

EMERGING FRONTS IN SEX TRAFFICKING LITIGATION CONFERENCE

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LITIGATION STRATEGY AND PROCEDURE



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Personal Jurisdiction & Failure to State a Claim

Threshold defenses frequently raised in trafficking litigation — examining which motions courts are entertaining and the standards applied.



Which Are Worthwhile? Which Are Successful?

Evaluating motion success rates, judicial temperament, and strategic tradeoffs of early dispositive motions versus preserving resources for merits litigation.



What Happens Next?

Case trajectory after early motions: amended complaints, interlocutory appeals, discovery timelines, and setting expectations for clients.

PRO'S & CON'S

- Cost and time efficiency vs. trial risk
- Confidentiality and controlled narrative
- Flexibility in remedies beyond damages
- Risk of under-valuation without full discovery
- Potential for re-traumatization if not handled properly

SURVIVOR EXPECTATIONS

- Desire for acknowledgment and accountability
- Tension between closure and systemic change
- Emotional preparation requirements
- Managing expectations on monetary outcomes
- Participation level and voice in the process

OTHER CONSIDERATIONS

- Mediator selection and expertise in trauma
- Coordination in multi-defendant matters
- Insurance coverage implications
- Confidentiality provisions and NDA scope
- Settlement structure and payment terms

Confidentiality

Balancing survivor privacy protections against discovery obligations; sealing records and protective order frameworks.

Protective Orders

Drafting and litigating protective orders — scope, enforcement, and handling of sensitive third-party information.

Scope

Defining proportional discovery in complex institutional litigation; resisting overbroad requests while securing critical evidence.

Documentation Challenges

Preservation obligations, ESI collection, and addressing gaps when institutional records are incomplete or destroyed.

Plaintiff vs. Defense Perspective: Divergent discovery priorities, asymmetric information access, and strategic implications for both sides of the docket.

Discovery & Mediation

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Discovery Issues Impeding Progress at Mediation

Unresolved discovery disputes that stall mediation — spoliation concerns, privilege logs, and incomplete financial disclosures.

Sample Solutions

Structured discovery protocols pre-mediation, limited targeted exchanges, and mediator-assisted resolution of discrete discovery disputes.

Missing or Incomplete Record Challenges

Strategies for proceeding with mediation when records are unavailable, destroyed, or contested — expert reconstruction and adverse inference considerations.

Individual vs. Large Group Mediation

Comparing single-claimant and mass mediation structures: efficiency, equity, and the unique dynamics of group trauma in a mediated setting.

Aggregation & Class Issues

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MDL Challenges & Recent Rulings

- Judicial Panel on Multidistrict Litigation trends in trafficking cases
- Centralization criteria and how courts are ruling
- Coordination with parallel state proceedings
- Bellwether case selection and its downstream impact

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Motions to Join Multiple Claims

- Permissive joinder standards under Rule 20
- Strategic considerations for targeting specific defendants
- Severance motions and defense responses
- Coordination among co-plaintiffs and counsel

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Predicting the Future of Aggregation

- Class certification viability in trafficking matters
- Commonality and typicality challenges
- Legislative developments affecting aggregation
- Emerging settlement structures for mass claims

Timing

Optimal timing relative to discovery progress; pre-suit mediation considerations and court-ordered mediation windows.

Common Issues

Authority gaps, insurance coordination, valuation disputes, and impasse dynamics in institutional defendant cases.

Role of Narratives & Damages

How survivor narratives frame damages arguments; economic vs. non-economic harm and the use of expert testimony on impact.

Trauma-Informed Approach

Imperative of trauma-informed process design — mediator training, session structure, and survivor support protocols.

Balancing Defense-Specific Concerns

Insurance allocation, contribution rights among co-defendants, reputational risk management, and settlement confidentiality.

Claims Process Design

Architecture of an effective claims program — eligibility criteria, tiered compensation matrices, documentation requirements, and independent review structures. Balancing efficiency with individualized assessment.

- Intake and verification workflows
- Compensation tier frameworks
- Independent review and appeals process
- Timeline and deadline management

Communication with Survivors

Designing survivor-centered communication protocols that are accessible, trauma-informed, and legally compliant — addressing language access, literacy, and outreach to hard-to-reach claimants.

- Plain language and accessibility standards
- Outreach strategies for hard-to-reach populations
- Support resources and advocate coordination
- Status updates and transparency obligations

Participation Challenges

Barriers to claimant participation — fear, distrust, documentation gaps, and geographic constraints. Strategies to maximize participation rates while maintaining program integrity.

- Addressing distrust of institutional processes
- Documentation gap accommodations
- Late claim and curative petition procedures
- Measuring program effectiveness and equity

Q&A

Questions & Discussion

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