

City's Payout for Lawsuits Continues to Rise Rapidly

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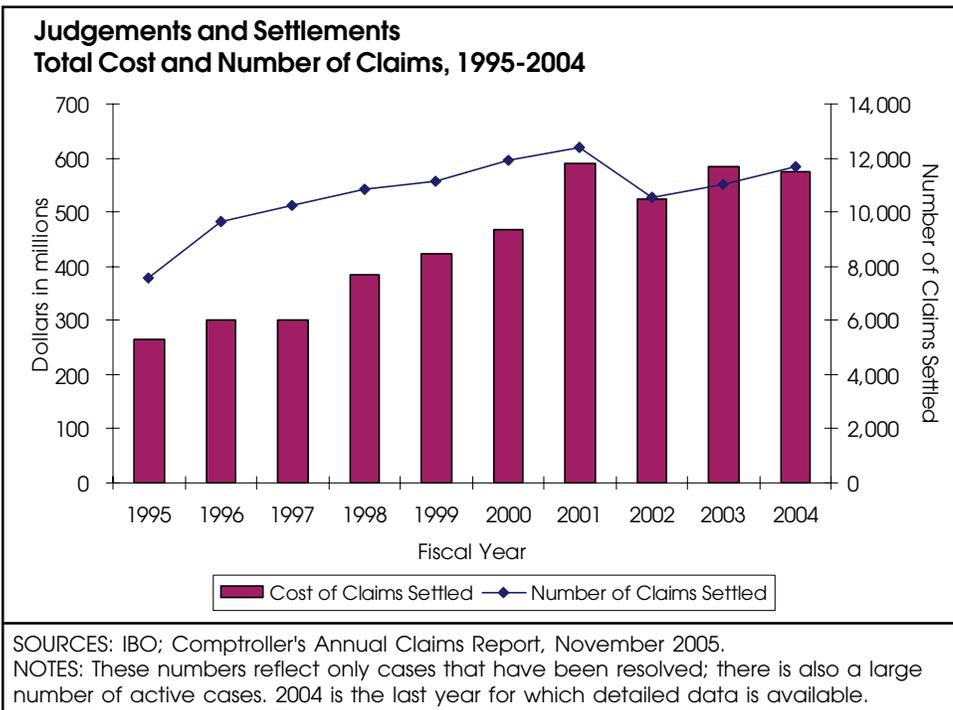
THE COST OF SETTTLING LAWSUITS against the city is a little noticed but fast-rising expenditure. Over a 10-year period beginning in 1995, the costs for settling these legal claims, which include personal injury, property damage, civil rights, and other complaints against the city, have more than doubled. In 1995, the city spent \$265.1 million on legal judgments and settlements; by 2004 the cost had grown to \$575.6 million—more than two-and-a-half times the amount the city spent on the Department of Parks and Recreation during that same fiscal year.

City spending to settle lawsuits has been rising for some time, and is expected to continue to rise over the next few years. A January 2001 IBO report ("[New York City's Escalating Costs for Resolving Lawsuits](#)") began tracking the costs of legal claims from 1990, when the city spent \$176 million. From 1995 through 2004, the cost of settling these lawsuits grew at an average rate of 9 percent annually, nearly twice the rate of all other city spending. The Mayor's most recent budget projections anticipate that the cost of resolving legal claims against the city will rise from roughly \$600 million this year to nearly \$800 million by 2010—a rise in spending that continues to exceed the growth rate for most other city programs.

Much as in our report five years ago, the majority of the cost of settlements of judgments and claims still stems from personal injury claims, which can result from medical malpractice, sidewalk defects, auto accidents, police actions, and school mishaps. IBO takes an updated look at expenditure trends for judgments and claims.

Why and for What Does the City Pay? Judgment and settlement expenditures reflect costs to the city from personal injury and property damage tort claims—for example, tripping on a broken sidewalk or property damage from a leaky water main—as well as claims resulting from contractual liabilities between city agencies and their contractors or employees. The city incurs these costs because it is self-insured, meaning that claims are paid from available budget resources rather than by a third-party insurer.

Claims are divided into three main categories—personal injury, property damage, and other legal claims—that are further divided by the specific type of claim. Personal injury claims include, for example, medical malpractice, sidewalk trip and fall accidents, motor vehicle accidents, and police actions due primarily to police misconduct. Property damage claims include, for example, vehicles damaged by defective roadways, personal property damage from pedestrian accidents on defective roadways and personal property damage from leaking or broken water mains or fire hydrants. Other legal claims include contract liabilities relating to city employment, as well as disputes between the city and private contractors.



Claims are usually not resolved until a number of years after they are filed. During the 10-year period IBO looked at, it took on average seven years to resolve medical malpractice suits, according to the Comptroller's office.

Many medical malpractice claims are for care provided at Health & Hospitals Corporation (HHC) facilities, which became responsible in 2002 for shouldering all or part of the cost of settlements related to its functions. There is an annual cap on how much HHC may have to pay from its own revenues. In 2004, the cap was \$185 million and the total amount of medical malpractice settlements was \$167.5 million. This

What Claims Are Costliest for the City? As in the previous report, personal injury claims against the city account for the vast majority—about 90 percent—of the city's expenses for judgment and claims. In 1995, four categories of personal injury claims accounted for 65 percent of total expenditures and in 2004, these same categories accounted for 60 percent—medical malpractice (30 percent), sidewalk trips and falls (12 percent), motor vehicle accidents (11 percent), and police actions (7 percent). In 2004 the city paid a total of \$536.8 million to settle personal injury claims.

Medical Malpractice. Claims concerning malpractice at public health facilities comprise a small share of the lawsuits filed against the city but account for a disproportionately large share of settlement costs. Malpractice claims typically make up about 3 percent of the personal injury lawsuits filed against the city each year. Yet in 2004, for example, the cost of settling medical malpractice suits amounted to about 30 percent of the \$575.6 million in claims paid that year. Part of the reason medical malpractice cases are such a disproportionate share of the cost is that the individual settlements often come with a high price tag. In each year since 2000 there were 40 or more medical malpractice claims settled for at least \$1 million, according to information provided by the office of Comptroller William Thompson.

While the total cost of settlements and the number of claims settled in a given year tend to rise and fall in tandem, there is no direct relationship between the number of suits filed in a year and the amount paid out to settle claims in that same year.

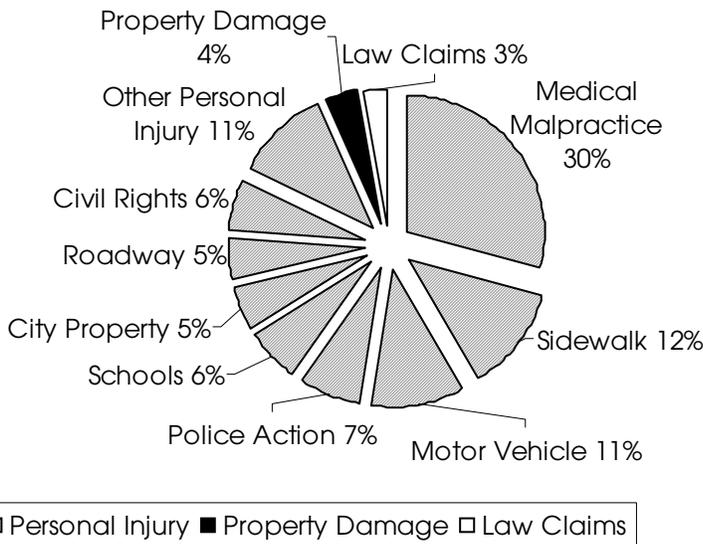
means that none of the cost of settling these suits had to be paid from the city's expense budget.

Defective Sidewalks. About 12 percent of all personal injury settlements in 2004 were from defective sidewalk claims against the city—i.e. trips and falls. This total is down from nearly 19 percent of all personal injury settlements in 1995. There was almost a 9 percent decrease in the number of claims settled for this type of accident from 2003 to 2004 but the total settlement costs increased 5 percent. Overall, the cost of defective sidewalk settlements has increased, on average, 5 percent each year from 1995 to 2004, which is also on par with the growth in the number of claims paid during this same period. It took, on average, four years from when it was first filed to settle these claims.

The number of defective sidewalk claims filed has dropped significantly over the past several years, however, from 4,142 in 1995 to 3,229 in 2004. This decrease is due in large part to Local Law 49 of 2003, which limits the city's liability for injury to property or people on sidewalks adjoining city-owned property or to owner-occupied residential property having no more than three units. As a result of this legislation, the Comptroller's office rejected 1,216 of the 3,229 sidewalk claims filed in 2004. In the future, this legislation is expected to lower the amount of settlements paid for this type of claim.

Motor Vehicle Accidents. Since 1995, the number of claims settled for motor vehicle accidents more than doubled (538 claims in 1995 to 1,095 claims in 2004). The dollar value of

What Claims are the Costliest?
Shares of \$576 Million in Judgements and Settlements Paid in 2004



SOURCE: IBO; Comptroller's Annual Claims Report, November 2005.
NOTE: 2004 is the last year for which detailed data is available.

amount paid out for these claims in the same time period (from \$32.9 million to \$42.6 million). In comparison to the first five years covered in this report, the growth of settlements in the latter five year period has decelerated (17.9 percent growth rate from 1995 through 1999 versus 2.9 percent growth rate from 2000 through 2004). On average, police action claims were settled roughly four-and-a-half years after they were first filed during the period IBO examined.

Looking Ahead. In addition to efforts to reduce the number of claims filed for injuries due to defective sidewalks, the city has also sought to save money by settling cases prior to litigation. The results are beginning to show. In 2004, the city settled 1,625 personal injury cases before going to court—the highest number ever.

The city's new Cybersettle system is part of the effort to settle cases prior to litigation. Set up in February 2004, Cybersettle is an Internet-based tool that facilitates a double-blind negotiation process between the city and claimants. Of the 1,625 personal injury cases settled before going to court in 2004, 281 were resolved through Cybersettle. If not for efforts such as these, the cost of settling legal claims against the city might be rising even faster.

Written by Nicole M. Fleming

these settlements also nearly doubled over the same period, rising from \$31.2 million in 1995 to \$62.3 million in 2004.

Police Action Claims. Police action claims stem from allegations of improper police conduct such as false arrest, excessive force, or assault. There was almost a 12 percent increase in the number of claims settled from 2003 to 2004 (613 to 693, respectively) and also an increase of 23 percent in the total

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