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TORT REFORM

American Tort Reform Association Has Issued Its Report Naming Nine “Judicial Hellholes” In The United States

The American Tort Reform Association (ATRA) recently issued a report identifying nine “Judicial Hellholes” in the United States.¹ According to the ATRA, “Judicial Hellholes” are jurisdictions which have a disproportionately harmful impact on civil litigation and are sought out by plaintiff personal injury lawyers because of the likelihood that they will produce an excessive verdict or settlement, a favorable precedent, or both. The states with jurisdictions designated as “Judicial Hellholes” are reported to have experienced harmful economic side effects that are damaging to businesses and consumers, including higher costs of goods and services, higher insurance premiums, reduced wages, loss of employment opportunities and reduced access to health care.

The stated purpose of the report is to: (1) identify areas of the United States where the scales of justice are radically out of balance; and (2) illustrate how accuracy, efficiency and predictability can benefit the American civil justice system.

The ATRA’s Report lists a number of factors considered when it determined whether to designate a particular jurisdiction a “Judicial Hellhole.” These factors include:

- **Forum shopping:** The jurisdiction permits cases to be filed even if there is no connection between the subject of plaintiff’s complaint and the jurisdiction.
- **Novel legal theories:** Judges in the jurisdiction fail to dismiss cases that are not supported by the law and adopt new legal theories to rule in favor of plaintiffs, which often have inappropriate national ramifications.
- **Discovery abuse:** Judges allow unnecessarily broad, invasive, expensive and burdensome discovery of defendants and conversely may limit discovery of plaintiffs such that defendants are denied their fundamental right to learn about the plaintiff’s case.
- **Consolidation and joinder:** Judges join claims lacking common facts and circumstances.
- **Improper class certification:** Judges certify classes without adequate commonality of facts or law.
- **Unfair case scheduling:** Judges schedule cases in ways that are unfair or overly burdensome to defendants.
- **Excessive damages:** Judges facilitate the award of excessive punitive or pain and suffering awards,

which are tainted by passion or prejudice, or influenced by improper evidentiary rulings.

- **Junk science:** Judges do not act as gatekeepers to ensure that the expert witness testimony is credible in the scientific community.

- **Uneven application of evidentiary rules:** Judges may have a propensity to allow plaintiffs greater flexibility in the kinds of evidence that can be admitted at trial and be more stringent in respect of evidence proffered by a defendant.

- **Jury instructions:** The judges give improper or pro-plaintiff jury instructions.

- **Trial lawyer contributions:** In certain jurisdictions, plaintiff lawyer donate disproportionately to the campaigns of locally-elected judges. In a recent poll cited in the Report, 46 percent of judges said donations influenced their judicial decisions.

“Judicial Hellholes” identified by the ATRA are:

Madison County, Illinois. Madison County appears to have become a magnet court for national class actions, asbestos claims, welding rod litigation and other types of cases from around the country. Madison County judges allow claims to proceed in their courts even if the plaintiff and the defendant are located outside of the state, the plaintiff’s injury occurred outside the state, medical treatment was provided outside the state, no witnesses live in Illinois, and no evidence relates to the state.

St. Clair County, Illinois. St. Clair County judges reportedly allow issuance of anonymous “certificates of merit” in medical malpractice cases. Illinois (as well as several other states) requires a medical malpractice complaint to be accompanied by a signed evaluation by an independent medical professional finding that the plaintiff has a potentially valid claim. These courts, however, reportedly permit certifying doctors to remain anonymous, which does not permit defense lawyers to challenge the credentials of a doctor who may lack expertise in the medical procedure at issue in the case.

Hampton County, South Carolina. According to the Report, venue can be maintained in Hampton

County without regard to the site of the claimed injury, the plaintiff’s place of residence and the fact that a defendant’s headquarters may be hundreds of miles away. This favorable treatment appears to be exacerbated by the plaintiffs’ prospects of being awarded large verdicts.

The State of West Virginia. West Virginia was included in the list based, in large part, upon its handling of medical monitoring suits. West Virginia is reportedly the only state where people can collect cash awards in medical monitoring cases without even showing that there is a reasonable probability that they will become ill and also when they have failed to show any medical benefit to regular medical examinations. In these cases, money reportedly is awarded without restrictions on its use, which allows plaintiffs to use the funds other than for medical monitoring purposes.

Jefferson County, Texas. The Report cites Jefferson County, Texas as a “Judicial Hellhole” based, in part, upon a jury verdict of U.S. \$1.013 billion to one family in a Fen-Phen case. The jury verdict included U.S. \$113 million in compensatory damages and U.S. \$900 million in punitive damages. The Report noted that the verdict was contrary to Texas law capping punitive damages and was extraordinary compared to the total of U.S. \$3.75 billion that defendant Wyeth had paid to settle the majority of its Fen-Phen cases, more than 125,000 claims.

Orleans Parish, Louisiana. The Report included Orleans Parish, Louisiana as a result of an Orleans Parish court order that tobacco companies must pay U.S. \$591 million, not for medical costs or other physical injuries, but to assist 500,000 Louisiana smokers in their effort to stop smoking. The case was *Scott v. American Tobacco Co.* and the size of the award reportedly could grow by as much as U.S. \$300 million because Louisiana permits interest to accrue on judgments from the date a plaintiff files the complaint. Rather than awarding actual damages, the jury reportedly created a “comprehensive smoking cessation program” to fund public education campaigns, telephone hotlines and the distribution of nicotine patches, among other activities, for over a ten-year period.

South Florida. The counties of Broward, Miami-Dade and Palm Beach have become “Judicial Hellholes” because of their handling of asbestos litigation. Each county reportedly has a separate asbestos division and a set of rules called an “omnibus order” for processing the claims. The Report states that these special asbestos courts move claims quickly and allow plaintiffs’ lawyers to schedule hundreds of cases for trial at once. This scheduling maneuver reportedly has pressured defendants into settling because of the difficulty of defending cases with the short amount of preparation time provided by these courts. Plaintiffs’ lawyers reportedly also can file claims from outside the area because Florida’s venue law allows lawyers to choose any county in the state to file a complaint as long as the complaint names as a defendant one company that is doing business in that particular county.

Philadelphia, Pennsylvania. In February 2004, the Supreme Court of Pennsylvania struck down legislation that protected companies that never were involved in the manufacture, sale or use of asbestos or asbestos-containing products from unlimited liability due solely to their acquisition of a company with some such past activity. This is cited by the Report as one of the primary reasons that is included in the list. The legislation would have reasonably limited a non-negligent company’s liability to the fair market value of the total assets of the acquired company as of the time of the merger or consolidation. It was designed to address the problem faced by companies such as Crown Holdings, which was named in hundreds of asbestos lawsuits as a result of its ninety-day ownership in the 1960s of a small insulation company that may have used asbestos materials, but not during the time Crown Holdings owned the company. Crown Holdings, which produces packaging and beverage containers and has nothing to do with asbestos, has paid more than U.S. \$336 million to settle asbestos lawsuits and is now facing bankruptcy.

Los Angeles, California. For the third consecutive year, Los Angeles County has been listed in the Report. This year, the Report focused on California’s Unfair Competition Law, which permits private attorneys to bring lawsuits against businesses for unfair, unlawful or fraudulent

practices on behalf of the general public. The statute does not require the party filing the action to suffer any personal harm or have any connection to the defendant. This law is reportedly being abused by plaintiffs’ attorneys throughout the state, but particularly in Los Angeles County, where plaintiffs’ lawyers are reportedly filing unfair competition claims for almost any business practice, regardless of whether the conduct was harmful.

In conclusion, we wish all of our readers a prosperous and healthy New Year and one where we hope you do not find yourself a defendant in one of these jurisdictions!

Endnotes

¹ ATRA is a non-profit corporation and its primary purpose is stated to be “to educate and inform the general public on 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.” A full copy of the ATRA Report can be obtained at www.atra.org/reports/hellholes/report.pdf.

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