

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

In re:)	
SILICONE GEL BREAST IMPLANT)	Master File No. CV 92-P-10000-S
PRODUCTS LIABILITY LITIGATION)	
(MDL 926))	
HEIDI LINDSEY, et al.,)	
Plaintiff(s);)	
)	
-vs.-)	No. CV 94-P-11558-S
)	
DOW CORNING CORPORATION, et al.,)	
Defendant(s).)	

Order No 13A
(Modifying Amount of Common Benefit Fund Assessment)

The court, after consulting with the Escrow Agent and with the Special Master appointed to review claims against the "common benefit" fund and after considering past and potential charges against the common benefit fund initially established under Order No.13, has determined that future assessments to support this fund can be reduced from a rate of 6% to a rate of 4% of recoveries obtained by implant recipients through settlement or trial, and that, consistent with the provisions of paragraph 3(d) of Order No. 13 and of paragraph 28(c) of the Notice of the Revised Settlement Program, there should be a rebate of one-third of the amount of assessments collected at the 6% rate. Accordingly, it is ordered as follows:

1. With respect to settlement agreements made, or collection of judgments entered, after December 31, 1999, the common benefit assessment under Order 13 to be withheld and paid to the Escrow Agent shall be reduced to 4% of the gross monetary recovery.

2. With respect to future distributions under the Revised Settlement Program (or under the Individual Settlement Plan administered by the Duke Private Adjudication Center) the assessment to be paid by the settling defendant(s) to the Escrow Agent under paragraph 28(a) of the RSP Notice shall continue to be 6% of the amount of such distributions. However, only 2/3 of any such assessment shall be paid to the Escrow Agent for the common benefit fund, and 1/3 of any such assessment shall be added to the amount of the distribution to the claimant.

3. With respect to contributions to the common benefit fund assessed on the basis of

6% of the distributions under the Revised Settlement Program (or under the Individual Settlement Plan administered by the Duke Private Adjudication Center) through checks issued before January 1, 2000, or 6% of the gross monetary recovery under settlement agreements made (or collection of judgments entered) before January 1, 2000, the Escrow Agent will distribute to the implant recipient or her attorney a refund check equal to 2% of the RSP/ISP distribution or of the gross monetary recovery.

(a) Expenses in administering the refund program (e.g., costs of preparing and mailing checks) will be charged against the common benefit fund.

(b) With respect to refunds based on assessments outside the Revised Settlement Program and outside the Individual Settlement Plan administered by the Duke Private Adjudication Center (e.g., private settlements with "opt out" implant recipients), the refund check should, if the records of the Escrow Agent reflect that the implant recipient was represented at the time of the assessment by an attorney who is not deceased and who has not been shown as no longer in good standing as a member of the bar, be made payable to the attorney (as counsel for the implant recipient), with the following guidance as to disposition of the proceeds of the check.

Order No. 13 provided that, for implant-recipients being represented by an attorney under a contingent fee agreement, the assessment was to be charged against, and paid from, the attorney's share of the recovery. The Order also provided that one-half of the assessment could, however, be treated as a litigation expense and, depending on the terms of the fee agreement, be charged against the client's share of the recovery. The proper division of a refund check as between an attorney and a client respecting a recovery outside the terms of the Revised Settlement Program and the Individual Settlement Program will depend on how the original assessment was treated. If the entire assessment was charged against the attorney's share, then the attorney would be entitled to the full amount of the refund check. If half of the assessment was treated as a litigation expense and charged against the client's share, then the proceeds of the refund check should be divided equally between the attorney and the client. Attorneys are, of course, not precluded from waiving any claim to the common benefit refund check and from sending the check, appropriately endorsed, to the client, and this same action should be taken if the entire assessment was charged against the client's share of the recovery.

(c) With respect to refunds based on assessments under the Revised Settlement Program (or on payments made under the Individual Settlement Plan), the refund check should—if less than \$1,000 or if the records of the Claims Office do not show that the claimant is represented by an attorney— be made payable to the implant recipient and should be mailed to the last address for such claimant according to records of the Claims Office. Larger refund checks for an RSP/ISP claimant who is represented by an attorney in good standing should be made payable jointly to the claimant and the attorney, with the guidelines for attorneys' fees and expenses established under the RSP applying to the division of the proceeds of the check.

(d) The Escrow Agent is authorized to designate an appropriate alternative payee with respect to any check that cannot be negotiated in view of the death or disability of the initial payee or that may be subject to attorney or lien disputes. The Escrow Agent may also require that the

refund checks be negotiated within a specified period (e.g., 90 days after issuance).

(e) No refunds will be due with respect to distributions under the Foreign Settlement Program inasmuch as the common benefit assessment for such distributions was set at 4%. Nor will there be refunds due with respect to distributions under the Mentor, Bioplasty, and Inamed/CUI/McGhan settlements inasmuch as, given the small amounts payable to individual implant recipients, no common benefit contribution was assessed with respect to such distributions.

4. The court does not anticipate that, other than as set forth in this order, there will be any additional reductions in the common benefit assessment rate or any additional individual refunds or rebates of amounts paid or to be paid into the common benefit fund.

5. A copy of this order shall be docketed and filed in CV92-P-10000-S and CV 94-P-11558-S.

This the 28th day of December, 1999.

/s/ Sam C. Pointer, Jr.

Judge Sam C. Pointer, Jr.

Service List:

Plaintiffs Liaison Counsel

Defendants Liaison Counsel

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