**GUIDELINES AND BEST PRACTICES**

**IMPLEMENTING 2018 AMENDMENTS TO**

**RULE 23 CLASS ACTION SETTLEMENT PROVISIONS**

**BOLCH JUDICIAL INSTITUTE, DUKE LAW SCHOOL**

**EXECUTIVE SUMMARY**

DUKE LAW SCHOOL

AUGUST 2018

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**THE ROLE OF COURT-APPOINTED LEAD COUNSEL VIS-À-VIS OTHERS**

**GUIDELINE 10**: In an MDL action comprised of multiple putative class actions, the court should, in connection with an early and prompt initial conference with the parties, prescribe an application process for appointment of one or more firms, as appropriate, to serve as Interim Class Counsel under Rule 23(g)(3), upon considering factors pertinent to the case, including those specified in Rule 23(g)(1).

BEST PRACTICE 10A*:* In an MDL proceeding involving multiple actions that include putative class actions, the court should determine, in connection with an early and prompt initial conference with the parties, the nature and scope of the leadership structure it intends to appoint, including whether the appointment of Interim Class Counsel under Rule 23(g) is necessary or appropriate, and should specify and delineate with appropriate precision the roles and responsibilities of the counsel it appoints to leadership positions.

**GUIDELINE 11:** A court should, at an early point in its management of the proceedings before it, schedule pretrial proceedings (including class certification briefing and hearing dates, and, as early as practicable, a trial date on class claims); obtain information and establish procedures for coordination with any related putative class action litigation pending in other courts, designate counsel with responsibility to coordinate with counterparts in related litigation; and remind all parties and counsel of their duty to timely update the court and each other on developments in related actions pending in other courts.

BEST PRACTICE 11A*:* To assure that all tracks are managed effectively, a transferee court in a hybrid MDL should typically appoint different counsel to take primary responsibility for personal injury claims on the one hand, and economic loss claims on the other.

BEST PRACTICE 11B*:* An MDL transferee judge who is appointed to manage individual and class claims concurrently should prioritize their judicial resources in assuring that both types of claims move forward appropriately, through discovery, pretrial disposition, settlement where appropriate, and trial, either in the MDL transferee court, through bellwether trials, or upon remand to districts of origin.

BEST PRACTICE 11C*:* In a “hybrid” MDL, the court’s order appointing a leadership structure should clearly delineate the roles and responsibilities for the class lead counsel and tort lead counsel and their respective committees.

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