

## ANNEKE STEWART – THE TRAVELING LITIGATOR



Anneke Stewart

Surrounded by an immediate family who have collectively earned 5 PhD's, 2 Masters and 2 MBA's, and who count amongst their ranks 4 university professors, Anneke Stewart's upbringing was steeped in both academic achievement and political activism. Having seen in her mother and sisters the power of educated and highly motivated women, and having

learned from her father, a political science professor, the inherent inequities in the world, Anneke naturally gravitated to a career in law. "Given the influences of my upbringing I was always interested in helping the little guy protect himself against the bigger corporate forces," Anneke said. As a young child Anneke's beloved Dutch mother taught her the value of traveling and learning from other cultures. As a child Anneke took constant trips to Europe to visit her family in Holland and later enjoyed a year studying in The Netherlands followed by a stretch studying law in Guanajuato, Mexico. When her cases at MAK give her a tiny break to see the world she enjoys traveling the world including past trips to Tibet, Turkey, Bali, Fiji, Tonga, Tahiti, Thailand, Tokyo, Hong Kong, Beijing, Singapore, Guangzhou and Costa Rica, and she will be venturing into the heart of India this coming fall.

Anneke first honed her legal skills doing years of high profile insurance defense work which gave her the opportunity to learn how disputes were handled on the defense side, while at the same time representing individuals that were backed by the financial resources of insurance companies. Once her defense education was sufficiently well-rounded, she moved on to her ultimate goal of

plaintiff representation. "In MAK I found the perfect fit," Anneke explains. "I love representing individual homebuyers and holding large well-funded developers accountable when they've sold the American dream and have not delivered on their promises. It's a very stimulating environment to work in and every day there's something new and fun and challenging to look forward to."

Anneke recently had a great victory in one of her cases in a Judicial Reference Hearing. Anneke put on a case including expert witnesses for the homeowners, who testified as to the defects and damages in areas such as structural engineering, roofing, weatherproofing and general contracting. The home builder also called expert witnesses to testify, and after nearly eight days of direct testimony, cross-examination, and presentation of evidence, the Referee rendered his decision: substantial damage awards for each of the homeowners. In addition to compensation for defects and damages, the Referee awarded investigative costs and even reimbursement of his own Referee fees. These awards have been filed with the Superior Court, which has entered judgment in favor of each of the four homeowners and against the home builder. The firm is very proud of Anneke for this great victory for her clients.

Outside of her legal career, Anneke is involved in many charities including The American Cancer Society, Stop Global Warming, The United Way and Heal the Bay. Anneke is also an avid traveler, as well as a sports enthusiast who teaches spinning at Equinox in Santa Monica. She is currently pursuing her next fitness goal of obtaining her yoga certification. Anneke adds, "I am very proud to have brought twice a week yoga classes to MAK, as I believe that a healthy body and mind are integral to leading a satisfying professional and personal life."



## LEGAL TRENDS

### MULTIDISTRICT LITIGATION – HOW AN MDL WORKS

The massive BP oil spill, the wide ranging Toyota automobile recall and the toxic infection of homes by Chinese-made drywall are all economic calamities and horrible national tragedies. They are also the subjects of hundreds of lawsuits filed by thousands of law firms around the country, and yet they are all likely to eventually be resolved in the courtroom of a single United States District Court judge who has been or will be tasked to oversee the consolidated and coordinated lawsuits. These heart-breaking disasters are affecting millions of consumers around the country and will likely take millions if not billions of dollars to rectify. The legal process by which each of these matters will be adjudicated is known as an MDL, short for Multidistrict Litigation.

In April 1968 Congress created the Judicial Panel on Multidistrict Litigation (82 Stat. 109) and granted it authority to transfer to a single District Court the pretrial proceedings for civil cases involving common questions of fact. The Panel can transfer practically any type of civil case filed in the federal district courts, either on its own initiative, or as more often the case, at the request of a party. Certain types of litigation are good candidates for transfer and consolidation to a single judge. Torts involving a disaster, product liability, trademark and patent infringement, securities violations, tobacco cases and antitrust issues have typically used multidistrict transfer. Once it becomes clear that numerous cases are being filed against the same parties arising out of the same issue or set of issues, the cases become ripe for coordination through the MDL process.

The Panel typically convenes once a month in various locations around the country to hear oral argument from lawyers seeking to have their cases consolidated and coordinated before a certain judge in a particular district. The panel's decision whether to make a transfer is guided by a number of criteria: the existence of one or more common questions of fact within the group of cases being considered; whether transfer would be "for the convenience of parties and witnesses [and would] promote the just and efficient conduct of such actions" (section 1407(a)); the residence of the principal witnesses; the locations where the actions were initially filed; and the likelihood that transfer will avoid conflicting rulings. In general, economy and convenience become the determining factors.

Once the panel decides that a transfer is appropriate, it must select the appropriate judicial district to handle the litigation. There are no statutory guidelines governing the assignment of the consolidated case, but the panel considers the location of the judicial district in relation to the residences of the parties, the scene of the disaster (if the case involves such a situation), the business headquarters of the parties, the location with the highest concentration of relevant documents, and how easily the location of a judicial district can be reached. Apart from these factors, the panel seeks to place transferred cases in courts that have the time to oversee the complexities of the

litigation. The Panel may assign the pretrial proceedings to a judge of the district to which the cases are transferred or it may assign the proceedings to an experienced judge from a district that does not have any of the consolidated cases. The Panel is composed of seven district or appeals court judges, each of whom must be from a different judicial circuit. The concurrence of four members is required for any Judicial Panel on Multidistrict Litigation action. Aside from the above, the lawyers' arguments to the Panel urging transfer to one judge or another often involve nothing more than the preference by a lawyer of a certain judge for strategic purposes.

After a district is chosen and a federal district judge is selected to manage the group of cases, the judge exercises full judicial powers over the case. The judge will enter a "practice and procedure order" that governs all matters leading to trial. During the pretrial stage, the parties use the discovery process to find out as much as they can about each other's case.

Under the statute, once all pretrial proceedings have been concluded, the judge remands the case to the panel, along with a recommendation as to how the panel should proceed in setting the cases for trial. Though the statute implies that the cases be remanded to their districts of inception for trial, the Panel usually transfers a case back to the judge who handled the pretrial proceedings. As interpreted by the Supreme Court in *Lexecon Inc. v. Milberg Bershad Hynes & Lerach*, 523 U.S. 26 (1998), the statute requires the Panel to remand all transferred cases to their original district courts for trial at or before the conclusion of the pretrial proceedings although the cases are usually resolved before this happens. *Lexecon* held that the language of § 1407 precludes a transferee court from utilizing 28 U.S.C. § 1404(a) to make "self-assignments" and thereby retain transferred cases beyond pretrial proceedings. Accordingly, at the conclusion of pretrial proceedings, cases that have not been terminated in the transferee court upon stipulation must be remanded by the MDL Panel to the transferor courts for trial. However, in practice, few cases are remanded for trial; most multidistrict litigation is settled in the transferee court. Transferee courts also typically hold bellweather trials or other proceedings designed to properly value and predict the multitude of cases before them.

As a practical matter, many attorneys with good cases end up transferred to an MDL and are surprised to learn that they no longer control their case, and no longer have a right to the fee they negotiated with their client. That is because the MDL judge will appoint steering committees for the plaintiffs and defendants, composed of lawyers for both sides who have either the most filed cases, the most experience or the most influence; the recent initial Case Management Conference before Judge Selna in the Toyota MDL saw hundreds of petitions for appointments for lead counsel or steering committee assignments,

out of which the court was forced to choose the winners of those coveted few positions. The leader of the committee for each side is known as either the lead counsel or the liaison counsel, and the other members of the steering committee are usually the chairs of the various sub-committees like discovery, fact, law, certification and experts. The chairs of each committee will then assign different work projects to other members of the sub-committee or other law firms seeking to do work for the case. At the end of the case, all of the lawyers who performed work assigned by the committees will submit their applications for attorneys fees based on the "common benefit"

performed for the overall case. The award of attorneys fees is in the discretion of the MDL judge.

For attorneys who find themselves in an MDL, the key is to become affiliated with a certain group of lawyers who control one or more of the committees, and get assigned to one of them or get assigned work from the committee. Short of that, you are likely to be on the outside looking in despite having a filed case, a client and a retainer agreement. With cases like BP, Toyota and Chinese drywall, there will surely be no shortage of work to do.

## RECENT RESULTS

### MAK IS PLEASED TO REPORT THE FOLLOWING FAVORABLE RULINGS AND CASE RESOLUTIONS:

#### Trial Court

- Final Approval GRANTED in a California case in which MAK, as lead counsel, represents a statewide class of consumers against a utility company for overbilling in excess of permissible rates.
- Preliminary Approval GRANTED in a Los Angeles County, California case in which MAK, as lead counsel, represents a nationwide class of consumers against the manufacturer of a popular weight loss pill, for false advertising in the labeling and sales of its products.
- Preliminary Approval GRANTED in a San Joaquin County, California case in which MAK, as co-lead counsel, represents California homeowners in a products liability class action against the manufacturer of their aluminum windows.

#### Verdicts And Settlements

- \$12 Million – Class action settlement in a Los Angeles County, California case in which MAK represents a nationwide class of consumers for false advertising against the manufacturer of a popular penis enlargement product.
- \$2,600,000 – Complex multi-party construction defect litigation on behalf of residential homeowners in Lincoln, California.
- \$1,310,000 – Complex multi-party construction defect litigation on behalf of residential homeowners in Brentwood, California.
- \$1,011,000 – Complex multi-party construction defect litigation on behalf of residential homeowners in Chula Vista, California.
- \$900,000 – Complex multi-party construction defect litigation on behalf of residential homeowners in Thousand Oaks, California.

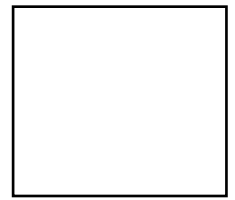
- \$841,000 – Complex multi-party construction defect litigation on behalf of residential homeowners in Temecula, California.
- \$775,000 – Complex multi-party construction defect litigation on behalf of residential homeowners in Bakersfield, California.
- \$706,000 – Complex multi-party construction defect litigation on behalf of residential homeowners in Rocklin, California.
- \$685,000 – Complex multi-party construction defect litigation on behalf of residential homeowners in Folsom, California.
- \$658,000 – Complex multi-party construction defect litigation on behalf of residential homeowners in Coto de Caza, California.
- \$645,000 – Complex multi-party construction defect litigation on behalf of residential homeowners in Temecula, California.



# MAK

## Milstein, Adelman, & Kreger, LLP

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# MAK NEWS

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## WE KEEP GROWING

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### Allison Willett

Allison has joined the firm as an associate. Allison, who attended Loyola Law School, comes to the firm after working for the Orbach, Huff law firm in Century City. Allison will work on some of the firm's largest cases, including some of the firm's Chinese drywall cases in Florida, in the complex consumer litigation group.



### Jonathan Staffeldt

Jonathan has returned to MAK, where he was a legal assistant prior to attending UCLA Law School. Upon graduation, Jonathan joined Jeffer, Mengels, where he worked for three years. But Jonathan found his way back to MAK, as predicted, and he'll concentrate his practice in the construction defect litigation group.

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