

West Virginia Civil Courts and Juries

Do They Protect or Harm West Virginia Businesses?

- West Virginia's civil courts are only place where a locally-owned business that employs five people and has annual profits of just \$100,000 is equal to the world's most powerful corporations.
- Contract disputes are heard in the courts by juries
 - Contract cases between two businesses have risen steadily for three decades—and passed the number of tort cases in our courts 15 years ago.
 - For more than 20 years, business v. business contract cases have constituted 50 percent of all cases in federal courts (Wall Street Journal)
 - According to the National Center for State Courts, contract cases now comprise more than 50 percent of all civil cases nationally
- These big corporations have attempted to reduce the number of contract lawsuits by inserting binding arbitration agreements into the contract's fine print.
 - West Virginia businesses are forced to sign contracts with binding arbitration clauses or do without the goods and services needed for their businesses
 - Why binding arbitration is bad for West Virginia businesses
 - Unlike the courts, where both businesses are on equal footing, arbitration favors the defendant
 - Instead of an impartial judge and jury, the case is heard by an arbitrator who is selected and paid by the defendant. Whom would you rather hear your case? A judge elected by local voters or an arbitrator whose check is signed by the defendant? Would we ever allow someone on trial for robbery or murder to pay the salary of the person hearing the case?
 - Arbitration makes it harder for a business owner to prove that the other business has done something wrong because you can't get access to all of the evidence needed, such as internal documents from the defendant, to prove the case
 - Unlike the court system, which has formal rules and procedures, arbitration varies greatly from one arbitrator to the next.
 - There is little oversight or accountability, and it's nearly impossible to challenge the arbitrator's decision
 - Arbitration is manipulated by the corporate defendants and provides only an illusion of justice for the small businesses challenging them.
 - Just this summer, a U. S. Supreme Court ruling upheld arbitration clauses, leaving small businesses at the mercy of American Express.
 - In that case, several small businesses had filed a lawsuit against American Express alleging that the credit card giant had created a monopoly and violated federal trade laws in order to force the businesses to pay higher fees to accept American Express cards.

- Because of binding arbitration clauses buried in the multi-page contracts signed by the businesses, the U. S. Supreme Court sided with Amex and ruled that the case could not proceed. The only option for the businesses to challenge their high fees was individual arbitration with Amex by each business.
 - The small businesses showed that it would be impossible for them to pursue their antitrust claims if they had to go forward on an individual basis because it would cost each of them hundreds of thousands of dollars to prove each case and the claims were worth only about \$5,000 apiece.
 - The small businesses are left with no choice—either accept the outrageous fees and continue to be at the mercy of Amex or lose customers who want to pay with their American Express cards.
 - As a result of the decision, corporations can continue to violate a wide range of laws designed to protect small businesses and all Americans. As Justice Kagan noted in his dissent, the ruling is “a betrayal of our precedents, and of federal statutes like antitrust laws.”

- When local businesses have been cheated or robbed by large corporations, they have been forced our businesses to hold them accountable in our courtrooms. Business v. business tort actions—civil cases brought because a defendant has breached its duty to the plaintiff resulting in a financial or other loss—make up nearly one-third of all tort cases.
 - Business v. business cases are where the real growth has been in civil litigation in the last 30 years
 - “One of the unheralded developments in civil litigation during the last 30 years has been a dramatic increase in business-against-business tort litigation. Business tort litigation has jumped so dramatically that it can fairly be said that much of the increase in civil litigation occurring during the past 30 years can be attributable to . . . a dramatic increase in the instances of businesses suing other businesses.”
 - These cases include fraud, misrepresentation, interference with contractual relations, interference with employment relations, unfair competition, misappropriation of trade secrets and defamation.
 - Despite claims to the contrary, the big corporations behind the U. S. Chamber of Commerce and front groups like CALA don’t want to be held accountable when they cheat West Virginia small businesses.
 - In 1999, Eagle Research Corporation in Putnam County, West Virginia produced flow computers that were among the very best products of its kind in the world. The company entered into a contract with Daniels Measurement to provide 3,000 of its computers. The contract stated clearly that the computers’ technology was confidential and belonged to Eagle, and the companies signed a mutual confidentiality agreement. Emerson Electric acquired Daniels and forced the company to share the technology with another Emerson subsidiary based in Great Britain. That company deconstructed it and then began manufacturing its own product using Eagle’s design to compete with those being produced in West Virginia. The vice president of Daniels objected to what Emerson had done and was fired.

- Eagle filed a lawsuit since its trade secrets were stolen. The evidence in the case was clear, and a Putnam County jury found in favor of Eagle. The decision was upheld by the West Virginia Supreme Court.
- Emerson appealed the decision to the U. S. Supreme Court. Both Eagle Research Corporation and Emerson were members of the U. S. Chamber of Commerce that made contributions over and above their membership dues—but Eagle was a West Virginia-owned small business and Emerson was a multinational, multi-billion dollar corporation. Although the evidence was clear that Emerson violated the contract and copied the technology in the Eagle computer to manufacture and sell a competing product, the U. S. Chamber of Commerce filed an amicus brief on behalf of Emerson. The U. S. Chamber did not support a West Virginia business providing good paying, high-tech jobs in Putnam County.
- The appeal to the U. S. Supreme Court was denied.