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RULES 4 MDLs

73% of Federal Civil Cases Are in MDLs as of Fiscal Year 2022

Data Reinforces Need for Proposed Rule 16.1 Currently Under Consideration by Advisory Committee on Civil Rules

WASHINGTON, D.C. – April 27, 2023 – 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 73% of the federal civil caseload (392,374 cases out of 536,651 federal civil cases) resides in Multidistrict Litigations (MDLs) as of the end of fiscal year 2022 (FY22). In the last decade, the percentage of civil cases in MDLs has more than doubled (29% in FY12) – underscoring the acute need for rules reform to address the unique management challenges of MDLs, where many civil rules are not applied.

This new data comes at an important time, as at a recent meeting the Advisory Committee on Civil Rules proposed a new Federal Rule of Civil Procedure (FRCP) 16.1 designed to address issues with the management of MDL proceedings. Among its provisions, the proposed rule aims to help judges avoid the well-known problems that unexamined claims cause in MDL proceedings by prompting early discussion of how and when information regarding the factual basis for the claims will be disclosed. This proposed rule, with further refinement, could help address the problem in MDLs of unexamined and often meritless claims.

“The fact that nearly three-quarters of the civil case docket resides in MDLs speaks to the need for rulemaking to address the specific challenges posed by MDLs where many of the existing Rules of Civil Procedure are often not applied,” said Alex Dahl, LCJ’s general counsel. “MDLs have become warehouses for unexamined claims – where even bare bones proof of exposure and injury are not required nor provided – which hampers the ability of judges to manage the proceedings. Indeed, in many MDLs, cases are dismissed from bellwether trial pools and at the remand stage when it is discovered that they don’t belong in the MDL, which wastes time and delays these proceedings; still others drop out of settlements because they don’t meet the most basic requirements. The rule, if written and implemented correctly, should result in more MDL transferee judges requiring basic due diligence early in the proceedings.”

On March 28, the Advisory Committee on Civil Rules voted to recommend the proposed rule be published for public comment. The rule now goes to the Standing Committee on Rules of Practice and Procedure, which is expected to consider the rule at its June meeting. If approved by the

Standing Committee, the proposed rule will be published in August for a six-month public comment period.

“LCJ supports proposed rule 16.1 – although we will be suggesting improvements – as a first step to properly incorporating MDLs into the FRCP,” said Dan Steen, LCJ’s executive director. “If needed changes are made, the proposed rule could be effective in raising key questions early in the litigation so that all parties have access to the information they need to properly assess litigation risks and valuations.”

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, that generally do not take the time of Article III judges.

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](https://www.rules4mdls.com) or contact us at media@rules4mdls.com.

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Lawyers for Civil Justice, a national coalition of defense trial lawyer organizations, law firms, and corporations, utilizes a methodology first developed by the Duke Law Center for Judicial Studies to calculate this annual data. Despite recent comments treating specific current MDLs as outliers given their size, the Duke/LCJ methodology notably includes all active MDLs (read here for more on the methodology: <https://www.rules4mdls.com/faq>). For example, in his 2022 Year-End Report on the Federal Judiciary, Chief Justice John Roberts excluded the 3M Combat Arms Earplug MDL from the total of civil cases in MDLs. However, this ignores the fact that large MDLs are not outliers but rather have been fixtures of the system for the last three decades, at least. At their largest, the Asbestos MDL (consolidated in 1991) had 192,130 actions filed, the Silicone Gel Breast Implants MDL (consolidated in 1992) had almost thirty-thousand actions filed, and in the pelvic mesh litigation, 103,000 cases were consolidated in several MDLs before the same judge. The same dynamics that created the “largest” MDLs of the past, and created the 3M case, will continue to create ever-larger MDLs unless addressed by rulemaking.