

# Tips and Strategies for Successful Mass Tort Management

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Mass tort litigation is unlike many other types of litigation – the cases are large, complex, and fast moving, and if you’re not organized and prepared early on, it can be hard to regain control. In this podcast, Carlton Fields attorneys Ryan Cobbs and Ashley Drumm discuss the idiosyncrasies of mass tort management and share tips and strategies to help you maximize efficiency and direct resources

toward winning — not just defending — your next mass tort engagement.

For more tips and strategies, read: [5 Steps to Successful Mass Tort Management](#)

## Transcript:

**Ryan Cobbs:** Hi, my name is Ryan Cobbs. I am a partner at Carlton Fields in our West Palm Beach Office. I am also the Co-Practice Group Leader of our Mass Tort and Product Liability Practice Group. I represent companies involved in mass tort and product liability litigation in Florida and around the country.

**Ashley Drumm:** I'm Ashley Drumm I'm also a partner in Carlton Fields West Palm Office and a member the Mass Tort and Product Liability Practice Group. My practice focus is on representing global and national clients in mass tort and individual litigation. Ryan and I have worked together managing mass torts, closing in on almost a decade. Ryan and I wanted to start with the call. The call that comes in on 4 p.m. on a Friday and you handle more of those than I have so, can you talk a little bit about what that is like?

**Ryan Cobbs:** Sure, I mean, we are here today to talk about that call that many of us hope we get but we are also a little concerned when we get it. I'm talking about the call from a current or a new client that comes to you with a problem, but not just a small problem, a big one or a growing one. That's kind of the emerging mass tort. You may get a call, hopefully, it's not on a Friday afternoon at 4 o'clock, but whenever it is, you get it, there will be a whole range of thoughts and emotions going through your head about what to do next because as many of us know who practice in this area, these cases are not like any other type of litigation - they are large, they are complex, they are fast moving and if you don't have your ducks in a row, early on, they can kind of get out of the gate ahead of you and they are hard to wheel back but we are here today to talk a little bit about an article that Ashley and I wrote on Mass Tort Management. There is lots of articles out there about Mass Torts - whether its experts or trials. When we look at the landscape of the literature out there, we just didn't think there was a lot on Management which isn't necessarily the sexiest thing you can talk about, write about in an article or in a podcast but as we go through things today, I think you will get an idea of how critical it is to success for your client in that area.

So, Ashley, maybe you can tell us a little about, why you're interested, why we think it's important and why we're here to talk about it today.

**Ashley Drumm:** Yes, absolutely! Management is not something that was forefront in my mind when I started working on these case with Ryan and his team. It was something that, cases-by-base and working with such a body of active complaints I realized was really, really critical and its, it's kind of like a very long term chess game. You create you plan - you set it up, you have your initial things that you much do, you have your mid-game strategies and then, depending on how far along an individual

case gets, or a group of cases, you have your closing maneuvers and so, those are things that are really fascinating and these are all important because they can so easily be taken for one product, for example and, of course, you have to tailor things depending on the client and the nature of the product that is an issue but it's very satisfying to see a game plan work when repeated successfully and repeated by really good people. So, now that I've been working more and more on the management side, as I become more senior, I and Ryan - I mean, we are both always looking for ways to run cases more efficiently, more effectively and some of things that I do, I really look to different team members at different stages - you have to look, not just to the partners you work with but also to legal assistance, to the paralegals to the associates. There are tips and there are strategies that can be adopted from the habits of really good team members and implemented on a broader scale so, those are very important.

**Ryan Cobbs:** One thing I'll add to that, there is this old adage that I think lots of lawyers have heard and I don't necessarily subscribe to it but it's this idea that lawyers are not good managers or can't be good managers. I do think it's true that you're not necessarily though management in law school and a lot of times coming up in the associate ranks, you're not thought *per se* but I don't think lawyers can't be good managers. I know they can and it's such a critical part of a practice, particularly in mass tort and it's often overlooked, or time isn't put into it, or training or mentoring isn't focused on it. When we think of, kind of great lawyers - particularly in the movies, you think of the amazing cross examination by, Tom Cruise, in *A Few Good Men*, or the opening statement and closing arguments in *Philadelphia* by, Denzel Washington, and that's what we think of as lawyers but there is so much management that goes into that. I mean, if you can think of those two movies, for example, well there is a whole bunch of people, if they were real, that were managing the case before that to get to the point where you even get to have that sort of Hollywood moment in the courtroom or that great brief that wins a case. So that's why we both thought this was so important to talk about and why lawyers need to train themselves to be better managers and to mentor up and coming managers as well.

So, Ashley, why don't you start us off in going through some of the highlights from our article and start off with the first point and why it's important to learn your client's goals.

**Ashley Drumm:** Will do! I think that is really important and I think the initial reaction a lot of people may have is, "Oh, that's very obvious," or "that's very cliché." The fact is, it's worth bringing up and discussing even if it is both of those things because there are a lot of sub-points underneath it that are not obvious - that are really important and I think worth flushing out. So, the first thing is, when a client comes to you with a problem, I think most of us are geared to immediately be on the alert and many times the response could be to jump up, jump right in and say, "I have a plan, I have a plan" and it's great if you have a plan but the first thing that has to happen is to not just hear what your client says their goals are but really talk through them. This is what your goal is, and all right, do you understand what we perceive as being necessary to achieved those goals because a lawyer's plan

may have a lot of underlining assumptions about what needs to be done and how the litigation can be managed and the client's goal may have another set of assumptions and the two sets may differ, they may conflict. So, it's important to have a very strategic talk through about what are we going to doing. I can be very easy to rush pass that if there are complaints that are being filed that are time sensitive and advantages that needs to be gained by immediate action. For example, when you're discussing strategies with your client and your client may say to you, "We want these resolved, really quickly" and you talk through - OK, to resolve it quickly, this is what I would recommend, we are going to do; a, b, c. Well, in talking about those things, you may realize that what the client really wants is not exactly a quick resolution but we need to conduct so tort discovery. We need to have motion practice based on that and then we want the quick resolution. Those two things together may make it a less expensive quick resolution. It may make it a more wide reaching and effective quick resolution. So, the other thing that's important to talk about in reaching this goal and why - and this is something you really, I think, taught me over years, is the cost. The cost discussion must be had. The budget is one of the most unfun things about litigation planning and it is extremely time consuming and it's very easy to push that a little bit back while you immediately address the things that need to be triaged but the sooner that you can share with the client the realistic cost of reaching the clients goals, the better able you'll be positioned to really know what your management strategy is, is going to work for your client's litigation and financial goals. So, that's another unsexy thing - it's the budget. I don't even think that came up in the article but just talking about it, I really realized it's important...

**Ryan Cobbs:** And not only have that conversation beginning but you are going to have that consistently through the life of - and again, we're not talking about "a case" we are talking about "mass litigations". So, that is something you need to be checking in quarterly, annually. These things go on for a long time, and goals can change when cost change, and strategies change, and are successful, or not so successful.

**Ashley Drumm:** One thing I wanted to finish out this particular piece with Ryan before we talk about some of the other really important things that go on in managing a mass tort, is conducting the threat assessment. Because just like the cost of litigation over time can really shift what a client's goals are, I think the initial goals, it's important to recognize what is going to be impacting it. The threat of large damages, the risk of protracted litigation as opposed to the silver bullet that just kind of quickly extinguishes litigation. I think that all like that, I don't know how often it happens. The potential lifetime of the litigation and really, a lot of what drives the too, I think, can be the Plaintiff's appetite, the Plaintiffs' appetite for that tort. So, whatever you figure out with the client is the goal, that has got to the top of mind at every strategic decision because, especially if the litigation last, those thing need to be brought up and evaluated and examined to see if they are still relevant goals.

Ryan, I think the other really important thing is the role that each person in each - maybe the law firm even plays in mass litigation. Do you want to talk a bit about that?

**Ryan Cobbs:** Sure! It's a mantra that I've used, I've heard clients' use. It's one if you're involved mass tort, it should be one. That's always top of mind is knowing your role! A typical lawsuit and case that many lawyers are used to is here - here's your case, run with it, from the day you file it through trial and handle all pieces of it, or your firm will handle all pieces of that. The mass tort is almost always different and it's different because you're typically dealing with cases across multiple jurisdictions, across the country, just different locales, different issues and often times the volume is so large that no one firm can or should handle all the pieces of it if you're really trying to be successful. So, I think I've probably been in all of these roles at one point or another throughout my career, whether it's national, local, expert council or focusing on legal issues. But it's really important to know your role. There is this term I think that has been thrown around a lot in the last probably five to ten years now that most of us can work remotely, we've seen in the pandemic but this idea of a virtual law firm and it's this concept that clients have multiple firms, working together, cooperating for one goal - defense of the mass tort success and that mass tort. And so, knowing your role and being accountable for that role, is so important and I'll give some examples. If you're in the national council role, you are obviously developing the strategy to win the litigation across the country and "win" can have many different definitions but you're coming up with the strategy that's going to apply across the country. Now, at the same time, you're effectuating that role and trying to be the great national council. You need to know your role and the role of others - whether it's your local council or your expert council and I'll tell you why. Often times the national council, you can analogize it to the general up on top of the hill and you may have your local council down in the trenches in various parts on the battlefield. You may have your expert council - let's put them perched up on a tree doing what they're doing to give this war analogy. But if you don't know what's going on in each locale, you could be sending your local council into a total buzz saw of a certain judge in a certain jurisdiction that although your marching orders across the country are one thing, that locale is just not going to work and so, not just knowing your role as national council, but knowing the roles of local and other, it's critical.

The flip side of that, as local council, you need to know what your role is, if it's a support role for trial lawyers that are coming in, if it's support role for your national council and you need to stay within that role and within that lane and do that really, really well unless you're asked to do more. I think a lot of times the virtual law firm can run into some speed bumps and hiccups when folks are kind of going outside their lane, not doing what they are assigned to do really well first, before they look into other areas. But again, as local council, that is your role, know your role but know what national council is dealing with, or regional council or expert council. Don't make your decisions on a local level in a vacuum without thinking of the big picture. Don't have blinders on. You'll see a lot more success that way, you're be valued a lot more both by your national council and your clients, if you're doing that. And then knowing your role goes hand-in-hand with building trust. The only way these virtual law firms work and are successful with their clients, built on relationships and trust. I've been in good situations in virtual law firms and not so good situations. I often look at, are you dealing with a cooperative environment or a competitive environment and it should never be the latter in that



situation. You need to build the trust with whoever else is on your team. If you make a mistake, you need to own it. When there is credit due, you need to give it to the person where it's due. Clients hate nothing more than their partners in different law firms that is trying to jockey for a better role in the litigation or a new work down the road. They can see it a mile away. It doesn't happen - at least in my experience, it's been rare. But when it does, boy, does it - does it stink up the room. I mean, you really does not look good and so again, trust, knowing your role, being accountable for your role, those are all keys to your successful mass tort management.

Ashley, there is one other topic I think we are going to talk about today that we will both handle together and that's how to choose your team.

**Ashley Drumm:** Yes! This is my favorite topic because it is so important and we have a really good team, I think, and it has branched out into other, more than one client. We have a core group of people that were able to put into mass torts and with the few satellite people really having an effective operation.

**Ryan Cobbs:** Yes, and I can't stress this point enough - choosing your team and choosing it wisely. I analogize it to the head coach and pick your sports team. The head coaches get all the glory but they also get all the blame. So, what does that mean? It means you need to fill out that rooster strategically, not with your friends, not who you worked necessarily with in the past, but the best people for the job. That means, not just yourself or within your own firm, but whether you consider other law firms. I will share a little personal insight. Earlier in my career when you're trying to get opportunities, you say yes to everything and you want to do every hearing, trial, brief - whatever it is but as you get a little further in your career, you realize that, you know what, I may not be the best lawyer for that hearing or that judge, or that opponent. You need to continue to reflect on that with yourself, within your law firm and outside the law firm so, that you're getting the right person for the job, for the client, in that instance.

Yes, Ashley, I wanted you to talk a little bit about kind of what the different team players are in a typical mass tort and why they are important.

**Ashley Drumm:** Sure! Before we go to that topic, I wanted to add an anecdote about - to your point about picking the right person for the right opponent. This wasn't in the mass tort context but it was in a products context and it was, the decision to have an associate who was with a tool related product and the associate had prior experience using that exact tool. It just made a lot of sense to say, OK, we are going to send this associate to the product inspection, or even, we've had that come up in a deposition where the subject matter, you have people who have outside experience and it's really important to be looking at who you have in your rooster to say, all right, is this person with specialized knowledge going to bring something additional to an otherwise pretty standard deposition.

**Ryan Cobbs:** And I think when you do make changes like that or substitutions or you're picking and you go to your client and you explain why you're doing it, hey, this person may be person may be pretty junior, in terms of...

**Ashley Drumm:** Yes.

**Ryan Cobbs:** ...but they have this expertise...

**Ashley Drumm:** Yes.

**Ryan Cobbs:** ... or you know what, we would normally handle this but I think this lawyer at that other law firm would be really good for this and here's why - clients really respect that and again, that builds the trust up that you're really trying to win, you're not just trying to hoard the work for yourself or within your own firm - you're trying to meet the clients goals.

**Ashley Drumm:** Yes and so, going into the discussion of who you slot in where in your rooster. There are lots of roles and sometimes the roles might overlap but you're a litigation manager, you're a strategic thinker and I mean, those two things, Ryan, to your point earlier about all lawyers, where they can benefit by learning and thinking about how to become better managers and I think that's true. I also think there's some people who just really like it and are kind of naturally good at it, probably some of us who really like it and become better at it just by virtue of doing it. So, the important thing is, all right, we want to encourage people to develop a whole host of skills but who is our go-to when you need a closer for hearing. Who do you tap to say, all right, I'm going to prep you and send you in, we need this result? I mean - I can - I think of, folks we use for that purpose. I think of the niche we have where you have a lot of need for expert development and working with some of the expert managers on a regional and national level and it's great to have someone on your team you can call up and say, "All right, here are the facts of this case, here are some of the expert issues. Is there anything we need to do early on to make sure we've got all the science parts lined up because are going to get a really short trial date? So, those are pieces that's important and it's good both to spot natural talent and then further development where needed and also to ask lawyers on your team, "What's your interest?" "What is something that you are interested and wanting to learn more about?" Because, I think, you can't just look at immediate needs this year. You have to look at, all right - What if this litigation grows? What if we are asked to start taking on a more active role in X arena? You need to make sure that before you get to that point, you have people who are prepared and ready to take on those challenges.

Ryan, now you - I mean, I wanted to also lob this one back to you because you've been more keen in putting together a team for a while and so, I think that one of the things that we both agree on is how important paralegals are and that is something when you're building it - when you're building a team,

you cannot undervalue the need for someone with both a lot of experience in the management and then a lot of institutional knowledge. I think that those things are import.

**Ryan Cobbs:** Yes, and I'm going to go out on a limb and say this and some of my colleagues may not agree with me, but I think in mass tort litigation there is no other type of litigation where a good paralegal is as valuable and is necessary, maybe real estate and closing things like that but because you're dealing with such a volume and you need someone that can really whittle things down, master everything, organize it, wield it for you and your team and we are talking, you and I, we live in the world of spreadsheets...

**Ashley Drumm:** Yes.

**Ryan Cobbs:** ... I never thought I would go to law school and do spreadsheets...

**Ashley Drumm:** Yes.

**Ryan Cobbs:** ... I needed to learn Excel but that's the only way you can keep track of such massive amounts of information and plaintiffs and be able to have one-the-spot answers for your clients. So, paralegals, being able to hand that is so important. Then there is the investigation piece which we deal with is a huge part of mass tort cases because you're constantly trying to figure out the facts, the Plaintiffs, their story, the product and the paralegal investigatory skills are just invaluable for that as well.

**Ashley Drumm:** And I was going to add too that it's so important too that, I think, associates from the beginning also be trained to do all of those things - not necessarily routinely but frequently we deal with such a volume of cases that inevitably, one case will be on the eve of trial and five more cases will need active management and its important, not that you have associates you want to have doing more of the ministerial task, but they need to know it because in a pinch, you got to be able to get in up to your elbows.

**Ryan Cobbs:** Well that's a perfect example of knowing your role and knowing the role of others...

**Ashley Drumm:** Yes.

**Ryan Cobbs:** ...because if you don't what it is your paralegal does, not only can you not do it but I don't think you can appreciate the capabilities, the timing, are you asking for things that are just totally out...

**Ashley Drumm:** Yes.



**Ryan Cobbs:** ... of the realm of completion, and then are you overpromising your client because you've just made a promise that your team can't fulfill? So, that's a really great point, Ashley.

**Ashley Drumm:** And just tying that back into something, I think that, we were talking at the beginning of ways to become more efficient and development more efficacy overall in the litigation. I think one thing that I have employed and I think, honestly, I think I learned it from you, I don't know, but I'm going to credit you with it...

**Ryan Cobbs:** I'll take it.

**Ashley Drumm:** ... is, ask the people that you're working with, OK, is - this process, if the process is breaking down, this process is not working. Like, can you tell me why you think it's not working? What will be helpful to you? I did that recently and just asked, OK, there seems to be a logjam happening. What needs to be done from your perspective? Because it's very easy, especially, the higher up you go in your career to look down and say, "Oh, that's such an easy fix, just do this" but when you're managing something, as much as you're managing these litigation issues, all of the litigation issues require people who are in the cogs and, like, working them for you. So, you have to talk to them and learn from their immediate experience what needs to be tweaked.

**Ryan Cobbs:** That's a really good point, Ashley! We are going to close this out with a little bonus tip that was not in our article but as Ashley and I were preparing for this podcast, it dawned on me and frankly it probably should have been on our article but it's a good thing we are doing the podcast now and then we can share it. One key tip if you're involved in mass tort litigation around the country that is often overlooked because this person is typically seen as the enemy by your client, often times by you, it's the relationships you have with Plaintiff's lawyers on the other side of cases and being able to manage different personalities and who you deal with and how you deal with them in terms of meeting your clients goals. Ashley, I know you'll chuckle because we'll think of different adversaries we have in litigation and how different we handle them. Some, they are just incorrigible and it doesn't matter how nice you try to be or accommodating, they are just going to be difficult because they think that helps them with the case. OK. You know what to do with that person.

There are others that are more reasonable, there are others that are just business people, there are others that think they're saving the world and it doesn't matter what kind of reasonable idea you throw their way, they are going to stick to this principle that they assigned for themselves. Ashley, we know that we deal with certain lawyers and we have certain of our defense lawyers that we assign to cases like that because they work well together. It's not always about going to do battle and winning with your adversaries, but it's still two human beings, relationships, personalities and that can be a huge value for your client if you're able to navigate those successfully in mass tort.

Not every case goes to a trial, some of them are settled. Sometimes, if you're just so difficult, you're going to create more fights for your client they just don't need.

Ashley, do you have any kind of thoughts or comments on that bonus tip?

**Ashley Drumm:** No, but that is a great bonus tip. I will also add that there were two other tips that we didn't talk about that are in our article which I would encourage everyone listening to this podcast to read if you want more strategies for successful mass tort management. It's available on Carlton Field's website. If anyone has questions for me, or for Ryan, you can reach us via email. My email is [adrumm@carltonfields.com](mailto:adrumm@carltonfields.com). Ryan?

**Ryan Cobbs:** And mine is [r.cobbs@carltonfields.com](mailto:r.cobbs@carltonfields.com) Thank you!

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