



GEORGE MASON UNIVERSITY SCHOOL OF LAW



SEARLE CIVIL JUSTICE INSTITUTE
STATE CONSUMER PROTECTION ACT LITIGATION:
UPDATE ON TRENDS

JUNE 2016

LAW & ECONOMICS CENTER

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THE SEARLE CIVIL JUSTICE INSTITUTE is a public policy institute devoted to producing timely, analytically rigorous, and balanced research on important civil justice issues confronting our free enterprise system.

THE MASON ATTORNEYS GENERAL EDUCATION PROGRAM offers courses that provide a broad-based understanding of economic and public policy issues to state attorneys general and their staff attorneys.

THE CONGRESSIONAL CIVIL JUSTICE CAUCUS ACADEMY organizes rigorous, balanced educational programs on a range of civil justice issues for the benefit of the general public and members of the US Congress and their staff.

THE GLOBAL ANTITRUST INSTITUTE is a leading international platform for research and education that focuses on the legal and economic analysis of key antitrust issues confronting competition agencies and courts around the world.

THE PROGRAM ON ECONOMICS & PRIVACY is dedicated to studying the economic tradeoffs inherent to privacy, data security, and other digital information debates, and to producing relevant and original research and education programs for policymakers.

SEARLE CIVIL JUSTICE INSTITUTE

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James C. Cooper

Matthew D. Sibery

June 2016

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PURPOSE STATEMENT

The Searle Civil Justice Institute is a public policy institute devoted to producing timely, analytically rigorous, and balanced research on important civil justice issues confronting our free enterprise system.

BOARD MISSION STATEMENT

The Board of Overseers plays a crucial, active role in the work of the Searle Civil Justice Institute (SCJI). The Board identifies and supports topics for new research projects and provides constructive advice on existing research projects. Board Members help assure impartiality and autonomy of SCJI research. The Board also builds financial support for the SCJI and its mission, as appropriate. The Board is composed of a balanced group of leading academics, practitioners, and judges, with a wide breadth of legal, economic, business, and public policy expertise.

RESEARCH METHODOLOGY

Using both empirical and qualitative research models, the SCJI addresses a full range of policy topics using diverse research methodologies and timeframes.

Large-scale, peer-reviewed empirical projects are conducted by academic experts and members of SCJI's internal research team. This collaborative effort allows SCJI to benefit from the diverse perspectives of many subject matter experts while controlling quality and completion time. These empirical initiatives involve collecting substantial amounts of data, performing statistical and econometric analyses, and producing SCJI public policy reports. Every report is subject to a balanced peer-review process in accordance with SCJI research protocol and is reviewed by the SCJI Board of Overseers. This rigorous process helps ensure that hard facts are part of the ongoing national debates on legal and regulatory policies.

The SCJI's qualitative law and economics studies are organized through research roundtables and conferences that infuse active public policy discussions with critical thinking and research from the nation's leading academics. The SCJI commissions original, high-quality law and economics research papers that have the potential to advance the understanding of key issues and drive actionable policy solutions. All papers are vetted at SCJI public policy events attended by the authors, policymakers, practicing lawyers, judges, leading academics, and other interested participants. The papers are released online and often are subsequently published in academic journals.

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Judge, US Court of Appeals for the Eleventh Circuit



PRINCIPAL INVESTIGATOR

JAMES C. COOPER

Associate Professor of Law
Director, Program on Economics and Policy
George Mason University School of Law

LEC RESEARCH STAFF

MATTHEW D. SIBERY

Research Coordinator
Law & Economics Center
George Mason University School of Law

LEC CONTACT INFORMATION

LAW & ECONOMICS CENTER

GEORGE MASON UNIVERSITY SCHOOL OF LAW

3301 Fairfax Dr.

Arlington, VA 22201

lec@mason.edu

www.MasonLEC.org

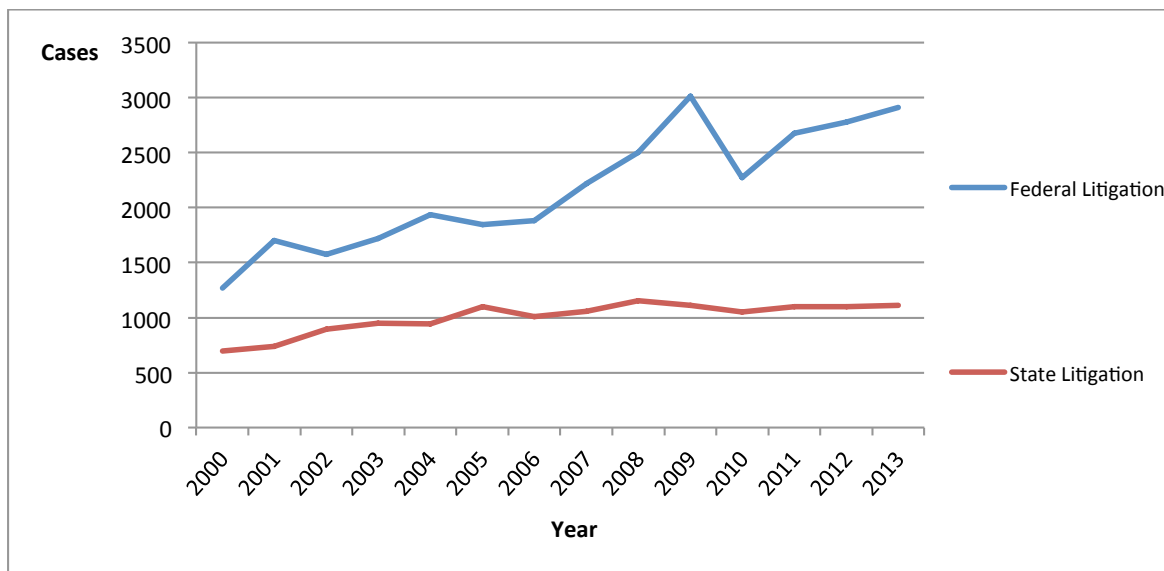
Executive Summary

In 2009, the Searle Civil Justice Institute (SCJI) conducted the first large-scale empirical examination of consumer protection acts (CPAs). The 2009 Report found that CPAs were becoming more favorable to consumers and there was a pronounced upward trend in state CPA litigation from 2000-2007. It also found a positive association between more consumer-friendly statutes and the number of reported cases. This Report picks up where the 2009 Report left off, examining trends in CPA statutes and litigation from 2008-2013.

Several major findings emerge from the data:

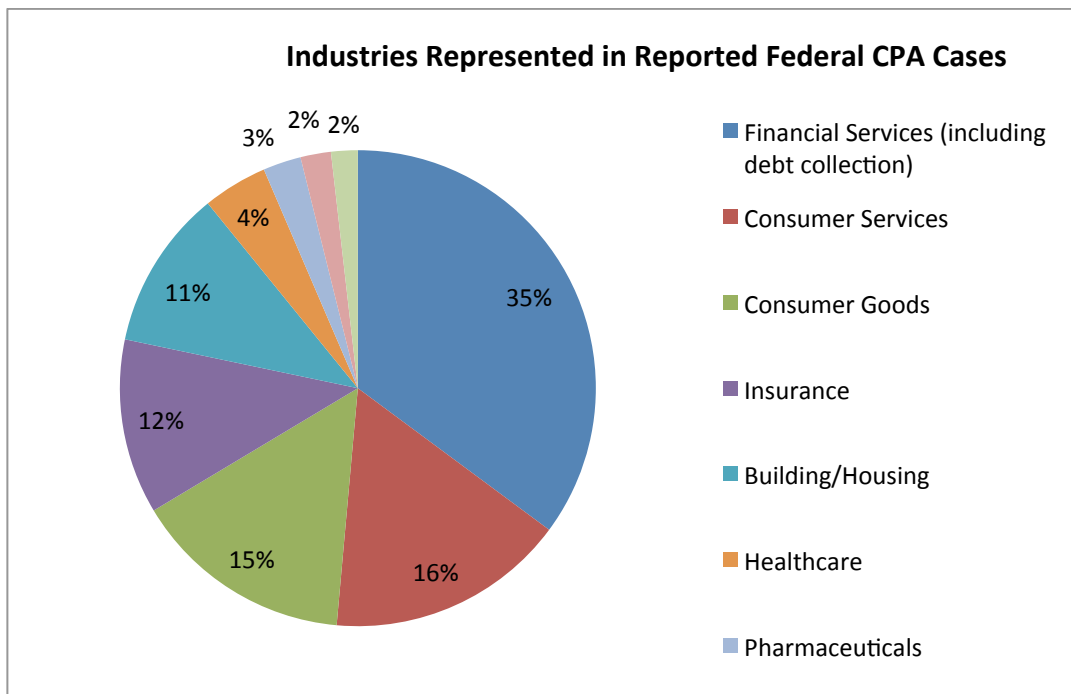
- There is a steady upward trend in CPA litigation, especially in federal court. The compounded annual growth rate (CAGR) for cases in state court was 3.4%, and that for cases in federal court was 6.1%.
- Although the general upward trend in litigation continued, there was a 21% decline in reported federal CPA cases from 2009-2010, reflecting an impact from the financial crisis.
- Total state court litigation has fallen slightly from 2008-2013 (CAGR -.6%), but federal litigation has risen by 2.5% per year on average.

REPORTED STATE AND FEDERAL CPA CASES: 2000-2013

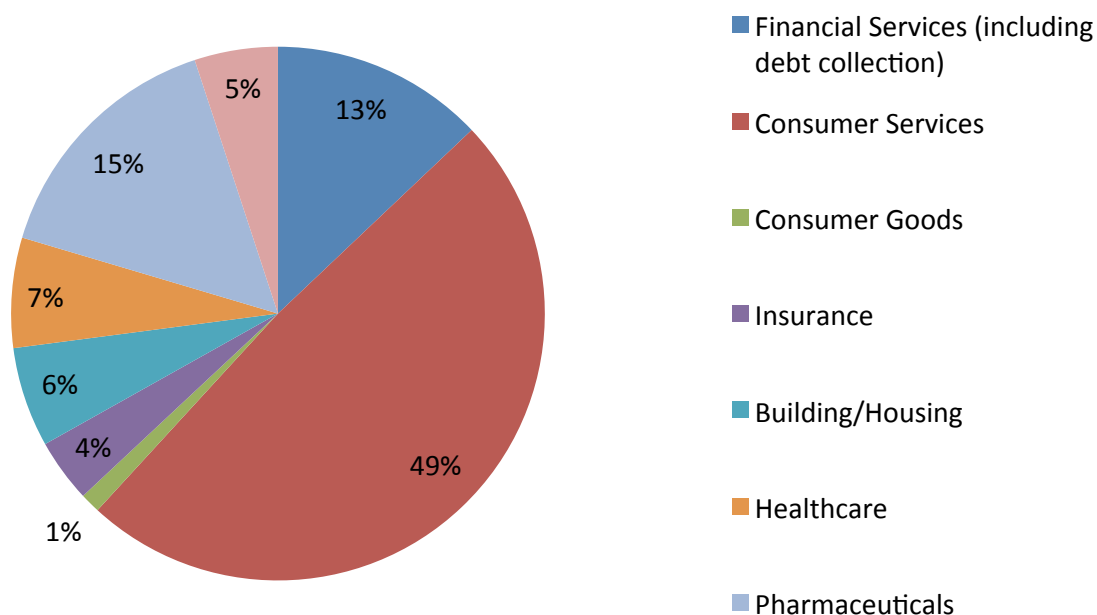


- The increase in growth in reported cases around 2006 and the large number of removal cases based on diversity jurisdiction found in the sample suggest that the Class Action Fairness Act (CAFA) played a role in the increasing volume of CPA cases in federal court.
- The financial crisis appears to have played a large part in shaping recent CPA litigation. The financial industry is the most common target of private reported

cases sampled, and it is the second largest single industry targeted by state AG investigations. Further, 32 percent of federal cases sampled involve some underlying debt-collection action, and 21 percent involve a federal lending or housing statute.

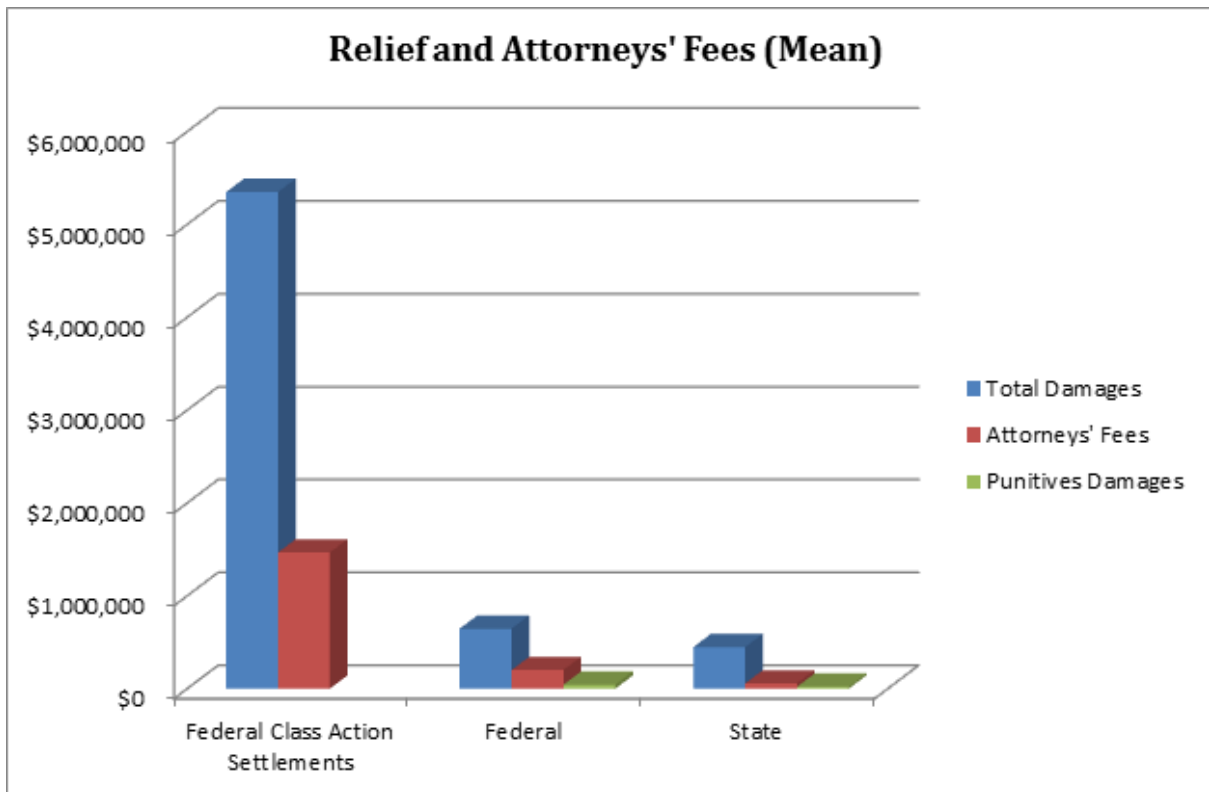


Industries Represented in Reported State Attorney General Investigations



Notes: COLUMBIA LAW SCHOOL, NATIONAL STATE ATTORNEYS GENERAL PROGRAM, *Consumer Protection Report*, <http://web.law.columbia.edu/attorneys-general/policy-areas/consumer-protection/resources-and-publications/consumer-protection-newsletter> (last visited Apr. 11, 2016).

- The average (median) damages are \$546,000 (\$81,000), with average (median) attorney fees of \$138,000 (\$25,000), between 25 and 30 percent of total damages awards. An examination of relevant filings from federal class action settlements finds a similar ratio (.27) of average attorneys' fees (\$1.5 million) to average awards (\$5.3 million).



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