

## THE IMPACT OF JUDICIAL PHILOSOPHY ON BUSINESS AND INDUSTRY

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### KEY FACTS

- Lawsuits raise the cost of every product and service in America & Oklahoma
- Extremes of expansion of civil liability in American courts over recent decades inhibit growth, discourage enterprise and change for the worse the way we conduct our personal and professional lives
- Judge-made law in the state and federal courts has created much of this liability expansion and many of its destructive features
- The U.S. has the highest liability costs as a percentage of GDP of the countries surveyed by the U.S. Chamber of Institute for Legal Reform, with liability costs at 2.6 times the average level of the Eurozone economies
- U.S. liability costs are four times higher than those of the least costly European countries in the study—Belgium, the Netherlands and Portugal
- The annual “tort tax” we all pay because of these frivolous lawsuits is \$9,827 for a family of four, in terms of costs and forgone benefits

### BACKGROUND

America’s lawsuit environment, encouraged and supported by a court system that doesn’t throw out meritless lawsuits, raises the cost of every product and service in our nation. American jobs are at stake. Insurance paid by American workers and their companies—health insurance, auto insurance

and business liability—continues to rise. In today’s tight economy, workers and their employers face tough insurance choices to survive—choices that affect our jobs, wages and benefits.

The National Association of Insurance Commissioners reports that in 2014, total incurred indemnity costs were \$4.3 billion and the costs of defending medical malpractice cases totaled \$2.4 billion, a seven-fold increase in defense costs over 1985. Almost 40% of defense costs incurred were for claims that were dropped without settlement or judgement.

With recent changes, Oklahoma has been able to influence the national perspective. We are now recognized as one of the top states to have adopted common-sense reforms and thus have increased the number of jobs, doctors, nurses and hospitals while bringing prosperity to our great state! The issue now remains whether our courts will uphold what the elected representatives of the people in Oklahoma have adopted. In 2013, the Oklahoma Supreme Court struck down a major lawsuit reform bill passed four years earlier for “addressing more than one subject.” The State Chamber of Oklahoma pushed hard for a Special Session of the Legislature which met just three months later and passed 23 individual bills containing the very same reforms struck down.

## STATE CHAMBER POSITION

The bottom line is that too many lawsuits are filed over issues that should not be going to court. Lawsuit liability costs continue to be a factor in the loss of jobs in Oklahoma. We must have a legal system that:

- Fairly compensates our citizens when an injury occurs
- Allows all parties to receive a fair trial when one is needed
- Discourages frivolous lawsuits
- Deals with disputes more quickly
- Assures that the injured party receives the bulk of their award—not lawyers

Our legislators must continue to pass laws which restore predictability and efficiency to our legal system, fairly compensating plaintiffs for damages suffered while holding defendants responsible in proportion to their actual fault.

## HOW DOES THIS AFFECT JOBS AND YOUR FAMILY IN OKLAHOMA?

A recent Harris Poll showed that 75% of business leaders say that a state's lawsuit environment affects their location decisions for new operations or expansions.

Another survey by the Pacific Research Institute indicates that for a family of four, the annual "tort tax" we all pay because of these frivolous lawsuits in terms of costs and forgone benefits is \$9,827.

## WHAT CAN BE DONE?

Pass the following Tort Reform elements this year:

### **Transparency in Private Attorney Contracts Act**

Pass reforms that recognize the discretion and independence needed to enforce state laws free from the influence of parties that may have a private interest in the outcome of litigation. Proposed reform measures seek to preserve the ability for Oklahoma's attorney general to contract with outside contingency fee counsel while insulating themselves from political pressure and ensuring maximum benefit to taxpayers. This policy proposal focuses on common-sense good government principles including transparency and accountability.

### **Consumer Protection Act**

Require that a plaintiff must suffer an "ascertainable loss of money or property, real or personal, as a result of a violation" of the OCPA in order to recover damages.

### **Ten-Year Statute of Repose**

An eight-year statute of repose is reasonable.

### **Judicial Selection Reform**

Setting term limits and/or a retirement age.

Requiring Senate confirmation on all judicial appointments.

Requiring at least a 60% positive vote on judicial retention.