

McCarter Partners Mentioned in the American Tort Reform Foundation's 2016 Edition of "Judicial Hellholes"

Related People:

Edward J. Fanning, Jr.
David R. Kott

American Tort Reform Foundation's 2016 Edition of "Judicial Hellholes"

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David Kott and Edward Fanning are mentioned in the 2016 edition of "Judicial Hellholes," an annual publication that "...identifies and documents problems in jurisdictions where judges in civil cases systematically apply laws and court procedures in a unfair and unbalanced manner, generally to the disadvantage of defendants." This edition of "Judicial Hellholes" includes McCarter's home state of New Jersey and prominent mentions of Newark-based partners David Kott and Ed Fanning. The publication also features a quote on its inside cover from special counsel Peggy Ableman. There are three additional "Judicial Hellholes" within the McCarter footprint where the firm is active – the Philadelphia Court of Common Pleas, New York City Asbestos Litigation and Pennsylvania Supreme Court.

For the full "Judicial Hellholes" 2016 edition, click [here](#).

Peggy Ableman quoted in 2016 edition of "Judicial Hellholes"

This quote from Peggy Ableman appears on the inside cover:

"The proliferation of case consolidations as the judicial response to burgeoning caseloads in [New York City Asbestos Litigation ("NYCAL")], with an emphasis on expediency and case management, has led to inequitable outcomes, which in turn have raised concerns over violations of defendant due process.... [C]onsolidated trial settings create administrative and jury biases that result in an artificially inflated frequency of plaintiff verdicts at abnormally large amounts."

— Peggy L. Ableman, Peter R. Kelso & Marc C. Scarcella, *The Consolidation Effect: New York City Asbestos*

An oral argument by David Kott mentioned in the 2016 edition of "Judicial Hellholes"

"Judicial Hellholes" includes a link to David Kott's oral argument before the New Jersey Supreme Court in *McCarell v. Roche* in which Mr. Kott argued on behalf of *amicus curiae* the New Jersey Civil Justice Institute. He persuaded Justice Albin to concede that the lax standards for admissibility of expert testimony in New Jersey state courts attract out-of-state plaintiffs.

The link to Mr. Kott's video transcript was mentioned in the following paragraph:

One reason litigants prefer New Jersey is the state's standard for expert testimony. New Jersey Supreme Court Justice Barry T. Albin affirmed this during recent oral arguments in the Accutane litigation, saying, "We apply our evidence rules and our court rules and that attracts plaintiffs here. They like our evidence rules, they like our expert witness rules," as though becoming a destination for litigation tourists were something to aspire to.

For Mr. Kott's full video transcript, click [here](#).

Ed Fanning was quoted in the article "Those terms and conditions (that nobody reads) could cost N.J. retailers" which was featured on NJ.com and mentioned in the American Tort Reform Foundation's (ATRF) 2016 edition of "Judicial Hellholes"

An ATRF-commissioned study found that Consumer Fraud Act lawsuits decided by courts increased 447% from 2000 to 2009. So New Jersey policymakers have obviously known for some time that there are problems with the state's principal consumer protection law. Still they've done nothing to solve those problems. Meanwhile, a previously obscure statute known as the Truth-in-Consumer Contract, Warranty and Notice Act (TCCWNA) has rapidly become a choice weapon that plaintiffs' lawyers can wield against virtually any merchant "looking to sell in the Garden State."

Here is an excerpt from the NJ.com article:

On Dec. 24, 2015, a home furnishings company called Crossill Home sold a tea light candleholder online to an Ocean County man. That transaction now has the company facing the threat of a class action lawsuit and the possible loss of a huge sum of money. The law permits statutory penalties of \$100 per person for consumers who shopped on the website. It also covers "prospective consumers," so plaintiffs can sue for consumers who may use the site in the future.

For a big retailer, that could amount to "tens of millions of dollars" in penalties, said Edward J. Fanning Jr. of McCarter & English in Newark. According to Fanning, the litigation is being filed by a few lawyers looking to generate substantial legal fees. "This is not for one single consumer or one single transaction," he said. "They're interested in putative class actions...to really add up those numbers to get a large attorney fee."

Fanning said "dozens" of companies have gotten "demand letters," that ask for an immediate settlement in lieu of the filing of a lawsuit. "I'm getting calls from companies regularly on this," he said earlier this year.

For full NJ.com article, click [here](#).

Ed Fanning was quoted in an article mentioned in the American Tort Reform Foundation's 2016 edition of "Judicial Hellholes"

A link to "Online Shopper Using 35-Year-Old NJ Consumer Law Against Websites" which appeared in *NJ Spotlight* is mentioned in the 2016 edition of "Judicial Hellholes."

The article was included in this paragraph:

Many of the key terms of this "gotcha" statute are undefined, leading to lawsuits over drink prices on menus, the definition of hardwood flooring, the phrase "void where prohibited" and the terms of service agreements on scores of websites. It truly is "a feeding frenzy [for] plaintiffs' lawyers," or as *The Economist* suggested, "class-action lawyers...may have struck gold."

This is an excerpt from *NJ Spotlight*:

More than three decades after its passage, a modest New Jersey consumer-protection law has become an Internet scourge, at least in the eyes of some companies.

New Jersey civil courts are being hit with suits from around the country using the Truth-in-Consumer Contract, Warranty and Notice Act (TCCWNA) to challenge the terms and conditions listed on some commercial websites. Big corporations, including Wal-Mart, Hertz, and Bed Bath & Beyond, have been hit with class action suits charging they violated the little-known New Jersey statute.

“There has been a literal blizzard of demand letters that have gone out to businesses across the country,” said Edward Fanning, chair of the product liability group at McCarter & English.

The letters are warnings from plaintiffs’ attorneys, contending the terms and conditions of sales, discounts, memberships, and other offers made via websites could violate TCCWNA.

Although the law’s penalties are slight – \$100, actual damages, or both – they apply to each infraction, Fanning noted. That makes it a potentially devastating tool against the owners of heavily trafficked websites, he said.

The demand letters warn “hundreds of thousands or even millions of people may have been exposed” to multiple confusing terms, even if they were just casually browsing a website rather than shopping, Fanning said.

Another key provision of the New Jersey statute is that it applies not just to customers who bought a lamp or joined a club but to any “prospective consumer.” The penalties must be paid to any “aggrieved consumer,” not only those who completed transactions.

For the full njspotlight.com article, click [here](#).

For full “Judicial Hellholes” 2016 edition, click [here](#).