

Asbestos Personal Injury Litigation in the Federal Courts: MDL-875

Eduardo C. Robreno, Presiding Judge
United States District Court for the Eastern District of
Pennsylvania

© June 12, 2009
As Amended
February 15,
2011

Asbestos: A Health-Legal Crisis

- Former Third Circuit Chief Judge Edward R. Becker described the social effect of Asbestos in Georgine v. Amchem Prods., Inc.:
 - The use of asbestos “is a tale of danger known about in the 1930s, [with] exposure inflicted upon millions of Americans in the 1940s and 1950s, injuries that began to take their toll in the 1960s, and a flood of lawsuits beginning in the 1970s.”

History of MDL-875

- 1991 – Transfer to the Eastern District of PA by the Judicial Panel on Multidistrict Litigation
- The cases transferred involved personal injury claims resulting from asbestos exposure
- 1996 – Separate docket established for Maritime cases brought under the Jones Act (MARDOC).

MDL-875: A Typical Asbestos Personal Injury Lawsuit

- Brought by plaintiff(s) in state court
- Removed by defendants and transferred to the E.D. Pa.
- Initially involved one or more plaintiffs suing many defendants.
- MDL-875 is different type of MDL.
- Statute of Limitations issues.
- The Two or multiple disease Rule.
- Choice of law.

Three Phases of MDL-875

- MDL-875 Phase I: Class Action Effort
 - Supreme Court ruled that a proposed class did not satisfy the requirements of Fed. R. Civ. P. 23 – Georgine v. Amchem Prods.
- MDL-875 Phase II: Legislative Effort
 - Opportunities for mass settlement through legislative action did not materialize
- MDL-875 Phase III: claim by claim resolution of each case.

DECONSTRUCTING THE CASE

- Admin. Ord. 11: Transfer of all electronic dockets in MDL-875 to the E.D. Pa. CM/ECF system.
- Admin. Ord. 12: Requires each Plaintiff to submit a diagnosing report or opinion upon which they rely in pursuing their action.

Status of MDL-875 as of 10/1/2008

- About 110,000 plaintiffs, each of whom had sued, on average, over 50 defendants.
- Estimated number of open claims in excess of 10 million.
- Maritime Docket (MARDOC): a separate docket consisting of about 42,000 cases.

MDL 875 Phase III: Changes in Law & Culture

- The aging of exposed asbestos population
- State tort reforms
- Recognition of problems with the mechanisms used to resolve large numbers of asbestos cases in the 1990s
- Discovery of widespread fraud in the medical diagnosing of silicosis
- Development of new litigation strategies by corporations.
- Bankruptcy of all Major Manufacturers.

Management Plan

- Operating Principles
- Personnel
- Procedures
- Communication

Operating Principles

- A commitment to hands-on management of cases;
- Systematic differential diagnostics – all cases cannot be treated similarly;
- And reasonable but fixed deadlines and benchmarks.

Personnel

- Judge Eduardo C. Robreno, Presiding Judge
- Judge Lowell A. Reed, Jr., U.S. District Judge
- Chief Magistrate Judge Thomas Rueter; Magistrate Judges M. Faith Angell, David Strawbridge, Elizabeth Hey
- Clerk of the Court Michael Kunz, Esq.
- Case Administrator Bruce Lassman, Esq.
- Deputy Clerk Jeff Lucini
- Law Clerk Emily Breslin
- Summary Judgment Law Clerk Mary Pat Stahler
- Magistrate Judge Law Clerk Christopher Lyding, Esq.
- Clerk's Office Personnel

Procedures

- Motions
- Settlements
- Trials
- Remands
 - By motion of party or by suggestion of the Court.
- Summary Judgment

Communication

- MDL-875 website provides easily accessible information to litigants. The website includes:
 - Updates – Any activity in the litigation is logged.
 - Master Calendar
 - Opinions
 - Case Listings
 - Steering Committee
 - Daily Updates
 - Statistical Breakdown of the MDL
- Case question hotline and contact information

MDL 875 Website Hits

<http://www.paed.uscourts.gov>
 WEBSITE STATISTICS
 3/1/2009 - 1/31/2010

DIRECTORY DESCRIPTION	VISITS			TOTAL
	3/1/09 - 12/31/09	1/1/10 - 12/31/10	JAN 2011	
MDL 875 HOME	39075	48552	4337	91964

SUBDIRECTORY DESCRIPTION	VIEWS/DOWNLOADS			TOTAL
	3/1/09 - 12/31/09	1/1/10 - 12/31/10	JAN 2011	
UPDATES	12918	19303	2086	34307
ADMINISTRATIVE ORDERS	5866	7773	960	14599
PROCEDURES	4447	8734	1008	14189
CONTACTS	4634	6448	767	11849
OPINIONS	2111	6126	883	9120
COMPREHENSIVE MDL 875 CALENDAR	5327	3265	339	8931
MARDOC CASE INFORMATION	504	6041	779	7324
CASE INFORMATION	3228	4083	-	7311
NOTICES	-	5638	937	6575
ADMINISTRATIVE ORDER NO. 12 (AS AMMENDED)	3370	2317	130	5817
SUMMARY JUDGMENT PROCEDURES	-	4130	1019	5149
ABOUT	-	3459	667	4126
CASEWIDE STATISTICAL BREAKDOWN	1103	2489	497	4089
CASES REFERRED TO JUDGE REED	-	1881	751	2632
MOTION SCHEDULE	2480	130	-	2610
CASES REFERRED TO JUDGE HEY	-	2000	554	2554
CASE MANAGEMENT FLOWCHART	628	1265	94	1987
SETTLEMENT CONFERENCE SCHEDULE	1800	99	-	1899
DISCOVERY PLAN TEMPLATE	492	1326	76	1894
STEERING COMMITTEES	953	385	-	1338
OLD ADMINISTRATIVE ORDERS	-	666	-	666

Integration of Principles and Procedures

- The Flow Chart on the following slide illustrates how the Court is implementing its Case Management principles and procedures.

CASE IS LISTED FOR HEARING

Voluntary
/Involuntary
Dismissal of Viable
Defendants

Contested
Compliance with
Admin. Ords.

Plaintiff has complied
with Admin. Ords. 11 &
12.

Non-Viable
Defendants →
Bankruptcy docket

Daubert
Hearing/ other
Evidentiary
Hearing

Rule 26(f) Report/ Rule
16 Conference

Settlement
Conference

Involuntary
Dismissal

Summary Judgment Motions Hearing
before District Judge or three judge
panel of Magistrate Judges

Settlement/Final Pretrial Conference

Malignancy & Non-Malignancy Tracks

Trial in E.D. Pa. or Remand to Transferor
District (pursuant to Admin. Ord. 18)

NOTE: A non-viable
defendant is a party
that is in bankruptcy
proceedings

Progress since 1/1/2009

- Beginning in January of 2009, the Court has fully implemented the procedures described.
 - The Court began by addressing the “land-based” litigation in MDL-875.
 - In December of 2009, the Court began applying these procedures to the MARDOC cases.

**Cases Opened and Transferred to the Eastern District of Pennsylvania as Part of MDL 875
from November 2008 - December 2009**

	CASES TRANSFERRED TO EDPA	CLAIMS TRANSFERRED TO EDPA	CASES TERMINATED IN EDPA	CLAIMS TERMINATED NATIONWIDE	CASES ADDED TO BANKRUPTCY DOCKET	C.T.O.'S FILED
NOVEMBER 2008	1,024	33,982	2	2,304	2,064	0
DECEMBER 2008	834	16,112	12	4,278	143	56
JANUARY 2009	2,469	72,511	0	10,681	358	152
FEBRUARY 2009	1,253	35,222	5,233	216,095	222	542
MARCH 2009	1,891	40,890	1,463	282,683	0	762
APRIL 2009	2,433	51,932	3,187	149,129	695	72
MAY 2009	2,220	71,401	9,751	1,151,139	3,890	46
JUNE 2009	5,566	145,735	2,880	146,093	2,366	53
JULY 2009	4,463	114,537	4,588	404,157	4,576	24
AUGUST 2009	5,822	971,937	3,882	60,009	1,022	138
SEPTEMBER 2009	11,722	643,476	2,724	2,474,855	317	0
OCTOBER 2009	2,169	93,632	6,396	435,802	645	92
NOVEMBER 2009	1,169	53,768	3,366	77,986	2,618	53
DECEMBER 2009	1,009	41,843	2,179	155,072	4,187	43
TOTAL 11/1/2008 - 12/31/2009	44,044	2,386,978	45,663	5,570,283	23,103	2,033

**Cases Opened and Transferred to the Eastern District of Pennsylvania as Part of MDL 875
in 2010**

	CASES TRANSFERRED TO EDPA	CLAIMS TRANSFERRED TO EDPA	CASES TERMINATED IN EDPA	CLAIMS TERMINATED NATIONWIDE	CASES ADDED TO BANKRUPTCY DOCKET	C.T.O.S FILED
JANUARY 2010	426	12,185	2,408	59,644	727	1
FEBRUARY 2010	1,082	21,427	864	44,821	270	37
MARCH 2010	79	2,370	8,655	647,192	2,309	0
APRIL 2010	4,579	218,523	3,525	235,284	2,415	31
MAY 2010	2,754	75,420	8,806	553,430	2,726	62
JUNE 2010	856	6,321	14,244	1,071,056	770	0
JULY 2010	3,449	25,410	3,578	111,232	5,438	34
AUGUST 2010	6,280	46,208	11,785	114,556	5,273	91
SEPTEMBER 2010	1,852	33,072	569	7,714	4,814	13
OCTOBER 2010	2,480	101,484	1,203	23,675	5,343	9
NOVEMBER 2010	176	16,400	602	12,167	771	9
DECEMBER 2010	1,726	69,633	1,362	8,900	1,201	19
TOTAL 1/1/2010 - 12/31/2010	25,739	628,453	57,601	2,889,671	32,057	306

**Cases Opened and Transferred to the Eastern District of Pennsylvania as Part of MDL 875
in 2011**

	CASES TRANSFERRED TO EDPA	CLAIMS TRANSFERRED TO EDPA	CASES TERMINATED IN EDPA	CLAIMS TERMINATED NATIONWIDE	CASES ADDED TO BANKRUPTCY DOCKET	C.T.O.S FILED
JANUARY 2011	97	6,010	489	117,555	66	11
FEBRUARY 2011						
MARCH 2011						
APRIL 2011						
MAY 2011						
JUNE 2011						
JULY 2011						
AUGUST 2011						
SEPTEMBER 2011						
OCTOBER 2011						
NOVEMBER 2011						
DECEMBER 2011						
TOTAL 1/1/2011 - 1/31/2011	97	6,010	489	117,555	66	11

Case Totals 2006-2011

	CASES TRANSFERRED TO EDPA	CASES TERMINATED IN EDPA	CASES PENDING IN EDPA	
8/1/2006 - 10/31/2008	53,849	1,809	AS OF 10/31/08	52,040
11/1/2008 - 12/31/2009	44,044	45,663	AS OF 12/31/09	50,421
1/1/2010 - 12/31/2010	25,739	57,601	AS OF 12/31/10	18,559
1/1/2011- 1/31/2011	97	489	AS OF 1/31/11	18,167
TOTAL	123,729	105,562	AS OF 1/31/11	18,167*

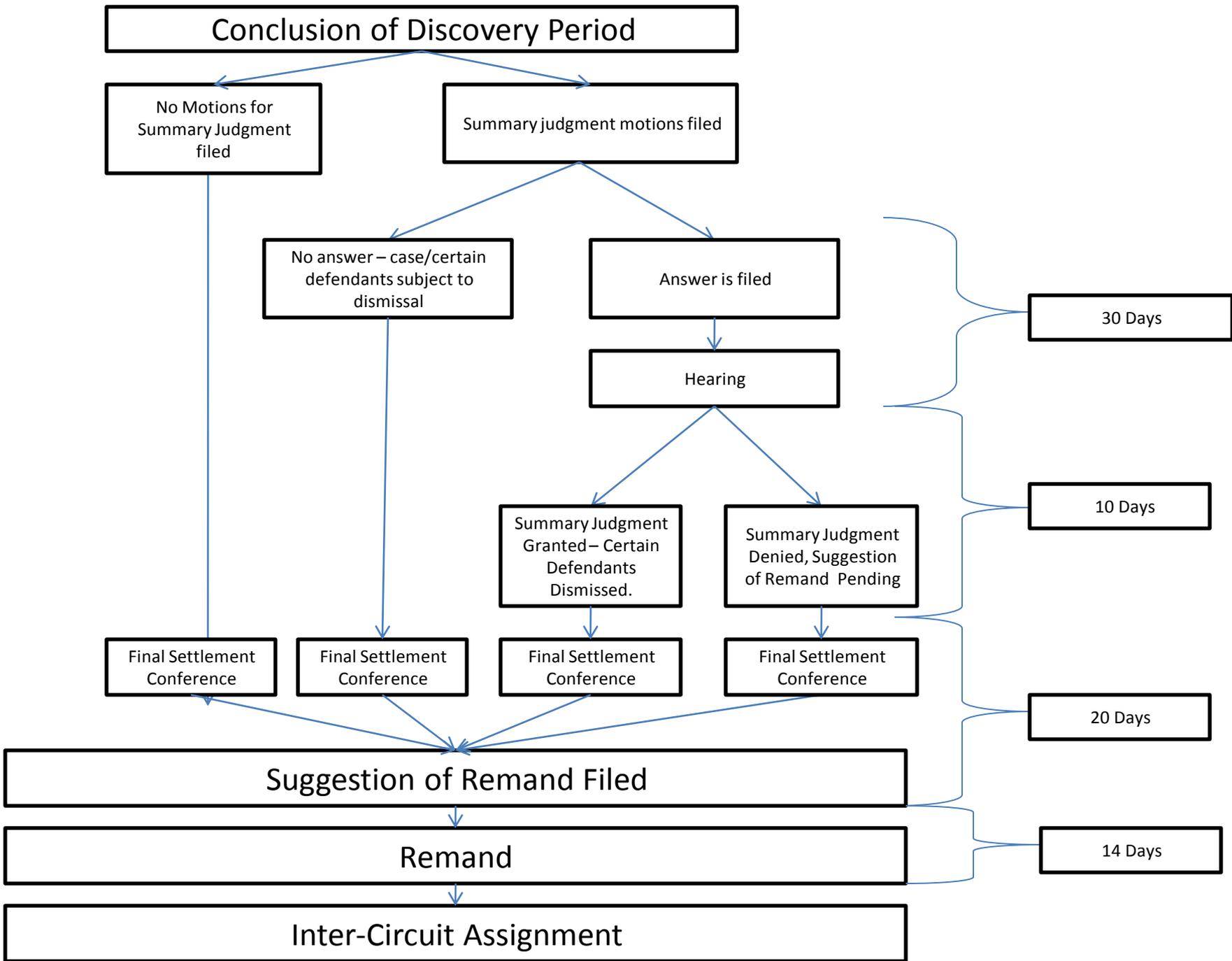
***7,265 Referred to Magistrate Judges and Judge Reed**

Cases Referred to Magistrate Judges and Judge Reed

REFERRAL JUDGE	REFERRALS
REED	2591
HEY	1879
ANGELL	1846
STRAWBRIDGE	532
RUETER	417
TOTAL	7265

MDL-875 Phase IV: Summary Judgment

- The Court has devised a procedure to deal with the volume of summary judgment motions received.
- The following chart illustrates the procedure.



Summary Judgment Procedure

- As of the response date for motions for summary judgment, the Court can ascertain the number of cases/claims that may be remanded.
- If some or all of the motions in a case are opposed, a hearing on those motions will be scheduled within 30 days.

Summary Judgment Hearings

- Motions for Summary Judgment based on lack of product identification or lack of successor liability will be heard by one or more Magistrate Judges.
- Whether the hearing is in front of a Magistrate Judge or a District Judge, a ruling will issue from the bench or by written memorandum within 10 days.

Remand

- Once motions for summary judgment are decided, pursuant to Administrative Order 18, the Court will prepare a suggestion of remand.
- While this suggestion of remand is pending, parties may request a final settlement conference.
- If settlement is not finalized, the case will be remanded to the transferor districts.
- The transferor court suggests that the transferee court schedule trial in 30 days (intercircuit panel assignments may be utilized).

All MDL 875 Cases Hearing Dates

available at: <http://www.paed.uscourts.gov/documents/MDL/MDL875/Remand%20Dates%201.24.pdf>

Jurisdiction (and Magistrate Judge)	# of Cases	Hearing Date	Sugg. Of Remand Date
D. ME	60	9.22.2010	10.22.2010
D.N.H.	60	9.22.2010	10.22.2010
D.MASS	30	9.22.2010	10.22.2010
D. DEL	1	10.5.2010	11.5.2010
W.D. PA	10	10.5.2010	11.5.2010
D.N.J	approx. 300	10.5.2010	11.5.2010
D. MINN	249	10.5.2010	11.5.2010
W.D. MO	6	10.5.2011	11.5.2010
E.D. MO	37	10.5.2010	11.5.2010
D. IA	5	10.5.2010	11.5.2010
D. KS	2	10.5.2010	11.5.2010
D. UT	9	10.5.2010	11.5.2010
D.N.M	18	10.5.2010	11.5.2010
D. W. Y	4	10.5.2010	11.5.2010
E.D. OK	9	10.21.2010	11.19.2010
N.D. OK	11	10.21.2010	11.19.2010
W.D. OK	10	10.21.2010	11.19.2010
D. OR	1	10.21.2010	11.19.2010
D. MT	2	10.21.2010	11.19.2010
D. ID	2	10.21.2010	11.19.2010
D. NM	3	10.21.2010	11.19.2010
W.D. WA	19	10.21.2010	11.19.2010
E.D. WA	1	10.21.2010	11.19.2010
CAL	12	10.21.2010	11.19.2010
D.C.	1	11.2.2010	12.2.2010
S.D. FL	1	11.2.2010	12.2.2010
N.D.W.V	1	11.2.2010	12.2.2010
S.D.W.V.	9	11.2.2010	12.2.2010
D. ME	1	11.2.2010	12.2.2010
D.N.J	8	11.16.2010	12.16.2010
E.D. KY	53	11.16.2010	12.16.2010
E.D. TN	2	11.16.2010	12.16.2010
W.D. TN	69	11.16.2010	12.16.2010
D. MD	639	12.7.2010	1.7.2011

N.D. FL	16	12.14.2010	1.14.2011
S.D. FL	190	12.14.2010	1.14.2011
S.D. GA	464	12.14.2010	1.14.2011
E.D. TX	1	12.14.2010	1.14.2011
D. ID	1	12.14.2010	1.14.2011
N.D. AL	3	1.11.2011	2.11.2011
S.D. AL	1	1.11.2011	2.11.2011
M.D. MS	3	1.11.2011	2.11.2011
D.DEL	1	1.11.2011	2.11.2011
S.D. TX	47	1.11.2011	2.11.2011
W.D. TX	3	1.11.2011	2.11.2011
N.D. TX	206	1.11.2011	2.11.2011
D.N.H	1	1.11.2011	2.11.2011
<i>UT, CA-S, WA-W (Judge Rueter)</i>	3	<i>1.11.2011</i>	2.11.2012
<i>W.D. WA (Judge Strawbridge)</i>	1	<i>1.11.2011</i>	2.11.2013
D. KY	3	1.25.2011	2.25.2011
M.D. GA	1	1.25.2011	2.25.2011
D. LA	32	1.25.2011	2.25.2011
D.AK	4	1.25.2011	2.25.2011
D.AZ	1	1.25.2011	2.25.2011
<i>S.C. (Judge Angell)</i>	<i>approx. 530</i>	<i>1.25.2011</i>	2.25.2011
<i>UT (Judge Angell)</i>	1	1.25.2011	2.25.2011
<i>UT, AL-M, GA-N (Judge Rueter)</i>	3	1.25.2011	2.25.2011
C.D. ILL	160	2.8.2011	3.8.2011
N.D. ILL	5	2.8.2011	3.8.2011
S.D. ILL	45	2.8.2011	3.8.2011
E.D. WI	8	2.8.2011	3.8.2011
D. ME	57	2.8.2011	3.8.2011
S.D. IN	54	2.8.2011	3.8.2011
<i>LA-M (Judge Angell)</i>	2	2.8.2011	3.8.2011

W.D.N.C.	36	2.22.2011	3.22.2011
E.D.N.C	36	2.22.2011	3.22.2011
M.D.N.C	36	2.22.2011	3.22.2011
S.C.	36	2.22.2011	3.22.2011
N.D. OH	27	2.22.2011	3.22.2011
S.D. OH	27	2.22.2011	3.22.2011
E.D. MI	27	2.22.2011	3.22.2011
W.D. MI	27	2.22.2011	3.22.2011
<i>OK-W Wilkins (09-92451) (Judge Hey)</i>	<i>1</i>	<i>2.22.2011</i>	<i>3.22.2011</i>
<i>FL-S (Judge Rueter)</i>	<i>1</i>	<i>2.22.2011</i>	<i>3.22.2011</i>
<i>GA-S (Judge Angell)</i>	<i>approx. 350</i>	<i>2.22.2011</i>	<i>3.22.2011</i>
E.D. TX	50	3.8.2011	4.8.2011
S.D. IN	3	3.8.2011	4.8.2011
D. ME	3	3.8.2011	4.8.2011
S.D.N.Y	337	3.22.2011	4.22.2011
<i>N.D. (Judge Rueter)</i>	<i>approx. 80</i>	<i>3.22.2011</i>	<i>4.22.2011</i>
<i>D.C. (Judge Rueter)</i>	<i>1</i>	<i>3.22.2011</i>	<i>4.22.2011</i>
E.D.N.Y	266	4.5.2011	5.5.2011
D. UT	1	4.5.2011	5.5.2011
E.D. TX	1	4.5.2011	5.5.2011
<i>Levy Phillips II (Judge Hey)</i>	<i>3</i>	<i>4.5.2011</i>	<i>5.5.2011</i>
<i>Wallace and Graham II (Judge Hey)</i>	<i>441</i>	<i>4.5.2011</i>	<i>5.5.2011</i>
S.D. MS	286	4.26.2011	5.26.2011
D.MT	9	5.18.2011	5.29.2011
<i>WA-W, N.D. AL, E.D. LA (Judge Rueter)</i>	<i>3</i>	<i>5.18.2011</i>	<i>5.29.2011</i>
<i>N.D. CAL (Judge Rueter)</i>	<i>approx 192</i>	<i>5.18.2011</i>	<i>5.29.2011</i>
<i>NC (Wallace and Graham III)(Judge Hey)</i>	<i>367</i>	<i>5.18.2011</i>	<i>5.29.2011</i>
E.D. VA	5,900	6.6.2011	7.5.2011

← Hearings still to be completed in bold

Various Districts	62	6.14.2011	7.14.2011
<i>E.D. VA (Judge Strawbridge)</i>	2	6.14.2011	7.24.2011
Various Districts	5	6.28.2011	7.28.2011
<i>C.D. CA (Judge Angell)</i>	2	6.28.2011	7.28.2011
<i>RI, CT (Judge Rueter)</i>	4	6.28.2011	7.28.2011
<i>Wallace and Graham IV (Judge Hey)</i>	367	6.28.2011	7.28.2011
<i>RI (Judge Hey)</i>	1	6.28.2011	7.28.2011
<i>CT (Judge Strawbridge)</i>	13	7.7.2011	8.7.2011
<i>MS Motley Rice (Judge Hey)</i>	95	7.12.2011	8.12.2011
<i>NC Ward Black (Judge Hey)</i>	200	7.12.2011	8.12.2011
<i>NC</i>	2	7.12.2011	8.12.2011
E.D. PA	2	7.26.2011	N/A
D.N.J	1	8.9.2011	9.9.2011
<i>N.D. (Judge Rueter)</i>	128	8.23.2011	9.23.2011
<i>CA (Judge Hey)</i>	1	8.23.2011	9.23.2011
<i>LA (Judge Hey)</i>	1	8.23.2011	9.23.2011
<i>CAL-C (Judge Angell)</i>	1	10.1.2011	11.1.2011
<i>GA-S (Judge Angell)</i>	1	10.5.2011	11.5.2011

All MDL 875 Cases Remanded after Hearing Dates

Hearing Date	Number of Cases Remanded
9.22	0
10.5	DE (1), IA-N (1), MN (1), MO-E(7), NJ (16), PA-1(6), UT (7), WY (2)
10.21	NM (1), OK-N (1)
11.2	NDWV (1), PA-W (1)
11.17	SDWV (1)
12.7	MD (10)
12.14	FL-N (2), FL-S (1), TX-E (1), ID (1)
1.11	DE (1), TX-N (1)
1.25	SC (13), MD (1), AZ (1)
2.8	IL-S (2) [potential as of date of writing]
TOTAL	80

MDL 875 Hearing Results

Hearing Date	Cases Listed	Transferor Districts	Opposed Motions	Remands
9.22.10	150	NH, MA, ME	0	0
10.5.10	617	MO, UT, NM, WDPA, NJ, WY, DE, KS, IA	31 (in 7 cases)	41
10.21.10	37	OK, OR, MT, ID, NM, WA, CA	4 (in 3 cases)	2
11.2.10	16	DC, FL, WV, ME	3 in (2 cases)	2
11.17.10	165	NJ, KY, TN	8 (in 3 cases)	1
12.7.11	639	MD	10 (in 10 cases)	10
12.14.11	250	FL, GA, TX, ID	6 (in 4 cases)	5
1.11.11	230	AL, MC, DEL, TX, NH	13 (in 4 cases)	2
1.25.11	600	KY, GA, LA, AK, AZ, SC	18 (in 15 cases)	15
2.8.11	66	ILL, WI, ME, IN	2 (in 2 cases)	2 (potential)
2.22.11		NC, OH, MI		
3.8.11		TX, IN, ME, NY, ND		
TOTALS	2770*		95	80

***2690 cases settled, dismissed to bankruptcy only docket or dismissed for lack of prosecution.**

Status of MARDOC

- As of December 2009, MARDOC contained approximately 40,000 plaintiffs.
- The Court has separated these cases and will be administering MARDOC independently of the “land-based” litigation
- All of the cases were administratively dismissed in 1996
 - Each case is being reactivated, but is kept separate from “land-based” cases for statistical purposes

MARDOC

- Differences between MARDOC and the “land-based” litigation
 - Jones Act claims brought under maritime law
 - Almost every individual plaintiff represented by the same counsel
 - By agreement of counsel, all cases filed in one transferor district, the Northern District of Ohio
 - Old cases on paper dockets

Administration of MARDOC

- Number of cases transferred (or to be transferred):
44,492
- Elimination of claims
 - Plaintiffs' original complaints name approximately 150 defendants in each case.
 - Plaintiffs' Counsel has agreed to dismiss all but 15 defendants in each remaining MARDOC case
- Plaintiffs' counsel has voluntarily dismissed approx. 41,000 cases and is moving forward with 3,384 cases.
- Further administrative procedures to be implemented to promote settlement and/or begin dismissals.

Nationwide Projections – “Land-Based” Cases

- By June 30, 2010, every case in MDL-875 will have been settled, dismissed, remanded, tried or will be subject to a scheduling order
- Beginning in the spring and summer of 2010, cases which have completed pretrial proceedings in the E.D. Pa. will be remanded to the transferor districts.
 - The preference will be to remand cases in groups.

Remaining Cases in MDL-875 as of February 15, 2011

UNITED STATES DISTRICT COURT
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION
875 -IN RE: Asbestos Products Liability Litigation (No.VI)
PENNSYLVANIA EASTERN

FROM 2006-2011	CASES	CASES	CASES
	TRANSFERRED	TERMINATED	REMAINING
	TO EDPA	IN EDPA	IN EDPA
LAND CASES	123,729	105,562	18,167
MARDOC	44,492*	41,108	3,384
TOTAL	163,584	142,908	21,551

***Subject to
processing of case
files.**