



Techniques for Young Lawyers to Maximize Their Value to Senior Attorneys in  
Asbestos Litigation

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Asbestos litigation has been a fixture of the U.S. tort system for decades. The flood of asbestos cases and court filings began in earnest with the 1973 decision by the Fifth Circuit in *Borel v. Fibreboard Paper Products Corporation et al.*, 493 F.2d 1076 (5<sup>th</sup> Cir. 1973). Accordingly, asbestos litigation is unique among all mass torts in its longevity. It is approaching the end of its fifth decade of litigation with no indication it will end anytime soon.

Senior attorneys who have practiced in the asbestos litigation possess a wealth of knowledge they are not readily able to share. Some attorneys practicing today were present for the commencement of asbestos litigation. Many more attorneys have built entire practices and careers representing and defending clients for decades in this field. With such a long history comes a breadth of knowledge that stretches well into the past, as well as client relationships that have been ongoing for many years. Young attorney beginning their careers and handling cases in asbestos litigation are often expected to hit the ground running without the benefit of the background knowledge possessed by more experienced litigators. Senior attorneys face tremendous pressure to address client demands, meet tight deadlines on discovery and related court requirements, and deal with sometimes-hostile or confrontational opposing counsel. Accordingly, they are often prevented from, or limited in, opportunities to provide young and new attorneys with the information on background and key developments in asbestos litigation necessary to effectively litigate in this space.

As young attorneys practicing in asbestos litigation, it is essential for them to take the initiative and find ways to add value to their existing practice group and benefit clients. Keys to this are knowing where to turn for information on historical and developing material on clients and where to watch for developments in the litigation to proactively stay on top of an ever-changing asbestos litigation landscape without having to wait for information to come from the senior attorneys in the firm. This paper is aimed at providing information and techniques to young attorneys in the asbestos litigation so that they can maximize their value to their firm and practice group.

## **I. Stay Current on Publications, Science, and Literature**

Much of the asbestos litigation's staying power has been because of its adaptation to developments in science and medicine. As the litigation continues into the foreseeable future, the one constant that will remain is, ironically, change. Young attorneys can add value to the firm by monitoring and educating themselves on newly developing scientific and medical research, publications and statements made by litigation experts, and reports or other efforts by Government and non-Government organizations.

In recent years, there has been a focus on the human genome and non-asbestos causes of mesothelioma and lung cancers. This is a newly-developing area of science that will have major ramifications on asbestos litigation for the next several years. Every year it seems as though at least one expert at DRI's

Asbestos Medicine Seminar speaks on the developing literature surrounding genetics and how it impacts the development of diseases. Young attorneys must stay up to date on this developing topic area, as it will be one of the largest drivers of how asbestos litigation changes over the next decade and beyond. A detailed grasp of this key developing area will allow young attorneys to meaningfully participate in the decisions senior attorneys make in case defense strategy, increasing the value added to the defense team.

Asbestos litigation tends to have the same plaintiffs' experts and defense experts preparing reports and sitting for depositions in each case. Accordingly, young attorneys should monitor news reports and publications for the experts most often used in the cases – both plaintiff and defense. Positions taken by these individuals who regularly show up in the litigation are ripe for examination. Identifying and alerting senior attorneys to possible avenues of cross-examination of plaintiffs' expert or a vulnerability of the defense expert based on information found in recent publications or work can be a tremendous benefit to the client and raise the young attorney's value to the firm.

Governmental and non-governmental agencies are continually monitoring various human health aspects and other related regulatory components of hazardous materials. The statements of organizations such as the World Health Organization or rules and regulations promulgated by entities such as OSHA inevitably appear in litigation, especially when such statements or rules apply to asbestos. Young attorneys must stay educated and up to date on statements these agencies and organizations make. A prime example of this is the Environmental Protection Agency's Asbestos Risk Evaluation, which is currently nearing finalization as required by the Toxic Substance Control Act. If the final risk assessment concludes that asbestos poses a health hazard for certain categories of use, plaintiffs may seek to use the agency statements against defendants in the litigation. The statements of these various organizations carry tremendous weight and have been and will continue to be used in asbestos cases and trials. Young attorneys must be aware of these publications in order to be prepared to discuss these positions with the senior attorneys for whom they work to meaningfully contribute to defense strategy on how to adapt to their use in discovery and at trial.

## **II. Know Your Client**

To effectively and zealously represent defendants in asbestos litigation, young attorneys need to know the ins and outs of their client. This includes the obvious historical facts such as what type of product or products the client made, the years it contained asbestos, what the intended uses were for the client's products, etc. Young attorneys must learn the company history and the corporate story. The best way to do that is to review the testimony of current and prior client corporate representatives and become intimately familiar with what the client said in the past.

It is equally important for young attorneys to know what the client is saying today. While young attorneys are unlikely to have a direct line of communication to either the client or its National Coordinating Counsel, since that role most often falls to the senior attorney at the firm, there are many public forums where clients will publish information that young attorneys should monitor. All major companies have websites and marketing departments to help maintain their brand names and stay competitive in the present marketplace. They also publish press releases, highlight news and other significant company events, and share corporate information like annual reports and citizenship reports with the public. In publicly traded companies, there are legal filings that must be submitted to the Securities and Exchange Commission. These filings include information about asbestos liabilities, significant events in the legal space for a company, and other prospective information. Young attorneys who know what their clients are saying publicly, without waiting for word to pass from senior attorneys in the firm, are better-positioned to help implement legal strategy based on changes in circumstances of a client. As all of this information is in the public domain, either on company websites or in SEC filings, it is easily accessible – something most plaintiffs’ lawyers know and are already monitoring. By staying abreast of what a client is saying publicly, young attorneys can be ready to address issues that come up without the need for a senior attorney to educate them on the issue, saving the client time and ensuring consistency in messaging.

In addition, it is beneficial to know what other defendants similarly-situated to a client are saying, as the statements and successes of the manufacturer of a certain type of product can impact other defendants who manufactured or are liable for the same type of product. Co-defendants publish and file the same types of information and can be monitored in the same manner as your own client. This is especially apparent when several major defendants in the litigation are seeking to set up 524(g) bankruptcy trusts and exit the tort system and plaintiffs are looking to other defendants to make up the difference in their expected case resolutions. Accordingly, young attorneys can be prepared for changes and assist in developing defense strategy in the litigation landscape by monitoring what other companies are saying and doing.

### **III. Know the Rules**

Because asbestos cases are a longstanding mass tort that has created a backlog of litigation in countless jurisdictions across the country, many courts have created case management orders or separate and distinct dockets to handle them. These asbestos dockets typically have their own rules and deadlines that parties are expected to follow, separate and distinct from non-asbestos civil cases. In many circumstances, they have been in place for years and are routine and cyclical, with cases following similar discovery periods, filing deadlines, and trial preparation calendars year after year.

While it is essential for young attorneys to be intimately familiar with the specifics of the rules governing the asbestos docket, they should be equally

familiar with the rules that govern non-asbestos civil cases in the same jurisdiction. By familiarizing themselves with the standard rules governing civil cases, young attorneys are positioned to propose and prepare nuanced litigation strategy when a case is filed outside of the traditional asbestos docket and a standing order does not apply. When parties to these cases try to operate under the asbestos docket rules, identifying motions or other practice maneuvers not traditionally available to a client can greatly alter the trajectory of a case and even catch opposing counsel off guard.

#### **IV. Monitor Local Filings for New Plaintiffs' Counsel**

Most jurisdictions have the same firms filing actions related to asbestos, and those same firms have been doing so for years. They have reputations and relationships with defense counsel and generally work to manage and resolve cases, as has been done for the last forty-seven years in the asbestos litigation. Occasionally, new plaintiffs' firms or out-of-town players file in jurisdictions where they do not usually practice. Sometimes this becomes apparent at a product identification deposition where a young attorney is met by an out-of-town attorney representing the plaintiff in a case. Nothing upsets a client more than surprises. Accordingly, immediately alerting the senior attorneys to the inclusion of these out-of-town plaintiffs' counsel is essential. While it may just be a single filing, it could also be indicative of a new strategy by an established plaintiffs' firm, or the first instance of an up-and-coming new firm. By monitoring the appearances and subsequent filings, young attorneys can play a role in assessing and managing these developments in his or her jurisdiction.

#### **V. Master the Technology**

The benefit and curse of being a young attorney is that they are expected to know how to utilize new technology. Young attorneys should embrace this expectation as an opportunity to serve in key roles in a practice group for their firm. Some senior attorneys who have been practicing in asbestos litigation for decades have routines and habits that are difficult, if not impossible, to break. Young attorneys' contributions can include integrating new technologies that can better and more efficiently research and prepare documents for clients, staying on top of advancing science and client news by way of available online resources, and more efficiently and effectively representing the client through the use of demonstrative technology at trial.

There are a number of valuable case management tools that young attorneys are predisposed to learn and use quickly due to lifelong fluency with technology and associated systems. As Millennials and members of Generation Z, most young attorneys grew up surrounded by technology and the internet. As such, it is often easier for attorneys from these generations to adapt and learn as newer technologies are developed and utilized in the legal profession. While now common in most law firms, document management systems are an important way to recreate and repurpose prior motions or other legal documents without having

to start each filing or pleading from scratch, and it is essential that young attorneys know how they work. Further, subscribing to news alerts and related online filing systems for clients and related entities are key to helping young attorneys stay informed of client news and other information relevant to asbestos litigation, as described above. Most importantly, and especially for those young attorneys who aspire to a seat at counsel's table in the courtroom, mastering new digital and electronic tools for use in courtrooms can make a young attorney an indispensable member of the trial team. As technology develops and courts adopt more technology-based presentation tools, possessing the ability to use such tools to the client's benefit is a certain way for young attorneys to raise their value to the firm.

## **VI. Always Take Notes and Prepare Summaries**

As a young attorney, one must always take notes on each and every meeting and call they attend. At the conclusion of any meeting or call, young attorneys should prepare a summary with action items. While this seems like an obvious recommendation, senior attorneys may instinctively assume that the younger attorneys are taking down the discussion without asking specifically for it to happen. There is not a worse feeling than being asked to summarize what just occurred at the conclusion of a meeting and realizing one's notes are incomplete or inadequate. Further, even if not asked to provide an immediate summary or memo, preparing one will be of benefit to young attorneys as they build their own knowledge base and develop their practice skills. Young attorneys will also impress senior attorneys when they are able to provide a detailed summary of discussions in the distant past when those senior attorneys are trying to recall a detail or decision made at a prior meeting.

Young attorneys should also include comments, observations, and recommendations in any report prepared after a call or meeting. Attorneys are paid to think and young associates should not be afraid to voice their thoughts. Ultimately the comments or recommendations may be disregarded by the senior attorney reviewing the report, but the efforts will not go unnoticed.

## **VII. Conclusion**

Young attorneys can add tremendous value to their firm and the clients they represent by proactively educating themselves and staying abreast of changes in the litigation. Young attorneys who seek out information that gives them a deeper knowledge of their client, the rules of the court, the developing and changing science and literature, and new technologies will find themselves given greater opportunities to meaningfully participate in a client's defense. Young attorneys can be assets by bringing a fresh and nuanced perspective to the often-repetitive litigation practices in various jurisdictions. The key for any young attorney is to be a self-starter and take the initiative to educate oneself on topics and key information without being directed to do so by senior firm personnel. Young attorneys who are better prepared will have greater confidence when

taking on expanding roles in their firm and will see the volume, importance, and complexity of their opportunities increase.