



Oregon: Survey Shows Drop in State Liability Ranking¹ *Oregon falls from 14th in 2008, to 21st in 2010*

Here are some possible explanations:

The Legislature weakened Oregon's statute of repose for product liability.

- This past year, the Oregon Legislature extended the state's statute of repose for product liability actions from 8 years to the greater of 10 years from when the product was manufactured or the statute of repose of the state in which the product was manufactured or from which it was imported.² This weakened what was a strong protection against speculative litigation.

Oregon cannot place reasonable limits on noneconomic damage awards.

- The state legislature is precluded from placing reasonable limits on inherently subjective noneconomic damages since the state's high court invalidated a \$500,000 limit in personal injury actions as unconstitutional.³

Oregon is gaining a reputation for allowing excessive punitive damage awards.

- Oregon courts are developing a reputation for anti-business rulings, the most salient of which is the state judiciary's refusal to abide by the due process safeguards on punitive damage awards established by the U.S. Supreme Court.
 - In 2003, the U.S. Supreme Court threw out a \$79.5 million punitive damage award and instructed the Oregon courts to reconsider whether the award was excessive.⁴ Oregon courts, however, reinstated the award.⁵
 - In 2007, the same case again reached the U.S. Supreme Court, which ruled that the judge improperly permitted the jury to consider alleged harms to individuals who were not before the court when considering punitive damages.⁶
 - Nevertheless, in 2008, the Oregon Supreme Court again refused to alter its decision, rejecting the defendant's appeal on new procedural grounds. The U.S. Supreme Court granted review of the case for an unprecedented third time, but later decided not to hear the case again.⁷
- Oregon's lack of appellate review of the size of punitive damage awards also motivated a foundational U.S. Supreme Court decision requiring procedural safeguards for excessive awards.⁸

Oregon law is conducive to forum shopping.

- Oregon's venue laws are highly permissive, allowing plaintiffs' lawyers to engage in forum shopping for favorable courts.⁹ The judiciary has adopted an inconvenient forum doctrine, but this will not necessarily protect out-of-state businesses from being sued virtually in any court in Oregon.¹⁰

Oregon's procedural rules lack important safeguards.

- There is no immediate right to appeal class certification in Oregon.¹¹ The effect is that a court's certification of a claim places significant pressure on defendants to settle regardless of the merits of the case.
- There is no limit on the size of an appeal bond in Oregon, outside of tobacco litigation.¹² This means that civil defendants who are hit with an extraordinary verdict can be effectively forced into settlement because they lack the financial ability to post bond in the amount of the judgment plus interest to secure the right to appeal a poor decision.
- On the positive side, in 2008, the Oregon Supreme Court joined a growing list of state courts to reject claims for medical monitoring absent signs of present physical injury.¹³

The Oregon Legislature and voters passed slew of business tax increases.

- In a recent referendum, Oregon voters approved measures dramatically increasing business taxes in the state.¹⁴

Oregon's poor legal climate tracks the state's underperforming economy.

- A report issued by the state earlier this month forecasts double digit unemployment in Oregon for 2010.¹⁵ The fourth quarter of 2009 was Oregon's seventh consecutive quarter of job losses.
- The most recent report by the U.S. Census Bureau indicates that Oregon's economy ranks 30th among states.¹⁶
- Oregon's recent tax increases, erosion of reasonable laws protecting against litigation abuse, and worsening its judiciary's reputation are combining to push the state's legal climate further down. This downward spiral needs to be stopped for Oregon to get back on track.

¹ Go to www.jobsnolawsuits.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 Or. Rev. Stat. § 30.905, as amended by 2009 Or. S.B. 284.

³ *Lakin v. Senco Prods., Inc.*, 987 P.2d 463 (Or.), clarified by 987 P.2d 476 (Or. 1999).

⁴ *Philip Morris USA Inc. v. Williams*, 540 U.S. 801 (2003).

⁵ *Williams v. Philip Morris Inc.*, 92 P.3d 126 (Or. App. Ct. 2004), *aff'd*, 127 P.3d 1165 (Or. 2006).

⁶ *Philip Morris USA v. Williams*, 549 U.S. 346 (2007).

⁷ *Williams v. Philip Morris Inc.*, 176 P.3d 1255 (Or. 2008), *cert. granted in part*, 128 S. Ct. 2904 (2008), *cert. dismissed as improvidently granted*, 129 S. Ct. 1436 (2009).

⁸ *Honda Motor Co. v. Oberg* 512 U.S. 415, 432 (1994).

⁹ Or. Rev. Stat. § 14.080.

¹⁰ *Novich v. McClean*, 18 P.3d 424, 430 (Ct. App.), *review denied*, 27 P.3d 1043 (Or. 2001).

¹¹ Or. Rev. Stat. § 19.225.

¹² Or. Rev. Stat. § 19.312(2).

¹³ *Lowe v. Philip Morris USA, Inc.*, 183 P.3d 181 (Or. 2008).

¹⁴ News Release, *Oregon Legislature Enacts Slew of Tax Hikes, Including "Millionaires' Tax"*, The Tax Foundation, July 9, 2009, at <http://www.taxfoundation.org/news/show/24836.html>; see also Oregon Measure 67, Ballotpedia, at [http://www.ballotpedia.org/wiki/index.php/Oregon_Measure_67_\(2010\)](http://www.ballotpedia.org/wiki/index.php/Oregon_Measure_67_(2010)).

¹⁵ Oregon Economic and Revenue Forecast, Dept. of Administrative Services, Office of Economic Analysis (Mar. 2010), at 18.

¹⁶ State Rankings – Personal Income Per Capita in Current Dollars (2007), U.S. Census Bureau, at <http://www.census.gov/compendia/statab/2010/ranks/rank29.html>.