

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

**Special Master PTO 78
Assessment Decision**

R.H. Dorman submitted a Request pursuant to Pretrial Order No. 78 challenging the MDL 6% holdback. Thomas Penfield represents the Plaintiff Dorman. Leanne DeShong submitted a response on behalf of Bayer; and Ron Goldser submitted a response on behalf of the Plaintiffs' Steering Committee.

Case Summary

Plaintiff Dorman filed a lawsuit in the San Diego Superior Court. Defendant Bayer removed the case the United States District Court for the Southern District of California, which issued a stay pending transfer to the MDL where a remand motion could be heard. A Conditional Transfer Order was issued (CTO No. 14), and Plaintiff filed a Motion to Vacate the Conditional Transfer Order. The case settled before any further proceedings. There was no final transfer order to this Court. The records of the District of Minnesota do not show any docketing or filing of the Dorman case.

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 Dorman case was never filed with this transferee Court, and Plaintiff Dorman was not a party to a case filed with this Court. Accordingly, this Court does not have jurisdiction over the Dorman case or Plaintiff Dorman. 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 Dorman. 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