

# Legal System Abuse: Causes & Effects



## Impact:

- “Nuclear verdicts” have become commonplace, while “meganuclear” and “thermonuclear” verdicts are on the rise.
- Legal advertising has had adverse effects on the public. For example, because of an ad targeting a specific medication, 65 people stopped taking that medication without consulting a doctor. As a result, 33 people suffered a stroke; another 24 of those people became seriously ill; and seven people died.
- “Junk science” has been introduced as evidence, causing products to be discontinued or causing companies to file for bankruptcy despite the unreliability of the purported evidence.
- The rising costs passed along to consumers and attributed to legal system abuse have been dubbed “tort tax” by tort reform groups, and are estimated to cost each person over \$1300 per year.<sup>1</sup>

## Quick Facts:

- Along with plaintiff trial tactics, legal advertising and anti-corporate sentiment are also thought to drive “nuclear verdicts.”
- Social inflation, the disproportionate increasing loss costs on liability-based claims, is understood to be caused, at least in large part, by lawsuit abuse.
- Third-party litigation funding (TPLF) is a large concern that lends to lawsuit abuse.
- Lawsuit abuse provides fertile ground for potential fraud.

## What is legal system abuse?

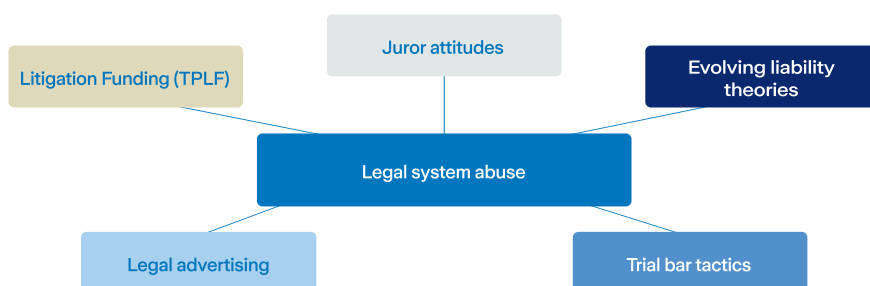
Those practices which increase costs and time to resolve insurance claims can be considered legal system abuse. In turn, legal system abuse drives social inflation<sup>ii</sup> and persists as an “unpredictable and yet more preventable component of a hard-to-measure force that shifts loss ratios for insurers and disrupts forecasts, rendering cost management more challenging.”<sup>iii</sup>

Legal system abuse encompasses terms such as overinflated claims; fraudulent claims; proliferation of class actions or multidistrict litigation (“MDL”s); legal advertising; expanding liability theories; forum shopping; third-party litigation financing (“TPLF”) and “nuclear verdicts.”

Nuclear verdicts, those verdicts of \$10M or more, are increasing every year. Recently, “meganuclear” or “thermonuclear” verdicts, those over \$50M and \$100M respectively, have become more frequent as well.<sup>iv</sup> In part, these verdicts are fueled by the public’s mistrust of corporations, often leading to punitive damages. One of the plaintiffs’ tactics, the Reptile Theory, seeking to make the jury the “conscience of the community,” ignores the judge’s instruction on the law while punishing the corporate defendant for any harm that occurred regardless of fault. Another plaintiff tactic, anchoring, asks the jury to award an incredibly high amount based on figures, such as a professional sports player’s salary, which inflate the verdict, thus demonstrating that jurors have become desensitized to the value of a dollar.

Although most legal advertising is permitted by law or rule, medical/legal advertising has harmed some individuals and is considered a “deceptive” or “unfair” practice in at least seven states. Other types of legal advertising tend to place a value on future cases by touting the verdicts that plaintiffs have won, whether collected, appealed, or overturned. Other forms of legal advertising state a cause and effect without the matter ever having gone to trial. This predisposes audiences to assume it is true and may bias potential jurors.

Items such as “phantom damages” and TPLF inflate the costs and value of claims, which in most cases leads to larger settlements and verdicts. Likewise, forum shopping allows cases to be heard in more liberal jurisdictions, again leading to larger verdicts or settlements.



## Key terms:

**Corporate mistrust** – is the sentiment that corporations harm society. Further in this mindset, corporations should be required to pay higher verdicts or even be punished, since they presumably take advantage of consumers. Jurors who espouse this concept believe that punishing corporations is a way of doing justice for the community.

**Forum shopping** – is the process of filing a claim or lawsuit in a jurisdiction, unrelated to the claim, because it is more favorable to plaintiff for reasons such as known higher damages awards, more plaintiff-friendly laws or practices, or more liberal juries.

**Jury demographics** – refers to the composition of a jury. Generational differences suggest more corporate mistrust and higher awards will be the norm rather than the outlier. Jurisdictional differences also affect jury demographics.

**Punitive damages** – are those damages which are meant to punish a defendant for outrageous conduct. While compensatory damages seek to make the plaintiff whole, or compensate for damages such as lost wages, medical bills and pain and suffering, punitive damages seek to “send a message.”

**The Reptile Theory** – is a trial tactic employed by the plaintiff's bar appealing to the jury's “fight or flight” mentality. It urges the jury to be the conscience of the community as well as angers the jury in an effort to punish the defendant.

**Third-party litigation funding (TPLF)** – may be consumer or commercial funding that is supplied by a non-party to the litigation which ultimately recovers its investment with unregulated, high interest rates. May also be portfolio funding, which loans money directly to law firms using a large group of cases as collateral, or medical funding which allows medical providers to inflate treatment costs since they are deferred until the conclusion of the litigation. Many analysts believe that TPLF breeds fraud, consumes the courts' time, and takes advantage of plaintiffs, all in the interests of profit for the funders.<sup>v</sup>

## Zurich North America Initiatives

- Collaborates with insurance carriers and with internal and external stakeholders on lawsuit abuse reform efforts.
- Advocates for lawsuit abuse reform issues impacting Zurich and its customers through its Government & Regulatory Relations (GRR) team.
- Created the insurance industry's first Claims Judicial & Legislative Affairs (CJLA) unit within the Company as a social inflation task force comprised of a dedicated team to provide education and advocacy support.
- Established the in person and virtual Lawsuit Abuse Reform Symposia with industry coalition members and continues to engage annually.
- Hosts Zurich Defense Attorney Summit twice a year through CJLA.
- Publishes the CJLA *Quarterly Digest* and *Regional Recap* to keep industry colleagues informed.

## What can you do?

- Support local civil justice organizations.
- Gather examples and data to show abusive practices by plaintiffs' attorneys to use as examples to lobby for reform.
- Urge disclosure of TPLF agreements
- Analyze plaintiff trial tactics and techniques
- Understand the basis of corporate mistrust

i. The Perryman Group, *Economic Benefits of Tort Reform*, December 2021.

ii. Insurance Information Institute, “How Legal System Abuse Drives Social Inflation,” 2022.

iii. Insurance Information Institute, “Legal System Abuse: State of the Risk,” 2024.

iv. Source: U.S. Chamber of Commerce Institute for Legal Reform, *Nuclear Verdicts: An Update on Trends, Causes, and Solutions*, June 2024.

v. U.S. Chamber of Commerce Institute for Legal Reform, *Grim Realities: Debunking Myths in Third-Party Litigation Funding*, 2024.

To learn how you can get involved, contact Zurich North America's Claims Judicial & Legislative Affairs team at [usz\\_coalition@zurichna.com](mailto:usz_coalition@zurichna.com).



### Zurich North America

1299 Zurich Way, Schaumburg, Illinois 60196-1056  
800-382-2150

This document is provided for informational purposes only. Please consult with qualified legal counsel to address your particular circumstances and needs. Zurich is not providing legal advice and assumes no liability concerning the information set forth above.