

Featuring the
latest of ILR's
groundbreaking
research on pressing
legal issues



FROM THE TOP: *The President's Perspective*

At ILR's 17th Annual Legal Reform Summit, we looked at the various components that fuel the American "litigation machine" – a system that industrializes the practice of law by mass producing litigation and prioritizing profit.

ILR's cutting edge research continues to look for ways we can gum up the machine, by recommending reforms that will address exploitations of the legal system today, and predicting the litigation trends of tomorrow so we can stop the machine in its tracks.

In this issue of the ILR research review, we look at how plaintiffs' lawyers are working in the shadows to increase profits. These are areas where a little transparency would go a long way, such as in the asbestos bankruptcy trust system. Plaintiffs' lawyers are manipulating the timing of asbestos trust claim filings in order to "double dip" and benefit greatly from both civil litigation and trust claims – often to the tune of millions of dollars in payouts. Another area is the pay-to-play system flourishing in our cities and counties, where local prosecutors are hiring politically-connected outside counsel on a contingency fee basis to bring state cases, resulting in conflicts of interest and more leverage for these outside attorneys.

And while plaintiffs' lawyers are working in the shadows, they are also using more visible tactics for plaintiff solicitation. To anticipate the next big litigation trend, ILR commissioned research on trial lawyer advertising, which shows that trial lawyers are increasingly advertising in new ways to harvest plaintiffs in bigger numbers, specifically for drug and device litigation.

It is time to pull the emergency brake. Spotlighting these issues and making recommendations for reform helps to dismantle the "litigation machine" by making the civil justice system more transparent and fair, rather than a well-oiled machine that benefits the plaintiffs' lawyers who run it.

- Lisa A. Rickard

ILR EVENT

17th Annual Legal Reform Summit *The Litigation Machine*

This year's Summit featured discussions in the form of panels, TED-style talks, and interviews on topics such as third party litigation financing, the direction of data privacy liability, government over-enforcement, and trial lawyer advertising. It also addressed new drivers of litigation, including local government use of outside contingency fee counsel.

There was also a panel discussion on the political landscape of the 2016 election featuring Mark Halperin and Kristen Solits Anderson, who provided insights into the mind of the millennial voter.

The Summit was keynoted by 2012 Republican Presidential Nominee and Former Massachusetts Governor Mitt Romney.

Major media covering the event included C-SPAN, Politico, NBC, USA Today, ABC News, CNBC, The Washington Post, The Boston Herald, and many others.



Big Bucks and Local Lawyers:

The Increasing Use of Contingency Fee Lawyers
by Local Governments

Author: *Michael M. Maddigan, Hogan Lovells US LLP*

Similar to state AGs hiring outside contingency fee counsel, local prosecutors and city attorneys are hiring private attorneys to pursue public interest cases under contingency fee contracts that give those private attorneys a direct, financial interest in the outcome of those cases.

As a result, the public interest is no longer the sole consideration of the public's lawyers in those contingency fee cases or the sole measure of an appropriate outcome in them.

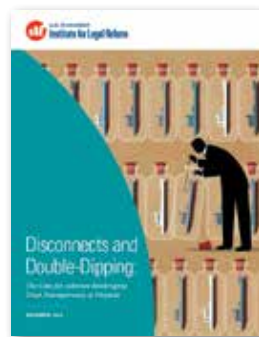
Moreover, the work and remuneration of these private attorneys often is shielded from public scrutiny by claims of attorney-client privilege.

This research highlights recent examples of local government prosecutors, including district and city attorneys, hiring outside counsel to sue businesses, and the impact these arrangements have had on the individual cases as well as on the legal system. This issue is particularly prevalent in California, and examples of local prosecutors using contingency fee counsel there are included in the research.

The paper also identifies the key ethical issues and public policy problems posed by these contingency fee contracts, such as the "pay-to-play" problem, where local officials use the potentially lucrative contingency fee opportunities to reward their supporters.

Overall, the research shows that the increasing use of contingency fee counsel by local government entities is a disturbing trend that poses real risks to the fair and impartial administration of justice.

STATE ISSUES



Disconnects and Double-Dipping:

The Case for Asbestos Bankruptcy Trust Transparency in Virginia

Author: *Mark A. Behrens, Shook, Hardy & Bacon L.L.P.*

Asbestos litigation has existed for over four decades.

For years, the litigation was focused on the major asbestos producers until those companies were overwhelmed with asbestos claims and forced into bankruptcy.

Trusts approved by bankruptcy courts have been set up to pay people with asbestos-related injuries caused by exposure to their products. Today, billions of dollars are held in these privately managed trusts to pay asbestos claimants.

Despite the exit of the major asbestos producers from the tort system, asbestos litigation shows no signs of abating, and asbestos personal injury lawsuits continue to be filed by the thousands against still-solvent companies. The targets in the litigation today are often newer defendants or those remote from asbestos production.

By manipulating the timing of when claims are filed with asbestos bankruptcy trusts—specifically,

by delaying the filing of trust claims until after an asbestos personal injury case is settled or goes to verdict—plaintiffs can withhold information regarding alternative exposures from tort system defendants, potentially increasing the amount they receive in recovery from those defendants.

This study examines trust-claiming activity in wrongful death cases in Newport News, which is home to seven of every ten asbestos cases filed in Virginia.

The research provides several examples in which asbestos plaintiffs and their lawyers failed to identify exposures to bankrupt companies' asbestos products until after collecting large multi-million dollar jury awards or settlements from solvent companies.

As a result of this scheme, asbestos plaintiffs "double-dip" by collecting through court cases and again from large trust funds set up by bankrupt companies.

ASBESTOS



National Trial Lawyer Drug Advertising Memo

TRIAL LAWYER ADVERTISING

Author: Rusty Silverstein, X-Ante

This year, it is projected that trial lawyers will spend \$854 million on advertising for litigation. This data is part of new research ILR commissioned on national trial lawyer advertising of drug and device litigation, both online and on television. **That data reveals significant increases in ad spending for drug and device litigation; up 15% in the last year alone, while spending has decreased**

TOP LEGAL SERVICES TV AD CATEGORIES

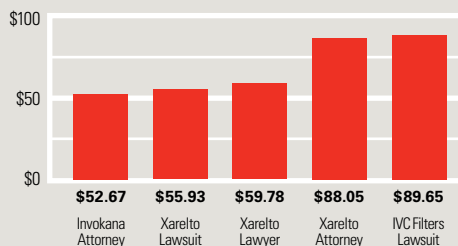
Est. Ad Spending, 2015-16 (projected)

	2015	2016 (proj.)	% Change
Rx Drugs & Med Devices	\$129m	\$149m	15%
Asbestos	\$60m	\$54m	-10%
Lawsuit Funding	\$50m	\$23m	-54%
Energy	\$756k	\$139k	-82%
Automotive	\$957k	\$904k	-6%

on advertising for asbestos (down 10%) and automotive litigation (down 6%). The research also tracks the top paid Google search terms related to side effects of prescription drugs, number one being Zolofit with 450,000 searches over 6 months in 2016, and the most expensive Google ads for drug and device litigation, IVC filters taking the top spot at \$89.65 per click on the ad.

TOP DRUG & MEDICAL DEVICE LITIGATION

2016 Google Ad Avg.
Cost-Per-Click Price, Jan-Jun 2016



ILR IN THE MEDIA

ILR's National Drug Advertising research was picked up by *Corporate Counsel*, *The Hill*, *US Recall News*, and *Southeast Texas Record*.

Earlier this fall, the *Washington Post* ran an opinion piece by Lisa Rickard on the potentially dangerous health effects of trial lawyer drug advertisements. These ads seek plaintiffs for lawsuits against drug and device manufacturers with panic-inducing warnings about adverse reactions - without any context. Unlike advertisements for the pharmaceutical drugs themselves, these trial lawyer advertisements are not regulated and do not have to inform the viewer to consult with their doctor.

National Digital Privacy Survey Memo

DATA PRIVACY

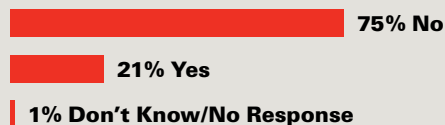
Author: Bill McInturff and Lori Weigel, Public Opinion Strategies

ILR commissioned Public Opinion Strategies to conduct a national survey of voters' opinions on data privacy and liability. The results show that while American voters are increasingly worried about the security of their personal information, they also feel that most companies will be affected by hackers at some point, and that following data

breaches, they should not be sued. **The survey clearly demonstrates overwhelming and consistent support for policies to reform how data breaches are handled in legal proceedings and by government regulators.**

This support is significant across partisan lines and among all key subgroups.

Should a company be sued in a class action lawsuit if a company quickly notifies its customers, provides free credit monitoring to anyone whose information was exposed, and fixes the security problems in its systems?



86% More than four-in-five support a standard federal notification law



ILR IN THE MEDIA

ILR's National Digital Privacy Survey was picked up by *Inside Counsel*, *Technology Law Dispatch*, and *Legal Newsline*.

