90 Broad Street ❖ Suite 401
90 Broad Street ❖ Suite 401
New York, NY 10004
(212) 267-2801
info@insurance-reform.org
www.insurance-reform.org
(A project of the Center for Justice & Democracy)

TOWERS PERRIN: "GRADE F" FOR FANTASTICALLY INFLATED "TORT COST" REPORT

PADDED, INEXPLICABLE DATA STILL SHOW COSTS LOWER THAN 1983 LEVELS

Executive Summary

The insurance industry-consulting firm, Towers Perrin, issued a "study" in December 2009 that estimates what it calls the overall "cost" of the U.S. tort system in 2008. Towers Perrin puts this figure at a whopping $254.7 billion, saying this translates to $838 per person. These figures are highly unreliable and completely inappropriate for evaluating the U.S. tort system. They have been effectively debunked over and over again. Towers Perrin has no excuse for its misleading and shoddy work. Policymakers and opinion leaders should be extremely wary of this document and how it is used. It gives no credence to the notion that tort costs are out of line.

The report and its promotion are highly skewed and political. Despite being severely criticized by business journalists, consumer groups and academics, Towers Perrin has issued these "tort costs" annually for over two decades and it continues to be used by those seeking to attack the nation's tort system. The report has no other purpose; it is of no use for individual businesses.

Even with its flaws, the report provides no support to those claiming that "tort costs" are growing beyond what would be expected, much less any problem or crisis. It calls the tort cost environment in the U.S. "relatively benign" and says that medical malpractice trends are stable. By its own admission, "tort costs" are growing slower than medical inflation and "the ratio of tort costs to GDP decreased substantially since 2003." Moreover, today's tort costs are less, compared to GDP, than they were in 1983.

Although "tort costs" by Towers Perrin's definition are not increasing, that should not excuse the multitude of problems with this report.

- The company admits that its figures have nothing to do with the costs of the legal system. The report does not examine jury verdicts, settlements, lawyers' fees or any actual costs of what might generally be considered the "tort" system.
- Towers Perrin examines only insurance losses whether or not a lawsuit was filed, plus insurers' "guess" (historically, widely overstated) of what future losses could be, plus all of the industry's bloated overhead (salaries, bonuses, lobbying costs, jet planes etc.).
- Towers Perrin greatly pads its numbers by:

- incorrectly counting as a "tort cost" the transfer of money from wrongdoers to victims, such as $500 to fix a dented car fender, which the insurance company of the person who caused the accident pays; these are not "tort costs" and were not created by the person whose car needs fixing.
- including insurance costs whether or not a lawsuit was filed; fully 52 percent of the total "tort costs" are auto liability claims (such as fender-benders), which typically are settled without claimants hiring attorneys or suing anyone.
- including billions of dollars of insurer estimates - not actual costs - that insurers make in rate filings and that have in the past proved to be wildly overstated.
- including billions of dollars of certain first party coverages, like auto insurance medical payments, which can cover anyone hurt in the car, as well as uninsured motorists (UM) and underinsured motorists (UIM).
- including the immense costs of operating the wasteful and inefficient insurance industry, an industry that is not fully competitive due to its exemption from anti-trust laws; fully 26.1 percent of Towers Perrin's total "tort cost" figures are these administrative expenses, such as multi-million dollar salaries and bonuses of insurance industry executives, perks like private jets and country club memberships, lobbying and advertising expenses, rent and utilities for insurance company headquarters and commissions paid to agents.

Towers Perrin "tort cost" studies are filled with unverifiable data and broad assumptions that other data contradict.

- Towers Perrin adjusts figures without any basis and fails to provide explanations or sources.
- There is good reason to question Towers Perrin's accuracy. For example, its medical malpractice calculations are based on its own internal studies, which are not revealed, and it finds these medical malpractice costs to total $29.8 billion. Yet 36.1 percent of these "costs" are largely unverifiable insurer expenses. Moreover, what is left - $19 billion in actual medical malpractice claims and reserves - is still out of whack with the insurance industry standard calculated by A.M. Best, which puts losses *and* "Loss Adjustment Expenses" at only $6 billion – less than a third of Towers Perrin's calculation.

Towers Perrin does not measure the countervailing costs *saved* by the tort system, which provides the financial incentive for companies and institutions to act more safely.

- Towers Perrin entirely ignores the amount of money the civil justice system saves the economy in terms of injuries and deaths that are prevented due to safer products and practices, wages not lost, health care expenses not incurred, and so on.
- Towers Perrin's calculations are not discounted one cent for the benefit that is gained from repairing damage.

Tort Tax Fiction. The term "tort tax" or "litigation tax" is a public relations gimmick, derived from these very same Towers Perrin numbers that do not represent tort system costs at all, but rather insurance losses, likely exaggerated estimates of future claims that have not even been filed yet, and all of the insurance industry's bloated expenses.