

And Now A Word From The Panel: Watch The MDL Calendar

By **Alan Rothman** (May 29, 2024)

This article is part of a bimonthly column that "rides the circuit" with the Judicial Panel on Multidistrict Litigation as it meets every other month. With baseball season in full swing, the panel is headed west to Salt Lake City, Utah, another state without a major league baseball team.

The panel enters the Beehive State with another busy docket when it considers eight new MDL petitions, after a ninth new petition was recently rendered moot.[1] This docket builds on the 15 petitions already ruled on by the panel in its first two sessions, a blazing start for the year.



Alan Rothman

At the March session in Charleston, the panel granted five of the nine petitions before it to drop its season average to .667, granting a total of 10 of the 15 petitions on which it has ruled this year.

Interestingly, it took longer than usual for the panel to issue its decision, with the first rulings on the new MDL petitions hitting the docket on Thursday, April 11, a full two weeks after the March hearing session. But there will be more on that later in this column.

The five new MDL proceedings from the March hearing session are venued in California, New York, Utah and West Virginia. These venues not only put Utah and West Virginia on the current MDL proceeding map, but for the first time this year, add both the mountain and western time zones as venues for new MDL proceedings.

The overall number of pending MDL proceedings has ticked up slightly to 170, from 169 proceedings at the beginning of March.[2] The panel has closed out 7 MDL proceedings.[3] Product liability MDLs continue to dominate the MDL landscape, continuing to represent more than 39% of the total number of MDL proceedings, or 67 out of 170 MDLs.[4]

The 170 MDL proceedings encompass a total of 432,933 actions, a bit below the 458,469 actions at the beginning of March.[5] There remain 21 proceedings that have more than 1,000 pending actions, a dozen of which have more than 5,000 pending actions, all of which are from among the product liability MDLs.[6] As we have reminded our readers, these tallies are just civil actions, not the total number of plaintiffs, and the figures do not include unfilled claimants.

Watching the MDL Calendar

As noted above, the panel began issuing its decisions on new MDL petitions considered at the March hearing session two weeks after the session, slightly later than usual. Accordingly, we thought it would be an opportune time to revisit questions we raised in a column nearly a decade ago relating to the MDL calendar.[7]

In that vein, one of the most fascinating features of panel practice is the regularity of the panel calendar, including: (1) the date of hearing sessions; (2) when the docket is released for hearing sessions; (3) the timing of the filing of MDL petitions to be heard at the following hearing session; and (4) the date of panel decisions.

Hearing Sessions

The panel meets six times a year. Those hearing sessions are almost always held on the last Thursday of every other month — January, March, May, July, September and November.

There are exceptions for Thanksgiving in November and sometimes in September, resulting in the panel hearing being held on the first Thursday of the following month.

The Hearing Session Docket

The docket for a hearing session is typically issued between six and seven weeks prior to the hearing session.

Timing of MDL Petitions

To be heard at a hearing session, the new MDL petition should generally be filed approximately two months prior to that session. Put another way, to be considered at a May hearing session, practitioners should target filing the new MDL petition by the end of March — but, in any event, no later than a week before the docket for the hearing session is likely to be released, a date which would not be known for certain.

In addition, it may take a few days for the panel to formally docket a new MDL petition after it is filed. Practitioners should also be mindful that "cutting it close" and filing an MDL petition shortly before the docket is released, might affect briefing deadlines.

Indeed, the panel has recently accelerated briefing deadlines and made clear that extensions would not be granted absent extraordinary circumstances, when the motion was filed close to finalization of the hearing session docket. But cutting it close also risks missing that hearing session and waiting nearly four months, instead of about two months, to be heard by the panel.

Panel Decisions

The panel typically issues its decisions quickly, within one to two weeks of the hearing session. Thus, when the panel issued its first decision from the March 28 hearing session two weeks after that session, panel watchers took note.

Of course, the panel had a heavy docket of nine new MDL petitions to consider, and the panel still issued all of its decisions on new MDL petitions by April 12, a mere 15 days following the March hearing session.

To help our readers better visualize these issues, the chart below depicts how these timing considerations have played out over the past year of panel hearing sessions.

PANEL TRIVIA CORNER

March Trivia Question

When was the last time the panel ruled on more than 50 new MDL petitions in a calendar year?

Answer to March Trivia Question

2018 (61 in total: 28 granted; 33 denied).

May Trivia Question

When is the next time that the panel is scheduled to hold a hearing session in a state with a major league baseball team?

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.

Panel Hearing Date	Hearing Docket Release Date	Docketing Date of Last MDL Petition on Hearing Docket	Dates of Panel Decisions on MDL Petitions
July 27, 2023	June 16, 2023	May 30, 2023	Aug. 3-8, 2023
Sept. 28, 2023	Aug. 11, 2023	Aug. 7, 2023	Oct. 4, 2023
Nov. 30, 2023	Oct. 13, 2023	Sept. 18, 2023	Dec. 6-8, 2023
Jan. 25, 2024	Dec. 15, 2023	Dec. 8, 2023	Jan. 30-Feb. 5, 2024
March 28, 2024	Feb. 16, 2024	Feb. 6, 2024	April 11-12, 2024
May 30, 2024	April 12, 2024	April 5, 2024	N/A

The lesson is simple — keep an eye on the MDL calendar!

When will the panel issue its decisions from the May hearing session? Will the panel improve its batting average? Will we continue to see a steady flow of new MDL petitions? Will the total number of MDL proceedings continue to rise? Will the panel continue to spread new MDLs around the country? When will the panel issue its docket for the next hearing session?

Stay tuned for our next edition of And Now a Word from The Panel when the panel heads northeast to Portland, Maine, another state without a major league baseball team, for its July 25 hearing session.

Alan E. Rothman is a partner at Sidley Austin LLP. He counsels clients on issues relating to practice and procedure before the Judicial Panel on Multidistrict Litigation, and has appeared before the panel on oral argument.

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[1] <https://www.jpml.uscourts.gov/hearing-information>.

[2] https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_District-May-1-2024.pdf.

[3] https://www.jpml.uscourts.gov/sites/jpml/files/Recently_Terminated_MDLs-January-1-2024-May-1-2024.pdf.

[4] https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_Docket_Type-May-1-2024.pdf.

[5] https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_Actions_Pending-May-1-2024.pdf.

[6] Id.

[7] See "And Now a Word from the Panel; ABCs of MDL Practice," Law360 (Sept. 30, 2014).