Legal System Abuse:
State of the Risk

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The conversation adapts to evolving challenges.

Even as general economic inflation slows, insurance underwriting losses for key areas of the property casualty sectors – personal auto, homeowners, commercial auto, and commercial multi-peril – continue to exceed expectations. Therefore, Triple-I remains watchful of key drivers of claims costs beyond the overall rate of inflation.

Actuaries and industry-based researchers work to capture how these trends affect rates. In line with this mission and in conjunction with our efforts to raise awareness of the barriers to coverage availability and affordability, we collaborated with other industry thought leaders to offer a new term: **legal system abuse**.

Key drivers of incurred losses, beyond general inflation:

- soaring litigation costs
- expanding definitions of liability
- systemic issues and trends

What is Legal System Abuse?

Triple-I defines legal system abuse as policyholder or plaintiff attorney practices that increase costs and time to settle insurance claims. While litigation is generally considered a policyholder's last resort, legal system abuse can occur when a disputed claim could have been resolved without judicial intervention. Fraudulent or unnecessary litigation racks up attorney and court fees that increases costs for insurance operations and policyholder pricing. Industry analysts have attributed rising claim costs to specific litigation trends and practices, such as an increase in outsized verdicts (typically defined as awards exceeding $10 million), dodgy claims filing tactics, and third-party funding of lawsuits.

For example, some litigants leverage assignment of benefits (AOB) to force undue payouts in the homeowners and auto insurance market. They involve some parties that may not necessarily be at fault by misusing the AOB option to overextend claim allegations. In Louisiana, legal system abuse may be costing residents more than $1,100 annually, according to the American Tort Reform Association.

The Insurance Research Council has found Louisiana to be the least affordable U.S. state for auto and homeowners insurance. The litigation rate for personal auto claims is more than twice the national average and surpassed in the rankings only by Florida. Homeowners claims in Louisiana were 12 times more likely to involve litigation, compared with all other states except Florida.

The latest research sheds light on solutions for coverage affordability.

The rise in class-action and government enforcement lawsuits, especially those concerning privacy violations, may be placing a substantial financial strain on organizations and their insurers, according to a report published by Duane Morris LLP, an insurance defense firm. The two-year settlement total (2022-2023) "eclipses any other two-year period in the history of American jurisprudence."

Triple-I's most recent sponsored research study, "Impact of Increasing Inflation on Personal and Commercial Auto Liability Insurance," examines the surge in U.S. auto insurer claim payouts due to economic and social inflation. Between 2013 and 2022, a perfect storm of economic and social inflation fueled a $96 billion to $105 billion increase in combined claim payouts for U.S. personal and commercial auto insurer liability. While the study does not attribute all the increase to legal system abuse or litigation, the authors offer insights into how drawn-out lawsuits can factor into rising costs. Results indicate that these and other factors beyond general economic inflation combine to act as a loss driver, potentially outpacing inflation in the overall economy by two to three percent per year.

Institute for Legal Reform published Tort Costs in America An Empirical Analysis of Costs and Compensation of the U.S. Tort System, an analysis of data from 2016 to 2020 and studies development of tort costs.

"Overall, the direct economic costs of the tort system have grown at an annual rate of six percent a year over the period 2016 to 2020, with commercial liability growing at a faster rate than personal or medical professional liability... This rate exceeds both the growth in inflation during that period, which averaged 1.9 percent, and GDP, which grew at 2.8 percent over the same period. Because growth in the tort system has outpaced GDP, tort costs as a percentage of GDP grew from 1.88 percent to 2.13 percent. This result has been exacerbated by the contraction in GDP in 2020 caused by COVID-related shutdowns, but even through 2019 tort costs grew at a faster rate than GDP."

Smaller, more niche markets are facing the issue of increased litigation costs, too. A 2023 report, "Medical Malpractice Claims-Made Social Inflation and Loss Development Report," reviewed data from the National Practitioner Data Bank (NPDB) – a federal dataset that collects information on, among other things, malpractice payments. Findings indicate that the pace of settlements larger than $1 million has accelerated.

A 2022 report on the architect and engineers (A&E) professional liability insurance market, which has implications for the construction industry, reveals that 63 percent of A&E insurers reported an increase in claims severity, 31 percent reported a rise in the frequency of claims, and 31 percent attributed higher expenses as an upward driver of overall claim costs. The report also states that 13 percent of the payouts fell between $10 million and $19.9 million, amounts high enough to qualify as outsized verdicts by the insurance industry.

Recruitment for big payouts rises as the TPLF industry hunts profits.

The high fees and interest rates charged by third-party litigation funders (TPLF) can discourage prompt and reasonable settlements, even of rightful claims. It would make logical sense that attorneys and, thereby, funders would only accept meritorious cases in these arrangements and then push hard for a feasible recovery, even if that involved a pre-trial settlement to avoid the costs of drawn-out litigation. However, when attorneys directly receive TPLF, either on a case-by-case or portfolio basis, these presumptions might not always hold when their firm no longer bears the full financial risk of the lawsuits they pursue.

Lack of transparency regarding which cases are funded makes it impossible to hold attorneys or their clients accountable to good faith standards. Providing more discretionary funding to the litigation industry can escalate challenges for insurance affordability. Law firms can use the money to nourish more lawsuits seeking giant settlements – a boon for the firms and the funders. This effort can

Consumers understand connection between attorney advertising and insurance costs.

Among participants* in a 2022 survey:

50%	59%	57%
agree attorney advertising has increased in the past year.	agree attorney advertising increases the cost of insurance.	agree the number of personal injury lawsuits today is too high.

*Excludes participants who responded "don't know"

Source: Insurance Research Council

manifest in the proliferation of advertising, in which plaintiff firms dangle the lure of a financial windfall through multiple channels– highway billboards, broadcasts, and social media.

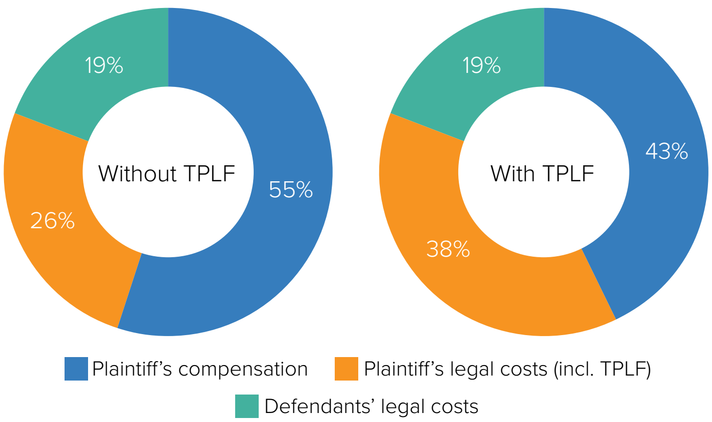
The Wall Street Journal reports that nearly 800,000 television advertisements for mass tort cases ran in 2023, with costs exceeding $160 million. The article also revealed the average loan directly to law firms fell in the range of $20 million to $100 million, with returns for funders expected to climb as high as 20 percent. Meanwhile, federal civil cases saw a 24 percent increase in filings during 2023, a trend driven by a rise in mass tort lawsuits.

However, the regulatory framework has begun to recognize the potential problem behind the lack of transparency. For instance, Triple-I chief insurance officer, Dale Porfilio, was invited to provide testimony before the Ohio State Senate's judiciary committee on why residents have a right to know if a third-party litigation funding firm is financing a lawsuit against them. A Florida Senate panel approved an insurance industry-backed bill that cracks down on the TPLF industry, as reported by Florida Politics.

A Government Accountability Office (GAO) report, Third-Party Litigation Financing: Market Characteristics, Data and Trends, examined the role of TPLF in consumer and commercial markets. One of the key takeaways was an outline of the gaps in crucial public data along with six policy options to explore mitigation. Additionally, the federal Protecting Our Courts from Foreign Manipulation Act of 2023, was introduced in 2023 by legislators concerned about the potential opportunity for harmful influence on the U.S. legal system via TPLF firms.

Despite the likely reduced value for plaintiffs – as much as 12 percent according to Swiss Re analysis – the TPLF market continues to grow, becoming more complex over the past decade. TPLF is a global industry, but estimates of the market size rank the U.S. as number 1 with a 52 percent share of activity.

Distribution of tort system actual costs in 2016 without TPLF (left) and with TPLF



Source: Swiss Re, Institute for Legal Reform, Research Nester

Legal system abuse plagues the Florida insurance landscape.

Florida has the highest average property insurance premiums in the nation. At least nine insurers who conducted business in the state became insolvent since 2020, and several others either left the state or limited the number of new homeowners insurance policies offered to residents. While climate risk plays a significant role, insurers attribute the even more unpredictable confluence of attorney fee mechanisms, AOB, and other legal system abuse tactics.

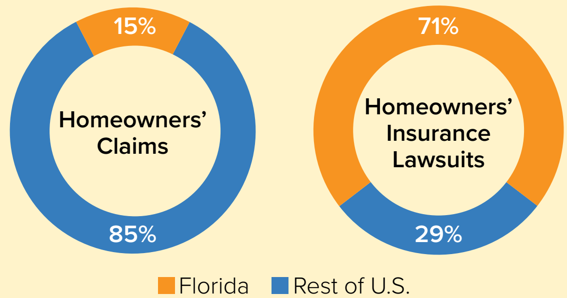
The state's Office of Insurance Regulation recently looked at 58,395 insurance claims leading to lawsuits in 2022. Their analysis revealed that Florida accounts for nearly 71 percent of the nation's homeowners' insurance lawsuits, yet only 15 percent of all U.S. homeowners' insurance claims are filed within the state. Litigated claims were more than six times as expensive as other claims.

Key findings also pointed to regional disparities. In Miami-Dade, Broward, and Palm Beach counties, about 28 percent of closed claims led to lawsuits, more than double the state average of 10 percent. The Florida Insurance Commissioner, Mike Yaworsky, admits the high disparity in litigated claims in this region contributes to increased insurance costs statewide.

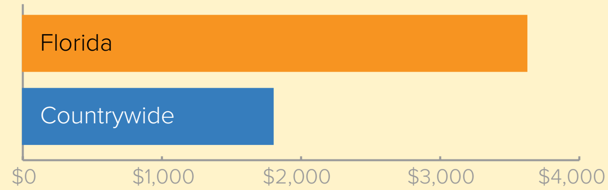
Legal system abuse persists as an unpredictable and yet more preventable component of a hard-to-measure force that shifts loss ratios for insurers and disrupts forecasts, rendering cost management more challenging. Since the bill for extraneous litigation ultimately flows to consumers, impacting coverage availability, Triple-I will continue to monitor these issues. We remain committed to facilitating conversations that can help uncover actionable strategies to curb lengthy and unnecessary litigation.

Florida By the Numbers

Florida leads the nation in homeowners' insurance-related litigation, despite accounting for less than 10 percent of claims, with a corresponding impact on policyholder premiums.



Average 2024 Homeowners' Insurance Premium (projected)



Source: Triple-I analysis of Florida Office of Insurance Regulation and National Association of Insurance Commissioners data

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