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## A Step in the: Right Direction for MDLs: New Federal Rule of Civil Procedure 16.1

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MDL defendants should insist that Rule 16.1, properly understood and applied, requires plaintiffs' firms to make early disclosures of basic verifying information about each of their cases. And defendants should further encourage courts to weed out baseless claims.

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# Executive Summary

Multidistrict litigation (MDL) proceedings were established almost a half-century ago to coordinate discovery and other pretrial matters when multiple cases involving overlapping factual issues are pending in different federal courts. But as the volume of MDL litigation has multiplied in recent years, some MDL courts facing hundreds, thousands, or even tens of thousands of cases have departed from ordinary application of the Federal Rules of Civil Procedure and managed cases on a largely ad hoc basis.

This proliferation of MDLs has become a serious problem. In particular, and as discussed in prior editions of *ILR Briefly*, the sprawling and undisciplined nature of many MDLs frequently diminishes defendants' ability to test the validity of individual cases and weed out meritless or unsupported claims.[1] All too often, plaintiffs' firms cast a wide net to solicit clients so that they can stockpile an "inventory" of cases to maximize coercive settlement leverage regardless of the merits of the claims. And frequently, those firms do not adequately vet their clients or their claims.

In traditional, single-party litigation, the courts have procedural tools—such as motions to dismiss—that, while imperfect, can weed out meritless or unsupportable claims early in the case. But in the MDL context, many courts confronted with hundreds or thousands of consolidated lawsuits have effectively thrown up their hands, concluding that they lack the capacity to consider motions to dismiss each individual case. And plaintiffs' lawyers have convinced those courts that it is too burdensome for them to provide mandatory initial disclosures or basic discovery responses in each of the hundreds or thousands of cases they have filed. There is thus no mechanism to separate the weaker claims from the potentially meritorious and weed out the weaker or even entirely meritless claims.

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Against this backdrop, the federal Advisory Committee on Civil Rules formed an MDL Subcommittee in November 2017 to report on modern MDL practice and suggest possible amendments to the Federal Rules of Civil Procedure.[2] The years-long efforts that followed culminated in the recent adoption of Federal Rule of Civil Procedure 16.1, which goes into effect on December 1, 2025.[3] Rule 16.1 is the first rule of civil procedure to expressly address MDL proceedings, and it seeks to provide MDL courts with a framework for early case management and to develop a plan for "orderly pretrial activity in the MDL proceedings."[4]

Among other things, Rule 16.1(b)(3)(B) directs the parties to provide—in advance of the initial management conference—their views on "how and when the parties will exchange information about the factual bases for their claims and defenses."[5] As the commentary to the Rule notes, lawyers' obligations under Rule 11 continue to apply in MDL proceedings, and Rule 16.1(b)(3)(B) is designed to ensure that claims are asserted in compliance with that Rule.[6] Rule 16.1 further directs early judicial attention to "likely pretrial motions" and "the principal factual and legal issues likely to be presented."[7]

Rule 16.1 reflects a meaningful step in the right direction in addressing abuses of the MDL process—in particular, the widespread filing of unverified or unsupportable claims that could not survive for long outside of the MDL context. However, the Rule only establishes a process for raising these issues. Defendants have to use that process to urge MDL courts to require plaintiffs' counsel to provide basic verifying information about their claims at the outset—for example, that the claimant used the defendant's product at issue and suffered an injury—and to urge MDL courts to screen out unsupportable claims early in the proceedings.

How the Rule will operate in practice remains unknown. Plaintiffs' lawyers can be expected to continue to take advantage of the MDL process to try and coerce settlements based on claim inventory rather than merit, and to argue that Rule 16.1 does not require early scrutiny of each of their asserted claims. And some courts may decline to require early disclosures and to penalize plaintiffs' firms that file unverified or insupportable claims in violation of their professional obligations. Further reforms built on the initial foundation of Rule 16.1 would help curtail these likely abuses.

# MDL Abuses and the Road to Rule 16.1

For the first few decades after the MDL statute was enacted in 1968, multidistrict litigation constituted only a small portion of federal civil litigation.[8] It's an understatement to say that the volume of suits has changed dramatically. By 2018, over half of the overall civil caseload in federal courts was consolidated in MDLs.[9] In recent years, the number of cases that are part of MDLs has only continued to swell.

As of January 2, 2025, there were 302,338 pending cases consolidated in active federal MDLs, with the vast majority involving personal injury claims.[10] By comparison, there were 501,908 total civil cases pending in all U.S. district courts, of which 461,512 were private civil cases (not involving the federal government), according to the most recent available data published by the federal courts covering the period ending on December 31, 2024.[11] Thus, MDLs account for nearly two thirds of the 2024 year-end total of all private civil litigation in federal court.

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Especially given the prevalence of MDL proceedings in the landscape of federal civil litigation, it is critical that the Federal Rules of Civil Procedure—which are supposed to apply to all cases—govern in the MDL context. But the structure of MDLs includes built-in disadvantages for defendants that in practice deny defendants full use of many of those rules, including the rules related to motions to dismiss and discovery.[12]

## The Problem of Unsupported Claims

Perhaps most significantly, it has been difficult for defendants in large mass tort MDLs to verify that all or even most of the cases filed against them are well grounded. In ordinary litigation, a defendant can file a motion to dismiss an insupportable lawsuit or seek early summary judgment based on initial discovery revealing that the plaintiff's claims are groundless. While this initial screening process is imperfect, it at least serves as a check on baseless lawsuits and is designed to reserve for potentially meritorious lawsuits the burdens of more intensive discovery and, if necessary, a trial.

In the world of mass tort MDLs, however, the number of claims asserted and the informational asymmetry between plaintiffs' counsel and defendants often mean that courts are unable to undertake a meaningful vetting process of individual cases.

A single district court confronted with hundreds, thousands, or tens of thousands of individual cases may conclude that it lacks the capacity to consider motions to dismiss individual cases, and plaintiffs' counsel often successfully resist producing initial discovery or basic verifying information in each of the hundreds or thousands of cases they have filed.[13] Orders dismissing all or most of the cases in an MDL on the basis of broadly applicable issues like lack of jurisdiction, preemption, or the implausibility of the underlying allegations are rare, and in that unusual circumstance plaintiffs can take an immediate appeal. By contrast, defendants are generally unable to obtain interlocutory appellate review for decisions denying important dispositive motions.[14]

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As a result, defendants in MDL proceedings often obtain at best selective application of key rules, including Rules 12(b)(6) (motions to dismiss), 12(e) (more definite statement), 26 (general discovery), 30 (depositions), 33 (interrogatories), 34 (document production), 36 (requests for admissions), and 56 (summary judgment).[15] And without a mechanism to weed out weak claims from potentially meritorious ones, individual cases languish on the MDL docket until the MDL reaches a broader resolution—typically through global settlements or "inventory" settlements with the plaintiffs' firms that hold large groups of cases.

For example, one study reported that between 2000 and 2015, 72 percent of MDL case terminations resulted from settlements.[16] And, more broadly, it is exceedingly rare for cases to be remanded back to their originating court for trial. Since 1968, when Congress passed the MDL statute, transferee courts have remanded back to the originating courts fewer than three percent of all cases consolidated into an MDL, which means that transferee courts terminated over 97 percent of cases themselves.[17]

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## Plaintiffs' Lawyers Respond to the Incentive to Amass "Inventories" of Claims Without Regard to Merit

These dynamics—a lack of reliable vetting of individual cases combined with the pressure on defendants to settle on an inventory or global basis without the opportunity to assess which claims are baseless and which have potential merit—create a powerful incentive for plaintiffs' lawyers to generate the largest possible inventories of claims and file as many lawsuits as possible. That is exactly what happens. Plaintiffs' firms aggressively advertise and solicit clients and stockpile inventories of potential claimants—both to increase their settlement leverage and to jockey for lucrative positions as leadership counsel.

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Unfortunately, this all too often results in plaintiffs' firms filing dubious cases in the MDL mass tort context that would never be filed as standalone suits.[18] As the MDL Subcommittee reported:

> The unfortunate reality that confronts experienced lawyers in MDL proceedings is that a significant number of claimants in those proceedings turn out not to have supportable claims. Were there no MDL centralization, arguably, this would not be a problem. Defendants would have an opportunity to challenge individual claims one by one. Indeed, but for the MDL centralization order, many of those claims might not have reached court at all.[19]

The Subcommittee further estimated that typically 20 percent to 30 percent, and as many as 50 percent, of the claims included in mass tort MDL proceedings may be marginal or downright frivolous—for example, "because the claimant did not use the product involved, or because the claimant had not suffered the adverse consequence in suit, or because the pertinent statute of limitations had run before the claimant filed suit."[20] For these reasons, as one court presiding over the Paraquat Products Liability MDL put it, cases presenting "implausible or far-fetched theories of liability" and that "would not have been filed but for the availability of this multidistrict litigation" continue to populate the court's docket despite judicial efforts to clean up the docket.[21]

There simply is no doubt that unsupported claims are rampant in mass tort MDLs.[22] Plaintiffs' lawyers should be vetting their clients to ensure that they have a basis for presenting a claim and communicating with their clients throughout the process—steps that are mandated by Rule 11 and the American Bar Association's Model Rules of Professional Conduct.[23] But experience suggests that these requirements often are not met in mass tort MDL proceedings.

## Unsupported Claims Also Harm Legitimate Claimants

The harm imposed by the proliferation of baseless claims in MDL proceedings is not limited to defendants. Claimants who may have more legitimate claims are forced to wait for a global or inventory settlement rather than obtaining a prompt resolution of their claims on the merits, leading to further delays in the already overburdened court system.[24] And when

a legitimate plaintiff does recover under a settlement, his or her recovery is diluted by illegitimate claims that drain away resources that could instead be used to provide greater compensation to legitimate claimants. Simply put, the inventory-based rather than merit-based disposition of claims in many MDL proceedings results in legitimate claimants subsidizing claimants with weaker or even completely frivolous claims.

Because of this dynamic and the lack of attention to and vetting of the merits of individual claims in MDL proceedings, it is no surprise that MDL plaintiffs report widespread dissatisfaction with the MDL process. A study conducted by Professor Elizabeth Burch of the University of Georgia found that:

- More than 75 percent of MDL mass tort plaintiffs surveyed "did not know what was happening in their case while it was being litigated;"
- Nearly two thirds were "somewhat or extremely dissatisfied with their lawyers;" and
- More than 80 percent of those who settled "were somewhat or extremely dissatisfied with the fairness of the settlement process."[25]

In short, it seems that many claimants are treated as fungible inventory because there is no meaningful early vetting process that forces plaintiffs' counsel to communicate with their clients and analyze the facts of each individual case. Except for the illegitimate claimants and their lawyers, who obtain an undeserved windfall, the claims-warehousing approach to MDL proceedings harms everyone—defendants, legitimate claimants, and the judicial system alike.

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# Rule 16.1 and its Potential Benefits

The journey to Rule 16.1 began in November 2017, when the federal Advisory Committee on Civil Rules formed an MDL Subcommittee to report on MDL practice and suggest possible amendments to the Federal Rules of Civil Procedure.[26]

After multiple rounds of spirited public comment from both the plaintiffs' and defense bars, the final version of Rule 16.1 was approved by the Committee on Rules of Practice and Procedure in June 2024 and adopted by the Supreme Court in April 2025.[27] Because Congress took no action on the Rule, it is now final and will go into effect on December 1, 2025.

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## The Substance of the Rule

Rule 16.1 is the first rule of civil procedure to explicitly address MDL proceedings. Its focus is on the initial management conference, and it encourages the transferee court presiding over an MDL to both conduct such a conference and enter a case management order addressing the matters covered by the Rule.[28] The Rule further encourages the court to require the parties to "meet and submit a report to the court before the conference."[29]

Unless the court orders otherwise, the parties' report must address several topics enumerated in the Rule. The Rule first directs the parties to provide their views on issues related to the appointment of leadership counsel, modification of any prior scheduling orders, how to manage the filing of new actions, and coordination with cases that have been filed or are expected to be filed in other courts.[30]

The Rule then calls for the parties to submit their "initial views" on additional topics.[31] Most relevant to the problem of baseless claims and a lack of vetting, the Rule requires the parties to address "how and when the parties will exchange information about the factual bases for their claims and defenses."[32] This exchange of information is

separate from discovery, which is addressed by another part of the Rule.[33]

The Advisory Committee Notes make clear that this "early exchange of information about the factual bases for claims and defenses" is designed to address "concerns [that] have been raised on both the plaintiff side and the defense side that some claims and defenses have been asserted without the inquiry called for by Rule 11(b)."[34] And the Notes further emphasize that "the court may find it appropriate to employ expedited methods to resolve claims or defenses not supported after the required information exchange."[35]

## Rule 16.1 Requires Meaningful Early Vetting

MDL defendants should insist that Rule 16.1, properly understood and applied, requires plaintiffs' firms to make early disclosures of basic verifying information about each of their cases. And defendants should further encourage courts to weed out baseless claims.

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Defendants should emphasize that the Rule's text suggests that this information exchange is mandatory—requiring the parties to address "how and when," rather than if, such an exchange will take place.[36] Plaintiffs' firms should not be heard to complain that it is difficult to provide such information near the outset of the MDL proceeding, given that having a basic understanding of their clients' claims before filing a lawsuit is part and parcel of their obligations under Rule 11.[37]

Moreover, there are already established federal rules, such as Federal Rule of Civil Procedure 26(a)(1), that provide the framework for initial pre-discovery information exchanges of this kind. The fact that multiple lawsuits are consolidated into an MDL for pretrial purposes should not change the obligations of each plaintiff in each lawsuit to provide this information. As the Committee Notes emphasize, the "Rules of Civil Procedure … continue to apply in all MDL proceedings."[38] And the Supreme Court has underscored that MDL proceedings remain composed of separate individual cases that "retain their separate identities."[39] Plaintiffs' firms should therefore be required to exchange basic verifying

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information in each of the individual lawsuits they have filed. Put another way, proper application of Rule 16.1 should make clear that MDL consolidation cannot be used as a mechanism to hide meritless claims from party and judicial scrutiny. Defendants should therefore employ Rule 16.1 to insist on basic verifying information in each of the cases filed against them, prior to and independent of any formal discovery.

Indeed, even before Rule 16.1's effective date, one court recently issued an order requiring every complaint in the MDL—both pre-existing and newly filed—to include basic information about the plaintiff's asserted injuries and their cause.[40] The order put the onus on a third-party administrator, and notably not the defendant, to identify deficient filings, and further put the onus on the plaintiffs' counsel to quickly address any deficiencies on pain of "sanctions" for failing to timely comply.[41] Defendants should argue that Rule 16.1 provides all the more support for this type of order designed to weed out unverified claims at the outset.

To the extent courts require information exchange in only a sampling of cases—though, for the reasons just discussed, they should not impose such limits—defendants should insist that at minimum the information exchange must occur in randomly selected cases, not cases handpicked by the plaintiffs. Otherwise, plaintiffs' firms can capitalize on the information asymmetry to hide their meritless claims.

Finally, defendants should also argue that cases should not be permitted to languish on the MDL docket if the information exchange reveals claims to be meritless (or if plaintiffs fail to meet their obligations to provide the information). For example, early summary judgment motions—even pre-answer and pre-discovery—are appropriate examples of "expedited methods to resolve claims or defenses not supported after the required information exchange."[42]

Given the importance of early vetting to proper management of an MDL proceeding and in protecting defendants' rights, courts also should not hesitate to employ adverse inferences and case-terminating sanctions if plaintiffs' firms fail to provide the required information. Otherwise, some plaintiffs' firms may bank on remaining intransigent in the hopes that defendants will consider it more efficient to reach a global resolution than to fight to enforce their rights in each case.

# Plaintiffs' Lawyers Can Be Expected to Try to Circumvent or Limit Rule 16.1

At least some—perhaps many—plaintiff's' lawyers will strongly resist providing meaningful information about their clients' claims under Rule 16.1, instead urging courts to treat the Rule as largely advisory. They also are likely to seek to delay, limit, or outright avoid the exchange of information called for by Rule 16.1(b)(3)(B).

There is no need to speculate on this point: the organized plaintiffs' bar has already asserted that the Rule does not require disclosure of "plaintiff fact sheets at the outset of the MDL" or "mandatory initial disclosures" regarding the sufficiency of the plaintiffs' claims.[43] They have also denied that meritless claims are a genuine problem in MDL proceedings[44]—notwithstanding the findings of the MDL Subcommittee and recognition of the problem by judges and others.

Despite the text of and commentary to the Rule discussed in the prior section, plaintiffs' firms may seize on certain aspects of the Rule and the Advisory Committee Notes in an effort to support their position.

For example, they may point out that the Rule leaves considerable discretion to courts and does not require them to hold an initial conference or to have the parties submit a report at all—instead saying that courts "should" do so.[45] In an effort to delay meaningful progress on claim vetting, plaintiffs' lawyers may also note that the Rule calls only for the parties' "initial views" on exchange of information and seek to defer any actual exchanges of information to later stages of the case.[46] Plaintiffs' lawyers are also likely to argue that it is too burdensome to produce basic verifying information for each plaintiff, especially near the outset of the case.[47]

But such assertions of prematurity or undue burden are baseless given the lawyers' Rule 11 responsibilities. Defendants should underscore that courts should not permit

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plaintiffs' lawyers to avoid meaningful disclosures at the outset of the proceedings or require those lawyers to exchange information only for a small sample of their clients instead.

Finally, even when it is shown that a claim is meritless—often only after great effort and expense by the defendant—plaintiffs' lawyers may simply voluntarily dismiss the claim and suffer no real adverse consequence from having filed a meritless and unverified claim in the first place.[48] And plaintiffs' lawyers can employ the same tactic to avoid exchanging proof that they filed large numbers of meritless claims. For example, in the Paraquat Products Liability MDL, shortly after the court ordered limited discovery into certain plaintiffs, "nine of the 25 Plaintiffs who were selected for limited discovery voluntarily dismissed their complaints."[49]

Defendants should urge courts to exercise the fullest extent of their authority to look into the circumstances of suspicious dismissals and impose sanctions if appropriate. But courts and defendants may not always be able to get to the bottom of the reasons for the dismissal—particularly for cases that plaintiffs can voluntarily dismiss as of right without judicial approval or the defendant's consent.

The process thus threatens to resemble a game of whack-a-mole, in which plaintiffs' firms aim to exhaust defendants into settlement long before defendants and the courts can identify and exclude all of the meritless claims inflating the MDL dockets.

# Potential Future Reforms

Courts should reject these expected efforts by the plaintiffs' bar to limit application of Rule 16.1. A faithful application of the Rule calls for robust early vetting and exclusion of meritless claims at the outset of the MDL proceedings. But additional reforms may ultimately prove helpful in achieving that goal.

## Further Amendments to Rule 16.1

Additional amendments to Rule 16.1 could more directly address the problem of widespread filing of meritless claims in MDL proceedings, strengthen the obligations on lawyers filing claims, and further diminish incentives to file unvetted and unsupportable claims.

### Clearly Identifying the Problem

To begin, it is unfortunate that, in an apparent effort to appear evenhanded, the Advisory Committee Notes suggest that Rule 16.1(b)(3)(B) is designed to address concerns "on both the plaintiff side and the defense side that some claims and defenses have been asserted without the inquiry called for by Rule 11(b)."[50] That suggestion of equivalence does not reflect the reality that the proliferation of meritless claims in MDL proceedings is a one-sided phenomenon driven by the plaintiffs' bar.

Rather than treating exchanging information supporting claims and defenses as a two-way issue, the Rule could more directly identify the problem of meritless claims and impose disclosure and other obligations on the lawyers filing these claims.

### Mandate Disclosure of Basic Verifying Information

Relatedly, the Rule should expressly mandate the disclosure of basic verifying information near the outset of the proceedings in all cases, rather than referring to the parties' "initial views" on the exchange of information.[51] The Advisory Committee Notes state that Rule 16.1(b)(3)(B) and the other topics in

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Rule 16.1(b)(3) involve "matters that may be more fully addressed once leadership is appointed, should leadership be recommended, and thus, in their report the parties may only be able to provide their initial views on these matters."[52]

But all lawyers—not just leadership counsel—must adhere to their obligations under Rule 11 and rules of professional conduct. Delaying exchanges of information until leadership counsel are chosen also may fail to address the proliferation of baseless claims in MDL proceedings—and may even exacerbate the problem.

After all, Section (b)(3)(B) is only effective if it helps keep meritless claims out of the litigation by prompting action to remove those claims early in the proceeding. Deferring vetting until months or years into the case is little better than not vetting at all.

### Make Claim Quality a Factor in Leadership Counsel Appointment

To make matters worse, plaintiffs' firms have the incentive to file the largest number of claims as quickly as possible to try and secure a leadership role. Thus, postponing an investigation of meritless claims until after leadership counsel has been appointed perversely increases the incentives for plaintiffs' firms to amass large quantities of claims without adequate vetting.

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To be sure, the current Rule prompts the transferee court to consider whether "the appointments [of leadership counsel] should be reviewed periodically."[53] But the Rule could be expressly amended to say that filing unsupportable claims is a factor that should weigh against appointment to a leadership role or remaining in that role.

### Raise the Cost of Bringing Unsupportable Claims

Another potential amendment could penalize plaintiffs' firms for voluntarily dismissing cases that have been randomly selected as bellwethers for robust discovery or trial. The risk to plaintiffs' firms of being exposed for having filed unsupportable claims may cause plaintiffs' firms to think twice about flooding MDL dockets with those claims in the first place. The approach of this potential amendment—which would authorize sanctions only for the dismissal of cases selected as bellwethers—would also preserve plaintiffs' general ability to voluntarily dismiss claims as of right early in the case and the parties' ability to voluntarily dismiss claims by stipulation.[54] And the proposed rule would also help ensure that bellwether plaintiffs are representative of the "large[r] group of claimants" and that bellwether trials therefore serve their function, when conducted properly, of informing merits-based settlements of the remaining claims.[55]

## Legislative Solutions

One form of legislation could increase the consequences for filing claims without the inquiry required by Rule 11. A bill passed by the U.S. House of Representatives in both 2015 and 2017 called the Lawsuit Abuse Reduction Act (LARA) would have made sanctions for violating Rule 11's requirements mandatory rather than discretionary and eliminated the safe harbor that allowed plaintiffs' lawyers to avoid sanctions by withdrawing the offending pleading. The legislation did not make it past the Senate, however.

Other legislation could also require more robust disclosures by plaintiffs who file claims that are consolidated into MDL proceedings.

For example, a bill passed by the U.S. House of Representatives in 2017 called the Fairness in Class Action Litigation Act (FICALA) would have required plaintiffs in MDL proceedings to submit basic factual evidence supporting their claim that they were in fact injured and were exposed to the relevant product or risk. These disclosures would not have been onerous, but the legislation did not make it past the Senate.

If widespread abuses of the MDL process persist after Rule 16.1, increased awareness of the problems with mass tort MDLs should encourage Congress to revive and enact LARA and FICALA, or similar legislation.

Legislation requiring disclosure of third-party litigation funding (TPLF) would be another important step in addressing the filing of meritless claims. Thankfully, awareness of the problems posed by TPLF seems to be increasingly widespread among policymakers. At the time of publication, members of Congress had recently introduced bills aimed at addressing problematic aspects of TPLF.[56] Eight states currently have TPLF laws on the books,[57] and legislators in over 20 states have introduced TPLF legislation in 2025.[58]

Disclosure of TPLF is critical, including in the MDL context. Because TPLF lets plaintiffs off the hook for legal costs, they face little risk in advancing non-meritorious claims—even outside of MDL proceedings, where individual claims may be more fully vetted. In addition, the Chamber has previously explained why TPLF raises grave national security concerns and a host of other issues.[59]

Disclosure is important because litigation funding agreements are generally kept secret. As a result, nobody knows what control or influence the funders have over the underlying litigation or attorneys.

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Disclosure allows the court and parties to know the identity of the litigation funder and may help determine whether the funders are exercising undue influence, violating any ethical rules, or whether conflicts of interest exist.

## Involving State Bars and Attorneys General

State bars and attorneys general also have an important role to play in investigating unethical or deceptive advertising and recruitment practices used to gin up mass tort claimants.

Responsible oversight of mass tort filings is sorely needed. All states have limitations on attorney solicitation and advertising.[60] State bars should be active in investigating whether the advertising used to recruit mass tort claimants crosses over the ethical line.[61]

Attorneys general also can use their investigatory powers to shine a spotlight on the practices of prolific filers of mass tort claims. To determine the extent to which a particular state's business community has been victimized, and whether state residents have been taken advantage of by misleading solicitations or unfair settlements, an attorney general could send letters or subpoenas to law firms that are repeat mass-tort filers. The letters or subpoenas could require disclosure of detailed information about mass tort settlements and request all advertisements, solicitations, websites, and online forms used to recruit mass tort plaintiffs.

By undertaking these investigations, attorneys general could shine a light on practices that are currently taking place largely in the dark—thereby exposing a significant source of potentially fraudulent (and ethically dubious) behavior taking place around the country.

# Conclusion

Rule 16.1 is a welcome step in the right direction in addressing widespread abuses of the MDL process. If properly applied, it should result in better vetting to identify unsupportable claims and increased judicial attention to the problems posed by those claims.

Plaintiffs' firms that have an interest in the status quo will no doubt argue that Rule 16.1 does not impose meaningful new requirements and will resist having to back up their claims with even basic verifying information. And it remains to be seen how courts will apply Rule 16.1 in practice, including whether they will impose meaningful consequences on plaintiffs' firms that continue to file meritless and unverified claims. Additional reforms may prove helpful or even necessary to sufficiently curb misuse of the MDL process.

# Endnotes

[1] *See* Benjamin Halperin, *Twisted Blackjack: How MDLs Extort and Distort,* at 3-5 (U.S. Chamber Institute for Legal Reform, October 2021).

[2] *See* Advisory Committee on Civil Rules, MDL Subcommittee Report – Agenda Book, at 139 (Nov. 1, 2018).

[3] *See* Fed. R. Civ. P. 16.1 ("Rule 16.1").

[4] Rule 16.1(a).

[5] Rule 16.1(b)(3)(B).

[6] Rule 16.1(b)(3)(B) Advisory Committee Notes.

[7] Rule 16.1(b)(3)(D),(G).

[8] *See* John H. Beisner & Jordan M. Schwartz, *MDL Imbalance: Why Defendants Need Timely Access to Interlocutory Review,* at 3 (U.S. Chamber Institute for Legal Reform, April 2019).

[9] *See id.; see also* MDL Subcommittee Report, *supra* note 2.

[10] U.S. Judicial Panel on Multidistrict Litigation, *MDL Statistics Report - Distribution of Pending MDL Dockets by District* (Jan. 2, 2025).

[11] *See* U.S. Courts, "U.S. District Courts - Civil Federal Judicial Caseload Statistics," Tbl. C-1 (Dec. 31, 2024).

[12] *See Twisted Blackjack, supra* note 1, at 2-5.

[13] *Id.* at 3. One federal judge has remarked that the usual procedural safeguards that test claims sufficiency are "difficult to employ at scale in the MDL context, where the volume of individual cases in a single MDL can number in the hundreds, thousands, and even hundreds of thousands." Judge M. Casey Rodgers, Vetting the Wether: One Shepherd's View, 89 UMKC L. Rev. 873, 873 (2021).

[14] *See MDL Imbalance, supra* note 8.

[15] *See Twisted Blackjack, supra* note 1, at 4-5.

[16] NYU Center on Civil Justice, *What the Data Show: Mapping Trends in Multidistrict Litigation* (Sept. 2015); *see also* Manual for Complex Litigation, Fourth § 20.132 (2004) ("Few cases are remanded for trial; most multidistrict litigation is settled in the transferee court."). The Supreme Court has explained that, in the absence of party consent, an MDL transferee court cannot transfer a case to itself for trial and must instead remand the case to the originating court. *See Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach,* 523 U.S. 26, 40 (1998).

[17] *See* U.S. Judicial Panel on Multidistrict Litigation, *Statistical Analysis of Multidistrict Litigation Under 28 U.S.C. § 1407 Fiscal Year 2021,* at 3 (2021) ("Since the creation of the Panel in 1968, . . . a total of 17,357 actions have been remanded for trial and 647,396 actions have been terminated in the transferee court.").

[18] The Chamber has reported on a similar phenomenon accompanying the rise of abusive "mass arbitrations." *See* Andrew J. Pincus, Archis A. Parasharami, Kevin Ranlett, & Carmen Longoria-Green, *Mass Arbitration Shakedown: Coercing Unjustified Settlements* (U.S. Chamber Institute for Legal Reform, Feb. 2023).

[19] MDL Subcommittee Report, *supra* note 2, at 141-42; *see also, e.g., In re Mentor Corp. Obtape Transobturator Sling Products Liability Litigation,* 2016 WL 4705827, at *2 (M.D. Ga. 2016) ("MDL consolidation for products liability actions does have the unintended consequence of producing more new case filings of marginal merit in federal court, many of which would not have been filed otherwise.").

[20] MDL Subcommittee Report, *supra* note 2, at 142.

[21] Case Management Order No. 21 Relating To Limited Third-Party Discovery, *In re Paraquat Products Liability Litigation*, Case No. 3:21-md-3004-NJR (S.D. Ill. Feb. 26, 2024).

[22] *See, e.g.,* Lawyers for Civil Justice, *Clarity on the Two "Rules Problems": Empirical Evidence of the Insufficient Claims Problem in MDLs and Key Testimony on Much-Needed Revisions to the Proposed Rule 16.1 and Privilege Log Amendments,* Feb. 16, 2024, https://www.regulations.gov/comment/USC-RULES-CV-2023-0003-0054.

[23] *See, e.g.,* Fed. R. Civ. P. 11(b); ABA Model R. of Prof. Conduct 3.1 cmt. 2 ("The filing of an action . . . or similar action taken for a client" requires lawyers to "inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions."); 7 Harry M. Reasoner, *et al., Business & Commercial Litigation in Federal Courts* § 85.14 (5th ed. Supp. 2021) ("Like Fed. R. Civ. P. 11, Model Rule 3.1 and analogous state rules generally impose a duty of investigation on the lawyer."); *see also* ABA Model R. of Prof. Conduct 1.4 (requiring lawyer to communicate and consult with client).

[24] *See, e.g.,* U.S. Courts, "Judiciary News," *The Need for Additional Judgeships: Litigants Suffer When Cases Linger* (Nov. 18, 2024) (noting the "346 percent" rise in civil litigation between 2004 and 2024).

[25] Alison Frankel, "First-ever survey of MDL plaintiffs suggests deep flaws in mass tort system," Reuters (Aug. 9, 2021).

[26] *See* MDL Subcommittee Report, *supra* note 2, at 139.

[27] *See* U.S. Supreme Court, *Letter to the Honorable Mike Johnson, Speaker, U.S. House of Representatives* (Apr. 23, 2025).

[28] Rule 16.1(a), (c).

[29] Rule 16.1(b)(1).

[30] Rule 16.1(b)(2).

[31] Rule 16.1(b)(3).

[32] Rule 16.1(b)(3)(B).

[33] Rule 16.1(b)(3)(C); *see also* Rule 16.1(b)(3)(B) Advisory Committee Note ("This court-ordered exchange of information may be ordered independently from the discovery rules, which are addressed in Rule 16.1(b)(3)(C).").

[34] Rule 16.1(b)(3)(B) Advisory Committee Note.

[35] *Id.*

[36] Rule 16.1(b)(3)(B).

[37] Rule 16.1(b)(3)(B).

[38] Rule 16.1(b)(3)(A) Advisory Committee Note.

[39] *Gelboim v. Bank of Am. Corp.,* 574 U.S. 405, 413 (2015).

[40] *See In re Depo-Provera (Depot Medroxyprogesterone Acetate) Products Liability Litigation,* 2025 WL 1618995 (N.D. Fla. May 12, 2025).

[41] *Id.* at *1.

[42] Rule 16.1(b)(3)(B) Advisory Committee Note.

[43] American Association for Justice, Comment Letter from the American Association for Justice (AAJ) to the Committee on Rules of Practice and Procedure, "Re: Proposed Amendments to Rule 16.1 (Multidistrict Litigation)," at 9 (Feb. 15, 2024).

[44] *Id.* at 10.

[45] Rule 16.1(a), (b)(1).

[46] Rule 16.1(b)(3).

[47] *See* AAJ Comment Letter, *supra* note 43, at 10 ("Because consolidation can occur rapidly while proof of product use takes time, it is impractical—if not impossible—to require proof of product use up front.").

[48] *See* Fed. R. Civ. P. 41(a)(1)(A).

[49] Case Management Order No. 21 Relating To Limited Third-Party Discovery, *In re Paraquat Products Liability Litigation,* Case No. 3:21-md-3004-NJR (S.D. Ill. Feb. 26, 2024).

[50] Rule 16.1(b)(3)(B) Advisory Committee Note.

[51] Rule 16.1(b)(3).

[52] Rule 16.1(b)(3) Advisory Committee Note.

[53] Rule 16.1(b)(2)(A)(iii).

[54] *See* Fed. R. Civ. P. 41(a)(1)(A).

[55] *In re Chevron U.S.A., Inc.,* 109 F.3d 1016, 1019 (5th Cir. 1997).

[56] *See, e.g.,* The Litigation Transparency Act of 2025, H.R. 1109, 119th Cong. (2025); Protecting Our Courts from Foreign Manipulation Act of 2025, H.R. 2675, 119th Cong. (2025).

[57] *See* Ga. Code Ann. §§ 7-10-1—7-10-11, 9-11-26 (2025); Ind. Code § 24-12-11-5; Kan. Stat. Ann. § 60-226 (2025); La. Rev. Stat. § 3580.13; Mont. Code Ann. § 31-4-108; Okla. Stat. tit. 12, § 3226 (2025); W. Va. Code § 46A-6N-6; Wis. Stat. § 804.01(2)(bg).

[58] In addition to Georgia, Kansas, and Oklahoma, where the bills introduced this year have already been enacted, those states include: Arizona: S.B. 1215, 57th Leg., 1st Reg. Sess. (Ariz. 2025); California: A.B. 743, 2025-2026, Reg. Sess. (Cal. 2025); A.B. 791, 2025-2026, Reg. Sess. (Cal. 2025); Colorado: H.B. 25-1329, 2025, Reg. Sess. (Colo. 2025); Florida: S.B. 1534, Reg. Sess. (Fla. 2025); Iowa: S.F. 53, 91st Gen. Assemb. (Iowa 2025); S.F. 54, 91st Gen. Assemb. (Iowa 2025); S.F. 586, 91st Gen. Assemb. (Iowa 2025); Louisiana: H.B. 432, 2025 Reg. Sess. (La. 2025); Maryland: S.B. 985, 2024 Reg. Sess. (Md. 2024); Massachusetts: S. 680, 194th Gen. Ct. (Mass. 2023); H. 1182, 194th Gen. Ct. (Mass. 2025); H. 1861, 194th Gen. Ct. (Mass. 2025); Minnesota: S.F. 2929, 94th Leg. (Minn. 2025); H.F. 2677, 94th Leg. (Minn. 2025); Mississippi: H.B. 1260, 2025 Reg. Sess. (Miss. 2025); H.B. 1426, 2025 Reg. Sess. (Miss. 2025); Montana: S.B. 511, 2025 Reg. Sess. (Mont. 2025); Nebraska (L.B. 199, 109th Leg. (Neb. 2025); New Hampshire: H.B. 733, 2025 Reg. Sess. (N.H. 2025); New Jersey: A. 5566, 2024-2025 Reg. Sess. (N.J. 2025); S. 4374, 2024-2025 Reg. Sess. (N.J. 2025); New York: A.B. 00804-C, 2025 Gen. Assemb. (N.Y. 2025); A.B. 03225, 2025 Gen. Assemb. (N.Y. 2025); A.B. 07599, 2025 Gen. Assemb. (N.Y. 2025); A.B. 00240, 2025 Gen. Assemb. (N.Y. 2025); S.B. 1104, 2025 Gen. Assemb. (N.Y. 2025); S.B. 3666, 2025 Gen. Assemb. (N.Y. 2025); North Dakota: H.B. 1372, 69th Leg. Assemb. (N.D. 2025); Ohio: H.B. 105, 135th Gen. Assemb. (Ohio 2023); S.B. 10, 136th Gen. Assemb. (Ohio 2025); Rhode Island: H.B. 5907, 2025 Reg. Sess. (R.I. 2025); S.B. 534, 2025 Reg. Sess. (R.I. 2025); South Dakota: S.B. 175, 2025 Reg. Sess. (S.D. 2025); and Texas: S.B. 1200, 89th Leg. (Tex. 2025); S.B. 2954, 89th Leg. (Tex. 2025); S.B. 3025, 89th Leg. (Tex. 2025).

[59] *See* John H. Beisner, Jordan M. Schwartz, & Alexander J. Kasparie, *Grim Realities: Debunking Myths in Third-Party Litigation Funding* (U.S. Chamber Institute for Legal Reform, Aug. 29, 2024); John H. Beisner, Michael E. Leiter, James E. Perry, & Jordan M. Schwartz, *ILR Briefly: A New Threat: The National Security Risk of Third Party Litigation Funding* (U.S. Chamber Institute for Legal Reform, Nov. 2, 2022).

[60] *See Mass Arbitration Shakedown, supra* note 18, at 32-34.

[61] *See, e.g.,* U.S. Chamber Institute for Legal Reform, "Manipulative Legal Advertising: The Ethical and Health Risks of Misleading Lawsuit Ads" *and* "Lawyers Near Me: The Scoop Behind Trial Lawyer Advertising," News & Events – Blog (Feb. 29, 2024).

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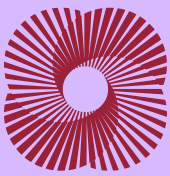

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