

JUDICIAL HELLHOLES[®]

2010/2011

“What I call the ‘magic jurisdiction,’ [is] where the judiciary is elected with verdict money. The trial lawyers have established relationships with the judges ... and it’s almost impossible to get a fair trial if you’re a defendant in some of these places. ... 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.”

—Richard “Dickie” Scruggs, legendary Mississippi trial lawyer who built an empire of influence suing tobacco companies, HMOs and asbestos-related companies, but who has since been disbarred and sentenced to federal prison after pleading guilty to conspiracy in an attempt to bribe a judge.

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PREFACE

Since its inception in 2002, the American Tort Reform Foundation's Judicial Hellholes® program has documented in annually published reports various abuses within the civil justice system, focusing primarily on jurisdictions where courts have been radically out of balance.

Traditionally, Judicial Hellholes have been considered places where judges systematically apply laws and court procedures in an unfair and unbalanced manner, generally against defendants in civil lawsuits. Now, as both technology and the liability-expanding strategies of the nation's formidable litigation industry evolve, the Judicial Hellholes program must evolve, too. Though it remains focused on judges and the courts, Judicial Hellholes reporting will occasionally expand its focus to the legislative and executive branches' growing influence on the courts, while moving to a year-round online format that will offer real-time updates and analyses of civil justice developments as they occur.

Of course, most judges do a diligent and fair job for modest pay. Even in Judicial Hellholes jurisdictions, including some that have received national attention, the clear majority of judges are fair, and the negative publicity can be blamed on a few bad apples. Because judges generally set the rules in personal injury lawsuits, and those rulings weigh so heavily on the outcomes of individual cases, it may only take one or two judges who stray from the law to sully the reputation of an entire jurisdiction.

Though entire states may occasionally be cited as Hellholes, it is usually only specific counties or courts in a given state that warrant this citation. And, importantly, jurisdictions discussed in this report and online are not the only Judicial Hellholes in the United States; they are simply among the worst.

To the extent possible, ATRF is specific in explaining how and why particular courts, laws or regulations can produce unfair civil justice outcomes in the jurisdictions cited. These cities, counties or judicial districts are frequently identified by members of the American Tort Reform Association (ATRA) and other individuals familiar with the litigation. But because sources for Judicial Hellholes information may fear lawsuits or other retaliation in these jurisdictions, they sometimes prefer to have their names and cases kept out of the program's reporting.

ATRF annually surveys ATRA members and others with firsthand experience in Judicial Hellholes jurisdictions as part of its research process. Because the program has become widely known, ATRF also continually receives and gathers information provided by a variety of additional sources. After interviewing such sources, Judicial Hellholes reporters work to confirm the information with independent research of publicly available court documents, judicial branch statistics, press accounts, and various studies. As the Judicial Hellholes program goes online, it also invites visitors to provide additional firsthand leads and inside information, anonymously if they prefer, at www.judicialhellholes.org

(The Judicial Hellholes program considers only civil litigation; it does not reflect in any way on the criminal justice system.)

ABOUT THE AMERICAN TORT REFORM FOUNDATION

The American Tort Reform Foundation (ATRF) is a District of Columbia nonprofit corporation, founded in 1997. The primary purpose of the Foundation is to educate the general public about: how the American civil justice system operates; the role of tort law in the civil justice system; and the impact of tort law on the private, public and business sectors of society.

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JUDICIAL HELLHOLES

JUDICIAL HELLHOLES® 2010/2011

- 1 Philadelphia, Pennsylvania
- 2 California, Particularly Los Angeles and Humboldt Counties
- 3 West Virginia
- 4 South Florida
- 5 Cook County, Illinois
- 6 Clark County, Nevada

PHILADELPHIA, PENNSYLVANIA

Fairly or not, “Philadelphia lawyers” have been subjected to plenty of criticism through the decades. Now some Philadelphia judges seem determined to get in on the act.

Various defendants express growing concern with Pennsylvania’s Complex Litigation Center (CLC), located in the Philadelphia Court of Common Pleas. The CLC handles mass tort litigation filed in state courts, such as thousands of pharmaceutical and asbestos cases. Various attorneys have shared with the American Tort Reform Association their criticisms of the CLC’s administration as being decidedly tilted against many lawsuit defendants. Scheduling unfairness, encouragement of “litigation tourism,” consolidation of dissimilar claims, and failure to use court reporters are among the disturbing examples.

The trouble seems to have arisen after Judge Sandra Mazer Moss, the founder and first Supervising Judge of the CLC, [replaced](#) Judge Allan Tereshko as coordinating judge of the mass tort program in 2009. Judge Tereshko had been the CLC’s coordinating judge since 2001. Judge Moss has [declared](#) that “it is a new day” in the Philadelphia CLC, while a “[public cam-](#)

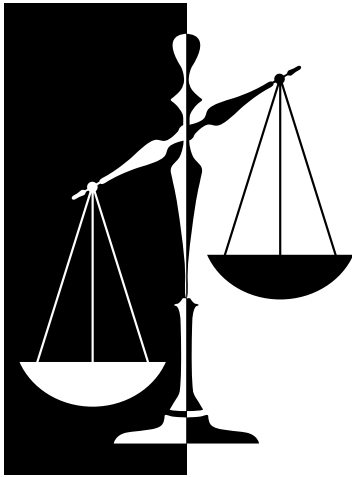
[paign](#) to lay out the welcome mat for increased mass torts filings” has been initiated by Common Pleas President Judge Pamela Pryor Dembe.

It appears that Judge Dembe is attempting to keep the court busy after a dramatic drop in the use of the mass tort program when more than 12,000 Fen-Phen cases concluded in 2008. In a March 2009 [interview](#) with the *Legal Intelligencer*, Judge Dembe reportedly said that the court’s budgetary woes could be eased by making the CLC even more attractive to attorneys, “so we’re taking away business from other courts.”

In addition to generating substantial filing fees for the court, out-of-state lawyers are an economic stimulus for Philadelphia, according to Judge Dembe. These litigation tourists eat at local restaurants, stay in city hotels, and hire local counsel. So it should come as no surprise that Pennsylvania’s big time plaintiffs’ lawyers, such as [Tom Kline](#), are ecstatic about Judge Dembe’s efforts. Out-of-state lawyers are also taking notice, and at least one [believes](#) Judge Moss’s plaintiff-friendly reputation will make it “more likely” that out-of-state lawyers will file their cases in her court. According to ATRA members and others surveyed, this strategy is working.

The mass torts program places expediency over fairness. In order to resolve cases in a predetermined amount of time, multiple cases are set for





trial in a given month. These cases may involve several plaintiffs, represented by multiple law firms, all arrayed against the same defendant company. The defense attorneys' challenge to prepare for multiple and overlapping trials, most of which typically include several weeks of testimony, places extraordinary pressure on them and their clients to settle cases, regardless of the respective merits.

In addition, the court has more recently engaged in a practice of combining the cases of multiple plaintiffs for a single trial. In such cases, the plaintiffs may be from different states and have different types of injuries, while the admissible evidence, applicable state law, and available defenses for each may vary. Many cases with no connection to Philadelphia proceed to trial. The system is overwhelmed and decisions on whether to dismiss weak cases are often not made until the eve of trial.

Philadelphia judges also use a procedure known as "reverse bifurcation" in asbestos trials wherein juries decide how much money plaintiffs should receive *before* considering if defendants are responsible for the alleged injuries. After hearing hours of pain-and-suffering and medical causation testimony based on matters defendants do not dispute, jurors understandably become sympathetic to plaintiffs. This places defendants in a difficult situation, as the jury becomes focused on compensating plaintiffs' injuries even before the defendants have an opportunity to show they were not responsible.

As if that was not astoundingly unfair enough, emboldened plaintiffs' lawyers have now asked the CLC to reverse its longstanding practice of deferring punitive damage claims in asbestos lawsuits. This sound practice, which is followed in federal courts and several other jurisdictions, prioritizes compensation for those who are injured above jackpot payouts for a few, recognizing that punitive damages serve no purpose when the conduct occurred decades ago.

There are other reasons that defense lawyers fear cases in Pennsylvania.

Verdicts over \$1 million are up. The [Pennsylvania courts report](#) that the number of jury verdicts and judicial rulings of more than \$1 million tripled in the Philadelphia Court of Common Pleas in the first half of 2010 compared to the same period in 2009. Among these was the \$2.23 million award that a Northeast Philadelphia bar, the Empty Glass Café, was ordered to pay the family of a man shot while trying to break up a fight outside the bar, according to a local CBS News report. The small business owner declared bankruptcy, ceased operations, and instructed his lawyer not to defend against the suit, which claimed the bar should have installed metal detectors or had security to prevent patrons from bringing guns inside.

On lengthy trials, it is the experience of some ATRA members that Philadelphia judges excuse any summoned juror who claims hardship due to work responsibilities, leaving a plainly unrepresentative jury pool.

Beyond Philadelphia, the Pennsylvania Supreme Court has permitted the state government to hire private-sector contingency fee lawyers with its August 2010 [ruling](#) that a targeted business could not challenge the controversial practice. Such hiring practices encourage enforcement of state laws based on the profit interests of politically connected lawyers, not the public interest.

Another [decision](#) that month by an appellate panel of the Pennsylvania Superior Court authorized a new way to sue drug manufacturers. Nearly every state recognizes that while drug manufacturers may be liable for problems in manufacturing their products or not adequately warning of potential risks, they are not strictly liable for the design of the drug. That's because the design of any drug must first be approved by the federal government, and it cannot be altered without fundamentally changing the product itself. Nevertheless, the Philadelphia court [permitted](#) an

open-ended “negligent design” claim to proceed, effectively asking inept jurors the reasonableness of the manufacturer’s conduct in the complex design of the drug.

This is not the first instance of Pennsylvania tort laws falling out of the mainstream. It also is one of only a handful of states to retain a “pure” joint and several liability law, which provides that any defendant that is found to be even slightly at fault for a plaintiff’s injury — even 1% at fault — may be required to pay the entire amount of the plaintiff’s damages. In many states, a defendant is only responsible for its proportion of the fault or is held not responsible. In others, a defendant may be responsible for paying the full amount, but only if it bares at least half the blame. The Pennsylvania courts [struck down](#) as unconstitutional an attempt at reform in 2006.

Moreover, while many other states have placed outer limits on the size of highly subjective pain and suffering awards, Pennsylvania has not. And though federal courts and many state courts charge their judges with serving as gatekeepers to ensure the reliability of expert testimony, Pennsylvania [retains](#) an older, less rigorous standard.

But in fairness to Philadelphia courts, this report must cite one area in which there has been improvement: in medical malpractice cases that had contributed in the past to the city’s growing Judicial Hellholes reputation. The number of malpractice filings in Philadelphia [fell](#) from a high of 1,365 in 2002, the year before the General Assembly enacted reforms, to just 491 in 2009. Those reforms eliminated the ability of plaintiffs’ lawyers to shop for favorable courts by requiring cases to be heard where the alleged medical errors occurred, and by requiring a certificate of merit from a third-party physician attesting to the validity of medical liability claims. Both measures help weed out weak claims.

On the other hand, according to a recent [analysis](#) of data collected from 1,600 hospitals between 1997 and 2007, Pennsylvania has the highest claim frequency rate in the country, nearly twice the average of most states. The state’s medical community continues to push for a limit on subjective pain and suffering awards as a means to stop insurance rates, which remain twice their 2002 level, from further burdening Pennsylvania doctors.

CALIFORNIA, PARTICULARLY LOS ANGELES AND HUMBOLDT COUNTIES

California has a history of wacky consumer class actions that further encourages plaintiffs’ lawyers to seize on minor missteps as a means to lots of cash. And though state voters passed an initiative attempting to rein in this kind of litigation in 2004, it remains big business for certain California plaintiffs’ lawyers. Two such class actions in 2010 made headlines, including one in Orange County that claimed certain olive oil labeled as “extra virgin” is [not extra virgin enough](#), and another that challenges Apple’s claim that “[reading on the iPad is just like reading a book](#).”

Thankfully, at least some judges have resisted these shameless lawsuits, often filed primarily to benefit the lawyers who concoct them. For example, a California appellate court, for the second time, [rejected](#) a class action challenging a claim that using Listerine is as “effective as flossing.” It did so because most of the 34 different Listerine mouthwash labels never included any such statement, commercials making such claims ran only sporadically, and therefore most people who purchased Listerine during the six-month period at issue did so not because of any allegedly deceptive conduct, but more likely because they were brand-loyal customers or for other reasons. A federal judge in California also [threw out](#) a class action challenging I Can’t Believe It’s Not Butter’s claim that it is “made from a blend of nutritious oils,” finding the “plaintiff’s complaint [implausible on its face](#).”

California, with a not coincidentally high unemployment rate, also remains the site of predatory lawsuits against small business owners premised on technical violations of disability access requirements. For instance, Scott Johnson filed [more than 1,000 Americans with Disabilities \(ADA\) access lawsuits](#) since 2003 in the Eastern District of California. His average settlement is \$4,000 to \$6,000, primarily from restaurant owners. Such results stem from



a [California state law](#) that effectively provides the right to seek damages for technical violations of ADA architectural guidelines, a right not afforded by the federal law itself. Johnson isn't the only one filing such suits. A relatively small number of California attorneys have made a livelihood of such litigation, making [claims](#) that range from the lack of a restroom grab bar to a restaurant chair temporarily blocking an aisle. Such shakedown lawsuits take a [harsh toll](#) on small businesses, even when business owners do all they can to quickly address accessibility issues.

In a real [blow to the California civil justice system](#), the state's highest court rendered meaningless an earlier ruling that prohibited state and local officials from hiring private lawyers to represent the government on a contingency fee basis. In its [prior ruling](#), which governed since 1985, the court properly understood that attorneys who work on behalf of the government to enforce the law have an obligation to seek justice, not to maximize their profit. The new ruling clears the way for more pay-to-play arrangements by which plaintiffs' law firms with political connections pitch speculative, yet potentially lucrative, lawsuits to the government in exchange for a percentage of the state's recovery.

In addition to this California Supreme Court ruling, [two state appellate courts](#) issued particularly unsound decisions. Rather than requiring the defendant to compensate the plaintiff the amount actually paid to the doctor for the plaintiffs' medical care, the courts awarded the plaintiffs the sticker-price value of the care. Some refer to these overpayments as "phantom damages" because neither the insurer nor the patient ever paid this extra amount. It's like refunding a person who buys a defective car the full Manufacturer's Suggested Retail Price even though various promotional discounts and cash back incentives reduced his final price considerably. Phantom damages, which can amount to over a hundred thousand dollars in a single case, drastically drive up the cost of health care. Under the "collateral source rule," juries are not allowed to consider how much the plaintiff paid for treatment or the reasonable value of the medical services. The California Supreme Court is [currently considering](#) the issue.

LOS ANGELES

In a reminder about why Los Angeles courts had earlier earned a collective reputation as "the bank," a jury in late April 2010 awarded \$200 million in punitive damages, on top of \$8.8 million in compensation, in an asbestos case. Such punishment makes little sense when one considers the city's power and water authority, which was held liable for one-third of the award, stopped selling asbestos-containing products 18 years ago, and all of the company officials there at the time are long gone. And punitive damages are rare in such cases because, four and five decades ago, people were not aware of the danger of asbestos. Moreover, the size of the punitive damages award in this case – 23 times the size of the plaintiff's loss – is out of line with the U.S. Supreme Court's guidelines for determining excessiveness. If upheld, this decision would become the largest mesothelioma lawsuit award in California history. Some legal observers anticipate the award will be overturned and that the plaintiffs will be required to either accept a smaller award or have a new trial.

In an encouraging development, Los Angeles County Superior Court Judge Victoria Chaney threw out a \$2.3 million verdict against Dole Food, finding that plaintiffs' attorneys had orchestrated a "[massive fraud](#)" on the court by preventing the defendants from interviewing witnesses in a case wherein Nicaraguan banana harvesters claimed their exposure to a pesticide left them sterile. [Evidence showed](#) that lawyers coached their clients, fabricated medical and work records, and intimidated Dole's investigators.

HUMBOLDT COUNTY

Humboldt County, the self-described "Pot Capital of the World," may also become known for very *high* verdicts.

California law and court rulings too often put defendant companies at risk of bankruptcy, even when no one has suffered a demonstrable injury. The latest example from the small Humboldt County community of Eureka comes in the



form of a jaw-dropping \$677 million class-action verdict against Skilled Healthcare Group, Inc., which operates 22 facilities throughout the state. And that extraordinary amount does not include punitive damages, which were to be determined in a second phase of the proceedings. The plaintiffs did not claim any injury, but merely alleged that staffing at the facilities occasionally fell below 3.2 nursing hours per patient per day, the level required by the California health code.

The local district attorney, in the midst of an election year, teamed up with the plaintiffs' lawyers to also allege deceptive practices based on the staffing levels at the facilities. During the six-month trial, defendant's counsel filed a [motion to remove](#) trial judge Bruce Watson, detailing numerous instances of uneven treatment in the handling of the trial. They also requested that the court declare a [mistrial](#) when it was revealed that one of the jurors concealed during pre-trial questioning that she knew one of the plaintiff class members and had a strong bias against the defendant company, which was obvious to her fellow jurors. The trial court judge [denied](#) the defendant's requests. Burdened by an unjust California law that requires a defendant to post an appeal bond for [150% of the judgment](#), Skilled Healthcare – with just \$2 million in assets – settled for an undisclosed sum. [Forbes.com](#) called the case “a tort reform advocate's dream – meaning a defendant's worst nightmare.”

WEST VIRGINIA

To their credit, some West Virginia judges and other policymakers appear willing to reform their civil courts with an eye on ending their perennial citation in the Judicial Hellholes report. Sadly, resistance from others has slowed the pace of needed reforms.

The Mountain State is all but unique in that its civil defendants do not have a guaranteed right to appeal adverse rulings. As the Supreme Court of Appeals, the state's highest and only appeals court, has [acknowledged](#), it is already the “busiest appellate court of its type in the country. West Virginia's caseload exceeded by nearly 1,500 cases that of the next-busiest state, Nevada, and was more than the states of Delaware, Maine, North Dakota, Rhode Island, and Wyoming combined.” Yet, the state lacks an intermediate appellate court and the high court can choose to deny parties' petitions for review. For instance, in 2009, the high court [refused](#) to hear 2,756 of the 3,589 cases in which such petitions were filed, and it issued fully signed opinions in just 67 cases. In civil cases, the court granted review in less than 1 in 4 cases.

The 2009/2010 Judicial Hellholes report cited then-Governor Joe Manchin's pledge to establish an intermediate appellate court among its Points of Light. He issued the pledge after an independent commission [documented](#) the need for such action. Supreme Court of Appeals Chief Justice Robin Jean Davis, however, challenged the need for an intermediate appellate court. She argued through an [open letter](#) that litigants in West Virginia already have a right of appeal – they can petition the court to review the case. When the state's business community and others took issue with her remarks, noting that asking the court to hear a case and having a court actually decide a case on the merits are hardly the same thing, the court [proposed changes to its appellate rules](#).

The new rules, which went into [effect December 1, 2010](#), require the Court to issue a decision on the merits in every case. But the rules also provide the Court with a shorthand option of issuing a “memorandum decision” in doing so. A memorandum decision only requires a concise statement of the reason for affirming or reversing the trial court's ruling; it is different from a traditional judicial opinion that fully analyzes the claims in the case and can be cited as precedent. Without the force of precedent, memorandum decisions could result in significant confusion among lower courts.



Nevertheless, the overall effect of these newly adopted changes is that the Supreme Court of Appeals has, at least in theory, made it less likely that it will use the state's appellate procedure in an arbitrary or prejudicial manner. It remains to be seen, however, whether the Court will employ these decision options to provide meaningful appellate review in all cases. If it does so, then the changes will build confidence in the West Virginia courts. Still, the rule changes, at best, provide only a short term solution to address current abuses; the long-term solution remains the establishment of an intermediate appellate court system that guarantees litigants the full appellate rights provided in other states.

With even [some former advocates](#) backing away from restructuring West Virginia's court system, the potential for the state to significantly improve its litigation climate has diminished. A bill to create an intermediate appellate court and provide a right to appeal was [defeated](#) in the state Senate's finance committee, whose members are holding off until the court implements its new appellate rules.

One case the high court will consider this year is a challenge to the state's limit on noneconomic damages in medical malpractice lawsuits. The state enacted the limit in 2003, among other reforms, as the state's OB/GYNs had the [second highest](#) insurance premiums in the country and such care was [not available](#) in some rural areas. (There also was a [shortage](#) of neurosurgeons, orthopedic surgeons, and trauma care.) The Court twice [upheld](#) a previous version of the law. During his 2008 election campaign, West Virginia [Justice Menis Ketchum said](#) of the law, "I will not vote to overturn it. I will not vote to change it. I will not vote to modify it." This pledge led the plaintiffs in the current case to urge Justice Ketchum to recuse himself.

Justice Ketchum [initially refused to recuse himself](#) on the basis that "even it were possible to select judges who did not have preconceived views on legal issues, it would be hardly desirable to do so," noting that [the U.S. Supreme Court has found](#) that "[p]roof that a Justice's mind at the time he joined the Court was a complete tabula rasa in the area of constitutional adjudication would be evidence of lack of qualification, not lack of bias." But he ultimately backed down, issuing a [memorandum](#) expressing frustration that the plaintiffs had exhibited a "win-at-all-costs" mentality and sought to "create a 'firestorm' by assaulting the integrity and impartiality of West Virginia's Supreme Court."

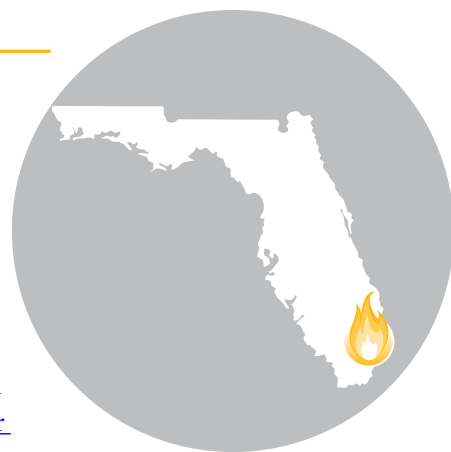
A divided West Virginia Supreme Court was also criticized this year for its ruling in a racially charged [insurance case](#) that will likely lead to more lawsuits and liability.

Positive news in West Virginia can be found in Ohio County Circuit Court Judge Arthur Recht's [dismissal](#) of most of 1,400 asbestos claims filed by a Pittsburgh law firm, after the firm opted not to attempt to meet a court order requiring them to submit additional evidence of their clients' alleged exposure to asbestos and medical history. The defendant, CSX Transportation, has [filed a fraud claim](#) in federal court alleging that the law firm worked with a radiologist, Dr. Ray Harron, whose diagnoses have come under [increasing scrutiny](#), to fabricate the claims.

SOUTH FLORIDA

This perennial Judicial Hellhole was ranked the very worst in last year's report. But, as noted in this year's Points of Light section, litigation clouds over the Sunshine State may begin to clear a bit in light of reform action taken in 2010 by the Florida Legislature. Exceptional progress was made in addressing issues raised in previous reports, such as the state's notoriously lax standard for filing slip-and-fall lawsuits and a state supreme court ruling that prevented parents from signing waivers to allow their children's participation in various sports and recreational activities. And a Miami appellate court [interpreted](#) the state's \$250,000 limit on pain and suffering in medical malpractice arbitration cases the way it was intended — [to apply per claimant, not per defendant](#).

But tort reform advocates who seek to improve South Florida's civil justice system can still face serious repercussions. In September 2009, the executive director of the Florida Justice Reform Institute (FJRI), William Large,



had a [column](#) published in the *Sun Sentinel* criticizing a ruling by Broward County Judge Charles M. Greene that stripped a company of [all its defenses](#), entered a default judgment, and held a damages-only trial in response to a discovery dispute. This rare but pernicious practice, known as the “civil death penalty,” is discussed in detail in the 2009/10 Judicial Hellholes report (see page 34). It is intended to apply only to the most egregious conduct that no other sanction can correct, such as when a party maliciously destroys key evidence.

Nonetheless, Judge Greene imposed the sanctions on DuPont in [litigation](#) brought in behalf of Ecuadorian shrimp farmers, claiming that a fungicide contaminated their shrimp crops after being applied to nearby banana plantations. Mr. Large’s column argued simply that there should be “strict and fair guidelines for when the ‘civil death penalty’ can be used.”

Greene

But that did not stop the plaintiffs’ lawyers from serving Mr. Large with a subpoena, even though he was not a party to the case and was exercising his First Amendment free speech right in offering analysis of the court’s decisions. They also threatened to file a complaint with the Florida Bar and sought sanctions against DuPont, [saying](#) that somehow Mr. Large’s op-ed was tampering with a jury, even though there was no jury at the time, and the civil death penalty had already deprived DuPont of a jury trial on liability. The plaintiffs’ lawyers also engaged FJRI in an expensive and intrusive legal battle, seeking its membership lists and funding sources – ultimately costing Mr. Large’s nonprofit organization \$71,000 in legal bills.

During this time, an appellate court [found](#) that the plaintiffs presented [no evidence](#) to justify a [gag order](#) Judge Greene issued based on the plaintiff’s lawyers complaints about Mr. Large’s op-ed. As a practical matter, this meant that there was no basis for sanctions either. Yet, those who might advocate for greater fairness and transparency in South Florida courts were sent a clear and threatening message.

With that message still reverberating, many unfair legal practices continue to draw attention to the Sunshine State. As the epicenter of lawsuits against cigarette makers, the state now hosts about 8,000 pending cases, many of which are in South Florida courts. The *Wall Street Journal* has [reported](#) that, during the past two years, Philip Morris lost nine verdicts in Florida, totaling \$86 million in damages. It lost just one case, for \$13.8 million, throughout the rest of the country during the same period. Similarly, RJ Reynolds has lost 15 verdicts in Florida since 2009, with \$166 million in total damages, while losing just two cases outside of Florida for a combined \$9.5 million. Frustrated defense lawyers observe that they are “trying cases with our arms tied behind our back.” This is because a prior Florida Supreme Court [ruling](#) determined that tobacco defendants must begin lawsuits with two strikes against them – jurors are told that cigarettes are defective and that defendants misled smokers. Plaintiffs must only demonstrate that cigarettes caused their respective illnesses, and argue how large their awards should be (generally, very large).

This year, an appellate court [upheld](#) a \$24 million Miami-Dade verdict for one smoker. In another recent case, a Broward County jury awarded a single plaintiff [\\$26.6 million](#). “We are just getting started,” said the plaintiff’s lawyer. More recently, Florida defense counsel did manage some success, obtaining defense verdicts in [eight subsequent cases](#), some of which were even tried in South Florida courts. But that success may be short lived. Just before press time, another Florida jury awarded [\\$80 million](#) to the family of a deceased smoker whose smoking history included decades’ of surgeon general warnings on every pack he smoked.

Miami Dade also continues a tradition of large awards in other areas. This year, the court awarded [\\$14 million](#) in an asbestos suit, following a \$24 million verdict in 2008 – the largest compensatory jury verdict involving a single defendant in a Florida asbestos case.

Fallout from a number of South Florida lawyer scandals also continued this year with Fort Lauderdale-based Scott Rothstein [sentenced](#) to 50 years in prison for operating a \$1.2 billion Ponzi scheme that used forged legal settlements. Rothstein sold

Rothstein

investors stakes in collecting these settlements, and then used the money to buy mansions, sports cars, and massive yachts. A Coral Gables couple, which was charged last year with stealing Miami-Dade-area hospital and clinic records and selling them to personal injury attorneys, is [now charged](#) with orchestrating a similar arrangement with an ambulance company employee. Why chase the ambulance, when you can just pay off the driver? And finally, Broward Circuit Judge Jack Tuter this year [found](#) that Henry Adorno violated ethics rules when he orchestrated a \$7 million class-action settlement that [benefited only seven people](#), rather than all the Miami taxpayers he claimed to represent. In the case, which challenged a city fire fee, seven plaintiffs split \$5 million and the lawyers took \$2 million instead of providing a refund to thousands of property owners.

COOK COUNTY, ILLINOIS

A Hellhole since 2005, Cook County continues to be a magnet for plaintiffs not only from Illinois, but from all across the country, as well. [Statistics](#) show that the county has consistently hosted nearly two thirds of the state's litigation, while serving as home to just over 40% of its population – a proportion that has gradually grown more lopsided over the past 15 years. [Other recent surveys](#) ranking states' overall litigation climates have singled out Cook County as the worst litigation environment in the country. This year, there was very little to change that long-held perception.



Early in 2010, the Illinois Supreme Court set the tone by affirming a Cook County judge's ruling that [struck down](#) a 2005 law limiting subjective pain and suffering damages in medical liability cases. This ruling invites, [once again](#), an increase in medical claims, along with the higher insurance premiums for doctors that such cases precipitate. In fact, a [study](#) conducted in the wake of the high court's decision to strike down limits on noneconomic damages calculated the impact to be an immediate 18% jump in physician medical malpractice insurance premiums. Over time, and depending on the volume of claims and award amounts, this number may grow much higher.

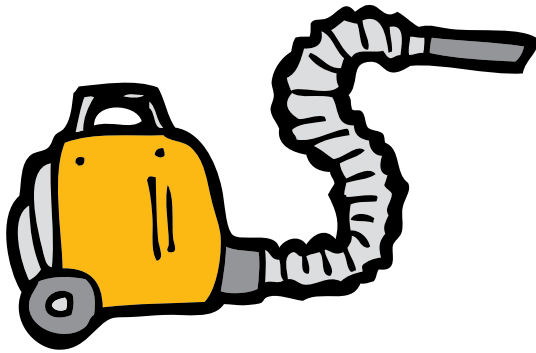
Ultimately, such increases in the level of new litigation and insurance premiums will affect residents' access to affordable health care as physicians scale back practices, particularly in high risk areas, or opt to move their practices to states with reasonable limits on liability. A recent [survey](#) found that half of Illinois medical students plan to practice in other states. As reported by the *Chicago Sun-Times*, 7 out of 10 of those choosing to practice elsewhere cited the state's anti-doctor liability climate as a factor in their decision.

Already, the adverse effects can be seen in Cook County. In October, a jury there awarded a woman over [\\$3 million](#) because she was not offered a C-section for her son who weighed more than the average child at birth.

The lawsuit claimed this failure to offer a C-section resulted in an injury to the child's arm, justifying a multi-million dollar award.

Elsewhere in the county, the litigation engine rolled on as usual with numerous questionable claims and awards, as in previous years. For example, in a virtual throwback to the infamous McDonald's hot coffee lawsuit in 1994, a plaintiff sued a Cook County McDonald's in August 2010, alleging that her [hot chocolate](#) was too hot. Notwithstanding the fact that the word "hot" is in the name of the product, the plaintiff claimed damages in excess of \$50,000 for burns allegedly sustained by her daughter when the hot chocolate spilled. The lawsuit, which is still pending at press-time, also charges that McDonald's failed to adequately secure the cup's lid.

In another Cook County case, a plaintiff sued an Ohio-based vacuum-maker for \$200,000 after apparently sucking hair off her own head while using the



vacuum. According to the *Chicago Sun-Times*, the lawsuit alleges that the vacuum cleaner was defective and that it was sold without adequate warnings about the risk of injury. Apparently, the everyday wisdom of “Do not stick things in a vacuum cleaner you don’t want sucked up” requires additional elaboration.

A final case illustrates how this hellhollish county has developed into something of a national testing ground for precedent-setting litigation and awards for damages. In September, a Cook County jury returned the largest verdict ever, \$30.4 million, in a so-called “[popcorn lung](#)” case. Such lawsuits allege

that exposure to an ingredient used in the making of butter-flavored microwave popcorn can cause injury to the lungs. In this case, the jury not only agreed that the plaintiff popcorn factory worker’s lung disease was caused by exposure to the ingredient, it returned a whopping award that will invariably be cited by plaintiffs’ lawyers in other jurisdictions and encourage similar claims.

Of course, such rampant abuse of the civil justice system comes with costs. As Illinois’ unemployment rate remains stubbornly higher than the national average, an [in-depth study](#) undertaken by Illinois Lawsuit Abuse Watch also found that the Cook County government’s spending to defend itself against lawsuits dwarfs counties of similar size in the state and beyond. I-LAW attributes the county’s \$54 million expenditure on litigation costs in 2009 alone to the county’s “infamously plaintiff-friendly courts.”

But apparently, the folks running Cook County’s court system have little desire to curb the filing of questionable lawsuits, show restraint in awarding damages, or otherwise heed calls for reform. Litigation there, after all, is a booming business for both plaintiffs’ attorneys and the courts. According to the most recent statistics compiled by the Administrative Office of the Illinois Courts, Cook County Circuit Courts alone collect over [\\$111 million](#) annually in filing fees and other revenue, more than all other Illinois counties combined. Though litigation abuse clearly hurts the area’s business climate, it seems that an ingrained dependence on litigation industry-derived revenues has overwhelmed common sense.

And amazingly enough, Cook County voters and taxpayers also seem content with the status quo. Though several neutral legal groups deemed four [circuit court judges](#) unqualified for the bench, all were [narrowly retained](#) by voters in November 2010 elections.

CLARK COUNTY, NEVADA

In 2007 and 2008, Clark County, Nevada made its first two appearances among the nation’s Judicial Hellholes in this report. Last year, it inched down to the report’s Watch List. But this year, the home to gambling capital Las Vegas has again proven itself to be a prime jurisdiction for jackpot justice with a [half-billion dollar verdict](#) against two drug companies in a case where injuries were clearly caused by others.

In developed nations such as the United States, it is commonly understood that reusing needles is an extremely dangerous practice that comes with a high risk of spreading disease. The Desert Shadow Endoscopy Center, however, practiced medicine on the cheap. It did not follow the most basic disinfection techniques and used vials of the anesthetic propofol for multiple colonoscopy or endoscopy procedures.

A record-breaking Clark County District Court verdict in May 2010, however, placed much of the responsibility for a resulting outbreak of Hepatitis C on the drug’s manufacturer and distributor. The court absurdly reasoned that stronger warnings against using syringes on multiple patients would have helped, even as over-





whelming evidence showed that those running the endoscopy center were motivated by profits to willfully ignore any and all such warnings.

Local health officials blamed the outbreak on nurse anesthetists reusing propofol vials after they had become contaminated by syringes that were reused on patients with Hepatitis C. In fact, health officials shut down the clinic in 2008 for unsanitary practices, including reuse of syringes and vials of medication intended only for single-patient use. The doctor who ran the clinic, Dipak Desai, was criminally [indicted](#) by a grand jury, pleaded not guilty to 28 felony charges, and is scheduled to be criminally tried in March 2011. But Dr. Desai and his staff who had performed the plaintiff's colonoscopy settled the civil

medical malpractice claims against them a few weeks before trial, leaving the deeper-pocketed drug manufacturer and distributor on the hook.

The subsequent verdict included the largest known punitive damages award in Nevada history for a man who contracted Hepatitis C. The court ordered Teva Pharmaceutical Industries to pay \$356 million and Baxter Healthcare Services to pay \$144 million in punitive damages, plus \$3.25 million in compensatory damages to the plaintiff, Henry Chanin, and \$1.85 million to his wife. Believe it or not, the couple had sought \$1 billion.

The label for propofol clearly states that it is for single patient use only and that aseptic procedures should be used at all times. Despite the blatant misuse of the drug by clinic staff, the court found that by placing it in larger than typically needed vials, the manufacturer effectively encouraged such improper practices.

Peabody Award-winning investigative reporter George Knapp [observed](#) that "jurors were never allowed to hear a host of arguments, evidence and experts who would have offered alternative explanations." Knapp notes that "the presiding judge, Jesse Walsh, was viewed as overtly friendly to the plaintiff's attorneys. The fact that those attorneys contributed such a large percentage of Walsh's campaign war chest is only part of the explanation." Knapp also notes that the judge's rulings kept jurors from learning: about the serious misconduct of clinic staff; that the federal Food and Drug Administration had approved the warnings on the vials and would have had to approve changes to those warnings; and of other ways hepatitis could have been spread, effectively stripping the companies of any possible defense.

Local legal observers [predicted](#) an astronomical verdict despite the clear responsibility of the clinic, citing the combination of a plaintiff-friendly judge, skillful plaintiffs' lawyers, and pharmaceutical company defendants. One [asked](#), "Is it really the drug maker's responsibility to make a bottle that can't be reused or cross contaminated. That's like saying it's the toaster oven manufacturer's responsibility to make a toaster that doesn't fit in a bathtub full of water." Even a legal blogger who typically takes the plaintiffs' side in cases against drug companies [distanced](#) himself from the outcome, describing the case as "a crafty lawyer looking for a deep pocket."

The \$500 million verdict is but the first of many lawsuits brought by patients who contracted Hepatitis C as a result of the clinic's unsanitary practices. The wronged defendants have [appealed](#). But the initial verdict shows once again that Clark County courts are too often willing to shift liability to defendants with the deepest pockets.

WATCH LIST

The Judicial Hellholes program calls attention to several additional jurisdictions that bear watching, whether or not they have been cited previously as Judicial Hellholes. These Watch List jurisdictions may become more or less like the Hellholes as their respective litigation climates degenerate or improve.

MADISON COUNTY, ILLINOIS

A growing number of filings and continued questionable rulings place Madison County, once a perennial Judicial Hellhole, on the very precarious edge of sinking back in again. The largely rural county in the southwestern part of Illinois seems to be detouring from its recent road toward progress.

At its worst in the early part of last decade, little Madison County was home to numerous nationwide class actions, asbestos claims filed by individuals from all across the country, extraordinarily high verdicts, and prejudicial court rulings. Its high medical malpractice insurance rates led physicians to flee the area, and in 2005, former [President George Bush visited the county](#) to highlight the need for Congress to pass the Class Action Fairness Act.

In the years that followed, [reforms](#) spurred by Chief Judge Ann Callis, and a new manager of the court's asbestos docket, Judge Daniel Stack, significantly reduced forum shopping and abuse of the system.

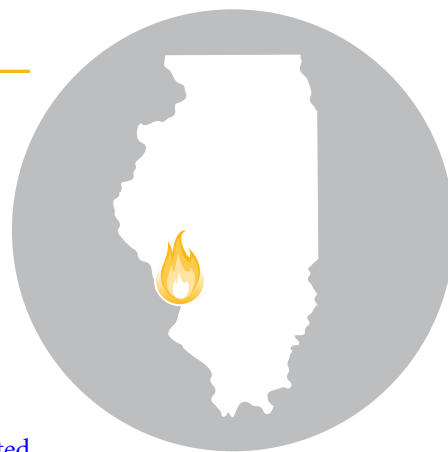
Today, however, there are increasingly troubling signs of backsliding. In 2006, asbestos cases had waned to 325 after waxing to a high of about 950 in 2003. In 2009, however, the number of such filings surged back up to 814, and the final count is [expected to reach 840](#) this year. Some defendant companies report that the number of lawsuits filed against them in Madison County has doubled over the past four years. The court has put out the welcome mat for such cases by setting aside more time for asbestos trials. The number of asbestos [trial slots](#) has climbed from 424 in 2009, to 490 in 2010, and to 520 in 2011. This places growing pressure on defendants to settle even meritless cases.

According to a [study](#) conducted by the Illinois Civil Justice League, just 11% of those who filed these asbestos claims live or work in, or have any other connection to Madison County. Rather, these claims involved residents from at least 40 other states. In fact, this small county handles roughly [one quarter](#) of the entire nation's mesothelioma lawsuits, and this is hardly a coincidence.

On July 30, a retiring Judge Stack [handed over control](#) of this insanely crowded asbestos docket to Judge Barbara Crowder. It remains to be seen how she will address forum shopping and whether she will establish fair procedures for handling cases.

Over the past few years, Judge Stack backed away from earlier decisions for which he had gained a reputation as a no-nonsense judge who was willing to throw out claims that did not belong in Madison County. For example, an [appellate court in September 2010 overruled](#) a decision by Judge Stack that allowed the wife of a deceased former railroad worker who had lived in Texas, and worked in Ohio and Michigan, to sue in Madison County simply because it was supposedly more convenient for her locally-based lawyer.

"Because the plaintiff resides outside of Illinois, the decedent resided outside of Illinois, the alleged exposure



occurred outside of Illinois, the identified witnesses including the treating physicians resided outside of Illinois and are not subject to Illinois subpoenas, and a jury view of the injury site would occur outside of Illinois, the private interest factors weigh heavily in favor of a dismissal,” the [appellate court ruled](#). If given proper respect by other trial courts, this sound appellate decision could significantly reduce brazen forum shopping by plaintiffs’ lawyers throughout Illinois. Hope springs eternal.

On a far less hopeful note, however, an appellate court [affirmed](#) a Madison County verdict that held Ford liable after an elderly couple’s Lincoln Town Car was rear ended in stand-still traffic by a distracted driver who was looking for her sunglasses while traveling up to 65 mph. A pipe wrench in the Lincoln’s trunk thrust into the gas tank, igniting the car, killing the husband and severely injuring the wife. Their family claimed Ford should have made them aware of the availability of a “trunk pack,” designed for Crown Victoria Police Interceptors and sold to police departments, that reinforces the gas tank against high speed rear collisions for which officers, who often idle on the side of highways, are at particular risk. Although there was no evidence of other Lincoln Town Cars exploding when rear ended, the jury awarded the plaintiffs’ \$43 million, including \$15 million in punitive damages. Unless overturned, the logic of such a decision would require manufacturers to design and sell, at unfathomable prices, products that are literally [indestructible](#) and able to survive extremely unlikely accidents.

In a foreboding sign of Madison County courts slipping back into the ranks of Judicial Hellholes, the trial court in this Lincoln case issued several unbalanced evidentiary rulings for the plaintiffs and against the defendants. For instance, the trial court refused to let the jury consider that the car’s gas tank not only exceeded federal standards at the time the car was manufactured in 1993, but continued to meet significantly higher standards adopted over a decade later. On the other hand, the court permitted the jury to hear evidence of numerous other accidents involving Ford cars, none of which involved the model car driven by the plaintiffs. It also allowed the jury to consider efforts Ford later took to improve the safety of police cars, when such remedial measures are typically excluded so as not to punish manufacturers who strive to improve the safety of their products. An appeal is now pending before the Illinois Supreme Court.

In another throwback to Madison County’s days as “[America’s Class-Action Capital](#),” local lawyers are taking on Blimpie sandwich shops, [alleging](#) that the sandwich chain is [shorting customers on the meat](#) in their “Super Stacked” sandwiches. The case, [brought](#) on behalf of all people who purchased a Super Stacked sandwich in Illinois, seeks a finding of statutory fraud and as much as \$75,000 per person, and asks the court for an injunction against any further skimping on meat.

But all may not be lost. This year, a Madison County jury took just 90 minutes to find in favor of Ford in a case wherein the plaintiff claimed that his exposure to brake-dust while working as a mechanic caused his mesothelioma. The defense argued that, even if the plaintiff had worked on Ford brakes, which was in doubt, the dust contained just 1% asbestos, and the level of the plaintiff’s exposure could not have caused his injury. As the lead defense counsel [stated](#) after the verdict, “It’s a new day in Madison County for corporate America. Not only did we get a great jury, we got a terrific, fair and impartial judge.” As the first asbestos trial of 2010 and the first heard by Judge Crowder, it may be reason for optimism.

ATLANTIC COUNTY, NEW JERSEY

New Jersey is home to two major industries: the one that manufactures life-saving prescription drugs, and the one that relentlessly sues those manufacturers. At the heart of the litigation industry’s business plan is Atlantic County’s Pleasantville, a town of 19,000 people near Atlantic City, where more lawsuits have been filed against pharmaceutical companies than anywhere else in the country. According to one [economist](#), “Personal injury lawyers have learned that judges and juries in Pleasantville are more likely to rule in their favor. They flock there from across the country as litigation tourists, even though often neither plaintiff nor defendant is from the town.” And the state’s

expansive, abuse-prone [Consumer Fraud Act](#) also helps drive this pernicious, economy-eroding form of litigation tourism. In fact, the *New Jersey Law Journal* [reported](#) in November 2010 that an estimated 93% of pending mass-tort cases in New Jersey are filed by plaintiffs who live elsewhere and have no connection to New Jersey.

For example, an Atlantic County court this past year awarded an Alabama man [more than \\$25 million](#) in damages against New Jersey-based Roche – roughly 10 times the \$2.6 million verdict the man received in 2007 before an appellate court overturned it. This recent [verdict is the largest](#) involving Accutane to date. The man claimed that the manufacturer did not adequately warn that inflammatory bowel disease is a potential side effect. More recently, an appellate court [reversed](#) a \$10.5 million Atlantic County verdict in an Accutane case, [finding](#) that the judge did not provide Roche with a “full and fair opportunity” to present evidence that “could have potentially and reasonably led a jury to reach a different verdict.”

[Excessive liability](#) leads manufacturers to remove beneficial products from the market. While generic versions remain available, the high cost of defending against lawsuits contributed to Roche’s [decision](#) to discontinue Accutane in June 2009. Emboldened by large verdicts, favorable New Jersey law, and a welcoming court, plaintiffs’ lawyers from all over the country filed [400 Accutane suits](#) in New Jersey in just two months, bringing the total pending in the state to 1,600. That’s about one-quarter of the total cases nationwide.



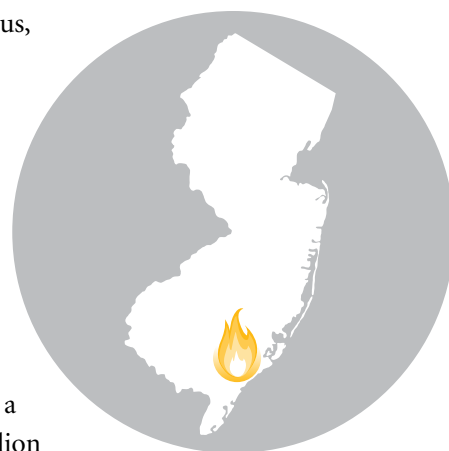
It’s not just the pharmaceutical industry that risks being crowded out by weed-like litigation in the Garden State. A [report](#) by the Monmouth University Polling Institute, commissioned by the [New Jersey Lawsuit Reform Alliance](#), found that 7 in 10 of the state’s small business owners believe state liability laws make New Jersey less attractive for businesses than other states. Meanwhile, 1 in 5 small business owners reported being sued by a client or customer in the past five years. Those who faced lawsuits were forced to limit expansion plans, discontinue products or services, layoff employees, cut employee hours, or raise prices. Sixty-five percent of these small businessmen and women also reported increases in liability insurance during the past five years.

Similarly, physicians also view themselves at risk due to their liability exposure in New Jersey, and some have [left](#) the state. A New Jersey Supreme Court [decision](#) gutting a law that weeded out meritless lawsuits by requiring plaintiffs’ lawyers to file affidavits of merit from three different doctors certified in the same field supporting a claim, adds to this anxiety. Unless the state takes action, many more doctors are [expected](#) to leave, limiting the availability of medical care for residents.

ST. LANDRY PARISH, LOUISIANA

When the Bayou State’s government needs to raise easy money, it sues somebody, and it views St. Landry Parish as the jurisdiction in which to do so – even when there’s no harm to a state resident. Instead, Louisiana Attorney General Charles C. Foti, Jr., since succeeded by Buddy Caldwell, hired [profit-driven personal injury lawyers](#) to sue a pharmaceutical company for a drug promotion that had already been fully addressed by the federal Food and Drug Administration (FDA). The result? An incredible [\\$258 million judgment](#), believed to be the largest ever assessed in the parish and one of the largest in the history of the state.

Here’s what happened: Janssen Pharmaceutica, one of the Johnson & Johnson companies, sent a letter and called doctors touting Risperdal as superior to competing antipsychotic drugs on the market and its comparably smaller risk of diabetes. The FDA found that Janssen overstated the benefits and understated the potential risk,





requiring the manufacturer to send a corrective letter to the doctors. Case closed?

Not quite. That's when Louisiana sued on the basis of the regulatory finding by the FDA hoping to collect a windfall. How does a letter and phone calls justify a \$258 million punishment? Lawyers for the state asked the jury to fine J&J up to \$10,000 for each of the letters sent to 7,604 Louisiana physicians and for each of 27,542 sales calls made by drug representatives over a two-year period. The jury decided that \$7,250 per letter or call was fair enough.

The disproportionate enormity of this verdict is better understood in comparison with a verdict obtained in a case involving similar allegations made by West Virginia Attorney General Darrell McGraw. Even in that notorious Judicial Hellhole, the verdict was held to \$4.5 million, and even that was [overturned on appeal](#).

Of course, the St. Landry case will be appealed, as well. "We believe that the jury was not appropriately instructed on applicable legal standards and that critically and highly relevant evidence was excluded," [said a J&J spokesman](#). Attorney General Caldwell proclaimed that the verdict sends the message that "those who deceive the state must pay." But the real message conveyed is: Beware of Louisiana's civil justice system – it can lead to verdicts of hundreds of millions of dollars, even without evidence of actual harm.

DISTRICT OF COLUMBIA

Could the District of Columbia become the nation's capital for spurious lawsuits alleging violations of consumer protection law? While readers may remember the absurd abuse of the District's consumer protection law by former administrative law judge Roy Pearson Jr. in waging a [notorious](#) \$54 million "pantsuit" against his neighborhood dry cleaners, the District's highest local court is now deciding whether anyone can use the law to sue, regardless of whether he or she lives in the District or experienced an actual loss. The case involves the claim of Florida resident, personal injury lawyer, and recently ousted one-term Congressman Alan Grayson. He wants companies that issue telephone calling cards to be required to turn over any leftover balances on said cards. But Mr. Grayson is [not arguing](#) that he has suffered a personal loss or injury as a result of a company's failure to reimburse card balances. No, he instead claims that the remaining balances are "unclaimed property," and that phone card companies should give such funds to the District government.

Because the District's well-intentioned but loosely written consumer law authorizes damages of \$1,500 per violation plus recovery of plaintiff attorney's fees, regardless of *actual* damages, Mr. Grayson could cash in nicely for himself, too, as he transitions out of his career as a member of Congress. If the court decides that plaintiffs such as Mr. Grayson are not required to demonstrate any actual injury, then it will be [open season](#) for creative plaintiffs' lawyers to bring their claims from [around the country](#) to the District. A trial court judge sensibly tossed Mr. Grayson's shamelessly speculative case, but a three-judge appellate panel [reinstated](#) it in 2009. As of this report's publication deadline, the full appellate court had [decided to review](#) the case but had not yet ruled.





NEW YORK CITY AND ALBANY, NEW YORK

An October 2010 [report](#) by the Empire Center for New York State Policy offers discouraging, if hardly surprising, news: From 1993 through 2007, job creation in New York staggered along at just one-fifth the average rate across the nation. Meanwhile, more than 393,000 jobs were relocated to other states, leaving New York among the very worst states with respect to net outmigration of jobs.

Surely New York's dauntingly high rates of taxation and tangle of red-tape regulations have had much to do with employers seeking greener, more profitable economic pastures in other states. But business executives responsible for decisions about expansion or relocation also routinely consider states'

litigation and liability climates. New York's disadvantage in this regard is growing fast.

Last year's edition of the [Judicial Hellholes report](#) cited New York City among the worst jurisdictions in the nation for senselessly costly litigation. This year, a [headline-grabbing lawsuit](#) that accuses, among others, a 4-year-old girl of negligence in a sidewalk accident that occurred while she rode her training wheel-equipped bicycle along East 52nd Street typifies the ongoing madness in "Sue York." Another suit, this one out on Long Island, [pitting one golf buddy against another](#) after a poorly struck shot caused an injury, has reached the state's highest court where a final decision is pending.

But this runaway litigiousness and the businesses that run to other states as a result does not seem to bother many policymakers in the state capital of Albany. In fact, personal injury lawyer turned Assembly Speaker Sheldon Silver has repeatedly killed tort reform bills in the legislature while aggressively pursuing a liability-expanding agenda. In addition to having a [personal financial stake](#) in a Buffalo area company that provides loans to litigation-ginning law firms, Speaker Silver has, among many other legislative efforts, backed bills that would make workplaces the target of ["bullying" lawsuits](#) and jeopardize the state's vitally important financial industry.

One of Speaker Silver's key legislative allies in threatening the financial industry with expansion of the state's Martin Act, former State Senator [Eric Schneiderman](#), was just elected to become the state's next attorney general. So, unless the outgoing attorney general and incoming governor, Andrew Cuomo, lives up to his campaign stance as a budget-balancing moderate amenable to reasonable tort reforms, look for lawsuit-loving Albany to drag the rest of New York down with other Judicial Hellholes.

ST. CLAIR COUNTY, ILLINOIS

Madison County's neighbor, St. Clair County, also continues to raise anxiety among civil defendants. Like its neighbor, St. Clair County is viewed by personal injury lawyers around the country as a choice jurisdiction in which to file their lawsuits. In 2010, for example, residents of states including Alaska, Colorado, Delaware, Georgia, Iowa, Maryland, Massachusetts, Nevada, New Jersey, Oklahoma, Ohio, Pennsylvania, Tennessee, Texas, and West Virginia [chose](#) St. Clair County to [claim](#) that a drug maker and pharmacy chain did not sufficiently warn them that an antibiotic could lead to a higher risk of tendon injuries.

Also this year, St. Clair County Circuit Judge Michael O'Malley, who had previously presided over a class action targeting a particular pharmaceutical company, retired from the bench to join a personal injury law firm that [advertises itself](#) as a champion for "victims of corporate abuse, neglect and greed." Within weeks of hanging up his robes, Judge O'Malley [filed claims](#) as the lead attorney against the same drug maker in both St. Clair and



Madison counties. That the former judge [does not view](#) his role-switch as the inherent conflict of interest that it obviously is would make for side-splitting backwoods satire were the sobering stakes not so high for the defendant.

If judge's quitting the bench to get in on the real money isn't sufficiently disquieting, asbestos claims in St. Clair County are approaching a high this year. Though nowhere near Madison County's volume, lawyers had [filed](#) 53 new asbestos claims in St. Clair County as of December 1, 2010, shattering the previous yearly [record](#) of 25 set back in 2006.

Meanwhile, St. Clair County judges have not addressed a [civil suit](#) against former Metro-East plaintiff-lawyer kingpin L. Thomas Lakin, the founder of the Lakin Law Firm who pleaded guilty to drug charges and was sentenced to six years in prison in October 2008. Though criminal sexual abuse charges against Lakin were dropped as part of a plea agreement, a civil suit against Lakin for sexual abuse and conspiracy has remained [on hold](#) since criminal charges were filed in 2007. The case has gone through four St. Clair County judges — two recused themselves and one has since retired.

OTHER JURISDICTIONS

- In **McLean County, Illinois**, Associate Judge Paul Lawrence [ruled](#) that Greg Baise, the President of the Illinois Manufacturers' Association (IMA), must travel 135 miles from Chicago to Bloomington to face questioning in a trial. The claim alleges that certain companies engaged in a conspiracy to keep the risks of asbestos from the public several decades ago. The oddity is that neither Baise nor the IMA is a party to the lawsuit. Defendants also took notice this year when Judge Lawrence, joined by Circuit Judge Michael Drazewski, scheduled two trials against the same defendant on the same day. According to a [report](#), "Pneumo Abex, a corporation that exists only to pay claims, ran out of lawyers and tried to settle the case before Lawrence because it couldn't defend two." Other defendants had to split up their trial teams.
- The **Gulf Coast of Texas** has long been recognized as one of the toughest places in America for corporate defendants to receive a fair trial. Once a perennial Judicial Hellhole, the area, which includes several of Houston's surrounding counties, is at the center of numerous mass litigations, and is infamous for huge awards. Although the Texas legislature enacted significant reforms that helped improve the litigation climate throughout the state, significant concerns about Gulf Coast, courts remain. A Harris County jury, for instance, recently broke records for the largest verdict for a single incident of wrongful death when awarding [\\$82.5 million](#) to the family of a worker killed in a natural gas explosion.

DISHONORABLE MENTIONS

“Dishonorable Mentions” recognize particularly abusive practices, unsound court decisions or other actions that erode the fairness of a state’s civil justice system.

MICHIGAN SUPREME COURT GOES ON LIABILITY SPREE

A new, if short-lived, majority on the Michigan Supreme Court made its presence known on July 31, 2010. The Court that day unleashed three rulings that were aptly characterized by the headline of an August 4 *Detroit News* editorial: “State Supreme Court’s rulings will invite more lawsuits, create more costs.”

The rulings were a culmination of a 2008 shift on the high court when former Wayne County Circuit Court Judge Diane Hathaway was [elected](#) to replace Chief Justice Clifford Taylor, who had held the line against unprincipled expansions of liability. After her election, incoming Justice Hathaway vowed that the new majority would “undo a great deal of the damage” of the prior court — discarding prior law in favor of new liability expanding rulings.

The first July [decision](#), written by Justice Hathaway, reduced the proof needed for a patient to show a doctor was negligent in causing injury. Justice Stephen J. Markman, in a separate opinion in which he agreed with the result but not the reasoning of the court’s lead opinion, characterized the ruling as an example of the “adoption of whatever formula best serves the plaintiff.” Justice Robert Young, Jr., dissenting, noted that the court’s splintered ruling “destroy[s] the doctrinal integrity of medical malpractice law and would result in “[c]haos and confusion in the law [that] only promote[s] more litigation.” The new majority’s decision will “benefit only those who profit from litigating medical malpractice cases,” Justice Young observed.

As the court abandoned established principles in medical malpractice cases, it did so with respect to the state’s no-fault automobile compensation system, too. In the no-fault auto insurance case, the court’s new majority [overturned](#) an [earlier decision](#) that allowed damages for pain and suffering only in cases in which the plaintiff had suffered a major impairment of a bodily function. The lower courts had found such damages unwarranted because the plaintiff, who had injured his ankle in a work-related accident, had recovered, returned to work at the same rate of pay, and was able to continue his hobbies. Justice Markman, along with two other justices, dissented from the majority’s ruling, finding that it interfered with the balance struck by the legislature — no-fault compensation in return for limiting difficult-to-measure pain and suffering damages.

Finally, in a case involving members of the Lansing teachers union, the court’s majority broadened the concept of standing, which determines whether plaintiffs have experienced a tangible injury permitting them to sue. The 4-3 [decision](#) held that teachers who were allegedly physically assaulted by students can sue the school board, claiming that it should have, pursuant to state law, expelled, not just suspended, those students. Again, the court abandoned a prior decision that, in accordance with the federal courts, required plaintiffs to demonstrate an actual injury. Instead, the new majority adopted a broader concept of standing that allows anyone with a significant interest distinct from that of the general public to sue for the enforcement of a statute.

As the *Detroit News* editorialized, “These rulings will serve the interests of plaintiffs’ attorneys well. But they will result in businesses having to devote more resources to legal issues, which will impose higher costs for the state’s economy,” including one of the highest state unemployment rates in the country.

In the November 2010 elections, the Michigan electorate voted to restore stability to the civil justice system. In January the majority of the court will [shift](#) back, and that may put the brakes on future liability-expanding decisions.



ST. LOUIS: LAWYERS REAP \$21 MILLION, CLIENTS GOT \$20 AND COUPONS WORTH \$24.66

In 2005, Congress enacted the Class Action Fairness Act (CAFA), which, among its features, deals with “coupon” class action abuse. Such abuse occurs when attorneys bring lawsuits purportedly to protect consumer rights, but often seek primarily to push targeted defendants into settlements that provide those attorneys with millions in fees while leaving their presumptive clients with nothing more than a nominal discount on future purchases of products or services. CAFA addressed such abuse by limiting lawyers fees relative to the value of *redeemed* coupons only. The federal law, however, applies only to class actions decided in federal courts. While some states have enacted similar safeguards, Missouri has not done so.

In May 2010, City of St. Louis Circuit Court Judge Angela T. Quigless [approved](#) a class-action [settlement](#) against mutual fund A.G. Edwards (now Wells Fargo). The lawyers will [receive](#) an immediate \$21 million in fees plus about \$600,000 in expenses. By contrast, the 294,000 members of the class will divide \$6 million among them and receive \$34 million in semi-worthless coupons. This breaks down to providing each individual client with [about \\$20](#) in cash and three [coupons](#) worth \$8.22 each that can be

Quigless

used on a set schedule, one-per-year over three years, to offset fees. Of course, it is likely that many class members will not bother to take the time to fill out the necessary paperwork to obtain their award and redeem their coupons. Despite [objections](#), Judge Quigless approved the settlement. The economy may be floundering, but the class-action industry is alive and well in the “Show Me (Your Lawsuits) State.”

COLORADO SUPREME COURT: PLAINTIFFS CAN RECOVER ‘PHANTOM’ MEDICAL DAMAGES

In November 2010, the Colorado Supreme Court ruled in a sharply divided [4-3 decision](#) that plaintiffs may collect costs of medical care that were billed, but never actually paid. These so-called “phantom damages” unjustifiably impose millions of dollars worth of costs on consumers and businesses each year.

There is often a sizable difference between the amount of money a doctor theoretically charges for services and the amount the doctor is actually paid, either by the plaintiff or the plaintiff’s insurer. In personal injury litigation, a defendant who is found liable must pay the medical expenses associated with the plaintiffs’ wrongfully-caused injury. But the plaintiff can be “over-compensated” by recovering the doctor’s full “sticker price” even though neither the plaintiff (due to his or her insurance) nor the insurance provider (which pays a substantially lower negotiated rate) actually paid that sticker price.

This over-compensation is often substantial. For example, the Colorado case involved a typical slip-and-fall that occurred at an event sponsored by the nonprofit Volunteers of America, for which the plaintiff was found 49% at fault. The amount *paid* by the plaintiff’s insurer for his medical expenses came to \$43,236, while the amount *billed*, before application of the negotiated rate, was \$74,242. As this example shows, inclusion of such illusory costs can easily increase awards for damages in personal injury suits by 40%. And these costs are invariably passed on to consumers.

Three members of the Colorado Supreme Court found that the majority ignored the legislature’s clear intent to prevent such over-recovery by allowing damages only for amounts an insurer actually pays on the plaintiff’s behalf, not amounts for which anyone was ever actually liable. As the dissent noted, “the majority proceeds to rebuild the statute’s limited contract exception into a vehicle for tort plaintiffs to recover nearly any theoretical damages that are mitigated by their insurance policies.”

POINTS OF LIGHT

There are five ways to douse the flames in Judicial Hellholes and to keep jurisdictions from developing an out-of-balance legal climate:

- 1 Constructive media attention and public education can help encourage reform;
- 2 Trial court judges can engage in self-correction;
- 3 Appellate courts can overturn bad trial court decisions and limit future judicial malfeasance;
- 4 Legislatures can enact statutory reforms; and
- 5 Voters can reject litigation-loving judges or enact ballot referenda to address particular problems.

In its “Points of Light” section, the Judicial Hellholes report highlights jurisdictions in which judges, legislators, the electorate and/or the media intervened to stem abusive judicial practices. These jurisdictions set an example for how a courthouse, city, county or state can emerge from the desultory depths of a Hellhole or otherwise keep itself from sinking to those depths in the first place.

FLORIDA LEGISLATURE’S TRIFECTA

In its most recent session, the Florida Legislature addressed three areas of state law that address problems which, in the past, have contributed to South Florida’s reputation as a Judicial Hellhole.

Last year, this report highlighted Florida’s lax standard for proof in the state’s all too common slip-and-fall claims. Under Florida law then, as a practical matter, retailers, restaurants, and grocery stores were liable for the alleged injuries of anyone who *claimed* to slip and fall on their property. This untenable situation arose out of a 2001 Florida Supreme Court [decision](#) that eliminated the need for a plaintiff to show that a property owner or his employees knew or should have known of the dangerous condition.

The high court’s decision required Florida business owners, all but impossibly, to prove a negative – namely, that they could not have prevented the accident. And because slip-and-falls are among the oldest frauds in the book, the decision immediately made Florida extremely attractive for slip-and-fall artists and their ensuing lawsuits. But thankfully for businesses, their employees and jobseekers, the Florida Legislature [adopted](#), and Governor Charlie Christ signed, a new law providing a more logical framework for slip-and-fall liability. The [new law](#) restores a logical standard of constructive notice that protects businesses, upon which the state’s economy depends, from parasitic fraudsters without jeopardizing the meritorious claims of truly injured parties.

Florida legislators this year also [restored](#) the rights of parents to sign a liability waiver on behalf of their

minor child, superseding a 2008 Florida Supreme Court [ruling](#). The [new law](#) takes into account parental rights and the rights of children to have access to activities such as horseback and ATV riding, scuba diving and a variety of other sports, all of which include inherent risks. The law appropriately favors the interests of families over those of personal injury lawyers who would rather be free to file a lawsuit every time an active child skins a knee or breaks a bone.

Finally, with the urging of outgoing Attorney General Bill McCollum, Sunshine State lawmakers [enacted legislation](#) that ensures [transparency](#) when the state hires private-sector lawyers to represent the state. It also limits

the amount private attorneys can siphon off the state's recovery to no more than \$50 million — an extraordinary amount to most people, but apparently not obscene in the minds of some contingency fee lawyers. The law will help avoid “pay-to-play” situations that have plagued a number of states, wherein elected officials coincidentally offer cushy contingency contracts to some of their biggest campaign contributors.

Florida Governor-elect Rick Scott's pledge to work for a more fair and predictable civil justice system as a [key initiative](#) during his administration bodes well for the future.

RECHT'S RULES

West Virginia Circuit Court Judge Arthur Recht, a former state Supreme Court of Appeals justice now serving as an Ohio County trial judge, is to be commended for steps he has taken to safeguard the integrity of asbestos claims filed in his court.

In a hearing this year, Judge Recht reflected on the “[bizarre](#)” events he has seen in the litigation, from the [forged signature](#) of a doctor who did not exist to “a doctor who has an imagination beyond description in reading certain X-rays.” Judge Recht has [required](#) individuals who file asbestos claims to see a pulmonologist, rather than radiologists with a history of supplying questionable evidence in such cases. Pulmonologists who examine plaintiffs must testify as experts at trial. Plaintiffs must also submit a signed statement that he or she is aware of the lawsuit and believes the claim is well founded (this precaution grew out of evidence that a prominent law firm specializing in West Virginia asbestos claims purported to represent clients who did not know lawsuits had been filed on their behalf).

Judge Recht also requires plaintiffs to provide the defendants with their medical records and a history of other asbestos exposure claims they have pursued. And Judge Recht had earlier rejected “expert” testimony offered to prove that railroad workers exposed to a solvent could experience brain changes when it was learned the experts had [failed to disclose](#) their pay arrangement with plaintiffs' lawyers and the fact that said lawyers had referred their clients to the experts as research subjects.

MARYLAND UPHOLDS UPPER LIMIT ON PAIN & SUFFERING DAMAGES

There is no objectively fair way for juries to put a monetary value on an individual's pain and suffering. Such awards vary drastically, often depending on whether a jury finds a particular plaintiff sympathetic, or how effective the plaintiff's attorney is in exhorting the jury to “send a message” by harshly punishing the defendant. These inherently subjective awards, while a windfall for those who receive them, nonetheless pose less positive consequences for society. Doctors find that they cannot provide needed services ranging from trauma care to delivery of babies due to the high price of insurance. High awards can bankrupt individuals and small businesses for a regrettable accident. For those reasons and others, many states have placed upper limits on pain and suffering awards. These limits do not take away from an injured person's right to recoup their costs for medical care, lost wages and domestic services, or other readily calculable expenses.

This year, Maryland's highest court [upheld](#) the state's limit on noneconomic damages, which currently stands at \$720,000 and increases annually with inflation. The Maryland Court of Appeals reaffirmed a prior ruling in which it found that “obviously a legitimate legislative objective” is “assur[ing] the availability of sufficient liability insurance, at a reasonable cost, in order to cover claims for personal injuries to members of the public. . . . A cap on noneconomic damages may lead to greater ease in calculating premiums, thus making the market more attractive to insurers, and ultimately may lead to reduced premiums, making insurance more affordable for individuals and organizations performing needed services.”

The reasonableness shown by jurists in the relatively low-unemployment state of Maryland stands in stark contrast to those sitting on state supreme courts in two high-unemployment states: [Illinois](#) (home to perennial

Judicial Hellholes) and [Georgia](#). Justices on both courts this year struck down statutory limits on awards for pain and suffering, bucking a trend among other state courts and replacing the policy judgments of elected legislators and governors with their own. West Virginia's high court is [currently considering](#) a challenge to that state's limit on noneconomic damages, and the much-anticipated decision will indicate that court's willingness, or lack thereof, to help counter its state's well-deserved reputation among the worst Judicial Hellholes.

ROGUES' GALLERY

Behind every Judicial Hellhole judge is a supporting cast of personal injury and mass tort lawyers who are constantly pushing courts to expand liability. This “Rogues’ Gallery” section reminds policymakers of the need for aggressive oversight of influential plaintiffs’ lawyers who have stretched ethics rules and criminal laws beyond their intended bounds – manufacturing lawsuits, lying to the courts, disregarding court orders and stealing client recoveries.

- This year’s top **Junk Advocacy In Lawyering** award goes to personal injury lawyers, **William Guy** and **Thomas Brock**, who were found [civilly liable](#) by a federal jury for their pursuit of fraudulent asbestos claims. Guy and Brock pursued those claims against the Illinois Central Railroad even though their clients had already received compensation for asbestos-related injuries in a previous lawsuit against other businesses years earlier and were barred from making additional claims. The lawyers were ordered to [repay](#) the \$210,000 damages they initially won for the clients and kick in another \$210,000 in punitive damages. ATRA urges the Mississippi Bar to impose severe sanctions to send a strong message to citizens and employers that the state’s legal culture will not backslide toward corruption.
- Also taking a strong stand was the U.S. Court of Appeals for the Ninth Circuit. The federal appellate court gave **Walter Lack** a [six-month suspension](#) for submitting allegedly fraudulent materials in an effort to collect a default judgment entered by a Nicaraguan court. After Lack secured the \$489 million judgment against a nonexistent corporate entity, he allegedly relied on documents and representations he knew to be false to hide the error so that he could collect against Dole Food Company in the United States. Lack and the other plaintiffs’ lawyers and law firms involved also agreed to pay \$390,000 in sanctions to reimburse Dole’s legal defense costs. Lack is known for settling the toxic tort made famous in the movie “Erin Brockovich” and is [described](#) as “one of California’s top plaintiffs lawyers.” While the suspension will only briefly preclude Lack from appearing before the Ninth Circuit, the California State Bar could impose additional sanctions, such as a suspension of his license or disbarment.
- A federal appeals court has [cleared the way](#) for a second criminal trial against prominent Houston plaintiffs’ attorney **Warren Todd Hoeffner** for fraud in negotiating \$34 million in silica-related settlements. Hoeffner, in representing some 900 individuals in silicosis or silica-related personal injury claims, allegedly paid employees of an insurance company \$3 million in cash, luxury goods and services to secure the settlements.
- Allentown, Pennsylvania plaintiffs’ lawyer **John Karoly** was sentenced to 6 ½ years in prison this year for “evading \$1.5 million in taxes and steering \$500,000 in tax-free donations back to himself.” The federal judge who con-



victed him of fraud and money laundering [reportedly](#) said that Karoly “seems to have an honesty problem”: “He lied under oath in this courtroom. For a skilled trial lawyer, this is behavior that shocks the conscience.” In addition to his prison sentence, which [began](#) in July, Karoly was also ordered to pay the \$1.5 million in back taxes plus restitution.

- Personal-injury lawyer **Kenneth Bernas** took his clients’ money to pay for construction of his home. *The Buffalo News* [reported](#) that Bernas pleaded guilty to 33 felony counts after admitting he stole \$2.7 million from 23 clients and two loan agencies for the house. He built the house in the style of a Buffalo mansion owned by a strip club owner. Prosecutors say Bernas will have to repay the money he stole from his victims. Bernas also admitted to failing to pay state income tax of more than \$85,000 between 2005 and 2007.
- New York personal injury lawyer **Marc Bernstein**, who last year was [arrested](#) for allegedly stealing from clients, was charged this year with tax evasion. Prosecutors allege that Bernstein took \$2.2 million in settlement monies from 16 personal injury and medical malpractice clients. The *New York Law Journal* [reports](#) that Bernstein has now been “accused of failing to file tax returns from 2003 through 2007 and understating his gross income in a 2008 return.” In all, prosecutors claim Bernstein has evaded “roughly \$220,500 in personal income taxes.”
- 76-year-old personal injury lawyer **Allen Isaac**, according to the *New York Law Journal*, was “caught on tape making unwelcome sexual advances to a client and has been suspended from practicing law for six months.” He also, according to the *Journal*, allegedly “bragged to her that he could improperly influence Appellate Division judges.” While the Bar’s disciplinary committee voted to disbar Isaac, the Appellate Division reduced the sanction to a [six-month suspension](#).
- Personal-injury lawyer **Jeffrey Abramowitz** was indicted in August for embezzling more than \$1 million from his clients. The *Legal Intelligencer* [reported](#) that Abramowitz’s indictment alleges that he lied to clients about the settlements of their cases, that he was “investing” their funds and that they would receive their money in accordance with a “bogus distribution schedule.” So what does the indictment say he did with the money? He allegedly spent some on himself and the rest on a “‘favored client’ and her family.” Lest people lose all faith in personal injury lawyers, Abramowitz’s partner is the one who alerted the authorities.
- In October, the Florida Supreme Court [suspended](#) the law license of **Hank Adorno** in connection with a violation of rules governing attorney conduct. The high court action followed the [finding](#) of Broward Circuit Judge Jack Tuter that Adorno had violated ethics rules when he orchestrated a \$7 million class-action settlement that [benefited only seven people](#), rather than all the Miami taxpayers he claimed to represent. In the case, which challenged a city fire fee, seven plaintiffs split \$5 million and the lawyers took \$2 million instead of providing a refund to thousands of property owners. Adorno’s law firm, which [dropped](#) the co-founding partner’s name from its letterhead, returned \$1.6 million in fees collected, but kept about \$400,000. As of the time of publication, the Florida Supreme Court continues to consider whether Adorno’s suspension should last three years and whether he should be permanently disbarred.
- Finally, no Rogues’ Gallery would be complete without an update on **Bill Lerach**, who was officially [released](#) from federal prison last March. Lerach and three of the other firm’s top partners pleaded guilty to paying kickbacks. In addition to the recently concluded two-year prison sentence, Lerach is serving two years of probation and must do 1,000 hours of community service. The *San Diego Business Journal* reported that he “sounded defiant,” saying that he doesn’t “have any regrets about the career” he pursued.

THE MAKING OF A JUDICIAL HELLHOLE:

QUESTION: WHAT MAKES A JURISDICTION A JUDICIAL HELLHOLE?

ANSWER: THE JUDGES.

Equal Justice Under Law. It is the motto etched on the façade of the Supreme Court of the United States and the reason why few institutions in America are more respected than the judiciary.

When Americans learn about their civil justice system, they are taught that justice is blind. Litigation is fair, predictable and won or lost on the facts. Only legitimate cases go forward. Plaintiffs have the burden of proof. The rights of the parties are not compromised. And like referees and umpires in sports, judges are unbiased arbiters who enforce rules, but never determine the outcome of a case.

While most judges honor their commitment to be unbiased arbiters in the pursuit of truth and justice, Judicial Hellholes judges do not. Instead, these few jurists may favor local plaintiffs' lawyers and their clients over defendant corporations. Some, in remarkable moments of candor, have admitted their biases. More often, judges may, with the best of intentions, make rulings for the sake of expediency or efficiency that have the effect of depriving a party of its right to a proper defense.

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 providing legitimate victims a forum in which to seek just compensation from those whose wrongful acts caused their injuries.

Weaknesses in evidence are routinely overcome by pretrial and procedural rulings. Product identification and causation become "irrelevant because [they know] the jury will return a verdict in favor of the plaintiff." Judges approve novel legal theories so that even plaintiffs without injuries can win awards for "damages." Class actions are certified regardless of the commonality of claims. Defendants are named, not because they may be culpable, but because they have deep pockets or will be forced to settle at the threat of being subject to the jurisdiction. Local defendants may also be named simply to keep cases out of federal courts. Extraordinary verdicts are upheld, even when they are unsupported by the evidence and may be in violation of constitutional standards. And judges often allow cases to proceed even if the plaintiff, defendant and witnesses have no connection to the Hellhole jurisdiction and events in question.

Not surprisingly, personal injury lawyers have a different name for these courts. They call them "magic jurisdictions." Personal injury lawyers are drawn like flies to these rotten jurisdictions, looking for any excuse to file lawsuits there. When a prior Judicial Hellhole Madison County was named the worst Judicial Hellhole in the nation, some personal injury lawyers were reported as cheering "We're number one, we're number one."

Rulings in Judicial Hellholes often have national implications because they involve parties from across the country, can result in excessive awards that wrongfully bankrupt businesses and destroy jobs, and can leave a local judge to regulate an entire industry.

Judicial Hellholes judges hold considerable influence over the cases that appear before them. Here are some of their tricks-of-the-trade:

PRETRIAL RULINGS

- **Forum Shopping.** Judicial Hellholes are known for being plaintiff-friendly and, thus, attract personal injury cases with little or no connection to the jurisdiction. Judges in these jurisdictions often refuse to stop this forum shopping.
- **Novel Legal Theories.** Judges allow suits not supported by existing law to go forward. Instead of dismissing these suits, Hellholes judges adopt new and retroactive legal theories, which often have inappropriate national ramifications.
- **Discovery Abuse.** Judges allow unnecessarily broad, invasive and expensive discovery requests to increase the burden of litigation on defendants. Judges also may apply discovery rules in an unbalanced manner, denying defendants their fundamental right to learn about the plaintiff's case.
- **Consolidation & Joinder.** Judges join claims together into mass actions that do not have common facts and circumstances. In one notorious example, West Virginia courts consolidated more than 8,000 claims and 250 defendants in a single trial. In situations where there are so many plaintiffs and defendants, individual parties are deprived of their rights to have their cases fully and fairly heard by a jury.
- **Improper Class-Action Certification.** Judges certify classes without sufficiently common sets of facts or law. These classes can confuse juries and make the cases difficult to defend. In states where class certification cannot be appealed until after a trial, improper class certification can force a company into a large, unfair settlement.
- **Unfair Case Scheduling.** Judges schedule cases in ways that are unfair or overly burdensome. For example, judges in Judicial Hellholes have scheduled numerous cases against a defendant to start on the same day or given defendants short notice before a trial begins.

DECISIONS DURING TRIAL

- **Uneven Application of Evidentiary Rules.** Judges allow plaintiffs greater flexibility in the kinds of evidence they can introduce at trial, while rejecting evidence that might favor defendants.
- **Junk Science.** Judges fail to ensure that scientific evidence admitted at trial is credible. Rather, they'll allow a plaintiff's lawyer to introduce "expert" testimony linking the defendant(s) to alleged injuries, even when the expert has no credibility within the scientific community.
- **Jury Instructions.** Giving improper or slanted jury instructions is one of the most controversial, yet underreported, abuses of discretion in Judicial Hellholes.
- **Excessive Damages.** Judges facilitate and allow to stand excessive punitive or pain and suffering awards that are influenced by improper evidentiary rulings, tainted by passion or prejudice, or unsupported by the evidence.

UNREASONABLE EXPANSIONS OF LIABILITY

- **Private Lawsuits Under Loosely-Worded Consumer Protection Statutes.** The vague wording of state consumer protection laws has led some judges to allow plaintiffs to sue even if they can't demonstrate an actual financial loss that resulted from their reliance on allegedly deceptive conduct.

- **Logically-Stretched Public Nuisance Claims.** Similarly, the once simple concept of a “public nuisance” (e.g., an overgrown hedge obscuring a STOP sign or music that is too loud for the neighbors night after night) has been conflated into an amorphous Super Tort for pinning liability for various societal problems on manufacturers of lawful products. Recently, a normally highly respected federal circuit court [stretched](#) public nuisance law to potentially cover global warming. The defendants were not India, China, or even the United States, but a handful of energy producers.
- **Expansion of Damages.** There also has been a concerted effort to expand the scope of damages, which may hurt society as a whole, such as “hedonic” damages in personal injury claims, “loss of companionship” damages in animal injury cases, or emotional harm damages in wrongful death suits.

JUDICIAL INTEGRITY

- **Alliance Between State Attorneys General and Personal Injury Lawyers.** Some state attorneys general routinely work hand-in-hand with personal injury lawyers, hiring them on a contingency fee basis. Such arrangements introduce a profit motive into government law enforcement, casting a shadow over whether government action is taken for public good or private gain.
- **Cozy Relations.** There is often excessive familiarity among jurists, personal injury lawyers, and government officials.



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