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## CREEPING EXPANSION OF LIABILITY BLEEDING NEW MEXICO'S PRIVATE SECTOR

Albuquerque, NM July 14, 2009 – A thief steals a car from a dealer's lot at night. The next day, sheriff's deputies see the car speeding through a school zone and give chase.

Trying to get away at speeds up to 90 miles an hour, the thief crashes head-on into another car, killing one and injuring another. Who's to blame?

Common sense would say the thief is responsible. Some might even think that the deputies were somehow at fault too. But making it the car dealer's fault?

Welcome to the twisted world of liability in New Mexico, where our Supreme Court thought it could be the auto dealer's fault (in their 2003 decision *Herrera v. Quality Pontiac*).

For years, many in the business community have felt that New Mexico courts were prone to 'legislating from the bench' in ways that expanded liability even beyond what state lawmakers intended.

With the release of the first biennial Economic Judicial Report (EJR), those concerns have been confirmed, documented and even scored.

The EJR is the result of a collaboration between the Judicial Evaluation Institute in Washington, DC and a research firm from Oklahoma, Sequoyah Information Systems Ltd.

Together they have crafted a thorough analysis of just how persistently our appellate judges have ruled in ways that snowball businesses' liability in six categories of law: Employment, Insurance, Medical Malpractice, Product Liability, Workers' Compensation and Other.

"Up until now, citizens have had little in the way of information against which to assess the performance of their judges," said T. Greg Merrion, Chairman of the New Mexico Prosperity Project. "Now we have reliable, empirical ratings based on issues of civil liability that are meaningful to families, employers and communities while also being fair to the judges."

Though the state Supreme Court consists of five judges, only four were evaluated for this report. The fifth, Justice Daniels, has not been on the bench long enough to have accrued a statistically significant pattern of decisions.

And though each Justice received an identical 36 percent score, it should be noted that there was a degree of diversity in some of the opinions studied. The net result, however, was that each Justice chose to expand liability for business, families and community institutions nearly two-thirds of the time.

Also notable is where Justices hail from. All five Supreme Court Justices, for example, are from the northern I-25 corridor.

"In addition to the dismal records of our top courts on the question of expanding civil liabilities, it is also unconscionable that rural parts of the state should be essentially unrepresented," said Beverly McClure, President & CEO for the Association of Commerce and Industry. "One ready solution would be to have judges serve in the higher courts from specific districts around the state. And this would potentially aid in the diversity of court opinion as well."

In addition to a report on the state's highest court, an EJR was also released for the New Mexico state Court of Appeals.

Though the scores were higher and more varied, none went beyond the 'D' grade range.

"The cost of everything we buy or do goes up in relation to the costs of civil liability, and we are less competitive because of it," said Barbara Bruin, Director of the New Mexico Alliance for Legal Reform. "And even our taxes are higher than they need be, given how often government ends up being the 'deep pocketed' soft target of questionable lawsuits."

Further comment is available upon request, as are copies of both EJR reports.

Check out [www.nmlegalreform.org](http://www.nmlegalreform.org) for more as well.

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