

**In re: Baycol Products Litigation
MDL NO. 143**

**Special Master PTO 78
Assessment Decision**

Allen Bienenstock submitted a Request pursuant to Pretrial Order No. 78 challenging the MDL 6% holdback. Chris Pinedo represents the Plaintiff Bienenstock. Leanne DeShong submitted a response on behalf of Bayer; and Ron Goldser submitted a response on behalf of the Plaintiffs' Steering Committee.

Case Summary

Plaintiffs filed lawsuits in the state courts of New York in 2002 and moved to consolidate them in March 2003. On March 19, 2003, Defendant Bayer filed a Notice to Remove cases to the United States District Court for the Eastern District of New York. On March 26, 2003, Plaintiff Bienenstock sought a pre-motion conference to remand his case to state court. On April 11, 2003, Plaintiff and Defendants agreed on settlement terms. On April 21, 2003, an order staying the deadline to file a motion to remand pending resolution of the state court consolidation motion was granted. On May 12, 2003, a Conditional Transfer Order was issued (CTO # 24). On May 19, 2003, Plaintiff filed a Notice of Opposition to the CTO. The CTO was stayed. On June 5, 2003, Plaintiff and Defendants enter into a written settlement agreement. On June 6, 2003 a Stipulation of Dismissal was filed in the United States District Court for the Eastern District of New York which issued a dismissal order on June 9, 2003. The Judicial Panel on Multidistrict Litigation entered an order vacating the CTO on June 12, 2003. There was no final transfer order to this Court and no filing of this case with this Court.

Decision

Holdbacks are to be reserved if this Court has jurisdiction and one of the factors set forth in Pretrial Order No. 53 exists. Title 28 U.S.C. Section 1407 (c) states, in applicable part, that: "Orders of transfer and such other orders as the panel may make thereafter shall be filed in the office of the clerk of the district court of the transferee district and shall be effective when thus filed." Further: "A transferee court's jurisdiction in multi-district litigation is limited to cases and controversies between persons who are properly parties to the cases transferred...." *In re Showa Denko K.K. L-Tryptophan Products Liability Litigation-II*, 953 F.2d 162, 165 (4th Cir. 1992). See also *Hartland v. Alaska Airlines*, 544 F.2d 992 (9th Cir. 1976). The Bienenstock case was never filed with this transferee Court, and Plaintiff Bienenstock was not a party to a case filed with this Court. Accordingly, this Court does not have jurisdiction over the Bienenstock case or Plaintiff Bienenstock. The Eighth Circuit decision in *Walitalo v. Iacocca*, 968 F.2d 741 (8th Cir. 1992) does not require a holdback in this case.

The Request is granted and the holdback amount is to be refunded in its entirety to Plaintiff Bienenstock. It is ordered that a check be issued in the amount of the holdback and provided to Plaintiff.

June 27, 2003

/s/ Roger S. Haydock
Special Master

