

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

General Court Regulation No. 2013-01

Notice to the Mass Tort Bar
Amended Protocols and Year-End Report

This Court adopted transitional working rules (“protocols”) on February 15, 2012 (see General Court Regulation No. 2012-01) and amended on June 18, 2012 (see General Court Regulation No. 2012-03) to address concerns that the mass tort inventory was experiencing explosive growth, i.e.:

1. In the last six (6) years, the pending inventory rose from 2,542 cases to 5,302 cases, or a 52% increase.
2. While meeting the ABA standards for time to disposition in 90% of all major jury cases, only 37.5% of the mass tort cases were disposed in accordance with these standards. (These standards are unrealistically short for mass torts.)
3. The 2011 year-end inventory of 6,174 cases burdened FJD resources and required prudent management and court oversight to assure meeting scheduled events and trial dates.

Based on the results from January through December, 2012 terms, the Court reports the following:

1. There were 816 mass tort filings for 2012. This is a 70% reduction from the 2,690 cases filed in 2011 and a return to pre-2009 filing levels.
2. There has been a slight reduction in the total out of state filings. In percentage terms, pharmaceutical cases have been reduced from 88% to 86%, and in asbestos cases from 47% to 44%.
3. There has been heightened settlement activity. Mediation activity in both asbestos and pharmaceutical cases has increased notably.
4. Discovery disputes have greatly diminished as a result of adopting separate discovery rules written by the Asbestos Bar and the Pharmaceutical Bar.
5. Since January 1, 2012, two additional judges have been assigned to the Program in an effort to reduce the swelling inventory.
6. The overall inventory of mass tort cases has been reduced by 14% to 5,302 cases as of December 31, 2012.
7. In 2012, only six (6) mass tort cases were tried to jury verdict with two (2) resulting in plaintiff verdicts and four (4) in defense verdicts. These results can be compared with the Major Jury Program in which 148 cases were tried

to jury verdict with 49% resulting in plaintiff verdicts and 51% in defense verdicts.

Accordingly, the Court now republishes the protocols as modified over the past year.

ORDER

AND NOW, this 7th day of February, 2013, it is hereby ORDERED, ADJUDGED AND DECREED that:

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 asbestos claims shall be deferred. Punitive damage claims may be litigated in pharmaceutical mass tort cases provided that the Coordinating Judge, following appropriate motion practice by defense counsel at least 60 days in advance of trial, rules that there are sufficient requisite proofs to support the claim going to trial.
4. Pro hac vice counsel shall be limited to no more than four (4) 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. Discovery Rules: The following discovery rules were proposed to the Court by the Asbestos Bar and the Pharmaceutical Bar and have been adopted by the Mass Tort Program.

Asbestos Bar Discovery Rule

Unless otherwise agreed by opposing counsel or upon showing of exigent circumstances, all discovery shall take place in Philadelphia; however, a party may notice a deposition to take place at a location outside of Philadelphia so long as that party provides video conferencing, or telephone conferencing if video conferencing is impracticable, at no expense to opposing parties.

A notice of deposition shall be served on all parties at least 7 days prior to the scheduled deposition date, unless court approval is obtained for a shorter period of time.

Pharmaceutical Bar Discovery Rule

All plaintiffs shall be made available for deposition in Philadelphia unless otherwise agreed by all parties or upon motion and for good cause shown.

6. Consolidation of Asbestos Cases: Asbestos cases 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;
 - f. 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;
 - g. 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. Phyllis W. Beck, Judge
Independence Foundation
Offices at the Bellevue
200 South Broad Street, Suite 1101
Philadelphia, PA 19102
2. Jane Cutler Greenspan, Justice
JAMS Arbitration, Mediation and ADR Services
1717 Arch Street
Suite 4010 - Bell Atlantic Tower
Philadelphia, PA 19103
(215) 246-9494
3. G. Craig Lord, Judge
Blank Rome LLP
One Logan Square
130 North 18th Street
Philadelphia, PA 19103-6998
(215) 569-5496
4. James R. Melinson, Judge
JAMS Arbitration, Mediation and ADR Services
1717 Arch Street
Suite 4010 - Bell Atlantic Tower
Philadelphia, PA 19103
(215) 246-9494
5. Russell Nigro, Justice
210 W. Washington Square
Philadelphia, PA 19106
(215) 287-5866
6. 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 Court shall designate which of the cases will proceed to trial. The parties may object to the cases selected to be tried together and request the Court to reconsider.
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. The Coordinating Judge will accept and rule upon Petitions for advanced listings premised upon a medically verifiable prognosis of imminent death.

This General Court Regulation is promulgated in accordance with Pa.R.C.P. No. 239 and the April 11, 1986 Order of the Supreme Court of Pennsylvania, Eastern District, No. 55 Judicial Administration. The original General Court Regulation shall be filed with the Prothonotary in a Docket maintained for General Court Regulations issued by the Administrative Judge of the Trial Division, Court of Common Pleas of Philadelphia County, and shall be submitted to the *Pennsylvania Bulletin* for publication. Copies of the General Court Regulation shall be submitted to the Administrative Office of Pennsylvania Courts, the Civil Procedural Rules Committee, American Lawyer Media, The Legal Intelligencer, Jenkins Memorial Law Library, and the Law Library for the First Judicial District of Pennsylvania, and shall be posted on the website of the First Judicial District of Pennsylvania: <http://courts.phila.gov/regs>.

BY THE COURT:

/s/ John W. Herron _____

HONORABLE JOHN W. HERRON
Administrative Judge, Trial Division