

New Map Flags Litigation's Deeper Ditches

By STEVE HANTLER | Posted Monday, July 09, 2007 4:30 PM PT

Home Depot co-founder Bernie Marcus has said corporate America's biggest competitor for capital is the trial bar. Through the litigation system, personal injury lawyers siphon off billions that could be invested in new ventures, research & development, job creation, or returned to shareholders.

Despite this threat, most companies underestimate the importance of a state's liability climate when making critical business decisions, such as employment, plant location and operating decisions.

That should change and a new tool will help.

Given today's litigation climate — where every lawsuit is a potential "bet-the-company" proposition — a fair and predictable legal environment is just as critical to business success as a favorable tax code, an educated work force and a nonpunitive regulatory environment. The good news is that, over the past several years, legal reform advocates have become increasingly sophisticated in their ability to identify the best — and the worst — legal environments.

A new report — Risky Business: The Annual Boardroom Guide to Litigation in the 50 States — takes that process a step further. It builds on a few landmark studies, including the American Tort Reform Association's "Judicial Hellholes," which highlighted the worst jurisdictions, the Pacific Research Institute's Liability Index and the Institute for Legal Reform/Harris Interactive survey.

Risky Business synthesizes the wealth of information from those earlier studies while incorporating input from dozens of legal reform experts and organizations at the state level — people with the most direct and current intelligence from the litigation trenches.

This survey, in my view, provides business leaders with the best tool they've ever had for making strategic business decisions.

Let's be clear. When it comes to fighting toe-to-toe with the trial bar, businesses still need all the help they can get. Tort costs in the United States have increased by 46% over the past five years. A new study by the Pacific Research Institute reports that the total direct and indirect costs of lawsuits are a staggering \$865 billion.

So where are the soundest states — and where is the swampland? Let's look briefly at the findings.

Nebraska and Virginia top the list as the states with the best legal climates. What do they have in common? Reasonable limits on punitive damages, a "rule of law" majority on the state supreme court and attorneys general who specialize in law enforcement, not grabbing the spotlight at the expense of businesses. All the top-ranked states share these characteristics.

In stark contrast, West Virginia, Rhode Island and Florida round out the bottom of the list. All have activist supreme court majorities who consistently rule in favor of trial lawyers. Here's something else worth keeping in mind: West Virginia has a governor who supports legal reform, reminding us that simply controlling the governor's office does not necessarily translate into a sound legal environment.

Corporate America is finally waking up to the fact that in today's legal climate, the accounted costs of litigation — legal

State Rankings

By favorable legal climate

- | | |
|-------------------|-------------------|
| 1. Nebraska | 41. New Mexico |
| 2. Virginia | 42. California |
| 3. North Dakota | 43. Vermont |
| 4. Kansas | 44. Oklahoma |
| 5. Utah | 45. Pennsylvania |
| 6. North Carolina | 46. Illinois |
| 7. Michigan | 47. Montana |
| 8. Indiana | 48. Florida |
| 9. Ohio | 49. Rhode Island |
| 10. Colorado | 50. West Virginia |

Sources: American Justice Partnership, Directorship magadne

fees, settlements, judgments — are just the starting point. The real costs are often far higher and more dangerous — loss of shareholder value, damage to the company's reputation, higher litigation reserves, higher insurance costs. Trial lawyers have even been known to brief financial analysts in order to drive down stock values and pressure companies to the settlement table.

Experience has demonstrated, however, that a reasonable legal climate makes a significant difference. In Michigan, for example, reforms have helped reduce product liability filings a whopping 67%. A property and casualty insurer reported it was able to release more than \$50 million from reserves to income after legal reforms in Ohio weeded out junk lawsuits.

State officials heavily court businesses to their states through economic development programs, tax incentives and other enticements. Armed with the ratings from Risky Business, business leaders should let these courtiers know that the fairness and predictability of their state's legal climate is also a critical factor in making business decisions.

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