

Court Statistics: There Is No Litigation Explosion

Special interest groups have been decrying a “litigation explosion” since at least 1986¹, bolstered by the fundraising return that such claims garner. However, recent analyses by non-partisan organizations show that the supposed “explosion” that allegedly has lasted for nearly two decades bears no resemblance to reality.

NATIONAL CENTER FOR STATE COURTS: State Tort Litigation Decreasing

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

- Tort filings have declined by 4% since 1993. Contract filings, meanwhile, which are more likely to involve businesses than tort cases, rose by 21% over the same period.²
- Automobile tort filings, which make up the majority of all tort claims, have fallen by 5% since 1993 and by 14% since their high in 1996.³
- Medical malpractice filings per 100,000 population have fallen by 1% since 1998.⁴
- In 22 of the 30 states that NCSC examined population-adjusted tort filings declined from 1992 to 2001. The average change in tort filings across all 30 states was a 15% decrease.⁵

ADMINISTRATIVE OFFICE OF THE U.S. COURTS: Federal Civil Litigation Decreasing

The same holds true in federal courts. According to the Administrative Office of the U.S. Courts, tort actions in U.S. District Courts dropped by 28% from 2002 to 2003.⁶ In addition, over the last five years federal civil filings are not only down, but the percentage of civil filings that are personal injury cases has also declined.⁷

¹ One such group is the Manhattan Institute. The Manhattan Institute’s Judicial Studies Program, which formed the launching pad for Walter Olson’s *The Litigation Explosion* (1991), was created in 1986.

² *Examining the Work of State Courts, 2003*, at 23, National Center for State Courts, 2004.

³ *Id.* at 27.

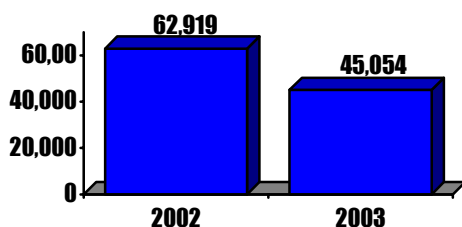
⁴ *Medical Malpractice Filings per 100,000 Population in 11 and 17 States, 1993-2002*, National Center for State Courts, 2004 (unpublished, on file with author).

⁵ *Examining the Work of State Courts 2002*, at 25, National Center for State Courts, 2003.

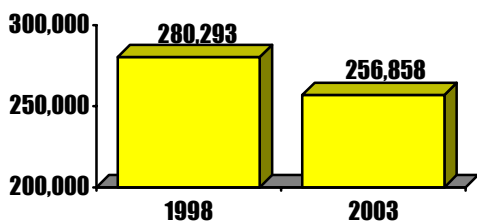
⁶ *Judicial Facts and Figures*, Table 2.2, Administrative Office of the U.S. Courts

⁷ *Federal Judicial Caseload Statistics*, Judicial Caseload Indicators, 2002 & 2003, Administrative Office of the U.S. Courts

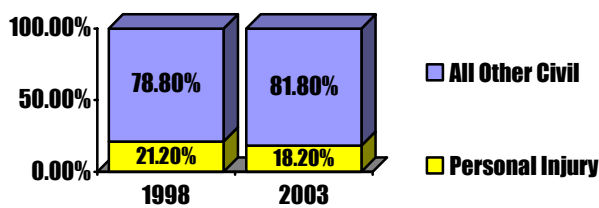
Tort Actions in U.S. District Courts



Federal Civil Filings



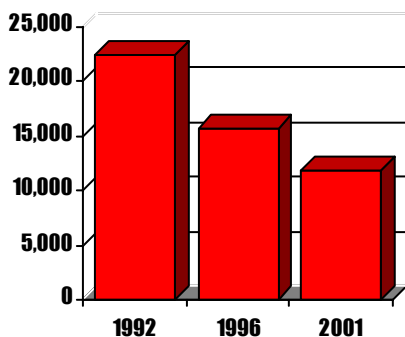
Percentage of Personal Injury Suits



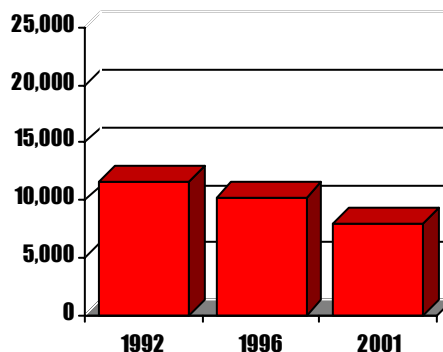
BUREAU OF JUSTICE STATISTICS: Frequency and Award Size Down

The Bureau of Justice Statistics, a division of the Department of Justice, found that the number of civil trials dropped by 47% between 1992 and 2001.⁸ The number of tort cases decreased by 31.8% during the same period.

All Civil Trials



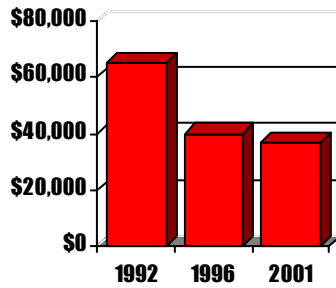
All Tort Trials



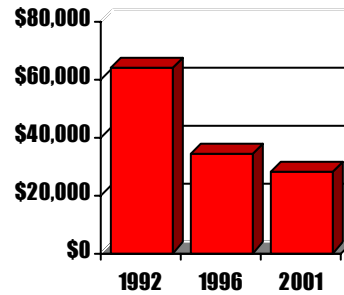
The trend in award size was also down. The median inflation-adjusted award in all tort cases dropped 56.3% between 1992 and 2001 to \$28,000.

⁸ Civil Trial Cases and Verdicts in Large Counties, 2001, Thomas H. Cohen, Steven K. Smith, Bureau of Justice Statistics, 2004

Median Award - All Civil Trials



Median Award - All Tort Trials



NATIONAL PRACTITIONER DATABANK: *Frequency Down, Awards Stable*

According to the National Practitioner Databank (NPDB), to which all medical malpractice payments must be reported, the number of malpractice payments dropped 7.7% from 2001 to 2002. The mean award increased 1.6% from \$270,854 to \$275,094 during the same period. The median award, which NPDB claims is more representative, was \$150,000 in 2002, up from \$135,000 the previous year.⁹

⁹ National Practitioner Databank Annual Report 2002