

**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. 49A  
(Remanding Listed Cases to State Court)**

Having considered any responses to Order 49, it is ORDERED as follows:

1. The cases listed on the appendix to this order are hereby remanded to the state courts listed in the appendix in accordance with the further terms of this order.

2. The terms and conditions under which such remands are 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) are, to the extent not previously dismissed, severed and not remanded. Such claims are 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) All claims by any party against McGhan Medical Corp., INAMED Corp., CUI Corp., and their subsidiaries and principals are, to the extent not previously dismissed, 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, are dismissed with prejudice.

(f) All listed claims against Union Carbide Corporation are, to the extent based on its 1990-1992 ownership of McGhan NuSil Corporation, 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 are, if listed in the appendix, 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, are 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 are, if listed in the appendix, remanded to the indicated courts, or, if not listed in the appendix, are 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.

(4) To the extent the docket sheet in any of these cases reflects as Plaintiffs National Liaison Counsel or Defendants National Liaison Counsel as counsel of record, such attorneys are relieved of further responsibilities in these cases.

3. This order will be docketed and filed in Master File CV 92-P-10000-S and in each of the cases being remanded.

This the 28th day of December, 1998.

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

Serve: Plaintiffs' Liaison Counsel  
Defendants' Liaison Counsel

Post also on website

<u>ALN Case</u>	<u>Transferor Court</u>	<u>State Court to which remanded</u>	<u>Lead Pltf</u>	<u>P Atty</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
CV96-11169	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
CV95-10280	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; COOPERSURGICAL; 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; COOPERSURGICAL; JACKSON, PALMER; MEC; NATURAL Y ; WASHBURN, WESLEY; WILSHIRE FOAM