

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

**Special Master PTO 78  
Assessment Decision No. 17  
Stanley and Mastronardo Decisions**

Requests pursuant to Pretrial Order No.78 were submitted by Plaintiffs Avis Stanley and Margie Mastronardo challenging the MDL 6% holdback. Russell Serafin represents the Plaintiffs. Leanne DeShong submitted a response on behalf of Bayer; and Ronald Goldser submitted a response on behalf of the Plaintiffs' Steering Committee.

#### Case Summary

Actions on behalf of the Plaintiffs were originally filed in the United States District Court for the Southern District of Texas, Case No. 03-CV-3122. It appears that at the time of the settlement of these actions they were not transferred to this MDL court. Plaintiffs assert they are not subject to a holdback because: their lawyers are not members of the PSC, Plaintiffs have not voluntarily submitted to the jurisdiction of the MDL, Plaintiffs have not used or received any "common benefit" from the MDL, and the Plaintiffs have not participated in the MDL proceedings.

#### 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.

There is no requirement that the parties or their lawyers voluntarily submit to the jurisdiction of the MDL court, or that they be members of the PSC or participate directly in the MDL, or that they deny receiving any common benefit. The federal court filing makes these cases part of the MDL.

The Requests by Plaintiffs are 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.

December 11, 2003

/s/ Roger S. Haydock  
Special Master