

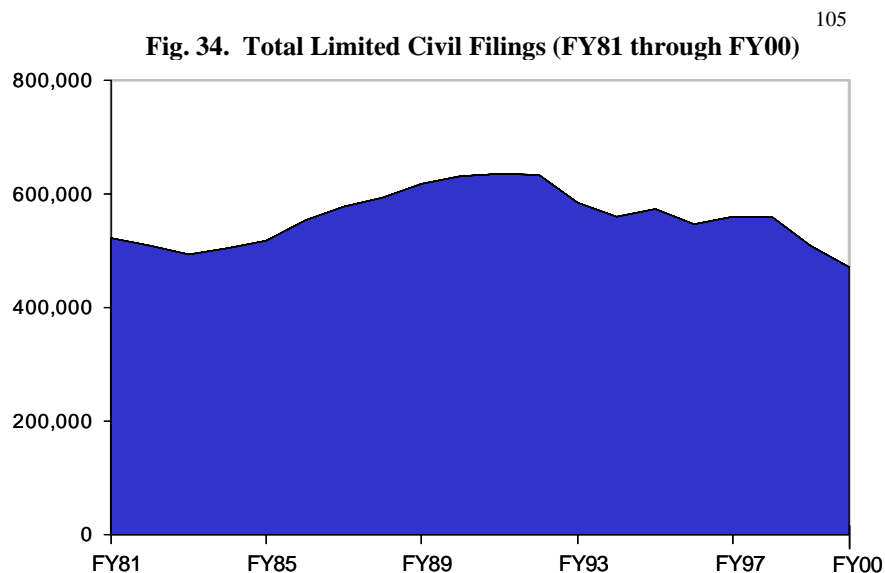
D. LIMITED CIVIL CASES

The Limited Civil case-category is composed of general civil cases seeking monetary damages up to \$25,000. It has more filings than any other civil case type. Individual case types within this case category are as follows:

- Auto Torts
- Other Personal Injury/ Property Damage/Wrongful Death
- Other Tort
- Other Civil
- Contracts
- Real Property
- Employment
- Enforcement of Judgment
- Unlawful Detainers
- Judicial Review
- Complex Litigation
- Small Claims Appeals

Except for Unlawful Detainers, the Limited Civil case-type category was not disaggregated during the 20 years studied.

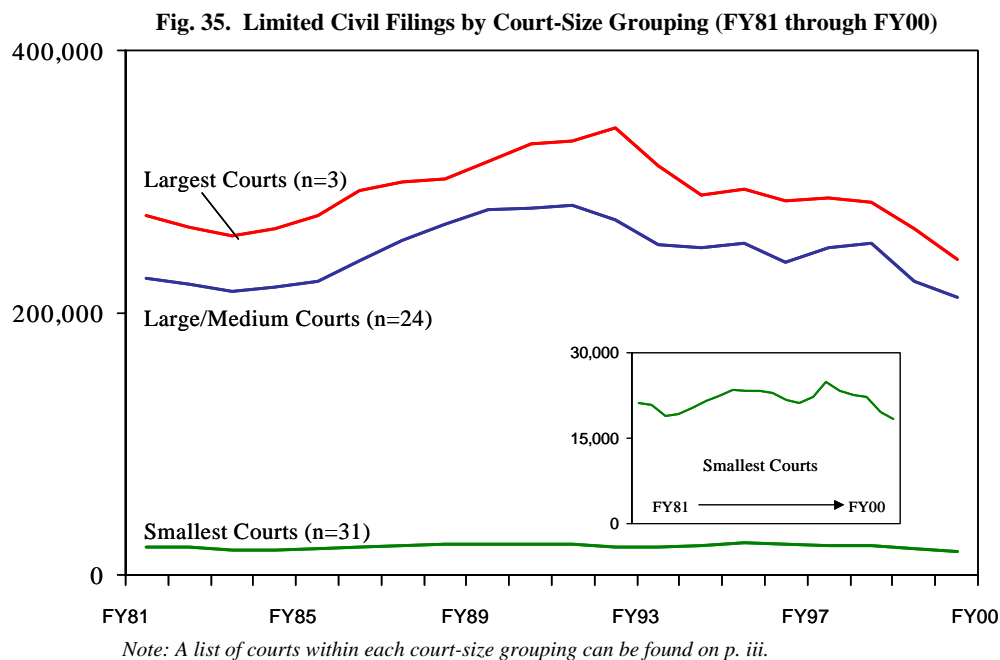
There were fewer filings statewide in FY00 than in FY81, a decrease of 50,606 cases (-10%) over the 20 years studied. In the 1980s, filings increased steadily, reaching a peak of 114,960 new cases in FY91. Since FY93, filings have fallen by a total of 74,000 cases. Between FY99 and FY00, filings fell more than in the previous six years (about 88,500 cases); thus, over half of the decline in filings for the 1990s was in the last two fiscal years.



¹⁰⁵ Filing and disposition data cited or represented are from Judicial Branch Statistical Information System (JBSIS) unless otherwise noted. For a list of individual case-types in a case-type category, see p. iii. Convention for notation of fiscal years is also found on p. iii.

1. Filings by Court-Size Grouping

All court-size groupings had fewer filings in FY00 than in FY81, and all had drops in the early 1980s followed by steady increases until around FY92. Both the Largest and the Large/Medium size groupings experienced fairly steady declines after FY92. The Smallest courts also experienced a decline in filings in the 1990s, but most of the loss came after an increase between FY94 and FY95.



As stated above, the significant increase in the 1980s followed by a decline in the 1990s produced a net decrease of 10%. Los Angeles's drop in filings represents 62% of the total drop for the 20-year period studied.

2. Filing Influences

Because individual case-type data was not disaggregated for Limited Civil cases in the 20 years studied for this report, it is hard to evaluate the influence of specific case types within the Limited Civil case category. However, a study commissioned by the Judicial Council of California and the California Law Revision Commission concerning California's three-track system provides a snapshot of caseload breakdown in three courts. The filing numbers represented in Table 10 below do not include unlawful detainers and unemployment compensation reimbursements filed by the State of California primarily because these case types are processed differently than other case types in this category.¹⁰⁶

¹⁰⁶ Unlawful detainers comprise the largest percentage of all filings for Fresno, San Diego and San Francisco for FY96 through FY01, averaging approximately 37% for Fresno, 46% for San Diego, and 39% for San Francisco. By law, case-processing time for unlawful detainers is much shorter (most trials occur within 45 days after service of the summons and complaint) than for other case types in this category. Further, a great many unlawful detainers are resolved by default judgment.

Table 10. Limited Civil Caseload (Average monthly caseload)

Case Type	San Diego (2000)		Fresno (2001)		San Francisco (2001)	
	Filings	%	Filings	%	Filings	%
Collections	757.7	58.7	237.4	52.7	216.8	46.9
Breach of Contract	189.3	14.7	66.5	16.0	59.9	13.0
Tort PI, PD, WD	243.0	18.8	76.2	18.4	146.8	31.7
Other	100.1	7.8	35.0	8.4	38.9	8.4
Total	1290.1	100	415.1	100	462.4	100

Aside from unlawful detainers, the above table would indicate the bulk of Limited Civil are contract cases (collection cases are counted in JBSIS as contract filings). If other courts follow this same trend (and there is no way of knowing if these three courts are representative of the state as a whole), any fluctuations in contract filings should significantly influence trends for the Limited Civil case category. Thomas B. Marvell theorized that contract trends are associated with changes in the economy.¹⁰⁷ When the economy is good, filings increase because more people enter into contracts. When there are more contracts, there are more breaches of contracts (including failures to pay). In recessions, fewer people enter into contracts, which results in fewer breaches. Whether or not the boom of the 1990s in California generated more contracts and, thus, more contract filings, is undeterminable for the period studied because filing data was not disaggregated. Because Limited Civil filings fell in the 1990s, the most that could be said from Marvell’s theoretical standpoint is that any increase in the number of contract filings in the 1990s would have had the effect of slowing the overall rate of decline of Limited Civil filings.

To the extent that Limited Civil cases include personal injury claims, factors influencing the Unlimited Civil personal injury cases similarly apply to the Limited Civil cases. Factors affecting civil matters discussed below include (a) overturning of *Royal Globe*, (b) economics of practicing law, (c) changes in Auto Tort laws related to DUIs, and 4) Laws requiring safety restraints.

a. Overruling *Royal Globe*

In 1979, the California Supreme Court decided the case of *Royal Globe Ins. Co. v. Superior Court*¹⁰⁸ (*Royal Globe*). The *Royal Globe* decision extended the statutory proposition that an insurance company is obliged to deal with the party injured by the policyholder in good faith, giving third parties a claim against the insurance company on the basis of its “bad faith.” The prospect of bad-faith claims being filed changed the behavior of both insurance companies and policyholders.¹⁰⁹

¹⁰⁷ Thomas B. Marvell, “Caseload Growth—Past And Future Trends” (Oct.-Nov. 1987) *Judicature*, pp. 151-161; “The Impact of Jurisdictional Amounts on Trial Court Caseload” (Apr.-May 1986) *Judicature*, pp.367-371; “Civil Caseloads: The Impact of the Economy and Trial Judgeships Increases” (Oct.-Nov. 1985) *Judicature*, pp.153-156.

¹⁰⁸ (1979) 23 Cal.3d 880.

¹⁰⁹ Angela Hawken, Stephen Carroll, and Allan Abrahamse, *The Effects of Third-Party, Bad Faith Doctrine on Automobile Insurance Costs and Compensation* (Rand Institute for Civil Justice) (forthcoming).

According to Hawkin, Carroll, and Abrahamse, the amounts paid by insurance companies to settle claims increased after *Royal Globe*. The increased payouts made smaller claims more cost-effective for attorneys because costly bad-faith tactics such as incessant discovery were significantly curtailed.¹¹⁰ The 50% increase in unlimited civil personal injury filings in the 1980s suggests that the *Royal Globe* decision was at least partially responsible for the increase in limited civil as well.

Nine years later, in 1988, the Supreme Court reversed *Royal Globe* in *Moradi-Shalal v. Fireman's Fund Insurance Cos.*¹¹¹ (*Fireman's Fund*). Following this decision, the economics of personal injury litigation again changed. By 1992, payments by insurance companies to California claimants were 29% lower than might have been expected based on the payouts in the *Royal Globe* era. By 1997, payments were 35% lower. The decision's impact once again primarily affected smaller claims. Researchers from the Rand Institute of Civil Justice calculated that without the *Fireman's Fund* decision, payments for the bottom 25th percentile of claims paid would have been 33% higher than they actually were. Consequently, a decline in representation for people with smaller tort claims occurred.¹¹² And although some of the litigants certainly proceeded without representation, it is also likely that many did not file at all.¹¹³

b. Economics of Practicing Law

A number of other factors that can be categorized as economic in nature influence filing trends. Practicing law has two primary economic components: the cost of doing business (for attorneys) and the cost of hiring attorneys (for clients). Each changed in the 1990s and each impacted filings.

(1) The Cost Of Doing Business

Several newspaper articles in 2000—2001 focused on the increasing costs of litigation and the declining recoveries, which have led attorneys to reject small-valued tort cases. In addition, plaintiffs' attorneys assert that insurance companies increasingly are resisting discovery requests and that more experts are needed at trial, both of which raise costs.¹¹⁴

¹¹⁰ *Ibid.*

¹¹¹ (1988) 46 Cal.3d 287.

¹¹² Rand's findings were based on the number of administrative (with the potential for arbitration) claims with attorney representation filed with insurance companies. It is probable that if attorneys were no longer accepting administrative claims with insurance companies, they also were not representing these claimants in court.

¹¹³ Another "economic" influence that relates to a case's value as seen by an attorney is the passage of Proposition 213. That new law, which took effect January 1, 1997, limited uninsured drivers to compensatory damages only, with no funds to be paid for "pain and suffering." This rendered such claims economically unattractive for attorneys. Proposition 213 is cited by many interviewees as an important factor in the decline in auto personal injury lawsuits. See also "Letter to the Editor from Robert A. Reed," *California Bar Journal* (July 2001) p. 8.

¹¹⁴ See, e.g., Ted Rohrlich, "We Aren't Seeing You in Court," *Los Angeles Times*, (Feb. 1, 2001); Quentin L. Kopp, "California's Courts Are Putting Themselves Out of Business," *San Francisco Recorder*, (Feb. 7, 2001); Mike McKee, "Trouble Among the Stacks," (Jan. 25, 2000), obtained through the Internet Web site of CalLaw. See also, "Letter to the Editor from Nancy Lee Wolfen," *California Bar Journal*, (July 2001) pp. 8—9.

(2) The cost of hiring an attorney

In its *2000 Survey of Law Firm Economics*, Altman Weil, Inc. found the average hourly fee for partners with 25-29 years' experience and for associates with five years' experience doubled between 1985 and 2000 in California. In 2000, the median hourly rate for an equity partner in California was \$295; the median for associates was \$190.¹¹⁵ In contrast, a recent study conducted for the Administrative Office of the Courts indicates that in family support cases, two-thirds of the parents seeking support had gross earnings of \$3,000 a month or less. The median net income was \$1,655.¹¹⁶ The average associate in a California law firm would consume the entire monthly net income of a median-income parent in less than nine hours of work. It is reasonable to assume that some percent of the decline in Limited Civil cases is traceable to people choosing not to go to court because they cannot afford to hire an attorney, and they do not feel capable of representing themselves.

c. Changes in Auto Tort Laws Related to DUIs

To the extent that auto-related tort claims fall under \$25,000, factors influencing Auto PI in unlimited civil cases probably influence auto-related limited civil cases as well, especially those cases involving injuries and property damage resulting from alcohol-related accidents.

In 1990, California enacted the .08 blood alcohol content (BAC) law and implemented an immediate driver license suspension, also referred to as an "Administrative Per Se" (APS) action. APS requires the DMV to automatically suspend or revoke the driving privilege of persons who are driving with blood alcohol levels of .08 or more, or who refuses a chemical test upon arrest. In 1994, Zero Tolerance Campaigns reduced the BAC in APS actions to .01 for persons under the age of 21. The .01 APS actions carry an automatic one-year license suspension.

Between 1994 and 2000, there were 74,000 .01 APS suspensions.¹¹⁷ Research shows a significant portion of those persons at-fault in alcohol-related accidents had prior traffic convictions and/or prior suspensions.¹¹⁸ The absence of high-risk young drivers on the road as a result of APS actions may have had the added benefit of reducing the number of accidents resulting from reckless driving, for example, in the second half of the 1990s.¹¹⁹ Such reductions may account for some of the drop in civil limited tort filings. More research is required.

The APS action for a BAC .08, on the first action, is a 4-month suspension with only 30 days of actual suspension if the driver can show insurance coverage, has enrolled in an alcohol education

¹¹⁵ *The 2000 Survey of Law Firm Economics* (Newton Square, PA: Altman Well, Inc., 2000).

¹¹⁶ David M. Betson, et al., *2001 Review Of California's Statewide Uniform Child Support Guideline* (San Francisco, CA: Public Studies, Inc.) p. 27 (draft report).

¹¹⁷ Department of Motor Vehicles, *DUI Summary Statistics: 1989-1999*, <http://www.dmv.ca.gov/about/profile/rd/duistats89_99.htm> .

¹¹⁸ See annual *Traffic Safety Facts* reports compiled and published by the National Highway Traffic Safety Administration located at <<http://www.nhtsa.do.gov>> .

¹¹⁹ The under-21 driver is over-represented in accidents resulting from reckless driving, especially speeding. See Rhonda Aizenberg, et al. *Teen and Senior Drivers*, (Sacramento, CA: California Department of Motor Vehicles and Beverly Foundation, Government Publications).

and treatment program, and has paid all fines. The remaining three months will involve some restrictions but driving privileges are restored. Although there are as many as 150,000 APS .08 suspensions per year, the short duration of the .08 BAC suspension probably does not contribute to declines in accident rates as much as the one-year suspensions of younger, more high-risk drivers may be contributing to such declines. On the other hand, adult offenders are made aware that repeat APS actions can result in severe penalties, including long suspensions. The threat of longer suspensions has served to deter DUI recidivism,¹²⁰ and may well be deterring aberrant driving behavior in general. The extent to which changes in behavior influence auto tort filings will need further research.

d. Automobile Safety Restraints

Nationally, deaths and injuries related to automobile collisions have been declining since the 1970s. California saw a reduction of 40,000 injury accidents from 1988 through 2000. One explanation for this decline is the use of seat belts. The National Highway and Traffic Safety Administration (NHTSA) found in a recent report that lap/shoulder safety belts reduce the risk of fatal injury to front-seat car occupants by 45% and the risk of moderate-to-critical injury by 50%. Airbags further reduce the risks of injury in automobile accidents. These reductions probably impact Auto—PI, although it is less clear how California was influenced in light of the huge increase in filings during the 1980s. More research is needed.

e. Impact of Age on Future Auto Tort Filing Trends

(1) Teen Drivers

California is currently experiencing a demographic shift that will result in a 36% increase in the state's adolescent population (ages 10 to 17) to nearly five million by 2005. This growth rate is 2.2 times greater than that of California's overall population and three times greater than the nation's overall population.¹²¹ A rise in the teen population will undoubtedly mean a rise in the number of teen drivers on the road, which, in turn, could result in an increase in auto tort filings as teens are overrepresented in auto accidents.¹²² However, in 1998, California's Graduated Driver License (GDL) went into effect. GDL is designed to address the two main causes underlying teen auto accidents—inexperience and distraction caused by teen passengers.¹²³

GDL involves three licensing phases. The first phase entails obtaining a drivers' permit, which requires passing a written driving test, completing a certified drivers' education program, and 50

¹²⁰ See Patricia N. Rogers, "California's .08 BAC Limit and Administrative License Suspension Laws Working to Deter Drunk Driving Accidents" [DMV] *Research Notes* (Summer 1997).

¹²¹ *Children Now Report Card 2000*, < <http://www.childrennow.org/California/rc-2000/reportcard-2k.htm> >.

¹²² In the 1990s, teens comprised about 4% of the driving population but were involved in 9% of all fatal accidents and 10% of all injury accidents. See Allan F. Williams, *Teenage Passengers in Motor Vehicle Crashes: A Summary of Current Research* (Insurance Institute for Highway Safety Publications, Dec. 2001).

¹²³ Several passenger studies found an increase in crash rates for each additional passenger in a vehicle driven by a youth. 16- to 17-year-old drivers experienced 1.6 crashes per 10,000 trips with no passengers; 2.3 crashes with 1 passenger; 3.3 crashes with two passengers; and 6.3 crashes with 3+ passengers. Boy passengers pose the greatest risk. See Allan F. Williams, *Teenage Passengers in Motor Vehicle Crashes: A Summary of Current Research*, (Insurance Institute for Highway Safety Publications, Dec. 2001).

hours of supervised driving that includes 10 hours of night driving. Upon completing the phase one requirements, the teen may take a driving test for a provisional license. The provisional phase of the GDL involves several restrictions and conditions:

1. No passengers under the age of 20 for the first 6 months unless an adult is present,
2. No driving between midnight and 5:00 a.m. for the first 12 months unless an adult is present, and
3. Maintaining a clear record.

One citation or at-fault accident within the first 12 months results in a warning; two or more results in further license restrictions or suspensions. Full licensure occurs at age 18 provided there are no outstanding DMV or court-ordered restrictions, suspensions, or probation.

Although it is too early to know exactly how the GDL will impact filings, especially in light of this population's growth, there has been a 24% drop in at-fault collisions involving 16-year-olds between 1998 and 2000.¹²⁴ Based on the experience of other states with GDL, as well as that of Canada and New Zealand, there is reason to expect greater reductions in accident rates for young drivers in the future.¹²⁵

(2) Senior Drivers

California's Department of Aging states that between 1950 and 1990, the elderly population (60+) grew from 1.6 million to 4.2 million, an increase of 157%. This growth will continue as the elderly population is expected to reach 12.5 million by 2040, an increase of 232% from 1990. The highest growth rates will occur in the next 30 years when the Baby Boomers become elderly; the first wave will turn 60 between 2000 and 2010.¹²⁶ This shift in the population could result in an increase in auto tort filings.

Although the number of fatal and injury collisions decreases after age 19, it begins to increase again after age 65. Further, the number of at-fault fatal and injury collisions dramatically increases between age 75 and 85. In 1995, for example, the number of at-fault fatal and injury collisions per 1,000 licensed drivers 85 years of age was nearly the same as for 16-year-olds (3 to 3.75, respectively).¹²⁷ The higher incidences of injury and/or death are partly due to the frailty of the elderly population, i.e., it takes less of an impact to cause injury to older persons. Nonetheless, the greater propensity of the elderly to be injured or to die in automobile collisions¹²⁸ may mean an increase in auto PI filings as the elderly population grows. On the

¹²⁴ *Graduated Driver License Law Reduces California Teen Passenger Deaths and Injuries 40 Percent*, Automobile Club of Southern California (2001) <<http://www.aaa-calif.com/members/corpinfo/gd12001.asp>>. See also "Statewide Integrated Traffic Records System Annual Reports" (1998—2000), <<http://www.chp.ca.gov/html/publications.html>>.

¹²⁵ See *Saving Teenage Lives*, National Highway and Traffic Safety Administration, <<http://www.nhtsa.dot.gov/people/injury/newdriver/SaveTeens/>> .

¹²⁶ See California Department on Aging, Statistics and Demographics <<http://www.aging.state.ca.us/>>.

¹²⁷ Insurance Institute for Highway Safety, *Fatality Facts: Elderly* (October 2001 Fact Sheet), <http://www.hwysafety.org/safety_facts/fatality_facts/elderly.htm>.

¹²⁸ Insurance Institute for Highway Safety, *Older Drivers Up Close—They Aren't Dangerous, Except Maybe to Themselves*, Status Report, Vol. 36, No. 8 (Sept. 8, 2001).

other hand, like the GDL instituted for young drivers, a series of mandatory tests to determine driving competency of the elderly are being proposed and, if enacted, may help to offset future increases in the number of accidents involving the elderly.

3. Workload Influences

Factors that might influence workload are (a) statutory changes and (b) increased numbers of self-represented litigants.

a. Statutory Changes

Among the 437 new laws examined for this report (see Methodology), 27% created new civil causes of action while only one eliminated a cause of action. Each case filed under one of these statutes, exclusively, is reflected in filing totals; none generated a significant number of new cases in the 1990s. However, there were 61 other statutes specifically affecting civil cases that probably increased workload.

Statutes potentially increasing workload are divided into two categories: (1) statutes affecting courtroom proceedings and (2) statutes affecting staff workload. Most of the 61 statutes fall into the former category. Only a few of the 61 statutes affected cases filed in Limited Civil case category, however.

b. Self-Represented Litigants

Although there are no data on the number of self-represented litigants in limited civil matters, there is some evidence of increases in unlimited civil matters. For example, Alameda County found in a recent survey the number of self-represented parties in civil cases (limited and unlimited combined) increased by 26% between 1990 and 2000. After *Royal Globe* was overturned, smaller claims (\$5,000 to \$15,000 range) became too unprofitable for attorneys to handle and it is reasonable to assume many litigants proceeded without attorney representation. Examples of how self-represented litigants impact workload are as follows:

Judicial Officers:

- More continuances required because of incomplete documents, missing documents, failure to provide information to the court in a timely way, failure to arrange for needed witnesses.
- Additional legal research needed because of failure to cite relevant law or to present it properly to the court.
- Additional court time to explain court procedures.

Staff

- Responding to questions of the self-represented to which an attorney would know the answer.
- More careful reviewing of filed forms to be sure all needed items are complete.
- Preparing paperwork and adjusting calendars for continuances.