



January 11, 2021

## A Q&A WITH ATRA PRESIDENT TIGER JOYCE ON 2020 JUDICIAL HELLHOLES® REPORT

**Editor's Note:** In 2002, the American Tort Reform Foundation (ATRF) first unleashed hell on the legal and judicial communities. Its audacious "Judicial Hellholes®" report branded specific courts, municipalities, and entire states as Judicial Hellholes® for they how they treated civil-litigation defendants. It offered meticulously researched examples, identified data-supported trends, and, where necessary, named names of responsible jurists, politicians, activist groups, and lawyers. The report opened a lot of eyes (and mouths, no doubt).

ATRF has built on the success of that first report, making the release of Judicial Hellholes® an event to look forward to each December. On December 8, the organization released the [2020 edition](#) through a dedicated Judicial Hellholes® [website](#). The *WLF Legal Pulse* caught up with American Tort Reform Association (ATRA) president Sherman "Tiger" Joyce to talk about the report's evolution and what readers will learn from the 2020 report.

**WLF:** Tiger, congratulations on the 19<sup>th</sup> edition of the Judicial Hellholes® report. Let's start by going back to the beginning. What was the genesis of putting together this report?

**Joyce:** Our objective is to identify the worst litigation jurisdictions in the country for civil litigation and put a bright spotlight on our designation of a Hellhole. We do this by writing about the specific problems that lead to the designation and explaining why that puts the jurisdiction outside the mainstream of the civil justice system.

**WLF:** It's certainly had the impact that you and your colleagues had hoped for. How has the report remained consistent over the years, and how has it changed?

**Joyce:** The main constant in the report is the overarching objective since it was first published: putting a spotlight on the worst abuses of the civil justice system and serving as a catalyst for reform and improvement. In terms of changes, we now highlight improvements as "points of light," which is great to be able to do, particularly when the designation of a Hellhole serves as a catalyst for change. Also, we have developed "Closer Look" sections to discuss important developments, such as this year's report which outlines concerns about the activism of the American Law Institute's Restatements—a topic I know the WLF has also written very effectively on.

**WLF:** Looking back over the years, how do you feel Judicial Hellholes® has moved the needle toward greater fairness and balance in jurisdictions that have earned the ignominious Judicial Hellholes® label?

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**Sherman "Tiger" Joyce** is President of the American Tort Reform Association, a position he has held since 1994.

**Joyce:** The report has increased in reach every year. It was mentioned in the media over 350 times and had over 550,000 digital impressions since it was released on December 8, which is the basic objective. That includes highlighting the economic impact that lawsuit abuse has on a state, including lost jobs, economic output, and tax revenue. We are confident that, with the outreach of the report and the considerable effort of our ATRA team and civil justice allies around the country, the issues we raise have resonance in the Hellhole jurisdictions. While it is expected that the organized trial bar will attempt to discredit the report, public officials have acknowledged the problems we have highlighted. A few years back when West Virginia was taken off the list after many years, the President of the State Senate and the Speaker of the House held a press conference announcing that the reforms they enacted led to the state's removal from the list. That's a pretty strong testimonial to the effectiveness of the report!

**WLF:** The 2020 report spotlights an interesting mixture of jurisdictions as Judicial Hellholes.<sup>®</sup> Why is it that some municipalities or counties, or even specific courts within a state, are named but not the state itself?

**Joyce:** Ideally, we would highlight only specific communities in a given state—such as a city or county. The impetus for the report all those years ago was our conclusion that the negative reputation a state might enjoy could be attributed to one or two counties. For example, Mississippi became a national center for pharmaceutical litigation nearly twenty years ago, but we determined that the problem was really taking place in one small jurisdiction: Jefferson County. One of the points we highlighted that year was that there were more lawsuits filed in that county than there were citizens! Hampton County, South Carolina was a similar example. But, in places like California, the issues we highlight are all over the state, so it's impossible to target a single place like Jefferson County, Mississippi in California.

**WLF:** Both this year and in years past, have you seen a correlation between the presence of the most entrepreneurial lawyers and law firms in a state or locality and that jurisdiction earning a Judicial Hellholes<sup>®</sup> label? For instance, the #2 Judicial Hellhole<sup>®</sup>, New York City, has an enormous number of suits focused on websites' alleged violation of the Americans with Disabilities Act, and the report notes the presence of several firms located there that are very active in that space.

**Joyce:** I think that's a good observation but would add an important distinction. Litigation brought in Hellhole jurisdictions often are brought by lawyers from other areas. For example, we highlighted South Carolina's asbestos court as the number four Hellhole due to significant problems in these cases. As our report highlights, however, a key figure from the trial bar in these cases is a firm from Dallas, Texas. In addition, among the major areas that we focus on in the report is the failure of the judiciary to police its dockets and permit "litigation tourism." These jurisdictions are, as you observed, quite hospitable to entrepreneurial lawyers, but it's important to recognize that they welcome lawyers from all over the country—not just those from their own state. As we observed in this year's report, one of the key issues in the Hellholes is the failure to follow the important precedent of the Supreme Court of the United States in *Bristol Myers Squibb v. Superior Court of California* which establishes important limitations on personal jurisdiction of state courts on out-of-state defendants.

**WLF:** One common characteristic of several of the Judicial Hellholes<sup>®</sup> is the frequency of so-called nuclear verdicts. Why are such verdicts hazardous to other business defendants in those jurisdictions?

**Joyce:** If there is one constant over the years it is that the trial bar looks to capitalize on success in one area by using it against different defendants—in different jurisdictions. This year's report

highlights commercial trucking cases—and premises cases as among the most egregious examples of “nuclear” verdicts. But anyone who thinks that the factors that went into those cases—particularly in Georgia—will not be replicated against other defendants is mistaken. In addition, these outsized verdicts have a significant impact on similar cases that settle before a jury verdict.

**WLF:** As an organization that advocates for a limited role for the judiciary, we share your group’s disdain for “regulation by litigation,” which is another common characteristic this year’s report identifies. What are some of the worst examples of this practice that ATRF identified for the report?

**Joyce:** We have been highlighting extensively the opioid litigation brought by state and local governments. To date there have been more than 2,000 suits in this area, which involves activities that are completely subject to regulation by federal and state agencies. It begins with FDA approval of the product, includes DEA regulation of distribution, and the product can only be provided to a consumer if a physician writes that person a prescription. In the case brought by Oklahoma, that state alleged a violation of the state’s public nuisance statute. We believe other important areas include efforts to address climate change through litigation as well as lawsuits against the manufacturers of PFAS. With regard to climate change, as we have reported previously, Bloomberg Philanthropies is actually paying lawyers to work in the offices of state attorneys general so that they can file these climate change cases. Ask yourself this question: what would the response be if the WLF or ATRA paid lawyers to work for state attorneys general to oppose opioids or climate change cases? Can you imagine the outrage that would ensue?

**WLF:** How does the 2020 report factor in the impact of COVID-19? And do the group’s findings provide any kind of window into how the pandemic will affect civil litigation in 2021?

**Joyce:** I think we are watching the courts just as are other organizations and individuals to determine when we might be able to see the system operate as normal. No doubt, the pandemic has significantly limited the courts in countless ways. To date, there have been well over 6,000 cases filed in matters arising out of the pandemic, but, in our view, we are in the very early stages of this litigation. As we outlined in our [white paper](#) on the topic, reasonable and balanced legislative reform is needed to protect healthcare providers and businesses of all kinds due to the uncertainty the pandemic creates for all. We remain hopeful that Congress still may step up to enact needed reform, but states are stepping into the breach. 21 states plus the District of Columbia have enacted some level of liability protections, and several more states plan to address the issue in 2021. ATRA is working extensively with our in-state allies to coordinate and support these efforts. This year’s report included a “[Closer Look](#)” at the COVID-19 litigation surge and the response around the country. It also discusses what we expect to see if 2021.

**WLF:** To close, how can decision makers in the judiciary, and policy makers in legislatures, in Judicial Hellholes® jurisdictions douse the flames, and bring more balance to their respective civil-justice systems?

**Joyce:** We believe that too many elected officials fail to understand the impact that lawsuit abuse has on fundamental priorities such as access to health care and its cost, and a state’s economy. Too often profound problems in the civil justice system are dismissed as matters only for lawyers and judges. The reality is that the worst abuses in litigation are a problem for all. Our Judicial Hellholes® report endeavors to be a catalyst for leaders in government—legislators, judges, and members of the executive branch—to address these important issues.

**WLF:** Thank you, Tiger, and thanks to ATRA and its dedicated team for its years of fighting for a fair and balanced civil-justice system.