CROSSING THE RUBICON: ASSEMBLING A LITIGATION COLOSSUS IN MASS TORTS

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In 2021, Arizona created the alternative business structure (ABS), which allows nonattorneys to own a firm that provides legal services and actively participate in firm management. Scholars have argued that this new paradigm will erode the attorney-client relationship. This represents a legitimate concern. Conflicting fiduciary duties can complicate key moments in case resolution. But the impact of Arizona's shift is more seismic. The true threat does not involve nonattorneys owning a law firm but, rather, private equity firms vertically integrating the entire mass-tort machinery. The endgame is a litigation colossus that rolls up law firms, marketers, claim aggregators, administrative vendors, and medical clinics—creating an apex predator that can weaponize litigation.

This Essay offers a primarily descriptive treatment in extrapolating the future of aggregate litigation with the hope of initiating a dialogue on this convoluted issue. The engagement of academics and policymakers is paramount in understanding the new dynamics and risks that the litigation colossus will create and what—if any—legislative intervention may be necessary.

INTRODUCTION

Roman law forbade a military general from entering Italy with his army, but in 49 BCE, Julius Caesar was contemplating this very act.[1] His battles through Europe had brought a staggering amount of territory under Roman control and earned him the moniker, "Caesar the Great."[2] The means by which Caesar achieved his conquests, however, involved mass killing that even hardened Roman citizens found questionable. Caesar's command was coming to an end, and, as a private citizen out of office, he could be prosecuted for his actions.[3]

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1. *See* ANCIENT ROME: THE DEFINITIVE VISUAL HISTORY 128 (Stephanie Farrow et al. eds., 2023).

2. MARY BEARD, SPQR: A HISTORY OF ANCIENT ROME 284 (Profile Books 2015).

3. *See id.* at 285.

The Roman Senate ordered Caesar to disband his army.[4] Instead, Caesar and his troops—stationed in Western Europe at this time—marched to Italy.[5] The Rubicon River marked Italy's northern boundary and represented both a physical and metaphorical barrier. Crossing the river with his army would be seen as an act of war, a point of no return. Caesar did not pause as he ordered his troops across, remarking, "Let the die be cast."[6] This act plunged the republic into civil war that would last over four years and ended with Caesar being declared dictator for life before his assassination by the very senators that had seen the threat he represented years before.

Modern mass-tort cases are approaching a similar point of no return, but this advance has largely gone unnoticed. Multibillion-dollar settlements in cases involving corporate behemoths like Johnson & Johnson, 3M, and Purdue Pharma have made the law firm oligarchy that controls these cases extremely wealthy.[7] The profit margins, however, have attracted the attention of private equity firms eager to seize a lion's share in this lucrative ecosystem.[8]

Various rules and regulations—most notably the American Bar Association's Model Rules of Professional Conduct—have kept these nonlawyers at the periphery, unable to control lucrative mass-tort cases. Only attorneys licensed by the state can provide legal services, and nonattorneys can neither own any portion of a professional firm providing legal services nor manage attorneys providing services through such a firm.[9] The ABA developed this rule to address the conflict between an attorney's fiduciary duties to their clients and a nonattorney's separate and distinct duties to their investors or shareholders.[10] Introducing the latter into a law firm's governance structure would create conflicts that could harm clients and invariably erode basic tenets of the legal profession.

This axiom has remained relatively unquestioned in the United States, but other countries have altered their approach.[11] The idea of improving access to

4. *See id.*

5. *See id.* at 286–87.

6. ANCIENT ROME: THE DEFINITIVE VISUAL HISTORY, *supra* note 1, at 128. *But see* BEARD, *supra* note 2, at 287 (arguing that the actual translation is "Let the dice be thrown," representing Caesar's hesitation to cross the Rubicon).

7. *See* Brendan Pierson, *Top Law Firms in US Opioid Lawsuits to Get Hundreds of Millions in Fees*, REUTERS (June 10, 2024, 12:34 PM), https://www.reuters.com/legal/top-law-firms-us-opioid-lawsuits-get-hundreds-millions-fees-2024-06-07/ [https://perma.cc/43VC-36QZ].

8. *See* Samir D. Parikh, *Opaque Capital and Mass-Tort Financing*, 133 YALE L.J. F. 32, 42–43 (2023).

9. MODEL RULES OF PRO. CONDUCT r. 5.4 (AM. BAR ASS'N 1983).

10. Creighton R. Magid, *Trends Worth Watching in Fiduciary Duty Litigation*, DORSEY (Aug. 15, 2006), https://www.dorsey.com/newsresources/publications/2006/08/trends-worth-watching-in-fiduciary-duty-litigation [https://perma.cc/REH6-6PLU].

11. *See* Judith A. McMorrow, *UK Alternative Business Structures for Legal Practice: Emerging Models and Lessons for the US*, 47 GEO. J. INT'L L. 665, 674–75 (2016).

justice was the key that unlocked the restriction,[12] but the resulting opportunity has been used to further less honorable objectives.

Arizona recently eliminated the impact of Rule 5.4 within its borders and opened the floodgates. The actors who have entered are focused on premium recoveries in mass-tort cases, not access to justice issues. We are at the forefront of what could be a transformative era for the legal profession and dispute resolution. Indeed, nonattorneys entering the ownership and governance ranks of law firms is crossing the Rubicon—a point of no return that will shift the fundamental tenets of the legal profession and mass-tort cases in particular. The potential risks to the profession, the clients attorneys serve, and the judiciary are unknown. This Essay attempts to spotlight the key maneuvers and initiate a dialogue that will help policymakers assess what—if any—intervention is necessary.[13] The insights gleaned will impact policy well beyond the world of mass torts.

Part I details the extremely fragmented mass-torts ecosystem and the actors responsible for marshaling meritorious and nonmeritorious claims. The convoluted intermediation yields various consequences that impact claimants, litigants, and the judiciary. The yield premium that large-scale mass torts produce is the key feature that keeps the machinery running. This part further explains how a small oligarchy of sophisticated plaintiffs' firms takes the lion's share of this premium. This dynamic has attracted private equity's attention.

Part II explores Arizona's new alternative business structure, which allows nonattorneys to acquire and run law firms—an innovation that Rule 5.4 prohibits in just about all states. Welcoming nonattorneys into law firm ownership certainly raises the prospect of dueling fiduciary duties and owners compromising client interests for profits. This part explains that the risks of nonattorney intervention have been misunderstood. The true impact of Arizona's new law is not the erosion of fiduciary duties nor the amplification of the risk of client exploitation. Rather, I argue that the real threat is that nonattorneys will begin to vertically integrate the entire mass-tort machinery. The endgame is a corporate entity that rolls up law firms, financiers, inventory builders, marketers, vendors, and medical clinics. This new litigation colossus would completely displace the hub-and-spoke model that currently features attorneys at the center of in the mass-torts universe.

Part III explores the contours of this impending colossus and explains that vertical integration could bring staggering efficiency to the mass-tort machinery, creating exponential profit growth. But the new colossus could also weaponize litigation—a phrase I use to describe a nihilistic approach where

12. *See* TASK FORCE ON THE DELIVERY OF LEGAL SERVICES, REPORT AND RECOMMENDATIONS TO ARIZONA SUPREME COURT 10 (2019) https://iaals.du.edu/sites/default/files/documents/publications/az_report_recommendations.pdf [https://perma.cc/2QR2-DV8Q].

13. From March 2023 through January 2025, the author conducted twenty-nine interviews with twenty-two individuals intimately involved in mass torts and litigation finance, including plaintiff's attorneys, defense attorneys, and litigation financiers. *See* Confidential Interviews with Mass-Tort Insiders (on file with author).

nonattorneys marshal nonmeritorious claims and attempt to force settlement by threatening to punish corporate defendants in the court of public opinion. This part also tackles the possibility of this litigation colossus creating positive externalities, ultimately concluding that this possibility is extremely remote.

Private equity firms have begun organizing alternative business structures and lobbying other states to eliminate Rule 5.4, opening the doors to larger and more lucrative legal markets.[14] Much like sports betting, those who seek to capitalize on legislative changes are clandestinely assembling the machinery for a new world order. The trend holds the potential to revolutionize the legal profession and mass-tort cases in particular. But the world revealed could be dystopian.

I. CLAIM INCUBATION AND THE FRAGMENTED MASS-TORTS ECOSYSTEM

Mass-tort litigation is not for the faint of heart. Cases are chaotic and can take a decade to resolve.[15] The funds necessary to pursue these cases to completion can be staggering. These demands stem in large part from the woefully fragmented claim-marshaling process, which raises myriad logistical, ethical, and moral quandaries.[16]

Case acquisition firms, lead generators, claim aggregators, brokers, financiers, and case administrators are the key actors who work in symbiosis to execute the initial tasks that fuel massive profits for an oligarchy of plaintiffs' law firms.[17] Various events can spur this group to act, including a natural disaster like the Maui wildfire,[18] a report concluding a product—like Roundup—

14. *See generally* Sam Skolnik, *Litigation Finance Companies Eye Law Firm Ownership in Arizona*, BLOOMBERG L. (Nov. 29, 2021, 5:30 AM), https://news.bloomberglaw.com/us-law-week/litigation-finance-companies-eye-law-firm-ownership-in-arizona [https://perma.cc/HY6L-CN53].

15. Mass-tort cases that are the subject of this essay do not qualify for class aggregation under Rule 23 of the Federal Rules of Civil Procedure because—quite simply—there are too many individualized issues regarding causation and harm to satisfy Rule 23's requirements. *See* Samir D. Parikh, *The New Mass Torts Bargain*, 91 FORDHAM L. REV. 447, 469–70 (2022).

16. *See* Samir D. Parikh, *The Alchemist's Inversion*, 110 CORNELL L. REV. (forthcoming 2025) (manuscript at 8) (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4944361 [https://perma.cc/VG6J-42XH]).

17. *See id.* (manuscript at 10).

18. *See* Erin Mulvaney & Katherine Blunt, *Lawyers Descend on Maui After Historic Wildfire*, WALL ST. J. (Aug. 29, 2023, 5:30 AM), https://www.wsj.com/us-news/law/lawyers-descend-on-maui-after-historic-wildfire-15bfaaf5 [https://perma.cc/5NTK-RZB4].

harms users in an unforeseen way,[19] new legislation lifting the statute of limitations on sexual abuse claims,[20] and widespread use of a new drug like Ozempic.[21] Once the triggering event occurs, a seemingly erratic but highly orchestrated symphony begins.

The initial movement involves inventory builders—a phrase I use to describe case acquisition firms, lead generators, and claim aggregators who are essential to identifying and marshaling hundreds of thousands of individuals with potential lucrative litigation claims.[22] Inventory builders have the infrastructure necessary to engage potential claimants through websites and television advertising, video "infomercials" posted on social media, and direct outreach through texting and direct messaging.[23] The message is usually quite simple: Potential claimants are urged to respond immediately if there is any chance they have been harmed. These guerrilla marketing tactics have become increasingly effective, but some cases still demand inventory builders physically go into communities affected by natural disasters and solicit claimants. For example, the BP oil spill in the Gulf of Mexico prompted various inventory builders to flood effected states to sign up individuals who had supposedly

19. *See* World Health Organization, International Agency for Research on Cancer (IARC), *IARC Monographs On The Evaluation Of Carcinogenic Risks To Humans*, IARC PUBL'NS, 2017, at 1 (implicating Roundup's chemicals); *see also* Alex Wolf, *Trillions in PFAS Liabilities Threaten Corporate Bankruptcy Wave*, BLOOMBERG L. (Oct. 24, 2023, 5:15 AM), https://www.bloomberglaw.com/bloomberglawnews/bankruptcy-law/XAM20A6K000000?bna_news_filter=bankruptcy-law#jcite [https://perma.cc/TT8C-2HJA].

20. Parikh, *supra* note 16 (manuscript at 16) (discussing Louisiana's attempt to remove the state statute of limitations on molestation claims).

21. The Judicial Panel on Multidistrict Litigation has already instituted an MDL focused on Ozempic. *See* Hailey Konnath, *Ozempic MDL Gets New Judge After Judge Pratter's Death*, LAW360 (June 7, 2024, 10:40 PM), https://www.law360.com/pulse/articles/1845718/ozempic-mdl-gets-new-judge-after-judge-pratter-s-death [https://perma.cc/F9QA-CPMR].

22. Parikh, *supra* note 16 (manuscript at 10) ("A law firm seeking a prominent role in a mass tort case must represent thousands of claimants. Many plaintiffs' firms have sophisticated intake . . . departments . . . but [these] are woefully inadequate to build inventory volume in a large-scale matter . . . [E]ven established law firms must work with inventory builders.").

23. *See* Confidential Interview with Mass-Tort Insider (Feb. 22, 2024); Confidential Interview with Mass-Tort Insider (Mar. 25, 2024); Confidential Interview with Mass-Tort Insider (Apr. 17, 2024); *see also* Zachary Crockett, *Personal Injury Lawyers*, FREAKONOMICS (Feb. 18, 2024), https://freakonomics.com/podcast/personal-injury-lawyers/ [https://perma.cc/5M27-4RLG]. These practices are described as "direct solicitation" and are illegal. My understanding is that many firms pursuing these tactics are based outside the United States and avoid prosecution.

been harmed by the spill.[24] A similar phenomenon emerged after the catastrophic fires in Maui[25] and Southern California.[26]

As inventory builders are marshaling potential claimants, law firms hire administrative vendors to provide essential "back room" services. Once the law firm begins to secure representation of mass-tort claimants, vendors help retrieve potential clients' medical records and review other records to help assess claims.[27] Vendors can also estimate the potential value of each class of claims and determine how many claims will need to be kicked out of the case.[28] Vendors assist throughout the case and manage settlement logistics and ultimate distributions. They also help with claim administration by establishing case-specific portals, communicating with client pools, preparing instructional videos and newsletters, and managing global communications.[29] Inventory builders and administrative vendors provide essential services. A critical mass of claims helps solidify the credibility of a given case and draws public and journalist scrutiny, which can ultimately help impose crippling social and financial pressure on the corporate defendant.[30]

A plaintiffs' firm's primary task at the early stages of litigation is to build the legal case, but the firm is also in a position to engage in a unique form of speculation. The firm can enter the secondary market for claims trading and begin buying and selling claims based on the firm's assessment of the case and respective risk appetite. There is no formalized exchange for trading mass-tort claims—and certainly no entity that could be described as a "market maker."[31]

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24. *See* Francesca Mari, *The Lawyer Whose Clients Didn't Exist*, THE ATLANTIC (Apr. 16, 2020), https://www.theatlantic.com/magazine/archive/2020/05/bp-oil-spill-shrimpers-settlement/609082/ [https://perma.cc/AQ7Y-2T53].

25. *See* Stewart Yerton, *Do Maui Wildfire Lawyers Deserve $1 Billion In Fees?*, HONOLULU CIV. BEAT (Jan. 7, 2025), https://www.civilbeat.org/2025/01/do-maui-wildfire-lawyers-deserve-1-billion-in-fees/ [https://perma.cc/BX23-RC9K] ("Soon after the fires, attorneys descended on Maui, taking out advertisements in the airport and dashing to the courts . . . . [O]ut-of-state mass-disaster lawyers team[ed] with lawyers licensed in Hawaii.").

26. *See* Tony Saavedra, *Pacific Palisades, Eaton Wildfires Spark 'Feeding Frenzy' Among Lawyers, Ethics Concerns*, THE ORANGE CNTY. REG. (Feb. 2, 2025, 2:57 PM), https://www.ocregister.com/2025/02/02/pacific-palisades-eaton-wildfires-spark-feeding-frenzy-among-lawyers-ethics-concerns/ [https://perma.cc/Q94D-2YMB].

27. *See* Confidential Interview with Mass-Tort Insider (Apr. 17, 2024).

28. *See id.* The vendor might be tasked with identifying woefully deficient claims that present a high risk of being nonmeritorious. The firm will wish to be apprised of the risk even though it may still keep the claimant within its claim inventory.

29. *See World-Class Settlement Administration: Unparalleled Service*, ARCHER, https://www.archersystems.com/ [https://perma.cc/TQD3-DDU9].

30. *See* Parikh, *supra* note 8, at 46.

31. *See* Maureen O'Hara & George S. Oldfield, *The Microeconomics of Market Making*, 21 J. FIN. AND QUANTITATIVE ANALYSIS 361, 361 (1986) ("A market maker is a dealer who conducts a two-sided auction for [some good or asset] by standing ready to trade on either side of the market . . . .").

Instead, there is an extremely active secondary market where firms and individuals buy and sell claims, making offers over email or text messages.[32] In this unregulated space, prices fluctuate erratically based on legal and nonlegal developments. For example, "[c]laims trading can be heavy in the weeks and months before seminal events in a case, including a *Daubert* ruling, a bellwether verdict, or the passage of legislation creating a funding pool."[33]

The market is plagued by a distinct lack of integrity. Baseless and fraudulent claims proliferate. Attorneys I interviewed acknowledged that 40-50 percent of claims offered for sale were noncompensable.[34] This stems in part from the fact that identifying flawed claims is extremely difficult. My understanding is that demand for claims in mass-tort cases is strong, which creates a sellers' market. Therefore, claim buyers typically have only seven days to return claims.[35] But pulling medical records on an individual claim can take multiple weeks—if not months. Purchasers have the option of contacting the claimant to assess the claim, but many claimants misstate facts—both intentionally and unintentionally—and "claim infirmity will not be apparent for months, if ever."[36]

Ultimately, claim incubation in mass torts is extremely fragmented, unsystematic, fraught with fraud, and highly inefficient.[37] The music keeps playing because mass torts yield staggering settlement recoveries. But the premium recoveries coupled with process inefficiencies have prompted private equity firms to envision a different model—one focused on reallocating the spoils of victory. Attorneys control the current hub-and-spoke model and sit at the center of this chaotic galaxy. But does that make sense?

Private equity firms envision a different construct and recently found the means for implementation.

II. ALTERNATIVE BUSINESS STRUCTURES

Rule 5.4 of the American Bar Association's Model Rules of Professional Conduct prohibits attorneys from engaging in various types of conduct. Most notably, the rule precludes attorneys from providing for-profit, legal services through a professional corporation or association in which a nonlawyer (i) owns an interest, or (ii) has the right to direct or control the lawyer's professional judgment.[38] This rule has shaped—and possibly inhibited—the development of the legal profession since its widespread adoption. The rule is

32. *See* Confidential Interview with Mass-Tort Insider (Mar. 25, 2024).

33. Parikh, *supra* note 16 (manuscript at 16).

34. *See* Confidential Interview with Mass-Tort Insider (Mar. 25, 2024).

35. Parikh, *supra* note 16 (manuscript at 17).

36. *Id.*

37. I assess efficiency in this context by the relative number of meritorious claims—as compared to noncompensable or nonmeritorious claims—brought into the resolution process. The chaos inherent in this process is arguably beneficial to established law firms because it presents significant barriers to entry.

38. MODEL RULES OF PRO. CONDUCT r. 5.4 (AM. BAR ASS'N 1983).

premised on various justifications, including the fear that nonlawyers will (i) erode attorneys' ability to prioritize client interests before profits, (ii) undermine the decision-making process in legal disputes, and (iii) distort the legal system.[39]

Utah and the District of Columbia—as well as the UK and Australia—have rejected this idea of attorney exceptionalism and client fragility.[40] And echoes of that incredulity have begun to affect how the rule is viewed in the United States today.

A. *Arizona's Innovation*

On January 1, 2021, Arizona began allowing nonlawyers to jointly own firms providing legal services and be part of governing such firms without restriction on practice area.[41] The new approach displaces Rule 5.4 under the guise of providing litigants greater access to legal representation and bolstering the means to address civil harm.[42] The task force appointed to consider the change justified eliminating Rule 5.4 by arguing "its twin goals of protecting a lawyer's independent professional judgment and protecting the public are reflected in other ethical rules which can be strengthened."[43] The task force concluded that economic protectionism was Rule 5.4's true motivation; the rule was designed to prevent nonattorneys from being affiliated with a firm providing legal services.[44]

Arizona's new law abrogates Rule 5.4 within the state and amends the definition of "firm" to allow nonlawyers to enjoy an ownership interest. These nonattorneys are defined as "Authorized Persons"—individuals and corporate entities[45] who "possess[] 1. An economic interest in the [ABS] equal to or more

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39. *See* Maya Steinitz, *The Partnership Mystique: Law Firm Finance and Governance for the 21st Century American Law Firm*, 63 WM. & MARY L. REV. 939, 956–57 (2022).

40. TASK FORCE ON THE DELIVERY OF LEGAL SERVICES, *supra* note 12, at 11, 13, 40; *see* Nick Robinson, *When Lawyers Don't Get All the Profits: Non-Lawyer Ownership, Access, and Professionalism*, 29 GEO. J. LEGAL ETHICS 1, 8–9 (2016). In 2018, Utah created an option for nonlawyer-owned firms, but these firms can provide only limited legal services involving "family law matters," "[f]orcible entry and detainer," and "[d]ebt collection matters in which the dollar amount at issue does not exceed the statutory limit for small claims cases." *Licensed Paralegal Practitioner*, UTAH. CTS., https://www.utcourts.gov/en/about/miscellaneous/legal-community/lpp.html [https://perma.cc/UF45-T48J]. Washington D.C. allows nonlawyer ownership with similar restrictions. *See* TASK FORCE ON THE DELIVERY OF LEGAL SERVICES, *supra* note 12, at 11. Arizona has transcended these approaches by eliminating Rule 5.4 entirely.

41. Ariz. Sup. Ct. Admin. Ord. No. 2020-173 § 7-209(A) (2020), https://orders.azcourts.gov/Portals/22/admorder/Orders20/2020-173F.pdf?ver=2020-11-05-105350-050 [https://perma.cc/F3SD-Y37R] [hereinafter Arizona Admin. Order].

42. *See* TASK FORCE ON THE DELIVERY OF LEGAL SERVICES, *supra* note 12, at 10. ("[Rule] 5.4 . . . has been identified as a barrier to innovation in the delivery of legal services.").

43. *Id.* at 13, 16 (referencing Rule 1.8(f), which provides that third parties cannot interfere with an attorney's independent professional judgment nor the attorney-client relationship).

44. *Id.* at 15.

45. Arizona Admin. Order, *supra* note 41, § 7-209(A) (" 'Person' means an individual, business corporation, . . . partnership, limited partnership, [and] limited liability company . . . .").

than 10 percent of all economic interests in the [ABS]; or 2. [t]he legal right to exercise decision-making authority on behalf of the alternative business structure."[46] "Decision-making authority" can be direct or indirect.[47]

Arizona businesses interested in forming as an ABS must apply to the state supreme court for approval.[48] Once approved, the firm can begin offering legal services, assuming it has at least one attorney licensed to practice in Arizona and an internal compliance attorney.[49] ABSs are required to have an Arizona-licensed compliance attorney,[50] but other firm investors and managers can be based outside the state.[51]

The obvious fear with this radical change is that nonattorneys will subtly distort how law firms are run and erode rules of ethics.[52] Nonattorneys are fixated on maximizing profits, regardless of the risk of disadvantaging clients. There is a strong argument that, while attorneys at law firms are also attempting to maximize returns, they are not burdened with a fiduciary duty to do so. Rather, attorneys' duties extend to their clients. This variance could theoretically pit nonattorneys against attorneys at key points in a case's trajectory. "[The fear is that] non-lawyer owners and investors may put their profit maximization goals ahead of professional obligations to clients more often than lawyers might succumb to the same temptation, presumably because lawyers . . . have internalized values of ethical conduct through their legal training and practice."[53]

To address fiduciary duty drift, the Arizona Supreme Court is tasked with licensing ABSs and granting applications after verifying several criteria, including whether the governance structure ensures that lawyers make decisions in the best interest of clients.[54] Section 7-209(G)(3) of the Code of Judicial Administration requires each ABS to have a "compliance lawyer" who is obligated to:

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46. *Id.*

47. *See* Steinitz, *supra* note 39, at 983–84.

48. Arizona Admin. Order, *supra* note 41, § 7-209(E).

49. *Id.* § 7-209(A), (G).

50. This mirrors what we see in other jurisdictions. *See* Robinson, *supra* note 40, at 9.

51. *See* Emily R. Siegel, *Private Equity Goes to Arizona for National Tort Firms (Correct)*, BLOOMBERG L. (July 2, 2024, 2:09 PM), https://news.bloomberglaw.com/business-and-practice/private-equity-flows-into-arizona-to-run-national-tort-firms [https://perma.cc/CLB3-4ADX].

52. *See* MAX FRUMES & SUJEET INDAP, THE CAESARS PALACE COUP: HOW A BILLIONAIRE BRAWL OVER THE FAMOUS CASINO EXPOSED THE POWER AND GREED OF WALL STREET 276 (2021) ("There can be no serious dispute that Paul, Weiss, acting for [private equity firm Apollo], not only facilitated the [fraudulent transfers at issue] but was intimately involved in their formulation and implementation . . . .").

53. McMorrow, *supra* note 11, at 674–75; *see also* Skolnik, *supra* note 14 ("Our job, our loyalty, our commitment is to our clients and not to an investor . . . . I would worry about the possibility of split loyalties.").

54. Arizona Admin. Order, *supra* note 41, § 7-209(E).

> (1) Ensure compliance with the ethical and professional responsibilities of lawyers in the ABS providing legal services; (2) Ensure compliance by the ABS's authorized persons; (3) Ensure the ABS's authorized persons and others employed, associated with, or engaged by the ABS do not cause or substantially contribute to a breach of the regulatory requirements of this code or the ethical and professional obligations of lawyers . . . .[55]

Section 7-209 imposes on the ABS and its members a unique code of conduct. The most relevant obligations require nonattorneys to "not take any action or engage in activity that interferes with the professional independence of lawyers or others authorized to provide legal services."[56] Further, Arizona Rule 2.1 requires lawyers to "exercise independent professional judgment" regardless of external factors, such as financing.[57] Presumably, ethical obligations owed to clients would take precedence over such external factors.

These provisions theoretically provide meaningful safeguards for maintaining the highest levels of professional integrity. But codes of conduct like this one currently exist across the country, and lawyers still face "unrelenting pressures to erode their professional practice."[58] The suspicion is that outside pressure causes attorneys to frequently fall short of their ethical rules. What happens if that pressure comes from inside the firm? The obvious fear is that merely placing similar restrictions on attorneys and nonattorneys in an ABS will do little to curb profiteering. Indeed, the threat of unintended consequences looms large.

B. *Unintended Consequences*

Despite noble intentions, it is unclear if Arizona's new paradigm will ever meaningfully improve access to justice within the state.[59] Few firms filing ABS applications are attempting to facilitate legal representation for the financially disadvantaged or disenfranchised.[60] The early trend mirrors what various cynics had predicted: "Hedge funds, private equity groups[,] and other investors [are exploiting] Arizona's unusual opportunity to have an equity stake in law firms."[61] Forty percent of the legal businesses approved as ABSs so far are backed by private equity firms or hedge funds,[62] and "[a]bout one-third of the

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55. *Id.* § 7-209(G)(3)(b).

56. *Id.* § 7-209(K)(1)(b).

57. ARIZ. RULES OF PRO. CONDUCT r. 2.1 (STATE BAR OF ARIZ. 2003).

58. *See* McMorrow, *supra* note 11, at 672; *see also* FRUMES & INDAP, *supra* note 52, at 276.

59. *See* Robinson, *supra* note 40, at 15.

60. *See id.*

61. Erin Mulvaney, *Why Arizona Law Firms Are a Hot Investment for Private Equity*, WALL ST. J. (Mar. 20, 2024, 4:38 PM), https://www.wsj.com/us-news/law/smart-money-in-bed-with-lawyers-why-wall-street-is-investing-in-arizona-law-firms-7b0ec2a1 [https://perma.cc/ZD6N-4AQP]; *see also* Siegel, *supra* note 51.

62. Mulvaney, *supra* note 61.

new firms specialize in personal injury claims and mass tort litigation."[63] This is not surprising because the personal injury market is exceedingly profitable on a per-claim basis, and mass torts present the scale, predictability, and deep-pocketed defendants that rarely exist in other areas.[64]

Equity investors and litigation funders have been the first to enter the ABS space. This latter group—through its lending practices—already has significant experience with the claim-incubation process and what makes plaintiffs' firms in the mass-tort sphere successful.[65] Arizona's model of nonattorney ownership would radically transform how law firms are structured and operate and "would let [financiers and private equity] work across all parts of a law operation."[66] The matter is framed as an innovation in delivering legal services, but the clear subtext is that these actors see a means to assume decision-making control and otherwise disrupt the law firm oligarchy in mass torts. For example, 777 partners formed an ABS with Scout Law Group, which already represents Camp Lejeune claimants in a separate mass-tort case.[67] Other litigation finance and private equity firms that own a stake in an ABS include Pravati Capital, Melody Capital Management, Kayne Anderson, Counsel Financial, Bespoke Capital Consulting, and Virage Capital Management.[68] One new ABS, Case Partners, is run by three mass-tort marketers.[69] Ninth Avenue Capital is a private equity firm that applied for an ABS and disclosed that it will initially focus on mass torts and personal injury.[70] Burford Capital and Longford Capital Management—two behemoth financiers—have expressed interest in co-owning an ABS.[71] These steady advancements will provide a stress test to Arizona's fiduciary duty safeguards.

Arizona has initiated a new business model for legal services, but, as explored below, the model's true consequence has been overlooked.

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63. *Id.* ("What is different in Arizona is that the investors can now have equity, and potentially have much higher margins.").

64. *See* Parikh, *supra* note 16 (manuscript at 28) (detailing why financiers are enamored with large-scale, mass-tort cases).

65. *See* Skolnik, *supra* note 14; *see also* Parikh, *supra* note 8, at 44.

66. Skolnik, *supra* note 14.

67. *Leading Arizona Law Firm Partners with Private Investment Firm to Create National Plaintiff Powerhouse*, PR NEWSWIRE (Sept. 27, 2022, 8:00 PM), https://www.prnewswire.com/news-releases/leading-arizona-law-firm-partners-with-private-investment-firm-to-create-national-plaintiff-powerhouse-301633402.html [https://perma.cc/C9VG-FPDF].

68. *See* Siegel, *supra* note 51.

69. Jack Newsham, *Gold Rush: Lawyers are Flocking to Arizona to Take Advantage of New Rules Resulting in a Flood of Outside Investments in Law Firms*, SCOUT L. GRP., https://www.scoutlawgroup.com/news/gold-rush-lawyers-are-flocking-to-arizona-to-take-advantage-of-new-rules-resulting-in-a-flood-of-outside-investments-in-law-firms [https://perma.cc/Y6SP-KARF].

70. Siegel, *supra* note 51.

71. Skolnik, *supra* note 14.

C. *The True Threat of Arizona's Shift*

Arizona's new rule attempts to manage the risk of fiduciary duty encroachment by imposing obligations on all nonattorneys who could exert influence and distort ethical obligations.[72] Naturally, the fit is misaligned. Not all investors who could influence the agents of the ABS have to be disclosed. I argue that Arizona's new model ushers nonattorneys into the decision-making process and allows some to pull strings from the shadows. The complexity these dynamics present is meaningful, and the concerns that have been expressed are well founded. I argue, however, these concerns miss the point. The true impact of Arizona's new law is not the erosion of fiduciary duties or amplification of the risk of client exploitation. These are secondary or tertiary issues, an idle diversion while Rome is burning.

The real threat that Arizona's new rule poses is that nonattorneys who gain ownership and decision-making authority within a law firm will then proceed to restructure the world of litigation by vertically integrating the entire mass-torts machinery. The endgame is a corporate entity owned and run by nonattorneys that rolls up law firms, financiers, inventory builders, marketers, vendors, and medical clinics.[73] The firm could provide all essential services. Naturally, this paradigm would displace the current hub-and-spoke model and redistribute recoveries; attorneys would no longer be the center of the mass-torts universe.[74] The impact on victims and, more broadly, the integrity of the United States judiciary is unclear.

Arizona's new law allows for vertical integration that could instill staggering efficiency to the mass-torts ecosystem, conceivably creating exponential

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72. Arizona Admin. Order, *supra* note 41, § 7-209(K).

73. *See generally* Odd Lots, *Lina Khan Is Sending a Message to the Private Equity Industry*, BLOOMBERG (Nov. 16, 2023), https://podcasts.apple.com/us/podcast/lina-khan-is-sending-a-message-to-the-private/id1056200096?i=1000634957896 [https://perma.cc/9QSV-M29M].

74. An obvious limit is that out-of-state attorneys would violate ethics rules in their home state if they partnered with nonattorneys through an Arizona ABS. Therefore, the litigation colossus can materialize only if other jurisdictions with larger legal markets (e.g., California, Texas, and New York) join Arizona. I acknowledge that Arizona is at the forefront—just as it was with attorney advertising on television—but others will follow. *See* Skolnik, *supra* note 14 ("[O]ther jurisdictions with larger legal markets need to join Arizona . . . . This could happen within two-to-three years . . . given that California and other large states also have begun to weigh the benefits of rules changes."); *see also* DAVID FREEMAN ENGSTROM, LUCY RICCA, GRAHAM AMBROSE & MADDIE WALSH, LEGAL INNOVATION AFTER REFORM: EVIDENCE FROM REGULATORY CHANGE 17–18 (2022). Arizona is offering a platform for parties to begin formulating how the colossus can be assembled and ultimately "how to make it a US-wide business." *See* Siegel, *supra* note 51. It may not be the daunting obstacle many would assume. Sports betting—a practice rejected by ostensibly all states for the past century—is now legal in the majority of the country and serves as an apt analogy. John T. Holden, Marc Edelman & Keith Miller, *Legalized Sports Wagering in America*, 44 CARDOZO L. REV. 1383, 1384–85, 1416 (2023). Further, there are ABS-like firms operating overseas that compete with US firms; many view this dichotomy as a disadvantage for US firms. *See* Steinitz, *supra* note 39, at 977, 1012. If these views become widespread, these entities and others will lobby to dismantle the current restrictions.

profit growth. As explored below, this new colossus would also weaponize litigation, bringing forward all the miracles and horrors that prospect conjures.

III. THE LITIGATION COLOSSUS

The previous section detailed Arizona's new ABS paradigm and how its potential implications have been overlooked. This section further unpacks how the new paradigm has drawn actors to the mass-torts ecosystem seeking to assemble a litigation colossus.

A. *Vertical Integration*

Vertical integration is where a firm occupies—or owns entities occupying—several stages of a particular industry's value chain.[75] Vertical integration is attractive for strategic considerations,[76] including improving leverage and positioning vis-à-vis counterparties and efficiency objectives focused on governance and marginal transaction costs.[77] The practice also increases barriers to entry. The ultimate goal is to achieve monopolistic or oligopolistic profits.

Improved governance is a prominent benefit of vertical integration.[78] Relying on internal divisions to perform services typically provided by third parties can be optimal when there are questions about a partner's or agent's contributions or the quality of their services—a concern that is often prevalent when attorneys rely on claim aggregators[79]—and these services cannot be monitored effectively or policed through contract. Further, I argue that governance can be vastly improved when all key modules in the chain are under the supervision of experienced managers with a singular vision. Service providers in industries plagued by intermediation are often able to demand a premium for nonspecialized services. Vertical integration allows firms to avoid incurring these premium payments and, in some cases, secure the premium for itself by charging other actors within an industry for these services.

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75. Thomas Osegowitsch & Anoop Madhok, *Vertical Integration Is Dead, Or Is It?*, BUS. HORIZONS, Mar.-Apr. 2003, at 25, 25; *see also* Stephen Mihm, *Vertical Integration is Making a Comeback at U.S. Companies*, BLOOMBERG (Jan. 12, 2022, 9:30 AM), https://www.bloomberg.com/opinion/articles/2022-01-12/supply-chain-woes-are-convincing-ceos-to-bring-back-vertical-integration [https://perma.cc/B8T7-LQHL]. Starbucks is arguably vertically integrated in that it owns (i) farms that grow coffee beans, (ii) servicers that process and transport the beans, and (iii) retail locations that sell coffee. Peter Bondarenko, Melissa Petruzzello & Karl Montevirgen, *Starbucks*, BRITANNICA MONEY, https://www.britannica.com/money/Starbucks [https://perma.cc/7YHH-VVW4] (last updated June 5, 2025).

76. *See* OSEGOWITSCH & MADHOK, *supra* note 75, at 26 (noting that strategic approaches intend to "change [an] industry's existing power structure," improve efficiency, and increase barriers to entry).

77. *See id.* at 26–27; *see also* Herbert Hovenkamp, *The Law of Vertical Integration and the Business Firm: 1880-1960*, 95 IOWA L. REV. 863, 865–70 (2010); *see generally* R. H. Coase, *The Nature of the Firm*, 4 ECONOMICA 386 (1937).

78. *See* OSEGOWITSCH & MADHOK, *supra* note 75, at 27.

79. *See supra* Part I.

Finally, vertical integration is especially attractive in nascent industries or new asset classes, because the process creates an industry representative that can add credibility and integrity.[80]

B. *Weaponizing Litigation and Other Risks*

Vertical integration is foreign to the legal services industry and the mass-torts ecosystem. While this practice has historically been antithetical to how legal services are delivered, mass torts present unique dynamics. In this space, private equity firms are attracted to the prospect of a litigation colossus that can systematically marshal claims and methodically apply settlement pressure on wealthy corporate defendants. There are currently no litigation colossuses in the United States. Arizona's innovation only recently opened the door to such possibilities. Earlier this year, the Arizona Supreme Court approved accounting behemoth KPMG's application to form a legal services arm—a development that accounting firms have long sought.[81] And we are beginning to see vertical integration overseas. In the UK, Legatus Holdings Limited integrates investors in mass-tort claims and insurers for litigants.[82]

Vertical integration rolls up key actors in the ecosystem. A private equity firm will start by partnering with a legal services firm to create an alternative business structure. Let's call it Litigation Colossus X. The private equity firm will invariably create a subsidiary to own a controlling stake in the new colossus and, therefore, be recognized as an "Authorized person" under Arizona law.[83] Once the Arizona Supreme Court has approved Litigation Colossus X, the firm can begin acquiring other actors in the value chain. The next most important actor would be a marketing firm with the infrastructure to engage in the guerrilla marketing practices described above.[84] A claim aggregator is essential to further bolster claim marshaling and secure clients through direct contact. Litigation Colossus X will also need to roll up multiple administrative vendors adept at assessing investment-grade claims and managing all logistical matters that accompany the representation of thousands of clients. The final controversial piece is to create or acquire medical clinics to employ

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80. *See id.* at 30. Naturally, vertical integration has detriments, especially when considering the upfront financial investment the practice demands, along with the loss of optionality if the industry begins to deteriorate.

81. *See* Sara Merken, *KPMG Approved to Launch US Law Firm in First for Big Four*, REUTERS (Feb. 27, 2025, 3:18 PM), https://www.reuters.com/legal/legalindustry/kpmg-approved-launch-us-law-firm-first-big-four-2025-02-27/ [https://perma.cc/6JV6-8UWR].

82. *See* Emily R. Siegel, *UK Funder Joins with Law Firm, Insurer to Form Legal Behemoth*, BLOOMBERG L. (Jan. 10, 2025, 5:00 AM), https://news.bloomberglaw.com/business-and-practice/uk-funder-joins-with-law-firm-insurer-to-form-legal-behemoth [https://perma.cc/5U67-YMM3].

83. *See* Arizona Admin. Order, *supra* note 41, § 7-209(A).

84. *Infra* Part I.

physicians who can diagnose and assess potential clients.[85] Based on traditional private equity models, Litigation Colossus X will fund operations with capital contributed by the main fund's limited partners and recoveries will be distributed to investors *and* the private equity firm.

The litigation colossus raises many issues, but I want to focus on the idea of weaponizing litigation, which is the most troubling threat. Naturally, the threat can manifest in myriad forms, but there are two prominent facets.

The primary threat is that the colossus is able to methodically marshal nonmeritorious claims and more easily build cases—arguably frivolous ones—where other actors would retreat. Many claims in a mass-tort dispute turn out to be entirely nonmeritorious. The claimant did not suffer the harm alleged or did not use the service or product at issue.[86] On a stand-alone basis, these claims are extremely unlikely to realize any recovery through the judiciary. But if these claims are bundled with meritorious claims in a large-scale, mass-tort case, the resulting critical mass could force a defendant to pay a premium to settle *all* claims.[87]

This windfall is possible for a variety of reasons,[88] but the main driver is that neither plaintiffs' attorneys nor the judiciary have proven capable of filtering nonmeritorious claims in the vast majority of mass-tort cases.[89] The sheer number of claims in these cases makes filtering extremely difficult. And because of limited court resources that preclude careful review of claims, nonmeritorious claims are often paid out at the same level as meritorious ones.[90] The result is an oversized claim inventory, which can place exaggerated pressure on corporate defendants.

As my recent article explained, "[t]he [aggregate] litigation labyrinth is daunting, but a party with the resources to stay the course knows that the corporate defendant will invariably have to concede . . . . [T]his [is] the 'inevitability doctrine[.]'"[91] Pressure tactics, when executed systematically, are

85. An alternative approach is to merely partner with certain medical facilities to maintain health insurance coverage for actual and potential clients but still access medical records expeditiously.

86. *See* Parikh, *supra* note 8, at 34–37 (offering a full explanation of this phenomenon).

87. Mass-torts cases that are the subject of this essay have too many claimants to allow anything more than a handful of cases to be heard by a jury. The only viable means of resolution is mass settlement through protracted negotiations. *See* Samir Parikh, *'Day-In-Court' Ideal is Distracting From Victim Recovery*, LAW360 (Mar. 16, 2023, 10:11 AM), https://www.law360.com/articles/1585884 [https://perma.cc/2QQK-U2WG] ("Once a case becomes part of MDL, claimants cannot opt out to continue their litigation . . . . Only a handful of the hundreds of thousands of claimants . . . will ever get their day in court.").

88. *See* Parikh, *supra* note 8, at 34.

89. *See* Nora Freeman Engstrom & Todd Venook, *Harnessing Common Benefit Fees to Promote MDL Integrity*, 101 TEX. L. REV. 1623, 1631–33 (2023) (listing several recent cases that appeared to contain large numbers of nonmeritorious claims, including *Vioxx*, *Deepwater Horizon*, *Fosamax*, *Digitek*, *Abilify*, *Zostavax*, and *3M*).

90. *See* Parikh, *supra* note 8, at 49–51.

91. *See* Parikh, *supra* note 16 (manuscript at 31).

successful because they create a "black cloud" over the defendant.[92] The cloud can ruin the defendant's brand and suppress market capitalization. The negative publicity and uncertainty surrounding the litigation force investors to discount the defendant's value.[93] "Credit markets are affected similarly, but the results are increased borrowing costs or . . . restricted access to credit."[94] Claimants know pressure only mounts as litigation endures. The building cacophony of bad press and uncompensated claimants can ultimately cripple even the most resolute defendant.

The litigation colossus is able to capitalize on this reality. The firm has the capital necessary to stay the course and relentlessly build the cloud. Consider that a cause of action is property[95] and settlement is merely selling that asset to the wrongdoer. A colossus with veto power over any settlement offer[96] can wait to sell at a time where asset value is maximized, systematically ratcheting pressure until the corporate defendant must concede. The inevitability doctrine's dark side is that the merits of the litigation are often deemphasized. The unique dynamics in mass torts can force settlement even where scientific evidence fails to establish that the corporate defendant engaged in any tortious conduct.[97] The ultimate result is that the colossus is uniquely positioned to pursue both meritorious *and* nonmeritorious claims. I argue that current resolution structures actually encourage marshaling of both.

This initial facet of weaponization should be troubling to all parties. The threat to corporate defendants and the integrity of the judiciary is clear, but victims also suffer. Every dollar received by a nonmeritorious claimant is one less dollar available for a meritorious one.[98]

The second facet is that the litigation colossus may be able to enhance claim value in entirely unpredictable and unethical ways. For example, in

92. *See* Parikh, *supra* note 8, at 50.

93. *See id.*

94. Parikh, *supra* note 15, at 462.

95. Ryan C. Williams, *Due Process, Class Action Opt Outs, and the Right Not to Sue*, 115 COLUM. L. REV. 599, 619–21 (2015).

96. *See* Parikh, *supra* note 8, at 39–41 (explaining how financiers can provide capital to individual claimants in exchange for veto power over any settlement offer in a particular case). The colossus is also able to purchase mass-tort claims outright from victims and enjoy full discretion in pursuing an action.

97. *See* Parikh, *supra* note 16 (manuscript at 19) ("For example . . . . Johnson & Johnson was victorious in 15 of the 16 [state court] cases [involving use of its talcum powder] . . . . Nevertheless, the company recently proposed a $6.4 billion settlement . . . . Johnson & Johnson employed a similar approach in the Xarelto MDL, where the company prevailed in all three bellwether trials and all Pennsylvania state court cases . . . but still agreed to settle the matter for $775 million.") (citations omitted); *see also* David E. Bernstein, *The Breast Implant Fiasco*, 87 CAL. L. REV. 457, 459, 479–80 (1999) (explaining that Dow Corning was forced to file for bankruptcy to address claims that breast implants caused cancer even though there was ostensibly no scientific evidence supporting the claims, which were subsequently debunked).

98. *See* Parikh, *supra* note 16 (manuscript at 7).

2008, many recipients of mesh implants designed to correct pelvic organ prolapse began complaining of internal bleeding.[99] Attorneys soon learned that the value of a claim increased dramatically if the implant had been removed from a plaintiff's body.[100] Seizing on this idea, various inventory builders began reaching out to mesh recipients to convince them to have the mesh removed before filing a claim.[101] Of course, neither the inventory builders nor the parties they worked with attempted to make any determination about the need for a particular individual to have the mesh implant removed.[102] In fact, in many cases, there was no basis for removal, an extremely dangerous procedure.[103] This case is an example of a haphazard attempt to build a mass-tort case. A litigation colossus would enjoy the scale to more systematically and aggressively pursue these types of measures.

C. *Addressing Potential Benefits*

In discussing this Essay with industry insiders, terror was the initial response to my idea of the litigation colossus. Defense-side attorneys were understandably troubled by the prospect, but so were plaintiffs' attorneys. Notwithstanding this trepidation, I acknowledge that there may be some meaningful benefits this new predator can offer. Unfortunately, as explained below, the promise of positive externalities may be illusory.

The primary argument for the colossus is that this actor could actually reduce the number of nonmeritorious claims entering the judiciary. The infiltration of nonmeritorious claims into mass-tort cases is one of the most intractable obstacles to settlement.[104] The current fragmented claim-aggregation process incentivizes parties to marshal nonmeritorious claims and creates structural obstacles to identifying parties that do so. Naturally, the litigation colossus disintermediates this process and could shift incentives by bringing key actors under one umbrella. And it is possible that the colossus will be focused on pursuing meritorious and compensable claims. These claims are the most valuable and offer the greatest recovery. By doing so, the colossus could

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99. Alison Frankel & Jessica Dye, *Investors Profit by Funding Surgery for Desperate Women Patients*, REUTERS (Aug. 18, 2015, 12:25 PM), https://www.reuters.com/article/business/healthcare-pharmaceuticals/special-report-investors-profit-by-funding-surgery-for-desperate-women-patients-idUSL3N10S54U/ [https://perma.cc/9STH-WMDG].

100. *See* Matthew Goldstein & Jessica Silver-Greenberg, *How Profiteers Lure Women Into Often-Unneeded Surgery*, N.Y. TIMES (Apr. 14, 2018), https://www.nytimes.com/2018/04/14/business/vaginal-mesh-surgerylawsuits-financing.html [https://perma.cc/D9NZ-VCSW] (explaining that defendants were offering only meager settlements in cases where the mesh had not been removed).

101. *See id.*

102. *See* Frankel & Dye, *supra* note 99.

103. *See id.*

104. *See* Samir Parikh, *How Courts Can Filter Nonmeritorious Claims in Mass Torts*, LAW360 (Feb. 27, 2025, 3:07 PM), https://www.law360.com/articles/2302792/how-courts-can-filter-nonmeritorious-claims-in-mass-torts [https://perma.cc/6FTU-XG7Z].

be motivated to help courts identify nonmeritorious claims that could diminish distributions made to meritorious claimants.

This argument is flawed. Private equity firms are attracted to mass torts because of the premium recovery. As I have already explained, if nonmeritorious claims continue to be valuable assets, the litigation colossus is going to marshal them and may even amplify efforts to do so. Keep in mind that attorneys—parties who face robust ethical and professional responsibility obligations—have been actively marshaling nonmeritorious claims.[105] Consequently, we should anticipate that parties whose only obligation is to maximize profits for their investors will do the same as long as the practice continues to be lucrative.

Another potential benefit is that the colossus has the size to bolster claim integrity by creating a trading exchange. The exchange for bankruptcy claims is a good analogy.[106] Exchanges for bankruptcy claims have become extremely sophisticated and reliable over the last decade. The colossus is positioned to replicate these exchanges for mass-tort claims. The argument is that a mass-tort claim exchange could require sellers to provide an evidentiary basis supporting the prima facie validity of a claim offered for sale. This evidence could come in the form of an affidavit from the client or redacted copies of medical records or diagnoses. Imposing this requirement will naturally put upward pressure on claim prices but could, nevertheless, keep nonmeritorious claims out of the judiciary. Further, the colossus will also have the scale necessary to be a market maker—buying and selling claims as necessary to facilitate the seamless functioning of a nascent marketplace.

This notion similarly falls. One of the primary benefits of vertical integration is that the mass-torts ecosystem is extremely fragmented and marshaling claims is resource intensive. Vertical integration facilitates claim aggregation for the colossus and, at the same time, creates barriers to entry for competitors. An efficient claims-trading exchange would ease a competitor's acquisition of mass-tort claims and facilitate their active engagement in cases. This development would be decidedly against the litigation colossus's interests. From a private equity firm's perspective, investing resources to create an exchange could actually defeat the purpose of vertically integrating.

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105. Parikh, *supra* note 16 (manuscript at 36–37) (highlighting the staggering number of nonmeritorious claims that attorneys filed in the Combat Arms MDL).

106. Historically, there was a thin market for claims against a company that filed for bankruptcy. See Adam J. Levitin, *Bankruptcy Markets: Making Sense of Claims Trading*, 4 BROOK. J. CORP. FIN. & COM. L. 64, 80 (2010). As the bankruptcy process became more sophisticated and predictable, investors realized that this perception was inaccurate. These parties began soliciting claimants listed in the schedules of large corporations that filed for federal bankruptcy. The market for selling bankruptcy claims grew over the last three decades, *see id.*, and has now culminated in a number of sophisticated online exchanges. XClaim is a good example. The exchange helps bolster the integrity of the sale process by requiring supporting documentation and other means to help identify fraudulent claims. *See The Smartest Way to Buy and Sell Bankruptcy Claims*, XCLAIM, https://www.x-claim.com/ [https://perma.cc/M4CU-62HR].

Finally, one could argue that the colossus will heighten the risk of punishment through the judiciary and incentivize corporate defendants to be more vigilant in ensuring the safety of the products and services they offer. The primary limitation of this argument is that the mass-torts sphere is plagued by perverse incentives. As noted above, large-scale, mass-tort cases often settle years before there is any scientific consensus about causation.[107] This phenomenon supports the conclusion that "financial success in a given case is most strongly correlated to the size of an attorney's claim inventory," as opposed to the merits of the case.[108] "If a critical mass of claims is secured, the argument goes, then the rest of the process is merely about applying pressure to a corporate defendant and negotiating a purchase price."[109] This phenomenon presents significant lottery effects, rendering deterrence unrealized. Indeed, insiders I spoke to asserted "that corporate actors that conform their behavior to legal strictures are no better off than those that do not."[110] To the extent that culpability is not necessary to establish liability, the enhanced threat of litigation will not necessarily alter a potential defendant's practices or procedures.

Ultimately, the litigation colossus could certainly create positive externalities, but my suspicion is that the primary effect will be to distort the mass-tort ecosystem in ways that disadvantage all other stakeholders.

CONCLUSION

The legal profession is approaching a point of no return. The traditional construct that has kept attorneys and nonattorneys in discrete ownership silos is eroding. And the mass-tort ecosystem is going to be the first to witness the consequences. This Essay argues that the litigation colossus—a firm with a convoluted governance structure and woefully divided loyalties—is the most significant result of Arizona's divergent evolution that is poised to spread across the country. Profit maximization will be the ultimate guiding light for this new predator. I predict that the impact on other stakeholders in the mass-tort ecosystem—including victims—will be decidedly negative.

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107. *See supra* note 95.

108. *See* Parikh, *supra* note 16 (manuscript at 17).

109. *Id.* Naturally, plaintiffs' attorneys mock this premise.

110. *See id.* (on file with author).