



News Release

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West Virginians Should Demand That ATRA Cease Its Unwarranted Attack on the Mountain State

Charleston, W.Va. – The West Virginia Association for Justice today called on every West Virginian to demand that the American Tort Reform Association stop its baseless and unfair attack on the Mountain State.

“Year after year, the American Tort Reform Association issues a piece of propaganda called the Judicial Hellhole report which unfairly attacks our state. ATRA was created for one purpose—lobbying for immunity when corporations break the law and risk the lives and bank accounts of West Virginia consumers, workers and small business owners,” said Beth A. White, executive director of the West Virginia Association for Justice.

“The real goal of this campaign is to create two standards—one for billion-dollar corporate special interests and one for the rest of us. When our founding fathers created this country, they envisioned a place where ‘all men are created equal,’ not a place where average citizens are held to one standard while billion-dollar corporations get a free pass.”

“I want every West Virginian to call ATRA at (202)682-1163 and tell them to stop this unfair attack on our state and our constitutional right to a jury trial.”

The report is typically released in early December.

Get the Facts!

The goal of the Hellhole PR campaign is to scare state lawmakers into passing laws that limit access to the civil justice system—or risk being labeled by ATRA as a “judicial hellhole.” Indeed, in her article “Judicial Hellholes, Lawsuit Climates and Bad Social Science: Lessons from West Virginia,” Southern Methodist University Dedman School of Law professor Elizabeth Thornburg writes:

“ATRA’s hellhole campaign began in 2002, and falls squarely within this tradition of scaring the public, but with a twist—this time the explicit goal is to appeal to the public as voters, to scare state politicians into making pro-defendant changes in the law in order to make the label go away, and to get rid of judges whose rulings made ATRA members unhappy. Judicial Hellholes are selected in whatever way suits ATRA’s political goals. The choice is not based on research into the actual conditions in the courts.” (*West Virginia Law Review*, Vol. 110 No. 3)

ATRA’s report purports itself to be an analysis of court systems hostile to businesses, but Thornburg also noted in her article that in the ATRA reports, “the stories are embedded in a framework of more general statements about West Virginia’s legal system—statements that are the opinions of persons quoted but that appear to be statements of fact. The reports do this by using quotations (unattributed in the text, but identified in the endnotes)—often from the local leaders of ATRA affiliates—characterizing West Virginia’s legal system as if they were providing a neutral empirical analysis.”

The *New York Times* criticized the validity of the 2007 report. “The question is whether the report’s arguments make sense, are supported by evidence and are applied evenhandedly. Here the report falls short . . . It has no apparent methodology.” In response, ATRA acknowledged that its report was not based on an analysis of the actual facts, admitting, “We have never claimed to be an empirical study.” (*New York Times*, December 24, 2007)

There is no civil litigation explosion in West Virginia courts.

- West Virginia ranks 39th among all states for the number of lawsuits filed per capita (www.ncsconline.org). In contrast to our good ranking in the bottom third, Maryland ranked first, Virginia second and Ohio seventh in the number of lawsuits filed.
- Appeals to the West Virginia Supreme Court declined to just 1668 in 2010—the lowest number of since 1990. Civil appeals comprise just 20 percent of that total and have declined 45 percent in the last decade from 606 in 2001 to 343 in 2010 (2010 West Virginia Supreme Court Statistical Report).
- The study done by Brisbin and Kilwein found that “since the 1980s West Virginia courts—the trial court of general jurisdiction—have not experienced a massive upsurge in non-family law civil litigation.” (*The Future of the West Virginia Judiciary: Problems and Policy Options* by Richard Brisbin, Jr. and John C. Kilwein, 2007)

Illinois Judge Ruled That Hellhole Report Part of PR Strategy to Damage Courts, Aid Defendant

- On April 20, 2011, Illinois Circuit Judge William Mudge issued an order which disclosed that Syngenta Crop Protection Inc., a defendant in a pending water pollution case, and its Chicago public relations firm developed a prejudicial PR campaign based on the Judicial Hellhole report. The judge found that the proposal prepared for Syngenta “outlines a plan to tie the defense of this action into a negative public relations campaign that attacked the Madison County judicial system as a “‘judicial hellhole’ friendly to frivolous lawsuits” and a “source of ‘jackpot justice’” (*St. Louis Post-Dispatch*, April 21, 2011).

Hellhole report is “bad social science”

- “The point of the hellhole campaign is not to create an accurate snapshot of reality. The point of the hellhole campaign is to motivate legislators and judges to make law that will favor repeat corporate defendants and their insurers, and to spur voters to vote for those judges and legislators who will do so.” (*Judicial Hellholes, Lawsuit Climates and Bad Social Science: Lessons from West Virginia*, p. 3)
- “The stories are embedded in a framework of more general statements about West Virginia’s legal system—statements that are the opinions of the personal quoted but that appear to be statements of fact. The reports do this by using quotations (unattributed in the text, but identified in the endnotes)—often from the leaders of local ATRA affiliates—characterizing West Virginia’s legal system as if they were providing a neutral empirical analysis. ATRA is, in effect, quoting itself in order to prove that its views are generally held, and uses the quotations to state or imply that the opinions are factually-based.” (*Judicial Hellholes, Lawsuit Climates and Bad Social Science: Lessons from West Virginia*, pp. 26 - 27)
- “The debate over the West Virginia justice system has at times become heated, where often hyperbolic and biased political rhetoric replaces systemic social scientific consideration of the issues at hand” (“The Future of the West Virginia Judiciary: Problems and Policy Options” by Richard A. Brisbin, Jr. and John C. Kilwein, *West Virginia Public Affairs Reporter* Vol. 24 Issue 2, pp. 2 – 3)
- “Business interest groups and the media produce stories about abusive litigation that neglect important contradictory information, rely on erroneous information, make assumptions based on inaccurate anecdotes, or use inadequate evidence and slogans generated by the ‘research’ arm of interest groups who neglect normal standards and practices of empirical social scientific inquiry” (“The Future of the West Virginia Judiciary: Problems and Policy Options” by Richard A. Brisbin, Jr. and John C. Kilwein, *West Virginia Public Affairs Reporter* Vol. 24 Issue 2, pp. 5 – 6)

Fallacies of previous Hellhole reports

- West Virginia’s ranking in 2005 was based largely on two lawsuits regarding Teflon cookware that were never even filed in the state. Indeed, even the report’s own footnotes listed the states where those lawsuits had been filed—and West Virginia wasn’t included. When a reporter pointed out the error, ATRA said that it didn’t matter. “While we regret and apologize for the error, this does not affect the ranking of West Virginia as the third worst Judicial Hellhole. The overall pattern is the same, regardless of whether the lawsuit was filed there or not” (*Charleston Gazette*, December 15, 2005)
- In its 2009 report ATRA claimed that in West Virginia there is no right of appeal, yet every defendant has the right to petition the West Virginia Supreme Court.
- West Virginia’s ranking gets worse when the state legislature passes the so-called reforms pushed by ATRA and the corporate interests it represents. In 2002, West Virginia wasn’t listed in the hellhole report. The state’s rankings for the following years were sixth in 2003, fourth in 2004, third in 2005 and first in 2006. In that same time period, the West Virginia Legislature passed significant tort reforms pushed by ATRA including caps on medical malpractice damages, the elimination of third party bad faith, privatization of our state’s workers’ compensation system, and changes to joint and several liability. The U. S. Chamber, ATRA and other corporate special interests also said that our judicial climate would improve if Brent Benjamin was successful in defeating Justice Warren McGraw. Despite Benjamin’s victory over McGraw, our state’s ranking still fell.

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