

MYTHBUSTER

DEVIL IN THE DETAILS: FACTS ABOUT THE U.S. CHAMBER RANKING OF STATE LIABILITY SYSTEMS

On March 8, 2004, the U.S. Chamber of Commerce released a “survey” of 1,400 corporate lawyers, including the in-house counsel for major corporations, about what they think of the U.S. “litigation environment.” The Chamber complains about “huge awards in frivolous cases.” State Liability Systems Ranking Study, conducted for the U.S. Chamber of Commerce and the U.S. Chamber Institute for Legal Reform, March 8, 2004, and accompanying News Release.

To the extent that readers could decipher the details of this “survey,” it seems clearly designed to test responses to a set of arguments reflecting the Chamber’s political agenda to limit class action lawsuits and the liability of corporate wrongdoers. Yet the survey contains some noteworthy observations that the Chamber may be burying:

- Surveyed corporate counsel were asked to designate “the most important issue that state policymakers who care about economic development should focus on to improve the litigation environment in their state.” In 2003, the number one issue for these corporate counsel was enacting a “ceiling on damages” (although even then, only one in four considered it most important.) **In the 2004 study released on March 8, the issue of caps had completely dropped off the list, meaning that fewer than one percent, if any, considered it their most important issue.** Joint and several liability also fell off the list.
- In 2004, only 6 percent (fewer than 1 out of 16) named “limitation of class action suits” as their number one priority issue. Only three percent (fewer than 1 out of 30) named “elimination of unnecessary lawsuits” as the number one priority.
- When asked about the “level of improvement” observed or expected “since legislative reforms [i.e., so-called ‘tort reforms’] were implemented” in three states that recently enacted restrictions on victims’ rights, the option “no improvement” was kept off the list. In other words, respondents were permitted to select from various levels of “improvement” to the state, but were not permitted to select the “no improvement” alternative.
- In fact, it appears that between 50 percent and 75 percent did not answer these questions at all (although the report says that the non-response rate was between 0 and 2 percent.) Perhaps the majority did not expect or see any improvement due to “tort reform,” but the Chamber is obscuring that fact.

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