



JACKPOT JUSTICE

The True Cost of America's Tort System

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with Jeffrey A. Johnson and Anna Erokhina

With a foreword by Haley Barbour, Governor of the State of Mississippi

What is the goal of the study?

The goal of *Jackpot Justice* is to arrive at a fuller accounting of the true cost of the U.S. tort liability system. The study provides a conservative, first approximation of the total costs, both direct and indirect, and the total excess cost of the U.S. tort system.

To our knowledge, no one has collected this cost data under one cover before.

Why should people care about tort liability?

A thriving free-enterprise economy depends on an efficient tort system that provides proper incentives to businesses to produce safe products in a safe environment and ensures that truly injured people are fully compensated for their injuries.

A poor tort system, however, acts as a burdensome tax that weighs down the standard of living for ordinary citizens. Everyone pays for an excessively costly tort system through lower wages and less productivity, lost jobs in certain sectors of the economy, fewer innovations and new products, higher prices, and a lower standard of living for everyone. These costs are not obvious or transparent.

Excessive tort costs act as a drag on the U.S. economy and make it harder for American businesses to compete in global markets. We all pay the price for excessive tort litigation. *Jackpot Justice* rings up the true cost of the U.S. tort liability system.

How did we calculate the cost of the U.S. tort liability system?

At its core, the tort system is a massive transfer system, taking resources from those judged to have caused harm and transferring the resources to those judged to have been harmed. The rent-seeking theory of transfers from economic science can be used to measure the cost of the tort transfer system.

Rent-seeking theory is often applied to taxation, tariffs, monopolies, and government spending. In this study, we apply it to torts. We also include dynamic elements in our analysis to develop a fuller accounting of the true cost of the tort system.

PRI's cost calculation relies on the best available scholarly studies by top economists and legal scholars. Whenever possible, the studies reflect the "consensus view" among those who have studied these factors. When selecting which study to rely on, the authors' first choice was to base calculations on statistically significant results in the most prestigious academic publications.

What is the general outcome of the study?

According to PRI's calculation, the total annual accounting costs of the U.S. tort liability system is \$865.37 billion. To put the annual social cost of the U.S. tort system into perspective, it is equivalent to an 8-percent tax on consumption, a 13-percent tax on wages,

the combined annual output of all six New England states (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont), or the total annual sales of the U.S. restaurant industry. The annual price tag, or “tort tax,” for a family of four in terms of costs and foregone benefits is \$9,827.

The total annual wealth loss to U.S. stockholders from tort lawsuits is \$684 billion. To put this into perspective using output terms, stockholder loss is equivalent to losing all U.S. supermarket sales for an entire year or the output of Florida each year. Or the equivalent of losing the combined output of 15 smaller states: Alaska, Delaware, Hawaii, Idaho, Maine, Montana, Nebraska, New Hampshire, New Mexico, North Dakota, Rhode Island, South Dakota, Vermont, West Virginia, and Wyoming.

How did we measure “excess” tort costs?

How much of the total U.S. tort costs are excessive?

Not all tort costs are “excessive” or “wasteful.” Some tort costs are necessary as part of a thriving free-enterprise economy operating under the rule of law.

The United States spends 2.2 percent of GDP on direct tort costs. Other advanced countries spend an average of 0.9 percent of GDP on direct tort costs. The difference of 1.3 percent is the best estimate of the excessive costs of the U.S. tort system; it measures how much more expensive the U.S. tort system is relative to the tort systems in comparable countries. This comparative international approach yields the result that 59 percent of U.S. direct

tort costs are excessive (1.3 percent of the 2.2 percent is excessive).

After applying this percentage to the appropriate social costs and adding the figures, the results show that America wastes \$589 billion each year from excessive tort litigation. This is roughly equivalent to losing the entire annual output of the state of Illinois. It is equivalent to a 7-percent tax on consumption or a 10-percent tax on wages. The annual price tag, or “excess tort tax,” for a family of four in terms of costs and foregone benefits is \$7,848.

How can excess tort costs be reduced?

How would the U.S. benefit from tort reforms?

Tort reforms can reduce and eliminate excess U.S. tort costs. The *U.S. Tort Liability Index: 2006 Report*, coauthored by Dr. Lawrence J. McQuillan and Hovannes Abramyan of the Pacific Research Institute, lists more than two dozen tort reforms that states have adopted, or have at their disposal, to reduce direct tort costs. The *U.S. Tort Liability Index* also summarizes scholarly studies that have quantified the secondary or spillover benefits of tort reform such as increased productivity, better state economic performance, greater innovation, higher national output and personal income, and saved lives. Given these profound and sweeping benefits, ordinary citizens and state lawmakers would be wise to promote and enact legal reforms that curb tort excesses.

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