

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

**Special Master PTO 78
Assessment Decision No. 36
Bailey, Mims, Plummer,
Williams, Walker & Stark
Decision**

A Joint Request pursuant to Pretrial Order No.78 was submitted by Jimmie Bailey, Shirley Mims, Alice Plummer, Howard Williams, James Walker, and Boyce Stark, challenging the MDL 6% holdback. The firm of Beasley, Allen, Crow, Methvin, Portis & Miles represents the Plaintiffs. Douglas Beck submitted a response on behalf of Bayer; and Ron Goldser submitted a response on behalf of the Plaintiffs' Steering Committee.

Case Summary

Jimmie Bailey and James Walker are plaintiffs in the lawsuit entitled Cindy Dickerson, et al. v. Bayer Corp., et al., MDL No. 03-1173, with a Final Transfer date of February 20, 2003.

Shirley Mims and Howard Williams are plaintiffs in the lawsuit entitled Verlean Toles, et al. v. Bayer Corporation, et al., MDL No. 03-1174, with a Final Transfer date of February 24, 2003.

Plaintiff Alice Plummer is a plaintiff in the lawsuit entitled Curtis Coates, et al. v. Bayer Corporation, MDL No. 03-1175, with a Final Transfer date of February 24, 2003.

Plaintiff Boyce Stark is a plaintiff in MDL Case No. 03-6415, with a Final Transfer Order of December 9, 2003.

All six plaintiffs settled their cases with the defendants in January, 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(a) of PTO 53 explicitly 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." Plaintiffs contend that a holdback is inappropriate because the lawyers for the Plaintiffs have received "no benefit" from the MDL Baycol work product, have independently worked on many Baycol state court cases, are established experts in Baycol litigation, and have a large staff of professionals working on the Plaintiffs' cases. However, none of these reasons prevent a holdback. There is no requirement that the parties prove or disprove the receipt of any common benefit from the MDL or establish their independent work and expertise.

As these cases were transferred to this Court, the Joint Request by Plaintiffs is presently denied. Plaintiffs may seek a refund of their respective holdback or any portion of it at a later time when this Court determines the distribution of the holdback contributions.

May 26, 2004

/s/ Roger S. Haydock

Special Master