



LEGAL SYSTEM ABUSE TOOLKIT

TABLE OF CONTENTS

3 Introduction

- Legal System Abuse: What You and Your Customers Should Know
- Things for Insurance Agents and Brokers to Keep in Mind
- Solutions

5 Materials for Education of and Discussion with Customers

- FAQ for Discussions with Personal Lines Customers
- Follow-Up Materials to Share with Personal Lines Customers
- FAQ for Discussions with Commercial Lines Customers
- Follow-Up Materials to Share with Commercial Lines Customers
- Social Media Content
- Video

15 Materials for Engagement with Lawmakers

- Sample Letter to Legislator
- Legal System Abuse Leave Behind

17 Appendix

- Glossary
- Resources



INTRODUCTION

Legal System Abuse: What You and Your Customers Should Know

Legal system abuse is a driving force behind insurance affordability and availability challenges affecting all your customers. As courts increasingly become a first resort for resolving disputes, rather than a last resort, we are seeing increased upward pressure on premium rates while consumers are seeing more limited coverage options in the marketplace. To make matters even worse, constant and persistent lawyer advertising has eroded the industry's trust relationship with its customers, convincing many once-loyal customers to turn to lawyers. This toolkit is designed to provide insurance agents and brokers with answers to questions from your personal lines and commercial lines customers, to educate them on the consequences of persistent legal system abuse, to repair and strengthen the trust relationship, and to arm agents and brokers with the data and arguments that underscore the need for reform and policy solutions.

As a trusted partner in the insurance shopping and purchasing process, being able to help your customers better understand cost drivers and take steps to mitigate their own risk and lower their insurance costs can be crucial. Importantly, should a loss occur, you can encourage your customers to pursue already-available avenues to resolve disputes – call you and their insurer first to work through a claim; relying on the expertise of you, their partner, to facilitate resolving disputes; and, if needed as a last resort, contact their state insurance regulator who provides robust consumer protection services. If claimants stop paying attention to misleading trial bar billboards, TV, and radio ads and instead call their insurer and their trusted agent, we can help solve the high costs of unnecessary litigation together.



Things for Insurance Agents and Brokers to Keep in Mind



Because of the negative impact of legal system abuse on the insurance marketplace, there are some things happening that could impact your customers. The following points may be helpful to keep in mind when working with your personal and commercial lines customers and can assist you in guiding them through potential challenges while you help them protect what matters most. Legal system abuse is significantly driving up the costs to settle most claims, leading to industry-wide shifts, including:

- Rising insurance costs: Insurers may adjust their pricing models to account for the rise in both the number and value of claims, putting upward pressure on premiums.
- Underwriting challenges: With more unpredictable claim outcomes, insurers may tighten underwriting standards, which can limit options and create coverage gaps.
- Reserve adjustments: Insurers may increase financial reserves to prepare for current and future claims, which could impact long-term pricing.
- Claims handling: The rising complexity of claims may increase the time it takes to resolve a claim.
- Umbrella coverage restrictions: Insurers are becoming more selective with commercial umbrella offerings, implementing tighter rules on eligible classes and coverage limits.

Solutions



We need a balanced and impartial civil justice system – one that is fair to all participants, promotes prompt resolution of legitimate claims, reduces the incentives for fraud and claim cost build up, and increases certainty and predictability for all litigants.

We want to help you help your personal and commercial lines customers better understand the legal system abuses that are leading to rising insurance costs. And, if they are interested in engaging with public policymakers to encourage common-sense reforms to curb abusive practices, we want to help you arm them with useful resources.

This toolkit includes materials for education of and discussion with personal lines and commercial lines customers, and engagement with lawmakers.



MATERIALS FOR EDUCATION OF AND DISCUSSION WITH CUSTOMERS



FAQ for Discussions with Personal Lines Customers

PERSONAL LINES CLIENTS WILL BE IMPACTED BY THE FOLLOWING:

- Upward market pressure on home and auto insurance rates due to increasing claim costs.
- Some insurers may narrow certain coverages or add new conditions, making it essential for customers to understand their policies.
- Claims processing times may increase as cases become more complex.
- Some insurers may adopt stricter underwriting standards, which could make obtaining or renewing policies more difficult.
- Many customers may choose or be required to have higher deductibles or sublimits, increasing their out-of-pocket expenses during claims.

Q *Why are my insurance costs going up so much? I haven't made any claims, and I've faithfully paid my premiums for decades.*

A Insurance premiums may increase for a variety of reasons. Significant drivers are inflation in both the cost of materials to rebuild and repair homes and cars and the cost of labor to perform the needed repairs; more frequent and severe weather; and increasing regulatory burdens placed on insurers and other businesses at the state level. One of the most unexpected and increasingly important reasons is legal system abuse. Excessively high jury verdicts, deceptive and secretive third-party litigation funding practices, fraud, and widespread and often misleading attorney advertising put significant upward pressure on insurance costs as attorneys become increasingly involved and more lawsuits are filed. Since insurance is a risk-sharing mechanism, it's also important to keep in mind that the prices you pay for coverage for your home and auto may increase even if you have not made a claim.

Q *What steps can I take to keep my premiums lower?*

A We can assess your coverage needs and see if there might be areas in which you could safely reduce your coverage. You may be able to raise your deductibles. You can also take steps to strengthen your home against weather and other losses by, for example, installing a hail-resistant roof or retrofitting your home to higher building standards or putting in a home alarm, if you don't already have one. We can check and see which carriers offer discounts for taking these kinds of steps to protect your home and auto. You can take a safe driving course, if your carrier offers a discount, and we can explore what other discounts might be available to you.

Q *What do I do if I have a claim?*

A If you have an accident, or your home is damaged, call me, your trusted partner, first. I can help guide you through the claims process and be your advocate with the insurance company. I want to work with you to reach a mutually agreeable claims resolution with your insurer. Also, of course, call your insurance company. As a last resort, call your state insurance regulator, as departments of insurance provide robust consumer protection services and can be contacted if a dispute happens to arise.

While all the billboard, TV, and radio ads make it seem like hiring an attorney is the best thing to do, they will likely prolong the process before you are paid and will take a hefty chunk of your money just to represent you. Most people actually end up getting less money in hand when they hire a lawyer, and it takes much longer to even get that smaller amount. In 2019, data showed that on average, auto insurance claims from start to finish took 195 days, or about 6.5 months. But when an attorney was involved, the process took 750 days, or 25 months, on average to fully resolve.

Q *What other steps can I take to help keep insurance affordable?*

A You can reach out to your local elected officials – your state representative and senator – and urge them to pass legal system abuse reforms to help control insurance costs. Reforms like these have been successful in increasing both the number of companies offering coverage in the state and in stabilizing rates. Florida customers, for example, are experiencing these market improvements following the passage of legal system abuse reform measures. Passing reforms like that would help here in [STATE], too.



Follow-Up Materials to Share with Personal Lines Customers

CLICK HERE TO DOWNLOAD THE PDF VERSION

INSURANCE PREMIUMS ARE INCREASING FOR A VARIETY OF REASONS:

- Inflation in both the cost of materials to rebuild and repair homes and cars and the cost of labor to perform the repairs needed
- Increasing frequency and severity of weather events
- Increasing regulatory burdens placed on insurers and other businesses at the state level
- Increased costs to pay claims due to ever-worsening legal system abuses, including excessively high jury verdicts, deceptive and secretive third-party litigation funding practices, fraud, and widespread and often misleading attorney advertising

Since insurance is a risk-sharing mechanism, the price you pay for coverage for your home and auto may increase even if you have not filed a claim. You're paying more for all of the reasons just mentioned, even if you yourself don't make a claim.

THERE ARE THINGS WE CAN DO THAT MAY HELP TO KEEP YOUR PREMIUMS LOWER:

- We can assess your coverage needs and see if there might be areas in which you could safely reduce your coverage.
- You may be able to raise your deductibles.
- We can look into getting all your insurance from one company. This is called bundling and may reduce your total premiums.
- You can take steps to strengthen your home against weather and other losses by, for example, installing a hail-resistant roof or retrofitting your home to higher building standards or putting in a home alarm if you don't already have one.
- You can take a safe driving course if your carrier offers a discount, and we can explore what other discounts might be available to you.
- We can check and see which carriers offer discounts for taking these kinds of steps to protect your home and auto.
- You can also reach out to public policymakers in support of common-sense legal system abuse reforms.

IF YOU HAVE AN ACCIDENT, OR YOUR HOME IS DAMAGED, I ENCOURAGE YOU TO TAKE THE FOLLOWING STEPS:

- First, call your insurance company. It's in their best interest to work with you to reach a mutually agreeable claims resolution.
- Next, call your insurance agent. I can help you navigate the claims process.
- Your state insurance regulator offers robust consumer protection services and can be contacted if a dispute happens to arise.

While all the billboard, TV, and radio ads make it seem like hiring an attorney is the best thing to do, they are only going to prolong the process before you are paid, and they will take a hefty chunk of the money you get just for representing you. Most people actually end up getting less money in hand when they hire a lawyer, and it takes much longer to even get that smaller amount.

If you want to do more to help curb abusive litigation tactics that are driving your insurance costs up, you can reach out to your local elected officials—your state representative and senator—and urge them to pass common sense legal reforms so you won't have to pay as much for your insurance in the future. Reforms like these have been successful in increasing the number of companies offering coverage in the state and in stabilizing rates. Florida customers, for example, are experiencing these market improvements following the passage of legal system abuse reform measures. Passing reforms like that would help here, too.

The Impact of Legal System Abuse on Personal Lines Affordability and Availability

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The Impact of Legal System Abuse on Personal Lines Affordability and Availability



Legal system abuse involves trial lawyer tactics that convince you to call a lawyer first and turn our courts into a money-making machine for lawyers, their vendors and funders at everyone else's expense.

TRIAL LAWYER TACTICS INCLUDE:



MASSIVE, SOMETIMES MISLEADING AD CAMPAIGNS designed to convince consumers that hiring trial lawyers will deliver jackpot justice.

Legal services ads spend by plaintiff lawyers totaled more than **\$2.5 billion** for more than **26.9 million ads** in 2024, an increase of more than 32% compared to 2020.¹



MANIPULATIVE COURTROOM TACTICS called "jury anchoring" intentionally suggesting that jurors must award high damages as a starting point and focusing that jury on punishing the defendant rather than awarding an amount for the plaintiff's economic loss.

In 1994, the McDonald's hot coffee spill lawsuit made headlines for its **\$2.7 million punitive damages award**. This year, the Starbucks hot tea drive-thru spill lawsuit generated a **\$50+ million jury award**, all for so-called "noneconomic" damages.



Don't fall for these tactics. When you have a claim, call your insurance company or agent first. Or if your claim cannot be resolved with the company or agent, call your state insurance department. **Otherwise, you may pay the price for legal system abuse.**

⚠️ Higher costs per year of **\$1,666** per person or **\$5,215** per family for goods and services as a result of excessive litigation.²

• Auto and home insurance costs are **2.5% and 4.56% higher**, and prescription drugs are **over 9% higher** due to excessive legal system costs.²

⚠️ **4.8 million jobs lost annually.**²

⚠️ **220% increase in typical personal injury awards** between 2010 (\$39,300) and 2020 (\$125,366).³

⚠️ U.S. liability claims as a % of GDP are **more than twice as high** as most EU countries.⁴

⚠️ Plaintiffs receive **only 53 cents per dollar of legal expenditures.**⁴



Your insurance company can make you whole. Insurance regulation and regulatory oversight are designed to protect claimants, and they do so very well. We all need to understand the consequences of legal system abuse and work together to ensure the U.S. civil justice system is fair for all.

American Property Casualty Insurance Association
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¹ American Tort Reform Association

² The Perryman Group

³ APCIA

⁴ U.S. Chamber of Commerce Institute for Legal Reform

FAQ for Discussions with Commercial Lines Customers



COMMERCIAL LINES CUSTOMERS MAY BE IMPACTED BY THE FOLLOWING:

- Upward pressure on rates as insurers prepare for larger claims.
- Some insurers may restrict coverage options, apply stricter terms, or your choice of insurers may be more limited.
- Shifts in the market—such as new risk threats like cybercrime, new laws and regulations in your industry or industries you serve, or new trends in litigation/legal system abuse—can create financial strain for small businesses, highlighting the need for customized insurance solutions.
- Broader liability exposure is becoming more common due to legal system abuse, meaning that businesses face an increased risk of lawsuits and higher legal costs.



Why has it become hard for me to find insurance for my business?



Because of the drastic increase in litigation abuses—including ever-increasing attorney advertising to attract consumers to sue businesses with the lure of lawsuit-related jackpots, along with increasingly outsized settlement and award amounts—it is becoming more difficult for many businesses to find insurance coverage. Industries that are specifically targeted by attorneys for lawsuits and are susceptible to extremely high settlement or damage awards because of the nature of the business may have even more trouble finding insurance because of these unpredictable risks. [For example, large damage awards against trucking firms increased 867% between 2010 and 2018, despite the industry becoming safer each year and fatal crashes declining. Nonprofit foster care agencies are another sector where obtaining insurance has become extremely difficult due to large lawsuit costs, causing many of these nonprofits to shut down.]

The impacts can be even more significant for smaller businesses, which can be more disproportionately impacted by legal system abuses. Small businesses paid \$160 billion into the U.S. commercial liability system in 2021. That accounts for 48% of the total commercial litigation costs, while small businesses bring in just 20% of the total commercial revenues in the country.



Why are my insurance costs going up so much?



Insurance premiums increase for a variety of reasons. One of the most surprising causes is legal system abuse. Excessively high jury verdicts, deceptive and secretive third-party litigation funding practices, fraud, and widespread and misleading attorney advertising put significant upward pressure on insurance costs as the volume and cost of lawsuits increase. Other, less surprising reasons are inflation in both the cost of materials to rebuild and repair homes and cars and the cost of labor to perform the needed repairs; the increasing frequency and severity of weather; and increasing regulatory burdens placed on insurers and other businesses at the state level. Also, since insurance is a risk-sharing mechanism, the price you pay for coverage may increase even if your company has not filed a claim. You're paying more for all the reasons just mentioned, even if your business doesn't make a claim.

FAQ for Discussions with Commercial Lines Customers

continued



Q *What steps can I take to keep my company's premiums lower?*

A We can assess your coverage needs and see if there might be areas in which you could safely reduce your coverage. You may be able to raise your deductibles. You could potentially bundle and purchase your coverage from one insurer, which could reduce your premiums. You may also be able to take steps to make your workplace safer and improve loss control measures. Other things you could consider are removing optional coverages, adjusting building value, and maintaining good property condition, especially the roof.

Q *What do I do if I have a claim?*

A If you have a claim, call me, your trusted partner, first. I can help guide you through the claims process and be your advocate with the insurance company. I want to work with you to reach a mutually agreeable claims resolution with your insurer. Also, of course, call your insurance company. As a last resort, call your state insurance regulator, as departments of insurance provide robust consumer protection services and can be contacted if a dispute happens to arise.

Q *What other steps can I take to help keep insurance affordable?*

A You can reach out to your local elected officials – your state representative and senator – and urge them to pass common sense legal system abuse reforms so you won't have to pay as much for your insurance in the future. Reforms like these have been successful in improving both the number of companies offering coverage in the state and in stabilizing rates. Florida customers, for example, are experiencing these market improvements following the passage of legal system abuse reform measures. Passing reforms like that would help here in [STATE], too.

Follow-Up Materials to Share with Commercial Lines Customers



CLICK HERE TO DOWNLOAD THE PDF VERSION

INSURANCE PREMIUMS MAY INCREASE FOR A VARIETY OF REASONS:

- Inflation in both the cost of materials to rebuild and repair physical structures and commercial vehicles and the cost of labor to perform the repairs needed
- Increasing frequency and severity of severe weather
- Increasing regulatory burdens placed on insurers and other businesses at the state level
- Increased costs to pay claims due to ever-worsening legal system abuses

The availability of certain types of insurance is rapidly declining. Some industries and sectors that have been targeted by attorneys for large lawsuits may have trouble finding insurance at all, as these unpredictable risks make insuring those industries untenable. As an example, nonprofit foster care agencies, schools, daycares, and trucking businesses are struggling to remain open and affordable as insurance becomes increasingly expensive and challenging to find.

Since insurance is a risk-sharing mechanism, the prices you pay to protect your business may increase even if you have not made a claim. You may be paying more for all the reasons just mentioned, even if you yourself don't make a claim.

THERE ARE THINGS WE CAN DO THAT MAY HELP TO KEEP YOUR PREMIUMS LOWER:

- We can assess your coverage needs and see if there might be areas in which you could safely reduce your coverage.
- You may be able to raise your deductibles.
- We can look into getting more of your insurance from one company. Bundling may reduce your total premiums.
- You may be able to enhance loss control measures, including ensuring your workplace has robust safety measures in place.
- You can consider removing optional coverages, adjusting building value, and maintaining good property condition, especially the roof.

IF YOU HAVE A CLAIM, I ENCOURAGE YOU TO TAKE THE FOLLOWING STEPS:

- First, call me, your trusted partner. I can help you navigate the claims process.
- Call your insurer. It's in their best interest to work with you to reach a mutually agreeable claims resolution.
- If necessary, state departments of insurance provide robust consumer protection services and can be contacted if a dispute happens to arise.

If you want to do more to help curb abusive litigation tactics that are driving your insurance costs up, you can reach out to your local elected officials—your state representative and senator—and urge them to pass legal system abuse reforms so you won't have to pay as much for your insurance in the future. Reforms like these have been successful in improving both the number of companies offering coverage in the state and in stabilizing rates. Florida customers, for example, are experiencing these market improvements following the passage of legal system abuse reform measures. Passing reforms like that would help here, too.

The Impact of Legal System Abuse on Small Commercial Lines Affordability and Availability

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Legal system abuse involves trial lawyer tactics that convince consumers to call a lawyer first and turns our courts from a system of justice into a money-making machine for lawyers, their vendors and funders at everyone else's expense.

TRIAL LAWYER TACTICS INCLUDE:



MASSIVE AD CAMPAIGNS that manipulate consumers to demonize institutions, trust trial lawyers to be a sole source of payment, and award damages that far exceed economic loss.

Legal services ads spend by plaintiff lawyers totaled more than \$2.5 billion for more than 26.9 million ads in 2024. This is an increase of more than 32% compared to 2020.¹



MANIPULATIVE COURTROOM TACTICS called "jury anchoring" intentionally suggesting that jurors must award high damages as a starting point and focusing that jury on punishing the defendant rather than awarding an amount for the plaintiff's economic loss.

In 1994, the McDonald's hot coffee spill lawsuit made headlines for its **\$2.7 million punitive damages award** (later reduced and then settled). **31 years later**, the Starbucks hot tea drive-thru spill lawsuit generated **over \$50 million in noneconomic damages** before settling recently for an undisclosed amount.



THIRD-PARTY FIRMS THAT FUND AND INVEST IN LITIGATION OUTCOMES TO PROFIT FROM OUR COURT SYSTEM.

Third-party litigation financing assets under management grew to \$16 billion in 2024.²



NUMEROUS COPY-CAT LAWSUITS aimed at forcing a business to settle rather than defend thousands of claims in court. **Trial-bar backed laws** that allow lawsuits to be filed in a state even where the case law doesn't allow suit or whether there was no injury in the state. [cite to IL consent-to-jurisdiction law]. **These lawsuits and laws signal that a state is "closed" for business.**



Be aware of these tactics and their adverse impact on your business. When you have a claim, call your insurance company, agent or broker first. **Otherwise, you may pay the price for legal system abuse.**

⚠️ **\$160 billion in higher annual small business costs.**³

⚠️ **Commercial auto claim severity has risen 72% since 2013**, with a median annual increase of 6.3%.⁴

⚠️ Higher costs per year of **\$1,666 per person or \$5,215 per family** for goods and services as a result of excessive litigation.⁵

⚠️ **4.8 million jobs lost annually.**⁶

⚠️ In **2024**, the **median nuclear verdict** against a company **grew to \$51 million**, more than double the \$21 million per case in 2020.⁶

⚠️ Product liability nuclear verdicts **are increasing**, rising to a median value of \$36 million in 2022.³

⚠️ U.S. liability claims as a % of GDP are **more than twice as high** as most EU countries.³

⚠️ Plaintiffs receive **only 53 cents for every dollar of legal expenditures.**³



You and your business pay the price for trial lawyer greed and abuse of the legal system. Because of these costs, businesses suffer. We all need to understand the consequences of legal system abuse and work together to ensure the U.S. civil justice system is fair for all.

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1 American Tort Reform Association
2 The Westfleet Insider 2024 Litigation Finance Market Report
3 U.S. Chamber of Commerce Institute for Legal Reform
4 Insurance Information Institute
5 The Perryman Group
6 Marathon Strategies

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The Impact of Legal System Abuse on Large Commercial Lines Affordability and Availability

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THIRD-PARTY FIRMS THAT FUND AND INVEST IN LITIGATION

OUTCOMES TO PROFIT FROM OUR COURT SYSTEM. Third-party litigation financing assets under management grew to \$16 billion in 2024.²



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TRIAL-BAR BACKED LAWS that allow lawsuits to be filed in a state even where the case law doesn't allow suit or whether there was no injury in the state.³



Be aware of these tactics and their adverse impact on your business. When you have a claim, call your insurance company, agent or broker first. **Otherwise, you may pay the price for legal system abuse.**

- ⚠ Higher costs per year of **\$1,666** per person or **\$5,215** per family for goods and services as a result of excessive litigation.⁴
- ⚠ **4.8 million jobs lost annually.**⁴
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3 Illinois Coalition for Legal Reform
4 The Perryman Group
5 Marathon Strategies
6 U.S. Chamber of Commerce Institute for Legal Reform
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SAMPLE SOCIAL MEDIA CONTENT

DIGITAL GRAPHICS

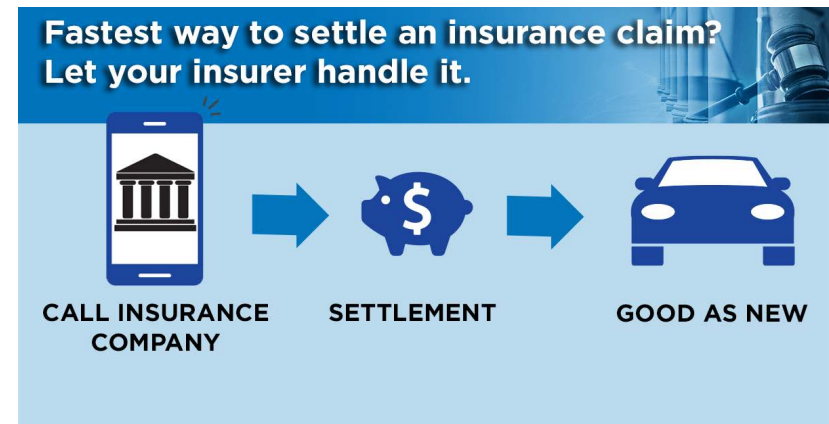


HELP AMPLIFY OUR VOICE ON SOCIAL MEDIA.

Share the following suggested messages and graphics to help amplify the urgent need for legal system abuse reform. If you would like to add your branding to any of the social tiles or video, please contact APCIA staff.



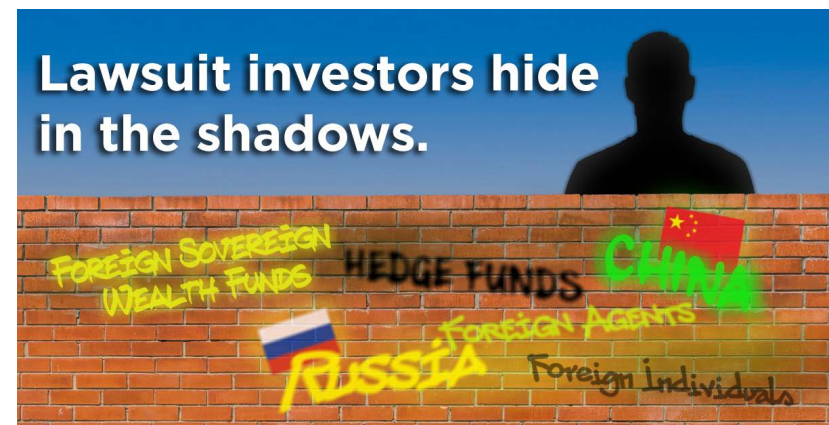
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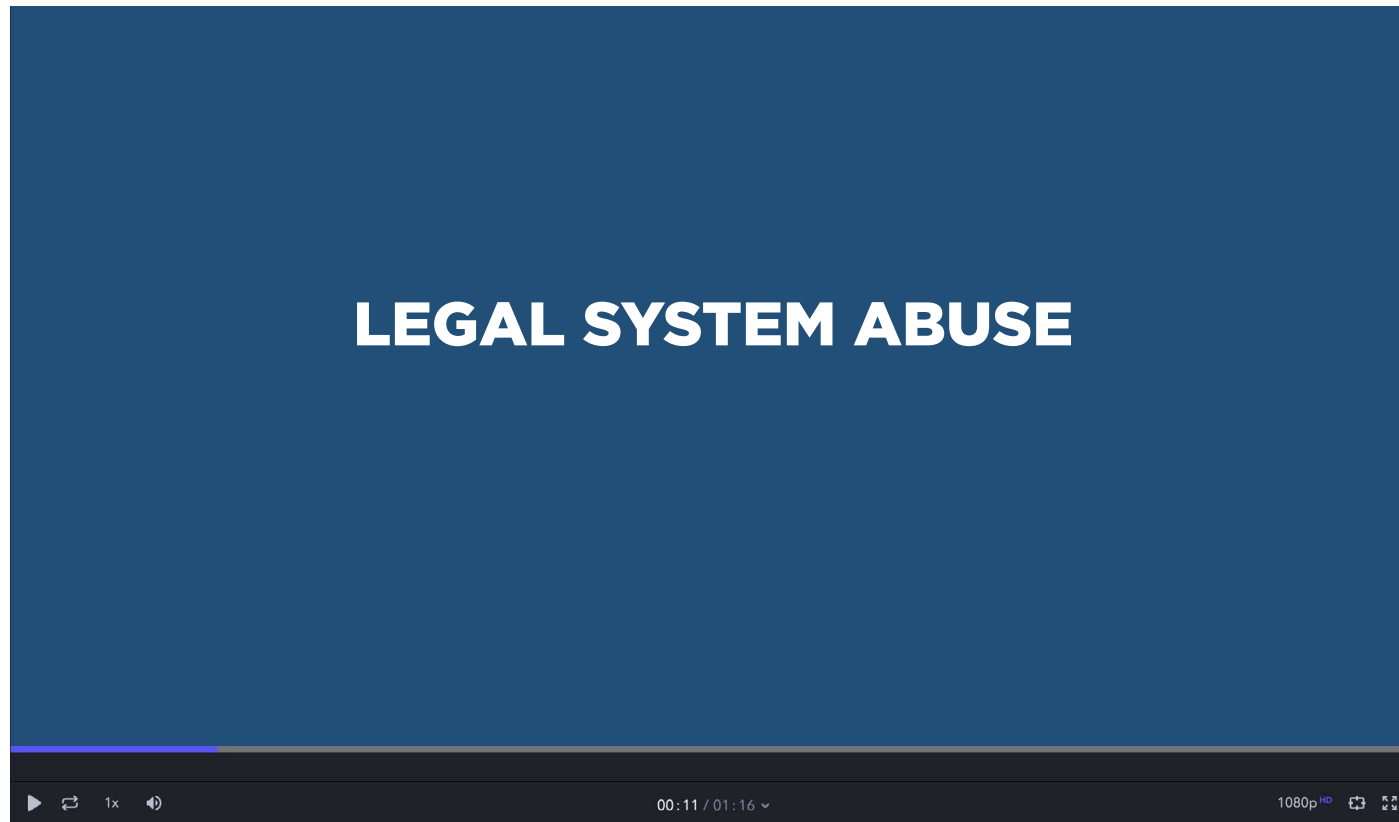


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VIDEO FOR EDUCATION AND ENGAGEMENT OF CONSUMERS



[**CLICK HERE TO VIEW OUR LEGAL SYSTEM ABUSE REFORM VIDEO**](#)

Please reach out to APCIA for help customizing the video or for assistance or for help engaging your policyholders in grassroots letter writing efforts to legislators.

MATERIALS FOR ENGAGEMENT WITH LAWMAKERS

Sample Letter to Legislators

[CLICK HERE TO DOWNLOAD THE PLAIN TEXT VERSION](#)



Dear [Senator/Representative]:

As an independent insurance [agent/broker], I am witnessing the significant negative impact legal system abuse is having on my insurance policyholder customers. Independent insurance [agents/brokers] are trusted advisors to our insurance customers and are their partners in the insurance marketplace. They rely on us to help them decide on and purchase the best and most affordable insurance coverage to protect their most valuable assets.

Unfortunately, the abuse of our legal system, fueled by excessively high jury awards, hidden third-party litigation funding (TPLF), nearly constant and misleading attorney advertising, and inflated damages awards, has made protecting our customers even more challenging. These abuses cost the U.S. economy and consumers an estimated \$529 billion annually—equal to 2.1% of the U.S. GDP—and each household over \$4,200 annually. Part of these costs can be seen in the increasing costs of insurance for my customers and your constituents. Moreover, legal system abuse costs have reached historic highs in recent years, at nearly double the rate of inflation.

Allowing abuses of the legal system to remain unchecked leads to higher costs for policyholders because when legal costs climb, so do insurance premiums. Rising costs due to legal system abuse also makes it more difficult for me to find and offer options for the coverage individuals and businesses need at a price they can afford, because the legal system abuses and related costs can force insurers to consider offering less coverage to fewer customers as those costs continue to accelerate. As a result, litigation abuse negatively impacts insurance availability and affordability in the insurance marketplace.

You can help fix this. I respectfully urge you to enact legislation to address legal system abuses and to restore fairness, efficiency, and predictability to our civil justice system. Crucial reforms are needed to reduce policyholder and consumer costs and improve insurance availability and affordability. Areas in need of reform include (1) requiring disclosure when third-party litigation funders secretly invest in and profit from lawsuit outcomes; (2) taking steps to stop the trend towards “nuclear” verdicts of \$10 million or more by capping awards of non-compensatory damages; (3) reining in misleading attorney advertising; and (4) helping to stop increasingly common insurance fraud schemes.

Understanding and deterring legal system abuse is critical to ensuring that our courts provide access to justice, not profiteering, and to maintaining a healthy, predictable, and affordable insurance market. Please help me protect my customers and your constituents. I respectfully urge your support of legislation to help fix legal system abuse, including through the critical legal system abuse reforms proposed above.

Sincerely,

[Agent/Broker]

Legal System Abuse Reform Leave Behind

CLICK HERE TO DOWNLOAD THE PDF VERSION

APCIA can provide state-specific leave behind materials for all states. Please contact us for assistance.

Rampant Legal System Abuse is Contributing to Rising Costs and Impacting Business Viability



The Impact

Everyone pays the price for legal system abuse. These increased litigation costs are passed onto households and businesses through increased costs of goods and services.



The average American household pays more than a **\$4,200 “TORT TAX”** due to unnecessary and abusive litigation across the country that raises the costs of products and services like groceries and gas.¹



Plaintiffs receive **ONLY 53 CENTS PER DOLLAR OF LEGAL EXPENDITURES**.¹



Legal system abuse creates a disconnect in what ought to be fair and reasonable compensation for a legitimate loss.



There has been nearly a **220%** increase in typical personal injury awards.²



Even average verdicts are seeing outsized growth with a manifold increase in the last ten years.



In 2010, average personal injury verdicts were **\$39,300**, and by 2020 they were **\$125,366**! This **219%** increase even accounts for the dip at the beginning of the pandemic.²



Legal system abuse has a significant impact on the economy.³



4.8 MILLION lost jobs



\$557.8 BILLION in lost economic output annually



\$156.10 BILLION in lost government (federal, state, and local) revenues annually



The U.S. is an extreme outlier in terms of the percentage of GDP that is eroded by legal system abuse (.36% of GDP).⁴

Solutions

Common-sense reforms, including legislation that requires transparency and mandatory disclosure of TPLF agreements, increased discoverability of those arrangements when needed in litigation, and state and federal-level regulation of funders, could restore fairness to the civil justice system and reduce consumer costs.

¹ Chamber of Commerce Institute for Legal Reform

² American Property Casualty Insurance Association using Jury Verdict Research and Trends In Personal Injury Lawsuits, Insurance Information Institute, 2020

³ Perryman Group

⁴ Swiss Re

APPENDIX

GLOSSARY

ALI-RLLI

The American Law Institute (ALI), a 501(c)(3) not-for-profit organization, bills itself as a leading independent organization producing scholarly work to clarify, modernize, and otherwise improve the law. The ALI adopted the Restatement of the Law, Liability Insurance (RLLI) in 2019. The RLLI represented several important aspects of liability insurance incorrectly and as settled law. The ALI continues to engage in an activist approach to recent projects, calling into question the historic dependability of secondary sources of law.

Asbestos Bankruptcy Trust Transparency

This term describes a transparent process by which asbestos injury claimants must reveal when they have made claims for their damage against asbestos trusts or similar facilities to uncover situations in which they may be seeking to recover more than once for the same purported injury.

Asbestos Overnaming

The practice of naming dozens or even hundreds of defendants in an asbestos complaint in an attempt to receive nuisance settlements from innocent defendants. This costs innocent companies thousands of dollars. Reform efforts focus on requiring plaintiff asbestos filings to include certain details about each named defendant and allowing the defendants to easily remove themselves from the case if the plaintiffs cannot provide these details.

Assignment of Benefits

This term describes myriad situations in which claimants or insureds seek to assign their insurance benefits to service providers, including medical practitioners, automobile repairers and property damage repairers. The service provider is then able to bring that claim against the insurance company. This can also be seen in the bad faith context, where an insured transfers their rights to bring a bad faith claim against their insurer to the injured party and/or the plaintiff attorney. This eliminates the financial exposure of the case to the insured and creates a potential windfall for the injured party.

Attorney Advertising

The use of mass media, the web, call centers, billboards and more by trial lawyers aiming to increase the volume of claims and their business.

Bad Faith

A short-hand description intended to refer to alleged insurer breaches of the covenant of good faith and fair dealing implied in contracts. It has been converted in many states to a separate tort-like cause of action that trial lawyers use to extract extortionate settlements and more. In its worst form, it permits trial lawyers to game the system for profit with bad faith set ups. One example is Time Limited Demands that trap insurers with short turnaround times for accepting a settlement demand in complicated matters and with the possibility of leaving insureds exposure. First party bad faith represents claimant v. insurer. Third party bad faith actually permits stranger third parties to assert extracontractual claims against insurers.

Billed v. Paid

This describes the effort of trial lawyers and medical providers and financiers to obtain the billed or incurred value of medical services, as opposed to what was actually paid for the services after accounting for discounts under Medicare or health insurance. This serves to inflate medical costs, which can in turn inflate other categories of damages. It is a subset of what we call "Phantom Damages."

Collateral Source Rule

A legal doctrine that prevents payments by third parties – like health insurance or workers' compensation – from being used to reduce damages awarded against a defendant. This can lead to inflated or duplicative damage awards by allowing plaintiffs to recover costs that have already been covered by third parties. Reform efforts typically aim to prevent such windfalls and align damage awards with actual economic losses.

Empty Chair Defense

When a defendant is not named in a lawsuit, or they have settled out of the case, the remaining defendants point the jury towards the liability of those parties not in the case at trial.



Joint & Several Liability

This describes situations in which claimants wish to recover the total of their damages from any one of several defendants in a single occurrence notwithstanding that the recovery may be outsized for that individual's responsibility for the harm caused.

Judgment Interest

Judgment interest is the amount of pre- and/or post-judgment interest applied to a trial verdict. Judgment interest can itself be a form of phantom damage when their award is outsized in terms of value or length of time.

Judicial Election & Appointment Advocacy

This describes the selection process for judges and how stakeholders seek to advocate for or against particular candidates.

Judicial Limits on Non-lawyers Owning Law Firms

There are efforts, under the guise of increasing access to justice, to permit non-lawyers to have an ownership interest in law firms. Imagine medical providers, medical financiers, litigation financiers or more owning the very law firms that can litigate matters for them. Nonetheless, such individuals and entities are not lawyers or subject to legal ethics or court practice rules.

APPENDIX

GLOSSARY continued

Jury Anchoring

Jury “anchoring” is a tactic used by attorneys in which they request an unjustifiably large award that then serves as a baseline for the jury’s damages calculation. The numbers requested are often completely unrelated to the facts of the case (e.g., a sport celebrity’s salary or the cost of a house in a wealthy neighborhood). The intent is to manipulate juries into awarding damages not supported by the evidence in a trial.

Letters of Protection

An agreement between a claimant (and often their attorney) and a healthcare provider guaranteeing payment in full for all billed medical services once a personal injury case is resolved. Claimants are treated but agree not to submit their bills to insurance or Medicare. Claimants may also agree to pay off the treatment charges regardless of the case outcome, and this can leave many exposed for treatment they may not have otherwise received.

Medical Expense Schedules

A detailed list of all medical services and their corresponding cost. Programs such as Medicare have these medical expense schedules, and they can be useful in resolving the billed v. paid problem. We often recommend language providing that medical expenses cannot be more than 200% of the Medicare Part B Schedule.

Medical Factoring

Medical factoring is the sale and assignment of medical services performed by a medical provider to a third party, often a financing or funding company, who will pay the medical provider a percentage of the bill or some agreed value and then pursue the full invoices. Recoveries are kept by the factoring company or split with the medical provider, if additional monies are due to the provider.

Medical Financing

Medical financing is an agreement between a third-party financier and a personal injury claimant and often their medical provider. In return for payment of a set value, or agreement to pay for a procedure or series of procedures from the financier, the claimant agrees to repay the payments or value with interest or a stake in the outcome of litigation. The amounts charged for the medical procedures are typically at their highest rate, and the interest or stake in litigation charged to the claimant can be considerable.

Medical Liens

Medical liens simply refer to the agreement a claimant makes to compensate their medical provider from their lawsuit recovery.

Medical Factoring

Medical factoring is the sale and assignment of medical services performed by a medical provider to a third party, often a financing or funding company, who will pay the medical provider a percentage of the bill or some agreed value and then pursue the full invoices. Recoveries are kept by the factoring company or split with the medical provider, if additional monies are due to the provider.

Non-Economic Damages

Non-economic damages refer to compensation for subjective, non-monetary losses such as pain, suffering, inconvenience, emotional distress, loss of society and companionship, loss of consortium, and loss of enjoyment of life. These amounts are often awarded based on emotional appeals as opposed to objective criteria. This type of damages is generally the largest component of nuclear verdicts.

Non-Economic Damages Caps

Limits on the maximum amount that may be awarded for non-economic damages. These may take various forms.

- One common form is a numerical cap, where the noneconomic damages are limited to a certain number (e.g., \$500,000).
- Another variation is a multiplier cap, where damages are limited to a certain multiple of the economic damage award (e.g., 3x economic damages).



Nuclear Verdicts

Jury awards of \$10 million or above. These mega-verdicts are un-tethered to the evidence and outside verdict norms and precedent.

Phantom Damages

Phantom damages is a global term to account for inflated harms, injuries or services to a claimant, often in medical treatment, intending to deliver an outsized recovery from what would normally be reasonable and appropriate. Phantom damages can reflect billed v. paid differences, claims build up, jury anchoring, subjective damages and more.

Plaintiff Attorney Involvement

Refers to plaintiff attorney representation of plaintiffs in insurance claims. Attorneys are increasingly becoming involved in even the most routine and small claims. Involving plaintiff attorneys early in the settlement process is driven in part by the widespread plaintiff lawyer advertising saturating television and computer screens.

Premises Liability

Any liability a property owner may have for injuries occurring at the property. Includes criminal acts on the premises linked to allegations of negligent security, slip and fall, and others.

APPENDIX

GLOSSARY continued

Public Nuisance

Typically involves actions or conditions that create a substantial and unreasonable interference with the public's rights or safety related to physical land, air, or water (e.g., a factory emitting smoke that impacts neighboring homes or business). It has historically been enforced by government entities. More recently, plaintiff attorneys have worked to expand public nuisance to include emotional or indirect harms (e.g., alleging crabs being boiled alive at a seafood festival constituted a public nuisance) and to allow individuals to bring these claims.

Punitive Damages

Punitive damages are awarded to punish defendants for egregious actions that are either intentional or committed with a wanton disregard for the rights of others. As with non-economic damages and even jury anchoring, the lack of objective criteria for juries to consider can result in grossly excessive awards.

Reptile Theory

A litigation strategy that focuses on appealing to a jury's primal instincts, such as anger towards the civil defendant and fears for their safety causing them to conflate negligence with punitive conduct, rather than the actual factual evidence to reach a reasonable and objective verdict. This strategy is used to promote payment of amounts that "punish" the defendant or address damages that do more than compensate the plaintiff for injuries.

SOL Defense

Statute of Limitations. Intended to capture challenges to long-established time frames in which claimants are to bring claims and, in particular, efforts to revive previously time-barred claims as well as our effort to defend SOLs.

Time Limit Demand

As examined above under bad faith, a Time Limit Demand or TLD, is a short window in which to accept a settlement demand to set up an extracontractual exposure for an insurer should there be an excess judgment against an insured.

Third-Party Litigation Financing (TPLF)

This is a practice that allows unknown investors with no ties to the harm alleged in a suit to invest in lawsuits for profit. TPLF encourages plaintiff lawyers, medical providers, and financiers such as hedge funds to increase claims damages with the intention of increasing their return on "investment;" lengthens the time to resolve matters which then increases legal costs; generates excessive and frivolous lawsuits; reduces the efficiency of the civil justice system; introduces conflicts of interest and ethics concerns into litigation; allows foreign investors to manipulate the U.S. justice system; and reduces the plaintiff's settlement award. This is often also referred to as litigation financing, litigation funding, litigation loans and TPLF.

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[Milliman/APCIA, Trends in Attorney Representation: US Commercial Automobile Insurance](#), 2022

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