

And Now A Word From The Panel: Ballpark Lessons For MDLs

By **Alan Rothman** (December 4, 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. This installment examines the confluence between the world of MDLs and the world of baseball, fresh off a World Series disappointment for Yankees fans.



Alan Rothman

With MLB's Fall Classic behind us — more about that later — the Judicial Panel on Multidistrict Litigation finally returns to a state with a baseball presence, and two major league teams: New York.

The panel enters the Big Apple with an extremely light docket as it considers only two new MDL petitions. This includes a petition joining the docket after the original hearing order was issued.[1] This will bring the total number of new MDL petitions considered this year to 34.

To put a more cheerful spin on the results of this year's World Series, at least from a New Yorker's perspective, it would be intriguing to explore lessons we can learn from the national pastime for MDL practice.

But before taking a look at the confluence between these two worlds, we take a retrospective look at the panel's September session held in Nashville, Tennessee. At that session, the panel granted five of the seven petitions before it, creating four new MDL proceedings, with two of the petitions consolidated into a single MDL. With these new decisions, the panel's batting average for the year dipped somewhat to .750, with the panel granting a total of 24 of the 32 petitions considered so far this year, but still one of the highest panel batting averages in years.

The panel issued all its decisions on new MDL petitions considered at the September session by the end of the following week.[2] The new MDL proceedings from the September hearing session are venued in California, Minnesota, Montana and Tennessee, respectively. Interestingly, the panel again decided to establish an MDL in a venue that did not have another current MDL proceeding, Montana, continuing a recent trend.

The overall number of pending MDL proceedings has ticked up slightly to 173, from 172 proceedings at the beginning of September.[3] The panel has closed out 18 MDL proceedings this year.[4] Product liability MDLs continue to dominate the MDL landscape, continuing to represent more than 38% of the total number of MDL proceedings with 67 out of 173 MDLs.[5]

The number of actions in the 173 MDL proceedings fell to a total of 325,303 actions.[6] But as we remind our readers, the data as to number of actions are just civil actions. The figures do not reflect the total number of plaintiffs, including those in multiplaintiff actions, and do not include unfiled claims, which would be valuable pieces of additional information to have in assessing the magnitude of the MDL world.

There are now 21 MDL proceedings that have more than 1,000 pending actions, 10 of which have more than 5,000 pending actions, all from among the product liability MDLs.[7]

Four World Series Lessons

As readers of this column know well, when there is a sports analogy, and particularly a baseball analogy, to MDL practice, I run with it. With the baseball season ending much too soon for New Yorkers just over a month ago, the offseason has provided some time to ponder how MDL life resembles the national pastime.

With that, here are four lessons we have gleaned.

1. Root, Root, Root for the Home Team?

There is nothing like home-field advantage in baseball, unless you happen to lose a World Series in five games on your home field — and then it is a shame, as New Yorkers know all too well this year.

In the MDL world, the panel considers the home location of parties as a factor in determining the venue for a new MDL. Sometimes, as with the past panel hearing session, a new MDL is established in the home state where the hearing session was held: this time, Tennessee.

2. Major Television Markets

As in baseball, major markets matter. This year's East Coast versus West Coast Yankees-Dodgers series saw viewership skyrocket.[8]

Similarly, the coasts of this country are home to many MDL proceedings. California is home to 25 MDL proceedings and New York is home to 16, representing close to a quarter of the current 173 MDL proceedings.[9]

3. Repeat Teams and Players

As this year showed, certain teams seem to be staples of the Fall Classic. The Yankees have appeared 41 times and the Dodgers — during their time in both Los Angeles and, yes, Brooklyn — have made 22 appearances.[10]

In the MDL world, there are many repeat MDL venues and jurists as well. But every so often, the World Series features new teams and faces. MDLs are no different; at times, the panel selects new vistas for MDLs and judges who have not yet had the opportunity to preside over an MDL.

4. Records Are Made to Be Broken

Inevitably, baseball statisticians are at the ready each fall to find a new record in the World Series or broader post-season, such as the six grand slam home runs in this year's playoffs.[11]

With each passing year, it also seems that panel and MDL records are made to be broken, whether it is the number of petitions considered (or lack thereof), the number of actions in

PANEL TRIVIA CORNER

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?

Answer to September Trivia Question

March 2020, when the panel canceled its hearing session originally scheduled for Nashville "in light of the concerns about the spread of the COVID-19 virus (coronavirus)."

December Trivia Question

When was the last time the panel considered only two new MDL petitions at a 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.

MDL proceedings, the panel's batting average, or new venues for MDLs, among other bits of trivia.

Looking Ahead

Where will the panel's final batting average for 2024 land? Will it reach its highest average in years? What venues will the panel select for any new MDLs? Will the panel continue to look for new vistas for MDLs? Will the pace of new MDL petitions speed up again? And what is on the horizon for 2025? Where will the panel hold its January hearing session? Will it return to Florida where it has historically held its January session, or will it follow the approach it took this past January and head west again?

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

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

[3] https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_District-November-1-2024.pdf.

[4] https://www.jpml.uscourts.gov/sites/jpml/files/Recently_Terminated_MDLs-January-1-2024-November-1-2024.pdf.

[5] https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_Docket_Type-November-1-2024.pdf.

[6] https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_Actions_Pending-November-1-2024_0.pdf.

[7] Id.

[8] <https://www.mlb.com/press-release/press-release-2024-world-series-drives-big-results-across-global-viewership-merchandise-sales-attendance-and-social-media>.

[9] See *supra*, n.4.

[10] <https://www.sportingnews.com/us/mlb/news/world-series-yankees-won-history-new-york-appearances/70a9922ffc5c4fcd1bd74c28>; <https://www.sportingnews.com/us/mlb/news/dodgers-world-series-history-los-angeles-appearances-record/27c17f7f7997e49cbe838c0a>.

[11] <https://www.mlb.com/video/2024-postseason-sets-playoff-grand-slam-record>.