

## Tyson & Mendes Head Talks Contingency-Based Subsidiary

By Emma Cueto

*Law360 (October 4, 2023, 11:26 AM EDT)* -- Two years after launching its subsidiary aimed at preventing "nuclear verdicts" for its clients, insurance defense firm Tyson & Mendes LLP has announced the cases it handles through the TM HALO offshoot are now fully contingency-based.

Tyson & Mendes has had its sights on the phenomenon of "nuclear verdicts" — generally described as jury verdicts of \$10 million or more — for some time and offers clients several resources to try to prevent these outcomes, including a book on the subject by managing partner Robert Tyson. It also has TM HALO, which takes its name from a high-risk military parachuting maneuver known as "high altitude low opening" or HALO.



Robert Tyson

Two years after launching TM HALO, Tyson talked to Law360 Pulse about the subsidiary, how the firm makes a contingency-based model work on a business level, and what the reaction has been from clients. This interview has been edited for length and clarity.

### What was the original goal with TM HALO? What led to the firm deciding to create this subsidiary?

All of this is in response to nuclear verdicts and the unjust results that have taken place across the country and really taken off over the last 10 or 15 years. So our first approach was to determine what's going on in these trials — and we're still doing that. We're still studying nuclear verdicts, and we're coming out with book number two on nuclear verdicts soon.

So we've come up with these tactics to fight nuclear verdicts in trial, but it's never-ending. So what we tried to do here is look at the problem from a business point of view.

What are plaintiffs lawyers doing differently than defense lawyers when it comes to the business and their approach to these trials. And the one glaring thing is that plaintiffs lawyers only get paid if they win. So that's something that we started looking at.

When we first launched two years ago, it was more of just on a test basis. We knew it would evolve into something, and that's what happened. Two years later, it's evolved from a hybrid approach to fee structures to be purely contingency. We only get paid if we win, just like our opponents.

### Besides becoming fully contingency based, are there other changes or adjustments that you've made to it since the launch?

You know, it's been an interesting dialogue with our partners and clients, because it is a radically different business model than any other cases we handle.

We're an insurance defense firm, and our goal is to be the best insurance defense firm in America. Defense firms are all volume business, that's what we do. That's the model. But after studying nuclear verdicts for years, we wondered: Does that business model work for the few cases a year that insurance carriers and big companies are worried about? And what we found after speaking with our trusted partners, many of whom are insurance companies, is that that might not be right for a handful of cases a year where our clients are worried about going to trial and there's a lot of exposure there.

And so as we've done that over the past two years, it's been a dialogue with our clients. Because on a typical case, you have a partner on the case, you have an associate, and there's all sorts of guidelines for billing and rules for billing, and all that gets tossed aside here. Our only goal with TM HALO is to get the lowest possible jury verdict that justice deserves.

So it doesn't matter how many lawyers we have. Some of the questions we've gotten over the last few years are "How many lawyers are going to work on this file?" My answer is "Don't worry about it, because we're going to put as many lawyers as it takes to win." Which is very different than the usual model.

And the other thing that's come about that's different is the parachuting aspect. Most of these cases, we're not handling from inception. We're not going to have these files for two or three years; we may have just two or three months before trial. So that's a very different business model, too.

And all of this has just evolved as part of the dialogue with our key clients.

### **From a business perspective, since it is so different from the usual model, how do you make the math, so to speak, work for you here?**

It works because we don't want every case to go into TM HALO. This model does not work on a volume basis. We just have to look at things differently.

So first, to be a TM HALO case, it has to have a settlement demand of at least \$10 million before we'll consider taking it. We also have to evaluate our chances of winning. Because we're taking it on contingency, we have to evaluate it in the same way our competition does. They look at a client who comes in, an injured client, and they think, "Are we going to be able to win this?" Well, that's the same thing we have to do.

It has to have a demand of over \$10 million, and we have to look at our chances of success in beating whatever the demand is. And then our compensation is 40% of whatever savings we can achieve for our client over the last settlement demand before we parachuted into the case.

So that's the business model for TM HALO. And for most of our attorneys, for most cases, we're not doing that. But every now and then there are those large cases where we'll look at whether we think we can bring value and whether it fits our model.

### **How have clients responded?**

Well, it's initially tough to get your arms around. In our space, the insurance space, around 2009, the reptile theory came out, in a book written by David Ball and Don Keenan, and it really crystalized a strategy for plaintiffs lawyers to go for a new emotion, which was anger. So for the last almost 15 years, they've been

trying to get juries angry. Before that they were going for sympathy, and now they're going for anger. They've been trying for large jury verdicts by making juries angry.

And that's really when insurance companies started focusing, out of necessity, on cost and the term litigation management became very prevalent. So what we tried to do with this is take cost out of the equation, just for those handful of cases per year. We wanted to provide this option.

It changes the whole approach to the case. You don't have to worry about how many attorneys are on it. You don't have to worry about travel or other expenses. It all comes down to winning.

And there's been a tremendous interest in it. For a case that an insurance carrier is extremely worried about, it's a very different approach, and there's been a lot of excitement about it.

**I know for most attorneys billing and having to account for your time is not their favorite thing. So has it also been well-received by attorneys in the firm?**

Oh come on, everybody loves billing! No but seriously, that is a big attraction.

And I don't have a problem at all with the billable hour. Our firm is based upon the billable hour. My only thing with this is that nuclear verdicts are a real problem. Nuclear verdicts and social inflation are at the top of most insurance company CEOs' list of biggest concerns. And so we're trying to come at it every which way that can help our clients.

The thinking is, why not have your defense attorneys as worried about the case as you are? Because right now your defense lawyers get paid the same amount of money no matter what. I get paid the same amount for doing a summary of interrogatory responses as I do for giving closing arguments in a \$100 million catastrophic injury case. And that's fine; that works for 99% of cases. We're just trying to address possible nuclear verdicts, and try to come at it in a creative way that we think will align everybody's interests.

**Do you have any plans for the future, to grow it or to make changes?**

We're in a good position now, I think. One of the reasons we were able to launch this at all is that we've been able to hire some unbelievable lawyers. We've got lawyers who have handled 100+ trials.

So I don't think we see this ever becoming too big a part of our business. Because first of all, we probably can't scale enough to be handling hundreds of bet-the-company cases. 10 huge trials a month, 20 huge trials a month? We don't have the trial lawyers to do that. But do we have the trial lawyers to do one a month? Yes, absolutely.

This is just a different approach. TM HALO is not a volume model at all. It's good for one-offs, for all hands on deck, for an emergency-type case.

So we have plans to continue it. We will want to grow it slowly. But we also turn cases away. We want to be able to win and to bring value to our clients. There's a lot of excitement out there from our clients about it and certainly a need for it, but we don't ever see it being too big a part of our business.

--Editing by Alyssa Miller.

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