

SMALL BUSINESSES' INFINITESIMAL "TORT" PROBLEM

Are "tort restrictions" or "liability limitations" needed to save jobs or allow small businesses, called "the engines of job growth,"¹ to survive? This is what some Big Business groups argue.² But the answer is clearly no.

For years, liability issues have hardly appeared on lists of actual business concerns (as opposed to views expressed by paid lobbyists and other hired staff). Small businesses virtually always put issues like "lawsuits" "liability" "tort reform" or the cost of "liability insurance" at the bottom of any list of concerns - that is, if they mention them at all. They usually don't.

National Federation of Independent Businesses (NFIB)

In its most recent report, "Small Business Problems & Priorities (August 2012),³ the NFIB surveyed a "large sample of small-business owners, all members of the National Federation of Independent Business" about issues of concern to them.

- Small businesses ranked "Costs and Frequency of Lawsuits/Threatened Lawsuits" at number 71 out of a possible 75 issues, a lower rank than how to use Twitter. NFIB writes, "The 71st ranking belongs to 'Cost and Frequency of Lawsuits/Threatened Lawsuits' down six positions from 2008. ... It appears this problem has not developed into something more as the ranking remains low."
- Examining "costs" as a problem cluster, the NFIB category "Costs and Frequency of Lawsuits/Threatened Lawsuits" ranked *last* among cost issues.
- NFIB called this issue one of the 10 least severe problems for small-business owners of the 75 business problems assessed.

National Small Business Association

In its 2013 Year End Economic Report, the NSBA surveyed 1,395 small business owners.⁴

- Owners were asked, "Which of the following issues do you believe Congress and President Obama's Administration Should Address First?" Seventeen issues were listed. Tort reform was checked by a mere 1% of respondents.
- Owners were asked about the "three most significant challenges to the future growth and survival of your business." Fifteen issues were listed. Neither lawsuits nor liability costs

were mentioned. That means they fell in importance below the last listed category: “No Major Challenges” (which came in at 2%).

None of the following surveys list lawsuits, litigation, tort reform, liability costs or anything like that as issues that are important to businesses:

- The National Association of Manufacturers (NAM)/*IndustryWeek* fourth quarter 2014 Survey of Manufacturers, which asked companies, “What are the top five policies manufacturers want the Administration and Congress to pursue” and what are their “Primary Current Business Challenges.”⁵
- January 2015 Endurance International Group Survey of 850 small business owners, when asked about prospects for 2015.⁶
- Wells Fargo/Gallup Small Business Index, which asked 603 small business owners about the biggest challenges they face.⁷
- CAN Capital Small Business Health Index, which asked “What do you view as the biggest challenge when it comes to competing with big businesses?”⁸
- *Business News Daily*, which “asked the experts” what top 20 challenges CEOs would face this year.⁹

The Economic Policy Institute

In 2005, EPI examined whether there was any link between jobs and tort the tort system. They found:¹⁰

There is no historical correlation between the inflated estimates of the costs of the tort system and corporate profits, product quality, productivity, or research and development (R&D) spending. Evidence suggests that the tort system, without the proposed restrictions, has actually been beneficial to the economy in all these areas.... [S]ignificant tort law change would be more likely to slow employment growth than to promote it. Endlessly repeating that so-called ‘tort reform’ will create jobs does not make it true.”

NOTES

¹ <http://www.whitehouse.gov/snapshots/supporting-small-business-and-entrepreneurs>

² <https://www.uschamber.com/tort-liability-costs-small-business>

³ <http://www.nfib.com/Portals/0/PDF/AllUsers/research/studies/small-business-problems-priorities-2012-nfib.pdf>

⁴ <http://www.nsba.biz/wp-content/uploads/2014/02/2013-Year-End-Economic-Report.pdf>

⁵ <http://www.industryweek.com/global-economy/namindustryweek-4q-survey-manufacturers-had-good-year-and-expect-2015-be-better?page=2>

⁶ <http://www.prnewswire.com/news-releases/us-small-business-owners-have-positive-economic-outlook-for-2015-but-remain-skeptical-that-the-white-house-and-new-congress-can-address-issues-most-important-to-them-300022266.html>

⁷ <http://www.gallup.com/poll/167660/small-businesses-face-operational-regulatory-challenges.aspx>

⁸ <http://smallbiztrends.com/2014/11/smb-owners-expect-growth-in-2015.html>

⁹ https://www.cancapital.com/assets/pdf/CANIndexKeyFindings_10.21.14.pdf

⁹ <http://www.businessnewsdaily.com/3625-new-year-challenges.html>

¹⁰ <http://www.epi.org/publication/bp157/>