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April 18, 2007

The Honorable Howard L. Berman  
Chair, House Subcommittee on Courts,  
the Internet, and Intellectual Property  
2221 Rayburn House Office Building  
Washington, D.C. 20515

Re: Support of Increase in Federal Judicial Compensation

Dear Congressman Berman:

We are an association of business trial lawyers, representing both plaintiffs and defendants in business litigation, in law practices ranging from solo and small firms to the largest national and multi-national firms. As lawyers engaged in litigation in the federal courts, we are writing in support of Chief Justice John Roberts' request, in his year-end report on the Federal Judiciary, that Congress enact a substantial increase in the salaries of federal judges. We agree with Chief Justice Roberts that the condition of federal judicial compensation, dire for years, has reached a "crisis that threatens to undermine the strength and independence of the federal judiciary."

Federal judges have not received a pay raise since 1989, and even cost of living adjustments have been denied in many of the years since that pay raise took full effect. As a result, many newly-graduating lawyers now enter private practice at major law firms with pay equal to or greater than federal judges, and the disparity of compensation between federal judges and experienced private practitioners possessing the qualifications to be federal judges is so large as to almost lack relevance, as Chief Justice Roberts pointed out in his Report. A substantial gulf -- about 50% -- exists between salaries of federal judges and law school deans and senior professors, a comparison which in the late 1960s favored federal judges. Significantly, also, judicial salaries have lagged behind the average salary paid to U.S. workers. According to the Chief Justice, average American workers' wages, when adjusted for inflation, rose 18% since 1969, but judges' pay lagged inflation by 24%, creating a 42% gap. During that time, even the pay of most other federal employees, except Congress, has risen more than 15% when adjusted for inflation.

Our Nation needs the most capable people to serve as judges -- the guardians of our liberty and freedom -- without regard to their personal financial capabilities. As Justice Anthony Kennedy recently testified before the Senate Judiciary Committee, "without a functioning, highly qualified, efficient judiciary, no nation can hope to guarantee its prosperity and secure the liberties of its people," but, as a result of the salary crisis, "some of the most talented attorneys can no longer be persuaded to come to the bench" and "some of our most talented and experienced judges are electing to leave it." Indeed, there has been an accelerating exodus of judges with years of potential public service still before them, with 38 leaving in the past six years and 17 in the past three years.

Four years ago, the National Commission on the Public Service (the "Volcker Commission"), described the then judicial pay situation as "the most egregious example of the failure of the federal compensation policies" and recommended that Congress enact "an immediate and substantial increase in judicial salaries." This year, Mr. Volcker lamented in a *Wall Street Journal* commentary that Congress has not acted and urged that "plainly, the time has come to take heed of the deep concerns of two chief justices and to honor the constitutional intent."

We write because, as the Chief Justice noted, federal judges "have no constituency in Congress to voice their concerns," but "must rely on fact, equity and reason to speak on their behalf." As both citizens and lawyers with a vital interest in a high-quality, independent judiciary, we respectfully urge you to support a prompt, substantial increase in the compensation of federal judges.

Respectfully,

Michael A. Sherman  
President, Los Angeles Chapter  
Association of Business Trial Lawyers

Robert F. Scouler  
Chair, Courts Committee, Los Angeles Chapter  
Association of Business Trial Lawyers