

2011 | 2012 **JUDICIAL  
HELLHOLES<sup>®</sup>**



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FOUNDATION



The targeted “deep pockets” were held liable simply because they sold Propofol in a 50ml vial, in addition to 10ml and 20ml sizes, when typical procedures require 20ml or less. [Reportedly biased rulings](#) of District **Judge Jessie Walsh** kept jurors from learning about the allegedly criminal conduct of clinic staff and the fact that the drug’s warning label could not have been changed without FDA approval. This effectively [stripped](#) the companies of their defenses. Perhaps not coincidentally, finance records show that, just months before she was randomly assigned the case, Judge Walsh’s reelection campaign [received \\$40,000](#) from the plaintiffs’ lawyer and others at his firm. The Nevada Supreme Court has not yet ruled on the defendants’ pending [appeal](#).

Early in the year, two similar cases heading to trial were [put on hold](#) by the state’s high court after Clark County **Judge Kathleen Delaney** ruled that the companies could introduce evidence of the clinic’s systematic misconduct, while her colleague, **Judge Timothy Williams**, would have kept from the jury some of the key facts surrounding the case.

Then came a whirlwind week in October that included two more massive verdicts, cementing Clark County’s Judicial Hellholes status.

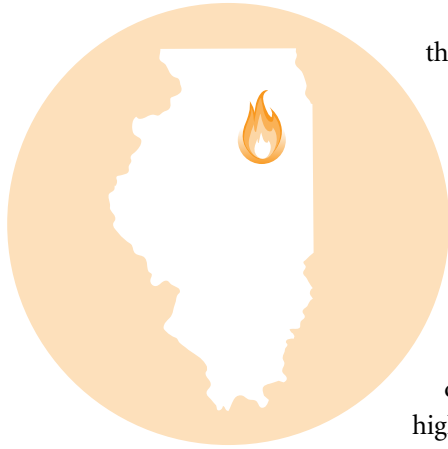
- ▶ **Thursday, October 6:** The same law firm that won the \$500 million aimed higher, asking a jury that had already awarded \$20.1 million in compensatory damages to three clinic patients and two spouses to award an additional [\\$739 million](#) in punitive damages against the pharmaceutical companies.
- ▶ **Monday, October 10:** The jury returned a [\\$162 million](#) punitive damages award. (But in the go-for-broke, casino-like mindset of certain Clark County personal injury lawyers, one must wonder if this gigantic add-on award was at least a little disappointing.)
- ▶ **Tuesday, October 11:** Dr. Desai and his lawyers [challenged](#) his competency to face the criminal charges brought by the state against him. Earlier in the year, the former clinic owner was ordered admitted to the state’s mental hospital after a court-appointed psychiatrist and psychologist found him [mentally incompetent](#). Six months later, doctors found him competent, concluding he was [exaggerating](#) the effects of two strokes he had suffered in 2007 and 2008. Prosecutors said Dr. Desai’s behavior was [an act](#). Dr. Desai is tentatively [scheduled](#) to face state criminal charges next March.
- ▶ **Wednesday, October 12:** Another clinic patient and his wife received a [\\$104 million](#) award, including \$90 million in punitive damages and \$14 million in compensatory damages, against Teva and Baxter.
- ▶ **Thursday, October 13:** Dr. Desai [pleaded not guilty](#) to federal charges stemming from the hepatitis C outbreak. A separate federal trial for conspiracy and health care [fraud](#) is scheduled for May 22, 2012. He remains free on \$1 million bail.

Though it claims it did so for manufacturing reasons unrelated to the Clark County award, Teva [ceased production of Propofol](#) just three weeks after the \$500 million verdict last year. Propofol is the most common intravenous anesthetic in the United States, used for general anesthesia and for sedation because, when used properly, patients wake up quickly and side effects are rare. With Teva leaving the market, and no other U.S. production of the sedative, there are concerns about continued [shortages](#) like those that have already been reported.



## MCLEAN COUNTY, ILLINOIS

Last year’s Judicial Hellholes report for the first time placed central Illinois’ McLean County on the “Watch List.” Those who have watched McLean’s civil justice system work over the past year are not pleased with what they have seen. By and large, however, the jurisdiction’s problems stem from a single type of case – a [McLean County phenomenon](#) in which lawyers [do not present evidence](#) that their clients worked for any of the employers named in



the lawsuit, or that their clients were exposed to asbestos from any of the named defendants' products. Every case is allowed to go to trial and any case resulting in a plaintiffs' verdict ultimately gets reversed. Between the legal expenses and the potential for massive punitive damages verdicts, however, those defending such cases have a strong incentive to settle.

In fact, just after last year's report was published, a McLean County trial before Circuit **Judge Scott Drazewski** resulted in a near [\\$90 million verdict](#) for Charles Gillenwater, who worked as a pipefitter in the 1970s and later developed mesothelioma. The award included \$9.6 million in compensatory damages and \$80 million in punitive damages. It is believed to be the second highest verdict of all time for a single mesothelioma plaintiff.

Lawyers in such cases claim that companies or their predecessors engaged in "parallel conduct" and conspired to suppress the dangers of asbestos decades ago – a charge defendants [deny](#). This strategy lets lawyers [circumvent](#) the need to show a connection between their client's injury and the defendant's products, and gives them a deep-pocket employer to sue when the companies that may actually be responsible for a plaintiff's exposure have already declared bankruptcy under the weight of lawsuits. In such cases McLean judges take a let-it-all-in approach to expert testimony of [questionable relevance and reliability](#). One local lawyer, James Wylder, has won a string of such trials, culminating in the \$90 million award.

But why even bother with trials? In April 2011, **Judge Paul Lawrence** barred Honeywell from presenting a defense, directed a verdict for the plaintiff, and had the jury deliberate only on damages. Stripping away Honeywell's defenses was an action Judge Lawrence said he did not undertake "lightly," but that it nonetheless was "the appropriate thing to do." His reason? Citing his age and need to remain with family, an elderly Honeywell consultant living in New Jersey was not prepared to travel again to central Illinois to offer the same testimony for the [23rd time](#), as plaintiffs' lawyers have sought to relitigate the same basic facts in order to wear down the defense.



The Fourth District Appellate Court has repeatedly [reversed](#) these multimillion-dollar verdicts, and this year [found](#) a lack of evidence of a conspiracy. For instance, plaintiffs have desperately relied on defendants' mutual membership in a trade association, a board member shared by two defendants, one defendant's assistance of another in drafting a position paper on the dangers of asbestos, and an allegation that the defendant companies suppressed results of a study on eight or nine mice that lacked scientific significance. Nevertheless, trial courts continue to allow these cases to go to the jury.



The situation has led legal observers to exclaim "[Move over, Madison County](#)" and note that "McLean County seems to be descending [deeper and deeper](#) into Hellhole status." An eye-popping award, application of what has been described in this report as the "civil death penalty," junk science, and allowing plaintiffs to recover with no direct link to the companies they sue place McLean County tentatively in the ranks of Judicial Hellholes for 2011/2012. Perhaps trial and appellate judges, whose souls have thus far appeared

