

The ILR Research Review

Featuring the latest of ILR's groundbreaking research on pressing legal issues

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From the Top: The President's Perspective

The end of the year is a time for reflection, and for giving thanks. On a personal note, I have been especially grateful this year for the return of in-person gatherings. Being back in person has given new energy and momentum to the legal reform movement. Our ties held strong in the peak of the pandemic, but there's nothing quite like seeing one another face to face as we did on November 2nd, at ILR's first in-person Summit in four years. The ILR team is very fortunate to be part of such a passionate community of civil justice advocates, and we're going to need that passion. As the research covered in this edition of the *Review* illustrates, American business faces an array of daunting liability trends.

Included in this edition is research giving empirical evidence that America is paying more into our tort system than ever before (\$443 billion in 2020), and that nuclear verdicts (jury verdicts worth \$10 million or more) are on the rise.

ILR's research also reveals a worrisome emerging issue—third party litigation

funding may be serving as an avenue for foreign adversaries to strategically undermine U.S. companies and extract sensitive commercial information. This problem can be countered with commonsense reforms, but it will take skillful advocacy and political will to make them happen.

Finally, this *Review* includes the latest edition of *101 Ways*, ILR's flagship compendium of state civil justice reforms. With a plethora of practical solutions, this paper offers guidance for state legislators to make their states' legal environments fairer and better for businesses and consumers.

As we prepare to turn the page into 2023, we have plenty of challenges ahead of us—but we also have full faith and confidence that ILR and our partners in civil justice are ready to meet them.

Happy reading,

—Harold H. Kim



U.S. Chamber of Commerce
Institute for Legal Reform

Real-World Impact

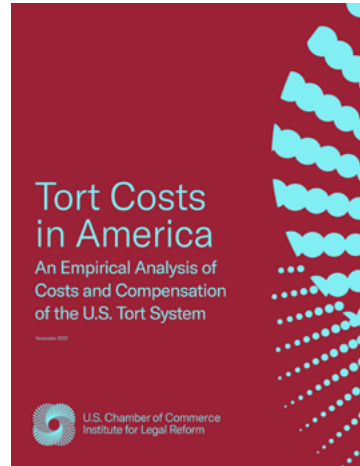
As mentioned to the right, annual tort costs per household reached \$3,621 in 2020, the final year of the study. That's 70% of what the average household spent on groceries during that year (\$4,942) and more than twice the average household's monthly housing cost in 2020 (\$1,784), per the Bureau of Labor Statistics. Though distributed throughout the economy, these costs clearly create a significant and unwelcome burden for every American family.

Summit Panel Discussion

Co-author Michael Leiter gave an incisive summary of the national economic and security threats posed by TPLF during an interview at ILR's Summit 2022: Law • Policy • Politics, held on November 2, 2022. Beyond simply disrupting the operations of U.S. companies, actors affiliated with adversaries like China, Russia, and Iran could feasibly use TPLF to access sensitive competitive information held by targeted companies through litigation they fund. In those cases, "winning" a funded lawsuit may not even be the primary goal of the government-backed entity bringing the litigation, as long as it can extract valuable information in the process. In Michael's words, "we know that our adversaries are trying to get this information, there's an avenue [through TPLF] to get it, and we should protect against that."

The paper's release has been covered in multiple national and beltway outlets, including Reuters, *The Wall Street Journal*, and *The Hill*.

Tort Costs in America: An Empirical Analysis of Costs and Compensation of the U.S. Tort System



November 2022

Authors: David McKnight and Paul Hinton, the Brattle Group

Tort costs in America are rising, and they are making a major impact on our economy. Landmark research conducted by the Brattle Group and published by ILR uses insurance premium data to estimate tort costs by state and nationally between 2016 and 2020. The research reveals that costs and compensation paid in the tort system reached \$443 billion in 2020, or 2.1 percent of GDP. In more concrete terms, that averages out to \$3,621 for every American household. The research also shows that the tort system is highly inefficient, with only 53 cents of every dollar going to claimant compensation.

The empirical data in this report should serve as a clear call for policymakers to fix our runaway lawsuit system.

ILR Briefly: A New Threat: The National Security Risk of Third Party Litigation Funding



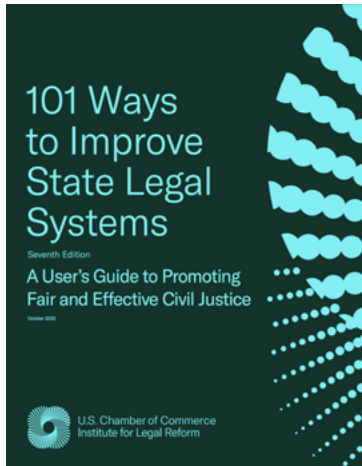
November 2022

Authors: Michael E. Leiter, John H. Beisner, Jordan M. Schwartz, and James E. Perry, Skadden, Arps, Slate, Meagher & Flom L.L.P.

This edition of *ILR Briefly* makes the case that the lack of safeguards in third party litigation funding (TPLF) provides a clear path for foreign adversaries to undermine U.S. national economic and security interests through the infiltration of the American litigation system. By using TPLF, an adversary can pursue their goals with little risk of their involvement ever coming to light.

ILR's research offers a deep dive into TPLF's troubling implications for national security and offers a range of legislative and executive solutions to address this intolerable weak point in America's national security architecture.

101 Ways to Improve State Legal Systems—Seventh Edition



October 2022

Authors: Victor E. Schwartz, Cary Silverman, and Christopher E. Appel, Shook, Hardy & Bacon L.L.P.

As in past years, the seventh edition of *101 Ways* covers a wide range of civil justice priority issues, offering policymakers and reform advocates a robust set of options for improving the civil legal environment in their states.

The reforms in this edition run the gamut from addressing over-regulation and over-enforcement, to improving product liability law, to promoting rational liability rules, to addressing damages “run wild,” to safeguarding the integrity of the litigation process.

Nuclear Verdicts: Trends, Causes, and Solutions



September 2022

Authors: Cary Silverman and Christopher E. Appel, Shook, Hardy & Bacon L.L.P.

Nuclear verdicts are on the rise, with damaging consequences for businesses, consumers, and the rule of law. ILR’s research examines 1,376 nuclear verdicts (jury verdicts worth \$10 million or more) in state and federal courts from 2010–2019. The report shows that these verdicts grew significantly in frequency and size during the study period, with the median nuclear verdict rising from \$19.3 million in 2010 to \$24.6 million in 2019. That’s a 27.5% increase, far outstripping inflation of 17.2% over the same period.

This paper dives into the factors driving nuclear trends, looking at different case types behind these verdicts and their variation across the states. We conclude by offering a series of solutions that legislators and courts can employ to fix system flaws and curb exploitative plaintiffs’ lawyer tactics that contribute to this out-of-control phenomenon.

Roadmap to Improvement

Two other papers covered in this *Review—Tort Costs in America* and *Nuclear Verdicts*—illustrate the plight of states that suffer from elevated tort costs in general and high rates of nuclear verdicts in particular. Though the timelines of these two studies do not overlap exactly, it is worth noting that many of the states experiencing the highest tort costs in our research also experienced the highest numbers of nuclear verdicts, including states like California, Florida, and Texas. The reforms listed in *101 Ways* present a clear roadmap to bring these numbers down and improve state legal climates, to the benefit of businesses and families.

Verdicts by the Numbers

Among other findings, ILR’s research revealed that:

- Florida, California, and New York produced the most nuclear verdicts in the 2010-2019 study period, with 575 verdicts worth over \$10 million;
- the total amount of noneconomic damages in nuclear verdicts exceeded total economic and punitive damages combined in six out of the 10 years studied; and
- nuclear verdicts were most frequent in product liability (23.6%), auto accident (22.8%), and medical liability (20.6%) cases.

Summit 2022

Law • Policy • Politics

November 2



U.S. Chamber of Commerce
Institute for Legal Reform



ILR's Summit 2022 featured discussions with legal leaders about the most urgent challenges on today's litigation landscape.

Top-left: ILR President and U.S. Chamber Chief Legal Officer and Executive Vice President Harold Kim kicks off Summit 2022. **Top-right:** U.S. Chamber Chief Policy Officer Neil Bradley (left) interviews former Secretary of Labor Gene Scalia of Gibson Dunn (second-left), Julia Malkina of Sullivan & Cromwell (second-right), and David Ogden of Wilmer Hale (right). **Bottom:** Former Florida Attorney General Bill McCollum of Dentons (left) interviews Virginia Attorney General Jason Miyares (center) and Maryland Attorney General Brian Frosh (right).

