



Settling Multidistrict Litigation

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As we've seen with several recent highly complex cases, creating a resolution strategy at the beginning of a dispute can save both time and money before litigation costs mount. Though 95 percent of cases settle before trial, the eventual settlement often takes place following a number of hours and dollars spent preparing for litigation.

Take for example when a corporation has been sued in a variety of jurisdictions, and the cases have been consolidated into a multidistrict litigation (MDL), which is a federal procedure designed to consolidate and process complex cases. Typically one federal judge is assigned by the U.S. Judicial Panel on Multidistrict Litigation (MDL Panel) to coordinate cases spread out across the United States. The purpose of this centralization process is to avoid duplication of discovery, to prevent inconsistent pretrial rulings and to promote efficiency for counsel and judges. Transferred actions not terminated in the transferee district are remanded to their originating transferor districts by the Panel at or before the conclusion of centralized pretrial proceedings. Generally, the appointed MDL judge oversees the settlement process, creating it in conjunction with the plaintiff steering committee, the

defendants' settlement counsel, and a settlement special master or mediator.

A key part of settlement strategy for the defense is to create a national settlement team whose sole job it is to resolve the litigation. The settlement team needs a lead counsel whose only focus is settling the case. They should be a respected trial attorney with knowledge of the mediation process, the ability to work effectively with plaintiffs' counsel, and great perseverance. Settlement counsel will work together with both trial and in-house counsel to learn the case and strategize for settlement. With an overall settlement strategy in place, discovery (often the most expensive aspect of litigation) can be focused on key issues.

Many courts will appoint a mediator or mediation panel—usually agreed to by the parties—to help the parties resolve the cases in coordination with national settlement counsel and a plaintiffs' steering committee.

The mediator who is assigned to the litigation develops a deep understanding of the issues and knowledge of settlement values for the individual claims. Some judges take a very active role in resolving their assigned MDL matters,

holding mediations at the courthouse with the assistance of the mediator. There are many paths to coordinating mediation. The mediator can work with individual firms to settle cases individually or in a pool, and can also work with the plaintiffs' steering committee to resolve cases on a global basis.

Having a well coordinated litigation and settlement team with a succinct strategy for settlement is a cost effective and efficient process for resolving MDLs.

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