

And Now A Word From The Panel: Location Is Central

By **Alan Rothman** (May 26, 2021)

Welcome to the latest installment of And Now a Word from the Panel, a column which "rides the circuit" with the Judicial Panel on Multidistrict Litigation as it meets on a bimonthly basis.

Consistent with recent panel practice in the wake of the COVID-19 pandemic, the panel's May 27 hearing session will be held remotely as a video teleconference from the panel's Washington, D.C., office via the Zoom meeting app. The panel has a jam-packed docket with 12 motions on its oral argument calendar.



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Once again, this month's hearing comes with the panel's reminder that:

The use of videoconference technology for presentation of oral argument is not normal Panel practice. In light of the ongoing COVID-19 pandemic, the Panel and Panel staff are making the time- and resource-intensive arrangements necessary to conduct a virtual hearing in an efficient and effective manner. The Panel plans to return to its practice of in-person hearings when it becomes practicable to do so.[1]

In an exciting panel development and as anticipated, the panel has joined the "3,000 hit club" with the filing this spring of the 3,000th MDL petition since the panel's inception in 1968. Notably — and to highlight how almost no area of the law is immune from the MDL world — this milestone petition is a prisoner-alleged false imprisonment litigation.[2]

To provide a sense of how panel practice has evolved over its 53-year history, it took 34 years to reach the benchmark of 1,500 MDL petitions, yet only another 19 years from that point to reach the current level of 3,000 petitions.

Returning to a topic we addressed in our last edition, this month's column will examine the results of an MDL venue battle in an MDL petition arising from the marketing of coffee. But before exploring that result, let us more broadly review the March hearing session.

In March, the panel considered five new MDL petitions. The panel granted four of those petitions, bringing the panel batting average to an even .500 for 2021 — granting five out of 10 petitions for the year. The new MDLs are venued in federal district courts in California, Florida, Missouri and Pennsylvania.

The overall number of pending MDL proceedings remained relatively stable at 184, as compared to 185 in mid-March.[3] The panel continues to close out older MDL dockets, but at a slower pace than in years past, terminating only seven MDLs this year through mid-May.[4]

Product liability MDLs continue to comprise nearly one-third of the total number of MDL proceedings.[5] The 184 MDL proceedings now encompass 365,594 individual actions — a slight increase, by approximately 10,000 actions, over the past two months.[6] There are currently 22 MDL proceedings which have more than 500 individual pending actions, almost all of which are from among the product liability MDLs.[7]

PANEL TRIVIA CORNER

March Trivia Question

When was the last time that the panel's March hearing session coincided with opening day of the Major League Baseball season?

Answer to March Trivia Question

March 28, 2019. The panel had been scheduled to hold its March 26, 2020, hearing session on opening day as well, but opening day was postponed and the panel canceled oral argument for that session due to the COVID-19 pandemic.

May Trivia Question

How long did it take for the panel to reach its 1,000th MDL petition?

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.

Looking Back: Home Sweet Home?

As noted in our prior column, at its March hearing session, the panel considered whether to centralize actions arising from allegedly misleading ground coffee canister labels, purportedly overstating the number of cups of coffee the canister would yield. The panel granted the MDL petition.[8]

Perhaps even more interesting than the question of whether to create an MDL, was the question of where the MDL should be venued. As a reminder to our readers, the defendants in this coffee consumer fraud litigation are Ohio companies with their principal place of business in Ohio. But there were no actions pending in Ohio.

Rather, the petition included various putative class actions pending in California, Florida, Illinois and Missouri, where various class representatives resided. There were also related actions pending in other districts.

Defendants suggested the U.S. District Court for the Northern District of Ohio as the MDL

venue "where the vast majority of the key witnesses and documents are located" and where "decisions, actions, and individuals relevant to the claims alleged by the plaintiffs in each of the [cases] occurred."

The moving plaintiffs, and others, argued in favor of the U.S. District Court for the Central District of California, where two of the actions were filed, and asserted that in light of the COVID-19 pandemic and MDL practice, the location of witnesses and documents was a less critical factor.[9]

In what may be viewed as a Solomonian compromise, the panel opted for a different venue. In selecting the U.S. District Court for the Western District of Missouri where an action was pending, the panel found that "[t]his geographically central district will provide a readily accessible and convenient transferee forum for this nationwide litigation." [10]

In addition, the MDL would proceed before "an experienced jurist with the ability and willingness to manage this litigation efficiently." [11] The panel further noted that at oral argument, a plaintiff in the Missouri action did "not oppose centralization" in that district. [12] This decision again highlights how the selection of MDL venue may be one of the most unpredictable — and intriguing — aspects of panel practice.

Which venues will be selected for the next round of MDL proceedings? Will the pace of new MDL petitions continue to see an uptick? Can the panel break a .500 batting average for the year? Where will the panel meet next? Stay tuned for our July edition of And Now a Word from the Panel! Happy MDL 3000, and may all be well and safe!

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[1] https://www.jpml.uscourts.gov/sites/jpml/files/Supplemental_Notice_of_Hearing_Session-5-27-21.pdf.

[2] In re Charles Hayes False Imprisonment Litig. (MDL No. 3000).

[3] https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_District-May-17-2021.pdf.

[4] https://www.jpml.uscourts.gov/sites/jpml/files/Recently_Terminated_MDLs-January%201-May%2017-2021.pdf.

[5] https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_MDL_Type-May-17-2021.pdf.

[6] https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_Actions_Pending-May-17-2021.pdf.

[7] Id.

[8] In re Folgers Coffee Marketing and Sales Practices Litig. , MDL No. 2984 (JPML April 1, 2021).

[9] See "And Now a Word from the Panel: There's No Place Like Home," Law360 (March 23, 2021).

[10] Folgers, at 2.

[11] Id.

[12] Id. at 1 n.3.