

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

**IN RE: ZANTAC (RANITIDINE)
PRODUCTS LIABILITY
LITIGATION**

**MDL NO. 2924
20-MD-2924**

**JUDGE ROBIN L. ROSENBERG
MAGISTRATE JUDGE BRUCE E. REINHART**

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THIS DOCUMENT RELATES TO: ALL CASES

PRETRIAL ORDER # 73

Order on Review of Plaintiffs' Leadership Structure and Additional Appointments

In Pretrial Order # 1, the Court invited attorneys to apply for positions as Plaintiffs' lead counsel or on a committee. The Court required the applications to address, among other things, willingness and ability to commit time and resources to this multi-district litigation ("MDL"), ability to work cooperatively with others, and professional experience in other MDLs. *See* DE 13 at 11-13. The Court received over 60 applications and conducted interviews of all applicants over the course of a 2-day period in May of 2020. The Court considered many factors, including the individual applicant's skill, background, ethical standards, professionalism, collaboration, other leadership positions, and reputation earned from colleagues and judges in other litigation. The Court sought to appoint a diverse leadership team that is representative of the inevitable diversity of the Plaintiffs and a team that affords younger and slightly less experienced attorneys an opportunity to participate in a leadership role in an MDL. Following this exhaustive evaluation process, the Court created a Plaintiffs' leadership structure that encompassed the Court's objectives and explained the appointees' duties and responsibilities in Pretrial Order # 20. *See* DE 685.

The leadership structure that the Court created consisted of Co-Lead Counsel, Liaison Counsel, a Plaintiffs' Steering Committee ("PSC"), a Leadership Development Committee ("LDC"), and several other committees. First, the Court appointed four Co-Lead Counsel who would bear the ultimate responsibility for prosecuting potential claims and coordinating the pretrial proceedings for Plaintiffs. Second, the Court appointed a Liaison Counsel to facilitate communications with the Court and all counsel and to assist counsel in complying with the rules and procedures of this Court.¹ Third, the Court appointed 15 PSC members to operate under the direction of Co-Lead Counsel and to assist Co-Lead Counsel in fulfilling their duties.² Fourth, the Court appointed five attorneys to the LDC. The LDC members are attorneys who previously had not been appointed to a committee in an MDL or who the Court otherwise considered to be less experienced in MDLs. The Court expressed its intent for the LDC as follows:

The Court was impressed by the insights of each of these applicants and sees the potential in each of them to become leaders within the MDL bar. The Court believes these attorneys will benefit from the mentorship and experience gained from participation in a large and complex MDL, and that the MDL will equally benefit from their enthusiasm and fresh perspective. The attorneys appointed to the LDC, most of whom have not previously been appointed to an MDL steering committee, shall be mentored by and work with those attorneys appointed to the PSC. It is the Court's expectation that the PSC members will actively mentor and work closely with the attorneys appointed to the LDC so they have the opportunity to play a meaningful role in various aspects of this MDL, including subcommittee assignments, and thereby gain further experience in preparation for future service on steering committees.

Id. at 7. The Court also named two PSC members as LDC co-chairs to ensure that LDC members receive appropriate opportunities in this MDL, including opportunities to make court presentations. Fifth and finally, the Court named chairs and co-chairs of an ESI/Document

¹ Subsequently, the Court also charged Liaison Counsel with making recommendations to ensure that *pro se* litigants in the MDL are kept reasonably informed of the litigation. *See* DE 1194.

² The PSC currently has 14 members.

Production Committee, a Law & Briefing Committee, a Science & Experts Committee, and a Bellwether & Trial Team.

In making these appointments, the Court recognized that the needs of this MDL could change as the litigation advanced, and the Court therefore explained that it would monitor the leadership structure to ensure that Plaintiffs and unfiled Claimants were being appropriately and adequately represented. Specifically, the Court stated:

The Court will consider a process for periodically evaluating leadership appointees' performance and commitment to the tasks assigned, as well as the ongoing needs of the litigation. The Court anticipates that this evaluation will happen on an approximately annual basis; but this timing will be adjusted as circumstances warrant and at a time that minimizes any disruption to the litigation that might occur if changes were made to the team. In evaluating the leadership team, the Court will consider the amount of time counsel has devoted to the litigation and the resources counsel and/or his or her firm have contributed to the litigation, as well as whether any counsel is in arrears in his or her contributions, the ability of counsel to work collaboratively with other members of the leadership team and counsel not appointed to a leadership position and the commitment counsel has shown to the fair, just and efficient management of the case. The Court will also periodically assess the needs of the litigation overall, including whether any additional or different resources are necessary for the Plaintiffs' leadership as the case progresses.

Id. at 12-13.³

The Court has raised the topic of the evaluation process for the leadership structure and appointments with Plaintiffs' and Defendants' Co-Lead Counsel at various points in the litigation. The Court has sought their input, as it has on most important issues impacting this MDL, both as to how the evaluation process should be conducted and what changes, if any, should be made to the leadership structure and appointments. Plaintiffs' Co-Lead Counsel have proposed and undertaken an evaluation process consistent with the intent of Pretrial Order # 20 and made recommendations to the Court. Defendants' Co-Lead Counsel, on the other hand, have represented

³ The Court similarly created a defense leadership structure in Pretrial Order # 22. *See* DE 747.

to the Court that the current leadership structure should remain in place. Notably, the number of Defendants at issue in the master complaints has changed significantly since the beginning of this litigation. Only manufacturers of brand-name ranitidine products remain as Defendants in the master complaints, and each Defendants' Co-Lead Counsel represents one of the four brand-name manufacturers.⁴ Thus, the need for any change in the leadership structure and appointments for Defendants is different than for Plaintiffs. As for Plaintiffs, there were approximately 280 cases filed in this MDL when the Court appointed Plaintiffs' leadership; today there are over nearly 2,200 filed cases. In addition, the Registry being utilized in this MDL was only at its inception when the Court appointed Plaintiffs' leadership; today over 150,000 Claimants have registered their claims in the Registry.

The Court commends Plaintiffs' Co-Lead Counsel for taking into account the factors that the Court set forth in Pretrial Order # 20 as well as additional factors that leadership considered appropriate in making leadership recommendations to the Court. The Court recognizes that the process was time intensive, required active participation by all members of Plaintiffs' leadership team, and reflected an earnest effort to gage leadership's own performance and the needs of the case. To that end, Plaintiffs' Co-Lead Counsel have made a number of recommendations as to Plaintiffs' leadership structure. The Court adopts those recommendations and hereby modifies Pretrial Order # 20 as to Plaintiffs' leadership appointments only. In all other respects, Pretrial Order # 20 remains in effect.

First, Plaintiffs' Co-Lead Counsel have recommended that the Court appoint Ashley Keller, Frederick Longer, Francisco Maderal, and Steve Rotman to the PSC. Plaintiffs' Co-Lead

⁴ The original master complaints filed in the MDL named both brand-name and generic manufacturers of ranitidine products, as well as retailers, distributors, and repackagers of the products. The Court has dismissed the claims in the master complaints against the generic manufacturers, retailers, distributors, and repackagers.

Counsel have provided the Court with sufficient information for the Court to be assured that these individuals are capable of fulfilling the roles and duties of PSC members set forth in Pretrial Order # 20. With the exception of Mr. Maderal, whom the Court appointed as Liaison Counsel in Pretrial Order # 5 on February 28, 2020, the Court interviewed each of the recommended appointees during its May 2020 interviews of all applicants for a leadership position in this MDL. Throughout this litigation, Mr. Keller and Mr. Longer have served as Co-Chairs of the Law & Briefing Committee and, since the Summer of 2020, Mr. Rotman has served as a member of the Science Committee. Accordingly, the Court appoints Ashley Keller, Frederick Longer, Francisco Maderal, and Steve Rotman to the PSC effective as of the date of entry of this Order.

Second, Plaintiffs' Co-Lead Counsel have recommended that the Court elevate the following five current LDC members to the PSC: Paige Boldt, Je Yon Jung, Adam Krause, Nicola Larmond-Harvey, and Bradford Lear. Each of the LDC members has appeared before the Court during the interview process as well as at court hearings to, for example, argue motions to dismiss, resolve discovery disputes, address the bellwether trial process, and provide procedural updates. *See, e.g.*, DE 2503, 3682, 4391. The LDC members have also provided updates to the Court on their respective roles in the MDL. For example, one LDC member, at a Case Management Conference on September 21, 2020, described the LDC experience as:

comprised of five members with diverse career paths and personal backgrounds, and 63 years of combined legal experience. Over the last nearly five months since our appointment and your selection of us we have been fully integrated into the Plaintiffs steering committee as equal and active members. Amongst our five members, we have comprehensive representation and membership on every single one of the PSC's committees. We have made substantive procedural and strategic contributions, be it from meet and confers to brief writing to strategic decisions about discovery. In short, we have not been relegated to subordinate positions as members of the PSC, which has been an amazing experience. I know I speak on behalf of all the members that it has been truly amazing. The one thing when I polled the other four members is that every single one felt that we had been fully included and embraced as a full member, have not been given the worst

assignments, and we have taken equal part of all the assignments and participation in the duties and responsibilities that we have. The coleads and the committee chairs and our LDC co-chairs are fully engaged and provide mentorship on a regular basis, if not weekly, if not daily. The coleads and the chairs are consistently checking in with us and providing -- we, as LDC members, are also providing our unique input and experiences and they're welcomed and invited, and that has been the case since the five months we have been here. I speak on behalf of the Plaintiffs LDC to thank the PSC members for embracing the concept that your Honor has implemented here and the members of the LDC so completely and fully.

DE 2087 at 142-43.

A member of the PSC and one of the LDC co-chairs also addressed the Court at the September 21 Case Management Conference and provided her assessment of the LDC members in the following way:

I'm one of the co-chairs of the Plaintiffs Leadership Development Committee. Thanks for the opportunity this afternoon to present and let the Court know what is going on with the Plaintiffs Leadership Development Committee. . . . It's been a great experience for all of us. We know the Court wanted to create a diverse group for mentorship through the Plaintiffs Leadership Development Committee and the Court has done just that. That is certainly the case that we have a diverse group even within a very diverse PSC. We have among our LDC members on the Plaintiffs' side individuals who are new to mass torts, but who have had a long career in litigation otherwise. We have folks on our LDC committee who have practiced in mass torts for years and are leading their law firms, and we also have lawyers who had careers before becoming lawyers and who offer different and wonderful things to the Plaintiffs Steering Committee. The bottom line is that each LDC member on our side has a background that benefits not just the LDC, but the PSC as a whole. It has been wonderful to work within that group. The Court, of course, recognized that each of the LDC members had these qualifications when you interviewed us, or interviewed them and placed them in these positions in the formation of the MDL, but what the Court perhaps didn't realize is that you were really creating a think tank of lawyers that has now fully integrated into every aspect of this case. As for the mentorship piece of the LDC on the Plaintiffs' side, that has also been great. We meet weekly and I can say for myself, and I think I speak for others, that the mentorship really does flow both ways. We constantly learn from one another in the course of our meetings as we collaborate and work together on various issues and also through regular communication. We, as leaders of the LDC, working with leadership, make sure that LDC members are integrated fully into the PSC and working on every facet of the case as we go forward. With the creation of the LDC the Court, I believe, has succeeded in what we believe was intended, and that is taking already very accomplished lawyers and putting them in a position of PSC leadership that they had not been given an opportunity to have

before. You asked early on in the hearing today whether we had any suggestions. My only suggestion would be that the Court continue with this process in other MDLs and certainly encourage the adoption of a Leadership Development Committee for other MDLs in the future.

Id. at 130-32.

These comments, along with many others, and the Court's observation and knowledge of the LDC members and their contributions to the MDL persuade the Court that it is appropriate, based on the recommendation of Plaintiffs' Co-Lead Counsel and the intent of the Court in establishing the LDC, to elevate Paige Boldt, Je Yon Jung, Adam Krause, Nicola Larmond-Harvey and Bradford Lear to the PSC.⁵

Third, Plaintiffs' Co-Lead Counsel have recommended that the Court appoint a new slate of LDC members, each of whom has been represented to the Court as a lawyer who has not previously received an MDL leadership appointment and has played an important role on Plaintiffs' leadership team in prosecuting the MDL. Plaintiffs' Co-Lead Counsel believe that appointing a new class of LDC members will prepare another cadre of lawyers to serve in MDL leadership positions and will enhance their future MDL leadership applications. The Court agrees. The Court expressed its hope in Pretrial Order # 20 that, as litigation moves forward, the leadership team will endeavor to build on the diversity of its team. With the recommendation of a new slate of 12 LDC members, Plaintiffs' Co-Lead Counsel have done just that. The next generation of MDL leaders has expanded within this MDL and will be well suited to assume even greater leadership roles in future MDLs. Accordingly, the Court appoints the following to Plaintiffs' LDC: Brooke Achua, Harrison Biggs, Lea Bucciero, Alexander Cohen, Marlo Fischer, Kendra

⁵ Although Defendants have not sought changes to their leadership structure at this time, the Court would also like to commend the members of Defendants' LDC for their meaningful contributions to this MDL. Like the members of Plaintiffs' LDC, Defendants' LDC members regularly have appeared before the court during motion and discovery hearings and status conferences. The Court encourages the continuing effort to ensure that all LDC members are given opportunities to make integral and meaningful contributions to this MDL.

Goldhirsch, Noah Heinz, Catelyn McDonough, Caroline McGlamry, Madeline Pendley, Laura Stemkowski, and Daniel Tropin.

The Court attaches to this Order Exhibit A which reflects the new Plaintiffs' leadership team.

DONE and ORDERED in Chambers, West Palm Beach, Florida, this 8th day of March, 2022.

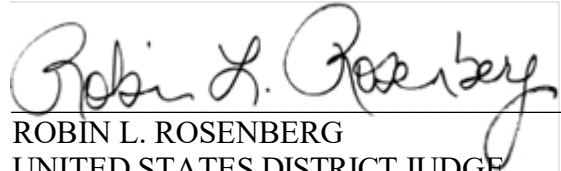

ROBIN L. ROSENBERG
UNITED STATES DISTRICT JUDGE

Exhibit A
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