

# And Now A Word From The Panel: 55 Years Of The JPML

By **Alan Rothman** (July 26, 2023)

Welcome to the latest installment 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.

The summer marches on, and so does the panel, as it prepares for another hearing session, scheduled this month for San Francisco. At that meeting, the panel is scheduled to hear a mere three new MDL petitions.

Over the past few months, the panel has crossed a milestone: its 55th birthday! But before we get nostalgic about the panel's history, let's take a look at its more recent activities — specifically, the results from its May hearing session in Philadelphia.



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The May session was a busy one for the JPML, and it picked up its pace in creating new MDL proceedings. The panel granted six of the seven MDL petitions it considered, thus bringing the panel's "batting average" for the year up to that point to .700, up from .615.

Since the start of the year, the panel has created a total of 14 new MDLs and denied six MDL petitions. The six new MDL proceedings from the May hearing session are venued in Florida, Missouri, Illinois, Pennsylvania and Wisconsin.

Over the past two months, the overall number of pending MDL proceedings has ticked down slightly to 173, from 174 proceedings in mid-May.[1] Since January, the panel has closed out 13 MDL proceedings.[2]

Product liability MDLs still dominate the MDL landscape. They have grown to nearly 37% of the total number of MDL proceedings — 64 out of 173 MDLs.[3]

MDL proceedings continue to encompass more than 400,000 individual actions, growing to a total of 409,889 actions pending in the current 173 MDL proceedings — an increase from the 405,996 actions pending as of mid-May.[4]

There are currently 18 proceedings that have more than 1,000 pending actions each. But even more remarkably, 10 of those proceedings have more than 5,000 pending actions each — all of which are from among the product liability MDLs.[5]

As we have reminded our readers, these tallies are just civil actions, not the total number of plaintiffs, and do not include unfilled claimants.

## **PANEL TRIVIA CORNER**

### **May Trivia Question**

Since 2013 and prior to the March hearing session, when was the last time that all the new MDL proceedings arising from a single hearing session were venued in a state without a major league baseball team?

### **Answer to May Trivia Question**

The May 2019 hearing session, with a lone new MDL in the state of Kansas (the Royals play in Kansas City, Missouri).

### **July Trivia Question**

In honor of the panel's 55th birthday: Which states have never hosted an MDL proceeding?

*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).*

### **Looking Back: 55 Years Ago**

As a reminder, on April 29, 1968, President Lyndon Johnson signed into law the multidistrict litigation statute, codified at Title 28 of the U.S. Code, Section 1407.

As the legislative history observed, the bill "was based on the experience of the Coordinating Committee [for Multidistrict Litigation of the U.S. District Courts] in supervising nationwide discovery proceedings in the electrical equipment cases which flooded the Federal courts in the early 1960's." [6]

In that electrical antitrust litigation, more than 1,800 cases were filed in more than 30 federal district courts. Thus, the need for a formalized procedure for handling the common discovery associated with that type of multidistrict litigation loomed large. [7]

To provide a very brief perspective as to how far the MDL world has come over the past 55 years, here is some historical MDL trivia by the numbers [8]:

- 3,080+ MDL petitions filed (first petition filed June 6, 1968)

- 1,800+ MDL proceedings created
- 1.1 million+ individual actions in MDL proceedings
- Approximately 17,000 of those individual actions have been remanded from MDL proceedings to other federal courts
- 57 panel judges

### **What's New at the Panel**

What is perhaps a remarkable aspect of panel practice over the years is its consistency. For many years, the panel has met on the last Thursday of every other month, with a few exceptions, visiting different courts around the country.

As set by statute, the panel still includes seven federal judges, no two of whom may be from the same circuit.[9] Panel decisions are almost always unanimous, and issued relatively promptly, generally 1-2 weeks following a panel hearing session.

So what has changed in panel practice over the years? In more recent years, the panel used remote hearings via Zoom with a dial-in option available, at least during the height of the COVID-19 pandemic.

Substantively, the panel continues to consider fewer MDL petitions as compared to a decade or two ago. And in recent years, the panel has granted relatively fewer of those motions.

But this year has seen a significant increase in the grant of those motions, with the panel raising its current batting average considerably. There are fewer overall MDL proceedings compared to a decade ago, down from approximately 300 proceedings to the current 173 proceedings.

But, as this column has noted, the number of individual actions within those proceedings has swelled — quadrupling to more than 400,000 actions as compared to under 100,000 a decade ago.[10]

Will the panel continue to pick up the pace in creating new MDL proceedings? How high will the panel's batting average go? What will MDL practice look like when the panel reaches its next anniversary milestone?

Stay tuned for our next edition of *And Now A Word From The Panel*, when the panel heads back east to the panel chair's hometown of Lexington, Kentucky, for the Sept. 28 hearing session.

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[1] [https://www.jpml.uscourts.gov/sites/jpml/files/Pending\\_MDL\\_Dockets\\_By\\_District-July-17-2023.pdf](https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_District-July-17-2023.pdf).

[2] [https://www.jpml.uscourts.gov/sites/jpml/files/Recently\\_Terminated\\_MDLs-January%201-July-17-2023.pdf](https://www.jpml.uscourts.gov/sites/jpml/files/Recently_Terminated_MDLs-January%201-July-17-2023.pdf).

[3] [https://www.jpml.uscourts.gov/sites/jpml/files/Pending\\_MDL\\_Dockets\\_By\\_Docket\\_Type-July-17-2023.pdf](https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_Docket_Type-July-17-2023.pdf).

[4] [https://www.jpml.uscourts.gov/sites/jpml/files/Pending\\_MDL\\_Dockets\\_By\\_Actions\\_Pending-July-17-2023.pdf](https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_Actions_Pending-July-17-2023.pdf).

[5] Id.

[6] See H.R. Rep. No. 90-1130 (Feb. 28, 1968).

[7] See "And Now A Word From The Panel: Happy 50th!," Law360 (May 29, 2018).

[8] See [https://www.jpml.uscourts.gov/sites/jpml/files/JPML%20Fiscal%20Year%202022%20Report-12-9-22\\_0.pdf](https://www.jpml.uscourts.gov/sites/jpml/files/JPML%20Fiscal%20Year%202022%20Report-12-9-22_0.pdf); <https://www.jpml.uscourts.gov/about-panel>; <https://www.jpml.uscourts.gov/content/panel-judges>; "And Now a Word from the Panel: Happy 50th!," Law360 (May 29, 2018).

[9] 28 U.S.C. § 1407(d).

[10] See "And Now A Word From The Panel: MDLs as a Last Resort," Law360 (May 24, 2023).