In re: Baycol Products Litigation   **Special Master PTO 78**
MDL No. 143   **Assessment Decision No. 12**
                                                         Reeves Decision

A Request pursuant to Pretrial Order No.78 was submitted by Plaintiff Richard Reeves challenging the MDL 6% holdback. Patrick McMurtray represents the Plaintiff. Leanne DeShong submitted a response on behalf of Bayer; and Ron Goldser submitted a response on behalf of the Plaintiffs' Steering Committee.

Case Summary

This action was originally filed in state court in the Circuit Court of Hinds County, Mississippi. Defendant Bayer removed this case to the United States District Court. This case was transferred to, docketed, and then filed with this Court on March 18, 2003. Plaintiff contends that a holdback is inappropriate for a number of reasons including the basis that the Plaintiff did not benefit from any of the work of the PSC in this multi-district case.

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." 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." Further, Pretrial Order No. 25 applies "to all cases over which the Court in MDL 1431 has jurisdiction."

As this Court has jurisdiction over this transferred case, the Request by Plaintiff is presently denied. This case was not transferred back. There is no basis under any Pretrial Order that a Plaintiff with a filed case in this Court who alleges that he did not benefit from this multi-district case has a right to unilaterally receive the holdback amount. 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 holdback contributions.

August 27, 2003   /s/ Roger S. Haydock
                                                         Special Master