

Case Management Tools: The Importance of Master Dockets When Monitoring Your Mass Tort Cases

At its core, case management is about controlling the docket. As such, the Judge assigned to each case has broad discretion to usher the case through the judicial system in the manner they prefer. Since the mid-1990s, Judges were concerned about cost and delay in their dockets, so they moved to an active case management approach.¹ However, the “active” label could more appropriately be considered “aggressive” in some scenarios.

Now at the crux of this article, is a discussion on how aggressive case management tools affect mass tort claims. “Mass torts occur when the conduct of one or more tortfeasors causes a group injury where the individual tort claims within the group have some common factual basis.”² Unlike class-action lawsuits, each person has a filed case in court, typically in a federal court multi-district litigation (MDL) or a consolidated state court. For this reason, there are hundreds or thousands of individual cases making plaintiff lawyers vulnerable to aggressive case management.

Monitoring Master Dockets

In your typical state court, single event civil case, the judge sets a case management order that applies to your individual case and you are served with a copy of the order whether electronic or by regular mail. The same goes for subsequent filings that affect your case. However, increasingly in mass tort cases, almost all filings and orders appear on the master docket and apply to all or a subset of cases. They are not filed in each individual case. How these filings effect your individual case are not always apparent and it is necessary to read virtually every document filed to determine the applicability. This can result in spending several hours each day reading Case Management/Electronic Case Files’ notices to determine if they are relevant to your clients. This is true whether you represent one client in an MDL or thousands across several MDLs. Failure to locate your client or law firm on one of these bulk filings can have an irreversible effect on your case.

As obvious as it may seem, it is necessary to have multiple attorneys and paralegals on the CMECF service list so that no important filings are overlooked, and all due dates are calendared properly. Equally important is immediately adding new attorneys to the service list and removing old attorneys that were taken off a project or are no longer with the firm. It is extremely important because failing to monitor the master docket for just one day can result in overlooking a relevant filing.

Subsequent Discovery Obligations

Essentially all MDL cases start with an order that establishes an abbreviated discovery protocol for plaintiffs. Commonly known as Plaintiff Fact Sheets (PFS), Plaintiff Profile Sheets

¹ . Steven S. Gensler, *Judicial Case Management: Caught in The Crossfire*, 60 DUKE L.J. 669, 679 (2010).

² Roger H. Trangsrud, *Joinder Alternatives in Mass Tort Litigation*, 70 CORNELL L. REV. 779, 780 (1985).

(PPS), or Plaintiff Profile Forms (PPF), these interrogatories range from a few pages to 50 plus pages. Once responses are served to defendants, it can be months or years before there are any obligations required of plaintiffs. After this stagnant time period, a census form or an additional short discovery document is typically due to defendants to update the lead attorneys and the court of what types of cases make up the MDL. Included in the update may be a short summary of what updates each client has had, whether its further injuries or additional treatment. At this point, even if everything was completed pursuant to the previous court orders and federal rules, failure to complete this additional case census document can result in dismissal of your case. Also, unlike the PPF/PPS process, these required census documents may not require a meet and confer component where the defendant provides notice that a document is delinquent/deficient and provides an opportunity to cure.

During the fall of 2018, in MDL No. 2570 *IN RE: Cook Medical, Inc., IVC Filters Marketing, Sales Practices and Products Liability Litigation*, the judge required each client to submit a case categorization form to classify the cases and submit supporting records. While each categorization form and annotated record production is not an overly burdensome task, failure to monitor the multitude of master docket filings and identify the requirements for each plaintiff is detrimental. As expected, plaintiffs can face a motion to dismiss for failing to follow the court order.

The End of Direct Filing and Start of Remand

Most MDL cases last for years and consist of case specific discovery, discovery relevant to all cases, a pool of bellwether case workup, and bellwether trials. After years of work and trials, these cases do not always end in a global settlement agreement covering all cases in the litigation. In that situation, firms have to access the option of an inventory settlement, if adequate to the clients and available, or face remand back to the home court.

In MDL No. 2244 *IN RE: DePuy Orthopaedics, Inc., Pinnacle Hip Implant Products Liability Litigation*, any cases that have not been involved in settlement discussions with defendants are expected to be remanded, in the near future, after years of bellwether trials and no global settlement being reached.

In MDL No. 2641 *IN RE: Bard IVC Filters Products Liability Litigation*, the judge entered an order that ended direct filing and the court will begin remanding cases later this year if they are not on a settlement track with defendants. Similar to the Pinnacle MDL, this case had bellwether trials over the course of several years and no global settlement was reached.

While plaintiffs' lawyers certainly want their clients to reach a favorable outcome timely, they do not want clients faced with a case management system that can clear their case from the docket. With increasing docket sizes in mass tort cases, it is imperative that a prudent attorney

monitor the master docket and read all filings. Failure to scour all pleadings, motions, and orders can put a plaintiff attorney in an undesirable situation.