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What's It Take To Be Lead Counsel On Multidistrict Class Action Litigation?

The Wall Street Journal (and their Law Blog) had an amusing piece recently about the jockeying underway for the position of lead counsel in the Toyota Motor Corporation Unintended Acceleration Marketing, Sales Practices, and Products Liability Multidistrict Litigation, which has been consolidated in the Central District of California:

Lawyer Daniel Becnel Jr. of Reserve, La., donated a kidney to his sick brother. Alexandria, La., attorney Richard Arsenault organized a symposium featuring a lawyer played by John Travolta in the movie "A Civil Action." New York lawyer Anita Jaskot's father is a doctor. She is also single and speaks Polish.

These are among the many personal morsels lawyers hope will help them win a lead spot in the litigation against Toyota Motor Corp., which has been consolidated in a Santa Ana, Calif., courtroom. ...

For the Japanese auto maker, which declined to comment for this story, billions of dollars in legal liability could be at stake as it fights suits tied to its recalls of vehicles because of sudden-acceleration issues. The lawyers' quest is a pot of as much as $500 million in fees. Only a few will share it.

For reference, here's David Becnel's, Richard Arsenault's, and Anita Jaskot's applications.

You can't blame them for pulling out all the stops. Judge James V. Selna specifically ordered:

[T]he Court presently intends to appoint plaintiffs' lead counsel and liaison counsel. Applications for these positions must be filed with the clerk's office on or before April 30, 2010. The Court will only consider attorneys who have filed an action in this litigation. The main criteria for these appointments are (1) knowledge and experience in prosecuting complex litigation, including class actions; (2) willingness and ability to commit to a time-consuming process; (3) ability to work cooperatively with others; and (4) access to sufficient resources to prosecute the litigation in a timely manner. Where appropriate, applications should also set forth attorney fee proposals, rates, and percentages that applicants expect to seek if the litigation succeeds in creating a common fund.

How intense and expensive can these cases get?

Consider the class action filed back in 1996 on behalf of 300,000 Native Americans alleging the U.S. Department of the Interior mismanaged trust accounts and land under the Dawes Act of

1887. The suit tentatively settled for $3.4 billion a few months ago, but approval is being held up by the political process.

The case was driven by a team at Kilpatrick Stockton, which sunk more than $22 million in legal fees and expenses into the suit, through fourteen years of litigation, seven trials (totaling almost 28 weeks in trial), and 10 rounds of appeals against the most well-funded defendant in the world: the United States government.

But they weren't lead counsel.

That honor went to Dennis Gingold, a solo practitioner who used to represent big banks.

It wasn't easy:

Mr. GINGOLD: We gave [Blackfeet tribe leader and lead plaintiff Elouise Cobell] a commitment that no matter what it took, we would do what needs to be done to resolve this for the individual Indians, because it's the dark side of American history and we as lawyers have an obligation to correct it if we can.

SHAPIRO: How much of your time has this case taken up as a percentage of your total practice in the last 14 years?

Mr. GINGOLD: A hundred percent.

SHAPIRO: Really, this has been your sole case for the last 14 years?

Mr. GINGOLD: I haven't had a vacation since December of 1998. I've generally worked seven days a week on this case.

Twenty years ago Gingold organized the takeover of Baltimore Bancorp. That massive, hostile deal was like a vacation compared to the Indian Land Trust case, which swallowed up his whole professional and personal life for more than a dozen years.

But he did it, and did it well. You can't say he did the whole case by himself — Kilpatrick's $22 million contribution was essential — but you *can* say he managed the litigation by himself. So what does it take to be lead counsel on a multidistrict class action? They need access to money, sure, but that can be effectively guaranteed by appointing multiple plaintiff's firms to the case.

What it really takes is **dedication**. As much as I'd like to see the Court adopt Philip Thomas' suggestion that the lawyers compete on an obstacle course — a process that would probably yield similar or better results to relying on the whimsical applications — my hope is that the most dedicated lawyer is chosen.

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