

In re: Baycol Products Litigation
MDL No. 1431

Special Master PTO 78
Assessment Decision No. 37
Lena St. Martin Decision

A Request pursuant to Pretrial Order No.78 was submitted by Plaintiff Estate of Lena St. Martin challenging the MDL 6% holdback. The Eaves Law Firm represents the Plaintiff. Doug Beck submitted a response on behalf of Bayer; and Ron Goldser submitted a response on behalf of the Plaintiffs' Steering Committee

Case Summary

A multi-plaintiff lawsuit, Johnny Creel, et al. v. Bayer Corp, et al., was originally filed in the Circuit Court of Jones County, Mississippi. The Estate of Lena St. Martin was one of the named plaintiffs. Defendant Bayer removed the actions to the United States District Court for the Southern District of Mississippi. Plaintiffs filed a motion to remand. These actions were transferred to, docketed, and filed with this Court, MDL Case No. 03-4968. The Plaintiff Estate of St. Martin settled its claims with Bayer and other defendants.

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." There was no ruling on the remand motion before the settlement of this case. 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 or the PSC or from state-federal coordinating efforts. It is not within the power of the Special Master in a holdback assessment request to rule on the propriety of a remand motion.

As this action was properly transferred to this Court and has remained within the jurisdiction of this Court, the Request by Plaintiff is presently denied. Plaintiff may seek a refund of the holdback or any portion of it at a later time when this Court determines the distribution of the holdback contributions.

June 11, 2004

/s/ Roger S. Haydock
Special Master

