS v. DOW CORNING
SC	4:95-02496	CV95-12015	CLEMMONS v. ROBERT M. HARRIS M.D.
SC	4:95-02497	CV95-12016	HOLCOMBE v. DOW CORNING
SC	6:92-03135	CV92-11398	PECK v. DOW CORNING
SC	6:93-00525	CV93-11290	COLLINS v. DOW CORNING CORP.
SC	6:93-00528	CV93-11291	REID v. MCGHAN MEDICAL CORP.
SC	6:93-01140	CV93-11699	MABRY v. BRISTOL-MYERS SQUIBB CO.
SC	7:92-03243	CV92-11418	GREEN v. DOW CORNING
SC	7:93-02355	CV93-13390	SOSEBEE v. CUI
SC	8:93-02322	CV93-13394	KING v. DOW CORNING
SC	8:93-02370	CV93-13690	PRACHT v. MINNESOTA MINING & MFG.
TNE	4:92-00089	CV92-11430	THOMPSON v. MCGHAN MEDICAL
TXE	1:93-00185	CV93-11865	HOWARD v. MCGHAN MEDICAL CORP.
TXE	1:96-00257	CV97-10032	RAYON v. MENTOR CORP.
TXE	9:93-00055	CV93-12007	HOPSON v. DOW CORNING
TXN	3:95-01674	CV95-14608	EMMETT v. DOW CORNING
TXS	1:93-00218	CV94-10218	SAMORA v. DOW CORNING
TXS	4:92-00792	CV92-10072	HOLLY GALANDO v. DOW CORNING CORP., ET AL.
TXW	5:93-00286	CV93-11553	LOCKWOOD v. DOW CORNING
VAW	1:94-00032	CV94-11707	CHRISTIAN v. BAXTER HEALTHCARE
VI	3:94-00103	CV94-14586	SULLIVAN v. MCGHAN MEDICAL