



**Anastasia Mazzella**

KABATECK LLP



**Matt Sahak**

KABATECK LLP

## Multidistrict Litigation (MDL) vs. individual cases

### EXPLORING THE BENEFITS AND RISKS OF COORDINATED PROCEEDINGS VERSUS INDIVIDUAL LITIGATION

If you work on products-liability cases, you have almost certainly encountered federal Multidistrict Litigation (“MDL”). Consolidation has become a powerful tool of the courts and the defining feature of modern complex litigation. Today, MDLs cover a variety of claims ranging from pharmaceuticals, medical devices, environmental disasters, institutional abuse, and antitrust and securities litigation. Historically, however, the most common type of MDLs are product-liability cases. As of October 2025, there are approximately 197,000 cases pending in MDL dockets, nearly 95% of which are tied to product-liability litigation. This is largely due to the significant number of individual claims brought in certain product-liability MDLs.

While MDLs can be efficient and effective, they are not always the best option for every client in every case. Sometimes, staying independent (if an option) offers strategic advantages. The key is knowing when to embrace consolidation, when and how to resist it, and how to navigate the transition points in between. By examining how MDLs work, their advantages and drawbacks, consumer attorneys can make the best choice for their clients.

#### What is an MDL, and why does it exist?

With the Multidistrict Litigation Act of 1968 (28 U.S. § 1407), Congress created the federal MDL process to deal with duplicative, complex litigation filed in multiple federal districts. The goal was simple: Avoid inconsistent rulings, reduce duplicative discovery, and streamline pretrial proceedings.

Under 28 U.S. § 1407, the Judicial Panel on Multidistrict Litigation (JPML), comprised of seven circuit or district judges from different circuits, decides whether cases should be transferred to a

single consolidated proceeding based on three factors: whether transfer is convenient for the parties; whether there are common questions of fact; and whether transfer will promote judicial efficiency, economy, and fairness. The panel also decides which judge will preside. Proceedings are initiated by the JPML itself or by a motion filed by a party in any action for which transfer may be appropriate. Once established, the presiding court will appoint a Plaintiffs’ Steering Committee (often referred to as “Plaintiffs’ leadership”), which consists of one or more law firms who serve the common interests of all plaintiffs in the MDL.

Importantly, MDL consolidation is for pretrial proceedings only. In theory, cases not resolved by dispositive motion or settlement are remanded to their original district courts for trial. In practice, the majority of MDL cases are resolved through global settlement.

#### Significant product liability MDLs

The “Agent Orange MDL,” formed in 1979, was one of the first and largest mass toxic-tort lawsuits in U.S. history. The class action was filed on behalf of Vietnam veterans who claimed they were injured by the herbicide during the Vietnam War (*In re Agent Orange Product Liability*, MDL No. 381, U.S. District Court for the Eastern District of New York). Approximately five years later, in 1984, the lawsuit settled for a total of \$180 million.

Another well-known product liability MDL involves asbestos. Since 1991, over 121,000 lawsuits have been filed in the Asbestos MDL, alleging that exposure to asbestos causes mesothelioma, a rare and fatal cancer. To date, over 108,000 cases have settled, but thousands of personal injury and wrongful-death cases are still pending with new cases filed each year (*In*

*re: Asbestos Products Liability Litigation*, MDL No. 875; U.S. District Court for the Eastern District of Pennsylvania).

The largest product-defect MDL filed in recent years is the 3M Combat Arms Earplugs MDL. This MDL involved more than 300,000 individual cases filed by military personnel and veterans who claimed defective 3M earplugs, also known as CAEv2, dislodged from the ear canal, exposing wearers to damaging noise levels, ultimately leading to hearing loss and tinnitus (*In re: 3M Combat Arms Earplug Products Liability Litigation*, MDL No. 2885, U.S. District Court for the Northern District of Florida). The 3M Combat Arms Earplugs MDL was formed in 2019 and settled in August 2023 for \$6 billion, resolving approximately 250,000 individual lawsuits. Although the turnaround time between forming the MDL and reaching a global settlement was lightning fast compared to most MDLs, there was a prior settlement in 2018 wherein 3M paid \$9.1 million to the U.S. government for selling the defective product.

Other significant product-liability MDLs with pending personal-injury claims include: the Johnson & Johnson talcum powder cases (*In re: Johnson & Johnson Talcum Powder Products*, MDL No. 2738, U.S. District Court for the District of New Jersey); the hair-relaxer cancer lawsuits (*In re: Hair Relaxer Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 3060, U.S. District Court for the Northern District of Illinois); and the opioid cases (*In re: National Prescription Opiate Litigation*, MDL No. 2804, U.S. District Court of Northern District of Ohio). Although the hair-relaxer cases are relatively new, the talcum powder and opioid MDLs have been pending since 2016 and 2017, respectively, with no global settlements in sight.

Medical devices and pharmaceutical litigation are often transferred to MDLs. One of the most notable is the Davol/C.R. Bard Hernia Mesh Litigation (*In re: Davol, Inc./C.R. Bard, Inc., Polypropylene Hernia Mesh Products Liability Litigation*, MDL No. 2846, U.S. District Court for the Southern District of Ohio). Since 2006, thousands of plaintiffs have filed lawsuits alleging defective polypropylene hernia mesh products caused debilitating injuries. The first hernia-mesh cases were filed in state court in Rhode Island, where manufacturer Davol was headquartered. C.R. Bard, Davol's parent company, was brought into the litigation in 2017. Federal cases soon followed, and an MDL was formed in August 2018. In October 2024, C.R. Bard settled approximately 38,000 federal and state court cases. Although the settlement amount was not disclosed, reports indicate the payouts could exceed \$1 billion. The settlement took place after C.R. Bard lost three consecutive bellwether trials, including a \$4.8 million verdict in Rhode Island state court.

These high-profile MDLs highlight the pros and cons of coordinated proceedings. MDLs offer an efficient, cost-effective way to litigate thousands, sometimes hundreds of thousands, of individual cases; however, in many instances, it takes up to a decade or longer to reach a settlement or go to trial.

### California state equivalent – Judicial Council Coordination Proceedings (JCCP)

Many states, such as California, Illinois, Florida, New Jersey, and Texas, offer state-level coordinated proceedings similar to federal MDLs. In California, the Judicial Council Coordinated Proceedings (JCCPs) are used to consolidate cases with common questions of fact and law filed in different counties into a single proceeding before one judge. Like federal MDLs, JCCPs aim to achieve judicial efficiency and economy and are commonly used for product liability cases, mass torts, wildfire litigation, and clergy sex abuse cases.

State-coordinated proceedings often run parallel to federal MDLs, which allows for coordinated settlement and/or bellwether trials. For example, there is a California parallel JCCP formed for the Johnson & Johnson talc powder cancer cases (*Johnson & Johnson Talcum Powder Cases*, JCCP No. 4872, Los Angeles Superior Court). Formed in 2016, the California JCCP is moving slightly faster than its federal counterpart. Recently, a group of six ovarian cancer lawsuits in the JCCP have been selected for bellwether trials slated to begin in November 2025. In contrast, no federal talc powder cancer cases have gone to trial; however, the first federal bellwether trial is expected to occur in 2026.

### Advantages of MDLs and JCCPs

One of the main advantages of MDLs and JCCPs is efficiency. Coordinated discovery efforts avoid repetitive depositions and inconsistent rulings. Plaintiffs' leadership negotiates protocols, takes depositions, creates a shared work product, negotiates settlements, and develops the settlement process.

Another major advantage in both MDLs and JCCPs is cost sharing. Individual firms can leverage millions of dollars' worth of expert work, document review, and litigation infrastructure through common benefit cost-sharing arrangements. This is often the only way a small or mid-sized plaintiffs' firm can realistically take on a corporate giant with seemingly unlimited resources. Instead of every lawyer deposing the same company witness or retaining duplicative experts, leadership coordinates the effort, and the costs are spread across all participating firms.

Consolidation also creates leverage. A defendant facing tens of thousands of coordinated cases is far more likely to negotiate global settlement than when cases are scattered across the nation. Size creates pressure. The defendant cannot fight everyone at once.

Finally, MDLs and JCCPs are usually overseen by experienced judges. The transferee judges in federal MDLs often have prior experience handling complex

dockets. Coordination judges in California are frequently drawn from seasoned jurists in Los Angeles, San Francisco, or Alameda. Leadership firms are usually veterans of past mass torts. That experience can bring order and sophistication to what would otherwise be chaos.

### The downside of MDLs and JCCPs

The biggest disadvantage to MDLs and JCCPs is loss of autonomy. Once an MDL or JCCP is established, a plaintiff's case is automatically transferred to the coordinated proceeding for pretrial matters. A plaintiff in a coordinated proceeding retains the right to their own trial and participation in a global settlement is voluntary, however, plaintiffs transferred to an MDL or JCCP must follow leadership's strategies. Decisions about bellwether nominations, expert selection, theories of liability, discovery scope, and settlement negotiations are often out of non-leadership counsel's control. Leadership's decisions on which claims to prioritize and which to abandon can directly impact a plaintiff's case.

Also, MDLs and JCCPs move slowly. It could be nearly a decade before the first bellwether trial takes place or a settlement is reached. After years of protracted litigation, clients often become frustrated and angry, others may move without providing updated contact information, making it difficult to find them if a settlement is reached, and others pass away. Managing clients in this situation is often challenging, to say the least.

Because MDLs and JCCP lawsuits often end in a global settlement, clients who crave their day in court may be disappointed. Many plaintiffs injured by defective products and their families want more than compensation. They want to confront the defendant, tell their story, and get closure. A global settlement reached years later, negotiated by leadership, may not be satisfactory.

Large, coordinated cases create enormous administrative burdens for the individual plaintiffs' firms who represent hundreds, sometimes thousands, of

clients. For example, in the Depo Provera MDL (*In Re: Depo-Provera Products Liability Litigation*, Northern District of Florida, MDL No. 3140), only 932 actions were filed, but leadership certified nearly 10,000 unfiled cases in their inventories. Handling such inventories requires systems for intake, client communications, and document management at a large scale. Simple tasks become monumental. Gathering signatures. Completing plaintiff fact sheets. Collecting medical records. Tracking changes of address, phone, and email. Substituting deceased clients with personal representatives. Each step multiplies when scaled to thousands of clients. Plaintiffs' firms with large inventories of cases could incur hundreds of thousands of dollars in administrative and overhead costs, especially since MDLs and JCCPs last anywhere from 5 to 10 years.

Another reality is settlement pressure. When global settlements are reached, funds are finite. Holdouts risk being left behind, especially if the defendant edges toward insolvency. Some settlements undervalue certain categories of claims. Plaintiffs with unique injuries may achieve more by pursuing their own trial, but that path is often difficult once cases are consolidated.

### Fighting to stay independent – a losing battle?

Filing an individual case does not guarantee the plaintiff will stay independent. Although an MDL or JCCP cannot technically *compel* plaintiffs to join, plaintiffs face an uphill battle if they oppose being transferred and consolidated with other similar cases. Additionally, plaintiffs who remain in an MDL or JCCP but opt out of global settlements risk their individual cases being dismissed or going to trial in the original court, which carries its own set of risks and benefits.

In federal court, defendants routinely move to transfer *all similar cases* into an MDL. The JPML rarely denies those motions when cases share common questions of fact. The Roundup MDL (*In re: Roundup Products Liability Litigation*, MDL No. 2741, U.S. District Court for

the Northern District Court of California) is a classic example. In 2016, after thousands of plaintiffs filed lawsuits in both federal and state courts, alleging that Roundup herbicide causes cancer, defendant Monsanto Company moved all federal cases into an MDL in the U.S. District Court for the Northern District of California.

This move came after several plaintiffs obtained large jury verdicts in California state court cases, signaling that Monsanto faced significant financial exposure. Plaintiffs who hoped to keep their federal cases moving on a fast track, much like the state cases, were swept into the MDL. In 2020, Bayer, Monsanto's parent company, settled a large portion of the MDL cases, but thousands of cases are still pending.

#### *Avoiding federal court*

Plaintiffs may be able to avoid federal court, and thus stay out of an MDL entirely, by asserting only state-law claims that do not give rise to federal question or by finding ways to defeat diversity jurisdiction. Once an MDL is established, however, plaintiffs' best route for avoiding the MDL is to file the lawsuit in their home jurisdiction (either district court or state court) instead of filing directly in the MDL. In the federal context, these cases are called "tag-along" cases. Under Panel Rule 7.1, parties involved in an MDL are obligated to inform the JPML of any potentially related actions in which they are involved. If the JPML determines the action is related to the MDL, they will place it on a conditional transfer order (CTO). Under JPML Rule 10.2(a)-(b), an objecting plaintiff must file a motion to vacate the CTO and Notice of Opposition with the JPML. Similarly, California plaintiffs who oppose transferring their case to a JCCP must file an opposition with the court pursuant to California Rules of Court, Rule 3.543(b).

Plaintiffs in an MDL or JCCP who hope to stay independent must demonstrate in their oppositions that their case does not meet the legal criteria for coordination – i.e., that the case has individualized issues of fact or law that outweigh the benefits of coordination and consolidation. The most common

arguments that weigh in favor of avoiding an MDL or JCCP include unique liability issues, individualized causation, distinct injuries and damages, inconvenience for witnesses, procedural posture (e.g., if the case already has a trial date). Demonstrating that a case should not be transferred to an MDL or JCCP, however, is a difficult burden to meet. Judges have significant discretion, and coordination is favored for its efficiency in complex, mass actions.

Filing independently can buy time or leverage; however, it rarely guarantees insulation. Both MDLs and JCCPs are designed to pull sprawling litigation under one umbrella. Defendants use these mechanisms aggressively to contain risks and slow down threatening local cases. Plaintiffs' counsel must anticipate consolidation and plan accordingly.

### Conclusion

MDLs and JCCPs are now the default in products liability and mass tort practice. They bring efficiency, leverage, and structure, but they also bring loss of control, slow timelines, and immense administrative demands. Independent litigation can sometimes offer speed and individualized justice, but the odds of avoiding consolidation are slim. Coordination can be a powerful tool. Independence can be a valuable path. The lawyer's job is to weigh the tradeoffs, communicate them clearly to clients, and plan accordingly.

*Anastasia Mazzella is a partner at Kabateck LLP, whose practice focuses on mass actions, MDLs, JCCPs, disaster litigation, class actions, and sexual-abuse cases. She serves as lead counsel in several large coordinated cases.*

*Matt Sahak is a senior associate at Kabateck LLP handling mass actions, MDLs, JCCPs, class actions, and complex civil litigation in state and federal court. Mr. Sahak served as judicial law clerk to the Honorable Ferdinand F. Fernandez on the Ninth Circuit Court of Appeals and externed for the Honorable Otis D. Wright, II at the United States District Court. He graduated cum laude from Southwestern Law School.*