

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

**Special Master PTO 78  
Assessment Decision No. 46  
Rodriguez Decision**

A Request pursuant to Pretrial Order No.78 was submitted by Plaintiff Yolanda Rodriguez challenging the MDL holdback. Victor Diaz represents the Plaintiff. Douglas Beck submitted a response on behalf of Bayer; and Stacy Hauer submitted a response on behalf of the Plaintiffs' Steering Committee.

Case Summary

This action is a transferred and docketed case with this Court, MDL Case No. 03-CV- 5368. The transfer occurred in 2003 before this case was settled in 2006.

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...." Actions that are settled while the case is a filed MDL case are subject to a holdback.

Plaintiff requests that a holdback be waived or substantially reduced in this case. Plaintiff asserts that the PSC failed to provide sufficient information and assistance to Plaintiff in the settlement of this case. In support, Plaintiff provided a cover letter and exhibits containing copies of lawyer correspondence and emails. The PSC did not specifically respond to the assertions made by Mr. Diaz in the cover letter.<sup>1</sup>

Plaintiff submitted a Plaintiff Mediation Request Form and mediated her case through the Mediation Program, which was established by this Court with the assistance of the PSC and Bayer. In May 2005, Plaintiff attended a mediation session with Peter Woodin, a mediator appointed by this Court. Recently, Plaintiff and Bayer settled this case.

It is not necessary for parties to prove or disprove whether this MDL was a particular benefit to a case settlement regarding the assessment of a holdback. PTO 53 explicitly requires a holdback in this case. The PSC has provided benefits to all MDL cases.

Because this action is an MDL case, Plaintiff's Request is presently denied. Plaintiff may seek a refund of the holdback or any portion of it at a later time when this Court determines the distribution of the holdback contributions.

April 25, 2006

/s/ Roger S. Haydock  
Special Master

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<sup>1</sup> While these documents are not dispositive regarding the issue in this Request, I have forwarded a copy of the cover letter from Mr. Diaz to Judge Davis.