



X TRIAL LAWYER PLAYBOOKTM

ATRA

American Tort Reform Association

Table of Contents

Executive Summary.....	2
What is the Trial Lawyer Playbook?.....	2
The Finance Play: Third Party Litigation Financing.....	4
What Is Third-Party Litigation Funding (TPLF)?.....	4
An Analysis of TPLF Today.....	5
Examples of TPLF & Litigation Funders.....	5
Counsel Financial Boasts About Providing Funding for Various Lawsuit Classes, Including Talcum And Xarelto.....	6
Outside Investors Owning Law Firms.....	6
Using Loans to Buy New Clients from Other Firms.....	7
Foreign Investment.....	7
How to Curb Abuse.....	8
Recent Successful Legislative Efforts.....	9
The Advertising Play: Trial Lawyer Advertising & Client Acquisition.....	10
Why and How Are Lawyers Advertising Their Services?.....	10
An Analysis of Trial Lawyers' Marketing Tactics & Client Acquisition Today.....	11
Legal Services Advertising.....	11
Client Acquisition Beyond Ads.....	12
Examples of Trial Lawyer Ads.....	12
Impacts of Misleading Legal Services Advertisements.....	13
How To Curb Abuse.....	14
Recent Successful Legislative Efforts.....	14
The Junk Science Play: Misleading Scientific Evidence.....	15
What is Junk Science?.....	15
An Analysis and Examples of Junk Science Today.....	15
Valisure & Private Testing Labs.....	15
The World Health Organization and the International Agency for Research on Cancer (IARC).....	16
Roundup® Litigation.....	17
Talcum Powder Litigation.....	18
PFAS Litigation.....	19
How To Curb Abuse.....	19

Executive Summary

In the dynamic landscape of Capitol Hill discussions and evolving policy debates, one topic has emerged as a pivotal concern – "[The Trial Lawyer Playbook](#)." As policymakers grapple with the intricate web of mass tort litigation, it is evident that this playbook serves as the proverbial oil that keeps the mass tort machine running smoothly.

The American Tort Reform Association's comprehensive report, "The Trial Lawyer Playbook," seeks to pull back the curtain and expose the inner workings of the trial bar – namely, the three-legged stool that upholds their operations, comprised of robust public relations and advertising campaigns, the propagation of junk science, and an infusion of funding from third-party investors.

Recent developments and events on Capitol Hill have set the stage for this pivotal discussion. In September 2023, the House Committee on Oversight and Reform held a hearing on third-party litigation financing, during which the American Tort Reform Association submitted a compelling [letter of testimony](#), underscoring the urgency of this report. Equally pertinent is the introduction of a bill, the "[Protecting Our Courts from Foreign Manipulation Act](#)," championed by Senators John Kennedy (R-LA) and Joe Manchin (D-WV), which looms large on the legislative horizon.

What is the Trial Lawyer Playbook?

Regardless of the product, "The Trial Lawyer Playbook" is essentially the same every time. ATRA's report unearths the foundational elements of this complex mass tort machine – third-party litigation financing, dubious scientific theories, and the ubiquitous influence wielded by trial lawyer advertising.

The first pillar, third-party litigation financing (TPLF), swiftly has burgeoned into a multi-billion-dollar industry. Hedge funds and private equity entities now play a pivotal role by furnishing substantial capital to plaintiffs' law firms, thereby securing a share of forthcoming settlements. While proponents extol TPLF for expanding access to justice, it introduces ethical quandaries and upends the conventional dynamics of litigation.

As foreign investment enters the realm of litigation finance, the narrative becomes further convoluted. Sovereign wealth funds, often enshrouded in opacity, have initiated investments in litigation finance entities, potentially infusing foreign influence into domestic legal matters. Apprehensions surrounding national security repercussions have prompted the aforementioned legislative response from Senators Kennedy and Manchin, forging bipartisan endeavors to address these concerns.



The second pillar of the triad centers on trial lawyer advertising. Law firms and lead generators spare no expense in soliciting new clients, deploying aggressive advertising campaigns that instill unwarranted trepidation in consumers. These campaigns are often made possible by third-party financing. Products such as Roundup® weed killer and talcum powder are thrust into the public limelight, frequently bereft of scientific substantiation. [From 2017 to 2021](#), an astonishing \$6.8 billion was spent on legal advertising, underscoring the magnitude of this issue.

The third pillar, the proliferation of unsubstantiated scientific evidence, finds particular resonance in mass tort litigation. Unscrupulous experts, characterized by dubious credentials and lax scientific standards, are enlisted to provide baseless scientific testimony. The integrity of our legal system is at risk as lenient evidentiary standards persist, permitting misleading assertions to infiltrate courtrooms.

Our hope is that legislators and policymakers utilize this report as a resource, given the report's illuminative insights into a system that profoundly impacts not only the judicial echelon but also the lives and livelihoods of our neighbors. A [report by the Perryman Group](#) found that the total current impact of excessive tort costs on the U.S. economy includes losses of an estimated \$472.88 billion in output (gross product) each year and about 4.46 million jobs when dynamic effects are considered. Some states with the highest "tort taxes" paid due to these excessive tort costs are in [Judicial Hellholes®](#) like [California](#), [New York](#), and [Illinois](#), where residents pay an annual "tort tax" of \$2,119, \$2,013, and \$1,688, respectively.

This report navigates the labyrinth of the trial lawyer playbook, encompassing in-depth analysis, instances of litigation, prospective trends, and a look at actions that have served as remedial measures in states, which have dealt with these issues. These states have proactively embraced measures to redress such pressing concerns.

The Finance Play: Third Party Litigation Financing

What Is Third-Party Litigation Funding (TPLF)?

Third party litigation funding (TPLF) is the practice of investors buying an interest in the outcome of a lawsuit – and it has rapidly become a multi-billion-dollar industry.

There are multiple types of litigation financing, but “big-ticket” lawsuit lending typically involves hedge funds and private equity companies that specialize in financing mass tort litigation, commercial and intellectual property litigation, or a broader portfolio of cases handled by a law firm.



Third-party litigation funders front money to plaintiffs’ law firms in exchange for an agreed-upon cut of any settlement or money judgment. When these cases are resolved, the lawsuit lender is usually entitled to a percentage of the recovery, much like a contingency-fee. Investors are attracted by the prospect of a substantial return on their investment and law firms use the money to cover upfront litigation costs.

Importantly, litigation financing does not only fund lawsuits, but it creates them. For example, an outsider’s financial investment in a case may be used to cover the cost of the mass tort lawsuit advertising that has surged in recent years and the call centers that handle the responses. These ads often urge viewers who have taken a prescription drug, been treated with a medical device, or used a consumer product to “call right now” because “you may be entitled to substantial compensation.” Even when sound science does not support these suits, mass tort lawyers and their investors understand that if they quickly generate thousands of claims tying a widely used product to a common illness, the targeted company will face strong pressure to reach a global settlement. That settlement will result in a substantial payout to both the contingency-fee lawyers and investors.

Proponents of lawsuit financing argue that TPLF provides access to justice for those who might not otherwise be able to afford it. But, the reality is that it can create serious problems for the legal system as a whole.

Litigation financing raises several ethical concerns, such as a threat to a lawyer’s ability to exercise independent judgment in cases where the funder can influence litigation or settlement decisions. The presence of an unknown third-party with a stake in the outcome of a lawsuit can change what is essentially a two-party negotiation into a multi-party process with a

“behind-the-scenes” influencer. As a TPLF company executive [has acknowledged](#), litigation funding “make[s] it harder and more expensive to settle cases.”

An Analysis of TPLF Today

With mass torts frequently being litigated on a contingency arrangement by plaintiffs’ firms, financing litigation has become a lucrative business. An article from *The New York Times* in 2018 noted that [hedge funds](#) and investment firms have begun to open funds based on litigation finance, with these investors becoming “go-to financiers for many of these cases.” These loans to law firms often carry interest rates as high as [18%](#), with some investors also [receiving a cut](#) of any possible return in some larger cases. The head of one large litigation finance fund even equated mass tort lending to “[payday lending](#).”

With more than [\\$10 billion](#) in capital distributed from investors to law firms in 2021, hedge funds are not only capitalizing individual mass torts, they are also funding law firms to buy mass tort cases from other firms to bulk up their caseloads. Litigation finance has become a booming industry as large Wall Street firms and pension funds aim to diversify their investment portfolios with [alternative investment classes](#) that make money independent of market variance.


Examples of TPLF & Litigation Funders

Beyond Wall Street money, some of the smaller trial law firms also are receiving financing from larger, more established trial law firms. One example of this phenomenon is [Counsel Financial](#), a boutique litigation finance firm partially overseen by [Weitz & Luxenberg](#), a large plaintiffs’ firm focusing on mass torts. Counsel Financial boasts of [financing lawsuits](#) dealing with [talc](#), [Xarelto](#) and hernia [mesh](#), all of which have been a focus of Weitz & Luxenberg. Counsel Financial even has a [program](#) offering to help new trial lawyers get into mass torts dealing with those three case classes. Weitz & Luxenberg lawyers are even offered up as [mentors](#) for trial lawyers looking to file those lawsuits.

A hybrid model between Wall Street funding and the Counsel Financial model exists with [Armadillo Litigation Funding](#). Armadillo Litigation Funding is run by employees of the [Johnson Law Group](#), a mass tort firm based in Texas, but appears to be funded by [EJF Capital](#). Armadillo Litigation Funding supplies money not just to the Johnson Law Group, but also [gives money](#) to smaller firms participating in mass torts.

Counsel Financial Boasts About Providing Funding for Various Lawsuit Classes, Including Talcum And Xarelto


Litigations Financed



Talcum Powder

Thousands of lawsuits involving claims that talcum powder causes ovarian cancer have been filed—mostly in St. Louis and New Jersey. The defendants named in the litigation are: the manufacturer of the products, Johnson & Johnson;...


[Read More](#)



Risperdal

Risperdal is the brand name for Risperidone, an atypical or "second generation" antipsychotic drug prescribed to treat schizophrenia and other manifestations of psychotic disorders. The defendants named in the...

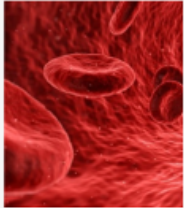
[Read More](#)



Actos

Actos is a prescription Type 2 diabetes drug that has only one active ingredient, pioglitazone, and is part of a class of drugs known as thiazolidinediones ("TZDs"). TZDs are oral anti-diabetic agents that...

[Read More](#)




Xarelto

Hundreds of lawsuits have been filed against Xarelto manufacturer, Johnson & Johnson and its Healthcare alleging that manufacturers failed to warn consumers of the grave risks involved in taking...

[Read More](#)

(Source: "Mass Torts," [Counsel Financial](#), Accessed 5/21/21)




Counsel Financial
The power of attorney funding.®

[Products](#) ▾ [Practice Areas](#) ▾ [About Us](#) ▾ [Blog](#) ▾ [Finance Corner](#)

[Counsel Financial](#) > [Practice Areas](#) > [Mass Torts](#) > [Talcum Powder](#)

(Source: "Talcum Powder," [Counsel Financial](#), Accessed 5/21/21)



Counsel Financial
The power of attorney funding.®

[Products](#) ▾ [Practice Areas](#) ▾ [About Us](#) ▾ [Blog](#) ▾ [Finance Corner](#)

[Counsel Financial](#) > [Practice Areas](#) > [Mass Torts](#) > [Xarelto](#)

(Source: "Xarelto," [Counsel Financial](#), Accessed 5/21/21)

Outside Investors Owning Law Firms

Rules in virtually every state prohibit private interests from owning – or co-owning – law firms. This recently changed in [Arizona](#), where the state supreme court ruled that outside investors can own law firms. Experts have said the groups most likely to participate in co-owning a law

firm could be [litigation funders](#) or legal marketing firms. This arrangement could lead to lawyers directly [splitting case proceeds](#) with their outside investors, something that wasn't possible before. Legal experts worry this could create [cross-pressure](#) with law firms that may be trapped between their fiduciary duty to their investors and their ethical duty to their clients.

Conflicts of interest between fiduciary duty and client representation in mass torts has already been an issue in direct litigation finance. Some lenders charge higher interest rates as cases drag on, putting pressure on the trial lawyer to settle or take less than what their client would get by [prolonging](#) the case. During pelvic mesh cases, the federal government investigated whether lawyers and litigation funders were [urging women](#) to remove their mesh implants to receive larger settlements from companies that made or manufactured pelvic mesh.

Using Loans to Buy New Clients from Other Firms

Using loans to acquire new clients from other firms raises additional concerns within the legal industry. A prime example of this practice can be seen in the 2016 acquisition of Gerchen Keller Capital by Burford Capital. In this transaction, a substantial sum of [\\$160 million](#) was involved, composed of cash, notes, and shares. Gerchen Keller Capital, previously known for its involvement in personal injury mass torts, had amassed a considerable \$475 million fund in 2015. They extended [\\$100 million](#) to the Houston law firm AkinMears for the explicit purpose of buying injury claims from other lawyers.

This strategy essentially turns legal cases into commodities, with financing deals often structured at interest rates near 16%. AkinMears utilized Gerchen Keller's capital to acquire a staggering [14,000 defective product claims](#), primarily focusing on transvaginal mesh cases. The potential profits were immense, with calculations suggesting attorneys' fees of up to [\\$200 million](#) if the cases proved successful.

Furthermore, part of the funds obtained by AkinMears from Gerchen Keller went toward settling debts with another litigation financing company, Virage Capital Management. AkinMears had found itself in dire financial straits due to substantial debt, making it increasingly challenging to secure additional loans. Gerchen Keller's capital infusion not only facilitated the acquisition of new clients but also acted as a [lifeline](#), allowing AkinMears to stabilize its financial position by paying off a portion of its outstanding debts.

This practice underscores the ethical and moral dilemmas inherent in the legal industry's pursuit of profit. Using loans to buy clients from other firms transforms justice into a commercial venture, potentially compromising the integrity of legal proceedings and the interests of clients. It raises serious questions about the prioritization of financial gain over the principles of justice and the sanctity of legal practice.

Foreign Investment

Coupled with the rise of large hedge funds and pension funds to find alternative assets for portfolio diversification, it is no surprise that sovereign wealth funds have begun to invest in

litigation finance firms and funds. Disclosures as to which litigation finance funds receive sovereign wealth investment is sparse as sovereign wealth funds do not have to [publicly disclose](#) their investments.

While the exact investments of sovereign wealth in litigation finance is largely unknown, some reports have leaked. A 2022 article in Arabian Gulf Business implied that the Abu Dhabi Investment Authority has invested in litigation finance funds. Litigation finance firms like [Burford Capital](#), [Fortress Investment Group](#), [IMF Bentham](#) and [Therium Capital Management](#) all have announced publicly that they have received sovereign wealth investment.

The issues relating to sovereign wealth investment in litigation finance have been noted by several outside experts. In December 2022, an unnamed outside association warned the U.S. Government Accountability Office that [sovereign wealth funds](#) could seek to influence litigation decisions via these funds. University of Iowa law professor Maya Steinitz noted, “a sovereign wealth fund or a foreign government may [seek to advance](#) foreign policy or military goals.” A [recent report](#) by the U.S. Chamber of Commerce echoed similar concerns. In December 2022, 14 Republican Attorneys General asked the U.S. Department of Justice to [investigate](#) foreign funding into litigation finance.

[Senator John Kennedy](#) (R-LA), a member of the Senate Judiciary Committee, has expressed concerns that state actors like China and Russia could [infiltrate litigation](#) financing in the U.S. which could have dire national security implications. Senator Kennedy recently asked Chief Justice John Roberts and Attorney General Merrick Garland to proactively issue guidance and [take steps to limit](#) the ability of foreign governments from being involved in funding domestic litigation. In September 2023, Senator Kennedy and Senator Joe Manchin (D-WV) introduced bi-partisan [legislation](#) aimed at addressing these concerns.

How to Curb Abuse

Our legal system is intended to achieve fair and just resolution – not to generate profits for investors. If third-party litigation financing continues to be allowed, there must be regulations in place to ensure that investors are held accountable for their actions and that the integrity of the legal system is preserved.

Regulations should include transparency surrounding TPLF agreements. Disclosure of such arrangements at the outset of litigation or upon entering a funding agreement would provide parties and courts with vital information to assess the influence of funders on the litigation.

Recent Successful Legislative Efforts

In some states, legislative bodies have prioritized reforms to address various forms of TPLF. These efforts are outlined below.

2023

Indiana

[H.B. 1124](#) – Requires disclosure of a consumer litigation funding agreement.

Missouri

[S.B. 103](#) - Provides that consumer litigation funding agreements are subject to the rules of discovery, among other requirements.

Montana

[S.B. 269](#) – Subjects TPLF to the maximum usury interest rate or a 25% fee cap, requires automatic disclosure of the agreement in litigation and requires registration with the state as well as disclosure of the officers of the company engaging in litigation financing in Montana. The legislation explicitly applies to class actions and subjects lenders to joint liability for costs and sanctions.

The Advertising Play: Trial Lawyer Advertising & Client Acquisition

Why and How Are Lawyers Advertising Their Services?

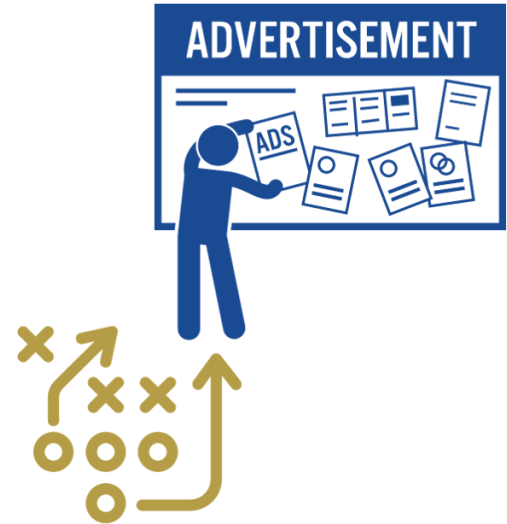
Law firms and businesses known as lead generators or aggregators increasingly spend large sums of money on advertising to recruit new clients – especially in plaintiff-friendly [Judicial Hellholes®](#). They know it's an effective way to needlessly scare consumers and encourage them to file claims.

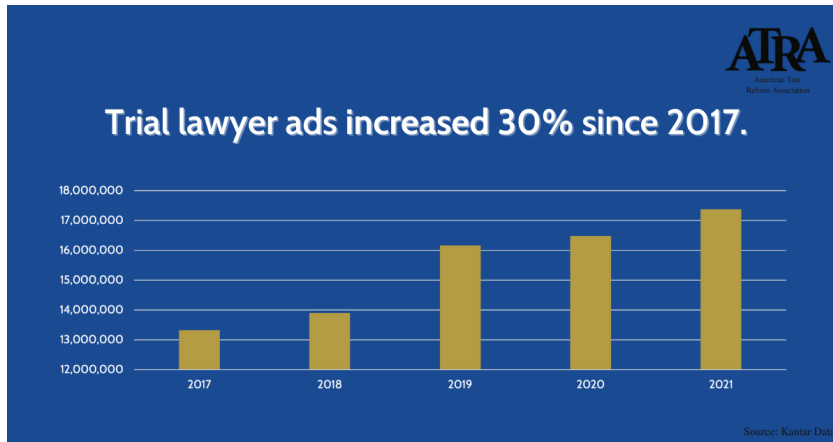
If you turn on your television, chances are you will see an advertisement for either a law firm or a mass tort. Between 2017 and 2021, [\\$6.8 billion](#) was spent on legal advertising on television, comprising more than 77 million ads aired. Of the \$6.8 billion spent, [\\$1.4 billion](#) of that came in 2021 alone. As Bloomberg noted in 2023, [mass tort cases](#) have been “turbocharged by a mass tort marketing industry that has evolved in recent years from the door-knocking of Erin Brockovich types into a high-tech, targeted operation on social media and TV.”

These ads include those soliciting claims alleging that consumer products, pharmaceuticals, and medical devices are responsible for medical conditions that either have a range of potential causes or the causes of which are unknown. Top targets of these ads include Roundup® weed killer, talcum powder and, more recently, the herbicide paraquat.

As of 2022, Roundup® was the top target of mass tort product liability litigation TV ads since 2015, with an estimated [\\$131 million](#) spent on more than 625,000 ads airing nationally and locally across the country between 2015 and 2022. Second only to Roundup® litigation ads, are ads soliciting claims alleging a link between the use of talcum powder and incidences of cancer. An estimated [\\$109 million](#) was spent on more than 370,000 talc litigation ads nationwide between 2015 and 2022.

Since plaintiffs' lawyers have earned billions of dollars on talc and Roundup® litigation, showing a good return on their advertising investment, they've turned their attention to another herbicide – paraquat. Between 2021 and 2022, more TV ads aired across the country soliciting claims alleging injuries caused by paraquat than mass tort ads related to any other product. Advertisers spent more than [\\$24 million](#) to air more than 150,000 of these ads between 2021 and 2022.





Notably, much of this advertising is conducted by aggregators: businesses that recruit potential plaintiffs and then sell their information to law firms.

From advertising to in-person advocacy to the outright purchase of caseloads, there are many ways to build out a portfolio of cases. And the

payoff can be massive, with firms holding the largest caseloads often getting preference for payouts and the allocation of funds from cases involving large, multidistrict litigation.

An Analysis of Trial Lawyers' Marketing Tactics & Client Acquisition Today

Legal Services Advertising

Advertising is the trial bar's main method for finding claimants, with many advertisements being paid for by legal lead generators. Those lead generators then turn around and [sell the potential clients](#) based on a formula determined by the number of lawyers advertising for the case and where the litigation stands in the courts. A simple rule of thumb is that the more lawyers who are interested in gaining clients via advertising, the [more expensive](#) it will be for the trial law firm to gain caseload on a per-client basis. Beyond lead generation, some of these marketing firms have even opened a sideline in retrieving the medical records of potential claimants before [passing this information](#) along to tort law firms—a function previously handled by the law firms directly.

Some of the biggest players in legal lead generation include MCM Services Group (more commonly known as the [Gold Shield Group](#)) and the [Relion Group](#), which is wholly owned by the Carlyle Group. Another player, Knightline Legal is owned by Lucy Business Services LLC and primarily [utilizes TV ads](#) to generate leads for mass tort firms. Knightline Legal positions itself as a [consolidated group of lawyers](#) offering legal services to those injured by dangerous drugs and medical devices. Potential leads who call their hotline [provide confidential information](#), which is then forwarded to law firms for evaluation.

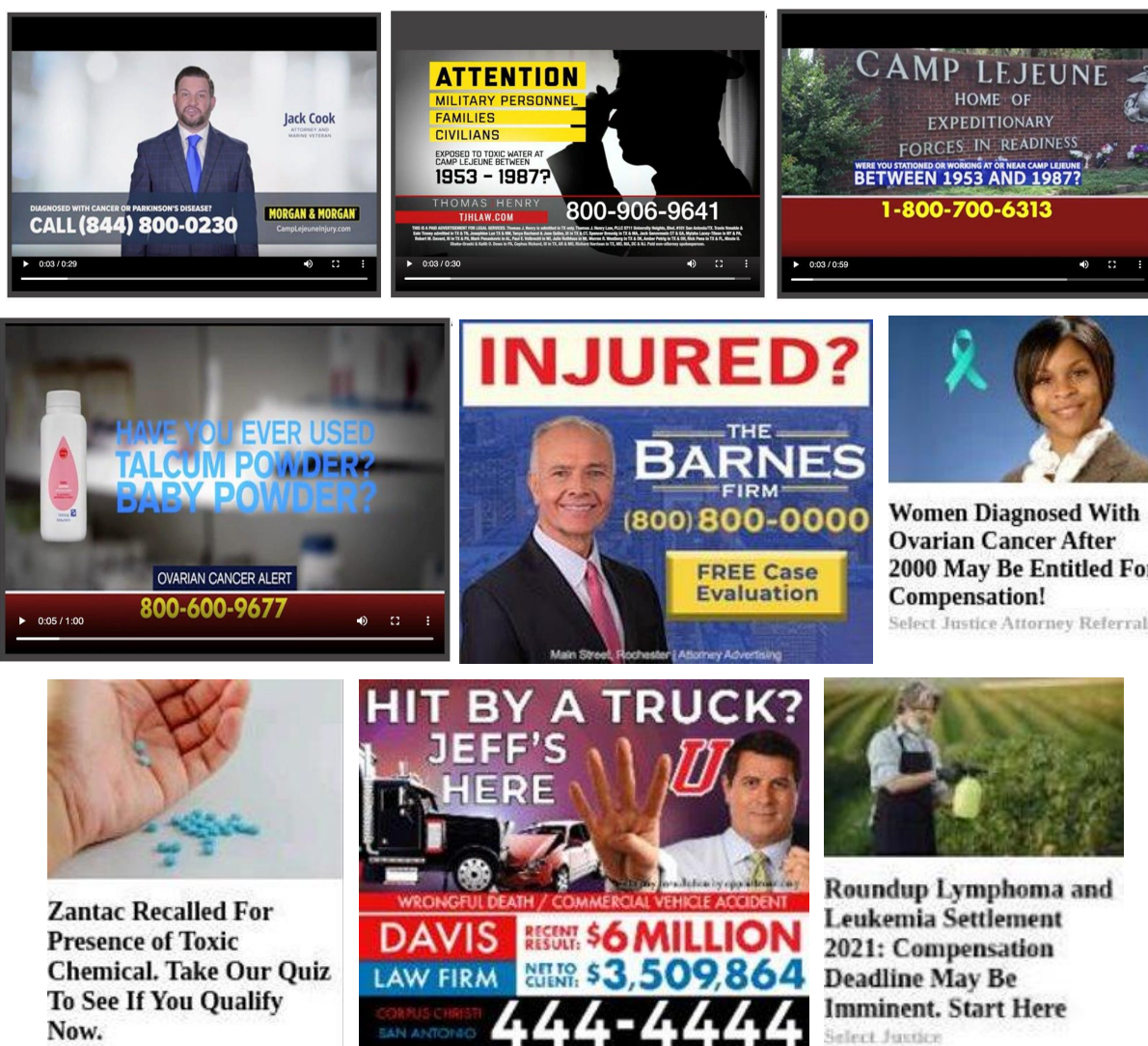
While advertising and buying client loads have been an aspect of client generation for decades, several new frontiers of client generation have popped up in recent years. Newsome Melton, an Orlando-based law firm, has started an [Astroturf marketing campaign](#) by creating a website with information on brain and spinal injuries. This informational website then serves to [drive potential personal injury clients](#) to the firm. Newsome Melton has also sought to write [guest articles](#) for other, work safety-related blogs under a pseudonym, with content designed to drive business to the firm.

Client Acquisition Beyond Ads

Mass tort firms have also started to get more aggressive with in-person marketing. In 2018, mass tort firm Napoli Shkolnik hosted an [in-person event](#) in Flint, Michigan with actor Harper Hill. The event aimed to get local residents to sign retainer agreements for lawsuits relating to the detection of lead in the Flint water system. Another law firm involved in litigation in Flint, Cohen Milstein, [accused](#) Napoli of breaching ethics laws against solicitation.

Another new method of client generation comes from Levy Konigsberg in the competitive market for asbestos and mesothelioma clients. The law firm donates a considerable amount of money to a doctor studying mesothelioma at the NYU Langone Medical Center, leading the doctor to [refer his clients](#) directly to the firm.

Examples of Trial Lawyer Ads



Ad analysis conducted by the American Tort Reform Association utilizing data and creative provided by Kantar.

Impacts of Misleading Legal Services Advertisements

Unfortunately, consumers may see doomsday ads about the lethal effects of medications or even general medical injury, and consequently stop using their prescribed medications. This is often done without consulting a doctor, causing health problems for the patients and increasing litigation risk for the product manufacturers.

A [2019 FDA study](#) shows the real-life consequences of deceptive trial lawyer ads. The report found 66 incidents of adverse events following patients discontinuing the use of blood thinner medication (Pradaxa, Xarelto, Eliquis or Savaysa) after viewing a lawyer advertisement. The median patient age was 70 and 98% stopped medication use without consulting with their doctor. Thirty-three patients experienced a stroke, 24 experienced another serious injury, and seven people died.

Dr. Shawn H. Fleming, doctor for one of the deceased, [stated](#) before a 2017 U.S. House Judiciary committee hearing, “It’s my opinion that the tone and content of these advertisements imply a qualitative judgment about these medications that are just not true. When you say ‘call 1-800-BAD-DRUG,’ that clearly implies it’s a bad drug, which runs counter to current medical evidence and also to the FDA’s recommendations.”

These over-the-top advertisements from personal injury attorneys with catchy jingles and toll-free numbers pose a serious danger. These ads undermine the simple notion that physicians and health care providers, not personal injury lawyers or the “aggregators” who run the ads for the lawyers, should dispense medical advice.

The reason trial lawyers pump significant money into these ad buys is because, armed with more clients, they can boost settlements and payouts when they go after large corporations. This leads to larger contingency fees for themselves.

The ads do more than help recruit clients, however. They can also influence the thinking of citizens who may serve on a jury in lawsuits. A survey conducted by [Trial Partners, Inc.](#) found that 90% of jurors would be somewhat or very concerned if they saw an advertisement claiming a company’s product injured people. Additionally, 72% of jurors agreed somewhat or strongly that if there are lawsuits against a company claiming its products injured people, then there is probably truth to the claim – showing just how great an impact these ads can have.

These examples collectively shed light on the complexities and ethical issues surrounding legal services advertisements and the acquisition of clients in the legal industry. The changing industry highlights the need for transparency, regulation, and scrutiny of practices that may compromise the integrity of the attorney-client relationship.

How To Curb Abuse

States need to place reasonable regulations regarding deceptive or misleading lawsuit or legal services advertisements.

In some states, legislative bodies have prioritized reforms to address misleading legal services advertisements. These efforts are outlined below.

Recent Successful Legislative Efforts

2023

Florida

[H.B. 1205](#) – Creates law related to legal advertising and the use of protected health information to solicit individuals for legal services.

2022

Kansas

[S.B. 150](#) – Creates law related to legal advertising and the use of protected health information to solicit individuals for legal services.

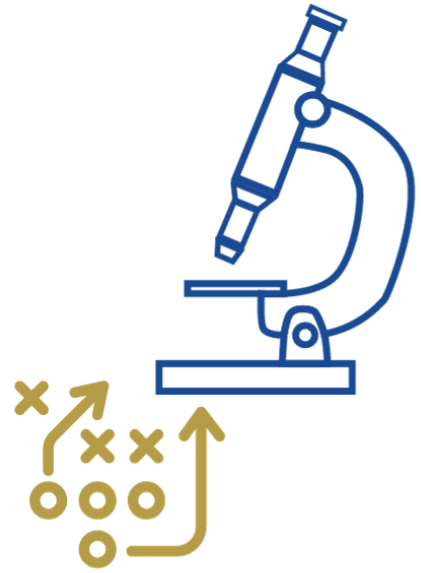
Louisiana

[S.B. 378](#) – Prohibits deceptive or misleading advertisements, specifically those presented as a medical alert, health alert, drug alert, or public service announcement.

The Junk Science Play: Misleading Scientific Evidence

What is Junk Science?

The trial bar engages in massive television ad buys and public relations campaigns that peddle misinformation and taint the public's preconceptions, while judges in [Judicial Hellholes®](#) fail to restrict falsehoods in their courtrooms. Junk science is especially common in mass tort litigation regarding the glyphosate-based Roundup® weed killer and talcum baby powder. The trial bar is spending hundreds of millions of dollars trying to drive home the message that these products cause cancer, despite the lack of sound scientific evidence verifying such claims.



Many courts have lax standards for evidence and judges who abandon their role as gatekeepers, resulting in an abundance of “junk science” presented to jurors.

Trial lawyers sometimes partner with so-called experts to provide misleading scientific evidence to support their claims both inside and outside the courtroom.

Simply stated, for a mass tort to exist, a target must be found to sue. In the past, targets were found via more traditional methods such as product recalls, regulation, and legislation, all of which are done by government organizations. Now, beyond these traditional methods, the plaintiff's bar is also finding targets by relying on non-governmental organizations, often featuring shoddy research, using novel legal strategies to identify new targets, and even infiltrating traditional regulatory bodies to push regulations to extremes to make it easier to sue.

Trial lawyers turn to individuals with dubious credentials and a loose appreciation of ethical norms for one reason – the truth simply isn't on their side.

An Analysis and Examples of Junk Science Today

Valisure & Private Testing Labs

Valisure, a small private sector company based in Connecticut, has been the genesis of a number of lawsuits filed against drug and chemical manufacturers, most notably lawsuits on the diabetes drug [Metformin](#) and [heartburn medication Zantac](#).

Valisure has been repeatedly criticized by experts for their faulty methodology, with the U.S. Food and Drug Administration calling out Valisure's methodology on both its tests on [Zantac](#) and [Metformin](#). Valisure was also forced to [retract](#) a study on Zantac due to methodological issues.

Valisure's testing methodology involved heating the product to over [260 degrees](#), which is clearly not a realistic scenario for how an individual would consume the drug, considering that is double the temperature of the average healthy person.

Besides heating the product to temperatures it would not otherwise be subjected to, Valisure also tested the product with an [artificial stomach](#) containing unusually high amounts of salt – amounts that humans could not safely ingest.

Of more long-term concern is Valisure's ties to trial lawyers. Several times, [mass torts](#) have been filed in the wake of Valisure testing results, including lawsuits regarding Metformin and Zantac.

Valisure has publicly said their business model is based on "[generating data](#)" for companies and other stakeholders, with Valisure's CEO David Light [noting](#) they made money via a "data index subscription services." One defendant who was the subject of a mass tort based on Valisure data [explicitly called](#) the company out, noting the company might have "financial incentives to... skew the results of its testing in a plaintiff-friendly manner."

This contention was borne out in emails found during the discovery process in a mass tort filed using Valisure data. The emails found that Valisure received direct funding from trial lawyers for testing and had [discussions](#) with trial lawyers prior to filing a citizen's petition with the FDA against rapid-release acetaminophen gel caps produced for Rite Aid. Emails also showed that trial lawyers [hired Valisure](#) as a consultant before the citizen's petition was filed and Valisure discussed the progress of the study and citizen's petition "for months in advance of its publication. The brother-in-law of Valisure's CEO also appears to have gotten information from Valisure tests ahead of publication, with lawsuits on the levels of ranitidine in Zantac and the amount of benzene in body sprays being filed the [same exact day](#) Valisure publicly released FDA citizen's petitions on the topics.

The World Health Organization and the International Agency for Research on Cancer (IARC)

Over the course of the last several decades, the use of outlier studies to instigate new mass torts has risen precipitously. One of the most frequent sources for these outlier studies has been the World Health Organization's International Agency for Research on Cancer, which is more commonly known as IARC. As of 2016, IARC had studied 989 separate substances and activities and had only found [one](#) that they didn't deem a cause of cancer - a nylon used in yoga pants and nylon bristles.

Among IARC's more interesting determinations, they rated processed meats, wood dust and Chinese [salted fish](#) as existing at the same cancer-causing level as plutonium, mustard gas and tobacco use. IARC has also ruled that working as a [painter](#) causes cancer, mobile phone usage possibly causes cancer and working as a nurse is "probably carcinogenic." With rulings like this, it's no surprise that IARC has been called out by outside governmental regulators for their suspect methodology.

IARC also has been subjected to heavy criticism from outside experts and even former employees. Bob Tarone, the Head of Biostatistics at the International Epidemiology Institute, said IARC's cancer determinations were "[not good for science](#)" and "not good for regulatory agencies." Another former employee stated IARC's cancer determinations sometimes lack "[scientific rigor](#)." Geoffrey Kabat, a cancer epidemiologist at the Albert Einstein College of Medicine, said IARC's cancer determinations are "[theoretical exposures](#) which might, under some far-fetched conditions, possibly have an effect," which does the public a "[disservice](#)."

On glyphosate, a chemical IARC deems probably carcinogenic, a host of governmental regulators have dismissed the IARC methodology as [flawed](#), as has been the case with IARC's classification of [aspartame](#). Environmental safety agencies in the U.S., Canada, Brazil, Australia, New Zealand, Japan, and the European Union have spent decades reviewing the health impacts of glyphosate. All agree that no credible evidence exists linking glyphosate to non-Hodgkin's lymphoma.

But IARC says otherwise. The chemical, generally [found safe](#) by regulators worldwide, was termed a "[probable](#)" [carcinogen](#) by IARC in 2015. A member of the working group was a scientist named [Christopher Portier](#), who, beyond being paid by an anti-pesticide advocacy group, later received [\\$160,000](#) to serve as a consultant for a group of lawyers suing Monsanto over their use of glyphosate in their products. According to [emails](#), Portier even took it upon himself to go on a "counteroffensive policy" to "deflect any reputational damage to IARC's review" by going after agencies such as Germany's Federal Institute for Risk Assessment and [European Food Safety Authority's assessments](#) of glyphosate.

Roundup® Litigation

Monsanto faces thousands of cases across the country alleging Roundup® causes cancer. Expert witnesses testify that glyphosate, the active ingredient in [Monsanto's](#) signature Roundup® weedkiller, is to blame for triggering the disease.

While a vast majority of plaintiffs' lawyers rely on IARC's glyphosate study as the foundation for their claims, others have looked to questionable "expert" witnesses.

One such example was in August 2022, in the first St. Louis County case involving three plaintiffs from Florida, Washington, and upstate New York. Ten of the 12 jurors in the St. Louis courtroom [sided](#) with Monsanto, even after hearing a month's worth of unfounded science put forth by plaintiffs' witnesses. The case fell apart under cross-examination as the expert witnesses proved less than credible.

The LinkedIn [resume](#) of one plaintiffs' witness, William Sawyer, advertised that he was a "board-certified toxicologist" — until he was confronted on the stand and forced to [admit](#) that he was unable to obtain certification from the American Board of Toxicology. Sawyer [failed both](#) of his attempts to pass the examination required to secure that important credential. Sawyer then turned to Robert O'Block, founder of the American College of Forensic Examiners, who supplied

an appropriate diploma. In fact, O'Block was so willing to certify any paying customer that he once [certified a cat](#) as a toxicologist.

Sawyer is a full-time expert witness in glyphosate product liability trials, an occupation that has made him a millionaire. Billing \$785 an hour for his time, Sawyer has collected [\\$2.5 million](#) from his testimony in four Roundup® trials, according to his own testimony at trial.

At least Sawyer had academic training in toxicology. Fellow expert witness Charles Benbrook, by contrast, testified about the health effects of glyphosate [despite](#) having no training whatsoever in medicine, toxicology, or epidemiology.

Benbrook runs the [Heartland Health Research Alliance \(HHRA\)](#) which produces studies linking cancer to herbicides like Roundup®, as well as competing herbicides like dicamba and [2,4-D](#). His studies are likely laying the groundwork for future lawsuits against those products.

The trial bar sees great value in Benbrook's endeavor – he was rewarded with [\\$1.3 million](#) for his testimony in addition to the \$220,000 annual salary he takes from his non-profit, scientific research organization. The trial bar not only provides funding, it provides management direction. HHRA's vice chair is [Robin Greenwald](#), a partner at [Weitz & Luxenberg](#), one of the many firms suing Monsanto.

Talcum Powder Litigation

Plaintiffs' lawyers see the media as co-counsel in mass tort litigation. Most recently, *The New Yorker* published a story about Johnson & Johnson and its long-running talc litigation.

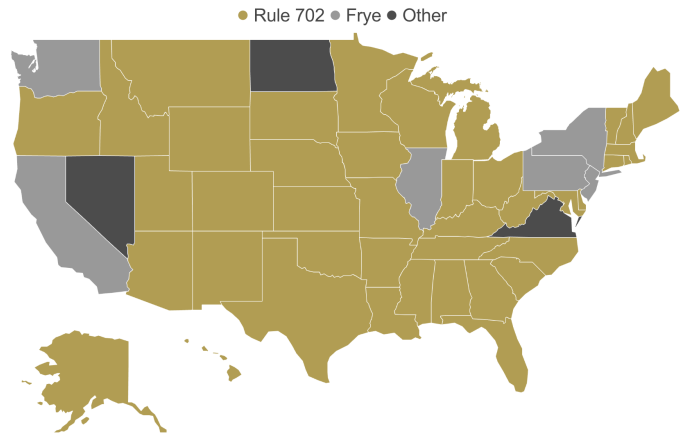
Plaintiffs' lawyers seem unwilling to let the litigation's facts and legal arguments speak for themselves. Instead, as their [communications](#) with *The New Yorker* show, they helped orchestrate a media broadside in the form of a misleading 8,000-word article riddled with false statements, half-truths and omitted facts they then promoted tirelessly on social media.

Plaintiffs' attorneys persuaded *The New Yorker* to print their allegations as if they were facts. One of the sources *The New Yorker* cites is the plaintiffs' attorneys' hired gun expert, Dr. David Egilman, who testifies that, every time he looks, he finds asbestos in the tissue of customers who use Johnson & Johnson's baby powder. In addition, Dr. Egilman [recently testified](#) that, when shown a picture of the Orion constellation, it was a depiction of talc, which allegedly contained asbestos.

The magazine also failed to disclose that, in 2007, Dr. Egilman conspired with others to violate a protective order in a case regarding the drug Zyprexa, and he provided hundreds of cherry-picked confidential documents to various media outlets – including by using a sham subpoena. A federal district court held extensive hearings and [strongly rebuked Dr. Egilman](#) for his conduct, [noting](#) that he and his conspirators “executed the conspiracy using other people as their agents in crime.” Judge Jack Weinstein of the U.S. District Court for the Eastern District of New York stated that “such unprincipled revelation of sealed documents seriously compromises

the ability of litigants to speak and reveal information candidly to each other; these illegalities impede private and peaceful resolution of disputes.”

Judge Weinstein issued a Stipulated Order in which Dr. Egilman [accepted responsibility](#) and was ordered to pay Eli Lilly \$100,000, which the company then donated to a charity of its choosing.



Despite a myriad of baseless claims by the plaintiffs’ bar, independent medical experts have not found a confirmed link between talcum powder and cancer.

PFAS Litigation

The plaintiffs’ bar also have set their sights on companies in the per- and polyfluoroalkyl (PFAS) business. These chemicals have been used since the 1950s and are valued for their ability to resist heat, repel water, protect surfaces, and reduce friction. They have been incorporated into an array of consumer products, such as nonstick cookware, stain-resistant carpet, and electronics.

In 2016 the U.S. Environmental Protection Agency issued [new regulations](#) on the amount of PFAS allowed in drinking water. This has led to a [spate](#) of new mass tort lawsuits across the country, with trial lawyers not just targeting PFAS manufacturers, but also [companies](#) that used PFAS and even landfill owners and operators over alleged PFAS contamination. This is despite the fact that [no definitive evidence](#) of adverse health effects from PFAS exists, with the states of [New York](#) and [Minnesota](#) showing no health effects from PFAS.

Despite this fact, 3M settled an 8-year long case with Minnesota for [\\$850 million](#) in February 2018. Of this total, \$125 million went to private contingency fee lawyers — which, according to a Minnesota legislator, was the equivalent of earning [\\$47,000 per day](#) for seven years.

How To Curb Abuse

Juries and judges should have access to the most complete and accurate evidence during trials and be presented with scientifically and factually accurate information to allow them to make well-informed decisions.

Judges and lawmakers must support implementation of Federal Rule of Evidence 702 in courts, requiring that theories must be based on sound scientific method.

The Rule 702 standard is utilized in the federal court system and by a majority of states. Judges must follow applicable laws regarding evidentiary standards if they are in place in their state.