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NEW EMPIRICAL ANALYSIS – *U.S. CHAMBER OF COMMERCE LIABILITY SURVEY:* INACCURATE, UNFAIR AND BAD FOR BUSINESS

In 1998, the U.S. Chamber of Commerce, by far the nation's top lobby spender,[1] created what it calls its "Institute for Legal Reform" (ILR) to pursue the Chamber's agenda of protecting corporations from liability. In pursuit of this agenda, the Chamber publishes a Survey of State Liability, an annual "ranking" of states that criticizes certain state business climates based on nothing more than some corporate lawyers' views of a state's legal system

In a scathing indictment of the integrity, validity and impact of this "survey"[2], Theodore Eisenberg, Professor of Law and Statistical Sciences at Cornell University, concludes, "The Chamber's willingness to vilify states and counties to promote both itself and legislation may be the product of the same mentality that has led to shocking business failures. … 'If Detroit had spent less time lobbying for government protection and more on improving its products it might have fared better,'" and with this survey, "the Chamber may be leading other members down a similar path," not to mention damaging the country overall. Here's what Professor Eisenberg found:

DEPLORABLE METHODOLOGY:

- "The survey is methodologically flawed and provides little useful information for states assessing their liability systems or for businesses considering investment in states or in the United States. The survey lacks elementary social scientific objectivity and incorrectly characterizes state law. Objectively verifiable responses are correct less than 10% of the time. Respondents ignore legal rules and material events within states."
- "The Chamber's survey violates the elementary principle that evaluation of legal system performance should be based on input from both sides to disputes," noting the obvious: "asking only one side to a dispute about a system will yield biased results."
- Even within the subset of corporate lawyers responding to the Chamber, there is additional bias. Those responding are likely the very attorneys who experienced the professional embarrassment of losing at trial, naturally wanting to blame the states' courts for their loss.
- Compounding this bias is the fact that respondents are first told of the prior year's results, and they are paid.
- Routinely low ranking of states on the Gulf Coast or other states where there have been large asbestos, tobacco or other cases reflect more corporate counsels' view of litigation

[1] Center for Responsive Politics, http://www.opensecrets.org/lobby/top.php?indexType=s.
[2] Theodore Eisenberg, Henry Allen Mark Professor of Law and Adjunct Professor of Statistical Sciences, Myron Taylor Hall, Cornell University, "U.S. Chamber of Commerce Liability Survey: Inaccurate, Unfair, and Bad for Business," Forthcoming in the *Journal of Empirical Legal Studies*," draft September 9, 2009.

losses in those states, even though “few people seriously defend the asbestos or tobacco industries’ behavior.” Even when one of those states changes its laws to strip consumers or patients of legal rights (such as Alabama, Louisiana, Mississippi, Texas and West Virginia), these states continue to rank “low,” which is “consistent with evidence from other states that respondents know little about the states they rank.”

SURVEYS OF CORPORATE RISK MANAGERS REACH THE OPPOSITE CONCLUSION ABOUT LIABILITY

- **Conference Board.** In 1986, during the “height of concerns about insurance coverage and costs,” the Conference Board surveyed risk managers at 232 major US. Corporations and found, “For the major corporations surveyed, the pressures of product liability have hardly affected larger economic issues, such as revenues, market share, or employee retention. …Where product liability has had a notable impact-where it has most significantly affected management decision making-has been in the quality of the products themselves. Managers say products have become safer, manufacturing procedures have been improved, and labels and use instructions have become more explicit.
- **UCLA.** In 1994, Professor Gary Schwartz of UCLA Law School interviewed risk managers for California public agencies and the UCLA Medical Center and found that the “prospect of tort liability provides an important reinforcement [for accident avoidance] as well as an essential way to sell the risk manager’s proposals to others in the organization.”

DESTRUCTIVE IMPACT ON THE UNITED STATES

- **Damage to the U.S. Economy:** “The most damaging effects of the Chamber’s survey likely are not on the states the Chamber attacks but on our whole country’s fiscal and physical well-being. U.S. businesses invest largely based on criteria more relevant to their decisions than the Chamber’s claims about state legal systems. But the Chamber’s use of its survey to attack courts and juries creates false impressions about states and the United States that may discourage foreign investment.”
- **Damage to Public Safety:** “Based on the views of risk managers and those who seriously study the effect of the tort system, the Chamber may also unnecessarily endanger the public safety by decreasing tort law’s deterrent effect.”

TIME TO SHUN THIS SURVEY AND STOP ATTACKING JUDICIARIES

According to Eisenberg, “The attention the survey receives illustrates the critical need for better, reliable, systematic information about the legal system. Absent such information, the informational vacuum will be filled by questionable special-interest data such as the Chamber’s.…

“Surveys on important issues that are as flawed as the Chamber’s usually have muted impact because the other side to an issue responds with its own surveys. … But the Chamber attacks an institution that is not accustomed to defending itself. State judiciaries lack the resources to respond to the Chamber’s media campaigns and professional norms prevent the judiciaries from fully responding even if they could.”