

In re: Baycol Products Litigation
MDL No. 143

Special Master PTO 78
Assessment Decision No. 7

A Request pursuant to Pretrial Order No.78 was submitted in the case of Plaintiff Gliva challenging the MDL 6% holdback. Craig Manchik represents the Plaintiff. Leanne DeShong submitted a response on behalf of Bayer; and Ron Goldser submitted a response on behalf of the Plaintiffs' Steering Committee.

Case Summary

This action was originally filed in state court in the Circuit Court of Cook County Illinois. Defendant Bayer removed this case to the United States District Court for the Northern District of Illinois. This case was never transferred to this Court, nor ever filed with this Court.

Decision

Holdbacks are to be reserved if this Court has jurisdiction and one of the factors set forth in Pretrial Order No. 53 exists. Title 28 U.S.C. Section 1407 (c) states, in applicable part, that: "Orders of transfer and such other orders as the panel may make thereafter shall be filed in the office of the clerk of the district court of the transferee district and shall be effective when thus filed." Further: "A transferee court's jurisdiction in multi-district litigation is limited to cases and controversies between persons who are properly parties to the cases transferred." *In re Showa Denko K.K. L-Tryptophan Products Liability Litigation-II*, 953 F.2d 162, 165 (4th Cir. 1992); *Hartland v. Alaska Airlines*, 544 F.2d 992 (9th Cir. 1976).

The Gliva case was never filed with this transferee Court; and this Court does not have jurisdiction over the Gliva case or Plaintiff Gliva, which jurisdiction is necessary to effectuate the provisions of Pretrial Orders No. 53 and 78.

The Request is granted and the holdback amount is to be refunded in its entirety to Plaintiff. It is ordered that a check in the full amount of the holdback be issued and provided to Plaintiff Gliva.

July 29, 2003

/s/ Roger S. Haydock
Special Master