

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

In re:)	Master File No. CV 92-P-10000-S
SILICONE GEL BREAST IMPLANTS)	Master File No. CV 98-P-10000-S
PRODUCTS LIABILITY LITIGATION)	This Document Relates To All
(MDL-926))	Cases Designated as EFILE cases

ORDER
SPECIAL RULES FOR EFILE (ELECTRONIC FILING) CASES

The following rules govern the service and filing of orders, pleadings, motions, briefs, and other documents in cases that are designated by the Court as EFILE cases under an electronic filing system as created and contemplated by the Service Agreement executed on November 4, 1997, between LAWPlus, Inc. and the United States District Court for the Northern District of Alabama, or any successor electronic filing system.

1. **Designation of EFILE Cases.** Cases may, from time to time, be designated as EFILE cases by an order filed in such cases, indicating the effective date of this designation. At this time, the Court will order such a designation—

(a) only in certain "Breast Implant" cases that were originally filed in this Court (or were removed from Alabama state courts directly to this Court), and

(b) only if at least one of the attorneys for each of the named, non-dismissed parties in the case (excluding parties against whom proceedings have been enjoined or stayed as a result of bankruptcy proceedings or as a result of an injunction) is a subscriber (or has indicated his or her willingness to become a subscriber) to the system maintained by LAWPlus (or the entity then providing such services to the Court) ("the Vendor"). In determining whether to designate as an EFILE case a newly filed case naming as defendants only parties that at that time are already defendants in EFILE cases, the Court may assume, prior to appearance by different counsel, that such defendants will be represented in the newly filed case by the attorneys representing them in the other EFILE cases.

2. **Electronic Service, Filing, and Docketing.** Except as otherwise provided in this order, the serving, filing, and docketing of all orders, pleadings, motions, briefs, and other documents on or after the effective date of an order designating the case as an EFILE case shall, to the extent practicable, be effected electronically through the EFILE system. A "hard copy" (*i.e.*, a printed copy) of such documents will not ordinarily be filed with the Court or be served on the parties (other than non-subscribers).

(a) **Non-Subscribers.**

(1) Non-parties and later-added parties who are neither represented by subscribers to the EFILE system nor themselves subscribers to the EFILE system—

(A) may file documents by providing the document to the Clerk's office in Birmingham either as a hard document or in any standard word processing format (with non-text pages scanned in a standard graphic format) on a formatted IBM-compatible 3-1/2" computer diskette; and

(B) shall serve by conventional methods a hard copy of such conventionally-filed documents on all persons entitled to service (whether or not EFILE subscribers). The Clerk's office will cause a copy of such documents to be placed into the EFILE system.

(2) Service of orders, pleadings, motions, briefs, and other documents on non-parties and later-added parties who are neither represented by subscribers to the EFILE system nor themselves subscribers to the EFILE system shall be made by serving such person with a hard copy of the document by conventional methods under the Federal Rules of Civil Procedure and the Local Rules of this Court, but, if a document is generated by the Court or by a subscriber to the EFILE system, an electronic copy shall also be placed in the EFILE system.

(b) **FAX-Only Subscribers.** FAX-only subscribers are to serve and file documents either (1) by conventional methods as described in paragraph 2(a) above for non-subscribers or (2) by using the FFOBO option available from the Vendor. FAX-only subscribers will receive documents served on them under the EFILE system through their FAX machines. For purposes of these rules, FAX-only subscribers are considered as non-subscribers with respect to documents they serve or file by conventional methods and are considered as subscribers with respect to service of documents on them and with respect to filing and serving documents by them using the FFOBO option.

(c) **Fees.**

(1) Any fee required by law to be paid to the Court in connection with the filing of a document shall be paid by the filing party directly to the Clerk of the Court promptly after electronic filing of the document. (At the present time the only document requiring such a payment that would be filed electronically would be a Notice of Appeal, which requires a combined (district and appellate court) fee of \$ 105.00. Any such required court fee is in addition to, and independent of, charges imposed by the Vendor under the Subscription Agreement for electronic transmission of documents.

(2) Fees charged to subscribers by the Vendor under its Subscription Agreement for access to and use of the EFILE system for serving and filing documents are in addition to any filing fees of the Court and are solely the property of the Vendor.

(d) **Court Records.** Under the Service Agreement, an electronic copy of the docket sheet and of all orders, pleadings, motions, briefs, and other documents that are either generated or received by the Court will be maintained on a computer in the Clerk's office in Birmingham. The computer, the associated equipment, and the copyrighted EFILE software are the property of LAWPLUS, Inc., but the Court has full and unimpaired rights at all times to retrieve and retain, as its own property, the stored electronic data without regard to any dispute between the Court and the Vendor, any termination of the Service Agreement, any bankruptcy proceeding involving the Vendor, or any replacement of the original vendor (LAWPLUS, Inc.) with a successor.

(e) **Documents to be Served or Filed Both in EFILE Cases and in Non-EFILE Cases.**

(1) Documents that apply to one or more EFILE cases and to one or more non-EFILE cases should be served and/or filed in the EFILE case(s) in accordance with these rules, with a hard copy also by conventional methods in the non-EFILE case(s).

(2) Documents filed in the Master Case file for non-EFILE Breast Implant cases (CV 92-P-10000-S) do not apply to EFILE cases unless also served and/or filed in the EFILE cases in accordance with these rules.

(3) Documents filed in EFILE cases will not be filed or docketed in the Master Case File for non-EFILE cases (CV 92-P-10000-S) unless a separate hard copy is submitted by conventional methods to the Clerk's office for filing in that case.

3. **Personal Identification Numbers; Signatures.** Upon receipt of a properly executed Subscriber

Agreement, the Vendor shall promptly assign to the subscriber or its designated representative(s) a confidential Personal Identification Number ("PIN"). This PIN will enable the attorney to file, serve, receive, review, and retrieve electronically filed pleadings, motions, briefs and other documents in the EFILE case, as well as to receive, review, and retrieve the docket sheet and the orders and other documents generated by the Court.

(a) **PIN as Signature.** Documents electronically served or filed through use of the attorney's PIN will be treated as bearing such attorney's signature for all purposes, including Fed. R. Civ. P. 5(e), 11(a), and 26(g). However, primarily for the purpose of avoiding misunderstanding by non-subscribers who may view the document, electronically filed documents that, if filed or served conventionally, would require the signature of the attorney should also include a facsimile or graphic image of the signature of at least one of the attorneys filing or serving the document (along with the typed name, firm name, mailing address, telephone number, and FAX number of the attorney, and, if available, the attorney's e-mail address).

(b) **Use of PIN.** An attorney's PIN shall be used to serve or file documents only (1) by that attorney or (2), if expressly authorized by that attorney, by other attorneys and employees of that attorney's firm or office.

4. **Effective Time of Electronic Filing and Service.**

(a) **Filing with Court.**

(1) Except as provided in paragraph 4(a)(2) below, pleadings, motions, briefs, and other documents will, if **sent** electronically to the Court under the EFILE system by 11:59 p.m., Central Time, be treated as filed on that day.

(2) Notices of Appeal under the Federal Rules of Appellate Procedure (and motions under FRAP 4(a)(5) for extension of time to file such Notices) will, if **received** electronically by the Court under the EFILE system by 11:59 p.m., Central Time, be treated as filed on that day. If a Notice of Appeal that has been sent electronically to the Court by 11:59 p.m., Central Time, on the last day allowed for filing the Notice is not received by the Court on that day, the Notice shall be treated as including a motion under FRAP 4(a)(5) for an extension of time and such motion shall be deemed automatically granted by the Court. (As a precautionary measure, the party submitting such late Notice may wish to serve and file electronically a separate motion under FRAP 4(a)(5).)

(b) **Service on Parties and Non-Parties; Time to Respond or Act.**

(1) Documents will, if **sent** electronically under the EFILE system by 11:59 p.m., Central Time, to an EFILE subscriber, be treated as served by mail on such person on that day. For purposes of calculating the time in which the recipient may or must take some action based on service of the document, the 3 additional days provided under Fed. R. Civ. P. 6(c) after service by mailing shall apply with respect to such electronic service, whether or not a hard copy of the document is delivered personally or FAXed to the recipient as a courtesy.

(2) The Federal Rules of Civil Procedure govern the methods of service, the date of service, and the time to respond or act with respect to hard copies of documents served by conventional methods on non-subscribers to the EFILE system.

5. **Service List.** Each party (or group of parties jointly represented by essentially the same counsel) may designate as many as two attorneys upon whom service of documents is to be made under the EFILE system. Additional attorneys may be shown as authorized to appear on behalf of the party, but will not be shown on the service list for the party.

(a) **Failure to Receive Document.** Although, when two persons are designated for service on a party (or group of parties jointly represented by essentially the same counsel), service should be attempted on both of such persons, any objection or request for relief based on failure of such persons to receive the document under the EFILE system will be denied if the document is received by either of such persons.

(b) **Autocopy; Forwarding.**

(1) **Autocopy.** An EFILE subscriber may elect the autocopy service under the EFILE system in which the subscriber, at his or her expense (rather than that of the sender), will automatically be sent a copy of documents electronically served on other persons designated by that subscriber. This feature may be of benefit to persons (A) who are not on the service list or (B) who are on the service list but desire to receive copies of documents served only on one or more other parties in the case.

(2) **Forwarding.** If more than two representatives of a party (or group of parties jointly represented by essentially the same counsel) desire to receive copies of documents served on such party (or group of parties) in addition to the persons designated for service but do not elect the autocopy service described in paragraph 5(b)(1) above, it shall be the responsibility of those on the service list to redistribute to them such copies (whether by forwarding a copy using the EFILE system, by using other electronic or FAX means, or by using conventional means).

6. Caption, Title, Signatures, and Other Requirements for Documents Electronically Served or Filed.

(a) **General Rule.** Except as otherwise provided in this order and subject to the following subparagraphs of this paragraph 6, each order, pleading, motion, brief, or other document electronically served or filed under the EFILE system shall, in general, conform to the requirements of Fed. R. Civ. P. 7, 10, and 11.

(b) **Description of Document.** Each document must contain on the first page (after the court caption, abbreviated title showing the first-named parties, and file number of the case) a designation briefly describing the document, including such information—such as the filing parties, the nature of the document, and, if appropriate, the parties to whom the document is directed (*e.g.*, "Motion by Bristol-Myers to Dismiss Claims of Plaintiff Mary Jones"—as will uniquely identify the document from other documents in the case.

(c) **Appendix Listing Cases.** If the document applies to several EFILE cases (but not generally to all EFILE cases), the titles and file numbers of the affected cases should be listed in an appendix to the document (rather than showing multiple titles and file numbers on the first page) so that the first page of the document, even if partially overwritten by a notation from the Court indicating its ruling on the document, will still adequately identify the particular document.

(d) **Signatures.**

(1) A facsimile or graphic image of the signature of the attorney submitting the document should be shown on the signature page of the document. However, as indicated in paragraph 3(a) above, use of the attorney's PIN will, even in the absence of such signature, constitute a signature of such attorney. Also, as provided in paragraph 3(a), the document should contain the typed name, firm name, mailing address, telephone number, and FAX number of the attorney, and, if available, the attorney's e-mail address.

(2) For documents requiring the signature of a person who is not an EFILE subscriber (*e.g.*,

a party answering interrogatories or a non-subscriber signing an affidavit), the document should be sent as a word processing document, along with a scanned copy of the page containing the person's signature. The transmitting party should also retain (for inspection by other parties for good cause shown) a copy of the document containing the person's original signature.

(e) **Certificate of Service.** Since the EFILE system provides a retrievable log of service, the Certificate of Service otherwise required under Fed. R. Civ. P. 5(d) may be omitted unless service of a hard copy is required under this order. In such event, the certificate may simply identify the person(s) upon whom conventional service of a hard copy has been made.

(f) **Proposed Form of Order.** When filing a motion, a party may include (but is not required to include) a proposed form of order as an attachment, clearly identified as being a draft, for the Court's consideration and possible use if the motion is granted.

(g) **Short Orders.** The Court contemplates that, following its past practice, its ruling on many motions will be made by inserting that ruling on the first page of the motion and then causing only that first page, containing the ruling, to be served on the affected parties.

7. **Special Provisions.**

(a) **Master File.** A Master File (CV 98-P-10000-S) has been established for receiving, docketing, and transmitting documents that generally affect all, or at least a large number of, Breast Implant EFILE cases. A copy of this order will be filed in that case. Documents filed in that master case will, to the extent applicable, be deemed to have been docketed and filed in each Breast Implant EFILE case. As a convenience, parties filing documents in CV 98-P-10000-S that do not apply to all EFILE cases are encouraged to include with the document an appendix listing the cases to which the document applies or to include in the description of the document a brief indication of the cases to which it applies (*e.g.*, "all EFILE cases in which ABC represents the plaintiffs") or does not apply (*e.g.*, "all EFILE cases except those in which ABC represents the plaintiffs").

(b) **Documents Filed Before Designation as EFILE Case.** Documents filed with the Court prior to a case being designated as an EFILE case will, although noted on the docket sheet and placed in the Court file, not ordinarily be available for viewing through the EFILE system. For convenient reference, parties are encouraged (but not required) to "re-file" electronically their pleadings (or the latest restated versions of such pleadings); such documents will not ordinarily need to be electronically served on other parties on whom such documents had previously been served by conventional methods.

(c) **Summons Directed to New Defendants.** Amended complaints by plaintiffs adding additional defendants and third-party complaints by defendants under Fed. R. Civ. P. 14 shall be filed electronically under the EFILE system and, if the newly added defendant is represented in other cases by an attorney who is an EFILE subscriber, a copy shall be forwarded through the EFILE system to such attorney. However, unless waived by the newly added defendant, a hard copy of the complaint and of the summons shall also be served on such defendant in the manner prescribed by Fed. R. Civ. P. 4. (Earlier orders in CV 92-P-10000-S provide for most defendants an address where they can be served by certified mail.)

(d) **Disclosures.** In EFILE cases, parties shall serve and file electronically not only their Pretrial Disclosures under Fed. R. Civ. P. 26(a)(3), but also the written reports of expert testimony under Fed. R. Civ. P. 26(a)(2).

(e) **Discovery Materials.** The provisions of Local Rule LR5.1 with respect to filing of discovery documents are modified for EFILE cases as follows:

(1) Interrogatories under Fed. R. Civ. P. 33 (and answers or objections to interrogatories) shall be electronically served and filed with the Court. (See, however, paragraph 7(g)(2) below for special instructions regarding Questionnaires to be provided by plaintiffs in Breast Implant cases.)

(A) In preparing its response, the party upon whom interrogatories are served shall repeat the questions and then provide its answer or objection immediately after each such question. (This can be done by retrieving and saving as a new file the interrogatories.)

(B) If an answer to an interrogatory would be voluminous or involve the attachment of exhibits that would be impossible or impracticable to transmit electronically, the electronically transmitted answer should so note, identifying the materials that are to be separately served or made available. Such materials and exhibits should not be filed with the Court except when so ordered by the Court or when (and to the extent) needed in connection with a motion (or response) or for trial.

(2) Requests for admission under Fed. R. Civ. P. 36 (and answers or objections to such requests) shall be electronically served and filed with the Court.

(A) In preparing its response, the party upon whom requests for admission are served shall repeat the requests and then provide its answer or objection immediately after each such request. (This can be done by retrieving and saving as a new file the requests for admission.)

(B) If documents to be served with a request are voluminous or involve exhibits that would be impossible or impracticable to transmit electronically, the electronically transmitted request should so note, identifying the materials that are being separately served. Such materials and exhibits should not be filed with the Court except when so ordered by the Court or when (and to the extent) needed in connection with a motion (or response) or for trial.

(3) Notices of a deposition to be taken under Fed. R. Civ. P. 30 or 31 shall be electronically served and filed with the Court. If the person to be deposed is not an EFILE subscriber and is not represented by an EFILE subscriber, the party noticing the deposition shall prepare and cause to be served on such person a hard copy of the Notice and of any subpoena that may be required under Fed. R. Civ. P. 45.

(A) The deposition itself need not be filed with the Court except when so ordered by the Court or when (and to the extent) needed in connection with a motion (or response) or for trial. If a deposition is to be filed—

(i) If the transcript is available as a word processing document, such document shall be filed electronically through the EFILE system.

(ii) If the transcript is not available as a word processing document, the party filing the deposition has the option either to file a hard copy of the transcript by conventional means or to file electronically through the EFILE system a scanned copy of the transcript.

(iii) In addition to the transcript, any party shall have the option to file by conventional means a video or audio tape of the deposition.

(iv) If documents and things produced for inspection during the examination of the deponent are voluminous or involve exhibits that would be impossible, impracticable, or unreasonably expensive to transmit electronically, the electronically transmitted deposition should so note, identifying the exhibits to the deposition that are not being

filed. Such materials and things should not be filed with the Court except when so ordered by the Court or when needed in connection with a motion (or response) or for trial.

Even when a deposition is not required to be filed, any party may file electronically through the EFILE system the transcript of a deposition that is available as a word processing document or that is scanned for electronic transmission.

(B) Questions, cross questions, and redirect questions for a deposition to be taken upon written questions under Fed. R. Civ. 31 shall be electronically served and filed.

(4) Requests under Fed. R. Civ. P. 34 for production of documents (and responses to such requests) shall be electronically served and filed with the Court. The documents so produced will not be filed with the Court except when so ordered by the Court or when needed in connection with a motion (or response) or for trial.

(f) **Subpoenas.** Subpoenas under Fed. R. Civ. P. 45 shall be electronically served and filed with the Court, but, if the subpoena is to be served on a person who is not an EFILE subscriber, the party serving the subpoena shall cause the original to be served on such person in the conventional manner. Proof of service of a subpoena ordinarily need not and should not be either served or filed. When such proof is necessary (*e.g.*, when a non-party deponent fails to appear for the deposition), such proof may be served and filed electronically under the EFILE system by scanning the certificate signed by the person who made the service.

(g) Documents Under Seal; Medical Records and Information.

(1) By selecting the Access limitation option available in the EFILE system, parties may electronically serve and file a notice indicating that a document is being filed under seal, in which event a proxy entry will be placed on the docket sheet indicating filing of a document under seal. The document itself must be delivered in a sealed envelope to the Clerk's office in Birmingham. Absent unusual circumstances and a special order from the court, the sealed envelope will be physically maintained in the Court file rather than in the Clerk's vault.

(2) The Questionnaire to be provided by plaintiffs in Breast Implant cases, which may include medical records and release authorizations, should be served on the defendant(s) in hard copy by conventional methods and should not be filed with the Court except when so ordered by the Court or when needed in connection with a motion (or response) or for trial.

(h) **Non-Documentary Materials; Voluminous Documents.** Appendices and exhibits to motions, briefs, and other documents that either cannot be transmitted electronically or are so voluminous as to make electronic transmission impracticable or unduly expensive shall be submitted to the Clerk for filing in the conventional manner, but the motion, brief, or other document itself shall be served and filed electronically, with an identification of the nature of the appendices and exhibits that are being separately filed.

(i) **Final Judgments; Appeal.** In addition to being electronically served and filed, a hard copy will be placed in the Court file in EFILE cases of the following:

(1) the final judgment or order that, considering earlier orders, adjudicates all claims by and against all parties in the case;

(2) an order adjudicating all claims by or against one or more (but not all) parties if certified as final under Fed. R. Civ. P. 54(b);

(3) a Notice of Appeal under the Federal Rules of Appellate Procedure, a motion under

FRAP 4(a)(5) for extension of time to file such Notices, a motion under FRAP 10 to correct the record on appeal, and responses and orders relating to such motions; and

(4) other motions and documents filed after the final judgment or order that adjudicates all claims by and against all parties in the case.

In the event of an appeal, it shall be the responsibility of the appellant to cause to be printed and submitted to the Clerk a hard copy of the documents needed for the record on appeal that have not previously been placed as hard copies in the Court file.

8. **Public Access.** At its offices in Birmingham during normal business hours, the Clerk's office shall make available to all persons, without charge, access to a computer terminal on which documents electronically filed in EFILE cases (other than those allowed to be filed under seal) can be searched, viewed, and saved as a new file on a formatted IBM-compatible computer diskette provided by such person. Persons may also obtain printed copies of such documents at the same rates as are prescribed by the Judicial Conference of the United States.

9. **Purpose; Right to Amend.**

(a) **Purpose.** These rules are lengthy and detailed in order to provide guidance for the variety of questions that may arise in an electronic filing system. They are not, however, intended to create procedural traps or barriers affecting the substantive rights of any of the parties. They will be interpreted and administered in a manner to foster the purposes of Rule 1 of the Federal Rules of Civil Procedure.

(b) **Amendment.** Recognizing the potential need to amend this order based on experience of the Court and the parties, the Court reserves the right to amend the terms of this order. The Court would, however, expect that any such amendments would be entered only after consultation with the counsel for potentially affected parties.

This the 22nd day of June, 1998.

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