

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

ANTONIA TOLBERT, *et al.*,)
)
Plaintiffs,)

vs.)

Civil Action Number
01-C-1407-S

MONSANTO COMPANY; AND PHARMACIA)
CORPORATION;)
)
Defendants.)

GERALDINE OLIVER,)
)
Plaintiff,)

vs.)

Civil Action Number
02-C-0836-S

MONSANTO COMPANY; AND PHARMACIA)
CORPORATION;)
)
Defendants.)

**ORDER APPROVING CLAIMANT PERSONAL INJURY PAYMENT PROGRAM FOR
DECEASED ADULT CLAIMANTS WITHOUT A PCB BLOOD TEST**

Before this Court is a report and recommendation by the Claims Administrator concerning how to compensate deceased adult claimants not having a PCB blood test for personal injury.

On June 14, 2004 the Court approved a Claimant Payment Program in this matter. The Program required that this issue be resolved by the Claims Administrator. He reports that, based upon available data, it is very likely that these deceased claimants would have scored positive for PCBs had they been tested. It therefore appears to be appropriate to compensate these deceased claimants for their Medical Interview score. These deceased claimants will also be compensated for the years they lived in the Area of Concern at the same rate as living adult claimants.

However, any additional payments to deceased claimants without a PCB score are problematic. The Claims Administrator and the Court have no way of knowing whether an individual deceased claimant not tested for PCBs would have provided a PCB score above background levels so as to justify a 50% enhancement of the Medical Interview score for payment purposes. In addition, we do not know what each individual deceased claimant's PCB score would have been.

After reviewing the Claims Administrator's report on this matter and such other matters and things as the Court deems appropriate, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. The estates or heirs of deceased claimants without a PCB blood test will be compensated for the number of years that the deceased claimant lived in the Area of Concern at the same rate being paid to living claimants. In addition, deceased claimants without a PCB blood test shall receive compensation for their Medical Interview score, without the score being enhanced by 50% as done for living adult claimants scoring above PCB background levels. Deceased claimants without a PCB blood test score shall receive no further compensation for personal injury.

2. Provided that the Claims Administrator, his employees, co-workers or staff, act strictly in accordance with the provisions of this Order, they are hereby granted judicial immunity and are protected and immune from liability in connection with paying such claimant benefits to a claimant.

Done this 29th day of November, 2004



U.W. Clemon
Chief United States District Judge