

**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. 59
Suggestion of Remand (Federal) No. 10**

The undersigned transferee district judge has, after issuing Orders No. 57 and 58, after considering the responses to those Orders, 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 7th day of February, 2000.

/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 59

Cases suggested for remand to transferor courts

Transferor Ct.	ALN No.	Lead Plaintiff	Pltf Atty	Defendants	
Against Whom	Claims to be Pursued		Namecode		
AZ	2:98-02080	CV99-10001	RICHARDSON	HORENS_N BRISTOL-MYERS; COOPERSURGICAL; MEC	
AZ	2:98-02270	CV99-10050	LAWLESS	HORENS_N BRISTOL-MYERS; COOPERSURGICAL; MEC	
AZ	2:99-00368	CV99-10063	PICKETT	HORENS_N	3M
AZ	2:99-00529	CV99-10089	BOWMAN	KNAPP_CR	3M
AZ	2:99-00881	CV99-10101	GRAY	KNAPP_CR	3M
AZ	2:99-00918	CV99-10109	ANGUS	KNAPP_CR BRISTOL-MYERS; MEC	
AZ	2:99-00959	CV99-10110	HILL	KNAPP_CR BRISTOL-MYERS; MEC	
CAE	2:99-02074	CV99-10147	ELLEN KARINE BECK, ET AL.	KLEIN_RO BRISTOL-MYERS; MEC; MEC	
CAS	3:95-03101	CV98-10861	STUEVE	SUB. GIRARD_T	BAXTER
DC	1:98-03139	CV00-10001	FRY	HEALTHCARE SAUL_LEW	BAXTER
FLM	3:98-00984	CV99-10064	CLARKE	HEALTHCARE; BAXTER INT'L PARKS_SC	BAXTER
FLM	8:97-01435	CV97-11239	BRIANT	HEALTHCARE; BAXTER INT'L NADER_GE	
FLM	8:97-02266	CV98-11485	SCARBOROUGH	BRISTOL-MYERS BOYDST_C	
GAN	1:98-03205	CV99-10090	LOWDER	BRISTOL-MYERS; MEC	3M
GAN	1:99-03186	CV99-10149	JERI D. GLIDDEN	SCHWAR_B WILSO_JA	
GAN	2:99-00153	CV99-10148	DORIS DUNN	BRISTOL-MYERS; MEC GIBBON_T	
ID	1:99-00259	CV99-10150	ALICE C. FIORE	BRISTOL-MYERS; COOPER CO'S; MEC; MEC SUB	BAXTER
KYE	2:97-00206	CV98-11639	COLEMAN	HINES_WI HEALTHCARE; BAXTER INT'L	
MA	1:99-10562	CV99-10113	ELLIS	DEUTSC_D BRISTOL-MYERS; ROSSI, FRANK	3M
MA	1:99-10563	CV99-10114	THOMPSON	HUGO_MIC	3M
MN	0:97-02216	CV97-11935	DENSTAD	BIRD_CHA	BAXTER
NCM	1:97-00771	CV97-11097	CHRISTENSEN	HEALTHCARE HAHN_BLA	
NCW	3:99-00435	CV99-10151	LUCIE BINDLECHNER	BRISTOL-MYERS; MEC NEWKIR_R	
NYE	1:97-00014	CV97-10349	BLAZE TOUPS, ET AL	BRISTOL-MYERS; MEC PEDERS_M	
NYE	1:97-02623	CV97-10790	GILDSTON	BRISTOL-MYERS; MEC PEDERS_M	BAXTER
NYE	1:97-02732	CV97-10795	WALDMAN	HEALTHCARE; BAXTER INT'L PEDERS_M	BAXTER
NYE	1:97-02992	CV97-10936	REA	HEALTHCARE; BAXTER INT'L PEDERS_M	BAXTER
NYE	1:97-05263	CV98-11385	BYNUM	HEALTHCARE; BAXTER INT'L PEDERS_M	BAXTER

NYE	1:97-05419	CV98-11389	WILSON	PEDERS_M	BAXTER
NYE	1:97-05423	CV98-11393	ROBERTSON	HEALTHCARE; BAXTER INT'L PEDERS_M	BAXTER
NYE	1:97-05443	CV98-11395	PATTERSON	HEALTHCARE; BAXTER INT'L PEDERS_M	BAXTER
NYE	1:97-05445	CV98-11396	WILLIAMS	HEALTHCARE; BAXTER INT'L PEDERS_M	BAXTER
NYE	1:97-05448	CV98-11398	RIGOT	HEALTHCARE; BAXTER INT'L PEDERS_M	BAXTER
NYE	1:97-05459	CV98-11847	MATHIS	HEALTHCARE; BAXTER INT'L PEDERS_M	BAXTER
NYE	1:97-05460	CV98-11680	KITRUSH	HEALTHCARE; BAXTER INT'L PEDERS_M	BAXTER
NYE	1:97-05683	CV98-11407	CAIN	HEALTHCARE; BAXTER INT'L PEDERS_M	BAXTER
NYE	1:97-06846	CV98-11426	REPKA	HEALTHCARE; BAXTER INT'L PEDERS_M	BAXTER
NYE	1:98-00118	CV98-11927	EZRA	HEALTHCARE; BAXTER INT'L PEDERS_M	BAXTER
NYE	1:98-01627	CV98-12127	LATONI	BRISTOL-MYERS; MEC PEDERS_M	BAXTER
NYE	1:98-04426	CV98-12310	THOMAS	HEALTHCARE; BAXTER INT'L PEDERS_M	BAXTER
NYE	1:98-04997	CV98-12315	BOOTH	HEALTHCARE; BAXTER INT'L PEDERS_M	BAXTER
NYE	1:98-05249	CV98-12344	AUZENNE	HEALTHCARE; BAXTER INT'L PEDERS_M	BAXTER
NYE	1:98-05250	CV98-12345	CRATE	HEALTHCARE; BAXTER INT'L PEDERS_M	BAXTER
NYE	1:98-05490	CV98-12352	PENA	HEALTHCARE; BAXTER INT'L PEDERS_M	BAXTER
NYE	1:98-05493	CV98-12354	SULLIVAN	HEALTHCARE; BAXTER INT'L PEDERS_M	BAXTER
NYE	1:98-05496	CV98-12357	OAKES	HEALTHCARE; BAXTER INT'L PEDERS_M	BAXTER
NYE	1:98-05497	CV98-12358	SWANSON	HEALTHCARE; BAXTER INT'L PEDERS_M	BAXTER
NYS	1:95-04038	CV95-10245	SCHIAVONE	HEALTHCARE; BAXTER INT'L PEDERS_M	3M;
NYS	1:95-07160	CV95-17870	SCIBELLI	HERMAN, DR. STEVEN PEDERS_M	BAXTER
NYS	1:97-06694	CV98-12133	GILLIAM	HEALTHCARE; BAXTER INT'L PEDERS_M	BAXTER
NYS	1:97-08789	CV98-11430	TIPPY	HEALTHCARE; BAXTER INT'L PEDERS_M	BAXTER
NYS	1:97-09446	CV98-12136	PRIVATERA	HEALTHCARE; BAXTER INT'L PEDERS_M	BAXTER
OHN	3:98-07367	CV99-10049	REEVES	HEALTHCARE; BAXTER INT'L JORDAN_D	MCGHAN
OHS	1:97-00929	CV98-10204	BILLINGSLEY	(12/29/93 IMPLANT) DEUTSC_D	
OKN	4:99-00059	CV99-10106	AUSMUS	BRISTOL-MYERS HUMPH_RO	
OKN	4:99-00083	CV99-10107	ALLEN	BRISTOL-MYERS; MEC HUMPH_RO	
PAE	2:98-05778	CV99-10077	BEATTY	BRISTOL-MYERS; MEC SHELLE_J	COHEN,
PAM	1:99-00155	CV99-10078	ASSADI	STEPHEN; MIRABILE, ROBERT J.; UNI. OF PA. HOSP. REIHAR_D	
PAM	1:99-00706	CV99-10108	KINNARD ET AL.	BRISTOL-MYERS; MEC; MEC SUB.	BAXTER
PAW	2:98-01805	CV99-10019	DUFFY	REIHAR_D HEALTHCARE; BAXTER INT'L MESSER_H	
				SHADYSIDE HOSP.; SHADYSIDE H.E.R.; VAGLEY, RICHARD	

PAW	2:98-01806	CV99-10020	HUSSEY	MESSER_H ARCILLA, JAIME; CONSTANTINO, ABRAHAM; FORBES HEALTH SYS; INT'L SILICONE; MED. COLLEGE PA. HOSP.; SPECIAL SILICONE FABRICATORS
TXS	2:97-00390	CV97-11170	BAILEY	JUAREZ_L BRISTOL-MYERS; MEC; SOUTH TEXAS SURGICARE CENTER
UT	1:98-00008	CV98-12011	COBB	COLLAR_K BRISTOL-MYERS; KEITER, JOHN E; MEC
UT	1:98-00097	CV98-12320	SCOTT	COLLAR_K BRISTOL-MYERS; MEC
UT	2:98-00066	CV98-12012	THOMAS	COLLAR_K BRISTOL-MYERS; COTTONWOOD CLINIC; MEC
UT	2:98-00067	CV98-12013	BAKER	COLLAR_K BERGERA, JERALD J.; BRISTOL-MYERS; MEC
UT	2:98-00068	CV98-12014	JONES	COLLAR_K BRISTOL-MYERS; MEC; PLASTIC SURGERY CLINIC
UT	2:98-00069	CV98-12015	CLARK	COLLAR_K BRISTOL-MYERS; MEC
UT	2:98-00070	CV98-12016	ROSHELLEY	COLLAR_K 3M; BERGERA, JERALD A.; MCGHAN NUSIL; BRISTOL-MYERS; MEC
UT	2:98-00071	CV98-12017	CURRY	COLLAR_K BRISTOL-MYERS; CENTRAL VALLEY MEDICAL CENTER; MEC