

**UNITED STATES DISTRICT COURT
ALFRED A. ARRAJ UNITED STATES COURTHOUSE
DENVER, COLORADO**

**Boyd N. Boland
United States Magistrate Judge**

303-844-6408

MEMORANDUM

TO: Judge O. Edward Schlatter
Judge Patricia A. Coan
Judge Michael J. Watanabe
Judge Craig B. Shaffer
Judge Gudrun J. Rice
Judge David L. West

RE: **Civil Jury Verdict Outcomes: 2003**

DATE: January 26, 2004

In calendar year 2003, there were 47 cases in the District of Colorado tried to verdicts by juries. Also in 2003, there were 2672 civil cases filed. Thus, a number equal to 1.75% of the civil cases filed in 2003 were tried to a jury verdict.

This memorandum analyzes the jury trials and efforts to settle those cases. The raw statistics are contained in the end notes.

Statistics concerning amounts offered in settlement are provided for your use only and, of course, are confidential.

A. TRIAL OUTCOMES: VERDICT AMOUNTS

Of the 47 civil jury trials, 26 resulted in plaintiffs' verdicts (55%) and 21 resulted in defense verdicts (45%).

The average amount of the verdicts received by plaintiffs was \$851,504.¹ The largest verdict was \$7,464,531, and the smallest was \$0. There were seven verdicts of \$1 million or more; eight verdicts between \$100,000 and \$1 million, ranging from a high of \$770,000 to a low of \$258,725; and 11 verdicts of less than \$100,000 ranging from a high of \$50,000 to a low of \$0.

The average verdict in all cases that proceeded to trial, including both plaintiff's and defense verdicts, was \$471,045.

In a recent study commissioned by the American Bar Association, the author concluded that cases which proceed to trial are more complex and take longer to try. Accordingly, "[a]s smaller cases--and presumably shorter trials--become less frequent, there is an increase in the portion of longer trials as well as the size of verdicts." Marc A. Galantar, The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts. (American Bar Ass'n 2003) (the "ABA Report"). The jury trials analyzed here ranged in length from 3 to 19 days, with an average length of 5.6 days. Only one trial lasted more than nine days. Fifteen of the trials lasted five days, the most common length. Thirty of the 47 jury trials (64%) lasted five days or less.

Active Colorado district judges tried 33 cases; senior district judges tried 12 cases; and Wyoming district judges tried two cases.² No civil jury trials were conducted by magistrate judges in 2003.

B. BREAKDOWN BY NATURE OF CLAIM

The 47 trials fell into the following categories based on the nature of the plaintiff's claim:³

Category	No. of cases	% of cases tried
Employment	22	47%
Negligence	10	21%
Civil Rights	7	15%
Breach of Contract	6	13%
Intellectual Property	1	2%
Fraud	1	2%

The nature of the cases proceeding to trial in the District of Colorado is consistent with national trends. The ABA Report indicates that nationally for 2002, 41% of cases tried to juries were employment cases and 26% were torts cases.

Significantly, 29 of the 47 jury trials (62%) involved claims which provided for the award of attorneys fees to a prevailing plaintiff. The plaintiffs prevailed in 11 of those 29 cases (38%).

Taking a case to trial is not without risk to the defendant. In 21 of the 47 cases tried, the defendants prevailed. The defendants were awarded their costs in nine of the 21 cases tried to defense verdicts (43%); the cases were settled before the issue of costs was determined in three cases (14%); the prevailing defendants did not seek costs in three cases (14%); in two cases, the prevailing defendants were ordered to pay their own costs (10%); and the issue of costs still is pending in four cases (19%). The amount of costs awarded ranged from a high of \$6,323 to a low of \$701, averaging \$2,629.

1. Employment

Employment cases accounted for 22 of the 47 civil jury trials, or 47% of the trials.

During 2003, employment cases compromised approximately 20% of this Court's overall civil caseload. Thus, a disproportionately large number of employment cases proceeded to trial.

Of the 22 employment cases tried, 10 resulted in verdicts for the plaintiff (45%) and 12 resulted in verdicts for the defense (55%).

Two cases involved claims of reverse gender discrimination. In one of them, the jury found for the plaintiff but awarded zero damages; the second resulted in a defense verdict. The largest verdict in an employment case was \$770,000. The average amount of the plaintiffs' verdicts in the employment cases was \$273,738.⁴ The average recovery on all employment cases tried, including both plaintiffs' and defense verdicts, was \$124,426.50.

Of the 22 employment cases that went to trial, five involved claims of retaliation (23%); five involved claims of gender-based discrimination (23%), including two cases asserting reverse gender discrimination; three alleged age discrimination (14%); three cases alleged discrimination based on disability (14%); two involved claims of race discrimination (9%); two involved claims by public employees for wrongful termination (9%); one alleged a hostile work environment based on religion (4%); and one alleged termination in violation of public policy (4%).

A comprehensive analysis of the employment cases is attached as a note.⁵

2. Negligence

Ten of the 47 trials (21%) were negligence cases. Seven resulted in plaintiffs' verdicts (70%), while three were defense verdicts (30%). The plaintiffs' verdicts ranged from a high of \$7,464,531 to a low of \$0. The average value of the plaintiffs' verdicts was \$1,529,794. The

average recovery in all negligence cases, including both plaintiffs' and defense verdicts, was \$1,070,856.

An analysis of these cases is contained in the note.⁶

3. Civil Rights (Other Than Employment)

Civil rights (other than employment) cases accounted for seven of the 47 trials (15%). Of those, two resulted in plaintiffs' verdicts (29%) and five were defense verdicts (71%). The plaintiffs' verdicts were in the amounts of \$1,500 and \$1, respectively.

Four of the civil rights cases concerned excessive force by police (57%); one alleged an unlawful arrest (14%); and one alleged retaliation by prison guards against an inmate for filing a lawsuit (14%). In the final civil rights case, the plaintiff alleged denial of medical assistance based on disability, in violation of the Americans With Disabilities Act. The plaintiff did not succeed in any of the excessive force cases. The plaintiffs prevailed in the retaliation and the unlawful arrest cases.

An analysis of the civil rights cases is in the note.⁷

4. Breach of Contract

Six trials (13%) involved claims for breach of contract. Five cases resulted in verdicts for the plaintiff (83%), while one resulted in a defense verdict (17%). The plaintiffs' verdicts included one award of specific performance valued at more than \$2,000,000. The other verdicts ranged from a high of \$2,482,487 to a low of \$258,725. The average value of the plaintiffs' verdicts was \$1,162,982. The average recovery in all breach of contract cases, including both plaintiffs' and defense verdicts, was \$969,135.

The cases are analyzed in the note.⁸

5. Intellectual Property

There was one trial involving intellectual property (2%), asserting patent infringement. The plaintiff prevailed and was awarded damages of \$1,205,000 and a permanent injunction against future infringement.⁹

6. Fraud

One case alleged claims of fraud (2%). The plaintiff prevailed and was awarded damages of \$1,671,862.

C. SETTLEMENT EFFORTS

In 2003 the magistrate judges conducted 863 settlement conferences. In 660 cases, a settlement was reached at or after the initial settlement conference, resulting in a success rate of 76%.¹⁰

The 47 cases that went to trial did not settle, obviously. An analysis of the parties' settlement positions compared to the results at trial follows.

1. Cases Where the Defendant Offered Zero

It is particularly difficult to settle cases where the defendant makes no monetary offer. That occurred in 16 of the 47 cases (34%) that proceeded to a jury verdict.

The plaintiffs prevailed in 11 of the 16 cases (69%) where the defendant made no settlement offer. The defendants prevailed in only five of the 16 (31%). Among those cases where the plaintiff prevailed, in one instance the jury awarded zero damages; in a second case the jury found that the plaintiff was 50% responsible, resulting in no damages being awarded; and in a third case the jury awarded damages of \$1.

In four of the seven cases resulting in a verdict of \$1 million or more, the defendant made no monetary offer to settle. The average verdict in the 16 cases where the defendant made no settlement offer and the plaintiff prevailed was \$894,767.

The cases are analyzed in the note.¹¹

2. Cases Where the Verdict Exceeded Defendant's Last Settlement Offer

The plaintiffs received a verdict that exceeded the defendant's last settlement offer in 21 of the 47 cases (45%) that went to trial. In ten of these cases, the defendant made no settlement offer at all.

In six of the seven cases resulting in a verdict exceeding \$1 million, the verdict was far greater than the last settlement offer. In four of the cases resulting in verdicts of more than \$1 million, the defendant made no settlement offer at all.

Using \$50,000 as an assumed cost of defense, the defendant failed to offer the cost of defense in 16 of the 21 cases (76%) where the verdict exceeded the last settlement offer.

On average, the verdict exceeded the last settlement offer by more than fifteen times.

These cases are analyzed in the note.¹²

3. Cases Where the Last Settlement Offer Exceeded the Verdict

By contrast, in 15 of the 47 cases tried (32%), the defendant's last settlement offer exceeded the verdict. In 13 of those 15 cases, the trial resulted in a defense verdict. Put another way, in 13 of the 15 cases tried to a defense verdict (87%), the defendant made a settlement offer in some amount that was rejected.

Significantly, in nine of the 12 employment cases (75%) tried to a defense verdict, the defendant made a settlement offer. The offers in those cases ranged from a high of \$125,000 to a low of \$2,500, with an average value of \$25,556.

The largest settlement offer made and rejected in this category of cases was \$125,000, in an employment case. The average settlement offered but rejected was \$28,667.

The cases are analyzed further in the note.¹³

4. Analysis by Type of Case

A full analysis of the cases, comparing verdicts against last settlement offers, is contained in the note.¹⁴

In employment cases, the verdict exceeded the defendant's last settlement offer nine times out of the 22 cases tried (41%). Three times (14%), the defendant offered zero and the case was tried to a defense verdict.

In negligence cases, the verdict exceeded the last settlement offer three times out of the eight cases tried (38%). One time (13%), the defendant offered zero and the case was tried to a defense verdict. In one case where the defendant offered zero, the verdict was for the plaintiff but the allocation of fault resulted in no damages being awarded.

In civil rights cases, the verdict exceeded the defendant's last settlement offer one time out of the seven cases tried (14%). In two cases (29%), the defendant rejected settlement offers and later lost the case.

In cases involving claims for breach of contract, the verdict exceeded defendant's last settlement offer in five of the six cases tried (83%). In three of the six cases resulting in plaintiff's verdicts (50%), the defendant made no settlement offer whatsoever.

Finally, in each of the two intellectual property and fraud cases tried, the verdicts exceeded the defendants' last settlement offers.

D. CONCLUSION

It is striking that only 1.75% of the cases filed proceeded to trial. It also is significant that the average time from filing the complaint to verdict in the cases analyzed is 35 months.¹⁵

Almost nothing can be predicted about the odds of prevailing at trial. In 2003, plaintiffs won 55% of the time and defendants prevailed 45% of the time. In 2002, by contrast, plaintiffs prevailed 45% of the time and defendants 55%. Over two years, the odds of a plaintiff prevailing are 50/50.

Significantly, plaintiffs who lost at trial left money on the settlement table 87% of the time. Defendants who refused to make any monetary settlement offer lost at trial 69% of the time.

I hope these statistics are helpful. Please let me know if you have any questions or would like additional information.

1. The amounts of the verdicts, from largest to smallest, are set out below:

	Amount	Type of Case
1	\$7,464,531	products liability
2	2,000,000+	breach of contract (specific performance)
3	2,482,487	breach of contract
4	1,671,862	fraud
5	1,612,596	negligence
6	1,564,800	negligence
7	1,205,000	patent infringement
8	770,000	employment: hostile work environment (religion)
9	640,300	breach of contract
10	600,000	employment retaliation
11	518,260	wrongful discharge in violation of First Amendment rights
12	433,297	breach of contract
13	417,923	age discrimination
14	302,500	gender discrimination
15	258,725	breach of contract
16	50,000	discrimination based on disability
17	49,400	wrongful discharge in violation of due process
18	34,336	negligence
19	30,000	negligence
20	25,000	employment retaliation
21	4,300	employment retaliation
22	2,297	negligence

23	1,500	civil rights
24	1	civil rights
25	0	negligence (50% contributory against plaintiff)
26	0	gender discrimination (reverse)
	TOTAL:	\$22,139,115

2. A breakdown of the trials by judge follows:

Judge	Type of Case	Outcome	Amount of Verdict
Babcock	1. products liability	P	\$7,464,531
	2. patent infringement	P	\$1,205,000
	3. hostile work environment (religion)	P	\$770,000
	4. negligence	D	--
Nottingham	1. breach of contract	P	\$2,000,000+ (specific performance)
	2. gender discrimination (reverse)	D	--
	3. gender discrimination	D	--
	4. civil rights	D	--
Daniel	1. fraud	P	\$1,671,862
	2. employment retaliation	P	\$600,000
	3. age discrimination	P	\$417,923
	4. discrimination based on disability	D	--
	5. discrimination based on disability	D	--
Miller	1. gender discrimination	P	\$302,500
	2. employment retaliation	P	\$25,000
	3. gender discrimination	D	--
	4. civil rights	D	--
Krieger	1. negligence	P	\$1,612,596
	2. wrongful discharge: First Amendment	P	\$518,260
	3. breach of contract	P	\$258,725
	4. employment retaliation	P	\$4,300
	5. civil rights	P	\$1,500
	6. civil rights	P	\$1
	7. negligence	P	\$0
	8. civil rights	D	--
	9. age discrimination	D	--

Blackburn	1. wrongful discharge: due process	P	\$49,400
	2. negligence	P	\$2,297
	3. age discrimination	D	--
	4. race discrimination	D	--
	5. civil rights	D	--
	6. civil rights	D	--
	7. breach of contract	D	--
Matsch	1. breach of contract	P	\$2,482,487
	2. negligence	P	\$1,564,800
	3. discrimination based on disability	P	\$50,000
	4. employment retaliation	D	--
Kane	1. gender discrimination (reverse)	P	\$0
	2. wrongful discharge in violation of public policy	D	--
Weinshienk	1. breach of contract	P	\$640,300
	2. breach of contract	P	\$433,297
	3. employment retaliation	D	--
	4. negligence	D	--
Sparr	1. negligence	P	\$30,000
	2. race discrimination	D	--
Johnson (Wyoming)	1. negligence	P	\$34,336
	2. negligence	D	--

A breakdown of the magistrate judges assigned to the cases that went to trial shows:

<u>Magistrate Judge</u>	<u>Cases Tried</u>
Schlatter	12
Coan	9
Watanabe	8
Boland	8
Shaffer	10

Civil Rights		
1. excessive force	0	\$25,000
2. denial of medical treatment	<u>0</u>	<u>\$15,000</u>
SUBTOTAL:	0	\$40,000
AVERAGE:	0	\$20,000

TOTAL VERDICTS: \$36,633 AVERAGE VERDICTS: \$2,442
 TOTAL OFFERS: \$430,000 AVERAGE OFFERS: \$28,667

14. An analysis comparing verdicts and settlement offers in every case tried to a verdict in 2003 follows:

Type of case	Prevailing Party	Amount of Verdict	Last Settlement Offers
Employment:			
Retaliation: 1	plaintiff	\$600,000	P: \$300,000 D: 0
2	plaintiff	\$25,000	P: \$60,000 D: 17,500
3	plaintiff	\$4,300	P: \$40,000 D: \$2,500
4	defendant	--	P: \$120,000 D: \$10,000
5	defendant	--	P: \$470,000 D: \$10,000
Gender Discrimination: 1	plaintiff	\$302,000	P: \$1,000,000 D: \$69,000
2	plaintiff	0	P: \$0 D: \$0
3	defendant	--	P: \$210,000 D: \$125,000
4	defendant	--	P: \$50,000 D: \$2,500
5	defendant	--	P: \$50,000 D: \$5,000
Age Discrimination: 1	plaintiff	\$417,923	P: \$1,00,000 D: \$325,000
2	defendant	--	P: \$165,000 D: \$60,000
3	defendant	--	P: \$87,500 D: \$10,000

Race Discrimination: 1	defendant	--	P: \$85,000 D: \$2,500
2	defendant	--	P: \$0 D: \$0
Disability Discrimination: 1	plaintiff	\$50,000	P: \$143,000 D: \$0
2	defendant	--	P: \$18,500 D: \$5,000
3	defendant	--	P: \$150,000 D: \$0
Wrongful Discharge Public Employee: 1	plaintiff	\$518,260	P: \$200,000 D: \$98,000
2	plaintiff	\$49,400	P: \$120,000 D: \$10,000
Hostile Work Environment (Religion) 1	plaintiff	\$770,000	P: \$475,000 D: \$10,000
Wrongful Discharge: Public Policy: 1	defendant	--	P: \$0 D: \$0

Negligence:			
Personal Injury: 1	plaintiff	\$1,612,596	P: \$2,800,000 D: \$0
2	plaintiff	\$1,564,800	P: \$750,000 D: \$99,900
3	plaintiff	\$34,336	P: \$850,000 D: \$75,000
4	plaintiff	\$30,000	P: \$75,000 D: \$12,500
5	plaintiff	\$2,297	P: \$140,000 D: \$35,000
6	plaintiff	\$0	P: \$1,000,000 D: \$0
7	defendant	--	P: \$700,000 D: \$0
8	defendant	--	P: \$85,000 D: \$40,000
Medical Malpractice: 1	defendant	--	P: \$750,000 D: \$10,000
Products Liability: 1	plaintiff	\$7,464,531	P: \$0 D: \$0

Civil Rights			
Unlawful Arrest: 1	plaintiff	\$1	P: \$25,000 D: \$0
Excessive Force: 1	defendant	--	P: \$150,000 D: \$25,000
2	defendant	--	P: \$0 D: \$0
3	defendant	--	P: \$0 D: \$0
4	defendant	--	P: \$20,000 D: \$0
Retaliation 1:	plaintiff	\$1,500	P: \$0 D: \$0
ADA (medical treatment) 1:	defendant	--	P: \$100,000 D: \$15,000
Breach of Contract			
1	plaintiff	\$2,000,000+	P: specific perf. D: \$2,000,000
2	plaintiff	\$2,482,487	P: \$0 D: \$0
3	plaintiff	\$640,300	P: \$300,000 D: \$0
4	plaintiff	\$433,297	P: \$400,000 D: \$0
5	plaintiff	\$258,725	P: \$200,000 D: \$30,000
6	defendant	--	P: \$113,000 D: \$7,500

Intellectual Property			
1	plaintiff	\$1,205,000	P: \$700,000 + royalty D: \$725,000 + no royalty
Fraud			
1	plaintiff	\$1,671,862	P: \$3,500,000 D: \$0

15. Statistics compiled by the Administrative Office of the United States Courts for the 12 month period of October 1, 2002, to September 30, 2003, show that in the District of Colorado the average time from filing to disposition other than by trial was 9.3 months.