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. 40F

Remand to Transferor Courts

Pursuant to the order of the Judicial Panel on Multidistrict Litigation filed January 30, 1998, (but after eliminating two cases that had been dismissed before receipt of the order in the Clerk's office of this court) 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 pending or subsequent 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 (ongoing 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 17th day of February, 1998.

<u>/s/ Sam C. Pointer, Jr.</u> Chief Judge Sam C. Pointer, Jr.

Service: Plaintiffs' Liaison Counsel

Defendants' Liaison Counsel

ALN Case No. Transferor/ Short Caption

Remand Court

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2.94 10000ALS	4.92-00238	CUTRER, ET AL. v. HEYER-SCHULTE INC.,
ET AL.	4.92 00230	COTRER, ET AL. V. HETER SCHOOLE INC.,
	4:92-00376	MORTON, ET AL. v. MEDICAL ENGINEERING,
ET AL.	1.32 00070	months, at the v. medicine and marketing,
	4.92-00517	ZEIGLER, ET AL. v. DOW CORNING CORP.,
ET L.	1.32 00017	and the vibou continuo continuo
·	4:93-00387	COX v. MEDICAL ENGINEERING
2:93-13440 ARE		DOE v. AESTHETECH
2:93-14137 ARE		DOE #49 v. AESTHETECH
		CATHERINE STAGE v. BRISTOL-MYERS
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~	2:92-01653	AMABISCA v. DOW CORNING CORP.
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2:94-11157 CAE	2:93-01790	GILBERT-GIBSON v. SURGITEK
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2:94-11568 CAN	3:94-00326	COOPER v. BRISTOL-MYER SQUIBB
2:94-13322 CAN	3:94-00481	RAYBOULD v. MEDICAL ENGINEERING
2:94-13566 CAN	3:94-01129	CALABRETTE v. BRISTOL-MYERS SQUIBB
2:97-10070 CAN	3:96-04430	MASSEE v. BRISTOL-MYERS SQUIBB
2:94-13735 CAN	5:94-20367	POSADA v. DOW CORNING, ET AL.
2:96-12140 CAN	5:96-20210	SPIEGEL v. BRISTOL-MYERS
2:94-10316CAS	3:93-01755	SWALLOW v. BRISTOL-MYERS
2:95-10875 CAS		WILLBURN v. JAMES D. WILLIAMS
2:97-10458 CAS	3:97-00069	PAULA JACKSON v. BAXTER HEALTHCARE
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