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RULES 4 MDLs

Over 70% of Federal Civil Cases Remain in MDLs as of Fiscal Year 2023

Data Reinforces Need for Committee to Prioritize Claims Insufficiency Issue with Draft Rule 16.1

WASHINGTON, D.C. – April 4, 2024 – Newly released data from the Judicial Panel on Multidistrict Litigation (JPML) and the United States Courts, analyzed by Lawyers for Civil Justice (LCJ), shows that 71.3% of the federal civil caseload (417,137 cases out of 584,986 federal civil cases) resides in Multidistrict Litigations (MDLs) as of the end of fiscal year 2023 (FY23). In the last decade, the percentage of civil cases in MDLs has risen precipitously (from 29% in FY12) – highlighting the need to amend the Federal Rule of Civil Procedure to address the unique procedural challenges posed by MDLs.

The new data comes just days in advance of the Advisory Committee on Civil Rules meeting on April 9, 2024, where the Committee will consider a draft of a proposed new Rule 16.1 specifically for MDLs. LCJ has [called on the Committee](#) to address the problems which arise in the management and resolution of MDLs caused by unexamined – and often meritless – claims, many of which do not belong in the MDLs where they are filed or transferred.

LCJ's most [recent comment](#) on draft Rule 16.1 urges the Committee to fix the draft's treatment of claim insufficiency as a second-tier issue in the early management of MDL proceedings.

“It’s important that the first MDL-focused rule prioritizes taking action to avoid the amassing of insufficient claims early in the proceeding,” said LCJ’s General Counsel Alex Dahl. “Because the central value of this new rule would be its ability to help keep insufficient claims out of the litigation, putting it off to an uncertain point is equivalent to doing nothing at all. The new data from the Courts further demonstrates the need for a rule that gives formal guidance for dealing with the insufficient claims that plague MDLs.”

The Advisory Committee will next meet on April 9, 2024, to make any changes to the draft Rule 16.1 and to vote on submitting it to the Standing Committee. The Standing Committee will then consider the final recommendations of the Advisory Committee in June and may accept, reject, or modify the proposed rule. More information about the rulemaking process for the Federal Rules of Civil Procedure is available [here](#).

“LCJ will continue to advocate before the Advisory Committee and Standing Committee for adoption of a rule that provides meaningful guidance to courts and parties for addressing claim insufficiency in MDLs,” said LCJ’s Executive Director Dan Steen. “LCJ has been working closely on

this issue since asking the rules committees to take up the topic in 2017, and we will continue to push for clear, uniform rules that apply in MDL cases.”

Recent action in MDL cases further exemplifies the real concern of claim insufficiency; An MDL judge in the U.S. District Court for the Southern District of Illinois [recently ruled](#) that the three-year-old Paraquat MDL continued to contain a significant number of plaintiffs that cannot plausibly allege exposure to the herbicide. Additionally, recent [empirical evidence](#) from LCJ shows that there are tens of thousands of cases centered on unsupported claims in a number of the largest MDLs, such as:

- Mentor Transobturator Sling – 75 percent of the cases were dismissed
- Pelvic Mesh – 53 percent were dismissed
- Zofran – 40 percent were dismissed
- Cymbalta – 31 percent of the cases were dismissed

LCJ’s civil caseload calculation follows the [Duke Law Center methodology established in 2014](#), which excludes all Social Security cases and prisoner cases, except death penalty cases.

For more information on Lawyers for Civil Justice’s efforts to bring fairness, clarity and consistency to procedures in all civil cases, please visit [Rules4MDLs.com](#) and [lfcj.com](#) or contact us at media@rules4mdls.com.

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