

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

In re BAYCOL PRODUCTS  
LITIGATION

: MDL No. 1431  
:  
: (MJD/JGL)

This Document Relates To All Actions

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: Pretrial Order No. 54  
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IT IS HEREBY ORDERED that Pretrial Order (“PTO”) No. 4 § V.D.1, PTO No. 10, and PTO No. 12 are supplemented as follows:

I. **Plaintiffs’ discovery obligations:** Pursuant to PTO Nos. 4 § V.D.1, 10, and 12, plaintiffs have 45 days from the date of transfer of a case (as defined below) to serve upon defendants a completed Plaintiff’s Fact Sheet (“PFS”) and executed authorizations, and 60 days from the date of transfer to produce all documents responsive to the requests contained within § IX of the PFS (“responsive documents”).

A. Date of transfer

1. Cases transferred to MDL-1431 pursuant to a Conditional Transfer Order (“CTO”) of the Judicial Panel on Multidistrict Litigation (“JPML”) in which transfer was not opposed: Where a case is transferred to MDL-1431 pursuant to entry of a CTO by the JPML and such transfer was not opposed, the date of transfer for such a case is deemed to be the date that a certified copy of the applicable CTO is entered in the MDL-1431 docket. (See PTO No. 12, § 1.a.)
2. Cases transferred to MDL-1431 by Transfer Order of the JPML in which transfer was opposed: Where a case is identified in a CTO entered by the JPML but transfer is opposed by a party, and the JPML subsequently enters an order transferring the case (because either the opposition is withdrawn or the JPML denies the opposition), the date of transfer for such a case is deemed to be the date that a certified copy of the applicable Transfer Order is entered in the MDL-1431 docket.

3. Cases filed directly in the District of Minnesota: For purposes of the Court's discovery orders (e.g., PTO Nos. 4, 10, and 12), the date of transfer for a case filed directly in the District of Minnesota shall be deemed to be the filing date. Plaintiffs who file a case directly in the District of Minnesota are hereby on notice that pursuant to PTO Nos. 4, 10, and 12, each plaintiff has 45 days from the date of filing to serve upon defendants a completed PFS and executed authorizations, and 60 days from the date of filing to produce all responsive documents.

B. Responsive documents: If neither plaintiff nor plaintiff's counsel possesses documents responsive to the requests contained within § IX of the PFS, plaintiff's counsel must inform defendants of such in writing by letter, a copy to be delivered to Liaison Counsel.

- II. **Initial notice of discovery obligations in cases transferred by JPML order**: Defendants will send timely notice by first-class mail of entry of the Transfer Order in the MDL-1431 docket to plaintiffs' counsel identified on the "Involved Counsel" Service list provided by the JPML, and will inform plaintiffs' counsel that, pursuant to PTO Nos. 4, 10, and 12, plaintiffs have 45 days from the date of entry of the transfer order in the MDL-1431 docket to serve upon defendants a completed PFS and executed authorizations, and 60 days from the date of entry of the transfer order in the MDL-1431 docket to produce all responsive documents, or advise defendants in writing that no responsive documents are in the possession of plaintiffs or plaintiffs' counsel. Defendants will provide such notice to plaintiffs' counsel using a format similar to *Exhibit A* (transfer not opposed) or *Exhibit B* (transfer opposed).
- III. **70-day Notice of Overdue Discovery**: If defendants have not received a PFS, executed authorizations, and *either* responsive documents *or* a letter advising them that no responsive documents are in the possession of plaintiffs or plaintiffs' counsel within 70 days of the date of entry of the transfer order in MDL-1431, defendants will send a Notice of Overdue Discovery to plaintiff's counsel identifying the discovery overdue and stating that, unless plaintiff complies with the Court's discovery orders, the case will be subject to dismissal. Defendants will provide such notice to plaintiff's counsel using a format similar to *Exhibit C*. Defendants also will notify the PSC of such discovery deficiencies, so that the PSC may assist plaintiffs.

- IV. **Sanction of dismissal for willful violation of Court Orders:** If defendants have not received a PFS, executed authorizations, and either responsive documents or a letter advising them that no responsive documents are in the possession of plaintiffs or plaintiffs' counsel within 90 days of the date of entry of the transfer order in MDL-1431, defendants will so notify the Court and the PSC.

Absent an agreed-upon extension as described under § V of this order, the Court will issue an order giving notice of cases that will be dismissed with prejudice if defendants have not received a PFS, executed authorizations, and either responsive documents or a letter advising them that no responsive documents are in the possession of plaintiffs or plaintiffs' counsel by 120 days of the date of transfer. The PSC will mail copies of the order to plaintiffs' counsel.

120 days after the date of transfer, defendants will advise the Court and the PSC of any plaintiffs whose discovery is still delinquent, and the Court will dismiss such cases with prejudice.

- V. **Extension of discovery deadlines:** Nothing in this PTO shall be interpreted as a restriction upon the ability of (a) the parties to stipulate to an extension of discovery deadlines in a particular case, or (b) the plaintiff to move for an extension of discovery deadlines in a particular case based on a showing of good cause.

VI. **Procedures for Pending Discovery Motions and Applicability of Order**

- A. **Cases in which discovery is delinquent but which are not subject to a pending discovery motion:** In those cases in which plaintiffs have not complied with their discovery obligations but which are not currently subject to a pending Motions to Enforce Plaintiffs' Court-Ordered Discovery Obligations, plaintiffs have already been served with notice consistent with § III. Defendants shall submit a list of all such cases to the Court and the PSC identifying all cases in which plaintiffs' discovery remains delinquent as of December 11. The Court will enter an order giving notice of its intent to dismiss such cases with prejudice if plaintiffs have not complied with their discovery obligations within 30 days. 30 days after entry of this Order, defendants will advise the Court and the PSC of any plaintiffs whose discovery is still delinquent, and the Court will dismiss those cases with prejudice.

- B. For all other cases transferred to MDL-1431, this Order shall be effective immediately.

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The Honorable Michael J. Davis  
United States District Court

## EXHIBIT A

TO ALL PLAINTIFFS' COUNSEL IN CASES  
ON CONDITIONAL TRANSFER ORDER  
NO. \_\_

Re: In re Baycol Prods. Liab. Litig.  
MDL-1431

Dear Counsel:

As you are aware, the Judicial Panel on Multidistrict Litigation lifted the stay on Conditional Transfer Order ("CTO") No. \_\_ and entered it as a final order on \_\_\_\_\_. A certified copy of that order was entered on the docket of the above matter on \_\_\_\_\_ and electronically served on all parties on \_\_\_\_\_. Therefore, pursuant to MDL-1431 Pre-Trial Order ("PTO") No. 12, all cases included in that order that are not the subject of a Notice of Opposition are deemed transferred to the District of Minnesota for coordination with MDL-1431, *In re Baycol Products Liability Litigation*.

Accordingly, all such cases are now governed by the provisions of the PTOs entered in MDL-1431. Copies of the PTOs can be found on the Baycol website at [www.mnd.uscourts.gov/Baycol\\_Mdl/index.htm](http://www.mnd.uscourts.gov/Baycol_Mdl/index.htm).

In particular, please take notice that pursuant to PTO Nos. 4, 10, and 12, plaintiffs in cases transferred to MDL-1431 on CTO-\_\_ shall have until \_\_\_\_\_ (*i.e.* 45 days) to serve upon defendants a completed Plaintiff Fact Sheet ("PFS") and executed authorizations. Such plaintiffs also have until \_\_\_\_\_ (*i.e.*, 60 days) to produce all documents responsive to the requests contained in § IX of the PFS.

If you and/or your client do not possess responsive documents as requested by § IX of the PFS, you must so advise defendants in writing with a copy to liaison counsel. Copies of the PFS and authorization forms can be found at [www.mnd.uscourts.gov/Baycol\\_Mdl/index.htm](http://www.mnd.uscourts.gov/Baycol_Mdl/index.htm).

Very truly yours,

Catherine Valerio Barrad

cc: All Other Involved Counsel per attached Panel Service List  
Charles S. Zimmerman  
Richard A. Lockridge  
Robert K. Shelquist  
Wendy R. Fleishman  
Jean M. Geoppinger  
James W. Mizgala  
Fred T. Magaziner  
Kristine M. Weikel

## EXHIBIT B

Re: [case name]

Dear [plaintiff's counsel]:

As you are aware, the Judicial Panel on Multidistrict Litigation entered a Transfer Order on \_\_\_\_\_, and therefore denied the pending Motion to Vacate Conditional Transfer Order ("CTO") No. \_\_. A certified copy of that order was entered on the docket of MDL-1431 on \_\_\_\_\_ and electronically served on all parties on \_\_\_\_\_. Therefore, pursuant to MDL-1431 Pre-Trial Order ("PTO") No. 12, plaintiff's case is deemed transferred to the District of Minnesota for coordination with MDL-1431, *In re Baycol Products Liability Litigation*.

[ALTERNATIVE: As you are aware, the opposition to transfer of this case has been withdrawn, and therefore the Judicial Panel on Multidistrict Litigation entered an order on \_\_\_\_\_ lifting the stay on Conditional Transfer Order ("CTO") No. \_\_ with respect to this case. A certified copy of that order was entered on the docket of the above matter on \_\_\_\_\_ and electronically served on all parties on \_\_\_\_\_. Therefore, pursuant to MDL-1431 Pre-Trial Order ("PTO") No. 12, plaintiff's case is deemed transferred to the District of Minnesota for coordination with MDL-1431, *In re Baycol Products Liability Litigation*.]

Accordingly, plaintiff's case is now governed by the provisions of the PTOs entered in MDL-1431. Copies of the PTOs can be found on the Baycol website at [www.mnd.uscourts.gov/Baycol\\_Mdl/index.htm](http://www.mnd.uscourts.gov/Baycol_Mdl/index.htm).

In particular, please take notice that pursuant to PTO Nos. 4, 10, and 12, plaintiff shall have until \_\_\_\_\_ (*i.e.* 45 days) to serve upon defendants a completed Plaintiff Fact Sheet ("PFS") and executed authorizations. Plaintiffs also has until \_\_\_\_\_ (*i.e.*, 60 days) to produce all documents responsive to the requests contained in § IX of the PFS.

If you and/or your client do not possess responsive documents as requested by § IX of the PFS, you must so advise defendants in writing with a copy to liaison counsel. Copies of the PFS and authorization forms can be found at [www.mnd.uscourts.gov/Baycol\\_Mdl/index.htm](http://www.mnd.uscourts.gov/Baycol_Mdl/index.htm).

Very truly yours,

Catherine Valerio Barrad

cc: All Other Involved Counsel per attached Panel Service List  
Charles S. Zimmerman  
Richard A. Lockridge  
Robert K. Shelquist  
Wendy R. Fleishman  
Jean M. Geoppinger  
James W. Mizgala  
Fred T. Magaziner  
Kristine M. Weikel



## EXHIBIT C

### NOTICE OF OVERDUE DISCOVERY

#### FAILURE TO RESPOND WILL RESULT IN DISMISSAL OF YOUR CASE

Re: [Case Name], MDL No. \_\_\_\_\_  
Plaintiff's Fact Sheet/Authorizations

Dear [plaintiff's counsel]:

Your discovery is overdue in this lawsuit.

Pursuant to MDL PTO Nos. 4, 10 and 12, Plaintiff's Fact Sheets ("PFS") and executed authorizations were due to be served by \_\_\_\_\_ . To date we have not received them. Plaintiff *and* a witness should *only* sign and date the authorizations and should *not* complete any other part.

Your documents responsive to the document production requests set forth in Section IX of the PFS were due to be served by \_\_\_\_\_. To date, we have not received them. If neither plaintiff nor plaintiff's counsel possesses documents responsive to the requests contained within § IX of the PFS, plaintiff's counsel must so inform defendants in writing.

Please provide us with the completed PFS, executed authorizations and all responsive documents by \_\_\_\_\_. **If we do not receive the PFS, authorizations, and documents by \_\_\_\_\_, your case will be dismissed with prejudice pursuant to PTO No. \_\_, § \_\_.**

Because of the volume of cases in this MDL, defendants are not routinely agreeing to extensions of discovery deadlines. If you believe that your particular case presents extraordinary circumstances warranting an extension, you must request such an extension in a letter addressed to me that explains the extraordinary circumstances that you believe warrant an extension. Defendants will respond promptly.

Thank you for your prompt attention and cooperation.

Very truly yours,

James W. Mizgala

cc: Charles S. Zimmerman  
Richard A. Lockridge  
Robert K. Shelquist  
Wendy R. Fleishman  
Jean M. Geoppinger  
Fred T. Magaziner  
Kristine M. Weikel