

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

**Special Master PTO 78
Assessment Decision No. 15
Moreno and Stemen Decisions**

A Joint Request pursuant to Pretrial Order No.78 was submitted by Plaintiffs Kathy Moreno and Pete Moreno and Plaintiffs Emma Lou Stemen and Albert Stemen challenging the MDL 6% holdback. Craig Niedenthal represents the Plaintiffs. Leanne DeShong submitted a response on behalf of Bayer seeking a clarification of PTO 53; and Ronald Goldser submitted a response on behalf of the Plaintiffs' Steering Committee supporting the position of the Plaintiffs that no holdback should occur.

Case Summary

Actions on behalf of the Plaintiffs were originally filed in the United States District Court for the Northern District of Texas on May 29, 2003. On or about July 31, 2003, the Plaintiffs and Defendants reached a settlement. No Conditional Transfer Orders were ever issued, and the settlement was reached before there was an official transfer to this MDL.

Decision

Holdbacks are to be reserved if federal jurisdiction exists and one of the factors set forth in Pretrial Order No. 53 exists. Paragraph 2b of PTO 53 clearly and explicitly states that a holdback applies to: "all cases filed in federal court not yet transferred, except those dismissed for lack of jurisdiction." Holdbacks are applicable in these cases as they were filed in federal court.

These are not cases originally filed in state court, removed to federal court, but not yet filed with this MDL court. Further, there is no requirement that the parties prove or disprove the receipt of any direct common benefit from the MDL. The federal court filing makes these cases part of the MDL.

The Request by Plaintiffs is presently denied. Plaintiffs may seek a refund of the entire holdback or a portion of it at a later time when this Court determines the distribution of the common benefit contributions.

September 10, 2003

/s/ Roger S. Haydock
Special Master

