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## Rookie Judges Start to Wrangle MDL Dockets

Amanda Bronstad, The National Law Journal

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Lawyers who sued Stryker Orthopaedics over recalled hip implant components wanted a single judge to oversee about 30 cases filed in the past year. At the top of their list was U.S. District Judge Frank Donovan in Minnesota—an obvious choice, having overseen thousands of cases brought over another Stryker hip implant that [settled for \\$1 billion](#).

But on April 5, the U.S. Judicial Panel on Multidistrict Litigation instead chose [U.S. District Judge Indira Talwani in Boston](#), a relative newcomer to the federal bench who has never before handled a multidistrict litigation proceeding, or MDL.

In its [order](#), the panel noted that five of the Stryker cases were already pending in her courtroom. Further, it said, she had “not yet had an opportunity to preside over an MDL docket.”

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#### [Meet the Next Generation of MDL Judges](#)

*A look at eight judges who are handling their first multidistrict litigation assignments and why they're likely to be tapped again.*

That's become an increasingly common phrase in orders from the MDL panel, which in 2016 transferred cases to 15 first-time MDL judges, according to a review of the panel's assignments conducted by The National Law Journal. It's the first time in at least five years that the majority of judges chosen to oversee an MDL had never done it before.

Among the new initiates to the complex world of MDL litigation are Obama appointees [Lorna Schofield](#) in Manhattan [Ketanji Brown Jackson](#) in Washington, D.C.; [Vince Chhabria](#) in San Francisco; and [Brian Martinotti](#) in New Jersey. Notably, as the baton passes to a new generation of MDL judges, more women and minority jurists have been drawn into their ranks.

The widening circle is no fluke, said U.S. District Judge Charles Breyer of the Northern District of California, one of seven federal judges from across the country [who comprise the MDL panel](#).

“There has been an effort to reach out to newer judges, to bring them into the MDL process, so as to give a greater MDL experience to the judiciary as a whole,” said Breyer, a veteran MDL judge himself. “You need a skill set in order to handle very large cases, but the only way you acquire that skill set is through experience. We look for MDL judges who are new to take smaller cases, to acquire the skill set, so eventually they'll get to the larger case.”

### 'WILLING TO EXPLORE'

Multidistrict litigation is a significant part of the federal court system—both in terms of potential recovery and the demands it puts on judges. As of April 17, there were 236 MDLs encompassing more than 131,000 cases, according to the MDL panel's statistics. Most involve mass torts, antitrust cases and consumer class actions.

“These cases have a tremendous impact on society,” said John Rabiej, director of the Center for Judicial Studies at Duke University Law School, which provides best practices guidelines to MDL judges.

Unlike individual cases, multidistrict litigation deals with dozens—sometimes, tens of thousands—of lawsuits that can drag on for years. It's a job that historically has gone to judges who've been there, done that.

But former MDL Chairman U.S. District Judge John Heyburn of the Western District of Kentucky acknowledged before his death in 2015 that the dramatic growth of MDLs required the panel to look beyond its small list of veteran judges.

“He launched the policy of spreading it out,” Rabiej said. “You can't expect the same judges to handle these, particularly the big ones.”

More MDLs are now going to judges with no experience handling them. Many have only been on the bench for a few years. Jamie Dodge, director of the Institute for Complex Litigation & Mass Claims at Emory University School of Law, which provides training programs for MDL judges, said new judges “are often willing to explore new ways of approaching the complexity of MDL, challenging traditional assumptions held by the more experienced judges.”

To be sure, judges could decline an assignment. But few of them do because MDLs come with some “prestige,” Rabiej said.

“Most judges would agree to that and accept that [it] is a prestigious appointment,” he said.

U.S. District Judge Vince Chhabria of the Northern District of California, who was handed his first MDL in October, is overseeing dozens of suits against Monsanto Co. over its RoundUp herbicide. He said many federal judges find themselves confident enough after a few years to take on a new challenge like an MDL, which comes with “more balls in the air.”

“That’s time when I think a lot of us feel we are capable of taking on new challenges,” said Chhabria, who was confirmed in 2014. “We’ve begun to get a grip on the basics, and therefore we can feel capable of taking on new challenges. That’s probably what you’d see from this group in 2016 that got MDLs for the first time.”

## NEW BLOOD

Over the past 16 months, many newer judges edged out veteran MDL judges in being assigned cases. The new MDL judges also are more ethnically and gender diverse—seven of the recent selectees are women and six are minorities—though it’s unclear whether that’s by design or because the federal bench as a whole has changed.

The evolution could help [open doors for plaintiffs lawyers](#) looking to break into lucrative lead roles, which have also tended to go to repeat players who are overwhelmingly male and white.

Plaintiffs attorney Karen Barth Menzies of San Francisco’s Girard Gibbs said members of the MDL panel, including Chairwoman Sarah Vance, a judge at the Eastern District of Louisiana, have talked about diversifying the bench.

“The panel has spoken numerous times about the need to, even with the presenters to the panel, have more women and minorities presented to the panel itself,” she said. “Lawyers feel that’s been a consistent theme we’ve heard from the panel and recognize that, as well, would be a positive development or going in the right direction.”

Lawyers are becoming aware of the changes, sometimes pitching a new judge for an MDL in their briefs before the panel.

One of the most common names to pop up in the last year was U.S. District Judge Brian Martinotti, who joined New Jersey’s federal bench in July. In briefs before the panel, lawyers noted his prior experience as one of three judges in New Jersey state court handling mass torts—a role that often required him to coordinate with federal MDL judges.

“Although it is unusual for a newly appointed judge to have experience and understanding of mass torts in general, here we not only have a highly skilled and well qualified jurist, but also one with extensive and successful experience in the highly complex pharmaceutical mass tort field,” wrote Hunter Shkolnik, a partner at New York’s Napoli Shkolnik, in a Nov. 23 brief in the MDL involving diabetes drug Invokana. The panel transferred the cases to Martinotti on Dec. 7.

Breyer said the panel attempts to spread MDLs across a wide range of districts, as long as they are convenient to the parties. Many of the new judges in 2016 were in districts that historically have had few MDLs, such as the Northern District of Florida.

Lawyers suggest potential MDL judges for a host of other reasons, such as whether they’re already handling one of the cases at issue, the convenience of their courthouse or their district’s docket conditions.

The panel considers some of the same factors. But it’s notoriously secret about its decisions in order to maintain objectivity and impartiality. The panel’s transfer orders are often no more than two pages long, with a cryptic few sentences identifying its reasons for picking a particular district or judge.

Breyer shed some light on the process. He said he also looks at the calendar of a particular judge, who could be too busy, and the size and complexity of an MDL, some of which are “no more complicated than a run-of-the-mill case.”

Then there’s the judge herself.

“The test we use is do we think that this particular judge can handle an MDL?” he said. “Based upon the general reputation of the judge, based on the judge’s workload, based on anything we know about the judge’s work ethic. Is this judge a suitable judge to handle this MDL?”

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Amanda Bronstad covers mass torts and class actions for ALM. Contact her at [abronstad@alm.com](mailto:abronstad@alm.com). On Twitter: [@abronstadlaw](https://twitter.com/abronstadlaw)

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