

Tyson & Mendes Managing Partner On 'Nuclear Verdict' Biz

By Xiumei Dong

Law360 (July 14, 2021, 9:02 AM EDT) -- Robert Tyson and Patrick Mendes established their firm, Tyson & Mendes, in a small space on La Jolla Boulevard in San Diego in 2002 to represent clients in the insurance industry. Since then, the civil defense law firm has grown to have more than 200 attorneys in 14 offices serving 17 states.

Now, Tyson & Mendes is launching a subsidiary, TM Halo, to target and defend corporations against "nuclear verdicts," which is commonly defined as a jury award of \$10 million or greater. Much like the high-risk military maneuver of "high altitude, low opening," TM Halo attorneys will parachute in shortly before trials start and try the biggest cases that their clients are worried about, Tyson said.



Robert Tyson

Here, Tyson talks about the firm's reason for forming TM Halo, its makeup and billing model, and how the new firm will approach cases.

This interview has been edited for length and clarity.

What is TM Halo? What's your reason for launching the new subsidiary?

Tyson & Mendes is a defense firm with 200 lawyers, and we've got offices throughout the country, and we're a litigation firm. We are a defense firm, and TM Halo is strictly a trial firm. TM Halo typically will be brought in to try the biggest cases for insurance companies and corporations, anywhere in America, not just where we have our offices.

TM Halo is a natural progression from our fight against nuclear verdicts. I wrote a book last year about nuclear verdicts and how to fight them to achieve justice for all. That was the beginning of the education piece, because we believe that there are three things that insurance companies can do to stop nuclear verdicts today. A lot of insurance companies and corporations just scratch their heads when these crazy nuclear runaway jury verdicts come in, but there are things we can do and the three things are: educate, communicate and compensate. So TM Halo is a combination of all of those — all of our research and studying, and trial skills — forming a new law firm ... just being devoted to stopping the insanity of nuclear verdicts.

What are nuclear verdicts? Why is the firm devoting resources to this area?

When folks research verdicts and research nuclear verdicts, what they focus on seems to be \$10 million above, but there are verdicts that are much lower than that, that are still nuclear. So, my definition of nuclear verdict is when the noneconomic damages are extremely disproportionate to the economic damages. In other words, the pain and suffering awards are outrageous compared to the economic loss that happened in a particular case. So for instance, you could have a case where there is \$25,000 in medical expenses, or wage loss, but the whole award is a million dollars, and \$950,000 of it is in pain and suffering in the future. So, in that case, I would say that's a nuclear verdict, even though it's only a million dollars not \$10 million.

What will the new firm consist of, and how's it different from your firm's general practice?

While the firm itself is being led by six veteran trial attorneys, they will have the backing of 200 of Tyson & Mendes attorneys, so it's quite a lot of force in this new model we're rolling out. The six members include me, Mike Coffey, Margaret Holm, Mina Miserlis, Damian Fletcher and Ed Leonard.

They're all the top defense lawyers in America. They're all jury trials veterans. They've all had tremendous success. They're also all completely on board, trained and educated on the TM method to avoid nuclear verdicts, which is really one of the most important features here. There's a fair amount of trial lawyers in America, but not all have been trained on these anti-nuclear verdict methods that we have come up with.

How will TM Halo bill clients? Is it the same or different from a law firm's traditional billing model?

With the TM Halo, we're using value billing. And what that means is that we're going to be charging our clients, insurance companies and corporations, a reduced flat fee so that if they hire us to try this case, it'll be on a flat-fee basis. It'll be less than they would anticipate paying us or some other firm by the hour. So there's a saving there.

But we'll also be receiving a success fee if we're able to win the case for our clients. In other words, we're able to get an outcome with which they're very happy, then we will receive a percentage of the savings. So if we were able to save the insurance company or corporation money, then we would receive a percentage of that.

And this way, they'll be paying less, and then if we win, and we only get this if we win, we would receive what's been called a reverse contingency or a success fee for how much we save the insurance company.

How does the firm determine which cases that you want to take on?

First of all, it's got to be big enough. The case has to have a demand of at least \$10 million or more for it to qualify for TM Halo. Because we will be using value billing, which will be part reduced flat fee and part success fee, we're going to have to evaluate the chances for success. In other words, if we're going to be taking on these big trials and dropping everything, which is different from the insurance defense model, which has a very high volume of cases. If we're going to be taking a reduced flat fee, we want to have a chance to win, which from a defense point of view is not typically a factor in whether or not you're going to take the case.

This model is very similar to what the best plaintiff's lawyers in America do, right? This law firm is set up

very similar to our competition where they evaluate cases, where they don't take that many cases, where they decide whether they want to take a case and not take the case based upon whether they think they can win. So, in a way, we've learned from our competitors and are doing the same thing.

--Editing by Nicole Bleier.