

1 Christopher B. Dolan (SBN 165358)
2 Aimee Kirby (SBN 216909)
3 **DOLAN LAW FIRM, PC**
4 1438 Market Street
5 San Francisco, CA 94102
6 Tel: (415) 421-2800
7 Fax: (415) 421-2830

8 Attorneys for Plaintiff
9 JAHl MCMATH, a minor; and
10 NAILAH WINKFIELD

11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 JAHl MCMATH, a minor; NAILAH
14 WINKFIELD, an individual, as parent, as
15 guardian, and as next friend of JAHl McMath,
16 a minor

17 Plaintiffs,

18 v.

19 STATE OF CALIFORNIA;
20 COUNTY OF ALAMEDA; et al.

21 Defendants.

Case No. 3:15-cv-06042-HSG

**PLAINTIFF’S SUPPLEMENTAL BRIEF
TO ADVISE THE COURT OF RECENT
CALIFORNIA APPELLATE COURT
DECISION REGARDING JAHl
MCMATH**

Date: August 4, 2016

Time: 2:00 pm

Judge: The Honorable Haywood S. Gilliam,
Jr.

Action filed: December 23, 2015

Trial: Not set.

22
23 Plaintiffs submit this supplemental brief and its corresponding request for judicial
24 notice to alert this Court of recent developments in *Winkfield v. Rosen*, (Alameda County
25 Superior Court case no. RG-15760730), a medical malpractice case. As this Court is aware from
26 both parties’ earlier briefings, the Alameda County Superior Court months ago overruled
27 demurrers by the Intervening Defendants that addressed issues similar to those at issue in the
28 Defendants’ motions to dismiss this case. On July 12, 2016, the California Court of Appeal

1 issued a written order denying these Intervening Defendants' writ in the state case and approving
2 the state trial court's refusal to give collateral estoppel effect to the probate court's earlier brain
3 death finding.

4 **I. INTRODUCTION**

5 *Winkfield v. Rosen* is a medical negligence action arising from the events that caused
6 Jahi McMath's devastating brain injury in December, 2013. The matter pending before this court
7 does not, in any way, seek to advance a medical malpractice action. The matter currently before
8 this Court will require a determination of Jahi's status as living or deceased and an examination
9 of the civil rights that have been denied her since her brain injury. In contrast, the malpractice
10 action does not raise or address any of the causes of action upon which the instant matter is
11 based. The malpractice action will turn on whether the defendants are liable for negligence to
12 Jahi or to her family.

13 The issue of whether Jahi McMath is alive or not will not necessarily be resolved in the
14 malpractice action. In that state law tort case, duty, breach and causation must be proven before
15 the issue of damages will be addressed. Only at that point might the malpractice court possibly
16 address Jahi's status as live or dead. In other words, the tort case focuses on why Jahi McMath is
17 in her current condition and not necessarily what that condition is. The state court will inquire
18 into her current neurological status only if duty, breach, and causation are proven to the trier of
19 fact.

21 **II. THE CALIFORNIA COURT OF APPEAL'S RECENT ORDER**

22 The Intervening Defendants in this case have repeatedly, unsuccessfully, demurred to
23 the claims made in the state malpractice case, in part by asserting that Jahi McMath's personal
24 malpractice claims are collaterally estopped by a California probate court's ruling, in an
25 emergency proceeding, that Jahi, in December 2013, exhibited no signs of brain function. Their
26 estoppel arguments were denied by the state trial court, and have now been denied by Judges
27 Humes, Margulies, and Banke of the California Court of Appeal, in a unanimous decision
28 denying the Intervening Defendants' petition for writ of mandate. The appeals court concurred

1 with the decision of the trial court in the malpractice action, holding that the record is not
2 sufficiently developed for that issue to be resolved at the pleading stage.

3
4 “Petitioners ask this court to issue a writ of mandate directing the trial court to
5 sustain demurrers by UCSF and Dr. Rosen to Jahi's first cause of action for
6 personal injury, asserting that it is precluded by the collateral estoppel effect of
7 the probate court's earlier finding that Jahi had suffered brain death. **Because**
8 **the trial court found the record at the pleading stage was inadequate for a**
9 **collateral-estoppel determination and "may require a more developed**
10 **factual record," we conclude, under these circumstances, that this matter**
11 **should not be resolved at the pleading stage.** (See *Babb v. Superior Court*
12 (1971) 3 Cal.3d 841, 851 [writ relief at pleading stage generally disfavored].)
13 The petition for writ of mandate or other appropriate relief is denied.”

14 (UC Benioff Children's Hospital Oakland, et al. v. Superior Court, Cal. Ct. of
15 Appeal. Case no. A147989 (July 12, 2016), emphasis added. Exhibit A to
16 Declaration of Christopher Dolan in Support of Plaintiffs' Request for Judicial
17 Notice.)

18 The issue before that court was precisely the same estoppel argument on which the
19 Defendants in the instant matter have based many of their arguments to this Court. The decisions
20 of the state trial and appeals courts run counter to the position which the Defendants have taken
21 in this matter and are consistent with the argument which Plaintiffs have raised to this Court. The
22 record at the current stage of the instant proceedings is inadequate for this Court fully to assess
23 Jahi's current condition, and in order to do so this Court should allow the parties to develop a
24 more developed factual record. But the facts of this case are precisely what the Defendants wish
25 this Court never to consider.

26 Although the myriad Defendants in this action will hue and cry that the state
27 malpractice court is the proper place to address the issues regarding Jahi's current neurological
28 function, this Court should pay these Defendants no heed. Malpractice cases are the hardest to
prove of all tort cases with roughly a 75% loss ratio according to the Department of Justice (*see*
Exhibits B and C to the Declaration of Christopher Dolan In Support of Plaintiffs' Request for
Judicial Notice). Therefore, according to these statistics, there is only a 25% chance that Jahi's
status of life or death will ever be decided. (Bureau of Justice Statistics: *Malpractice Trials and*

1 *verdicts in Large Counties*, Exhibit C to Declaration of Christopher Dolan In Support of
2 Plaintiffs’ Request for Judicial Notice).

3 Medical malpractice cases, because of their complexity, are among those cases which
4 take the longest time to process to verdict. (Bureau of Justice Statistics: *Tort Trials and verdicts*
5 *in Large Counties*, Exhibit B to Declaration of Christopher Dolan In Support of Plaintiffs’
6 Request for Judicial Notice– note that this study was completed before the budget crisis, which
7 has severely curtailed California’s State Court Resources.) Therefore there is, at best, a
8 possibility that Jahi’s status as live or dead will ever be decided in the state court action. Even if
9 a jury or judge ever reach this issue, an appeal could drag on for years.

10 Here, time is to the advantage of the Defendants, just as it was back in 2013. They want
11 to run out the clock on this teenager’s ability to vindicate her most basic human rights. Then, as
12 now, Defendants hope that the issues before this Court will be resolved by the cardio-pulmonary
13 death of Jahi McMath. If another 3 years passes before this matter reaches a decision, and
14 perhaps 2 more before a Court of Appeals decision is rendered, Jahi will be almost 20, although
15 this saga began when she was 12. If ever there were a case where Gladstone’s maxim that
16 “justice delayed is justice denied” applies, it is here.

17 18 **III. CONCLUSION**

19 Jahi and her mother should not have to pin their hopes of reunion with their family
20 during Jahi’s lifetime on the statistically improbable likelihood that the state court malpractice
21 action will resolve the issue of her life. In the state court action her life is a contingent issue,
22 merely a component of the damages prong of the malpractice case, which may only be reached
23 after if there is a finding of liability. In this action, by contrast, the question of life or death is
24 central and not contingent. Therefore this court should not dismiss this case and should not stay
25 the Federal Action for the years that the state action will require to be resolve. Plaintiffs request
26 that this Court, instead, deny Defendants’ Motions to Dismiss and set this matter on a fast track
27 for resolution in this Court.

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Dated: July 15, 2016

DOLAN LAW FIRM, PC

Signed: /s/ Christopher Dolan
Christopher Dolan

1 Christopher B. Dolan (SBN 165358)
2 Aimee Kirby (SBN 216909)
3 **THE DOLAN LAW FIRM**
4 The Dolan Building
5 1438 Market Street
6 San Francisco, CA 94102
7 Tel: (415) 421-2800
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12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 JAHl MCMATH, a minor; NAILAH
15 WINKFIELD, an individual, as parent, as
16 guardian, and as next friend of JAHl McMath,
17 a minor

18 Plaintiffs,

19 v.

20 STATE OF CALIFORNIA;
21 COUNTY OF ALAMEDA; et al.

22 Defendants.

Case No. 3:15-cv-06042-HSG

**PLAINTIFFS' REQUEST FOR
JUDICIAL NOTICE**

Date: August 4, 2016

Time: 2:00 pm

Judge: The Honorable Haywood S. Gilliam,
Jr.

Action filed: December 23, 2015

Trial: Not set.

23 **I. INTRODUCTION**

24 Plaintiffs respectfully request that the court take judicial notice of the items listed below.
25 Judicial notice is appropriate where the fact is not subject to reasonable dispute because it is
26 "capable of accurate and ready determination by resort to sources whose accuracy cannot
27 reasonably be questioned." Fed. R. Evid. 201(b)(2). Federal courts routinely take judicial notice
28 of state court records. *Harris v. County of Orange*, 682 F.3d 1126, 1132 (9th Cir. 2012); *Cachil
Dehe Band of Wintun Indians v. California*, 547 F.3d 962, 968 n. 4 (9th Cir. 2008) (taking

1 judicial notice of state records); *United States v. Black*, 482 F.3d 1035, 1041 (9th Cir. 2007)
 2 (noting that a court "may take notice of proceedings in other courts, both within and without the
 3 federal judicial system, if those proceedings have a direct relation to matters at issue"); *Reyn's*
 4 *Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n. 6 (9th Cir. 2006) (taking judicial notice
 5 of pleadings, memoranda, and other court filings); *Asdar Group v. Pillsbury, Madison & Sutro*,
 6 99 F.3d 289, 290 n. 1 (9th Cir. 1996) (court may take judicial notice of pleadings and court
 7 orders in related proceedings). Judicial notice by a court is mandatory "if requested by a party
 8 and supplied with the necessary information." Fed. R. Evid. 201(c)(2). This court may properly
 9 take judicial notice of matters of public record, including the decision and file of another court.
 10 Therefore, Plaintiff request the court take judicial notice of the following items, which are
 11 attached to the DECLARATION OF CHRISTOPHER DOLAN IN SUPPORT OF
 12 PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE:

- 13
- 14 1. **Exhibit A:** Docket report in *UCSF Benioff Children's Hospital Oakland et al. v. The*
 15 *Superior Court of Alameda County*, Case Number A147989, First Appellate District,
 16 California Court of Appeals.

17

18 The appeal referred to in the docket report, *UCSF Benioff Children's Hospital Oakland*
 19 *et al. v. The Superior Court of Alameda County*, was filed on April 13, 2016 by UCSF Benioff
 20 Children's Hospital Oakland and Frederick S. Rosen, M.D. (hereinafter "Intervening
 21 Defendants"), the two parties who have been granted leave to intervene in the present case. The
 22 Intervening Defendants are among the defendants in the medical malpractice case, Alameda
 23 County Superior Court Case Number RG15760730. The Intervening Defendants appealed Judge
 24 Robert B. Freedman's order denying their second demurrers. For this Court's convenience, the
 25 entirety of the Court of Appeal's order dismissing the Intervening Defendants' appeal (the
 26 penultimate docket entry, which was entered by the court on July 12, 2016) is pasted
 27 immediately below.

28

1 BY THE COURT: In the underlying case, plaintiffs and real parties in interest Latasha
 2 Nailah Spears Winkfield, Marvin Winkfield, Sandra Chatman, Milton McMath and Jahi
 3 McMath (Jahi), by and through her Guardian Ad Litem, Latasha Nailah Spears Winkfield,
 4 brought suit against defendants and petitioners UCSF Children's Hospital Oakland (UCSF) and
 5 Dr. Frederick Rosen for personal injury, and, in the alternative, wrongful death. Petitioners ask
 6 this court to issue a writ of mandate directing the trial court to sustain demurrers by UCSF and
 7 Dr. Rosen to Jahi's first cause of action for personal injury, asserting that it is precluded by the
 8 collateral estoppel effect of the probate court's earlier finding that Jahi had suffered brain death.
 9 Because the trial court found the record at the pleading stage was inadequate for a collateral-
 10 estoppel determination and "may require a more developed factual record," we conclude, under
 11 these circumstances, that this matter should not be resolved at the pleading stage. (See *Babb v.*
 12 *Superior Court* (1971) 3 Cal.3d 841, 851 [writ relief at pleading stage generally disfavored].)
 13 The petition for writ of mandate or other appropriate relief is denied. Before Humes, P.J.,
 14 Margulies, J., and Banke, J.

15
 16 2. **Exhibit B:** U.S. Department of Justice, Office of Justice Programs, Bureau of Justice
 17 Statistics Bulletin (November, 2004): *Civil Justice Survey of State Courts, 2001, Tort Trials*
 18 *and Verdicts in Large Counties, 2001.*

19 3. **Exhibit C:** U.S. Department of Justice, Office of Justice Programs, Bureau of Justice
 20 Statistics Bulletin (November, 2004): *Civil Justice Survey of State Courts, 2001, Medical*
 21 *Malpractice Trials and Verdicts in Large Counties, 2001.*

22
 23 Dated: July 15, 2016
 24 Respectfully Submitted,
DOLAN LAW FIRM, PC

25
 26 By: /s/ Christopher B. Dolan
 27 Christopher B. Dolan, Esq.
 28 Attorney for Plaintiffs

1 Christopher B. Dolan (SBN 165358)
2 Aimee Kirby (SBN 216909)
3 **DOLAN LAW FIRM, PC**
4 1438 Market Street
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11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 JAHl MCMATH, a minor; NAILAH
14 WINKFIELD, an individual, as parent, as
15 guardian, and as next friend of JAHl McMath,
16 a minor

17 Plaintiffs,

18 v.

19 STATE OF CALIFORNIA;
20 COUNTY OF ALAMEDA; et al.

21 Defendants.

Case No. 3:15-cv-06042-HSG

**DECLARATION OF CHRISTOPHER
DOLAN IN SUPPORT OF PLAINTIFFS'
REQUEST FOR JUDICIAL NOTICE**

Date: August 4, 2016

Time: 2:00 pm

Judge: The Honorable Haywood S. Gilliam,
Jr.

Action filed: December 23, 2015

Trial: Not set.

22 I, Christopher Dolan, declare the following to be true:

23
24 1. I am an attorney licensed to practice in the State of California. I am the Principal at the
25 Dolan Law Firm, PC, counsel of record for the Plaintiffs in this matter. I have personal
26 knowledge of the matters stated herein, and could and would testify as stated if called as a
27 witness.

28 2. I make this declaration in support of Plaintiffs' Request for Judicial Notice.

1 3. Attached hereto as Exhibit A is a document titled “Appellate Courts Case Information,
2 California Courts, The Judicial Branch of California.” This is the complete docket report in
3 UCSF Benioff Children's Hospital Oakland et al. v. The Superior Court of Alameda County,
4 Case Number A147989, First Appellate District, California Court of Appeals. This appeal is
5 referred to in the Intervening Defendants’ pending 12(b)(6) motion. Its pendency apparently was
6 one reason given by the Intervening Defendants to justify this Court’s dismissing or abstaining
7 from hearing the instant matter. The appeal was dismissed on July 12, 2016, subsequent to the
8 date on which Plaintiffs’ opposition to Intervening Defendants’ 12(b)(6) motion was due and
9 filed, as reflected in Exhibit A.

10 4. Attached hereto as Exhibit B is a publication of the United States Department of Justice,
11 Office of Justice Programs, Bureau of Justice Statistics Bulletin (November, 2004), titled *Civil*
12 *Justice Survey of State Courts, 2001, Tort Trials and Verdicts in Large Counties, 2001*. It was
13 accessed on the website bjs.gov on July 14, 2016. The report has been reproduced in its entirety
14 without alteration.

15 5. Attached hereto as Exhibit C is a publication of the United States Department of Justice,
16 Office of Justice Programs, Bureau of Justice Statistics Bulletin (November, 2004), titled *Civil*
17 *Justice Survey of State Courts, 2001, Medical Malpractice Trials and Verdicts in Large*
18 *Counties, 2001*. It was accessed on the website bjs.gov on July 14, 2016. The report has been
19 reproduced in its entirety without alteration.

20
21 I declare under the penalty of perjury, according to the laws of the State of California,
22 that the foregoing is true and correct.

23 Executed in Martha’s Vineyard, Massachusetts, on the date indicated below.
24

25 Dated: July 15, 2016

DOLAN LAW FIRM, PC

26
27 Signed: /s/ Christopher Dolan
28 Christopher Dolan

Exhibit A

Appellate Courts Case Information

CALIFORNIA COURTS
THE JUDICIAL BRANCH OF CALIFORNIA

1st Appellate District

Change court ▾

Court data last updated: 07/13/2016 01:41 PM

Docket (Register of Actions)

**UCSF Benioff Children's Hospital Oakland et al. v. The Superior Court
of Alameda County**

Division 1

Case Number A147989

Date	Description	Notes
04/13/2016	Filing fee.	
04/13/2016	Filed petition for writ of:	Mandate
04/13/2016	Exhibits lodged.	Volume 1 of 5; Pages 1-227
04/13/2016	Exhibits lodged.	Volume 2 of 5; Pages 228-461
04/13/2016	Exhibits lodged.	Volume 3 of 5; Pages 462-705
04/13/2016	Exhibits lodged.	Volume 4 of 5; Pages 706-919
04/13/2016	Exhibits lodged.	Volume 5 of 5; Pages 920-1148
04/13/2016	Filed proof of service.	
04/14/2016	Opposition requested.	Dear Counsel: Your client has been named as real party in interest in the above-captioned writ proceeding, which is assigned to Division One. At the Court's request, all parties are by this letter placed on notice that the court may choose to act by issuing a peremptory writ in the first instance. (See <i>Palma v. U.S. Industrial Fasteners, Inc.</i> (1984) 36 Cal.3d 171, 177-180.) The Court requests that real party in interest serve and file opposition, if any, to the petition on or before the opposition date indicated above. (California Rules of Court, rule 8.487(b)(1)-(2).) The opposition shall include a Certificate of Interested Entities or Persons in compliance with Rule 8.488 of the California Rules of Court. If you are not filing an opposition, please inform the

		<p>court in writing. Petitioner may serve and file a reply within fifteen (15) days after the opposition is filed. (California Rules of Court, rule 8.487(b)(3).) All briefs must be served and filed electronically in compliance with Rule 16 of the Local Rules of the Court of Appeal First Appellate District, which are available on the Court's website at www.courts.ca.gov/1dca.htm. All parties are directed to include citations and record references in the body of their briefs and not in footnotes.</p>
04/18/2016	Requested - extension of time.	Opposition filed. Requested for 05/16/2016 By 14 Day(s)
04/19/2016	Granted - extension of time.	Opposition filed. Due on 05/16/2016 By 14 Day(s)
05/16/2016	Order filed.	The clerk of court is directed to file "Letter of Amici Curiae in Support of the Petition for Writ of Mandate or Other Appropriate Relief," which the court received from the California Medical Association, California Dental Association, California Hospital Association and American Medical Association, on May 12, 2016. Real parties in interest may file a response to Amici Curiae's letter by June 6, 2016.
05/12/2016	Amicus curiae brief filed by:	Petitioner: UCSF Benioff Children's Hospital Oakland Attorney: George Patrick Galloway
05/16/2016	Exhibits lodged.	In Support of Opposition
05/16/2016	Opposition filed.	
05/23/2016	Requested - extension of time.	Reply filed to:. Requested for 06/10/2016 By 10 Day(s)
05/24/2016	Granted - extension of time.	Reply filed to:. Due on 06/10/2016 By 10 Day(s)
06/02/2016	Change of contact information filed for:	RPI's counsel, Andrew Nathan Chang: old address 1: 234 East Colorado Boulevard, Suite 750 new address 1: 234 East Colorado Boulevard, Suite 975

06/02/2016	Requested - extension of time.	Response to amicus curiae brief filed by:. Requested for 06/16/2016 By 10 Day(s)
06/06/2016	Granted - extension of time.	Response to amicus curiae brief filed by:. Due on 06/16/2016 By 10 Day(s)
06/10/2016	Filed proof of service.	Reply
06/10/2016	Reply filed to:	
06/16/2016	Response to amicus curiae brief filed by:	Real Party in Interest: Latasha Nailah Spears Winkfield Attorney: Andrew Nathan Chang
07/12/2016	Order denying petition filed.	BY THE COURT: In the underlying case, plaintiffs and real parties in interest Latasha Nailah Spears Winkfield, Marvin Winkfield, Sandra Chatman, Milton McMath and Jahi McMath (Jahi), by and through her Guardian Ad Litum, Latasha Nailah Spears Winkfield, brought suit against defendants and petitioners UCSF Children's Hospital Oakland (UCSF) and Dr. Frederick Rosen for personal injury, and, in the alternative, wrongful death. Petitioners ask this court to issue a writ of mandate directing the trial court to sustain demurrers by UCSF and Dr. Rosen to Jahi's first cause of action for personal injury, asserting that it is precluded by the collateral estoppel effect of the probate court's earlier finding that Jahi had suffered brain death. Because the trial court found the record at the pleading stage was inadequate for a collateral-estoppel determination and "may require a more developed factual record," we conclude, under these circumstances, that this matter should not be resolved at the pleading stage. (See <i>Babb v. Superior Court</i> (1971) 3 Cal.3d 841, 851 [writ relief at pleading stage generally disfavored].) The petition for writ of mandate or other appropriate relief is denied. Before Humes, P.J., Margulies, J., and Banke, J.
07/12/2016	Case complete.	

[Click here to request automatic e-mail notifications about this case.](#)

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Judicial Council of California

Exhibit B



Bureau of Justice Statistics

Civil Justice Data Brief

Civil Justice Survey of State Courts, 2001

April 2004, NCJ 203098

Medical Malpractice Trials and Verdicts in Large Counties, 2001

By Thomas H. Cohen, J.D., Ph.D.
BJS Statistician

Of the 1,156 medical malpractice trials litigated in the Nation's 75 most populous counties during 2001, most were disposed of by jury trial (96%) (not shown in a table). In an estimated 9 out of 10 medical malpractice trials, the alleged harm involved either a permanent injury (57%) or a death claim (33%) (figure 1).

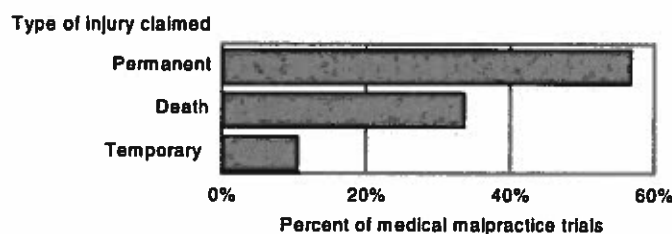
About half of the sampled medical malpractice trials were brought against surgeons, while a third were against nonsurgeons. Dentists accounted for 5% of medical malpractice defendants (table 1).

Medical malpractice trials with nonsurgeons had the highest estimated percentage of injuries involving a death claim (43%). Death claims arose in 30% of trials with a surgeon defendant (not shown in a table).

The overall win rate for medical malpractice plaintiffs (27%) was about half of that found among plaintiffs in all tort trials (52%). Plaintiffs prevailed in nearly 39% of trials against dentist defendants and in about a quarter of trials against nonsurgeon (23%) and surgeon (27%) defendants (table 1).

The median award of \$425,000 in medical malpractice trials was nearly 16 times greater than the overall median award in all tort trials (\$27,000). Median award amounts were higher among plaintiffs who won

90% of medical malpractice trials involved plaintiffs who claimed malpractice had caused death or permanent injury



Note: Injury data were available for 78.2% (904) of medical malpractice trials. Trials include bench and jury trials, trials with a directed verdict, judgments notwithstanding the verdict, and jury trials for defaulted defendants.

Figure 1

Table 1. Awards in medical malpractice cases decided by a bench or jury trial in State courts in the Nation's 75 largest counties, 2001

Case and defendant type ^a	Number of trials	Percent of plaintiff winners ^b	Final awards to plaintiff winner			Percent of plaintiff winners with awards Over \$1 million or more	
			Number ^c	Total	Median	\$250,000	\$1 million
Medical malpractice trials	1,038	27.1%	278	\$448,219,000	\$425,000	65.7%	29.4%
Doctor – nonsurgeon	361	23.0	82	122,841,000	511,000	76.6	29.7
Doctor – surgeon	533	26.5	140	245,587,000	575,000	70.5	36.4
Dentist	54	38.9	20	2,867,000	53,000	20.6	–
Other	90	40.0	36	76,924,000	224,000	47.5	17.5

Note: Includes bench and jury trials, trials with a directed verdict, judgments notwithstanding the verdict, and jury trials for defaulted defendants. Detail may not sum to total because of rounding.

–No cases recorded.

^aData on type of defendant were available for 89.8% of the sampled medical malpractice trials.

^bData on plaintiff winners were available for 100.0% of the sampled medical malpractice trials in which the defendant type was known.

^cData on final awards were available for 98.9% of medical malpractice trials in which the type of defendant and the winner was known.

U.S. Department of Justice
Office of Justice Programs
Bureau of Justice Statistics



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malpractice trials against medical doctors, both surgeons (\$575,000) and nonsurgeons (\$511,000), than against dentists (\$53,000) (table 1).

Plaintiff winners were awarded \$1 million or more in approximately a third of medical malpractice trials brought against nonsurgeon and surgeon defendants (table 1).

The type of injury giving rise to the medical malpractice trial also had an impact on damage awards. Median award amounts for medical malpractice trials arising from death claims (\$837,000) and permanent injuries (\$412,000) were higher than the median awards for medical malpractice trials that stemmed from temporary injuries (\$77,000) (table 2).

The number of medical malpractice jury trials since 1992 has remained stable as the reported differences were not statistically significant. Since 1992 the percentage of plaintiff winners ranged from 22% to 30%.

After remaining stable in 1992 and 1996, the median amount awarded in jury trials to plaintiff winners increased from \$287,000 in 1996 to \$431,000 in 2001. The percentage of plaintiff winners receiving awards of \$1 million or more also rose from an estimated 25% in 1992 and 1996 to 32% in 2001 (table 3).

Punitive damages remained rare in medical malpractice jury trials. From 1992 to 2001, 1% to 4% of plaintiff winners in medical malpractice jury trials received punitive damages (not

shown in table). The median punitive damage awards for medical malpractice jury trials in two of the three study periods (1992 and 2001) were around \$250,000.

Table 2. Medical malpractice awards, by type of injury, in State courts in the Nation's 75 largest counties, 2001

Type of injury claimed ^a	Number of medical malpractice trials with plaintiff winner ^b	Final amount awarded to plaintiff winners		Percent of plaintiff winner cases with final awards	
		Total	Median	Over \$250,000	\$1 million or more
Death	69	\$163,391,000	\$837,000	79.4%	43.3%
Permanent	141	215,545,000	412,000	68.8	31.7
Temporary	19	2,688,000	77,000	15.6	--

Note: Includes bench and jury trials, trials with a directed verdict, judgments notwithstanding the verdict, and jury trials for defaulted defendants.
--No cases recorded.

^aInjury data were available for 78.2% of medical malpractice trials.

^bData on final awards were available for 99.2% of cases in which the injury type was known.

Table 3. Trends in plaintiff winners and awards for medical malpractice jury trials in State courts in the Nation's 75 largest counties, 1992-2001

Year	Medical malpractice jury trials		Final amount awarded to plaintiff winners (in 2001 dollars)		Percent of plaintiff winner cases with final awards	
	Total	With plaintiff award winner	Total	Median	Over \$250,000	\$1 million or more
1992	1,356	403	\$753,667,000	\$253,000	53.4%	25.3%
1996	1,118	249	371,262,000	287,000	52.2	25.1
2001	1,112	292 [*]	596,329,000	431,000 [*]	67.6 [*]	31.5 [*]

Note: Medical malpractice award data were available for plaintiff winners in 97.6% of jury trials in 1992, 97.3% of jury trials in 1996, and 98.9% of jury trials in 2001. Since the 1992 dataset does not contain award information for bench trials, the trend table only examines jury trial cases. Award amounts are rounded up to the nearest thousand. 1992 and 1996 award amounts are adjusted for inflation and presented in 2001 dollars. The inflation adjustment was calculated by utilizing the CPI inflation calculator on the U.S. Department of Labor's web page at <<http://www.bls.gov/cpi/home.htm>>. Data Sources: *Civil Justice Survey of State Courts, 1992* (ICPSR 6587), *Civil Justice Survey of State Courts, 1996* (ICPSR 2883), and *Civil Justice Survey of State Courts, 2001* (ICPSR 3957).

^{*}The 2001 estimate differs significantly (with a 95%-confidence interval) from the estimate for 1992.

Exhibit C



Bureau of Justice Statistics Bulletin

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Tort Trials and Verdicts in Large Counties, 2001

By
Thomas H. Cohen, J.D., Ph.D.
BJS Statistician

Torts accounted for nearly two-thirds of the estimated 12,000 tort, contract, and real property cases disposed of by bench or jury trial in State courts of general jurisdiction in the Nation's 75 largest counties in 2001.¹ A tort involves one party alleging injury, damage, or financial loss stemming from the negligent or intentional acts of another party.

During 2001 over 90% of tort trials were decided by a jury, while judges adjudicated less than 10% of these cases.

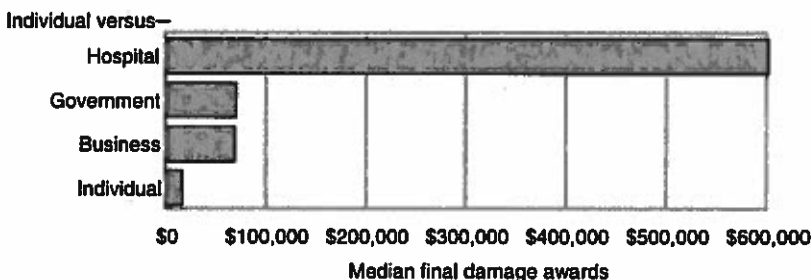
Plaintiffs won in about half of all tort trials and were awarded a total of about \$2.3 billion in compensatory and punitive damages. Half of all plaintiff winners in tort jury and bench trials received damage awards of \$27,000 or more. Appeals to a State intermediate appellate court or court of last resort were filed in 13% of tort trials disposed of in 2001.

These are some of the findings from a survey of tort trials in State courts of general jurisdiction. This report is the

¹Courts of general jurisdiction typically handle civil disputes that are over certain monetary amounts. The exceptions are in States like California that have merged their limited and general jurisdiction courts.

Highlights

Median final damage awards in tort trials with individual plaintiff winners versus different defendant types in the Nation's 75 largest counties, 2001



- During 2001 an estimated 7,948 tort cases were disposed of by trial in State courts of general jurisdiction in the Nation's 75 largest counties.
- Juries decided over 90% of these tort cases, while judges adjudicated less than 10%.
- The 7,218 tort jury trials disposed of in 2001 represents a 23% decline from the 9,431 tort jury trials disposed of in these counties in 1992, consistent with data from 30 States showing decreases in the number of tort claims filed.
- In tort jury trials the overall median damage awards have declined 56% from \$64,000 in 1992 to \$28,000 in 2001.
- Fifty-two percent of tort trials involved a private individual suing another individual, while 31% involved an individual suing a business.
- Plaintiffs won in 52% of tort trials in 2001. This win rate has remained relatively unchanged since 1992.
- About 5% of plaintiff winners in tort trials were awarded punitive damages. The median punitive damage award was \$25,000.
- Litigants sought post verdict relief — amended judgment, judgment notwithstanding the verdict, new trial, or award modification — in 29% of all tort trials; 23% of these litigants seeking relief were granted relief, most frequently an award modification.
- Litigants filed a notice of appeal to a State appellate court in 13% of tort trials disposed of in 2001.

third in a series based on data collected from the Civil Justice Survey of State Courts, 2001.²

The first report of this series provided a general overview of tort, contract, and real property cases decided by a bench or jury trial in the Nation's 75 most populous counties in 2001. The second report focused on medical malpractice cases disposed of by trial. This third report describes the contours of tort trial litigation in the Nation's 75 largest counties.

The sample of civil trials excluded civil matters that did not involve tort, contract, or real property cases. Federal trials, trials in counties outside the 75 most populous counties, and trials in State courts of limited jurisdiction were also excluded from the sample.

Types of tort trials

During 2001 State courts of general jurisdiction in the Nation's 75 largest counties disposed of an estimated 7,948 tort trials. A prior BJS study on tort cases found that a minority (about 3%) were adjudicated by trial and that most (73%) were disposed of by settlement.³

Although tort trials account for a small percentage of tort dispositions, they are crucial to examine because they provide key information on plaintiff award compensation, punitive damages, and case processing times. Tort cases that settle rarely include this type of information as part of the public record.

Of the estimated 7,948 tort trials disposed of in the Nation's 75 largest counties in 2001, about half were automobile accident cases (table 1).

²The two reports produced from the Civil Justice Survey of State Courts 2001 are *Civil Trial Cases and Verdicts in Large Counties, 2001*, NCJ 202803, and *Medical Malpractice Trials and Verdicts in Large Counties, 2001*, NCJ 203098, <<http://www.ojp.usdoj.gov/bjs/civil.htm>>.

³See BJS, *Tort Cases in Large Counties, 1992*, NCJ 153177, <<http://www.ojp.usdoj.gov/bjs/abstract/tclic.htm>>.

Table 1. Tort cases disposed of by trial in State courts in the Nation's 75 largest counties, 2001

Case type	All tort trials		Type of trial		
	Number	Percent	Jury	Bench	Other*
All tort trials	7,948	100.0%	90.8%	7.3%	1.9%
Automobile	4,235	53.3%	92.6%	5.9%	1.5%
Premises liability	1,268	16.0	91.4	6.2	2.4
Product liability	158	2.0	91.8	3.2	5.1
Asbestos	31	0.4	96.8	—	3.2
Other	126	1.6	90.5	6.3	3.2
Intentional tort	375	4.7	76.3	20.3	3.5
Medical malpractice	1,156	14.5	96.2	2.9	0.9
Professional malpractice	102	1.3	66.3	32.7	1.0
Slander/libel	95	1.2	78.9	18.9	2.1
Animal attack	99	1.2	86.9	13.1	—
Conversion	27	0.3	46.4	46.4	7.1
False arrest, imprisonment	45	0.6	75.6	20.0	4.4
Other or unknown tort	390	4.9	82.6	12.1	5.4

Note: Data for case and disposition type were available for 100.0% of the 7,948 tort trials. Detail may not sum to total because of rounding.

—No cases recorded.

*Other trial cases include trials with a directed verdict, judgments notwithstanding the verdict, and jury trials for defaulted defendants. Although these cases are typically placed in a separate category they are a form of jury trial.

Premises liability and medical malpractice each accounted for nearly 15% of tort cases disposed of by trial. An estimated 2% of tort trials were product liability cases, in which the primary claim involved asbestos, toxic substances, breast implants, tobacco, or other defective product matters.

Type of trial verdict

The majority of tort trials (93%) were decided by a jury, while judges adjudicated about 7% of tort trials (table 1).

Sixty-three percent of the tort jury trials with data on the nature of the jury's decision resulted in a unanimous verdict for the plaintiff or the defendant

Selected case types	Percent of jury verdicts that were unanimous
All tort trials	63.0%
Automobile	66.8
Premises liability	65.6
Product liability	62.9
Medical malpractice	57.4
Intentional tort	41.5

Note: Only includes States that permitted non-unanimous verdicts. States that required unanimous verdicts were not included. Data on the unanimity of jury verdicts were available in 64.3% of the 4,797 jury trials.

Two percent of tort jury trials were disposed of by directed verdict, judgments notwithstanding the verdict (JNOV), or default jury trial. (For definitions, see page 9.) The right to a jury trial is guaranteed in most States; however, if neither the plaintiff nor the defendant makes a formal jury trial request, that right is forfeited, and the trial takes place before a judge.

Juries disposed of an estimated 9 out of 10 medical malpractice (96%), automobile accident (93%), product liability (92%), and premises liability (91%) tort trial cases. At least a fifth of conversion, professional malpractice, intentional torts, and false arrest-imprisonment cases were adjudicated before judges.

Litigants

An estimated 24,904 litigants (plaintiffs and defendants) were involved in the 7,948 tort trials disposed of in the Nation's 75 largest counties in 2001 (not shown in a table). Of these litigants in tort trials, 11,209 were plaintiffs, and 13,695 were defendants. Seventy-percent of tort trials were litigated by one plaintiff, while 56% involved one defendant.

Table 2. Pairings of primary litigants in tort trial cases, by case type, in State courts in the Nation's 75 largest counties, 2001

Case type	Number	Plaintiffs			
		Individual	Government ^a	Business ^b	Hospital ^c
All tort trials^d					
Individual only defendant	4,193	52.2%	0.2%	0.8%	--
Government defendant ^a	421	5.1	0.0	0.2	0.0
Business defendant ^b	2,590	30.6	0.2	2.1	--
Hospital defendant ^c	688	8.7	--	0.0	--
Automobile tort trials					
Individual only defendant	3,113	73.1%	0.2%	0.8%	--
Government defendant ^a	149	3.5	--	0.1	--
Business defendant ^b	926	20.5	0.0	1.5	--
Hospital defendant ^c	13	0.3	--	--	--
All other tort trials					
Individual only defendant	1,080	28.4%	0.1%	0.8%	--
Government defendant ^a	272	7.0	0.1	0.3	0.0
Business defendant ^b	1,663	42.0	0.4	2.7	--
Hospital defendant ^c	675	18.2	--	0.1	--

Note: Data for litigant pairings were available for 99.3% of all tort trials, 99.2% of automobile trials, and 99.4% of all non-automobile tort trials. Plaintiff or defendant type for each case is whichever type appears first on this list: (1) hospital/medical company; (2) corporate/business; (3) government agencies; (4) individuals. For example, any case involving a hospital defendant is categorized as a case with a "hospital defendant" even if there were also business, individual, and government defendants in the case. Detail may not sum to total because of rounding. A "0.0" indicates a statistic of less than .05%.

--No cases recorded.

^aIncludes law enforcement and other government organizations.

^bIncludes insurance companies, banks, and other business organizations.

^cIncludes medical companies.

^dIncludes bench and jury trials, trials with a directed verdict, judgments notwithstanding the verdict, and jury trials for defaulted defendants.

or a business (31%). Individuals sued hospitals or governmental agencies in less than 15% of tort trials.

A relatively small number of tort trials involved non-individual plaintiffs. Governments and businesses were plaintiffs in an estimated 4% of all tort trials. Among bench trials non-individual plaintiffs were more common. Governments or businesses were plaintiffs in about 10% of bench tort trials (not shown in a table).

Automobile trials versus other tort trials

Accounting for around half of all tort trials, automobile accident cases are characterized by marked differences in their litigant pairings (table 2). Nearly three-fourths of automobile accident trials involved individuals suing other individuals. In comparison, individuals sued other individuals in 28% of non-automobile accident tort trials. Individual plaintiffs were more likely to litigate against businesses (42%) or hospital defendants (18%) in trials where the primary claim did not involve an automobile accident.

Litigant pairings

For each tort trial, data were collected on whether the plaintiff or defendant

was an individual, government, business, or hospital (table 2). Four-fifths of tort trials involved an individual suing either another individual (52%)

Defective products in product liability trials in the 75 largest counties, 2001

• Of the 144 product liability trials for which the type of defective product was known, 28% dealt with asbestos or other toxic substances.

• Cases involving defective vehicles such as automobiles, trucks, or airplanes accounted for about 12% of the 144 product liability trials.

• Defective construction, electrical, or manufacturing equipment was involved in about 19% of the 144 product liability trials disposed of in the Nation's 75 largest counties during 2001.

• Punitive damages were awarded to plaintiff winners in 3 of 144 product liability trials (not shown in a table).

• There was 1 tobacco product liability trial in the Nation's 75 largest counties in 2001. This was a jury trial involving 1 plaintiff against 4 business defendants. The jury ruled in favor of the defendants.

Type of defective product	Product liability trials ^a	
	Number	Percent
Total	144	100.0%
Toxic substances	40	27.9%
Asbestos	31	21.8
Other substances	9	6.1
Equipment ^b	27	18.7
Home appliances and items ^c	24	17.0
Other product ^d	21	14.6
Vehicle ^e	18	12.4
Medical ^f	8	5.5
Food ^g	6	4.0

Note: Type of defective product was known for 144 of the 158 product liability trials. Detail may not sum to total because of rounding.

^aTrials include bench and jury trials, trials with a directed verdict, judgments notwithstanding the verdict, and jury trials for defaulted defendants.

^bIncludes construction, electrical, and manufacturing equipment.

^cIncludes home furniture, small appliances, workshop tools, yard equipment, TV/Stereo/VCR appliances, and sporting goods.

^dIncludes natural gas, tobacco, and other products.

^eIncludes automobiles, trucks, and other forms of transport (airplanes).

^fIncludes nonprescription and prescription drugs, cosmetics, breast and other internal implants, and other medical equipment and devices.

^gIncludes food in restaurants and grocery stores.

Table 3. Tort trial plaintiff winners in State courts in the Nation's 75 largest counties, 2001

Case type	All tort trials ^a		Jury trials ^b		Bench trials	
	Number ^c	Plaintiff winners	Number ^c	Plaintiff winners	Number ^c	Plaintiff winners
Tort cases	7,798	51.6%	7,085	50.7%	570	64.7%
Automobile	4,121	61.2%	3,812	60.2%	250	78.0%
Premises liability	1,260	42.0	1,151	41.5	78	57.7
Product liability	154	44.2	141	44.7	8	50.0
Asbestos	30	60.0	29	62.1	—	—
Other	124	40.3	112	40.2	8	50.0
Intentional tort	366	56.8	281	53.7	73	68.5
Medical malpractice	1,149	26.8	1,107	26.3	32	50.0
Professional malpractice	99	52.5	67	55.2	32	43.8
Slander/libel	94	41.5	74	47.3	18	22.2
Animal attack	99	66.7	86	68.6	13	53.8
Conversion	28	46.4	13	61.5	13	23.1
False arrest, imprisonment	45	42.2	34	50.0	9	22.2
Other or unknown tort	383	50.9	319	50.2	44	65.9

Note: Data on plaintiff winners were available for 99.9% of all tort trials. Detail may not sum to total because of rounding.

—No cases recorded.

^aIncludes bench and jury trials, trials with a directed verdict, judgments notwithstanding the verdict, and jury trials for defaulted defendants.

^bDoes not include jury trials that involved trials with a directed verdict, judgments notwithstanding the verdict, and jury trials for defaulted defendants.

^cExcludes bifurcated trials where the plaintiff litigated only the damage claim.

Plaintiff winners

Plaintiffs prevailed in about half of all tort trials disposed of in the Nation's 75 largest counties during 2001 (table 3). The plaintiff win rates varied considerably, depending on the type of tort case litigated. Among some tort case categories such as automobile, asbestos, and animal attack, the estimated plaintiff win rates approached or exceeded 60%.

Plaintiffs were less successful in other kinds of tort cases. Plaintiffs prevailed in less than a third of medical malpractice trials and won in less than a half of premises liability, slander/libel, false arrest, and other product liability trials.

Plaintiffs prevailed to a greater extent in tort trials heard by judges than juries. Judges found in favor of plaintiffs in nearly two-thirds of tort trials, while juries ruled for the plaintiffs in about half of tort trials.

Table 4. Final award amounts for tort trials with plaintiff winners in State courts in the Nation's 75 largest counties, 2001

Case type	Tort trials with damages awarded to plaintiff winners ^a	Final amount awarded to plaintiff winners		Percent of plaintiff winner cases with final awards—	
		Total	Median	Over \$250,000	\$1 million or more
All tort trials ^b	4,069 ^c	\$2,299,957,000	\$27,000	18.8%	7.7%
Automobile	2,565	\$526,435,000	\$16,000	8.6%	2.8%
Premises liability	522	400,653,000	59,000	22.9	9.1
Product liability	70	199,153,000	450,000	64.6	39.1
Asbestos	19	86,275,000	1,650,000	90.7	59.7
Other	51	112,878,000	311,000	54.7	31.4
Intentional tort	214	128,428,000	37,000	25.4	16.3
Medical malpractice	311	600,746,000	422,000	66.1	29.7
Professional malpractice	51	43,108,000	93,000	30.6	13.9
Slander/libel	39	17,067,000	121,000	39.6	6.0
Animal attack	66	6,741,000	18,000	11.7	—
Conversion	13	926,000	23,000	—	—
False arrest, imprisonment	19	2,185,000	30,000	14.6	—
Other or unknown tort	199	374,514,000	106,000	39.9	15.5

Note: Data for final awards were available for 99.5% of all sampled tort trials. Final amount awarded includes compensatory (reduced for contributory negligence) and punitive damage awards. Award data were rounded to the nearest thousand. Detail may not sum to total because of rounding.

^aThe number of plaintiffs awarded damages may differ from the number calculated from the percentage of plaintiffs who successfully litigated the case (table 3). Missing award data, the fact that in some cases plaintiff winners receive nothing because of award reductions, and the inclusion of plaintiff winners in bifurcated damage trials (a group excluded from table 3) account for some of this difference.

—No cases recorded.

^bExcludes bifurcated trials where the plaintiff litigated the liability claim. Bifurcated trials involving damage claims; however, have been included.

^cAll tort trials include bench and jury trials, trials with a directed verdict, judgments notwithstanding the verdict, and jury trials for defaulted defendants.

Final awards

During 2001 plaintiff winners in tort jury and bench trials were awarded an estimated \$2.3 billion in compensatory and punitive damages in the Nation's 75 largest counties (table 4). The median award for plaintiff winners in tort trials was \$27,000. About 19% of these plaintiff winners received damage awards over \$250,000, and an estimated 8% were awarded at least \$1 million or more in damages.

Damage awards for plaintiff winners in tort trials differed markedly by case type. In some tort case categories the median awards were relatively modest. For example, automobile and premises liability cases, which together accounted for about three-fourths of all tort trials with a plaintiff winner, generated median awards of \$16,000 and \$59,000, respectively.

In other tort case categories, the median awards were considerably higher. Half the plaintiff winners in asbestos cases, for example, were awarded damages of \$1.7 million or more. Since asbestos cases tended

to involve multiple plaintiffs, few plaintiffs received the whole award amount when successful in these trials.

In medical malpractice trials the median awards (\$422,000) were nearly 16 times greater than the overall median awards in tort trials. Damage verdicts of \$1 million or more were awarded in about a third of medical malpractice trials. These higher award amounts are partially explained by the fact that in 9 out of 10 medical malpractice trials the plaintiffs alleged that the defendant's negligence caused a permanent injury or death (not shown in a table).

The median final award of \$28,000 in tort jury trials and \$23,000 in tort bench trials did not differ statistically (not shown in a table).

Punitive damage awards

Plaintiffs are entitled to punitive damages when the defendant's actions are so "willful, malicious, or fraudulent" that ordinary damages alone would not fully compensate the plaintiff for an inflicted injury. Unlike other forms of damage relief afforded to plaintiffs, punitive damages serve as a means for "punishing the defendant" and deterring others from committing similar actions (*Black's Law Dictionary*).

Nearly 60% of plaintiff winners in slander/libel trials and about 36% of plaintiff winners in intentional tort trials were awarded punitive damages (table 5). Punitive damages were awarded to less than 5% of plaintiff winners in product liability trials.

Punitive damages were more likely to be awarded in bench (11%) than in jury (5%) tort trials. The median punitive damage awards in bench (\$15,000) and jury (\$23,000) tort trials, however, was not significantly different (not shown in a table).

Largest tort damage award

In the 2001 database the tort trial that generated the largest damage award involved a case alleging malicious prosecution. In 1999 the defendant, who was both a general manager and equity holder for an automobile outlet company, was accused of stealing millions from the company. Federal officials responded by launching a fraud investigation into the defendant's activities.

The defendant's attorney advised the defendant to file a RICO suit against the automobile outlet's owners. The RICO suit alleged that the owners were "responsible for any missing inventory" and were "engaged in a racketeering conspiracy." The suit was dismissed in Federal court, and the owners then filed suit against both the defendant and the defendant's attorney alleging "abuse of the civil process." Soon after the owners filed suit, the defendant fled the country.

The trial took place before a jury in Philadelphia and lasted 7 days. In the second week of trial, the defendant's attorney settled, leaving the fugitive defendant as the sole person being sued. The jury found in favor of the auto outlet's owners and awarded \$50 million in compensatory and \$100 million in punitive damages. The defendant never appeared to contest the case and as of 2002 was still a fugitive.

Source for additional case details: *The National Law Journal*, February 4, 2002.

Table 5. Punitive damages awarded to plaintiff winners in tort trials in State courts in the Nation's 75 largest counties, 2001

Case type	Tort trials with plaintiff winners		Number of trials with punitive damages	Number of trials with punitive damages —	
	Number of trials with punitive damages	Amount of punitive damages awarded		Over \$250,000	\$1 million or more
All tort trials*	217	\$367,149,000	\$25,000	45	23
Automobile	54	\$48,578,000	\$5,000	9	7
Premises liability	8	646,000	33,000	—	—
Product liability	3	1,077,000	433,000	2	—
Asbestos	2	900,000	500,000	2	—
Other	1	150,000	150,000*	—	—
Intentional tort	78	32,653,000	16,000	16	9
Medical malpractice	15	115,577,000	187,000	4	2
Professional malpractice	7	117,000	1,000	—	—
Slander/libel	23	3,771,000	77,000	4	—
Animal attack	6	391,000	68,000	—	—
Conversion	3	289,000	100,000	—	—
False arrest, imprisonment	5	202,000	8,000	—	—
Other or unknown tort	16	163,849,000	470,000	11	4

Note: Data on punitive damages were available for 99.6% of all sampled tort trials in which the plaintiff winner was awarded damages. Detail may not sum to total because of rounding. Award data were rounded to the nearest thousand.

*Not median but the actual amount awarded.

—No cases recorded.

*Includes bench and jury trials, trials with a directed verdict, judgments notwithstanding the verdict, and jury trials for defaulted defendants.

The role of contributory or comparative plaintiff negligence

A plaintiff's own negligent actions may contribute wholly or partially to the injury sustained. Six States maintain the doctrine of contributory negligence.⁴ In these States any plaintiff negligence automatically bars recovery for damages. The remaining States use differing forms of comparative negligence in which damages are proportionally reduced according to the plaintiff's negligence.

In States that employ contributory or comparative negligence, compensatory damages awarded to plaintiff winners were reduced in 14% of tort trials disposed of in the Nation's 75 largest counties during 2001 (table 6). These awards were reduced 38% on average.

In a third of the premises liability trials with a plaintiff winner, the compensatory awards were reduced due to the plaintiff's own negligence. The average award reduction in these trials was about 42%.

Plaintiff winners tended to receive award reductions more frequently in jury than in bench trials. Sixteen percent of plaintiff winners in jury trials had their awards reduced, while in bench trials, 6% of plaintiff awards were reduced (not shown in a table).

⁴Alabama, Maryland, South Carolina, Delaware, North Carolina, and Virginia are contributory negligence States. *American Jurisprudence*, 2nd edition (1989, supp. 1995), 57B, pp. 1131-49.

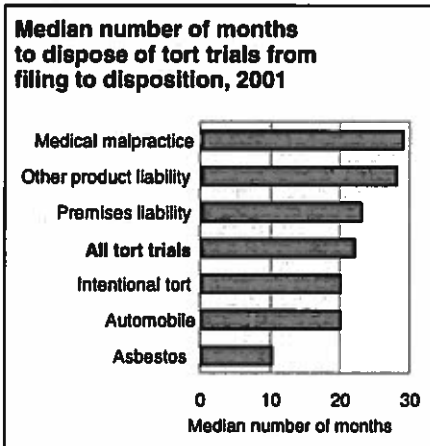


Figure 1

Case processing time

Half of the estimated 7,900 tort cases disposed of by trial in the Nation's 75 largest counties in 2001 went from filing of the complaint to final verdict or judgment within an estimated 22 months (figure 1). Among medical

malpractice and non-asbestos product liability trials, the median case processing times from filing to disposition were 29 and 28 months, respectively. Asbestos product liability trials, in comparison, were processed within a median of 10 months.

Table 6. Plaintiff winners with awards reduced in tort trials due to contributory or comparative negligence in State courts in the Nation's 75 largest counties, 2001

Case type	Number of tort trials with a plaintiff winner ^a	Tort trials with awards reduced		
		Percent	Number	Mean percent reduction
All tort trials ^b	4,045	14.4%	584	37.5%
Automobile	2,553	12.7%	324	36.8%
Premises liability	518	33.4	173	41.5
Product liability	68	13.7	9	27.6
Asbestos	19	--	--	--
Other	49	19.0	9	27.6
Intentional tort	214	8.5	18	27.2
Medical malpractice	307	6.6	20	30.5
Professional malpractice	51	13.7	7	31.6
Slander/libel	39	2.5	1	40.0*
Animal attack	65	6.3	4	43.3
Conversion	13	--	--	--
False arrest, imprisonment	19	--	--	--
Other or unknown tort	199	13.8	27	37.4

Note: Data on whether awards were reduced for contributory or comparative negligence were available for 99.0% of sampled trials with a plaintiff winner and a known initial award amount. Detail may not sum to total because of rounding.

*Not mean but actual reduction amount.

--No cases recorded.

^aOnly includes plaintiffs who won an initial monetary damage award.

^bIncludes bench and jury trials, trials with a directed verdict, judgments notwithstanding the verdict, and jury trials for defaulted defendants.

Tort trials in U.S. district courts, 2001

- U.S. district courts exercise jurisdiction in civil actions between private parties that involve the interpretation and application of a Federal question arising from the U.S. Constitution, or in cases where the parties reside in different States or countries and the amount in controversy exceeds \$75,000, or in cases where the U.S. Government is the plaintiff or defendant. Of the 248,174 civil cases terminated in the U.S. district courts during fiscal year 2001, 14% (34,918) were tort claims. About 4% (1,234) of these tort claims were terminated by a jury or bench trial.

- A jury decided tort trials less often in U.S. district courts (79%) than in State courts of general jurisdiction in the Nation's 75 largest counties during 2001 (93%).

- Plaintiffs won about half of tort trials in both U.S. district courts (51%) and State courts of general jurisdiction in the Nation's 75 largest counties (52%). Plaintiff winners, however, were awarded less monetary damages in State courts, with a median of \$27,000, compared to a median of \$179,000 awarded to plaintiff winners of tort trials decided by U.S. district courts during 2001.

Source: Administrative Office of the U.S. Courts, Civil Master File, fiscal year 2001. Published reports on Federal District Court data are also available from the U.S. Administrative Office of the Courts: <<http://www.uscourts.gov>>. See also *Civil Trial Cases and Verdicts in Large Counties, 2001*, BJS Bulletin, NCJ 202803, April 2004.

Trends in tort jury trials

• The number of tort trials decided by a jury in the Nation's 75 largest counties declined 23%, from 9,431 trials in 1992 to 7,218 trials in 2001 (table 7). The growing use of alternative dispute resolution (ADR) and other tort reform efforts aimed at limiting damage awards and tort litigation may provide a partial explanation for this trend. The National Center for State Courts also reports that tort filings in 30 States declined 9% from 1992 to 2001, contributing to the decrease in tort trials.⁵

• The plaintiff win rate in tort jury trials remained relatively stable from 1992 to 2001. During this period about half of all plaintiffs prevailed in tort jury trials. Some tort case categories witnessed declining plaintiff win rates. In 1992 nearly a third of plaintiffs prevailed in medical malpractice cases tried by a jury; by 2001 about a fourth of plaintiffs won medical malpractice jury trials. The plaintiff win rate also declined in product liability jury trials. Plaintiffs won 56% of product liability jury trials in 1992, but 45% of these trials in 2001.

• The median damage awards in tort jury trials declined from \$64,000 in 1992 to \$28,000 in 2001.⁶ The smaller damage awards imposed by juries in automobile accident trials partially explains this trend. At least half of plaintiff winners in automobile accident jury trials won \$37,000 or more in damages in 1992; by 2001 the median damage award for plaintiff winners in automobile accident trials had declined to \$16,000.

• Medical malpractice and product liability trials had marked increases in their median jury damage awards. In product liability jury trials, the median award amounts were at least 3 times higher in 2001 (\$543,000) than in 1992 (\$140,000). The median award amounts for medical malpractice jury trials nearly doubled from \$253,000 in 1992 to \$431,000 in 2001.

• Since 1992 the percentage of tort jury trials with punitive damage awards has remained unchanged. The reported differences in plaintiff winners receiving punitive damages between 1992 (4%) and 2001 (5%) were not statistically significant.

• In 1992 half of all tort cases proceeded from initial filing to jury verdict in nearly 25 months, while during 2001, the time was 22 months. These differences were not statistically significant.

⁵The sources for these findings are *Tort Reform Record*, American Tort Reform Association, 2003, and B. Ostrom, N. Kauder, and R. LaFountain, *Examining the Work of State Courts, 2002: A National Perspective from the Court Statistics Project*, 2003.

⁶The 1992 damage award amount was adjusted to account for inflation. The adjustment was calculated through the U.S. Department of Labor's website <<http://www.bls.gov/cpi/home.htm>>.

Table 7. Comparing tort jury trials in State courts in the Nation's 75 largest counties, 1992 to 2001

	1992	2001
How many tort cases were adjudicated by a jury?		
All tort jury trials	9,431	7,218*
What percentage of plaintiffs won?*		
All tort jury trials	50.3%	50.7%
Automobile	60.4	60.2
Premises liability	44.4	41.5
Product liability	55.7	44.7*
Medical malpractice	30.5	26.3*
How much did prevailing plaintiffs win?* (overall median awards, adjusted for inflation)		
All tort jury trials	\$64,000	\$28,000*
Automobile	37,000	16,000*
Premises liability	74,000	61,000
Product liability	140,000	543,000*
Medical malpractice	253,000	431,000*
What percentage of plaintiffs won punitive damages?*		
All tort jury trials	4.2%	4.5%
Automobile	2.4	1.7
Premises liability	1.7	1.7
Product liability	4.8	4.6
Medical malpractice	3.2	4.0
How long did disposition of tort cases take?* (median number of months from filing to verdict)		
All tort jury trials	24.5 mo	21.8 mo
Automobile	21.7	19.9
Premises liability	25.0	22.8
Product liability	29.8	26.1*
Medical malpractice	33.1	29.0*

Note: The number of trials includes tort jury trials adjudicated in 1992 and 2001. Bench trials, trials with a directed verdict, judgments notwithstanding the verdict, and jury trials for defaulted defendants have been excluded. Bench trials are not included because no award data were collected for bench trials in 1992.

Data Sources: Civil Justice Survey of State Courts, 1992 (ICPSR 6587) and 2001 (ICPSR 3957). Data can be obtained from the University of Michigan Inter-university Consortium for Political and Social Research (ICPSR) at <<http://www.icpsr.umich.edu/>>. Product liability trials include both the asbestos and other product liability case categories.

Award data were rounded to the nearest thousand.

*1992 - 2001 difference is significant at the 95% confidence interval.

^{*}Data on plaintiff winners were available for 99.4% of tort jury trials in 1992 and 99.9% of tort jury trials in 2001.

^{*}Data on final awards in tort jury trials were available for 97.0% of plaintiff winners in 1992 and 99.5% of plaintiff winners in 2001.

^{*}Data on punitive damages in tort jury trials were available for 97.1% of plaintiff winners in 1992 and 98.4% of plaintiff winners in 2001.

^{*}Data on time to disposition were available for 79.7% of tort jury trials in 1992 and 99.9% of tort jury trials in 2001.

Table 8. Type of post verdict relief sought by plaintiffs or defendants in tort trials in State courts in the Nation's 75 largest counties, 2001

Post verdict relief sought by —	Tort trials in which post verdict relief sought		Percent of trials in which litigants sought post verdict relief ^a			
	Percent of all trials	Number	JNOV or amended judgment	New trial	Award modification	Other relief
Plaintiff prevailed^b						
Plaintiffs	18.7%	766	9.5%	42.0%	42.4%	19.6%
Defendants	22.8	933	30.1	59.9	28.0	15.3
Plaintiff did not prevail^c						
Plaintiffs	22.2%	831	25.5%	84.5%	2.6%	6.6%
Defendants	3.5	129	9.6	10.3	3.8	79.9

Note: Post verdict motions filed by plaintiffs or defendants include motions for judgments notwithstanding the verdict, amended judgments, new trials, award modifications, and other relief.

^aThe type of post verdict relief sought may not sum to 100% because the post verdict relief categories are not mutually exclusive. After a verdict is reached, parties can seek multiple forms of post verdict relief.

^bFor tort trials in which plaintiffs prevailed, data on plaintiff post verdict activity were available for 99.0% of trials, and data on defendant post verdict activity were available for 98.7% of trials.

^cFor tort trials in which plaintiffs did not prevail, data on plaintiff post verdict activity were available for 98.6% of trials, and data on defendant post verdict activity were available for 98.7% of trials.

Tracking post verdict motions for relief in tort trials

After a tort trial reaches verdict or judgment, litigants often file post-verdict motions seeking to modify or overturn the trial outcome. These can include motions for judgments notwithstanding the verdict (JNOV) or for an amended judgment, motions for a new trial, motions to modify the award, or motions for some "other" form of relief.

A motion for a JNOV or an amended judgment is filed when the moving party requests that the judge render a verdict in favor of one party despite the fact that the jury or judge found in favor of the other party. A motion for a new trial is filed when one party seeks to have the verdict or judgment discarded and the case tried again. A motion to modify the award occurs when one party seeks to have the damage award increased or reduced. A motion for

"other relief" typically involves attorney fees and other court costs.⁷

Both plaintiffs and defendants sought post verdict relief at similar rates in tort trials where plaintiffs prevailed (table 8). Plaintiffs filed motions for post verdict relief in 19% of tort trials where they won, while defendants requested post verdict relief in 23% of tort trials with a plaintiff winner.

A variety of underlying factors could drive plaintiff post verdict activity in trials in which the plaintiff received a favorable outcome. These can include pre-trial "high-low" agreements with the defendants or post-trial settlements as well as dissatisfaction with the damage awards imposed at trial. In a "high-low" agreement both parties agree on an acceptable range of damages. If the award falls outside that range, the award is adjusted to fit within the agreed upon range.

The types of post verdict relief sought most commonly by plaintiff winners in tort trials were motions for new trials or award modifications. These forms of post verdict relief accounted for nearly 6 out of 7 plaintiff post verdict motions. In tort trials where the defendant filed a subsequent motion for post verdict relief, 60% of those motions were for a new trial while 30% were for a JNOV or amended judgment.

Tort trials that the plaintiff did not win also manifested substantial post verdict activity. Plaintiffs filed motions for post verdict relief in about a quarter of tort trials that they lost. In 85% of these cases, the plaintiff requested that the court discard the verdict or judgment and grant a new trial.

In tort trials in which the plaintiff did not prevail, defendants rarely engaged in post verdict activity. Less than 5% of defendants sought post verdict relief, in the form of attorney fees and court costs, in tort trials without a plaintiff winner.

⁷Paula Hannaford-Agor, 2004, *Not Quite the End of the Road: Post Trial Activity in Civil Litigation*, Williamsburg, VA: National Center for State Courts.

Table 9. Type of post verdict relief granted to plaintiffs or defendants in tort trials in State courts in the Nation's 75 largest counties, 2001

Post verdict relief granted to —	Post verdict relief in tort trials		Percent of tort trials in which litigants sought and were granted relief ^a			
	Number sought ^b	Percent in which relief granted	JNOV or amended judgment	New trial	Award modification	Other relief
Plaintiff prevailed^c						
Plaintiffs	731	41.6%	5.0%	8.6%	66.1%	21.0%
Defendants	901	28.0	9.8	14.0	61.4	16.8
Plaintiff did not prevail^d						
Plaintiffs	816	8.7%	4.2%	53.5%	6.2%	37.5%
Defendants	124	32.8	7.4	17.9	7.1	70.5

Note: Post verdict motions filed by plaintiffs or defendants include motions for judgments notwithstanding the verdict, amended judgments, new trials, award modifications, and other relief.

^aThe type of post verdict relief granted may not sum to 100% because the post verdict relief categories are not mutually exclusive.

^bThe number of litigants seeking post verdict relief in table 9 differs from the number posted in table 8 because of missing or incomplete post verdict relief granted data.

^cAmong tort trials where plaintiffs prevailed, data on the granting of post verdict relief were available for 95.5% of the 766 trials where the plaintiff sought post verdict relief and 96.6% of the 933 trials where the defendant sought post verdict relief.

^dAmong tort trials where plaintiffs did not prevail, data on the granting of post verdict relief were available for 98.1% of the 831 trials where the plaintiff sought post verdict relief and 95.5% of the 129 trials where the defendant sought post verdict relief.

Table 10. Tort trials in which plaintiff or defendant gave notice of appeal in State courts in the Nation's 75 largest counties, 2001

Case type	Tort trials with plaintiff winners			Tort trials without plaintiff winners		
	Number of tort trials	Cases appealed by Plaintiff	Cases appealed by Defendant	Number of tort trials	Cases appealed by Plaintiff	Cases appealed by Defendant
All tort trials*	4,105	4.1%	11.2%	3,778	10.9%	0.8%
Automobile	2,606	2.7%	5.3%	1,614	5.8%	0.6%
Premises liability	524	4.8	13.8	726	11.0	1.6
Product liability	70	10.3	38.1	86	23.4	3.5
Asbestos	17	5.7	34.2	12	16.4	--
Other	52	11.8	39.4	74	24.6	4.0
Intentional tort	213	2.8	15.6	158	18.4	--
Medical malpractice	306	10.6	27.7	832	13.8	0.5
Professional malpractice	54	5.5	31.2	47	34.0	--
Slander/libel	39	11.4	42.9	55	22.2	--
Animal attack	66	1.5	8.2	33	6.3	--
Conversion	13	21.8	17.0	15	38.5	--
False arrest, imprisonment	19	5.2	42.1	24	4.9	--
Other or unknown tort	195	6.7	27.7	187	19.9	1.2

Note: Tort trials appeals data were available for 99.0% of tort trials where the plaintiff prevailed and 99.4% of tort trials where the plaintiff did not prevail. Detail may not sum to total because of rounding.

--No cases recorded.

*Includes bench and jury trials, trials with a directed verdict, judgments notwithstanding the verdict, and jury trials for defaulted defendants.

Plaintiffs were more likely to be granted post verdict relief if they won at trial (table 9). The courts granted post verdict relief to 42% of plaintiff winners seeking to have their verdict modified. The most common form of post verdict relief granted to these plaintiffs was an award modification. In comparison 9% of plaintiffs who did not prevail at trial and who subsequently filed a post verdict motion received some form of post trial relief. About half of these plaintiffs were granted a new trial and 38% received some form of "other" relief.

Post verdict relief was granted to 28% of defendants who sought to modify a favorable plaintiff verdict or judgment. In nearly two-thirds of these cases, the relief granted was in the form of an award modification and in 14% of these cases a new trial was granted. Although less than 5% of defendants sought to modify a verdict or judgment that went against the plaintiff, nearly a third of these defendants were granted some type of post verdict relief.

Appeals in tort trials

Filing a notice of appeal to the State's intermediate appellate court or court of last resort represents another option

for litigants seeking to overturn or modify a verdict or judgment that they believe does not comply with State law. Appeals to a State supreme or intermediate appellate court were filed in 13% of tort trials (not shown in a table).

The appeal rate depended upon the trial outcome. Plaintiffs filed appeals in 4% of tort trials in which they prevailed and 11% of tort trials in which they lost (table 10). Defendants gave notice of appeal in 11% of tort trials with a plaintiff winner; however, they rarely filed appeals in tort trials where the plaintiff did not receive a favorable verdict.

The rate of appeals also varied substantially by case type. Defendants filed notices of appeal in about 40% of slander/libel and false arrest imprisonment trials in which they lost. Defendants also gave notice of appeal in 28% of medical malpractice, 31% of professional malpractice, and 38% of product liability trials with prevailing plaintiffs. Among tort trials that the plaintiff lost, plaintiffs filed an appeal in at least 20% of product liability and slander/libel trials and in 30% or more of trials involving professional malpractice or conversion issues.

Methodology

Definitions of disposition types:

Jury trial A trial held before and decided by a group of laypersons selected according to the law presided over by a judge culminating in a verdict for the plaintiff(s) and/or defendant(s).

Bench trial (nonjury trial) A trial held in the absence of a jury and decided by a judge culminating in a judgment for the plaintiff(s) or defendant(s).

Directed verdict In a case in which the party with the burden of proof has failed to present a prima facie case for jury consideration, a trial judge may order the entry of a verdict without allowing the jury to consider it, because, as a matter of law, there can be only one such verdict.

Judgment notwithstanding the verdict ("JNOV" or Judgment non obstante veredicto) A judgment rendered in favor of one party despite the finding of a jury verdict in favor of the other party.

Jury trials for defaulted defendants Some States make provisions for a jury to be impaneled even if the defendants in a case fail to appear and enter a defense. The purpose of a trial is typically to decide issues such as amount of damages.

Definitions of civil case types

Torts Claims arising from personal injury or property damage caused by negligent or intentional acts of another person or business. Specific tort case types include: automobile accident; premises liability (injury caused by the dangerous condition of residential or commercial property); medical malpractice (by doctor, dentist, or medical professional); other professional malpractice (such as by lawyers, engineers, and architects); product liability (injury or damage caused by defective products; injury caused by toxic substances such as asbestos); libel/slander (injury to reputation); intentional tort (vandalism, intentional

personal injury); animal attack (the negligent supervision of a dog or other animal resulting in an attack); conversion (unauthorized use or control of another person's personal property); false arrest/imprisonment (an arrest or imprisonment without the proper legal authority); and other negligent acts (negligence against another party for an act not represented by the other case categories).

Sample

The sample design for the 2001 civil trial study was similar to the ones used for the 1996 and 1992 BJS civil trial studies. The sample is a 2-stage stratified sample with 46 of the 75 most populous counties selected at the first stage. The 75 counties were divided into 5 strata based on 1990 civil disposition data obtained through telephone interviews with court staff in the general jurisdiction trial courts. Stratum 1 consisted of the 14 counties with the largest number of civil case dispositions. Every county in stratum 1 was selected with certainty. Stratum 2 consisted of 13 counties with 11 chosen for the sample. From stratum 3, 10 of the 18 counties were selected. Nine of the 26 counties in stratum 4 were included in the sample. Stratum 5 was added to the 2001 sample to replace Norfolk County, Massachusetts, a stratum 4 site that participated in the 1992 and 1996 studies but that fell out of the 75 most populous counties in the 2000 Census. Mecklenburg County, North Carolina, and El Paso County, Texas, were randomly selected from the 4 counties whose population increased sufficiently that they joined the ranks of the 75 most populous counties.

The second stage of the sample design involved generating lists of cases that would be coded. Prior to drawing the 2001 case sample, each participating jurisdiction was asked to identify a list of cases that had been disposed of by jury trial or bench trial between January 1, 2001, and December 31, 2001. Trial cases were to meet the following definitional criteria for jury and bench trials as defined by the

Bureau of Justice Statistics and the National Center for State Courts: (1) A jury trial was defined as "a trial held before and decided by a jury of laypersons and presided over by a judge culminating in a verdict for the plaintiff(s) or defendant(s)," and (2) A bench trial was defined as "a trial held in the absence of a jury and decided by a judge culminating in a judgment for the plaintiff(s) or defendant(s)."

The study plan was to obtain every jury and bench trial disposed from the court of general jurisdiction in each of the counties selected for the study. In courts where the number of trials became too great, a sample of civil trials was selected. Regardless of whether all or a sample of civil trials was collected, every medical malpractice or product liability case was included to oversample these case types.

At the second stage of sampling, all tort, contract, and real property cases disposed of by bench or jury verdict between January 1, 2001, and December 31, 2001, were selected in 43 jurisdictions. In two of the remaining three jurisdictions (Cook and Philadelphia), a sample of civil trials was selected and then "weighted" to obtain an appropriate number of civil trials. In Bergen County some civil case files were unavailable for coding purposes. Weights were applied in Bergen County in order to account for these missing cases.

Data on 6,215 civil jury trial cases, 1,958 civil bench trial cases, and 138 other civil trial cases that met the study criteria were collected in the 46 courts. The final sample consisted of 8,311 tort, contract, and real property cases disposed of by jury or bench trial.

Sampling error

Since the data in this report came from a sample, a sampling error (standard error) is associated with each reported number. In general if the difference between 2 numbers is greater than twice the standard error for that difference, there is confidence that for 95

out of every 100 possible samples a real difference exists and that the apparent difference is not simply the result of using a sample rather than the entire population. All differences discussed in the text of this report were statistically significant at or above the 95-percent confidence level. Standard error estimates were generated by using a bootstrap method (jackknife) available for WESVAR PC.

Data coding

For each sampled case, a standard coding form was manually completed by on-site court staff to record information about the litigants, case type, processing time, and award amounts.

The Bureau of Justice Statistics is the statistical agency of the U.S. Department of Justice. Lawrence A. Greenfeld is director.

This BJS Bulletin presents the third release of findings in a series of reports from the Civil Justice Survey of State Courts, 2001.

Thomas H. Cohen wrote this Bulletin under supervision of Steven K. Smith. Lynn Bauer provided statistical review. Data collection was supervised by the National Center for State Courts (NCSC); Paula Hannaford-Agor was the project director. Paula Hannaford-Agor and Neil LaFountain of the NCSC provided comments. Tom Hester, Devon Adams, and Tina Dorsey edited the report. Jayne Robinson prepared the report for final printing.

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Appendix A. Selected estimates, standard errors, and confidence intervals, civil trial 2001 survey

	Estimate	One standard error	95% - confidence interval	
			Lower	Upper
Number of tort trials	7,948	366	7,219	8,677
Automobile	4,235	228	3,781	4,690
Premises liability	1,268	72	1,125	1,411
Product liability	158	10	137	179
Intentional tort	375	26	323	426
Medical malpractice	1,156	74	1,008	1,304
Professional malpractice	102	14	74	129
Slander/libel	95	14	66	123
Animal attack	99	14	71	126
Conversion	27	4	18	36
False arrest, imprisonment	45	8	29	61
Other or unknown tort	390	33	325	455
Percent decided by —				
Jury trial	90.8%	0.6%	89.7%	91.9%
Bench trial	7.3	0.6	6.1	8.5
Other	1.9	0.1	1.6	2.2
Percent of tort trials with a plaintiff winner	51.6%	1.0%	49.6%	53.5%
Median award to plaintiff winners				
Final	\$27,000	\$2,000	\$24,000	\$32,000
Punitive	25,000	11,000	13,000	56,000
Mean award to plaintiff winners				
Final	\$565,000	\$49,000	\$468,000	\$663,000
Punitive	1,694,000	469,000	761,000	2,626,000
Median months from filing to final verdict	21.5 mo	0.6 mo	20.3 mo	22.8 mo

Note: Standard errors were calculated by using the jackknife method (JKN) generated by WESVAR PC. Award data were rounded to the nearest thousand.

Appendix B. Tort trial winners in State courts by sampled counties, 2001

County	All tort trials*	
	Number	Percent plaintiff winners
Milwaukee, WI	97	69.1%
Fulton, GA	87	69.0
Mecklenburg, NC	80	66.3
Palm Beach, FL	132	65.2
Pima, AZ	74	64.9
King, WA	117	64.1
Santa Clara, CA	46	60.9
Alameda, CA	56	60.7
Fairfield, CT	55	60.0
Orange, FL	27	59.3
Dade, FL	270	58.5
Cuyahoga, OH	178	58.4
Franklin, OH	94	57.4
Du Page, IL	77	57.1
Philadelphia, PA	500	56.6
San Francisco, CA	76	56.6
Hartford, CT	86	55.8
Fairfax, VA	151	55.0
Cook, IL	339	54.9
Dallas, TX	175	54.9
Hennepin, MN	123	54.5
Maricopa, AZ	230	54.3
St. Louis, MO	78	53.8
El Paso, TX	54	53.7
Marion, IN	84	51.2
San Bernardino, CA	65	50.8
Fresno, CA	26	50.0
Ventura, CA	43	48.8
Orange, CA	171	47.4
Oakland, MI	94	46.8
Jefferson, KY	107	45.8
New York, NY	255	44.3
Los Angeles, CA ^b	129	43.4
Harris, TX	340	41.8
Allegheny, PA	192	41.7
Bergen, NJ	145	37.9
Essex, MA	24	37.5
Essex, NJ	124	37.1
Suffolk, MA	41	36.6
Contra Costa, CA	22	36.4
Wayne, MI	144	35.4
Middlesex, NJ	253	34.8
Bexar, TX	70	34.3
Honolulu, HI	9	33.3
Middlesex, MA	88	18.2
Worcester, MA	28	17.9

*Includes bench and jury trials, trials with a directed verdict, judgments notwithstanding the verdict, and jury trials for defaulted defendants.

^bIncludes only the central district of the Los Angeles County Superior Court. Los Angeles county suburban courts are not included.

Appendix C. Final and punitive damage awards for plaintiff winners in tort trials, by sampled counties, 2001

County	Final amount awarded to plaintiff winners				Punitive damages awarded to plaintiff winners		
	Total number of tort trials	Number of plaintiff award winners	Total of all awards	Median award	Number of plaintiff winners	Total of all awards	Median award
Maricopa, AZ	230	124	\$25,322,000	\$14,000	4	\$175,000	\$10,000
Pima, AZ	74	48	5,405,000	26,000	5	28,000	6,000
Alameda, CA	56	33	47,809,000	64,000	3	951,000	350,000
Contra Costa, CA	22	8	2,766,000	108,000	1	15,000	15,000*
Fresno, CA	26	13	6,293,000	75,000	1	50,000	50,000*
Los Angeles, CA*	130	56	21,508,000	69,000	4	1,805,000	102,000
Orange, CA	171	81	101,670,000	42,000	5	235,000	50,000
San Bernardino, CA	65	33	38,852,000	135,000	4	3,032,000	14,000
San Francisco, CA	76	43	143,533,000	80,000	--	--	--
Santa Clara, CA	46	28	7,515,000	24,000	1	250,000	250,000*
Ventura, CA	43	21	\$1,677,000	\$30,000	2	\$105,000	\$53,000
Fairfield, CT	55	33	2,134,000	18,000	--	--	--
Hartford, CT	86	48	8,049,000	18,000	3	629,000	150,000
Dade, FL	270	145	136,098,000	88,000	4	850,000	175,000
Orange, FL	27	16	9,272,000	78,000	--	--	--
Palm Beach, FL	132	84	21,642,000	42,000	2	5,000,000	2,500,000
Fulton, GA	87	60	6,313,000	6,000	4	171,000	53,000
Honolulu, HI	9	3	1,585,000	550,000	1	500,000	500,000*
Cook, IL	339	185	152,823,000	76,000	3	11,000	4,000
Du Page, IL	77	44	5,358,000	8,000	1	150,000	150,000*
Marion, IN	84	43	\$2,726,000	\$13,000	3	\$510,000	\$5,000
Jefferson, KY	107	46	7,487,000	16,000	4	100,000	11,000
Essex, MA	24	9	10,720,000	42,000	--	--	--
Middlesex, MA	88	16	19,005,000	41,000	--	--	--
Suffolk, MA	41	15	5,600,000	51,000	1	2,750,000	2,750,000*
Worcester, MA	28	5	169,000	8,000	--	--	--
Oakland, MI	94	42	8,769,000	61,000	--	--	--
Wayne, MI	144	46	26,551,000	65,000	--	--	--
Hennepin, MN	123	55	7,096,000	29,000	--	--	--
St. Louis, MO	78	42	1,437,000	13,000	1	5,000	5,000*
Bergen, NJ	145	53	\$8,776,000	\$27,000	4	\$370,000	\$86,000
Essex, NJ	124	45	13,304,000	41,000	--	--	--
Middlesex, NJ	253	87	15,406,000	57,000	3	55,000	17,000
New York, NY	256	111	145,434,000	300,000	3	7,850,000	700,000
Mecklenburg, NC	80	53	11,450,000	14,000	3	518,000	16,000
Cuyahoga, OH	178	103	20,034,000	16,000	6	572,000	55,000
Franklin, OH	94	52	20,805,000	15,000	8	4,320,000	6,000
Allegheny, PA	194	80	23,227,000	13,000	2	3,010,000	1,505,000
Philadelphia, PA	500	283	378,447,000	40,000	4	149,067,000	49,000
Bexar, TX	70	24	99,142,000	31,000	3	76,937,000	1,737,000
Dallas, TX	175	96	\$67,300,000	\$19,000	5	\$23,277,000	\$750,000
El Paso, TX	54	29	2,595,000	11,000	4	607,000	53,000
Harris, TX	340	137	84,056,000	21,000	7	34,877,000	100,000
Fairfax, VA	151	83	8,437,000	12,000	10	942,000	14,000
King, WA	117	74	43,935,000	37,000	4	125,000	10,000
Milwaukee, WI	97	66	6,800,000	19,000	2	102,000	51,000

Note: Excludes cases with missing award amounts. Final amount awarded includes both compensatory (reduced for contributory negligence), costs and fees, and punitive damage awards. Award data were rounded to the nearest thousand.

--No cases recorded.

*Not a median but the actual amount awarded.

*Includes only the central district of the Los Angeles County Superior Court. Los Angeles suburban courts are not included.