

**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. 54

(Show Cause Why Listed Cases Should Not Be Remanded to Federal Transferor Courts)

Pending before the court are motions or letter-requests by plaintiffs or defendants (or responses to Order 52) in the cases listed in the appendix to this order, requesting remand 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 September 24, 1999, why this court should not suggest to the Judicial Panel on Multidistrict Litigation ("JPMDL") that the listed cases be remanded, with respect to claims against the defendants shown in the appendix, to the transferor courts subject to the terms and conditions specified in this order. The parties are expected to be very specific as to any objections *Ce.g.*, that there are dispositive motions under submission that can best be determined by this court, or that the only claims by plaintiffs are against defendants participating in the Revised Settlement Program and none of the plaintiffs has "opted out" of the settlement, or that there are other defendants named in the complaint or an amended complaint against whom the plaintiff(s) can (and intend to) pursue a claim after remand.

2. Affected parties are requested to provide the court with corrections as to such matters as case captions and case numbers.

3. 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 3(a) through 3(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) If the appendix indicates that the case would be suggested for remand only with respect to indicated plaintiffs, the claims of any other plaintiffs will be severed and dismissed or 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.

(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 "show cause" order will be filed only in Master File CV 92-P-10000-S but will be 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 24th day of August, 1999.

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

Serve: Plaintiffs= Liaison Counsel
Defendants= Liaison Counsel

Post also on website

Cases for potential remand to transferor courts

Transferor Ct.	ALN No.	Lead Plaintiff	Pltf Atty Namecode	Defendants Against Whom	
CAS	3:95-03175	CV98-10926	WOOD	MCLEAN_K BAXTER HEALTHCARE	BAXTER INT'L;
FLM	3:97-00864	CV97-11233	DONOVAN	ALFORD_W HEALTHCARE; BAXTER INT'L	BAXTER
FLM	8:94-02034	CV95-10044	DOORACK	HUTTON_M	POREX TECH
FLM	8:97-02358	CV98-11985	OATLEY	BOYDST_C	BRISTOL-MYERS
FLM	8:97-02640	CV98-11766	PAULSON	MICHAEL_R	BRISTOL-MYERS
FLS	0:94-06576	CV94-13718	SANDRA LEE SMITH	SEITEL_L MYERS; MEC; MEC SUB.	BRISTOL-
FLS	0:97-07207	CV97-11872	VIDAURRAZAGA	SCHRIE_L HEALTHCARE; BAXTER INT'L	3M; BAXTER
GAN	1:94-02436	CV94-14505	WYCOFF	MOORE_WN	POREX TECH
GAN	1:97-02134	CV97-11059	BAUGHMAN	PARHAM_M HEALTHCARE; BAXTER INT'L	BAXTER
KYE	6:98-00220	CV98-12166	LATHAM	MILLS_ME	BAXTER INT'L
KYW	3:97-00778	CV98-11531	NEVITT	HANLE_MI MYERS; COLE, NORMAN M.; MEC; MEC SUB.	BRISTOL-
LAW	5:94-01714	CV94-14514	GUTHRIE	CLAWSO_W MYERS; MEC; MEC SUB.	BRISTOL-
LAW	5:98-00221	CV99-10094	WOMACK, ET AL.	KEENE_RA MYERS; MEC	BRISTOL-
LAW	5:98-02271	CV99-10055	EDWARDS	KEENE_RA BRISTOL-MYERS; MEC	SURGITEK;
MA	1:94-12567	CV95-10078	HOBART	DESIMO_M	POREX TECH
MD	1:97-03750	CV98-11327	RASNAKE	HAMMER_J HEALTHCARE; BAXTER INT'L	BAXTER
MIE	2:95-74005	CV96-10808	BARBER	MANNAU_R HEALTHCARE; BAXTER INT'L	BAXTER
MIE	2:95-74134	CV96-10935	KOCH	MANNAU_R BRISTOL-MYERS; COOPER CO'S; COOPERSURGICAL; MEC; SIROD;	WILSHIRE TECH POREX TECH. MEC; BRISTOL-
MIE	2:97-71165	CV97-10457	HANNAH BECKHAM	JANKS_GR	POREX TECH.
MN	0:97-02724	CV98-10175	FARINHA	NEESE_MA MYERS SQUIBB	MEC; BRISTOL-
NCM	1:97-01069	CV97-12232	BLACKBURN	HAHN_BLA (PLAINTIFFS DAPOLITO, LATCHAM, AND CANNON); BAXTER HEALTHCARE AND BAXTER INT'L (PLAINTIFF PERSON ONLY)	3M
NCM	1:98-00216	CV98-11921	HINSON	BROWN_R. HEALTHCARE; BAXTER INT'L	BAXTER
NJ	2:95-03236	CV95-11035	STRANGIO	PAHIGI_P SURGERY; POREX TECH; SCHER,	AMER PLASTIC CHARLES
NJ	2:95-03242	CV95-11041	NOVRIT	PAHIGI_P SCHER, CHARLES	POREX TECH;
NJ	2:95-03246	CV95-11044	CAUDLE	LEVINS_W	POREX TECH
NJ	2:95-03570	CV95-11949	RAK	PAHIGI_P SURGERY; POREX TECH; SCHER,	AMER PLASTIC CHARLES
NYE	1:94-00349	CV94-11015	HILLER	PEDERS_M	POREX TECH
NYS	1:94-02976	CV94-13496	GOODEN	KNOWL_T_S	POREX TECH
OHN	1:93-01995	CV93-13892	D'AURORA	HUGO_MIC HEALTHCARE; BAXTER INT'L	BAXTER
OKN	4:94-01172	CV95-10088	LOERTCHER	HUTTON_M	POREX TECH
OKW	5:95-00021	CV95-10052	COOPER	MUSE_LAR	POREX TECH
OR	3:94-00692	CV94-13876	ADAMS	DAILEY_K MYERS; MEC; MEC SUB. (CLAIMS ONLY OF PLAINTIFFS STACEY VAUGHN AND CATHLEEN LINDQUIST)--QUESTION ABOUT RELEASES	BRISTOL-
OR	3:94-00784	CV94-13885	ENGLER	WILLI_MI HEALTHCARE; BAXTER INT'L (CLAIMS ONLY OF PLTF LAURIE BOWMAN)	BAXTER
PAE	2:93-06360	CV94-10197	CHASIN	CHASI_R*	BAXTER

SC	3:98-02110	CV98-12316	GARMON	HEALTHCARE; BAXTER INT'L BRAITH_K MEDICAL (POST '93 IMPLANT)	MCGHAN
TXE	2:94-00068	CV95-10752	SMITH	MANN_JAM HEALTHCARE; BAXTER INT'L; BRISTOL-MYERS; MEC	BAXTER
TXN	3:95-01619	CV95-14578	RITTMAN	CLARK_ST	SMITH, SYDNIE
TXS	3:94-00006	CV94-11312	ADAMS	MELANC_R AESTHETECH; APPLIED SILICONE; BAXTER HEALTHCARE; BAXTER INT'L; BRISTOL-MYERS; COOPER CO'S; COOPERSURGICAL; MCGHAN NUSIL; MEC; POREX TECH; UNION CARBIDE	3M;
TXS	3:94-00009	CV94-11315	WHITE	MELANC_R AESTHETECH; BAXTER HEALTHCARE; BAXTER INT'L; BRISTOL-MYERS; COOPER CO'S; COOPERSURGICAL; MCGHAN NUSIL; MEC; UNION CARBIDE	3M;
TXS	4:94-00068	CV95-10091	HARRIS	BROWN_CO AESTHETECH; APPLIED SILICONE; BAXTER INT'L; BRISTOL-MYERS; COOPER CO'S; COOPERSURGICAL; MCGHAN NUSIL; MEC; POREX TECH; UNION CARBIDE	3M;
TXS	4:95-09401	CV95-16972	SIMONS	SIMON_D* BRISTOL-MYERS; COOPER CO'S; COOPERSURGICAL; CRONIN, THOMAS; CV SUB 1987; GALATI, VICKI; GEROW, FRANK; MEC	AESTHETECH;
VAW	2:96-00215	CV97-10046	GILLENWATER	MCAFEE_C MYERS; MEC; MEC SUB.	BRISTOL-
VAW	2:96-00244	CV97-10048	SPIVEY	MCAFEE_C MYERS; MEC; MEC SUB.	BRISTOL-
VAW	2:98-00100	CV98-12267	FLANARY	MCAFEE_C MYERS; MEC; MEC SUB.	BRISTOL-
VAW	2:98-00184	CV98-12362	NEGRON	MCAFEE_C MYERS; MEC; MEC SUB.	BRISTOL-