

Judicial Hellholes Are a Law Firm Marketing Opportunity for Plaintiff Lawyers

By Larry Bodine, Esq.

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There are six "judicial hellholes," five jurisdictions on the "watch list," four "dishonorable mentions" and 16 lawyers in the "rogue's gallery" in the list of plaintiff-friendly jurisdictions named by the American Tort Reform Foundation (ATRA). "Judicial Hellholes are places where judges systematically apply laws and court procedures in an unfair and unbalanced manner, generally against defendants in civil lawsuits," the organization's [new 64-page report](#) says.

Viewed another way, the jurisdictions are marketing opportunities for plaintiff lawyers battling big corporations. "West Virginia was a 'field of dreams' for plaintiffs' lawyers. We built it and they came," the report quotes West Virginia Judge Arthur Recht as saying. It also quotes Mississippi trial lawyer Richard "Dickie" Scruggs describing them as "magic jurisdictions."

ATRA is a pro-business organization that is supported by major industries and Fortune 500 companies. It is a "business-led effort to take away consumers' legal rights," which attacks judges and juries, according to the Center for Justice and Democracy (CJD). "ATRA's unscientific report attacks a number of poor communities in the United States" using "no actual or scientific data" a [CJD statement](#) says.

[Timothy C. Bailey](#), president of the West Virginia Association for Justice, said, "ATRA was created expressly for the purpose of lobbying for immunity when corporations break the law. It is continuing its unrelenting attack on West Virginia and our civil justice system because our courts are the one place where these corporate wrongdoers can still be held accountable for their negligence and misconduct."

Defense "points of light"

Conversely, defense lawyers can make it a marketing distinction that they've kept clients out of these jurisdictions. Making the argument that justice can be controlled by location, the report also lists defense-oriented "points of light." Corporate defendants are favored in these jurisdictions by getting additional appeals (Maryland and West Virginia, which is hellhole #2), reduced verdicts (New Jersey, which is hellhole #4), rejecting emotional harm damages (Vermont and California), adding burdens to cases for asbestosis victims (U.S. Supreme Court), and raising hurdles for the admission of expert testimony (Arizona).



The "ATRA Gold Medal" went to Oklahoma, for enacting tort reform by

reducing appeals bonds for defendants, requiring experts to file a "certificate of merit for professional negligence," limiting class actions, limiting joint and several liability, limiting noneconomic damages, exempting fast-food outlets from obesity cases, and lowering and delaying prejudgment interest.

Viewing the list dispassionately from a business development perspective, the judicial hellholes are a road map for business development and law firm marketing for plaintiff lawyers. The ATRA report states:

#1 SOUTH FLORIDA

South Florida, the home of WhoCanISue.com, is known for its medical malpractice claims, never-ending tobacco lawsuits and generous verdicts. Trial practices favor plaintiffs, as exemplified by a string of reversals in a Miami-Dade case against Ford Motor Company. Florida is also developing a reputation as the place to bring slip-and-fall lawsuits due to its lower burden of proof compared to other states, making the state ripe for fraudulent claims. Supermarkets, corner stores, and restaurants have no choice but to settle, regardless of whether they could have prevented accidents. In addition, Florida is one of the few states that allow those who drive under the influence of alcohol or drugs to sue the automobile manufacturer for failing to prevent their injuries by designing a safer car, while hiding from the jury the driver's responsibility for the crash. South Florida is home to several legal scandals this year, in which lawyers enriched themselves with their clients' money and bought hospital records to solicit business. Even the organization representing plaintiffs' lawyers in the state has found itself in hot water.

JUDICIAL HELLHOLES[®] 2009-2010

- 1 South Florida**
- 2 West Virginia**
- 3 Cook County, Illinois**
- 4 Atlantic County, New Jersey & Beyond**
- 5 New Mexico Appellate Courts**
- 6 New York City**

#2 WEST VIRGINIA

West Virginia has gained its poor reputation as a place in which civil defendants often cannot receive justice. This perception is due to the state's unique lack of appellate review; the home court advantage provided by locally elected judges to in-state plaintiffs against out-of-state corporations; unfair trial practices; and the novel, liability-expanding decisions of its high court. West Virginia is also known for its close relationships between the plaintiffs' bar and its long-serving state attorney general. Recently, some businesses have attempted to fight back by exposing fraudulent claims. The recent recommendation of an Independent Commission on the Judiciary that West Virginia establish an intermediate appellate court and an appeal as a matter of right, as detailed in a Point of Light, provides some hope that West Virginia may be turning the corner on the road to reform. Until West Virginia shows tangible change, however, it remains a troubling Judicial Hellhole.

3 COOK COUNTY, ILLINOIS

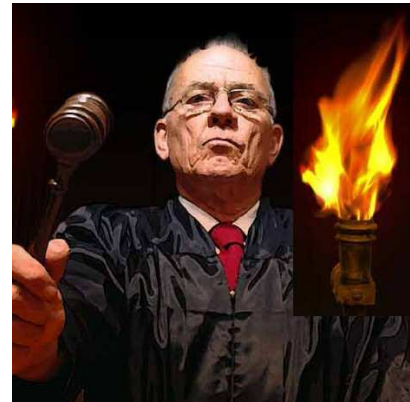
Cook County is Illinois' center of litigation, hosting 65 percent of the state's lawsuits while serving as home to just 41 percent of its population. This disparity has widened over the past 15 fifteen years. O'Hare is not just busy with tourists, but also with lawyers bringing claims from around the state, across the country, and even from abroad. Lawsuits in hyper-litigious Cook County include claims that a dolphin at a zoo splashed spectators, that fire engine sirens are too loud, and that a camp is responsible for the deaths of teenagers who took a late night joy ride in its boats.

4 ATLANTIC COUNTY, NEW JERSEY & BEYOND

Atlantic County has been identified as a Judicial Hellhole since 2007 in large part because it serves as a center for mass tort actions, often directed at one of the state's own economic generators, pharmaceutical manufacturers. Ninety-three percent of plaintiffs in New Jersey's pharmaceutical mass torts come from outside the state. Atlantic County also spends an astronomical amount defending against lawsuits with a legal services budget that dwarfs other Garden State counties. In other New Jersey courts, advocacy groups have taken aim against food producers, alleging that hot dog makers should warn that this ballpark staple increases the risk of cancer and that restaurants commit fraud by not disclosing the sodium content of menu items.

5 NEW MEXICO APPELLATE COURTS

After several years on the Watch List, New Mexico's appellate courts now get to feel some full-blown Judicial Hellholes heat. This year the New Mexico Court of Appeals even rejected the "baseball rule," which has long recognized spectators' inherent risk of being hit by a batted ball. In another recent case the same court found that the manufacturer of a rock crusher could be held liable for the death of a worker, even though the worker disregarded his training and climbed into the machine while it was still in operation, and even though someone else had altered the machine to expose its moving parts.



6 NEW YORK CITY

Start spreading the news... you can make it in New York by suing the city. The Great Gotham spent more settling slip and falls, medical malpractice, car accident and school-related claims than the next five largest American cities combined. With a personal injury lawyer serving as Speaker of the New York Assembly, it's not surprising that many observers have also expressed concern with the trial practices of the new judge handling asbestos litigation in the state.

ATRA's "watch list" includes:

- California
- Alabama

- Madison County, Illinois
- Jefferson County, Mississippi
- Gulf Coast and Rio Grande Valley, Texas

The "dishonorable mentions" include:

- The Arkansas Supreme Court
- The Minnesota Supreme Court
- The North Dakota Supreme Court
- Democratic Governor Edward G. Rendell of Pennsylvania

The report makes it clear that one lawyer's hellhole is another lawyer's paradise.