

# PROS AND CONS OF MDL CONSOLIDATION

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### **Biographical Information**

**Linda Woolf** is the Managing Partner at the Baltimore law firm of Goodell, DeVries, Leech & Dann, LLP, and the head of its commercial litigation and insurance coverage departments. She graduated magna cum laude from the University of Baltimore Law School where she was the Managing Editor of the Law Review.

Linda is a past Chair of the Network of Trial Law Firms, Inc. (2000). She is a Vice Chair of the Commercial Litigation Section of the Federation of Defense & Corporate Counsel and has served as the Chair of the Nominating Committee and several of its ad hoc committees. She is a member of the Maryland Chapter of the Federal Bar Association Board of Governors and a past member of the Executive Board of the Maryland Association of Defense Counsel.

In 2007-2009, Linda was named as one of the Top 25 Women Super Lawyers in Maryland. In 2007, she was honored with the Leadership in Law Award and as one of the Top 100 Women in Maryland. She has been recognized since 2008 by

Best Lawyers in America for commercial litigation and 2009-2010 for Bet-the-Company litigation.

**Jeff J. Hines** joined Goodell, DeVries as a partner in 2003. He was formerly the managing principal of a regional law firm's District of Columbia and Virginia offices. Jeff is licensed to practice in Maryland, the District of Columbia and the Commonwealth of Virginia and has represented clients in trials and appeals in all three jurisdictions.

Jeff focuses his litigation practice in the areas of professional malpractice, toxic tort and environmental litigation, pharmaceutical and products liability litigation, and commercial, securities and employee litigation. He is national counsel to a major industrial supplier of materials and is part of national trial teams representing AstraZeneca and Pfizer. He has served on the national team representing Wyeth in Fen-Phen litigation and also represents other major clients in pharmaceutical and products liability litigation as well as toxic tort and environmental litigation.

Since 2006, *Best Lawyers* and peers have recognized Jeff as a premier defense attorney in Legal Malpractice claims litigated throughout Maryland, Virginia, and the District of Columbia. *Maryland Super Lawyers* has named Jeff a leader in Products Liability, Professional Liability Defense, and Environmental Litigation in 2009 and 2010.

For better or worse, MDL consolidation is an important feature of the complex litigation landscape in our country. Yet MDL consolidation tends to be a polarizing practice. Some view it as an effective tool for handling mass tort litigation while others view it as a process to be avoided at all costs. Interestingly, these divergent views do not always split cleanly between plaintiffs and defendants. The decision to seek or oppose MDL consolidation is a complex one involving numerous legal and strategic considerations. Not unlike beauty, the perceived pros and cons of MDL consolidation exist in the eyes of the beholder. An aspect of MDL consolidation that is favorable in one piece of litigation may cause consternation in another. It is critical that parties facing multiple cases incorporate a strategy on MDL transfer into their overall litigation strategy as early as possible.

## I. BACKGROUND

Congress created multidistrict litigation in 1968 when it enacted 28 U.S.C. § 1407, which created a new method for consolidating similar cases during the pretrial and discovery phase of litigation. Under 28 U.S.C. § 1407(a), when “civil actions involving one or more common questions of fact are pending in different districts,” those actions may be transferred to any district for coordinated or consolidated pretrial proceedings. Though a prerequisite, common questions do not have to predominate. A case may be transferred pursuant to 28 U.S.C. § 1407(a) if it will be for “the convenience of the parties and witnesses and will promote the just and efficient conduct of such actions.” The overarching goal of such a transfer is to avoid duplicative, parallel discovery and other pretrial proceedings, to avoid inconsistent rulings, to reduce litigation cost and conserve the time and effort of the parties, witnesses, and the courts.

Congress created the Judicial Panel on Multidistrict Litigation (JPML), consisting of seven Article III judges from different judicial circuits, to govern this transfer process. The JPML plays a limited but crucial role in the multidistrict litigation process- it decides whether cases will be consolidated into an MDL and, if so, what court and judge will handle the MDL pretrial proceedings. In making this determination, the JPML considers whether the statutory criteria have been met, along with a number of subsidiary factors discussed below. Once the multidistrict litigation has been set up, later-filed actions involving common factual issues, called “tag-along” actions, are conditionally transferred to the MDL district, subject to the opportunity to show why the cases should not be transferred. The JPML plays no role in the ongoing management of cases following transfer. When the pretrial proceedings are concluded, and upon the suggestion of the transferee judge, the JPML may

remand the remaining cases for trial to the districts in which they were originally filed.

Over the years Section 1407 MDL cases have comprised an increasingly significant portion of the federal civil case docket. Since multidistrict litigation began in 1968, more than 216,000 civil actions have been consolidated in multidistrict litigation pretrial proceedings. *Statistical Analysis of Multidistrict Litigation 2009* (<http://www.jpml.uscourts.gov/Statistics/statistics.html>) (last visited April 4, 2010). As of February 2010, approximately 310 MDLs, comprised of approximately 92,000 individual cases, are pending in over 60 federal districts. *Panel Promotes Just and Efficient Conduct of Litigation*, Interview with John G. Heyburn II, February 2010 ([http://www.jpml.uscourts.gov/General\\_Info/Overview/overview.html](http://www.jpml.uscourts.gov/General_Info/Overview/overview.html)) (last visited April 4, 2010).

## II. MULTIDISTRICT LITIGATION: TRADING REDUNDANCY FOR EFFICIENCY

MDL transfer and consolidation can be an attractive procedural mechanism for dealing with disparate litigation in multiple courts. Commonly-cited benefits of an MDL include: lower litigation costs, more convenient discovery, tighter case management, more uniform decisions and increased potential for successful settlement.

### A. **One Bite at The Apple Equals Lower Litigation Costs**

A coordinated proceeding before a single judge offers one overwhelming advantage- lower costs due to non-duplicative discovery and pretrial proceedings. The benefits of eliminating duplicative discovery are substantial. First, coordination avoids the substantial cost of producing the same documents, answering the same interrogatories, and defending the same depositions over and over. Discovery-related travel expenses will similarly be reduced. Coordination also avoids the human cost to corporate officers and directors, who can devote less of their time to litigation and more to running a business. Finally, one deposition per witness reduces potential danger of inconsistent testimony by fact witnesses and experts.

A concomitant reduction in legal fees may also be realized. For one, there are fewer attorneys to do the "heavy lifting." More uniform decisions presumably will also result in fewer motions to file or respond to, including reduced interlocutory appeals or motions for consideration. In addition, there is only one judge to study and predict. Thus, less time can be spent analyzing his conduct in prior unrelated cases.

### **B. Consolidation Minimizes Judicial Inconsistency**

Judicial inconsistency is inevitable when thousands of cases are litigated separately before hundreds of different judges in numerous districts. Heterogenic outcomes may be particularly unacceptable with respect to some types of questions, such as privileges, where inconsistency can result in directly contradictory court orders with respect to identical subject matter. These varied outcomes can encourage forum shopping and other strategic manipulations of the system to move cases to a favorable court. "While there is nothing strikingly novel about inconsistent decisions in the United States District Courts, the interests of justice are not ordinarily served by such disparities. This consideration has been recognized as a basis for ordering cases to be transferred under 28 U.S.C. § 1404(a). Similarly, during the course of multidistrict litigation, § 1407 is an appropriate means of avoiding injury to like parties caused by inconsistent judicial treatment." *In re Fourth Class Postage Regulations*, 298 F.Supp. 1326, 1327 (J.P.M.L. 1969) (internal citations omitted).

Multidistrict litigation offers another important efficiency: greater opportunity for coordination between state and federal courts. Without an MDL proceeding, it can be very difficult to convince state court judges to follow the lead of any one particular federal judge. *See* Mark Herrmann, *To MDL or Not to MDL? A Defense Perspective*, 24 Litit. 43, 43 (1998). Coordination between the state and federal court system is also difficult, if not impossible in the absence of an MDL. However, when there is only one federal judge ruling on the cases, state judges are more likely to consider that judge's rulings on common pretrial issues. Once an MDL is in place, state court judges are also more likely to attempt coordination of depositions and document discovery with the MDL court. Moreover, some MDL judges appoint a common Special Master to officially coordinate the federal cases with pending state court cases.

### **C. Effective Judicial Management Can Promote Fair Play**

By its very nature, pretrial coordination may deprive plaintiffs' counsel of certain tactical advantages. When cases are scattered throughout the federal system, counsel may be able to speed the disposition of select cases while postponing others. Opportunities such as these to create favorable precedents is diminished when an MDL proceeding is created. Granted plaintiffs may still try to maneuver the system to their advantage, but a vigilant judge can quickly right such wrongs. In *In re: Seroquel Products Liability Litigation*, MDL No. 1769, Judge Anne C. Conway announced the creation of a bellwether trial group in which 54 cases filed in district courts in the Eleventh Circuit would be subject to case-specific discovery, *Daubert* and dispositive motions and, if necessary, trial. Within four hours of the Court's announcement- in an apparent attempt to avoid case-specific discovery and summary judgment motions- 19 of the 54 plaintiffs

unilaterally dismissed their cases. Within seven days of dismissing their cases, the very same 19 plaintiffs re-filed their cases in the United States District Court for the District of Minnesota, even though only two of those plaintiffs actually resided in Minnesota. Less than a month later, the cases were transferred back to MDL No. 1769 as tag-along cases, thereby concluding plaintiffs' "end run" around the Court's plan for their inclusion in the bellwether trial group. Unsurprisingly, this did not go unnoticed by defendant AstraZeneca. The following month, AstraZeneca filed a motion to return the 19 plaintiffs to the bellwether trial group. Judge Anne C. Conway granted AstraZeneca's motion, issuing a scathing order that reinstated the 19 cases to the bellwether trial group as originally planned.

MDL judges have also played a critical role in preserving the resources of the parties and the judiciary in mass tort litigation by weeding out unsupported claims through *Lone Pine* case management orders. This name comes from *Lore v Lone Pine Corp.*, 1986 WL 637507 (N.J. Super. Ct. Law Div., Nov. 18, 1986), in which the court approved a pretrial order requiring plaintiffs to provide some basic facts supporting their claim or run the risk of having their case dismissed. *Lone Pine* orders have been effectively utilized in multidistrict litigation. Two years after multidistrict litigation status was conferred, the court in *In re Vioxx Products Liability Litigation*, MDL No. 1657, issued a pretrial order requiring that plaintiffs provide expert reports to establish case-specific causation. 557 F.Supp.2d 741, 742 (E.D. La. 2008). The court subsequently dismissed 46 claims of plaintiffs who failed to comply with these orders. *In re Vioxx Products Liability Litigation*, MDL No. 1657, 2009 WL 1158887 at \*4. In denying plaintiff's motion to suspend the pretrial orders, the court found that after six bellwether trials and thirteen Vioxx-related state trials "it is not too much to ask a plaintiff to provide some kind of evidence to support their claim that Vioxx® caused them personal injury. Surely if plaintiffs' counsel believe that such claims have merit, they must have some basis for that belief; after all this time it is reasonable to require plaintiffs ....to show some kind of basic evidence of specific causation." *In re Vioxx*, 557 F.Supp.2d 741 at 744.

Clearly, a "hands on" judge who has experience with complex cases, maintains tight supervision of discovery and takes an aggressive, innovative approach to managing the cases is critical to the success of an MDL. If procedures are implemented to weed out unmeritorious cases early on, Plaintiffs' ability to litigate based on quantity instead of quality is significantly hampered.

#### **D. The MDL "Black Hole"**

"The centralized forum [of MDLs] can resemble a black hole, into which cases are transferred never to be heard from again." Eldon E. Fallon, et al., *Bellwether Trials in Multidistrict Litigation*, 82 Tul. L. Rev. 2323, 2330 (2008).

Experience shows that few cases are remanded for trial after Section 1407 proceedings. Of the 216,809 actions transferred to an MDL since 1968, only 11,737 have been remanded by the panel to their original transferor district for trial. *Statistical Analysis of Multidistrict Litigation 2009* (<http://www.jpml.uscourts.gov/Statistics/statistics.html>) (last visited April 4, 2010). More than summary judgment, settlement is the explanation for the reality that most cases the Panel transfers do not return. Whether global settlement should uniformly be a goal of transferee judges is a topic for debate, but one cannot overlook the reality that settlement is an important element of promoting the “just and efficient conduct” of litigation. See 28 U.S.C. § 1407(a). Though some scholars suggest there is a bias in favor of transferee judges who favor settlement, all federal judges today have a responsibility to actively promote settlement. See Fed. R. Civ. P. 16(a)(5), (c)(2)(P) (an objective of the pretrial conference is “facilitating settlement” and the “just, speedy, and inexpensive disposition of the action”). MDL judges are particularly proactive in this regard because they have a limited time to put the litigation into a posture for settlement and avoid the inefficiency and lack of uniformity that would undoubtedly ensue upon remand.

Although the path to settlement can be arduous, MDLs have repeatedly shown themselves to be a positive attractive force commanding resolution of nationally prominent litigation. For multidistrict litigation to achieve its desired result, procedures must be implemented by a strong and creative transferee judge and by counsel who are willing to cooperate with each other and with the court to find creative ways to resolve issues not necessarily contemplated by substantive law. Desmond T. Barry, *A Practical Guide to the Ins and Outs of Multidistrict Litigation*, 64 Def. Couns. J. 58 (1997). Ultimately, it is the resourcefulness of the court and counsel which will determine how efficiently, economically and fairly mass tort litigation is brought to a conclusion.

### III. MULTIDISTRICT LITIGATION: THE REST OF THE STORY

#### A. Publicity: A Weapon of Mass Destruction

The primary disadvantage of an MDL, from a defense perspective, is one of perception. As the number of cases against a defendant increases, so does their perceived legitimacy. This is particularly dangerous for a pharmaceutical defendant whose product in question remains on the market. In such a case, public interest can very quickly escalate. The perception of a “public health” issue is often created- and then trumpeted- by the media in an effort to gain greater access to the litigation. Public access is advisable when litigation “involves issues of great public interest [such as] the health of hundreds of

thousands of people, fundamental questions about our system of approval and monitoring of pharmaceutical products, and the funding for many health and insurance benefit plans.” *In re Zyprexa Products Liability Litigation*, 253 F.R.D. 69, 209 (E.D.N.Y. Sept. 5, 2008). Courts have held that, as the eyes and ears of the public, a public media outlet has standing to intervene to seek access to judicial proceedings and records. *See, e.g., Chicago Tribune Co. v Bridgestone/Firestone, Inc.*, 263 F.3d 1304, 1309 (11<sup>th</sup> Cir. 2001) (allowing press standing to seek to unseal settlement in civil case).

Enter Bloomberg L.P., a 24-hour global news service that supplies real-time business, financial and legal news to more than 300,000 desktop subscribers world-wide and more than 400 newspapers in 73 countries. On February 13, 2009, Bloomberg L.P. moved to intervene in *In Re: Seroquel Products Liability Litigation*, MDL No. 1769, citing public health concerns and seeking access to confidential documents under seal with the court. Bloomberg argued that the public’s health was at stake and they must be afforded the opportunity to assess the magnitude of risk involved. Bloomberg sought to unseal six categories of documents, including:

- FDA submissions and correspondence that had not yet resulted in final action,
- Four unpublished clinical study reports,
- Proprietary prescription data purchased from a consulting firm,
- Non-public documents reflecting foreign regulatory actions,
- Call notes reflecting competitively sensitive information, and
- Embarrassing personal employee emails

The parties gradually agreed to unseal all but three categories of documents: call notes by AstraZeneca sales representatives, certain marketing data reflecting the histories of prescribing physicians; and documents reflecting foreign regulatory action. Upon Bloomberg’s motion, Judge David A. Baker ordered AstraZeneca to redact and unseal the remaining documents.

#### **B. Higher Stakes Equals a Harder Fight**

An MDL often results in escalation of the stakes for the Defense. The focus of the MDL court is typically on generic discovery applicable to all cases which, of course, means the focus is entirely on the defendants. Given the huge mass of cases, MDL courts may not have time to hear case-specific motions. The court may defer decision on a strong motion that would otherwise eliminate a particular case because such individualized issues should be decided by the remand courts. Thus defense counsel is forced to devise arguments that can win cases wholesale. These higher stakes result in every discovery battle taking on monumental significance, requiring immense time and effort on the part of the

defense. Moreover, due to higher stakes and larger volume of plaintiffs, it becomes difficult to win any discovery battle based on burden or relevance, much less a global Daubert motion or motion for summary judgment.

Moreover, the overall cost savings of coordinated discovery in an MDL may be more imagined than real. For instance, savings will be negligible if defendants are required to respond to new areas of controversy. The time and money that plaintiffs' counsel is not spending for repetitive depositions will likely be channeled into new areas of discovery. Plaintiffs may well decide to undertake tangential discovery or significantly increase the depth of their investigation into critical issues. With more resources and more lawyers, more work can be undertaken. Defense counsel should anticipate that although duplicative discovery will be eliminated in an MDL, additional discovery will more than likely fill the void. *See* 24 Litig. 43 at 45. Thus the end result may be that Plaintiffs walk away with a stronger case against the defendants.

### **C. If You Build it, They Will Come**

Any mechanism that provides more efficient means of litigating is likely to enable more litigation. In other words, efficiency breeds economy. Efficiency can lower the cost of bringing suit which, combined with increased publicity, makes it more attractive for litigants to sue. *See* Richard L. Marcus, *Cure-All for an Era of Dispersed Litigation? Toward a Maximalist Use of the Multidistrict Litigation Panel's Transfer Power*, 82 Tulane L. Rev. 2245 (2008) (quoting Deborah R. Hensler et al., *Class Action Dilemmas: Pursuing Public Goals for Private Gain* 49 (2000)). Moreover, when an MDL is created, litigation that enjoyed the cloak of anonymity suddenly gains credibility in the plaintiffs' bar, making it more attractive for lawyers to take tag-along cases. As the publicity continues to grow, so does the snowball effect.

Multidistrict litigation enables plaintiffs to litigate based on volume instead of merit. An MDL proceeding may place hundreds or thousands of cases before a single judge. Aware of this fact, plaintiffs' counsel can file their less meritorious cases in federal court, hoping that these cases will never see the light of day. The primary goal of such tactics is to gain enough critical mass to force settlement, not to litigate based on merits. Confronted with such overwhelming numbers, defendants can no longer hope to prevail simply because they did nothing wrong. Plaintiffs' claims are often added to without a proper investigation. Defendants' odds become increasingly unfavorable if their judge views an MDL as a mechanism to settle an unmanageable morass of cases rather than as a mechanism for weeding out frivolous ones.

*In re Seroquel Liability Litigation* (MDL No. 1769) is a prime example of plaintiffs' counsel using an MDL to bury meritless cases. At the time Eli Lilly

announced its settlement of 8,000 Zyprexa® claims in June 2005, AstraZeneca had only two active cases and one dormant case involving Seroquel®. Over the next year additional cases were filed and plaintiffs petitioned for an MDL. This opened a veritable floodgate, resulting in thousands of new claims. In fact, 92% of the cases pending at the time of oral arguments for *In re Seroquel Liability Litigation* (MDL No. 1769) were filed after the motion for transfer to an MDL. Of those cases, 91% did not even allege diabetes; the claimed injury in the Seroquel-related litigation. Three years into the MDL there are over 20,000 claims in the MDL and several state courts. The fact that AstraZeneca has won summary judgment or obtained voluntary dismissals in every case that has been worked-up to date in MDL No. 1769 is indicative of the poor merits of these cases.

#### IV. JPML TRANSFER DECISIONS: WHAT YOU SHOULD KNOW

##### A. Factors Considered By The JPML

For better or for worse, the prospect of MDL transfer is an important part of complex case litigation. In recent years, the JPML has shown a great propensity to order transfer. Since 2000, the annual approval rate of MDL transfer requests before the JPML ranges from sixty-seven percent to eighty-seven percent. John G. Heyburn II, *A View from the Panel: Part of the Solution*, 82 Tul. L. Rev. 2225, 2235 n. 53 (2008). Perhaps the most critical decision the Panel has to make is the selection of the judge to whom an MDL case is transferred. Whether the JPML will order transfer, and to which district and judge, cannot be predicted by formula or with certainty but there are factors that clearly weigh on the decision:

- ***Number and complexity of actions.*** Clearly, the more actions that are pending or are likely to be filed, the more likely the panel will see fit to transfer. The panel looks not only to the number of filed actions, but also to the number of potential “tag-along” actions. The fewer the cases, the higher the burden on the moving party to show that the common issues are so complex that coordination will in fact conserve judicial resources.
- ***Procedural stage of the cases.*** If cases have been pending for a long time and are nearing trial, or if cases are in a wide variety of different procedural stages, transfer is less likely.
- ***Preferences of the parties.*** Although agreement between parties is not dispositive of obtaining or preventing transfer, the panel does

pay attention to this. The unanimous opposition of counsel to transfer can be persuasive.

- ***Opportunity to coordinate with other proceedings.*** The Panel will consider the existence of related state cases, the possibility of informal coordination with them, and the forum where state/federal coordination may be most extensive. If transfer will facilitate the coordination of the pending cases with other proceedings, transfer is more likely.
- ***Docket conditions and resources of the transferee judge or district.***
- ***Experience of transferee judge.*** The Panel will consider a judge's experience presiding over constituent actions or his or her familiarity with factual or legal issues in the MDL.
- ***Geographic centrality of transferee district.*** The JPML may consider the district's proximity to the filed actions, potential witnesses, company operations, the residence of an important party or the events at issue in the litigation.

See Daniel A. Richards, *An Analysis of the Judicial Panel on Multidistrict Litigation's Selection of Transferee District and Judge*, 78 Fordham L. Rev. 311, 331 (2009); Georgene Vairo, "Multi-District Litigation," 17 Moore's Federal Practice Ch. 112 (3d Ed. 2005); Practising Law Institute, Corporate Law and Practice Course Handbook Series 2008, PLI Order No. 14257, *The MDL Process*, Mark A. Chavez, Chavez & Gertler LLP.

#### **B. All Factors Are Not Created Equal**

It is difficult, if not impossible to predict how a JPML panel will rule with regards to the "where" question. Moreover, it can be challenging to glean any clues from past JPML transfer orders because they are oftentimes short and use standardized language. Nonetheless, taking a historical look at the decisions and the dockets selected allows some insights into what factors the Panel considers important. To that end one study undertook an analysis of over three hundred JPML transfer orders issued from 2003 through 2008. See Daniel A. Richards, *An Analysis of the Judicial Panel on Multidistrict Litigation's Selection of Transferee District and Judge*, 78 Fordham L. Rev. 311, 331 (2009). The study found that the overwhelming majority of cases (93%) were transferred to districts where either a constituent action or a tag along action was currently pending. *Id* at 343-344.

The Panel characterizes MDLs into ten distinct categories: air disaster, antitrust, common disaster, contract, employment practices, intellectual

property, products liability, sales practices, securities, and miscellaneous. *Id* at 329. The factors which the JPML considers may vary depending upon the category of case at issue. *Id* at 330. For instance, in products liability cases transferred by the JMPL from 2003 through 2008, the most frequently-cited factors included the concentration of constituent actions, the preferences of the parties, the location of an important party near the transferee district, and the docket conditions for the transferee district or judge. *Id* at 334. The JPML cites the preferences of parties and the geographic centrality of the transferee district more frequently in products liability cases than it does in the aggregate. *Id*.

Several interesting trends are also found in sales practices, intellectual property and air disaster MDLs. In sales practices cases, the JPML cites the experience of the transferee judge as a basis for their decision more than twice as frequently as it does in the aggregate. *Id* at 335. In intellectual property cases the JPML only rarely cites the preferences of the parties as a basis. *Id*. As one might expect, in air disaster cases, the proximity of the transferee district to the event at issue is cited as a reason for district selection in 50% of the cases as compared to 5% in aggregate. *Id*.

#### IV. PUTTING IT ALL TOGETHER

The potential for MDL transfer is an important part of complex case litigation. Parties facing multiple cases should incorporate a strategy on MDL transfer into their overall litigation strategy. A real advocacy challenge is to argue against transfer but then argue for a particular transferee district in the event transfer is ordered. In doing so, it is critical to refrain from arguments in opposition that are inconsistent with a transfer to your choice forum or judge. Thus it becomes extremely important to identify desirable judges and districts at the outset so that arguments in opposition can be tailored to complement the particular characteristics of those locations.

Moreover, understanding which factors are most salient in the context of a particular MDL is important because parties have only two limited opportunities to influence the JPML's selection of a transferee judge and district. First, the party can attempt to persuade the JPML through a twenty-page brief. Earle F. Kyle, IV, *The Mechanics of Motion Practice Before the Judicial Panel on Multidistrict Litigation*, 175 F.R.D. 589, 597 (1998). After the parties submit briefs they then have an opportunity for one to five minutes of oral argument before the JPML. John G. Heyburn II, *A View from the Panel: Part of the Solution*, 82 Tul. L. Rev. 2225, 2235 n. 53 (2008). With such an abbreviated period of time for a party to artfully articulate its views on selection of a transferee district and judge, one must have

a carefully considered strategy that involves focusing only those factors that the JPML considers most important in the context of the MDL under consideration.

Stay tuned for additional information from the JPML on the relative benefits and consequences of MDL transfer in the near future. The Panel is planning a formal, in-depth review in 2010 which it anticipates analyzing whether its centralization decisions have had the (unintended) tendency of benefitting certain groups of parties over others and whether there are certain kinds of cases where centralization benefits are more or less clear. The Panel will also be analyzing whether there are circumstances in which the Panel should discontinue transferring “tag-along” actions to an existing MDL. *Panel Promotes Just and Efficient Conduct of Litigation*, Interview with John G. Heyburn II, February 2010 ([http://www.jpml.uscourts.gov/General\\_Info / Overview/overview.html](http://www.jpml.uscourts.gov/General_Info / Overview/overview.html)) (last visited April 4, 2010).



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Linda S. Woolf is the Managing Partner of the firm and one of its founding members. Ms. Woolf's practice is devoted to the representation of clients in complex commercial, insurance coverage, construction, government liability, and employment litigation.

Ms. Woolf is the Vice Chair of the Commercial Litigation Section of the Federation of Defense and Corporate Counsel and serves on several of its ad hoc committees. She is a past Chair of the Network of Trial Law Firms, Inc. (1999-2000), a non-profit corporation comprised of 26 independent law firms nationally recognized for their trial and litigation experience. Ms. Woolf is a past member of the Executive Board of the Maryland Association of Defense Counsel, and past Co-Chair of its Appellate Committee.

In 2007, Ms. Woolf was honored with the Daily Record's Leadership in Law Award and as one of the Top 100 Women in Maryland. From 2007-2010, she has been named as one of the Top 25 Women Super Lawyers in Maryland and recognized by Best Lawyers in Bet-the-Company (2009-2010) and Commercial Litigation (2008-2010).

**PROFESSIONAL EXPERIENCE**

**COMMERCIAL AND BUSINESS TORT LITIGATION**

Represents medical device manufacturer in class actions pending in various federal and state courts arising from sale and distribution of Class II medical device.

Represents food producer in multi-district litigation seeking certification of nationwide class of consumers involving allegedly false advertising claims.

Represents international pharmaceutical company in litigation arising from the divestiture of a wholly-owned medical device subsidiary. Represents an international manufacturer in litigation arising from the divestiture of a worldwide battery business. Has represented national and local corporations at the trial and appellate levels in state and federal courts in matters involving the sale of corporate subsidiaries and businesses, alleged predatory lending practices and consumer fraud, federal and state antitrust violations, claims arising from non-competition agreements and the misappropriation of technology and other contractual disputes. Represented a surety in protracted litigation with the Resolution Trust Corporation arising from the failure of a savings and loan institution. Represented the majority shareholders of two thoroughbred racing corporations in derivative lawsuits filed by minority shareholders, successfully retaining control of nationally known racetracks.

Has represented corporate directors and officers, trustees and other fiduciaries in various litigation including claims for diversion of corporate opportunity, claims under ERISA for alleged breaches of fiduciary duty, shareholder derivative claims. Defeated proposed class certification in two companion ERISA cases brought by retirees of non-for-profit health insurer seeking enforcement of former welfare benefit plan and damages for breach of fiduciary duty. Has represented a variety of businesses in complex business tort litigation. Defended a defense contractor against claims of defamation and tortious interference with economic relations, arising from responses to RFP's to NSA. Represented hospitals, health insurers and managed health care organizations and their officers and directors in various litigation involving billing disputes, alleged breach of physician participation agreements, credentialing disputes and claims of defamation, tortious interference with economic relations and other business torts.

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 Defense



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Mr. Hines joined the firm as a partner in 2003. He was formerly the managing principal of a regional law firm's District of Columbia and Virginia offices. Mr. Hines is licensed in Maryland, the District of Columbia and Virginia, and has represented clients in trials and appeals in all three jurisdictions. His areas of practice include professional malpractice, toxic tort and environmental, pharmaceutical, products liability, and commercial, securities and employee litigation. Mr. Hines is listed in Best Lawyers in America under legal malpractice law, in Super Lawyers under products liability and in The Best of the U.S.

Professional Malpractice Litigation. Mr. Hines defends attorneys, health care providers, realtors, clergy, social workers and other professionals in malpractice claims brought in Maryland, Virginia and the District of Columbia. In 2008, Mr. Hines successfully tried a will construction case in the Circuit Court for Montgomery County, Maryland. In 2005, he convinced a federal judge in the United States District Court for the Eastern District of Virginia to apply Virginia law regarding the non-assignability of legal malpractice claims substantially reducing an insurance company's claims against its panel counsel.

In 2004, Mr. Hines obtained a defense verdict in Maryland for an accountant who allegedly provided improper tax advice. In December 2003, Mr. Hines successfully tried a wrongful adoption matter involving allegations of child trafficking and brain damage in the Circuit Court for Montgomery County, Maryland. He was able to strike plaintiff's expert neuropsychologist for basing his opinion on unreliable data. At his prior firm, Mr. Hines obtained a defense verdict after a three week jury trial in a sexual abuse case brought against a psychologist in the Circuit Court for Fairfax County, Virginia. In addition, Mr. Hines obtained a defense verdict in a multi-million dollar case against an attorney brought in the Superior Court of the District of Columbia. Mr. Hines has also defended attorneys and health care providers in matters before disciplinary boards. As a service to his clients, Mr. Hines provides in-house educational seminars to professionals to assist them in avoiding claims.

Pharmaceutical and Products Liability Litigation. Mr. Hines represents Astra Zeneca in the Seroquel and Pain Pump litigations. Mr. Hines has represented Pfizer, Inc. in the Neurontin, Celebrex and Mirapex litigations. Mr. Hines was part of the national team representing Wyeth in Fen-Phen litigation. At his prior firm, Mr. Hines handled a variety of product liability claims involving products ranging from contact lenses to light industrial lifts. Mr. Hines also was Scottsdale Insurance Company's national coverage counsel for claims arising out of the national firearms product liability litigation.

#### EDUCATION

University of Maryland School of Law (J.D., with Honors, 1985)  
University of Maryland (B.S., Economics, 1981)

