

## 3M Company's Military Earplug Multi-District Litigation

Article By:

Carron Nicks

---

It seems like such a small thing. An ear plug, about an inch long, with dual tips (one yellow, one black). It was designed to protect the military from hearing damage caused by gunfire and explosions. But now it seems that small thing, costing just 85 cents to manufacture, was in fact too small to do its job effectively and thereby spawned the largest multi-district litigation (MDL) push and one of the largest classes of personal injury and products liability litigation cases in history.

### How It All Began

[The 3M company](#), which manufactures the tiny plug, is under fire because of what those service members contend is a design flaw that caused them to lose hearing and to develop tinnitus (ringing in the ears).

3M did not originally design the technology embodied in the earplugs. The plug itself was put on the market in 2003 by Aearo Technologies, LLC, which develops and produces technology to control noise, vibration, and temperature for industrial and commercial products. Among other innovative products, it is the developer of the ubiquitous foam ear plugs we purchase for a few cents in the hardware department at Walmart. In 2008, the 3M Company purchased Aearo and therein became the parent of a legacy that would result in massive litigation ten years later, threatening its own legacy of Post-It Notes, Ace Bandages, and Scotch Tape.

From 2003 to 2015, first Aearo, then 3M, manufactured the Combat Arms version 2 (CAEv2) ear plugs and sold them to every branch of the service. Version 4 replaced Version 2 in 2015 and continues to be issued by the military today.

### 3M's Potential Exposure

We do not know how many of the Combat Arms version 2 earplugs the military purchased or how many of them were issued to service members. As of August 31, 2021, the date the country pulled the last military personnel out of Afghanistan, more than 775,000 service members had been deployed there. Since 2001, between 1.9 and 3 million service members have served in post-9/11 war operations in Afghanistan and Iraq. This does not count the number of personnel assigned to bases elsewhere inside and outside the United States who worked in proximity to potentially damaging noise vibrations and who may have been issued Combat Arms earplugs.

---

We also know that the potential exposure to 3M is massive. According to the Department of Veterans Affairs, hearing loss and tinnitus are by far the most common and widespread service related injuries. Veteran and current service members and others have so far filed more than 250,000 claims and lawsuits against 3M contending that the earplug's design was defective and led to hearing loss and tinnitus.

## The Whistleblower Lawsuit

This mad rush to litigate began with a [whistleblower \(\*qui tam\*\) lawsuit](#) brought in 2016 under the False Claims Act by Moldex-Metric, Inc., a competitor of 3M. The act allows private parties to sue on behalf of the government when they believe that defendants submitted false claims for government funds. Moldex contended that Aearo knew as early as 2000 that the CAEv2 was too small to fit the ears of some soldiers.

According to the Department of Justice,

3M violated the False Claims Act by selling or causing to be sold defective earplugs to the Defense Logistics Agency. Specifically, the United States alleged that 3M, and its predecessor, Aearo Technologies, Inc., knew the CAEv2 was too short for proper insertion into users' ears and that the earplugs could loosen imperceptibly and therefore did not perform well for certain individuals. The United States further alleged that 3M did not disclose this design defect to the military.

In 2018, the government settled the whistleblower lawsuit for \$9.1 million. The settlement did not require that 3M admit that the product was defective or that it knowingly failed to disclose the defect to the government.

## The Multi-District Litigation

The whistleblower lawsuit, however, does not compensate service members who may have been injured as a result of their reliance on the Combat Arms earplugs and did not limit service members' rights to seek recompense for injuries from 3M. Since then, more than 250,000 lawsuits have been filed against 3M. Those lawsuits have been transferred to the Northern District of Florida and will be presided over by the Honorable Casey Rodgers, becoming the largest example of mass tort (MDL) in history. [See 3M Products Liability Litigation](#), MDL No. 2885, Master Docket No. 3:19md2885.

## The Bellwether Trials

This is not a class action suit. Presumably, the plaintiffs have not sought class action status because they recognize that circumstances and proof needed are not sufficiently similar to qualify. Consequently, the logistics of holding 250,000 trials within a reasonable period, especially considering the exigencies of the pandemic, are mind boggling. Courts assigned MDL have developed processes and procedures to address the administrative coordination of those cases. To promote settlement, it is not uncommon in MDL for the parties to test the waters by holding trials of representative cases. These so-called bellwether trials are designed to provide the court and the parties with information they can use to determine the value of cases and terms for potential settlements.

Between March and June 2021, Judge Rodgers held three bellwether trials. In the first, the jury awarded three plaintiffs just over \$7 million total. The second bellwether ended in a verdict in favor of

3M, finding that the earplugs did not cause a veteran's tinnitus. The third resulted in a jury award of \$1.7 million against 3M.

Judge Rodgers has scheduled another group of bellwether trials to begin September 20, 2021 and October 18, 2021, with a possible consolidated trial of three plaintiffs in January 2022.

These are not rehearsals or test trials. The decisions are binding on 3M and on the individual plaintiffs, but they are not binding on other claims. In due time, each claim will be decided on its own merits, either through trial or some sort of settlement or claims procedure. The parties report that there have been no settlement discussions to date, and none of the 250,000 plus pending cases has been settled. The parties will be scrutinizing these bellwether trials and the trials to come in the near future to determine their next steps.

## **Is it too late for current service members and veterans to file lawsuits against 3M?**

Personal injury and products liability attorneys across the country continue to evaluate and file cases. But whether a particular service member or veteran is entitled to file depends on several factors that can affect the statute of limitations.

This is MDL, which means that the cases have been filed all over the country and transferred under the umbrella of one court and one judge for what the courts intend will be a more efficient and quicker administration of justice. Even though the cases have been transferred to Judge Rodgers in the Northern District of Florida, the statute of limitations that applies to each case is the statute of the state where the plaintiff's original case was or could have been filed. Those limitation periods vary, with most statutes for cases of this type running two to three years. Determining how a state's limitations period applies to an individual case requires a careful analysis of facts, including when the plaintiff used the earplugs, when symptoms of hearing loss or tinnitus appeared, and when measurable damage attributable to the earplugs was discovered or diagnosed.

## **Effect of MDL on Veterans' Disability Claims**

Current and potential claimants should note that filing a lawsuit against 3M does not prejudice any VA disability claims the plaintiffs may bring. These lawsuits are filed against a private corporation that sold equipment to branches of the military. Disability claims are made against the Veterans Administration, a government entity. VA disability claims are not impacted by the decisions made by a court or jury in private litigation. The VA must conduct its own investigation to determine whether the veteran suffered a hearing loss that would qualify as a disability but was not necessarily caused by a defect in 3M earplugs.

© 2025 Copyright Tribeca Lawsuit Loans

---

National Law Review, Volume XI, Number 264

Source URL: <https://natlawreview.com/article/3m-company-s-military-earplug-multi-district-litigation>