

## The Third Branch

December 1995

# An Interview with Judge John F. Nangle: Chair of the Judicial Panel on Multidistrict Litigation

*Judge John F. Nangle was appointed to the U.S. District Court of the Eastern District of Missouri in 1973, taking senior status in 1990. He was named chairman of the Judicial Panel on Multidistrict Litigation in 1990.*

**Q:** Can you give some historical background on why the Judicial Panel on Multidistrict Litigation was formed?

**A:** The Judicial Panel on Multidistrict Litigation was created by legislation in 1968 in response to the Judiciary's earlier struggle with coordinating almost 2,000 related cases pending in 36 districts around the country (containing over 25,000 claims) alleging a nationwide antitrust conspiracy among electrical equipment manufacturers. A national consensus evolved that the Judicial Panel on Multidistrict Litigation was needed to streamline adjudication of related complex cases filed in multiple districts.

**Q:** The Federal Rules of Civil Procedure call for "the just, speedy, and inexpensive determination" of federal litigation. How does the panel accomplish this?

**A:** Proper use of the panel's power to centralize cases before one judge is one of the Judiciary's best procedures for "the just, speedy and inexpensive determination" of federal litigation. Such centralization eliminates duplication of discovery; avoids inconsistent pretrial rulings; conserves the resources of the parties, their counsel and the Judiciary; and thereby expedites the entire proceeding.

Motions for centralization of cases are brought by any party or may be brought sua sponte by the panel (as was done in the asbestos cases). Under the panel rules, the parties fully brief the case and, thereafter, the panel holds bimonthly oral hearings in different locations around the country in recognition of the national nature of this type of litigation. A "docket" can consist of as few as two or three cases or as many as thousands of cases, as in the asbestos and the breast implant cases. An average of 15 to 20 dockets are handled at a panel hearing.

Upon determining that the cases in a particular docket involve common questions of fact and that the transfer will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation, the panel will then order the transfer of multiple litigation to a single district for coordinated or consolidated pretrial proceedings. In such cases, the savings in time and money to the parties and the courts are enormous.

A little recognized advantage of multidistrict litigation (MDL) involvement is that the panel has, through experience, developed a very solid corps of judges who are highly skilled in handling special types of litigation. An example of this is Judge Milton Pollack of New York, a former member of the panel, who handled the very involved and highly technical Drexel Burnham/Milken securities matters and brought them to a speedy conclusion. Perhaps, the major advantage arising from cases being centralized under the MDL is the fact that, as a practical matter, most cases are disposed of by the transferee court through transfer under Section 1404 (forum nonconveniens), by settlement or by other final disposition.

**Q:** Seven judges serve on the panel. Are all their duties the same? Do they sit individually or as a panel? With

their appointment to the panel do the judges continue to carry a full caseload in their home court?

**A:** The panel consists of seven judges presided over by the chairman. The duties of each panel member are the same with respect to deciding cases. The chairman of the panel has additional responsibilities since he is responsible for the oversight of the panel's office, its staff of 20 employees, and its budget. Also, the chairman usually handles any necessary contacts with the transferee district.

Fortunately, the MDL panel has an outstanding staff headed by its excellent executive attorney, Bob Cahn, and its dedicated clerk of court, Patricia Howard. Its office is in the Thurgood Marshall Federal Judiciary Building in Washington, D.C.

Despite the fact that most members of the panel are senior judges, all members work full time as judges. Many carry a full load in their home districts, and some others of us do court work in several districts and sit on courts of appeal.

**Q:** In 1994, the panel acted on 12,886 civil actions. What types of cases are transferred by the panel? What types are not transferred?

**A:** Typical types of cases transferred by the panel include antitrust, securities, air disasters, toxic waste disasters, products liability, patent, copyright, trademark, employment practices, and contracts. Recent examples are the Norplant and breast implants products liability litigations, the NASDAQ antitrust and the Keating securities dockets, and last year's airplane crashes near Pittsburgh, Pennsylvania, and Charlotte, North Carolina. We are currently considering centralization of antitrust litigation in various aspects of the corn products industry. The panel is more likely to decline transfer in prisoner disputes, cases involving predominately different or relatively simple questions of fact, cases that are nearing completion, and dockets involving few cases.

**Q:** Has the increased complexity of federal litigation and the rise in large scale disasters had an impact on the panel's work?

**A:** Yes, such matters consume a substantial portion of the panel's time and have placed the panel itself on the cutting edge of developing procedures for handling complex litigation and large scale disasters. Cases of this sort frequently present hotly contested turf battles among lawyers and require detailed studies by the panel to determine which district and which judge should act as the transferee court in such cases.

**Q:** Multiparty, multiforum legislation that would allow the consolidation of mass torts has been introduced in past congresses. Does the panel have an interest in this legislation, and if so, what would the legislation accomplish?

**A:** The panel, along with the Judicial Conference, has long supported a Multiparty Multiforum Act. Stated briefly, such a statute would grant federal district courts (and the MDL panel) jurisdiction in any civil case involving minimal diversity and arising from a single accident (i.e., an airplane crash, a hotel fire, etc.) in which at least 25 people are killed or injured. This legislation has long had bipartisan support in Congress and has unanimously passed the House in the past. However, it became bogged down in joint conference and died. I honestly do not know why! It seems clear to me that all parties involved in a serious single event disaster would want to have one judge guiding the case for all the reasons apparent to anyone experienced in litigation.

Under the multiparty, multi-forum legislation, the MDL panel is authorized to centralize before one judge all suits arising from a single accident--including state court cases removed to federal district courts pursuant to more permissive removal provisions--not only for resolution of pretrial matters, as provided under current law, but also for determination of liability and assessment of punitive damages, where applicable. The

transferee court would then return the actions to the courts where they were originally filed for compensatory damages assessment.

I fully expect that legislation will be enacted in the next five to ten years, which will greatly expand the power of the MDL panel (or some similar court or panel) for consolidating and centralizing multiparty, multiforum litigation, especially when it arises from a single accident or event. I believe that the public will demand such action as the best way to reduce transaction costs in this growing field of mass tort litigation.

**Q:** Is there anything else you think readers would like to know about the panel's work?

**A:** I am always surprised when I discover how little many of our district judges know about the purpose and workings of the MDL panel. For example, many judges do not realize that the mere pendency of a motion or of an order to show cause before the panel in no way limits the jurisdiction of the court in which an action is pending. Nor does such pendency before the panel "affect or suspend orders and pretrial proceedings" in that court. All discovery in progress and all orders of the transferor court remain in effect after transfer unless and until modified by the transferee judge who may modify, expand, or vacate prior orders of the transferor court. Once the panel enters an order of transfer, of course, then the transferor court loses all jurisdiction over the case until further order of the MDL panel.