

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

**Special Master PTO 78
Assessment Decision No. 13
Stark Decision**

A Request pursuant to Pretrial Order No.78 was submitted by Plaintiff Betty Stark challenging the MDL 6% holdback. Russell Serafin represents the Plaintiff. Leanne DeShong submitted a response on behalf of Bayer; and Ron Goldser submitted a response on behalf of the Plaintiffs' Steering Committee.

Case Summary

This action was originally filed in state court in Mississippi. Defendant Bayer removed this case to the United States District Court for the Northern District of Mississippi. Plaintiff filed a motion to remand. A conditional Transfer Order was issued on February 25, 2003, and Plaintiff filed an Opposition to this CTO. Subsequently, a Final Transfer Order was entered on July 1, 2003. This case was then transferred to, docketed, and filed with this Court, MDL Case No. 03-1174. The motion to remand was pending while the settlement was reached.

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." There is no requirement that the parties prove or disprove the receipt of any common benefit from the MDL. The determination of whether the remand motion would have been granted is speculative and moot.

As this case was transferred to this Court, the Request by Plaintiff is presently denied. Plaintiff 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 9, 2003

/s/ Roger S. Haydock
Special Master