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Alison Frankel's **ON THE CASE**

Who will lead J&J hip replacement MDL?

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In the next day or two, **W. Mark Lanier** of the **Lanier Law Firm** will file a letter with Dallas federal judge Ed Kinkeade, outlining the reasons why he should lead what Lanier believes will become a huge mass tort: the multidistrict litigation over DePuy's Pinnacle hip replacements. More than 300 personal injury suits accusing the Johnson & Johnson unit of failing to warn patients about design defects in the best-selling product have been filed in federal courts around the country and consolidated before Judge Kinkeade. Lanier made a preemptive play to take charge of the MDL, proposing that he and a handful of other well-known mass tort veterans head up a broadly inclusive plaintiffs steering committee. But instead, in an [August 10](#) order, Judge Kinkeade threw open the leadership contest with a call for plaintiffs firms to respond to a long list of questions about their experience in big cases.

"It's an interesting situation," Lanier told me. "You've got the usual crew of mass tort lawyers who've done this rodeo time and time again. And then you've got a new crew of Dallas lawyers who are looking to be in leadership roles because they know the judge, know the Dallas system." Lanier's allies include **Edward Blizzard** of **Blizzard McCarthy & Nabers**; **Richard Arsenault** of **Neblett Beard & Arsenault**; **Kenneth Seeger** of **Seeger Salvvas**; and **Paul Hanly** of **Hanly Conroy Bierstein Sheridan Fisher & Hayes**. Blizzard told me that coalition is holding together, "but what I took from Judge Kinkeade is that he's going to make his own decision." The judge, who has never before presided over an MDL, has said he may even interview candidates to lead the case.

Notably absent from the contenders' ranks is **Ellen Relkin** of **Weitz & Luxenberg**-but that's because she's already co-lead counsel in the other DePuy hip replacement MDL. Yes, that's right: The Pinnacle litigation is a younger brother to the year-old MDL over DePuy's ASR hip replacement. Johnson & Johnson recalled the ASR implants a year ago, and that MDL already includes more than 2,000 cases. Relkin and her co-lead counsel, **Steven Skikos** of **Skikos Crawford Skikos & Joseph**, previously led the Ortho Evra birth control MDL before the Cleveland federal judge who's overseeing the ASR case, **David Katz**. Judge Katz picked Relkin and Skikos from among dozens of plaintiffs lawyers who filed applications.

The big question, according to Lanier, Relkin, and Blizzard, is how the two DePuy hip replacement MDLs will differ. Obviously, they involve different products, only one of which was recalled. J&J has been proactive about complaints by patients with ASR hip replacements. As [Reuters reported](#) earlier this week, the company reached out to doctors who used the ASR products and, in a controversial move, brought in a consultant, Broadspire Services, to administer patient claims for replacement surgery. (Ed Blizzard calls Broadspire, a health insurance management company, "a spy for J&J.")

All ASR implants have a metal-on-metal hip-in-socket design, which is the source of the problems plaintiffs allege. (The basis assertion is that when the two metal pieces rub against one another, they create metallic residue that causes debilitating local irritation and, possibly, systemic metal poisoning.) Some Pinnacle products, on the other hand, have polyethylene or ceramic liners between the metal parts. That means, according to Relkin, that there's a known universe of potential ASR plaintiffs-about 34,000 in the U.S.-but not of potential Pinnacle plaintiffs because it's not clear how many Pinnacle implants are metal-on-metal. (Relkin's firm, Weitz & Luxenberg, is involved in both MDLs.) Lanier is convinced Pinnacle claims will eventually outpace ASR claims because DePuy sold many more Pinnacle implants; Blizzard said ASR will be the bigger MDL.

All three plaintiffs lawyers told me J&J will eventually have to settle the ASR cases, considering that the company recalled the product and has already begun paying for replacement surgery through Broadspire. Relkin and Lanier said, however, that J&J seems to be gearing up for a real fight over the Pinnacle, which is still on the market. The company's lead counsel in the ASR MDL is **Drinker Biddle & Reath** and **Tucker Ellis & West**; in the Pinnacle MDL it's **Skadden, Arps, Slate, Meagher & Flom**.

"Skadden and John Beisner are known to fight to the death," Lanier said. "Bringing them in was an overt gunshot blast. The hard part of leadership in the case is that [plaintiffs lawyers] generally compete against each other. So how do you get a group to coordinate to go up against Skadden Arps?"

I left messages with lawyers at Drinker Biddle; Tucker Ellis; and Skadden, as well as a corporate spokesperson at DePuy. Beisner of Skadden declined comment; none of the others got back to me.

(Reporting by Alison Frankel)

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