

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

General Court Regulation No. 2012-01
In re: Mass Tort and Asbestos Programs

Background: In an effort to consider and address a number of concerns and criticisms of this Court's Mass Tort Program and the Asbestos Program in particular, the Coordinating Judge of the Complex Litigation Center and the Administrative Judge of the Trial Division reviewed the Mass Tort protocols and subsequently issued a Notice to the Bar on November 28, 2011. This Notice confirmed the Court's decision to end reverse bifurcation in all pharmaceutical cases, established a two month comment period whereby counsel were invited to submit comments concerning the utilization of consolidation and reverse bifurcation trial methodologies and further requested comment on addressing claims of punitive damages.

During the two month comment period spanning December and the month of January, 2012, this Court independently examined its docket of asbestos claims and reviewed certain relevant and pertinent information upon which it now bases the implementation of substantial changes and revisions to the conduct of its Mass Tort Program and in particular the trial of asbestos cases (asbestos cases constitute a large portion of the inventory of the Mass Tort Program).

The asbestos case inventory as of February 3, 2012 numbers 770 cases. Since 2006 when the asbestos inventory numbered 589 cases, there has been a pronounced upward trend in filings in each successive year. Although the disposition rate remained at an average of 244 cases per year over this six year period, the Court's disposition rate has not kept pace with filings and a significant backlog has developed and will continue to develop if measures are not implemented to ameliorate the trend.

In January and again in March, 2009, certain Court leadership invited the filing of asbestos cases from other jurisdictions and did so apparently unaware that, at that time, this Court's asbestos program was only meeting the ABA's suggested standards for resolving these cases in 24-25 months in 42% of the cases filed. During a five year period from 2007 through 2011, 82.2% of the cases were disposed of within 31-36 months, leaving almost an entire fifth of the inventory undisposed after three years.

Administrators provided online "Age of Pending Cases" and "Disposed Age Analysis" reports, however, until now no corrective action was taken internally to address the growing backlog of asbestos cases.

From 2001 to 2008, an average of approximately one-third of the filings were from outside the Commonwealth. A dramatic increase in these filings occurred after this Court's leadership invited claims from other jurisdictions. In 2009, when published comments were offered encouraging the filing of claims in Philadelphia, out-of-state filings soared to 41% and in 2011 reached an astonishing 47%.

Preliminary Conclusion: With regard to other Mass Tort Programs, the Court failed to meet ABA suggested standards for the disposition of cases in the HRT, Paxil, Beryllium, Phen-Fen and Vioxx matters, but achieved 100% compliance with the Avandia, Trasylol, Digitek, Firefighters' Hearing Loss, Gadolinium and Anti-Convulsant Drugs programs. The Asbestos Program was by far the one Mass Tort Program most out of compliance with the standards. Significant results were achieved in HRT, Paxil and pharmaceutical mass torts.

With regard to asbestos cases, this Court has invited out-of-state filings, has failed to meet the ABA's suggested standards in over half the filings and may not at the present time meet the needs of the citizens of the Commonwealth for the prompt and fair resolution of these claims, while at the same time addressing the claims of non-Pennsylvania residents. Therefore, in the interests of the orderly administration of justice, this Court is required to thoughtfully review the present methodologies employed in the trial of mass tort cases and, in particular, the asbestos inventory.

During the comment period, 32 comments were submitted by a broad cross-section of the Asbestos Bar and the Court expresses its sincere and grateful appreciation for all recommendations received. These comments were instrumental in formulating revisions of this Court's Mass Tort Program and have facilitated this Court's examination of various methodologies allowing for the disposition of a vast number of cases against the ultimate imperative of providing a fair and prompt resolution of each and every claim. Furthermore, the Court cautions out-of-state plaintiffs to seek other venues to file their claims until and unless this Court's revisions have successfully resolved the backlog of outstanding claims and achieved compliance with the ABA suggested standards.

ORDER

AND NOW, this 15th day of February, 2012, it is hereby ORDERED, ADJUDGED AND DECREED, for all of the reasons expressed herein above and considering the thoughtful recommendations of many members of the Bar engaged in the trial of mass tort cases in Philadelphia and elsewhere, that the following protocols are hereby adopted for the prompt, efficient and orderly administration of justice in the disposition of all mass tort and asbestos claims with the understanding that the Court will monitor the implementation of these revisions over the coming year and make revisions as necessary:

1. There shall be no reverse bifurcation of any mass tort case, including asbestos, unless agreed upon by all counsel involved.
2. Consolidation of mass tort cases shall not occur absent an agreement of all parties, except in the asbestos program in accordance with the protocols set forth herein below.
3. All punitive damage claims in mass tort claims shall be deferred.
4. Pro hoc vice counsel shall be limited to no more than two (2) trials per year, but otherwise will not be limited on pre-trial appearances. The Court

encourages non-Pennsylvania counsel to pass its Bar Examination and thereby become familiar with Pennsylvania law, rules and procedures.

5. Unless otherwise agreed by defense counsel or upon showing of exigent circumstances, all discovery shall take place in Philadelphia.
6. Except for those cases already scheduled for trial through February 29, 2012, asbestos cases thereafter shall be grouped in groups of a minimum of 8 and a maximum of 10 and counsel shall be required to propose cases for consolidation considering the following criteria:
 - a. Same law. Cases that involve application of the law of different states will not be tried together;
 - b. Same disease. The disease category for each case in a group must be identical. The disease categories of cases to be grouped for trial are mesotheliomas, lung cancers, other cancers and non-malignancy cases;
 - c. Same plaintiff's law firm. Primary trial counsel for all cases in each group will be from a single plaintiff firm. Cases where Philadelphia plaintiff firms serve as local counsel for out-of-state counsel will not be grouped with cases from the local firm;
 - d. Fair Share Act cases will not be consolidated with non-Fair Share Act cases;
 - e. Pleural mesothelioma is a disease that is distinct from mesotheliomas originating in other parts of the body, and will not be tried on a consolidated basis with non-pleural mesothelioma cases and not necessarily tried on a consolidated basis. Non-pleural mesothelioma cases will be further classified for trial, so that non-pleural mesothelioma cases allegedly caused by occupational exposure will not be tried on a consolidated basis with non-pleural mesothelioma cases allegedly caused by para-occupational (bystander) exposure;
 - f. And such other factors as determined appropriate in weighing whether all parties to the litigation can receive a prompt and just trial. The Court's present backlog of asbestos cases shall not be an overriding factor in the consolidation determination.
7. Any grouping of cases less than 8-10 in number shall not receive a trial date until a group is formed of 8-10 cases. A maximum of 3 of these 8-10 cases may be tried, with the other 5-7 cases either resolving through settlement or returned to the Coordinating Judge for regrouping and relisting for trial.
8. Mediation: Once grouped, assigned a trial date and after Motions for Summary Judgment have been decided by the Court, counsel are urged to seek mediation from a special panel of former judges named herein below. Either side may request mediation. The mediator selected by the parties shall

advise the Court whether the plaintiff firm's participation was in good faith or not. In the discretion of the Coordinating Judge, any plaintiff firm's failure to proceed in good faith in mediation may constitute just cause to remove that group of cases from the trial list and any defendant's failure to proceed in good faith may result in an increase of the maximum 3 cases consolidated for trial. Since no more than 3 cases may be consolidated and proceed to trial in any group of 8-10, the remaining 5-7 cases should be resolved and settled. Otherwise, those unresolved cases shall be relisted for trial. All parties will share the expense of mediation.

9. The panel of former judges invited to participate in the special mediation of mass tort cases are the following:

1. Jane Cutler Greenspan, Judge
JAMS Arbitration, Mediation and ADR Services
1717 Arch Street
Suite 4010 - Bell Atlantic Tower
Philadelphia, PA 19103
(215) 246-9494
2. G. Craig Lord, Judge
Blank Rome LLP
One Logan Square
130 North 18th Street
Philadelphia, PA 19103-6998
(215) 569-5496
3. James R. Melinson, Judge
JAMS Arbitration, Mediation and ADR Services
1717 Arch Street
Suite 4010 - Bell Atlantic Tower
Philadelphia, PA 19103
(215) 246-9494
4. Russell Nigro, Judge
210 W. Washington Square
Philadelphia, PA 19106
(215) 287-5866
5. Diane M. Welsh, Judge
JAMS Arbitration, Mediation and ADR Services
1717 Arch Street
Suite 4010 - Bell Atlantic Tower
Philadelphia, PA 19103
(215) 246-9494

10. The plaintiff firm shall designate which of the cases will proceed to trial. The defendants have the right to object to the cases selected to be tried together.
11. Immediately prior to trial of up to 3 consolidated asbestos cases, the assigned trial judge shall independently determine whether the cases will be tried in a consolidated manner based on the criteria herein above set forth and any other factors deemed relevant to the issue of consolidation and a fair trial.
12. Expediting of Cases. There shall be no expediting of cases based on exigent medical or financial reasons until the backlog of pending cases has been resolved, unless otherwise agreed by a majority of the defendants. When this Program achieves 80% of all asbestos cases resolved in 24-25 months, advanced listings based on exigent medical circumstances will be considered for plaintiffs with Pennsylvania exposure only.
13. Effective May 1, 2012, the Honorable Arnold New, presently assigned to the Commerce Program, will be reassigned as a Co-Coordinating Judge of the Complex Litigation Center and will join the Honorable Sandra Mazer Moss in administrating all programs in the Complex Litigation Center. Judge Moss will assume senior status as of December 31, 2012 at which time Judge New will thereupon serve as the sole Coordinating Judge of the Complex Litigation Center and its Mass Tort Program.
14. Effective May 1, 2012, the Honorable Gary Glazer will be reassigned to the Commerce Program and will assume Judge New's commerce inventory. Judge Glazer's assignment to the Commerce Program shall not interfere or impair in any fashion his continued services to the Supreme Court as Administrative Judge of Traffic Court.
15. Throughout this year, the Court will entertain suggestions to improve these protocols. During the month of November, 2012, the Court will once again invite and consider comments from interested members of the Bar addressing these protocols and the necessity for any changes and/or modifications.

BY THE COURT:

HONORABLE JOHN W. HERRON
Administrative Judge, Trial Division