

## **Mass Torts – Guidelines and Criteria for Designation**

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Pursuant to Rule 4:38A (“Centralized Management of Mass Torts”), the Supreme Court has approved the attached “Mass Tort Guidelines” for promulgation by Administrative Directive. These guidelines, which are effective immediately, set forth (1) criteria to be considered in determining whether a category of cases should be designated a mass tort, and (2) a procedure for interested attorneys to have input into the process.

## **MASS TORT GUIDELINES**

### **PROCEDURE FOR REQUESTING DESIGNATION OF A CASE AS A MASS TORT FOR CENTRALIZED MANAGEMENT**

The Assignment Judge of any vicinage or an attorney involved in a case or cases that may constitute a mass tort may apply to the Supreme Court, through the Administrative Director of the Courts, to have the case(s) classified as a mass tort, and assigned to a designated judge for centralized management. The Assignment Judge or attorney making such an application must give notice to all parties then involved in the case(s), advising that the application has been made and that a Notice to the Bar will appear in the legal newspapers and in the Mass Tort Information Center on the Judiciary's Internet website providing information on where and within what time period comments on and objections to the application may be made.

The Administrative Director of the Courts will present the application, along with a compilation of any comments and objections received, to the Supreme Court for its review and determination.

If the Supreme Court determines that the case(s) should be classified as a mass tort and assigned to a designated judge for centralized management and, in that judge's discretion, trial, an appropriate Order will be entered. The Order will be sent to all Assignment Judges and Civil Presiding Judges, will be published in the legal newspapers, and will be posted in the Mass Tort Information Center on the Judiciary's Internet website.

### **Criteria to be Applied in Determining Whether Designation as a Mass Tort is Warranted**

In determining whether designation as a mass tort is warranted, the following factors, among others, will be considered:

- whether the case(s) possess(es) the following characteristics:
  - C it involves large numbers of parties;
  - C it involves many claims with common, recurrent issues of law and fact that are associated with a single product, mass disaster, or complex environmental or toxic tort;
  - C there is geographical dispersment of parties;
  - C there is a high degree of commonality of injury or damages among plaintiffs;
  - C there is a value interdependence between different claims, that is, the perceived strength or weakness of the causation and liability aspects of the case(s) are often dependent upon the success or

failure of similar lawsuits in other jurisdictions; and

- C there is a degree of remoteness between the court and actual decision-makers in the litigation, that is, even the simplest of decisions may be required to pass through layers of local, regional, national, general and house counsel.
- whether there is a risk that centralization may unreasonably delay the progress, increase the expense, or complicate the processing of any action, or otherwise prejudice a party;
  - whether centralized management is fair and convenient to the parties, witnesses and counsel;
  - whether there is a risk of duplicative and inconsistent rulings, orders or judgments if the cases are not managed in a coordinated fashion;
  - whether coordinated discovery would be advantageous;
  - whether the cases require specialized expertise and case processing as provided by the dedicated mass tort judge and staff;
  - whether centralization would result in the efficient utilization of judicial resources and the facilities and personnel of the court;
  - whether issues of insurance, limits on assets and potential bankruptcy can be best addressed in coordinated proceedings; and
  - whether there are related matters pending in Federal court or in other state courts that require coordination with a single New Jersey judge.

### **Choice of Site for Centralized Management**

Issues of fairness, geographical location of parties and attorneys, and the existing civil and mass tort caseload in the vicinage will be considered in determining to which vicinage a particular mass tort will be assigned for centralized management. This decision will be made by the Supreme Court.

### **Subsequent Related Actions**

The initial Order of the Supreme Court denominating a particular category of cases as a mass tort and referring those cases to a particular county for centralized management may specify that subsequent related actions are to be transferred from the counties in which they are filed to the designated mass tort county and judge without further application to the Supreme Court.

## **Severance**

The mass tort judge may thereafter review the cases designated as a mass tort and assigned for centralized management, and may sever and return to the original county(ies) of venue any that no longer warrant centralization.

## **Termination of Centralized Management**

When the mass tort judge determines that centralized management is no longer necessary or appropriate under the circumstances, he or she will send a written report to the Administrative Director, with copies to the Assignment Judge, Civil Presiding Judge, Trial Court Administrator and Civil Division Manager of his or her vicinage. The report shall provide details of matters resolved as well as the particulars concerning any unresolved matters being returned to their original county(ies) of venue. This report will be presented to the Supreme Court for review.

[As approved by the Supreme Court pursuant to Rule 4:38A, October 2003.]