

BAYCOL MDL 1431

Common Fund Audit Procedures

The following procedures will be utilized to review and audit the Common Fund assessments provided for in Pretrial Order No. 53. Both Bayer lawyers and PSC lawyers have submitted proposed procedures and have reviewed and edited these Audit Procedures.

1. In addition to the information Bayer has provided under PTO 53, Bayer shall also provide monthly the total settlement amounts for MDL cases and a spreadsheet of cases pending in federal courts.
2. With respect to cases in which Bayer has withheld the six percent cost and fee assessment, Accountant Joseph Kenyon and his staff from the accounting firm of Schechter Dokken Kanter, under the supervision of Special Master Roger Haydock, will perform periodic tests by comparing the settlement charts with brokerage statements on the withholding account and by comparing a sample of approximately ten per cent of MDL/Bayer settlement agreements with the reports. The timing of this testing will be at the discretion of the Accountant. Bayer will provide to the Court by the 10th day of the month settlement charts and the withholding account information. Bayer shall also promptly provide a full and complete copy of the settlement agreements as requested by the Accountant.
3. With respect to other settlements, Accountant will compare:

The PSC list of counsel subject to PTO 53 Para. 2 and the spreadsheet of cases pending in federal court with

The settlement list provided by Bayer, which will identify settling plaintiffs, their counsel and, if no confidentiality agreement applies, the settlement amount.

If a law firm appears on the PSC list or a case appears on the spreadsheet, but does not appear on the settlement list, the Accountant will provide notice to Ron Goldser for the Plaintiffs and Leanne DeShong for Bayer, who will promptly meet and confer regarding specific cases. If they conclude that a case may be subject to the MDL withhold, they will arrange a meet-and-confer with the plaintiff's attorney in that case and report the outcome to the Accountant. If the matter is not resolved through this process, it will be referred to the Special Master for resolution. The Accountant may also conduct other audit sampling procedures if deemed necessary.

4. The assessment Account shall continue to be the Dreyfus Baycol MDL 1431 Attorneys Fee & Cost Account. Bayer shall continue to deposit funds in the Account in accord with PTO 53. Funds may only be withdrawn from the Account under the express direction of this Court. All check withdrawals require the signatures of both Accountant Joseph Kenyon and a Bayer representative.
5. Bayer shall provide to Accountant Kenyon documents and statements relating to the Account, checkbook, and other information as periodically requested.
6. All interest earned on the Account shall remain re-invested in the Account.
7. The MDL PSC and Bayer shall each be responsible to pay one half of the fees for Accountant Kenyon and his staff.
8. Bayer shall include the following statement on all of its monthly submissions to this Court regarding settlements:

Bayer and its lawyers certify pursuant to PTO 53 and these Common Fund Audit Procedures, to the best of their knowledge, information, and belief, formed after an inquiry reasonable under the circumstances that: (1) all the information provided is complete and accurate and includes all settlements between Bayer and any plaintiff of any federal or state lawsuit and any claimant alleging any Baycol related claim, and (2) the amounts deposited in the Account are complete and accurate and include all assessments which are to be deposited in the Account. If this Court, after notice and a reasonable opportunity to respond, determines that this certification has been violated, sanctions may be imposed upon pursuant to the standards and applicable procedures set forth in Fed.R.Civ. P. 11.

9. These procedures will be evaluated after April 30, 2003, when modifications may be made.

March 3, 2003

Roger Haydock, Special Master