

There is a strong view that plaintiff lawyers are the past masters of media management - but as Tracey Cain told the recent Australian Plaintiff Lawyers Association's National Conference, the tactics being used are from another country and another time.

Controlling the *spin*



BY TRACEY CAIN, SYDNEY
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There is substantial evidence that a small group of plaintiff law firms have gained significant value from using the media to leverage particular cases and causes of action.

But what they need to realise is that their media environment is changing.

Journalists, who in the past have been only too willing to run sensational,

anti-corporate stories, are starting to question the credibility of these tales and also whether they are being used by firms to troll for more work. Many of their journalistic colleagues now ridicule them for running yet another article about a potential class action by a plaintiff firm.

Also, very few worthwhile targets for plaintiff action are now without professional media advice. Australia is heading the way of the USA where media advisers outnumber journalists

by a ratio of 2:1, and almost everything that appears in the papers is influenced by at least one adviser.

Increasingly, corporate communications advisors are successfully reorienting class-action stories - putting the legal tactic, rather than the corporation in the spotlight.

Good 'spin control' is about more than getting a case or a name mentioned in the media. It is about supporting long-term reputation building, positioning and credibility.

At the moment, this is a lesson which has passed the understanding of plaintiff lawyers. Rather they are prone

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to a number of misconceptions about their use of media.

Foremost among these is the mistaken belief that the media is raising plaintiff firms to a pedestal - whereas they are in reality using these firms to attack large corporations. Once they tire of the class-action hook, they will quickly find another.

Secondly, negative media might be effective in the short-term, but it is not sustainable and does not build a reputation.

Thirdly, and if we can draw anything germane from the recent Victorian election, it is that trumpeting cunning tactics (such as being 'media savvy') to the detriment of substance is not a winning strategy.

Potential clients want to know that plaintiff firms are technically competent, but more importantly for the long-term, they need to believe these firms have a function and an ability to contribute to the process.

Ultimately, people need to perceive the firms as agents of justice, not as clever conjurers.

There certainly is a role for media management to establish a debate on an issue of public importance, to leverage the case at hand, and also to develop a firm's long-term reputation as a fierce competitor. But it is time plaintiff lawyers became innovators not imitators.

Rather than lifting a concept straight out of the USA - they need to adapt it to the Australian environment.

Consider corporate law firms. When they discuss points of law they use clients as context. When they release stories, they justify them and they justify their position - they do not automatically assume that the entire corporate sector, their audience, endorses their view. And they invest a considerable amount of time in 'not saying anything' in many articles, and in submitting material for industry substantiating league tables or awards for deals.

Again, plaintiff law firms should not copy, but they should take the lessons about reputation management and reposition themselves in the Australian psyche.

Rather than responding to inci-

dents, they need to generate an environment which will demand and respect their services. Product and service companies do this all the time - it is called debate management, issues profiling, or in some cases even leadership.

If plaintiff firms can convince society that corporations or organisations owe people a certain duty of care and that the firms are there to ensure that is upheld - then plaintiff firms become the corporate watchdog and the guardian of the potential victims. It is a much more positive and long-term role than the current reactive position.

Currently, it is not established in the minds of Australians that they are owed something. Consequently, it is a false assumption that the general public agrees with plaintiff firms and understands the notion of a duty of care. They do not always agree and they are not always supportive - more often they view the lawyers as seeking to get rich through misery and revenge.

If plaintiff firms can generate an environment where the media and public take up the cause for them, then the victims will find the firms, rather than the firms having to tout for business with free and paid media. It is a much more powerful and sustainable position.

And the firms must establish that they exist for redress not revenge.

Ultimately, the reputation which is most valuable will have a number of crucial characteristics.

The firms will be known as expert commentators on their areas of law also likely to be innovative and fierce in pursuit of victory.

The firms will be recognised for their capacity to use media coverage to lead a case, but only when it is strategically appropriate and never at the expense of the law.

And finally, the firms must be seen as winners - both for their clients, and for a just society.

It may be counter-intuitive to pull back from routine use of sensational media, but everyone already understands the threat - now is the time to strengthen reputation and build a genuine industry. **PL**

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