Lex Machina

Product Liability Litigation

Report

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Introduction

Lex Machina's 2020 Product Liability Litigation Report looks at trends and insights in federal district court. The Product Liability practice area has the highest volume of cases in the Lex Machina database due to the large number of multidistrict litigation ("MDL") cases. The report includes analytics about case filings, districts, judges, parties, law firms, and more. Each section discusses analytics in relation to MDL Associated cases and non-MDL Associated cases in order to gain particular insights into this unique practice area. This report features federal district court data from 2010 to 2019, with a focus on the last five years.

Lex Machina defines a "Product Liability" case as a case in which a party seeks compensation for injury caused by a defect in a product. Product Liability has a large number of MDL cases. These cases include an MDL Master case, where most of the significant activity often occurs, and MDL Associated cases, which usually contain little activity. Lex Machina tags cases as "MDL Associated" based on the Judicial Panel for Multidistrict Litigation ("JPML") or Lex Machina's review. Based on the JMPL data, this includes cases within the JPML system that have been submitted by the parties for consideration to be included in a Master MDL. Lex Machina tags both MDL Master cases and MDL Associated cases in order to look at various sets of cases. This report specifically indicates whether MDL Associated cases are included in a figure. Often, an MDL Master case is opened in a later year than many of the MDL Associated cases. This may affect recent statistics if a case has not yet been officially designated an MDL.

Legal Analytics is used for planning, forecasting, and litigation strategy. The metrics in this report may help readers decide whom to pursue as clients, which claims to include in a complaint, or when to settle. This research supplements traditional legal research and anecdotal data in order to gain a competitive edge in litigation.

For more information, please see the Data and Methodology section at the end of this report.

Highlights

- Product Liability cases have been increasing in recent years, even when excluding MDL Associated cases. (Note that JPML delays in designating MDL cases may be impacting these numbers, especially in 2019.)
- There was a dramatic increase in Aircraft case filings in 2019 due to litigation related to the Boeing 737 MAX.
- Judge Eldon E. Fallon from the Eastern District of Louisiana saw the most Product Liability cases in the last five years, principally because he is handling MDL 2592 *In Re: Xarelto (Rivaroxaban) Products Liability Litigation*.
- Overall, pharmaceutical companies were all of the top defendants. When MDL Associated cases are removed from the data, the list of most active defendants becomes a little more varied: several vehicle manufacturers, a chemical company, and several companies associated with asbestos litigation are included.
- Weitz & Luxenberg filed the most Product Liability cases on behalf of plaintiffs from 2015 to 2019, with 6,848 cases filed in 53 districts. When excluding MDL Associated cases, Bracewell filed the most cases on behalf of plaintiffs with 514 cases.
- Shook, Hardy & Bacon handled the most Product Liability cases for defendants. When MDL Associated cases are excluded, Kirkland & Ellis appeared most often on behalf of defendants in the last five years.
- In the last five years, more punitive damages (over $1.2 billion) have been awarded than any other damage type. The next-highest category of damages awarded was Class Action Settlement damages at nearly $744 million.

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Case Filings

Looking at Product Liability case filings over the last decade, there was a distinct drop in case filings in 2012. Case filings stayed relatively steady between 2015 and 2018, followed by a jump in cases last year. As previously mentioned, the Product Liability practice area has the highest volume of cases in the Lex Machina database due to the large number of MDL Associated cases. When excluding MDL Associated cases, the filing numbers are closer to a medium-sized practice area such as Copyright. There was an increase in filings of non-MDL Associated cases in 2018 and 2019. While the delay in designating cases as "MDL Associated" may affect the data for 2019, any delay from the JPML data is unlikely to go all the way back to 2018. As cases make their way through the court, an upward trend may solidify in the next few years.

Lex Machina tags Product Liability cases relating to the following products: Aircraft, Asbestos, Medical Device/ Pharmaceutical, and Vehicle. It should be noted that cases involving allegations of talc contained in skin care products are tagged Medical Device/Pharmaceutical, not Asbestos. Figures three through six below show the case filings excluding MDL Associated cases for each of the product types.

Looking at case filings involving specific product types, Medical Device/Pharmaceutical cases are the most common product type, followed by Vehicle cases. Medical Device/Pharmaceutical filings show a steady upward trend in filings with an increase in the last three years. Product Liability cases involving Vehicles had a steady climb over the past seven years when looking at non-MDL Associated cases. Again, because the data from the JPML associating individual cases to an MDL may lag, these filing numbers may include cases that will later be designated MDL Associated cases. Practitioners will have to wait to see if the upward trend in case filings solidifies or not.

Asbestos case filings in Federal Court peaked in 2013 and declined over the past few years until an increase occurred in 2019. Even with this increase, the number of filings involving traditional asbestos products remains very low compared to earlier decades when tens of thousands of cases were filed annually.

The dramatic increase in Aircraft case filings in 2019 is due to litigation related to the Boeing 737 MAX. Crashes of Boeing aircrafts in Ethiopia and off the coast of Indonesia resulted in almost 200 cases in the Northern District of Illinois. Litigation based on the crashes is handled in two cases, *In Re Ethiopian Airlines Flight ET302 Crash* and *In Re Lion Air Flight JT610 Crash*. Despite the fact that there are many cases being filed related to one incident, many cases are not tagged MDL Associated cases because they were removed from state court under the Multiparty, Multiforum Trial Jurisdiction Act of 2002 ("MMTJA"). However, there are a set of cases related to the Ethiopian Airlines crash that were considered for inclusion in a possible MDL that the JPML declined to create.

Figure 1: Product Liability Case Filings from 2010 to 2019

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Total	46,066	56,194	32,495	56,024	52,342	39,002	42,538	42,854	43,567	56,041
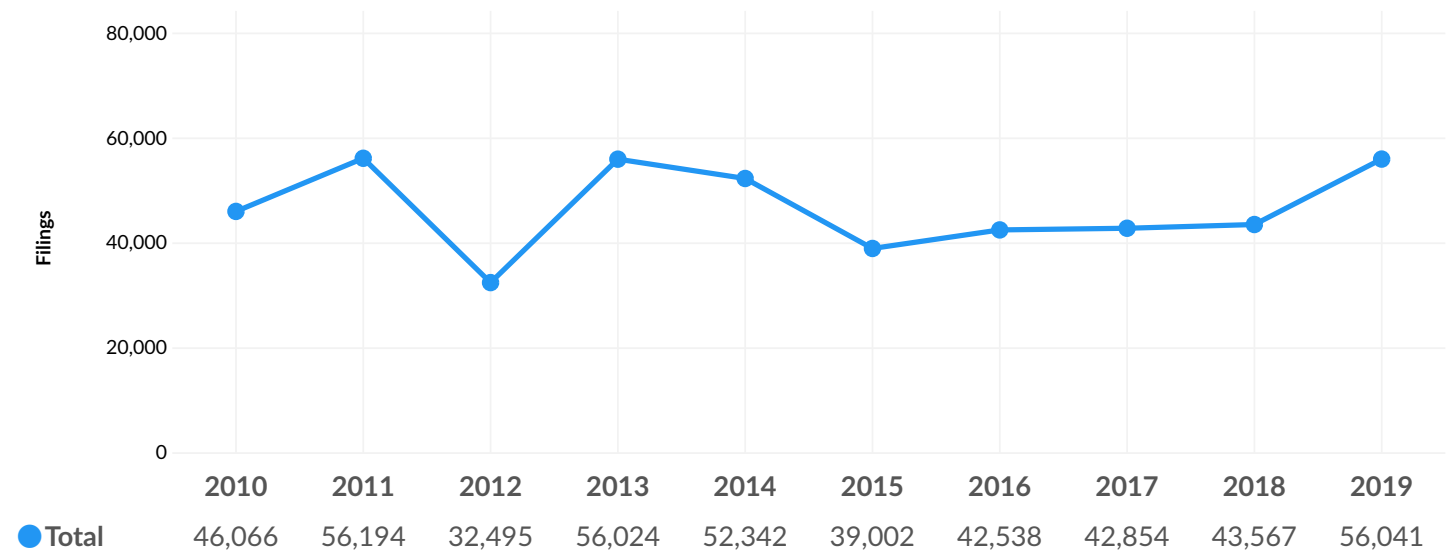
Figure 2: Product Liability Case Filings (Excluding MDL Associated Cases) from 2010 to 2019

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Total	3,138	2,901	3,060	3,104	3,050	2,765	3,109	3,227	4,943	5,261
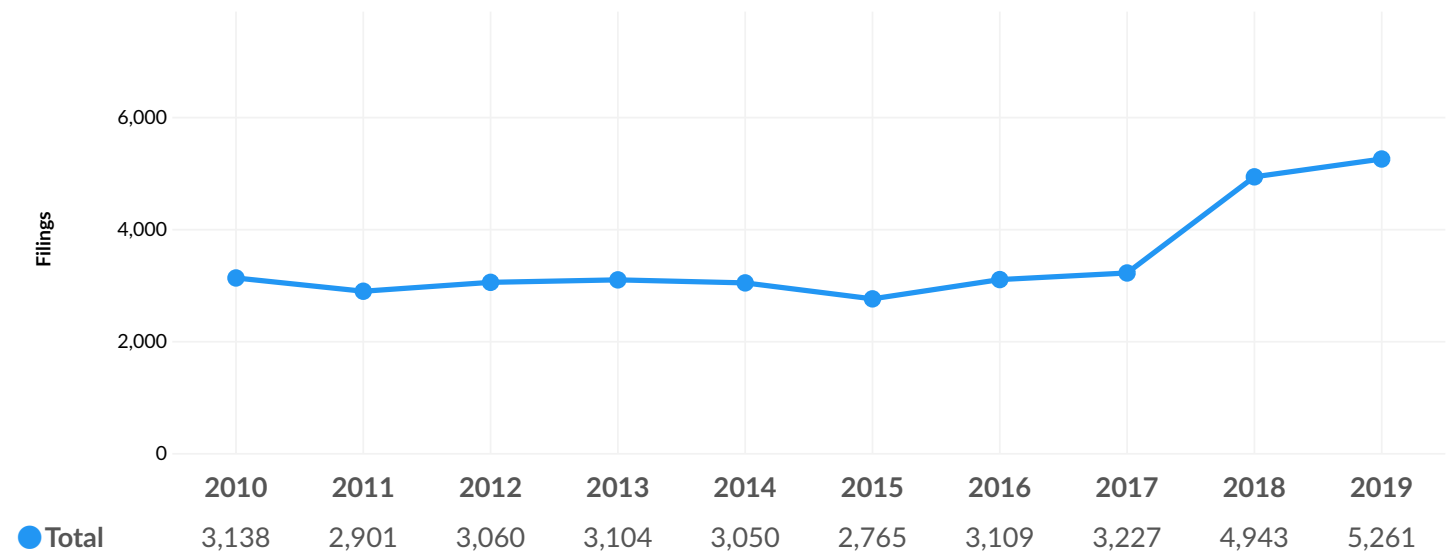
Figure 3: Product Liability Medical Device/Pharmaceutical Case Filings (Excluding MDL Associated Cases) from 2010 to 2019

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Total	1,025	945	900	1,032	1,100	816	796	898	2,186	2,011
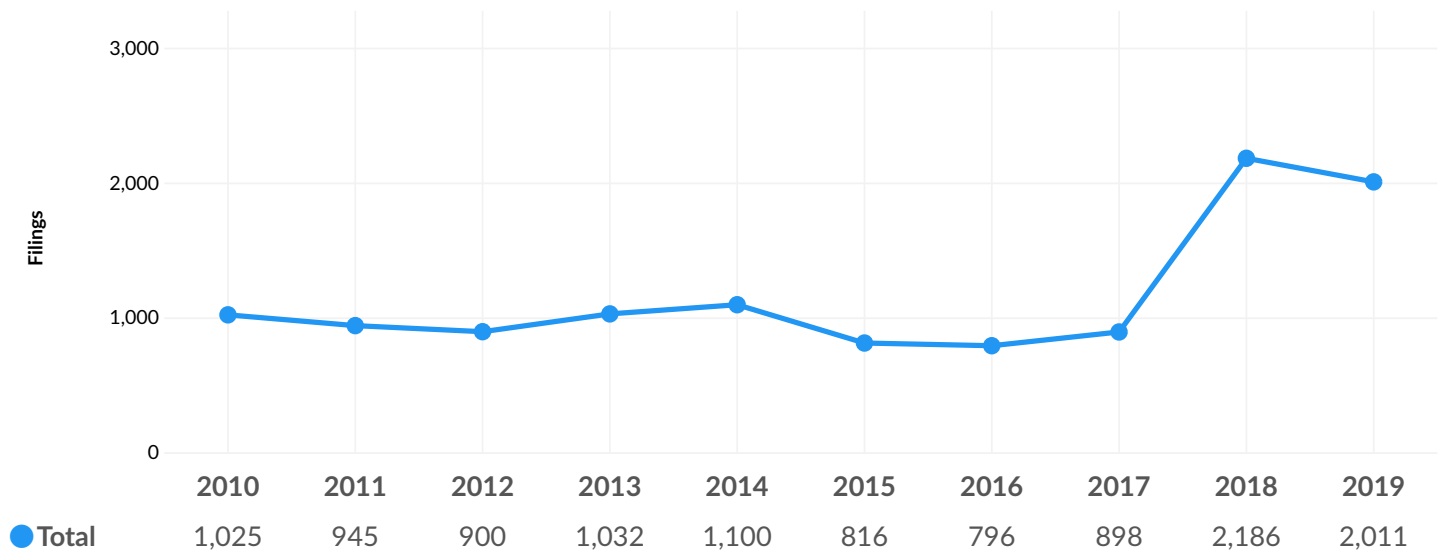
Figure 4: Product Liability Vehicle Case Filings (Excluding MDL Associated Cases) from 2010 to 2019

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Total	539	484	497	403	488	517	601	649	773	866
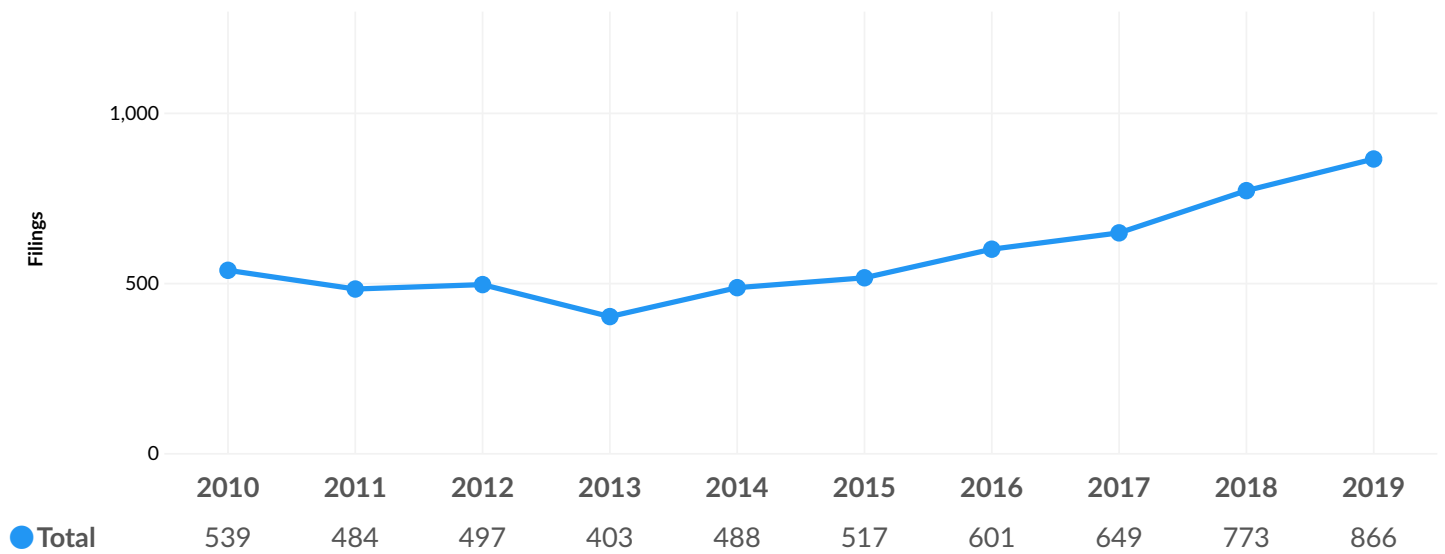
Figure 5: Product Liability Asbestos Case Filings (Excluding MDL Associated Cases) from 2010 to 2019

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
● Total	43	56	197	259	258	165	161	165	159	211
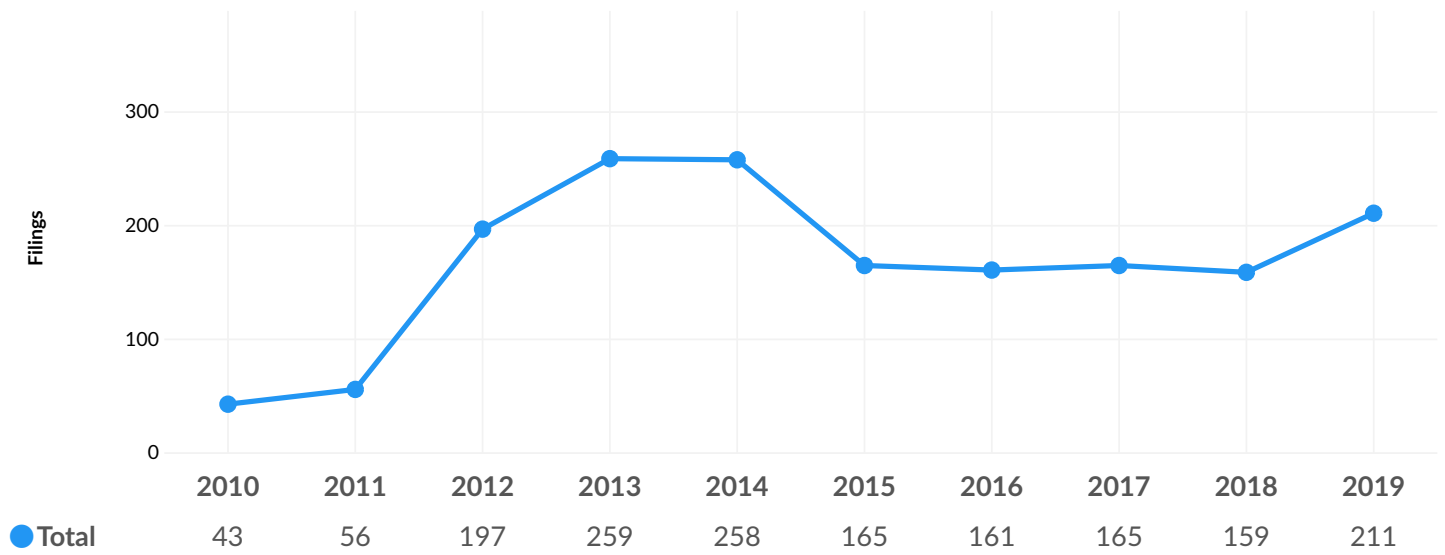
Figure 6: Product Liability Aircraft Case Filings (Excluding MDL Associated Cases) from 2010 to 2019

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
● Total	96	57	74	40	39	42	41	49	36	150
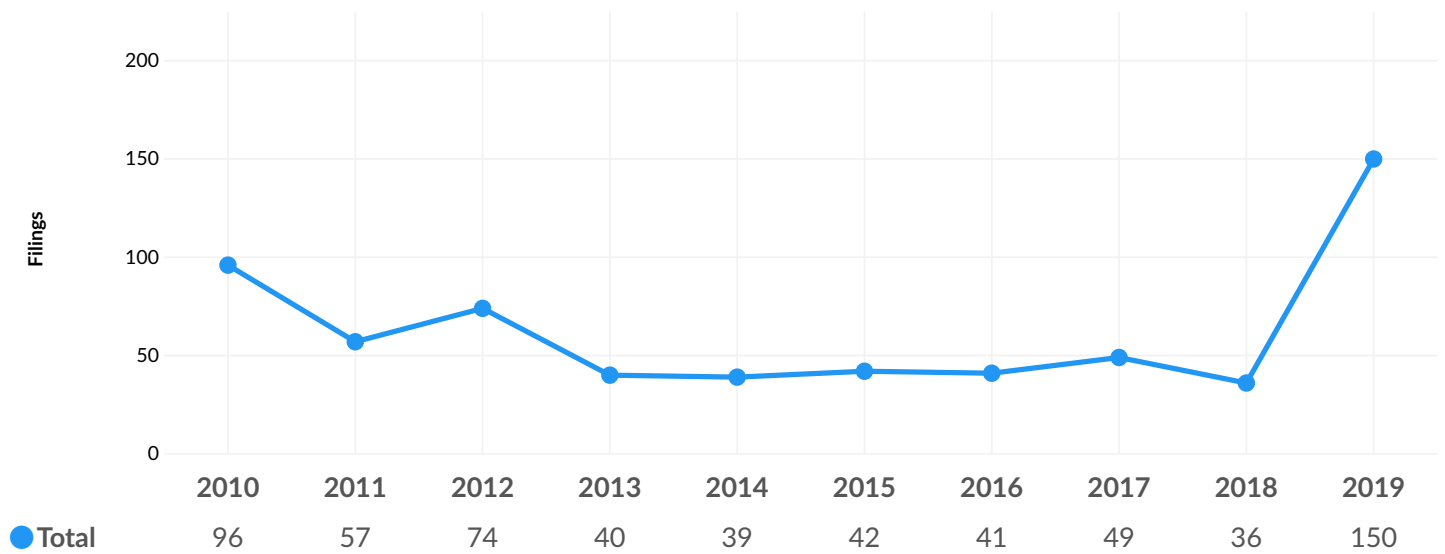
Most Active Districts

The two figures in this section show the districts with the most Product Liability cases in the last five years. Each figure contains the percentage of the overall set of cases in Lex Machina's database (either including or excluding MDL Associated cases depending on the figure). The right-hand columns break down the filings by case tag. The first figure includes all Product Liability cases, and it shows where large MDL cases are filed. While Medical Device/Pharmaceutical cases were the biggest driver of cases on this list, large numbers of Vehicle and Aircraft cases also appeared in specific jurisdictions. The Eastern District of Louisiana saw two large MDLs involving pharmaceuticals, *In Re: Taxoter (Docetaxel) Product Liability Litigation* before Judge Englehardt and *In Re: Xarelto (Rivaroxaban) Product Liability Litigation* before Judge Fallon. These MDLs accounted for over 45,000 cases being filed. The District of New Jersey is home to *In Re: Johnson and Johnson Talcum Powder Products Marketing, Sales and Product Liability Litigation*, presently encompassing more than 16,000 associated cases.

Looking at the districts with the most Product Liability cases (excluding MDL Associated cases), the top district is the Central District of California. This district had slightly more Vehicle cases (581) than Medical Device/Pharmaceutical cases (542). The Southern District of Illinois was second and the District of New Jersey was third. While most of these jurisdictions have cases involving a number of different product types, almost all of the product liability docket in the Southern District of Illinois relates to the use of the drug Depakote during pregnancy.

Figure 7: Districts with the Most Product Liability Filings from 2015 to 2019

District	Cases	Percent	Med Pharma	Asbestos	Vehicle	Aircraft	Subrogation
E.D.La.	47,538	21.22%	46,988	75	91	1	24
D.N.J.	37,521	16.75%	36,761	36	176	5	107
S.D.W.Va.	30,827	13.76%	30,732	2	29	2	5
D.Ariz.	9,332	4.17%	8,809	1	86	5	21
D.Minn.	9,277	4.14%	8,710	4	72	3	34
N.D.Ill.	8,418	3.76%	7,743	10	96	236	60
S.D.Ind.	8,123	3.63%	7,923	0	25	1	37
N.D.Cal.	6,547	2.92%	1,671	69	1,750	16	126
N.D.Fla.	6,533	2.92%	2,917	0	20	2	9
S.D.Ohio	5,514	2.46%	5,281	0	48	0	34

Figure 8: Districts with the Most Product Liability Filings (Excluding MDL Associated Cases) from 2015 to 2019

District	Cases	Percent	Med Pharma	Asbestos	Vehicle	Aircraft	Subrogation
C.D.Cal.	1,620	.72%	542	68	581	13	257
S.D.Ill.	1,189	.53%	1,085	22	20	0	10
D.N.J.	1,055	.47%	560	35	79	5	104
E.D.Cal.	812	.36%	137	16	157	4	75
E.D.Pa.	803	.36%	368	6	71	12	108
N.D.Cal.	796	.36%	233	68	152	1	89
M.D.Fla.	611	.27%	257	11	68	4	34
N.D.Ill.	549	.25%	138	10	43	132	52
E.D.N.Y.	424	.19%	166	2	48	4	34
S.D.Tex.	407	.18%	90	21	125	10	30

Most Active Judges

Similar to above, the two figures in this section show the judges with the most Product Liability cases in the last five years. The right-hand columns break down the filings by case tag. While most judges are located in the most active districts, knowing which specific judge has experience with Product Liability cases helps practitioners strategize. When including MDL Associated cases, all the judges on the list saw cases that were nearly all Medical Device/Pharmaceutical in nature.

Judge Eldon E. Fallon from the Eastern District of Louisiana saw the most Product Liability cases in the last five years, principally because he is handling MDL 2592 *In Re: Xarelto (Rivaroxaban) Products Liability Litigation*. Similarly, Judge Robert Goodwin is handling *In Re Ethicon Pelvic Repair System* and *In Re: Boston Scientific*, two large MDL matters with more than 10,000 filings in each MDL. Judge Margaret Catharine Rodgers saw a lower proportion of Medical Device/ Pharmaceutical cases than the other judges on the list, but this data reflects only filings through December 31, 2019, when her handling of over 2,000 cases from MDL 2734 *In Re: Abilify (Aripiprazole) Product Liability Litigation* dominated her Product Liability docket. Beginning late in 2019, filings of complaints in Judge Rodgers' court related to MDL 2885 *In Re: 3M Combat Arms Earplugs Product Liability Litigation* began to increase rapidly. That trend continues in 2020, and Judge Rodgers' docket looks very different now than it did at the end of 2019.

Looking at the judges with the most Product Liability cases (excluding MDL Associated cases), the top judge was Judge David R. Herndon from the Southern District of Illinois. Medical Device/Pharmaceutical cases dominate Judge Herndon's product liability docket because he and Judge Rosentengel are handling several hundred cases involving the drug Depakote.

Figure 9: Judges with the Most Product Liability Filings 2015 to 2019

Judge	Court	Cases	Percent	Med Pharma	Asbestos	Vehicle	Aircraft	Subrogation
Eldon E. Fallon	E.D.La.	31,012	13.84%	30,955	10	7	0	1
Joseph Robert Goodwin	S.D.W.Va.	30,445	13.59%	30,432	1	4	0	1
Freda L. Wolfson	D.N.J.	16,208	7.24%	16,105	3	9	0	13
Claire Claudia Cecchi	D.N.J.	15,353	6.85%	15,300	2	9	1	2
Jane Margaret Triche Milazzo	E.D.La.	14,951	6.67%	14,756	8	8	1	3
Kurt Damian Engelhardt	E.D.La.	9,016	4.02%	8,987	8	4	0	3
David G. Campbell	D.Ariz.	8,718	3.89%	8,692	0	5	1	1
Richard L. Young	S.D.Ind.	7,771	3.47%	7,729	0	7	0	14
Matthew F. Kennelly	N.D.Ill.	7,176	3.2%	7,144	0	2	10	1
Margaret Catharine Rodgers	N.D.Fla.	6,174	2.76%	2,831	0	6	2	3

Figure 10: Judges with the Most Product Liability Filings (Excluding MDL Associated Cases) 2015 to 2019

Judge	Court	Cases	Percent	Med Pharma	Asbestos	Vehicle	Aircraft	Subrogation
David R. Herndon	S.D.Ill.	846	.38%	810	3	8	0	3
Nancy Jo Rosenstengel	S.D.Ill.	668	.3%	616	5	11	0	3
Cormac J. Carney	C.D.Cal.	283	.13%	228	14	25	0	9
Freda L. Wolfson	D.N.J.	169	.08%	127	3	6	0	13
Vince Girdhari Chhabria	N.D.Cal.	158	.07%	26	8	4	1	10
Irene Cornelia Berger	S.D.W.Va.	142	.06%	129	0	5	0	1
Andre Birotte Jr.	C.D.Cal.	123	.05%	38	4	62	0	23
Harvey Bartle III	E.D.Pa.	108	.05%	84	0	4	0	6
John Arnold Kronstadt	C.D.Cal.	95	.04%	38	9	23	1	15
Dolly Maizie Gee	C.D.Cal.	94	.04%	30	6	32	2	17

Most Active Defendants

The charts in this section show the most active defendants in federal court Product Liability litigation filed from 2015 to 2019. When looking at all Product Liability cases, unsurprisingly, medical device and pharmaceutical companies take all 20 positions on the list of most active defendants. The top three defendants were Johnson & Johnson, Janssen Pharmaceuticals, and Bayer Healthcare Pharmaceuticals. Given the number of MDLs relating to their products, some of which have as many as 50,000 individual cases, it is no surprise that these companies dominate this list. When MDL Associated cases are removed from the data, the list of most active defendants becomes a little more varied: several vehicle manufacturers, a chemical company, and several companies associated with asbestos litigation are included.

Looking at most active Vehicle defendants from 2015 to 2019, including MDL Associated cases, there were several large MDLs over this time frame involving Volkswagen, Ford, General Motors, and Takata. The two overseas disasters involving Boeing 737 MAX aircraft put Boeing at the top of the most active aircraft defendants by a wide margin. Aircraft cases include companies that make component parts for aircrafts, which explains the other manufacturers on the list such as 3M and Honeywell.

Figure 11: Most Active Defendants by Case Filings from 2015 to 2019

Parties	Filings	Districts
Johnson & Johnson	70,924	91
Janssen Pharmaceuticals Inc.	35,993	85
Bayer Healthcare Pharmaceuticals Inc.	35,405	87
Janssen Research & Development LLC	34,804	75
Bayer Pharma AG	34,760	84
Bayer Corporation	33,398	76
Janssen Ortho LLC	33,191	70
Bayer AG	32,990	73
Bayer HealthCare AG	32,143	71
Bayer Healthcare LLC	30,894	75
C. R. Bard, Inc.	19,812	88
Ethicon, Inc.	19,378	85
Merck & Co Inc	16,405	57
Johnson & Johnson Consumer Inc.	16,188	59
Astrazeneca Pharmaceuticals LP	15,301	69
Astrazeneca LP	14,812	51
Pfizer, Inc.	14,718	72
Sanofi-Aventis U.S. LLC	13,744	57
Sanofi US Services Inc.	12,689	33
Imerys Talc America, Inc.	11,803	65

Figure 12: Most Active Defendants by Case Filings (Excluding MDL Associated Cases) from 2015 to 2019

Parties	Filings	Districts
Johnson & Johnson	1,429	82
Abbott Laboratories	1,197	39
Ford Motor Company	973	72
Johnson & Johnson Consumer Inc.	529	37
General Electric Company	528	66
Imerys Talc America, Inc.	500	34
CBS Corporation	447	52
FCA US LLC	380	67
AbbVie Inc.	376	10
Crane Co	358	42
General Motors LLC	356	78
Ethicon, Inc.	335	58
Bayer Healthcare Pharmaceuticals Inc.	323	42
Honeywell International, Inc.	304	59
Union Carbide Corporation	299	49
Bayer Corporation	283	38
Monsanto Company	278	44
Ingersoll-Rand Company	274	41
Pfizer, Inc.	269	54
Bayer Healthcare LLC	264	37
Metropolitan Life Insurance Company	264	48

Figure 13: Most Active Vehicle Defendants by Case Filings from 2015 to 2019

Parties	Filings	MDL Associated	Districts
Volkswagen Group of America, Inc.	2,729	2,696	78
Ford Motor Company	2,313	1,702	71
Volkswagen AG	1,254	1,238	61
General Motors LLC	1,134	784	81
FCA US LLC	490	128	70
Takata Corporation	294	247	54
TK Holdings Inc.	280	235	50
Audi AG	258	256	41
American Honda Motor Co., Inc.	251	182	50
BMW of North America, LLC	212	59	40

Figure 14: Most Active Aircraft Defendants by Case Filings from 2015 to 2019

Parties	Filings	MDL Associated	Districts
The Boeing Company	296	156	16
Rosemount Aerospace Inc.	45	37	2
3M Company	25	24	10
Honeywell International, Inc.	21	3	15
Continental Motors, Inc.	20	2	12
Tyco Fire Products LP	18	18	6
Avco Corporation	17	0	9
National Foam Inc	16	16	6
Rockwell Collins, Inc.	16	12	2
Chemguard Inc	15	15	6

Most Active Firms

Weitz & Luxenberg filed the most Product Liability cases on behalf of plaintiffs from 2015 to 2019, with 6,848 cases filed in 53 districts. The firm filed many pharmaceutical cases and is listed as counsel in *In Re: Juul Labs, Inc., Marketing, Sales Practices, and Products Liability Litigation*. Beasley Allen Crow Methvin Portis & Miles was second with 6,470 cases and Aylstock, Witkin, Kreis & Overholtz was third with 6,403 cases. When excluding MDL Associated cases, Bracewell filed the most cases on behalf of plaintiffs with 514 cases. Bracewell filed over 500 Medical Device/Pharmaceutical cases in 2018 against Abbott Laboratories and AbbVie Inc. in relation to the drug Depakote. Robinson Calcagnie was second with 299 cases, and Cozen O'Connor was third with 251.

Shook, Hardy & Bacon handled the most cases for defendants when including MDL Associated cases. Excluding MDL Associated cases, Shook, Hardy & Bacon came in second behind Kirkland & Ellis. While there is a lot of crossover between the two lists of most active defendants' firms, many of the names move to a different spot when MDL Associated cases are excluded.

Figure 15: Most Active Plaintiffs' Law Firms from 2015 to 2019

Firms	Filings	Districts
Weitz & Luxenberg	6,848	53
Beasley Allen Crow Methvin Portis & Miles	6,470	63
Aylstock, Witkin, Kreis & Overholtz	6,403	50
The Mostyn Law Firm	6,188	18
Johnson Law Group (johnsonlawgroup.com)	4,733	33
Arnold & Itkin	4,203	15
Levin Papantonio Thomas Mitchell Rafferty & Proctor	3,874	45
Fears Nachawati	3,817	37
Sanders Barshay Grossman	3,632	60
OnderLaw	3,356	24
Napoli Shkolnik	3,085	44
Brown & Crouppen	3,048	17
Matthews & Associates	2,950	22
Douglas & London	2,936	39
Bachus & Schanker	2,820	34
Wagstaff & Cartmell	2,772	42
Morgan & Morgan	2,699	48
Ashcraft & Gerel	2,482	21
Johnson Becker	2,454	57
Marc J. Bern & Partners	2,407	39

Figure 16: Most Active Plaintiffs' Law Firms (Excluding MDL Associated Cases) 2015 to 2019

Firms	Filings	Districts
Bracewell	514	3
Robinson Calcagnie	299	7
Cozen O'Connor	251	74
The Tracy Law Firm	213	24
Burg Simpson Eldredge Hersh & Jardine	190	23
Williams Kherkher Hart Boundas	188	7
de Luca Levine	170	31
Morgan & Morgan	165	34
Motley Rice	164	37
Terrell Hogan	158	6
Strategic Legal Practices	140	4
Napoli Shkolnik	135	25
Weitz & Luxenberg	127	25
Marc J. Bern & Partners	119	30
The Law Office of Stephen P. New	116	1
Knight Law Group (knightlaw.com)	112	4
Law Office of Christopher Cueto	111	2
Beasley Allen Crow Methvin Portis & Miles	109	43
Simon Greenstone Panatier	108	31
Sanders Barshay Grossman	107	22

Figure 17: Most Active Defendants' Law Firms 2015 to 2019

Firms	Filings	Districts
Shook, Hardy & Bacon	27,249	76
Faegre Drinker Biddle & Reath	26,690	82
Nelson Mullins Riley & Scarborough	11,503	87
McCarter & English	11,232	42
Butler Snow	9,179	75
Coughlin Duffy	8,315	4
Flaherty Sensabaugh & Bonasso	7,275	28
Gordon Rees Scully Mansukhani	6,970	78
Thomas Combs & Spann	6,579	58
Seyfarth Shaw	5,995	21
Dechert	5,443	34
Vorys, Sater, Seymour & Pease	4,975	11
Ulmer & Berne	4,511	46
DLA Piper	4,452	54
Tucker Ellis	3,871	62
Hollingsworth	3,725	35
Skadden, Arps, Slate, Meagher & Flom	3,139	32
Reed Smith	3,032	72
Locke Lord	3,020	19
Arnold & Porter Kaye Scholer	2,750	58

Figure 18: Most Active Defendants' Law Firms (Excluding MDL Associated Cases) 2015 to 2019

| Firms	Filings	Districts
Kirkland & Ellis	976	21
Shook, Hardy & Bacon	936	69
Tucker Ellis	680	53
Bowman & Brooke	569	68
Faegre Drinker Biddle & Reath	558	77
Gordon Rees Scully Mansukhani	539	74
Lewis Brisbois Bisgaard & Smith	508	69
Nelson Mullins Riley & Scarborough	410	52
Wilson Elser Moskowitz Edelman & Dicker	399	67
LeClairRyan	310	20
Bryan Cave Leighton Paisner	297	24
McCarter & English	290	22
Morgan Lewis & Bockius	289	37
Greenberg Traurig	276	60
Goldberg Segalla	252	42
Butler Snow	224	53
King & Spalding	221	41
Reed Smith	218	61
Clark Hill	216	51
Sidley Austin	215	42

Case Timing

This section contains two figures with timing analytics. Lex Machina provides case timing data to certain milestones, which is often used for forecasting, calendaring, and budgeting. In viewing boxplots, the blue lines represent the lower and upper quartiles, and the middle box represents the middle 50% of cases with the median number highlighted in the middle (more information can be found in the section titled "Understanding Boxplots" at the end of this report).

While timing in Product Liability cases generally is relevant to the practice area, comparing case timing for a particular set of cases can be informative. The first figure shows the timing in Product Liability cases (excluding MDL Associated cases) terminated between 2015 and 2019. Looking at nearly 2,000 cases that reached summary judgment, the median time to summary judgment was just over 1.5 years. Looking at 320 cases that reached trial, the median time to trial was nearly 2.5 years. The median time to termination was 308 days based on 17,389 cases.

The second figure shows the timing in Medical Device/Pharmaceutical cases (excluding MDL Associated cases) terminated between 2015 and 2019. While Medical Device/Pharmaceutical cases are approximately one-third of the cases in the first figure, the time to trial is much longer and the time to termination is much shorter. Looking at 334 cases that reached summary judgment, the median time to summary judgment was only 28 days more than the first figure. Looking at 27 cases that reached trial, the median time to trial was nearly three years and 176 days more than the first figure. The median time to termination was over 87 days less than the previous figure. Based on nearly 5,600 cases, courts took a median of 221 days to terminate the Medical Device/Pharmaceutical cases.

Figure 19: Time to Events in Product Liability Cases (Excluding MDL Associated Cases) Terminated 2015 to 2019
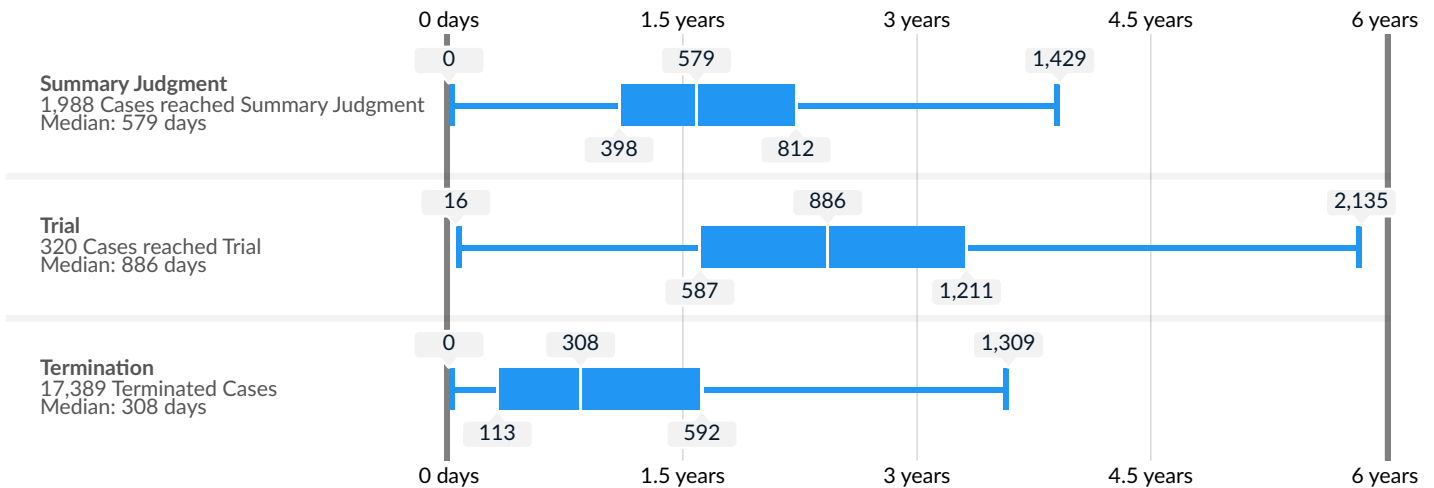
Figure 20: Time to Events in Medical Device/Pharmaceutical Product Liability Cases (Excluding MDL Associated Cases) Terminated 2015 to 2019
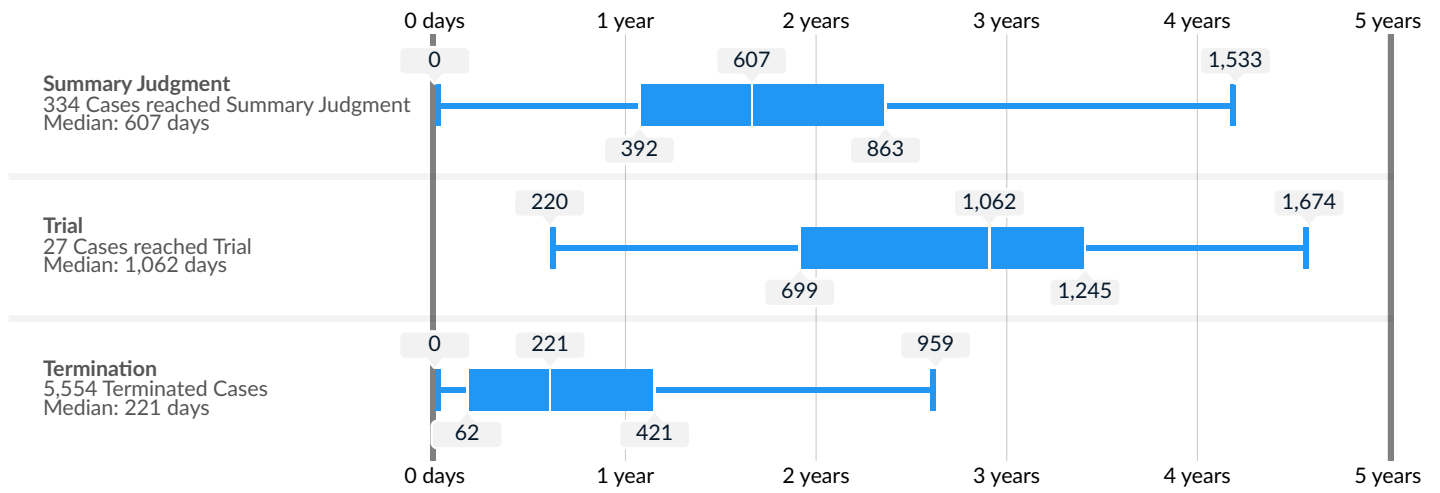
Expert Witnesses

Expert witnesses are an important component of many Product Liability cases. An expert's track record, which parties they've worked for, and how judges have ruled on their admissibility are valuable insights for litigation strategy. To enable this analysis, Lex Machina annotates three categories of rulings on admissibility: Admitted, Limited, or Excluded. Experts in Medical Device/Pharmaceutical litigation make up the largest segment of this list, which is not surprising considering the prominence of this litigation in product liability generally and the importance of expert testimony to the litigation. However, the most active Expert Witness, Arnold R. Brody, has been an expert for plaintiffs in asbestos cases.

Figure 21: Most Active Expert Witnesses by Admission Orders from 2015 to 2019

Expert	Total Cases	Admitted	Limited	Excluded	Type	Districts
Arnold R. Brody	7	2	3	2	Asbestos, Subrogation Case	7
Suzanne Parisian	6	0	6	0	Medical Device / Pharmaceutical	5
Thomas A. Berry	6	4	2	0	Vehicle	6
Darry Robert Holt	5	3	2	0		5
Laura M. Plunkett	5	2	2	1	Medical Device / Pharmaceutical	5
Mariusz Ziejewski	5	2	3	0	Vehicle	5
Ruston M. Hunt	5	2	3	0	Subrogation Case	3
Stephen A. Batzer	5	2	2	1	Vehicle	4
Timothy A. Ulatowski	5	1	2	2	Medical Device / Pharmaceutical	5
Bryan R. Durig	4	2	1	1	Subrogation Case	3
Daniel S. Elliott	4	1	3	0	Medical Device / Pharmaceutical	3
Darell Bevis	4	3	0	1		2
Edward Karnes	4	2	1	1	Vehicle	3
George Saunders	4	3	2	0		4
John D. Jarrell	4	1	1	2	Medical Device / Pharmaceutical	3
Thomas Bailey	4	4	0	0	Vehicle	2
Vernon Rose	4	3	0	1		2

Case Resolutions

Looking at case resolutions for all Product Liability cases terminating between 2015 and 2019, it is unsurprising that 89% resolved when the case was consolidated/transferred for adjudication in a case with another civil action number as directed by the MDL Panel. The second figure, which excludes MDL associated cases, looks more like other practice areas. However, it does include a large number of procedural dismissals, which include cases remanded back to state court.

Looking at cases that resolved with a decision on the merits, cases that resolved at judgment on the pleadings or summary judgment overwhelmingly resolved in favor of defendants. As this figure looks at the way cases terminated, defendants are likely to have more judgments on the pleadings and summary judgments that resolve the case due to the nature of those proceedings. Often the case will go on if the claimant wins at those stages of trial. However, the large number of summary judgments, compared to judgments on the pleadings and trials, is significant and informs case strategy in this practice area. Cases with trial resolutions are much more evenly divided, with defendants winning just over half of the cases at trial.

Figure 22: Case Resolutions for Cases Terminated 2015 to 2019

Claimant Win	191	0%
Default Judgment	44	0%
Consent Judgment	4	0%
Judgment on the Pleadings	0	0%
Summary Judgment	33	0%
Trial	110	0%
Judgment as a Matter of Law	0	0%
Decision on Bankruptcy Appeal	0	0%

Claim Defendant Win	953	1%
Default Judgment	0	0%
Consent Judgment	2	0%
Judgment on the Pleadings	134	0%
Summary Judgment	676	0%
Trial	131	0%
Judgment as a Matter of Law	10	0%
Decision on Bankruptcy Appeal	0	0%

Likely Settlement	11,541	8%
Plaintiff Voluntary Dismissal	966	1%
Stipulated Dismissal	10,575	7%

Procedural Resolution	140,688	92%
Contested Dismissal	545	0%
Dismissal	3,181	2%
Consolidation	295	0%
Severance	8	0%
Interdistrict Transfer	419	0%
Intradistrict Transfer	202	0%
Stay	103	0%
Multidistrict Litigation	135,935	89%

No Case Resolution	0	0%

Figure 23: Case Resolutions for Cases Terminated 2015 to 2019 (Excluding MDL Associated Cases)

Claimant Win	174	1%
Default Judgment	44	0%
Consent Judgment	4	0%
Judgment on the Pleadings	0	0%
Summary Judgment	30	0%
Trial	96	1%
Judgment as a Matter of Law	0	0%
Decision on Bankruptcy Appeal	0	0%

Claim Defendant Win	840	5%
Default Judgment	0	0%
Consent Judgment	2	0%
Judgment on the Pleadings	134	1%
Summary Judgment	578	3%
Trial	118	1%
Judgment as a Matter of Law	8	0%
Decision on Bankruptcy Appeal	0	0%

Likely Settlement	11,521	66%
Plaintiff Voluntary Dismissal	966	6%
Stipulated Dismissal	10,555	61%

Procedural Resolution	4,854	28%
Contested Dismissal	543	3%
Dismissal	3,177	18%
Consolidation	293	2%
Severance	8	0%
Interdistrict Transfer	416	2%
Intradistrict Transfer	202	1%
Stay	102	1%
Multidistrict Litigation	113	1%

No Case Resolution	0	0%

Findings

This section provides the number of cases with findings for cases terminated between 2015 and 2019. Findings are broken down into three tables: Defect Findings, Conduct Findings, and Defense Findings. The three most popular Defect Findings were No Breach of Warranty, No Negligence, and No Defective Product: Design. All three were found most often at summary judgment. The prevalence of findings in favor of defendants, especially at the pleadings or summary judgment phase, is expected based on the resolutions data discussed above. Again, findings at trial are more evenly divided between claimants and defendants.

Looking at Conduct Findings, manufacturers tend to win when those issues are decided at summary judgment. Defendants are quite successful at motions for summary judgment on misrepresentation and punitive damages claims. However, at trial there were more findings of Tortious Misrepresentation and Punitive Damages Conduct than the opposite.

The most popular findings relating to specific product liability defenses had to do with causation issues. Product Did Not Cause Injury was the most popular finding in this category, followed by Manufacturer Not Proven, which often is an issue in Asbestos cases.

Figure 24: Defect Findings for Cases Terminated 2015 to 2019

Finding	Default Judgment	Consent Judgment	Judgment on the Pleadings	Summary Judgment	Trial	Judgment as a Matter of Law	Any Judgment Event
Breach of Warranty	29	3	0	7	30	0	69
No Breach of Warranty	0	1	55	383	39	9	473
Defective Product: Design	23	2	0	3	30	0	57
No Defective Product: Design	0	2	22	277	66	2	362
Defective Product: Manufacture	20	1	0	2	17	0	40
No Defective Product: Manufacture	0	0	21	249	31	0	299
Defective Product: Warnings	23	2	0	6	27	0	57
No Defective Product: Warnings	0	1	26	284	39	4	349
Defective Product: Unspecified	9	1	0	1	15	0	26
No Defective Product: Unspecified	0	0	10	114	20	2	146
Negligence	36	2	0	8	58	0	103
No Negligence	0	2	32	339	70	7	441

Figure 25: Conduct Findings for Cases Terminated 2015 to 2019

Finding	Default Judgment	Consent Judgment	Judgment on the Pleadings	Summary Judgment	Trial	Judgment as a Matter of Law	Any Judgment Event
Tortious Misrepresentation	5	1	0	1	16	0	23
No Tortious Misrepresentation	0	0	31	130	11	4	175
Punitive Damages Conduct	7	0	0	1	14	0	22
No Punitive Damages Conduct	0	0	12	95	11	2	120
Consumer Protection Law Violation	8	1	0	5	4	0	18
No Consumer Protection Law Violation	0	0	33	96	7	5	139
Fraud on the FDA	0	0	0	0	0	0	0
No Fraud on the FDA	0	0	1	5	0	0	6

Figure 26: Defense Findings for Cases Terminated 2015 to 2019

Finding	Default Judgment	Consent Judgment	Judgment on the Pleadings	Summary Judgment	Trial	Judgment as a Matter of Law	Any Judgment Event
Comparative Fault Defense	0	0	0	11	33	0	44
No Comparative Fault Defense	0	0	0	19	4	0	23
Preemption Defense	0	0	55	28	1	0	84
No Preemption Defense	0	0	1	15	0	1	17
Statute of Limitations Defense	0	0	41	152	1	0	194
No Statute of Limitations Defense	1	0	1	3	0	0	5
Statute of Repose Defense	0	0	4	34	0	1	39
No Statute of Repose Defense	0	0	0	1	0	0	1
Manufacturer Not Proven	0	2	12	215	1	1	229
Product Did Not Cause Injury	0	1	13	340	40	4	390

Damages

The first figure in this section has the total damages awarded each year (excluding fees, costs, and interest). The awards were based on the district court's initial decision before appeal and are not adjusted for inflation. In 2019, there were fewer cases that awarded damages, and the overall damages awards were lower than the previous year by more than $70 million. The large increases in damages awarded in 2016 and 2017 were, in part, the result of several large awards of compensatory and punitive damages in cases that were tried in MDL 2244 *In Re: DePuy Orthopedics Pinnacle Hip Implant Product Liability Litigation*.

The second figure below shows the total damages awarded between 2015 and 2019 by damage type and the stage awarded. In the last five years, more punitive damages (over $1.2 billion) have been awarded than any other damage type. Next, nearly $744 million in Class Action Settlement damages were awarded. Two types of personal injury damages garnered high awards in the past five years: Non-Economic damages with $218 million and Unspecified with nearly $209 million. Damage awards are classified as unspecified when the jury awards a lump sum, without categorizing the amount awarded.

Figure 27: Total Product Liability Damages Awarded from 2010 to 2019 (Excluding Fees and Interest)

Year	Cases	Amount
2,019	23	$132,064,923.40
2,018	33	$204,905,095.39
2,017	31	$1,076,477,105.86
2,016	39	$913,553,972.62
2,015	45	$209,945,189.94
2,014	21	$185,419,184.74
2,013	28	$57,885,750.78
2,012	31	$187,638,875.19
2,011	25	$33,337,220.03
2,010	43	$134,761,589.64

Figure 28: Total Product Liability Damages By Type Awarded from 2015 to 2019 by Source

Type	Total Cases	Total Awarded	Default Judgment	Consent Judgment	Jury Verdict	Judgment on Merits
Personal Injury: Economic	53	$53,411,847.34	$11,168,127.65		$36,624,917.92	$5,618,801.77
Personal Injury: Non-Economic	61	$218,253,966.67	$33,112,665.64		$170,421,301.03	$14,720,000.00
Personal Injury: Unspecified	51	$208,801,909.72	$8,949,569.82		$194,602,683.16	$5,249,656.74
Property Damages	21	$9,219,084.32	$2,594,099.29		$6,399,821.56	$225,163.47
Other Product Liability Damages	3	$409,522.72			$252,886.34	$156,636.38
Punitive Damages	26	$1,208,065,749.21	$7,379,206.00		$946,234,079.19	$254,452,464.02
Approved Class Action Settlement	15	$743,650,809.72		$16,500,000.00		$727,150,809.72
Other / Mixed Damage Types	38	$95,133,397.51	$4,622,298.98	$1,030,000.00	$74,002,630.43	$15,478,468.10
Prejudgment Interest	15	$12,919,995.65	$247,128.26	$2,113.47	$666,798.74	$12,003,955.18
Attorneys' Fees / Costs	205	$46,366,635.78	$63,656.15	$737,502.14	$669,621.52	$44,895,855.97

Data and Methodology

This report presents data from Lex Machina's Legal Analytics platform. Using machine learning and technology-assisted attorney review, raw data is extracted from sources including PACER. The raw data is then cleaned, tagged, structured, and loaded into Lex Machina's proprietary platform. This report is prepared by the Lex Machina Product Team using charts and graphs from the platform. Commentary is provided by Lex Machina's legal experts.

Lex Machina supplements and corrects primary data from PACER in a variety of ways, including:

- Correcting errors ranging from spelling mistakes to complex data problems
- Normalizing data on judges, parties, law firms, and attorneys
- Extracting records of law firms and attorneys not found in docket reports
- Tagging and categorizing cases
- Annotating case resolutions, damages, and dispositive rulings

What Kinds of Data Does Lex Machina Offer?

Lex Machina maintains a specialized database containing information about litigation in U.S. District Courts, several state courts, the U.S. Patent and Trademark Office's Patent Trial and Appeal Board, and the U.S. International Trade Commission. On a daily basis, Lex Machina requests and receives data from the various district courts' PACER systems on new cases and docket entries filed. Lex Machina's automated systems ensure the completeness and consistency of this data before analyzing it in conjunction with other data sources.

Lex Machina's litigation data does not include appeals or modifications of judgments on appeal.

This document was published in May 2020. The Lex Machina platform updates daily; therefore, any numbers in this report will change as new cases get added to PACER with new information. This report is meant to provide trends and general research information as of the date of publication.

What is a Product Liability case?

A case in which a party seeks compensation for injury caused by a defect in a product. The legal theories underlying Product Liability cases are strict liability, negligence, and breach of warranty (both express and implied).

Injury — in Product Liability cases includes physical or emotional injury to a person, damage to property, or economic losses caused by the product defect.

Product — encompasses virtually any object or substance introduced into commerce. Products frequently involved in Product Liability cases include pharmaceuticals, medical devices, building products, industrial machines, transportation products, tools, household appliances, watercraft, airplanes, helicopters, food, cosmetics, toys, tobacco products, products using asbestos, and electronic devices.

Defect — in a product can be a shortcoming in the design, manufacturing, warnings, or instructions for the product. Product Liability cases may be filed against the manufacturer, seller, or distributor of a defective product. If the manufacturer, seller, distributor, or any party in the product distribution chain is not a party to the case, it does not meet the definition of Product Liability case.

Note that this Case Type does not include:

- Cases alleging solely false advertising, marketing, or promotion of a product
- Cases alleging solely negligent installation or service of a product
- Cases alleging solely negligence against physicians, hospitals, or other medical providers
- Cases alleging solely negligent operation of a vehicle or aircraft

Multidistrict Litigation

Lex Machina derives multidistrict litigation ("MDL") information from two sources: district court case data and the Judicial Panel on Multidistrict Litigation ("JPML"). Cases are tagged as either "MDL Master Case" or "MDL Associated Case", according to the JPML. Within the platform, Lex Machina shows key MDL information on case pages that are tagged with one of these MDL case tags. Found in the MDL section, this information comes directly from the JPML, and it includes MDL Timelines, the Litigation Type of the MDL, and for master cases, their MDL Status. In addition, the "Related Cases" section provides links (where applicable) to certain kinds of related cases. Note that the link to "Associated Lex Machina Cases" will show the associated cases that are within Lex Machina's scope of coverage.

What are the Product Liability case tags?

Product: Aircraft — A Product Liability case involving an aircraft, which is anything that comprises or is utilized in a machine that flies in the air by its own design. This includes not only the aircraft itself but component parts, engine structure, electronics, guidance mechanisms, landing gear, tires, wheels, etc. Examples: commercial or personal airplanes, helicopters, drones, or gliders.

Product: Asbestos — A Product Liability case involving asbestos, which is a naturally-occurring mineral widely used as an insulator and as an ingredient in drywall, plaster, floor tiles, adhesives, roofing materials, caulk, automotive brake linings, and numerous other applications. Exposure to asbestos can cause mesothelioma (a particular type of lung cancer).

Product: Medical Device/Pharmaceutical — A Product Liability case involving a medical device or pharmaceutical.

- A medical device is any physical object that is used in a medical procedure or placed into a human body for the purpose of improving, maintaining, or changing health, mobility, or human functioning, or to aid in the diagnosis of disease or other conditions. Examples: heart pacemakers, replacement hips, knee joints, cardiovascular system stents, mesh, catheters, implants, contraceptive devices, or surgical implements.
- A pharmaceutical is any chemical compound used to diagnose, cure, treat, or prevent disease. Examples: painkillers, vaccines, blood pressure medication, tranquilizers, cholesterol medication, antibiotics, sleep aids, or contraceptive drugs. This also includes biological products such as blood therapies, gene therapies, or transplanted tissues.
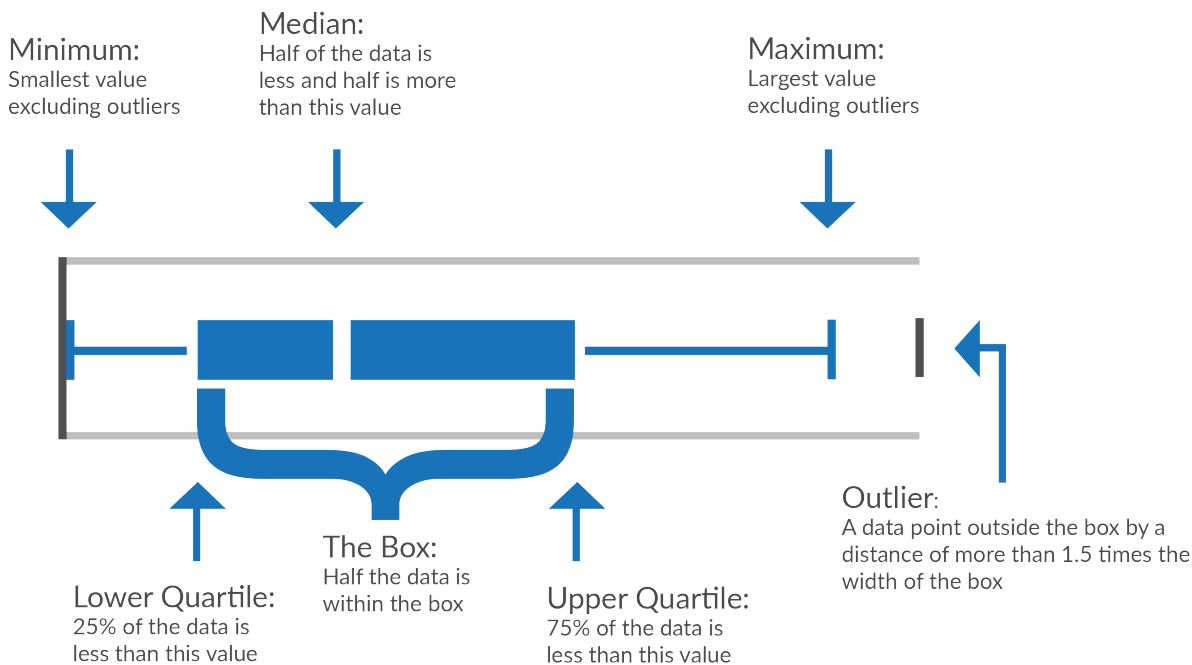
Product: Vehicle — A Product Liability case involving a vehicle, which is any self-propelled machine used to carry passengers and/or cargo on the ground. This includes not only the vehicle itself but components such as tires, wheels, seat belts, airbags, seats, glass, brakes, steering, engine, suspension, fuel system, transmission, etc. Examples: automobiles, trucks, vans, SUVs, motorcycles, mopeds, ATVs, and their component parts.

Subrogation Case — A Product Liability case in which an insurance company seeks to recover payments it has made to its insured for damages caused by an allegedly defective product.

Understanding Boxplots

Lex Machina's analytics use a data visualization known as the boxplot to convey information about the timing of significant events in a case. A boxplot summarizes a series of data points to help you understand the shape or distribution of the values in those points. The boxplot is drawn based on five numbers: the median, the upper and lower quartiles, and the whiskers for a distribution.

Figure 29: Paying attention to these key parts of the plot will help you quickly understand what you need to know.

Minimum:
Smallest value excluding outliers

Median:
Half of the data is less and half is more than this value

Maximum:
Largest value excluding outliers

The Box:
Half the data is within the box

Lower Quartile:
25% of the data is less than this value

Upper Quartile:
75% of the data is less than this value

Outlier:
A data point outside the box by a distance of more than 1.5 times the width of the box

The four observations below explain the significance of a boxplot:

Median
The middle dividing line of the box splits the data points evenly so that 50% fall to either side. It's a form of average that gives a single number representation of what to reasonably expect.

Box bounds
The box encloses the middle-most 50% of the data points (from the 25th percentile to the 75th), with 25% of the data points falling outside to either side. This makes the box a good representation of the range one can reasonably expect.

Box compressed or elongated
A more compressed box means that more data points fall into a smaller range of time and therefore are more consistent; in contrast, a longer box means that the data points are spread out over a wider time period and are therefore less predictable.

Whiskers
Whiskers are drawn to show the outside bounds of reasonable expectation, beyond which data points are considered outliers. By statistical convention, boxplots define outliers as points beyond more than 1.5 times the width of the box (sometimes called the "interquartile range").