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Baltimore City Circuit Court Rejects Attempt to Consolidate Asbestos Cases

Order refusing to consolidate more than 13,000 non-mesothelioma cases continues a U.S.-wide trend of courts moving away from mass trial consolidations in asbestos cases.

On March 5, the Circuit Court for Baltimore City—a court responsible for one of the largest asbestos dockets in the United States—rejected a proposal by certain prominent asbestos plaintiffs' firms to consolidate more than 13,000 non-mesothelioma cases into a three-phase trial process.[1] The asbestos plaintiffs claimed that the asbestos docket in Baltimore City had reached a "crisis" and proposed that a consolidation approach that had been used twice in the early 1990s should be applied again.

The plaintiffs' proposed plan, called "Consolidation III," would have resulted in the asbestos "backlog" docket being tried in three phases. In Phase I, plaintiffs' counsel would select 15 "illustrative" claimants from among the thousands of suits to be tried in full before a single jury that would reach a verdict as to a set of undefined asbestos defendants. In Phase II, the jury would consider the amount of punitive damages to award in each of the "illustrative" claimants' cases. Phase III would consist of a series of "mini trials," with separate juries resolving individual issues for each of the remaining thousands of plaintiffs, including issues such as medical causation, damages, and contribution claims. The proposal, if it had been adopted, would have reversed significant and widely lauded reforms of mass tort asbestos litigation that have been adopted in Maryland as well as elsewhere, chiefly the use of an inactive docket with deferred trials for unimpaired claimants who have not made a threshold showing of asbestos-related impairment.

In a 43-page opinion, Judge John M. Glynn rejected the Consolidation III proposal, finding, among other things, that the plan was "entirely too vague and unsupported to inspire confidence" and that the proponents had "failed to proffer meaningful detail about . . . how consolidation would result in better outcomes than the present system, . . . how the scheme would carry its own weight if mass settlements fail to occur, or how the Court would be justified in amassing and diverting resources from the current asbestos trial schedule and other dockets."[2] Judge Glynn found that "consolidation would slow down the practice of the asbestos docket and ultimately increase the number of cases awaiting resolution," requiring "massive resources."[3] In support of his opinion, Judge Glynn cited a study of prior consolidations, which concluded that such approaches—instead of decreasing asbestos dockets—have actually "encourage[d] additional filings by making it more attractive to file a claim in a particular jurisdiction."[4] Finally, Judge Glynn noted that an additional issue with the consolidation approach is that numerous duplicative and meritless claims are often included in the consolidation dockets, hidden among more meritorious claims, resulting in higher settlement costs.

After rejecting the proposal, Judge Glynn urged the parties to look for a better solution for the pending asbestos cases, suggesting the parties consider mass arbitration or seek legislative solutions. He praised the inactive docket system as "one innovation that has worked well and has benefited all parties."[5] Begun in Maryland at the

1. *See In re Asbestos Pers. Injury*, No. 24-X-87-048500, 2014 WL 895441 (Md. Cir. Ct. Mar. 5, 2014).
2. *Id.* at *12, *24.
3. *Id.* at *16, *11.
4. *Id.* at *17.
5. *Id.* at *15.

time of Consolidation I, the inactive docket system allows claimants who have not yet been impaired by asbestos-related disease to file cases without concern for the statute of limitations, but it prioritizes the cases for trial to those involving evidence of actual asbestos-related injury and to living claimants.

Judge Glynn also praised the model of MDL-875, the federal district court for Pennsylvania's eastern district, which has managed multidistrict litigation (MDL) for federal asbestos cases. In that MDL, the district judge has required each plaintiff to submit the claimant's status of preparation for trial, the particular claims against each defendant, and medical reports supporting the claims. This approach allowed the court to both prioritize cases and weed out invalid claims.

Implications

Consolidating mass trials in asbestos cases was a common approach two decades ago, but it has since been abandoned by courts across the United States. Courts have rejected the consolidation approach because it fails to prioritize claims of actually injured claimants, imposes tremendous expense on the parties, taxes the resources f the courts, and leads not to the promised reduction of cases in asbestos dockets but rather to an increase in them. The earlier consolidation approaches also contributed to a wave of bankruptcies of asbestos defendants that were more likely to have caused the asbestos-related injury alleged in the lawsuits brought in courts today. The Baltimore City Circuit Court's decision reinforces the trend of other jurisdictions that have similarly rejected asbestos mass consolidations. It further acknowledges the changed landscape of the litigation, making it more likely that courts across the United States will continue to refuse to entertain such consolidation approaches in the future.

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