



CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER

# **CLAIMS REPORT 2001-2002**

**WILLIAM C. THOMPSON, JR.**  
COMPTROLLER

July 2003

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WILLIAM C. THOMPSON, JR.  
COMPTROLLER

July 1, 2003

Dear Fellow New Yorkers:

I am pleased to share with you the *Claims Report 2001-2002*, a comprehensive examination of data regarding claims filed against the City in fiscal years 2001 and 2002. The report has been reconfigured to make it more user-friendly and accessible to all New Yorkers.

The City Charter grants the New York City Comptroller the power to investigate all claims made against the City, to determine liability and damages, and to reach a settlement where appropriate. The City continues to spend over half a billion dollars a year on claims, thereby reducing the City's ability to provide essential services to its residents. Although much of the data contained in the report is troubling, there are encouraging signs. For example, between fiscal year 2001 and 2002, the amount the City spent on settlements and judgments declined, from \$580.5 million to \$525 million, reversing years of annual increases. In addition, the number of claims made against the City was the lowest in 11 years and declined again for the sixth year.

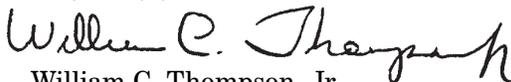
However, at a time when New York City is grappling with billion-dollar budget deficits, it is more important than ever that we find creative ways to save City dollars. To achieve this goal, my office has embarked on a number of initiatives to combat fraud and to ensure that the City uses the industry's best practices to address claims.

A 1997 Price Waterhouse study of the City's claims process estimated that at least 10 percent of all claims filed against the City were fraudulent. Identifying just 20 percent of these fraudulent claims could produce savings of more than \$11 million. To that end, we have formed a fraud unit to identify fraudulent claims. We have created a Fraud Hotline (212-669-4747), and launched a public awareness campaign to enlist the public's help in our fight against claims abuse. We also continue to train our claims examiners so that they remain equipped to identify fraudulent claims.

Newly created early intervention units, comprised of staff from my office and the office of the Corporation Counsel, scrutinize high-cost medical malpractice and police action cases. These units identify cases appropriate for early settlement—*before* expensive legal fees begin to mount. By adopting this approach, we hope to replicate my office's success in reducing personal injury costs. In fiscal year 2002, my office settled a record 1,410 personal injury claims prior to litigation, saving the City \$30.8 million in settlement costs.

A thoughtful re-examination of our tort laws, such as the sidewalk legislation recently adopted by the City, could further relieve us of our unacceptably high claims costs. By taking a determined and unwavering look at claims, we can create a process that responds to those who file legitimate actions and that reduces the heavy burden on taxpayers.

Very truly yours,

  
William C. Thompson, Jr.

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## Overview

**S**ection I presents an overview of the three categories of claims filed—personal injury, property damage, and law claims<sup>1,2</sup>—and their costs for the 11-year period from fiscal year 1992 through fiscal year 2002.<sup>3</sup>

Section II presents trends in personal injury claims, which are analyzed by claim type and agency. This report focuses on personal injury claims, because they account for the greatest cost and largest number of new claims filed. In fiscal year 2002, the cost for personal injury claims was \$474.8 million, or more than 90 percent of the total cost for the year. The 15,930 new personal injury claims filed accounted for 65 percent of all new claims filed. In fiscal year 2001, the cost for personal injury claims was \$549.3 million, or more than 95 percent of the total cost for the year. The 15,632 new personal injury claims filed accounted for 59 percent of all new claims filed.

A summary of claim trends can be found starting on Page 9.

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<sup>1</sup> The Comptroller records all claims data on the Omnibus Automated Image Storage and Information System (OASIS). For the purpose of this report, “settlement and judgment costs,” “liabilities,” “expenditures” or “amounts paid” will be used interchangeably with “recorded settlements and judgments.”

<sup>2</sup> Refer to Appendix A for a description of the claim types used by the Comptroller’s office.

<sup>3</sup> Some settlements and judgments for fiscal year 2002, and even for prior years, may not yet be on OASIS because the necessary information has not been transmitted from the Law Department or the plaintiffs’ attorneys to the Comptroller’s Office. Settlements are entered into the system based on the date the settlement is agreed upon, not the date of payment. Judgments are entered into the system based on the date of the final judgment; cases are not entered until appeals are finalized. In addition, data for years prior to 1994 may not be as reliable as recent data because they were derived from a different database.

## Claim Trends

- Most significantly, the number of new claims filed in fiscal year 2002 was the lowest in the last 11 years. The number of new claims filed declined from 26,336 in fiscal year 2000 to 26,330 in fiscal year 2001 to 24,376 in fiscal year 2002. This decrease continues the trend of the previous five-year decline in claim filings. There was a 22 percent decrease from the historical high of 31,119 new claims that were filed in fiscal year 1996 to fiscal year 2002.
- In an encouraging sign, the amount the City spent on settlements and judgments in fiscal year 2002 declined to \$525 million from \$580.5 million in fiscal year 2001, reversing years of annual increases.
- Personal injury claims accounted for \$474.8 million, or 90 percent, of the \$525 million paid in fiscal year 2002. Law claims, also known as contract claims, include disputes with City contractors, and claims relating to wages and sidewalk assessments. These claims accounted for \$40.3 million in fiscal year 2002. Property damage claims cost \$9.9 million in fiscal 2002.
- In fiscal year 2002, a record 94 separate cases were resolved for \$1 million or more. Fifty of the \$1 million or more cases involved medical malpractice. These 94 cases cost the City \$240.7 million, or 46 percent of the total of \$525 million paid for all cases. The number of cases over one million dollars reflects an increase of 165 percent over an 11-year period. In comparison, the cost for cases that were resolved for over \$1 million in fiscal year 1991 was \$91 million.
- Medical malpractice cases cost the City \$190.5 million for 298 cases, making these cases the most expensive of all personal injury claims. In fiscal year 2002, the second costliest claim category was defective sidewalks, representing 2,659 claims totaling \$53.1 million. Motor vehicle settlements and judgments were the third costliest category, with 961 claims totaling \$42.3 million. The fourth largest claim amount was for civil rights claims, which cost \$37.4 million.

## Personal Injury Claims

- Personal injury claims have been the most costly claim category for the past 11 fiscal years. They were the most frequently filed claim type for fiscal year 2002.
- In fiscal year 2002, settlements and judgments for personal injury claims, which on average are resolved four to five years after an incident occurs, totaled \$474.8 million for 7,679 claims. The average settlement/judgment for all personal injury cases was \$61,833 an increase of five percent from \$58,917 in fiscal year 2001.

## Medical Malpractice

- Medical malpractice claims comprised a relatively small percentage of personal injury claims filed but represented the costliest component of personal injury claims each of the past 11 fiscal years. While the 796 claims represented only three percent of fiscal year 2002 claims, they accounted for \$190.5 million, or 36 percent, of the total \$525 million.

- The three hospitals for which the City paid the highest total amounts for medical malpractice claims in fiscal year 2002 were Kings County Hospital (\$35.6 million), Harlem Hospital (\$26.6 million), and Jacobi/Bronx Municipal Hospital (\$22.6 million).
- Four hospitals had more than a 10 percent decrease in the number of medical malpractice claims filed. Claims filed against Elmhurst Hospital dropped from 98 in fiscal year 2001 to 48 in fiscal year 2002. Claims filed against Lincoln Hospital fell from 91 in fiscal year 2001 to 80 in fiscal year 2002. Woodhull Hospital's claims decreased from 61 in fiscal year 2001 to 53 in fiscal year 2002. New claims filed against Queens Hospital declined from 23 in fiscal year 2001 to 20 in fiscal year 2002.
- Four hospitals had significant increases in the number of medical malpractice claims filed. Claims filed against Coney Island Hospital rose from 53 in fiscal year 2001 to 59 in fiscal year 2002. Claims filed against Jacobi/Bronx Municipal Hospital increased from 82 in fiscal year 2001 to 95 in fiscal year 2002. Claims filed against Metropolitan Hospital increased from 41 in fiscal year 2001 to 57 in fiscal year 2002. Claims filed against North Central Bronx Hospital increased from 27 in fiscal year 2001 to 35 in fiscal year 2002.
- Eight hospitals experienced increases and three hospitals experienced decreases in medical malpractice payouts from fiscal year 2001 to fiscal year 2002. Among the most significant increases in medical malpractice payouts was Harlem Hospital (358%), Bellevue Hospital (218%), Elmhurst Hospital (162%), Queens Hospital (135%) and Lincoln Hospital (126%). It should be noted, however, that medical malpractice claims often are not resolved for five to ten years. Thus, the number of claims filed is a better indicator of current hospital activity because the amount paid out in any one year reflects claims filed in prior years.

### Defective Sidewalk Claims

- During the past 11 fiscal years, sidewalk claims have been the most frequently filed personal injury claim. In fiscal year 2002, 3,276 sidewalk claims were filed against the City, a nine percent decrease from the 3,606 sidewalk claims filed in the prior fiscal year. The number of sidewalk claims filed in fiscal year 2002 represents the lowest number of sidewalk claim filings in the last 11 years.

### Motor Vehicle Accident Claims

- Personal injury motor vehicle accident claims cost \$42.3 million in fiscal year 2002, down from \$56.6 million in fiscal year 2001. The number of new personal injury motor vehicle accident claims filed decreased, from 1,662 in fiscal year 2001 to 1,581 in fiscal year 2002.

### Police Action Claims

- The cost of police action claims decreased 43 percent from \$38.5 million in fiscal year 2001 to \$21.9 million in fiscal year 2002. There were 1,796 new police action claims filed in fiscal year

2002, a decrease of nine percent from the 1,980 filed in fiscal year 2001. Police action claims result from alleged improper police action such as false arrest or the use of excessive force.

### School Claims

- The cost of school claims increased from \$25.7 million paid in fiscal year 2001 to \$30.1 million paid in fiscal year 2002. The number of new school claims filed continued to decline from 1,656 in fiscal year 2001 to 1,510 in fiscal year 2002. School claims are those claims filed against the New York City Department of Education for injuries sustained at its facilities or during its sponsored activities.

### Property Damage

- There was a decrease in the number of property damage claims filed from 9,180 in fiscal year 2001 to 7,453 in fiscal year 2002. Resolved property damage cases for fiscal year 2002 cost \$9.9 million, or less than two percent of the total paid for the year.

### Law Claims

- Law claim filings decreased by 35 percent from 1,518 in fiscal year 2001 to 993 in fiscal year 2002. Resolved law claims cost \$40.3 million or 7.6 percent of the total liability for the year. Law claims arise from disputes concerning implied or actual contracts between City agencies and their contractors or employees.

### Claims by Agency

- The Department of Transportation and the Police Department together accounted for the highest number of new claim filings in each of the last 11 fiscal years.
- Ten agencies showed a decrease in the number of claims filed. The Buildings Department experienced the greatest decrease, 42 percent, followed by the Human Resources Administration, with a 37 percent decrease. In fiscal year 2002, new claim filings against the Department of Transportation, Department of Education, Health and Hospitals Corporation, Department of Corrections, and the Department of Housing Preservation & Development were the lowest in the last 11 years.

- Two agencies showed an increase in the number of claims filed. Claims against the Fire Department rose by 85 percent due mainly to claims arising from the World Trade Center attack. Claims against the Parks Department increased seven percent.

### Claims by Borough

- Personal injury (PI) and property damage (PD) claim patterns were analyzed by borough, based on the location of the incident. Law claims were not included because they are not tracked by borough. For fiscal year 2002, the greatest number of personal injury claims arose in Manhattan (4,987). The greatest number of property damage claims arose in Brooklyn (1,912).

#### *Number of Claims Filed*

Borough	Personal Injury (PI) Claims	Property Damage (PD) Claims
Brooklyn	4,139	1,912
Bronx	2,696	867
Manhattan	4,987	1,342
Queens	2,857	1,884
Staten Island	521	477

In fiscal year 2002, the largest dollar amount paid to resolve personal injury claims was in the Borough of Brooklyn. Claims for Brooklyn totaled \$149.4 million. Claims paid for property damage were highest in Manhattan and totaled \$5.7 million.

#### *Settlements & Judgments*

Borough	PI Claims Resolved	Amount Paid for PI Claims (millions)	PD Claims Resolved	Amount Paid for PD Claims (millions)
Brooklyn	2,291	\$149.4	784	\$1.6
Bronx	1,105	\$100.5	309	\$0.6
Manhattan	2,536	\$124.4	540	\$5.7
Queens	2,311	\$67.6	684	\$1.3
Staten Island	307	\$13.3	195	\$0.4

## Comptroller's Initiatives to Manage Risk and Implement Best Practices

In order to address the City's unacceptably high claims costs, the Comptroller has spearheaded several initiatives that are aimed to significantly reduce the City's liability. These initiatives include:

- **Creation of a Risk Management Division:** The Comptroller created a Risk Management Division to establish better Citywide risk management practices. It provides risk management assistance to City agencies. The Division acts as the Comptroller's representative in the risk management industry and publishes a risk management newsletter. The goal of this Division is to ensure that the City uses the insurance industry's optimum risk reduction practices to address City claims ("best practices").
- **Early Settlement of Medical Malpractice and Police Action Cases:** The Comptroller established early settlement initiatives with Corporation Counsel staff and the Health and Hospitals Corporation (HHC) to negotiate reasonable and fair settlements prior to the commencement of costly legal proceedings. The goal of this initiative is to settle costly claims earlier thus saving the City both settlement and litigation costs. An added benefit of this initiative is the collection of risk management and loss prevention data to aid in analyzing cost reduction strategies.
- **Creation of a Motor Vehicle Personal Injury Settlement Division:** The Comptroller established a new Division devoted to the early investigation and settlement of appropriate claims involving personal injuries sustained from New York City-owned motor vehicles.
- **Creation of a Fraud Division:** The Comptroller created a Fraud Division and established a new Fraud Hotline number (212-669-4747). The Unit uses sophisticated technology and educational tools to identify fraudulent claims. Price Waterhouse, in its 1997 New York City Claims and Litigation Practices Study, conservatively estimated that 10% of all claims filed against the City were fraudulent. The goal of this initiative is to improve public awareness of claim fraud against the City and to identify and ensure the prosecution of those associated with fraudulent claims. The Comptroller also aired public service announcements to encourage New Yorkers to report claims fraud.
- **Expansion of Affirmative Claims Efforts:** The Comptroller significantly expanded efforts to collect money from those causing damage to City property.
- **Increasing Agency Accountability:** The Comptroller has stressed the need to implement measures ensuring that agencies are held accountable for the actions of its employees. Although it is the activities of City agencies that result in claims, individual agencies are not financially responsible for those costs. Generally, claims, settlements and judgments are paid from the City's General Fund, and as a result, most claim payments are not reflected in agency budgets. Each agency's efforts to reduce claims should be monitored using the *Mayor's Management Report*. Agency management must be held accountable for improving agency operations and improving agency litigation support. Claims activity is a key indicator of the success or failure of a City agency's mission.

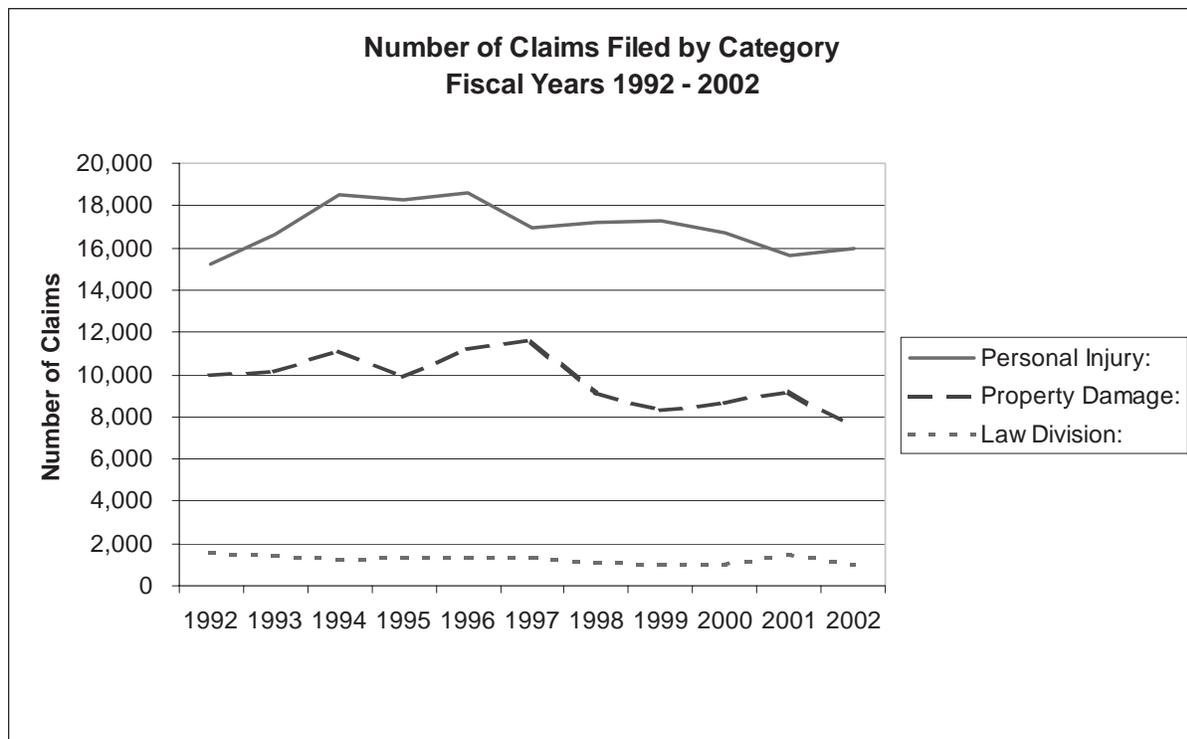
- **Pre-litigation Settlement:** For fiscal year 2002, the Comptroller’s office settled a record 1,410 personal injury claims prior to litigation. This effort resulted in considerable savings to the City in settlement and litigation costs. The Office settled 1,410 claims. The average settlement was \$6,202 significantly less than the \$22,841 average settlement for claims where litigation has commenced. The Comptroller’s office conducted comprehensive early investigations of these claims and as a result, the City saved \$30.8 million in settlement costs.
  
- **Recovery Program:** For fiscal year 2002, the Comptroller collected a record of more than \$8 million from claimants with outstanding obligations to the City. By improving both manual and automated City systems and by working closely with City agencies—particularly the Human Resources Administration—the office was able to collect outstanding public assistance, parking ticket and child support obligations from claimants who received settlements from the City.

## SECTION I. Overview of Claims Filed and Claims Paid

### A. Trends in Claim Filing

In fiscal year 2002, 24,376 new claims were filed against the City. This represents the lowest number of new filings in the last 11 fiscal years. The number of new claims filed decreased seven percent from fiscal year 2001. Chart 1 shows the trends in claim filings by the three major categories of claims (personal injury, property damage, and law claims).

Chart 1



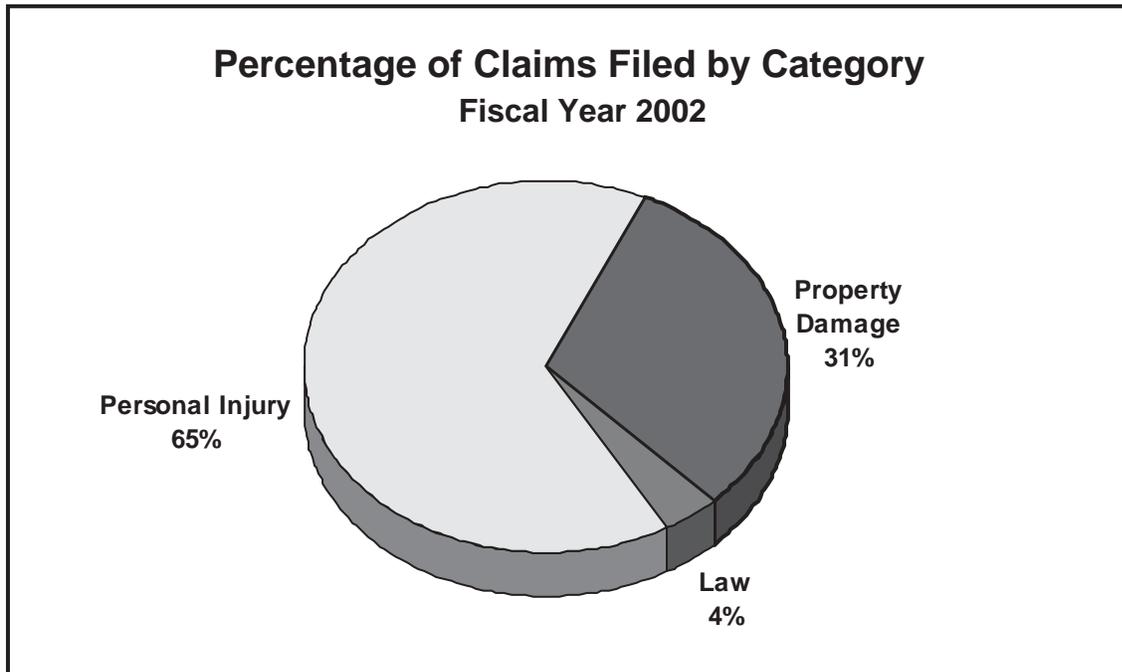
### Personal Injury Claim Filings

Each year, personal injury claims are the claims most frequently filed and the most costly to resolve. In fiscal year 2002, 15,930 new personal injury claims were filed against the City. They accounted for 65 percent of all new claims filed during the year. The number of new personal injury claims filed in fiscal year 2002 represents a two percent increase from the previous fiscal year's filings (see Chart 2 and Table 1 of Appendix C).

In fiscal year 2001, 15,632 new personal injury claims were filed against the City. They accounted for 59 percent of all new claims filed during the year. The number of new personal injury claims

filed in fiscal year 2001 represents a 6.5 percent decrease from the previous year's filings of 16,714 (see Chart 1, Appendix C).

### Chart 2



### Property Damage Claim Filings

In fiscal year 2002, 7,453 new property damage claims were filed. This was the lowest number of new property damage claims filed in the last 11 years. Property damage claims accounted for 31 percent of all new claims filed in fiscal year 2002.

In fiscal year 2001, 9,180 new property damage claims were filed, a 5.9 percent increase from the 8,670 property damage claims filed in fiscal year 2000. Property damage claims accounted for 35 percent of all new claims filed in fiscal year 2001.

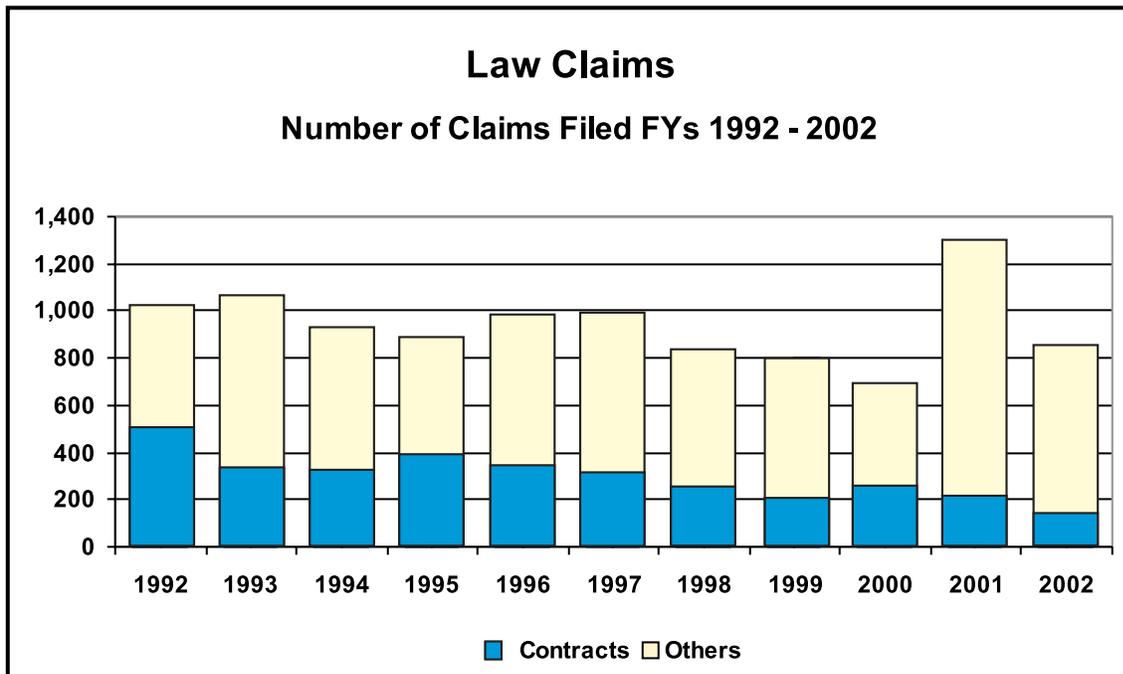
### Law Claim Filings

Law claims arise primarily from disputes concerning implied or actual contracts between City agencies and their contractors or employees. Claims from contractors, usually construction disputes, involve issues such as quality and scope of work. Employee claims stem from salary and other compensation-related matters. Law claims also include "illegal but equitable" claims as well as claims for refunds of money mistakenly paid to the City. "Illegal but equitable" claims refers to claims filed by vendors alleging that work was performed or supplies delivered without receipt of payment. These claims typically arise where appropriate contract approval was not obtained.

In fiscal year 2002, the number of new law claims filed decreased to 993 and represented four percent of the total number of new claims filed during that year.

Law claim filings increased dramatically, from 952 in fiscal year 2000, to 1,518 in fiscal year 2001, a 59.5 % increase. This increase can be attributed to cases involving rent stabilization tax refunds. Law claims accounted for six percent of all new claims filed in fiscal year 2001 (see Chart 3).

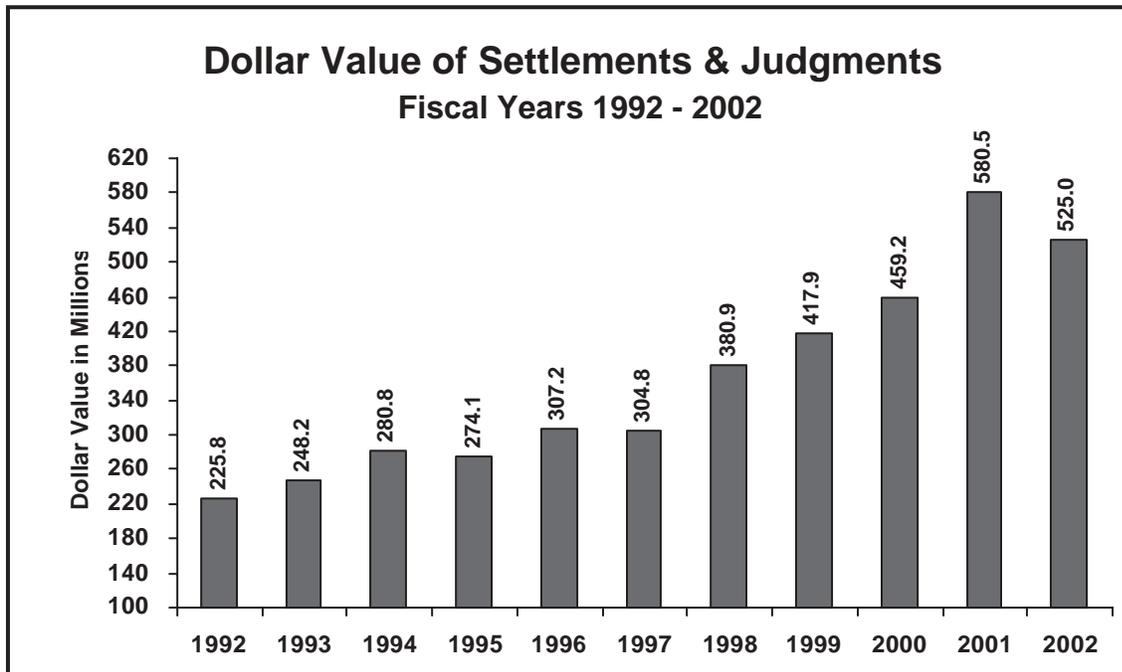
Chart 3



## Trends in Settlements and Judgments

The City's liability for recorded settlements and judgments in fiscal year 2001 and fiscal year 2002 was \$580.5 million and \$525 million respectively (see Chart 4).

Chart 4



## Personal Injury Settlements and Judgments

Settlements and judgments for personal injury claims resolved in fiscal year 2002 totaled \$474.8 million for 7,679 dispositions as compared to \$549.3 million for 9,324 dispositions in fiscal year 2001. The average settlement for personal injury cases was \$50,389 per settlement in fiscal year 2002, down from \$52,897 in fiscal year 2001. The average judgment for personal injury cases was \$289,681 in fiscal year 2002, down from \$376,584 in fiscal year 2001. Personal injury claims accounted for 90 percent of the total dollars expended in fiscal year 2002, down from 95 percent in fiscal year 2001.

Total costs for settlements are much higher than costs for judgments, because the vast majority of cases are resolved either before or during trial and thus never reach a judgment. Average settlement and judgment costs are affected by several factors, a major one being cases that are resolved for \$1 million or more each.

Medical malpractice cases cost \$190.5 million (298 dispositions) in fiscal year 2002, making this the single costliest personal injury claim type for at least the 11th consecutive year. This figure increased from the \$154.9 million expended in fiscal year 2001.

The second highest fiscal year 2002 cost within the personal injury claim category was sidewalk claims at \$53 million. Motor vehicle claims was third at \$42.3 million, followed by civil rights claims at \$37.4 million and school claims at \$30.1 million.

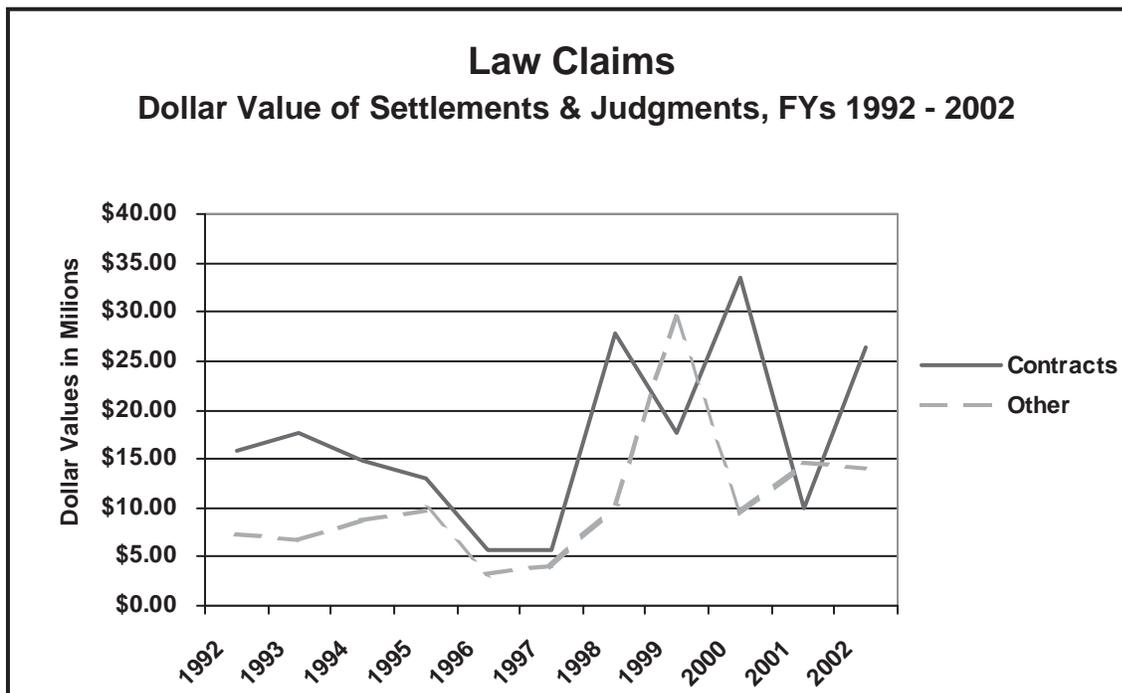
### Property Damage Settlements and Judgments

Property damage settlements and judgments remain small in comparison to total settlements and judgments. In fiscal year 2002, resolved property damage cases cost \$9.9 million, or 1.9 percent, of the total \$525 million paid for the year. In fiscal year 2001, property damage claims settled for \$6.7 million, or 1.1 percent of that year's cost.

### Law Claim Settlements and Judgments

In fiscal year 2002, the total cost of settlements and judgments for law claims was \$40.3 million, up from \$24.5 million in 2001. Law claims represented 7.7 percent of the total claims liability for fiscal year 2002 as compared to 4.2 percent of the total claims liability for fiscal year 2001 (see Chart 5).

Chart 5



### Settlements and Judgments of \$1 Million or More

In fiscal year 2002, 94 cases were resolved for \$1 million or more each. Combined, these cases cost the City \$240.7 million and accounted for 46 percent of the \$525 million total paid for the year (see Charts 6A and 6B). The average amount spent to resolve these claims in fiscal year 2002 was \$2.6 million. A summary of the 10 largest claims that were resolved in fiscal year 2002 can be found in Appendix D.

Chart 6A

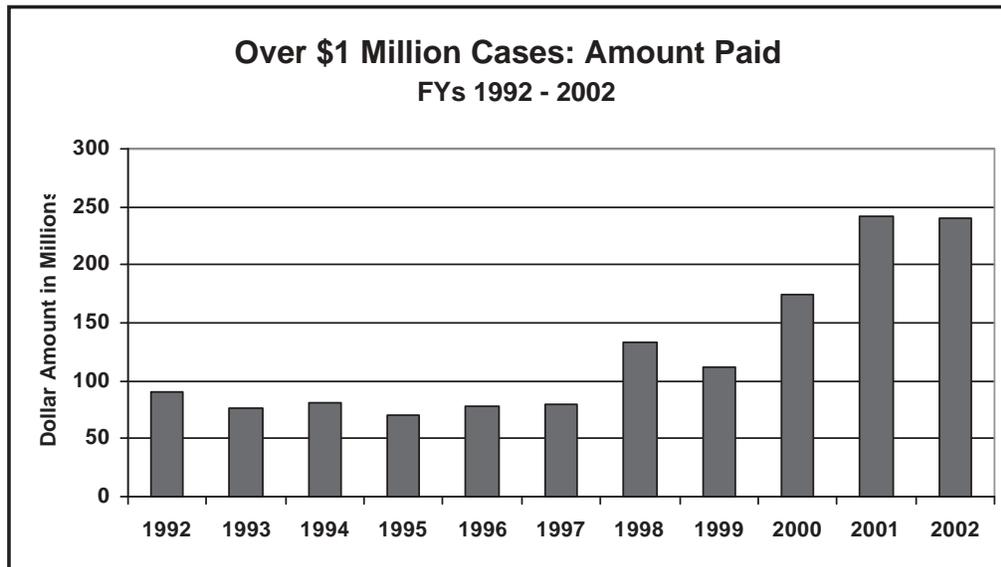
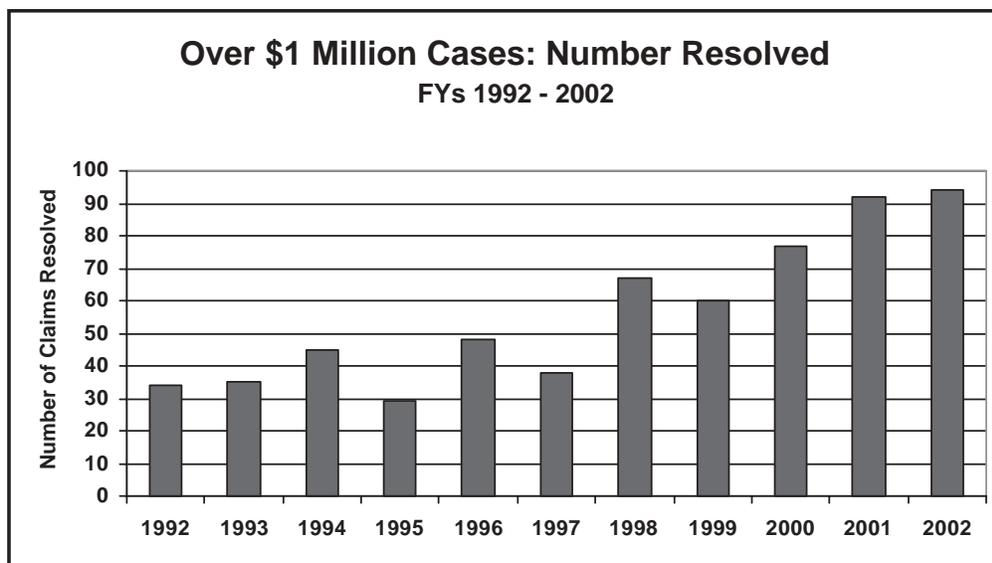


Chart 6B



## SECTION II. Analysis of Claims Against the City

### Discussion of Personal Injury Claims by Claim Type

The cost of settlements and judgments for personal injury cases in fiscal year 2002 was \$474.8 million, down from \$549.3 million in fiscal year 2001. The number of resolved personal injury cases was 7,679 in fiscal year 2002, down from 9,324 in fiscal year 2001.

This section details the seven most costly types of personal injury claims (medical malpractice, sidewalk, motor vehicle accidents, civil rights, school claims, uniform services and defective roadway) by their dollar order of magnitude in fiscal year 2002.

Chart 7 tracks the dollar value of settlements and judgments by claim type over the 11-year period from fiscal year 1992 to fiscal year 2002.

Chart 8 shows the percentage of total recorded personal injury expenditures in each of these major claim types for fiscal year 2002.

Chart 9 tracks claim filings by claim type over the same period, also see Tables 1 and 3 of Appendix C.

See the end of this section for a discussion of other claim types that showed increases or decreases in claim filings and cost.

#### Chart 7

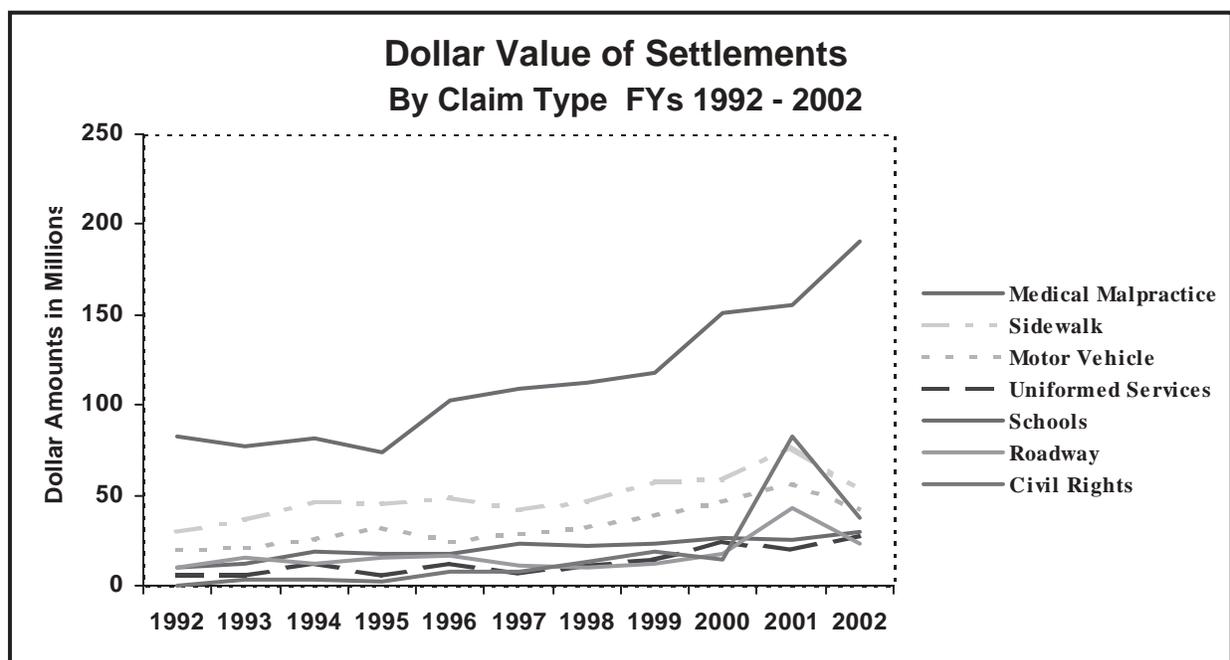


Chart 8

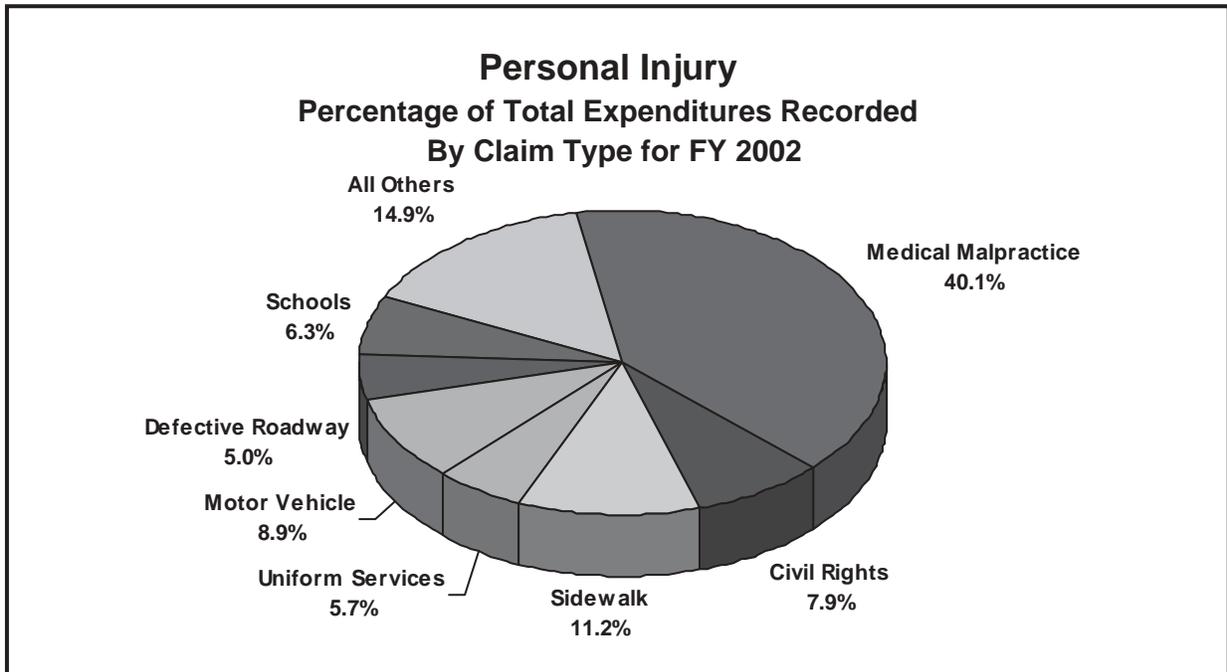
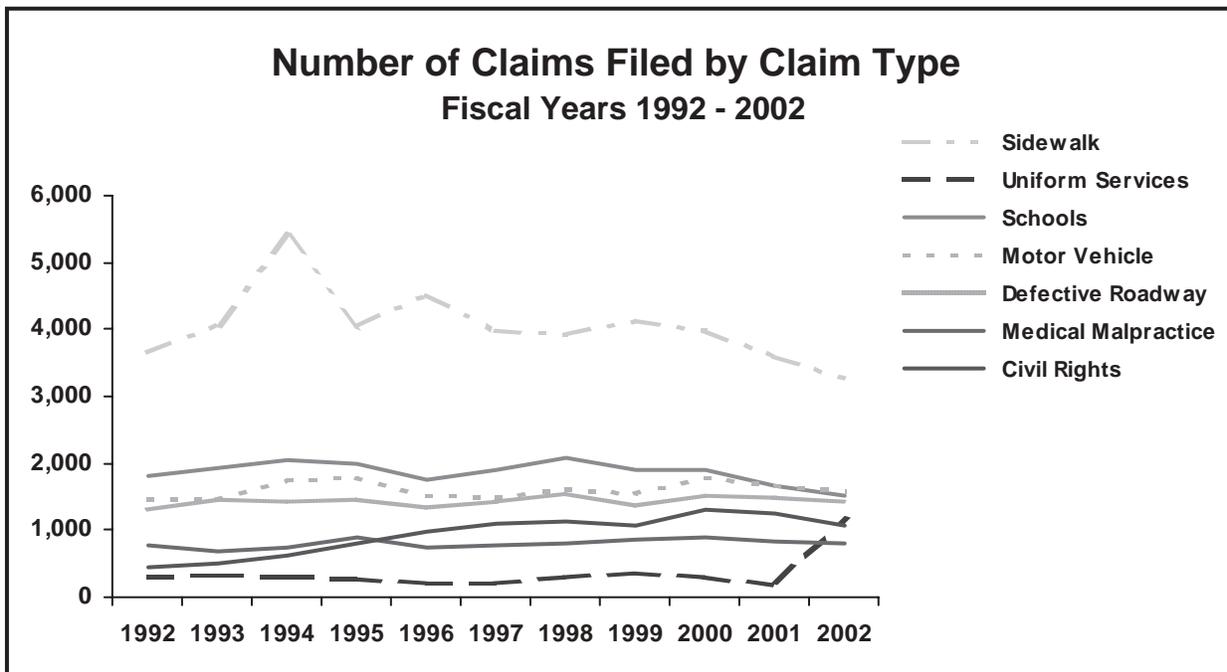


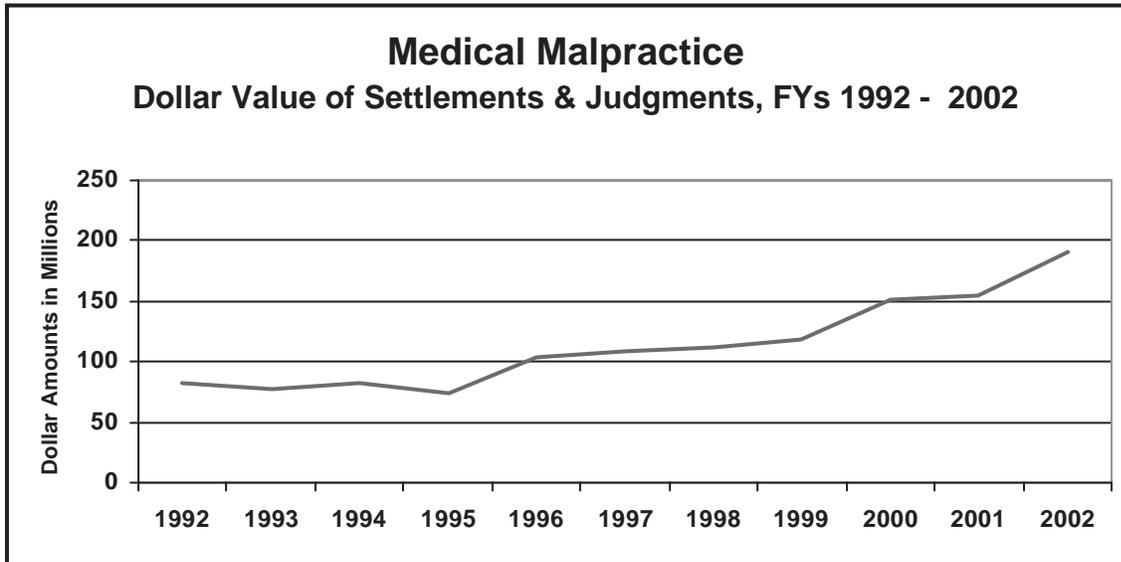
Chart 9



## Medical Malpractice Claims

Medical malpractice claims have been the costliest claim type for each of the past 11 fiscal years. In fiscal year 2002, the City paid \$190.5 million in settlements and judgments for 298 medical malpractice cases (see Charts 7 and 10).

Chart 10



In fiscal year 2002, the 298 medical malpractice dispositions represented less than 3.8 percent of the total number of personal injury cases resolved, but 40.1 percent of the City’s total personal injury payout (see Chart 8).

While the total number of medical malpractice cases resolved is small relative to other claim categories, the number of medical malpractice cases resolved for \$1 million or more is significant. In fiscal year 2002, 50 of the 94 cases resolved for \$1 million or more were medical malpractice cases. By comparison, in fiscal year 2001, 43 of the 92 cases resolved for \$1 million or more were medical malpractice cases.

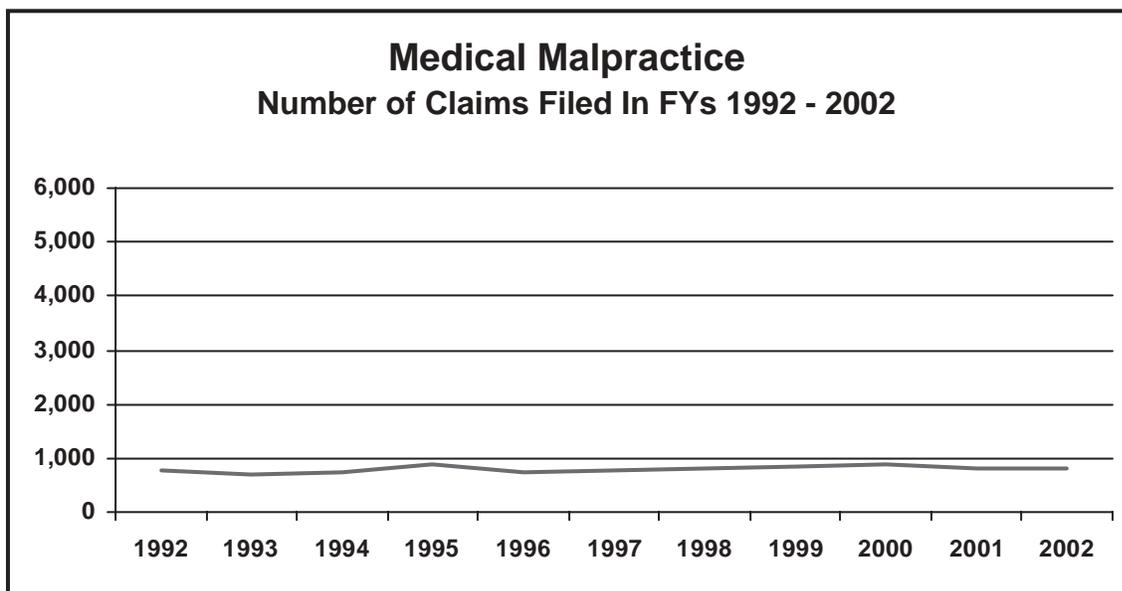
An analysis of the 50 medical malpractice cases resolved for \$1 million or more, shows that 36 of these cases, which cost a total of \$113.1 million, involved allegations of inadequate or improper obstetrical or gynecological care. All but seven of these 36 cases involved impaired newborns. The remaining 14 cases fell into two categories: two involved neonatal care and were resolved for \$5 million, and 12 involved failures to diagnose and/or treat various conditions appropriately, and were resolved for a total of \$23.4 million. Thus, the total cost of all medical malpractice cases resolved against HHC in fiscal year 2002 for \$1 million or more was \$141.5 million.

An analysis of costs per hospital for settlements/judgments over \$1 million in fiscal year 2002 shows that seven hospitals (Metropolitan, Jacobi/ Bronx Municipal, Queens, North Central Bronx,

Lincoln, Woodhull and Coney Island) had up to four such cases, with the costs ranging from \$3.1 million to \$15.8 million. Elmhurst and Harlem had six cases each totaling \$8 million and \$22.4 million respectively. Bellevue had seven such cases totaling \$13.1 million. Kings County had nine such cases totaling \$28.5 million.

The number of new medical malpractice claims filed decreased seven percent, from 822 in fiscal year 2001 to 796 in fiscal year 2002. As seen in Chart 11, the number of new claims filed has been generally consistent over the years. Medical malpractice claims accounted for approximately five percent of the total number of personal injury claims filed in fiscal year 2002 (see Chart 9).

Chart 11



The total number of medical malpractice claims filed against HHC acute care hospitals was 726 in fiscal year 2002 as compared with 709 in fiscal year 2001. Table A shows the number of medical malpractice claims resolved and the dollar amounts paid for the last two fiscal years by hospital. Table B shows the number of medical malpractice claims filed by each hospital for the last two fiscal years.<sup>4</sup>

**Table A**

Hospital	Resolved FY 2001	Amount Paid FY 2001 <i>(millions)</i>	Resolved FY 2002	Amount Paid FY 2002 <i>(millions)</i>
Bellevue	33	\$6.1	34	\$19.4
Coney Island	32	\$10.3	23	\$7.4
Elmhurst	32	\$7.3	22	\$11.8
Harlem	20	\$5.8	24	\$26.6
Jacobi/Bx Mun	39	\$19.6	27	\$22.6
Kings County	46	\$28.6	51	\$35.6
Lincoln	23	\$6.7	24	\$15.2
Metropolitan	18	\$21.4	15	\$9.1
No. Central Bronx	37	\$20.4	27	\$14.7
Queens	15	\$5.9	8	\$13.9
Woodhull	16	\$7.7	15	\$8.7
<b>Total</b>	<b>311</b>	<b>\$139.8</b>	<b>270</b>	<b>\$185.0</b>

**Table B**

Hospital	Claims Filed (FY 2001)	Claims Filed (FY 2002)
Bellevue	93	95
Coney Island	53	59
Elmhurst	98	48
Harlem	59	70
Jacobi / Bx Mun	82	95
Kings County	81	114
Lincoln	91	80
Metropolitan	41	57
No. Central Bronx	27	35
Queens	23	20
Woodhull	61	53
<b>Total</b>	<b>709</b>	<b>726</b>

<sup>4</sup> Certain other medical malpractice claims involving care administered at HHC sites are not included in Tables A or B.

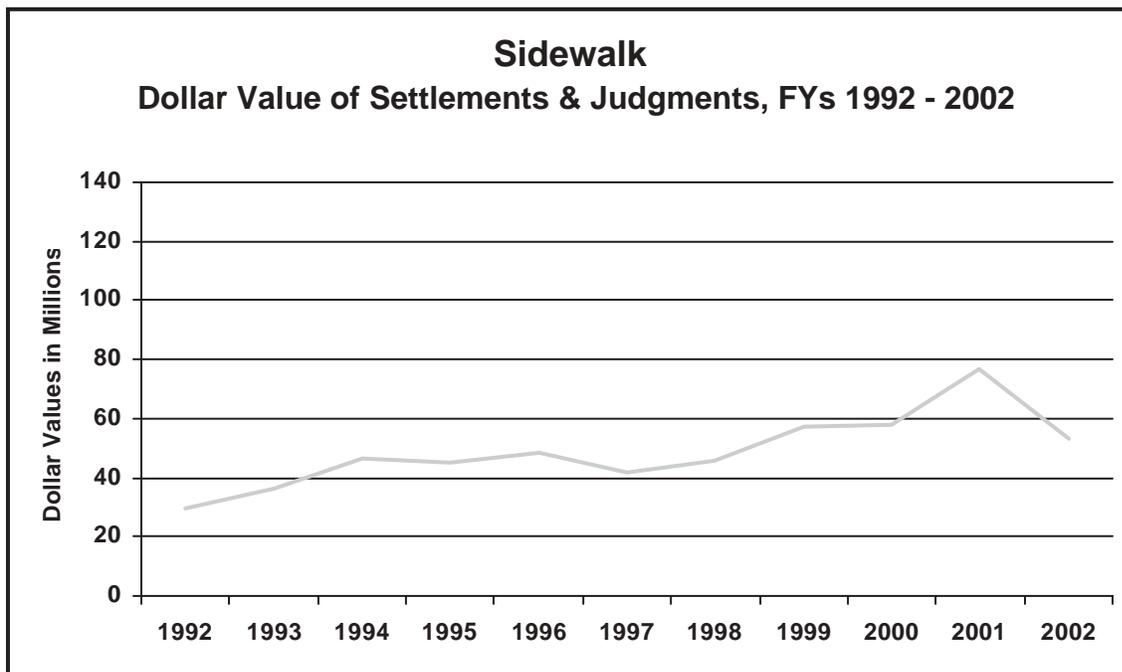
## Sidewalk Claims

Sidewalk claims arise from alleged defects, such as cracked or uneven surfaces, in public sidewalks. This type of claim includes personal injuries for “trip and fall” accidents resulting from such defects, as well as accidents from falls-on-snow and ice-covered sidewalks.

The Prior Written Notice Law, enacted by the New York City Council in 1979, provides that the City is liable for a sidewalk or roadway claim only if the location of the incident was reported to the Department of Transportation’s “Prior Written Notice Unit,” in writing, at least 15 days before the incident. Although this law was designed to provide the City an opportunity to correct specific defects, judges now typically permit general survey maps, sometimes referred to as “Big Apple” maps, to fulfill the statutory notice requirement. This practice has contributed to an increase in annual payouts ranging from \$30 million to \$77 million over the past 11 fiscal years.

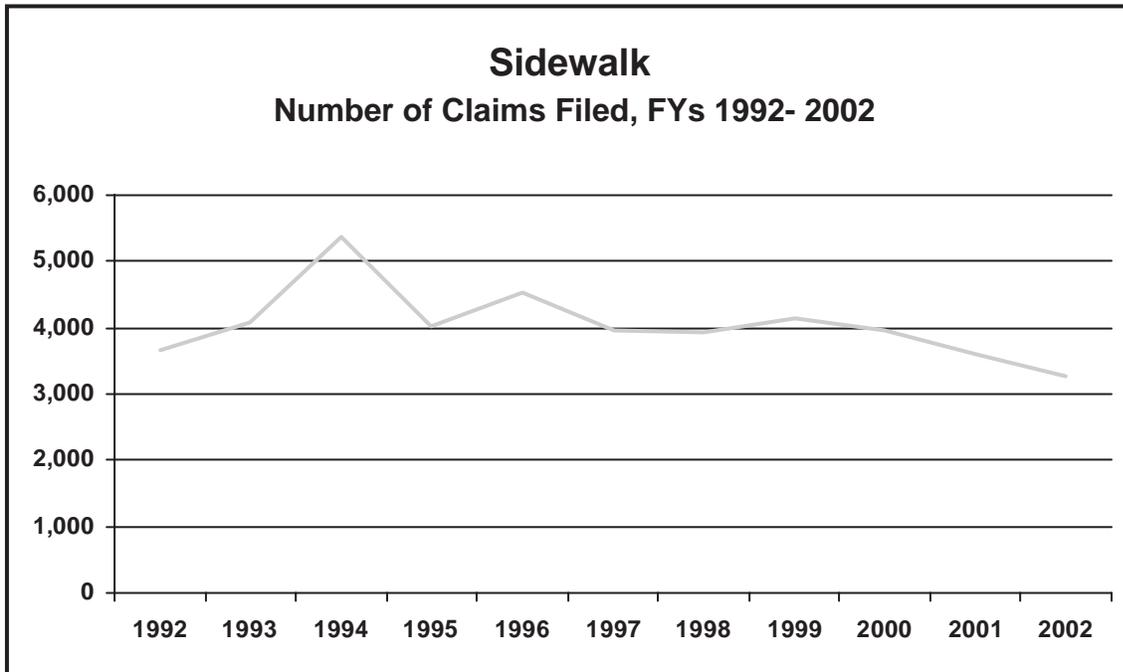
In fiscal year 2001, the City incurred a record liability of \$76.8 million in settlements and judgments for 3,325 resolved sidewalk claims (see Chart 12). In fiscal 2002, the amount of sidewalk settlements and judgments declined to \$53.1 million for 2,659 dispositions. Sidewalk cases were the second most costly category of claims each fiscal year for the past 11 fiscal years except for fiscal 2001 (see Chart 7). In fiscal 2002, sidewalk claims accounted for 34.6 percent of the total number of resolved personal injury cases, but 11.2 percent of the total cost to resolve personal injury claims (see Chart 8).

Chart 12



Over the past 11 fiscal years, sidewalk claims have been the most frequently filed personal injury claim (see Chart 9). In fiscal year 2002, 3,276 sidewalk claims were filed against the City (see Chart 13). New sidewalk claims represented 21 percent of all new personal injury claims filed in fiscal year 2002.

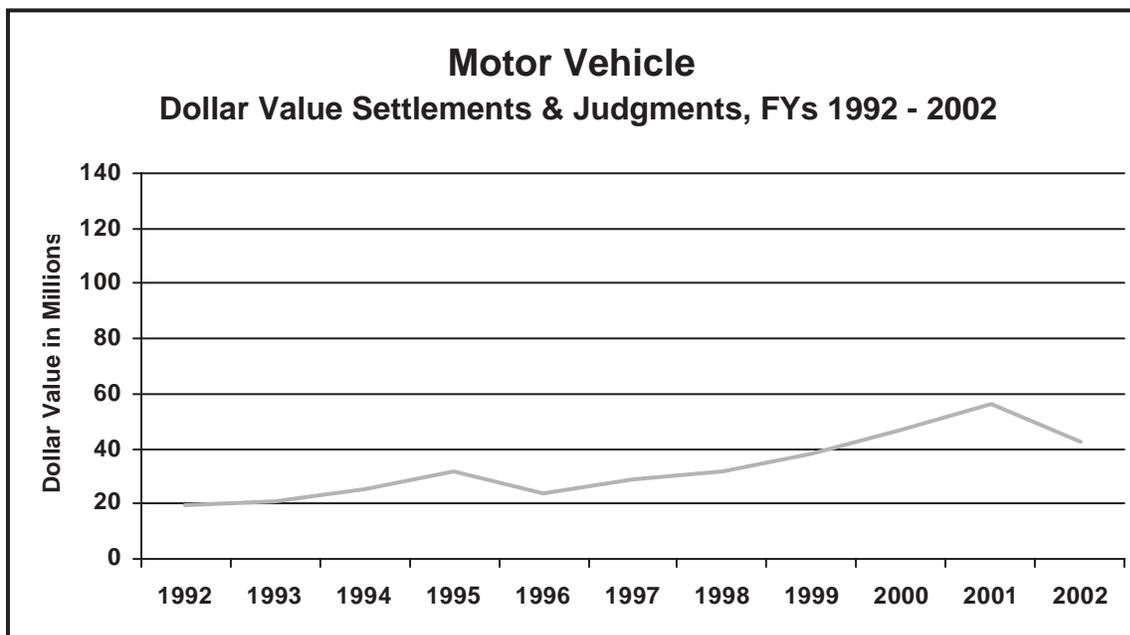
Chart 13



## Motor Vehicle Accident Claims

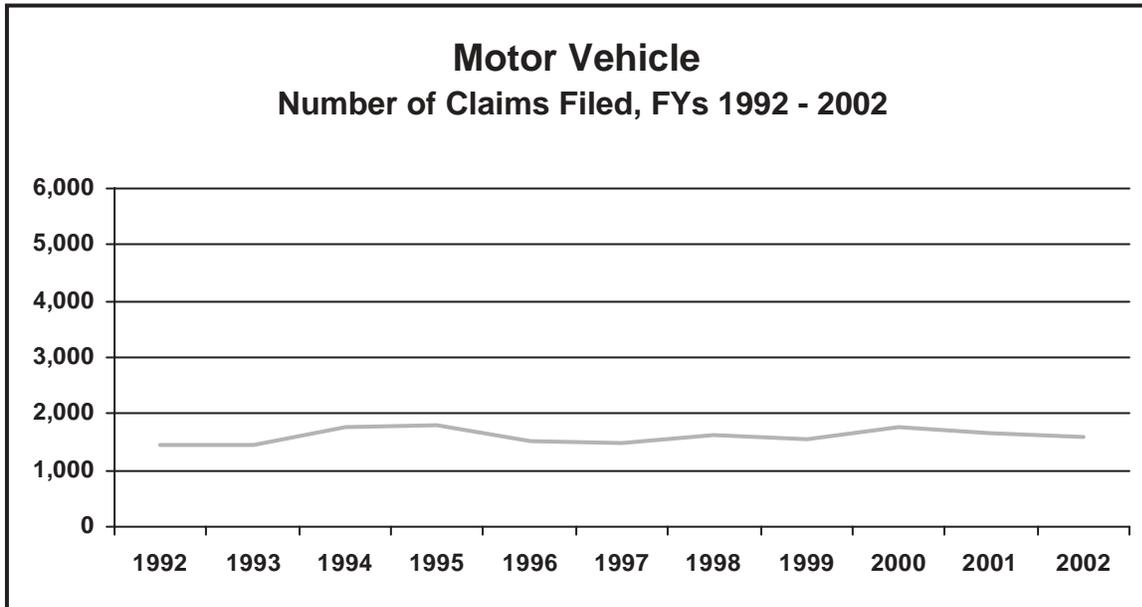
Motor vehicle accident cases are comprised of accidents involving City vehicles. Motor vehicle accident cases were the third most costly category of personal injury cases (see Chart 7). In fiscal year 2002, the City incurred liability for \$42.3 million in settlements and judgments in 961 motor vehicle cases (see Charts 7 and 14). Motor vehicle cases represented 12.5 percent of the total number of recorded personal injury settlements and judgments for the fiscal year and 8.9 percent of total personal injury expenditures (see Chart 8).

Chart 14



The number of new motor vehicle personal injury claims filed in fiscal year 2002 was 1,581, a nine percent decrease from the 1,662 filed in fiscal year 2001 (see Chart 15). Motor vehicle claims were 9.9 percent of the total personal injury claims filed in fiscal year 2002.

Chart 15



## Civil Rights Claims

Civil rights claims include claims filed by individuals whose civil rights have been allegedly violated or denied by a city employee, policy or action. For fiscal year 2002, the City was liable for \$37.4 million in settlements and judgments for 613 civil rights claims. Civil rights claims cost the City \$82.2 million for 542 cases in fiscal year 2001. The bulk of this is a result of a \$50 million class action settlement (Tyson v. City of New York) for alleged illegal strip searches (see Charts 9 and 16).

New civil rights cases have been increasing steadily over the past 10 years, from 449 cases in fiscal year 1992 to a peak of 1,312 new cases in fiscal year 2000. In fiscal year 2002, there were 1,065 new cases filed, a 15% decrease from fiscal year 2001. New civil rights cases accounted for 6.7 percent of all personal injury claims filed in fiscal year 2002 (see Chart 17).

Chart 16

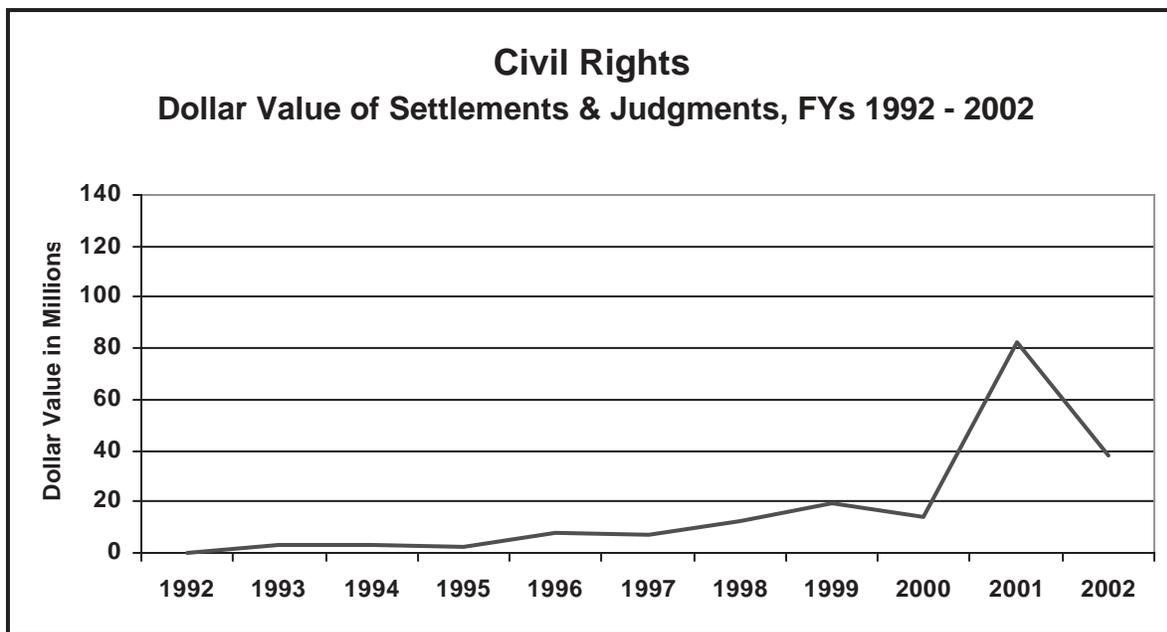
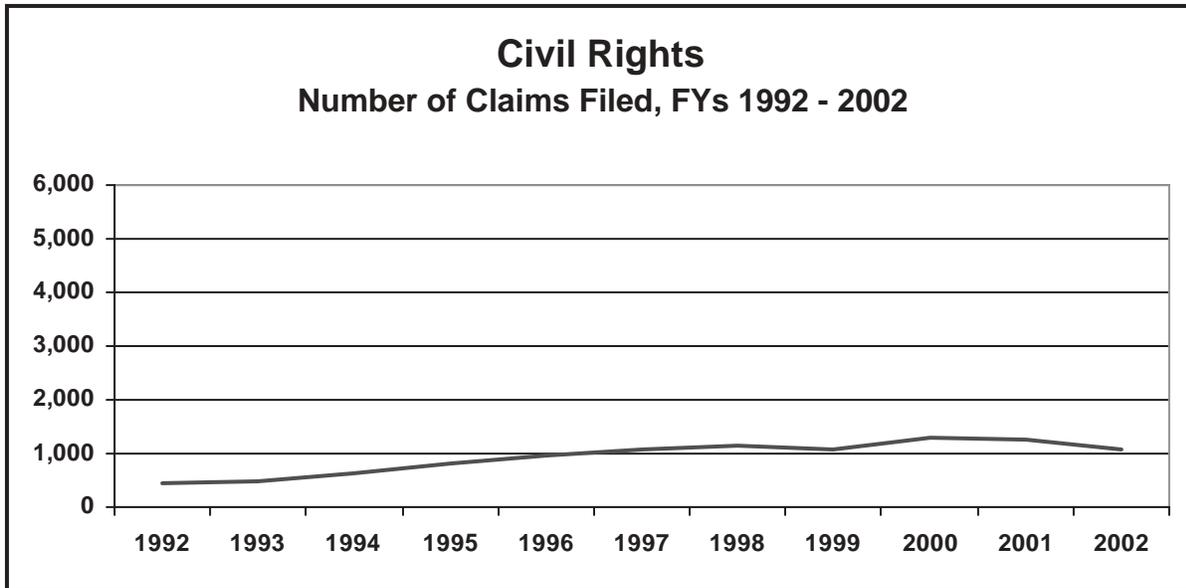


Chart 17

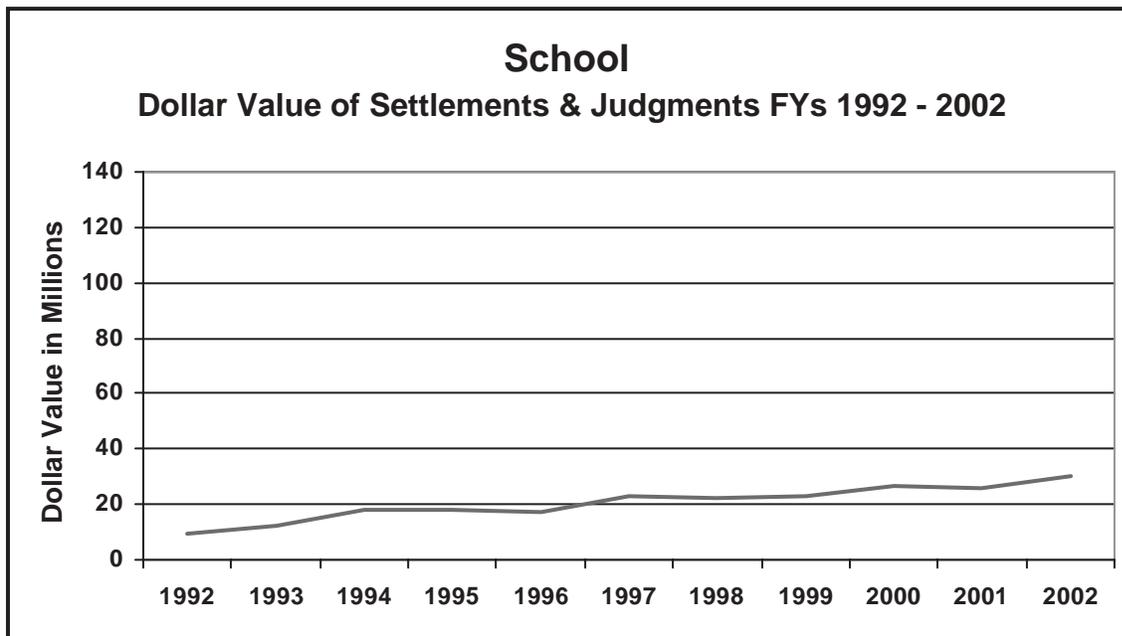


## School Claims

School claims are those claims filed against the Department of Education by students, teachers, other Department of Education staff, and parents or visitors to Department of Education facilities. School claims were the fifth most costly category of personal injury cases in fiscal year 2002.

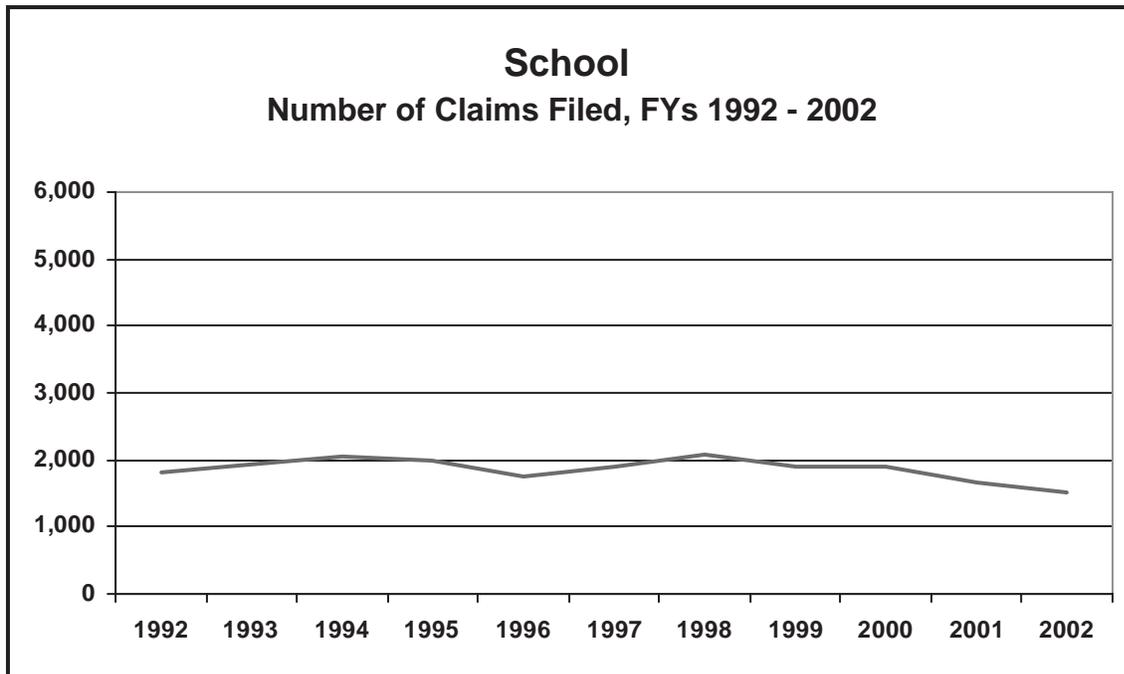
In fiscal year 2002, the City was liable for \$30.1 million in settlements and judgments for 1,226 personal injury school cases, representing a 17 percent increase from the City's liability for school claims in fiscal year 2001, when the City paid \$25.7 million (see Charts 7 and 18). School claims comprised 13 percent of the total number of recorded personal injury settlements and judgments for fiscal year 2002, and 6.3 percent of the total expended for personal injury claims (see Chart 8).

Chart 18



In fiscal year 2002, the number of new personal injury school claims filed was 1,510, down 8.8 percent from the 1,656 claims filed in fiscal year 2001. School claims accounted for nine percent of the total number of personal injury claims filed for fiscal year 2002 (see Chart 19).

Chart 19



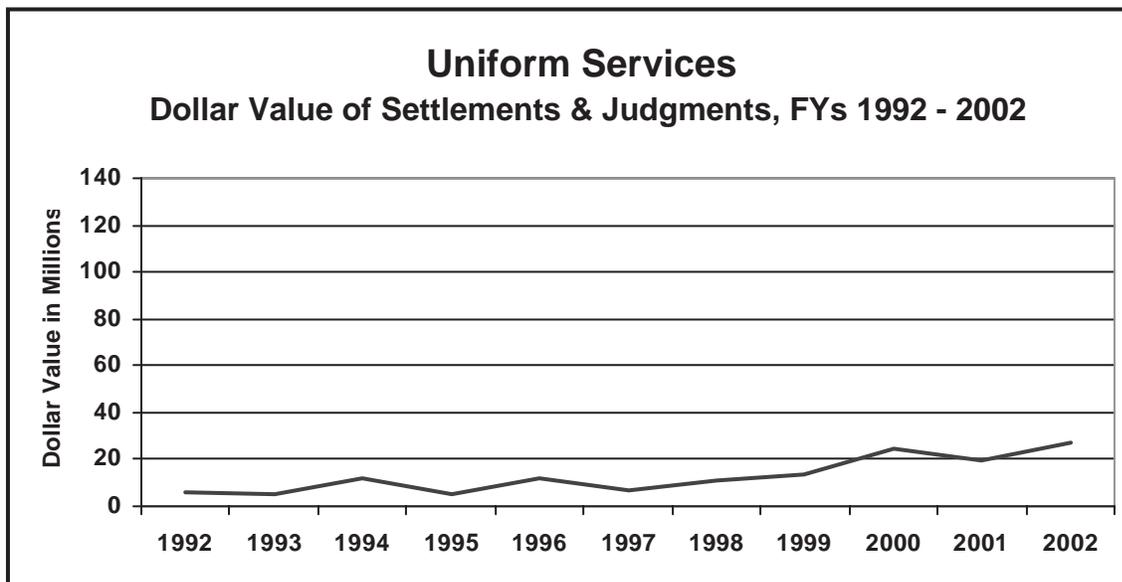
## Uniform Services Claims

Uniform services claims are unique to the City. Certain categories of City employees such as Police, Firefighters, Department of Education pedagogues and Sanitation workers are not subject to the Workers' Compensation laws. They may, however, file claims against the City for certain on-the-job injuries.

Uniform services claims were the sixth costliest category of cases in fiscal year 2002. The City was liable for \$27 million in settlements and judgments in 139 cases in fiscal year 2002 (see Charts 7 and 20); this represents a 40 percent increase from the \$ 19.3 million paid in fiscal year 2001 for 175 resolved cases.

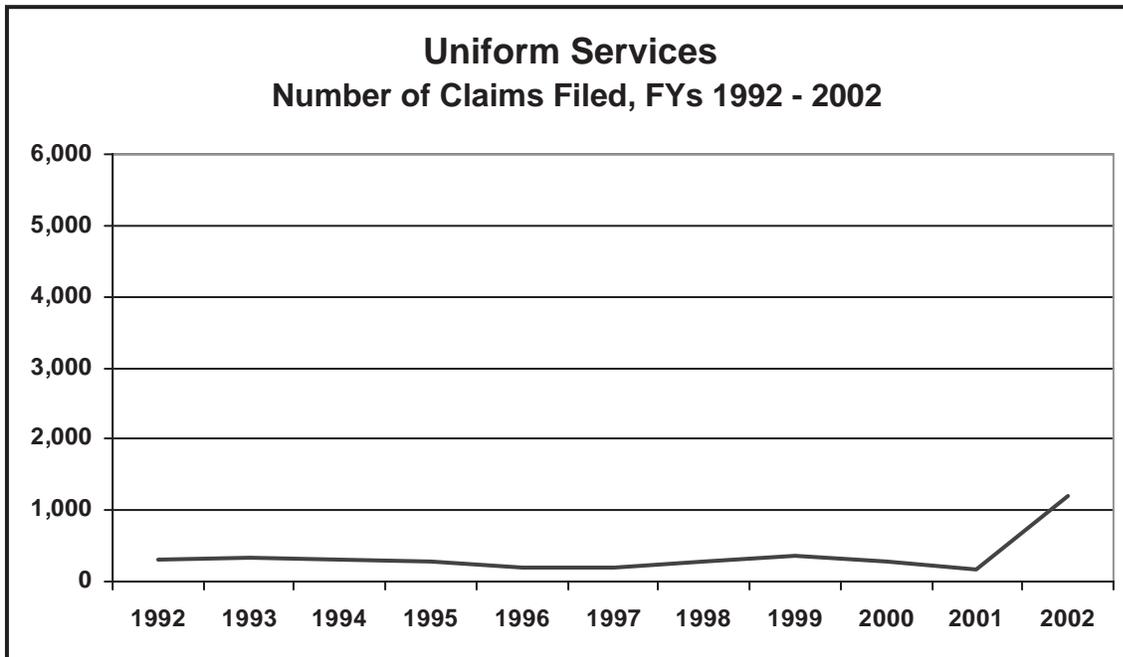
Uniform services cases constituted two percent of the total number of recorded personal injury settlements and judgments and six percent of the total personal injury expenditure in fiscal 2002 (see Chart 8).

### Chart 20



The number of new uniform services claims filed increased from 171 in fiscal year 2001 to 1,194 in fiscal year 2002. This represents nearly a 600 percent increase from 2001 filings. The increase in uniform services filings was due to the World Trade Center attack. Newly filed uniform services claims constituted seven percent of all new personal injury claims filed in fiscal year 2002 (see Charts 9 and 21).

Chart 21

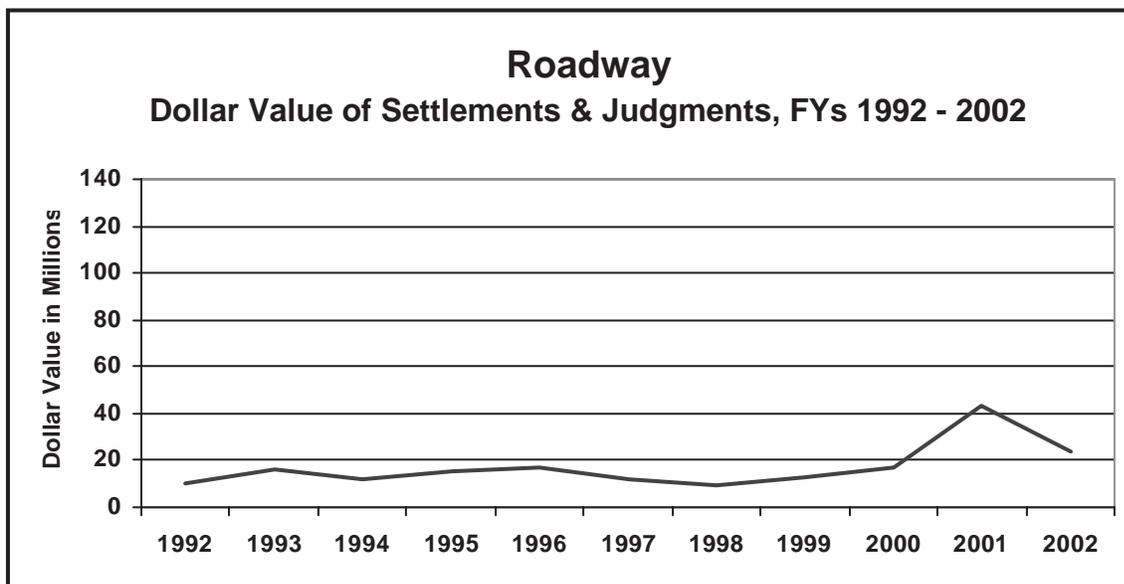


## Defective Roadway Claims

Roadway claims were the seventh costliest category of cases in fiscal year 2002. The City was liable for \$23.7 million in settlements and judgments in 599 cases in fiscal year 2002 (see Charts 7 and 22). This represents a 45 percent decrease from the \$43.2 million paid in fiscal year 2001 for 770 resolved cases.

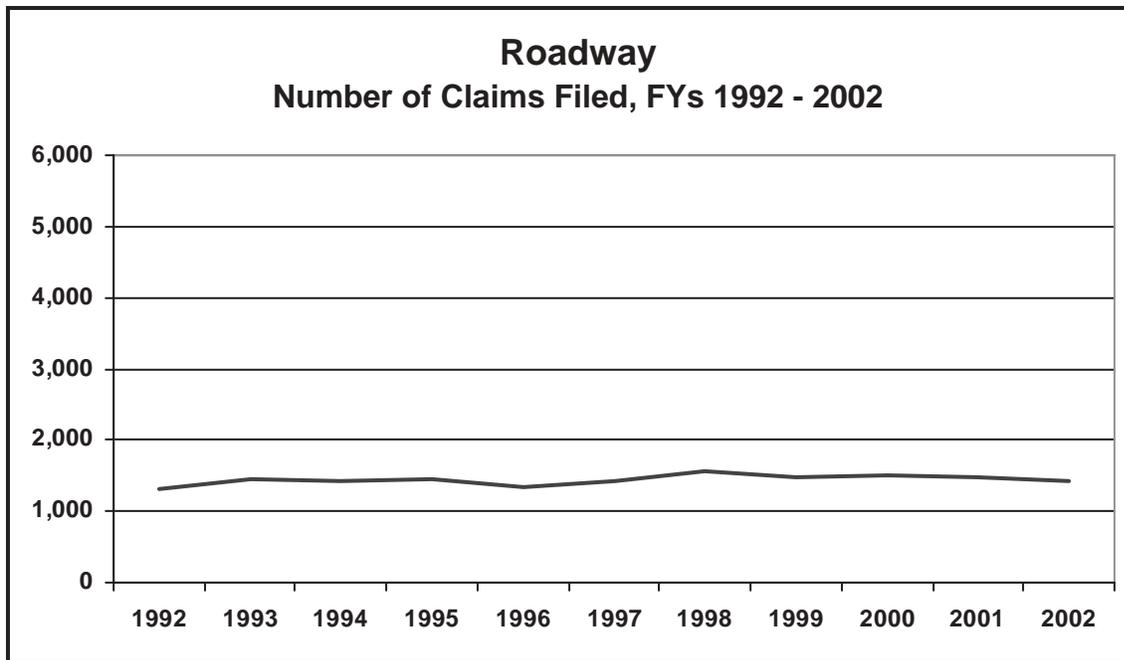
Roadway cases constituted eight percent of the total number of recorded personal injury settlements and judgments and five percent of the total personal injury expenditure in fiscal year 2002 (see Chart 8).

### Chart 22



The number of new defective roadway claims filed decreased from 1,478 in fiscal year 2001 to 1,414 in fiscal year 2002. This represents a four percent decrease from 2001 filings. New defective roadway claims filed constituted nine percent of all new personal injury claims filed in fiscal year 2002 (see Charts 9 and 23).

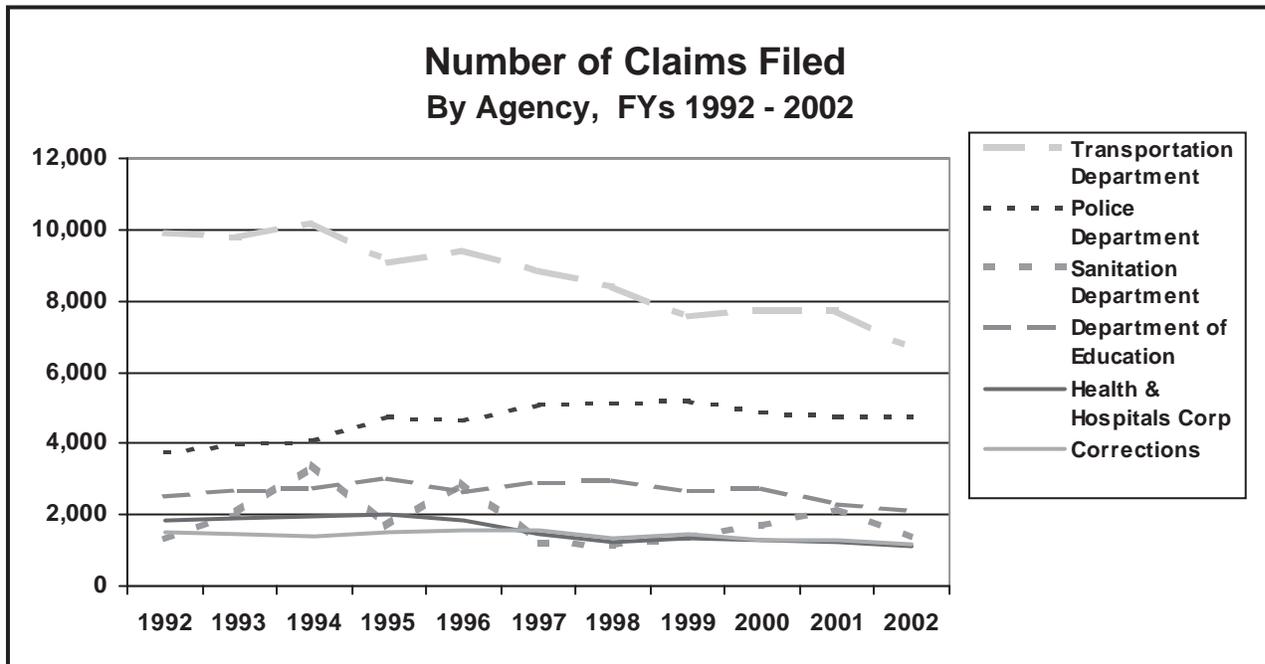
Chart 23



### New Claim Filings by Agency

Claim filing trends by agency have been consistent over the past decade. The Department of Transportation and the Police Department have been the two agencies with the most claims filed against them in each of the past 11 fiscal years (see Chart 24).

Chart 24



The number of claims filed in fiscal year 2002 decreased seven percent from the previous year. The number of claims filed against nine of the eleven agencies that are tracked did show substantial decreases from the previous fiscal year (see Table C). Two agencies showed an increase in the number of new claims filed (see Table D).

Table C

Agencies That Experienced Decreases in Number of Claims Filed <sup>5</sup>

Agency	FY 2001	FY 2002	% Decrease
Transportation	7,733	6,637	14.25
Police	4,726	4,720	0.1
Sanitation	2,165	1,418	34.5
Education	2,306	2,146	6.9
Environmental Protection	967	909	6
Corrections	1,308	1,184	9.5
Housing, Preservation & Development	319	250	18.8
Human Resources	199	125	37.2
Buildings	107	62	42.1

Table D

Agencies That Experienced Increases in Number of Claims Filed

Agency	FY 2001	FY 2002	% Increase
Parks	832	892	7.2
Fire	959	1,775	85.1

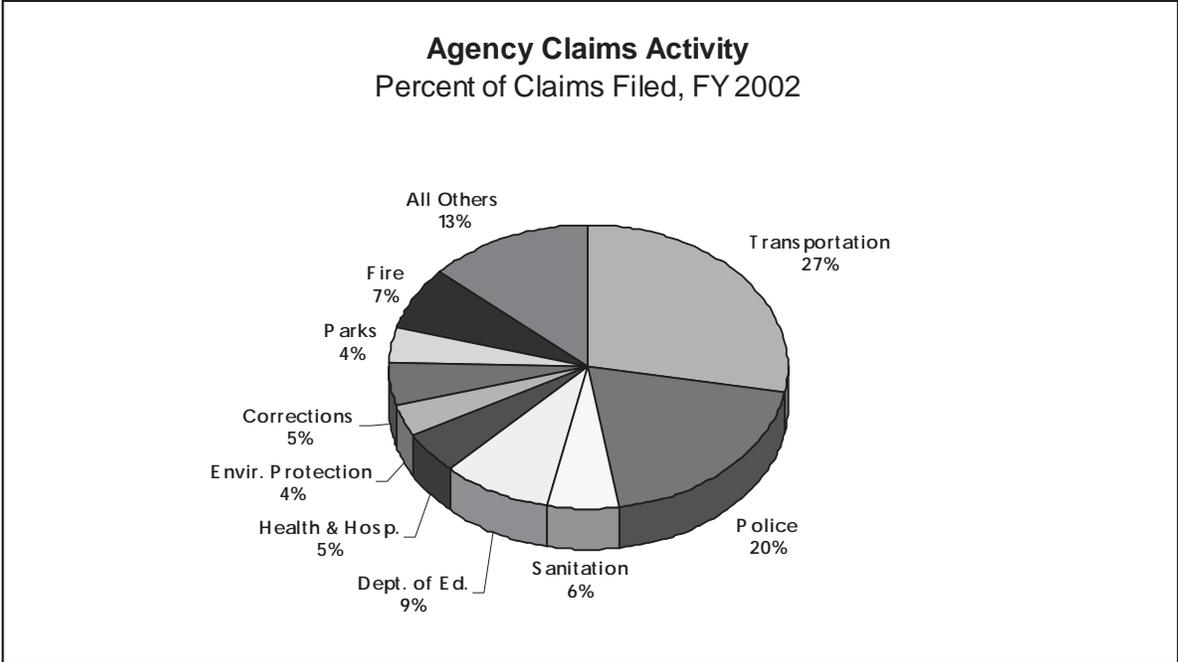
The Fire Department had the largest increase, 85.1 percent, in claims filed. The increase is attributable to uniform services claims injuries sustained by members of the force related to the World Trade Center attack.

Claims against the Department of Transportation decreased in fiscal year 2002 by 14.25 percent from fiscal year 2001. This decrease was due to a reduction in the number of personal injury claims filed, from 5,383 in fiscal year 2001 to 5,091 in fiscal year 2002. Additionally, there was a decrease in the number of property damage claims filed, from 2,240 to 1,508 and in the number of law claims filed from 110 to 43. Despite the decrease in claims filed in fiscal year 2002, the highest number of claims filed in each of the past 11 fiscal years was against the Department of Transportation. These claims accounted for 26.5 percent of all claims filed in fiscal year 2002.

The Police Department has consistently had the second highest number of claims filed in each of the past 11 fiscal years, accounting for 19.9 percent of all claims filed in fiscal year 2002. (See Chart 25 for a percentage breakdown of relative claim activity by agency for fiscal year 2002.)

<sup>5</sup> For the 11-year trend in claims filed by the agency, see Appendix C, Table 2.

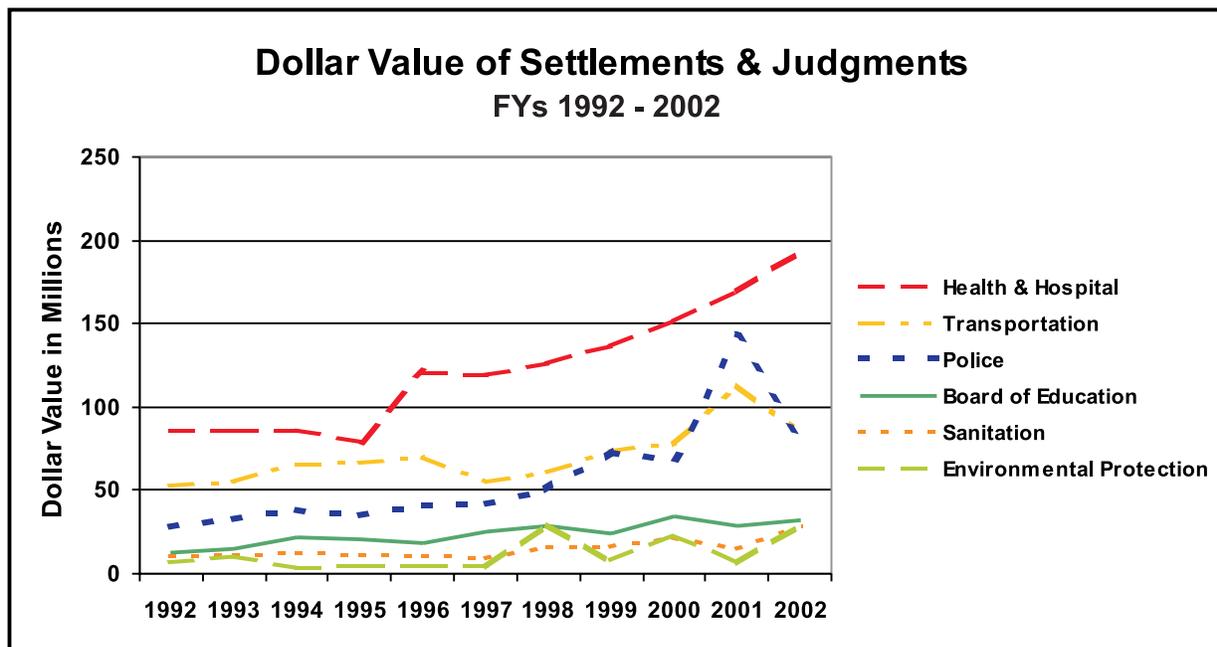
**Chart 25**



### Settlement and Judgment Costs by Agency

The Health and Hospitals Corporation, the Department of Transportation, the Police Department, and the Department of Education had the highest claim expenditures in fiscal year 2002. Chart 26 tracks the total annual dollar value of settlements and judgments by agency from fiscal year 1992 to fiscal year 2002. Table 4 of Appendix C contains the total dollar amounts of settlements and judgments for 12 agencies over the past 11 fiscal years.

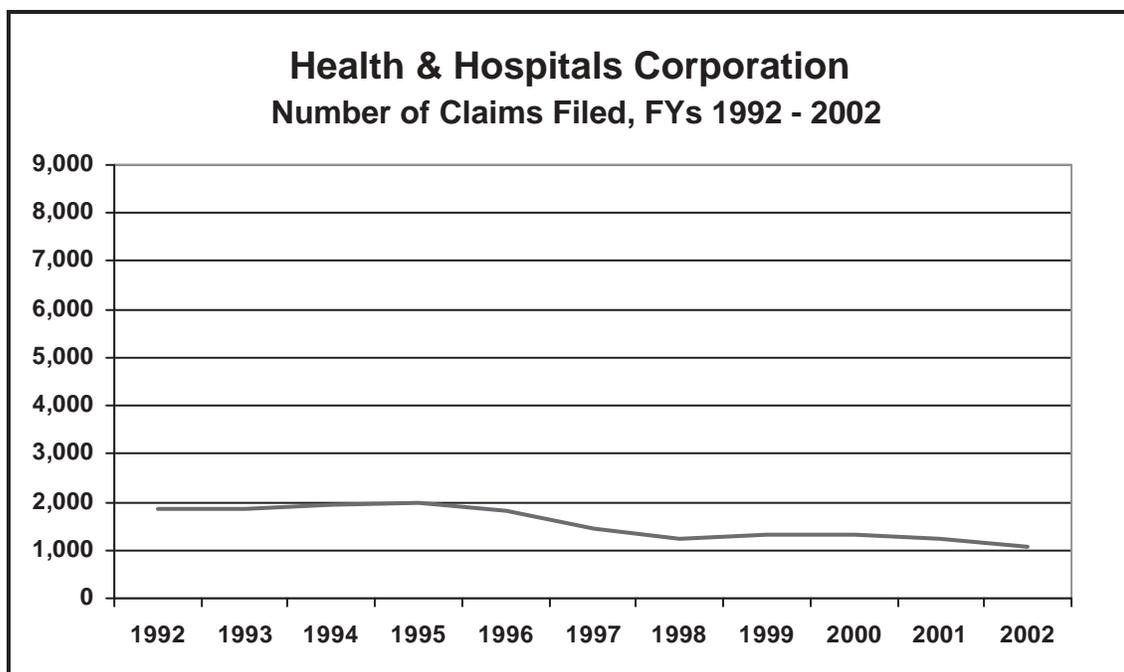
Chart 26



## 1. Health and Hospitals Corporation

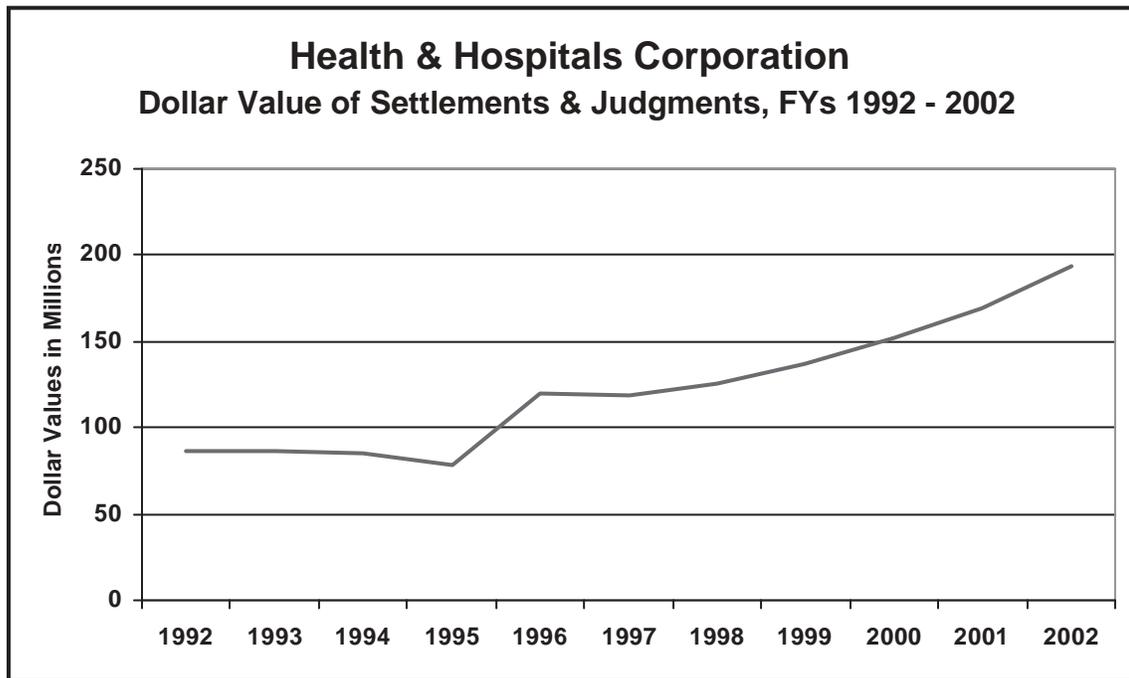
Claims against the Health and Hospitals Corporation (HHC) include claims for medical malpractice as well as contract claims and claims for personal injuries or property damage sustained on hospital property. In fiscal year 2002, 1,090 claims were filed against HHC (See Charts 24 and 27), more than 73 percent of which (796) were for medical malpractice. The total number of filings represents an 11 percent decrease from the 1,230 claims filed against HHC in fiscal year 2001. These claims accounted for 4.4 percent of all new claims filed in fiscal year 2001.

Chart 27



HHC cases constituted 4.2 percent of the number of cases resolved in fiscal year 2002 but accounted for the highest expenditure (\$194.1 million). This agency was responsible for 37 percent of the total amount paid for all claims in fiscal year 2002 (see Chart 28).

Chart 28

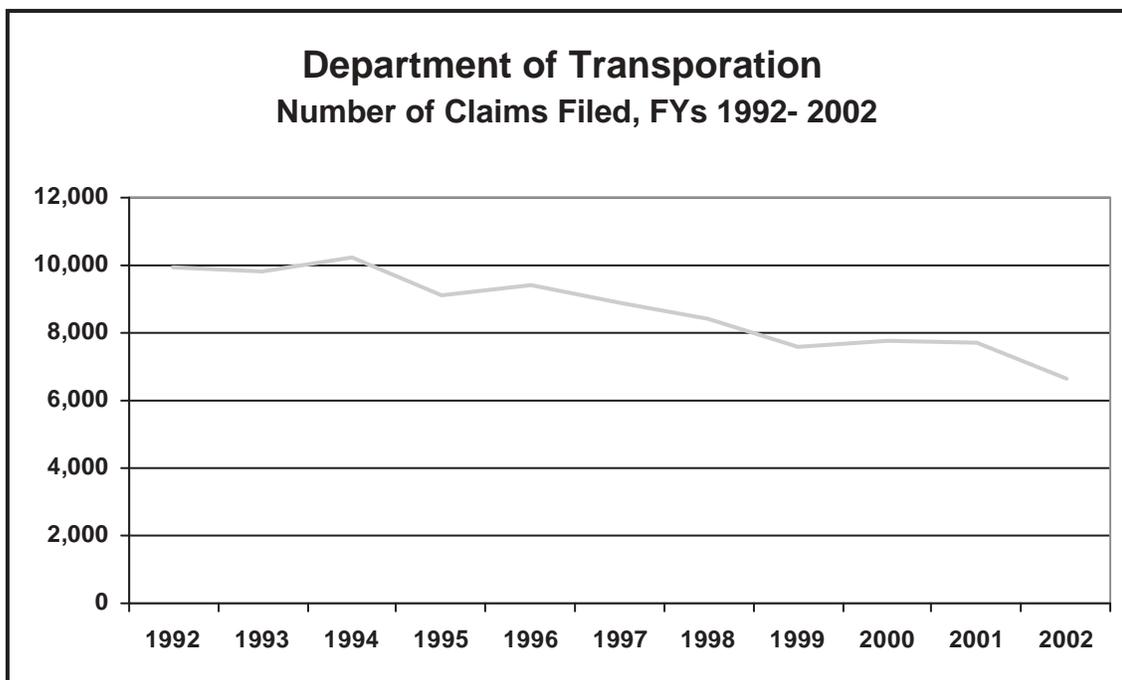


## 2. Department of Transportation

In each of the 11 fiscal years, more claims were filed against the Department of Transportation (DOT) than any other agency (see Chart 24). Claims against DOT include primarily personal injury due to sidewalk trip and fall accidents, or personal injury or property damage due to defective roadways, defective traffic signals, or motor vehicle accidents with DOT vehicles. In fiscal year 2002, the 6,637 claims filed against DOT accounted for 27.2 percent of all new claims filed, representing a 14 percent decrease from the 7,733 claims filed against DOT in fiscal year 2001 (see Chart 29).

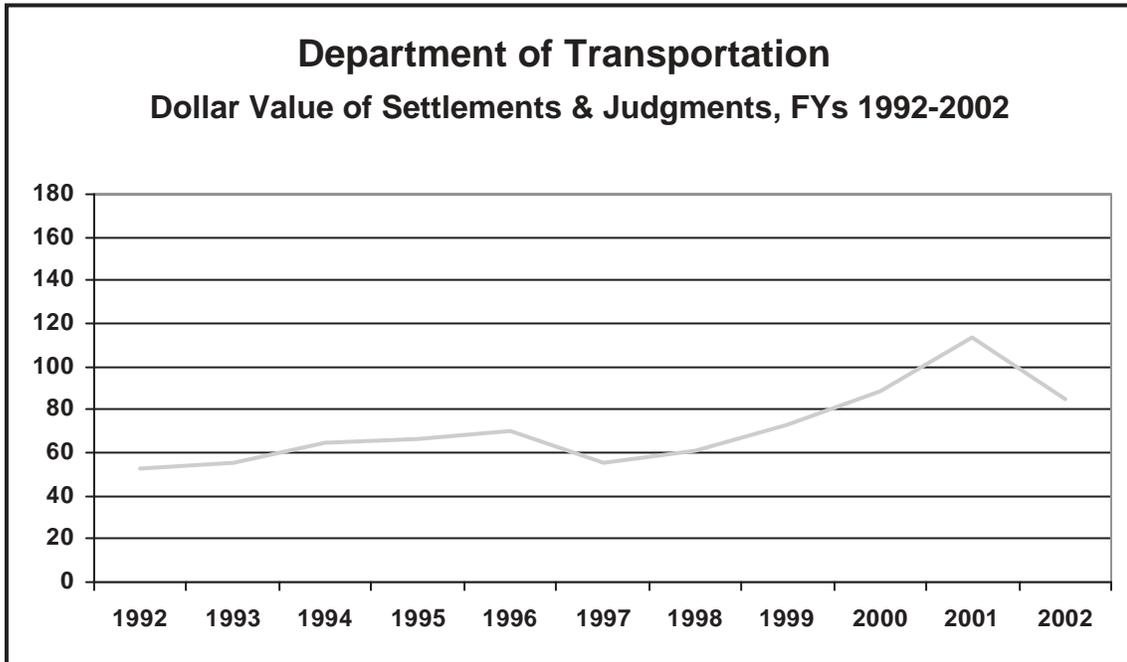
The number of new claims filed in fiscal years 1999, 2000, 2001 and 2002 represents a significant decrease in overall filings for the agency. The number of new filings for those years was over 3,500 less than the number of claims filed in fiscal year 1994.

Chart 29



The number of cases against DOT that were resolved by settlement or judgment decreased from 4,589 in fiscal year 2001 to 3,659 in fiscal year 2002. In fiscal year 2002, the total dollar amount paid for DOT cases was \$84.7 million, a 26 percent decrease from the \$113.8 million paid in fiscal year 2001 (see Chart 30). DOT cases accounted for 16.1 percent of the total expenditure for claims in fiscal year 2002.

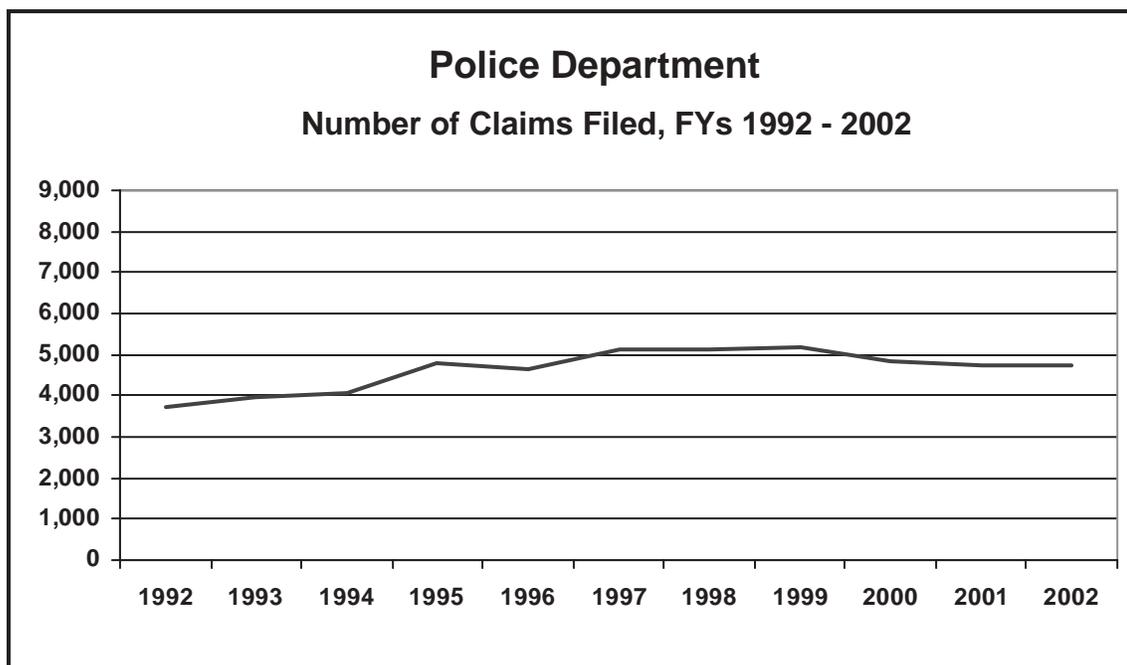
Chart 30



### 3. Police Department

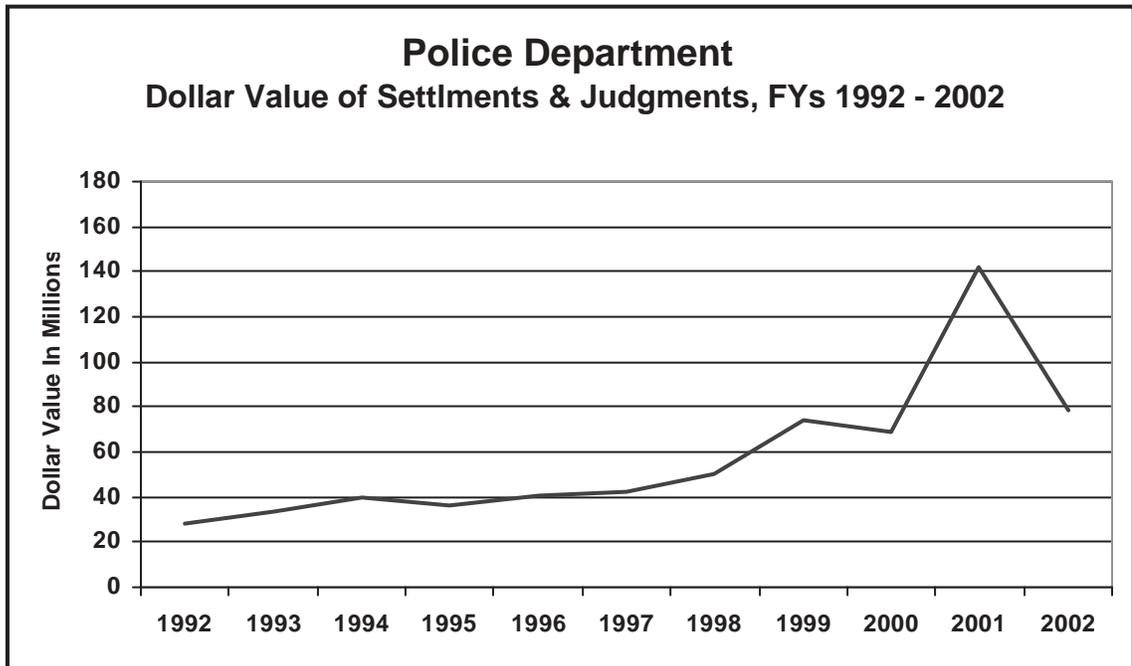
Claims against the Police Department encompass police action claims (which include police misconduct, failure to protect, and injury to fellow officers) as well as claims for personal injury or property damage arising out of motor vehicle accidents with a police vehicle. In the last two fiscal years, the number of claims filed against the Police Department decreased slightly: 4,726 in fiscal year 2001 to 4,720 in fiscal year 2002 (see Chart 31). Claims filed against the Police Department constituted 19.3 percent of total claim filings in fiscal year 2002 (see Chart 24).

Chart 31



Cases against the Police Department cost the City \$141.7 million in fiscal year 2001 (One class action suit was settled for \$50 million). In fiscal year 2002, the expenditure for claims decreased to \$78.7 million (see Chart 32). Claims against the Police Department accounted for 15 percent of the total expenditure for claims in fiscal year 2002.

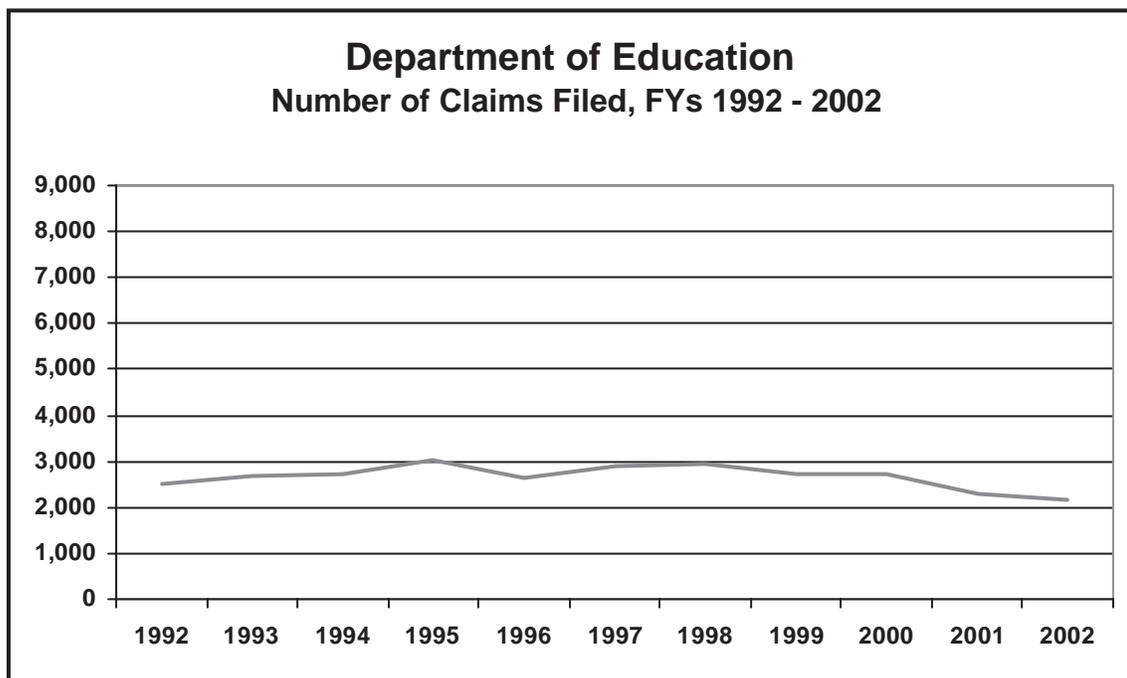
Chart 32



#### 4. Department of Education

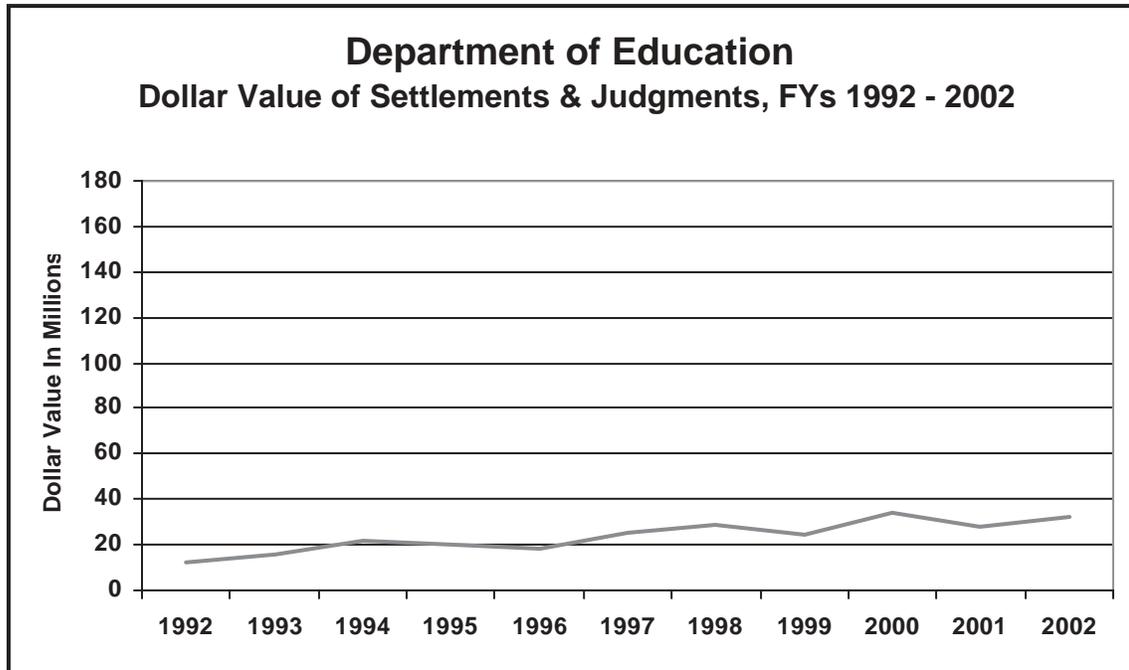
Claims against the Department of Education include personal injury claims alleging lack of supervision or defective maintenance, damage to property, and motor vehicle accidents with Department of Education vehicles. The number of new claims filed against the Department of Education decreased by 6.9 percent, from 2,306 in fiscal year 2001 to 2,146 in fiscal year 2002 (see Chart 33). Claim filings against the Department of Education accounted for 8.8 percent of total claim filings in fiscal year 2002.

Chart 33



From fiscal year 2001 to fiscal year 2002, the number of Department of Education cases resolved decreased by 16 percent, from 1,310 to 1,102. The total expenditure for Department of Education cases increased by nearly 15 percent, from \$28.3 million in fiscal year 2001 to \$32.5 million in fiscal year 2002 (see Chart 34). Department of Education claims accounted for 6.2 percent of the total expenditure for claims in fiscal year 2002.

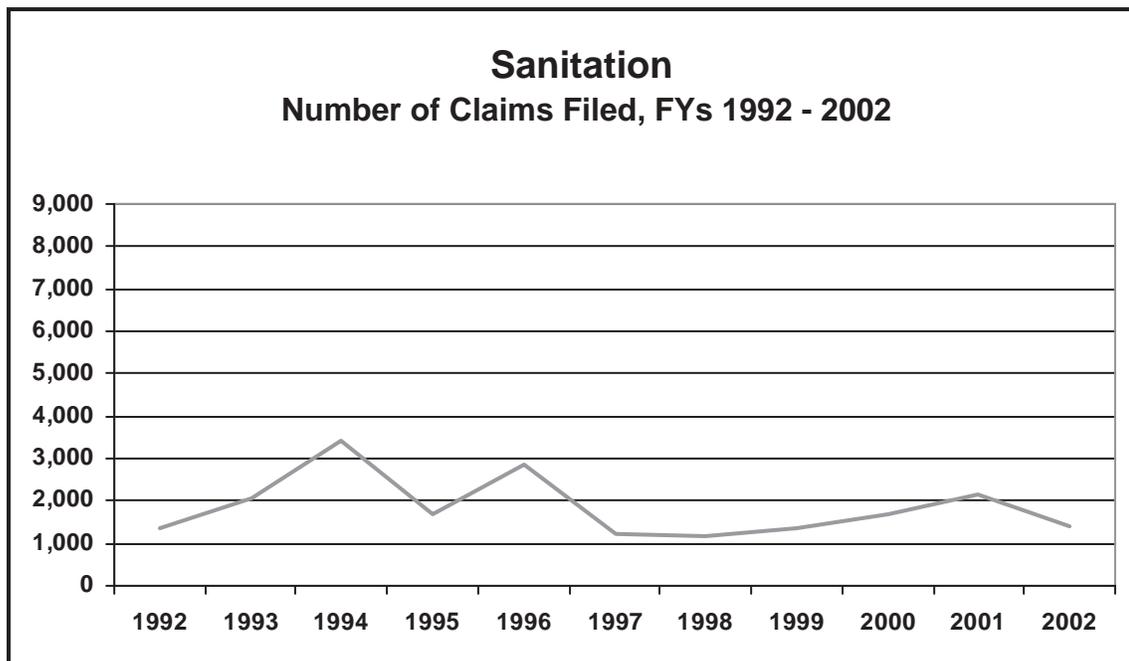
Chart 34



## 5. Sanitation Department

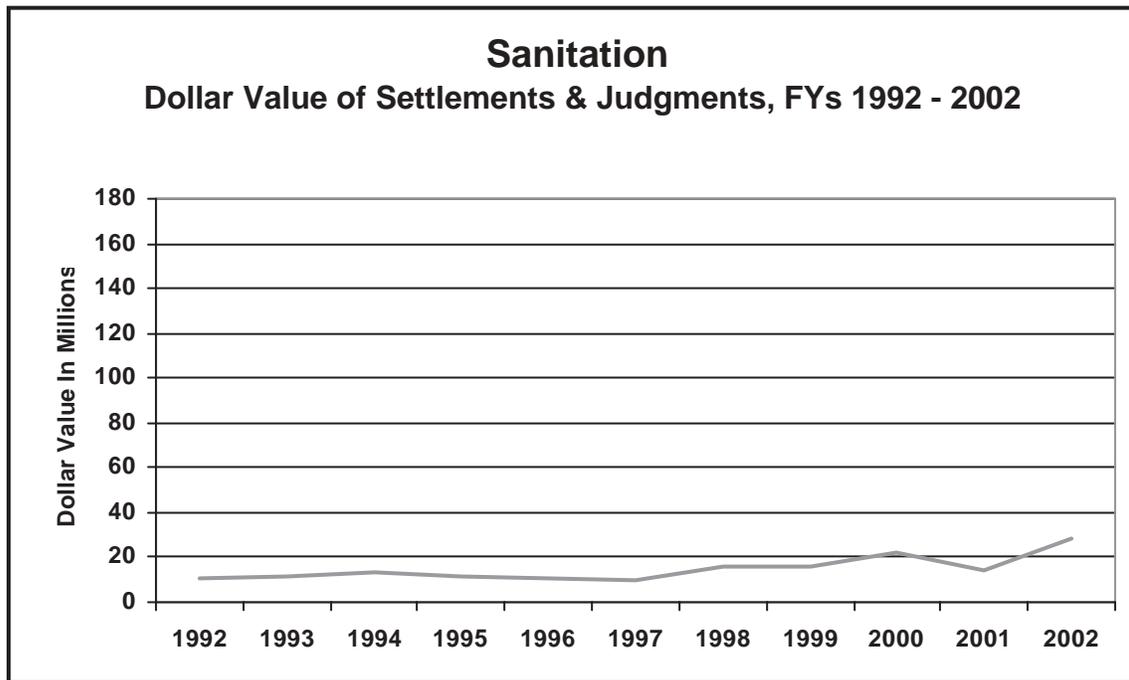
Claims are filed against the Department of Sanitation primarily for alleged personal injury and property damage caused by Sanitation vehicles. The number of new claims filed against the Department of Sanitation decreased by over 34 percent, from 2,165 in fiscal year 2001 to 1,418 in fiscal year 2002 (see Chart 35). New claim filings against the Department of Sanitation constituted 5.8 percent of total claim filings in fiscal year 2002.

Chart 35



In fiscal year 2002, there were 1,145 Department of Sanitation cases resolved for \$28.2 million. Department of Sanitation claims accounted for 5.4 percent of the total claims expenditure. In fiscal year 2001, 1,198 cases were resolved for \$14.4 million (see Chart 36).

Chart 36



## APPENDICES

### APPENDIX A

#### Description of Claim Types

Claims that are filed against the City are coded according to certain general categories. The coding structure used to classify claims has changed over time to meet changing information needs. In August 1994, a new coding structure was established in conjunction with the implementation of the Comptroller's Omnibus Automated Image Storage and Information System (OASIS). The coding of claims into standardized categories facilitates analysis both by the Comptroller's Office and by agencies that choose to analyze their claims experience.

Under the present coding structure, claims are categorized initially by the City agency involved and by general category of claim: personal injury, property damage, and law. Each general category has subtypes, and it is at this level that claims are analyzed. For example, personal injury claims may include "slip and fall" accidents on sidewalks (sidewalk claims), or injuries that occurred in school (school claims) or in a City park (parks and recreation claims).

Claim coding has also been designed to ensure that descriptive information about a claim can be captured in coded form. Thus, four additional codes are utilized for every claim so that, by reviewing the codes, one can obtain a clear picture of the specifics of the claim. These four additional codes are:

1. **Claimant.** This category describes the claimant and, if appropriate, the activity the claimant was involved in; for example, "bicyclist"; "jogger"; "pedestrian"; "driver of vehicle"; "passenger"; "vendor"; etc.
2. **Location.** This category describes where the location of an accident; for example, "boardwalk"; "sidewalk"; "driveway"; "swimming pool"; "hospital"; "school"; etc.
3. **Accident Agent.** This indicates the catalyst for the accident; for example, "building construction"; "debris/glass"; "improper lighting"; "City vehicle"; "defective maintenance"; "improper supervision"; etc.
4. **Interaction.** This refers to the physical action that the claimant experienced; for example, "collision/struck by"; "slip/fall"; "assault"; etc.

A typical personal injury claim involving a "slip & fall" accident on a cracked defective sidewalk would be coded as follows:

<b>Claim type:</b>	Defective Sidewalk
<b>Claimant:</b>	Pedestrian
<b>Location:</b>	Sidewalk
<b>Accident Agent:</b>	Crack
<b>Interaction:</b>	Slip/fall

The present coding system classifies claim types as follows:

## I. Personal Injury Claims

### A. Admiralty

Admiralty claims include claims by passengers or other persons injured on the water, either on City vessels or ferries, gangplanks or piers.

### B. Defective Roadway

Defective Roadway claims include pedestrians, motorists, or others injured as a result of defects in a street or roadway; e.g., potholes; cracked, wet or snow-covered roadways; sewer gratings; raised, missing or exploding manhole covers; or roadways under repair.

### C. Defective Sidewalk

Defective Sidewalk claims include pedestrians or others injured because of a defective sidewalk; e.g., broken, wet, uneven sidewalks; broken curbstones; protruding bolts, grates, or parking meter or traffic sign stubs; defective boardwalks; and snow-and-ice claims.

### D. Traffic Control Device

Traffic Control Device claims include pedestrians or motorists injured in accidents because of malfunctioning traffic signals, defective or missing traffic devices, or downed or missing traffic signs.

### E. Police Action

Police Action claims result from alleged improper police action; e.g., false arrest or imprisonment; shooting of a suspect; excessive force or assault; and failure to provide police protection.

### F. School

School claims are those filed against the New York City Department of Education by students, teachers, other staff, and parents or other visitors to Department of Education facilities.

### G. Medical Malpractice

This category of claim derives from medical malpractice in the diagnosis, treatment, or care at a City or Health and Hospitals Corporation (HHC) facility. Medical malpractice claims include those that involve pre- or post-natal treatment, emergency room care, EMS treatment, and defective equipment.

#### H. Health Facility/Non-Medical Incidents

These claims involve non-medical acts involving a City or HHC facility or employee, such as injuries sustained by visitors due to wet floors; assaults of patients or visitors; and abuse or assaults of senior citizens by home care workers.

#### I. Motor Vehicle Accident

Motor Vehicle Accident claims involve accidents with City vehicles. Included in this category are pedestrians or passengers of other vehicles struck by a City vehicle, and operators or passengers of City vehicles involved in a collision.

#### J. Employee Uniform Services

Included in this category of claims are City employees of the uniformed services; i.e., police, fire, Department of Education (pedagogues), or sanitation employees who are not subject to Workers' Compensation laws and may sue the City for on-the-job personal injuries.

#### K. Parks and Recreation

Parks and recreation claims include claims by persons allegedly injured because of defective equipment or negligent maintenance of property under the jurisdiction of the Department of Parks and Recreation. This includes incidents that occur in Parks Department buildings or on playground equipment and grounds, and incidents involving falling trees or limbs, whether on a street, sidewalk, or in a park.

#### L. City Property

This category of claims includes those by tenants or others injured by a defect or the negligent maintenance of City-owned land or a City-owned or City-administered building or facility.

#### M. Catastrophe

This claim type includes claims filed as a result of natural disasters, such as floods or earthquakes; environmental accidents, such as leaking gas tanks; power failures, such as blackouts; and civil disturbances, such as riots.

#### N. Civil Rights

Civil Rights claims involve alleged statutory or constitutional violations, such as discrimination based on sex, race, religion, handicap, sexual preference, and age.

#### O. Corrections

Corrections claims involve claims by inmates or employees of City correctional institutions who were allegedly injured by the actions of City employees or inmates.

## II. Property Damage Claims

### A. Admiralty

These claims include property damaged on the water, either on City vessels, ferries, gangplanks or piers.

### B. Sewer Overflow

Sewer Overflow claims include flooding or water damage to real or personal property caused by inadequate sewer repairs or clogged/obstructed City sewers.

### C. Water Main Break

Water Main Break claims include water damage to real or personal property as a result of leaking or broken water mains or fire hydrants.

### D. Defective Roadway

This claim type includes claims for vehicles that are damaged by defective roadways, or from objects that have fallen from bridges or overpasses. Also included are claims made by pedestrians who sustained damage to personal property as a result of a fall on a defective roadway.

### E. Defective Sidewalk

Defective Sidewalk claims are made by individuals who sustain damage to personal property as a result of defective sidewalks.

### F. Traffic Device

This claim type includes vehicles or other personal property damaged in accidents allegedly caused by defective, obstructed, or missing traffic lights or stop signs.

### G. Police Action

Police Action claims related to vehicles or other personal property that is stolen, damaged, sold, or destroyed while in police custody.

### H. School

School claims include lost, stolen, or damaged personal property that belongs to students, teachers, or Department of Education staff while on Department of Education property.

### I. Health Facility

These claims include the personal property of patients or others that has been lost, stolen, or damaged while on hospital property.

#### J. Motor Vehicle Accidents

Motor vehicle accident claims include vehicles or other personal property that is damaged in accidents with City vehicles. Included are parked cars hit by City vehicles, and vehicles damaged while being towed.

#### K. Uniform Services/City Employees

This claim type includes claims for personal property that is lost, damaged, or stolen from City employees while at work.

#### L. Parks and Recreation

Claims in this category include personal property that is lost, stolen, or damaged in the City's parks. Damage occurs from vandalism, poor maintenance, or unmarked fresh paint, and from accidents involving grounds and equipment.

#### M. Public Buildings and Property

This claim type includes claims for personal property damaged or stolen as a result of a defect or negligence in maintaining City-owned land or a City-owned building or facility.

#### N. Catastrophe

These claims include property damage caused by the City's response to a natural disaster (such as a flood or earthquake), an environmental accident (such as a leaking gas tank), power failures (blackouts), or civil disturbances (such as riots).

#### O. Damage City Action/Personnel

These claims include property damaged by City vehicles or equipment, such as a City vehicle damaging a homeowner's fence or other property, or damage caused by a traffic light falling onto a vehicle.

#### P. Corrections Facility

Correctional facility claims include claims by prisoners, inmates, or detainees whose personal property is lost, stolen or damaged while in a correctional institution.

### III. Law Claims

#### A. Employment

Employment claims are those by prospective, current, or former City employees alleging employment-related disputes. These disputes include claims for discrimination, out-of-title work, pay differential, annual leave, and suspension.

#### B. Illegal but Equitable

These claims typically allege that work was performed and/or the City accepted services, but the appropriate contract and other approval were not obtained. These claims, though invalid at law, may be recognized as equitable and proper if it can be determined that the City received a benefit and that the public interest would be served by payment or compromise.

#### C. Contract/Lease

Claims in this category arise from disputes between the City and private contractors (construction or non-construction) and in instances where the City is a lessee or lessor of property.

#### D. Refund

Refund claims include claims by private individuals seeking refunds for alleged overpayments and unjust fines.

#### E. Change of Grade

These claims are made by commercial or residential property owners or lessees. The claims arise from changes in grade to a sidewalk, that impairs access to property and drainage. Claims typically are made for loss of business, walkway or driveway repairs.

#### F. Alternative Dispute Resolution

Contracts between the City and vendors solicited after September 1990 have included an Alternative Dispute Resolution (ADR) provision designed to provide a speedy alternative to litigation. When the disputes arise, contractors may attempt to resolve them directly with the agency involved. If no agreement is reached, a claim can then be filed with the Comptroller's Office. If the claim is denied, the contractor may appeal to the Contract Dispute Resolution Board.

## APPENDIX B

### Legal Background

#### I. Municipal Liability

The decision of the New York Court of Appeals in *Bernadine v. NYC*, issued in 1945, exposed the City for the first time to liability for torts committed by the City’s officers, agents, and employees.<sup>6</sup>

In *Bernadine*, the Court held that “the civil divisions of the State are answerable equally with individuals and private corporations for wrongs of officers and employees — even if no separate statute sanctions that enlarged liability in a given instance.”<sup>7</sup> The Court, in effect, abolished the doctrine of sovereign immunity for municipalities, but did not provide municipalities any of the protections accorded to the State by the Court of Claims Act.<sup>8</sup> In particular, claimants seeking to recover from municipalities for their agents’ negligent and wrongful acts are entitled to a jury trial.

Municipal liability is also governed by local law. Under their home rule authority, municipalities can limit liability to some extent through limitations on the right to sue. An example is New York City’s prior notice law, enacted in 1979 in an effort to limit the City’s liability in “slip and fall” cases on City sidewalks and streets.

#### II. Claims Process

To commence an action against the City, a claimant typically must first notify the City by filing a Notice of Claim with the Office of the Comptroller. In some instances, however, the claim must be filed with the entity involved or the Law Department. In most instances the notice of a personal injury or property damage claim must be filed within 90 days of an alleged injury or wrong.<sup>9</sup> The City Charter grants to the Comptroller the power to settle and adjust all claims in favor of or against the City.<sup>10</sup>

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<sup>6</sup> *Bernadine v. NYC*, 294 N.Y. 361 (1945)

<sup>7</sup> *Id.* p. 365.

<sup>8</sup> Court of Claims Act of 1920, L. 1920, ch. 922, and L. 1929, ch. 467, § 1.

<sup>9</sup> General Municipal Law, Article 4, § 50-e. One notable exception is a claim under 42 U.S.C. § 1983, the Federal Civil Rights Act; a § 1983 action can be filed directly in court without filing a notice of claim.

<sup>10</sup> City Charter, Chapter 5, Section 93 (I).

The City Charter also grants settlement authority exclusively to the office of the Comptroller.<sup>11</sup> The Comptroller has the power to investigate claims, determine liability and damages, and reach a settlement prior to litigation.<sup>12</sup> If the Comptroller denies liability or is unable to arrive at a settlement with a claimant, the claimant may commence suit. Actions regarding tort claims must generally be filed within a year and 90 days after the loss.<sup>13</sup>

The City's Law Department, under the direction of the Corporation Counsel, defends the City in most actions, although the Law Department, may engage outside counsel to defend HHC and its doctors in certain medical malpractice actions.

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<sup>11</sup> City Charter, Chapter 17, Section 394 (c).

<sup>12</sup> The Comptroller's Bureau of Law and Adjustment (BLA) investigates claims filed against the City; obtains and evaluates accident reports and other documents provided by agencies; conducts field visits, interviews witnesses, and conducts hearings; makes determinations as to liability; and attempts to settle cases where liability has been established. The Comptroller's Bureau of Engineering investigates contract claims, and together with the Law Department and BLA, negotiates construction contract claim settlements. Both Bureaus conduct surveys and studies to identify and report on the City's exposure to claim liability.

<sup>13</sup> General Municipal Law, Article 4, § 50-I. A significant exception to this requirement is in the area of medical malpractice, in particular claims for injuries to newborn infants.

**APPENDIX C**

Detailed Tables

**Table 1**  
**Number of Claims Filed by Claim Type**  
**Fiscal Years 1992-2002**

	<u>1992</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>
<b>Personal Injury</b>											
Sidewalk	3,647	4,068	5,365	4,034	4,520	3,967	3,929	4,141	3,975	3,606	3,276
Police Action	1,749	1,567	1,759	2,195	2,237	2,266	2,105	2,386	1,781	1,980	1,796
Schools	1,805	1,941	2,043	2,004	1,756	1,901	2,080	1,898	1,895	1,656	1,510
Motor Vehicle	1,451	1,454	1,763	1,790	1,515	1,498	1,617	1,558	1,768	1,662	1,581
Roadway	1,309	1,442	1,422	1,450	1,345	1,417	1,552	1,381	1,520	1,478	1,414
City Property	1,075	972	1,315	1,353	1,326	1,006	1,051	814	814	701	1,127
Corrections	984	833	879	971	1,014	1,021	861	1,008	799	775	789
Civil Rights	449	491	616	803	981	1,092	1,135	1,063	1,312	1,257	1,065
Medical Malpractice	761	692	734	898	739	771	806	857	888	822	796
Traffic Device	384	413	347	335	464	433	444	407	417	331	318
Parks & Recreation	345	400	447	394	449	390	399	384	320	274	263
Uniform Services	304	332	300	279	205	205	288	361	292	171	1,194
Other	1,002	2,048	1,542	1,782	2,040	970	944	1,048	933	919	801
<b>Total</b>	<b>15,265</b>	<b>16,653</b>	<b>18,532</b>	<b>18,288</b>	<b>18,591</b>	<b>16,937</b>	<b>17,211</b>	<b>17,306</b>	<b>16,714</b>	<b>15,632</b>	<b>15,930</b>
<b>Property Damage</b>											
Motor Vehicle	5,183	4,851	5,034	4,408	4,551	3,315	3,218	3,179	3,549	4,074	3,434
Other	4,748	5,307	6,037	5,480	6,648	8,282	5,893	5,134	5,121	5,106	4,019
<b>Total</b>	<b>9,931</b>	<b>10,158</b>	<b>11,071</b>	<b>9,888</b>	<b>11,199</b>	<b>11,597</b>	<b>9,111</b>	<b>8,313</b>	<b>8,670</b>	<b>9,180</b>	<b>7,453</b>
<b>Law Division</b>											
Contracts	507	335	329	396	350	317	261	215	262	220	144
Other	1,021	1,061	929	883	979	984	837	798	690	1,298	849
<b>Total</b>	<b>1,528</b>	<b>1,396</b>	<b>1,258</b>	<b>1,279</b>	<b>1,329</b>	<b>1,301</b>	<b>1,098</b>	<b>1,013</b>	<b>952</b>	<b>1,518</b>	<b>993</b>
<b>Grand Total</b>	<b>26,724</b>	<b>28,207</b>	<b>30,861</b>	<b>29,455</b>	<b>31,119</b>	<b>29,835</b>	<b>27,420</b>	<b>26,632</b>	<b>26,336</b>	<b>26,330</b>	<b>24,376</b>

**Table 2**  
**Number of Claims Filed by Agency**  
**Fiscal Years 1992-2002**

	<u>1992</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>
Department of Transportation	9,919	9,842	10,227	9,114	9,434	8,858	8,433	7,614	7,776	7,733	6,637
Police Department	3,712	3,973	4,080	4,771	4,631	5,106	5,141	5,163	4,830	4,726	4,720
Sanitation Department	1,356	2,058	3,418	1,685	2,880	1,217	1,171	1,377	1,709	2,165	1,418
Department of Education	2,522	2,665	2,726	3,010	2,644	2,894	2,934	2,706	2,747	2,306	2,146
Health and Hospital Corp.	1,866	1,871	1,953	1,999	1,828	1,465	1,245	1,340	1,309	1,230	1,090
Environmental Protection	1,017	1,128	1,121	1,041	1,615	3,397	1,185	1,176	1,140	967	909
Department of Corrections	1,511	1,439	1,380	1,490	1,585	1,546	1,349	1,470	1,305	1,308	1,184
Department of Parks & Recreation	737	982	999	973	1,181	1,073	1,201	1,166	1,047	832	892
Fire Department	421	488	602	504	455	720	915	1,048	986	959	1,775
Housing, Preservation & Development	938	866	1,162	1,062	1,024	715	755	444	379	319	250
Human Resources Administration	264	245	349	305	339	294	236	243	193	199	125
Department of Buildings	88	104	308	112	150	134	209	149	84	107	62
Other	2,373	2,546	2,536	3,389	3,353	2,416	2,646	2,736	2,831	3,479	3,168
<b>Total</b>	<b><u>26,724</u></b>	<b><u>28,207</u></b>	<b><u>30,861</u></b>	<b><u>29,455</u></b>	<b><u>31,119</u></b>	<b><u>29,835</u></b>	<b><u>27,420</u></b>	<b><u>26,632</u></b>	<b><u>26,336</u></b>	<b><u>26,330</u></b>	<b><u>24,376</u></b>

**Table 3**  
**Dollar Amount of Settlements & Judgments by Claim Type**  
**Fiscal Years 1992-2002**

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
<b>Personal Injury</b>											
Medical Malpractice	\$82,667,006	\$77,121,634	\$81,580,373	\$74,118,403	\$102,815,084	\$109,187,159	\$112,002,950	\$118,239,245	\$150,587,850	\$154,918,613	\$190,458,195
Sidewalk	29,731,127	36,091,730	46,700,553	45,189,536	48,370,451	41,613,592	45,784,399	57,435,873	58,114,551	76,785,230	53,076,848
Motor Vehicle	19,806,328	20,877,514	24,936,242	31,551,558	24,156,807	28,902,034	31,841,333	38,005,534	46,823,848	56,623,578	42,267,713
Police Action	15,430,821	20,030,884	24,853,213	23,911,025	20,525,668	27,519,141	28,287,073	40,806,603	36,878,050	38,549,599	21,942,414
Schools	9,550,531	12,435,982	18,220,381	18,031,869	17,394,479	23,029,250	22,125,570	22,959,156	26,223,401	25,739,783	30,108,579
Civil Rights	278,212	3,522,616	2,803,418	2,364,241	7,665,511	7,342,849	12,657,194	19,245,628	14,079,949	82,190,057	37,358,445
City Property	13,861,570	15,106,169	12,134,021	16,103,018	17,412,275	15,308,191	27,518,265	21,609,971	17,127,652	21,484,870	20,658,287
Roadway	10,070,471	15,767,778	11,972,205	15,695,165	16,554,287	11,544,090	9,611,729	12,543,866	17,373,343	43,178,908	23,661,795
Uniform Services	5,684,133	4,974,172	12,121,764	4,979,068	11,759,906	6,693,829	10,648,041	13,774,953	24,226,780	19,312,680	27,026,215
Corrections	1,737,550	1,429,570	1,588,100	1,429,911	2,837,865	3,826,619	5,929,500	4,370,529	2,996,728	3,156,827	3,717,903
Parks & Recreation	2,007,729	2,292,950	4,384,934	3,447,532	4,692,176	3,095,377	3,289,038	6,085,883	5,320,038	17,653,097	10,201,408
Traffic Device	334,683	1,221,250	1,496,618	1,873,123	1,757,550	2,812,168	1,081,650	1,604,343	2,304,100	3,514,250	3,553,000
Other	6,613,669	6,583,855	9,304,956	8,095,706	16,682,331	7,528,449	6,638,930	8,099,800	4,377,202	6,245,666	10,788,430
<b>Total</b>	<b>\$197,773,630</b>	<b>\$217,456,104</b>	<b>\$252,096,778</b>	<b>\$246,790,145</b>	<b>\$292,624,390</b>	<b>\$288,342,748</b>	<b>\$317,415,672</b>	<b>\$364,781,384</b>	<b>\$406,433,492</b>	<b>\$549,343,158</b>	<b>\$474,819,232</b>
<b>Property Damage</b>											
Motor Vehicle	\$1,940,503	\$2,820,770	\$3,087,290	\$2,382,992	\$3,036,709	\$3,701,594	\$3,245,829	\$2,732,298	\$2,953,802	\$3,627,102	\$3,221,809
Other	2,875,645	3,615,733	1,882,185	2,134,124	2,779,935	2,970,398	22,072,757	3,192,543	6,696,343	3,038,868	6,678,230
<b>Total</b>	<b>\$4,816,148</b>	<b>\$6,436,503</b>	<b>\$4,969,475</b>	<b>\$4,517,116</b>	<b>\$5,816,644</b>	<b>\$6,671,992</b>	<b>\$25,318,586</b>	<b>\$5,924,841</b>	<b>\$9,650,145</b>	<b>\$6,665,970</b>	<b>\$9,900,039</b>
<b>Law Claims</b>											
Contracts	\$15,764,080	\$17,659,557	\$14,861,494	\$13,009,629	\$5,573,949	\$5,640,322	\$27,851,650	\$17,689,500	\$33,589,224	\$9,851,773	\$26,266,027
Other	7,413,330	6,629,298	8,845,593	9,803,531	3,209,991	4,140,759	10,297,568	29,497,613	9,554,616	14,655,352	14,019,473
<b>Total</b>	<b>\$23,177,410</b>	<b>\$24,288,855</b>	<b>\$23,707,087</b>	<b>\$22,813,160</b>	<b>\$8,783,940</b>	<b>\$9,781,081</b>	<b>\$38,149,218</b>	<b>\$47,187,113</b>	<b>\$43,143,840</b>	<b>\$24,507,125</b>	<b>\$40,285,500</b>
<b>Grand Total</b>	<b>\$225,767,188</b>	<b>\$248,181,462</b>	<b>\$280,773,340</b>	<b>\$274,120,421</b>	<b>\$307,224,974</b>	<b>\$304,795,821</b>	<b>\$380,883,476</b>	<b>\$417,893,338</b>	<b>\$459,227,477</b>	<b>\$580,516,253</b>	<b>\$525,004,771</b>

**Table 4**  
**Dollar Amount of Agency Settlements & Judgments**  
**Fiscal Years 1992-2002**

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Health & Hospitals Corporation	\$85,965,158	\$86,264,669	\$85,638,407	\$78,902,019	\$120,257,352	\$118,739,180	\$126,137,443	\$136,920,865	\$151,600,607	\$169,552,699	\$194,066,741
Department of Transportation	52,996,422	54,994,494	64,831,988	66,786,655	70,506,746	55,594,060	60,581,624	73,357,580	89,009,770	113,820,374	84,651,336
Police Department	28,557,585	33,265,111	39,387,527	36,049,676	40,770,640	42,529,254	50,704,820	73,832,780	68,846,238	141,723,117	78,681,205
Department of Education	12,264,046	15,292,150	21,550,301	20,132,360	18,061,533	25,003,224	28,832,557	24,618,598	34,297,999	28,318,386	32,546,589
Housing, Preservation & Development	8,880,997	8,819,221	15,506,695	15,691,881	14,464,592	10,101,698	19,214,180	15,977,566	16,607,520	20,344,499	11,869,678
Sanitation Department	10,741,639	11,454,381	12,922,092	11,313,926	10,175,364	9,377,326	16,038,626	16,065,466	22,310,803	14,403,111	28,241,603
Department of Corrections	2,424,337	2,165,525	3,653,306	2,637,887	4,054,779	5,106,562	7,904,418	7,077,942	4,534,825	11,534,335	6,035,155
Department of Parks & Recreation	2,705,628	3,398,753	7,848,623	5,043,826	6,041,675	5,053,188	4,708,847	10,125,767	9,114,088	19,617,360	18,474,380
Environmental Protection	6,604,261	9,754,166	3,455,218	4,598,362	4,982,474	4,976,068	30,192,152	7,767,465	22,966,507	7,238,266	29,923,841
Fire Department	2,830,764	1,944,612	8,193,942	4,573,296	6,315,215	4,376,379	11,330,626	11,097,973	13,766,794	15,589,590	13,180,927
Department of Buildings	5,833,032	2,593,847	927,305	5,332,460	1,284,364	3,164,460	1,132,500	720,670	1,813,768	1,083,362	1,854,394
Human Resources Administration	933,145	2,988,978	1,882,667	1,714,479	1,356,009	2,291,438	1,020,894	16,215,190	1,613,570	2,117,776	3,789,405
Other	5,030,174	15,245,555	14,975,269	21,343,594	8,954,231	18,482,984	23,084,799	24,115,476	22,744,988	35,173,378	21,689,517
<u>Total</u>	<u>\$225,767,188</u>	<u>\$248,181,662</u>	<u>\$280,773,340</u>	<u>\$274,120,421</u>	<u>\$307,224,974</u>	<u>\$304,795,821</u>	<u>\$380,883,476</u>	<u>\$417,893,338</u>	<u>\$459,227,477</u>	<u>\$580,516,253</u>	<u>\$525,004,771</u>

**Table 5**  
**Count of Settlements & Judgments by Claim Type**  
**Fiscal Years 1992-2002**

	<u>1992</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>
<b><u>Personal Injury</u></b>											
Sidewalk	1,235	1,500	1,770	1,702	2,069	2,034	2,334	2,800	3,100	3,325	2,659
Schools	676	770	767	591	798	785	885	1,021	1,401	1,226	1,033
Motor Vehicle	351	459	502	534	714	772	889	1,092	1,025	1,151	961
Police Action	272	315	409	379	459	555	558	744	830	784	561
Roadway	207	240	334	340	415	422	455	574	624	770	599
City Property	184	208	269	249	275	296	322	340	340	309	267
Medical Malpractice	216	264	231	234	280	255	277	297	291	349	298
Civil Rights	22	39	51	64	153	212	282	260	293	542	613
Parks & Recreation	91	125	157	123	173	168	173	246	205	222	176
Corrections	62	65	92	87	118	145	141	130	134	162	151
Uniform Services	72	74	97	104	121	134	154	163	201	175	139
Traffic Device	51	66	85	81	94	108	108	119	120	162	143
Other	332	398	444	544	594	612	155	177	141	147	79
<b>Total</b>	<b>3,771</b>	<b>4,523</b>	<b>5,208</b>	<b>5,032</b>	<b>6,263</b>	<b>6,498</b>	<b>6,733</b>	<b>7,963</b>	<b>8,705</b>	<b>9,324</b>	<b>7,679</b>
<b><u>Property Damage</u></b>											
Motor Vehicle	1,910	2,746	2,599	1,744	2,390	2,667	2,287	1,940	2,056	2,104	1,937
Other	697	1,062	1,064	877	1,209	1,304	1,647	1,056	971	833	806
<b>Total</b>	<b>2,607</b>	<b>3,808</b>	<b>3,663</b>	<b>2,621</b>	<b>3,599</b>	<b>3,971</b>	<b>3,934</b>	<b>2,996</b>	<b>3,027</b>	<b>2,937</b>	<b>2,743</b>
<b><u>Law Division</u></b>											
Contracts	65	90	107	84	43	30	60	54	53	40	33
Other	118	222	232	145	141	123	113	99	99	88	79
<b>Total</b>	<b>183</b>	<b>312</b>	<b>339</b>	<b>229</b>	<b>184</b>	<b>153</b>	<b>173</b>	<b>153</b>	<b>152</b>	<b>128</b>	<b>112</b>
<b>Grand Total</b>	<b>6,561</b>	<b>8,643</b>	<b>9,210</b>	<b>7,882</b>	<b>10,046</b>	<b>10,622</b>	<b>10,840</b>	<b>11,112</b>	<b>11,884</b>	<b>12,389</b>	<b>10,534</b>

**Table 6**  
**Count of Settlement & Judgments by Agency**  
**Fiscal Years 1992-2003**

	<u>1992</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>
Department of Transportation	2,341	3,172	3,358	2,945	3,830	3,367	3,502	3,882	4,227	4,589	3,659
Police Department	805	1,148	1,175	1,066	1,387	1,734	2,005	2,045	2,245	2,404	1,856
Sanitation Department	740	832	1,021	766	934	1,380	1,007	959	1,011	1,198	1,145
Department of Education	821	1,117	1,033	715	955	1,038	1,154	1,149	1,496	1,310	1,102
Health & Hospitals Corporation	545	661	662	549	677	659	620	592	501	547	438
Department of Parks & Recreation	230	318	395	314	371	460	570	550	466	460	392
Environmental Protection	295	377	374	349	519	414	522	442	465	368	377
Fire Department	169	178	213	161	233	336	335	403	402	498	622
Department of Corrections	127	156	185	179	213	268	285	265	249	297	283
Housing Preservation & Development	154	168	234	211	221	247	252	279	270	218	181
Human Resources Administration	40	62	56	59	56	79	65	59	41	52	32
Department of Buildings	20	20	22	27	30	20	23	22	21	27	23
Other	274	434	482	541	620	620	500	465	490	421	424
<b>Total</b>	<b><u>6,561</u></b>	<b><u>8,643</u></b>	<b><u>9,210</u></b>	<b><u>7,882</u></b>	<b><u>10,046</u></b>	<b><u>10,622</u></b>	<b><u>10,840</u></b>	<b><u>11,112</u></b>	<b><u>11,884</u></b>	<b><u>12,389</u></b>	<b><u>10,534</u></b>

## APPENDIX D

### Summary of the 10 Largest Settlements/Judgments for Fiscal Year 2002

1. In 1983, claimant alleges negligence and malpractice for failure to timely perform a Cesarean section, resulting in cerebral palsy and retardation. *Settlement: \$9.5 million*
2. In 1987, claimant alleges negligence and malpractice for failure to perform a Cesarean section and mismanagement of labor and delivery resulting in brain damage and cerebral palsy. *Settlement: \$9.2 million*
3. In 1994, claimant alleges negligence and malpractice for failure to deliver proper care during labor and delivery resulting in brain damage and cerebral palsy. *Judgment: \$7.2 million*
4. In 1997, claimant alleges police brutality, tortious conduct and violation of civil rights resulting in significant internal injuries and mental anguish. *Settlement: \$7.1 million*
5. In 1992, claimant alleges negligence and malpractice for failure to timely perform a Cesarean section resulting in quadriplegia, severe intellectual restrictions and cortical blindness – *Settlement: \$6.25 million.*
6. In 1990, claimant alleges negligence and malpractice by failing to perform a Cesarean section resulting in causing brain damage, retardation and cerebral palsy. *Settlement: \$6.2 million*
7. In 1986, claimant alleges negligence and malpractice due to improper actions during a spinal tap procedure resulting in cardiac arrest causing brain damage. *Settlement: \$6 million*
8. In 1992, claimant dove off a City pier into shallow water and suffered catastrophic injury. Claimant alleges that the City was negligent by not posting signs warning of danger. *Settlement: \$6 million*
9. In 1988, claimant alleges negligence and malpractice for failure to deliver proper care during and after delivery resulting in brain damage, cerebral palsy and Erb's palsy. *Settlement: \$5.5 million*
10. In 1986, claimant alleges negligence and malpractice during the delivery of a newborn resulting in brain damage and cerebral palsy. *Settlement: \$ 4.9 million*