

In re: Baycol Products Litigation
MDL No. 1431

Special Master PTO 78
Assessment Decision No. 24
Bice Decision

A Request pursuant to Pretrial Order No.78 was submitted on behalf of Plaintiff Angela Bice on behalf of the Estate of Betty Jean Bice challenging the MDL 6% holdback. Melissa Pickett represents the Plaintiff. Leanne DeShong submitted a response on behalf of Bayer; and Ron Goldser submitted a response on behalf of the Plaintiffs' Steering Committee.

Case Summary

This action was originally filed in Mississippi State Court. On February 14, 2003, it was removed to the United States District Court for the Northern District of Mississippi. On or about July 23, 2003 the case was settled. On July 31, 2003, a Conditional Transfer Order was entered. On November 12, 2003, a dismissal was entered in Mississippi federal court. On December 4, 2003, the final transfer to this Court occurred. The settlement was final before the transfer to this Court occurred.

Decision

Holdbacks are to be reserved if this Court has jurisdiction and one of the factors set forth in Pretrial Order No. 53 exists. Title 28 U.S.C. Section 1407 (c) states, in applicable part, that: "Orders of transfer and such other orders as the panel may make thereafter shall be filed in the office of the clerk of the district court of the transferee district and shall be effective when thus filed." Further: "A transferee court's jurisdiction in multi-district litigation is limited to cases and controversies between persons who are properly parties to the cases transferred." *In re Showa Denko K.K. L-Tryptophan Products Liability Litigation-II*, 953 F.2d 162, 165 (4th Cir. 1992); *Hartland v. Alaska Airlines*, 544 F.2d 992 (9th Cir. 1976). The case involving Plaintiff Bice was not filed with this transferee Court before the settlement was finalized. And, the case was dismissed by the United States District Court for the Northern District of Mississippi before this case was transferred to this Court.

The Request is granted and the holdback amount is to be refunded in its entirety to Plaintiff. It is ordered that a check in the full amount of the holdback be issued and provided to Plaintiff Bice.

January 14, 2004

/s/ Roger S. Haydock
Special Master

