

Mass Tort Introduction: Difference Between Class Action and Mass Tort

By: Gary A. Newland

Over the years I represented people in mass torts and class actions from the start of my career. I have been asked the difference between the two types of actions on many occasions by members of the Bar as well as the general public. Although my practice is limited to injury related claims at this time such as mass torts I will provide a series of articles explaining mass torts in NewsBriefs. I will also present what is going on with certain mass torts such as the CPAP MDL and the baby formula food poisoning claims the death of premature babies, both of which I will address in the Civil Litigation Committees' annual seminar January 27, 2022.

We have all heard of class actions and mass torts as methods of obtaining compensation for clients that have been damaged financially and or physically. In both mass tort and class action cases the plaintiffs are made up of a large group and sometimes sub-groups of people who share the same or similar grievance. In both types of claims a financial recovery is sought for the harm caused.

With both class action and mass torts, claims can be consolidated avoiding separate lawsuits for judicial economy. Such proceedings are designed to reduce the number of court cases that arise when many are harmed.

The main difference between mass torts and class actions is how the large group of plaintiffs is treated and the fact that every tort victims harm is felt differently and impacts a persons life differently as opposed to class action claims where the harm is uniform.

Mass torts and class actions often involve a group of individuals sometimes from the same geographic area and sometimes throughout the country. Therefore, mass tort cases can also consist of a small group or large group of injured plaintiffs.

Although plaintiffs in a mass tort action can be a piece of a large group, each member can be treated as an individual as their harm is unique to them and the consequences can vary.

Class action suits have similar attributes to mass torts. In class actions the large group of plaintiffs is considered a class and is represented by an individual called a class representative. The class representative stands in for the rest of the class and all members are treated as one plaintiff as generally the harm caused the class representative is the same as the members.

A class action lawsuit must meet certain criteria.

Generally individuals that may fall into a class must be notified of the suit and given the choice to either opt out or find their own counsel. To establish a class action, a motion must be filed in court for a class representative to act as a plaintiff on behalf of the class of people similarly situated.

Generally the criteria to establish a class action requires the following elements:

1. The class is so numerous that joinder of all members is impracticable;
2. There are questions of law or fact common to the class;
3. The claims or defenses of the representative parties are typical of the claims or defenses of the class; and
4. The representative parties will fairly and adequately protect the interests of the class.

In a mass tort one or more of the above criteria of a class action is not met.

For instance, a mass tort action generally occurs when we are talking about physical injury because a physical injury can impact each person differently. With mass torts circumstances can be different and outweigh the common issues necessary for a class action. Basically if everyone is charged an illegal fee by a bank it is easy to determine a class as everyone is charged a sum certain. Personal injury claims are all unique to the individual.

In many cases mass tort claims are filed when consumers are injured on a large scale by defective products under product liability and negligence theories. Since each person's condition caused by the defective product is different from individual to individual these cases rarely fit into a single classification.

Another factor is mass tort lawsuits are generally much more complicated than class action lawsuits.

A mass tort can be resolved in a similar way as a class action. Sometimes with a mass tort we will acquire a pot of money for a group of injured parties and hire a special master to divide up compensation equitably based on the individual circumstances. Sometimes bellwether cases are determined to help classify cases. We will discuss the special master issue in later articles as well as bellwether claims.

I hope this is helpful in beginning to understand the differences between mass tort and class action.