

# MDL Vetting Rule Needed to Restore Balance

## Vetting Rules Apply to Individual Cases

- Allegations of Exposure
- Allegations of Injury

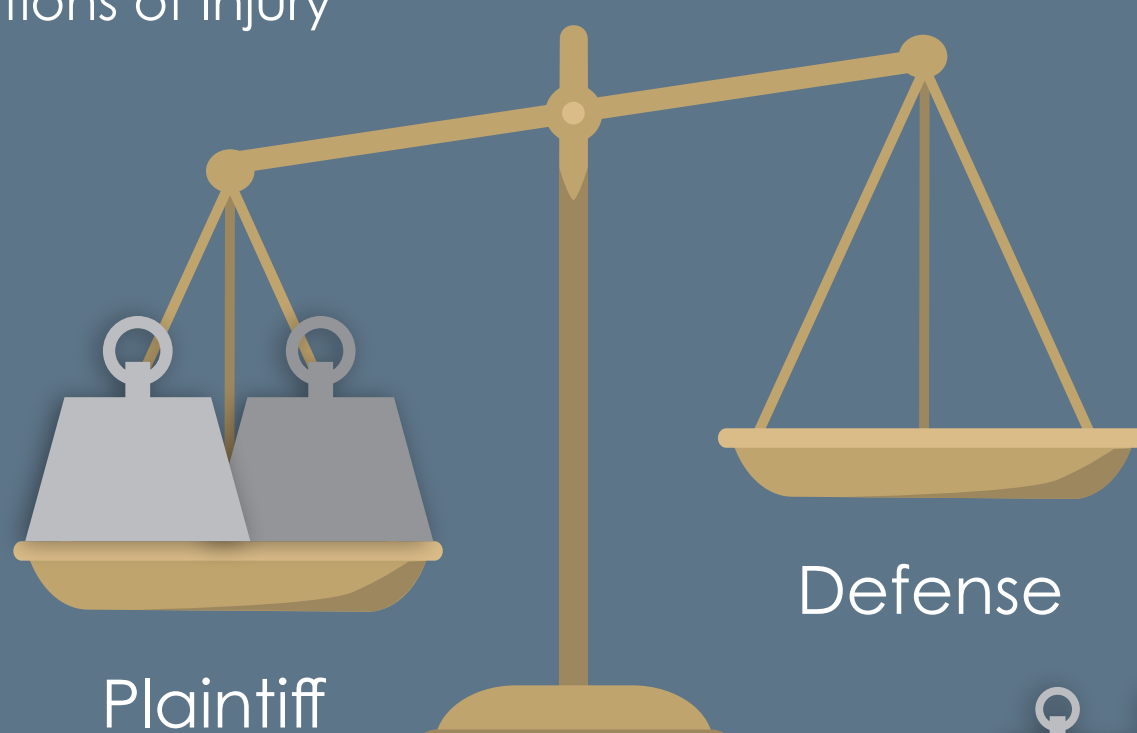


### Procedures available:

- Motion to Dismiss for failure to state claim (Rules 8, 9 & 12(b)(6))
- Summary judgment (Rule 56)
- Certification of evidentiary support (Rule 11)
- Certainty of discovery and disclosure obligations and remedies (Rules 26 & 37)

## Vetting Rules May Not Apply in MDLs

- Allegations of Exposure
- Allegations of Injury



Volume of cases in MDLs makes FRCP vetting rules unavailable for most defendants:<sup>1</sup>

- ~~Rules 8, 9 & 12(b)(6)~~
- ~~Rule 56~~
- ~~Rule 9~~
- ~~Rule 11~~
- ~~Rules 26 & 37~~

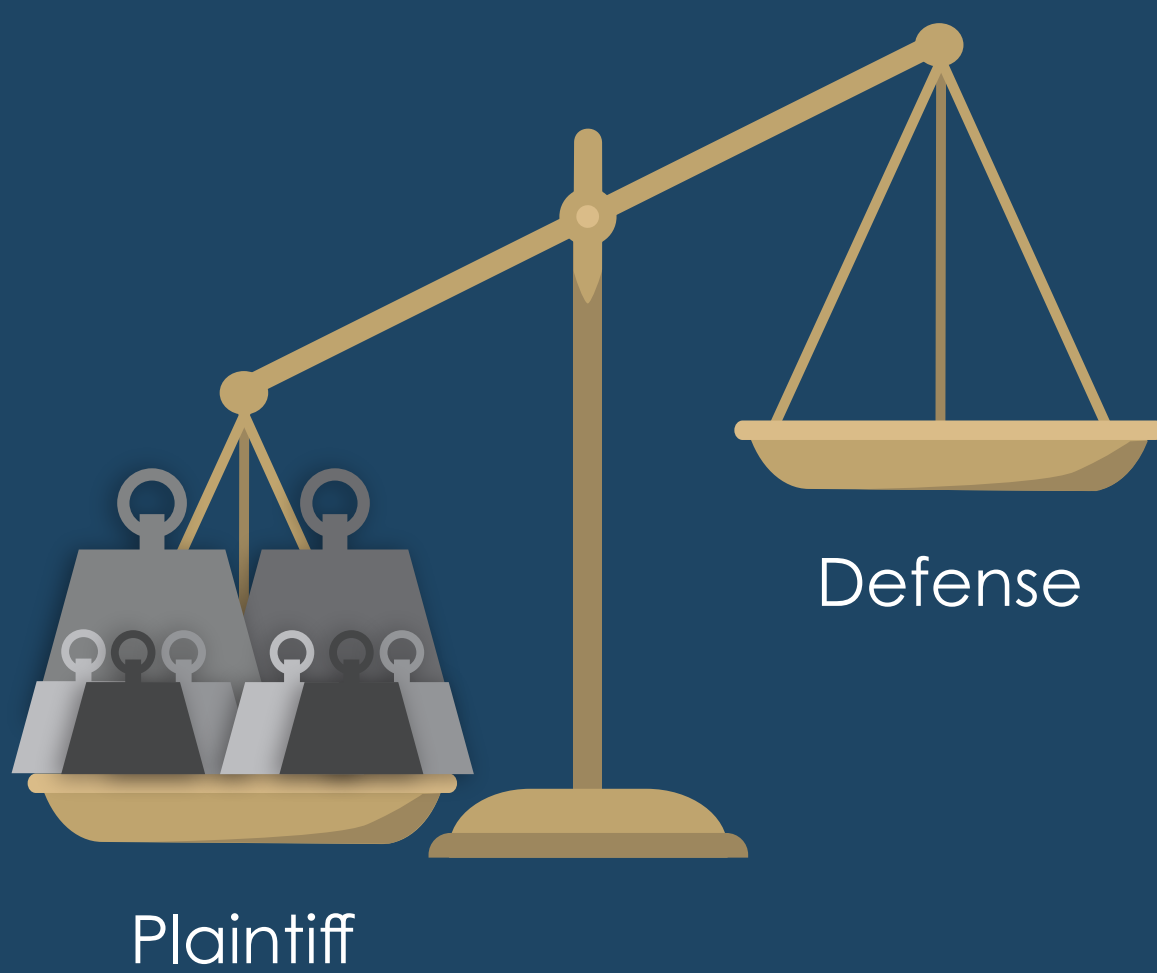


## Practices in MDLs Tilt the Scales

- Allegations of Exposure
- Allegations of Injury

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- Short-form filing
- Direct file to MDLs
- Ad hoc discovery
- Mass advertising campaigns
- Third-party funding
- Multi-plaintiff complaints



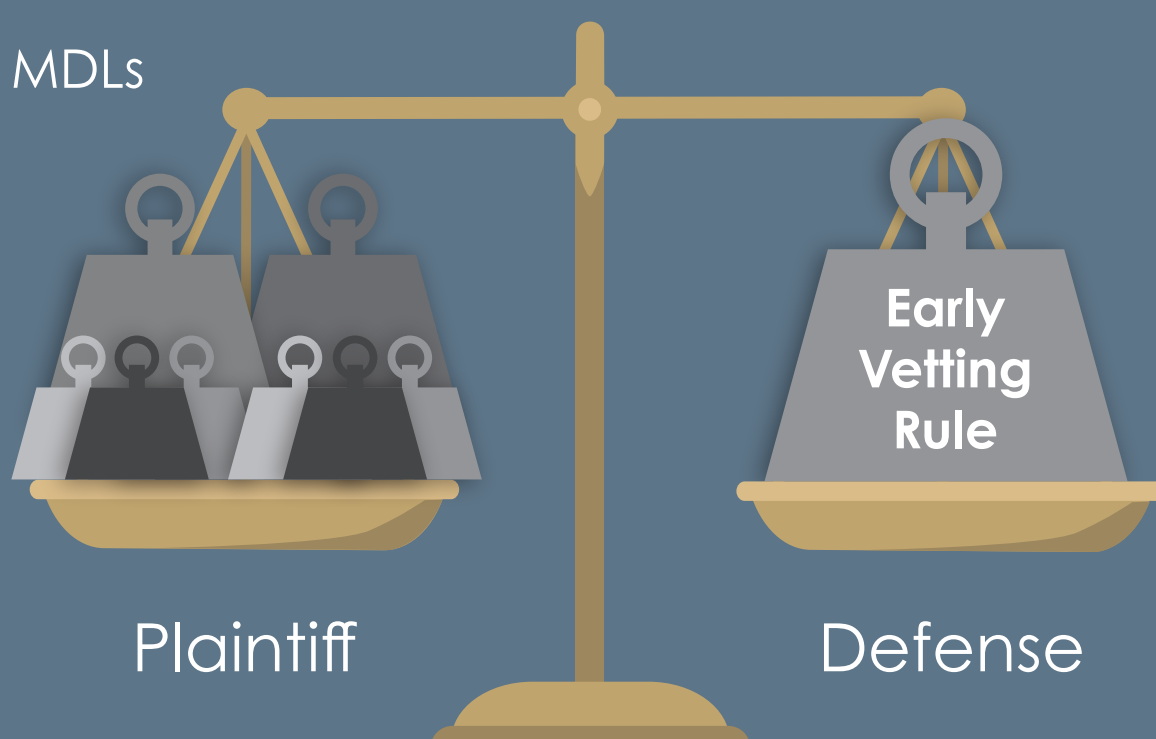
These common MDL practices create an imbalance allowing meritless claims to pile up.<sup>2,3</sup>

## Bringing Balance to Vetting in MDLs

- Allegations of Exposure
- Allegations of Injury

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- Practices in MDLs



New early vetting rule to screen out meritless claims

Sources:

1: Report to the Standing Committee; Standing Committee Agenda Book Jan. 3, 2019 at 160-61.

[https://www.uscourts.gov/sites/default/files/2019-01-standing\\_agenda\\_book.pdf](https://www.uscourts.gov/sites/default/files/2019-01-standing_agenda_book.pdf)

2: Civil Rules Agenda Book Nov. 1, 2018 at 142.

[https://www.uscourts.gov/sites/default/files/2018-11\\_civil\\_rules\\_agenda\\_book\\_0.pdf](https://www.uscourts.gov/sites/default/files/2018-11_civil_rules_agenda_book_0.pdf)

3: CASE STUDY: Vioxx MDL and Settlement: <https://www.rules4mdls.com/case-study-vioxx-mdl>