

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

In re: BAYCOL PRODUCTS LITIGATION

MDL No. 1431

(MJD/JGL)

This Document Relates to All Actions

Pretrial Order No. \_\_\_\_\_

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**PLAINTIFF'S FACT SHEETS/AUTHORIZATIONS**

IT IS HEREBY ORDERED that Pretrial Order ["PTO"] No. 4, Section (D)(1) and PTO No. 10 are supplemented as follows:

1. Record Copy Service: Defendants have retained MCS Group, Inc. ("MCS"), a national medical record copy service, to collect and copy Plaintiffs' medical, employment and other records. Although it is contemplated that MCS will generally be responsible for collecting Plaintiffs' records, there may be times due to concerns for expediency that Defendants will themselves endeavor to collect certain records. In those instances: (a) Defendants will provide notice of use of authorizations as required by paragraph 2, and (b) any timely objection should be served via e-mail or facsimile on those Defendants providing such notice, in addition to service on the Plaintiffs' Liaison Counsel and Defendants' Liaison Counsel, as required by paragraph 3(c). Additionally, Defendants will stamp all records collected "Confidential, Subject to Protective Order," in accordance with paragraph 5. Plaintiffs shall be entitled to a complete list, and to inspect and obtain copies, of all records collected directly by Defendants, at a reasonable cost.

2. Notice of Use of Authorizations: MCS shall provide Plaintiff's counsel or the Plaintiff, if unrepresented, 10 days advance notice of its intention to use an authorization to collect records from any health care provider, employer or other source beyond those identified in Plaintiff's Fact Sheet (including any subsequent supplements thereof) and Supplemental Fact Sheet for Claims of Emotional Distress and Psychological Injuries and Harm (where applicable). Such notice shall either be via e-mail or facsimile. For those health care providers, employers and other sources identified in Plaintiff's Fact Sheet (including any subsequent supplements thereof) and Supplemental Fact Sheet for Claims of Emotional Distress and Psychological Injuries and Harm (where applicable), Plaintiff and his or her counsel waive any notice requirement, except as provided in paragraph 3(a).

3. Objections to the Use of Authorizations to Obtain Medical Records:

(a) Should a Plaintiff have any objection to the collection of records from any of the health care providers, employers or other sources identified in Plaintiff's Fact Sheet (including any subsequent supplements thereof) and Supplemental Fact Sheet for Claims of Emotional Distress and Psychological Injuries and Harm (where applicable), then such objection (in letter form) shall accompany that Plaintiff's Fact Sheet upon service or, otherwise, shall be waived, except as provided in paragraph 3(b). The objection, in 2 pages or less, shall identify the legal basis for the objection and describe the nature of the documents to which the objection is asserted in a manner that, without revealing the information protected, will enable defendants to assess the applicability of the

protection. Any such objection will then be resolved pursuant to the procedure set forth in paragraph 4.

(b) Each Plaintiff whose case was transferred to this Court before the entry of PTO No. 10 on March 19, 2002, including those cases that contain class action allegations, and whose Plaintiff Fact Sheet either has been served or is due on May 3, 2002, pursuant to PTO No. 12, shall have until May 6, 2002 to serve any objections pursuant to paragraph 3(a).

(c) Where Plaintiff receives notice from MCS of its intention to use an authorization to collect medical, employment or other records from sources beyond those identified in Plaintiff's Fact Sheet (including any subsequent supplements thereof) or Supplemental Fact Sheet for Claims of Emotional Distress and Psychological Injuries and Harm (where applicable), Plaintiff shall have 10 days from the date of notice to submit an objection (in letter form) to the use of the authorization. The objection, in 2 pages or less, shall identify the legal basis for the objection and describe the nature of the documents to which the objection is asserted in a manner that, without revealing the information protected, will enable defendants to assess the applicability of the protection. Copies of the objection shall be served via e-mail or facsimile on:

MCS  
Cinda K. Baker  
E-mail:       cbaker@themcsgroup.com  
Facsimile:   (412) 642-9088

Plaintiffs' Liaison Counsel

Ms. Kristine M. Weikel  
Larson • King, LLP  
E-mail:       kweikel@larsonking.com

Facsimile: (615) 312-6618

Defendants' Liaison Counsel

Susan A. Weber, Esq.  
Sidley Austin Brown & Wood  
E-mail: saweber@sidley.com  
Facsimile: (312) 853-7036

Fred T. Magaziner, Esq.  
Dechert  
E-mail: fred.magaziner@dechert.com  
Facsimile: (215) 994-2222.

If no such objection is received within 10 days of notice, the records shall be requested and produced to Defendants.

4. Procedure for Resolution of Objections to the Use of Authorizations to Obtain Medical Records: Upon receipt of a Plaintiff's objection, no further efforts will be made by Defendants (or their representatives) to collect the records placed at issue until the objection is resolved. The parties shall have 10 days, from the date of Plaintiff's objection, to meet and confer to resolve the objection. Should the parties be unable to resolve the objection, then Plaintiff's objection and a response by Defendants (in letter form) of 2 pages or less shall be submitted to the Magistrate Judge for resolution. Upon resolution, the Magistrate Judge will submit a Decision and Recommendation to the Court for its consideration. Any party wishing to appeal the Decision and Recommendation must file its appeal with the Court within 10 days of receipt of the same.

5. Confidentiality: Pursuant to PTO No. 5, all records regarding Plaintiffs collected by MCS through the use of the authorizations attached to PTO No. 10 ["Collected Records"] are hereby designed "CONFIDENTIAL." All

Collected Records shall be stamped or otherwise marked by MCS with the legend:

**CONFIDENTIAL  
SUBJECT TO PROTECTIVE ORDER**

Disclosure of Collected Records shall be governed by the provisions of PTO No. 5, except that such medical records for any given Plaintiff may also be disclosed to any of that Plaintiff's health care providers without the requirement of an Endorsement of Stipulation and Protective Order from any of those health care providers. Additionally, for the purposes of depositions and pleadings filed with the Court, any records that explicitly reference Baycol usage, or any condition or injury that Plaintiff claims is caused by Baycol usage, will not be treated as confidential.

6. Copies of Collected Records: Plaintiffs shall be entitled to a complete list, and to inspect and obtain copies, of all Collected Records, directly from MCS, at a reasonable cost.

Dated:

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Michael J. Davis  
United States District Judge