

In re: Baycol Products Litigation
MDL No. 1431

Special Master PTO 78
Assessment Decision No. 35
Yothers Decision

A Request pursuant to Pretrial Order No.78 was submitted by Dorothy Yothers challenging the MDL 6% holdback. The firm of Vannah Costello Canepa Riedy Rubino & Lattie represents the Plaintiff. Douglas Beck submitted a response on behalf of Bayer; and Ron Goldser submitted a response on behalf of the Plaintiffs' Steering Committee.

Case Summary

Plaintiff Yothers filed her case in Nevada state court and it was removed to federal court. Her case was transferred to this MDL on November 22, 2002, MDL Case No. 02-4448. She has submitted her Fact Sheet. Subsequently, Plaintiff settled her case with the defendants in April, 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." Plaintiff contends that a holdback is inappropriate because she did not participate in any MDL discovery, nor use any of the PSC documents or resources, nor receive any assistance from this MDL. However, none of these reasons prevent a holdback. There is no requirement that a plaintiff proves or disproves the receipt of any common benefit from the MDL. Cases that are part of this MDL are appropriately subject to a holdback.

As this case was transferred to this Court, the Request by Plaintiff is presently denied. Plaintiff may seek a refund of her 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