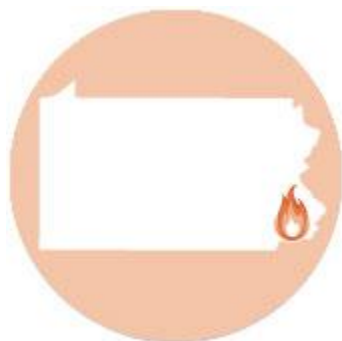


<http://www.judicialhellholes.org/2012-13/philadelphia/>

Philadelphia



As regular readers of this report and its related [website](#) know, Philadelphia ignominiously reigned as the nation's #1 Judicial Hellhole for the past two years. Under the direction of plaintiff-friendly judges, the Court of Common Pleas' Complex Litigation Center (CLC), designed initially for the more efficient handling of mass tort cases, had become a magnet jurisdiction for lawsuits from across the country. During the past five years, nearly **9 out of 10** active asbestos or pharmaceutical cases in the CLC had no connection to Philadelphia, and less than a third of them had even a connection to Pennsylvania.

Local rules and procedures had evolved in a manner advantageous to plaintiffs, and the significant risk of inordinately high jury verdicts in the "[City of Unbrotherly Torts](#)" effectively forced most defendants to seek peace with generous settlement offers – even when they believed the facts and law were on their side, and that in a more fairly balanced court they might win their cases.

But unwelcomed, relentless attention from Judicial Hellholes reporters and other civil justice reformers has now sufficiently motivated fair-minded judges in Philadelphia and lawmakers in Harrisburg to initiate what is hoped will be an era of sustained positive change. And while it comes with many caveats and a pledge to keep the white-hot Judicial Hellholes spotlight firmly fixed on the jurisdiction for as long as necessary to prevent backsliding, it is in the spirit of giving credit where credit is due that this year's report appropriately eases Philadelphia out of the Hellholes rankings and onto the Watch List.

Judge Herron Leads Reform Drive

Though personal injury lawyers may not have been quite as depressed as Philadelphia Eagles fans watching their team remain without a Super Bowl title year after year, many were nonetheless sadly disappointed on February 15, 2012, when **Court of Common Pleas Chief Administrative Judge John W. Herron** announced a 15-point reform order aimed at better leveling the playing field in Philadelphia's CLC.

Upon considering comments and recommendations from attorneys and others, Judge Herron signed off on [General Court Regulation No. 2012-01](#), which, among other positive steps, eliminates reverse bifurcation, limits consolidation in all mass tort cases, including asbestos cases, and limits the number of cases that can be tried by out-of-state attorneys annually.

Judge Herron's order also critically acknowledges the "dramatic" explosion of the CLC's asbestos docket that began when "this Court's leadership invited claims from other jurisdictions. In 2009, when published comments were offered encouraging the filing of claims in Philadelphia, out-of-state filings soared to 41% and in 2011 reached an astonishing 47%."

Along with other judges implicated by Judge Herron's damning reference to court leadership that invited out-of-state claims was then CLC **Supervising Judge Sandra Mazer Moss**. The new reform order also laid the ground work for Judge Moss to be moved respectfully but firmly out of the CLC, effective at the start of 2013. Many CLC defendants are quietly relieved both by that move and by the apparent commitment to reform and fairness thus far demonstrated by her replacement, **Judge Arnold L. New**.

With purpose, Judge Herron picked Judge New to redirect the CLC. Their reform efforts have the continuing support of Pennsylvania **Supreme Court Chief Justice Ronald D. Castille**, who in turn had [appointed](#) Judge Herron with the intention of giving the high court "more direct control and involvement in some of the issues" facing Philadelphia courts. That support and control seems well-founded in light of preliminary statistics on new mass tort case filings.

As [reported](#) in September 2012 by the Legal Intelligencer, the "Philadelphia Court of Common Pleas is projecting that 60 percent fewer mass tort cases will be filed this year than were filed in 2011." With only 628 such cases having been filed through the end of August, the court projects only 1,068 new filings for all of 2012, compared to 2,690 in 2011. The fresh scent of fairness is likely discouraging new filings from plaintiffs' attorneys who'd grown accustomed to having an unfair advantage in Philadelphia.

More Progress Can Be Made

As reported earlier this year by [Becker's ASC Review](#), analysis of 2011 data by [Diederich Healthcare](#) ranked the states from highest to lowest for their total medical lawsuit payouts, as recorded by the [National Practitioner Data Bank](#). In this very costly category, Pennsylvania's nearly \$320 million in such payouts was second in the nation only to New York's mindboggling \$678 million. One shudders to think how high the Keystone State's payouts might have been had it not undertaken venue reform for medical liability cases in 2003.

Reflecting on the success of that venue reform, which directs medical plaintiffs to file claims "only in a county in which the cause of action arose," Philadelphia Magazine's "Be Well Philly" blog in May 2012 reported that Pennsylvania's high court and legislature sought to curb runaway medical lawsuits in Philadelphia 10 years ago and have succeeded in dramatically reducing the abuse of the system as it then existed. A [collection of data](#) issued by Pennsylvania's Supreme Court shows, according to the blog post, "in 2002, medical malpractice plaintiffs whose cases were heard in Philly courts were more than twice as likely to win jury trials as the national average – and more than half their awards were for \$1 million or more."

Now, in "Pennsylvania overall, medical malpractice lawsuits are down 44.1 percent from the base years of 2000-2002; in Philly, they're down a whopping 65 percent. The total number of med-mal filings in the city fell from 1,365 in 2003 to 577 in 2011 – a 58 percent decrease." And Chief Justice Castille [says](#) that "serious cases and the cases that deserve compensation are being handled well in the system" since reforms were undertaken.

So if venue reform has served to tamp down the filing of meritless medical lawsuits in Philadelphia and throughout Pennsylvania more broadly, surely the legislature and high court should be motivated to apply similar reform to all civil litigation. After all, as one Pennsylvania court has candidly [acknowledged](#), "Pennsylvania does not forbid 'forum shopping' per se – to the contrary, our venue rules give plaintiffs various choices of different possible venues, and plaintiffs are generally free to 'shop' among those forums and choose the one they prefer."

Following enactment of the Fair Share Act in 2011, which moved Pennsylvania into the mainstream and largely holds defendants that are less than 60% responsible for a plaintiffs' injuries liable only for their share of damage (with some exceptions), Pennsylvania policymakers can and should maintain their reform momentum in 2013 by tightening venue rules, too.

After all, it was venue shopping by personal injury lawyers from all around the country, enticed by plaintiff-friendly judges and procedures, that had helped make Philadelphia the Judicial Hellhole it had become. There's no reason Pennsylvania taxpayers should foot the bill for court resources consumed by out-of-state and out-of-county plaintiffs or otherwise be obligated to serve on juries in cases that belong elsewhere. Other states have adopted broad venue reforms over the last decade, and Pennsylvania should now join them.

Post-Script

Despite the distracting denials and protests that have come from some Philadelphia judges, plaintiffs' lawyers and self-described consumer advocates since the jurisdiction's fairness problems began to be spotlighted and [fully documented](#), ATRA is encouraged to know that serious-minded jurists there took criticisms as they were constructively intended. Their desire to render justice fairly for all parties with matters rightly before them in Philadelphia courts is the basis for Judge Herron's reform order. ATRA applauds the courage of these judges in challenging the status quo, and it encourages Keystone State policymakers to redouble broader reform efforts.

Climbing out of a judicial hellhole isn't easy. But it has been done by other, ultimately reform-minded jurisdictions, and Philadelphia has now joined them. Assuming trial judges will live up to both the letter and spirit of Judge Herron's reform order, and hopeful that Pennsylvania will broaden civil justice reform further, ATRA members would like to see Philadelphia stay off the Judicial Hellholes list indefinitely.