

Testimony of  
**Mr. Russel Sutter**

October 16, 2003

Testimony  
United States Senate Judiciary Committee  
Subcommittee on Administrative Oversight and the Courts  
October 16, 2003

S.1428, Commonsense Consumption Act of 2003  
Statement of Russel L. Sutter, FCAS, MAAA  
Quantifying Tort Costs in the U.S.

Mr. Chairman and members of the Subcommittee: Thank you for allowing me to testify today. My name is Russ Sutter. I am a consulting actuary with Tillinghast - Towers Perrin and a principal of Towers Perrin. I am a Fellow of the Casualty Actuarial Society and a Member of the American Academy of Actuaries.

In February 2003, Tillinghast published the study "U.S. Tort Costs: 2002 Update, Trends and Findings on the Cost of the U.S. Tort System." I was the primary author of the study. That study examined tort costs in the U.S. from 1950 through 2001. We are in the process of publishing a new study that will include results through 2002.

It is my understanding that the subject of this hearing is S.1428, also known as the "Commonsense Consumption Act of 2003." My testimony does not include specific comments on that bill. Rather, my testimony provides background on the costs of the U.S. tort system, trends in those costs, and a comparison of costs in the U.S. to those in other countries.

Our current research on U.S. tort costs shows the following:

1. The cost of the U.S. tort system was \$233 billion in 2002. This represents 2.2% of U.S. gross domestic product, or GDP.
2. In 2002, U.S. tort system costs increased by 13.3% over 2001. Costs in 2001 increased 14.4% over costs in 2000. This total 2-year change of 29.6% was the highest since 1986-1987. This is in contrast to the 5-year period from 1995 to 2000, during which tort costs increased by an average of 2.6% per year.

3. Since 1950, tort costs have increased an average of 9.8% per year, compared to an average GDP growth of 7.1% per year. (Our analysis uses GDP on a nominal basis, before adjusting for inflation.)

4. U.S. tort costs were \$809 per citizen in 2002. In 1950, torts costs were \$12 per citizen, before adjusting for inflation, and \$89 per citizen after adjusting for inflation. This implies that real tort costs per citizen have increased by more than 800% since 1950.

5. While not part of our current study, two years ago we did a study comparing tort costs in the U.S. to those of 11 other countries. The 11 other countries included 8 from Western Europe, along with Canada, Japan and Australia. That comparison was based on 1998 data. At that time, the ratio of tort costs to GDP in the U.S. was 1.9%. The other 11 countries had ratios of tort costs to GDP ranging from 0.4% to 1.7%, with an average of 1.0%. In other words, tort costs in the U.S. were approximately twice as high as in the other countries.

6. We attribute the significant increases in costs in 2001 and 2002 to several factors, including asbestos claims, other class action litigation, higher awards in medical malpractice cases, an increase in the number and size of lawsuits against directors and officers of publicly traded companies, and an increase in medical cost inflation.

The charts attached to my written testimony provide details behind some of these findings.

In closing, I would like to point out three items regarding our analysis:

1. This study was not paid for or commissioned by any organization. The study is self-funded by Tillinghast.

2. The study does not attempt to quantify any of the indirect benefits of the tort system, such as acting as a deterrent to unsafe practices and products, or any of the indirect costs of the tort system, such as duplicate or unnecessary medical tests ordered mainly as a defense against possible malpractice allegations.

3. The purpose of the study is not to support any particular viewpoint on tort costs. The study's purpose is to quantify tort costs and the trends in those torts. We do not take any position on whether the costs are too high or too low.

Mr. Chairman, thank you for the opportunity to present this testimony. I will be happy to answer any questions the committee may have.

The publication "U.S. Tort Costs: 2002 Update, Trends and Findings on the Costs of the U.S. Tort System" is available on-line at [www.tillinghast.com](http://www.tillinghast.com).

U.S. Ratio of Tort Costs to GDP  
1950 - 2002

Source: Tillinghast - Towers Perrin

	U.S. Population (millions)	U.S. Tort Costs (\$billions)	Tort Cost per Citizen	Inflation-Adjusted* Tort Cost per Citizen
1950	152	\$ 1.8	\$ 12	\$ 89
1960	181	5.4	30	183
1970	205	13.9	68	314
1980	228	42.8	188	410
1990	249	129.8	520	716
2000	281	180.0	640	668
2001	285	206.0	722	733
2002	288	233.4	809	809

\*re-stated in year 2002 dollars.

Source: Tillinghast - Towers Perrin

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