

Some Truths About Florida's Tort System...

The business community is again trumpeting the branding of Florida as a “judicial hellhole” whose tort system is running out of control. Don't be misled by distorted--if not fabricated--“facts”.

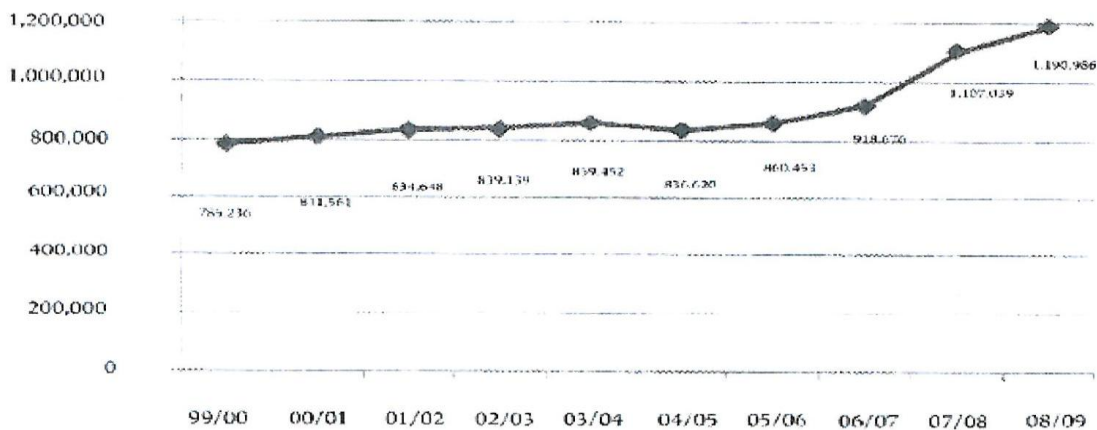
What is the truth?

Fact #1. There is only one trustworthy source of complete and accurate information on civil case filings in Florida—the Supreme Court's Office of the State Courts Administrator.¹ Data derived from anecdotal reports, or contained in self-serving studies commissioned by special interest groups or conducted by special interest-funded “research institutes” or other biased front groups, must be viewed with a great deal of skepticism and the assumption that the primary goal is to mislead the reader by distorting the facts in support of a particular agenda.

Fact #2. The presentation of even valid data can be manipulated in ways designed to grossly mislead the reader. A perfect example of this approach appears in the graph below. Presented as part of recommendations to incoming Governor Scott by some members of Florida's business community acting under the mantle of the Tort Reform and Insurance subgroup of the Regulatory Reform Transition Team, the graph was used as evidence to support their premise that Florida somehow deserves the brand of a “judicial hellhole” placed on it by a national organization (one whose prime mission is to restrict if not eliminate consumers' access to the courts countrywide).²

This graph obviously shows a significant increase in circuit court filings over the past ten years. The context in which it was presented, however, certainly implies, as it was obviously intended to do, that the tort system is responsible for that increase. *Truth or fiction?* Well, the numbers are true—and they are from the Office of the State Courts Administrator--**but this misleading presentation says absolutely nothing about tort case filings in Florida courts!**

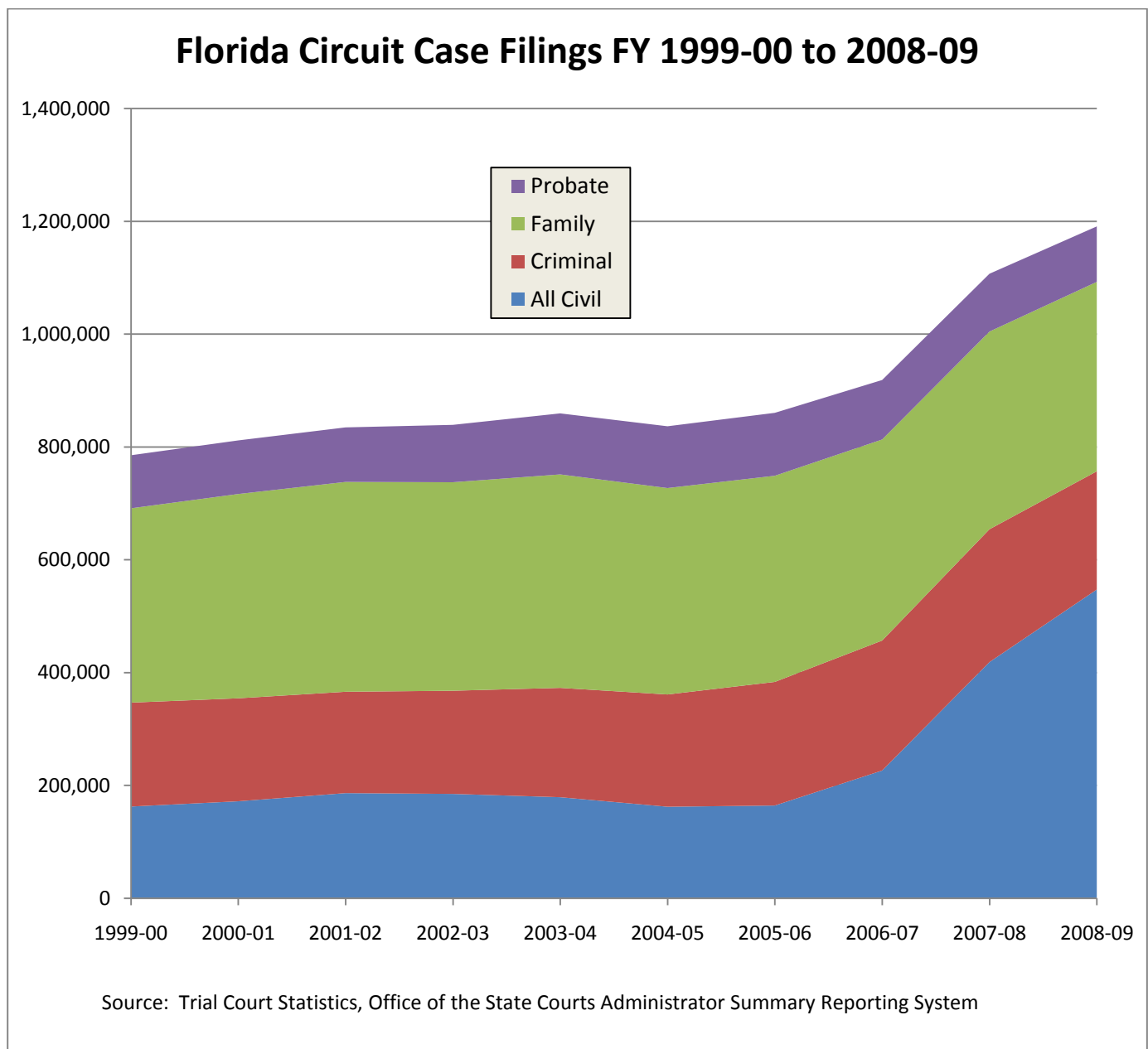
Circuit Court Filings over past 10 years



52% increase

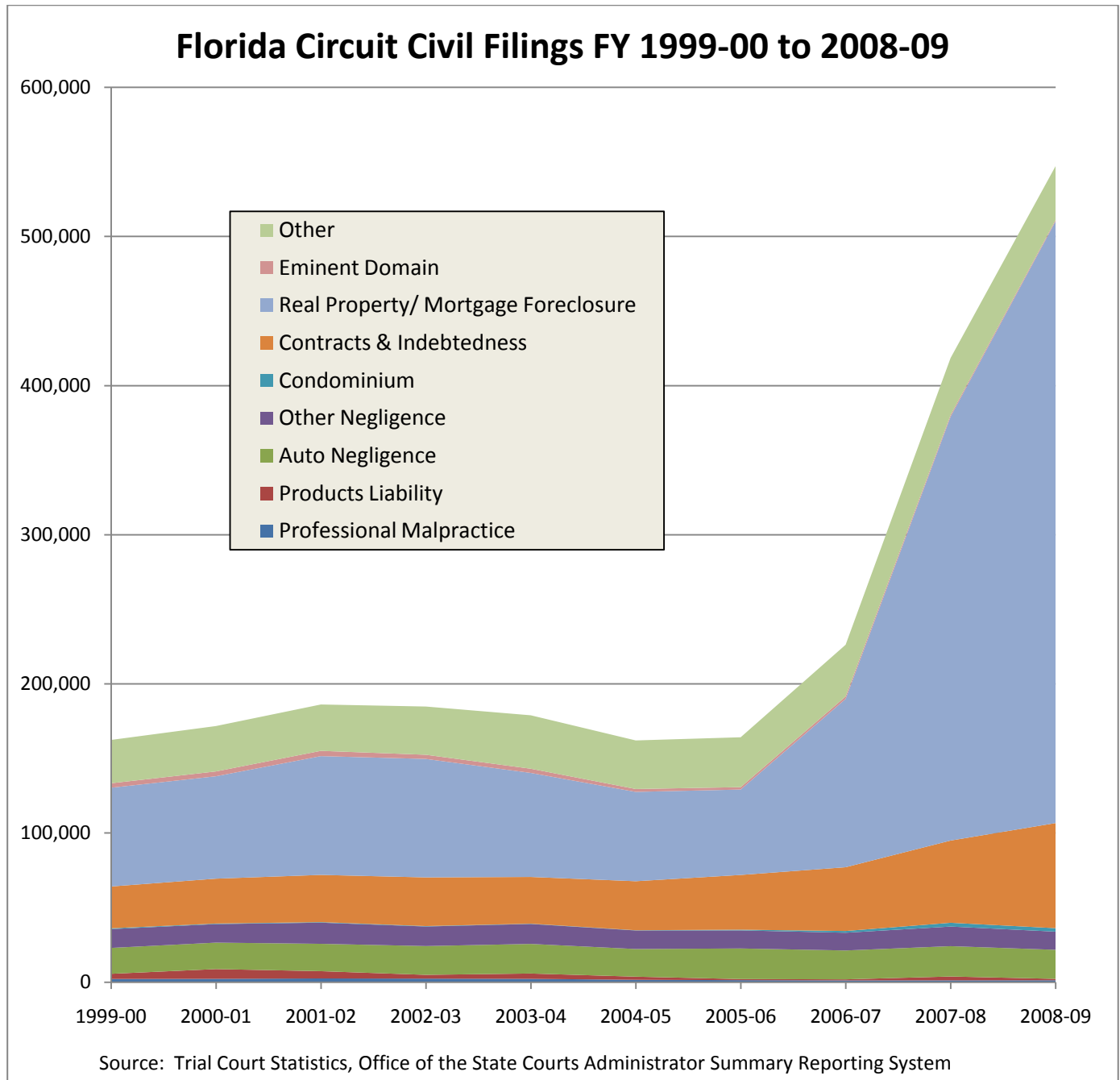
The truth is that the graph above presents the **total** number of **all types** of cases filed in circuit court. *The truth* is that in FY 2008-09, the last year shown, civil cases were less than half (45.9%) of the total number of circuit court case filings, while the majority of cases filed that year in circuit court were criminal (17.6%), family (28.2%), and probate (8.3%).³ While this graph certainly illustrates an increasing judicial workload, it does not tell the whole story and it cannot be truthfully used to lay the blame for that increase at the foot of Florida's tort system!

Fact #3. To understand why total case filings in circuit court have increased over the last ten years, one must look at the breakdown of the different types of cases filed in circuit court. The top line of graph below represents the total circuit court case filings and tracks the single line presented in the preceding graph, but the breakout by general type of case reveals much more information. It clearly illustrates that civil cases constituted a fairly small portion of all cases filed until a relatively recent steep increase in filings, and that recent increase also accounts for the bulk of the overall increase in circuit court filings. However, this still does not provide any information about tort cases because the category of *civil cases* covers a lot more than just tort cases—the collected statistics on civil cases are grouped into nine subcategories, of which only four are actually tort-related.

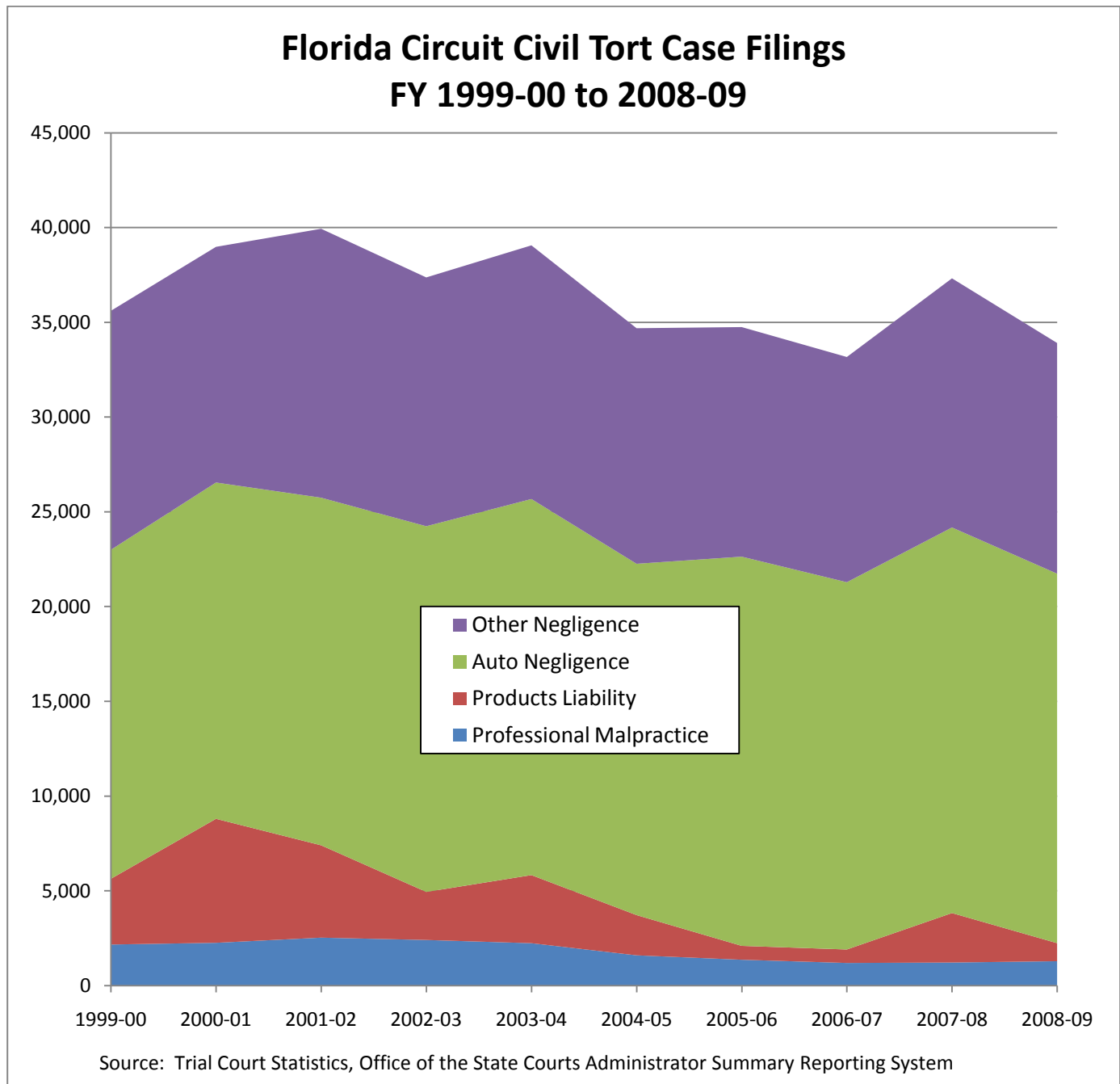


Fact #4. Looking deeper still at the nine subcategories of civil cases, it is clear that while overall civil case filings have, in fact, increased significantly over the last ten years, the increase is not because of tort cases--it's because of the explosion in mortgage foreclosure proceedings! When the examination of circuit court filings is limited only to

civil actions, broken out by the categories tracked by the Office of the State Courts Administrator, it is immediately obvious what type of cases are responsible for the increase—real property and mortgage foreclosure cases. Back in FY 1999-00 this category already represented nearly a third of all civil cases, but over the last ten years these cases have increased six-fold (mostly in recent years) to a staggering number (403,477) that is over 400 times the number of products liability cases (953) filed in FY 2008-09! As is evident in the graph below, the only other category showing an increase of any consequence over this period was contracts and indebtedness cases—business vs. business cases, not tort cases.

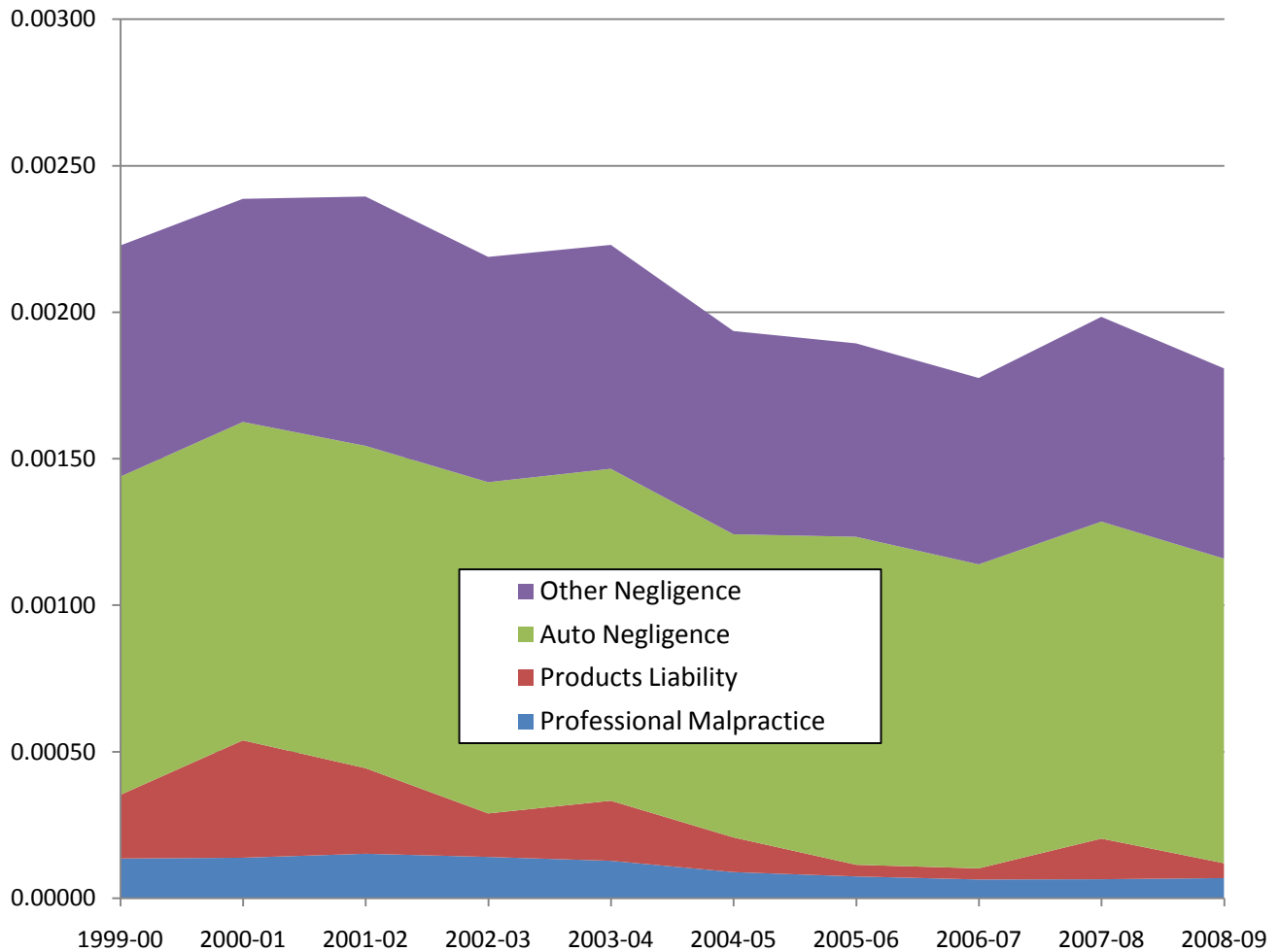


Fact #5. The truth is that the total number of circuit civil case filings in the *tort categories* (professional malpractice, products liability, auto negligence, and other negligence) has actually decreased over the last ten years (down 4.8%), with *large decreases* in professional malpractice (down 40.6%) and products liability (down 72.5%). During this period, auto negligence cases were up (12.3%) and “other” negligence cases were down (3.5%).



Fact #6. What’s more, from April 1, 2000 to April 1,-2009, Florida’s population increased 17.3%⁴, and, on a per capita basis, filings in Florida’s circuit courts for every category of tort case have declined over the last ten years! On a per capita basis, filings of professional malpractice cases were down 49.4%, products liability cases were down 76.6%, auto negligence cases were down 4.3%, and other negligence cases were down 17.7%. Overall, combined tort case filings per capita in Florida were down 18.8% over the ten year period.

Florida Circuit Civil Tort Case Filings Per Capita FY 1999-00 to 2008-09



Source: Trial Court Statistics, Office of the State Courts Administrator Summary Reporting System; Population (April 1), Florida Office of Economic and Demographic Research; Florida Demographic Estimating Conference, January 2010 and the Florida Demographic Database, August 2010.

Conclusion: What do circuit court filing statistics really show?

A runaway tort system?

A judicial hellhole??

No, not even close!!

When presented fairly, the numbers don't lie!

Judge based on fact, not fiction...

Notes

¹ The Office of the State Courts Administrator collects circuit court data in four categories—civil, criminal, probate and family law. Civil cases are further broken down into nine subcategories (professional malpractice, products liability, auto negligence, other negligence, condominium, contracts and indebtedness, real property/mortgage foreclosure, eminent domain and other). No further detail on types of civil cases is available. The collected data are available online at: http://www.flcourts.org/gen_public/stats/index.shtml

² The presentation of the Regulatory Reform Transition Team’s recommendations can be found at <http://www.scotttransition.com/wp-content/uploads/2010/12/Reg-Reform.pdf>. See pp.70-72.

³ The collected court data (all circuit filings) used for the calculations herein are:

FY	Professional Malpractice	Products Liability	Auto Negligence	Other Negligence	Condominium	Contracts & Indebtedness
1999-00	2,166	3,468	17,362	12,610	531	28,044
2000-01	2,257	6,543	17,747	12,436	339	30,112
2001-02	2,530	4,871	18,345	14,191	361	31,660
2002-03	2,405	2,536	19,299	13,129	277	32,638
2003-04	2,236	3,593	19,847	13,386	191	31,331
2004-05	1,596	2,123	18,539	12,431	151	32,878
2005-06	1,363	732	20,539	12,115	475	36,703
2006-07	1,193	710	19,382	11,885	1,172	42,764
2007-08	1,217	2,609	20,348	13,148	2,540	55,116
2008-09	1,286	953	19,497	12,173	2,327	70,466

FY	Real Property/ Mortgage Foreclosure	Eminent Domain	Other	Total Civil	Criminal	Family	Probate
1999-00	66,232	2,987	29,046	162,446	184,229	344,507	94,054
2000-01	68,651	3,253	30,437	171,775	182,581	362,185	95,020
2001-02	79,647	3,536	31,077	186,218	179,757	371,961	96,712
2002-03	79,429	2,803	32,342	184,858	182,893	369,652	101,736
2003-04	69,759	2,825	35,802	178,970	193,870	378,429	108,183
2004-05	59,907	1,934	32,557	162,116	199,009	365,990	109,505
2005-06	57,272	1,592	33,454	164,245	219,157	365,468	111,583
2006-07	112,840	1,649	34,693	226,288	230,417	356,485	105,486
2007-08	284,266	1,149	38,186	418,579	235,451	350,477	102,532
2008-09	403,477	856	36,159	547,194	209,593	335,854	98,345

⁴ Population data was obtained from the Office of Economic and Demographic Research website at <http://edr.state.fl.us/Content/population-demographics/index.cfm>. Data used (all years as of April 1) are: 2000-15,982,824; 2001-16,330,224; 2002-16,674,608; 2003-17,071,508; 2004-17,516,732; 2005-17,918,227; 2006-18,349,132; 2007-18,680,367; 2008-18,807,219; 2009-18,750,483.