

**Frequent Filers:
Corporate Hypocrisy in
Accessing the Courts**



**Congress Watch
October 2004**

Acknowledgments

The principal authors of *America's Businesses: Lawsuit Kings* are Public Citizen Congress Watch's Legal Fellow Samantha Coulombe and Legislative Counsel Jackson Williams. Contributions also were made by Special Counsel Barry Boughton, Legislative Assistant Jessica Kutch and Director Frank Clemente.

About Public Citizen

Public Citizen is a 160,000 member non-profit organization based in Washington, D.C. We represent consumer interests through lobbying, litigation, research and public education. Founded in 1971, Public Citizen fights for consumer rights in the marketplace, safe and affordable health care, campaign finance reform, fair trade, clean and safe energy sources, and corporate and government accountability. Public Citizen has five divisions and is active in every public forum: Congress, the courts, governmental agencies and the media. Congress Watch is one of the five divisions.



Public Citizen's Congress Watch
215 Pennsylvania Ave. S.E.
Washington, D.C. 20003

P: 202-546-4996

F: 202-547-7392

www.citizen.org

Frequent Filers: Corporate Hypocrisy in Accessing the Courts

Table of Contents

Introduction	2
Business File About Four Times as Many Lawsuits as Individuals Represented by Trial Attorneys.....	3
The Many Types of Business Lawsuits.....	5
Health Care Industry Hypocrisy.....	9
America’s Businesses Are More Likely to Be Sanctioned for Frivolous Litigation than Individuals.....	11
Frivolous Filers – The Pharmaceutical Industry.....	12
Frivolous Filers – The Entertainment Industry	13
Frivolous Filers – America’s Biggest Companies Fail to Muzzle Consumer Complaints.....	15
Appendix A: Methodology for Determining the Number of Business Lawsuits.....	17
Appendix B: Court Filings of Businesses and Individuals.....	19
Arkansas Courts.....	19
Cook County, Illinois Courts.....	20
Mississippi Courts.....	24
Philadelphia, Pennsylvania Courts.....	26
Appendix C: 100 Most Recent Federal District Court Cases Where Rule 11 Sanctions Were Imposed, 2001 - 2004.....	30
Endnotes.....	39

Introduction

Business lobbyists and their political allies have created a perception that America's legal system has run amok. They point the finger at consumer and patient lawsuits, which they imply are concocted by "greedy trial lawyers." They argue that lawsuits have detrimental effects on society and the economy, and effectively suggest that people should turn the other cheek when their rights are violated. President Bush and Vice President Cheney mimic these erroneous claims and make attacks on the legal system a central part of their campaign stump speeches. "See, everybody is getting sued," says the President, and the lawsuits are "junk and frivolous."

But Public Citizen's examination of public records finds that for the most part it is businesses rather than consumers and their lawyers doing the suing, and that businesses are far more often guilty of filing frivolous pleadings than the trial lawyers they demonize.

- **Businesses file about four times as many lawsuits as individuals represented by trial lawyers.** Public Citizen obtained statistics from four court systems that keep detailed records of the type of lawsuits filed in them. In all four courts, business-initiated lawsuits outnumber individual-initiated lawsuits by a ratio of about four-to-one. The business lawsuits include debt collection cases, mortgage foreclosures, and evictions brought against consumers, as well as suits against other businesses. The individual suits include consumer fraud, motor vehicle, product liability and medical malpractice claims.
- **Businesses are far more likely than individual tort plaintiffs to be sanctioned for frivolous litigation.** The business community charges that trial lawyers file frivolous lawsuits in hopes of hitting a "jackpot" verdict. But our survey of the last 100 federal court decisions in which parties were sanctioned found that businesses that pay their lawyers an hourly fee are 69 percent more likely to be frivolous filers than individuals represented by trial lawyers. The contingency fee system has proven effective in discouraging frivolous suits, because a lawyer recovers no fee if the suit is not successful.

Oddly enough, Vice President Cheney, who frequently attacks lawyers in his speeches, typifies the hardball litigation stance of corporate America. During Cheney's five-year tenure as its CEO, the Halliburton corporation filed over 150 lawsuits, seeking money from other corporations, individuals, and insurance companies.¹

The huge corporate campaign against consumer access to the courts is approaching its 25th year. This campaign has targeted trial lawyers who represent consumers in fraud, medical negligence and personal injury cases on a contingent basis, getting paid only if they win and paying up front for all the costs. The contingent fee allows any consumer, poor or rich, to secure an attorney if they have a good case because they do not have to pay hourly fees. Since the corporations could not denigrate the consumers they injure and defraud, they have lambasted the consumers' attorneys, claiming they needlessly increase costs to business and harm the economy, when in fact they are the last defense for public protection in an open capitalist market.

The cost of this harshly negative corporate campaign has easily exceeded hundreds of millions of dollars since its inception, covering the creation of new trade associations of companies pushing for state as well as federal legislation to limit consumer rights; hundreds of lobbyists covering the Congress and more at the state level; the creation of front groups across the country called Citizens Against Law Suit Abuse, whose members are actually businesses; new think tank programs such as at the Manhattan Institute to hire authors to write books and reports attacking the civil justice system; strategic television and radio advertising at the state and national level; and the hiring of public relations firms to secure magazine and news articles, editorials and to promote the books and reports.

The overwhelming majority of Americans, both businesses and consumers, use the legal system responsibly. Public Citizen does not begrudge anyone, including corporations, the right to seek legal redress in court. We simply wish to counter the inaccurate stereotypes perpetuated by corporate lobbyists in their campaign to restrict consumers' legal rights.

Businesses File About Four Times as Many Lawsuits as Individuals Represented by Trial Attorneys

For years, Americans have been told that we live in a “litigious society”—that we are too quick to file lawsuits when involved in a dispute—and that trial lawyers are drumming up too many “junk and frivolous lawsuits.” Usually this assertion is backed by an anecdote, such as some unusual lawsuit threatened by a cantankerous individual. Sometimes Americans are compared unfavorably to people residing in societies that are less confrontational (such as Japan), more stoical (such as Scandinavia) or that have comprehensive social welfare systems that negate the need for some tort claims (such as France and Germany).

But perhaps the best benchmark for determining whether American consumers and the lawyers who represent them are “litigious” is to compare their behavior to those who criticize them the most—America’s business community. By this standard, a clear picture emerges: **Businesses file four times as many lawsuits as do individuals represented by trial attorneys.** But the 281 million American consumers outnumber America’s 7 million business establishments 40-to-1.²

Business Lawsuits Vs. Individual Lawsuits, 2001

Jurisdiction	Philadelphia, Pennsylvania	Arkansas	Cook County, Illinois	Mississippi
Number of Business Lawsuits	64,698	20,868	137,890	45,891
Number of Individual/Trial Attorney Lawsuits	19,751	4,786	26,938	7,959
Ratio of Business to Individual Lawsuits	3.3 to 1	4.4 to 1	5.3 to 1	5.8 to 1

Source: Court statistics compiled in Appendix B.

Court caseload statistics are hard for researchers to come by and are seldom comprehensive. But for this study, Public Citizen was able to obtain fairly detailed statistics from four jurisdictions—Philadelphia, Pennsylvania; Cook County, Illinois, which includes Chicago; and the states of Arkansas and Mississippi. These appear to be the only court systems that require lawyers to characterize the nature of the suit with the specificity sufficient to separate business-initiated suits from trial attorney-initiated suits. [See Appendix A for a more detailed discussion of methodology and Appendix B for a breakdown of the type of filings by jurisdictions] Of the four jurisdictions, two are mostly urban and two are mostly rural, yet the results in all jurisdictions are roughly the same; about four business lawsuits are filed for every one filed by an individual.

The Many Types of Business Lawsuits

Business-initiated suits include eviction suits filed by landlords, foreclosure suits filed by banks, and collection suits filed by hospitals, merchants and credit card companies. Even those who protest most adamantly when they are sued get in the act themselves: Insurers file subrogation lawsuits against uninsured drivers, and doctors sue just about anyone they don't think gave them a fair shake—insurers, hospitals, HMOs and even fellow doctors.

Also looming large are cases in which businesses sue other businesses. When the *National Law Journal* reported in November 2003 on the top 10 jury verdicts rendered thus far that year, eight of the 10 involved businesses suing other businesses—accounting for \$3.1 billion of the total \$3.5 billion awarded by the 10 juries. Only two of the 10 cases were brought by individuals for personal injuries.³

While most business-to-business suits seem to involve serious matters, some concern disputes that, had they been brought by consumers, business lobbyists would have surely labeled “trivial”:

- The **Union Pacific Railroad** sued a toymaker for making model trains with the logos of defunct railroads it had acquired—something that for decades had been an accepted practice, and that couldn't possibly cause harm to the company.⁴
- Potato chip manufacturer **Jay's** sued rival **Frito-Lay** demanding that it stop immediately all its advertising claiming that “Chicago Prefers the Taste of Lay's Over Jays.” Jay's lawyer insisted that the ads were technically incorrect since the taste tests on which the ads were based took place in suburban malls, and that test takers might have been out of state tourists. “They could have been from Tuscaloosa,” he told the judge.⁵
- **Georgia-Pacific** and **Proctor & Gamble** were engaged in a dispute over ads implying that **P&G's** Bounty brand paper towels won't drip while cleaning up spills.⁶ A three-person arbitration panel ruled that the ads were false and misleading.⁷
- **Scott Fetzer Company**, the manufacturer of **Kirby** vacuum cleaners, sued House of Vacuums Inc., a vacuum sale and repair shop in San Antonio, Texas for trademark infringement after House of Vacuums mentioned in a Yellow Pages ad that it services Kirby vacuums. The case was dismissed because Scott Fetzer presented no evidence of monetary damages.⁸
- Another vacuum cleaner maker **Electrolux** in April 2001 issued a press release accusing rival **Oreck** of filing a “frivolous” lawsuit against it. Oreck had alleged that Electrolux infringed upon its trademark by using bowling balls to demonstrate the powerful suction generated by its machines.⁹ In the ensuing court battle the two companies argued over which had performed the bowling ball stunt first.

- **Mattel Inc.**, maker of the Barbie doll, filed a federal lawsuit against **MCA Records**, charging trademark infringement after MCA released the song parody “Barbie Girl” by the Danish group Aqua. MCA countersued Mattel for defamation after the toymaker likened the record firm to a bank robber. Both claims were rejected.¹⁰

Strangely enough, the industry that has done the most to perpetuate the “junk lawsuit” myth—the entertainment industry—has itself been among the most litigious industries. **Fox News Network** filed a lawsuit against comedian Al Franken for parodying its motto, “Fair and Balanced.” The suit was summarily dismissed.¹¹ The recording industry has filed at least 4,700 lawsuits against youngsters for swapping songs on the Internet.¹²

Earlier this year, travelers leafing through the *American Way* magazine provided to American Airlines passengers saw a four-page advertisement from a law firm bragging of the “millions of dollars [we’ve] collected for our clients.” A personal injury law firm? No—the ad was purchased by Shughart, Thomson & Kilroy, a firm representing businesses in suits against other businesses.

The point here is not to begrudge anyone for filing a lawsuit. The civil justice system underpins a free-market economy. Tort lawsuits ensure that businesses sell safe products and services and don’t rip off consumers. Contract lawsuits ensure that those who lend money or invest resources in a business can enjoy the profit to which they’re entitled. Most important of all, the courts prevent disputes from being settled through violence.

Most business-initiated suits differ from those filed by individuals in that they are based on contract law rather than tort law. Businesses usually file suits to collect debts, while individuals who hire lawyers usually have been injured by another party’s negligence. However, a substantial number of suits filed by businesses also involve negligence. This is because of the doctrine of subrogation, which allows an insurer to “stand in the shoes” of an insured individual to whom it has made an indemnity payment. For instance, a driver with a comprehensive auto insurance policy whose car is damaged by another negligent driver makes a claim on his own policy to have the car repaired. The insurer then seeks damages from the responsible party. In Cook County, Illinois, over 8,000 such lawsuits are filed by insurers such as **State Farm** and **Allstate** each year—even as those insurers and their lobbyists decry the “litigiousness” of our society.

Enough lawyers make a living representing insurers in such suits that they even have their own bar association, the National Association of Subrogation Professionals. Subrogation suits are so important to the insurance industry that in 2003 the American Insurance Association asked that insurers be exempted from one of their own model tort “reform” bills!¹³

Critics of the “junk lawsuit” society make two primary arguments why individuals should refrain from bringing lawsuits. First, they say that lawsuits are ways of avoiding “personal responsibility” for one’s own mistakes. Second, they argue that a proliferation of lawsuits has a detrimental effect on society as a whole, such as causing an inordinate “fear of lawsuits” to alter others’ behavior. While Public Citizen doesn’t subscribe to their point of view, a cursory examination of these claims shows that they apply equally to the lawsuits filed by businesses.

Stella Liebeck, the 79 year-old woman who was burned by scalding hot **McDonald's** coffee was criticized for suing over an injury that could have been avoided if McDonald's had warned customers it was serving coffee 40 degrees hotter than what is brewed at home, and if she had exercised more caution. (She won her suits.) But most business-initiated lawsuits could be avoided if the business being sued had exercised more caution. For instance, a bank foreclosing on a risky, sub-prime mortgage loan may know at the time when it made the loan that there was a good chance the borrower would default. If so, why is the bank's lawsuit more justified than Stella Liebeck's?

Business lawsuits also impact the community as a whole. For example, a foreclosure suit often leaves a vacant property sitting derelict, adversely affecting the immediate neighborhood. How is this less damaging than "legal fear" encouraging a doctor to order another blood test?

In short, there is no principled reason to characterize lawsuits brought by individuals as "harmful" but lawsuits brought by businesses as benign. By the same token, businesses should not be denied access to the court system when their legal rights are infringed. Corporate America should be no less understanding of consumers and patients seeking to correct wrongs.

Health Care Industry Hypocrisy

Every American pays the price for a legal system that is out of control. – Dr. Donald J. Palmisano, president-elect, American Medical Association, 2003¹⁴

Across the country, doctors, their employers and the American Medical Association, among others, have bemoaned a lawsuit crisis. This crisis, they claim, is the result of litigious patients, greedy trial lawyers and overzealous juries acting in concert to create a litigation “lottery” that victimizes health care providers. Yet these same providers have been more than willing to seek redress for themselves through the courts. Some examples:

- An ob-gyn in **West Virginia** sued her state’s trial lawyer association and its president for engaging in frivolous lawsuits against West Virginia physicians. The case was dismissed.¹⁵
- A **West Virginia** physician sued a local newspaper for libel after it reported on an internal hospital memo that raised questions about the doctor’s competency. The case was dismissed.¹⁶
- Six plastic surgeons filed suit against a **Florida** hospital seeking an exemption from having to treat patients with hand injuries.¹⁷
- Several hospitals in the suburbs of **Detroit** filed suit to stop **Detroit Health Systems** from building hospitals in **Oakland County, Michigan**¹⁸
- A class-action lawsuit has been filed by about 950,000 physicians nationwide against several large health plans, charging them with a racketeering conspiracy.¹⁹ **Aetna** and **Cigna** have already settled with the physicians.²⁰
- A nationwide class-action lawsuit representing more than 40,000 doctors alleged that the **St. Paul Co.** carried out a scheme to increase its bottom-line profits while leaving doctors without insurance coverage and contributing to a national health care crisis.²¹
- **Madison County, Ill.**, is often cited by doctors as a jurisdiction where too many lawsuits are filed. But according to the group Victims and Families United, doctors have filed 37 class action suits against 31 insurance companies in Madison County.²²
- The **North Carolina Medical Society**, the state’s largest advocacy group for physicians, has sued **Blue Cross and Blue Shield of North Carolina**, accusing the company of engaging in unfair business practices.²³
- The **AMA**, the **Medical Society of the State of New York**, and the **Missouri State Medical Association** were the representatives in a class-action lawsuit against two managed care organizations, **United Healthcare** and **Metropolitan Life Insurance**.²⁴ The lawsuit contended that the insurance companies frequently use unreliable or insufficient data to

determine “usual, customary, and reasonable” charges when paying physicians or reimbursing patients for medical services.

- Several **Florida** hospitals filed lawsuits against their insurance company, **Great West Life & Annuity Insurance Co.**, for non-payment of claims. The insurance company, in turn, filed an antitrust lawsuit, alleging that the hospitals and the **Florida Hospital Association** conspired to fix prices for uninsured patients.²⁵
- **Yale-New Haven Hospital** has drawn criticism over its aggressive debt collection litigation against uninsured patients. The outcry from advocates for the uninsured—including Yale’s own legal clinic—forced the hospital to dump its law firm.²⁶
- A key lobbying demand of doctors is to prohibit punitive damages—but that didn’t stop six pediatricians in **Kansas City, Missouri** from requesting, and receiving, an award of \$3.09 million in punitive damages from **Blue Cross and Blue Shield of Kansas City** in a breach of contract lawsuit in 2002.²⁷

America's Businesses Are More Likely to Be Sanctioned for Frivolous Litigation than Individuals

Some argue that lawyers operating on a contingency-fee basis have no deterrent to bringing frivolous suits. Common sense dictates otherwise, however. Economic disincentive alone precludes attorneys from taking a case where the plaintiff is not entitled to be compensated for injuries. When a plaintiff is not compensated, the attorney is not compensated. Attorneys who represent corporations, on the other hand, are usually paid by the hour and will receive compensation no matter what the outcome of their litigation activities. Moreover, to suggest that a civil case was frivolous because a jury finds for a defendant is erroneous.

Rule 11 of the Federal Rule of Civil Procedure is a powerful tool for discouraging the use of dilatory or abusive litigation tactics – such as filing frivolous claims or defenses. The imposition of sanctions under Rule 11 is discretionary once a district court finds that an attorney or party has violated the rule. Possible sanctions under Rule 11 include reprimands, paying the other side's litigation costs, denial of fees that would otherwise be recoverable, fines, dismissal of claims and injunctions from further litigation. It should be noted that Rule 11-type sanctions are not limited to cases heard in federal courts. Most states have adopted comparable rules.

Public Citizen conducted a survey of the 100 most recent decisions by federal judges imposing Rule 11 sanctions. We placed the litigants who were sanctioned into four categories: businesses; individuals bringing the types of tort claims that businesses decry (e.g. personal injury claims); pro se litigants; and individuals bringing non-tort claims. The survey found that businesses and their attorneys were 69 percent more likely than individual tort plaintiffs and their attorneys to be sanctioned for engaging in frivolous litigation. [See Appendix C for specific case information] Of the 100 most recent sanctioned parties, 27 were businesses or their attorneys while only 16 were individual tort plaintiffs or their attorneys. The most frequently sanctioned type of party (comprising 35 of the 100 most recent sanctions) was pro se litigants – individuals who do not have counsel but instead represent themselves. The remaining 22 sanctions were assessed against individuals who were represented by counsel, but who were not individual tort plaintiffs engaged in litigation with businesses (because the claim was not of an individual tort nature, the opposing party was not a business, etc.).

100 Most Recent Rule 11 Sanctions By Party Type, 2001-2004

Pro Se (Individuals not represented by lawyers)	35
Business	27
Individual (tort claim against business)	16
Individual (non-tort claim)	22

Source and Methodology: See Appendix C

Frivolous Filers – The Pharmaceutical Industry

We surely have the most litigious society on Earth. – Judy Bello, executive vice president for policy and strategic affairs, Pharmaceutical Research & Manufacturers of America (PhRMA), 2001.²⁸

A key reason for the pharmaceutical industry's enormous profitability has been its willingness to use loopholes in the 1984 Hatch-Waxman Act, which was designed to encourage innovation and competition from generic drug-makers.²⁹ (These loopholes were significantly closed in the Medicare Modernization Act, which became law in Dec. 2003.) Typically, just before a drug's original patent expired, brand-name companies listed additional patents for the product in the Food and Drug Administration's "Orange Book," a registry of approved prescription drugs. The listings allowed these companies to file patent-infringement suits against any manufacturer developing a generic version of the patent-protected product. These infringement suits automatically delay final approval of a generic version of the product for 30 months or until litigation over the patent was adjudicated, whichever comes first.³⁰ The patents often have nothing to do with the brand's chemical makeup. The suits have often been frivolous, covering such items as the color of a pill bottle.

Examples of frivolous patent-infringement suits include:

- **Bristol-Myers Squibb (BMS)** delayed generic competition for its anti-anxiety medication BuSpar by listing a new patent for the product in the Orange Book on the same day generic versions were set to be approved. A federal judge eventually forced Bristol-Myers Squibb to delist the patent from the Orange Book, but the four-month delay in approval of generic versions of the product reportedly cost consumers \$100 million.³¹ BMS has the distinction of being under order by the Federal Trade Commission to desist from "any fraudulent or objectively baseless claim, or otherwise engage in sham litigation."³²
- **GlaxoSmithKline**, maker of the antidepressant Paxil, excluded generic competitors through frivolous litigation. In litigation between Glaxo and companies seeking to bring generic equivalent drugs to market, the Court of Appeals for the Federal Circuit found that Glaxo's patents were invalid for non-statutory double patenting.³³ **New York City** has filed suit against Glaxo for antitrust violations and Medicaid fraud in connection with the frivolous litigation.³⁴

Frivolous Filers – The Entertainment Industry

No industry has done more to perpetuate the stereotype of the lawsuit-happy American than our media conglomerates. In creating characters like *Seinfeld's* Jackie Chiles and *The Simpsons's* Lionel Hutz, the media have gone beyond traditional lawyer jokes to portray not only greedy lawyers, but greedy clients as well. Late-night television hosts reinforce the myth as well. But if entertainment giants find personal-injury suits a source of amusement, they find intellectual-property suits to be no laughing matter.

“Intellectual property” refers to the rights that the owner of a creative work—such as music or a television program—has to profit from that work. Like the individual’s right to be free from negligent injury, such as paraplegia, quadriplegia and brain damage, intellectual property is a right that is frequently asserted in court. But America’s media giants have never tried to stigmatize their type of lawsuits:

- **Fox News Network** sought an injunction against comedian Al Franken to halt distribution of his book *Lies and the Lying Liars Who Tell Them: A Fair and Balanced Look at the Right*, asserting that the book violated its trademark slogan. After listening to 30 minutes of oral arguments, the district court judge said the lawsuit was “wholly without merit, both factually and legally.”³⁵

The most serious charge made against lawyers who represent consumers is that some employ a “scattershot” approach or “shotgun tactics” to naming numerous defendants to lawsuits, even though they have no evidence that a particular person is liable. As one judge hearing such a case has noted, “Lawyers have a responsibility before subscribing their names to complaints which contain serious charges to ascertain that a reasonable basis exists for the allegations, even if they are made upon information and belief. That is one of the purposes of [Rule 11 of the Federal Rules of Civil Procedure](#).”³⁶ But the entertainment industry has typified the shotgun approach in its anti-piracy litigation.

- **DirecTV** has filed more than 24,000 lawsuits since 2001 against people the company says have acquired devices to unscramble its satellite television signals. The company successfully sued manufacturers and distributors of smart-card technology and shut them down. Through that process, they obtained records about people who had ordered the technology. The lawsuits have come under criticism because smart-card technology can be used for legitimate purposes, and the DirecTV lawsuits do not distinguish between those who use the technology to intercept DirecTV’s signal and those who do not.³⁷
- **The Recording Industry Association of America (RIAA)** has been waging a war against file-swapping on the Internet. First, the RIAA successfully sued Napster, putting the start-up out of business. Buoyed by its success, it then went after **Kazaa** and **Morpheus**, two file-sharing programs that emerged to replace **Napster**. The RIAA lost its legal battles against these two companies, however. Nevertheless, the RIAA has set its sights on ordinary individuals, filing 4,700 lawsuits since September 2003 against people who allegedly share

copyrighted music online.³⁸ Examples of suits that have been filed against individuals accused of copyright infringement include:

- The case of Ross Plank of Playa Del Rey, **California**, who has been accused by the **RIAA** of making hundreds of Latin songs available using **Kazaa**. Plank does not speak Spanish, however, nor does he listen to Latin music. His computer did not even have Kazaa installed on it during the period when the investigation occurred.³⁹
- The case of Brianna LaHara of **New York City**, a 12-year-old honor-roll student. Brianna's mother settled her daughter's case with the **RIAA** for \$2,000. A coalition of companies that run Internet song-sharing services offered to pick up the cost of the settlement.⁴⁰
- The case of Durwood Pickle, a 71-year-old grandfather from Richardson, **Texas**. His grandchildren downloaded music onto his computer during a visit to his home. Pickle rarely uses his computer, and his grown son had to explain to him what the kids had done.⁴¹
- The case of Annie Lieth of **New York**, a 14-year-old who, along with her older sister and younger brother, downloaded 950 songs over three years. Her lawsuit was settled for \$3,000. She has appeared in a **Pepsi** ad, along with other teenagers sued by the RIAA, to promote the "Pepsi iTunes Giveaway."⁴²

Frivolous Filers – America’s Biggest Companies Fail to Muzzle Consumer Complaints

Corporate America alleges that overly litigious consumers frequently file “frivolous” lawsuits against companies and doctors, but many businesses themselves abuse the legal system by filing lawsuits that have no merit. For example, companies like Circuit City and Nissan Motor Corp. have spent years in litigation attempting to silence their critics on the Internet. The Public Citizen Litigation Group has successfully defended the free speech rights of citizens in a number of such cases. The following are examples of these irresponsible lawsuits:

- ***ServiceMaster, et al. v. Virga***: Carla Virga of **California** received a “clear” report for a home from the pest control company Terminix; however, the company overlooked numerous problems. Wanting to share her experiences and warn other consumers about Terminix, Virga started a Web site called www.syix.com/emu/. The site included information from many consumers as well as a directory of information about Terminix complaints. In October 1999, Terminix, its corporate parent ServiceMaster and several corporate affiliates sued Virga to force her to remove all references to Terminix and ServiceMaster from her Web site. The suit also sought millions of dollars in damages. The companies alleged in the suit that Virga violated their trademark rights every time she referred to them by name on the Web site. Virga argued that the trademark claim was meritless, that it violated her free speech rights. ServiceMaster dropped the lawsuit in 2000 once Public Citizen entered the case and filed a motion to dismiss. This was the second lawsuit brought against Virga by ServiceMaster; in the first, it sued her for defamation, but the case was thrown out of court.
- ***Alitalia v. Porta***: In 2000, the airline Alitalia brought a trademark suit in federal court in **New York** seeking to suppress a Web site called www.alitaliasucks.com, which was created by an unhappy customer whose luggage was lost. The company claimed that the domain name violated the new anti-cybersquatting law. The defendant, William Porta, argued that this law was not violated and that, in any event, the First Amendment protects his speech. On a Minnesota Public Radio show, an Alitalia spokesperson admitted that the suit was brought to prevent customers from finding Porta’s site through Internet search engines. The company dropped the lawsuit in February 2001.
- ***Bosley v. Kremer***: In 2000, a **California** company brought suit in **Illinois** against a former customer who ran Web sites devoted to the alleged misconduct of the company, as reported in various media sources and detailed in law enforcement investigations. **Bosley Medical Institute** contended that Michael Kremer was violating the company’s trademark and was using the company’s name for commercial gain. Kremer was not; Kremer’s sites were purely informational and he received no income from them. Further, there is no way a visitor to one of Kremer’s sites could have mistaken it for Bosley’s site. In May 2004, U.S. District Judge William Q. Hayes of the Southern District of **California** tossed out the lawsuit filed by Bosley.

- ***Circuit City Stores, Inc. v. Steven C. Shane***: Circuit City sued a disgruntled **Ohio** customer and his attorney, Steven Shane, who created a Web site devoted to describing a consumer class action lawsuit against Circuit City Stores in February 2000. Circuit City's suit alleged that Shane violated trademark law and professional conduct codes. The suit also alleged that they used the company's name and distinctive colors to divert customers from Circuit City's Web site to their own and to solicit clients to expand the lawsuit. Along with its complaint, the company asked the court to issue a ruling that would forbid the use of Circuit City's name anywhere on the Web site, which would effectively shut it down. When Circuit City agreed to settle the suit brought by Shane's customer, it insisted that Shane give up the domain name.
- ***Crown Pontiac v. Ballock***: Thomas Ballock purchased a defective car from Crown Pontiac of **Hoover, Alabama**, and was unhappy with Crown's response to his complaints, so he posted a gripe site on the Internet in which he used Crown's name in the domain name and text. Ballock's site clearly stated that it was not Crown's official Web site, but rather a site critical of Crown. Crown sued Ballock in 2002 under trademark and cyber-squatting laws but was eventually forced to drop its lawsuit and pay Ballock more than \$6,000 for the damages he incurred from the company's attempt to control his Web site.
- ***Taubman v. Mishkoff***: In 2001, **Dallas, Texas** resident Henry Mishkoff created a Web site praising a local shopping mall, the Shops at Willow Bend, using the domain name shopsatwillowbend.com, and was then sued by the mall developer, the Taubman Company, which claimed that the Web site and domain name violated its trademark of the mall's name. When Mishkoff created new sites using names like taubmansucks.com and shopsatwillowbendsucks.com to protest the abusive litigation against him, the developer sought a preliminary ruling asking that the new sites be stricken as well. In 2003, the 6th U.S. Circuit Court of Appeals upheld Mishkoff's right to maintain his Web sites. The court wrote that Mishkoff clearly had no commercial intent in either of his sites, that there was no likelihood that any visitors to his sites would be confused as to their purpose and that allowing the injunctions to remain would harm the public by curtailing free speech rights.
- ***TMI, Inc. v. Maxwell***: The case involves a **Houston**-area software engineer who was unhappy about his dealings with an agent of TMI Inc., a company that builds houses under the trademark TrendMaker Homes. Joseph Maxwell created a non-commercial Internet gripe site because he had a complaint about a salesperson's misleading statements about what home models were available. TMI alleged that Maxwell's site violated its trademark and would potentially confuse users who were looking for TMI's own Web site. It also alleged that he violated the Anti-cybersquatting Consumer Protection Act and state trademark law. In February 2003, a Texas district court barred Maxwell from using 10 different TMI trademarks and ordered him to pay \$80,000 in statutory damages and attorney fees. In 2004, the 5th U.S. Circuit Court of Appeals reversed the district court decision, allowing Maxwell to criticize the company through his Web site.
- ***Nissan Motor Co. v. Nissan Computer Corp.***: Uzi Nissan, a **North Carolina** man who runs a computer business using his surname was sued by the giant automaker for trademark infringement and dilution because he operated a Web site with the domain name

nissan.com. He also used his Web site to criticize the auto giant for picking on him because of the Web site. The trial court in the case issued a series of rulings holding that Nissan was guilty of both trademark dilution and, to a limited extent, infringement, and consequently issued an order forbidding him from using his Web site to criticize Nissan Motor in any way, even by linking to disparaging Web sites. In an unanimous opinion written by Circuit Judge Pamela Rymer, the 9th U.S. Circuit Court of Appeals flatly rejected this reasoning in August 2004 and overturned the injunction against criticism. The dilution ruling was vacated and remanded for trial.

Appendix A: Methodology for Determining the Number of Business Lawsuits

A number of court systems in the United States collect statistics on the types of civil lawsuits filed. This is usually done via a “civil case cover sheet,” on which the attorney filing the case or the court clerk marks a box indicating its type. By using an Internet search engine to find “civil case cover sheets” posted on various courts’ Web sites, and then following up with telephone and written inquiries, Public Citizen was able to obtain statistics from four jurisdictions (Cook County, Ill., Philadelphia, Penn., and the states of Mississippi and Arkansas) that classify caseloads in relatively detailed manner.¹

Available statistics do not show how many parties are individuals represented by contingency-fee lawyers or how many are businesses, but these numbers can be determined with a high degree of accuracy. Some types of cases are always filed by individuals who will nearly always be represented by lawyers and some types are always filed by businesses. For instance, cases categorized as “personal injury” or “medical malpractice” can only be filed by individuals. Cases categorized as “forcible entry” or “ejectment” (evictions) and “foreclosure” or “replevin” (repossessions) will always be filed by landlords and lenders respectively. Only an insurer can file a “subrogation” lawsuit.

Some categories of cases involve less certainty but inferences can be made nevertheless.

- A “contract” case is usually filed by a business to collect a debt, but occasionally it is filed by an individual. Statistics generated by a Department of Justice Bureau of Justice Statistics (BJS) study from 1996 indicate that many “contract” cases are brought by individuals, but DOJ’s team did not attempt to determine whether the individuals were consumers or business proprietors.² It is not unknown for individuals to bring breach-of-contract claims against businesses, such as “Lemon Law” claims but most of those claims are resolved through arbitration, rather than in court. The overwhelming majority of “contract” lawsuits are brought by businesses.
- A “property damage” case could be filed by an individual, but it would seldom be pursued by an attorney on a contingency fee basis. Most damage to property is covered by insurance.

¹ Practically speaking, to make the proper inferences it is necessary for the categories to separate out the types of “tort” cases that are typically filed by businesses as opposed to consumers. For instance, “fraud” is a tort that usually involves a business transaction. Subrogation cases are usually categorized as “tort” or “negligence” but differ from most in that they are filed by insurers. Florida separates out subrogation cases by deeming them “contract and indebtedness” cases; the state does not include “fraud” in either of its “tort” categories (“professional negligence and product liability” and “auto and other negligence”). In Florida, the Office of the State Courts Administrator’s FY 2002-03 Statistical Reference Guide shows that “contract” cases outnumber cases in the two tort categories by 3-to-1, but many other business-initiated suits, such as replevin and injunctions are lumped into an “other” category that is shared with governmental suits. The ratio of business-to-individual lawsuits in Florida is probably between 3-to-1 and 4-to-1 but the statistics are not specific enough to cite a precise figure.

² Bureau of Justice Statistics, Lea S. Gifford, Carol. J. DeFrances, Marika F.V. Litras, “Contract Trials and Verdicts in Large Counties, 1996,” Bureau of Justice Statistics Bulletin, April 2000.

Individuals will make a claim on an insurance policy to cover property damage, but an insurer will often pursue a subrogation lawsuit to recover the amount paid to the policyholder. Some jurisdictions do not collect statistics on subrogation suits, but do break out property damage suits. In those instances this report assumes that all property damage cases are subrogation cases.

- According to the 1996 Bureau of Justice Statistics study, 67 percent of “fraud” cases are brought by individuals, and 30 percent are brought by businesses. The BJS study did not try to determine whether the individuals involved were consumers or business people. But when such suits are brought by individuals, they typically involve business and not consumer transactions.
- Injunctions and general chancery cases conceivably could be filed by consumers but in practice, nearly all involve business disputes.

Some categories of cases for which statistics are available are irrelevant to this study and are not discussed in detail. A substantial portion of many courts’ caseload involves taxes, forfeitures, administrative review of agency decisions, and other governmental matters that don’t relate to the debates over “litigiousness” or “lawsuit abuse.” A category such as “foreign judgment” would simply double-count cases of all types filed in other jurisdictions and is omitted from this study.

Appendix B: Court Filings of Businesses and Individuals

Arkansas Courts

Nature of Business Litigation	1998	1999	2000	2001	2002
Fraud	162	156	153	169	207
Debt - Open Account	6,682	5,924	6,799	7,146	9,203
Debt - Promissory Note	2,491	1,798	1,697	1,996	1,840
Other - Contracts	3,473	3,526	3,369	3,947	3,522
Equity/ Foreclosure	4,412	3,945	3,346	2,880	2,596
Injunction	452	412	394	381	375
Other - Equity	176	171	278	382	732
Replevin	1,140	1,132	1,226	1,482	1,452
Declaratory Judgment	152	130	144	162	254
Unlawful Detainer	1,168	1,230	1,378	1,893	1,933
Incorporation	60	56	49	41	39
Insurance	374	361	350	389	452
Total	20,742	18,841	19,183	20,868	22,605

Nature of Individual Litigation	1998	1999	2000	2001	2002
Negligence: Motor Vehicle	2,775	2,739	2,648	2,767	2,970
Negligence: Other	854	869	799	881	945
Bad Faith	91	81	82	78	98
Malpractice	267	287	412	383	384
Products Liability	115	113	214	108	176
Other - Torts	423	363	368	455	416
Employment	106	86	99	114	111
Total	4,631	4,538	4,622	4,786	5,100

Source: Administrative Office of the State Courts, State of Arkansas

Cook County, Illinois Courts

Cook County, Illinois - Law Division

Nature of Individual Litigation	1999	2000	2001	2002
Personal Injury	5	34	7	26
Tort	2	95	14	32
Personal Injury (Motor Vehicle)	5,315	5,587	5,834	5,673
Personal Injury (Med Mal)	1	2	2	1
Medical Malpractice	1,214	1,319	1,360	1,324
Class Action	13	36	1	1
Personal Injury (Asbestos)	66	194	80	174
Personal Injury (Dram Shop)	94	92	105	118
Personal Injury (Product Liability)	269	285	297	255
Personal Injury (Construction Injury)	363	430	407	420
Personal Injury (FELA-Railroad)	126	82	187	151
Pediatric Lead Exposure	22	16	35	42
Other Personal Injury	1,177	1,204	1,207	1,264
Intentional Tort	218	228	286	260
Miscellaneous Statutory Action	123	162	206	191
Premises Liability	1,635	1,627	1,788	1,825
Legal Malpractice	155	136	150	172
Professional Malpractice	47	57	42	51
Consumer Fraud	102	140	132	118
Breach of Warranty	156	100	50	53
Statutory Action	74	90	119	162
Retaliatory Discharge	80	54	53	77
Libel/Slander	64	89	93	104
Redux Pondimin	10	5	1	1
Personal Injury (Silicon Implant)	0	0	1	1
Subtotal	11,331	12,064	12,457	12,496

Nature of Business Litigation	1999	2000	2001	2002
Contract	2,622	3,279	3,534	3,462
Forcible Entry and Detainer	0	4	0	0
Joint Action	0	30	0	9
Confession of Judgment	31	34	53	40
Replevin	71	77	78	81
Detinue	8	7	12	24
Personal Injury (Motor Vehicle) Subrogation	0	119	14	35
Fraud	124	150	135	150
Other Commercial Litigation	186	181	211	160
Subtotal	3,042	3,881	4,037	3,961
Total	14,373	15,945	16,494	16,457

Cook County, Illinois - Chancery

Nature of Individual Litigation	1999	2000	2001	2002
Class Action	142	141	172	256

Nature of Business Litigation	1999	2000	2001	2002
Declaratory	1,089	1,244	1,281	1,324
Mortgage Foreclosure	12,934	12,707	16,230	17,449
General Chancery	1,767	1,814	1,880	1,712
Mechanic Lien	547	559	617	641
Subtotal	16,337	16,324	20,008	21,126
Total	16,479	16,465	20,180	21,382

Cook County, Illinois – First Municipal District

Nature of Individual Litigation	1999	2000	2001	2002
Personal Injury	1,228	1,037	932	985
Tort	5,343	5,512	6,159	5,871
PI (Motor Vehicle)	7,010	6,032	5,659	5,375
PI (M. Malpractice)	12	11	7	7
PI (Salmonella)	9	2	0	0
Dram Shop	35	16	18	10
Liability	9	5	0	3
Pro Se	1,609	1,724	1,535	1,392
PI Other/Wrongful Death	0	1	0	0
Subtotal	15,255	14,340	14,310	13,643

Nature of Business Litigation	1999	2000	2001	2002
Contract	64,089	61,580	65,556	80,805
Forcible Detainer	12,793	9,479	8,853	8,789
Joint Action	28,819	28,267	29,807	27,601
Confession of Judgment	30	21	22	17
Replevin	925	615	568	867
Declaratory Judgment	1	0	1	0
Detinue	863	973	811	965
PI Subrogation	6,334	5,288	4,493	5,032
PI Subrogation (Motor Vehicle)	4,074	3,389	3,734	3,798
Subtotal	117,928	109,612	113,845	127,874
Total	133,183	123,952	128,155	141,517

Cook County Lawsuit Totals

	1999	2000	2001	2002
Cases Filed by Individuals				
County-Law	11,331	12,064	12,457	12,496
County-Chancery	142	141	172	256
Municipal	15,255	14,340	14,310	13,643
Total	26,728	26,545	26,939	26,395
Cases Filed by Businesses				
County-Law	3,042	3,881	4,037	3,961
County-Chancery	16,337	16,324	20,008	21,126
Municipal	117,928	109,612	113,845	127,874
Total	137,307	129,817	137,890	152,961

Source: Clerk of the Circuit Court, Cook County, Illinois

Mississippi Courts*

Nature of Business Litigation		2001	2002
Business/Commercial Cases	Accounting	50	64
	Business Dissolution - Corporation	21	44
	Business Dissolution - Partnership	22	23
	Debt Collection	30,315	30,271
	Examination of Debtor	411	394
	Garnishment	10,094	10,094
	Injunction or Restraining Order	6	0
	Replevin	1,813	2,054
Contract Cases	Breach of Contract	1,951	1,769
	Accounting - Business	1	15
	Injunction or Restraining Order	8	6
	Installment Contract	103	76
Real Property Cases	Ejectment	116	202
	Eviction	243	244
	Injunction or Restraining Order	8	7
	Judicial Foreclosure	73	108
Statutes/Rules Cases	Declaratory Judgment	100	102
Personal Injury Cases	Fraud	443	69
	Subrogation	113	43
	Total	45,891	45,585

Nature of Individual Litigation		2001	2002
Business/Commercial Cases	Employment	47	89
Property Injury Cases	Personalty	136	30
	Realty	59	4
Mass Torts Cases	Asbestos	195	116
	Chemical Spill	9	3
	Dioxin	0	0
	Hand/Arm Vibration	0	0
	Hearing Loss	0	0
	Injunction or Restraining Order	1	3
	Other	35	56
	Pharmaceuticals	0	1
	Radioactive Materials	0	0
Contract Cases	Product Liability Under Contract	54	37
Statutes/Rules Cases	ERISA	3	1
Torts-Personal Injury Cases	Assault & Battery	6	34
	Bad Faith	346	278
Torts-Personal Injury Cases	Injunction or Restraining Order	1	3
	Loss of Consortium	1	3
	Malpractice - Legal	38	41
	Malpractice - Medical	460	559
	Negligence - General	1,792	1,828
	Negligence - Motor Vehicle	3,822	3,355
	Other	521	500
	Premises Liability	0	1
	Products Liability	229	229
	Slander	7	15
	Wrongful Death	197	255
	Total	7,959	7,441

Source: Administrative Office of Courts, Supreme Court of Mississippi

*Combined Totals for Circuit, County and Chancery Courts.

Philadelphia, Pennsylvania Courts

Court of Common Pleas, First District

Nature of Business Litigation	1999	2000	2001	2002	2003*
Contracts (Goods), Enforce	949	5,397	5,869	5,409	4,682
Insurance, Declaratory Judgment	153	100	130	153	161
Subrogation Action	586	725	687	742	841
Mechanics Lien	18	15	16	33	12
Contracts Other	4,714	1,470	2,441	3,237	2,985
Uninsured/underinsured Savings	493	364	386	376	275
Replevin	242	214	178	183	165
Foreclosure	5,361	5,448	6,244	6,684	5,682
Mechanics Lien Enforcement	1	0	0	0	2
Rent, Lease, or Ejectment	1,415	1,569	1,506	1,864	1,520
Confession of Judgment	711	683	714	738	566
Mechanics Lien	283	172	129	153	108
Confession of Judgment (1806)	57	37	31	21	15
Equity - No Real Estate	476	250	78	107	72
Equity - Real Estate	159	125	124	138	151
Equity - No Real Estate (TRO)	118	372	485	659	497
Equity - Real Estate (TRO)	74	166	119	92	44
Fraud	5	80	110	114	107
Subtotal	15,810	17,107	19,137	20,589	17,778

Nature of Individual Litigation	1999	2000	2001	2002	2003*
Employment, Wrongful Discharge	2	4	7	1	12
Contract Product Liability	2	0	1	0	0
Airplane, Aviation	1	2	0	0	1
Assault, Battery	37	157	175	134	104
Malpractice - Dental	65	46	44	38	12
Personal Injury - FELA	2	204	275	312	180
Other Traffic Accident	57	79	62	58	41
Libel, Slander, Misrepresent	82	122	133	94	85
Malpractice - Medical	1,081	1,088	1,161	1,367	496
Personal Injury - Other	361	1,008	1,176	1,080	880
Product Liability	354	330	341	421	319
Premises Liability, Slip/Fall	3,655	3,336	3,318	3,514	2,692
Toxic Tort Personal Injury	2	15	8	39	16
Motor Vehicle Accident	10,603	9,906	10,560	10,493	8,723
Motor Vehicle Product Liability	1	1	0	0	0
Malpractice - Miscellaneous	24	33	35	34	26
Malpractice - Legal	116	103	87	100	72
Class Action	42	32	40	29	27
Mass Tort - Breast Implant	0	1	1	0	4
Mass Tort - Asbestos	472	484	629	519	320
Mass Tort - Lead (Based Paint)	26	8	2	2	3
Mass Tort Des (Pharma)	1	1	91	0	0
Mass Tort - Carpal Tunnel Syndrome	306	70	91	36	18
Mass Tort - Latex Gloves	13	4	3	0	0
Mass Tort - Hearing Loss	1	0	0	0	0
Mass Tort - Phen Fen	305	267	7	427	1,605
Mass Tort- Tobacco	3	3	0	0	0
Mass Tort - DCE Litigation	0	0	25	0	0
Mass Tort - Pier 34 Litigation	0	0	8	8	0
Mass Tort - Populsid	0	0	45	66	3
Mass Tort - PPA	0	0	50	304	13
Mass Tort - Baycol	0	0	37	1,965	2,016
Mass Tort - Rezulin	0	0	0	1	0
Mass Tort - Beryllium Litigation	0	0	0	0	1
Mass Tort - Silica	0	0	0	0	1
Mass Tort - Lotronex Litigation	0	0	0	0	18
Subtotal	17,614	17,304	18,412	21,042	17,688

Philadelphia, Pennsylvania Municipal Courts

Nature of Business Litigation	1999	2000	2001	2002	2003*
Landlord and Tenant: Evictions**	25,782	25,314	25,451	22,230	21,814
Collections***	20,000	20,000	20,000	20,000	20,000
Subtotal	45,782	45,314	45,451	42,230	41,814

Nature of Individual Litigation	1999	2000	2001	2002	2003*
Landlord and Tenant: Security Deposit	1,357	1,332	1,339	1,170	1,150
Subtotal	1,357	1,332	1,339	1,170	1,150

* 2003 totals through November 13.

** Eviction cases are not tracked separately from security deposit cases in the "Landlord and Tenant" category, but Deputy Court Administrator Patricia McDermott estimates that evictions comprise 95 percent of cases in this category.

*** Estimate from Deputy Court Administrator McDermott

Philadelphia Lawsuit Totals

	1999	2000	2001	2002	2003*
Total Number of Business Cases	61,592	62,421	64,588	62,819	59,592
Total Number of Individual Cases	18,971	18,636	19,751	22,212	18,838

* 2003 totals through November 13.

Sources: For First District cases, Judge William J. Manfredi, Court of Common Pleas; for Municipal Court cases, Deputy Court Administrator Patricia McDermott.

Appendix C: 100 Most Recent Federal District Court Cases Where Rule 11 Sanctions Were Imposed, 2001 - 2004

Case Name	Type of Party Sanctioned			
	Pro Se Individual	Business	Individual Represented by Attorney (tort claim against business)	Individual Represented by Attorney (non-tort claim against business)
<u>Penda Corp. v. STK, LLC</u> , 2004 WL 1628907 (E.D.Pa. July 16, 2004)		X		
<u>Dohm v. Gilday</u> , 2004 WL 1474581 (N.D.Ill. June 29, 2004)			X (defamation)	
<u>Kurz v. Chase Manhattan Bank USA, NA.</u> , 324 F.Supp.2d 444 (S.D.N.Y. June 25, 2004)	X			
<u>Hass v. Rico Enterprise</u> , 2004 WL 1385837 (N.D.Ill. June 18, 2004)	X			
<u>Pannonia Farms, Inc. v. USA Cable</u> , 2004 WL 1276842 (S.D.N.Y. June 8, 2004)		X		
<u>DePonceau v. Bush</u> , 2004 WL 1574621 (W.D.N.Y. June 4, 2004)	X			
<u>Kojis v. Equifax Credit Information Services</u> , 2004 WL 1005664 (N.D.Ill. May 6, 2004)			X (Fair Credit Reporting Act)	
<u>Professional Management Associates, Inc. Employees' Profit Sharing Plan v. KPMG LLP</u> , 2004 WL 831134 (D.Minn. April 15, 2004)		X		
<u>Mathis v. U.S. ex rel. C.I.R.</u> , 2004 WL 1192356 (D.S.D. April 13, 2004)	X			
<u>Wingate v. Birkett</u> , 2004 WL 719266 (N.D.Ill. March 31, 2004)	X			
<u>Pfizer, Inc. v. Y2K Shipping & Trading, Inc.</u> , 2004 WL 896952 (E.D.N.Y. March 26, 2004)		X		

Case Name	Type of Party Sanctioned			
	Pro Se Individual	Business	Individual Represented by Attorney (tort claim against business)	Individual Represented by Attorney (non-tort claim against business)
<u>Moazed v. First Union Mortg. Corp.</u> , 221 F.R.D. 28 (D.Conn March 18, 2004)			X (Truth in Lending Act)	
<u>Galasso v. Eisman, Zucker, Klein & Ruttenberg</u> , 310 F.Supp.2d 569 (S.D.N.Y. March 9, 2004)			X (Fair Labor Standards Act)	
<u>Chaplin v. Du Pont Advance Fiber Systems</u> , 303 F.Supp.2d 766 (E.D.Va. Feb. 18, 2004)			X (Title VII)	
<u>Young v. City of Providence</u> , 301 F.Supp.2d 187 (D.R.I. Feb. 11, 2004)				X (against government)
<u>U.S. v. Thompson</u> , 2004 WL 721148 (E.D.Cal. Feb. 10, 2004)	X			
<u>Espinoza v. Northwestern University</u> , 2004 WL 416471 (N.D.Ill. Jan. 30, 2004)			X (Title VII)	
<u>Thomas v. Connecticut General Life Ins. Co.</u> , 2003 WL 22953189 (D.Del. Dec 12, 2003)	X			
<u>Minnfee v. Simpson</u> , 2003 WL 22971313 (N.D.Tex. Dec 09, 2003)	X			
<u>McMahon v. Pier 39 Ltd. Partnership</u> , 2003 WL 22939233 (N.D.Cal. Dec 05, 2003)	X			
<u>Brenda R. v. Employer Aurora East School Dist. 131</u> , 2003 WL 22478755 (N.D.Ill. Nov 04, 2003)	X			
<u>Stanley v. University of Texas Medical Branch</u> , 2003 WL 22998815 (S.D.Tex. Oct 17, 2003)			X (Title VII Action)	
<u>Estate of Davis v. Trojer</u> , 287 F.Supp.2d 455 (S.D.N.Y. Oct 16, 2003)		X		

Case Name	Type of Party Sanctioned			
	Pro Se Individual	Business	Individual Represented by Attorney (tort claim against business)	Individual Represented by Attorney (non-tort claim against business)
<u>Dangerfield v. Merrill Lynch, Pierce, Fenner & Smith, Inc.</u> , 2003 WL 22227956, (S.D.N.Y. Sep 26, 2003)				X (RICO)
<u>Ridall v. Claiborne Farms Equine, Inc.</u> , 2003 WL 22387515 (E.D.Pa. Sep 23, 2003)		X		
<u>Withreow v. Holtze Corp.</u> , 2003 WL 23120044 (N.D.Tex. Sep 22, 2003)	X			
<u>Cargile v. Viacom Intern., Inc.</u> , 282 F.Supp.2d 1316, (N.D.Fla. Sep 17, 2003)				X (breach of contract)
<u>Johnson v. Barnes</u> , 283 F.Supp.2d 1297 (S.D.Ga. Sep 17, 2003)	X			
<u>Vaughn v. City of North Branch</u> , 2003 WL 22145641 (D.Minn. Sep 15, 2003)	X			
<u>Casimini v. U.S.</u> , 2003 WL 22474724 (D.Nev. Sep 15, 2003)	X			
<u>Balthazar v. Atlantic City Medical Center</u> , 279 F.Supp.2d 574 (D.N.J. Aug 15, 2003)				X (RICO)
<u>Jordaan v. Hall</u> , 275 F.Supp.2d 778 (N.D.Tex. Aug 07, 2003)				X (suit against individual)
<u>Methode Electronics, Inc. v. Adam Technologies, Inc.</u> , 2003 WL 21799934 (N.D.Ill. Jul 25, 2003)		X		
<u>Commer v. American Federation of State, County and Mun. Employees</u> , 2003 WL 21697873 (S.D.N.Y. Jul 22, 2003)	X			
<u>Bankhead v. King</u> , 2003 WL 21529822 (N.D.Tex. Jul 07, 2003)	X			

Case Name	Type of Party Sanctioned			
	Pro Se Individual	Business	Individual Represented by Attorney (tort claim against business)	Individual Represented by Attorney (non-tort claim against business)
<u>Nike, Inc. v. Top Brand Co. Ltd.</u> , 216 F.R.D. 259 (S.D.N.Y. Jul 03, 2003)		X		
<u>DiPaolo v. Moran</u> , 277 F.Supp.2d 528 (E.D.Pa. Jun 27, 2003)				X (constitutional claims)
<u>Cruz v. Performing Arts Physical Therapy, P.C.</u> , 2003 WL 21488039 (S.D.N.Y. Jun 26, 2003)			X (sexual harassment and retaliation)	
<u>Mikkilineni v. Penn Nat. Mut. Casualty Ins. Co.</u> , 271 F.Supp.2d 151 (D.D.C. Jun 13, 2003)	X			
<u>McMahan v. First Union Nat'l. Bank</u> , 2003 WL 21339370 (W.D.Tex. Jun 10, 2003)				X (declaratory judgment that lien is invalid)
<u>Ivanova v. Columbia Pictures Industries, Inc.</u> , 217 F.R.D. 501 (C.D.Cal. Jun 09, 2003)				X (copyright infringement)
<u>Amasike v. Geico Ins.</u> , 2003 WL 21283531 (S.D.N.Y. Jun 03, 2003)	X			
<u>Obert v. Republic Western Ins. Co.</u> , 264 F.Supp.2d 106 (D.R.I. May 28, 2003)		X		
<u>Flores v. U.S.</u> , 2003 WL 21209582 (N.D.Tex. May 21, 2003)	X			
<u>Cameron v. U.S.</u> , 2003 WL 21518574 (D.Nev. May 14, 2003)	X			
<u>Williams v. Owell</u> , 2003 WL 22087420 (N.D.Tex. May 07, 2003)	X			
<u>de la Fuente v. DCI Telecommunications, Inc.</u> , 269 F.Supp.2d 229 (S.D.N.Y. May 05, 2003)			X (securities fraud class action)	
<u>Boim v. Quranic Literacy Institute</u> , 2003 WL 1956132 (N.D.Ill. Apr 24, 2003)		X		

Case Name	Type of Party Sanctioned			
	Pro Se Individual	Business	Individual Represented by Attorney (tort claim against business)	Individual Represented by Attorney (non-tort claim against business)
<u>Pigford v. Veneman</u> , 215 F.R.D. 2 (D.D.C. Apr 14, 2003)				X (versus government)
<u>Banner v. Raisin Valley, Inc.</u> , 2003 WL 21309875 (N.D. Ohio Apr 04, 2003)		X		
<u>Silberman v. Innovation Luggage, Inc.</u> , 2003 WL 1787123 (S.D.N.Y. Apr 03, 2003)		X		
<u>Perpetual Securities, Inc. v. Tang</u> , 2003 WL 1740456 (S.D.N.Y. Apr 01, 2003)		X		
<u>Kahre v. U.S.</u> , 2003 WL 21001012 (D.Nev. Mar 10, 2003)	X			
<u>Payman v. Mirza</u> , 2003 WL 751010 (W.D.Va. Mar 03, 2003)	X			
<u>Brighton Commons v. Nextel West Corp., an assumed name d/b/a Nextel Communications Inc.</u> , 2003 WL 548890 (N.D.Ill. Feb 13, 2003)		X		
<u>Smith & Green Corp. v. Trustees of Const. Industry & Laborers Health & Welfare Trust</u> , 244 F.Supp.2d 1098 (D.Nev. Jan 31, 2003)		X		
<u>Profile Publishing and Management Corp. APS v. Musicmaker.com., Inc.</u> , 242 F.Supp.2d 363 (S.D.N.Y. Jan 23, 2003)		X		
<u>Elsman v. Standard Federal Bank (Michigan)</u> , 238 F.Supp.2d 903 (E.D.Mich. Jan 09, 2003)	X			
<u>Divot Golf Corp. v. Citizens Bank of Massachusetts</u> , 2003 WL 61287 (D.Mass. Jan 08, 2003)		X		

Case Name	Type of Party Sanctioned			
	Pro Se Individual	Business	Individual Represented by Attorney (tort claim against business)	Individual Represented by Attorney (non-tort claim against business)
<u>Todd v. City of Natchitoches, Louisiana</u> , 238 F.Supp.2d 793 (W.D.La. Oct 29, 2002)				X (versus government)
<u>Dillon v. Diamond Offshore Mgmt. Co.</u> , 2002 WL 31415706 (E.D.La. Oct 25, 2002)	X			
<u>Soler v. Puerto Rico Telephone Co.</u> , 230 F.Supp.2d 232 (D.Puerto Rico Sep 30, 2002)			X (employment discrimination)	
<u>Vertical Productions by Design v. A.I.J.J. Enterprises, Inc.</u> , 2002 WL 31545827 (E.D.N.Y. Sep 25, 2002)		X		
<u>Phillips ex rel. Estate of Fullingim v. First Nat. Bank of Weatherford</u> , 258 F.Supp.2d 501 (N.D.Tex. Sep 10, 2002)				X (bankruptcy)
<u>Wechsler v. Hunt Health Systems, Ltd.</u> , 216 F.Supp.2d 347 (S.D.N.Y. Aug 27, 2002)		X		
<u>Jacques v. DiMarzio, Inc.</u> , 216 F.Supp.2d 139 (E.D.N.Y. Aug 23, 2002)		X		
<u>Bermudez v. 1 World Productions, Inc.</u> , 209 F.R.D. 287 (D.Puerto Rico Aug 22, 2002)				X (civil rights)
<u>Altamont Summit Apartments LLC v. Wolff Properties LLC</u> , 2002 WL 31971832 (D.Or. Aug 21, 2002)		X		
<u>Meadows v. Morrison</u> , 2002 WL 1798910 (N.D.Tex. Aug 02, 2002)				X (versus individual)
<u>Taylor v. Maple Ave. Economic Development Corp.</u> , 2002 WL 1758189 (N.D.Tex. Jul 26, 2002)	X			

Case Name	Type of Party Sanctioned			
	Pro Se Individual	Business	Individual Represented by Attorney (tort claim against business)	Individual Represented by Attorney (non-tort claim against business)
<u>MHC Inv. Co. v. Racom Corp.</u> , 209 F.R.D. 431 (S.D.Iowa Jul 26, 2002)		X		
<u>Truesdell v. Southern California Permanente Medical Group</u> , 209 F.R.D. 169 (C.D.Cal. Jul 24, 2002)			X (breach of duty of fair representation)	
<u>Chosin Few, Inc. v. Scott</u> , 209 F.Supp.2d 593 (W.D.N.C. Jun 24, 2002)				X (corporate law)
<u>Anderson v. Smithfield Foods, Inc.</u> , 209 F.Supp.2d 1278 (M.D.Fla. Jun 24, 2002)				X (RICO class action)
<u>Roeder v. Rogers</u> , 206 F.Supp.2d 406 (W.D.N.Y. May 22, 2002)				X (versus individual)
<u>Martinez v. Martinez</u> , 207 F.Supp.2d 1303 (D.N.M. May 08, 2002)				X (versus individual)
<u>Drewicz v. Dachis</u> , 2002 WL 849810 (N.D.Ill. May 02, 2002)				X (civil rights)
<u>Miller v. Norfolk Southern Rwy. Co.</u> , 208 F.Supp.2d 851 (N.D.Ohio May 02, 2002)				X (RICO)
<u>Chapman v. Charles Schwab & Co., Inc.</u> , 2002 WL 818300 (N.D.Ill. Apr 30, 2002)	X			
<u>Demes v. ABN Amro Services Co., Inc.</u> , 2002 WL 737280 (N.D.Ill. Apr 25, 2002)	X			
<u>Arceneaux v. Venture Transport</u> , 2002 WL 617246 (E.D.La. Apr 17, 2002)			X (personal injury)	
<u>Walsh v. Massachusetts Bd. of Bar Examiners</u> , 2002 WL 561024 (D.Mass. Apr 09, 2002)	X			

Case Name	Type of Party Sanctioned			
	Pro Se Individual	Business	Individual Represented by Attorney (tort claim against business)	Individual Represented by Attorney (non-tort claim against business)
<u>Integrated Circuit Systems, Inc. v. Realtek Semiconductor Com., Ltd.</u> , 2002 WL 532122 (N.D.Cal. Apr 05, 2002)		X		
<u>Kent v. Ford Motor Co.</u> , 200 F.Supp.2d 670 (S.D.Miss. Apr 01, 2002)		X		
<u>Lipin v. National Union Fire Ins. Co. of Pittsburgh, Pa.</u> , 202 F.Supp.2d 126 (S.D.N.Y. Mar 28, 2002)			X (defamation)	
<u>Mazur v. Woodson</u> , 191 F.Supp.2d 676 (E.D.Va. Mar 20, 2002)	X			
<u>Liptak v. Banner</u> , 2002 WL 378454 (N.D.Tex. Mar 07, 2002)	X			
<u>Ritchie v. Holschuh</u> , 2002 WL 484698 (S.D.Ohio Mar 06, 2002)	X			
<u>Goldstein v. Gordon</u> , 2002 WL 324289 (N.D.Tex. Feb 27, 2002)	X			
<u>Gambello v. Time Warner Communications, Inc.</u> , 186 F.Supp.2d 209 (E.D.N.Y. Feb 15, 2002)			X (age discrimination)	
<u>Waters v. Walt Disney World Co.</u> , 237 F.Supp.2d 162 (D.R.I. Feb 12, 2002)			X (copyright infringement, fraud)	
<u>Mendez v. Draham</u> , 182 F.Supp.2d 430, 52 Fed.R.Serv.3d 147 (D.N.J. Jan 31, 2002)				X (versus individual)
<u>Schmitt v. Schmitt</u> , 2002 WL 109359 (N.D.Ill. Jan 28, 2002)				X (versus individual)
<u>Scott v. Boeing Co.</u> , 204 F.R.D. 698 (D.Kan. Jan 24, 2002)			X (employment discrimination)	
<u>Storey v. Cello Holdings, L.L.C.</u> , 182 F.Supp.2d 355 (S.D.N.Y. Jan 23, 2002)		X		

Case Name	Type of Party Sanctioned			
	Pro Se Individual	Business	Individual Represented by Attorney (tort claim against business)	Individual Represented by Attorney (non-tort claim against business)
<u>Patsy's Brand, Inc. v. I.O.B. Realty, Inc.</u> , 2002 WL 59434 (S.D.N.Y. Jan 16, 2002)		X		
<u>Leuallen v. Borough of Paulsboro</u> , 180 F.Supp.2d 615 (D.N.J. Jan 10, 2002)				X (versus government)
<u>Fernicola v. Specific Real Property in Possession, Custody, Control of Healthcare Underwriters Mut. Ins. Co.</u> , 2001 WL 1658257 (S.D.N.Y. Dec 26, 2001)	X			
<u>Roberts v. Shawnee Mission Ford, Inc.</u> , 2001 WL 1717993 (D.Kan. Dec 06, 2001)		X		
<u>Burger v. U.S.</u> , 2001 WL 1490719 (E.D.La. Nov 21, 2001)	X			
Total	35	27	16	22

Source and Methodology: Public Citizen researched Westlaw, a legal resources online database, for federal district court cases where Federal Rule of Civil Procedure 11 had been applied. All of the cases were then reviewed to make sure that Rule 11 sanctions were in fact ordered. The cases were then analyzed to determine which type of litigant was sanctioned (pro se individual, attorney representing an individual, attorney representing a business, etc.). Cases where attorneys representing individuals were sanctioned were then examined to determine how many involved tort claims. Despite Public Citizen's extensive research on this issue, some cases are not published on Westlaw so it is possible that some cases were not considered because they were unavailable. Subsequent history was not checked for any of the examined cases because the purpose of collecting this data is simply to determine how frequently different categories of litigants are being sanctioned in federal district courts.

End Notes

-
- ¹ “Dick Cheney: Master Litigator,” Halliburton Watch.org, available at: http://www.halliburtonwatch.org/news/cheneylawsuits_099.html, viewed on Sept. 28, 2004.
- ² U.S Census Bureau, Census 2000 Summary File 1; 2000 County Business Patterns.
- ³ “Top 10 Verdicts,” *The National Law Journal*, Nov. 17, 2003.
- ⁴ James P. Miller, “Model Train Fans Steaming Mad at UP; Union Pacific Corp. Says It’s Just Protecting Trademarks, but Its Push to Collect a 3% Royalty Fee from Model-Train Makers Has Generated Large-Scale Anger Among Hobbyists,” *Chicago Tribune*, June 27, 2004.
- ⁵ Matt O’ Connor, “Judge flattens Frito-Lay’s ad campaign against Chicago potato-chip rival Jays,” *Chicago Tribune*, July 23, 2004.
- ⁶ Tony Wilbert, “G-P Wins Dispute over Paper Towel Ad,” *Atlanta Journal-Constitution*, Jan. 22, 2004.
- ⁷ *Id.*
- ⁸ Ken Rodriguez, “S.A. Businessman’s Win Shows Justice Can Work in a Vacuum,” *San Antonio Express-News*, January 7, 2004.
- ⁹ Electrolux LLC press release, April 20, 2001.
- ¹⁰ “Supreme Court Rejects Ugly Fight Over Barbie Doll,” cnn.com, available at: <http://www.cnn.com/2003/LAW/01/27/scotus.barbie>, viewed on Jan. 27, 2003.
- ¹¹ Phil Hirschhorn, “Fox News Loses Attempt to Block Satirist’s Book,” CNN.com, Aug. 22, 2003.
- ¹² “Music Industry’s Dubious Suits Invite Public Backlash,” *USA Today*, Sept. 19, 2003.
- ¹³ Proposed amendment to “Notice and Opportunity to Cure Model Act,” submitted by American Insurance Association to National Conference of Insurance Legislators.
- ¹⁴ “AMA Supports Health Act to Bring Common Sense to Our Liability System,” American Medical Association press release, Feb. 6, 2003.
- ¹⁵ Tanya Albert, “Frustrated and Fighting Back: Ob-gyn Sues West Virginia Trial Lawyers,” amednews.com, Jan. 26, 2004.
- ¹⁶ Dan Radmacher, “Frivolous Lawsuits Can Be Battled,” *Charleston Gazette*, Nov. 16, 2001.
- ¹⁷ Missy Stoddard, “Surgeons File Suit Against Hospital,” *South Florida-Sun Sentinel*, July 30, 2004.
- ¹⁸ Sheri Hall, “Hospitals Sue Over Shift of Beds,” *Detroit News*, June 17, 2003.
- ¹⁹ “Sept. 13 Trial Set in Doctors’ Suit Against Managed Care Industry,” *Miami Herald*, Jan. 5, 2004.
- ²⁰ *Id.*
- ²¹ *St. Paul Pioneer Press*, Dec. 18, 2003.
- ²² Trisha L. Howard, “New Twist in Tort Reform Fight,” *St. Louis Post-Dispatch*, Aug. 25, 2004.
- ²³ Jean P. Fisher, “Doctors Sue Insurer,” *Charlotte News Observer*, Jan. 6, 2004.
- ²⁴ American Medical Association Web site, “AMA v. United HealthCare and Metropolitan Life Insurance (S.D.N.Y.),” available at <http://www.ama-assn.org/ama/pub/category/8100.html>, viewed on Sept. 14, 2004.
- ²⁵ Liz Freeman, “NCH Sues Insurance Company for Nonpayment of Claims,” *Naples Daily News*, June 5, 2004.
- ²⁶ Lucette Lagnado, “Call it Yale v. Yale,” *Wall Street Journal*, November 14, 2003.
- ²⁷ Vaughers et al v. Blue Cross and Blue Shield of Kansas City, Jackson County Circuit Court 00-CV-227323.
- ²⁸ John Fauber and Joe Manning, “Drug Making is Big Business,” *Milwaukee Journal Sentinel*, April 1, 2001.
- ²⁹ Frank Scussa, “Patent Games: Seeking to Put an End to Big Pharma’s Patent-Extension Tactics, the Generic Industry Is Putting Pressure on Washington and Galvanizing Public Opinion,” *Med Ad News*, June 1, 2002.
- ³⁰ *Id.*
- ³¹ *Id.*
- ³² FTC Order, Docket No. 021 0181 In the Matter of Bristol-Myers Squibb Company, March 7, 2003.
- ³³ Geneva Pharmaceuticals, Inc. v. GlaxoSmithKline PLC, 349 F.3d 1373 (Nov. 21, 2003).
- ³⁴ “New York City Files Two Suits Against GlaxoSmithKline for Antitrust Violations and Medicaid Fraud in Connection with the Antidepressant Paxil and the Antibiotic Augmentin,” New York City Law Department press release, May 18, 2004.
- ³⁵ Phil Hirschhorn, “Fox News Loses Attempt to Block Satirist’s Book,” CNN.com, Aug. 22, 2003.
- ³⁶ Miller v. Schweickart, 413 F.Supp. 1059. (D.C.N.Y. 1976).
- ³⁷ Jen McCaffery, “DirecTV’s Legal Strategies Raise Eyebrows,” *Roanoke Times and World News*, June 19, 2004.
- ³⁸ Tim Arango, “RIAA Sues 744 Music Pirates,” *New York Post*, Aug. 26, 2004.

³⁹ “Electronic Frontier Foundation Defends Alleged Filesharer,” Electronic Frontier Foundation press release, Oct. 14, 2003.

⁴⁰ Frank Ahrens, “File-Sharing Companies Offer to Pay Girl’s Settlement,” *Washington Post*, Sept. 11, 2003.

⁴¹ “Music Industry’s Dubious Suits Invite Public Backlash,” *USA Today*, Sept. 19, 2003.

⁴² Theresa Howard, “Pepsi Ads Wink at Music Downloading,” *USA Today*, Jan. 22, 2004.