



TRANSPORTATION LAW UPDATE



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PHILADELPHIA JUDICIAL HELLHOLE



Nigel Greene

Philadelphia listed as top “Judicial Hellhole” in the country.

The ninth annual survey conducted by the American Tort Reform Association (ATRA) ranked Philadelphia first on its list of “judicial hellholes.” The ATRA released the list online in December 2010. The full list can be found at www.judicialhellholes.org.

According to its website, ATRA was founded in 1986 by the American Council of Engineering Companies and was later joined by the American Medical Association. ATRA describes itself as “working to bring greater fairness, predictability and efficiency to America’s civil justice system.” Its stated agenda includes, among other things, various tort and civil litigation reforms and limits on punitive and joint and several damages.

In a press release, ATRA general counsel Victor Schwartz described judicial hellholes as, “Traditionally . . . considered places where civil judges systematically apply laws and court procedures in an unfair and unbalanced manner, generally against defendants in civil lawsuits.” He also notes that “The jurisdictions we name as Judicial Hellholes each year are not the only unfair courts in the nation, but they are among the most unfair, based on our survey of litigants and considerable independent research.”

In 2010, Philadelphia was ranked number 1 for the first time in the nine year history, displacing prior list leaders South Florida and West Virginia. South Florida and West Virginia remain in the top 5 judicial hellholes in 2010. The top five locations in 2010, in order, were:

1. Philadelphia
2. California, particular Los Angeles and Humboldt counties
3. West Virginia
4. South Florida
5. Cook County Illinois

ATRA describes Philadelphia's top listing as a result of the:

“... philosophy and trial practices of its Complex Litigation Center, as well as the area's reputation for excessive verdicts. The judicial leadership is engaged in a campaign to draw in massive personal injury lawsuits from around the country, viewing the increase in lawsuits and out-of-town lawyers as a boost for the court's revenues and the local restaurants and hotels. Controversial practices, such as “reverse bifurcation,” unfairness in multiple trials against the same defendant at the same time, and combining multiple cases into a single trial provide incentives for plaintiffs' lawyers to bring their claims to the City of Brotherly Love. Punitive damage awards over \$1 million have reportedly tripled in Philadelphia courts. State tort law that is out of the mainstream further encourages lawsuits.”

The report cites press reports and court's data, as well as complaints from unnamed “various defendants” and “various attorneys.”

Plaintiffs' lawyers have taken issue with ATRA's methodology and consider it flawed. However, a pro-plaintiff bent is clearly identifiable in Pennsylvania and Philadelphia laws, procedures and policies. For example:

- The 1% Rule - A Pennsylvania defendant found just 1% liable in a personal injury case can be made to pay 100% of the damages and forced to seek recovery from more culpable defendants, or, if the more culpable defendant cannot pay its share, bear a vastly disproportionate loss without recourse.
- Delay Damages - Pennsylvania imposes delay damages whereby a defendant can be made to pay interest on a verdict for pre-trial delays, even when the defendant is not at fault or did not cause the delay.

- 20 day Rule - A Pennsylvania defendant has only twenty (20) calendar days to deliver settlement funds to a party or risk invalidation of the settlement agreement and sanctions.
- Limited discovery - In Philadelphia arbitration cases involving motor vehicle or premises liability, a plaintiff may unilaterally limit, and compel, a defendant's discovery by issuing court created Interrogatories and Request for Production of Documents that may have limited application or use to a corporate defendant.

For a civil defendant facing trial in Philadelphia, the listing by ATRA sheds light on the need for a defense attorney that is not only aware of the local laws, policies and procedures, but is also able to avoid the pitfalls and achieve good results within the jurisdiction's constraints.

Nigel Greene earned his B.A. from Virginia Polytechnic and State University in 1989. He received a Juris Doctorate from Georgetown University Law Center in 1994, where he was active in Moot Court competition. He achieved Quarterfinalist status in the Advocacy Competition.

Prior to joining Rawle & Henderson, Nigel served as an Assistant District Attorney in Philadelphia as a prosecutor in the Major Trials Unit where he successfully tried numerous cases, including jury trials involving major felonies.

Nigel now focuses his practice on the defense of commercial motor vehicles and complex commercial litigation matters. In addition, he serves as an arbitrator in Philadelphia County. He is admitted to practice in the state courts of Pennsylvania, the United States District Court for the Eastern and Middle Districts of Pennsylvania and the U.S. Courts of Appeals for the Third Circuit.

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