

And Now A Word From The Panel: A Rare MDL Petition Off-Day

By **Alan Rothman** (May 28, 2025)

This article is part of a bimonthly column that "rides the circuit" with the Judicial Panel on Multidistrict Litigation as it meets on a bimonthly basis. With baseball season in full swing and with the panel having geared up for a visit to a city and state with a major league baseball team (Milwaukee, Wisconsin), the panel is now taking a rare "off-day" from hearing oral arguments.



Alan Rothman

In an unusual occurrence in panel history, there are a total of zero new MDL petitions scheduled for a hearing session. Thus, the panel will retreat to its Washington, D.C., hub, another locale that is home to a major league baseball team, where the panel will consider, by video conference or teleconference, motions relating to transfer of cases to existing MDL proceedings, without oral argument.[1]

Before further addressing this rarity and any suggestion that the time has come to write an epitaph for MDL proceedings, let us take a look back at the panel's March hearing session in Charlotte, North Carolina. Notably, the March session was one of the most robust in recent memory, bustling with many new MDL petitions.

At that session, the panel considered an impressive 10 new MDL petitions, bringing the total number of new MDL petitions considered this year by the panel to 18. That was above last year's pace of 15 new MDL petitions ruled on by the panel through the March 2024 hearing session, belying the notion that MDLs are on the verge of becoming obsolete.

However, what may be even more intriguing than the dearth of MDL petitions at the May session is the panel's "batting average" for the year. Of the 10 new MDL petitions considered by the panel at its March hearing, the panel granted only four of the petitions and denied six of the petitions, bringing its average this year to .389 — granting seven and denying 11 petitions.

While this batting average may be enough to be close to the leading average in the major leagues — behind a certain player with a "judicial" ring to his name — it is well below the panel's 2024 batting average of .758. The new MDL proceedings from the March hearing session are venued in California (privacy and data breach), New York (copyright), and yet another rarely used MDL venue, Rhode Island (antitrust).

With this lower batting average, the overall number of pending MDL proceedings has continued to recede to a recent low watermark of 162 from 164 proceedings two months ago.[2] The panel has closed out an impressive 15 MDL proceedings over the first four months of this year.[3]

Product liability MDLs continue to dominate the MDL landscape, slipping to slightly less than 40% of the total number of MDL proceedings — 64 out of 162 MDLs.[4] The number of actions in the 162 MDL proceedings fell to a total of 182,011 actions.[5]

But as we remind our readers time and again, the data as to number of actions are just civil actions. The figures do not reflect the total number of plaintiffs, including those in multiparty actions and do not include unfilled claimants, which would be valuable pieces of

additional information to have in assessing the magnitude of the MDL world.

There are now 22 MDL proceedings that have more than 1,000 pending actions, nine of which have more than 5,000 pending actions, all from among the product liability MDLs.[6]

Off-Day?

It is hard to resist talking about the absence of oral argument. But this is a good opportunity to remind our readers that the panel's work is not limited to deciding whether to create MDL proceedings, but also whether to transfer new cases to existing MDL proceedings or remand cases from those proceedings.

Thus, this Thursday is hardly a day off for the panel, as it remains busy considering a host of motions regarding whether to transfer cases to eight existing MDL proceedings, including motions to transfer and oppositions to conditional transfer orders.

But in more recent years, the panel has only conducted oral argument on motions to create new MDLs, so this month's "hearing" will be limited to consideration on the papers of the motions and oppositions related to existing MDL proceedings.

Put another way in panel hearing session jargon, the matters that are usually Section B of a hearing session order — matters that the panel has determined to consider without oral argument — have moved up to Section A of the hearing session order, and no matters will be subject to oral argument.[7]

Lest there be a concern that we may never see another MDL petition again, be rest assured that those petitions are back! As of last week, there were already four new MDL petitions, two related to antitrust matters, one related to a data breach and one related to an aviation incident.

While the panel's rare off-day may make for fascinating MDL trivia, it is far too premature to write off MDLs. While the types of actions subject to MDL petitions may vary with time with ebbs and flows, the last few weeks reflect that MDL petitions are alive and well.

And very much like baseball and notwithstanding its occasional off-days, the MDL world will likely remain a fixture of the U.S. landscape for many years to come.

Will the panel hold oral argument at its next hearing session? Will the panel improve its batting average for 2025 or at least "top the majors?" Will the pace of new MDL petitions pick up steam again? Will product liability MDLs resurface? Will the panel continue to select lesser used venues for new MDL proceedings?

PANEL TRIVIA CORNER

March Trivia Question

When was the last time the panel met on opening day in a city with a baseball game that day and where?

Answer to March Trivia Question

March 28, 2019, in Washington, D.C.

May Trivia Question

When was the last time that the panel did not hear oral argument at a scheduled 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.

Stay tuned for the next edition of And Now a Word from the Panel, when the panel (likely) returns for oral argument in a state without a major league baseball team — Boise, Idaho — for its July 31 hearing session.

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[1] https://www.jpml.uscourts.gov/sites/jpml/files/Hearing%20Session%20Filed_May%202025_0.pdf.

[2] https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_District-May-1-2025.pdf.

[3] https://www.jpml.uscourts.gov/sites/jpml/files/Recently_Terminated_MDLs-January-1-2025-May-1-2025.pdf.

[4] https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_Docket_Type-May-1-2025.pdf.

[5] https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_Actions_Pending-May-1-2025.pdf.

[6] Id.

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