

[Products Liability Law Daily Wrap Up, TOP STORY—E.D. Pa.: No personal jurisdiction over maritime defendants in hundreds of cases involved in multidistrict asbestos litigation, \(Aug. 27, 2013\)](#)

Products Liability Law Daily Wrap Up

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By John W. Scanlan, J.D.

A federal district court had no personal jurisdiction over hundreds of defendants involved in consolidated asbestos products liability multidistrict litigation on the maritime docket, a U.S. District Court for the Eastern District of Pennsylvania held in granting defendants' motions to dismiss (*In re: Asbestos Products Liability Litigation (No. IV) (Bartel v. Various Defendants)*, August 26, 2013, Robreno, E.). However, the court declined to dismiss other defendants who had claimed improper service of process.

Background. In the 1980s, merchant marines began filing cases in the Northern District of Ohio against shipowners, manufacturers, and suppliers of products containing asbestos, alleging that they had been injured by exposure to these products. More than 50,000 cases involving millions of claims were filed against hundreds of defendants by 2009. The cases were originally assigned to a maritime docket (MARDOC), but in 1991 they were consolidated and transferred to the Eastern District of Pennsylvania, which has handled this multidistrict litigation since then as part of Docket No. MDL 875. In 1989, defendants filed motions to dismiss for lack of personal jurisdiction, and the district court in the Northern District of Ohio found that it had no personal jurisdiction over the approximately 100 named shipowner defendants. The court rejected the plaintiffs' theory that because maritime law strives for national uniformity, a defendant in a maritime case who was subject to jurisdiction in any U.S. jurisdiction should be subject to jurisdiction in any U.S. jurisdiction.

The court allowed defense counsel to consult with their clients on whether they would prefer to transfer their cases to other jurisdictions where they would be subject to personal jurisdiction or whether they would prefer to waive jurisdictional arguments and remain in the Northern District of Ohio. The court subsequently issued an order directing the plaintiffs to report their choice of forum for the upcoming transfer order, specifying that defendants who wished to remain in the district should merely file answers to the complaint. Although the court later issued an order purporting to initiate the transfer of cases in which personal jurisdiction was not found for those defendants who sought transfer, no severance orders were issued identifying the claims and defendants to be transferred and the jurisdictions to which they were to be transferred. Therefore, those claims and defendants remained on the docket of the Northern District of Ohio and were consolidated with the other cases in MDL 875.

Of the 2,671 maritime cases that are part of MDL 875, 565 motions to dismiss were filed in the present case, including 418 motions to dismiss for lack of personal jurisdiction and others involving service of process. The plaintiffs contended that the defendants waived their personal jurisdiction defense when they filed answers based on the court's orders at that time and continued to participate in these cases both in the Northern District of Ohio and in the MDL litigation. The defendants argued that they had filed answers under protest in which they specifically asserted the personal jurisdiction defense and had asked for leave to file a motion for interlocutory appeal at that time, but the district court had never ruled on that motion. The parties also disputed whether Ohio recognized general jurisdiction and the nature of the defendants' contacts with the state of Ohio. Finally, the plaintiffs argued, in the alternative, that if the court were to find no personal jurisdiction over all of the defendants and that defendants had not waived the defense, the court should transfer the cases to jurisdictions where the defendants would be subject to personal jurisdiction. The defendants argued that an MDL court could not transfer cases to other districts or to itself and, therefore, the appropriate remedy was for the court to dismiss the cases.

Ohio long-arm statute. There was no personal jurisdiction over the defendants under Ohio's long-arm statute. The Sixth Circuit Court of Appeals stated in 2012 that Ohio does not recognize general jurisdiction. Unlike long-arm statutes in many other states, Ohio's statute was not coextensive with the federal Due Process Clause, but specifies nine categories of contacts with the state that will create jurisdiction if the cause of action arises from those contacts. The plaintiffs did not dispute that there was no jurisdiction over those defendants that had no contacts with Ohio. Regarding those defendants that did have contacts with Ohio, the court found that the plaintiffs' complaints did not make any jurisdictional allegations about any specific activities by the defendants that allegedly injured the plaintiffs and did not identify how any of their claims arose from the defendants' contacts with Ohio. Because the contacts did not fall within the nine statutory categories of contacts, there was no personal jurisdiction over these defendants either.

Waiver of personal jurisdiction defense. The actions of the defendants did not waive the personal jurisdiction defense. The defendants had originally raised the issue of personal jurisdiction in 1987, and MDL administrative orders issued in 1995 and 2011 administratively denied without prejudice all existing motions to dismiss. Although the defendants then requested that the MDL court decide the personal jurisdiction issue, they were ordered to participate in the litigation before being given the opportunity to file motions to dismiss, meaning that the present motions were the defendants' first opportunity to litigate personal jurisdiction since 1989. Furthermore, the record showed that the defendants did not intend to waive the defense because their answers included language stating their intention to assert it and also stating that they were filing their answers under protest pending review of the district court's decision to transfer rather than dismiss the cases. The defendants' actions in clearly identifying the defense in their answers and seeking interlocutory review of the order preserved their personal jurisdictional defense.

Transfer of MDL cases. The cases could not be transferred to other jurisdictions that would have personal jurisdiction over the defendants. An MDL court may not transfer a civil action under the standard statutory provision for transfers because a special provision governs the handling of MDL litigation. After an MDL court has completed pretrial proceedings, it may only rule on the action or suggest to the Joint Panel on Multidistrict Litigation that it be remanded to the transferor court for trial; the MDL court cannot transfer a case to another district. Even if the MDL court could transfer the maritime cases, there was no good cause to do so, because the plaintiffs had continued to file thousands of cases in the Northern District of Ohio after the court stated that it did not have personal jurisdiction over the defendants. Because the plaintiffs chose to continue their litigation in Ohio knowing there was no personal jurisdiction in that district, they could not now complain about the dismissal of their cases, the court ruled.

The case number is [MDL Docket No. 875](#).

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