

American Tort Reform Association

Bringing Justice To
Judicial
HELLHOLES
2002

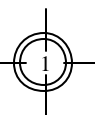


ATRA

PREFACE

This report presents information collected by the American Tort Reform Association (“ATRA”) to document litigation abuses that occur in jurisdictions that have been identified by ATRA’s members as “judicial hellholes.” The hellholes included in this report were identified by respondents to a survey of ATRA’s members. Although there are very likely other areas in the country that may also be considered judicial hellholes, we have chosen to focus our efforts on documenting the litigation abuses in those cities, counties, or judicial districts that were most frequently identified by the respondents to ATRA’s survey. 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 litigation abuses in the hellholes discussed in this report. We encourage readers to contact ATRA with additional information regarding 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 to quench the fire in judicial hellholes and restore fair and equal justice under law. While there is a significant need and beneficial purpose for tort reform in our civil justice system, this report does not propose to limit or alter the existing substantive rules of tort law in any way. Rather, this report seeks to restore the balance of the scales of justice in judicial hellholes.



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 even-handedly to all litigants. The motto etched on the façade of the United States Supreme Court, “Equal Justice Under Law,” is forgotten in these areas. The American Tort Reform Association (“ATRA”) has conducted a survey of its members to determine which areas they would identify as judicial hellholes. ATRA has conducted research and 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 the hellholes.

We wish to make clear at the outset that ATRA’s judicial hellholes project is not an effort to obtain a special advantage for defendants in these areas. ATRA seeks fair and balanced application of the law so that defendants can receive a fair trial in the hellhole jurisdictions. ATRA is seeking to restore “Equal Justice Under Law.”

Our project has been directed at obtaining objective and cumulative information as to where judicial hellholes exist; not airing the cries or complaints of one or two defense lawyers who have lost a case. The eleven areas that have been most frequently named by ATRA’s members as judicial hellholes are: 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. The following pages will highlight the litigation abuses that have occurred in these areas and provide an explanation as to why these areas are considered judicial hellholes. In addition to these eleven hellholes, the report also includes anecdotal information on three additional areas: Hampton County, South Carolina, West Virginia, and certain counties in Alabama, that deserve “dishonorable mention” because they are considered by several individuals with whom we spoke to be judicial hellholes.

In addition to pointing out the problems in hellhole jurisdictions, ATRA urges judges and legislators in hellholes to adopt reforms to restore balance to the judicial systems in these areas. First, ATRA supports venue reform. Venue is a legal term that means the place where a case can be brought. A fair venue rule would allow suits to be brought where a person lives, where he or she was injured, or where the defendant’s principal place of business is located. Second, ATRA supports fair and just application of the doctrine of *forum non conveniens*; a case should have some meaningful connection with a jurisdiction, otherwise it should be heard in the forum where the facts arose. Finally, class action reform is needed. Such reform should change existing rules to ensure that large-scale litigation with a national impact would be tried in federal court. Whether such actions are brought as class actions, or joined together through consolidation, joinder, or any other procedural device, federal courts are the proper forum for these actions.

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 from 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.

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 reports to Michael Hotra at: mhotra@atra.org.

DENYING EQUAL JUSTICE UNDER LAW: JUDICIAL HELLHOLES IN THE UNITED STATES

The United States is a vast and culturally diverse nation. One would naturally expect to find substantial differences among the courtrooms across the country. One might believe that a courtroom in a major metropolitan area, such as Los Angeles, would have little in common with a court in a rural area such as Jefferson County, Mississippi. Yet these two courtrooms and several others across the country do have something in common; they are areas that have become all too well-known by defense counsel as powerful magnets for litigation. The American Tort Reform Association (“ATRA”) calls these jurisdictions “judicial hellholes.” These courtrooms attract cases that should be tried in other jurisdictions. Plaintiffs’ attorneys recognize this and seek to try their cases, especially weak ones, in these courtrooms. Skilled and noted plaintiffs’ attorney Richard Scruggs calls these courts “‘magic jurisdictions’- areas where what happens in court is irrelevant because the jury will return a verdict in favor of the plaintiff.”¹ ATRA and Richard Scruggs appear to agree about how the jurisdictions act, we simply differ about the proper name. Mr. Scruggs calls them “magic.” We call them “hellholes.”

The list of areas identified by ATRA as judicial hellholes is not exhaustive. We appreciate that they exist elsewhere, and our list does not include every area identified by ATRA members. We chose to focus the study on areas that were identified the most frequently and where we found objective reports of miscarriages of justice. We also found that the experiences of some defendants varied, thus some areas that may be hellholes to one defendant may not have been to another. When we identify these jurisdictions, we also share differing points of view about them.

ATRA has agreed to keep the sources of information for this report confidential. As common sense and the contents of some of this report suggest, people who supplied information for this report were concerned about reprisals if their names became public, a sad commentary about some of the hellholes. We have pledged and respected confidentiality of our reports. We have tried, where we were able, to be certain that the information contained in the report is independently verifiable.

PROBLEMS IN HELLHOLES

Efforts by plaintiffs' lawyers to try their cases in "favorable" courts and jurisdictions are not new. Forum shopping has been practiced for a long time. What is new is the extent to which certain courts and jurisdictions have become powerful magnets for litigation. Due to advances in technology such as the internet and increased mobility and communications, personal injury lawyers are now much more able to forum shop their cases than in the past. Consequently, defendants are sometimes brought into courtrooms in areas of the country that have little or no connection to the case being tried. This is not only unfair to defendants, it is also unfair to the individuals who live in these hellhole jurisdictions. When local courts are unduly burdened with cases from elsewhere, the local residents may have their own cases subjected to substantial delay.

In general, one of the main problems in hellhole jurisdictions is that the rules are not applied fairly. The specific litigation abuses that lead to the hellhole label, however, vary from jurisdiction to jurisdiction. One problem that occurs in many hellholes is the certification of class actions that do not meet the fundamental standards for class actions. Rule 23 of the Federal Rules of Civil Procedure and many analogous state rules provide specific requirements that must be met before a class action can be certified. These requirements include having a sufficient number of class members, 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 other class members, and that there is fair and adequate protection of class interests by the lawyers who have brought the class action.²

These requirements exist to protect the interests of both plaintiffs who may not be before the court, and defendants who are faced with a class action. The practice in some hellhole jurisdictions of certifying virtually anything as a class action puts enormous pressure on defendants to settle, even in instances where the underlying claim has little merit. One distinguished federal judge has recognized that defendants in class actions may be pressured to agree to "blackmail settlements."³ As one recent news article reported regarding a hellhole, "[o]nce a suit is certified as a class action, plaintiffs' lawyers know to expect a call from their opponents — with an expensive settlement offer. In fact, in recent memory no class action case has actually been decided by a Madison [County, Illinois] jury — defendants have always hastened to settle."⁴

Loose application of class action certification rules is just one of the problems that defendants face in hellhole jurisdictions. Courts in hellholes often allow prejudicial or "junk science" evidence to be admitted; allow attorneys to appeal to juror bias; or refuse to dismiss baseless claims or grant summary judgment when it is proper to do so. As the examples below will demonstrate, there are several litigation abuses that can lead to the hellhole title.

ATRA's HELLHOLES INITIATIVE

The purpose of ATRA's judicial hellholes initiative is to show the litigation abuses that occur in judicial hellholes. 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 not an entire state that is a judicial hellhole. Only certain counties or courts in the state should be considered hellholes. For that reason, this report focuses on specific areas within a state.

THE HELLHOLES

The eleven areas that have been most frequently named by ATRA's members as judicial hellholes are: 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; are given "dishonorable mention" as areas that have also been named as judicial hellholes by numerous individuals with whom we spoke. This report will highlight the litigation abuses that have occurred in these areas and provide an explanation as to why these jurisdictions are considered judicial hellholes.

LOS ANGELES, CA—CENTRAL CIVIL WEST, "THE BANK"

Los Angeles has become a county known for high jury verdicts. The largest verdict rendered by any jury in the country in 2001 was awarded in a Los Angeles County Court.⁵ The Central Civil West Division in particular, which is called "the Bank" by plaintiffs attorneys (a place where they can always withdraw substantial sums of money), has been the source of a number of high jury verdicts.⁶

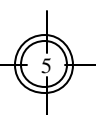
In one toxic pollution case in the Central Civil West Division, a judge urged the jury to "send a notice out to the world" with the punitive damages verdict. The jury responded to the judge's call for dollars with a \$760 million punitive damages award.⁷

In another case, a Los Angeles jury awarded \$4.9 billion when a Chevy Malibu was rear-ended and burst into flames, severely injuring the occupants of the vehicle. The judge reduced the award to \$1.09 billion. The defendants appealed, arguing that the judge erred by refusing to allow GM to enter evidence that the driver, who rear-ended the plaintiff's car, had been driving at over 70 miles per hour, in excess of the speed



Pop.: 9,637,494
Land Area: 4,061 sq. mi.
Persons per sq. mi.: 2344.2*

*All population data contained in this report is the most current available on the U.S. Census website, www.census.gov as of September 25, 2002.



limit, and was drunk.⁸ GM was also prevented from presenting testimony regarding the Malibu's low accident fire rates.⁹ In addition, the plaintiffs' attorney presented testimony in the case regarding GM's supposed lobbying to limit fuel-tank safety regulations, but the defense was not allowed to present the testimony of "high-ranking former public servants" to rebut the plaintiff's testimony.¹⁰

Another reason that Los Angeles is deemed a hellhole is how some officials handle jury service. In recent years, juries in Los Angeles have not been representative of a cross section of the community¹¹ (similar, according to some sources, to the Vietnam military draft). For example, an article last year reported that in the Central Civil West courthouse in Los Angeles, a clerk "asks potential jurors in the holding room whether they have any problem associated with length of jury service and even seems to encourage potential jurors to state a legitimate reason for not being able to serve on a long trial."¹²

The result? Juries in Central Civil West tend not to represent a cross-section of the community.¹³ A defendant is denied a trial by a jury of one's peers. The practical result is that jurors may not focus on individual responsibility, whether the plaintiff is responsible for his or her own injuries, whether scientific evidence is valid, whether causation has been proven, and what amount of damages are actually needed to compensate the plaintiff. A plaintiff's lawyer's rhetoric and emotional appeals may eclipse the facts in the case.

A recent study found that in Los Angeles only 19% of jurors who were summoned completed their jury service.¹⁴ Until recently, little was done to correct this very serious abandonment of a primary obligation of good citizenship.¹⁵ Fortunately, changes are being made in the system. In June of this year, Los Angeles completed county-wide implementation of the one day-one trial system, and is making an effort to broaden the categories of people who are called to jury service.¹⁶ In addition, Los Angeles has recently begun more aggressive enforcement of jury summons.¹⁷ Much more needs to be done, however, to restore the basic right to trial by a jury of one's peers. Once again, a "defendants' jury" is not the goal we seek. What will help restore justice in Los Angeles is a cross-section of the population serving on juries.

MADISON COUNTY, IL

Madison County, Illinois, has become well known as a county in which almost any class action will be certified. Frequently, the fundamental requirements for a class action are only given lip service. Class action rules require judges to find that the factual questions in common to the class outweigh the facts that are not in common.¹⁸ One example of where this might happen is in lawsuits arising out of a plane crash. The reason for this rule is to balance the rights of both plaintiffs and defendants to have their cases heard on the individual facts against the efficiency of bringing a multiplicity of claims in a class action. In many Madison County cases that are certified as class actions, the individual facts that meaningfully distinguish cases are ignored. As one professor of legal ethics has stated, “Madison County judges are infamous for approving anything put before them, however unfair to the class or suggestive of collusion that is.”¹⁹



Pop.: 260,259
Land Area: 725 sq. mi.
Persons per sq. mi.: 357.2

A recent study by the Manhattan Institute found that class action filings in Madison County increased by 1850% between 1998 and 2000.²⁰ As the Manhattan Institute report shows, the increase in claims indicates that plaintiffs’ lawyers are drawn to this county, which they perceive will be a favorable jurisdiction for their cases.²¹ Many class actions filed in Madison County have little connection to the county. In the class actions filings reviewed by the Manhattan Institute, none of the defendant companies were based in Madison County and only 63% of plaintiffs were county residents.²² In a subsequent study updating the information in the original Manhattan Institute study, forty-three class actions were filed in Madison County in 2001, and only five Madison County companies were sued in the cases.²³

It is not only the abandonment of rules and the resulting number of class actions that are successfully filed that are troubling. In many of these cases, the class members receive only nominal recovery while the plaintiffs’ attorneys receive high fees. One Madison County class action was brought against a cable company for allegedly charging excessive late fees.²⁴ As a result of the case, the customers were given a choice of various free services and former customers were eligible to receive \$9.95. The attorneys representing the class received \$5.5 million in fees. One class member wrote to the judge in the case, complaining that his cable bill increased. “Please don’t sue anyone else on my behalf,” he wrote, “I can’t afford more of these brilliant legal victories.”²⁵

In another class action filed in Madison County, the class sought to recover funds that had been lost by class members in a lottery scheme.²⁶ The defendant in the case, James Blair Down, had already pled guilty in federal court for violating anti-gambling laws.²⁷

The proposed settlement in the case would have provided a \$6 million fund for the claims of over 400,000 individuals, which could provide about \$15 per person if all 400,000 people filed claims. Meanwhile, the plaintiffs' attorneys in the case stood to receive \$2 million in fees.²⁸ Fortunately, a Madison County judge declined to approve the settlement; a new hearing is set for November 7, 2002.²⁹

ORLEANS PARISH, LA

Orleans Parish was described by one counsel with whom we spoke as an area where the majority of judges and many juries are pro-plaintiff. Some interviewees also commented that trial court litigation abuses in Louisiana are more serious than in other jurisdictions because some intermediate appellate courts in the state are viewed as biased against corporate defendants.

As is true in many other “hellhole” jurisdictions, no matter how many unfair rulings may be handed down, it is hard to find a “smoking gun” where it can be shown that a judge’s ruling is transparently wrong. Many of the unfair rulings come down by mere fiat. There are no judicial opinions, and records of rulings are hard to find.



Pop.: 476,492
Land Area: 181 sq. mi.
Persons per sq. mi.: 2684.3

One of the few “smoking guns” that we found was in *Scott v. American Tobacco*, a class action case that is currently pending in Orleans Parish, Louisiana. The defendants recently filed a motion to amend the definition of the class in the case because the class is so broadly defined that “neither the parties nor the Court nor potential class members . . . can know for certain who is a class member and who is not.”³⁰ The class includes individuals “who are or were smokers on or before May 24, 1996” but does not define what the term “smoker” means — whether it refers to anyone who ever “puffed” a cigarette, or whether class members must have smoked a certain number of cigarettes or for a certain length of time.³¹ The defendants argue that the class definition is so vague that it does not meet the requirements of Louisiana law, and have urged the court to issue a redefinition of the class.³²

The selection of the jurors has also been a problem in the *Scott* case. During the jury selection process, the defendants challenged several jurors who were immediate family members of prospective class members.³³ The trial court denied the challenges, and the defendants appealed. The Louisiana Supreme Court held that immediate family members of potential class members did not necessarily need to be excluded from the jury, and proceeded to review the twelve challenged jurors individually, to determine whether those jurors would be influenced in reaching the verdict.³⁴

The Supreme Court of Louisiana found that the trial court had erred in allowing seven of the twelve challenged jurors to be seated on the jury.³⁵ Included among the seven jurors that the Supreme Court held should have been excused was a woman whose husband was a smoker. This woman admitted that she was “biased” and that she would want her husband to receive medical monitoring (which is a remedy that the plaintiffs are seeking in the case).³⁶ In a subsequent decision, the Supreme Court reversed the trial court again, holding that the court erred in denying the defendants’ challenges to four more jurors.³⁷ The *Scott* defendants were able to take their appeal to the Louisiana Supreme Court, but defendants without the resources and legal team to challenge the trial court’s decision would have had to live with the adverse results.

While the *Scott* case is an example of the problems in Orleans Parish, it is certainly not the only case to demonstrate the litigation environment in Orleans Parish. The second highest verdict awarded in the country in 2001 was awarded in Orleans Parish.³⁸ In that case, the plaintiff, a former state court judge, claimed that Exxon Mobil Corp. had left radioactivity on land involved in an oil-field pipe operation.³⁹ In May of 2001, a jury awarded the plaintiff \$145,000 for lost property value of the land and \$1 billion in punitive damages.⁴⁰ In October of 2001, approximately 2000 current and former residents sued the former judge, who had been the plaintiff in the first suit, along with Exxon-Mobil Corp., and other oil related companies that were defendants in the first suit.⁴¹

In 1999, a New Orleans jury awarded \$3.4 billion in punitive damages for a fire caused by leakage from a train car.⁴² No one was killed in the accident; the plaintiffs’ claims were for fear, suffering, evacuation, medical expenses and property damage.”⁴³ The case was eventually settled while it was on appeal.

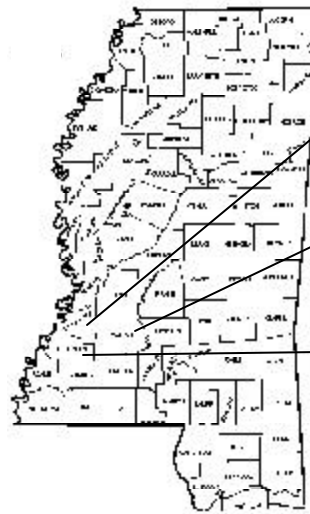
In one case in Orleans Parish, a judge reversed herself on a grant of a mistrial in breast implant litigation.⁴⁴ The judge granted a mistrial because she found that the plaintiff’s attorneys had unfairly prejudiced the jury with improper body language and eye contact.⁴⁵ The judge reversed herself the following day, stating “ I have wept for these women, I have wept for these attorneys, and for [one of the plaintiffs’ attorneys], who I personally believe has done an outstanding job.”⁴⁶ She also stated “I wept because with one stroke of the pen, I devastated the lives of these people.”⁴⁷ Persons who seek basic fairness in our system of justice would have cause to weep at the judge’s decision. Ultimately, the judge decided to de-certify the class.⁴⁸

MISSISSIPPI'S 22ND JUDICIAL CIRCUIT: COPIAH, CLAIBORNE & JEFFERSON COUNTIES

The counties in Mississippi's 22nd Circuit have become known for mass actions and high jury verdicts. Mississippi has been called a "lawsuit mecca," and within Mississippi, Jefferson County has been described as a "popular destination" for plaintiffs' lawyers.⁴⁹ One defendant company told the Mississippi Supreme Court that it could not obtain a fair trial in Jefferson County because "the litigation industry has saturated the community with bias."⁵⁰ Although Jefferson County has less than 10,000 residents, more than 21,000 people were plaintiffs in Jefferson County from 1995 to 2000.⁵¹

Hilda Bankston, the former owner of the local pharmacy, has been named as a defendant in so many lawsuits that she has lost count of the number of cases in which she has been sued.⁵² Nevertheless, no verdicts have been rendered and enforced against Ms. Bankston's drug store. Why is this true? The answer goes to why her store was named as a defendant in the first place. Federal rules allow a class action case to be brought in a federal court if the named plaintiffs are citizens of different states than all the defendants. If even one defendant is from the same state as a named plaintiff, the plaintiffs can keep the case in state court. By naming Ms. Bankston's store, plaintiffs' lawyers are able to keep cases out of a neutral federal court and land the cases in a Mississippi judicial hellhole.

Mississippi is one of only two states in the United States that does not allow class actions. As a result, cases that might be brought as class actions in other states are joined together as "mass actions" in Mississippi. Mass actions are similar to class actions but without rules to guide them and assure that they are fair. In one case that was consolidated in Jefferson County a few years ago, the judge allowed the claims of 1738 plaintiffs from around the country to be consolidated into one case.⁵³ The plaintiffs in the case differed with regard to the illnesses they suffered, amount and extent of injury, time of exposure and a myriad of other factors.⁵⁴ A similar pattern of variance in class members' claims led the United States Supreme Court to reject a class action in an asbestos case, even where the plaintiffs and defendants in the case agreed to class action format.⁵⁵ In the Mississippi litigation, after the trial of twelve plaintiffs' claims resulted in a jury verdict of \$48.5 million, the judge pressured the defendants to settle on terms that the defendants thought were harsh.⁵⁶ The judge reportedly told the defendants that if they did not settle, he would try the remaining cases immediately.⁵⁷ When the defense counsel replied that sounded like "this side of hell," the judge purportedly said "no counselor, that is hell."⁵⁸



Claiborne
Pop.: 11,823
Land Area: 487 sq. mi
Persons per sq. mi.: 24.3

Copiah
Pop.: 28,886
Land Area: 777 sq. mi
Persons per sq. mi.: 37

Jefferson
Pop.: 9695
Land Area: 519 sq. mi
Persons per sq. mi.: 18.8

The plaintiffs' lawyer's race to bring cases in certain counties in Mississippi is facilitated by the state's pure plastic venue rule, which has been described as the "good as to one, good as to all" rule. This means that if either a single plaintiff or a single defendant resides in a county, the lawsuit may be brought in that county. In one case, 398 people who took diet drugs sued 203 physicians and pharmacists in a single lawsuit.⁵⁹ Not a single plaintiff, and only one defendant in the case resided in the county in which the case was brought.⁶⁰

In one asbestos case in Jefferson County, the defendants settled with a group of 4000 plaintiffs who live in five states.⁶¹ When the settlement amounts became public, it seemed that the plaintiffs who lived closest to where the case was filed received larger awards than plaintiffs who lived elsewhere. Plaintiffs from Mississippi received, on average, \$263,000. Plaintiffs from Texas received \$43,500 each, while over 2,500 plaintiffs who lived farther away (in Ohio, Indiana, and Pennsylvania), and were just as badly injured, received only \$14,000.⁶² The plaintiffs in that case brought suit against their lawyers in federal court, alleging that the lawyers treated the clients' cases as "inventory" and distributed the settlement funds according to where the clients lived and were exposed to asbestos.⁶³

The hellhole environment in Jefferson County, Mississippi was so bad that a local journalist described the situation in a series of front-page articles in the *Mississippi Clarion-Ledger*.⁶⁴ Illustrating our thesis that objective media attention can help put out the fire in judicial hellholes, recently the litigation environment in Mississippi's 22nd Judicial Circuit has improved. For example, Judge Lamar Pickard has announced that plaintiffs trying a case in a county must live there.⁶⁵ Nonetheless, the area is still home to some of the largest verdicts in recent memory, including a Propulsid trial that resulted in a \$100 million verdict.⁶⁶

JEFFERSON COUNTY, TX

Like Madison County, Illinois, a county in Texas called “Jefferson”⁶⁷ (like its hellhole cousin in Mississippi) has become a magnet for class action litigation. The county has been called “the Barbary Coast of class action litigation.”⁶⁸ A recent study by the Manhattan Institute found that the number of class actions filed in Jefferson County, Texas, nearly doubled between 1998 and 2000.⁶⁹ 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.⁷⁰



Pop. : 249,640
Land Area: 904 sq. mi
Persons per sq. mi.: 279

A few examples illustrate the types of cases that have been filed in Jefferson County. A class action suit against Best Buy was filed by two Jefferson County residents seeking certification for a nationwide class. The plaintiffs alleged that the extended warranties on the computers that they purchased covered far less than they thought when they purchased the warranties.⁷¹ A nationwide class action was filed against Blockbuster in Jefferson County on behalf of individuals who paid late fees for video rentals.⁷² Blockbuster’s principal place of business is located in Dallas, Texas, but the plaintiffs’ lawyers chose to file the class action in Jefferson County.⁷³ They knew that they could engage in forum shopping and they were correct. The settlement negotiated in the Blockbuster case would allow the “half-dozen” law firms involved in the case to split \$9.25 million in legal fees, while the customers would receive discount coupons.⁷⁴

STARR COUNTY AND HIDALGO COUNTIES, TX⁷⁵

An attorney who litigates in South Texas described the problem in these counties as a combination of juries who tend to be persuaded by emotion rather than the facts, plaintiff-oriented judges, and a local environment in which everybody knows everybody. Outsiders are viewed with suspicion. The tight-knit nature of the county may extend to a familiarity of judges and advocates. Another interviewee described the judges in Starr County as fair minded, but agreed with concerns about the other factors. One source stated that the juries in Hidalgo are not as generous as in Starr County, but that the judges in Hidalgo County tend to be more plaintiff friendly.



Starr
Pop.: 54,671
Land Area: 1223 sq. mi
Persons per sq. mi.: 43.8

Hidalgo
Pop.: 590,285
Land Area: 1570 sq. mi
Persons per sq. mi.: 362.8

The individuals with whom we spoke indicated that the verdicts in this area tend to be very high. In Starr County, a \$13 million verdict was recently assessed against Wal-Mart and one of its employees for malicious prosecution and intentional infliction of emotional distress in a case involving a woman who had allegedly shoplifted from Wal-Mart as part of a shoplifting gang.⁷⁶ A Wal-Mart employee, who was an undercover loss prevention associate, identified the woman in a police line-up as one of a group of people who had stolen merchandise from Wal-Mart.⁷⁷ The woman was criminally charged. Wal-Mart asserted that it did not initiate the case and only participated at the request of the police. The woman spent a month in jail, and the charges against her were eventually dropped. According to Wal-Mart the charges were dropped in return for the woman's agreement to cooperate in an investigation of the alleged shoplifting gang.⁷⁸ The woman and her family⁷⁹ then sued Wal-Mart for malicious prosecution. According to news reports, Wal-Mart claimed that a surveillance videotape which showed the woman in the store at the time of the alleged shoplifting had been turned over to police but the police denied ever receiving it.⁸⁰ A Starr County jury found that Wal-Mart's identification of the alleged shoplifter amounted to malicious prosecution, and awarded the woman's family \$13 million.

NUECES COUNTY, TX

Nueces County was also identified as a hellhole by survey respondents, although one attorney with whom we spoke described Nueces as more moderate. On July 3, 2002, a Nueces County judge certified a nationwide class of as many as 14 million owners of Chrysler, Dodge and Jeep vehicles. Defense lawyers asserted that the judges delivered the order “within an hour of receiving a brief from the plaintiffs’ lawyers, but without giving the defense team an opportunity to respond.”⁸¹ The judge countered that the timing of the receipt of the brief was just coincidental, and that the order was not based on the last briefing.⁸²



Pop.: 312,470
Land Area: 836 sq. mi
Persons per sq. mi.: 375.3

The effects of the litigious environment in Nueces County have been felt by the individuals who work there. In March of 2002, doctors hosted a “Day of Awareness” in which they marched to local courthouses to draw attention to an “impending medical meltdown.”⁸³ Kim Ross, Vice President of the Texas Medical Association noted that lawsuit abuse is particularly bad in Nueces and Hidalgo counties.⁸⁴ Sixty-three percent of doctors in Nueces County have had malpractice claims filed against them.⁸⁵ There has been no objective showing that the doctors in this county practice medicine in a more careless fashion than in other counties.

JUDICIAL HELLHOLES?

SOME SAY “YES,” SOME SAY “NO”

Alameda County, California, San Francisco County, California, and the City of Saint Louis, Missouri, were identified by respondents to ATRA’s survey as judicial hellholes. After speaking with individuals who are familiar with these areas, however, we found that there is some difference of opinion regarding whether these areas are judicial hellholes. Below we describe these areas and the differing opinions about whether they are judicial hellholes. We suggest that further investigation as to whether these areas are judicial hellholes would be worthwhile.

ALAMEDA COUNTY, CA

Some individuals with whom we spoke characterized Alameda as one of the least desirable places to litigate in California. Others, however, suggested that while they would not choose to litigate a case in Alameda, it does not quite reach the status of a hellhole. An example of judicial activism in Alameda County occurred in 2000, when an Alameda County judge ordered the recall of 1.8 million Ford vehicles in California. Basic principles of tort law leave recalls to be designated by agencies, in this case the National Highway Traffic Safety Administration (NHTSA).⁸⁶ Administrative agencies such as NHTSA are equipped to administer recalls. Courts are not. The authority to decide whether a nationally distributed product is to be recalled should be vested in one agency and not subject to conflicting rules by courts. The judge's ruling was the first time a recall had ever been ordered by a state court judge.⁸⁷ Apart from the judge's unprecedented action in ordering a recall in a product liability suit, no other court had found the product, an ignition device, defective.⁸⁸ Although the recall was ultimately halted as a result of a settlement in the case, the unprecedented action by the judge is noteworthy.



Pop.: 1,458,420
Land Area: 738 sq. mi.
Persons per sq. mi.: 1957.4

The judge who ordered the recall in that case is no longer on the bench, and at least one interviewee stated that the situation in Alameda County is improving. The interviewee would not characterize the judges there as biased against defendants. There is, however, no consensus on this one. Other respondents indicated that they would still consider Alameda County a judicial hellhole.

SAN FRANCISCO COUNTY, CA

San Francisco is an area that some have identified as a “hellhole,” while others with whom we have spoken have stated that they would not consider San Francisco a hellhole. A recent study sponsored by ATRA found that jury service is a significant issue in San Francisco. The core concept of being judged by a jury of one’s peers is given lip service at best. The study found that more than ten percent of jurors summoned failed to appear.⁸⁹ Of the jurors who did appear, many presented reasons why they could not serve on a jury. In San Francisco County, more than 13% of people who appeared for jury service were excused for medical reasons.⁹⁰ As the study points out, “since jury service is not that physically taxing, it is likely that some of these disabilities were feigned or exaggerated.”⁹¹



Pop.: 770,723
Land Area: 47 sq. mi
Persons per sq. mi.: 16,634.4

ST. LOUIS, MO

While the City of St. Louis was identified by respondents to ATRA’s survey as a judicial hellhole, one person with whom we spoke stated that she would not consider St. Louis a judicial hellhole. She stated that the judges there are not in general biased either in favor of, or against defendants, although the juries in St. Louis tend to disfavor large corporations.



Pop.: 339,211
Land Area: 62 sq. mi
Persons per sq. mi.: 5622.9

“DISHONORABLE MENTION”

Some areas, although not the most frequently identified by respondents to ATRA’s survey, deserve mention because they have been described as hellholes by a number of individuals with whom we spoke.

ALABAMA

Several counties in Alabama have been mentioned by individuals with whom we spoke as judicial hellholes. Those counties include Chocktaw, Clark, Barbour, Bullock, Macon, and Greene Counties. One interviewee stated that the basic problem in these counties is that judges may allow cases to go to the jury, even where there are sound reasons based upon the law and the facts to end the case with summary judgment or a directed verdict. The failure to grant motions for summary judgments or directed verdicts is compounded by the fact that juries in these areas have a tendency to return high verdicts. For example in May of 2002, a Bullock County jury awarded a \$122 million verdict against General Motors.⁹² The combination of judges who will allow even a weak case to the jury and juries who are willing to grant high verdicts suggests to some that this county should be designated a judicial hellhole.



While some respondents mentioned that the Alabama Supreme Court in this state is fair and balanced, they also observed that it is challenging to get cases into that court and overcome the action of the hellhole below.

HAMPTON COUNTY, SC

A disproportionately high percentage of the litigation filed against CSX railroad company in South Carolina is located in Hampton County, because venue rules in South Carolina allow cases to be filed anywhere that CSX's tracks run, regardless of where the plaintiff lives or was injured. One recent case in Hampton County was brought by a woman who lived ninety miles away against a corporation based in Michigan and Ohio.⁹³ We have heard other reports that judges may impose extraordinary sanctions against defendantss who are not in full compliance with discovery rules. In effect, a party is stripped of its defenses. While judges do have broad discretion in applying such sanctions, some view Hampton County as being outside the mainstream on this vital issue.



Pop.: 21,411
Land Area: 560 sq. mi
Persons per sq. mi.: 38.2

WEST VIRGINIA

West Virginia is an area that has been discussed by many as an adverse jurisdiction in which to litigate. Unlike the other areas identified by ATRA's survey, in which one or a few areas of a state could be identified as a hellhole, those who describe West Virginia as a hellhole tend to refer to the state in general. Two recent decisions by the West Virginia Supreme Court of Appeals may provide an indication of why West Virginia is viewed as statewide hellhole. The first case, *Bower v. Westinghouse*,⁹⁴ was a case in which the court recognized medical monitoring as a cause of action in West Virginia. Medical monitoring allows a plaintiff to receive a damage award



even though he or she is in perfect health at the time. The award is made because the plaintiff claims that he or she may become ill in the future, and seeks damages to obtain on-going medical monitoring. The tort of medical monitoring abandons a long held principle of tort law that an individual must suffer an actual injury before the law will recognize his or her claim.

One's opinion may differ as to whether medical monitoring claims should be allowed in the law, but irrespective of one's opinion on this issue, there are several aspects of the West Virginia court's decision that are unique and unfair. First the West Virginia Supreme Court of Appeals recognized medical monitoring as a cause of action despite the fact that the issue was not actually presented to the court.⁹⁵ The court held that a cause of action for medical monitoring is available, even if the plaintiff cannot show that a particular disease is likely to occur, or medical monitoring would be useful to the plaintiff.⁹⁶ The court also allowed damages for medical monitoring to be awarded to plaintiffs in lump sum amounts, a practice that almost assures that the funds will not be used in a carefully conducted medical monitoring program. In a thoughtful dissent, Justice Maynard recognized that the majority decision conflicted with 200 years of tort law, and stated that the decision could turn every West Virginian into a potential medical monitoring plaintiff.⁹⁷

Similarly, the litigation environment in West Virginia is also reflected in the West Virginia Supreme Court of Appeal's decision this year to allow a mass asbestos trial to proceed. The case involves "thousands of plaintiffs; twenty or more defendants; hundreds of different work sites located in a number of different states; dozens of different occupations and circumstances of exposure; dozens of different products with different formulations, applications, and warnings; several different diseases; numerous different claims at different stages of development; and at least nine different law firms, with differing interests, representing the various plaintiffs."⁹⁸ The defendants in the case have appealed to the United States Supreme Court, arguing the trial of such differing claims in one mass setting violates their constitutional right of due process.⁹⁹ Although the United States Supreme Court denied a request to postpone the trial, which is scheduled to begin in late September, the United States Supreme Court is expected to decide whether to hear the case this fall.¹⁰⁰

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. 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. As we have shown, careful media reporting appears to have had this effect in some instances in some parts of Mississippi.

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 in those areas. 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 jurisdiction (often 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.

"MASS LITIGATION REFORM"

Class actions and mass joinders allow plaintiffs' lawyers to bring hundreds or thousands of claimants together, and put enormous pressure on defendants to settle even non meritorious claims.¹⁰¹ ATRA supports reform of large scale litigation to bring class actions and "mass actions" into federal court when the claims have a significant interstate character—that is, where at least some members of the plaintiff class are citizens of a different state than a defendant and the amount in controversy is high. ATRA supports legislation that would apply not just to claims brought as "class actions" in state court, but to any "mass actions" which may not be called "class actions" when brought in state court.

The United States House of Representatives passed legislation in the spring of 2002 that would take an important step toward curbing forum shopping in class actions by allowing interstate class actions to be removed to federal court. The bill would allow class actions to be removed to federal court if any plaintiff is from a different state than any defendant and the combined claims of the class members exceed \$2,000,000. Allowing interstate class actions to be removed to federal court would provide a way for defendants

involved in interstate class action litigation to have their cases heard by courts that were created, at least in part, to hear claims involving claimants from more than one state. The class action reform bill (H.R. 2341), which was passed by the House of Representatives in 2002, also contains consumer protections to curb class actions that result in windfall payments to lawyers and “coupon” or nominal awards to the plaintiffs. This reform would help defendants and consumers alike, protecting them from class action settlements that benefit only the attorneys involved.

CONCLUSION

Judicial hellholes” do not need to remain hellholes. There is a great deal that can be done to restore “equal justice under law” to these jurisdictions. The media and the public can improve the conditions in judicial hellholes by drawing attention to the litigation abuses that occur in these areas. State and federal legislatures can support the reforms suggested by ATRA above. Legislatures should seek to change the rules governing litigation, especially those covering class actions and mass actions, so that courts in their states do not become magnets for litigation abuse. Most importantly, judges can improve the situation in judicial hellholes. They need not change one comma of existing law; they simply should apply it in a fair and even handed manner. *ELB*

ENDNOTES

¹ Medical Monitoring and Asbestos Litigation — A Discussion with Richard Scruggs and Victor Schwartz, 17 MEALEY'S LITIG. REP.: ASBESTOS, March 1, 2002 at 1, 6.

² See Fed. R. Civ. P. 23(a).

³ See *In re Rhone-Poulenc Rorer, Inc.*, 51 F.3d 1293, 1298 (7th Cir.) (Posner, J.), cert. denied, 516 U.S. 867 (1995).

⁴ See Noam Neusner, *The Judges of Madison County*, U.S. NEWS AND WORLD REPORT, Dec. 17, 2001, at 39.

⁵ See The National Law Journal's largest verdicts of 2001, available at www.verdictsearch.com/news/specials/0204verdicts_index.jsp (noting that the \$3 billion verdict in *Boeken v. Philip Morris, Inc.*, was the largest jury verdict in 2001).

⁶ See Robert D. Crockett and Jonathan M. Jenkins, *Taking it to the Bank*, LOS ANGELES LAWYER, Sept. 2001, at 47.

⁷ See Kenneth Reich, *\$700 Million Award May Be Reduced Courts: Judge's Remarks In Lockheed Workers' Case Against Oil Frms May Be Focus Of Review, Experts Say*, L.A. TIMES, Aug. 10, 1998, at B1. Notably, 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.

⁸ 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*, BUSINESS PRESS (ONTARIO, CA), Mar. 6, 2000, at 27.

⁹ 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.

¹⁰ See *id.*

¹¹ See Kenneth Reich, *Courthouse Sees Big Awards*, L.A. TIMES, June 7, 2001, at A34

¹² Robert D. Crockett and Jonathan M. Jenkins, *Taking it to the Bank*, LOS ANGELES LAWYER, Sept. 2001, at 47, 49.

¹³ See *id.* at 51.

¹⁴ See Daniel Klerman, *A Look at California Juries: Participation, Shortcomings, and Recommendations*. (Sept., 2002, American Tort Reform Association, Washington D.C.)

- 15 *See id.* at 10.
- 16 *See* Judge James A. Bascue, *Jury Duty Need Not Be a Trial, Court is trying to be more aware of the Human Relations Factor*, L. A. TIMES, June 29, 2002, at B25.
- 17 *See* Jean Guccione, *Jury Duty Scofflaws Get Hit In the Pocketbook: In A New Crackdown, L.A. County Residents Who Don't Show Up For Their Service Are Being Fined \$1500*, L. A. TIMES, Aug. 16, 2002, at B2.
- 18 *See* 735 Ill. Comp. Stat. Ann. 5/2-801 (2002).
- 19 *See* Adam Liptak, *Court Has Dubious Record as a Class Action Leader*, N. Y. TIMES, Aug. 15, 2002, at A14 (quoting Professor Susan Koniak of Boston University).
- 20 *See* John H. Besiner and Jessica Davidson Miller, *They're Making A Federal Case Out of it... In State Court*, 25 HARV. J. L. & PUB. POL'Y 143, 160 (2001) [hereinafter "Besiner and Miller"].
- 21 *See id.* at 169-70.
- 22 *See id.* at 164.
- 23 *See* John H. Besiner and Jessica Davidson Miller, *Class Action Magnet Courts: The Allure Intensifies*, Civil Justice Report No. 5, (Center for Legal Policy at the Manhattan Institute) July 2002, at 1-2.
- 24 *See* Brian Brueggemann, *Hall of Shame Is Announced For Class Action Lawsuits In County*, BELLEVILLE NEWS-DEMOCRAT, Sept. 6, 2002, at A40.
- 25 *See id.*
- 26 *See* Michael Higgins, *Judge Halts \$6 Million Settlement, Plaintiffs Object to Lower Payouts, High Lawyer Fees*, CHICAGO TRIB., Aug. 16, 2002, at L1.
- 27 *See id.*
- 28 *See id.*
- 29 *See id.*
- 30 *See* Defendants' Memorandum in Support of Motion to Issue New Class Notice and Amend the Class Definition at 6, *Scott v. American Tobacco Co., Inc.*, No. 96-8461 (Civ. Dist. Ct. Parish of Orleans, La. Aug. 9, 2002).
- 31 *See id.*
- 32 *See id.*
- 33 *See* *Scott v. American Tobacco Co., Inc.*, 795 So. 2d 1176, 1180 (La. 2001).
- 34 *Id.* at 1182.
- 35 *Id.* at 1186.
- 36 *See id.*
- 37 *Scott v. American Tobacco Co., Inc.*, 814 So. 2d 544 (La. 2002).

³⁸ See The National Law Journal's largest verdicts of 2001, *available at* www.verdictsearch.com/news/specials/0204verdicts_index.jsp (citing the \$1 billion verdict in Grefer v. Alpha Tech. Svcs. Inc., as the second largest verdict of 2001).

³⁹ See Sandra Barbier, *Family Awarded \$1 Billion in Lawsuit: Exxon Mobil Hit for Radioactive Land*, TIMES-PICAYUNE, May 23, 2001, at 1.

⁴⁰ See *id.*

⁴¹ See Sandra Barbier, *Residents Sue Firms Over Pipe Radiation; Waste Triggered Host of Illnesses, They Say*, TIMES-PICAYUNE, Oct. 9, 2001, at 1.

⁴² See *\$2250 Awarded to Three In Blast Both Sides Claiming Victor in Gentilly Case*, New Orleans TIMES-PICAYUNE, July 3, 1999.

⁴³ See *\$2250 Awarded to Three In Blast Both Sides Claiming Victor in Gentilly Case*, New Orleans TIMES-PICAYUNE, July 3, 1999.

⁴⁴ See Pamela Coyle, *Implant Mistrial is Reversed, Judge Changes Her Mind, Provokes Outburst of Tears*, TIMES-PICAYUNE, July 18, 1997, at A1.

⁴⁵ See Pamela Coyle, *Court Rules that Implant Case Will Go On; Choice Words Exchanged*, TIMES-PICAYUNE, July 29, 1997, at B1.

⁴⁶ See Pamela Coyle, *Implant Mistrial is Reversed, Judge Changes Her Mind, Provokes Outburst of Tears*, TIMES-PICAYUNE, July 18, 1997, at A1.

⁴⁷ See *id.*

⁴⁸ See Pamela Coyle, *Implant Case Is waiting Game; Safety Debate Goes On*, TIMES-PICAYUNE, Apr. 12, 1998, at B1.

⁴⁹ Robert Pear, *Mississippi Gaining as Lawsuit Mecca*, N.Y. TIMES, Aug. 20, 2001 at A1.

⁵⁰ *Id.*

⁵¹ See *id.*

⁵² See *NBC Nightly News* (NBC Television Broadcast, Sept. 1, 2002).

⁵³ See *The Fairness in Asbestos Compensation Act of 1999: Legislative Hearing on H.R. 1283 Before the House Comm. on the Judiciary*, 106th Cong. at 13 (July 1, 1999) (statement of Professor William N. Eskridge, Yale Law School) [hereinafter "Eskridge Testimony"]. See also, Paul F. Rothstein, *What Courts Can Do in the Face of the Never-Ending Asbestos Crisis*, 71 MISS. L.J. 1, 15-16 (2001).

⁵⁴ See *Mississippi Jury Awards \$48.5 Million in 12 Cases*, 20 NO. 12 ANDREWS ASBESTOS LITIG. REP. 1 (July 17, 1998); See also Defendant's Motion For Disqualification and Recusal of Circuit Judge at 2-3, *Cosey v. Bullard* No. 95-0069 (Miss. Cir. Ct. Jefferson County Sept. 16, 1998).

⁵⁵ See *Amchem Prods, Inc., v. Windsor*, 521 U.S. 591, 622-625 (1997).

⁵⁶ See Eskridge Testimony at 13.

⁵⁷ See *id.*

58 *Id* at 13-14.

59 Jerry Mitchell, *Jefferson County Ground Zero For Cases*, CLARION-LEDGER, June 17, 2001, at A1.

60 *See id.*

61 *See* Stephen Labanton, *Settlement Reached in Huge Asbestos Case; But Unequal Awards to Victims Inspire Talk of Legislation To Fix The System*. N.Y.TIMES, Jan. 23, 2000 at A22.

62 *See id.*

63 *See* Complaint at 11-12, Huber v. Taylor, No. 02-0304 (W.D. Pa. Feb 6, 2002).

64 *See e.g.*, Jerry Mitchell, *Out of State Cases, In-State headaches*, CLARION-LEDGER, June 17, 2001, at A1; Jerry Mitchell, *Jefferson County Ground Zero For Cases*, CLARION-LEDGER, June 17, 2001, at A1.

65 Tim Lemke, *Best Place to Sue?* WASH. TIMES, June 30, 2002, at A1.

66 *See* Melody Petersen, *Jury Levies \$100 Million Award Against Heartburn Drug Maker*, N.Y. TIMES, Sept. 30, 2001, at A1.

67 The authors of this report wish to make clear that they have no disrespect for our third President, Mr. Jefferson. Quite the contrary, we believe that Mr. Jefferson, author of the Declaration of Independence would be dismayed that these counties bearing his name have become judicial hellholes.

68 *See* Stuart Taylor, Jr., *How I Hit the Class Action Jackpot*, NAT'L. L. J. Nov. 13, 1999, at 3292, 3292 (quoting Professor Lester Brickman of Cardozo Law School).

69 *See* Beisner and Miller, *supra*, at 185.

70 *See* Beisner and Miller, *supra*, at 164.

71 *See* Beisner and Miller, *supra*, at 189.

72 *See id.* at 187.

73 *See id.*

74 *See Blockbuster Customers To be Reimbursed For Late Fees*, ASSOC. PRESS NEWSWIRE, Jan. 11, 2002.

75 Some respondents also suggested that Cameron County and Duval County should also be mentioned as judicial hellholes.

76 *See* Bob Van Voris, *Wal-Mart Hit With Malicious Prosecution Verdict*, TEXAS LAWYER, Oct. 29, 2001, at 17.

77 *See id.*

78 *See id.*

79 The woman's family pursued the case after she died in 2000.

80 *See* Bob Van Voris, *Wal-Mart Hit With Malicious Prosecution Verdict*, TEXAS LAWYER, Oct. 29, 2001, at 17.

- ⁸¹ See Miriam Rozen, *Class-Action Status Granted in Suit Against Daimler Chrysler*, TEXAS LAWYER, July 15, 2002, at 5.
- ⁸² See *id.*
- ⁸³ See James Pinkerton, *Border-area Physicians Protest Malpractice Costs; Frivolous Suits Causing Crisis, Doctors Contend*, HOUSTON CHRON., Mar. 24, 2002, at A37.
- ⁸⁴ See *id.*
- ⁸⁵ See *id.*
- ⁸⁶ See RESTATEMENT (THIRD) OF TORTS: PRODUCTS LIABILITY §11 (1998).
- ⁸⁷ See Myron Levin, *Ford Motor Settles Ignition Lawsuits*, L.A. TIMES, Oct. 26, 2001 at C1.
- ⁸⁸ See David Kravets, *Class Action Suits Allege Ford Know About Faulty Parts*, CONTRA COSTA TIMES, Aug. 20, 2001, at A7.
- ⁸⁹ See Daniel Klerman, *A Look at California Juries: Participation, Shortcomings, and Recommendations*. (Sept., 2002, American Tort Reform Association, Washington D.C.)
- ⁹⁰ See *id.* at 13.
- ⁹¹ *Id.*
- ⁹² See Margaret Cronin Fisk, *GM hit with \$122 M Verdict*, NATN'L L. J., May 13, 2002, at A4.
- ⁹³ See Michael Freedman, *Home Court Advantage; How a small-town South Carolina Lawyer Instill Fear in Corporations Everywhere*, FORBES, June 10, 2002 at 74.
- ⁹⁴ 522 S.E. 2d 424 (W. Va. 1999).
- ⁹⁵ See *id.* at 428.
- ⁹⁶ See Victor E. Schwartz et al., *Medical Monitoring - Should Tort Law Say Yes?*, 34 Wake Forest L. Rev. 1057, 1070 (1999).
- ⁹⁷ See 522 S.E. 2d at 435.
- ⁹⁸ *State ex rel. Mobil Corp. v. Gaughan*, 565 S.E.2d 793, 794 (W. Va. 2002) (Maynard, J., concurring).
- ⁹⁹ See *Asbestos Suit Heads to Court, Despite Appeal by Companies*, N.Y. TIMES, Sept. 23, 2002, at A22.
- ¹⁰⁰ See *id.*
- ¹⁰¹ See *In re Rhone-Poulenc Rorer, Inc.*, 51 F.3d 1293, 1298 (7th Cir.) (Posner, J.), cert. denied, 516 U.S. 867 (1995).