ZURICH

Claims Judicial and Legislative Affairs Quarterly Digest

March 2025

“Recognizing that today’s economic and litigation environments are top of mind for our customers, Zurich has devoted a team of subject matter professionals to address their concerns. The Claims Judicial and Legislative Affairs (CJLA) group studies social inflation and its drivers, providing insights and information to Zurich’s customers and brokers; our claims and risk engineering teams; and others who may influence our industry and the legislative environment. As a founding member and instrumental leader amongst a growing coalition of industry partners, we are proud to share this information in our *Quarterly Digest* and *Regional Recap*.”

Keith Daly
ZNA Chief Claims Office

Social inflation is increasingly responsible for rising claims costs. This may affect how companies do business, interact with their communities, and connect with their customers. Zurich remains dedicated to working collaboratively with our customers, brokers, and risk mitigation industry members to tackle these challenges.

The **CJLA *Quarterly Digest*** highlights issues which touch the industry on a global, national, and state level. Trending topics as well as successful trial tactics are also shared. The articles contain direct links for more in-depth information. The **CJLA *Quarterly Digest*** publishes once a quarter.

The **CJLA *Regional Recap*** captures the latest legislative enactments and judicial decisions that impact social inflation and the insurance industry. For ease of use, these are indexed by region and by state with direct links to the exact legislation or citation. The **CJLA *Regional Recap*** publishes four times a year.

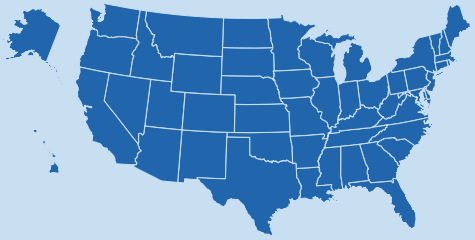
Education is only the beginning of the solution. Leveling the playing field requires that all be involved.

To join Zurich in combatting social inflation – or for questions or submission of topics for future issues – please contact lisa.bellino@zurichna.com

Table of contents

In this issue:

National News



Third-party litigation funding:
Making headlines again

Third-party litigation financing (TPLF) continues to be a regular topic of discussion. However, TPLF's hallmark is that it is usually hidden and discovery-proof, despite its involvement in many cases. In response, there are various courts which have requirements that TPLF be disclosed. Certain states have passed legislation specifically dealing with TPLF, while other states have legislation pending. Some states have statutes that focus on consumer protection laws aiming to curtail TPLF's effect on their citizens. Even the federal government is taking a look at TPLF as the Litigation Transparency Act of 2024 and the Protecting our Courts from Foreign Manipulation Act of 2023 have been introduced to Congress.

However, despite requests for funding information during litigation, it is not always disclosed. While efforts to shine a light on TPLF in the courts is not always guaranteed, occasionally the headlines assist in spotlighting the issue. Recently, Netflix, Mastercard and ExxonMobil have been the focus of behind-the-scenes TPLF in lawsuits brought against them. The presence of TPLF in these cases highlights the effect of non-disclosed TPLF on legal systems as well as its ability to target a specific corporation to advance its own agenda.

Netflix

Filed as a patent infringement case, *Valjakka v. Netflix, Inc.* uncovered the role of funders in this type of litigation. Valjakka asserted that Netflix had infringed upon two patents, one of which was declared ineligible in 2023 and the other for which the Court found he lacked standing to assert infringement. During the litigation, Netflix counterclaimed against Valjakka alleging that he violated the California Uniform Voidable Transactions Act (CUVTA) by diverting settlement proceeds from other actions in order to avoid paying creditors. The Court ordered plaintiff to cease disposing of assets as well as to send a copy of that court order to any entity which had an interest in those settlement proceeds. During the discovery related to this discreet issue, Netflix learned of AiPi, LLC ("AiPi"), a third-party funder.

Although plaintiff's funding information was sought, it was not initially disclosed, and the presence of the funder was learned only after the Court allowed discovery on the CUVTA claim. It was also discovered then that AiPi engaged counsel to file the plaintiff's complaint and initiate litigation. AiPi further assisted in the production of plaintiff's documents, paid the plaintiff's experts, and managed settlement funds from previous infringement cases, which included compensating investors. The U.S. District Court for the Northern District of California stated AiPi clearly "participated in the litigation" as it not only managed the plaintiff's third-party funding but also retained counsel to represent him. When issues of conflict between Valjakka and AiPi later arose, the Court disqualified the retained counsel upon plaintiff's motion.

As a result of AiPi's involvement, Netflix moved the court to join AiPi as a defendant and to find it in contempt, neither of which plaintiff opposed. The Court denied both requests. Likewise, Netflix's subpoena to obtain the funder's records was quashed, with the U.S. District Court for the Eastern District of Virginia noting that the subpoena was too broad as well as irrelevant to the litigation.

In early 2025, however, Netflix fought to discover the communications between AiPi and then-plaintiff's counsel, as AiPi acted as plaintiff's primary counsel with the exception of appearing before the courts. AiPi was compelled to provide this information regarding "material litigation decisions." Netflix further sought sanctions, alleging that Valjakka's former attorney disclosed its confidential information, including financial records and its "source code" to AiPi in violation of a previously entered protective order. If the motion, scheduled to be heard on May 8, 2025, is granted, it may well be the basis for others who seek disclosure of funding agreements and information.

Mastercard

In the last few years, Mastercard has been sued for its fee charges, either at the retailer or consumer level. In particular, a group of approximately 44 million consumers in the United Kingdom (UK) brought claims that they paid higher prices as a result of "interchange fees" spanning 1992-2010. These individuals were ultimately permitted to bring their actions as a "collective," akin to a U.S. class action, brought by solicitor Walter Merricks. This was the largest collective in UK legal history and was considered a harbinger of future claims.

Given the size of the collective and the 18-year window of claims, Merricks' initial evaluation of the case was as high as £14bn. Over the lengthy course of the litigation, this figure remained relatively consistent. However, in 2024, the tribunal rejected the consumers' argument that the higher domestic prices were causally related to the interchange fees. Further, those claims that preceded June 20, 1997 were time barred and thus presumably diminished the class and its value.

In December 2024, Mastercard and Merricks announced its intention to settle this collective action for £200m. The settlement met with objection from the collective's litigation funder, Innsworth Capital, as being unreasonable and premature. Innsworth contested the settlement, particularly as it was struck without Innsworth's agreement.

Disregarding Innsworth's objection, the tribunal approved the settlement on February 21, 2025. Innsworth is not only challenging the approval, but seeks arbitration against Merricks for failing to "act in its best interests." The proposed distribution of the settlement proceeds would use £100m to pay individuals between £2.27 to £45, with any unclaimed portion reverting to Innsworth. The settlement funds will next reimburse Innsworth its legal and operation funding of £45.6bn. The remaining sums may either be paid to Innsworth or used to pay additional sums to the claimants.

The tribunal is expected to issue a formal document regarding its approval of the settlement. As a result of this case, some have opined that this might affect the stability of litigation funding in the UK.

ExxonMobil

On behalf of the people of California, Attorney General Rob Bonta filed a 147-page suit against ExxonMobil in September 2024. Claiming that ExxonMobil's "advanced recycling" program deceived the public and created a greater plastics pollution crisis around the world, Bonta requested very specific relief. To combat the "public nuisance" that ExxonMobil had allegedly created, Bonta requested that it establish an abatement fund to pay for the purported harm of its recycling program. Further, Bonta sought that ExxonMobil cease publicly referring to its advanced recycling program as such and further cease its "destruction of the natural resources of California." Bonta cited multiple statutes and requested the Court fine ExxonMobil under each of them. In addition to Bonta, the Sierra Club, Surfrider Foundation, Heal the Bay and Baykeeper also filed a lawsuit against ExxonMobil on similar grounds.

While the claims against ExxonMobil were made known, the funding behind them was not, until the law firm representing the plaintiffs' was required to file a registration as a foreign agent. The Department of Justice documents revealed that an Australian-based "charity" was paying for these attorneys but the charity itself was not a party to the litigation. The "first overseas project" of the charity, Intergenerational Environment Justice Fund Ltd. (IEJF), was to "litigate against entities responsible" for what was presumably pollution. The Department of Justice considered this to be "engaging in political activities" which then required registration under the Foreign Agents Registration Act.

IEFJ's website summarizes its activities as: "We advanced the protection and promotion of the environment through our various functions: research, advocating for policy and law reform, legal advice, and community engagement and education." It was soon uncovered that IEFJ is a subsidiary of an organization owned by an Australian billionaire who owns Fortescue Energy, a direct competitor of ExxonMobil. Thus, a foreign competitor had funded a suit which could directly impact its American competitor.

Armed with this information, ExxonMobil filed its own complaint on January 6, 2025 in a Texas federal court claiming the Bonta plaintiffs' use of "corrupting influence of foreign money in the American legal system" as well as the "false statements" made against it. ExxonMobil's action outlines the allegedly defamatory nature of IEFJ's and Bonta's claims against it and asserts those plaintiffs are "reverse greenwashing" ExxonMobil's recycling efforts in California and elsewhere.

Although ExxonMobil's countersuit is still very young, it is unique in that it is an effort to push back on the claims backed by a funder. For ExxonMobil's case to go forward, presumably, there will be funding information that needs to be disclosed. While funding information is often claimed to be irrelevant by those who obtain the funding, this case brings relevance to the forefront.

As more headlines showcase the role of litigation funding in lawsuits, the public may gain insight into the ways that funding uses the justice system to its own end.

By: Lisa M. Bellino, Zurich CJLA

Non-lawyer owned firms:
Allowing access to justice or fueling funding?

In 1983, the American Bar Association drafted Model Rule 5.4, which prevents nonlawyers from owning an interest in law firms. The purpose of the rule is to prevent conflicts of interest and undue influence by another party that could compromise professional judgement. The Model Rule itself is titled "Professional Independence of a Lawyer." Most states have adopted some form of this model rule. However, the advent of the internet brought new websites, such as LegalZoom, that offered legal help without a lawyer. This has led to calls for loosening Model Rule 5.4 in order to allow more "innovative" sources of legal advice and assistance.

One of the main arguments for change that plaintiffs lack "access to justice." In a podcast with *Stanford Legal*, two professors claimed that a large number of cases have one side that lacks legal representation. Professor David Freeman Engstrom stated:

> *Generally, these are low-dollar, but highly consequential cases. They tend to be debt collection actions, evictions, mortgage foreclosure actions, and a lot of family law claims, including child support enforcement actions. There are approximately 15 million cases a year where at least one side lacks a lawyer. Another feature of these cases also really stands out: These cases tend to pit an institutional plaintiff—for instance, a bank, a credit card company, a corporate landlord, a municipal housing authority, or some other government agency—against an individual defendant without a lawyer.*

Proponents of increased access to justice have also pushed for third party litigation funding and nonlawyer fee sharing. For decades, personal injury plaintiff's attorneys have traditionally functioned on a contingency fee model. An attorney will meet with a prospective client, review the case, agree to take the case, then resolve the case either through settlement or trial. Contingency fees naturally encourage careful analysis of cases for viability and wariness of fraud since an attorney will not want to take a case that has low chance of success. In addition, attorneys and firms are incentivized to prioritize legal skills as opposed to filing a volume of cases looking for payout. Generally, plaintiff's attorneys keep 30%-40% of the final result as a fee. If run well, a plaintiff's practice can be lucrative with some larger firms amassing a "small fortune". In contrast, defense attorneys generally function on hourly billing basis. Defense firms rarely see a large cash infusion from a windfall on a case, known as the "lawyer's lottery."

In line with proponents' arguments, many investors are now seeking to obtain a slice of the litigation pie by using mechanisms such as third-party litigation financing and direct ownership of law firms in states that allow it. Currently, Arizona and Utah are running pilot programs that allow nonlawyers to own law firms. Washington DC has allowed non-ownership since 1991 and Washington state is considering beginning a pilot similar to Arizona and Utah. Indeed, some of the nonlawyer owners are litigation funders themselves. In other states, funders provide law firms a loan and then expect a hefty return.

Despite the urgent call for more legal representation, litigation funders are painting a different picture about their products. Hays Mews Capital predicted global litigation funding trends for 2025 and called it a "fast-growing alternative asset class." The article touts diversified portfolios and niche markets such as: intellectual property disputes, mass torts, class actions, and cybersecurity. The site states, "These specialised areas offer the potential for high returns" and offers "fixed returns of 16.25% or 12% with 100% capital protection." A Litigation Funding Investment Report, again prognosticating 2025 trends, states: "The global market is rapidly expanding owing to rising awareness about the advantages of litigation funding, catering to business contract disputes, intellectual property cases, and fraud-related lawsuit." These trends are nothing new as a Swiss Re report from 2021 also notes that "The largest share of new investments, about 38%, went into mass tort litigation, followed by commercial litigation (37%) and personal injury (25%)." Interestingly, none of these reports or sources mention access to justice nor the lack of legal representation.

Non-lawyer owned firms: *Allowing access to justice or fueling funding?*

Most people seeking a personal injury attorney can easily look to TV or billboards to find an attorney to take their case on contingency basis. If a layperson has low value but consequential cases dealing with child custody, eviction, or small credit dispute, then Legal Aid and Public Counsel may come to their rescue. There is no doubt that litigation funding can help fund cases but can it deliver access to justice?

By: Mahima Raghav, Zurich CJLA

The Peach State:
Ripe for reform

For nearly a decade, the American Tort Reform Association (ATRA) has identified Georgia as a "Judicial Hellhole." A variety of factors have now made the Peach State's legal environment ripe for tort reform. Georgia has been a prolific producer of nuclear verdicts, seen awards of inflated medical costs, been impacted by the expansion of premises liability concepts and prevented juries from hearing evidence whether an occupant wore their seatbelt at the time of an automobile accident due to its seatbelt gag rule.

As 2024 drew to a close, Governor Brian Kemp focused efforts on gathering data and evidence to support the need for action. The Governor held roundtable sessions with the business community and industry leaders to learn how the legal environment has impacted business and to discuss workable solutions. The legislature enacted the Data Analysis for Tort Reform Act (HB 1114) allowing the Georgia Insurance Commissioner to collect data from insurers, insurance rating organizations and state agencies on tort claims and tort related insurance risks. In November 2024, an in-depth analysis of the insurance claims data was released. The report revealed several significant trends occurring over a ten-year span: (i) claim frequency steadily increased; (ii) claim severity increased; and (iii) legal involvement grew resulting in increased paid indemnity.

During his 2025 State of the State Address, Governor Kemp made a firm commitment to implement tort reform this session, noting he believes "one of the biggest threats to Georgia's future, is [the] state's legal environment." The Governor explained that in listening to the business community, it was clear the *status quo* is unsustainable and the increased costs of doing business is being passed on to the consumer. The Governor further stated that without tort reform the livelihoods of many Georgians would be in serious jeopardy.

As the 2025 legislative session began, Senator John F. Kennedy carried two bills. The first bill (SB68) is an omnibus tort reform bill addressing the following issues:

Damages: The proposed legislation addresses non-economic damages that are many times influenced by Georgia's anchoring statute. The decades old current law allows plaintiff and defense lawyers to provide testimony and argument as to specific monetary amounts for non-economic damages which can have a prejudicial effect on juries. The proposed legislation seeks to curb this practice. Additionally, phantom damages are addressed. Currently, the jury only hears the sticker price of medical treatment. This can lead to inflated medical damages. The proposed legislation would allow the jury to hear the actual amount of medical charges paid by the plaintiff, an insurer or entity such as Medicare.

Civil Procedure: The proposed legislation amends the time frame during which a party can file a motion to dismiss and stays discovery until the court rules on the motion to preclude unnecessary discovery expenses. Further, it changes the procedure for voluntarily dismissing a case without prejudice, requiring that a dismissal be filed before the opposing party files an answer or a motion for summary judgment.

Seat Belt Admissibility: Under current Georgia law, evidence of whether any occupant wears or fails to wear a seatbelt is inadmissible. The proposed legislation would allow the jury to hear evidence of a party's failure to wear a seatbelt with respect to issues of negligence, comparative negligence, causation, assumption of risk, or apportionment of fault in a civil case.

Premises Liability: The expanded concept of premises liability in Georgia currently allows a premises owner to be liable for injuries resulting from third-party criminal activity. The legislation proposes to shield premises owners from liability for injuries sustained by a trespasser, from liability for injuries to individuals not on their premises or premises that they do not control, requires reasonable apportionment of fault to parties involved, including third parties, and provides limits to liability for security contractors.

Eliminating double recovery of attorney's fees: The Georgia Supreme Court has found that separate and distinct statutes for recovery of attorney's fees allows for double recovery of an attorney's fee that was established pursuant to a contingency fee arrangement. The legislation seeks to prohibit multiple recoveries by limiting recovery to one statute with the contingency fee arrangement as proof of reasonableness of the attorney's fee.

Bifurcated Trials: Liability and damages are determined by a jury at the same time. This can lead to prejudicial practices, such as bringing up the worth of someone's damages while arguing apportionment of fault with the intent to influence a jury's feelings. The legislation would allow either party to demand a split trial on the issues of liability and of damages.

The second bill (SB69) introduced by Senator Kennedy covers third party litigation funding. The bill proposes litigation financing entities register with Georgia's Department of Banking and Finance and bars financiers from affiliating with any foreign person, principal or sovereign wealth fund associated with adversarial nations. Additionally, litigation financiers cannot exert direct influence over legal proceedings, such as decisions regarding legal representation, expert witnesses or litigation strategy. Further, if a financier provides funding, they are jointly and severally liable for any award issues against the funded party. Additionally, the proposed legislation allows parties to obtain discovery of the existence and terms of any litigation financing agreement.

By: Rebecca Fozo, Zurich CJLA

Almost heaven:
West Virginia rises up with tort reform

It seems that costs are rising everywhere. For example, tort costs in America rose to $529 billion in 2022 from $423 billion in 2020. The median nuclear verdict jumped to $44m in 2023 from $21m in 2020. The average tort tax each person pays has climbed to $1,561 each year, up 20% over the course of just two years.

West Virginia consistently contributed to these statistics, over 10 years considered a "Judicial Hellhole," with emphasis on its excessive commercial automobile cases. Yet, despite the rising costs elsewhere, today West Virginia seems to have reversed this trend within its borders. As of 2024, the Mountain State's *per capita* tort tax was $662, less than one-half the national average. To what does West Virginia attribute this turn around?

Analysts within the state attribute this to tort reform over the years. Starting in 2015, West Virginia passed significant legislation. Most notable of this was:

- establishment of comparative fault, including joint and several liability as well as consideration of the fault of a non-party;
- codification of premises liability duty, as well as no duty of care owed to trespassers;
- reinstatement of the "open and obvious" doctrine;
- amendment of the Consumer Protection Act;
- limitations on punitive damages; and,
- modifications to medical professional liability.

Since 2015, several more significant changes occurred. The learned intermediary doctrine became a defense in civil cases. Protection from liability if the plaintiff's damages arose out of the commission of a felony or an attempt thereof also emerged. Even further, innocent sellers were protected from liability and pre and post judgment interest rates were set. Venue rules tightened to limit non-residents from bringing an action there unless criteria were met. Shortly thereafter, asbestos litigation was reformed, seat belt evidence became admissible and modifications were made to the election of judges and the running of the courts.

Most recently, in 2024, West Virginia passed amendments to the consumer protection statutes regarding third-party litigation funding, prohibiting specific actions by litigation financiers and requiring the funding contracts be disclosed during litigation without the need for a discovery request. It is one of only a handful of states in the country to have undertaken this action.

In the last 10 years, the state has passed legislation that has brought litigation under control. It has revamped its court system and refined the protection of its citizens. After all of this reform, West Virginia's tort costs are the lowest in the country. In six years, that initial high figure had decreased by 20%. Now, it no longer appears in the "Judicial Hellholes" report as a problem state at all and in fact had been a "point of light." West Virginia rose from the depths and, instead, today is touted as the "Tort Reform Trailblazer" for what it has accomplished in the last decade.

By: Lisa M. Bellino, Zurich CJLA

Trending Topics

Food fight!
The hottest class action lawsuits

Legal challenges in food and beverage litigation have dramatically increased in recent years, much in part due to plaintiffs' lawyers filing consumer class action claims. The number of food and beverage class action lawsuits totaled approximately 26 in 2009 and has continued to grow. Food and beverage class actions expanded from 187 class actions in 2023 to 296 class actions in 2024. The top jurisdictions for filing food and beverage class actions continue to be California, New York, Illinois and Missouri likely due to the consumer friendly laws in these states or plaintiff friendly venues. Plaintiffs' attorneys advance a variety of theories in these lawsuits. Regardless of whether these class action lawsuits have merit, the targeted companies must mount what usually is a costly defense.

This has become a cottage industry for plaintiffs' lawyers. According to the U.S. Chamber of Commerce Institute for Legal Reform, once the plaintiffs' lawyers develop a template for a class action complaint, they simply cut and paste to insert the next targeted product. Once the attorney launches these class action lawsuits, there is a significant chance that some of the targeted companies will settle simply to avoid the cost of litigation and the potential damage to their brand. Other times, the putative plaintiff in the class action will simply drop their claims. Nonetheless, the increase in food and beverage lawsuits adds to an already clogged civil justice system, results in a costly endeavor for the defendants, and plaintiffs may not even receive a dime.

There are a variety of allegations set forth in these types of class action lawsuits. Some lawsuits are filed over alleged false advertising as to a product's origin. For example, a class action lawsuit was filed against T.W. Garner Food Co. alleging that after plaintiff purchased a bottle of the company's Texas Pete Hot Sauce he learned that the product was not from Texas but rather made in Winston-Salem, North Carolina. The lawsuit asked the court to force Texas Pete to change its name and branding and pay back previous customers. U.S. District Court Judge Maame Ewusi-Mensah Frimpong denied the company's motion to dismiss, holding that customers who see the bottle's label, depicting a lone white star and cowboy "could believe – erroneously – that the products originated in Texas." The company was forced to continue a costly defense until several months later, the plaintiff filed a motion to drop his case for reasons unknown.

Other lawsuits suggest the serving size is inaccurate or there is unnecessary extra space in the product's packaging known as "slack fill." One class action lawsuit, filed against Tootsie Roll Industries Inc., alleged consumers were tricked into overpaying for Junior Mints by filling more than one-third of its candy boxes with empty space. U.S. District Judge Naomi Reice Buchwald granted the candy company's motion to dismiss, finding there was no fraud and that "reasonable" consumers could have determined the weight and number of candies from the packaging and would anticipate there to be some empty space. The opinion states that "[t]he law simply does not provide the level of coddling plaintiffs seek."

Class action lawsuits also allege that certain products contain microcontaminants such as lead or cadmium that are not listed on the product label inaccurate or misleading. For example, a New York plaintiff filed a class action lawsuit against a confectionary giant, seeking damages of $5m and claiming the chocolatier failed to disclose that some of its chocolate products contained unsafe levels of lead and cadmium. The lawsuit alleged the chocolate's label was "false, deceptive and misleading" as consumers had no independent way of knowing the lead and cadmium content of the chocolate before making a purchase. Plaintiff did not allege lead poisoning but rather focused the allegation on wrongdoing relating to marketing practices. The lawsuit was voluntarily dismissed several months after it was originally filed.

One notable plaintiff's attorney dubbed as the Vanilla Vigilante filed hundreds of food and beverage class action suits claiming false advertising or deceptive practices related to vanilla flavoring in products that did not contain traditional vanilla or claiming that strawberry flavoring in Pop-Tarts came from pears and apples (not strawberries) and was dyed red. While the cases were ultimately voluntarily dismissed by plaintiffs or dismissed by the court, the targeted companies spent thousands of dollars defending these lawsuits.

Food fight!
The hottest class action lawsuits

Ricola USA was targeted by the Vanilla Vigilante who filed a class action lawsuit against the lozenge company alleging the company's advertising that its lozenges are "Made With Swiss Alpine Herbs" was misleading and deceptive, asserting a claim under the Illinois Consumer Fraud & Deceptive Business Practices Act. The class action alleged that plaintiffs paid more for Ricola products than they should have, had they known the key cough suppressant ingredient is menthol. Ricola submitted an expert report that the menthol in Ricola lozenges is 100% herbal. Plaintiffs' counsel never submitted an expert report to rebut it and responded, "menthol is not an herb." Judge Colleen Lawless granted Ricola's Motion for Summary Judgment, dismissing the class action. Ricola is pushing back and now wants the class action lawyer to pay $60,000 in attorney's fees because he continued to pursue claims over ingredients in the lozenges that he knew were inaccurate. It would not be the first time this particular counsel was sanctioned for pursuing claims without the needed evidentiary support.

A recent lawsuit filed by the Morgan & Morgan law firm in the Philadelphia Court of Common Pleas takes aim at nearly a dozen major food brands. The 149 page complaint alleges the defendant companies intentionally designed certain food products to be addictive even though they knew the products were linked to various health issues. The lawsuit, filed on behalf of a Bucks County resident who claims he developed Type 2 diabetes and nonalcoholic fatty liver disease as a teen, focuses on the health risks of consuming ultra processed foods. The complaint also emphasizes ties between the tobacco and food industries. At this stage, it is unclear what science plaintiffs will rely upon to support their claims. This may be instrumental in the outcome of the case – depending on where it is heard. The defendants are attempting to remove the case from Philadelphia state court, a venue identified by the American Tort Reform Association as the "#1 Judicial Hellhole," to the U.S. District Court for the Eastern District of Pennsylvania. The decision on whether the case can be removed to federal court may prove pivotal in this lawsuit. If the case is removed to federal court, the scientific proof tendered by plaintiffs will need to show a causal link between the ultra-processed foods and the alleged injuries, while withstanding scrutiny under amended Federal Rule of Evidence 702. If the case remains in Philadelphia state court, the more liberal *Frye* standard will apply, which may allow plaintiffs a greater opportunity with respect to expert testimony.

By: Rebecca Fozo, Zurich CJLA

Trending Topics

The new face of TPLF:
Steno offers more than just transcripts

"Revolutionizing" the way court reporting and litigation support services are done, Steno claims to be transforming the litigation industry. Promoting itself as an advantage for forward thinking law firms, Steno is not just a court reporting service: it also provides "litigation services." The founders of Steno have noted that they created an "opportunity to improve attorney's litigation financing problems" so that it offers both technology and financing.

Co-founded by boutique plaintiffs' attorney, Dylan Ruga, Steno amassed $46m in funding from various sources, including Rivonia Road Capital LLC, Left Lane Capital, Clio Ventures, The LegalTech Fund and Trinity Capital, Inc., which alone committed $20m in "growth capital" to Steno at the end of 2024 claiming to offer "diversified financial solutions for growth-oriented companies." Clio Ventures has also invested in EvenUp, which uses AI and technology to "level the playing field" for the personal injury plaintiff, claiming to ensure "equal access to justice for all." The LegalTech Fund also invests in other legaltech entities, including Jusfy, which focuses on Latin America, as well as provides news and information on legaltech funding.

One of the services offered by Steno is its DelayPay product, which provides deferred and non-recourse payment options. On its website, Steno claims that the requesting party will not need to pay upfront for a court reporter. Payment can wait until the case settles or sometimes even simply be on a non-recourse basis. In fact, advance payment is not required for any litigation support services for those who use DelayPay. One of its DelayPay testimonials includes an attorney who had spent $22,000 in depositions costs, only to lose on summary judgment but who did not have to pay the depositions fees because Steno covered his financial loss.

Buried within the website, Steno discusses "how you fund your litigation" using DelayPay. Deep within the public site, Steno offers information on "what litigation financing can provide for your firm" and provides the download for obtaining the "how to" guide.

Offering "custom" legal technology, Steno claims to "make the litigation process easier." It offers a "digital firm dashboard" to manage not only litigation support, but also file management. Additionally, Steno has partnered with Litify to manage data and cases. Litify was founded in 2016 by John Morgan and Reuven Moskowitz, both of Morgan and Morgan. Bessemer Venture Partners, which also invested in Clio, has invested heavily in Litify as well. Steno offers "concierge" litigation support services, which also consolidates vendors.

Most recently, Steno has activated Transcript Genius, a tool which analyzes, summarizes and searches depositions using their "AI power play." The tool allows attorneys to upload transcripts within their own firm, but also permits access to others who are not in the firm's dashboard, so that they might be analyzed. This function ultimately may allow others to access depositions within a firm or perhaps even a repository, which might be used as a deposition warehouse if sharing permission is granted. Specifically, Transcript Genius' "notable features" are listed as:

- Gives litigators the capability to ask any question, providing customizable responses tailored to specific case needs
- The ability to highlight inconsistencies and discrepancies within and between transcripts with just a click
- Deeper analysis of testimony to strengthen arguments, including page and line references for manual follow-up
- An all-in-one platform feature for seamless integration into attorney workflows

The question then becomes whether firms who may share databases might be able to then obtain information about specific witnesses taken in other cases simply by "asking any question." Moreover, what other information might be shared using this feature? And, if this allows for funders to capitalize on their investments, does it create an even bigger issue?

By: Lisa M. Bellino, Zurich CJLA

Trials & Tribulations

Eliminate the negative:
Shifting focus to the client's positive efforts changed the trial outcome

Focusing on the positive instead of the negative makes a difference in just about everything. Jury trials are no exception. Although the client did not have a duty to do what others claimed it did, focusing instead on the positive things the client did, really persuaded the jury.

In this case, Plaintiff was delivering fuel on an industrial construction site. He claimed that he stepped off a platform onto its unsafe wooden base which then crumbled beneath him, tearing his Achilles tendon on his left leg. Then, due to overcompensating while recovering, he tore his right Achilles tendon. Plaintiff alleged that his injuries were serious and that his work life would be curtailed. His medical bills alone would be over $1m. Additionally, his past and present economic loss was claimed to be worth over $1.2m. The $10m demand never changed prior to trial as plaintiff sought compensation for his allegedly catastrophic injuries and life-long limitations.

The client was the safety inspector on the site, contractually responsible for certain safety items but not all. The platform was not within the contractual duties enumerated. However, the client did undertake a duty to inspect the platform plus, it was argued by plaintiff and co-defendants that the client had a duty to report any unsafe condition, including the one plaintiff claimed caused his injury. Also named in the suit were the industrial property owner and the platform constructor. While plaintiff alleged he had brought the platform's dangerous condition to his employer before the incident on numerous occasions, there were no recorded complaints at any level. His employer actually denied this as well. Plaintiff's liability expert opined that the platform was not safe and that it did not comply with OSHA regulations. In response, the defense argument was that technically, the client had no contractual responsibility to inspect the platform and that the condition of which the plaintiff complained did not exist at the time that the client had last seen the platform.

It was a difficult argument to make and because of the potentially significant damages award, the case was presented to mock juries. This allowed the defense to test its theories and find any flaws in its case. The results were most enlightening.

Some of the mock jurors felt the client had a responsibility to flag an unsafe condition, even without a contractual requirement to do so. Others held the client to a higher standard as the "safety expert" at the site. Many were skeptical as to the lack of prior knowledge of a deficient condition and questioned why no one had done anything about it before the plaintiff's incident. Arguing that the platform's structural integrity was not part of the client's expertise also was discarded by the mock jurors. This meant the strategy had to deal with these issues.

First, a $250,000 offer of judgment was filed with the court, knowing that the plaintiff would not accept it to settle the matter. Also, if the jury determined the case was worth less than that amount, plaintiff would need to reimburse legal costs.

Convincing co-defendants' counsel that it would be in the defenses' joint interest to have a unified defense and not blame the others' clients was another important aspect of the case. Pointing fingers at each other would give the plaintiff an advantage and would harm each defendant as well. Discussing strategy with the other defendants was critical in that a focus could be made on other legal issues the Plaintiff must prove. Doing so would assist the defense in focusing on the Plaintiff's own negligent actions on the date of his incident. This set the stage.

Rebutting the plaintiff's contention that his injuries were so severe and that he might not work again as he had was the next step. Using the plaintiff's own expert to point out that the plaintiff had an underlying degenerative condition that eventually would have required surgery was a key point to make. Additionally, pointing towards the flaws in the plaintiff's medical expert's opinion regarding the cause of the plaintiff's Achilles tear on his other leg, due to overcompensating, on cross-examination was impactful. Emphasizing that the plaintiff had continued to work was substantial in proving that

he could work again. Giving the jury an explanation as to how the incident occurred – that plaintiff actually misplaced his foot causing the platform to shift and become damaged – was also critical. However, having surveillance of the plaintiff's activities after the incident was the final piece to the damages puzzle as it showed that plaintiff could do those things he said he could not.

Finally, learning from the mock juries, rather than focus on what the client *did not* need to do, the focus shifted to what the client *did* do and how well it had done it. Showing the client's knowledge and application of safety standards established it understood safety and took it seriously. Talking about routine inspections and locating other hazards before the plaintiff's incident helped to set the stage for when the client would testify that there was no issue with this platform whenever it had been inspected. This was buttressed by demonstrating that no other entity had seen any issue before the plaintiff's incident either, including OSHA itself when it came to the site. Instead of the negative, the strength of the defense was on the positive.

And the jury agreed. At the end of the trial, the jury awarded plaintiff a gross verdict of only $650,000. Of that, plaintiff was found to be 30% comparatively negligent, reducing his award by that percentage. Of the defendants, the owner was found 20% and the platform builder 40%, leaving the client as 10% negligent. This made the net award against the client $65,000, which was well below the offer of judgment. Given this result, the costs of litigation will be recovered from plaintiff, making this a win all around.

Knowing what the jury liked and disliked regarding the defense arguments was incredibly helpful and insightful. It changed the dynamics of how this case was tried. Focusing on the client as a positive safety influence on the site cast the client in a positive light before the jury, which it confirmed with its verdict.

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