

PREFACE

*Jennie Lee Anderson**

On November 1–2, 2019, the Pound Civil Justice Institute and Lewis & Clark Law School together presented a unique academic symposium, addressing “Class Actions, Mass Torts, and MDLS: The Next 50 Years.” This symposium brought together distinguished legal academics, judges, and practitioners to consider the present status of class actions, mass torts, and multidistrict litigation in the United States, as well as possible future developments.

The mission of the Pound Institute is to support the United States civil justice system, access to justice for all Americans, and the rule of law, including the critical right to trial by jury. The Institute was established in 1956 to build on the work of Roscoe Pound, who was the Dean of Harvard Law School from 1916 to 1936. He was one of the law’s great thinkers and educators, and he is considered the founder of the “sociological jurisprudence” movement. The Institute promotes open, ongoing dialogue with the academic and judicial communities, and the public, on issues critical to protecting and strengthening the civil justice system. The Pound Institute has a membership largely consisting of plaintiffs’ trial attorneys, many of whom are active in the field of aggregate litigation.

Aggregate litigation provides vital mechanisms for the enforcement of individual rights, allowing access to justice with reduced transactional costs and less strain on public resources. For example, the class action mechanism can open the courts’ doors for consumers and employees whose individual claims may otherwise be too small to justify the high cost of litigation. By doing so, these procedures provide an opportunity to correct injustices that would otherwise go unchallenged, including wage theft, discrimination in the workplace, data breaches that endanger the financial well-being of millions of Americans, price-fixing, and consumer fraud.

No less important to the fabric of our civil justice system are mass tort actions

* President, Pound Civil Justice Institute, and founding partner of Andrus Anderson LLP in San Francisco, CA.

coordinated in both state forums and federal multidistrict litigations (MDLs). Federal court statistics show that MDL cases now comprise nearly 40% of the federal civil caseload,¹ with large numbers of claims involving pharmaceutical and other products liability, environmental contamination, and mass disasters. Like their class action counterparts, mass torts allow everyday plaintiffs who have suffered personal injury or property damage arising from the same unlawful conduct to seek redress for those wrongs. Without the opportunity to pool resources and consolidate proceedings in MDLs for pretrial purposes, many injured Americans would receive no compensation at all. At the same time, corporations that have caused widespread harm would not be held accountable or deterred from future wrongful conduct.

The Symposium examined both procedural hurdles facing mass-action plaintiffs, such as personal jurisdiction challenges and forced arbitration, as well as how to enhance and strengthen the effectiveness of these important tools as we look forward to the next 50 years of aggregate litigation.

This is the fifth academic symposium we have co-sponsored with law schools. Our past conferences have addressed mandatory arbitration, medical malpractice litigation, the “war” on the U.S. civil justice system, and the state of worker compensation system.

We came to this symposium shortly after holding our annual Forum for State Appellate Court Judges in San Diego, on the topic of aggregate litigation in the state courts.² At the Forum, we heard from academics, judges, and practitioners of the many challenges faced by those who need to avail themselves of aggregate forms of litigation.

We are grateful for the hospitality of the Lewis & Clark Law School, and particularly for the dedicated work of Professor Bob Klonoff in recruiting many of the outstanding legal minds that made the Symposium so special, and of Pound’s Executive Director, Mary Collishaw, in organizing and executing the program.

¹ U.S. JUDICIAL PANEL ON MULTIDISTRICT LITIG., MDL STATISTICS REPORT (2019), https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_Type-January-15-2019.pdf.

² The Forum was held in San Diego on July 27, 2019. Its report was published in February of 2020. See POUND CIVIL JUSTICE INST., AGGREGATE LITIGATION IN STATE COURTS: PRESERVING VITAL MECHANISMS (2020), http://www.poundinstitute.org/wp-content/uploads/2020/02/Pound-Report-2019_low-res_2.13.2020.pdf.