

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

In re: Baycol Products Litigation

MDL No. 1431

This Document Relates to:

Pretrial Order No. 106

Kathy Moreno et al. v. Bayer Corp. et al., U.S. District Court, Northern District of Texas, Dallas Division, Case No. 3-03-CV1197-K;

Emma Lou Stemen et al. v. Bayer Corp. et al., U.S. District Court, Northern District of Texas, Dallas Division, Case No. 3-03-CV1198-D.

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Craig P. Niedenthal, Cory, Watson, Crowder & Degaris, P.C. for and on behalf of Plaintiffs.

Charles S. Zimmerman, Ronald Goldser, Robert R. Hopper, Zimmerman Reed P.L.L.P. and Richard A. Lockridge, Hugh V. Plunkett, Robert K. Shelquist, and Yvonne M. Flaherty, Lockridge Grindal Nauen, P.L.L.P. for and on behalf of the Plaintiffs' Steering Committee.

Peter W. Sipkins, Dorsey & Whitney LLP, for and on behalf of Bayer Corporation.

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This matter is before the Court upon the Plaintiffs' motion to vacate alternative appeal of Special Master PTO 78, Assessment Decision No. 15.<sup>1</sup>

Pursuant to the terms of PTO No. 53<sup>2</sup>, for certain defined cases, prior to a any claim payment to a plaintiff, defendants shall deduct 6% percent of such payment to be

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<sup>1</sup>The Plaintiffs' Steering Committee asserts that this motion is not timely under Fed.R.Civ.P. 53. Prior to filing the motion, this Court granted Plaintiffs permission to file the instant motion according to the proposed amendments to Rule 53 that became effective December 1, 2003.

<sup>2</sup>PTO No. 53 is a stipulated order that resulted from negotiations involving the PSC, Defendants and state lawyers on the Liaison Advisory Committee.

paid into the MDL 1431 Fee and Cost Account. PTO No. 53, ¶ 3. The cases to which the terms of PTO No. 53 are listed in paragraph 1, including all cases transferred to this MDL by the Judicial Panel on Multidistrict Litigation (“JPML”), and any case filed in federal court and not yet transferred by the JPML. Id. ¶ 1.

The Plaintiffs referenced above filed their cases in the United States District Court, Northern District of Texas in May 2003. Settlements were reached in both cases in July 2003. At the time of settlement, neither case had been transferred to the District of Minnesota by the JPML. Bayer notified Plaintiffs that the settlements were subject to the 6% holdback as provided in PTO No. 53. Plaintiffs thereafter submitted an objection to the holdback to Special Master Haydock, pursuant to the terms of PTO No. 78. Special Master Haydock thereafter found Plaintiffs’ challenge to be without merit, as PTO No. 53 specifically provided that holdbacks apply to cases filed in federal court, even though the case was settled prior to transfer to the MDL proceedings. Plaintiffs now appeal Special Master Haydock’s decision to this Court pursuant to Fed. R. Civ. P. 53.

In support of the appeal, Plaintiffs argue that although their cases were originally filed in federal court, the cases had not been the subject of a conditional transfer order at the time of settlement. As such, this Court never acquired jurisdiction over these cases, and the terms of PTO No. 53 should not apply.

Whether or not a transferee court in multidistrict litigation has jurisdiction to assess fees and costs against plaintiffs who filed their cases in state or federal court, and whose cases had not yet transferred to the MDL proceeding, was addressed by the Fourth Circuit Court of Appeals in In re: Showa Denka K.K. L-Tryptophan Products Liability

Litigation-II, 953 F.2d 162 (4<sup>th</sup> Cir. 1992).

While § 1407 provides for a procedure for transferring cases filed in different districts to a single district court for pretrial proceedings, nowhere does it expand the jurisdiction of either the transferor or the transferee court. As in any other case, a transferee court's jurisdiction is limited to cases and controversies between persons who are properly parties to the cases transferred . . ." Id. at 165-166.

Therefore, the court reasoned, a transferee court does not have jurisdiction to assess fees and costs against parties whose cases had not been transferred pursuant to § 1407. Id. at 166. See also, Hartland v. Alaska Airlines, 544 F.2d 992 (9<sup>th</sup> Cir. 1976); In re: Linerboard Antitrust Litigation, 292 F. Supp.2d 644, 664 (E.D. Pa. 2003(order sequestering funds from settlements in tag-along cases should not extend to nontransferred cases); In re: Pantopaque Products Liability Litigation, 1996 U.S. Dist. LEXIS 17144 \* 15 (D. N. J. 1996). Neither the Plaintiffs' Steering Committee or Bayer Corporation provided the Court any contrary authority.

As it appears this Court does not have jurisdiction to order a holdback in cases not transferred to this Court, PTO No. 53 must be amended to exclude cases filed in federal court and not transferred to this court by the JPML. Plaintiffs' motion will be granted, and the Special Master's Assessment Decision No. 15 is vacated.

IT IS HEREBY ORDERED that Plaintiffs' Motion to Vacate Alternative Appeal of Special Master PTO 78, Assessment Decision No. 15 is GRANTED and Assessment Decision 15 is VACATED.

Date:

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Michael J. Davis  
United States District Court