

To Rein in Costs, Get Insurance Defense Lawyers Under Control!

New data from the Cato Institute book, *Medical Malpractice Litigation: How It Works, Why Tort Reform Hasn't Helped*, written by six top medical malpractice researchers, reveals that the hourly billing practices of insurance industry lawyers are a key reason why insurance defense costs are rising.¹

- According to the authors, insurance defense costs are going up because industry lawyers are “billing more hours for working on apparently *similar cases*” (emphasis added).
- At the same time, the researchers found no evidence of “rising payouts, rising exposure, rising lawyer hourly rates, claims staying open longer, and cases settling at a later stage.” This leaves unnecessary hourly billing as the best explanation for rising costs.
- Unlike contingency fee attorneys, insurance defense lawyers who bill by the hour are incentivized to drag out cases and waste judicial resources.
 - Contingency fee attorneys are not paid hourly, take cases without charging up front, only get paid if they win, and thus have no financial incentive to either file “frivolous” lawsuits or drag out their cases.
- Half the states in this country have some type of law dealing with contingency fees; in response to industry lobbying, most of these laws block victims’ ability to hire counsel.²
- In states where plaintiffs’ attorney fees are limited, insurance companies have no reciprocal limits on what they can pay their own high-priced attorneys, who data now show bill excessively, leading to higher insurance and overall system costs.

¹ Bernard S. Black et al., *Medical Malpractice Litigation: How It Works, Why Tort Reform Hasn't Helped*, Cato Institute (2021) at 135, 149. (Page numbers refer to the Kindle edition.)

² See Center for Justice & Democracy, “Courthouse Cornerstone: Contingency Fees and Their Importance for Everyday Americans,” (January 2013), <http://centerjd.org/content/white-paper-courthouse-cornerstone-contingency-fees-and-their-importance-everyday-americans>