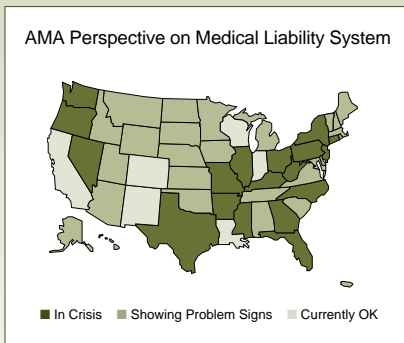
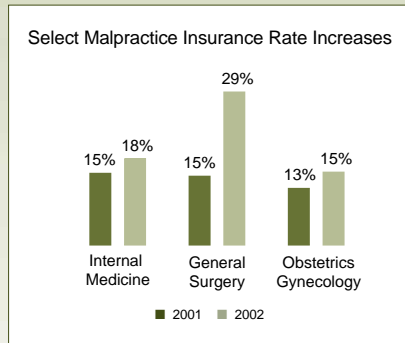


TORT AND CONTRACT

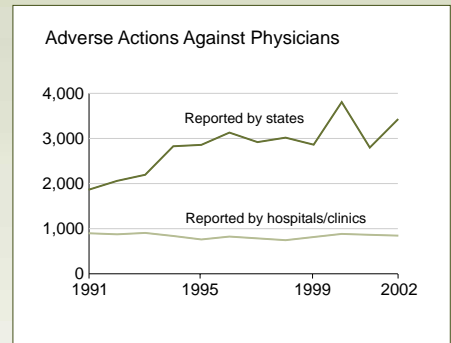
Issues related to medical malpractice are back in the news.



Source: American Medical Association, March 2003.



Source: American Medical Association.



Source: National Practitioner Data Bank.

The AMA uses multiple measures such as insurance rates, legislative activity, and reduced physician access to gauge medical system liability.

Medical malpractice premiums are rising across a number of specialty areas...

and reported adverse actions against physicians show recent fluctuations.

Tort and Contract Caseloads in State Trial Courts

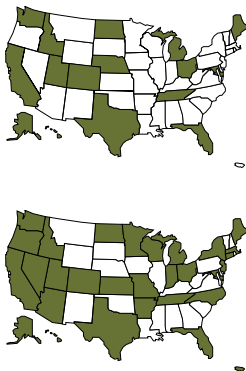
Tort cases garner the most interest of all state court cases

Contrary to what many believe, the terms “tort” and “personal injury” are not interchangeable. Although personal injury is an *attribute* of some tort cases (e.g., assault, medical malpractice, premises liability), other types of torts, such as defamation or professional malpractice, may instead involve damage to one’s reputation, personal property, or livelihood. Nonetheless, much attention is paid to the resolution of tort cases, particularly notorious ones involving personal injury, as they may dramatically affect the operational and strategic business decisions made by corporate executives, small business owners, healthcare providers, insurance companies, and government employees.

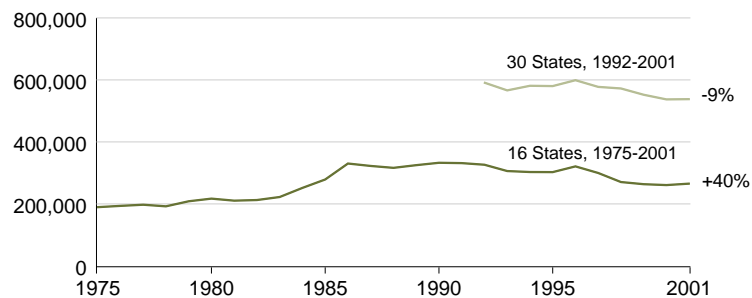
It is primarily for those reasons that requests for information to the Court Statistics Project (CSP) regarding the filings and dispositions of tort cases regularly exceed those for any other kind of case—civil or criminal. And, despite the fact that tort case filings have declined in the last 10 years, interest in these cases remains high, with significant debate continuing in the area of tort reform policy and law. Consequently, filing trends in these cases, the types of litigants involved, and, most importantly, the outcomes of tort trials, provide vital baseline information for court personnel, legislators, academics, and the media.

Tort filings in 30 states have decreased since 1992

The longest trend of state court filing data that the CSP reports is tort filings from 16 states for the period 1975 to 2001. These data, including filings from three of the four most populous states (California, Texas, and Florida), indicate a 40 percent rise in tort filings during that time. In 1990, when filings had increased 75 percent over 1973, the trend reached its apex. Since then, tort filings have, with the exception of an anomalous spike in 1996 caused by the enactment of tort legislation in Michigan, shown a continual decline. The downward trend is confirmed by the inclusion of data from 14 additional states (representing a total of 73 percent of the U.S. population) that reported data since 1992.



Tort Filings in General Jurisdiction Courts in 16 States and 30 States, 1975-2001



Population-adjusted tort filings declined in 22 of 30 states examined

The table below ranks states according to changes in tort filings per 100,000 population between 1992 and 2001. These population-adjusted figures eliminate the disparity caused by states of varying population sizes and allow for a more meaningful comparison of caseloads. The table reveals that tort filings per 100,000 population declined in 22 of the 30 states examined. Population-adjusted filings dropped 25 percent or more in 11 of these states and had a median decline of 19 percent. The largest declines occurred in Texas and Massachusetts, where tort filings fell by 41 percent.

Growth Rates of Tort Filings in 30 States, 1992 vs. 2001

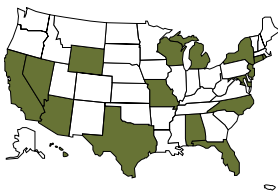
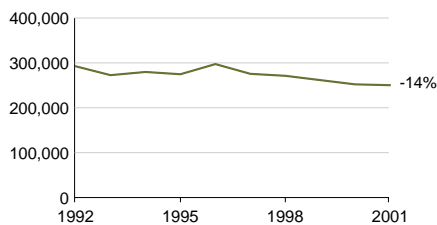
State	Filings per 100,000 Population		Percent Change
	1992	2001	1992-2001
Unified Courts			
North Dakota	65	89	37%
Puerto Rico	243	268	10
Kansas	172	180	5
Connecticut	495	513	4
Missouri	385	331	-14
Wisconsin	176	147	-17
Minnesota	167	119	-29
California	354	224	-37
General Jurisdiction Courts			
Indiana	146	207	42
Alaska	139	174	25
Idaho	106	122	15
New York	398	424	6
New Jersey	865	819	-5
Ohio	301	282	-6
Florida	322	289	-10
Utah	109	97	-11
Arkansas	213	180	-16
North Carolina	137	116	-16
Tennessee	261	218	-16
Washington	217	181	-16
Oregon	254	209	-18
Nevada	466	347	-26
Maine	133	90	-32
Maryland	318	206	-35
Colorado	177	112	-37
Michigan	366	226	-38
Arizona	361	223	-38
Hawaii	232	139	-40
Texas	265	157	-41
Massachusetts	233	138	-41
Average	269	228	-15
Median	238	193	-19

Only eight states reported an increase in their filing rates since 1992. Of those, the rates in three states (Indiana, North Dakota, and Alaska) increased by 25 percent or more. New Jersey and Connecticut ranked first and second, respectively, among all 30 states in both 1992 and 2001. And although New Jersey's adjusted tort filings declined by 5 percent since 1992, its rate of 819 filings per 100,000 population remains the highest of the 30 states, more than four times higher than the 2001 median of 193. In both years, population-adjusted tort filings for North Dakota and Utah ranked the states among the three lowest. Despite reporting the largest increase (37 percent) in the last 10 years, North Dakota's adjusted tort filings (89) remain the lowest among the 30 states examined here.

Automobile tort filings are down but still dominate the tort caseload

A 1992 case-level study of tort cases disposed of in the nation's 75 largest counties (conducted by the National Center for State Courts and the Bureau of Justice Statistics [BJS]) determined that automobile cases comprised 60 percent of torts disposed in general jurisdiction courts that year. Hundreds of thousands of these cases are filed annually in the United States. Since so much of the national tort caseload is comprised of automobile torts, it is fair to expect that overall tort trends would be "driven" by automobile tort filings, and such would appear to be the case.

Automobile Tort Filings in 17 States, 1992-2001



Seventeen states, representing 53 percent of the U.S. population, were able to provide automobile tort filings for the period between 1992 and 2001. Automobile tort filings declined 14 percent over this period, but the trend indicates a moderate fluctuation. After falling 6 percent between 1992 and 1995, filings returned to very near the starting point of approximately 300,000 in 1996, only to decline another 16 percent to their present level of just over 250,000.

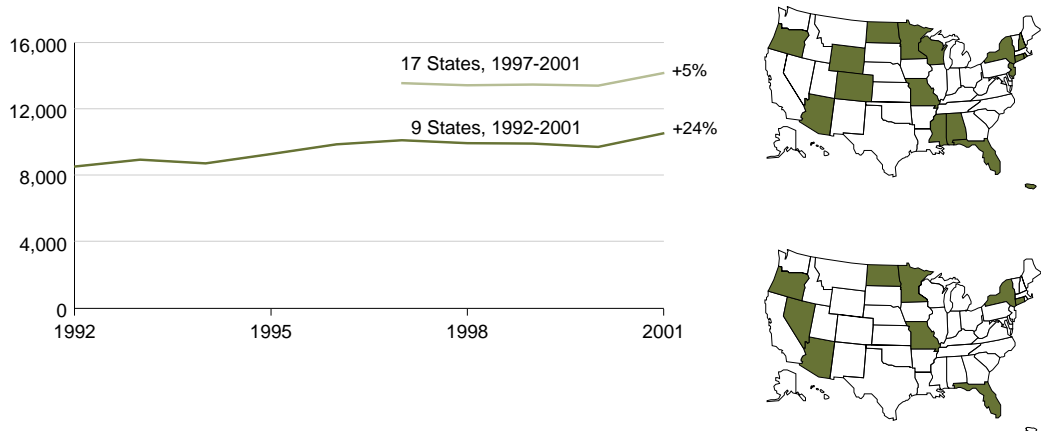
Since most states require drivers to purchase insurance that covers damage to their vehicle as well as all but the most serious injury to themselves and others, automobile torts that enter the court system typically claim an injury that exceeds the coverage of the insurance or that is not covered by the policy at all. Therefore, one possible explanation for the decrease in automobile filings is that automobiles are safer now than ever before and the occupants of cars are not as severely injured as they had been previously. The advent of seatbelts, crumple zones, and front and side airbags have undoubtedly contributed to this welcome change.

In 2001, raw medical malpractice filings increased for the first time in five years

As prevalent as automobile cases are in the civil landscape, they do not seize as much of the public interest as do the less frequently filed medical malpractice cases. From a court’s perspective, medical malpractice, product liability (e.g., asbestos), and other “complex” cases require more resources than other types of cases. They typically have more pre-trial hearings, thereby creating more work for both judges and clerks’ offices. At trial, expert witnesses, numerous exhibits, and technology requirements for evidentiary display, all add to the time and monetary cost of a trial. The outcomes of medical malpractice cases, whether settled or resolved by trial, not only affect tort reform and legislation, but also may dramatically affect malpractice insurance rates paid by doctors and hospitals. As important as these cases are to the courts, the public, and related industries, the most recent available data suggest medical malpractice cases comprised only 5 percent of total tort dispositions.

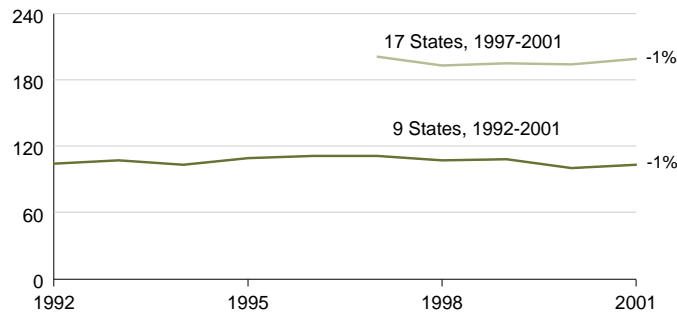
In the chart below, data from nine states indicate a 24 percent increase in medical malpractice filings over the past 10 years (from 8,500 to 10,500), with the greatest number of filings occurring in 2001. However, the trend has not always been upward—from 1997 to 2000 filings dropped 4 percent. This chart also shows filings for 17 states for the past five years. Besides the expected gain in volume due to the addition of eight more states, these data confirm the decrease between 1997 and 2000 as well as the increase experienced in 2001.

Medical Malpractice Filings in Nine and 17 States, 1992-2001



Adjusting the trend for changes in population over time provides an alternative, if not more accurate, way to view this information. A “flat” trend line in population-adjusted filings would indicate that filings grew at the same *rate* as the population. If adjusted filings showed an increase, it would indicate that filings outpaced the growth in population. The following graph shows that the 1992 to 2001 trend in medical malpractice filings per 100,000 population has only fluctuated minimally, with an overall 1 percent decrease in *per capita* filings.

Medical Malpractice Filings per 100,000 Population in Nine and 17 States, 1992-2001



Medical malpractice filings vary across states

The table below indicates that medical malpractice filings comprised a relatively small proportion (5 percent) of the tort caseload in 2001. In the 17 states able to provide comparable medical malpractice data for 2001, the *percent* of tort caseload ranged from a low of 1 percent in Oregon to highs of 8 percent in Mississippi and Florida. However, changes in the *number* of filings between 1997 and 2001 among these 17 states cover a wide range, from a -44 percent change in Minnesota to a +41 percent change in North Dakota.

Medical Malpractice Filings in 17 States, 1997 vs. 2001

State	Filings		Percent Change 1997-2001	Percent of Tort Caseload
	1997	2001		
North Dakota	29	41	41%	7%
Colorado	171	231	35	5
Mississippi	332	443	33	8
Puerto Rico	502	634	26	6
Florida	3,266	3,980	22	8
Alabama	310	340	10	3
Wisconsin	232	253	9	3
Wyoming	70	76	9	2
Rhode Island	158	163	3	5
Arizona	641	641	0	5
Missouri	794	777	-2	4
New York	4,467	4,337	-3	5
Connecticut	382	366	-4	2
New Jersey	1,775	1,613	-9	2
New Hampshire	80	68	-15	3
Oregon	101	64	-37	1
Minnesota	237	132	-44	2
Total	13,547	14,159	5%	5%

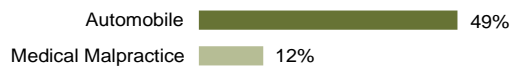
Contrasting automobile and medical malpractice trials

Medical malpractice and automobile torts both typically involve personal injury and allege some form of negligence on the part of the defendant(s). However, similarities in the two types of cases essentially end there. Aside from the enormous difference in the *volume* of cases filed in the state courts, the characteristics of medical malpractice and automobile torts begin to diverge when examining cases disposed of by trial. According to the 1996 NCSC/BJIS follow-up study of civil trials in the nation's 75 largest counties, nearly one-half of all tort trials involved automobile claims, whereas about 12 percent involved claims of medical malpractice. Automobile and medical malpractice trials also differed substantially in the rates at which plaintiffs prevailed. Plaintiff win rates in automobile trials were 57 percent, whereas plaintiffs won less than one out of four medical malpractice trials (23 percent).

As interesting as these facts may be, these are not the statistics capturing the public's attention. Although many more automobile cases go to trial than medical malpractice cases, and even though plaintiffs prevail at a much higher rate in automobile cases, it is the awards to plaintiffs in medical malpractice cases that attract the spotlight. The median award of \$286,000 in medical malpractice trials was roughly 16 times greater than that in automobile trials (\$18,000) and second in magnitude only to awards in asbestos trials.

Automobile vs. Medical Malpractice Trials: Percentage of Tort, Plaintiff Win, and Median Award

Proportion of All Tort Trials, 1996



Percent of Trials in which Plaintiff Prevailed, 1996



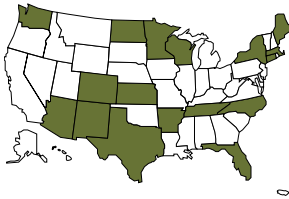
Median Award to Prevailing Plaintiffs, 1996



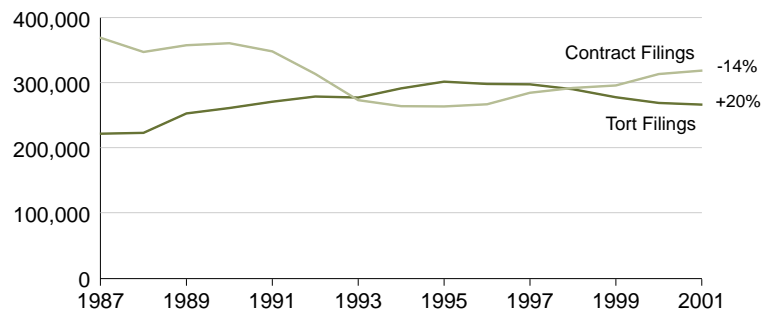
Contract filings once again outpace tort filings in 2001

As a result of occasional large awards in tort trials and the high-profile nature of certain product liability cases such as tobacco and asbestos, tort cases tend to dominate discussions of civil litigation. However, in all but four of the last 15 years, contract case filings equaled or exceeded tort filings in the general jurisdiction courts of 17 states. In 1987, our benchmark year, contract filings were at their highest point (369,000) and torts at their lowest point (221,000). From 1987 until 1995, both case filings moved in contrary directions until they converged; contract cases were then surpassed by torts for the next four years. In 1995, tort filings reached their maximum (eclipsing contract filings by 13 percent) then slowly declined through 2001.

After attaining their lowest point at about the same time as torts reached their pinnacle (1995), contract filings are once again increasing. But despite the nearly 21 percent increase in contract filings since 1995, filings are still down 14 percent from their starting point in 1987. Conversely, tort filings have dropped 12 percent since 1995, yet still show an overall increase of 20 percent.



Tort and Contract Filings in General Jurisdiction Courts in 17 States, 1987-2001



Contract filings decline in 15 of 19 states

Erratic movement in filing trends, such as those shown in the previous graph, likely indicates the influence of things other than population, such as changes in laws or the economy. However, some upward movement in court filings may be simply explained by an increase in the underlying population. The following table shows population-adjusted contract filings in 19 states for two years: 1992 and 2001.

It is important to note that filing rates in states with unified court systems generally appear higher than the general jurisdiction filings in other states because all contract cases are filed in the same court. In states with two-tiered court systems, limited jurisdiction courts handle many of the cases involving nominal amounts of money, so the general jurisdiction caseloads tend to appear smaller.

Growth Rates of Contract Filings in 19 states, 1992 vs. 2001

State	Filings per 100,000 Population		Percent Change 1992-2001
	1992	2001	
Unified Courts			
Kansas	2,968	3,853	30%
North Dakota	971	1,239	28
Missouri	1,354	1,405	4
Minnesota	155	112	-28
Wisconsin	415	261	-37
Connecticut	848	486	-43
General Jurisdiction Courts			
Washington	287	315	10
North Carolina	94	90	-4
Arkansas	569	506	-11
Oregon	721	629	-13
New Mexico	730	633	-13
Massachusetts	83	71	-14
Texas	145	117	-19
Alaska	93	75	-20
New York	126	98	-22
Tennessee	153	112	-26
Colorado	281	193	-31
Arizona	371	215	-42
Maine	89	51	-42

Gains and losses were evenly split between the six states with unified court systems. Among those whose caseloads increased faster than the population, Kansas was highest with an increase of 30 percent. The district court of Kansas uniquely counts any debt collection case with an amount in controversy exceeding \$1,800 as a contract filing, helping to explain the relatively high number of filings, if not the increase. At the other end of the spectrum, Connecticut realized a net decrease of 43 percent.

Unlike the relative equilibrium seen among the unified courts, changes in general jurisdiction courts were overwhelmingly downward, as only one state, Washington, reported an increase (10 percent). Eleven of the 13 general jurisdiction courts experienced a decline of more than 10 percent, and six courts saw decreases of 20 percent or more.