

# *Ranking the States:* LAWSUIT CLIMATE 2010



Conducted for the U.S. Chamber  
Institute for Legal Reform by  
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## California: Survey Gives Bottom 5 Ranking to State Liability System<sup>1</sup>

*California ranks number 46 out of 50 states in survey of corporate lawyers*

Here are some possible explanations:

California's state courts remain a haven for class action lawsuits.

- Plaintiffs' lawyers choose to file suit in California because they know that the courts are often willing to certify class actions that are not certifiable elsewhere, and juries are willing to give plaintiffs high awards in civil cases.
- More than four class actions are filed every day that California superior courts are in session.

California's reputation for large jury awards adds to its lawsuit-friendly perception.

- Over many years, Los Angeles gained a reputation as "The Bank" due to its excessive verdicts.
  - The largest verdict in the nation in 2009 came out of Los Angeles, when a jury awarded a defamation award of \$370 million.

California is a growing hot spot for asbestos litigation.

- Out-of-state attorneys continue to flock to California to benefit from the state judiciary's favorable rules towards asbestos suits, particularly California courts' lax standards for showing a defendant's products caused a plaintiff's injury and the court's unwillingness to dismiss weak cases prior to trial.
  - One leading plaintiffs' attorney, whose Houston-based firm recently opened offices in Los Angeles and Palo Alto, has referred to parts of California as "home run" jurisdictions for asbestos cases.<sup>2</sup>
- Firms based in Texas and Illinois have sought to take advantage of California courts, which have allowed cases involving minimal exposure to asbestos to survive motions for summary judgment.
  - Texas-based firm Waters & Kraus has routinely filed asbestos suits in Texas, only to dismiss them and refile them in California in order to take advantage of procedural rules. Last April, Los Angeles Superior Court Judge Aurelio Munoz denounced the law firm's "procedural ploy."<sup>3</sup> While Judge Munoz recognized that the case represented "the grisly game of asbestos litigation," he was unable to grant defendant's motion for summary judgment and looked to the appellate courts to address this serious problem. However, the Court of Appeal and California Supreme Court refused to consider the case.<sup>4</sup>
- California judges acknowledge ever-increasing burden placed on the judicial system by the state's asbestos docket.
  - San Francisco Superior Court Judge James McBride has said that the length of asbestos trials causes hardship for jurors, leaving many citizens unable to serve and forcing the courts to "use jurors at an absolutely abominable rate."<sup>5</sup>

In California, professional plaintiffs engage in legal extortion against small businesses.

- California's Unruh Act, applied in conjunction with the federal Americans with Disabilities Act, permits plaintiffs to bring claims for minor, technical violations of disabled access laws. Individuals may recover the greater of three times actual damages or \$4,000 per violation. Some individuals go from small business to small business, looking for any possible violation, then demand thousands of dollars to settle the case.

- For example, a federal judge branded one such individual a “hit-and-run plaintiff” and barred him from filing additional suits in his court, but only after he had filed 400 lawsuits.<sup>6</sup>
- Although the California legislature has attempted to reduce this type of abuse – for example, many bills have been introduced in the past five years that would have given businesses the right to repair before a lawsuit could be filed – the California Supreme Court has facilitated more litigation by recently lowering the required standard of proof.<sup>7</sup>

There is little political support for addressing these excesses.

- Governor Schwarzenegger has attempted to make tort reform a priority at various times during his term in office and has consistently vetoed trial lawyer-sponsored bills that have reached his desk. The governor’s 2010 tort reform package includes proposals to tighten up on class-action lawsuits that can often generate big payouts to lawyers and their clients; restrict the size of punitive damages; and shield sellers of defective goods from liability if they are “mere conduits of a product.” However, the Governor continually faces strong resistance from the California legislature.
- Both the Assembly and Senate Judiciary Committees, which include a majority of pro-trial bar legislators, continue to pose significant obstacles to measures aimed at reforming the state’s civil justice system.
  - In 2008, the Senate Judiciary Committee declined to approve a bill imposing limits on the amount of punitive damages that can be recovered at trial. The bill (SB 423) would have capped punitive damages at an amount no greater than three times the compensatory damages award. Notwithstanding the fact that many state legislatures have already adopted limits on – or eliminated – punitive damages, the California Senate declined to approve the bill.
  - Last year, both houses of the California legislature approved a bill that would have expanded employer liability in workplace liability lawsuits. Governor Schwarzenegger ultimately vetoed the bill.
  - Plaintiffs currently have an automatic right to appeal an order denying class certification. Last year, the Assembly Judiciary Committee failed to approve legislation (AB 298) that would have given defendants a comparable right to appeal an order certifying a class action.

California’s poor litigation climate discourages businesses from bringing or expanding jobs in the state.

- With an unemployment rate of 12.5% (the fifth-highest in the nation, according to the Bureau of Labor Statistics), California needs more jobs, not more lawsuits. As California’s leaders work to recover from the current economic downturn, they need to think about whether the policies they are considering will help create jobs or create lawsuits and expand liability against local businesses.

<sup>1</sup> Go to [www.jobsnotlawsuits.com](http://www.jobsnotlawsuits.com) for a copy of “Ranking the States: Lawsuit Climate 2010 State Liability Systems Survey” conducted for the U.S. Chamber Institute for Legal Reform by Harris Interactive Inc.

<sup>2</sup> Alison Frankel, *Texas Tort Firm Says Business is Booming, Expands Houston Office*, AmLaw Litigation Daily, Apr. 6, 2009, at <http://www.law.com/jsp/tal/digestTAL.jsp?id=1202429695200>.

<sup>3</sup> *Washington v. American Standard, Inc.*, No. BC 376529 (Cal. Super. Ct. Apr. 7, 2007), available at <http://www.calbizlit.com/WatersKrausdepo.pdf>.

<sup>4</sup> *Crane Co. v. Superior Ct.* (Washington), No. S173141, rev. denied, (Cal. July 8, 2009).

<sup>5</sup> Judicial Forum on Asbestos, HB Litigation Conferences, New York City, June 3, 2009 (quoting Judge McBride), available at <http://litigationconferences.com/?p=6669>.

<sup>6</sup> *Molski v. Mandarin Touch Restaurant*, 359 F. Supp.2d 924 (C.D. 2005), *aff’d sub nom.*, *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047 (9th Cir. 2007), *cert. denied*, 129 S. Ct. 594 (2008).

<sup>7</sup> *Munson v. Del Taco, Inc.*, 208 P.3d 623 (Cal. 2009).