

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: 2006
DATE: February 17, 2007

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 pending in the District of Colorado during calendar year 2006.

I. OVERVIEW

There were 2,607 civil actions filed in the District of Colorado in 2006. A total of 2,895 cases were closed. The average number of cases pending during each month was 2,151.²

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

²In 2005, there were 2,679 cases filed, and 2,810 cases were closed. The average number of cases pending during each month was 2,180. Consequently, over the calendar year of 2006 the court reduced its average pending caseload by 29 cases, or slightly more than 1%.

Judges entered orders resolving motions for summary judgment in 252 cases.³ Thus, summary judgment played a part in only 252 of the 2,895 cases (9%) terminated in 2006.⁴

In 103 instances, the cases were terminated as a result of the summary judgment motions.⁵ Consequently, 103 of the 2,895 cases (3.5%) terminated in 2006 ended through the granting of summary judgment. Looked at differently, 103 of the 252 cases (41%) where summary judgment motions were decided were terminated as a result of the ruling.

Summary judgment was granted in whole or in part in 188 cases, including the 103 cases terminated by summary judgment and 85 cases where summary judgment was granted in part but

³I did not review each case pending in 2006 to identify those where summary judgment motions were ruled on. Instead, this analysis 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 cases and isolate those where motions for summary judgment were ruled on in 2006. The report identified the 252 cases analyzed here. I then examined the docket sheet for each of the 252 cases to obtain more information and to verify the results of the orders on summary judgment.

⁴By comparison, in 2005 summary judgment motions were ruled on in 311 of the 2,810 cases closed, or 11%. In raw numbers, summary judgment motions were ruled on in 59 fewer cases in 2006 as compared to 2005.

⁵The number of cases resolved by summary judgment in the District of Colorado (103 cases, or 3.5% 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).

the case was not fully resolved.⁶ In other words, the moving party was completely or partially successful in 188 of the 252 cases (75%) where summary judgment motions were decided.

This is a significant increase over calendar year 2005, when judges ruled on motions for summary judgment in 302 cases, and 111 of those cases (64%) were terminated as a result. Thus, although the court ruled on 50 fewer summary judgment motions in 2006, the percentage of motions granted increased by 11%. This apparent trend of fewer but more meritorious motions for summary judgment is encouraging.

Motions for summary judgment were denied in their entirety and on the merits in 64 of the 252 cases (25%) where motions were decided.⁷

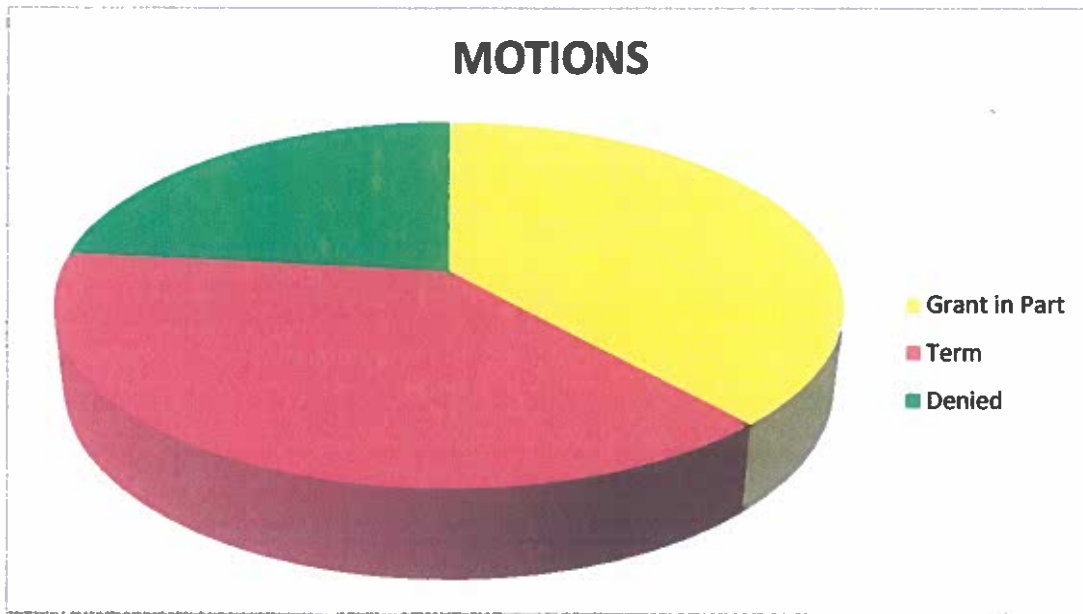
⁶Summary judgment has been characterized as “especially encouraged in complex cases in which issues of fact may metastasize if the court does not take action to confine the dispute and proscribe costly overextension of discovery and trial.” Issacharoff, *supra* note 1, at n.9. In fact, however, the motions reviewed here only limited the issues presented at trial; virtually all of the motions were decided after discovery had been completed.

⁷Fifteen motions for summary judgment were stricken or denied without prejudice based on technical errors. Judges Nottingham, Daniel, Krieger, and Blackburn have established detailed practice standards concerning the format of summary judgment motions. This is consistent with a national trend:

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).

The results of the summary judgment motions ruled on in 2006 are summarized in the following graph and table:



Summary Judgment Motions Ruled On	252
Cases Terminated By Summary Judgment	103 (41%)
Summary Judgment Motions Granted In Part, Narrowing Issues	85 (34%)
Summary Judgment Motions Denied In Their Entirety On the Merits	64 (25%)

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 in this district.⁸ In 2006, the average time from the filing of a motion for summary judgment until its determination was 7.5 months.⁹ Most summary judgment motions are filed shortly after the close of discovery (usually 30 days), and generally one year or more after the case was filed. Consequently, the motions appear to have been ruled on approximately 20 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 2006 was 42.3 months, but ten of the 38 cases (26%) that went to trial in 2006 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 of 1855.¹⁰ As originally implemented, the summary procedure was designed to benefit plaintiffs by accelerating debt actions on overdue bills and

⁸This 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.

⁹ In 2005, the average time from the filing of a motion for summary judgment to ruling was 9.4 months. The reduction in 2006 of the time to ruling by nearly two months (20%), to 7.5 months, is substantial.

¹⁰Gregory A. Gordillo, *Summary Judgment and Problems In Applying the Celotex Trilogy Standard*, 42 CLEV. S. L. REV. 263, 266 and n.13 (1994).

notes where the debtor could not dispute the existence of the debt.¹¹ Although England's historic summary procedure was designed to protect merchants from sham defenses, there is no doubt that modern summary judgment under Rule 56, Fed. R. Civ. P., is a defendant's tool utilized primarily to eliminate meritless claims.¹² The experience in the District of Colorado confirms this fact, where 94 of the 103 (91%) cases terminated through summary judgment resulted in judgments for the defendants. Only nine cases (9%) terminated by summary judgment favored the plaintiffs.

II. SUMMARY JUDGMENT RULINGS IN *PRO SE* CASES

In 36 of the 252 cases where summary judgment motions were decided, at least one party was proceeding *pro se*. In other words, 14% of the cases where summary judgment orders were entered involved *pro se* parties. Twenty-four of the 36 cases (66%) were terminated as a result of the ruling. Summary judgment was granted in whole or in part in 30 of the 36 cases (83%).¹³ The motions were denied in six cases (17%).

¹¹See Miller, *supra* note 5, at 1016.

¹²See Gordillo, *supra* note 7, at 278, 281.

¹³Not surprisingly, the percentage of *pro se* cases terminated by summary judgment (66%) is significantly greater than the percentage of cases generally terminated by summary judgment (41%). The percentage of *pro se* cases where summary judgment is granted in whole or in part (83%) also is notably greater than the percentage of cases generally where summary judgment is granted in whole or part (75%).

III. BREAKDOWN BY NATURE OF CLAIM

Motions for summary judgment were most common in civil rights cases, where 74 of the 252 motions (29%) arose.¹⁴ Forty-six of the 74 civil rights cases (62%) were terminated by summary judgment.¹⁵

Motions for summary judgment were ruled on in 62 employment cases, and 23 of the cases (37%) were terminated as a result.

Three other categories 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 55 cases. Twenty-two of the 55 cases (40%) were terminated as a result. Summary judgment motions were ruled on in 17 cases based on negligence, but only two cases (12%) were terminated as a result. And summary judgment motions were ruled on in 10 cases involving intellectual property, with two of the cases (20%) being terminated

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

¹⁴The experience in the District of Colorado, where summary judgment motions are most common in civil rights 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 civil rights cases are relatively small. The average verdict in the District of Colorado in civil rights cases won by plaintiffs in the last five years is \$122,363, and the median verdict is only \$6,500.

¹⁵Studies have shown that “[h]igher rates of summary judgment are especially notable in civil rights cases.” Cecil, *supra* note 3, at 1.

Nature of Claim	Cases With Motions Decided	Cases Terminated
Civil Rights	74	46 (62%)
Employment	62	23 (37%)
Contract Disputes (including insurance contracts)	55	22 (40%)
Negligence	17	2 (12%)
Intellectual Property	10	2 (20%)
ERISA	5	2 (40%)
Habeas Corpus	4	0
RICO	2	0
FOIA	2	1 (50%)
Securities	2	0
FELA	2	0
FLSA	1	0
Interpleader	1	1 (100%)
Fraud	1	0
Fair Credit Reporting Act	1	0
Colorado Unfair Practices Act	1	0
Theft	1	0
Qui Tam	1	0
Civil Forfeiture	1	0
False Claims Act	1	1 (100%)
Telecommunications Act	1	1 (100%)
IRS Summons	1	0
Colorado Indoor Air Act	1	1 (100%)
Condemnation	1	0
Fraudulent Transfer	1	0
Defamation	1	0
Antitrust	1	0
FDCPA	1	1 (100%)
TOTAL	252	103 (41%)

IV. BREAKDOWN OF SUMMARY JUDGMENT RULINGS BY PRESIDING JUDGE

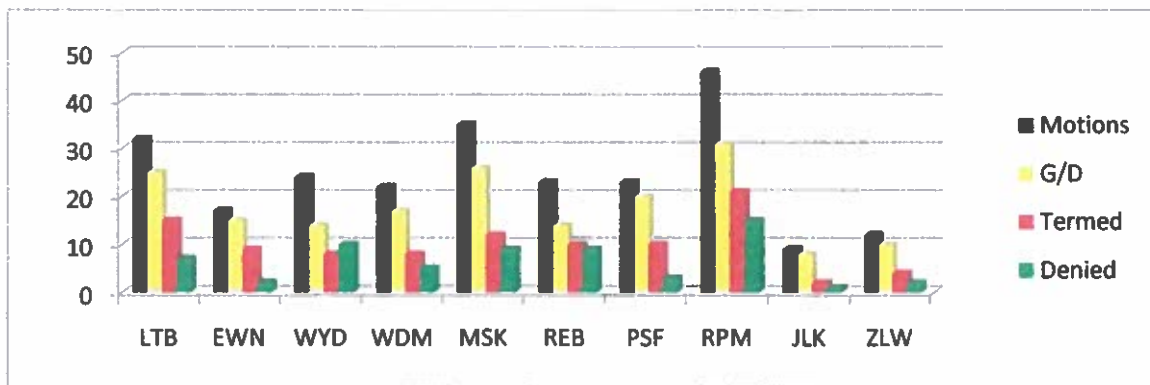
District judges entered the orders in 244 of the 252 cases (97%) where summary judgment motions were ruled on. In 35 of those 244 cases (15%), however, the district judges were reviewing recommendations made by magistrate judges. The district judges accepted the recommendations *in toto* in 30 instances (83%); accepted the recommendation in part and rejected it in part in five instances (14%); and rejected the recommendation outright only once (3%).

Magistrate judges entered orders ruling on motions for summary judgment in eight cases (3%) involving consent jurisdiction under 28 U.S.C. § 636(c).

Judge Nottingham was most likely among the district judges to enter summary judgment terminating a case, doing so in 53% 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 22% of the cases where he ruled.

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 In Part	Motions Denied
LTB	32	15 (47%)	25 (78%)	7 (22%)
EWN	17	9 (53%)	15 (88%)	2 (12%)
WYD	24	8 (33%)	14 (58%)	10 (42%)
WDM	22	8 (36%)	17 (77%)	5 (23%)
MSK	35	12 (34%)	26 (74%)	9 (26%)
REB	23	10 (43%)	14 (61%)	9 (39%)
PSF	23	10 (43%)	20 (87%)	3 (13%)
RPM	46	21 (46%)	31 (67%)	15 (33%)
JLK	9	2 (22%)	8 (89%)	1 (11%)
ZLW	12	4 (33%)	10 (83%)	2 (17%)
CAB	1	1 (100%)	1 (100%)	0
PAC	1	1 (100%)	1 (100%)	0
MJW	1	0	1 (100%)	0
BNB	1	0	1 (100%)	0
CBS	1	0	1 (100%)	0
MEH	4	2 (50%)	3 (75%)	1 (25%)
TOTAL	252	103 (41%)	188 (75%)	64 (25%)



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

LTB

Nature of Claim	Cases With Motions Decided	Cases Terminated
Civil Rights	8	6
Employment	12	5
Contract	4	1
Negligence	2	0
Intellectual Property	1	1
RICO	1	0
FOIA	1	0
ERISA	1	1
Habeas Corpus	1	0
Clean Indoor Air Act	1	1
TOTAL	32	15 (47%)

EWN

Nature of Claim	Cases With Motions Decided	Cases Terminated
Civil Rights	10	7
Employment	1	0
Negligence	4	1
FOIA	1	1
Habeas Corpus	1	0
TOTAL	17	9 (53%)

WYD

Nature of Claim	Cases With Motions Decided	Cases Terminated
Civil Rights	8	5
Employment	4	1
Contract	8	2
Intellectual Property	2	0
Habeas Corpus	1	0
Securities	1	0
TOTAL	24	8 (33%)

WDM

Nature of Claim	Cases With Motions Decided	Cases Terminated
Civil Rights	6	2
Employment	5	1
Contract	5	3
Negligence	1	0
ERISA	2	1
Habeas Corpus	1	0
IRS Summons	1	0
FDCPA	1	1
TOTAL	22	8 (36%)

MSK

Nature of Claim	Cases With Motions Decided	Cases Terminated
Civil Rights	15	8
Employment	6	2
Contract	6	1
Negligence	3	0
Intellectual Property	3	0
FLSA	1	0
Interpleader	1	1
TOTAL	35	12 (34%)

REB

Nature of Claim	Cases With Motions Decided	Cases Terminated
Civil Rights	7	6
Employment	6	3
Contracts	3	1
Negligence	1	0
RICO	1	0
Securities	1	0
Fraud	1	0
Fair Credit Reporting Act	1	0
Colorado Unfair Practices Act	1	0
Theft	1	0
TOTAL	23	10 (43%)

PSF

Nature of Claim	Cases With Motions Decided	Cases Terminated
Civil Rights	3	2
Employment	11	5
Contracts	5	2
Intellectual Property	1	1
ERISA	1	0
Qui Tam	1	0
Civil Forfeiture	1	0
TOTAL	23	10 (43%)

RPM

Nature of Claim	Cases With Motions Decided	Cases Terminated
Civil Rights	12	6
Employment	6	2
Contracts	17	10
Negligence	3	1
Intellectual Property	2	0
ERISA	1	0
FELA	1	0
False Claims Act	1	1
Telecommunications Act	1	1
Condemnation	1	0
Fraudulent Transfer	1	0
TOTAL	46	21 (46%)

JLK

Nature of Claim	Cases With Motions Decided	Cases Terminated
Civil Rights	1	1
Employment	2	1
Contracts	1	0
Negligence	3	0
Intellectual Property	1	0
Defamation	1	0
TOTAL	9	2 (22%)

ZLW

Nature of Claim	Cases With Motions Decided	Cases Terminated
Civil Rights	3	2
Employment	4	1
Contracts	3	1
FELA	1	0
Antitrust	1	0
TOTAL	12	4 (33%)

CAB

Nature of Claim	Cases With Motions Decided	Cases Terminated
Contract	1	1
TOTAL	1	1 (100%)

PAC

Nature of Claim	Cases With Motions Decided	Cases Terminated
Employment	1	1
TOTAL	1	1 (100%)

MJW

Nature of Claim	Cases With Motions Decided	Cases Terminated
Employment	1	0
TOTAL	1	0

BNB

Nature of Claim	Cases With Motions Decided	Cases Terminated
Employment	1	0
TOTAL	1	0

CBS

Nature of Claim	Cases With Motions Decided	Cases Terminated
Employment	1	0
TOTAL	1	0

MEH

Nature of Claim	Cases With Motions Decided	Cases Terminated
Civil Rights	1	1
Employment	1	1
Contract	2	0
TOTAL	4	2 (50%)

V. CONCLUSION

I have analyzed the rulings on summary judgment motions 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.¹⁶

There were 2,607 civil cases filed in the District of Colorado in 2006, and 2,895 cases were terminated. Thirty-eight of the cases terminated (1.3%) were tried to juries, and ten (0.3%) were tried to the court. An additional 103 cases (3.5%) were terminated through summary judgment. Another 544 (19%) cases were settled at or after court-sponsored settlement conferences. Thus, the termination of 695 cases (24%) 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 2,200 cases (76%).

¹⁶See 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.¹⁷

¹⁷Issacharoff, *supra* note 1, at 100.