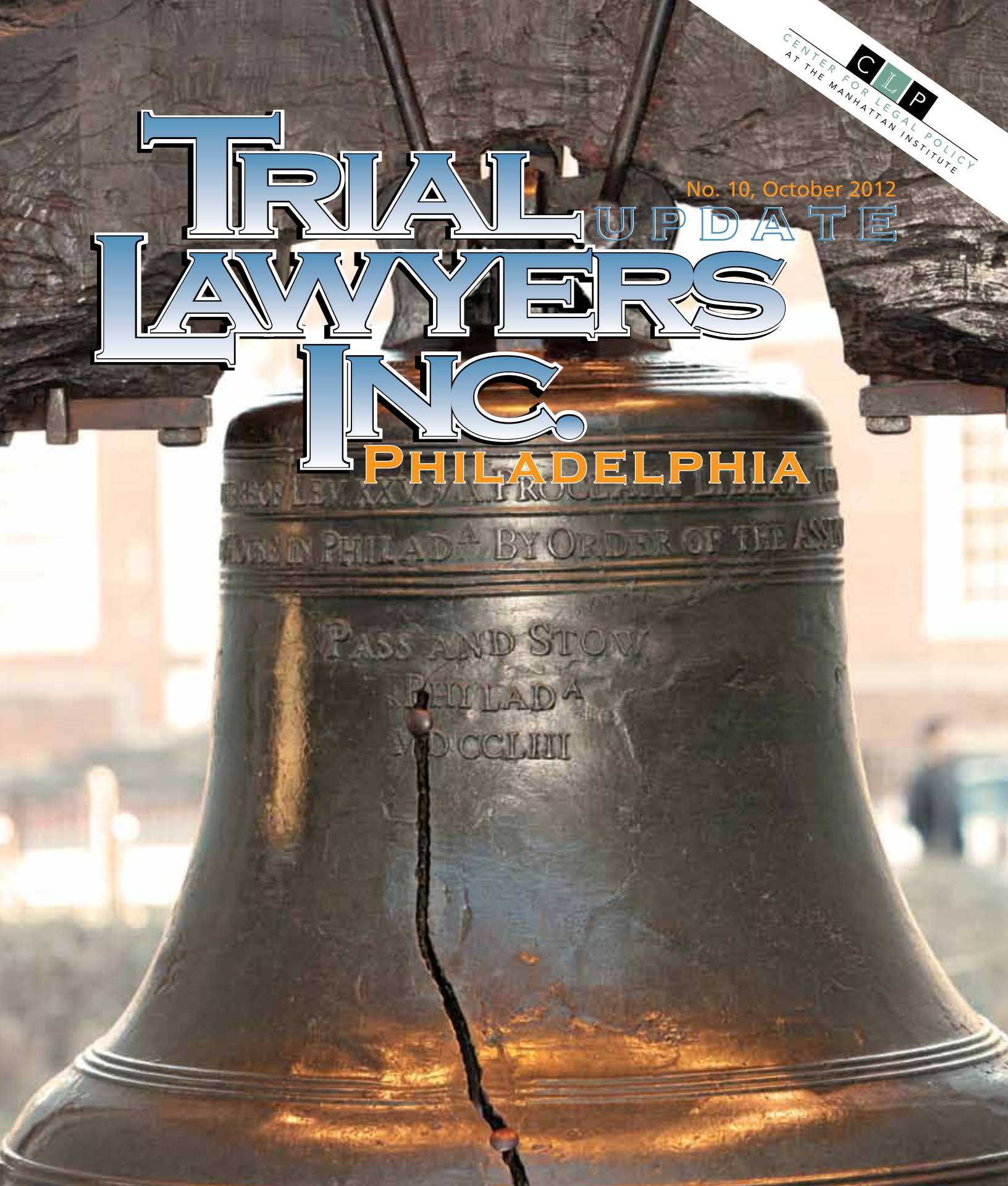


No. 10, October 2012

# TRIAL UPDATE LAWYERS INC. PHILADELPHIA



# CRACKED JUSTICE

## Philadelphia's Magnet Court Making Progress but in Need of Greater Reform

While many Philadelphians are struggling economically,<sup>1</sup> the city has been a major revenue center for mass-tort plaintiffs' lawyers. These big-ticket litigators have developed a sophisticated business model and outsize profits, leading the Manhattan Institute to dub their collective enterprise "Trial Lawyers, Inc."<sup>2</sup> But where Trial Lawyers, Inc. tends to thrive, traditional businesses tend to flee—which means that the litigation industry's Philadelphia successes have contributed to the exodus of jobs from the City of Brotherly Love and depressed economic growth across the Keystone State.

Philadelphia courts have been so friendly to Trial Lawyers, Inc.—and hostile to businesses—that the American Tort Reform Association has named the jurisdiction the nation's worst "judicial hellhole" two years running.<sup>3</sup> Philadelphia's status as the nation's most feared legal jurisdiction stems, somewhat ironically, from a legal reform designed to improve the way the city's courts function: the 1992 creation of a Complex Litigation Center (CLC) to deal with "complex, multi-filed Mass Tort cases,"<sup>4</sup> which the Philadelphia Court of Common Pleas opened in response to ballooning case dockets and costs.<sup>5</sup> Although the CLC was relatively successful in expediting cases, it soon emerged as a "magnet" court for mass-tort litigation—attracting lawsuits from across the Commonwealth and nation with plaintiff-friendly legal rules and outsize jury awards. Recent legislation and changes in case management have stemmed the tide of litigation somewhat, but further reform is essential to ensuring fair justice in Philadelphia—and to reviving the city's economic prospects, as well as those of the broader Commonwealth.

### The Making of a Mass-Tort Magnet Court

Pennsylvania's loose "venue" rules permit plaintiffs' lawyers to "shop" their cases statewide to preferred courthouses, since under the Commonwealth's legal rules, injury claims against businesses can generally be filed in any jurisdiction as long as the company "regularly conducts business" there—even if it is headquartered elsewhere, the plaintiff resides elsewhere, and the injury occurred elsewhere.<sup>6</sup> Under the doctrine of *forum non conveniens*, Pennsylvania judges have discretion to transfer a case "for the convenience of parties and witnesses"<sup>7</sup> but only if the defendant demonstrates, "with detailed information on the record, that the plaintiff's chosen forum is oppressive or vexatious to the defendant"<sup>8</sup>—a finding that Philadelphia's judges have been reluctant to impose on themselves. As one court noted, "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."<sup>9</sup>

Plaintiffs' lawyers have had many reasons to prefer Philadelphia. The CLC was expressly designed to expedite cases: notwithstanding the factual complexity of most mass-tort claims, trial dates are strictly set for 13 to 24 months after the filing of initial complaints.<sup>10</sup> Judges in the CLC are compared based on their "judicial productivity"—generally, the volume of cases they dispose of and their speed in doing so.<sup>11</sup> The CLC's expedited case management increases

the value of litigation, by reducing the time before lawyers receive payouts, by limiting defendants' ability to develop particularized defenses tailored to diverse claims, and by creating incentives for judges to pressure settlements.

Moreover, Philadelphia's juries have shown themselves much more likely than average to give large damage awards,<sup>12</sup> with verdicts of over \$1 million being commonplace.<sup>13</sup> Finally, until recently, the CLC allowed for "reverse bifurcation" of asbestos trials in which juries *first* determined damages and *then* determined whether a defendant was liable—a practice designed to encourage settlement but shown empirically to increase defendants' expected damages by hundreds of thousands of dollars per claim.<sup>14</sup>

In recent years, some judges of the CLC have openly "marketed" their jurisdiction in an effort to attract new cases. In 2009, shortly after Judge Sandra Mazer Moss replaced Judge Allan Tereshko as the mass-tort program's coordinating judge, she declared that it was "a new day" for the CLC.<sup>15</sup> Judge Pamela Pryor Dembe, president of the Court of Common Pleas, unabashedly announced a goal of "taking away business from other courts."<sup>16</sup> Some observers have noted that the court has an incentive to attract cases, particularly in "cash-strapped times," since the court retains filing fees—meaning that attracting more cases increases the court's available financial resources.<sup>17</sup>

How did Judge Dembe's marketing program succeed? Over the last five years, the number of active asbestos and pharmaceutical cases in the CLC increased 143 percent, from 2,542 to 6,174.<sup>18</sup> By 2010, Philadelphia had 21 percent of Pennsylvania's civil caseload, as compared with less than 12 percent of the population.<sup>19</sup> A startling number of these cases were out of state.<sup>20</sup> From 2001 through 2008, out-of-state claims constituted about one-third of all case filings in the CLC, but that number rose to 41 percent in 2009—and to 47 percent in 2011.<sup>21</sup> Looking solely at asbestos and pharmaceutical mass-tort cases on the CLC docket in late 2011, the numbers are even starker: over 67 percent of all identified cases involved out-of-state plaintiffs with no apparent connection to the jurisdiction; only 13 percent involved plaintiffs who either lived in or alleged that they were injured in Philadelphia.<sup>22</sup> Among the primary defendants in 95 percent of the CLC's active asbestos and pharmaceutical mass-tort claims—Pfizer, GlaxoSmithKline, Teva Pharmaceuticals, Goodyear Tires, and Ford Motor Company—only Glaxo has a major commercial office in Philadelphia.<sup>23</sup>

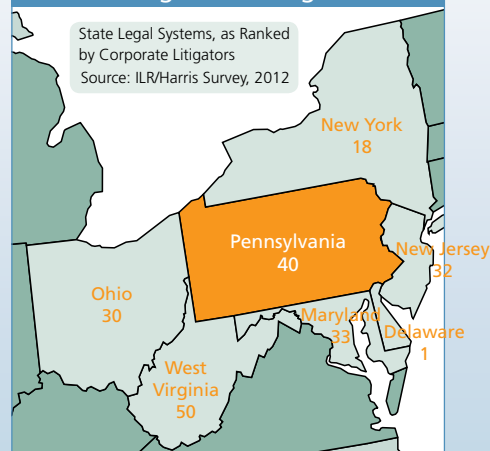
## Signs of Progress

Historically, there has been little positive record of legislative tort reform in Pennsylvania, with the notable exception of 2002 medical-malpractice litigation reforms, which have notably reduced abuses in such lawsuits (see page 5). Another

## THE CASE FOR CHANGE: AN ECONOMIC IMPERATIVE

Unlike for most businesses, which sell to willing customers, the trial lawyers' gain is a loss for ordinary residents of Philadelphia and Pennsylvania: 70 percent of business leaders around the country surveyed by Harris say that a state's litigation climate affects their decision on where to locate a business.<sup>24</sup> Philadelphia's legal climate affects economic development statewide, since the Commonwealth's permissive venue rules permit businesses in Pittsburgh, Allentown, Erie, or Scranton to be hauled into court in Philadelphia. Corporate executives rank Pennsylvania's overall legal climate below that of its neighboring states, save notoriously lawsuit-friendly West Virginia.<sup>25</sup> The cost of Pennsylvania's product-liability suits—injury claims stemming from an alleged product defect, such as the asbestos and pharmaceutical claims that dominate the mass-tort bar—is higher as a share of the state's economy than any other state's.<sup>26</sup>

Thanks to Philadelphia, Pennsylvania Trails Its Neighbors in Legal Fairness



er reform passed in 2002, which sought to reform the state's "joint and several liability" doctrine—essentially, ending the practice of holding a defendant wholly responsible for all of a plaintiff's losses, even if the defendant was minimally at fault—was thrown out on procedural grounds by the state supreme court.<sup>27</sup>

Recently, however, there have been signs of progress signaling an improved outlook for Philadelphia's legal system—prompted by electoral changes in the legislature and governor's office and by the publicity focusing on Philadelphia's emergence as the nation's most notorious mass-tort magnet court. In June 2011, Governor Tom Corbett signed into law the Fair Share Act, another attempt to reform joint and several liability to limit a defendant's obligation to cover all plaintiff losses unless the jury determined that the defendant was responsible for at least 60 percent of the plaintiff's

injuries.<sup>28</sup> Time will tell if the Pennsylvania Supreme Court will permit this reform, unlike its predecessor, to take effect. Outside the legislative arena, the courts themselves have taken major steps to police the excesses of the Philadelphia CLC. In November 2011, the chief justice of the Pennsylvania Supreme Court, Ronald Castille, appointed Judge John Herron to oversee Philadelphia's Court of Common Pleas,<sup>29</sup> with the express goal of "giv[ing] the Supreme Court more direct control and involvement in some of the issues facing the [Philadelphia courts]."<sup>30</sup> Shortly thereafter, in February 2012, the CLC modified its mass-tort protocols to eliminate reverse bifurcated trials and trial consolidations absent defendants' consent.<sup>31</sup> Initially, the court also extended its rule deferring punitive damage determinations, previously limited to asbestos cases, to all mass torts; and it limited out-of-state attorney admissions to two trials annually.<sup>32</sup> After an outcry by the plaintiffs' bar, however, Judge Herron

## PHILADELPHIA COURTS' HIGH-RISERS

AP Photo/Centre Daily Times, Nabil K. Mark



Thomas Kline and Shanin Specter, son of the late Republican-turned-Democrat Pennsylvania senator Arlen Specter, trained as plaintiffs' lawyers under notorious trial lawyer Jere Beasley<sup>33</sup> before branching out on their own in 1995. Since then, the firm they founded, Kline & Specter, has grown to be one of the largest plaintiffs' law firms in Pennsylvania<sup>34</sup>—and the leader of the Philadelphia branch of Trial Lawyers, Inc.

Kline has been dubbed "the Marlon Brando of the courtroom," donning "black, stylish suits" as his "trademark costume." His performance in front of one jury inspired the

judge to write an article, "Trial as Theater"—which inspired Kline to perform a one-man show at the Wilma Theater in Philadelphia, for Continuing Legal Education (CLE) credit.<sup>35</sup> Specter, in turn, has been dubbed a "skilled and humble storyteller," who "build[s] the emotional tension" when addressing a jury, "closing his eyes and tilting his head upward ever so slightly, as though summoning a muse."<sup>36</sup>

The Kline & Specter firm claims to have scored 33 jury verdicts of \$10 million or higher and 19 more of over \$1 million<sup>37</sup>—the foundation for many larger settlements in asbestos and pharmaceutical litigation—and Kline and Specter tout five eight-figure-verdict cases they've each won in Philadelphia,<sup>38</sup> where the firm often seeks to file its litigation, even when connections to the city are tenuous.<sup>39</sup> Such litigation bankrolls the firm's "high-rise Philadelphia office, [with] enormous windows displaying vistas of Center City,"<sup>40</sup> as well as lavish lifestyles for its name partners, including Kline's regular courtside seats to watch the Philadelphia 76ers.<sup>41</sup>

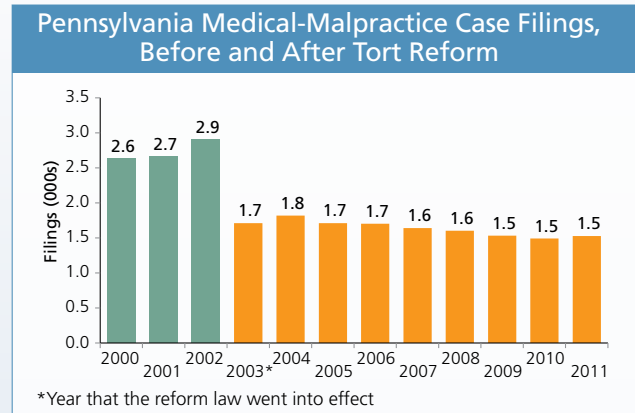
Kline and Specter also donate heavily to political and social causes that buttress their position and that of Trial Lawyers, Inc. more broadly. Kline and Specter have each donated close to \$150,000 to Pennsylvania candidates for statewide office since 2000,<sup>42</sup> and the firm has a law school courtroom and university squash center named in its honor.<sup>43</sup>

## MEDICAL MALPRACTICE LIABILITY: A CASE STUDY IN REFORM

Philadelphia has long been known as perhaps the nation's most egregiously pro-plaintiff jurisdiction for medical-malpractice litigation. A decade ago, the percentage of pro-plaintiff jury verdicts in the city, 44 percent, was more than twice the U.S. average.<sup>44</sup> When juries did find for plaintiffs, they found big: from 1999 through 2001, more than half of all medical-malpractice verdicts in Philadelphia exceeded \$1 million; indeed, the number of million-dollar med-mal verdicts in Philadelphia (87) almost matched that for the entire state of California (101).<sup>45</sup> In 2001, Philadelphia County had more medical-malpractice cases, by far, than any other county in the United States, including much larger counties such as New York County and Cook County, Illinois (Chicago) (see graph below).<sup>46</sup> Unsurprisingly, by 2002, hospitals in the city—including the Thomas Jefferson University Hospital, Mercy Hospital, Brandywine Hospital, and Paoli Hospital—were shuttering maternity wards and trauma units.<sup>47</sup>

Philadelphia became a big profit center for the medical-malpractice division of Trial Lawyers, Inc. in large part because of Pennsylvania's loose expert testimony requirements and loose "venue rules," which permitted lawyers around the state to ship their cases to the City of Brotherly Love. To remedy this problem, in 2002, the Pennsylvania legislature passed the Medical Care Availability and Reduction of Error Act (M-CARE), which tightened standards for medical testimony and tightened venue rules to permit the filing of malpractice cases "only in a county in which the cause of action arose."<sup>48</sup>

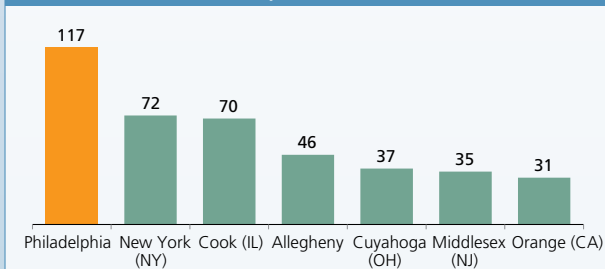
The effect of the M-CARE reforms was immediate and pronounced: in the first year after the reforms went into effect, the number of medical-malpractice cases filed in Philadelphia fell 58 percent, from 1,365 to 577.<sup>49</sup> Statewide medical-malpractice case filings, which had averaged between



2,600 and 2,900 annually prior to the passage of M-CARE, fell markedly after the law went into effect: in the subsequent nine years, filings have averaged between 1,500 and 1,800 annually (see graph above).<sup>50</sup>

Although some of the drop-off in medical-malpractice litigation that occurred statewide was attributable to new rules such as the heightened testimony standards, a significant portion of the change was attributable to drops exclusively in Philadelphia—clear evidence of the importance of the new venue rules. From 2000 to 2010, medical-malpractice case filings in Philadelphia declined almost 65 percent, as compared with a 28 percent drop across all of Pennsylvania and a 15 percent drop across comparison states.<sup>51</sup> Whereas the number of medical-malpractice trials relative to the population in Philadelphia County was double that in Pittsburgh's Allegheny County in 2001, med-mal trials were only 33 percent more common in Philadelphia in 2005 (see table below).<sup>52</sup> The profound effect of M-CARE on Philadelphia's and Pennsylvania's medical-malpractice case dockets offers a compelling case study of the potential impact of venue reforms in product liability and other litigation.

### U.S. Counties with the Largest Number of Medical-Malpractice Trials, 2001



### Medical-Malpractice Trials and Plaintiff Win Rates, 2001 and 2005

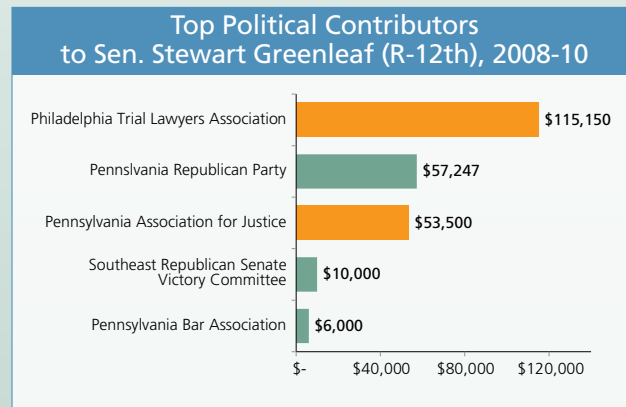
	Philadelphia		Allegheny	
	2001	2005	2001	2005
Medical-Malpractice Trials	117	60	46	38
Med-Mal Trials per 100,000 Population	8	4	4	3
Plaintiff Win Rate	40%	37%	13%	24%

## GREENLEAF ENSURES GREENBACKS FOR TRIAL LAWYERS, INC.

Trial Lawyers, Inc. typically maintains its grip on favored jurisdictions by bankrolling political champions in the legislature. Pennsylvania is no exception to this rule, as the litigation industry's interests are championed in Harrisburg by the chairman of the Senate Judiciary Committee, Republican Stewart J. Greenleaf, who represents the Philadelphia suburbs in Montgomery and Bucks Counties.

Remarkably, Greenleaf's "day job" is as a named partner and "senior shareholder" with the law firm Elliott Greenleaf, which boasts an attorney roster featuring former and current judges and elected officials as well as a slew of multimillion-dollar verdicts.<sup>53</sup> Trial Lawyers, Inc. has also "generously" funded Senator Greenleaf's campaigns: in the 2008–10 election cycle, political action committees for the Philadelphia Trial Lawyers Association and the Pennsylvania Association for Justice (the statewide trial lawyers' group) gave over 35 percent of Greenleaf's political contributions, with lawyers and lobbyists' combined donations constituting almost 48 percent of his campaign war chest.<sup>54</sup>

Such largesse by the litigation industry is money well spent. As Senate Judiciary chairman, Greenleaf is regularly



reversed course, deciding in June that the court would defer punitive damage decisions only in asbestos cases, as per prior practice, and deciding to permit out-of-state counsel to try as many as four cases per year.<sup>59</sup>

Finally, in addition to pushing the CLC to make internal changes, the Pennsylvania Supreme Court has also reined in asbestos litigation abuse in a 2012 ruling that disallowed the theory that an asbestos claim could rest on "any exposure" to the product.<sup>60</sup> The court reasoned that "one cannot



AP Photo/Carolyn Kaster

Stewart J. Greenleaf

cited for his efforts to obstruct, bottle up, or water down tort-reform legislation even when there is majority support in both chambers. Staunch tort-reform opponents, such as labor unions and trial lawyers' associations, have awarded Greenleaf multiple honors for his efforts to beat back meaningful reform.<sup>55</sup>

For example, joint-and-several liability reforms—which keep deep-pocketed defendants with little responsibility for an injury from fronting the full bill for its costs—were finally enacted in Pennsylvania as the Fair Share Act of 2011, after three unsuccessful attempts at reform over the last decade.<sup>56</sup> But the bill didn't pass the Senate before Greenleaf had exhausted every avenue to weaken the proposed legislation, first by introducing his own "alternative" bill and then by proposing an amendment with exceptions.<sup>57</sup> Although the Fair Share Act easily passed the Senate by a majority vote in virtually the same form as it arrived on Greenleaf's desk from the House, not all bills are so lucky. For his efforts, Greenleaf was given the 2011 President's Award by the trial lawyers' association—and singled out for "special" thanks for his "political courage."<sup>58</sup>

simultaneously maintain that a single fiber among millions is substantially causative, while also conceding that a disease is dose responsive."<sup>61</sup>

### A Path Forward

Although the Fair Share Act, the recent changes in CLC mass-tort protocols, and the supreme court's limits on asbestos liability should help limit some of the abuses that have fueled Philadelphia's lawsuit explosion,<sup>62</sup> these positive steps fall short of what

is necessary to end the jurisdiction's status as a magnet court. A comprehensive reform agenda would include changes to:

**Venue.** The venue limitations in Pennsylvania's M-CARE medical-malpractice reform law have worked well to curb forum shopping in such litigation (see page 5) and could serve as a model for reform in the product liability arena.<sup>63</sup> In the alternative, the legislature might choose to limit venue to the plaintiff's residence, the defendant's principal place of business, or the place where the alleged injury occurred. In recent years, various state legislatures have tackled venue reform in various ways,<sup>64</sup> any of which might serve as a template for Pennsylvania's reform. Venue reforms might also be modified by court rule, absent legislative action.

In addition to straightforward venue reform, other changes could be adopted that would limit forum shopping. For instance, an "innocent seller defense" would prevent plaintiffs from suing a local druggist to connect a case to Philadelphia; such "fraudulent joinder" is a typical ruse to sue defendant manufacturers in plaintiff-friendly jurisdictions.

The Pennsylvania legislature might also determine that court filing fees should be returned to the broader public fisc or to statewide administration of justice, rather than to the local jurisdiction where a case is filed. The current practice not only circumvents the legislature's appropriations power; it gives local courts such as Philadelphia an incentive to "recruit" litigation.

**Evidence.** In addition to its venue reforms, a key component of the successful M-CARE reform legislation was a height-

ened evidentiary standard for expert medical testimony. These rules might be usefully adopted for broader litigation, including product liability, better to exclude specious expert testimony founded more on junk science than on legitimate causation. The legislature could also require a heightened expert-evidence requirement based on the federal standard established in *Daubert v. Merrill-Dow Pharmaceuticals*<sup>65</sup>—the standard used in the majority of state jurisdictions today<sup>66</sup> but rejected in Pennsylvania.<sup>67</sup>

**Damages.** Part of what makes Philadelphia such a magnet for out-of-jurisdiction lawsuits is the tendency of local juries to award outlandish damages. Although Pennsylvania is among the small number of states to have an express constitutional provision limiting the legislature's ability to cap most damage awards,<sup>68</sup> the legislature or the courts could require that courts defer punitive damage determinations, as proposed by Judge Herron earlier this year before he reversed course after a torrent of trial lawyer pressure. Of course, the courts might also adopt such a shift unilaterally themselves, absent legislative action.

None of these proposed reforms would be easily achieved, given the tort bar's proven ability to influence the lawmaking process through outsize campaign contributions donated to key legislative leaders (see page 6). That said, the case for broad, systemic reform to rein in America's most notorious magnet court is compelling. Such reforms would significantly cut into the bottom line of Trial Lawyers, Inc. but would be a boon to average citizens and businesses in Philadelphia and across the Commonwealth.

## Endnotes

<sup>1</sup> The median household income for the city is less than 70 percent that of the U.S. as a whole, and in 2011, the city's economy grew just 0.3 percent, only one-quarter the nationwide growth rate. Over the last decade, Philadelphia has lost a net 30,000 jobs, and the city continues to have an unemployment rate over 10 percent—a troubling statistic compounded by the fact that over 42 percent of the city's adult population is not in the labor force. See The Pew Charitable Trusts, Phila. Research Initiative, Philadelphia: The State of the City (2012), available at [http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Philadelphia\\_Research\\_Initiative/Philadelphia-2012-State-of-City-Update.pdf](http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Philadelphia_Research_Initiative/Philadelphia-2012-State-of-City-Update.pdf). Almost 27 percent of Philadelphia's citizens are below the poverty level—trailing only Detroit and Cleveland for ignominy among the largest U.S. metropolitan areas. See *id.*; U.S. Census Bureau, Philadelphia, Pennsylvania, State and County QuickFacts (2010), [hereinafter State and County QuickFacts], available at <http://quickfacts.census.gov/qfd/states/42/42101.html> (last visited Oct. 1, 2012).

<sup>2</sup> See Center for Legal Pol'y, Manhattan Inst., Trial Lawyers, Inc.: A Report on the Lawsuit Industry in America 2003.

<sup>3</sup> American Tort Reform Association, Judicial Hellholes 2011/2012, available at <http://www.judicialhellholes.org/wp-content/uploads/2011/12/Judicial-Hellholes-2011.pdf> (last visited Oct. 1, 2012); Am. Tort Reform Ass'n, Judicial Hellholes 2010/2011, available at <http://www.judicialhellholes.org/wp-content/uploads/2010/12/JH2010.pdf> (last visited Oct. 1, 2012).

<sup>4</sup> First Judicial District of Pennsylvania, Philadelphia County Court of Common Pleas, Civil Administration at a Glance, § 4 Complex Litigation Center 2 (2005-2006), available at <http://courts.phila.gov/pdf/manuals/civil-trial-complex-litigation-center.pdf>.

<sup>5</sup> See The Comm. of Seventy, Study and Analysis of the Philadelphia Commerce Program 11-13 (2005).

<sup>6</sup> See Pa. R. Civ. Pro. 2179(a).

<sup>7</sup> Pa. R. Civ. Pro. 1006(d)(1).

<sup>8</sup> *Hunter v. Shire U.S., Inc.*, 992 A.2d 891 (Pa. Super. Ct. 2010).

<sup>9</sup> *Zappala v. James Lewis Group*, 982 A.2d 512, 521-22 (Pa. Super. Ct. 2009).

<sup>10</sup> See David C. Steelman & Richard Van Duizend, National Center for State Courts, Civil Programs in the Philadelphia Court of Common Pleas 48 (2004).

<sup>11</sup> See The Comm. of Seventy, *supra* note 5, at 16.

<sup>12</sup> See Joshua D. Wright, *Are Plaintiffs Drawn to Philadelphia's Civil Courts? An Empirical Evaluation* App. A 5 (Int'l Center for Law & Econ. 2011).

<sup>13</sup> See Steelman & Van Duizend, *supra* note 10, at 49.

<sup>14</sup> See Michelle J. White, *Asbestos Litigation: Procedural Innovations and Forum Shopping*, 35 J. LEGAL STUD. 365, 393 tab. 7 (2006).

<sup>15</sup> Amaris Elliott-Engel, *For Mass Torts, a New Judge and a Very Public Campaign*, LEGAL INTELLIGENCER, Mar. 16, 2009.

<sup>16</sup> *Id.*

<sup>17</sup> Elliott-Engel, *Common Pleas Court Seeing More Diabetes Drug Cases*, LEGAL INTELLIGENCER, Mar. 19, 2009.

- <sup>18</sup> Chris Mondics, *New rules make Philadelphia court less attractive to out-of-state lawyers*, THE PHILADELPHIA INQUIRER, Jun. 17, 2012.
- <sup>19</sup> See Administrative Office of Pennsylvania Courts, 2010 Caseload Statistics of the Unified Judicial System of Pennsylvania 23 (2010), available at <http://www.pacourts.us/NR/rdonlyres/506E317A-0A57-498C-9F44-2F6B738E3F08/0/2010Report.pdf>; Unified Judicial System of Pennsylvania, Pennsylvania Common Pleas Caseload Statistics 1-2 (2010), available at <http://www.pacourts.us/NR/rdonlyres/52D04F80-22A6-47C7-80F8-9CF2D65A5BEE/0/Statewide2010.pdf>.
- <sup>20</sup> See Ashby Jones, *Philadelphia Rues Case Flood*, WALL ST. J., Sept. 24, 2012.
- <sup>21</sup> See General Court Regulation No. 2012-01, *In re Mass Tort and Asbestos Programs* (Pa. Ct. Com. Pl. Phila. County Feb. 15, 2012).
- <sup>22</sup> See Wright, *supra* note 12.
- <sup>23</sup> See *id.*
- <sup>24</sup> Harris Interactive, 2012 State Liability Systems Survey, Lawsuit Climate: Ranking the States (U.S. Chamber Inst. for Legal Reform 2012).
- <sup>25</sup> See *id.*
- <sup>26</sup> Lawrence J. McQuillan & Hovannes Abramyan, U.S. Tort Liability Index: 2010 Report (Pacific Research Inst. 2010).
- <sup>27</sup> Estate of Hicks v. Dana Corp., 909 A.2d 298 (Pa. 2006) (joint liability reform amendment violated single subject rule of State Constitution); see also *DeWeese v. Weaver*, 880 A.2d 54 (Pa. Commw. 2005), affirmed sub nom. *DeWeese v. Cortes*, 906 A.2d 1193 (Pa. 2006).
- <sup>28</sup> 2011 Pa. Legis. Serv. Act 2011-17 (amending 42 Pa. C.S.A. § 7102).
- <sup>29</sup> See Jeff Blumenthal, *Herron Appointed Administrative Judge*, PHILA. BUS. J., Nov. 10, 2011.
- <sup>30</sup> Pennsylvanians for Modern Courts, *Administrative Judge Herron Appointed to Chair Administrative Governing Board*, Dec. 14, 2011.
- <sup>31</sup> See General Court Regulation No. 2012-01, *supra* note 21.
- <sup>32</sup> See *id.*; Jones, *supra* note 20.
- <sup>33</sup> Seth Woehrl, *And the Oscar Goes to... Lawyer and thespian Tom Kline for his outstanding performance in the courtroom and on stage*, PENNSYLVANIA SUPER LAWYERS, June 2004.
- <sup>34</sup> Kline & Specter, P.C., Firm Profile, [http://www.klinespecter.com/profile\\_index.html](http://www.klinespecter.com/profile_index.html) (last visited Oct. 1, 2012) [hereinafter Firm Profile]; The Legal Intelligencer, *Annual Report on the Legal Profession: Pennsylvania's 100 Largest Law Firms 79*, PALAW MAGAZINE (2011).
- <sup>35</sup> Woehrl, *supra* note 33; Paul Davies, *Wheels Of Justice He's Showing A Lot Of Class \$51m Lawyer Credits Teaching Experience*, THE PHILADELPHIA INQUIRER, Dec. 28, 1999.
- <sup>36</sup> Nick DiUlio, *The Raconteur: When Shanin Specter speaks, med mal juries listen*, PENNSYLVANIA SUPER LAWYERS, June, 2011.
- <sup>37</sup> Kline & Specter, P.C., Major Victories, [http://www.klinespecter.com/major\\_victories.html](http://www.klinespecter.com/major_victories.html) (last visited Oct. 1, 2012).
- <sup>38</sup> *Id.*; Kline & Specter, P.C., Tom Kline, <http://www.klinespecter.com/kline.html> (last visited Oct. 1, 2012); Kline & Specter, P.C., Shanin Specter, <http://www.klinespecter.com/specter.html> (last visited Oct. 1, 2012).
- <sup>39</sup> Shannon P. Duffy, *For Big Pharma, 'Nerve Center' Test May Be Unnerving*, THE LEGAL INTELLIGENCER, Jul. 1, 2010; Ted Frank, *Removal jurisdiction and corporate headquarters*, POINT OF LAW BLOG (Jul. 5, 2010, 9:51 AM), <http://www.pointoflaw.com/archives/2010/07/removal-jurisd.php>; Jim Nolan, *\$24M won in swimming pool tragedy: Girl, 5 suffered brain damage*, PHILADELPHIA DAILY NEWS, Jun. 27, 1995, available at [http://www.klinespecter.com/news\\_wtmnpdn062795.html](http://www.klinespecter.com/news_wtmnpdn062795.html) (last visited Oct. 1, 2012).
- <sup>40</sup> Davies, *supra* note 35; see photographs in Firm Profile, *supra* note 34.
- <sup>41</sup> *Id.*
- <sup>42</sup> Search individual campaign contributions for Tom Kline and Shanin Specter, FOLLOWTHEMONEY, <http://www.followthemoney.org/index.phtml> (search "Kline & Specter"; then follow "Search our Data" hyperlink).
- <sup>43</sup> *Kline & Specter: Contributing to Philadelphia in Many Ways*, PHILADELPHIA'S BEST LAWYERS, 2012, at 9.
- <sup>44</sup> Randall R. Bovbjerg & Anna Bartow, Project on Med. Liab. in Pa., *Understanding Pennsylvania's Medical Malpractice Crisis* 32 (2003).
- <sup>45</sup> *Id.*
- <sup>46</sup> See Cynthia Lee and Nicole Waters, *Court Statistics Project, Caseload Highlights: Medical Malpractice on Appeal* 3 (2009), available at <http://www.courtstatistics.org/FlashMicrosites/CSP/images/ch-16-4.pdf>.
- <sup>47</sup> Joseph B. Treaster, *Rise in Insurance Forces Hospitals to Shutter Wards*, N.Y. TIMES, Aug. 25, 2002.
- <sup>48</sup> 42 Pa. Consol. Stat. § 5101.1(b).
- <sup>49</sup> See Admin. Office of the Pa. Courts, Table 1: Pennsylvania Medical Malpractice Case Filings: 2000-2010 (2011).
- <sup>50</sup> Press Release, Administrative Office of Pennsylvania Courts, Medical Malpractice Data Levels Off as Court Rules Yield Results (May 7, 2012) (click through for graphic), [http://www.pacourts.us/NR/rdonlyres/5F95A1FD-3563-44FE-8315-DD9BD7B95002/0/MedMalStats\\_050712.pdf](http://www.pacourts.us/NR/rdonlyres/5F95A1FD-3563-44FE-8315-DD9BD7B95002/0/MedMalStats_050712.pdf).
- <sup>51</sup> Wright, *supra* note 12, at 29.
- <sup>52</sup> Lee and Waters, *supra* note 46, at 6.
- <sup>53</sup> Elliott Greenleaf, <http://www.elliottgreenleaf.com/> (last visited Oct. 1, 2012); Elliot Greenleaf, Stewart J. Greenleaf, <http://www.elliottgreenleaf.com/sjg.html> (last visited Oct. 1, 2012) [hereinafter Greenleaf Bio].
- <sup>54</sup> See FollowTheMoney, Stewart J. Greenleaf <http://www.followthemoney.org/database/uniquecandidate.phtml?uc=1087> (last visited Oct. 1, 2012).
- <sup>55</sup> See Greenleaf Bio, *supra* note 53; Elliott Greenleaf, *Stewart J. Greenleaf Receives Justice Musmanno Award*, <http://elliottgreenleaf.com/Sept2011-5.html> (last visited Oct. 1, 2012); Mark Phenicie, *Legislative Update*, PA JUSTICE NEWS, Vol. IV No. 4, Oct. 2011; Stewart Greenleaf for America, Awards, <http://stewartgreenleafforamerica.com/Awards.html> (last visited Oct. 1, 2012).
- <sup>56</sup> Marc Levy, *Pennsylvania Governor Signs 'Fair Share' Civil Liability Reform*, INSURANCE JOURNAL, Jun. 28, 2011; Judicial Hellholes 2011/2012, *supra* note 3, at 8.
- <sup>57</sup> Op-ed, *The City of Unbrotherly Torts: It's a nice place, but you wouldn't want to be sued there*, WALL ST. J., Dec. 3, 2011; Jonathan B. Stepanian, *New Proposal to Reform Pennsylvania Joint and Several Liability*, DEFENSE OF MEDICINE BLOG, (Jun. 20, 2011), <http://www.defenseofmedicine.com/2011/06/20/new-proposal-to-reform-pennsylvania-joint-and-several-liability/>.
- <sup>58</sup> Phenicie, *supra* note 55.
- <sup>59</sup> See General Court Regulation No. 2012-03, Notice to the Mass Tort Bar: Amended Protocols and 5 Month Interim Report (Pa. Ct. Com. Pl. Phila. County Jun. 18, 2012).
- <sup>60</sup> *Betz v. Pneumo Abex LLC*, 44 A.3d 27 (Pa. 2012). Additionally, the Pennsylvania Superior Court, to curb double dipping in asbestos claims, approved the use of a trial court's equitable powers to deduct bankruptcy trust recoveries from an asbestos plaintiff's tort system recovery for claims involving the same alleged injury, *Marlene Reed v. Honeywell Int'l, Inc.*, 2011 WL 6645694 (Pa. Super. Ct. Dec. 6, 2011); Mark A. Behrens & Cary Silverman, *State Court Endorses Use of Equitable Powers to Reduce Asbestos Suit Double-Dipping*, Washington Legal Found., Jan. 27, 2012.
- <sup>61</sup> *Betz*, 44 A.3d 27.
- <sup>62</sup> "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." See Elliot-Engel, *FJD Sees Dramatic Drop in Filings of Mass Tort Cases*, Legal Intelligencer, Oct. 1, 2012.
- <sup>63</sup> Behrens, *Philadelphia Tort Litigation: Forum Shopping and Venue Reform*, The Federalist Society, (2012) available at <http://www.fed-soc.org/publications/detail/philadelphia-tort-litigation-forum-shopping-and-venue-reform>.
- <sup>64</sup> See, e.g., S.B. 212, Reg. Sess. (Ala. 2011) (amending Ala. Code Ann. § 6-5-4109(e)); H.B. 1038 (Ark. 2003) (amending Ark. Code Ann. § 16-55-213); S.B. 3, § 2 (Ga. 2005) (codified at Ga. Code Ann. § 9-10-31.1); H.B. 13 (Miss. 2004) (special session) (amending Miss. Code Ann. § 11-11-3); H.B. 393 (Mo. 2005) (codified at Mo. Rev. Stat. § 538.232); H.B. 1603 (Okla. 2009) (codified at Okla. Stat. § 12.140.2); H. 3008, § 3, 116th Sess. (S.C. 2005) (amending S.C. Code Ann. § 15-7-30); H.B. 2008 (Tenn. 2011) (amending Tenn. Code Ann. § 20-4-104); H.B. 4, Reg. Sess., § 3.03 (Tex. 2003) (amending Tex. Civ. Prac. & Rem. Code Ann. § 15.003).
- <sup>65</sup> 509 U.S. 579 (1993).
- <sup>66</sup> See Martin S. Kaufman, *The Status of Daubert in State Courts* (Atlantic Legal Found. 2006), available at <http://www.atlanticlegal.org/daubertreport.pdf> (visited Oct. 1, 2012).
- <sup>67</sup> See *Grady v. Frito-Lay, Inc.*, 839 A.2d 1038 (Pa. 2003) (rejecting Daubert standard).
- <sup>68</sup> See Pa. Const. Art. III, § 18 (stating that "in no other cases [besides workers' compensation] shall the General Assembly limit the amount to be recovered for injuries resulting in death, or for injuries to persons or property. . .").

**Project Director**  
James R. Copland

**Editor**  
Matthew Hennessey

**Project Manager**  
Isaac Gorodetski

**Production Design**  
Elaine Ren

**Research Intern**  
Jarrett Dieterle

[www.TrialLawyersInc.com](http://www.TrialLawyersInc.com)