

**In re: Baycol Products Litigation**  
**MDL No. 1431**

**Special Master PTO 78**  
**Assessment Decision No. 25**  
**Walker Decision**

A Request pursuant to Pretrial Order No.78 was submitted on behalf of Plaintiff Nell Walker challenging the MDL 6% holdback. The law firm of Beasley, Allen, Crow, Methvin, Portis & Miles 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 the Circuit Court of Barbour County, Alabama. On February 5, 2003 it was removed to the United States District Court for the Middle District of Alabama. On April 21, 2003, a Conditional Transfer Order was entered. On or about July 23, 2003 the case was settled. On August 11, 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 (4<sup>th</sup> Cir. 1992); *Hartland v. Alaska Airlines*, 544 F.2d 992 (9<sup>th</sup> Cir. 1976). The case involving Plaintiff Walker was not filed with this transferee Court before the settlement was finalized. There is no need for the remand issue raised by the Plaintiff to be resolved.

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 Walker

January 14, 2004

/s/ Roger S. Haydock  
Special Master

