

SETTLEMENT	CASE TYPE	CO-COUNSEL FIRM
\$135,857,800	Mesothelioma and other Asbestos-related Diseases	Multiple Co-counsel Firms
\$8,900,000	Cerebral Palsy	Eisenberg, Rothweiler, Winkler, Eisenberg & Jeck – Philadelphia, PA
\$5,175,000	CP, Erb's Palsy and Medical Malpractice Cases	Blume Donnelly Fried Forte Zerres & Molinari – Chatham, NJ
\$3,950,000	2 Cerebral Palsy Cases	Nurenberg, Paris, Heller & McCarthy – Cleveland, OH
\$3,500,000	Cerebral Palsy	Reiter & Walsh – Bloomfield Hills, MI
\$2,852,716	8 Stockbroker Fraud Cases	Oakes & Fosher – St. Louis, MO
\$2,734,500	11 Nursing Home Cases	Doolan Platt & Setareh – Irvington, NY
\$2,200,000	Cerebral Palsy	Prochaska Howell & Prochaska – Wichita, KS
\$2,000,000	Cerebral Palsy	Mahoney Law – Boise, ID
\$1,425,000	7 Nursing Home Cases	Kralovec Jambois & Schwartz – Chicago, IL
\$988,500	3 Nursing Home Cases	Shuttlesworth Law Firm – Birmingham, AL
\$550,000	4 Nursing Home Cases	Slater & Zurz – Akron, OH
\$453,000	3 Nursing Home Cases	Mallard & Sharp – Miami, FL
\$425,000	Medical Malpractice	Silbert & Garon – New Orleans, LA
\$320,000	Motor Vehicle Accident	Kralovec Jambois & Schwartz – Chicago, IL
\$235,000	Nursing Home	Nurenberg, Paris, Heller & McCarthy – Cleveland, OH
\$235,000	Nursing Home	Silbert & Garon – New Orleans, LA

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clients as they can. These firms blatantly and with complete disregard for the law (and at any cost) unethically and illegally solicit clients.”

This is exactly the type of activity that casts a shadow over the entire legal marketing industry and reinforces negative stereotypes of plaintiffs’ lawyers as greedy “ambulance chasers.” If found liable in the case, the firms could face damages to the

tune of \$10,000 for each unsolicited phone call made in violation of the law. Not to mention the threat of potential disciplinary action for the violation of ethics rules regarding client solicitation.

Knowing who you’re doing business with when it comes to case generation, including knowing where your leads are coming from and the manner in which they

### Refer Your Mesothelioma Cases to Us

Our co-counsel firm has represented thousands of clients throughout the country and has recovered over \$5 billion in verdicts and settlements from mesothelioma cases. With its experienced team of over 40 lawyers, the firm gained the reputation as one of the top asbestos firms in the country after securing a \$250 million verdict on behalf of one client. The verdict still stands as the largest verdict for a single asbestos plaintiff. The firm’s track record of securing results continues today. Other notable victories include a \$34 million verdict for a factory worker and thousands of multi-million-dollar settlements for families across the country. Each year, they file more mesothelioma cases than any other firm in the country.

**If you want the best firm and the best result for your mesothelioma referral, call us today to discuss your case and to learn about our very competitive referral arrangements.**

**SOKOLOVE LAW**  
**1-800-305-4009**

are obtained is just as important, if not more so, than the cost of the service. Simply put, if you are not taking the time to carefully screen your marketing partners for ethical compliance, you are putting yourself and your firm at risk. And if you are aware of your marketer’s unlawful tactics and choose to look the other way for the sake of a few extra cases, you are as much a part of the problem as they are.

## Unethical Legal Marketing Overboard: Be Part of the Solution, Not the Problem

It’s no exaggeration to say that the number of legal ads produced over the past few years has grown exponentially, along with the ranks of new advertisers. More than ever before, lawyers complain that they are besieged with solicitations from marketing firms and lead vendors vying for a share of their advertising budgets.

Mass tort litigation, in particular, with its eye-popping verdicts and global settlements, has attracted a herd of new entrants into the case generation business. In fact, a whole cottage industry has emerged dedicated to teaching lawyers how to “get into mass torts.” Lured by the promise of large returns on investment, lawyers can learn how to acquire mass tort leads over the course of a weekend.

**...it has also spawned a new breed of marketer who will stop at nothing in the pursuit of saleable leads—flouting ethical rules and disregarding consumer protection and privacy laws—and exposing the lead purchaser to potential liability as well.**

While there are many reputable legal marketers in the industry today, recent court filings have begun to shine a light on the seedy underside of the case generation trade. It seems that the increased competition for mass tort claimants has propelled the feeding frenzy for leads that begins the minute signs of new litigation appear. Unfortunately, it has also spawned a new breed of marketer who will stop at nothing in the pursuit of saleable leads—flouting ethical rules and



MIKE SKOLER, CEO, Sokolove Law, LLC

disregarding consumer protection and privacy laws—and exposing the lead purchaser to potential liability as well.

While opinions may differ as to the exact catalyst for the explosion in the number of unscrupulous mass tort marketers, some say the legal industry itself is partly to blame. Although we adamantly disavow such behavior, it can be argued that we are not doing enough to disincentivize the wrongdoers and drive them out of the industry.

### Unscrupulous Marketers Exploiting D.C. Rules Governing Law Firm Ownership

Pharmaceutical and medical device litigation has seen the greatest rise in questionable case generation practices. Accusations of aggressive and unlawful solicitation of potential clients has cropped up several times in the transvaginal mesh litigation.

Challenging the origin of a number of filed claims, one surgical mesh manufacturer went so far as to allege the existence of “an illicit enterprise” targeting women who received pelvic mesh implants. At the heart of this operation, it claimed, was a network of commonly owned and operated entities that included a Florida-based legal marketing company and several D.C. law firms, among others.

According to court documents, the scheme played out this way: The marketing company contracted with call centers, many based off-shore. Armed with confidential medical information, call center employees cold called potential U.S. mesh claimants, using any means necessary to pressure them into signing retention letters.

**They also expose the way in which D.C.’s unique rules regarding law firm ownership can be exploited by lead generators, hedge funds, and other profiteers to facilitate the sharing of profits with nonlawyer stakeholders.**

The law firms—which were virtual offices largely owned and controlled by lead generators—basically served as brokerage houses that gathered up the leads provided by their marketing partners, bundled them, and “flipped” them to unsuspecting mass tort law firms or other aggregators, hungry for new cases. In court papers filed last year in a separate action, it was alleged that this same group of D.C. law firms brokered a deal to sell its stockpile

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Jeffrey M. Goldberg founded his law firm immediately after graduating law school. In the beginning, Goldberg focused his practice on plaintiff's personal injury, but the firm rapidly transitioned to handling catastrophic medical malpractice and product liability cases. Currently, the firm's focus is on birth trauma-related cases.

Headquartered in Chicago, the firm has a satellite office in Milwaukee, but practices throughout the Midwest with cases currently pending in Indiana, Wisconsin, Illinois, Iowa, and Missouri. Throughout its history, the firm has tried and won or settled dozens of multi-million dollar cases, including multiple verdicts in excess of \$20 million each.

"When selecting co-counsel firms with which to associate, we always look for leaders in their particular practice area," says Mike Skoler, CEO of Sokolove Law. "Jeffrey Goldberg and his dedicated and experienced staff are certainly leaders in handling birth trauma cases. We are

proud to count them among our esteemed co-counsel firms."

Currently, Goldberg's staff includes four lawyers in the principal office, along with two nurses and a support staff that includes multiple paralegals and technical personnel. In addition to his work on behalf of his own clients, Goldberg is a past president of the nationally known, Public Justice Foundation, a contributor to multiple continuing legal education publications, and a guest lecturer at law schools in Chicago.

The firm has worked with Sokolove Law in a campaign to represent serious birth injury cases in multiple states. "The result of the partnership has been a significant increase in the number of clients that have been able to be served by the firm," says Goldberg. "The relationship has been very beneficial to the firm and we look forward to working with Sokolove Law for years in the future."

### Campaign Highlight

## IVC Filters

In August of 2010, the FDA released its first statement regarding potential complications with small, cage-like devices used in the prevention of pulmonary embolisms called Inferior Vena Cava (IVC) filters. Fast forward five years and the number of adverse event reports had grown to over 1,600.

In July of 2015, we launched a national campaign targeting consumers implanted with one of these IVC filters who had suffered health problems as a result. What resulted was one of the most successful medical device campaigns in the past several years. The campaign ran for 13 months with multiple firms participating.

Throughout the 13 months in market, all media channels were deployed. Of all channels, however, the greatest

efficiencies were found online. In addition to driving in lead volume at a low cost, Paid Search delivered the highest sign rate for the campaign, proving it generated the most qualified traffic across all channels, both on and offline.

Pockets of success were found offline to supplement the Paid Search campaign. Although costs were slightly higher, the volume generated from TV was stronger which balanced well with the efficient, but comparatively lighter, web performance.

Cumulatively, the campaign generated over 3,000 responses, approximately 1,000 qualified leads and 450 signed cases with over 70 cases remaining in the pending inventory.



JEFFREY M. GOLDBERG, Founder,  
Jeffrey M. Goldberg Law Offices

## Co-counsel Opportunities

### Join our Networks

Sokolove Law knows the legal marketing industry. After all, we're pioneers in the field. Our diverse, highly trained team of experts brings you the leads with the greatest conversion potential.

Put almost four decades of legal marketing expertise to work for your firm by joining one of our national networks.

We currently have openings in our networks for a limited number of states, including the following:

#### ► Birth Injury Campaign

North Carolina, Pennsylvania, Missouri, Kentucky, Virginia, and Minnesota

#### ► Nursing Home Campaign

North Carolina, Mississippi, Arizona, Indiana, Oregon, and Washington

Call us to learn more about our national network campaigns and to find out if your state is available.



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of over 14,000 pelvic mesh and other mass tort cases to a Texas law firm/lead aggregator for about \$40 million.

If true, these allegations provide alarming evidence of the lengths to which some marketers will go to acquire mass tort leads. They also expose the way in which D.C.'s unique rules regarding law firm ownership can be exploited by lead generators, hedge funds, and other profiteers to facilitate the sharing of profits with nonlawyer stakeholders.

In contrast to the rules in every other jurisdiction which strictly prohibit the sharing of fees with nonlawyers, Rule 5.4 (b) of the D.C. Rules of Professional Conduct permits lawyers to practice law in a firm in which a financial interest is held or managerial authority is exercised by nonlawyer participants *who perform professional services which assist the organization in providing legal services to clients*. The rule comes with certain conditions, among them that the provision of legal services to clients is the *sole purpose* of the partnership or organization, and that those with a financial interest or managerial authority undertake to abide by the D.C. Rules of Professional Conduct.

For example, a psychologist who works with family law practitioners to assist in counseling clients would be permissible under the rule. Whereas an individual or entity who acquires an ownership stake in a law practice strictly for investment or other purposes would not. Given those parameters, a D.C. law firm owned in part by nonlawyer legal marketers who use unethical means to acquire mass tort leads, for the sole purpose of assisting the firm in case generation and commoditization, is not likely the type of arrangement contemplated by the rule. In fact, I have been told by more than one ethics attorney, that the D.C. rule was intended *ONLY* for work performed on behalf of D.C. based clients and performed within the District itself. That doesn't sound like it applies to mass torts to me.

### Lead Purchasers Potentially Liable for the Activities of a Marketer

What does all this have to do with you? If you purchase mass tort leads from an outside vendor or you pursue cases acquired from a law firm marketer or other aggregator like the D.C. firms described above, without first vetting your lead sources for ethical compliance, you may be putting your own license and reputation in jeopardy. Foreign call centers and third party lead vendors may be beyond the reach of state bar authority, but you are not. It's only a matter of time before state bars and courts start to hold lawyers accountable for the unethical behavior of their marketing partners.

Outside of the legal sector, regulators like the Federal Trade Commission (FTC) and the Consumer Financial Protection Bureau (CFPB) have expressed growing interest in lead generation practices within the lending, postsecondary education, and insurance industries. According to a *Staff Perspective* issued September 2016 by the FTC, aggressive or deceptive marketing tactics used to entice consumers to fill out web forms was chief among the concerns raised at a public workshop on lead generation the agency held last fall.

The FTC has advised lead buyers to take affirmative steps to avoid doing business with companies obtaining leads through deception or other unlawful marketing practices, including monitoring lead sources for deceptive claims and other warning signs like consumer complaints. "Companies who choose to ignore warning signs and look the other way may be at risk of violating the law themselves," it said.

Using the D.C. firms as an example, the fact that a group of largely unknown law firms could amass 14,000 mass tort cases while lacking any significant television, internet or physical presence, should immediately raise a red flag that less than ethical means may have been used to generate those cases. A simple internet search may have revealed

consumer complaints about their questionable marketing practices or that one firm laughably employed one of their principals' children, a sophomore in college, as their "Managing Partner." Performing even the most basic due diligence into your marketing partner's business practices is a vital step in protecting you and your business from potential liability down the road. Such penalties could include sanctions, censures, disgorgement of fees, and even disbarment.

### The Legal Industry Needs to Do More to Drive Out Unethical Marketers

As members of the legal industry, we need to do our part to stem the tide of unscrupulous mass tort marketers. A proposed class action lawsuit recently filed in Texas federal court, may just be the start of a movement to eradicate the industry of these bad actors.

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The lawsuit accuses two law firms, and a couple of marketing companies allegedly acting on their behalf, of violating Texas anti-barratry laws by engaging in a massive "robocall" campaign, making unsolicited phone calls to consumers with the intent to sign up plaintiffs for litigation involving blood clot filter devices. The plaintiff who was allegedly targeted in the campaign also happens to be a Texas plaintiffs' attorney, and a leader in the IVC filter litigation. According to the complaint, while most attorneys abide by the rules regarding client solicitation, "Sadly there are attorneys and law firms that ignore ethical rules and barratry laws and use any means necessary in the mad dash to grab as many

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