

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

**General Court Regulation No. 2012-03**

*Notice to the Mass Tort Bar*  
*Amended Protocols and 5 Month Interim Report*

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

1. In the last five (5) years, the inventory rose from 2,542 cases to 6,174 (12/31/11) cases or a 143% increase (3,632 new filings).
2. While meeting ABA standards for time to disposition in 90% of all major jury cases, only 36% 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 burdens FJD resources and requires prudent management and court oversight to assure meeting scheduled events and trial dates.

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

1. There were 444 filings during January-May terms. The total projected filings in mass tort should total 1,068 cases for the 2012 year. This is a 60% reduction from the 2,690 cases filed in 2011 and a return to pre-2009 filing levels.
2. There has been a substantial reduction in the total out of state filings. In percentage terms, pharmaceutical cases have been reduced from 88% to 85%, and in asbestos cases from 47% to 46%.
3. Although the protocols suggest deferral of punitive damage claims, the rule has not been applied to a single case as no case involving a punitive damage claim has proceeded to trial.
4. There has been heightened settlement activity. Mediation activity in both asbestos and pharmaceutical cases has increased notably.
5. Discovery disputes have greatly diminished as a result of adopting separate discovery rules written by the Asbestos Bar and the Pharmaceutical Bar.
6. An additional judge will be assigned to the Mass Tort Program this fall (an increase of two judges since January 1, 2012).

Accordingly, the Court now revises the protocols: (a) to allow punitive damage claims to proceed, subject to decisions of the Coordinating Judges; (b) to incorporate the discovery rules

written by the Asbestos and Pharmaceutical Bars; (c) to relax the rules on pro hoc vice counsel by doubling the number of permissible trials; (d) to resume expedited listings for plaintiffs who have a medically verifiable prognosis of imminent death; and (e) to encourage the Pharmaceutical Bar to utilize voluntary mediation which has proven successful in the Asbestos Program.

## ORDER

AND NOW, this 18<sup>th</sup> day of June, 2012, the comment period having expired, it is hereby ORDERED, ADJUDGED AND DECREED that:

### **[Bracketed words deleted]**

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. **AMENDED.** ~~[All punitive damage claims in mass tort claims shall be deferred.]~~ The Court continues to review recommendations concerning punitive damages and will likely further amend this rule. Until a final version is established, the following procedure is adopted: Punitive damage claims may be litigated in pharmaceutical mass tort cases provided that the Coordinating Judges, following appropriate motion practice by defense counsel at least 60 days in advance of trial, rule that there are sufficient requisite proofs to support the claim going to trial.
4. **AMENDED.** Pro hoc vice counsel shall be limited to no more than four (4) ~~[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. **AMENDED.** ~~[Unless otherwise agreed by defense counsel or upon showing of exigent circumstances, all discovery shall take place in Philadelphia.]~~

### 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. 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 Judges 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 Judges, 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. **AMENDED.** [~~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.~~] The Coordinating Judges will now accept and rule upon Petitions for advanced listings premised upon a medically verifiable prognosis of imminent death.
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.

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:

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HONORABLE JOHN W. HERRON  
Administrative Judge, Trial Division