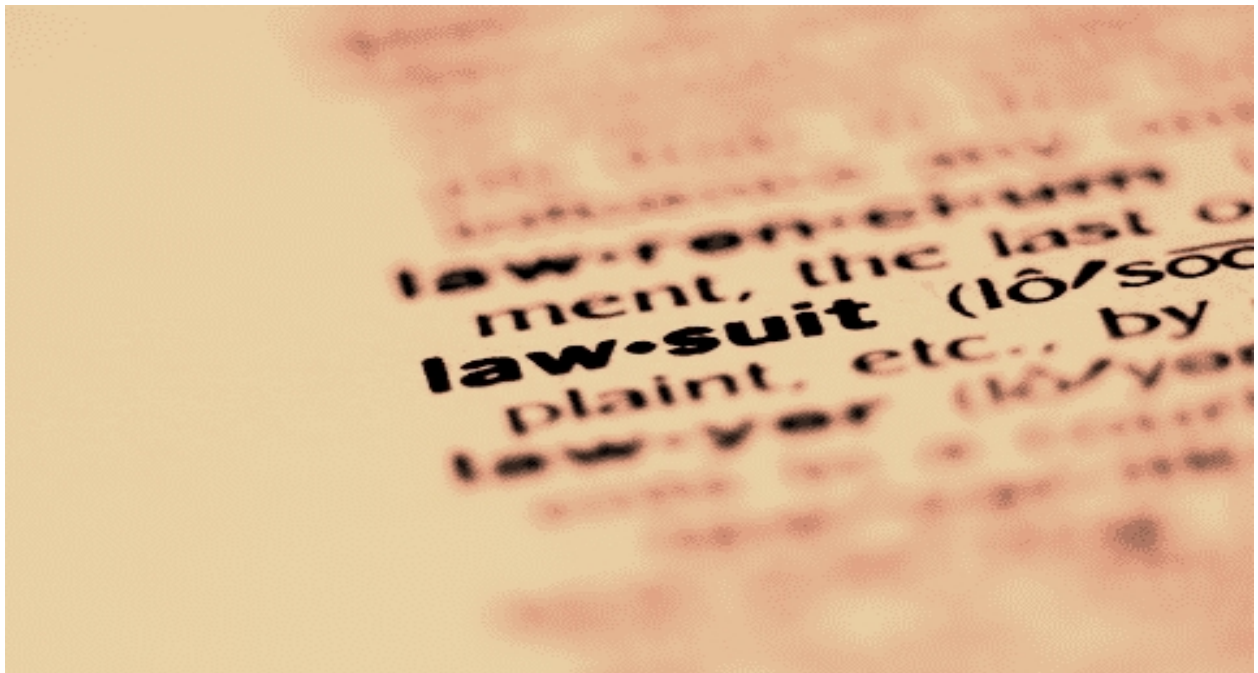


# Assessing the Fiscal Impact of Lawsuits on New York State Municipalities

Report One



*A Research Project of:*

Program on Local and Intergovernmental Studies

Rockefeller College of Public Affairs and Policy

University at Albany

# Assessing the Fiscal Impact of Lawsuits on New York State Municipalities

**October 2011**

**Sydney Cresswell  
Michael Landon-Murray**

**Research staff:**

**Joseph Martin  
Matthew O'Neil**

**Program on Local and Intergovernmental Studies  
Rockefeller College of Public Affairs and Policy  
University at Albany  
135 Western Avenue  
Albany, NY 12222  
Phone: (518) 442-5293  
E-mail: [sgc@albany.edu](mailto:sgc@albany.edu)**

© 2011 Program on Local and Intergovernmental Studies  
The Program grants permission to reprint this document  
provided the cover and this title page are included.

## Overview

This report is the first piece of a 3-part study examining the fiscal impact of lawsuits against municipalities in New York State, a cost area for local governments that has received little sustained public attention. The difficulty of assembling the pertinent fiscal data on lawsuits may be the chief reason that attention to this expense category has been sporadic. Even so, local officials, local government associations, and issue advocates tell us that municipalities (and by extension, the public) pay a heavy cost for legal actions brought against them, and that sensible reforms are needed. Without relevant data, both fiscal and contextual, the case for making policy reforms will be difficult to argue.

As a first step in addressing the existing information gap, the Program on Local and Intergovernmental Studies (POLIS) at the University at Albany, has examined available fiscal data on municipal lawsuits in New York State. Although the focus of the work is to estimate outlays for lawsuit costs, the POLIS team would like to develop a more complete understanding of operational costs incurred in responding to legal actions against local governments. Future planned research activities may yield important insights and information about these less visible consequences. The study series is supported in part with funding from the Lawsuit Reform Alliance of New York (LRANY), although the findings and opinions in this report, unless expressly attributed to others, are those of POLIS.

### I. Introduction

The protracted economic recovery in the U.S. is powering an unprecedented, close examination of government spending. After several years of belt tightening, federal, state, and local officials have largely exhausted traditional budget reduction tools. This has forced or provided the rationale for the fiscal focus to move to programs and services traditionally exempt from review. There are a number of high profile examples of such efforts. Public officials have made deep cuts in long-protected programs and services (k-12 education, poverty programs, and environmental protection, for example), rewritten the terms of public employment benefits and practices to reduce costs, and openly challenged the terms of security net programs. In these cases, government officials are taking exceptional and politically controversial actions.

In a less charged and obtrusive way, policymakers are also looking at forms of government spending that usually escape systematic scrutiny. The list has grown to include expenditures for programs or services that are difficult to assess, items tightly linked to historical concerns and values, and expenses that are relatively inconsequential in fiscal terms. These trends are particularly evident at the local level. Communities that have already weathered difficult service reductions now find voters willing to merge or abolish public safety services, restructure relatively low cost areas like justice courts, and even vote jurisdictions out of existence.

With such a wide-ranging search for savings, finding cost areas that remain unexplored is becoming difficult. However, one cluster of expenditures that has not been studied comprehensively in New York State is the cost of municipal lawsuits.<sup>1</sup> At first glance, there is no reason that lawsuit costs should be overlooked. We should know how much local governments spend annually to counter and settle adverse legal actions. It is also important to determine whether all such expenses are simply the cost of a fair and balanced judicial system or the result of policy failures. Regrettably, an examination of the subject is exceedingly difficult because much of the information pertaining to these lawsuits is neither centralized nor public. The lack of data or guidelines for reporting this data suggests that to date, the state has not found sufficient merit in knowing the full cost of judgments or settlements reached in municipal lawsuits.

---

<sup>1</sup> For this study, *municipal* is intended to include all categories of local government: counties, cities, towns, and villages.

This report is a first step in assembling cost information about municipal lawsuits in New York State. It provides a summary of local government expenditures for judgments and claims over a five year period. A secondary, but related expenditure category on legal costs is also discussed. As background, the report provides a brief explanation of the process needed to capture the full fiscal measure of municipal lawsuits, and the difficulties in acquiring the essential data.

## **II. The Insurance Puzzle**

Knowing how municipalities spend local resources on lawsuits requires some basic information on how municipal insurance works. Municipalities insure to cover health insurance benefits for employees, to safeguard assets, and to protect against losses tied to liability claims. This study addresses the latter, the costs of liability-based lawsuits. Municipalities obtain insurance in one of three ways, 1) through private companies, 2) through the New York State Insurance Reciprocal (NYMIR), a municipally owned non-profit insurance company, or 3) by becoming self-insured. In liability matters, insurers cover judgments and claims up to a specified limit for their clients and hire litigators to handle lawsuits. Insurers also work assiduously to help municipalities avoid lawsuits by conducting risk assessments and providing risk management education.

When a lawsuit is lodged against a local government and either adjudicated in court or settled out of court, the payouts are likely to be split by the municipality and their insurer. Municipalities can have deductibles for claims in the same way that individual insurance policy holders do, which makes municipalities responsible for a portion of the payout set within their policies. The insurer is responsible for paying claims that exceed the deductible up to the policy cap. For very large claims that exceed their coverage, municipalities incur the cost of paying the overage. They may cover these judgments and claims with reserve funds or may borrow the needed sums. In any case, an examination of the costs for municipal lawsuits must include the moneys spent by local governments and their insurers.

The self-insured municipalities incur additional expenses. Generally speaking, an insurer has reserve funds to cover the cost of claims up to a certain threshold. Insurers protect themselves against the possibility of having to cover claims or judgments that exceed their reserves by purchasing reinsurance. These are policies purchased from other insurance companies to cover payouts that could exceed the insurers' reserves. For self-insured municipalities, the purchase of reinsurance is another local expense, while for those with outside insurance, the costs are absorbed by the insurer and reflected in premiums charged.

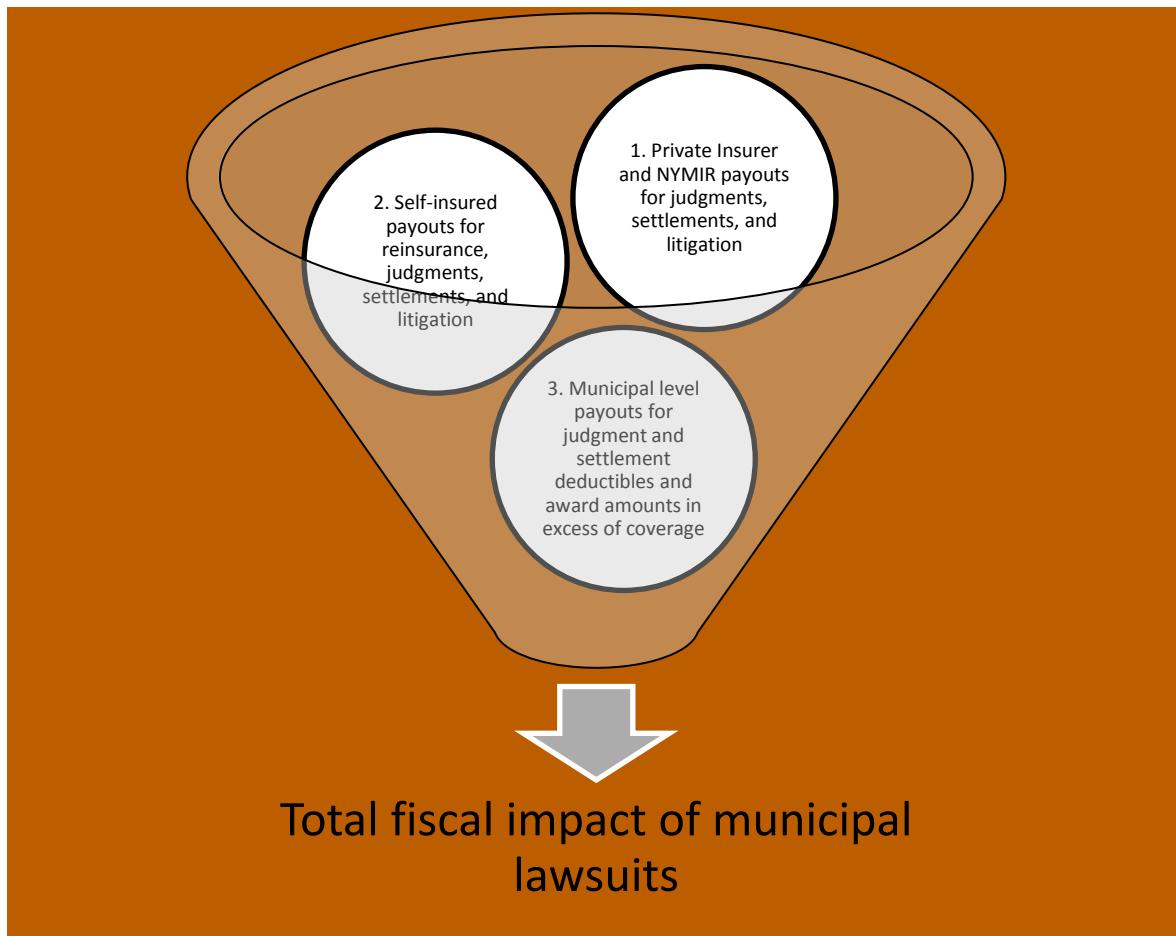
Risk management is a second cost that self-insured municipalities must cover. A key part of the insurer's role is to actively help the local government manage and assess risks. For instance, insurers assess highway safety and practices, including road conditions, maintenance activities, signage, and traffic controls, with the goals of limiting injury and property damage, and helping municipalities avoid liability for accidents. Insurers also stay attuned to changes in case law, statutes, and practices that affect public employment, public safety, etc. They provide training on appropriate practices and safeguards to local officials and their staff to minimize adverse actions that could be brought against the municipalities. These adverse actions can include lawsuits brought by employees for improper employment practices, and by the public for a number of problems that include personal injury, property damage, and harm caused by the decisions or actions of public employees. A NYMIR official commented that while automobile and slip-and-fall cases are the most frequently lodged cases against municipalities in New York State, the most expensive lawsuits that confront municipal insurers stem from law enforcement activity.

In summary, the net costs for externally insured local governments for protection against lawsuits are the initial costs of insurance, and the payment of deductibles and judgments or claims that exceed the coverage limits of their insurance. The self-insured have to establish necessary reserves, cover the cost of litigation in adverse actions, cover the costs of claims management and risk assessment, and either provide or pay for risk management training services.

### III. Difficulties of Assembling the Data on Lawsuits

In order to have a complete picture of the fiscal impact of municipal lawsuits in New York, information from several sources needs to be collected. First, information from primary external insurers (private companies and NYMIR) would be necessary. This would include total liability expenditures made on behalf of New York State municipal clients for judgments (court determined payments) and settlements (out-of-court determined payments) over a multiyear span. Ideally, the insurers would also provide summary data on the litigation costs associated with settling these adverse actions. Second, self-insured municipalities would need to provide similar data covering lawsuit payouts for judgments and settlements and related litigation costs, and also supply reinsurance expenses. And third, municipalities would need to provide information on payments for deductibles, legal fees, and liability awards in excess of insurance limits. **Figure 1** depicts the assembly of data that would accurately assess the full cost of lawsuits for New York State local governments.

**Figure 1. Data Needed to Assemble a True Picture of Lawsuit Costs**



Unfortunately, the only data in this set that was publicly accessible (without FOI or special requests) pertains to municipal judgments and claims (Circle 3). The New York State Office of the State Comptroller (OSC) publishes Level 2 data<sup>2</sup> on undifferentiated judgment and claim information for individual municipalities, derived from annual financial reports. The data does not isolate legal fees; that information is aggregated in a broad administrative cost category. By requesting specific data codes from OSC, it is possible to unpack the judgment and claims information across the many categories and purposes of expenditure that comprise the totals, and to separate legal fees out of administrative costs. Summary tables with this information are presented in Section IV.

The data on self-insured municipalities (Circle 2) were available from OSC through special data requests, but will require additional background work to understand how this group of municipalities reports the desired information. An examination of current Level 2 data shows discrepancies in entries for expenditure codes associated with self-insurance. These discrepancies will be examined in future reports that summarize data on self-insured local governments over the same 5-year period covered by the tables below.

The likelihood of acquiring data from external insurers (Circle 1) is the least certain. At present, the POLIS team is investigating options for accessing and including NYMIR and private insurer payouts for New York State local governments. If successful in gaining the cooperation of the principals, subsequent reports will summarize insurer payouts for municipal lawsuits.

#### **IV. Data and Analytic Methods**

In this section, municipal costs in expenditure categories for ‘judgments and claims’ and ‘law’ were examined. For the purposes of this study, judgment and claims costs can be more directly tied to the cost of lawsuits, and are discussed in greater detail. Law costs, though interesting, include all municipal expenditures for legal counsel, advice that may be predominantly focused on administrative and operational matters.

Judgment costs (reporting code 1930) were reported by category of municipality and geographic location (using a county designation). Law costs (reporting code 1420) were examined only by municipal category. The data on judgments and claims were constructed using a combination of information available on the website of OSC (Level 2 Data) and data provided under a special request. The law data were also provided under a special request.

Data for these expenditure categories were collected for 5 years covering the period 2005 to 2009, for all municipalities in New York State. Legal costs for New York City were not provided, but will be requested for later use. Separate data on counties, towns, villages, and cities were aggregated along municipal and geographic lines by POLIS team members.

There are important limits to convey about this data. Judgment costs can speak to a range of cases and claims. With respect to judgment and law costs, municipalities do not record the specific breakdown of these expenditures, and thus the OSC data remains undifferentiated. Municipalities do provide some detail on the nature of judgment and claims expenditures in accompanying notes in the financial report, but this information is not included in OSC data. The proportion of these costs that follow from lawsuits covering a particular matter, e.g., labor law, is undetectable in this dataset.

Also, it is important to note that annual expenditures for judgments and claims can be misleading as markers for the total lawsuit costs in a given year, and can underestimate or overestimate the full cost of a judgment or claim.

---

<sup>2</sup> Level 2 data offers more detailed revenue and expenditure data in this dataset.

Municipal officials show caution and pragmatism when dealing with judgments and claims that may be decided against the municipality, setting aside funds to cover a case that is nearing resolution, but not yet settled. Lawsuits can take years, sometimes a decade before reaching finality. As resolution nears, legal counsel will often suggest putting aside funds to cover the expected outlay of funds. In the case of a judgment or claim that a municipality does pay, the one year expenditure will underestimate the total amount that has been held in reserve to cover the payment. And, although admittedly less likely, if a case is not expected to be decided in favor of a municipality but does, reserved funds will not be used, and the record of expenditures in previous years of precautionary savings will overstate judgment and claims payments. As a result, assessing judgment and claims data is likely to yield a more accurate picture if aggregated in multiyear clusters.

Law costs are even more broad and varied. They are incurred each year by virtually all municipalities. And with municipal legal activity and costs speaking to a wide range of operations (including costs related to judgments and claims), the data provided by municipalities to OSC is too aggregated to be of value in assessing lawsuit costs.

## V. Findings

**Frequency Data.** The data in **Table 1** show that for each year examined, county and city governments are more likely to incur expenses relating to judgments and claims than towns and villages. Counties generally cover larger geographic areas, contain a broader tax base, manage larger operational and administrative operations, and encompass greater populations. Cities are likely to be more densely populated, and contain more heavily used assets and infrastructure than other municipalities. These differences need to be remembered when thinking about the likelihood and impacts of judgment costs on different kinds of municipalities.

In a typical year over this 5-year span, 73% of county governments report expenditures for judgments and claims. Those figures for cities, towns, and villages respectively are 74%, 18%, and 23%. These numbers represent the number of municipalities reporting such costs, but do not necessarily reflect the full set of cases, claims, and costs experienced by municipalities.

As municipalities vary considerably in terms of demographics, infrastructure, and commerce, these factors are presumably important determinants of municipal lawsuit and cost levels. Comparing costs on the basis of municipal type is an important angle, but not the only one. POLIS is in the process of coding judgment costs on the basis of income, municipal classification (as stipulated by OSC), population, and region. Findings will be reported later in the research process.

Table 1 Frequency of Judgments and Claims

Number of Municipalities Paying Judgment and Claims Payments* (excluding New York City)					
Government <sup>1</sup>	2005	2006	2007	2008	2009
Counties (57)	43	41	40	42	42
Cities (61)	47	45	46	44	43
Towns (932)	170	159	173	175	167
Villages (556)	122	134	125	130	136
<b>Total (1606)</b>	<b>382</b>	<b>379</b>	<b>384</b>	<b>391</b>	<b>388</b>

\* Data from the NYS Office of the State Comptroller 2005-09

<sup>1</sup> Number of governments appearing in 2009 OSC Level 2 Data

**Expenditure Data.** When looking at actual expenditures, counties spend more on judgments and claims than any other kind of municipality, suggestive of a greater number of cases or more costly cases. **Table 2** reveals that, in the aggregate, county governments also experience the most variability year to year. While cities, towns, and villages also experience a degree of fluidity, it is much less marked. While good guesses can be made, and variability is inherent to judgments and claims, subsequent data and analysis for this project may shed light on the specific sources of this variability.

Table 2 Judgment and Claims Expenditures

Judgment and Claims Expenditures By Municipal Category* (excluding New York City)						
Government	2005	2006	2007	2008	2009	Total
Counties	311,926,722	48,513,565	74,794,449	133,964,010	78,358,110	<b>647,556,856</b>
Cities	21,306,162	20,085,960	22,124,494	28,136,390	34,736,493	<b>126,389,499</b>
Towns	23,354,423	23,692,692	50,781,894	36,861,267	32,027,765	<b>166,718,041</b>
Villages	15,462,000	16,732,284	22,374,934	27,056,408	22,605,340	<b>104,230,966</b>
<b>Total</b>	<b>372,049,307</b>	<b>109,024,501</b>	<b>170,075,771</b>	<b>226,018,075</b>	<b>167,727,708</b>	<b>1,044,895,362</b>

\* Data from the NYS Office of the State Comptroller 2005-09

As a percentage of total municipal budgets, judgment expenditures represented a relatively small portion for each type of local government. For counties, judgment costs were about .5% of overall budgetary outlays for the period 2005 to 2009. For cities, that number was .6%. Towns and villages, respectively, were at .5% and .8%.



While judgment costs were generally low in proportion to total expenditures, in some cases individual municipalities and counties experienced higher costs on a sustained or intermittent basis. This can be quite a fiscal shock for a small local government. In 2007, the Town of Haverstraw in Rockland County incurred judgment costs of nearly \$27 million, or 47% of the entire town budget that year. The town budget virtually doubled as a result of judgment and claims payments. The previous year (2006), the Village of Broadalbin in Fulton County incurred judgment costs equaling 17% of overall expenditures, approximately \$175,000 in a village with a budget of just over \$1 million (in all other years between 2005 and 2009, Broadalbin had no judgment costs). Haverstraw and Broadalbin's experiences are outliers in the data, but a number of other local governments have experienced less dramatic spikes in judgment costs (to around 5% or 6% of total expenditures). The Town of Amherst, for example, saw its judgment costs increase nearly 6-fold in 2009 to over \$7 million, or 5% of their total annual expenditures that year. Other local governments carry regular annual judgment costs that can reach 5% or 6% of total fiscal outlays, including Cattaraugus County.

In contrast, many municipalities recorded no judgment costs in any of the five years evaluated for this study. These municipalities almost certainly incurred some judgment and claims costs, indicating that expenditures are recorded in other categories. Case studies that will be produced in the coming months may provide insight into instances where municipalities appear to be outliers.

**Legal Data.** The 5-year total of legal expenditures for all municipalities in New York State (excluding New York City) is roughly equivalent to that for judgments and claims in the same period. It is a much more static expenditure, however, most likely because it reflects regular local needs for legal counsel. And again, only a portion of legal expenditures (and very likely a small one) are related to the types of judgments and claims this study is exploring.

Table 3 Legal Expenditures by Municipal Category

Legal Expenditures By Municipal Category* (excluding New York City)						
Government	2005	2006	2007	2008	2009	Total
Counties	105,466,487	119,106,544	112,793,294	97,664,206	96,575,196	531,605,727
Cities	24,751,222	25,233,681	26,258,464	27,149,854	26,677,581	130,070,802
Towns	54,215,827	56,195,202	58,693,593	59,608,426	61,368,386	290,081,434
Villages	22,353,476	23,712,284	26,823,535	28,141,267	26,052,246	127,082,808
<b>Total</b>	<b>206,787,012</b>	<b>224,247,711</b>	<b>224,568,886</b>	<b>212,563,753</b>	<b>210,673,409</b>	<b>1,078,840,771</b>

\* Data from the NYS Office of the State Comptroller 2005-09

**County By County Expenditures.** When examining municipal judgment and claims costs on a geographic basis, including all municipalities in a county, significant variability is observed both county to county and year to year. This is partly a function of the lower rate of judgment and claims costs for towns and villages, and partly a function of occasional large spikes for county and city governments. Again, given the different plans and policies available

to municipalities, these costs are not necessarily complete or comparable. Self-insurance and private insurance costs are generally not captured below. While they have not been provided in the body of this report, POLIS has built judgment cost tables for each county, listing annual and five-year totals for the cities, towns, and villages in the county. This will be provided electronically to LRANY.

Table 4a Countywide Expenditures

Judgment and Claims Cost, All Municipalities Within the County *						
(excluding New York City)						
County	2005	2006	2007	2008	2009	Total
Albany	1,937,414	1,154,639	1,229,439	764,890	1,519,837	6,606,219
Allegany	86,629	64,511	0	73,960	95,444	320,544
Broome	112,515	97,747	1,037,019	253,068	2,184,135	3,684,484
Cattaraugus	9,202,277	9,677,143	10,588,391	12,491,510	12,146,817	54,106,138
Cayuga	601,872	345,513	278,397	301,451	632,939	2,160,172
Chautauqua	577,551	133,569	297,405	138,651	61,815	1,208,991
Chemung	85,455	8,944	39,585	1,805	19,076	154,865
Chenango	15,661	18,240	45,147	45,403	64,679	189,130
Clinton	60,395	89,589	23,746	41,677	91,105	306,512
Columbia	16,720	2,846	19,262	7,971	11,238	58,037
Cortland	16,580	19,242	12,360	5,748	23,330	77,260
Delaware	9,661	8,812	15,103	406,244	10,629	450,449
Dutchess	610,878	587,082	761,707	188,774	789,531	2,937,972
Erie	9,931,425	9,873,112	9,136,384	20,337,602	21,643,812	70,922,335
Essex	170,373	162,038	101,953	216,759	161,643	812,766
Franklin	15,533	22,193	7,459	37,881	4,813	87,879
Fulton	7,996	192,962	9,373	30,664	77,769	318,764
Genesee	42,523	53,775	46,487	101,192	57,771	301,748
Greene	111,244	88,137	105,110	68,102	565,967	938,560
Hamilton	26,107	10,703	1,861	6,350	180,500	225,521
Herkimer	12,896	35,777	302,663	116,270	46,905	514,511
Jefferson	77,345	141,245	32,040	87,700	167,534	505,864
Lewis	227,747	37,450	168,400	80,730	5,964	520,291
Livingston	6,904	5,817	4,071	24,175	28,000	68,967
Madison	300,794	1,077	809,699	623,607	1,116,165	2,851,342
Monroe	4,322,518	747,048	1,536,737	2,474,418	5,535,750	14,616,471

**Judgment and Claims Cost, All Municipalities Within the County\***  
(excluding New York City)

Montgomery	237,665	3,581,653	260,921	200,483	120,973	<b>4,401,695</b>
Nassau	277,014,659	19,649,894	35,553,464	109,998,159	21,515,241	<b>463,731,417</b>
Niagara	4,492,730	512,438	633,856	1,114,122	189,394	<b>6,942,540</b>
Oneida	1,983,755	903,440	1,047,063	1,001,650	1,067,452	<b>6,003,360</b>
Onondaga	3,504,943	(4,207,346)	6,349,711	3,433,334	6,123,293	<b>15,203,935</b>
Ontario	49,855	31,524	(58,381)	62,328	19,986	<b>105,312</b>
Orange	3,532,020	3,649,871	1,370,264	7,472,947	7,494,189	<b>23,519,291</b>
Orleans	3,178	47,822	78,240	34,286	54,348	<b>217,874</b>
Oswego	788,688	233,966	375,281	49,556	43,315	<b>1,490,806</b>
Otsego	8,065	4,930	6,639	21,666	17,057	<b>58,357</b>
Putnam	471,012	343,694	387,331	606,505	812,979	<b>2,621,521</b>
Rensselaer	211,271	280,941	671,924	647,438	305,995	<b>2,117,569</b>
Rockland	3,703,954	11,265,573	37,117,429	4,138,572	4,283,047	<b>60,508,575</b>
St. Lawrence	95,296	104,745	131,682	99,602	199,105	<b>630,430</b>
Saratoga	309,746	527,384	171,183	240,719	138,619	<b>1,387,651</b>
Schenectady	316,843	181,913	217,940	265,367	313,902	<b>1,295,965</b>
Schoharie	89,207	213,823	4,854	23,880	19,633	<b>351,397</b>
Schuyler	\$18,844	\$27,018	\$19,437	\$2,279	\$5,000	<b>\$72,578</b>
Seneca	\$0	\$0	\$233	\$150	\$8,347	<b>\$8,730</b>
Steuben	183,869	(5,794)	486,145	197,979	843,824	<b>1,706,023</b>
Suffolk	10,461,316	7,766,904	7,370,006	6,332,220	6,598,399	<b>38,528,845</b>
Sullivan	206,749	142,789	577,933	594,923	121,853	<b>1,644,247</b>
Tioga	142,703	57,276	40,886	21,902	21,171	<b>283,938</b>
Tompkins	239,429	294,956	221,362	189,187	542,746	<b>1,487,680</b>
Ulster	220,596	435,562	267,170	326,275	1,529,957	<b>2,779,560</b>
Warren	18,614	221	500	0	11,198	<b>30,533</b>
Washington	11,824	16,907	11,337	44,146	27,314	<b>111,528</b>
Wayne	418,564	184,196	140,300	179,320	213,754	<b>1,136,134</b>
Westchester	34,686,227	39,173,273	49,943,955	49,750,680	67,814,385	<b>241,368,520</b>
Wyoming	1,741	70	0	408	366	<b>2,585</b>
Yates	38,934	25,556	67,308	41,502	27,701	<b>201,001</b>
<b>Total</b>	<b>372,049,310</b>	<b>109,024,410</b>	<b>170,075,771</b>	<b>226,018,187</b>	<b>167,727,711</b>	<b>1,044,895,389</b>

\* Data from the NYS Office of the State Comptroller 2005-09; county level distribution calculated by the POLIS team

**New York City Data.** The data on New York City data is maintained separately in OSC files, and its judgment and claims costs are being reported in a standalone table below. It is important to note that New York City's expenditures in this category are smaller than some of the smallest counties and municipalities in New York State. This is not indicative of any unusually safe work conditions, good luck, or great legal representation, but rather the

fact that New York City, like many municipalities, is not recording all related expenditures in judgments and claims. Data on self-insured municipalities in the next report, which includes New York City, will surely increase the total cost of judgments and settlements paid by the city.

Table 5 Judgments and Claims for New York City

Judgments and Claims for New York City*					
2005	2006	2007	2008	2009	Total
590,294.00	516,801.00	564,037.00	625,395.00	623,192.00	2,919,719

\* Data from the NYS Office of the State Comptroller 2005-09

## VI. Concluding Comments

This report is part of a larger study effort seeking to understand the aggregate fiscal impact of liability lawsuits brought against municipalities in New York State. The data presented here captures annual municipal payouts for judgments and settlements, figures that may overstate liability costs slightly because small amounts for non-liability claims are comingled in the totals. At the same time, the totals dramatically understate the overall expenditures for lawsuits when insurer payouts are taken into account. Nevertheless, this report is an appropriate and important starting point for the research project. The study outlines and captures to the degree possible, a key part of the cost universe, spells out the hurdles in assembling needed data, and brings us a step closer in being able to determine whether the overall cost of municipal lawsuits is serious enough to be addressed through the policy process.