Court Statistics: There Is No Litigation Explosion

Special interest groups have been decrying a “litigation explosion” for decades. However, recent analyses by non-partisan organizations show that the supposed “explosion” bears no resemblance to reality.

National Center for State Courts

Recent analysis from the National Center for State Courts found that:

- Tort filings declined by 24 percent between 1998 and 2007. Contract filings, meanwhile, which are more likely to involve businesses than tort cases, rose by 37 percent between since 1998 and 2007.¹
- Tort filings in state courts decreased by nine percent between 2006 and 2007, while contract filings increased 11 percent during the same time period.²
- The number of medical malpractice cases dropped eight percent between 1997 and 2006.³
- Medical malpractice cases accounted for just three percent of tort caseloads in 2006.⁴
- The number of product liability cases dropped by four percent between 1997 and 2006.⁵
- Product liability cases accounted for just four percent of tort caseloads in 2006.⁶
- Automobile tort filings, which make up the majority of all tort claims, fell by 23 percent between 1997 and 2006.⁷

Bureau of Justice Statistics

The Bureau of Justice Statistics (BJS) has repeatedly found that the number of tort cases filed is dropping in both state and federal courts.

State Courts

BJS found that the number of tort trials in state courts in the nation’s 75 largest counties dropped 31.5 percent between 1996 and 2005. The median awards in these trials dropped 18.4 percent over the same time period.⁸
In an examination of bench and jury tort trials in state courts in 2005, BJS found that very few tort cases are ever decided by a judge or jury, with just four percent of all tort cases being disposed by a bench or jury trial. Despite their infrequency, trial statistics provide an important sample of the overall caseload of the civil justice system. BJS found:

- Approximately 15 percent of tort trials were medical malpractice cases.
- The median medical malpractice award was $400,000. According to BJS, “[d]amage awards of $1 million or more were awarded in nearly 30% of medical malpractice trials…These high award amounts may be related to the allegations of wrongful death that were asserted in two-fifths of medical malpractice trials with plaintiff winners.”
- Less than five percent of tort trials were product liability trials and one in four of these were related to asbestos.
- Punitive damages were sought in just nine percent of all tort trials where plaintiffs won.
- The median punitive damage award was $55,000.
- There were too few medical malpractice cases in which punitive damages were awarded to provide a statistically reliable estimate of the amount of punitive damages in this category.

**Federal Courts**

BJS has found similar downward trends in federal civil trials. Between 1985 and 2003, the number of tort trials in U.S. District Courts declined by 79 percent, from 3,604 in 1985 to fewer than 800 in 2003.

**Medical Malpractice**

The number of medical malpractice trials resolved in federal district courts dropped 46 percent between 1985 and 2003, from 164 to 88. Over the same time period, the number of people who were awarded monetary damages dropped 52 percent, from 50 in 1985 to 24 in 2003.

**Non-Asbestos Product Liability**

Between 1985 and 2003, the number of non-asbestos product liability trials in federal district courts fell almost 69 percent, from 279 to 87. The number of plaintiffs who were awarded...
damages dropped 72 percent, from 89 in 1985 to 25 in 2003.

**National Law Journal’s Top 100 Jury Verdicts**

Big business argues that access to the courthouse should be restricted, yet businesses suing other businesses accounts for the vast majority of all verdict dollars. Contract cases, which are more likely to involve businesses, vastly outnumber tort cases.

Of the top 100 verdicts as reported by the *National Law Journal*:

- Seven out of top ten are business v. business cases
- These seven cases account for more than $3 billion in verdicts – four times as much as the highest verdicts in cases filed by individuals
- Across the top 100, even though business v. business cases account for only about a third of the total number of cases, they account for more than two thirds of all verdict dollars.\(^\text{11}\)

**National Practitioner Databank**

According to the National Practitioner Databank (NPDB), to which medical malpractice payments must be reported, the number of malpractice payments dropped eight percent between 2005 and 2006. That decrease follows a drop the previous year when the number of payments decreased 2.2 percent in 2005 compared to 2004.\(^\text{12}\)

---

2. *Ibid*.
4. *Ibid*.
5. *Ibid*.
7. *Ibid*.
9 Ibid.