

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

**In re BAYCOL PRODUCTS
LITIGATION**

MDL No. 1431 (MJD/JGL)

O R D E R

This document relates to:

all cases

JONATHAN LEBEDOFF, Chief United States Magistrate Judge

The above-entitled matter is before the undersigned Chief Magistrate Judge of District Court on Defendants' Substituted Submission Requesting Entry of a Court Order Pursuant to PTO No. 54 for Delinquent "Third-Wave" (CTO-11, 12, & 13) Plaintiffs, Defendants' Submission Requesting Entry of a Court Order Pursuant to PTO No. 54 for Delinquent "Fourth-Wave" (CTO-14) Plaintiffs, and Defendants' Submission Requesting Entry of a Court Order Pursuant to PTO No. 54 for Delinquent "Fifth-Wave" Plaintiffs (No Doc. Nos.). The case has been referred to the undersigned for resolution of pretrial discovery matters pursuant to 28 U.S.C. § 636, D. Minn. LR 72.1, and Pretrial Order 52.

Pretrial Order 54 ("PTO 54") governs certain discovery requirements in this case; the requirements were initially stipulated between Defendants and the Plaintiffs' Steering Committee. Pursuant to the parties' agreement and Court Order, all Plaintiffs are required to serve upon

Defendants completed Plaintiffs' Fact Sheets ("PFS"), executed authorizations, and documents within 60 days from the date of transfer to or filing with this Court. PTO 54 requires Defendants to advise the Court of Plaintiffs whose discovery is still delinquent 120 days after the date of transfer, and PTO 54 further warns that the Court will dismiss such cases with prejudice.

Defendants have repeatedly submitted the names of "Third-Wave", "Fourth-Wave", and "Fifth-Wave" Plaintiffs whose discovery obligations are long overdue. According to Defendants, documents were due from Third-Wave Plaintiffs by October 29, 2002, from Fourth-Wave Plaintiffs by December 9, 2002, and from Fifth-Wave Plaintiffs by October 28, 2002. Defendants submitted to the Court lists of Plaintiffs who had not provided the required discovery. Because the list of Plaintiffs who had not provided the required discovery continued to change, causing Defendants to submit replacement lists, on April 18, 2003, this Court ordered the parties to stipulate to a list of Plaintiffs who had not complied with discovery obligations by April 29, 2003. The Court has now received that list, which is attached to this Order as Exhibit A. The purpose of this Order is to warn the Plaintiffs that this Court will recommend dismissal with prejudice of the cases of any Plaintiffs listed on Exhibit A if they have not provided the required discovery pursuant to PTO 54 within twelve days of the date of this Order.

The Court has also received a communication from the Weitz & Luxenberg, P.C. law firm ("Weitz & Luxenberg"), which represents various

Third-Wave and Fifth-Wave Plaintiffs who have not completed their discovery obligations. Weitz & Luxenberg provides lists of clients who have apparently served their PFS (but no mention is made of whether authorizations or documents were provided), clients who agree to voluntarily dismiss their cases, and clients who seek discovery extensions. This Court is unaware of any formal motions brought by Weitz & Luxenberg or its clients to seek relief from either PTO 54 or this Court's Order of April 18, 2003. This Court issued its April 18, 2003, Order for the purpose of avoiding the continual submission of changing lists by the parties, and Weitz & Luxenberg provides no explanation for why its clients should be treated differently than the other Plaintiffs who are subject to this Court's orders. Accordingly, the Plaintiffs listed on the informal letter to the Court from Weitz & Luxenberg are not exempt from this Order.

Based on the foregoing, and on the files, records, and proceedings therein, **IT IS HEREBY ORDERED:**

Defendants' Substituted Submission Requesting Entry of a Court Order Pursuant to PTO No. 54 for Delinquent "Third-Wave" Plaintiffs, Defendants' Submission Requesting Entry of a Court Order Pursuant to PTO No. 54 for Delinquent "Fourth-Wave" Plaintiffs, and Defendants' Submission Requesting Entry of a Court Order Pursuant to PTO No. 54 for Delinquent "Fifth-Wave" Plaintiffs (No Doc. Nos.) are **GRANTED IN PART**. The parties will

stipulate to a list of Third-Wave, Fourth-Wave, and Fifth-Wave Plaintiffs who have not provided the required discovery to Defendants by May 12, 2003, 5:00 p.m., Central Standard Time. The list will be submitted to this Court, which will then recommend dismissal with prejudice of the cases of the listed Plaintiffs.

Dated: _____, 2003

JONATHAN LEBEDOFF
Chief United States Magistrate Judge