

Special Reports

How they do it: Favorite tactics of liability lawyers that tip the scales for their fame and fortune



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WASHINGTON -

Something unexpected is happening in Delaware these days as the number of asbestos liability lawsuits filed in the “small wonder” state’s judicial system has increased 345 percent in a few short years.

New asbestos cases have become so common in Delaware that state judges are hearing as many as 85 a day, according to Steve Hantler of Overlawyered.com. Hantler, who is Chrysler’s assistant general counsel for government regulation, is a regular contributor to the widely read Web site that covers the costs of excessive litigation.

“Out-of-state law firms are now busy turning Delaware into Ground Zero of the asbestos litigation morass but the overwhelming majority of plaintiffs have no connection to Delaware whatsoever,” said Hantler, who is also chairman of the American Justice Partnership, an educational group supporting tort reform backed by the National Association of Manufacturers.

(Examiner photo illustration)
An estimated 60,000 jobs have been lost as a result of the more than 70 firms that have been put into bankruptcy as a result of asbestos litigation which first appeared on the nation’s legal scene in the 1970s.

With its traditionally corporate-friendly legal system, Delaware might seem an odd place for such cases, especially since asbestos litigation has already cost companies across the nation more than \$70 billion from the nearly 1 million cases that have either been settled or remain pending.



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There really is no mystery to the flood of liability lawyers streaming to Delaware to file asbestos cases, however, because it illustrates one of the most common tactics — known more commonly as forum shopping — that such attorneys frequently employ to maximize their chances of gaining a lucrative settlement or verdict.

A state or locality can become a favored forum for a variety of reasons, among them court decisions as in Delaware, how a particular law or regulation is written, the absence of a law governing an activity, how judges are selected and even a judge’s ideological perspectives.

Not all plaintiff lawyers use forum shopping or any of the other tactics described here, nor are most plaintiff lawyers necessarily more interested in getting rich than in gaining justice for their clients.

But these tactics have become commonplace in American courts in recent years because, critics say, so many of the most aggressive liability lawyers have perfected them in pursuit of goals that often seem unrelated to the health or welfare of many plaintiffs.

Delaware became a magnet a couple of years ago, said Hantler, with “a series of Delaware Supreme Court decisions that gave trial lawyers the green light to file hundreds of toxic tort cases.” Another factor is that Delaware has no ceiling on punitive damages a defendant can be ordered to pay to plaintiffs.

Besides court decisions or particular laws, forum shopping can also involve liability lawyers seeking clients in particular localities or states where the odds favor finding a sympathetic judge or jury.

Often, sympathetic judges are elected rather than appointed. A survey cited by the American Tort Reform Association’s “Judicial Hellholes” report found that 46 percent of judges admit being influenced in their decisions by the donations they received during their campaigns.

It doesn’t hurt having friends on the bench or among a state’s top leaders, either. In Delaware, for example, the attorney general is Beau Biden, a former plaintiff lawyer and the son of the state’s senior U.S. senator.

Similarly, New York and California are perennial leaders in the number of liability suits filed annually. During his previous eight-year tenure as attorney general, New York Gov. Eliot Spitzer was a well-known and powerful ally of liability lawyers, as was California’s previous AG, Bill Lockyer.

Even failing politicians can be helpful allies, as noted in a 2005 Manhattan Institute report:

“In a final payback to the trial lawyers who helped bankroll his failed effort to remain in office, recalled governor Gray Davis signed into law the Labor Code Private Attorneys General Act of 2004 a mere five days after his ouster.” The new law bestowed a right-to-sue against employers for even the mildest of infractions — and within months, 65 cases were filed against California’s top corporations.

Cozy relationships among liability lawyers and judicial officials or others in positions of political power are hardly confined to a few states or localities.

Combine a natural disaster and a judge with a fondness for making certain defendants pay and the result can be a liability lawyer’s heaven, as is seen in the aftermath of Hurricane Katrina and the ongoing suits against State Farm Insurance, said Glenn Lammi, chief counsel with the [Washington Legal Foundation](#).

“The problem is some judges are willing to reinterpret insurance contracts,” he said. “In the Katrina case, you have one judge in Mississippi reinterpreting the State Farm contracts and you’re seeing a lot of settlements now ... which all of America has to pay.”

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