

A MILESTONE FOR DIVERSITY IN MDL

Center for Judicial Studies events help pave way for first majority-female steering committee

When U.S. District Judge Kathryn Vratil approved a multidistrict litigation steering committee in November, her appointments made headlines – and perhaps ushered in a new era for MDL helped along by Duke Law’s Center for Judicial Studies.

The plaintiff steering committee Vratil approved includes more women than men. It’s the first time a majority-female leadership team has been appointed to an MDL. Observers hope it won’t be the last.

“This was an important milestone. People who understand MDL and understand the landscape know how significant this is,” said Paul Pennock of New York’s Weitz & Luxenberg, who, with Aimee Wagstaff, founding partner of Andrus Wagstaff in Lakewood, Colo., serves as co-lead counsel on the committee and recommended the leadership team to Vratil.

“It’s astonishing, from my point of view,” said Sheila Birnbaum, partner at Quinn Emanuel and a member of the Center for Judicial Studies Advisory Council. “To see so many women I know from some of the top law firms having this opportunity to play a leadership role in a major MDL is definitely a step in the right direction.”

Pennock told *The National Law Journal* in November that he was inspired to put forward a nearly all-woman slate after hearing Vratil, a former member of the U.S. Judicial Panel on Multidistrict Litigation, speak at a 2014 MDL conference hosted by Duke Law School’s Center for Judicial Studies.

“These conferences are inspirational,” said Pennock, who also attended a Duke Law MDL Institute in November 2015. “They’re providing all of us with new insights, new thoughts, new goals for representing our clients. There’s no

“MDLs are where the action is, and the PSC is where the litigation decisions are made for plaintiffs. If women are to be taken seriously in MDL litigation, they must obtain greater parity in positions of leadership.

– *Chilton Varner*

question these conferences are helping to bring diversity to this field. There’s such great talent in the room, from the judiciary to the general counsels from major corporations to the attorneys. I really believe that in relatively short order these events are revolutionizing the field.”

The center has worked to promote diversity in MDL through events and publications. In *Standards and Best Practices for Large and Mass-Tort MDLs*, a document produced by lawyers and judges who participated in the first Duke Law MDL conference in 2014, diversity within an MDL leadership team is explicitly promoted as a best practice (see *99 Judicature* No. 2 Autumn, p. 34 (2015)). “Duke’s inclusion of diversity within its best practices helped bring awareness and attention to gender diversity, which helps swing the pendulum, if even a little,” said Wagstaff, who founded Women En Mass to promote diversity

in mass tort litigation.

“Our goal is to broaden the pool of attorneys who are experienced in managing large MDLs, to provide more attorneys with the tools, information, and connections needed to manage these cases, and to bring diversity to what has historically been a small, exclusive group of repeat players,” said John Rabiej, director of the Center for Judicial Studies, noting that several of the women appointed to the steering committee have attended Duke MDL institutes.

“I attended the November Duke conference because of the robust agenda and stellar faculty, and because I represent so many clients in MDL litigations,” said Elizabeth Graham of Grant & Eisenhofer. “As counsel for women in the power morcellator litigation, I had contemplated a role in the leadership structure of the evolving MDL. However, it was only after my attendance at the conference, hearing esteemed jurists and practitioners speak of the need for diversity, that I solidified my decision to really push for a leadership role. In particular, the opportunity to speak with Judge Vratil herself during the conference inspired me to participate at a higher level in the MDLs in which I represent clients.”

“Clearly these kinds of conferences can have an impact on how we practice and administer the law,” said Stephanie O’Connor of Douglas & London, adding that she has served on other PSCs, composed mostly of male attorneys. “Having attended the Duke Law seminar in 2014, I was struck by the clear commitment to diversity reflected in the comments of both the judges and attorneys in attendance. I applaud Judge Vratil’s decision to appoint this PSC, and I am honored to serve.”

“Conferences such as the one hosted

“The only way we are going to get new people involved and the experience they need to play larger and more important roles in MDL is to insist that the committees selected by judges are not all from the same club.

– Sheila Birnbaum

by Duke provide a forum for collaborative discussion on many important topics, including diversity,” added Yvonne Flaherty of Lockridge Grindal Nauen.

“I applaud Duke, the bench, and the bar for raising awareness of the diversity challenges we face and the importance of finding a manageable solution. Collectively, we can better serve the legal community when we work together to address these issues. The Duke Conference reinforces these principles and encourages women to seek out leadership roles in their respective litigations.”

DIVERSITY IN MDL IS CRITICAL, proponents say, because the pool of attorneys with MDL experience has been too small and too closed for too long. It also “helps capture the strengths of both genders and promotes different viewpoints and ideas that will best serve our clients,” said Wagstaff.

“Not only are you not tapping the pool of talent – half of the lawyers out there are women, certainly half of the best lawyers I work with are women – but then you’re also not developing the pool of talent for MDL,” Pennock added. “If you’ve never had a role on a PSC, you’re not learning the pitfalls, the strategies that go with this type of litigation. You’re not taking great lawyers and creating great MDL lawyers, which is really important for us and for our clients.”

Chilton Varner, partner at King & Spalding and a member of the Center for Judicial Studies Advisory Council, said increasing diversity in MDL leadership roles is particularly important “because consolidation of mass-tort litigation into MDLs accounts for a striking percentage of the overall civil case load of the federal

WOMEN NAMED TO POWER MORCELLATOR MDL STEERING COMMITTEE

AIMEE WAGSTAFF ANDRUS WAGSTAFF
(CO-LEAD COUNSEL)

ANNE ANDREWS ANDREWS & THORNTON

SINDHU DANIEL BARON & BUDD

YVONNE FLAHERTY LOCKRIDGE GRINDAL NAUEN

ELIZABETH GRAHAM GRANT & EISENHOFER

ANDREA HIRSCH HERMAN GEREL

REBECCA KING TRACEY & FOX

MEGAN MCKENZIE ROBINS KAPLAN

STEPHANIE O’CONNOR DOUGLAS & LONDON

MEGHAN QUINLIVAN BURG SIMPSON ELDREDGE
HERSH & JARDINE

CARMEN SCOTT MOTLEY RICE

courts. In other words, MDLs are where the action is, and the PSC is where the litigation decisions are made for plaintiffs. If women are to be taken seriously in MDL litigation, they must obtain greater parity in positions of leadership.”

And while women have made significant strides on the defense side, Varner added, “women as first-chair trial lawyers on the plaintiffs’ side are far less commonplace.”

Birnbaum said she hopes this steering committee will raise the bar for future MDLs. “The only way we are going to get new people involved and the experience they need to play larger and more important roles in MDL is to insist that the committees selected by judges are not all from the same club.”

– MELINDA VAUGHN is
managing editor of *Judicature*

WE WANT TO HEAR FROM YOU!

SUBMISSIONS

Judicature explores all aspects of the administration of justice and its improvement. We publish articles based on empirical research as well as articles based on fact and opinion from members of the bench, the bar, and the academy. Complete submission guidelines, including instructions for length and format, may be found on our website at www.law.duke.edu/judicature.

LETTERS TO THE EDITOR

Email your letter, including your full name and title, with *Attn: Editor* in the subject line, to judicature@law.duke.edu.

JUDICIAL HONORS AND MILESTONES

We print select judicial honors, space permitting, and listings for active judges celebrating milestone anniversaries of the date of their commission. Send submissions to judicature@law.duke.edu; high-resolution photos are encouraged.