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After Six-Year Reprieve, Philadelphia Back Among the 'Judicial Hellholes'

The American Tort Reform Association has once again christened Philadelphia's Court of Common Pleas a "Judicial Hellhole" after a six-year reprieve. And, following two key developments in Philadelphia's mass torts program Tuesday, it's probably safe to say ATRA has no regrets about its decision.

by **ZAC NEEDLES and AMANDA BRONSTAD,**

Of the Legal staff

Well, it was nice while it lasted.

Six years ago, the Philadelphia Court of Common Pleas took the top spot in the American Tort Reform Association's annual "Judicial Hellholes" report, which featured a three-page lambasting of the court's alleged pro-plaintiff bias with subheads like "Forum Shopping: A Philly Phenomenon" and "The Complex Litigation Center: Efficiency Over Fairness?"

But thanks to a slate of rule changes for mass tort cases adopted by the First Judicial District in 2012, Philadelphia was relieved of its "hellhole" designation in the 2012-13 report and was instead placed within the relatively more comfortable confines of ATRA's "Watch List," where it remained for the next four annual reports.

Unfortunately, it wasn't meant to be. In this year's report, issued Tuesday, a clearly disappointed ATRA said it was forced to add Philadelphia back to the rankings—at No. 5 of 8.

"The [Complex Litigation Center] had undertaken reforms and, in

recent years, seemed to become less welcoming to out-of-state plaintiffs. But a surge of new lawsuits and a string of multimillion-dollar verdicts have sadly returned 'The City of Unbrotherly Torts' to the ranks of Judicial Hellholes," the report read, invoking the title of a 2011 Wall Street Journal piece that declared Philadelphia to be "a nice place, but you wouldn't want to be sued there."

Philadelphia's trial court found itself back in the top five due to a surge of new lawsuits and big verdicts, particularly involving pelvic mesh, antipsychotic drug Risperdal and blood thinner Xarelto.

On the same day the report was released came two developments that likely provided both affirmation and aggravation to ATRA: On Tuesday morning, after three straight losses for plaintiffs in federal court, a Philadelphia jury awarded nearly \$28 million to the plaintiffs in the first Xarelto bellwether trial to take place in state court. Later that afternoon, Philadelphia Court of Common Pleas Judge Arnold New ruled that only one of the roughly 120 cases pending against Johnson & Johnson subsidiary Ethicon needed to be dismissed from the venue as a result of the U.S. Supreme Court's

recent high-profile pronouncement in Bristol-Myers Squibb v. Superior Court of California, which said out-of-state plaintiffs can't sue companies where the defendants aren't considered to be "at home," or haven't conducted business directly linked to the claimed injury.

The timing of New's decision was particularly uncanny as ATRA had specifically mentioned the judge's then-pending ruling in its latest report, expressing cautious optimism that New might rule the other way and toss out-of-state mesh claims.

"Judge New issued a late-summer 2017 order in the Philly mesh litigation, indicating that he is considering dismissal of mesh cases brought by out-of-state plaintiffs in light of recent U.S. Supreme Court jurisdictional decisions limiting the ability of state courts to exercise jurisdiction over out-of-state defendants when a claim is not connected to the state. Following those U.S. Supreme Court rulings, three out-of-state plaintiffs suing Boston Scientific in the Philadelphia Court of Common Pleas withdrew their mesh lawsuits with the intention of refileing them in Delaware, where Boston Scientific is incorporated," the report said.

It continued: “But **Shanin Specter**, of Kline & Specter, which has brought most of the mesh lawsuits in Philadelphia, has indicated that he has no intention of voluntarily withdrawing any of the cases his firm is pursuing on behalf of out-of-state plaintiffs. Mesh defendants, meanwhile, have urged the Philadelphia court to dismiss the out-of-state claims, observing that, ‘Plaintiffs’ sole connection to the commonwealth is their lawyers’ choice to file suit in this court.’”

Reached Wednesday for comment on the report, Specter said in an email: “ATRA resides in a rancid, fact-free alternative dimension, characterized by invective, not intellect. Even after the [Bristol-Myers Squibb] decision, we demonstrated the close nexus between Pennsylvania and the claims through the fact that Ethicon had their mesh made in Pennsylvania. That’s why the court just reaffirmed its earlier decision maintaining jurisdiction in Pennsylvania. ATRA’s attack on the Pennsylvania judiciary is especially disgusting, since our judges are ethically bound not to respond.”

Philadelphia’s wasn’t the only Pennsylvania court to attract ATRA’s attention this year, however. The state Supreme Court was placed on the Watch List for several rulings over the past year siding with plaintiffs in asbestos, medical liability, insurance bad faith and workers’ compensation cases.

“While it has been generally balanced in the past, its membership shifted in 2016 after the earlier election of several candidates supported by the plaintiffs’ bar,” the report said. “Plaintiff-friendly justices now have a dominant majori-

ty. During the past year the court has certainly done so, rendering decisions affecting.”

Around the Country

Florida was ranked No. 1 among the “Hellholes” for the first time ever.

The report, published by ATRA since 2002, cited four Florida Supreme Court rulings in medical malpractice lawsuits among the primary reasons for ranking it the least business-friendly courts in the nation. Other top venues included those in California, New York and New Jersey.

“This year, thanks to a state high court majority’s barely contained contempt for the policy-making authority of the legislative and executive branches of government, and a notoriously aggressive and sometimes lawless plaintiffs’ bar, Florida earns the ignominious No. 1 ranking among eight Judicial Hellholes, even as authorities have begun to crack down on some of the lawsuit industry’s most obviously fraudulent rackets,” Tiger Joyce, president of ATRA, said in a statement.

American Association for Justice spokesman Peter Knudsen took aim at the report’s general criticism of the courts.

“The authors of this report seem to think that our Seventh Amendment right to seek justice in court is something to be condemned. But that right is protected by the Constitution, just like their right to trot out this same stunt every year in an effort to help corporations avoid accountability.”

Here’s a look at some of the eight venues that made the list:

Florida

According to the report, Florida Supreme Court’s medical malpractice cases appeared to disregard the intent of the state’s legislature. The first decision granted patients access to medical records. Two other decisions pushed back against limits on attorney fees and damages. The court also upheld the privacy rights of patients.

Fort Lauderdale plaintiffs lawyer Scott Schlesinger chastised the report as “fiction” and “meaningless.” He said it’s harder than ever for plaintiffs to get compensated for malpractice committed by their doctors.

“Medical care is pretty much worse than it’s ever been and more dangerous than ever, but nobody wants to be held accountable,” said Schlesinger, of Schlesinger Law Offices. “The powers that be are able to ram through special interest legislation, and it’s the neutral courts that say, wait, this is unfair, or unconstitutional or unlawful legislation.”

The report also noted recent crackdowns on insurance fraud among Florida’s plaintiffs’ bar, some of which have landed plea agreements. And it referenced \$9.2 million in sanctions against two Jacksonville plaintiffs firms for “unprofessional conduct” in tobacco cases.

“Our state has a vibrant justice system that is working to keep Floridians safe and deter insurance companies and big corporations from taking advantage of people and small businesses,” wrote Florida Justice Association spokesman Ryan Banfill. “That’s good for consumers and for business, too.”

California

The report cited California's Private Attorneys General Act and public nuisance law as among the reasons the state ranked No. 2. In particular, the report mentioned an appeals court decision upholding liability in a \$1.15 billion lead paint judgment.

The report acknowledged some defense wins in California, both involving alleged links between Johnson & Johnson's baby powder and ovarian cancer and mesothelioma. And it praised the U.S. Supreme Court's reversal of the U.S. Court of Appeals for the Ninth Circuit's 2016 ruling in Bristol-Myers Squibb v. Superior Court.

"The good news is the U.S. Supreme Court in June reversed a California high court decision that we criticized in last year's report," Joyce said. "Had it been allowed to stand, California's courthouse doors would have been thrown open even wider to out-of-state plaintiffs suing out-of-state defendants over alleged out-of-state injuries."

New York

In New York, the report focused on the city's asbestos docket, which ranked No. 4 due to a case management order issued this year that allowed claimants to pursue punitive damages.

Joyce called it "a great disappointment for defendants."

Missouri

St. Louis topped the list last year but moved to No. 3 after the governor signed legislation designed to rein in large verdicts based on what tort reformers called "junk

science." Juries in St. Louis have awarded double-digit awards against Johnson & Johnson over baby powder. The report cited those reforms, Bristol-Myers and an appeals court's reversal of a \$72 million talc verdict as reasons for St. Louis to drop in rank.

New Jersey

The state ranked No. 6, primarily due to an appeals court ruling reviving more than 2,000 lawsuits over acne drug Accutane that had been dismissed based on scientific experts.

The report also flagged several venues to watch out for, such as Georgia, for its "growing list of outrageous verdicts." It also chastised the Connecticut Supreme Court for upholding a \$41.7 million award against a private school after a student was bit by a tick while on a class trip in China—though the judges were less than enthusiastic about their opinion.

Justice Andrew McDonald wrote in a concurring opinion: "Indeed, while the damages award in the present case shocks my conscience, our existing standard does not provide a recognized basis to conclude that the trial court's conclusion to the contrary was improper."