

In re: Baycol Products Litigation
MDL No. 1431

Special Master PTO 78
Assessment Decision No. 20
Cole, Cooper, Slagle Decisions

A joint Request pursuant to Pretrial Order No.78 was submitted by Plaintiffs Bruce Cole, Robert Cooper, and Lana Slagle challenging the MDL 6% holdback. The law firm of Beasley, Allen, Crow, Methvin, Portis, & Miles represents the Plaintiffs. Leanne DeShong submitted a response on behalf of Bayer; and Ron Goldser submitted a response on behalf of the Plaintiffs' Steering Committee. The parties through their lawyers unsuccessfully attempted to reach a stipulation regarding the holdbacks, and this case is now ready for resolution.

Case Summary

These actions were originally filed in state court in the Circuit Court of Humphreys County, Mississippi. Defendant Bayer removed the actions to the United States District Court for the Northern District of Mississippi. Plaintiffs claim they filed a motion to remand. These actions were transferred to, docketed, and filed with this Court, MDL Case No. 03-1175.

All three plaintiffs settled their claims with Bayer and other defendants. A motion to remand on behalf of Plaintiff Slagel was denied on September 4, 2003. A stipulation to terminate with prejudice was filed by Plaintiff Cooper on October 3, 2003. No docket entry appears for a purported remand motion filed by Plaintiff Cole, and, obviously, no record appears of any order granting a remand before settlement.

Decision

Holdbacks are to be reserved if this Court has jurisdiction and one of the factors set forth in Pretrial Order No. 53 exists. Paragraph 2 of PTO 53 states that a holdback applies to: "a) all cases transferred to this MDL, except those remanded by order of the Court to state court for lack of jurisdiction." Actions that are settled while the case is a filed MDL case are subject to a holdback. It is not necessary for parties to establish or disprove the receipt of any benefit from the MDL.

As these actions were transferred to this Court, the Request by each Plaintiff is presently denied. A Plaintiff or the Plaintiffs may seek a refund of their respective holdback or any portion of it at a later time when this Court determines the distribution of the holdback contributions.

January 12, 2004

/s/ Roger S. Haydock
Special Master

