

SETTLEMENT	CASE TYPE	CO-COUNSEL FIRM
\$118,000,000	Mesothelioma and other Asbestos-related Diseases	Simmons Hanly Conroy and other Co-counsel Firms
\$13,025,000	Birth Injury Cases	Donahue & Horrow, LLP, El Segundo, CA
\$8,000,000	Birth Injury Case	Duffy & Duffy, Esqs., Uniondale, NY
\$5,075,000	Medical Malpractice	Butler Daniel & Associates and Pleasant Law, PLLC, Wrightsville Beach, NC
\$2,522,500	Nursing Home Cases	Kralovec Jambois & Schwartz, Chicago, IL
\$2,300,000	Birth Injury Cases	The Talaska Law Firm, PLLC, Houston, TX
\$920,000	Nursing Home Cases	Doolan Platt & Setareh, Irvington, NY
\$787,500	Medical Malpractice	Duffy & Duffy, Esqs., Uniondale, NY
\$720,000	Automobile Accident	Iannella & Mummolo, Boston, MA
\$500,000	Workers' Compensation	Law Office of Steven P. Brendemuehl, Natick, MA
\$495,000	Nursing Home Case	Elam & Elam, PLLC, Charlotte, NC
\$400,000	Automobile Accident	Karl Vrana & Associates, P.C., Raynham, MA
\$400,000	Nursing Home Case	Christian & Davis, Attorneys at Law, Greenville, SC
\$300,000	Nursing Home Case	Knapp & Roberts, P.C., Scottsdale, AZ

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in litigation, but acknowledged that when looking to generate a significant number of cases, it's helpful to contract with a marketing and intake specialist to screen client inquiries and obtain signed contracts.

And don't forget your own client base as a rich source of prospective leads. Kristian Rasmussen says his firm uses newsletters, email blasts, and other forms of communication to keep current and former clients, as well as referring attorneys and friends informed about developing drug and device litigation.

Ready, Set, File...Litigation Strategies for Mass Torts

As you begin to work up your cases, a multitude of new considerations emerge: does your firm have the financial resources, manpower, and trial experience to stay in it for the long haul, or should you align with, or even refer your cases to a more established firm? If you decide to take on the risk yourself, where should you file your cases? Should you try to keep

them in state court or join a federal MDL?

Rick Meadow says that his firm prefers to file cases in state court and more often, that's the route they take. Presby agreed, saying "If I can stay in state court, that's generally my preference. I have found the cases move faster." Meadow also cited that many state courts have a less onerous scientific burden than Daubert as well as a more progressive view of science and causation as reasons for filing there. However, he stressed that if you have a good case, venue will not matter, noting his firm's very successful federal court trial outcomes in the Pinnacle hip implant and Actos mass torts.

Last September, a Georgia federal court judge overseeing the Mentor mesh MDL issued an order threatening sanctions in future summary judgment orders against firms who file lawsuits they know have no merit or suffer from some fatal flaw. Judge Clay D. Land wrote, "Some lawyers seem to think that their case will be swept into the MDL where a global settlement will be reached,

allowing them to obtain a recovery without the individual merit of their case being scrutinized as closely as it would if it proceeded as a separate individual action."

"I am a strong believer in filing cases only with proof of exposure and injury," said Presby. "When too many lawyers breach that rule, we cause the reputation of the plaintiffs' bar to suffer, and we give judges reason to want to reign in litigation."

Echoing Presby, Fred Thompson stated that no situation relieves a lawyer from actively working up his cases for the benefit of his clients. If a case can't be proved persuasively, said Thompson, "it will not magically grow more attractive over time." Specifically, for lawyers joining a mass tort already in progress, Thompson warns that they "must not seek to free ride, because the potential for harm to clients is real—this lawyer will need to place a high premium on building a successful network to assure his or her clients have access to the best available experts and a seat at any resolution table." ❄

Thinking About Getting Into Mass Torts? What You Need to Know

Whether enticed by the prospect of sizeable awards, disenchanted by increased litigation costs and capped damages in medical malpractice cases, or simply looking to enhance client service offerings, more and more plaintiffs' firms are expanding their practices to include mass torts. Whatever your motivation—if you're just dipping a toe in the water or leaping in feet first—preparation is key.

There are countless factors to consider regarding project selection, retention of experts, client acquisition, case preparation and overall strategy that are crucial to a successful outcome.

Case Type Selection—A Crucial First Step

Identifying viable case types and carefully choosing the ones in which to invest your time and resources is a critical first step on your mass torts journey. It goes without saying that the initial selection is key, said **Fred Thompson of Motley Rice, LLC** in South Carolina. "Know the law," added Thompson, "and only then analyze the facts and circumstances presented by the prospective project. In this regard, there are several avenues to uncover projects, all of which require hard attention and critical analysis."

Thompson recommends various approaches to identifying new opportunities, including close monitoring of FDA action, medical journals and medical-related publications; tracking Google alerts and trending topics on social media; attendance (and paying attention) at medical and legal seminars; periodically checking legal blogs and websites (both plaintiff and defense); utilizing attorney networks, and tuning in to feedback from current clients and their families.

Once you have a potential litigation target in your sights, your next step is

to determine viability. At the outset, **Kristian Rasmussen of Cory Watson, P.C.**, in Alabama says he asks some of the following questions: "Is the drug or device defective? Does the potential harm outweigh the benefit? This requires review of FDA reports and medical research. Is there a signature injury or disease? What is the mechanism of injury—and is it accepted in the medical and scientific community? Is the epidemiology in plaintiffs' favor? What is the number of potential cases? Is there a clear set of criteria for initial evaluation of cases? What event brought about litigation or threat of litigation—FDA recall, voluntary withdrawal, increased warnings on the product, "Dear Healthcare Provider" letter, or updated scientific findings?"



Further research, as well as the retention of an epidemiologist and other medical experts, will help to flesh out the strength of the scientific evidence, the adequacy of the warning label and warnings history, potential statute of limitations issues, federal preemption concerns, and other issues regarding liability and causation that could impact your decision to pursue the matter any further.

Choosing the Right Experts

The success of a drug or device case can rise or fall on the strength of your expert witnesses, so this is an area where careful

consideration is necessary. "We try to match our experts to the litigation," said **Rick Meadow of The Lanier Law Firm** in Texas.

"For example, if the drug causes cardiovascular issues, we hire a cardiologist; if the drug causes a kidney injury, we hire a nephrologist. We also hire an epidemiologist to help us decipher if previous studies related to a drug's side-effects are accurate and unbiased."

Referencing the ongoing talcum powder litigation, Meadow emphasized the value of a corporate knowledge expert to determine whether a corporate defendant has known or should have known about the potential injury their product causes and for how long. "We like to get the full picture of a company before we begin litigation," Meadow concluded.

Case Acquisition

From TV, web and social media marketing, to everything in between, there is a wide range of options available for lawyers seeking to acquire mass tort cases. Your marketing budget, the type of product, the signature injury and your target demographic will usually dictate which form of advertising will be most effective.

For someone just starting out in mass torts, "any means of advertising, referrals, or third-party case generation would be good methods to acquire cases," said Meadow. However, he is quick to caution attorneys to "thoroughly vet any source for case acquisition," warning of the existence of unscrupulous vendors who may sell you stale, recycled or stolen leads.

Ellen Presby of The Nemeroff Law Firm in Texas noted that it's easier to rely on referrals once your firm is established

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With media spend of over \$26 million, our reach and scope was extensive in 2016. We launched over 50 unique national and regional, highly targeted, multi-channel and fully integrated campaigns for over 55 case types and delivered over 35,000 qualified leads to 350 co-counsel firms.

Some of our most successful mass tort campaigns included:

- Talcum Powder
- Essure
- Taxotere
- Abilify
- Xarelto
- IVC Filters
- Stryker LFIT
- Stockert 3T Devices
- Benicar
- Invokana
- Viagra
- Hernia Mesh

How Did We Do It?

- **Compliance** – Meticulous attention to state-by-state compliance gives us tremendous strategic advantage. We can market ethically and efficiently to the widest possible audience and deliver to our co-counsel the cases they want with the peace of mind that only our national compliance can provide.
- **Case Generation** – With almost 40 years of legal marketing experience, our size, scale and long-term vendor relationships allow us to negotiate the best media rates. Our investment in marketing analytics means we’re targeting the right prospects at the



right time. Media spending power and leverage for greater efficiencies and effectiveness means we deliver the most qualified leads.

- **Conversion** – With our customized intake process and lead qualification tailored to each firm’s specifications, our best-of-breed screening delivers the cases that are worth pursuing—and that means better conversion and better return on investment. 🍀

Contributing Editor

The Stakes: At an All-Time High

For trial lawyers and their clients, the current climate in the U.S. Congress is the toughest since the Contract with America Congress of the 1990s. In the first two months after being sworn in, the current Congress introduced several anti-consumer, anti-patient tort “reform” bills.

For example, H.R. 985, the so-called “Fairness in Class Action Litigation Act” and H.R. 906, the “Furthering Asbestos Claims Transparency Act,” were rolled together into H.R. 985. This year’s version of the bill is harsher than last year’s, with more restrictions on people’s ability to hold corporations accountable. The most problematic aspects of this legislation include:

Elimination of Class Actions. The bill requires class members to have the same type and scope of injury as the named representative. In an employment discrimination case, it means that all the class members have the same amount of lost wages. In a case involving mortgage fraud, all the homeowners will have suffered the same amount of damages for the same duration.

Violation of Contractual Rights. The bill interferes with an attorney’s ability to

represent his or her clients, prohibiting an attorney from representing a family member or law firm employee in a class action. Meanwhile, corporations can use the same counsel, as they wish.

Imposition of One-Sided Requirements. Many of the bill’s provisions apply only to plaintiffs and their attorneys. The discovery stay, the third-party funding disclosure provision, the requirement to prove causation and liability before discovery in a multi-district litigation proceeding, and the prohibition against joining plaintiffs together in the same case all impose one-sided requirements on injured people, but not on corporate defendants. The fee restrictions in the bill apply only to attorneys representing plaintiffs.

Elimination of Existing Rights. The bill applies to pending class actions and consolidated tort claims. Passage of the bill would eliminate existing remedies for plaintiffs without justification.

AAJ fought back by launching a targeted PR and grassroots campaign to disrupt momentum of this bill and others moving through the legislative process. In the House Floor vote on H.R. 985, every

*By Linda Lipsen
CEO, American Association for Justice*

Democrat—and a number of Republicans—stood strongly against the bill. Strong votes against anti-consumer legislation send a clear message to the Senate that there is fierce opposition to bills.

Many of you reading this newsletter, and your clients, helped us by taking action through our Take Justice Back website (www.TakeJusticeBack.com). We provided a portal through which attorneys and clients could easily send emails to their members of Congress. This effort resulted in more than 23,000 letters and more than 1,000 calls to Congress.

AAJ will keep up the momentum and I hope you will help us. If you are not an AAJ member, please join us by going to www.justice.org/JOIN. There is strength in numbers! We are witnessing a vehement attack on practices big and small. All lawyers and all practice areas.

I appreciate the work you do to help injured people. Let’s work together to ensure that people harmed by corporate negligence continue to have a remedy in this country. 🍀

If you have a mesothelioma case to refer out, do you know where to send it to get the best representation for your client and to maximize your referral fee?

When it comes to handling asbestos exposure cases, one law firm stands apart from the rest and has the track record of success to back it up.

Besides having recovered over \$5 billion for clients through settlements and verdicts—the majority of that for mesothelioma victims and their families, Simmons Hanly Conroy, LLC of Alton, Illinois files more mesothelioma cases than any other firm in the country. In fact, according to Asbestos Litigation: 2016 Year in Review, a report published by the consulting firm KCIC that estimates to capture at least 90% of the total asbestos filings in the U.S., Simmons Hanly Conroy files significantly more mesothelioma cases than the next closest firm. This is a record the firm has held since 2014 when KCIC started compiling this information.

But the attorneys of Simmons Hanly Conroy were filing and settling mesothelioma cases long before KCIC started tracking this information.

From its humble beginnings in 1999 as the Simmons Firm, the firm, founded by John Simmons with his small staff of 7, specialized in only one area of law: asbestos litigation. Having grown up in East Alton, Ill., the son of a steelworker, Simmons understood the dangers, health hazards and challenges faced by workers and their families. Deciding to focus his practice on helping workers exposed to asbestos was a natural choice for him.

It was then that Simmons partnered with Sokolove Law to handle marketing and case generation and our long-standing relationship was forged.

Simmons’ first trial was a mesothelioma case involving a former Shell Oil employee who had worked as a roofer. In a jury verdict, Simmons won \$34.1 million in the lawsuit. At that time,



JOHN SIMMONS, Founder & Chairman

it was one of the largest jury verdicts in a mesothelioma case. The \$34.1 million record was soon shattered, again by Simmons, when he won a \$250 million verdict for a steelworker client. This verdict still stands today as the largest verdict for a single asbestos plaintiff.

Within a short time, the firm experienced meteoric growth and was on a trajectory for continued success that John Simmons himself could not have imagined. By 2006, the firm, which was then known as Simmons Cooper, had 45 attorneys and approximately 400 employees. They soon expanded into other areas of law, including dangerous drugs and medical devices, intellectual property infringement, environmental litigation, consumer protection and contingent fee commercial litigation and gradually gained a reputation as a leader in mass tort litigation.

In 2014, the firm merged with mass tort litigation powerhouse Hanly, Conroy, Bierstein, Sheridan, Fisher & Hayes LLP, of New York after a 10-year co-counsel relationship on products liability cases. Through the merger, Simmons Hanly Conroy was created. Today, with 50 lawyers in 5 offices around the country, the firm continues to excel as a leader in mesothelioma and mass tort litigation.

Success is not the only thing that drives Simmons Hanly Conroy. The firm is committed to giving back to the community and to furthering research to help eradicate mesothelioma and other cancers. With a donation of over \$10 million, the Simmons Cancer Institute, a patient care, research, education and outreach center was erected on the campus of Southern Illinois University in Springfield. Simmons Hanly Conroy also runs a philanthropic arm called the Simmons Employee Foundation, which has donated over \$1 million to charities and events and over \$20 million to cancer research. Finally, the firm established the Simmons Mesothelioma Foundation, which gives money to universities for research. As of the end of 2016, the foundation gave over \$5 million to several universities across the U.S.

If you have a mesothelioma case you’d like to refer, isn’t Simmons Hanly Conroy your natural first choice? Call us at 1-800-305-4009 for an introduction or if you call them directly, be sure to mention Sokolove Law so that you are guaranteed the best referral fee above and beyond industry standards. 🍀