

***Mass Tort Retention & Compensation
Best Practice Considerations***

As the number of cases involving pelvic mesh or mass torts remains steady, we wanted to share some considerations regarding retention and compensation:

Q: Should trustees file motions to employ the mass tort firms in the bankruptcy?

A: Yes – whether the firm is acting as attorney – 327(e) – or in more of an administrative/financial capacity – 327(a) – they still need to be employed if they want to receive compensation.

Q: If the mass tort firms are employed, does an application to employ need to be filed or can employment merely be included as one of the proposed settlement terms?

A: An employment application should be filed, pursuant to Rule 2014. Filing an application also lets the trustee address any issues raised by hiring an attorney who was already retained by the debtor (such as - Which one is the client? What happens if the debtor wants the settlement money paid as comp for injury (exempt) but the trustee wants it classified as punitive or other non-exempt category?).

Q: May trustees claim trustee compensation on the amount of money distributed to the mass tort firm even though that money doesn't pass through the hands of the trustee?

A: Absent some other objectionable factor, the U.S. Trustee will not object to this.

Finally, our office does not make determinations as to whether the claims constitute property of the estate, or whether they should be administered. Our office will in most cases move to reopen the case, leaving those matters to the trustee's business judgment. Please feel free to reach out to me if you have any questions.