Overview of the Legal Reform Environment in the U.S.
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
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.
Today’s Topics

- State Reform Process
- Battle for Legal Reform
- U.S. Overview
- Outlook: 2010-2012
Steps to Win and Defend Reforms

House
Senate
Governor
Supreme Court
Really

What Goes On Behind the Newspaper Headlines
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:

“Plaintiff Lawyers Rally to Fight Lawsuit Reforms”
“Republicans Pass Legal Reform Bill by Two Votes Before Adjournment”
“Governor Smith (R) Signs Legal Reform Bill Before Leaving Office”
“Lawsuit to test constitutionality of legal reforms passed last year”
“Supreme Court to hear lawsuit against insurance company”
Headline:

“Business Community Hopes to Save Reform Law at Supreme Court”
“Supreme Court Strikes Down Key Parts of Reform Bill”
“Trade group says reforms helping despite Supreme Court decision”
Headline: “Liberals on State Supreme Court Throw Out Legal Reforms”
“State Chamber Says State is Losing Employers, Jobs to Texas”
“Republicans Consider Options for Legal Reform Bill in 2010”
“Democrats Consider Options for Consumer Protection Bill in 2010”
Today’s Topics

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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
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
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
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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
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 Directors & Officers, the third annual publication of Directors & Officers, a national association of more than 70 organizations working together to advance business leadership 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,” vowing in large part to changing politics. To exploit this opportunity, plaintiffs’ lawyers and their allies in state legislatures are moving aggressively to reduce liability costs and expand liability through court challenges and new legislation. This is certainly not good news for directors, who are already dealing with a deluging of suits and likely new waves of business regulations 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, whose 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 encourage business leaders to work efficiently and intelligently toward specific reforms that produce the best results for consumers and business alike.

Unfortunately, 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 dramatically lower litigation costs and awards, lower insurance premiums, and support efforts to reduce customer prices. Solid data indicate that the cumulative effect of tort reforms in various states has been a 17 percent reduction in overall losses and a 10 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 liability climates that favor growth and job creation. The Guide was first published in 2007. They include North Dakota, which tops our list this year, as well as Idaho, Nebraska, Wisconsin, and Texas. Yet other states have slipped over the past year. North Carolina dropped from sixth last year to eleventh, while the litigation environment in Wisconsin, Nevada, and Utah are also on the decline. Pennsylvania, which has generally lagged in its litigation environment, is in the top ten performers in the survey, beating out Illinois, which held the dubious distinction last year.

Author: FFCJ Chairman Steven Hantler
Sample 2009 Legislative Results

Green = successful gains or defenses

Yellow = defeats or “close calls”
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 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.

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 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.

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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FFCJ Plaintiff Bar Watch
States Covered in the Current Edition
Florida Governor Charlie Crist and Lloyd’s Chairman Lord Peter Levene
Today’s Topics

- State Reform Process
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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
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