

Class Actions and Local Governments: Risks, Defenses and Strategies

Municipal Participation in National Class Action and Mass Tort Litigation

Eric Romano
Romano Law Group
West Palm Beach, FL
eric@RomanoLawGroup.com

Why this matters. Over the last decade, national litigation has resulted in the recovery of tens of billions of dollars for states and their subdivisions — the opioid matters alone now exceed \$50 billion in committed settlements. Cities and counties are no longer bystanders; they are named plaintiffs driving these cases. This presentation is intended to give city attorneys and other local government officials a structured way to decide *whether, when, and on what terms* to participate — and how to protect the public interest while doing so.

A Threshold Distinction: Class Action ≠ Mass Tort / MDL

The single most important conceptual point is that “class action” and “mass tort / MDL” are not the same thing, and the difference changes a municipality’s rights, control, and risk.

Class Action. This is typically a single lawsuit filed on behalf of a large group of similarly situated claimants who have suffered a similar loss. These are common in the consumer context. For example, if a mobile phone provider unlawfully adds a \$2 fee to every monthly phone bill, every customer suffers a \$2 monthly loss. Because individual lawsuits over such a small amount are not practical, the class action process provides a way for one or more class representatives to file a lawsuit on behalf of everyone harmed (the “class members”). The class representative(s) binds all class members. Each class member may be a passive member who opts in or out, with limited individual control over strategy and settlement.

Multidistrict Litigation (MDL) (28 U.S.C. § 1407). This process is designed for matters involving large numbers of individual lawsuits alleging similar harm resulting from similar conduct. Each municipality files and controls its own lawsuit. The Judicial Panel on Multidistrict Litigation (JPML) transfers those individual cases to a single judge for coordinated pretrial proceedings only. Each plaintiff remains master of its own complaint and retains its own counsel, but because no single representative binds everyone,

resolution typically comes through a negotiated allocation framework that each entity individually accepts or rejects.

PRACTICAL NOTE

While MDLs are a creature of federal court, many MDLs have parallel state-court coordinated proceedings (e.g., California’s JCCPs for social media and JUUL) and parallel state Attorney General actions. A single local subdivision’s claims can implicate all three tracks at once.

Part 1 — How National Litigation Matters Work

The Architecture of an MDL

The JPML decides whether to centralize related federal cases and where, considering the prevalence of common legal or factual issues, the efficiency of avoiding duplicative discovery, and the need for consistent pretrial rulings.

These are multi-year relationships with a single judge: Each MDL is typically assigned to a single federal judge, who presides over all pretrial matters and is responsible for issuing orders pertaining to all cases and otherwise managing the litigation.

Pretrial only. Under *Lexecon*, absent a waiver, individual cases often return to the originating district court for trial. In practice the overwhelming majority of cases never reach trial — they resolve through global frameworks — but the bellwether trials often guide the parties and the court in the valuation of the cases. The March 2026 plaintiff verdict in a social-media bellwether trial (a \$6M award including punitive damages is a recent example.

Becoming Eligible: Start With a Cognizable Injury

Eligibility is not automatic. The threshold question is whether the subdivision has its own legally cognizable injury — and the answer differs by matter:

- **Opioids** — response, public-health, and criminal-justice costs, framed largely as a public-nuisance abatement theory. (MDL 2804 – Cleveland, OH)
- **PFAS / AFFF** — a water-provider injury: the cost to test for and remediate contamination in the public water supply. (MDL 2873 – Charleston, SC)
- **Social media** — school-district and local-government costs of responding to a youth mental-health crisis, pled through negligence, public nuisance, and failure-to-warn. (MDL 3047 – Oakland, CA)
- **JUUL / vaping** — local costs of a youth nicotine-addiction crisis, on similar theories. (MDL 2913 – Sacramento, CA)

- **Insulin overpricing** — seeking reimbursement to local governments with self-funded health plans that overpaid for insulin because of the alleged pricing scheme. (MDL 3080 – Newark, NJ)

Lead Counsel, the PSC, and Common Benefit

The transferee judge appoints lead / co-lead counsel and a Plaintiffs’ Steering Committee (PSC) to run the litigation for everyone — corporate document discovery, expert development, bellwether trials, and the global settlement negotiation. While each plaintiff retains its own attorney(s) who are responsible for case-specific work, the PSC generally controls the litigation and does important work on behalf of all plaintiffs. The court also appoints a similar structure on the defense side. The PSC is typically compensated through a “common benefit fund”, which is funded by a small percentage paid from the recovery on each case.

Track structures. MDLs are often separated into tracks so that similar cases are handled more efficiently and consistently. For example, an MDL might have a city/county track, a school district track, and a tribal track.

The Litigation Lifecycle, Joinder to Resolution

1. **Initial Filing** – Case is filed in appropriate venue.
2. **MDL Transfer** – Case is transferred to the MDL Court.
3. **Initial Motions.** Survive the pleadings stage — e.g., Section 230 in social media; RICO, consumer-protection, and preemption issues in insulin.
4. **Common discovery.** Plaintiff fact sheets, a case census, corporate documents, and experts.
5. **Bellwether trials.** Test the theory and establish the value range.
6. **Global framework.** A negotiated allocation framework — not a jury award — is often reached.
7. **Solicitation and sign-on.** Eligible entities individually accept; settlements are usually contingent on participation thresholds.
8. **Allocation, claims administration, payout.**

THRESHOLDS MATTER

Global settlements are commonly void if too few subdivisions join. In addition, the amounts to paid by defendants can depend on the participation rate of subdivisions — your decision never sits in a vacuum; it interacts with everyone else’s.

How Settlement Funds Are Structured

Once a settlement is reached, money usually flows into a qualified settlement fund administered by a settlement administrator, and individual recoveries are set by an allocation formula typically negotiated as a part of the settlement. Settlement funds are often paid over a period of years, although some may be a single lump sum payment.

- **Formula-driven shares.** PFAS public water systems are scored on an “Adjusted Base Score” tied to flow rate and contamination test results. JUUL government-entity allocations ran off a matrix keyed to population and litigation posture, with a minimum floor for small entities.
- **State ↔ subdivision splits.** The opioid model is the template: funds split between the state and its subdivisions under a negotiated agreement, with interlocal agreements further allocating funds between local governments.
- **Abatement.** Most funds are restricted to abatement — treatment, prevention, remediation — not the general fund, with audit, reporting, and clawback provisions.

Part 2 — The Benefits of Participation

Cost Recovery

The primary benefit is recovering public dollars already spent (or to be spent) cleaning up a privately created harm, and the numbers are not theoretical:

- **Opioids** — \$50B+ to states, cities, and counties
- **PFAS/AFFF** — \$14B+ to public water providers
- **JUUL / Altria** — \$2B+ to school districts, cities, and counties

Injunctive and Programmatic Relief

Coordinated litigation buys behavioral relief an individual suit rarely could. The Purdue resolution ends Sackler ownership, bars them from selling opioids in the U.S., installs an independent monitor over the successor company (Knoa Pharma), and forces the release of tens of millions of internal documents. On the insulin side, the parallel FTC track produced a settlement with Express Scripts requiring transparency changes projected to reduce patient out-of-pocket costs. Participation can deliver prevention, not only reimbursement.

Deterrence and the Leverage of Coordination

A single municipality rarely has the resources to out-litigate a major global corporation. Coordination changes the math: roughly 800 school districts and a docket exceeding 2,600 cases in the social media MDL create aggregate exposure that brings defendants to the table. The PSC fronts the common discovery and expert work, and a single

plaintiff verdict helps encourage settlement. Each resolution also signals to the next industry that externalized harms carry a price.

A Financial Structure That Favors Public Plaintiffs

Municipalities can and often do retain outside counsel on a contingent fee basis, so there is little to no upfront cost and the financial risk of losing largely sits with the law firm. Suing in your own right also means you are not wholly dependent on your state Attorney General's priorities or timeline — though some coordination with the state may be necessary on allocation of settlement funds.

Part 3 — Risks and Strategic Considerations

Timeline

These are marathons, not sprints — often 5-8 years or more. The opioid litigation has now been going for nearly a decade. Once settlements are reached, payments are often spread out over many years. These are not quick reimbursement opportunities, but rather require patience.

Fee Arrangements

Outside litigation counsel often work on a contingent fee basis. Such agreements are regulated by each state's Bar rules and often by statute. Under these agreements, outside counsel often advances the funds necessary to cover litigation expenses – filing fees, expert witness fees, investigative costs, and more. The court may also require each plaintiff to pay a percentage of its recovery to the common benefit fund to compensate the PSC for its work on behalf of all claimants. Many MDL settlements are structured to create a separate attorneys' fee fund to be funded directly by the defendants. In such situations, attorneys' fees are typically paid directly from this fund and not deducted from the client's recovery.

Burdens of Participating

Participating in a MDL or class action often requires consideration of the following:

1. Public hearings to consider hiring outside counsel and whether or not to participate.
2. Working with counsel to provide information necessary to investigate the claims and file suit.
3. Completing a Plaintiff Fact Sheet, short-form complaint, and other preliminary documents.
4. Implementing a record hold to preserve all records that may pertain to the subject of the litigation.

5. Regular communication with outside counsel to make decisions and provide necessary authorizations.
6. Public hearings as necessary to approve settlements or participation in various aspects of the case.
7. If chosen as a bellwether case, the possible requirements to produce records and make staff and city officials available to testify.
8. Reporting requirements – most settlements require recipients to track and report the expenditure of funds to ensure they are being used for permitted purposes.

Release of Claims

To receive settlement funds, you must generally release all claims - frequently broadly defined, sometimes including future and unknown claims against an expansively defined set of “released parties.”

Allocation Disputes and the State/Local Tension

Due to the number of government entities that often participate in these litigations, there often arise disputes over how settlement funds will be allocated to each plaintiff. Setting allocation models on the front end can help prevent protracted fights over the funds on the back end. Florida’s statewide allocation agreement in the opioid litigation is a good example of the benefits of reaching an agreement among all interested parties early in the litigation.

Political and Public-Interest Considerations

Litigation is a political act. Suing a company that employs your residents, or that the city does business with, has consequences beyond the courtroom — and so does declining to sue when peer cities recover and yours does not. There is a genuine tension between maximizing a near-term check and serving the long-term public interest: an early settlement may underprice a harm that bellwethers later reveal to be far larger, while holding out risks the deal collapsing or a threshold not being met.

Verdict and Maturity Risk

Timing is itself a strategic variable. Read the maturity signals before committing: Is leadership appointed and capable? Has the theory survived dismissal? Are there bellwether dates or results? Is there a settlement framework yet? Are there any financial risks to participating?

Decision Framework and Practical Guidance

The City Attorney’s Due-Diligence Checklist

1. **Harm.** Do we have a concrete, cognizable municipal harm we can prove?

2. **Standing & limitations.** Can we plead it and is it timely?
3. **Maturity.** Where is this MDL in its lifecycle and what is the expected timeline to settlement and receipt of funds?
4. **Net recovery.** Model the likely allocation, then subtract the contingency fee *and* the common benefit assessment. Decide on the net, not the gross.
5. **Strings.** Release scope, abatement use-restrictions, reporting, audit, and clawback.
6. **Authority.** Council or board approval, competitive procurement for counsel, and compliance with state fee rules.
7. **Risks.** Discuss with counsel to understand all potential risks.

The Bottom Line

There is no categorical “always join” or “never join.” Each litigation presents unique opportunities to recoup public funds for past harms, to recover funds to abate future harms, and injunctive relief to remedy and stop corporate misconduct. Each opportunity should be considered in light of the above benefits and risks so that each subdivision can decide if participating is in the public’s best interest.