

# TOWERS PERRIN CORRECTIONS AND CLARIFICATIONS TO COMMENTS MADE IN “THE FRIVOLOUS CASE FOR TORT LAW CHANGE” REPORT

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Note: Information developed and distributed by others often requires amplification, correction and clarification. Analyses like these ensure that the most accurate, complete and clear perspective is available to those who are interested in, engaged in, and care about Tillinghast’s work and purpose.

**Text in bold** in the left column is the subject of clarification and the correction appears in the right-hand column.

	<b>Article Text</b>	<b>Corrections and Clarifications</b>
	“The Frivolous Case for Tort Law Change,” report by the Economic Policy Institute (EPI)	“U.S. Tort Costs: 2004 Update, Trends and Findings in the Cost of the U.S. Tort System,” report by the Tillinghast business of Towers Perrin
<b>1</b>	The EPI paper states that <b>“the TTP reports are one-sided...TTP makes no attempt to measure the benefits of the tort system.”</b> (page 2)	Tillinghast acknowledges this in its 2004 Update in the Introduction, Page 4. The objective of the 2004 Update is to measure the cost of torts in the U.S. We take no position as to whether tort costs are too high or too low, or whether the costs are high or low relative to the benefits of the tort system. Our purpose is merely to inform the policy debate with an objective, factual cost estimate.
<b>2</b>	<b>“Half 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 victims.”</b> (page 2)	As noted above, the purpose of the 2004 Update is to measure the cost of torts in the U.S. We think it is common sense to include in the costs the amounts paid to the alleged victims of the torts. The basis for our estimates are fully disclosed in the report, so that users of the report understand what we are measuring.
<b>3</b>	<b>“To arrive at numbers large enough (hundreds of billions of dollars) to scare the public about the size of what it erroneously calls a tort crisis ...”</b> (page 3)	The purpose of the 2004 Update is to inform, not to “scare” anyone. Moreover, the word “crisis” does not appear in the 2004 Update.
<b>4</b>	<b>“TTP includes a number of costs that do not belong in an estimate of tort costs:... (self-insurance costs and deductibles paid by insureds...benefits paid for non-tort losses).”</b> (page 3)	The purpose of the study is to measure U.S. tort costs, whether insured or not. We see no reason why self-insured tort costs should be excluded. In addition, benefits paid for non-tort losses are not included in our study, as a close reading of Page 8 of the 2004 Update would show.

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<b>5</b>	<p>“...with respect to medical malpractice, for instance, whereas A.M. Best reports incurred costs of liability insurance of less than \$8 billion in 2003...” (page 4)</p>	<p>Actually, A.M. Best reports incurred losses of \$7.9 billion in 2003. A.M. Best also reports over \$3 billion in defense costs in 2003. In addition, as those familiar with medical malpractice are aware, most (if not all) major U.S. health systems self-insure a significant portion of their medical malpractice losses. Such self-insured losses are not included in the data reported by A.M. Best.</p>
<b>6</b>	<p>“Use of this figure allows TTP to simply ‘reassess’ liabilities associated with claims.” (page 5)</p>	<p>This statement is in reference to asbestos costs. It insinuates that Tillinghast changed its assessment of asbestos losses. That is not the case. The reassessment is by the U.S. property/casualty insurance industry, not Tillinghast; the numbers in the 2004 Update reflect data drawn from insurance company statutory annual statements.</p>
<b>7</b>	<p>The EPI paper criticizes the 2004 Update for including administrative expenses. (page 5)</p> <p>The EPI paper, related to administrative expenses, states, “<b>But it is impossible to analyze how TTP apportions such costs to what it calls the tort system...</b>” (page 6)</p>	<p>We believe such expenses should be included, and separately identify them so that users of our report can analyze the data with and without such costs. We include a chart on Page 7 of the 2004 Update that shows the relative share of total insured tort costs attributable to administrative expenses. The administrative expenses are created because businesses and individuals feel the need to transfer the risk of a tort exposure. Absent the tort exposure, liability insurance would not be necessary and the administrative costs would not be incurred.</p> <p>It’s not Tillinghast that apportions these expenses. Rather, it’s the insurance companies themselves who apportion their administrative expenses to each line of business as part of their annual filings with state insurance departments. The data tabulated by A.M. Best that we cite on Page 8 of the 2004 Update includes the apportionment of administrative expenses to line of business.</p>
<b>8</b>	<p>“For example, no one denies that insurance companies should make good on the promises in their insurance contracts to pay the first- or third-party damages of their insureds, but it is misleading to treat these obligations as tort costs.” (page 6)</p>	<p>As noted previously, benefits paid for non-tort, or first-party, coverages are not included in the 2004 Update. In addition, we believe payments for third-party damages of insureds should be included — they reflect the payments made as a result of alleged torts, which is what the 2004 Update attempts to measure.</p>
<b>9</b>	<p>“TTP cites a number of misleading numbers to support its claims that there is</p>	<p>As noted previously, the word, “crisis” does not appear in the 2004 Update. Moreover,</p>

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	<b>a crisis in the tort system. These include claims that...tort costs as a percentage of gross domestic product are too high...</b> (page 6)	Page 4 of the 2004 Update states, "This study takes no position on whether tort costs are too high or too low."
<b>10</b>	<b>"TTP's 2003 Update claimed that tort costs rose almost 30% from 2000 to 2002 and predicted that the trend would continue."</b> (page 7)	The 2003 Update showed increases in tort costs of 14.4% in 2001 and 13.3% in 2002. We did not expect that trend to continue. As outlined on Page 20 of the 2003 Update, we anticipated an increase in costs of 8.5% in 2003, well below the rate of increase in 2001 and 2002, and even below the 52-year average annual increase of 9.8%.
<b>11</b>	<b>"But because TTP appears to measure 'tort costs' by the premiums paid for all insurance coverage rather than through an actual accounting of tort payouts..." and "Using insurance premiums as a proxy for tort costs..."</b> (page 8)	The 2004 Update's tabulation of tort costs does not include all insurance coverages, as noted previously. Moreover, premiums are not used as a proxy for tort costs. As stated on Pages 8 and 9 of the 2004 Update:  "Earned premiums are displayed in Appendix 3. The actual premiums are not considered in the total tort costs shown in column (6). (The arithmetic in the Appendix multiplies premiums by ratios in which earned premium is the denominator, effectively eliminating premiums from the resulting product.) As such, any increase in insurance premiums without a corresponding increase in costs has no impact on the estimated tort costs in this study."