

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In re: BAYCOL PRODUCTS LITIGATION

MDL No. 1431

(MJD/JGL)

This Document Relates to All Actions

Pretrial Order No. 6

ORDER FOR PRESERVATION OF RECORDS

It is ORDERED:

1. Preservation.

(a) During the pendency of this litigation, and for 60 days after entry of a final order closing all cases, each of the parties herein and their respective officers, agents, servants, employees and attorneys, and all persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise, are restrained and enjoined from altering, interlining, destroying, or permitting the destruction of any “document” in the actual or constructive care, custody or control of such person, wherever such document is physically located.

(b) To facilitate preserving and collecting electronic documents related to Baycol which are created after entry of this Order, each Plaintiff and each corporate Defendant shall establish a dedicated electronic mailbox to receive copies, on a going forward basis, of all electronic documents relating to Baycol. The parties further agree to direct all of their employees to preserve Baycol-related documents, and to direct those employees (other than legal personnel) to send all future Baycol-related electronic documents to the Baycol mailbox.

(c) The parties shall retain all existing “snap shots” of electronic servers and all

existing back-up tapes already archived and not used in the ordinary operation of the parties' electronic document management systems at Bayer Corporation's Pittsburgh and West Haven facilities; Bayer AG's Building Q30 at Leverkusen and Pharma Research facility at Wuppertal; GlaxoSmithKline's Upper Merion, Upper Providence, and Franklin Plaza facilities; and any off-site storage facility housing documents created in these facilities. The parties shall secure the hard drives (or make mirror-image copies of the files on hard drives) of all computers (including laptop or desktop computers) used by the parties or their employees with Baycol-related responsibilities that are not backed up in the ordinary course, before the reformatting, redeployment or disposal of such hard drives. The parties may also continue routine erasures of computerized data pursuant to existing programs, but they shall (1) immediately notify opposing counsel about such programs and (2) preserve any printouts of such data. Notwithstanding any other provisions of this Order, as of the date of this Order, persons may generate documents in the future without preserving dictation, drafts, interim versions or other temporary compilations of information if such documents would not have been preserved in the ordinary course of business.

2. Scope.

(a) "Document" shall mean any writing, drawing, film, videotape, chart, photograph, phonograph record, tape record, mechanical or electronic sound recording or transcript thereof, retrievable data (whether carded, taped coded, electrostatically or electromagnetically recorded, or otherwise), or other data compilation from which information can be obtained, including (but not limited to) notices, memoranda, diaries, minutes, purchase records, purchase invoices, market data, correspondence, computer

storage tapes, computer storage cards or disks, books, journals, ledgers, statements, reports, invoices, bills, vouchers, worksheets, jottings, notes, letters, abstracts, audits, charts, checks, diagrams, drafts, recordings, instructions, lists, logs, orders, recitals, telegram messages, telephone bills and logs, resumes, summaries, compilations, computations and other formal and informal writings or tangible preservations of information.

(b) This order pertains only to documents containing information that may be relevant to, or may lead to the discovery of information relevant to, the Baycol litigation. Any Baycol-related document described or referred to in any discovery request or response made during this litigation shall, from the time of the request or response, be treated for purposes of this Order as containing such information unless and until the court rules such information to be irrelevant.

(c) Counsel are directed to confer to resolve questions as to what documents are outside the scope of this Order or otherwise need not be preserved and as to an earlier date for permissible destruction of particular categories of documents. If counsel are unable to agree, any party may apply to the court for clarification or relief from this Order upon reasonable notice. A party failing, within 60 days after receiving written notice from another party that specified documents will be destroyed, lost, or otherwise

altered pursuant to routine policies and programs, to indicate in writing its objection shall

be deemed to have agreed to such destruction.

Dated: March 4, 2002

BY THE COURT:

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Michael J. Davis
United States District Court