

## HOW LOW CAN THEY GO?

### STATE CIVIL, TORT, MEDICAL MALPRACTICE AND PRODUCTS LIABILITY CASELOADS AND JURY TRIALS

Many states (but not all) compile annual civil case filing and jury trial statistics, and provide their data to the National Center for State Courts (NCSC). Together, these data present the most accurate overview of our nation's state-based civil justice system. According to averages calculated from the most recent data released by NCSC (2016):

#### CIVIL CASES

- Civil cases represented 18.1 percent of incoming cases in state trial courts in 2016.<sup>1</sup>
- Between 2007 and 2016, civil caseloads in state trial courts fell by 16 percent.<sup>2</sup>
- “Between 2009 and 2015, civil caseloads fell by over 4 million cases, an annual rate of about -3.5 percent. However, reported caseloads for 2016 were only 1 percent below the previous year, suggesting that the end of the decline may be near.”<sup>3</sup>

#### TORT vs. CONTRACT CASES

- Tort cases represent only 4 percent of state court civil caseloads.<sup>4</sup> This rate is consistent with NCSC data from the previous four years.<sup>5</sup>
- Contract cases – not tort cases – “dominate the civil landscapes,” comprising 47 percent of state court civil caseloads in 2016.<sup>6</sup>

#### MEDICAL MALPRACTICE AND PRODUCT LIABILITY CASES

- Medical malpractice cases represent only 0.17 percent of state *civil* caseloads.<sup>7</sup> This rate is consistent with NCSC data from the previous four years.<sup>8</sup>
- Medical malpractice cases represent only 4 percent of state *tort* caseloads.<sup>9</sup> This rate is consistent with NCSC data from the previous four years.<sup>10</sup>

- Product liability cases represent only 1 percent of state *tort* caseloads.<sup>11</sup>
- “Malpractice and product liability together account for just 5 percent of *tort* caseloads and that varies little among states.”<sup>12</sup>

## JURY TRIALS

- The percentage of *civil* cases resolved by jury trial in state courts is only 0.23 percent.<sup>13</sup> This rate is consistent with NCSC data from the previous four years.<sup>14</sup>
- The percentage of *tort* cases resolved by jury trial in state courts is just 1.48 percent.<sup>15</sup> This rate is consistent with NCSC data from the previous four years.<sup>16</sup>
- The percentage of *medical malpractice* cases resolved through jury trial in state courts is only 5.1 percent.<sup>17</sup> This rate is consistent with NCSC data from the previous four years.<sup>18</sup>

## NOTES

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<sup>1</sup> This percentage comes from NCSC’s examination of data from state trial courts in all 50 states plus the District of Columbia, Puerto Rico and Guam. National Center for State Courts, “Composition of Incoming Cases, All Trial Courts, 2016,” <http://www.courtstatistics.org/~media/Microsites/Files/CSP/National-Overview-2016/EWSC-2016-Overview-Page-4-Comp.ashx>; National Center for State Courts, “Number of Incoming Cases, by Case Category and Tier, 2016 (in Millions),” <http://www.courtstatistics.org/%7E/media/Microsites/Files/CSP/National-Overview-2016/EWSC-2016-Overview-Page-5-Table.ashx>

<sup>2</sup> National Center for State Courts, “Incoming Non-Traffic Caseloads by Case Category, 2007-2016,” <http://www.courtstatistics.org/Civil/~media/F0CD3650C3984BE394C222FBEF9CD73F.ashx>

<sup>3</sup> National Center for State Courts, “Total Incoming Civil Cases in State Court Trials, 2007-2016,” <http://www.courtstatistics.org/Civil/~media/F0CD3650C3984BE394C222FBEF9CD73F.ashx>

<sup>4</sup> This percentage comes from NCSC’s examination of statewide civil caseload composition in 26 states. National Center for State Courts, “Statewide Civil Caseload Composition in 26 States, 2016,” <http://www.courtstatistics.org/~media/Microsites/Files/CSP/Civil/PDFs/EWSC-2016-CIVIL-Page-2-Comp-Pie.ashx>. This percentage is also consistent with 2016 data provided to NCSC by 30 states plus the District of Columbia and Puerto Rico and released in November 2017, which showed that tort cases represent 3.98 percent of total state court civil caseloads. National Center for State Courts, “2016 Civil Caseloads – Trial Courts: 2016 Statewide Tort Caseloads and Rates,” [http://www.ncsc.org/Sitecore/Content/Microsites/PopUp/Home/CSP/CSP\\_Civil](http://www.ncsc.org/Sitecore/Content/Microsites/PopUp/Home/CSP/CSP_Civil)

<sup>5</sup> See National Center for State Courts, “2015 Civil Caseloads – Trial Courts: 2015 Statewide Tort Caseloads and Rates” (3.8 percent), “2014 Civil Caseloads – Trial Courts: 2014 Statewide Tort Caseloads and Rates” (3.6 percent), “2013 Civil Caseloads – Trial Courts: 2013 Statewide Tort Caseloads and Rates” (3.5 percent) and “2012 Civil Caseloads – Trial Courts: 2012 Statewide Tort Caseloads and Rates” (3.7 percent), [http://www.ncsc.org/Sitecore/Content/Microsites/PopUp/Home/CSP/CSP\\_Civil](http://www.ncsc.org/Sitecore/Content/Microsites/PopUp/Home/CSP/CSP_Civil)

<sup>6</sup> This percentage comes from NCSC’s examination of statewide civil caseload composition in 26 states. National Center for State Courts, “Statewide Civil Caseload Composition in 26 States, 2016,” <http://www.courtstatistics.org/~media/Microsites/Files/CSP/Civil/PDFs/EWSC-2016-CIVIL-Page-2-Comp-Pie.ashx>

<sup>7</sup> Twenty states plus the District of Columbia and Puerto Rico provided NCSC with state court caseload data related to medical malpractice cases as a percentage of total civil caseloads. National Center for State Courts, “2016 Civil Caseloads – Trial Courts: 2016 Statewide Medical Malpractice Caseloads and Rates,” [http://www.ncsc.org/Sitecore/Content/Microsites/PopUp/Home/CSP/CSP\\_Civil](http://www.ncsc.org/Sitecore/Content/Microsites/PopUp/Home/CSP/CSP_Civil)

<sup>8</sup> See National Center for State Courts, “2015 Civil Caseloads – Trial Courts: 2015 Statewide Medical Malpractice Caseloads and Rates” (0.16 percent), “2014 Civil Caseloads – Trial Courts: 2014 Statewide Medical Malpractice Caseloads and Rates” (0.14 percent), “2013 Civil Caseloads – Trial Courts: 2013 Statewide Medical Malpractice

Caseloads and Rates” (0.14 percent) and “2012 Civil Caseloads – Trial Courts: 2012 Statewide Medical Malpractice Caseloads and Rates” (0.13 percent), [http://www.ncsc.org/Sitecore/Content/Microsites/PopUp/Home/CSP/CSP\\_Civil](http://www.ncsc.org/Sitecore/Content/Microsites/PopUp/Home/CSP/CSP_Civil)

<sup>9</sup> This percentage comes from NCSC’s examination of tort caseload composition in 20 states. National Center for State Courts, “Composition of Tort Caseloads in 20 States, 2016,”

<http://www.courtstatistics.org/~media/Microsites/Files/CSP/Civil/PDFs/EWSC-2016-CIVIL-Page-6-Tort-Pie.ashx>.

This percentage is also consistent with 2016 data provided to NCSC by 20 states plus the District of Columbia and Puerto Rico and released in November 2017, which showed that medical malpractice cases represent 4.15 percent of total state court tort caseloads. National Center for State Courts, “2016 Civil Caseloads – Trial Courts: 2016 Statewide Medical Malpractice Caseloads and Rates,”

[http://www.ncsc.org/Sitecore/Content/Microsites/PopUp/Home/CSP/CSP\\_Civil](http://www.ncsc.org/Sitecore/Content/Microsites/PopUp/Home/CSP/CSP_Civil)

<sup>10</sup> See National Center for State Courts, “2015 Civil Caseloads – Trial Courts: 2015 Statewide Medical Malpractice Caseloads and Rates” (4.6 percent), “2014 Civil Caseloads – Trial Courts: 2014 Statewide Medical Malpractice Caseloads and Rates” (3.9 percent), “2013 Civil Caseloads – Trial Courts: 2013 Statewide Medical Malpractice Caseloads and Rates” (4 percent) and “2012 Civil Caseloads – Trial Courts: 2012 Statewide Medical Malpractice Caseloads and Rates” (3.4 percent), [http://www.ncsc.org/Sitecore/Content/Microsites/PopUp/Home/CSP/CSP\\_Civil](http://www.ncsc.org/Sitecore/Content/Microsites/PopUp/Home/CSP/CSP_Civil)

<sup>11</sup> This percentage comes from NCSC’s examination of tort caseload composition in 20 states. National Center for State Courts, “Composition of Tort Caseloads in 20 States, 2016,”

<http://www.courtstatistics.org/~media/Microsites/Files/CSP/Civil/PDFs/EWSC-2016-CIVIL-Page-6-Tort-Pie.ashx>

<sup>12</sup> This calculation comes from NCSC’s analysis of tort caseload composition in 20 states. National Center for State Courts, “Civil Caseloads, 2016,” <http://www.courtstatistics.org/Civil/Civil-Caseloads-2016.aspx> [ellipses omitted].

<sup>13</sup> Twenty-four states provided NCSC with state court caseload data related to the percentage of civil cases resolved by juries. National Center for State Courts, “2016 Civil Caseloads – Trial Courts: 2016 Civil Jury Trials and Rates,”

[http://www.ncsc.org/Sitecore/Content/Microsites/PopUp/Home/CSP/CSP\\_Civil](http://www.ncsc.org/Sitecore/Content/Microsites/PopUp/Home/CSP/CSP_Civil)

<sup>14</sup> See National Center for State Courts, “2015 Civil Caseloads – Trial Courts: 2015 Civil Jury Trials and Rates” (0.26 percent), “2014 Civil Caseloads – Trial Courts: 2014 Civil Jury Trials and Rates” (0.27 percent), “2013 Civil Caseloads – Trial Courts: 2013 Civil Jury Trials and Rates” (0.27 percent) and “2012 Civil Caseloads – Trial Courts: 2012 Civil Jury Trials and Rates” (0.33 percent), [http://www.ncsc.org/Sitecore/Content/Microsites/PopUp/Home/CSP/CSP\\_Civil](http://www.ncsc.org/Sitecore/Content/Microsites/PopUp/Home/CSP/CSP_Civil)

<sup>15</sup> Nineteen states provided NCSC with state court caseload data related to the percentage of tort cases resolved by juries. National Center for State Courts, “2016 Civil Caseloads – Trial Courts: 2016 Tort Jury Trials and Rates,”

[http://www.ncsc.org/Sitecore/Content/Microsites/PopUp/Home/CSP/CSP\\_Civil](http://www.ncsc.org/Sitecore/Content/Microsites/PopUp/Home/CSP/CSP_Civil)

<sup>16</sup> See National Center for State Courts, “2015 Civil Caseloads – Trial Courts: 2015 Tort Jury Trials and Rates” (1.7 percent), “2014 Civil Caseloads – Trial Courts: 2014 Tort Jury Trials and Rates” (1.9 percent), “2013 Civil Caseloads – Trial Courts: 2013 Tort Jury Trials and Rates” (2.2 percent) and “2012 Civil Caseloads – Trial Courts: 2012 Tort Jury Trials and Rates” (2.3 percent), [http://www.ncsc.org/Sitecore/Content/Microsites/PopUp/Home/CSP/CSP\\_Civil](http://www.ncsc.org/Sitecore/Content/Microsites/PopUp/Home/CSP/CSP_Civil)

<sup>17</sup> Sixteen states provided NCSC with state court caseload data related to the percentage of medical malpractice cases resolved by juries. National Center for State Courts, “2016 Civil Caseloads – Trial Courts: 2016 Medical Malpractice Jury Trials and Rates,” [http://www.ncsc.org/Sitecore/Content/Microsites/PopUp/Home/CSP/CSP\\_Civil](http://www.ncsc.org/Sitecore/Content/Microsites/PopUp/Home/CSP/CSP_Civil)

<sup>18</sup> See National Center for State Courts, “2015 Civil Caseloads – Trial Courts: 2015 Medical Malpractice Jury Trials and Rates” (6.4 percent), “2014 Civil Caseloads – Trial Courts: 2014 Medical Malpractice Jury Trials and Rates” (6.1 percent), “2013 Civil Caseloads – Trial Courts: 2013 Medical Malpractice Jury Trials and Rates” (6.1 percent) and “2012 Civil Caseloads – Trial Courts: 2012 Medical Malpractice Jury Trials and Rates” (6.3 percent),

[http://www.ncsc.org/Sitecore/Content/Microsites/PopUp/Home/CSP/CSP\\_Civil](http://www.ncsc.org/Sitecore/Content/Microsites/PopUp/Home/CSP/CSP_Civil)