

# And Now A Word From The Panel: 2021 MDLs In Review

By **Alan Rothman** (January 26, 2022)

Welcome as we enter the 10th year of "And Now a Word from the Panel," a column that "rides the circuit" with the Judicial Panel on Multidistrict Litigation as it meets on a bimonthly basis at venues around the country.

Although the panel had hoped to conduct the first hearing session of 2022 in its typical January venue of the Sunshine State, Florida,[1] the recent surge in COVID-19 caused the panel to shift to its pandemic norm of a remote Zoom hearing. Nevertheless, the panel once again expressed that it "plans to return to its practice of in-person hearings when it becomes practicable to do so." [2]



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Looking at the panel's docket for January's hearing session, the panel again has a light docket, with only three new MDL petitions to begin the year.[3]

## 2021: MDL Year in Review

Over the past few years, this column has noted the relative decrease in the number of MDL petitions. The past year was no exception, with the panel ruling on 33 petitions, the fewest petitions considered by the panel in any year this century.

This is a decrease from the 44 new petitions on which the panel ruled in 2020, and from the 40 decided in 2019. In 2021, the panel batted .576 — granting 19 new MDL petitions and denying 14 petitions. This is a slight decrease from the panel's .591 batting average a year earlier.

Once again, the panel continued its cleanup efforts, terminating 21 MDL proceedings during 2021.[4] The panel ended the year with 185 pending MDL proceedings, the same number of MDL proceedings as of year-end 2020.[5]

## 2021: By the Numbers

The chart below compares the panel's 2021 stats with those from 2020:

CATEGORY	2021	2020
# of New MDL Petitions Ruled Upon	33	44
# of MDLs Created	19	26
# of MDL Motions Denied	14	18
MDLs Created as Percentage of Total # of MDLs Created/Motions Denied	57.6%	59.1%
# of Terminated MDLs	21	34

# of New Products Liability MDLs	5	6
# of New Marketing & Sales MDLs	2	0
# of New Antitrust MDLs	4	5
# of New Data Breach/Privacy MDLs	2	3
# of New Securities MDLs	0	1
# of New Intellectual Property/Patent MDLs	1	2
Total # of MDLs Pending	185	185
Total # of Actions in MDL Proceedings[6] (as of mid-December)	420,418	330,816

## 2021: Trendlines

As noted above, perhaps the most marked difference in panel practice between 2020 and 2021 was the approximately 25% decrease in the number of new petitions — 33 in 2021 versus 44 in 2020. In addition, the number of new MDL proceedings decreased over the past year — 19 in 2021 versus 26 in 2020.

But this does not mean that anyone should be writing an epitaph for the MDL world. As noted earlier, the panel terminated only 21 MDL proceedings in 2021, as compared to 34 in 2020, suggesting that the existing MDLs — which remained constant as of year-end 2021 from year-end 2020, at 185 proceedings — are lasting longer.

Beyond the number of MDL proceedings, the aggregate number of individual actions in those MDLs jumped more than 25%, increasing to 420,418 as of mid-December 2021, from 330,816 as of mid-December 2020.[7]

Moreover, as previously noted in this column, the number of actions undercounts the true impact of MDLs. There are many unfiled claims triggered by, and associated with, various MDL proceedings. Clearly, and adapting Mark Twain's immortal quote, any report of the death of MDLs is an exaggeration.[8]

Other notable takeaways from the 2021 statistics include:

### PANEL TRIVIA CORNER

#### December Trivia Question

Which circuits are not currently represented on the panel?

#### Answer to December Trivia Question

The Second, Fifth, Eighth, Ninth, DC and Federal Circuits.

#### January Trivia Question

What was the venue for the last in-person March panel hearing session?

*Like to venture a guess as to this month's trivia question? Have tidbits of panel trivia that you would like to be featured in an upcoming column? Please do not hesitate to drop me a note at [arothman@sidley.com](mailto:arothman@sidley.com).*

- There were slightly fewer new product liability MDLs — five — as compared to the six product liability MDLs created in 2020.
- No new securities MDLs were created in 2021; although the panel created one new securities MDL in 2020, that proceeding closed in 2021.
- 2021 saw a continued decline in the number of new intellectual property and patent MDLs — one in 2021, versus two in 2020, versus five in 2019.
- 2021 saw a slight decline in the number of new antitrust MDLs — four in 2021 versus five in 2020.
- The number of new data breach and privacy MDL proceedings also experienced a slight decline in 2021, with two new MDLs — a decrease from three MDLs created in 2020.

## **2021: MDL Venues**

Continuing this column's annual tradition, let us explore the panel's 2021 selection of MDL venues. For a third year in a row, the new 2021 MDL proceedings are heavily concentrated in the Eastern and Central time zones — 14 out of the 19 new MDL proceedings in 2021.

However, over the past year, California reemerged as the state winner for the most new MDL proceedings, leading the pack with a total of five new MDLs. In what remains an interesting trend to watch, Florida added four MDLs to its tally, and Missouri was again selected as a host for three MDLs.

In particular, two of those Missouri MDLs were venued in the Western District of Missouri, a district that has been awarded five MDL proceedings since 2020.[9]

In total, the 19 new 2021 MDLs are centralized in eight states, embodying 13 judicial districts. Out of the 19 MDL proceedings that were created in 2021:

- 32% (6) are venued in the Midwest (Illinois, Minnesota, Missouri);[10]
- 26% (5) are venued in the South (Delaware, Florida);
- 26% (5) are venued in the West (California); and
- 16% (3) are venued in the Northeast (New York, Pennsylvania).

What lies ahead in 2022 for the panel? Will the number of new MDL petitions see an uptick? Will product liability actions continue to permeate the MDL world? Will the number of actions in MDLs continue to increase? What will be the venue for new MDLs? Will in-person panel

hearings finally return in 2022?

While the venue for the panel's March 31 hearing session on opening day of the baseball season remains to be determined, stay tuned for our next edition of And Now a Word from the Panel.

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[1] [https://www.jpml.uscourts.gov/sites/jpml/files/Hearing%20Session%20Filed\\_January%202022.pdf](https://www.jpml.uscourts.gov/sites/jpml/files/Hearing%20Session%20Filed_January%202022.pdf).

[2] [https://www.jpml.uscourts.gov/sites/jpml/files/Supplemental\\_Notice\\_of\\_Hearing\\_Session-1-27-22.pdf](https://www.jpml.uscourts.gov/sites/jpml/files/Supplemental_Notice_of_Hearing_Session-1-27-22.pdf).

[3] See *supra*, n.1.

[4] [https://www.jpml.uscourts.gov/sites/jpml/files/Recently\\_Terminated\\_MDLs-January%201-December%2015-2021.pdf](https://www.jpml.uscourts.gov/sites/jpml/files/Recently_Terminated_MDLs-January%201-December%2015-2021.pdf).

[5] [https://www.jpml.uscourts.gov/sites/jpml/files/Pending\\_MDL\\_Dockets\\_By\\_Actions\\_Pending-January-18-2021.pdf](https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_Actions_Pending-January-18-2021.pdf); "And Now a Word from the Panel: Fewer MDLs, More Actions," Law360 (Jan. 27, 2021).

[6] Data as to the number of actions within MDL proceedings is as of December 15, 2021 (when the panel published its final monthly statistical report for the year as to number of actions).

[7] [https://www.jpml.uscourts.gov/sites/jpml/files/Pending\\_MDL\\_Dockets\\_By\\_Actions\\_Pending-December-15-2021.pdf](https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_Actions_Pending-December-15-2021.pdf); "And Now a Word from the Panel: Fewer MDLs, More Actions," Law360 (Jan. 27, 2021).

[8] Frank Marshall White, "Mark Twain Amused," N.Y.J., June 2, 1897, at A1.

[9] [https://www.jpml.uscourts.gov/sites/jpml/files/Pending\\_MDL\\_Dockets\\_By\\_District-January-19-2022.pdf](https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_District-January-19-2022.pdf); "And Now a Word from the Panel: Fewer MDLs, More Actions," Law360 (Jan. 27, 2021).

[10] The regions are based on those used for purposes of the U.S. census.