

And Now A Word From The Panel: Tracking MDL Geography

By **Alan Rothman** (November 29, 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.

With the World Series in the rearview mirror, and with Thanksgiving falling on the second-to-last Thursday of November, the panel prepares for a somewhat rare November hearing session on the final Thursday of the month, as opposed to at the beginning of December.

The panel heads a bit west to San Antonio, Texas, for this month's session, when the panel considers only four new MDL petitions, a slight increase from the three new petitions considered by the panel in September, and a mere two petitions considered in July.



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At the September session, the panel granted two of the three petitions before it. But despite the panel's scorching overall batting average this year, the panel saw its batting average dip from .727 to .720, following the results of the September session.

In 2023, the panel has created a total of 18 new MDLs and denied seven MDL petitions. The two new MDL proceedings from the September hearing session are venued in California and Massachusetts, respectively — but more about venue later in this column.

Over the past two months and with a relative dearth of new petitions, the overall number of pending MDL proceedings has ticked down to 168, from 172 proceedings in mid-September.[1] Since January, the panel has closed out 22 MDL proceedings.[2]

While MDL proceedings overall may be at a low watermark in recent memory, this has only highlighted how product liability MDLs continue to dominate the MDL landscape — growing to more than 38% of the total number of MDL proceedings, or 64 out of 168 MDLs.[3]

Moreover, the low watermark of overall MDL proceedings is ironically rivaled by the high watermark of actions within those proceedings. Specifically, the 168 MDL proceedings now encompass a total of 464,724 actions — an increase of more than 50,000 from the 408,636 actions pending as of mid-September.[4]

There are currently 19 proceedings that have more than 1,000 pending actions, 11 of which have more than 5,000 pending actions. All of those 11 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.

In exciting news for panel statisticians and aficionados, the panel has announced that beginning in 2024, it will publish its monthly stats on the first business day of each month, rather than at mid-month.[6]

MDL Geography: A One-State MDL?

PANEL TRIVIA CORNER

September Trivia Question

How many panel chairs have there been in the panel's 55-year history?

Answer to September Trivia Question

Eight.

November Trivia Question

When was the last time the panel held a hearing session during the month of November?

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.

In our last column, we addressed a petition to establish a new MDL proceeding for a total of two cases pending in the same state — Pennsylvania — albeit in different federal judicial districts.[7] For those who may be curious, the panel denied the MDL petition.

Not surprisingly, the geographical proximity of the small number of actions played a role in the panel's decision, among other reasons.

The panel observed that "informal coordination seems eminently feasible, particularly given that defendants in both actions are represented by the [same counsel] and the actions are pending in adjacent districts in Pennsylvania." [8]

MDL Geography: Venues

Turning to a different type of MDL geography, it is difficult to resist touching upon one of our favorite panel topics, MDL venue.

Indeed, with the football season in full swing, venue selection for new MDLs is almost as intriguing as selection of the Super Bowl site — which by the way, will this season be at a new venue of Las Vegas, Nevada, a locale that does not currently host any current MDL proceedings.

Over the past few years, the venues for new MDL proceedings have predominantly been east of the Mississippi River — or put another way, limited primarily to the Eastern and Central time zones.[9] Through June of this year, the panel followed that pattern with 12 of

the 13 new MDLs venued in Eastern or Central time zones.[10]

But beginning with the second half of the year, we have seen some movement to the west, with two of the last four new MDLs finding their way to Arizona and California. And lest anyone be concerned about a lack of West Coast MDLs, there are still nearly two dozen pending MDL proceedings in the Golden State — 23 in total.[11]

Will the pace of MDL petitions pick up? Will the total number of MDL proceedings rise above 170? Will the number of actions in pending MDLs exceed half a million? Where will any new MDL proceedings be located?

Stay tuned for our next edition of And Now A Word From The Panel, when the panel heads to a venue to be determined for its January hearing session. If history is a guide, the panel will likely head to Florida — but time will tell whether the panel expands its own geographical horizons and explores venues beyond the Sunshine State.

As we conclude this column's 11th year, we wish our readers all the best for the new year!

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[1] https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MD_L_Dockets_By_District-November-16-2023.pdf.

[2] https://www.jpml.uscourts.gov/sites/jpml/files/Recently_Terminated_MD_Ls-January%201-November-16-2023.pdf.

[3] https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MD_L_Dockets_By_Docket_Type-November-16-2023.pdf.

[4] https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MD_L_Dockets_By_Actions_Pending-November-16-2023.pdf.

[5] Id.

[6] <https://www.jpml.uscourts.gov/pending-mdls-0>.

[7] "And Now a Word from the Panel: A One-State MDL?," Law360 (Sept. 27, 2023).

[8] In re: Pennsylvania Department of Corrections Inmate Confinement Litig., MDL No. 3085. at 2 (J.P.M.L. Oct. 4, 2023); see also "And Now A Word From The Panel: A One-State MDL?," Law360 (Sept. 27, 2023) ("Of course, the pendency of actions in the relative close proximity of the same state, coupled with a limited number of actions and counsel, may impact on these questions, especially the ability to coordinate informally").

[9] See "And Now A Word From The Panel: 2022 MDLs By The Numbers," Law360 (Jan. 24, 2023).

[10]

See https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_MDL_Number-November-16-2023.pdf.

[11]

See https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_District-November-16-2023.pdf.