

## Plaintiffs Bar Perspective: Motley Rice's Donald Migliori

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Donald A. Migliori, a member at Motley Rice LLC in Mount Pleasant, South Carolina, is a multifaceted litigator who can navigate both the courtroom and the negotiating table. He represents victims of defective medical devices and drugs, occupational diseases, terrorism, aviation disasters, antitrust, and securities and consumer fraud in mass torts, and other cutting-edge litigation.



Donald Migliori

Migliori holds leadership roles in a number of MDLs, including negotiating on behalf of tens of thousands of women allegedly harmed by pelvic mesh/sling products and serving as co-liaison counsel in the N.J. Bard pelvic mesh litigation. He is a member of the plaintiffs' steering committee for the *In re Bard IVC Filters Products Liability Litigation*, the *Depuy® Orthopaedics Inc. ASR™*, and the *Pinnacle® Hip Implant MDLs*. He also serves as co-lead plaintiffs counsel and liaison counsel in the *Composix® Kugel® Mesh MDL*, and as liaison counsel for the litigation consolidated in Rhode Island state court.

Migliori played a central role in the settlements of more than 50 cases of 9/11 aviation liability. He represented 9/11 families who opted out of the Victim Compensation Fund, and served as liaison counsel for all wrongful death and personal injury cases in the 9/11 aviation security litigation. Additionally, he is a lead attorney of the 9/11 Families United to Bankrupt Terrorism, a groundbreaking case designed to bankrupt the financiers of al Qaeda.

### **Q: What's the most rewarding aspect of working as a plaintiffs attorney?**

A: I started my practice as a defense lawyer and after four years, I was ready to quit the law. Owning an Italian restaurant sounded more rewarding. But I have a love of the law. I just realized that I was on the wrong side of worker safety and public health issues in the profession. I started at Ness Motley during the height of the attorneys general tobacco litigation in the 90s. The firm, now Motley Rice LLC, makes a difference in the lives of our clients and their families at a fundamental level — whether it be in tobacco, asbestos, aviation, terrorist financing, medical device, or other litigation. But at 30,000 feet, we are effectuating change in public health and safety. Hearing that a defective medical device or dangerous drug has been pulled from the market is gratifying, but getting the occasional fruitcake from the widow of an asbestos worker feels pretty awesome, too!

### **Q: What skill do you feel is most important for achieving success as a plaintiffs attorney?**

A: Preparedness. My mentor and dear friend, Ron Motley, used to always brag, “I read everything!” And he did. Sometimes more than 1,000 pages in a day. What made him such an amazing trial lawyer is that

he knew every fact, every document, every study and every word of testimony in a case. One of our experts told me after Ron left the trial war room one night, "Damn, Ron knows more about epidemiology than I do." Probably true, but even if not, Ron held his own with every expert because he read everything. Know the facts. Know the science. Know the law. Never wing it: Judges hate it and juries don't buy it.

**Q: When it comes to trial strategy, what's the biggest difference between representing a plaintiff and representing a defendant?**

A: Defense lawyers are not burdened with the truth! No really. A plaintiff attorney who misstates the evidence is admonished or sanctioned. A defense attorney who misstates the evidence is just doing his or her job. Some of the best defense attorneys I have faced have argued completely contradictory facts in the same case with impunity.

One federal judge called it "good lawyering." To overcome the imbalance of who owns the truth in trial, plaintiff attorneys need to know every detail of every piece of evidence on the case. They need to command the facts and control the story from voir dire to closing. Wait for the overzealous defense lawyer to sell a fact that is easily disproven. That's how you get a jury to stop listening to the defense of the case.

**Q: What advice would you offer to young lawyers interested in practicing as a plaintiffs attorney?**

A: The best and worst quality of young plaintiff trial lawyers is their enthusiasm. So many have only one gear: overdrive. Nothing makes a "seasoned" trial lawyer like me happier than to have several young, ambitious and tireless attorneys working up a case. That energy and productivity always distinguishes the up-and-coming lawyers in the office and is infectious.

However, in a deposition or before a jury, that enthusiasm needs to be controlled. It often prevents listening to witnesses, observing the reactions of the jury, understanding how a judge is trying to shape your case, and ultimately how well you perform. For example, not every defense witness needs to be brow beaten. Make your points and move on, so when you do go into overdrive on a defense witness, the jurors understand the relative importance of that issue. I tell our young lawyers that there are many gears in a fine car ... and a brake. Control your speed and know when to kick it in gear; you won't crash and burn.

**Q: What's one thing defense attorneys don't understand about practicing as a plaintiffs attorney?**

A: I am most surprised by the fact that many defense lawyers do not get that we believe in this work and why lawsuits are good for America. It's not just about compensation. It's about "just compensation." Our clients engage us for many reasons. Whether in the 9/11 aviation security litigation, vehicle defects, tobacco, medical device, or occupational exposure litigations, our clients demand answers, accountability, change in behavior and deterrence.

Compensation is always a part of the equation but cash is not "just compensation" unless it has purpose. Our cases cause manufacturers to redesign or remove dangerous products from the market; our cases cause start rates to decrease among teen smokers and quit rates to increase across all ages; and our cases cause corporations to reform how they govern themselves. Even a simple car accident can cause one driver to be more careful on the roads. We are in the business of Causes, Not Just Cases™.

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