

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

**Special Master PTO 78
Assessment Decision**

James McCarver submitted a Request pursuant to Pretrial Order No. 78 challenging the MDL 6% holdback. Jesse Harrington represents the Plaintiff McCarver. 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 McCarver was a plaintiff in a multi-party lawsuit (Dorothy Pegues, et al) filed in Mississippi state court. Defendant Bayer removed the case to federal court in the Northern District of Mississippi. Plaintiffs filed a motion to remand. A settlement was reached between Plaintiff McCarver and Bayer on March 4, 2003 before a Conditional Transfer Order was issued. Subsequently, a CTO was issued in the Pegues case and a Notice of Opposition was filed by the remaining Plaintiffs on May 28, 2003. The Pegues case remains pending in the Mississippi federal court. There was no final transfer order of the McCarver case to this Court. The records of the District of Minnesota do not show any docketing or filing of the McCarver 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 McCarver case was never filed with this transferee Court, and Plaintiff McCarver was not a party to a case filed with this Court. Accordingly, this Court does not have jurisdiction over the McCarver case or Plaintiff McCarver. 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 McCarver. 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

