

Multidistrict Litigation



Impact:

- Economy sized litigation with sometimes thousands of claims consolidated into one venue allowing questionable claims to camouflage themselves among meritorious claims.
- Structural features allow the MDL judge to focus on common issues first, leaving individual issues on meritless claims to linger while the defendant continues to shoulder litigation costs.
- Pressures on defendants to settle large volumes of cases to avoid risk threatening liability.
- Susceptible to third party litigation funding (TPLF) where investments by outside funders that finance upfront costs enable the growth of weak or meritless mass tort litigation.

Quick Facts:

- Large numbers of claims from across the country are consolidated into one venue and treated as one matter for discovery and pretrial.
- Motions targeted at determining plaintiffs' specific alleged injuries, damages and causal evidence to support their claims are key to weeding out meritless claims.
- Proposed Federal Rule of Civil Procedure 16.1 will be the first federal rule providing MDL guidance. Rule 16.1, if passed, will provide guidance on initial management of MDL claims.

What is Multidistrict Litigation (MDL)?

The MDL was created in the late 1960's by statute (28 U.S.C. §1407). Section 1407(a) states an MDL may be created "[w]hen civil actions involving one or more common questions of fact are pending in different districts, such actions may be transferred to any district for coordinated or consolidated pretrial proceedings." The MDL is managed by the Judicial Panel on Multidistrict Litigation (JPML). Members of the JPML are appointed by the Chief Justice of the U.S. Supreme Court. MDLs are pending in U.S. District Courts in nearly every state.

The purpose of centralizing these matters is for efficiency and consistency in pretrial rulings. Cases remain in the MDL for all pretrial proceedings and discovery. If a case is dismissed and/or does not settle, it is remanded to the court from which it was transferred. The JPML has no authority over actions pending in state courts. Any party can petition the JPML to have a group of cases consolidated, or the JPML can do so on its own.

Since its creation in the 1960s, there have been no specific rules dictating how judges should manage MDLs beyond the Federal Rules of Civil Procedure. On June 4, 2024, the U.S. Judicial Conference Committee on Rules of Practice and Procedure approved Rule 16.1 to address case management in MDL proceedings. Rule 16.1 would be the first MDL focused Federal Rule of Civil Procedure.

MDL Examples

MDLs can be used to consolidate any type of litigation involving large number of cases.

- *In re: Acetaminophen - ASD-ADHD Prod. Liab. Litigation* (US Dist. Ct. SDNY)
 - Manufacturers/retailers of brand name and generic acetaminophen products allegedly violated various duties to warn consumers of the risk that children may develop ASD or ADHD as a result of in utero exposure.
- *In re: AT&T Data Security Breach Litigation* (US Dist. Ct. NDTX)
 - Allegations that AT&T failed to implement sufficient security measures, exposing the data of millions of customers.
- *In re: National Prescription Opiate Litigation* (US Dist. Ct. SDOH)
 - Allegations that defendants misrepresented the risks of long term use of opiate drugs and improperly marketed and distributed the medications.
- *In re: Apple Inc. Smartphone Antitrust Litigation* (US. Dist. Ct. NJ)
 - Allegations that the company locked its customers into the iPhone while pushing competitors out of the market through the use of anticompetitive agreements.

Solutions

- Request that the MDL court require plaintiffs to submit fact sheets and for targeted discovery.
- Ask that Lone Pine orders to be entered to weed out meritless claims. Lone Pine orders require plaintiffs: 1) specifically define their alleged injuries and/or damages and 2) demonstrate at the outset some minimal level of evidence support for key components of their claims – usually causation.
- Encourage the court to hold fast to gatekeeping obligations under Federal Rule of Evidence 702. A court's decision to preclude a causation expert has significant impacts affecting many cases.
- Support efforts for disclosure of TPLF agreements at the outset of litigation or upon entering an agreement to receive outside funding.
- Support adoption of Federal Rule 16.1 providing guidance to manage MDLs.

Zurich North America Initiatives

- Support efforts to adopt Federal Rule of Civil Procedure 16.1 to manage MDL proceedings.
- Leads the development and collaboration of industry partners on all lawsuit abuse reform efforts.
- Advocates for all lawsuit abuse reform issues impacting Zurich and its customers through its Government & Regulatory Relations (GRR) team.
- Created the first Claims Judicial & Legislative Affairs (CJLA) unit within Zurich North America Claims as a social inflation task force comprised of a dedicated team of experts to provide education and advocacy support.
- Launched and participates in the annual Lawsuit Abuse Reform Symposium with industry coalition members.
- Hosts Zurich Defense Attorney Summit twice a year through CJLA.
- Publishes *Quarterly Digest* to keep industry advocates informed through CJLA.

What can you do?

- Support local civil justice organizations.
- Gather examples and data to show abusive practices by plaintiffs' attorneys to use as examples to lobby for reform.
- Lobby to encourage disclosure of third party litigation funding agreements.

To learn how you can get involved, contact Zurich North America's Claims Judicial & Legislative Affairs team at usz.cjla@zurichna.com.



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