

New Economic Policy Institute Study Confirms That Data Used To Support “Tort Reform” For 20 Years Are Unfounded

New York The Center for Justice & Democracy applauded the Economic Policy Institute (“EPI”) for releasing today a definitive study debunking common myths about the costs of the legal system and its burden on consumers, which have been used to drive the so-called “tort reform” movement for over 20 years.

EPI’s briefing paper, “The Frivolous Case for Tort Law Change,” (<http://www.epi.org/content.cfm/bp157>) adds to mounting criticism of the now widely-discredited annual report by Tillinghast-Towers Perrin, an insurance industry-consulting firm, whose figures have been used since at least 1985 by “tort reform” proponents as justification for weakening the civil justice system.

According to the EPI report:

“A careful examination of available data and economic trends reveals the following:

- Half of the “costs” that Tillinghast-Towers Perrin attributes to the tort system are not costs in any real economic sense. They are transfer payments from wrongdoers to victims...
- There is no tort liability crisis.
- The tort system is not the cause of insurance premium increases in recent years. The actual causes are the collapse of the stock market; record low long-term interest rates, which reduced investment income for insurance companies; the recession, which increased claims in some lines of insurance; and high and rising medical costs, which pushed up health insurance premiums.
- No evidence has been presented that the tort system has reduced real wages and caused job loss...
- There is no historical correlation between the inflated estimates of the costs of the tort system and corporate profits, product quality, productivity, or research and development (R&D) spending. Evidence suggests that the tort system, without the proposed restrictions, has actually been beneficial to the economy in all these areas.
- There is no basis for the claim that tort law changes now being considered will result in more jobs. Indeed, there is evidence that the significant changes in the tort system that have been proposed would slow job growth.”

For the past two years, the Center for Justice & Democracy and its project, Americans for Insurance Reform, have released critiques of the annual Tillinghast numbers. J. Robert Hunter, Director of Insurance for the Consumer Federation of America and co-founder of Americans for Insurance Reform, said in January 2005, “Tillinghast’s numbers are wrong and are entirely inappropriate for demonstrating either total costs of the U.S. tort system, or cost trends over time. Policymakers and opinion leaders should consider these figures highly unreliable.”

For further information, see the EPI report at <http://www.epi.org/content.cfm/bp157> or the Center for Justice & Democracy at <http://centerjd.org>.

April 19, 2005

New Report Finds No Link Between Spike in Doctors' Insurance Rates and Medical Malpractice Lawsuits by Injured Patients

Most Recent Government Data Reveal Declining Malpractice Payouts; Real Crisis Continues to Be Inadequate Measures for Guaranteeing Patient Safety

<http://www.citizen.org/pressroom/release.cfm?ID=1925>

WASHINGTON, D.C. – The latest national data on physician malpractice payments show no evidence that the spike in doctors' insurance rates is due to lawsuits by patients, a new study by Public Citizen confirms.

At the same time that insurance rates in some areas have been climbing, the number and total value of malpractice payouts to patients have been flat since 1991 and, in fact, show a significant decline since 2001, when the spike in insurance rates began, the study found.

“The hard, factual evidence cannot be any clearer: We have no medical malpractice lawsuit crisis in America,” said Joan Claybrook, president of Public Citizen.

“Insurance companies may be padding their bottom lines by jacking up rates on doctors, but it is not because of patients seeking relief for bad medical care through our courts. The true crisis continues to be in inadequate measures for patient safety and incompetent medical care by a small number of physicians.”

The data show that from 1990 to 2004, only 5.5 percent of doctors account for 57.3 percent of all malpractice payments. In addition, only 11.4 percent of doctors who have made three or more malpractice payouts have ever been disciplined.

The report, *Medical Malpractice Payment Trends 1991-2004; Evidence Shows Lawsuits Haven't Caused Doctors' Insurance Woes*, is available online by [clicking here](#).

Meanwhile, Public Citizen today also released its annual rankings of state medical boards. The rankings, found online [here](#), are based on data from the Federation of State Medical Boards and specify the number of disciplinary actions taken against doctors from 2002 to 2004.

The medical malpractice payment trends report analyzes the most current information from the federal government's National Practitioner Data Bank (NPDB). The NPDB reports on malpractice payments made on behalf of doctors by malpractice payers, such as insurance companies, state-run insurance funds and self-insured health care providers. Those making malpractice payments are required by federal law to report them to the NPDB.

The NPDB also contains information about disciplinary actions taken against doctors and provides a repository of data that those employing doctors can query for background checks.

In analyzing records from the NPDB, Public Citizen found that:

The annual number of malpractice payments is down. Despite alarms by doctors and insurers about a “crisis,” the number of malpractice payments paid on behalf of doctors – chiefly by their insurance companies – has fallen over the past three years, from 16,682 in 2001 to 14,441 in 2004, a drop of 13.6 percent. The 2004 number is only 5.5 percent higher than the 13,687 payments recorded for 1991. Adjusting for population growth, the number of payments per 100,000 people has fallen from 5.85 to 4.91 from 2001 to 2004, a decline of 16.1 percent. Since 1991, the number of payments per 100,000 people has dropped by 9.2 percent, from 5.41.

The total value of malpractice payments has been flat since 1991. Total malpractice payments increased from \$2.1 billion in 1991 to \$4.2 billion in 2004. However, from 1991 to 2004, the inflation-adjusted amount has changed little, rising from \$2.1 billion to \$2.3 billion – an average annual increase of only 0.8 percent.

Jury verdicts are not out of control. The median size of payments from judgments appears to have soared, from \$125,000 in 1991 to \$265,000 in 2004. But adjusted for inflation, the median payment grew from \$125,000 in 1991 to \$146,100 in 2004 – an average annual increase of only 1.2 percent.

There has been a 56 percent decline in million-dollar payouts. The incidence of payments of \$1 million or more, adjusted for inflation, is down 56 percent from 1991 to 2004, from 2.25 percent of all payments to just 1 percent of all payments. Even during the so-called “crisis” years between 2001 and 2004 when insurance rates were spiking, the incidence of large payments declined 31 percent, from 1.44 percent of payments to 1 percent.

The incidence of surgical and obstetrics payouts has not increased. Although surgeons and obstetricians complain the loudest about malpractice insurance rate hikes, the incidence of surgical and obstetrics payouts is virtually unchanged from 1991 to 2004. In 1991, 9.5 percent of all payouts were for obstetrics cases; in 2004, the figure was the same. Surgical cases accounted for 25.6 percent of payments in 1991, and 26.1 percent of payouts last year.

Cases of serious injury to patients continue. Three-quarters of payments for 2004 involved major or significant injuries, or death, and these most severe cases account for 89 percent of the value of payouts made. “Failure to diagnose” cases have grown from 16 percent of payouts in 1991 to 20 percent in 2004, while “improper performance” cases have grown from 10 percent to 15 percent of payouts.

“The evidence shows that the system is working as it should, with minor injuries receiving little compensation and the great bulk of malpractice awards going to cases of major, debilitating injuries – or death,” said Frank Clemente, director of

Public Citizen's Congress Watch. "Rather than complain about medical malpractice lawsuits, the medical community should address its own failings and strive aggressively to improve the performance and competency of its doctors and better protect patients. That is the surest way to keep both doctors and patients out of the courtroom."

Study Finds So-Called Tort “Reform” Does Not Benefit Economy *Scholars find insurance industry claims are “grossly overblown”*

AUSTIN – A national study of tort law changes released today finds that claims of economic harm from individuals seeking justice in our courts are “grossly overblown or manufactured.”

The study, compiled by the D.C.-based Economic Policy Institute (EPI), examines reports prepared by the insurance industry consulting firm Tillinghast-Towers Perrin that insurance lobbyists and politicians have used to make the case for enacting severe restrictions on individual legal rights.

The EPI report titled [“The Frivolous Case for Tort Law Change”](#) illustrates how the insurance company-backed Tillinghast reports have been widely discredited.

“This report shows that the so-called insurance experts have been using flawed data to distort the truth and confuse the electorate,” said Alex Winslow, Executive Director of Texas Watch, a consumer advocacy and research organization that has been active in the fight to protect individual legal rights. “This proves that the insurance companies will stop at nothing to shield themselves from accountability by taking away our right to hold a wrongdoer accountable.”

Conducted by economist Dr. Lawrence Chimerine and attorney Ross Eisenberry, the EPI report finds that “draconian change[s] to the tort system is more likely to hurt than help job creation.” Additionally, the report concludes that there is no link between tort costs and the economy.

“Texas voters were sold a bill of goods by the insurance companies when they passed radical legal changes that stripped Texas families of their legal rights two years ago,” said Winslow. “Now, the insurance industry wants to escape responsibility on the national level. Today’s report clearly discredits the rhetoric of the insurance company spinmeisters.”

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NOTE: A copy of “The Frivolous Case for Tort Law Change” can be found at www.TexasWatch.org.

Tort Issue Creates a Tussle - Disagreement on need for reform

Wed, May. 18, 2005

By Diane Stafford

The Kansas City Star

<http://www.kansascity.com/mld/kansascity/11671602.htm>

Tort-reform advocates say the U.S. court system — with too many frivolous civil lawsuits — creates a drag on productivity, research and development, job creation and international competitiveness.

But publicly available data do not support that conclusion, contends a new report by the Economic Policy Institute.

The institute, frequently at odds with policies backed by the Bush administration, came out swinging Tuesday with “The Frivolous Case for Tort Law Change,” a briefing paper.

The report is sharply critical of an annual estimate by Tillinghast-Towers Perrin, a consulting company, which put the cost of the U.S. tort system at \$246 billion in 2003. Tort-reform advocates often cite that estimate as a reason why “frivolous lawsuits” should be quashed.

Tort lawsuits usually involve damage to property or to a person’s reputation or harm to a person’s commercial interests. Reforms are meant to curb litigation and its costs to business.

The Economic Policy Institute joins other groups, such as the Consumer Federation of America and the Center for Justice and Democracy, which say the \$246 billion figure is a grossly inflated representation of the costs of tort litigation and is misused by tort-reform advocates.

Lawrence Chimérine, an economist and former president of Radnor International Consulting, and Ross Eisenbrey, vice president and policy director of the institute, authors of the Economic Policy Institute report, also asserted Tuesday in a conference call with reporters that the \$246 billion cost estimate is “unverifiable.”

The 20-page “Frivolous Case” report may be read online at www.epinet.org .

Asked to comment on the institute’s report, Russ Sutter, primary researcher for the Tillinghast-Towers Perrin report, said it was true that tort-reform advocates use the data “in a way that’s probably misleading.” He said the full report may be read online at www.towersperrin.com .

Sutter said it was not misleading to put the broad price tag on the costs of resolving torts. Fear of litigation drives businesses and individuals to purchase insurance, he said; thus, it is justifiable to include insurance industry overhead and other self-insured expenses in the calculation.

About 70 percent of the Tillinghast-Towers Perrin data is pulled from insurance companies' annual statements, Sutter said, but the remainder — particularly estimates of the cost of medical malpractice — is the result of proprietary research.

The inability to check that data frustrated the Economic Policy Institute researchers. Eisenbrey said publicly available evidence easily disproves the \$246 billion cost claim. He said that figure wrongly includes the cost of auto-related insurance claims, which never involve lawsuits.

But Sutter disagreed that such claims shouldn't be included in the cost total.

“We consider it a continuum,” Sutter said. “When one party believes they were damaged by another party ... the ultimate end result could be a trial with a verdict. Yes, most don't get to that point. But we say the total cost is the result of torts, many of which get resolved because of fear of litigation. All along the continuum, money is changing hands.”

Eisenbrey also said the Tillinghast-Towers Perrin report wrongly calculates the costs of liability judgments in tort cases; when actually paid out, total judgments are about 10 times lower than the initial awards, he said.

Chimerine said he “came out of semi-retirement” to participate in the institute's research because he was “infuriated by the lack of intellectual honesty” by those who call tort verdicts a serious problem for the U.S. economy “when, in fact, they're not.” Furthermore, he said, “many tort cases have merit ” ... they are not all ‘frivolous.’

Insurance premiums, Chimerine said, have gone up “not because of the tort system” but because of the stock market decline, which hurt insurance company portfolios, and the aftershocks of Sept. 11.

Chimerine said productivity grew and corporate profits reached record highs over the past decade, which wouldn't happen if the tort system were the drain on the economy that reform advocates suggest.

The Economic Policy Institute said Tillinghast-Towers Perrin's estimate of the actual litigation costs of the tort system — \$82 billion — was a more likely estimate and that represented just 0.7 percent of U.S. gross domestic product.

Sutter said the \$82 billion figure was not pulled directly from his report but used “percentages from our 2003 report in which we tried to carve out attorneys fees.”

The Economic Policy report also criticized the Tillinghast-Towers Perrin estimate that medical malpractice cost \$27 billion in 2003. A better reflection, it said, is offered by the insurance reporting service, A.M. Best, which put the incurred costs of liability insurers at less than \$8 billion for that year.

Sutter countered that most major health systems do not buy commercial insurance to cover their malpractice claims and thus don't report their self-insured costs to A.M. Best. Also, he said, defense costs associated with malpractice claims would add another \$3 billion to \$4 billion to the \$8 billion.

The Economic Policy report said the \$246 billion cost estimate also was wrongly inflated because 22 percent of the total represents administrative expenses by the insurance industry — overhead that would exist anyway and doesn't reflect the actual costs of handling claims or legal costs of defending them.

Sutter said the figure would more likely be in the "high teens" instead of 22 percent.

The institute also cited the National Center for State Courts, which finds that the number of tort filings declined by 4 percent from 1993 to 2002.

Economic Policy Institute: No Evidence to Support Campaign to Lock Consumers Out Of Courthouses

Claims that lawsuits hurt the economy – and that restrictions on families’ legal rights will help – are grossly inflated, made up, or just plain wrong.

ATLANTA – A groundbreaking new study by Washington D.C.-based think tank Economic Policy Institute today has punctured overblown claims made by national and state politicians in order to strip families of their legal rights and give special protections to businesses that knowingly endanger their customers.

The report by economists Lawrence Chimerine and Ross Eisenbrey shows there is no evidence that lawsuits brought by consumers harmed by dangerous products and services have had any negative effect on the economy or on insurance rates.

Instead, their analysis shows that lobbyists have simply manufactured a “crisis” based on wildly overstated cost estimates that have been widely cited by lawmakers and the media to suit the agenda of special interest groups.

The full report, “The Frivolous Case for Tort Law Change,” is available online at: <http://www.epinet.org/>.

Statewide consumer watchdog Georgia Watch, AARP Georgia, Mothers Against Drunk Driving, the Georgia Council on Aging, the Women’s Policy Group, the Georgia Network to End Sexual Assault and thousands of citizen advocates for three years worked to block anti-consumer changes to the justice system, pushed by insurance lobbyists and corporate defense attorneys. Instead, Georgia lawmakers this year buckled under pressure from lobbyists for the health care and insurance industry – and mega-corporations including Home Depot, Georgia Pacific and BellSouth – when they passed laws that shield sloppy health care providers and businesses who harm their customers.

"Georgia lawmakers have titled the law in favor of corporations and insurance companies at the expense of Georgia families," said Allison Wall, Executive Director of Georgia Watch. "Apparently, their argument for doing so was based on exaggerations, junk studies and outright lies."

Alliance For Justice Declares New Study Debunks Bush Administration's Claims About Legal System

Washington, DC— A comprehensive economic study released today by the Economic Policy Institute exposes the fallacies underlying claims that the legal system harms the nation's economy. In support of his second term agenda to enact restrictive legal reforms, President Bush frequently blames "frivolous lawsuits" for sagging job growth, lack of access to healthcare and skyrocketing medical malpractice premiums. But the careful analysis of a detailed study released today by the Economic Policy Institute shows that the cost claims of the proponents of tort reform are unverifiable and exaggerated.

"Once again we see a pattern of a manufactured crisis and bogus evidence being put forward to support the Administration's agenda," said Nan Aron, president of Alliance for Justice. "The Bush Administration, backed by a multi-million dollar big business campaign, has been telling members of Congress and the world that lawsuits are imposing tremendous costs on the American people, but this study reveals that just isn't true," Aron added.

The Economic Policy Institute analysis shows that tort lawsuits have fallen significantly, conclusively demonstrates that rising insurance premiums are not the result of increased tort litigation but rather a combination of economic factors, and reveals that the large economic price tag that reform proponents seek for the tort system are not connected to the legal system and are really nothing more than guesswork.

"This study reveals the phony numbers and political agenda behind the claims that lawsuits harm the economy," Aron noted. "It confirms that there is no need for legislation that weakens the ability of Americans to protect their rights and hold wrongdoers accountable. Politics should not reward greed and let corporations off the hook when they break the law and harm people."

A copy of the report can be found on the Economic Policy Institute's website, www.epinet.org.

Alliance for Justice is a national coalition of more than 65 civil rights, environmental, seniors, consumer and labor organizations. The mission of the Alliance for Justice is to promote a fair and independent judiciary and strengthen public interest advocacy.

New Epi Study Shows “Tort Tax” Is An Insurance Industry Fabrication

Independent Study the Latest to Debunk “Crisis”

WASHINGTON, DC – A major new report released today by the Economic Policy Institute (EPI) offers more evidence that the insurance industry is intentionally using faulty data to make claims that the tort system leads to increased economic costs.

EPI, a nonprofit, nonpartisan think tank based in Washington, analyzed in detail the alleged cost estimates of the U.S. tort system published by Tillinghast-Towers Perrin (TTP), a consulting firm whose clients include many of the world's largest insurance companies.

The 20-page study by economist Lawrence Chimerine and EPI vice president Ross Eisenbrey, entitled *Frivolous Case for Tort Law Change*, concludes that TTP's cost estimates are one-sided, inflate the impact of the tort system and ignore its benefits, and that corroboration supporting their numbers is weak or nonexistent. Earlier this year, *BusinessWeek* warned in an editorial that TTP's numbers were “a wild exaggeration.”

“This authoritative study is just the latest to prove that special interests and the insurance industry are throwing up smokescreens to preserve their rising profits, no matter the cost to doctors and consumers,” said Todd Smith, president of the Association of Trial Lawyer of America.

“This is yet another call for policymakers to acknowledge reality: The ‘tort tax’ is a phony invention of the insurance industry, and those that repeat this nonsense – including President Bush – have either been snookered by it, or they’re just willing to use any argument, no matter how untrue, to undermine the rights of American families,” continued Smith.

“The real costs of the legal system are created by those who cause injuries, not by those who are injured through no fault of their own by the negligence of others,” Smith said.

Indeed, advocates of changes to the tort system have repeatedly touted TTP's estimates to allege that there is a civil liability “crisis” that justifies restricting the rights of average Americans to hold negligent corporations and individuals responsible. Even the President's own Council of Economic Advisers (CEA) has based policy positions on TTP's flawed data, devoting an entire chapter of its 2004 Economic Report of the President to tort liability.

However, EPI's careful examination discredits these myths and many others:

* Fully half of the “costs” that Tillinghast-Towers Perrin attributes to the tort system are actually transfer payments from wrongdoers to victims, which, the Congressional Budget

Office agrees, are not true costs to society as a whole, as they “merely shift money from injurers to victims.”

* A number of economic factors, not the tort system, have caused insurance premium increases in recent years.

* There is no basis for claims that tort law changes now being considered could result in more jobs.

* There is no evidence that the tort system has reduced real wages and caused job loss.

* Far from harming corporate profits, productivity, or research and development spending, the tort system has actually benefited all of these areas.

* TTP’s “costs” includes insurance industry overhead, such as executive salaries, and auto payments when there are no lawyers involved.

“When a child is injured because Firestone refused to pull defective tires from the market, or a company like Enron decides to cook the books at the expense of shareholders, that’s not harming the economy – that’s the cost of corporate disregard for consumers. Americans would pay a far more devastating price if we didn’t have a strong civil justice system to hold corporations accountable,” said Smith.

The EPI report “Frivolous Case for Tort Law Change” is [available here](#).

Tillinghast Defends U.S. Tort Costs Study Against Criticisms

May 18, 2005

The Tillinghast business of Towers Perrin has come out in defense of its annual study of the costs of the U.S. tort system, which has come under fire by a Washington, D.C. economic research group.

The insurance consulting firm said it stands behind its data, analysis and methodology. It maintained that its studies provide "neutral data" and draw no conclusions about whether the costs of the tort system are too high or low.

"The report makes no conclusion about whether the costs of the system outweigh its benefits or vice versa," Tillinghast said in a statement.

The Economic Policy Institute this week claimed that the methodology and costs cited in the Tillinghast study were misleading and that the Bush Administration uses them to claim there is a crisis in the tort system.

"TTP (Towers Perrin Tillinghast) has succeeded in alarming the public and the media by making a manageable situation seem like a crisis," said Ross Eisenbrey in recent criticism by his organization, the Economic Policy Institute. "Their numbers do not stand up to analysis and neither do the promises about the economy that the administration has based on them."

Tillinghast noted that its methodology incorporates three cost components: benefits paid or expected to be paid to third parties, defense costs and administrative expenses. Administrative expenses are identified separately in the report. While Tillinghast outlines why these are a real cost of the tort system, it said it takes no position on the efficiency of the insurance industry's administrative expenses.

The Tillingast study also states that..."the costs tabulated in this study are not a reflection of litigated claims or of the legal system." According to the firm, this statement is included in the report because litigated claims and the legal system involve other areas beside tort claims, and not all tort claims are litigated. The study accumulates all of the costs of damages awarded to injured parties as a result of the negligence of others, including the costs that are embedded in the liability insurance system and the claims that are settled out of court.

Tillinghast countered with a point-by-point response to EPI criticisms and claims. A document outlining these responses can be found on the company's web site at

http://www.towersperrin.com/tillinghast/press/2005_press/response_0517.pdf

Find this article at:

<http://www.insurancejournal.com/news/national/2005/05/18/55267.htm>

Quorum Report

MAY 17, 2005

STUDY FINDS SO-CALLED TORT "REFORM" DOES NOT BENEFIT ECONOMY--Scholars find insurance industry claims are "grossly overblown"

A national study of tort law changes released today finds that claims of economic harm from individuals seeking justice in our courts are "grossly overblown or manufactured." [The study](#), compiled by the D.C.-based *Economic Policy Institute (EPI)*, examines reports prepared by the insurance industry consulting firm **Tillinghast-Towers Perrin** that insurance lobbyists and politicians have used to make the case for enacting severe restrictions on individual legal rights. The EPI report titled "[The Frivolous Case for Tort Law Change](#)" illustrates how the insurance company-backed Tillinghast reports have been widely discredited.

Insurance Journal

<http://www.insurancejournal.com/news/national/2005/05/17/55224.htm>

Business Wire

http://home.businesswire.com/portal/site/google/index.jsp?ndmViewId=news_view&newsId=20050517006138&newsLang=en