

**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))	listed in the appendix to this order

**ORDER No. 55
Suggestion of Remand (Federal) No. 9**

The undersigned transferee district judge has, after issuing Order No. 52C, after considering the responses to that Order, and after considering other formal and informal requests for remand, concluded that, under the Rules of Procedure of the Judicial Panel on Multidistrict Litigation ("JPMDL"), it is appropriate that certain transferred actions be remanded to the transferor district courts, and accordingly recommends that the actions listed in the Appendix to this Order be remanded to the indicated transferor courts. Certain conditions, specified in paragraph 2 below, will apply to such cases after remand.

1. If counsel believe that an error has been made in the Appendix, they are instructed to notify the court in writing within fourteen (14) days of the date of this order so that this court, if persuaded by the assertion of error, can so notify the JPMDL. The parties are also requested to send to this court a copy of any objections submitted to the JPMDL after the Panel's issuance of a Conditional Remand Order so that this court can advise the Panel of its views regarding such objections. The parties are reminded that, until a Remand Order from the Panel is received by this court, jurisdiction over the case remains in this court and that, accordingly, should the parties before that date settle a case, this court should be immediately provided with the appropriate papers so that the case can be dismissed before the case is remanded.

2. The terms and conditions under which such remands, if ordered by the JPMDL, 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 against the following companies have been dismissed with prejudice through unappealed final judgments: Bioplasty, Inc.; Bio-Manufacturing, Inc.; Cabot Medical Corporation; Corning, Inc.; Cox Uphoff; CUI Corp.; Foamex Products, Inc.; General Electric Co.; General Felt Industries, Inc.; Huls America Inc.; Knoll International Holdings, Inc.; McGhan Medical Corp.; INAMED Corp.; Petrarch Systems, Inc.; Recticel Foam Corporation; Scotfoam Corporation; Scott Paper Company; Surgitek, Inc.; '21' International Holdings, Inc; '21' Foam Company, Inc.; and Uroplasty, Inc.

(d) 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.

(e) 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 transferor 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.

(f) 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 transferor 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).

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

(h) For some cases, the appendix indicates that the case is suggested for remand against indicated defendants only with respect to indicated plaintiffs. Where this is indicated, the claims of any other plaintiffs in the case, if not previously dismissed, will be severed and then dismissed and administratively closed, rather than remanded.

(i) Further proceedings in the transferor courts 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 motions for transfer under 28 U.S.C. § 1404 or § 1406, or for remand to state court, will, if not ruled upon by this court before remand, be decided by the transferor court after remand. If any such motions are granted by this court, the JPMDL will be notified so that the case can be removed from the list of those to be remanded to transferor courts.

(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. (Please note that under Order 13A the amount of the assessment has been reduced to 4% of the gross amount recovered.)

(4) The deposition testimony of the members of the National Science Panel, appointed under Orders No 31 and 31D, will be admissible and usable to the same extent as other depositions taken on proper notice in these cases.

4. This order will be filed in Master File CV 92-P-10000-S and posted on the webpage. Upon receiving from the JPMDL an order determining which cases should be remanded, a new order will be prepared for docketing and filing in those cases that are to be remanded.

This the 16th day of December, 1999.

/s/ Sam C. Pointer, Jr.
U. S. District Judge

Serve: Plaintiffs' Liaison Counsel
Defendants' Liaison Counsel
Clerk, Judicial Panel on Multidistrict Litigation

Post also on website

Appendix to Order 55

Cases suggested for remand to transferor courts

Transferor Ct.	ALN No.	Lead Plaintiff	Pltf Atty	Defendants	
Against Whom	Claims to be Pursued		Namecode		
AZ	2:98-00766	CV98-12075	MAUPIN	RINGWO_D HEALTHCARE; BAXTER INT'L	BAXTER
AZ	2:98-01695	CV98-12324	RIGBERG	HORENS_N	3M
CAC	2:93-05524	CV93-14152	FERRARI	SPAGNO_C HEALTHCARE; BAXTER INT'L	BAXTER
CAC	2:94-07482	CV95-10122	WELLINS	HO_TAMAR HEALTHCARE; BAXTER INT'L	BAXTER
CAS	3:97-02046	CV98-10060	MORRIS	EGGLES_S BRISTOL-MYERS	
FLM	3:94-00264	CV94-12406	ANTOLIK	PARKS_SC BRISTOL-MYERS; MEC; MEC	
FLM	3:95-00490	CV95-10217	FRENCH	SUB. ALFORD_W	ST
FLM	8:99-01507	CV99-10136	SPALA	VINCENTS MED CTR BOYDST_C	3M
FLS	2:93-14073	CV93-11483	POPE	BERKOW_S BRISTOL-MYERS; MEC	
GAN	1:97-02794	CV97-11497	ANDREW	MOFFET_F	MEC
GAN	1:97-02797	CV97-11883	GRANTHAM	SUB. MOFFET_F	MEC
GAN	1:97-02802	CV97-11884	RAMEY	SUB. MOFFET_F BRISTOL-MYERS	
GAN	1:97-02804	CV97-11500	UMENSETTER	MOFFET_F	MEC
GAN	1:97-02805	CV97-11627	WHITE	SUB. MOFFET_F BRISTOL-MYERS	
GAN	4:98-00032	CV98-11790	BAYLESS	COLVIN_W BRISTOL-MYERS; MEC	
IAS	1:98-80024	CV98-12084	LEINEN	MCCRIG_J BRISTOL-MYERS; MEC SUB.	
ILN	3:97-50073	CV97-10334	PETERS	(FORMERLY D/B/A SURGITEK) REESE_BR BRISTOL-MYERS; MEC; MEC	
ILN	3:97-50286	CV97-11404	LANDIS	SUB. REESE_BR	3M; BRISTOL-MYERS; MCGHAN NUSIL; MEC; MEC
ILN	3:98-50100	CV98-12087	AHLQUIST	SUB.; NATURAL Y REESE_BR	MENTOR
INN	1:95-00258	CV95-12900	MURPHY (GLICK)	(LIMIED TO POST '93 IMPLANTS) PETRI_VE AESTHETECH; BRISTOL-MYERS; COOPER CO'S; MEC SUBSIDIARY	
INN	2:95-00263	CV95-13420	THOMAS	PETRI_VE	
INN	2:95-00266	CV95-13421	WALWORTH	PLATIS, JAMES M PETRI_VE	
INN	2:95-00269	CV95-13424	QUILLEN	PLATIS, JAMES M PETRI_VE	
INS	1:93-00616	CV93-12419	MARSHALL	PLATIS, JAMES M PETRI_VE	
KYW	3:97-00449	CV97-11073	UNDERWOOD	BRISTOL-MYERS; MEC GRANT_RO	BAXTER
LAW	5:99-00825	CV99-10112	GREER, ET AL.	HEALTHCARE; BAXTER INT'L CREWS_WI	BAXTER
				HEALTHCARE	

MIE	2:92-73018	CV92-11031	FRANK AGOSTA ET AL.	BARRON_R	BAXTER HEALTHCARE; BRISTOL-MYERS; MEC; MEC SUB.
MOE	4:92-00212	CV92-10196	VAN WINKLE	FINNEY_D	AM HOSP SUPPLY (BAXTER HEALTHCARE)
MOW	4:98-00054	CV98-11549	SCHERZER	MONSLO_H	BAXTER HEALTHCARE; BAXTER INT'L
NCM	1:97-01069	CV97-12232	BLACKBURN	BLAC_JAN	3M (PLTFs JUDITH LATCHAM AND PEGGY MCCANNON ONLY); BAXTER HEALTHCARE (PLTF JUDITH LATCHAM ONLY); BRISTOL- MYERS (PLTF ELLEN SUZANNE PERSON ONLY)
NYE	1:94-03343	CV94-14010	KANNER	O'CONN_S	3M (PLAINTIFFS SPATOLA AND WOOD-MARSHALL ONLY); BAXTER HEALTHCARE (PLAINTIFF SPATOLA ONLY)
NYS	1:95-05948	CV95-14065	KIKTUS	RESNIC_A	BAXTER HEALTHCARE; BAXTER INT'L
NYS	1:95-06014	CV95-13496	LOMBARDO	RESNIC_A	3M; AESTHETECH; BAXTER HEALTHCARE; BAXTER INT'L; COOPERSURGICAL; MARKHAM MED INT'L; MEC; MEC SUB.
NYS	1:95-06084	CV95-13533	MENELLA	RESNIC_A	3M; AESTHETECH; BAXTER HEALTHCARE; BAXTER INT'L; BRISTOL-MYERS; COOPERSURGICAL; MARKHAM MED INT'L; MEC; MEC SUB.
NYS	1:95-06334	CV95-17625	TRENTACOSTE	RESNIC_A	3M; AESTHETECH; BAXTER HEALTHCARE; BAXTER INT'L; COOPERSURGICAL; MARKHAM MED INT'L; MEC; MEC SUB.
OHN	5:97-01987	CV97-11312	MANCINI	NORRIS_A	MCGHAN MEDICAL (POST JUNE 1993 IMPLANT)
OKW	5:96-00768	CV96-12275	LEHNHART	RICHA_CH	POREX TECH
SC	3:94-00186	CV94-11052	ESTES	HENSHA_C	MEC SUB. (FORMERLY D/B/A SURGITEK)
SC	3:97-01754	CV97-10949	NESS	ETHERI_J	BAXTER HEALTHCARE; BAXTER INT'L
TNE	1:97-00242	CV97-10664	MANNING	COLVIN_W	BAXTER; BRISTOL-MYERS; MEC
TNE	1:97-00541	CV98-12224	JONES	COLVIN_W	BRISTOL-MYERS; MEC
TNE	1:98-00005	CV98-11711	LOWE	COLVIN_W	BAXTER HEALTHCARE; BAXTER INT'L
TNE	1:98-00049	CV98-12050	SIMS	COLVIN_W	BRISTOL-MYERS; MEC
TNE	1:98-00311	CV98-12377	CROWE	COLVIN_W	BRISTOL-MYERS; MEC
TNE	1:98-00368	CV99-10022	HICKMAN	COLVIN_W	BRISTOL-MYERS; MEC
TNE	1:98-00369	CV99-10023	KIMBALL	COLVIN_W	BRISTOL-MYERS; MEC
TNE	1:98-00370	CV99-10024	WHEELER	COLVIN_W	BRISTOL-MYERS; MEC
TNE	1:98-00371	CV99-10025	RILEY	COLVIN_W	BRISTOL-MYERS; MEC
TNE	1:98-00372	CV99-10026	RICHESON	COLVIN_W	BRISTOL-MYERS; MEC
TNE	1:98-00373	CV99-10027	DOWIS	COLVIN_W	BRISTOL-MYERS; MEC
TNE	1:98-00386	CV98-12378	TUCKER	COLVIN_W	BAXTER HEALTHCARE; BAXTER INT'L
TXN	3:95-01669	CV95-14605	WAKEFIELD	MULLIG_P	3M
TXN	3:95-01683	CV95-18039	BASS	LAMINA_R	BAXTER HEALTHCARE; BAXTER INT'L (CLAIMS ONLY OF PLTF RENEE MARIE TREGRE)
TXS	3:94-00013	CV94-11319	HEAD ET AL.	MELANC_R	3M;

TXS	3:95-00314	CV95-13213	WALLS	BAXTER HEALTHCARE; BAXTER INT'L; MCGHAN NUSIL; UNION CARBIDE BORLAN_R BRISTOL-MYERS; MEC; DR.
TXS	4:95-02822	CV95-11503	MUNCY ET AL.	MOORE; DR. KELLEHER HOUSSE_C DR. HILTON YEE; DR. WILMER WUEST (CLAIMS ONLY OF PLAINTIFF MARY BETH MUNCY)
TXS	4:95-08524	CV95-16185	POTTER-ALOISI	SCHERR_J BAXTER HEALTHCARE
TXS	4:97-00592	CV97-10360	ALDRIDGE	HOUSSE_C 3M; BRISTOL-MYERS; MEC; MEC SUB. (CLAIMS ONLY OF PLAINTIFF SUZANNE MARIE BELL)
TXW	3:95-00246	CV95-14550	MONTELONGO	BIEGAN_V BAXTER HEALTHCARE (CLAIMS OF PLAINTIFFS BOLINGER, POWELL AND SULLIVAN)
TXW	6:98-00325	CV98-12380	DAVIS	LITTLE_Z BAXTER HEALTHCARE
UT	2:93-00842	CV93-13704	REDDING	EPPERS_D 3M
UT	2:98-00649	CV99-10030	DAVID	EPPERS_D 3M (PLTFS DAVID, FULLMER, GREEN)
VAW	1:96-00192	CV97-10113	FRITZ	TAT_MARY BAXTER HEALTHCARE; BAXTER INT'L
VAW	2:97-00015	CV97-10177	JEWELL	MCAFEE_C BAXTER HEALTHCARE; BAXTER INT'L
VAW	2:99-00095	CV99-10133	MOORE	TAT_MARY BAXTER HEALTHCARE; BAXTER INT'L