

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In re: BAYCOL PRODUCTS LITIGATION

**MDL No. 1431
(MJD/JGL)**

This Document Relates to All Actions

**PRETRIAL
ORDER NO. 59**

Settlement/Mediation Order

Pretrial Order No. 51 established a Court sponsored Settlement/Mediation Program for all MDL cases and other Baycol cases and claims. A Settlement/Mediation Program Committee has submitted recommendations to this Court to develop the Program. The Committee consisted of Special Master Roger Haydock, Chair, Ron Goldser and Steve Murray for the Plaintiffs, Adam Hoeflich and Leanne DeShong for the Defendants, and Ramon Lopez as appointed by the Court. This Order implements an initial settlement/mediation program.

IT IS HEREBY ORDERED:

1. Scope of Program. Any MDL plaintiff and any other plaintiff or claimant may request a settlement conference or a mediation conference with Bayer for documented rhabdo cases with supporting medical records. Bayer shall promptly review the request and documents and either within 14 days of receiving the request: (1) agree to a settlement conference, (2) agree to a mediation conference, or (3) decline the request.

A. If the parties agree to a settlement conference, they shall schedule a settlement conference no later than 30 days after Bayer's response.

B. If the parties agree to a mediation conference, they may select a mediator or the Special Master shall promptly appoint a mediator who shall schedule mediation no later than 30 days after the appointment.

C. If Bayer declines the request, the Special Master shall promptly appoint a mediator who shall determine whether the case is a documented rhabdo case that could be settled, and if so determined, shall schedule mediation no later than 30 days after the determination.

2. Settlement Authority. Parties or persons with authority to enter into a full and complete compromise and settlement of the case on behalf of the parties shall attend settlement and mediation discussions.

3. Location. Settlement conferences shall be scheduled at various locations throughout the United States at the direction of Special Master Haydock, based on suggestions made by the Settlement/Mediation Program Committee.

4. Attendance. Parties and lawyers shall attend settlement or mediation meetings as scheduled by the Special Master or a mediator. Participants in settlement or mediation discussions shall spend as much time as necessary to settle the case or until an impasse is declared by the Special Master or a mediator.

5. Preparation. Sufficient notice is to be provided parties regarding the timing of the settlement and mediation conferences, and participating parties must timely submit settlement or mediation and other documents a reasonable time in advance of the settlement conference or mediation. The Special Master shall prepare and implement a protocol for the scheduling and operations of settlement and mediation conferences, based on suggestions made by the Settlement/Mediation Program Committee.

6. Mandatory Mediation. MDL cases that do not settle are subject to mandatory mediation either at the time: (1) they are set for trial in the Federal District Court of Minnesota, or (2) one of the parties requests a remand to the transferor court. Parties may certify to the Special Master that no negotiation efforts to resolve the case have failed to produce a settlement.

7. Settlement Agreement. At the time of settlement, each settlement is to be confirmed in a written settlement agreement signed by a party or party representative with authority to sign and by a lawyer representing each party. A party representative who signs is presumed to have full authority to bind the party. Bayer shall be responsible to prepare and provide a full and complete draft of a settlement agreement to the lawyer for the plaintiff before the settlement conference or mediation begins. The proposed settlement agreement is an issue for settlement negotiations.

8. Payment of Settlement Amounts. Parties who settle cases are to receive the settlement amount no later than one month after the date of the written settlement agreement.

9. Enforcement of Settlement Agreements. A party to a settlement shall enforce a written settlement agreement by bringing a motion before Special Master Haydock or, in the absence of a Special Master, before this Court. The Special Master, after determining the motion, shall issue a report to this Court which may accept, modify, or reject the report and issue an order or judgment.

10. Mediation Costs. Bayer shall pay the mediation fees and mediator expenses of successful mediations. Parties shall share equally the mediation fees and mediator expenses of unsuccessful mediations and of determinations made by a mediator under

Paragraph 1(C) of this Order. The Special Master shall decide any disputes that arise regarding payment of mediation costs.

11. Promotion of Settlement Program. MDL plaintiff and defense lawyers may reasonably promote the availability of this Settlement Program.

12. Special Master Orders. If the Special Master concludes that any party or counsel refuses or fails to comply with the provisions of this Order or with the proceedings of the Settlement Program, the Special Master shall have the power to issue a written or oral order directing compliance. If a party or person objects to such an order by the Special Master, that party or person shall file a written objection including reasons with this Court within five (5) days of the receipt of the written or oral order.

13. Settlement/Mediation Conferences. The settlement and mediation conferences constitute settlement discussions under the applicable rules of evidence. Nothing said or disclosed during the settlement or mediation conferences, nor any document produced during the conferences that is not otherwise discoverable, shall be admissible as evidence or for impeachment or any other purposes in any judicial, arbitration, or administrative action.

14. Pretrial Orders. Pretrial Orders No. 25 and No. 53 apply to all cases settled under the Settlement/Mediation Program. However, if settlement is not reached under this Settlement/Mediation Program for non-federal cases or non-filed claims, the case or claim can be withdrawn from the Settlement/Mediation Program and Pretrial Orders No. 25 and No. shall not apply.

15. Special Master/Mediator Immunity. No party, person, or entity shall call or subpoena the Special Master, his staff, mediators, or the Settlement/Mediation Committee members

to testify or produce any notes or documents related to any settlement conference or mediation in any civil action or proceedings of any kind whatsoever. If called or subpoenaed, the Special Master and other protected participants may refuse to testify or produce notes or documents. Any party, person, or entity that attempts to compel such testimony or production will be liable for and shall indemnify the Special Master and other protected participants against any liabilities, costs, and expenses, including reasonable attorney fees, which may be incurred in resisting such compulsion.

16. Payment of Settlement/Mediation Program Fees and Expenses. Mediators shall be paid no later than one month after receipt of the expenses and fees.

SO ORDERED this 2nd day of January, 2003.

Honorable Michael J. Davis
United States District Court