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# Critical Mass: MDL Leadership Is Gaining in Diversity, But Slowly. Plus: Judge Eying New Leadership for State Street Case

Plaintiffs' lawyers appointed to lead multidistrict litigation are starting to be less and less of a "boys club," but those gains are coming slowly. According to ALM statistics that I compiled, women increasingly are getting leadership posts--although they aren't always at the very top and still make up less than 30 percent.

By Amanda Bronstad | May 30, 2018

Welcome to **Critical Mass**, Law.com's weekly briefing on class actions and mass torts.

I'm **Amanda Bronstad**

(<http://link.law.com/click/12719567.364/aHR0cHM6Ly93d3cubGF3LmNvbS9hdXRob3lvcl>

Los Angeles. **Women are increasingly getting appointments to MDL leadership posts** – but they still make up **less than 30%**. A **hearing set for Wednesday** may provide the opportunity for a federal judge to consider appointing new counsel following a **report on allegations of overbilling in the State Street settlement**. In two **talcum powder trials**, one jury awarded **\$25.75 million**, and the other hung.

Send your feedback to [abronstad@alm.com](mailto:abronstad@alm.com) (<mailto:abronstad@alm.com>), or find me on Twitter: [@abronstadlaw](https://twitter.com/abronstadlaw).

(<http://link.law.com/click/12609930.0/aHR0cHM6Ly90d2l0dGVyLmNvbS9hYnJvbnNet=&bu=&cn=&src=&pt=&et=&bu=&cn=&src=&pt=>)

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## Diversity in MDL Leadership Gaining, But Slowly

**Plaintiffs' lawyers appointed to lead multidistrict litigation** are starting to come from outside what some critics have called the **"Good Ol' Boys" network**. Here's **my story**.

(<http://link.law.com/click/13408026.0/aHR0cHM6Ly93d3cubGF3LmNvbS9uYXRpb25hbG>; the trend. According to **ALM statistics** that I compiled, women increasingly are getting leadership posts—although they aren't always at the very top and still make up less than 30 percent.

**The change is fairly recent:** From 2011 to 2016, women made up on **average 17 percent** of all appointments, according to a 2017 report called "Vying for the Lead in the Boys' Club: Understanding the Gender Gap in Multidistrict Leadership Appointments." **What's happened?** Some women and minority attorneys have struck out on their own to get appointments, while many firms are diversifying their hiring or pitching new faces to MDL judges, half of whom were women or minorities last year.

Here are some of the most **interesting facts** from the stats I compiled for MDLs in '16-'17:

- ▶ Firms with the **most women appointed to an MDL** were **Robins Kaplan, Lieff Cabraser, Lockridge Grindal, Weitz & Luxenberg, Napoli Shkolnik** and **Motley Rice**.
- ▶ The **woman attorney with the most appointments** was **Ellen Relkin** (<http://link.law.com/click/13408026.0/aHR0cHM6Ly93d3cud2VpdHpsdXguY29tL2F0> & Luxenberg) in 4 MDLs in 2016 and 2017.
- ▶ The MDL with the **highest percentage of women leaders** involved the diabetes drug **Farxiga, at 71%**, before **U.S. District Judge Lorna Schofield** of the Southern District of New York, and the MDL with the **most women appointed** were 10 in **antitrust cases** over generic pharmaceutical pricing before **U.S. District Judge Cynthia Rufe** of the Eastern District of Pennsylvania.

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## Q&A: Securing Diversity in MDL Leadership

And **while we're on the topic**, here's a bit more from **Chris Seeger** and **Mike Roberts** on **how to diversify multidistrict litigation leadership**. It's part of a **new segment in Critical Mass** in which I ask a plaintiffs lawyer a little bit about the business.

To Seeger, of **Seeger Weiss**: **Q: How are you able to get a more diverse slate in some MDLs?** **A:** I actually work that aspect of the case extremely hard. I make a number of phone calls. I look at the committee and, if I don't think it's representative or diverse for our bar, I'll make more calls.

And to Roberts of the **Roberts Law Firm**, a certified minority business enterprise:

**Q: How can women and minority attorneys break into MDL leadership roles?**

**A:** My best advice to them is get experience. If it's an antitrust case or products case, work in a state attorney's general office or law firm that has that department and get the experience. Volunteer to take depositions, volunteer to do some briefing to gain that experience, and then at a certain point volunteer to lead a committee, a subcommittee, on a case. That's how you're going to get noticed.



(<https://images.law.com/contrib/content/uploads/sites/292/2018/05/unnamed-1100.jpg>)

## Judge Eying New Class Counsel in State Street Case

There's **another cliffhanger in the State Street overbilling matter**: A federal judge who appointed a special master to look into **potential overbilling** by three plaintiffs firms in the securities class action settlement held **a hearing for Wednesday** to consider **whether to appoint new class counsel**. [Here](#)

([http://link.law.com/click/13401755.0/aHR0cHM6Ly93d3cubGF3LmNvbS9uYXRpb25hbG;my preview of the hearing](http://link.law.com/click/13401755.0/aHR0cHM6Ly93d3cubGF3LmNvbS9uYXRpb25hbG;my%20preview%20of%20the%20hearing)).

The order by **U.S. District Judge Mark Wolf** (see [here](#)) ([http://link.law.com/click/13408026.0/aHR0cHM6Ly93d3cubGF3LmNvbS9uYXRpb25hbG;comes after the special master's report was filed under seal](http://link.law.com/click/13408026.0/aHR0cHM6Ly93d3cubGF3LmNvbS9uYXRpb25hbG;comes%20after%20the%20special%20master%27s%20report%20was%20filed%20under%20seal)). The order is pretty cryptic, but it appears the judge has some concerns about a **potential conflict involving the lead plaintiff and class counsel (Lieff Cabraser, Labaton**

**Sucharow** and the **Thornton Law Firm**). And it's probably not a small matter given that the special master said back in February (see story on that [here](http://link.law.com/click/13408026.0/aHR0cHM6Ly93d3cuYWxtY21zLmNvbS9jb250cmli) (<http://link.law.com/click/13408026.0/aHR0cHM6Ly93d3cuYWxtY21zLmNvbS9jb250cmli>) that his report could have "serious and far-reaching adverse ramifications" for the firms and "the plaintiffs' class action bar."

Read some **coverage of the hearing** on Twitter from freelance reporter John Hawkinson [here](http://link.law.com/click/13408026.0/aHR0cHM6Ly90d2l0dGVyLmNvbS9qb2huaGF3a2l)

(<http://link.law.com/click/13408026.0/aHR0cHM6Ly90d2l0dGVyLmNvbS9qb2huaGF3a2l>) It sounds like the potential conflict involves referral payments. Labaton sent me this statement today regarding George Hopkins, executive director of the lead plaintiff, Arkansas Teacher Retirement System:

*"George Hopkins, the Executive Director of the Arkansas Teacher Retirement System—the lead plaintiff in this case—was instrumental in securing an excellent result for the class, reportedly the largest recovery under Massachusetts consumer statutes and one of the largest settlements achieved in the First Circuit. We continue to have every confidence in George Hopkins and ATRS' integrity in serving as lead plaintiff in this successfully resolved case."*



(<https://images.law.com/contrib/content/uploads/sites/292/2018/05/unnamed-1300.jpg>)

## Talc Twists

A **high-profile trial in South Carolina** involving claims that **Johnson & Johnson's talcum powder products** caused a lawyer to die of **mesothelioma** ended in a **mistrial** on Friday following a hung jury. (Here's my **[background on the case.](http://link.law.com/click/13408026.0/aHR0cHM6Ly93d3cubGF3LmNvbS9uYXRpb25hbG;)**)  
(<http://link.law.com/click/13408026.0/aHR0cHM6Ly93d3cubGF3LmNvbS9uYXRpb25hbG;>)  
The mistrial occurred one day after a **Los Angeles jury awarded \$25.75 million** against J&J to a woman diagnosed with mesothelioma. (See my story **[here.](http://link.law.com/click/13408026.0/aHR0cHM6Ly93d3cubGF3LmNvbS90aGVyZWNVcm)**)  
(<http://link.law.com/click/13408026.0/aHR0cHM6Ly93d3cubGF3LmNvbS90aGVyZWNVcm>)

**Who Got the Work?** In Los Angeles, J&J was repped by **King & Spalding** and **Bailey Crowe Arnold & Majors** and, in South Carolina, by **Nelson Mullins** and **Willcox & Savage**. Lawyers from **Simon Greenstone Panatier** represented the plaintiff in Los Angeles.

Plaintiffs lawyers **Christopher Swett, Nathan Finch** and **Marlon Kimpson** at **Motley Rice**, who handled the South Carolina case for the husband of Bertila Boyd-Bostic, had this to say:

*"We continue to believe that the daily use of talcum powder on Bertila from birth led to her death. She ultimately wanted to share her story with others through her suit. We look forward to retrying this case at the earliest opportunity."*

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*Here's more you need to know today:*

► **Cracked Open: Aetna** has sued plaintiffs firm **Whatley Kallas** and nonprofit **Consumer Watchdog** over a debacle in which **HIV patients** were notified of a class action settlement in mailings that identified them through **windowed envelopes**. [Here](#)

(<http://link.law.com/click/13408026.0/aHR0cHM6Ly93d3cubGF3LmNvbS90aGVsZWdhbG> story. Aetna, which already been forced to pay \$17 million over the blunder, claims plaintiffs lawyers were responsible. Aetna and the claims administrator, **KCC**, also have suits against each other over the mistake.

► **Tag, You're It: Facebook** won a bid to delay an **upcoming trial** over its "**tag suggestions**" feature. See **Law.com's** story [here](#) (<http://link.law.com/click/13408026.0/aHR0cHM6Ly93d3cubGF3LmNvbS90aGVyZWNVcr> Facebook (repped by **Mayer Brown**) had sought a delay to file an interlocutory appeal of **U.S. District Judge James Donato's** certification of a class (repped by **Robbins Geller and Labaton Sucharow**) suing for privacy violations under the **Illinois Biometric Information Protection Act**. Donato rejected Facebook's request but, on Tuesday, the 9th Circuit granted Facebook's emergency motion for interlocutory review, staying the trial.

► **Workplace Arbitration:** Here's a roundup of some **Law.com coverage** of the **U.S. Supreme Court's ruling last week banning class action waivers in arbitration**

**contracts:** How **plaintiffs' lawyers plan**

(<http://link.law.com/click/13408026.0/aHR0cHM6Ly93d3cubGF3LmNvbS8yMDE4LzA1LzI>

plot around the ruling, how the ruling could be a **victory for companies**

(<http://link.law.com/click/13408026.0/aHR0cHM6Ly93d3cubGF3LmNvbS9jb3JwY291bnN>

this defense firm already **launched a tool**

(<http://link.law.com/click/13408026.0/aHR0cHM6Ly93d3cubGF3LmNvbS9jb3JwY291bnN>

automate arbitration agreements, how the ruling might make **#Gorsuchstyle**

(<http://link.law.com/click/13408026.0/aHR0cHM6Ly93d3cubGF3LmNvbS9uYXRpb25hbG>

thing of the past, and **Litigation Daily's Litigator of the Week**

(<http://link.law.com/click/13408026.0/aHR0cHM6Ly93d3cubGF3LmNvbS9saXRpZ2F0aW>

put the spotlight on **Paul Clement (Kirkland & Ellis)**.

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