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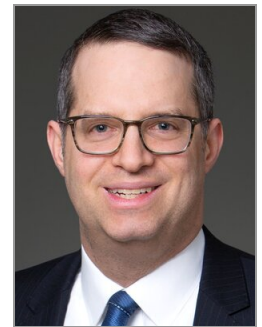
## And Now A Word From The Panel: The MDL Map

By **Alan Rothman** (September 25, 2024, 10:24 AM EDT)

*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. In this installment, we review the unpredictable nature of MDL venue selection, which can have a significant impact on MDL practice.*

With autumn upon us, the JPML is heading a bit south for its September session, to Nashville, Tennessee — its third session in a row in a state without a major league baseball team.

The panel enters Music City with a somewhat heavier docket than in July as it considers seven new petitions for multidistrict litigation. This docket builds on the 27 petitions already ruled on by the panel this year.



Alan Rothman

With another year rapidly approaching its final quarter, it is worthwhile to take a fresh look at the MDL map. More specifically, we consider the lay of the land as to where the panel has decided to place new MDL proceedings.

But before revisiting this fascinating issue of MDL venue, we take a retrospective look at the panel's July session held in Portland, Maine, with relatively few new petitions. At that session, the panel granted two of the four petitions before it.

With this even split in decisions, the panel's batting average for the year dipped somewhat to .760, with the panel granting a total of 19 of the 25 petitions considered this year, but still one of the highest panel batting averages in years.

Once again, the panel ruled with alacrity, issuing all of its decisions on new MDL petitions considered at the July session by the end of the following week.[1] The two new MDL proceedings from the July hearing session are venued in Illinois and New Mexico, respectively — and we will have some additional words on venue later in this column.

The overall number of pending MDL proceedings has ticked down to 172, from 177 proceedings at the beginning of July.[2] The panel has closed out 15 MDL proceedings this year.[3]

Product liability MDLs continue to dominate the landscape, representing more than 38% of the total number of MDL proceedings — 66 out of 172 total MDLs.[4] The 172 MDL proceedings encompass a total of 405,371 actions, a bit below the 417,521 actions at the beginning of July.[5]

There are now 22 proceedings that have more than 1,000 pending actions, and 10 that have more than 5,000 pending actions, all of which are from among the product liability MDLs.[6]

As we have previously reminded our readers, these tallies are just civil actions, not the total number of plaintiffs, including those in multiplaintiff actions — which would be a valuable piece of additional information to have in assessing the magnitude of the MDL world — and the figures do not include unfiled claimants.

### The MDL Map: Venue Considerations

As we have noted in the past, one of the most intriguing but probably least predictable facets of panel practice is selection of the venue for new MDL proceedings.

One of the many factors the panel considers in selecting venue is where actions are pending. However, the issue for defendants is that they do not choose where cases are filed.

Only plaintiffs have the first move on the map in deciding where a case is filed, and whether a particular district will have a heavy concentration of the cases.

But as readers of this column are aware, the absence of a pending action in a district does not preclude that district from being selected as the MDL transferee court.

While speaking of venue, this is an opportunity to look at where MDLs have been established so far this year, with some fun facts.

### ***Heading East***

A majority — 11 of 19 — of the new MDLs this year are in the Eastern time zone, including in Florida, Georgia, New York, New Jersey, Ohio, Pennsylvania, Virginia and West Virginia.[7]

### ***Central, Mountain and Pacific Time Zones***

The other eight new MDLs were venued in other time zones, including new MDLs in California, Illinois, Minnesota, New Mexico, Texas and Utah.[8]

### ***New Vistas***

Perhaps an even more interesting development is that the panel has established a number of MDL proceedings this year in states with relatively few MDL proceedings — including Utah and West Virginia, which had no other current MDLs, and New Mexico and Virginia, which now have only two MDLs each.[9]

What is particularly notable about New Mexico and Virginia is that each of those districts saw their respective third MDL closed out by the panel shortly after selection of those venues for new MDL proceedings.[10]

### ***And the Overall MDL Winner Is...***

Although the panel has taken a noticeable shift east for MDL venues this year, the district with the most currently pending MDLs remains the Northern District of California — with a total of 18 current MDL proceedings, or more than 10% of all MDLs.[11]

Where will any new MDL proceedings be venued? What factors will the panel consider as to venue? Will the panel select a venue without a pending action? Will the panel raise its batting average? Will the pace of new MDL petitions pick up as we approach year-end?

Stay tuned for our next edition of And Now a Word from The Panel, when the panel changes its tune and heads northeast from Music City to a city with not

## **PANEL TRIVIA CORNER**

### **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.)

### **Answer to July Trivia Question**

2009 — batting .814, granting 83 petitions and denying 19 petitions.

### **September Trivia Question**

Prior to this September hearing session, when was the last time a panel hearing was scheduled to take place in Nashville, Tennessee and what happened?

*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.*

just one, but two, major league baseball teams — possibly both playoff-bound — for its Dec. 5 hearing session and final hearing of 2024: the Big Apple — New York, New York!

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

[2] [https://www.jpml.uscourts.gov/sites/jpml/files/Pending\\_MDL\\_Dockets\\_By\\_District-September-3-2024.pdf](https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_District-September-3-2024.pdf).

[3] [https://www.jpml.uscourts.gov/sites/jpml/files/Recently\\_Terminated\\_MDLs-January-1-2024-September-3-2024.pdf](https://www.jpml.uscourts.gov/sites/jpml/files/Recently_Terminated_MDLs-January-1-2024-September-3-2024.pdf).

[4] [https://www.jpml.uscourts.gov/sites/jpml/files/Pending\\_MDL\\_Dockets\\_By\\_Docket\\_Type-September-3-2024.pdf](https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_Docket_Type-September-3-2024.pdf).

[5] [https://www.jpml.uscourts.gov/sites/jpml/files/Pending\\_MDL\\_Dockets\\_By\\_Actions-Pending-September-3-2024.pdf](https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_Actions-Pending-September-3-2024.pdf).

[6] Id.

[7] [https://www.jpml.uscourts.gov/sites/jpml/files/Pending\\_MDL\\_Dockets\\_By\\_MDL\\_Number-September-3-2024.pdf](https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_MDL_Number-September-3-2024.pdf).

[8] Id.

[9] [https://www.jpml.uscourts.gov/sites/jpml/files/Pending\\_MDL\\_Dockets\\_By\\_District-September-3-2024.pdf](https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_District-September-3-2024.pdf).

[10] [https://www.jpml.uscourts.gov/sites/jpml/files/Recently\\_Terminated\\_MDLs-January-1-2024-September-3-2024.pdf](https://www.jpml.uscourts.gov/sites/jpml/files/Recently_Terminated_MDLs-January-1-2024-September-3-2024.pdf).

[11] [https://www.jpml.uscourts.gov/sites/jpml/files/Pending\\_MDL\\_Dockets\\_By\\_District-September-3-2024.pdf](https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_District-September-3-2024.pdf).

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