

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

**Special Master PTO 78
Assessment Decision**

A Request pursuant to Pretrial Order No.78 was submitted in the case of Paul Edgar and John Edgar Individually and as Representatives of the Estate of Simone Jennings v. Bayer A.G., Bayer Corporation, and Prescription Shop, Inc. challenging the MDL 6% holdback. Martin Palmer represents the Plaintiffs. Leanne DeShong submitted a response on behalf of Bayer; and Ron Goldser submitted a response on behalf of the Plaintiffs' Steering Committee.

Case Summary

This action was originally filed in state court in Florida. Defendant Bayer filed a Notice of Removal claiming fraudulent joinder, and the case was remanded to the United States District Court for the Middle District of Florida. Plaintiffs filed a remand motion. A Conditional Transfer Order was issued, and Plaintiffs filed a Notice of opposition to the transfer.

The Judicial Panel on Multidistrict Litigation denied the Plaintiffs' opposition to transfer on August 9, 2002. This Order was filed stamped in the District of Minnesota on September 5, 2002. The file number for this case is 02-3578. The determination of the remand motion was deferred to this Court. Plaintiffs assert that while the remand motion was pending, the case settled. The Plaintiffs' motion to remand was denied by this Court.

Plaintiffs contend that they received no benefit from the MDL proceedings and did all their own work on this case. Plaintiffs do suggest that that they would accept a holdback percentage of 3%. The PSC asserts that the request is premature and its determination or any compromise should be deferred until the end of this MDL. Bayer contends no withholding is required for various reasons including the contention that Plaintiffs received no benefit from the MDL.

Decision

Holdbacks are to be reserved if this Court has jurisdiction and one of the factors set forth in Pretrial Order No. 53 exists. Pretrial Order No. 25 applies "to all cases over which the Court in MDL 1431 has jurisdiction." It is clear and uncontested that this Court had jurisdiction over Plaintiffs case, and had jurisdiction at that time this case was settled. Pretrial Order No. 53 Paragraph 2 provides that a holdback applies to: "a) all cases transferred to this MDL, except those remanded by order of the Court to state court for lack of jurisdiction." This case was transferred to this Court and was denied remand.

The Request by Plaintiffs is presently denied. Plaintiffs may seek a refund of the entire holdback or a portion of it at a later time when this Court determines the distribution of the holdback contributions.

June 30, 2003

/s/ Roger S. Haydock
Special Master

