

MYTHBUSTER!

FACTS ABOUT TORT LITIGATION IN THE UNITED STATES

TORT CASES REPRESENT A SMALL PERCENTAGE OF CIVIL CASELOADS.

- According to the most recent data from the National Center for State Courts (NCSC), in 2008, tort cases represented only 4.4 percent of all civil caseloads in seven states reporting, while monetary disputes (contract and small claims cases) combined for 73 percent of cases.¹ In 2007, the percentages were 6 percent vs. 69 percent, respectively.²

TORT CASELOADS ARE FALLING WHILE CONTRACT CASELOADS INCREASE.

- From 2007 to 2008, tort caseloads fell by 6 percent in 13 general jurisdiction courts reporting, while contract litigation (often businesses suing businesses) increased by 27 percent.³ Similarly, long-term NCSC data show tort caseloads experiencing a 25 percent decline in those courts from 1999 to 2008, with contract caseloads increasing by 63 percent in the same courts during the same period.⁴
- Based on 2008 data from eleven states, NCSC researchers found that “[w]hen tort and contract caseloads are examined side by side, contracts dominate in every jurisdiction.”⁵
- NCSC data show that “[c]ontract clearance rates are consistently lower than those for tort caseloads.”⁶ The researchers add that “increasing contract caseloads may be hampering courts’ efforts to clear civil cases.”⁷

FEW TORT CASES ARE RESOLVED THROUGH TRIAL AND THE NUMBER IS DECLINING.

- In 2005, approximately 3.5 percent of tort cases were resolved through bench (*i.e.*, judge) or jury trial in 104 jurisdictions reporting.⁸ As the U.S. Department of Justice (DOJ) stated in an October 2011 report, “Few civil cases are actually tried, as most are settled by mutual agreement outside the court system.”⁹
- Between 1996 and 2005, the number of tort trials concluded in state courts in the nation’s 75 most populous counties dropped by 31.5 percent.¹⁰ Among the tort case types, product liability registered one of the largest declines – falling by 46.7 percent.¹¹

INJURED VICTIMS OFTEN LOSE AT TRIAL; IF THEY PREVAIL, AWARDS ARE MODEST.

- In 2005, the most recent year studied by DOJ, injured plaintiffs succeeded in about half of all tort trials nationwide.¹² This win rate has been roughly the same since 1996, according to long-term DOJ data from state trials in the nation's 75 most populous counties.¹³
- During 2005, “[h]alf of plaintiff winners in tort trials were awarded \$24,000 or less in damages.”¹⁴
- Long-term data from state trials in the nation's 75 most populous counties show that plaintiff median damage awards in tort trials have been consistently low —\$38,000 in 1996, \$30,000 in 2001 and \$31,000 in 2005.¹⁵
- According to DOJ, in 2005, compensatory damages awarded to plaintiff winners were reduced in 15 percent of tort trials,¹⁶ with such awards being reduced by 40 percent on average.¹⁷

PUNITIVE DAMAGES ARE RARELY AWARDED AND MODEST IN AMOUNT.

- In 2005, punitive damages were awarded in only 3 percent of tort cases with plaintiff winners¹⁸; for contract cases, it was 8 percent.¹⁹
- During 2005, the median punitive damage award to plaintiff winners for all tort cases was \$55,000.²⁰ In contract cases, the median was higher — \$69,000.²¹

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NOTES

¹ Richard LaFountain et al., *Examining the Work of State Courts: An Analysis of 2008 State Court Caseloads* (National Center for State Courts 2010) at 26, found at http://www.ncsconline.org/d_research/csp/2008_files/Civil.pdf.

² *Ibid.*

³ *Id.* at 27.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Id.* at 30.

⁷ *Ibid.*

⁸ U.S. Department of Justice, Bureau of Justice Statistics, “Punitive Damage Awards in State Courts, 2005” (NCJ 233094)(March 2011) at 2 (Table 2), found at <http://bjs.ojp.usdoj.gov/content/pub/pdf/pdasc05.pdf>.

⁹ U.S. Department of Justice, Bureau of Justice Statistics, “Appeals of Civil Trials Concluded in 2005,” NCJ 235187 (October 2011) at 2, found at <http://bjs.ojp.usdoj.gov/content/pub/pdf/actc05.pdf>.

¹⁰ U.S. Department of Justice, Bureau of Justice Statistics, “Tort Bench and Jury Trials in State Courts, 2005,” NCJ 228129 (November 2009) at 12 (Table 12), found at <http://bjs.ojp.usdoj.gov/content/pub/pdf/tbjtsc05.pdf>.

¹¹ *Ibid.*

¹² *Id.* at 1, 4 (Table 4).

¹³ *Id.* at 12 (Table 12), 13.

¹⁴ *Id.* at 5 (Table 5).

¹⁵ *Id.* at 12 (Table 12), 13.

¹⁶ *Id.* at 8 (Table 7).

¹⁷ *Id.* at 8.

¹⁸ “Punitive Damage Awards in State Courts, 2005,” *supra* n. 8, at 4 (Table 5).

¹⁹ *Ibid.*

²⁰ *Id.* at 5 (Table 8).

²¹ *Ibid.*