

A Request pursuant to Pretrial Order No.78 was submitted by Plaintiff Steven Sparks challenging the MDL holdback. Stuart Emmons represents the Plaintiff. Doug Beck submitted a response on behalf of Bayer; and Ron Goldser submitted a response on behalf of the Plaintiffs' Steering Committee (PSC).

Case Summary

Plaintiff Sparks filed a putative class action in state court in Oklahoma in early 2002. It was promptly transferred to this MDL. The salient dates and events that followed include:

- May 13, 2002: Plaintiff Sparks filed a motion to dismiss so that the Plaintiff could re-file in state court and add non-diverse defendants whom had recently been discovered to be potentially liable.
- June 5, 2002: This Court issued PTO 25 requiring a holdback.
- July 31, 2002: A motion to dismiss Plaintiff Sparks was granted and the case was dismissed without prejudice from the MDL.
- August 22, 2002: Plaintiff Sparks re-filed in Oklahoma state court where the case remained for over the two past years.
- November 22, 2002: This Court issued PTO 53 detailing the cases subject to the withholding.
- August, 2004: Plaintiff Sparks settled his state court case with the defendants.

At the time of the settlement, and for a substantial amount of time previous to the settlement, Plaintiff Sparks was not a party to a case in this MDL. There is no evidence that Plaintiff Sparks dismissed and re-filed his case in state court to avoid the MDL holdback.

Decision

Holdbacks are to be reserved if this Court has jurisdiction and one of the factors set forth in Pretrial Order No. 53 exists. Based on the litigation events involving Plaintiff Sparks, none of the factors has been met. There are no circumstances warranting a holdback in this case.

This Court does not have jurisdiction over the settlement and the earlier MDL case was dismissed before PTO 53 took affect. This case is not a situation where a plaintiff dismisses a case and then settles it in an effort to avoid a MDL holdback.

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

October 11, 2004

/s/ Roger S. Haydock
Special Master