

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

In re: SILICONE GEL BREAST) Master File CV 92-P-10000-S
IMPLANT PRODUCTS LIABILITY)
LITIGATION (MDL-926)) (Applies to cases listed in Appendix)

**ORDER No. 44
(Show Cause Why Listed Cases Should Not Be Dismissed)**

1. Thousands of cases are still pending in this court which, because of settlements, bankruptcy, summary judgment or other reasons, are essentially dormant and could be dismissed. The closing of such cases will enable this court (and potential remand courts), parties, and counsel to focus their energies on the "active" cases. It is also desirable to prepare for potential remand of the active cases by eliminating defendants who may have been originally named (or later added) but who will not be retained as defendants if the case proceeds towards trial or settlement.

(a) As a first step in this process, the undersigned has compiled a list of all cases transferred to this court under § 1407 prior to 1997 in which, according to the records maintained by the undersigned, no request for remand (to federal or state court) is pending and there are no special motions, etc., indicating that the case may be active. There are 15,000+ cases on this list, which is attached as an appendix to this order. The information regarding defendants still remaining in these cases was compiled as of mid-March 1998 and may not reflect subsequent dismissals.

(b) To reduce unnecessary paperwork by litigants or their attorneys (and by the Clerk's office), this order is issued as a "show cause" order in which a failure to respond by the due date will be treated as a motion to dismiss under the conditions specified in paragraph 2(b) of this order. Also, a mechanism is provided so that corrections and party-reductions in the active cases can be accomplished with the least amount of time/paper-work by litigants and the Clerk's office. Though cast in the form of a "show cause" directive, this order is not intended to imply any dereliction or neglect on the part of plaintiffs or their

counsel. The court does not expect—or want—any response by plaintiffs or their counsel if they agree

that a listed case may be dismissed under the conditions specified in this order; nor does the court expect—or want—any explanation why a listed case should not be dismissed.

(c) Plaintiffs' counsel should familiarize themselves with the developments in this case—particularly matters learned during discovery; the changes in the organizational structures, circumstances, and financial conditions of various defendants who may have been named as parties in their cases; the rulings on summary judgment motions by this court; and whether the plaintiffs are participants in the Revised Settlement Program.

(d) The court does not intend that this order create a procedural snare or trap for plaintiffs who do want to proceed with their cases against one or more of the defendants. Accordingly, a relatively long time period is established for responding to this show cause order, and provisions are included for reinstating cases that are dismissed pursuant to this order.

2. With this background, it is hereby ORDERED that:

(a) Plaintiffs (whether acting pro se or through counsel) are directed to indicate to the undersigned in writing by July 17, 1998, which of the cases listed in the appendix to this order should not be dismissed.

(b) Absent such a response, those cases will be dismissed under the following conditions:

(1) Claims against Dow Corning Corp. and Dow Corning Wright would be 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 would, 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.

(2) The plaintiff(s) in such case would have the right to vacate the dismissal and

reinstate

in this court claims against any of the other defendants listed in the appendix by written motion filed in this

court within 1 year after the date of the order dismissing the case. Unless and until vacated, the dismissal

would be considered as with prejudice to the extent of precluding breast implant claims by the plaintiff (individually or as a class member) against such defendants in other cases in federal or state courts (except

to the extent permitted under the terms of the Revised Settlement Program should a participating defendant

default in meeting its financial obligations under that settlement).

(3) Each party would bear its own costs.

(c) Plaintiffs (and their counsel) who object to dismissal under the above conditions should submit by July 17, 1998, their written responses directly to the undersigned, and NOT to the Clerk's Office. This will eliminate unnecessary activities by the Clerk in filing and docketing such responses, and,

in view of the opportunities to set aside dismissals, parties should not be prejudiced by the possibility that

the undersigned might inadvertently fail to note an objection to dismissal. Moreover, counsel with multiple

cases that should not be dismissed are requested to indicate such objections by submitting to the undersigned a SINGLE JOINT response for all of such cases by copying the page(s) of the appendix on

which such cases appear and by showing their response through appropriate notations on such page(s).

To indicate that a case should not be dismissed, simply (1) place an asterisk to the left of the ALN CaseNo and (2) circle the names of the defendants against whom the case will proceed if remanded.

The court suggests that a copy of such responses also be sent to the Office of Plaintiffs' National Liaison

Counsel, which will work with the court to minimize the chance that an objection to dismissal might be

inadvertently overlooked.

(1) In evaluating which parties will remain as defendants, plaintiffs should note:

(A) 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. may proceed only if they relate to breast implants implanted after May 31, 1993.

(B) Claims against Union Carbide Corporation (or Union Carbide Chemicals and Plastics Company, Inc) may proceed only if based on its 1990-1992 ownership of McGhan NuSil Corporation and if the plaintiffs, if eligible, timely opted out of the original Global Settlement or the Revised Settlement Program provided by that defendant.

(C) Claims against Bristol-Myers Squibb Co., Medical Engineering Corp., Baxter Healthcare Corp., Baxter International Inc., and Minnesota Mining and Manufacturing Co. ("3M"), and their subsidiaries may proceed only if the plaintiffs, if eligible, timely opted out of the original Global Settlement or the Revised Settlement Program provided by those defendants.

(D) Claims against Inamed Corp., and McGhan Medical Corp. may proceed only if those defendants default in payment of their obligations under the Revised Settlement Program or if the plaintiffs, if eligible, timely opted out of the original Global Settlement or the Revised Settlement Program provided by those defendants.

(E) Claims against Dow Corning Corp. may not proceed without authorization from the Bankruptcy Court for the Eastern District of Michigan.

(2) A response objecting to dismissal will be treated as also indicating a request for remand to the Transferor Court (subject to the same terms and conditions as specified in Order No. 42) unless some other indication is given in the response. To reduce work by plaintiffs (and their counsel) and by the Clerk's office, the court requests that there not be any separate motions or requests for remand of such cases filed with the Clerk's office.

3. This order will be filed only in Master File CV 92-P-10000-S. After expiration of the time for indicating objections, a revised appendix (showing the cases tentatively scheduled for dismissal) will be posted on the webpage for a period of four weeks, and counsel can notify the undersigned by telephone or FAX if there are any errors in that list. Then, a new order will be prepared for docketing and filing in those cases that are to be dismissed. The court will also at that time prepare a new "show cause" order why this court should not suggest to the Judicial Panel on Multidistrict Litigation the remand to Transferor

Courts of cases that have been so identified by the responses to this order.

4. The appendix reflects for "P's Atty" a namecode identification used by this court. The information is included on the appendix both to assist Plaintiffs' Liaison Counsel in determining the attorneys to whom this order should be sent and to assist Plaintiffs' counsel in identifying cases to which their attention should be directed. In many cases, however, this information is missing or may be incorrect, particularly as a result of withdrawal or substitution of counsel or as a result of multiple attorneys from the same firm being shown as counsel for different plaintiffs. The court urges plaintiffs' counsel to look for other case numbers in which they are the representative of the plaintiff and to advise the undersigned and Plaintiffs' Liaison Counsel (through appropriate interlineations on page(s) of the appendix) where some change or addition should be made in showing the plaintiff's representative.

5. On the court's Webpage, compressed self-expanding files will be made available for downloading that include the appendix arranged both in order of Transferor Court/CaseNo's and in order of P's Atty. Plaintiffs' Liaison Counsel will also be provided with computer disks with files that may facilitate their obligations for providing notice.

6. There are probably other dormant cases that are not listed in the appendix but can be dismissed under the conditions indicated in paragraph 2(b). As to such cases, Plaintiffs' counsel should file a formal motion with the Clerk's office, identifying the case(s) by ALN CaseNo and lead plaintiff's name, and simply requesting dismissal pursuant to the terms specified in paragraph 2(b) of this Order No. 44.

This the 6th day of April, 1998.

/s/ Sam C. Pointer, Jr.
Chief Judge

Serve: Plaintiffs' Liaison Counsel
Defendants' Liaison Counsel

Post also on www.fjc.gov/BREIMLIT/mdl926.htm