

## Driving Resolution in Mass Torts

The threat of mass tort litigation is real enough for many corporations that it continues to be among the top reasons executive leadership teams lose sleep at night. That said, the impact of this threat can be muted by leveraging a new form of resolution counsel that brings together exceptional legal instinct and acumen with emerging technology and effective project management.

As mass tort litigation continues to saddle many companies with a logistical and costly morass of management and regulatory burdens, Tanenbaum Keale has developed an approach to resolution counsel that positions clients to defend and resolve existing and threatened claims against their businesses efficiently and effectively.

Our team understands the complexity of navigating litigation that places a company at a crossroad where it must balance the demands of litigation, both in terms of financial cost and dislocation, against the natural desire to defend the company, its products and people at any cost. We are trial attorneys who have an understanding of and respect for the pressures your business faces in its day-to-day operations.

## Our Approach

We love trying cases. From start to finish, we immerse ourselves in the strategy and its execution, whether we are developing experts, exposing junk science or preparing the company story. On a parallel track, as desired by our clients, our team simultaneously models scenarios that could lead our clients to favorable forms of resolution. We understand that the vast majority of cases end in settlement, not jury verdicts.

This approach led us to create a practice that is dedicated to serving as resolution counsel for clients. Whether it's drug or medical device litigation, an environmental disaster or a toxic tort, clients need an experienced legal team to help assess liabilities, develop strategies for resolution and implement integrated plans that use litigation leverage to drive resolution.

Our experience handling and managing litigation from inception to trial and through appeal equips our attorneys with unique insight into the likely trajectories of litigation. This experience also enables us to provide our clients with decision pathways that allows them to evaluate and choose from different litigation and resolution strategies designed to meet their business goals.

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We use proprietary data management software to track individual claims, determine trends, evaluate risk and provide the tools for clients to meet internal and external reporting obligations. We rely on our experience with major plaintiff firms and knowledge about every plaintiff-friendly venue across the United States to develop risk assessment models and strategies. This allows our clients to best decide how to use litigation and resolution resources interactively to create strategic litigation leverage. Furthermore, our attorneys rely on their knowledge of judges and procedural rules to strategically craft settlements that maximize closure for our clients and deliver the results our clients desire at the lowest possible overall cost.

Here are some of the things that make us different

## **Creative Solutions on the Forefront of Mass Tort Litigation**

Tanenbaum Keale's attorneys have occupied center stage in defending corporations ensnared in complex mass tort controversies that have grabbed headlines and clogged court systems. The breadth of our experience defies a simple listing but ranges from cases involving breast and pelvic implants to chemical spills, pharmaceutical products, environmental torts and building products. We've learned a thing or two from these experiences, including how to value a mass tort and how to get rid of it. Tanenbaum Keale lawyers have crafted and implemented influential class settlements and developed strategies and protocols for aggregate settlements on a nonclass basis.

## **Tracking Information**

Mass tort litigation requires companies to keep track of a massive amount of information for hundreds or thousands of claimants. Through our information technology subsidiary, Xerdict Group LLC and its proprietary web-based extranet tool, CaseEnsemble, we provide a platform where our clients can collect, analyze and act on information obtained by their legal and business teams. This not only includes information about liability, damages, liens, procedural

status and settlements, but it also allows our clients to track information about a host of other metrics relevant to their businesses, including product usage, alleged failure modes, claimant demographics and other data. CaseEnsemble facilitates communication among legal teams, allowing in-house, national and local counsel to correspond and analyze information in a secure, common space. And it gives clients instant access to information needed for reporting, disclosures, and for setting reserves.

## **Negotiating the Deal**

Mass tort resolution requires advocacy and mastery of information about individual claimants. Plaintiffs' counsel are known for overstating their claims and are often blind to informational gaps that undermine the legitimacy of individual claims. Agreements cannot be reached unless the parties can clearly identify the universe of claims and the information supporting them. Over many years, Tanenbaum Keale's lawyers have developed relationships with the plaintiffs' counsel who represent mass tort claimants. Plaintiffs' counsel understand we negotiate from strength based on the facts and laws applicable to each engagement. Through our mastery of evidence relating to liability and individual damages, we cut through their puffery and posturing to advocate for our clients. From our experience built on scores of mass tort litigations, we are able to assess verdict risk and settlement values, and model the risks and benefits and attendant costs associated with differing legal strategies.

## **Services à la Carte**

When clients retain us to defend a mass tort, our resolution services and technology are at their disposal. In some instances, however, clients ask us to step in to help resolve litigation defended by another firm. This can provide tactical benefits, as it allows one firm's lawyers to focus on defending litigation aggressively while providing a fresh set of eyes and a clean slate to negotiate with plaintiffs' counsel. Either way, we are prepared to assist and will do so cooperatively with any other defense firm.