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MYTHBUSTER!

FACTS ABOUT CIVIL LITIGATION IN THE UNITED STATES

CONTRARY TO POPULAR MYTH, FEW INJURED AMERICANS FILE LAWSUITS.

- Only 10 percent of injured Americans ever file a claim for compensation, which includes informal demands and insurance claims. Only two percent file lawsuits.¹
- Academics generally concede there is no evidence that “frivolous” lawsuits are a problem.²
- **Focus on Medical Malpractice.** In 1999, the Institute of Medicine (IOM) concluded that between 44,000 and 98,000 Americans die each year (and 300,000 are injured) due to avoidable medical errors in hospitals alone. Yet eight times as many patients are injured as ever file a claim; 16 times as many suffer injuries as receive any compensation.³ Recent studies have discovered even higher death rates. For example, in 2004, hospital rating company HealthGrades examined national Medicare data and reported that IOM’s finding of 98,000 preventable deaths was too low and that a figure of 195,000 annual deaths was more accurate.⁴ Similarly, in 2009, a Hearst Newspapers national investigation concluded that the number of fatalities from avoidable medical injuries approaches 200,000 per year in the United States.⁵

At the highest level, the estimated number of medical injuries (in hospitals and otherwise) is more than one million per year; yet approximately 85,000 malpractice suits are filed annually. “With about ten times as many injuries as malpractice claims, the only conclusion possible is that injured patients rarely file lawsuits.”⁶

The Harvard School of Public Health closely examined 1,452 closed claims and concluded that “[p]ortraits of a malpractice system that is stricken with frivolous litigation are overblown.”⁷ The study found that most injuries resulting in claims were caused by medical error, and that those that weren’t were, nevertheless, not “frivolous” claims.⁸

TORT (PERSONAL INJURY) CASE FILINGS ARE DECLINING.

- Long-term data from the National Center for State Courts show a 21 percent decline in tort filings in 30 states from 1996 to 2005.⁹ In contrast, contract litigation (often businesses suing businesses) increased 25 percent in 13 states during the same ten-year period.¹⁰

SECURITIES FRAUD CLASS ACTION CASE FILINGS ARE DECREASING.

- “Federal securities fraud class action activity in 2009 was down sharply compared to 2008 and historical averages,” according to a 2010 report by the Stanford Law School Securities Class Action Clearinghouse, a joint project between Stanford Law School and Cornerstone Research.¹¹ “A total of 169 federal securities class actions were filed in 2009, a 24 percent decline from the 223 observed in 2008, and 14 percent below the average of 197 observed between 1997 and 2008. Litigation activity related to the credit crisis declined even more markedly from 100 filings in 2008 to only 53 in 2009, a 47 percent decrease.”¹²

TORT CASES REPRESENT A SMALL PERCENTAGE OF CIVIL CASELOADS.

- In 2007, monetary disputes (contract and small claims cases) accounted for 70 percent of civil caseloads in seven states reporting, while tort cases represented only 6 percent of civil caseloads in those states.¹³

TORT CASELOADS ARE DECLINING.

- Tort caseloads have ‘continued a prolonged decrease,’ falling by 9 percent from 2006 to 2007 in 14 general jurisdiction courts reporting, whereas contract caseloads “rose sharply,” increasing by 11 percent in those courts over the same time period.¹⁴
- From 1998-2007, tort caseloads in 14 general jurisdiction courts reporting decreased 24 percent, while contract caseloads, where businesses are more heavily represented as plaintiffs, grew 37 percent.¹⁵

CIVIL TRIALS ARE NOT CLOGGING THE COURTS; THE VAST MAJORITY OF TORT CASES ARE RESOLVED BY NEITHER JUDGES NOR JURIES.

- In 2005, jury and bench trials collectively accounted for 3.4 percent of all tort, contract and real property dispositions in 116 jurisdictions reporting.¹⁶ As the Department of Justice’s Bureau of Justice Statistics explained, “Civil bench and jury trials are rare but important events.”¹⁷
- In 2005, tort jury and bench trials together constituted 1.3 percent of all general civil dispositions in 79 jurisdictions reporting¹⁸ and 3.5 percent of all tort dispositions in 104 jurisdictions reporting.¹⁹
- Long-term data from the nation’s 75 most populous counties show that from 1992 to 2005, the number of civil trials in state courts fell by 51.8 percent.²⁰
- Between 1996 and 2005, the number of tort trials concluded in state courts in the nation’s 75 most populous counties dropped by 31.5 percent.²¹ Among the tort case types, product liability registered one of the largest declines – falling by 46.7 percent – while the number of medical malpractice trials remained fairly stable from 1996 through 2005.²²
- **Focus on Medical Malpractice.** In 2005, only 7.8 percent of medical malpractice cases were disposed of by trial in 49 jurisdictions reporting.²³
- **Focus on Non-Asbestos Product Liability.** In 2005, only .6 percent of non-asbestos product liability cases were resolved through bench or jury trial in 47 jurisdictions reporting.²⁴

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NOTES

¹ David A. Hyman and Charles Silver, “Medical Malpractice Litigation and Tort Reform: It’s the Incentives, Stupid,” 59 *Vand. L. Rev.* 1085, 1089 (May 2006) (citing Thomas F. Burke, *Lawyers, Lawsuits, and Legal Rights: The Battle over Litigation in American Society* 3 (2002)); Rand Institute for Civil Justice, *Compensation for Accidental Injuries in the United States* (1991).

² See, e.g., David A. Hyman and Charles Silver, “Medical Malpractice Litigation and Tort Reform: It’s the Incentives, Stupid,” 59 *Vand. L. Rev.* 1085, 1101 (May 2006) (citing Chris Guthrie, “Framing Frivolous Litigation: A Psychological Theory,” 67 *U. Chi. L. Rev.* 163, 163 n.2 (2000) (citing sources recognizing dearth of hard evidence showing frivolous lawsuits are a serious problem). See also, Testimony of Duke Law School Professor Neil Vidmar before the U.S. Senate Committee on Health, Education, Labor and Pensions, Hearing on “Medical Liability: New Ideas for Making the System Work Better for Patients,” June 22, 2006 at 6 (“There is a widespread belief that injured patients sue at the drop of a hat ... In fact, the opposite appears to be true.”)

³ National Academy of Sciences, Institute of Medicine, *To Err is Human* (1999); Harvard Medical Practice Study (1990).

⁴ HealthGrades press release, “In-Hospital Deaths From Medical Errors At 195,000 Per Year, HealthGrades Study Finds,” July 27, 2004, found at www.healthgrades.com/media/DMS/pdf/InhospitalDeathsPatientSafetyPressRelease072704.pdf. See also, Testimony of Duke Law School Professor Neil Vidmar before the U.S. Senate Committee on Health, Education, Labor and Pensions, Hearing on “Medical Liability: New Ideas for Making the System Work Better for Patients,” June 22, 2006 at 5.

⁵ “Dead By Mistake,” *Hearst Newspapers*, found at <http://www.chron.com/deadbymistake/>.

⁶ David A. Hyman and Charles Silver, “Medical Malpractice Litigation and Tort Reform: It’s the Incentives, Stupid,” 59 *Vand. L. Rev.* 1085, 1089 (May 2006) (citing Brian Ostrom, Neal Kauder & Robert LaFountain, *Examining the Work of State Courts*, 2003 at 23).

⁷ David M. Studdert et al., “Claims, Errors, and Compensation Payments in Medical Malpractice Litigation,” *New England Journal of Medicine*, May 11, 2006.

⁸ *Ibid.*

⁹ U.S. Department of Justice, Bureau of Justice Statistics, “Civil Bench and Jury Trials in State Courts, 2005,” NCJ 223851 (October 2008)(revised April 9, 2009) at 9, found at <http://bjs.ojp.usdoj.gov/content/pub/pdf/cbjtsc05.pdf>.

¹⁰ *Ibid.*

¹¹ Stanford Law School Securities Class Action Clearinghouse news release, “Securities Class Action Filings Decline Sharply in 2009, With Steepest Drop in Claims Related to the Credit Crisis, According to the Annual Report by Stanford Law School and Cornerstone Research, January 5, 2010, found at http://securities.stanford.edu/scac_press/Cornerstone_Research_Filings_2009_Release.pdf.

¹² *Ibid.*

¹³ Richard LaFountain et al., *Examining the Work of State Courts: A National Perspective from the Court Statistics Project* (National Center for State Courts 2009) at 1, 2, found at http://www.ncsconline.org/D_Research/csp/2007B_files/EWSC-2007-v21-online.pdf. (The Court Statistics Project

is a joint project of the Conference of State Court Administrators, the U.S. Department of Justice's Bureau of Justice Statistics and the National Center for State Courts.)

¹⁴ *Id.* at 1, 3.

¹⁵ *Id.* at 3.

¹⁶ "Civil Bench and Jury Trials in State Courts, 2005," *supra* n.9, at 1, 9.

¹⁷ *Id.* at 1.

¹⁸ *Id.* at 9.

¹⁹ U.S. Department of Justice, Bureau of Justice Statistics, "Tort Bench and Jury Trials in State Courts, 2005," NCJ 228129 (November 2009) at 14 (Table 13), found at <http://bjs.ojp.usdoj.gov/content/pub/pdf/tbjtsc05.pdf>.

²⁰ "Civil Bench and Jury Trials in State Courts, 2005," *supra* n.9, at 8, 9 (Table 10).

²¹ "Tort Bench and Jury Trials in State Courts, 2005," *supra* n.19, at 12 (Table 12).

²² *Ibid.*

²³ *Id.* at 14 (Table 13).

²⁴ *Ibid.*