

[Why We Can't Sue Our Way to Prosperity](#)

May 26, 2011 by Sean Wajert

The House Judiciary Committee's Subcommittee on the Constitution held a [hearing](#) earlier this week on "Can We Sue Our Way to Prosperity?: Litigation's Effect on America's Global Competitiveness." Speakers included a public policy expert from NERA; a law school professor; and my friend, esteemed litigator John Beisner.

Paul Hinton [testified](#) that the direct cost of the U.S. tort system is estimated to be approximately \$250 billion in 2009 or about 2 percent of GDP. The U.S. costs are the highest as a percent of GDP amongst those reported for other industrialized countries and more than double the estimates for countries such as the U.K, France, and Japan. Small businesses bear a relatively larger share of tort costs than larger businesses.

Professor Silver from Texas tried to make the case that the civil justice systems contributes greatly to the prosperity of the U.S. He seemed to think that litigation is the only thing that deters doctors from committing widespread medical malpractice.

[John Beisner](#) noted that given the lucrative potential of private lawsuits in the U.S., it is not surprising that fraud has crept into the system. One notable example is the fraud that may have occurred with respect to asbestos bankruptcy trusts. In addition, some lawyers have engaged in questionable tactics to recruit clients – tactics that have encouraged the filing of frivolous or fraudulent claims. The most notorious of these efforts, he observed, have been the massive screening programs undertaken in the silica and welding-fume litigation, both of which resulted in the mass filing of meritless and even fraudulent claims – and forced defendants to spend huge sums of money defending themselves against groundless allegations. In addition, Beisner pointed out, more and more plaintiff lawyers are using the internet to troll for clients and sow dissatisfaction with products in advance, in the hopes of generating large bodies of claims against targeted defendants. "These efforts have contributed to the deluge of meritless lawsuits that clog the civil justice system."

Another troubling development he noted in the American civil justice system has been the rise in foreign lawsuits with virtually no nexus to the United States. In addition to transnational tort cases, the American civil justice system has also seen an uptick in efforts to enforce foreign judgments in U.S. courts.

Although the enactment of the Class Action Fairness Act of 2005 dramatically reduced class-action abuse, several serious problems remain in the aggregate litigation arena, including (1) state attorney general actions; (2) the routine deprivation of due process in class actions that remain in state courts; and (3) mass joinder actions.

The hearing comes as the Judiciary Committee considers the [Lawsuit Abuse Reduction Act](#), which would call for greater sanctions for Rule 11 violations to deal with frivolous claims.