



Lawyers for Civil Justice Launches *Rules4MDLs* Website and New Education Campaign on the Federal Rules of Civil Procedure (FRCP) and MDLs

Program Aimed at Growing Concern that FRCP Need to be Modernized for the 47 Percent of Cases Consolidated in Multidistrict Litigation (MDL)

WASHINGTON, D.C. – April 24, 2018 – Lawyers for Civil Justice (LCJ), a national coalition of defense trial lawyer organizations, law firms, and corporations, today announced the launch of a new website (www.Rules4MDLs.com) and education program to raise awareness of the need to update the Federal Rules of Civil Procedure (FRCP) to furnish MDL cases with the same procedural clarity enjoyed by the other 53 percent of federal civil cases.

As of September 2017, approximately 47 percent of the pending civil caseload nationwide (minus most prisoner and all Social Security cases) are consolidated in MDLs, up from just 16 percent in 2002. In addition, the largest 18 MDLs, each with more than 1,000 cases, are managed by only 15 judges and account for more than 40 percent of the pending federal civil caseload.

“The Federal Rules of Civil Procedure were not designed to manage the hundreds or even thousands of individual claims in an MDL. As a result, judges improvise with ad hoc practices, which suffer from a lack of clarity, uniformity and predictability that the rules are supposed to provide for all civil cases,” said LCJ Executive Director Andrea B. Looney. “Litigants with meritless claims proceed for years without any scrutiny, forcing defendants to settle, while litigants with legitimate claims get lost in the process. The rule of law requires predictable and transparent rules, and the Federal Rules of Civil Procedure need to be updated to ensure that appropriate rules apply not only to individual cases but also to the nearly half of the federal civil caseload consolidated in MDLs.”

The launch of this new initiative follows LCJ’s August 2017 Request for Rulemaking to the Advisory Committee on Civil Rules, which proposed amending the FRCP to reflect the needs of MDL cases. The Committee established a special MDL/Third-Party Litigation Funding Subcommittee in response to proposals from LCJ and other organizations, and charged it with evaluating whether rule changes are warranted by its next meeting in November 2018. The Committee is beginning a listening tour to gather input, and its first stop is a conference sponsored by Duke Law School’s Judicial Studies Center, *Documenting and Seeking Solutions to Mass-Tort MDL Problems*, in Atlanta, Ga., on April 26-27, 2018, in which LCJ is participating.

LCJ’s education program will utilize a variety of media tools and third-party experts, and includes a repository of information including several infographics, a case study, testimonials, reports and more to highlight the failure of the FRCP to govern MDLs and the consequences this has.

One focus of LCJ’s work is the inability of MDLs to screen out meritless claims early in the litigation. Because many MDLs have a large number of plaintiffs, courts do not always apply the FRCP that require

plaintiffs to come forward with basic evidence of injury and causation. As a result, groundless claims can languish in the MDL proceeding for years, which drive up litigation costs and can affect strategy. LCJ cites the Vioxx MDL to illustrate this problem, and reports that, after the case was settled, nearly a third of all the claims failed to meet the basic requirements set by the court. To fix this problem, LCJ recommends that the FRCP be amended to require plaintiffs in MDLs to disclose the basis for their claims early in the case, and/or that claims be pled with particularity, allowing timely dismissal of individual complaints that lack merit.

Overall, there are six areas in the FRCP that LCJ recommends should be adapted to the practical realities of MDL cases: pleadings, dismissal, joinder, required discovery disclosures, trial, and appellate review.

For more information about LCJ and this important initiative, please visit www.Rules4MDIs.com or contact us at media@rules4mdls.com.

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