

The Times-Tribune

Tort filings rising

Peter Cameron

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Slip-and-fall, motor vehicle and other wrongful act lawsuits are filed in Lackawanna County at one of the highest rates in Pennsylvania, according to a Sunday Times analysis.

Per capita, Lackawanna ranks second in the state in the number of torts filed. Philadelphia ranks first.

The newspaper analyzed data from the Administrative Office of Pennsylvania Courts from 2012 through 2014, the most recent years for which that information is available.

Torts are civil wrongs where the injured person is entitled to financial compensation.

In Lackawanna County, an average of about 680 torts were filed annually from 2012 through 2014, a per-capita rate of about 3.2 for every 1,000 residents, the newspaper found. In Philadelphia, once dubbed a “judicial hellhole” by the American Tort Reform Association, an average of about 14,000 were filed annually at a per-capita rate of nine per 1,000.

With an average of about 800 torts filed, Luzerne County had the fourth-highest rate among Pennsylvania’s 67 counties, the newspaper found. That is a per-capita rate of about 2.6 per 1,000 residents, just behind Delaware County, which averaged about 1,600 torts annually at a per-capita rate of about 2.9 per 1,000 residents.

Northeast Pennsylvania historically is known as a region where a high number of wrongful-act suits are filed, said Samuel R. Marshall, the president and CEO of Insurance Federation of Pennsylvania, a nonprofit trade association.

However, there is no clear-cut reason why so many are filed in Lackawanna County but experts theorize it could be the county’s high number of attorneys or its widespread legal advertising.

Ads driving lawsuits?

Billboards and television ads promoting local law firms are prevalent in Lackawanna County and may contribute to the county's litigious nature, some experts say.

Their advertising messages often are blatant: "Injured? We fight for what's right." "We take personal injury personally."

The sheer amount of advertising "saturates" the market and pushes people to sue, said Daniel E. Cummins, a Scranton attorney who has worked in civil defense in the region for nearly 20 years. He also reports on the local civil legal scene in his blog [Tort Talk](#).

Visiting out-of-town attorneys often comment to him on the large amount of legal billboards, he said.

"Apparently, that advertising — and the emphasis in those ads that people can pursue a personal injury lawsuit without having to pay out any money unless they win — is working," he said.

Others are skeptical that advertising is driving the high rate of suits.

Attorneys will decide to pursue a case if it has merit and a chance of winning, said James F. Tierney IV, a managing partner at the Scranton office of the civil defense firm Cipriani & Werner.

"There's no question that advertising plays a role," he said. "But I don't think it creates any more work. (Legal firms) are competing for the same work. So if there are 10 cases out there, all the firms that are advertising are competing for those 10 cases, in my mind. The advertising doesn't create an 11th and 12th case."

Most attorneys work on contingency, meaning their clients pay nothing up-front and the lawyers only make money if they win the case, said Paul Lyon, a spokesman for the Committee for Justice for All, an advocacy group for plaintiff's attorneys. Lawyers and their staff scrutinize potential plaintiffs before deciding to move forward, he said.

"They only accept a small percentage of the cases they review," Mr. Lyon said, weeding out the meritless ones.

Mr. Cummins sees it differently. He said the lack of any up-front cost for clients means a deeper pool of potential cases for attorneys.

“There’s really no downside here in America to filing a lawsuit in this country,” he said, speaking from a client’s perspective. “You lose and there’s no money out of pocket, generally speaking.”

On a winning lawsuit, attorneys typically get 25 to 40 percent of the awarded compensation, Mr. Cummins said.

Lots of lawyers

Lackawanna County also had the seventh-highest number of lawyers per capita in the state last year, the newspaper found. In fact, the county gained attorneys nearly every year in the past decade, despite its fairly stagnant population.

From 2006 to 2015, the county saw an increase of about 13 percent in the number of attorneys, from 693 to 782, according to data from [the Disciplinary Board of the Pennsylvania Supreme Court](#), which tracks the numbers. With an estimated 211,917 residents in 2015, Lackawanna has the 17th largest population of the state’s 67 counties, but the 11th most attorneys.

Many local attorneys agree about the general overpopulation of their profession, but do not see it exclusively as a local problem.

“Every place has too many lawyers,” said Kevin McNicholas, a conflict counsel attorney for Lackawanna County who practiced for many years in Allegheny County, which has the third-highest rate of lawyers per capita in Pennsylvania.

“There’s no question about it,” said John J. Aponick Jr., a longtime civil defense attorney at Marshall Dennehey in Moosic. “There are too many lawyers in the world.”

Attorney Mary Theresa Gardier Paterson, president of the Lackawanna Bar Association, disagrees that there is an oversaturation of lawyers in Lackawanna County.

“The number of attorneys licensed to practice law in Lackawanna County tends to be higher, comparable to Philadelphia and Allegheny counties, because Lackawanna County has both the Lackawanna County Courthouse and by statute, the United States District Court for the Middle District of Pennsylvania, which has seven full-time judges and their staff,” she said.

The county also houses the United States attorney’s office and FBI, which have attorneys on staff, Ms. Paterson said. The state has a local office building that houses the attorney general’s tort division, she said, and there are attorneys working in the county in other state agencies, including the Pennsylvania Department of Transportation and the Workers’ Compensation bureau.

Additionally, the existence of the Lackawanna ProBono, Inc. supports the fact that there is not an over-saturation of attorneys in Lackawanna County, Ms. Paterson said.

“This nonprofit organization, founded by members of the Lackawanna Bar Association, funded in part by the Lackawanna Bar Association and served by the attorneys of Lackawanna County who volunteer

their services, has a constant need for attorneys to service their clients,” she said.

The number of licensed attorneys in the state also increased in the last decade, rising about 9 percent, from 45,333 in 2006, to 49,397 in 2015. However, Pennsylvania’s population also grew in those years, a total of more than 2 percent over the decade, from about 12.5 million in 2006, to about 12.8 million in 2015.

However, the plummeting law school enrollment figures, in response to a drop in legal profession jobs, may be reversing the trend. For example, the number of lawyers statewide and in Lackawanna County dropped slightly in fiscal year 2016, which ended June 30.

The greater issue is the access to justice,” Ms. Paterson said. “There are many people injured, hurt or suffering injustice who cannot access the legal system. Perhaps there should be insurance for access to justice as there is insurance coverage for our physical and mental health medical issues.”

Litigious climate is costly

Experts have another theory on the high rate of wrongful act lawsuits filed in Lackawanna County.

“Do we have more bad things happening to good people than a lot of other places?” asked Malcolm L. MacGregor, a Scranton-based attorney and a past president of the Pennsylvania Association for Justice, a statewide association of plaintiff’s attorneys.

Location may drive tort cases dealing with accidents, he said.

Major interstate highways, including 81, 84 and 80, cross through Northeast Pennsylvania, bringing with them fleets of cars and tractor-trailers — and a greater chance for motor vehicle crashes.

Regardless, the litigious climate is costly, experts agree.

It can lead to higher insurance premiums on things like cars and homes, said Walter Olson, an author and senior fellow at the Cato Institute, a Washington, D.C.-based, libertarian think tank,

who specializes in tort reform. Insurance companies that have to spend a lot of resources fighting lawsuits must recoup that money somehow.

“Everyone who writes an insurance check is paying for a climate of litigation,” Mr. Olson said. “The costs of this winds up getting paid in large part by the public.”

Defending lawsuits is particularly expensive, and can even be fatal, for small businesses. Also, a litigious climate can scare away new businesses from moving in, costing the area jobs, said Sam Denisco, vice president of government affairs at the Pennsylvania Chamber of Business and Industry.

“If they see a disproportionate amount of torts filed in that county, they’re going to ask the question ‘why?’” he said.

Tort reform slow

Whatever the reason for the high number of wrongful act lawsuits, tort reform is the answer to reducing filings, some experts say, particularly tightening the requirements.

Tort reform advocates constantly work and negotiate in the state legislature to “create an equitable civil justice environment,” Mr. Denisco said.

The legislature did this with medical malpractice suits in 2002, passing the Medical Care Availability and Reduction of Error Fund, more commonly referred to as MCARE. From 2002 to 2015, it nearly halved the number of medical malpractice suits filed in Pennsylvania. In Lackawanna County, it reduced the number filed by nearly 30 percent.

Still, between the years of 2012 and 2014, Lackawanna County had the 11th-highest per capita rate in the state of medical malpractice lawsuits filed, with an average of about 26 a year, the newspaper found. The more populous Luzerne County has the 12th-highest per capita rate, averaging about 38 annually in those years.

Attorneys are quick to note that the large number of hospitals in the two counties could explain the reason for the high rate of medical malpractice filings here compared to other counties.

Wrongful acts suits have not received the same treatment as medical malpractice cases when it comes to reform, said Neal Leshner, legislative director of the Pennsylvania chapter of the National Federation of Independent Business.

Progress, from the advocates’ perspective, usually doesn’t happen that monumentally.

“It’s incremental. It’s slow,” Mr. Denisco said. “Maybe one win a (legislative) session.”

There are a couple of bills moving forward now, he said, including one that would place a cap on financial damages against nursing homes.

“From our perspective, while there have been some wins, Pennsylvania is pretty much known as being a poor legal climate state,” Mr. Leshner said, noting that legislatures in other states recently made major and minor reforms. “We continue to be an outlier.”

Contact the writer: pcameron@timeshamrock.com, @pcameronTT on Twitter

Subcategories

Motor vehicle and slip-and-fall lawsuits are two subcategories included in the broad classification of wrongful act lawsuits.

In Pennsylvania, Lackawanna County has the second-highest filings per capita of premises liability lawsuits, most commonly known as slip-and-falls. Premises liability laws makes the property or landowner liable in certain cases of injury on that property.

Lackawanna County also has the third-highest per capita rate of motor vehicle suits filed alleging a wrongful act.

Luzerne County ranks fourth in both categories.