

INVESTIGATIONS FOR PRODUCT LIABILITY AND TOXIC-TORT LITIGATORS

The Mintz Group specializes in helping defense counsel gather facts to prevail in product-liability and toxic-tort lawsuits. Our investigations have involved a wide variety of products, including pharmaceuticals, medical implants, lead paint, automobiles, heavy machinery and various asbestos-containing products.

The assignments we undertake in product-liability cases are often aimed at answering one or more of the following questions:

- Are the plaintiff and the plaintiff's witnesses credible?
- Was our client's product really used by the plaintiff?
- Is there an alternative explanation for the plaintiff's alleged injuries?
- Did our client's product truly malfunction or fail to perform as alleged?
- Is plaintiff's counsel engaged in litigation abuse relating to the solicitation of clients, production of evidence, testimony of experts or influence over judges?

Plaintiff's Credibility

The first issue clients often ask us to examine is the plaintiff's background and reputation. We focus on whether the plaintiff has been in civil or criminal trouble, has been under financial pressure and has been truthful about his background. We look for any indications that the plaintiff's injuries were caused by something other than our client's product.

We start with the public record but often follow up with quiet interviews to sharpen our understanding of important contradictions between the plaintiff's testimony and what we learn independently. We understand that questioning the credibility of an inherently sympathetic plaintiff can be a delicate issue; clients value our discretion and our ability to zero in on what really matters.

Real Role of Client's Product

We gather information about the plaintiff's actual use of the client's product primarily by identifying and interviewing the people who would know best, often former co-workers of the plaintiff and others who used the product.

Clients call on our interviewing skills particularly when such witnesses are hard to identify, hard to find or likely resistant to getting involved with litigation.

Identifying knowledgeable and sympathetic people is a core competency of the Mintz Group, to which we devote significant resources and creativity. To cite just a few examples, we have found witnesses by placing ads in neighborhood newspapers targeted at particular tradesmen; searching websites or listserves hosted by and for former employees of specific companies; and scouring the obscure public record such as building permits, crew lists of merchant ships, purchase orders, etc.

Some details in these case studies have been changed to protect client confidentiality.



Product Identification

Product identification has been the Achilles heel in a number of the toxic-tort claims we have investigated for clients, including claims involving asbestos and lead paint. These have been cases where exposure took place years ago and where there are a myriad of possible defendants.

We have frequently succeeded in tracking down people and documents that effectively refuted product identification on our clients, helping them win summary judgment in some cases and a relatively painless settlement in others. We have identified witnesses from work sites as long ago as the 1930s and tracked them down across the intervening years.

Alternative Causation

Clients use us to bolster alternative-causation defenses. Exploring other explanations for the plaintiff's injuries means digging further into known alternatives (other products, other toxins, other manufacturers) and keeping our ears and eyes open for something unexpected (a dangerous hobby we didn't know about, a history of negligence at a work site).

We have found that the plaintiff often wants to tell a story that is far simpler than the truth. We excel at getting the *whole* story.

Litigation Abuse

On a number of occasions, clients have asked us to investigate apparent abuse of the litigation process in mass torts and product-liability cases.

We have looked behind the veil of certain "magic jurisdictions" where, as plaintiff attorney Richard Scruggs has said, "Cases are not won in the courtroom. They are won on the back roads long before the case goes to trial." And we have gathered information from across the U.S. on practices such as attorney-sponsored screenings.

We have particular expertise in investigating allegations of:

- Undisclosed ties between lawyer and expert
- Questionable medical evidence
- Pinpoint (apparently coached) witness testimony
- Possible influence over judges
- Improperly distributed settlement money

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