



## **A Paradigm Shift from Personal Injury to Business Litigation**

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**OHIO ASSOCIATION OF JUSTICE**

A Paradigm Shift From  
Personal Injury To Business Litigation:  
You Can Do It!

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**I. What is a “Business Tort”?**

A. When we discuss “business torts,” we should avoid a narrow definition in the traditional concept of “torts” and think of a more expansive “commercial” practice.

1. Intellectual Property Claims (patent infringement, copyright infringement, anti-piracy, proprietary information, etc.)
2. Breach of Contract/Piercing (*Dombrowski*, et al.)
3. “Business Divorces” (partnership disputes, dissolutions, etc.)
4. Trade Secret/Related Claims
5. Competition Claims (enforcement of “restrictive covenants,” etc.)
6. Consumer Claims (individual and class claims in the consumer context)
7. Commercial Fraud and Distinguish with B.O.K.

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**B. See also, Sup. R. Temp. R. 103  
“Scope of the Commercial  
Docket”.**

- 2. Disputes between or among 2 or more business entities or individuals, including without limitation, the following:
  - a. Transactions governed by the UCC (except consumer product liability)
  - b. Intellectual property claims
  - c. Purchase/sale of the business entity
  - d. Sale of goods or services by a business to a business
  - e. Bank/brokerage accounts
  - f. Surety bonds and surety simple guaranty obligations
  - g. Commercial property
  - h. Franchise or dealer relationships
  - i. Business-related torts (“such as claims of unfair competition, false advertising, unfair trade practice, fraud or interference with contractual relations or prospective contractual relations”)
  - j. Anti-trust
  - k. Securities
  - l. Insurance

**II. Transition to Business  
Torts Practice.**

**A. The “Organic Transition”.**

- 1. **Assess Partner/Associate Shift Within Firm:** Which partner(s) or associate(s) are best suited to make the shift from traditional “plaintiff’s practice” to a business tort/commercial practice?
- 2. **Assess Outside Hire:** Consider lateral hires from mid-size/large commercial firms with reduced base salary and high incentives for business generation, production, results.

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**3. Assess Available Tools**

- a. **Attorney Assessment:** See above.
- b. **Business Paralegal:** organically or through a "contract" legal service.
- c. **Case Management Software:** software that can handle business tort/commercial practice.
- d. **Billing Software:** software to track hourly fees and generate monthly bills (the "scourge" of the plaintiff's lawyer's practice).
- e. **Law Clerk:** hiring of law clerk to conduct research-intensive commercial litigation and research/writing.
- f. **"Contract" Attorney:** hire "contract" attorney to handle extensive brief writing and research on a project-by-project basis.

**B. The "External Transition": Market for the business tort practice, then refer out and receive co-counsel fees.**

- 1. Receive a percentage of hourly fee charged to client
- 2. Receive a percentage of contingent fee charged to client
- 3. Blended fee arrangements

**C. Business Development/ Marketing for Business Tort/Commercial Practice**

- 1. Describe Goldwasser/Corroto Shift: both started off as 100% personal injury practice, then morphed into a 50/50 commercial PI practice that affected not only individual marketing, but also marketing of the firm.
- 2. Consider "stock page" advertising in local newspapers.
- 3. Pursue and attempt to be elected as Director to community Boards and local business Boards.
- 4. Consider sponsoring BBB and other commercial-related events as "Keynote" speaker/ writer on various business topics.
- 5. Shift traditional "PI" advertising from Yellow Pages to more entertainment-related events for local business/community affairs.
- 6. Prepare to shift to more "direct contact" marketing approaches as opposed to a broad/consumer approach.
- 7. Consider marketing to mid-size and large firm commercial lawyers who: do no contingent work in commercial or other matters, have conflicts arising each day, and are concerned about referring to "competitors" where they can lose clients down the road.
- 8. Consider marketing to CPA firms/financial advisors/commercial bankers who services closely-held and other corporate clients.

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### III. Why Expand Now?

- A. **The PI Landscape Has Changed:** The death of medical malpractice/insurance lobbying/tort reform.
  
- B. **Low Barriers to Entry:** When considering expanding to commercial/business tort practice, may be easier than other “knee-jerk” expansion landscapes, such as multi-district litigation, class action and the like.

### IV. Conclusion/Q&A

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