



Multi-District Litigation

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THE ISSUE

In 2003, the Texas Legislature passed significant civil justice reforms designed to improve the efficiency and effectiveness of our state courts. The Multi-District Litigation (MDL) system was a key part of that reform and has generally proven successful. The purpose of the MDL system is to improve the efficient administration of justice and promote settlement.

The 81st Legislative session saw the introduction of legislation designed to limit the application of multi-district litigation to product liability cases involving pharmaceutical products, and tort claims involving asbestos and silica cases. This legislation would narrow the kind of cases the MDL system would handle, undermining the entire system and returning more mass tort litigation cases back to the complex and inefficient previous system.

When lawsuits involving products with widespread use are consolidated, efforts to resolve the dispute are less likely to be duplicated, and the application of the law is more likely to be consistent. This consistency reduces the risk of judicial error at the trial court level and, consequently, reduces the number of appeals that weigh down our appellate courts. Additionally, removing pre-trial matters to an MDL judge in a different geographical location also ensures a fair application of the law by removing local biases.

THE FACTS

★ In 2003, the Texas Legislature instituted the Texas MDL system as part of a package of strong civil justice reforms. Prior to the 2003 reforms, plaintiff's attorneys often sought to keep federal mass tort suits in state courts—free from federal MDL jurisdiction.

- ★ The 2003 Texas MDL system consists of a five-judge panel that consolidates lawsuits involving the same basic facts and assigns them to one judge for the purpose of handling pre-trial matters such as discovery and other motions.
- ★ The Texas MDL panel has remained true to the Act, which specifies that transfers are only to be made by the MDL panel when the determination is made that the transfer serves the “convenience of the parties and witnesses; and promote(s) the just and efficient conduct of the actions.”
- ★ In 1968, the U.S. Congress enacted MDL for federal cases, chiefly in response to a massive government antitrust prosecution involving more than 25,000 individual claims.
- ★ The Federal MDL system showed immediate results, consolidating the nearly 2,000 separate suits filed in 36 different courts down to nine trials, only five of which went all the way to judgment. As U.S. Chief Justice Earl Warren stated in 1967, if not for consolidation, “the district court calendars throughout the country could well have broken down.”
- ★ Since 1967, more than 179,000 separate federal civil actions have been consolidated in pretrial proceedings.

RECOMMENDATIONS

- ★ Do not narrow the scope of litigation managed through the Multi-District Litigation system in Texas.
- ★ The system prior to MDLs is not a good fit for these kinds of mass tort cases because it scatters litigants across the state and saddles parties

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seeking justice with unnecessarily costly and burdensome pre-trial maneuvering. A return to such a system for mass tort cases does not serve the interests of justice and is not an efficient use of taxpayers' dollars.

- ★ The MDL system is efficient and effective. To limit its scope is at odds with the interests of justice. Slowing down Texas' civil justice system is exactly the wrong course.

RESOURCES

"U.S. Tort Costs: 2004 Update" by Tillinghast-Towers Perrin (2005) http://www.atra.org/wrap/files.cgi/7963_howtortreform.html.

"Is Multi-district Litigation a Just and Efficient Consolidation Technique?" by Danielle Oakley, 6 NVLJ 494 (2005).

"Unsettling Efficiency: When Non-Class Aggregation of Mass Torts Creates Second-Class Settlements" by L. Elizabeth Chamblee, 65 *Louisiana Law Review* 157, 209 (2004).

"The Next Step: Strengthening Texas Courts" Texans for Lawsuit Reform (Nov. 2005) 1, <http://www.tortreform.com/node/17>.

"Federal Jurisdiction Expanded For Mass Tort Litigation by the Multiparty, Multiforum Trial Jurisdiction Act of 2002," a presentation by Carlton Fields, Attorney At Law.

In re Delta Lloyds Ins. Co. of Houston, 2008 WL 5786888 (5 Sept. 2008) [Unpublished opinion available on Westlaw.] Sec. 74.162, Government Code. ★

