

Legal System Abuse and Attorney Advertising for Mass Litigation: State of the Risk

As with marketing for all goods and services, attorney advertising is designed to attract as many consumers (i.e., claimants) as possible, including some people who likely wouldn't have even considered the service until presented with certain information in the ad.

The most recently available data, research from the American Tort Reform Association (ATRA), estimates in 2024, legal service providers spent more than [\\$2.5 billion on 26.9 million ads](#) across the United States:

- Television ad volume peaked in 2023, with more than 16.4 million TV ads for legal services, approximately a 44 percent increase when compared with 2017.
- Radio ad quantity peaked in 2024 with more than 6.8 million radio ads for legal services, an increase of more than 261 percent compared with the 1.8 million radio ads in 2017. Spending on these ads increased by more than 134 percent compared with 2017.
- Spending on out-of-home and outdoor ads, such as billboards, increased more than 260 percent compared to 2017.

The analysis indicates spending on ads has increased by 39 percent from 2020 to 2024; however, this rise is partially due to the increased cost of digital advertising. The ubiquity of attorney advertising merits scrutiny as a factor in [legal system abuse](#) – policyholder or plaintiff attorney practices that increase costs and time to settle insurance claims.

As with many legal system abuse factors, the impact of excessive and aggressive attorney advertising has been challenging to quantify. However, research can shed light on the role it can play in mass litigation.

What is Multidistrict Litigation and how does it impact liability risk management?

By 2023, multidistrict litigation (MDL) – large lawsuits consisting of multiple civil cases involving one or more common questions of fact but pending in different districts – constituted about a third of all pending cases in the federal system, and fully half of all pending civil cases, according to [a report by Bloomberg Law](#).

According to a research paper, [Mass Tort Advertising and Multidistrict Litigation Filings](#), between 2003 and 2023, the number of pending cases within MDL increased tenfold, from about 45,000

Key Findings

\$2.5 billion Spent by legal service providers on 26.9 million ads across the U.S.



Research suggests legal advertising increases the number of plaintiffs in mass litigation.



Product liability cases emerged as the single largest group of MDLs, while other case types have decreased 2012- 2022.

\$16 billion Third-party litigation funding market size in 2024. But 12 states and 2 jurisdictions have enacted or are considering disclosure requirements.

to nearly 417,000. By July 2024, MDL cases constituted roughly 65 percent of all civil cases pending in U.S. District Courts. While the data posed constraints to analysis, the findings can shed light on the relationship between the proliferation of attorney advertising and escalating litigation and insurance claims.

The Researchers created probability models using proprietary data on mass tort TV advertisements, matching it to Federal Judicial Center data on all filings that were transferred to an MDL. They concluded that legal advertising increases the number of plaintiffs in an MDL case. They also theorize the increase in filings “is not merely a result of competition between lawyers for cases but, rather, a genuine growth in the number of claimants.”

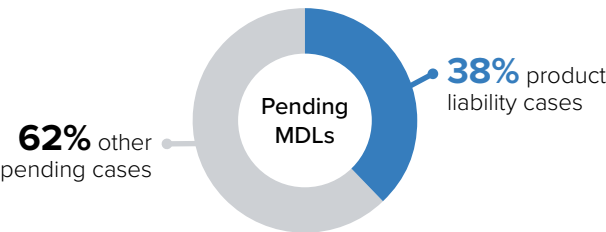
Sometimes multiple individual lawsuits involve essentially the same types of claims caused by the same negligence and involve common factual or legal issues. Courts may decide to combine these cases into a mass tort lawsuit. When these lawsuits span across several federal district courts, a judicial panel may decide to further combine all of these cases into a single district court using the MDL framework for coordinated or consolidated pre-trial proceedings. Once pre-trial proceedings are completed in the MDL court, individual cases may be returned to their original courts for trial or resolution.

The [MDL framework was created by a statute in 1968](#) to streamline judicial efforts on mass torts and mitigate backlogs. In a class action lawsuit, a settlement or judgment applies to all members of the lawsuit class. The court must approve the settlements to ensure fairness to all class members. Unlike a class action lawsuit, in mass torts, each plaintiff’s case is treated as an individual case. Accordingly, in MDL, each individual case can result in different individual settlements or judgments, increasing the potential of higher costs to resolve the claims.

The number of actions, or lawsuits, in an MDL varies, but according to [the report by Bloomberg Law](#), the “MDL ecosystem” typically involves “a couple of whales and a lot of minnows.” In other words, “most MDLs (74 percent) contain fewer than 100 actions, and almost 30 percent of MDL dockets contain 10 actions or fewer. In contrast, 97 percent of the consolidated actions currently pending can be found in only the largest 10 percent of MDL dockets.” Yet, it’s important to note some MDLs have hundreds or thousands of actions.

In the ten years leading up to and including 2022, the number of consolidated MDL cases pending in federal courts steadily declined, according to the Bloomberg report. However, during the same period, the single largest group of pending MDLs have involved product liability cases. Most other categories of pending MDLs have decreased while the total number of product liability cases has remained consistently between “60-71 cases each year.”

Product Liability: Single Largest Category of Pending MDLs



Source: Bloomberg Law

Making up 38 percent of the pending cases as of August 2023, product liability is the only litigation area to exceed more than a 30 percent share of pending docket since 2017. Twenty of the 21 largest (in terms of included pending actions) MDLs were product liability cases. Data shows the gap “between the number of product liability MDLs and the next most common case category—antitrust—has never been higher than it is in 2023.”

When used, MDL is considered a pivotal factor in liability management and key to forecasting the impact of other types of litigation subject to consolidation. Once the Judicial Panel on Multidistrict Litigations (JPML) renders a decision, there is limited

Hazards of Problematic Attorney Advertising

- Creates a false sense of urgency, pressuring the target audience to take legal action, possibly without even considering other options.
- Overpromises results when implying guaranteed windfalls, creating unrealistic expectations and potentially impacting time to settle.
- Influences potential jury, allowing attorneys to communicate plaintiff biased information which can impact the way jurors process facts about the case.

ability to appeal from that order. If the panel declines to consolidate, there is no appeal from that decision. While either party in the MDL can request a motion to consolidate, the Bloomberg report indicates that from 2002 to 2022, plaintiffs requested twice as often as defendants, with motions granted to the requester (respectively) 53 percent and 46 percent. However, for the 15 years leading up to 2022, the rate at which the JPML granted consolidation overall was about 50 percent.

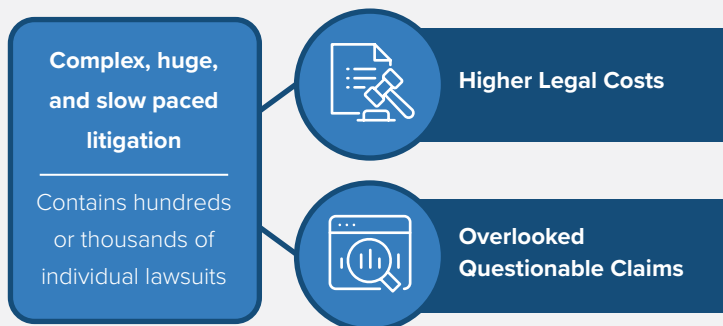
How can mass tort advertising lead to higher claim costs?

A 2024 Wall Street Journal article, [“The Latest Ad Boom: Lawyers Seeking Plaintiffs for Mass Litigation,”](#) reported a 24 percent increase in [federal civil cases](#) filed in 2023. More than \$106 million was spent by the 10 biggest digital legal advertisers in 2023. Since the potential to optimize profits can motivate the increase in advertising for these cases, it is fair to presume the advertising boom played some role in the increase in mass litigation.

Mass torts consolidate numerous claims against the same defendant(s) and can lead to multi-million or even billion-dollar settlements. Once a lawsuit is created, the cost of adding more litigants may not increase much and may even be lowered as the attorneys will encounter certain expenses, such as expert testimony and labor costs, regardless of the number of plaintiffs attached to the case. When a case is consolidated into an MDL, the resulting diminished complexity around these expenses can, in turn, lower attorney costs.

Marketing for mass torts can differ from general attorney advertising in that the ads may directly mention specific product or brand names and associated injuries in their messaging. What can follow is the increased risk of reputational damage, bringing more financial risk, such as a decline in company sales or even share prices. Attorney advertising can also increase the litigation risk of targeted defendants and influence potential jurors who may presume, when they see the ads, “where there’s smoke, there’s fire.”

Risks of Multidistrict Litigation and Mass Torts



The legal system has mechanisms during trials to restrict attorney communication with jurors and juror exposure to media. However, before a trial, pervasive attorney advertising can bypass the intent of those restrictions: mitigating undue bias and influence. Marketing strategists target ad audiences based on strategic factors and attributes, such as location, demographics, and interests gleaned from information such as purchasing and internet history. A net cast for plaintiffs may also capture the future jury pool.

Consumers are becoming increasingly aware of the rise in legal services marketing and the potential impact on their coverage. A report from the Insurance Research Council (IRC), "[Public Opinions on Attorney Involvement in Insurance Claims](#)," examined consumer opinions on attorney advertising and its perceived impact on the cost of auto insurance and legal behavior. Expanding on findings from past IRC studies on this issue, the national 2024 survey showed 60 percent of respondents indicated attorney advertising increases the number of auto claims (up from 55 percent in the 2021 IRC survey).

While 89 percent of respondents reported seeing attorney advertising in the past year (up eight percentage points from 2021), the most frequently reported type of legal ad, by a large margin, targeted injuries from auto accidents, with 63 percent saying they encountered advertisements of this type. Additionally, 52 percent of respondents feel attorney advertising increases the cost of their auto insurance (up from 45 percent in 2021).

How can Third-party Litigation Funding fuel mass litigation via attorney advertising?

Ads saturate multiple channels – public billboards, radio and television broadcasts, and social media – dangling the lure of a financial windfall. Nearly [800,000 television advertisements for](#)

[mass tort cases](#) ran in 2023, with costs exceeding \$160 million, according to The Wall Street Journal.

While the size of MDL allows attorneys to tap into efficiencies, finding plaintiffs and keeping the cases going can still be an expensive burden, especially when working on contingency. Third party litigation funding (TPLF) investors may be especially attracted to mass litigation by the chance to optimize their financial returns. Law firms can use the capital that TPLF provides to not only cover legal expenses but also advertising to recruit more plaintiffs.

The "[Westfleet Insider 2024 Litigation Finance Market Report](#)" estimates TPLF market size at \$16 billion in assets under management (AUM) in 2024, up from \$15.2 billion in 2023. Reflecting a trend that began in 2023, the amount of new commitments is down, with \$2.3 billion in new deals versus a high of \$3.2 billion in 2022. Lawyer-directed deals made up approximately 58 percent of capital commitments versus 64 percent in 2023.

Consistently, over the past four years, more capital has been allocated toward claim monetization, but 74 percent of commitments still go toward legal budgets, which likely include costs for recruiting plaintiffs for mass litigation. For the first time since Westfleet began publishing the annual report, the data set included information on contingent risk insurance, attributing 19 percent of new commitments in 2024 fully or partially to contingent risk insurers. Despite tighter capital availability, (TPLF) remains strong.

While several factors may impact insurer costs, unnecessary and excessive litigation can drive higher loss ratios while being more challenging to predict and mitigate. Coverage affordability is a growing concern for many policyholders nationwide. Stakeholders across several jurisdictions have been pushing for reform, leading to the establishment of TPLF disclosure requirements over the past decade, including:

- The U.S. District Court of Northern California (for class action lawsuits) in 2018
- The New Jersey Federal District Court in 2021
- Indiana and Montana Legislatures in 2023
- West Virginia Legislature in 2024 (updated existing laws)
- Kansas and Georgia Legislatures in 2025

As of March 2025, Arizona, Ohio, New Hampshire, and at least five other states were aiming to consider TPLF disclosure legislation.