Tort Costs in America

Third Edition

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

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Foreword

The costs of our lawsuit system are a hidden burden that affects every American, and that burden is growing. Costs and compensation paid in the U.S. tort system reached over $529 billion in 2022, or over $4,200 per U.S. household. That's the equivalent of 2.1 percent of national GDP and it represents a massive challenge for consumers and businesses of all sizes, but that challenge can be overcome.

This edition of *Tort Costs in America*, conducted by The Brattle Group and published by the U.S. Chamber of Commerce Institute for Legal Reform (ILR), shows the pervasive challenge of rising tort costs across the country, but also provides important examples of the success that can be achieved when leaders address this challenge with dedication.

First, the challenge: between 2016 and 2022, tort costs at the national level rose an average of 7.1 percent per year—far faster than average annual inflation (3.4 percent) and average annual GDP growth (5.4 percent) for that period. The rapidly inflating costs of the tort system are evidence that the plaintiffs' bar, litigation funders, lawsuit advertisers, and their allies are working hard to expand liability, and that the civil justice community's work must continue.

That said, the data also shows that meaningful legal reforms work to improve state legal climates and drive down tort costs.

"... [B]etween 2016 and 2022, tort costs at the national level rose an average of 7.1 percent per year—far faster than average annual inflation (3.4 percent) and average annual GDP growth (5.4 percent) for that period."

West Virginia is an example of that success. For more than a decade, the Mountain State has prioritized efforts to create and maintain a fair legal system, signaling to businesses and the plaintiffs' bar alike that balance in civil justice is a priority and that liability-expanding policy initiatives will face resistance. In recent legislative sessions the state has tackled key issues like lawsuit tourism, harmful lawsuit advertising tactics, and examples of out-of-control damage awards. The hard work has paid off. West Virginia's tort costs have declined over 20 percent, and its per-household cost was the lowest in the country in 2022, at $2,132.

Florida could be the next success story after the state passed historic lawsuit abuse reforms post-report data in 2023. Proving Florida was at a breaking point, the data shows above average growth in tort costs through 2022, the last year of available data, which underscores the urgency that drove policymakers to enact historic legal reforms in 2023 that increased transparency in lawsuit damages and tackled billboard lawyer windfalls and unfair divisions of liability. According to our partners at the Florida Chamber, there are early signs that the reforms are working: insurance carriers are expanding their business in Florida and homeowner insurance rates are stabilizing or decreasing.[1] ILR applauds Florida's meaningful movement in the right direction and encourages lawmakers to continue fixing what remains broken, unfair, and unpredictable. Meanwhile, other states should strive to tell a similar success story.

In sum, national tort costs have hit a new high water mark in 2022, and the 2016-2022 national tort cost average growth rate of 7.1 percent is rapid and unsustainable. But there are clear signs that legal reform can bring those costs down in individual states where policymakers commit to improving the legal climate for communities, businesses, and consumers. The objective, empirical tort costs research provided by The Brattle Group continues to serve as a barometer for states to understand when their tort costs are rising and to see the fruits of reform when tort costs fall.

The tort cost figures and the report describing the methods used to develop those figures are the work product of The Brattle Group. This Foreword is the work of ILR.

This edition of *Tort Costs in America* ... shows the pervasive challenge of rising tort costs across the country, but also provides important examples of the success that can be achieved when leaders address this challenge with dedication.

Executive Summary

Chapter

01

This is the third in our series of reports that measure the total costs and compensation of the American legal system (the "tort system").[2] We refer to the costs of litigating and the compensation paid to claimants together as "tort costs."[3] Our estimates are based on state-level insurance data and estimated self-insured and uninsured costs. As a consequence, the tort costs included in this study are only those that are insurable, which understates tort costs to some extent.

These national and state-specific tort cost estimates provide a foundation for analysis of the effect of legislative reforms on the cost and efficiency of the tort system, the variation in liability costs across states, and the economic impact of potential excesses in the tort system. A detailed description of the data and methodology used in this study is included in the appendix.

We find that in 2022 (the latest year for which the data are available), tort costs amounted to $529 billion, or 2.1 percent of U.S. gross domestic product (GDP). These tort costs include:

- $296 billion in general and commercial litigation liabilities, which includes a broad range of personal injury, consumer, labor, environmental, finance, regulatory and commercial litigation claims;[4]
- $215 billion in automobile accident claims; and
- $17 billion in medical liability claims.

Tort Costs Over Time

To provide context, we extend our analysis back from 2022 to 2016 and explore the development of tort costs throughout that period (see Table 1).[5] Overall, tort costs have grown at an annual rate of 7.1 percent a year over the period 2016 to 2022—with commercial liability growing at a faster rate than personal liability. This rate exceeds both the annual rate of inflation, which averaged 3.4 percent, and GDP, which grew at 5.4 percent

"Overall, tort costs have grown at an annual rate of 7.1 percent a year over the period 2016 to 2022—with commercial liability growing at a faster rate than personal liability. This rate exceeds both the annual rate of inflation, which averaged 3.4 percent, and GDP, which grew at 5.4 percent per year over the same period."

per year over the same period. Because increases in tort costs have outpaced increases in GDP, tort costs as a percentage of GDP rose from 1.88 percent to 2.07 percent.

GDP contracted in 2020 during the period of COVID-related shutdowns, but tort costs continued to grow. As a result, tort costs as a percentage of GDP increased to 2.09 percent in 2020. Even as GDP rebounded in 2021 and 2022, tort costs continued to grow faster than inflation.

Tort Costs per Household

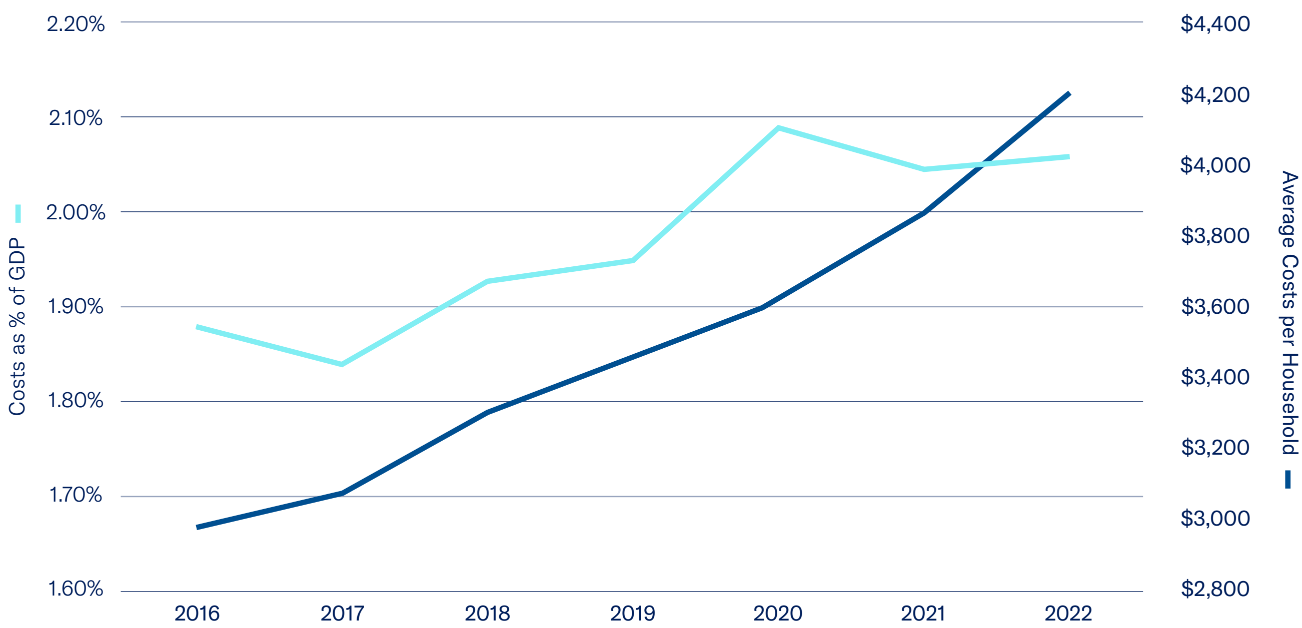
We estimate that U.S. tort costs in 2022 equate to $4,207 per household.[6] As illustrated in Figure 1, this per-household amount has grown consistently since 2016.

Table 1: Tort Costs by Category ($ Billions) (2016 – 2022)

	2016	2017	2018	2019	2020	2021	2022	Average Annual Growth
Commercial Liability	$222	$220	$247	$264	$290	$324	$367	8.7%
Personal Liability	$129	$139	$149	$154	$153	$156	$162	3.9%
Total Tort Costs	**$351**	**$359**	**$397**	**$418**	**$444**	**$481**	**$529**	**7.1%**
National GDP	$18,701	$19,508	$20,536	$21,395	$21,193	$23,462	$25,598	5.4%
Consumer Price Index	240	245	251	256	259	271	293	3.4%
Total Tort Costs as % of GDP	**1.88%**	**1.84%**	**1.93%**	**1.95%**	**2.09%**	**2.05%**	**2.07%**	

See Table 3 for full results, explanation of calculations, and sources.

Figure 1: Change in Tort Costs Per Household and as % of U.S. GDP Over Time (2016 – 2022)



Sources: Tort Costs are from Brattle analysis; GDP is from the Bureau of Economic Analysis; and number of households is from the United States Census Bureau.

Tort Costs Across States

Our results reveal significant variations across states.

Tort costs in the most expensive states are up to 2.5 times larger than in the least expensive states.

For example, after Delaware,[7] Florida has the highest tort costs as a percentage of state GDP (just under 3.4 percent),[8] while Alaska, North Dakota, and South Dakota have among the lowest (less than 1.4 percent).

Tort system costs per household are below $2,600 in states such as Maine, Wisconsin, and West Virginia, but over $5,500 in states such as New York, Florida, and New Jersey.

Introduction

Chapter

02

The legal system in the United States provides businesses and individuals with the means to obtain civil remedies for harm caused by others in the form of monetary damages and penalties. This legal system includes a variety of individuals and institutions (both public and private) that are involved in adjudicating tort claims in federal, state, and local courts; arbitrations and mediations; settlement negotiations; and other settings.

We refer to these laws, institutions, and persons collectively as the "tort system." The tort system may be described as playing two important economic roles in society: to compensate for harm actually incurred, and to prevent future harm by deterring irresponsible behavior.

The U.S. Tort System

The cost and efficiency of the tort system have been the subject of public policy debate, and the United States has been found to have significantly higher costs than other developed countries.[9] Some of the factors contributing to differences in liability costs across countries include: the comprehensiveness of the social safety net, the availability of no-fault compensation schemes, the existence of loser-pays rules for attorneys' fees in certain jurisdictions, the extensiveness of private rights of action, the access to litigation funding, and the availability and abuses of the class action mechanism.[10]

Excessive costs of the tort system can adversely affect businesses and individuals, and multiple studies have identified significant indirect costs and liability risks that result from how the tort system works, sometimes referred to as "externalities." For example:

- The risk of litigation can discourage the development and sale of new products and can slow innovation.[11]

"In addition to having a substantial aggregate cost on the economy, a large portion of the total tort-related expenditures go toward litigating and defending claims and lawsuits rather than compensating claimants."

- The perceived liability risk can influence where businesses choose to locate or do business.[12] In particular, liability costs in the U.S. decrease manufacturing cost competitiveness by 3.7 percent relative to the U.S.'s top nine trading partners[13] and could deter foreign direct investment.[14]

- Ultimately, excesses in the tort system have been linked to lower worker productivity and employment,[15] and these effects can be severe in industries subject to widespread litigation.[16]

Within the U.S., there are large variations in liability costs across states and they have been explained in part by differences in state legal environments, such as the number of lawyers, the perception of the competence of state judges, the strength of evidentiary rules, and the frequency of frivolous or abusive litigation.[17]

In addition to having a substantial aggregate cost on the economy, a large portion of the total tort-related expenditures go toward litigating and defending claims and lawsuits rather than compensating claimants. One study of insured personal injury claims in Texas found that for every dollar received by a claimant in commercial claims, an average of 75 cents was paid in legal and administrative costs.[18] A RAND study of nationwide expenditures for tort litigation similarly found that 79 cents of legal fees and related expenses were incurred per dollar of net compensation paid to injured parties.[19] This raises the important question of whether there are more efficient ways to adjudicate and compensate claimants.

A Consistent Measure of Tort Costs

In this study, we develop estimates of tort costs for the entire United States and for each state. This research is an update to our 2018 study with Dr. Lawrence Powell and to our 2022 study, which reported on the size of the U.S. tort system in 2016 and 2020 respectively.[20] For purposes of these studies, we define tort costs as the aggregate amount of judgments, settlements, and legal and administrative costs to adjudicate private claims and enforcement actions. The costs of the tort system also include the portion of liability insurance premiums used to pay administrative expenses and overhead and contribute to the profits of insurers.

We use data on liability insurance premiums in the United States to develop a consistent and transparent measure of tort costs. Tort liability is, however, not always insured in the commercial marketplace. It can be self-insured by businesses subject to tort liability. We include in our estimate of tort costs the liabilities of businesses that are self-insured, including businesses with explicit arrangements and risk management programs, as well as those that assume risk passively by choosing

An additional advantage of relying on insurance data is that our estimates incorporate the impact of private settlements on tort costs, which are missing from studies that rely only on public records of adjudicated cases.

to be uninsured.[21] The liabilities included in this study are only those that are insurable, which will understate tort costs to the extent that certain tort claims are uninsurable.[22] While the tort costs computed in this study will necessarily exclude some categories of costs, they are consistently estimated over time and geography through the use of insurance data, providing a basis to track trends and to compare tort costs across jurisdictions. An additional advantage of relying on insurance data is that our estimates incorporate the impact of private settlements on tort costs, which are missing from studies that rely only on public records of adjudicated cases.

The principal categories of insurable liability include:

- liability for personal injury and property damage, in some cases including consequential damages;
- liability related to commercial disputes based on tort claims, such as negligence, bad faith, misappropriation, or tortious interference;
- automobile accident liability;
- product liability and certain environmental liabilities;
- consumer protection liability;
- professional liability, including medical professional liability;
- investor protection liability;
- labor and employment liability;[23]
- civil rights (including disability, privacy, and non-discrimination protections); and
- antitrust liability, such as for unfair competition.

Liability costs covered by the commercial insurance market can be directly estimated from the statutory reporting of insurance companies. Specifically, total earned premiums of liability insurance policies measure the size of the tort system for insured businesses and individuals. Earned premiums cover the aggregate amount of expected awards and settlements, the costs of administering and adjudicating claims, and insurers' gross profits.

For self-insured businesses, we rely on data from Verisk's MarketStance® business, a leading provider of market intelligence to the insurance industry. MarketStance estimates U.S. commercial liability exposures and premiums, including liability exposures for self-insured businesses.[24]

We apply loss ratios and loss adjustment expense ratios from the National Association of Insurance Commissioners (NAIC) to the estimated liability premiums to compute the amount of tort costs that are paid in compensation to injured parties, spent administering and defending claims, or paid to transfer liability to insurers.

Updates to the 2022 Study

This study includes several updates resulting from improvements in the quality of the data available for estimating tort costs.

- We have updated the estimates of commercial automobile liability costs to rely on more fulsome data from MarketStance, which captures additional costs that were excluded in our prior estimates.[25]
- MarketStance now includes estimates of liability premiums for several additional lines of insurance, including motor truck cargo, warehouse liability, and business owners' policies that were not included in our prior estimates.[26]
- MarketStance has updated its methodology for computing uninsured premiums to better capture trends and allow for more consistent results over time.[27]

The net result of these changes is that our estimate of the total tort costs in 2020 is less than one percent higher than what we had estimated in our prior study ($444 billion rather than $443 billion).

To allow for analysis of trends in tort costs and consistent reporting over time, we have updated the estimates of tort costs from 2016 through 2020 to account for these methodological improvements and to allow for an accurate trendline. For the period 2016 through 2019, we compute the impact of the change in methodology on 2020 costs and apply that same percent change to the other years. This preserves the observed trends in tort costs and allows for a more consistent comparison of costs across years.

Results

Chapter

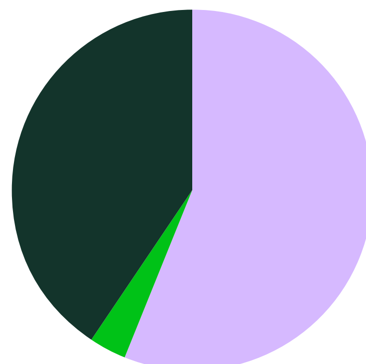
03

We estimate that the aggregate tort costs in the U.S. amounted to $529 billion in 2022. As shown in Figure 2, $296.5 billion of those costs are attributable to general and professional liability claims; $215 billion to automobile claims; and $17.5 billion to medical liability claims.

Costs and Compensation of the U.S. Tort System

We further report tort costs by line of coverage as either arising from personal or commercial sources of exposure (both insured and self-insured) in Table 2.[28] For presentation purposes, we group these lines of coverage into three categories of tort costs: general and professional liability; medical professional liability; and automobile liability.

Figure 2: Tort Costs by Category of Claims ($ Billions) (2022)



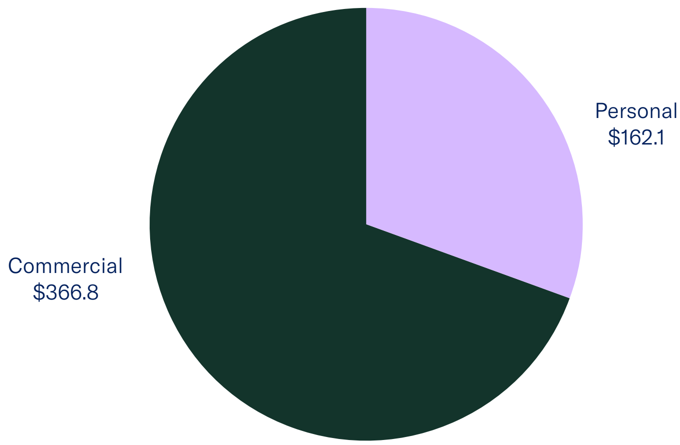
Sources: MarketStance; NAIC.

Table 2: Summary of Tort Costs ($ Billions) (2022)

	Commercial			
	Insured [A]	Self-Insured [B]	Personal [C]	Total [D]
General/Professional	$145.3	$146.0	$5.2	$296.5
Medical Liability	$12.9	$4.6	-	$17.5
Automobile	$45.4	$12.7	$156.9	$215.0
Total	**$203.6**	**$163.2**	**$162.1**	**$528.9**

Sources and Notes:
Differences in totals are the result of rounding.
[A]: Insurance premiums for commercial liabilities.
[B]: Imputed self-insured premiums for commercial liabilities.
[C]: Insured premiums for personal liabilities.
[D] = [A] + [B] + [C].

Figure 3: Tort Costs Borne by Businesses and Individuals ($ Billions) (2022)



Sources: MarketStance; NAIC.

The sum of commercial liabilities amounts to $366.8 billion. Of that amount, $291.3 billion (79 percent) relates to general and professional liabilities, while $17.5 billion (five percent) relates to medical liability, and $58.1 billion (16 percent) to commercial automobile liability. The total $291.3 billion general and professional liabilities consist of:

- $106 billion of operating liability, including coverages that relate to commercial property, commercial general liability, and product liability lines;
- $39.3 billion of professional liability, including directors and officers (D&O) liability, employment practices liability, and professional errors and omissions liability; and
- $146 billion of self-insured exposures, which shows that many businesses choose not to purchase insurance.

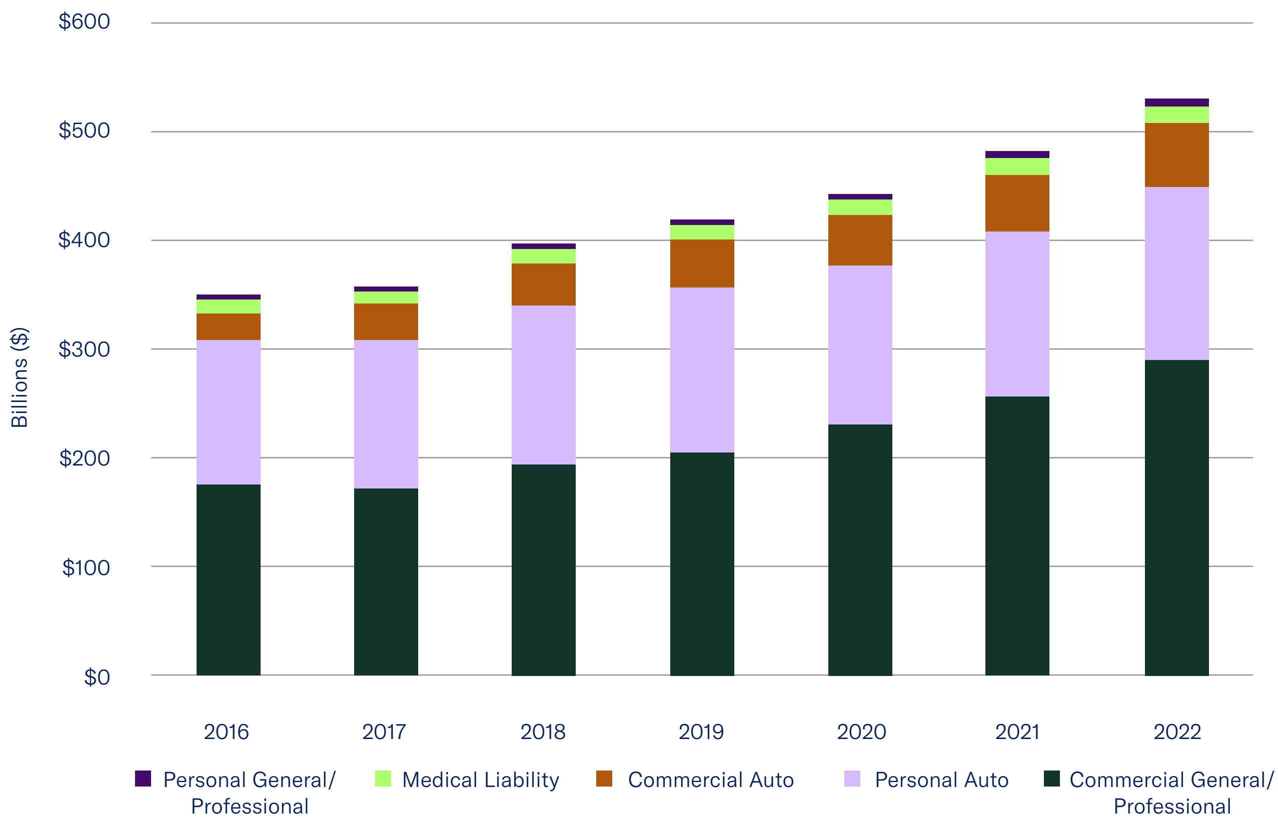
As shown in Figure 3, individuals face $162.1 billion in tort costs. Personal liabilities covered by homeowners', renters', and condominium insurance only account for $5.2 billion, a small fraction of the tort system. In contrast, personal auto liability accounts for $156.9 billion in total tort costs.

Tort Costs Over Time

Using the methodology described in this paper, we estimate tort costs for the years 2016-2022. Tort costs over this period by insurance line of exposure are summarized in Figure 4 below.

As shown in Table 3, tort costs have grown at an annual rate of 7.1 percent a year over the period 2016 to 2022—with commercial liability growing at a faster rate than personal liability. Furthermore, the annual growth in commercial general liability costs excluding medical liability is even higher at 8.8 percent,

Figure 4: Tort Costs Over Time by Category (2016 – 2022)



Sources and Notes:
MarketStance; NAIC; Bureau of Economic Analysis; Bureau of Labor Statistics.

and reaches 10.1 percent per year for commercial automobile liability.

These increases in tort costs exceed both inflation, which averaged 3.4 percent, and GDP growth of 5.4 percent over the same time period.[29] Because growth in the tort system has outpaced GDP, tort costs as a percentage of GDP grew from 1.9 percent to 2.1 percent. This growth in tort costs as a percentage of GDP over the period amounts to an average growth rate of 1.6 percent per year.[30]

The Impact of COVID

The growth in tort costs above the rate of inflation persisted in 2020 despite the tremendous systemic disruptions caused by the pandemic. COVID caused courts to shut down and greatly slowed down the pace at which tort cases proceeded through the justice system,[31] but this slowdown was not reflected in insurance data, which captures future expected costs of tort liabilities (i.e. from claims expected to be made or tort occurrences expected in the policy year).[32] Consumer price inflation also rose during COVID, but tort costs rose even more.

Table 3: Tort Costs Over Time by Category ($ Billions) (2016 - 2022)

		2016	2017	2018	2019	2020	2021	2022	Average Annual Growth
Commercial Liability									
General/Professional	[1]	$176	$171	$194	$205	$230	$256	$291	8.8%
Medical	[2]	$14	$13	$14	$15	$16	$17	$17	4.3%
Automobile	[3]	$33	$35	$39	$44	$45	$51	$58	10.1%
Commercial Liability Total	[4]	$222	$220	$247	$264	$290	$324	$367	8.7%
Personal Liability									
Homeowners (liability portion)	[5]	$4	$4	$4	$4	$4	$5	$5	5.1%
Automobile	[6]	$125	$135	$145	$150	$149	$152	$157	3.9%
Personal Liability Total	[7]	$129	$139	$149	$154	$153	$156	$162	3.9%
Total Tort Costs	[8]	**$351**	**$359**	**$397**	**$418**	**$444**	**$481**	**$529**	**7.1%**
National GDP	[9]	$18,701	$19,508	$20,536	$21,395	$21,193	$23,462	$25,598	5.4%
Consumer Price Index	[10]	240.0	245.1	251.1	255.7	258.8	271.0	292.7	3.4%
Total Costs as % of GDP	[11]	**1.9%**	**1.8%**	**1.9%**	**2.0%**	**2.1%**	**2.0%**	**2.1%**	

Sources and Notes:
MarketStance; NAIC; Bureau of Economic Analysis; Bureau of Labor Statistics.
Tort economic costs include losses, direct defense costs and cost containment expenses, plaintiffs' legal costs, and cost of risk transfer.
Average Annual Growth is the compound annual growth rate from 2016-2022: i.e., $(\text{value}_{2022}/\text{value}_{2016})^{1/6}-1$.
[4] = [1] + [2] + [3].
[7] = [5] + [6].
[8] = [4] + [7].
[10]: CPI is non-seasonally adjusted for all urban consumers; all items in U.S. city average. Base period: 1982-84=100.
[11] = [8] / [9].

Our estimates of tort costs are based on insurance premiums earned and losses incurred in each year. This includes the expected losses and expenses for liabilities in the current year plus any unexpected developments in losses and expenses for unresolved liabilities from prior years. Therefore, even though the pace of adjudicating claims may have slowed down as a result of the COVID-related shutdowns, the liabilities were still incurred in 2020 and are captured in our insurance-based estimates. Thus, while GDP contracted in 2020 as a result of the economic slowdowns associated with the pandemic, including a temporary drop in traffic volume leading to fewer accidents,[33] tort costs continued to grow overall.

Tort Costs Per Household and Across States

We report the costs of the tort system as an amount per household by dividing the estimated costs by the number of households in the U.S. as reported in the U.S. Census. Aggregate tort costs of $529 billion in 2022 amounted to $4,207 per household.

We also compute tort costs by state (in dollars and as a percentage of state GDP) and calculate the state-by-state amount per household. Insurance companies allocate premiums and losses to each state or territory based on the physical location of the insured risk, but for some liability coverage where a single premium is determined for multiple locations, premiums and losses can be allocated to the location of the principal office of the insured.[34] MarketStance produces ground-up written premium estimates based on the

These increases in tort costs exceed both inflation, which averaged 3.4 percent, and GDP growth of 5.4 percent over the same time period. Because growth in the tort system has outpaced GDP, tort costs as a percentage of GDP grew from 1.9 percent to 2.1 percent.

Table 4: Tort Costs by State (2022)

State	General/ Commercial ($ millions) [1]	Medical Liability ($ millions) [2]	Automobile ($ millions) [3]	Total Tort Costs ($ millions) [4]	Tort Costs as % of State GDP [5]	Tort Costs per Household ($) [6]
DE	$2,204	$65	$853	$3,122	3.46%	$8,026
FL	$24,224	$1,152	$22,803	$48,179	3.35%	$5,768
LA	$3,307	$162	$4,279	$7,748	2.65%	$4,389
NY	$37,717	$2,746	$12,974	$53,437	2.61%	$7,027
GA	$9,504	$575	$9,853	$19,932	2.60%	$5,050
MT	$1,085	$47	$597	$1,729	2.58%	$3,894
SC	$3,409	$154	$3,991	$7,554	2.54%	$3,734
NJ	$10,484	$714	$7,797	$18,996	2.52%	$5,525
NV	$2,300	$119	$2,937	$5,356	2.40%	$4,603
RI	$867	$54	$794	$1,714	2.36%	$3,966
MS	$1,376	$99	$1,713	$3,188	2.28%	$2,843
CT	$4,307	$365	$2,563	$7,236	2.27%	$5,133
AL	$3,178	$252	$2,923	$6,352	2.26%	$3,286
PA	$11,151	$1,470	$6,868	$19,489	2.14%	$3,752
NM	$1,188	$200	$1,256	$2,644	2.11%	$3,252
MO	$4,629	$294	$3,403	$8,325	2.10%	$3,387
AR	$1,668	$104	$1,676	$3,448	2.08%	$2,942
IL	$13,736	$767	$6,770	$21,273	2.07%	$4,281
TX	$26,177	$924	$21,095	$48,196	2.01%	$4,594
AZ	$4,319	$342	$4,785	$9,446	1.99%	$3,449
CA	$45,521	$1,283	$25,494	$72,298	1.99%	$5,429
MI	$5,523	$363	$6,446	$12,332	1.98%	$3,076
CO	$5,013	$247	$4,191	$9,451	1.92%	$4,149
KY	$2,147	$188	$2,632	$4,968	1.92%	$2,808
ID	$1,116	$54	$944	$2,113	1.91%	$3,129
OR	$2,752	$172	$2,657	$5,581	1.88%	$3,320
OK	$2,145	$153	$2,164	$4,462	1.84%	$2,930
MA	$7,973	$538	$4,079	$12,590	1.82%	$4,593
UT	$2,377	$118	$2,133	$4,627	1.80%	$4,354
MD	$3,975	$492	$4,096	$8,563	1.78%	$3,694
VT	$427	$34	$246	$707	1.73%	$2,659
TN	$4,410	$421	$3,571	$8,402	1.73%	$3,096

IN	$4,089	$414	$3,357	$7,860	1.67%	$2,962
HI	$1,032	$66	$564	$1,662	1.64%	$3,435
KS	$1,751	$159	$1,454	$3,363	1.61%	$2,928
MN	$4,197	$144	$2,839	$7,181	1.60%	$3,183
ME	$712	$62	$585	$1,358	1.58%	$2,341
WV	$567	$96	$864	$1,526	1.57%	$2,132
WI	$3,571	$117	$2,468	$6,155	1.55%	$2,538
NE	$1,451	$79	$1,014	$2,544	1.54%	$3,276
IA	$2,085	$104	$1,419	$3,609	1.51%	$2,797
NC	$5,450	$272	$5,049	$10,771	1.50%	$2,624
OH	$6,747	$397	$5,228	$12,372	1.50%	$2,583
VA	$4,910	$329	$4,526	$9,765	1.47%	$2,968
NH	$786	$84	$621	$1,490	1.42%	$2,734
WA	$5,397	$333	$4,709	$10,440	1.41%	$3,504
WY	$371	$21	$283	$676	1.38%	$2,886
SD	$492	$27	$392	$911	1.32%	$2,594
AK	$451	$28	$373	$851	1.30%	$3,219
ND	$565	$17	$350	$932	1.28%	$2,913
DC	$1,665	$46	$293	$2,004	1.21%	$6,347
National	**$296,498**	**$17,461**	**$214,971**	**$528,929**	**2.07%**	**$4,207**

Note: Homeowner (liability portion) is included under General/Commercial Liability.

location, class, size, and other characteristics of each operation. MarketStance adjusts these estimates to account for premiums that are reported where multistate businesses are headquartered and not where the risks are located. Accordingly, our estimates of tort costs across states capture liabilities that are incurred in each state.

As shown in Table 4, tort costs vary greatly across states, ranging from $676 million in Wyoming to over $72 billion in California, but this diversity is not entirely explained by the relative size of the states. For example, in 2022 Ohio was the seventh most populous state in the nation with nearly 12 million residents, yet its per-household tort costs were the 47th highest among the states, at $2,583. Conversely, Louisiana was the 25th most populous state in 2022 with just over four and a half million residents, but

"Aggregate tort costs of $529 billion in 2022 amounted to $4,207 per household."

Table 5: States With Highest Tort Costs as % of State GDP (2022)

State	Total Tort Costs ($ millions) [1]	State GDP ($ millions) [2]	Tort Costs as % of State GDP [3]
DE	$3,122	$90,208	3.46%
FL	$48,179	$1,439,065	3.35%
LA	$7,748	$291,952	2.65%
NY	$53,437	$2,048,403	2.61%
GA	$19,932	$767,378	2.60%
MT	$1,729	$67,072	2.58%
SC	$7,554	$297,546	2.54%
NJ	$18,996	$754,948	2.52%
NV	$5,356	$222,939	2.40%
RI	$1,714	$72,771	2.36%
Top 10 States	**$167,766**	**$6,052,282**	**2.77%**

Sources and Notes:
[2]: Bureau of Economic Analysis, Gross Domestic Product by state: All industry total. Last updated: May 23, 2024.
[3] = [1] / [2].

it was 11th by per-household tort costs, at $4,389.
Table 5 shows the 10 most expensive states in terms of tort costs as a percentage of GDP. Measured this way, tort costs in the 10 most expensive states were $167.8 billion. On average, this amounts to 2.77 percent of the total GDP in these states.

Table 6 shows the 10 most expensive states in terms of tort costs per household. Measured this way, tort costs in the 10 most expensive states reached $289.3 billion. This amounts to an average of $5,475 in tort costs per household for each of the 52.9 million households in these states.

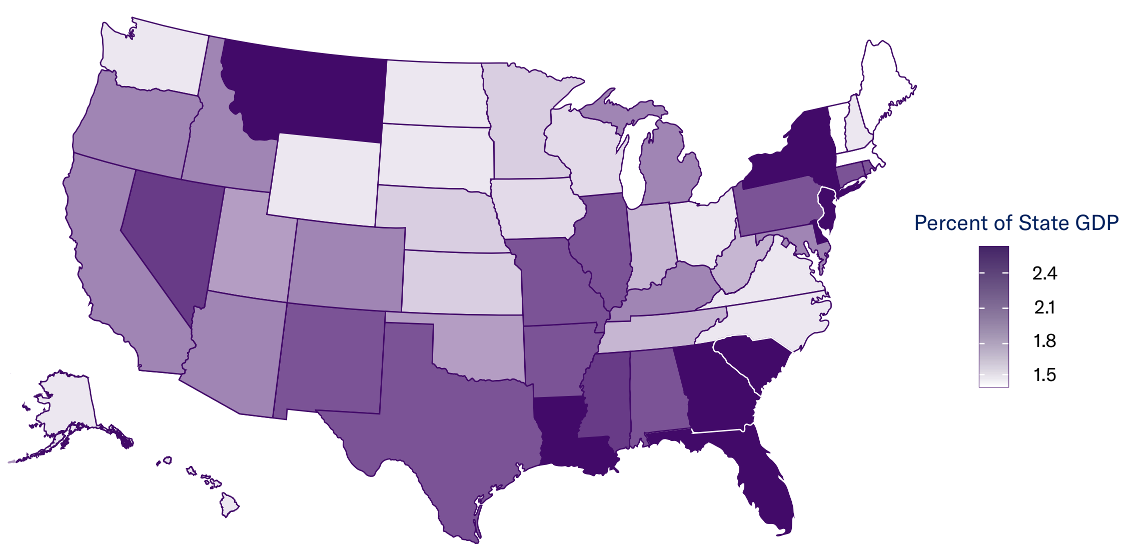
Figure 5 shows how the tort costs as a percentage of GDP vary across states. After Delaware, Florida has the highest tort system costs as a percentage of GDP (just under 3.4 percent), which is two and a half times higher than Alaska, North Dakota, and South Dakota, which have among the lowest tort system costs as a percentage of GDP (less than 1.4 percent). This large variation in state-level tort costs, which is not explained by the total economic output in each state, illustrates that states have differing legal liability climates. The various factors that explain the variation in tort costs across the states—including economic, demographic, and legal environment variables; the perception of the tort system; and the volume of tort litigation activity—are analyzed in our 2011 study.[35]

Table 6: States With Highest Per-Household Tort Costs (2022)

State	Total Tort Costs ($ millions)	Number of Households	Total Costs per Household ($)
	[1]	[2]	[3]
DE	$3,122	389,000	$8,026
NY	$53,437	7,604,523	$7,027
FL	$48,179	8,353,441	$5,768
NJ	$18,996	3,438,162	$5,525
CA	$72,298	13,315,822	$5,429
CT	$7,236	1,409,807	$5,133
GA	$19,932	3,946,490	$5,050
NV	$5,356	1,163,671	$4,603
TX	$48,196	10,490,553	$4,594
MA	$12,590	2,740,995	$4,593
Top 10 States	**$289,342**	**52,852,464**	**$5,475**

Sources and Notes:
Washington D.C. had the 3rd largest tort costs per household but is excluded.
[2]: U.S. Census.
[3] = [1] / [2].

Figure 5: Tort Costs as a Percentage of GDP by State (2022)



Sources: MarketStance; NAIC; Bureau of Economic Analysis.

Conclusion

Chapter

04

The aggregate amount of tort costs is large and accounts for a significant portion of the GDP in the U.S.

"At this rate, the costs to businesses of the tort system will double in a little over eight years."

We estimate that in 2022, the tort costs amounted to $529 billion or 2.07 percent of U.S. GDP. The tort system has grown at an average annual rate of 7.1 percent a year—faster than both inflation and GDP. For businesses, tort costs have risen faster, at 8.7 percent a year. At this rate, the costs to businesses of the tort system will double in a little over eight years.

We hope that this objective, clear definition of tort costs and transparent cost estimation methodology will continue to provide a basis for further research and policy debate.

Included Categories of Tort Claims

Appendix

A

This study provides a consistent and transparent estimate of tort costs for the entire United States and for each state. These estimates provide a foundation for research into the variation in liability costs across states; the effectiveness of legislative reforms in reducing costs and increasing the efficiency of the tort system; and the economic impact of potential excesses in the tort system.

Categories of Tort Liability

The tort system allows an individual who has been wronged or injured to seek compensation from the person or entity that caused the harm. For practical reasons, our definition of the tort system includes only categories of liability that are insurable.[36] This definition of the tort system excludes some tort liabilities. For example, harms caused by intentional actions are typically uninsurable but would be considered torts within the legal system.[37, 38] While this definition does not overlap exactly with any formal legal definition, it makes it possible to estimate the size of the tort system using insurance data.

The legal system in the United States provides businesses and individuals with the means to obtain civil remedies for harm caused by others in the form of monetary damages and penalties. The legal basis for seeking damages arises from two principal sources of legal liability:

1. the common law, or court-made law, of contracts and of torts, such as negligence and product liability; and

2. statutory protections established through legislation, such as consumer protection acts, labor and employment laws, and securities laws.

Publicly available insurance data are reported by line of business or industry. They do not distinguish between claims based on common law torts and statutory torts. Accordingly, we do not separately estimate the liability costs arising from common law claims and statutory law claims. To the extent that both are insurable, they are included in our estimates.

Compensation for Common Law Torts

Common law torts are causes of action to redress harm caused by others due to a negligent or careless act or omission, or other wrongful conduct.[39] Compensation for damages in the tort system depends on the type of claim. For example, in personal injury cases, damages may cover economic losses (such as medical expenses and lost wages) as well as noneconomic damages (such as pain and suffering).[40] In other litigation, claimants may seek compensation for property damages, financial losses, or punitive damages. The main categories of insurable common law tort claims included in this study are:

- Automobile accidents: The largest category of insurable tort liability claims arises from automobile accidents.

- Commercial disputes based on tort claims, such as negligence, bad faith, misappropriation, or tortious interference: These are claims that arise from contract disputes concerning alleged failures to abide by the terms or fulfill obligations made in private agreements. While these are, by definition, not tort claims, in many instances claimants will invoke parallel common law tort claims in connection with the same conduct, such as allegations of bad faith and fair dealing, misrepresentation, or tortious interference.[41] Doing so allows claimants to benefit from the ability of defendants to draw on insurance policies that would not cover alleged intentional acts such as breach of contract.

- Personal injury or property damages:[42] Coverage for personal injury or property damages claims is available through general liability and umbrella policies.

- Product liability: Product liability-related insurance coverage is available both through general liability and umbrella policies, and through specialty coverage.

- Professional liability: Professional liabilities are covered by a number of lines of insurance that provide coverage for negligence in the provision of professional services, including medical liability insurance.

- Environmental toxic torts: Until 1985, the risk of products or industrial pollution causing bodily injury or property damage to others was widely covered by insurance. Thereafter, pollution and asbestos liabilities were generally excluded across the United States.[43] As a consequence, environmental toxic torts are now only covered by specialty environmental liability lines of insurance that offer limited coverage. These specialty lines are included in our estimates. Many environmental toxic torts arising from exposures after 1985—including asbestos—are uninsurable. While significant, these amounts are small relative to the total size of the tort system.[44]

Compensation for Statutory Liability

Civil liabilities can also be imposed by statute. Statutory liability claims can arise from a combination of federal, state, or local statutes that give rise to claims for compensation, remediation, injunctive relief, and penalty. Statutory liability claims can be brought either through private rights of action or regulatory enforcement proceedings. Some of these statutes also provide for criminal liability, but criminal liabilities are outside our definition of the tort system. Statutes that can give rise to insurable liability claims include:

- labor and employment laws;
- consumer protection laws, including general unfair and deceptive practices acts;
- civil rights laws, including disability, privacy and non-discrimination protections;
- antitrust laws;[45] and
- securities laws.

Statutory environmental protections, such as environmental clean-up costs and costs of compliance with emissions controls, are generally uninsurable and excluded from our definition of the tort system.[46] Workers' compensation liabilities are typically handled outside the tort system and consequently are excluded.

Methodology

Appendix

B

Tort costs include the compensation paid to claimants, whether through adjudicated judgments or settlements; the costs of adjudication; and the cost that policyholders pay to transfer tort liability risks to insurers (i.e., the cost of risk transfer).

Liability Insurance Premiums

We estimate tort costs based on the total premium expense that would be required to fully insure against all claims arising in the tort system, including actual premiums paid, and the estimated tort costs for self-insured risks.

Liability insurance premiums cover the expected amounts required to pay for:

1. compensation paid to claimants (covered losses, including awards and settlements);

2. the costs of adjudication (defense costs and cost containment expenses, including the costs to investigate and litigate claims); and

3. cost of risk transfer (claims administration costs, including the costs of operations, risk management, and profit required to compensate insurance companies for assuming the liability risks).

Since the price of liability insurance is set in a competitive marketplace,[47] premiums paid by policyholders reflect the market costs of obtaining and providing liability insurance. In particular, as the insurance premiums include insurers' operating costs and profit margins, our estimate of the tort costs includes the cost of risk transfer.

While premiums include insurer expenses and profits, insurance companies have several important advantages that allow them to administer and pay claims more efficiently than individual policyholders. Some of the advantages that insurance companies hold over individual policyholders include: the pooling of risks, the realization of economies of scale in defending and administering claims, and the beneficial tax treatment of expected future losses. For these reasons, it can be less expensive for a policyholder to pay a premium that includes the insurance company's expenses and profits than to be self-insured.[48]

"We estimate tort costs based on the total premium expense that would be required to fully insure against all claims arising in the tort system, including actual premiums paid, and the estimated tort costs for self-insured risks."

Despite these advantages, some businesses self-insure by having high deductibles or exposures in excess of carried limits, or by choosing to not purchase any insurance at all. For liabilities that are self-insured, losses and defense costs are computed based on estimates of the size of the self-insured market. The cost of risk transfer is assumed to be avoided by self-insuring. This reduction in liability costs for self-insured businesses is a simplifying assumption. For example, captives operate similarly to carriers and often hire third parties to administer claims, and businesses that self-insure must reserve for expected losses and perform their own risk management functions. We do not account for these costs in our estimates, nor do we account for selection bias that could attract higher risk businesses to buy insurance.

This study does not capture certain direct and indirect costs of the tort system. First, our measure of the direct economic cost of the tort system does not include the cost of running and administering the institutions of the tort

For liabilities that are self-insured, losses and defense costs are computed based on estimates of the size of the self-insured market.

system, such as the cost of operating state and federal courts, the cost of regulatory enforcement staff, or the productivity and wages lost by individuals who serve on juries. We also do not quantify any of the negative externalities of the tort system, including the effects on innovation, the availability of products or services, foreign direct investment, and the economy as a whole. Similarly, we do not quantify any positive effects that the tort system may have in preventing and deterring harms, and in providing just outcomes for injured parties. Non-economic costs of the tort system, including the psychological costs and stresses of legal disputes, are also outside of the scope of this study.

Since insurance premiums are reported by insurance lines of business, we group them into the following broad segments:
(1) commercial liability,
(2) personal liability, and
(3) automobile liability.

We discuss the estimation of tort costs for each of these segments below.

Commercial Liability and Medical Professional Liability

The largest components of U.S. liability costs are covered by commercial liability insurance. We rely on estimates of the size of the market for liability insurance developed by MarketStance—a leading provider of market intelligence to the insurance industry—to compute the tort costs for commercial and medical professional liability. MarketStance uses data on the cost of liability insurance from insurance companies' rate filings, and detailed information about the number and size of businesses from the Economic Census and other sources to compute the exposure base for risks by size, industry, and location of businesses.

Based in part on survey data, MarketStance estimates the percentage of exposures that are retained either by businesses choosing to self-insure, or through deductibles and exposures in excess of carried limits. MarketStance scales the estimated insured exposures (for the largest liability insurance lines) to match total premiums written into each state by domestic and alien insurance companies using data collected by NAIC and other sources. The same scaling factor is then used to develop estimates of self-insured premium liabilities.

This methodology is described in more detail in the following pages.

Insured Commercial Liability Costs

Commercial liability costs can be either insured or self-insured. All insurance companies are required to report financial data, including premiums, to state and federal regulators, and this information is widely available. These data are aggregated and reported by a number of data providers, including NAIC.[49] Table 7 shows the specific lines of insurance included in MarketStance's estimates.

Medical liability insurance protects doctors and hospitals from liability arising from allegations of negligence, purportedly resulting in the injury or death of patients.[50] MarketStance separately analyzes medical professional liability insurance, which is reported separately by NAIC under line 11.

For purposes of estimating tort costs in 2022, we are interested in direct premiums earned, which include the portion of premiums that relate to coverage for the 2022 calendar year.[51] However, MarketStance computes direct premiums written in its estimates of insurance liability exposure. On average, earned commercial liability premiums were four percent lower than written premiums in 2022. Accordingly, we scale down the estimates of commercial written premiums by four percent. Similarly, medical professional liability earned premiums were two percent lower than written premiums, and commercial auto liability earned premiums were four percent lower than written premiums. We scale down the MarketStance estimates of written premiums for medical professional liability and commercial auto liability accordingly.

Self-Insured Liability Costs

MarketStance estimates the fraction of tort costs not covered by insurance and prices this self-insured liability cost using insurance rates.[52] Aggregate premium data provides an estimate of tort costs for those businesses and individuals that purchase insurance. However, not all businesses and individuals purchase insurance, and not all losses are covered. At the smaller end of the market, many individuals and businesses retain a significant amount of risk by not purchasing insurance or having low limits. At the other end of the market, many larger businesses self-insure by choosing high deductibles, or by setting aside funds and developing their own risk management programs. Similarly, in the medical liability insurance segment, many physician groups and hospital systems are largely or fully self-insured.[53]

Table 7: Lines of Insurance Included in Commercial Liability Estimates

Type of Insurance	NAIC Line	Related MarketStance Line	Tort Category
Commercial Multiple Peril (Liability)	5.2	Premises & Operations Liability Umbrella Liability Excess Liability Business Owner's Policy	General/ Professional
Inland Marine	9	Motor Truck Cargo Liability Warehouse Liability	General/ Professional
Medical Professional Liability	11	Medical Professional Liability	Medical Professional
Other Liability – Occurrence	17.1	Premises & Operations Liability Umbrella Liability Excess Liability Cyber Liability Directors & Officers Liability Business Owner's Policy	General/ Professional
Other Liability – Claims Made	17.2	Errors & Omissions/ Professional Liability Employment Practices Liability Insurance Fiduciary Liability Cyber Liability Directors & Officers Liability	General/ Professional
Products Liability	18	Products Liability	General/ Professional
Commercial Auto Liability	19.4	Commercial Auto Liability	Commercial Auto

*Notes:

1. The NAIC insurance lines in this table include the following types of insurance: 5.2002 Business owners, 5.2003 Commercial Package Policy, 5.2006 Commercial Farm and Ranch, 5.2007 Other CMP Policies, 17.0001 Commercial General Liability, 17.0002 Completed Operations, 17.0003 Comprehensive Personal Liability, 17.0004 Contractual Liability, 17.0005 Day Care Centers, 17.0006 D&O Liability, 17.0007 Elevators and Escalators Liability, 17.0008 Employee Benefit Liability, 17.0009 Employers Liability, 17.001 Employment Practices Liability, 17.0011 Environmental Pollution Liability, 17.0012 Fire Legal Liability, 17.0013 Kidnap & Ransom Liability, 17.0014 Liquor Liability, 17.0015 Municipal Liability, 17.0016 Nuclear Energy Liability, 17.0017 Personal Injury Liability, 17.0018 Premises and Operations (OL&T and M&C), 17.0019 Professional Errors and Omissions Liability, 17.002 Umbrella and Excess (Commercial), 17.0021 Umbrella and Excess (Personal), 17.0022 Other, 17.0023 Veterinarian, 17.0024 Internet Liability, 17.0025 Provider Excess Stop Loss, 17.0026 Excess Stop Loss, 17.0027 Other Excess Stop Loss, 17.0028 Cyber Liability, 18.0001 Occurrence, and 18.0002 Claims Made.
2. While aviation and ocean marine policies provide some liability coverage, they are relatively small lines and predominantly cover property losses. These liability costs are excluded from our estimates.

These self-insured liabilities are not tracked by NAIC but are a significant part of the market. We rely on data and the methodology developed by MarketStance to develop estimates of the self-insured commercial and medical professional liability costs. We do not estimate self-insured costs of individuals, since we assess these to be immaterial to tort costs in aggregate (as discussed further below). The key steps in the methodology for self-insured liability lines are as follows:

1. computing the total liability exposure using rate filings and business demographic data,
2. estimating the percentage of the exposure that is insured and self-insured, and
3. determining the premium cost of insuring the exposure based on total reported insured premiums.

These steps are discussed in the following sections.

Computing Total Exposure

In addition to statutory financial data, insurance companies are required to submit rate filings with their regulators which describe how their premiums are set. Many of these rate filings are available from NAIC's System for Electronic Rates and Forms Filing (SERFF). Rate filings provide valuable information on the cost of liability insurance within each state and identify the risk factors that insurance companies use to price liability insurance. These risk factors and the associated pricing, combined with estimates of the size of each industry sector, provide a measure of the total exposure that each business, doctor, or hospital has to liability risk.

MarketStance estimates exposure based on rate filings, business demographic data reported by the U.S. Census, and other federal government sources for each state. Business demographic data that affects liability costs include: the location of the business operations, the industry in which the business operates, the number of employees, amount of sales, total payroll, or square footage of business operations. Risk factors for medical professional liability also include other factors such as the number of physicians or hospital beds covered. Risk factors for commercial auto liability include number of miles driven and fleet size.

Included in these estimates are exposures for employee businesses, non-employee businesses, hospitals, individual physicians and practices, and state and local governments. MarketStance models exposures and premiums for the following liability lines of coverage ("modeled categories of exposure"):

- Premises and Operations;
- Products Liability;
- Umbrella & Excess (Commercial);

- Business Owners (Liability Portion);[54]
- Professional Errors & Omissions Liability;
- Directors & Officers Liability;
- Employment Practices Liability;
- Fiduciary Liability;
- Cyber Liability;
- Motor Truck and Cargo Liability;
- Warehouse Liability;
- Medical Professional Liability; and
- Commercial Automobile Liability.

Estimating the Percentage of Exposure That Is Self-Insured

The percentage of exposure that is self-insured varies greatly across businesses with different demographic characteristics. For instance, larger businesses are more likely to retain risk through formal risk management programs, whereas smaller businesses are more likely to be entirely uninsured. In addition, businesses in different industries are exposed to different types of risk, which can greatly affect which lines of insurance they purchase and which risks they retain. Many physician groups and hospital systems are largely or fully self-insured. As noted above, this limits the usefulness of aggregate statistics on medical liability insurance premiums reported in NAIC statutory filings.[55]

MarketStance estimates the percentage of the total exposure that is insured based on surveys of companies' propensity to purchase insurance.

Determining the Cost of Self-Insured Exposure

MarketStance calibrates its estimates of self-insured exposure by matching the corresponding estimated insured fraction of exposure to the reported values. MarketStance combines its estimates of premiums written and the premium equivalent values for self-insured risks. For each modeled category of liability exposure,[56] MarketStance scales estimated premiums to equal the liability premiums reported in the related annual statement lines, with adjustments, applying the self-insured factor to derive the written premium equivalents for that part of the market.

Personal Liability Insurance

Personal liability exposure is estimated from the costs of homeowners' (private homes and condominiums) or renters' insurance policies.

Most individuals only carry general liability insurance as a part of homeowners' or renters' insurance policies. Using rate filings from SERFF that separately report liability premiums, we estimate the fraction of homeowners', condominium owners', and renters' insurance premiums that are for liability coverage.

As shown in Table 8, most of the home and condominium owners' insurance premiums are for property damage, and only four to eight percent of the premiums go to cover personal liability exposure. In contrast, for renters' and tenants' insurance policies, where the value of the insured property is much less, liability coverage accounts for 17 percent of the total premiums.

We apply these percentages to total homeowners', renters', and condominium owners' insurance premiums reported by NAIC to estimate personal liability insurance premiums. While a number of individuals do not carry homeowners' or renters' liability insurance, they are the most likely not to possess the wealth necessary to make payments, and so be judgment proof. Therefore, we assume that uninsured personal liability costs are not material.

Personal Auto Liability

We assume that all personal automobile liability is insured either directly or through uninsured/underinsured insurance.[57] Individuals are required to carry automobile liability

Table 8: Estimated Portion of Homeowners Insurance That Relates to Liability Coverages

	Average Portion of Premium for Liability Coverage	Range Across States
Homeowners	4.3%	2.7% – 6.4%
Renters/Tenants	17.1%	11.2% – 26.4%
Condominium/Unit Owner	8.4%	5.2% – 12.2%

Source: SERFF filings.

insurance, and liability from drivers that are uninsured or underinsured is covered by uninsured/underinsured motorist coverage (a form of first-party insurance that covers the insured's own losses) designed to fill that gap. NAIC reports the total earned liability premiums (including coverage for uninsured and underinsured motorists) in its Auto Insurance Database Reports.[58] The automobile liability premiums include the following coverages:

- bodily injury liability ("BI");
- property damage liability ("PD");
- BI/PD combined single limits;
- personal injury protection;
- uninsured/underinsured motorist;
- medical payments; and
- other liability.

Important Caveats

Our estimated tort costs are understated for several reasons.

First, self-insured costs have omitted components:

- We do not include any estimate for self-insured costs for individuals.
- Self-insured businesses are assumed to avoid claims administration costs and the cost of risk transfer. This simplifying assumption underestimates costs for certain businesses. For example, captives operate similarly to carriers and may hire third parties to administer claims, and businesses that self-insure must reserve for expected losses and perform their own risk management functions.

Second, this study does not capture certain direct and indirect costs of the tort system:

- Our measure of the direct economic cost of the tort system does not include the cost of running and administering the institutions of the tort system, such as the cost of operating state and federal courts, the cost of regulatory enforcement staff, or the productivity and wages lost by individuals who serve on juries.
- We also do not quantify any of the negative externalities of the tort system, including the effects on innovation, the availability of products or services, foreign direct investment, and the economy as a whole.

Third, this study only captures tort liabilities that are insurable. This excludes torts relating to intentional acts, as well as certain torts that are excluded from coverage, including many pollution and toxic tort claims.

Finally, non-monetary costs of the tort system, including the psychological costs and stresses of legal disputes, are outside of the scope of this study.

Endnotes

[1] *Florida's Insurance Commissioner Provides Update on Continued Property Insurance Market Stabilization*, Florida Office of Insurance Regulation, (Oct., 2024), https://floir.com/newsroom/archives/item-details/2024/10/10/florida-s-insurance-commissioner-provides-update-on-continued-property-insurance-market-stabilization.

[2] Paul Hinton and David McKnight are Principals at The Brattle Group. This study was developed for the U.S. Chamber of Commerce Institute for Legal Reform (ILR). We would like to acknowledge the contributions of those who commented on earlier drafts, in particular Eric Price-Glynn, Senior Principal, at Verisk's MarketStance® business; and our colleague Bin Zhou. We would also like to acknowledge Lawrence Powell, the Director of the Alabama Center for Insurance Information and Research at the Culverhouse College of Business, and Judyth Pendell, an independent consultant, who helped develop the methodology and contributed to the first version of this study. Selina Ji, Rachel Liu, and Britanya Williams provided research assistance. Previous editions of this study were released in 2022 and in 2018 and included data for the years 2016 – 2020. This study provides a 2021-2022 update and includes data for the full timeline covered by the previous studies as well.

[3] This phrase ("tort costs") reflects the costs of litigating and adjudicating claims, the compensation that is paid to injured parties, and the amounts that businesses and individuals pay to transfer tort liabilities to insurance companies.

[4] While we refer to the costs and compensation associated with these types of litigation as "tort costs" we acknowledge that they include legal claims beyond those governed by the law of torts including sources of statutory liability and some contract claims.

[5] Improvements in available data have led to small revisions in annual tort cost estimates for the years reported in our prior studies. *See* "Updates to the 2022 Study" on pg. 14 for details of the changes.

[6] The total number of households in 2022 is 125.7 million as per the U.S. Census Bureau American Community Survey 5-year estimates. $4,207 per household in tort costs is calculated by dividing $529 billion by 125.7 million.

[7] Delaware has the highest tort costs as a percentage of state GDP and per household, but this is in part an artifact of our methodology of estimating tort costs from insurance data. Even though MarketStance attributes corporate insurance costs to the states in which those corporations operate, certain insured risks are concentrated at corporate headquarters, which for many companies are located in Delaware. Delaware has the highest tort costs as a percentage of GDP associated with the commercial insurance coverage for Excess Liability, Cyber Liability, D&O Liability, E&O Liability, Employment Practices Liability Insurance (EPLI) Liability, and Fiduciary Liability, but ranks 13th in personal liability costs as a percentage of GDP.

[8] Florida passed comprehensive civil justice reforms in 2023, after the most recent year of data in this study.

[9] David L. McKnight and Paul J. Hinton, *International Comparisons of Litigation Costs: Europe, the United States and Canada,* U.S. Chamber of Commerce Institute for Legal Reform (2013).

[10] *See generally*, Mark J. Browne and Joan T. Schmit, *Litigation Patterns in Automobile Bodily Injury Claims 1977-1997: Effects of Time and Tort Reforms*, 75 J. Risk & Ins., 83 (2008). We presented a review of the literature on the impact of tort reforms, much of which relies on insurance data, in our 2012 study on the determinants of tort costs across states. *See* Paul Hinton et al., *Determinants of State Tort Costs: The Predictive Power of the Harris State Liability Systems Ranking Study*, U.S. Chamber of Commerce Institute for Legal Reform (Oct. 2011).

[11] Alberto Galasso and Hong Luo, *Punishing Robots: Issues in the Economics of Tort Liability and Innovation in Artificial Intelligence*, The Economics of Artificial Intelligence: An Agenda, pp. 493-504. University of Chicago Press (2018).

[12] *2019 Lawsuit Climate Survey – Ranking the States*, U.S. Chamber of Commerce Institute for Legal Reform (September 2019).

[13] Measured in terms of the percentage of raw production costs. Jeremy A. Leonard, *The Escalating Cost Crisis: An Update on Structural Cost Pressures Facing U.S. Manufacturers*, Manufacturers Alliance/MAPI Prepared for The Manufacturing Institute of the National Association of Manufacturers, September 2006, Table 1.

[14] *See* Robert E. Litan, *Through Their Eyes: How Foreign Investors View and React to the U.S. Legal System*, U.S. Chamber of Commerce Institute for Legal Reform (2007); *see also* U.S. Department of Commerce, *The U.S. Litigation Environment and Foreign Direct Investment: Supporting U.S. Competitiveness by Reducing Legal Costs and Uncertainty* (Oct. 2008).

[15] Thomas J. Campbell, et al., *The Causes and Effects of Liability Reform: Some Empirical Evidence,* NBER Working Paper No. 4989, 1995.

[16] Joseph E. Stiglitz, Jonathan M. Orszag and Peter R. Orszag, *The Impact of Asbestos Liabilities on Workers in Bankrupt Firms,* Sebago Associates (Dec. 2002).

[17] *See* Paul J. Hinton, David McKnight, and Ronald I. Miller, *Determinants of State Tort Costs: The Predictive Power of the Harris State Liability Systems Ranking Study*, available at SSRN 2154124 (2012); and *2019 Lawsuit Climate Survey – Ranking the States*, U.S. Chamber of Commerce Institute

for Legal Reform (September 2019). Research has also found that differences in legal environments can contribute to fraudulent or exaggerated automobile accident claims, which raises the cost of automobile insurance. *See* Stephen J. Carroll et al., *The Costs of Excess Medical Claims for Automobile Personal Injuries,* RAND Corporation (1995).

18 Joni Hersch and Kip Viscusi, *Tort Liability Litigation Costs for Commercial Claims* 27, Vand. U. Law Sch., Law and Econ., Working Paper 07-16 (2007).

19 These costs increased to over $1.17 when including the value of the time spent by the litigants to the cost estimates. *See* James S. Kakalik and Nicholas Michael Pace, *Costs and Compensation Paid in Tort Litigation,* Institute for Civil Justice, RAND Corporation (1986).

20 Paul Hinton, David McKnight, and Lawrence Powell, *Costs and Compensation of the U.S. Tort System*, U.S. Chamber of Commerce Institute for Legal Reform (October 2018); and David McKnight and Paul Hinton, *Tort Costs in America – An Empirical Analysis of Costs and Compensation of the U.S. Tort System*, U.S. Chamber of Commerce Institute for Legal Reform (November 2022).

21 Self-insured and uninsured costs include insurance deductibles or retentions, exposures in excess of insured limits, and exposures that are uninsured.

22 Awards, whether compensatory or punitive, arising from a finding of intentional wrongdoing are generally excluded from liability coverage. In addition, certain claims, such as claims relating to pollution and toxic torts, and since 1985 for asbestos exposure, are excluded under most insurance policies.

23 For example, from claims arising due to: negligent hiring or supervision, invasion of privacy, wrongful termination, or violations of statutory employment law protections.

24 MarketStance estimates liability premiums and exposure for the following lines of insurance: Businessowners, Commercial Automobile, Premises and Operations, Products, D&O, E&O, Employment Practices, Fiduciary, Umbrella, Excess, Medical Professional, Cyber, Motor Truck Cargo, and Warehouse.

25 In prior studies, we estimated the commercial automobile liability costs based on insured costs reported in NAIC statutory filings and estimated uninsured costs based on survey responses of the fraction of commercial automobile liability that is retained by businesses. We now source these estimates directly from MarketStance, which incorporates additional information on insurance placed by foreign insurers, such as Lloyd's syndicates. MarketStance also includes estimates of the amount of risk that is retained – whether through self-insurance, high-deductibles, or captive plans. The inclusion of insurance from foreign entities provides a more complete estimate of commercial auto liability costs.

26 Motor truck cargo and warehouse liability sub-lines are benchmarked to inland marine insurance. Premiums are estimated using data from the economic census on the composition of trucking and warehouse industries. MarketStance benchmarks businessowners policies to commercial multi-peril liability, premises & operations, umbrella, excess, and other liability lines. Businesses, contractors, and condo associations are considered BOP eligible if revenue, payroll, and assets fall below certain thresholds.

27 Uninsured premiums are calculated based on trends in insured premiums and applying the same rate changes to uninsured premiums.

28 Uninsured personal automobile liability costs are assumed not to be material because individuals are required to carry automobile liability insurance, and liability from drivers that are uninsured or underinsured is covered by uninsured/underinsured motorist coverage. Similarly, most individuals that do not carry homeowners' or renters' liability insurance would be unable to make substantial liability payments.

29 U.S. Bureau of Labor Statistics.

30 $1.6\% = (2.1\%/1.9\%)^{1/6} - 1$.

31 *See e.g.* Diane Robinson and Sarah Gibson, *Pandemic Caseload Highlights, Court filings and dispositions 2019-2020*, Court Statistics Project www.courtstatistics.org (March 2021).

32 An occurrence policy has lifetime coverage for the incidents that occur during a policy period, regardless of when the claim is reported. A claims-made policy only covers incidents that happen and are reported within the policy's timeframe.

33 *U.S. Property & Casualty and Title Insurance Industries – 2021 Full Year Results*, National Association of Insurance Commissioners (2022).

34 *See e.g.*, NAIC, Official Annual Statement Instructions, Property/Casualty, for the 2020 reporting year, Adopted by the NAIC as of June 2020, Schedule T – Exhibit of Premiums Written Allocated by States and Territories.

35 Paul Hinton and David McKnight, *Creating Conditions for Economic Growth: The Role of the Legal Environment*, U.S. Chamber of Commerce Institute for Legal Reform (October 2011).

36 Although state and federal governments enjoy sovereign immunity, the Federal Tort Claims Act and similar state laws allow lawsuits against them but with damage limits or higher evidentiary burdens than tort claims against private parties. These sources of liability, at least for states and

municipalities, can be insured. We include government tort liabilities in our estimates and definition of the tort system.

37 In some states, certain intentional torts and punitive damages are not insurable because shifting responsibility away from an individual for his or her own bad acts would create moral hazard (an incentive to act badly). Whether torts were committed deliberately is often in question, so insurance will often respond to a wider range of claimed torts because doing so does not involve admitting or denying wrongdoing. Furthermore, claimants typically include a negligence theory to ensure coverage, thus allowing them to draw on insurance resources. For example, a deliberate fraud allegedly committed by an employee may be restated as a failure to supervise.

38 We note that although insurance coverage is not generally available for intentional torts, "there are an array of intentional torts for which insurance coverage is expressly provided under liability policies. For example, insurance coverage is available for defamation, disparagement, trademark infringement, misappropriation of style of doing business, unfair competition, infringement of copyright, title or slogan, false imprisonment, employment discrimination, wrongful termination, wrongful eviction, malicious prosecution, and invasion of privacy." *See* Christopher French, *Debunking the Myth that Insurance Coverage Is Not Available or Allowed for Intentional Torts or Damages*, 8 Hastings Bus. L.J. 65 (2012).

39 Common law torts include: (1) intentional torts, such as assault, battery, trespass, conversion, and defamation; (2) negligent torts involving the violation of a duty of care; and (3) strict/product liability torts. *Tort,* Wex, Legal Information Institute, https://www.law.cornell.edu/wex/tort.

40 42 USC § 14505(1) and 42 USC § 247d-6d(e)(8). *See also*, Justia, Non-Economic Damages in Personal Injury Cases, https://www.justia.com/injury/negligence-theory/non-economic-damages/.

41 Other sources of potential tort liability include slander and defamation.

42 Bodily injury and property damage are the principal coverages in industry standard general liability policies. C*ommercial general liability insurance*, Insurance Information Institute, https://www.iii.org/article/commercial-general-liability-insurance.

43 Today, commercial general liability (CGL) policies contain a broad pollution exclusion that provides very little coverage for injury, remediation, or cleanup from pollutants. The clause excludes claims for "'bodily injury' or 'property damage' arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of 'pollutants.'" Examples of "pollutants" include asbestos, benzene, chemical fumes, DDT, gasoline, heating oil, insecticide, lead paint, and TCE.

44 The impact of the asbestos exclusion can be assessed by considering the size of the aggregate loss payments on insured legacy (1985 and prior) asbestos exposures. In the United States in 2016, insured asbestos losses were $3.2 billion according to AM Best. Uninsured post-1985 exposures are excluded from this estimate but would be expected to be less costly than the claims arising from 1985 and prior exposures, which pre-dated occupational controls and the discontinuation of the use of asbestos. Relative to the estimated aggregate size of the tort system, this source of current liabilities is small. *See Asbestos Claims Payments Show No Sign of Slowing Down Despite Drop in Incurred Losses*, Best's Special Report (Nov. 2017).

45 Antitrust liabilities that arise in mergers and acquisitions are first-party costs and would not be included in our insurance estimates based on third-party liability coverage. Exclusion from coverage of intentional acts would also eliminate liability protection from proven actions of collusion.

46 Related private litigation, including class actions, can be brought to recover compensation for bodily injury and property value diminution associated with alleged violations of environmental laws. These costs are included in our tort cost estimates to the extent they are insurable under specialty environmental liability lines.

47 While there are differences across states and products, insurance markets are quite competitive by traditional measures and returns are lower than those of other industries. *See* National Association of Insurance Commissioners, *2016 Competition Database Report* (2017), https://www.naic.org/prod_serv/ CLR-OPS-17.pdf; *see also Report on Profitability by Line by State in 2016*, National Association of Insurance Commissioners (2017), https://www. naic.org/prod_serv/PBL-PB-17.pdf.

48 *See* Richard MacMinn and James Garven, *On the Demand for Corporate Insurance: Creating Value, Handbook of Insurance*, at 487-516 (July 2013).

49 *See e.g., Statistical Compilation of Annual Statement Information for Property/Casualty Insurance Companies in 2019*, National Association of Insurance Commissioners (2020).

50 We note that one study of closed claims alleging medical malpractice found that in a large percentage of lawsuits filed, medical errors were not responsible for the claimed injuries. *See* David M. Studdert et al., *Claims, errors, and compensation payments in medical malpractice litigation 2024-2033*, 19 New England Journal of Medicine 345 (2006).

51 While premiums for annual policies are often paid in advance, those premiums are "earned" throughout the policy term.

[52] We refer to uninsured exposures and exposures not covered by formal risk management programs as self-insured.

[53] Eric Nordman et al., *Medical malpractice insurance report: A study of market conditions and potential solutions to the recent crisis*, Kansas City, MO: National Association of Insurance Commissioners (2004).

[54] The liability portion can be broken out based on disclosures made in statutory filings.

[55] Eric Nordman et al., *Medical malpractice insurance report: A study of market conditions and potential solutions to the recent crisis*, National Association of Insurance Commissioners (2004).

[56] There are over 30 different lines of liability insurance, including a number of specialty lines that MarketStance does not separately model.

[57] Because of the mandatory coverage and inclusion of uninsured losses, we assume auto insurance premiums reported by NAIC represent 100 percent of personal automobile liability. In fact, uninsured motorists' coverage is not mandatory in most states, leaving some level of uninsured costs. Our estimate of tort costs will be understated as a result.

[58] *Auto Insurance Database Report 2014/2015*, National Association of Insurance Commissioners (Dec. 2017), https://www.naic. org/prod_serv/AUT-PB-14.pdf.

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