Municipality Litigation

The Plaintiffs' Lawyer Playbook

U.S. Chamber of Commerce
Institute for Legal Reform

Chapter

01

Executive Summary

Six years ago, ILR released *Mitigating Municipality Litigation*: *Scope and Solutions*, which brought much-needed attention to the concerning surge in civil lawsuits by cities and counties against corporate defendants.[1]

Since then, the range and volume of large-scale litigation by municipalities against businesses has continued to increase.[2]

When faced with the potential risks, costs, and reputational damage from these suits, defendants are pressured to, and frequently do, agree to substantial settlements that enrich plaintiffs' attorneys and any third-party investors whose funding enabled the litigation. As a result, recruiting municipalities as clients has become an increasingly attractive business model for the plaintiffs' bar. Indeed, a "playbook" for this unique subset of litigation has taken shape and is regularly deployed in courts across the country.

This white paper is a tool for policymakers, civil justice advocates, and defendants seeking to understand the dynamics of mass municipality litigation and what can be done about it. The paper begins by identifying and deconstructing six common elements of the playbook driving municipality litigation. It then examines recent categories of litigation that illustrate plaintiffs' use of the playbook and details how, in most high-profile cases of this kind, many or all of its component tactics are being exploited. The paper concludes by briefly outlining potential policy solutions for preventing this new litigation blueprint from taking further root.

The Costs of Mass Municipality Litigation and the Playbook Driving It

As used in this paper, mass municipality litigation refers to sets of cases in which municipal government entities—e.g., counties, cities, school districts, water districts, etc.—bring similar or identical claims against the same or similar defendant(s), often with the goal not just of obtaining financial recovery but of pursuing policy objectives.[3] Private plaintiffs' lawyers, representing anywhere from one to dozens or even hundreds of municipalities, have played a prominent role in the growth of municipality litigation. In addition to representing their clients in the courtroom, private lawyers

identify and pitch municipal clients on proposed litigation, coordinate among multiple municipal plaintiffs and other counsel (especially when matters are consolidated into multi-district litigation), and organize funding and public relations campaigns. Their practices have begun to formalize into a set of litigation tactics that comprise the playbook discussed herein.

As ILR has previously documented, mass municipality litigation raises numerous concerns, making it critical to understand how the playbook operates.

Although municipality litigation typically involves allegations of widespread environmental, health, or social harms, the playbook strategy is to target select, deep-pocketed defendants, with courts asked to pin liability for the purported blameworthy actions of many on just a

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few. Litigation under the playbook usually relies on broad and novel legal claims and involves conduct with only an indirect or attenuated connection to the purported harm. Proliferation of playbook tactics threatens to chill a wide swath of legitimate economic activity, hamper innovation, and make products less available to and more expensive for consumers. At the same time, it delays relief for true victims by making litigation overly complicated and difficult to resolve.

The prolific use of the playbook by municipalities and their private counsel should alarm more than just corporate defendants. Ironically, given that elements of the playbook were pioneered in state attorney general (AG)-led actions like the 1990s tobacco litigation,[4] their use threatens the exclusive authority of AGs—the states' chief legal officers—to bring *parens patriae* suits on behalf of state residents. As the sheer scale and industry-altering outcomes of municipality lawsuits continue to grow, the playbook also stimulates "regulation by litigation," which usurps the responsibility and prerogative of state (and even federal) legislators to regulate business in the public's best interest. These efforts threaten to shift disproportionate power to even the smallest of municipal governments—and to unelected attorneys and other interests who use municipality lawsuits as vehicles for advancing profit-and ideology-motivated goals.

This paper identifies the basic elements of the playbook, including the litigation and public relations strategies that plaintiffs' lawyers leverage in representing municipalities. It also explains how playbook tactics harm businesses, consumers, and the very municipal clients on whose behalf they are deployed. It then discusses real-world case studies, explaining how key elements of the playbook emerged, continue to be applied in ongoing litigation, and call out for reform. The white paper also examines features of the playbook that have appeared only in recent years, such as third-party litigation funding (TPLF), and how these modern litigation tools have further distorted the civil justice system.

Finally, the paper outlines potential solutions to the problems created and exacerbated by municipalities' reliance on this playbook. It offers several solutions by which policymakers can wrest litigation and regulatory power away from plaintiffs' lawyers and back into the hands of elected officials where it more properly belongs; ensure that local government entities are not co-opted as vehicles for private profit and policy preferences; and serve the interests of consumers through lower prices, greater product availability, and a more predictable framework for addressing issues of statewide and national concern.

Elements of Plaintiffs' Mass Municipality Litigation Playbook

Chapter

02

This chapter describes six common tactics in the trial bar's mass municipality litigation playbook and explains how their use can undermine the rule of law, slow the resolution of litigation to the detriment of those allegedly harmed, and erode states' business environments.

To be sure, many of these elements also are features of mass litigation brought by private plaintiffs and, as discussed below, they did not coalesce into a playbook for municipality suits overnight. But it is apparent these tactics are now part of a multi-pronged strategy that is regularly employed by municipalities and their private lawyers to supercharge their litigation efforts. These tactics are listed below and then examined in detail in the corresponding sections that follow. Chapter III provides case studies of the playbook in action, profiling a selection of mass municipality litigation matters, and Chapter IV offers solutions for curbing abusive aspects of the playbook.

Six Elements of the Playbook

- Targeting select industries and defendants
- Crafting the narrative
- Applying pressure through numbers
- Picking a favorable playing field
- Asserting broad and novel causes of action
- Relying on questionable expert evidence

Targeting Select Industries and Defendants

It is no accident that mass municipality lawsuits in recent years have tended to target highly regulated industries and defendants that are already the object of scrutiny and public criticism. Today's trial-lawyer-driven litigation almost reflexively follows on the heels of reports linking particular products to potential harms or in the wake of governmental enforcement activity or scrutiny.[5]

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Well-known or industry-leading companies are frequently the initial targets for plaintiffs' lawyers, given the potential for the largest settlements, but smaller companies also can be attractive targets because they may agree to an early settlement to avoid spending limited resources on litigation.

Capitalizing on a public perception of wrongdoing—or, at least, some purported association with a widespread societal harm—plaintiffs' firms frequently allege that companies or an entire industry knew, should have known, or failed to warn consumers of the perceived harm and participated in a conspiracy to conceal that harm from their customers or the general public. Recent examples of such lawsuits, whether brought by private or municipal plaintiffs, include those against the pharmaceutical industry related to widespread opioid addiction,[6] against manufacturers and suppliers of products containing polychlorinated alkanes (PCAs) and polychlorinated biphenyls (PCBs) asserting environmental harms or personal injury,[7] and against social media companies claiming harm to young people's mental health. Many of the largest cases currently pending in the United States are product liability actions asserting that defendant corporations sold products that were allegedly harmful, despite being legal (and, often times, regulated and governmentally approved). For example, the Johnson & Johnson talc/ovarian cancer matters (over 60,000 cases pending), the hair relaxer multi-district litigation (MDL) (nearly 10,000 cases pending), and the Monsanto RoundUp MDL (61,000 cases pending), arose in the wake of studies purportedly linking legal and government-approved products to certain types of cancers.[8]

Well-known or industry-leading companies are frequently the initial targets for plaintiffs' lawyers, given the potential for the largest settlements,[9] but smaller companies also can be attractive targets because they may agree to an early settlement to avoid spending limited resources on litigation.[10] Early successes against industry leaders encourage—and, often, financially equip—plaintiffs' lawyers to broaden their approach and target any corporate defendant with even a tangential relationship to the industry or product at issue. For example, litigation involving per-and polyfluoroalkyl substances (PFAS) first focused primarily on manufacturers,[11] but it has since expanded to include end-users of PFAS chemicals and PFAS-containing products, distributors and suppliers of PFAS-containing products and "secondary manufacturers (i.e., companies that use or integrate PFAS into the products they produce)."[12]

Crafting the Narrative

A second common element of mass municipality litigation is the development by plaintiffs' lawyers of a narrative to depict the facts underlying the litigation in a manner that seeks to maximize public attention and undermine corporate defendants' credibility. The approach taken by plaintiffs' firm Levin Papantonio—which prides itself on "successfully represent[ing] almost 2,000 states, tribes, counties, municipalities, and pension systems"[13]—is emblematic. As named partner Mike Papantonio recently proclaimed at the "Mass Torts Made Perfect

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Spring 2025" conference, "[t]he idea that you're going to go try a case and that's all you have to do is ridiculous," because "[i]f you don't control the narrative outside the courtroom, you've already lost inside the courtroom."[14] This tactic often involves alleging a corporate conspiracy and building a public relations campaign to negatively influence public perception of the industry or defendants.

Such campaigns frequently rely on television and digital advertising, which serves the dual purposes of reinforcing the public narrative and recruiting potential plaintiffs.[15] Indeed, a cottage industry has developed among advertising firms, catering specifically to trial lawyers, offering "strategic initiatives that amplify your message and maximize your reach"[16] and campaigns that "regularly produce 1,000+ potential plaintiffs from just a single month of advertising."[17] Such advertising is often specifically intended to craft and reinforce a public narrative (whether true or not) regarding the dangers of a particular product. For example, advertising related to pharmaceutical litigation might inform viewers that a certain medication can cause a "heart attack, stroke, death, or birth defects," but omit to note that the drug is approved by the Food and Drug Administration (FDA) as safe and effective and that side effects are rare.[18]

Allegations of conspiracy are now the norm, as in suits asserting that energy producers and beverage companies produced and sold plastic products despite allegedly knowing that plastic recycling efforts were mostly ineffective;[19] that opioid manufacturers allegedly knew but misrepresented the risk that their products were being abused;[20] and that the manufacturers of PFAS allegedly knew the dangers of PFAS but manipulated the science and hid evidence from the public.[21] Another example is the claim that talcum powder producers allegedly knew for decades that their product contained asbestos but hid this information from consumers and the FDA.[22]

Plaintiffs' lawyers begin making their case to potential clients (and potential jury pools) long before their lawsuits are filed. For example, in the talcum powder litigation, leaked communications revealed plaintiffs' lawyers' collaboration with *The New Yorker* to write an exposé-styled piece critical of Johnson & Johnson.[23] Building negative media campaigns against large corporate defendants can condition judges, juries, and the public to the idea that it is appropriate to hold a few companies responsible for any harm that might be traceable to their product or conduct. This tactic also applies additional settlement pressure on corporate defendants whose commercial activity, including from business lines having nothing to do with underlying litigation, can be significantly affected by reputational attacks launched in support of lawsuits.

Applying Pressure through Numbers

Another proven strategy of the plaintiffs' bar is to leverage the collective force of many lawsuits against the same industry or set of defendants to increase litigation risk and settlement pressure on defendants. The potential success of this tactic (among others profiled in this paper) makes cities and counties attractive clients to contingency-fee counsel. Numbering in the thousands—and typically urged to claim damages far greater than an individual plaintiff could—municipalities around the country represent an enormous pool of potential clients. Thus, in recent years municipalities have been recruited as plaintiffs in a wide range of mass litigation matters.

For example, local governments have figured prominently in the many climate-related lawsuits filed in the United States in recent years.[24] More than 60 cities and counties have brought climate litigation against fossil fuel companies, including New York, Chicago, San Francisco, Boulder County, Colorado, and Maui County, Hawaii.[25] More than 3,000 state and local governments have joined lawsuits against various defendants in the opioid supply chain.[26] And hundreds of localities are among the plaintiffs who have filed over 15,000 claims against PFAS manufacturers.[27] In 2023, several major companies settled PFAS-related claims with approximately 13,000 public water systems and another likewise settled with approximately 11,000 such providers.[28]

As explained at length in *Mitigating Municipality Litigation*, there are multiple reasons why municipalities might agree to become plaintiffs—and why the trial bar encourages them to do so.[29] For example, municipal leaders might face political pressure to engage in litigation on issues of public import. Officials aspiring to higher office may view litigation "taking on" some industry as a politically effective activity. Some may also be convinced that litigation is an effective means of generating revenue. Prospective outside counsel are effective at stoking fears that, if a local government does not sue, it will be left out of significant recoveries or settlements resolving litigation initiated by other plaintiffs.

Facing a vast number of claimants puts enormous litigation pressure on defendants, who must weigh an expensive settlement against the costs of sprawling litigation, the possibility of a bankruptcy-inducing judgment, and the reputational damage occasioned by both the litigation and negative public relations campaigns often coordinated by plaintiffs.[30] Indeed, just the number of claims brought and the size of the damages award sought can damage the public perception of defendants. This effect may be amplified if the plaintiffs are government entities, and if municipal officials championing the litigation

communicate about it with residents and seek media coverage of their efforts. Described as an "anchoring effect," judges, jurors, and the public at large develop a negative impression of the defendants from the number of claims, regardless of their underlying merit.[31] With these considerations in mind, plaintiffs' firms are incentivized to include as many claimants and claims in their lawsuits as possible to inflate damages calculations at settlement.[32]

A system of recruiting hundreds of municipal plaintiffs to incentivize a quicker or larger settlement may not serve the interests of justice or of the plaintiffs themselves, especially given the contingency-fee basis on which public entities often retain outside counsel. Inherent conflicts over relief may exist between the municipal plaintiffs and their lawyers: plaintiffs' attorneys negotiating a settlement may be incentivized to maximize monetary relief to increase their share, while the public interest may favor nonmonetary relief, such as an injunction prohibiting future conduct, or monetary terms that do not accrue to the lawyers' benefit.[33] There are practical difficulties too. Where multiple plaintiffs'

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firms represent localities in a municipal lawsuit, they add yet another competing voice in settlement discussions.[34] Contingency fees can also lead to unequal distribution of relief among municipalities because those fees can vary widely from market to market (even within the same state). For example, in the opioid litigation, Harris County, Texas agreed to pay outside lawyers a contingency fee of 35 percent, more than double the percentage negotiated by Dallas County, Texas.[35] The structure and amount of lawyer compensation provided for in contingency-fee agreements, as well as conflicts among private counsel over fees in mass litigation, not only can deprive true victims of compensation, but also can significantly delay resolution.[36]

Picking a Favorable Playing Field

Recruiting municipalities as plaintiffs allows plaintiffs' lawyers ready access to favorable forums, especially given that many municipalities willing to participate in affirmative litigation often happen to be within the jurisdictions of relatively plaintiff-friendly courts. For example, climate lawsuits brought by New York City, Washington, D.C., and San Francisco have been or are currently being litigated in those jurisdictions' state and federal courts. The forum and venue in which a matter is litigated can, of course, dramatically affect the course and outcome of proceedings. This is especially so in matters that could be litigated in either state or federal court. In cases of federal multidistrict litigation, the forum is significant for the law that will be applied in pretrial proceedings.[37] While MDLs can be an important tool in marshalling and managing disperse litigation, the state law of the transferor court generally governs pre-trial proceedings, which can complicate a defendant's strategy by forcing it to grapple with a wide variety of state laws governing the same basic dispute.[38]

The geographic dispersion of claims and the related choice-of-law issues that arise can present serious impediments to a coherent defense, on top of the financial and logistical burden of having to litigate potentially thousands of claims in multiple jurisdictions across the country.

Mindful of these considerations, plaintiffs' lawyers are careful to craft their pleadings to ensure a venue they perceive to be favorable for their claims or potential recoveries. The asbestos litigation of the 1990s and early 2000s is but one illustration of the practice of forum shopping. There, the trial bar began to bring claims in federal court until the claims were consolidated into MDL No. 875.[39] Plaintiffs' lawyers then shifted to targeting specific state-level jurisdictions, where punitive damages were available and where procedural rules favored plaintiffs, to drive up settlement pressure.[40]

Asserting Broad and Novel Causes of Action

While the trial bar has long been creative in asserting expansive theories of liability, the rise of municipalities as plaintiffs has given their outside lawyers a newfound ability to advance novel legal claims and theories.

For instance, cities and counties regularly rely on public nuisance as a cause of action, seeking to redress not individual injuries or local property impediments, but complex social problems.[41] A theory of recovery that in most states remains a common-law tort, with limits defined by court decisions, public nuisance was, historically, quite constrained in its application. But, ignoring the tort's origins as a limited remedy for blocked public roads or waterways,[42] recent suits by government plaintiffs attempt to exploit their unique role as representatives of the public by advancing a broad interpretation of public nuisance. Their claims generally seek to bypass traditional constraints on that cause of action, such as the requirement to show an injury to a right common to the public at large, the burden of proving causation, and limitations on recovery of damages.[43] Twisting the definition of public nuisance adopted by the American Law Institute,[44] for years plaintiffs' firms have brought suits alleging public harms from environmental pollution,[45] asbestos,[46] tobacco,[47] and lead paint.[48] Public nuisance remains the common-law cause of action of choice for political subdivision plaintiffs, as illustrated by the opioids,[49] social media,[50] and climate change[51] lawsuits.

The opioid litigation, in particular, presented an explosion of public nuisance claims, which have since sprouted in other novel areas. According to ILR's Public Nuisance Tracker,[52] 314 cases filed in 2016 involved public nuisance causes of action and they primarily followed traditional fact patterns (e.g., local property damage, properties unsafe for human inhabitation, etc.). By 2017, the number of public nuisance cases had more than doubled to 647, and more than half of them related to opioids. In 2018, approximately 1,718 cases with public nuisance claims were filed across the country, 1,333 of which involved opioids. These numbers have since fallen significantly to an average of 700 public nuisance cases filed each year between 2019 and 2024, but this still exceeds the number of such cases filed in the years preceding the opioid litigation.

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Of particular concern is plaintiffs' lawyers' tendering as expert evidence largely theoretical academic work that was either sourced for purposes of litigation or otherwise specifically undertaken and financed with corporate liability as its goal.

Attorneys for government plaintiffs also take advantage of state Unfair and Deceptive Acts and Practices (UDAP) statutes,[53] which confer broad consumer protection enforcement powers on authorized plaintiffs—typically state AGs,[54] but sometimes local officials too,[55] expanding the pool of potential plaintiffs. UDAPs also offer jurisdictional advantages to claimants. These statutes are broad in substantive and geographic scope, providing plaintiffs and their lawyers an opening to claim a purported basis to bring suit over a range of policy issues such as those relating to opioids, social media, and climate change.[56] Many of these statutes also provide for recovery of significant statutory penalties that apply per violation and can multiply the total potential value of a claim, ratcheting up settlement pressure exponentially.[57]

Relying on Questionable Expert Evidence

A final tactic frequently used by private attorneys representing mass tort plaintiffs—whether municipal or private—is to advance their claims by relying on purported "expert" evidence of dubious quality and value. The plaintiffs' bar's reliance on novel and unproven science is hardly a uniquely modern phenomenon, but the forms it has taken in recent litigation are aggressive and alarming. Of particular concern is plaintiffs' lawyers' tendering as expert evidence largely theoretical academic work that was either sourced for purposes of litigation or otherwise specifically undertaken and financed with corporate liability as its goal.[58] In new and developing fields that are the subject of underlying litigation, judges are increasingly forced to be the arbiters of what is and is not reliable science.

In support of narratives designed to attribute broad societal harms to a few defendants, plaintiffs' attorneys often turn to "emerging science" and friendly "experts." These experts, sometimes with questionable credentials and asserting untested theories or hypotheses lacking peer review, typically are paid handsomely by plaintiffs' firms for their services.[59] Their opinions and conclusions are then used to fuel huge, coercive litigation matters.[60] Though the requirements imposed by *Daubert* and its progeny are designed to preclude consideration of scientific evidence that is not the product of reliable principles and methods, some courts have been reluctant to fulfill their role as gatekeepers for expert testimony.[61] Indeed, the U.S. Judicial Conference's Advisory Committee on Evidence Rules recently updated Federal Rule of Evidence 702, governing the admissibility of expert

evidence, after reporting that amendments were "made necessary by the courts that have failed to apply correctly the reliability requirements of that rule."[62] While this clarification of a court's proper role helps combat the introduction of junk science,[63] it does not insulate judges, juries, and the public from coordinated efforts to muddy the waters with questionable evidence.[64]

Emerging Element for Consideration: Exploiting the Black Box of Litigation Finance

While not present in every piece of municipality litigation, a troubling new feature of many cases is the increasing role that third-party funding is playing. Although the full scope of TPLF remains unclear (a dynamic intended and protected by the litigation-funding industry), many plaintiffs' firms are known to be funded at significant levels, regularly exceeding $50 million for an individual law firm and, in extreme cases, approaching $250 million.[65] One analysis recently concluded that the litigation finance industry had reached $19 billion in investment in 2025, and that this figure would likely rise to $67 billion by 2037.[66] Whether this estimate is right on the mark or merely directionally accurate, the obvious effect of an explosion in litigation funding is to lower the barrier to entry for plaintiffs' firms, allowing more competitors to bring more suits against more defendants on behalf of more plaintiffs.[67]

Likely seeing the immense potential profits from local-government-driven litigation, such as over opioids, specialty funding outfits have emerged that focus specifically on financing public sector litigation in exchange for a stake in future settlements and awards. Indeed, one publication prepared by a funder in collaboration with officials from the Government Finance Officers Association and the International Municipal Lawyers Association prominently highlights that "[o]pioid litigation currently has cases brought by about 3,500 governments, with a projected claim range valued between $80-100 billion."[68] The piece encourages municipal leaders to consider whether their jurisdiction has "been impacted by issues that could be litigated by many governments, either regionally or nationally[,]" adding that "[s]cale will be more attractive to legal funders because the case could be brought on behalf of many jurisdictions, and the potential pool of recovery is greater."[69]

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Some of these funders suggest that they can help fill budgetary gaps from "[e]conomic dislocation" caused by unforeseeable factors such as the COVID-19 pandemic, as well as from "related revenue decreases" that erode municipal governments' "ability and capacity to pursue and sustain affirmative litigation."[70] They also suggest that municipalities can and should "hedge against other actions where they may be listed as the defendant."[71] Public-sector litigation financing is also marketed as a means of "address[ing] the asymmetrical funding gap between [public sector entities] and corporate defendants."[72]

TPLF may serve the purposes of the trial bar in facilitating increased litigation, but it creates or exacerbates a host of problems. Although they have incentives and litigation goals that may differ from the plaintiffs on whose behalf the litigation is filed, third-party investors such as hedge funds and private equity firms can, at least in some cases, exert veto power over settlements and drive claimants toward less advantageous settlements.[73] Indeed, these investors can even dictate the types of claims brought, forgoing claims for declaratory or injunctive relief in favor of those for compensatory and punitive damages.[74] Even more concerning is that, except in rare cases, financiers exercise this considerable control anonymously. With litigation-funding practices largely unregulated and rarely subject to disclosure, the fact of financiers' involvement, let alone specifics about the rights and benefits they hold under funding arrangements, rarely comes to light.[75] Notwithstanding that litigation funding also can present serious national security risks,[76] plaintiffs' lawyers persist in engaging in the practice, sometimes only nominally in service of their clients, which increasingly include cities and counties.

The Playbook in Action: Case Studies of Recent Municipality Litigation

Chapter

03

A review of recent and ongoing municipality litigation confirms that the playbook and its component parts are being put to widespread use against corporate defendants.

This chapter profiles seven sets of cases in which municipalities have figured prominently as plaintiffs and, for each, briefly describes how the individual tactics identified above have been brought to bear. While these case studies may not feature every playbook tactic, the combined application of even a few tactics can significantly affect the course and outcome of municipality lawsuits targeting businesses.

Opioids

The epidemic of opioid addiction and overdoses has impacted millions of individuals and families from every state in the nation. Like any epidemic of this scale and reach, intervention to curb further harm and resources on the ground to assist those impacted continue to be badly needed. Unfortunately, a tidal wave of litigation—in large measure brought by thousands of municipal plaintiffs—has slowed the provision of relief to those impacted, siphoned resources that would otherwise go directly to communities, and complicated global resolution. Indeed, opioid cases represent an inflection point for the emergence of municipal litigation on a massive scale. The lawsuits alleged that the manufacturers intentionally engaged in misleading marketing of opioids by "downplay[ing] the risk of addiction" and "deny[ing] the risks of higher dosages."[77] The opioid litigation resulted in massive settlements—totaling more than $50 billion.[78]

The litigation also raised numerous questions about the use of contingency-fee arrangements, the ability of local governments to sue separately from the state, and the difficulty of reaching settlement when a myriad of plaintiffs and firms are involved. And each of those critical questions goes directly to understanding the impact mass municipality litigation has had on securing and administering relief to impacted individuals and communities.

Identifying and Targeting Defendants

The "Opioid Crisis," as it was dubbed by the Surgeon General in 2018,[79]

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had long ago entered the collective consciousness of Americans. Although the number of overdose deaths had been on the rise since the 1990s, deaths significantly increased as synthetic opioids like fentanyl became more widely available in 2016.[80] This spike naturally prompted increased public concern—as well as calls for accountability.

The opioid crisis made manufacturers obvious targets for litigation, including by the municipal entities on the front lines of confronting the crisis's consequences and looking for assistance in addressing its costs. Lawsuits proliferated against all manufacturers of opioids.[81]

Crafting the Narrative

Plaintiffs' lawyers crafted the narrative against the drug manufacturers (as well as distributors, retailers, and other businesses in the pharmaceutical supply chain), alleging that they had long known of the addictive properties of opioids and the danger they posed to patients, downplayed these risks, and denied the risk of higher dosages.[82] Further, those same lawyers crafted a narrative targeted at prospective clients—in this instance, often vulnerable communities with little or no experience engaging in large-scale civil litigation and desperately looking for answers and relief in the midst of the ongoing addiction crisis. That narrative aimed to convince municipalities that, if they did not hire a firm to engage directly in litigation, they would be left with nothing when the time came to divide up massive settlement proceeds. Omitted from this narrative is acknowledgment of AGs' ability to represent communities in their states and of the relatively small amount that most municipalities would actually receive after paying attorneys' contingency fees and dividing the remaining settlement amounts among thousands of other municipalities.

Applying Pressure through Numbers

Beginning in 2017, states, cities, counties, and other local entities brought over 3,000 lawsuits against drug manufacturers, distributors, and pharmacies (among others) seeking compensation for the opioid epidemic.[83] The litigation, which was consolidated as multi-district litigation in the U.S. District Court for the Northern District of

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Ohio (the Opioid MDL), was unprecedented in terms of the scope and number of government entities involved.[84] The opioid suits sought to recover the costs the local government plaintiffs allegedly incurred or would incur to abate the public health crisis, such as emergency response and rehabilitation services.[85]

The opioid litigation illustrates many of the problems with government contingency-fee arrangements. For example, one prominent pharmacy benefit manager (and a defendant in the Opioid MDL) filed a motion to disqualify the plaintiffs' firm Motley Rice, which represented Hawaii, Chicago, and Washington, D.C. in the opioid litigation while at the same time also representing private clients in related litigation.[86] Although the court denied the disqualification motion, it noted the problems that can arise from outsourcing government enforcement authority to private law firms: "If outside counsel, like Motley Rice, intends to enter agreements where it has the power to wield (and potentially abuse) government power, then it needs to adhere to the same rules to which government lawyers are subject."[87] And while all lawyers must be subject to the same set of rules, private lawyers have a different incentive structure than government lawyers. Having profit maximization as a top priority often conflicts with the priorities of public welfare and an expeditious resolution—a misalignment that is at the root of why private lawyers should rarely be permitted to wield (and potentially abuse) governments' litigation power. Further, conflict of interest issues arise around the simultaneous representation of both municipalities and states in the same litigation, where those different government entities—and their counsel—might have conflicting priorities. For example, in one instance, a prominent pharmacy benefit manager attempted to have the Motley Rice law firm disqualified from the nationwide opioid litigation on the grounds that the firm "could use confidential information gained from previous government work to boost cases for other government clients in unrelated cases."[88]

The contingency-fee arrangements at issue in the opioid litigation also resulted in staggering fees for plaintiffs' attorneys. Of the $46 billion Opioid MDL settlement funds as of June 2024 (a number that has since grown), a pool of $2.13 billion was to be divvied up among the various plaintiffs' firms that participated in the litigation; Motley Rice received the largest share, $396 million.[89] Plaintiffs' firms represented some states and many hundreds of municipalities. Absent those firms' presence in the litigation, states could have distributed the hundreds of millions of dollars in fees that went to lawyers to victims instead (or to municipalities themselves) to aid in opioid-related mitigation efforts.

As one observer explained, one of the "significant challenges to achieving an equitable global settlement . . . [is the] complexity of settling among so many parties with diverse and sometimes competing interests in state and federal courts."

The opioid litigation also illustrates the difficulty of reaching a global settlement that provides relief to those who need it when a huge number of plaintiffs and law firms are involved. As one observer explained, one of the "significant challenges to achieving an equitable global settlement . . . [is the] complexity of settling among so many parties with diverse and sometimes competing interests in state and federal courts."[90] Recognizing this dynamic, several AGs challenged the ability of municipalities in their states to pursue opioid litigation with private counsel. For example, in 2019, Ohio AG Dave Yost filed a brief in the U.S. Court of Appeals for the Sixth Circuit arguing "that only the state of Ohio can speak on behalf of all its residents" and "that every Ohio county should have access to money from the results of the opioid lawsuits, but that money should come from the state's litigation and not through individual lawsuits filed by smaller governments."[91] Other AGs have pursued similar intervention attempts in order to wrest back control over litigation representing citizens of their states.

Other challenges include determining how much each plaintiff should receive, defining the local government plaintiffs (given that local governments have multiple layers, such as fire departments and local hospitals), and getting state and local governments with differing interests to work together.[92] As was the case in the opioid litigation, all of these issues, many of which are unique to mass municipality litigation, made it harder and more expensive to reach a global settlement, thereby delaying and diminishing the relief for those who may have been harmed while growing the eventual payday for the plaintiffs' firms.[93] At least one large municipality, Baltimore, opted out of the global settlement and has continued to litigate claims against corporate defendants, most recently accepting a judge-reduced $152.3 million settlement offer from drug distributors.[94]

The thousands of municipal plaintiffs in the opioid litigation created enormous settlement pressure on defendants in the opioid supply chain. Rather than face a "bet-the-company" scenario by litigating these issues to the end—risking adverse judgments representing possibly billions of dollars in liability, considering restitution, abatement costs, and punitive damages—companies may have seen settlement as the only viable option. Despite the many pitfalls displayed most acutely in the opioid litigation, for which the local government plaintiffs and the individual victims on whose behalf they were litigating often paid the price in the form of delayed and diminished relief, local government plaintiffs continue to be receptive to outside counsel pitching their claims in other contexts, playing up the potential benefits of bundling many claims together.

Picking a Favorable Playing Field

Many of the opioid cases seeking to use state consumer protection statutes to punish opioid manufacturers were filed in state court.[95] Similarly, of the approximately 1,300 public nuisance opioids cases filed in 2018, approximately one-third were filed in state court. Plaintiffs in those suits may also have benefitted from local state court procedures and fought to remain in their chosen fora in state court, such as by opposing consolidation of claims against failing manufacturers into a bankruptcy proceeding.[96] State court proceedings that could not be removed to federal court also could not be consolidated into the federal multidistrict litigation, leading to strain on judicial systems in states with favorable consumer protection laws.[97]

Asserting Broad and Novel Causes of Action

Plaintiffs in the opioid litigation sought to use broad causes of action to reach defendants' alleged wrongdoing, including public nuisance, unjust enrichment, consumer protection violations, and Medicaid

In addition to novel legal theories, plaintiffs in the opioid litigation also leveraged novel methods of assessing and imposing liability.

fraud.[98] With respect to their public nuisance claims, plaintiffs generally presented their theory as alleging not that the products themselves—which are both legal and highly regulated by the federal government—constituted a nuisance, but rather that the marketing of those products did.[99] This theory gained some traction in Oklahoma's suit against Johnson & Johnson, in which the trial court accepted the theory that Johnson & Johnson's alleged deceptive marketing practices constituted a public nuisance by contributing to the opioid crisis.[100] Though eventually overturned,[101] the Oklahoma suit was one of the earlier suits against opioid manufacturers and provided an example of a trial court accepting speech as public nuisance. This approach illustrates how plaintiffs rely on a new, complex, and problematic conception of what might constitute a public nuisance.

In addition to novel legal theories, plaintiffs in the opioid litigation also leveraged novel methods of assessing and imposing liability. Opioid claimants rely on the market-share liability framework, which apportions a defendant's maximum liability based on their market share, so as to simulate the statistical likelihood that their medication caused harm.[102] But this is a distortion of the concept of market-share liability. That theory was developed to prevent issues of proving specific causation when claimants could not make such a showing through no fault of their own.[103] To apply such a framework in opioid litigation would merely relieve plaintiffs' lawyers of their burden to prove an element of their clients' claims.[104]

Climate Change

In recent years, the plaintiffs' bar has seized on concerns over global climate change and worked with municipalities across the United States to bring lawsuits seeking damages for harms allegedly related to global warming.[105] These cases began appearing in earnest a decade after activists and commentators began endeavoring to "identify a manageable subset of environmental harms that could be the subject of . . . a compensation system."[106] Although the challenges of adapting recognized legal claims to address climate change were apparent even then,[107] the tobacco and asbestos litigation were seen, in at least some respects, to provide a template: "[P]laintiffs and their attorneys will draw on the same lessons . . . to pursue claims and will reach a point where they can obtain significant discovery from defendants. Lawsuits do not have to be successful on the merits before they cause a defendant to spend significant time and resources."[108] Litigation was thought "likely to focus attention on compensation issues and uncover useful information; it may also increase political pressure for a nonlitigation solution."[109]

Against that backdrop, since 2017 the trial bar has enlisted numerous cities and counties to bring "lawsuits

against fossil fuel companies seeking abatement and/or compensation under the (novel) theory that these companies' extraction, production, promotion, marketing, and sale of fossil fuels has contributed to the increase in fossil fuel use and contributed to global climate change resulting in injury to plaintiffs' infrastructures."[110] Municipal climate change cases that have reached a "final decision have generally denied [the] plaintiff any relief,"[111] but nearly two dozen such lawsuits, involving an even greater number of municipal plaintiffs, remain pending.[112]

Identifying and Targeting Defendants

In some ways, climate change litigation is the textbook example of local government plaintiffs strategically targeting certain deep-pocketed corporate defendants and assigning liability solely to them for the actions of countless others.[113] For example, while cities like San Francisco, New York, and Baltimore base their allegations on the carbon emissions of certain fossil fuel companies, those cities themselves emit massive amounts of carbon by, among many other things, operating vehicles and public transportation, providing electricity, and other forms of government and household consumption.[114]

The largest fossil fuel companies and their affiliates are the most frequent targets for these lawsuits,[115] given their size and name recognition. Perhaps most important for plaintiffs' purposes, large fossil-fuel companies represent some of the most profitable businesses in the world, with several appearing in the Fortune 100. Most of the local government climate lawsuits name the same handful of companies as defendants, usually adding a local petroleum refiner or distributor for strategic jurisdictional purposes.

Crafting the Narrative

Local governments' climate lawsuits almost always assert that the defendant fossil fuel companies created a public nuisance and/or violated state or local consumer protection laws by marketing and advertising their products without disclosing the climate change-related harms purportedly caused by those products.[116] Notably, none of these public nuisance climate claims against energy industry participants have been successful to date—with several having been categorically dismissed by trial and appellate

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Notably, none of these public nuisance climate claims against energy industry participants have been successful to date—with several having been categorically dismissed by trial and appellate courts as lacking legal support.

Consistent with the common perception that state court judges have a “predisposition” in favor of plaintiffs and that state substantive law, evidentiary rules, and discovery practices are more favorable to plaintiffs than their federal counterparts, municipal plaintiffs have almost uniformly brought their cases in state court and vigorously fought attempts to remove them to federal court.

courts as lacking legal support. This narrative of a corporate conspiracy draws on and attempts to amplify a perception that large companies are lying to the public in order to maximize profits. Activist organizations, often working in concert with plaintiffs' lawyers, provide fodder for this narrative, which is frequently disseminated through coordinated public relations campaigns.[117] A seminal example of this type of narrative development is the so-called "#ExxonKnew" campaign,[118] which claims (notwithstanding public records to the contrary[119]) that ExxonMobil knew for decades that burning fossil fuels would result in damaging climate change and deliberately withheld or hid that information from the public in order to continue selling its products.[120]

Importantly, this type of corporate deception narrative is intended to try to sour the public's and jurors' perceptions of corporate defendants, and it is a critical element of the consumer protection claims asserted by local government plaintiffs. #ExxonKnew is just one of many public relations campaigns associated with plaintiffs' climate claims and, while it focuses on a single corporate defendant, plaintiffs have claimed that this deception was industry-wide and have broadly asserted false and deceptive advertising practices by all defendants, including by the petroleum industry's most prominent trade association.[121]

Applying Pressure through Numbers

By 2023, plaintiffs' lawyers had filed more than 1,500 climate change-related cases in the United States against energy companies.[122] Although the trial bar has not been as successful in recruiting municipal plaintiffs as in some other mass litigation matters, large cities and counties have been among the most prominent plaintiffs in the climate change litigation. A handful of firms have made well-documented efforts to identify and enlist municipalities as plaintiffs in their cases, seeking to exert pressure, as in other mass litigation cases, to extract enormous settlements from defendants.[123]

Picking a Favorable Playing Field

The climate change cases illustrate the high stakes that municipal plaintiffs feel are implicated by the choice of venue. Consistent with the common perception that state court judges have a "predisposition" in favor of plaintiffs and that state substantive law, evidentiary rules, and discovery practices are more favorable to plaintiffs than their federal counterparts,[124] municipal plaintiffs have almost uniformly brought their cases in state court and vigorously fought attempts to remove them to federal court.[125] They have done so despite the relationship—recognized by defendants, many legal experts, and some courts—between plaintiffs' claims about the consequences of burning fossil fuels and interstate air emissions, which among other reasons makes it a topic appropriate for adjudication by federal courts.[126]

The dispute over the availability of federal jurisdiction has played out with mixed results, as illustrated by a pair of decisions issued by different courts on May 16, 2025. In Illinois, a federal court judge remanded Chicago's lawsuit against various energy companies and their trade association back to the Circuit Court of Cook County, Illinois.[127] The same day, a Pennsylvania state judge dismissed Bucks County's similar lawsuit against many of the same defendants, having concluded that "Pennsylvania courts have no subject matter jurisdiction" over Bucks County's claims and noting

Despite plaintiffs' lawyers' contention that their claims can be resolved through traditional applications of these torts, their theory of harm, if accepted, would mark a fundamental shift in the law.

that it was "join[ing] many other state and federal courts in finding [such] claims . . . are solely within the province of federal law."[128] In the majority of instances, however, local government plaintiffs have been successful in keeping their claims in what are perceived to be friendlier state courts.[129]

Asserting Broad and Novel Causes of Action

Plaintiffs in the climate litigation have relied on novel legal claims and theories, generally bringing claims including public nuisance, trespass, and UDAP violations and alleging that oil companies and automobile manufacturers failed to warn consumers and the public about the potential environmental harms of producing and using fossil-fuel products.[130] Despite plaintiffs' lawyers' contention that their claims can be resolved through traditional applications of these torts, their theory of harm, if accepted, would mark a fundamental shift in the law. For instance, plaintiffs bring public nuisance claims against manufacturers of fossil-fuel products for the marketing and sale of those lawful products. But public nuisance is not a cause of action intended to remedy harms arising from products liability; rather, it is a tort for remedying the violation of a public right.[131]

Unlike their mass litigation in other areas, municipalities' novel efforts to seek compensation for the harms allegedly related to global warming also implicate issues of extraterritoriality and preemption—bases on which some courts have concluded that they lack jurisdiction. For example, in *City of New York v. Chevron Corporation*, the U.S. Court of Appeals for the Second Circuit held that municipalities could not use state tort law to hold multi-national oil companies liable for damages caused by global greenhouse gas emissions given the complex web of federal and international environmental law regulating such emissions.[132] A Maryland state court judge also dismissed the City of Baltimore's climate change suit (raising nuisance, failure to warn, trespass, and consumer-protection violations), explaining that "[g]lobal pollution-based complaints were never intended by Congress to be handled by individual states."[133] And a South Carolina state court judge recently concluded that "the scope of the state-law claims alleged [by the City of Charleston] exceeds the recognized bounds of South Carolina law. . . . [134] In so holding, the court noted that it was "join[ing] the 'growing chorus of state and federal courts across the United States, singing from the same hymnal, in concluding that the claims raised by [climate change plaintiffs] are not judiciable by any state court' and that 'our federal structure does not allow... any State's law[] to address'" those claims.[135]

Municipalities' novel consumer-protection claims also have hit roadblocks. A New York state court rejected New York City's

lawsuit alleging that oil and gas companies "systematically misl[ed] New York City [] consumers about the environmental impact of their fossil fuel products and their commitments to renewable energy."[136] With respect to the city's consumer protection claims (e.g., false/misleading advertising), the court explained that "[t]he City cannot have it both ways by, on one hand, asserting that consumers are aware of and commercially sensitive to the fact that fossil fuels cause climate change, and, on the other hand, that the same consumers are being duped by Defendants' failure to disclose that their fossil fuel products emit greenhouse gases that contribute to climate change."[137]

Relying on Questionable Expert Evidence

A strain of argument that plaintiffs often employ in climate change litigation is so-called "attribution science," which, among other things, seeks to estimate the "causal responsibility for the drivers and impacts of climate change" and to connect extreme events and other phenomena attributed to global warming, in turn, to the actions of individuals and companies.[138] This approach arose from a 2004 study that sought to determine the extent to which humans had increased the risk of a single heatwave. Notably, the study explicitly stated that attempting to use attribution science to lay blame for climate outcomes would be "an ill-posed question[.]"[139] In *Multnomah County v. Exxon Mobil*, for instance, the complaint relies on climate attribution studies in support of its claim that, by marketing and advertising fossil-fuel products, the corporate defendants were responsible for a June 2021 heat wave on the Pacific Coast.[140] The county's complaint cites a study by Richard Heede, co-founder of the Climate Accountability Institute, entitled "Tracing Anthropogenic Carbon Dioxide and Methane Emissions to Fossil Fuel and Cement Producers," to support a theory of "[c]umulative carbon analysis" that purportedly "allows an accurate calculation of net annual CO2 and methane emissions attributable to each Defendant by quantifying the amount and type of fossil fuel products each Defendant extracted and placed into the stream of commerce, and

"If permitted by courts as a means of apportioning liability, attribution science could be used by plaintiffs' lawyers and their clients as a cudgel to target producers, distributors, retailers, and other deep-pocketed targets in the energy value chain. Even more expansively, it could be used to make an all-encompassing argument to extend climate liability to a vast array of persons and entities with some degree of connection to the energy industry for allegedly failing to consider climate-related risks."

multiplying those quantities by each fossil fuel product's carbon factor."[141]

While attribution science has received attention for its modeling of how human influence could intensify weather phenomena, plaintiffs' lawyers rarely acknowledge, unsurprisingly, that it suffers from critical drawbacks as a means of assigning liability.[142] Setting aside questions regarding the reliability of attribution findings as evidence,[143] serious questions remain regarding the fairness of holding U.S. energy companies solely responsible for global climate change.[144] Essentially, attribution science reduces climate change "from a problem caused by several billion past and present human individuals to one driven by a few dozen companies."[145]

Unwarranted reliance on attribution science, like other methods or evidence not widely accepted or confirmed by the scientific community, poses no small concern. If permitted by courts as a means of apportioning liability, attribution science could be used by plaintiffs' lawyers and their clients as a cudgel to target producers, distributors, retailers, and other deep-pocketed targets in the energy value chain.[146] Even more expansively, it could be used to make an all-encompassing argument to extend climate liability to a vast array of persons and entities with some degree of connection to the energy industry for allegedly failing to consider climate-related risks.[147]

PFAS

With the assistance of outside counsel, hundreds of municipal plaintiffs also have sued PFAS manufacturers and other secondary defendants, asserting hundreds of millions of dollars in damages based on the costs of remediating the presence of PFAS in drinking water.[148] "Generally, the plaintiffs (including cities and public water systems) have alleged that PFAS manufacturers have knowingly understated or obscured the dangerous qualities of PFAS, placing them in widespread use, which then contaminated water supplies with harmful chemicals."[149] For example, the Pennsylvania-American Water Company (PAWC) sued a number of manufacturers and sellers of products that contain PFAS alleging that the companies are "responsible for PFAS released into [] the groundwater and surface waters that serve as the supply sources for PAWC's public water supply systems."[150] The complaint alleges that the manufacturers "knew, or should have known, that PFAS and related constituents present unreasonable risks and dangers to human health, water quality, and the environment" and "created a nuisance such that PAWC has been and will be required to fund and implement capital improvements, and has and will in the future incur ongoing testing, operation, and maintenance costs, in order to identify, remove, and treat for the presence of PFAS in its public water supply systems."[151]

These are just two of countless variations on the same theme—that a few large industry participants conspired to hide the dangers of their products in the name of profit—that plaintiffs' lawyers push across multimedia channels to generate new clients and ingrain in the public a negative perception of corporate defendants.

Identifying and Targeting Defendants

Large chemical companies have been recurring targets of the tactics in the mass litigation playbook. These manufacturing giants are well-known to the public not only for their size and leading industry roles, but also for the frequency with which they are named as environmental litigation defendants. But plaintiffs' firms have begun focusing on other companies in the "PFAS industry," extracting more than $22 billion in PFAS verdicts and settlements in 2023 alone.[152] Indeed, the term "PFAS industry" is perhaps a strategically applied misnomer, as the group of corporations that plaintiffs commonly characterize as a single blameworthy "industry" is in reality a disparate group of companies that may have used PFAS in their products or in their operations.

Crafting the Narrative

Central to plaintiffs' claims in PFAS litigation is the allegation that industry participants suppressed information that would have revealed PFAS poses a risk to human health. Their preferred narrative is told, for instance, in a recent paper about industry's "influence on PFAS science."[153] That paper claims that the PFAS manufacturers "knew PFAS was 'highly toxic when inhaled and moderately toxic when ingested' by 1970, forty years before the public health community," and that the industry "used several strategies that have been shown common to tobacco, pharmaceutical and other industries to influence science and regulation – most notably, suppressing unfavorable research and distorting public discourse."[154]

And plaintiffs' firms have engaged in massive advertising campaigns targeting individuals who may have been exposed to PFAS, emboldened by negative media treatment of PFAS manufacturers.[155] Prominent lawsuit aggregation firms like The Sentinel Group, which promises to "bridge" potential claimants "to elite lawyers," have also run ad campaigns echoing these themes. For example, in one 2023 ad, that group ran a commercial featuring a red-highlighted "WARNING" banner at the top of the frame and stating that, "with every sip of water an unseen peril lurks," and describing PFAS as "silent culprits linked to devastating cancers." The ad proclaims that these "silent culprits" "originat[e] from industry titans . . . and even our own federal government" and that "a wave of lawsuits is rising, holding those at fault accountable for the shattered lives left in their wake."[156] Likewise, the Lanier Law Firm ran an ad on Facebook, accompanied by a post noting that, "despite knowing the risks for decades, companies continued to sell PFAS-containing products—allowing dangerous chemicals to accumulate in the bloodstreams of millions."[157] These are just two of countless variations on the same theme—that a few large industry participants conspired to hide the dangers of their

products in the name of profit—that plaintiffs' lawyers push across multimedia channels to generate new clients and ingrain in the public a negative perception of corporate defendants.

Applying Pressure through Numbers

As with other mass litigation examples, much of the PFAS litigation has been consolidated into an MDL for coordinated discovery and pretrial matters. The Aqueous Film-Forming Foams (AFFF) Products Liability MDL involves more than 12,000 cases, hundreds of which were brought by municipal plaintiffs who allege that PFAS used to extinguish liquid fuel fires has contaminated municipal water sources and groundwater near certain industrial sites, among other claims.[158] Defendants all entered into settlement agreements with most of the municipal plaintiffs,[159] but more cases involving a host of municipal and individual plaintiffs continue to be added to the MDL, including over 700 new cases in June 2025 alone.[160] As one plaintiffs' firm acknowledged, that "reflects what many see as a critical moment in the litigation: plaintiffs' lawyers are rushing to file cases ahead of a potential global settlement."[161]

Picking a Favorable Playing Field

As noted above, the AFFF MDL has swallowed more than 10,000 cases involving AFFF products. In an effort to avoid federal jurisdiction (because AFFF was a military-specified product) and getting looped into the massive MDL, some municipal plaintiffs have filed parallel suits in state court alleging PFAS contamination from other, non-AFFF sources and disclaiming the involvement of AFFF.[162] Courts have viewed this approach, which the Fourth Circuit recently described as "artful crafting," with some skepticism where there is some evidence that AFFF and non-AFFF PFAS from the same manufacturer commingled to cause the alleged injury.[163]

Relying on Questionable Expert Evidence

PFAS litigation demonstrates the peril of basing liability determinations on evolving, incomplete scientific evidence. Thousands of very different chemicals fall under the PFAS umbrella, and the vast majority of those chemicals have not been clearly associated with an environmental or human health impact. Even for the more studied PFAS chemicals (e.g., PFOA and PFOS, which have been out of commerce in the U.S. for more a decade), "the evidence on whether and which PFAS chemicals can generally or specifically cause harm is still incomplete."[164] All PFAS chemicals are not the same. Indeed, with maturing science having cast doubt on the causal links between many PFAS chemicals and human illness, on which experts in previous cases had offered testimony, "courts handling PFAS litigation are now beginning to require particularized pleadings of precise PFAS compounds and products to establish

a plausible inference that defendant manufacturers or distributors bear responsibility for the PFAS products allegedly causing harm."[165]

Social Media

Another emerging area for mass municipal litigation is the targeting of social media companies for allegedly contributing to depression and anxiety among adolescents.[166] These cases allege that social media companies "deliberately embedded in their products an array of design features aimed at maximizing youth engagement to drive advertising revenue" and did so "know[ing that] children are in a developmental stage that leaves them particularly vulnerable to the addictive effects of these features."[167] Leveraging the power of state and local governments, plaintiffs' lawyers have identified companies that are already the subject of public scrutiny, crafted a narrative that connects a widely discussed public harm to those companies' lawful products, and applied pressure by filing over 1,000 lawsuits in favorable forums on broad and malleable causes of action.

Local governments and independent school districts (themselves government entities) have been among the most active categories of plaintiffs in recent litigation against social media companies. More than 200 school districts have sued major social media companies alleging that the companies designed highly addictive products that are harmful to mental health, marketed them to children who are particularly susceptible, and thereby created a youth mental health crisis.[168] The school districts argue that they are being forced to devote substantial resources to addressing students' deteriorating mental health because of social media.[169] Most of the school districts' lawsuits were consolidated with other lawsuits, numbering more than 1,500 in total, filed by individuals, states, and local governments in an MDL in the U.S. District Court for the Northern District of California.[170] The MDL judge recently denied in part several defendants' motions to dismiss, allowing various negligence and public nuisance claims to advance.[171]

Identifying and Targeting Defendants

Prior to this litigation, social media companies were receiving negative media and public attention and significant legal and regulatory scrutiny for issues unrelated to youth mental health, including over antitrust claims and accusations that certain social media platforms had been used as vehicles for election interference and foreign government influence.[172] Adding to these public perception difficulties, as many as one in four American teens have been diagnosed with a mental health issue, and one survey found that nearly half of teens believe that social media has a "mostly negative" effect on people their age.[173] These factors, among others, make social media companies attractive targets for plaintiffs' lawyers.

Plaintiffs' firms leverage these studies—which for the most part do not discuss liability, but rather observe and analyze patterns and effects of usage—to advance the "solution" of holding those companies legally responsible.

Crafting the Narrative

Plaintiffs' lawyers have advanced and refined the narrative that social media companies have long known the negative impact of their products on youth development but have exploited the addictive nature of social media for increased profit. For their own purposes, they identify, borrow, and amplify the conclusions in some reports and academic journals on the youth mental health crisis to claim that social media companies knowingly caused the crisis.[174] Plaintiffs' firms leverage these studies—which for the most part do not discuss liability, but rather observe and analyze patterns and effects of usage—to advance the "solution" of holding those companies legally responsible.[175]

Lawsuit advertising, a tried-and-true arrow in a trial lawyer's quiver, also likely played a role in the proliferation of this litigation. One law firm particularly notorious for coinciding ad blitzes with forthcoming litigation, Morgan & Morgan, ran Facebook advertisements asking "Do you know a child whose mental health suffered due to social media use?" at least as early as June 2022.[176] Unsurprisingly, while its ads are ostensibly targeted at individual plaintiffs, Morgan & Morgan is among plaintiffs' counsel in an ongoing consolidated lawsuit filed in 2022 in the U.S. District Court for the Northern District of California on behalf of local governments and school districts.[177] Similar ads were aired by lawsuit referral services, such as the "Negligence Network," in late 2022, ambiguously citing "a recent study finding a direct correlation" between teen social media usage and mental health disorders.[178] Prior ILR research observed in separate litigation that a "significant driver of spending on . . . lawsuit advertisements [was] the proximity of a trial or large verdict[,]" and that "[l]awsuit advertising during this period may serve several purposes. The most controversial reason to run ads just prior to or during a trial, as it is improper, is to influence the jury pool."[179]

Applying Pressure through Numbers

The plaintiffs' lawyers in these cases have applied pressure to social media companies by filing a huge number of lawsuits on behalf of numerous public and private plaintiffs,

"Prior ILR research observed in separate litigation that a 'significant driver of spending on . . . lawsuit advertisements [was] the proximity of a trial or large verdict[,]' and that '[l]awsuit advertising during this period may serve several purposes. The most controversial reason to run ads just prior to or during a trial, as it is improper, is to influence the jury pool.'"

As also demonstrated by other case studies, plaintiffs' lawyers have come to rely heavily on public nuisance claims in an attempt to avoid their usual burden to show causation or specific harm—leading enterprising attorneys to attempt to direct it at a wide variety of challenged conduct.

including over 800 local government entities in the social media MDL alone.[180] The expense imposed by defending such a significant number of lawsuits, even in the preliminary stages, ratchets up the pressure on companies to reach a quick settlement.

Asserting Broad and Novel Causes of Action

As also demonstrated by other case studies, plaintiffs' lawyers have come to rely heavily on public nuisance claims in an attempt to avoid their usual burden to show causation or specific harm—leading enterprising attorneys to attempt to direct it at a wide variety of challenged conduct. That was the case in the social media MDL, where Judge Yvonne Gonzalez Rogers, who presides over the MDL, recognized that some jurisdictions limit the wide-ranging use of public nuisance to solve societal ills and that "public nuisance law remains in flux."[181] Judge Rogers ultimately granted the defendants' motion to dismiss as to claims arising from states the supreme courts of which had recognized product-or land-related limits on public nuisance.[182]

Relying on Questionable Expert Evidence

Even the various studies that have been performed connecting social media overuse with the potential for harmful mental health outcomes for youths also recognize the difficulty of establishing a definitive causal link between usage and harm.[183] Understanding "social media's impacts on mental health at a population level is extremely complex."[184] Further, "social media exposure is near universal among youth" and such platforms "can expose youth to health harms and benefits – often simultaneously[.]"[185] As such, filings in the social media lawsuits have been criticized as suffering from two core deficiencies—namely, that "much of the cited research did not explicitly examine the links between youth social media use and health harms" and that the filings cited positive correlations between social media and mental health harms but had "limited causal research cited to support [the] claims[.]"[186]

Plastics

Among the most recent examples of municipalities and plaintiffs' lawyers applying the playbook to target deep-pocketed defendants is the emerging litigation over plastics. In 2024, Los Angeles County and the City of Baltimore sued large consumer products companies, arguing that the defendants misled consumers into believing that their products were recyclable or had no negative environmental impacts despite knowing that plastic products cannot be disposed of without environmental impacts.[187] In federal court in Kansas, Ford County filed a similar putative class action lawsuit on behalf of itself and all other Kansas counties—itself a novel procedural approach.[188] Ford County's suit, which

was voluntarily dismissed in January 2025, alleged that plastics manufacturers misrepresented the recyclability of plastics, leading to extreme sanitation issues in local landfills.[189]

In this area, as in others, municipalities are filing suits that parallel those brought by state AGs, the officials more likely to have relevant authority to bring suit.[190] In September 2024, the State of California filed a similar lawsuit against an energy company, alleging that it misrepresented the ability of mechanical and chemical recycling to handle increasing amounts of plastic waste and thereby caused harm to California's natural resources, economy, and recreation.[191] The case, which was removed from state court to the U.S. District Court for the Northern District of California, raises claims of public nuisance, pollution in violation of California law, and UDAP violations. Connecticut filed a similar lawsuit against a consumer products company, alleging that the company violated

In this area, as in others, municipalities are filing suits that parallel those brought by state AGs, the officials more likely to have relevant authority to bring suit.

Connecticut's UDAP law by falsely and deceptively marketing its trash bags as "recyclable" despite knowing that they could not be recycled in Connecticut.

The above cases are largely still in their infancy, but recent developments are instructive in understanding how these cases might evolve. In 2023, the State of New York sued consumer products companies alleging that their single-use plastics pollute the Buffalo River and its tributaries, threatening wildlife and public health.[192] The lawsuit raised a variety of causes of action, including public nuisance, strict products liability, failure to warn, and violation of New York's UDAP. On October 31, 2024, the trial court dismissed the case, holding that the state failed to provide evidence to support its allegation that the defendants knew or should have foreseen that their products would pollute the Buffalo River, explaining that "[p]lastic packaging is used by more than just [defendants]."[193] At the time of publication, the State's appeal remains pending.[194]

Success for the plaintiffs could mean a settlement that would require the "plastics industry" (again, a term perhaps misleadingly used to describe a wide variety of plastics manufacturers, users, recyclers, and others up and down the vast supply chain) to pay significant sums of money to state and local governments for remediation of plastic pollution and to plaintiffs' lawyers. Any settlement could also amount to "regulation through litigation" by imposing constraints on corporate manufacturing, use, and marketing practices. For instance, in a 2023 case, Minnesota reached a settlement that required the defendant to mark its recycling bags with the label "these bags are not recyclable."[195]

It remains to be seen whether these plastics cases will metastasize into mass municipality litigation like the matters discussed above, but multiple elements are already present in the cases filed by municipalities: (1) targeting industries and defendants (in this instance, large petrochemical companies already under legal attack from municipalities under other theories); (2) crafting the narrative (that defendants knew about the alleged non-recyclability of plastics products, but continued to market them, and promoting that theory through nongovernmental organizations (NGOs) and public relations campaigns); (3) asserting broad and novel causes of action (chiefly, public nuisance and consumer protection violations); and (4) relying on questionable expert evidence (novel theories related to harms, including those associated with the feasibility of advanced recycling techniques).

Identifying and Targeting Defendants

Plastics raw material manufacturers (i.e., petrochemical companies) and consumer product companies have been under

growing pressure to address plastics pollution and the potential health effects from microplastics.[196] Advocacy groups have published lists of the "top contributors" to plastic pollution, attempting to publicly shame brands that are household names.[197] This makes these companies attractive targets for plaintiffs' lawyers who can leverage negative public opinion for profit.[198]

Crafting the Narrative

Plaintiffs' attorneys have alleged that plastics companies throughout the supply chain have promoted and advertised the efficacy of recycling as a solution to the problem of plastics pollution while knowing that recycling plastics is neither technically nor economically feasible. This narrative appears not only in the litigation itself but in academic papers and multi-state comment letters on plastics issues filed in federal agency dockets.[199] Aside from litigation related to claims about plastics' recyclability, some have also attempted to assign liability to companies for allegedly "fail[ing] to warn consumers about the potential health and environmental risks of [their] single-use plastic packaging, and mislead[ing] consumers and the public about [their] efforts to combat plastic pollution."[200] In a lawsuit brought by the State of New York, AG Letitia James claimed that one consumer food company's "single-use plastic [] contributes significantly to high levels of plastic pollution along the Buffalo River."[201] In dismissing New York's lawsuit, the trial court noted that the state's claims against the sole corporate defendant ignore the role of third parties in the actual act of littering and singles out one entity when countless others produce the same materials.[202]

NGOs and advocacy organizations have been active in developing and disseminating these narratives both in and out of court.[203] For example, in 2024, Connecticut's AG convened a national forum on plastics co-hosted by the State Energy & Environmental Impact Center (the "State Impact Center") to bring together AGs, academics, advocates, and industry experts to discuss plastics-related environmental and health concerns.[204] The express purpose of the State Impact Center, a group funded by Bloomberg Philanthropies,[205] is to provide expertise to government officials "on specific administrative, judicial or legislative matters involving clean energy, climate change and environmental interests of regional and national significance."[206] The AGs from each of the states that have filed plastics cases spoke at the event,[207] which was also attended by other state and local officials and members of the trial bar. Similarly, the nonprofit group the Center for Climate Integrity, which has accused the plastics industry of "fraud" in connection with recycling claims,[208] has played a pivotal role in convincing government entities to bring suit against petrochemical companies.

Asserting Broad and Novel Causes of Action

As in other mass litigation, plaintiffs' attorneys also have relied on broad causes of action, including UDAP and misrepresentation claims.

Some courts have shown skepticism regarding these novel legal theories—including the claims' seeming disregard for gaps in the causal chain. For instance, dismissing one case, a New York state trial court noted that, "[w]hile no one doubts the harm litter and waste cause in our ecosystem, this does not create a civil cause of action from which to punish" the defendants.[209] The same decision also poured cold water on the use of public nuisance as a cause of action: "Plastic packaging is used by more than just [defendants here]. . . . Either this is a pervasive problem and all offenders have contributed to this 'public nuisance' or else it is nothing more than selective prosecution based on a naïve theory."[210] As the court explained, if a public nuisance theory were "permitted, no [d]efendant would be safe from a race to penalize a

Some courts have shown skepticism regarding these novel legal theories—including the claims' seeming disregard for gaps in the causal chain.

party notwithstanding" the lack of a law prohibiting the alleged conduct.[211] Indeed, the court found that the issue of plastics pollution "is a purely legislative or executive function to ameliorate and the judicial system should not be burdened with predatory lawsuits that seek to impose punishment while searching for a crime."[212] Many other cases premised on similarly broad legal theories remain pending, however.

Relying on Questionable Expert Evidence

Plastics litigation is promoted and accelerated by studies that seek to attribute the global plastics crisis to "a limited set of private actors" and the claim that "all such [plastic] pollution is the foreseeable and direct result of the production and marketing of plastics."[213] Broadly, legal claims are based on the assertion that these companies have understood that plastics may end up polluting the environment, and that this knowledge makes them culpable for municipal remediation and cleanup costs.[214] This argument fails to account for the superseding intervening cause that is the consumer choosing to purchase plastic products and not dispose of them properly. Further, plaintiffs seek to claim that plastics producers misled consumers by labeling goods as "recyclable" because such consumers did not have access to facilities capable of sorting and recovering material from such products.[215] These claims are based broadly on a 2020 Greenpeace report arguing that products should not be labeled "recyclable" in communities that do not have the requisite recycling infrastructure to reprocess those goods.[216]

Exploiting the Black Box of Litigation Finance

Organizations that describe their focus as "holding polluters accountable," such as the Center for Climate Integrity (CCI), actively encourage municipal lawsuits.[217] In addition, CCI asserts that communities will not foot the costs of any suits unless successful and encourages the use of contingency-fee arrangements with plaintiffs' firms backed by TPLF.[218] In fact, one major climate-litigation firm, Sher Edling, is heavily supported by the Collective Action Fund for Accountability, Resilience, and Adaptation,[219] a group described as actively supporting lawsuits filed by state and local governments against energy companies.[220] Since only the fact of the firm's millions of dollars of funding was revealed in the group's tax filings,[221] other terms of this funding arrangement are unknown, which illustrates one of the significant problems that arise in the absence of requirements to disclose TPLF agreements to courts and parties in funded cases.

Vaping

Use of non-tobacco nicotine products, particularly e-cigarettes or vapes, has increased significantly in recent years.[222] In the United States, vaping products are used by youth more than any other tobacco product.[223] Young people's use of vapes has attracted widespread scrutiny, including from the plaintiffs' bar.

These concerns have given rise to litigation across the country. Cities, counties, and school districts are among the plaintiffs alleging that vape manufacturers intentionally marketed their products to youth, resulting in a variety of harms ranging from negative health effects to student absenteeism.[224] One particular vape manufacturer, Juul Labs, Inc. ("JUUL"), was the subject of multidistrict litigation that included hundreds of local government plaintiffs and that ended in a massive settlement, $150 million of which went to plaintiffs' lawyers.[225] In 2019, the U.S. Judicial Panel on Multidistrict Litigation consolidated dozens of lawsuits in the U.S. District Court for the Northern District of California.[226] These lawsuits, filed on behalf of individual plaintiffs, school districts, Native American tribes, and various AGs alleged, among other things, that JUUL "marketed its JUUL nicotine delivery products in a manner designed to attract minors [and] that [its] marketing misrepresent[ed] or omit[ted] that JUUL products are more potent and addictive than cigarettes," asserting a variety of claims, including negligence, public nuisance, and UDAP claims.[227] More than 5,000 individual lawsuits were consolidated as part of the JUUL MDL.[228] After several years of litigation, JUUL agreed to a combined $300 million settlement to resolve claims brought by consumers[229] and separate settlement agreements with 48 U.S. states and territories amounting to more than $1.1 billion.[230]

Identifying and Targeting Defendants

While e-cigarette technology had existed for years, the mass appeal and adoption of JUUL's products helped make vaping a widespread phenomenon, and JUUL a household name synonymous with the product category. At its prime around 2019, JUUL accounted for 75 percent of U.S. e-cigarette sales and was referred to as the "iPhone of e-cigarettes."[231] The proliferation of vaping products also introduced a wave of public scrutiny related to youth usage and prompted mass litigation from local governments and entities across the country.

Crafting the Narrative

Plaintiffs' lawyers have worked to frame vaping as a product largely marketed to and used by youth. This narrative, which depends on attributing allegations of bad marketing practices to all industry participants, has been exploited to attempt to build claims of public nuisance and consumer protection

If speech could be regulated through the injunctive relief available through public nuisance actions, this “supertort” could be applied to essentially any unwelcomed activity to effectively regulate it—a far cry from the tort’s roots as a means to abate physical obstructions to public land.

violations. Lawsuit advertising no doubt also played a prominent role in conditioning the public to associate vaping products with harm, youth usage, and liability.[232] [233]

Applying Pressure through Numbers

JUUL alone has settled more than 5,000 suits brought against it.[234] As discussed, JUUL is only one participant in the current vaping market and, as lawsuits from local governments continue to pile up, the legitimate manufacturers with deep pockets—which are frequently lumped in with illegitimate black-market manufacturers and other bad actors, by both the public and plaintiffs— are left with little option but to settle claims, regardless of their merit. Although the federal suit was filed in 2019, in 2022 "[]school districts of all sizes, as well as . . . other government entities, continue[d] to join the suit," with plaintiffs' "attorneys continu[ing] to seek out school districts across the country to join the litigation" and "show[ing] up at school board meetings to explain the suit to officials."[235]

Asserting Broad and Novel Causes of Action

In vaping-related lawsuits to date, local governments have largely relied on consumer protection (e.g., false and deceptive advertising), public nuisance, and product liability (e.g., failure-to-warn) claims. The prolific use of public nuisance in these cases has been particularly concerning, given that, like many other modern examples of mass municipal litigation, allegations target the marketing and advertising of vaping products.[236] Public nuisance was never intended to be used as a foundation for such claims.[237] For speech, even allegedly unlawful speech, to be a public nuisance—and for a government entity to effectively regulate it through legal action—would troublingly stretch the cause of action even farther from its historical moorings.[238] If speech could be regulated through the injunctive relief available through public nuisance actions, this "supertort" could be applied to essentially any unwelcomed activity to effectively regulate it—a far cry from the tort's roots as a means to abate physical obstructions to public land. Further, and as discussed above, the harms alleged by many local government plaintiffs are more directly related to allegations associated with use of the product itself, not its marketing or advertising.[239]

Relying on Questionable Expert Evidence

Given the relative newness of vaping technology and use, the science regarding its health impacts, particularly in comparison to that of combustible tobacco use, is rapidly evolving. For example, two studies published in prominent medical journals—one suggesting that nicotine vaping doubled the risk of heart attacks and another suggesting that vaping presented equivalent

Assertions that are not fully vetted, especially when they appear to have the imprimatur of the scientific community, can present serious issues in litigation and can put defendants at a significant and unfair disadvantage, resulting in further pressure to settle claims at high-dollar amounts.

health risks to cigarette smoking—were later retracted on the grounds that "[t]he researchers failed to consider whether the medical problems that survey respondents reported were diagnosed before or after they began vaping, a minimum requirement for inferring a causal relationship."[240] Unsurprisingly, one of these studies was cited in litigation by plaintiffs in support of the claim that "[s]everal studies have shown that e-cigarettes increase the risk of strokes and heart attacks."[241] And that study was likewise cited by other plaintiffs in support of similar claims.[242] As one article argued, these types of fallible studies reinforce the problem that, despite vaping being "far less dangerous than smoking," in the author's view, "most Americans think vaping is just as dangerous, if not more so."[243] Assertions that are not fully vetted, especially when they appear to have the imprimatur of the scientific community, can present serious issues in litigation and can put defendants at a significant and unfair disadvantage, resulting in further pressure to settle claims at high-dollar amounts.[244]

Vehicle Thefts

In 2023, a number of cities, including New York, Cleveland, San Diego, Milwaukee, Columbus, and Seattle, joined related actions filed by consumers against car manufacturers alleging that the companies knowingly sold vehicles that lacked certain anti-theft devices, such as engine immobilizers that prevent the vehicle from being started without a key, making the vehicles much easier to steal.[245] Over 20 U.S. cities have now filed suit against these car manufacturers.[246]

Beginning in 2020, a group of teenagers in Milwaukee discovered the purported defects in certain vehicles and began posting videos showing how to steal the cars in a matter of seconds.[247] As thefts of these types of vehicles quickly spread throughout the country, dozens of class actions were filed nationwide, and the cases were eventually consolidated in an MDL in the U.S. District Court for the Central District of California.[248] The defendants reached a settlement with the individual plaintiffs,[249] but the municipal litigation remains ongoing. Since the initial lawsuits from cities were filed, Baltimore, Newark, Indianapolis, Columbus, Nashville, Chicago, and other large cities have brought their own actions, with others considering filing suit.

Identifying and Targeting Defendants

As large, deep-pocketed companies, the car manufacturers were attractive targets for litigation. Plaintiffs' attorneys were able to capitalize on the negative media attention that these companies received from the thefts in order to draw more plaintiffs into the lawsuits.[250]

Crafting the Narrative

In both in-court and out-of-court statements, plaintiffs' attorneys have alleged that defendants put profits over safety by failing to install industry-standard engine immobilization anti-theft devices, despite decades of academic literature and research supporting the deterrent effects of such technology.[251] The plaintiffs' complaints claim that the companies' actions "opened the floodgates to vehicle theft, crime sprees, reckless driving, and public harm."[252] This comes after Hagens Berman, amid similar statements by other law firms, reported on its website that theft of these vehicles had contributed to a dramatic rise in rates of car theft overall and that some "incidents have turned dangerous, with suspects and bystanders being seriously injured or killed following unsafe driving and crashes related to the thefts."[253] Under a heading of "YOUR CONSUMER RIGHTS," the firm's website ad then reports, "We believe [the companies] chose to sell the affected vehicles without immobilizers to cut costs. . . . Hagens Berman believes vehicle owners deserve to be safe, and these automakers should be held accountable for putting drivers at risk for increased likelihood and rates of theft."[254]

Applying Pressure through Numbers

The vehicle-theft litigation is a textbook example of applying pressure through numbers. The MDL included seventy-nine cases filed in more than two dozen district courts,[255] including 17 municipalities.[256] The number of plaintiffs put significant pressure on the defendants by requiring them to defend against dozens of claims raised under multiple legal theories.

Asserting Broad and Novel Causes of Action

The vehicle-theft litigation involves broad and unwieldy causes of action including public nuisance, negligence, and unjust enrichment theories that have never been applied in this context.[257] The plaintiffs alleged that, by failing to include anti-theft devices in their vehicles, the companies created a public nuisance that deprived residents "of the peaceful use of the public streets and sidewalks" and required cities to spend more money on law enforcement and emergency services.[258] As the federal district court simply noted, "the claims here are novel."[259]

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Solutions

Chapter

04

The tactics profiled in this paper make up a litigation playbook that has been repeatedly put to use by municipal plaintiffs and their outside counsel to coerce corporate defendants into large settlements. While not all of the profiled elements can be addressed with policy solutions, this section offers a survey of approaches that policymakers might use to counter some of the worst abuses pulled from the pages of this playbook.

Reforms that can be made through legislative action fall into six categories: (1) circumscribing localities' authority to bring suit over certain issues; (2) limiting the hiring and influence of private outside counsel; (3) limiting the causes of action that form the basis for municipal mass litigation; (4) ensuring neutral forums for litigation brought by municipalities and removal to federal court, where appropriate; (5) promoting transparency and fairness in private attorney fee arrangements and litigation funding; and (6) ensuring scientific reliability in the courtroom.

Circumscribing Localities' Authority to Bring Suit Over Certain Issues

A state can reduce or eliminate local authority to bring suit over matters beyond those of strictly local concern. Such an effort could take the form of a general prohibition on municipal lawsuits over matters of statewide or national concern or prohibiting lawsuits in specific areas or against specific industries. For instance, some states have passed these types of limited statutory protections for the firearms,[260] agriculture,[261] food,[262] and pharmaceutical[263] industries. Congress has also passed statutes limiting liability for certain industries.[264]

Limiting the Hiring and Influence of Private Outside Counsel

Another way to reduce municipalities' involvement in mass litigation is to limit their ability to hire plaintiffs' attorneys in certain circumstances. Besides an outright prohibition on hiring outside counsel, states could require that municipalities receive permission to do so from the AG. Texas and Louisiana have adopted such statutes.[265] States might also limit the fees that outside counsel can ultimately collect through contingency-fee caps, as nearly two dozen states have already done in the context of their AGs hiring outside counsel.[266] States should, at a minimum, increase transparency by requiring that municipalities publicly disclose fee arrangements. Requiring transparency would discourage plaintiffs' firms from securing wildly unfair fee arrangements, instead prompting firms to bid competitively to deliver the most benefit to cities and counties.

Under the playbook, the judiciary is asked to take an active role in regulating business, a traditional role of the legislative branch. Legislatures can push back by clarifying and limiting the broad causes of action that are common in filings by plaintiffs' firms, such as public nuisance.

Limiting the Causes of Action That Form the Basis for Municipal Mass Litigation

Under the playbook, the judiciary is asked to take an active role in regulating business, a traditional role of the legislative branch. Legislatures can push back by clarifying and limiting the broad causes of action that are common in filings by plaintiffs' firms, such as public nuisance.[267] In addition, lawmakers should revise the current body of products liability law so that it adheres to its core purpose—compensating an injured consumer by imposing costs upon the manufacturer, vendor, or distributor that sold a defective product. By utilizing novel theories of harm and fault, plaintiffs' lawyers try to circumvent these core principles in a variety of ways. States should therefore enact legislation requiring plaintiffs to show both that warnings were inadequate and that the product itself was defective.[268]

Ensuring Neutral Forums for Municipal Claims and Removal, Where Appropriate

States should impose common-sense rules to prevent enterprising plaintiffs' firms from manufacturing jurisdiction and venue to get their cases into favorable forums. A state could, either through legislation or constitutional amendment, limit its courts' jurisdiction to hear certain public nuisance claims brought by municipalities or alleging certain "nuisance" activities.[269] In modifying the jurisdiction of state courts, however, a state's legislative and executive branches would need to be mindful of potential separation-of-powers limitations. A more limited approach would be to prohibit nonresidents from bringing suit in state court unless all or a substantial part of the events that gave rise to the lawsuit occurred in the state.[270]

Promoting Transparency and Fairness in Private Attorney Fee Arrangements and TPLF

State legislatures, state and federal courts, and the political branches of the federal government can promote transparency and fairness, and curb influxes of questionable claims—potentially brought to bolster plaintiff numbers and increase pressure on defendants to settle—by reforming TPLF. TPLF needs reform because it increases the numbers of claims, regardless of merit,[271] and subjects the actual plaintiffs to the whims of undisclosed financiers.[272] While some courts are proactive about

"States should impose common-sense rules to prevent enterprising plaintiffs' firms from manufacturing jurisdiction and venue to get their cases into favorable forums."

While rule changes at the federal level have reified the judge's role as gatekeeper to keep out ambiguous or questionable science, more should be done at the state level.

ensuring transparency of TPLF arrangements,[273] others are not. Potential reforms include mandatory disclosure of TPLF agreements to the courts and all parties to litigation and limits on a financier's power to direct litigation, including a prohibition on settlement-veto power, as well as prohibitions on foreign funding of litigation. Many other measures are possible and may be desirable.[274]

Ensuring Scientific Reliability in the Courtroom

Despite the Supreme Court's instruction in *Daubert* to determine what science is worth admitting into evidence, junk science still pervades mass litigation. While rule changes at the federal level have reified the judge's role as gatekeeper to keep out ambiguous or questionable science, more should be done at the state level.[275] To the extent further action is necessary, since state rules already should be interpreted to mirror the federal rules, states should amend their own rules governing civil procedure and evidence to be consistent with Federal Rule of Evidence 702, which charges judges to act as gatekeepers with regard to scientific testimony.[276] Many states have a similar requirement, but not all. Therefore, plaintiffs' firms can target jurisdictions where poor-quality evidence favoring them stands a better chance of being accepted in the courtroom. This creates litigation uncertainty for defendants that could be eliminated through more uniform law.

Conclusion

Chapter

05

Landmark litigation of the 1990s, and the resultant windfalls for states and municipalities, kicked off the development of a litigation playbook that plaintiffs' lawyers have honed extensively since that time. These attorneys, who increasingly seek to represent government entities, make extensive use of the tactics in this playbook to boost their likelihood of extracting massive settlements from American businesses that sell lawful and non-defective products.

Under this mass litigation playbook, local government plaintiffs identify and target potential defendants in industries subject to public criticism, create a narrative with the support of the media based on often-shaky expert evidence, and inundate defendants with cases in plaintiff-friendly forums. These tactics are bolstered by public relations campaigns from allied NGOs and advertising blitzes sponsored by plaintiffs' lawyers and lawsuit aggregator firms. These public-facing campaigns not only recruit potential plaintiffs, but also condition the public (including potential jury pools) to accept plaintiffs' theories of liability, making the case that companies should pay out millions or billions of dollars before claims are even presented, let alone tested, in court. And, as plaintiffs reach for broad and novel causes of action, use of this playbook is not limited to products that cause the actual injuries complained of, nor to entities responsible for manufacturing those products.

Reliance on the playbook has multiple baneful effects. It dilutes the authority of AGs who are lawfully entrusted to protect the public interest and supercharges the "regulation by litigation" phenomenon. It also chills economic activity and innovation by subjecting businesses to increased potential liability and litigation costs and in turn makes products less available and more expensive for consumers. At the same time, it delays relief for victims by making the settlement process more time-consuming and difficult.

Policymakers should address these problems by limiting the ability of municipalities to bring these suits and to hire profit-motivated private plaintiffs' lawyers; reining in the use of causes of action that are too often abused in municipal mass litigation; reducing the ability of plaintiffs to strategically select a judicial forum that may be unduly receptive to their claims; and promoting transparency, fairness, and scientific reliability in the courtroom.

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