

And Now A Word From The Panel: Spotlight On MDL Venue

By Alan Rothman

Law360 (March 25, 2020, 6:04 PM EDT) -- 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. The coronavirus pandemic has affected every aspect of our lives — personal, family, communal and professional. And as the panel’s work often provides a glimpse into the issues of the day, it is no surprise that the panel has also changed its routine.



Alan Rothman

Although the panel typically holds its in-person hearing session at a selected venue around the country, this hearing session will be different from other sessions. In what may be unprecedented, the panel will conduct its March 26 hearing telephonically from its offices in Washington, D.C., rather than meeting in person at the Middle District of Tennessee's courthouse in Nashville. In its notice regarding the telephonic hearing, the panel reserved the right to schedule oral argument or order supplemental briefing, if warranted.[1]

With travel plans on hold in this country and around the world, and changing venues being the norm of the day, this column will somewhat aptly return to exploring one of its favorite panel topics: venue for MDL proceedings. But first let us take a look back at the Jan. 30 hearing session held in Tampa, Florida.

At the January hearing, the panel considered five new MDL petitions. The panel denied three of those motions and granted two motions, in the areas of product liability and antitrust.

With the panel now batting .400 for the year, it considers five new MDL petitions at the March telephonic hearing, in the areas of marketing and sales practices, antitrust, patent (and contract), mortgage practices and fair credit reporting.

The overall number of pending MDL proceedings has declined to 184,[2] as compared to 190 just two months ago. The panel continues to close out older MDL dockets, terminating a total of 8 existing MDLs this year through mid-March.[3]

Product liability MDLs comprise nearly 35% of the total number of MDL proceedings.[4] The 184 MDL proceedings encompass 134,190 actions.[5] There are now 25 MDL proceedings that have more than 500 individual pending actions, almost all of which are from among the product liability MDLs.[6]

PANEL TRIVIA CORNER

February Trivia Question

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

Answer to February Trivia Question

2014 (when the panel granted 48 new MDL petitions and denied 27 new MDL petitions).

March Trivia Question

When was the last time that the panel adjourned a regularly scheduled 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.

Travel Plans: Venue Options

As noted in our [last column](#), the East Coast has been the overwhelming venue of choice for recent new MDL proceedings, with 15 of the 21 new MDLs created in 2019 venued in that area of the country. The two new MDLs established following the January hearing session have continued that trend, being venued in Florida and Washington, D.C., respectively.

But more important than the physical situs for the new MDL proceedings is what can we discern as to the reasoning of the panel for its venue selection decisions. Have the venue factors remained similar or have they differed with the passage of time?

What we have gleaned is that as much as things change, they remain the same. In recent decisions, the panel continues to consider the following factors:

- Where a significant number of actions are pending;
- A convenient forum;
- Where the defendant has its headquarters and/or principal place of business;
- Where significant evidence, including common witnesses, are located;
- The presence of an experienced jurist who may not have had prior MDL experience;
- The presence of an experienced jurist with MDL experience (not necessarily inconsistent with the above factor); and
- A district with pending related litigation.

In looking ahead to the March hearing, the new MDL petitions being considered by the panel seek a bit more geographic diversity, ranging from requests for new MDLs from “California to the New York island” — with a petition requesting centralization on the West Coast (California or Washington) and another petition seeking centralization in the Southern District of New York, with other petitions seeking venues elsewhere in the country.

What will the March telephonic hearing bring? Will venue considerations remain the same? We hope that all should be well and safe. And we further hope that by our May edition of And Now A Word From The Panel, the panel and counsel will be able to head to the scheduled destination of San Francisco, California, for the panel’s May 28 hearing session!

[Alan E. Rothman](#) is counsel 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 the firm, 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/sites/jpml/files/Amendment%20to%20Hearing%20Session%20Order-3-12-2020.pdf>.

[2] [https://www.jpml.uscourts.gov/sites/jpml/files/Pending MD L Dockets By MD L Number-March-16-2020.pdf](https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MD_L_Dockets_By_MD_L_Number-March-16-2020.pdf).

[3] [https://www.jpml.uscourts.gov/sites/jpml/files/Recently_Terminated MD Ls-January%201-March-16-2020.pdf](https://www.jpml.uscourts.gov/sites/jpml/files/Recently_Terminated_MD_Ls-January%201-March-16-2020.pdf).

[4] [https://www.jpml.uscourts.gov/sites/jpml/files/Pending MD L Dockets By MD L Type-March-16-2020.pdf](https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MD_L_Dockets_By_MD_L_Type-March-16-2020.pdf).

[5] [https://www.jpml.uscourts.gov/sites/jpml/files/Pending MD L Dockets By Actions Pending-March-16-2020.pdf](https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MD_L_Dockets_By_Actions_Pending-March-16-2020.pdf).

[6] Id.

Article Link: <https://www.law360.com/articles/1256760/and-now-a-word-from-the-panel-spotlight-on-mdl-venue>

This article first appeared in Law360