

Incorporating mass tort cases into your firm's portfolio can be the factor that takes your firm to the next level. It can also be an overwhelming undertaking. Before you start, make sure you have a thorough understanding of mass tort litigation, as well as what business model will work best within the existing structure of your firm. Determining which mass tort cases to get involved in is an important part of the process. Like single event cases, not all mass tort cases are viable. Mass tort litigation requires significant resources so you will want to be confident in the choice you make. Some areas of investigation include:

- Research on the science and experts involved in the claim
- Specific and general causation theories
- Likelihood of surviving a Daubert/Frye challenge
- Budgeting the cost per client acquisition
- When to start, pause, or end marketing campaigns
- Other mass tort firms involved in the litigation

The Mass Tort Institute's ***Tort Selection Research Checklist*** will help you stay organized and ensure no step is missed in your evaluation of potential dockets to pursue. Whether you are a solo practitioner or have a team of lawyers and support staff to assist, you will be able to start evaluating existing and emerging mass tort dockets right away!

At MTI we offer a variety of products to assist practitioners looking to enter the mass tort industry including online self-led courses to help you strategically plan and time your entry, execute your plan and build your network, and ultimately maximize your return by getting the best settlements possible for your clients.

Join the Mass Tort Institute today and let's start a conversation.

Email: [info@masstortinstitute.com](mailto:info@masstortinstitute.com)

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Call: 888-789-TORT

This handy Tort Selection  
Research Checklist  
can be used to verify  
important steps  
when choosing a mass tort  
to invest in.

# **TORT SELECTION RESEARCH CHECKLIST**

Don't Miss a Single Step.

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**TORT SELECTION RESEARCH CHECKLIST**


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Docket Name

**STATUTE OF LIMITATIONS:**
**YES / NO**

1. Date(s) of Injury or notice to person or property \_\_\_\_\_
2. Anniversary of recall or notice date \_\_\_\_\_
3. State SOL for each cause of action \_\_\_\_\_

**DOCKET TRIGGERS:**

4. FDA Recall (Class I, Class II or Class III) \_\_\_\_\_
5. JAMA or other publication study \_\_\_\_\_
6. International Agency for Research on Cancer (IARC) \_\_\_\_\_
7. Consumer Product Safety Commission (CPSC) \_\_\_\_\_
8. Media report \_\_\_\_\_

**PREEMPTION ISSUES:**

9. Express preemption \_\_\_\_\_
10. Implied preemption \_\_\_\_\_
11. Preemption in bankruptcy \_\_\_\_\_

**SCIENCE:**

12. General Causation \_\_\_\_\_
13. Specific Causation \_\_\_\_\_
14. Patient Confounders \_\_\_\_\_
15. Other proximate causes \_\_\_\_\_

**PHARMACEUTICAL:**

16. Prescription, over the counter (OTC) or both? \_\_\_\_\_
17. Is there a generic equivalent? \_\_\_\_\_
18. Off-label uses \_\_\_\_\_
19. Signature injury \_\_\_\_\_
20. Additional injuries/symptoms \_\_\_\_\_
21. Sales numbers \_\_\_\_\_
22. Numerosity \_\_\_\_\_

**MEDICAL DEVICE:**

23. 510(k) substantially equivalent predicate \_\_\_\_\_
24. 513(g) device reclassification \_\_\_\_\_
25. FDA clearance vs. approval \_\_\_\_\_
26. FDA device classification \_\_\_\_\_
27. Off-label uses \_\_\_\_\_
28. Signature injury \_\_\_\_\_
29. Additional injuries/symptoms \_\_\_\_\_
30. Sales numbers \_\_\_\_\_
31. Numerosity \_\_\_\_\_

**DEFENDANT(S):**

32. Solvency/Bankruptcy potential \_\_\_\_\_
33. Parent company \_\_\_\_\_
34. Manufacturing/Distribution/Seller agreements \_\_\_\_\_
35. State of residence/Registered agent \_\_\_\_\_

**TORT SELECTION RESEARCH CHECKLIST**


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Docket Name

**MEDICAL EXPERTS:**

- 36. Open payments system check \_\_\_\_\_
- 37. Board certification or clinical trial experience \_\_\_\_\_
- 38. Daubert/Frye challenge \_\_\_\_\_

**RECALL/MARKET STATUS:**

- 39. FDA Recall, Correction or Removal \_\_\_\_\_
- 40. Voluntary vs. Mandatory. \_\_\_\_\_
- 41. CPSC Recall Remedy Notice \_\_\_\_\_
- 42. Company product elimination \_\_\_\_\_

**LEGAL THEORIES:**

- 43. Breach of warranty \_\_\_\_\_
- 44. Negligence \_\_\_\_\_
- 45. Strict liability \_\_\_\_\_

**LITIGATION STATUS:**

- 46. Survived preemption challenge \_\_\_\_\_
- 47. Survived Daubert challenge \_\_\_\_\_
- 48. MDL Wave Orders \_\_\_\_\_
- 49. Post bellwether \_\_\_\_\_
- 50. Settlement phase \_\_\_\_\_

**MARKETING:**

- 51. Who is the target audience (demographics)? \_\_\_\_\_
- 52. How will you reach them? (TV, radio, internet, blogs, Facebook, Twitter, Instagram) \_\_\_\_\_
- 53. Targeted marketing based on demographics (geo-fencing and geo-targeting) \_\_\_\_\_
- 54. When to start, stop, and pause advertising \_\_\_\_\_

**TIMING:**

- 55. Emerging awareness \_\_\_\_\_
- 56. Pending MDL consolidation \_\_\_\_\_
- 57. MDL consolidation \_\_\_\_\_
- 58. State or County consolidation \_\_\_\_\_
- 59. Post-bellwether \_\_\_\_\_
- 60. Settlement phase \_\_\_\_\_

**OTHER INVOLVED FIRMS:**

- 61. Firm leading MDL consolidation \_\_\_\_\_
- 62. Leadership structure and appointments \_\_\_\_\_
- 63. Reputation of leading firms (fair dealing) \_\_\_\_\_
- 64. Co-counsel/Joint venture opportunities \_\_\_\_\_