



ADMINISTRATIVE OFFICE OF THE COURTS

MARYLAND JUDICIAL CENTER
187 HARRY S. TRUMAN PARKWAY
ANNAPOLIS, MARYLAND 21401

Pamela Harris
State Court Administrator
410-260-1295

October 15, 2019

Honorable Nancy J. King
Chair, Senate Budget & Taxation Committee
3 West Miller Senate Office Building
11 Bladen Street
Annapolis, Maryland 21401

Honorable Maggie McIntosh
Chair, House Appropriations Committee
121 House Office Building
6 Bladen Street
Annapolis, Maryland 21401

Re: 2019_p6_JUD_Report on Baltimore City Asbestos Docket

Dear Madam Chairs:

Pursuant to the 2019 Joint Chairmen's Report, page 6, the Judiciary herein submits its report on the Baltimore City Asbestos Docket.

If the committees require further information, please direct all inquiries and questions to my attention at (410) 260-1295 or pamela.harris@mdcourts.gov.

Sincerely,

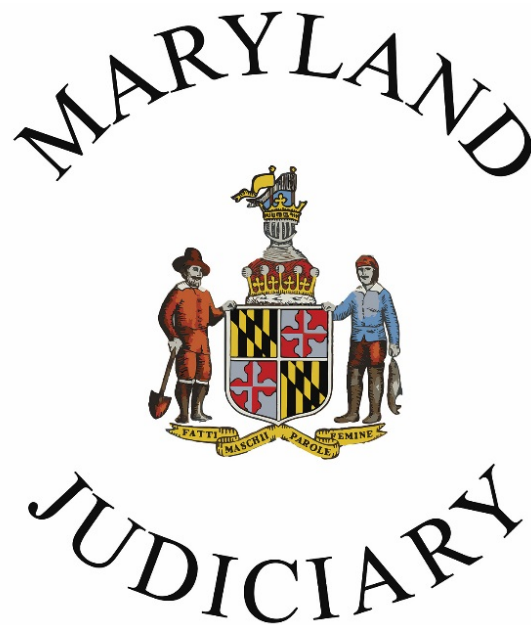
A handwritten signature in blue ink that reads "Pamela Harris".

Pamela Harris
State Court Administrator

Enc.

cc: Honorable Mary Ellen Barbera, Chief Judge, Court of Appeals
Honorable W. Michel Pierson, Circuit Administrative Judge, Eighth Judicial Circuit
Honorable Marilyn Bentley, Clerk, Circuit Court for Baltimore City
Honorable Douglas J.J. Peters, Chair, Public Safety, Transportation, and Environment
Subcommittee
Honorable Bobby A. Zirkin, Chair, Senate Judicial Proceedings Committee
Honorable Luke Clippinger, Chair, House Judiciary Committee
Honorable Keith E. Haynes, Chair, Public Safety and Administration Subcommittee
Faye D. Gaskin, Deputy State Court Administrator
Kelley O'Connor, Assistant State Court Administrator, Government Relations and Public
Affairs
Matthew Bennett, Policy Analyst
Matthew Jackson, Policy Analyst
Kenneth Weaver, Budget Analyst
Sarah Albert, Mandated Reports Specialist
Cathy.Kramer@mlis.state.md.us

Report on Baltimore City Asbestos Docket



Administrative Office of the Courts

October 2019

Introduction

The committees requested that the Judiciary submit a comprehensive report concerning the status of the asbestos docket and the measures necessary to expeditiously address the volume of asbestos-related cases. The request directed that the report include the following information:

- 1) an inventory of the pending asbestos caseload, including the number of active and inactive cases by filing date;
- 2) a summary of asbestos case dispositions from fiscal 2016 to 2019;
- 3) an itemization of Judiciary resources, including funds, judge time, and staff time that have been assigned to the asbestos docket since fiscal 2014;
- 4) a description and assessment of the specific measures that have been implemented to support the expeditious resolution of asbestos-related claims;
- 5) an assessment of whether additional measures are necessary for the effective management of the asbestos docket, including a full description and cost analysis of any additional resources necessary to implement those measures; and
- 6) a summary of any statutory or regulatory changes necessary to implement proposed measures to improve the management of the asbestos docket.

Response to Request

This report is organized by response to the categories of information requested. In 2014, a previous report, included as Appendix A of the current report,¹ was submitted to the committees. The information contained in that report is not otherwise repeated herein.

1. An inventory of the pending asbestos caseload, including the number of active and inactive cases by filing date.

Appendix B contains an inventory of the pending asbestos caseload, including the number of active and inactive cases² by year of filing.

¹ The 2014 report included lengthy appendices, omitted from Appendix A of the current report for brevity but readily available if needed by the committees.

² The inactive docket, created to hold claims of plaintiffs unable to demonstrate impairment at the time their lawsuit is filed, was established by an order dated December 9, 1992, which applies to all cases filed after that date. All cases filed prior to that order are therefore “active.” In 2018, the Inactive Docket was renamed the Special Pretrial Inactive Docket, to distinguish it from the Special Bankruptcy Inactive Docket that was created at that time. Beginning in 2000, cases became eligible for removal from the inactive docket due to the death of the plaintiff,

This inventory does not record the number of individual plaintiffs who have pending asbestos cases. The number of actual plaintiffs is smaller than the number of cases because many plaintiffs have more than one case pending. This is due to a procedural convention adopted by the Circuit Court for Baltimore City (the Court), which requires plaintiffs with a pending case who develop a second disease to file a separate case for that disease. Except as otherwise noted, all data in this report are based on numbers of cases, not numbers of plaintiffs.

It should be noted that the Court has determined that there is a number of cases in which dismissal requests were filed by plaintiffs, which have not been formally closed due to technical reasons, as well as cases in which dismissals were filed before the current procedures for closing cases were developed by the court, and research into these cases is ongoing. As such, the actual number of pending cases is smaller than indicated in Appendix B. The Court is taking steps to complete the closure process and anticipates finalizing the dismissals of such cases by early 2020.

2. A summary of asbestos case dispositions from fiscal 2016 to 2019.

Appendix C, which details the number of orders of dismissal and dismissals/transfers from fiscal 2016 through fiscal 2020 to date, responds to the request for a summary of asbestos case dispositions.

An asbestos lawsuit typically includes large numbers of defendants. The claims against different defendants may be resolved at different stages in the litigation, and by different procedural means. A case is ripe for closure when the claim against the last remaining defendant is resolved. At that time, the court will enter an order dismissing all remaining defendants or an order dismissing all remaining non-bankrupt defendants and transferring the claims against bankrupt defendants to the Special Inactive Bankruptcy Docket, a docket created in 2018 for that purpose. That action constitutes the “disposition” of the case.

Additional perspective on resolution of cases is provided by records maintained by the Court that detail the number of cases set for status conferences since August 2017 (Appendix D) and the number of cases set for trial since 2014 (Appendix E). As set forth below in response to No. 4, with the exception of relatively infrequent postponements requested by counsel, all cases set for trial during this period have been resolved at or before the scheduled trial date.

3. An itemization of Judiciary resources, including funds, judge time, and staff time that have been assigned to the asbestos docket since fiscal 2014.

The response to this question is phrased in terms of positions that are assigned to the docket.

regardless of whether the criteria for removal were met. Since that time, 19,550 cases have been removed from the inactive docket, of which 7,883 were removed due to the death of the plaintiff.

a. Current staffing.

The Court's Asbestos Unit currently includes:

- Three active judges whose full-time responsibility is asbestos cases – including conducting trials, conducting status conferences, and deciding motions in cases assigned to them. Cases that are the subject of scheduling orders are assigned to one of these three judges for trial and proceedings leading up to trial. Although these judges are assigned as full-time asbestos judges, there are not sufficient asbestos trials to occupy them full-time. Therefore, they also hear other cases when doing so does not conflict with their responsibilities for asbestos cases.
- One senior judge is responsible for overseeing the docket, directing the assignment of cases, and deciding motions that are not within the purview of the assigned trial judges.
- One full-time magistrate is assigned to the asbestos docket, who schedules, administers and coordinates status conferences, conducts settlement conferences, and oversees the administrative personnel in the Asbestos Unit.
- Six full-time administrative assistants (two positions currently vacant) are assigned, who support the adjudicative and administrative functions of the docket.
- Two clerk's office employees are assigned full-time to the asbestos docket, who perform clerical functions related to the litigation. Additional clerk's office employees perform functions as needed to supplement their work.
- In addition to the judges whose full-time responsibility is the asbestos docket, other judges are assigned as needed to conduct trials or related pretrial proceedings based on the trial assignments.
- The administrative judge of the Court oversees the operations of the Asbestos Unit, conducts status conferences, and decides motions as needed. Both the administrative judge and the senior judge conduct periodic meetings with representatives of the bar and promulgate administrative procedures to govern the operation of the docket.

b. Historical staffing

For some years prior to 2015, the docket was administered primarily by a senior judge, who decided motions and conducted trials. Trials were also assigned to active judges based upon need identified by the senior judge. Administrative support was provided by a part-time law clerk, as well as clerk's office employees.

The senior judge currently assigned to the Asbestos Unit began this assignment in July 2015. She joined the senior judge already assigned to the asbestos docket at that time. That judge left the docket in April 2016.

Two administrative assistant positions were created effective July 1, 2015 and were filled in August of that year. Two additional administrative assistant positions were created effective July 1, 2018 and two more administrative assistant positions were created effective July 1, 2019.

A full-time magistrate took office in April 2017. Two judges were assigned to the docket on a full-time basis commencing January 1, 2017. A third full-time judge was assigned to the docket in the summer of 2019. Additional judges have been assigned to conduct asbestos trials on an as-needed basis during the period from fiscal year 2014 until the present.

4. A description and assessment of the specific measures that have been implemented to support the expeditious resolution of asbestos-related claims.

Since the 2014 report, a number of measures have been implemented to support the expeditious resolution of these claims. The measures may best be summarized in three categories.

a. New Case Management Plan

Prior to the organization of the Asbestos Unit, cases were set for trial based solely on the selection of cases by counsel. Under a protocol established by the Court with input from counsel, a determinate number of trial slots was available on a monthly basis, according to disease type. Five mesothelioma trial slots were available each month for ten months each year. Another 470 trial slots were available each year for cancer cases and asbestosis (ALD) cases. Counsel would select cases to fill these slots, and the Court would enter scheduling orders setting the cases selected by counsel for trial.

Upon the organization of the Asbestos Unit, the Court decided to select cases to be scheduled for trial by conducting status conferences to assess readiness for trial. The Court promulgated an amendment to the Differentiated Case Management Plan (see Appendix F) establishing a structure for the status conference process, after publishing its intended procedure to the bar and modifying that procedure based on meetings with the bar and comments offered by the lawyers. The Court also determined that it would continue to offer the existing trial slots to be filled by counsel. As a result, cases currently may be scheduled for trial in one of two ways: (1) cases where a status conference has occurred, where the case is scheduled by the court; and (2) cases selected by counsel to fill trial slots.

Status conferences have been scheduled regularly on a monthly basis since October 2018. Two groups of conferences were held in the Fall of 2017, but regular conference scheduling did not begin until the following year due to the necessity to resolve procedural issues arising from the initial groups of conferences.

Appendix D to this report summarizes the results of the conferences held through September 2019. It shows that 2,061 cases have been scheduled for status conference, 1,033 cases have been resolved at the status conference stage, and that 645 cases have been approved for trial scheduling after a conference. Appendix E shows that 1,184 trials were scheduled by counsel from 2014 through 2020. These results show that the status conference process is enabling the Court to schedule and resolve cases in much greater numbers than occurred under the previous scheduling process where scheduling was solely based on selection by counsel.

b. Judicial and Staff Resources

Upon the organization of the Asbestos Unit, the Court made a commitment that there would be adequate judicial resources to ensure the availability of judges to conduct all trials that were scheduled either by the Court or counsel and to decide any issues arising from the litigation. That commitment has resulted in the resolution of all cases set for trial, with the exception of cases postponed at the request of counsel for reasons having no relation to the availability of judicial resources.

During 2018 and 2019, 318 cases were scheduled for trial by counsel through the preexisting trial slot process, of which 68 were mesothelioma cases and 250 were other cases. Some of those cases have been postponed by counsel. Otherwise, all cases set for trial dates through the date of this report, either by counsel or by the Court as the result of status conferences, have been resolved. No cases have been postponed due to unavailability of judges to conduct trials. Most cases have been resolved before the commencement of trial, and the trial judges assigned to the Asbestos Unit have performed other duties during the assigned trial dates.

In addition, the Judiciary has provided staff resources adequate to support the administrative needs of the Asbestos Unit.

c. Case Management Improvements

The Court has also initiated measures to improve record keeping and other clerical functions, and to classify and organize information necessary for effective case management. These measures have enabled the Court to track the progress and disposition of cases to an extent not possible previously. In addition, measures such as the establishment of the Special Inactive Bankruptcy Docket (Rule 16-306.1; see Appendix G) have provided procedural avenues that enable the resolution of cases that otherwise would remain open on the docket indefinitely.

5. An assessment of whether additional measures are necessary for the effective management of the asbestos docket, including a full description and cost analysis of any additional resources necessary to implement those measures.

The scheduling of monthly groups of status conferences has proven to be effective in moving cases toward resolution. This fact leads the Court to believe that processing greater numbers of cases, by scheduling larger numbers of status conferences, would enable the Court to increase the rate at which the pending caseload is addressed. However, the pace at which cases can be resolved depends not only upon judicial resources brought to bear on the docket, but also the availability of counsel. Since July 2019, the Court has been scheduling 500 status conferences per month; plaintiffs' counsel have asserted that they are not capable of preparing a greater number of cases than this. They also assert that the prosecution of the cases set by the Court for trial exhausts their entire capacity. Therefore, the Court does not believe that additional measures can reasonably be implemented without a commitment from the bar.

6. A summary of any statutory or regulatory changes necessary to implement proposed measures to improve the management of the asbestos docket.

Given the response to Question No. 5, no statutory or regulatory changes suggest themselves for implementation at this time.

Conclusion

As the foregoing indicates, the Judiciary has dedicated substantial resources to the asbestos docket. We are committed to processing these cases as quickly as possible consistent with both our commitment to providing fair, efficient, and effective justice for all, and the parties' capacities to proceed. We have made and continue to make progress in addressing the pending caseload. The Judiciary appreciates the opportunity to inform the committees of that progress. Also, as stated above, the Judiciary does not believe there is any need for additional resources or statutory and regulatory change at this time.

Appendix A: 2014 Report on Baltimore City Asbestos Docket.

Introduction

The 2014 Joint Chairmen's Report directed that the Judiciary undertake a study of the asbestos docket in the Circuit Court for Baltimore City. Specifically, it stated:

The committees are concerned about a backlog of over 11,000 civil asbestos cases in Baltimore City and request that the Maryland Judiciary undertake a study of the backlog that: evaluates all options for resolving the pending cases in a more expeditious manner; estimates the number of new circuit court judges that would be necessary to address the backlog within a three-year period; evaluates whether hiring retired judges specifically to address the backlog would resolve the backlog within a three-year period and identify any additional funding required to address the issue in this manner; and makes recommendations on ways to reduce the existing backlog of civil asbestos cases in Baltimore City within a three-year period.

In response, the Circuit Court for Baltimore City has conducted the following assessment of its asbestos case inventory and proposes a plan that implements a new case management approach that upon full implementation: (1) identifies with accuracy the viability and readiness of individual cases to establish a reliable inventory; (2) identifies with accuracy the judicial and support resources necessary for the establishment of a robust settlement and trial calendar; (3) reduces the inventory to manageable proportions in a realistic period of time; and (4) gathers, analyzes and reports with regularity on case management performance.

The Current Docket

Plaintiffs' attorneys report that their collective case inventories approximate 30,000¹ cases with about 12,000 of these being delayed from resolution by the court's failure to assign sufficient judicial resources to the docket; conversely, defense counsel uniformly dispute the plaintiffs' assertions.² Candidly, the court is not in a position to conclude definitively how many cases are being delayed because it lacks essential information about the individual cases to assess for itself how many are viable and to what degree are trial ready. This situation arises, in part, from a pleading regimen that does not provide the necessary information for the court to determine the viability and status of individual cases. Two additional factors also contribute: (1) the calendar of cases is controlled by plaintiffs' counsel, who inform the court which and how many cases are ready to proceed and when, and (2) the court has not taken measures that proactively manage the docket.

How the asbestos docket has evolved since its inception will provide context and instruction about its present condition.

¹ A brief statistical summary of the information supplied by plaintiffs is attached as Appendix 1.

² These competing narratives are discussed in the March 5, 2014 opinion of Judge John M. Glynn denying the motion of some plaintiffs for a consolidation, attached as Appendix 2 to this report.

Appendix A: 2014 Report on Baltimore City Asbestos Docket (Continued).

A variety of case management techniques have been applied to the court's asbestos docket since the first cases were filed in the 1980s. In 1987, the court adopted a master case management order governing all cases, which is still in effect.³ The order provides for the filing of master complaints for different types of cases, and permits each plaintiff to file a short form complaint that adopts the allegations of the relevant master complaint, with little or no supporting factual information.

In 1990, in the face of a large influx of filings, the court created a consolidation of 8,555 cases, which provided for a single trial of common issues (in several phases), followed by mini-trials to resolve issues individual to each case. At the same time, cases from other circuits in Maryland were transferred to the Circuit Court for Baltimore City. Proceedings relating to the common issues trials lasted until 1993. Following the first consolidation, a second consolidation, intended to resolve 1300 cases filed between 1990 and 1993, occurred from 1994 to 1995.

Following the consolidation trials, mini-trials continued to be conducted until 2002. In 1999, the court convened a working group of attorneys to explore ways to reduce the backlog of post-consolidation mini-trials. This resulted in the creation of monthly trial groups comprising multiple cases that were assigned to multiple judges to conduct simultaneous trials. This approach enabled the court to dispose of several thousand cases but the number of cases not reached continued to increase due to continuing filings that outpaced the disposition rate of the docket.

The trial group procedure, which arose from a consensus reached by all counsel, remains in effect with a structure that provides for four trial groups in each of ten months: one group of not more than six mesothelioma cases; two lung cancer groups of ten cases and one asbestosis group of ten cases.⁴ The cases to be included in each group are selected by counsel a year in advance. Scheduling orders are issued in each case, providing for a one year period of discovery and proceedings leading to trial. The current trial group structure permits only 360 cases to be set for trial each year and, for several years, many of the trial slots have not been filled by plaintiffs' counsel. The docket is administered by a single judge who supervises pre-trial proceedings, decides dispositive motions, engages in pre-trial case resolution and also may conduct the trial (although another judge may be assigned to conduct the trial).

Findings

The court's analysis of new and alternative means to address the delays in adjudication has included examination of the docket statistics, input from judges who have participated in the administration of the docket, and input from attorneys who litigate asbestos cases, including the plaintiffs' and defendants' bars. The court has also inquired into methods employed in other jurisdictions to manage large volumes of asbestos cases and address delays. As a result of this

³ The case management order is attached as Appendix 3.

⁴ There are provisions for a small number of additional trial groups relating to one defendant.

Appendix A: 2014 Report on Baltimore City Asbestos Docket (Continued).

analysis, several conclusions have emerged: (1) the court must exercise greater control over the docket; (2) the data available at present make it difficult to reach firm conclusions about how long it will take to address delay issues; and (3) without a change to the present case management plan, merely increasing the number of judges assigned to the docket will fail both to optimize delay reduction and to maximize the significant investment in judicial and support resources.

In support of these conclusions, it is important to note that for the court to create an effective delay reduction program it must have the capability to determine the viability of cases within the asbestos inventory. Because of the procedures set forth in the master scheduling order, essential facts concerning the claim that is the subject of a complaint are not revealed until after a scheduling order is entered in anticipation of trial. There is no information currently available to the court concerning the vast majority of cases on the docket. An estimate of the resources needed to resolve the cases on the docket depends on a calculation of the time required to resolve each individual case. That calculation is in turn informed by conclusions about the individual cases which cannot currently be made because the court does not have access to case information.

Further, there are multiple reasons why simply increasing the number of judges assigned to hear cases would not significantly reduce delays under current procedures. The experience of the past several years, and the information contributed by the bar for this analysis, indicate that the current trial plan places the maximum number of cases that one judge can handle on an ongoing basis. Based on that measure (360 cases per year), 11 new judges would be required to address the 12,000 cases identified by plaintiffs within a three-year period. An alternative measure is found in the judicial workload model employed by the Administrative Office of the Courts that establishes a maximum of 575 tort cases that reasonably could be assigned annually to a single judge hearing this case type exclusively. The resulting calculation amounts to the court needing 7 judges to address 12,000 cases within a three-year period. Practically, the court does not possess the facilities to accommodate half that number, as well as the number of other supporting resources including masters and clerks. In addition, respective counsel in the past have indicated that trying simultaneously more than the current level of cases creates an undue burden on their representation.

A review of alternative case management techniques for mass tort litigation has identified a method that proved effective in reducing delays and eliminating docket congestion. Specifically, the procedures employed in the United States District Court for the Eastern District of Pennsylvania furnish a case study of such a model. In 1991, the federal Judicial Panel on Multidistrict Litigation ordered the transfer of all asbestos cases pending in the United States District Courts across the country to the Eastern District of Pennsylvania. (MDL-875) In October 2008, United States District Judge Eduardo C. Robreno was designated to preside over the litigation. Judge Robreno became convinced that prior methods of addressing the asbestos docket congestion, such as aggregation and consolidation, had proven ineffective. Judge Robreno created a case management plan based on a new paradigm. Over the course of the ensuing five years, the court resolved 183,545 cases, resulting in 2,979 cases remaining pending as of September 30, 2013.

The essential elements of the plan included an administrative order requiring plaintiffs, on pain of dismissal for noncompliance, to furnish medical reports of a specified level as well as exposure history and other data, and the scheduling of each case for a show cause hearing or status conference. If the plaintiff demonstrated that there was a live case against live defendants, a

Appendix A: 2014 Report on Baltimore City Asbestos Docket (Continued).

scheduling order would be entered providing for discovery, summary judgment proceedings and ultimately trial. Implementation of the plan required an assemblage of administrative and judicial resources.

In reflecting on the lessons learned from the effort, Judge Robreno reached several conclusions that can serve as guideposts for fashioning a meaningful case management plan.⁵ These include the following:

“Regardless of the amount of judicial effort and resources, unless the court establishes a toll gate at which entrance to the litigation is controlled, non-meritorious cases will clog the process. Therefore, courts must establish procedures by which, at an early point, each plaintiff is required to provide facts which support the claim through expert diagnostics reports or risk dismissal of the case.”

“The consolidation or aggregation of large numbers of cases distorts the litigation and the settlement process. Aside from the significant due process issues raised by forcing parties to litigate or settle cases in groups, aggregation promotes the filing of cases of uncertain merit. The incentive becomes the number of cases that can be filed, not the relative merit of the individual case. Additionally, while the court searches for global solutions, the individual cases are not attended to by either the court or the individual lawyers. Since litigation or settlement is to be determined in mass, or at least in groups, there is no perceived need by the parties to litigate each case separately. While the parties wait for ‘superman’ to resolve the litigation, the cases linger.”

“In the MDL context, two perceptions may undermine the litigants’ confidence in the process. On the part of the plaintiffs, the belief is that the agenda behind the process is designed to simply ‘clean house’ by dismissing cases or depriving litigants of the opportunity to present their cases to a jury. On the other hand, the belief on the part of defendants that the MDL process is designed to coerce settlements or to deprive them of the right to assert legitimate defenses. Under a ‘one-plaintiff-one-claim’ process, case outcomes benefit both plaintiffs and defendants. Defendants see a decline in the number of claims which they have to defend, due to an early assessment of the merit of each claim with a concomitant reduction of costs of defense. Conversely, plaintiffs see the more meritorious claim move to the head of the line, as unmeritorious claims are dismissed and removed from the docket. Both sides see the benefits and are prepared to support the court’s plan.”

In March 2014, Judge John Glynn, denying a motion to establish a third consolidation, reached similar conclusions based on his review of the history of the asbestos litigation and his study of past efforts around the country to manage the asbestos caseload. Judge Glynn invited counsel to partner with the court in searching for new methods and described several avenues to explore, without response from the parties.

⁵ These passages are drawn from a law review article authored by Judge Robreno, describing the process, which is attached as Appendix 4.

Appendix A: 2014 Report on Baltimore City Asbestos Docket (Continued).

The principles identified by Judge Robreno are applicable to the caseload in the Circuit Court for Baltimore City. The court can only reduce delays by new methods of control of the docket, which require evaluation of each case on an individual basis. Leaving management of the docket, including case assignment, to counsel is contrary to modern principles of case management for all types of cases, not just mass tort litigation. Therefore, the court must begin to gain control of the caseload by establishing new procedures. Continuing the current procedures with the addition of some number of new judges will, at best, result in incremental reductions in delays, and based on the rate of new filings will probably not result in any reduction in the number of pending cases.

It is not appropriate to divert resources from the current trial plan to begin to fashion a new case management plan. Therefore, the current plan should continue to operate under the supervision of Judge Glynn. In addition, beginning January 1, 2015, the court will assign an active trial judge from the civil docket each month, so that there will be two judges available for trial at all times. This will ensure that all cases assigned to the current trial groups are resolved. Some plaintiffs' attorneys also claim that trial slots are not filled due to uncertainty about the availability of judges for trial. While the court does not believe that this statement is wholly supported by the facts, the availability of a second judge should address such a concern.

At the same time, a new case management effort will begin under the supervision of a second retired judge. Its elements will be similar to those embodied in the MDL-875 administrative order.⁶ The court will select cases to be scheduled for status conferences before a special master, with differentiated management based thereon. Cases that are not resolved at the status conference stage will receive a scheduling order providing for discovery, dispositive motions scheduling, ADR and trial. There will be also be focus on improved ADR structure, with a view to early resolution of cases.

Implementation Plan

The following plan is the resulting product of the court's analysis of its asbestos docket and the conclusions drawn from that examination. With the financial support of the State, it seeks to put into action a new management approach over the next several years that will provide a reasonable, effective and equitable alternative to the present system. It moves to adopt a new case management approach similar to the one that has achieved success in the U.S. District Court for the Eastern District of Pennsylvania. During its implementation, the court proposes to continue the current method of case management with an additional judge. Beginning in July of next year and with the requisite resources, the court also will commence a new case management effort that will operate in parallel with the present system. Comparative case data will be collected to establish a baseline of reliable data for purposes of a comparative analysis and to project a practical and realistic estimate of the time and resources it will take to expedite adjudication of the caseload.

⁶ The order is attached as Appendix 5.

Appendix A: 2014 Report on Baltimore City Asbestos Docket (Continued).

Stage I

January 1, 2015 - June 30, 2016

The court will provide a second judge to the current trial group structure to enhance trial date certainty and to ensure that plaintiffs see no reason not to take full advantage of trial opportunities.

July 1, 2015 - June 30, 2016

Implementation of the new case management effort will require the services of a retired judge to administer the docket with the support of a special master to manage pre-trial matters, and two clerical staff.

The features of the new effort will include:

- selection of cases for examination and scheduling.
- enhanced information gathering for the cases selected to enable the court to identify cases that merit the investment of trial resources.
- cases lacking demonstrable viability will be dismissed.
- enhancement of ADR requirements.

Stage II

July 1, 2016 - June 30, 2017

An evaluation and assessment of performance in Stage I will furnish the basis for elements and resources needed for Stage II.

Conclusion

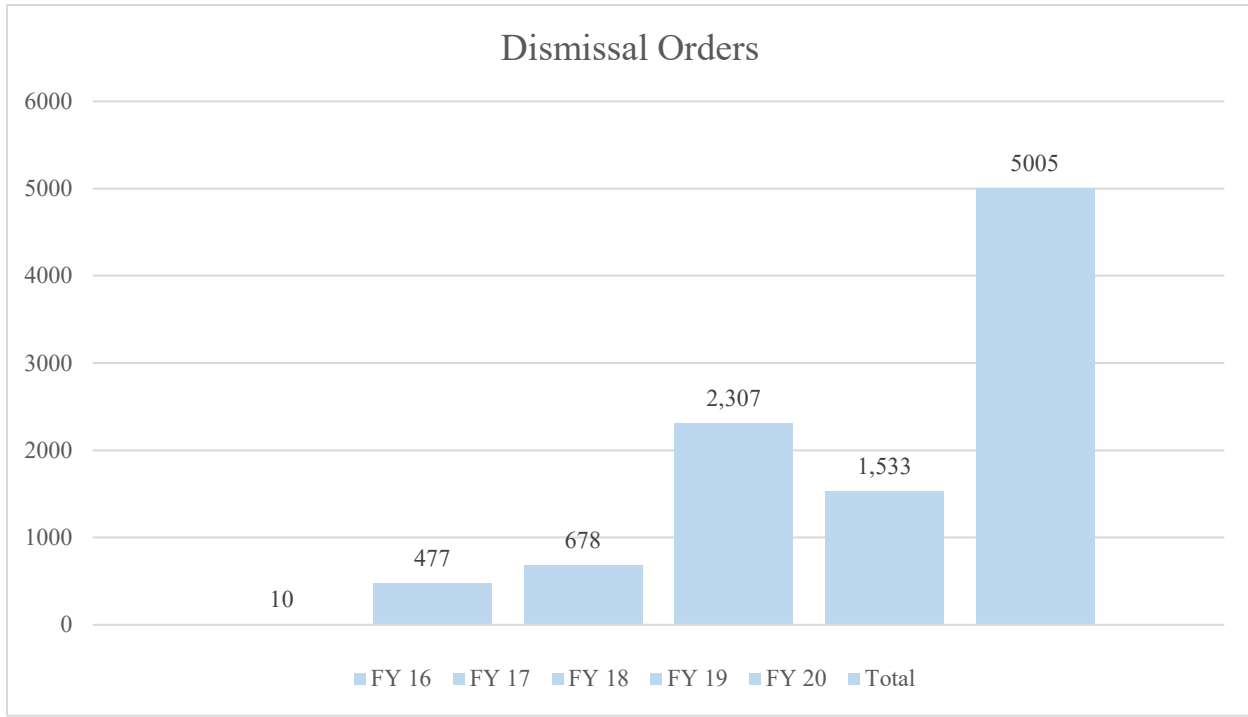
The record of the past thirty years shows that repetition of previous methods of case management will not produce an improvement in the asbestos caseload. It is apparent that the court needs to adopt new procedures that will support active management of the docket. The methods described herein have been demonstrated to be effective, and the court is prepared to implement them.

Appendix B: An inventory of the pending asbestos caseload, including the number of active and inactive cases by filing date

Filing Year	Open Active	Open Inactive	Total Open	Filing Year	Open Active	Open Inactive	Total Open
1980	2	0	2	2000	778	448	1,226
1981	0	0	0	2001	1,106	679	1,785
1982	3	0	3	2002	1,827	597	2,424
1983	2	0	2	2003	787	264	1,051
1984	21	0	21	2004	734	271	1,005
1985	45	0	45	2005	540	206	746
1986	160	0	160	2006	491	189	680
1987	1,124	0	1,124	2007	345	68	413
1988	941	0	941	2008	281	59	340
1989	1,515	0	1,515	2009	285	102	387
1990	2,262	0	2,262	2010	293	116	409
1991	845	0	845	2011	547	303	850
1992	644	11	655	2012	696	367	1,063
1993	1,882	103	1,985	2013	464	231	695
1994	435	101	536	2014	375	125	500
1995	820	95	915	2015	418	185	603
1996	1,088	372	1,460	2016	376	134	510
1997	1,764	568	2,332	2017	292	177	469
1998	1,363	695	2,058	2018	319	144	463
1999	1,452	867	2,319	2019	165	116	281
				TOTAL	27,487	7,593	35,080

Appendix C: A summary of asbestos case dispositions from fiscal 2016^a to date

	FY 16	FY 17	FY 18	FY 19	FY 20 (YTD)	Total
Dismissal Orders	10	477	678	2,307	1,533	5,005



^a The numbers of dismissal orders for prior years may increase following the formal dismissal of historical cases, discussed in section 1 above, expected to be completed in early 2020.

Appendix D: Status Conference Results

	Cases Set for Conference	Cases Resolved At/ Before Conference	Cases Extended/ Continued^a	Cases Approved for Trial
November 2017	60	34	4	22
October 2018	45	18	0	27
November 2018	41	18	0	23
January 2019	42	20	1	21
February 2019	42	21	2	19
March 2019	83	46	2	35
April 2019	83	36	11	36
May 2019	213	97	36	80
June 2019	454	267	70	117
July 2019	535	188	144	203
September 2019	463	288	113	62
TOTAL	2,061	1,033	383	645

In August 2017, conferences were scheduled for 231 cases that had previously been set for trial on dates in 2013 and years prior thereto. Of those cases, 117 cases were resolved at the conference stage and 114 cases were scheduled for trial in 2018 and 2019.

Of cases approved for trial, 40 have now been resolved during the course of the trial schedule. The remainder are scheduled for trial dates in 2019-2021.

^a Cases have been extended or continued at a status conference where necessary to resolve various issues relating to the case status before it can be resolved or approved for a trial date. Of the cases initially extended or continued, 40 have subsequently been resolved to date, and the balance remains in continued status at this time.

Appendix E: Trial Dates Scheduled

Case Type	2014	2015	2016	2017	2018	2019	2020	Total
<i>Trial Dates Set through Trial Slot Process</i>								
Mesothelioma	61	58	55	46	45	23	10	298
Cancer	67	29	61	40	58	37	7	299
Asbestosis	81	120	110	110	111	44	11	587
Total Set through Trial Slot Process	209	207	226	196	214	104	28	1,184
<i>Trial Dates Set through Status Conference Process</i>					41	136	234	411
TOTAL	209	207	226	196	255	240	262	1,595

Appendix F: Case Management Plan Amendment.

**Circuit Court
for
Baltimore City**
EIGHTH JUDICIAL CIRCUIT COURT OF MARYLAND
111 North Calvert Street
Baltimore, Maryland 21202

W. Michel Pierson
Administrative Judge

(410) 396-4916
FAX: (410) 545-7326
City Deaf TTY (410) 396-4930

Memorandum to: Counsel in Asbestos Cases

From: Judge W. Michel Pierson
Judge Pamela North

Date: November 9, 2016

On August 6, 2015, the court circulated a notice concerning the amendment of the DCM Plan to institute a second sub-track. Thereafter two meetings were held to entertain comments from interested persons, and a number of comments were submitted in writing. The court has considered the comments submitted orally and in writing, and has determined to amend the provisions of its proposed DCM Plan to add the following language to Track 5 (Asbestos)(new language appears in italics):

Track 5 (Asbestos) Asbestos cases are set on monthly trial group slots, allocated based on disease process. Cases scheduled for trial are governed by asbestos scheduling orders issued at the time that the case is assigned a trial group slot. *The court will also select cases for scheduling of a status conference to determine what action is necessary for resolution. Dates for cases so selected will be determined by the court. The provisions of the status conference order (Appendix 8) will apply to these cases.*

A copy of Appendix 8 is appended hereto. The court appreciates the suggestions and comments submitted by counsel.

Appendix F: Case Management Plan Amendment (Continued).

APPENDIX 8
TRACK 5 (ASBESTOS)
(Status Conference Scheduling Order)

Plaintiff(s)	*	IN THE
	*	CIRCUIT COURT
v.	*	FOR BALTIMORE CITY
Defendant(s)	*	CASE NO.: 24-X-
	* * * * *	

STATUS CONFERENCE SCHEDULING ORDER

A status conference is scheduled for this case on _____. The conference may be postponed only upon order of the court. Any request to postpone the conference must be made in writing not later than _____. The purpose of the conference is to assess the status of this case and to determine what action is necessary to move the case toward resolution, and, accordingly, it is ORDERED:

1. Plaintiff's written submissions: Not later than [sixty days before the conference], plaintiff shall furnish to the court the following information:

A. Submission of identification information. Plaintiff shall submit to the court a report identifying each plaintiff by full name, date of birth, last four digits of plaintiff's SSN, and indicating the status of the plaintiff in this case, i.e, asbestos-related injury victim, spouse of injured party, personal representative/executor/administrator of injured party, child of injured party, etc.

B. Submission of statement of ongoing interest. Plaintiff's counsel shall certify in writing that they spoke directly with their client (identifying date and time of the communication) and that the client intends to proceed with the case.

C. Statement of case status. Plaintiff shall identify all of the named defendants, including

i. Each defendant with whom plaintiff has reached resolution of the case, whether by settlement or agreement to dismiss with or without prejudice.

ii. Each defendant that is currently in bankruptcy, and whether a claim has been submitted.

iii. Each non-bankrupt active defendant.

D. Submission of related proceedings. Plaintiff shall identify each and every prior or pending court or administrative proceeding brought with the intent of satisfying in whole or in part the damages sustained by plaintiff as a result of an alleged asbestos-related injury, including the forum, case number, parties involved, and current status or outcome of the proceeding. Plaintiff shall include a listing of all entities with whom settlements have been reached, (whether or not that entity was at any time a party to the present case), indicating for each the type of release received.

Appendix F: Case Management Plan Amendment (Continued).

E. Submission of medical records. Plaintiff shall submit all medical records relating to that plaintiff's claims then available to plaintiff, and a current medical authorization in a form acceptable to any health care providers to whom said authorization will be sent, together with any existing plaintiff-specific expert reports for that plaintiff, as well as any tests, studies, etc., on which the reports rely.

F. Submission of work/exposure history. Plaintiff shall submit a statement of the injured person's work history, including dates of service and identification of each work site at which exposure to asbestos is alleged. If exposure is alleged at any place other than a work site, plaintiff shall submit a statement identifying each site of exposure with dates of exposure.

G. Submission of identification of co-worker/exposure witnesses.

(i) Plaintiff shall identify by name and address all co-workers or other witnesses who will be relied upon to furnish identification of exposure to asbestos of the injured person, including identification of each site and product of which such witness has knowledge.

(ii) Plaintiff shall identify each deposition transcript containing testimony of a co-worker or witness that will be relied upon to furnish identification of exposure to asbestos of the injured person.

H. Submission of social security printout. Plaintiff shall submit a social security printout for the exposed plaintiff, and, if a secondary exposure case, then in addition for the vector(s) through whom exposure is claimed, or if such a printout is not currently available, then a signed authorization sufficient to permit defendants to obtain it.

2. Any defendant who desires to challenge the sufficiency of plaintiff's submission must file a written objection specifying each ground of challenge not later than thirty (30) days after the filing of plaintiff's submission. Any defendant may file a statement with additional pertinent information in the same format as plaintiff's submission not later than thirty (30) days after the filing of plaintiff's submission.

3. In lieu of the submission, plaintiff may file a stipulation of dismissal or a motion for dismissal consented to by the parties.

4. If no submission is filed by plaintiff, any defendant may file a motion to dismiss the case not later than fifteen (15) days after the due date for the submission. Unless plaintiff files a response within fifteen (15) days thereafter showing good cause for failure to file the submission, an order of dismissal without prejudice will be entered summarily.

5. At the status conference, the court will review the submissions of the parties and may direct the parties to submit additional information as appropriate to enable it to assess the status of the claim. The court may continue the conference to a later date as necessary.

6. Parties must be prepared at the status conference to discuss scheduling of discovery, dispositive motions, pre-trial conference and trial, and possible referral for ADR.

Judge

Appendix G: Maryland Rule 16-306.1. Special Inactive Bankruptcy Docket for Asbestos Actions

(a) Definition. In this Rule, the following definitions apply except as expressly otherwise provided or as necessary implication requires:

- (1) *Asbestos action*. “Asbestos action” has the meaning set forth in Rule 16-306 (a);
- (2) *Bankrupt Defendant*. “Bankrupt defendant” means a defendant in an asbestos action who is in bankruptcy and, as a result, is subject to the protection of a stay of proceedings under 11 U.S.C. § 362 or by order of the Bankruptcy Court.
- (3) *SIBD*. “SIBD” means the special inactive bankruptcy docket created pursuant to this Rule.

(b) Applicability. This Rule applies only to asbestos actions in which (1) all claims by all plaintiffs against all non-bankrupt defendants and all claims by non-bankrupt defendants against other non-bankrupt defendants have been fully resolved or abandoned and, (2) but for open claims by or against a bankrupt defendant, final judgment could be entered with respect to the plaintiffs' claims against the non-bankrupt defendants and claims by non-bankrupt defendants against other non-bankrupt defendants.

(c) Notice of Resolution.

(1) Any party to an asbestos action who has reason to believe that the action falls within the ambit of this Rule may file a Notice of Resolution.

(2) To the extent feasible, the Notice shall

(A) include an affirmation by counsel that all claims by all plaintiffs against all non-bankrupt defendants and all claims by non-bankrupt defendants against other non-bankrupt defendants have been, or pursuant to section (e) of this Rule, will be, fully resolved, and

(B) identify all bankrupt defendants by or against whom claims are still pending but cannot be adjudicated because proceedings against those defendants are stayed under Federal bankruptcy law.

(3) The Notice shall be served on all other parties, other than a bankrupt defendant, in accordance with the procedures for service applicable to asbestos actions.

(4) Upon the filing of a Notice of Resolution, the Administrative Judge may cancel or postpone any pending events in the action that may be unnecessary in light of the Notice.

(d) Objection. Any party may contest the Notice of Resolution by filing and serving on all other parties, other than a bankrupt defendant, an objection within 15 days after service of the Notice. If an objection is filed, the court, after an opportunity for a hearing if one is requested, shall determine whether the Notice is valid and further proceedings under section (e) of this Rule should occur.

(e) Ruling; Severance; Transfer.

(1) If the court concludes that an objection has merit and that the action does not fall within the ambit of this Rule, the court shall reject the Notice and state the basis for the rejection.

(2) If no objection to the Notice is timely filed or if, upon the filing of an objection, the court determines that the objection is without merit, the court may (A) cancel pending events in the action, (B) sever all claims by or against the bankrupt defendants and transfer those claims to the SIBD created pursuant to section (f) of this Rule, and (C) enter appropriate judgments with respect to all existing claims (i) by all plaintiffs against all non-bankrupt defendants and (ii) by all non-bankrupt defendants against other non-bankrupt defendants.

(f) Creation of Special Inactive Bankruptcy Docket (SIBD)

(1) By administrative order, the Administrative Judge of the Circuit Court for Baltimore City shall establish a Special Inactive Bankruptcy Docket for Asbestos Actions (SIBD) in accordance with this Rule. The docket shall consist of all claims severed and transferred to it pursuant to section (e) of this Rule.

(2) The severance and transfer of claims to the SIBD shall not affect the substantive status or validity of any claim by or against the bankrupt defendant or any defense to such a claim, whether existing at the time of severance and transfer or filed or raised upon termination of the bankruptcy stay. The purpose of the severance and transfer is solely to permit judgments to be entered on resolved claims against the non-bankrupt defendants.

(3) The plaintiffs are responsible for monitoring periodically the status of the bankruptcy actions and notifying the court upon (A) any lifting of a stay that would permit the action to proceed against a bankrupt defendant or successor that emerges from the bankruptcy, or (B) a discharge or other resolution in the bankruptcy proceeding that would permanently preclude any relief in the circuit court against a defendant or successor. Upon the lifting of a stay that would permit the action to proceed against a bankrupt defendant or its successor, or upon a permanent preclusion of relief in the circuit court against a bankrupt defendant or its successor, the action against that defendant shall be removed from the SIBD in accordance with an appropriate order of the Administrative Judge or a designee of that judge.

(4) Because no proceedings are permissible with respect to any claims by or against a bankrupt defendant while the bankruptcy stay is in effect, actions on the SIBD shall not be subject to Rule 2-507 and shall be deemed to be administratively closed for statistical purposes, including any otherwise applicable time standards, subject to being reopened upon removal from that docket.

Source: This Rule is new.

Credits

[Adopted April 9, 2018, eff. July 1, 2018.]