New Jersey’s Supreme Court has frequently found itself on the cutting edge of developments in the law, and mass torts is no exception. Much has been said, both positive and negative, about mass torts litigation in the New Jersey courts. Whether hailed as a progressive and efficient system, or scorned as a “judicial hellhole,” it is indisputable that New Jersey’s state courts are among the preeminent jurisdictions in the country for mass tort litigation.

New Jersey’s unique status as a headquarters for numerous drug and chemical companies, its proximity to the major metropolitan centers of New York, Philadelphia, and Washington, D.C., and its dense population, are likely factors that have contributed to the growth of mass tort litigation in New Jersey. Equally important factors, however, have been New Jersey’s court system, and its Judiciary.

Over the last 15 years or so, New Jersey has developed unique procedures intended to facilitate the coordination and handling of mass torts. These procedures evolved over time, and are currently embodied in Court Rule 4:38A and Administrative Directive #7-09, which sets forth mass tort guidelines as well as the procedure and criteria for seeking mass tort treatment of particular types of claims. (Directive #7-09 can be found on the New Jersey Courts Mass Tort Information Center website at www.judiciary.state.nj.us/directive/2009/dir_7_09.pdf). While it does not have the force of law, the resource book is nevertheless an invaluable resource for judges and counsel alike, setting forth procedural and operational guidance on mass tort issues from case designation through resolution.

With specialized procedures and court-sanctioned guidance, New Jersey’s courts are particularly well-equipped to handle mass torts.

Additionally, New Jersey has devoted specialized judicial resources to mass torts, assigning specific judges to mass tort cases on a full-time basis. As with the evolution of the Court Rules and administrative directives, this specialized judicial assignment evolved from one judge sitting in Middlesex County to the present day arrangement of three mass tort judges sitting in the northern,
central, and southern vicinages to whom mass torts are assigned by the Supreme Court: the Honorable Brian R. Martinotti in Bergen County, the Honorable Jessica R. Mayer in Middlesex County, and the Honorable Carol E. Higbee in Atlantic County. These full-time assignments have enabled New Jersey’s mass tort judges to develop mass tort expertise that is uncommon among state courts. As explained by Judge Higbee in her interview in this issue, many of the current practices followed by New Jersey’s mass tort judges are attributable to the pioneering work of the Honorable Marina Corodemus, J.S.C. (retired), who sat in Middlesex County until 2004 as New Jersey’s sole assigned mass tort judge.

New Jersey’s mass tort judiciary has frequently taken an active role in coordination of New Jersey’s state court proceedings with mass tort cases in other jurisdictions, even to the point of participation in joint proceedings. In 2004, for example, then mass tort judge Corodemus participated in a federal court multi-district litigation (MDL) hearing in Seattle from New Jersey via real-time video connection in the In re PPA Pharmaceutical Litigation. In 2006, in the Bextra and Celebrex product liability litigation, Judge Higbee jointly attended a science day in the United States District Court in San Francisco with Federal Judge Charles L. Breyer and New York Supreme Court Judge Shirley Kornreich in which a science tutorial on causation issues involved in the litigation was presented for the benefit of the three judges overseeing the cases in different jurisdictions.

More recently, on June 1, 2011, history was made in Bergen County, when United States District Judge David A. Katz, from the Northern District of Ohio, presided jointly with Superior Court Judge Brian R. Martinotti at a joint status conference involving litigation over the Depuy ASR Hip implants, which is concurrently pending as a centrally managed case in Bergen County before Judge Martinotti and in a federal MDL before Judge Katz in Ohio. This was the first time that an out-of-state federal judge came to New Jersey to preside in a joint proceeding coordinating a federal MDL with a pending New Jersey mass tort proceeding.

We are extremely proud and pleased to present the first ever edition of the New Jersey Lawyer Magazine devoted to the subject of mass tort litigation in New Jersey. Given New Jersey’s prominence in mass tort litigation, this issue is long overdue. As the focal point of the issue, we are pleased to present an interview with the senior sitting mass tort judge in New Jersey, the Honorable Carol E. Higbee, presiding judge of the Law Division, Atlantic County.

As for the articles, the authors include a cross-section of some of the best and most experienced attorneys and firms handling mass torts in New Jersey’s courts, from both the plaintiff and defense sides. The article topics include substantive issues pertaining to particular mass torts, unique procedural and legal issues in mass tort litigation, and opinion pieces on certain aspects of mass tort practice. We are confident that novices and experienced practitioners in this area will find this issue both interesting and beneficial.

Mass tort practice in New Jersey will continue to evolve, as there are a number of cases pending before the courts that will undoubtedly significantly impact the practice. As of this writing, the United States Supreme Court had just decided Pliva v. Mensing, No. 09-993 (June 23, 2011), holding that state law claims against generic drug manufacturers are federally preempted pursuant to the supremacy clause of the U.S. Constitution. The full extent of the impact of Mensing on claims against generic drug manufacturers is yet to be seen.

Among other important cases pending before the courts are those involving the interpretation of New Jersey’s Product Liability Act (PLA) and the presumption of adequacy of the FDA-approved labeling of prescription drugs, statute of limitations, and choice of law issues.

Stay tuned, and happy reading! 🌟

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