

**Exhibit to PTO No. 102
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. _____**

In order to promote the fair and efficient administration of the litigation, the parties have agreed that a program is necessary to identify those plaintiffs who lack documented evidentiary support of their alleged injuries, to evaluate and to categorize the claims of those plaintiffs who have such evidentiary support, and to expand the pool of cases for potential trial in this MDL. Therefore, IT IS HEREBY ORDERED:

I. Plaintiffs' Supplemental Discovery Obligation: In addition to each plaintiff's obligation to serve timely a completed Plaintiff's Fact Sheet ["PFS"], properly executed authorizations, and responsive documents, each plaintiff must serve according to the deadlines in Part II:

A. Prescription, sample or medical records documenting plaintiff's use of Baycol,

AND

B. 1. For a plaintiff who has prescription, sample or medical records documenting plaintiff's discontinuation or nonrenewal of plaintiff's Baycol use prior to August 8, 2001, **either**—

a. specific medical records contemporaneous with the time period of plaintiff's Baycol use that document the manifestation of either:

(i) rhabdomyolysis that led to the discontinuation of Baycol use; or

(ii) sudden onset, severe muscle pain that led to the discontinuation of Baycol use;

or

b. a Rule 26(a)(2) case-specific report from a medical expert attesting that plaintiff suffered injuries caused by plaintiff's use of Baycol.

OR

2. For a plaintiff who discontinued Baycol on or after August 8, 2001 or who does not have prescription, sample or medical records documenting any earlier discontinuation or nonrenewal of plaintiff's Baycol use, **both**

a. specific medical records contemporaneous with the time period of plaintiff's Baycol use that document the manifestation of either:

(i) rhabdomyolysis that led to the discontinuation of Baycol use; or

(ii) sudden onset, severe muscle pain that led to the discontinuation of Baycol use;

and

b. a Rule 26(a)(2) case-specific report from a medical expert attesting that plaintiff suffered injuries caused by plaintiff's use of Baycol.

C. **Service:** Like plaintiffs' initial discovery obligations, service shall be upon those persons listed in ¶ 4 of PTO 12.

D. **Form:** Plaintiffs must use the Plaintiff's Supplemental Discovery Disclosure attached as Exhibit A when serving the medical records or report required by this PTO.

II. Deadline for Compliance with this Order: With respect to those plaintiffs transferred to this Court prior to the date of entry of this PTO, a plaintiff's deadline to serve upon defendants materials required under Part I of this order will be governed by each plaintiff's District of Minnesota case number as follows:

01-1594 to 02-4433	April 20, 2004
02-4434 to 03-2581	June 10, 2004
03-2583 to 03-6427	August 3, 2004

With respect to all other plaintiffs, the deadline to serve upon defendants materials required under Part I of this order will be: (a) for cases originally filed outside this District and transferred by the JPML, 120 days from the date a certified copy of the applicable Transfer Order is entered in the MDL-1431 docket or (b) for cases originally filed in this District, 120 days from the date of filing.

III. Notice of Additional Discovery Obligation in Cases Transferred by JPML Order:

- A. For those cases that already have been transferred to the MDL by the date of entry of this PTO, the entry of this PTO will serve as notice of plaintiffs' additional obligations in Part I of this Order. Deadlines for compliance with these obligations are set forth in Part II.
- B. For those cases that have not yet been transferred to the MDL by the date of entry of this PTO, defendants will provide notice of plaintiffs' additional obligations under Part I of this order in the same letter by which defendants provide plaintiffs notice of their Initial Discovery Obligations pursuant to Part II of PTO 81.

IV. Notice of Overdue Additional Discovery: If defendants have not received the materials required under Part I of this order within 5 days of the applicable deadline from Part II of this PTO, defendants will send a Notice of Overdue Supplemental Discovery to plaintiff's counsel identifying the discovery overdue and stating that, unless plaintiff complies with this PTO, the case will be subject to dismissal. Defendants will provide such notice to plaintiff's counsel and the Plaintiffs' Steering Committee ["PSC"] using a format similar to Exhibit B. At the same time, defendants will also provide the PSC with a list of plaintiffs whose discovery is overdue, in a format similar to Exhibit C [the "Overdue Supplemental Discovery List"], so that the PSC may assist plaintiffs in complying with their discovery obligations.

V. Lists of Non-Compliant Plaintiffs and Sanction of Dismissal With Prejudice: Ten days after defendants provide the PSC with an Overdue Supplemental Discovery List, the PSC and defendants shall meet and confer to develop a stipulated list of those plaintiffs who have not complied with their discovery obligations. That list shall be submitted to the Court no later than fifteen days after provision of the Overdue Supplemental Discovery List. The Court will then issue an order, using a format similar to Exhibit D, providing that the listed plaintiffs shall have ten days within which to comply with their discovery obligations. The PSC will notify individual counsel for plaintiffs appearing on the Court's order. On the eleventh day following the entry of that order, the PSC and defendants shall again meet and confer, and thereafter shall submit to the Court stipulated orders – one to be used to dismiss with prejudice entire actions and another to dismiss with prejudice individual plaintiffs from multi-plaintiff actions – using formats similar to those in Exhibit E.

VI. Extension of Discovery Deadlines: Nothing in this PTO shall be interpreted as a restriction upon the ability of: (a) the parties to stipulate to an extension of discovery deadlines in a particular case; or (b) the plaintiff to move for an

extension of discovery deadlines in a particular case based on a showing of good cause.

- VII. Categorization of Claims:** The parties, in consultation with Special Master Haydock, shall cooperate to categorize the remaining claims based on the information provided in Plaintiff Fact Sheets and the Supplemental Discovery Disclosure required under this Order.
- A.** Within 30 days after the first wave of supplemental discovery becomes due and every 30 days thereafter, the PSC shall provide to defendants a list of those cases asserting documented claims for rhabdomyolysis. Within 14 days of receipt of such a list, defendants will advise plaintiffs on whether they agree as to the categorization of those claims. All cases that the parties agree assert documented claims for rhabdomyolysis will be referred to settlement counsel for prompt settlement negotiations and, if unsuccessful, for mandatory mediation under PTO 59.
 - B.** With respect to all other cases, within 45 days after the first wave of supplemental discovery becomes due, defendants and the PSC shall confer to determine a system and procedures for further categorizing claims to assist in the selection of an appropriate spectrum of cases for potential trial in this MDL.
- VIII. Supplementation of Discovery and Trial Program:** To assure that an adequate pool of non-rhabdomyolysis claims are available for potential trial in this MDL, PTOs 89 and 96 are supplemented as follows:
- A.** The Court, in consultation with the parties, shall identify all cases filed in the District of Minnesota by Minnesota residents prior to the entry of this order and shall designate those cases for discovery pursuant to the procedures established in PTO 89. The parties shall meet and confer with Special Master Roger Haydock to determine a schedule for management of these cases.
 - B.** A number of cases brought by plaintiffs who reside in the District of Minnesota have been filed in the Eastern District of Pennsylvania. The parties shall identify those cases filed in the Eastern District of Pennsylvania by plaintiffs who are Minnesota residents and are not asserting rhabdomyolysis claims. The Court, in consultation with the JPML and the Clerk of the Court for the Eastern District of Pennsylvania, will then determine a procedure for expedited remand of those cases, upon completion of supplemental discovery, to the Eastern District of Pennsylvania and transfer back to this District. Upon transfer of the cases back to this District, the parties shall meet and confer with Special Master Roger Haydock to determine a schedule for management of these cases.

With regard to all other cases, the parties reserve all arguments with regard to venue and forum non conveniens issues.

IX. Alternative Dispute Resolution: This Court shall determine the alternative dispute resolution mechanism to be used at an appropriate time. Neither party waives any position with respect to alternative dispute resolution mechanisms. The parties believe that the most appropriate time to recommend to the Court potential alternative dispute resolution mechanisms will be after the narrowing process, after the categorization of claims, and after several cases not asserting claims for rhabdomyolysis have been tried, subject to further Order of the Court.

Date:

The Honorable Michael J. Davis
United States District Court

EXHIBIT A

**IN RE: BAYCOL PRODUCTS LITIGATION
MDL No. 1431**

PLAINTIFF'S SUPPLEMENTAL DISCOVERY DISCLOSURE

Pursuant to PTO __, each Plaintiff must complete this Supplemental Discovery Disclosure. In completing this Discovery Disclosure, you are under oath and must provide information that is true and correct to the best of your knowledge. You may and should consult with your attorney if you have any questions regarding the completion of this form.

I. Case Information:

A. Plaintiff's Name: _____

B. Case Name: _____

C. D. Minn. Civil Action No: _____

D. Name, address and telephone number of principal attorney representing you:

Name

Firm

Street Address

City, State and Zip Code

Telephone Number

II. Period of Baycol Use: _____

III. Injuries Allegedly Caused by Use of Baycol: (check one)

1. Rhabdomyolysis ____
2. Sudden onset, severe muscle pain ____

III. Supplemental Discovery Disclosure:

Attached are:

A. Prescription, sample or medical records documenting plaintiff's use of Baycol

and

B. The following additional discovery materials:

(You must check either number 1 or 2, based on the facts of your case, and complete the requirements under that section.)

() **1.** If the plaintiff has prescription, sample or medical records documenting plaintiff's discontinuation or nonrenewal of plaintiff's Baycol use prior to August 8, 2001, attach **either** (check one):

() the specific medical records contemporaneous with the time period of plaintiff's Baycol use that document the manifestation of either -

(i) rhabdomyolysis that led to the discontinuation of Baycol use; or

(ii) sudden onset, severe muscle pain that led to a discontinuation of Baycol use;

or

() a Rule 26(a)(2) case-specific report from a medical expert attesting that plaintiff suffered injuries caused by plaintiff's use of Baycol.

() **2.** If the plaintiff discontinued Baycol on or after August 8, 2001 or does not have prescription, sample or medical records documenting any earlier discontinuation or nonrenewal of plaintiff's Baycol use, attach **both** (you must check both):

() the specific medical records contemporaneous with the time period of plaintiff's Baycol use that document the manifestation of either:

(i) rhabdomyolysis that led to the discontinuance of Baycol use; or

(ii) onset, severe muscle pain that led to a discontinuation of Baycol use;

and

- () a Rule 26(a)(2) case-specific report from a medical expert attesting that plaintiff suffered injuries caused by plaintiff's use of Baycol.

IV. Declaration

I declare under penalty of perjury that all of the information provided in this Plaintiff's Supplemental Discovery Disclosure is true and correct to the best of my knowledge, information and belief.

Dated

Signature

EXHIBIT B

**NOTICE OF OVERDUE SUPPLEMENTAL DISCOVERY
FAILURE TO RESPOND WILL RESULT IN DISMISSAL OF YOUR CASE**

Re: [Case Name], MDL No. _____
Supplemental Discovery Disclosure

Dear [plaintiff's counsel]:

Your discovery is overdue in this lawsuit.

Pursuant to MDL PTO No. __, Plaintiff's Supplemental Discovery Disclosure was due to be served by _____. To date we have not received it.

Please provide us with the completed Supplemental Discovery Disclosure immediately. **If we do not receive it, your case will be dismissed with prejudice pursuant to PTO No. __, § V.**

Because of the volume of cases in this MDL, defendants are not routinely agreeing to extensions of discovery deadlines. If you believe that your particular case presents extraordinary circumstances warranting an extension, you must request such an extension in a letter addressed to me that explains the extraordinary circumstances that you believe warrant an extension. Defendants will respond promptly.

Thank you for your prompt attention and cooperation

Very truly yours,

James W. Mizgala

cc: Charles S. Zimmerman
Richard A. Lockridge
Robert K. Shelquist
Wendy R. Fleishman
Jean M. Geoppinger
Fred T. Magaziner
Kristine M. Weikel

EXHIBIT C

OVERDUE SUPPLEMENTAL DISCOVERY LIST

No.	Plaintiff Name	MDL Number	Plaintiff Counsel Name/Address
1.	Plaintiff's Name	03-XXXX	Attorney Name Address
2.	Plaintiff's Name	03-XXXX	City, State Zip Code Telephone Number Fax Number
3.	Plaintiff's Name	03-XXXX	Attorney Name Address
4.	Plaintiff's Name	03-XXXX	City, State Zip Code Telephone Number Fax Number

EXHIBIT D

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

IN RE BAYCOL PRODUCTS LITIGATION

MDL No. 1431
(MJD/JGL)

This Documents Relates to All Actions

ORDER

JONATHAN LEBEDOFF, Chief United States Magistrate Judge

The above-entitled matter is before the undersigned Chief Magistrate Judge of District Court pursuant to Pretrial Order __ regarding Plaintiffs who have not submitted Supplemental Discovery Disclosures. 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 __ (“PTO __”) governs the Supplemental Discovery Disclosure requirements in this case; the requirements were initially stipulated between Defendants and the Plaintiffs’ Steering Committee (“PSC”). Pursuant to the parties’ agreement and Court Order, Plaintiffs with District of Minnesota case numbers 01-#### to 02-#### were required to serve upon Defendants completed Supplemental Discovery Disclosures by April 20, 2004. PTO __ requires the PSC and Defendants to submit to the Court a stipulated list of Plaintiffs whose Supplemental Discovery Disclosure is still delinquent within 20 days of this deadline, and PTO __ further warns that the Court will dismiss such cases with prejudice.

Pursuant to PTO __, the parties have submitted a list of Plaintiffs who have not complied with their Supplemental Discovery obligation as of _____, 2004. These Plaintiffs are listed in Exhibit A attached to this Order. The purpose of this Order is to warn those Plaintiffs that the District Court will dismiss with prejudice the cases, including all personal injury, economic and other claims, of any Plaintiffs listed on Exhibit A from whom defendants have not received the required discovery pursuant to PTO __ by _____, 2004.

Based on the foregoing, and on the files, records, and proceedings therein, **IT IS HEREBY ORDERED** that the parties will stipulate to a proposed order naming those Plaintiffs on the attached list from whom Defendants have not received the required discovery by _____, 2004, 5:00 p.m., Central Standard Time, in accordance with PTO __, ¶ VI. The proposed order will be submitted to the Court, which will then dismiss with prejudice the cases of the listed Plaintiffs.

Dated:

JONATHAN LEBEDOFF
Chief United States Magistrate Judge

EXHIBIT E

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

<i>In re BAYCOL PRODUCTS LITIGATION</i>	:	MDL No. 1431
	:	(MDL/JGL)
This Document Relates to:	:	
	:	
	:	
<i>Plaintiff A v. Bayer Corp., et al.</i>	:	Case No. 03-XXXX
<i>Plaintiff B v. Bayer Corp., et al.</i>	:	Case No. 03-XXXX
<i>Plaintiff C v. Bayer Corp., et al.</i>	:	Case No. 03-XXXX

ORDER

Based on the stipulated submissions pursuant to PTO __ and this Court's Order of _____, 200_, and on the files, records, and proceedings therein, **IT IS HEREBY ORDERED:**

The above-captioned cases are **DISMISSED WITH PREJUDICE.**

Dated:

The Honorable Michael J. Davis
United States District Court

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

<i>In re BAYCOL PRODUCTS LITIGATION</i>	:	MDL No. 1431
	:	(MDL/JGL)
This Document Relates to:	:	
	:	
<i>Lead Plaintiff, et al. v. Bayer Corp., et al.</i>	:	Case No. 03-XXXX

ORDER

Based on the stipulated submissions pursuant to PTO __ and this Court's Order of _____, 200_, and on the files, records, and proceedings therein, **IT IS HEREBY ORDERED:**

The claims of Plaintiff A, Plaintiff B, and Plaintiff C are **DISMISSED WITH PREJUDICE** from the above-captioned case.

Dated:

The Honorable Michael J. Davis
United States District Court