

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In re: BAYCOL PRODUCTS LITIGATION

**MDL No. 1431
(MJD)**

**This Document Relates to All Actions
No. 3**

Pretrial Order

Pursuant to Pretrial Order No. 2, the Court requested that those Plaintiffs' counsel that wished to be considered for positions as Plaintiffs' Liaison Counsel, Lead Counsel, or as a member of the Plaintiffs' Steering Committee to submit an application on or before January 31, 2002. The Court received many applications, and has also received a few objections. The Court also held a hearing on February 1, 2002, and heard argument from counsel as to their applications for Plaintiffs' Lead and Liaison counsel positions. Based on the submissions of counsel, and having considered §§ 20.22 and 41.31 on the *Manual on Complex Litigation (Third)*, IT IS HEREBY ORDERED:

I. ORGANIZATION AND RESPONSIBILITIES OF COUNSEL

To act on behalf of plaintiffs, the Court designates the following counsel:

A. Plaintiff's Co-Lead Counsel

The Court designates the following counsel to serve as Plaintiffs' Co-Lead Counsel:

Charles S. Zimmerman
ZIMMERMAN REED

651 Nicollet Mall, Suite 501
Minneapolis, MN 55402

Richard A. Lockridge
LOCKRIDGE GRINDAL NAUEN P.L.L.P.
100 Washington Avenue South, Suite 2200
Minneapolis, MN 55401

B. Plaintiffs' Steering Committee

The Court designates the following counsel to serve on Plaintiffs' Steering
Committee:

Samuel D. Heins*
HEINS MILLS & OLSON, P.L.C.
Minneapolis, Minnesota

Andy Birchfield
BEASLEY, ALLEN, CROW, METHVIN, PORTIS & MILES, P.C.
Montgomery, Alabama

Don Barrett
BARRETT LAW OFFICE
Lexington, Mississippi

Turner W. Branch
BRANCH LAW FIRM
Albuquerque, New Mexico

Elizabeth J. Cabraser*
LIEF, CABRASER, HEIMANN & BERNSTEIN, LLP
San Francisco, California

Stanley M. Chesley*
WAITE, SCHNEIDER, BAYLESS & CHESLEY CO., LPA
Cincinnati, Ohio

John R. Climaco
CLIMACO, LEFKOWITZ, PECA, WILCOX & GAROFOLI CO., L.P.A.
Cleveland, Ohio

Walter Dumas
DUMAS & ASSOCIATES
Baton Rouge, Louisiana

Frederic S. Fox
KAPLAN, FOX & KILSHEIMER, LLP
New York, New York

Michael Gallagher
GALLAGHER, LEWIS, DOWNEY & KIM
Houston, Texas

Paul J. Geller
CAULEY GELLER BOWMAN & COATES, LLP
Little Rock, Arkansas

Don Hildre
DOUGHERTY, HILDRE, DUDEK & HAKLAR
San Diego, California

James R. Dugan, II
GAUTHIER, DOWNING, LABARRE, BEISER & DEAN
Metairie, Louisiana

Daniel E. Becnel, Jr.
LAW OFFICES OF DANIEL E. BECNEL, JR.
LaPlace, Louisiana

Will Kemp
HARRISON, KEMP & JONES
Las Vegas, Nevada

Dianne M. Nast*
RODA & NAST, P.C.
Lancaster, Pennsylvania

W. James Singleton
SINGLETON LAW FIRM
Shreveport, Louisiana

Kenneth B. Moll*
KENNETH B. MOLL & ASSOCIATES, LTD.
Chicago, Illinois

Counsel marked by asterisk shall serve, with Co-Lead Counsel, on an Executive Committee of the Plaintiffs' Steering Committee.

C. Responsibilities of Co-Lead Counsel

Plaintiffs' Co-Lead Counsel shall be generally responsible for coordinating the activities of plaintiffs during pretrial proceedings and, in consultation and with the assistance of the Executive Committee, shall:

- a. Determine (after consultation with other members of Plaintiffs' Steering Committee and other co-counsel as may be appropriate) and present (in briefs, oral argument, or such other fashion as may be appropriate, personally or by a designee) to the Court and opposing parties the position of the plaintiffs on all matters arising during pretrial proceedings;
- b. Coordinate the initiation and conduct of discovery on behalf of plaintiffs consistent with the requirements of Fed. R. Civ. P. 26(b)(1) and (2), and (g), including the preparation of joint interrogatories and requests for production of documents and the examination of witnesses in depositions;
- c. Conduct settlement negotiations on behalf of plaintiffs, but not enter binding agreements except to the extent expressly authorized;
- d. Delegate specific tasks to other counsel in a manner to ensure that pretrial preparation for the plaintiffs is conducted effectively, efficiently, and economically;
- e. Enter into stipulations, with opposing counsel, necessary for the conduct of the litigation;
- f. Prepare and distribute to the parties periodic status reports;
- g. Maintain adequate time and disbursement records covering services of designated counsel;
- h. Monitor the activities of co-counsel to ensure that schedules are met and unnecessary expenditures of time and funds are avoided;

- i. Perform such other duties as may be incidental to proper coordination of plaintiffs' pretrial activities or authorized by further order of the Court; and
- j. Submit additional committees and counsel for designation by the Court.

Counsel for plaintiffs who disagree with Co-Lead Counsel (or those acting on behalf of lead counsel) or who have individual or divergent positions may present written and oral arguments, conduct examinations of deponents, and otherwise act separately on behalf of their client(s) as appropriate, provided that in doing so they do not repeat arguments, questions, or actions of Co-Lead Counsel.

D. Responsibilities of Plaintiffs' Steering Committee

The other members of Plaintiffs' Steering Committee shall from time to time consult with Plaintiffs' Co-Lead Counsel and Executive Committee in coordinating the plaintiffs' pretrial activities and in planning for trial.

E. Plaintiffs' Liaison Counsel

The Court designates the following counsel to serve as Plaintiffs' Liaison Counsel:

Dale Larson
LARSON•KING
St. Paul, Minnesota

Plaintiffs' Liaison Counsel shall:

- a. Maintain and distribute to co-counsel and to Defendants' Liaison Counsel an up-to-date service list;
- b. Receive and, as appropriate, distribute to co-counsel orders from the Court and documents from opposing parties and counsel;
- c. Maintain and make available to co-counsel at reasonable hours a complete file of all documents served by or upon each party except

such documents as may be available at a document depository; and

- d. Establish and maintain a document depository.

F. Defendants' Lead Counsel

Lead Counsel for Defendant Bayer AG and Bayer Corporation is:

Philip Beck
BARLET BECK HERMAN PALENCHAR & SCOTT
54 West Hubbard, Suite 300
Chicago, Illinois 60610

Local Counsel for Defendant Bayer AG and Bayer Corporation is:

Peter W. Sipkins
DORSEY & WHITNEY
50 South Sixth Street, Suite 1500
Minneapolis, MN 55401-1498

Liaison Counsel for the Bayer Defendants is:

Adam L. Hoeflich
BARLET BECK HERMAN PALENCHAR & SCOTT
54 West Hubbard, Suite 300
Chicago, Illinois 60610

Susan A. Weber
SIDLEY AUSTIN BROWN & WOOD
Bank One Plaza
10 South Dearborn Street
Chicago, Illinois 60603

Peter W. Sipkins
DORSEY & WHITNEY
50 South Sixth Street, Suite 1500
Minneapolis, MN 55401-1498

Lead/Liaison Counsel for Defendant GlaxoSmithKline is:

Fred T. Magaziner
Robert A. Limbacher
Hope S. Freiwald

DECHERT
400 Bell Atlantic Tower
1717 Arch Street
Philadelphia, Pennsylvania 19103-2793
Tracy J. Van Steenburgh
Scott A. Smith
HALLELAND LEWIS NILAN SIPKINS & JOHNSON, P.A.
220 South Sixth Street, Suite 600
Minneapolis, Minnesota 55402-4501

II. PRIVILEGES PRESERVED

No communication among Plaintiffs' Counsel or among Defendants' Counsel shall be taken as a waiver of any privilege or protection to which they would otherwise be entitled.

III. DOCUMENT DEPOSITORY

There shall be one document depository in this litigation located at the law offices of Larson•King, St. Paul, Minnesota.

IV. SERVICE OF DOCUMENTS

A. Orders

A copy of each Order will be provided to Plaintiffs' Co-Lead Counsel for distribution as appropriate to other counsel and parties.

B. Pleadings, Motions, and Other Documents

Plaintiffs' Co-Lead Counsel will be provided with two copies of each document filed by a party. Pursuant to Fed.R.Civ.P. 5, service on Plaintiffs' Co-Lead Counsel constitutes service on other attorneys and parties for whom Co-Lead Counsel is acting, such service being deemed effective seven (7) days after service on Co-Lead Counsel.

V. OFFICIAL COURT WEBSITE

The Court will create and maintain a website devoted solely to the Baycol Product Liability Litigation, found at www.mnd.uscourts.gov. Through the website, parties may access Court Orders, Court Minutes, Court Calendar, Frequently Asked Questions, Court Transcripts, Court Docket, Current Developments, information as to Plaintiffs' Co-Lead and Liaison Counsel as well as Defendants' Lead and Liaison Counsel. Plaintiffs' Co-Lead and Liaison Counsel and Defendants' Lead and Liaison Counsel shall confer with the Court regarding the content of the website.

VI. ELECTRONIC SERVICE PROVIDERS

The Court hereby grants the parties permission to utilize an electronic service provider of their choice.

VII. TRANSCRIPT PAYMENT

The Official Transcript of all hearings shall be posted on the Baycol website. The cost of the Official Transcript shall be borne by the Plaintiffs and Defendants equally. Payment is to be made within seven(7) days of receipt of the Court Reporter's invoice.

VIII. SCHEDULE CHANGE

Based on the request of counsel, the Court will reschedule the Initial Conference, currently scheduled for April 1, 2002. The Initial Conference is re-scheduled for March 4, 2002, at 10:00 a.m. Because the Initial Conference has been rescheduled, counsel is now ordered to submit their preliminary reports, list of affiliated companies and counsel, list of pending motions and a list of related cases to the Court by February 18, 2001.

Date: February 1, 2002

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Michael J. Davis
United States District Court