

And Now A Word From The Panel: 2022 MDLs By The Numbers

By **Alan Rothman** (January 24, 2023)

Welcome as we enter the second decade, and eleventh 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.

After a hiatus of a few years due to the COVID-19 pandemic, the panel once again returns to its typical January venue of the Sunshine State, with the January hearing session taking place in Miami. Looking at the panel's docket for this hearing session, the panel begins the new year with a robust docket of nine new MDL petitions.



Alan Rothman

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 again no exception, with a relatively light load of 33 petitions, matching the annual low of this century first set in 2021.

This continues a downward trend from the 44 new petitions on which the panel ruled in 2020, and from the 40 decided in 2019. But as noted earlier, 2023 is off to a quick start with nine new petitions.

One of the most significant features of 2022 was the panel's "batting average," which saw a dramatic increase to its highest level in years. In 2022, the panel batted .667, granting 22 new MDL petitions and denying 11 petitions. By comparison, the panel batted .576 in 2021 and .591 in 2020.

Once again, the panel continued its cleanup efforts, terminating 36 MDL proceedings during 2022.[1] This resulted in the panel ending the year with the lowest total of new MDLs in years. The panel ended the year with 171 pending MDL proceedings — a drop from the 185 MDL proceedings pending as of year-end 2021.[2]

By the Numbers

The chart below compares the panel's 2022 stats with those from 2021:

| CATEGORY | 2022 | 2021 |
|--|-------|-------|
| # of New MDL Petitions Ruled Upon | 33 | 33 |
| # of MDLs Created | 22 | 19 |
| # of MDL Motions Denied | 11 | 14 |
| MDLs Created as Percentage of Total # of MDLs Created/Motions Denied | 66.7% | 57.6% |

| | | |
|---|---------|---------|
| # of Terminated MDLs | 36 | 21 |
| # of New Products Liability MDLs | 11 | 5 |
| # of New Marketing & Sales MDLs | 2 | 2 |
| # of New Antitrust MDLs | 2 | 4 |
| # of New Intellectual Property/Patent MDLs | 3 | 1 |
| # of New Data Breach/Privacy MDLs | 0 | 2 |
| # of New Securities MDLs | 0 | 0 |
| Total # of MDLs Pending | 171 | 185 |
| Total # of Actions in MDL Proceedings[3] (as of mid-December) | 400,196 | 420,418 |

Trendlines

As noted above, perhaps the most significant highlight of panel practice during 2022 was the significant increase in the percentage of new MDL petitions granted by the panel, for a batting average of .667 in 2022, compared to .576 in 2021.

It is also significant to note the number of new product liability MDL proceedings. Half — 11 — of the 22 new MDL proceeding are product liability litigations, with product liability MDLs now representing 37% of all MDL proceedings, or 63 out of 171.[4]

The absolute number of MDL proceedings fell notably down by year-end, to 171 from 185 a year earlier, with a whopping 36 MDL proceedings terminated by the panel. But the aggregate number of actions in those MDLs continues to remain above 400,00 — with a total of 400,196 actions as of mid-December 2022.[5]

Moreover, as we have noted in the past, the number of actions undercounts the true impact of MDLs. There are many unfiled claims triggered by, and associated with, various MDL proceedings. Moreover, the number of actions does not necessarily reflect the total number of plaintiffs in an MDL, as there may be multiplaintiff complaints.

Other notable takeaways from the 2022 statistics include:

- An increase in the number of new intellectual property/patent MDLs — three in 2022 vs. one in 2021;
- A decline in the number of new antitrust MDLs — two in 2022 vs. four in 2021;

- No new data breach/privacy MDL proceedings created over the past year; and
- Once again, no new securities MDLs created over the past year.

MDL Venues

PANEL TRIVIA CORNER

December Trivia Question

When was the last time the panel met in New York, prior to the December 2022 hearing session?

Answer to December Trivia Question

Nov. 29, 2018.

January Trivia Question

When did the panel last hold an in-person January hearing session in a city other than Miami?

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.

Continuing this column's annual tradition, let us explore the panel's 2022 selection of MDL venues. For a fifth year in a row, the new MDL proceedings are heavily concentrated in the Eastern and Central time zones — 20 out of the 22 new MDL proceedings in 2022.

New York emerged as the state winner for the most new MDL proceedings, leading the pack with a total of four new MDLs. The only other states with more than one new MDL proceeding are California, Illinois, Michigan and Tennessee.[6]

Rounding out the states with new MDL proceedings are Delaware, Georgia, Louisiana, Massachusetts, Minnesota, North Carolina, Ohio, Pennsylvania and Texas.

In total, the 22 new 2022 MDLs are centralized in 14 states, embodying 16 judicial districts. As this column has an affinity for sports analogies, and we are, after all, in the midst of the football playoffs, let's explore the regions of the new MDL proceeding from the perspective of football divisions:[7]

- 36%, or eight, are venued in the North (Ill., Mich., Minn., Ohio, Pa.);

- 27%, or six, are venued in the East (Del., Mass., N.Y.);
- 27%, or six, are venued in the South (Ga., La., N.C., Tenn., Texas); and
- 9%, or two, are venued in the West (Calif.).

What lies ahead in 2023 for the panel? Will the number of new MDL petitions finally see an uptick for the year? Will product liability actions continue to dominate the MDL landscape? Will the number of actions in MDLs continue to increase?

What will be the venue for new MDLs? Will the West host additional MDLs? Stay tuned as the panel itself heads out west to Tucson, Arizona, for its March 30 hearing session — on the opening day of the baseball season — and for our next edition of And Now a Word from the Panel. Best wishes to all of our readers for a safe and healthy 2023!

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[1] https://www.jpml.uscourts.gov/sites/jpml/files/Recently_Terminated_MDLs-January%201-December-15-2022.pdf.

[2] https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_Actions_Pending-January-17-2023.pdf.

[3] 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 the year as to number of actions.

[4] There is one additional new MDL that includes sales, marketing and product liability cases, not technically counted for JPML purposes as either a marketing or product liability MDL proceeding.

[5] See n.2, *supra*.

[6] https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_District-January-17-2023.pdf.

[7] 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 a team or teams from that state are situated, subject to the following caveats: The MDL venued in Pennsylvania, part of the Western District, is deemed to be in the Steelers' division (North); the MDL venued in Texas is deemed to be in the Texans' division (South), rather than that of the Cowboys (East); and the MDL venued in Delaware, a state without an NFL team, is deemed to be in the East.