

**Are Plaintiffs Drawn to Philadelphia's Civil Courts?  
An Empirical Examination**

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**BY**

**JOSHUA D. WRIGHT**

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## EXECUTIVE SUMMARY

- Philadelphia courts have been the subject of considerable controversy, including accusations of structural biases in favor of plaintiffs, leading to disproportionately large shares of litigation and verdicts relative to both Pennsylvania and the United States generally. Philadelphia courts, including the Philadelphia Complex Litigation Center, employ several atypical procedures that explain a significant portion of these differences. This study uses data from the Administrative Office of Pennsylvania Courts to analyze litigation trends and outcomes in Philadelphia relative to the rest of Pennsylvania and the United States.
- The Complex Litigation Center, specializing in mass torts and other potentially large-verdict cases, drives much of Philadelphia's litigation environment. The Complex Litigation Center handles asbestos, drug, and similar cases, attracting class actions where many plaintiffs have little or no connection to Philadelphia. In turn, the Complex Litigation Center's judges have indicated their intent to attract litigation from other courts. The procedures adopted by the Complex Litigation Center appear to have successfully increased litigation, bringing in more clients and more work for Pennsylvania lawyers, though likely at significant cost to Pennsylvania consumers and businesses alike.

- Philadelphia courts, when measured against non-Philadelphia Pennsylvania state courts and federal district courts, exhibit marked and significant dissimilarities supporting an inference that something intrinsically unusual is occurring in Philadelphia. Philadelphia courts host an especially large number of cases, Philadelphia courts have a larger docket than expected, Philadelphia plaintiffs are less likely to settle than other non-Philadelphia Pennsylvania plaintiffs, and Philadelphia plaintiffs are disproportionately likely to prefer jury trials. These findings are consistent with a conclusion that Philadelphia courts demonstrate a marked and meaningful preference for plaintiffs, consistent with both the Complex Litigation Center's intention of inviting "business" from other courts and criticisms that Philadelphia's courts provide a unique combination of advantages for plaintiffs.

# Are Plaintiffs Drawn to Philadelphia's Civil Courts? An Empirical Examination

BY

JOSHUA D. WRIGHT\*

## Introduction

American consumers and businesses have long availed themselves of elaborate judicial systems to redress wrongs, including injuries to person, property, and reputation. Early procedural rules broadly channeled these complaints into specific writs. Major procedural rules followed the same pattern: a writ of *coram nobis* requested a trial court examine an error in the same proceeding, while a writ of error petitioned an appellate court to review a trial court's judgment. Increasing social complexity called for both substantive and procedural adaptations; much of modern consumer protection,<sup>1</sup> negligence, and products liability law arose as a result.

Modern civil and criminal procedural rules also evolved to channel greater numbers and types of claims into increasingly dense spaces. These federal, state, and local rules confront distinct challenges in balancing conflicting valuable interests; as the

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<sup>1</sup> On the history of consumer protection law, see generally Henry N. Butler & Joshua D. Wright, *Are State Consumer Protection Acts Really Little-FTC Acts?*, 63 FLA. L. REV. 163, 164-173 (2011).



common law and statutes expanded available theories of liability, legislatures and the judiciary crafted procedural rules to encourage and facilitate meritorious claims while winnowing out frivolous ones. Indeed, frivolous lawsuits may often inflict multiple harms, not only hailing innocent defendants into court, but also compounding forum delays; in several American metropolitan areas, waits extend into multiple years in trying certain cases.<sup>2</sup>

States and municipalities have experimented with procedural and evidentiary requirements in striking this balance, including forum and venue requirements, pleading requirements in certain kinds of cases, and rules governing allocation of fault among multiple defendants.<sup>3</sup> This approach has led to divergent systems. Some are viewed as havens for businesses, while others are perceived as allowing or even encouraging predation by out-of-locale plaintiffs seeking generous local rules and norms, a practice known as “litigation tourism.”<sup>4</sup> One of the nation’s largest

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<sup>2</sup> Heather Perlberg Medill, *Chicago courts make for bad medicine*, NWI.COM, June 13, 2011 (stating that, “[t]he court system in Cook County is so clogged it takes about four years for a case to go from filing to trial.”); *See also* Doreen Carvajal, *Awaiting Judgment: A special report.; New York’s Clogged U.S. Courts Delaying Civil Verdicts for Years*, NEW YORK TIMES, Apr. 17, 1995; Ashley Trent, *Frivolous lawsuits clogging U.S. courts, stalling economic growth*, INSIDE COUNSEL, June 2011; *see generally* JOHN GOERDT, EXAMINING COURT DELAY: THE PACE OF LITIGATION IN 26 URBAN TRIAL COURTS, NATIONAL CENTER FOR STATE COURTS (1987).

<sup>3</sup> *See, e.g.*, THE NAT’L CTR. FOR STATE COURTS, TWELVE STEPS TO ENHANCE THE EFFICIENCY OF COURT OPERATIONS IN LANCASTER COUNTY, PENNSYLVANIA (2011); *See also* BRIAN KLADKO, BOSTON BUSINESS JOURNAL, REPORT: STATE COURT SYSTEM HAS IMPROVED EFFICIENCY (2007); *Joint and Several Liability Rule Reform*, AMERICAN TORT REFORM ASSOCIATION, (September 6, 2011), <http://www.atra.org/issues/index.php?issue=7345&display=bydate>.

<sup>4</sup> *See* Tony Ogden, *Study ranks states’ on ‘business friendly’ tort laws*, LAWYERS USA, June 9, 2010; *see also*, *Accutane, and New Jersey’s booming litigation tourism industry*, NEW JERSEY LAWSUIT REFORM ASS’N,

metropolitan areas, Philadelphia is often grouped into this second category.

Pennsylvania courts employ several plaintiff-friendly procedural devices, including a more lenient standard for expert testimony and, until recently, a broad application of joint and several liability, where multiple contributors to a tort harm could be held responsible for the entire injury – no matter how small their relative fault.<sup>5</sup> Philadelphia courts compound these with permissive procedural rules including a “reverse bifurcation” trial, where damages from a purported wrong are calculated prior to establishing liability – as opposed to the normally bifurcated trial, where a plaintiff must establish liability before proving damages.<sup>6</sup> The Philadelphia Complex Litigation Center perhaps distinguishes Philadelphia from other Pennsylvania courts;<sup>7</sup> the Center often hears mass-tort cases and has openly stated its desire to lure “business away from other courts.”<sup>8</sup> The American Tort Reform Association has labeled Philadelphia courts as a “judicial hellhole,” amongst the most plaintiff-friendly and lawsuit-inviting jurisdictions in the nation.<sup>9</sup> As discussed below, the data are consistent with concerns

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(September 6, 2011), <http://www.lawsuitreformwatch.org/2010/10/accutane-and-new-jerseys-booming-litigation-tourism-industry.html>.

<sup>5</sup> Marc Levy, *Pennsylvania Governor Signs ‘Fair Share’ Civil Liability Reform*, ASSOCIATED PRESS, June 28, 2011.

<sup>6</sup> John O'Brien, *Asbestos defendant says Philly's reverse procedure is truly backwards*, LEGAL NEWS LINE, Nov. 22, 2010.

<sup>7</sup> For one critical perspective on the PCLC, see, e.g., Lesley Smith, Editorial, *Pennsylvania's Unbalanced Legal System*, THE TRIBUNE DEMOCRAT, Jan. 16, 2011, available at <http://tribune-democrat.com/editorials/x1221290767/Pa-s-unbalanced-legal-system>.

<sup>8</sup> Amaris Elliott-Engel, *For Mass Torts, a New Judge and a Very Public Campaign*, LAW.COM, Mar. 16, 2009.

<sup>9</sup> AM. TORT REFORM FOUND., JUDICIAL HELLHOLES 3-5 (2010), available at <http://www.judicialhellholes.org/wp-content/uploads/2010/12/JH2010.pdf>.

that Philadelphia has created a uniquely plaintiff-friendly environment relative to both other Pennsylvania courts as well as jurisdictions throughout the United States.

Despite widespread recognition of Philadelphia's ostensibly litigation-friendly court system there has been little empirical evidence illuminating its causes and consequences or documenting differences between civil justice institutions in Philadelphia and other jurisdictions. We attempt to fill that void by examining recent developments in Philadelphia courts – specifically civil litigation in Philadelphia courts – with an eye towards documenting trends and systematic evidence from available empirical data. We analyze metrics including docketed cases, settlement rates, and claim volume, comparing Philadelphia courts with other Pennsylvania counties to ascertain the causes and extent of Philadelphia's distinct litigation environment.

Part I summarizes both the history of and recent developments in Philadelphia and Pennsylvania courts to establish the relevant timeline and institutional setting for our analysis. Part II compares Philadelphia and non-Philadelphia Pennsylvania courts along various metrics to obtain a rough estimate of relevant Philadelphia-specific differences. This approach allows one to control for and “net out” unobservable litigation trends that impact the state as a whole. Our primary interest is in identifying whether and to what extent Philadelphia's substantive and procedural rules are having a unique impact on civil justice. Part III broadens this analysis, comparing Philadelphia courts to other comparable state courts. Part IV draws conclusions from these data.

## I. Pennsylvania and Philadelphia Courts: Background and History

Founded by British endorsement of the 1722 Judiciary Act, Pennsylvania's courts preceded American independence.<sup>10</sup> The Pennsylvania Supreme Court and several of the Courts of Common Pleas – including the Philadelphia Court of Common Pleas – originated in that Act;<sup>11</sup> the Pennsylvania Constitution provided for additional Courts of Common Pleas, Courts of Sessions, and Orphan's Courts.<sup>12</sup> The early Pennsylvania court system buckled under a heavy caseload, prompting further reforms in 1790, including dividing counties into judicial districts and appointing a presiding judge for each district Court of Common Pleas.<sup>13</sup> And in 1895 the state established the Superior Court as an intermediate appellate court.<sup>14</sup> Finally, the 1968 Pennsylvania Constitution consolidated the state's complicated judiciary into the Unified Judicial System beneath the Pennsylvania Supreme Court.<sup>15</sup>

The Philadelphia Court of Common Pleas is the court of general jurisdiction for Philadelphia County.<sup>16</sup> It contains Family Court and Orphans' Court Divisions, entrusted with domestic relations, juvenile justice, estate administration, and similar

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<sup>10</sup> THE ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS, A BRIEF HISTORY OF THE COURTS OF PENNSYLVANIA 5, available at <http://www.aopc.org/NR/rdonlyres/602ACB7B-6F80-4AF6-BC9A-C471A6025175/0/06cthist.pdf>.

<sup>11</sup> *Id.*

<sup>12</sup> Pa. Const. art. V, §§ 4-5.

<sup>13</sup> See A BRIEF HISTORY OF THE COURTS OF PENNSYLVANIA, *supra* note 10, at 5.

<sup>14</sup> *Id.* at 7.

<sup>15</sup> *Id.* at 6.

<sup>16</sup> DAVID C. STEELMAN & RICHARD VAN DUZEND, NATIONAL CENTER FOR STATE COURTS, CIVIL PROGRAMS IN THE PHILADELPHIA COURT OF COMMON PLEAS i (2004).

litigation, both criminal and civil, and the Trial Division, charged with general jurisdiction in all other cases.<sup>17</sup> The Trial Division hears all civil cases with an amount-in-controversy over \$10,000.<sup>18</sup> The Philadelphia courts have perennially battled a tremendous case backlog. Older cases mounted during the 1980s, increasing to over 28,000 in the Philadelphia courts by the early 1990s. This increasingly costly queue led to exponentially larger judicial expenses, ballooning by tens of millions of dollars during the 1980s.<sup>19</sup>

The Philadelphia courts implemented numerous structural and procedural changes in response to this perceived judicial ossification. Most notable of these is the Philadelphia Complex Litigation Center (PCLC), which opened in 1992 to address “complex, multi-filed Mass Tort cases” in the Philadelphia courts.<sup>20</sup> “Designed exclusively” for mass tort cases,<sup>21</sup> the PCLC also addresses arbitration appeals, and many non-jury trials.<sup>22</sup> Plaintiffs initiate cases in the PCLC by filing a more extensive global complaint for the mass tort and subsequent detailing of party-specific facts and

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<sup>17</sup> *Id.*

<sup>18</sup> THE COMMITTEE OF SEVEN, STUDY AND ANALYSIS OF THE PHILADELPHIA COMMERCE PROGRAM 11 (2005), available at [http://www.seventy.org/Downloads/Policy\\_&\\_Reform/Governance\\_Studies/2005\\_Study\\_and\\_Analysis\\_of\\_Philadelphia\\_Commerce\\_Program.pdf](http://www.seventy.org/Downloads/Policy_&_Reform/Governance_Studies/2005_Study_and_Analysis_of_Philadelphia_Commerce_Program.pdf).

<sup>19</sup> *Id.* at 12-13.

<sup>20</sup> FIRST JUDICIAL DISTRICT OF PENNSYLVANIA, PHILADELPHIA COUNTY COURT OF COMMON PLEAS, CIVIL ADMINISTRATION AT A GLANCE, § 4 COMPLEX LITIGATION CENTER 2 (2005-2006), available at <http://courts.phila.gov/pdf/manuals/civil-trial/complex-litigation-center.pdf>.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

circumstances.<sup>23</sup> Mass tort cases in the PCLC generally calendar for trial 18 to 24 months after filing, and trial dates are typically firm.<sup>24</sup>

The PCLC inspired several programs to address the then-28,000 docketed cases. These included a “Day Backward” program to deal with many of the 13,000 cases more than three years old as of the PCLC’s founding, and a “Day Forward” program imposing new case management programs on more recent cases.<sup>25</sup> The Day Forward program required a case management conference within 90 days of filing, firm deadlines for discovery, settlement conference, pre-trial conference, and trial, and scheduled cases for trial between 12 and 24 months after filing, depending on case complexity.<sup>26</sup> The Philadelphia courts also implemented statistical tracking mechanisms to compile data on cases and judges: complaints required case type information in the caption at filing, and judges were compared on “judicial productivity,” largely based on the speed and volume of disposed-of cases.<sup>27</sup> The Day Backward/Day Forward programs cleared the overwhelming majority of Philadelphia’s oldest cases in just a handful of years, and a 2004 report by the National Center for State Courts estimated the PCLC’s clearance rate at over 100%.<sup>28</sup>

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<sup>23</sup> CIVIL PROGRAMS IN THE PHILADELPHIA COURT OF COMMON PLEAS, *supra* note 16, at 48.

<sup>24</sup> *Id.*

<sup>25</sup> STUDY AND ANALYSIS OF THE PHILADELPHIA COMMERCE PROGRAM, *supra* note 18, at 16.

<sup>26</sup> *Id.* at 17-18.

<sup>27</sup> *Id.* at 18.

<sup>28</sup> CIVIL PROGRAMS IN THE PHILADELPHIA COURT OF COMMON PLEAS, *supra* note 16, at 47.

In response to the Day Forward and an unsuccessful statewide attempt to create a Pennsylvania analogue to Delaware's widely well-regarded Court of Chancery, the Philadelphia courts created a Commerce Program in 2000.<sup>29</sup> The Commerce Court's design drew on both the Day Forward and the Court of Chancery. The court addresses only business-related issues, encouraging subject-matter specialization like the Court of Chancery.<sup>30</sup> It also applies several of the Day Forward's fast-tracking procedures, including mandatory case management conferences, firm deadlines on discovery, expert reports, and motion practice, and a three-tiered tracking system, where cases are scheduled for trial in 13, 18, or 24 months.<sup>31</sup> Most cases are scheduled for trial within 13 months of filing.<sup>32</sup> Program use began slowly but has steadily grown to more than several hundred cases a year, many of which have issued published opinions on pre-trial matters to build a substantial body of business law.<sup>33</sup>

Despite the PCLC's founding to address a burgeoning Philadelphia civil docket in the 1990s, recent quotes by the Philadelphia court's President Judge indicate the PCLC actively seeks out-of-state tort suits, viewing the cases as "taking business away from other courts."<sup>34</sup> Several Philadelphia court tendencies similarly encourage out-of-state litigation. For example, the PCLC allows rarely permitted reverse bifurcation

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<sup>29</sup> STUDY AND ANALYSIS OF THE PHILADELPHIA COMMERCE PROGRAM, *supra* note 18, at 14; *see also Philadelphia's Commerce Court Expedites Business Cases*, PHILADELPHIA INQUIRER, Mar. 7, 2001.

<sup>30</sup> STUDY AND ANALYSIS OF THE PHILADELPHIA COMMERCE PROGRAM, *supra* note 18, at 14.

<sup>31</sup> *Id.* at 20-21.

<sup>32</sup> *See Philadelphia's Commerce Court Expedites Business Cases*, *supra* note 29.

<sup>33</sup> STUDY AND ANALYSIS OF THE PHILADELPHIA COMMERCE PROGRAM, *supra* note 18, at 21-22.

<sup>34</sup> Elliott-Engel, *supra* note 8.

procedures, in which a jury must determine a plaintiff's damages prior to trying a defendant's liability.<sup>35</sup> Furthermore, the PCLC and Commerce Court require only federally mandated minimum contacts with Philadelphia to hear suits, imposing no more stringent venue requirements on out-of-state or out-of-county cases.<sup>36</sup>

Philadelphia juries also render unusually high numbers of large damage awards, with verdicts commonly exceeding \$1 million.<sup>37</sup> Out-of-state plaintiffs' lawyers prefer the PCLC due to its quick and relatively rigid trial dates that outpace the federal Eastern District of Pennsylvania and Multi-District Litigation counterparts; the Philadelphia courts in turn strictly enforce a procedural rule requiring out-of-state attorneys to retain local counsel in prosecuting suits.<sup>38</sup>

PCLC caseload has recently increased after several years' downturn. Early 1990s PCLC litigation focused on asbestos mass tort cases, which swept both Pennsylvania and the nation.<sup>39</sup> The PCLC received diet drug mass tort complaints from 1998 through 2004, including a nearly 13,000-member strong "opt out" class action against

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<sup>35</sup> O'Brien, *supra* note 6; *see also* CIVIL PROGRAMS IN THE PHILADELPHIA COURT OF COMMON PLEAS, *supra* note 16, at 49.

<sup>36</sup> CIVIL PROGRAMS IN THE PHILADELPHIA COURT OF COMMON PLEAS, *supra* note 16, at 50; Elliott-Engel, *supra* note 8.

<sup>37</sup> CIVIL PROGRAMS IN THE PHILADELPHIA COURT OF COMMON PLEAS, *supra* note 16, at 49; *see also* CIVIL JURY CASES AND VERDICTS IN LARGE COUNTIES, CIVIL JUSTICE SURVEY OF STATE COURTS, BUREAU OF JUSTICE STATISTICS 13 (1992), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/cjcavilc.pdf>.

<sup>38</sup> CIVIL PROGRAMS IN THE PHILADELPHIA COURT OF COMMON PLEAS, *supra* note 13, at 49.

<sup>39</sup> *No End To Asbestos Suits Personal Injury Claims Could Hit \$70 Billion*, ST. LOUIS POST-DISPATCH, July 19, 1992.



pharmaceutical company Wyeth.<sup>40</sup> The PCLC's caseload declined from over 15,000 cases in 2004 to just under 3,000 in 2008.<sup>41</sup> But in 2009 Judge Sandra Moss replaced Judge Allan Tereshko as coordinating judge of the PCLC, declaring a "new day" in the PCLC. Mass-tort cases in the PCLC began anew with hormone replacement therapy suits against several pharmaceutical companies.<sup>42</sup>

Pennsylvania's statewide litigation environment has also shifted over time due to both legislative efforts to reform the state's tort laws and judicial interpretations of those laws in light of the state constitution. Where Philadelphia's court system is confined to court-specific procedural and administrative changes (which may, of course, nevertheless be substantial), state laws have often changed the *substantive* elements of claims as well as procedural requirements for a litigant to avail himself of a specific forum. Major statewide litigation developments since the PCLC's opening include:

- Worker's compensation reform under Governor Tom Ridge in 1996, enabling employers to claim a number of previously forbidden offsets against a damage award, including severance benefits, Social Security payments, and vested pension payments.<sup>43</sup>

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<sup>40</sup> *Diet-drug lawsuits netting slim payoffs; Plaintiffs from all over the country have come to Philadelphia to sue drug maker Wyeth over claims of heart damage*, THE PHILADELPHIA INQUIRER, Aug. 16, 2004.

<sup>41</sup> Elliott-Engel, *supra* note 8.

<sup>42</sup> *Id.*

<sup>43</sup> *Updates; Owens-Corning Alleges Fraud In Up To 40,000 Asbestos Claims*, BUSINESS INSURANCE, June 24, 1996.

- Major medical malpractice reform in 2002-03, including requiring independent physician certification that the complained-of practices fell beneath accepted medical standards, a prohibition on “double compensation” – suits for costs already paid by insurers – and a mandatory venue provision requiring suit to be brought in the county where the alleged malpractice occurred.<sup>44</sup>
- Judicial rejection of the *Daubert* standard in *Grady v. Frito-Lay, Inc.* in favor of the *Frye* standard in 2003.<sup>45</sup> While *Daubert* enumerates a number of factors in admitting expert testimony, *Frye* merely requires an expert’s methodology be generally accepted in the relevant expert community.<sup>46</sup>
- Pennsylvania Supreme Court invalidation of a state law ending joint and several liability – through which any defendant even fractionally responsible for a tort can be held financially responsible for all of a verdict – in 2006.<sup>47</sup>
- Re-limitation on joint and several liability in 2011. This most recent attempt at reducing the doctrine’s potentially unjust consequences limits

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<sup>44</sup> Latest Medical Malpractice data show number of cases and verdicts reach new low, THE ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS, Apr. 20, 2010, available at [http://www.sdklawfirm.com/news\\_articles.php?action=view&id=36](http://www.sdklawfirm.com/news_articles.php?action=view&id=36).

<sup>45</sup> *Grady v. Frito Lay*, 839 A.2d 1038 (Pa. 2003).

<sup>46</sup> Edward K. Cheng & Albert H. Yoon, *Does Frye Or Daubert Matter? A Study Of Scientific Admissibility Standards*, 91 VA. L. REV. 471, 471 (2005).

<sup>47</sup> The decision came in *Deweese v. Cortez*, 588 A.2d 738 (Pa. 2006), where the Order contained only eight words, “The Order of the Commonwealth Court is affirmed.”

defendants who are less than 60% liable to only their share of a plaintiff's damages.<sup>48</sup> The Pennsylvania Supreme Court has not yet concluded whether this statute passes state constitutional muster.

These ongoing structural changes have altered Pennsylvania's litigation environment in a variety of ways. In light of Philadelphia's procedurally and administratively distinct Court of Common Pleas, these changes offer numerous opportunities to compare Philadelphia courts to other Courts of Common Pleas within the state as well as to monitor effects on state caseloads and litigation practices over time. This paper next examines this evolution through comparison of relevant litigation metrics between Philadelphia and non-Philadelphia Pennsylvania courts.

## **II. Philadelphia and Non-Philadelphia Pennsylvania Litigation Statistics: A Comparison**

As a first step toward empirically understanding whether and to what extent there are meaningful features of Philadelphia's court system that make it especially favorable toward plaintiffs, spur abnormally high rates of litigation, or generate problematic outcomes, we begin with a comparison of that court with nearby institutions. Non-Philadelphia Pennsylvania courts provide a meaningful comparison because they have much more in common, both demographically and institutionally, than other state courts. While there are obvious key differences between Philadelphia

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<sup>48</sup> Marc Levy, *Pennsylvania Governor Signs 'Fair Share' Civil Liability Reform*, ASSOCIATED PRESS, June 28, 2011.

courts and other Pennsylvania courts – for example, the selection of lawsuits litigated in larger cities versus less populated areas – the similarities with respect to state law and demographics allow useful first comparisons.

We examine potentially systematic differences between Philadelphia and other Pennsylvania courts with data from the Administrative Office of Pennsylvania Courts (AOPC). The AOPC was established in 1969 to assist the Pennsylvania Supreme Court in the administration of Pennsylvania Courts. The AOPC maintains an extensive database tracking numerous variables related to all categories of cases and decisions within the Unified Judicial System of Pennsylvania.<sup>49</sup> Separate databases are maintained for Criminal, Civil, Family, Orphan, and Medical Malpractice cases within the Pennsylvania court system, and generally are accounted for by county and recorded annually. The analysis herein relies upon AOPC data for every county from 1994 to 2009, including docketed cases, cases pending at the beginning of the year, cases available for trial, settlements, jury trial cases, non-jury trial cases, and new cases.

The civil case data is reported in four forms, including Civil Action, Equity cases, Other Cases, and Total. The total category is net of the other three categories. Wherever possible, the reported figures reflect the Total category. In 2007, Philadelphia County started categorizing its reporting standards differently. The new Philadelphia variables are inconsistent with the data from earlier years and somewhat less

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<sup>49</sup> The Unified Judicial System of Pennsylvania, Administrative Office of Pennsylvania Courts, Research and Statistics: Caseload Statistics, <http://www.courts.state.pa.us/T/AOPC/ResearchandStatistics.htm>.

comparable across other Pennsylvania counties. Accordingly, to allow meaningful comparison, the analysis using these civil data is limited to data up to and including 2006. However, AOPC data are available for medical malpractice cases from 2000 to 2010, including jury and non-jury verdicts for every county in Pennsylvania.<sup>50</sup>

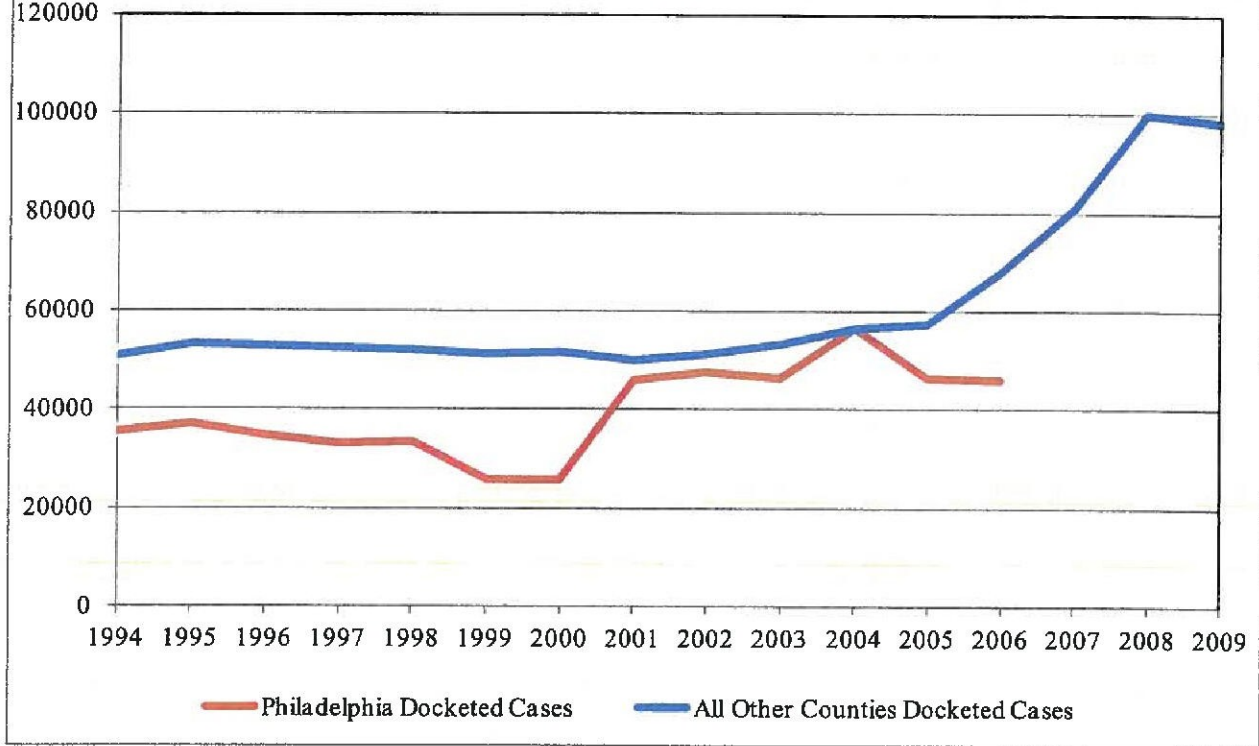
A meaningful comparison of Philadelphia's court system to other Pennsylvania courts begins with a simple account of Philadelphia's relative share of Pennsylvania's population as well as its caseload. A 2006 census bureau report estimated 1.45 million out of 12.4 million Pennsylvanians – or 11.7% of the total population -- resided in Philadelphia.<sup>51</sup> Figure 1 compares Philadelphia's docketed cases to all other Pennsylvania docketed cases.

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<sup>50</sup> The Unified Judicial Sys. of Pennsylvania, Admin. Office of Pennsylvania Courts, Med. Malpractice, <http://www.courts.state.pa.us/Links/Media/MedicalMalpractice/default.htm>.

<sup>51</sup> NAT'L AND STATE POPULATION ESTIMATES, US CENSUS BUREAU, ANNUAL POPULATION ESTIMATES 2000 TO 2006, available at <http://www.census.gov/popest/states/NST-ann-est2006.html>; POPULATION ESTIMATES BY COUNTY, US CENSUS BUREAU, ANNUAL POPULATION ESTIMATES 2000 TO 2006, available at <http://www.census.gov/popest/counties/CO-EST2006-01.html>.

**Figure 1**  
**Docketed Cases**  
**No. of Civil Cases**

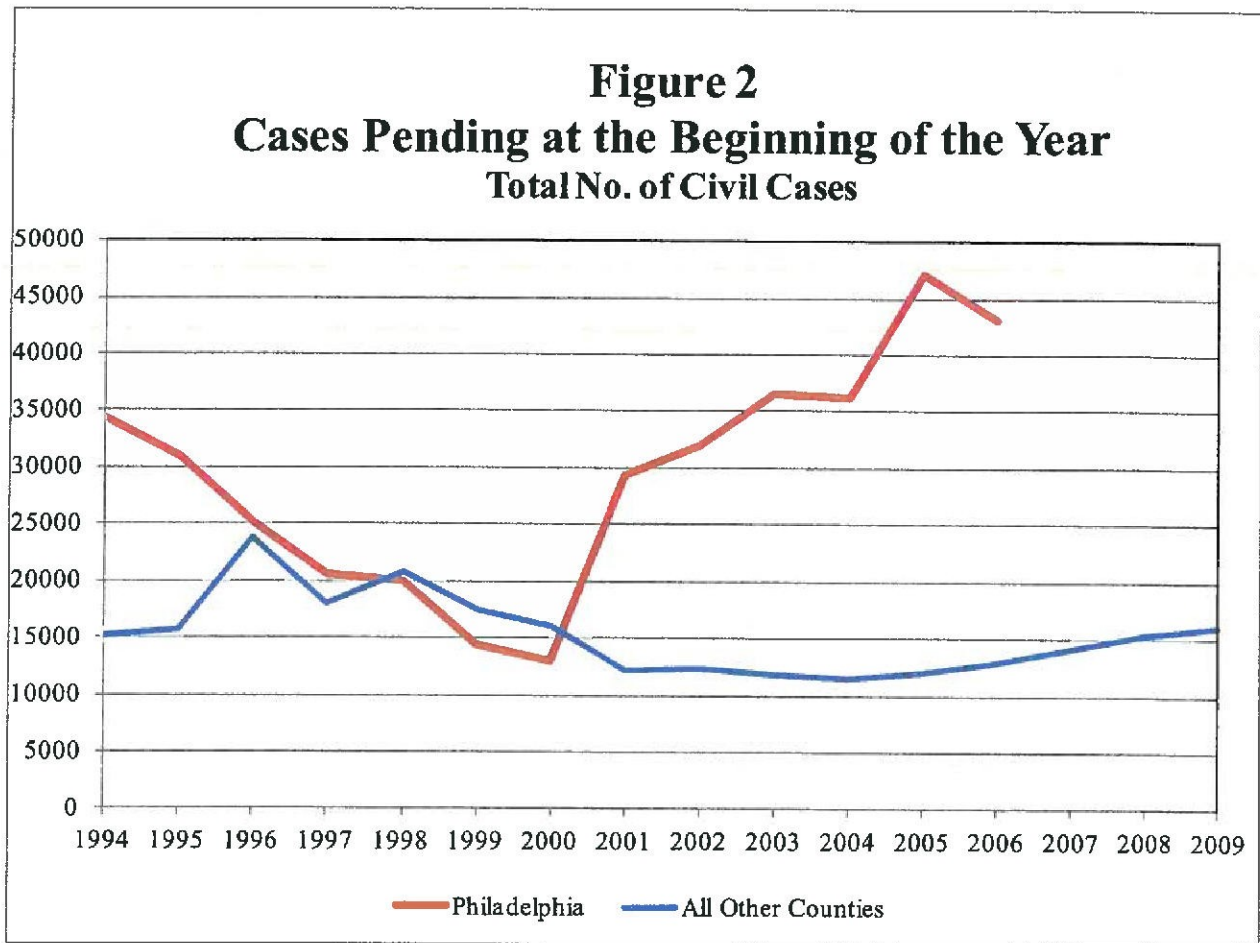


As a starting point, it is clear that Philadelphia courts have consistently heard a greater share of cases than its underlying share of the population would otherwise suggest. That a large city would attract more than its proportional share of the state's litigation is not surprising in its own right. There are several reasons to expect higher litigation rates in more densely populated cities. However, Philadelphia's historical share of Pennsylvania litigation provides a useful benchmark against which various changes over the past two decades can be measured. The absolute trend in case filings is positive for both Philadelphia courts and Pennsylvania courts in general, With the most



prominent growth in docketed cases between 2000 and 2001, when Philadelphia's caseload increased 78.5%.

Figure 2 provides a different look at litigation volume in Philadelphia compared to other Pennsylvania courts, focusing on beginning-of-year pending cases. Pending cases reflect the accumulated docket not disposed of by year's end.



Combined, Figures 1 and 2 provide some evidence that docket management differs significantly between Philadelphia courts and non-Philadelphia Pennsylvania courts. While docketed cases in non-Philadelphia courts are relatively constant from 1994 to 2009, the first seven years of that time period exhibit greater variance and a general

downward trend in docketed cases. From 2004 onward, the rest of Pennsylvania experiences a modest upward trend of approximately 7% annually.

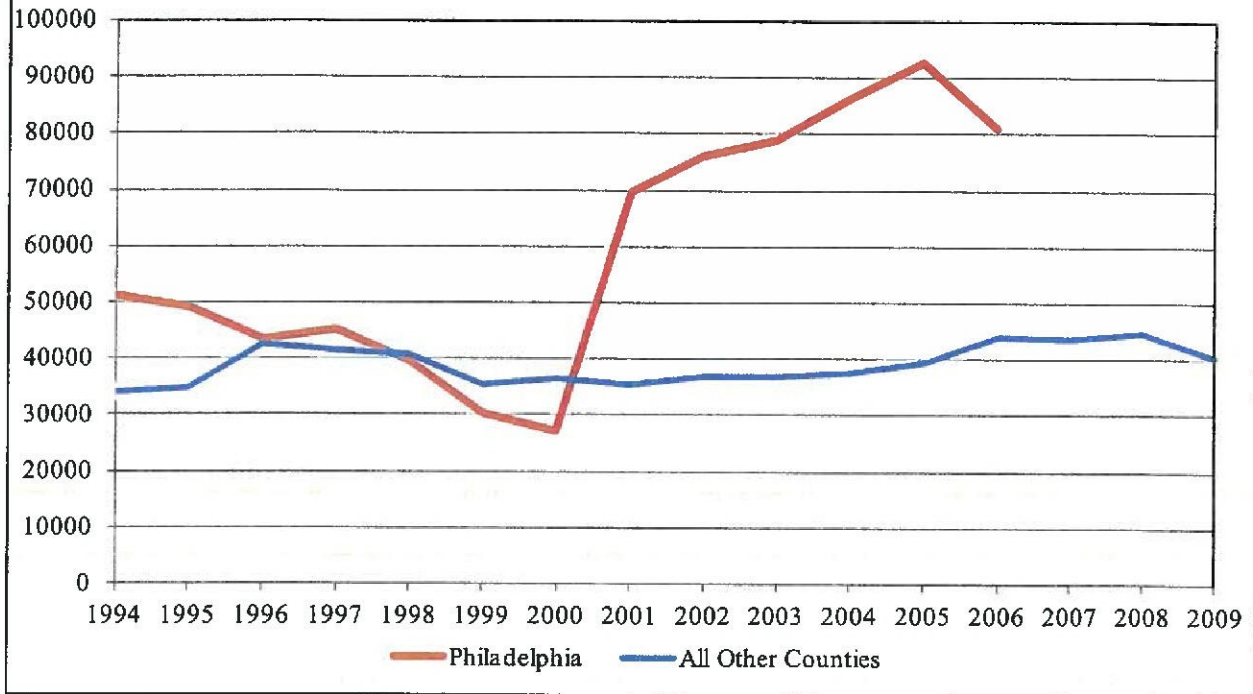
Philadelphia courts show far more extreme variation by way of comparison. From 1994 to 2000 – partially during the Day Backward and Day Forward programs – Philadelphia courts retained a more pronounced reduction in beginning-of-year docketed cases. As seen in Figure 1, this reduction is at least in part attributable to the overall decline in docketed cases. It also reflects the fact that Philadelphia courts during this period generally disposed of more cases than were filed.

Perhaps the most striking feature of this comparison is the abrupt reversal in this negative trend in Philadelphia – consistent with the statewide tendency – when Philadelphia’s beginning-of-year caseload spiked dramatically. As we will discuss in greater detail, at least part of this surge is explained by the unusual filing increase in 2001 (see Figure 1). This trend continues through 2005, peaking at over 47,000 cases.

Figure 3 compares cases available for trial and demonstrates similar trends to Figure 2. These include both cases certified as ready for trial, either by bench or jury trial, and those classified as “pre-trial.”



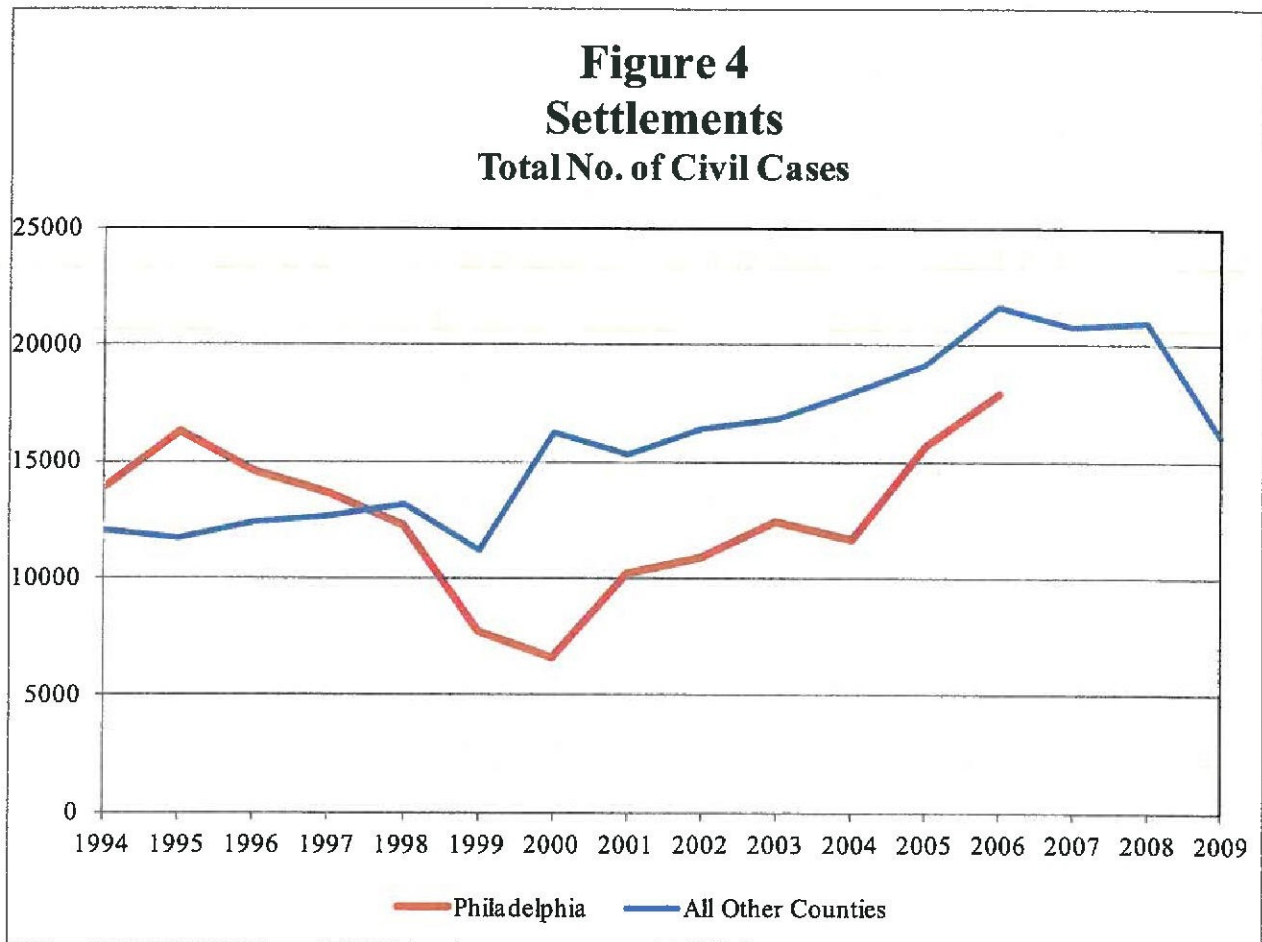
**Figure 3**  
**Cases Available for Trial**  
**Total No. of Civil Cases**



Philadelphia's available-for-trial caseload roughly tracks non-Philadelphia Pennsylvania counties from 1994 to 2000, but skyrockets by 155.2% between 2000 and 2001. Other Pennsylvania courts remain relatively constant across 1994 to 2009, but Philadelphia's caseload both drops and rises far more sharply than its statewide counterparts. Philadelphia cases available for trial continue to grow through 2005. While Pennsylvania cases available for trial outside of Philadelphia grew 19.1%, Philadelphia cases available for trial increased 57.6%. Both Figures 2 and Figure 3 indicate that Philadelphia courts experienced significant change relative to the rest of

Pennsylvania beginning in 2001. Both support observations that Philadelphia is an especially litigious climate.

We have thus far focused on dockets, the decision to file suit, and the relative rate of litigation and disposition. We have not yet discussed outcomes. Figure 4 compares settlements in Philadelphia and non-Philadelphia Pennsylvania courts.



Comparing Philadelphia courts to the rest of the state, Philadelphia settled more cases from 1994 to 1997, but fewer after that point; Philadelphia settled 17.4% more cases between 1994 and 1995, but settlements fell 59.3% through 2000. This trend bears note in light of Philadelphia's greater docketed caseload from 2001 onward, its higher

beginning-of-year case rates, and its substantially larger number of cases noted as available for trial. This is consistent with an inference that plaintiffs suspect disproportionately favorable treatment in Philadelphia – thereby avoiding settlement – and, by extension, with the hypothesis that Philadelphia courts structurally prefer plaintiffs to defendants.

Figure 5 decomposes the trends in tried cases in Philadelphia and non-Philadelphia Pennsylvania courts by trial type: jury and non-jury trials. Some qualitative reports suggest Philadelphia juries favor plaintiffs over defendants; others remark that excessively lenient excusal norms leave Philadelphia juries skewed away from a typical population sample. If these explanations proved true, one would expect Philadelphia plaintiffs to prefer jury trials to non-jury trials, all else equal, to avail themselves of this ingrained pro-plaintiff prejudice. Figure 5 bears this suspicion out: Philadelphia plaintiffs prefer jury trials compared to non-Philadelphia counterparts.

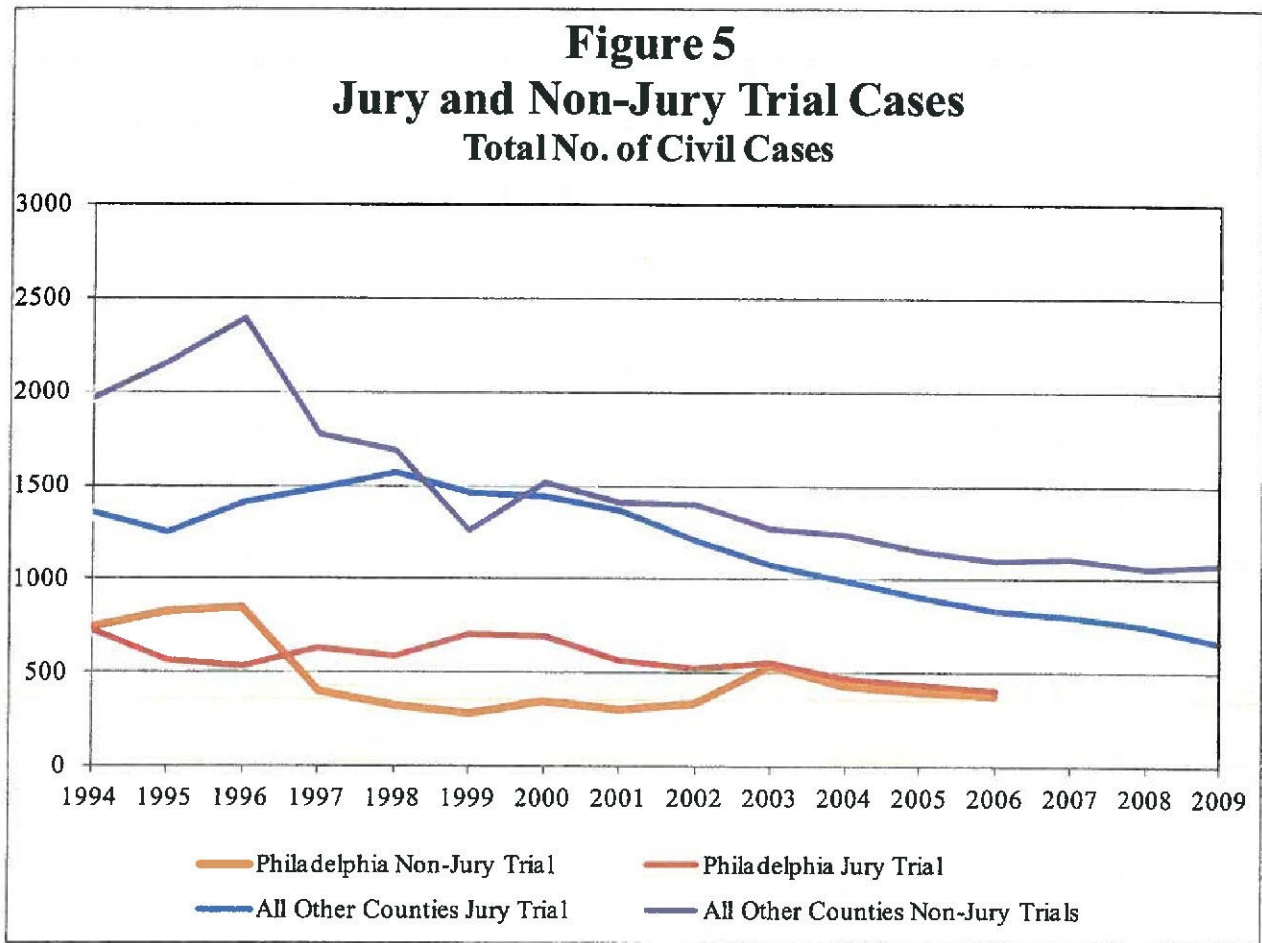


Figure 5 reveals a modest Philadelphian preference for jury trials when compared to the rest of the state. Counties outside Philadelphia consistently prefer non-jury trials in terms of absolute numbers of civil cases; excepting 1999, a majority of cases tried in Pennsylvania courts outside Philadelphia appeared before non-jury arbiters. In contrast, Philadelphia courts from 1997 onward display a preference for jury trials, even as both the total number of trials has decreased and the remainder of the state has gradually trended away from jury trials as a share of all cases actually tried.

One important battleground in debates over Philadelphia civil courts, and the PCLC in particular, has been medical malpractice cases. Medical malpractice cases



represent some of the most extensive tort reforms thus far – such as the 2002 MCARE Act – as well as some of the most potent accusations of forum-shopping. Figure 6 examines relative plaintiff win percentages in medical malpractice jury trials.

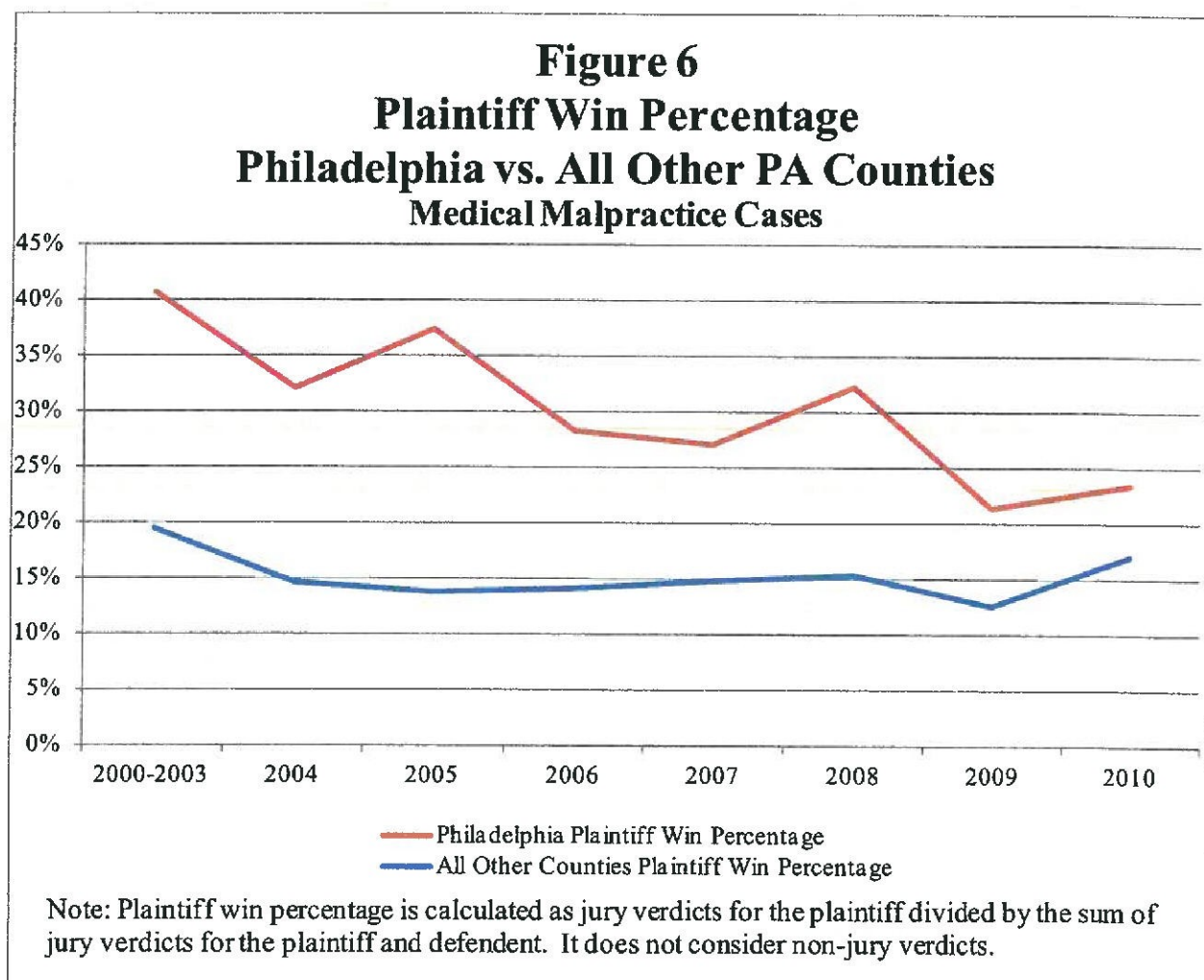


Figure 6 reveals a significant asymmetry between Philadelphia and non-Philadelphia Pennsylvania juries in medical malpractice cases. While non-Philadelphia Pennsylvania juries returned favorable verdicts for plaintiffs around 15% of the time across the time period, Philadelphia juries consistently found in favor of plaintiffs more often – by as much as 23.7% in absolute terms in 2005. Importantly, the Philadelphia plaintiff win

rate premium has consistently narrowed since 2005, as the Philadelphia win percentage dropped over the time horizon by 17.3%, while the non-Philadelphia win percentage fell by only 2.3%.

The above figures comparing Philadelphia litigation to the experiences and outcomes of non-Philadelphia Pennsylvania litigants cumulatively depict a system at significant tension with the narrative offered by PCLC advocates. Philadelphia retains a disproportionately large volume of cases relative to its population across the examined time horizon. However, litigation volume alone does not describe the important and apparent distinctive characteristics of the Philadelphia courts. Philadelphia generally has a greater number of cases ready for trial or in pre-trial status – yet settles fewer cases, despite mandatory case status conferencing and strong encouragement towards settlement under the PCLC.

Philadelphia cases actually tried also exhibit a preference for jury trials unusual when compared to the remainder of the state. Significantly, at least in medical malpractice cases, Philadelphia juries are significantly more likely to find in favor of plaintiffs. Comparing the Philadelphia to the rest of the state allows one to roughly isolate the impact of Philadelphia-specific institutions on these trends. Collectively, the data suggest that Philadelphia courts and institutions significantly differ from their counterparts in the state in a number of ways and that those differences manifest themselves in docket statistics, caseloads and outcomes. Of course, there are other

relevant comparisons that further characterize the significance of these trends compared to other court systems. The next section attempts to illuminate these discrepancies through comparisons to national data along many of the same metrics – and several additional ones.

### III. Philadelphia Courts, Pennsylvania Courts, and Other Federal and State Courts

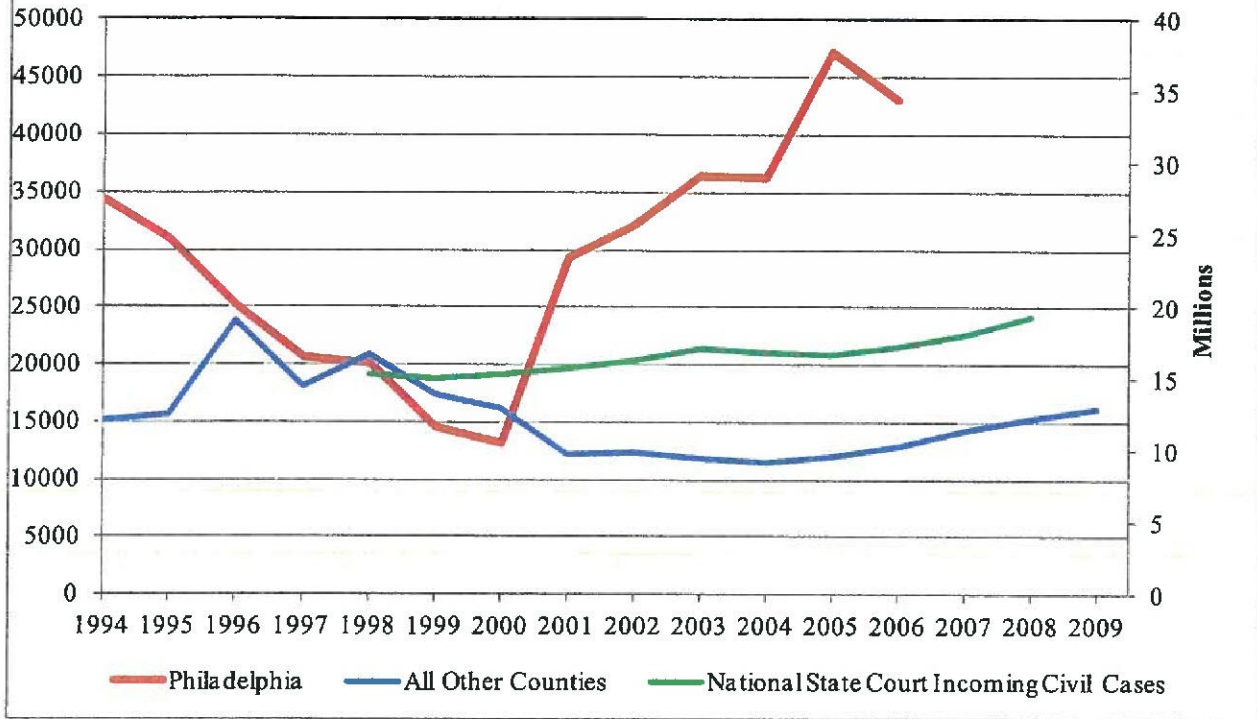
The above discrepancies appear more rather than less prominent when examined in light of national trends. We begin with caseload statistics. Figures 7 and 8 examine the same data as Figure 2 – cases left unresolved in the prior year, and therefore pending beginning-of-year – alongside *all* state court pending cases and *all* federal district court pending cases, respectively.<sup>52</sup>

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<sup>52</sup> COURT STATISTICS PROJECT, EXAMINING THE WORK OF STATE COURTS: AN ANALYSIS OF 2008 STATE COURT CASELOADS, TRIAL COURTS: CIVIL CASELOADS, (2008), *available at* [http://www.ncsconline.org/d\\_research/csp/2008\\_files/Civil.pdf](http://www.ncsconline.org/d_research/csp/2008_files/Civil.pdf); JAMES C. DUFF, ADMIN. OFFICE OF THE UNITED STATES COURTS, JUDICIAL FACTS AND FIGURES: MULTI-YEAR STATISTICAL COMPILATIONS OF FEDERAL COURT CASELOAD THROUGH FISCAL YEAR 2009 (2010), *available at* <http://www.uscourts.gov/Statistics/JudicialFactsAndFigures.aspx>.



**Figure 7**  
**Cases Pending at the Beginning of the Year**  
**Total No. of Civil Cases**



Analyzing Figure 7 in light of Pennsylvania and Philadelphia data confirms that while Pennsylvania’s statewide trend is typical of national judicial caseloads, Philadelphia’s is not, further bolstering the conclusion that Philadelphia courts have adopted institutions successful in attracting a disproportionate share of cases. Both national and non-Philadelphia Pennsylvania courts exhibit fairly gentle variations in caseload with a general upward trend from 2001 to 2009 – though Pennsylvania at large showed a nationally abnormal decreased caseload from 1998 to 2001. In contrast, the Philadelphia court docket grew drastically from 1998 to 2006 – the years for which data on all three



courts are available – increasing by 114.8%, or more than quadruple the national rate of increase (at 25.3% across the entire time period).

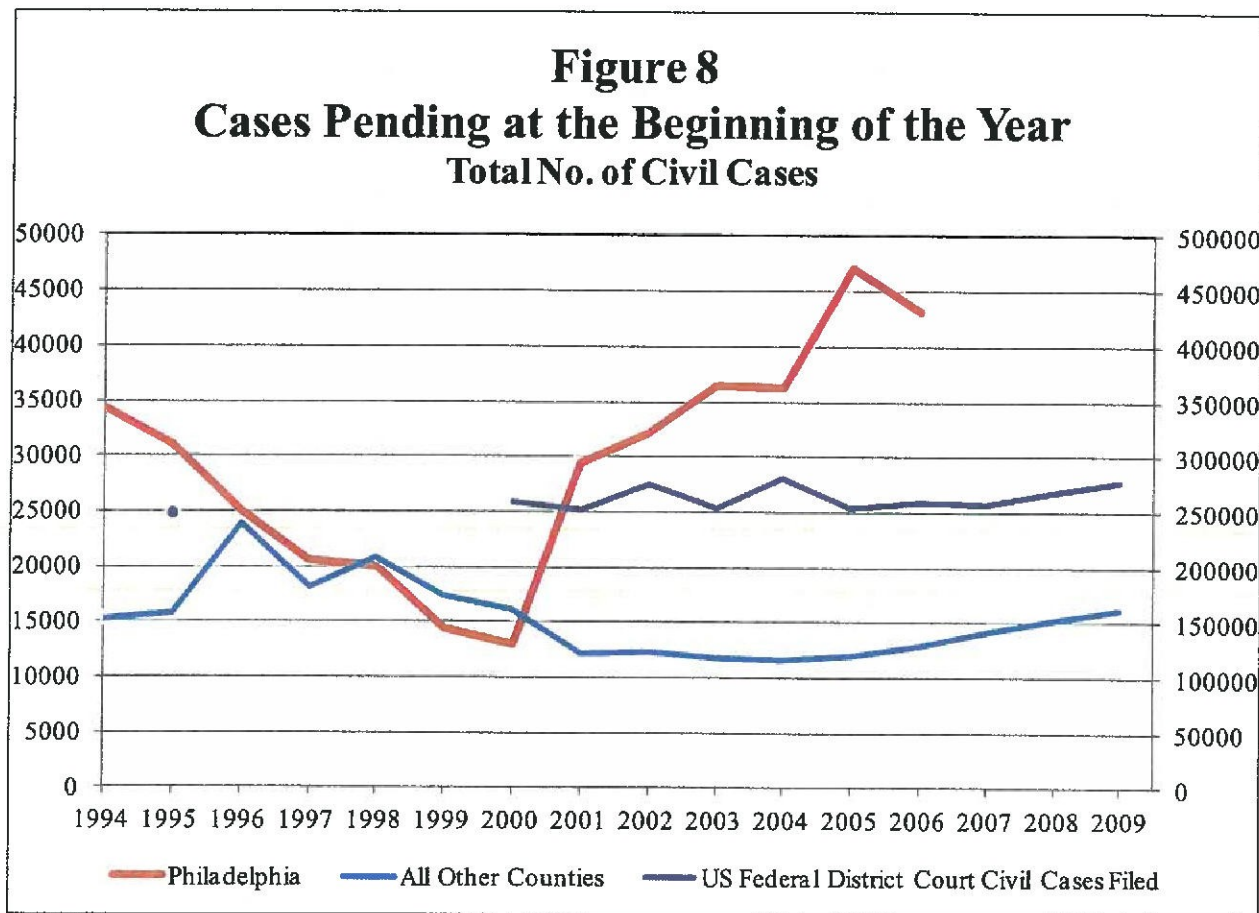
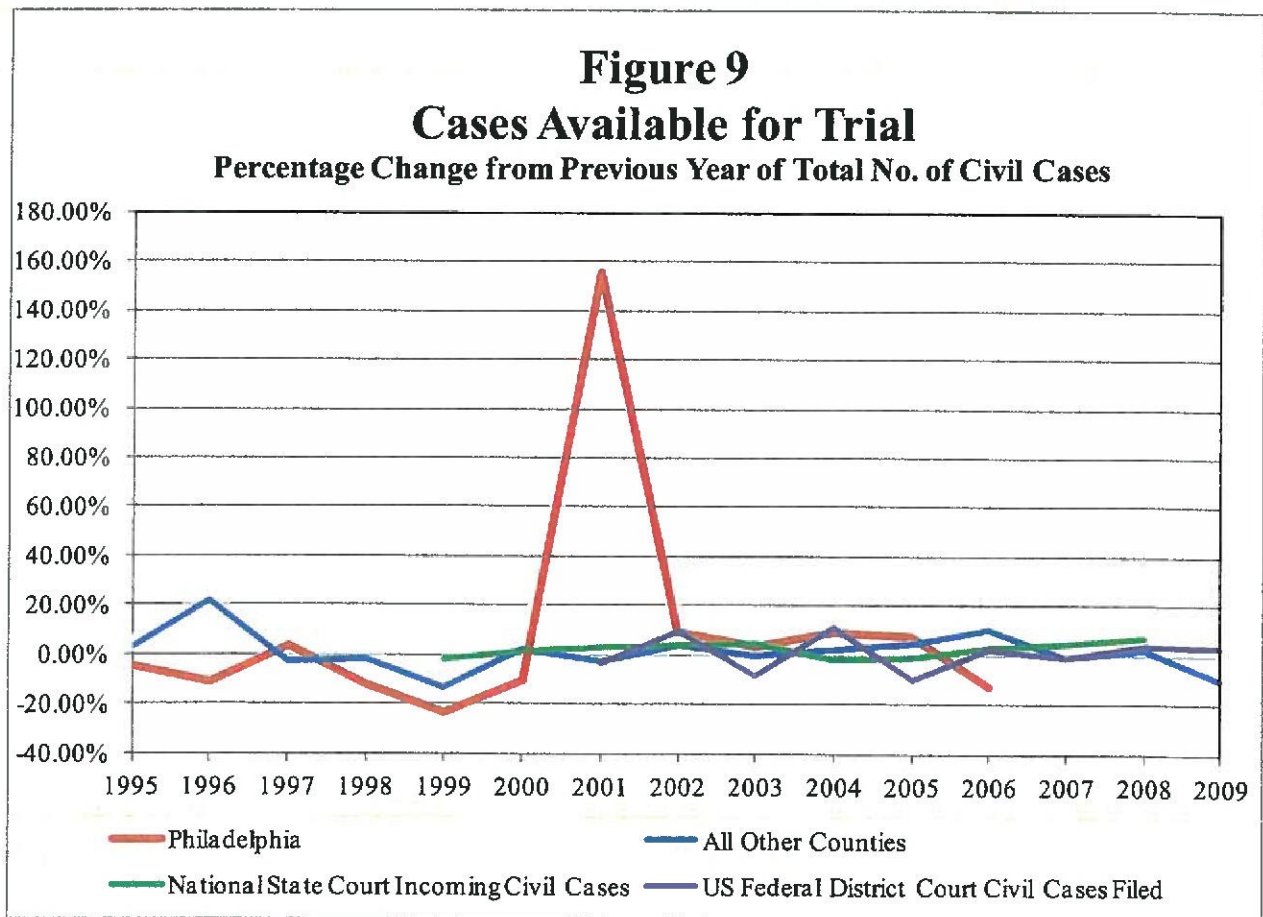


Figure 8 displays the same data with reference to federal district court cases filed during the same period. Data from 2000 to 2009 suggest very modest (6.5%) growth in district court filings. Non-Philadelphia Pennsylvania courts experienced nearly identical backlogged case growth, at 6.3%. Figures 7 and 8 jointly illustrate that the growth of backlogged cases in Philadelphia courts neither reflected a surge in filed cases at the federal or state levels nor followed the remaining Pennsylvania trends,

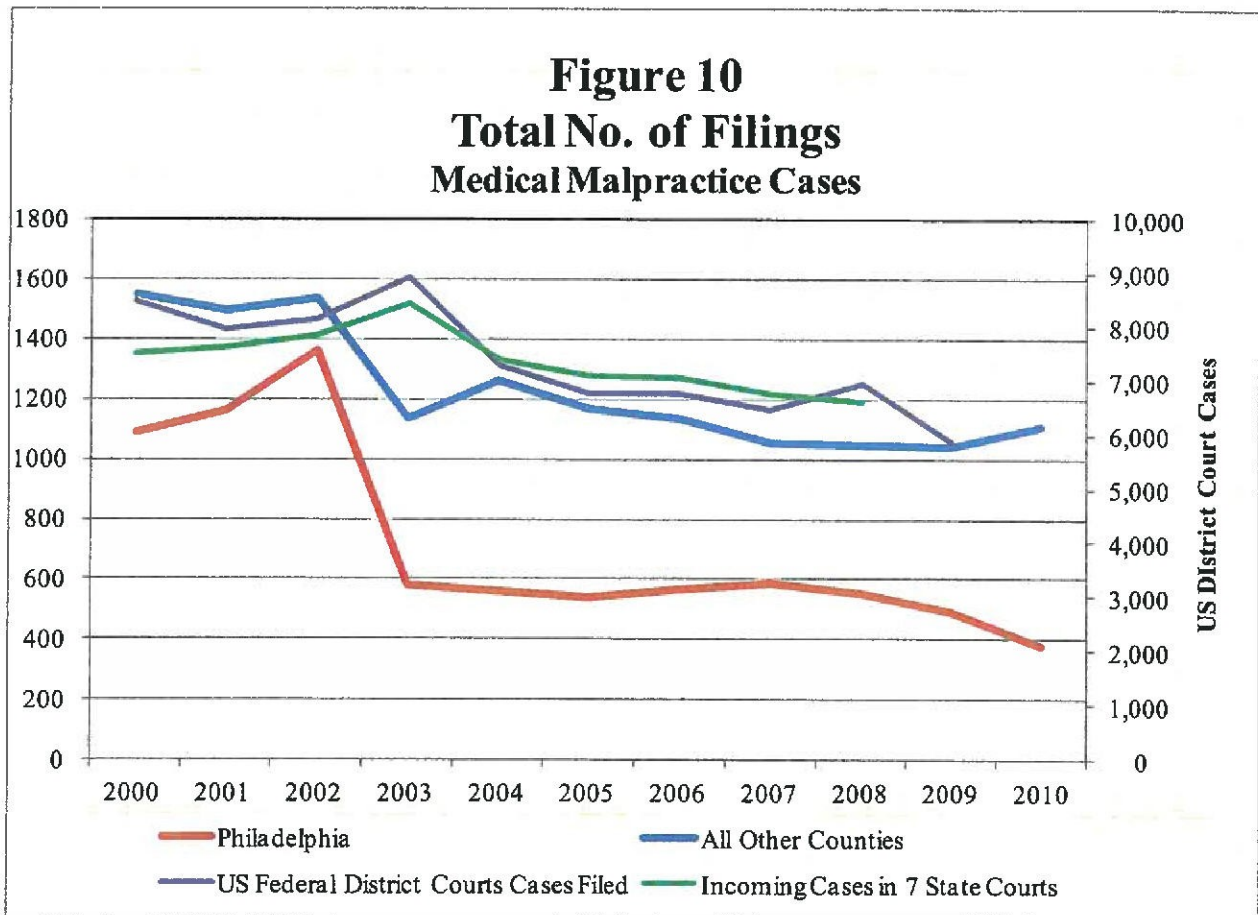
which approximately mapped onto broader national trends. Indeed, something distinctly Philadelphian appears at work in generating the queue.

Figure 9 expresses the data in Figure 3 as a function of percentage of total cases: it illustrates cases available for trial year-over-year, where a positive rate of change indicates case accumulation, while a negative rate of change shows a jurisdiction clearing some of its case backlog. Figure 9 mirrors figure 3 with regards to Philadelphia courts: while from 1995 to 2000 they generally reduced their cases, beyond that – including a colossal 2001 case increase – they have struggled to do so since.



Moreover, Figure 9 illustrates that while from 1995 to 2000, Philadelphia courts often outperformed the statewide, federal, or national state court averages, they struggled to do so from 2001 onward, only again clearing case backlogs in 2006. Nevertheless, Philadelphia courts – save for 2001– tracked national trends from 2002 onward.

Figure 10 returns to medical malpractice cases in specific, comparing medical malpractice filings in Philadelphia courts, Pennsylvania state courts, seven selected state court filings aggregated – including Arizona, Connecticut, New Jersey, New York, Rhode Island, and Oregon – and federal district courts.<sup>53</sup>



<sup>53</sup> COURT STATISTICS PROJECT, *supra*, note 52; JUDICIAL FACTS AND FIGURES, *supra*, note 52.



While Pennsylvania medical malpractice suits remained generally flat from 2000 to 2002, Philadelphia court medical malpractice suits steadily rose. This is relatively unsurprising in light of Figures 5 and 6; Philadelphia cases actually tried tended towards jury trials, and Philadelphia juries revealed a significant preference for plaintiffs unlike other Pennsylvania jury pools. Note that medical malpractice cases in Pennsylvania (excluding Philadelphia) exceeded the seven listed states *combined* until 2003, and Philadelphia alone approached the seven-state total.

Critically, the turnaround in medical malpractice case trends occurred in 2002–03, when Pennsylvania law reformed medical malpractice case procedures and venue requirements, leading to a predictable drop in Pennsylvania medical malpractice suits. To the extent these changes spurred positive trends in Philadelphia medical malpractice cases and convergence with statewide and national trends, these changes provide a potential solution to similar abnormal trends in non-medical malpractice civil cases. The success of these provisions was significant. Non-Philadelphia court medical malpractice cases declined by 28.2% from 2000–2010; Philadelphia courts experienced a more pronounced 64.9% decline. The seven-state total declined merely 14.6% across the same period. Thus far we have documented dramatic differences between Philadelphia civil courts and their state and national counterparts. The data overwhelmingly suggest that, consistent with the American Tort Reform Association's critique of Philadelphia

courts, there is indeed something unique occurring in Philadelphia courts. In the next section, we turn to explaining some of these differences in light of the data presented.

#### **IV. What's Different About Philadelphia Courts?**

The above data suggest that Philadelphia courts indeed display dissimilarities to their other Pennsylvanian counterparts as well as other state and federal courts. One must be cautious when extrapolating from limited data, especially without rigorously accounting for differences in population, types of claims, and other procedural and substantive changes across time. Nevertheless, the available data suggest an unusual dynamic in Philadelphia courts. While Philadelphia court dockets hold a disproportionately large number of cases relative to Philadelphia's population, they hold an absolute majority of the cases left pending at the beginning of each court year for most years examined, with a staggering growth following 2001. Several of the PCLC's procedural reforms may have contributed to a late-1990s steady decline in backlogged cases; this decline quickly and sharply reversed in 2001, however, as Philadelphian court cases grew.

Moreover, Philadelphia court plaintiffs demonstrate different preferences after filing cases. Philadelphia plaintiffs prefer jury trials unlike their other Pennsylvanian counterparts, and this affinity appears reciprocal in at least the medical malpractice context, where Philadelphia juries tender verdicts in favor of plaintiffs at disproportionate rates. Similarly, Philadelphia courts recorded fewer settlements

despite having more cases available for trial than non-Philadelphia Pennsylvania courts. Neither Philadelphia's initial reduction in caseload, its wild increase thereafter, or its large variance between the two track the remainder of the state, other state courts, or case growth in federal district courts. To the extent the PCLC's initial mission of resolving complex cases and reducing the county caseload is in tension with recent statements by its officiating judges seeking to attract additional litigation – "business," in its words – to Philadelphia, the latter appears to have had the upper hand in recent years.

Yet the decline in medical malpractice cases appears informative. Unlike several other tort law variations, which demonstrated unclear results, Pennsylvania's medical malpractice reform preceded a substantial drop in statewide cases and an even sharper decline in Philadelphia medical malpractice cases. Unlike several other substantive tort changes in prior years – or procedural ones thereafter – the 2002 medical malpractice reforms instituted strict venue rules. This suggests certain procedural rules can isolate court-specific effects and, to the extent plaintiffs may seek to avail themselves of a specific forum for whatever reason, reduce those effects' deliberate use. The effects of such a venue provision call into question the potential consequences of rapidly expanding access to Philadelphia courts, especially to outsiders; if medical malpractice cases are representative, the example suggests such a restrictive provision could reduce Philadelphia forum shopping and bring Philadelphia plaintiff behavior in settlement

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and trial closer to the statewide average. It suffices to say that such a venue provision stands in direct opposition to recent calls for increased litigation in the PCLC, however. But a venue provision's salutary effects could inure both to defendants who would otherwise struggle to navigate Philadelphia's court and litigation system, as well as to those Philadelphians whose cases remain mired in substantial litigation delays.

