

Pa.'s model for commonsense tort reform

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For two consecutive years, 2010 and 2011, Philadelphia was rated America's No. 1 "Judicial Hellhole" by the American Tort Reform Foundation. Courts with a reputation for unfair application of the laws scare away employers and inhibit job creation.

Recently, things have improved. Last year, Pennsylvania's General Assembly enacted Fair Share Act legislation so that more defendants are held responsible for only their share of fault for a harm. Earlier this year, the Philadelphia Court of Common Pleas significantly changed its protocol governing mass tort cases. The court addressed some of the ways in which trial procedures had been applied in what the court considered an unfair manner. More should be done to address

Philadelphia's reputation as a magnet for lawsuits. In 2010, Philadelphia hosted almost 21 percent of the commonwealth's total civil-action docketed cases, while accounting for only 12 percent of the population.

According to Philadelphia Common Pleas Court Judge John Heron, the percentage of out-of-state claims in Philadelphia's Complex Litigation Center, which handles mass tort claims, constituted about one-third of filings from 2001 to 2008, "scared" to 41 percent in 2009, and "reached an astonishing" 47 percent in 2011.

The prevalence of cases in Philadelphia that flow from other states or counties is unnatural. Tort plaintiffs generally prefer to sue in their own courthouses to potentially benefit from favorable bias by local judges and juries. Plaintiffs also find local courthouses more convenient. From a societal perspective, the tendency of plaintiffs to bring suit in do-

cal forums helps distribute the burden of lawsuits in accordance with the population.

When plaintiffs voluntarily give up "home court" advantage and sue in distant forums, something is amiss. This has been the case in Philadelphia. Studies indicate that plaintiffs' attorneys often file suit in Philadelphia because they believe the courts will offer them an advantage in litigation, and because Pennsylvania's venue rules allow a larger-than-usual number of plaintiffs to sue in the commonwealth's courts, a practice commonly called "forum shopping."

The history of medical malpractice litigation in Philadelphia demonstrates both the extent of the forum-shopping issue and a potential solution for other types of civil cases.

In 2002, nearly half of all medical malpractice claims filed in Pennsylvania landed in Philadelphia. The legislature sought to improve the malpractice litigation environ-

ment by adopting the Medical Care Availability and Reduction of Error Act in 2002. MCARE included a special rule limiting venue in medical malpractice actions to the "county in which the cause of action arose." Soon thereafter, the state Supreme Court adopted the same rule. The year after the venue reform went into effect, medical-malpractice claims filed in Philadelphia fell from 1,365 to 577, a decline of 58 percent.

Recent state Supreme Court data reveal that medical-malpractice lawsuits filed in Pennsylvania declined by 45 percent from the average of the three years preceding the 2002 reforms; in Philadelphia the decline was 68 percent.

Medical-malpractice claims declined in other counties that had hosted a disproportionately high number of cases, while areas that had seen a disproportionately low number of claims experienced increases.

Now medical negligence claims

are more evenly dispersed in the commonwealth because of venue reform. The system is working well. Plaintiffs are not disadvantaged, defendants receive fairer treatment, and jurors fulfill their civil duty deciding cases with a connection to their communities.

Other states have adopted broad venue reforms over the last decade. Pennsylvania should join them. The success of medical liability reform shows that progress is possible. Adoption of venue reform for other civil actions would refocus litigation on the commonwealth's citizens and relieve them of the burden of serving on juries in cases that belong elsewhere.

The Keystone State should demonstrate to job creators that it is willing to make its legal climate more competitive with other states and show that Pennsylvania is "open for business."

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