

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In re: BAYCOL PRODUCTS LITIGATION

**MDL No. 1431
(MJD)**

This Document also relates to:

Paul Amari and Barbara Barnes v. Bayer Corporation et al., Case No. 02-1351

James A. Staack, Staack, Simms & Hernandez, P.A. for and on behalf of Plaintiff.

Patricia E. Lowry and John W. Little, Steel Hector & Davis LLP, Philip S. Beck, Adam L. Hoeflich, Andrew Goldman and Tarek Ismail, Bartlit Beck Herman Palenchar & Scott, Gene C. Schaerr and Paul J. Zidlicky, Sidley Austin Brown & Wood LLP and Richard K. Dandrea and Michal R. Borasky, Eckert Seamans Chaerin & Mellott, LLC, for and on behalf of Bayer Corporation.

In the Complaint, Plaintiff Paul Amari alleges that he took Baycol from April 2000 to approximately June 2001. During this time, he suffered from a number of physical maladies, such as muscle pain, nausea, fever, dark urine, headaches, digestive problems, fatigue and drowsiness. Plaintiff Barbara Barnes alleges she took Baycol from October 2000 through June 2001. During that time she also experienced a number of physical maladies, including muscle pain and stiffness, weakness in her legs and general fatigue. Plaintiff further allege that Baycol can cause kidney failure, and a condition called rhabdomyolysis, the symptoms of which include muscle pain, fatigue, malaise, fever, nausea and dark urine. Plaintiffs seek to represent a class of persons nationwide that have taken Baycol, and have died or have suffered serious injuries as a result. Plaintiffs do not provide a specific damage amount in the Complaint, other than to allege that damages exceed \$15,000.

This action was originally filed in Florida state court. Bayer Corporation (“Bayer”) timely removed this action to federal court, asserting that this court has subject matter jurisdiction based on diversity. 28 U.S.C. § 1332. Now before the Court is Plaintiffs’ motion to remand. Bayer opposes the motion on the basis that the amount in controversy exceeds \$75,000.

Standard

Remand to state court is proper if the district court lacks subject matter jurisdiction over the asserted claims. 28 U.S.C. § 1447(c). In reviewing a motion to remand, the court must resolve all doubts in favor of a remand to state court, and the party opposing remand has the burden of establishing federal jurisdiction by a preponderance of the evidence. In re Business Men’s Assurance Co. of America, 992 F.2d 181, 183 (8th Cir. 1983)(citing Steel Valley Auth. v. Union Switch & Signal Div., 809 F.2d 1006, 1010 (3rd Cir. 1987) cert. dismissed 484 U.S. 1021 (1988)).

When no amount is specified in the complaint, the party opposing remand must prove the required amount by a preponderance of the evidence. Peterson v. BASF Corporation 12 F. Supp. 2d 964, 971 (D. Minn. 1998); Trimble v. Asarco, Inc. 232 F.3d 946, 959 (8th Cir. 2000).

Given the allegations that the named Plaintiffs have suffered serious injuries as a result of taking Baycol, and that putative class members have died as a result of taking Baycol, the Court finds that Bayer has met its burden of showing that Plaintiffs may be entitled to damages exceeding the amount in controversy.

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiffs' Motion to Remand is DENIED.

Date:

Michael J. Davis
United States District Court

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