http://www.judicialhellholes.org/2011-12/philadelphia/

Philadelphia, Pennsylvania

Plaintiffs' attorneys are drawn to Philadelphia courts because they believe their clients will receive favorable treatment in the way the laws are administered, essentially getting a better deal there than they would likely get at home in front of their local judges and juries.

Forum Shopping: The Philly Phenomenon

Pennsylvania law provides significant flexibility to plaintiffs' lawyers as to where to file their cases. For example, Pennsylvania law permits claims against businesses anywhere in the state that they conduct more than incidental or isolated business activity. In a 2009 ruling, a Pennsylvania court **candidly acknowledged** that "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." While courts can transfer or dismiss cases "for the convenience of parties and witnesses," Pennsylvania judges place a **heavy burden** on the defendant to present detailed information proving that the plaintiff's choice of court is "oppressive or vexatious." Such requests are often **denied**, even when there is little or no connection between the lawsuit and the county in which it is filed.

Philadelphia is clearly the plaintiffs' choice – it has nearly twice the litigation per capita of other Pennsylvania counties, according to **court statistics** and census data. While there are a handful of other counties that have a disproportionately high number of lawsuits relative to their populations, forum shopping in Pennsylvania appears to be primarily, if not exclusively, a Philadelphia phenomenon. One might write this discrepancy off to cities' higher concentration of lawyers and businesses, being more convenient for litigating claims, or arguably more plaintiff-friendly jury pools. Statistics suggest, however, that Philadelphia's disproportionately large civil docket is not necessarily an urban versus rural/suburban issue. When excluding Philadelphia, Pennsylvania's urban counties averaged about the same amount of civil cases docketed per capita as **rural areas**. Lancaster, the least favored of the urban counties, had one-third the per capita caseload of Philadelphia.

Plaintiffs' Lawyers Expect More Favorable Trial Outcomes

Plaintiffs' lawyers in Philadelphia courts act differently than those in other areas of Pennsylvania and in other states. According to a recent study, "**Are Plaintiffs Drawn to Philadelphia's Civil Courts? An Empirical Examination**," published by the **International Center for Law & Economics**, Philadelphia courts host an especially large number of cases and have a larger docket than expected. Furthermore, the report indicates, Philadelphia plaintiffs are less likely to settle their cases before trial than are non-Philadelphia plaintiffs, and they are disproportionately likely to prefer jury trials. These findings are consistent with a conclusion that Philadelphia courts demonstrate a marked and meaningful preference for plaintiffs.

A **legislative effort** to reduce litigation tourism to Philadelphia and elsewhere in the state stalled in the Pennsylvania General Assembly this year but is expected to be renewed in 2012.

The Complex Litigation Center: Efficiency Over Fairness?

As highlighted in the 2010/2011 Judicial Hellholes report, the court's Complex Litigation Center (CLC) is also a major factor in the flow of cases to Philadelphia. Touted by some as a "**national model** for mass torts litigation," the CLC handles mass tort litigation, such as pharmaceutical and asbestos cases. A rigid mandate to bring mass tort cases to **trial within two years** of filing may contribute to the attractiveness of the CLC to plaintiffs from across the country. Philadelphia Common Pleas **Judge Sandra Mazer Moss** has said that nonresident plaintiffs file in Philadelphia "because they know they can get a trial in 18 months to two years." Philadelphia Common Pleas **Judge William J. Manfredi**, supervising judge of the civil section of the trial division, has **similarly observed** that "[m]ass tort cases are being filed here because the parties are interested in coming to Philadelphia once again. It comes back to our case management system."

A sophisticated litigation center like the CLC provides some efficiencies and advantages. The problem occurs when too much emphasis is placed on efficiency and fairness takes a back seat. Those who are sued must have adequate time to fully assess and defend numerous claims, otherwise undue pressure is created to settle regardless of the merits. Efficiency is important, but fairness must be the top priority.

"Marketing" of the CLC by the Philadelphia judiciary has contributed to the concern of those who might be named as defendants. Soon after Judge Moss replaced **Judge Allan Tereshko** as coordinating judge of the mass tort program in 2009, she **declared** that "a new day" had arrived at the CLC. This new day was reflected by Common Pleas President **Judge Pamela Pryor Dembe**, who **undertook** a "public campaign to lay out the welcome mat for increased mass torts filings." Judge Dembe has expressed a desire to make the CLC even more attractive to attorneys, "so we're **taking away business** from other courts." Some may question whether the goal of fairness is paramount in this environment. For instance, Jim Copland of the Manhattan Institute calls the Philadelphia court system a "**profit center**" given the amount of filing fees it takes in from out-of-state cases.

The court's strategy for drawing more lawsuits to Philadelphia seems to be working. There were **13,631 mass tort cases** in the CLC in 2006. After **settlement** of thousands of Fen-Phen cases, the court's docket shrank to 2,498 cases in the spring of 2007. But it is growing again. In 2010, CLC's Mass Tort Program **docket was up** 22 percent – from 4,288 to 5,244 pending cases – largely due to four new pharmaceutical mass tort consolidations.

A Statewide Anti-Business Litigation Climate

Lawyers from other states may be lured to Pennsylvania and decide to file in Philadelphia, due to the state's plaintiff-friendly environment. Pennsylvania is one of a handful of states that continues to follow an insufficiently rigorous **standard for admissibility of expert testimony**, which federal courts and most state courts have abandoned. It also is in the minority of states that have not placed a limit on damages for subjective pain and suffering applicable either in medical liability cases or all personal injury cases. Nor has Pennsylvania joined the majority of states that have placed statutory limits on the size of awards for punitive damages. Meanwhile, a growing number of states have enacted comprehensive tort reform legislation. The litigation environment in Texas and Mississippi, formerly homes to multiple Judicial Hellholes, was transformed by such legislation. More recently, states such as Tennessee and Wisconsin have adopted significant reform packages (see Points of Light, p. 38). Pennsylvania, however, has taken little action in recent years to address excesses in its civil justice system, with two notable exceptions – its adoption of medical liability reforms in 2002 and "fair share" liability this year, as discussed below.

An About Face in Medical Malpractice Claims

Philadelphia forum shopping and the impacts of lawsuit abuse initially surfaced in the context of medical malpractice litigation, which significantly contributed to the city's development of a Judicial Hellholes reputation. In 2002 **nearly half** of all medical liability claims filed in Pennsylvania landed in Philadelphia's Court of Common Pleas. The reasons plaintiffs' lawyers chose Philadelphia as the hot spot for such claims are likely some of the same reasons they continue to choose Philadelphia for other personal injury actions today.**Pre-reform data** indicated that plaintiffs in Philadelphia were more than twice as likely to win jury trials relative to the national average, and over half of these medical liability awards were for $1 million or more. The **National Center for State Courts** documented a 40 percent win rate for plaintiffs in Philadelphia medical trials in 2001, three times the plaintiff win rate in Alleghany County (Pittsburgh). NCSC also found that Philadelphia trials were four times more likely to be appealed than those tried in Pittsburgh. And according to a study funded by the Pew Charitable Trusts, the number of medical liability verdicts that exceeded $1 million in Philadelphia **rivaled** all of those in the entire state of California during this period.

In response to the adverse impact of tort litigation on access to affordable health care, the General Assembly and Pennsylvania Supreme Court took action, addressing venue among other areas. The **Medical Care Availability and Reduction of Error Act** (MCARE) of 2002 directed plaintiffs to file medical liability claims "only in a county in which the cause of action arose." Soon thereafter, the Pennsylvania Supreme Court incorporated this**provision** into the Rules of Civil Procedure. The year after the venue reform went into

effect, medical liability claims filed in Philadelphia **plummeted** from 1,365 to 577, a decline of 58 percent.

The Pennsylvania Supreme Court's **data** on medical liability filings and verdicts for 2010 show a shifting of medical cases since enactment of the 2003 liability reforms. Court statistics show that while medical liability lawsuits filed in Pennsylvania have declined by an impressive 45 percent from the three-year average before the 2003 reforms, the decline in Philadelphia has been a staggering 68 percent, down to just 381 in 2010. Now, medical liability lawsuits are more evenly dispersed throughout the state. As Pennsylvania Supreme Court **Chief Justice Ronald D. Castille** **observed**, "Most importantly, justice for our citizens is still being delivered where patients are truly injured by medical mistakes."

Third Time is a Charm: Pennsylvania Adopts 'Fair Share'

Pennsylvania lawmakers deserve credit for its move into the mainstream this year by limiting its application of joint and several liability. Until this year, Pennsylvania was among a shrinking minority of states still operating under so-called "joint and several" liability law wherein a civil defendant can be made to pay 100 percent of a jury award even if he is only 1 percent liable for the injury suffered by a plaintiff. Under its new "Fair Share" **law**, when a defendant is less than 60 percent responsible for an individual's injuries, that defendant pays only its share of liability, with certain exceptions. When a defendant's responsibility equals or exceeds 60 percent, joint liability continues to apply and that defendant is potentially liable for all of the plaintiff's damages if recovery from other responsible parties is not possible.

This law is a major tort reform victory, as it represented the third attempt to pass such a bill. In 2002, the General Assembly passed a Fair Share Act, but the legislation was **struck down** for procedural reasons. A subsequent session of the General Assembly passed corrective legislation, which former **Gov. Ed Rendell** **unexpectedly** vetoed in 2006.

Enactment of the Fair Share Act may mark the beginning of meaningful civil justice reform in Pennsylvania. As noted above, the House Judiciary Committee held a hearing in October on a venue reform **bill** that would require plaintiffs to file civil cases in the county where the claim arose, an approach consistent with that which has proved successful when applied to medical malpractice claims. The General Assembly and judiciary should support such moderate efforts to improve Pennsylvania's legal and business environment.

Editor's Note: Evenhandedness requires the passing along of one very positive report offered by defense counsel in a major products liability case in Philadelphia's Court of Common Pleas. It commended the "patience, careful legal analysis and practical judgment, tempered by an appropriate level of humor and humility" demonstrated by **Judge Marlene F. Lachman**, who, "[w]ithout ever betraying her view of the merits," fairly afforded all lawyers in the case "the same level of respect."