

PRESIDENT'S COLUMN

Chamber of Horrors-- Let's Get the Message Out

by **Kenneth M. Sigelman**

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A few days before this column went to press, the United States Chamber of Commerce released a so-called "study" that purported to rank the best and worst "State Court liability systems" in America. According to the Chamber, the higher a state is ranked, the more business friendly the environment, and vice versa. California was ranked 44th out of 50 states, placing it among the supposedly least desirable states in which to do business.

Of course, the Chamber released the study with considerable media fanfare. In California, a National Public Radio story broadcast statewide (including on KPBS in San Diego) reported Tom Donohue, the president of the U.S. Chamber of Commerce, as stating that California's legal climate "isn't always good for economic growth." Mr. Donohue decried the supposed leniency of California courts in allowing "Junk Science," defined by him as "science that a rational person would not think is appropriate" into evidence. The NPR story concludes by noting that the Chamber and Mr. Donohue are urging "lawmakers in California . . . to consider legislation that would make it harder to permit so-called 'Junk Science' from entering the courtroom."

What's remarkable here is not the Chamber "study" itself. The data was compiled by the Chamber's Institute for Legal Reform ("ILR"), whose 30-person board is composed of representatives of drug, chemical, and (seven) insurance companies with combined 2007 revenues of \$1.4 trillion. The methodology used by the ILR consisted of surveying a "nationally representative sample" of 957 in-house general counsel or other senior litigators at companies with annual revenues of \$100 million or more. According to the respondents, nationally, the four most important issues for state policymakers who "care about economic development to focus on to improve [the] litigation environment" were the following: (1) speeding up the trial process; (2) reform of punitive damages; (3) elimination of unnecessary lawsuits; and (4) tort reform issues in general. Clearly, the Chamber's "study" is a factually groundless, statistically invalid, thinly disguised attempt to manipulate public opinion on behalf of large corporations, in order to limit or eliminate the rights of victims of corporate misconduct. Sadly, we've come to expect this type of baseless propaganda from the Chamber and from corporate America. So, the latest "study" really doesn't seem like a big deal.

However, the media coverage of the release of the Chamber "study," as exemplified by the NPR broadcast piece, was startling in its shallowness, imbalance and apparent blind acceptance of the "study's" factual underpinnings, methodology, and implications. The Chamber has released similar "studies" in previous years. In the past, as well as, preemptively, just before the current Chamber report, the American Association for Justice ("AAJ", formerly ATLA) and the Center for Justice and Democracy ("CJD") have issued press releases pointing out the following:

(1) Humphrey Taylor of Harris Interactive, the polling firm that conducted the survey on behalf of the Chamber, admitted in an interview with the Copley News Service that **there is no way to measure fairness of the legal system in each state;**

(2) The “select” sampling of attorneys did not include anyone who represented victims of corporate malfeasance; **all of those surveyed worked for clients whose self-interest was centered on eliminating and/or restricting victim’s rights;**

(3) As an example of the knowledge base of the lawyers whose responses were included in the survey, Chamber CEO Donohue and pollster Taylor both admitted that only a fraction of the corporate lawyers surveyed actually knew anything about West Virginia’s courts, despite the fact that the Chamber “study” ranked West Virginia as 49th (2nd worst) on the list of state legal systems;

(4) According to the Tallahassee *Democrat* (the newspaper, not an indication that only one person in that city belongs to that particular political party), the Chamber’s ILR sponsored a television ad in Florida last year that mischaracterized the results of the Chamber’s “study” of state legal systems. The ad stated that “[a] recent Harris poll ranked the best to worst legal systems in America.” However, according to the *Democrat*, this claim was “wrong,” because the “ad did not mention **the Harris poll was conducted [only] among corporate lawyers who have to defend their clients against civil suits;**”

(5) A survey published by the National Association of Manufacturers found that American manufacturing companies ranked the “fear of litigation” at the bottom of their concerns;

(6) A survey by *Business Week* magazine found that the threat of lawsuits is not a major concern of small business owners. Tort reform, including limitation of class action lawsuits, is not a major priority for this group. Small business owners, according to the *Business Week* survey, found that the biggest threats to their businesses included such things as: (1) rising inflation; (2) the trade deficit and weak dollar; (3) energy shortages; (4) excessive household and/or corporate debt; (5) the rising federal deficit; and (6) a poorly prepared labor force and/or shortage of skilled labor;

(7) Statistics compiled by the Bush Justice Department reported that the number of federal tort trials is down nearly 80% since 1985 (down from 3,600 in 1985 to fewer than 800 in 2003);

(8) According to the National Center for State Courts, the number of tort cases filed in state courts has dropped dramatically in the past decade, including in West Virginia, which is ranked perennially by the Chamber as having one of the worst state court liability systems; and

(9) According to a survey by the Federal Judicial Center, the research and education agency of the federal court system, an overwhelming majority (85%) of federal judges don’t see “frivolous lawsuits” as a major problem.

In light of the abundance of readily verifiable information that had been provided to the media before the Chamber’s latest release, which demonstrated the patently sham nature of the “study,” the story broadcast in California by NPR, a network generally reviled by the right wing for being “too liberal,” defies rational explanation.

Or does it? The unfortunate, but unmistakable, truth is that the audacity of the Chamber “study” and

the media's failure to thoroughly debunk it and expose the Chamber's true motives are just the latest examples of how badly we are losing in the court of public opinion. The huge investment made by the insurance industry and the rest of mega-corporate America has paid off handsomely. Criminal greed that robbed shareholders and/or employees of companies such as Enron, WorldCom, HealthSouth, etc., has been all but ignored by a public that now largely equates class action lawsuits with trial lawyer greed rather than the only viable access to justice for mass victims of corporate wrongdoing. Corporate-funded right wing think tanks such as the Heritage Foundation, the Cato Institute, the Manhattan Institute, etc., churn out and promote an endless series of "studies" that have no more validity than the latest Chamber effort. Federalist Society-inspired judges, indoctrinated for the past 20 years by pro-corporate, anti-consumer propaganda, render an ever widening array of judicial decisions limiting and/or eliminating tort victim's rights. State legislatures and Congress have acted similarly, largely as a result of the swarm of corporate lobbyists, armed with a seemingly endless supply of "data" from the anti-consumer think tanks and Federalist Society-inspired academicians.

Consumers and their attorneys will never be able to compete for public approval with corporate America by matching corporate spending. Instead, **we must act microcosmically— one client at a time, one neighbor at a time, one friend at a time, one editorial board at a time, etc. Of course, before we can inform others, we must first be educated ourselves.** Fortunately, CASD Communications Committee co-chairs Kerry Hoxie and Jon Williams have assembled on the CASD website a series of outstanding resource materials that thoroughly debunk corporate America's attacks on the tort system. From www.casd.org, click on "Info & News", and then to "The Whole Story." You can then click on "Articles," as well as "Facts and Figures." In addition, AAJ's website, www.justice.org has an enormous wealth of information as does CJD's website, www.centerjd.org. Whenever possible, our clients who have been victimized should share their stories with the media, so that the public can be reminded continually that, while corporate misconduct may be about nothing more than dollars and cents to the wrongdoers, for the victims it is all about real human physical, emotional and/or financial loss. Whenever possible, victims' stories should also be shared with their elected representatives.

Clearly, while it is extremely important that all of us, individually, inform everyone we can about these issues, we need the capacity for a broader outreach. By "never standing alone," CASD members can together be a much stronger force than any one of us, individually, in winning the fight to (1) recapture public opinion, (2) repair the legislative, initiative, and judicially induced damage to the tort system, and (3) preserve access to justice for our clients.