

'Case management' helps speed complex suits in state civil courts

By KATHY BARRETT CARTER

Left partially brain damaged after a near-fatal bout of food poisoning while vacationing in Bermuda, John O'Shea's court case normally would have taken at least three years to wind its way through the state's civil courts with depositions, pretrial motions, conferences, the trial and possibly appeals.

But procedures now used in the state's court system expedited what was a complicated personal injury case. O'Shea, of Edison, was awarded a \$1.5 million structured settlement two years after he was injured and was able to move on with his life a year ahead of schedule, so to speak, his lawyer said.

What happened in his case is a testament to how well a procedure called "case management" is working in New Jersey's courts, said O'Shea's lawyer, Joseph Maran, who has 27 years of experience handling personal injury, medical malpractice and related cases.

Case management for complex civil cases has increasingly become the norm in courts in New Jersey.

Explains Robert Lipscher, director of the Administrative Office of the Courts (AOC): "Active and early participation in the complex case allows the judge to develop, in close cooperation with the attorneys, what really is a custom-made plan for the case. This reduces the discovery and other activities such as motions, so that attorneys can focus on finishing the case with the least cost and anguish to the client."

"In case management, the case is assigned to a judge six months after it is filed and within 30 to 60 days the judge calls the parties together" to discuss the issues in the case, Maran said.

After that, every so often the judge holds conferences, Maran said, "to make sure everybody does their homework, so to speak. Finally, when the case is ready, the same judge tries it."

How case management is used varies from county to county because the state Supreme Court has not yet authorized uniform statewide procedures. But typically it is used for complex cases like medical malpractice, product liability, personal injury and other similarly complicated cases.

Alan Roth, a West Orange attorney and president of the Association of Trial Lawyers of America—New Jersey, said case management is a very

good idea that also seems to work very well in practice.

"By and large the concept, as long as you keep an eye on the goal, is very viable. My personal experience has been excellent," Roth said. "It works very well on complex cases. It gets everyone together to work out the problems."

Janice Newman, president of the New Jersey Women Lawyers, said, "It makes our life easier, dealing with one judge from start to finish. It's much better to have one judge. Games can't be played and the result is more equitable," Newman said.

It is also "very helpful" to "get the stamp of a judge to move things along," Roth said.

One of the key reasons for a judge to get involved in the case early on is to issue orders requiring the two sides to provide their adversary, for example, with expert testimony by a certain date, said Superior Court Judge John E. Keefe. He manages all the asbestos cases in Middlesex County with the assistance of Richard Henke, an attorney employed by the court as special master.

Keefe was designated to handle those cases back in 1978 before case management became a popular idea. There was a realization by the assignment judge in Middlesex County then that the volume and complexity of asbestos related personal injury and wrongful death cases was growing, Keefe said.

"He thought it would be more efficient to have one judge to shepherd these cases, to bring them to trial in an orderly fashion. Neither he nor I realized the magnitude of what was about to happen," Keefe said.

During the 1986-87 court year Keefe managed 552 asbestos cases involving 1,651 plaintiffs. He settled 190 cases out of court during the same year at a cost to the defendant companies of \$24 million.

One of the problems with asbestos cases is that there are only a dozen law firms in the state that handle these cases, creating serious logistical problems when it comes to setting trial dates, Keefe said.

Even with case management, Keefe said, "Because of the tremendous backlog you can't assign a realistic

trial date until the case is about two and half years old."

"These people die" sometimes before the case comes to trial, Keefe said. But, he adds, "Where there is extreme need we try to give people their day in court when they are able to experience it."

Referring to the use of case management, Superior Court Judge Samuel DeSimone who handles cases in Gloucester, Cumberland and Salem counties said, "It is very, very helpful in extremely complex cases." Without it the court would "run into chaos."

"The litigants are benefited" by the use of case management, DeSimone said. "Their case is streamlined, it gets them into the courthouse as soon as possible" and, he said, it helps to hold expenses down.

"A large percentage of litigants do not have enough assets to support themselves while they are recovering from injuries," Maran said, noting that if a worker is injured on the job he is covered by worker's compensation but other non-work related injuries are not.

"Some litigants don't work for a year," Maran said.

Reaching an out-of-court settlement or getting the case in front of a jury as quickly as possible is very important and case management helps accomplish that, Maran said.

Superior Court Judge James D. Clyne, the presiding civil court judge in Ocean County, said, "We're committed to case management in Ocean County."

Although he did not have statistics immediately available since the procedures have only been in place for two months there, Clyne said the process gets cases "in a position to be settled."

It enhances the chances of settlement by "bringing the people together, they exchange views . . . they get a better understanding of the file and the other side's positions," Clyne said.

Weaknesses and strengths of a case are pointed out by the parties and the judge, Clyne said.

While case management is particularly effective in complex cases, Clyne said, "I think it works well in every kind of case from your traffic accident to a pollution case."