

**In re: Baycol Products Litigation  
MDL No. 1431**

**Special Master PTO 78  
Assessment Decision No. 14  
Andras Decision**

A Request pursuant to Pretrial Order No.78 was submitted by Plaintiff Harry Andras challenging the MDL 6% holdback. Dawn Barrios and Buffy Martines represent the Plaintiff. Leanne DeShong submitted a response on behalf of Bayer; and Charles Zimmerman submitted a response on behalf of the Plaintiffs' Steering Committee.

#### Case Summary

An action on behalf of Plaintiff Andras was filed in two courts: one in state court in Louisiana and one in state court in Mississippi. The Mississippi case was removed to federal court by Defendant Bayer. Plaintiff asserts that the inclusion of his name in the Mississippi case (one of 500 plaintiffs in the case) was inadvertent and that a court order in the Louisiana case required proceedings to be coordinated with the Eighth Region in Texas. The Mississippi case was transferred to, docketed, and filed with this Court, MDL Case No. 03-257.

#### Decision

Holdbacks are to be reserved if this Court has jurisdiction and one of the factors set forth in Pretrial Order No. 53 exists. Paragraph 2 of PTO 53 states that a holdback applies to: "a) all cases transferred to this MDL, except those remanded by order of the Court to state court for lack of jurisdiction." A holdback is applicable in this case as the Andras case has become and is an MDL case. Another case by the same plaintiff pending in state court does not preclude the assessment of a holdback. There was no action taken at any time to dismiss Plaintiff Andras in the Mississippi case before, or even after, it was transferred to this Court. And, there is no requirement that the parties prove or disprove the receipt of any direct common benefit from the MDL.

As this case was transferred to this Court, the Request by Plaintiff is presently denied. Plaintiff may seek a refund of the entire holdback or a portion of it at a later time when this Court determines the distribution of the common benefit contributions.

September 9, 2003

/s/ Roger S. Haydock  
Special Master