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## MYTHBUSTER!

### FACTS ABOUT CIVIL LITIGATION IN THE UNITED STATES

#### CONTRARY TO POPULAR MYTH, FEW INJURED AMERICANS FILE LAWSUITS.

- Only 10 percent of injured Americans ever file a claim for compensation, which includes informal demands and insurance claims. Only two percent file lawsuits.<sup>1</sup>
- Academics generally concede that there is no evidence indicating that “frivolous” lawsuits are a problem.<sup>2</sup>
- **Medical malpractice.**
  - Between 44,000 and 98,000 Americans die each year (and 300,000 are injured) due to medical errors in hospitals alone. Yet eight times as many patients are injured as ever file a claim; 16 times as many suffer injuries as receive any compensation.<sup>3</sup>
  - A recent Harvard School of Public Health study that closely examined 1452 closed claims concluded that “[p]ortraits of a malpractice system that is stricken with frivolous litigation are overblown.”<sup>4</sup> The study found that most injuries resulting in claims were caused by medical error, and that those that weren’t were, nevertheless, not “frivolous” claims.<sup>5</sup>
  - At the highest level, the estimated number of medical injuries (in hospitals and otherwise) is more than one million per year; approximately 85,000 malpractice suits are filed annually. “With about ten times as many injuries as malpractice claims, the only conclusion possible is that injured patients rarely file lawsuits.”<sup>6</sup>

#### THE NUMBER OF TORT (PERSONAL INJURY) CASES IS DECLINING.

- **State Courts.**
  - From 1995-2004, the total number of tort filings for 15 states reporting showed a general downward trend.<sup>7</sup> There has been a general downward movement in tort filings since 1990.<sup>8</sup>
  - Tort filings in 30 states reporting declined nine percent from 1992 to 2001.<sup>9</sup> In 2002, tort suit filings in state courts had dropped five percent since 1993; by contrast, contract suit filings had increased 21 percent.<sup>10</sup>
  - In 2004, in 30 states reporting, only three percent of civil cases filed in “unified courts” (where all civil cases are heard) and 17 percent of “general jurisdiction courts” (which hear only certain types of cases) were tort cases.<sup>11</sup>
  - In 2004, tort cases accounted for only five percent of general civil cases in unified courts in six states reporting, while contract cases (often businesses suing businesses) comprised 27 percent. Tort cases were even outnumbered by probate cases.<sup>12</sup>
  - **Medical Malpractice.** In 2004, medical malpractice cases accounted for an average of only four percent of tort cases in thirteen states reporting.<sup>13</sup>

- **Product Liability.**
  - In 2001, only 1.3 percent of all civil trials were product liability cases; 1.1 percent were non-asbestos trials.<sup>14</sup> Of tort cases resolved by trial in 2001, only 1.6 percent were non-asbestos product liability cases.<sup>15</sup>
  - In 2004, only 7 percent of incoming tort cases were product liability matters in six states reporting.<sup>16</sup>
- **Federal Courts.**
  - From 1985-2003, the number of tort trials terminated in U.S. district courts fell by 79 percent.<sup>17</sup>
  - In 2001, only 14 percent of civil cases terminated in U.S. district courts were tort claims.<sup>18</sup>
  - In 2002-2003, motor vehicle claims comprised 20.3 percent of tort trials, product liability 12.8 percent, and medical malpractice 9.9 percent.<sup>19</sup>
  - **Product Liability.** The number of non-asbestos product liability trials in U.S. district courts declined by about two-thirds from 1990 to 2003.<sup>20</sup>

**Securities fraud class actions case filings are at an all-time low.** According to a 2007 report by the Stanford Law School Securities Class Action Clearinghouse, a joint project between Stanford Law School and Cornerstone Research, “The number of securities fraud class actions filed in 2006 was the lowest ever recorded in a calendar year since the adoption of the Public Securities Litigation Reform Act (PSLRA) of 1995.... The study reports securities fraud class actions decreased by 38 percent since 2005, plunging from 178 filings to just 110, making [2006] numbers nearly 43 percent lower than the ten-year historical average of 193.<sup>21</sup>

**Civil trials are not clogging the courts; the vast majority of tort cases are resolved by neither juries nor judges.**

- **State Courts.**
  - In 2004, of nine states reporting, the median percentage of civil cases disposed of by trial was one-half of one percent. No state reported a jury trial rate of over four percent. Bench trials were more common, yet still rarely accounted for more than four percent of civil dispositions.<sup>22</sup>
  - The number of tort trials decided by a jury declined 23 percent from 1992 to 2001.<sup>23</sup>
  - **Medical Malpractice.**
    - In the Harvard closed claims study, only fifteen percent of claims were decided by trial verdict.<sup>24</sup>
    - “More than 90 percent of medical malpractice cases are decided without jury trial, with some estimates indicating that the figure is as high as 97 percent.”<sup>25</sup>
    - According to a Bureau of Justice report that examined medical malpractice insurance claims in seven states between 2000 and 2004, about 95 percent of medical malpractice insurance claims settled prior to trial.<sup>26</sup>
- **Federal Courts.**
  - The number of tort trials concluded in U.S. District Courts declined by 80 percent from 1985 to 2003.<sup>27</sup>
  - The percentage of tort cases concluded by trial in U.S. District Courts declined from 10 percent in the early 1970’s to only 2 percent in 2003.<sup>28</sup>

**January 2007**

**NOTES**

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<sup>1</sup> David A. Hyman and Charles Silver, “Medical Malpractice Litigation and Tort Reform: It's the Incentives, Stupid,” 59 Vand. L. Rev. 1085, 1089 (May 2006) (citing Thomas F. Burke, *Lawyers, Lawsuits, and Legal Rights: The Battle over Litigation in American Society* 3 (2002)); Rand Institute for Civil Justice, *Compensation for Accidental Injuries in the United States* (1991).

<sup>2</sup> See e.g., David A. Hyman and Charles Silver, “Medical Malpractice Litigation and Tort Reform: It's the Incentives, Stupid,” 59 Vand. L. Rev. 1085, 1101 (May 2006) (citing Chris Guthrie, “Framing Frivolous Litigation: A Psychological Theory,” 67 U. Chi. L. Rev. 163, 163 n.2 (2000) (citing sources recognizing dearth of hard evidence showing frivolous lawsuits are a serious problem). See, also, Testimony of Neil Vidmar of Duke Law School before The Senate Committee on Health, Education, Labor and Pensions, Hearing on “Medical Liability: New Ideas for Making the System Work Better for Patients,” June 22, 2006 at 6 (“There is a widespread belief that injured patients sue at the drop of a hat ... In fact, the opposite appears to be true.”).

<sup>3</sup> National Academy of Sciences Institute of Medicine, “To Err is Human” (1999); Harvard Medical Practice Study (1990). In 2004, HealthGrades, Inc., which rates hospitals for insurers and health plans, concluded, from a study of Medicare records for all fifty states from 2000-2002, that the Institute of Medicine’s high figure of 98,000 was too low and that a figure of 195,000 annual deaths was more accurate. (Testimony of Neil Vidmar of Duke Law School before The Senate Committee on Health, Education, Labor and Pensions, Hearing on “Medical Liability: New Ideas for Making the System Work Better for Patients,” June 22, 2006 at 5.)

<sup>4</sup> David M. Studdert, Michelle Mello, et al., “Claims, Errors, and Compensation Payments in Medical Malpractice Litigation,” *New England Journal of Medicine*, May 11, 2006.

<sup>5</sup> David M. Studdert, Michelle Mello, et al., “Claims, Errors, and Compensation Payments in Medical Malpractice Litigation,” *New England Journal of Medicine*, May 11, 2006.

<sup>6</sup> David A. Hyman and Charles Silver, “Medical Malpractice Litigation and Tort Reform: It's the Incentives, Stupid,” 59 Vand. L. Rev. 1085, 1089 (May 2006) (citing Brian Ostrom, Neal Kauder & Neil LaFontain, *Examining the Work of State Courts*, 2003 at 23).

<sup>7</sup> *Examining the Work of State Courts, 2005, A National Perspective from the Court Statistics Project* (2006) at 27. (The Court Statistics Project is a joint project of the National Center for State Courts, the State Justice Institute and the Bureau of Justice Statistics of the Department of Justice.)

<sup>8</sup> *Examining the Work of State Courts, 2003; A National Perspective from the Court Statistics Project*, at 23.

<sup>9</sup> Bureau of Justice Statistics, U.S. Department of Justice, “Tort Trials and Verdicts in Large Counties, 2001” November 2004, NCJ 206240 at 7.

<sup>10</sup> *Examining the Work of State Courts, 2003* at 23.

<sup>11</sup> *Examining the Work of State Courts, 2005*, at 27.

<sup>12</sup> *Examining the Work of State Courts, 2005*, at 24. The six states examined were Connecticut, Iowa, Minnesota, Missouri, North Dakota, and Wisconsin.

<sup>13</sup> *Examining the Work of State Courts, 2005*, at 29.

<sup>14</sup> Bureau of Justice Statistics, U.S. Department of Justice, “Civil Trial Cases and Verdicts in Large Counties, 2001,” NCJ 202803 (April 2004) at 2.

<sup>15</sup> Bureau of Justice Statistics, U.S. Department of Justice, “Tort Trials and Verdicts in Large Counties, 2001,” NCJ 179769 (August 2000) at 2.

<sup>16</sup> *Examining the Work of State Courts, 2005*, at 28. The six cases examined were Connecticut, Hawaii, Iowa, Michigan, New Jersey, and Wisconsin.

<sup>17</sup> Bureau of Justice Statistics, U.S. Department of Justice, “Federal Tort Trials and Verdicts, 2002-3,” NCJ 208713 (August 2005).

<sup>18</sup> Bureau of Justice Statistics, U.S. Department of Justice, “Tort Trials and Verdicts in Large Counties, 2001” November 2004, NCJ 206240 at 6.

<sup>19</sup> Bureau of Justice Statistics, U.S. Department of Justice, “Federal Tort Trials and Verdicts, 2002-2003,” NCJ 208713 (Aug. 2005) at 4.

<sup>20</sup> Bureau of Justice Statistics, U.S. Department of Justice, “Federal Tort Trials and Verdicts, 2002-2003,” NCJ 208713 (Aug. 2005) at 10.

<sup>21</sup> News Release, “Securities Fraud Class Actions Tumbled to an All-Time Low in 2006, Finds New Study by Stanford Law School and Cornerstone Research; Strong Federal Enforcement Activity and Stable Stock Market Contribute to Decline,” January 2, 2007. <http://securities.stanford.edu/> (“The study attributes the record low numbers of securities fraud class action filings in 2006 to three primary factors. First, the strengthened federal enforcement environment reflected in the pressure that the SEC and Department of Justice now bring to bear on corporations to conduct internal investigations that implicate the individual executives responsible for the fraud, may

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be reducing the amount of fraud in the market. Second, a strong stock market combined with lower stock price volatility typically reduces the number of cases filed. Third, the overwhelming majority of securities fraud class actions that were filed in the late 1990s to the early 2000s are now behind us. While the boom and bust cycle of this era may have contributed to the peak, the numbers in 2006 are low even when compared to pre-peak activity.”)

<sup>22</sup> *Examining the Work of State Courts, 2005* at 31. The nine states examined were Colorado, Florida, Indiana, Kentucky, Michigan, New Jersey, New Mexico, Rhode Island, and Texas.

<sup>23</sup> Bureau of Justice Statistics, U.S. Department of Justice, “Tort Trials and Verdicts in Large Counties, 2001,” November 2004, NCJ 206240 at 7.

<sup>24</sup> David M. Studdert, Michelle Mello, et al., “Claims, Errors, and Compensation Payments in Medical Malpractice Litigation,” *New England Journal of Medicine*, May 11, 2006.

<sup>25</sup> Testimony of Neil Vidmar, Russell M. Robinson, II Professor of Law, Duke Law School before The Senate Committee on Health, Education, Labor and Pensions, “Hearing on Medical Liability: New Ideas for Making the System Work Better for Patients,” June 22, 2006 at 17.

<sup>26</sup> Bureau of Justice Statistics, U.S. Department of Justice, “Medical Malpractice Insurance Claims in Seven States, 2000-2004,” NCJ 216339 (Mar. 2007) at 7.

<sup>27</sup> Bureau of Justice Statistics, U.S. Department of Justice, “Civil Justice Statistics,” found at <http://www.ojp.usdoj.gov/bjs/civil.htm>

<sup>28</sup> Bureau of Justice Statistics, U.S. Department of Justice, “Civil Justice Statistics,” found at <http://www.ojp.usdoj.gov/bjs/civil.htm>