

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. 81
 :

IT IS HEREBY ORDERED that Pretrial Order No. 54 is hereby superseded by, and replaced with, this Pretrial Order.

I. Plaintiffs' Discovery Obligations: Pursuant to PTO Nos. 4 § V.D.1, 10 and 12, plaintiffs have 45 days from the date of transfer of a case (as defined below) to serve upon defendants a completed Plaintiff's Fact Sheet ["PFS"] and executed authorizations, and 60 days from the date of transfer to produce all documents responsive to the requests contained within § IX of the PFS ["responsive documents"].

A. Date of Transfer

1. Cases transferred to MDL-1431 pursuant to a Conditional Transfer Order ["CTO"] of the Judicial Panel on Multidistrict Litigation ["JPML"] in which transfer was not opposed:

Where a case is transferred to MDL-1431 pursuant to entry of a CTO by the JPML and such transfer was not opposed, the date of transfer for such a case is deemed to be the date that a certified copy of the applicable CTO is entered in the MDL-1431 docket. (See PTO No. 12 § 1.a.)

2. Cases transferred to MDL-1431 by Transfer Order of the JPML in which transfer was opposed: Where a case is identified in a CTO entered by the JPML but transfer is opposed by a party, and the JPML subsequently enters an order transferring the case (because either the opposition is withdrawn or the JPML denies the opposition), the date of transfer for such a case is deemed to be the date that a certified copy of the applicable Transfer Order is entered in the MDL-1431 docket.

MAY 21 2003
FILED _____
RICHARD D. SLETTEN, CLERK
JUDGMENT ENTD _____
DEPUTY CLERK _____

3. Cases filed directly in the District of Minnesota: For purposes of the Court's discovery orders (e.g., PTO Nos. 4, 10 and 12), the date of transfer for a case filed directly in the District of Minnesota shall be deemed to be the filing date. Plaintiffs who file a case directly in the District of Minnesota are hereby on notice that pursuant to PTO Nos. 4, 10 and 12, each plaintiff has 45 days from the date of filing to serve upon defendants a completed PFS and executed authorizations, and 60 days from the date of filing to produce all responsive documents.

B. Responsive Documents: If neither plaintiff nor plaintiff's counsel possesses documents responsive to the requests contained within § IX of the PFS, plaintiff's counsel must inform defendants of such in writing by letter, a copy to be delivered to Liaison Counsel.

II. Initial Notice of Discovery Obligations in Cases Transferred by JPML Order:

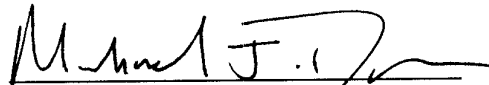
Defendants will send timely notice by first-class mail of entry of the Transfer Order in the MDL-1431 docket to plaintiffs' counsel identified on the "Involved Counsel" service list provided by the JPML, and will inform plaintiffs' counsel that, pursuant to PTO Nos. 4, 10 and 12, plaintiffs have 45 days from the date of entry of the transfer order in the MDL-1431 docket to serve upon defendants a completed PFS and executed authorizations, and 60 days from the date of entry on the transfer order in the MDL-1431 docket to produce all responsive documents, or advise defendants in writing that no responsive documents are in the possession of plaintiffs or plaintiffs' counsel. Defendant will provide such notice to plaintiffs' counsel using a format similar to Exhibit A (transfer not opposed) or Exhibit B (transfer opposed).

III. 70-Day Notice of Overdue Discovery: If defendants have not received a PFS, executed authorizations, and either responsive documents or a letter advising them that no responsive documents are in the possession of plaintiff or plaintiffs' counsel within 70 days of the date of entry of the transfer order in MDL-1431, defendant will send a Notice of Overdue Discovery to plaintiff's counsel identifying the discovery overdue and stating that, unless plaintiff complies with the Court's discovery orders, the case will be subject to dismissal. Defendants will provide such notice to plaintiff's counsel and the Plaintiffs' Steering Committee ["PSC"] using a format similar to Exhibit C. At the same time, defendants will also provide the PSC with a list of plaintiffs whose discovery is overdue, in a format similar to Exhibit D [the "70-Day List"], so that the PSC may assist plaintiffs in complying with their discovery obligations.

- IV. **Stipulated Lists of Non-Compliant Plaintiffs and Sanction of Dismissal:** Thirty-five days after defendants provide the PSC with the 70-Day List, the PSC and defendants shall meet and confer to develop a stipulated list of those plaintiffs who have not complied with their discovery obligations. That list shall be submitted to the Court no later than forty days after provision of the 70-Day List.¹ The Court will then issue an order, using a format similar to Exhibit E, providing that the listed plaintiffs shall have ten days within which to comply with their discovery obligations. The PSC will notify individual counsel for plaintiffs' appearing on the Court's order. On the eleventh day following the entry of that order, the PSC and defendants shall again meet and confer, and that same day shall submit stipulated orders -- one to be used to dismiss entire actions and one to dismiss select plaintiffs from multi-plaintiff actions -- using formats similar to those in Exhibit F, to the Court.
- V. **Extension of Discovery Deadlines:** Nothing in this PTO shall be interpreted as a restriction upon the ability of: (a) the parties to stipulate to an extension of discovery deadlines in a particular case; or (b) the plaintiff to move for an extension of discovery deadlines in a particular case based on a showing of good cause.
- VI. **Applicability of Order:** With respect to those plaintiffs transferred to this Court by CTOs 15 through 17, because more than 110 days have already passed since the date of transfer, stipulated lists of non-compliant plaintiffs (as contemplated in Part IV) will be submitted to the Court by May 23, 2003. The Court will then issue an order, using a format similar to Exhibit E, providing that the listed plaintiffs shall have ten days within which to comply with their discovery obligations. The PSC will notify individual counsel for plaintiffs' appearing on the Court's order. On the eleventh day following the entry of that order, the PSC and defendants shall again meet and confer, and that same day shall submit stipulated orders -- one to be used to dismiss entire actions and one to dismiss select plaintiffs from multi-plaintiff actions -- using formats similar to those in Exhibit F, to the Court.

With respect to all other plaintiffs, this Order shall be effective immediately.

May 21, 2003


The Honorable Michael J. Davis
United States District Court

¹ Such list will be submitted to the Court in electronic form, in Word Perfect format.

EXHIBIT A

TO ALL PLAINTIFFS' COUNSEL IN CASES
ON CONDITIONAL TRANSFER ORDER
NO. __

Re: In re Baycol Prods. Liab. Litig.
MDL-1431

Dear Counsel:

As you are aware, the Judicial Panel on Multidistrict Litigation lifted the stay on Conditional Transfer Order ("CTO") No. __ and entered it as a final order on _____. A certified copy of that order was entered on the docket of the above matter on _____ and electronically served on all parties on _____. Therefore, pursuant to MDL-1431 Pre-Trial Order ("PTO") No. 12, all cases included in that order that are not the subject of a Notice of Opposition are deemed transferred to the District of Minnesota for coordination with MDL-1431, *In re Baycol Products Liability Litigation*.

Accordingly, all such cases are now governed by the provisions of the PTOs entered in MDL-1431. Copies of the PTOs can be found on the Baycol website at www.mnd.uscourts.gov/BaycolMdl/index.htm.

In particular, please take notice that pursuant to PTO Nos. 4, 10, and 12, plaintiffs in cases transferred to MDL-1431 on CTO-__ shall have until _____ (i.e. 45 days) to serve upon defendants a completed Plaintiff Fact Sheet ("PFS") and executed authorizations. Such plaintiffs also have until _____ (i.e., 60 days) to produce all documents responsive to the requests contained in § IX of the PFS.

If you and/or your client do not possess responsive documents as requested by § IX of the PFS, you must so advise defendants in writing with a copy to liaison counsel. Copies of the PFS and authorization forms can be found at www.mnd.uscourts.gov/Bayco_Mdl/index.htm.

Very truly yours,

Catherine Valerio Barrad

cc: All Other Involved Counsel per attached Panel Service List
Charles S. Zimmerman
Richard A. Lockridge
Robert K. Shelquist
Wendy R. Fleishman
Jean M. Geoppinger
James W. Mizgala

Fred T. Magaziner
Kristine M. Weikel

EXHIBIT B

Re: [case name]

Dear [plaintiff's counsel]:

As you are aware, the Judicial Panel on Multidistrict Litigation entered a Transfer Order on _____, and therefore denied the pending Motion to Vacate Conditional Transfer Order ("CTO") No. __. A certified copy of that order was entered on the docket of MDL- 1431 on _____ and electronically served on all parties on _____. Therefore, pursuant to MDL-1431 Pre-Trial Order ("PTO") No. 12, plaintiff's case is deemed transferred to the District of Minnesota for coordination with MDL-1431, *In re Baycol Products Liability Litigation*.

[ALTERNATIVE: As you are aware, the opposition to transfer of this case has been withdrawn, and therefore the Judicial Panel on Multidistrict Litigation entered an order on _____ lifting the stay on Conditional Transfer Order ("CTO") No. __ with respect to this case. A certified copy of that order was entered on the docket of the above matter on _____ and electronically served on all parties on _____. Therefore, pursuant to MDL-1431 Pre-Trial Order ("PTO") No. 12, plaintiff's case is deemed transferred to the District of Minnesota for coordination with MDL-1431, *In re Baycol Products Liability Litigation*.]

Accordingly, plaintiff's case is now governed by the provisions of the PTOs entered in MDL-1431. Copies of the PTOs can be found on the Baycol website at www.mnd.uscourts.gov/Baycol_Mdl/index.htm.

In particular, please take notice that pursuant to PTO Nos. 4, 10, and 12, plaintiff shall have until _____ (i.e. 45 days) to serve upon defendants a completed Plaintiff Fact Sheet ("PFS") and executed authorizations. Plaintiffs also have until _____ (i.e., 60 days) to produce all documents responsive to the requests contained in § IX of the PFS.

If you and/or your client do not possess responsive documents as requested by § IX of the PFS, you must so advise defendants in writing with a copy to liaison counsel. Copies of the PFS and authorization forms can be found at www.mnd.uscourts.gov/Baycol_Mdl/index.htm.

Very truly yours,

Catherine Valerio Barrad

cc: All Other Involved Counsel per attached Panel Service List
Charles S. Zimmerman

Richard A. Lockridge
Robert K. Shelquist
Wendy R. Fleishman
Jean M. Geoppinger
James W. Mizgala
Fred T. Magaziner
Kristine M. Weikel

EXHIBIT C

NOTICE OF OVERDUE DISCOVERY

FAILURE TO RESPOND WILL RESULT IN DISMISSAL OF YOUR CASE

Re: [Case Name], MDL No. _____
Plaintiff's Fact Sheet/Authorizations _____

Dear [plaintiff's counsel]:

Your discovery is overdue in this lawsuit.

Pursuant to MDL PTO Nos. 4, 10 and 12, Plaintiff's Fact Sheets ("PFS") and executed authorizations were due to be served by _____. To date we have not received them. Plaintiff and a witness should *only* sign and date the authorizations and should not complete any other part.

Your documents responsive to the document production requests set forth in Section IX of the PFS were due to be served by _____. To date, we have not received them. If neither plaintiff nor plaintiff's counsel possesses documents responsive to the requests contained within § IX of the PFS, plaintiff's counsel must so inform defendants in writing.

Please provide us with the completed PFS, executed authorizations and all responsive documents by _____. **If we do not receive the PFS, authorizations, and documents by _____, your case will be dismissed with prejudice pursuant to PTO No. __, § __.**

Because of the volume of cases in this MDL, defendants are not routinely agreeing to extensions of discovery deadlines. If you believe that your particular case presents extraordinary circumstances warranting an extension, you must request such an extension in a letter addressed to me that explains the extraordinary circumstances that you believe warrant an extension. Defendants will respond promptly.

Thank you for your prompt attention and cooperation

Very truly yours,

James W. Mizgala

cc: Charles S. Zimmerman
Richard A. Lockridge
Robert K. Shelquist
Wendy R. Fleishman
Jean M. Geoppinger

Fred T. Magaziner
Kristine M. Weikel

EXHIBIT D

CTO-XX

70-Day List of Delinquent Plaintiffs

Plaintiffs Delinquent on PFS and Responsive Documents

No.	Plaintiff Name/ Case Caption	MDL No.	Counsel Name/Address
1.	Plaintiff's Name <i>Case Caption</i>	03-XXXX	Attorney Name Address City, State Zip Code
2.	Plaintiff's Name <i>Case Caption</i>	03-XXXX	Telephone Number
3.	Plaintiff's Name <i>Case Caption</i>	03-XXXX	Attorney Name Address City, State Zip Code
4.	Plaintiff's Name <i>Case Caption</i>	03-XXXX	Telephone Number

CTO-XX

70-Day List of Delinquent Plaintiffs

Plaintiffs Delinquent on Responsive Documents Only

No.	Plaintiff Name/ Case Caption	MDL No.	Counsel Name/Address
1.	Plaintiff's Name <i>Case Caption</i>	03-XXXX	Attorney Name Address City, State Zip Code
2.	Plaintiff's Name <i>Case Caption</i>	03-XXXX	Telephone Number
3.	Plaintiff's Name <i>Case Caption</i>	03-XXXX	
4.	Plaintiff's Name <i>Case Caption</i>	03-XXXX	

EXHIBIT E

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

IN RE BAYCOL PRODUCTS
LITIGATION

MDL No. 1431 (MJD/JGL)

ORDER

This document relates to:

ALL CASES

JONATHAN LEBEDOFF, Chief United States Magistrate Judge

The above-entitled matter is before the undersigned Chief Magistrate Judge of District pursuant to Pretrial Order ____, regarding delinquent “____-Wave” (CTO-____) plaintiffs. The case has been referred to the undersigned for resolution of pretrial discovery matters pursuant to 28 U.S.C. § 636, D. Minn. LR 72.1, and Pretrial Order 52.

Pretrial Order ____ (“PTO ____”) governs certain discovery requirements in this case; the requirements were initially stipulated between defendants and the Plaintiffs’ Steering Committee. Pursuant to the parties’ agreement and Court Order, all plaintiffs are required to serve upon defendants completed Plaintiff’s Fact Sheets (“PFS”) and executed authorizations within 45 days, and responsive documents within 60 days, from the date of transfer to or filing with this Court. PTO ____ requires the PSC and defendants to advise the Court of plaintiffs whose discovery is still delinquent 110 days after the date of transfer, and PTO ____ further warns that the Court will dismiss such cases with prejudice.

Pursuant to PTO ____, the parties have submitted a list of “____-Wave” (CTO-____) plaintiffs who had not complied with their discovery obligations by [DATE], which is attached to this Order as Exhibit A. The purpose of this Order is to warn the plaintiffs that

this Court will dismiss with prejudice the cases of any plaintiffs listed on Exhibit A from whom Defendants have not received the required discovery pursuant to PTO 54 within ten days of the date of this Order.

Based on the forgoing, and on the files, records, and proceedings therein, **IT IS HEREBY ORDERED:**

The parties will stipulate to a proposed order listing those plaintiffs of “_____ - Wave” (CTO-___) from whom Defendants have not received the required discovery by [DATE], 5:00 p.m., Central Standard/Daylight Time (as appropriate). The proposed order will be submitted to the Court, which will then dismiss with prejudice the cases of the listed plaintiffs.

Dated: _____, 2003

JONATHAN LEBEDOFF
Chief United States Magistrate Judge

EXHIBIT F
(for use in dismissing the entire action)

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In re: BAYCOL PRODUCTS LITIGATION

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

This Document Relates to:

PLAINTIFF A v. Bayer Corp., et al.

No. ##-####

PLAINTIFF B v. Bayer Corp., et al.

No. ##-####

PLAINTIFF C v. Bayer Corp., et al.

No. ##-####

ORDER

Based on the stipulated submissions pursuant to PTO ___,
any response thereto, and on the files, records, and proceedings therein,

IT IS HEREBY ORDERED:

The above-captioned cases are **DISMISSED WITH
PREJUDICE.**

Dated:

The Honorable Michael J. Davis
United States District Court

(for use in dismissing certain plaintiff's claims)

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In re: BAYCOL PRODUCTS LITIGATION

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

This Document Relates to:

PLAINTIFF A v. Bayer Corp., et al.

No. #-####

PLAINTIFF B v. Bayer Corp., et al.

No. #-####

PLAINTIFF C v. Bayer Corp., et al.

No. #-####

ORDER

Based on the stipulated submissions pursuant to PTO ___,
any response thereto, and on the files, records, and proceedings therein,

IT IS HEREBY ORDERED:

All the claims of the following plaintiffs only are **DISMISSED
WITH PREJUDICE** from the above-captioned cases: Plaintiff X (Case
Name, Case No.); Plaintiff Y (Case Name, Case No.); Plaintiff Z (Case
Name, Case No.).

Dated:

The Honorable Michael J. Davis
United States District Court