

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

Boyd N. Boland
United States Magistrate Judge

303-844-6408

MEMORANDUM

TO: Chief District Judge
All Magistrate Judges
Clerk of the Court

RE: **Civil Jury Verdicts: 2004**

DATE: January 19, 2005

This memorandum analyzes the jury verdicts returned in the District of Colorado in calendar year 2004¹ and the efforts to settle the cases that went to trial that year. Statistics concerning amounts offered in settlement are provided for your use only and are confidential.

A substantial body of academic literature exists which links trials and settlement efforts. "Rather than two separate tracks--adjudication on the one hand and negotiation and settlement on the other--there is a single process of pursuing remedies in the presence of courts."² This process has been labeled "bargaining in the shadow of the law"³ because settlement negotiations rely on

¹The focus here is on verdicts, not judgments. The judgment entered following a jury verdict often differs from the verdict. In at least 16 of the cases tried to juries in 2004, either the cases were settled before the entry of judgments or the judgments that were entered differed materially from the verdicts. In a number of other cases tried in 2004, judgments have not yet been entered.

²Marc Galanter and Mia Cahill, "Most Cases Settle: Judicial Promotion and Regulation of Settlements," 46 Stan. L. Rev. 1339, 1341-42 (1994).

³Robert H. Mnookin and Lewis Kornhauser, "Bargaining in the Shadow of the Law: The Case of Divorce," 88 Yale L. Rev. 950 (1979).

the results of trials and appeals to produce precedents which serve as guides to valuing cases. "It is in the 'shadow' of these adjudicated cases that most cases are resolved by settlement."⁴ Consequently, compiling and distributing information about the outcomes of trials serves to facilitate informed settlements.

A. OVERVIEW

Fifty-one civil cases were tried to jury verdicts in 2004. In the same time period, 2698 civil cases were filed.⁵ The ratio of cases tried to cases filed in 2004 is less than 2%.

The comparison is imprecise because none of the cases tried in 2004 were filed in 2004. To the contrary, the following chart shows the years of filing of the cases tried:

<u>Year Filed</u>	<u>No. Tried in 2004</u>
1995	1
1997	2
1998	2
1999	2
2000	6
2001	7
2002	25
2003	6

The average time from the filing of a case to its trial was 34 months. The shortest time from filing to trial was 12 months, achieved in two cases. The 2% ratio provides a snapshot of the likelihood of trial rather than describing which cases went to trial.

⁴Kevin C. McMunigal, "The Costs of Settlement: The Impact of Scarcity of Adjudication on Litigating Lawyers," 37 U.C.L.A. L. Rev. 833, 856 (1990).

⁵This compares with 47 jury trials and 2672 civil filings in 2003. The number of civil jury trials increased by 6% while the number of civil filings increased by 1%.

B. TRIAL OUTCOMES: VERDICT AMOUNTS

Of the 51 civil jury trials, 25 resulted in plaintiffs' verdicts (49%) and 26 resulted in defense verdicts (51%).⁶

The average verdict received by plaintiffs was \$1,686,950, and the median⁷ verdict was \$250,000.⁸ The largest verdict was \$9,340,000, and the smallest was \$0. There were six verdicts of \$1 million or more; ten verdicts between \$100,000 and \$1 million, ranging from a high of \$921,661 to a low of \$100,000; and six verdicts of less than \$100,000, ranging from a high of \$88,798 to a low of \$0.

In three cases, the issue of damages was not before the jury: in one, damages were bifurcated for a later trial; in the second, only statutory damages were sought, to be awarded by the trial judge; and in the third, the jury determined that the plaintiff had no additional tax liability to the IRS.

The amounts of the verdicts, from largest to smallest, are contained in **Table 1**.

Active Colorado district judges presided over 33 jury trials; senior district judges presided over 12 jury trials; Wyoming district judges presided over four jury trials; and magistrate judges presided over two jury trials. A breakdown of the trials by judge is set out in **Table 2**.

⁶In 2003, the plaintiffs prevailed in 55% of the jury trials, and in 2002 the plaintiffs prevailed in 45% of the jury trials.

⁷The median is the verdict with the middle value in the distribution. Half the verdicts had a value greater than the median and half the verdicts had a value less than the median.

⁸The three cases where damages were not sought from the jury have been excluded in calculating the average and median verdicts.

The shortest jury trial lasted 2 days; the longest was 18 days. The average length of trial was slightly more than 6 days.⁹ Thirteen trials lasted 4 days and 13 trials lasted 5 days--the most frequently encountered trial lengths. Trial lengths are specified in **Table 3**.

C. BREAKDOWN BY NATURE OF CLAIM

The cases tried fell into eight categories, based on the nature of the plaintiff's claim:

Category	No. of cases	% of cases tried
Employment	17	33%
Breach of Contract	10	20%
Civil Rights	9	18%
Negligence	9	18%
Intellectual Property	3	6%
Qui Tam	1	2%
Securities	1	2%
Tax	1	2%

Significantly, far fewer employment cases were tried in 2004 than in 2003. In 2003, there were 22 trials involving employment claims (or 47% of the total 47 jury trials conducted that year), as compared to 17 employment trials in 2004 (or 33% of the 51 jury trials). This 14% decline in the number of employment trials is a significant change.

In addition, at least 29 of the 51 jury trials conducted in 2004 (57%) involved claims which provided for the award of attorneys' fees to a prevailing plaintiff. The plaintiffs prevailed in 11 of those 29 cases (38%).

⁹The jury trials in 2003 ranged in length from 3 to 19 days. The average trial in 2003 was 5.6 days as compared to 6.1 days in 2004.

1. Employment

Employment cases accounted for 17 of the 51 civil jury trials, or 33%. In general, employment cases historically have compromised approximately 13% of this Court's overall civil caseload. Thus, a disproportionately large number of employment cases went to trial.

Of the 17 employment cases tried to juries, nine resulted in verdicts for plaintiffs (53%)¹⁰ and eight resulted in verdicts for the defense (47%).

The largest verdict in an employment case was \$8,006,000, comprised of \$6,000 in lost back pay; \$500,000 in pain, suffering, and mental anguish; and \$7,500,000 in punitive damages.¹¹ The average plaintiffs' verdict in the employment cases was \$1,023,592, and the median verdict was \$247,000.

In two cases, although the juries found for the plaintiffs, they awarded no damages. In both cases, however, claims for front and back pay were sought, to be awarded by the trial judge.

The amounts of the plaintiffs' verdicts in employment cases, from largest to smallest, are contained in **Table 4**.

¹⁰In 2003, the plaintiffs prevailed in only 45% of the employment trials.

¹¹An argument in favor of settlement is that it "protects against the possibility of an outcome at an extreme point on the range of possible outcomes." Janet Cooper Alexander, "Do the Merits Matter? A Study of Settlements in Securities Class Actions," 43 *Stan. L. Rev.* 497, 504 (1991). This case is an example. Neither party anticipated an outcome so extreme. At the last settlement conference, the plaintiff demanded only \$250,000, and the defendant offered \$20,000. As a result of post-trial motions, the award was substantially reduced and judgment was entered for the plaintiff in the amount of \$1,012,000, composed of back pay of \$6,000; non-economic damages of \$500,000; and punitive damages of \$506,000.

Of the 17 employment cases tried to juries, eight involved claims of retaliation (47%);¹² three alleged discrimination based on disability (18%); two involved claims of race discrimination (12%); two involved claims of gender-based discrimination (12%); one alleged age discrimination (6%); and one involved claims by a public employee for wrongful termination based on the exercise of First Amendment rights (6%).

An analysis of the employment cases is contained in **Table 5**.

2. Breach of Contract

Ten of the trials (20%) involved claims for breach of contract. Six cases resulted in verdicts for the plaintiff (60%),¹³ and four resulted in defense verdicts (40%). The jury awarded damages in five of the cases, in the following amounts from high to low:

1.	\$921,661.00
2.	501,693.00
3.	120,806.00
4.	88,798.00
5.	1.00

In the sixth case where the plaintiff prevailed, damages were severed for a separate trial.

The average plaintiffs' verdict in a breach of contract case was \$302,430, and the median verdict was \$120,806.

¹²This is a significant increase from 2003, when only 23% of the employment claims were based on retaliation.

¹³In 2003, the plaintiffs prevailed in 83% of the cases alleging breach of contract.

3. Civil Rights

Civil rights cases accounted for nine of the 51 trials (18%). Of those, one resulted in a plaintiff's verdict (11%),¹⁴ and eight were defense verdicts (89%). The plaintiff's verdict was in the amount of \$190,000.

Three of the civil rights cases concerned excessive force (33%); three alleged unlawful arrests (33%); two alleged illegal searches (22%); and one alleged cruel and unusual punishment in violation of the Eighth Amendment (11%). The plaintiff prevailed in an illegal search case.

An analysis of the civil rights cases is contained in **Table 6**.

4. Negligence

Nine of the 51 trials (18%) were negligence cases. Five resulted in plaintiffs' verdicts (56%),¹⁵ while four were defense verdicts (44%). Four of the five plaintiffs' verdicts were for more than \$1 million. The plaintiffs' verdicts ranged from a high of \$8,111,544 to a low of \$21,782. The average plaintiffs' verdict was \$3,327,521, and the median was \$1,900,000.

Five of the negligence cases involved personal injuries, including two automobile accidents. The plaintiffs prevailed in four of the five personal injury cases (80%). The average verdict in a personal injury case was \$2,131,516, and the median value was \$1,900,000.

Two of the negligence cases asserted medical malpractice. The defendants prevailed in both.

¹⁴In 2003, the plaintiffs prevailed in two of the seven (29%) cases asserting civil rights claims.

¹⁵In 2003, plaintiffs prevailed in seven of the ten (70%) cases involving claims of negligence.

Two of the negligence cases asserted products liability. The plaintiffs prevailed in one (50%), and the defendants prevailed in the other. The plaintiffs' verdict in the products liability case involved property damage and was in the amount of \$8,111,544.

The negligence cases are analyzed in **Table 7**.

5. Intellectual Property

There were three trials involving intellectual property (6%): one alleged the breach of a non-disclosure agreement; the second involved piracy of encrypted television signals; and the third concerned misappropriation of trade secrets.¹⁶ The plaintiffs prevailed in all three cases. The issue of damages was presented to the jury in two cases, resulting in awards of \$9,340,000 and \$100,000. The average verdict awarded by a jury was \$4,720,000. In the piracy case, the plaintiff sought statutory damages only, which were determined by the trial judge and not by the jury.¹⁷

6. Qui Tam

One qui tam case (Jack Grynberg was the relator) went to trial (2%). The defendant prevailed.

7. Securities

One case involving claims of securities fraud, including violations of Rule 10b-5, went to trial (2%). The defendant prevailed.

¹⁶The only intellectual property case tried to a jury in 2003 asserted patent infringement. The plaintiff prevailed.

¹⁷The trial judge awarded statutory damages of \$10,000, the maximum available, plus attorneys' fees of \$125,570.

8. Tax

The final jury trial involved the issue of whether a horse farm was operated as a business and whether losses incurred by the horse operation could be claimed for tax purposes. The plaintiff (who was the taxpayer) prevailed, and the jury found that the horse farm was operated with the primary objective of realizing a profit. Given the posture of the case, damages were not sought by the plaintiff.

D. SETTLEMENT EFFORTS

Statistically, trials are the exception rather than the rule: most litigation ends through settlement.

In this district, the magistrate judges held 807 settlement conferences in 2004, and 620 cases settled at or after an initial settlement conference. The ratio of cases settled to cases filed in 2004 is 23%. Information concerning the settlement conferences conducted on a judge by judge basis is contained in **Table 8**.

If 2% of the cases filed were tried to juries and 23% settled at or after a settlement conference, what happened to the remaining 75% of the cases? No reliable explanation is readily available. Some cases are settled without the necessity of a settlement conference; some are determined by motions to dismiss or for summary judgment; some are remanded to state courts, transferred to other districts, or stayed pending arbitration; some are voluntarily dismissed; and some are tried to the court.

Although no statistics currently are available concerning the number of cases decided in this district on dispositive motions, it has been estimated nation-wide that as many as 35% of

civil cases in federal courts are disposed of by such motions.¹⁸ Another study indicates that the percentage of cases terminated through summary judgment in 2000 was 7.7%.¹⁹

The 51 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 Defendants Offered Zero

It is particularly difficult to settle a case where the defendant makes no monetary offer. That occurred in 17 of the 51 cases (33%) that proceeded to a jury verdict. In those 17 cases, settlement conferences were held but were unsuccessful. In an additional seven cases (or 14% of the cases proceeding to a jury trial) no settlement conference was held.²⁰ Thus, in 24 of the cases that were tried to juries (47%), either no settlement conference was held or the defendant failed to make a monetary offer to settle the case.

The plaintiffs prevailed in nine of the 17 cases where the defendant made no settlement offer (53%), and the defendants prevailed in the remaining eight cases (47%).

In two cases resulting in verdicts of \$1 million or more, the defendant made no monetary offer to settle. Also in two cases where the defendants made no settlement offer, the issue of

¹⁸Alexander, supra note 11, at 524.

¹⁹Joe S. Cecil, Dean P. Miletich, and George Cort, Trends in Summary Judgment Practice: A Preliminary Analysis (Federal Judicial Center, 2001). The study looked at cases from six districts: Eastern Pennsylvania; Southern New York; Eastern Louisiana; Maryland; Central California; and Northern Illinois.

²⁰Three of the cases never were referred to a magistrate judge. In the other four, the parties opposed settlement conferences as a waste of resources.

damages was not before the jury.²¹ In the seven cases where the defendant made no settlement offer, where the plaintiff prevailed, and where the issue of damages was before the jury, the average verdict was \$2,171,872 and the median value was \$100,000.

The cases are analyzed in **Table 9**.

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

The plaintiffs received verdicts that exceeded the defendants' last settlement offers in 19 of the 25 cases where the plaintiffs prevailed (76%). In eight of those cases (28%), the defendants made no settlement offer at all.

Six cases resulted in verdicts exceeding \$1 million. In four of them, the verdict far exceeded the last settlement offer; no settlement conference was held in the other two.

Using \$50,000 as an assumed cost of defense, the defendant failed to offer the cost of defense in 15 of the 19 cases (79%) where the verdict exceeded the last settlement offer.

In two of the cases resulting in verdicts of more than \$1 million, the plaintiff refused to make a settlement demand.

These cases are analyzed in **Table 10**.

3. Cases Where the Last Settlement Offer Exceeded the Verdict

By contrast, in 15 of the 51 cases tried (29%) the defendant's last settlement offer exceeded the verdict. In 14 of those 15 cases (93%), the trial resulted in a defense verdict.²² Put

²¹In one case, the plaintiff sought only statutory damages, to be awarded by the trial judge. In the second case, the issue was whether the plaintiff operated a horse farm for profit.

²²In one case, the plaintiff prevailed but was not awarded any damages by the jury. The defendant had offered \$30,000 in settlement. This was an employment case, however, and the issues of front and back pay and attorneys' fees were not presented to the jury and are to be awarded by the trial judge.

another way, in 14 of the 26 cases tried to a defense verdict (54%) the defendant made a settlement offer in some amount that was rejected.

Significantly, in six of the eight employment cases tried to a defense verdict, the defendant made a settlement offer. The offers in those cases ranged from a high of \$30,000 to a low of \$2,500, with an average value of \$15,143 and a median value of \$10,000.

The largest settlement offer made and rejected in a case where the defendant prevailed was \$75,000, in a medical malpractice case. The average settlement offer made but rejected where the defendant prevailed was \$16,650, with a median unaccepted settlement offer value of \$10,000.

The cases are analyzed further in **Table 11**.

4. Analysis by Type of Case

A full analysis of the cases, comparing verdicts against last settlement offers, is contained in **Table 12**.

In employment cases, the verdict exceeded the defendant's last settlement offer seven times out of the nine cases where the plaintiff prevailed (78%). In the remaining two cases tried to a plaintiff's verdict, no damages were awarded by the jury, but the issues of front and back pay and attorneys' fees were before the trial judge for award.

In cases involving claims for breach of contract, the verdict exceeded defendant's last settlement offer in five of the six cases tried to a plaintiff's verdict. In the other case where the plaintiff prevailed, the issue of damages was severed and will be tried later. In one contract case, where the plaintiff prevailed and was awarded damages of \$921,661, the defendant's last settlement offer was to demand payment from the plaintiff on its counterclaims in the amount of

\$800,000. In that case, the defendant miscalculated the case by more than \$1.7 million.

In civil rights cases, the verdict exceeded the defendant's last settlement offer in one case. No settlement conference was held in two of the cases. In four of the eight cases tried to defense verdicts (50%), the defendants made offers that were rejected. The rejected offers ranged from a high of \$10,000 to a low of \$100, with a median value of \$2,000.

In negligence cases, the verdict exceeded the last settlement offer in three of the five cases tried to plaintiffs' verdicts (60%), and no settlement conference was held in the other two cases.

In each of the three intellectual property cases, the plaintiff prevailed and the defendants made no settlement offer. The defendant made no offer in the qui tam case, and it was tried to a defense verdict. No settlement conference was held in the single securities fraud case tried, which resulted in a defense verdict. No settlement offers were made in the single tax case tried.

E. CONCLUSION

Based on these statistics, virtually nothing can be predicted about the likelihood of prevailing at trial. In 2004, plaintiffs prevailed 49% of the time and defendants prevailed 51%; in 2003, the plaintiffs prevailed 55% of the time and the defendants prevailed 45% of the time; and in 2002, the plaintiffs prevailed 45% of the time and the defendants prevailed 55% of the time. Applying this three year sample, the odds of a plaintiff prevailing at trial are 50/50.

Significantly, plaintiffs who lost at trial left money on the settlement table 54% of the time. In those cases where defendants refused to make any settlement offer, they lost at trial 50% of the time.

TABLE 1: Verdict Amounts: Largest to Smallest

	Amount	Type of Case
1	\$9,340,000	intellectual property
2	8,111,544	products liability (property damage)
3	8,006,000	employment: disability
4	5,413,102	personal injury: negligence
5	1,900,000	personal injury: negligence
6	1,191,179	personal injury: negligence
7	921,661	breach of contract
8	501,693	breach of contract
9	300,000	employment: retaliation
10	295,000	employment: retaliation
11	250,000	employment: retaliation
12	247,726	employment: gender
13	190,000	civil rights: illegal search
14	120,806	breach of insurance contract
15	100,000	intellectual property
16	100,000	employment: gender
17	88,798	breach of contract
18	21,782	personal injury: negligence
19	13,600	employment: retaliation
20	1	breach of contract
21	0	employment: retaliation
22	0	employment: age
23	NA	breach of contract: damages severed for separate trial
24	NA	intellectual property: statutory damages to be awarded by the trial judge
25	NA	tax: determination that the plaintiff owed no additional tax
	\$37,112,892	TOTAL

TABLE 2: Trials by Judge

Judge	Type of Case	Outcome	Amount of Verdict
Babcock	1. products liability	P	\$8,111,544
	2. tax	P	NA
	3. personal injury: negligence	D	--
	4. employment: race	D	--
Nottingham	1. employment: gender	P	\$100,000
	2. personal injury: medical malpractice	D	--
	3. civil rights: unlawful arrest	D	--
Daniel	1. employment: retaliation	P	\$250,000
	2. breach of contract	P	\$ 88,798
	3. employment: age	P	0
	4. employment: disability	D	--
	5. breach of contract	D	--
	6. products liability	D	--
	7. qui tam	D	--
Miller	1. employment: retaliation	P	\$300,000
Krieger	1. breach of contract	P	\$1
	2. civil rights: unlawful arrest	D	--
Blackburn	1. personal injury: negligence	P	\$5,413,102
	2. employment: retaliation	P	\$ 13,600
	3. intellectual property	P	NA
	4. civil rights: 8th Amendment	D	--
Figa	1. intellectual property	P	\$9,340,000
	2. personal injury: negligence	P	\$1,900,000
	3. personal injury: negligence	P	\$1,191,179
	4. breach of contract	P	\$ 921,661
	5. employment: gender	P	\$ 247,726
	6. intellectual property	P	\$ 100,000
	7. personal injury: negligence	P	\$ 21,782
	8. employment: retaliation	P	0
	9. employment: 1st Amendment	D	--
	10. employment: disability	D	--
	11. personal injury: medical malpractice	D	--
	12. civil rights: excessive force	D	--

Judge	Type of Case	Outcome	Amount of Verdict
Matsch (Senior Judge)	1. breach of contract	P	damages severed
	2. employment: retaliation	D	--
	3. breach of insurance contract	D	--
	4. civil rights: illegal search	D	--
Kane (Senior Judge)	1. employment: disability	P	\$8,006,000
	2. civil rights: unlawful arrest	D	--
	3. securities fraud	D	--
Weinshienk (Senior Judge)	1. employment: retaliation	P	\$295,000
	2. employment: retaliation	D	--
	3. breach of contract	D	--
Sparr (Senior Judge)	1. employment: race	D	--
	2. civil rights: excessive force	D	--
Brimmer (Wyoming)	1. employment: retaliation	D	--
	2. civil rights: excessive force	D	--
Johnson (Wyoming)	1. breach of contract	P	\$501,693
	2. breach of insurance contract	P	\$120,806
Boland (Magistrate Judge)	1. breach of contract	D	--
Shaffer (Magistrate Judge)	1. civil rights: illegal search	P	\$190,000

TABLE 3: Lengths of Trials

<u>Length of Trial</u>	<u>No. of Trials</u>	<u>Total Trial Days</u>
2 days	1	2
3 days	5	15
4 days	13	52
5 days	13	65
6 days	2	12
7 days	5	35
8 days	2	16
9 days	4	36
10 days	1	10
11 days	2	22
12 days	1	12
16 days	1	16
18 days	1	<u>18</u>
		311 trial days

Average length of trial: 6.1 days

TABLE 4

Amount of the plaintiffs' verdicts in employment cases, from largest to smallest

	Nature of Claim	Amount of Verdict
1	disability	\$8,006,000
2	retaliation	\$300,000
3	retaliation	\$295,000
4	retaliation	\$250,000
5	gender	\$247,726
6	gender	\$100,000
7	retaliation	\$13,600
8	retaliation	\$0
9	age	\$0
	TOTAL	\$9,212,326

TABLE 5
Employment Cases By Nature of Claim

Retaliation:

Number of cases:	8
Verdicts for plaintiff:	5 (63%)
Verdicts for defendant:	3

Amounts of verdicts:

1.	\$300,000
2.	\$ 295,000
3.	\$ 250,000
4.	\$ 13,600
5.	<u> 0</u>

TOTAL:	\$858,600	AVG: \$ 171,720
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Disability:

Number of cases:	3
Verdicts for plaintiff:	1 (33%)
Verdicts for defendant:	2

Amount of verdict: \$8,006,000

Race:

Number of cases:	2
Verdicts for plaintiff:	0 (0%)
Verdicts for defendant:	2

Gender:

Number of cases:	2
Verdicts for plaintiff:	2 (100%)
Verdicts for defendant:	0

Amounts of verdicts:

1.	\$247,726
2.	<u>\$100,000</u>

TOTAL:	\$347,726	AVG: \$ 173,863
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Public Employee/First Amendment:

Number of cases:	1
Verdicts for plaintiff:	0 (0%)
Verdicts for defendant:	1

Age discrimination:

Number of cases:	1
Verdicts for plaintiff:	1 (100%)
Verdicts for defendant:	0

Amount of Verdict: 0 (front pay, back pay, and attorneys' fees were reserved for decision by the trial judge)

TABLE 6
Civil Rights Cases By Nature of Claim

Unlawful Arrest:

Number of cases:	3
Verdicts for plaintiffs:	0 (0%)
Verdicts for defendants:	3

Excessive Force:

Number of cases:	3
Verdicts for plaintiffs:	0 (0%)
Verdicts for defendants:	3

Illegal Search:

Number of cases:	2
Verdicts for plaintiffs:	1 (50%)
Verdicts for defendants:	1

Amount of Verdict: \$190,000

Cruel and Unusual Punishment:

Number of cases:	1
Verdicts for plaintiffs:	0 (0%)
Verdicts for defendants:	1

TABLE 7
Negligence Cases By Nature of Claim

Personal injury:

Number of cases:	5
Verdicts for plaintiff:	4 (80%)
Verdicts for defendant:	1

Amount of verdicts:

1.	\$5,413,102
2.	1,900,000
3.	1,191,179
4.	<u>21,782</u>

TOTAL:	\$8,526,063	AVG: \$2,131,516
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Medical malpractice:

Number of cases:	2
Verdicts for plaintiff:	0 (0%)
Verdicts for defendant:	2

Products liability:

Number of cases:	2
Verdicts for plaintiff:	1 (50%)
Verdicts for defendant:	1

Amount of verdict: \$8,111,544

TABLE 8
Settlement Conferences By Judge

<u>Judge</u>	<u>Settlement Conferences Held</u>	<u>Cases Settled At or After Conference</u>
Schlatter	130	112
Coan	212	168
Watanabe	164	84
Boland	138	136
Shaffer	153	117
Rice	9	2
West	<u>1</u>	<u>1</u>
TOTAL	807	620

TABLE 9
Cases Where the Defendant Made No Settlement Offer

Total instances:	18
Plaintiff's verdict:	9 (50%)
Defense verdict:	9
Average plaintiff's verdict:	\$1,689,667
Median verdict:	\$ 100,000

When broken down by category of case:

Type of case	Verdict	Offer
Employment		
1. retaliation	\$250,000	0
2. gender	\$100,000	0
3. retaliation	0	0
4. retaliation	defense verdict	0
4. retaliation	defense verdict	0
Breach of Contract		
1. breach of contract	\$1	0
2. breach of contract	defense verdict	0
Civil Rights		
1. unlawful arrest	defense verdict	0
2. unlawful arrest	defense verdict	0
3. excessive force	defense verdict	0
4. cruel and unusual punishment	defense verdict	0

Type of case	Verdict	Offer
Negligence		
1. personal injury	\$5,413,102	0
2. products liability	defense verdict	0
Intellectual Property		
1. misappropriation of trade secrets	\$9,340,000	0
2. breach of non-disclosure agreement	\$100,000	0
3. theft of encrypted signal	statutory damages	0
Qui Tam		
1. qui tam	defense verdict	0
Tax		
1. tax	NA*	0

*No damages were sought by the plaintiff. The jury decided that the plaintiff operated her horse farm for profit, resulting in a determination that no additional taxes were owed.

TABLE 10
Verdict Exceeded the Defendant's Last Offer

Total instances:	20
Instances where defendant offered 0:	8
Average verdict:	\$1,545,004
Median verdict:	\$ 250,000
Average final offer by defendant:	\$ 17,862

Broken down by category of case:

Type of case	Verdict	Offer
Employment		
1. disability	\$8,006,000	\$20,000
2. retaliation	\$300,000	\$30,000
3. retaliation	\$295,000	\$45,000
4. retaliation	\$250,000	0
5. gender	\$247,726	\$60,000
6. gender	\$100,000	0
7. retaliation	\$13,600	\$5,000
SUBTOTAL:	\$9,212,325	\$160,000
AVERAGE:	\$1,316,047	\$22,857
Negligence		
1. personal injury	\$5,413,000	0
2. personal injury	\$1,900,000	\$50,000
3. personal injury	\$21,782	\$10,000
SUBTOTAL:	\$7,334,782	\$60,000
AVERAGE:	\$2,444,927	\$20,000

Type of case	Verdict	Offer
Civil Rights		
1. illegal search	\$190,000	\$2,000
SUBTOTAL:	\$190,000	\$2,000
AVERAGE:	\$190,000	\$2,000
Breach of Contract		
1. breach of contract	\$921,661	P pays D \$800,000
2. breach of contract	\$501,693	\$250
3. breach of contract	\$120,806	\$75,000
4. breach of contract	\$88,798	\$60,000
5. breach of contract	\$1	0
SUBTOTAL:	\$1,632,959	\$135,250
AVERAGE:	\$326,592	\$27,050
Intellectual Property		
1. misappropriation of trade secrets	\$9,340,000	0
2. breach of non-disclosure agreement	\$100,000	0
3. theft of encrypted signals	statutory damages	0
Tax		
1. tax	NA	0

TOTAL VERDICTS: \$27,810,067
AVERAGE VERDICTS: \$ 1,545,004

TOTAL OFFERS: \$ 357,250
AVERAGE OFFERS: \$ 17,862

TABLE 11
Defendant's Last Offer Exceeded the Verdict

Total instances:	14
Plaintiffs' verdicts:	0
Defense verdicts:	14
Average final offer:	\$16,650
Average verdict:	0

Analyzed by category of case:

Type of case	Verdict	Offer
Employment		
1. race	0	\$30,000
2. race	0	\$20,000
3. public employee: 1st Amendment	0	\$10,000
4. disability	0	\$10,000
5. retaliation	0	\$3,500
6. retaliation	0	\$2,500
SUBTOTAL:	0	\$73,525
AVERAGE:	0	\$12,254
Civil Rights		
1. unlawful arrest	0	\$10,000
2. excessive force	0	\$2,000
3. cruel and unusual punishment	0	\$100
SUBTOTAL:	0	\$12,100
AVERAGE:	0	\$4,033

Type of case	Verdict	Offer
Negligence		
1. personal injury	0	\$7,500
2. medical malpractice	0	\$75,000
3. medical malpractice	0	\$25,000
SUBTOTAL:	0	\$107,500
AVERAGE:	0	\$35,833

TOTAL VERDICTS: 0
AVERAGE VERDICTS: 0

TOTAL OFFERS: \$193,125
AVERAGE OFFERS: \$ 16,094

TABLE 12

Comparison of Verdicts to Final Settlement Offers In All Cases Tried In 2004

Type of case		Prevailing Party	Amount of Verdict	Last Settlement Offers
Employment:				
Retaliation:	1	plaintiff	\$300,000	P: \$475,000 D: 30,000
	2	plaintiff	\$295,000	P: \$700,000 D: 45,000
	3	plaintiff	\$250,000	P: \$1,100,000 D: 0
	4	plaintiff	\$ 13,600	P: \$225,000 D: 5,000
	5	plaintiff	0	P:\$150,000 D: 0
	6	defendant	--	P: \$109,750 D: 3,500
	7	defendant	--	P:\$1,200,000 D: 0
	8	defendant	--	P:\$300,000 D: 2,500
Disability:	1	plaintiff	\$8,006,000	P: \$250,000 D: 20,000
	2	defendant	--	P: \$250,000 D: 10,000
	3	defendant	--	P: \$500,000 D: 0
Race:	1	defendant	--	P: \$115,000 D: 30,000
	2	defendant	--	P: \$110,000 D: 20,000

Type of case	Prevailing Party	Amount of Verdict	Last Settlement Offers
Gender: 1	plaintiff	\$247,726	P: \$200,000 D: 60,000
2	plaintiff	\$100,000	P: \$150,000 D: 0
Public Employee First Amendment: 1	defendant	--	P: \$850,000 D: 10,000
Age: 1	plaintiff	0	P: \$175,000 D: 30,000
Negligence:			
Personal Injury:	plaintiff	\$5,413,102	P: no demand D: 0
2	plaintiff	\$1,900,000	P: \$425,000 D: 50,000
3	plaintiff	\$1,191,179	no settlement conference held
4	plaintiff	\$21,782	P: \$25,000 D: 10,000
5	defendant	--	P: \$45,000 D: 7,500
Medical Malpractice: 1	defendant	--	P: \$350,000 D: 75,000
2	defendant	--	P: \$1,100,000 D: 25,000
Products Liability: 1	plaintiff	\$8,111,544	no settlement conference held
2	defendant	--	P: \$1,470,000 D: 0

Type of case		Prevailing Party	Amount of Verdict	Last Settlement Offers
Civil Rights				
Unlawful Arrest:	1	defendant	--	P: legal fees and costs D: 0
	2	defendant	--	P: \$185,000 D: 0
	3	defendant	--	P: \$85,000 D: 10,000
Excessive Force:	1	defendant	--	P: \$2,000,000 D: 2,000
	2	defendant	--	P: \$100,000 D: 0
	3	defendant	--	no settlement conference held
Illegal Search:	1	plaintiff	\$190,000	P: \$50,000 D: 2,000
		defendant	--	no settlement conference held
Cruel and Unusual Punishment:	1	defendant	--	P: no demand made D: \$100

Type of case	Prevailing Party	Amount of Verdict	Last Settlement Offers
Breach of Contract			
1	plaintiff	\$921,000	P: \$956,000 D: P pays D \$800,000
2	plaintiff	\$501,693	P: \$734,395 D: P pays D \$250
3	plaintiff	\$120,806	P: \$300,000 D: 75,000
4	plaintiff	\$88,798	P: \$90,000 D: 60,000
5	plaintiff	damages severed for later trial	no settlement conference held
6	plaintiff	\$1	P: \$900,000 D: 0
7	defendant	--	P: \$70,000 D: 30,000
8	defendant	--	P: \$60,000 D: 7,500
9	defendant	--	P: no demand D: no offer
10	defendant	--	no settlement conference held
Intellectual Property			
1	plaintiff	\$9,340,000	P: no demand D: no offer
2	plaintiff	\$100,000	P: permanent injunction D: no offer
3	plaintiff	statutory penalty	P: \$10,000 D: 0

Type of case	Prevailing Party	Amount of Verdict	Last Settlement Offers
Securities			
	defendant	--	no settlement conference held
Qui Tam			
	defendant	--	P: \$52,000,000 D: 0
Tax			
	plaintiff	NA	P: no demand D: no offer