

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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In re: BAYCOL PRODUCTS LITIGATION

MDL No. 1431  
(MJD/JGL)

This Document Relates to All Actions

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**PRETRIAL ORDER NO. 96**

This Court will try a case in Minnesota filed in this MDL proceeding. The Court, with the assistance of the parties, has selected the Program Cases and Eligible Cases as described in PTO 89. The parties have met and conferred together, have jointly met with Special Masters Haydock and Remele, and have provided this Court with procedural pretrial information. As of this date, there are six Minnesota plaintiff resident cases eligible for trial. This Pretrial Order applies to the following cases:

Anderson v. Bayer	(02-1103)
Goulet v. Bayer	(03-3636)
Lee v. Bayer	(02-1053)
Pierce v. Bayer	(03-1003)
Schmit v. Bayer	(03- 897)
Soliman v. Bayer	(03-3635)

IT IS HEREBY ORDERED:

**A. Depositions of Plaintiffs and Witnesses**

1. Between October 20 and December 19, 2003, defendants may depose each Eligible Case plaintiff who alleges that he/she used Baycol and each witness identified by plaintiff. These depositions will be governed by the Federal Rules of Civil Procedure and all existing Pretrial Orders

issued in this MDL. If counsel for a plaintiff elects to memorialize the testimony of a plaintiff or witness after completion of defendants' questioning, defendants may thereafter cross-examine the deponent.

2. Prior to the deposition of a plaintiff, defendants will provide to counsel for plaintiff a copy of any Medwatch report in defendants' possession, custody or control that specifically mentions plaintiff by name. Defendants will review their internal adverse event database to determine if there are other means to identify plaintiffs who are subject to Medwatch reports. If the PSC identifies any other means of identifying plaintiffs subject to Medwatch reports, they will so advise defendants.

3. Each plaintiff is to identify and disclose all witnesses to defendants no later than November 7, 2003. Each witness identified by plaintiff may include spouses of alleged Baycol users, whether or not the spouse is a plaintiff, and family members or other third-party non-physicians who may have factual information relevant to the plaintiff's case. In any case in which the alleged Baycol user is incapable of testifying about the circumstances involved in his/her use of Baycol or about the injuries that allegedly resulted therefrom, plaintiff's counsel will identify a spouse, family member, or other person who is the most knowledgeable about the circumstances of the use of Baycol by the injured party.

**B. Depositions of Physicians.**

1. Between October 20, 2003 and January 9, 2004, defendants may depose any physician who (a) prescribed Baycol to a plaintiff (or, in a death case, to plaintiff's decedent) or (b) who treated a plaintiff or decedent. At this stage of the proceedings without leave of court, Defendant may name a maximum of four such physicians for deposition. The plaintiffs shall begin the deposition followed by the defendants, followed by the plaintiffs if they choose, and concluding with the defendants

if they choose. Any party has the right to memorialize any treating physician testimony. If defendants elect not to depose such a physician, plaintiffs may do so.

2. Prior to the deposition of any physician who prescribed Baycol to a plaintiff or decedent, Bayer and GSK will each provide to counsel for plaintiff a verified statement showing (a) the name(s) of all sales representatives employed by it who detailed Baycol to the physician during the period in which he/she prescribed Baycol to said plaintiff or decedent, (b) the dates of all detailing, and (c) the number and types of samples, if any, and where such information is available, that were provided by the sales representatives to said prescribing physician during such detailing. Defendants shall provide to plaintiff all documents in the possession of the detail person concerning the detailing of Baycol to these physicians as soon as they obtain the information and no later than one week before the deposition of that physician. Defendants shall produce any and all agreements or other documents whereby Defendants indemnify, hold harmless or otherwise ensure that such physician, individually or through his medical practice or malpractice insurance company, is free from any liability associated with this litigation.

**C. Discovery**

1. The parties will meet and confer in good faith to schedule these depositions. To the extent that the parties are unable to agree on the schedule for any depositions, Magistrate Judge Lebedoff will establish the dates and cities where each deposition shall occur. To the extent other disputes arise regarding the depositions or discovery of these cases being prepared for trial, Magistrate Judge Lebedoff will resolve those disputes after the parties have unsuccessfully conferred. Except for

good cause shown, if a plaintiff fails to appear for his/her scheduled deposition, his/her case will be dismissed with prejudice.

2. All non-expert discovery is to be completed by January 9, 2003.

**D. Experts**

1. Plaintiffs' Generic Expert Reports are to be filed and served no later than December 1, 2003.
2. Defendants' Generic Expert reports are to be filed and served no later than January 12, 2004.
3. Plaintiff's Case Specific Expert reports are to be filed and served no later than January 9, 2004.
4. Defendants' Case Specific Expert reports are to be filed and served no later than February 2, 2004.
5. Depositions of Plaintiffs' Generic Experts are to occur and be completed between January 19 and February 16, 2004.
6. Depositions of Plaintiff's Case Specific Experts are to occur and be completed between February 4 and February 23, 2004.
7. Depositions of Defendants' Experts are to be completed no later than March 5, 2004.

**E. Motions Challenging Experts**

1. All motions challenging any expert including challenges of reports and testimony and all other Daubert motions are to be filed and served no later than March 10, 2004. Motions are to be accompanied by a memorandum of law and a proposed order.

2. A Party opposing any motion is to file and serve an opposition memorandum no later than March 24, 2004.

3. A moving party may file and serve a reply memorandum no later than March 29, 2004.

4. The hearing on expert motions is scheduled for Thursday, April 1, 2004 at 9:30 a.m.

**F. Summary Judgment/Dispositive and Other Motions**

1. All summary judgment motions, any other dispositive motion, and any other motion including a motion regarding which cases are to be tried, are to be filed and served no later than April 9, 2004. Motions are to be accompanied by a memorandum of law, including specific references to factual discovery responses or affidavits, and a proposed order.

2. A Party opposing any motion is to file and serve opposition memorandum no later than April 21, 2004.

3. A moving party may file and serve a reply memorandum no later than April 26, 2004.

4. The hearing on these motions is scheduled for Thursday, April 29, 2004 at 9:30 a.m.

**G. Pretrial Submissions**

1. All parties are to file and serve all pretrial submissions including motions in limine, jury instructions, witness lists, exhibit lists, deposition designations, and any other information subsequently

required by this Court on May 17, 2004. Motions are to be accompanied by a memorandum of law and a proposed order.

2. Opposing parties may submit counter submissions and memorandums of law no later than May 25, 2003. No reply memorandums are permitted.

3. A hearing on any in limine motions, challenges to jury instructions, and all other pretrial matters is scheduled for May 27, 2004 at 9:30 a.m. The Court requires that all trial counsel be at this conference and be prepared to discuss any issue related to the trial.

**H. Trial Date Certain**

1. A final pretrial conference is scheduled for Thursday, June 3, 2004 at 9:30 a.m. The Court requires that all trial counsel be at this conference.

2. The date certain for trial is June 7, 2004 at 9:30 a.m. for the case or cases designated by this Court.

Date: October 17, 2003

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Michael J. Davis  
United States District Court