

TRIAL LAWYERS INC.

Illinois

A REPORT ON THE
LAWSUIT INDUSTRY IN
ILLINOIS 2006

A Message from the Director

Trial Lawyers, Inc.: Illinois is the Manhattan Institute's fourth full-length report examining the workings of the litigation industry and the second such report focusing exclusively on a single state, following *Trial Lawyers, Inc.: California*, published in April 2005.¹ Illinois is a logical subject for our second state study: the fifth-most populous state, Illinois is home to a plaintiffs' bar whose aggressive tactics have had a far-reaching national—and even international—impact.

As we have documented throughout this publication series, today's American trial bar has thrown off its traditional strictures of legal professionalism and ethics and now wrings dollars from the U.S. economy using a business model at least as advanced—if not nearly as wholesome—as those of the large corporations off which it feeds. "Trial Lawyers, Inc.," as we call this sue-for-profit behemoth, differs from traditional big businesses in two important ways. First, Trial Lawyers, Inc.'s revenues are extracted from unwilling defendants, rather than paid by willing customers. Second, the tort industry is in many respects immune from outside regulation: since the bar associations police themselves, Trial Lawyers, Inc. plays by its own rules.

Since we launched our *Trial Lawyers, Inc.* series in September 2003,² the litigation industry's growth has slowed in key areas such as mass torts and class actions—owing to federal class action reform and prosecutorial and judicial investigations into criminal wrongdoing by the plaintiffs' bar.³ Nevertheless, Trial Lawyers, Inc.'s overall profits have continued their long-term trend: over the last three years for which data are available, litigation industry revenues have grown by over 26 percent, or almost *twice as fast* as the U.S. economy as

a whole.⁴ Viewed as a corporation, Trial Lawyers, Inc. has enjoyed annual domestic revenues that exceed those of every single publicly held company headquartered in Illinois: it grosses over \$49 billion—more than the U.S. operations of Walgreens, Boeing, or Allstate, over twice as much as Archer Daniels Midland, over three times as much as Motorola, and fully seven times as much as McDonald's.⁵

It would be difficult to overstate the importance of Illinois' courts to this massive litigation business. Relative to the size of its economy, Illinois has more lawyers than any American state except New York and Massachusetts.⁶ Tort costs for medical-malpractice liability are a greater share of Illinois' economy than of any state's save New York's.⁷ Illinois' companies fare little better than its doctors: its corporations' self-insured liability costs are third-highest in the nation.⁸ Little wonder, then, that for each of the last three years, corporate attorneys and general counsels have ranked Illinois' litigation climate 44th or worse among the 50 states.⁹

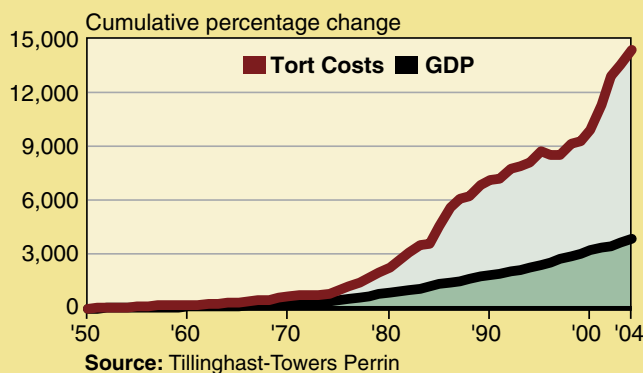
Trial Lawyers, Inc. has prospered in Illinois by developing lucrative "lines of business" that parallel its national case portfolio: medical malpractice, whose liability costs have sent doctors scurrying out of the state; class actions, which have made the judges of Madison County infamous; and asbestos, the nation's longest-running—and horribly corrupt—mass tort. Illinois courts have made fortunes not only for the state's own tort kings but also for lawyers nationwide who have sought out the Prairie State's "magic jurisdictions," those county courts where judges are elected with "verdict money" funneled to their campaigns by the plaintiffs' bar.¹⁰ For although Illinois' litigation business is broad-based in terms of

Illinois' Tort Climate Is the Sixth-Worst in the U.S.

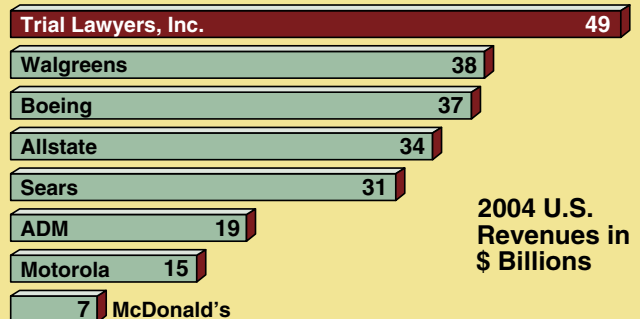
State Legal Systems, As Ranked by Corporate Litigators



U.S. Tort Costs Have Risen Much Faster than GDP



Trial Lawyers, Inc.'s Income Dwarfs Illinois' Largest Public Companies'



Sources: *Fortune*, Tillinghast-Towers Perrin

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caseload, it is narrowly focused in geography: these select courts—including Madison and St. Clair Counties, east of St. Louis, and Chicago’s Cook County—attract cases from around the state and nation hoping to cash in on the venues’ trademark jackpot justice.

To maintain these magic jurisdictions, the Illinois division of Trial Lawyers, Inc. supports relentless government-relations efforts targeting both the legislature in Springfield and courthouses throughout the state. The stakes have gotten so high for the trial bar and its legal victims that in the 2004 election for a single state supreme court seat in southern Illinois, the two candidates and their supporters together spent over \$9 million, a mind-boggling sum unprecedented in American judicial-election history.¹¹ Such heavy investment in the state’s high court makes sense when you consider that in 1997, the litigation-friendly court overrode as unconstitutional the tort-reform measures that the state legislature had just enacted.¹²

Fortunately, the tide in Illinois may be starting to turn. In that \$9 million judicial race, Gordon Maag, the trial bar’s candidate, not only lost the supreme court election but also lost his retention election to the court of appeals, becoming the first judge to receive a no-confidence vote since retention-election rules were adopted in 1984.¹³ The state supreme court seems to be improving, as it recently reversed a class action decision that intruded on other states’ laws and regulations¹⁴ and threw out an egregious multibillion-dollar verdict issued under a misuse of the state’s consumer-protection laws.¹⁵ And just last year, the state legislature enacted comprehensive medical-malpractice liability reform, which has already led to a 25 percent drop in Cook County medical-malpractice case filings.¹⁶

Whether the Illinois Supreme Court behaves responsibly and allows these reforms to stand will go a long way toward determining whether the state can lift itself out of the national basement in medical-malpractice law, a necessary step in improving access to health care and lowering its cost. Still, Illinois’ overall legal climate badly trails that of neighboring states, and its economic future depends on enhancing its attractiveness to job-creating businesses. We hope that this latest iteration of our *Trial Lawyers, Inc.* series will help illuminate how Illinois’ legal barons enrich themselves at their home state’s expense.



James R. Copland

James R. Copland
Director, Center for Legal Policy
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Visit TrialLawyersInc.com for online versions of this report, the three previous editions in the series, and other resources.

STIRRING UP TORT TROUBLE

The trial bar's outsize profits come at the expense of Illinois health and prosperity.

Never stir up litigation," wrote Abraham Lincoln in the 1850s. "A worse man can scarcely be found than one who does this."¹⁷ It's a lesson that the Land of Lincoln appears to have forgotten, and with disastrous effects. From 2000 through 2005, Illinois witnessed a net out-migration of 374,000 residents, the third-highest exodus from any state,¹⁸ while its economy had the country's fourth-lowest growth rate.¹⁹ Fleeing residents and economic stagnation: these are the inevitable characteristics of a state dominated by Trial Lawyers, Inc.

Just how bad is Illinois' litigation climate? The state is home to three of the five worst jurisdictions in the country, as ranked by the American Tort Reform Association (see table).²⁰ Across a host of measures, Illinois is among the worst states in the union: corporate litigators rank it near the bottom in terms of its judges' impartiality and competence, its class action requirements, and its permissive rules on punitive damages.²¹

Choosing Where You Sue

Trial Lawyers, Inc.'s business strategy in Illinois begins with exploiting the state's venue rules, which tort-friendly counties interpret loosely, to funnel cases into jurisdictions where defendants won't get a fair shake. As the graph on this page shows, tort filings are far from uniform in Illinois, where some counties have twice or even four times as much major civil litigation per capita as the state as a whole.²²

Trial Lawyers, Inc.'s favorite jurisdictions are Madison and St. Clair Counties, on the Missouri border just east of St. Louis.²³ St. Clair has about twice as many lawsuits as similar-sized McHenry and Winnebago Counties, and Madison has over four times as many.²⁴ Madison County has been an all-too-willing host for national class action and asbestos litigation: class action filings there skyrocketed 5,000 percent from 1998 through 2003,²⁵ and the county's filings for asbestos-related mesothelioma in 2003 constituted about one-fourth of the nation's total.²⁶ St. Clair County can also boast of excessive class action suits and asbestos torts, but it is particularly notorious for its medical-malpractice bar, which has earned the county the state's highest filing rates against doctors and hospitals. Fully 85 percent of these cases are so flimsy that they are eventually dismissed or resolved without payment.²⁷

Chicagoland's Cook County is also high on this unenviable list of U.S. litigation venues.²⁸ Illinois' biggest county, Cook has nearly three times as many lawsuits per capita as the state's second biggest county, neighboring DuPage.²⁹ One might expect a lot of litigation in a populous metropolitan hub like Chicago, but Cook County's share of Illinois' tort activity has grown alarmingly—from 47 percent to 64 percent over the last decade—even as its share of the state's population has declined.³⁰ Cook is home to some of the nation's largest-grossing plaintiffs' lawyers—like Bob Clifford, whose firm is the top earner in the state.³¹ For all his millions, Clifford is the jet-set equivalent of an ambulance chaser: over the last two decades, he's filed a suit after every major airline crash in the country.³² He also profits handsomely off the unhealthy climate for medical-malpractice litigation in Cook County, where juries paid

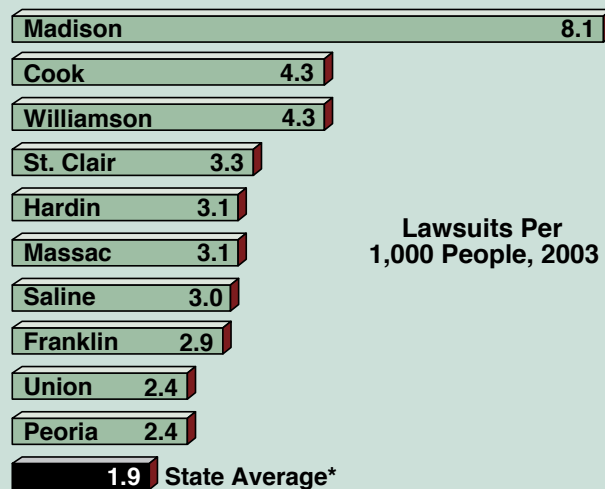
Prairie State Perdition

America's Worst Judicial Hellholes, 2005

1. Rio Grande Valley, Texas
2. Cook County, Illinois
3. West Virginia
4. Madison County, Illinois
5. St. Clair County, Illinois

Source: American Tort Reform Association

Illinois' Ten Most Litigious Counties



*Excluding Cook

Source: Illinois Civil Justice League

Some Illinois counties have twice or even four times as much major civil litigation per capita as the state as a whole.

out a mind-boggling \$161 million in med-mal verdicts in the 12 months ending in August 2004. Little wonder that malpractice coverage for Cook County obstetricians is up 67 percent since 2003.³³ What's more, Cook is fast becoming an asbestos-litigation hotbed as well, having recently taken on some of Madison County's overflow. Chicago lawyer John Cooney has already wrested two multibillion-dollar asbestos settlements from corporate coffers this year.³⁴

Smaller counties on Illinois' southern tip have also begun to make tort litigation a cottage industry, with Williamson, Jefferson, Saline, and Franklin Counties emerging as centers for national silicosis litigation.³⁵ What's clear is that litigation abuse in Illinois is not uniform across its 102 counties, but rather concentrated in plaintiff-friendly venues that accept cases from around the state and across the nation.

It's the Judges, Stupid

To protect these county-court cash cows, the Illinois division of Trial Lawyers, Inc. has invested in a highly sophisticated government- and public-relations operation. Historically, the plaintiffs' bar has handpicked judicial candidates in Illinois, from the local judges of Madison County right up to the state supreme court.

The relationship between Madison County's plaintiffs' attorneys and its judges is both neatly symbiotic and perversely incestuous. Randy Bono built a successful asbestos practice in the 1980s and early '90s, became a judge on the Madison County bench, and then returned to private practice, where he earned hundreds of millions more and became one of the top contributors to state Democratic Party campaigns.³⁶ Morris Chapman, often considered the "godfather" of the Madison County bar, helped get his daughter and former law partner Melissa elected to the Madison County appellate bench, where she sits today.³⁷

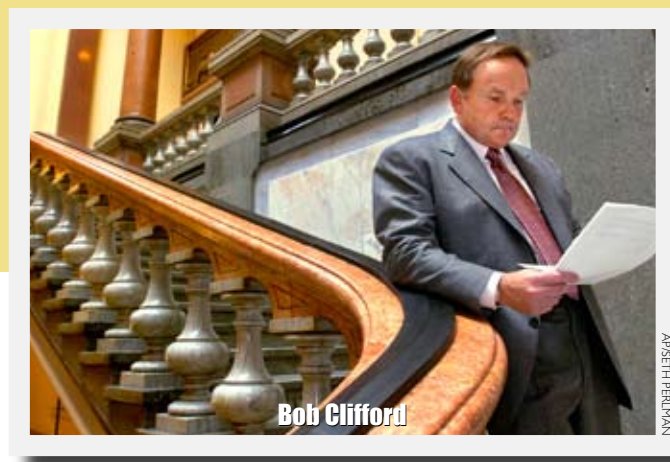
Besides packing the state's courts, Trial Lawyers, Inc. exerts a tremendous influence on Illinois politics generally. In 2004, fully 78 percent of all contributions to the state Democratic Party came from plaintiffs' lawyers.³⁸ Lawyers donated hundreds of thousands more to the saccharine-sounding "Justice for All Foundation," which spent heavily on behalf of the litigation industry's favored state supreme court candidate.³⁹ And lawyers, of course, gave generously to the war chests of individual candidates for office in all branches of government.⁴⁰

Controlling the judiciary, though, has been the crucial tactic for blocking reform. Illinois' citizens, aware of excessive litigation's effects on their economy and their access to vital medical services, have periodically pressed for the passage of reform legislation designed to curb lawsuit abuse, despite the trial bar's powerful influence in the state legislature and the governor's mansion.⁴¹ But Trial Lawyers, Inc.'s handpicked allies on the state supreme court, in brazen acts of judicial activism, have overturned these democratic reforms twice in the last 30 years.⁴²

Signs of Progress?

Recent signals suggest that Illinois could reverse its fortunes and return litigation to its rightful and rarely used place—offering reasonable redress for actual harms in accordance with the predictable norms that are inherent in the rule of law. During the 2004 state supreme court contest between Lloyd Karmeier and the tort bar's anointed candidate, Gordon Maag, business groups and grassroots activists pooled resources to educate Illinois voters about the state's broken legal system.⁴³ After the most expensive judicial race in the nation's history, Karmeier won the seat. Further, Maag—a judge overseeing the Madison/St. Clair County region—became the first Illinois appeals judge ever to lose his retention election.⁴⁴ The newly reconstituted state supreme court has reversed massive class action verdicts, and judges in Madison County have even begun to turn away some asbestos cases.⁴⁵

We've seen good news on the legislative front, as well. Last year, the Democrat-led state legislature made its third attempt in the last 30 years to fix the state's medical-malpractice liability system, passing a comprehensive bill that antireform governor Rod Blagojevich signed into law under intense public pressure.⁴⁶ Will the state supreme court again overturn this popular legislation, as with the two earlier comprehensive reforms? Or will it serve the common good and let the democratic process speak?



WASHING THEIR HANDS OF ILLINOIS

Doctors flee the state to escape its med-mal mess.

In October 2005, a story that would have been a minor item in most newspapers made the front page of the Belleville, Illinois, *News Democrat*.⁴⁷ There were new doctors in town—and in Belleville, that’s a big story.

Why? Because it meant that there would finally be enough orthopedic surgeons to cover emergencies at St. Elizabeth’s Hospital—which had been scraping by with only one. Belleville, you see, was in a swath of Illinois that had long been in the grip of the plaintiffs’ bar, and skyrocketing rates for malpractice insurance had driven doctors away.⁴⁸ The insurance-rate spike was caused by a decade-long onslaught of malpractice suits that had not only chased away doctors but shut down obstetric wards and forced patients to travel hundreds of miles in search of care. New doctors in Belleville, then, were good news for Illinois as a whole—a sign that the state’s salutary new tort-reform law was already having an effect.

Illinois’ comprehensive medical-liability reform, enacted in August 2005, imposes caps on “noneconomic” awards—for example, damages for pain and suffering or emotional distress—in malpractice litigation. It also allows doctors to apologize to patients without having their apologies used against them in court, and it raises qualification standards for the expert witnesses whom trial lawyers hire to testify in their cases.⁴⁹

That’s the good news. The bad news is that the malpractice insurers that fled the state’s runaway litigation and outsize verdicts have yet to return, and liability premiums, while dropping 5.2 percent in the past year, are still sky-high.⁵⁰ Insurers’ slow reaction is understandable, since Illinois’ activist supreme court struck down as unconstitutional two previous reform efforts in 1975 and 1995.⁵¹ So rather than risk another court intervention, insurers will wait to see if the new caps on noneconomic damages withstand the trial bar’s inevitable higher-court appeal.

The Unhealthy Costs of Illinois Jackpot Justice

Still, that the reform was passed at all by the Democrat-controlled Illinois legislature and that a firmly antireform Democratic governor signed it into law signal a developing backlash against Illinois jackpot justice. It’s increasingly difficult to ignore the manner in which out-of-control malpractice lawsuits have inflicted real damage on health-care delivery in Illinois.

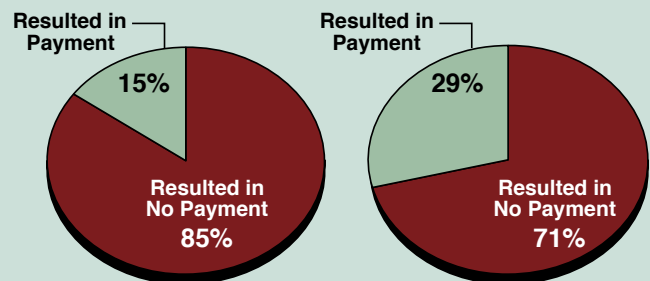
From 2000 through 2003, for example, more than half of the 950 licensed practitioners in Madison and St. Clair Counties were sued individually or through their practices.⁵² On any given day, as many as a third of them would be subject to a suit—putting the lie to the trial bar’s claim that it only targets “bad” doctors.⁵³ All told, more than 400 medical-malpractice cases were brought in Madison and St. Clair Counties from 2000 through 2003, against 1,082 different defendants—including both counties’ hospitals, which were hauled into court 220 times.⁵⁴

Most of these suits were weak or groundless—85 percent of med-mal claims in St. Clair County and 71 percent in Madison County were resolved with no payout from the defendant—but they still ate up millions of dollars in court and lawyer fees.⁵⁵ Illinois’ largest malpractice insurer, ISMIE Mutual Insurance Company, spent \$150 million between 2000 and 2005 defending claims that resulted in no payment to plaintiffs.⁵⁶

To understand how so many meritless claims can be filed in the first place, consider the staggering payouts that successful claims net lawyers who hit the jackpot. In plaintiff-friendly Cook County, the average jury award in 2003 was \$4.45 million, up an astounding 314 percent since 1998.⁵⁷ Pain-and-suffering awards averaged \$3.12 million, 247 percent more than in 1998.⁵⁸ From August 2003 to August 2004, Cook County juries handed out \$161 million to plaintiffs in 30 malpractice cases, including seven verdicts in excess of \$10 million and two in excess of \$30 million.⁵⁹ Add nearly half a billion dollars for 191 reported settlements at an average of \$2.4 million each,⁶⁰ and the tab in Cook County for 200 cases of alleged malpractice climbs to over \$600 million.

Because of such costs, malpractice premiums in Illinois are now two to three times those of other states, and unaffordable for many physicians. Shouldering most of the burden are valuable specialists—obstetricians, orthopedists, and neurosurgeons—whose high-risk patients and procedures make them especially vulnerable to lawsuits. In Cook County in 2004, the average obstetrician paid \$230,428 for malpractice

A Flood of Flimsy Filings



St. Clair County
Medical-Malpractice Claims, 1999–2003

Source: Illinois Civil Justice League



Cook County's average jury award in 2003 was \$4.45 million, up an astounding 314 percent since 1998.

coverage, up 67 percent from 2003 and nearly 12 times what he would pay in nearby Minnesota.⁶¹ Illinois neurosurgeons paid \$246,196, more than three times the \$73,105 average in next-door Indiana.⁶² Orthopedists—even those avoiding high-risk spinal work—paid \$135,584, while Wisconsin orthopedists paid only \$23,012.⁶³

Some Illinois doctors can't find a company to insure them even at these off-the-scale rates. In 2002, malpractice insurers in Illinois paid out \$1.47 in claims for every dollar they collected in premiums, making them among the biggest malpractice losers in the nation.⁶⁴ No wonder that of the 17 malpractice insurers that did business in the Prairie State in 2001, 12 have since headed for the hills.⁶⁵ The five that remain have limited the issuance of new policies and restricted the parts of the state and the specialties that they'll insure.⁶⁶

Trial lawyers blame the cost of malpractice insurance not on runaway malpractice judgments but on "price gouging" by insurers. But that claim rings hollow, since over two-thirds of Illinois' insurers have left the state in the last five years, and ISMIE, by far the state's largest med-mal insurer, is doctor-owned.⁶⁷ To buy the trial bar's propaganda, you'd have to believe that doctors price-gouge themselves; that supposedly rapacious insurers would flee a great price-gouging opportunity; and, most absurdly, that price-gouging insurers are losing 47 cents on every dollar.

Doctor Exodus Threatens Access to Care

Many Illinois doctors, hard-pressed to find affordable liability insurance—required for admitting patients to a hospital—have simply pulled in their shingles. In 2003, an estimated 131 physicians in Madison and St. Clair Counties retired, moved to other states, or gave up doing high-risk procedures that could land them in court.⁶⁸

The ultimate losers, of course, are Illinois patients. Unchecked malpractice lawsuits are not just costly and inconvenient, but literally life-threatening. Until early 2005, when Memorial Hospital in Carbondale managed to recruit a neurosurgeon from St. Louis,⁶⁹ southern Illinois had gone two years without one. Accident victims had to be transported 115 miles to St. Louis for treatment—often to St. Louis University Hospital, where the number of trauma patients from Illinois more than doubled between 2002 and 2004.⁷⁰

OB-GYNs, too, had been running for the border—at least until the recent reform bill passed. One such obstetrician, Dr. Mark Edelstein, had never been sued, but his malpractice premiums jumped from \$36,000 to \$110,000 anyway.⁷¹ In 2003, he moved from Alton, in Madison County, to Syracuse, New York, where he pays \$35,000 a year.⁷² Alton also lost three orthopedic surgeons, a gastroenterologist, four internists, and a neurologist.⁷³

Hospitals fare no better than doctors. Between 2001 and 2003, Illinois hospitals' average annual insurance costs jumped from \$1.5 million to \$2.8 million.⁷⁴ Provena Health, which operates six hospitals in Illinois, has lost nine obstetricians and four neurosurgeons.⁷⁵ Reeling from doctor flight and fearing potential suits over inevitable birth defects, some hospitals have stopped delivering babies entirely.⁷⁶

Will Reforms Turn the Tide?

Whether last year's medical-liability reforms can stanch the flow of physicians and insurers out of Illinois and restore critical services to the state's beleaguered hospitals remains to be seen. It could take years of moving old cases through the pipeline before we see the reform's full impact; ISMIE still has 5,300 cases waiting to be tried or settled under the old law.⁷⁷

But if other states are any guide, the newly enacted caps on noneconomic damages, once upheld, *will* lower insurance premiums for doctors by reducing extreme jury payouts. Medical-liability premiums have fallen 29.5 percent in Texas over the four years since it passed a reform including a constitutional amendment,⁷⁸ and malpractice premiums have dropped 30 percent over the three years since comprehensive reform passed in Mississippi.⁷⁹ Predictably, doctors are coming back: Texas is granting licenses to 400 more new physicians per year than it was before the reforms, and the state is estimating a record 4,100 applications for medical licenses in 2006, a 38 percent increase.⁸⁰

Since noneconomic damages were 91 percent of the average Illinois jury verdict in 2002, it's not surprising that new Cook County filings are down 25 percent in the last year.⁸¹ If the supreme court upholds the caps this time, Trial Lawyers, Inc. will lose a healthy source of revenue, and Prairie Staters will be far better off as a result.

CLEANING UP THE COURTS

Federal reform sweeps
class action suits from
Illinois' cluttered dockets.

When President Bush made tort reform a key part of his second term's domestic agenda in 2004—presaging the successful passage of the first major federal tort reform bill in a decade—he debuted his legal-reform road show in that county-court poster child for runaway litigation, Madison County, Illinois.⁸² At the time, Madison County had been named the nation's worst "Judicial Hellhole" for three straight years.⁸³

The county's courts well deserved the title. On top of its role as a national center for asbestos litigation and one of the country's most favorable venues for malpractice suits, Madison County had emerged as the forum of choice for Trial Lawyers, Inc.'s class action litigators. By their sheer size, class action suits—cases aggregating thousands, if not millions, of plaintiffs into a single claim—can force deep-pocketed corporate defendants to capitulate and settle, no matter how trivial or specious the suit, rather than risk trial in forums like Madison County.⁸⁴ The process nets millions of dollars for the lawyers—and pennies (or less) for their clients.⁸⁵

The steady stream of verdict and settlement money from downstate Illinois courts had long allowed Trial Lawyers, Inc. to be a generous campaign contributor, and the judges of Madison County could rely almost exclusively on contributions from plaintiffs' lawyers to bankroll their election bids (see "Buying Justice," pages 14–15).⁸⁶ This corrupt dynamic epitomizes what billionaire trial lawyer Dickie Scruggs has fondly labeled the "magic jurisdiction," where the "judiciary is elected with verdict money" and where "it's almost impossible to get a fair trial if you're a defendant."⁸⁷

Evolution of a Magnet Court

Once Trial Lawyers, Inc. had established Madison County's reputation as a mega-verdict venue, class action filings there skyrocketed, rising a staggering 5,000 percent from 1998 to 2003.⁸⁸ Filings in neighboring, similarly pro-litigation St. Clair County soon followed suit, rising 1,100 percent from 2002 to 2004 alone.⁸⁹ During 2003 and 2004, Madison County judges gave the go-ahead to nearly 200 class action suits, the highest per-capita rate in the nation.⁹⁰ Like a magnet, the county was attracting speculative filings from around the country.

Leading the charge was Brad Lakin, the county's most frequent class action filer, who followed a simple and effective business model: identify a standard industry practice; dig up

FEDERAL FAIRNESS

Early last year, after trial-lawyer crony and former Democratic minority leader Tom Daschle had been voted out of his U.S. Senate seat, 18 Democrats defied the lawyers' lobby and voted with Senate Republicans to pass the long-stalled Class Action Fairness Act (CAFA).¹⁰⁶ Signed into law in February 2005, CAFA has put the brakes on some of the rampant forum shopping that passes for civil justice in Madison and St. Clair Counties and in other class action mills around the country.

The new federal law doesn't entirely remove the class action racket from state courts. It does, however, force big, national suits—those involving over \$5 million in damages and more than 100 plaintiffs, a third or more of whom are from out of state—into federal court,¹⁰⁷ where pleading standards are tougher and judges appointed for life are not indebted to trial-lawyer political contributors.

By establishing federal jurisdiction when at least one-third of plaintiffs are from out of state,¹⁰⁸ CAFA also puts the kibosh on some tried-and-true ploys to block removal to federal court. Under earlier jurisdictional rules, if at least one defendant and one plaintiff were from the home state, the case could not be removed to federal court. Class action attorneys typically abused this pre-CAFA "diversity jurisdiction" rule by, for instance, suing a local pharmacy in a broader lawsuit against a big out-of-town drugmaker.¹⁰⁹

Finally, CAFA sets limits on attorneys' fees in class action settlements.¹¹⁰ Settlements like the 2002 Madison County verdict that dispensed \$80 in coupons to class members while forking over \$84.5 million to lawyers are a thing of the past in federal court.¹¹¹



One Madison County judge certified a class action against Mattel for manufacturing too many special-edition Barbies.

a plaintiff supposedly injured by that practice; craft a nationwide class action against the major players in that industry; and tailor the details of the suit to prevent removal to a federal court.⁹¹ Lakin would then punch out “cookie cutter” suits—reiterating the same charges against scores of different defendants, in batch after batch of identical pleadings, right down to the misspellings and typographical errors.⁹²

The hallmark of these Madison and St. Clair class actions—and what cements the counties’ status as magic jurisdictions—was that filings typically involved out-of-state claims, led by out-of-state plaintiffs, often even invoking out-of-state law. One Madison County judge certified a nationwide class action brought by two unhappy Barbie-doll collectors against California-based Mattel for manufacturing too many special-edition Barbies—and seeking damages for a nationwide class of plaintiffs under *California’s* consumer-protection laws.⁹³ In another case, Madison County judge Philip Kardis green-lighted a national class action case by Christopher Gridley alleging fraud against State Farm Mutual Automobile Insurance Company; Gridley was a resident of Louisiana, had purchased his car and his auto insurance in Louisiana, and State Farm’s alleged fraud had taken place in Louisiana.⁹⁴ The threat posed by Madison County’s class action courts to the national system of interstate commerce was very real indeed: a small-town judge and jury could perform end runs around the laws of other states, and even Congress, rewriting the rules for consumers all over the country.⁹⁵

A Change for the Better?

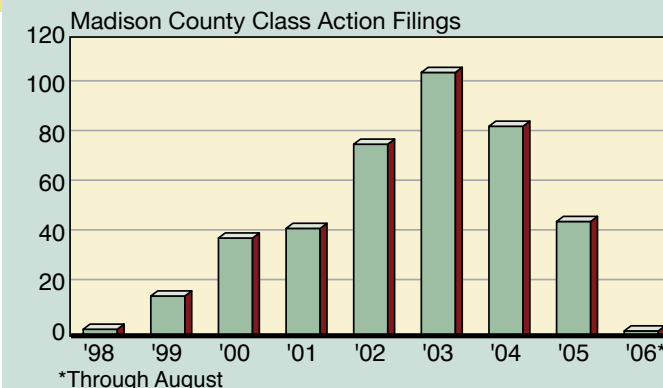
Given the state of affairs in Madison County, it’s little wonder that President Bush made class action reform the first major economic effort of his second term. The resulting federal Class Action Fairness Act, signed into law in February 2005,⁹⁶ has put a damper on some of the most flagrant forum shopping and is a major reason why Madison County dropped from the Number One spot to Number Four on the American Tort Reform Association’s Judicial Hellhole list in 2005, while St. Clair County dropped from Number Two to Number Five.⁹⁷

In addition, a shakeup in the state judiciary has had a major impact on Madison County’s class action problem. In 2004, the most expensive judicial race in American history saw Republican judge Lloyd Karmeier defeat plaintiffs’ lawyer and former appellate-court judge Gordon Maag to win a seat on the Illinois Supreme Court, a seat that for 34 years had been held by Democratic judges beholden to the trial bar.⁹⁸ Soon after, that court overturned two out-of-state class action plaintiff verdicts, and in the Christopher Gridley case, ruled that Illinois’ consumer-protection law does not apply to transactions that take place outside the state.⁹⁹ (Gridley’s chastened lawyers say that they’ll refile their case in his home state of Louisiana.)¹⁰⁰

The Karmeier election confirmed that Illinoisans increasingly recognize the need for legal reform. This dawning public awareness was made manifest in May 2005, when members of a Madison County jury openly questioned why a Missouri plaintiff should be able to file suit in Illinois.¹⁰¹ Presiding judge Nicholas Byron was so rattled that he declared a mistrial.¹⁰² Byron—who received 81 percent of his 2002 reelection campaign funds from the trial bar—was recently dismissed as chief judge of the county’s civil division, yet another positive indicator of Madison County’s prospects.¹⁰³

So there are growing signs that Madison County’s free ride for class action forum shoppers is over. Despite a stampede to the courthouse in the days before the Class Action Fairness Act took effect—over 80 class action suits were filed in downstate Illinois courts the week before President Bush signed the bill¹⁰⁴—the law nearly halved the class actions filed in Madison County in 2005, and only one class action has been filed there so far this year (see graph).¹⁰⁵

The Rise and Fall of Class Action Madness



Sources: Madison County Record; Crain's Chicago Business

COMBUSTIBLE CLAIMS

Trial Lawyers, Inc. burns through the courts with asbestos litigation.

In October 2004, Madison County judge Daniel Stack handed down an unusual ruling in the case of one Paul Palmer, Sr., a Louisiana resident who was suing 87 different companies for causing his mesothelioma, a fatal cancer that usually results in multimillion-dollar awards in asbestos lawsuits.¹¹² Stunming Palmer's lawyers, Judge Stack, in his first case since being placed in charge of the county's asbestos docket, granted the defendant's request for a change of venue—a decision almost never seen in asbestos cases in Madison County. In a terse reproof, Stack served notice that, since Palmer had lived and worked in Louisiana all his life, and since he resided 15 minutes from the Baton Rouge courthouse but 700 miles from Madison County, he had better take his complaint elsewhere. Later that day, Judge Stack dismissed two more asbestos suits filed by out-of-state plaintiffs.¹¹³

Stack's venue decisions sent tremors through the U.S. tort bar, which for years had relied on Madison County courts to help it bully billions of dollars out of corporations in asbestos cases. Indeed, in the past ten years, trial lawyers have filed an astounding 5,150 asbestos cases in Madison County, as many as 75 percent of them filed by plaintiffs who had never before set foot in the county.¹¹⁴ In 2003 alone, lawyers brought 953 suits there, more than double the number brought a year earlier, including one-fourth of all mesothelioma litigation in the country.¹¹⁵

Judge Stack's no-nonsense take on forum shopping ended years of kowtowing to the asbestos bar—most notably by his immediate predecessor, Judge Nicholas Byron. Byron once explained his refusal to grant a venue change in a case that had no connection to Madison County by saying that he was “concerned not only with the citizens of Illinois” but for “all Americans.”¹¹⁶ Until Judge Stack's recent stands, jurists regularly denied defendants' requests for venue changes and rejected their motions for summary judgment, even when plaintiffs' attorneys neglected to file the required written responses.¹¹⁷

Madison County's Asbestos Kingpin

No lawyer profited from Madison County's historical disregard for the law as handsomely as Randy Bono, who has amassed an estimated \$400 million in asbestos-case fees.¹¹⁸ Bono single-handedly built the Madison County asbestos bar when he filed an estimated 1,500 cases in 1986; the year before, there had been only *one* case filed.¹¹⁹

After a stint as a Madison County trial judge from 1995 to 2000, Bono returned to practicing law, teaming up with aggressive young gun John Simmons to form a firm that quickly became an asbestos juggernaut. Just how dominant are these attorneys? In 2003, 457 mesothelioma lawsuits were filed in Madison County, an incredible one-quarter of the entire U.S. total. Bono and Simmons's firm was responsible for 375 of them.¹²⁰ Bono's homespun style belies his status as a top legal shark; he regularly shows up for court in hiking boots and wrinkled khakis, hamming it up for the spectators.¹²¹ He does much of his real work, however, in back-room deals outside court, where he puts the screws to defense lawyers, deciding “who pays and which defendants get let off the hook.”¹²²

That defense lawyers would capitulate to Bono makes sense when you look at the awards he has consistently won in trials before plaintiff-friendly judges and hometown juries. Take *Whittington v. U.S. Steel*, a 2003 case that produced a whopping \$250 million verdict, the largest-ever for a single asbestos plaintiff.¹²³ Judge Byron denied the defendant's request for a venue change, even though the late plaintiff, Roby Whittington, was an Indiana resident who was exposed to

In 2003, mesothelioma suits in Madison County accounted for almost one-fourth of all such litigation in the country.



Randy Bono

asbestos at an Indiana steel mill.¹²⁴ In order to get venue in Madison County, the plaintiffs added a local defendant company, John Crane Inc., but made no allegations against it.¹²⁵ Defense attorneys accused John Crane’s lawyers of making a “sweetheart deal” to stay out of Bono’s crosshairs: John Crane’s attorneys actively opposed U.S. Steel’s request for a venue change, challenged jurors who appeared to favor the defense, and were observed privately conferring with plaintiffs’ counsel.¹²⁶ Needless to say, John Crane got away without paying a cent.¹²⁷

Procedural Rules Rig the Game

A crucial component in Bono’s success in asbestos litigation has been Madison County’s “rocket docket,” which has historically taken cases from discovery to trial in a matter of months, with multiple cases scheduled for the same day.¹²⁸ Such time frames impose a heavy burden on

FABRICATED FILINGS

There’s a dirty secret in asbestos litigation: 80 to 90 percent of all asbestos claimants aren’t injured.¹²⁹ The sheer volume of claims, which peaked at some 110,000 nationwide in 2003, has made it difficult for judges to give each case the scrutiny it deserves, so even jurisdictions more conscientious than Judge Byron’s Madison County have been forced to consolidate mass claims and push defendants to settle.¹³⁰

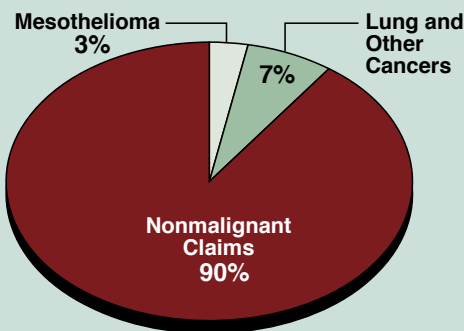
How did Trial Lawyers, Inc. manage to choke the courts with so many claims? Simple: it hired unscrupulous physicians to mass-produce phony diagnoses. One such doctor has diagnosed more than 88,000 patients with asbestos-related conditions since the early 1990s, doing as many as 150 screenings a day.¹³¹ That’s one diagnosis every four minutes for ten straight hours. Needless to say, a remarkably high percentage of patients so screened wound up as plaintiffs in asbestos cases.

In a telling 2004 study, Johns Hopkins radiologists took a sample of X-rays in which Trial Lawyers, Inc.’s handpicked examiners had identified lung abnormalities in 95.9 percent of 492 cases. The Hopkins researchers hired independent readers to examine the same X-rays without knowing their origins; these readers found abnormalities in only 4.5 percent of the same cases.¹³²

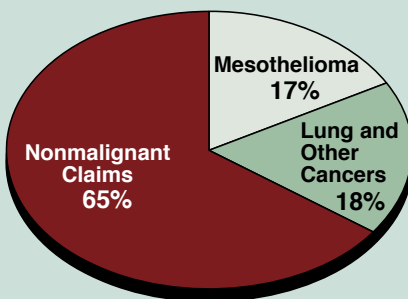
Last year, after decades of abuse, Trial Lawyers, Inc.’s asbestos division finally found a judge who wouldn’t look the other way. When U.S. District Judge Janis Graham Jack—a Clinton appointee and former nurse—began looking at asbestosis and silicosis filings in her Texas court, she found massive fraud, including a majority of plaintiffs who had claimed to suffer both silicosis and asbestosis, a very rare medical phenomenon.¹³³ While Judge Jack’s investigations have led to dramatically fewer asbestos filings nationwide, the drop-off has been slower in Madison County—and Cook County’s filings are on the rise.¹³⁴

The trial bar’s fraudulent asbestos machine particularly hurts those who have genuinely been harmed by asbestos exposure, including the 4,000 mesothelioma cases diagnosed each year.¹³⁵ As lawyers shamelessly combine these valid cases with bogus claims, the truly injured get inadequate settlements to cover their medical bills, while the uninjured get money they don’t deserve—and their lawyers get a huge windfall.¹³⁶ Trial lawyers’ abusive tactics long ago bankrupted the companies most closely linked to asbestos manufacture—but this particular business line has been so lucrative historically that they have been loath to give it up: the 8,000 corporations they now target have tenuous links at best to plaintiffs’ purported asbestos exposure.¹³⁷ It’s fitting, in a perverse way: businesses whose products never caused mesothelioma are compensating people who don’t actually have it.

Most Asbestos Plaintiffs Aren’t Seriously Sick . . .



. . . But Get the Lion’s Share of Compensation Awards, Anyway.



Source: RAND Institute

defense attorneys who may be working on hundreds of cases around the country, notwithstanding Bono's blithe assertion that "six months is oodles of time for a defense attorney to prepare for trial."¹³⁸ Academic studies have shown that consolidated case schedules and similar procedural gimmicks inevitably lead to higher average verdicts in asbestos cases¹³⁹—a problem compounded in courtrooms like Madison County's, where plaintiffs' attorneys always seem to know which case is scheduled for trial on a given day, while defense attorneys are left to guess about which case to prepare. Trial Lawyers, Inc. is thus playing the asbestos game with a stacked deck: the attorneys attack scores of defendants with thousands of claims, and each defendant must rapidly prepare cases it knows it may not win, whether it caused each plaintiff's alleged ailment or not.

Moreover, Illinois law heavily favors asbestos plaintiffs, especially the state's unique and prejudicial *Lipke* rule, which prevents a defendant from introducing evidence that other companies might be responsible for a claimant's illness and thus keeps jurors from being aware of major holes in Trial Lawyers, Inc.'s stories of causation.¹⁴⁰ This rule spelled certain defeat for Union Carbide in 2003 when one plaintiff—a cigarette-smoking housepainter who had worked with many other asbestos-containing products—alleged that his mesothelioma was caused by an interior-finishing product containing Union Carbide asbestos. Union Carbide settled the case out of court for \$4 million.¹⁴¹ Today, with so many big companies bankrupted by asbestos payouts, *Lipke* works as a bludgeon against thousands of small contractors, engineers, and maintenance companies who are being swept into litigation despite tangential connections to asbestos.

Two Steps Forward, One Step Back

When Judge Stack took over Madison County's asbestos cases in 2004, he not only cracked down on forum shopping; he also established a new deferred docket for asbestos plaintiffs who weren't actually sick. Filings promptly declined by over 50 percent, as trial lawyers shopped for more welcoming venues, including upstate Cook County and even faraway Delaware.¹⁴² Although these trends seem to be continuing, the local tort bar is working hard to replace its foreclosed out-of-state opportunities. Last September, tort lawyers from St. Louis filed 153 asbestosis and silicosis lawsuits in Madison County, naming a total of 136 defendants, on behalf of former Illinois state workers who had allegedly been exposed to asbestos in their workplaces.¹⁴³

Despite its recent improvements, Madison County still ranks as the nation's most litigious venue for asbestos claims, with 389 asbestos case filings last year.¹⁴⁴ Moreover, viewed in the context of nationwide trends, Madison County's improvement is unremarkable. Its 59 percent drop in

asbestos filings since 2003 compares with an 82 percent nationwide drop over the same time period in claims filed against the former Johns-Manville Corporation, which manages one of the largest and longest-running asbestos-settlement trusts.¹⁴⁵

And Madison County's new efforts to curb forum shopping have unfortunately failed to fix the asbestos-litigation problem for Illinois as a whole. Many of the displaced claims have simply found their way into alternative Illinois courtrooms—particularly in Cook County, where asbestos filings grew 40 percent in 2004.¹⁴⁶ Illinois needs to adopt reforms at a statewide level—to keep out-of-state claimants from filing suits, to prevent judges from consolidating claims and denying defendants due process with "rocket dockets," and to allow jurors to hear defendants' evidence on causation. Otherwise, Trial Lawyers, Inc. will keep filing suits in the state's most permissive counties—and driving out Illinois jobs in the process.

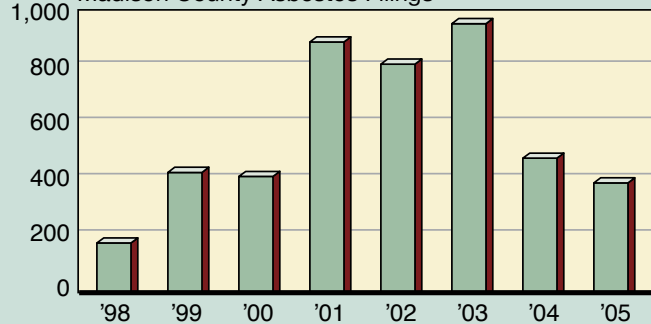


AP/CHARLES REX ARBOGAST

Judge Nicholas Byron

Down, But Not Out

Madison County Asbestos Filings



Source: Madison County Record

THE SECOND (WORST) CITY

The legal climate has improved downstate, but a storm is brewing in the Windy City.

In 2005, Cook County made the American Tort Reform Association's list of the nation's worst Judicial Hellholes for the first time, debuting all the way up at Number Two.¹⁴⁷ The Chicagoland jurisdiction's rising share of Illinois' litigation—its share of state claims skyrocketed from 47 to 64 percent from 1994 through 2003—is troubling, particularly when you consider that Cook County's share of Illinois' population dropped slightly over the same period.¹⁴⁸

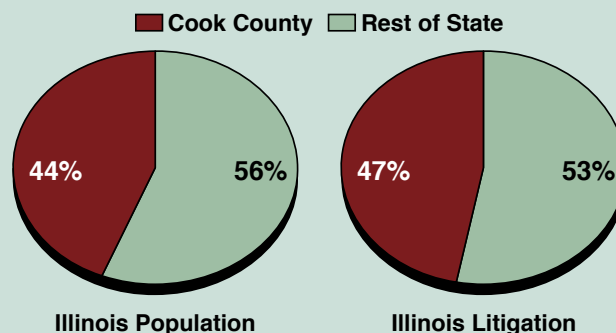
Cook County's emergence as Trial Lawyers, Inc.'s new venue of choice can in part be traced to the housecleaning that's been going on downstate. After Judge Daniel Stack took over Madison County's asbestos docket from Nicholas Byron in 2004 and began dismissing out-of-state claims, plaintiffs' lawyers began filing cases in Cook County in greater numbers. The Chicago asbestos firm Cooney and Conway, for example—which boasts of handling 90 percent of northern Illinois' mesothelioma cases—was more than eager to accommodate any displaced litigants.¹⁴⁹ In 2004, Cook County asbestos filings rose 40 percent, to 236, even as national filings dropped considerably.¹⁵⁰ And this year, the firm's John Cooney netted two multibillion-dollar asbestos settlements with USG Corporation and Ohio-based Owens Corning.¹⁵¹

Cook County is also one of the trial bar's favorite medical-malpractice venues. Med-mal verdicts there averaged over \$1 million as recently as 1998, but they have since escalated to \$4.45 million.¹⁵² Trial Lawyers, Inc.'s big player in the med-mal field in Chicago is Power Rogers & Smith; founding partner Larry Rogers won a recent \$55 million medical-malpractice verdict, the state's largest in the last decade,¹⁵³ and name partner Todd Smith recently negotiated med-mal settlements of \$17.25 and \$20 million.¹⁵⁴ Each of these lawyers is also a power player in Trial Lawyers, Inc.'s government- and public-relations operations: Rogers is a past president of the Illinois Trial Lawyers Association, and Smith is the immediate past president of the Association of Trial Lawyers of America—or the "American Association for Justice," as the organization sunnily rebranded itself this summer.¹⁵⁵

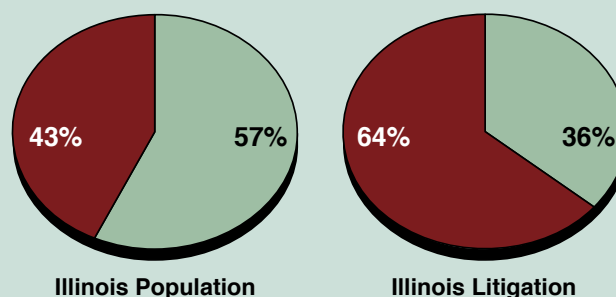
Cook County judges abuse procedure in much the same way that their Madison and St. Clair County colleagues once did, welcoming far-flung cases with no real local contacts.¹⁵⁶ Even when such venue abuses are reversed on appeal, defendants cough up a lot of money litigating the claims. Cook County's judges also routinely make questionable evidentiary decisions that prejudice defendants, such as excluding videotaped testimony showing purportedly injured plaintiffs engaged in strenuous activity—while accepting videotape evidence that disadvantages the defense.¹⁵⁷

Unfortunately, reforming Chicago's judiciary is like catching lightning in a bottle. A simple change in one judge can make a big difference in Madison or St. Clair County, but to clean up Cook County requires a massive effort. Statewide reforms—from legislative action on medical malpractice to shifts in personnel and opinion on the state supreme court—offer some hope, but much work remains. Let's hope that Cook County can get its act together and elect judges with respect for the rule of law. Chicago may be proud of its position as America's Second City, but placing second on the Judicial Hellholes list is a far less enviable distinction.

Litigation in Cook County Reflected Its Share of the State's Population in 1994 . . .



. . . But Constituted Nearly Two-Thirds of the State's Litigation by 2003.



Source: Illinois Civil Justice League

BUYING JUSTICE

Verdict cash bankrolls judicial campaigns and “independent” public-relations support.

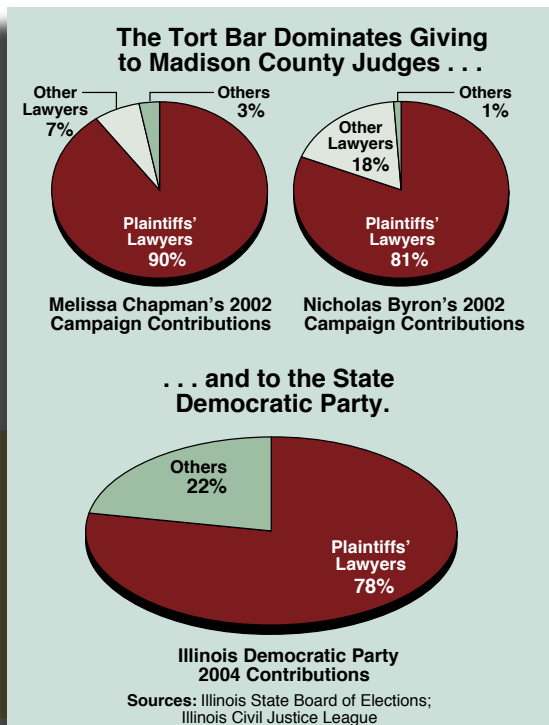
Campaign largesse is central to the litigation industry’s strategy nationwide, but no state’s justice system has been as corrupted by trial-lawyer dollars over the last two decades as Illinois’. Trial Lawyers, Inc. pumps millions of dollars into the campaigns of its favored candidates for state judgeships—many of whom are the relatives or law partners of powerful plaintiffs’ attorneys. These judges preside over a system rigged to enrich their families, friends, and allies—and cash in themselves when they leave the bench and return to private practice.

Jackpot Justice for All

The plaintiffs’ bar in Madison County provided 75 percent of the contributions to judicial campaigns between 1980 and 2002.¹⁵⁸ In 2002, for example, Judge Nicholas Byron received 81 percent of his donations from plaintiffs’ attorneys. That same year, Melissa Chapman—the daughter and law partner of Morris Chapman, patriarch of the Madison County trial bar—collected a staggering 90 percent of her donations from plaintiffs’ lawyers (see graph) in her successful run for the Fifth District Appellate Court.¹⁵⁹ From 2002 to 2004, trial lawyers poured more than \$800,000 into the campaigns of eight candidates for the Madison County Circuit Court and the Fifth District Appellate Court.¹⁶⁰ Is it surprising that these judges tolerate flagrant forum shopping, certify virtually any class action, and maul the rules of civil procedure to favor plaintiffs?

But the litigation industry’s fund-raising dominance is not limited to Madison County’s notoriously shady judicial elections: it extends throughout Illinois, across all branches of government. In 2004, an incredible 78 percent of all contributions to the Illinois state Democratic Party came from plaintiffs’ lawyers and their firms (see graph).¹⁶¹

To further influence elections—and to obscure its special-interest lobbying—the trial bar also finances political action committees like the Justice for All Foundation, which, despite its innocuous name, exists primarily to funnel trial-lawyer money into judicial campaigns. In 2004, for example, Madison County asbestos lawyer Randy Bono gave Justice for All almost \$400,000, while the law firm with which he’s affiliated, Simmons Cooper, chipped in \$275,000—money that helped the PAC spend over \$1.3 million to support the supreme-court campaign of Madison County judge Gordon Maag.¹⁶² Justice for All also serves as a vehicle for out-of-state law firms to help preserve Illinois’ magic jurisdictions: Texas plaintiffs’ firm Baron and Budd sent \$25,000 to Justice for All in 2004; the firm filed its most recent asbestos case in Madison County only last month—on behalf of an out-of-state plaintiff.¹⁶³



Trial Lawyers, Inc.'s Attack Dogs

To further obscure its role in funding the campaigns of its favorite-son candidates, Trial Lawyers, Inc. operates a clever public-relations effort in Illinois. Chief among the litigation industry’s surrogates are self-described “campaign-finance watchdogs” whose purported mission is to clean up state electoral politics, but who are more attack dogs than watchdogs, who work to suppress the political speech of tort-reform candidates.

For instance, Illinois Campaign for Political Reform (ICPR), led by trial-lawyers allies, showed its true colors during the hotly contested 2004 supreme-court race between

Trial lawyer-allied “watchdog” groups are pushing campaign-finance “reforms” designed to hinder competitive campaigning.

Gordon Maag and Lloyd Karmeier.¹⁶⁴ Disturbed by the fact that Trial Lawyers, Inc.'s candidate at last faced a well-financed opponent able to spread a reform message, ICPR pressured the candidates to agree to a "tone and conduct" pact disavowing negative advertising, including by third parties.¹⁶⁵ But when Maag attacked Karmeier's integrity—and even his law school grades—ICPR unsurprisingly refused to rebuke him.¹⁶⁶

A Crucial Juncture

The result of this massive political giving and persistent public messaging in Illinois is a judiciary, legislature, and governor's mansion populated by former plaintiffs' attorneys and allied opponents of tort reform. Fortunately, business groups and tort reformers have begun to fight back, and the state's voters seem to be waking up to the deleterious toll that litigation has taken on their health-care system and economy.

But Trial Lawyers, Inc., having collected billions of dollars from the dysfunctional status quo ante, will devote vast sums to forthcoming judicial campaigns in an effort to reestablish its dominance. Illinoisans should expect a proliferation of "consumer-advocacy" groups—who will speak passionately on behalf of "the victims," but whose purpose is to restore the parasitic perquisites of Trial Lawyers, Inc.'s fat cats. Already, ICPR and other "watchdog" groups are pushing campaign finance "reforms" designed to block competitive campaigning.¹⁶⁷ (Needless to say, neither these groups nor their parrots in the mainstream media seemed to mind when the plaintiffs' bar was the only serious donor to judicial campaigns.) Only time will tell whether Trial Lawyers, Inc. will succeed in tightening its grip on Illinois' courts, or whether the state's citizens will fight back and elect judges who'll fairly and impartially mete out real justice and serve the common good.



AP/CHARLES REK ARBOGAST

THE \$100 MILLION JUDGESHIP

The 2004 election battle between Republican Lloyd Karmeier and Democrat Gordon Maag for a seat on the Illinois Supreme Court became a state referendum on lawsuit abuse.¹⁶⁸ Set against the backdrop of pending medical-malpractice reforms in Springfield, the race soon evolved into a flashpoint in the national battle for tort reform.

For 34 years, the Fifth District justice had been a Madison County Democrat, duly anointed by the local branch of Trial Lawyers, Inc. The seat had not even been contested since 1992, and no electoral challenge was expected before 2010.¹⁶⁹ Gordon Maag, a former plaintiffs' lawyer and at the time a state appellate court judge, was tapped as the successor.

Then Lloyd Karmeier—a Washington County Republican whose 17 years on the bench earned him a "highly qualified" rating¹⁷⁰ from the state bar association—had the temerity to throw his hat into the ring, disturbing the peaceful transfer of trial-lawyer power.

The race was crucial to legal-reform efforts. A loss in the Fifth District might jeopardize Trial Lawyers, Inc.'s control over the Illinois Supreme Court, which in striking down legislative attempts to rein in runaway lawsuits represents the litigation industry's last line of defense against tort reform.¹⁷¹ And because the Fifth District's supreme-court justice names judges to lower-court vacancies, Karmeier would be able to weaken the tort bar's grip on Illinois' courts.¹⁷²

Naturally, with the stakes so high, so was the campaign spending. Madison and St. Clair County lawyers poured \$2.7 million directly into Maag's campaign, and they and others funneled \$1.7 million through the Democratic Party and the Justice for All PAC.¹⁷³ But businesses and pro-reform grassroots lobbies fought back, donating a roughly equal amount of money to the Karmeier campaign.¹⁷⁴

In the end, southern Illinois voters were so fed up with doctor flight and job losses that they awarded Lloyd Karmeier the seat decisively, with 57 percent of the vote and

29 of 37 counties in the heavily Democratic district.¹⁷⁵ What's more, Maag failed in a separate election to earn the 60 percent voter approval that he needed to retain his appellate judgeship.¹⁷⁶ How did Maag react? He sued, of course, claiming that Karmeier's supporters had "defamed" him and seeking damages in excess of \$100 million—a hefty price tag indeed for a judgeship that pays less than \$200,000 per year.¹⁷⁷

Plaintiffs' Firms: Gordon Maag's Core Constituents

Simmons Cooper	\$1,165,000
Power Rogers & Smith	350,000
Carr, Korein, & Tillery	298,800
Clifford Law Offices	295,000
Lakin Law Firm	280,800
Corboy & Demetrio	250,000
Cooney & Conway	240,000

Source: Illinois Civil Justice League

COUNSEL CHAIRMEN

Illinois courts answer to these princes of the prairie.

A dozen or so lawyers control Trial Lawyers, Inc.'s Illinois operations. These attorneys—the “leadership team” for Illinois’ litigation industry—make millions off the state’s magic jurisdictions.



Philip Corboy

Chairman, Cook County

For over 50 years, Corboy has led the personal-injury bar in Illinois, and his junior partner, **Tom Demetrio**, scored the state’s largest personal-injury award sustained on appeal.¹⁷⁸

TIME LIFE PICTURES/GETTY IMAGES/MICHAEL L. ABRAMSON



Bob Clifford

President, Cook County

The leader of Illinois’ most profitable plaintiffs’ firm, Clifford has pulled in two med-mal awards at or above \$16 million in the last two years alone.¹⁷⁹

AP/MARK CORNELISON



Randy Bono

Chairman, Madison County

The asbestos tort king has assumed the Madison County leadership since returning from the bench, scoring a \$250 million verdict against U.S. Steel.¹⁸⁰

AP/CHARLES REX ARBOGAST



John Simmons

President, Asbestos

Madison County is Asbestos Central, and Simmons, in partnership with Bono, leads the way: their firm filed 375 of the county’s 457 mesothelioma cases in 2003.¹⁸¹

AP/CHUCK NOVAKA



Brad Lakin

President, Class Actions

Madison County’s most frequent class action filer uses “cookie cutter” lawsuits that even contain the same typographical errors.¹⁸²

ST. LOUIS POST-DISPATCH/DAVID CARON



Stephen Tillery

President, Tobacco

Another of the litigation-industry leaders east of St. Louis, Tillery won a landmark \$10.1 billion verdict against Philip Morris for marketing light cigarettes, which was overturned on appeal.¹⁸³

AP/CHARLES REX ARBOGAST



Rex Carr

Chairman, St. Clair County

The longtime litigator made headlines in 2004 when he represented former judge **Gordon Maag**, after an electoral defeat, in a \$110 million libel suit against his political opponents.¹⁸⁴

AP/DERIK HOLTSMANN



Bruce Cook

President, St. Clair County

St. Clair County’s most politically influential lawyer, Cook is also the former law partner of **Ann Callis**—daughter of local tort powerhouse **Lance Callis** and now the chief judge of Madison County.¹⁸⁵

AP/DERIK HOLTSMANN

A PIVOTAL MOMENT

Illinoisans want legal reform—but they'll need to work to get it.

Illinois has been at the crossroads of North American commerce since even before its entry into the Union. Today, the Prairie State finds itself at a crucial juncture, and the path it follows will determine whether it continues on a slow decline or reestablishes its prominence as the economic hub of the Midwest. Illinois voters have clearly signaled their desire for a saner civil-justice system, but sustaining that political momentum will demand resolve, particularly in the face of Trial Lawyers, Inc.'s aggressive lobbying and public-relations efforts every election season. An engaged citizenry needs to hold elected officials accountable for delivering the legal reform Illinois needs. And until the state's supreme court shows its willingness to let democratically enacted reform stand, all legislative gains and executive bill-signings must be viewed with skepticism.

Undoubtedly, Illinoisans have been energized about tort reform over the past two years. Lloyd Karmeier's thrashing of Gordon Maag to win the Fifth District's seat on the state supreme court was the first major political setback for Trial Lawyers, Inc. in southern Illinois's modern history, and the newly constituted supreme court has already begun to address the most ridiculous examples of forum shopping and to reverse outlandish trial-court verdicts.¹⁸⁶ The legislature, mindful of growing public discontent, has passed a comprehensive medical-liability reform bill.¹⁸⁷ Even the judges of Madison County have shown progress: Daniel Stack has trimmed out-of-state plaintiffs from the clogged asbestos docket he inherited from Nicholas Byron, and he could do the same with the broader civil docket after supplanting Byron as the county's civil-division chief, as well.¹⁸⁸

For all the positive signs, Illinois remains one of the nation's worst states for litigation: next to last for medical liability, third from last in corporate liability, and 44th overall according to corporate litigators. The will of the voters is plainly in favor of tort reform, but if the Illinois supreme court once again thwarts legislative action, citizens will have to wait until 2008 to hold it accountable.¹⁸⁹

On lower courts, however, voters in southern Illinois face real choices this November. The Fifth District's newest appellate judge, Stephen McGlynn, has been a vast improvement over Gordon Maag as a Fifth District appellate judge, but Trial Lawyers, Inc. is devoting considerable resources to regain Maag's old seat for its anointed candidate, Bruce Stewart.¹⁹⁰ Three Madison County circuit judges are also up for retention, including chief judge Ann Callis, daughter of local litigation-industry chieftain Lance Callis.¹⁹¹ These candidates' public statements are peppered with calls for reform, but voters will have to decide if the tough talk on torts is just election-year rhetoric.¹⁹²

Then there's Cook County, which together with some small counties at the state's southern tip has warmly welcomed suits diverted by Madison County's forum-shopping crackdown. Reforming the courts of the nation's third-largest city is a mammoth task. While some reform could be adopted at the district level, like improved handling of the county's asbestos docket, the number of judgeships system-wide makes it difficult to counter Trial Lawyers, Inc.'s political giving and public messaging with the type of voter-education efforts that have gained so much traction downstate.

Therefore, statewide reform is crucial. Our report concludes as it began—with questions that only Illinoisans can answer.

Central to legal improvement, obviously, is the judiciary. Will the state supreme court uphold the legislature's third attempt to fix the state's broken medical-liability system? If not, will citizens maintain their commitment to legal reform and replace activist judges with those ready to uphold their political will? And will voters and lawmakers resist the efforts of lawyer-backed "consumer" groups and their media parrots to push through campaign-finance laws that will further cement Trial Lawyers, Inc.'s control of the courthouse and insulate it from citizen pressure?

Legislative change is a necessary complement to a less activist judiciary. Can Illinois pass meaningful statewide venue reform to prevent forum shopping? Will the legislature enact class action reform to allow defendants to appeal class certifications? Can Springfield muster the political will to extend to products liability the reasonable protections it has adopted for medical-malpractice liability, and to clarify the state's ambiguous consumer-protection laws before the latest abuses popping up in other states gain a foothold in Illinois?

Illinois will need to address these issues to restore its legal reputation. Otherwise, neighboring states like Iowa, Indiana, Missouri, and Michigan will continue to poach job-creating businesses and skilled workers. Residents of the Land of Lincoln need to take Honest Abe's commonsense admonition against litigation to heart, and stand resolutely against the self-serving political machinations of Trial Lawyers, Inc.



APRIL PERMAN

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Graphs

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- Illinois' Tort Climate is the Sixth-Worst in the U.S.* See ILR/Harris Poll, *supra* note 9, at 15 & tbl. 3A.
- U.S. Tort Costs Have Risen Much Faster than GDP.* See TILLINGHAST-TOWERS PERRIN, *supra* note 4, at 15 & app. 1A.
- Trial Lawyers, Inc.'s Income Dwarfs Illinois' Largest Public Companies' Trial*

Lawyers, Inc. revenues based on 19 percent of tort costs, as estimated in TILLINGHAST-TOWERS PERRIN, supra note 4, at 15 & app. 1A. Company domestic revenues based on the most recent annual reports from the respective companies, available at <http://www.sec.gov/edgar/searchedgar/companysearch.html> (last visited Oct. 5, 2006).

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The Tort Bar Dominates Giving to Madison County Judges and to the State Democratic Party. See JUSTICE FOR SALE, *supra* note 86, at 3. Democratic Party of Illinois contributions are calculated from Illinois State Board of Elections data, available at <http://www.elections.il.gov/CampaignDisclosure/CommitteeList.aspx> (last visited Oct. 4, 2006) (spreadsheet on file).

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Other Resources

Illinois Experts

Heartland Institute

Joseph L. Bast, President
www.heartland.org
(312) 377-4000

Illinois Chamber of Commerce

Douglas L. Whitley, President and CEO
www.ilchamber.org
(312) 983-7100

Illinois Civil Justice League

Edward D. Murnane, President
www.icjl.org
(847) 222-9673

Illinois Hospital Association

Kenneth C. Robbins, President
www.ihatoday.org
(630) 276-5400

Illinois Manufacturers Association

Greg Baise, President and CEO
www.ima-net.org
(630) 368-5300

Illinois State Medical Society

Peter E. Eupierre, M.D., President
www.isms.org
(312) 782-1654

National Experts

Manhattan Institute Center for Legal Policy

James R. Copland, Director
Walter K. Olson, Senior Fellow
Peter W. Huber, Senior Fellow
www.manhattan-institute.org/clp
(212) 599-7000

AEI-Brookings Joint Center for Regulatory Studies

Robert W. Hahn, Executive Director
Robert E. Litan, Director
Judyth Pendell, Senior Fellow
www.aei-brookings.org
(202) 862-5847

American Enterprise Institute Liability Project

Ted Frank, Director and Resident Fellow
www.aei.org
(202) 862-5820

American Justice Partnership

Steven B. Hantler, Chairman
Dan Pero, President
www.americanjusticepartnership.com
(517) 371-5256

American Legislative Exchange Council

Kristin Armshaw, Director, Civil Justice Task Force
www.alec.org
(202) 466-3800

American Tort Reform Association

Sherman Joyce, President
Victor E. Schwartz, General Counsel
www.atra.org
(202) 682-1163

Common Good

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