

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

**In re BAYCOL PRODUCTS
LITIGATION**

MDL No. 1431 (MJD/JGL)

O R D E R

This document relates to:

all cases

JONATHAN LEBEDOFF, Chief United States Magistrate Judge

The above-entitled matter is before the undersigned Chief Magistrate Judge of District Court on Defendants' Substituted Submission Requesting Entry of a Court Order Pursuant to PTO No. 54 for Delinquent "Third-Wave" (CTO-11,12, &13) Plaintiffs, Defendants' Submission Requesting Entry of a Court Order Pursuant to PTO No. 54 for Delinquent "Fourth-Wave" (CTO-14) Plaintiffs, and Defendants' Submission Requesting Entry of a Court Order Pursuant to PTO No. 54 for Delinquent "Fifth-Wave" Plaintiffs (No Doc. Nos.). The case has been referred to the undersigned for resolution of pretrial discovery matters pursuant to 28 U.S.C. § 636, D. Minn. LR 72.1, and Pretrial Order 52.

On February 21, 2003, and March 5, 2003, Defendants Bayer Corporation and SmithKline Beecham Corporation d/b/a GlaxoSmithKline ("Defendants") filed submissions with the Court, seeking orders notifying "Third-Wave", "Fourth-Wave", and "Fifth-Wave" Plaintiffs with overdue

discovery that their cases would be dismissed if the discovery was not produced within thirty days. Plaintiffs responded to the submissions by noting that several more Plaintiffs had provided the discovery, making Defendants' requests outdated.

On April 3, 2003, Defendants withdrew their submissions with respect to Plaintiffs from whom they had received discovery and listed those Plaintiffs for the Court. Plaintiffs again responded that Defendants had submitted inaccurate information regarding which Plaintiffs had outstanding discovery obligations. Plaintiffs ask this Court to delay ruling on Defendants' submissions until the parties can stipulate to a new procedure for handling these matters. Defendants ask this Court to rule on their submissions without delay.

This Court recognizes the difficulty of attempting to submit an accurate list of Plaintiffs who have been delinquent in their discovery obligations, as the list is likely to change on a regular basis. Nevertheless, the Court seeks to ensure that discovery moves forward and that reasonable discovery deadlines are enforced. Because the parties continue to submit conflicting information regarding the specific Plaintiffs who should be subject to an enforcement order, this Court appears unable to enter an accurate order at this time.

This Court intends to enter an enforcement order for the Third, Fourth, and Fifth-Wave Plaintiffs who are delinquent in their discovery obligations on April 30, 2003. This order will be directed at Plaintiffs who have

not provided the required discovery to Defendants by April 29, 2003, 5:00 p.m., Central Standard Time. The parties are expected to stipulate to a list of such Plaintiffs, which will be attached to the Court's order, and submit the list to this Court's chambers by hand-delivery by April 30, 2003, 10:00 a.m., Central Standard Time.

Based on the foregoing, and on the files, records, and proceedings therein, **IT IS HEREBY ORDERED:**

The parties will stipulate to a list of Third-Wave, Fourth-Wave, and Fifth-Wave Plaintiffs who have not provided the required discovery to Defendants by April 29, 2003, 5:00 p.m., Central Standard Time. The list will be submitted to this Court's chambers by hand-delivery no later than April 30, 2003, 10:00 a.m., Central Standard Time.

Dated: _____, 2003

JONATHAN LEBEDOFF
Chief United States Magistrate Judge