

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

**Special Master PTO 78
Assessment Decision No. 40
Lewis Decision**

A Request pursuant to Pretrial Order No.78 was submitted by Claimant Jerry E. Lewis challenging the MDL holdback. Peter Kaufman represents the Claimant. Doug Beck submitted a response on behalf of Bayer taking no position on the appropriateness of the withholding. Ron Goldser submitted a supportive response on behalf of the Plaintiffs' Steering Committee (PSC).

Case Summary

Claimant Lewis was a class representative in a case filed in state court in Philadelphia, Pennsylvania. Subsequently, a ruling of the Court of Common Pleas for Philadelphia County excluded Mr. Lewis from the litigation.

Mr. Lewis never filed an individual lawsuit against Bayer in federal court or in any state court. No case involving Mr. Lewis was ever transferred to this MDL Court.

It appears that at no time did lawyers representing Mr. Lewis serve as members of the PSC. It further appears that some PSC lawyers were involved in various putative class action complaints in the Court of Common Pleas proceedings with the putative class action filed by Mr. Lewis.

Mr. Lewis, after his involvement in the state court litigation ended, settled his case with Bayer.

Decision

Holdbacks are to be reserved if this Court has jurisdiction and one of the factors set forth in Pretrial Order No. 53 exists. Based on the litigation events involving Claimant Lewis, none of the factors has been met. There are no circumstances warranting a holdback in the case of Mr. Lewis.

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

September 22, 2004

/s/ Roger S. Haydock
Special Master

