

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

Boyd N. Boland
United States Magistrate Judge

303-844-6408

MEMORANDUM

TO: All Magistrate Judges
RE: Summary Judgment Statistics
DATE: March 28, 2006

Summary judgment is a procedure designed both to control the volume of cases proceeding to trial and to limit the scope of any particular case.¹ This memorandum analyzes the effect of summary judgment motions in the cases decided in the District of Colorado during calendar year 2005.

¹Samuel Issaacharoff and George Loewenstein, *Second Thoughts About Summary Judgment*, 100 YALE L. J. 73, 74 (1990).

I. OVERVIEW

There were 2,679 civil actions filed in the District of Colorado in 2005. A total of 2,810 cases were closed. The average number of cases pending during each month was 2,180.

Judges entered orders resolving motions for summary judgment in 302 cases.² Thus, summary judgment played a part in only 302 of the 2,810 cases (11%) terminated in 2005.

In 111 instances, the cases were terminated as a result of the summary judgment motions.³ Consequently, 111 of the 2,810 cases (4%) terminated in 2005 ended through the grant of summary judgment. Looked at differently, 111 of the 302 cases (37%) where summary judgment motions were decided were terminated as a result of the ruling.

Summary judgment was granted in whole or in part in 192 cases, including the 111 cases terminated by summary judgment and 81 cases where summary judgment was granted in part but

²I did not review each of the 2,810 cases terminated in 2005 to isolate those involving motions for summary judgment. Instead, the analysis contained here springs from a computer generated report, entitled *Motions for Summary Judgment Satisfied*, prepared at my request by the office of the Clerk of the Court. The report was designed to sort all terminated cases and isolate those where motions for summary judgment were ruled on. The report identified the 302 cases analyzed here. I then examined the docket sheet for each of the 302 cases to obtain more information and to verify the results of the orders on summary judgment.

³The number of cases resolved by summary judgment in the district of Colorado (111 cases, or 4% of the caseload) is below the number anticipated by scholars and reported in other studies. Professor Judith Resnick of Yale University has estimated that “35 percent of civil cases in federal courts are disposed of by motion to dismiss or for summary judgment.” See Janet Cooper Alexander, *Do the Merits Matter? A Study of Settlements in Securities Class Actions*, 43 STAN. L. REV. 497, 524 (1991). A study conducted by the Federal Judicial Center indicated that in 2000, summary judgment motions were filed in 20% of federal cases, and terminated 7.7% of the pending cases. Joe S. Cecil, Dean P. Miletich & George Cort, TRENDS IN SUMMARY JUDGMENT PRACTICE: A PRELIMINARY ANALYSIS, pp. 3-4 (Nov. 2001). In the District of Colorado, by contrast, summary judgment motions were filed in only 14% of the pending cases, terminating only 5% of those cases.

the case was not fully resolved.⁴ In other words, the moving party was completely or partially successful in 192 of the 302 cases (64%) where summary judgment motions were decided.

Motions for summary judgment were denied in their entirety and on the merits in 82 of the 302 cases (27%) where motions were decided. The motions were denied without prejudice for technical errors in an additional 15 cases (5%).⁵ Finally, in 13 of the 302 cases (4%), the motions were decided on miscellaneous grounds, including being deemed moot, stricken, taken under advisement, or withdrawn.

The outcome of the summary judgment motions ruled on in 2005 are summarized in the following table and bar graph:

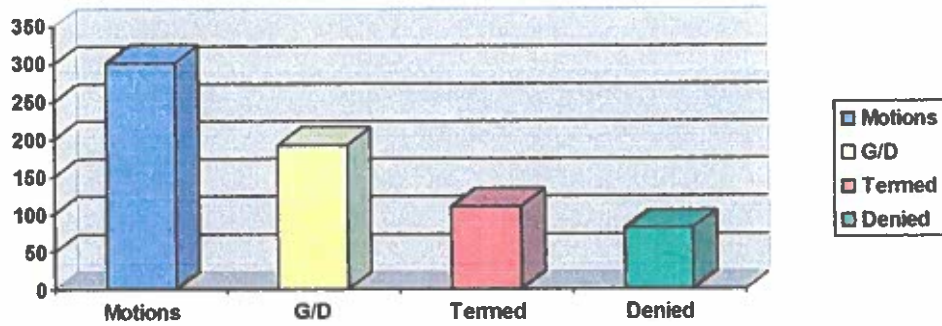
⁴Summary judgment has been characterized as “especially encouraged in complex cases in which issues of fact may metastasize if the court does not take action to confine the dispute and proscribe costly overextension of discovery and trial.” Issacharoff, *supra* note 1, at n.9. In fact, however, the motions reviewed here only limited the issues presented at trial; virtually all of the motions were decided after discovery had been completed.

⁵Judges Nottingham, Krieger, and Blackburn have established detailed practice standards concerning the format of summary judgment motions. This is consistent with a national trend. According to Professor Arthur Miller:

The increase in summary judgment activity also is evidenced by the recent growth of local district court rules regulating the procedure, and in their stepped-up enforcement. These rules tend to focus on improving the efficiency of motion practice, for example, by requiring separate filings identifying controverted and uncontroverted facts.

Arthur R. Miller, *The Pretrial Rush to Judgment: Are the “Litigation Explosion,” “Liability Crisis,” and Efficiency Cliches Eroding Our Day In Court and Jury Trial Commitments?*, 78 N.Y.U. L. REV. 982, 1051-52 (2003).

Total Cases Terminated	2,810
Summary Judgment Motions Ruled On	302
Summary Judgment Motions Granted In Whole or Part	192 (64%)
Cases Terminated By Summary Judgment	111 (37%)
Summary Judgment Denied On the Merits	82 (27%)
Summary Judgment Motions Denied Without Prejudice	15 (5%)
Misc. Rulings	13 (4%)



Although one purpose of the summary judgment procedure is to expedite the determination of cases, at least where the motion is granted, it is not clear that this purpose is

being achieved.⁶ In 2005, the average time from the filing of a motion for summary judgment until its determination was 9.4 months. Most summary judgment motions are filed shortly after (usually 30 days) the close of discovery, and generally approximately one year after the case was filed. Consequently, the motions appear to have been ruled on approximately 22 months or more after the case was filed. The average time from the filing of a case to trial in the District of Colorado in 2005 was 39.2 months, but six of the 35 cases that went to trial in 2005 were tried within two years of filing.

The modern summary judgment procedure traces its roots to England and the Summary Procedure on Bills of Exchange Act enacted in 1855.⁷ As originally implemented, the summary procedure was designed for the benefit of plaintiffs by accelerating debt actions on overdue bills and notes where the debtor could not dispute the existence of the debt.⁸ Although England's historic summary procedure was designed to protect merchants from sham defenses, there is no doubt that modern summary judgment under Fed. R. Civ. P. 56 is a defendant's weapon utilized

⁶This is not a novel observation. To the contrary:

[M]any critics have questioned whether the decisions [on summary judgment motions] really will produce gains in efficiency, pointing out that summary judgment motions take time to prepare, support, and decide . . . , often slow a case's forward progress, and typically save time only when granted.

Miller, *supra* note 5, at 1047.

⁷Gregory A. Gordillo, *Summary Judgment and Problems In Applying the Celotex Trilogy Standard*, 42 CLEV. S. L. REV. 263, 266 and n.13 (1994).

⁸See Miller, *supra* note 5, at 1016.

primarily by defendants to resolve sham claims.⁹ The experience of the courts in the District of Colorado confirms this fact, where 102 of the 111 (91%) cases terminated through summary judgment resulted in judgments for the defendants. Only 9 cases (9%) terminated by summary judgment favored the plaintiffs.

II. SUMMARY JUDGMENT RULINGS IN *PRO SE* CASES

In 51 of the 302 cases where summary judgment motions were decided, at least one party was proceeding *pro se*. In other words, 17% of the cases where summary judgment orders were entered involved *pro se* parties. Twenty of the 51 cases (39%) were terminated as a result of the ruling. Summary judgment was granted in whole or in part in 39 of the 51 cases (76%).¹⁰ The motions were denied in nine cases (18%), and were stricken, deemed moot, or taken under advisement in three cases (6%).

A breakdown of the outcomes of summary judgment motions in *pro se* cases based on the nature of the claim is contained in the table:

⁹See Gordillo, *supra* note 7, at 278, 281.

¹⁰Surprisingly, the percentage of *pro se* cases terminated by summary judgment (39%) is not significantly greater than the percentage of cases generally terminated by summary judgment (37%). By contrast, the percentage of *pro se* cases where summary judgment is granted in whole or in part (76%) is notably greater than the percentage of cases generally where summary judgment is granted in whole or part (64%).

Nature of Claim	No. of Motions Filed	Cases Terminated	Motions Granted In Whole or Part	Motions Denied	Misc. Rulings
Civil Rights	34 (66%)	20 (59%)	26 (76%)	6 (18%)	2 (6%)
Truth In Lending Act	5 (10%)	4 (80%)	4 (80%)	1 (20%)	0
Employment	5 (10%)	3 (60%)	5 (100%)	0	0
Habeas Corpus	2 (4%)	1 (50%)	1 (50%)	1 (50%)	0
Libel	2 (4%)	0	1 (50%)	1 (50%)	0
Insurance	1 (2%)	1 (100%)	1 (100%)	0	0
Tax	1 (2%)	0	0	0	1 (100%)
Fair Debt Collection Prac. Act	1 (2%)	1 (100%)	1 (100%)	0	0
TOTAL	51	30 (59%)	39 (76%)	9 (18%)	3 (6%)

III. BREAKDOWN BY NATURE OF CLAIM

Motions for summary judgment were most common in employment cases, where 79 of the 302 motions (26%) were ruled on.¹¹ Thirty-one of the 79 employment cases (39%) were terminated by summary judgment.

¹¹The experience in the District of Colorado, where summary judgment motions are most common in employment cases, is contrary to the conventional wisdom that “the defendant is more likely to move for summary judgment when the stakes in the litigation are high.” Issacharoff, *supra* note 1, at 108. To the contrary, the stakes in most employment cases are relatively small and measured by some factor of the employees annual salary prior to the alleged discrimination or retaliation.

Motions for summary judgment were ruled on in 72 civil rights cases, and 34 of the cases (47%) were terminated as a result.¹²

Four other categories of cases involved ten or more cases where an order on summary judgment was entered. In cases involving contract disputes, motions for summary judgment were ruled on in 28 cases. Eleven of the 28 cases (39%) were terminated as a result. Summary judgment motions were ruled on in 24 personal injury cases, but only three cases (12%) were terminated as a result. Summary judgment motions were ruled on in 21 cases involving insurance disputes, with nine of the cases (43%) being terminated. And summary judgment motions were ruled on in ten cases involving intellectual property disputes, but only two (20%) of the cases were terminated.

A breakdown of the outcomes of summary judgment motions by nature of the claim is contained in the table:

Nature of Claim	No. of Motions Filed	Cases Terminated
Employment	79	31 (39%)
Civil Rights	72	34 (47%)
Contract Disputes	28	11 (39%)
Personal Injury	24	3 (12%)
Insurance Disputes	21	9 (43%)
Intellectual Property	10	2 (20%)
ERISA	6	2 (33%)
Truth In Lending Act	6	4 (66%)

¹²Studies have shown that “[h]igher rates of summary judgment are especially notable in civil rights cases.” Cecil, *supra* note 3, at 1.

Environmental Claims	5	1 (20%)
Fair Debt Collection Practices Act	4	1 (25%)
Antitrust	3	2 (66%)
FELA	2	0
FMLA	3	1 (33%)
Fraud	3	0
Habeas Corpus	3	1 (33%)
Securities	3	0
Construction of State Statute	2	0
FOIA	2	0
False Claims Act	2	0
Libel	2	1 (50%)
Tax	2	1 (50%)
Telecommunications Act	2	1 (50%)
Enforce Arbitration Award	1	1 (100%)
Bankruptcy	1	0
Condemnation	1	0
Emergency Medical Active Labor Act	1	1 (100%)
Federal Tort Claims Act	2	1 (50%)
Handicapped Child Act	1	0
Interpleader	1	0
Naturalization	1	1 (100%)
Quiet Title	1	1 (100%)
Restitution	1	1 (100%)
RICO	1	0
Slander of Title	1	0
Title IX	1	1 (100%)
Tort to Land	1	0

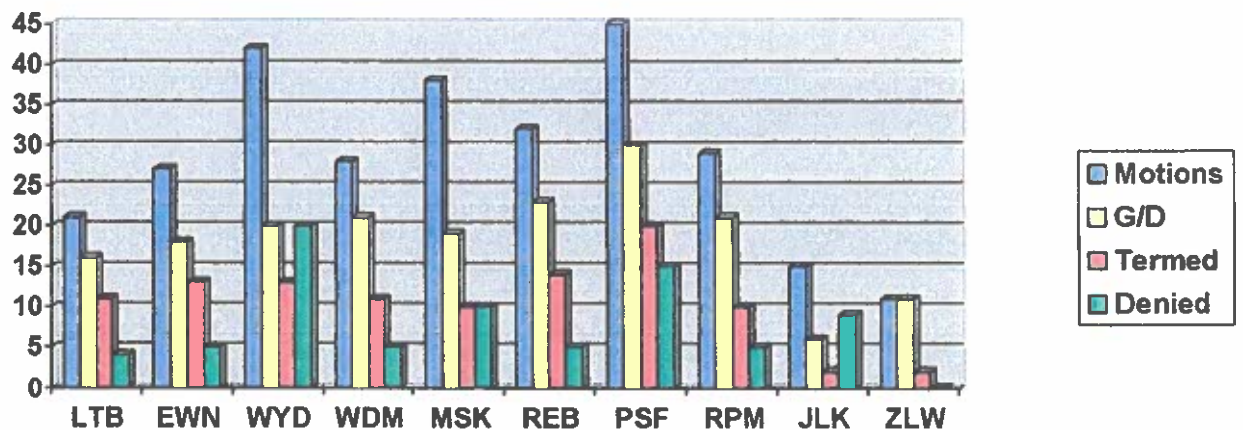
IV. BREAKDOWN OF SUMMARY JUDGMENT RULINGS BY PRESIDING JUDGE

District judges entered the orders in 290 of the 302 cases (94%) where summary judgment motions were ruled on. In 38 of those 290 cases (13%), however, the district judges were reviewing recommendations made by magistrate judges. In addition, magistrate judges entered orders ruling on motions for summary judgment in 12 cases (4%) involving consent jurisdiction under 28 U.S.C. § 636(c). Magistrate judges entered orders concerning summary judgment motions in an additional six cases, generally denying the motions without prejudice as moot following an order allowing amendment of a complaint.

Chief Judge Babcock was most likely among the district judges to enter summary judgment terminating a case, doing so in 52% of the cases where he ruled on summary judgment motions. Judge Kane was the least likely among the district judges to terminate a case by summary judgment, doing so in only 13% of the cases where he ruled. Judge Krieger denied summary judgment motions without prejudice based on technical errors in 7 of the 38 cases (18%) she considered.

A summary of how each judge ruled on summary judgment motions is contained in the table and accompanying graph:

Presiding Judge	No. of Motions Ruled On	Cases Terminated	Motions Granted In Whole or Part	Motions Denied	Misc. Rulings
LTB	21	11 (52%)	16 (76%)	4 (19%)	1 (5%)
EWN	27	13 (48%)	18 (66%)	5 (19%)	4 (15%)
WYD	42	13 (31%)	20 (48%)	20 (48%)	2 (5%)
WDM	28	11 (39%)	21 (75%)	5 (18%)	2 (7%)
MSK	38	10 (26%)	19 (50%)	10 (26%)	9 (24%)
REB	32	14 (44%)	23 (72%)	5 (16%)	4 (12%)
PSF	45	20 (44%)	30 (66%)	15 (33%)	0
RPM	29	10 (34%)	21 (72%)	5 (17%)	3 (10%)
JLK	15	2 (13%)	6 (40%)	9 (60%)	0
ZLW	11	2 (18%)	11 (100%)	0	0
ABJ	2	1 (50%)	1 (50%)	1 (50%)	0
OES	6	4 (66%)	5 (83%)	1 (17%)	0
PAC	3	0	0	1 (33%)	2 (66%)
MJW	2	0	1 (50%)	0	1 (50%)
BNB	1	0	0	1 (100%)	0
TOTAL	302	111 (37%)	192 (64%)	82 (27%)	28 (9%)



The following charts analyze the summary judgment rulings on a judge by judge basis broken down by the nature of the claims asserted in each case:

LTB

Nature of Claim	No. of Motions Filed	Cases Terminated
Employment	6	3
Personal Injury	5	1
Civil Rights	2	1
Intellectual Property	1	1
Insurance	1	1
FDCPA	1	1
Contract	1	1
FOIA	1	0
TILA	1	1
ERISA	1	0
Telecommunications Act	1	1
TOTAL	21	11 (52%)

EWN

Nature of Claim	No. of Motions Filed	Cases Terminated
Civil Rights	10	6
Employment	8	4
Contract	3	1
Personal Injury	1	0
Intellectual Property	1	0
Environmental	1	0
Antitrust	1	1
Habeas Corpus	1	0
False Claim Act	1	1
TOTAL	27	13 (48%)

WYD

Nature of Claim	No. of Motions Filed	Cases Terminated
Employment	13	3
Civil Rights	11	8
Personal Injury	5	0
Contract	3	0
Insurance	3	0
Fraud	2	0
FMLA	1	0
Intellectual Property	1	1
ERISA	1	0
Quiet Title	1	1
FDCPA	1	0
TOTAL	42	13 (31%)

WDM

Nature of Claim	No. of Motions Filed	Cases Terminated
Employment	10	3
Civil Rights	10	5
Securities	2	0
Tax	1	1
Handicapped Child Act	1	0
FDCPA	1	0
Contract	1	1
Habeas Corpus	1	0
TILA	1	1
TOTAL	28	11 (39%)

MSK

Nature of Claim	No. of Motions Filed	Cases Terminated
Employment	12	4
Civil Rights	7	1
Contracts	5	2
Environmental	3	0
Personal Injury	2	0
Insurance	2	2
Habeas Corpus	1	1
Libel	1	0
Tax	1	0
FOIA	1	0
Intellectual Property	1	0
TILA	1	0
FMLA	1	0
TOTAL	38	10 (26%)

REB

Nature of Claim	No. of Motions Filed	Cases Terminated
Insurance	7	4
Civil Rights	5	3
Contracts	4	2
Employment	3	1
Intellectual Property	2	0
Title IX	1	1
Environmental	1	1
Antitrust	1	1
Securities	1	0
Fraud	1	0
FDCPA	1	0
TILA	1	1
Slander of Title	1	0
Constitutionality of State Statute	1	0
False Claims Act	1	0
Interpleader	1	0
TOTAL	32	14 (44%)

PSF

Nature of Claim	No. of Motions Filed	Cases Terminated
Employment	11	4
Civil Rights	9	6
Contracts	6	2
Personal Injury	5	1
ERISA	2	1
TILA	2	1
Confirmation of Arbitration	1	1
FMLA	1	1
Emergency Medical Active Labor Act	1	1
Restitution	1	0
Insurance	1	1
Intellectual Property	1	0
RICO	1	0
Naturalization	1	1
Antitrust	1	0
Libel	1	0
TOTAL	45	20 (44%)

RPM

Nature of Claim	No. of Motions Filed	Cases Terminated
Civil Rights	10	3
Insurance	6	1
Employment	5	4
Intellectual Property	2	0
Personal Injury	2	1
Tort to Land	1	0
ERISA	1	1
FELA	1	0
Federal Tort Claims Act	1	0
TOTAL	29	10 (34%)

JLK

Nature of Claim	No. of Motions Filed	Cases Terminated
Employment	3	1
Contract	3	0
ERISA	2	0
Personal Injury	2	0
Civil Rights	1	0
Insurance	1	0
Condemnation	1	0
Bankruptcy	1	0
Telecommunications Act	1	1
TOTAL	15	2 (13%)

ZLW

Nature of Claim	No. of Motions Filed	Cases Terminated
Civil Rights	4	1
Employment	4	1
Contracts	2	0
Personal Injury	1	0
TOTAL	11	2 (18%)

ABJ

Nature of Claim	No. of Motions Filed	Cases Terminated
Employment	1	1
Intellectual Property	1	0
TOTAL	2	1 (50%)

OES

Nature of Claim	No. of Motions Filed	Cases Terminated
Employment	2	2
Federal Tort Claims Act	1	1
Personal Injury	1	0
FELA	1	0
Contracts	1	1
TOTAL	6	4 (66%)

PAC

Nature of Claim	No. of Motions Filed	Cases Terminated
Civil Rights	1	0
Constitutionality of State Statute	2	0
TOTAL	3	0

MJW

Nature of Claim	No. of Motions Filed	Cases Terminated
Civil Rights	1	0
Contracts	1	0
TOTAL	2	0

BNB

Nature of Claim	No. of Motions Filed	Cases Terminated
Employment	1	0
TOTAL	1	0

V. CONCLUSION

I have analyzed the cases terminated on summary judgment in an attempt to understand how the more than 2,500 cases filed each year in this district are resolved. Case disposition is something of a mystery:

It is often said that 90 percent to 95 percent of all civil cases are settled. This “statistic” is incorrect, however. It is a faulty inference from the fact that approximately five percent of the cases filed in federal court reach trial. Some of the cases that do not reach trial are adjudicated through motions to dismiss or for summary judgment, however, some are remanded or transferred, and some are voluntarily dismissed without settlement. . . . [A]n estimate from the Administrative Office of the United States Courts [indicates] that 35 percent of civil cases in federal courts are disposed of by motion to dismiss or for summary judgment. Adding these to the approximately 5 percent of cases that go to trial means that only about 60 percent are settled or voluntarily dismissed. . . . While it is true that most civil suits are settled, the figure is nowhere near the 90 to 95 percent figure that has passed into procedure folklore, and is more likely in the neighborhood of 60 to 70 percent.¹³

There were 2,679 civil cases filed in the District of Colorado in 2005, and 2,810 cases were terminated. Thirty-five of the cases terminated (1.2%) were tried to juries. An additional 111 cases (4%) were terminated through summary judgment. Another 549 (20%) cases were settled at or after court-sponsored settlement conferences. Thus, the termination of 695 cases (25%) can be traced to trial, disposition on summary judgment, or settlement after a court-sponsored settlement conference. No data is readily available on the disposition of the remaining 2,115 cases (75%).

¹³See Alexander, *supra* note 3, at 524 (internal notes omitted).

Summary judgment has been used by the judges in the District of Colorado as an effective tool both to control the volume of cases proceeding to trial and to limit the scope of any particular case. Nonetheless, settlement remains the primary method for the resolution of cases. Consequently, the greatest screening mechanism on cases going to trial in the federal system is not any procedural rule at all but the private settlement of disputes by the parties.¹⁴

¹⁴Issacharoff, *supra* note 1, at 100.