

CHAPTER 1

THE MECHANICS OF FORMING AND TERMINATING MULTICOUNTY LITIGATIONS IN NEW JERSEY

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I. INTRODUCTION

The New Jersey Multicounty Litigation (Non-Asbestos) Resource Book, Fourth Edition (Nov. 2014) (hereinafter “Resource Book”)¹ states that:

The definition of a[n] MCL in New Jersey derives from an identification of certain common case characteristics. Each group of cases designated as a[n] MCL do exhibit many, if not all, of these characteristics. Thus far, there have been three general classes of cases determined to be MCLs. These include:

- large numbers of claims associated with a single product ...
- mass disasters ... [and]
- complex environmental cases and toxic torts ...

Some of the possible characteristics of a[n] MCL include:

- sheer number of parties involved;
- many claims involving common, recurrent issues of law and fact that are associated with a single product, mass disaster, or very complex environmental or toxic tort;
- geographical disbursement of parties;

¹ The Resource Book “Notice” section discusses its purpose, origin, scope and application:

This Multicounty Litigant (Non-Asbestos) Resource Book is intended to provide procedural and operational guidance to New Jersey judges and Judiciary staff in the management of cases within their area of responsibility. The Resource Book was prepared by the designated MCL judges and the Civil Practice Division of the Administrative Office of the Courts and has been reviewed and endorsed by the Conference of Civil Presiding Judges. It is intended to embody Judiciary policies adopted by the New Jersey Supreme Court, the Judicial Council, and the Administrative Director of the Courts, but does not itself establish case management policy. It has been approved by the Judicial Council, on the recommendation of the Conference of Civil Presiding Judges.

While the Resource Book reflects Judiciary policies existing as of the date of its preparation, in the event there is a conflict between the Resource Book and any statement of policy issued by the Supreme Court, the Judicial Council, or the Administrative Director of the Courts, that statement of policy, rather than the provision in the Resource Book, will be controlling.

See also Resource Book, “Acknowledgement” section.

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- common injuries or damages incurred;
- value interdependence between different claims where the perceived strength or weakness of the causation and liability aspects are often dependent upon the success or failure of similar lawsuits in other jurisdictions; and
- degree of remoteness between the court and actual decision-makers in the litigation — *i.e.*, the fact that the simplest of decisions often must pass through layers of local, regional, national, general and house counsel.²

The primary goals of an MCL designation by the court appear to be 1) the avoidance of unnecessary duplication of effort and expense for the judiciary and the parties; 2) the avoidance of inconsistent case management and discovery rulings; 3) the coordination of discovery when possible; 4) the use of specialized expertise within the judiciary when appropriate; 5) enhanced coordination between the MCL and other state or federal courts handling the same category of cases, as needed; and 6) the efficient disposition or settlement of cases based upon any value interdependencies, among other things.³ These primary goals must be balanced against considerations such as prejudice to the parties, unfairness, inconvenience, added expense, delay, and whether the cases can be efficiently managed together.⁴ The Supreme Court seems to balance these interests, along with case allocation concerns, in determining whether to create an MCL and where to place venue.

For cases filed in the Superior Court of the State of New Jersey, under R. 4:38A (Centralized Management of Multicounty Litigation):

The Supreme Court may designate a case or category of cases as Multicounty Litigation to receive centralized management in accordance with criteria and procedures promulgated by the Administrative Director of the Courts upon approval by the Court. Promulgation of the criteria and procedures will include posting in the Multicounty Litigation Information Center on the Judiciary's Internet website (njcourts.com).

² Resource Book at p. 1 (Definition of "Multicounty Litigation").

³ *See generally* Resource Book; Directive 2-19 Multicounty Litigation Guidelines and Criteria for Designation (Revised Feb 22, 2019)(hereinafter "MCL Guidelines") available at <https://www.njcourts.gov/notices/2019/n190306a.pdf?c=IMV>, and provided as Appendix I to this chapter.

⁴ *See Id.*

R. 4:38A. The Court can transfer “a case or category of cases” for centralized management within the state’s Multicounty Litigation (“MCL”)⁵ system. The MCL system currently comprises three specialized MCL venues located in Atlantic, Bergen, and Middlesex Counties.⁶ In Directive 2-19, the Supreme Court adopted MCL Guidelines promulgated by the Administrative Director of the Courts for the formation and termination of MCL’s in New Jersey, to be discussed in more detail later, which is provided in Appendix I at the end of this chapter.

To provide additional information to the bar, in November of 2014, the judiciary posted a link to the Resource Book for reference by litigants. See <https://www.njcourts.gov/attorneys/assets/mcl/nonasbestosmanual.pdf?c=rrL>. The Resource Book is a comprehensive guidebook for practitioners in MCL cases, and is an excellent reference for anyone interested in learning more about New Jersey’s MCL system.

This chapter will briefly discuss the MCL courts, how the Supreme Court considers MCL designations, what happens when a category of cases is designated as an MCL, and when the Court terminates them. For an abbreviated discussion of this topic, see Dreier, Karg, Keefe and Katz, CURRENT N.J. PRODUCTS LIABILITY & TOXIC TORTS LAW, § 2:2-4 (Gann 2020).

II. A BRIEF DESCRIPTION OF NEW JERSEY’S MCL COURTS AND THE LITIGATIONS CENTRALLY MANAGED BY THEM

As of October 2019, New Jersey had three MCL venues: Atlantic, Bergen, and Middlesex counties.⁷ Judge Harz’s court has discretion to centralize the management of litigation in any one of these courts.

A. ATLANTIC COUNTY

The Honorable John C. Porto presides over centralized cases sent to Atlantic County. Judge Porto’s court is located at New Jersey Superior Court, Courtroom 3-H, Atlantic City, NJ 08401.⁸

⁵ Effective September 4, 2012, the New Jersey Supreme Court revised the caption of R. 4:38A from “Centralized Management of Mass Torts” to “Centralized Management of Multicounty Litigation,” and replaced all former “Mass Tort” terminology in the rule and associated guidelines with the new “Multicounty Litigation” terminology. See www.judiciary.state.nj.us/notices/2012/n120809b.pdf. It is believed that the Court made this change after receiving requests from the bar pointing out the potential prejudice of calling a category of cases a “mass tort” prior to the adjudication of any defect or fault.

⁶ See <https://www.njcourts.gov/attorneys/mcl/index.html>. (There are really four venues: Atlantic, Bergen, and Middlesex counties, plus a special court for asbestos cases, which are specially handled in Middlesex County by the Honorable Anna Viscomi.)

⁷ *Id.*

⁸ *Id.*