



Texas Trial Lawyer Association

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To: Members of the Texas Judiciary

From: Nelson Roach, President

Some of you may have heard about or received an economic report paid for and distributed by the self-styled "Texans for Lawsuit Reform." The report was prepared by economist-for-hire Ray Perryman, who was paid over \$100,000 by the "TLR" group. Beginning with a widely criticized insurance industry related report on the national cost of the tort system, Perryman's report claims that the legislative changes to the tort system have been responsible for job creation in Texas. The material in this notebook will provide you another view of Perryman's work product and the ramifications of so-called "tort reform."

First, "TLR" paid Perryman over \$100,000 for the report. The report is classic junk science that attempts to use unverifiable data to cover up deliberate and grossly inaccurate data.

The study relies on the Tillinghast report, which claims to be a national "study" of the cost of the tort system. Tillinghast argues its methodology is "proprietary" and "confidential." Perryman too uses the "proprietary" and "confidential" argument to not reveal his methodology. Thus, there is no way any third party can verify their calculations or fully vet the assumptions that underlie their numbers. If this were submitted to a peer review journal, it would be rejected on that basis alone. Their findings would not be admissible in a court of law because they refuse to disclose their methodology; therefore, they refuse to prove that their methodology and findings are sound.

What we do know about their methodology proves that it is in fact unsound. The Tillinghast study counts all insurance transfer payments as a cost of the tort system. As such, Tillinghast is measuring the cost of injuries, not the dead-weight costs of the tort system.

For example, in the BP explosion, a worker who was burned and incurred \$1M dollars in medical expenses is counted in Tillinghast as a \$1M cost to the tort system. However, that \$1M is not a cost of the tort system; it is a cost that is re-allocated by the tort system. Some party will pay that \$1M, whether it is the responsible party (tortfeasor), the victim, health insurance, Medicaid and/or the hospital, or some combination of any or all of them. The tort system is not incurring the \$1M cost: the tortfeasor is responsible for incurring the cost; therefore, it is not a dead-weight cost of the tort system. In other words, if you eliminated the tort system, the economy would still incur the cost.

Tillinghast includes insurance payments to policyholders in cases that never involve a lawyer as a "cost" of the tort system. For example, if you are involved in a fender bender and you settle your claim with an insurance company without hiring a lawyer, that payment is counted as a "cost" of the tort system.

The study further counts the insurance industry's administrative costs as a cost of the tort system, including the multi-million dollar salaries of insurance company executives.

Second, we include a number of articles raising valid and important criticisms of Perryman's work for past clients.

Third, you will find two insightful critiques of the Tillinghast Report on tort system costs on which Perryman bases his report.

Fourth, we recommend to you the *Stability, Not Crisis: Medical Malpractice Claim Outcomes In Texas, 1988-2000**, a peer-reviewed study (and one which fully discloses its methodology) conducted by Professors Bernard Black and Charles Silver (University of Texas); Dr. David Hyman (University of Illinois); and Dr. William Sage (Professor of Law at Columbia University and principal investigator for the Pew Project on Medical Liability). This study present a much different view of the effects of so-called "tort reform" than the Perryman report paid for by the proponents of the pro-defendant tort changes enacted in 2003.

It was my privilege to offer testimony regarding the Perryman report before the Texas Senate State Affairs Committee on April 28, 2008. If you have questions regarding my view of the Perryman report, feel free to email meatnjroach@nixlawfirm.com.

On behalf of the officers and members of the Texas Trial Lawyers Association, I thank you for your time and attention to our commentary on this important subject.

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