



RULES 4 MDLS

# Rules 4 MDLs: Calculating the Case

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**EMBARGOED UNTIL 12AM EDT  
ON THURSDAY, OCTOBER 4, 2018**



# About the Report

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Lawyers for Civil Justice (LCJ), a national coalition of defense trial lawyer organizations, law firms, and corporations, created this report relying on data from the Judicial Panel on Multidistrict Litigation and United States Courts.

Many of the present Federal Rules of Civil Procedure were never intended for MDLs and don't practically apply in these proceedings, particularly those with hundreds or even thousands of individual cases. As a result, courts overseeing these MDLs often employ *ad hoc* procedures that suffer from a lack of clarity, uniformity, and predictability that the rules are supposed to provide for all civil cases.

Overall, there are six areas in the FRCP that LCJ recommends should be adapted to the practical realities of MDL cases: pleadings, dismissal, joinder, required discovery disclosures, trial, and appellate review.

# FRCPP Are Supposed to Cover All Cases...

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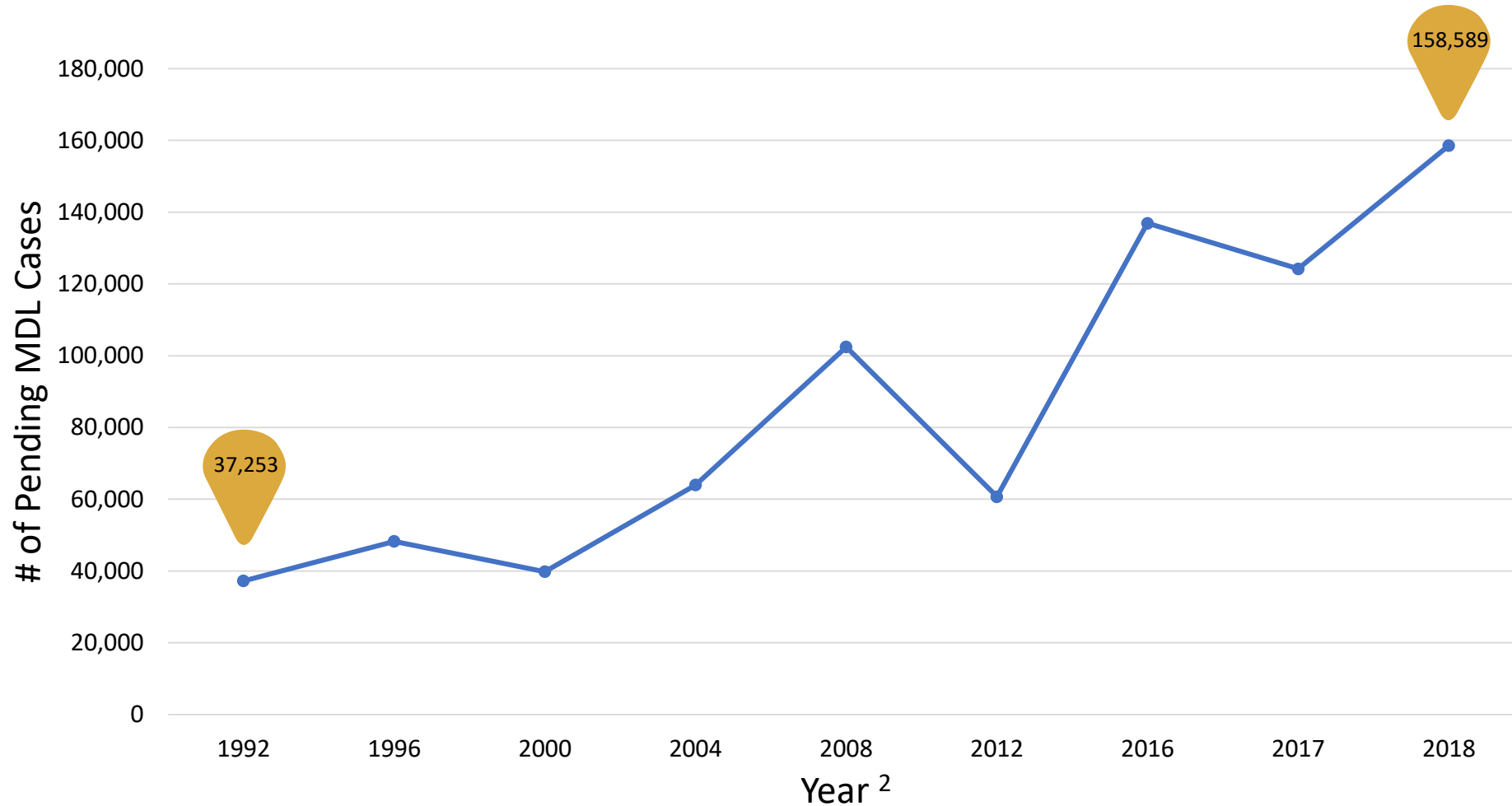
## The Federal Rules of Civil Procedure

### Rule 1 – Scope and Purpose

***“These rules govern the procedure in all civil actions and proceedings in the United States district courts...They should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.”***

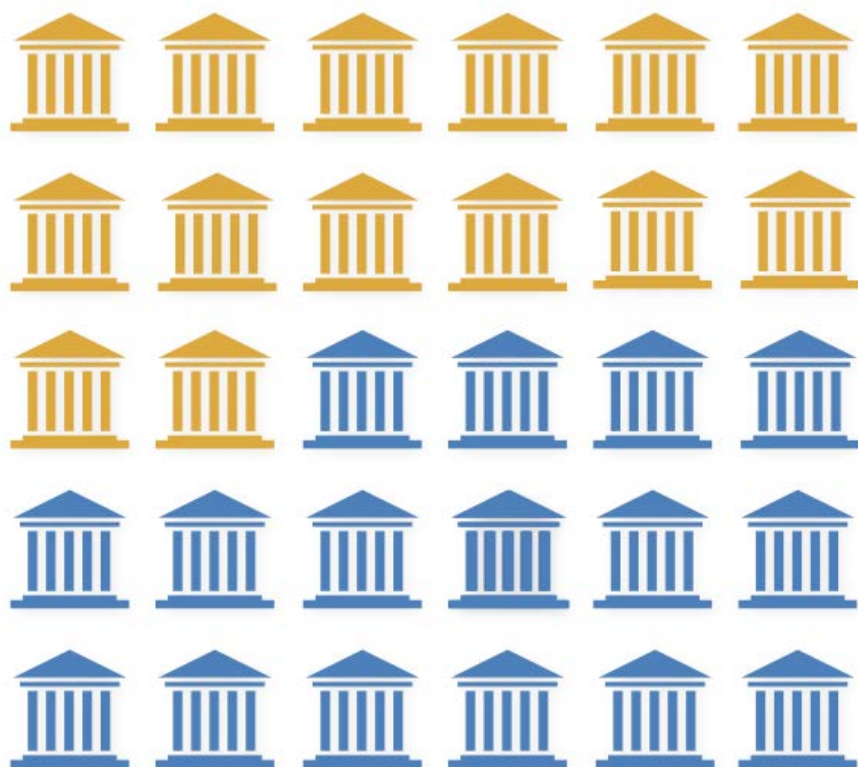
...Here are the facts

# Cases in MDLs Have Increased More Than 4X Since 1992 <sup>1</sup>



# Cases in MDLs Represent 47% of Civil Caseload

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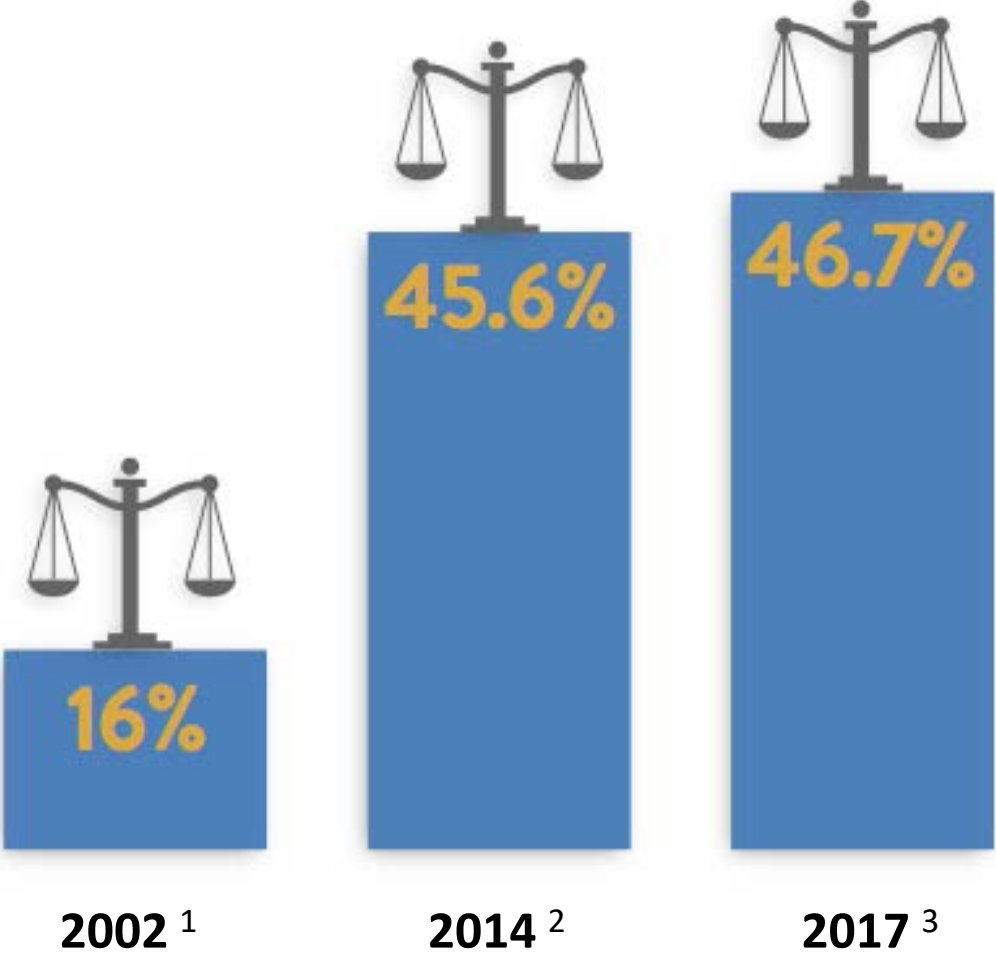


**266,108 civil cases** were pending in the federal court system at end of FY 2017 <sup>1</sup>

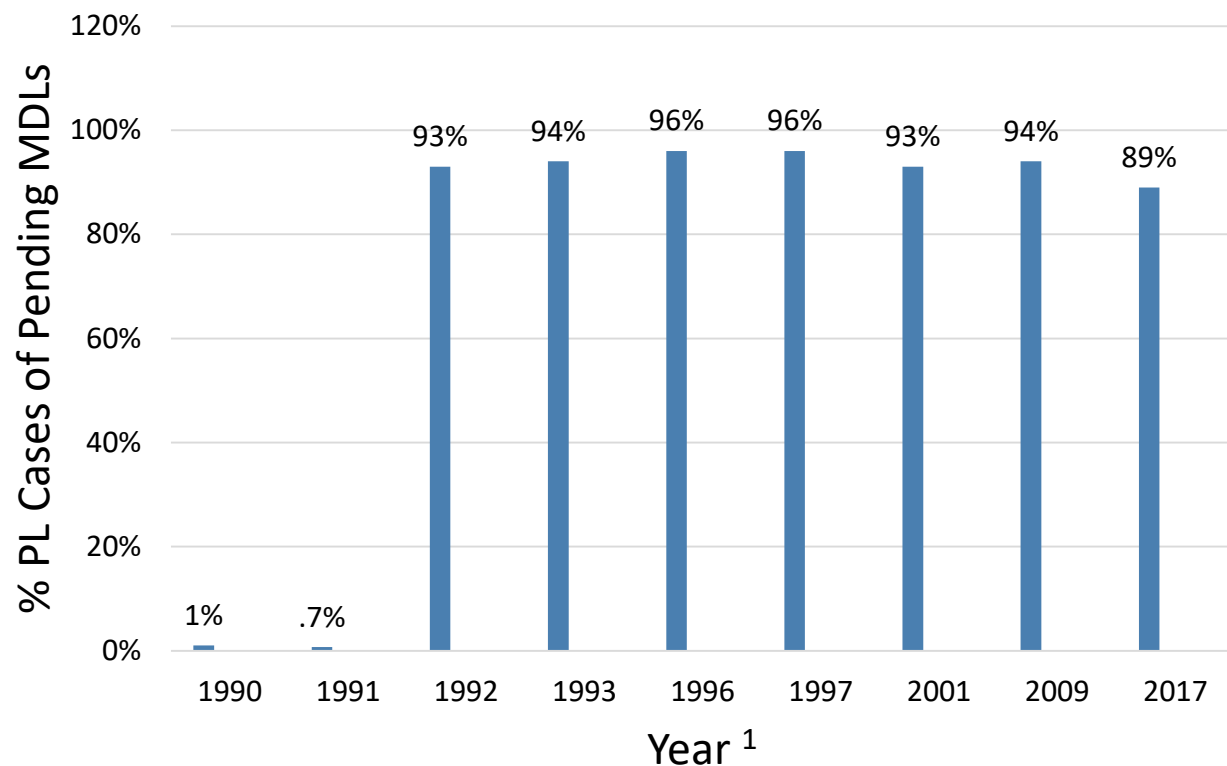
**124,202** of these cases were pending in **256** MDLs <sup>2</sup>

# Percentage of Civil Caseload in MDLs Nearly Tripled in 15 Years

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# Products Liability Cases Have Dominated MDLs Since 1992

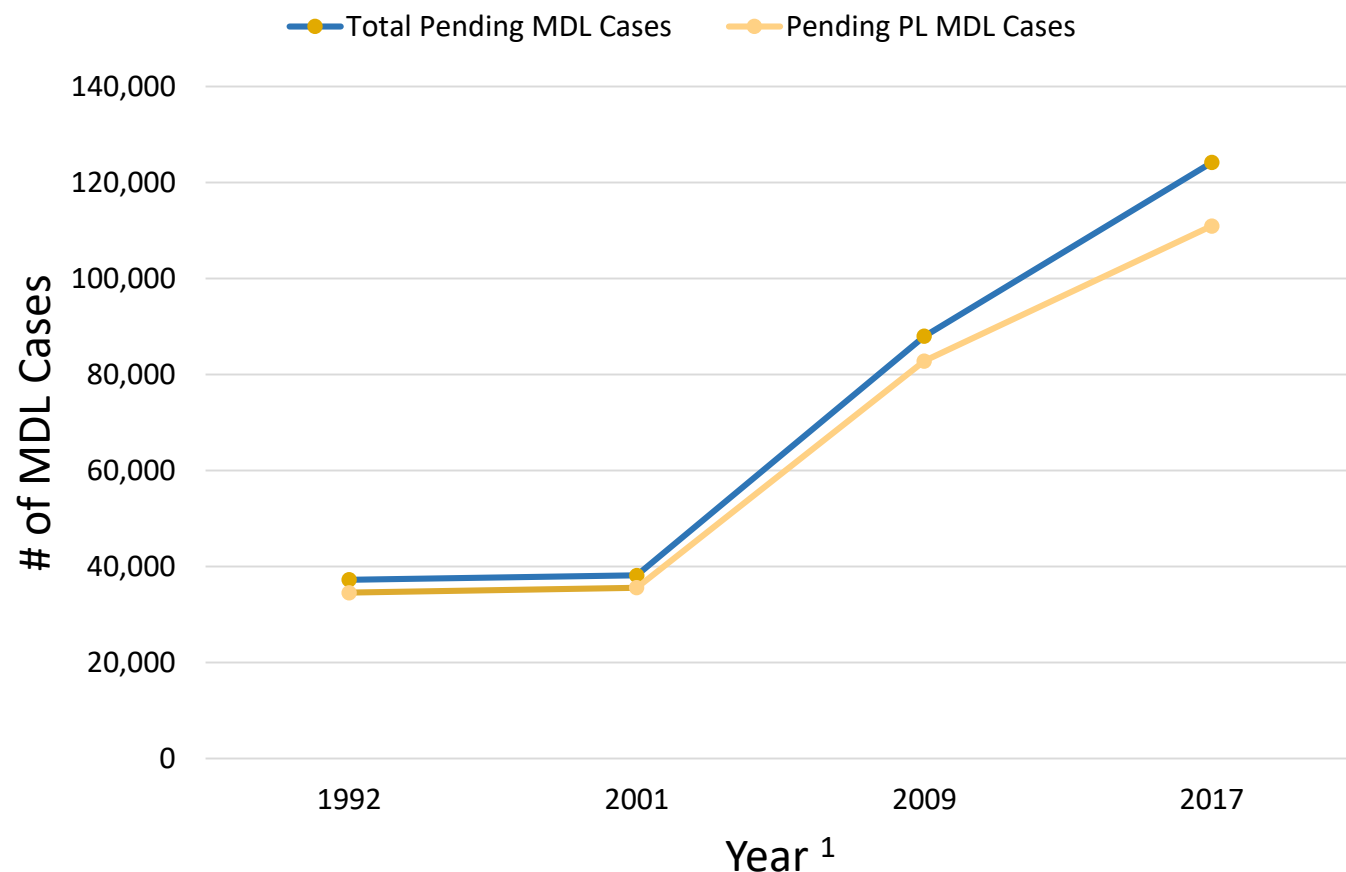


Products Liability cases have made up about **90%** or more of cases pending in MDLs since 1992 <sup>2</sup>

Before 1992, PL cases were only a fraction of all MDL cases

Turning point was the asbestos and silicon breast implant litigation in 1991 and 1992, respectively

# Products Liability Cases Fuel MDL Growth



MDL cases have more than tripled between FY 1992 and FY 2017, increasing by 86,949 cases <sup>2</sup>

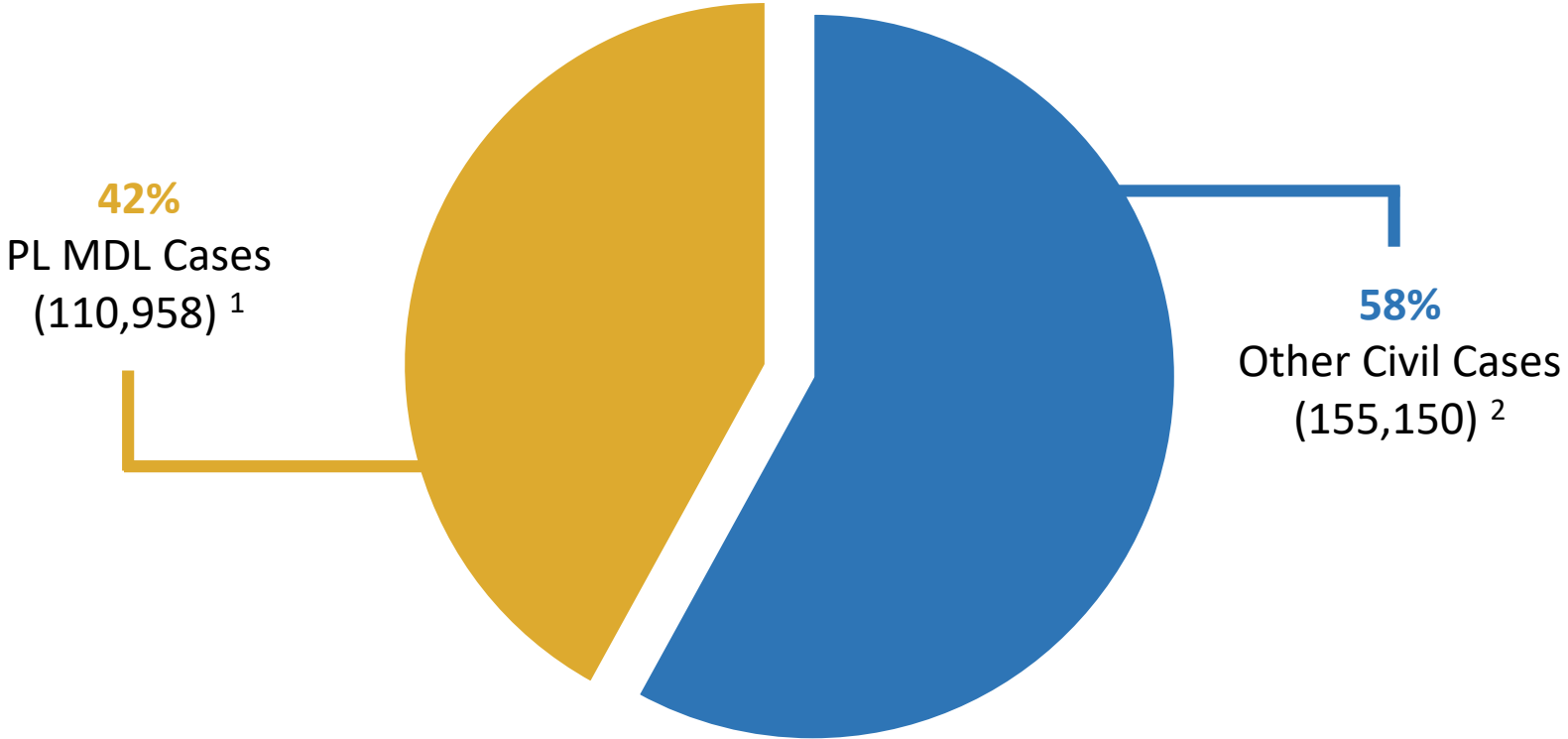
Over this same period, PL cases in MDLs also have more than tripled, increasing by 76,398 cases <sup>3</sup>

The growth in MDL PL cases alone accounts for almost 88% of the growth in MDL cases since FY 1992



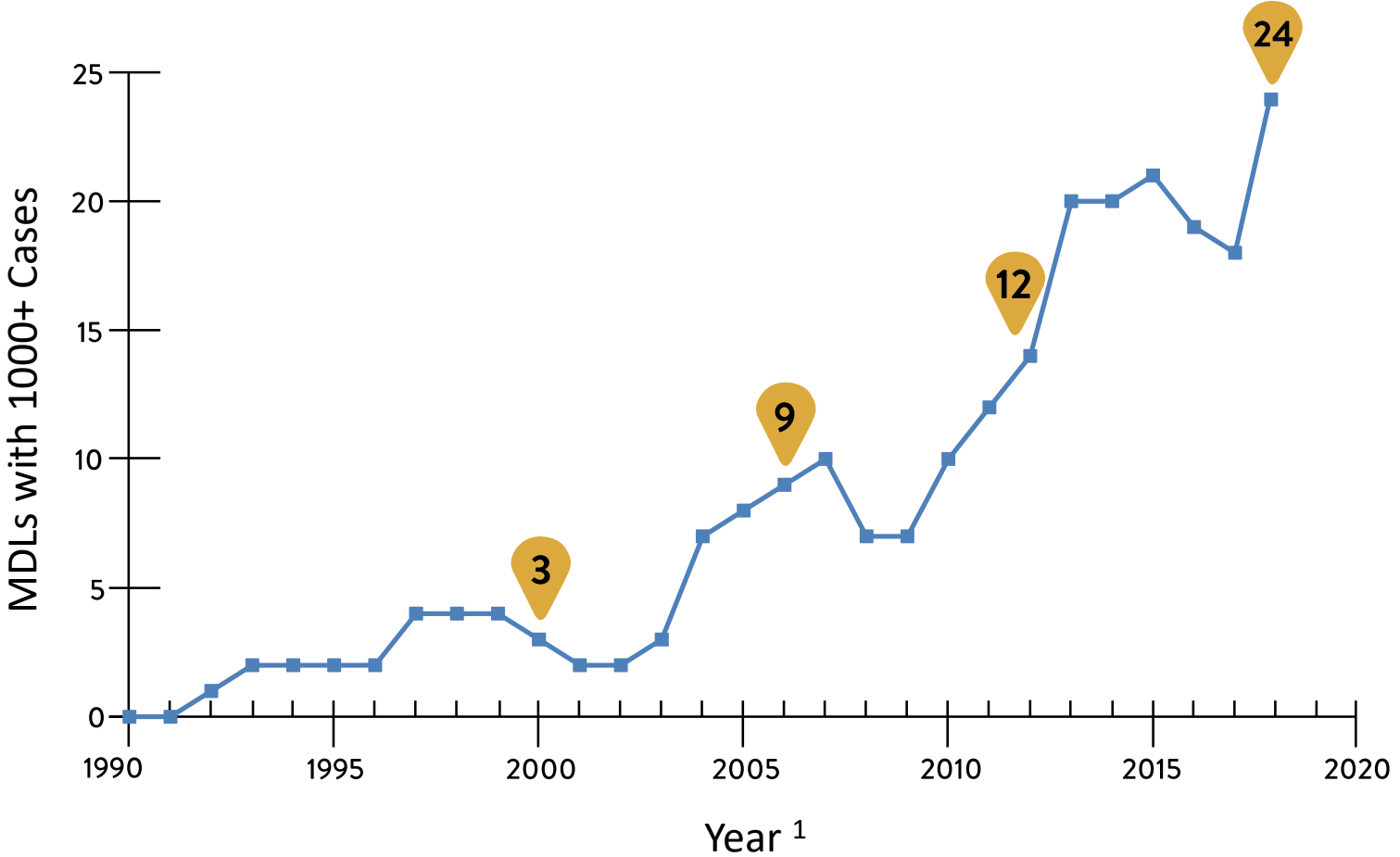
# As of FY17, Products Liability MDL Cases Are 42% of Civil Caseload

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Civil Caseload as of FY17: 266,108 <sup>3</sup>

# Number of Large MDLs Has Surged to an All-Time High

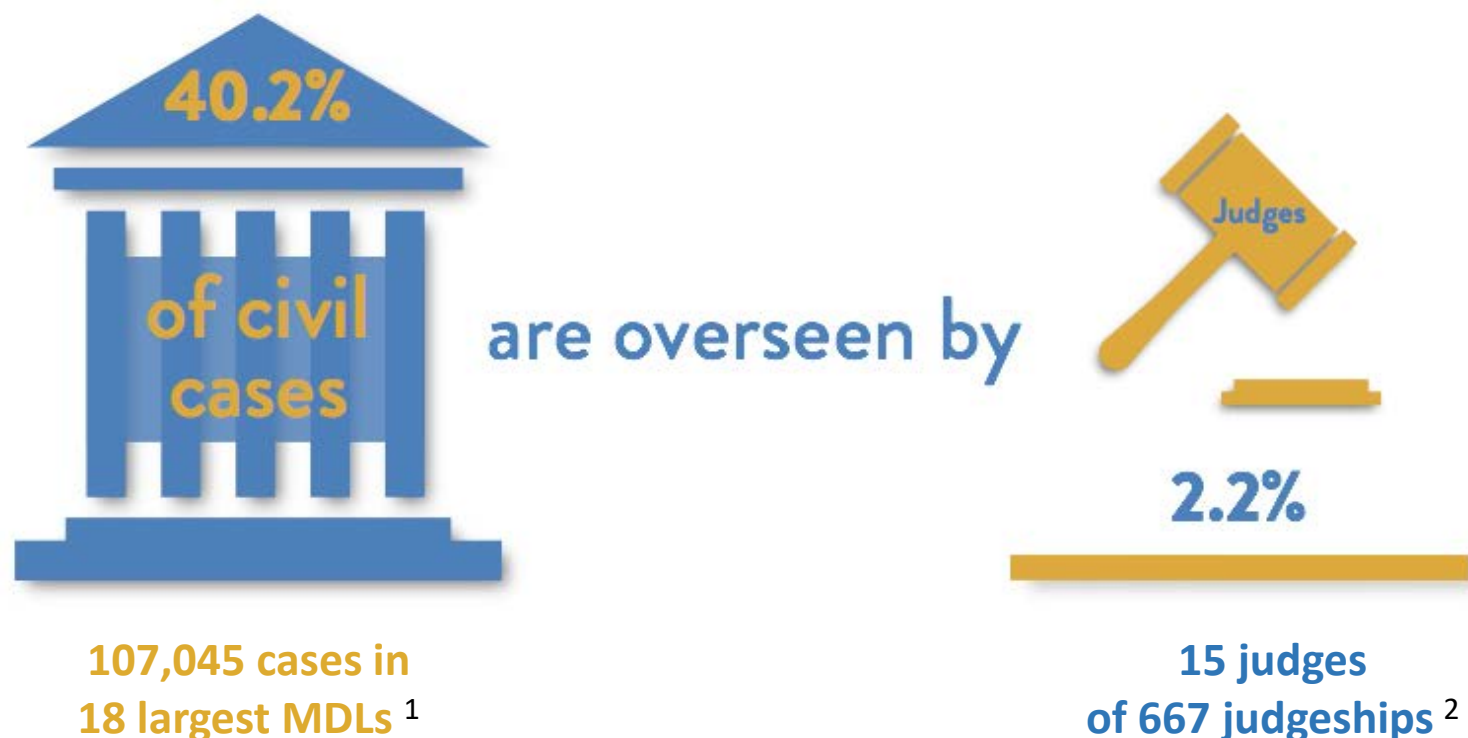


As of September 2018, the 142,114 pending cases in **24** large MDLs represented 89.6% of all pending cases in MDLs <sup>2</sup>

As of the end of fiscal year 2017, large MDLs with over 1,000 pending cases made up **40.2%** of the entire civil docket <sup>3</sup>

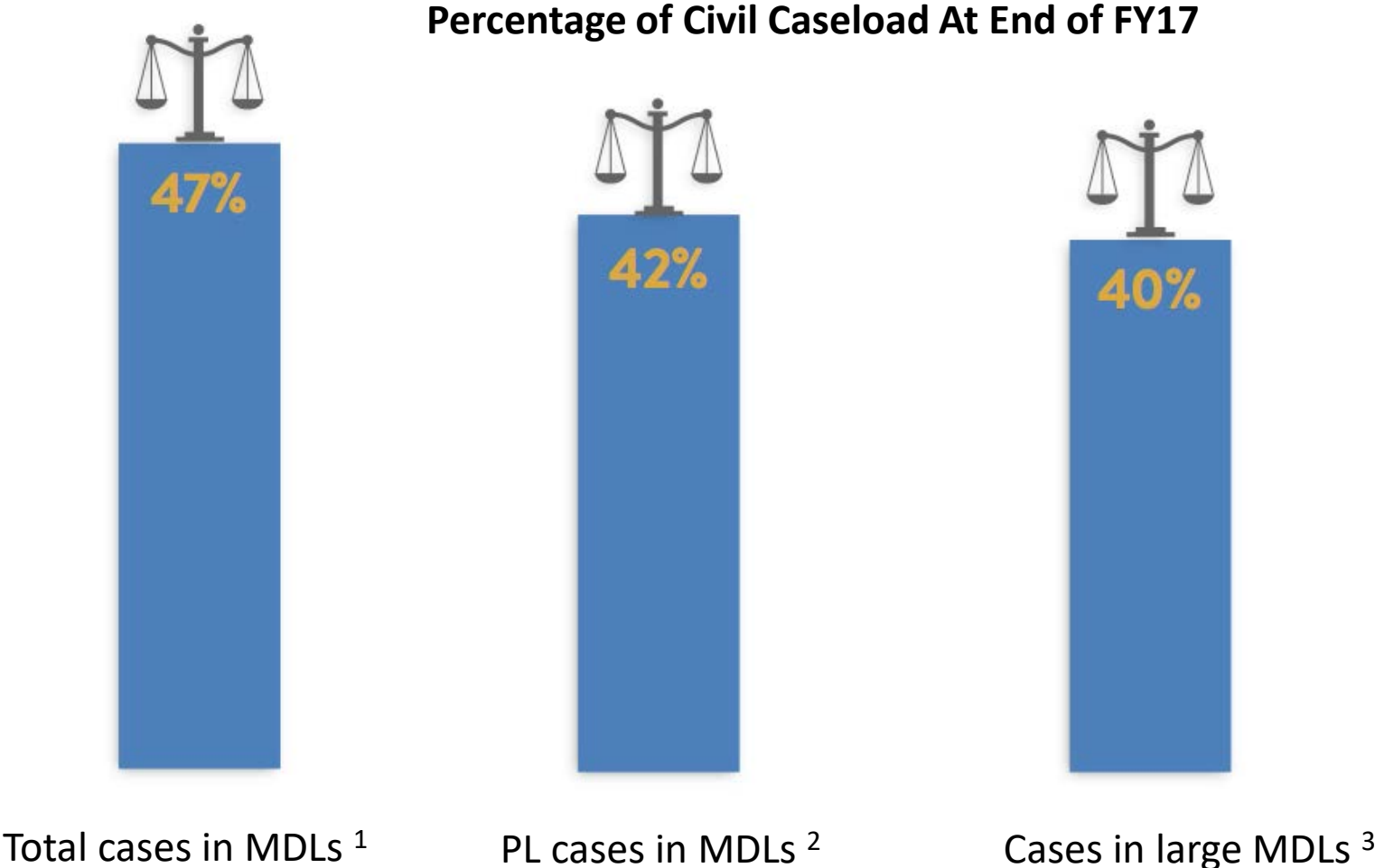
# 2% of Judges Oversee 40% of Civil Caseload as of FY17

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As of September 2018, 142,114 cases in 24 largest MDLs are overseen by 21 judges <sup>3</sup>

# MDL Cases Make Up Nearly Half of the Civil Caseload



# Vioxx Case Study: More Than 30% of Claims Failed After Settlement

Following settlement of the Vioxx MDL, more than 30% of those who filed lawsuits failed to satisfy basic requirements of the court necessary to collect their claims. The requirements were (i) a qualifying injury, (ii) minimum use of Vioxx, and (iii) use of the medicine within a proximate time.



Total claims: 48,362<sup>3</sup>

# Endnotes (I)

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## SLIDE 4

<sup>1</sup> <http://www.jpml.uscourts.gov/statistics-info>

[http://www.jpml.uscourts.gov/sites/jpml/files/Pending\\_MDL\\_Dockets\\_By\\_Actions\\_Pending-September-17-2018.pdf](http://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_Actions_Pending-September-17-2018.pdf)

<sup>2</sup> JPML data beginning 1992 is as of fiscal year September 30. 2018 data is as of September 17. Years in graph are not to scale.

## SLIDE 5

<sup>1</sup> Based on Duke Law Center methodology. Civil cases include all cases minus Social Security and prisoner cases, except death penalty cases.

[http://www.uscourts.gov/sites/default/files/data\\_tables/jb\\_c3a\\_0930.2017.pdf](http://www.uscourts.gov/sites/default/files/data_tables/jb_c3a_0930.2017.pdf)

<sup>2</sup> [http://www.jpml.uscourts.gov/sites/jpml/files/JPML\\_Statistical\\_Analysis\\_of\\_Multidistrict\\_Litigation-FY-2017.pdf](http://www.jpml.uscourts.gov/sites/jpml/files/JPML_Statistical_Analysis_of_Multidistrict_Litigation-FY-2017.pdf)

## SLIDE 6

<sup>1</sup> [https://judicialstudies.duke.edu/sites/default/files/centers/judicialstudies/MDL\\_Standards\\_and\\_Best\\_Practices\\_2014-REVISED.pdf](https://judicialstudies.duke.edu/sites/default/files/centers/judicialstudies/MDL_Standards_and_Best_Practices_2014-REVISED.pdf)

<sup>2</sup> *Ibid*

<sup>3</sup> [http://www.jpml.uscourts.gov/sites/jpml/files/JPML\\_Statistical\\_Analysis\\_of\\_Multidistrict\\_Litigation-FY-2017.pdf](http://www.jpml.uscourts.gov/sites/jpml/files/JPML_Statistical_Analysis_of_Multidistrict_Litigation-FY-2017.pdf)

## SLIDE 7

<sup>1</sup> <http://www.jpml.uscourts.gov/statistics-info>. JPML data end date before 1992 is June 30; after 1992 is fiscal year September 30. Years in graph are not to scale.

<sup>2</sup> JPML's 1991 data does not include the asbestos MDL transferred in July 1991.

## SLIDE 8

<sup>1</sup> <http://www.jpml.uscourts.gov/statistics-info> (FY 1992 - 2017)

<sup>2</sup> *Ibid*

<sup>3</sup> *Ibid*

## SLIDE 9

<sup>1</sup> [http://www.jpml.uscourts.gov/sites/jpml/files/JPML\\_Statistical\\_Analysis\\_of\\_Multidistrict\\_Litigation-FY-2017.pdf](http://www.jpml.uscourts.gov/sites/jpml/files/JPML_Statistical_Analysis_of_Multidistrict_Litigation-FY-2017.pdf)

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<sup>3</sup> *Ibid*

# Endnotes (II)

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## SLIDE 10

<sup>1</sup> JPML data end date before 1992 is June 30; after 1992 is fiscal year September 30; 2018 data is as of September 17. <http://www.jpml.uscourts.gov/statistics-info>

<sup>2</sup> [http://www.jpml.uscourts.gov/sites/jpml/files/Pending\\_MDL\\_Dockets\\_By\\_Actions\\_Pending-September-17-2018.pdf](http://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_Actions_Pending-September-17-2018.pdf)

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<sup>1</sup> [http://www.jpml.uscourts.gov/sites/jpml/files/JPML\\_Statistical\\_Analysis\\_of\\_Multidistrict\\_Litigation-FY-2017.pdf](http://www.jpml.uscourts.gov/sites/jpml/files/JPML_Statistical_Analysis_of_Multidistrict_Litigation-FY-2017.pdf)

<sup>2</sup> <http://www.uscourts.gov/sites/default/files/districtauth.pdf>

<sup>3</sup> [http://www.jpml.uscourts.gov/sites/jpml/files/Pending\\_MDL\\_Dockets\\_By\\_District-September-17-2018.pdf](http://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_District-September-17-2018.pdf)

## SLIDE 12

<sup>1</sup> Based on Duke Law Center methodology. Civil cases include all cases minus Social Security and prisoner cases, except death penalty cases.

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<sup>2</sup> Ibid

<sup>3</sup> Ibid

## SLIDE 13

<sup>1</sup> Vioxx Claims Administrator Court Report No. 29, July 27, 2010, p. 23.

<sup>2</sup> Ibid

<sup>3</sup> Ibid