

Q&A: How Marlon Kimpson Secured a Lead Role on a Historically Diverse MDL Plaintiffs Team

“It’s a signal to judges across the country that this can be done,” said Kimpson, of Motley Rice, about his appointment by U.S. District Judge Michelle Childs to a team of 12 lawyers in the Blackbaud data breach MDL, centered in South Carolina. MDL appointments have often been criticized as lacking in diversity.

BY AMANDA BRONSTAD

One of the most diverse leadership teams in multidistrict litigation has been chosen to pilot dozens of class actions against Blackbaud over its 2020 data breach. U.S. District Judge J. Michelle Childs of the District of South Carolina, who has been mentioned as a possible contender for a seat on the U.S. Supreme Court, **appointed eight women and four men Feb. 16**, making good on a promise to take into account diversity. One of the appointees was Marlon Kimpson, a Black lawyer who is a **member of Motley Rice**, and a state senator in South Carolina.

Kimpson, who works in his firm’s Mount Pleasant, South Carolina, office, talked to The National Law Journal about how he got his first MDL leadership appointment.

This interview has been edited for length and clarity.

NLJ: This is the first time you’ve been appointed to a leadership role in an MDL, but not your first time you’ve applied. Tell me about your experience in getting your name out there.

Marlon Kimpson: My first application was for a leadership position in the Facebook/Cambridge Analytica case. A partner in my firm encouraged me to apply. Not having had this experience before, I remember her telling me—because it was a her, a partner at the firm—whatever you do, try to get invited to the party the night before because that’s where the slates are formed, and people sort of figure out leadership teams. People were nice, but it was a chilling experience because I didn’t know any of



(Courtesy photos)

Marlon Kimpson, with Motley Rice.

those people. I wasn’t bashful about being there, and meeting people, but it was definitely a fraternity and sorority meeting. I don’t think any commitments were made that night, but the next day, having seen those lawyers the night before, I gained somewhat of a sense of familiarity. But what was very interesting was about 10 o’clock that evening, the judge narrowed the list of applications. I remember reading the order on my way there in a cab, and I saw my name. I didn’t get selected for leadership, but I felt a sense of accomplishment by making it to the top 10 considering there were so many applications.

NLJ: Did that experience help you get a seat on the Blackbaud leadership team?

MK: One of the firms, Keller Rohrback, is in the Blackbaud data breach case. I don’t know who all got

some work out of that Facebook case, but one of the lead firms in that case works with us today and because of that relationship works with us in Blackbaud.

NLJ: What role do you think your firm, Motley Rice, which is well known in mass torts, had in your getting this position?

MK: I can say, without fear of contradiction, I would not be exposed to the whole MDL/class action process but for my firm. I started my career working up and trying asbestos cases in the state of Kentucky and Mississippi. [Name partner] Joe Rice gave me an opportunity, and he did not consider the fact that Kentucky—I was going to a place that was not diverse itself. I would often ask myself a question while driving up to a 50-year-old pipefitter's house who had never seen a Black lawyer, why did Joe send me to Kentucky? He knew I could relate to people regardless of race and, more importantly, he managed the docket in Mississippi, and I could train next to him. I got exposure at a big firm early and learned from one of the best.

I've worked with Joe in the MDL on opioids, mainly coordinating the counties for South Carolina that are in the MDL, but separately I'm a lawyer in the state case. We represent the state of South Carolina.

The key is [that I've gotten] a lot of exposure, and that has helped me hone my skills to be ready in a co-lead capacity with the Blackbaud case.

NLJ: Attorneys of color are still underrepresented in leadership positions in multidistrict litigation. Do you think that

is more so the case than in the legal profession overall?

MK: I don't think it's unique to MDLs. It's similar to other professions, not just the legal profession. But I think what you're witnessing now is a new level of consciousness that's sweeping the country on the issue of diversity. Subsequent to what we witnessed last summer, major firms, major corporations, are certainly more focused on the message that's being sent by the teams they send to a courtroom, by the teams they send to the White House, by the teams they send to represent corporate governance proposals in front of shareholder meetings. And I am a product of the push for diversity.

NLJ: Why a data breach case?

MK: Joe has always encouraged the firm to diversify, and this is a relatively new world, new area for the firm, and it makes sense to have a diverse team when applying for leadership in these types of cases because it's a new emerging area and the injury impacts people from across all demographics.

NLJ: Judge Childs, in a prior order, told lawyers to focus on diversity. What role does the judge have in encouraging more diverse leadership teams?

MK: Irrespective of her statement on diversity in her order, anybody who does cursory research on Judge Michelle Childs knows that the issue of diversity is important to her. Judge Childs was, as I recall, the only African American partner at a major corporate law firm. She's been a first in a number of different capacities. So there is no doubt when you're forming a slate you research the judge to see what her history has been, and so we put

together a diverse team to comply with the spirit of her order but also to comport with the history of her life. It's a signal to judges across the country that this can be done without sacrificing the experience and level of competence to litigate these cases.

NLJ: What recommendation do you have for other African American attorneys who want to get leadership roles in MDLs?

MK: I would say that even if you're not with a firm, a big firm, I would encourage those lawyers with individual cases to show up at hearings. Because there may be a big firm there who will pick you up as part of the team if you have a unique case to add to what's not already represented in the class or the case. If this issue is at the forefront, someone who shows up may get the benefit of the lack of diversity in the courtroom and may find him or herself as part of an MDL and the larger firm supporting that larger firm. The other thing I would say is diversity is not just in the leadership of the MDL. We have a responsibility, as a leadership team, to look at the consultants we engage, the experts we engage, the court reporters we engage. It's our responsibility to allow this concept to trickle down to where we spend our money, recognizing that there are competent minorities performing these services all across the country, and we need to keep that in mind as we put together the team to litigate those cases.

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