

5 Tips for Personal Injury Attorneys Opening a Mass Tort Practice



Article By

[Stephen Fairley](#)

[The Rainmaker Institute](#)

[The Rainmaker Blog](#)

- [Law Office Management](#)
- [Personal Injury](#)
- [All Federal](#)

Tuesday, October 27, 2015

Attorneys nationwide are joining the trend to add mass tort claims to their personal injury practice. Based on conservative estimates, two to four million people per year are seriously or fatally injured in mass tort cases.

Most mass tort cases are product liability cases against pharmaceutical and medical device companies. Other types involve airplane crashes, train wrecks, hotel fires, asbestos, patent, antitrust price fixing, data security breaches, securities fraud and employment claims.

It is the only practice in which economies of scale exist. These cases are national and involve filing same primary claim over and over for multiple plaintiffs. The math is compelling: in the right situation it can cost \$1,500 to acquire a client with a case that will settle for \$300,000, according to John Ray, senior consultant for Mass Tort Nexus and a former pharmaceutical executive.

“It is a multi-billion dollar immature market, with economies of scale and only a single barrier to entry. You have already overcome the barrier, if you hold a bar card,” Ray said.

The best strategy is to find a mass torts case with strong liability, many plaintiffs, a financially viable defendant, high settlement values and a reasonable cost to acquire a client. Here are five tips:

1. **Timing.**

There are several optimal moments to seek mass tort clients:

- **In the emerging phase**, when many attorneys are advertising about a particular mass tort. Most patients do not connect their prescription with an adverse event. The highest consumer awareness exists when advertising is at its peak. Currently this includes IVC Filters, Bair Hugger blankets, Invokana, Xarelto, Pradaxa, Transvaginal Mesh, Morcellator, talcum powder, Zofran and Metal-on-metal hips, according to Steve Nober, CEO of the Consumer Attorney Marketing Group.
- **MDL phase.** When the federal courts create a multi-district litigation docket (MDL) for the mass tort. There are 300 federal MDLs, which organize hundreds of cases and promote settlements with trials of bellwether cases. Courts will create a form complaint and plaintiff's fact sheet, which can be found on Mass Tort Nexus. The MDL plaintiffs committee works on all the scheduling, motions and trials.
- **In the settlement phase**, when the defendant announces to its stockholders that it has set aside a settlement fund. At this point, attorneys are signing clients to settle their cases.

2. **Marketing.**

The goal of any form or marketing must be to educate clients about the side effects of the product they used. Lawyers should use clear, concise language that the general public will understand. Your marketing should be about the client — not about the firm. Don't forget to state that clients do not pay legal fees unless you win the case.

Marketing tactics that work include:

- **Pay for Performance Advertising.** The attorney pays for a call and is not buying leads. The charge depends on how long the phone call lasts.
- **Strong Organic Web Presence.** More people are filling out forms on lawyer websites, and the firm should have trained intake personnel to contact the person within minutes.
- **Standard Television Advertising.** Bear in mind that a consumer will watch an ad 12 times before acting, according to Ray. TV ads will create the lexicon that people use to search for lawyers online. Smart lawyers will incorporate the exact wording of TV ads into their website.
- **Buying Leads (Caveat Emptor).** Ray advises to be suspicious about lead generation companies, because there are many disreputable companies that will sell a single lead to five or six different law firms.

3. **Partnering with a law firm.**

Many of the leading mass tort law firms will accept referrals in a co-counsel

agreement. In this arrangement, a lawyer agrees to accept a fraction of the recovery in exchange for the other firm prosecuting the case.

A better approach is to create a co-counsel consortium, akin to entering a partnership where two firms agree to represent a client. It can be argued that no referral occurred and the word “referral” never appears in the agreement. Both firms are equally responsible and the originating attorney can claim a larger percentage. The client is getting more lawyers on his team — a dream team — but is not paying any additional legal fee.

4. Beware of common legal risks in drug or medical device cases.

- The Mensing Factor. The Supreme Court decided *Pliva, Inc. v. Mensing* in 2011, holding that failure-to-warn claims brought against manufacturers of generic medications under state law are pre-empted by federal law.
- PMA Preemption Potential. Makers of Class III Medical Devices that undertake the FDA’s stringent premarket approval process can be exempt from certain product liability claims. See *Riegel v. Medtronic*, decided by the US Supreme Court, 128 S.Ct. 999 (2008).
- Statute of Repose Issues.

5. Evaluating your firm.

Evaluating the resources of your firm is good place to start, before delving into other considerations necessary to develop your firm’s road map to mass tort success. See which Navy ship matches your firm.

Is your firm a super carrier?

A Super Carrier is a well-established firm with a large number of lawyers and support staff and extensive in-house logistical capabilities. It has the financial reserves needed to take on all necessary tasks of mass tort litigation, without the need for outside funding or outsourcing of services.

Is your firm a destroyer?

A Destroyer is a well-armed firm loaded with weapons (human resources and an abundance of cash.) These firms move fast to develop and deploy an attack plan, for any given mass tort case. A Destroyer may still need to seek outside funding or outsource certain services, if it wishes to take on a large number of clients in a mass tort case.

Is your firm a patrol ship?

Being a Patrol Ship has more to do with strategy than any other factor. Some firms take a conservative approach to mass torts. They stay on constant patrol and only make a move when a mass tort case arises and reaches a point that allows taking clients for the case, within the risk tolerance limits of the firm.

Are you one guy in a row boat?

- If you are a sole practitioner, with little to no staff and want to enter the mass tort space, you can, but your approach has to be realistic and you must have a relevant starting point.
- Many sole practitioners sit on the sidelines, believing that they are not ready for the leap into mass torts. Others jump in and reap the benefits of participation.
- If your practice has a docket of general PI cases or other assets, in most situations, you can obtain the funding to make the leap. The proceeds from your limited entry into mass torts can be used to finance future expansion of both your PI practice and additional mass tort cases.

© The Rainmaker Institute, All Rights Reserved

Source URL: <https://www.natlawreview.com/article/5-tips-personal-injury-attorneys-opening-mass-tort-practice>