



# **The Manufacturing Council**

WASHINGTON, D.C. 20230

## **Subcommittee on U.S. Competitiveness Focus: Tort Reform**

### **Subcommittee Report**

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As members of the Manufacturing Council's Subcommittee on Competitiveness, we are very concerned about the competitive challenges facing U.S. manufacturers. To compete globally, escalating health care, pension and litigation costs must be addressed. If left unchecked, the competitive gap created by these costs will drive investment decisions away from the United States and result in the loss of jobs for American workers.

As a first step, the Subcommittee on Competitiveness has reviewed the economic impact of excessive and costly litigation. The present civil justice system is increasingly abused and legitimate consumer claims are not efficiently or fairly addressed. U.S. tort costs are accelerating at an unsustainable rate, representing roughly 2% of our Gross Domestic Product and equivalent to over \$800 per citizen. These direct and indirect costs place a competitive burden on all types of businesses, from large to small, slowing economic growth and reducing jobs.

The following policy recommendations reflect our top priorities. We urge the Department of Commerce and President Bush to work with Congress and other stakeholders to pursue these critical initiatives that will improve the civil justice system as well as support U.S. jobs:

- 1) Encourage passage of the Class Action Fairness Act. This legislation will restore fairness and efficiency to our civil justice system, benefiting both consumers and businesses.
- 2) Reform medical liability laws, including caps on non-economic/punitive damages, to help reduce insurance costs and increase access to care.
- 3) Support a national asbestos solution, preferably through a negotiated closed end trust fund, that assures efficient compensation for legitimate claimants and eliminates the abuses of the current asbestos litigation crisis.
- 4) Support public/private efforts to implement a public communication campaign to encourage broad citizen participation on juries and thus better deliver the Constitutional vision of trial by jury.

These initiatives are not new. Many have been pending for years in Congress and have been blocked by special interest groups that take advantage of the escalating costs of litigation rather than focus on legitimate consumer needs.

These recommendations form the foundation of tort reform and advance the need to create a business and consumer friendly environment that supports job growth and investment. We recommend that the Department of Commerce, Congressional allies and other advocacy organizations develop a broad coalition in support of modernizing our legal system in a way that benefits both business and consumers.

# U.S. Manufacturing Council

## Subcommittee on Competitiveness

### RECOMMENDATIONS ON TORT REFORM

**ISSUE:** Reform initiatives are needed to reduce the competitive burden placed on U.S. manufacturers from excessive and unlimited awards in a variety of areas including class action, medical malpractice and asbestos litigation.

#### Impact on Consumers

- The American civil justice system is fundamental to the Constitutional vision of democracy in the United States and provides important tools to address wrongs to consumers.
- Unfortunately, the civil justice system is increasingly abused and legitimate claims by consumers are not efficiently and fairly addressed. Only 22 cents on the dollar are actually returned to consumers to recover economic losses.<sup>1</sup>

#### Impact on U.S. Manufacturers

- The U.S. tort system is the most expensive in the world. With an average cost more than double that of other industrialized nations<sup>2</sup>, U.S. companies are at a competitive disadvantage in an increasingly global economy.
  - Total 2002 legal costs were \$233 billion, or \$809 per citizen<sup>3</sup>.
  - U.S. tort costs are roughly 2 percent of Gross Domestic Product<sup>4</sup>.
  - State tort liability systems have been shown to slow economic growth and reduce jobs<sup>5</sup>. According to the Manufacturing Institute, "tort costs reduce manufacturing cost competitiveness by at least 3.2 percent".
- Costs are increasing at an unsustainable rate and the impact of excessive legal costs applies to the whole spectrum of U.S. companies, from small businesses to large manufacturers.
  - Class action suits against U.S. companies are exploding. Within the last decade, companies estimated that the number of class action suits filed against them has increased from 300 percent to 1,000 percent<sup>6</sup>.
  - The costs of medical liability coverage are a major burden on business, with estimates of premium increases as high as 81 percent in recent years. Changes in medical malpractice litigation, such as caps

<sup>1</sup> Tillinghast-Towers Perrin, "U.S. Tort Costs: 2003 Update"

<sup>2</sup> Council of Economic Advisors, April, 2002

<sup>3</sup> Tillinghast-Towers Perrin, "U.S. Tort Costs: 2003 Update"; refers to direct legal costs including awards for economic and non-economic damages, administration, claimants' attorney fees and the costs of defense.

<sup>4</sup> Tillinghast-Towers Perrin, "U.S. Tort Costs: 2003 Update"

<sup>5</sup> U.S. Chamber of Commerce

<sup>6</sup> Numbers reported by U.S. companies to Federal Judicial Advisory Committee on Civil Rules in 1998.

on non-economic damages, could reduce total medical costs by 5 to 9 percent per year.<sup>7</sup>

- Asbestos claims are overwhelming the court system with an estimated 300,000 cases pending and spending of \$70 billion toward resolution of the claims. Moreover, the cost of asbestos litigation has forced more than 70 companies to apply for bankruptcy<sup>8</sup>.

### **U.S. Policy Recommendations**

The tort system must be reformed to reduce abuses that limit individual's rights to seek redress for legitimate claims and to reduce the competitive burden of legal costs. Reforms will enable fair and fast resolution for justifiable claimants and help restore American competitiveness and jobs.

- Pass Class Action Fairness Act in Congress, restoring fairness and efficiency to our civil justice system. This legislation will insure fairness for consumers through the establishment of a Consumer Class Action Bill of Rights. Business will be better protected from abuses by closing a loophole in federal jurisdiction that allows forum shopping.
- Implement medical liability reforms, including caps on medical malpractice awards, to reduce rapidly rising costs and improve accessibility to health care for all Americans.
- Establish national asbestos litigation solution through development of a closed end trust fund to address legitimate claimants with fair and timely fund disbursement.
- Support cooperative public/private sector efforts to increase American's participation on juries, working to better ensure a fair trial by jury in our court system.

### **Action Plans – Key Milestones**

#### **The Subcommittee recommends that the Administration:**

- Support tort reform legislation in the U.S. Congress, including the Class Action Fairness Act, Medical Malpractice and Asbestos Litigation reform.
- Work with Congress to build broad coalition support, including working with existing civil justice reform advocacy groups.
- Work with the business community and reform coalitions to enact the Model Juror Patriotism Act in key states and implement communication campaign encouraging public participation on juries.

<sup>7</sup> Quarterly Journal of Economics, 1996

<sup>8</sup> Senator Frist, Senate Testimony, July 22, 2004