

MASS TORT ALERT

PHILADELPHIA PHARMACEUTICAL MASS TORT PRACTICE

Beginning last fall, the Philadelphia Court of Common Pleas significantly altered the manner in which it administers mass tort cases, including asbestos and pharmaceutical mass torts.

First, court administration was substantially reorganized. The Pennsylvania Supreme Court appointed a new Administrative Judge who, in turn, appointed both a new administrator for all civil division matters and a new co-chair of the Complex Litigation Center. That co-chair is slated to take complete control of the Complex Litigation Center at the end of this year.

Second, the court issued General Court Regulation 2012-1 in February which dramatically changed the manner in which mass tort cases are handled in Philadelphia. The Regulation specified that pharmaceutical mass tort cases would no longer be tried in a consolidated, reverse-bifurcated fashion as had been the custom, and changed the way in which asbestos cases would be consolidated. A new mediation program was established for asbestos cases. The Regulation also capped the number of pro hac vice admissions available to non-Pennsylvania lawyers, and limited to Philadelphia County the venue for discovery in pharmaceutical and asbestos cases. The Regulation also “deferred” all punitive damages claims in pharmaceutical mass tort cases.

The genesis of these changes was the increasing numbers of non-Pennsylvania residents filing cases in the Philadelphia Complex Litigation Center since 2009. As the Regulation made clear, the increase in out-of-state filers added dramatically to the court’s caseload. The court expressed concern that the increased caseload would heighten its administrative burdens, and slow the disposition of cases. In the Regulation, the court made it clear that while the Philadelphia Complex Litigation Center was a model of court administration, it was not intended to compete with other states for mass tort cases properly brought elsewhere.

After the adoption of General Court Regulation 2012-1, the Court received a number of letters from the plaintiffs’ bar raising issues with some of its provisions and responses to those letters from defense counsel. As a result, the Court created an “Implementation Committee” composed of plaintiff and defense lawyers in both asbestos and pharmaceutical cases to suggest proposed changes to the regulation. The Implementation Committee, by agreement, proposed changes to the rule regarding venue of discovery. The blanket requirement that all discovery take place in Philadelphia was modified for pharmaceutical and asbestos cases. For drug cases, the rule was changed to require that all plaintiffs be made available for deposition in Philadelphia absent agreement or good cause shown. For asbestos cases, the rule was changed, in essence, to provide that a party may notice a deposition for a location outside Philadelphia as long as they provide video conferencing at no cost to opposing parties.

Deferral of punitive damages has long been the policy in asbestos cases, but its extension to pharmaceutical cases engendered opposition from the plaintiffs’ bar. The Implementation Committee could not reach agreement concerning deferral of punitive damages in pharmaceutical cases, and reported that lack of agreement to the Court. As a result, the Court requested formal comments from the bar and public concerning this portion of Regulation 2012-1, and in response received a detailed proposal for procedural changes to the trial of punitive damage claims from defense counsel, as well as a number of comments from the plaintiff bar and business interests.

MASS TORT ALERT

On June 18, 2012, the court issued General Court Regulation 2012-3 which incorporated a number of changes to Regulation 2012-1, including the discovery rules discussed above. The new Regulation also adopted a revised rule on punitive damages in pharmaceutical cases:

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.

Regulation 2012-3 also reported that there had been a decrease in court filings and a decrease in out-of-state filings since the promulgation of Regulation 2012-1.

Time will tell whether the decrease in filings represents a real trend or is merely a transitory change. We will also need to see how the punitive damage rule is applied in practice. The revised protocol on punitive damages leaves many questions concerning procedure unanswered. Moreover, the Court's stated desire to continue the dialog on punitive damages in pharmaceutical cases means that this issue certainly has not been resolved.

This Alert is intended to keep readers current on matters affecting mass tort, and is not intended to be legal advice. If you have any questions, please contact Albert Bixler at 215.851.8412, or any other attorney with whom you have been working.

©Eckert Seamans Cherin & Mellott, LLC, 2012, all rights reserved.