

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

**Special Master PTO 78  
Assessment Decision No. 33  
Krieger Decision**

A Request pursuant to Pretrial Order No.78 was submitted by Frances Krieger challenging the MDL 6% holdback. Robert Malouf 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 lawsuit was initially filed in state court in Humphreys County, Mississippi. Subsequently, Bayer filed a Notice of Removal. This case was transferred to, docketed with, and filed with this MDL, Case No. 03-4956. This case was settled while Plaintiff's Motion to Remand was pending.

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(a) of PTO 53 states that a holdback applies to: "all cases transferred to this MDL, except those remanded by order of the Court to state court for lack of jurisdiction." There is no requirement that the parties prove or disprove the receipt of any common benefit from the MDL, beyond completing the plaintiff fact sheet, as was done in this case. And, the determination regarding whether the remand motion would have been granted before the settlement is speculative and moot.

As this case was transferred to this Court, the Request by Plaintiff is presently denied. Plaintiff may seek a refund of her respective holdback or any portion of it at a later time when this Court determines the distribution of the holdback contributions.

March 5, 2004

/s/ Roger S. Haydock  
Special Master