

MDL Vetting Rule Needed to Restore Balance

Vetting Rules Apply to Individual Cases

- Allegations of Exposure
- Allegations of Injury

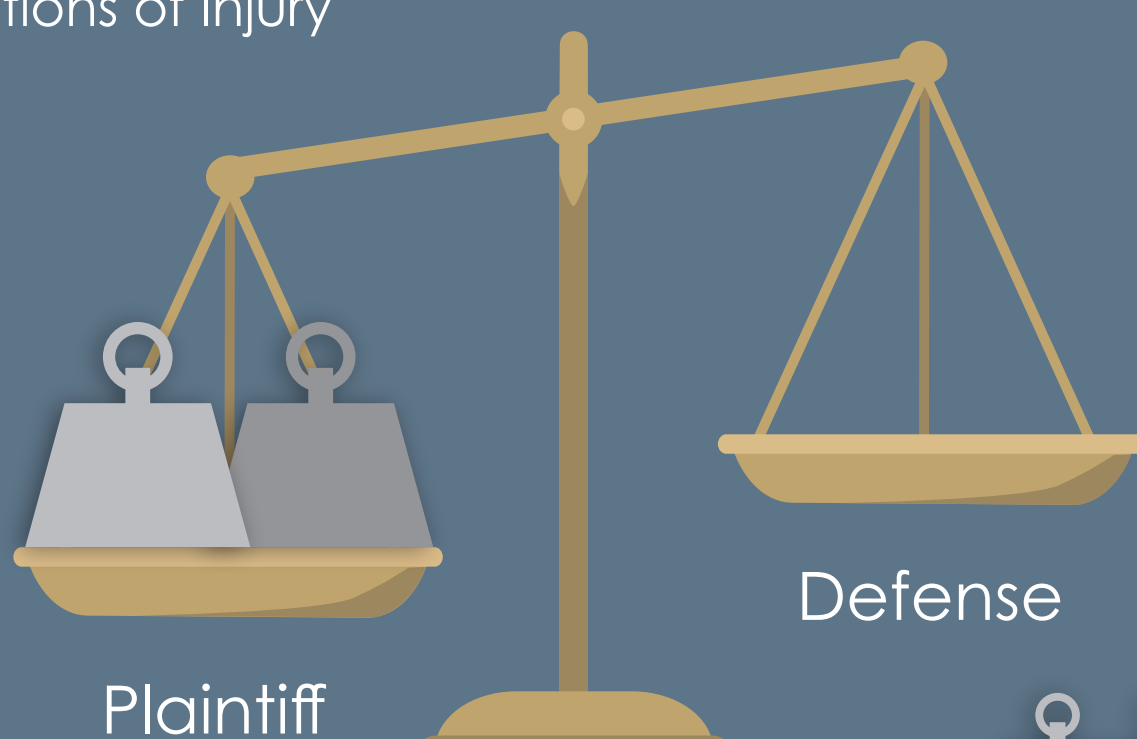


Procedures available:

- 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:¹

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

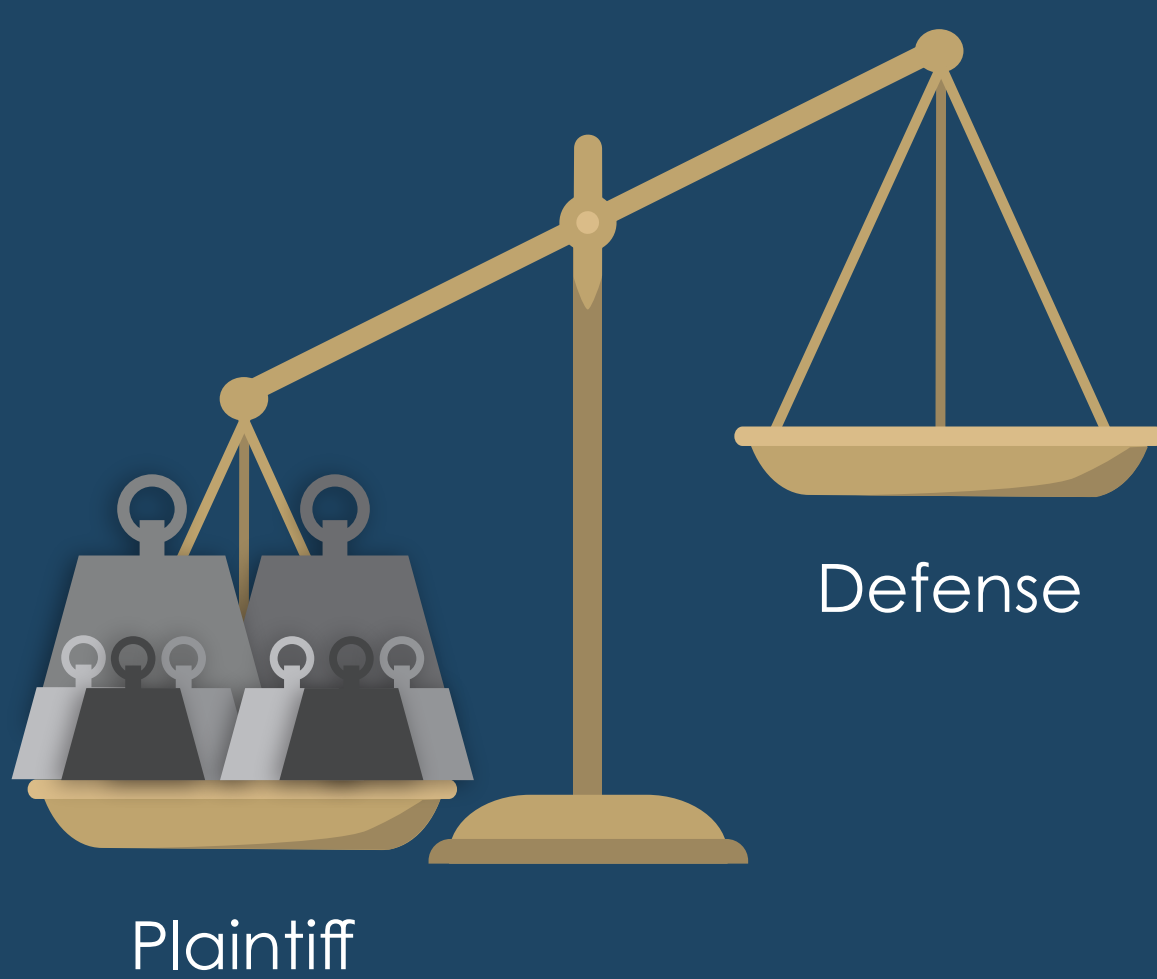


Practices in MDLs Tilt the Scales

- Allegations of Exposure
- Allegations of Injury

+

- No pre-filing due diligence
- No filing fees
- No pleading standards
- Multi-plaintiff complaints
- Experimental census in lieu of vetting
- Mass advertising campaigns
- Third-party funding
- No appellate review



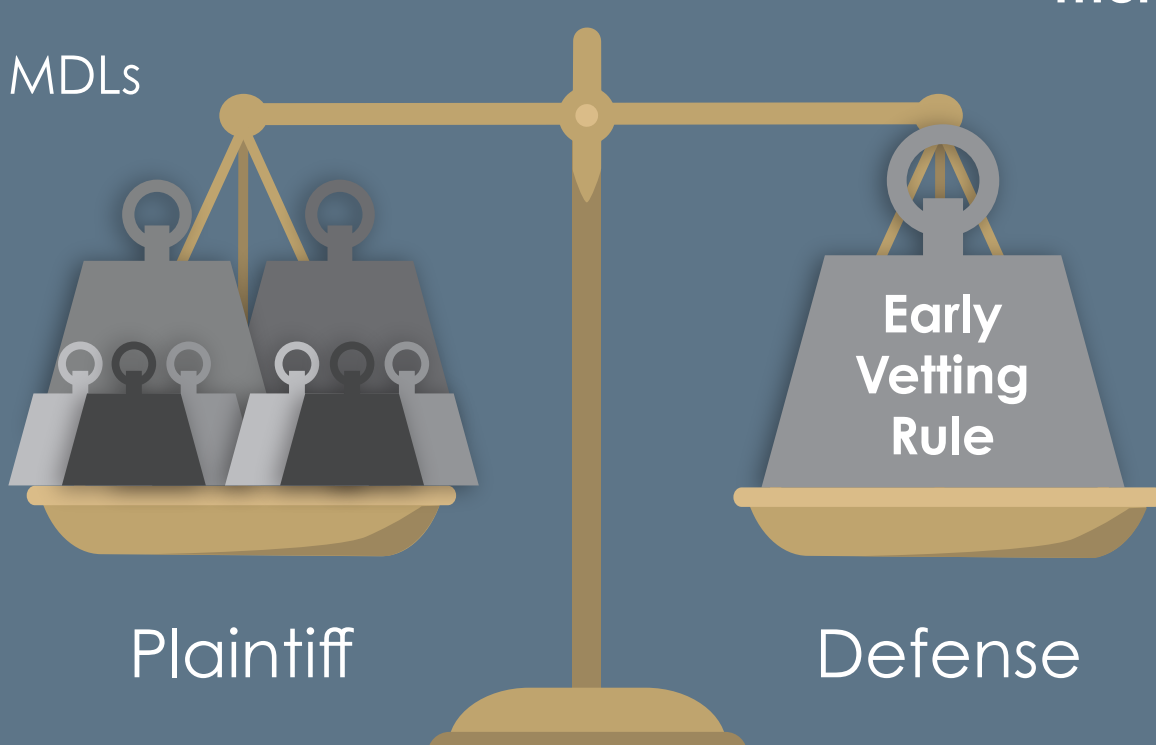
These common MDL practices create an imbalance allowing meritless claims to pile up.^{2, 3}

Bringing Balance to Vetting in MDLs

- Allegations of Exposure
- Allegations of Injury

+

- 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

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

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