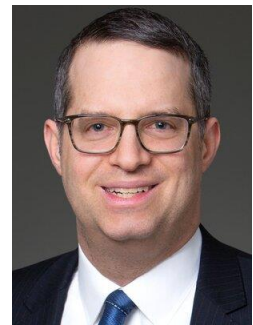


And Now A Word From The Panel: A Strong Year For MDLs

By **Alan Rothman** (January 24, 2024)

Welcome as we enter the 12th 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. As we begin a new year, we also begin a somewhat new chapter in the panel's choice of venue for its January hearing.

In a departure from what has become its typical January destination of the Sunshine State — Florida — the panel heads west to Santa Barbara, California, following a year that saw most new MDLs venued well to the east of California. But we will speak more about that later.[1]



Alan Rothman

Looking at the panel's docket for the January hearing session, the panel begins the new year on a busier note than the past several hearing sessions, with seven new MDL petitions under consideration.

2023: 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 saw an even further decrease in new MDL petitions, hitting a 21st-century low, with the panel ruling on only 29 new MDL petitions.

The panel ended the year with only 167 pending MDL proceedings, a drop from the 171 MDL proceedings pending as of the end of 2022, and the fewest overall MDL proceedings in decades.[2]

But one should not be misled into thinking that MDLs are any less robust than in years past. To the contrary, as we begin 2024, the universe of pending MDLs encompasses 456,698 actions, more actions at year's end than ever before in MDL proceedings — and this does not include multi-plaintiff cases or unfiled claims.

In addition, the panel reached its highest "batting average" in years — .690 — granting 20 MDL petitions and denying nine new petitions. This is a marked increase from the panel's .576 batting average in 2021, and even from its .667 average in 2022.

Once again, the panel continued its cleanup efforts, terminating 25 MDL proceedings during 2023.[3]

2023: By the Numbers

The chart below compares the panel's 2023 stats with those from 2022:

CATEGORY	2023	2022
# of New MDL Petitions Ruled Upon	29	33
# of MDLs Created	20	22
# of MDL Motions Denied	9	11
MDLs Created as Percentage of Total # of MDLs Created/Motions Denied	69.0%	66.7%
# of Terminated MDLs	25	36
# of New Product Liability MDLs	5	11
# of New Marketing & Sales MDLs	4	2
# of New Antitrust MDLs	2	2
# of New Intellectual Property/Patent MDLs	0	3
# of New Data Breach/Privacy MDLs[4]	4	0
# of New Securities MDLs	1	0
Total # of MDLs Pending	167	171
Total # of Actions in MDL Proceedings[5]	456,698	400,196

2023: Trendlines

As noted above, perhaps the most significant highlight of panel practice during 2023 was once again the significant increase in the percentage of new MDL petitions granted by the panel, for a batting average of .690.

It is also significant to note that the percentage of product liability MDLs, as compared to the overall MDL docket, continues to grow. Product liability MDL proceedings now make up more than 38% of all MDL proceedings — 64 out of 167.[6]

Even more significantly, the top 20 MDLs by number of actions now have 444,894 actions — embodying more than 97% of all actions in MDLs — and almost all those MDLs are from among the product liability MDL proceedings.

Moreover, as we continue to remind our readers, the number of actions undercounts the true impact of MDLs: There are many unfiled claims triggered by, and associated with, various MDL proceedings. And the number of actions does not necessarily reflect the total number of plaintiffs in an MDL, as there may be multi-plaintiff complaints.

Other notable takeaways from the 2023 statistics include:

- A significant number of new data breach MDLs — 4 in 2023 vs. 0 in 2022;
- An absence of new intellectual property and patent MDLs — 0 in 2023 vs. 3 in 2022;
- No change in the number of new antitrust MDLs — 2 in 2023 vs. 2 in 2022; and
- A decrease in the number of new product liability MDLs — 5 in 2023 vs. 11 in 2022 — although as noted above, the percentage of product liability MDLs as compared to the overall number of MDL proceedings continues to grow.

PANEL TRIVIA CORNER

November Trivia Question

When was the last time the panel held a hearing session during the month of November?

Answer to November Trivia Question

Nov. 29, 2018.

January Trivia Question

When was the last time the panel scheduled an in-person January hearing session outside of the state of Florida, and what unusual event happened in that selected venue?

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.

2023: MDL Venues

Continuing this column's annual tradition, let us explore the panel's 2023 selection of MDL venues. Once again, the new MDL proceedings are heavily concentrated in the Eastern and Central time zones — accounting for 17 out of the 20 new MDL proceedings in 2023.

Illinois emerged as the state with the most new MDL proceedings, leading the pack with a total of three new MDLs. California, Florida, New Jersey and Wisconsin were each assigned two new MDLs.[7]

Rounding out the states assigned to new MDL proceedings were Arizona, Georgia, Massachusetts, Missouri, New York, North Carolina, Pennsylvania, Tennessee and Virginia. In total, the 20 new 2023 MDLs were centralized in 14 states, embodying 15 judicial

districts.[8]

As this column has an affinity for sports analogies, and we are, after all, in the midst of the football playoffs, let's once again explore the regions where the panel placed new MDL proceedings, from the perspective of National Football League divisions:[9]

- 40% (8) venued in the East (Fla., Mass., N.J., Pa., Va.);
- 25% (5) venued in the North (Ill., Wis.);
- 20% (4) venued in the West (Ariz., Calif., Mo.); and
- 15% (3) venued in the South (Ga., N.C., Tenn.).

What does 2024 hold for the panel? Will the number of new MDL petitions finally increase? Will product liability actions continue to dominate the MDL landscape? Will the number of actions in MDLs break half a million? Will the panel also head west for its selection of new MDL venues?

Stay tuned for the panel's March hearing session — at a location yet to be determined — and for our next edition of And Now a Word from the Panel With best wishes to all of our readers for a safe and healthy 2024!

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[1] See also "And Now a Word from the Panel: Tracking MDL Geography," Law360 (Nov. 29, 2023), <https://www.law360.com/articles/1771154/and-now-a-word-from-the-panel-tracking-mdl-geography>.

[2] https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_Actions_Pending-January-2-2024.pdf.

[3] https://www.jpml.uscourts.gov/sites/jpml/files/Recently_Terminated_MDLS-January-1-2023-January-2-2024.pdf.

[4] This column generally utilizes the panel's characterization of docket types to identify the categories of MDL cases. Although the panel does not have a docket type titled "data breach/privacy," this column has identified such cases from the titles of those MDL proceedings.

[5] Data as to the number of actions within MDL proceedings for 2023 is as of Jan. 2, 2024, when the panel published its latest monthly statistical report as to number of actions. Data as to the number of actions within MDL proceedings for 2022 is as of Dec. 15, 2022, when the panel published its final monthly statistical report for that year as to number of actions.

[6] https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_Docket_Type-January-2-2024.pdf.

[7] https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_District-January-2-2024.pdf.

[8] The figures include one MDL proceeding that was subsequently terminated in 2023 by the panel.

[9] For purposes of this regional breakdown, an MDL venue is deemed to be in the NFL division/region (North, East, South or West) in which any team from that state is situated, subject to the following caveats: The MDL venued in Pennsylvania (Eastern District) is deemed to be in the Eagles' division (NFC East); and the MDL venued in the Alexandria Division of the Eastern District of Virginia, a state without an NFL team, is deemed to be in the East due its relative proximity to the home of the Commanders, who are in the NFC East division.