

**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. 49
(Show Cause Why Listed Cases Should Not Be Remanded to State Court)**

Pending before the court are motions or letter-requests by plaintiffs or defendants in the cases listed in the appendix to this order, seeking remand to state courts of such cases. Upon consideration, it is ORDERED as follows:

1. All affected parties are directed to show cause in writing to this court by December 23, 1998, why the listed cases should not be remanded to the state courts shown in the appendix subject to the terms and conditions of this order. The parties are expected to be very specific as to any objections (*e.g.*, that federal jurisdiction exists other than solely under the "related to" jurisdiction arising from Dow Corning's bankruptcy proceedings, that there are dispositive motions under submission that can best be determined by this court, that the plaintiffs' only claims are against the defendants participating in the Revised Settlement Program and the plaintiffs are participants in the RSP).

Affected parties are requested to provide the court with corrections as to such matters as case numbers, descriptions and locations of state courts, etc.

2. The terms and conditions under which such remands will be effected are as follows:

(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) will, to the extent not previously dismissed, be severed and not remanded. Such claims will, however, 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 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. will, to the extent not previously dismissed or transferred, be 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) All claims by any party against McGhan Medical Corp., INAMED Corp., CUI Corp., and their subsidiaries and principals will, to the extent not previously dismissed, be severed and administratively closed, without prejudice to the pursuit of such claims in a pending class settlement

of such claims (and with the same rights under any such settlement as if they still had a pending lawsuit against such companies and individuals). Moreover, this court retains jurisdiction to vacate such closings and reopen such claims on request if that pending class settlement should not be approved.

(d) All claims against the following companies have been dismissed with prejudice through unappealed final judgments: Bioplasty, Inc.; Bio-Manufacturing, Inc.; Cabot Medical Corporation; Corning, Inc.; Foamex Products, Inc.; General Electric Co.; General Felt Industries, Inc.; Huls America Inc.; Knoll International Holdings, Inc.; Petrarch Systems, Inc.; Recticel Foam Corporation; Scotfoam Corporation; Scott Paper Company; Surgitek, Inc.; '21' International Holdings, Inc.; '21' Foam Company, Inc.; and Uroplasty, Inc.

(e) All listed 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, will be dismissed with prejudice.

(f) All listed claims against Union Carbide Corporation will, to the extent based on its 1990-1992 ownership of McGhan NuSil Corporation, be remanded to the indicated court, but will be subject to dismissal by such court 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.

(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 will, if listed in the appendix, be remanded to the indicated court, but will be subject to dismissal by such court as to any plaintiff who, though eligible, failed to timely opt out of the Revised Settlement Program. Previously-pending claims against those companies, if not listed in the appendix, will be dismissed (subject to the right to reopen 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).

(h) All claims against other defendants not described in paragraphs 2(a) through 2(g) above will, if listed in the appendix, be remanded to the indicated courts, or, if not listed in the appendix, will be dismissed.

(i) Further proceedings in the 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) To the extent not inconsistent with state law, the provisions of Order No. 30, Order No. 30F, and Order No. 30G will apply to such further proceedings, except that paragraph 8 of that Order No. 30 and Order No. 13, imposing an assessment on recoveries for "common benefit" services and expenses, will not apply to recoveries by plaintiffs who exercised their initial right to opt out of the *Lindsey* class, who did not opt back in to the *Lindsey* class at any

time, and whose state-court case was removed to federal court solely under the “related to bankruptcy” jurisdiction.

(3) 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 in the state courts to the same extent as if taken before remand of the case to the state court.

3. This “show cause” order will be filed only in Master File CV 92-P-10000-S. After expiration of the time for indicating objections, a new order will be prepared for docketing and filing in those cases that are directed to be remanded.

This the 9th day of November, 1998.

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

Serve: Plaintiffs’ Liaison Counsel
Defendants’ Liaison Counsel

Post also on website

CASES FOR POTENTIAL REMAND TO STATE COURTS
(listed in order of remand court and case number)

<u>ALN Case</u>	<u>Transferor Court</u>	<u>State Court to which to be Remanded</u>			<u>Lead Pltf</u>	<u>Attorney</u>	<u>Defendants against whom claims</u>
CV95-10040	CAC 2:94-05386	CA	LOS ANGELES	SUP. CT.	2754-03609	TARTAGLINO	FISCHM_J BAXTER HEALTHCARE; BAXTER INT'L
CV96-11392	MIE 2:95-74620	MI	WAYNE CO.	CIR. CT.	93-	DUNCAN	SHEA_DAV 3M
CV96-11169	MIE 2:95-74384	MI	WAYNE CO.	CIR. CT.	93-306632	FRAZER	GRINNA_A 3M
CV96-11162	MIE 2:95-74377	MI	WAYNE CO.	CIR. CT.	93-306637	DAVIS	GRINNA_A 3M; BAXTER HEALTHCARE
CV96-11293	MIE 2:95-74513	MI	WAYNE CO.	CIR. CT.	93-306641	SAMPSEL	SHEA_DAV BAXTER HEALTHCARE
CV96-11062	MIE 2:95-74267	MI	WAYNE CO.	CIR. CT.	93-309112	HAYES	GRINNA_A MEC
CV96-11085	MIE 2:95-74292	MI	WAYNE CO.	CIR. CT.	93-312894	BEARD	SHEA_DAV AESTHETECH; MEC
CV96-11175	MIE 2:95-74391	MI	WAYNE CO.	CIR. CT.	94-406544	GARDNER	SHEA_DAV BAXTER HEALTHCARE
CV95-10740	MOE 4:95-01012	MO	ST. LOUIS	CIR. CT.	932-01038	WAN	LOWE_JEF BRISTOL-MYERS; MEC
CV95-17588	MOE 4:95-01447	MO	ST. LOUIS	CIR. CT.	932-08631	BUNCH	LOWE_JEF GATEWAY IMPLANT ASSOCIATES; GREEN, ROBERT; LONDE, ALAN
CV95-11037	NJ 2:95-03238	NJ	MIDDLESEX CO.	SUP. CT.		SALAMON	WILSEY_J BAXTER HEALTHCARE; BERGAMO, ANGELO R
CV95-10410	NJ 2:95-02693	NJ	MIDDLESEX CO.	SUP. CT.	10236-92	SETH	GREENS_S LIPSON, DAVID; MCGHAN NUSIL
CV95-10413	NJ 2:95-02705	NJ	MIDDLESEX CO.	SUP. CT.	L-10236-92	CANIZIO	GREENS_S BRISTOL-MYERS; COOPER CO'S; COOPERSURGICAL; MEC
CV95-10280	NYS 1:95-04219	NY	NEW YORK CO.	SUP. CT.	119095/94	HACKLIN	RAM_CAND AESTHETECH; APPLIED SILICONE; BRISTOL-MYERS; COOPERSURGICAL; JACKSON, PALMER; MARKHAM MED.; MEC
CV95-10442	NYS 1:95-04180	NY	NEW YORK CO.	SUP. CT.	119096/94	PLUNKET	RAM_CAND AESTHETECH; APPLIED SILICONE; BRISTOL-MYERS; COOPER CO'S; COOPERSURGICAL; MARKHAM MED INT'L; MEC
CV95-10457	NYS 1:95-04257	NY	NEW YORK CO.	SUP. CT.	119099/94	DEMATTEO	RAM_CAND BAXTER HEALTHCARE; BAXTER INT'L
CV95-14576	PAM 1:95-01157	PA	DAUPHIN CO.	CT.OF COMM.PL.		AZURE TOBIAS VERRUNI	RONCA_JA GRAHAM, WILLIAM
CV95-13680	TXS 3:95-00530	TX	GALVESTON CO.	122ND DIST.	92-CV0415	RUNKLE	GALLAG_M BRISTOL-MYERS; MEC
CV95-18129	TXS 4:95-06174	TX	HARRIS CO.	269TH DIST.	93-045480	MEEKS	ALEXAN_P BRISTOL-MYERS; MEC
CV95-14887	TXS 4:95-07021	TX	HARRIS CO.	334TH DIST.	92-08778EG	MCINTYRE	GALLAG_M BRISTOL-MYERS; MEC
CV95-16288	TXS 4:95-08641	TX	HARRIS CO.	334TH DIST.	92-58773	RODRIGUEZ	BONHAM_W MEC; BRISTOL-MYERS; COOPER SURGICAL; COOPER CO'S.; CV SUB 1987, INC.; AESTHETECH; NATURAL Y ; CVI MERGER CORP.; WILSHIRE FOAM PROD.; SIROD CORP.; FRANK J. GEROW, M.D.; THOMAS CRONIN, M.D.; UNION CARBIDE; REPLICON LABS
CV95-16289	TXS 4:95-08642	TX	HARRIS CO.	334TH DIST.	92-58776EL	RODRIGUEZ	BONHAM_W CRONIN, THOMAS; GEROW, FRANK; 3M; MCGHAN NUSIL CORP.; UNION CARBIDE
CV95-16373	TXS 4:95-08743	TX	HARRIS CO.	DIST. CT.	93-45239	SIMMONS	FLETCH_C BRAUER, RAYMOND; DERUI ORTIZ, TERESA
CV95-16513	TXS 4:95-08911	TX	HARRIS CO.	DIST. CT.	94-15480	TULEY	FLETCH_C BRAUER, RAYMOND; DERUIZ ORTIZ, TERESA
CV95-14494	TXE 1:95-00704	TX	JEFFERSON CO.	136TH DIST.	D142,898	OLEXA	GALLAG_M AESTHETECH; BRISTOL-MYERS; CBI MEDICAL; COOPER SURGICAL; JACKSON, PALMER; MEC; NATURAL Y; WASHBURN, WESLEY; WILSHIRE FOAM