

# And Now A Word From The Panel: MDLs Continue To Thrive

By **Alan Rothman**

Welcome as we enter the eighth year 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 at venues around the country.

As we began 2020, the panel returned to its typical January destination of the state of Florida. But in what may have been an attempt to avoid Super Bowl crowds in its usual host city, Miami, the panel stayed a bit north and held its hearing session in Tampa.

Looking at the panel’s docket for January’s hearing session, the panel had only five new MDL petitions, just slightly more than the three petitions heard at the December session. Speaking of December, at that session, the panel created only one new MDL proceeding, while denying two MDL petitions.



Alan Rothman

## Looking Back at MDLs in 2019

Over the past few years, this column has highlighted the panel’s scrutiny of an ever-decreasing number of MDL petitions. While 2018 may have been an exception to this trend, with rulings on 61 new MDL petitions, 2019 represented a return to the pattern of relatively few MDL petitions.

In 2019, the panel ruled on a total of 40 petitions, the same number ruled on in 2017. But in a slight change from years past, the panel broke .500, granting 21 petitions and denying 19 petitions, to end the year with a .525 batting average.

Once again, the panel continued its cleanup efforts, terminating 44 MDL proceedings, almost the same number terminated in 2018 (45). At the end of 2019, there were 190 pending MDL proceedings, an 8% decrease from the 207 pending MDL proceedings at the end of 2018.[1]

## 2019 By the Numbers

The chart below compares the panel’s 2019 stats with those from 2018:

CATEGORY	2019	2018
# of MDLs Created	21	28
# of MDL Motions Denied	19	33

MDLs Created as Percentage of Total # of MDLs Created/Motions Denied	52.5%	45.9%
# of Terminated MDLs	44	45
# of New Products Liability MDLs	8	8
# of New Marketing & Sales MDLs	2	2
# of New Antitrust MDLs	3	7
# of New Data Breach/Privacy MDLs	3	2
# of New Securities MDLs	0	0
# of New Intellectual Property/Patent MDLs	5	4
Total # of MDLs Pending at Year-End	190	207

### **Trendlines**

As noted, in stark contrast to 2018, where the panel saw the number of MDL petitions ruled on by the panel increase markedly to 61, 2019 saw a dramatic drop in the number of MDL petitions considered by the panel — down to only 40 petitions. But there were several other takeaways from the 2019 statistics.

The panel continued to create a significant number of product liability MDLs (8), nearly 40% of all new MDL proceedings. Product liability MDLs represent more than a third of the total number of MDL proceedings pending at year-end — 65 of the 190 MDLs.[2]

For the third year in a row, the panel created no new securities MDLs. 2019 continued to see a marked increase in intellectual property/patent MDLs (5 in 2019 versus 4 in 2018 versus 0 in 2017). But 2019 saw a decrease in the number of new antitrust MDLs (3 in 2019 versus 7 in 2018).

### **PANEL TRIVIA CORNER**

#### **December Trivia Question**

Which federal circuits have been the home circuit for panel chairs?

#### **Answer to December Trivia Question**

First, Second, Fifth, Sixth, Tenth and Eleventh.

#### **February Trivia Question**

Prior to 2019, when was the last year that the panel granted more new MDL petitions than it denied?

*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).*

## **MDL Venues**

Continuing this column's annual tradition, let us explore the panel's 2019 selection of MDL venues. In contrast to past years when MDLs were relatively evenly distributed around the country, the new 2019 MDL proceedings are heavily concentrated on the East Coast of the U.S., in the Southeast and Northeast.

In particular, due to the increase in patent MDLs, which have historically been venued in Delaware — the nation's first state, albeit one of the smallest — that state was the big winner in the MDL venue sweepstakes. Delaware is home to five of the 21 new MDL proceedings. New Jersey and California, which historically have been leading MDL venue choices, are home to three new MDLs, respectively.

In total, the new 2019 MDLs are centralized in 12 states, embodying 13 judicial districts. Out of the 21 MDL proceedings that were created in 2019:

- 48% (10) are venued in the Southeast (Delaware, Florida, Maryland, South Carolina, Virginia);[3]
- 24% (5) are venued in the Northeast (Massachusetts, New Jersey, New York);
- 14% (3) are venued in the West (California); and
- 14% (3) are venued in the Midwest (Illinois, Kansas, Michigan).

## **A Continued Word About MDL Growth**

Although the number of MDL proceedings continued to decrease, the MDL world is alive and well in a host of areas, including product liability, data breaches, intellectual property and antitrust.

Moreover, while 2019 was a year of contraction — with a continuing downward trend in the overall number of MDL proceedings — this decrease belies an overarching storyline of growth in MDL proceedings. The 190 MDL proceedings pending at year's end embody more than 130,000 individual actions.[4]

In fact, there are 22 MDL proceedings with more than 1,000 pending individual actions.[5] Even more dramatic is that the 16 product liability MDL proceedings established over the past two years already comprise a total of nearly 10,000 individual actions (9,731 as of mid-January).[6] We will continue to watch this critical trend in MDL practice.

What lies ahead in 2020 for the panel? Will we see an increase in the overall number of MDL petitions? Which areas will see an increase in MDL activity? Will we see a shift in the venues for new MDL proceedings? Stay tuned for our March edition of And Now a Word from the

Panel, as the panel heads to Music City — Nashville, Tennessee — for its March 26 hearing session, and, once again, opening day of the 2020 baseball season!

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[1] [https://www.jpml.uscourts.gov/sites/jpml/files/Pending\\_MDL\\_Dockets\\_By\\_Actions\\_Pending-January-15-2020.pdf](https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_Actions_Pending-January-15-2020.pdf).

[2] [https://www.jpml.uscourts.gov/sites/jpml/files/Pending\\_MDL\\_Dockets\\_By\\_MDL\\_Type-January-15-2020.pdf](https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_MDL_Type-January-15-2020.pdf).

[3] The regions are based on those used for purposes of the US census.

[4] [https://www.jpml.uscourts.gov/sites/jpml/files/Pending\\_MDL\\_Dockets\\_By\\_MDL\\_Type-January-15-2020.pdf](https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_MDL_Type-January-15-2020.pdf).

[5] Id.

[6] [https://www.jpml.uscourts.gov/sites/jpml/files/Pending\\_MDL\\_Dockets\\_By\\_MDL\\_Type-January-15-2020.pdf](https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_MDL_Type-January-15-2020.pdf); [https://www.jpml.uscourts.gov/sites/jpml/files/Pending\\_MDL\\_Dockets\\_By\\_Actions\\_Pending-January-15-2020.pdf](https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_Actions_Pending-January-15-2020.pdf).