

In re: Baycol Products Litigation
MDL No. 1431

Special Master PTO 78
Assessment Decision No. 10

A Request pursuant to Pretrial Order No.78 was submitted on behalf of Plaintiff McCaleb challenging the MDL 6% holdback. Chris Pinedo represents the Plaintiff. Leanne DeShong submitted a response on behalf of Bayer; and Ron Goldser submitted a response, although untimely, on behalf of the Plaintiffs' Steering Committee.

Case Summary

This action was originally filed in Georgia State Court in Fulton County, Georgia. Plaintiff McCaleb was one plaintiff in a state court case which had Plaintiff Padgett as the lead plaintiff in the case. Defendant Bayer removed the case to the United States District Court for the Eastern District of Georgia. Subsequently, Conditional Transfer Order No. 23 listed the Padgett case as one of the included cases, and Plaintiffs timely filed an opposition to the transfer. The Judicial Panel on Multidistrict Litigation has yet to rule on the Padgett, and McCaleb, opposition. This case was never finally transferred to this Court, nor ever filed with this Court. A settlement between Plaintiff McCaleb and Bayer occurred before a final transfer.

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 case involving Plaintiff McCaleb was never filed with this transferee Court; and this Court does not have jurisdiction over the case or Plaintiff McCaleb, 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 McCaleb.

August 8, 2003

/s/ Roger S. Haydock

Special Master