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THE “TORT TAX SCAM”

The term “tort tax,” also known as “lawsuit tax,” is a poll-driven, public relations gimmick created by the special interests behind the national “tort reform” movement.

This figure is not a tax. It is a figure derived from insurance data analyzed by an insurance industry-consulting firm, Tillinghast–Towers Perrin, which it says estimates what it calls the overall annual “cost” of the U.S. tort system. However, by its own admission, Tillinghast’s figures have *nothing to do with the costs of the legal system*. Nor do so-called “tort tax” figures, which are derived from Tillinghast’s numbers.

BY ITS OWN ADMISSION – NO RELATION TO LEGAL SYSTEM COSTS

- **Tillinghast admits that it does not examine jury verdicts, settlements, lawyers’ fees, court costs or any actual costs of what might generally be considered “tort costs.”** In 2006, Tillinghast acknowledged that its evaluation of the tort system does not include “costs incurred by federal and state court systems” and incredulously states these costs are not even relevant to its estimates.¹ That admission is similar to one made by Tillinghast in its 2005 study stating, “the costs tabulated in this study are not a reflection of litigated claims or of the legal system.”²
- **Tillinghast’s definition of “tort system costs,” from which the “tort tax” figure is derived, is vastly larger than the actual tort system.**
 - Included in Tillinghast’s definition of “tort costs” is *the immense costs of operating the wasteful and inefficient insurance industry*.³ Fully 22 percent of Tillinghast’s “tort costs” are what it calls insurance industry “administrative expenses,”⁴ (e.g. salaries of executives, rent and utilities for insurance company headquarters, commission paid to agents, advertising and other acquisition costs).
 - Tillinghast’s numbers are calculated from the most exaggerated possible source: insurance industry “incurred losses,”⁵ which are not really “losses” at all. They are mostly estimates - not actual costs - that insurers make in rate filings and have in the past proved to be wildly overstated.⁶
 - On top of that, a huge percentage of “tort costs” identified by Tillinghast concern personal auto insurance, including liability claims for fender benders, for which policyholders pay insurance premiums. The vast majority of these claims are settled without any attorneys being hired or anyone being sued. Identifying these figures as “tort costs” is a huge error.⁷
- **Tillinghast admits that it does not factor in the benefits or cost-savings from the tort system.** In its 2006 report, Tillinghast notes, “this study does not attempt to quantify the benefits of the tort system. Such benefits include a systematic resolution of disputes, thereby reducing conflict, possibly including violence. Another indirect benefit is that the tort system

may act as a deterrent to unsafe practices and products. From this perspective, compensation for pain and suffering is seen as beneficial to society as a whole.”⁸

FIGURES HAVE BEEN CONSISTENTLY DEBUNKED

- **Economic Policy Institute.** In 2005, the Economic Policy Institute (“EPI”) released a definitive study debunking common myths about the costs of the legal system and its burden on consumers.⁹ According to EPI:
 - 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 victim.
 - EPI also noted, “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.”

- **Capra Report.** In a January 29, 1999 independent study prepared for the New York State Bar Association, Daniel Capra, Philip Reed Professor of Civil Justice Reform at Fordham University School of Law, said, “[A]ny cries about a ‘tort tax’ are nothing but absurd and self-serving overkill.” Professor Capra also found:
 - “The analysis of the costs of the tort system creates the unfair inference that the cost is caused solely by plaintiffs lawyers and frivolous litigation -- when in fact most of the cost of the system is the result of corporate wrongdoing causing injury, and ‘hardball’ litigation tactics of insurance companies that deny legitimate claims.”
 - “[T]he quasi-statistical analysis about the costs of the tort system fails to mention that the system provides the essential benefits of victim compensation and product safety. Any focus on costs without consideration of countervailing benefits is completely irresponsible.”
 - The “tort tax” figure “is particularly disingenuous given the record profits of insurance companies and their executives.”
 - “[T]he cost of the tort system to business is remarkably low when compared to business income and profits.”

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Notes

¹ *U.S. Tort Costs and Cross Border Perspectives: 2005 Update*, at 11.

² *U.S. Tort Costs: 2004 Update*, at 4.

³ *U.S. Tort Costs and Cross Border Perspectives: 2005 Update*, at 8

⁴ *Ibid.*

⁵ *Ibid.*

⁶ See, e.g., Jay Angoff, *Falling Claims and Rising Premiums in the Medical Malpractice Insurance Industry*, July 2005, <http://www.centerjd.org/ANGOFFReport.pdf>; Americans for Insurance Reform, *Stable Losses/Unstable Rates*, 2004, <http://www.insurance-reform.org/StableLosses04.pdf>.

⁷ See, e.g., Center for Justice & Democracy, “Tillinghast’s “Tort Cost” Figures Vastly Overstate the Cost of the American Legal System,” January 6, 2004, http://www.centerjd.org/air/pr/Tillinghast_Overstates.pdf.

⁸ *U.S. Tort Costs and Cross Border Perspectives: 2005 Update*, at 11.

⁹ See, Economic Policy Institute, “The Frivolous Case for Tort Law Change,” <http://www.epi.org/content.cfm/bp157>.