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Multidistrict Litigation Rule Should Drive Merits-Based Results



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Hollingsworth's Robert Johnston and Gary Feldon say the proposed Federal Rule of Civil Procedure 16.1 for managing multidistrict litigation could go further to push courts toward a merits-driven approach.

More than 70% of federal civil cases are part of a multidistrict litigation, according to 2023 [US Courts data](#). Despite their crucial role in the US judicial system, there is presently no formal guidance to MDL courts on how to promote an outcome reflective of the cases' merits despite the unique challenges posed by this type of mass litigation. That may be about to change.

Anticipated to go into effect on Dec. 1, 2025, the [proposed](#) Federal Rule of Civil Procedure 16.1 would be the first rule to address MDLs specifically and would govern MDLs' critical initial case management phase.

As we expressed to the Advisory Committee on Civil Rules in our written [comment](#), the draft Rule 16.1's endorsement of effective merits-driven case management principles is a major step forward, but the rule also needs to offer concrete guidance to MDL courts on implementing those principles.

MDLs [centralize](#) individual cases “involving one or more common questions of fact” in a single court that addresses common issues before remanding any remaining cases to their home courts for individual trials. The parties can't rely on the ordinary tools of civil litigation—full discovery, case-specific motions practice, and trial—to determine the value (if any) of each plaintiff's claims.

Instead, they rely on the MDL court to efficiently address the common issues and keep doing so until the cases are resolved on their merits (whether by dismissal or on remand) or the parties' valuations are close enough that a party-led settlement is possible. This is what we call the merits-driven approach.

Although this commonsense approach may seem obvious from the nature of MDLs, it has only recently gained ascendancy. One federal judge [said](#) it was once “almost a point of honor” among MDL judges to settle cases instead of remanding them for trial, leading judges to keep cases within the MDL to pressure settlements.

Even today, too many courts cling to the idea that the MDL court's role is to push global settlements instead of engaging with the merits from the outset. One study [found](#) that “nearly one-third of the MDL judges who presided over products-liability MDLs that ended in private settlement had not ruled on a single merit-related motion before the settlement occurred.”

An early focus on global settlement becomes self-perpetuating because, without MDL courts affirmatively culling unsupportable claims and resolving dispositive issues to cleave off cases before remand, MDL dockets rapidly become unmanageable.

If Rule 16.1 takes effect without being stripped of its intended purpose, it will help cement a subtle revolution in how courts administer MDLs. Draft Rule 16.1 and its accompanying committee note encourage early engagement with the merits to promote efficient resolution of the cases within an MDL.

The draft committee note also specifically recognizes that “the question whether parties reach a settlement is just that—a decision to be made by the parties.” Together, this may be enough to dissuade MDL courts from myopically pushing early settlement instead of engaging on the merits.

The draft rule endorses a merits-driven approach primarily through Rule 16.1(c)'s list of proposed topics for the parties' initial case management report and the topics' discussion in the draft committee note.

The topics include possible early discovery or motions practice to address the MDL's principal factual and legal issues (e.g., Lone Pine orders requiring prima facie evidence, targeted summary judgment rulings), planning parties' exchanges of information supporting their claims and defenses (e.g., plaintiff fact sheets), and efficiently addressing likely motions (e.g., motions for remand).

A comprehensive case management report addressing these topics will immediately focus the MDL court on planning to efficiently address the merits of plaintiffs' claims and how to bring the MDL to a conclusion, even if not all the cases are resolved at that time.

Despite its seminal endorsement of the merits-driven approach, draft Rule 16.1 doesn't provide enough direction to MDL courts in how to implement that approach. We therefore called on the committee to amend the draft rule to make it more prescriptive and to provide more concrete guidance within the rule itself.

A better final rule would require MDL courts to enter case management orders that:

- Create affirmative obligations that all plaintiffs provide evidence of a prima facie claim so that MDL courts can identify non-meritorious cases to be cleaved off through merits decisions and Lone Pine orders
- Establish procedures for enforcing plaintiffs' obligations to provide accurate, substantially complete plaintiff fact sheets and other "census" discovery
- Set a schedule for the full lifecycle of the MDL, including remand of any unresolved cases, to ensure the litigation moves toward a conclusion

MDL courts should also be encouraged to revisit the Rule 16.1(c) topics throughout the litigation, and discouraged from attempting to facilitate settlement before the litigation has generated sufficient information for the parties to reasonably assess the value of plaintiffs' claims.

Rule 16.1 would be far more effective if the final rule and its committee note reflected the types of changes we propose. Regardless of the precise language ultimately adopted, however, a new Rule 16.1 will represent an invitation to litigants to push for efficient and fair MDL case management. Smart MDL practitioners will pay close attention to this rule and be prepared to wield it effectively when it comes into effect.

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