

**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))

ORDER

The Court hereby approves the November 14, 1996, Statement of Principles (the "Statement of Principles"), among the Foreign Claimants Committee, Bristol-Myers Squibb Company, Medical Engineering Corporation, Baxter Healthcare Corp., Baxter International Inc. and Minnesota Mining and Manufacturing Company (collectively, the "Settling Defendants"), hereby establishing a designated settlement fund under Internal Revenue Code of 1986, § 468B, for the principal purpose of resolving present and future claims against the Settling Defendants by foreign claimants, to be known as the Foreign Claimant Settlement Fund.

To facilitate, further, the establishment of the Foreign Claimant Settlement Fund with the Initial Deposit of \$25 Million required under the Statement of Principles, it is hereby ORDERED, ADJUDGED and DECREED as follows:

(i) The Court authorizes, empowers and directs the Settling Defendants to wire transfer the Initial Deposit on or before December 17, 1996 to Compass Bank, Birmingham, Alabama ("Compass Bank"), as Interim Custodian for the Foreign Claimant Settlement Fund;

(ii) The Court approves the Escrow Agreement for the Foreign Claimant Settlement Fund, a copy of which is attached as Exhibit A and is incorporated herein by reference, with Edgar C. Gentle, III serving as the Escrow Agent for the Foreign Claimant Settlement Fund, and the Court hereby authorizes, empowers and directs the Foreign Claimants Committee to enter into the Escrow Agreement on behalf of the Foreign Claimant Settlement Fund; and

(iii) The Court approves the Interim Custodian Agreement by and between the Foreign Claimant Settlement Fund and Compass Bank, a copy of which is attached as Exhibit B and is incorporated herein by reference, and the Court hereby authorizes, empowers and directs Edgar C. Gentle, III, as Escrow Agent, to enter into the Interim Custodian Agreement on behalf of the Foreign Claimant Settlement Fund.

Dated this 13th day of December, 1996.

/s/ Sam C. Pointer, Jr.
United States District Judge

STATEMENT OF PRINCIPLES

This Statement of Principles describes the essential terms of agreement between Sybil Shainwald (counsel for certain individual foreign claimants in the *Lindsey* class settlement, chair of the Foreign Claimants Committee, and the Court-appointed, foreign claimant representative on the Settlement Class Counsel negotiating team) and the undersigned settlement counsel for Bristol-Myers Squibb, Baxter, and 3M (the Settling Defendants).

Dismissal of Appeals

1. The appeals of Christina Johanna Adelaar, Johanna Maria Jagt-Hamerslag and Kathy Lambert in 11th Circuit No. 96-6097 (*i.e.*, all appeals by class members represented by Shainwald challenging any aspect of Order No. 27 other than the injunction against settlement negotiations) shall be dismissed with prejudice.

Settlement of Bristol, Baxter, and 3M Foreign Claims

2. Bristol, Baxter, and 3M agree to settle the claims of all Foreign Claimants (as defined in paragraph 18 of the Court's Breast Implant Litigation Notice concerning the Revised Settlement Program ("the Notice")) who (a) timely registered in the *Lindsey* settlement; (b) satisfy the eligibility requirements set forth in subsections (a)(2), (a)(3)(A), and (c) of paragraph 10 of the Notice; (c) provide acceptable proof of manufacturer of a covered Bristol, Baxter, or 3M implant (under the Revised Settlement Program protocols for domestic claimants or additional protocols to which the parties may agree¹); and (d) elect to participate in this Settlement. The settlement terms relating to such "Eligible Foreign Claimants" are described in paragraphs 3 and 4 below for "Current Foreign Claimants" and in paragraphs 5 through 8 below for "Other Foreign Registrants."

Current Foreign Claimants

3. "Current Foreign Claimants" are defined as Eligible Foreign Claimants who, under terms of the *Lindsey* global settlement, (a) mailed to the Claims Office by September 16, 1994, a signed Registration Form and (b) mailed to the Claims Office by December 1, 1994, a substantially complete Current Disease Compensation Form with sufficient documentation to be classified by the Claims Office under the global settlement as a current claimant. The deadline for the filing of proof of manufacturer forms with the Claims Office by Eligible Foreign Claimants wanting to preserve their status as Current Foreign Claimants shall be extended (from the existing deadline of December 16, 1996) until 12 months after the date of the Court's notice to foreign claimants of the terms of this settlement.

¹ _____

Current Foreign Claimants: Benefits

4. Current Foreign Claimants shall be entitled to the same benefits (and subject to the same 50% reduction in benefits for Dow Corning implants) as domestic current claimants who elect the Fixed Amount Benefit Schedule, except Current Foreign Claimants shall not be entitled to any rupture supplements on the Fixed Amount Benefit Schedule. Thus, Current Foreign Claimants shall be entitled to a non-refundable advance payment of \$5,000 as described in paragraph 12(d) of the Notice, to explantation benefits described in paragraph 12(a) of the Notice, and to the Fixed Amount Benefit payments described in paragraphs 12(c) and 17(a) of the Notice (except without any rupture supplements). Current Foreign Claimants, of course, continue to have the right to opt out of the *Lindsey* class, in accordance with the Court's existing orders, at any time before a final opt-out deadline (or deadlines), to be established by the Court in consultation with the parties. The parties contemplate that such deadline(s) shall be no earlier than 60 days after the date of notification by the Claims Office of the status of individual Current Foreign Claims.

Other Foreign Registrants

5. "Other Foreign Registrants" are Eligible Foreign Claimants who are not "Current Foreign Claimants" as defined above. The final deadline for the filing of election and proof of manufacturer forms by Other Foreign Registrants shall be 12 months after the date of the Court's notice to foreign claimant settlement. Paragraphs 6 and 7 below discuss how the benefit program for Other Foreign Registrants will be *funded* by the Settling Defendants -- that is, when and how money will be paid *into* a settlement fund for the benefit of Other Foreign Registrants. Paragraphs 6 and 7 do *not* address the subject of when and how benefits will be paid *out* of the settlement fund to those Other Foreign Registrants who qualify for benefits. That subject is reserved for paragraph 8, and nothing in paragraphs 6 and 7 is intended to imply anything about the nature or specific levels of the various *benefits* that ultimately will be offered.

Other Foreign Registrants: Funding

6. Bristol, Baxter, and 3M agree to fund a settlement program for Other Foreign Registrants in the total amount equal to (a) the average amount per registrant set aside for ongoing registrants in the Bristol-Myers Ontario/Quebec class action settlement, times (b) the number of Other Foreign Registrants who elect to participate in this Settlement. Each Settling Defendant shall be responsible only for that portion of the total amount attributable to those participating Other Foreign Registrants who have or had such Defendant's covered implant(s).

7. Within 30 (thirty) days of the signing of this Statement of Principles, the Settling Defendants shall deposit a total of \$25,000,000 (Twenty-Five Million Dollars) into an escrow account for the benefit of Other Foreign Registrants who elect to participate in the Settlement. This escrow amount shall be supplemented or refunded in part, as necessary, in accordance with

the formula set forth in paragraph 6 above. Any such adjustments shall be made within 15 business days from the date on which the Claims Office reports to the Court and the parties on the total numbers of Other Foreign Registrants who have elected to participate in the settlement and have filed acceptable proof of manufacturer by the deadline set forth in paragraph 5. Interest on the escrowed fund claimants and shall be non-refundable.

Other Foreign Registrants: Benefits

8. Determination of the benefits (and qualifying criteria for such benefits) to be offered to Other Foreign Registrants shall be developed by the Foreign Claimants Committee in consultation with the Court. Once the benefits and criteria have been approved by the Court, Other Foreign Registrants will have an opportunity to accept or reject the benefits offered. Such benefits will be paid after the Court's order approving such benefits becomes final. Other Foreign Registrants, of course, continue to have the right to opt out of the *Lindsey* class, in accordance with the Court's existing orders, at any time before the final opt-out deadline (which in no event shall be fewer than 60 days after the date of a notice describing the benefits and criteria).

No Double Recovery

9. No Current Foreign Claimant or Other Foreign Registrant may receive benefits under this settlement if the Claimant or Registrant has received benefits under any other settlement in any jurisdiction with respect to a covered Bristol, Baxter, or 3M implant. Similarly, all Current Foreign Claimants and Other Foreign Registrants who receive benefits under this settlement shall be enjoined from accepting benefits under any other settlement in any jurisdiction with respect to a covered Bristol, Baxter, or 3M implant. Nothing herein shall be construed to impair the right of a Foreign Claimant to participate in settlements with other manufacturers or in the Dow Corning bankruptcy.

Administrative Costs

10. The Settling Defendants shall be responsible for the reasonable costs of administering this Settlement.

Attorneys' Fees and Expenses

11. Fees and expenses of attorneys individually retained by Eligible Foreign Claimants will be borne by such persons based on applicable law and the individual arrangements made between them and their attorneys, subject to whatever limitations the Court may impose after consultation with the Foreign Claimants Committee.

12. As a means for complying with the Court's Common Benefit Orders (Order No. 13, as clarified by Orders No. 27 and 30), the Settling Defendants will pay into the Common

Benefit Fund an amount equal to 6% of the amounts paid under paragraphs 4 and 8 above.

Implementation

13. Further details concerning the implementation of the terms of this Statement of Principles shall be developed by the parties over the following months in consultation with the Court, and subject to the Court's final approval.

Dated: November 14, 1996

/s/ Sybil Shainwald
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Law Offices of Sybil Shainwald

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