

Overview of the Legal Reform Environment in the U.S.



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**Foundation for
Fair Civil Justice**

Public Education on Lawsuit Abuse
Website Tutorials on Managing Legal Liability
In-classroom Programs on Rule of Law
Radio and Website Commentaries
Leadership Education on Legal Reform
65+ National and State Partners

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**Foundation for
Fair Civil Justice**

www.FoundationforFairCivilJustice.org

www.FairCivilJusticeLeadership.org

www.LegalReformTV.com

Possible Victim of Lawsuit Abuse?



“For centuries, visitors were expected to walk backwards out of the room after seeing the monarch. But now, the tradition is to be dropped on health and safety grounds. Aides fear injury and lawsuits, so the practice will be restricted to just the Queen’s equerry and the Marshall of the Diplomatic Corps.”

– The Week, 8-15-09

SO I SAY, "GOOD DAY YOUR MAJESTY" AND I'M
BACKING DOWN THE RED CARPET WHEN
I TRIP OVER A WELSH CORGI AND
'POP' MY NECK ...

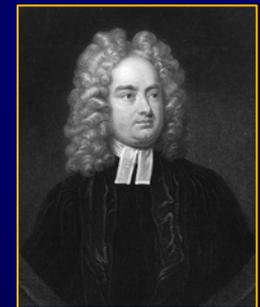
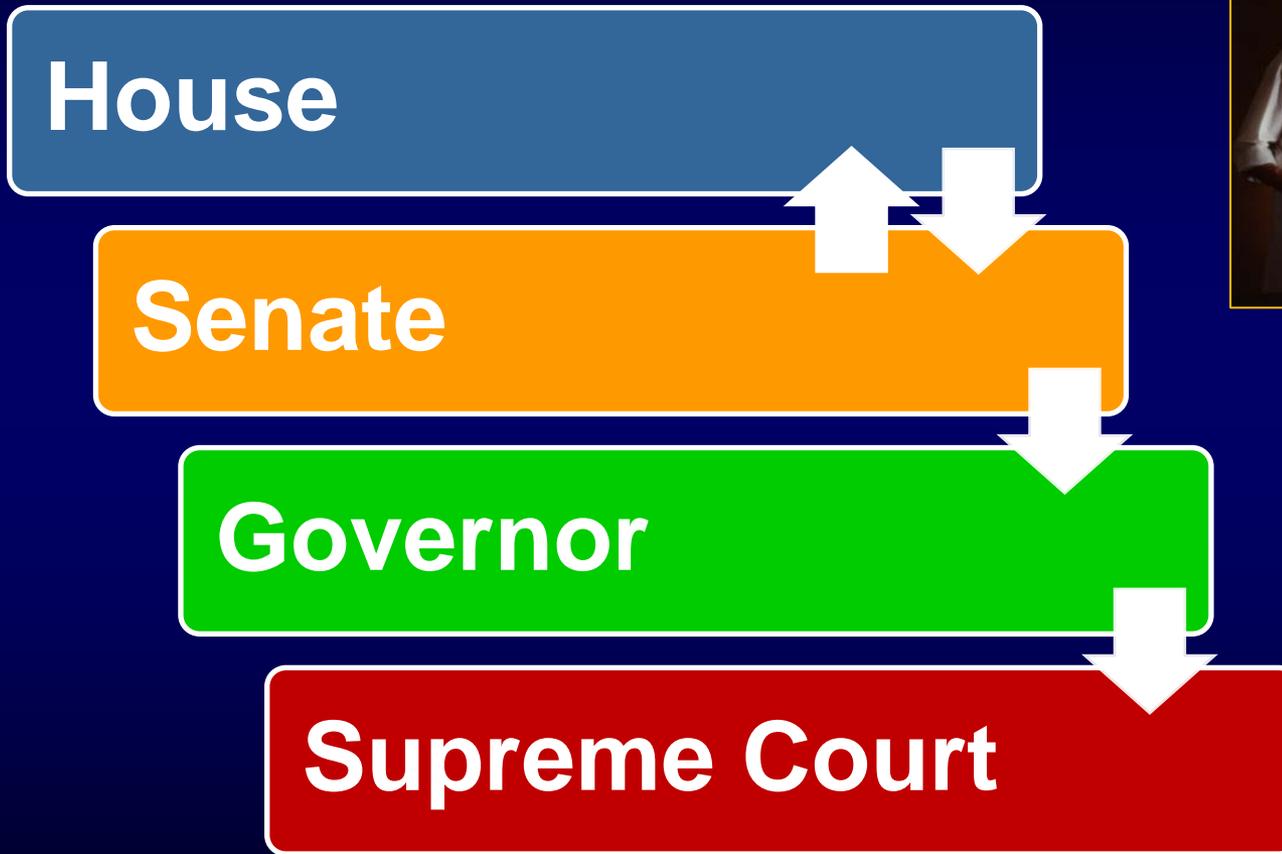
IF WE CAN SEE
THEM ...
WE CAN SUE
THEM.

FOLGEM WOLCHAU
BARRISTER

Today's Topics



Steps to Win and Defend Reforms

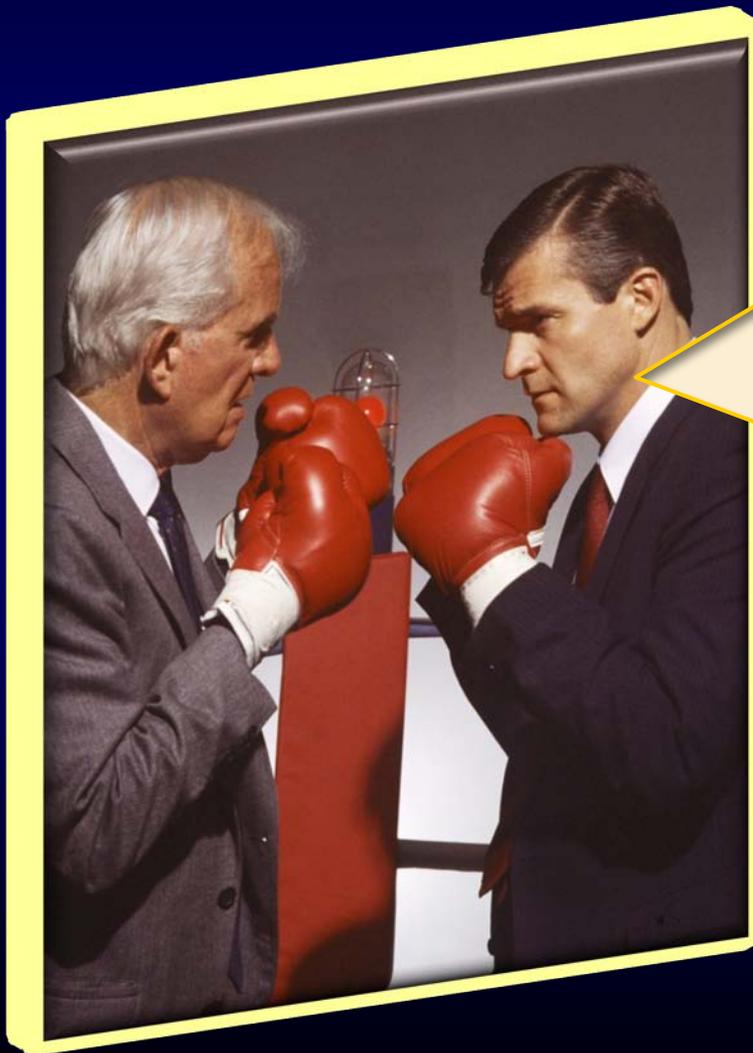


Really
**What  Goes On Behind the
Newspaper Headlines**

Headline:

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“Plaintiff Lawyers Hold Reception for Senators”



**If you vote for
these reforms,
we'll run a
candidate
against you in
2010 and give
him twice as
much money
as you have!**

Headline:

**“Business
Lobbyist Cites
Concerns About
in Plaintiff Bar
Message to
Legislators”**



Headline:

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“Plaintiff Lawyers Rally to Fight Lawsuit Reforms”



Headline:

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“Republicans Pass Legal Reform Bill by Two Votes Before Adjournment”



Headline:

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“Governor Smith (R) Signs Legal Reform Bill Before Leaving Office”



Headline:

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**“Lawsuit to test constitutionality
of legal reforms passed last year”**



Headline:

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“Supreme Court to hear lawsuit against insurance company”



Headline:

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“Business Community Hopes to Save Reform Law at Supreme Court”



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“Supreme Court Strikes Down Key Parts of Reform Bill”



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**“Trade group says reforms helping
despite Supreme Court decision”**



Headline:

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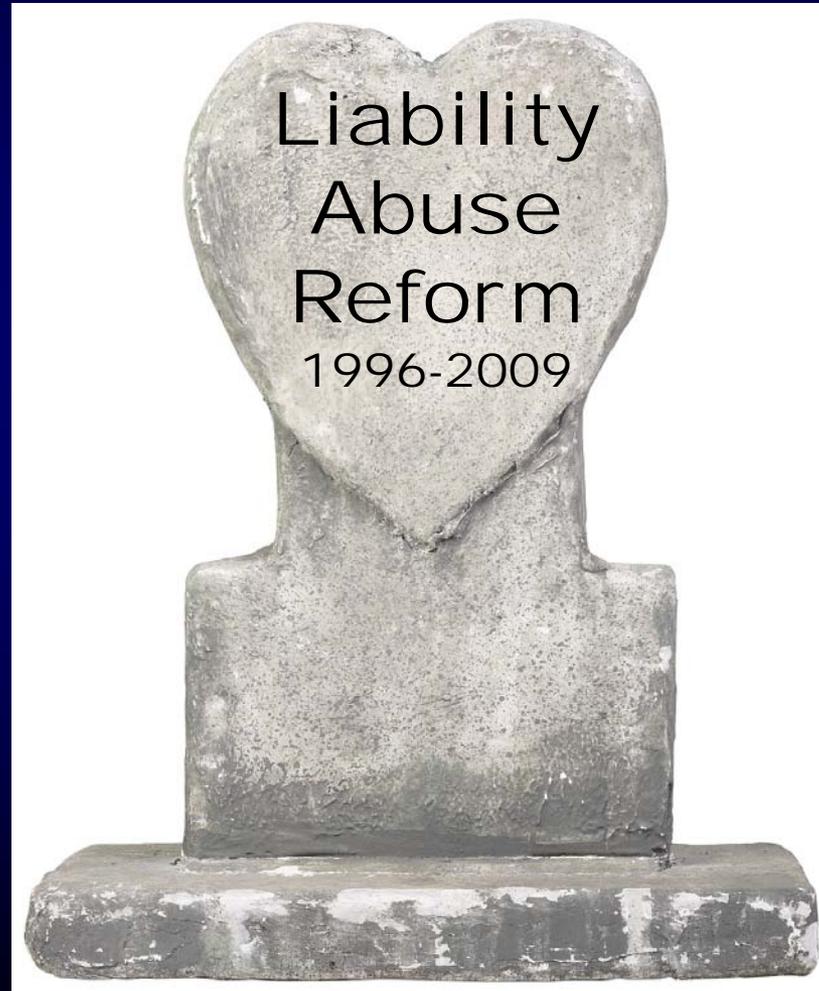
“Liberals on State Supreme Court Throw Out Legal Reforms”



Headline:

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“State Chamber Says State is Losing Employers, Jobs to Texas”



Headline:

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“Republicans Consider Options for Legal Reform Bill in 2010”



Headline:

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“Democrats Consider Options for Consumer Protection Bill in 2010”



Today's Topics

State Reform Process	Battle for Legal Reform
U.S. Overview	Outlook: 2010-2012

**Battle for
Legal
Reform**

***The Legal Reform
Community***

- **Economic issues are overshadowing reforms**
- **Political tide is running against reforms**
- **Funding cutbacks for campaigns limit most states to defensive efforts to preserve gains**
- **Reform advocates are **not** united on priorities**

**Battle for
Legal
Reform**

***The Liability Policy Goals for
Business***

- **Win Daubert standards for scientific evidence**
- **Set caps on non-economic damages**
- **Hold off product and nuisance liability expansion**
- **Prevent reinstating joint and several liability**
- **Prevent liberalization of discovery rules**
- **Keep limits on statutes of repose**

**Battle for
Legal
Reform**

The Plaintiffs' Bar

- **Riding high on 2008 political victories**
- **Raising millions for aggressive election campaigns in 2010**
- **Hiring *Republican* lobbyists**
- **Joining business groups to influence, disrupt**
- **Fighting for control of Supreme Court selection in states that have elections**

**Battle for
Legal
Reform**

***Plaintiff Bar “Causes of
Action” Goals***

- **Global Warming liability**
- **Medical monitoring of potential toxic injuries**
- **Consumer Protection Act expansions**
- **Emotional stress related to pet injuries**
- **Private rights of action**

Today's Topics

State Reform Process	Battle for Legal Reform
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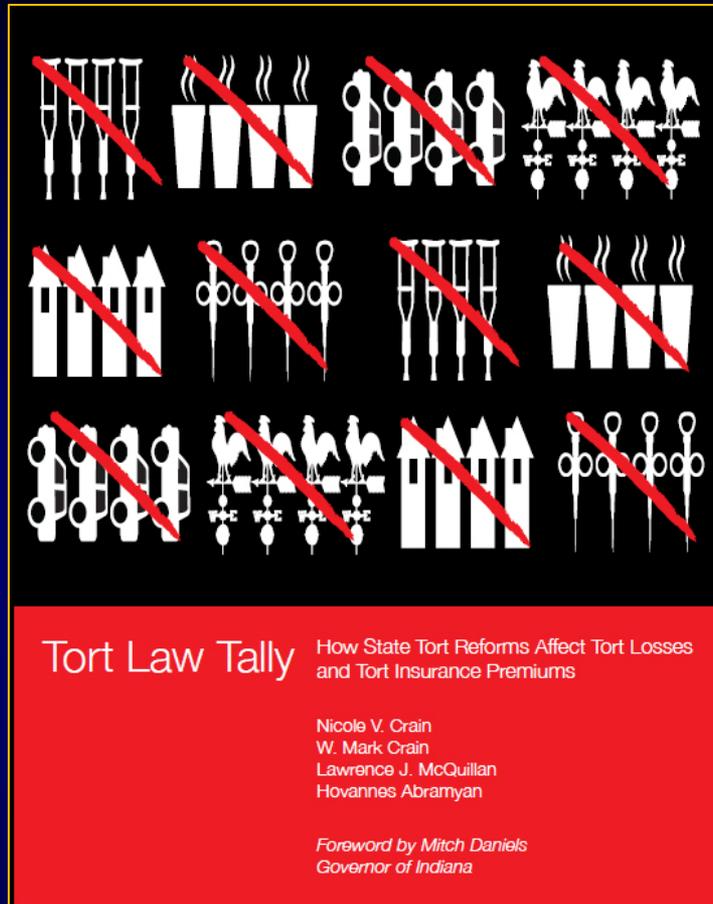
Tort Law Tally

Pacific Research Institute

- Reviewed 25 tort laws types 1996 to 2006
- 18 found significant in reducing tort losses, awards, premiums

Cumulative Impact:

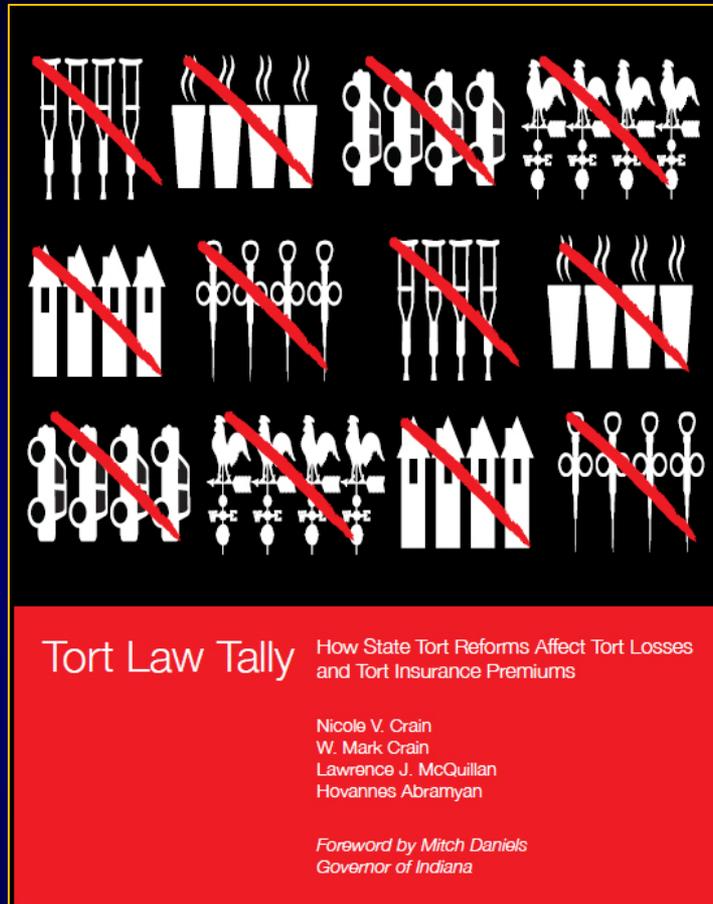
- **47% reduction in losses**
- **16% reduction in consumer premiums**



Tort Law Tally

Most Effective Reforms

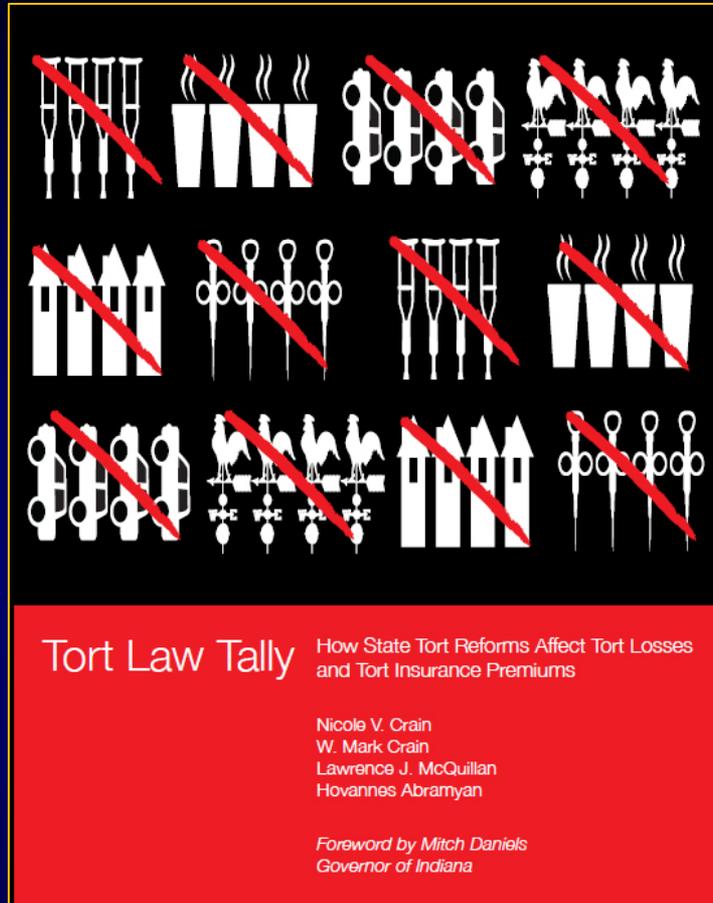
- Attorney-retention sunshine
- Evidence standards
- Frivolous lawsuits
- Jury service
- Appeal-bond caps
- Negligence standards
- Non-economic damages caps
- Med mal damage caps



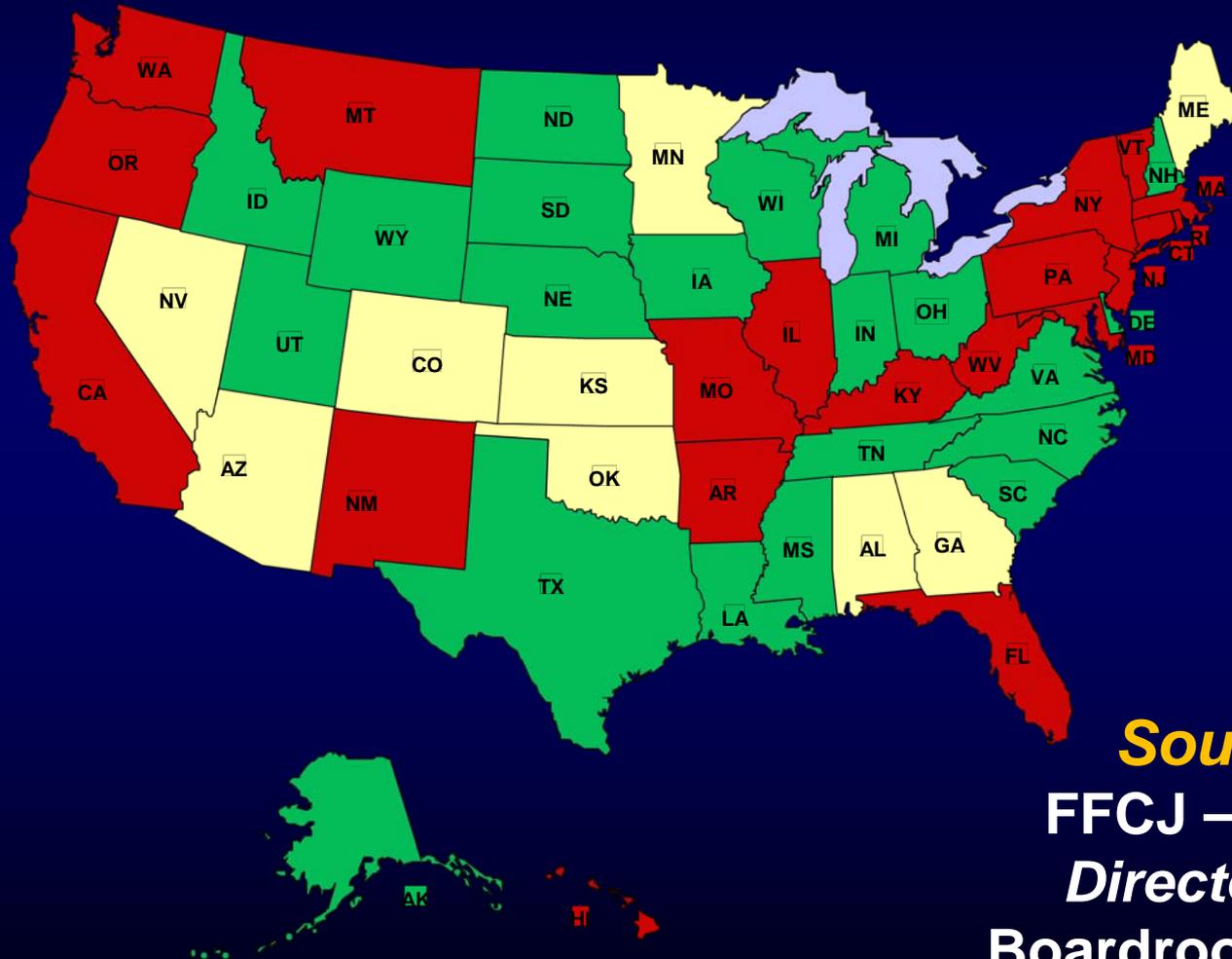
Tort Law Tally

Sources of Savings

- Judgments
- Settlements
- Attorney fees
- Administration expenses
- Premiums



State Economies Undermined by Excessive Liability Laws



Source:
FFCJ – NACD
Directorship
Boardroom Guide

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FFCJ – NACD Directorship Boardroom Guide



THE BOARDROOM GUIDE TO **LITIGATION**

An Analysis of the Legal Climates In All 50 States

New evidence shows litigation reform works, but reformers are fighting a new political landscape.

By Steven B. Hantler

Following the lead of the 2008 federal elections, recent state elections have ushered in a new wave of pro-plaintiffs' bar lawmakers and judges. These changes are reflected in *Directorship's Boardroom Guide to State Litigation Climates*, the third annual collaboration of *Directorship* and the Foundation for Fair Civil Justice, a national coalition of more than 70 organizations working together to achieve business liability reforms at the state level.

Several of the states identified in previous *Guides* that had liability climates conducive to job creation and growth are now "at-risk," owing in large part to changing politics. To exploit this opportunity, plaintiffs' lawyers and their allies in state legislatures are moving aggressively to undo legal reforms and expand liability through court challenges and new legislation. This is certainly not good news for directors, who are already dealing with a debilitating recession and likely new waves of business regulation on several fronts.

As a result, we're now moving into the "second generation" of legal reform, identifying specific reforms that work better than others, where reforms are working, and what arguments and information best influence the reform process. By developing a 21st century "legal reform tool kit," our goal is to empower business leaders to work efficiently and intelligently toward specific reforms that produce

the best results for consumers and business alike.

Fortunately, new empirical evidence demonstrates that tort and business liability reforms enacted over the past 20 years created jobs, lowered consumer costs, reduced insurance costs, and increased business investment and innovation. Legal reform advocates are now better equipped to prove that state liability reforms decrease litigation costs and awards, lower insurance premiums, and thus support efforts to reduce customer prices. Solid data indicate that the cumulative effect of tort reforms in various states has been a 47 percent reduction in overall losses and a 16 percent drop in annual insurance premiums for consumers as a direct result of reduced losses.

In fact, several states have made improvements and now have litigation climates that favor growth and job creation since this *Guide* was first presented in 2007. They include North Dakota, which tops our list this year, as well as Alaska, Nebraska, Wisconsin, and Texas. Yet other states have slipped over the past years. North Carolina dropped from sixth last year to eleventh, while the litigation environments in Wyoming, New Hampshire, and Iowa are also on the decline. Pennsylvania, which has generally lagged in its litigation environment, is the poorest performer in the survey, beating out Illinois, which held that dubious distinction last year.



Author: FFCJ Chairman Steven Hantler



U.S.
Overview

Examples of Legislation

- **Florida:** Eliminate mandatory arbitration
- **California:** Extend period for fair pay claims
- **Iowa:** Create new right of private action
- **Texas:** Rollback asbestos and silica reforms
- **Maryland:** Expand consumer fraud protections
- **Oklahoma:** Comprehensive legal reforms



Plaintiff Bar Watch

Updates from the Foundation for Fair Civil Justice
on Plaintiff Bar Efforts to Defeat Legal Reform

9/09

Plaintiff Bar Promises Major State Legislative Battles in 2010

Plaintiff Bar Watch, published by the Foundation for Fair Civil Justice, provides an on-the-ground perspective about the well-funded strategies used by the plaintiffs' bar to defeat legal reform.

favor of a nomination process controlled by plaintiffs' attorneys.

Upcoming elections provide important opportunities for reformers to educate state voters about the balance of power in the legislatures, executive branch offices, and on the state courts.

SUMMARY

Based on interviews with reform leaders in each state and independent research conducted by FFCJ, there are several trends discussed in this edition.

- State plaintiffs' bars are exploiting the cutbacks in corporate support experienced by legal reform advocates by increasing their own efforts to win public support.
- Building on 2008 election successes, they are forcefully pushing to overturn caps on damages, expand product and nuisance liability, reinstate joint and several liability where it has been limited, expand personal liability, liberalize discovery rules, broaden scientific evidence standards, and extend statutes of repose, among other proposals.
- They are seeking to take control of the courts through a campaign to eliminate judicial elections in states where they exist in

FLORIDA

NACD Directorship Magazine 2009 State Ranking for Legal Climate: 39

Florida is a key battleground for civil justice reform. Despite well-organized efforts by Florida's business community and reform organizations, there has been only modest success in achieving reforms over the past few years.

In 2009, Florida made strides in the right direction with the passage of workers'

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Georgia	3	Oklahoma	8
Minnesota	4	South Carolina ..	9
Missouri.....	5	Wisconsin	10

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FFCJ Plaintiff Bar Watch

Detailed State Profiles

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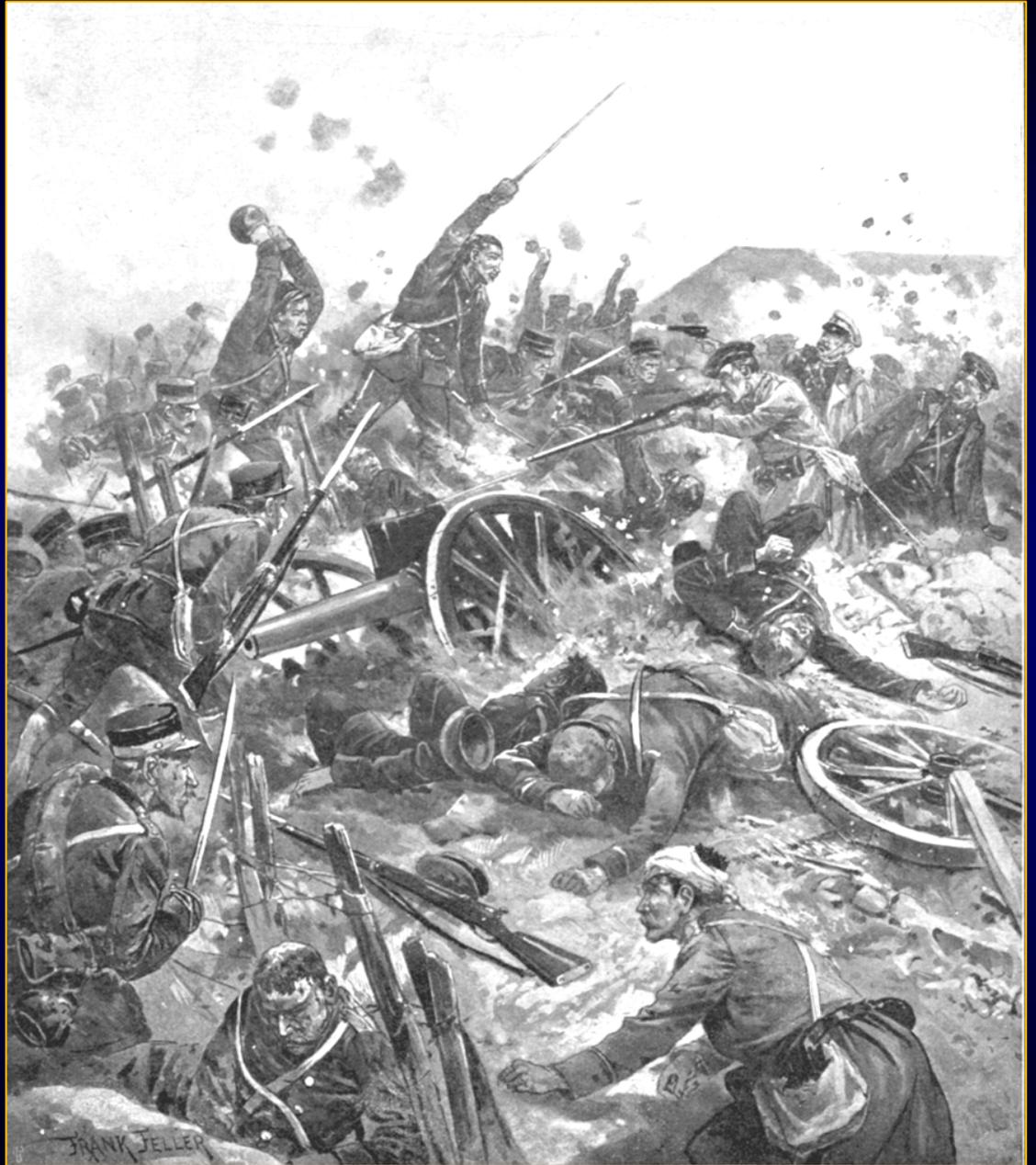
Florida Governor Charlie Crist and Lloyd's Chairman Lord Peter Levene



Today's Topics

State Reform Process	Battle for Legal Reform
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**Outlook:
2010-2012**



**Outlook:
2010-2012**

State Elections Increase Stakes Everywhere

- **Plaintiff Bar now controls more states than ever**
- **Plaintiff Bar spends more on candidates**
- **Anti-reform proposals in 2010 will be made in every state**
- **Legal reforms will become election issues**
- **Local defense coalitions vary widely in strength, ability to win – generally underfunded – potential for even greater control by Plaintiff Bar**

Key Action Steps

Join in the Battle!

- **Focus on state-level reform, not federal**
- **Review litigation losses by LOB and state**
- **Provide funding to AJP, FFCJ and ATRA**
- **Support Political Action Committees in states where it is permissible**
- **Be very cautious about supporting candidates that are anti-reform**



**Key
Resources**

Foundation for Fair Civil Justice

www.FoundationforFairCivilJustice.org

American Justice Partnership

www.AmericanJusticePartnership.org

American Tort Reform Association

www.ATRA.org

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www.FoundationforFairCivilJustice.org

www.FairCivilJusticeLeadership.org

www.LegalReformTV.com