

LIMITING LAWSUITS: SMALL BUSINESSES' LEAST CONCERN



By Emily Gottlieb and Joanne Doroshov

March 2017

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HIGHLIGHTS

National Federation of Independent Business (NFIB)

NFIB members were asked to rate the importance of 75 issues on their operations. “Cost and Frequency of Lawsuits/Threatened Lawsuits” ranked 68th. It was listed among the problems of least concern to small business members. It was of less concern to small businesses than “Access to High-Speed Internet” (#66). This was true regardless of business sector, the number of years of business ownership, or the location (state). And the issue ranked *last* in importance among 20 possible “cost” problems for small businesses.

National Small Business Association (NSBA)

When NSBA asked members, “What are the three most significant challenges to the future growth and survival of your business?” lawsuits was not among the 16 options listed. In addition, when asked, “Which one of the following issues do you believe Congress and President Trump’s administration should address first?” only *1 percent* of respondents selected “tort reform” from the list.

National Association of Manufacturers (NAM)

Small businesses (*i.e.*, “those with fewer than 50 employees”) and medium-sized businesses (*i.e.*, “those with between 50 and 499 employees”) comprise about 70 percent of responses to NAM surveys. Respondents were asked to check their primary business challenges from a list of options. Lawsuits was not on the list. Respondents were also “given the opportunity to submit other challenges affecting their business aside from the choices given in the survey question.” Lawsuits were not mentioned among the 13 sample comments included in the report.

Various bank surveys

M&T Bank, Bank of America and Wells Fargo all surveyed small business owners about their top concerns, or about what today’s lawmakers could do to help small businesses grow. Lawsuits were not mentioned as issues of concern in any of these surveys.

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INTRODUCTION

Leadership in the U.S. House of Representatives is ramming through a series of bills that would strip away the legal rights of individuals and small businesses. If passed, these bills would stop harmed, defrauded and cheated individuals and small business from pursuing legitimate cases in court, disrupting the health, safety and economic security of American families.

It would be one thing if America's rank and file small businesses – the engine of job growth in our nation – were pushing for such legal changes to somehow help their businesses. But this is not remotely the case. In fact, as we have reported for years¹ and do so again, internal small business surveys consistently show that restricting lawsuits, or the “cost” of lawsuits, is an issue of less importance to small businesses than almost any issue they could possibly face, or on which they want lawmakers to focus.² For example, according to the National Federation of Independent Business' most recent survey, “Cost and Frequency of Lawsuits/Threatened Lawsuits” ranked 68 out of 75 possible issues of concern to small businesses. It was listed among the problems of least concern to small business members. It was of less concern to them than “Access to High-Speed Internet.”

Moreover, when it comes to the issue of “litigation,” there may be great disparities between what small business owners actually believe and what businesses lobbyists tell lawmakers they believe. That is why we've chosen to examine internal, unbiased small business surveys that truly reflect the personal views of small business owners rather than “push polls” conceived by business lobbyists seeking to demonstrate support for a pre-defined political or legislative agenda.

As demonstrated below, recent small business surveys conducted by membership business organizations and business entities show that rank and file small businesses virtually always put “lawsuits” or “liability” at the bottom of their list of concerns, if they mention it at all. In light of this fact, lawmakers who pursue an anti-litigation agenda are clearly dishonoring and disregarding the expressed views of small business owners.

THE SURVEYS

National Federation of Independent Business (NFIB)

NFIB is a lobbying group that “represents 325,000 small businesses in all 50 states and Washington, D.C.”³ It claims to be “the only major business organization whose policies and positions are established by the members directly, not by executive staff or the Board of Directors. That’s what makes us credible, widely respected, and effective.”⁴

Small Business Problems & Priorities

Every four years, NFIB publishes a member survey “to provide parties outside NFIB an accurate picture of small-business owner concerns. Claims are often made regarding the problems and interests of small-business owners with little or no empirical evidence to support them. If there is no systematically collected data to establish a benchmark, these claims can mislead and attribute concern when little exists (and vice versa). The data in *Problems and Priorities* therefore provide a standard against which others can measure their hypotheses.”⁵

National results (2016). NFIB members were asked to rate the importance of 75 issues on their operations. “Cost and Frequency of Lawsuits/Threatened Lawsuits” ranked 68th. It was listed among the problems of least concern to small business members. Indeed, this issue was of less concern to small businesses than “Access to High-Speed Internet” (#66).⁶

NFIB created 10 small-business problem clusters containing all the survey’s problems related to that topic. “Cost and Frequency of Lawsuits/Threatened Lawsuits” ranked *last* in importance among the 20 problems that fell under the “Costs” cluster.⁷

Regardless of business sector, “Cost and Frequency of Lawsuits/Threatened Lawsuits” ranked low on the list of concerns across all industries – #63 (Agriculture, Forestry and Fishing), #67 (Construction), #69 (Manufacturing), #73 (Wholesale Trade), #72 (Retail), #60 (Transportation/Warehousing), #48 (Finance, Insurance, Real Estate, Rental), #65 (Professional Services) and #71 (Non-Professional Services).⁸

“Cost and Frequency of Lawsuits/Threatened Lawsuits” consistently ranked low in importance regardless of number of years of business ownership – #70 for those with ≤ 3 years of business ownership, #72 for the 4-5 year group, #72 for the 6-10 year group, #70 for the 11-20 year group and #67 for the ≥ 21 years group.⁹

State-specific results: California (2016). “Costs and Frequency of Lawsuits/Threatened Lawsuits” ranked very low on the list of concerns...#63 out of 75 problems.¹⁰

State-specific results: Ohio (2016). “Costs and Frequency of Lawsuits/Threatened Lawsuits” ranked very low on the list of concerns...#66 out of 75 problems.¹¹

State-specific results: Texas (2016). “Costs and Frequency of Lawsuits/Threatened Lawsuits” ranked very low on the list of concerns...#66 out of 75 problems.¹²

Survey trends (all years). Time and again, lawsuits rank low on the list of NFIB small-business owner concerns, if at all.¹³ More specifically,

- In 2016, “Costs and Frequency of Lawsuits/Threatened Lawsuits” ranked 68th, right after “Bad Debts (not delinquencies) and/or Bankruptcies.”
- In 2012, “Costs and Frequency of Lawsuits/Threatened Lawsuits” ranked 71st, right after “Using Social Media to Promote Business (Facebook, Twitter, etc.)”
- In 2008, “Costs and Frequency of Law Suits/Threatened Suits” ranked 65th, right after “Solid and Hazardous Waste Disposal.”
- In 2004, “Costs and Frequency of Law Suits” ranked 64th, right after “Solid and Hazardous Waste Disposal.”
- In 2000, 1996, 1991, 1986 and 1982, “lawsuits” was not even included on the list of concerns for members to consider.

National Small Business Association (NSBA)

NSBA describes itself as a “uniquely member-driven organization where the small-business members drive our policy agenda.”¹⁴ It claims to have “over 65,000 members representing every sector and industry of the U.S. economy”¹⁵ and represent “the 70 million owners and employees that comprise American small business.”¹⁶

Mid-Year Economic Report and Year-End Economic Report

NSBA sees its biannual Economic Reports as “providing a snapshot of what’s on the mind of America’s small-business community...”¹⁷

2016 Year-End Survey. When NSBA asked members, “What are the three most significant challenges to the future growth and survival of your business?” lawsuits was not among the 16 options listed. In addition, when asked, “Which one of the following issues do you believe Congress and President Trump’s administration should address first?” only *1 percent* of respondents selected “tort reform” from the list.¹⁸

2016 Mid-Year Survey. When NSBA asked members, “What are the three most significant challenges to the future growth and survival of your business?” lawsuits was not among the 16 options listed. In addition, when asked, “Which one of the following issues do you believe

Congress and President Obama’s administration should address first?” only *1 percent* of respondents selected “tort reform” from the list.¹⁹

2015 Year-End Survey. When members were asked about the most significant challenges to the future growth and survival of their business, lawsuits was not among the 16 options listed. In addition, when asked, “Which one of the following issues do you believe Congress and President Obama’s administration should address first?” only *1 percent* of respondents selected “tort reform” from the list.²⁰

Survey Trends. NSBA has never listed lawsuits among the most significant challenges to the future growth and survival of small businesses in these surveys.²¹ Moreover, in the 2013, 2014 and 2015 year-end surveys and the 2016 mid-year survey, only *1 percent* of respondents selected “tort reform” as a first-priority issue for Congress and the president.²² In the 2012 year-end survey, only *2 percent* of respondents chose “tort reform” as a first-priority issue for the federal government.²³ And in the 2010 and 2011 year-end surveys, “tort reform” wasn’t even listed by NSBA.²⁴

“Top Priority Issues”

“Every two years, at the beginning of a new Congress, NSBA holds the Small Business Congress where small-business owners discuss, debate and vote on our Priority Issues.”²⁵ Eleven priority issues were voted on at the 2017 meeting; restricting lawsuits was not among them.²⁶ The same is true when looking at NSBA’s 2009, 2011 and 2015 congressional agendas.²⁷ “Limiting medical liability” has only been cited once in nearly a decades’ worth of NSBA’s Top 10 lists.”²⁸

National Association of Manufacturers (NAM)

The NAM is “the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states,” self-described as “the powerful voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.”²⁹

Manufacturers’ Outlook Survey

These results reflect responses from small, medium-sized and large businesses. That said, small businesses (*i.e.*, “those with fewer than 50 employees”) and medium-sized businesses (*i.e.*, “those with between 50 and 499 employees”) are the vast majority of respondents, totalling over 70 percent of responses in all of the following surveys.

Q3 2016 Survey. Respondents were asked to check their primary business challenges from a list of options. Lawsuits was not on the list. Respondents were also “given the opportunity to submit other challenges affecting their business aside from the choices given in the survey

question.” Lawsuits were not mentioned among the 13 sample comments included in the report.³⁰

Q2 2016 Survey. Respondents were asked to check their primary business challenges from a list of options. Lawsuits was not on the list. Respondents were also “given the opportunity to provide other challenges affecting their business aside from the choices given for the survey question.” Lawsuits were not mentioned among the 18 sample comments included in the report.³¹

Q1 2016 Survey. Respondents were asked to check their primary business challenges from a list of options. Lawsuits was not on the list. Respondents were also “given the opportunity to provide other possible challenges that they would list as a primary challenge for their business.” Lawsuits were not mentioned among the 14 sample comments included in the report.³²

Q4 2015 Survey. Respondents were asked to check their primary business challenges from a list of options. Lawsuits was not on the list. Respondents were also given the opportunity to submit other challenges affecting their business aside from the choices given in the survey question. Lawsuits were not mentioned among the 10 sample comments included in the report.³³

Q3 2015 Survey. Respondents were asked to check their primary business challenges from a list of options. Lawsuits was not on the list. Respondents were also given the opportunity to submit other challenges affecting their business aside from the choices given in the survey question. Lawsuits were not mentioned among the 14 sample comments included in the report.³⁴

Q2 2015 Survey. Respondents were asked to check their primary business challenges from a list of options. Lawsuits was not on the list. Respondents were also given the opportunity to submit other challenges affecting their business aside from the choices given in the survey question. Lawsuits were not mentioned among the 12 sample comments included in the report.³⁵

Q1 2015 Survey. Respondents were asked to check their primary business challenges from a list of options. Lawsuits was not on the list.³⁶ Respondents were also given the opportunity to submit other challenges affecting their business aside from the choices given in the survey question. Lawsuits were not mentioned.³⁷

Q4 2014 Survey. Respondents were asked to check their primary business challenges from a list of options. Lawsuits was not on the list.³⁸ Respondents were also given the opportunity to submit other challenges affecting their business aside from the choices given in the survey question. Lawsuits were not mentioned among the 11 sample comments included in the report.³⁹

Q3 2014 Survey. Respondents were asked to check their biggest challenges from a list of options. Lawsuits was not on the list.⁴⁰ Respondents were also given the opportunity to submit other challenges affecting their business aside from the choices given in the survey question. Lawsuits were not mentioned among the 10 sample comments included in the report.⁴¹

Q2 2014 Survey. Respondents were asked to check their primary business challenges from a list of options. Lawsuits was not on the list.⁴² Respondents were also given the opportunity to

submit other challenges affecting their business aside from the choices given in the survey question. Lawsuits were not mentioned among the 13 sample comments included in the report.⁴³ In addition, when asked to list top policies they would like to see implemented by policymakers over the next few years, limiting lawsuits was not mentioned.⁴⁴

Q1 2014 Survey. Respondents were asked to check their primary business challenges from a list of options. Lawsuits was not on the list. Respondents were also given the opportunity to submit other challenges affecting their business aside from the choices given in the survey question. Lawsuits were not mentioned among the 15 sample comments included in the report.⁴⁵

M&T Bank

Business Economic Outlook Survey

“For the first time, M&T Bank conducted a survey of small business owners (those with annual sales of under \$10 million) to gain a deeper analysis of their outlook for the overall economy and their own industry.”⁴⁶ Lawsuits weren’t mentioned as a concern.

Bank of America

Small Business Owner Report

Fall 2016 Survey. 1,400 small business owners were asked about top economic concerns. Lawsuits was not on the list.⁴⁷

Survey Trends. For years, Bank of America has surveyed small businesses about their top concerns. Lawsuits has never made the list.⁴⁸

Wells Fargo

Small Business Survey

Q4 2016 Survey. “When asked what issues the new president and Congress should focus on,” limiting lawsuits is not mentioned. “Small business owners also were asked what the new administration could do to help small businesses grow in the years ahead.” Limiting lawsuits is not mentioned. “When business owners were asked to identify the most important challenges facing their business today,” limiting lawsuits is not mentioned.⁴⁹

Q3 2016 Survey. “When business owners were asked to identify the most important challenges facing their business today,” there was no mention of lawsuits.⁵⁰

Q2 2016 Survey. “In a sequence of questions, small business owners rated the importance of 15 specific issues to their small business when the new president takes office,” lawsuits wasn’t on the list. “When business owners were asked to identify the most important challenge facing their business,” lawsuits were not mentioned.⁵¹

Q1 2016 Survey. “When business owners were asked to identify the most important challenge facing their business,” lawsuits weren’t mentioned.⁵²

Wasp Barcode Technologies

State of Small Business Report

2016 Survey. Survey responses from over 1,100 U.S. small business owners/managers did not identify lawsuits as a top challenges for small businesses in 2017.⁵³

Survey Trends. Survey responses from over 1,100 U.S. small business owners/managers in 2014, 2015 and 2016 have never included lawsuits on the list of top challenges.⁵⁴

Business Insider/UPS Connect

State of Small Business

2016 Survey. Small business owners reporting their top priorities did not list restricting lawsuits.⁵⁵

2014 Survey. Small business owners reporting their top priorities did not list restricting lawsuits.⁵⁶

Babson College

The State of Small Business in America 2016

Over 1,800 small-business respondents shared feedback about “the small business owner’s perspective on how to grow in the U.S. business landscape specifically around: access to capital, the regulatory environment, workforce, and technology.” Lawsuits were not mentioned as a concern.⁵⁷

NOTES

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⁶ Ibid.

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⁹ Ibid.

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