



# **Building, Structuring & Financing Tomorrow's Products Liability Practice**

Presented by: Andy Payne



# Building, Structuring & Financing

## Building

- **Niche Practice: Why it works is a double edge sword**
- **Thoughts on Marketing**

## Structuring

- **Case Intake: Eliminate Bad Cases Cheaply**
- **Case Budget & Profitability Analysis**
- **Setting *Profitable* Case Value Thresholds**

## Financing

- **How much do you need**
- **Where to get it**

# Building: Why the Niche Practice Works



**I want to specialize in big easy cases!!!**

# Building: Why the Niche Practice Works

- **High Barriers-of-Entry**
- **Economies-of-Scale**

## High Barriers-of-Entry: “I don’t want to mess with this case”

- **TOO EXPENSIVE**

- **Expert Intensive**

- Defect
- Safer Alternative Designs
- Causation
- Damages

- **Daubert/Robinson**

- Many courts require testing to prove-up case
- Look for Existing Alternative Designs

- **Cost Estimates**

- \$50,000-\$75,000 simple one liability expert case
- \$100,000-\$200,000 complex, but no testing
- \$300,000-\$500,000 complex, with testing

## High Barriers-of-Entry: “I don’t want to mess with this case”

- **I CAN’T FIND AN EXPERT**
  - *COMPLEX PRODUCTS*
  - *PRODUCTS WITH LIMITED MARKET*
  - *GOOD EXPERT NEEDED TO RESOLVE CASES*
- **TECHNICAL EXPERTISE REQUIRED**
  - *ENGINEERING OF PRODUCT INVOLVED*
  - *ACCIDENT RECONSTRUCTION*
  - *VEHICLE & OCCUPANT DYNAMICS*
  - *BIOMECHANICS & INJURY CAUSATION*
  - *MEDICINE*

## **Economies-of-Scale: The more you handle; The easier it gets**

- **CHEAPLY ELIMINATE BAD CASES**
- **REDUNDANCY WITH THEORIES & EXPERTS**
- **RELATIONSHIPS WITH DEFENDANTS & DEFENSE COUNSEL**

# Building: Marketing for Products Business

- **Target Audience**
  - **Mostly other lawyers**
  - **Mostly plaintiff's lawyers**
- **Develop Marketing Budget & Plan**
  - **Budget both hours & dollars**
  - **Allocate budget to most effective marketing tools**
  - **Accountability**

# Building: Marketing for Products Business

- **Common Marketing Methods**
  - **Networking**
  - **Participate in TTLA & Bar Associations**
  - **Speaking Engagements**
  - **Letter & Brochure Campaigns**
  - **Newsletters**
  - **Advertising**
  - **Publicize Results**
  - **ASK OTHER LAWYERS FOR BUSINESS**
  - **TRY PRODUCTS CASES**

# Structuring the Products Practice

- **Case Intake**
- **Budget & Profitability Analysis**
- **Setting Profitable Case Value Thresholds**

## Case Intake: Eliminate Bad Cases Cheaply

- **Evaluations Are Time Consuming & Expensive**
- **Bad Intake Decisions = Financial Disaster**
- **Intake Process = Elimination Process**

## Case Intake: Eliminators

- **Causation**
- **Economic Feasibility**
  - Damages;
  - Likely Settlement;
  - Profit Analysis;
  - Need for Testing
    - *No Existing Safer Alternative Designs*
    - *New Defect Theory*
- **Drugs**
- **Prior Injuries**
- **Plaintiff Likeability**
- **Availability of a Credible Expert**

# Setting Profitable Case Value Thresholds

- **Create Budget**
  - **Expenses**
  - **Professional Time**

# Setting Profitable Case Value Thresholds

## Automotive Products Case

- **\$500,000 settlement value**
- **\$133,333 net fee (40% less 1/3 referral fee)**
- **Expenses**
  - **\$68,700 through expert reports**
  - **\$113,200 through expert depositions**
  - **\$160,200 through trial**
- **Profitability (Atty's Hourly Rate)**
  - **\$275/hour through expert reports**
  - **\$168/hour through expert depositions**
  - **\$ 75/hour through trial**

# Setting Profitable Case Value Thresholds

## Automotive Collision Case

- **\$50,000 settlement value**
- **\$16,667 net fee (1/3; no referral fee)**
- **Expenses**
  - **\$ 4,700 through expert reports**
  - **\$ 8,200 through expert depositions**
  - **\$10,700 through trial**
- **Profitability (Atty's Hourly Rate)**
  - **\$648/hour through expert reports**
  - **\$420/hour through expert depositions**
  - **\$105/hour through trial**

# Setting Profitable Case Value Thresholds

- **Profitability Analysis**
  - Prevents being blinded by “big” fee
  - Calculates Hourly Rate based on budget
  - Timing of settlement is important to profitability
    - *New defendant or new theory-increase threshold*
    - *History of quickly resolving cases-decrease threshold*
  - Use analysis to set profitable case value thresholds
  - Calculate rough hourly rate at end of year

# Financing the Products Liability Practice

- **HOW MUCH DO YOU NEED?**
  
  
  
  
  
  
  
  
  
  
- **WHERE TO GET THE MONEY?**

## How much is required?

- **\$700,000 to \$1,250,000 for 8 to 10 cases**
- **Basis**
  - ➔ **Assumes Budget in Appendix A**
  - ➔ **3 cases in expert report stage**
  - ➔ **2 cases beyond expert depositions**
  - ➔ **1 case trial ready**
  - ➔ **4-6 cases in evaluation (\$100,000)**
  - ➔ **Total Expense \$700,000**

## Where Do You Get the Money?

- **Internal Funds**
- **Joint Venture Agreements**
- **Traditional Lines-of-Credit**
- **Non-Traditional Lines-of-Credit**

## Joint Venture Agreements

- **Not Only To Share Workload**
- **Share Case Expenses**
- **Multiple Attorneys With Similar Cases; Share Research and Testing Expenses**
- **You Don't Have To Pay It Back**

## Non-Traditional Lines-of-Credit

- **Lends on historical ability to generate fees—no hard collateral required**
- **3% Commitment Fee on Line Extended**
- **Limited to Reimbursable Case Costs**
- **No obligation to repay until case settles or lost**
- **Pass interest cost to clients**
- **Annual Interest Rate 14.35%**
- **Only receive 80% funds; 20% is placed in reserves. Reserve on all cases can be tapped to repay loan on a lost case**
- **Effective Rate is over 20%**

## Traditional Lines-of-Credit

- **Accounts Receivable; Personal Guaranty; Collateral**
- **No Limitation On Use**
- **Only Charged Interest On Money Actually Borrowed**
- **Interest Due Monthly; Principal Per Loan**

[andy@howie-sweeney.com](mailto:andy@howie-sweeney.com)

