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Tort Bench and Jury Trials in State Courts, 2005

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A tort involves one party alleging injury, damage, or loss stemming from the negligent or intentional acts of another party. Torts accounted for about 60% of the estimated 26,948 tort, contract, and real property cases disposed of by bench or jury trial in a national sample of state courts of general jurisdiction in 2005. Courts of general jurisdiction typically handle civil disputes that exceed certain monetary amounts. The exception is in states that have merged their limited and general jurisdiction courts (e.g., California). Data from jurisdictions that provided totals for both trial and non-trial tort dispositions in 2005 show that nearly 4% of all tort cases were disposed of by trial.

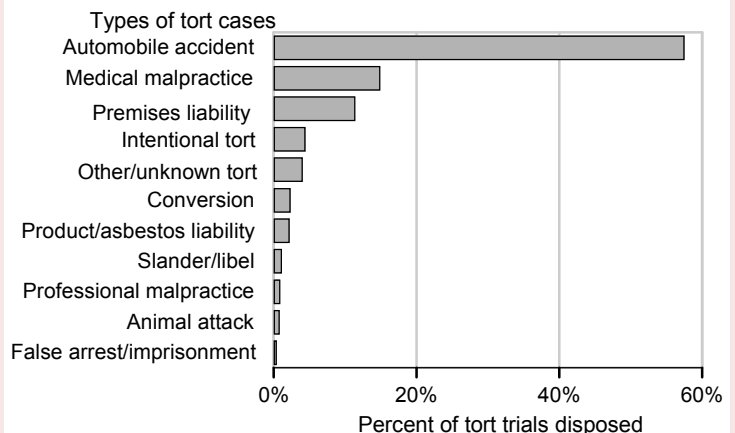
Although tort trials account for a small percentage of tort dispositions in general jurisdiction courts, they warrant examination because they provide key information on trial winners, plaintiff award compensation, punitive damages, case processing times, and post-trial activity. Key information—such as the terms of settlement—would typically not be made part of the public record for tort cases that settle.

This report on tort bench and jury trials in state courts of general jurisdiction is the third in a series based on data collected from the 2005 Civil Justice Survey of State Courts (CJSSC). The first report in this series provided an overview of tort, contract, and real property bench and jury trials disposed in a national sample of general jurisdiction courts in 2005. The second report focused on contract cases disposed of by trial.

Highlights

- During 2005 an estimated 16,397 tort cases were disposed of by bench or jury trial in a national sample of state trial courts. Juries heard about 90% of these cases.
- Together, bench and jury trials accounted for an estimated 4% of all tort dispositions in 2005.
- Nearly 60% of tort trials were automobile accident cases, and 15% involved medical malpractice claims (figure 1).
- Plaintiffs won about half of tort trials.
- Half of plaintiff winners in tort trials were awarded \$24,000 or less in damages.
- Punitive damages were sought in 9% of tort trials with plaintiff winners. The median punitive damage award was \$55,000.
- In the nation's 75 most populous counties, the number of tort trials declined by about a third between 1996 and 2005.

Figure 1.
Types of tort cases concluded by trial in 2005



The 2005 CJSSC comprises the first detailed case-level data collection for tort, contract, and real property bench and jury trials disposed of in state courts of general jurisdiction in a nationally representative sample of urban, suburban, and rural counties.¹ Prior collections of the CJSSC focused on such trials disposed of in general jurisdiction courts in a sample of the nation's 75 most populous counties.

Automobile accident cases accounted for nearly 60% of tort trials

During 2005 state courts of general jurisdiction in the national sample disposed of an estimated 16,397 tort trials. Nearly 60% of these tort trials were automobile accident cases (table 1). Medical malpractice cases, involving the negligent action of a doctor, dentist, or other health care provider, accounted for 15% of tort trials, while premises liability, concerning an alleged harm from an inadequately maintained or dangerous property, accounted for 11% of tort trials. An estimated 2% of tort trials were product liability cases in which the primary claim involved a dangerous or defective product, such as asbestos, toxic substances, breast implants, or tobacco.

¹The sample of civil trials excludes civil cases that were not tort, contract, or real property cases. Trials in state courts of limited jurisdiction and small claim cases were also excluded from the sample. See *Methodology* for a descriptive overview of sample design.

Nine out of 10 tort trials were resolved by juries

Ninety percent of tort trials were decided before a jury, while judges adjudicated the remaining 10%.² The right to a jury trial is guaranteed in most states; however, if neither the plaintiff nor the defendant makes a formal request for a jury trial, that right is forfeited and the trial takes place before a judge.

Cases in which the plaintiff claimed medical malpractice were most often disposed of by juries (99%), followed by asbestos (95%) and premises liability (94%) cases. More than 90% of non-asbestos product liability and automobile accident cases were disposed of by jury trial.

Judges decided at least a third of slander or libel, false arrest or imprisonment, and professional malpractice trials. About half of conversion cases, which involve the unauthorized use or control of another person's personal property, were adjudicated before judges.

More than 51,000 litigants were involved in tort trials in state courts

An estimated 51,375 litigants (plaintiffs and defendants) were involved in the 16,397 tort trials disposed of in 2005 (not shown in a table). Of these tort trial litigants, 45% were plaintiffs and 55% were defendants. Almost three-fourths of tort trials (70%) were litigated by only one plaintiff, while about half (55%) involved only one defendant.

Eight out of 10 tort trials involved individuals suing businesses or other individuals

Tort trials involved an individual suing either another individual in 53% of cases or a business in 27% of cases (table 2). Individuals sued hospitals or governmental agencies in 15% of tort trials. A relatively small number of tort trials (4%) involved non-individual plaintiffs such as governments, businesses, and hospitals.

Two-thirds of automobile accident trials involved individuals suing other individuals

The majority of automobile accident trials involved individuals suing other individuals. In comparison, individuals

²About 2% of tort jury trials disposed in the national sample include trials with a directed verdict, judgments notwithstanding the verdict, and jury trials for defaulted defendants.

Table 1.

Tort cases disposed of by bench or jury trial in state courts, by case type, 2005

Case type	Number of tort trials	Percent disposed by—	
		Jury trial*	Bench trial
All tort trials	16,397	90.0%	10.0%
Medical malpractice	2,449	98.7	1.3
Asbestos product liability	87	95.4	4.6
Premises liability	1,863	93.8	6.2
Other product liability	268	92.5	7.5
Automobile accident	9,431	92.2	7.8
Animal attack	138	80.6	19.4
Intentional tort	725	78.2	21.8
Other/unknown tort	664	71.5	28.5
Slander/libel	187	64.2	35.8
False arrest/imprisonment	58	63.8	36.2
Professional malpractice	150	60.0	40.0
Conversion	378	46.3	53.7

Note: Data for case and disposition type were available for 100% of the 16,397 tort trials. Detail may not sum to total because of rounding.

*Unless otherwise stated, jury trials include jury trials, trials with a directed verdict, trials that ended in a judgment notwithstanding the verdict, and jury trials for defaulted defendants. See *Methodology* for case type definitions.

sued other individuals in only about a third (35%) of other tort trials (not shown in a table).

Litigant pairings differed appreciably by case type among tort trials that did not involve automobile accident claims. For example, more

than half of medical malpractice trials involved individuals suing hospitals, while in product liability cases, nearly 90% of the litigants were individual plaintiffs suing business defendants other than hospitals.

Table 2.

Pairings of primary litigants in tort trials in state courts, by case type, 2005

Case type	Number of trials	Percentage of tort trial pairings involving						
		Individual plaintiff v.—				Business plaintiff v.—		
		Individual defendants	Business defendants ^a	Government defendants ^b	Hospital defendants ^c	Individual defendants	Business defendants ^a	Other defendants
All tort trials	16,359	53.4%	27.1%	6.5%	8.8%	1.5%	2.1%	0.6%
Animal attack	137	93.4	3.6	2.2	0.0	0.0	0.0	0.7
Automobile accident	9,419	67.3	23.9	5.1	0.1	1.5	1.7	0.4
Conversion	378	58.2	5.8	4.5	0.0	19.6	9.3	2.6
Slander/libel	187	57.2	29.4	0.5	3.2	2.1	7.5	0.0
Intentional tort	725	52.0	21.0	19.2	2.8	1.2	3.7	0.1
Medical malpractice	2,438	38.5	5.2	0.4	55.6	0.0	0.1	0.3
Professional malpractice	150	36.0	37.3	0.0	2.7	6.7	16.7	0.7
False arrest/imprisonment	58	24.1	8.6	67.2	0.0	0.0	0.0	0.0
Other/unknown tort	660	23.0	44.2	21.2	0.2	2.0	4.8	4.5
Premises liability	1,857	21.4	62.7	12.1	2.6	0.2	0.8	0.2
Asbestos product liability	83	6.0	88.0	2.4	0.0	0.0	3.6	0.0
Other product liability	267	1.1	89.9	0.0	0.0	0.0	9.0	0.0

Note: For cases that involve multiple plaintiff or defendant types, cases are categorized using the following hierarchy: (1) hospital or medical company, (2) government agency, (3) business, and (4) individual. 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. Data on plaintiff type were available for 99.9% of tort trials. Data on defendant type were available for 99.8% of tort trials. Detail may not sum to total because of rounding.

^aIncludes insurance companies, banks, other business organizations not involved in the medical industry.

^bIncludes law enforcement and other government organizations.

^cIncludes any organization or medical practice that provides health care and dental treatment. Individual doctors are treated as individuals.

1 out of 4 product liability trials involved asbestos claims

Although less than 5% of tort trials involved product liability issues, these cases garner a great deal of societal interest because of the high degree of publicity surrounding some of them and the perceived potential for very large payouts.

One out of every four product liability trials centered on asbestos, while another three percent involved other toxic substances, including tobacco or dangerous chemicals (table 3). Defective construction, electrical, or manufacturing equipment accounted for another 14% of product liability trials, and faulty home appliances, food, or transportation products each accounted for 10% of product liability trials.

Three tobacco product liability trials were disposed of in the national sample in 2005 (not shown in a table). All three of these trials were decided by juries that ruled in favor of the defendants.

Table 3.

Defective products in product liability trials in state courts, 2005

Type of defective product	Product liability trials	
	Number	Percent
All product liability trials	346	100.0%
Toxic substances ^a	96	27.8
Other product ^b	52	15.0
Equipment/machinery/tools ^c	49	14.1
Home appliances/entertainment ^d	38	11.0
Food in restaurants/stores	38	11.0
Automobile/truck/airplane transportation	35	10.1
Drugs/cosmetics	21	6.1
Sporting goods equipment	10	2.8
Implants/prostheses/other medical devices	7	2.0

Note: Type of defective product was known for 346 of the 354 product liability trials. Detail may not sum to total because of rounding.

^aIncludes asbestos, tobacco, chemicals, and other toxic substances. More than 90% of toxic substances trials involved asbestos claims.

^bIncludes clothing, footwear, textiles, oil, gasoline, and kerosene.

^cIncludes heavy industrial equipment and machinery, such as construction, electrical, and manufacturing equipment.

^dIncludes large and small appliances used in homes, such as washers, stoves, toasters, and space heaters. Also includes workshop tools, yard equipment, and building components used in homes. Entertainment products include televisions, stereos, VCRs, and computer equipment.

About half of all tort trials were won by plaintiffs

Plaintiffs prevailed in about half of all tort trials concluded in the national sample of state courts in 2005 (table 4). Judges found for plaintiffs in 56% of tort trials, while juries ruled in favor of plaintiffs in 51% of tort trials. The differences in plaintiff win rates between bench and jury trials for tort cases were not statistically significant.

Plaintiff win rates varied considerably depending on the type of tort case litigated. Among tort trials, the estimated plaintiff win rates exceeded 60% in some case categories, such as animal attack (75%) or automobile accident (64%).

Plaintiffs also won in about half of asbestos and intentional tort trials. Plaintiffs were less successful in other kinds of tort cases. Plaintiffs prevailed in less than a quarter of medical malpractice, non-asbestos (other) product liability, and false arrest or imprisonment trials.

In several types of tort cases, plaintiffs experienced similar outcomes irrespective of whether the case was tried before a judge or jury. Plaintiffs won at rates that were nearly identical in bench and jury trials involving automobile accident, intentional tort, professional malpractice, and premises liability issues.

Table 4.

Percent of tort trials with plaintiff winners in state courts, by case and trial type, 2005

Case type	All tort trials ^a		Jury trials ^b		Bench trials	
	Total number of trials	Percent with plaintiff winners	Total number of trials	Percent with plaintiff winners	Total number of trials	Percent with plaintiff winners
All tort trials	15,427	51.6%	13,622	51.3%	1,462	56.2%
Animal attack	125	75.2	109	78.0	15	53.3
Automobile accident	8,844	64.3	7,989	63.9	690	67.5
Asbestos product liability	82	54.9	78	53.8	4	**
Intentional tort	609	51.6	452	51.5	132	56.1
Conversion	296	48.3	129	31.0	165	61.8
Other/unknown tort	606	41.1	447	41.2	154	40.9
Slander/libel	175	39.4	86	54.7	56	30.4
Professional malpractice	143	39.2	81	39.5	59	40.7
Premises liability	1,827	38.4	1,678	38.2	115	38.3
Medical malpractice	2,397	22.7	2,307	22.7	32	50.0
Other product liability	265	19.6	232	20.7	19	15.8
False arrest/imprisonment	58	15.5	34	23.5	21	4.8

Note: Data on plaintiff winners were available for 99.8% of tort jury trials and 99.9% of tort bench trials. Plaintiff winner statistics include cases in which both the plaintiff and defendant won damages and the plaintiff award amount was greater than the defendant award amount. Table excludes the 934 bifurcated tort trials in which the plaintiff litigated only the damage claim.

**Too few cases to obtain statistically reliable data.

^aIncludes jury trials, bench trials, trials with a directed verdict, trials that ended in a judgment notwithstanding the verdict, and jury trials for defaulted defendants.

^bJury category excludes trials where the jury heard the case but did not determine liability, including trials with a directed verdict, trials that ended in a judgment notwithstanding the verdict, and jury trials for defaulted defendants.

Half of plaintiff winners in tort trials were awarded \$24,000 or less in damages

During 2005, plaintiff winners in tort trials in the national sample were awarded an estimated \$3.6 billion in compensatory and punitive damages (not shown in a table). The overall median final award of \$24,000 in jury trials and \$21,000 in bench trials did not differ statistically (table 5).

In some case categories, the median damage awards were relatively modest. For example, automobile accident, animal attack, slander or libel, conversion, and intentional tort cases, which together accounted for nearly 8 out of 10 tort trials with plaintiff winners, generated median awards of \$38,000 or less. Automobile accident cases alone constituted about 70% of tort trials with plaintiff winners, and the median award in these cases was \$15,000.

In other tort case categories, the median awards were considerably higher. Half the plaintiff winners in asbestos cases were awarded damages of \$682,000 or more. The median damage awards also exceeded \$100,000 in non-asbestos product liability (\$500,000) and professional malpractice (\$129,000) trials.

Medical malpractice trials also garnered relatively high median damage awards. The awards in medical malpractice trials (\$400,000) were 17 times greater than the overall median awards in all tort trials. Damage awards of \$1 million or more were awarded in nearly 30% of medical malpractice trials (not shown in a table). These high award amounts may be related to the allegations of wrongful death that were asserted in two-fifths of medical malpractice trials with plaintiff winners.

Table 5.

Plaintiff award winners in tort trials in state courts, by case and trial type, 2005

Case type	All tort trials ^a		Jury trials ^b		Bench trials	
	Number with plaintiff award winners ^c	Median final award amount ^d	Number with plaintiff award winners ^c	Median final award amount ^d	Number with plaintiff award winners ^c	Median final award amount ^d
All tort trials	8,455	\$24,000	7,341	\$24,000	951	\$21,000
Asbestos product liability	47	682,000	44	721,000	3	**
Other product liability	52	500,000	49	456,000	2	**
Medical malpractice	584	400,000	564	400,000	18	631,000
Professional malpractice	62	129,000	37	435,000	25	16,000
Premises liability	666	98,000	608	100,000	44	65,000
Other/unknown tort	305	83,000	205	109,000	98	8,000
Intentional tort	428	38,000	313	26,000	99	33,000
Conversion	148	27,000	40	60,000	108	22,000
Slander/libel	81	24,000	47	21,000	28	24,000
Animal attack	108	21,000	87	26,000	20	21,000
Automobile accident	5,965	15,000	5,339	15,000	506	17,000
False arrest/imprisonment	8	**	7	**	1	**

Note: Award data were available for 99.5% of tort jury and bench trials. Number of plaintiffs awarded damages may be different from the number of plaintiffs who successfully litigated the case. This difference is primarily due to the exclusion of plaintiff winners who receive no award because of award reductions and to the inclusion of 805 bifurcated damage trials with plaintiff award winners. Table also excludes the 330 bifurcated trials in which the plaintiff litigated only the liability claim.

**Too few cases to obtain statistically reliable estimates.

^aIncludes jury trials, bench trials, trials with a directed verdict, trials that ended in a judgment notwithstanding the verdict, and jury trials for defaulted defendants.

^bJury category excludes trials where the jury heard the case but did not determine liability, including trials with a directed verdict, trials that ended in a judgment notwithstanding the verdict, and jury trials for defaulted defendants.

^cIncludes cases in which both the plaintiff and defendant won damages and the plaintiff award amount was larger.

^dAward data rounded to the nearest thousand. Median amounts calculated for compensatory plus punitive damage awards, after adjustments for contributory negligence, prior settlement, high/low agreement, and damage caps but prior to post-trial activity and appeals.

Punitive damages were sought in 9% of tort trials with plaintiff winners

Awards for punitive damages are almost exclusively reserved for civil claims in which the defendant’s conduct was considered grossly negligent or intentional. Unlike other forms of damage relief afforded to plaintiffs, punitive damages are intended to serve as a means for “punishing the defendant” and deterring others from committing similar actions (*Black’s Law Dictionary*).

Punitive damages were sought in 9% of the approximately 8,763 tort trials with plaintiff winners in the 2005 national sample (table 6). Punitive damages were also requested in 9% of jury and 16% of bench trials with plaintiff winners.

Punitive damages were sought in nearly half (47%) of slander or libel trials with plaintiff winners. In approximately 1 out of 3 intentional torts (33%) and other or unknown torts (27%) trials in which the plaintiffs prevailed, punitive damages were also requested. Punitive damages were sought in less than 10% of automobile accident, professional malpractice, product liability, and premises liability cases with plaintiff winners. These case types garnered fewer punitive damage claims because they typically do not involve acts of gross negligence or intentional harms, which are necessary elements when seeking punitive damages.

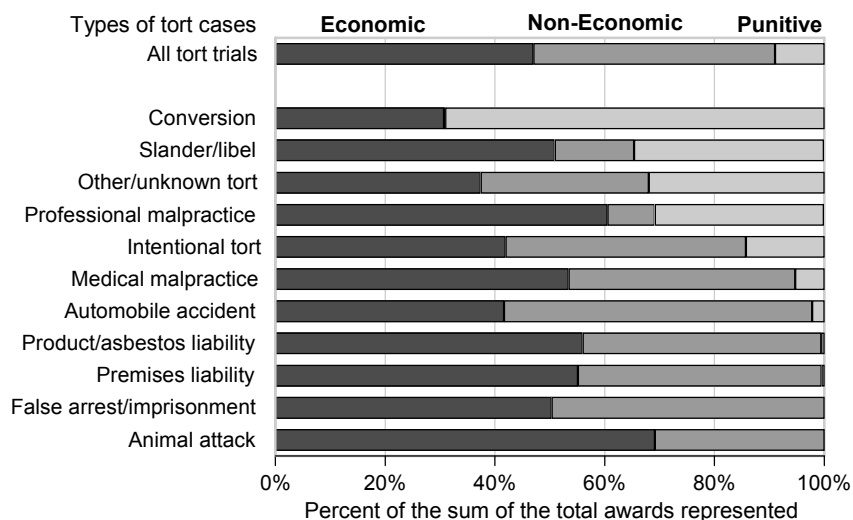
Punitive damages were awarded in 254 of the 8,763 tort trials with plaintiff winners (3%). The median punitive damage award was \$55,000. Twenty-three percent of punitive awards were more than \$250,000 and 17% were \$1 million or more (not shown in a table). The median punitive damage awards in tort jury (\$100,000) and bench (\$54,000) trials were not statistically different.

Punitive damages accounted for more than a third of the sum of the total awards in conversion and slander or libel cases

The CJSSC collected information on the percentage of total awards that could be classified into economic, non-economic, and punitive damages for three-fourths of tort trials with plaintiff winners (figure 2). Economic damages are associated with actual financial losses (e.g., medical costs, lost wages, lost future earnings, property damages), while non-economic damages are related to injuries where the plaintiff claims pain and suffering, emotional distress, or loss of consortium. These award classifications and amounts were determined by judges or juries when calculating the assessed damage payouts.

Figure 2.

Punitive damages accounted for nearly 10% of the total awards to plaintiff winners in tort trials



Overall, economic and non-economic damages constituted about 90% of the total monetary awards to plaintiff winners, while punitive damages accounted for nearly 10% of the total awards. Monetary payouts were evenly distributed between economic (47%) and non-

economic (44%) damages. Among the civil trial case types, punitive damages comprised 69% of the sum of the total awards in conversion cases and more than a third of the sum of total awards in slander or libel cases.

Table 6.

Punitive damages sought and awarded in tort trials with plaintiff winners in state courts, by case and trial type, 2005

Case type and trial type	Number of trials with plaintiff winners ^a	Percent of trials in which punitive damages sought	Punitive damages awarded to plaintiff winners	
			Number	Median punitive damage awards ^b
All tort trials^c	8,763	9.4%	254	\$55,000
Slander/libel	81	46.9	24	13,000
Intentional tort	429	32.9	126	81,000
Other/unknown tort	307	27.0	15	**
Animal attack	108	21.3	0	0
Conversion	179	17.3	12	**
Medical malpractice	592	9.5	6	**
Automobile accident	6,168	6.8	67	8,000
Professional malpractice	63	4.8	1	**
Product liability ^d	102	3.9	1	**
Premises liability	725	3.7	2	**
False arrest/imprisonment	9	0.0	0	0
Trial type				
Bench trials	994	15.5%	37	\$54,000
Jury trials ^e	7,600	8.6	204	100,000

Note: Information on whether punitive damages were sought indicates formal requests for punitive damages. In some instances, statutory rules allow jury/judge to consider awarding punitive damages in cases where a formal request is not made. There were an estimated 58 tort trials in which punitive damages were awarded but not formally requested.

**Too few cases to obtain statistically reliable estimates.

^aThe number of tort trials with plaintiff winners may differ from other tables because the figure includes tort trials in which the plaintiff won but did not receive monetary damages and 807 bifurcated trials in which the prevailing plaintiff litigated only the damage claim.

^bMedian awards are reported prior to adjustments, post-trial activity, or appeals and are rounded to the nearest thousand.

^cIncludes jury trials, bench trials, trials with a directed verdict, trials that ended in a judgment notwithstanding the verdict, and jury trials for defaulted defendants.

^dIncludes asbestos cases.

^eJury category excludes trials where the jury heard the case but did not determine liability, including trials with a directed verdict, trials that ended in a judgment notwithstanding the verdict, and jury trials for defaulted defendants.

Damages were reduced in 40% of premises liability trials as a result of comparative negligence

A plaintiff's own negligent actions may contribute to the injury sustained. Six states adhere to the doctrine of *contributory negligence*.³ In these states any negligence on the plaintiff's part automatically bars recovery for damages. In the remaining states differing forms of *comparative negligence* are used. Under comparative negligence doctrines, damages are proportionally reduced according to the plaintiff's negligence.

Compensatory damages awarded to plaintiff winners were reduced in 15% of tort trials disposed in the national sample in 2005 (table 7). These awards were reduced by 40% on average (not shown in a table).

In two-fifths of the premises liability trials with a plaintiff winner, the compensatory awards were reduced due to the plaintiff's own negligence. The award reduction in these premises liability trials was, on average, about 51% (not shown in a table).

Tort jury trials lasted 2 days longer on average than tort bench trials

In 2005 tort jury trials lasted nearly 4 days on average, while bench trials were disposed within an average of about 2 days (figure 3). For tort jury trials, asbestos cases tended to take the most time averaging 13 days in trial. Other case types that took more than a week on average for juries to dispose include medical malpractice (6 days), non-asbestos product liability (7 days), and professional malpractice (8 days) cases.

³Alabama, Maryland, South Carolina, Delaware, North Carolina, and Virginia are contributory negligence states. *American Justice Prudence*, 2nd edition (1989, supp. 1995), 57B, pp. 1131-49.

Table 7.

Plaintiff winners with awards reduced due to contributory or comparative negligence in tort trials in state courts, by case type, 2005

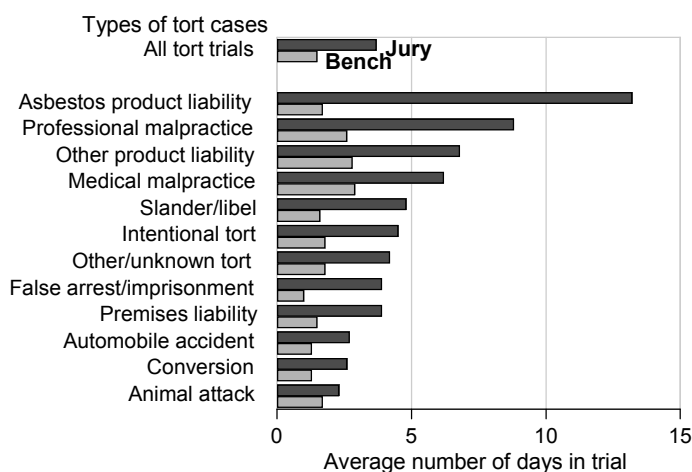
Case type	Number of trials with a plaintiff award winner	Percent of tort trials with awards reduced
All tort trials^a	8,566	14.7%
Premises liability	711	41.1
Automobile accident	6,039	14.6
Other/unknown tort	300	8.9
Professional malpractice	62	8.1
Other product liability	52	6.7
Asbestos product liability	47	4.8
Animal attack	108	4.2
Intentional tort	429	4.1
Medical malpractice	581	3.8
Slander/libel	81	3.6
Conversion	148	--
False arrest/imprisonment	8	--

Note: Data on whether awards were reduced for contributory or comparative negligence were available for 100% of sampled trials with a plaintiff winner and a known initial award amount. Detail may not sum to total because of rounding. Trials include only those in which plaintiffs won an initial monetary damage award. The number of trials with plaintiff award winners may differ from the numbers reported in other tables because this table reports initial, not final, award winners. In some trials plaintiffs who receive monetary damages have that award reduced to zero because of adjustments for contributory negligence, prior settlement, high/low agreement and damage caps. Table also includes 805 bifurcated damage trials with plaintiff award winners.

--No cases recorded.

Figure 3.

Average duration of tort bench and jury trials in state courts, 2005



Note: Data on number of days in trial were available for 94% of jury trials and 96% of bench trials.

Half of tort jury and bench trials were disposed of within 2 years after the complaint was filed

Half of the estimated tort trials disposed of in the national sample in 2005 went from filing of the complaint to final verdict or judgment within an estimated 23 months for jury trials and 18 months for bench trials (table 8). Among tort jury trials, the median case processing time was less than 2 years for animal attack, automobile accident, slander or libel, and conversion cases. Other case types resolved through jury trial took substantially longer to dispose. For example, half the non-asbestos product liability, medical malpractice, and false arrest or imprisonment cases took 30 months or more to process from initial filing to trial resolution. Among tort bench trials, the median case processing times varied from nearly 15 months for false arrest or imprisonment cases to 23 months for intentional and other torts.

Litigants sought post-trial relief in nearly 1 out of 3 tort trials

After a trial reaches final verdict or judgment, litigants can file post-trial motions seeking to modify or overturn the trial court outcome. These include motions for judgment notwithstanding the verdict (JNOV), motions for a new trial, motions to modify the award, and motions for some other form of relief.

A JNOV provides a mechanism for directly challenging the jury's verdict. In order to grant a JNOV, the judge must find that the evidence presented at trial so overwhelmingly favored the losing party that the jury's verdict should be reversed and a judgment entered for the party which initially lost. 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. Other relief can involve motions to correct errors that occurred at trial, modify court costs and fees, and amend judicial decisions in bench trials. Litigants filed post-trial motions in nearly 1 out of 3 tort trials disposed in the national sample in 2005 (not shown in a table).

Table 8.

Case processing time in months from filing to verdict or judgment in tort trials in state courts, by case and trial type, 2005

Case type	Median case processing time for—					
	All tort trials ^a		Jury trials ^b		Bench trials	
	Number	Median	Number	Median	Number	Median
All tort trials	16,390	22.3mo.	14,755	23.0mo.	1,636	17.7mo.
Medical malpractice	2,449	30.0	2,416	30.1	33	16.7
Other product liability	268	29.0	248	30.9	20	22.3
Professional malpractice	150	26.5	90	28.0	60	19.9
False arrest/imprisonment	58	26.3	37	43.0	21	14.7
Other/unknown tort	664	25.5	475	28.7	189	22.6
Asbestos product liability	87	25.0	83	23.9	4	**
Premises liability	1,862	24.5	1,746	25.2	116	15.0
Intentional tort	725	23.2	567	24.4	158	22.7
Animal attack	138	20.5	112	20.0	27	21.4
Automobile accident	9,425	20.1	8,686	20.3	739	16.6
Slander/libel	187	17.8	120	16.9	67	17.8
Conversion	378	17.7	175	18.6	203	16.0

Note: Case processing time calculates the number of months from filing of a complaint to verdict or judgment in a tort case. Processing time available for 99.9% of tort trials. Detail may not sum to total because of rounding.

**Too few cases to provide statistically reliable estimates.

^aIncludes jury trials, bench trials, trials with a directed verdict, trials that ended in a judgment notwithstanding the verdict, and jury trials for defaulted defendants.

^bIncludes jury trials, trials with a directed verdict, trials that ended in a judgment notwithstanding the verdict, and jury trials for defaulted defendants.

Plaintiffs and defendants sought post-trial relief at similar rates in trials where the plaintiff won

In tort trials where plaintiffs prevailed, post-trial relief was sought at a similar rate by both plaintiffs and defendants. Plaintiffs filed motions for post-trial relief in 16% of tort trials where they won, while defendants requested post-trial relief in 18% of tort trials with a plaintiff winner (not shown in a table). A variety of underlying factors can influence plaintiff post-trial activity in trials in which the plaintiff received a favorable outcome, including dissatisfaction with the damage award imposed at trial.

The types of post-trial relief sought most commonly by plaintiff winners in tort trials were motions for new trials and award modifications (table 9). These forms of post-trial relief accounted for nearly 90% of plaintiff post-trial motions.

In tort trials in which the plaintiff won and the defendant filed a subsequent motion for post-trial relief, 56% of those motions were for a new trial while 35% were for a JNOV.

Tort trials where the plaintiff did not win also manifested substantial post-trial activity. Plaintiffs filed motions for post-trial relief in almost one-quarter of tort trials (22%) where they lost (not shown in a table). In 86% of these cases, the plaintiff requested that the court discard the verdict or judgment and grant a new trial.

In tort trials where the plaintiff did not prevail, defendants rarely engaged in post-trial activity. Less than 4% of defendants sought post-trial relief in tort trials without a plaintiff winner.

Table 9.

Post-trial relief sought by plaintiffs or defendants in tort trials in state courts, 2005

Post-trial relief sought by—	Trials in which relief was sought	Type of post trial motions sought			
		JNOV	New trial	Award modified	Other relief*
Plaintiff prevailed					
Plaintiffs	1,391	16.6%	59.1%	29.8%	23.5%
Defendants	1,614	35.0	55.5	26.5	21.8
Plaintiff did not prevail					
Plaintiffs	1,654	25.5	86.3%	1.5%	10.2%
Defendants	256	7.3	22.0	1.9	70.1

Note: Post-trial activity data available for 100% of tort trials. The type of post-trial relief sought may not sum to 100% because the post trial categories are not mutually exclusive. Types of post-trial relief sought were calculated from the base of cases in which a plaintiff or defendant requested post-trial relief.

*Other forms of relief include motions to correct errors that occurred in trial, modify court costs and fees, and amend judicial decisions in bench trials.

Courts were more likely to grant plaintiffs post-trial relief in trials where the plaintiff prevailed

Plaintiffs were more likely to be granted post-trial relief if they won at trial. The courts granted post-trial relief to 36% of plaintiff winners seeking to have their verdict or judgment modified (not shown in a table). The most common post-trial relief granted to these plaintiffs was classified as “other,” including motions to correct errors that occurred in trial or modify court costs and fees (table 10). About 30% of plaintiff winners who sought and were granted post-trial relief were awarded a new trial, and another 22% received an award modification.

In comparison, 8% of plaintiffs who did not prevail at trial and who subsequently filed a post-trial motion received some form of post-trial relief (not shown in a table). More than 90% of these plaintiffs were granted a new trial.

Post-trial relief was granted to 30% of defendants who sought to modify a favorable plaintiff verdict or judgment. In about two-fifths of these cases the relief granted was in the form of an award reduction, and in 44% of these cases a new trial or JNOV was granted. Although fewer than 4% of defendants sought to modify a verdict or judgment that went against the plaintiff, an estimated 44% of these requests were granted.

Table 10.

Post-trial relief granted to plaintiffs or defendants in tort trials in state courts, 2005

Post-trial relief granted to—	Trials in which relief was granted	Type of post-trial relief granted			
		JNOV	New trial	Award modified	Other relief*
Plaintiff prevailed					
Plaintiffs	505	14.6%	29.5%	21.7%	40.0%
Defendants	487	21.3	22.5	41.1	23.1
Plaintiff did not prevail					
Plaintiffs	135	4.4%	91.7%	2.8%	5.6%
Defendants	113	5.5	4.3	3.3	86.9

Note: Post-trial activity data available for 100% of tort trials. The type of post-trial relief granted may not sum to 100% because the post-trial categories are not mutually exclusive. Types of post-trial relief granted were calculated from the base of cases in which a plaintiff or defendant was granted post-trial relief.

*Other forms of relief include motions to correct errors that occurred in trial, modify court costs and fees, and amend judicial decisions in bench trials.

Litigants filed notices of appeal in 13% of tort trials

Filing a notice with the trial court to take an 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. Notices to file an appeal were filed with the trial court by one or both parties in 13% of tort trials disposed in the national sample (not shown in a table).

The appeal rate depended on the trial outcome. Plaintiffs filed appeals in 5% of tort trials in which they prevailed and 13% of tort trials in which they lost (table 11). Defendants filed notice of appeal in 8% of tort trials with a plaintiff winner; however, they rarely filed appeals in tort trials where the plaintiff did not receive a favorable verdict or judgment.

The rate of appeals also varied substantially by case type. Defendants filed notices of appeal in about two-fifths of professional malpractice trials in which they lost. Defendants also gave notice of appeal in more than 30% of product liability and medical malpractice trials with prevailing plaintiffs. Among tort trials that the

plaintiff lost, plaintiffs filed a notice of appeal in at least 21% of intentional tort trials and in 39% of professional malpractice trials.

Tort trial trends in the nation's 75 most populous counties, 1996, 2001, and 2005

Prior to the 2005 CJSSC, BJS funded three surveys that examined general civil trials held in a sample of the nation's 75 most populous counties in 1992, 1996, and 2001. In addition to the national sample of general civil trials, the 2005 CJSSC also contained a sub-sample of civil trials concluded in the nation's 75 most populous counties. The 75 most populous counties sub-sample was maintained for comparison purposes with earlier iterations of the CJSSC.

In the trends discussion of this report, data are presented on tort trial litigation in the nation's 75 most populous counties rather than the national sample examined in the analyses described in the earlier sections of this report. In addition, the analyses have been restricted to tort bench and jury trials resolved in 1996, 2001, and 2005 because data from the 1992 survey did not contain case level information on tort bench trials.

Table 11.

Notices of appeal filed by plaintiffs or defendants in tort trials in state courts, by case type and trial outcome, 2005

Case type	Tort trials with plaintiff winners			Tort trials without plaintiff winners		
	Number ^a	Percent filing notice of appeal—		Number	Percent filing notice of appeal—	
		Plaintiff	Defendant		Plaintiff	Defendant
All tort trials	8,773	5.3%	7.8%	7,587	12.5%	1.6%
Professional malpractice	63	11.1	42.2	87	39.1	5.7
Product liability ^b	101	14.9	32.7	251	16.3	0.8
Medical malpractice	592	14.9	31.2	1,854	13.6	0.9
Other/unknown tort	306	7.8	21.9	357	17.9	0.3
Slander/libel	81	7.4	16.0	106	16.0	0.0
Premises liability	725	4.6	14.6	1,137	8.2	0.2
Conversion	179	1.7	12.3	197	10.2	23.2
Intentional tort	429	6.5	8.4	296	20.9	1.4
Automobile accident	6,180	4.1	3.1	3,222	11.2	1.2
Animal attack	108	7.4	0.0	31	9.7	0.0
False arrest/imprisonment	9	**	**	49	6.1	2.0

Note: Data are not available to determine whether litigants filing a notice of appeal in state trial courts further pursued appeals by filing documentation with the appropriate appellate court. Tort trial notice of appeals data were available for 99.9% of tort trials where the plaintiff prevailed and 99.9% of tort trials where the plaintiff did not prevail. Detail may not sum to total because of rounding.

**Too few cases to obtain statistically reliable estimates.

^aThe number of tort trials with plaintiff winners may differ from other tables because the figure includes tort trials in which the plaintiff won but did not receive monetary damages and bifurcated trials in which the plaintiff litigated only damage claims.

^bIncludes asbestos cases.

The number of tort trials declined by a third between 1996 and 2005

The number of tort trials concluded in state courts in the nation's 75 most populous counties declined by about a third from 10,278 trials in 1996 to 7,038 trials in 2005 (table 12). Among the tort case types, premises (-52%) and product liability (-48%) registered the largest declines,

while the number of medical malpractice trials remained fairly stable from 1996 through 2005.

Data from the two most recent BJS civil trial surveys reveal stabilization in the number of tort trials. From 2001 to 2005, the number of tort trials concluded in the nation's 75 most populous counties declined by 12%, a decrease that was not statistically significant.

Table 12.

Comparing tort trials in state courts in the nation's 75 most populous counties, by selected case types, 1996, 2001, 2005

Type of tort trial characteristic	Year of trial collection			Percent change	
	1996	2001	2005	1996-2005	2001-2005
How many tort trials were disposed?					
All tort trials	10,278	7,948	7,038	-31.5%*	-11.5%
Automobile accident	4,994	4,235	3,545	-29.0*	-16.3*
Medical malpractice	1,201	1,156	1,219	1.5	5.5
Premises liability	2,232	1,268	1,067	-52.2*	-15.8*
Intentional tort	491	375	352	-28.4*	-6.1
Product liability	421	158	225	-46.7*	42.2*
What percentage of plaintiffs won?					
All tort trials	48.2%	51.6%	48.0%	-0.3%	-6.8%*
Automobile accident	57.5	61.2	61.0	6.1	-0.4
Medical malpractice	23.3	26.8	19.4	-17.0*	-27.7*
Premises liability	39.6	42.0	38.9	-1.7	-7.3
Intentional tort	57.0	56.8	50.4	-11.5	-11.2
Product liability	44.9	44.2	37.9	-15.6*	-14.2
How much did prevailing plaintiffs win?^a					
All tort trials	\$38,000	\$30,000	\$31,000	-18.4%	3.3%
Automobile accident	22,000	18,000	16,000	-27.3*	-11.1
Medical malpractice	354,000	464,000	679,000	91.8*	46.3*
Premises liability	71,000	65,000	90,000	26.8	38.5
Intentional tort	40,000	41,000	100,000	150.0*	143.9*
Product liability	241,000	495,000	748,000	210.4*	51.1*
What percentage of plaintiffs won punitive damages?					
All tort trials	3.3%	5.3%	3.6%	8.5%	-33.3%*
Automobile accident	0.7	2.1	1.6	134.3	-22.0
Medical malpractice	1.1	4.9	2.6	144.7	-46.1
Premises liability	4.5	1.5	0.5	-89.5*	-68.9*
Intentional tort	24.0	36.4	24.3	1.2	-33.3
Product liability	7.7	4.2	1.3	-83.8*	-70.4
How long did disposition of tort case take?^b					
All tort trials	21.8mo.	21.5mo.	23.0mo.	5.3%	6.7%
Automobile accident	18.9	19.8	20.0	5.6	1.0
Medical malpractice	29.7	28.6	30.7	3.5	7.6
Premises liability	24.6	22.6	24.0	-2.5	6.0
Intentional tort	20.6	20.2	25.3	22.8*	25.2*
Product liability	32.4	25.5	30.0	-7.5	17.4*

Note: Table includes all jury trials, bench trials, trials with a directed verdict, trials that ended in a judgment notwithstanding the verdict, and jury trials for defaulted defendants concluded in a sample of the nation's 75 most populous counties. Product liability includes cases of asbestos exposure. Data sources: Civil Justice Survey of State Courts, 1996 (ICPSR 2883), 2001 (ICPSR 3957), and 2005 (ICPSR 23862). Data can be obtained from the University of Michigan Inter-University Consortium for Political and Social Research (ICPSR).

*Difference is significant at the 95% confidence level.

^aOverall median awards, adjusted to account for inflation using the Consumer Price Index (CPI) as reported by the Bureau of Labor Statistics.

^bMedian number of months from filing to verdict or judgment.

Plaintiff win rates were relatively stable in tort trials from 1996 through 2005

The plaintiff win rate in tort trials has remained relatively stable from 1996 to 2005. During this period, about half of all plaintiffs prevailed in tort trials. The percentage of plaintiffs prevailing in automobile accident cases increased slightly from 58% in 1996 to 61% in 2005. In comparison, plaintiffs won in fewer medical malpractice cases in 2005 (19%) than in 1996 (23%).

Median damage awards in product liability and medical malpractice trials were higher in 2005 compared to 1996

The median damage awards garnered by plaintiff winners in tort trials declined from \$38,000 in 1996 to \$31,000 in 2005, a decrease that was not statistically significant.⁴ In comparison to tort cases generally, several case categories witnessed marked increases in their median damage awards. This trend was especially apparent in product liability trials where the median award amounts were 3 times higher in 2005 (\$748,000) than they were in 1996 (\$241,000). For medical malpractice trials, the median damage awards were nearly 2 times higher in 2005 (\$679,000) than they were in 1996 (\$354,000). In intentional tort cases, the median awards were 2.5 times higher in 2005 (\$100,000) than in 1996 (\$40,000).

⁴The 1996 damage award statistic has been adjusted to account for inflation using the Consumer Price Index (CPI) prepared by the Bureau of Labor Statistics (<http://www.bls.gov/cpa/home.htm>). The CPI, the most commonly reported measure of consumer price levels, is a statistical estimate of the level of prices of goods and services bought for consumption purposes by households. The CPI is a measure of inflation used to index wages, salaries, pensions, or contracted prices.

Plaintiff winners were awarded punitive damages in 5% or less of tort trials overall between 1996 and 2005

The percentage of tort trials in which the plaintiff winner received punitive damages rose from 3% in 1996 to 5% in 2001 and then declined to 4% in 2005. Among intentional tort cases, the percentage of prevailing plaintiffs awarded punitive damages ranged from 24% to 36% during the 1996 to 2005 reporting period. For the other tort case categories, the rate at which plaintiff winners received punitive damages never exceeded 10%.

Case processing time remained relatively stable in tort trials from 1996 through 2005

In 1996 it took nearly 22 months for half of all tort cases to proceed from initial filing to verdict or judgment, while during 2005, 50% of tort cases progressed from filing to jury or bench disposition within 23 months. These differences were not statistically significant. Intentional tort cases took 4 months longer to dispose in 2005 (25 months) than in 1996 (21 months).

Bench and jury trials accounted for 4% of tort dispositions

In addition to collecting detailed case-level information on civil trials, the 2005 CJSSC included aggregate counts of trial and non-trial dispositions for all tort cases in 104 jurisdictions. Among these 104 jurisdictions, bench and jury trials accounted for an estimated 4% of the 140,929 tort cases disposed of in 2005 (table 13).

Trial rates also varied across the tort case categories.⁵ Nearly 8% of medical malpractice cases were disposed of through trial; in comparison, 3% of automobile accident and less than 1% of non-asbestos product liability tort cases were resolved through bench or jury trial.

⁵Not all 104 jurisdictions were capable of calculating trial rates by specific CJSSC case types. See table 13 for the jurisdictions that could calculate a trial rate by case type.

Table 13.

Percent of all tort cases disposed of by trial, by selected case types and jurisdictions, 2005

Case type	Number of trial and non-trial dispositions		Disposition by trial	
	Jurisdictions reporting ^a	Total dispositions ^b	Number ^c	Percentage
All torts	104	140,929	4,986	3.5%
Medical malpractice	49	4,685	367	7.8
Other/unknown tort	97	51,817	2,077	4.0
Professional malpractice	43	2,294	87	3.8
Automobile accident	77	63,339	2,122	3.4
Other product liability	47	8,146	47	0.6

Note: The percent of tort cases disposed of by trial were not calculated from all 156 jurisdictions participating in the 2005 CJSSC. A total of 104 jurisdictions were able to provide counts of both trial and non-trial dispositions for all tort cases. Fewer jurisdictions provided counts of trial and non-trial dispositions by specific case types. Only those case types where 40 or more jurisdictions could provide trial and non-trial are data shown. Data presented only represent counts of dispositions in the reporting counties. They are not weighted to provide national-level estimates.

^aIncludes number of jurisdictions that had the capacity to report counts of trial and non-trial tort dispositions by CJSSC case type.

^bIncludes tort cases disposed of by both non-trial (e.g., settlement, dismissal) and trial methods.

^cIncludes only those tort cases disposed of by jury or bench trial.

Methodology

Collection of data on general civil bench and jury trials

The Civil Justice Survey of State Courts (CJSSC) examines tort, contract, and real property trials disposed of in general jurisdiction courts. The 2005 CJSSC contained two sampling frames. First, the sample was designed so that inferences could be made about general civil trials litigated in the nation's 75 most populous counties. The 75 most populous counties design was maintained in order to compute trends in civil trial litigation. The sample design for the 75 most populous counties sample was the same as the ones used for the 2001, 1996, and 1992 BJS civil trial studies. The sample is a stratified sample with 46 of the 75 most populous counties selected.

In addition to sampling civil trial litigation in the nation's 75 most populous counties, a sample of from which to estimate the civil trial litigation outside the 75 most populous was developed.

The sample of civil trial litigation outside the nation's 75 most populous counties was constructed by first forming 2,518 primary sampling units (PSUs) from 3,066 counties—3,141 U.S. counties total minus the 75 counties from the 2001 CJSSC. The 2,518 PSUs were stratified into 50 strata according to census region, levels of urbanization, and population size which was based on the square root of the estimated 2004 population in each of these PSUs.

From the 50 strata, a total of 100 PSUs containing 110 counties were selected for the supplemental sample of counties outside the nation's 75 most populous. Hence, a total of 156 counties, 46 representing the nation's 75 most populous, and 110 representing the remainder of the nation were used for the sample.

Civil Justice Survey of State Courts Sampling Framework

	Sampling frame	
	75 most populous counties	Outside the 75 most populous counties
PSUs	75	2,518
Counties sampled	46	110
Cases meeting study criteria	5,038	744
Weighted cases	7,038	9,359
Weight	1.40	12.58

The second stage of the sample design involved generating lists of cases for coding. Each participating jurisdiction identified cases disposed of by jury trial or bench trial between January 1, 2005, and December 31, 2005. Some jurisdictions produced a list covering 12 months of trials for a fiscal year.

Trial cases sampled met the following criteria for jury and bench trials developed by the National Center for State Courts: both litigants appeared at trial, both sides presented contested evidence, at least one litigating party sought monetary damages, and the trial was heard through completion. These criteria excluded many cases initially classified as bench or jury trials from the sample. Civil trials in state courts of limited jurisdiction and small claim cases were also excluded.

For the sample of tort trials occurring in the nation's 75 most populous counties, data on 5,038 tort trials met the study criteria. When these trials are weighted to the nation's 75 most populous counties, they represent 7,038 tort trials. For the sample of civil trials occurring outside the nation's 75 most populous counties, data on 744 tort trials met the study criteria. When these trials are weighted, they represent 9,359 tort trials disposed in counties outside the nation's 75 most populous.

The weighted estimate of 16,397 tort trials represents a small percentage of the reported 7.5 million civil cases filed in all unified/general jurisdiction state courts nationwide in 2005. This nationwide count comprises all tort, contract, real property, small claims, probate/estate, mental health cases, and other civil cases filed in state courts of unified/general jurisdiction. Although no nationwide counts of tort filings in state courts are available, the National Center for State Courts Court Statistics Project reports 441,307 tort cases being filed in the unified/general jurisdiction courts of 34 states in 2005.⁶

⁶Source: See LaFountain, R., Schauffler, R., Strickland, S., Raftery, W., & Bromage, C. Examining the Work of State Courts, 2006: A National Perspective from the Court Statistics Project (National Center for State Courts 2007).

Collection of counts of all civil dispositions

In conjunction with collecting detailed case level information on general civil trials, the counties participating in this survey were asked to complete a matrix that contained information on all general civil cases disposed in 2005. Frequency counts were obtained for trial and non-trial dispositions in these counties. The non-trial dispositions included cases dismissed for want of prosecution, granted default or summary judgments, settled or withdrawn prior to trial, settled through mediation or another method of alternative dispute resolution, or transferred to another court. This secondary data collection was used to gather disposition outcomes in trial and non-trial cases by plaintiff claim type.

Definitions of case types

Animal attack: Personal injury or death caused by the negligent control of an animal.

Automobile accident: Personal injury or death caused by the negligent operation of a motor vehicle (not boat or airplane).

Conversion: Personal injury or property damage caused by the unauthorized use or control of another person's personal property.

False arrest, imprisonment: Arrest or imprisonment without proper legal authority.

Intentional tort: Personal injury, death, or property damage caused by another's intentional act.

Medical malpractice: Personal injury or death caused by a medical professional's negligent care.

Other professional malpractice: Personal injury, death, or property damage caused by the negligent act of a non-medical professional.

Other negligent acts: Negligence for an act not represented by other case categories.

Premises liability: Personal injury or death caused by dangerous condition of residential or commercial property.

Product liability: Personal injury or damage caused by the negligent manufacture or design of a product or exposure to toxic substances.

Slander, Libel, or Defamation: Damage caused to the career or reputation of an individual due to false accusations, comments, or statements made by another.



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The Bureau of Justice Statistics is the statistical agency of the U.S. Department of Justice. Michael D. Sinclair is acting director.

This BJS Bulletin presents the third release of findings in a series of reports from the Civil Justice Survey of State Courts, 2005. Thomas H. Cohen wrote this Bulletin under the supervision of Duren Banks. Tracey Kyckelhahn verified the report.

Data design and collection was conducted by the National Center for State Courts (NCSC); Nicole L. Waters, Ph.D. was the project director and provided comments. Shauna M. Strickland, Paula L. Hannaford-Agor, Cynthia G. Lee and Chantal G. Bromage of the NCSC also provided comments. James L. Green, M.A., Senior Statistician at Westat, designed the sample used for this data collection.

Tina Dorsey produced the report, Catherine Bird and Jill Duncan edited the report, and Jayne Robinson prepared the report for final printing, under the supervision of Doris J. James.

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This report in portable document format and in ASCII and its related statistical data and tables are available at the BJS World Wide Web Internet site: <<http://www.ojp.usdoj.gov/bjs/abstract/tbjtsc05.htm>>.

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Appendix Table 1.

Standard errors and confidence intervals for tort trials, by selected characteristics, 2005 Civil Justice Survey of State Courts

Case characteristics	Estimate ^a	One standard error	95%-confidence interval	
			Lower	Upper
Number of tort trials				
All tort trials	16,397	896	14,613	18,182
Automobile accident	9,431	622	8,193	10,668
Premises liability	1,863	130	1,604	2,123
Asbestos product liability	87	21	46	128
Other product liability	268	41	186	349
Intentional tort	725	112	501	948
Medical malpractice	2,449	264	1,924	2,974
Professional malpractice	150	25	100	201
Slander/libel	187	35	116	257
Animal attack	138	33	72	205
Conversion	378	108	163	593
False arrest/imprisonment	58	20	19	97
Other/unknown tort	664	94	476	852
Number of tort trials decided by—				
Jury trials ^b	14,761	834	13,100	16,421
Bench trials	1,637	208	1,223	2,051
Percent of tort trials with a plaintiff winner				
All tort trials	51.6%	1.8%	48.1%	55.2%
Jury trials ^c	51.3	1.9	47.5	55.2
Bench trials	56.2	4.7	46.8	65.5
Median award to plaintiff winners				
All tort trials	\$23,597	\$2,807	\$18,819	\$29,996
Jury trials ^c	23,600	3,045	17,876	29,999
Bench trials	20,902	4,149	14,838	31,359
Median punitive award to plaintiff winners				
All tort trials	\$52,814	\$18,582	\$23,493	\$97,483
Jury trials ^c	83,529	60,669	5,061	246,626
Bench trials	50,161	**	**	**
Median months from filing to final verdict or judgment				
All tort trials	22.3mo.	0.8mo.	20.6mo.	23.7mo.
Jury trials ^b	22.9	0.8	21.2	24.4
Bench trials	17.7	0.9	16.4	20.2

Note: Standard errors were calculated by using a replication method (i.e., jackknife, specifically JKN) available in WESVAR PC.

**Too few cases to reliably calculate standard errors and confidence intervals for punitive damages awarded in bench trials.

^aEstimates may vary slightly from those reported in the BJS report due to the use of WESVAR instead of SPSS for sample estimation.

^bIncludes jury trials, trials with a directed verdict, trials that ended in a judgment notwithstanding the verdict, and jury trials for defaulted defendants.

^cPlaintiff winner, damage awards, and punitive damages analyses excludes jury trials in which the jury heard the case but did not determine liability or damages, including trials with a directed verdict, trials that ended in a judgment notwithstanding the verdict, and jury trials for defaulted defendants.

Appendix Table 2.

Appendix table 2. Pairings of primary litigants in tort trials in state courts, by case type, 2005

Case type	Number of trials	Percent of trials won by plaintiffs	Final amount awarded to plaintiff winners	
			Number of trials	Median damage awards
All tort trials				
Individual only plaintiff v.—				
Individual only defendant	8,196	56.3%	4,938	\$14,000
Business defendant ^a	4,181	54.6	2,391	42,000
Government defendant ^b	1,047	35.0	368	61,000
Hospital defendant ^c	1,409	23.1	351	337,000
Business plaintiff^a v.—				
Individual only defendant	169	75.7%	149	\$16,000
Business defendant ^a	300	53.7	163	19,000
Government defendant ^b	64	89.1	57	70,000
Hospital defendant ^c	5	**	2	**
Automobile accident tort trials				
Individual only plaintiff v.—				
Individual only defendant	5,980	63.9%	3,989	\$11,000
Business defendant ^a	2,083	70.2	1,541	31,000
Government defendant ^b	484	39.0	187	42,000
Hospital defendant ^c	9	**	6	**
Business plaintiff^a v.—				
Individual only defendant	111	74.8%	111	\$14,000
Business defendant ^a	127	68.5	89	9,000
Government defendant ^b	30	86.7	26	70,000
Hospital defendant ^c	1	**	0	0
All other tort trials				
Individual only plaintiff v.—				
Individual only defendant	2,216	35.6%	949	\$77,000
Business defendant ^a	2,099	39.2	850	101,000
Government defendant ^b	564	31.2	180	71,000
Hospital defendant ^c	1,401	22.8	345	368,000
Business plaintiff^a v.—				
Individual only defendant	58	75.9%	37	\$125,000
Business defendant ^a	173	42.8	74	65,000
Government defendant ^b	34	91.2	31	109,000
Hospital defendant ^c	4	**	2	**

Note: For cases that involve multiple plaintiff or defendant types, cases are categorized using the following hierarchy: (1) hospital/medical company, (2) government agency, (3) business, and (4) individual. 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. Data on litigant pairing were available for 99.8% of all tort trials, 99.9% of automobile trials, and 99.6% of all non-automobile trials. Detail may not sum to total because of rounding. Damage awards rounded to the nearest thousand.

**Too few cases to obtain statistically reliable estimates.

^aIncludes insurance companies, banks, other business organizations not involved in the medical industry.

^bIncludes law enforcement and other government organizations.

^cIncludes any organization or medical practice that provides health care and dental treatment. Individual doctors are treated as individuals.

Appendix Table 3.

Types of tort trials in state courts in 46 of the nation's 75 most populous counties, by jurisdiction, 2005

County	Number ^a	Percent of tort trials by case type					
		Automobile accident	Premises liability	Product liability ^b	Intentional	Malpractice ^c	Other/unknown ^d
DuPage, IL	58	79.3%	6.9%	--%	--%	10.3%	3.4%
Fairfield, CT	55	78.2	10.9	--	7.3	1.8	1.8
Mecklenburg, NC	18	77.8	--	--	5.6	16.7	--
Franklin, OH	89	75.3	1.1	--	3.4	13.5	6.7
Hennepin, MN	121	71.1	6.6	0.8	5.0	8.3	8.3
Marion, IN	88	70.5	4.5	3.4	1.1	8.0	12.5
El Paso, TX	20	70.0	15.0	5.0	5.0	--	5.0
Middlesex, NJ	171	69.6	17.5	3.5	--	7.6	1.8
Milwaukee, WI	90	67.8	15.6	1.1	4.4	6.7	4.4
Essex, NJ	100	65.0	14.0	1.0	5.0	10.0	5.0
Hartford, CT	53	64.2	9.4	3.8	9.4	11.3	1.9
Fairfax, VA	105	61.9	8.6	1.0	5.7	13.3	9.5
Cuyahoga, OH	172	60.5	8.1	4.1	2.3	21.5	3.5
King, WA	119	59.7	10.9	2.5	10.1	11.8	5.0
Philadelphia, PA	539	58.6	13.2	10.2	2.6	11.7	3.7
Dallas, TX	138	58.0	8.7	1.4	4.3	21.7	5.8
Pima, AZ	55	54.5	16.4	1.8	1.8	12.7	12.7
Fulton, GA	17	52.9	23.5	5.9	--	11.8	5.9
St. Louis, MO	94	52.1	16.0	--	3.2	20.2	8.5
San Francisco, CA	79	51.9	12.7	12.7	6.3	6.3	10.1
Bexar, TX	56	51.8	12.5	7.1	1.8	17.9	8.9
San Bernardino, CA	58	51.7	3.4	1.7	1.7	32.8	8.6
Harris, TX	284	51.1	21.5	1.8	4.6	16.5	4.6
Fresno, CA	30	50.0	20.0	10.0	--	13.3	6.7
Bergen, NJ	103	49.5	18.4	2.9	2.9	23.3	2.9
Palm Beach, FL	77	49.4	23.4	3.9	5.2	14.3	3.9
Ventura, CA	39	48.7	23.1	--	--	17.9	10.3
Alameda, CA	105	47.6	19.0	2.9	10.5	15.2	4.8
Dade, FL	176	45.5	22.7	5.1	1.1	14.2	11.4
Cook, IL	498	45.0	17.5	1.2	2.2	27.5	6.6
Santa Clara, CA	32	43.8	18.8	3.1	6.3	9.4	18.8
Maricopa, AZ	164	43.3	19.5	1.2	7.9	21.3	6.7
Jefferson, KY	76	42.1	5.3	3.9	13.2	22.4	13.2
Contra Costa, CA	12	41.7	16.7	--	8.3	16.7	16.7
Honolulu, HI	12	41.7	8.3	--	16.7	16.7	16.7
Allegheny, PA	122	38.5	18.0	3.3	4.1	24.6	11.5
Worcester, MA	52	34.6	17.3	--	19.2	21.2	7.7
Orange, CA	105	34.3	20.0	3.8	5.7	24.8	11.4
Orange, FL	50	34.0	20.0	4.0	4.0	32.0	6.0
Wayne, MI	104	32.7	8.7	1.0	8.7	37.5	11.5
Essex, MA	40	30.0	25.0	--	5.0	35.0	5.0
Oakland, MI	90	30.0	8.9	1.1	7.8	33.3	18.9
Middlesex, MA	77	24.7	28.6	5.2	2.6	32.5	6.5
Los Angeles, CA	138	23.9	18.1	3.6	10.1	23.2	21.0
New York, NY	267	19.1	34.5	1.1	4.9	36.0	4.5
Suffolk, MA	90	17.8	18.9	3.3	22.2	32.2	5.6

Note: The counties used to estimate trials outside the 75 most populous counties were excluded from table because many of these counties contained too few trials to obtain statistically reliable estimates. For a comprehensive view of civil trials concluded in the national sample of 156 counties, see *Civil Bench and Jury Trials in State Courts, 2005* at <<http://www.ojp.usdoj.gov/bjs/abstract/cbjtsc05.htm>>.

--No cases recorded.

^aIncludes bench and jury trials, trials with a directed verdict, trials that ended in a judgment notwithstanding the verdict, and jury trials for defaulted defendants.

^bIncludes asbestos trials.

^cIncludes medical and other professional malpractice trials.

^dIncludes animal attack, slander or libel, false arrest, imprisonment, conversion, other and unknown torts.

Appendix Table 4.

Percentage of plaintiff winners in tort trials in state courts in 46 of the nation's 75 most populous counties, by jurisdiction, 2005

County	All tort trials	
	Number	Percent plaintiff winners
Mecklenburg, NC	18	83.3%
Franklin, OH	89	71.9
Fresno, CA	30	70.0
King, WA	119	68.9
Milwaukee, WI	88	65.9
DuPage, IL	58	65.5
Palm Beach, FL	77	63.6
Pima, AZ	55	63.6
Marion, IN	88	62.5
Hartford, CT	53	62.3
Fairfield, CT	55	61.8
Dade, FL	176	60.2
Philadelphia, PA	539	57.5
Alameda, CA	105	56.2
St. Louis, MO	94	55.3
Fairfax, VA	105	54.3
Orange, FL	50	54.0
San Bernardino, CA	58	53.4
San Francisco, CA	79	53.2
Cuyahoga, OH	171	50.9
El Paso, TX	20	50.0
Honolulu, HI	12	50.0
Harris, TX	284	47.5
Santa Clara, CA	32	46.9
Hennepin, MN	121	46.3
Maricopa, AZ	163	46.0
Cook, IL	497	45.7
Ventura, CA	39	43.6
Oakland, MI	90	43.3
Los Angeles, CA	138	42.8
New York, NY	267	41.9
Orange, CA	105	41.9
Fulton, GA	17	41.2
Essex, NJ	100	41.0
Bexar, TX	56	39.3
Allegheny, PA	122	37.7
Dallas, TX	138	36.2
Jefferson, KY	76	31.6
Middlesex, NJ	170	31.2
Bergen, NJ	103	27.2
Wayne, MI	104	24.0
Suffolk, MA	90	22.2
Essex, MA	40	20.0
Worcester, MA	52	19.2
Middlesex, MA	77	18.2
Contra Costa, CA	12	16.7

Note. The counties used to estimate trials outside the 75 most populous counties were excluded from this table because many of these counties contained too few trials to obtain statistically reliable estimates. For a comprehensive view of civil trials concluded in the national sample of 156 counties, see *Civil Bench and Jury Trials in State Courts, 2005* at <<http://www.ojp.usdoj.gov/bjs/abstract/cbjtsc05.htm>>. Tort trials include bench and jury trials, trials with a directed verdict, trials that ended in a judgment notwithstanding the verdict, and jury trials for defaulted defendants.

Appendix Table 5.

Final damage awards for plaintiff winners in tort trials in state courts in 46 of the nation's 75 most populous counties, by jurisdiction, 2005

County	Tort trials with plaintiff award winners	
	Number of plaintiff winners ^a	Median final award ^b
Contra Costa, CA	2	^
New York, NY	105	\$227,000
Dade, FL	97	128,000
Oakland, MI	37	123,000
Wayne, MI	16	119,000
Palm Beach, FL	48	116,000
Los Angeles, CA	58	106,000
Essex, NJ	40	88,000
Honolulu, HI	5	80,000
Middlesex, NJ	51	79,000
Cook, IL	225	68,000
Suffolk, MA	19	60,000
Bergen, NJ	28	58,000
Ventura, CA	17	56,000
Orange, CA	41	53,000
Middlesex, MA	14	53,000
Orange, FL	27	49,000
Jefferson, KY	18	46,000
San Francisco, CA	42	43,000
Pima, AZ	34	39,000
Fresno, CA	20	39,000
Maricopa, AZ	73	34,000
Alameda, CA	59	30,000
Hartford, CT	33	30,000
Essex, MA	7	29,000
King, WA	81	29,000
Worcester, MA	9	26,000
Bexar, TX	22	26,000
Allegheny, PA	42	23,000
Milwaukee, WI	49	22,000
Fairfield, CT	34	21,000
Philadelphia, PA	308	20,000
Harris, TX	135	20,000
San Bernardino, CA	31	19,000
Santa Clara, CA	14	19,000
Hennepin, MN	50	18,000
El Paso, TX	9	18,000
Franklin, OH	61	16,000
Fairfax, VA	55	15,000
Marion, IN	55	13,000
Dallas, TX	47	13,000
St. Louis, MO	52	12,000
Cuyahoga, OH	87	10,000
Fulton, GA	7	8,000
Mecklenburg, NC	14	8,000
DuPage, IL	38	6,000

Note. The counties used to estimate trials outside the 75 most populous counties were excluded from table because many of these counties contained too few trials to obtain statistically reliable estimates. For a comprehensive view of civil trials concluded in the national sample of 156 counties, see *Civil Bench and Jury Trials in State Courts, 2005* at <<http://www.ojp.usdoj.gov/bjs/abstract/cbjtsc05.htm>>. Variation in award amounts can be partially explained by cost of living among respective counties.

[^]Too few cases to provide a reliable median.

^aIncludes bench and jury trials, trials with a directed verdict, trials that ended in a judgment notwithstanding the verdict, and jury trials for defaulted defendants with plaintiff award winners.

^bAward data are rounded to the nearest thousand. Median amounts are calculated for compensatory plus punitive damage awards, after adjustments for contributory negligence, prior settlement, high/low agreement and damage caps but prior to post-trial activity and appeals.