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LIMITING LAWSUITS (“TORT REFORM”) WILL NOT LOWER INSURANCE PREMIUMS

2024 UPDATE

Four decades of data and experience show that when states try to solve insurance problems on the backs of harmed victims, stripping away their legal rights and blocking legitimate lawsuits, insurance premiums do not drop.

Studies of insurance data have long shown that litigation does not drive insurance rate hikes. As a result, limiting lawsuits will not stop them.

- Decades of studies examining insurance data from Americans for Insurance Reform (a project of the Center for Justice & Democracy) and the Consumer Federation of America show that tort law limits do not lower insurance premiums; states with little or no tort law restrictions experience the same level of insurance rates as those states that enact severe restrictions on victims’ rights; and liability insurance crises are driven by factors other than “tort law cost explosions” as insurance companies claim, so their “tort reform” remedy always fails.¹
- A recent study of the insurance industry’s failure to use its economic clout to reduce harm (loss prevention) found that while “one would expect that caps [on damages] would reduce premiums for doctors-insureds as a consequence ... this did not happen. ...Indeed, empirical studies reveal premium increases after states enact damage caps.”²
- A 2022 study found that the insurance market “seems, in important ways, to defy economic logic” because while caps “drive down insurance costs,” insurance premiums “do not fall in parallel with costs.” Instead, caps lead to “sustained supranormal profits.”³
- As recently reported in the *Tampa Bay Times*, “Kenneth Klein, a former defense lawyer and professor at California Western School of Law, gave a presentation to the National Association of Insurance Commissioners [in 2022] about how there was a lack of evidence for litigation having a material effect on rising premiums.”⁴

Industry insiders have long admitted that “tort reform” will not bring down insurance rates.

For example:⁵

- American Insurance Association says, “[T]he insurance industry never promised that tort reform would achieve specific premium savings.”
- Sherman Joyce, President, American Tort Reform Association says, “We wouldn’t tell you or anyone that the reason to pass tort reform would be to reduce insurance rates.”
- Victor Schwartz, General Counsel, American Tort Reform Association says, “[M]any tort reform advocates do not contend that restricting litigation will lower insurance rates, and ‘I’ve never said that in 30 years.’”⁶

Lawsuits against insurance companies are not frivolous; policyholders are forced to go to court against insurers because they fail to pay legitimate claims.

- According to the *Tampa Bay Times*, in Florida, for example, “insurers who dominate the market receive an outsize percentage of the nation’s complaints, and one company has been accused by its own adjusters of manipulating reports to lowball or deny homeowners’ claims.” Said former state senator and now insurer Locke Burt, “I believe that an insurance company’s litigation rate is directly related to how it handles its customers.”⁷
- “In 2020, Florida Insurance Consumer Advocate Tasha Carter surveyed 7,000 people whose claims were represented by a lawyer. The survey found that 78% of them said they hired a lawyer because of a poor claims experience, either from their insurer delaying payments, denying payments or not offering enough money. Another 20% said they hired a lawyer based on advice from a contractor, a consultant or an insurance adjuster.”⁸

Insurers hide data which could disprove their position yet lawmakers never demand to see these data before stripping away victims’ rights.

It is unforgivable for public officials to strip away the legal rights of harmed individuals without obtaining basic insurance data, which can be opened up to public inspection. Yet that is exactly what is happening. Lawmakers considering whether to take away legal rights must first demand the following:

- Full “closed claims” studies for each insurer for at least a 10-year period, and continuing on an ongoing basis. The public must have access to this information.
- Frequency and severity trends for the industry and for each company, going back at least six years.
- Careful studies of reserves (including “Incurred But Not Reported” claims or IBNR) of all insurers within the state.⁹

- All recent rate filings, with full information, unrestricted by overbroad “trade secret” assertions.

NOTES

¹ See, e.g., J. Robert Hunter, Joanne Doroshow and Douglas Heller, Consumer Federation of America and Center for Justice & Democracy, *Inventing Social Inflation 2023* (2023), <https://centerjd.org/content/inventing-social-inflation-2023>; J. Robert Hunter, Joanne Doroshow and Douglas Heller, Consumer Federation of America and Center for Justice & Democracy, *How the Cash Rich Insurance Industry Fakes Crises and Invents Social Inflation* (2020), <https://centerjd.org/content/study-how-cash-rich-insurance-industry-fakes-crises-and-invents-social-inflation>; J. Robert Hunter and Joanne Doroshow, Americans for Insurance Reform, *Premium Deceit 2016: The Failure of “Tort Reform” to Cut Insurance Prices* (2016), <https://www.centerjd.org/content/premium-deceit-2016-failure-tort-reform-cut-insurance-prices>; J. Robert Hunter and Joanne Doroshow, Center for Justice & Democracy, *Premium Deceit: The Failure of “Tort Reform” to Cut Insurance Prices* (1999, 2002), <http://centerjd.org/system/files/PremiumDeceit.pdf>

² Ronen Avraham and Ariel Porat, “The Dark Side of Insurance,” 19 *Review of Law & Economics* 13 (February 2023), <https://www.degruyter.com/document/doi/10.1515/rle-2022-0054/html> (“For instance, after Oklahoma passed insurer-supported damages caps, medical malpractice premium rates increased by 83 percent. Likewise, in Maryland, Missouri, and other states, insurers lobbied for damage caps claiming that they would reduce premiums. Ultimately, rates increased after legislature enacted reforms.” [Although omitted here, citations for these facts can be found in many publications written by the Center for Justice & Democracy, such as “Caps Do *Not* Lower Insurance Premiums for Doctors,” [https://www.centerjd.org/sites/default/files/ckfinder/userfiles/files/CapsDontWorkF\(1\).pdf](https://www.centerjd.org/sites/default/files/ckfinder/userfiles/files/CapsDontWorkF(1).pdf)] “Other studies support this conclusion, finding that caps above \$750,000 increase premiums substantially (Nelson et al. 2007)).”

³ Bernard S. Black, Jeffrey Traczynski and Victoria Udalova, “How Do Insurers Price Medical Malpractice Insurance?”, IZA Institute of Labor Economics, Discussion Paper No. 15392 (June 2022), <https://ssrn.com/abstract=4151271>

⁴ Lawrence Mower, “Florida leaders blame insurance crisis on lawsuits, but evidence is thin; Fighting lawsuits was Florida’s response to the insurance crisis, but evidence hasn’t materialized,” *Tampa Bay Times*, October 19, 2023, <https://www.tampabay.com/news/florida-politics/2023/10/19/florida-leaders-blame-insurance-crisis-lawsuits-evidence-is-thin/>. See Ken Klein, “Unpacking ‘Social Inflation,’” August 12, 2022, https://content.naic.org/sites/default/files/national_meeting/AttmtFive_Consumer_Social%20Inflation_kenklein.pdf (presentation during National Association of Insurance Commissioners Summer 2022 National Meeting).

⁵ See Americans for Insurance Reform, “Industry Insiders Admit – And History Shows: Tort Reform Will Not Lower Insurance Rates” (2003), <https://centerjd.org/air/pr/Quotes.pdf>

⁶ Ibid.

⁷ Lawrence Mower, “Florida leaders blame insurance crisis on lawsuits, but evidence is thin; Fighting lawsuits was Florida’s response to the insurance crisis, but evidence hasn’t materialized,” *Tampa Bay Times*, October 19, 2023, <https://www.tampabay.com/news/florida-politics/2023/10/19/florida-leaders-blame-insurance-crisis-lawsuits-evidence-is-thin/>

⁸ Ibid.

⁹ To understand IBNR and other insurance industry accounting tricks, see Center for Justice & Democracy, *Insurance: The Essential Guide to a Bewildering Industry* (2021), <https://www.insurancefatcat.com/>