

## OPINION

# Three Myths of Civil Litigation

Aggressive, saturation advertising by plaintiffs' attorneys has left consumers with many misconceptions about the insurance industry and how claims are filed and paid. Carriers need to be aware of these misconceptions.

By Robert Hartwig | April 8, 2024

Legal system abuse is a costly and growing threat that is rapidly eroding confidence and fairness in our country's civil justice system. It is contributing to rising costs that have an impact on businesses, including insurance companies. Increasing costs to businesses will also result in broader repercussions for the economy and consumers. One example of this egregious abuse is plaintiff lawyers' use of predatory advertising and marketing tactics that try to influence and profit from the litigation process.

Widespread and aggressive advertising is an effective strategy for lawyers to attract clients. Attorney advertising is a leading cause of consumers engaging lawyers and suing for their losses. This tactic increases the number of frivolous lawsuits and results in a windfall for trial lawyers. In fact, plaintiff attorneys spent \$1.4 billion dollars on advertising in 2021 alone. Growth in plaintiffs' bar advertising creates a platform



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for the plaintiffs' bar to promote their narrative that businesses, including insurers, are the offenders and that plaintiffs' attorneys are essential to helping them navigate even the simplest of claims.

The ads — big checks and images of lawyers touting large verdicts — are posted on billboards, TV, radio, and social media. These ads prey on vulnerable victims. They motivate the average consumer to sue as they are convinced they will win the jackpot. The idea of "easy money" is a temptation that's hard to resist.

Aggressive, saturation advertising by plaintiffs' attorneys has left consumers with many misconceptions about the insurance industry and how claims are filed and paid. Insurance carriers need to be aware of these misconceptions in order to mitigate the negative effects of these tactics, including emphasizing to consumers the downsides to early attorney involvement.

### **Myth #1: Claimants will receive a huge payout.**

A top myth is many claimants expect to receive a huge payout when engaging a lawyer to resolve a claim. Often, however, even if the claimant "wins" the case, they may not receive the full settlement or jury award owed to them. The plaintiff lawyer keeps a large percentage of the plaintiff's recovery — whether it's a jury award or settlement — typically between 33-40% of the total.

Additionally, a large share of the claimant's recovery may also go to third-party investors who have no relationship to the claimant other than to profit from their injuries.

Third-party litigation financing is an extremely concerning legal system abuse trend. This booming and unregulated industry allows lenders, who have no relationship to the claimant or issue being litigated, to secretly invest in a lawsuit in exchange for a portion

of the settlement or jury award. The plaintiff's recovery is redirected away from the injured party to the lenders. This tactic also places more control of litigation into the hands of unknown third parties and distorts our legal process.

Claimants are often misled by these ads, as they do not reflect average awards. Claimants are also not advised of defense wins, or that cases may ultimately be settled at a much lower figure.

### **Myth #2: Only a small percentage of families are impacted by the costs of civil litigation.**

A second mistaken belief is that only those engaged in litigation are impacted by the costs. In reality, everyone pays the price for legal system abuse.

According to the **U.S. Chamber Institute for Legal Reform**, the average American household pays a "tort tax" of more than \$3,600 per year due to unnecessary and abusive litigation across the country that raises the costs of products and services — from groceries to gas and haircuts to healthcare.

Legal system abuse, including frivolous lawsuits, has a significant impact on the economy, jobs and government revenues. According to a 2021 study from the **Perryman Group**, the economic toll of legal system abuse on the U.S. economy is staggering — resulting in the loss of 4.24 million jobs, \$429.35 billion in economic output, and more than \$110 billion in government revenues (federal, state and local) annually.

Many businesses also face higher costs, companies and insurers are facing significantly higher claim costs than in recent years.

### **Myth #3: Filing a lawsuit is the only way to get recourse.**

Another false impression is believing a lawsuit is the only way to get recourse following an accident.

Attorney advertising has been shown to be a leading cause of consumers engaging lawyers and suing for their losses. In fact, attorneys are becoming involved in even the ~~most routine and small claims, driving up the~~ cost of those claims — which in turn pushes insurance costs ever higher. While there are times when a consumer or victim of an accident needs to engage a lawyer, that should be the exception in today's society — and not the rule.

An insurance company can make a policyholder whole and potentially provide a faster resolution. A lawyer will often make you think your accident can be converted into quick profit.

The plaintiff lawyer's ads also negatively affect jurors' perceptions of certain issues and products, which could be considered a form of reptilian tactic to influence jurors.

Potential jurors see these numbers and become desensitized to the gravity of these large numbers. They may believe such verdicts are awarded with regularity. This could lead to more nuclear or outsized verdicts that people pay for in the products and services they purchase.

Abusive advertising or marketing litigation tactics and influence from outside investors turn our civil justice into a money-making machine for everyone but the victim. It's important for insurance professionals to be aware of these plaintiff attorney tactics and try to mitigate the negative effects of attorney advertising, including emphasizing the downsides to early attorney involvement.

We need a balanced civil justice system, one that is fair to all participants, promptly resolves legitimate claims, reduces the incentives for fraud and increases certainty and predictability for all litigants.



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