

CASELOAD HIGHLIGHTS

Volume 11 • Number 1

EXAMINING THE WORK OF STATE COURTS

An Empirical Overview of Civil Trial Litigation

Forty-six counties tried over 8,300 general civil cases to conclusion in 2001

Despite the media attention and public interest civil trials command, these cases remain largely uninvestigated and empirically enigmatic. Capturing the com-

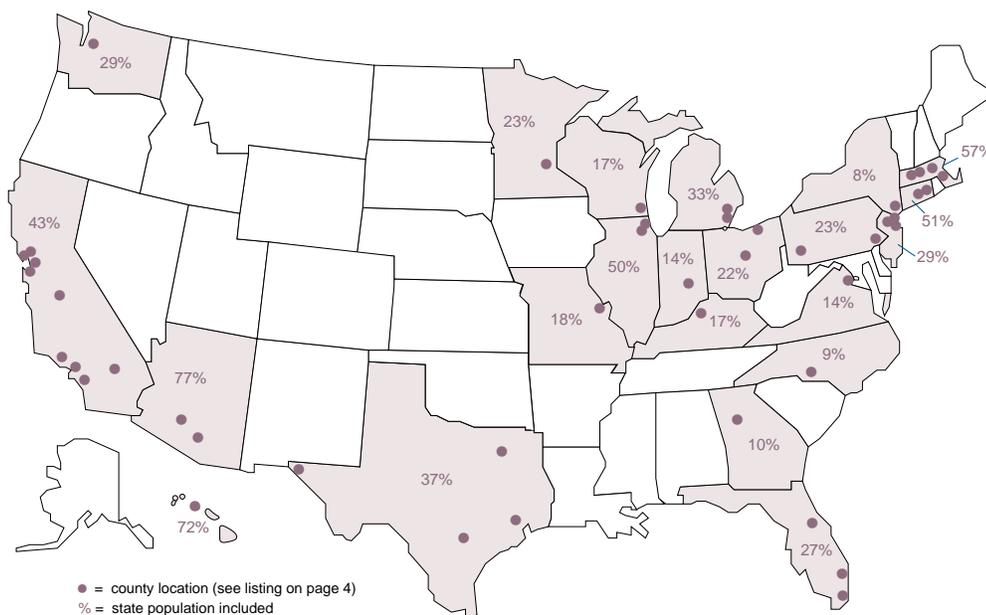
plexity of these cases is so resource intensive that trial courts rarely monitor or quantify these important events themselves. As a result, there is little compar-

ative research that lawyers, academics, lawmakers, tort reformers, and others can use as the basis for discussions about civil litigation.

In an effort to fill that

void, the National Center for State Courts, with support from the Bureau of Justice Statistics, has undertaken three detailed studies of civil litigation called the *Civil Justice Surveys of State Courts*. These studies examined general civil (i.e., tort, contract, and real property) cases disposed in 1992, 1996, and 2001, focusing exclusively on jury and bench trials in the latter two iterations.

This map shows the location of the 46 counties involved in the 2001 study (representing roughly 23 percent of the U.S. population) and the aggregate percentage of each state's population residing within the participating counties.



Juries almost always decide tort trials; judges are more likely to decide contract cases

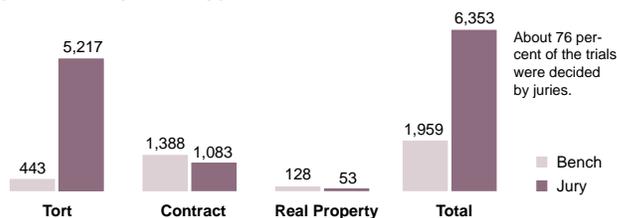
The first and most apparent feature of general civil trials is the predominance of tort jury trials. In the 46 counties examined, 63 percent of all trials were tort jury trials—nearly twice as many as all contract and real property trials combined. Further, tort litigants emphatically preferred having their

cases decided by a jury (12 to 1), whereas litigants in both contract and real property cases more often opted to have their cases decided by a judge. As real property trials are typically held to determine the value or boundary of real property (as opposed to damages or liability), and

because they number so few when compared with tort and contract cases,

these cases are excluded from further analysis in this report.

Type of Trial by Case Type, 2001



An Empirical Overview of Civil Trial Litigation, continued

A closer examination of type of trial by case type reveals dramatic differences within the general categories of tort and contract. The bar charts below show the proportion of jury to bench trials for each of the case types identified in the 2001

study. Among tort cases, plaintiffs alleging injuries caused by exposure to asbestos sought relief from juries exclusively. Juries were demanded in over 75 percent of all but two of the remaining case types.

Despite a much narrower gap between the

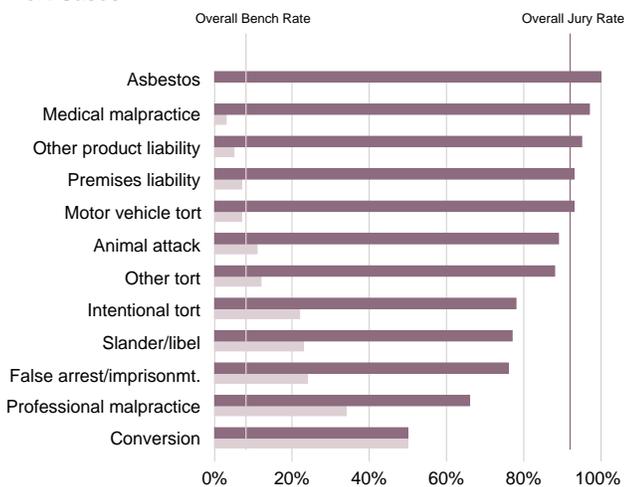
overall proportion of jury to bench trials in contract cases, wide variation still exists between individual case types. The highest proportion of jury trials occurred in employment discrimination cases, while every mortgage foreclosure trial was decided by a

judge. However, the overall contract bench trial rate is higher than in tort cases due to the disproportionately large number of seller plaintiff /debt collection trials decided by judges.

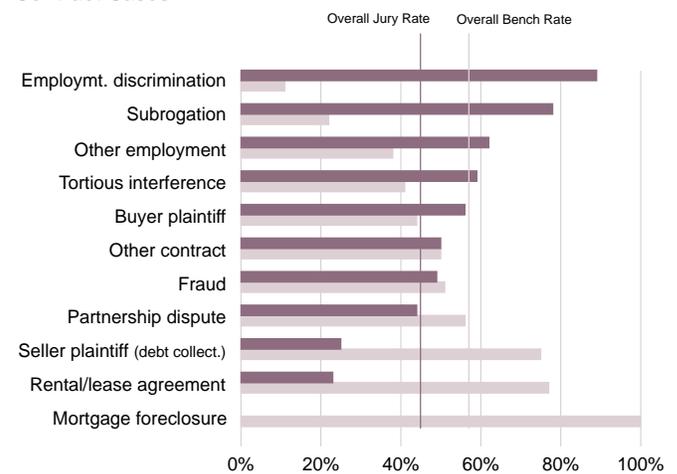
Proportion of Jury to Bench Trials, by Case Type, 2001

■ Jury ■ Bench

Tort Cases



Contract Cases



One in three civil trials involves motor vehicle liability

Motor vehicle torts dominated general civil trial caseloads, representing just over half of all tort trials and over one-third of all general civil trials. Premises liability and medical malpractice cases ranked second and third, followed by contract cases involving seller plaintiffs, buyer plaintiffs, and fraud.

Total Number of Tort and Contract Trials, 2001

| Tort Cases | Total | Percent | Contract Cases | Total | Percent |
|----------------------------|--------------|---------------|---------------------------|--------------|---------------|
| Motor vehicle | 2,967 | 52.4% | Seller plaintiff | 801 | 32.4% |
| Premises liability | 966 | 17.1 | Buyer plaintiff | 544 | 22.0 |
| Medical malpractice | 851 | 15.0 | Fraud | 433 | 17.5 |
| Intentional tort | 257 | 4.5 | Rental/lease agreement | 192 | 7.8 |
| Other product liability | 91 | 1.6 | Other employment | 178 | 7.2 |
| Professional malpractice | 68 | 1.2 | Employment discrimination | 107 | 4.3 |
| Slander/libel | 62 | 1.1 | Tortious interference | 82 | 3.3 |
| Animal attack | 62 | 1.1 | Subrogation | 45 | 1.8 |
| False arrest, imprisonment | 29 | .5 | Partnership dispute | 27 | 1.1 |
| Asbestos | 26 | .5 | Mortgage foreclosure | 14 | .6 |
| Conversion | 16 | .3 | Other contract | 48 | 1.9 |
| Other tort | 264 | 4.7 | | | |
| Total | 5,659 | 100.0% | Total | 2,471 | 100.0% |

Asbestos cases are disposed most quickly but have the longest trials

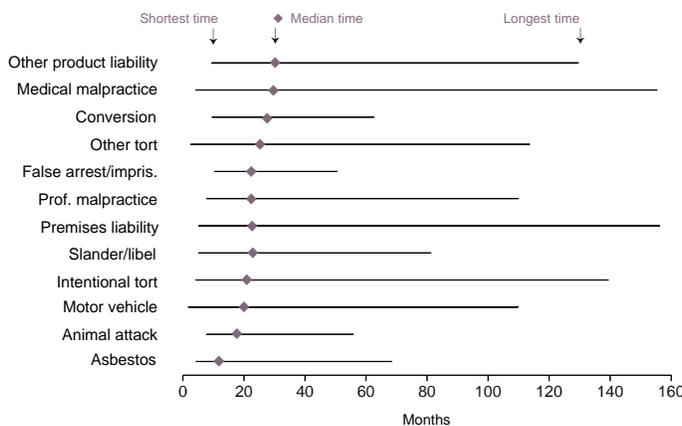
This chart shows the minimum, median, and maximum time from filing to verdict for each type of tort jury trial. Interestingly, asbestos cases typically reach a verdict in the fewest months (13 months), while product liability trials not concerning asbestos often

took the most time to reach a verdict (31 months). Although both types of cases are considered complex litigation, asbestos cases are often “fast-tracked” in trial courts due to the gravity of the plaintiff’s alleged injuries and defendant stipulations as to causation.

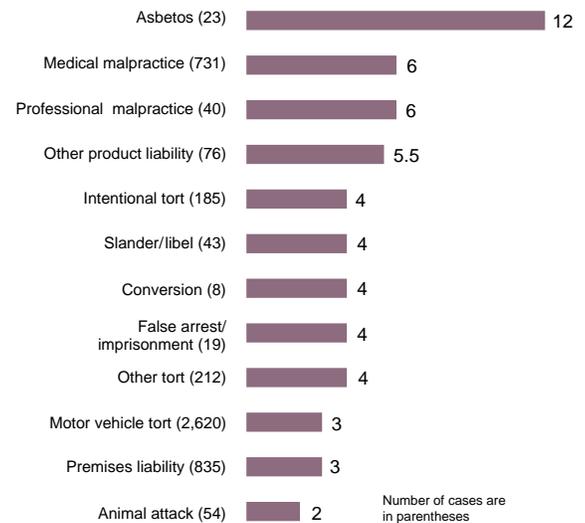
In contrast to their shorter overall case-processing times, asbestos trials tend to be the lengthiest. The median length of asbestos jury trials was 12 days—

twice as many as the next longest (medical malpractice). Eight of the 12 categories of torts had average trials lasting four days or less.

Time from Filing to Verdict in Tort Jury Trials, 2001



Median Duration of Tort Jury Trials, 2001 (in Days)



In jury trials, median tort awards are less than half of contract awards

Large monetary awards in tort cases are newsworthy events. However, the data from these studies indicate that jury awards in contract cases, where injury is not alleged, are typically higher than those in tort jury trials. The lower overall median award for tort jury trials is clearly attributable to the large proportion of prevailing plaintiffs in motor vehicle trials (62 percent), with a median award of less than \$18,000. The highest median award, stemming

from asbestos cases, is based on only 15 prevailing plaintiffs—less than 1 percent of all tort winners.

Additionally, asbestos cases had the highest average number of plaintiffs *per case*, indicating that

these large awards were often being divided among multiple plaintiffs.

Median Awards to Prevailing Plaintiffs in Tort and Contract Jury Trials, 2001

| Tort Case Type | Median Award | Percent of Prevailing Plaintiffs | Contract Case Type | Median Award | Percent of Prevailing Plaintiffs |
|--------------------------|-----------------|----------------------------------|--------------------------|-----------------|----------------------------------|
| Asbestos | \$1,649,597 | .6% | Employmt. discrimination | \$226,177 | 6.5% |
| Medical malpractice | 491,781 | 8.8 | Partnership dispute | 139,968 | 1.4 |
| Other product liability | 405,483 | 1.4 | Tortious interference | 112,336 | 4.5 |
| Professional malpractice | 140,584 | .9 | Rental/lease agreement | 88,961 | 4.3 |
| Other tort | 136,594 | 4.4 | Fraud | 85,476 | 19.1 |
| Slander/libel | 120,265 | .8 | Other employment dispute | 81,019 | 10.1 |
| False arrest/imprisonmt. | 94,546 | .4 | Other contract | 74,212 | 2.0 |
| Premises liability | 61,953 | 14.6 | Seller plaintiff | 64,974 | 21.2 |
| Intentional tort | 48,997 | 4.4 | Buyer plaintiff | 64,792 | 27.9 |
| Conversion | 23,871 | .2 | Subrogation | 7,864 | 2.9 |
| Animal attack | 21,930 | 1.4 | | | |
| Motor vehicle tort | 17,544 | 62.0 | | | |
| Overall | \$32,406 | 100.0% | Overall | \$78,627 | 100.0% |

Fewer than 5 percent of prevailing plaintiffs are awarded punitive damages

Comparatively few civil trials generate punitive damage awards. The adjacent table displays the number and percentage of all prevailing plaintiffs that won punitive awards and the median award amount for the 10 categories in which more than five punitive damage awards occurred. The median punitive award to all contract plaintiffs (\$82,644) was about 75 percent higher than in torts (\$47,077). However, the

highest median awards among these ten categories occurred in tort cases labeled “other.” Many types of cases do not fit neatly into the more common tort and contract distinctions. The claims in this “other” tort category included wrongful use of civil process, unsafe working conditions, and unfair trade practices. Absent from this list are product liability cases (asbestos and “other”); each had only one case with punitive damages.

Punitive Damage Awards to Prevailing Plaintiffs, 2001

| Case Type | Median Punitive Award | Number of Punitive Winners | Percent of All Winners |
|---------------------------|-----------------------|----------------------------|------------------------|
| Torts | | | |
| Slander/libel | \$77,701 | 13 | 57% |
| Intentional tort | 29,454 | 45 | 31% |
| Other tort | 475,920 | 10 | 8% |
| Medical malpractice | 200,000 | 9 | 4% |
| Motor vehicle tort | 6,020 | 33 | 2% |
| All Torts | \$47,077 | 125 | 5% |
| Contracts | | | |
| Fraud | \$78,550 | 38 | 16% |
| Employment discrimination | 350,000 | 7 | 15% |
| Tortious interference | 91,500 | 6 | 13% |
| Other employment | 117,500 | 10 | 10% |
| Buyer plaintiff | 232,125 | 11 | 3% |
| All Contracts | \$82,644 | 88 | 6% |

Counties that participated in the civil justice survey, 2001

| | | | | | | |
|------------------|-------------|---------------|-----------------|---------------|--------------------|---------------|
| Alameda, CA | Dade, FL | Fairfield, CT | Honolulu, HI | Middlesex, MA | Palm Beach, FL | Suffolk, MA |
| Allegheny, PA | Dallas, TX | Franklin, OH | Jefferson, KY | Middlesex, NJ | Philadelphia, PA | Ventura, CA |
| Bergen, NJ | Du Page, IL | Fresno, CA | King, WA | Milwaukee, WI | Pima, AZ | Wayne, MI |
| Bexar, TX | El Paso, TX | Fulton, GA | Los Angeles, CA | New York, NY | San Bernardino, CA | Worcester, MA |
| Contra Costa, CA | Essex, MA | Harris, TX | Maricopa, AZ | Oakland, MI | San Francisco, CA | |
| Cook, IL | Essex, NJ | Hartford, CT | Marion, IN | Orange, CA | Santa Clara, CA | |
| Cuyahoga, OH | Fairfax, VA | Hennepin, MN | Mecklenberg, NC | Orange, FL | St. Louis, MO | |



CASELOAD HIGHLIGHTS

NCSC President
Mary Campbell McQueen

NCSC Vice President
Research Division
Victor E. Flango

National Center for State Courts
300 Newport Avenue
Williamsburg, VA 23185-4147

Court Statistics Project Staff

Richard Y. Schauffler, Director
Fred L. Cheesman, Sr. Court Research Associate
Neal B. Kauder, Consultant, VisualResearch, Inc.
Robert C. LaFountain, Court Management Consultant
Shauna M. Strickland, Court Research Analyst
Nicole L. Waters, Court Research Associate
Brenda G. Otto, Program Specialist

Research Division
800/616-6109

Non Profit Org.
U. S. Postage
PAID
Richmond, VA
Permit No. 750

Points of view expressed herein are those of the authors and do not necessarily represent the official position or policies of the Bureau of Justice Statistics.

BJS