

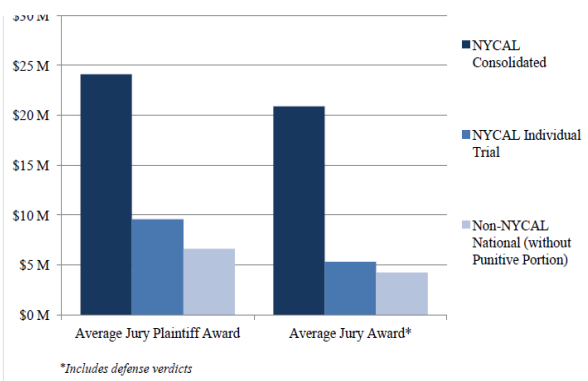
The Asbestos Cesspool

Charges Against Sheldon Silver Raise Concerns Over Questionable Asbestos Litigation Practices

Here are the facts about asbestos litigation in New York

FACT: The New York City Asbestos Litigation court (NYCAL) is home to the highest plaintiff awards in the nation. In 2013, the NYCAL returned a verdict of \$190 million on behalf of five asbestos plaintiffs, believed to be the largest verdict of its kind in U.S. history. Between 2010 and 2014, consolidated NYCAL verdicts were between three and four times higher than the national average.¹ Shortly following the indictment of Silver, the court slashed a \$190M jury verdict in *Asesenzio v. A.O. Smith Water Products, et al.* to under \$30M.

NYCAL Verdicts vs. National Average (2010-14)



Source: Bates White Economic Consulting

FACT: The NYCAL is the nation's worst "Judicial Hellhole." The American Tort Reform Foundation cites runaway verdicts and preferential treatment in favor of plaintiffs in naming the NYCAL the #1 "Judicial Hellhole" in the nation in 2015.

FACT: Weitz & Luxenberg, the firm which employed Sheldon Silver, enjoyed preferential treatment in the NYCAL. According to one source, "When Weitz & Luxenberg had an asbestos case up and needed a jury, it didn't matter who else needed a jury, they got their jury."²

FACT: At the request of Weitz & Luxenberg, NYCAL Chief Judge Sherry Klein Heitler reversed a long-standing Case Management Order (CMO) to allow punitive damages in asbestos cases. This change, which was made without consulting the parties that negotiated the original CMO, significantly increased potential fees for Weitz & Luxenberg.³

FACT: Weitz & Luxenberg is the largest player in the NYCAL. The firm accounted for 52% of all mesothelioma filings and 71% of all lung cancer filings between 2011 and 2014.⁴

FACT: Nationwide, practices by asbestos plaintiffs' firms are raising serious concerns. During the bankruptcy of Garlock Sealing Technologies, a Palmyra, NY-based company, a judge discovered that plaintiffs lawyers withheld evidence in every single one of the 15 cases examined.⁵ In 2005, Federal Judge Janis Jack sanctioned a plaintiff's firm and tossed approximately 10,000 fraudulent cases which relied on false diagnoses, noting that "...these diagnoses were driven by neither health nor justice; they were manufactured for money."⁶ Recently, a federal jury found the plaintiffs' firm of Pierce & Raimond guilty of fraud under the RICO Act for manufacturing asbestos cases against defendant CSX.⁷

SOURCES:

¹ Scarcella, M and Kelso, P. The Consolidation Effect: New York City Asbestos Verdicts, Due Process, and Judicial Efficiency. 2015.

² Fisher, Daniel. "New York's Asbestos Court Mulls Changes After Sheldon Silver Scandal." Forbes. 8 April, 2015.

³ Irsinghausen Gvillo, Heather. "Fight Rages Over Punitive Damages in N.Y. Asbestos Cases; Defendants Claim 'Chaos.'" Legal New-sline. 22 July, 2014.

⁴ ibid at ¹.

⁵ Heffner, Emerson. "Bankruptcy Judge: Plaintiffs, Lawyers Covered Up Evidence In Garlock Meso Cases." Mealys. 14 January, 2014.

⁶ Glater, Jonathan D. "The Tort Wars, at a Turning Point." New York Times. 9 October, 2005.

⁷ Ryan, Greg. "CSX Nets Triple Damages in Asbestos Fraud Suit Against Attys." Law 360. 26 September, 2013.



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