

U.S. CHAMBER OF COMMERCE TO RELEASE ANOTHER MISLEADING “STUDY” ATTACKING THE CIVIL JUSTICE SYSTEM

On Monday, the U.S. Chamber of Commerce will release an updated “study” that supposedly ranks the best and worst state legal systems in America. But as with past editions, this “study” merely measures how Corporate America perceives the civil justice system, ignoring the views of consumers. The “study” is based on a survey of corporate lawyers from multi-million dollar corporations who spend their days trying to ensure that consumers or employees can’t hold these corporations accountable for wrongdoing and gross negligence. A survey isn’t necessary to tell us that the attorneys working for Merck are not happy with the legal system that holds their company accountable for the deaths and injuries caused by its controversial drug Vioxx. Similarly, any convicted criminal would say that the legal system doesn’t work. Nevertheless, the Chamber touts this study as fairly measuring the states’ legal systems. The facts tell a different story.

THE CHAMBER’S “STUDY” IS MISLEADING

- **The Chamber’s “Study” Is Actually a Survey of Corporate Lawyers Working for Multi-Million Dollar Corporations.** Instead of attempting to measure the effectiveness of the civil justice systems in each state, the Chamber instead commissioned a poll of corporate lawyers at companies with \$100 million or more in annual revenues.¹ These are the very same lawyers who work every day protecting and defending large corporations when they take unfair advantage of consumers and employees.
- **The Chamber’s Own Pollster Admitted that There is No Way to Measure the Fairness of a State’s Legal System.** Humphrey Taylor of Harris Interactive, the polling firm that conducted the survey for the Chamber, admitted that there is no way to measure fairness of the legal system in each state. According to the Copley News Service, “Humphrey Taylor of Harris Interactive said the survey is based on the individual responses of the [corporate] lawyers because there is no hard data that can be used to measure the perceived fairness of a state’s legal system.”² Nevertheless, the Chamber has mischaracterized the “study” as “rank[ing] the best to worst legal systems in America.”³
- **After Ranking West Virginia as Having One of the “Worst” Liability Systems, the Chamber’s CEO and Pollster Were Forced to Admit that Only of a Fraction of Those Surveyed Actually Knew Anything About the State’s Court System.** When questioned about the methodology of last year’s “study” that ranked West Virginia as 49th in the list of state legal systems, the Chamber’s CEO, Thomas Donohue, and the pollster that conducted the survey, Humphrey Taylor of Harris Interactive, were forced to admit that only a fraction of the corporate lawyers surveyed actually knew anything about West Virginia’s courts. According to the Charleston Gazette, “Taylor and Donahue [sic] acknowledged not all of the 1,437 lawyers surveyed knew anything about West Virginia’s courts. Taylor said ‘around 107’ said they had direct knowledge of the state. ‘You could argue that’s a small sample, but what they keep saying is ‘49th, 49th, 49th,’ he said.”⁴
- **Florida Newspaper Criticized Chamber for Mischaracterizing the “Study” in a Television Ad.** According to the Tallahassee Democrat⁵, the Chamber’s Institute for Legal Reform sponsored a television ad in Florida last year that mischaracterized the results of their “study” of state legal systems. The Chamber’s ad included the line, “[a] recent Harris poll ranked the best to worst legal systems in America.” However, the Democrat reported that this claim was “wrong,” noting that the “ad did not mention the Harris poll was conducted among corporate lawyers who have to defend their clients against civil suits.”

¹ “2005 U.S. Chamber of Commerce State Liability Systems Ranking Study,” U.S. Chamber of Commerce, 3/8/05, <http://www.instituteforlegalreform.com/harris/pdf/HarrisPoll2005-FullReport.pdf>

² “Survey says frivolous lawsuits hurt state’s reputation,” Copley News Service, 3/8/04

³ “AdWatch,” The Tallahassee Democrat, 3/12/05

⁴ “Corporate lawyers rank state’s legal climate poor,” The Charleston Gazette, 3/9/05

⁵ “AdWatch,” The Tallahassee Democrat, 3/12/05

LAWSUITS ARE NOT A MAJOR CONCERN FOR BUSINESSES

- **A Recent Survey Published by the National Association of Manufacturers Found that American Manufacturing Companies Ranked the “Fear of Litigation” at the Bottom of Their Concerns.** The National Association of Manufacturers recently released⁶ a survey of manufacturers in the United States showing that the “fear of litigation” ranked at the bottom of their list of concerns:

“Please rate the following factors in terms of their negative impact on your company's operations (with 1 representing the greatest negative impact and 10 the least).”⁷

- 2.9 Cost of non-wage compensation
- 3.5 Cost of materials used in production
- 4.0 Inability to raise prices
- 4.1 Energy prices
- 5.0 Foreign competition
- 6.1 Taxes
- 6.3 Cost of wages
- 6.4 Shortage of qualified workers
- 7.4 Regulations/corporate governance rules (Sarbanes-Oxley)
- 7.8 Fear of litigation

- **Survey by Business Week Magazine Found that the Threat of Lawsuits is Not a Major Concern of Small Business Owners.** According to a recent survey published⁸ in Business Week magazine, owners of small and medium-sized businesses are generally not concerned about the threat of lawsuits: “One of the survey's more surprising results revealed that tort reform -- particularly limiting class-action lawsuits -- is not a major priority.” The survey found that the biggest threats to their businesses are: (1) Rising inflation, 44 percent; (2) The trade deficit and a weak dollar, 40 percent; (3) Energy shortages, 40 percent; (4) Excessive household and/or corporate debt, 29 percent; (5) The growing federal deficit, 28 percent; (6) Poorly prepared labor force/Shortage of skilled labor, 27 percent.

THE NUMBER OF STATE AND FEDERAL TORT TRIALS IS DECLINING

- **Bush Administration Statistics Show that the Number of Federal Tort Trials is Down Nearly 80 Percent Since 1985.** Last year, the Bush Justice Department reported that the number of tort (personal injury) cases resolved in U.S. District Courts fell by 79 percent between 1985 and 2003. In 1985, 3,600 tort trials were decided by a judge or jury in U.S. District Courts. By 2003, that number had dropped to less than 800.⁹
- **The Number of State Tort Trials is Decreasing.** According to the most recent statistics from the Bush administration's Bureau of Justice Statistics, the number of tort trials at the state level has decreased. These statistics were compiled as part of the Bureau's survey of state civil justice systems in the nation's largest 75 counties. Among these counties, the number of tort trials decreased 31.8% between 1992 and 2001.¹⁰
- **“Overwhelming Majority” of Federal Judges Don't See “Frivolous Lawsuits” as Major Problem.** According to survey by the Federal Judicial Center – the research and education agency of the federal court

⁶ “NAM Survey Shows Most Manufacturers Concerned About Energy, Production Costs and a Skills Shortage,” National Association of Manufacturers press release, 3/21/05, http://www.nam.org/s_nam/doc1.asp?CID=67&DID=236615

⁷ “National Manufacturing Week 2006 Annual Survey Results,” National Association of Manufacturers, http://www.nam.org/s_nam/doc1.asp?CID=6&DID=236617

⁸ “The Big Concerns of Small Business; A new survey points to the future of Social Security as a major concern. Tort reform, on the other hand, elicits only yawns,” Business Week, 5/12/05, http://www.businessweek.com/smallbiz/content/may2005/sb20050512_8954_sb006.htm

⁹ “Federal Tort Trials and Verdicts, 2002-03”, Bureau of Justice Statistics, 8/17/05

¹⁰ “Civil Trial Cases and Verdicts in Large Counties, 2001”, Bureau of Justice Statistics, 4/04

system – most Federal judges do not view “frivolous lawsuits” as a problem: “Frivolous litigation is not a major problem in the federal court system, according to an overwhelming majority of federal judges who participated in a recent survey. The survey, conducted by the Federal Judicial Center, was based on the responses of 278 federal district court judges. Seventy percent of the respondents called groundless litigation either a ‘small problem’ or a ‘very small problem,’ and 15% said it was no problem at all. Only 1% called it a ‘very large problem,’ 2% called it a ‘large problem’ and the rest rated it as a ‘moderate problem’ in their courts. ... In addition, 91% of the judges surveyed opposed provisions in the Lawsuit Abuse Reduction Act, which won House approval in the last Congress.”¹¹

¹¹ “Federal judges don't see problem with frivolous suits,” Business Insurance, 4/11/05, <http://www.businessinsurance.com/cgi-bin/news.pl?newsId=5365&print=Y>