UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
Southern Division

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

ORDER No. 27
(Approval of Revised Settlement Program and Injunctions)

It is hereby ORDERED as follows:

1. Attached to this order is the "Bristol, Baxter, 3M, McGhan & Union Carbide Revised Settlement Program," which has been submitted to the Court by such defendants in accordance with paragraph 18 of the notice that described the settlement which was approved on September 1, 1994 ("the Settlement").

(a) The Court concludes that, for eligible participants, this revised settlement program reduces the amount of "ratcheting" that would otherwise occur under terms of the Settlement and that, for persons not eligible to participate, it preserves their rights under the Settlement to opt out and, indeed, by providing some options to continue and extend the suspension of statutes of limitation and repose, it partially enhances those rights. Acting under its reserved general supervisory powers to administer the terms of the Settlement, the Court approves this program (except where inconsistent with the provisions contained in the attached Notice) as a revision in benefits authorized under paragraph 18 of the notice previously sent regarding the Settlement.

(b) Also attached to this order are the primary components of a new Notice package that, pursuant to terms of the Settlement, shall, as soon as printed, be sent to all persons who have registered with the Claims Office. It will also be sent to all other persons who, although not having registered with the Claims Office, nevertheless have given their names and addresses to the Court or to the Claims Office as possibly being breast-implant recipients, including those who have previously opted out. The provisions of the attached Notice are adopted as part of this order and, in the event of inconsistencies, the provisions of the attached Notice supersede and modify those in the revised settlement program.

(1) Where class members have indicated that they have an attorney and have asked that further information be sent only to such attorney, the Claims Office will endeavor to send the Notice package only to the attorney.

(2) Where class members have indicated they have an attorney but have not specifically requested that further information be sent only to their attorney, the Claims Office will endeavor

to send the Notice package both to the class member and to the attorney.

(3) Where class members have not indicated they have an attorney, the Claims Office will endeavor to send the Notice package to the class member.

(4) Although the foregoing notice program is in accord with the requirements of the Settlement and satisfies due process requirements, if any of the settling defendants want to give further additional notice to class members regarding the revised settlement program beyond the written notice and the explanatory television program, regional orientation meetings, and national telephone conference described in the Notice package, they may do so, but must first obtain the Court's prior approval as to the method and contents of such additional notice.

(c) In a subsequent order, the Court will approve a Question and Answer Booklet and Schedule G, which are to be mailed as part of the Notice package to Lindsey class members and others identified as possibly being breast-implant recipients. The Court reserves the right to make grammatical, typographical, and other non-substantive changes in the Notice package during the printing process.

(d) Class members should not use copies of the forms contained in the attached Notice package to make elections regarding their rights and options. Rather, they should wait until these forms—with identifying name, address, social security (or MDL registration) number, and date of birth information preprinted on the Election Forms to assist in electronic "scanning" of the Election Forms—are, with the Question and Answer Booklet and Schedule G, mailed to class members.

2. The injunction contained in the Settlement enjoining Lindsey class members from instituting, asserting, or prosecuting claims against any of the entities and persons named in Exhibit B to the Settlement as Settling Defendants or Released Parties for personal injury or death allegedly due in whole or part to any breast implant remains in effect, except as follows:

(a) Such persons—whether or not they elect to opt out of the Lindsey class or to accept or reject the terms of the revised settlement program—may, subject to the automatic stay provided by bankruptcy law, now file and pursue claims against Dow Corning under and pursuant to procedures for presenting claims against Dow Corning as set by the Bankruptcy Court for the United States District Court for the Eastern District of Michigan. Any suspension of the running of statutes of limitation and repose following the filing of bankruptcy proceedings by Dow Corning is governed by applicable provisions of bankruptcy law.

(b) Such persons—whether or not they elect to opt out of the Lindsey class or to accept or reject the terms of the revised settlement program—are, as a result of earlier bankruptcy proceedings, barred from proceeding with claims against the Bioplasty defendants. Their claims against the Bioplasty defendants will be resolved under the terms of the previously-approved Settlement by this Court and in conjunction with orders of the Bankruptcy Court for the United States District Court for the District of Minnesota.

(c) Such persons—whether or not they elect to opt out of the Lindsey class or to accept or reject the terms of the revised settlement program—are, as a result of an earlier mandatory non-opt-out class settlement which became final on September 10, 1993, barred from proceeding with claims against the Mentor defendants relating to breast implants implanted before June 1, 1993. Their claims against the

Mentor defendants relating to such implants will be resolved under the terms of the previously-approved mandatory class settlement.

(d) Such persons may, upon opting out of the Lindsey class before being sent the Notification of Status letter by the Claims Office, file and pursue claims against such Settling Defendants and Released Parties (other than as described in (a) - (c) above), with the running of statutes of limitation and repose with respect to such entities and persons resuming 30 days after the Claims Office receives such opt-out election.

(e) Such persons may, upon opting out within 45 days after being sent the Notification of Status letter by the Claims Office, file and pursue claims against such Settling Defendants and Released Parties (other than as described in (a) - (c) above), with the running of statutes of limitation and repose with respect to such entities and persons resuming 6 months after the Claims Office receives such opt-out election.

(f) Such persons who waive their opt-out rights under ¶ 7 of the attached Notice or do not exercise such opt-out rights within 45 days after being sent the Notification of Status letter by the Claims Office—

(1) may, upon such rights being waived or expiring, file and pursue claims against such Settling Defendants and Released Parties (other than the entities and persons described in Exhibit B1 of the Notice and other than as described in (a) - (c) above), with the running of statutes of limitation and repose with respect to such entities and persons resuming 30 days after the Claims Office receives such waiver or after such 45-day period expires; and,

(2) if they later have and exercise a right to opt-out under ¶ 20(e) of the attached Notice, may at that time file and pursue claims (other than for punitive or multiple statutory damages) against the entities and persons identified in Schedule B1 of the attached Notice, with the running of statutes of limitation and repose with respect to such entities and persons resuming 30 days after the Claims Office receives such subsequent opt-out election.

(g) Foreign claimants—whether or not they elect to opt out of the Lindsey class—may now file and pursue claims in the administrative or judicial tribunals of their own country. Such foreign claimants also, subject to potential objections based on "forum non conveniens"—

(1) may now file and pursue claims in courts of the United States against such Settling Defendants and Released Parties (other than the entities and persons described in Exhibit B1 of the Notice and other than as described in (a) - (c) above), with any suspension of statutes of limitation and repose terminating 30 days after being sent the attached Notice; and

(2) may, upon filing an Election to Opt Out with the Claims Office no later than 45 days after being sent the Notification of Status letter by the Claims Office, file and pursue claims in the courts of the United States against the entities and persons identified in Schedule B1 of the attached Notice, with any suspension of statutes of limitation and repose terminating 30 days after the Claims Office receives such opt-out election.

(h) Children of breast-implant recipients may now file and pursue claims against such Settling Defendants and Released Parties (other than as described in (a) - (c) above) respecting their own personal injury or death allegedly due in whole or part to their mother's having had a breast implant.

As described in ¶ 19 of the attached Notice, statutes of limitation or repose with respect to such entities and persons are suspended until December 15, 1997, or, if later, in accordance with applicable state law. Persons who, having previously opted out of the Lindsey class, elect to rejoin the class in order to participate in the revised settlement program will, upon filing the Election Form, be enjoined from instituting, asserting, or prosecuting claims against any of the entities and persons named in Exhibit B1 to the attached Notice for personal injury or death allegedly due in whole or part to any breast implant. If such persons later have and exercise a right to opt out under ¶ 20(e) of the attached Notice, they may at that time file and pursue claims (other than for punitive or multiple statutory damages) against such entities and persons, with statutes of limitation and repose deemed to have been suspended from the time such persons file their Election to rejoin the class until 30 days after such subsequent Opt-Out election is filed with the Claims Office.

3. The Settling Defendants identified in Schedule B1 of the attached Notice are hereby enjoined, pending further order of the Court, from engaging in settlement negotiations and discussions relating to possible resolution of claims by persons who have previously opted out of the Lindsey class or who may hereafter opt out of the Lindsey class except on a case-by-case, individual-claimant basis in cases that were brought by persons who earlier opted out of the Settlement or that may be specifically set for trial or court-sponsored mediation or arbitration. With respect to any such settlement negotiations and discussions that are permitted, the Settling Defendants and such claimants and their counsel are alerted to the provisions of Order No. 13 and ¶ 28(b) of the attached Notice.

4. As with the Settlement approved on September 1, 1994, the court, under Fed. R. Civ. P. 54(b), expressly determines that there is no just reason for delay and expressly directs that this order, upon filing in CV 94-P-11558-S, be deemed as a final judgment.

5. Without deferring or delaying the finality of this order, this court retains exclusive, general, and continuing jurisdiction as needed or appropriate in order to administer, supervise, implement, interpret, or enforce the Settlement, including the investment, conservation, protection, allocation, and distribution of the settlement funds under the revised settlement program.

This the 22nd day of December, 1995.

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

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
Southern Division

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

BREAST IMPLANT LITIGATION NOTICE

Please read this Notice carefully.
It affects your legal rights.

TO: All Lindsey class members and others identified as possibly being breast implant recipients

You are notified:

- that, due to the amount of Current Disease Compensation Claims that would be approved under the criteria of the global settlement, benefit levels based on the grids in the original notice would be severely "ratcheted" and would result in such a large number of additional opt-outs that the settling defendants would withdraw from the settlement
- that, because of reductions in benefit levels, all Lindsey class members now have an option to exclude themselves from the class and thereby be able to pursue, if they choose, litigation on an individual basis
- that Lindsey class members may, alternatively, remain in the class for the time being, with statutes of limitation and repose being suspended until they decide on what action to take
- that, to reduce the extent of ratcheting of benefits that would otherwise occur, a revised "claims-made" settlement program is being offered by Bristol, Baxter, 3M, McGhan, and Union Carbide to some—though not all—members of the Lindsey class
  - of your potential benefits, rights, and options, if eligible, under this revised settlement program
  - of these important dates under the revised settlement program:

April 1, 1996	deadline to register under revised settlement program for those who have not previously registered with Claims Office but want to preserve their "Second Opt-Out Right"
December 16, 1996	deadline to file forms preserving status as "Current Claimant" and to claim "rupture" benefits under revised settlement
December 15, 2010	end of 15-year period of revised settlement program

- that eligible implant-recipients who previously opted out of the Lindsey class may rejoin the class and accept benefits of the revised settlement program

THE LITIGATION

1. **Cases.** Thousands of lawsuits seeking damages for death or injuries allegedly resulting from breast implants are pending in many state and federal courts. The federal cases are coordinated in the United States District Court for the Northern District of Alabama ("the Court") before Chief Judge Sam C. Pointer, Jr., in a proceeding known as *In re Silicone Gel Breast Implant Products Liability Litigation, MDL No. 926*, Case No. CV 92-P-10000-S. Over a dozen breast implant cases have already been tried, with considerable expense and time, in state and federal courts—with some verdicts favorable to plaintiffs and with some favorable to defendants.

SAVE THIS NOTICE FOR PERIODIC REFERENCE REGARDING RIGHTS AND BENEFITS, THE CLAIMS PROCESS, DEADLINES, AND TELEPHONE NUMBERS

THE "GLOBAL" SETTLEMENT

2. **Settlement Approved.** In April 1994 Judge Pointer preliminarily approved a proposed "global" settlement under Fed. R. Civ. P. 23(b)(3) on behalf of a broad class of persons with respect to pending or potential claims against the then settling defendants for present or future personal injury or death caused by or involving breast implant products. On September 1, 1994—after extensive notice to potential class members; after opportunity to object, comment, and "opt out"; and after several days of hearings—Judge Pointer approved this settlement. The settlement order was entered in a case identified as *Lindsey, et al. v. Dow Corning Corporation, et al.*, Case No. CV 94-P-11558-S, and the class was generally referred to as the "Lindsey" class.

3. **Opt-Outs from Global Settlement. ("First" or "Initial" Opt-Out)** A major question while the proposed global settlement was pending was whether the number of persons electing under Fed. R. Civ. P. 23(c)(2) to "opt out" (or exclude themselves) from the proposed settlement would be so large that the then settling defendants would exercise their reserved option not to proceed with a settlement that might obligate them to pay more than $4.2 billion to the remaining class members. Although a substantial number of potential class members (over 10,000) did opt out, the then settling defendants concluded to proceed nevertheless with the settlement. Those who did not opt out were enjoined by the Court from pursuing or instituting lawsuits against the then settling defendants pending implementation of the settlement.

4. **Registrations and Claims.** Lindsey class members were advised that, if they wanted to make claims under the "Current Disease Compensation Program" of the global settlement, they were required to submit claim forms (with supporting documentation) to the Claims Office by September 16, 1994. Later orders of the Court extended to October 17, 1994, the deadline for submitting supporting documentation, and to March 1, 1995, the deadline for domestic class members to register with the Claims Office to avoid being treated as "late registrants." (Under terms of the settlement and notice, late registrants would receive benefits only if and to the extent settlement funds were not exhausted by benefits paid to class members who timely registered.) Eligible "foreign" class members who did not register with the Claims Office by March 1, 1995, were precluded from obtaining benefits under the settlement or from proceeding with litigation in courts in the United States, but retained their full rights to pursue claims in the judicial and administrative tribunals of their own countries.

5. **"Current Disease Compensation Claims" and "Ratcheting" under Global Settlement.** At the time the global settlement was approved, it could not be known whether, or to what extent, the benefits that might be approved under the Schedule of Benefits for Current Disease Compensation Claims (ranging from $105,000 to $1,400,000 for domestic claimants) would exceed the $1,200,000,000 to be set aside under the settlement for such benefits. For that reason, the settlement provided that the amounts shown in the Schedule were subject to potential reduction (or "ratcheting") but that, in such event, all registered class members would be so notified and be given a second opt-out right in order to pursue litigation rather than accept reduced benefits. The defendants would, however, then have an option to withdraw from the settlement because of the number of such additional opt-outs.

Promptly after the settlement was approved, the Claims Office began processing registrations and evaluating those with "current claims." However, because of the large number of registrations (approximately 260,000 were mailed by September 16, 1994) and because of the large number of those with current claims (projected to be about 100,000), it became apparent that far more time would be required to evaluate all current claims than had been initially anticipated and that benefit levels would definitely have to be ratcheted. In order not to unduly delay the determination about the extent of ratcheting, the opportunity for opting out, or the possible withdrawal by defendants, samples of these claims were selected for evaluation in a manner as to allow reasonably accurate predictions about the extent of ratcheting.

This study, a summary of which the Claims Office announced to class members in June 1995, demonstrated that, given the large amount of current claims that would be approved under the disease and severity criteria of the global settlement, the scheduled Disease Compensation benefits would be severely reduced—to perhaps less than 5% of the

amounts shown in the schedule. Additionally, by that time, Dow Corning, which was obligated to make almost half of the contributions to the settlement funds, had become the Debtor in bankruptcy reorganization proceedings, and its continued participation in the settlement was uncertain. These facts led the Court to conclude not only that thousands of additional class members would opt out of the class, but also that the defendants would withdraw from the settlement as a result of these opt-outs.

6. **Efforts to Reduce Ratcheting.** As required by the global settlement, Plaintiffs' Settlement Class Counsel and representatives of the more financially solvent defendants not in bankruptcy engaged in extensive conferences during the Summer and Fall of 1995 and explored various methods and options to reduce the extent of ratcheting, while preserving the rights of registered class members to opt out as had been guaranteed under the global settlement. Ultimately in November 1995 the Court was presented with a proposed revised settlement program approved by Bristol, Baxter, 3M, McGhan, and Union Carbide.

Although still providing substantially less compensation than the Schedule of Benefits contained in the original notice of settlement, this program is, in the view of the Court, far superior—for those eligible to participate—to the distribution of a conditional offer of severely-ratcheted benefits based on percentages of grid amounts in that original notice. The benefits to most participants with only Bristol, Baxter, or 3M implants under the revised settlement will be greater than the ratcheted amounts than would have been presented to class members under the original settlement. More importantly, those ratcheted amounts would, because of the projected opt-outs and withdrawal by the defendants, never have been paid to any class member, whereas the benefits offered under the revised settlement are not subject to any withdrawal right by the settling defendants even if a large number of persons opt out of the revised settlement.

Plaintiffs' Settlement Class Counsel have not approved the terms of the revised settlement offer and, indeed, believe that the settling defendants should have been willing to offer greater benefits, and to more members of the Lindsey class. They do not, however, object to class members individually having an opportunity to consider and possibly accept an offer of settlement where the terms of that offer are clear and understandable—even if less than what Class Counsel personally believe would represent a fair settlement value. Nor do they dispute that, for those eligible to participate, the revised settlement provides an opportunity for settlement without litigation that, because of the defendants' right to withdraw due to additional opt-outs, would not have been provided by sending notices of ratcheting under the original benefit schedule. While Class Counsel have not agreed to the terms of the revised offer, paragraph 18 of the original notice did not require agreement to a revision, such as this, that reduces the extent of ratcheting which would otherwise occur.

SECOND OPT-OUT RIGHT

7. **Opt-Out Right.** Because of the reduction in potential benefits, members of the Lindsey class now have a second right to opt out of the class and thereby be able, if desired, to pursue or institute litigation (including any rights to seek punitive or statutory multiple damages) against those who were settling defendants or released parties under the global settlement. This opt-out right is provided to all Lindsey class members—whether or not eligible to participate in the revised settlement—except for those who do not register until after April 1, 1996, or who, having previously opted out, elect to rejoin the Lindsey class.

(a) To opt out now, the individual (or her court-appointed representative) must sign and return to the Claims Office the Election Form (included with this Notice), with box 2C or 3A marked. The form can also be completed and signed by the individual's attorney. In the event of conflict between an election signed by a class member and an election signed by the person's attorney, the former will control.

(b) Those who elect to opt out now should understand that statutes of limitation and repose—which have been suspended during the pendency of the *Lindsey* case and, for most class members, during the pendency of the earlier-filed *Dante* class action—will resume running 30 days after the Claims Office receives this election. Resumption of the running of such statutes could adversely affect the litigation rights of persons who have not already filed lawsuits or who are not prepared to file any lawsuits within that 30-day period. Accordingly, the Court cautions class members against making an immediate opt-out election unless they are sure they won't be adversely affected by such statutes.

(c) There is no fixed deadline for such persons to opt out. Registered class members can wait to make the decision whether or not to opt out until 45 days after they are individually sent a Notification of Status letter by the Claims Office explaining their potential eligibility for benefits under the revised settlement. These individual Notifications will be mailed by the Claims Office during 1996 as registrations and claims are processed and reviewed. Statutes of limitation and repose will continue to be suspended until that decision is made, and indeed for many class members as much as 6 months after such an opt-out election is made. For this reason—and to assure the most informed decision by those who may be eligible to participate in the revised settlement—the Court strongly recommends that most Lindsey class members delay any decision about opting out until they are sent this Notification by the Claims Office.

(d) Persons who opt out should understand that their rights to institute or pursue litigation claims against Mentor, Bioplasty, and Dow Corning are subject to

insurers which attempted to intervene in the global class settlement to assert reimbursement or subrogation claims. The general nature of these discussions is that, in exchange for additional payments to such providers and insurers by the settling defendants—over and above their obligations to pay benefits to participants under the revised settlement—such providers and insurers would agree not to pursue reimbursement or subrogation claims against implant recipients participating in the revised settlement. As of the printing of this Notice, these discussions have not resulted in a final agreement approved by those parties, but they are sufficiently promising as to justify advising eligible participants of this potential supplemental agreement that would be of substantial benefit under the revised settlement program to many implant recipients. Updated information regarding the status of these negotiations will, when available, be posted on the Claims Office recorded-message telephone line (800-887-6828); and, if the negotiations are successful, you will be advised of the details in the Notification of Status letter to be sent to you by the Claims Office.

23. **Releases.**

(a) Eligible implant recipients who do not timely opt out will for themselves (and for their personal representatives and family members with respect to representative or derivative claims) waive and release, except as provided in 20(e), their rights to institute or pursue breast-implant related claims against the Settling Defendants and Released Parties identified in Exhibit B1.

(b) Claims against Dow Corning and other manufacturers, distributors, or suppliers of breast implants or component parts of such implants—or against doctors, hospitals, or other health-care providers—not listed in Exhibit B1 are not part of the revised settlement and are not released or dismissed. Claims against Mentor, Bioplasty, and Dow Corning may, however, be barred or restricted as a result of prior settlements or bankruptcy proceedings, as explained in 15-17 above.

24. **Effect of Appeals.** An appeal does not suspend the obligation of settling defendants to make payments under 12(a) or, upon receiving an executed standard-form release, under 12(c) or 12(d). Depending on the issues raised, an appeal may suspend the obligation of defendants to make payments under 13 and (unless a mutually satisfactory release is executed) under 12(b).

25. **Defendants' Position; Inadmissibility of Settlement.**

(a) Although agreeing to the revised settlement, the settling defendants continue to deny any wrongdoing or any legal liability of any kind. They have agreed to the revised settlement not only because of the risk of adverse judgments in some cases, but also because of the substantial time, expense, and other burdens they would incur even in successfully defending against thousands of existing cases and cases that might be filed in the future. These defendants believe that, at the same time, the settlement will also be in the best interests of those who have been implanted with their products by expediting the time for resolving claims and that, by taking advantage of the potential savings in "transaction costs" resulting from a class settlement, the amounts actually paid to many participants under the settlement would, in their opinion, exceed recoveries that might be obtained through individual claims and lawsuits.

(b) Establishment of and negotiations leading to the revised settlement program, and Claims Office determinations and payments under the program, do not constitute any admission by the settling defendants of fault, liability, or damages and will not be admissible in evidence in any proceeding for such purposes or as evidence of ownership, control, agency, or relationship between the settling defendants and the released parties in the event an implant recipient proceeds with litigation against the defendants (except that any judgment obtained by such a person will be reduced by any payment under this settlement).

26. **Incorporation of Terms of Global Settlement.** The revised settlement program implements paragraph 18 of the notice of the global settlement by reducing—for those eligible to participate—the extent of ratcheting that would otherwise occur and by preserving—for those not eligible to participate—their rights to opt out of the class (while providing an extension of the period during which statutes of limitation and repose would be suspended). Except to the extent modified by or inconsistent with the terms of this Notice, the settlement terms announced in the April 1994 notice (including, for example, provisions relating to contribution and indemnification claims against the settling defendants and released parties) remain in effect and govern rights, obligations, and options. The benefits provided under the revised settlement supersede and are in lieu of all benefits that participants and their attorneys might have had under the global settlement. The Court retains general powers to administer and implement the settlement, including the power to interpret the terms of the settlement and to resolve on an equitable basis conflicting claims to benefits arising because of death of a participant or asserted assignments or liens relating to payment of benefits.

ATTORNEYS' FEES AND EXPENSES

27. **Privately-retained Counsel.** Fees and expenses of attorneys individually retained by Lindsey class members who have not previously opted out, whether in presenting claims under the global settlement, or in presenting claims under the revised settlement, or in instituting or pursuing claims as new "opt-outs" will be borne by such persons based on applicable state law and the individual arrangements

made between them and their attorneys, but subject to certain limitations indicated below.

(a) The fees charged by individually-retained attorneys to an implant recipient who accepts the terms of the revised settlement shall not exceed the sum of—

(1) 10% of the first $10,000 paid to such participant under the settlement;

(2) 22.5% of the next $40,000 paid to such participant under the settlement; and

(3) 30% of the amount in excess of $50,000 paid to such participant under the settlement.

(b) Amounts paid to or on behalf of participants as explantation benefits shall not be counted as amounts paid to a participant for purposes of calculating the above limitations.

(c) The Court reserves the power to establish additional standards and limitations affecting the expenses that individually-retained attorneys may charge those participating in the revised settlement.

(d) Benefits payable to participants under 12, 13, and 14 shall not be subject to any reduction for fees and expenses of class counsel for representing the Lindsey class or for other "common benefit" services (or for administrative expenses of the Claims Office and others in implementing the revised settlement).

28. **Funding of "Common Benefit" Fees and Expenses.** Order No. 13 was entered in CV92-P-10000-S in July 1993 in order to provide for the fair and equitable sharing among breast-implant recipients who presented claims in federal court of the cost of the special services performed, and expenses incurred, by attorneys acting for the "common benefit" of all such claimants. Services in conducting common discovery, for example, would be beneficial not only to implant recipients who later chose to pursue litigation, but also to those who later accepted a settlement offer prompted at least in part by the existence of such discovery.

(a) As a means for complying with Order No. 13, the settling defendants under the revised settlement program will pay into the previously established fund an amount equal to 6% of the amounts paid under 12, 13, and 14. These payments will be paid as a surcharge and will not reduce the amounts payable to participants under 12, 13, or 14.

(b) Order No. 13 continues in place, and will continue to govern the resolution, whether by trial or settlement, of breast-implant claims of persons who do not accept (or are not eligible to participate in) the revised settlement, but who either were members of the Lindsey class (and did not exercise their initial right to opt out) or, although not members of the Lindsey class (whether because they were ineligible or because they exercised their initial right to opt out) now or in the future have breast-implant claims that are filed in or properly removed to federal court. What this means is that 6% of the "gross monetary recovery" obtained by such persons, whether by trial or settlement, is to be withheld and paid into the common-benefit expense fund.

(c) Under terms of Order No. 13, if the amounts paid into the fund exceed the amounts ultimately approved by the Court as proper charges against the fund, the excess will be distributed to implant recipients on a pro-rata basis as the Court determines to be fair and equitable.

29. **Employment of Attorneys.** You may retain an attorney of your own choice for advice concerning your rights or to provide services either in presenting a claim under the revised settlement or in instituting litigation, but you will be responsible for the fees and expenses of such attorney as explained in 27. You are not required, however, to have private counsel in order to submit claims under the revised settlement.

CLAIMS ADMINISTRATION

30. **Claims Office.** The Claims Office will continue to process and evaluate registrations and claims as expeditiously as possible, but may give priority of consideration to claims by claimants who, through Proof of Manufacturer forms, indicate they may have had a Bristol, Baxter, 3M, or "post 8/84 McGhan" implant (with particular priority to claims by those who have waived "Second Opt-Out Rights") and may defer consideration of submissions by those who appear to be ineligible under the revised settlement program.

(a) As claims are processed and evaluated, the Claims Office will send each person a Notification of Status indicating whether her proof of manufacturer identification is satisfactory; whether she is classified as a Current Claimant, Other Registrant, or Late Registrant; whether, if a Current Claimant, any documentation submitted in support of a rupture supplement is satisfactory; whether there are any deficiencies in the submission; and whether there is a deadline for submitting supplemental documentation relating to deficiencies. If there are deficiencies in any of the materials that are subject to correction, the Notification will so advise. This Notification, which triggers the opt out period under 7(c), will be sent to the last address provided to the Claims Office, with a copy to the person's attorney if one has been indicated.

(b) The Claims Office will continue to implement procedures designed to detect and prevent payment of fraudulent claims. To deter potential fraud, all claims must be signed under penalties of perjury. Since the Postal Service will be used in the processing and payment of claims, submission of fraudulent claims will violate the criminal laws of the United States and subject

those responsible to criminal prosecution in the federal courts.

(c) Under its plenary responsibilities to assure an acceptable level of reliability and quality control of claims, the Claims Office may require, without expense to the claimant, an examination or review by a physician or laboratory selected by the Claims Office.

(d) Expenses of the Claims Office will continue to be paid from the funds initially provided under terms of the global settlement, with such supplemental contributions from the settling defendants as, during the 15-year period of the program, the Court determines to be necessary for such purposes and without reducing the benefits payable to participants under the revised settlement program.

(e) Operations of the Claims Office will be subject to the continuing jurisdiction of the Court and subject to Court review.

31. **Fund Administration.** The fund into which the settling defendants' payments will be made is a continuation of the MDL 926 Settlement Fund established under Order No. 15, with Texas as its domicile, location, and place of creation and administration, and with eligible participants being its beneficiaries. Ann Tyrrell Cochran, Claims Administrator, has general responsibilities for collecting, collating, processing, evaluating, and quantifying claims. Edgar C. Gentle, III, has been designated as Escrow Agent and as Chairman of the Investment Committee, with the duties approved by the Court by order dated November 23, 1994 (as modified by further Court orders). Also on the Investment Committee are Don Springmeyer (plaintiffs' designee) and Todd M. Poland (defendants' designee).

32. **Filing of Elections, Forms, and Documentation.**

(a) All elections, forms, and documentation described in this Notice are to be filed with the Claims Office, and not with the Court. Please do not send "courtesy" copies to the Court. Please do not send additional copies of materials with a request for acknowledgment—handling of duplicate copies only results in increased administrative costs and delay.

(b) Deadlines for providing elections, forms, or documentation to the Claims Office are to be determined by the date such items are actually received in the Claims Office, rather than date of mailing. Facsimile transmissions are not acceptable.

33. **Documentation.** Current Claimants, Other Registrants, and Late Registrants may, throughout the 15-year period of the program, submit documentation respecting manufacturer identification, medical conditions and disability, and other matters affecting eligibility or entitlement to benefits in accordance with governing procedures. The Claims Office may, however, establish regulations relating to the submission of medical documentation and setting reasonable periods at which to conduct evaluations or re-evaluations of a person's eligibility and benefits based on supplemental submissions and for submission of supplemental documentation after notice of deficiencies. Initial documentation showing manufacturer identification must be presented to the Claims Office no later than December 16, 1996, by participants claiming status as Current Claimants, as must documentation of a claim for rupture supplement under 12(c)(2).

34. **Court Review of Claims Office Determinations.** A claimant dissatisfied with the decision made by Claims Officers may appeal to the Claims Administrator and, if still dissatisfied, may seek a further review, on the basis of the record evidence, by the Court (or a person designated by the Court to conduct such review). No other appeals or reviews are permitted, and the settling defendants will have no right of appeal or review from determinations made by the Claims Office.

ADDITIONAL INFORMATION

35. **Court Filings and Other Documents.** You may inspect documents on file with the Court at the office of the Clerk, 1729 Fifth Avenue North, Birmingham, Alabama, 35203, during regular business hours and may obtain copies of these documents (such as the revised settlement program and the Court's order approving transmittal of this offer to class members) by payment of the prescribed charges. The Clerk's office is not permitted to give legal advice. The Claims Office (800-600-0311 and 713-951-9106) is authorized to answer administrative and clerical inquiries relating to claims and the claims process, but not to give legal advice. Contact the Claims Office if you need a copy of the Disease Schedule that was transmitted with the original global settlement notice.

36. **Assistance.** You should save this Notice for reference concerning your rights and benefits, the claims process, the important deadlines, and telephone numbers. In addition to the limited information available from the Claims Office (see 35 above), you may obtain further information concerning the revised settlement and your rights and options in any one or more of the following ways:

- by reading the enclosed booklet, entitled "Questions and Answers", which has been approved by the Court.
- by consulting an attorney of your own choice. (Note: the advice given by private counsel is not monitored, reviewed, or supervised by the Court.)
- by watching the cable TV program on Court TV on Wednesday, January 24, 1996, at 9 pm CST. (Note: this program, intended to complement the written notice, will provide general information only and will not provide legal advice regarding particular claims.)
- by attending one of the regional meetings or participating in the telephone conference to be scheduled by the Court. See insert accompanying this Notice.

EXHIBIT B1—Revised Settlement

Settling Defendants

Baxter Healthcare Corp.
Baxter International Inc.
Bristol-Myers Squibb Co.
Inamed Corp.
McGhan Medical Corp. (Calif. Corp.)
McGhan Medical Corp. (Dela. Corp.)
a/k/a McGhan Medical/3M
Medical Engineering Corp.
Minnesota Mining & Manufacturing Co.
a/k/a 3M Company
Union Carbide Chemical & Plastics Co.
Union Carbide Corporation

Released Parties

Aesthetech Corp.
American Heyer-Schulte Corp.
f/k/a Heyer-Schulte Corp.
American Hospital Supply Corp.
Franklin L. Ashley
Baxter Acquisition Sub., Inc.
Baxter Corporation
Baxter Travenol Laboratories, Inc.
Baxter World Trade Corp.
Lawrence Birnbaum
Robert Bishop
Bristol Myers Squibb Canada, Inc.
Cabot Medical Corp.
Angelo Cappozzi
CBI Medical, Inc. a/k/a
CBI Medical Electronics, Inc.
CooperSurgical, Inc.
CooperVision, Inc.
CUI Corporation
CVI Merger Corp.
CV Sub 1987, Inc.
Edwards Laboratories, Inc.
Derwood Faries
Jack Fisher
Vicki Galati
John Hartley
Robert J. Helbling
Inamed BV
Inamed Development Co.
Richard P. Jobe
Real Lappierre
Linvatec Corp.
Harold Markham
Jacqueline Markham
Lottie Markham
Markham Medical Ass'n
Markham Medical International, Inc.
Markham Surgical Specialties
Mark/M Surgical
Mark/M Resources, Inc.
G. Patrick Maxwell
Anita Kost McAteer
Donald K. McGhan
McGhan Limited
McGhan NuSil Corporation
MEC Subsidiary Corp. f/k/a
Surgitek, Inc.
Natural "Y" Surgical Specialties, Inc.
NuSil Corp.
NuSil Technology
W. John Pangman, II
Vincent R. Pennisi
Poly Plastic Silicone Products, Inc.
Schulte Medical Products
Diran M. Seropian
Paul Silverstein
Sirod Corp.
Scott Spear
Specialty Silicone Fabrications, Inc.
H. E. Sterling
Summit Medical Corp.
Surgitek, Inc.
Kuros Tabari
John P. Tebbetts
Travenol Laboratories, Inc.
Kurt Wagner
Edward Weck, Inc.
Edward Weck & Company, Inc.
John L. Williams
Wilshire Advanced Materials, Inc.
Wilshire Foam Products, Inc.
Wilshire Technologies, Inc.
Zimmer, Inc.
Zimmer International, Ltd.
3M Australia Pty
3M Canada, Inc.

The "Released Parties" mean the above-listed individuals and entities, the above-listed Settling Defendants, and their respective present and former foreign and domestic parents, subsidiaries, and affiliates; their respective foreign and domestic successors, predecessors, sales representatives, independent sales representatives, distributors, transferees, insurers, and assigns; and their respective present, former, and subsequent officers, directors, agents, servants, proprietors, owners, shareholders, and employees, except that the term "Released Parties" (1) does not include doctors, hospitals, and other health-care providers who furnished medical services directly to a Class Member unless they are specifically named above, (2) does not include doctors specifically named above with respect to claims against them based upon their furnishing medical services directly to a Class Member, and (3) does not include such individuals and entities to the extent their alleged liability does not arise out of any affiliation or relationship with the Settling Defendants.