

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

In re: SILICONE GEL BREAST) Master File CV 92-P-10000-S
IMPLANT PRODUCTS LIABILITY)
LITIGATION (MDL-926)) (Applies to cases listed in Appendix)

**ORDER No. 41
(Show Cause Why Listed Cases Should Not Be Remanded to State Court)**

Pending before the court are motions or letter-requests by plaintiffs or defendants in the cases listed in the appendix to this order, seeking remand to state courts of such cases. Upon consideration, it is ORDERED as follows:

1. All affected parties are directed to show cause in writing to this court by April 13, 1998, why the listed cases should not be remanded to the state courts shown in the appendix subject to the terms and conditions of this order. The parties are expected to be very specific as to any objections (*e.g.*, that federal jurisdiction exists other than solely under the "related to" jurisdiction arising from Dow Corning's bankruptcy proceedings, that there are dispositive motions under submission that can best be determined by this court, that the plaintiffs' only claims are against the defendants participating in the Revised Settlement Program and the plaintiffs are participants in the RSP, or that the plaintiffs are unwilling to forgo participation in any appeal relating to the summary judgments recently granted in favor of Union Carbide Corporation and General Electric Company).

Affected parties are requested to provide the court with corrections as to such matters as case numbers, descriptions and locations of state courts, etc.

2. The terms and conditions under which such remands 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, which will determine whether any of such claims should be remanded (or allowed to proceed in state court as a consequence of federal court abstention).

(c) As explained in Order No. 30 and Order No. 30G, all claims against the following companies have been dismissed with prejudice: Bioplasty, Inc.; Bio-Manufacturing, Inc.; Cabot Medical

Corporation; Corning, Inc.; Foamex Products, Inc.; General Felt Industries, Inc.; Knoll International Holdings, Inc.; Recticel Foam Corporation; Scotfoam Corporation; Scott Paper Company; Surgitek, Inc.; '21' International Holdings, Inc.; '21' Foam Company, Inc.; and Uroplasty, Inc.

(d)Any 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 claims against General Electric Company have been dismissed with prejudice pursuant to Order No. 38. The plaintiffs in the remanded cases will be deemed to have disavowed any participation in any appeal that may be initiated and pursued with respect to Order No. 38.

(f)Any claims against Union Carbide Corporation based on its 1990-1992 ownership of McGhan NuSil Corporation will be remanded to the indicated state courts, but may be pursued in state court only (if challenged by the defendant for good cause) upon demonstration that the plaintiffs, if eligible, timely opted out of the original Global Settlement or the Revised Settlement Program provided by that defendant. 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, and the plaintiffs in the remanded cases will be deemed to have disavowed any participation in any appeal that may be initiated and pursued with respect to Order No. 37.

(g)All claims against Bristol-Myers Squibb Co., Medical Engineering Corp., Baxter Healthcare Corp., Baxter International Inc., and Minnesota Mining and Manufacturing Co. ("3M"), and their subsidiaries will be remanded to the indicated state courts, but may be pursued in state court only (if challenged by the defendants for good cause) upon demonstration that the plaintiffs, if eligible, timely opted out of the original Global Settlement or the Revised Settlement Program provided by those defendants.

(h)All claims against Inamed Corp., and McGhan Medical Corp. will be remanded to the indicated state courts, but may be pursued in state court only if those defendants default in payment of their obligations under the Revised Settlement Program or (if challenged by the defendants for good cause) upon demonstration that the plaintiffs, if eligible, timely opted out of the original Global Settlement or the Revised Settlement Program provided by those defendants

(i)All claims against other defendants not described in paragraphs 1(a) through 1(h) above will be remanded to the indicated state courts.

(j)Further proceedings in state 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)To the extent not inconsistent with state law, the provisions of Order No. 30, Order No. 30F, and Order No. 30G will apply to such further proceedings, except that paragraph 8 of that Order No. 30 and Order No. 13, imposing an assessment on recoveries for "common benefit" services and expenses, will not apply to recoveries by plaintiffs who exercised their initial right to opt out of the *Lindsey* class and whose state-court case was removed to federal court solely under the "related to bankruptcy" jurisdiction.

(2)The deposition testimony of the members of the National Science Panel, appointed under Orders No 31 and 31D, will, when taken, be admissible and usable in the state courts to the same extent as if taken before remand of the case to the state court.

3. This "show cause" order will be filed only in Master File CV 92-P-10000-S. After expiration of the time for indicating objections, a new order will be prepared for docketing and filing in those cases that are directed to be remanded.

4. Plaintiffs who seek a remand to state court, under the terms and conditions specified in this order, of additional cases not listed in the Appendix are requested to submit appropriate motions identifying such cases (including this court's case number, the transferor court and case number, and the state court and case number). It is anticipated that any such requests will be the subject of a subsequent "show cause" order.

5. Any pending motions or letter-requests for remand to state court of cases not listed in the Appendix (other than motions seeking remand to state courts located in the Northern District of Alabama) are hereby denied, but without prejudice to filing of a new motion under paragraph 4.

This the 19th day of February, 1998.

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

Serve: Plaintiffs' Liaison Counsel
Defendants' Liaison Counsel

Post also on website

APPENDIX TO ORDER No. 41
(listed in order of remand court and case number)

ALN CaseNo Plaintiff	Transferor Court	State Court to which to be Remanded				Lead
		No.	Court	Location	State	
CV94-14504	FLS 1:94-01424	93-09858	11TH CIR.CT	DADE CO.	FL	WINSON
CV96-10846	MIE 2:95-74043	93-311501NP	CIR.CT.	WAYNE CO.	MI	LABEAU
CV95-13922	NJ 2:95-04035	L-9934-92	SUP.CT	MIDDLESEX CO.	NJ	SHEDLER
CV95-10418	NJ 2:95-02710	L-1566-94	SUP.CT.	MIDDLESEX CO.	NJ	DORSEY
CV95-13764	NJ 1:95-04218	L-3293-93	SUP.CT.	MIDDLESEX CO.	NJ	FOGLIO
CV95-13930	NJ 2:95-04055	L-6095-94	SUP.CT.	MIDDLESEX CO.	NJ	SUTKUS
CV95-13921	NJ 2:95-04034	L-658-94	SUP.CT.	MIDDLESEX CO.	NJ	SCHAWA
CV95-13033	NJ 3:95-03890	L-6745-93	SUP.CT.	MIDDLESEX CO.	NJ	
	CHRONAKIS					
CV95-18169	NYS 1:95-06929	32285-92	SUP.CT.	NEW YORK CO.	NY	
	ZIELENSKI					
CV95-17722	NYS 1:95-06605	117543-94	SUP.CT.	NEW YORK CO.	NY	HUDAK
CV95-17805	NYS 1:95-06766	120038-93	SUP.CT.	NEW YORK CO.	NY	GOLDICH
CV95-10247	NYS 1:95-04040	121437/93	SUP.CT.	NEW YORK CO.	NY	
	CUTSURAS					
CV96-10375	NYS 1:95-08507	121438-93	SUP.CT.	NEW YORK CO.	NY	PABONE
CV95-10511	OR 3:95-00808	9312-08354	CIR.CT.	MULTNOMAH CO.	OR	MILLER
CV95-10505	OR 3:95-00802	9401-00132	CIR.CT.	MULTNOMAH CO.	OR	
	KIRKWOOD					
CV95-17957	OR 3:95-01413	9401-00144	CIR.CT.	MULTNOMAH CO.	OR	KORMAN
CV95-17976	OR 3:95-01432	9401-00146	CIR.CT.	MULTNOMAH CO.	OR	
	PHILLIPS					
CV95-17990	OR 3:95-01446	9401-00155	CIR.CT.	MULTNOMAH CO.	OR	YOUNG
CV95-11208	OR 3:95-00785	9401-00166	CIR.CT.	MULTNOMAH CO.	OR	DIXON
CV95-17988	OR 3:95-01444	9403-01725	CIR.CT.	MULTNOMAH CO.	OR	WOODALL
CV96-10528	OR 3:95-01174	9404-02678	CIR.CT.	MULTNOMAH CO.	OR	
	JORGENSON					
CV96-10529	OR 3:95-01175	9404-02716	CIR.CT.	MULTNOMAH CO.	OR	SMART
CV95-10530	OR 3:95-00833	9405-03521	CIR.CT.	MULTNOMAH CO.	OR	
	THORNTON					
CV96-10535	OR 3:95-01182	9406-04380	CIR.CT.	MULTNOMAH CO.	OR	NIELSEN
CV95-10481	OR 3:95-00740	9407-04610	CIR.CT.	MULTNOMAH CO.	OR	HEATH;
	LARSON; JENNING					
CV95-18264	OR 3:95-01170	9407-04653	CIR.CT.	MULTNOMAH CO.	OR	DIAL
CV96-10534	OR 3:95-01181	9410-06879	CIR.CT.	MULTNOMAH CO.	OR	
	FEINBERG					
CV96-11766	TNW 2:96-02071	46153-8 TD	CIR.CT.	SHELBY CO.	TN	
	CANTRELL					
CV95-10585	TXN 3:95-01171	93-11302-E	101ST DIST.	DALLAS CO.	TX	LIEBER
CV95-10578	TXN 3:95-01155	91-12230	116TH DIST.	DALLAS CO.	TX	ANDREWS
CV95-10582	TXN 3:95-01165	93-4374-E	116TH DIST.	DALLAS CO.	TX	
	ZIMMERMAN					
CV95-13195	TXN 3:95-01109	93-9030-F	116TH DIST.	DALLAS CO.	TX	FAIRES
CV95-10545	TXN 3:95-01079	93-9255	116TH DIST.	DALLAS CO.	TX	LONGINO
CV95-10550	TXN 3:95-01087	93-12405	134TH DIST.	DALLAS CO.	TX	HALL
CV95-10574	TXN 3:95-01149	93-9277-G	134TH DIST.	DALLAS CO.	TX	BUTLER
CV95-10572	TXN 3:95-01147	92-5374-A	14TH DIST.	DALLAS CO.	TX	
	HAMILTON					
CV95-10540	TXN 3:95-01074	95-00141-A	14TH DIST.	DALLAS CO.	TX	KEMPF
CV95-13194	TXN 3:95-01090	94-00711-H	160TH DIST.	DALLAS CO.	TX	
	ARMSTRONG					
CV95-10552	TXN 3:95-01091	94-4966-H	160TH DIST.	DALLAS CO.	TX	AUMAN
CV95-10581	TXN 3:95-01162	92-7581-I	162ND DIST.	DALLAS CO.	TX	HOFFMAN
CV95-10584	TXN 3:95-01170	93-04629-I	162ND DIST.	DALLAS CO.	TX	BALLARD
CV95-13200	TXN 3:95-01127	93-11906-I	162ND DIST.	DALLAS CO.	TX	ALLEN
CV95-10579	TXN 3:95-01156	92-5602-J	191ST DIST.	DALLAS CO.	TX	BALLEW
CV95-13190	TXN 3:95-01071	94-7274-J	191ST DIST.	DALLAS CO.	TX	ALLEN
CV95-13199	TXN 3:95-01124	93-9275-M	298TH DIST.	DALLAS CO.	TX	ALLEN
CV95-13201	TXN 3:95-01132	93-9275-M	298TH DIST.	DALLAS CO.	TX	ALLEN
CV95-13191	TXN 3:95-01073	93-09132-B	44TH DIST.	DALLAS CO.	TX	
	ACKERMANS					
CV95-10573	TXN 3:95-01148	93-10917	44TH DIST.	DALLAS CO.	TX	BROWN
CV95-10546	TXN 3:95-01080	93-4372-B	44TH DIST.	DALLAS CO.	TX	CROW

CV95-13198	TXN 3:95-01113	93-5218-D	95TH DIST.	DALLAS CO.	TX	BANKER
CV97-10109	TXS 4:96-04246	92-268	268TH DIST.	FT. BEND CO.	TX	EASON
CV95-11231	TXS 4:95-02423	92-056823	334TH DIST.	HARRIS CO.	TX	ADAMS
CV95-11576	TXS 4:95-02899	92-08778	334TH DIST.	HARRIS CO.	TX	RHODES
CV95-11587	TXS 4:95-02910	92-08778	334TH DIST.	HARRIS CO.	TX	
	SANTOPOLO					
CV95-11531	TXS 4:95-02853	92-08778FU	334TH DIST.	HARRIS CO.	TX	SHUMWAY
CV95-11009	TXS 4:95-02200	92-08778PB	334TH DIST.	HARRIS CO.	TX	SHEPARD
CV95-10917	TXS 4:95-02097	92-08778PC	334TH DIST.	HARRIS CO.	TX	PAYNE
CV95-11066	TXS 4:95-02215	92-08778PF	334TH DIST.	HARRIS CO.	TX	
	MCDANIEL					
CV95-11475	TXS 4:95-02792	92-18837	334TH DIST.	HARRIS CO.	TX	
	MAYFIELD					
CV95-10916	TXS 4:95-02096	92-18846XE	334TH DIST.	HARRIS CO.	TX	LYERLY
CV95-16562	TXS 4:95-08964	92-18846XK	334TH DIST.	HARRIS CO.	TX	WALES
CV95-10974	TXS 4:95-02159	92-18846XL	334TH DIST.	HARRIS CO.	TX	WISE
CV95-15980	TXS 4:95-08275	92-25173CF	334TH DIST.	HARRIS CO.	TX	MCMAHON
CV95-11080	TXS 4:95-02249	92-25394	334TH DIST.	HARRIS CO.	TX	SUAREZ
CV95-11099	TXS 4:95-02275	92-25394EG	334TH DIST.	HARRIS CO.	TX	MIRELES
CV95-11087	TXS 4:95-02257	92-25394EN	334TH DIST.	HARRIS CO.	TX	WOODALL
CV95-16975	TXS 4:95-09404	92-28833	334TH DIST.	HARRIS CO.	TX	
	SKILLERN					
CV95-10700	TXS 4:95-01908	92-42486	334TH DIST.	HARRIS CO.	TX	
	COLPITTS					
CV95-11083	TXS 4:95-02253	92-58773	334TH DIST.	HARRIS CO.	TX	LESLIE
CV95-11582	TXS 4:95-02905	92-58773	334TH DIST.	HARRIS CO.	TX	NOLLE
CV95-11518	TXS 4:95-02839	92-58873	334TH DIST.	HARRIS CO.	TX	LEWIS
CV95-11592	TXS 4:95-02916	92-58873	334TH DIST.	HARRIS CO.	TX	LEVI
CV95-15256	TXS 4:95-07450	92-60358EC	334TH DIST.	HARRIS CO.	TX	COOPER
CV95-11513	TXS 4:95-02832	92-60458	334TH DIST.	HARRIS CO.	TX	
	LIVINGSTON					
CV95-18772	TXS 4:95-10391	92-61145	334TH DIST.	HARRIS CO.	TX	WILSON
CV95-11092	TXS 4:95-02265	92-61148	334TH DIST.	HARRIS CO.	TX	PARKIN
CV95-11536	TXS 4:95-02858	92-61149	334TH DIST.	HARRIS CO.	TX	TUCKER
CV95-11594	TXS 4:95-02919	92-61167	334TH DIST.	HARRIS CO.	TX	
	WILLIAMS					
CV95-11447	TXS 4:95-02755	92-61169	334TH DIST.	HARRIS CO.	TX	
	TERRANOVA					
CV95-11538	TXS 4:95-02860	92-6173	334TH DIST.	HARRIS CO.	TX	TREVINO
CV95-14986	TXS 4:95-07128	93-031101EI	334TH DIST.	HARRIS CO.	TX	BAILEY
CV95-11179	TXS 4:95-02367	93-03624	334TH DIST.	HARRIS CO.	TX	DAISS
CV95-11183	TXS 4:95-02371	93-036424	334TH DIST.	HARRIS CO.	TX	BRONSON
CV95-11411	TXS 4:95-02696	93-58449	334TH DIST.	HARRIS CO.	TX	
	STEPHENS					
CV95-14878	TXS 4:95-07012	94-003122EA	334TH DIST.	HARRIS CO.	TX	KAMRUD
CV95-11005	TXS 4:95-02195	94-07746EA	334TH DIST.	HARRIS CO.	TX	PORTER
CV95-11015	TXS 4:95-02218	94-14857	334TH DIST.	HARRIS CO.	TX	
	MCCUBBIN					
CV95-10978	TXS 4:95-02163	94-15031ED	334TH DIST.	HARRIS CO.	TX	MCMAHAN
	V.SURGITTEK					
CV95-10532	TXN 3:95-01059	254-93	18TH DIST.	JOHNSON CO.	TX	JOHNSON
CV95-12034	TXS 4:95-02400	93-08-02550	2ND/9TH DIST.		TX	MONTGOMERY CO.
	TX CATLETT					
CV95-18963	WAW 2:95-01530	93-2-23716-2	SUP.CT.	KIING CO.	WA	
	MARQUARDT					
CV95-18956	WAW 2:95-01522	92-2-01207-7	SUP.CT.	KING CO.	WA	GIBSON
CV95-18952	WAW 2:95-01518	92-2-02343-7	SUP.CT.	KING CO.	WA	
	DELEPINE					
CV95-18958	WAW 2:95-01524	92-2-08950-5	SUP.CT.	KING CO.	WA	
	KNOEPEL					
CV95-18954	WAW 2:95-01520	92-2-15442-1	SUP.CT.	KING CO.	WA	SNYDER
CV95-18967	WAW 2:95-01535	92-2-16172	SUP.CT.	KING CO.	WA	COLE
CV95-18961	WAW 2:95-01528	92-2-29004-9	SUP.CT.	KING CO.	WA	KEMPER
CV95-18965	WAW 2:95-01533	93-2-03056-8	SUP.CT.	KING CO.	WA	
	BEAUMONT					
CV95-18951	WAW 2:95-01517	93-2-09887-1	SUP.CT.	KING CO.	WA	KEENE
CV95-18966	WAW 2:95-01534	93-2-30426-9	SUP.CT.	KING CO.	WA	WILSON
CV95-18962	WAW 2:95-01529	93-2-332120-1	SUP.CT.	KING CO.	WA	HOWE
CV95-18959	WAW 2:95-01525	94-2-00275-9	SUP.CT.	KING CO.	WA	HUMBERT
CV95-18960	WAW 2:95-01527	94-2-01123-7	SUP.CT.	KING CO.	WA	ZORN
CV95-18964	WAW 2:95-01532	94-2-06679-0	SUP.CT.	KING CO.	WA	GIBSON

CV95-18955	WAW 2:95-01521 GOLDENBERG	94-2-08484-4	SUP.CT.	KING CO.	WA
CV95-18950	WAW 2:95-01516 CHRISTENSEN	94-2-4496-1	SUP.CT.	KING CO.	WA
CV95-18953	WAW 2:95-01519 SUTCLIFFE	93-2-12217-4	SUP.CT.	PIERCE CO.	WA
CV96-10541	WAE 2:95-00542	94-2-01856-1	SUP.CT.	SPOKANE CO.	WA ANDERS