

If You Build It, They Will Come - Proliferation of Frivolous Mass Tort Cases and Overcoming Obstacles to Dispensation

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If You Build It, They Will Come:
*Proliferation of Frivolous Mass Tort Cases
and Overcoming Obstacles to Dispensation*

David Cooner, Becton Dickinson

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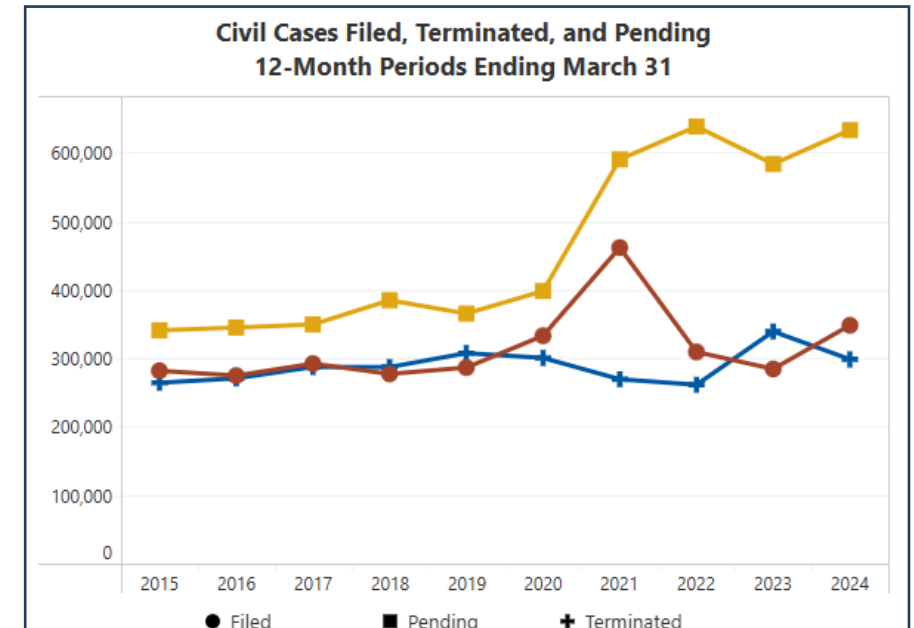
Moderator: Jim Rogers, Nelson Mullins Riley & Scarborough

Was Def Leppard the First Hair Band?



Trends of Mass Tort Litigation

- United States Civil Cases Filed ↑ 46%
 - Personal Injury Cases ↑ 78%
 - Diversity of Citizenship Cases ↑ 46%
 - Health Care Pharmaceutical Cases ↑ 98%
- Canadian Civil Cases Filed ↑
- MDLs ↑ 65% of all federal U.S. civil claims



Source: Federal Judicial Caseload Statistics 2024

*Information as of March 31, 2024

Plaintiffs' Collection of Cases: Hysteria



Hysteria



Plaintiffs' Collection of Cases: Television Advertising

**X Ante: Predictive and actionable intelligence
on litigation advertising.**

\$164,000,000

Mass Tort TV Ad Est. Spending,
2023

770,000

Mass Tort TV Ads, 2023

2,109

Average Number of Mass Tort TV Ads Per Day,
2023

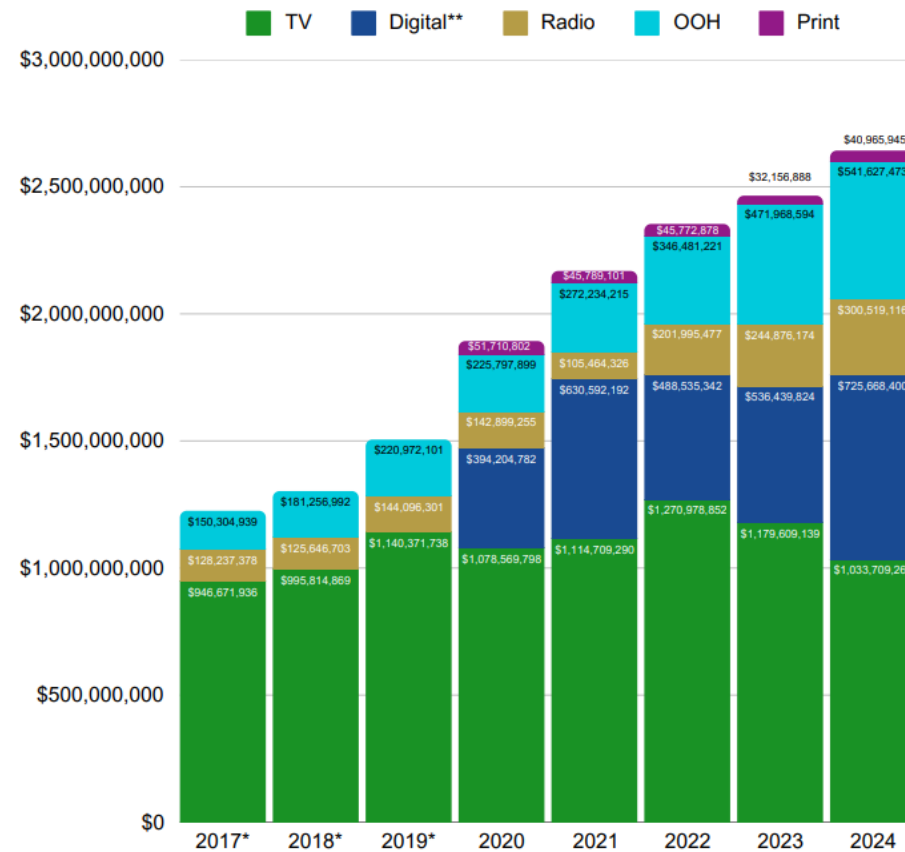
Source: X Ante - Mass Tort Intelligence - Predictive. Comprehensive. Actionable.

Plaintiffs' Collection of Cases: Spending Hysteria

Nationwide Data Ad Spending by Medium for 2024:

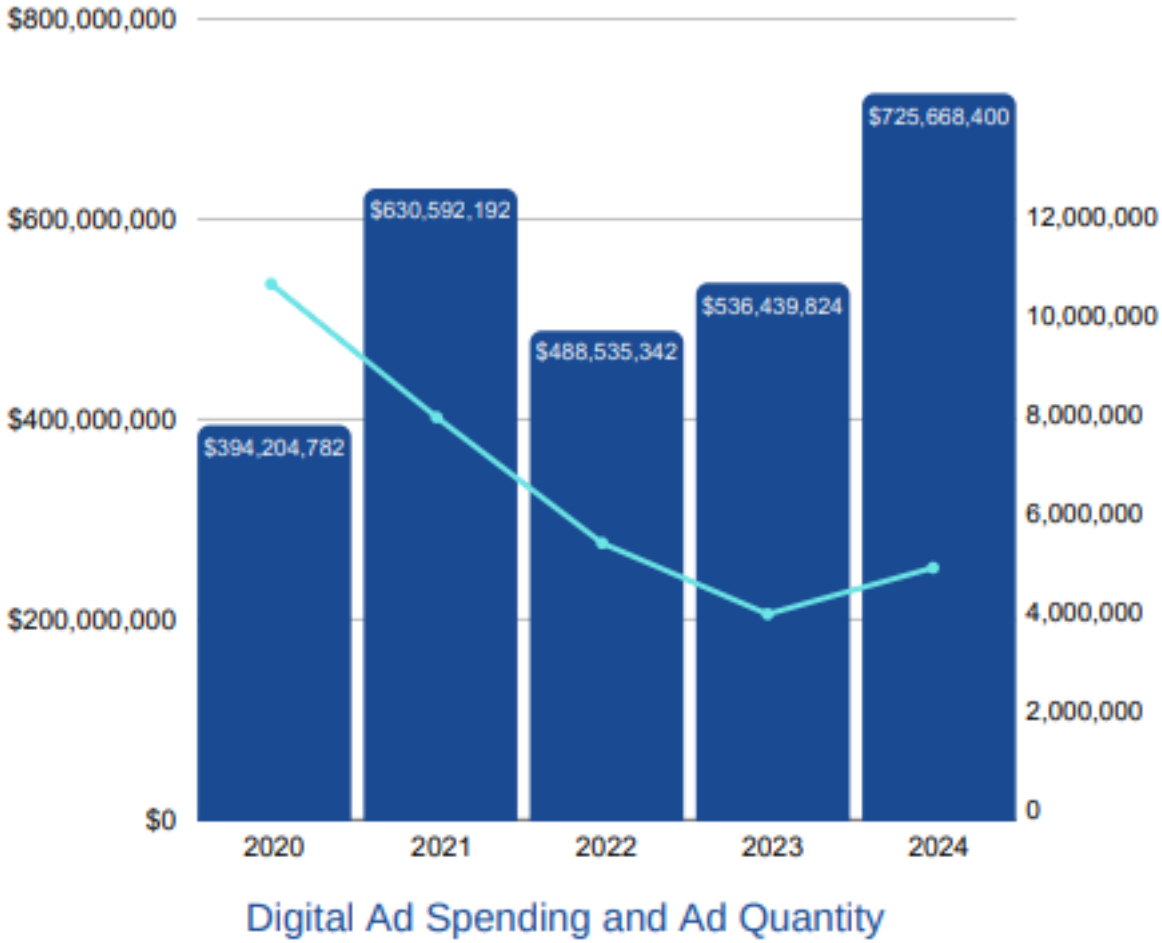
Print \$40,965,945
 OOH \$541,627,473
 Radio \$300,519,116
 Digital \$725,688,400
 TV \$1,033,709,263

Total: \$2,642,510,200



*Does not include print or digital
 **Digital excludes social media


Plaintiffs' Collection of Cases: Spending Hysteria



Plaintiffs' Collection of Cases: Social Media

Stephanie Zorio · Follow
May 14 · 🌐

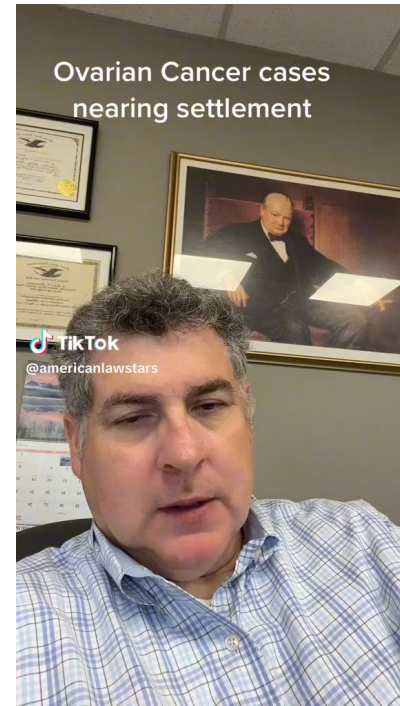
For my veteran friends: You were likely exposed to a lot of nasty stuff during your service, including highly concentrated amounts of PFAS chemicals. This is a **mass tort**, not a class action suit, which gives a lot more room for individual compensation. Many of us are trying hard to improve working conditions for soldiers, but in the meantime please consider joining the lawsuit if you have suffered from any of the health problems listed.




pfaswaterexperts.org
AFFF Lawsuit - Military Veterans May File Claims Online Here

👍👍👍 3 1 comment 1 share

👍 Like 💬 Comment 📧 Send ➦ Share



#RideshareAccident #AccidentClaim #LegalHelp
#Compensation #FinancialRecovery
#SettlementMoney #InjuryClaim #MassTort
#LegalSupport #UberAccident #LyftAccident
#CarAccident #InjuryLawyers #InsuranceClaim
#SecureYourFuture #AccidentCompensation



MASSTORT ADVISORS

**Rideshare Abuse Victim?
Secure Your Financial Future
with Our Help!**

You may Qualify for Settlement Money

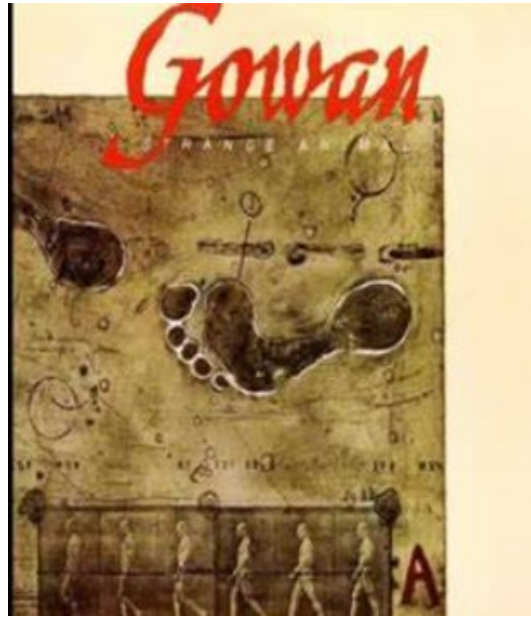
Get Compensation Now!

www.masstortadvisors.com info@masstortadvisors.com

masstortadvisors.com
Rideshare – Mass Tort Advisors **Learn more**

2 comments 1 share

Canadian Class Actions



Strange Animal



Canadian Class Actions

- Low threshold
- Objective criteria
- Lack of transparency into number and strength of claims
- Risks of overstating size of class and seriousness of conditions
- Limited ways to secure information on class members



Docket Control Orders



Rock of Ages



The Docket Control Order

Lore v. Lone Pine Corp., No. L-33606-85, 1986 WL 637507 (N.J. Super. Ct. Law Div. Nov. 18, 1986)

Fed. R. Civ. P. 16.1

Components

- Product ID
- Identification of Defect
- Proof of Injury
- Support for Causation

Docket Control Orders: Convincing the Courts

- Early Weeding Out of Frivolous Claims
- Shotgun Pleadings
- Iqbal/Twombly Requirements
- Need for Metrics

STANDARD TORT CLAIM FORM
General Liability Claims Form RGF 210

Pursuant to Chapter 4.02 RCW, this form is for filing for claims against Lewis County. Information requested on this form is required by RCW 4.02.105 and generally covers employees should be filed on a Standard Vehicle Accident Claim Form (SVA) 1001 rather than this form.

PLEASE TYPE OR PRINT IN INK

Mail or deliver original claim to:
Lewis County Risk Management
285 NW North St
Cliffside Station, Room 4023
Chesham, WA 98532

CLAIMANT INFORMATION

1. Claimant's name: _____

Last name: Jim Mable Date of birth (month, day, year): _____

2. Current residential address: _____

3. Mailing address (if different): _____

4. Residential address for six months prior to the date of the incident (if different from current address): _____

5. Claimant's daytime telephone number (Home Business): _____

6. Claimant's e-mail address: _____

INCIDENT INFORMATION

7. Date of the incident: _____
Month: 10 Day: 1 Year: 10

8. If the incident occurred over a period of time, date of first and last occurrence: _____
Start: _____ End: _____

9. Location of incident: _____
Date and county: 10/1/10 WV

10. If the incident occurred on a street or highway:
Name of street or highway: _____ Milepost number: _____
County agency or department alleged responsible for damage/injury: _____

11. Name, address and telephone numbers of all persons involved in or witness to this incident: _____

Docket Control Orders: Need for Metrics



United States



Canada

Frivolous Claims: Ethical Considerations



Ethical Considerations: Ontario Rules of Professional Conduct

5.1 (Lawyer as Advocate)

When acting as an advocate, a lawyer shall not knowingly misrepresent the client's position in the litigation or the issues to be determined in the litigation.

Ethical Considerations: Model Rules of Professional Conduct

3.1 (Meritorious Claims & Contentions)

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. . .

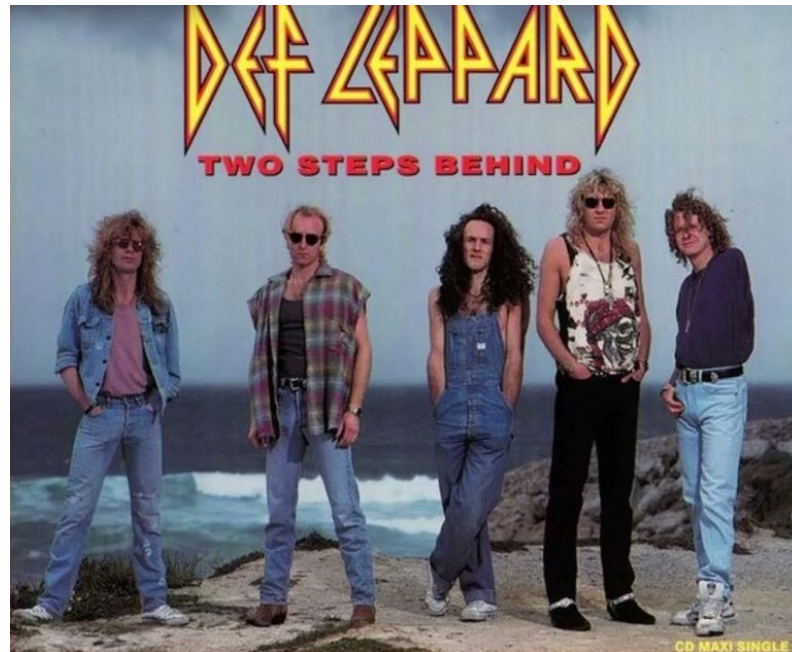
Ethical Considerations: Model Rules of Professional Conduct

3.3 (Candor Toward the Tribunal)

(a) A lawyer shall not knowingly:

- (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

Statutes of Limitations/Repose



Two Steps Behind



Statutes of Limitations/Repose

- Role as a docket limiting measure
- Successes and failures in the arguments for global accrual dates
- Real time examples



Recovering Costs



Bringing on the Heartache



Recovering Costs: Federal Rule of Civil Procedure 54(d)(1)

Federal Rule of Civil Procedure 54(d)(1)

(1) *Costs Other Than Attorney's Fees.* Unless a federal statute, these rules, or a court order provides otherwise, costs—other than attorney's fees—should be allowed to the prevailing party. But costs against the United States, its officers, and its agencies may be imposed only to the extent allowed by law. The clerk may tax costs on 14 days' notice. On motion served within the next 7 days, the court may review the clerk's action.

Recovering Costs: 28 U.S.C § 1920

28 U.S.C § 1920

A judge or clerk of any court of the United States may tax as costs the following:

- (1) Fees of the clerk and marshal;
- (2) Fees for printed or electronically recorded transcripts necessarily obtained for use in the case;
- (3) Fees and disbursements for printing and witnesses;
- (4) Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case;
- (5) Docket fees under section 1923 of this title;
- (6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.

A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree.

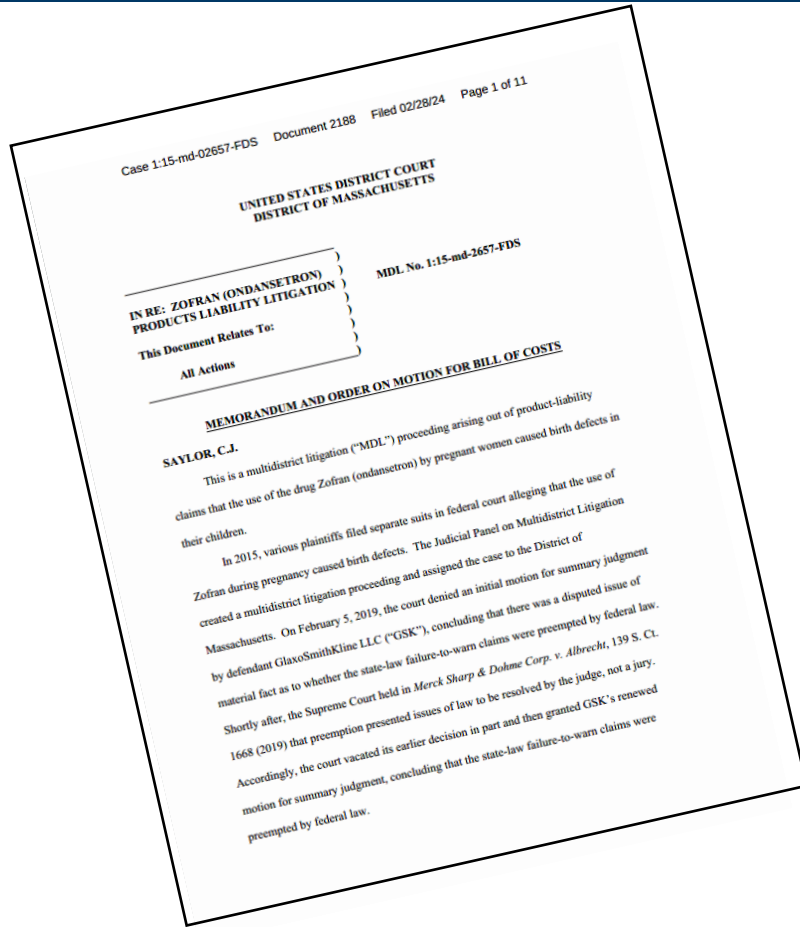
Recovering Costs: Canadian Jurisdictions

R.S.O. 1990,
c. C.43, s 131

(1) Subject to the provisions of an Act or rules of court, the costs of and incidental to a proceeding or a step in a proceeding are in the discretion of the court, and the court may determine by whom and to what extent the costs shall be paid.

In Re Zofran

Defense Recovered \$450,000

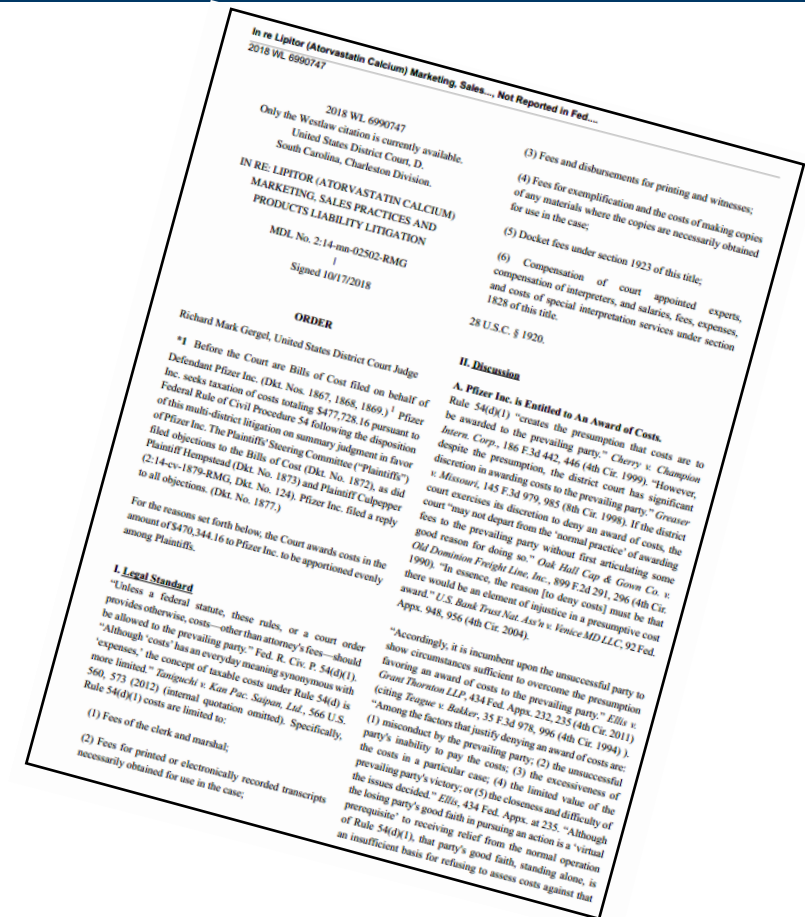


- Included costs for:
 - Process server fees
 - Deposition transcripts relied on in *dispositive* motions
 - Witness fees (\$40 for each deposed employee)
 - Obtaining medical records
- Did not include costs for:
 - Filing fees for removing over 40 cases to federal court
 - Fees associated with document production
 - Depositions of Current Employees

In Re Lipitor

Defense Recovered \$470,000

- Included costs for:
 - Deposition transcripts
 - Costs of copying medical records from providers
- Did not include costs for:
 - Deposition videotapes



Recovering Costs: Plaintiff Responses

“Plaintiffs object to costs because they are generally elderly women living on fixed-incomes and a potential bill of several thousand dollars could be crippling for some plaintiffs.” *In Re Lipitor*

“Plaintiffs object to the Bills of Cost because this litigation was ‘close and difficult.’” *In Re Lipitor*

“[Plaintiffs] also assert that [Defendants] are in a better position to absorb the costs of litigation than the families of children with birth defects.” *In Re Zofran*

“Nearly all of the costs that [Defendants] seek to recover are simply the costs of doing business” *In Re Zofran*

Rule 11 Sanctions



Armageddon



Rule 11 Sanctions

Imposing Rule 11 Sanctions upon counsel “due to the lack of objectively reasonably factual and/or legal basis to support [plaintiffs’] claims” in multidistrict litigation.

In re Taxable Mun. Bond Sec. Litig., No. CIV. A. MDL-863, 1994 WL 599762 (E.D. La. Oct. 31, 1994)

“Indeed, the Court has an interest in ensuring the effective operation of the pleading regime through Rule 11, particularly in the MDL context.”

In re Digitek Prod. Liab. Litig., Pretrial Order #39, MDL No. 1968 (S.D.W.Va. Aug. 26, 2009)

Applying Rule 11’s mandatory safe harbor provision in multi-district litigation where the defendants asserted that certain plaintiffs’ counsel lacked a factual basis to file claim under Rule 11(b)(3)).

In re Welding Fume Products Liability Litigation, No. 1:03-CV-17000, MDL No. 1535, 2006 WL 1173960, at *3 (N.D. Ohio April 5, 2006)

Settlement Considerations



Pour Some Sugar on Me



Settlement Considerations: Ethics

Model Rule 1.8(g): A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

Settlement Considerations: Canada

- Court Approval Requirements
- Adequacy of Settlement Amounts
- Legal Fees and Disbursements
- Objectors and Intervenors



Settlement Considerations: Concerns for Defendants

- Court setting aside settlement due to failure to comply with ethical guidelines.
- Restricting rights to practice as terms of settlement agreement
 - “The most obvious example of an ethically impermissible settlement provision [restricting a lawyer’s right to practice law] is one that expressly prohibits a plaintiff’s lawyer from subsequently representing other plaintiffs in litigation against the defendant.” ABA Ethical Guidelines for Settlement Negotiations (Aug. 2002).

Settlement Considerations: Strategy



QUESTIONS?

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