

SETTING THE RECORD STRAIGHT:

The U.S. Chamber of Commerce Releases a Series of Misleading Attack Ads

The U.S. Chamber of Commerce has released 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 defense 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 defense lawyers 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 is touting this study in a number of misleading print and radio advertisements around the country. The facts tell a very different story.

CHAMBER ATTACK	THE FACTS
<p>“A recent Harris poll ranked the legal systems in all fifty states.”¹</p> <p>“According to a Harris Interactive survey of 1,456 senior attorneys.”²</p>	<p>The Chamber’s Print Ads Fail to Note That Corporate Defense Attorneys Were Surveyed in the Harris Poll. The Chamber’s print ad fails to note that <i>corporate</i> attorneys – not all types of attorneys – were surveyed in the Harris poll. Instead, the ad claims that the survey was comprised of “1,456 senior attorneys.”³ This leaves the false impression that plaintiff’s attorneys, and other types of attorneys, were part of Harris’ polling sample. In fact, the poll’s results are based on a survey of corporate lawyers at companies with \$100 million or more in annual revenues.⁴ These are the same lawyers who work every day protecting and defending large corporations when they take unfair advantage of consumers and employees.</p>
<p>“In fact a recent, non-partisan Harris poll ranked the legal fairness of all 50 states, and West Virginia came in dead last.”⁵</p>	<p>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.”⁶ Nevertheless, the Chamber has mischaracterized the “study” as “rank[ing] the best to worst legal systems in America.”⁷</p> <p>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</p>

¹ U.S. Chamber of Institute for Legal Reform print advertisement, 3/28/06, http://www.instituteforlegalreform.com/harris/pdf/National_Trial_Lawyer.pdf

² Ibid

³ Ibid

⁴ “2006 U.S. Chamber of Commerce State Liability Systems Ranking Study,” U.S. Chamber of Commerce, 3/28/06, http://www.instituteforlegalreform.com/harris/pdf/2006_FULL_Report_FINAL.pdf

⁵ U.S. Chamber of Institute for Legal Reform radio advertisement. Aired in West Virginia, 3/27/06.

⁶ “Survey says frivolous lawsuits hurt state’s reputation,” Copley News Service, 3/8/04

⁷ “AdWatch,” The Tallahassee Democrat, 3/12/05

	<p>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.”⁸</p> <p>Florida Newspaper Criticized Chamber for Mischaracterizing the “Study” in a Television Ad. According to the Tallahassee Democrat⁹, 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.”</p>
<p>“Lawsuit abuse is a serious problem.”¹⁰</p>	<p>A Recent Survey from the National Association of Manufacturers Suggests that “Lawsuit Abuse” is Not a Top Concern for American Manufacturing Companies. The National Association of Manufacturers recently released¹¹ a survey of manufacturers in the United States showing that the “fear of litigation” ranked at the bottom of their list of concerns:</p> <p>“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).”¹²</p> <ul style="list-style-type: none"> 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

⁸ “Corporate lawyers rank state’s legal climate poor,” The Charleston Gazette, 3/9/05

⁹ “AdWatch,” The Tallahassee Democrat, 3/12/05

¹⁰ U.S. Chamber of Institute for Legal Reform print advertisement, 3/28/06, http://www.instituteforlegalreform.com/harris/pdf/National_Trial_Lawyer.pdf

¹¹ “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

¹² “National Manufacturing Week 2006 Annual Survey Results,” National Association of Manufacturers, http://www.nam.org/s_nam/doc1.asp?CID=6&DID=236617; emphasis added

	<p>A Survey from Business Week Magazine Suggests that “Lawsuit Abuse” is not a Major Concern for Small Business Owners. According to a recent survey published¹³ 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.</p> <p>A Survey of Federal Judges Found that an “Overwhelming Majority” 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 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.”¹⁴</p> <p>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 800.¹⁵</p> <p>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 2001.¹⁶</p>
<p>“In fact, each American pays \$886 a year in higher prices just to cover the cost of litigation.”¹⁷</p>	<p>Chamber Used a Widely Discredited “Study” to Support Their Claims Regarding the Costs of the Legal System; Business Week Called It a “Wild Exaggeration.” To support their claims about the “cost” of the American legal system, the Chamber cites a study by the insurance industry-consulting firm¹⁹, Tillinghast-Towers Perrin (TTP). However, this</p>

¹³ “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

¹⁴ “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>

¹⁵ “Federal Tort Trials and Verdicts, 2002-03”, Bureau of Justice Statistics, 8/17/05

¹⁶ “Civil Trial Cases and Verdicts in Large Counties, 2001”, Bureau of Justice Statistics, 4/04

¹⁷ U.S. Chamber of Institute for Legal Reform print advertisement, 3/28/06, http://www.instituteforlegalreform.com/harris/pdf/National_Trial_Lawyer.pdf

¹⁸ U.S. Chamber of Institute for Legal Reform radio advertisement. Aired in West Virginia, 3/27/06.

<p>“Last year, the lawsuit system cost each American \$886 dollars in litigation costs.”¹⁸</p>	<p>study, which is updated annually, has been widely discredited because it includes the cost of the insurance industry – multimillion dollar salaries for insurance CEOs, rent on office buildings, and administration overhead – in the “cost” of lawsuits. Business Week magazine editorialized that the study “includes everything from payouts for fender-benders to the salaries of insurance industry CEOs. It's a wild exaggeration.”²⁰</p> <ul style="list-style-type: none"> ✓ Congressional Quarterly Called Conclusions of TTP Study “Sketchy at Best.” Congressional Quarterly Weekly magazine did an entire story describing the evidence behind the figures cited by President Bush in his call for legal restrictions “sketchy at best.” They examined the “tort tax” figure and found, “Nearly all the assertions about the growing cost of the tort system are based on the figures from just one actuarial and management consulting firm, Tillinghast Towers-Perrin, that works for the insurance industry, which has a stake in limiting lawsuits. ... The company’s estimates of tort costs include the insurance industry’s administrative expenses and payments on claims that never involve courts or lawyers, such as auto collisions.”²¹ ✓ TTP Admitted that Past Study Not a Reflection of the Tort System. After being 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.”²² ✓ The Study’s Primary Author Said Study Used in a Misleading Way. Russ Sutter, primary researcher for the study, admitted in 2005 that tort-reform advocates use the data “in a way that's probably misleading.”²³ ✓ Analysis of Past Studies Revealed Flawed Data. A May 2005 report²⁴ from the Economic Policy Institute (EPI), a nonprofit, nonpartisan think tank in Washington D.C. 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. Claims that the tort system harms the U.S. economy do not square with the data. In fact, there is a good deal of evidence to the contrary. EPI's careful examination concludes that nearly half of the “costs” of the tort system described in the Tillinghast study are actually payments made to from wrongdoers to injured people for lost wages, property damage, or medical care – costs that are the result of injuries caused by the defendants and would be borne by society one way or another, whether by government programs or charities, or absorbed by the victims and their families. ✓ Wall Street Journal: New Version of TTP Study “Includes Payments that Don’t Involve the Legal System at All.” The Wall Street Journal previewed the new version of the TTP report, and noted that it includes costs that are not part of
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¹⁹ The firm described itself as “a premier independent actuarial advisor to the insurance and financial services industry; our major clients include most of the world’s top insurers.” See: “Financial Services and General Insurance Update,” Tillinghast-Towers Perrin, 9/03, http://www.towersperrin.com/tillinghast/publications/publications/till_update_uk/IASB_ED5_Contracts/Update_ED5_Contracts.pdf

²⁰ “How Partisanship Puts Big Solutions Out Of Reach,” Business Week editorial, 3/14/05

²¹ “‘Tort Reform’ Battle: A Simple Case of Complexity,” Congressional Quarterly Weekly, 1/29/05

²² “U.S. Tort Costs: 2004 Update,” Tillinghast-Towers Perrin at 4

²³ “Tort issue creates a tussle,” Kansas City Star, 5/18/05

²⁴ “The frivolous case for tort law change; Opponents of the legal system exaggerate its costs, ignore its benefits,” Lawrence Chimerine and Ross Eisenbrey, The Economic Policy Institute, 5/17/05; <http://www.epi.org/content.cfm/bp157>; (202) 775-8810

²⁵ “Math Divides Critics As Startling Toll of Torts Is Added Up,” Wall Street Journal, 3/13/06

	<p>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?"²⁵</p>
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