

**ADVANCED MASS-TORT MDL CERTIFICATE COURSE
JAMES F. HUMPHREYS COMPLEX LITIGATION CENTER**

MODULE 1

Thursday, February 24

8:30 am – 11:30 am

MDL CENTRALIZATION

- **Factors to consider (60 minutes)**
 - Possibility of global resolution and reduction of transactional cost savings
Reduction of discovery costs
 - Fewer C-Suite depositions
 - Damages to financial reputation and market value
 - Appointment to leadership committees; high risk & reward
 - Premium compensation, risk of loss not only of time spent on case but also contributions to “Expense Fund”
 - Delay in compensation for several years
 - Getting the word out to more people who are eligible for relief and concern with attracting filings that are unsupportable
 - Increased number of claimants
 - Impact of tv advertisers
 - Screening of claims by entities who solicited claims through tv advertisements
 - Financial arrangements with law firms who accept inventory of claims from tv advertisers
- **Ramp up to filing motion to centralize (60 minutes)**
 - Individual actions filed around the country
 - Choosing MDL, class action, bankruptcy, or other aggregate resolution vehicle
 - Effect of “critical mass” of actions in either state court or federal court
 - Determining who files motion to centralize and when
 - Status of discovery undertaken in individual actions
 - Effect of many actions filed in specific district to influence ultimate selection of MDL transferee judge
 - Contents and length of briefs supporting motion to centralize
 - Factors to consider whether to refile motion, which was initially denied by JPML
 - Building coalitions
 - How are initial discussions orchestrated; who starts and leads
 - Role and influence of repeat players
 - Role and influence of lawyers with large inventories
 - Building defense counsel coalitions
 - Factors considered by defense to engage plaintiffs in discussions before motion to centralize is filed

- **Centralization approval (45 minutes)**
 - JPML hearings held bi-monthly
 - Notices on JPML website
 - Appearance for 2-minute presentation
 - Filing request
 - Ongoing strategic consultations with lawyers who are presenting at hearing
 - Judge Heyburn’s criteria for deciding whether to grant motion to centralize
 - Reading the tea leaves from JPML’s last five mass-tort MDL orders
 - Recommending specific district and judge
 - Coordination among plaintiff lawyers; repeat players’ role
 - Strategies in promoting or avoiding specific judges
 - JPML history appointing “new” transferee judges
 - Consideration of state-court MDLs
 - States with their own MDL complex litigation systems, New Jersey, California, and more than 10 others
 - Consideration of strategic factors for both sides in filing in either state or federal court

11:30 am -12:00 pm

- Plaintiff and defense breakout sessions

Thursday, February 24

12:00 pm – 1:30 pm

- Lunch

1:30 pm – 4:30 pm

STEERING COMMITTEE APPOINTMENT PROCESS

- **Leadership appointments (45 minutes)**
 - Lead counsel and Plaintiff Steering Committee
 - Number of counsel
 - Responsibilities
 - Executive and other committee appointments
 - Description of different types of committees
 - Number of members on committees
 - Responsibilities
- **Selection process (60 minutes)**
 - Appointing authority
 - Court appoints lead counsel and plaintiff steering committee
 - Factors considered by court in appointments: competence, ability to work with others, financial wherewithal, and inclusivity

- Lead counsel appoints committee members
 - Factors considered by lead counsel in appointments: competence, experience, and inclusivity
 - Application process
 - Lead counsel – court establishes process
 - Written applications
 - Interviews in open court
 - PSC – court establishes process
 - Slate applications
 - Individual applications
 - Interviews
 - Committee assignments – lead counsel establishes process
 - Designates law firms or individual appointments
 - Strategies for appointments
 - Lead counsel
 - Prior MDL experience
 - Number of inventory cases
 - PSC
 - Slate -- What should be highlighted in slate application
 - Individual -- What should be highlighted
 - Committees
 - Contact lead counsel or PSC member in your law firm
 - If you have case(s) in the MDL, highlight what you can bring to the table
- **Financial and time commitments (60 minutes)**
 - PSC pays expenses that require immediate payments
 - Contributions monthly
 - Duration of monthly contributions
 - Recovery of contributions as part of common benefit fund distributions payable at end of MDL
 - Sources of funding for PSC
 - Law firm provides funding
 - Line of credit from bank
 - Third-party financing- disclosure requirements
 - Delayed remuneration
 - Compensation for common benefit work based on time and expense reports, evaluated at end of MDL by committee
 - Allocations from common benefit fund to law firms for distribution to individual lawyers who submitted time and expense reports

4:30 pm -5:00 pm

- Plaintiff and defense breakout sessions

Friday, February 25

8:30 am --11:30 am

COMMON BENEFIT FUND

- **Common benefit and expense funds (45 minutes)**
 - Common benefit fund compared with expense fund
 - Purposes of the two funds
 - Source of funding
 - Common benefit fund paid from percentage of settlement funds
 - Payment is made from contingency fees earned by individual lawyers in the MDL who settle with named defendants
 - Expense funds paid from periodic contributions by PSC members – expenses reimbursed from common benefit fund payable at settlement
 - Percentage from settlement funds in state parallel actions-- subject to voluntary agreement
 - Calculating the amounts of common benefit and expense funds
 - Expense funds are based on out-of-pocket expenses, which are due immediately, e.g., experts, transcribers
 - Common benefit fund percentage of settlement sufficient to reimburse all expenses, including out-of-pocket expenses and all pretrial attorney work payable at settlement
 - Based on comparable experiences with other mass-tort MDLs and other criteria
 - Fixed or fluid percentage
 - Who recommends to court and when
- **Common benefits tasks subject to remuneration (60 minutes)**
 - Process
 - Consultations among lead counsel and PSC
 - Advise court of recommendations
 - Case management order specifies tasks
 - Assignment of tasks
 - Assigned to individual lawyers or to law firms
 - Description of typical tasks payable immediately from expense fund
 - Experts
 - Transcribers
 - Bellwether expenses
 - Description of typical tasks subject to remuneration from common benefit fund at settlement
 - Pretrial work, including discovery, preparation experts
- **Allocating funds to pay for common benefit work (60 minutes)**

- Time and expense reports
 - Who develops reports
 - How often are the reports submitted
 - Monitoring of submitted reports
 - Special master
- Assessing lawyers fee in parallel state court actions
 - Written agreement with state court counsel agreeing to common benefit assessment
 - Consideration discovery by state counsel as part of common benefit
 - Federal and state court approval
- Approving submitted expenses and distributing compensation
 - Allocating sums to law firms
 - How calculated
 - Estimating hourly rates based on comparable defense lawyers' compensation
 - Timing of payment
 - At settlement (several years)
 - No payment, if no settlement

11:30 am -12:00 pm

- Plaintiff and defense breakout sessions

12:00 pm

Adjournment Grab-and-Go Snacks