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Do Newport News Courts Threaten Virginia's Pro-Business Reputation?

By Michael Thompson

3/6/2015 -- Virginia consistently ranks as one of the most business-friendly states in America, although lately we have been slipping. According to the Virginia Economic Development Partnership, since 2001, manufacturing companies have invested \$14.5 billion and created more than 72,000 new jobs in Virginia and nearly \$4 billion in capital investment. That is most encouraging.

The city of Newport News, as a bustling Navy and shipbuilding hub, has historically been a leading example of just how "open for business" Virginia really is. However, one recent report says that reputation may be in for some difficulty.

The American Tort Reform Foundation (ATRF) recently released its annual "[Judicial Hellhole 2014-2015](#)", which documents discouraging, anti-business developments in court jurisdictions around the country. Seven states and cities were listed as "Hellholes" and another five were on the "Watch List" – meaning they could graduate to the list of 'Hellholes' in the near future. Considering the large number of courts throughout the United States, this is not good.

Newport News got on the "Watch List" *because asbestos litigation defendants are more likely to lose at trial there than in any other jurisdiction in the country.* Most asbestos defendants in Virginia are sued (not surprisingly) in Newport News, and will lose their cases 85% of the time if they choose to go to trial rather than settling out-of-court. This is significantly higher than the nationwide average of 52% percent – higher than New York (81%) and higher than neighboring Maryland (76%).

According to ATRF's report, there are several reasons why Newport News is listed. First, asbestos claims are pursued under maritime law and its lax standard of causation. An asbestos plaintiff simply has to claim exposure to a defendant's product for the case to go to trial. Second, the Newport News courts prohibit a large amount of evidence – from scientific data to information about what a plaintiff's employer may have known or done about the asbestos exposure – from being admissible. The legal environment in Newport News certainly isn't on the side of business according to this report.

Of course, Newport News asbestos defendants can appeal to Virginia's Supreme Court but that means significantly more time, money and resources must be devoted to continuing the litigation. Many defendants simply opt to cut their losses and settle their cases.

This treatment of asbestos defendants in Newport News is certainly not doing the Commonwealth any favors to maintain its business-friendly status. The amount of money that

these defendants must spend not only on legal bills but also on settlements is extraordinary and, at times, can bankrupt a business. So instead of employing folks, adding to the economic growth of the region, businesses need to spend hundreds of thousands of dollars in court. This trend not only has disastrous effects for businesses currently in the state but can also serve as a hindrance to those considering coming to Virginia.

According to the authors of this report by ATRF, this anti-business jurisdiction could be changed by the Virginia's high court or lawmakers in Richmond. It would be good for the legislators in this area of the state, and others, to read this report and see what, if anything, can be done to level the legal playing field.

Although Newport News has yet to be named an official "Judicial Hellhole," – there are seven in this category -- its placement on the "Watch List" means it is very close to earning that title in the near future. However, reforms by those who can provide them here in Virginia can help Newport News climb away from this legal "hellhole" category. That would be good for all of Virginia.

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Michael Thompson is currently the Chairman and President of the Thomas Jefferson Institute for Public Policy, a non-partisan Virginia focused foundation dealing with the issues of improving education, government reform, economic development and environmental stewardship. This foundation is the state's premier independent public policy foundation and has gained broad based respect from political and business leaders throughout Virginia. Mr. Thompson may be reached at mikethompson@erols.com.