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TO: New Jersey Lawsuit Reform Alliance (NJLRA)

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The Monmouth University Polling Institute was asked by the New Jersey Lawsuit Reform Alliance (NJLRA) to assess attitudes of small business owners and operators in New Jersey regarding the state's liability laws and how these laws impact their businesses.

The Monmouth University Polling Institute interviewed 405 owners and senior operators of small businesses in New Jersey in July 2010. The results of this study represent the opinions of small businesses employing between 2 and 50 employees in the following industries including construction, manufacturing, retail trade, real estate, recreation, accommodation and food services, and other personal and support services. The margin of error for this sample +/- 5%.

Executive Summary

- About 1-in-3 (30%) small businesses in New Jersey consider liability lawsuits a major problem, 34% consider them a minor problem and 25% do not consider them a problem at all.
- Most (70%) New Jersey small businesses agree that the state's liability laws make it less attractive than other states to do business in, including 41% who strongly agree.
- Most small businesses strongly agree that advertising from personal injury lawyers (79%), hoping for a large cash settlement (72%), and the fact that misunderstandings are taken to court too quickly (68%) are major driving forces for customers and clients to sue.
- One-in-five (19%) small businesses report that a lawsuit was filed against them by a client or customer in the past 5 years and another 9% say they were threatened by a suit. About 1-in-3 (34%) small businesses think it is at least somewhat likely that they will be sued in the next 5 years.

Business Climate and General Attitudes towards NJ's Liability Laws

Overall, New Jersey's small business owners and operators consider the state's business climate bleak. Almost 8-in-10 currently rate it as either fair (39%) or poor (39%). Only 1-in-5 small business owners and operators think of the state's business climate as excellent (2%) or good (19%).

Almost half of small businesses, however, have a more positive outlook on the future with 44% believing that the business climate will get better over the next 5 years. Another 23% believe it will get worse and 28% think it will stay the same.

Most (70%) New Jersey small businesses agree that the state's liability laws make it less attractive than other states to do business in, including 41% who strongly agree. A majority (55%) of small business owners and operators believe that reforming New Jersey's liability laws would improve the state's business climate, including 21% who say it would make the climate a lot better. Another 26% think such reforms would make no difference and 8% believe reforms would make the business climate worse.

A majority of small business owners and operators (54%) believe that New Jersey's liability laws favor consumers over businesses. Only 1-in-3 believe that New Jersey's liability laws either strike the right balance (28%) or favor businesses over consumers (5%).

When asked directly about liability lawsuits, 30% of New Jersey small business owners and operators consider them a major problem and 34% consider them a minor problem. The remaining small businesses do not really see it as a problem (25%) or have no opinion on the issue (12%).

Most respondents think that customers or clients filing lawsuits only have a legitimate claim some of the time (61%). Another 7% believe they are never legitimate. Only 1-in-7 respondents believe consumers who sue have a legitimate claim most of the time (11%) or all of the time (3%).

When asked about the real motivation a client or customer might have for suing a business, almost all small businesses think that advertising from personal injury lawyers (93%), the possibility of a large cash settlement (92%), and misunderstandings being taken to court too quickly (92%) contribute at least somewhat to the problem. More than 2-in-3 respondents strongly agree with these statements.

About 3-in-4 small businesses agree that it is too easy to file a lawsuit in New Jersey (79%) including 46% who strongly agree. About 3-in-4 businesses believe people file lawsuits because they consider them more effective than settlements (74%), although just over 1-in-3 strongly agree (36%) with that statement.

Perceived Motivations for Filing a Lawsuit

	Total <u>Agree</u>	<i>Strongly</i> <u>Agree</u>
Advertising from personal injury lawyers	93%	79%
Large cash settlements	92%	72%
Misunderstandings taken to court too quickly	92%	68%
NJ laws make it too easy to file a lawsuit	79%	46%
People believe lawsuits are more effective than settlements	74%	36%

Experiences with Consumer Liability

Nearly 3-in-10 New Jersey small businesses faced consumer liability issues in the past five years, including 9% who were just threatened with a lawsuit and 19% who were actually sued.

About 1-in-3 respondents think it is very likely (13%) or somewhat likely (21%) that their business will be sued by a customer or client in the next 5 years. Another 33% say it is not very likely and 31% percent do not think it is likely at all.

Those small businesses that disclosed that they have been sued by a customer or client in the past 5 years were asked a separate battery of questions regarding how the lawsuit affected their operations.

Most (85%) of these businesses retained an attorney to defend against the lawsuit and almost half (45%) limited expansion plans. About 1-in-3 decided to discontinue products or services (32%), lay-off employees (32%) or cut employee hours or benefits (31%). About 1-in-5 (21%) raised prices for their products or services. Finally, 16% of owners and operators considered closing their business entirely. Since the preceding answers were based on a small sub-sample of the survey, businesses that were sued, the margin of error for these answers is +/- 11%.

Another issue related to liability lawsuits and the ability to defend them is liability insurance and other costs related to general liability. A majority of small businesses report that their liability costs increased in the past five years either by a lot (33%) or a little (32%). Another 23% say their costs have not substantially changed and only 3% state that their costs have gone down.

Impact of Liability Lawsuit Experience

On many of the questions a trend can be observed that those companies that report having been sued in the past 5 years are more likely to see liability lawsuits as a problem and they think that reform would make the state better.

Companies that report having been sued by a customer or client in the past 5 years are more likely to consider liability lawsuits a major issue in New Jersey. More than half (55%) consider them a major problem, while among those who were neither sued nor threatened only 22% consider them a major problem.

Among companies that report lawsuits against them, 55% strongly agree that New Jersey's liability laws make the state less attractive than other states to do business in. Among those not threatened or sued in the past 5 years only 36% strongly agree.

The differences are not as pronounced in other areas but can still be observed. About 2-in-3 (65%) businesses that reported being sued, for example, believe that the business climate in New Jersey would get better if liability laws were to be reformed. About half (51%) of businesses that have not had any direct experience with lawsuits in the past 5 years share that opinion.

Businesses that report being sued have stronger opinions on the real motivations customers and clients have to file a lawsuit. Most of them (88%) strongly agree that advertising from liability lawyers is a motivation, and 77% of companies that report no lawsuits in the past 5 years strongly agree. Similarly, 81% of companies with lawsuit experience strongly agree that cash settlements are a motivator compared to 68% of companies without lawsuit experience.

Companies that report having been involved in lawsuits in the past 5 years are more likely to report that their liability costs have increased a lot. Among those who have been sued in the past 5 years 47% report that their liability costs have increased a lot. Among those without lawsuit experience 31% report that their costs have increased a lot.

Finally, businesses who have been sued are also more likely to think it will happen again. Almost half (45%) of those businesses that report having been sued in the past 5 years think it is very likely that they will be sued again in the next 5 years. Among those companies that report that they have not been sued or threatened in the past 5 years only 5% think it is very likely that they will be sued in the next 5 years.

[Note: About 1-in-5 small businesses reported having been sued for liability in the past 5 years. The margin of error for this group is about +/-11%. About 1-in-10 companies reported being threatened with a lawsuit without actually getting sued. This group is too small to be analyzed further].

Opinions by Industry, Size, and Years in Business

This survey included small businesses from a wide range of industries. Owners and operators from construction and manufacturing (29%), food, travel, and entertainment (23%), retail trade (22%), and other service industries (26%) were included. The report shows no statistically significant differences among the different industries.

Almost half (48%) the businesses in this survey have been in business for more than 21 years, 25% have been in business for 11 to 20 years, 15% have been in business for 6 to 10 years, and 12% have been in business for 5 years or less. The report shows no statistically significant differences among the subgroups.

About 1-in-3 companies (34%) have 4 or fewer employees, 30% have 5 to 9, 27% have 10 to 24, and 9% have 25 or more employees. Companies with more employees also have higher revenues. Hoover's recorded annual revenues for the involved companies range from just over \$50,000 to more than \$30 million. About 1-in-3 companies (31%) recorded annual revenues of less than \$250 thousand, 26% earned \$250 to \$499 thousand, 22% made \$500 to \$999 thousand, and 22% recorded revenues of \$1 million or more.

For the most part, the report shows no statistically significant differences between larger and smaller companies measured either by the number of employees or their total revenue. The one exception is that companies with the highest revenues are significantly more likely to report that they have been sued in the past 5 years. Among companies with a million dollars or more in revenue, 31% reported that they were sued in the past 5 years while among those with revenues of less than a million, 16%, say they were sued.

Survey Methodology

The sample was drawn from the 2010 Hoover's database, which is comprehensive and updated on a daily basis and contains over 65 million U.S. companies. Hoover's is a Dun and Bradstreet Company. Only businesses with 3 to 50 employees having their headquarters or a single location in the state of New Jersey were selected at random¹. The sample was chosen to represent small businesses in industries serving retail customers. The sample included the following industries, based on Bureau of Labor Statistics (BLS) industry codes: construction, manufacturing, retail trade, real estate, recreation, accommodation and food services, as well as other personal and support services.

All government agencies and education services such as schools and universities were excluded. Industries that do not predominantly focus on retail customers such as agriculture and forestry, wholesale trade, transportation and warehousing, information, or technical and professional services were also excluded. Furthermore, professionals covered by separate liability laws, specific to their industry, such as medical professionals were excluded.

A representative sample of businesses fitting these criteria was selected. Interviews were conducted by telephone with 405 owners or senior executives with full knowledge of all business operations. Interviews were conducted between July 12, 2010 and July 23, 2010 by highly trained interviewers at Braun Research, Inc. under the direction of the Monmouth University Polling Institute.

¹ Employee numbers were verified during the interview. Companies who have since been reduced to just one employee were excluded.

The margin of error for results associated with this study is +/- 5% for the entire sample of 405 businesses. For results based only on businesses that reported being sued within the past 5 years, the margin of error is +/-11%.

New Jersey Lawsuit Reform Alliance
SURVEY INSTRUMENT
(n=405)

1. How would you rate the climate for businesses in New Jersey over the past five years – excellent, good, fair, or poor?

Excellent	Good	Fair	Poor	No answer
2%	19%	39%	39%	1%

2. Do you think the state's business climate will get better, get worse, or stay the same over the next five years?

Get better	Get worse	Stay the same	No answer
44%	23%	28%	5%

3. In your opinion, are liability lawsuits filed by customers or clients against businesses in New Jersey a major problem, a minor problem, or not really a problem?

Major problem	Minor problem	Not really a problem	No answer
30%	34%	25%	12%

4. How often are lawsuits filed by customers or clients against New Jersey businesses legitimate claims for injury – all of the time, most of the time, just some of the time, or none of the time?

All of the time	Most of the time	Just some of the time	None of the time	No answer
3%	11%	61%	7%	19%

5. Which of the following statements comes closest to your opinion?
 New Jersey's liability laws... [STATEMENTS 1 and 2 WERE ROTATED]

Favor businesses over consumers	Favor consumers over businesses	Strike the right balance between the two	No answer
5%	54%	28%	13%

6. Would reforming New Jersey's liability laws make the business climate in the state better or worse, or will it have no impact? [Is that a lot or just a little (better/worse)?]

A lot better	A little better	A little worse	A lot worse	No impact	No answer
21%	34%	6%	2%	26%	11%

7. Do you strongly agree, somewhat agree, somewhat disagree or strongly disagree that New Jersey's liability laws make the state less attractive than other states as a place to do business?

Strongly agree	Somewhat agree	Somewhat disagree	Strongly disagree	No answer
41%	29%	10%	4%	15%

8. I will now read you some statements. For each, please tell me if you strongly agree, somewhat agree, somewhat disagree, or strongly disagree with it.

	Strongly agree	Somewhat agree	Somewhat disagree	Strongly disagree	No answer
New Jersey's laws and regulations make it easy to file a lawsuit	46%	33%	6%	3%	12%
People file lawsuits because they believe that a business will be forced to settle for large cash amounts	72%	20%	4%	1%	3%
Advertisements from personal injury lawyers encourage people to sue	79%	14%	2%	1%	3%
People believe lawsuits are more effective than out-of-court settlements	36%	38%	12%	4%	11%
People are too quick to solve simple misunderstandings with a lawsuit rather than pursue other ways to resolve the dispute	68%	24%	3%	1%	3%

9. Within the past five years, has your business been threatened with a liability lawsuit by a consumer or a client?

Yes	No	No answer
28%	71%	1%

10. Within the past five years, has your business been sued by a consumer or a client?

Yes	No	No answer
19%	79%	2%

[NOTE: Question 11 was asked only of those who have been sued by a consumer or a client within the past five years; n=75, m.o.e.=±11%]

11. Have you done any of the following as a direct result of this lawsuit?

	Yes	No
Retain a lawyer to defend against the lawsuit	85%	15%
Limit the expansion of your business	45%	55%
Discontinue any products or services	32%	68%
Lay off any employees	32%	68%
Cut employee hours or benefits	31%	69%
Raise the price of your products or services	21%	79%
Consider closing your business	16%	84%

12. Over the past five years have your liability costs, such as insurance, gone up, gone down, or stayed the same? [Have they gone up/down by a lot or just a little]?

Up a lot	Up a little	Down a little	Down a lot	Same	No answer
33%	32%	2%	1%	23%	7%

13. How likely do you think it is that your own business will be sued in a liability case within the next 5 years – very likely, somewhat likely, not very likely, or not likely at all?

Very likely	Somewhat likely	Not very likely	Not at all likely	No answer
13%	21%	33%	31%	3%

DEMOGRAPHICS

- D1. What is your position in the company?

Owner	CEO/President	CFO/Treasurer	Vice President	Other Manager
54%	7%	1%	4%	34%

- D2. How many employees does your company have, including yourself?

2 to 4	5 to 9	10 to 24	25 or more
34%	30%	27%	9%

- D3. Company's annual sales or revenue (based on Hoover's):

Under \$250K	\$250-\$499K	\$500-\$999K	\$1 million or more
31%	26%	22%	22%

- D4. How long has your business been in operation? Is it 5 years or less, 6 to 10 years, 11 to 20 years, or longer than that?

5 years or less	6 - 10 years	11 - 20 years	21 years or more
12%	15%	25%	48%

- D5. Do you have any business operations outside the state of New Jersey?

Yes	No	No answer
9%	90%	1%

- D6. Industry classification (based on NAIC)

Construction & Manufacturing	Retail	Food, Travel, Entertainment	Other Services
29%	22%	23%	26%