

# *Ranking the States:* LAWSUIT CLIMATE 2010



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

*Louisiana ranks number 49 out of 50 states in survey of corporate lawyers*

Here are some possible explanations:

Louisiana has developed a reputation for having an unfair litigation climate.

- Louisiana, year after year, has consistently placed among the five worst states for litigation fairness in the Harris survey.
- The Manhattan Institute's Center for Legal Policy has labeled Louisiana as a "magnet for mass tort lawyers" and a "hotbed for new legal theories."<sup>2</sup>
- New Orleans is mentioned by Harris survey respondents as one of the worst jurisdictions in the country.

There have been numerous cases of corruption in the Louisiana judiciary.

- Corruption at all levels continues to plague the state. As the Times Picayune has observed, "Corrupt judges, and the attorneys that enable them in violation of their code of conduct, have severely tarnished the judiciary's reputation in our state."<sup>3</sup>
- Earlier this year, Louisiana Federal Judge Thomas Porteous was impeached by the U.S. House of Representatives after a federal investigation found "a pattern of corrupt conduct for years" including while he was a state court judge.<sup>4</sup>
- In January, the Louisiana Supreme Court permanently disbarred former Orleans Parish District Judge C. Hunter King, who was removed from the bench in 2003 after threatening to fire court staffers if they did not sell tickets for a campaign fundraiser, among other actions.<sup>5</sup>
- Last year, Jefferson Parish Judge Joan Bengé was removed from office after the Louisiana Supreme Court found that she had ruled for a plaintiff in a personal injury lawsuit against an insurance company because the plaintiffs' attorney was one of her political supporters, rather than based on the evidence presented.<sup>6</sup>
- Also last year, St. Bernard Parish Judge Wayne Cresap pleaded guilty in a kickback scheme in which he took \$70,000 in bribes from lawyers over five years in exchange for letting inmates out of jail without paying bond.<sup>7</sup>
- Nine people were charged in an ongoing federal investigation of city and state courts in Baton Rouge in 2009 for bribing prosecutors, witnesses, and victims to dismiss cases.<sup>8</sup>

Louisiana courts are lucrative for plaintiffs.

- Louisiana allows juries to provide a separate award for "hedonic damages" (lost enjoyment of life) in addition to compensation for pain and suffering.<sup>9</sup> While some states permit the jury to consider lost enjoyment of life when determining compensation for pain and suffering or a physical disability, allowing separate recovery of hedonic damages puts Louisiana out of step with most states and arguably allows for double recovery.
- In 2006, a Louisiana appellate court found the state's \$500,000 limit on noneconomic damages in medical malpractice cases unconstitutional. While the Louisiana Supreme Court threw out the decision on procedural grounds, the case has created uncertainty on the current viability of the law.<sup>10</sup>

- Louisiana’s class action rules result in cumbersome and burdensome litigation for civil defendants. Unlike the federal courts and many state courts, Louisiana courts rarely consolidate similar class action suits filed in different judicial districts or even within the same district.
- Louisiana’s liberal joinder rules also encourage class actions and forum shopping.<sup>11</sup>
  - The rules are used as a substitute for class actions without the few protections that class actions can provide to a defendant.
  - The liberal rules also encourage forum and judge shopping by the plaintiffs’ bar where cases keep getting filed until the “right” judge is assigned and then multiple cases are joined in the favorable forum.
- There are some positive aspects of Louisiana law for civil defendants. Louisiana law generally does not authorize punitive damages and liability of defendants is generally limited to their proportionate share of the fault. In addition, the state legislature enacted a law that provides better safeguards on the reliability of expert testimony in 2008.<sup>12</sup>

Louisiana’s poor litigation climate may discourage business.

- In the 2010 Harris survey, two-thirds (67%) of respondents report that the litigation environment in a state is likely to impact decisions at their company, such as where to locate or do business.
- With an unemployment rate of 7.5%, Louisiana needs more jobs, not more lawsuits.
- As Louisiana’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.

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<sup>1</sup> Go to [www.jobshotlawsuits.com](http://www.jobshotlawsuits.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> Manhattan Inst., Center for Legal Policy, Trial Lawyers, Inc.: Louisiana (2008), *available at* [http://www.triallawyersinc.com/pdfs/tli\\_update\\_7.pdf](http://www.triallawyersinc.com/pdfs/tli_update_7.pdf).

<sup>3</sup> Editorial, *Setting a Judicial Example*, New Orleans Times Picayune, Jan. 17, 2010.

<sup>4</sup> Paul Courson, *Louisiana Ex-Congressman Gets 13 Years on Corruption Conviction*, CNN.com, Nov. 17, 2009, at <http://www.cnn.com/2009/POLITICS/11/13/jefferson.sentencing/index.html>.

<sup>5</sup> Gwen Filosa, *Louisiana High Court Disbars Disgraced Judge*, New Orleans Times Picayune, Jan. 9, 2010.

<sup>6</sup> Paul Purpura, *Ex-judge Surrenders Law License*, New Orleans Times Picayune, Feb. 13, 2010; *see also* Editorial, *Farewell to Unfit Judge*, New Orleans Times Picayune, Nov. 25, 2009.

<sup>7</sup> Bob Warren, *Is there No End to the Shady Judges*, New Orleans Times Picayune, Nov. 21, 2009.

<sup>8</sup> Bill Lodge, *Ninth Person Indicted in Federal Probe of BR Courts*, Advocate, Dec. 30, 2009, at <http://www.theadvocate.com/news/80322162.html>.

<sup>9</sup> *McGee v. ACandS, Inc.*, 933 So. 2d 770 (La. 2006).

<sup>10</sup> *Arrington v. ER Physicians Group*, 940 So. 2d 777 (La. App. 3 Cir. 2006), *vacated*, 947 So. 2d 719 (La. 2007).

<sup>11</sup> *Contrast* La. Code Civ. P. arts. 461-65 *with* arts. 591-97; *see* *Giroir v. Louisiana Med. Center*, 475 So. 2d 1040 (La. 1985) (cumulation of otherwise time-barred actions by amended petition); *Arceneaux v. Amstar Corp.*, 969 So.2d 755 (La.Ct.App. 2007) (insurance coverage dispute re 300 hearing loss cases cumulated in a single action).

<sup>12</sup> La. Act No. 787 (2008) (codified at La. Code of Civ. Proc. Art. 1425(F)).