

Ranking the States: LAWSUIT CLIMATE 2010



Conducted for the U.S. Chamber
Institute for Legal Reform by
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Mississippi: Survey Gives Bottom 10 Ranking to State Liability System¹

Mississippi ranks number 48 out of 50 states in survey of corporate lawyers

Here are some possible explanations:

Historically, there have been times where the number of plaintiffs suing in some Mississippi counties actually exceeded the number of residents living in the county.² Despite enacting comprehensive tort reform in 2004, Mississippi continues to rank near the bottom of the survey as the climate remains difficult for defendants due to the state's plaintiff-friendly judges and juries.

Mississippi's Attorney General Office is a virtual plaintiffs' law firm.

- Mississippi is notorious for its "pay-to-play" arrangements, under which its attorneys general hire outside counsel, who typically are campaign donors, to prosecute civil actions on behalf of the state. In just his first 5 years as attorney general, Jim Hood retained 27 law firms to represent Mississippi in 20 separate lawsuits after partners at those firms contributed more than \$500,000 to Hood's re-election campaigns.
- Last month, the Jackson *Clarion Ledger* reported that Hood awarded a multi-million-dollar lawsuit contract to the Bailey Perrin law firm after it contributed \$75,000 to the Mississippi attorney general's campaign fund.³

Fraudulent claims and corruption in the judiciary.

- A federal jury in Natchez, Mississippi, on March 8, 2010, found that Mississippi plaintiffs' attorneys William Guy and Thomas Brock fraudulently filed asbestos claims against Illinois Central Railroad on behalf of plaintiffs who had already recovered for the same injuries in an earlier lawsuit. The jury awarded Illinois Central full repayment of the \$210,000 it paid on those claims plus an additional \$210,000 in punitive damages.
- In 2008, Mississippi's King of Torts, Richard "Dickie" Scruggs was sent to jail for a five-year sentence for "attempting to bribe a Mississippi judge."⁴ The famed personal injury lawyer was indicted in 2007 for conspiring to bribe Lafayette County Circuit Judge Henry Lackey, who reported the \$50,000 bribe overture. Prosecutors alleged that Scruggs wanted a favorable ruling in a dispute over \$26.5 million in legal fees from a mass settlement of Hurricane Katrina insurance cases.⁵
- Former Mississippi judges John Whitfield and Wes Teel were convicted in 2007 of taking part in a bribery scheme orchestrated by a prominent plaintiffs' attorney, Paul Minor, to receive favorable rulings in major asbestos, medical malpractice, and car safety cases. At sentencing, the presiding judge remarked, "Lady Justice is sobbing."⁶

Meaningful legislative reforms are at risk.

- The constitutionality of the state law reasonably limiting non-economic damage awards to \$1 million is pending before the Mississippi Supreme Court. If invalidated, it would reverse what gains have been made and could lead to an influx of litigation back into Mississippi.⁷

- Although the Mississippi Supreme Court has previously upheld civil justice reforms, including the noneconomic damage limit, the recent change in the composition of the court could impact the outcome of the decision.

Mississippi is home to a novel lawsuit seeking damages for global warming.

- The state has been one of a few select staging grounds for lawsuits which would seek to hold individually chosen “deep pocket” companies liable for the costs associated with global warming. This in spite of the fact that these companies are lawfully complying with emissions regulations.
- Lawyers from Mississippi and Louisiana have brought a class action lawsuit on behalf of Mississippi residents that seeks to hold more than a hundred oil, energy, and chemical companies liable for property damage caused by Hurricane Katrina. The creative lawsuit claims that, by emitting greenhouse gases, the companies contributed to global warming, which, in turn, warmed the waters off of the Gulf, and thereby increased the intensity of the hurricane and the damage to their homes. Although the trial court dismissed the case as raising a question so complex that it is reserved for the political branches of government, a three-judge panel of the U.S. Court of Appeals for the Fifth Circuit Court would have allowed the case to proceed to trial.⁸ The full Fifth Circuit (*en banc*) recently decided to reconsider the decision.⁹ Although this claim is in federal court, it adds to the negative business atmosphere in Mississippi.

There are bright spots in Mississippi’s legal climate.

- Mississippi’s 2004 comprehensive tort reform package has led to measurable improvements. These reforms helped pull the state out of a medical liability crisis, whereby high premiums and an exodus of insurers had led physicians to leave the state, causing shortages in critical medical services. In fact, the state’s tort reforms have lowered medical liability premiums by as much as 60% and reduced medical liability claims 91% from their peak.¹⁰
- In 2007, the Mississippi Supreme Court aligned with the majority of states by rejecting a claim for damages absent a present physical injury.

¹ Go to 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.

² Robert Pear, *Mississippi Gaining as Lawsuit Mecca*, N.Y. Times, Aug. 20, 2001, at A1.

³ Sid Salter, *Florida May Limit Fees for Outside Counselors*, Clarion Ledger, Feb. 7, 2010, available at <http://www.clarionledger.com/article/20100207/COL0412/2070316/Florida-may-limit-fees-for-outside-counselors>.

⁴ Associated Press, *Court Orders Dickie Scruggs to Ky. Federal Prison*, Law.com, July 24, 2008.

⁵ *Id.*; see also Anita Lee, *Scruggs Buckles at Sentencing: Receives 5 Years*, Sun Herald, June 27, 2008.

⁶ Debra Cassens Weiss, *Big-Name PI Lawyer Sentenced for Bribing Judges*, ABA J., Sep. 10, 2007, available at http://www.abajournal.com/weekly/big_name_pi_lawyer_sentenced_for_bribing_judges.

⁷ *Double Quick v. Lymas*, No. 2008-CA-01713-SCT (Miss. Sup. Ct.).

⁸ *Comer v. Murphy Oil USA, Inc.*, 585 F.3d 855 (5th Cir. 2009).

⁹ *Comer v. Murphy Oil USA, Inc.*, No. 07-60756, 2010 WL 685796 (5th Cir. Feb. 26, 2010).

¹⁰ Interview with Mississippi Governor Haley Barbour, *Your World with Neal Cavuto*, Fox News, Sept. 22, 2009.