

The State of Justice

It's time to stop lying: West Virginians deserve the truth

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By Jeffrey T. Jones

Once again, West Virginia is under attack by the U.S. Chamber of Commerce and the billion-dollar corporations that it represents. The charge? That West Virginia's courts are the worst in the country.

That so-called analysis is based on a survey of corporate attorneys who are employed as in-house counsel by corporations that earn at least \$100

million in annual profits. How many of those attorneys have any first-hand knowledge about West Virginia's judicial system? How many of them have ever stood before a West Virginia judge?

Of the more than 1,400 surveyed, just over 100 answered questions about West Virginia—less than 10 percent. Based on comments by the Chamber's spin doctors and hearsay, those attorneys attacked our courts. These are in-house attorneys who are responding exactly the way the Chamber tells them – and the results are exactly what the

chamber expected them to be.

In the courtroom, we can't argue our cases based on hearsay and spin. We have to deal with facts. So, here they are.

The ads claim that America's legal system costs each American \$886 per year – a total of \$1.6 billion for West Virginia. That figure is based on a report released by Tillinghast-Towers Perrin.

However, this study, which is updated annually, has been widely discredited because the total figure includes insurance industry overhead costs in the costs of lawsuits. These added costs include multi-million dollar salaries for CEO's, rent for office buildings and other administrative expenses.

A May 2005 report from the Economic Policy Institute (EPI), a non-profit, nonpartisan think tank in DC revealed that TTP's reports are one-sided, exaggerating the impact of the tort system and ignoring its benefits, and that evidence

supporting them is shaky or nonexistent.

The Wall Street Journal previewed the new version of the TTP report, and noted that it includes costs that are not part of the legal system: "...critics of past years' studies – and there are many – say the number and the projections that come with it are deeply flawed. For instance, they include payments that don't involve the legal system at all. Say somebody smashes his car into the back of your new SUV and his insurance company sends you a \$5,000 check to fix the damage. That gets counted as a tort cost in Tillinghast's

number. Critics say it's just a transfer payment from somebody who wasn't driving carefully to somebody who has been legitimately wronged. How is that evidence of a system run amok?" (Math Divides Critics As Startling Toll of Torts is Added Up," Wall Street Journal, 3/13/06) After being

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criticized for the methodology, TTP was forced to admit in their 2005 edition that “the costs tabulated in this study are not a reflection of litigated claims or of the legal system.” Russ Sutter, primary researcher for the study,

admitted in 2005 that tort-reform advocates use the data

“in a way that’s probably misleading.” (“U.S. Tort Costs: 2004 Update, “Tillinghast-Towers Perrin at 4)

The Chamber claims that our court system is the worst in the nation, yet when you look at an independent analysis of our courts the findings are very different. According to the National Center for State Courts, Maryland had the highest number of civil lawsuits per capita among the 39 states with two-tiered court systems.

Virginia is second and Ohio is tenth. Kentucky was 21st. Where is West Virginia?

West Virginia ranks 29th. Among all the states and Washington D.C., we have the 36th LEAST number of case filings per capita. West Virginia’s number of case filings was below the national median.

That does not point to an out of control system that should be ranked dead last by the Chamber.

Indeed, the data is flawed not just for West Virginia, but for several other states as well. Nine of the 15 states that the Chamber lists as the worst – Alaska, New Mexico, Arkansas, Texas, California, Illinois, Alabama, Mississippi and West Virginia – have civil case filings BELOW the national median. So, it can’t be based on the number of lawsuits. The numbers just don’t add up.

What is it then? Could it be that these states have strong consumer protection and

worker safety laws that hold negligent corporations accountable?

After passage of Proposition 103 in California, that state has some of the strongest insurance regulations in the country. According to the Foundation for Taxpayer and Consumer Rights, California auto insurance premiums, which were second highest in the nation prior to the initiative, dropped to 20th after the initiative passed, according to the most recent data reported by the insurance industry. Since its 1988 passage, the average premium has fallen 22 percent in California, while it has increased an average of 30 percent throughout the rest of the country.

The Chamber and the billion-dollar insurance industry are now trying to have Prop 103 repealed. To assist in that effort, they are now attacking California’s court system as one of the worst. California has fewer cases filed per capita

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than West Virginia.

West Virginians deserve the truth. The truth is that the U.S. Chamber doesn’t care about West Virginia consumers, West Virginia workers or West Virginia jobs. The truth is that the chamber’s primary political agenda is to destroy consumer and worker protection laws in order to provide total immunity to billion-dollar corporations that break the law. It’s all about the money and how these corporations can make more money on the backs of West Virginians.

The only thing that matters to Tom Donohue and the U.S. Chamber is protecting corporate profits at any cost no matter what they have to say or do. **AND THAT’S THE TRUTH!**

*Jones is President of
the West Virginia Trial
Lawyers Association.*

