

# Aggregating Claimant And Case Data In Mass Torts

By **Kenneth Jones and Pamela Kaplan**

Litigating complex cases such as product liability mass torts, which may span jurisdictions throughout the country, can create a unique data management challenge that is often overlooked. Important information about claimants and cases is often maintained in disparate databases that do not interact, communicate or sync in any way.

Consider that in many product liability mass tort cases, some claimants file traditional lawsuits in state court, while others may file directly in a court designated for multidistrict litigation. Claimants may choose to file claims with bankrupt entities through bankruptcy trust claims, either alone or in conjunction with a traditional lawsuit.

At times, a claimant may even file more than one lawsuit where one alleged injury occurs years after the first claimed injury. Or, a claimant may file multiple lawsuits through different lawyers asserting identical claims.

Certain information on these claims will be available from the courts, some information might be obtainable from the plaintiffs firms and still other information might be accessible through online databases for bankrupt entities. Defense firms will likely track certain data, while their clients' in-house legal department might track additional or overlapping data.

Each of the repositories of this data likely has a different document retention plan — and a different system for maintaining both paper and electronic records. It is not uncommon for these parallel systems to be running independently, with no interface to share case- and claimant-specific updates, much less real-time data reflecting case activity.

This is, for obvious reasons, less than ideal. Data is likely being maintained in an inconsistent — and to a degree, duplicative — manner. Consequently, there will be discrepancies among systems and many of the most basic reporting requirements will be unmet.

This article is not meant to try and solve all the legal world's mass tort tracking problems. Rather, it focuses on one key challenge: the seemingly simple goal of identifying the number of plaintiffs in a mass tort litigation.

To meet this goal, one must overcome the complexities associated with identifying duplicate claimants across systems. Thereafter, it is possible to designate what shall be the controlling record for that claimant in a litigation.

We have identified the following steps that legal teams can undertake to achieve this goal:

- Assess current data sources and create a data map, with desired flows, to consolidate plaintiff information.
- Establish a centralized database to collect and manage data from all relevant sources — claims, filed cases, etc.



Kenneth Jones



Pamela Kaplan

- Create business rules to match claimant records received from various sources. A Social Security number is generally best, and when that is not available, other factors including unique claimant names, claimant address, products at issue, plaintiffs counsel, etc., are among the data points that can be analyzed.
- Define criteria to rank records — e.g., filed cases supersede claims, settled records supersede unresolved claims.
- Develop code to apply the business rules to the centralized database. In our practice, we call this process an exclusion procedure, since it excludes duplicative records from analysis, leaving only the records for unique, predominant claimants as active records for consideration.
- Create the ability to run the exclusion procedure on demand, to rerank records as additional data is added to the system. We call the active record the parent, and the others child records.
- Create history logs and reports, to timestamp and document the number of unique plaintiffs at various points in time throughout the life of the litigation.
- Gain audit and/or business approval for the process.

Importantly, after completing this process, the simple question of how many claimants are at issue in this litigation — which is often vital for internal and external reporting — can be answered. Perhaps as importantly, this work can advance more effective and efficient discovery in litigation.

During the discovery phase of a lawsuit, knowing if a claimant has filed a prior lawsuit or bankruptcy trust claim may prove critical to the defense of the present case. For example, in the context of asbestos litigation, it is quite common to learn that a claimant had a prior nonmalignancy lawsuit, or filed claims with bankrupt entities years earlier — and yet no records from the earlier action of claim can be located.

These records may be helpful in establishing a legal defense, either in terms of proving alternative causation or establishing liability shares against codefendants or bankrupt entities. Creating a database that aggregates all available information about a claimant can assist an attorney in adequately preparing for depositions, or narrowly focusing the documents requested from the plaintiff.

This type of database may also provide the foundation for predictive analytics. Taking empirical litigation data and applying the results of predictive analytics — relating case profile data points to outcomes, for example — to identify proactive actions legal teams can take to reduce legal costs makes a tangible contribution to a company's bottom line.

Identifying unique claimants can ensure that litigation scope is better defined, reports and forecasting efforts are more useful, and the costs associated with reconciliation, auditing activities and repetitive data review are drastically reduced. Taking the time to define processes to reconcile claimant data, working toward the goal of one claimant, one record in a tracking system, can bring efficiency to myriad areas requiring data management and reporting.

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*Kenneth Jones is chief technologist at Tanenbaum Keale LLP, and chief operating officer of Xerdict Group LLC.*

*Pamela Kaplan is an associate at Tanenbaum Keale.*

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