

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

**Special Master PTO 78**  
**Assessment Decision No. 39**  
**Busby Decision**

A Request pursuant to Pretrial Order No.78 was submitted by the Plaintiff Estate of Carl Busby challenging the MDL holdback. The Motley Rice Law Firm represents the Plaintiff. Doug Beck submitted a late response on behalf of Bayer; and Ron Goldser submitted a response on behalf of the Plaintiffs' Steering Committee

#### Case Summary

This case was originally filed in United States District Court, District of South Carolina, on August 4, 2003. It was finally transferred to this Court, MDL Case No. 03-2545, on June 16, 2004. The Plaintiff had been engaged in settlement and mediation discussions prior to the MDL transfer and subsequently settled the case in July, 2004.

#### 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 whether the MDL was a hindrance or a benefit. Further, Fed.R.Civ.P. 53 does not provide any authority beyond that afforded under PTO 53.

As this action was properly transferred to 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.

September 22, 2004

/s/ Roger S. Haydock  
Special Master