Panel's Long-Time Chair Steps Down

Judge John F. Nangle was appointed to the U.S. District Court for the Eastern District of Missouri in 1973. He stepped down as chair of the Judicial Panel On Multidistrict Litigation in December.

Q: You've served as the chairman of the Judicial Panel on Multidistrict Litigation since 1990. What are the panel's statutory responsibilities?

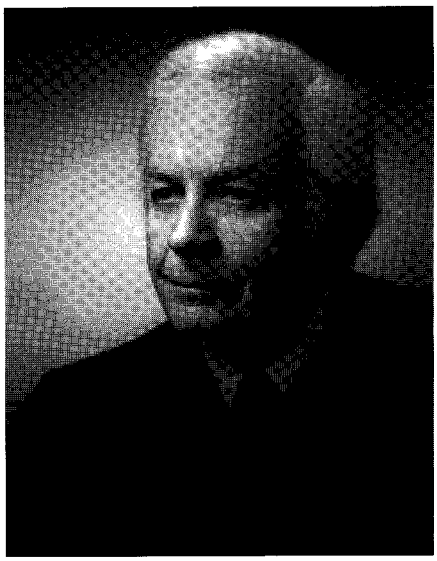
A: The Panel's current responsibilities arise under 28 USC § 1407. The need for having one district judge preside over, in one docket, a number of cases that had been filed in numerous district courts around the country became apparent in 1968. At that time, a large number of electrical equipment cases had been filed in many districts around the country. Circuit Judge Murrah and other leading jurists persuaded Congress that the centralization of such cases before one judge was truly necessary, especially in complex civil litigation. As a result, § 1407 was enacted granting the Panel, in civil cases, authority to centralize, before one transferee judge, cases from various districts around the country which involved one or more common questions of fact.

Q: How does the Panel carry out those responsibilities?

A: Normally, matters are brought before the Panel by motion of one or more of the parties in such litigation. The Panel rules set out the procedure for briefing, holding hearings, and deciding on the question of whether or not centralization of such cases is appropriate. In handling these dockets, the Panel holds hearings every two months. The docket, at such hearings, may cover from 15 to 25 contested matters. Usually, each such docket contains a large number of cases within it. As of September 2000, over 161,000 actions were subjected to § 1407 determinations. These dockets may include antitrust matters, security fraud cases, product liability cases, major airplane crashes, and patent litigation, just to name a few of the subjects.

Q: What are some of the other notable complex cases that have come before your Panel?

A: The asbestos cases are the best-known cases that we have centralized. This was done by the Panel in 1991 after prior Panels on five occasions had refused to centralize such cases. As Panel chairman, I had been contacted by a number of federal judges around the country who were deeply concerned about the large volume of asbestos cases being filed in their districts. Accordingly, the Panel, acting with its sua sponte power, set a special all-day hearing for all the parties involved. We, thereafter, determined to centralize all of the asbestos cases before Judge Weiner in the Eastern District of Pennsylvania. Since accepting this assignment, Judge Weiner has performed exceedingly well in the handling of this massive caseload—he has been able to keep to a minimum the corporations involved from going into bankruptcy, while at the same time assuring the plaintiffs with the most serious cases a fair and speedy resolution of their case. Some plaintiffs' lawyers have not been overjoyed with this procedure because their individual cases may not have proceeded as quickly as the more serious cases. On the other hand, Judge Weiner has miraculously disposed of approximately 63,500 separate cases, which translates into over 5,000,000 separate claims.



Judge John F. Nangle

Other significant complex dockets would include the silicon gel breast implant cases, the Michael Milken/Drexel Burnham cases, the Keating Savings and Loan cases, and major airplane crashes such as Flight 800 off Long Island, the airplane crash in which Secretary of Commerce Ron Brown died in Croatia, the ValuJet crash in the Florida Everglades, and the recent Swissair crash near Nova Scotia.

More recently, we have considered and transferred the Bridgestone/Firestone/Ford cases, the Phen-Fen cases, the Humana HMO cases, the Microsoft civil cases, and Holocaust cases in their many forms.

Q: Could you describe some of the advantages of centralizing a group of cases before one judge.

A: In a situation where a number of complex civil cases have been filed in various districts around the country, which

cases contain common questions of fact (and law), it is obvious that such cases can be best handled by one judge. This judge can control discovery, rule on motions to dismiss and motions for summary judgment, and organize the case much more economically than 10 or 15 judges could do. He will have one document depository, avoid duplicative depositions and other discovery measures, and, importantly, avoid the distinct possibility of having conflicting decisions in separate circuits if the cases are not centralized.

Q: How has the Panel's choice of transferee district evolved since 1990?

A: The Ford/Firestone cases may be a good example of how the Panel's choice of district has developed during my term. Let's say cases were filed in several districts, including California-Northern, Illinois-Northern, and New York-Southern. Previously, the Panel likely would have assigned the cases to one of the three named districts because perhaps one of them had more documents, or the company being sued may be located there, or because most of the witnesses or lawyers might be in one district. After 1990, we began to consider other factors in selecting a transferee district.

In the Ford/Firestone matters, we followed what might be called a neutral approach. In this hotly contested matter, we wanted to avoid the perception that any of the parties might be favored and decided not to send it to any of the districts that the parties desired. Instead, we wanted to make sure that we secured an outstanding judge in a good geographical location, and we thus selected Chief Judge Sara Evans Barker in Indiana. We followed the same procedure basically in the silicon breast implant cases, which were sent to Judge Sam Pointer, who, like Chief Judge Barker, did not have any pending cases on that particular docket.

Twelve or 15 years ago, the Panel likely would have sent these cases to one of the requested districts because the documents were in that district or because most witnesses were located in that district. A large factor in being able to change this policy arises out of the great technological advances made with computers, copying and storing documents, etc. As a result, many cases can be assigned to virtually any district.

In the past, I would estimate that a large portion of our dockets contained parties and attorneys who wanted to go to California, New York, Illinois-Northern, or the Eastern District of Pennsylvania. Instead of overloading those districts, we have been successful in using the services of outstanding judges across the country who are not in these major metropolitan districts. This has truly enabled us to develop a splendid pool of potential transferee judges who would otherwise have been overlooked.

Q: How has Congress responded to the Supreme Court's *Lexecon* decision?

A: I personally believe the *Lexecon* decision to be correct, even though our practice had been otherwise for 30 years. During those 30 years, we allowed the transferee judge, if they felt it was in the best interest of the parties and witnesses and in the interest of justice, to retain the cases for trial. Obviously, that gives the judge the necessary power to control the cases and ultimately settle them or secure some other kind of resolution. The *Lexecon* decision held that the transferee judge could not retain the cases for trials. The Panel and its staff have been helping transferee judges in many ways to avoid the full impact of the *Lexecon* decision but it certainly has crippled the Panel's ability to function as it was initially intended to function.

I will not go into all of the details but Judge Barefoot Sanders, Mike Blommer of the AO, and I have spent an unbelievable amount of time in working with Congress in an attempt to secure an amendment to § 1407 which will return the "self-transfer" power to the transferee judge. Both the Senate and House have approved our statutory recommendation in response to the *Lexecon* decision, but it bogged down just as it reached final passage form. I still have high hopes that our proposed amendment (H.R. 2112) will be passed before this Congress adjourns.

Q: You stepped down as chair of the Panel on December 1. What are your plans for the future?

A: I plan to keep working as a judge. Work on the Panel has certainly been one of the most enjoyable undertakings I have ever been involved in. However, 10 years is more than enough, and I am truly honored to be replaced by a judge of the caliber of Terry Hodges.

I expect to continue sitting with the 11th Circuit at least once a year and the 8th Circuit at least once a year. I still have a significant group of complex cases in my old district, the Eastern District of Missouri, and I handle a docket in my present home, the Southern District of Georgia. If things lighten up by next summer, I would think seriously of helping out some of the districts in the border states that are truly hard pressed. One of the things that I have learned as Panel chairman in dealing with all 94 districts over these past 10 years is that any requests for new district judges be scrutinized carefully.

I love the work. I have enjoyed judging. I've enjoyed the repartee with lawyers and other judges and trial work. And as long as I enjoy it and my mind and body permit me to keep going, I'll do it.