

## C. UNLIMITED CIVIL CASES

The Unlimited Civil case-type category includes all tort cases with potential damages in excess of \$25,000 and civil complaints other than torts with claims in excess of \$25,000—e.g., contracts, real property, and employment cases—or with a request for some form of equitable relief. The Unlimited Civil case-type category data were aggregated into three case types during the 20 years studied. The three individual case types comprising the Unlimited Civil case-type category are listed below.

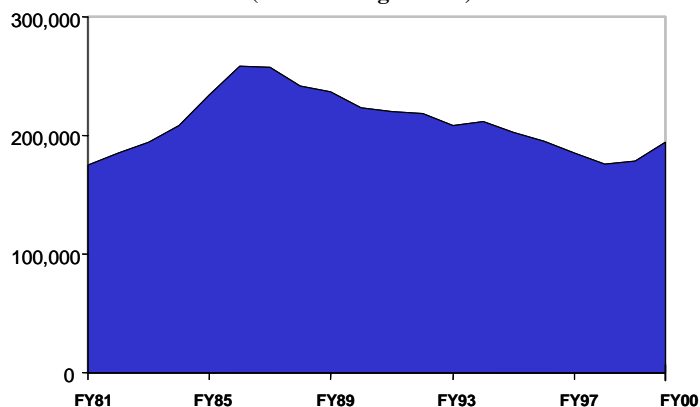
1. *Unlimited Civil—Auto PI*, which includes all claims for personal injury, property damage, and wrongful death resulting from an automobile accident;
2. *Unlimited Civil—Other PI*, which includes claims for personal injury, property damage, and wrongful deaths not resulting from automobile accidents, and other torts; and
3. *Unlimited Civil—Other Civil Complaints*, which includes complaints in contracts, real property, unlawful detainer, employment, as well as enforcement of judgment filings, judicial review, and small claims/limited civil appeals.

### 1. Statewide Civil Filings For All Unlimited Civil Cases

For the Unlimited Civil case-type category, filings between FY81 and FY00 rose by 18,498 filings (11%). Filings increased sharply from FY81 to FY86 and then declined steadily until FY98. Since FY98, filings have increased, especially between FY99 and FY00.

National data on civil filings includes probate filings. Adding probate filings to civil unlimited renders a civil filings picture for California<sup>67</sup> that is very dissimilar to the national picture. Nationally, civil filings steadily increased between 1984 and 2000, resulting in an overall increase of 21%.<sup>68</sup> As can be seen from the chart below (Fig. 22), even if probate filings are added to civil filings, California experienced a very sharp increase in filings

Fig. 22. Total Unlimited Civil Filings<sup>66</sup>  
(FY81 through FY00)

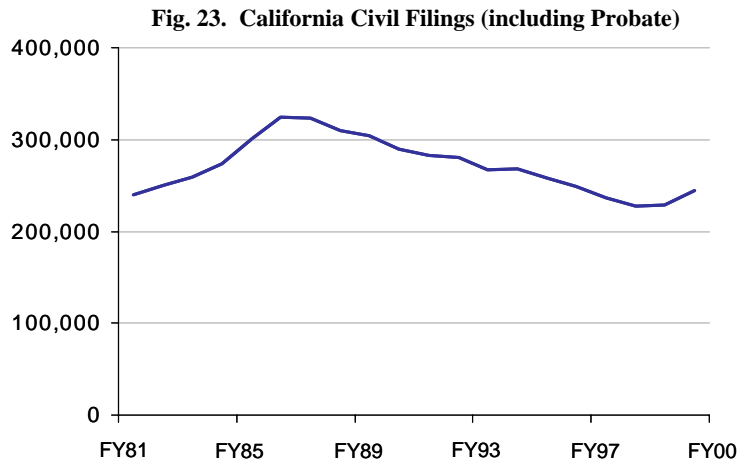


<sup>66</sup> Filing and disposition data cited or represented are from Judicial Branch Statistical Information System (JBIS) unless otherwise noted. For a list of individual case types in a case-type category, see p. iii. Convention for notation of fiscal years is also found on p. iii.

<sup>67</sup> The case types in the national civil filings category may not entirely parallel the adjustment made to California's civil filing numbers by the addition of probate. Those differences may be unknown but are not likely to make a significant difference in the analysis.

<sup>68</sup> The national sample included the following states: New York, Connecticut, Louisiana, Delaware, Arkansas, North Carolina, Ohio, Vermont, North Dakota, New Hampshire, Wisconsin, Nebraska, Montana, Michigan, Washington, Kansas, Colorado, District of Columbia, Arizona, Idaho, Massachusetts, Missouri, Minnesota, Iowa, South Dakota,

between FY84 and FY87 (+26.6%) followed by a steady decline until around 1998. The decline (-30.8%) between 1984 and 1998 was greater than the gains experienced between FY84 and FY86-87. Since 1998, filings have gone up again but are still fewer than they were in FY84.



Although California’s general civil filing pattern is dissimilar to the national pattern, the filing pattern for torts, a case type within the civil category, is similar to the national pattern. Tort filings in California declined 44% between 1991 and 2000; 22 states in a national sample of 30 states for the same time period also experienced declines. Approximately half of the states in the national sample experienced declines of over 20%.<sup>69</sup> The table below (Table 8) shows the percentage change for each of the 30 states in the national sample.

**Table 8. Change in General Civil Filings (1991—2000)**

States	% Change 1991-2000	States	% Change 1991-2000
<b>Unified Courts:</b>			
Kansas	24%	New Jersey	-7%
North Dakota	15%	Florida	-7%
Connecticut	10%	Ohio	-15%
Puerto Rico	8%	Washington	-16%
Missouri	-17%	Nevada	-18%
Wisconsin	-20%	Tennessee	-22%
Minnesota	-31%	Arkansas	-23%
California	-44%	Maine	-28%
		Oregon	-29%
<b>General Jurisdiction Courts:</b>			
Indiana	55%	Hawaii	-32%
New York	13%	Michigan	-34%
Utah	6%	Maryland	-34%
Alaska	0%	Texas	-35%
North Carolina	-4%	Colorado	-36%
Idaho	-6%	Arizona	-42%
		Massachusetts	-45%

Data from Examining the Work of the State Courts, 2001

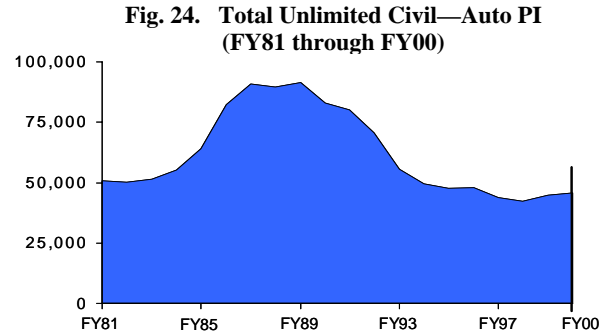
and Utah. (See National Center for State Courts, *Examining the Work of the State Courts, 2001: A National Perspective from the Court Statistics Project*, p. 16.)

<sup>69</sup> Id. at p. 27.

## 2. Unlimited Civil Filings by Individual Case Types

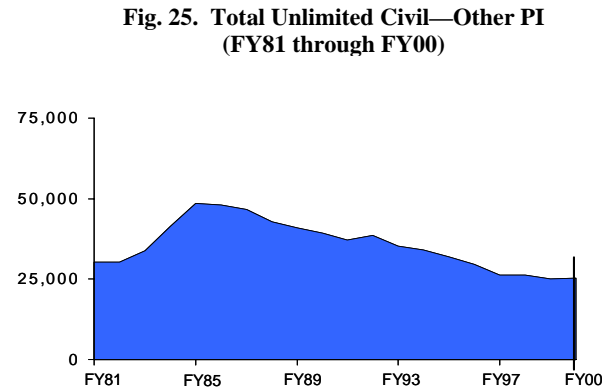
### a. Civil—Auto PI

*Auto PI* cases almost doubled between FY82 and FY86, reaching as many as 91,450 cases, and then tumbled between FY89 and FY98, resulting in a loss of 33,100 cases. Since FY98, auto filings have been slowly increasing. Despite this increase, Auto PI cases had the second-highest percentage decline (-49.9%) of all case types in the 1990s.



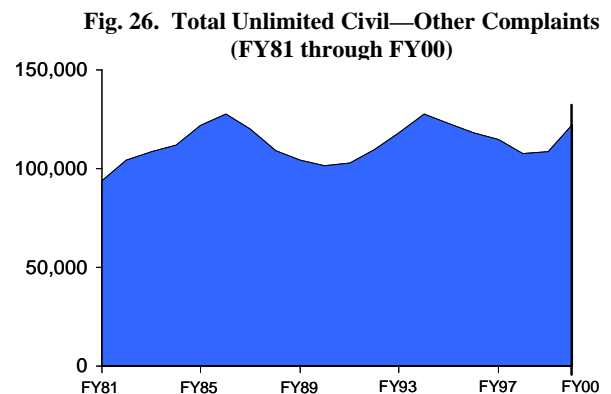
### b. Civil—Other PI

*Other PI* cases increased rapidly in the early 1980s to a high of approximately 48,000 cases in FY85 and then steadily fell until FY96-97. By FY97, filings fell 22,254 (-45.8%) cases. After FY97, filings leveled off.



### c. Civil—Other Civil Complaints

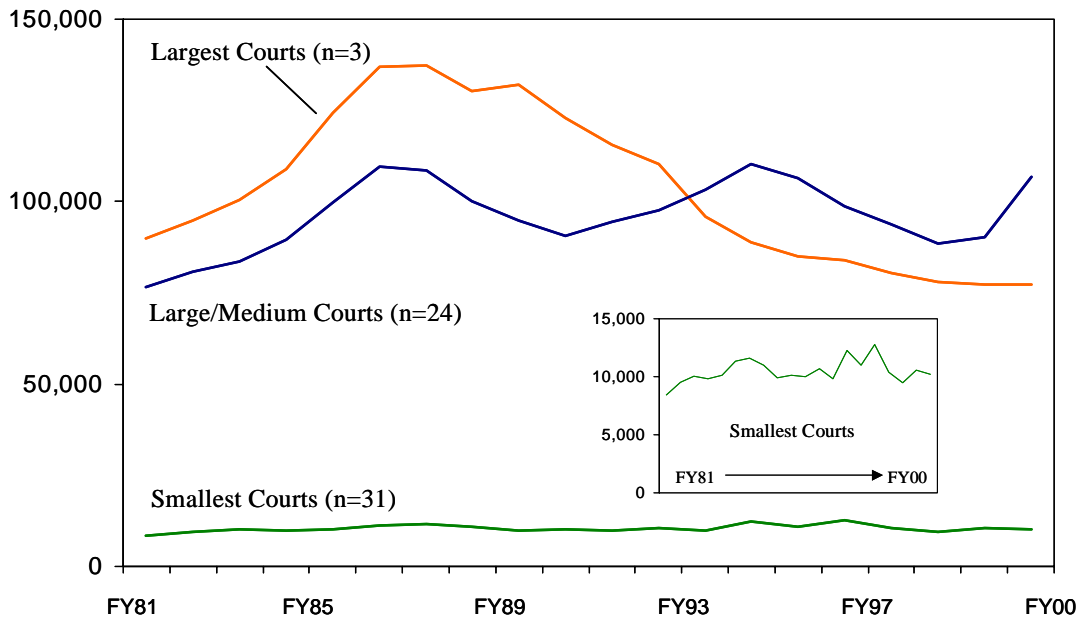
*Other Civil Complaints* is comprised of a number of individual case types, including collections, contracts, real estate, business torts, fraud, and employment cases. Civil Complaints experienced two waves of increased filings between FY81 and FY00, with the first wave reaching its peak in FY86 and the second in FY94. Additionally, since FY99, there has been a dramatic increase in filings.



### 3. Total Unlimited Civil Filings by Court-Size Grouping

Although statewide totals increased by 10% between FY81 and FY00, the Largest court-size grouping experienced a drop in filings (-14%) during the same period. At the same time, the Large/Medium courts experienced a 39% increase, and the Smallest courts a 21% increase. While all court-size groupings had sharp increases between FY81 and FY87, followed by sharp declines until FY92, patterns for the three court-size groupings differ greatly after FY92. The Largest courts continued on a downward trend; the other two court-size groupings experienced waves of increasing and decreasing filings.

**Fig. 27. Total Civil Unlimited Filings by Court-Size Grouping (FY81 through FY00)**



Note: A catalog of courts within each court-size grouping can be found on p. iii.

#### a. Filing Influences for All Unlimited Civil Cases

The factors most likely to have influenced tort filings in the time period studied are:

1. The impact of the 1979 California Superior Court opinion in *Royal Globe Ins. Co. v. Superior Court of Butte County*<sup>70</sup> (hereafter *Royal Globe*) and its 1988 reversal in *Moradi-Shalal v. Fireman's Fund Ins. Cos.*<sup>71</sup> (hereafter *Fireman's Fund*) on the economics of attorneys handling cases of limited value;

<sup>70</sup> (1979) 23 Cal.3d 880

<sup>71</sup> (1988) 46 Cal.3d 287

2. The economics of practicing law more generally; and
3. The increasingly common insertion of mandatory arbitration and/or mediation clauses in contracts among businesses, and between businesses and individuals.

### **(1) Overruling *Royal Globe***

Personal injury filings increased by 50% in the 1980s (+63% for PI—Auto and +30% for PI—Other) and then lost all those gains and more in the 1990s (down 47,500 cases after an increase in the 1980s of approximately 41,000 cases). Two U.S. Supreme Court cases may account for part of the filing fluctuations over the 20 years studied for both civil case types.

In 1979, the California Supreme Court decided the case of *Royal Globe Ins. Co. v. Superior Court*.<sup>72</sup> 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 court declared that these “bad faith” claims could be pursued in a separate lawsuit, and both compensatory and punitive damages could be recovered.

The prospect of bad-faith claims being filed and a few being successful changed the behavior of both insurance companies and policyholders.<sup>73</sup> According to Hawken, Carroll, and Abrahamse, the number of bad-faith claims filed jumped significantly after *Royal Globe*, as did the amounts paid by insurance companies to settle the underlying claims. The increased payouts made smaller claims feasible, not only for plaintiffs, but more important, for attorneys. The greater payouts meant that the attorneys’ one-third contingency fee became large enough to warrant taking on such cases. The 50% increase in personal injury filings in the 1980s suggests that the *Royal Globe* decision was at least partially responsible for the increases.<sup>74</sup>

Nine years later, in 1988, the Supreme Court overruled *Royal Globe* in *Moradi-Shalal v. Fireman’s Fund Ins. Cos.*<sup>75</sup> (*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% below what otherwise would have been expected without *Fireman’s Fund*. The decision’s impact, once again, was felt predominantly on smaller claims. Researchers from the Rand Institute for Civil Justice calculated that without the *Fireman’s Fund* decision, payments for the bottom 25th percentile of claim payments would be 33% higher than they actually were. Consequently, a decline in representation for people with

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<sup>72</sup> (1979) 23 Cal.3d 880

<sup>73</sup> 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).

<sup>74</sup> *Ibid.*

<sup>75</sup> (1988) 46 Cal.3d 287

smaller claims occurred.<sup>76</sup> And, although some of these potential litigants certainly proceeded in pro per, it is also likely that many did not file at all.<sup>77</sup>

## **(2) 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 impact filings.

### **(a) The Cost of Doing Business**

Several newspaper articles in 2000—2001 focused on the increasing costs of litigation and the declining recoveries, which led attorneys to reject small-valued tort cases.<sup>78</sup> Plaintiffs' attorneys assert that juries are awarding smaller judgments.<sup>79</sup> In addition, they assert that insurance companies increasingly are resisting discovery requests and that more experts are needed at trial, both of which raise costs. Jury verdict data from 75 urban courts across the country for 1992 and 1996 lend support to some of these claims.<sup>80</sup>

Nine of the 75 urban courts studied are in California. These counties account for about 65% of all tort, eminent domain, and other civil complaint filings in the state. A comparison of verdicts in those nine courts in 1992 and 1996 shows (1) plaintiffs won less often in 1996 than in 1992, and (2) the median amount awarded dropped between 1992 and 1996. In addition, the *average* verdict was lower in five courts in 1996 than in 1992.<sup>81</sup>

Table 9 below illustrates the median and average verdict values in those nine courts, with verdict values in current dollars. The cost of living in California increased by almost 12% from 1992 to

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<sup>76</sup> 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 no longer were accepting administrative claims with insurance companies, they also were not representing these claimants in court.

<sup>77</sup> 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.

<sup>78</sup> 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.

<sup>79</sup> But some articles claim that jury verdicts are increasing presently. Greg Winter, "Jury Awards Soar as Lawsuits Decline on Defective Goods," *Times*, New York (Jan. 30, 2001).

<sup>80</sup> Carol J. DeFrances et al., *Civil Jury Cases and Verdicts in Large Counties*, a special report of the Bureau of Justice Statistics (July 1995); Carol J. DeFrances and Marika F.X. Litras, *Civil Trial Cases and Verdicts in Large Counties, 1996*, in Bulletin, Bureau of Justice Statistics (Sept. 1999). Both of these publications rely solely on research by the National Center for State Courts. (The National Center has not yet received funding to do a study of verdicts in 2000.)

<sup>81</sup> The large difference between median verdicts and average verdicts clearly reflects the impact on the average of a limited number of very large verdicts. Average verdicts also can vary considerably year to year based on the size of these "outlier" verdicts relative to the "typical" verdicts.

1996. Thus, the drop in the value of the 1996 verdicts would be even greater with a cost-of-living adjustment.

**Table 9. Median and Average Verdicts in 9 California Courts<sup>82</sup>  
1992 and 1996 (not adjusted for inflation)**

County	Median Verdict		Average Verdict	
	1992	1996	1992	1996
Alameda	\$87,300	\$59,000	\$258,485	\$377,900
Contra Costa	\$110,000	\$48,000	\$1,117,713	\$451,500
Fresno	\$52,189	\$50,000	\$146,844	\$130,400
Los Angeles	\$124,922	\$98,000	\$968,163	\$736,900
Orange	\$48,500	\$49,000	\$323,254	\$1,168,400
San Bernardino	\$58,412	\$91,000	\$314,480	\$637,600
San Francisco	\$109,459	\$98,000	\$286,631	\$423,400
Santa Clara	\$67,834	\$64,000	\$443,182	\$227,900
Ventura	\$62,318	\$21,000	\$188,335	\$165,600

*Data from National Center for State Courts*

### **(b) 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.<sup>83</sup> 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.<sup>84</sup> The average associate in a California law firm would consume the entire monthly net income of a median-income parent in these cases in less than nine hours of work. It is reasonable to assume that some percent of the decline in civil filings 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.

### **(3) Mandatory Alternative Dispute Resolution (ADR) Clauses in Contracts**

Private alternative dispute resolution (ADR) is a non-court-based dispute resolution forum. Types of private ADR include but are not limited to arbitration, mediation, and private judging.

A great many companies throughout the United States use some form of arbitration as an

<sup>82</sup> There were 1,560 jury trials in the 1992 sample, 716 were plaintiff verdicts. In 1996, there were 1,064 jury trials in the sample and 469 plaintiff verdicts. Dept. of Finance, *California Population Survey Report, March 2001*.

<sup>83</sup> Altman Weil, Inc., *The 2000 Survey of Law Firm Economics* (PA: Newtown Square, 2000).

<sup>84</sup> David M. Betson, et al., *2001 Review of California's Statewide Uniform Child Support Guideline* (San Francisco: Public Studies, Inc.) p. 27 (draft report).

alternative to civil litigation. The following are typical arbitration cases filed each year:

- Business to business (commercial),
- Consumer,
- Health Care (coverage disputes and some medical malpractice),
- Employment, and
- Personal Injury.<sup>85</sup>

Because arbitration firms are private, there are no comprehensive statistics kept on the number of cases arbitrated each year or on industry growth. Further, private ADR can be initiated at any time before or after a filing. An ADR proceeding initiated before a filing would impact filings; an ADR initiated after a filing would impact workload. Thus, one cannot determine the full impact of private ADR on court filings. Nevertheless, there is some indirect evidence to suggest the impact on filings could be considerable, both for a number of personal injury filings—such as medical malpractice—and filings based on breaches of contract.

According to one RAND study, the use of private ADR in three large urban counties—Los Angeles, San Francisco, and San Diego—grew at a rate of 15% per year between 1990 and 1995. The majority of these cases involved automobile personal injury and involved claims exceeding \$25,000.<sup>86</sup>

The CPR Institute for Dispute Resolution in New York City has been promoting the use of ADR as an alternative to lawsuits for a number of years. A major tool in its campaign is a contract that pledges that a signatory business will consider ADR whenever it has a dispute with another business that also has signed the contract. Four thousand corporations nationally have signed this contract, including a large share of the Fortune 500 companies.<sup>87</sup> Recent research confirms the pervasive use of arbitration and mediation by the largest U.S. corporations.<sup>88</sup>

Requiring mandatory arbitration contracts for medical services has become common, especially for services provided by HMOs. Eighty percent of Californians enrolled in health care plans are required to use binding arbitration as a means of resolving coverage disputes; 27% were required to sign arbitration agreements in resolving malpractice claims.<sup>89</sup> However, the full impact of ADR in health care is unclear. The California Research Bureau estimates 300 medical plan arbitrations are decided each year, but also acknowledges that this number probably under-

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<sup>85</sup> Marcus Nieto, *Overview of Arbitration in California Managed Health Care Plans*, (Sacramento: California Research Bureau, Aug. 7, 1997) 4 (5).

<sup>86</sup> *Id.* at p. 5.

<sup>87</sup> Marc Galanter & Joel Rogers, *A Transformation of American Business Disputing? Some Preliminary Observations* (Madison, WI.: Institute for Legal Studies Working Paper DPRP #10-3, 1991).

<sup>88</sup> One report coming out the University of Pennsylvania states that 88% of the 1,000 largest U.S. corporations use mediation and arbitration on a regular basis, particularly in commercial and employment cases. See David B. Lipsky, and Ronald L. Seeber, “In Search of Control: The Corporate Embrace of ADR” (1998) 1 *Univ. of Pennsylvania JI. of Labor & Employment Law*, 133—157.

<sup>89</sup> Marcus Nieto and Margaret Hosel, *Arbitration in California Health Care System* (California Research Bureau, Dec. 2000).



represents the impact of ADR. The reasons for this under representation are as follows:

1. Although all health care plans are required to report arbitrations to the Department of Managed Health Care (DMHC), arbitrations that are part of an independent contract between doctors and patients are not subject to the requirement;
2. Pre-arbitration grievance procedures resolve a good many claims through mediation, and mediation proceedings do not have to be reported to the DMHC; and
3. Consumer confusion regarding the requirement to undergo pre-arbitration grievance proceedings before requesting arbitration and the cost of arbitration deters consumers from filing claims altogether.<sup>90</sup>

To illustrate this point, Kaiser's Office of Independent Administration reported 944 new arbitration demands in its 1999 Annual Report (641 were for medical malpractice), but only 168 were arbitrated and reported to the DMHC.<sup>91</sup>

#### **b. Workload Influences for All Unlimited Civil Cases**

Workload associated with personal injury and other civil cases is similar, whether those cases are automobile accident related or not. Factors impacting workload are:

1. Statutory changes; and
2. Increasing numbers of self-represented litigants.

##### **(1) Statutory Changes**

Among the 437 new laws examined for this report (see Introduction; Statutory Changes), 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, and none generated a significant number of new cases in the 1990s. However, there were 61 other statutes specifically affecting civil cases that probably impact workload. The following are examples of 61 statutory changes affecting civil proceedings in the 1990s:

1996

- Requires expert opinion in actions against certain professionals in claims of professional negligence.

1997

- Authorizes a nonparty consumer to object to personal records being subpoenaed and permits the requesting party to file a motion to enforce compliance.

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<sup>90</sup> Ibid.

<sup>91</sup> Ibid.

- Requires the court to consider extent of harm caused by polluting waters before issuing a temporary restraining order or injunction.

1999

- Creates an expedited action and an order to show cause to clear title to property from an unlawful claim of encumbrance.

## **(2) Self-Represented Litigants**

There is some evidence to suggest that the number of self-represented litigants in civil cases is going up. For example, Alameda County found in a recent survey that the number of self-represented parties in civil cases (limited and unlimited) increased by 26% between 1990 and 2000. In the early 1990s, the number of self-represented plaintiffs in these cases was a little more than twice the number of self-represented defendants. By the end of the 1990s, there were six times more self-represented plaintiffs than self-represented defendants; this increase was caused by both an increase in the number of self-represented plaintiffs and a decrease in the number of self-represented defendants. Further, between 1997 and July 2000, the self-represented in unlimited civil cases (those involving claims in excess of \$25,000) increased by 16%. If Alameda's experience is representative, a trend toward more self-representation in civil cases put added workload on staff and on the judges.

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, and 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.

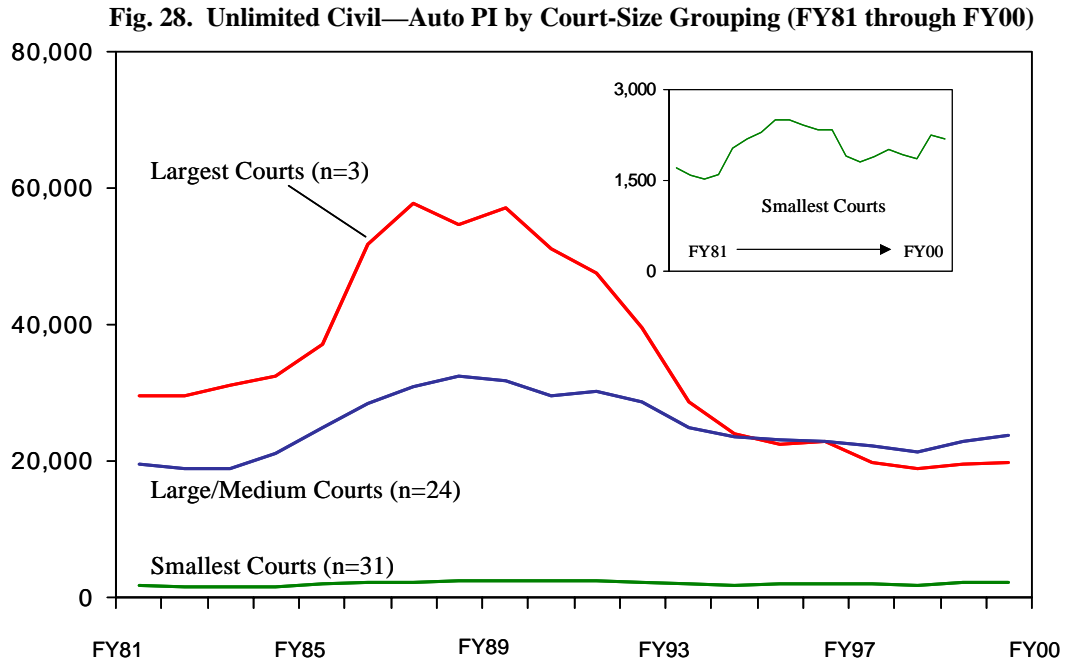
### *Staff*

- 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.

## 4. Unlimited Civil—Auto PI Case Type

### a. Filings by Court-Size Grouping

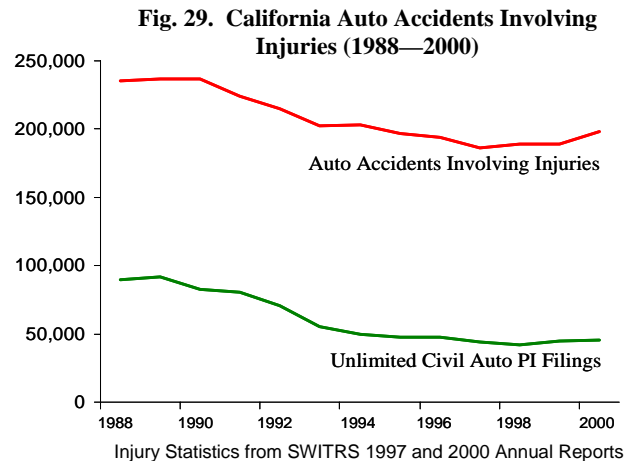
All court-size groupings experienced sharp increases between FY84 and FY87, followed by declines until around FY94. Only the Largest courts had fewer filings in FY00 than in FY81. However, 60% of the drop in filings in the 1990s is attributed to Los Angeles. The Large/Medium and Smallest court-size groupings experienced an upturn in filings in the latter part of the 1990s.



### b. Influences

#### (1) 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 (see Fig. 28). 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

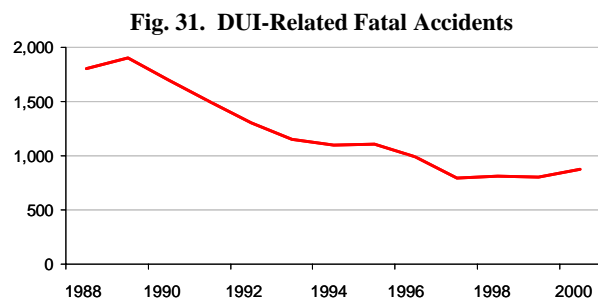
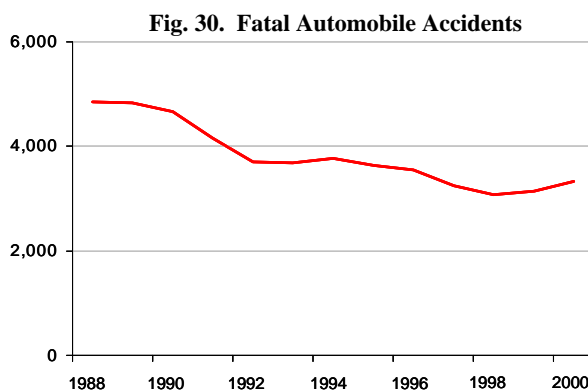


50%. Airbags further reduce the risks of injury in automobile accidents. These reductions probably impact Auto—PI cases, although it is less clear how California was influenced in light of the huge increase in filings during the 1980s. More research is needed.

## (2) Alcohol-related Accidents

Although fatal crashes generally declined from 1982 to 1990, the greatest declines came after 1990, following two important changes in law. In 1990, California enacted the .08 Blood Alcohol Content (BAC) law and implemented an immediate driver license suspension law, also referred to as an “Administrative Per Se (APS)” or “on-the-spot” license suspension law. The California APS law requires the DMV to suspend or revoke the driving privilege of persons who are driving with a BAC of .08 or more, or who refuse a chemical test upon arrest. A study conducted for the National Highway Traffic Safety Administration (NHTSA) found the combined laws resulted in a 26.7% decline in fatality crashes involving BAC of .1 and above and 31.5% decline in fatality crashes involving BAC of .01 and above (but less than .1) between 1990 and 1994.<sup>92</sup> The total reduction of alcohol-related accidents (fatal and injury accidents) was approximately 9%.<sup>93</sup>

Between 1990 and 2000, fatalities in drunk-driving crashes in California were down 52%.<sup>94</sup> The charts below compare the drops in DUI-related fatal accidents and the drop in the total number of fatal automobile accidents.



Source for these numbers was SWITRS 1997 and 2000 Annual Reports

The decline in alcohol-related accidents precipitated by the two laws enacted in 1990 clearly contributes to the decline in Auto-PI cases.

<sup>92</sup> Robert Apsler, AR Char, Wayne M. Harding, and Terry M. Klein, *The Effects of .08 BAC Laws* (National Highway Traffic Safety Administration, April 1999).

<sup>93</sup> Patrice Rogers, *California's 0.08% BAC Limit and Administrative License Suspension Laws Working to Deter Drunk Driving Accidents*, (1997) < <http://www.dmv.ca.gov/about/profile/rd/resnotes/baclimit.htm> >.

<sup>94</sup> National Highway Traffic Safety Administration Statistics (U.S. Dept. of Transportation, 2001).

### (3) Impact of Age on Future Auto Tort Filing Trends

#### (a) 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.<sup>95</sup> 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.<sup>96</sup> 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.<sup>97</sup>

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 hours of supervised driving that includes 10 hours of night driving. Upon completing the phase-one requirement, 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.<sup>98</sup> 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.<sup>99</sup>

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<sup>95</sup> Children Now Report Card 2000, < <http://www.childrenow.org/California/rc-2000/reportcard-2k.htm> >.

<sup>96</sup> 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).

<sup>97</sup> 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 with 1 passenger; 3.3 with two passengers, and 6.3 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).

<sup>98</sup> Automobile Club of Southern California, *Graduated Driver License Law Reduces California Teen Passenger Deaths and Injuries 40 Percent* (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> >.

<sup>99</sup> See National Highway and Traffic Safety Administration, *Saving Teenage Lives*, < <http://www.nhtsa.dot.gov/people/injury/newdriver/SaveTeens/> >.

## (b) 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.<sup>100</sup> This shift in the population could result in an increase in auto tort filings.

While 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).<sup>101</sup> 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 collisions<sup>102</sup> may mean an increase in auto PI filings as the elderly population grows. On the 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.

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<sup>100</sup> See California Department on Aging, Statistics and Demographics, <<http://www.aging.state.ca.us/>> .

<sup>101</sup> Insurance Institute for Highway Safety, *Fatality Facts: Elderly, October 2001 Fact Sheet*, <[http://www.hwysafety.org/safety\\_facts/fatality\\_facts/elderly.htm](http://www.hwysafety.org/safety_facts/fatality_facts/elderly.htm)> .

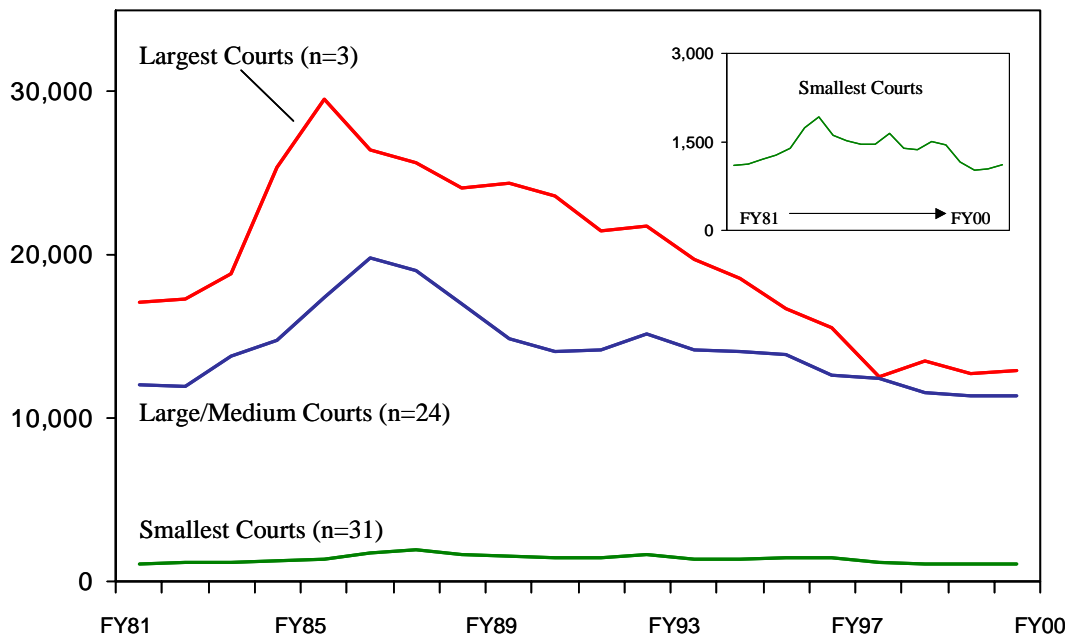
<sup>102</sup> Insurance Institute for Highway Safety, *Older Drivers Up Close—They Aren't Dangerous, Except Maybe to Themselves*, Status Report, Vol. 36, No.8, (Sept. 8, 2001).

## 5. Unlimited Civil—Other PI Case Type

### a. Filings by Court-Size Grouping

All court-size groupings experienced sharp increases between FY82 and FY87 followed by declines. The decline for the Largest courts was steady and continued until FY98. The decline for the Large/Medium and Smallest court-size groupings was sharp, lasting until FY90, and resulting in a loss of approximately half of the filings gained in the preceding swells. After FY90, both experienced fluctuations up and down, but both size groupings ended at filing levels slightly higher than they were in FY81. The Largest courts had fewer filings in FY00 than in FY81. Los Angeles accounts for about 61% of the drop.

Fig. 32. Unlimited Civil—Other PI by Court-Size Grouping (FY81 through FY00)



Note: A listing of courts within each court-size grouping can be found on p. iii.

### b. Influences

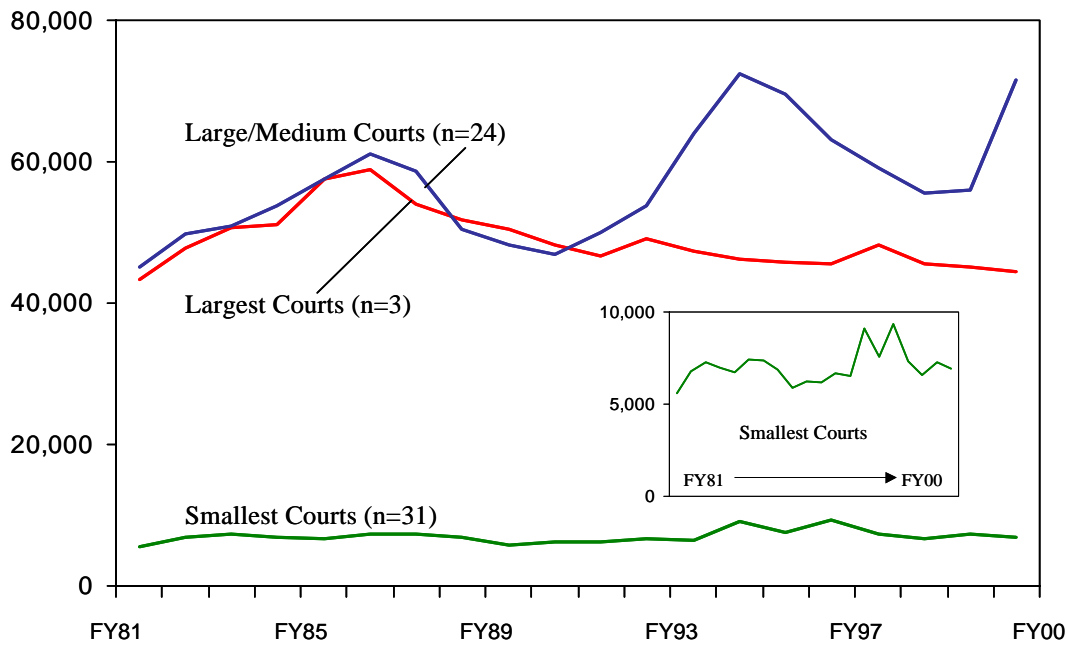
Other PI is not disaggregated and, hence, the specific case-type influences that impact this case type cannot be known beyond the influences impacting civil filings generally (see pp. 56—61). It should be said here, however, that the effect of ADR requirements in medical services contracts most impacts this case category because medical malpractice is an individual case type within the Other—PI case type. The growing use of ADR in the medical industry coupled with California’s caps on malpractice awards probably had some influence on filing declines for most of the 20 years surveyed.

## 6. Unlimited Civil—Other Complaints Case Type

### a. Filings by Court-Size Grouping

Looking at filings by court-size groupings reveals that the Large/Medium courts contributed virtually all of the additional cases to the statewide increase in the 1990s, although the Smallest courts did experience increases in the 1990s. The San Francisco Bay Area<sup>103</sup> increased the most on a percentage basis (139%) between FY81 and FY00, and accounts for much of the increase in the Large/Medium-court-size grouping. The Largest courts filing total in FY00 was lower than in FY81, while statewide, filings were up almost 20%.

Fig. 33. Unlimited Civil—Other Complaints by Court-Size Grouping (FY81 through FY00)



Note: A listing of courts within each court-size grouping can be found on p. iii.

### b. Influences

#### (1) Contract Cases

Filings for breach of contract may explain some of the increases in this case category. Thomas B. Marvell theorized that contract trends are associated with changes in the economy.<sup>104</sup> When the economy is good, filings go up because more people enter into contracts. When there are

<sup>103</sup> Nine counties are included in the San Francisco Bay Area: San Francisco, Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano, and Sonoma.

<sup>104</sup> 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.



more contracts, there are more breaches of contracts. 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 breaches, is undeterminable for the period studied since filing data isn't currently disaggregated into individual case types for the Civil—Other Complaints case category. On the other hand, the significant filing increase that occurred in the San Francisco Bay Area during the 1990s may be partially due to increased contracting, especially in the technology industry, that resulted in a corresponding increase in the number of breaches. More research is needed.

## **(2) Increased Number of Jury Trials**

Although dispositions by trial in the 1990s are generally down for all civil case types, the number of jury trials has gone up significantly for the Unlimited Civil—Other Complaint case type. The net change in workload generated by the increased number of jury trials cannot be judged without also knowing whether trials consume more, less, or about the same amount of time to complete as previously. For instance, Los Angeles' data for personal injury and civil complaint cases tried before juries and judges between FY93 and FY00 indicate increasing trial time for civil complaint jury trials but decreasing trial time for personal injury jury trials. To complicate matters, both case types experienced significant increases in trial time for bench trials. These facts stand in juxtaposition to a general decline in dispositions after trial and may or may not add up to increases in workload. Further research is clearly needed.