

American Tort Reform Association

Bringing Justice To  
Judicial  
**HELLHOLES**  
2003



**ATRA**

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What I call the “magic jurisdiction,”...[is] where the judiciary is elected with verdict money. The trial lawyers have established relationships with the judges that are elected; they’re State Court judges; they’re popul[ists]. They’ve got large populations of voters who are in on the deal, they’re getting their [piece] in many cases. And so, it’s a political force in their jurisdiction, and it’s almost impossible to get a fair trial if you’re a defendant in some of these places. The plaintiff lawyer walks in there and writes the number on the blackboard, and the first juror meets the last one coming out the door with that amount of money...These cases are not won in the courtroom. They’re won on the back roads long before the case goes to trial. Any lawyer fresh out of law school can walk in there and win the case, so it doesn’t matter what the evidence or law is.<sup>1</sup>

— *Richard “Dickie” Scruggs, trial lawyer, whose firm collected \$1.4 billion in legal fees from tobacco settlements.*

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# Preface

This report presents the results of the second annual survey of the membership of the American Tort Reform Association (“ATRA”) and serves to document litigation abuses that occur in jurisdictions identified by ATRA’s members as “judicial hellholes.” Judicial hellholes are places where court procedures and the law are systematically applied in an unfair and unbalanced manner against defendants. Often, plaintiffs’ lawyers choose these jurisdictions to bring their cases because of their reputation for pro-plaintiff decisions and high verdicts, and their lower standards for the admissibility of expert testimony and the certification of class action lawsuits.

ATRA has identified many areas that might be considered judicial hellholes and chosen to focus on 13 cities, counties, or judicial districts that were most frequently identified by the respondents to ATRA’s survey, and verified by independent research. We have collected anecdotal information and stories reported in the media to provide examples of the litigation abuses that occur in hellholes. We appreciate that there may be other jurisdictions that are judicial hellholes, and that there are additional examples of the litigation abuses in hellholes discussed in this report.

ATRA seeks fair and balanced application of the law so that all litigants can receive a fair trial. We wish to make clear at the outset that ATRA’s judicial hellhole project is not an effort to obtain a special advantage for defendants in these areas. This report does not have as its focus the change of tort law, although there is certainly an important civil justice need and one that is the subject of a number of ATRA initiatives. In this report, ATRA’s goal is to restore “Equal Justice Under Law,” the motto etched on the façade of the Supreme Court of the United States, but sometimes forgotten in judicial hellholes.

This 2003 report incorporates a new section highlighting “points of light,” recognizing judges and legislators whose recent actions may help quench the fire in judicial hellholes.

Identifying a problem can be useful in drawing attention to it, but to do so without offering any solutions does little to improve the situation. In the final section of this report, we suggest certain changes that can be made in judicial hellholes to restore fair and equal justice under the law.

ATRA welcomes information from readers with additional facts about the judicial hellholes identified in this report, as well as information about other jurisdictions where equal justice under law is denied in civil litigation. Please send such information to the attention of Michael Hotra, Director of Legislation and Communications, at [mhotra@atra.org](mailto:mhotra@atra.org) or write the American Tort Reform Association at 1101 Connecticut Avenue, N.W., Suite 400, Washington, D.C. 20036.

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# About the American Tort Reform Association

**F**ounded in 1986, ATRA is a District of Columbia corporation designated by the Internal Revenue Service as a 501(c)(6) organization. ATRA has grown to become a broad-based, bipartisan coalition of more than three hundred large and small businesses, corporations, municipalities, associations, professional firms, nonprofit organizations, and physician groups that support civil justice reform. Its mission is to bring greater fairness, balance, and predictability to the civil justice system through public education and legislative reform.

ATRA monitors developments in tort law, supports legislation to further its mission, publishes reports, and submits *amicus* briefs to state and federal appellate courts when issues are relevant to its goals. The Association works with local and statewide grassroots citizen-activist groups around the country. ATRA publishes a weekly *Legislative Watch* that keeps its members apprised of tort reform initiatives at the state and federal level, as well as a bi-weekly *Leaders' Update* report to state tort reform organization leaders on current developments on civil justice issues. ATRA also hosts conferences at which coalition leaders meet to discuss past successes and future strategies in support of its goals.

For more information about ATRA, visit its website [www.atra.org](http://www.atra.org).

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# Executive Summary

“Judicial hellholes” are cities, counties, or judicial districts that attract lawsuits from around the nation or the region because they are correctly perceived as very plaintiff-friendly jurisdictions. They are places where the law is not applied evenhandedly to all litigants. In these areas, there is a systematic bias against defendants, particularly those located outside of the state. West Virginia State Supreme Court Justice Richard Neely candidly described one of the reasons behind this phenomenon in his recent book: “As long as I am allowed to redistribute wealth from out-of-state companies to injured in-state plaintiffs, I shall continue to do so. Not only is my sleep enhanced when I give someone’s else money away, but so is my job security, because the in-state plaintiffs, their families, and their friends will reelect me....It should be obvious that the in-state local plaintiff, his witnesses and his friends, can all vote for the judge, while the out-of-state defendants can’t even be relied upon to send a campaign donation.”<sup>22</sup>

ATRA has conducted a survey of its members to determine which areas they would identify as judicial hellholes based on their experience. ATRA interviewed individuals familiar with litigation in the hellholes in an effort to determine what makes each area a judicial hellhole, and to document the litigation abuses that occur in hellholes. ATRA conducted independent research of press accounts, studies, court dockets, and other publicly available information to verify and substantiate these claims. While high profile issues, such as medical malpractice, asbestos lawsuits, and class action abuse, dominate the headlines in some hellholes, we believe that such examples indicate a broader lack of fairness that is occurring in these courthouses. Any individual or employer has reason to fear a lack of due process if sued in a judicial hellhole.

This year, 13 areas were most frequently named by ATRA’s members as judicial hellholes and supported by ATRA’s study: Madison County, Illinois; Jefferson County (Beaumont), Texas; Mississippi’s 22nd Judicial Circuit (Copiah, Claiborne and Jefferson Counties); Hidalgo County, Texas; Orleans Parish, Louisiana; Kanawha County, West

Virginia; Nueces County, Texas; Los Angeles County, California; Philadelphia Court of Common Pleas, Pennsylvania; Miami-Dade County, Florida; the City of St. Louis, Missouri, and Holmes and Hinds Counties, Mississippi. The following pages will highlight litigation abuses that have occurred in these areas and provide an explanation why these areas are considered judicial hellholes.

Judicial hellholes are sometimes referred to as “magnet courts” or even “magic jurisdictions” – magic in that they can seemingly pull million or billion dollar verdicts out of a hat and create causes of action previously unknown or procedural rules that are foreign to due process.

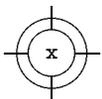
In addition to these 13 hellholes, the report also includes anecdotal information on three additional areas: Hampton County, South Carolina; the Northern Panhandle of the State of West Virginia; and appellate level courts in New Mexico. These areas are awarded a “dishonorable mention,” as areas also named by several survey respondents as judicial hellholes, and this report highlights a particular abusive practice or warped litigation environment in these jurisdictions.

After pointing out the problems in hellhole jurisdictions, ATRA highlights “points of light”— places where judges and legislators have recently intervened to stem abusive practices. Such positive actions include the recent enactment of comprehensive tort reform in Texas, a package of tort reforms in Mississippi, and the stemming of forum shopping in Pennsylvania and West Virginia. It also includes the clamping down on the flood of mass joinders flowing into Jefferson County, Mississippi, by Judge Lamar Hickard.

The examples above illustrate, there are several reforms that judges and legislators can adopt to restore balance to judicial hellholes. First, ATRA supports the strengthening of venue and *forum non conveniens* laws. Venue laws determine the appropriate county within a state for a plaintiff to file a lawsuit. A fair venue rule would allow suits to be brought where the person lives, where he or she was injured, or where the defendant’s principle place of business is located. The doctrine of *forum non conveniens*, a

related concept, allows a court in one state to dismiss a claim when the court finds that it would be more appropriately heard in another state. Likewise, courts should ensure that the doctrine of *forum non conveniens* is applied in a manner that requires a meaningful connection with a jurisdiction. Finally, Congress should enact the Class Action Fairness Act of 2003, which would provide some solace to those hauled into judicial hellholes that their case can be heard in a more neutral, federal forum, as envisioned by the Founders crafting of “diversity jurisdiction” of the federal courts. It is also important for courts to faithfully fulfill their “gatekeeping” role by ensuring that expert testimony is reliable and keeping “junk science” from the courtroom. Frequently overlooked is the importance of improving the jury system. The collective wisdom of a representative jury can provide the foundation for hearing and deciding cases in a fair and balanced way and help avoid outlier verdicts. ATRA encourages employers to adopt jury-friendly policies. The Association also supports legislation, such the model Jury Patriotism Act developed by the American Legislative Exchange Council, that is designed promote jury service and ensure that juries include the wide range of knowledge and experience of the community to make informed and fair decisions.

While legislation can help alleviate the problems identified in this report, one of the most effective ways to improve the litigation environment in hellhole jurisdictions is through the fair and full attention of the media and action by readers of this report. ATRA believes that by placing a spotlight on the litigation abuses that occur in hellholes, the public and the media can persuade the courts in hellholes to apply the law fairly to all litigants.



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# Introduction to Judicial Hellholes in the United States: Equal Justice Under Law?

There are very few institutions in America more hallowed than the judiciary. American courts are a place where truth is to be pursued, justice is to be blind, and the rights of the parties are to be protected. In many courtrooms throughout America, judges uphold these tenets and serve their communities proudly. Not so in judicial hellholes. In these courtrooms, as Dickie Scruggs pointed out in the remarkable moment of candor noted earlier, the notion that black robes and jury boxes create impartial judges and representative juries is a fallacy. What increasingly appears to be true, though, is that these jurisdictions have been targeted and cultivated as places where justice can be skewed by the plaintiffs' bar for its own benefit.<sup>3</sup>

What judicial hellholes have in common is that they systematically fail to adhere to core judicial tenets or principles of the law. They have strayed from the mission of being places where legitimate victims can seek compensation from those who caused their injuries. Weaknesses in evidence are routinely overcome by pre-trial and procedural rulings. Product identification and causation become "irrelevant because [they know] the jury will return a verdict in favor of the plaintiff."<sup>4</sup> Judges approve novel legal theories so that plaintiffs do not even have to be injured to receive "damages." Defendants are named not because they may be culpable, but because they have deep pockets or will be willing to settle at the threat of being subject to the jurisdiction. Not surprisingly, judicial hellholes have become magnets for personal injury cases against out-of-state employers, as plaintiffs' lawyers from around the country choose these jurisdictions to file their cases – especially when those cases are weak or speculative.

The purpose of ATRA's judicial hellholes initiative is to show the litigation abuses that occur in these jurisdictions. Our goal is to help change the litigation environment in these areas so that it is fair and balanced.

While some have suggested that entire states may be labeled hellholes, as respondents to ATRA's survey have demonstrated, it is usually only specific counties or courts in the state that deserve this title. This list is by no means

exclusive or exhaustive. In many states, including some that have received national attention, the majority of the courts are good and the publicity is a result of a few bad apples. Because tort law is generally court-made, and judicial decisions are so determinative in the outcome of individual cases, it may only take one or two judges who stray from the law in a given jurisdiction to become a hellhole.

To the extent possible, ATRA has tried to be specific in explaining why defendants are unable to achieve fair trials within these jurisdictions. Because ATRA members may face lawsuits in these jurisdictions, some members were justifiably concerned about reprisals if their names and their cases were identified in this report – a sad commentary about the hellholes in and of themselves. This concern is not hypothetical or speculative. In June 2003, The Lakin Law Firm, which represents itself as the "Best Personal Injury Law Firm"<sup>5</sup> and is active in class action and asbestos litigation, sought to haul civil justice activists across the country into a Madison County court as a result of their advocacy. After a joint press event to discuss the unfair legal treatment that many civil litigants have received in Madison County, leaders of ATRA, the Illinois Civil Justice League, the Illinois Chamber of Commerce, and the U.S. Chamber of Commerce were subpoenaed in a class action product liability lawsuit, involving claims of defective automobile paint.<sup>6</sup> ATRA had no knowledge of facts of this case, which was totally unrelated to the press event. The subpoena served on ATRA sought to compel the organization to release confidential financial information and membership lists, and require it to either pay the travel expenses of appearing for a deposition in Madison County or the legal fees in fighting the subpoena. ATRA believes the purpose of the subpoena was to intimidate and silence ATRA and its right under the First Amendment of the U.S. Constitution to discuss why it believes Madison County is a judicial hellhole. ATRA filed a motion to quash the subpoena based on the violation of its fundamental rights of speech and association of ATRA and its members that would result from such an unconstitutional invasion,<sup>7</sup> and was prepared to file a

motion for sanctions against the plaintiffs' lawyers for their clear abuse of process in using the court's subpoena power for an ulterior purpose unrelated to the pending case.<sup>8</sup> Five weeks later, the law firm withdrew its subpoena, which ATRA views as a clear vindication of its rights and as confirmation that the subpoena had no ground to stand on in the first place.

Understandably, in an effort to respect the confidentiality of its members, ATRA has, therefore, relied primarily on news articles and other publicly-available sources to find representative examples of injustice in each hellhole. Citations for these sources can be found in the over 250 endnotes following this report.

## ***Common Problems in Hellholes***

Each hellhole section of this report contains unique decisions and verdicts, but there are common themes that bind these jurisdictions together. Some of these issues have been prevalent for years, while others are relatively new.

- ***Forum Shopping:*** As verdicts and settlements have increased dramatically, plaintiffs' lawyers from other jurisdictions around the country are finding it more lucrative to join with plaintiffs' lawyer in judicial hellholes and split the take, rather than file the cases on their own in their own area. This only exacerbates the problem. When local courts are burdened with too many out-of-state cases, they tend to shortcut the rights of the parties. The endless stream of cases that belong elsewhere into a local courthouse cause needless delays for proper cases brought by local residents and places an unfair burden of paying for the increase workload in the judicial system on local taxpayers, who effectively subsidize the processing of these out-of-state claims.
- ***Improper Class Certifications:*** Judges and trial lawyers in judicial hellholes know that when classes are certified, companies are under extraordinary pressure to succumb to "blackmail settlements" regardless of the merits of the case. In some hellholes, judges are notorious for certifying classes that do not meet the criteria specifically laid out in the law: that the class is sufficiently large, that each class member's claims are based on a common question of law or fact, that the class representative's case is typical of the other class members and that there is a fair and adequate protection of class interests by the lawyers who have brought the class action.
- ***Mass Actions:*** Where class certification is not an option, the same dynamics can be achieved through mass joinders or consolidations, a tactic that has been used more frequently in recent years. In these instances, judges

combine tens, hundreds, or even thousands of individual claims against various defendants into one mass trial in an effort to clear their dockets. The goal of mass actions is to force companies to settle, rather than have the cases determined on the merits. With so many plaintiffs and defendants, individual parties are deprived of their rights to have their cases fully and fairly heard by a jury.

- ***The "Asbestos Exemption" from Actual Injury and Due Process Requirements:*** It used to be that to sue in tort litigation, a plaintiff needed to be injured. Now, judges in judicial hellholes are allowing suits for "damages" where no injury or impairment exists. And plaintiffs are being allowed to recover for "fear" that they may become sick at a later date. Mass actions and expedited trials are especially prevalent in asbestos litigation, which encroach on the constitutional due process rights afforded to all.
- ***Cozy Relationships:*** It is becoming more and more clear that judges in judicial hellholes are elected of, by, and for plaintiffs' lawyers. While businesses are hauled into court all over the country, local trial lawyers work with the same judges year in and year out. In these hellholes, they contribute to their campaigns and routinely socialize with them.
- ***Expedited Trials:*** In some jurisdictions, courts schedule many trials on the same date, but then call few of those cases. This practice makes it difficult for a defendant to prepare its cases and pressures it to settle.

Of course, there are many other commonalities: the admission of "junk science;" the failure to dismiss frivolous claims; skyrocketing medical malpractice liability; and excessive verdicts that actually can reach into the billions. Judicial hellholes have earned their reputation because judges in these jurisdictions do not miss many opportunities to find for the plaintiffs...and their lawyers.

## ***A Look Back: The 2002 Judicial Hellholes***

In 2002, ATRA members named 11 areas most frequently as judicial hellholes: Alameda County, California; Los Angeles County, California (particularly, the Civil Central West Division); San Francisco County, California; Madison County, Illinois; Orleans Parish, Louisiana; Mississippi's 22nd Judicial District; the City of St. Louis, Missouri; Jefferson County, Texas; Hidalgo County, Texas; Nueces County, Texas; and Starr County, Texas. In addition, several counties in Alabama; Hampton County, South Carolina; and West Virginia were given a "dishonorable mention" as areas that have also been named as judicial hellholes by numer-

ous individuals with whom we spoke. ATRA's 2002 Judicial Hellholes report achieved its goal of shining light on the abuses of these jurisdictions. The report was covered in the national media as well as in local newspapers in many of the states containing judicial hellholes. ATRA's focus on the troubling practices of these courts and the difficulty in obtaining a fair trial was helpful to passage of tort reform in Mississippi and Texas, and medical liability and venue reform in West Virginia in 2002. For example, as the Dallas Morning News recognized, "[t]he shadow of Beaumont and other alleged 'hellholes,' including three other Texas counties, hovered over the Legislature this spring as lawmakers overhauled state tort laws."<sup>10</sup>

### ***The 2003 Judicial Hellholes***

This year, 13 areas were most frequently named by ATRA's members as judicial hellholes. Of these, eight areas are veteran hellholes of ATRA's 2002 survey, or "repeat offenders" (designated with an \*). They are presented in this report and ranked based on the frequency by which they were named.

1. Madison County, Illinois\*
2. Jefferson County, Texas\*
3. Mississippi's 22nd Judicial Circuit (Copiah, Claiborne and Jefferson Counties)\*
4. Hidalgo County, Texas\*
5. Orleans Parish, Louisiana\*
6. West Virginia, and particularly Kanawha County
7. Nueces County, Texas\*
8. Los Angeles County, California\*
9. Philadelphia Court of Common Pleas, Pennsylvania
10. Miami-Dade County, Florida
11. City of St. Louis, Missouri\*
- 12 & 13. Holmes and Hinds Counties, Mississippi

In addition, Hampton County, South Carolina; the Northern Panhandle of West Virginia; and appellate courts in New Mexico are awarded a "dishonorable mention" as areas in order that have also been named as judicial hellholes by many individuals with whom we spoke.

This report highlights the litigation abuses that have occurred in these areas and provides an explanation as to why these jurisdictions are considered hellholes. It also considers "points of light," recent actions by judges and legislators that have sought to restore fairness and balance to the judicial system.

## **Madison County, Illinois**

There is a reason that plaintiffs' lawyers throughout Illinois, and indeed the entire nation, flock to a courthouse in a small, rural county that covers just 725 square miles in southwest Illinois.

### ***Follow the Personal Injury Lawyer Money***

Some say, "follow the money."<sup>11</sup> The locally elected judges of the Circuit Court of Madison County receive at least three-quarters of their campaign funding from the lawyers who appear before them to represent plaintiffs in personal injury, class action, or medical malpractice cases.<sup>12</sup> While the answer may not be so simple, such contributions combined with the favorable rulings of the court and its willingness to hear cases that are seemingly beyond its jurisdiction is cause for at least a suspicious eyebrow.

### ***The Jackpot Jurisdiction***

Another reason may be Madison County's reputation for exorbitant awards. Not once, but twice, the Chicago Tribune crowned Madison County as a "jackpot jurisdiction."<sup>13</sup> As the newspaper recognized, "[t]he number of suits has shot through the roof, and local newspapers sport advertisements looking for the local plaintiff who can provide a convenient excuse to file in Edwardsville.... [T]he Madison County phenomenon also provides a dramatic illustration of the potential for poor public policy when things get carried away."<sup>14</sup> Even retired Madison County judge, John DeLaurenti, weighed in that it took Madison County four decades to earn its reputation, "but now, it is so big with so much money and potential influence on people's careers that it has become very difficult to limit it in any way."<sup>15</sup>

### ***The Courthouse is Open for Business***

Madison County judges are infamous for their willingness to take cases from across the country, with little or no local connection, and offer decisions that regulate entire industries nationwide. Through artful pleading, lawyers are skilled at stopping defense lawyers from moving their cases to a more neutral forum by including a named plaintiff from the defendant's home state or toying with the amount in controversy to defeat the requirements of federal diversity jurisdiction. Madison County's over-eagerness to hear cases from other parts of the state has even been criticized



by the Supreme Court of Illinois.<sup>16</sup> The most recent case to gain public scrutiny is *Gridley v. State Farm Mutual Automobile Insurance Co.*, a class-action suit over allegedly fraudulent practices stemming from the sale of a car in Louisiana to a Louisiana resident.<sup>17</sup> The Supreme Court of Illinois is expected to rule on whether the case is another instance of pure forum shopping that should be moved either to a more appropriate Illinois county or dismissed and sent back to Louisiana. Some believe that this case provides the Court with the opportunity to again express its frustration with the Madison County debacle and strengthen Illinois' rules regarding *forum non conveniens* – that is, the issue of where a case ought be filed and decided.<sup>18</sup>

Because the purpose of this report is to foster change, it is only fair to recognize when positive action takes place. During the writing of this report, Judge Byron, a Madison County Circuit Judge, fairly dismissed an action filed in Madison County under the *forum non conveniens* doctrine and directed the plaintiff back to his home state.<sup>19</sup> The dismissed case concerned a lifetime resident of Washington, who worked in Washington, and was allegedly exposed to asbestos and injured in Washington, received no medical treatment in Illinois, and had no witnesses to testify on his behalf in Illinois.<sup>20</sup> So, what was the plaintiff's connection with Illinois? A 10-day family vacation almost 50 years ago.<sup>21</sup> While it seems outrageous that the plaintiff's attorney even attempted to bring the case in Madison County it draws further attention to some trial attorneys' wild attempts to have their cases heard in Madison County. This report commends Judge Byron for his dismissal of the action, which thwarted the plaintiff's attorney attempt to present the case in an improper, but perhaps more profitable, jurisdiction.<sup>22</sup>

### **A “Class Action Paradise”**

As class action lawsuits find their way to Madison County with increasing frequency, the county has become known by some as the “lawsuit capital of the world” and a “class-action paradise.”<sup>23</sup> It recently earned its own segment on 20/20.<sup>24</sup> Indeed, Madison County experienced an extraordinary 2,050% increase in class action lawsuits in three years between 1998 and 2001, and the increase was expected to reach 3,850% by 2002.<sup>25</sup> Plaintiffs' lawyers know how easy it is to certify a nationwide class in Madison County, persuade the court to apply favorable law, and then extract a court-approved settlement that compensates the lawyers far in excess of the victims, who often receive no more than a “coupon recovery.”<sup>26</sup> As legal ethics Professor Susan Koniak of Boston University School of Law observed, “Madison County judges are infamous for approving anything put before them, however unfair to the class or suggestive of collusion that is.”<sup>27</sup>

Likewise, Benjamin N. Cardozo School of Law legal ethics Professor Lester Brickman concludes that “the rule of law has been displaced by the ‘rule of class action lawyers.’”<sup>28</sup> The Supreme Court of Illinois recently took a small step forward to address class action abuse by changing its rules to allow a party to seek leave for an interlocutory appeal of class certification orders.<sup>29</sup> This change, which became effective in 2003 after millions of dollars in settlements and judgments,<sup>30</sup> is a positive first step, and more needs to be done to solve the substantial problem of forum shopping.

Locally elected judges in Madison County have, and continue to, set nationwide policy with respect to the insurance, communications, and various other industries. One recent example is a Madison County judge's approval of a \$350 million settlement in a class action lawsuit against AT&T and Lucent in November 2002 that alleged customers were being billed to lease telephones at an exorbitant rate. Forty-four lawyers from four law firms who worked on the case will split \$80 million of the settlement for legal fees and about \$4 million for expenses. The customers, on whose behalf these lawyers brought the case, took an average loss of \$6.49. They are eligible for a \$15, \$40, or \$80 payment based in part on how long they paid to lease phones.<sup>31</sup>

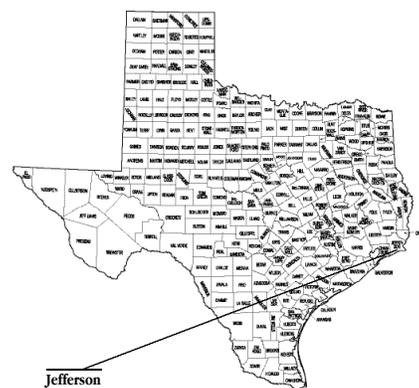
Blockbuster seems to be a favorite target of class action lawyers. In 2001, lawyers filed a national class action lawsuit against the video renter in another judicial hellhole, Jefferson County, Texas, alleging that the company had charged excessive late fees.<sup>32</sup> Blockbuster thought this lawsuit was over when the court approved a settlement that provided customers with discount coupons for rentals, while their attorneys divided up a \$9.25 million fee award.<sup>33</sup> But the sequel was yet to come. In April 2002, Blockbuster found itself subject to another nationwide class action lawsuit – this time in Madison County – alleging that the company was cheating members of its “rewards” program out of free rentals, which give one free rental for every five paid rentals. The lawsuit alleges that Blockbuster did not give customers credit for “re-rentals” – claiming that late charges on returns should be counted toward the program. An editorial in the *Belleville News-Democrat* declared that the pending lawsuit “is giving new meaning to the word ‘frivolous.’”<sup>34</sup>

### **Asbestos Central**

Asbestos cases, in particular, seem to find their way to Madison County Circuit Court at a surprising rate. Madison County (population 259,000) now hosts more mesothelioma claims than New York City (population 8,000,000), and a nine member law firm with one office in Madison County claims to handle more mesothelioma cases than any firm in the country.<sup>35</sup> Why? According to former U.S. Attorney

## Jefferson County (Beaumont), Texas

Refusing to accept a case in Jefferson County can get you killed. In an incredible and sad story, that is what happened to a well-respected plaintiffs' attorney when he declined to take an asbestos case and his distraught would-be client responded with a shotgun.<sup>44</sup>



**Jefferson**  
Pop: 252,051  
Land Area: 904 sq. mi.  
Person per sq. mi.: 279.0

Jefferson County, located in Southeast Texas, is known as a particularly plaintiff-friendly jurisdiction where “suing is one of Beaumont’s biggest industries.”<sup>45</sup> *The Austin American-Statesman* has recognized that “[o]ver the past few decades, personal injury lawyers have claimed this territory as their own, establishing Beaumont, Port Author, Orange, and nearby towns as an enclave where class-action lawsuits are pursued with a vengeance and juries often pass down sizable judgments.”<sup>46</sup> As one defense lawyer who has tried cases in Jefferson County stated, “I’m not looking for a pro-defendant place...I just want a fair trial. I want the playing field to be level.”<sup>47</sup>

### **Asbestos Lawsuit Magnet Court**

Jefferson County is a magnet for asbestos claims. For instance, the list of active cases in the 58th and 172nd Civil District Courts, located in Jackson County, includes hundreds, perhaps thousands, of asbestos cases.<sup>48</sup> In order to address this situation, in 2003, the Senate State Affairs Committee approved a bill that would have provided for an inactive docket program and required that claims satisfy objective medical criteria.<sup>49</sup> Similar programs have proven successful in protecting the rights of those who are not sick to sue should they become ill, while keeping such claims from clogging the judicial system and preserving limited resources to compensate the truly sick. Unfortunately, despite several weeks of negotiation between the Texas Asbestos Consumers Coalition, the trial bar, and several Texas Senators, as well as Lieutenant Governor Dewhurst and Governor Perry, the asbestos reform bill failed to reach the 21 votes necessary for rule suspension and was not brought to a floor vote. As the Texas Legislature is now out-of-session until 2005, the asbestos litigation crisis is likely to continue in Jefferson County courts.

General Griffin Bell, it is because its judges accept cases from throughout the state and place them on extraordinarily expedited schedules that do not provide defendants with adequate time to prepare for trial.<sup>36</sup> With the deck heavily stacked in favor of plaintiffs, defendants are forced to settle, regardless of the merits. When such cases do make it to trial, the court does not permit defendants to introduce evidence that the plaintiff was exposed to asbestos at a job with, or by a product of, another company, or that the plaintiff may have engaged in other activities that could have been responsible for the negative health effects. Given such a procedures, some may have foretold this year’s \$250 million verdict to a single plaintiff for his injuries from asbestos exposure,<sup>37</sup> or the \$34.1 million dollar award to a single asbestos plaintiff in 2000.<sup>38</sup> At the time, the \$34.1 million award was the largest asbestos verdict in Illinois history and one of the largest asbestos verdicts in the nation.

### **Appeal? That Will Be \$12 Billion Dollars!**

It almost cost a \$12 billion bond to appeal an excessive verdict from a Madison County court.<sup>39</sup> First, Philip Morris was hit with a \$10.1 billion verdict out of a nationwide class action alleging that the company defrauded “lights” smokers by suggesting to them Marlboro Lights and Cambridge Lights were actually less hazardous than their full-flavor brands.<sup>40</sup> Then, to add insult to injury, the company was ordered by the Madison County trial judge, Nicholas Byron, to post a \$12 billion bond in order to stay enforcement of the judgment during appeal.<sup>41</sup> After lengthy hearings, Judge Byron decided instead to require the company to place a \$6 billion note owed to the company, the \$420 million annual interest the note generates, and an additional \$800 million in cash payable in quarterly installments in an escrow account controlled by the court clerk.<sup>42</sup> Nevertheless, the plaintiffs’ lawyers, unsatisfied that Philip Morris had escaped bankruptcy, appealed. The Illinois Fifth District Court of Appeals ruled that Judge Byron exceeded his authority by setting a bond lower than the amount of the judgment, plus interest and costs.<sup>43</sup> The Supreme Court of Illinois reinstated the \$6 billion bond and took direct appeal.

### **And They Are Mad...**

As fully discussed in the introductory pages of this report, some plaintiffs’ lawyers are not happy that ATRA and others are documenting the litigation abuses occurring in Madison County. They are seeking to retaliate against non-profit organizations and employers that advocate for civil justice reform. ATRA encourages its members and all those seeking justice and fairness, to not be intimidated by such attempts to stifle the freedom of speech and association upon which this country is founded.

## **“The Barbary Coast of Class Action Litigation”**

As ATRA recognized in its 2002 Judicial Hellholes report, Jefferson County, Texas, has also been called the “the Barbary Coast of class action litigation.”<sup>50</sup> A recent study by the Manhattan Institute found that the number of class actions filed in Jefferson County nearly doubled between 1998 and 2000.<sup>51</sup> The same study also revealed that in class actions filed in Jefferson County between 1998 and 2001, only 13 of 173 defendants were based in Jefferson County, and only 64% of plaintiffs were county residents.<sup>52</sup> It is a place where entrepreneurial lawyers have sued out-of-state employers and profited from millions in legal fees, while their clients, most of which were located outside of Jefferson County and may not have even known about the lawsuit, received only coupons similar to that which one might clip from the Sunday newspaper.<sup>53</sup>

## **Doctors Flee from Rising Medical Malpractice Liability**

As in other judicial hellholes such as Philadelphia, Pennsylvania, medical liability has caused insurance rates to soar, sending Jefferson County neurosurgeons, obstetricians, and other doctors fleeing the area.<sup>54</sup> According to a Texas Senate Committee study, jury awards in medical malpractice lawsuits tripled on average to \$3.5 million from 1994 to 2000.<sup>55</sup> According to the Jefferson County Medical Society, more than half of doctors in Jefferson County saw their insurance rates increase by at least 55% between 1999 and 2002, with most medical malpractice insurance carriers leaving the Texas market altogether.<sup>56</sup>

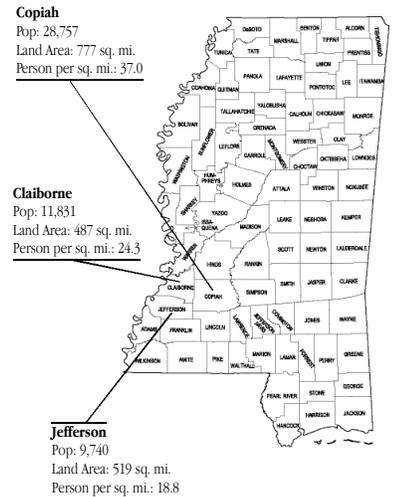
## **22nd Judicial Circuit (Copiah, Claiborne & Jefferson Counties), Mississippi**

Fayette, the county seat of Jefferson County, Mississippi, has the distinct privilege of holding the title of “jackpot justice capital of America.”<sup>57</sup> It is a small, rural county where the number of plaintiffs rivals the number of residents.<sup>58</sup> The national media, including the *Los Angeles Times*,<sup>59</sup> *The New York Times*,<sup>60</sup> and the *Washington Times*,<sup>61</sup> have all recognized the

Jefferson County phenomenon as a front-page story. In November of 2002, the popular news program, “60 Minutes,” devoted a program to explaining why Mississippi’s 22nd Judicial Circuit, which includes Copiah, Claiborne, and Jefferson County is a favorite place for plaintiffs’ lawyers to flock from all over the Nation.<sup>62</sup> It is more than ironic after the airing of the *60 Minutes* program, Media General Operations, which owns the local CBS-affiliate, the *60 Minutes*’ producers’, and several individuals who commented in the program, found themselves named as defendants in a \$6.4 billion defamation lawsuit in Jefferson County.<sup>63</sup> It is representative of the abuse that occurs in Jefferson County.

## **Anyone Can Sue in Jefferson County**

Plaintiffs’ lawyers routinely avoid federal diversity jurisdiction by naming a local company as a defendant, thus avoiding the complete diversity necessary to remove a case involving parties in different states to federal court. One small business, Bankston Drug Store, has been called “ground zero” in the pharmaceutical litigation business because, as the only pharmacy in Jefferson County, it has been named in hundreds of lawsuit alleging the defective manufacture of consumer prescription drugs in order to bring a large, out-of-state pharmaceutical company into local court.<sup>64</sup> The costs are real. As Ms. Bankston explained, “I’ve searched record after record and made copy after copy for use against me....I’ve had to hire personnel to watch the store while I was dragged into court on numerous occasions to testify. I have endured the whispers and questions of my customers and neighbors wondering what



we did to end up in court so often. And I have spent many sleepless nights wondering if my business would survive the tidal wave of lawsuits cresting over it.”<sup>65</sup>

### ***Extraordinary Verdicts Under Investigation***

In recent years, the 22nd Judicial Circuit has handed out numerous awards of \$100 million or more.<sup>66</sup> In fact, in June 2003, it was reported that the Federal Bureau of Investigation was probing possible judicial corruption in South Mississippi as well as these multimillion-dollar awards in Jefferson County.<sup>67</sup>

### ***Unfairness in Mass Actions***

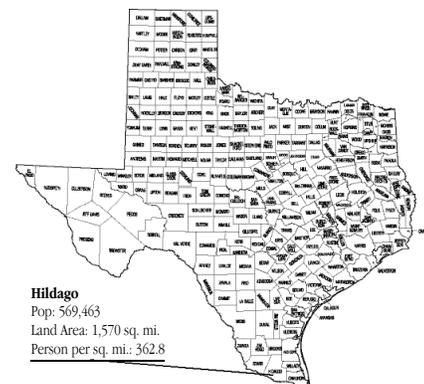
Jefferson County’s willingness to permit “mass joinders,” which allow multiple plaintiffs with disparate injuries to join in a single case, may also be changing for the better. Mississippi is one of only two states that does not have a class action rule that requires at least some measure of factual and legal similarity between the claims at issue. Between 1999 and 2000, the number of mass actions in Jefferson County grew from 17 to 73. Many of these claims had no relation to Jefferson County, were brought by lawyers from all over the country against out-of-state employers, included one local defendant to avoid federal diversity jurisdiction, and were clearly stacked with plaintiffs, who may or may not have had a valid claim, in order to compel settlement.

### ***Real Effects on Real People***

The effects of lawsuit abuse on the people of Mississippi are significant. Mississippi’s insurance commissioner says that 71 insurance companies have stopped doing business in the state, obstetricians are few and hard to find due to skyrocketing medical malpractice premiums, and thousands of jobs have been lost.<sup>68</sup>

## Hidalgo County, Texas

This year, the Hidalgo County District Courthouse was the setting for a plot almost sufficient for a TV movie involving conspiracy, theft, a plaintiffs’ lawyer and a corrupt government employee. In January 2003, a federal jury convicted attorney W. Lassiter



Holmes III of conspiring with then Hidalgo County district clerk Pauline Gonzalez, to backdate a medical malpractice claim that he filed in May 1999. Holmes placed the lawsuit in an envelope with a cancelled 1996 postage mark and filed it with Gonzalez, who stamped it as filed in 1996 so that Holmes could avoid the statute of limitations that would otherwise not permit him to file the lawsuit. Although Holmes made up a cockamamie story about the suit being filed in 1996, amended, lost, and found in 1998, expert testimony at the trial indicated that the watermark on the paper was not manufactured until 1997.<sup>69</sup> After three postponements, Holmes still awaits sentencing where he can face a \$250,000 fine and as much as five years in prison.<sup>70</sup> Gonzalez, 75, was also accused of stealing \$44,000 from her office, but has not gone to trial due to a serious illness.

While it is unlikely that this type of conspiracy is to blame for the county’s legal woes, according to the Texas State Insurance Department, the rate of medical malpractice claims in the Rio Grande Valley are 211% above the statewide average. Malpractice premiums were among the highest in the nation resulting in many Hidalgo doctors to close down or flee the state. Dr. Frances Mitchell was forced to shut down her family practice, the only one in a small town on the banks of the Rio Grande, due to the tripling of insurance premiums. As she recalled, “It was extremely painful...There were grown men in my office in tears, who cried on my shoulder as I left. It was heartbreaking.”<sup>71</sup> Dr. Mitchell is just one of the many doctors who cheered the passage of Proposition 12, discussed as a “point of light” later in this report.

# Orleans Parish, Louisiana



Orleans Parish is the birthplace of million and billion dollar awards against those who have the misfortune of being sued there. It is a place where judges actually take photo ops with plaintiffs' lawyers and raise campaign donations at funerals, where mold litigation is

becoming the new asbestos, and the threat of coming face-to-face with an angry jury and plaintiff-friendly court compels defendants to settle regardless of the merits.

## **Photo-Ops and Funeral Fundraising**

The most blatant and widely-reported questionable conduct in the New Orleans Civil District Court involve Judge C. Hunter King. Judge King recently presided over a street-car accident case with a whopping \$51.4 million verdict, which appears likely to be a result of the strong passion of a jury confronted with a sad injury to a child, rather than a reflection of the defendant's responsibility for the harm.<sup>72</sup> Counsel for the girl's family consisted of local attorney Robert Harvey, Sr., a contributor to and lender for the judge's campaigns,<sup>73</sup> who brought in big-name attorney, Johnnie Cochran.<sup>74</sup> As jurors exited Judge King's courtroom after the astoundingly huge verdict, the hallway erupted into a "partylike atmosphere" as the judge allowed jurors to pose for photographs with him and Cochran.<sup>75</sup> Press accounts suggested that the judge "managed to bring down the judiciary into a little more disrepute by posing for festive photographs," and that this behavior might in fact raise questions about his impartiality as the trial was going on.<sup>76</sup>

It gets worse. At a funeral, no less, Judge King sold \$250-a-plate tickets for his personal campaign fundraiser.<sup>77</sup> According to press reports, he also forced his employees, on threat of losing their jobs or bucking up the money themselves, to sell twenty of the same \$250 campaign tickets during their work hours.<sup>78</sup> The Honorable King then allegedly made good on his threat and fired his court reporter who did not make her sales quota.<sup>79</sup> Judge King stands accused of lying about his actions eighteen times in a sworn statement to the state Judiciary Commission, only to admit he was lying when confronted with audio tapes of his conversations with his staff.<sup>80</sup> When judges themselves lie in sworn statements, it does not

send a good message for the value they place on the sanctity of the judicial process inside their courtrooms.

## **In Orleans Parish, Mold is Gold**

While campaign tickets can rake in the money for Orleans Parish judges, mold is gold for Orleans Parish lawyers. Plaintiffs' class action lawyers hold the infamous mold, *Stachybotrys Chartarum*, to blame for what is now known as "sick building syndrome," which is blamed for every ailment from ear infections and headaches to memory loss and respiratory problems.<sup>81</sup> The problem is that the Center for Disease Control has not even linked this slimy black, often white-speckled, mold to the cause of any of these unique health conditions.<sup>82</sup>

Who is to blame for the allegedly toxic mold? Building owners? Contractors? Maintenance firms? Architects? Engineers? Landlords? Former owners? Plaintiffs' lawyers can and will slap any and all of the above with a toxic mold lawsuit.<sup>83</sup> Regarding the many unlucky possible defendants in any given toxic mold case, a New Orleans lawyer remarked "[i]f the case goes to the jury, the jury will throw up its hands and say everyone is responsible."<sup>84</sup> There have been no judicial decisions in Louisiana on toxic mold cases yet, but there are dozens of cases pending across the state and several high-profile cases in Orleans Parish, and which, even if without merit, may have a settlement value in the millions.<sup>85</sup> The attorney for the plaintiffs in the largest of these cases has remarked, "I truly believe that this is going to replace the asbestos rage."<sup>86</sup>

## **Runaway Jury Awards Upheld**

Defense attorneys in Orleans Parish are caught between a rock and a hard place. On the one hand, they are forced to defend cases in very unfriendly lower and appeals courts that are just looking for a reason to let plaintiffs win. On the other hand, the alternative – settlement – never even gives defendants a chance to reach the merits of their case. The juries are so hostile to defendants that even plaintiffs' attorneys in Orleans County recognize huge verdicts "reflect an angry jury."<sup>87</sup> Over and over again, defendants in "hellhole" jurisdictions have decided to bite the bullet and settle.

One example of the quandary defendants face is the case of *In re New Orleans Train Car Leakage Fire Litigation*.<sup>88</sup> In this case, over eight thousand plaintiffs joined in a class action lawsuit against CSX Transportation, Inc., AMF-BRD, Inc., Nova Chemicals, Inc. (Polysar), and six other companies, including Phillips Petroleum.<sup>89</sup> The plaintiffs claimed damages after they were forced to evacuate their homes when a railroad tank car leaked the chemical butadiene and caught fire, spreading smoke and ash over the plaintiffs'

neighborhood.<sup>90</sup> Fortunately, there were no injuries and the fire burned itself out after two days.<sup>91</sup> Nevertheless, the Orleans Parish jury found in favor of the plaintiffs and smacked CSX with \$2.5 billion in punitive damages and four other defendants with a total of \$865 million in punitive damages.<sup>92</sup> The trial court later reduced the punitive damages against CSX to \$850 million.<sup>93</sup>

After defendants in Orleans Parish rise from the onslaught of angry jurors and judges at the civil district courts, they must face appellate court judges who affirm these lower court decisions. That is just what happened when Louisiana's Fourth Circuit Court of Appeal upheld the award against CSX, notwithstanding the trial court's constitutionally-suspect practice of awarding punitive damages after it had only determined compensatory damages of twenty of the eight thousand plus plaintiffs.<sup>94</sup> This procedure goes astray of the Supreme Court's due process requirement that punitive damages bear a reasonable relationship to the harm suffered.<sup>95</sup> To justify the huge award, the appellate court considered a parade of horrors of all the potential harm that could have happened, but did not happen, as a result of the gas leak, including "hundreds or even thousands of deaths and injuries [which] could have ensued."<sup>96</sup>

After learning of the appellate court's decision, CSX settled with the plaintiffs for \$220 million, stopping short its appeal to the Louisiana Supreme Court.<sup>97</sup> Not too surprisingly for this "judicial hellhole," the judge set aside 40% of the \$220 million judgment for the plaintiffs' attorneys.<sup>98</sup>

### ***Want to Sue Exxon? Jump in Line!***

Last year, this report featured a New Orleans case that was the second highest verdict awarded in the nation in 2001. In that case, a former Louisiana state court judge sued Exxon Mobil Corp. for leaving radioactivity on land involved in an oil-field pipe operation.<sup>99</sup> The jury awarded the former judge \$145,000 for lost property value and \$1 billion in punitive damages.<sup>100</sup> Following this extraordinary verdict, more Orleans Parish citizens have jumped in line to file suit against Exxon and other oil companies for contamination on the site, including at least seven class-action suits against Exxon, as well as a suit by five individuals who worked or resided in the area.<sup>101</sup> In fact, the day after the award against Exxon came down, eleven men who cleaned oil pipes in the area filed suit for damages for their fear of developing cancer and for medical monitoring.<sup>102</sup> Days after that, another woman filed a class action suit for contamination on her family's property.<sup>103</sup> Obviously, the 2001 decision was just the spark to a giant rush of litigation against oil companies in ultra plaintiff-friendly Orleans Parish.

## **West Virginia, particularly Kanawha County**

One step forward, two steps back. That seems to be the situation in West Virginia, which repeats its distinction as the only statewide judicial hellhole in our survey. Litigation activity has increased 53.6% more rapidly in West Virginia than in the nation as a whole over the last ten years.<sup>104</sup> And when Harris Interactive ranked the nation's civil justice systems, West Virginia's ranked 49th.<sup>105</sup> Only Mississippi finished worse.<sup>106</sup> Due to the slew of tort reform measures Mississippi has since passed, West Virginians may no longer be able to say, "Thank goodness for Mississippi."<sup>107</sup>



West Virginia's capital county has become particularly well known for the insular nature of the legal community and the invention of judicial shortcuts and causes of action that result in million dollar damage awards for people who are not even injured. Within the last fifteen months, the local courts have received significant national attention for their "creativity" and "family ties," making them a bona fide "judicial hellhole."<sup>108</sup>

Instead of being a place where plaintiffs and defendants may each present their positions fully and fairly in having their disputes resolved by an impartial jury, Kanawha County turned its judicial system – with the help of the state's highest court– into a commodity business, akin to an ATM for claim filers.

### ***Judicial Shortcuts Sidestep Due Process***

The most glaring, high-profile shortcut in Kanawha County involves asbestos litigation. The County grabbed national headlines in the fall of 2002 when it consolidated into one mass trial more than 8,000 claims against more than 250 defendants.<sup>109</sup> These cases were batched together despite the fact that they had nothing to with each other: they involved many different types of alleged injuries (including no injuries at all), were alleged to have occurred in places all over the country, and involved literally hundreds of different products. The only commonality of the claims was the word "asbestos," as the process abandoned traditional concepts of individualized proof that is the foundation of our fault-based tort system.<sup>110</sup> Writing separately upon the

West Virginia Supreme Court of Appeals' upholding of the trial court's consolidation, Justice Maynard expressed that he was "deeply concerned" regarding the trial court's practices and noted that the defendants had likely been denied due process for a myriad of reasons "and some federal court will eventually tell us so."<sup>111</sup>

The goal of the consolidation was never for justice to be done. It was to force settlement, despite the injustice. Not surprisingly, nearly all the claims settled, irrespective of their merits or the culpability of the defendants. When one company settled for about a quarter million dollars over a product still available in home improvement stores today, it considered it a major victory. At a forum hosted by the American Tort Reform Association, Fred Baron, former head of the Association of Trial Lawyers of America even admitted the consolidation was probably unfair.<sup>112</sup>

The Kanawha County Court took another ill advised shortcut for workers' compensation claims. Under workers' compensation, a company can only be sued directly if it deliberately intended to harm employees – a serious charge meant for the worst corporate actors. But to save time, the courts "constructively concluded" a local employer was guilty of "deliberate intent" and allowed direct suits to be filed without any hearing on the issue. The court said it was close enough that in a previous trial, a court found the company may have been negligent in contributing to a similar health hazard for some local contractors. As noted in an op-ed after the decision, the cases were "fundamentally different – from factual, legal and moral perspectives."<sup>113</sup>

### ***Inventing Causes of Action***

Kanawha County also received national attention for its "fear for cancer" cause of action, which allows people to collect damages even though they do not have the disease. The U.S. Supreme Court allowed the ruling to stand, saying the Federal Employees Liability Act, which was at issue in the case, did not preclude the Kanawha County Courts from allowing rail workers to recover "fear of cancer" damages in addition to the damages they received for other non-cancerous injuries.<sup>114</sup> In an unrelated decision, but one certain to affect future rulings in Kanawha County, the West Virginia Supreme Court continued its degradation of traditional tort law by allowing noninjured people to collect cash damages. In February 2003, the Court expounded on its creation of a "medical monitoring" cause of action, saying that people receiving "medical monitoring" damages could keep the cash and do not need to be monitored for any medical condition.<sup>115</sup>

### ***Admittedly Pro-plaintiff***

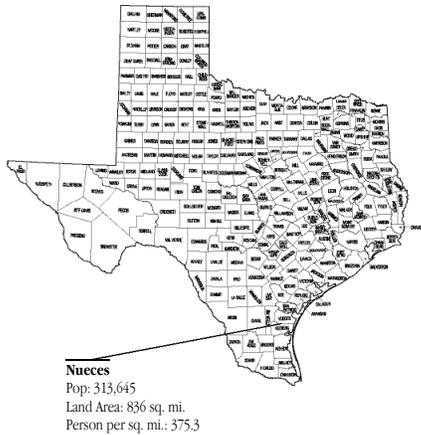
"I have a hard time not being lenient, as a jurist, on behalf of those people," current Chief Justice Larry Starcher has been quoted as saying.<sup>116</sup> That certainly explains why the Court ruled for the claimant in 434 of the 494 workers' compensation claims it accepted for review in 2002.<sup>117</sup> In 2002, the Court ruled that a man driving his family to church was within his scope of employment so he could collect from his employer's insurance company, that stress is compensable without a preceding physical incident, and that a worker can be awarded damages for "prolonged sitting."<sup>118</sup> Justice Starcher's statement may also explain the court's mass consolidation into one trial of the asbestos claims of some 8,000 plaintiffs (no one knows exactly how many) against 250 corporations, despite the utter lack of any similarity between the work sites, locations, diseases, and extent of injury of the plaintiffs.<sup>119</sup>

### ***Family Affairs***

Given the family ties between the local plaintiffs bar and those running the justice system in West Virginia's capital county, it is not likely that civil justice will be restored any time soon. Two of the more high profile family ties were profiled by the *Wall Street Journal* last year.<sup>120</sup> Most interesting is the marriage of Scot Segal, Kanawha County's top plaintiffs' lawyer, to Robin Davis, a Supreme Court Justice. She supported the new causes of action while her husband was the lead lawyer in a number of class action suits seeking those damages. Not surprisingly, he was also the lead plaintiffs' attorney in the mass consolidation of asbestos cases referenced above. The Segal-Davis 20,000 square-foot, \$5 million estate was featured in *Southern Living* magazine.<sup>121</sup>

In addition, Supreme Court Justice Warren McGraw's son is a plaintiffs' lawyer who brought several medical monitoring cases with claims in the billions of dollars after his father authored a decision directly impacting those claims.<sup>122</sup> Justice McGraw's brother, Darrell V. McGraw, is the Attorney General who handpicked the lawyers (including Mr. Segal) who split \$33.5 million in legal fees from the state's tobacco settlement. McGraw's own department kept just \$714,635 in fees.<sup>123</sup>

## Nueces County, Texas



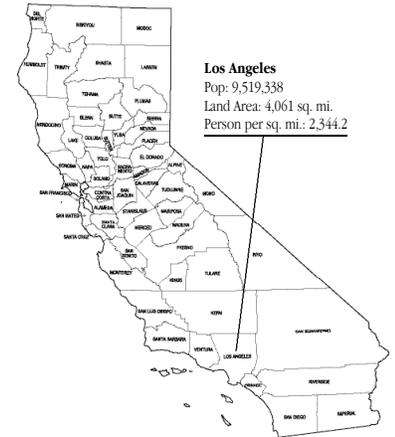
On May 29, 2003, the Nueces County District Court had its busiest day in five years. Trial lawyers thought it might be the last chance to file medical malpractice lawsuits to avoid the limits on damages in legislation pending before the Texas Legislature.<sup>124</sup> It was akin to filing ones taxes

on April 15. Their strong effort was in vain, since Texas's new medical malpractice statute did not take effect until July 1, but the situation does show how this county is one of the most litigious in the Lone Star State.

It is also one of the jurisdictions in which plaintiffs' lawyers like to forum shop. Every once in a while, they get caught going too far. Take the case of the Beaumont-based law firm of Provost & Umphrey, which represents hundreds of plaintiffs in asbestos cases pending in Nueces County. In late 2002, Texas Judge Nanette Hasette slapped it with \$500,000 in sanctions for actions that threaten "the integrity of our judicial system."<sup>125</sup> According to press accounts, defense attorneys alleged that four, single-plaintiff asbestos lawsuits were filed in one hour in February in Nueces County.<sup>126</sup> Each complaint was identical and was filed against the same defendants. Then began the shell game. The first two cases were assigned to Judge Hasette, the third to Judge Jose Longoria, and the fourth to Judge Martha Huerta. The law firm then dismissed the case assigned to Judge Longoria. It amended the complaint assigned to Judge Huerta to include more than 300 plaintiffs and then moved to Judge Hasette's court, apparently because they felt she was a sympathetic judge. Apparently not. Judge Hasette was not amused by these antics and order the firm to pay individual filing fees and service costs for each of the plaintiffs named in the lawsuit, in addition to the \$500,000 in sanctions.<sup>127</sup> The *Wall Street Journal* praised Judge Hasette for her "brave ruling" which imposed "normal judicial ethics" on one of the "kingpins of the trial bar."<sup>128</sup>

## Los Angeles County, California - Central Civil West Division

How do you change an excessive award into one that is not unconstitutionally excessive? In Los Angeles County's Central Civil West Division, the answer is simple and can be accomplished quickly on any word processor. Either delete three of the zeros or change the letter "b" to the letter "m." Just following ATRA's release of the 2002 Judicial Hellholes report arrived the news of a \$28 billion punitive damage award against Philip Morris to a single plaintiff, a 64-year-old former smoker. How did this court address the unbelievable jury award? Easy, the court reduced the \$28 billion award to \$28 million.<sup>129</sup>



### ***A History of Astronomical Awards***

The Central Civil West Division's reputation for high jury verdicts is well deserved. This jurisdiction is such a money-maker for plaintiffs' lawyers that it is known to them as "the Bank."<sup>130</sup> For instance, the \$28 billion award comes on the heels of a \$3 billion verdict in the Central Civil West Division to another single smoker in 2001, which was, at the time, one of the highest verdicts in history.<sup>131</sup> It also follows a \$4.9 billion verdict against GM in 2000 involving the explosion of a Chevy Malibu, where the defense was not permitted to tell the jury that the driver who rear ended the car at over 70 miles per hour, was both speeding and drunk.<sup>132</sup> Meanwhile, the court allowed the plaintiffs' attorney to present testimony regarding GM's supposed lobbying to limit fuel-tank safety regulations, but did not permit the defense to present the testimony of "high-ranking former public servants" to rebut the plaintiff's testimony.<sup>133</sup> And we still remember the \$760 million punitive damage award in a toxic pollution case in 1998, where the jury responded to a judge's call to "send a notice out to the world."<sup>134</sup> While each of these awards were reduced by a judge, the sheer magnitude of the amounts, even after the reduction, is cause for alarm.

### ***Breaking the Bank***

At this rate, the sum of verdicts coming out of the Central Civil West Division may exceed the total wealth of some small countries. The Bank clearly needs to hire a guard who will stop the looting and apply the law.

# Philadelphia, Pennsylvania (Court of Common Pleas)



Philadelphia  
Pop: 1,517,550  
Land Area: 135 sq. mi.  
Person per sq. mi.: 11,233.6

How much is a routine slip-and-fall case worth: \$5,000, \$25,000, \$50,000? In Philadelphia's lawsuit lottery, tripping over a raised manhole cover in the parking lot of a major employer, Home Depot, is worth a cool \$1 million.<sup>135</sup>

The impact of extraordinary awards is most noticed in the healthcare industry, where, according to *The Philadelphia Inquirer*, "hitting the 'malpractice lottery' is a made-for-Philadelphia phrase."<sup>136</sup>

## ***The Focal Point for the Pennsylvania Medical Liability Insurance Crisis***

According to a 2003 study by the Pew Charitable Trusts, which devotes an entire section to "The Special Case of Philadelphia," Pennsylvania has one of the worst situations in the nation in providing affordable liability insurance for physicians and hospitals.<sup>137</sup> The report shows that, in Philadelphia, plaintiffs are twice as likely to win jury trials as in the rest of the nation and a substantial percentage of cases result in verdicts greater than \$1 million.<sup>138</sup> In fact, the median verdict in medical liability cases from 1994 through 2001 in Philadelphia county was \$972,900, compared with \$410,000 in the rest of the state, according to a representative of the Pennsylvania Medical Society.<sup>139</sup> In recent years, the amount of medical malpractice verdicts in Philadelphia (population 1.5 million) accounted for about 70% of the total in Pennsylvania (population 12.3 million).<sup>140</sup> According to one researcher, "between 1999 and 2001, Philadelphia courts returned verdicts of \$1 million or more an average of 29 times a year, compared to an average 37 times a year in all of California" and plaintiffs won 44% of trials in Philadelphia compared to 20% nationally.<sup>141</sup> While some claim that the number of medical malpractice verdicts over \$1 million has fallen in recent years in Philadelphia,<sup>142</sup> data also suggests that payments to settle malpractice cases continues to rise, with some insurers reporting record payouts, as doctors and hospitals fear risking trial.<sup>143</sup>

As a cardiologist who attended a rally to focus attention on rising premiums observed, "Talk to a doctor these days and you're likely to hear tales of misery."<sup>144</sup> Philadelphia obstetricians, with a median national compensation of

about \$210,000, must pay \$150,000 per year in insurance costs – an amount that has doubled in the last three years. Highly-skilled surgeons who find themselves faced with \$240,000 premiums in Philadelphia pack their bags for states where rates are substantially lower.<sup>145</sup> Hospitals also find themselves in a bind. The President of a major Pennsylvania hospital testified before Congress that medical liability costs at his hospital rose 133% between 2001 and 2003.<sup>146</sup> Speaking from his hospital's experience in getting hit with a \$100 million award because the plaintiff's mother perceived the private-practice physicians who treated her infant to be employed by the hospital, the President questioned, "is it right to take \$100 million out of the health care system and give it to one family – after the lawyers receive their 40 or more percent?"<sup>147</sup>

According to *The Patriot-News*, "while it is impossible to put numbers on the problem, anecdotal evidence suggests that skyrocketing insurance premiums have persuaded far too many physicians, especially those working in such specialties as obstetrics and neurosurgery, to retire early, move to another state, or give up practicing their specialty."<sup>148</sup> For those who continue to practice in Pennsylvania, the drastic increase in premiums may be negatively impacting the standard of care. According to a 2001 poll by the Pennsylvania Medical Society, 72% of doctors contacted said they did not hire staff or buy new equipment as a result of the sudden increase in their liability insurance.<sup>149</sup> The *Pittsburgh Post-Gazette* reported that Frankford Hospital's trauma unit in Philadelphia temporarily closed when its orthopedic surgeons decided to give up operating rather than renew their malpractice insurance.<sup>150</sup> Small business owners are concerned that they will need to drop or cut back health insurance for their employees, and the public is concerned that they will both have to pay more for health care and have less access to doctors due to the liability crisis.<sup>151</sup>

# Miami-Dade County, Florida



In recent weeks, a hotly contested debate concerning medical malpractice reform has grabbed headlines in Miami-Dade County.<sup>15</sup> But this newcomer to the judicial hellholes list has more problems than just skyrocketing medical malpractice rates.

## ***Punitives to Plaintiffs With No Economic Harm***

Just ask businesses such as Texaco Refining and Marketing. In July 2003, a Miami-Dade jury pummeled it with a \$33.8 million punitive damages judgment.<sup>153</sup> This huge punitive award came *after* the jury had found the plaintiff had suffered no economic damages as a result of Texaco's actions.<sup>154</sup> This award appears unconstitutional in light of the recent U.S. Supreme Court ruling in *State Farm v. Campbell*, in which the Court ruled that a punitive damage award must have some relation to the size of the compensatory award.<sup>155</sup> The award is even more questionable considering the recent decision by Florida's Third District Court of Appeals, that in cases of fraud or where actual harm is an underlying element of the claim, the plaintiff must have actually suffered harm in order to receive punitive damages.<sup>156</sup> The Court of Appeals correctly reasoned that if no compensatory damages are awarded, it is impossible to measure what is a reasonable punitive award for the plaintiff's harm.<sup>157</sup>

## ***Remember Engle: Appellate Court Decision Overturns \$145 Billion Award and Highlights Shoddy Legal Practices***

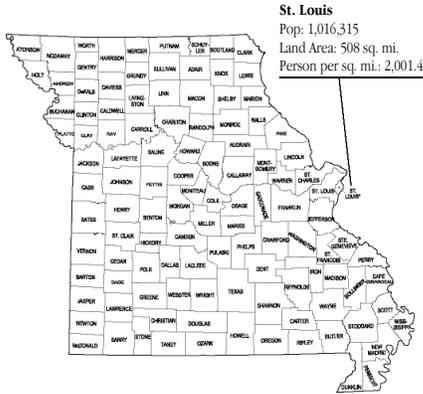
This is the same "hellhole" responsible for the largest civil judgment in this country's history, *Engle v. RJ Reynolds*, a \$145 billion punitive damage award to a class of approximately 700,000 Florida smokers against the tobacco industry back in 2000.<sup>158</sup> In a decisive ruling in May 2003, the Third District Court of Appeals scrapped the record breaking award based on a laundry list of egregious errors that occurred in the Miami-Dade Circuit Court trial.<sup>159</sup> The appellate court opinion is perhaps the most revealing of the kinds of antics that are going on in the Miami-Dade county courthouses. In their first move to strike down the colossal award, the appellate court rejected the class-action certification on the grounds that members of the proposed class did not have sufficiently similar claims to

share a common trial.<sup>160</sup> The appellate court then held that an award that would result in bankrupting the defendants was excessive and in violation of federal and Florida law. In addition to violating both Federal and state law, the trial was conducted in an unconstitutional manner. According to the appellate court, the trial court essentially punished the defendants without first finding them guilty, in violation of their Due Process rights, when they allowed punitive damages to be awarded without establishing the defendant's fault and liability towards the individual plaintiffs.<sup>161</sup> While these are only a few of the grounds the appellate court relied on to reverse the outrageous verdict, perhaps the most telling was when the appellate court blamed the "'runaway' jury award" largely on the plaintiffs' counsel's outrageous use of inflammatory, racially-charged arguments and "racial pandering" throughout the trial and "incited the jury to disregard the law."<sup>162</sup>

## ***Warning: Using a Cell Phone While Driving Can Lead to Million Dollar Verdicts***

It is not just the jury verdicts that are making headlines, so are the kinds of suits being brought in the Miami-Dade courts. Miami-Dade in one of the first counties to try a case linking negligence in car accident cases with cell phone usage at the time of the crash.<sup>163</sup> It appears that the trial lawyers have found a willing jury pool in Miami-Dade for their new theory. By December 2002, there had already been two multi-million dollar verdicts based on the new theory. In one case, a jury awarded \$21 million to a 74-year-old woman injured in a crash that occurred while the driver of the other car was talking on his cell phone.<sup>164</sup> In another similar trial shortly thereafter, a Miami-Dade jury awarded the widow of a 75-year-old man \$5.2 million.<sup>165</sup>

# City of St. Louis, Missouri



According to *Missouri Lawyers Weekly's* annual survey, 2002 was a banner year for plaintiffs in Missouri.<sup>166</sup> The survey showed that even after taking out the top verdict, a \$2.2 billion verdict against a pharmacist who diluted medications, the next nine highest verdicts of 2002

totaled a whopping \$156 million compared with the relatively “paltry” \$106 million total for 2001’s top ten awards.<sup>167</sup> The infamous St. Louis City Circuit Court, which enters its second consecutive year as a judicial hellhole, awarded eight of the twenty-one highest plaintiffs’ verdicts in Missouri (38%), a state made up of forty-five judicial circuits and two federal district courts.<sup>168</sup> It is also home to an even greater percentage of the highest settlements of 2002 – half.<sup>169</sup> Along with rising verdicts, the St. Louis City Circuit Court has seen a rise in personal injury / medical malpractice claims.<sup>170</sup> Between 2001 and 2002, there was a 9.1% increase in malpractice cases filed, with 1,207 malpractice defendants named in 231 cases compared with 1,090 malpractice defendants named in 214 cases filed in 2001.<sup>171</sup> This is a 13.7% rise from 2000.<sup>172</sup> In an October 30, 2002 hearing on professional liability insurance before the Missouri Department of Insurance, Dr. Erol Amon, the President of the St. Louis Metropolitan Medical Society, testified that many of these cases are not settled because of any legitimate malpractice that occurred, but for strictly economic reasons or the risk of being slapped with an even larger award in counties like pro-plaintiff St. Louis City.

It is no secret that St. Louis City Circuit Court “is the place to be” if you are a plaintiff.<sup>173</sup> Many lawyers view St. Louis judges and juries to be friendlier, even more generous to plaintiffs.<sup>174</sup> Plaintiffs move cases to St. Louis City because “St. Louis city is a better venue,” said one St. Louis plaintiffs’ attorney.<sup>175</sup> The Missouri Court of Appeals recognized that plaintiffs “pretensively” joined a company vice president responsible for finance for the purpose of obtaining venue in St. Louis City, and denied venue in one case.<sup>176</sup> Even Missouri Supreme Court Judge Michael Wolff has recognized that “[t]he preponderance of anecdotal evidence is that jurors in the city of St. Louis are far more favorably disposed toward injured plaintiffs’ claims than are their coun-

terparts in suburban St. Louis County or in most other counties in the state.”<sup>177</sup>

The Missouri Supreme Court tried to stop forum shopping by ruling in October, 2001, that venue must be re-determined any time a plaintiff adds another defendant to a case.<sup>178</sup> This decision helps prevent plaintiffs from choosing the most friendly venue by filing a suit against an out of state defendant, and then after venue was determined to their liking, amending the original petition to include a Missouri resident.<sup>179</sup> Judge Wolff has also advocated merging the juror pool of St. Louis County with that of St. Louis City in an effort to end the major motivation behind city-county venue maneuvering and make the juror pool more representative of the community at large.<sup>180</sup> This sensible idea has not come about.

The good news for the unfortunate defendants that may find themselves in this judicial hellhole is that the national spotlight and criticism may be slowly having an impact. The St. Louis Post-Dispatch referenced ATRA’s classification of St. Louis City Circuit Courts “among the nation’s ‘judicial hellholes’ of ‘litigation magnets,’” as making the need for reform “more urgent.”<sup>181</sup> Unfortunately, until the litigation environment becomes more balanced, St. Louis City Circuit Court continues on the list of judicial hellholes.

# Holmes & Hinds Counties, Mississippi

**Holmes**  
Pop: 21,609  
Land Area: 756 sq. mi.  
Person per sq. mi.: 28.6



**Hinds**  
Pop: 250,800  
Land Area: 869 sq. mi.  
Person per sq. mi.: 288.5

As discussed in the “points of light” section of this report, the number of mass actions filed in hellhole Jefferson County, Mississippi, has begun to recently taper off, a fact attributed to a change in direction by the county’s sole civil judge, Judge Lamar Hickard.<sup>182</sup> The result is that some of these cases are flowing to other Mississippi counties, such as Holmes and Hinds Counties,

which show a willingness to permit abusive practices.<sup>183</sup> These counties were named by respondents to ATRA’s survey as emerging judicial hellholes.

## ***Holmes County***

Holmes County has a number of the problems endemic to judicial hellholes. Cases with little connection to the area end up in Holmes County. For example, it was reported that one recent lawsuit had only 1 plaintiff out of 22, and only 1 defendant out of 66, from Holmes County.<sup>184</sup> This is the perfect formula for avoiding the jurisdiction of the federal courts and keeping a case with little or no relation to Holmes County in the judicial hellhole.

Holmes County also appears to share injustice in asbestos litigation with its hellhole colleagues. In December 2001, a Holmes County jury awarded \$25 million each to six plaintiffs, for a total of \$150 million, who alleged they were exposed to asbestos at several workplaces in Mississippi.<sup>185</sup> Their claims came from exposure in different environments, ranging from schools to shipyards and industrial boiler rooms.<sup>186</sup>

## ***Hinds County***

In *Jacobellis v. Ohio* (1964), Justice Potter Stewart said that he could not define pornography, “[b]ut I know it when I see it.”<sup>187</sup> Could the same not be said of frivolous lawsuits? Well, not in Hinds County. This year, a debate raged in the Hinds County Circuit Court as to what the legislature meant when it passed a law that “frivolous lawsuits” are subject to a \$1,000 fine. In that case, the plaintiff, Edward Keszenheimer filed a \$27.5 million lawsuit against his own attorneys, claiming legal malpractice after

they only partially won his disability case. While the judge dismissed the lawsuit and assessed court costs against the plaintiff, it did not impose the fine, leaving judges and commentators question when an appropriate instance exists for use of the new law.<sup>188</sup>

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# Dishonorable Mention

Some areas, although not the most frequently identified by respondents to ATRA's survey, are awarded a "dishonorable mention." This report highlights a particular abusive practice or warped litigation environment in these jurisdictions.

## Hampton County, South Carolina



**Hampton**  
Pop: 21,386  
Land Area: 560 sq. mi.  
Person per sq. mi.: 38.2

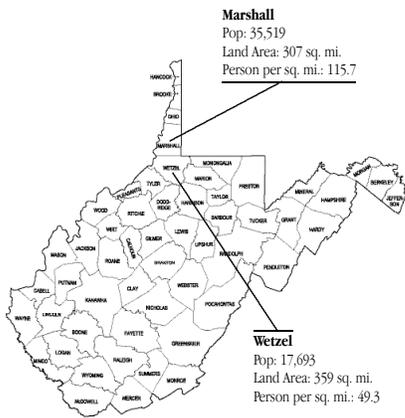
South Carolina law allows people to file an injury lawsuit against a company anywhere in the state in which it does business or owns property, regardless of where the plaintiff lives or was injured.<sup>189</sup> They choose Hampton County (pop. 20,000) for its reputation for high verdicts and

friendly courts and juries, and have turned this county into a "litigation machine."<sup>190</sup> Corporations from around the state and nation are pulled into Hampton County.<sup>191</sup> A review of the Court of Common Pleas docket of cases set for jury trial over the next year include a substantial number of lawsuits against CSX Transportation, Inc., as well as several against other national companies, such as Monsanto, Ford, and General Motors, among others.<sup>192</sup> Although South Carolina allows courts to transfer cases when "there is reason to believe that a fair and impartial trial cannot be held" or "when the convenience of witnesses and the ends of justice would be promoted by the change,"<sup>193</sup> we are told by local attorneys that Hampton County judges, without fail, deny such motions, which are not appealable until after the conclusion of the trial.

A recent positive development is an April 2003 reversal of a Hampton County Circuit Court decision by the Supreme Court of South Carolina.<sup>194</sup> The Hampton County

ruling would have allowed a nationwide class action against Monsanto to proceed despite a state law not permitting actions in state courts when the cause of action arose outside the state.<sup>195</sup> In a ruling that defies logic, the Hampton County court had found that since all of the class representatives were residents of South Carolina, the entire class, which might have included thousands of people from outside the state who could not have independently sued in the state, could sue in Hampton County.<sup>196</sup> Fortunately, the Supreme Court of South Carolina disagreed.<sup>197</sup> The Court's ruling may spare Hampton and other South Carolina counties from becoming the next Mecca of nationwide class action lawsuits. In addition, legislation pending in the South Carolina Legislature would revise the state's venue law to allow claims against corporations (1) in the county of the corporation's principal place of business; or (2) in the county where the cause of action arose, and, (3) in the case of an out-of-state corporation, if neither (1) nor (2) applies, where the plaintiff resides.<sup>198</sup> Venue reform along these lines would help address the problem in Hampton County.

## West Virginia's Northern Panhandle



Recent lawsuits in West Virginia's Northern Panhandle, including Wetzel and Marshall Counties, have respondents to ATRA's survey on edge that, notwithstanding the entire state's designation as a judicial hellhole, justice in this region is becoming particularly difficult to find.

"Hog-tied in the middle of the courtroom" with "nowhere to run."<sup>199</sup> That's how one defense lawyer described his experience in a Wetzel County courtroom after the judge stripped the defendant of its right to present all of its possible defenses. The result – a \$39 million verdict, including \$34 million in punitive damages – the largest verdict by far in the county's history, one of the highest ever in the state, and one of the 100 largest in the country in 2002.<sup>200</sup> Could it be just a coincidence that the trial judge's greatest contributor was none other than the law firm that "won" the case?<sup>201</sup>

West Virginia has also become one of the first states in the nation to use its consumer protection statute to attack national major investment firms for allegedly providing overly optimistic advice.<sup>202</sup> State Attorney General Darrell McGraw chose to bring this lawsuit in the Marshall County Circuit Court, which has no apparent connection to the case, showing that even the state can forum shop, particularly when it is in bed with plaintiffs' lawyers. The attorney general is seeking fines of \$300 million or more from the firms. If found liable, will the investors receive any of this reward? "It is possible," McGraw says, but obviously the motivation is a windfall for the state treasury and the benefit of the private attorneys hired to bring the case. In fact, the Attorney General handpicked private law firms to pursue these suits, without any open and competitive bidding or legislative approval, and they will profit more than the alleged victims. At least three of the four law firms involved were contributors to AG McGraw's recent election campaigns.<sup>203</sup>

## New Mexico Appellate Decisions Raise Cause for Concern

Recent appellate level decisions in New Mexico have caused concern among survey respondents that justice in the state may be headed south.

Consider these facts. An individual brings his car to the shop for repairs. As instructed by the repair shop, he leaves his keys in the car. A criminal gains entry to the shop and steals the car. The next day, the thief, while being chased by police and driving at speeds of up to ninety miles per hour, crashes head-on into another vehicle, killing one occupant and severely injuring a passenger. Who is responsible for this accident: (A) the thief; (B) the police; (C) the owner of the stolen car; or (D) the repair shop? Believe it or not, according to the Supreme Court of New Mexico, if you guessed (C) or (D), you would be correct. In a May 2003 ruling, the court found that it is foreseeable that a car left unattended with its keys in the ignition will be stolen and used for joyriding, and that a police chase resulting in an accident is also a probable result of this chain of events.<sup>204</sup> Thus, one who owns or is in possession of a vehicle that is left with its keys can be held responsible for the independent actions of a criminal who is trying to evade the police and anyone hurt or killed in the process. You did not leave your keys in the car, did you?

Another expansion of liability came from the Supreme Court of New Mexico in March 2003, when it became the first state court to allow "unmarried cohabitants" to recover for loss of consortium. In that case, the male domestic partner suffered a back injury in a car accident.<sup>205</sup> His partner, whom he had lived with for many years and with whom he had three children, but never formally married, sought damages because their social and sexual relations had deteriorated after the accident. Ordinarily, loss of consortium damages can only be recovered by a person's spouse or the parents of a child. Nevertheless, instead of looking to whether the two partners were legally married at the time of the accident, the court extended the ability to receive loss of consortium damages to anyone with an "intimate familial relationship," which would be determined based on "a myriad of factors."<sup>206</sup> The court's opinion attempts to nar-



row the scope of this claim to people in committed and exclusive relationships that are living in what might be considered common law marriage, and recognizes that a defendant should not have the burden of “fighting off” multiple claims for loss of consortium.<sup>207</sup> However, the elimination of the marriage requirement opens the door to novel loss of consortium claims, which may be permitted by lower courts. This is a case where stretching legal principles to fit sympathetic facts makes bad law. ATRA is concerned with the expansion of liability in this area by the courts, and takes no position on the underlying social issue, which is a policy decision best considered by the state legislature.

The Supreme Court of New Mexico has another chance to expand liability in a case pending before it. In a February 2003 decision, the New Mexico Court of Appeals ruled that a third party who is injured in a car accident by an insured person can sue their insurance company if it does not “mediate, resolve, and settle” her action.<sup>208</sup> It did so, on the urging of the state’s trial lawyer association, despite a compelling argument that the legislature consciously decided not to grant such a cause of action to third parties.<sup>209</sup> Under prior law, only the insured party could make such a claim. If the opinion is upheld, it may cause significant increases in automobile insurance premiums.

These recent appellate decisions raise cause for concern over how the courts will view further expansions of liability, such as in the class action litigation coming out of Santa Fe, New Mexico. “Modal” lawsuits,<sup>210</sup> have been called the “poster child for class-action abuse,”<sup>211</sup> and many would call frivolous.<sup>212</sup> In these suits, plaintiffs’ lawyers claim insurance companies failed to adequately disclose an alleged “annual percentage rate” to policyholders who pay their premiums in installments rather than paying annually.<sup>213</sup> Insurers point out that the extra charge is a legitimate administrative fee because it costs more to process multiple checks than to process single yearly checks, that the rates are fully disclosed and approved by state regulators, and that policyholders can easily calculate their yearly rates by simple multiplication.<sup>214</sup> The lawyers walk away with millions of dollars in the bank, while their clients receive next to nothing or nothing at all.<sup>215</sup> As one policyholder remarked about yet another modal litigation case, “that’s just another case where the lawyers made the money and the individual public citizens got nothing.”<sup>216</sup> It is also an example of “regulation through litigation,” where plaintiffs’ lawyers are seeking to impose requirements that have never been sought by the New Mexico Insurance Division – a government agency with a statutory duty to ensure that consumers receive full and fair disclosure from insurers.

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# Points of Light

“Points of light” is a section that is new to ATRA’s Judicial Hellhole’s report. These are areas where judges and legislators recently intervened to stem abusive practices, providing a sense of hope that their respective courthouse, city, county, or state will emerge from the depths of its hellhole status.

## ***Texas’s Civil Justice Reform***

The Texas Legislature reacted to the state’s medical insurance crisis, and class action and general lawsuit abuse in jurisdictions such as Jefferson County, by passing the Texas Omnibus Civil Justice Reform Act of 2003, H.B. 4.<sup>217</sup> This comprehensive reform legislation provides meaningful reform in many areas, including products liability, class actions, proportionate responsibility, appeals bonds, and multi-district litigation. In addition to various other positive measures in the bill, the new law includes venue and “*forum non conveniens*” reform, which helps ensure that claims are brought in a county with a rational relationship to the lawsuit.

H.B. 4 provides great cause for optimism for restoring fairness to Texas courts. It is too early, however, to declare the problem fixed, as the new law will undoubtedly face constitutional challenges from the trial bar. A 1999 decision by the Texas Supreme Court, which upheld an amendment to Texas law that closed a loophole in its *forum non conveniens* statute that allowed thousands of out-of-state residents to clog Texas courts with asbestos claims,<sup>218</sup> is a good sign for the viability of H.B. 4. Just to be safe, on September 13, 2003, Texas voters passed a constitutional amendment, Proposition 12, that explicitly authorizes the Texas Legislature to limit noneconomic damages in medical liability and other cases. This Amendment should help avoid constitutional challenges to the noneconomic damages cap provided in H.B. 4, and may allow future reforms to avoid judicial nullification.<sup>219</sup>

## ***Tort and Expert Testimony Reform in Mississippi***

Although abuse remains prevalent in Jefferson, Holmes, and Hinds Counties, there is reason for hope that the situation will improve. On December 3, 2002, the Mississippi Legislature intervened and passed a broad tort reform package, H.B. 19, with the support of business, labor, and doctors.<sup>220</sup> The new law, which was signed by Governor Ronnie Musgrove and became effective on January 1, 2003, includes joint liability reform, a modest cap on punitive damages, and a limitation on duplicative recovery of “hedonic,” or lost enjoyment of life, damages. The Act, also includes sections that limit advertising by out-of-state attorneys and authorizes the imposition of a small penalty for frivolous pleadings. It provides some protection for small businesses, such as the Bankston Drug Store, by providing that a defendant whose liability is based solely on its status as a product seller, may be dismissed from the action, so long as there is another defendant from whom the plaintiff may recover.

Following passage of the legislation, there was a rush on Mississippi courts by plaintiffs’ lawyers to file thousands of “last-minute lawsuits” before the new law went into effect,<sup>221</sup> particularly in judicial hellholes Jefferson, Holmes, and Hinds counties.<sup>222</sup> While it may take a few years to get through all of the cases filed before the law went into effect, there are good signs that the new legislation is causing a “tremendous decrease in the number of cases filed...”<sup>223</sup> Just 100 civil cases have been filed in Jefferson County in the first nine months of 2003, compared to the 2002 total of 391 filings, while approximately 72 mass tort cases were filed in the first six months of 2003 compared to around 969 for the entire year of 2002.<sup>224</sup> There is no certainty that the decline in filings is due to the recent legislation and there are still several avenues that allow for lawsuit abuse under Mississippi law.<sup>225</sup> In addition, H.B. 19 unfortunately does not change Mississippi’s “good-for-one, good-for-all” rule of civil procedure, which allows plaintiffs’ attorneys to choose to bring a lawsuit in any county in the

state in which a single plaintiff resides, no matter the number of plaintiffs. Thus, mass joinders continue to loom large over the Mississippi legal landscape.

The Mississippi Supreme Court also deserves recognition for its recent action to clamp down on junk science in the courtroom. As early as 1961, Mississippi applied the *Frye* “general acceptance” test as the standard for the admissibility of expert testimony in the state’s courts.<sup>226</sup> It continued to apply this standard even after the Supreme Court of the United States adopted the more rigorous *Daubert* test in 1993. In May 2003, the Mississippi Supreme Court amended Mississippi Rule of Evidence 702 to adopt the *Daubert* standard.

### ***Judge Pickard Takes a Positive Step to Curtail Mass Action Abuse in Jefferson County, Mississippi***

The number of mass actions filed in Jefferson County has begun to recently taper off, a fact attributed to a change in direction by the county’s sole civil judge, Judge Lamar Pickard, in July 2001.<sup>227</sup> Judge Pickard deserves praise for his willingness to scrutinize his court’s joinder practices and for reaching the conclusion that joinder is not proper “where you have different work sites, different defendants, different exposures, plaintiffs from different places and different injuries.”<sup>228</sup> Since that time, Judge Pickard has reportedly only permitted joinder if all plaintiffs reside in Jefferson County.<sup>229</sup> The result is that smart plaintiffs lawyers are slowly moving into other Mississippi counties, which show a willingness to permit such practices.<sup>230</sup>

### ***Venue Reform in West Virginia***

The West Virginia state legislature deserves credit for closing West Virginia’s loose venue law, which had allowed plaintiffs from around the nation to file suit in the state’s plaintifffriendly courts. The 2003 law requires a person’s alleged injury to occur in the state in order for them to file suit there.<sup>231</sup> Studies had shown that the average West Virginian was spending \$997.96 each in an addition “tax” for the thousands of out-of-staters who filed lawsuits in West Virginia despite never stepping foot in the state.<sup>232</sup> Unfortunately, the legislature has done little to address the judicial system itself, which has been largely left unfettered and unchecked in its regular abuse of power.

### ***Pennsylvania Takes Steps to Address Forum Shopping***

In 2002, the Pennsylvania General Assembly took a laudable step to address forum shopping by strengthening the state’s venue law to require medical malpractice lawsuits to be tried in the county in which the patient received care. Commentators hope that the new rules will “help end the all-too-common practice of plaintiffs suing defendants with peripheral involvement in a medical liability action merely because one defendant is in Philadelphia or some other ‘jackpot’ county.”<sup>233</sup> Additional medical malpractice reform efforts in Pennsylvania face a major constitutional obstacle, as the Pennsylvania Constitution prohibits the General Assembly from placing limits on damages in personal injury lawsuits, except in workers’ compensation cases.<sup>234</sup>

During the drafting of this report, it was reported that Philadelphia Common Pleas Judge Norman Ackerman began tossing out lawsuits by people from around the country, saying the claims should be dealt with in other states.<sup>235</sup> The ruling occurred in the cases of five plaintiffs from Washington, Hawaii, Missouri and Arizona, who said they suffered strokes after taking Alka-Seltzer Plus Cold medicine, allegedly due to a former ingredient in the popular pill. According to Judge Ackerman, who is chief of a special Philadelphia court that hears complicated product liability cases involving huge numbers of plaintiffs, “Most of those cases, like this one, involve out-of-state plaintiffs who chose to file [in Philadelphia] for no apparent reason other than the fact that their attorneys have their offices here.”<sup>236</sup> Judge Ackerman’s ruling may help stem forum shopping in the hundreds of other suits filed in Philadelphia’s Complex Litigation Center.

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# Addressing the Problems in Hellholes

ATRA's hellholes initiative seeks not only to identify the problems in hellhole jurisdictions, but also to suggest ways in which to change the litigation environment so that these jurisdictions can shed the hellhole label and restore the fundamental concept of "Equal Justice Under Law."

## **Media Attention**

Perhaps the best way in which to change the attitude in hellhole jurisdictions is for the media to help make the surrounding community aware of the litigation abuses in hellholes and the adverse effects of those abuses. By any measure, the 2002 report was a great success bringing to light the abuses in certain courts and branding these jurisdictions with a common name, "judicial hellholes." ATRA's survey was featured in reports by *USA Today*, *Business Week*, the *Financial Times*, the *Wall Street Journal*, the *National Law Journal*, *Baton Rouge Advocate* (La.), the *Times-Picayune* (La.), the *Belleville News-Democrat* (Ill.), the *Chicago Tribune* (Ill.), the *Pantagraph* (Ill.), the *St. Louis Post-Dispatch* (Mo.), the *Sun-Herald*, the *Dallas Morning News* (Tex.), and the *Charleston Gazette* (W.Va.), among others. Public light and public pressure may inspire judges to become more evenhanded jurists; and the counties in which they sit may shed the title of judicial hellhole.

## **Venue and Forum non conveniens Reform**

Venue and *forum non conveniens* are two concepts that relate to ensuring that lawsuits have a logical connection with the jurisdiction in which they are heard. Venue rules govern where, within a state, an action may be heard. As our hellhole examples demonstrate, certain areas in a state may be perceived by plaintiffs' attorneys as an advantageous place to have a trial. As a result, plaintiffs' attorneys may try to bring their claims there. A fair venue reform would require plaintiffs to bring their cases where they live or where they were injured, or where the defendant's principal place of business is located. This reform would help stop the forum-shopping that allows hellholes to become magnet jurisdictions.

*Forum non conveniens*, a related concept, allows a court to refuse to hear a case if there is a more appropriate forum in which the case could and should be heard. Although similar to venue, *forum non conveniens* contemplates that the more appropriate forum will be in another state, rather than in a different area of the same state. *Forum non conveniens* reform would oust a case brought in one jurisdiction where the plaintiff lives elsewhere, the injury arose elsewhere, and the facts of the case and witnesses are located elsewhere. By strengthening the rules governing venue and *forum non conveniens*, both legislatures (who pass the rules) and courts (who apply the rules) can ensure that the cases are heard in a court that has a logical connection to the claim, rather than a court that will produce the highest award for the plaintiff.

## **The Class Action Fairness Act**

Class actions and mass joinders, when their abuse is permitted by the courts, allow plaintiffs' lawyers to bring hundreds or thousands of claimants together in a favorable state court, and put enormous pressure on defendants to settle even non-meritorious claims.<sup>237</sup> As this report goes to press, federal legislation, the Class Action Fairness Act of 2003, has passed the House of Representatives and awaits a floor vote in the United States Senate.<sup>238</sup> This legislation, if enacted into law, may help alleviate lawsuit abuse in such hellholes as Madison County, Illinois; Jefferson County, Mississippi; and Kanawha County, West Virginia.

The federal class action reform law, which would include mass actions within its scope, would allow a defendant to move these mass actions from state to federal court when a substantial percentage of the plaintiffs are not residents of the state in which they are filed. The legislation would authorize federal courts to exercise discretion over cases where 25%-75% of plaintiffs are from out-of-state. It would allow cases with 100 or less plaintiffs to remain in state court, however, which would continue to provide plaintiffs' lawyers with an opening to manipulate the system. In sum, the Class Action Fairness Act is positive legislation

that should be enacted by Congress now. It may help curtail class action and mass consolidation abuse, however, it leaves some opportunity for plaintiffs' lawyers to steer clear of their provisions.

## ***Strengthening Rules on Expert Testimony***

Junk science pushed by pseudo "experts" has tainted tort litigation for decades. The more complex the scientific matters, the more trials tend to be determined by which "experts" the jury likes the best or believes the most and not on the sound principles of science. Typical trial lawyer tactics are to use statistics and anecdotes to cover up the scientific flaws in their theories, use family doctors to testify on matters completely unrelated to their expertise and try unreliable scientific techniques to engineer studies in their favor.<sup>239</sup>

Large-scale injustice is the result. Contrary to in-court findings, it is now accepted scientific fact that silicon breast implants do not cause systematic disease, and there is no connection between Bendectin and birth defects. Another example is Dalkon Shield litigation, where the plaintiffs' experts "showed almost compete [sic] disregard for epidemiologic principles in its design, conduct, analysis and interpretation of results."<sup>240</sup> Nevertheless, billions of dollars were lost, products were taken off the market and thousands of innocent workers lost their jobs.

Ten years ago, the U.S. Supreme Court in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*<sup>241</sup> told courts that it was their responsibility to act as gatekeepers to ensure that junk science stays out of the courtroom. The *Daubert* standard provides that, in determining reliability, the court must engage in a "preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid and of whether that reasoning or methodology properly can be applied to the facts at issue."<sup>242</sup> In addition, when determining scientific reliability the trial judge should consider (1) whether the proffered knowledge can be or has been tested, (2) whether the theory or technique has been subjected to peer review and publication, (3) the known or potential rate of error, and (4) whether the theory or technique has gained general acceptance in the relevant scientific discipline.<sup>243</sup>

Still, twenty-two states have not adopted anything close to the *Daubert* principles.<sup>244</sup> Even in states where *Daubert* governs, some judges are not doing their jobs effectively, as they have difficulty distinguishing between real and fake science<sup>245</sup> – the same problems that juries have faced for years. By adopting *Daubert*, taking their gatekeeper roles

seriously, and seeking competent independent science experts, judges can take more control over their courts and restore the essential burden on plaintiffs to prove causation in tort cases.

## ***Encourage and Improve Jury Service***

Litigators frequently observe that if juries included a fair share of business owners, professionals, and working Americans, then they would be more likely to reach well-reasoned decisions and there might be fewer excessive and bizarre verdicts. All of us must do our part to encourage jury service. Some employers may see jury service as a burden on their business. This attitude must change. Employers should adopt juror-friendly policies, such as continuing employee compensation during jury service and not penalizing employees by requiring them to use leave time to serve. Business owners and managers should lead by example by serving on juries themselves and encouraging their employees to serve.

While there are some steps that employers and citizens can take to promote jury service, there is also a need for legislative reform. Although Americans overwhelmingly support the jury system, many citizens fail to appear for jury duty when summoned or strive to get out of jury service once they enter the courthouse. Most of these individuals do not lack a sense of civic duty. Rather, they are discouraged from jury service by the hardship and headache imposed by antiquated systems that leave little or no flexibility as to the dates of service, require long terms of service, and allow for the possibility of service on a lengthy trial with no more than nominal compensation. Exemptions available to members of certain professions provide some privileged members of society with an easy way out of service, while loosely defined hardship exemptions provide many others with a means of escape. The result of many current jury laws is that many people cannot or will not serve. This leads to a jury pool that excludes the perspectives of many in the community.

The American Legislative Exchange Council (ALEC), the nation's largest bipartisan membership organization of state legislators, has developed model legislation, the Jury Patriotism Act, that addresses and breaks down each of the barriers to jury service. The Act increases the flexibility of jury service by providing an easy postponement procedure, guarantees that a juror who is not selected for trial on the first day of service would return to work by the next business day, and provides wage replacement or supplementation to those who are selected to serve on long trials through a fund financed by court filing fees. The model act

also makes it more difficult for citizens, particularly professionals, to avoid jury service by eliminating all automatic disqualifications or exemptions based on occupation, ensuring that only those who will experience true hardship will be excused from service. Legislation based on the model act was adopted in 2003 in Arizona, Louisiana, and Utah.<sup>246</sup> ATRA supports these reforms, which will make it easier for people of all backgrounds to participate in jury service and provide for more representative juries.

### ***Addressing the Asbestos Crisis***

Forum shopping, mass consolidations, expedited trials, multiple punitive damages awards against defendants for the same conduct, and the overall lack of due process afforded to defendants were issues repeatedly raised by respondents in the asbestos litigation context. The Supreme Court of the United States has described the litigation as a “crisis.”<sup>247</sup> The number of asbestos cases pending nationwide doubled from 100,000 to more than 200,000 during the 1990s.<sup>248</sup> Ninety thousand new cases were filed in 2001 alone.<sup>249</sup> Most of these claimants are not sick and may never develop an asbestos-related disease.<sup>250</sup> These claims siphon limited resources away from those who need it most, while lawyers get rich off the litigation. Already, at least 67 companies have been driven into bankruptcy.<sup>251</sup> Plaintiffs’ lawyers have responded by casting their litigation nets farther and wider. As a result, lawsuits are now piling up against companies with only a peripheral connection to the litigation, such as engineering and construction firms, and plant owners.<sup>252</sup>

Several state courts should be applauded for adopting trial plans that give priority to sick claimants. Some of these courts have adopted “inactive” or “deferred” docket plans, which place a lawsuit on inactive status until the plaintiff meets certain medical criteria. Boston, Chicago, and Baltimore were the first to adopt such plans in the late 1980s and early 1990s.<sup>253</sup> In the past two years, New York City, Syracuse, and Seattle followed.<sup>254</sup> Other jurisdictions have adopted innovative case management orders to simply dismiss claims of unimpaired plaintiffs without prejudice, with the understanding that they can re-file should they develop a disease.<sup>255</sup> The federal courts have also adopted a system to prioritize the claims of sick people.<sup>256</sup> Some courts also have adopted standing orders that severe claims for compensatory and punitive damages to ensure that limited resources go first to medical bills.<sup>257</sup> Each of these solutions protects those who have been exposed to asbestos by allowing them to bring a claim should they become ill in the future, while preserving resources for

those who need it now. Other state courts should consider adopting similar practices.

The Supreme Court of the United States, lower court judges, commentators, and public policy organizations have repeatedly called on the United States Congress to address the asbestos litigation crisis. At the time of this writing, a the Fairness in Asbestos Injury Resolution Act (“FAIR Act”) is awaiting a floor vote in the U.S. Senate, and has proceeded further than any asbestos bill in the past decade. That bill, which is sponsored by Senator Orrin G. Hatch (R-Utah), would establish a trust fund, financed by contributions from insurers and defendant companies, that would pay compensation to claimants who meet certain medical criteria. Senator Don Nickles (R-Oklahoma) has also introduced a bill with a more narrow approach. It would provide that courts must dismiss asbestos claims of those who do not meet a set of objective medical criteria until such time as they meet the standards provided in the legislation. Both approaches have merit and would greatly help curb out-of-control asbestos litigation, which is bad for those who are sick and for the Nation’s economy.

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# Conclusion

The 2002 Judicial Hellholes report concluded, “Judicial hellholes do not need to remain hellholes.” The litigation abuses highlighted in that report helped spur legislative and judicial interventions that provide reason for optimism that “equal justice under law” can be restored to those jurisdictions. Just as important, the 2002 report sent a message to hellhole jurisdictions: someone is watching. As this year’s report shows, there is much work to be done, and state legislatures and courts can support the reforms suggested by ATRA above. Most importantly, individual judges should strive to improve the situation in judicial hellholes by applying existing law and procedural rules in a fair and evenhanded manner.

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# Endnotes

- <sup>1</sup> *The Real Class Warfare: Predatory Class Action Lawsuits Drive Up Consumer Costs and Reduce Innovation*, <<http://www.triallawyersinc.com/html/part04.html#notes>> (quoting Richard Scruggs, Asbestos for Lunch, Panel Discussion at the Prudential Securities Financial Research and Regulatory Conference (May 9, 2002), in Industry Commentary (Prudential Securities, Inc., N.Y., New York), June 11, 2002, at 5).
- <sup>2</sup> RICHARD NEELY, THE PRODUCT LIABILITY MESS: HOW BUSINESS CAN BE RESCUED FROM THE POLITICS OF STATE COURTS 4, 62 (1998).
- <sup>3</sup> See John Stossel, Commentary, *The Lawsuits of Madison County*, Sept. 5, 2003, available at <[http://abcnews.go.com/sections/2020/GiveMeABreak/gmab\\_madisoncounty030905.html](http://abcnews.go.com/sections/2020/GiveMeABreak/gmab_madisoncounty030905.html)> (aired on 20/20 on Sept. 5, 2003).
- <sup>4</sup> Medical Monitoring and Asbestos Litigation – A Discussion with Richard Scruggs and Victor Schwartz, 17 MEALEY’S LITIG. REP.: ASBESTOS, Mar. 1, 2002 at 1, 6.
- <sup>5</sup> See <<http://www.lakinlaw.com/>> (referring to Sept. 21, 2001 article in the ST. LOUIS RIVERFRONT TIMES).
- <sup>6</sup> Phillips v. Ford Motor Co., No. 99-L-1041 (Madison County Cir. Ct.).
- <sup>7</sup> ATRA’s motion to quash is available online at <[http://www.atra.org/files.cgi/7589\\_motion.pdf](http://www.atra.org/files.cgi/7589_motion.pdf)>
- <sup>8</sup> Even the attorney who issued the subpoena admitted that his motives had nothing to do with the pending case: “My one and only goal in this action is to demand that these groups speak out, and fully and honestly disclose the membership of their organizations and who is paying for this multimillion-dollar public relations campaign.” Brian Brueggmann, *Business Group Subpoenas Defended*, BELLEVILLE NEWS-DEMOCRAT, July 2, 2003, available at 2003 WL 2461485 (quoting Bradley M. Lakin).
- <sup>9</sup> See *in re Rhone-Poulenc Rorer, Inc.*, 51 F.3d 1293, 1298 (7th Cir.) (Posner, J.), cert. denied, 516 U.S. 867 (1995).
- <sup>10</sup> Terry Maxon, *Beaumont Known for Torts*, DALLAS MORNING NEWS, July 20, 2003, available at <<http://www.dallasnews.com/sharedcontent/dallas/tsw/stories/072003dnspobeumont.58d51.html>>.
- <sup>11</sup> See John Stossel, Commentary, *The Lawsuits of Madison County*, Sept. 5, 2003, available at <[http://abcnews.go.com/sections/2020/GiveMeABreak/gmab\\_madisoncounty030905.html](http://abcnews.go.com/sections/2020/GiveMeABreak/gmab_madisoncounty030905.html)> (aired on 20/20 on Sept. 5, 2003).
- <sup>12</sup> See ILLINOIS LAWSUIT ABUSE WATCH & ILLINOIS CIVIL JUSTICE LEAGUE, JUSTICE FOR SALE: THE JUDGES OF MADISON COUNTY 2 (2002), available at <[http://www.atra.org/reports/IL\\_justice/report.pdf](http://www.atra.org/reports/IL_justice/report.pdf)>; see also Mike Fitzgerald, *Where Money Talks*, BELLEVILLE NEWS-DEMOCRAT, Oct. 5, 2003, at 1A (reporting that Madison County Judge, Nicholas Byron collected \$10,000 in donations for his election campaign from among 18 others, the plaintiffs’ attorney who won settlements in Madison County against Ameritech for \$133 million, Lucent for \$350 million, and the history making \$10.1 billion verdict against Philip Morris USA); David Bailey, *Illinois County Court a Corporate “Hellhole,”* Reuters, Oct. 5, 2003 (quoting a retired Madison County Judge, “Eventually, because of the money created through the plaintiffs bar and the power that money brings, I believe there became an idea that the system was beholden to the plaintiffs bar.”).
- <sup>13</sup> See Editorial, *A Madison County Jackpot*, CHIC. TRIB., Apr. 2, 2003, at 22; Editorial, *The Judges of Madison County*, CHIC. TRIB. Sept. 6, 2002, at 22.
- <sup>14</sup> *Id.*
- <sup>15</sup> See Bailey, *supra* note 12.

- <sup>16</sup> Both the Madison County Circuit Court and the Fifth District Court of Appeals have been reversed many times in cases in which they denied defendants' motions to transfer venue. In January 2002, the Supreme Court of Illinois counted fourteen cases since 1995 in which it ordered the Madison County Circuit Court to transfer venue. In another ten cases, the Supreme Court ordered the Fifth District to consider vacating its denial of a defendant's *forum non conveniens* motion. See *First Nat'l Bank v. Guerine*, 764 N.E.2d 54, 64-66 (Ill. 2002) (appendix).
- <sup>17</sup> 767 N.E.2d 896 (Ill. App. Ct. 2002), *review granted*, 786 N.E.2d 183 (Ill. 2002).
- <sup>18</sup> See Kevin McDermott, *Big Companies Aim to Dent County's Popularity as Venue for Lawsuits*, ST. LOUIS POST-DISPATCH, Sept. 14, 2003, at C9.
- <sup>19</sup> See *Holbrook v. Genuine Parts Co.*, Judicial Order Granting Defendants Motion to Dismiss, No. 03-L-536 (Madison County Cir. Ct., Ill. Sept. 26, 2003).
- <sup>20</sup> See *Motion to Dismiss of Defendant Genuine Parts Co., Holbrook c. Genuine Parts Co.*, No. 03-L-536, Exh. 2 at 88-89, Ins. 21-23 (Madison County Cir. Ct., Ill.).
- <sup>21</sup> See *id.*
- <sup>22</sup> According to attorneys in Madison County, Judge Byron also recently warned that he does not want cases from across the country being brought to his court. We have also heard that Judge Byron is considering adopting an inactive docket program that would place the asbestos claims of those who are not injured on hold, which would allow limited resources to go to those who need it most. These actions are also worthy of praise and are positive signs for Madison County.
- <sup>23</sup> See Brian Brueggemann, *Study: Metro-East is 'Lawsuit Capital of the World,'* BELLEVILLE NEWS-DEMOCRAT, May 1, 2002, at 1B; Editorial, *Class-Action Paradise*, BELLEVILLE NEWS-DEMOCRAT, Apr. 1, 2002, at 4A.
- <sup>24</sup> See Stossel, *supra* note 11.
- <sup>25</sup> See JOHN H. BEISNER & JESSICA DAVIDSON MILLER, MANHATTAN INST., CTR. FOR LEGAL POL'Y, CLASS ACTION MAGNET COURTS: THE ALLURE INTENSIFIES 1 (July 2002), *available at* <[http://www.manhattan-institute.org/cjr\\_05.pdf](http://www.manhattan-institute.org/cjr_05.pdf)>.
- <sup>26</sup> See Stossel, *supra* note 11 (discussing class action lawsuit filed against the phone company Ameritech in which the lawyers received \$16 million and the clients on whose "behalf" they sued received checks for small amounts, with most receiving credits, discounts to rewire their house, and phone cards that gave them a maximum of \$15 in calls – calls that had to be made at Ameritech's pay phones).
- <sup>27</sup> See Adam Liptak, *Court has Dubious Record as a Class Action Leader*, N.Y. TIMES, Aug. 15, 2002, at A14.
- <sup>28</sup> LESTER BRICKMAN, MANHATTAN INST., CTR. FOR LEGAL POL'Y, ANATOMY OF A MADISON COUNTY (ILLINOIS) CLASS ACTION: A STUDY OF PATHOLOGY 47 (Aug. 2002), *available at* <[http://www.manhattan-institute.org/cjr\\_06.pdf](http://www.manhattan-institute.org/cjr_06.pdf)> (analyzing Schuppert v. Down, No. 00-L-223 (filed Mar. 10, 2000, settled Nov. 20, 2001)).
- <sup>29</sup> See ILL. S. CT. RULE 306 (providing the Court of Appeals with discretion as to whether to hear an interlocutory appeal of a class certification order). A previous, more useful, version of the rule would have permitted appeal of a class certification order as a matter of right.
- <sup>30</sup> See JOHN H. BEISNER ET AL., MANHATTAN INST., CTR. FOR LEGAL POL'Y, ONE SMALL STEP FOR A COUNTY COURT...ONE GIANT CALAMITY FOR THE NATIONAL LEGAL SYSTEM, Civil Justice Rep., No. 7, at 31 (Apr. 2003), *available at* <[http://www.manhattan-institute.org/html/cjr\\_7.htm](http://www.manhattan-institute.org/html/cjr_7.htm)>.
- <sup>31</sup> See Brian Brueggemann, *\$350 Million Settlement Ok'd Against AT&T, Lucent: Lawsuit Based on Leased Phone Billings*, BELLEVILLE NEWS-DEMOCRAT, Nov. 5, 2002, at 30.
- <sup>32</sup> *Scott v. Blockbuster Inc.* (No. D162-535, Jefferson County, Tex. 2001).
- <sup>33</sup> See *Judge OKs Blockbuster Plan on Fees*, ASSOC. PRESS, Jan. 11, 2002; see also Notice of Proposed Settlement, *available at* <<http://promo.blockbuster.com/default.asp?site=evf&page=settlement.html>>; Blockbuster Settlement website maintained by Buchanan & Burke, LLP, <<http://www.blockbustersettlement.com/>>.
- <sup>34</sup> See Editorial, *Frivolous Redefined*, BELLEVILLE NEWS-DEMOCRAT, Apr. 30, 2002, at 4A.

- <sup>35</sup> See *Asbestos Case Leads to \$5.1 Million, Sanction*, NAT'L L.J., Dec. 2, 2002, at A4 (reporting on the Simmons Firm, [http://www.simmonsfirm.com/attorneys\\_staff.html](http://www.simmonsfirm.com/attorneys_staff.html)).
- <sup>36</sup> See Griffin B. Bell, *Asbestos & the Sleeping Constitution*, 31 PEPPERDINE L. REV. — (forthcoming 2003) (providing transcript of April 5, 2003 Symposium on "Asbestos Litigation and Tort Law: Trends, Ethics, and Soutlion").
- <sup>37</sup> See Brian Brueggemann, *Man Awarded \$250 Million in Cancer Case*, BELLEVILLE NEWS-DEMOCRAT, Mar. 29, 2003, at 40. The plaintiff was a 70-year-old Indiana man who was exposed to asbestos during his thirty-one year tenure at a Gary, Indiana steel mill. The case, which landed in Madison County because the plaintiff named several defendants located in Madison County that settled before trial, is believed to be one of the largest awards given to a single asbestos plaintiff and the largest award ever in Madison County. The parties subsequently settled for an undisclosed amount. See *U.S. Steel Settles Asbestos Lawsuit*, CHIC. DAILY HERALD, Apr. 1, 2003, at 1.
- <sup>38</sup> At the time, the award was the largest asbestos verdict in Illinois history, and one of the largest asbestos verdicts in the nation. See Terry Hillig, *Record Verdict in Asbestos Case Pleases Man With Cancer: Madison County Jury Awards \$34.1 Million; Shell Oil Plans Appeal*, ST. LOUIS POST DISPATCH, May 25, 2000, at C1.
- <sup>39</sup> Ill. S. Ct. Rule 305(a) provides that in cases where the judgment is for money only, the enforcement of the judgment is stayed so long as the bond shall "is in an amount sufficient to cover the amount of the judgment, interest and costs."
- <sup>40</sup> See *Price v. Philip Morris Inc.*, No. 00-L-112 (Cir. Ct. Madison County, Ill. Mar. 21, 2003), available at <http://news.findlaw.com/hdocs/docs/tobacco/pricepm32103jud.pdf>; see also Ameet Sachdev, *\$10 Billion Smoking Judgment Philip Morris Deception Found Over Light Cigarettes*, CHI. TRIB., Mar. 22, 2003, at 1.
- <sup>41</sup> *Id.*; see also Ameet Sachdev, *No Way, Firm Says of Bond of \$12 Billion Philip Morris Raises Prospect of Bankruptcy*, CHI. TRIB., Mar. 25, 2003, at 1.
- <sup>42</sup> See *Price v. Philip Morris Inc.*, No. 00-L-112 (Cir. Ct. Madison County, Ill. Apr. 14, 2003), available at <http://news.findlaw.com/hdocs/docs/tobacco/pricepm41403bo.pdf>; see also Susan Skiles Luke, *Philip Morris's Bond Cut; Ill. Judge Halves Order; to \$6 Billion*, WASH. POST, Apr. 15, 2003, at E4.
- <sup>43</sup> See *Price v. Philip Morris Inc.*, 793 N.E.2d 942 (Ill. App. Ct. 2003); see also John Schmeltzer, *\$12 Billion, Then Philip Morris' Appeal; Judge Boosts Bond in 'Light' Lawsuit*, CHI. TRIB., Aug. 16, 2003, at 1.
- <sup>44</sup> See David Pasztor, *As Quinn Laid to Rest, Mourners Contemplate Irony of His Slaying*, AUSTIN AM.-STATESMAN, June 16, 2002, at A1; Jim Suydam, *Beaumont Lawyer Shot at Work; 79-year-old Kills Noted Litigator Cris Quinn for Refusing Case, Police Say*, AUSTIN AM.-STATESMAN, June 14, 2002, at A1.
- <sup>45</sup> See Terry Maxon, *Beaumont Known for Torts*, DALLAS MORNING NEWS, July 20, 2003, available at <http://www.dallasnews.com/sharedcontent/dallas/tsw/stories/072003dnspobeumont.58d51.html>.
- <sup>46</sup> Pasztor, *supra* note 44.
- <sup>47</sup> Maxon, *supra* note 45 (quoting Terry Murphy, a Dallas County lawyer who has tried cases in Jefferson County).
- <sup>48</sup> See <http://co.jefferson.tx.us/distcrts/58th.htm> and <http://co.jefferson.tx.us/distcrts/172nd.htm>.
- <sup>49</sup> See S.B. 496, 108th Leg., Gen. Sess. (Tex. 2003).
- <sup>50</sup> See Stuart Taylor, Jr., *How I Hit the Class Action Jackpot*, NAT'L L. J., Nov. 13, 1999, at 3292 (quoting Professor Lester Brickman of Cardozo Law School).
- <sup>51</sup> See JOHN H. BEISNER & JESSICA DAIDSON MILLER, CENTER FOR LEGAL & POL'Y AT THE MANHATTAN INST., CLASS ACTION MAGNET COURTS: THE ALLURE INTENSIFIES, Civil Justice Rep. No., at 185 (July 2002).
- <sup>52</sup> *Id.* at 164.
- <sup>53</sup> See, e.g., *id.* at 189 (discussing the filing of a nationwide class action against Best Buy alleging that extended warranties on the computers purchased by the plaintiffs covered less than they expected when they purchased the warranties); see also *Blockbuster Customers to be Reimbursed for Late Fees*, ASSOC. PRESS NEWSWIRE, Jan. 11, 2002 (discussing the settlement of a nationwide class action lawsuit against Blockbuster on behalf of individuals who paid late fees, in which the plaintiffs received discount coupons on future purchases, while the law firms involved split \$9.25 million in legal fees).

- <sup>54</sup> See, e.g., Andrea Wright, *Beaumont, Texas, Area Loses Doctors to High Cost of Malpractice Insurance*, KNIGHT-RIDDER TRIB. BUS. NEWS, Nov. 6, 2001.
- <sup>55</sup> See Diana Reinhart, *Medical-Malpractice Insurance Costs Drive Specialists Out of Texas County*, KNIGHT RIDDER TRIB. BUS. NEWS, Jan. 3, 2003 (citing Texas Senator Jane Nelson (R-Lewisville), who chaired the committee that studied the issue).
- <sup>56</sup> See *id.*
- <sup>57</sup> Transcript, *Jackpot Justice*, 60 MINUTES, Nov. 25, 2002.
- <sup>58</sup> See Robert Pear, *Mississippi Gaining as Lawsuit Mecca*, N.Y. TIMES, Aug. 20, 2001, at A1 (“Jefferson County, with 9,740 residents, is a small county, but litigation there is a big business. An affidavit...said that more than 21,000 people were plaintiffs in Jefferson County from 1995 to 2000.”).
- <sup>59</sup> See Ken Ellingwood, *Mississippi Curbs Big Jury Awards Caps on Liability Verdicts Are Seen as Pro-Business. Critics Say Companies Will be Less Accountable*, L.A. TIMES, Dec. 4, 2002, at A1.
- <sup>60</sup> See Robert Pear, *Mississippi Gaining as Lawsuit Mecca*, N.Y. TIMES, Aug. 20, 2001, at A1.
- <sup>61</sup> See Tim Lemke, *Best Place to Sue?*, WASH. TIMES, June 30, 2002, at A1.
- <sup>62</sup> *Jackpot Justice*, *supra* note 57.
- <sup>63</sup> See *Judge Dismisses Two Mississippi Defendants from “60 Minutes” Defamation Lawsuit*, MERCURY NEWS, July 3, 2003, available at <<http://www.siliconvalley.com/mld/mercurynews/entertainment/television/6228349.htm>>. The lawsuit was filed by two former jurors who were offended by the program. See *id.*
- <sup>64</sup> See Jerry Mitchell, *Jefferson County Ground Zero for Cases*, CLARION-LEDGER, June 17, 2001, at A1.
- <sup>65</sup> Tom Wilemon, *Judicial Probe Looking at Big Jury Awards*, SUN HERALD, July 12, 2003, available at <<http://www.sunherald.com/mld/sunherald/6070078.htm>>.
- <sup>66</sup> See Betty Liu, *The Poor Southern County That’s Big on Lawsuits*, FINANCIAL TIMES, Aug. 20, 2001, available at 2001 WL 25578228.
- <sup>67</sup> See Wilemon, *supra* note 65; see also Tom Wilemon & Beth Musgrave, *Indictments Cast Doubt on Trial Lawyers, Mississippi Justice System*, SUN HERALD, July 26, 2003, available at 2003 WL 56832103.
- <sup>68</sup> See George Will, *Placing Our Bets on the Tort Law Wheel*, FT. WORTH STAR-TELEGRAM, Sept. 29, 2002, at 6.
- <sup>69</sup> See Rosanna Ruiz, *Lawyer is Convicted of Conspiracy; Suit was Backdated in Plot with Official*, HOUSTON CHRON., Jan. 18, 2003, at 37; see also U.S. Dep’t of Justice, U.S. Attorney’s Office, Southern Dist. of Tex., News Release, *Hidalgo County District Clerk and McAllen Attorney Indicted in Mail Fraud Scheme*, July 22, 2002, available at <<http://www.usdoj.gov/usao/txs/releases/July%202002/020722-gonzalez.htm>>.
- <sup>70</sup> See Sarah Ovaska, *Judge Considers New Trial for Local Attorney, Pushes Back Sentencing*, THE MONITOR, Sept. 2, 2003, available at <<http://www.themonitor.com/NewsPub/News/Stories/2003/09/02/10625596112.shtml>>.
- <sup>71</sup> See James Pinkerton, *To Amend? Proposition 12 / Valley at Epicenter of Debate on Malpractice Caps*, HOUSTON CHRON., Aug. 26, 2003, at 1.
- <sup>72</sup> See Susan Finch, *Girl Wins \$51 Million in Streetcar Case; Contractor Faulted for Mangled Arm*, NEW ORLEANS TIMES-PICAYUNE, Aug. 29, 2003, at 1. In this sad case, a girl fell out of the window of a streetcar and as a result, her arm was mangled. The jurors bought Johnny Cochran’s emotional appeal and dished out roughly the exact award he asked of them: \$49.4 million for the girl, including \$12 million for pain and suffering and \$4 million for medical expenses; and \$2 million to the girl’s parents, even though the defense claimed the parents were not properly supervising their daughter. See *id.*

<sup>73</sup> Harvey's personal injury law firm appears to have contributed at least \$5,000, and Harvey personally contributed \$2,000, toward Judge King's campaign from 1999 to 2000. See *Campaign Fin. Disclosure Reports*, La. Bd. of Ethics (30 Days Prior to Primary Election Report) (07/16/1999-09/13/1999) [1999 Report], available at <<http://www.ethics.state.la.us/cgi-bin/laimg/?118312>>; *Campaign Fin. Disclosure Reports*, La. Bd. of Ethics (90 Days Prior to Election Report) (04/17/1999-07/15/1999), available at <<http://www.ethics.state.la.us/cgi-bin/laimg/?118312>> (the entity contributing the money is listed as Harvey & Jacobson, A PLC, and though Harvey's current practice is listed as Robert G. Harvey, A PLC, one of his prior firm names is listed as Harvey, Jacobson & Glaco, A PLC, on the Louisiana Secretary of State's website's listing of individual corporations, available at <<http://www.sec.state.la.us/cgi-bin/rqstyp=crpdtl&rqsdta=34335422D>>). Beside political contributions, the 1999 Disclosure Reports show Harvey loaned the judge \$5,000, as did Harvey's wife. See *Campaign Fin. Disclosure Reports*, La. Bd. of Ethics (Supplemental Report/Registration Form) (10/31/1999-12/31/1999), available at <<http://www.ethics.state.la.us/cgi-bin/laimg/?118312>>. In August of 2002, the Disclosure Reports reflect Harvey and his wife together loaned the judge \$10,000 at 12% interest, only to be repaid \$13,000 that same day by the judge's campaign committee. See *Campaign Fin. Disclosure Reports*, La. Bd. of Ethics (30 Days Prior to Primary Election Report) (01/01/2002-08/26/2002), available at <<http://www.ethics.state.la.us/cgi-bin/laimg/?118312>>.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> See James Gill, *Photo Op: What's Wrong with this Picture?*, NEW ORLEANS TIMES-PICAYUNE, Sept. 10, 2002, at 7.

<sup>77</sup> See Gwen Filosa, *Judge Asks for 1-year Penalty; 'The Right Thing To Do,' King's Attorney Says*, NEW ORLEANS TIMES-PICAYUNE, June 14, 2003, at 1.

<sup>78</sup> See Gwen Filosa, *Court Rejects Judge's Offer; King Must Face Misconduct Hearing*, NEW ORLEANS TIMES-PICAYUNE, June 21, 2003, at 1; see Gwen Filosa, *Judge Tells Court he is Sorry; Louisiana Justices to Decide Penalty for Lies He Told*, NEW ORLEANS TIMES-PICAYUNE, Sept. 11, 2003, at 1.

<sup>79</sup> See Filosa, *supra*; see also Gwen Filosa, *Contrite Judge Seeks Second Chance; His Lawyers Argue for Suspension Only*, NEW ORLEANS TIMES-PICAYUNE, Sept. 10, 2003, at 1. Judge King explanation for his improper campaign actions was that he was under pressure to pay off campaign debts from his 1999 race because the "political establishment in this city...hated my guts." See Finch, *supra* note 72.

<sup>80</sup> See Filosa, *supra* note 78.

<sup>81</sup> See Greg Thomas, *Mold Excluded From La. Claims; Texas Suits Prompted Insurance Petition*, NEW ORLEANS TIMES-PICAYUNE, Feb. 22, 2002, at 1; Greg Thomas, *Mold Lawsuit Spawns Contempt Ruling; Judge Slams Tower Owners*, NEW ORLEANS TIMES-PICAYUNE, Mar. 16, 2002, at 1.

<sup>82</sup> See Greg Thomas, *Toxic Mold's Dangers Still Up in the Air*, NEW ORLEANS TIMES-PICAYUNE, June 16, 2002, at 6.

<sup>83</sup> See Greg Thomas, *La. Braces for Mold Lawsuits; Texas Already Tackling Issue*, NEW ORLEANS TIMES-PICAYUNE, May 18, 2002, at 1.

<sup>84</sup> See *id.*

<sup>85</sup> See *id.* A \$1.1 million settlement in neighboring St. Bernard parish may indicate the likelihood of a push for defendants to settle toxic mold cases, rather than bringing the cases to justice in the courts. See Greg Thomas, *Mold Lawsuit Blazes Trail; But Settlement Fails to Clarify Issues*, NEW ORLEANS TIMES-PICAYUNE, Dec. 13, 2002, at 1.

<sup>86</sup> See Greg Thomas, *A Growing Concern; Mold is Nothing New in New Orleans, but a Toxic Version of the Fungi is Posing Fresh Challenges for the Real Estate Industry*, NEW ORLEANS TIMES-PICAYUNE, Nov. 11, 2001, at 1 (quoting Robert Creely, the attorney for the plaintiffs). The largest toxic mold case in Orleans Parish is a suit by dozens of state employees who worked in the Louisiana departments of Health, Hospitals, and Human Services against the building management company, its owners, an insurance company, and the state of Virginia. See *id.* Assistant district attorneys for Orleans Parish whose offices were in the building also have rushed to the courthouse to bring suit. See *id.*

<sup>87</sup> See Gwen Filosa, *Burned Woman Awarded \$12 Million; Auto Maker, Driver Both Liable, Jury Says*, NEW ORLEANS TIMES-PICAYUNE, Mar. 14, 2002, at 1 (quoting the plaintiff's attorney after her client received a \$12 million verdict against Ford).

- <sup>88</sup> *In re New Orleans Train Car Leakage Fire Litig.*, 795 So. 2d 364 (La. Ct. App. 2001).
- <sup>89</sup> *Id.* at 371.
- <sup>90</sup> *Id.*
- <sup>91</sup> *Id.*
- <sup>92</sup> *Id.* at 372.
- <sup>93</sup> *Id.* at 373. Prior to the trial court judge's rulings on post-trial motions, five out of the nine defendants settled for a total of \$152.5 million, and Phillips Petroleum Co. settled for a whopping \$62.5 million. See Susan Finch, *Battle Over Tank Car Fire Returns to Court Tuesday; Hearing to Decide Fairness of Settlement*, NEW ORLEANS TIMES-PICAYUNE, Mar. 30, 2002, at 1.
- <sup>94</sup> See *In re New Orleans Train Car Leakage Fire Litig.*, 795 So. 2d at 379, 398.
- <sup>95</sup> *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 580 (1996).
- <sup>96</sup> *In re New Orleans Train Car Leakage Fire Litig.*, 795 So. 2d at 370. The appellate court's reasoning strays from the Supreme Court's guidance because it factored in all the harm that possibly could have happened, rather than only considering potential harm that was "likely to result" from the gas leak. See *TXO Prod. Corp. v. Alliance Res. Corp.*, 509 U.S. 443, 460 (1993).
- <sup>97</sup> See Susan Finch, *Judge Approves CSX Settlement Amount; Firm Owned Track Where Fire Erupted*, NEW ORLEANS TIMES-PICAYUNE, Apr. 3, 2002, at 1.
- <sup>98</sup> See *id.* The two remaining defendants are now negotiating with the plaintiffs. See *id.*
- <sup>99</sup> See Sandra Barbier, *Family Awarded \$1 Billion in Lawsuit: Exxon Mobil Hit for Radioactive Land*, NEW ORLEANS TIMES-PICAYUNE, May 23, 2001, at 1.
- <sup>100</sup> See *id.*
- <sup>101</sup> See Sandra Barbier, *Another Suit Filed Over Land in Harvey*, NEW ORLEANS TIMES-PICAYUNE, Mar. 19, 2002, at 1.
- <sup>102</sup> See Sandra Barbier, *Ex-pipe Cleaners Suing Exxon: Lawsuit Comes after \$1.06 Billion Ruling*, NEW ORLEANS TIMES-PICAYUNE, May 23, 2001, at 1.
- <sup>103</sup> See Sandra Barbier, *Harvey Woman Alleges Exxon Contaminated Land: Property Value Hurt, Lawsuit Contends*, NEW ORLEANS TIMES-PICAYUNE, May 27, 2001, at 1.
- <sup>104</sup> PERRYMAN STUDY, NEGATIVE IMPACT ON THE CURRENT CIVIL JUSTICE SYSTEM ON ECONOMIC ACTIVITY IN WEST VIRGINIA, (W. Va. Chamber of Commerce, Feb. 2003), available at <<http://66.241.235.56/resources/>>.
- <sup>105</sup> HARRIS INTERACTIVE, U.S. CHAMBER OF COMMERCE, STATE LIABILITY SYSTEMS RANKING STUDY 9 (Jan. 2002), available at <<http://66.241.235.56/resources/>>.
- <sup>106</sup> See *id.*
- <sup>107</sup> Jack Bailey, *Lawsuit Climate Needs Help*, CHARLESTON DAILY MAIL, Jan. 9, 2003, at C1.
- <sup>108</sup> Charles Lane, *Court Allows Suits Over Fear of Cancer; Workers Had Asbestos-Related Illness*, WASH. POST, Mar. 11, 2003, at A3; Robert S. Greenberger, *Case Study: Family Ties in West Virginia's Bar*, WALL ST. J., Nov. 13, 2002, at B1.
- <sup>109</sup> *State ex rel. Mobil Corp. v. Gaughan*, 563 S.E.2d 419 (W. Va. 2002).
- <sup>110</sup> JOHN H. BEISNER ET AL., CTR. FOR LEGAL POL'Y, MANHATTAN INST., ONE SMALL STEP FOR A COUNTY COURT...*ONE GIANT CALAMITY FOR THE NATIONAL LEGAL SYSTEM*, (Apr. 2003), available at <[http://www.manhattan-institute.org/html/cjr\\_7.htm](http://www.manhattan-institute.org/html/cjr_7.htm)>.
- <sup>111</sup> *State ex rel. Mobil Corp. v. Gaughan*, 565 S.E.2d 793, 794 (W. Va. 2002) (Maynard, J., concurring).
- <sup>112</sup> ATRA Forum, Spring 2003.
- <sup>113</sup> Brenda Nichols Harper, *W. Va. Courts Affect W.Va. Jobs*, CHARLESTON DAILY MAIL, Jan. 18, 2003, at A5.
- <sup>114</sup> See *Norfolk & Western Railway v. Ayers*, 123 S. Ct. 1210 (2003); see also *Justices Back Workers in W.Va. Asbestos Case; Supreme Court Says Fear of Cancer Enough*, ASSOC. PRESS, Mar. 10, 2003, available at 2003 WL 5450838.

- <sup>115</sup> *In re W. Va. Rezulin Litig. and State v. Hutchison*, Nos. 30958, 30963, 2003 WL 21518104 (W. Va. Feb 26, 2003); Robert D. Mauk, Editorial, *McGraw Ruling Harms State's Reputation in Law*, CHARLESTON DAILY MAIL, Mar. 1, 2003, at A5.
- <sup>116</sup> Court Watch, WEST VIRGINIA CHAMBER OF COMMERCE, July 2003, available at <<http://www.wvchamber.com/Courtwatch%20July.pdf>>.
- <sup>117</sup> Robert D. Mauk, *Can't-say-no Courts Hurts Us All*, CHARLESTON DAILY MAIL, May 17, 2003, at A4.
- <sup>118</sup> *Edwards v. Bestway Trucking*, 569 S.E.2d 443 (W.Va. 2002) (Per Curiam).
- <sup>119</sup> *See State ex rel. Mobil Corp. v. Gaughan*, 563 S.E.2d 419 (W. Va. 2002).
- <sup>120</sup> *See* Robert S. Greenberger, *Case Study: Family Ties in West Virginia's Bar*, WALL ST. J., Nov. 13, 2002, at B1.
- <sup>121</sup> *See id.*
- <sup>122</sup> Robert D. Mauk, Editorial, *McGraw Ruling Harms State's Reputation in Law*, CHARLESTON DAILY MAIL, Mar. 1, 2003, at A5.
- <sup>123</sup> Cheryl Carlson, Editorial, *Our Grievances Pay Handsomely: Lawyer's Speaking on Citizens' Behalf Got \$33.5 Million?*, CHARLESTON DAILY MAIL, Jul. 10, 2002, at A5.
- <sup>124</sup> *See* Harvey Rice, *Rush to Beat Lawsuit Caps All for Naught*, HOUSTON CHRON., June 3, 2003, at 13.
- <sup>125</sup> *News Roundup*, SAN ANTONIO EXPRESS-NEWS, Nov. 15, 2002, at 2B.
- <sup>126</sup> *See Judge Orders Beaumont Law Firm to Pay \$500,000*, ASSOC. PRESS NEWSWIRE, Nov. 14, 2002; Assoc. Press, *Beaumont Law Firm Must Pay \$500,000*, HOUSTON CHRON., Nov. 15, 2002, at 38.
- <sup>127</sup> *See* J.R. Gonzales, *Beaumont Firm Agrees To Filing Fees; Lawyers Accused of Shopping for Judge in Asbestos Cases*, CORPUS CHRISTI CALLER-TIMES, May 21, 2003, available at <[http://www.caller.com/ccct/local\\_news/article/0,1641,CCCT\\_811\\_1977745,00.html](http://www.caller.com/ccct/local_news/article/0,1641,CCCT_811_1977745,00.html)>.
- <sup>128</sup> *See* Editorial, *Shopping for Justice*, WALL ST. J., Nov. 20, 2002, at A20.
- <sup>129</sup> *See* Dan Ackman, In L.A., *Smoker Sets \$28 Billion, Er, Million*, FORBES.COM, Dec. 19, 2002, <[http://www.forbes.com/2002/12/19/ex\\_da\\_1219\\_top\\_news.html](http://www.forbes.com/2002/12/19/ex_da_1219_top_news.html)>. (Check also supras).
- <sup>130</sup> *See* Robert D. Crockett & Jonathan M. Jenkins, *Taking it to the Bank*, L.A. LAWYER, Sept. 2001, at 47.
- <sup>131</sup> *See* Myron Levin & Dalondo Moultrie, *L.A. Jury Awards \$3 Billion To Smoker Courts: Panel Orders Philip Morris to Pay Record Damages To Man With Incurable Cancer; Saying Firm Hid Risks*, L.A. TIMES, June 7, 2001, at A1.
- <sup>132</sup> *See* Gary Gentile, *GM Appeals Billion-Dollar Verdict in Crash Case. Courts: Original Award Was a Record \$4.9 Billion in the Fiery Malibu Accident*, ORANGE COUNTY REGISTER, Dec. 7, 2000, available at 2000 WL 29972745; Fred J. Heistand, *Courts Out of Step With Common Sense*, BUS. PRESS (ONTARIO, CA), Mar. 6, 2000, at 27. The judge reduced the award to \$1.09 billion. *See id.*
- <sup>133</sup> *See* John H. Sullivan, Editorial, *Justice System Defective; Opportunity to Right a Wrong Missed By Judge Ruling on GM Damage Award*, L.A. DAILY NEWS, Sept. 2, 1999, at N1.
- <sup>134</sup> *See* Kenneth Reich, *\$700 Million Award May be Reduced Courts: Judge's Remarks in Lockheed Workers' Case Against Oil Firms May be Focus of Review, Experts Say*, L.A. TIMES, Aug. 10, 1998, at B1. The verdict was reduced to \$380 million by the judge. *See Record \$760 Million Lockheed Verdict Is Cut In Half By Superior Court Judge*, ORANGE COUNTY REGISTER, Nov. 19, 1998, at C4.
- <sup>135</sup> *See* L. Stuart Ditzen, *Conflict Alleged in \$1 Million Civil Suit; A N.E. Phila. Woman Slipped in a Store Parking Lot, Philadelphia Inquirer*, July 22, 2003, at B1. When the lawsuit was filed, the plaintiff sought only \$50,000 in damages and reportedly considered settling the case for \$40,000 after an arbitration panel awarded \$25,000 in a non-binding proceeding. *See id.* The plaintiff rejected Home Depots final settlement offer of \$32,000 million and deliberated only eight minutes before awarding \$1 million. *See id.*
- <sup>136</sup> Josh Goldstein, *Malpractice Lawsuits Thrive in City; Still, Few are Filed, and Few are Decided by a Jury*, PHILADELPHIA INQUIRER, Dec. 10, 2001, at A1.

- <sup>137</sup> See RANDALL R. BOVBJERG & ANNA BARTOW, UNDERSTANDING PENNSYLVANIA'S MEDICAL MALPRACTICE CRISIS: FACTS ABOUT LIABILITY INSURANCE, THE LEGAL SYSTEM, AND HEALTH CARE IN PENNSYLVANIA (Pew Charitable Trusts 2003), *available at* <<http://medliability-pa.org/research/report0603/>>.
- <sup>138</sup> *See id.* at 32.
- <sup>139</sup> See Richard R. Kerr, *Philly, Northeast Pa Reeling from Practice Closings*, UROLOGY TIMES, Dec. 1, 2002, at 20 (quoting Chuck Moran).
- <sup>140</sup> See David B. Caruso, *Lawyers May Find it Tougher to Seek Sympathetic City Juries*, ASSOC. PRESS, Nov. 7, 2002.
- <sup>141</sup> *See id.* (citing Randall R. Bovbjerg, a researcher for Urban Institute).
- <sup>142</sup> See Josh Goldstein, *Malpractice Issue May Not Be About Money, Study Says*, PHILADELPHIA INQUIRER, Feb. 3, 2002, at C1 (reporting that a study by Pennsylvania Judges John W. Herron and Albert W. Sheppard Jr. found that the number of malpractice jury awards over \$1 million went down by one-third in 2001 over the previous year, yet noting that even with the reduction, Philadelphia malpractice awards and settlements still drastically overshadowed those from the rest of the state).
- <sup>143</sup> See Josh Goldstein, *Medical Lawsuit Payouts Still High; Philadelphia Awards and Settlements Made up Nearly Half of the \$348 Million Paid by a State Fund*, PHILADELPHIA INQUIRER, Sept. 22, 2002, at E1; Debbie Garlicki, *Trial Often "Tip of the Iceberg" in Medical Malpractice Cases, Jury Awards Don't Tell Story*, ALLENTOWN MORNING CALL, Apr. 1, 2002, at A1 (providing a list of high-profile medical malpractice settlements in Pennsylvania and around the nation).
- <sup>144</sup> See Karl Stark, *More Doctors Using Insurer of Last Resort*, PHILADELPHIA INQUIRER, May 4, 2003, at E1.
- <sup>145</sup> *See id.*
- <sup>146</sup> See Before the Subcomm. on Labor, Health and Human Services, Education Comm. on Senate Approp., 108 Cong. (Jan. 30, 2003) (statement of Richard A. Anderson, President and Chief Executive Officer, St. Luke's Hospital & Health Network, Inc., Bethlehem, Pennsylvania); *see also* Tim Darragh, *Hospitals Insure Themselves; Many in Region Find Alternatives Because of Steep Rates, Difficulty in Getting Malpractice Coverage*, ALLENTOWN MORNING CALL, June 16, 2002, at A1 (reporting that "[m]alpractice premiums for all Pennsylvania hospitals already rose an estimated \$180 million in the past year, as one insurer after another stopped doing business in the state after incurring enormous losses").
- <sup>147</sup> See Statement of Mr. Anderson, *supra* note 145.
- <sup>148</sup> Editorial, *Medical Crisis; Urgent Malpractice Insurance Issue Threatens Quality of Care in State*, PATRIOT-NEWS, Jan. 6, 2002, at B6 (recognizing that "Philadelphia, for reasons not entirely clear, has become renowned among trial lawyers for the generosity of its awards").
- <sup>149</sup> See Jennifer Nejman, *Malpractice Debate Heats Up; Some Say the High Price of Liability Insurance is Pushing Doctors Out of Pa.*, YORK DAILY REC., Jan. 7, 2002, at A3.
- <sup>150</sup> See Christopher Snowbeck, *Medical Malpractice Insurance Premiums Soar*, PITTSBURGH POST-GAZETTE, Jan. 21, 2001, at A13.
- <sup>151</sup> See PENNSYLVANIA MALPRACTICE SURVEY (Pew Charitable Trusts 2002), *available at* <<http://medliabilitypa.org/research/survey1002/>>.
- <sup>152</sup> See Mark Silva, *Voters Back Malpractice Caps the Governor's Push to Limit Awards in Lawsuits Has Strong Support in a Poll*, ORLANDO SENTINEL, Aug. 5, 2003, at A1; David Royse, *Doctors Ask for Malpractice Relief*, MIAMI HERALD, Mar. 28, 2003, *available at* <<http://www.miami.com/mld/miamiherald/news/state/5499379.htm>>.
- <sup>153</sup> Matthew Haggman, *Despite Lack of Compensatory Damages, Texaco Hit With \$33.8M in Punitives*, BROWARD DAILY BUS. REV., July 3, 2003, at 1.
- <sup>154</sup> *Id.*
- <sup>155</sup> See *State Farm v. Campbell*, 123 S. Ct. 1513, 1519-20, 1521 (2003).
- <sup>156</sup> See *Liggett Group Inc. v. Engle*, 853 So. 2d 434, 451 (Fla. Ct. App. May 21, 2003). The Engle decision is binding precedent on the Miami-Dade Circuit Court.
- <sup>157</sup> *Id.*

- <sup>158</sup> See *Engle v. RJ Reynolds Tobacco*, 2000 WL 33534572 (Fla. Cir. Ct. Nov. 6, 2000), rev'd, 853 So. 2d 434 (Fla. Ct. App. May 21, 2003); see also Susan R. Miller, *Now or Never, Dying Man Asks Court to Hear His Case Against Cigarette Makers Before Appeals Are Complete*, MIAMI DAILY BUS. REV., Mar. 27, 2002, at A8.
- <sup>159</sup> See generally *Engle*, 853 So.2d 434; see also Jay Weaver, *Court Voids Big Smoking Case Award; Florida Appellate Judges Wipe Out \$145 Billion in Punitive Damages*, MIAMI HERALD, May 22, 2003, at A1.
- <sup>160</sup> See *Engle*, 853 So.2d at 446; see also Laurie Cunningham, *Process That Led to \$145B Award in Tobacco Case Challenged Before Appeals Panel*, BROWARD DAILY BUS. REV., Nov. 7, 2002 at A1.
- <sup>161</sup> *Engle*, 853 So.2d at 453-55.
- <sup>162</sup> See *id.* at 458-62. Prior to the reversal of the \$145 billion punitive damage award, a lone plaintiff in the class was awarded \$37.5 million in a compensatory damages award. At the time, this was the highest compensatory verdict ever awarded in a tobacco lawsuit. See Jay Weaver, *Jury Awards Smoker \$37.5 Million*, MIAMI HERALD, June 2, 2002, at A1.
- <sup>163</sup> Matthew Haggman, *A Whopper of a Year: Sbrugging Off Criticism That People Are Too Litigious, Florida Juries Last Year Produced Big Awards for Plaintiffs*, MIAMI DAILY BUS. REV., Dec. 16, 2002, at 6.
- <sup>164</sup> See *id.*
- <sup>165</sup> See *id.*
- <sup>166</sup> See Missouri Lawyers Weekly, *Largest Verdicts & Settlements of 2002* (2003), available at <[http://www.molawyersweekly.com/largverd\\_02.cfm](http://www.molawyersweekly.com/largverd_02.cfm)>.
- <sup>167</sup> See *id.*
- <sup>168</sup> See Missouri Lawyers Weekly, *Largest Plaintiff's Verdicts of 2002 for Missouri* (2003), available at <[http://www.missourilaw.com/top\\_verd\\_02.cfm](http://www.missourilaw.com/top_verd_02.cfm)>. The survey included data from state circuit courts and federal district courts and included verdicts awarded to individual plaintiffs or families for accidents before any review for remittitur. The survey does not include class actions or consolidated cases, uncontested verdicts, bench trials, or business versus business lawsuits. See *id.*
- <sup>169</sup> See Missouri Lawyers Weekly, *Largest Settlements of 2002 for Missouri* (2003), available at <[http://www.missourilaw.com/top\\_sett\\_02.cfm](http://www.missourilaw.com/top_sett_02.cfm)>.
- <sup>170</sup> See OFFICE OF STATE COURT'S ADMINISTRATOR, SUP. CT. OF MO., FY 2002 MISSOURI JUDICIAL REPORT AND SUPPLEMENT (July 1-June 30).
- <sup>171</sup> *Id.*
- <sup>172</sup> *Id.*
- <sup>173</sup> See Roland Klose, *Venue's on the Menu For Lawyers Trying to Take a Bite of Doe Run, St. Louis is the Place to Be*, RIVERFRONT TIMES, Apr. 10, 2002, available at <<http://www.riverfronttimes.com/issues/2002-04-10/news.html/1/index.html>>; Tim Bryant, *Question of Merging City, County Jury Pools is Revived; State Supreme Court Judge Suggested Move Last Year*, ST. LOUIS POST-DISPATCH, Nov. 27, 2002, at B1 (Discussing the suggestion by Missouri Supreme Court Judge Michael Wolff of joining the juror pools of St. Louis City and County because plaintiffs' lawyers are known for trying to get their personal injury cases into St. Louis City Circuit Court for a more sympathetic jury, to make the issue of venue less important).
- <sup>174</sup> Klose, *supra* note 172.
- <sup>175</sup> *Id.*
- <sup>176</sup> The case was originally denied class certification in Jefferson County, after which, the plaintiffs dismissed the case without prejudice. The same day, the case was filed in the St. Louis City Circuit Court and in the third amended pleading, the plaintiffs added a resident of the City of St. Louis as a defendant. See *State ex rel. Doe Run Resources Corp. v. Neill*, No. ED81573, 2003 Mo. App. LEXIS 745 (Mo. Ct. App. May 20, 2003); see also Tim Bryant, *Judges Reject Trying Doe Run Lawsuits in St. Louis*, ST. LOUIS POST-DISPATCH, May 22, 2003, at B5.
- <sup>177</sup> See *State ex rel. Linthicum*, 57 S.W.3d 855, 859 (Mo. 2001) (Wolff, J., concurring in part, dissenting in part).
- <sup>178</sup> *Id.* at 858.

<sup>179</sup> *Id.* at 857.

<sup>180</sup> *Id.* at 860, 862.

<sup>181</sup> Tim Bryant, *Question of Merging City, County Jury Pools Is Revived; State Supreme Court Judge Suggest Move Last Year*, ST. LOUIS POST-DISPATCH, Nov. 27, 2002, at B1.

<sup>182</sup> See Beisner, *supra* note 30, at 17.

<sup>183</sup> See *id.* at 30.

<sup>184</sup> See Becky Gillette, *Debate Heats Up With Unusual Coalition of Business, Labor, Doctors*, MISS. BUS. J., June 10-16, 2002 (citing Terry Carter, president of the Jackson County Chamber of Commerce).

<sup>185</sup> See *Mississippi Jury Awards \$150M to Workers Exposed to Asbestos*, ASBESTOS. LITIG. REP., Dec. 13, 2001.

<sup>186</sup> See *id.*

<sup>187</sup> *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964).

<sup>188</sup> See Jimmie E. Gates, *'Frivolous' Law Stirring Debate*, CLARION-LEDGER (Jackson, Miss.), Jan. 27, 2003, at 1.

<sup>189</sup> See *Thomas & Howard Co., Inc. v. Wetterau Inc.*, 353 S.E.2d 141 (S.C.,1987); *In re: Asbestosis Cases*, 266 S.E.2d 773 (1980).

<sup>190</sup> See Jim Duplessis, *Business Complaints About Lawyers and Lawsuits are Older Than the State*, THE STATE (Columbia, S.C.), Jan. 12, 2003, at 4; Michael Freedman, *Home Court Advantage; How a Small-Town South Carolina Lawyer Instills Fear In Corporations Everywhere*, FORBES MAGAZINE, June 10, 2002, at 74.

<sup>191</sup> See Warren Wise, *Tort Reform Tops Agenda*, POST & COURIER (Charleston, S.C.), June 27, 2003, available at <[http://www.charleston.net/stories/062703/biz\\_27politics.shtml](http://www.charleston.net/stories/062703/biz_27politics.shtml)> (reporting on a lawsuit brought in Hampton County against a car manufacturer for head injuries suffered in an accident in Tennessee).

<sup>192</sup> See Hamilton County Clerk of Court, *Jury Case Roster Report*, June 16, 2003.

<sup>193</sup> S.C. Code Ann. § 15-7-100.

<sup>194</sup> See *Farmer v. Monsanto Corp.*, 579 S.E.2d 325 (S.C. 2003).

<sup>195</sup> See *id.* at 326 (citing S.C. Code Ann. § 15-5-150).

<sup>196</sup> See *id.* at 328.

<sup>197</sup> The South Carolina Supreme Court recognized that the state statute at issue had three important objectives: "1) it favors resident plaintiffs over nonresident plaintiffs; 2) it provides a forum for wrongs connected with the State while avoiding resolution of wrongs in which the State has little interest; and 3) it encourages activity and investment in the State by foreign corporations without subjecting them to litigation unrelated to their activity within the State." See *id.*

<sup>198</sup> See H. 3744/S. 446, 115th Sess. (S.C. 2003); S. 498, 115th Sess. (S.C. 2003).

<sup>199</sup> See Assoc. Press, *Supreme Court to Review \$34 Million Award by Jury*, CHARLESTON DAILY MAIL, Sept. 11, 2003, at 6A. The case is on review before the state supreme court. See *id.*

<sup>200</sup> See *id.*

<sup>201</sup> According to public records, the Fitzsimmons law offices contributed \$8,000 to Wetzel County Circuit Judge Mark Karl's campaign in 2000.

<sup>202</sup> See Toby Coleman, *State Sues Wall Street Firms, Attorney General Says Companies Gave Bad Advice*, CHARLESTON GAZETTE, June 23, 2003, at 1A.

<sup>203</sup> According to public records, the individuals associated with the law firms of Hill, Peterson, Carper, Bee & Deitzler, P.L.L.C.; DiTrapano, Barrett & DiPiero, P.L.L.C.; and Masters & Taylor, L.C., each of which is located in judicial hellhole Kanawha County, contributed several thousand dollars to McGraw's campaign fund between 1996 and 2001.

<sup>204</sup> See *Herrera v. Quality Pontiac*, 73 P.2d 181, 194 (N.M. 2003).

<sup>205</sup> See *Lozoya v. Sanchez*, 66 P3d 948 (N.M. 2003).

<sup>206</sup> See *id.* at 957-58.

<sup>207</sup> *Id.* at 958.

<sup>208</sup> See *Hovet v. Lujan*, 66 P3d 980 (N.M. Ct. App.), *cert. granted*, 66 P3d 962 (2003).

<sup>209</sup> See *id.* at 985.

<sup>210</sup> These suits are dubbed “modal” litigation, since they stem from the fact that the represented consumers have paid more on their policies because they selected among different payment modes, such as quarterly or semi-annual installment payments.

<sup>211</sup> See Reynolds Holding, *Lawyer Gets Lion’s Share in Class-Action*, SAN FRANCISCO CHRON., Feb. 18, 2001, at WB4.

<sup>212</sup> See Douglas G. Schneebeck, “Modal” Insurance Premium Class Action Litigation: Coming to a Courthouse Near You, INT’L ASS’N OF DEF. COUNSEL NEWSLETTER (Int’l Ass’n of Def. Counsel, Chicago, Ill.), Oct. 2002; Lawrence H. Mirel, *Plaintiff’s Lawyers Have No Business Regulating Insurance*, 16 WASH. LEGAL FOUND., (Wash. Legal Found., Washington, D.C.), Apr. 6, 2001.

<sup>213</sup> See *id.*

<sup>214</sup> See Thomas J. Cole, *Lawyers Reap Millions in Suits Against Insurers*, ALBUQUERQUE J., Feb. 18, 2001, at A1.

<sup>215</sup> See Winthrop Quigley, *Insurance Firm Offers Settlement*, ALBUQUERQUE J., Sept. 26, 2002, at 1 (discussing settlement with John Hancock Financial Services in which policyholders will receive an extra \$800 to \$1,400 in life insurance, but the customers will have to die within a year to get the money, while plaintiffs’ lawyers are expected to receive \$8.9 million in fees and \$95,000 in expenses); Assoc. Press, *Attorneys Getting Rich off Insurance Settlements*, SANTA FE NEW MEXICAN, Feb. 19, 2001, at A3 (discussing case against Primerica Insurance, where the lawyers walked away with \$7.5 million, the two named policy holders with \$30,000 each, and the rest of the class with no money at all); Beth Healy, *To Lawyer Go Spoils in Lawsuit While Attorney Nets \$8M in Settlement, Clients Get \$350,000*, BOSTON GLOBE, Jan. 25, 2001, at E1 (discussing proposed settlement with Massachusetts Mutual Life Insurance Company, where the plaintiffs’ attorney would have received \$5 million in attorney’s fees, plus a hefty \$3 million insurance policy, and a whopping \$250,000 lifetime annuity, while five million former policyholders would receive nothing more than assurances of explicit disclosure of costs in the future); see also Bob Van Voris, *Lawyer Only One to Benefit from MassMutual Settlement, Since Dropped*, NAT’L L.J., Mar. 5, 2001.

<sup>216</sup> See Assoc. Press, *Attorneys Getting Rich Off Insurance Settlements*, SANTA FE NEW MEXICAN, Feb. 19, 2001, at A3.

<sup>217</sup> H.B. 4, 78th Leg., Reg. Sess. (Tex. 2003).

<sup>218</sup> See *Owens Corning v. Carter*, 997 S.W2d 560 (Tex. 1999). The 1997 law (S.B. 220, 75th Leg., Reg. Sess. (Tex. 1997)) was enacted to stem “forum shopping” from out-of-state plaintiffs in favorable Texas courts, such as those in Jefferson, Galveston, Harris, and Orange Counties, which had enabled thousands of out-of-state asbestos cases to siphon the resources of Texas trial courts. See *id.* at 565-66. The Texas Supreme Court’s 2003 decision rejected a challenge from a group of Alabama residents, a positive ruling against the trend of judicial nullification of state civil justice reform laws. Nevertheless, some Texas courts, including those in Jefferson County, have resisted dismissing the cases of nonresidents, even when required to do so by the 1997 Act. See *E.I. Du Pont De Nemours & Co.*, 92 S.W3d 517 (Tex. 2002) (ruling that trial courts in Jefferson and Orange County abused their discretion when they refused to dismiss the asbestos claims of 8,000 plaintiffs on the grounds that the claims arose outside of Texas at a time when the plaintiffs were not residents of Texas).

<sup>219</sup> Laylan Copelin & David Pasztor, *Limits on Damages Narrowly Approved Voters OK Proposition 12, All Other Amendments to Texas Constitution*, AUSTIN AMERICAN-STATESMAN, Sept. 14, 2003, at A1.

<sup>220</sup> See Gillette, *supra* note 183.

<sup>221</sup> See Jimmie E. Gates, *Caps Prompt Lawsuit Blitz*, CLARION-LEDGER (Jackson, Miss.), Jan. 1, 2003, at 1.

<sup>222</sup> See Assoc. Press, *Some Counties See Late Rush of Lawsuits*, SUN HERALD (Biloxi, Miss.), Dec. 31, 2002, at 3.

<sup>223</sup> See Matt Volz, *Jefferson County Lawsuit Filings Are Down*, ASSOC. PRESS, Oct. 5, 2003.

<sup>224</sup> *Id.*

- <sup>225</sup> *Id.*
- <sup>226</sup> *See Mattox v. State*, 128 So. 2d 368, 372-73 (Miss. 1961).
- <sup>227</sup> *See* Beisner, *supra* note 30, at 17.
- <sup>228</sup> *Id.* (quoting statement of J. Lamar Pickard, Tr. of Mot. Hearing at 9-10, Conway v. Hopeman Bros. (Cir. Ct. Jefferson County, Miss. July 25, 2001).
- <sup>229</sup> *See id.*
- <sup>230</sup> *See id.* at 30.
- <sup>231</sup> S.B. 213, Reg. Sess. (W.Va. 2003) (codified at W. Va Code Ann. § 56-1-1 (2003)).
- <sup>232</sup> PERRYMAN STUDY, NEGATIVE IMPACT ON THE CURRENT CIVIL JUSTICE SYSTEM ON ECONOMIC ACTIVITY IN WEST VIRGINIA 9 (W. Va. Chamber of Commerce, Feb. 2003), *available at* <<http://66.241.235.56/resources/>>.
- <sup>233</sup> Andrew R. Rogoff & Imiebihoro T. Ahonkhai, *Impact of Venue and Certificate of Merit Reform*, PHYSICIAN'S NEWS DIGEST, June 2003, *available at* <<http://www.physiciansnews.com/law/603rogoff.htm>>.
- <sup>234</sup> PA. CONST. ART. 3, § 11 provides that, with the exception of workers' compensation laws, "the General Assembly [shall not] limit the amount to be recovered for injuries resulting in death, or for injuries to persons or property, and in case of death from such injuries..."
- <sup>235</sup> *See* Assoc. Press, *Alka-Seltzer Suit Thrown Out*, Oct. 1, 2003.
- <sup>236</sup> *See id.*
- <sup>237</sup> *See In re Rhone-Poulenc Rorer, Inc.*, 51 F.3d 1293, 1298 (7th Cir.) (Posner, J.), *cert. denied*, 516 U.S. 867 (1995).
- <sup>238</sup> The Class Action Fairness Act (H.R. 1115 / S. 274) passed the House of Representatives by a vote of 253-170 on June 12, 2003. Reports indicate that the Senate will vote upon the bill in October 2003 and the bill has a substantial chance of passage.
- <sup>239</sup> *See* David J. Damiani, *Proposals for Reform in the Evaluation of Expert Testimony in Pharmaceutical Mass Tort Cases*, 13 ALB. L.J. SCI. & TECH. 517, 526 (2003).
- <sup>240</sup> *Id.* at 527-28.
- <sup>241</sup> *Daubert v. Merrell Dow Pharmaceutical, Inc.*, 509 U.S. 579 (1993).
- <sup>242</sup> *Id.* at 593-94.
- <sup>243</sup> *See id.* at 593-95.
- <sup>244</sup> Some of these states, such as Alabama, California, Florida, and Illinois, continue to apply the less rigorous Frye "general acceptance" test, which the federal courts abandoned with the adoption of the *Daubert* standard in 1993. *See, e.g., Courtaulds Fibers, Inc. v. Long*, 779 So. 2d 198 (Ala. 2000); *People v. Leaby*, 882 P.2d 321 (Cal. 1994); *Flanagan v. State*, 625 So. 2d 827 (Fla. 1993); *Donaldson v. Ill. Pub. Serv. Co.*, 767 N.E.2d 314 (Ill. 2002). Other states apply their own standard to determine the admissibility of expert testimony. *See, e.g., In re Robert R.*, 531 S.E.2d 301, 303 (S.C. 2000).
- <sup>245</sup> Kathleen Burge, *Science of Evidence Puts Judges to the Test*, BOSTON GLOBE, May 19, 2002, at B1.
- <sup>246</sup> More information and the text of the model legislation is available on ALEC's website, [www.alec.org](http://www.alec.org).
- <sup>247</sup> *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 597 (1997).
- <sup>248</sup> *See* The Fairness in Asbestos Compensation Act of 1999: Legislative Hearing on H.R. 1283, Before the House Comm. on the Judiciary, 106th Cong. 4 (July 1, 1999) (statement of Christopher Edley, Jr., Professor, Harvard Law School).
- <sup>249</sup> Alex Berenson, *A Surge in Asbestos Suits, Many by Healthy Plaintiffs*, N.Y. TIMES, Apr. 10, 2002, at A1.

- <sup>250</sup> See JENNIFER BIGGS *ET AL.*, OVERVIEW OF ASBESTOS ISSUES AND TRENDS 3 (Dec. 2001), *available at* <<http://www.actuaryorg/mono.htm>> [hereinafter Biggs]; STEPHEN CARROLL *ET AL.*, ASBESTOS LITIGATION COSTS AND COMPENSATION: AN INTERIM REPORT 20 (RAND Inst. for Civil Justice, Sept. 2002) [hereinafter RAND Rep.]. See also James A. Henderson, Jr. & Aaron D. Twerski, *Asbestos Litigation Gone Mad: Exposure-based Recovery for Increased Risk, Mental Distress, and Medical Monitoring*, 53 S.C. L. REV. 815 (2002).
- <sup>251</sup> See Mark A. Behrens & Rochelle M. Tedesco, *Two Forks in the Road of Asbestos Litigation*, MEALEY'S LITIG. REP.: ASBESTOS, Vol. 18, No. 3, Mar. 7, 2003, at 1.
- <sup>252</sup> See Richard B. Schmitt, *Burning Issue: How Plaintiffs' Lawyers Have Turned Asbestos Into a Court Perennial*, WALL ST. J., Mar. 5, 2001, at A1.
- <sup>253</sup> See *Mass. State Ct. Asbestos Pers. Injury Litig.*, Order (Commw. of Mass., Middlesex Super. Ct., Sept. 1986) (adopting adopted the Massachusetts Inactive Asbestos Docket); *In re Asbestos Cases* (Cir. Ct., Cook County, Ill. Mar. 26, 1991) (Order to Establish Registry for Certain Asbestos Matters); *Asbestos Pers. Injury and Wrongful Death Asbestos Cases*, File No. 92344501 (Cir. Ct. Baltimore City, Md. Dec. 9, 1992) (Order Establishing an Inactive Docket for Asbestos Personal Injury Cases).
- <sup>254</sup> See *In re New York City Asbestos Litig.*, *Order Amending Prior Case Mgmt. Orders* (S. Ct. N.Y. City, N.Y. Dec. 19, 2002); *In re Fifth Jud. Dist. Asbestos Litig.*, Am. to Am. Case Mgmt. Order No. 1 (N.Y. Sup. Ct. Jan. 31, 2003); Letter from Judge Sharon S. Armstrong, King County, Wash., to Counsel of Record, Moving and Responding Parties, at 1 (Dec. 3, 2002).
- <sup>255</sup> See *In re Wallace & Graham Asbestos-Related Cases*, Case Mgmt. Order (Greenville County, SC 2002); *In re Cuyahoga County Asbestos Cases*, Gen. Pers. Injury Asbestos Case Mgmt. Order No. 1 (as amended Jan. 4, 2002). Multnomah County (Portland), Oregon Circuit Court Judge John Wittmayer currently is circulating a draft order that would "abate" claims filed by unimpaired asbestos claimants "while preserving for the litigants their positions on any statutes of limitations issues." *In re All Asbestos Exposure Cases Filed in Multnomah County*, First Amended Draft Gen. Order Re: Asymptomatic, Untreated, or Inchoate Disease Cases, No. 0003-0000B, at 5 (Cir. Ct. Multnomah County, Or. 2002).
- <sup>256</sup> In 1992, Judge Weiner adopted procedures, which although not technically an inactive docket, had the purpose of prioritizing "malignancy, death and total disability cases where the substantial contributing cause is an asbestos-related disease or injury." *In re Asbestos Prod. Liab. Litig. (No. VI)*, MDL 875, Admin. Order No. 3, at 1 (E.D. Pa. Sept. 8, 1992) [hereinafter MDL 875, Admin. Order No. 3].
- <sup>257</sup> See, e.g., *Abate v. A.C. & S., Inc.*, No. 89236704, slip op. at 26 (Md. Cir. Ct. Dec. 9, 1992); *Keene Corp. v. Levin*, 623 A.2d 662, 663 (Md. App. 1993) (noting that Judge Levin deferred payments of punitive damages "until all Baltimore City plaintiffs' compensatory damages are paid."); *In re Asbestos Litig.*, No. C0048AB200100003, slip Order, at 1 (Pa. Ct. Com. Pl. Jan. 11, 2001); *Yancey v. Raymark Indus., Inc.*, No. 1186 (832), Asbestos Order No. 0001, slip op., at 5 (Pa. Com. Pl. Oct. 1986); *\$64.65 Million Awarded in Four Asbestos Cases*, Vol. 4, No. 3 MEALEY'S LITIG. REP. TOXIC TORTS 16 (Dec. 15, 1995) (reporting on the New York case of *Falloon v. Westinghouse Electric* in which the trial court severed and deferred punitive damages indefinitely); see also *In re Collins*, 233 F.3d at 812 ("It is discouraging that while the Panel and transferee court follow this enlightened practice, some state courts allow punitive damages in asbestos cases. The continued hemorrhaging of available funds deprives current and future victims of rightful compensation.").