MDL Checklist

Multi-district litigations (MDLs) hold a special place in the legal lexicon. Defendants, many of whom are household names and brands, are often thrust into an unwelcoming spotlight.

However, an MDL case handled well can result in desirable outcomes that reach beyond a favorable ruling, including buttressing the reputation of the business within a community, mitigating future risk, and expanding precedence that supports economic development.

As you plan your next MDL, review these three recent MDL trends and considerations.

Top 3 MDL Trends over the last 3 years:

1. **Growing Data Volumes**: The volume of discoverable data has grown exponentially due to the expanded use of emerging communication platforms (i.e., social media, text messaging, collaboration apps, and cloud computing). And while historically plaintiffs' productions are comparatively smaller, they too are using communication platforms at a substantially increased rate, subsequently driving much larger inbound production volumes. The significant increase in the volume of offensive and defensive reviews requires critical strategic shifts around discovery efforts.

Nearly **80%** of workers were using collaboration tools for work in 2021, up from just over half of workers in 2019. This was an increase of **44%** since the pandemic began.

https://www.gartner.com/en/newsroom/press-releases/2021-08-23-gartner-survey-reveals-44-percent-rise-in-workers-use-of-collaboration-tools-since-2019

✓ Ensure your organization has the technical capabilities – including security measures – to work with the potentially millions of documents included in review as part of these complex litigations.

✓ Consider the data forensics experts within your firms and organizations. Confirm they are well-versed in the latest search, extraction, and analysis techniques for emerging communications, including popular apps like Slack, Teams, WhatsApp and more.

✓ Gauge the ability of your team to scale to meet the review needs of MDL litigation – with the largest MDLs often including thousands of cases and complainants.

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2. **Increased use of AI**: Leveraging technology and expertise in workflow design is a must. AI is a defensible tool that should be used to everyone's advantage.

> **"It may even be considered legal malpractice not to use AI one day, says Tom Girardi, renowned civil litigator and the real-life inspiration for the lawyer in the movie, *Erin Brockovich*. It would be analogous to a lawyer in the late twentieth century still doing everything by hand when this person could use a computer."**

✓ Detail methodology and use cases for solutions (for example, negotiating TAR protocols and running workflows across the entire dataset)

✓ Determine if you have the needed resources internally to execute and partner with the appropriate subject matter experts to supplement your team

✓ Discuss the scope of your deliverables and outputs required

✓ Understand ethical considerations around use of AI-based technology for your matter Confer with your IT department on security capabilities within your organization

3. **Globalization**: Business expansions trending around the world create a need to understand global jurisdictions and varying rules to effectively partner on litigation strategies. eDiscovery vendors with experience supporting case teams in a broad range of issues commonly argued as MDLs as well as global time zone support is necessary.

Thirty-four motions to centralize were filed in Fiscal Year 2022. The Panel granted 20 motions, creating new multidistrict litigation dockets in the following categories: antitrust (2); products liability (8); marketing and sales practices (2); intellectual property (4); common disaster (1); employment practices (1); "miscellaneous" litigations (2, one of which involved a customer data security breach)

https://www.jpml.uscourts.gov/sites/jpml/files/JPML%20Fiscal%20Year%202022%20Report-12-9-22_0.pdf

✓ Review potential ebbs and flows in review needs and benefits of eDiscovery experts with experience with MDL discovery matters

✓ Determine if you have the needed resources internally to execute and partner with the appropriate subject matter experts to supplement your team

✓ Relay any communications specifications to your team to facilitate global information exchange