

By Michael Crist

Where plaintiff advertising in mass tort cases assaults the cognition, recall, and bias of litigants, witnesses, and juries, an analytical approach to the admission of advertising evidence is required to neutralize the skewed playing field.

The Effect of Saturation Advertising on Claims, Courts, and Memories

Change comes not from the middle, from those who are content with the status quo, but from those on the ragged edge, railing against a system of perceived injustices, and from those on the lunatic fringe, where reason and reality

are obscured behind a wave of pain and emotion. Such tidal waves of emotion are not evident in contractual negotiations or the rarified realms of patent litigation. They are not evident in zoning disputes over the height of a building. But they are manifest in the world of tort litigation, particularly in mass torts, where all jurors can imagine themselves as plaintiffs, and where many plaintiffs either have, or could suffer, grievous injury. Saturation advertising in mass tort litigation plays upon those emotions and fears, and by doing so, it generates claims, taints jury pools, and changes the litigation landscape. This article will briefly outline some of the issues, stresses, and abuses related to saturation advertising that have

plagued mass tort litigation and how the courts and defendants have tried to control these issues with varying degrees of both success and outright failure.

Mass Torts

Regardless of the product at issue, mass torts are characterized by numbers, complexity, and repetition. The huge number of existing and potential plaintiffs and defendants, products, courts, jurisdictions, lawyers, and laws create stresses upon the system of justice. *See generally* Am. Academy of Actuaries, Mass Tort Subcommittee, *Overview of Asbestos Issues Claims and Trends*, (2007); Charles Alan Wright et al. §3862 *Transfer for Coordinated Pretrial Proceedings Under 28 U.S.C.A. §1407—Overview of Multidistrict Litigation*, 15 Fed. Prac. & Proc. Juris. §3862 (4th ed. Apr. 2016). As noted by the Supreme Court, American courts have been besieged by an “elephantine mass of asbestos cases [that] defies customary judicial administration.” *Norfolk & W. Ry. Co.*, 538 U.S. at 166; cf. *Metro N.*



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Commuter R.R. v. Buckley, 521 U.S. 424 (1997). The mass pummels defendants, their attorneys, and the courts into submission, thereby forcing the creation of specialized courts with streamlined procedures that may hamper both the courts' and the defendants' ability to distinguish between truth or fiction, fact or fraud, and genuine or apocryphal claims. For instance, in both the Texas silica litigation and Garlock bankruptcy cases, evidence of fraud, double dipping in multiple recovery systems, and falsification of evidence were not discovered until thousands of cases had been processed. *In re Garlock Sealing Techs., LLC*, 504 B.R. 71, 73 (Bankr. W.D.N.C. 2014); *In re Silica Prods. Liab. Litig.*, 398 F. Supp. 2d 563, 597 (S.D. Tex. 2005); See *Expert Report of Lester Brickman, In Re Garlock Sealing Technologies LLC, et al.*, Case No. 10-BK-31607 (Bankr. W.D. N.C. Apr. 23, 2013).

Complicated issues of general and specific causation also predominate. While the issue of whether a substance can cause a disease is universal, whether that substance, as incorporated into a specific product, caused the disease in a particular plaintiff with a specific exposure, is always case specific. Resolving these issues requires a nuanced analytical framework and legal process, but saturation advertising instead provides prospective jurors with a biased, preconceived, deceptively simple theory of liability that frames and directs their inquiry and analyses to the detriment of defendants. The detailed nature of the legal, scientific, and factual issues tends to result in lengthy trials with the attendant demands on the resources of judges, attorneys, and jurors. The greater the length of the trial, the greater the likelihood that educated persons with gainful employment will be excused from jury duty in a particular case. The resulting jury may thus have a disproportionate percentage of the retired, the young, the injured, and the currently unemployed. It is to those persons that saturation advertising is targeted.

Saturation Advertising

Imagine trying a case in which opposing counsel was given carte blanche to communicate with the jury by reaching into their homes and playing upon

their greatest fears, passions, prejudices, and avarices. Where an attorney would warn of dangers lurking in homes, work places, and even the bodies of the jury persons themselves. Where the low, sonorous voice of the advocate would advise that both the jurors and their loved ones may have already been inflicted with disease and also deserving of millions of dollars in compensation, despite the lack of overt symptoms. Where this same voice would inform that billions of dollars have already been paid to persons just like them, persons like the plaintiff in this case, and then would proceed to describe how such jurors meet each, as well as every element of the burdens of proof for negligence and strict liability. That voice would then tell them that your client was guilty, knew about the dangers, and then negligently and recklessly disregarded them. Imagine further that this message had been delivered since childhood on television and radio, and then later reinforced by attorney websites, YouTube channels, Twitter feeds, and supposedly unrelated, neutral third-party organizations until the message had the patina of an unassailable truth.

Surely, on an individual basis, such conduct is not only unimaginable, but would also be criminal. See generally Fla. Stat. §918.12. Yet, on a national basis, it is “merely” advertising—saturating advertising, which manipulates and controls the preconceptions of a jury while trolling the waters for new plaintiffs and defendants. The insidious effects of such practices are legion, but both courts and corporations have proved largely impotent in their response. Some of this may result from antiquated notions of attorney advertising, which may have been demeaning to the advertiser, but otherwise innocuous. AMC's *Better Call Saul* is an example of the genre of attorney advertising that had all the grace and majesty of a 1970s used car salesman but was otherwise harmless. See *Better Call Saul* (AMC 2015).

However, mass tort advertising is far more sophisticated. Written advertisements are targeted to the elderly, union members, and trade organizations. Such efforts are, in turn, supported by a sophisticated network of internet advertising that

runs the gamut from simple attorney websites to YouTube, a website more renowned for cat videos than scientific epiphanies. Indeed, in 2016, a simple mouse click of the term “best mesothelioma lawyer” on an internet search engine cost an advertiser \$935.71. See “The Most Expensive 100 Google Adwords Keywords in the US,” available at <https://searchenginewatch.com> (last

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visited May 31, 2016). The terms “mesothelioma settlement” and “mesothelioma lawsuit settlements” also appeared in the top 50 ad words. *Id.* Such ad words are designed to move a website or advertisement toward the top of search engine results, thereby increasing traffic. For instance, when Googling “mesothelioma” on January 28, 2017, the search produced 7.47 million hits in 0.51 seconds. That list was populated with multiple advertisements for plaintiffs' attorneys, as well many websites sponsored by such attorneys, which provide the plaintiffs' view of the disease, the science, and the billions available.

The first website listed in this search was Asbestos.com, “brought to you by The Mesothelioma Center,” which to some would seem an independent source of unbiased information, but which was actually sponsored by the Peterson Firm, LLC, as visible at the very end of a long series of articles. See Asbestos.com, <https://www.asbestos.com/> (last visited Feb. 2 2017). Such tactics, common in modern society,

tend to blur the lines between news and advertising, and between fact and opinion. Similarly, another attorney, touting himself as “America’s Lawyer,” sponsors a website of news articles carefully chosen or authored, a radio station, a pod cast, and a Russian television program. RT, Question More, <https://www.rt.com/shows/americas-lawyer/> (last visited Feb. 2, 2017).

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Just as advertisers can target their marketing to particular demographics for maximum effect through the analysis of “big data,” so too can defendants analyze such “big data” to provide analytics regarding the volume, location, targeted demographic, and content of multiple advertising streams and compare all this to the incidence, nature, and timing of product complaints, litigation filings, medical claims, and plaintiff allegations.

A search for that attorney’s name resulted in over 11,000 hits on YouTube alone. As expected, these are publicity streams for firms that handle mass tort claims.

In asbestos, multiple advertisements and websites specifically list the type, brand name, and manufacturer of prod-

ucts. See, e.g., Asbestos.com, <https://www.asbestos.com/companies/> (last visited Feb. 2, 2017); Cooper, Hart, Leggiero, & Whitehead, PLLC, http://www.asbestos-attorney.com/asbestos_product_brands.htm (last visited Feb. 2, 2017); Field Fisher, <http://www.fieldfisher.com/personal-injury/mesothelioma-claims/asbestos-companies-database> (last visited Feb. 2, 2017). They may further list the jobsites and locations where such products were used, and then provide graphic descriptions of the diseases allegedly caused by those products, as well the millions of dollars that a firm has recovered for similarly situated persons. In various forms, most national and regional plaintiff firms have pursued such strategies. For instance, Asbestos.com counsels that companies “not only knew about the potentially deadly effects of exposure but also went to great lengths to conceal the information from workers and consumers.” *Id.* Such websites may further describe the causes of action such as negligence and strict liability as paths to recovery, and by doing so, provide both plaintiff and jury with the necessary elements of the causes of action long before trial.

Such advertising is not simply limited to asbestos litigation. It applies to all mass tort claims. At times, it seems that any scientific study (regardless of merit or peer review) that captures the attention of the 24-hour news cycle serves as a basis for new advertising to solicit clients. See generally Juurlink, Park-Wyllie, & Kapral, *The Effect of Publication on Internet-Based Solicitation of Personal-Injury Litigants*, 177 *Canadian Med. J.* 1369, (2007). Such advertising has targeted hip implants, pelvic mesh, welding fumes, medical devices, drugs, formaldehyde, talc, and a panoply of other topics. After the recent talc cases with verdicts of \$55, \$70, and \$72 million last year, Johnson and Johnson’s counsel argued that the entire jury pool was tainted by saturation advertising; over 23 percent of the plaintiffs’ counsel’s national advertising budget was targeted to the trial area between March to May of last year. See Malerie Ma Roddy, *Forum Shopping in Talc Cases*, *Product Liability & Mass Tort Blog* (Dec. 7, 2016), available at <http://www.productliabilityandmasstorts.com> (last visited Feb. 20, 2017); Reuters, *Johnson & Johnson Hopes*

to Reverse Baby Powder Lawsuits (Nov. 7, 2016), available at <http://fortune.com> (last visited Feb. 20, 2017).

Indeed, the effect of such advertising is profound. Jury consulting experts preach the benefits of simplicity, primacy, and frequency. Make the arguments simple, frame the important issues first, and then repeat and reinforce these issues throughout the trial. For defense attorneys in trial, this process begins with voir dire and ends with closing arguments. However, for plaintiffs’ attorneys, the process begins with daytime advertising designed to reach persons who are out of work—persons that are not only potential plaintiffs, but also the primary persons available to serve on juries in complex cases that may last weeks or even months.

In fact, this advertising supports a trial strategy used by many plaintiffs’ attorneys. The “reptile theory” seeks to pit the jury against the defendants by making the jury feel that the defendants’ actions and products threaten themselves, their families, and their societies. Ball & Keenen, *Reptile: The 2009 Manual of the Plaintiff’s Revolution* (2009). It is thus a blatant appeal to emotion, sympathy, and anger. Viewed in that light, the reptile theory and saturation advertising go hand in hand in breaching the “golden rule” of litigation. This rule was designed to provide neutrality by preventing jurors from placing themselves into the shoes of a plaintiff. See generally Bethany Leigh Rabe, *Golden Rule: Arguments Not Okay on Liability Issues*, ABA (Apr. 17, 2013), available at <https://apps.americanbar.org> (last visited Feb. 20, 2017).

With such saturation advertising, the issue is not whether a jury member has seen such advertisements, but whether it’s even possible that anyone in this society has not. No judge or court will bar an attorney from advertising. That ship sailed long ago. No state bar will stymie such advertising, absent the most egregious frauds. Indeed, advertising is a form of speech, and it is therefore afforded a degree of constitutional protection. Therefore, the issue that arises is how can this information be collected, analyzed, and used by both the courts and defense counsel to neutralize the playing field? See Myers, *Legal Jiu Jitsu: How to Turn the*

Tables on the Plaintiff Bar's Advertising Juggernaut, 2016 IADC Annual Meeting (2016). As such strategies tend to be national in scope, collection and analysis are often better coordinated by national counsel or the client itself.

Big Data as a Tool

Paradoxically, the solution is in the cause of the problem itself. This is, after all, the era of "big data," where computers locate, collect, sift, and analyze massive quantities of data from formerly disparate sources. Just as advertisers can target their marketing to particular demographics for maximum effect through the analysis of "big data," so too can defendants analyze such "big data" to provide analytics regarding the volume, location, targeted demographic, and content of multiple advertising streams and compare all this to the incidence, nature, and timing of product complaints, litigation filings, medical claims, and plaintiff allegations. Analytics can be collected from websites, videos, Google Analytics, Google Ad Words, and third-party services such as X Ante, LLC. Additional information can be collected via discovery, once the defendant demonstrates advertising's potential effect on product identification, recall, and juror bias.

Voir Dire

During voir dire, questions regarding a juror's familiarity with, and reliance upon, such advertising should be permitted. Indeed, while the term "reliance" seems strange in that context, it is appropriate. In toxic tort and pharmaceutical litigation, most, if not all, of a juror's understanding of a particular substance has been derived from such advertising. While the framers of the Constitution may have envisioned the common sense of the common man as a defining characteristic of, and restraint upon, the judicial system, they could not have imagined that this common sense would be subject to the pervasive manipulation produced by a 24/7 umbilical cord to television and the internet.

Now, more than ever, it is important to put the source of a jury's preconceptions into context and then explore whether the individual jurors can move such preconceptions aside—or at least say that they

will. Cognition experts will caution that this is far easier said than done and that pretrial publicity and advertising has a disproportionate effect on a jury's perception of evidence and the resulting verdicts. See Nicole L. Waters, *Jurors 24/7: The Impact of New Media on Jurors, Public Perceptions of the Jury System, and the American Criminal Justice System*, Ctr. for Jury Studies, available at <http://www.ncsc-jurystudies.org/>.

A person tends to believe information that reinforces his or her preconceptions. This is called "reinforcement bias." A person tends to remember what has been repeatedly encoded and reinforced. See Elizabeth F. Loftus, *Reconstructing Memory: The Incredible Eyewitness*, ABA 188, 188–93 (1975); Kevin S. Krug, *Eyewitness Memory and Metamemory in Product Identification: Evidence for Familiarity Biases*, J. of Gen. Psychology, 132, 429–445 (2005). It is for this reason that the same set of operative facts can lead to drastically different perceptions of reality, veracity, and history. One need only place the adherents of MSNBC and Fox News in the same room to see this bias in action. As time passes, persons also tend to forget or confuse, or both, the source of the information. *Id.* at 432. Thus, information derived from attorney websites, photographs, advertisements, and leading questions may be confused with more neutral sources.

A verdict based upon marketing would be truly unfortunate. A trend of verdicts based upon advertising and faulty memory of both plaintiffs and juries would be catastrophic. In fact, for mature toxic torts, the simple truth is that plaintiffs may be better able to remember the comments of their attorneys and their attorneys' advertising than the specific date, name, manufacturer, use, and duration of use of a product only tangentially encountered 30 to 50 years ago, when there was simply no reason to encode, remember, or recall such use until the advent of the trial. *Id.* Experts can explain source monitoring and source confusion, encoding failures, post-event reformation of memory through suggestive inputs, transience of memory (fading), and the possibility of product identification based upon familiarity with an item, rather than its actual

use, in some situations. The common perception of memory as a photograph or video recorder is simply myth. Memories are reconstructed, recast, and reformulated with every retrieval. See Bernstein, D. M., & Loftus, E. F., *How to Tell if a Particular Memory Is True or False*, Perspectives on Psychological Science, 4, 370–374 (2009).

This reconstruction process is universal. Where internet access is ubiquitous and Facebook features targeted news feeds, the reality is that everyone with a cell phone has a computer in their pocket, which they now use to refresh and reformulate their memories on an almost instinctual basis. For all but the aged or the computer illiterate, it is as natural and as easy as eating. Asking a jury to disregard all prior information, and further to disregard the impulse to check the validity of statements during the course of a trial, is a matter of critical importance, but ultimately it is one that may be futile. Even asking jurors to disregard their cell phones during the course of a trial may increase their feelings of isolation, anxiety, and ire against both the court and the parties. In all but the most frivolous cases, jury anger increases verdict amounts, and lengthy convoluted jury instructions and admonitions, which at times border on incomprehensible, do little to cure this.

Trial

At trial, publicity and advertising is relevant to multiple potential issues, depending upon the type of case. For instance, for long-standing mass torts in which the plaintiffs have been indoctrinated in the potential hazards of a product, a delay in filing could raise a statute of limitations defense. Also, when the plaintiffs' counsel claims that prior complaints or lawsuits demonstrated either the defective nature of the product or the defendant's notice of that defect, the defense could postulate that the increased complaints merely coincided with saturation advertising campaigns, instead of a product defect or notice. Similarly, for situations in which prolonged exposures produced no reported injuries or symptomology until the airing of mass media campaigns, such advertising provides a method of attacking credibility of the complaint and the veracity

of the reported medical symptoms. It may also raise the issue of whether the injuries created the litigation, or whether the litigation spawned the injuries. Finally, targeted advertising in a location could taint the entirety of the jury pool, making it difficult, if not impossible, to locate a neutral and unbiased jury. This is particularly true when the local news media provide a

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running commentary on the allegations, evidence, and trial. Such attention, when combined with the underlying advertising, creates two simultaneous trials: one in the court of law, and the other in the court of public opinion. It is naïve to believe that the first is completely immunized from the second.

The chief obstacle to a defendant's use of advertising information in a mass tort trial is the plaintiffs' counsel's Federal Rules of Evidence 401 and 403 claim that the information is overly prejudicial, is not relevant, and would require a mini-trial of extraneous matters. See Kelly Brilleaux & Stephen Myers, *Reevaluating the 401/403 Balance in 21st Century Mass Torts*, For The Defense, Feb. 2014, at 48–53. The majority of courts seem inclined to accept

these arguments, but most courts have not fully considered the science of cognition in rendering their decisions. In the *Norplant* litigation, the court granted a motion in limine to preclude arguments that “attorney advertisements offer[ed] the prospect of easy money” because such arguments “inject[ed] the highly prejudicial theory that plaintiff lawyers have created this litigation.” *In re: Norplant Contraceptive Products Liability Litigation*, No. MDL 1038, 1997 WL 81087, at*1 (E.D. Tex. 1997). The court concluded that there were less prejudicial means of challenging the credibility of the plaintiffs, where issues related to the importance of declining sales as evidence of defect had been excluded.

The opposite conclusion was reached in *Re Ethicon Pelvic Repair System Litigation*, where the plaintiff filed a motion in limine to exclude any references that the litigation is “attorney driven” or that “lawyer advertising motivate[ed] suits.” See Mem. of Law in Support of Pl.’s Omnibus Mot. in Limine, *Dianne Bellew v. Ethicon, Inc., et al.*, 2:13-cv-22473 (S.D. W.V. Sept. 3, 2013) (No. 195). The court had previously ruled that whether the plaintiff’s suit was prompted by television advertising was probative of her credibility regarding her injuries and denied this motion as well. Mem. Op. and Order on Mots. in Limine, *Dianne Bellew v. Ethicon, Inc., et al.*, 2:13-cv-22473 (S.D. W.V. Sept. 3, 2013) (No. 287).

The *In re Welding Fume Products Liability Litigation*, the court held that the “[t]he bottom line is: as much as possible, evidence of other Welding Fume lawsuits and of lawyer advertising will be excluded.” *In re Welding Fume Prods. Liab. Litig.*, No. 1:03-CV-17000, 2010 WL 7699456, at *77 (N.D. Ohio June 4, 2010). However, the court would allow questions regarding advertising in limited situations. For instance, a description of the advertising was permitted if the plaintiff saw advertising that listed symptoms of fume inhalation before he visited a doctor for those symptoms, if the plaintiff saw such listed symptoms before visiting the plaintiff’s neurologist, or if the plaintiff’s counsel argued that the plaintiff would not have had sufficient information to report such symptoms to a company doctor. Even

then, however, introduction of the advertising itself was not permitted, and the defendant was required to minimize the use of the term “advertising.” *Id.*

More recently, talc litigation has brought the importance of such issues to the forefront. Defense counsel for *Johnson & Johnson* noted that in the one and half years prior to trial, plaintiffs’ firms aired over 57,000 television advertisements throughout the country. Defendants’ Motion to Change Venue for the Upcoming September Trial, *Hogans v. Johnson & Johnson*, Case No. 1422-CC09012-01 (Cir. Ct. St. Louis Miss. July 28, 2016); Defendants Johnson & Johnson and Johnson & Johnson Consumer Inc.’s Motion to Transfer Venue or Continue the Feb. 6, 2017 Trial Date Based on Jury Pool Taint, *Swann v. Johnson & Johnson*, Case No. 1422-CC09326-01 (Cir. Ct. St. Louis Mo. Jan 17, 2016). Between bellwether trials in St. Louis, plaintiffs aired approximately 39 television and 84 radio advertisements per day, respectively 2 to 3.5 per hour in St. Louis alone, numbers higher than in any other part of the country. Moreover, those advertisements did what plaintiffs’ counsel could not do at trial. They inundated potential jury members with unsubstantiated, inflammatory, and prejudicial innuendo. They highlighted verdict amounts, used cartoon characters to mock the defendants, asserted innuendo as facts, compared beauty products to tobacco, and repeatedly claimed that disputed medical and scientific issues had been resolved as unassailable facts in favor of the plaintiffs.

By conducting statistical surveys of the jury pool, the defendant highlighted the jury pools’ knowledge of the advertising and its effect on the jury’s perception of the product, the defendant, and the defendant’s claimed knowledge of defect. The combined effect was to taint the jury pool against the defendant and render the jury less inclined to process contrary information favorably. Moreover, by analyzing the text of the advertisements and the frequency of references to law firms, the defendant argued that much of the media campaign was designed to inundate potential jurors with the plaintiffs’ view of the allegations, rather than to generate additional clients. *Id.* Counsel even noted that one foreperson could quote the advertis-

ing word by word because of its endemic nature and his profession as a media producer. *Hogans v. Johnson & Johnson*, Cause No. 1422-CC09012-02, 2016 WL 6405480 (Mo. Cir. Ct. Sep. 27, 2016). Such situations make real the thought exercise at the beginning of this article in which attorneys communicated with juries during the course of a trial.

The Conclusion

Saturation, mass-market litigation advertising is a genie that effectively bestows mountains of gold upon the plaintiffs' bar, and it is one genie that will never be returned to the bottle. Combined with the trial strategies espoused by the reptile theory, the human response of sympathizing with the injured, the frailties and peculiarities of memory, and the pressures of streamlined, systematized mass tort litigation, the playing field is decidedly tilted toward the plaintiffs. While the populace may view litigation with a nostalgic sense of a little David battling the corporate Goliath, the reality is that David was long ago supplanted by national, sophisticated plaintiffs' law firms with massive financing from prior verdicts, settlement matrices, and even hedge funds.

Reminding courts, judges, and juries of the potential influence and manipulation of memory, testimony, and perception is necessary to regain common ground. This can only be done through the collection, analysis, and use of data regarding advertising and publicity that starts with the monitoring of internet traffic, Google ad words and analytics, and attorney websites. That data must also be requested through discovery, with detailed descriptions to the court of its relevancy and importance. Motions in limine, specific requests for voir dire, motions to transfer venue, and examinations of a plaintiff regarding these issues are required. Because a plaintiff may use a defendant's advertising and literature against it as evidence of failure to warn, there is symmetry in using the advertising of the plaintiff's counsel against the plaintiff. Of course, while both affect the claimed knowledge of the plaintiff (and the jury), there is a distinction in that the first is a statement by a party, while the second is a statement by a party's counsel. Even

then, it must be remembered that the potential use of such evidence is a dual-edged sword, which serves to remind the jury repeatedly of the number of pending cases and helps to reinforce the plaintiff's counsel's either explicit or implicit suggestion that the jury's role is to correct societal ills.

As specialized courts have been formed to handle many mass tort claims, the responses of these courts will be most telling. Such courts facilitate management of large dockets with case management orders, standardized discovery, global hearings, streamlined procedures, and rocket dockets for the most injured. See Paul Carrington, *Asbestos Lessons: The Unattended Consequences of Asbestos Litigation*, *The Review of Litig.*, 26, 583-611 (2007). While laudable in goal, the streamlined procedures may hamper a defendant's ability to investigate a particular case, including the effects of advertising. Nevertheless, because such courts are knowledgeable about the volume of litigation, it is hoped (although certainly not proved) that some may be willing to examine the effect of advertising both on the courts' case volume and on the credibility of the testimony brought before them. Unfortunately, there are other courts in which long-standing experience with the volume and repetition of personal injury claims has engendered a numbness that resists novel defenses and theories in favor of sending all matters to a jury, and the rulings produced by such courts will continue to have far-reaching consequences because of the widespread influence of mass torts.

Mass torts capture the imagination and attention of the populace and help to mold the society's view of, and expectations for, litigation. The resulting inflated verdicts tend to normalize higher verdicts throughout the system. They also tend to reinforce the concept, one that cannot be uttered within the confines of the courthouse, that it is the jury system that provides access to medical care that government and business have not. Finally, the expansive introductions of evidence and expert testimony that is common in so much of this litigation is both the cause and the effect of a climate in which "alternative facts" and "fake news" are too often

read and followed without the requisite analyses of their validity or reasoning. Mass tort mania is thus a reflection of our society. 