

## And Now A Word From The Panel: Rare MDL Moments

By **Alan Rothman** (July 24, 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 summer in full force, the panel makes a trip to the upper northeast region for its July session in Portland, Maine, another state without a major league baseball team.*



Alan Rothman

The panel enters the Pine Tree State with a lighter docket when it considers four new multidistrict litigation petitions, with one additional petition withdrawn from consideration.[1] This docket builds on the 23 petitions already ruled on by the panel during the first half of the year.

Subsequent to the panel's May hearing session in Salt Lake City, there have been a number of rare moments in baseball, including a pitcher recording a win without ever throwing a pitch,[2] and an even rarer 1-3-5 triple play — a triple-play configuration not seen in 95 years, well before the panel came into existence.[3]

With these baseball rarities top of mind, we thought it would be intriguing to consider rare moments in the MDL world as well.

To begin our trip down MDL nostalgia lane, we need look no further than the panel's May session. Looking back at that session, the panel granted seven of the eight petitions before it. It's a somewhat rare occurrence to have such a high batting average — .875 — for a panel session, and just one shy from granting every single new petition before it.

With the granting of these seven petitions, the panel increased its season average to a whopping .739, granting a total of 17 of the 23 petitions on which it has ruled this year, a panel batting average not seen on an annual basis in more than a decade.

Moreover, after the rare occurrence from the March session of a two-week delay from hearing session day to the first decision, the panel returned to its quick pace of issuing decisions. All of the decisions on new MDL petitions considered at the May session were entered by June 7, the end of the week following that session.[4] The seven new MDL proceedings from the May hearing session are venued in Georgia, Minnesota (two MDLs), New Jersey, Ohio, Texas and Virginia, respectively.

The overall number of pending MDL proceedings has ticked up slightly to 177, from 170 proceedings at the beginning of May.[5] The panel has closed out only eight MDL proceedings this year.[6]

Product liability MDLs continue to dominate the MDL landscape, now representing more than 38% of the total number of MDL proceedings, 68 out of 177 MDLs.[7] The 177 MDL proceedings encompass a total of 417,521, a bit below the 432,933 actions at the beginning of May.[8]

There remain 21 proceedings that have more than 1,000 pending actions, 11 of which have more than 5,000 pending actions, and all of which are from among the product liability MDLs.[9]

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

## Rare MDL Moments

We have already noted above a few recent rare MDL moments for the panel, including: (1) an unusually high rate of granting MDL petitions both with respect to the May hearing session and overall this year; (2) the timing of panel decisions; and (3) a venue streak for panel hearing sessions in states without a major league baseball team.

But following the recent trend of rare moments in baseball, let's explore a few additional rarities this year in MDL panel practice:

- **Go West:** In a rare departure from its usual venue for its January hearing session, the panel headed west to California, rather than its typical Florida destination.[10]
- **They come in pairs:** In an unusual twist, in each of the first three panel hearing sessions this year, the panel established two new MDL proceedings in the same federal judicial district — two in the Northern District of Ohio in the January session; two in the Northern District of California in the March session; and two in the District of Minnesota in the May session.[11]
- **New vistas:** In cases heard at a single hearing session in March, the panel established new MDL proceedings in two states which did not have a then-current MDL proceeding — Utah and West Virginia.[12]

### PANEL TRIVIA CORNER

#### 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?

#### Answer to May Trivia Question

Dec. 5, 2024, in New York, New York (albeit during the baseball off-season).

#### July Trivia Question

What was the last year that the panel's batting average for granting new MDL petitions exceeded .700? (Hint: It was also the last year that the panel ruled on more than 100 MDL petitions.)

*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).*

When will the panel issue its decisions from the July hearing session? Will the panel add to its near record-setting batting average? Will the pace of new MDL petitions pick up? What new panel records will be broken next? Will we see new venues for MDL proceedings, perhaps even a first-ever Alaska based MDL? Will the panel again establish multiple MDLs in the same judicial district?

Stay tuned for our next edition of "And Now a Word from The Panel," when the panel heads northeast to Music City, aka Nashville, Tennessee, yet another state without a major league baseball team, for its Sept. 26 hearing session and final hearing of the 2024 baseball season.

---

*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.*

*The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.*

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

[2] <https://www.mlb.com/news/sean-newcomb-earns-win-without-facing-batter#:~:text=Pitcher%20records%20win%20without%20officially%20facing%20a%20batter,-June%2022nd%2C%202024&text=Athletics%20reliever%20Sean%20Newcomb%20didn%2Cfirst%20win%20of%20the%20season>.

[3] <https://www.mlb.com/news/aaron-nola-Phillies-turn-triple-play-against-tigers#:~:text=Phillies%20catcher%20Garrett%20Stubbs%2C%20meanwhile,%2D3%2D5%20triple%20play>.

[4] <https://www.jpml.uscourts.gov/panel-orders>.

[5] [https://www.jpml.uscourts.gov/sites/jpml/files/Pending\\_MDL\\_Dockets\\_By\\_District-July-1-2024.pdf](https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_District-July-1-2024.pdf).

[6] [https://www.jpml.uscourts.gov/sites/jpml/files/Recently\\_Terminated\\_MDLs-January-1-2024-July-1-2024.pdf](https://www.jpml.uscourts.gov/sites/jpml/files/Recently_Terminated_MDLs-January-1-2024-July-1-2024.pdf).

[7] [https://www.jpml.uscourts.gov/sites/jpml/files/Pending\\_MDL\\_Dockets\\_By\\_Docket\\_Type-July-1-2024.pdf](https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_Docket_Type-July-1-2024.pdf).

[8] [https://www.jpml.uscourts.gov/sites/jpml/files/Pending\\_MDL\\_Dockets\\_By\\_Actions\\_Pending-July-1-2024.pdf](https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_Actions_Pending-July-1-2024.pdf).

[9] Id.

[10] See "And Now a Word from the Panel: A Strong Year For MDLs," Law360 (Jan. 24, 2024).

[11] [https://www.jpml.uscourts.gov/sites/jpml/files/Pending\\_MDL\\_Dockets\\_By\\_District-July-1-2024.pdf](https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_District-July-1-2024.pdf).

[12] [https://www.jpml.uscourts.gov/sites/jpml/files/Pending\\_MDL\\_Dockets\\_By\\_District-July-1-2024.pdf](https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_District-July-1-2024.pdf).