

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

In re: Baycol Products Litigation

MDL No. 1431

This Document Relates to All Actions

Pretrial Order No. 74

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This matter is before the Court upon Defendants' motion to compel compliance with PTO Nos. 18 and 24.

Background

PTO No. 18 provides for the use of electronic filing through Verilaw, while PTO No. 24 is the stipulated protective order. Defendants asserts that on two occasions, the PSC violated the terms of both orders. First, Defendants assert that the PSC filed publicly the motion for leave to amend the complaints of the Minnesota residents to add claims of punitive damages. The memorandum filed in support of this motion, however, revealed the contents of certain confidential documents. Second, while the supporting documents were filed under seal with the Clerk's Office, such documents were also filed on Verilaw. By the terms of PTO No. 18, however, documents filed under seal are not to be filed on Verilaw.

It is Plaintiffs' position that memoranda need not be filed under seal, and that confidential documents that are used in open court are no longer subject to the protective order.

## Analysis

PTO No. 24 provides that confidential discovery material shall not be disclosed unless specified for therein. Id. ¶ 6. Further, the order provides that “[a]ny confidential discovery material that is filed with the Court, and any pleading, motion or other paper filed with the Court containing or disclosing any such confidential discovery material shall be filed under seal . . . [s]aid confidential discovery material and/or other papers shall be kept under seal until further order of the Court . . . “ Id. ¶ 9. By this language, it is clear that any memoranda that quotes, summarizes or otherwise discloses the contents of confidential material shall be filed under seal, and will remain under seal pending further order of this Court. By this language, it is also clear that all discovery material will remain under seal pending further order of the Court. The Court thus rejects Plaintiffs’ argument that use of such confidential material by the parties in open court acts to unseal such material.

Finally, PTO No. 18 provides that documents filed under seal shall not be filed or served via Verilaw. Id. ¶ 13. It was thus error to file the confidential documents supporting Plaintiffs’ motion to amend to add punitive damages on Verilaw.

Based on the above, the Court finds that the PSC did in fact violate the terms of PTO Nos. 18 and 24 by publicly filing memoranda that disclosed the contents of confidential discovery material, and by filing sealed documents on Verilaw.

IT IS HEREBY ORDERED that Defendants’ motion to enforce PTO Nos. 18 and 24 is GRANTED. Upon entry of this Order, the PSC’s class certification bench books shall be placed under seal; the memorandum filed in support of plaintiffs’ punitive damages

motion shall be placed under seal; and plaintiffs are directed to remove the memorandum of law from Verilaw immediately. Counsel is directed to adhere to the provisions of PTO Nos. 18 and 24, and shall not reproduce confidential information in publicly filed documents. From this date forward, counsel shall serve and file documents on Verilaw using their real names and the actual names of their firms.

Date: April 17, 2003

\_\_\_\_\_/s/\_\_\_\_\_  
Michael J. Davis  
United States District Court