

# And Now A Word From The Panel: MDL Travel

By **Alan Rothman** (May 25, 2022)

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.

After a hiatus of more than two years in light of the COVID-19 pandemic, the panel is scheduled to hold its second consecutive in-person oral argument. The May 26 hearing session is being held in the Steel City — Pittsburgh, Pennsylvania.

With the baseball season now in full swing, it seems that panel practice is hitting its stride as well. In a noticeable uptick of new MDL petitions, the panel is scheduled to hear oral arguments as to eight new MDL petitions.

Before looking ahead to this month's session, we take a retrospective look at the March hearing session held in the Big Easy — New Orleans — where the panel and counsel traveled for the first in-person panel oral arguments in more than two years. The panel granted two of the four motions, leaving the panel with a .571 batting average for the year.

Speaking of travel, the new product liability and sales practices MDL proceedings are venued in Illinois and Ohio, respectively.

There will be more about travel later, but first let's present a word about the current lay of the MDL landscape. With two new MDLs, the overall number of pending MDL proceedings ticked back up to 185, from 183 in mid-March.[1]

The panel did not close out any MDLs over the past two months, with a total of four MDLs terminated this year.[2]

Product liability MDLs continue to dominate the MDL landscape, comprising just over one-third of the total number of MDL proceedings, or 62 out of 185 MDLs.[3]

The 185 MDL proceedings now encompass a total of 428,414 individual actions, an uptick from the astounding 425,905 individual actions pending as of mid-March.[4]

There are currently 26 MDL proceedings that have more than 500 individual pending actions, almost all of which are from among the product liability MDLs.[5]

## Looking Forward: MDL Travel

As we have noted in the past, one of the most interesting and least predictable features of panel practice is the selection of a venue for new MDL proceedings.



Alan Rothman

### PANEL TRIVIA CORNER

#### March Trivia Question

Prior to the March hearing session, where was the last in-person panel hearing session held?

#### Answer to March Trivia Question

Tampa, Florida (January 30, 2020).

#### May Trivia Question

Prior to this hearing session, when was the last time that the panel considered at least eight new MDL petitions at a hearing session?

*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).*

With the pandemic restricting travel and the prevalence of virtual hearings, we missed some of the usual arguments supporting a particular venue based on the convenience of air travel, the number of daily nonstop flights to a destination, the ranking of airports or the proximity of an airport to a courthouse.[6]

We are pleased to report that things are returning to normal. In connection with a new insurance-related MDL petition, the parties spared no detail regarding venue — and airports.[7]

Specifically, the actions under consideration are pending in Iowa, New Jersey, North Carolina and North Dakota.

As readers may recall, the pendency of an action in the proposed MDL transferee district is not a prerequisite for its selection.

In arguing in favor of the U.S. District Court for the Eastern District of Pennsylvania as the situs for an MDL arising from the insurer's rehabilitation plan approved by a state court in Pennsylvania, the proponents noted the district "has convenient access by air travel" and "requires the least total travel time among all the parties and witnesses." [8]

Indeed, a color-coded exhibit was used to support this contention, replete with travel time and connecting flight information, as well as alternative modes of transportation to the potential MDL districts in *In re: Senior Health Insurance Company of Pennsylvania Rehabilitation Plan Litigation*. [9]

Although one of the defendants is based in Austin, Texas, and another in Carmel, Indiana, the briefing — relying on a website for air travel — observed that there were direct flights to the Eastern District of Pennsylvania in Philadelphia from the nearest airports, but not to the U.S. District Court for the Middle District of Pennsylvania in Harrisburg. [10]

The petition also highlighted other typical venue factors, such as relative docket congestion of the districts in the running. [11] Various plaintiffs in those actions argued in favor of jurisdictions where the actions are pending, in the event the panel establishes an MDL. [12]

This petition highlights an important question regarding MDL venue as we move to a new normal, with the backdrop of virtual hearings becoming a fixture of MDL and other court proceedings. Specifically, will ease of travel remain a key factor to the panel in considering future MDL venues?

Or, will the panel now send MDLs to courts not previously in contention due to the difficulty of travel to those locations, as courts use various technological methods to convene conferences short of in-person attendance?

It remains to be seen whether the panel will place a premium on facilitating in-person conferences if the MDL transferee courts should be so inclined, and thus continue to consider travel convenience as a relevant factor.

Will the panel create new MDL proceedings? Where will they be venued? Will the number of new MDL petitions continue to grow? Will the panel continue to hold in-person oral arguments? While the venue for the panel's July 28 summer hearing session remains to be determined, stay tuned for our next edition of *And Now A Word From The Panel*.

And for those traveling over the holiday weekend and beyond, happy and safe travels!

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[1] [https://www.jpml.uscourts.gov/sites/jpml/files/Pending\\_MDL\\_Dockets\\_By\\_District-May-16-2022.pdf](https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_District-May-16-2022.pdf).

[2] [https://www.jpml.uscourts.gov/sites/jpml/files/Recently\\_Terminated\\_MDLs-January%201-May%2016-2022.pdf](https://www.jpml.uscourts.gov/sites/jpml/files/Recently_Terminated_MDLs-January%201-May%2016-2022.pdf).

[3] [https://www.jpml.uscourts.gov/sites/jpml/files/Pending\\_MDL\\_Dockets\\_By\\_MDL\\_Type-May-16-2022.pdf](https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_MDL_Type-May-16-2022.pdf).

[4] [https://www.jpml.uscourts.gov/sites/jpml/files/Pending\\_MDL\\_Dockets\\_By\\_Actions\\_Pending-May-16-2022.pdf](https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_Actions_Pending-May-16-2022.pdf).

[5] *Id.*

[6] See "And Now a Word from the Panel: Top 10 Venue Arguments," Law360 (July 29, 2014) (three of the "Top 10" related to airports).

[7] *In re Senior Health Insurance Company of Pennsylvania Rehabilitation Plan Litig.* (MDL No. 3033).

[8] *Id.*, ECF No. 1 at 1-2.

[9] *Id.*, ECF No. 1, Ex. 6.

[10] *Id.*, ECF No. 20 at 16 n.8.

[11] See generally *id.*, ECF Nos. 1 and 20.

[12] *Id.*, ECF No. 12, at 2, 18.