

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GENUINE PARTS COMPANY,)	
)	
Defendant Below,)	
Appellant,)	No. 528, 2015
)	
v.)	
)	
RALPH ALLAN CEPEC and)	On Appeal from the Superior
SANDRA FAYE CEPEC,)	Court of the State of Delaware,
)	in and for New Castle County,
Plaintiffs Below,)	C.A. No. N15C-02-184 ASB
Appellees.)	

**APPENDIX TO
ANSWERING BRIEF OF APPELLEES
RALPH ALLEN CEPEC AND SANDRA FAYE CEPEC**

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December 15, 2015

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IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

IN RE ASBESTOS LITIGATION:)
)
RALPH ALLAN CEPEC and SANDRA)
FAYE CEPEC,) C.A. No.
)
Plaintiffs,) ASBESTOS
)
v.) JURY TRIAL DEMANDED
)
ADVANCE AUTO PARTS, INC.;)
)
BORG-WARNER MORSE TEC LLC)
(sued individually and as successor-in-)
interest to BORG-WARNER)
CORPORATION);)
)
GENUINE PARTS COMPANY a/k/a)
NAPA (sued individually and as)
RAYLOC BRAKES);)
)
HENNESSY INDUSTRIES, INC.;)
)
HONEYWELL INTERNATIONAL,)
INC. f/k/a ALLIED-SIGNAL, INC.)
(sued as successor-in-interest to BENDIX)
CORPORATION);)
)
PNEUMO ABEX LLC (sued as)
successor-in-interest to ABEX)
CORPORATION);)
)
UNION CARBIDE CORPORATION;)
)
Defendants.)

COMPLAINT

COMMON ALLEGATIONS

1. Plaintiffs RALPH ALLAN CEPEC and SANDRA FAYE CEPEC are residents of the State of Georgia.

2. ADVANCE AUTO PARTS, INC. is a Delaware corporation whose registered agent for service of process is: National Registered Agents, Inc., 160 Greentree Drive, Suite 101, Dover, DE 19904.

3. BORG-WARNER MORSE TEC LLC (sued individually and as successor-in-interest to BORG-WARNER CORPORATION) is a Delaware corporation whose registered agent for service of process is: The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

4. GENUINE PARTS COMPANY a/k/a NAPA (sued individually and as RAYLOC BRAKES) is a foreign corporation doing business in the state of Delaware whose registered agent for service of process is: The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

5. HENNESSY INDUSTRIES, INC. is a Delaware corporation whose registered agent for service of process is: The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

6. HONEYWELL INTERNATIONAL, INC. f/k/a ALLIED-SIGNAL, INC. (sued as successor-in-interest to BENDIX CORPORATION) is a Delaware corporation whose registered agent for service of process is: Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, DE 19808.

7. PNEUMO ABEX LLC (sued as successor-in-interest to ABEX CORPORATION)

is a Delaware limited liability company whose registered agent for service of process is: Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, DE 19808.

8. UNION CARBIDE CORPORATION is a foreign corporation doing business in the state of Delaware whose registered agent for service of process is: The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

COUNT I

9. Plaintiffs reallege Paragraphs 1 through 8 of this Complaint and incorporate them herein by reference.

10. Plaintiff RALPH ALLAN CEPEC was wrongfully exposed to asbestos, an inherently dangerous toxic substance, as described below:

11. Plaintiff RALPH ALLAN CEPEC experienced exposure to asbestos while performing maintenance work to his personal automobiles in or near Statesboro, Georgia from approximately the 1970's through 1990's. During this time, Plaintiff RALPH ALLAN CEPEC was exposed to asbestos-containing products including, but not limited to, Bendix Brakes, Raybestos Brakes, and Abex Brake Linings. Plaintiff was also exposed to asbestos-containing friction products supplied by Genuine Parts Company a/k/a NAPA and Advance Auto Parts, Inc.

12. Plaintiff RALPH ALLAN CEPEC experienced exposure to asbestos while working as a warehouseman for Genuine Parts Company a/k/a NAPA in Jacksonville, Florida, from approximately 1988 to 1991. During this time, Plaintiff RALPH ALLAN CEPEC was exposed to asbestos-containing products and/or products designed to grind or otherwise manipulate asbestos-containing

products, and products containing asbestos and/or equipment, and/or equipment solely designed to be used with asbestos-containing products including, but not limited to, Bendix Brakes, Raybestos Brakes, Rayloc Brakes, Borg Warner Clutches, and Ammco Grinders.

The substantive state law(s) which should apply to this case is FLORIDA and GEORGIA, to the extent there is no conflict with the public policy of Delaware.

As a result of the Defendants' wrongful conduct, Plaintiff RALPH ALLAN CEPEC developed the following asbestos-related diseases and health problems:

Mesothelioma;

and other asbestos-related injuries and diseases.

As a result of Defendants' wrongful conduct which caused Plaintiff RALPH ALLAN CEPEC's asbestos-related diseases and health problems, Plaintiffs RALPH ALLAN CEPEC and SANDRA FAYE CEPEC have suffered and will suffer extensive mental anguish, pain and suffering, medical bills, physical impairment, permanent disability, loss of earning capacity and loss of enjoyment of life, all of which are recoverable under applicable law. In addition, Plaintiff SANDRA FAYE CEPEC has suffered extensive mental anguish and has been and will continue to be deprived of pecuniary benefits, contributions of support and household services, all of which are recoverable under applicable law.

13. The above injuries have resulted or will in the future result in a decrease of past or future earnings and various other past and future expenses Plaintiffs would not have otherwise incurred.

COUNT II

14. Plaintiffs reallege Paragraphs 1 through 13 of this Complaint and incorporate

them herein by reference.

ADVANCE AUTO PARTS, INC.;

BORG-WARNER MORSE TEC LLC (sued individually and as successor-in-interest to BORG-WARNER CORPORATION);

GENUINE PARTS COMPANY a/k/a NAPA (sued individually and as RAYLOC BRAKES);

HENNESSY INDUSTRIES, INC.;

HONEYWELL INTERNATIONAL, INC. f/k/a ALLIED-SIGNAL, INC. (sued as successor-in-interest to BENDIX CORPORATION);

PNEUMO ABEX LLC (sued as successor-in-interest to ABEX CORPORATION);

UNION CARBIDE CORPORATION;

were at all times pertinent directly or indirectly engaged in the mining, manufacturing, distribution, sales, licensing, leasing, installation, removal and/or use of asbestos, asbestos-containing products and/or products designed solely for use with asbestos or asbestos-containing products. They were also engaged in the development, manufacture, distribution, sales, licensing or leasing of equipment, procedures and/or technology necessary to mine, manufacture, sell, distribute, install, remove and use asbestos and asbestos-containing products.

15. As a direct and proximate result of the above wrongful activities of the Defendants, Plaintiff RALPH ALLAN CEPEC was exposed to asbestos and subsequently developed the asbestos-related disease discussed and sustained the injuries described herein.

COUNT III

16. Plaintiffs reallege Paragraphs 1 through 15 of this Complaint and incorporate them herein by reference.

17. The Defendants were negligent in conducting the above activities and/or in the safety conditions at their plants and facilities in that despite the fact that the Defendants knew or should have known that asbestos exposure could result in serious injury, disease and/or death, Defendants:

- a) Failed to substitute, suggest, promote or require the substitution of materials other than asbestos;
- b) Failed to adequately warn all the potential victims of asbestos, including Plaintiff RALPH ALLAN CEPEC as well as other users, bystanders, household members and members of the general public of the risks of asbestos;
- c) Failed to adequately test, research, or investigate asbestos and/or its effects prior to sale, use, and/or exposure of Plaintiff RALPH ALLAN CEPEC and others similarly situated;
- d) Failed to adequately package, distribute and/or use asbestos in a manner which would minimize the escape of asbestos fibers therefore adding to the exposure of Plaintiff RALPH ALLAN CEPEC and others similarly situated; and
- e) Failed to take adequate steps to remedy the above failures, including but not limited to recall of asbestos, abatement of asbestos on their property, recall of asbestos products, recall of equipment designed solely for use with asbestos-containing products, conduct research as to how to cure or minimize asbestos injuries, distribute asbestos so as to render it safe or safely remove the asbestos now in place.

18. As a direct and proximate result of the above actions and omissions of Defendants, Plaintiff RALPH ALLAN CEPEC was injured as described herein.

COUNT IV

19. Plaintiffs reallege Paragraphs 1 through 18 of this Complaint and incorporate them herein by reference.

20. The Defendants willfully and wantonly for their own economic gain and with reckless indifference to the health and safety of Plaintiff RALPH ALLAN CEPEC and others similarly situated:

- a) Failed to substitute, suggest, promote or require the substitution of materials other than asbestos;
- b) Failed to adequately warn all the potential victims of asbestos, including Plaintiff RALPH ALLAN CEPEC as well as other users, bystanders, household members and members of the general public of the risks of asbestos exposure;
- c) Failed to adequately test, research and investigate asbestos and/or its effects prior to sale, use, and/or exposure of Plaintiff RALPH ALLAN CEPEC and others similarly situated;
- d) Failed to adequately package, distribute and use asbestos in a manner which would minimize the escape of asbestos fibers therefore adding to the exposure of Plaintiff RALPH ALLAN CEPEC and others similarly situated; and
- e) Failed to take adequate steps to remedy the above failure, including but not limited to recall asbestos and asbestos products, to abate asbestos on their property, to redesign equipment made solely for use with asbestos-containing products, to conduct research as to how to cure or minimize asbestos injuries, to

distribute asbestos so as to render it safe or safely remove the asbestos now in place.

21. As a direct and proximate result of the above actions and omissions of Defendants, Plaintiff RALPH ALLAN CEPEC was injured as described herein.

COUNT V

22. Plaintiffs reallege Paragraphs 1 through 21 of this Complaint and incorporate them herein by reference.

23. Asbestos, asbestos-containing products, and equipment designed solely for use with asbestos-containing products are inherently dangerous, and as such, Defendants who made or sold asbestos or the equipment, processes, or other things necessary for its use, are strictly liable to Plaintiff RALPH ALLAN CEPEC for all injuries and damages which were contracted thereby.

24. Defendants who assisted, directly or indirectly, in the leasing or licensing of asbestos and all equipment necessary for its use are strictly liable to Plaintiff RALPH ALLAN CEPEC for all the injuries and damages which were contracted thereby.

25. The handling of asbestos packages, installation, removal and use of asbestos, and use of equipment designed solely for use with asbestos-containing products is an ultra hazardous activity and Defendants who assisted directly or indirectly in this are strictly liable for Plaintiff RALPH ALLAN CEPEC's injuries which were caused thereby.

26. The Defendants as manufacturers and suppliers warranted the asbestos products or equipment designed solely for use with asbestos-containing products for their intended purpose and use. Defendants violated this warranty as the product was neither packaged nor

provided in a method proper for its intended use and are strictly liable to Plaintiff RALPH ALLAN CEPEC for all injuries caused thereby.

27. As a direct and proximate result of the above action and omissions of Defendants, Plaintiff RALPH ALLAN CEPEC was injured as described herein.

COUNT VI

28. Plaintiffs reallege Paragraphs 1 through 27 of this Complaint and incorporate them herein by reference.

29. The Defendants knowing of significant risks of health hazards resulting from exposure to asbestos did willfully, wantonly, recklessly and/or intentionally:

- a) Conceal the existence, nature and extent of that risk; and
- b) Fail to disclose the existence, nature and extent of that risk to Plaintiff RALPH ALLAN CEPEC and those similarly situated.

30. The Defendants had reason to expect that Plaintiff RALPH ALLAN CEPEC, whose injuries were caused by his exposure, was within the class of persons whose actions or inaction would be materially affected by the aforementioned concealment and nondisclosure.

31. As a direct and proximate result of the above action and omissions of Defendants, Plaintiff RALPH ALLAN CEPEC was injured as described herein.

COUNT VII

32. Plaintiffs reallege Paragraphs 1 through 31 of this Complaint and incorporate them herein by reference.

33. The Defendants directly and indirectly materially misrepresented that asbestos was not hazardous and/or could be used safely when they:

- a) Had no adequate basis for such representations;
- b) Knew that a significant health hazard to human life existed from asbestos.

34. Defendants had reason to expect that as a result of such representation, Plaintiff RALPH ALLAN CEPEC and others similarly situated would be exposed to asbestos.

35. As a result of this wrongful representation, Plaintiff RALPH ALLAN CEPEC was exposed to asbestos and suffered the injuries referred to herein.

COUNT VIII

36. Plaintiffs reallege Paragraphs 1 through 35 of this Complaint and incorporate them herein by reference.

37. The Defendants knowingly and willfully conspired to perpetuate the actions and omissions referred to herein as well as aided and abetted other manufacturers of asbestos products and equipment solely designed for use with asbestos-containing products in keeping Plaintiff RALPH ALLAN CEPEC and others similarly situated ignorant of the risks they faced when exposed to asbestos and asbestos-containing products.

38. As a result of this conspiracy, Plaintiff RALPH ALLAN CEPEC was exposed to asbestos and suffered the injuries complained of herein.

COUNT IX

39. Plaintiffs reallege Paragraphs 1 through 38 of this Complaint and incorporate them herein by reference.

40. Even after the dangers of asbestos finally began to be known to Plaintiff RALPH ALLAN CEPEC or others similarly situated, Defendants continued to act wrongfully both individually and in a conspiracy to mislead and misrepresent the extent of the past wrongful

actions and omissions and to destroy records and hide witnesses and other evidence and to such other wrongful and unnecessary action so as to:

- a) Prevent and delay Plaintiff RALPH ALLAN CEPEC and others similarly situated from filing legal action to recover for these injuries and/or;
- b) Defeat and/or delay such legal actions and the final collection of any judgment.

41. Similarly, Defendants aided and abetted the manufacturers, miners, suppliers, and users of asbestos and asbestos products in keeping the true dangers of asbestos exposure secret and/or misrepresented.

42. As a result of this wrongful representation, Plaintiff RALPH ALLAN CEPEC was exposed to asbestos and suffered the injuries referred to herein.

COUNT X

43. All of the allegations contained in the previous paragraphs are realleged herein.

44. Plaintiff RALPH ALLAN CEPEC developed mesothelioma caused by his exposure to asbestos dust while employed by **Genuine Parts Company a/k/a NAPA** (hereinafter "Employer Defendant").

45. Plaintiff RALPH ALLAN CEPEC was employed by Employer Defendant and/or one of its predecessors at a facility located in Jacksonville, Florida, and during such time was continuously exposed to asbestos and asbestos-containing dust without the provision of appropriate safeguards by Employer Defendant and/or one of its predecessors, who had the responsibility for such.

46. Plaintiffs would further show that Plaintiff RALPH ALLAN CEPEC's disease is the result of Employer Defendant's intentional acts and/or omissions and/or negligence, gross negligence and malice in the use of asbestos and equipment solely designed for use with

asbestos-containing products at Plaintiff RALPH ALLAN CEPEC's place of employment. The Defendant failed to properly remove and/or abate said asbestos at this facility during the time Plaintiff RALPH ALLAN CEPEC was employed there, failed to warn Plaintiff RALPH ALLAN CEPEC of the dangers of asbestos and failed to take adequate precautions to protect Plaintiff RALPH ALLAN CEPEC from the dangers of asbestos.

47. Plaintiffs would further show Plaintiff RALPH ALLAN CEPEC's injuries and diseases were the result of intentional acts and/or omissions and/or negligence, gross negligence and malice in the use of asbestos at Employer Defendant's facility and Employer Defendant failed to properly remove and/or abate said asbestos at its facility during the time Plaintiff RALPH ALLAN CEPEC was working there.

48. Plaintiffs would show that Employer Defendant was negligent, grossly negligent and malicious, and committed certain intentional acts, all of which were the proximate cause of Plaintiff RALPH ALLAN CEPEC's disease and injuries resulting in mesothelioma from his exposure to asbestos.

49. In particular, Plaintiffs would show that Employer Defendant demonstrated such an entire want of care as to establish that its acts and omissions were the result of actual conscious indifference to the rights, safety, and welfare of the Plaintiff RALPH ALLAN CEPEC, and that such intentional acts and omissions proximately caused Plaintiff RALPH ALLAN CEPEC's disease and injuries.

50. Specific intentional acts and acts constituting negligence, gross negligence and malice committed by Employer Defendant that proximately caused Plaintiff RALPH ALLAN CEPEC's injuries and disease include:

- (a) Failure to provide safe equipment for Plaintiff RALPH ALLAN CEPEC to

use;

(b) Failure to provide adequate safety measures and protection against deadly and life-threatening asbestos dust, all despite Employer Defendant's knowledge of the extreme risk of harm inherent to asbestos exposure;

(c) Failure to adequately warn Plaintiff RALPH ALLAN CEPEC of the inherent dangers of asbestos contamination;

(d) Failure to maintain the ambient and environmental conditions of the premises in proper and safe condition;

(e) Failure to follow and adhere to various states and U.S. Government statutes, regulations and guidelines pertaining to asbestos and the exposure to asbestos of individuals. Such failure constituted negligence per se at a minimum.

Plaintiffs are not making claims for damages under federal law.

51. Plaintiffs would further show that Employer Defendant intentionally, knowingly, and/or due to negligence, gross negligence and malice, failed to ensure that individuals such as Plaintiff RALPH ALLAN CEPEC was protected from the inhalation of asbestos and asbestos fibers. Such actions proximately caused Plaintiff RALPH ALLAN CEPEC's injuries and illness.

52. Additionally, specific actions or omissions on the part of Employer Defendant that proximately caused Plaintiff RALPH ALLAN CEPEC's injuries and illness were:

(a) Attempting to remove asbestos dust in Plaintiff RALPH ALLAN CEPEC's workplace without taking adequate precautions for the protection of workers in the vicinity and/or in the premises generally;

(b) Failing to provide proper protective gear for individuals exposed to asbestos;

- (c) Failing to provide adequate ventilation to ensure that individuals in the vicinity were not exposed to asbestos;
- (d) Failing to provide a proper and safe method for the use of asbestos and asbestos fibers;
- (e) Failing to adhere to industry safe standards and other established measures to protect workers from harm;
- (f) Failing to adequately warn of the extreme risk of danger of inherent to asbestos exposure.

53. Employer Defendant demonstrated such an entire want of care as to establish that its acts and omissions alleged above were the result of actual conscious indifference to the rights, safety, and welfare of Plaintiff RALPH ALLAN CEPEC.

WHEREFORE, Plaintiffs demand judgment against each of the Defendants jointly and severally for such sums, including, but not limited to prejudgment and post-judgment interest, as would be necessary to compensate the Plaintiffs for the injuries they have and will suffer. Plaintiffs further demand judgment against each of the Defendants for punitive damages. Plaintiffs further demand payment by each of the Defendants jointly and severally of the costs and attorney fees of this action. Plaintiffs further demand payment by each Defendant jointly and severally of interest on the above and such other relief as the Court deems just.

LUNDY LAW

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State of Delaware
New Castle County
Trinidad Navarro
Sheriff

4/16/2015

Court Case # N15C-02-184 ASB

Summons and Complaint

**IN RE ASBESTOS LITIGATION RALPH ALLAN CEPEC AND SANDRA FAYE
CEPEC**

vs

ADVANCE AUTO PARTS INC BORG WARNER MORSE TEC LLC ET AL

Entity - GENUINE PARTS COMPANY AKA NAPA

On 4/15/2015 at 12:00 PM a copy of the within writ together with a copy of the Summons and Complaint were served upon Amy McLaren, a representative for the registered agent CORPORATION TRUST COMPANY 1209 ORANGE STREET WILMINGTON, DE 19801 .

Fees Paid: \$80.00

Per: Deputy Sheriff, Ronald Fioravanti

SO ANS;

SHERIFF

PER Faith Brown

Sheriff # 15-003712

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Entity Details

<u>File Number:</u>	5266673	<u>Incorporation Date / Formation Date:</u>	12/27/2012 (mm/dd/yyyy)
<u>Entity Name:</u>	GENUINE PARTS COMPANY		
<u>Entity Kind:</u>	CORPORATION	<u>Entity Type:</u>	GENERAL
<u>Residency:</u>	FOREIGN	State:	GA
<u>Status:</u>	GOOD STANDING	Status Date:	12/27/2012

TAX INFORMATION

<u>Last Annual Report Filed:</u>	2014	Tax Due:	\$ 0.00
<u>Annual Tax Assessment:</u>	\$ 0.00	<u>Total Authorized Shares:</u>	0

REGISTERED AGENT INFORMATION

Name:	THE CORPORATION TRUST COMPANY		
Address:	CORPORATION TRUST CENTER 1209 ORANGE ST		
City:	WILMINGTON	County:	NEW CASTLE
State:	DE	Postal Code:	19801
Phone:	(302)658-7581		

FILING HISTORY (Last 5 Filings)

<u>Seq</u>	<u>Document Code</u>	<u>Description</u>	<u>No. of pages</u>	<u>Filing Date</u> (mm/dd/yyyy)	<u>Filing Time</u>	<u>Effective Date</u> (mm/dd/yyyy)
1	0102F	Foreign Qualification	2	12/27/2012	16:45	12/27/2012

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IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

IN RE: ASBESTOS LITIGATION

HUDSON, MARY ANNE v. INTERNATIONAL PAPER COMPANY
N14C-03-247

SCHULTZ, FRANK v. SEVERAL DEFENDANTS
13C-04-015

SCHULTZ, FRANK v. MANNINGTON MILLS
13C-04-015

HELMERS, LOREN v. CERTAINTEED CORPORATION
13C-02-058

SIMS, WALTER v. CERTAINTEED CORPORATION
13C-12-210

MEDEIROS, JOSE v. DAIMLER CHRYSLER N. AMER. & PACCAR CO.
N14C-10-061

BEFORE: THE HONORABLE PAUL R. WALLACE, J

MOTIONS FOR SUMMARY JUDGMENT
TOXIC TORT MOTIONS
THURSDAY, JULY 9, 2015

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1 down until you register. These are coercive provisions,
2 Your Honor. Again, coming back to Goodyear's language
3 about the coercive due process applying to limit the
4 coercive power of the state because it is an individual
5 right. Companies like International Paper, anyone now
6 with this limited personal jurisdiction faces a very
7 difficult position, it's something that is offensive to
8 due process, offensive to fair play, a substantial
9 injustice.

10 Your Honor, we would suggest that this
11 should not apply to International Paper. Thank you,
12 Your Honor.

13 THE COURT: Thank you.

14 (Brief pause.)

15 THE COURT: I have reviewed this matter
16 fully and read the cases, both sides. So, I'm ready to
17 rule on this matter.

18 The plaintiff, Mary Anne Hudson, is a
19 resident of Mississippi. She alleges take-home exposure
20 to asbestos from her family, from which she contracted
21 mesothelioma and other asbestos-related injuries and
22 diseases.

23 Her father and brother worked for

1 International Paper Company, and I'll call them IP or
2 International Paper in Moss Point, Mississippi. Her
3 father was a paper-machine operator and foreman in the
4 paper-making department from 1940 to 1984. And her
5 brother worked in the wood yard and the pulp mill from
6 1968 to 2000.

7 The plaintiff avers that she would shake out
8 and wash their dusty clothes. She filed lawsuits
9 against multiple defendants, including International
10 Paper which the complaint states is, quote, "a foreign
11 corporation doing business in the State of Delaware,"
12 end quote, with a registered agent in Delaware. The
13 plaintiffs here, in relation to this motion, provide a
14 printout of what appears to be the Delaware Secretary of
15 State's website, stating that International Paper
16 Company is a corporation in good standing, incorporated
17 as of August 12, 1986. And it lists its registered
18 agent as the one that Exhibit 4 says was served.

19 The International Paper now moves to dismiss
20 that complaint for lack of personal jurisdiction. It's
21 been admitted here that the entity that was responsible,
22 the International Paper entity that was responsible for
23 the activity in Moss Point, Mississippi, is, in fact, at

1 the very least, a registered business here with a
2 registered agent for service.

3 Superior Court Civil Rule of Procedure
4 (b) (12) -- I'm sorry, 12(b) (2), requires the Court to
5 dismiss an action in which it lacks personal
6 jurisdiction. When the defendant raises the personal
7 jurisdiction defense, the plaintiff bears the burden to
8 show a basis for jurisdiction under Delaware law.

9 For instance, *Arrow Global Capital*
10 *Management versus Cirrus*, C-I-R-R-U-S, a 2005 decision
11 by the Delaware Supreme Court states, quote, "A
12 plaintiff bears the burden of showing a basis for a
13 trial court's exercise of jurisdiction over a
14 nonresident defendant." Courts do not need to accept
15 all facts in the complaint as true when considering a
16 motion under 12(b) (2), necessarily. In fact, the *Hart*
17 *Holding v. Drexel Burnham* decision -- and Hart is
18 H-A-R-T -- a Delaware Chancery decision from 1991, makes
19 that clear, mainly because there may be other factual
20 issues or factual materials that have to be looked to in
21 a 12(b) (2) motion. And there, the Chancery Court was
22 interpreting its own identical rule because, generally,
23 the pleader has no obligation to plead facts that show

1 amenability of a defendant to serve as a process within
2 the complaint. It's not always put in there and it's
3 not necessary, not always necessary. In certain limited
4 circumstances, it may be.

5 If this Court was looking to find general
6 jurisdiction through implied consent through minimum
7 contact, it's clear, I think, from the record and the
8 record materials that the Court has before it, that
9 International Paper has no continuance and systematic
10 contacts with Delaware to support general personal
11 jurisdiction. It is incorporated in New York and
12 maintains its principal business in Tennessee, although
13 that's been brought into question by some of the
14 exhibits brought in by the plaintiff. But let's assume
15 for the moment that that would be true. According to
16 the record evidence the Court has before it, it does not
17 appear that the Court would be able to find minimum
18 contacts that it was, quote, "at home here," in that
19 regard.

20 More importantly, though, is the question
21 regarding whether or not it is a registered business,
22 assuming we got down to that level, the registered agent
23 and what effect that has. The courts typically engage

1 in a two-prong analysis to determine whether the
2 plaintiff has met its burden. As I mentioned before, it
3 has on such a motion.

4 First, the Court will consider whether
5 Delaware's law on Statute 10 Delaware Code Section 3104
6 applies. Again, that's *Harkgold* that indicates that.
7 Next, the Court will evaluate whether subjecting the
8 nonresident to jurisdiction violates the due-process
9 clause in the 14th Amendment, that minimum contacts
10 requirement. There are two recognized classes of
11 personal jurisdiction, general jurisdiction and specific
12 jurisdiction. Specific jurisdiction encompasses causes
13 of action that arise out of the defendant's contacts
14 with the forum state, while general jurisdiction
15 encompasses complaints arising from dealings that are
16 distinct from the defendant's contacts with the forum
17 state.

18 The Court may exercise general jurisdiction
19 over a foreign corporation only when the corporation's
20 affiliations with the state in which the suit is brought
21 are so continuously systematic as to render it
22 essentially at home in the forum, as I've noted before.
23 The Court could not necessarily find that here, based

1 just on the facts before it now in this motion to
2 dismiss. But in this case, the defendant contends and
3 the Court understands that the defendant contends that
4 the Court is not required to analyze this case under
5 Delaware's long arm statute because it is construed
6 broadly to confer jurisdiction to the maximum extent
7 possible under the due-process clause. So, the focus of
8 the inquiry traditionally rests on the constitutional
9 component, so citing one decision, one reason or
10 decision of the Delaware District Court.

11 But in the Court's view, the main issue here
12 is whether International Paper has expressly consented
13 to personal jurisdiction in Delaware by registering as a
14 foreign corporation with the Delaware Secretary of State
15 and appointing an agent to accept service of process,
16 both facts of which you indicate it has done and was
17 done, was present at the time the suit was filed. That
18 is because, quote, "consent has been recognized as a
19 basis for the exercise of general personal
20 jurisdiction." That's a quote from *Sternberg*.

21 Plaintiff argues that International Paper
22 has consented to personal jurisdiction in Delaware by
23 registering to do business in Delaware and appointing a

1 registered agent for service of process. I should say
2 they claim that's the least basis. There is reason to
3 believe it may actually -- the entity may actually be
4 E-incorporated here in Delaware. Quoting *Sternberg*,
5 they claim that, "If the foreign corporation has
6 expressed -- has expressly subjected itself to the
7 jurisdiction of the state by registration, due process
8 is satisfied and an examination of minimum contacts
9 defined by consent is unnecessary."

10 The District Court, as both parties have
11 talked about, has very recently -- the District Court
12 for the District of Delaware has very recently addressed
13 this issue and the Court finds the view most recently
14 expressed by the District of Delaware persuasive on this
15 issue. I have read *AstraZeneca*, I have read *Acorda*,
16 *A-C-O-R-D-A*, *Novartis*, and *Forest Labs*. In its most
17 recent opinion in *Forest Labs*, for instance, it is
18 explicitly held, quote, "Even after *International Shoe*,
19 a corporation could battle with consent, personal
20 jurisdiction in the state's court by complying with a
21 state registration statute, acquiring designation of an
22 agent for service of process, with the scope of that
23 consent restricted to the types of cases for which the

1 state statute required an agent to be so designated."

2 I also noted that the Delaware registration
3 statute has been interpreted by our Court in *Sternberg*
4 to mean that, quote, "When a foreign corporation
5 complies with its terms, including appointing an agent
6 for service of process in the state, this amounts to
7 actual expressed consent to personal jurisdiction
8 applicable to any cause of action, not simply one where
9 the foreign corporation acts in the State of Delaware."

10 For instance, in *Forest Labs*, the defendant
11 who had affirmatively appointed a registered agent in
12 Delaware to accept service of process, thereby complying
13 with the registration statute, has expressly consented
14 to be sued in Delaware.

15 The *Forest Labs* court further declined to
16 follow *AstraZeneca*, as have two other decisions of the
17 Delaware District Court since *AstraZeneca* which came to
18 the opposite conclusion. I understand there's an
19 opposite decision by Delaware District Court that
20 compliance with Delaware's registration statutes didn't
21 constitute consent to jurisdiction.

22 On the facts of the complaint here and what
23 I believe to be more persuasive decisions by the

1 District of Delaware, the fact is that *Sternberg v.*
2 *O'Neill* still is good law here in Delaware. I
3 understand the overlay that the defendants wish to place
4 on it. Given subsequent case law on issues involving
5 jurisdiction, on the facts of the complaint here, it
6 appears that International Paper has registered to do
7 business in the State of Delaware and designated an
8 agent in Delaware for acceptance of service of process.

9 Under *Forest Labs in Sternberg*, this Court
10 finds that International Paper in this particular
11 circumstance has expressly consented to personal
12 jurisdiction in Delaware; and therefore, the motion is
13 denied.

14 MR. SMITH: Thank you, Your Honor.

15 MS. SAMIS: Your Honor, that concludes our
16 business here. May we be excused?

17 THE COURT: Yes. Thank you.

18 MR. SENSOR: Us, as well, Your Honor?

19 THE COURT: Sure.

20 MR. SOECHTING: Thank you, Your Honor.

21

22 MR. RUFO: Your Honor, I would like to just
23 continue.

1 THE COURT: Yes.

2 MR. RUFO: If we would turn to Item No. 3, a
3 motion in the Schultz case which I filed on behalf of
4 all defendants. I will not be arguing that motion this
5 morning. However, Mr. Reid, Don Reid from Morris
6 Nichols will be arguing the motion.

7 THE COURT: If I don't do these orders now,
8 I get in trouble later. Sorry.

9 (Brief pause.)

10 THE COURT: I get e-mails from you, I get
11 calls from downstairs, things go ugly.

12

13 ITEM NO. 3: FRANK SCHULTZ v. SEVERAL DEFENDANTS

14

MOTION TO DISMISS

15

16 MR. REID: Good morning, Your Honor.

17 THE COURT: Good morning.

18 MR. REID: As Mr. Rufo stated, I will be
19 making the presentation on behalf of the defense group
20 on the limitations of the motion in the Frank Schultz
21 case.

22 As Your Honor has seen from the papers that
23 have been filed, there are quite a number of decisions

1 in the Delaware trial courts dealing with the borrowing
2 statutes and they're not all consistent. I would be
3 happy to address any of those decisions if Your Honor
4 has questions about them, but I think there's a better
5 approach.

6 Your Honor, I think of this motion as a bit
7 of a Rubik's Cube. If you approach it the right way,
8 there's a simple answer, a simple way to resolve it.

9 THE COURT: Yeah, unfortunately, I was
10 incredibly bad at that thing, I've never gotten one.

11 MR. REID: I'm here to try to help you do it
12 right. If you approach it wrong, we make a wrong turn,
13 it's very confusing, I'll grant you that. I had the
14 same trouble you did. But I think today we could
15 probably --

16 THE COURT: I think that's why we're both
17 lawyers. You need some math and science brain to do
18 that.

19 MR. REID: That's right. So, we'll keep it
20 simple, Your Honor, for people like you and I.

21 In this case, plaintiff concedes that all of
22 his claims are untimely under the Delaware two-year
23 statute of limitations in 819. That section reflects a

CERTIFICATE OF COURT STENOGRAPHER

I, Patrick J. O'Hare, RPR, CSR, Assistant Chief Court Stenographer of the Superior Court, State of Delaware, do hereby certify that the foregoing is an accurate transcript of the proceedings had, as reported by me, in the Superior Court of the State of Delaware, in and for New Castle County, in the case herein stated, as the same remains of record in the Office of the Prothonotary at Wilmington, Delaware. This certification shall be considered null and void if this transcript is disassembled in any manner by any party without authorization of the signatory below.

WITNESS my hand this 21st day of July 2014.

/s/ Patrick J. O'Hare, RPR, CSR

Official Court Stenographer
Delaware CSR No. 158-PS



U.S. CHAMBER
Institute for Legal Reform

2015 LAWSUIT CLIMATE SURVEY

Ranking the States

*A Survey of the Fairness and
Reasonableness of State Liability Systems*

SEPTEMBER 2015



U.S. CHAMBER
Institute for Legal Reform

An Affiliate of the U.S. Chamber of Commerce

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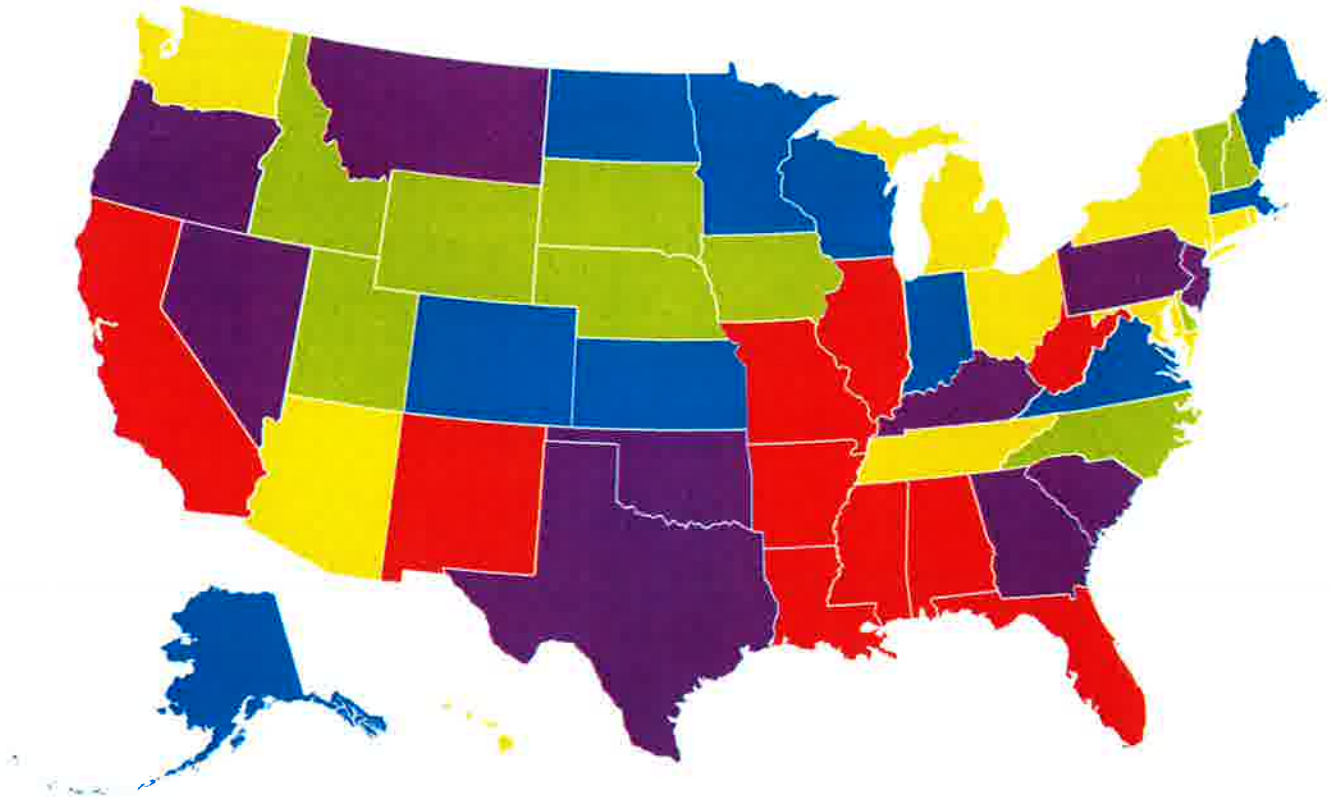
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Prepared for the U.S. Chamber Institute for Legal Reform by
Harris Poll

2015 Ranking of State Liability Systems



1—10	11—20	21—30	31—40	41—50
<ol style="list-style-type: none"> 1. Delaware 2. Vermont 3. Nebraska 4. Iowa 5. New Hampshire 6. Idaho 7. North Carolina 8. Wyoming 9. South Dakota 10. Utah 	<ol style="list-style-type: none"> 11. Virginia 12. Alaska 13. Minnesota 14. Maine 15. North Dakota 16. Colorado 17. Massachusetts 18. Indiana 19. Kansas 20. Wisconsin 	<ol style="list-style-type: none"> 21. New York 22. Connecticut 23. Tennessee 24. Michigan 25. Arizona 26. Rhode Island 27. Ohio 28. Maryland 29. Washington 30. Hawaii 	<ol style="list-style-type: none"> 31. Georgia 32. Oregon 33. Oklahoma 34. Montana 35. Nevada 36. South Carolina 37. Pennsylvania 38. New Jersey 39. Kentucky 40. Texas 	<ol style="list-style-type: none"> 41. Arkansas 42. Missouri 43. Mississippi 44. Florida 45. New Mexico 46. Alabama 47. California 48. Illinois 49. Louisiana 50. West Virginia

Overall Rankings of State Liability Systems 2008—2015

STATE	2015 RANK	SCORE	2012	2010	2008
Delaware	1	76.5	1	1	1
Vermont	2	73.8	16	25	8
Nebraska	3	73.0	2	3	2
Iowa	4	72.2	10	5	7
New Hampshire	5	70.7	21	16	16
Idaho	6	70.5	6	18	26
North Carolina	7	70.2	20	17	21
Wyoming	8	69.7	3	15	23
South Dakota	9	69.5	11	10	12
Utah	10	69.0	9	7	5
Virginia	11	68.3	7	6	6
Alaska	12	68.1	13	33	20
Minnesota	13	68.0	4	11	11
Maine	14	68.0	12	12	3
North Dakota	15	67.9	8	2	13
Colorado	16	67.8	23	8	9
Massachusetts	17	67.8	19	9	18
Indiana	18	67.7	14	4	4
Kansas	19	67.6	5	14	10
Wisconsin	20	66.6	15	22	24
New York	21	66.3	18	23	25
Connecticut	22	65.9	25	24	19
Tennessee	23	65.7	26	19	22
Michigan	24	65.5	27	30	33
Arizona	25	65.4	17	13	15
Rhode Island	26	64.6	31	38	39
Ohio	27	64.2	30	29	32
Maryland	28	63.9	33	20	30
Washington	29	63.8	22	26	27
Hawaii	30	62.8	29	35	45
Georgia	31	62.4	24	27	28
Oregon	32	61.2	28	21	14
Oklahoma	33	61.0	42	31	17
Montana	34	60.5	45	43	38
Nevada	35	60.4	37	28	40
South Carolina	36	59.4	39	39	43
Pennsylvania	37	59.4	40	34	36
New Jersey	38	59.3	32	32	35
Kentucky	39	59.0	38	40	29
Texas	40	58.5	36	36	41
Arkansas	41	57.7	35	44	34
Missouri	42	56.6	34	37	31
Mississippi	43	56.3	48	48	48
Florida	44	56.0	41	42	42
New Mexico	45	55.2	44	41	37
Alabama	46	55.1	43	47	47
California	47	49.9	47	46	44
Illinois	48	48.0	46	45	46
Louisiana	49	46.5	49	49	49
West Virginia	50	46.3	50	50	50

Scores displayed in this table have been rounded to one decimal point. However, when developing the ranking, scores were evaluated based on two decimal points. Therefore, states that appear tied based upon the scores in this table were not tied when two decimal points were taken into consideration.

Overview

The 2015 Lawsuit Climate Survey: Ranking the States was conducted for the U.S. Chamber Institute for Legal Reform by the *Harris Poll* to explore how fair and reasonable the states' tort liability systems are perceived to be by U.S. businesses.

The 2015 Lawsuit Climate Survey constitutes the tenth fielding of the survey and builds upon previous studies, the first of which was initiated in 2002.¹ Prior to these rankings, information regarding the attitudes of the business community toward the legal systems in each of the states had been largely anecdotal. *The 2015 Lawsuit Climate Survey* aims to quantify how corporate attorneys, as significant participants in state courts, view the state systems by measuring and synthesizing their perceptions of key elements of each state's liability system into a 1-50 ranking.

Participants in the survey were comprised of a national sample of 1,203 in-house general counsel, senior litigators or attorneys, and other senior executives at companies with at least \$100 million in annual revenues² who indicated they: (1) are knowledgeable about litigation matters; and (2) have recent litigation experience in each state they evaluate.

It is important to remember that, while courts and localities within a state may vary a great deal in fairness and reasonableness, respondents were asked to evaluate the state as a whole. To explore the nuances within each state would have required extensive questioning about each state and was beyond the scope and purpose of this study. It is possible that some states received low grades due to the negative reputation of one or more of their counties or jurisdictions.

The 2015 survey reveals that the overall average scores of the states are increasing, and senior attorneys see the litigation environment improving generally: half of the respondents (50%) view the fairness and reasonableness of state court liability systems in the United States as excellent or pretty good, up from 49% in 2012 and 44% in 2010. The remaining 50% view the system as only fair or poor, or declined to answer (1%).

Moreover, a state's litigation environment continues to be important to senior litigators, with three-quarters (75%) of respondents reporting that it is likely to impact important business decisions at their companies, such as where to locate or do business. This is a significant increase from 70% in 2012 and 67% in 2010.

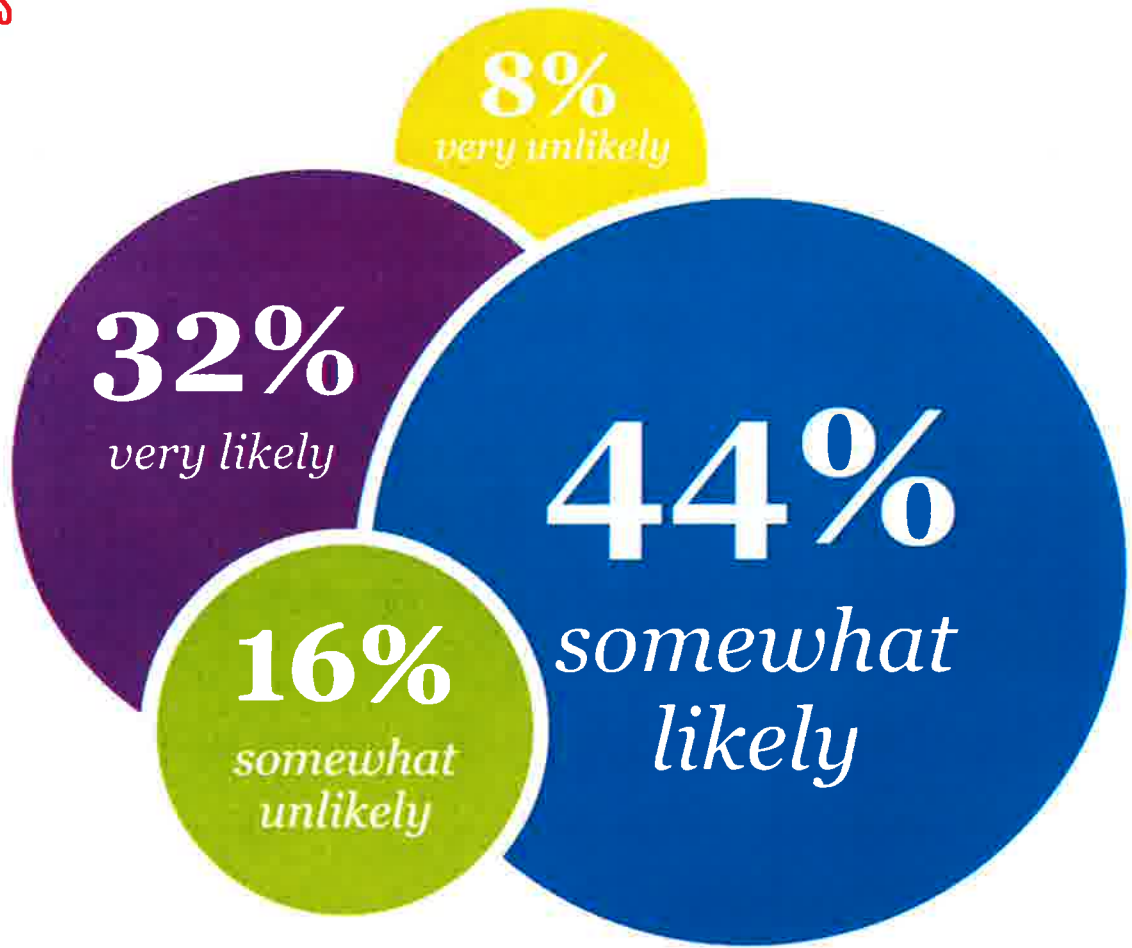
1. 2012, 2010, 2008, 2007, 2006, 2005, 2004, 2003, and 2002.

2. *Smaller companies were not surveyed because they so infrequently have in-house law departments.*

OVERVIEW

Impact of Litigation Environment on Important Business Decisions

How likely would you say it is that the litigation environment in a state could affect an important business decision at your company such as where to locate or do business?



75%*

*of respondents reported that a state's litigation environment is **likely** to impact important business decisions.*

Results are given for a base of 1,203 general counsel/senior litigators.

*Differences between chart values and nets are due to rounding.

OVERVIEW

Respondents were asked to give states a grade (A through F) in each of the following areas:

Having and enforcing meaningful venue requirements

Overall treatment of tort and contract litigation

Treatment of class action suits and mass consolidation suits

Damages

Timeliness of summary judgment or dismissal

Discovery

Scientific and technical evidence

Judges' impartiality

Judges' competence

Juries' fairness

Respondents were also asked to give the state an overall grade for creating a fair and reasonable litigation environment. These elements were then combined to create an overall ranking of state liability systems.

OVERVIEW

Taken as a whole, general counsel and senior litigators perceive state courts to be doing better than average on the various elements. States received significantly more A's and B's (52%) than D's and F's (16%) when all of the elements were averaged together.

AVERAGE PERCENTAGE ACROSS ALL ELEMENTS AMONG 50 STATES

<i>Grade</i>	<i>Average Percentage</i>
A	14%
B	38%
C	27%
D	11%
F	5%
Not sure/ Decline to answer	5%

Since the inception of the survey, there has been a general increase in the overall average score (expressed numerically on a scale of 1 to 100) of state liability systems, and this trend continues with the 2015 survey. The 2015 score has increased by 0.8 percentage points, building on the significant increase made in 2012.

AVERAGE OVERALL SCORE AMONG 50 STATES

<i>Year</i>	<i>Average Overall Score</i>
2015	61.7
2012	60.9
2010	57.9
2008	59.4
2007	58.1
2006	55.3
2005	52.8
2004	53.2
2003	50.7
2002	52.7

Most Important Issues for Improving the Litigation Environment

The study also asked respondents to select the most important issue needed to improve the litigation environment. Eliminating unnecessary lawsuits was mentioned by 32% of the attorneys who completed the survey. Other top issues named were placing reasonable limits on discovery (15%), limiting punitive or other types of damages (11%), and increasing the effectiveness of judicial case management (11%).

Worst Local Jurisdictions

In order to understand if there are any cities or counties that might impact a state's ranking, the respondents were asked to select cities or counties that have the least fair and reasonable litigation environments. Respondents were provided a list of cities or counties that have a reputation of being problematic when it comes to contract and tort litigation and had the option of inserting a city or county not on the list. The worst jurisdiction was East Texas (26%); followed by Chicago or Cook County, Illinois (20%); Los Angeles, California (16%); Madison County, Illinois (16%); and New Orleans or Orleans Parish, Louisiana (15%).

To understand why senior litigators view particular jurisdictions negatively, a follow-up question was asked to those who cited a jurisdiction. A quarter (24%) mentioned that the reason why a city or county has the least fair and reasonable litigation environment is because of biased or partial jury/judges. Similar to 2012, this is the number one reason by a large margin. The next reasons provided include corrupt/unfair system (11%), poor quality of jury/judges (7%), personal experience (7%), a slow process/delays (6%), and excessive damage awards (6%).

Conclusion

Several organizations and academics³ have conducted and analyzed surveys of attitudes toward the state courts held by various constituencies. The objective of these studies has been to understand how the state courts are perceived, and in some instances to evaluate them, overall or in part. Until the annual State Liability Systems Ranking Study was initiated in 2002, no data existed on how the state courts are perceived by the business community, which is a significant user of, and participant in, the court system. This, the tenth such survey and state ranking, finds that while the overall average scores of the states are increasing, the senior lawyers in large corporations still have mixed perceptions about the fairness and reasonableness of state liability systems overall. They are split: about half believe that the states are doing an excellent or pretty good job with respect to their state liability systems, and the other half believe the states' systems are only fair or poor. On the various elements, the general counsel and senior litigators give state courts more A's and B's than D's and F's.

3. Analysis of National Survey of Registered Voters, National Center for State Courts (2014); Citizen Perceptions of Judicial Realism in the American State Courts, Brigham Young University Center for the Study of Elections and Democracy (2014); Public Trust and Confidence Survey, State of Utah Administrative Office of the Courts (2012); The Sources of Public Confidence in State Courts, American Politics Research (2003); Perceptions of the U.S. Justice System, American Bar Association (1999).

OVERVIEW

An examination of individual state evaluations, however, reveals wide disparity among those states that are doing the best job and those states that are doing the worst job, with the highest performing state (Delaware) scoring 77 out of a possible 100, and the poorest performing state (West Virginia) scoring 46 out of 100. However, the poorest performing state score for West Virginia does reflect a 1 percentage point improvement over the 2012 survey results and an 11 percentage point improvement since 2010.

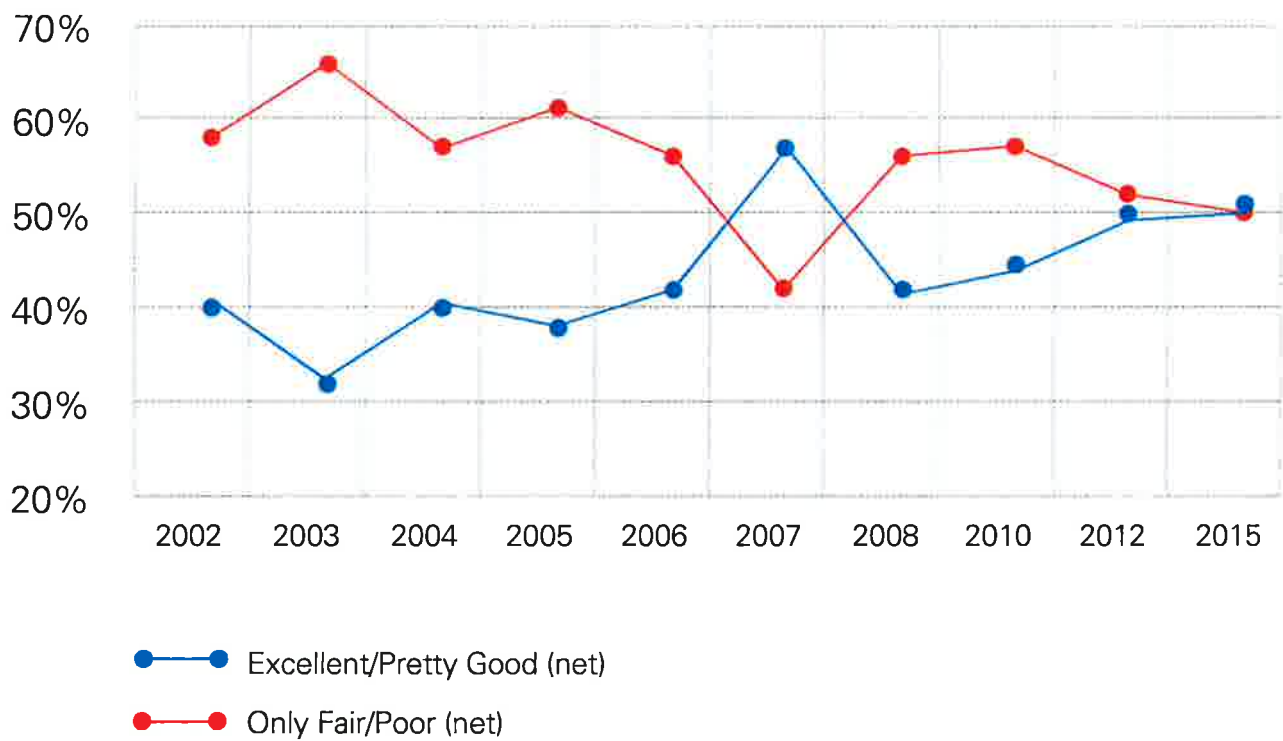
Clearly, corporate counsel see specific areas for improvement in the individual states, and the perceptions of senior lawyers and executives in large companies matter. This survey reveals that three in four senior lawyers and executives feel that the litigation environment in a state is likely to impact important business decisions, which could have economic consequences for the states. The challenge for the states is to focus on those areas where they received the lowest scores and then make improvements where they are needed.

“ Clearly, corporate counsel see specific areas for improvement in the individual states, and the perceptions of senior lawyers and executives in large companies matter. ”

OVERVIEW

Overall Rating of State Court Liability Systems Over Time

Overall, how would you describe the fairness and reasonableness of state court systems in America?



2015 results are given for a base of 1,203 general counsel/senior litigators.

Spotlight

State policymakers inevitably want to know the reasons behind their state's ranking, particularly if they fared poorly. Exactly what happens in the courts that businesses find unfair or unreasonable? When states receive less than optimal grades, what reforms should be considered when they contemplate their results? Are the problems in an individual state's liability system state-wide, or is the state's ranking skewed by one (or more) individual city or county court that is viewed as particularly unfair or unreasonable? The Spotlight section answers these questions by highlighting findings from *The 2015 Lawsuit Climate Survey* that provide additional context to the state ranking itself.

These Spotlight issues are important in-and-of themselves but are not part of the actual calculation of the overall rankings of state liability systems; they simply provide additional insight for policymakers to consider.

SPOTLIGHT

Most Important Issues for Improving the Litigation Environment

Eliminating unnecessary lawsuits	32%
Placing reasonable limits on discovery	15%
Limiting punitive or other types of damages	11%
Increasing the effectiveness of judicial case management	11%
Ensuring timely court decisions	9%
Assuring that liability is properly allocated among defendants	9%
Addressing e-discovery	6%

Results are given for a base of 1,203 general counsel/senior litigators who were asked, “Which of the following do you think is the single most important improvement that should be made in a litigation environment?”

Respondents were provided with this closed end list of items to evaluate. Additional responses volunteered by respondents at “Other” were all below 1%.

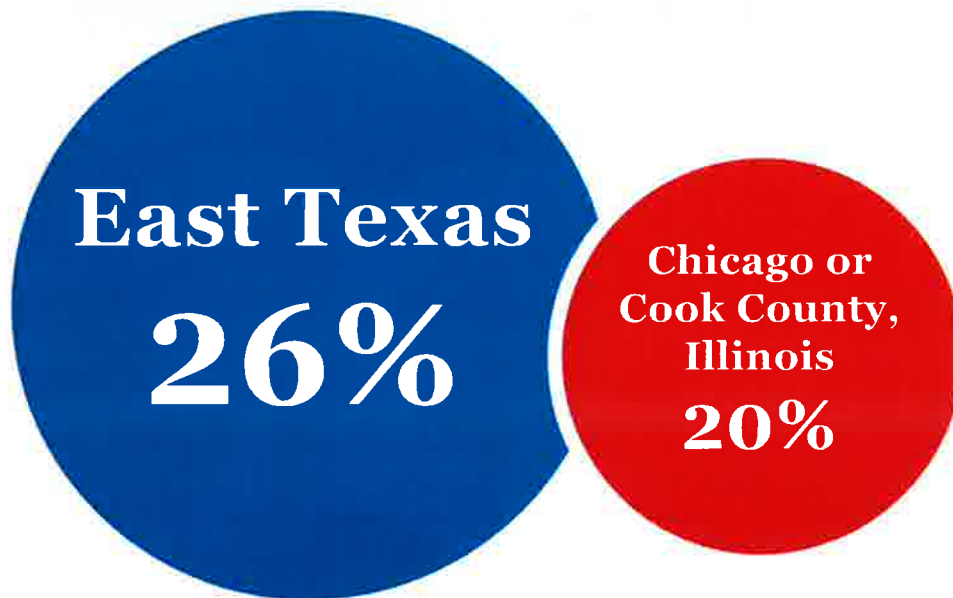


Worst Local Jurisdictions

East Texas	26%
Chicago or Cook County, Illinois	20%
Los Angeles, California	16%
Madison County, Illinois	16%
New Orleans or Orleans Parish, Louisiana	15%
New York, New York	10%
San Francisco, California	10%
Miami or Dade County, Florida	10%
Philadelphia, Pennsylvania	7%
St. Louis, Missouri	7%
Detroit, Michigan	7%
Washington, DC	5%

Results are given for a base of 1,203 general counsel/senior litigators who were asked, “Thinking about the entire country, which of the following do you think are the worst city or county courts? That is, which city or county courts have the least fair and reasonable litigation environment for both defendants and plaintiffs?”

Respondents were asked to provide up to two responses to this closed end list of city and county courts. Other mentions volunteered by respondents at “Other” in the list were all below 1%.



SPOTLIGHT

Top Issues Mentioned as Creating the Least Fair and Reasonable Litigation Environment

Biased/partial judgment	24%
Corrupt/unfair system	11%
Poor quality of jury/judges	7%
Personal experience	7%
Slow process/delays	6%
Excessive damage awards/not reasonable	6%
Anti-business/anti-corporate	5%
Have read/seen a case study	5%
Heavily influenced by politics	4%
Good old boy system/depends on who you know	4%
Poor/bad system	4%
Overburdened with cases/too many cases/backlog	4%
Unpredictable jury/judges/system	3%
Base judgments on irrelevant factors/emotion not fact	3%
Incompetent jury/judges/system	3%
Patent trolls/favorable to patent cases	3%
Frivolous litigation	3%
Asbestos litigation	3%
Does not adhere to laws/rules	3%
Uneducated jury/judges	2%
Unfair jury/judges	2%
Liberal jury/judges/system	2%
Poor jury pool	2%
Unreasonable rulings/verdicts	2%
Bad reputation	2%
Personal opinion	2%
Discovery issues	2%
It has become too dependent on class action suits	2%
Expensive/high court costs	2%

Results given are for a base of 1,034 general counsel/senior litigators who were asked, "Why do you say [Insert Name of City or County] has the LEAST fair and reasonable litigation environment for both defendants and plaintiffs?"

The responses displayed in this table were volunteered by respondents. Mentions of at least 2% are shown above.

Summary of Top/Bottom 5 States by Key Elements

Overall treatment of tort and contract litigation	BEST 1. Delaware 2. Vermont 3. Nebraska 4. South Dakota 5. North Carolina	WORST 50. West Virginia 49. Louisiana 48. Illinois 47. California 46. New Mexico
Having and enforcing meaningful venue requirements	BEST 1. Delaware 2. Nebraska 3. New York 4. Vermont 5. Minnesota	WORST 50. Illinois 49. West Virginia 48. Louisiana 47. California 46. New Mexico
Treatment of class action suits and mass consolidation suits	BEST 1. Delaware 2. Vermont 3. Idaho 4. Nebraska 5. Wyoming	WORST 50. California 49. Illinois 48. Louisiana 47. West Virginia 46. Missouri
Damages	BEST 1. Delaware 2. Kansas 3. Vermont 4. South Dakota 5. Iowa	WORST 50. California 49. Louisiana 48. Illinois 47. West Virginia 46. Alabama
Timeliness of summary judgment or dismissal	BEST 1. Delaware 2. Vermont 3. Nebraska 4. Idaho 5. Wyoming	WORST 50. Louisiana 49. West Virginia 48. California 47. Illinois 46. Alabama

Discovery

BEST	WORST
1. Vermont	50. West Virginia
2. Delaware	49. California
3. Nebraska	48. Illinois
4. New Hampshire	47. Louisiana
5. Iowa	46. New Mexico

Scientific and technical evidence

BEST	WORST
1. Vermont	50. West Virginia
2. Delaware	49. Louisiana
3. Massachusetts	48. Illinois
4. New York	47. Alabama
5. Iowa	46. Arkansas

Judges' impartiality

BEST	WORST
1. Vermont	50. Louisiana
2. Delaware	49. West Virginia
3. Iowa	48. Illinois
4. Nebraska	47. New Mexico
5. New Hampshire	46. Texas

Judges' competence

BEST	WORST
1. Delaware	50. Louisiana
2. Massachusetts	49. West Virginia
3. Maine	48. Illinois
4. Wyoming	47. New Mexico
5. Iowa	46. California

Juries' fairness

BEST	WORST
1. Nebraska	50. Louisiana
2. Delaware	49. California
3. New Hampshire	48. Illinois
4. Iowa	47. West Virginia
5. Vermont	46. Alabama

Key Elements

Most state liability systems have elements that function well, and others that do not. In evaluating how the states are perceived overall, this survey attempts to illuminate the observed strengths and weaknesses of specific aspects of state liability systems. It helps to pinpoint particular areas that may have lowered or raised the overall rankings.

This section of the report shows the state rankings by Key Element—the ten individual elements that respondents were asked to grade in each state. These key elements are the heart of the survey and what are used to develop the (1–50) Overall Ranking of State Liability Systems, as described in the Methodology section.

KEY ELEMENTS

**Overall Treatment
of Tort and
Contract Litigation**

STATE	RANK	STATE	RANK
Delaware	1	Ohio	26
Vermont	2	Rhode Island	27
Nebraska	3	Maryland	28
South Dakota	4	Oklahoma	29
North Carolina	5	Oregon	30
Iowa	6	South Carolina	31
Idaho	7	Washington	32
Virginia	8	Georgia	33
Wyoming	9	Nevada	34
New Hampshire	10	Montana	35
Indiana	11	Texas	36
Kansas	12	Kentucky	37
Colorado	13	Pennsylvania	38
North Dakota	14	New Jersey	39
Connecticut	15	Arkansas	40
Alaska	16	Hawaii	41
Maine	17	Alabama	42
Utah	18	Mississippi	43
New York	19	Missouri	44
Arizona	20	Florida	45
Wisconsin	21	New Mexico	46
Minnesota	22	California	47
Massachusetts	23	Illinois	48
Michigan	24	Louisiana	49
Tennessee	25	West Virginia	50

KEY ELEMENTS

**Having and
Enforcing
Meaningful Venue
Requirements**

STATE	RANK	STATE	RANK
Delaware	1	Colorado	26
Nebraska	2	Tennessee	27
New York	3	Hawaii	28
Vermont	4	Oregon	29
Minnesota	5	Oklahoma	30
Maine	6	Georgia	31
Maryland	7	Washington	32
Idaho	8	Nevada	33
Connecticut	9	South Carolina	34
Wyoming	10	Kentucky	35
North Carolina	11	Pennsylvania	36
New Hampshire	12	New Jersey	37
Kansas	13	Alabama	38
Iowa	14	Texas	39
Utah	15	Montana	40
Virginia	16	Rhode Island	41
Massachusetts	17	Florida	42
Ohio	18	Missouri	43
South Dakota	19	Mississippi	44
North Dakota	20	Arkansas	45
Arizona	21	New Mexico	46
Wisconsin	22	California	47
Indiana	23	Louisiana	48
Alaska	24	West Virginia	49
Michigan	25	Illinois	50

KEY ELEMENTS

**Treatment of Class
Action Suits
and Mass
Consolidation Suits**

STATE	RANK	STATE	RANK
Delaware	1	Massachusetts	26
Vermont	2	Oregon	27
Idaho	3	Wisconsin	28
Nebraska	4	Ohio	29
Wyoming	5	Georgia	30
South Dakota	6	Maryland	31
North Dakota	7	Washington	32
Utah	8	Texas	33
Rhode Island	9	Montana	34
Iowa	10	Pennsylvania	35
Alaska	11	Nevada	36
Tennessee	12	Kentucky	37
North Carolina	13	South Carolina	38
Colorado	14	Oklahoma	39
Maine	15	New Mexico	40
Michigan	16	New Jersey	41
Indiana	17	Alabama	42
Minnesota	18	Mississippi	43
Connecticut	19	Arkansas	44
Hawaii	20	Florida	45
New York	21	Missouri	46
Virginia	22	West Virginia	47
Kansas	23	Louisiana	48
New Hampshire	24	Illinois	49
Arizona	25	California	50

KEY ELEMENTS



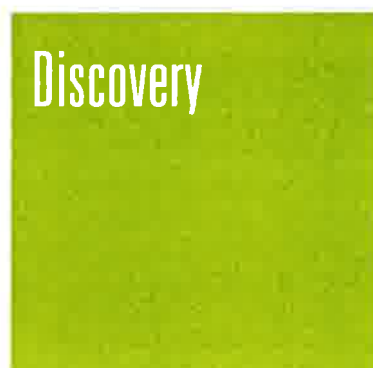
STATE	RANK	STATE	RANK
Delaware	1	Massachusetts	26
Kansas	2	Connecticut	27
Vermont	3	Oklahoma	28
South Dakota	4	New York	29
Iowa	5	Georgia	30
New Hampshire	6	Hawaii	31
Nebraska	7	Washington	32
Idaho	8	Montana	33
North Carolina	9	Pennsylvania	34
Wyoming	10	Oregon	35
Utah	11	Arkansas	36
North Dakota	12	Texas	37
Rhode Island	13	New Jersey	38
Alaska	14	Kentucky	39
Virginia	15	South Carolina	40
Indiana	16	Nevada	41
Wisconsin	17	Missouri	42
Colorado	18	Mississippi	43
Maine	19	New Mexico	44
Minnesota	20	Florida	45
Tennessee	21	Alabama	46
Arizona	22	West Virginia	47
Michigan	23	Illinois	48
Ohio	24	Louisiana	49
Maryland	25	California	50

KEY ELEMENTS

Timeliness
of Summary
Judgment or
Dismissal

STATE	RANK	STATE	RANK
Delaware	1	Oklahoma	26
Vermont	2	Maryland	27
Nebraska	3	Rhode Island	28
Idaho	4	Washington	29
Wyoming	5	Montana	30
Alaska	6	Oregon	31
Iowa	7	Nevada	32
North Carolina	8	Ohio	33
New Hampshire	9	Texas	34
North Dakota	10	New York	35
Utah	11	Georgia	36
Hawaii	12	South Carolina	37
Maine	13	Kentucky	38
Minnesota	14	Pennsylvania	39
South Dakota	15	New Mexico	40
Wisconsin	16	Mississippi	41
Kansas	17	Missouri	42
Massachusetts	18	Arkansas	43
Virginia	19	New Jersey	44
Michigan	20	Florida	45
Connecticut	21	Alabama	46
Arizona	22	Illinois	47
Indiana	23	California	48
Colorado	24	West Virginia	49
Tennessee	25	Louisiana	50

KEY ELEMENTS



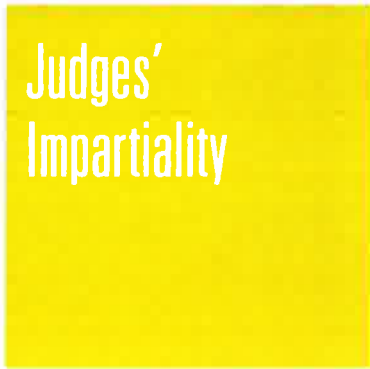
STATE	RANK	STATE	RANK
Vermont	1	Nevada	26
Delaware	2	North Dakota	27
Nebraska	3	Ohio	28
New Hampshire	4	New York	29
Iowa	5	Maine	30
North Carolina	6	Georgia	31
Virginia	7	Montana	32
Utah	8	Oklahoma	33
South Dakota	9	Rhode Island	34
Idaho	10	Oregon	35
Indiana	11	Pennsylvania	36
Colorado	12	Texas	37
Kansas	13	Arkansas	38
Minnesota	14	Kentucky	39
Massachusetts	15	South Carolina	40
Wyoming	16	New Jersey	41
Wisconsin	17	Mississippi	42
Maryland	18	Florida	43
Tennessee	19	Alabama	44
Hawaii	20	Missouri	45
Arizona	21	New Mexico	46
Michigan	22	Louisiana	47
Alaska	23	Illinois	48
Connecticut	24	California	49
Washington	25	West Virginia	50

KEY ELEMENTS

**Scientific
and Technical
Evidence**

STATE	RANK	STATE	RANK
Vermont	1	Washington	26
Delaware	2	Ohio	27
Massachusetts	3	Kansas	28
New York	4	Maryland	29
Iowa	5	Tennessee	30
North Carolina	6	Georgia	31
Idaho	7	Pennsylvania	32
Minnesota	8	New Jersey	33
Colorado	9	Montana	34
Nebraska	10	Hawaii	35
South Dakota	11	Oklahoma	36
Connecticut	12	Texas	37
Virginia	13	Oregon	38
Utah	14	New Mexico	39
New Hampshire	15	South Carolina	40
Michigan	16	Florida	41
Indiana	17	California	42
Wyoming	18	Missouri	43
Wisconsin	19	Kentucky	44
Rhode Island	20	Mississippi	45
Maine	21	Arkansas	46
North Dakota	22	Alabama	47
Arizona	23	Illinois	48
Alaska	24	Louisiana	49
Nevada	25	West Virginia	50

KEY ELEMENTS



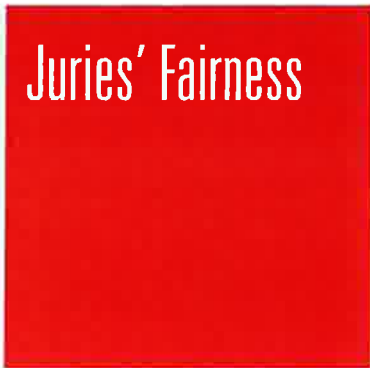
STATE	RANK	STATE	RANK
Vermont	1	Maryland	26
Delaware	2	Ohio	27
Iowa	3	Rhode Island	28
Nebraska	4	Michigan	29
New Hampshire	5	Hawaii	30
North Dakota	6	Georgia	31
North Carolina	7	New Jersey	32
Virginia	8	Oregon	33
Utah	9	Montana	34
Colorado	10	Kentucky	35
Minnesota	11	Arkansas	36
Massachusetts	12	Pennsylvania	37
Wyoming	13	Nevada	38
South Dakota	14	Florida	39
Alaska	15	Missouri	40
Indiana	16	Oklahoma	41
Kansas	17	South Carolina	42
Connecticut	18	Alabama	43
Idaho	19	Mississippi	44
Wisconsin	20	California	45
Arizona	21	Texas	46
New York	22	New Mexico	47
Tennessee	23	Illinois	48
Maine	24	West Virginia	49
Washington	25	Louisiana	50

KEY ELEMENTS



STATE	RANK	STATE	RANK
Delaware	1	Rhode Island	26
Massachusetts	2	Connecticut	27
Maine	3	Ohio	28
Wyoming	4	Georgia	29
Iowa	5	Arizona	30
Nebraska	6	New Jersey	31
Alaska	7	Hawaii	32
Vermont	8	Pennsylvania	33
New Hampshire	9	Montana	34
Idaho	10	Missouri	35
South Dakota	11	Kentucky	36
Utah	12	Oregon	37
Virginia	13	Nevada	38
Colorado	14	Oklahoma	39
Minnesota	15	Mississippi	40
New York	16	Arkansas	41
Indiana	17	Texas	42
North Carolina	18	Florida	43
Kansas	19	South Carolina	44
Washington	20	Alabama	45
Maryland	21	California	46
North Dakota	22	New Mexico	47
Tennessee	23	Illinois	48
Wisconsin	24	West Virginia	49
Michigan	25	Louisiana	50

KEY ELEMENTS



STATE	RANK	STATE	RANK
Nebraska	1	Hawaii	26
Delaware	2	Michigan	27
New Hampshire	3	Ohio	28
Iowa	4	Montana	29
Vermont	5	New York	30
Maine	6	Georgia	31
North Dakota	7	Maryland	32
Rhode Island	8	Oregon	33
Idaho	9	Nevada	34
South Dakota	10	Oklahoma	35
North Carolina	11	Kentucky	36
Alaska	12	Pennsylvania	37
Wyoming	13	South Carolina	38
Indiana	14	New Jersey	39
Kansas	15	Missouri	40
Colorado	16	Arkansas	41
Utah	17	Texas	42
Virginia	18	New Mexico	43
Minnesota	19	Mississippi	44
Arizona	20	Florida	45
Wisconsin	21	Alabama	46
Washington	22	West Virginia	47
Massachusetts	23	Illinois	48
Tennessee	24	California	49
Connecticut	25	Louisiana	50

Methodology

The 2015 Lawsuit Climate Survey: Ranking the States was conducted for the U.S. Chamber Institute for Legal Reform by the *Harris Poll*. The final results are based on interviews with a national sample of 1,203 in-house general counsel, senior litigators or attorneys, and other senior executives who are knowledgeable about litigation matters at public and private companies with annual revenues of at least \$100 million.

The general counsel, senior litigators or attorneys, and other senior executives included in this study were involved in or very familiar with litigation in the states they evaluated within the past four years. On average, each telephone respondent evaluated four states, and each online respondent evaluated five states.⁴ As a result, these 1,203 individual respondents represent a total of 5,346 responses or state evaluations.

Phone interviews averaging 26 minutes in length were conducted with a total of 560 respondents and took place between March 9, 2015, and June 24, 2015. Online interviews using the same questionnaire and averaging 14 minutes in length were conducted with a total of 643 respondents and took place between March 12, 2015, and June 24, 2015. As a point of reference, the 2012 research was conducted between March 13, 2012, and June 25, 2012. The remaining prior years' research was conducted during October to January in the years 2002–2010.

Sample Design

For the telephone sample, a comprehensive list of general counsel at companies with annual revenues of at least \$100 million was compiled using Hoovers Phone, InfoUSA, ALM Legal Intelligence and Leadership Directories. An alert letter was sent to the general counsel at each company. This letter provided general information about the study and notified the recipient of the option to take the survey online or by phone.

4. The number of evaluations was rounded to the nearest whole number.

METHODOLOGY

It told them that an interviewer from Harris Poll would be contacting them to set up an appointment for a telephone interview if that was their preference. The letter included a toll-free number for respondents to call and schedule an appointment for a telephone interview. It also alerted the respondent to a \$100 incentive in the form of a gift card or charitable donation given in appreciation of the time invested in taking the survey.

For the online sample, the e-mail addresses for a representative sample of general counsel and other senior attorneys were drawn from Hoovers ConnectMail, ALM Law Journal, Today's General Counsel, National Data Group, InfoUSA, ALM Legal Intelligence and Leadership Directories. Respondents received an electronic version of the alert letter, which included a password-protected link to take the survey. Once they accessed the survey online, all respondents were screened to ensure that they worked for companies with more than \$100 million in annual revenues.

Sample Characteristics

A vast majority (73%) of respondents were general counsel, corporate counsel, associate or assistant counsel, or some other senior litigator or attorney. The remaining respondents were senior executives knowledgeable about or responsible for litigation at their companies. Respondents had an average of 19 years of relevant legal experience, including in their current position, and had been involved in or familiar with litigation at their current companies for an average of 10 years. All respondents were familiar with or had litigated in the states they rated within the past four years; 78% fell within the past three years. The most common industry sector represented was manufacturing, followed by services and finance.

Telephone Interviewing Procedures

The telephone interviews utilized a computer-assisted telephone interviewing (CATI) system, whereby trained interviewers call and immediately input responses into the computer. This system greatly enhances reporting reliability. It also reduces clerical error by eliminating the need for keypunching, since interviewers enter respondent answers directly into a computer terminal during the interview itself. This data entry program does not permit interviewers to inadvertently skip questions, as each question must be answered before the computer moves on to the next question. The data entry program also ensures that all skip patterns are correctly followed. Furthermore, the online data editing system refuses to accept punches that are out-of-range, demands confirmation of responses that exceed expected ranges, and asks for explanations for inconsistencies between certain key responses.

METHODOLOGY

To achieve high participation, in addition to the alert letters, numerous telephone callbacks were made to reach respondents and conduct the interviews at a convenient time. Interviewers also offered to send respondents an e-mail invitation so that respondents could take the survey online on their own time.

Online Interviewing Procedures

All online interviews were hosted on Harris Poll's server and were conducted using a self-administered, online questionnaire via proprietary Web-assisted interviewing software. The mail version of the alert letter directed respondents to a URL and provided participants with a unique ID and password that they were required to enter on the landing page of the survey. Those who received an e-mail version of the alert letter accessed the survey by clicking on the password-protected URL included in the e-mail. Due to password protection, it was not possible for a respondent to answer the survey more than once. Respondents for whom we had e-mail addresses received an initial invitation as well as reminder e-mails.

Interviewing Protocol

After determining that respondents were qualified to participate in the survey using a series of screening questions, respondents identified the state liability systems with which they were familiar. The respondents were then asked to identify the last time they litigated in or were familiar with the states' liability systems: responses included in this study were from respondents who were involved in or very familiar with litigation in the state within the past four years. From there, respondents were given the opportunity to evaluate the states' liability systems, prioritized by most recent litigation experience. As stated earlier, respondents evaluated four states, on average, via telephone and five states, on average, online.

Rating and Scoring of States

States were given a grade (A through F) by respondents for each of the key elements of their liability system, providing a rating of the states by these grades, the percentage of respondents giving each grade, and the mean grade for each element. The mean grade was calculated by converting the letter grade using a 5.0 scale where A = 5.0, B = 4.0, C = 3.0, D = 2.0, and F = 1.0. Therefore, the mean score displayed can also be interpreted as a letter grade. For example, a mean score of 2.8 is roughly a C- grade.

Mean Grade Scale

A=5.0

B=4.0

C=3.0

D=2.0

F=1.0

Index Grade Scale

A = 100

B = 75

C = 50

D = 25

F = 0

The Overall Rankings of State Liability Systems table was developed by creating an index using the grades provided for each of the key elements plus the overall performance grade. All of the key elements were highly correlated with one another and with overall performance. The differences in the relationship between each element and overall performance were trivial, so it was determined that each element should contribute equally to the index score. To create the index, each grade across the elements plus the overall performance grade were rescaled from 0 to 100 (A = 100, B = 75, C = 50, D = 25, and F = 0). Then, any evaluation that contained 6 or more “not sure” or “decline to answer” responses per state was removed. A total of 5.2% of state evaluations were unusable. From the usable evaluations, the scores on the elements were then averaged together to create the index score from 0 to 100.

The scores displayed in this report have been rounded to one decimal point, but rankings are based on the full, unrounded number. States that appear tied based upon the scores in this report were tied when the unrounded numbers were taken into consideration.

For the Rankings on Key Elements, a score was calculated per element for each state based on the 0 to 100 rescaled performance grades. The states were then ranked by their mean scores on that element.

Reliability of Survey Percentages

The results from any sample survey are subject to sampling variation. The sampling variation (or error) that applies to the results for this survey of 1,203 respondents is plus or minus 2.8 percentage points. That is, the chances are 95 in 100 that a survey result does not vary, plus or minus, by more than 2.8 percentage points from the result that would have been obtained if interviews were conducted with all persons in the universe represented by the sample. Note that survey results based on subgroups of smaller sizes can be subject to larger sampling error.

Sampling error of the type so far discussed is only one type of error. Survey research is also susceptible to other types of error, such as refusals to be interviewed (nonresponse error), question wording and question order, interviewer error, and weighting by demographic control data. Although it is difficult or impossible to quantify these types of error, the procedures followed by Harris Poll keep errors of these types to a minimum.

A full copy of the report, including grades for each state on each of the key elements, is available at www.InstituteForLegalReform.com.

Overall Rankings of State Liability Systems 2002–2015*

STATE	2015 RANK	N	SCORE	RANKING CHANGE FROM 2012
Delaware	1	89	76.5	0
Vermont	2	56	73.8	14
Nebraska	3	82	73.0	-1
Iowa	4	90	72.2	6
New Hampshire	5	67	70.7	16
Idaho	6	62	70.5	0
North Carolina	7	91	70.2	13
Wyoming	8	63	69.7	-5
South Dakota	9	62	69.5	2
Utah	10	90	69.0	-1
Virginia	11	126	68.3	-4
Alaska	12	58	68.1	1
Minnesota	13	89	68.0	-9
Maine	14	58	68.0	-2
North Dakota	15	59	67.9	-7
Colorado	16	89	67.8	7
Massachusetts	17	108	67.8	2
Indiana	18	94	67.7	-4
Kansas	19	102	67.6	-14
Wisconsin	20	127	66.6	-5
New York	21	176	66.3	-3
Connecticut	22	86	65.9	3
Tennessee	23	103	65.7	3
Michigan	24	114	65.5	3
Arizona	25	116	65.4	-8
Rhode Island	26	83	64.6	5
Ohio	27	125	64.2	3
Maryland	28	92	63.9	5
Washington	29	122	63.8	-7
Hawaii	30	62	62.8	-1
Georgia	31	108	62.4	-7
Oregon	32	87	61.2	-4
Oklahoma	33	80	61.0	9
Montana	34	67	60.5	11
Nevada	35	98	60.4	2
South Carolina	36	86	59.4	3
Pennsylvania	37	203	59.4	3
New Jersey	38	128	59.3	-6
Kentucky	39	95	59.0	-1
Texas	40	202	58.5	-4
Arkansas	41	74	57.7	-6
Missouri	42	106	56.6	-8
Mississippi	43	128	56.3	5
Florida	44	211	56.0	-3
New Mexico	45	75	55.2	-1
Alabama	46	98	55.1	-3
California	47	306	49.9	0
Illinois	48	197	48.0	-2
Louisiana	49	131	46.5	0
West Virginia	50	125	46.3	0

*Scores displayed in this table have been rounded to one decimal point. The column labels "N" represents the number of evaluations for a given state.

STATE	2012	2010	2008	2007	2006	2005	2004	2003	2002
Delaware	1	1	1	1	1	1	1	1	1
Vermont	16	25	8	27	24	21	20	19	21
Nebraska	2	3	2	3	2	2	2	2	6
Iowa	10	5	7	4	4	5	4	3	5
New Hampshire	21	16	16	6	6	12	7	10	17
Idaho	6	18	26	30	18	10	5	13	14
North Carolina	20	17	21	16	10	20	19	20	16
Wyoming	3	15	23	22	16	9	15	25	20
South Dakota	11	10	12	11	7	8	17	4	9
Utah	9	7	5	9	17	14	6	7	8
Virginia	7	6	6	12	3	4	3	8	2
Alaska	13	33	20	43	36	33	33	32	37
Minnesota	4	11	11	2	14	7	8	9	19
Maine	12	12	3	5	9	11	12	16	18
North Dakota	8	2	13	20	12	3	16	6	25
Colorado	23	8	9	21	8	13	13	12	7
Massachusetts	19	9	18	18	32	31	28	22	36
Indiana	14	4	4	8	11	6	11	5	12
Kansas	5	14	10	13	15	16	9	15	4
Wisconsin	15	22	24	10	23	17	10	11	15
New York	18	23	25	19	21	27	22	27	27
Connecticut	25	24	19	14	5	18	18	17	10
Tennessee	26	19	22	7	29	22	25	26	24
Michigan	27	30	33	23	22	24	23	29	28
Arizona	17	13	15	15	13	19	14	18	11
Rhode Island	31	38	39	35	26	35	36	37	35
Ohio	30	29	32	24	19	26	32	24	26
Maryland	33	20	30	29	20	23	21	23	22
Washington	22	26	27	25	28	15	24	21	3
Hawaii	29	35	45	42	46	41	39	43	40
Georgia	24	27	28	31	27	28	29	39	23
Oregon	28	21	14	17	30	25	27	14	13
Oklahoma	42	31	17	38	33	32	31	36	41
Montana	45	43	38	40	39	37	43	28	43
Nevada	37	28	40	28	37	29	34	34	30
South Carolina	39	39	43	37	42	39	40	42	42
Pennsylvania	40	34	36	32	31	34	30	31	31
New Jersey	32	32	35	26	25	30	26	30	32
Kentucky	38	40	29	33	34	36	35	35	38
Texas	36	36	41	44	43	44	45	46	46
Arkansas	35	44	34	41	41	43	42	45	44
Missouri	34	37	31	34	35	40	41	33	29
Mississippi	48	48	48	49	48	50	50	50	50
Florida	41	42	42	36	38	42	38	40	33
New Mexico	44	41	37	39	40	38	37	41	39
Alabama	43	47	47	47	47	48	48	48	48
California	47	46	44	45	44	45	46	44	45
Illinois	46	45	46	46	45	46	44	38	34
Louisiana	49	49	49	48	49	47	47	47	47
West Virginia	50	50	50	50	50	49	49	49	49



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CERTIFICATE OF SERVICE

I, Jeffrey S. Goddess, hereby certify that on December 15, 2015, I caused to be served a true and correct copy of the foregoing document upon the following counsel of record in the manner indicated below:

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