

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

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

303-844-6408

MEMORANDUM: Jury Verdicts 2011

This memorandum analyzes the jury verdicts¹ returned in civil cases in the District of Colorado between January 1 and December 2, 2011.

A. OVERVIEW

Twenty-nine cases have been tried to jury verdicts during the first eleven months of 2011, while 3,136 civil actions were filed. The ratio of cases tried to cases filed is 0.92%.²

The comparison is imprecise because none of the cases tried so far in 2011 was filed then. The date of filing of each of the civil cases tried to a verdict in 2011 is set out below:

<u>Year Filed</u>	<u>No. Tried in 2011</u>
2010	4
2009	12
2008	11
2007	2

¹It is important to distinguish between a jury's verdict and the judgment ultimately entered by the court. Except as noted, and particularly with the exception of Part D, *infra*, this memorandum is concerned with verdicts and not with judgments.

²So far in 2011, there also have been eight civil trials to the court and 15 criminal trials. Consequently, a total of 52 civil and criminal matters have been tried in the District of Colorado.

The average time from the date a case was filed until trial was 26.7 months, or just more than two years. The shortest time from filing to trial was 12 months in a Fair Debt Collection Practices Act case. Eleven of the 29 cases (38%) were tried within two years of filing.

The number of civil jury trials has risen slightly over the number in 2010, but remains among the lowest number in the past decade. The number of civil jury trials to verdict in each of the last ten years is reported below:

<u>Year</u>	<u>No. of Cases Filed</u>	<u>No. of Civil Jury Trials</u>	<u>Rate of Trials</u>
2011	3,136	29	0.92%
2010	3,177	25	0.79
2009	3,042	34	1.1
2008	2,838	29	1.0
2007	2,726	36	1.3
2006	2,607	38	1.5
2005	2,679	35	1.3
2004	2,698	51	1.89
2003	2,672	47	1.75
2002	2,464	52	2.1

B. TRIAL OUTCOMES: VERDICT AMOUNTS

Plaintiffs have been slightly more successful at trial in 2011 than defendants. Plaintiffs have prevailed in 15 of the 29 jury trials (52%); defendants have prevailed in the remaining 14 cases (48%). Rates of success for the last nine years are set out below:

<u>Year</u>	<u>No. of Civil Jury Trials</u>	<u>Plaintiffs Prevailed</u>	<u>Defendants Prevailed</u>	<u>Split Verdicts</u>
2011	29	15 (52%)	14 (48%)	0
2010	25	13 (52%)	11 (44%) ³	1 (4%)
2009	34	15 (44%)	16 (47%) ⁴	3 (9%)
2008	29	12 (41%)	17 (59%)	0
2007	36	15 (42%)	21 (58%) ⁵	0
2006	38	24 (63%)	14 (37%)	0
2005	35	23 (66%)	11 (31%) ⁶	1 (3%)
2004	51	25 (49%)	26 (51%)	0
<u>2003</u>	<u>47</u>	<u>26 (55%)</u>	<u>21 (45%)</u>	<u>0</u>
TOTAL	324	168 (52%)	151 (47%)	5 (1%)

The largest verdict so far in 2011 is \$5.3 million (in a case alleging fraud), and the smallest verdicts are \$0.⁷ The average verdict is \$871,075, and the median⁸ verdict is \$336,000.

The following chart reports the amounts of the jury verdicts in 2011 from high to low:

³In one case tried in 2010, the verdict for the defendant included an award of \$221,631 on a counterclaim.

⁴In one case tried in 2009, the verdict for the defendant included an award of \$5,350,000 on a counterclaim.

⁵In one case tried in 2007, the verdict for the defendant included an award of \$16,000,000 on a counterclaim.

⁶In 2005, there was one split verdict, with the plaintiff being awarded \$57,672 on his claim for invasion of privacy and the defendant being awarded \$140,520 on its counterclaim for breach of the duty of loyalty.

⁷In three cases, the jury found negligence on the part of the defendant but also found that the plaintiff was 50% or more at fault, resulting in no award to the plaintiff.

⁸The median is the point in the middle of a distribution. Half the verdicts exceeded the median and half were less than the median.

Rank	Amount	Type of Case
1	\$5,300,000	fraud
2	3,030,000	negligence: product liability
3	1,300,000	negligence: skiing accident
4	1,149,950	breach of contract
5	815,562	FELA
6	750,000	negligence: product liability
7	336,000	negligence: auto accident
8	165,000 ⁹	negligence: power saw accident
9	123,601	employment: 1st amendment
10	65,000	breach of contract
11	30,300	FDCPA
12	635	copyright infringement
13	82	trademark infringement
14	0 ¹⁰	negligence: property damage
15	0 ¹¹	negligence: auto accident

Active district judges have presided over 17 jury trials; senior district judges have presided over ten jury trials; a visiting judge presided over one jury trial; and a magistrate judge presided over one jury trial. A breakdown of the trials by presiding judge follows:

⁹The jury awarded damages of \$165,000, but also found the plaintiff 50% at fault, resulting in no award.

¹⁰The jury found the plaintiff 95% at fault, resulting in no award.

¹¹The jury found the plaintiff 82% at fault, resulting in no award.

Judge	Type of Case	Prevailing Party	Amount of Verdict
WYD 1 2 3 4 5 6	breach of contract copyright infringement negligence: auto accident civil rights: excessive force civil rights: retaliation employment: gender	P P P D D D	\$65,000 635 0
MSK 1 2	negligence: product liability trademark infringement	P P	\$3,030,000 82
REB 1 2 3	breach of contract employment: 1st Amendment negligence: power saw accident	P P P	\$1,149,950 123,601 0
PAB 1	employment: gender	D	
CMA 1	FDCPA	P	\$30,300
WJM 1 2 3	employment: breach of contract breach of insurance contract negligence: death	D D D	
RBJ 1	negligence: product liability	P	\$750,000
RPM 1 2 3 4 5	fraud employment: age employment: due process FLSA FDCPA	P D D D D	\$5,300,000
LTB 1 2 3	FELA negligence: auto accident negligence: property damage	P P P	\$815,562 336,000 0
WDM 1 2	civil rights: excessive force breach insurance contract	D D	
SJJohnson 1	civil rights: excessive force	D	
CBS 1	negligence: ski accident	P	\$1,300,000

The civil jury trials in 2011 have required a total of 153 trial days. The longest trial lasted nine days (involving a product liability claim); the shortest was one day (alleging a violation of the FDCPA). The average trial length was 5.3 days. The most common trial lengths were four and five days (6 cases each). The lengths of the trials are specified below:

Trial Days	Type of Case	Prevailing Party
9	civil rights: excessive force	D
9	negligence: products liability	D
8	FELA	P: \$815,562
8	employment: 1st Amendment	P: \$730,000
8	negligence: auto accident	P: \$336,000
8	negligence: auto accident	P: 0
8	negligence: death	D
7	breach of contract	P: \$1,149,950
7	breach of insurance contract	D
6	negligence: product liability	P: \$3,030,250
6	breach of insurance contract	D
5	negligence: ski accident	P: \$445,858
5	breach of contract	P: \$65,000
5	trademark infringement	P: \$82
5	civil rights: excessive force	D
5	employment: gender	D
5	employment: due process	D
4	fraud	P: \$5,300,000
4	copyright infringement	P: \$935
4	negligence: property damage	P: 0
4	negligence: power saw accident	P: 0
4	employment: gender	D
4	FLSA	D
3	civil rights: excessive force	D
3	civil rights: retaliation	D

3	employment: breach of contract	D
3	employment: age	D
2	FDCPA	P: \$30,300
1	FDCPA	D

Average lengths of trial, by nature of claim, are set out below:

Nature of Case	Average Trial Length (days)
FELA	8
negligence	6.5
breach of contract	6.25
civil rights	5
employment	4.6
intellectual property	4.5
fraud	4
FLSA	4
FDCPA	1.5

C. BREAKDOWN BY NATURE OF CLAIM

The jury trials conducted so far in 2011 fall into seven categories based on the nature of the plaintiff's claim:

Category	No. of Cases	% of Cases Tried
negligence	8	28%
employment	6	21
civil rights	4	14
breach of contract	4	14
misc. federal statutes (FELA; FLSA; FDCPA)	4	14
intellectual property	2	7
fraud	1	3

At least 16 of the 29 (55%) cases tried involved claims which permitted the award of attorneys fees to a prevailing plaintiff. The plaintiffs won six of the 16 cases (37.5%). Four of the cases settled before the issue of attorneys fees was decided. The court awarded attorneys fees of \$5,571 in the trademark infringement case where the jury awarded damages of \$82. The court denied the plaintiff's motion for attorneys fees in the sixth case.

Costs have been awarded in 15 cases: six times to plaintiffs and nine times to defendants. The average costs awarded to plaintiffs is \$52,188. The average costs awarded to defendants is \$5,177. An award of costs was denied in two cases. Costs are pending in four cases.

An analysis of the costs awarded is set out below:

Type of Case	Prevailing Party	Verdict	Costs Awarded
negligence: auto accident	P	\$336,000	\$224,261
negligence: products liability	P	3,030,000	40,734
negligence: property damage	P ¹²	--	18,236
breach of contract	P	1,149,950	16,885
fraud	P	5,300,000	16,330
civil rights: excessive force	D	--	10,967
negligence: ski accident	P	1,300,000	9,865
breach of contract	P	65,000	5,053
employment: due process	D	--	4,195
employment: gender	D	--	3,987
employment: breach of contract	D	--	2,944
employment: age	D	--	1,868
FDCPA	D	--	1,862
civil rights: excessive force	D	--	1,713
civil rights: retaliation	D	--	825

¹²The plaintiff was found to be 95% at fault, and costs were awarded to the defendant.

1. Negligence

Eight of the 29 jury trials (28%) in 2011 involved negligence claims. Two involved auto accidents; two involved products liability (auto transmission and a pain pump); and one each involved a ski accident, power saw accident, death of a patient, and an explosion resulting in property damage. The plaintiffs prevailed in seven of the eight cases (87.5%), but in three cases the jury found the plaintiffs to be 50% or more at fault, resulting in no award. The defendant prevailed in the death case.

Trial outcomes by nature of the claim are listed below:

Nature of Claim	Prevailing Party	Amount of Verdict
product liability 1 (auto transmission)	P	\$3,030,000
2 (pain pump)	P	750,000
ski accident	P	1,300,000
auto accident 1	P	336,000
2	P	0 ¹³
power saw	P	0 ¹⁴
property damage	P	0 ¹⁵
death	D	

The average plaintiff's verdict in a negligence case in 2011 is \$773,714.

¹³The jury found the plaintiff 82% at fault, resulting in no award.

¹⁴The jury awarded damages of \$165,000, but also found the plaintiff 50% at fault, resulting in no award.

¹⁵The jury found the plaintiff 95% at fault, resulting in no award.

2. Employment

Six of the 29 jury trials (21%) involved employment claims. The plaintiff prevailed in only one of the six employment cases (17%), in a case implicating First Amendment rights.

Two of the employment cases alleged gender discrimination. The other cases involved the First Amendment, due process, age discrimination, and breach of an employment contract.

In the last decade, 123 employment cases have been tried to verdict. The employment claims most frequently tried are gender (31) and retaliation (29). The plaintiffs prevailed in 59 employment cases (48%), and the defendants prevailed in 64 cases (52%).

The historical trial results of the various employment claims asserted over the past ten years are analyzed below:

Nature of Claim	Cases Tried	Cases Won by Plaintiffs	Plaintiffs' Success Rate	Average Verdict
gender	31	13	42%	\$563,769
retaliation	29	19	66%	280,047
race/national origin	18	5	28%	680,636
disability	17	9	53%	2,275,000
age	9	3	33%	342,832
public employee	8	4	50%	486,787
religion	2	2	100%	535,000
public policy violation	3	1	33%	582,145
FMLA	1	1	100%	10,000
luring	1	0	0%	--
breach of contract	4	2	50%	140,001
TOTAL	123	59	48%	682,817

The 59 cases tried to plaintiffs' verdicts in the last ten years have resulted in awards totaling \$40,286,209.

3. Civil Rights (other than employment)

Civil rights cases (other than employment) accounted for four of the 29 trials (14%).

This is a significant increase from 2010, when only one of 25 trials (4%) alleged a civil rights violation.

The defendants prevailed in all four civil rights cases tried, three of which alleged excessive force and one which alleged retaliation.

Historically, civil rights cases have been among the most difficult for plaintiffs to win. In the last ten years, 54 civil rights cases have been tried to juries. The plaintiffs won eleven cases (20%), and the defendants prevailed in 43 (80%). The largest verdict in a civil rights case was \$1,000,000, involving the unlawful arrest of a state judge. (That verdict was reversed on appeal.) The smallest verdicts were for \$1. The plaintiffs' verdicts over the last ten years are as follows:

Nature of claim	Amount of verdict
unlawful arrest	\$1,000,000
unreasonable search	190,000
excessive force	10,000
unlawful arrest	10,000
unreasonable search	6,500
unlawful arrest	5,000
retaliation: 1st Amendment	1,791
retaliation	1,500
equal protection	630
unlawful arrest	1
excessive force	1

The average verdict in a civil rights case over the last ten years is \$111,402. The median

verdict is \$5,000. When the anomalous \$1 million verdict (which was reversed) is taken out of the equation, the average verdict is \$22,542, and the median verdict is \$5,000.

4. Breach of Contract

Four of the 29 trials (14%) involved claims for breach of contract. Two alleged breach of insurance contracts; one alleged an oral contract; and one involved a contract for engineering services. The defendants prevailed in both cases alleging breach of insurance contracts. The plaintiff prevailed in the oral contract case and was awarded \$1,149,950. The plaintiff also prevailed in the case involving engineering services and was awarded \$65,000.

The trial outcomes are listed below:

Nature of Claim	Prevailing Party	Amount of Verdict
oral contract	P	\$1,149,950
engineering services	P	65,000
insurance 1	D	--
2	D	--

The average verdict for breach of contract was \$607,475.

5. Federal Statutory Claims

Four jury trials in 2011 involved claims under various federal statutes. Two cases under the FDCPA were tried to verdict, and the plaintiff prevailed in one with an award of \$30,300. The plaintiff prevailed in a claim under the Federal Employers' Liability Act and was awarded \$815,562. The defendants prevailed in the second FDCPA case and in a case under the Fair Labor Standards Act. The cases are set out below:

Nature of Claim	Prevailing Party	Amount of Verdict
FDCPA		
1	P	\$30,300
1	D	--
FELA	P	815,562
FLSA	D	--

6. Intellectual Property

Two of the 29 trials (7%) involved intellectual property claims. The plaintiffs prevailed in both actions, but were awarded minimal damages. In a claim alleging copyright infringement, the plaintiff was awarded damages of \$635. In a trademark infringement case, the plaintiff was awarded \$82.

Plaintiffs have fared exceptionally well in intellectual property cases tried in this district. In the last ten years, 21 intellectual property cases have been tried, and the plaintiffs prevailed in 19 of them (90%). The historical results over the last nine years follow:

Nature of Claim	Cases Tried	Cases Won by Plaintiffs	Plaintiffs' Success Rate
patent infringement	8	8	100%
trademark infringement	5	3	60%
breach of non-disclosure	1	1	100%
piracy	1	1	100%
theft of trade secrets	3	3	100%
copyright infringement	2	2	100%
Lanham Act	1	1	100%

The verdicts in the intellectual property cases have ranged as follows:

Nature of Claim	Amount of Verdict
patent infringement	\$51,000,000
misappropriation of trade secrets	41,980,131
trademark infringement	15,199,936
patent Infringement	14,320,283
misappropriation of trade secrets	12,719,176
breach of non-disclosure	9,340,000
patent infringement	5,350,000
trademark infringement	4,462,000
patent infringement	1,850,000
patent infringement	1,679,616
patent infringement	1,205,000
patent infringement	728,484
copyright infringement	511,910
misappropriation of trade secret	100,000
patent infringement	74,863
piracy	10,000 ¹⁶
copyright infringement	635
trademark infringement	82
Lanham Act	0
Total	160,532,116

The average verdict over the last ten years in intellectual property cases is \$8,499,059; the median verdict is \$1,850,000.

7. Miscellaneous Torts.

One of the 29 trials (3%) involved the common law tort of fraud. The plaintiff prevailed and was awarded damages of \$5,300,000.

¹⁶The plaintiff sought statutory damages only, which were awarded by the trial judge and not the jury.

D. JUDGMENTS VARYING SUBSTANTIALLY FROM THE VERDICT

Several of the judgments entered in 2011 varied substantially from the jury's verdicts underlying them.

In the ski accident case, the trial judge applied a statutory damages cap and reduced the verdict of \$1,300,000 to a judgment of \$445,859.

In an employment case, the parties settled all remaining issues for a total judgment of \$730,000 after the jury returned a verdict of \$123,601 for emotional distress and back pay.

In an auto accident case, the trial judge awarded costs of \$224,261, nearly doubling the jury's verdict of \$336,000. The resulting judgment was for more than \$560,000.

In a negligence case involving property damage, the jury found that the defendant was negligent, but also found the plaintiff was 95% at fault. The court awarded the defendant its costs in the amount of \$18,236.

In another negligence case involving a personal injury resulting from a power saw accident, the jury awarded damages of \$165,000, but found the plaintiff 50% at fault, resulting in no award.

E. TRIALS VACATED DUE TO SETTLEMENT

Continuing a troubling pattern, six cases settled less than one week before the trial was scheduled to begin or after the trial started. Thus, although 29 cases have proceeded to verdict, six of the 35 cases (17%) that reached the eve of trial settled before a verdict was returned.

The pattern of cases settling on the eve of trial is highlighted below:

Year	Cases Pending at Eve of Trial	Cases Tried	Cases Settling on Eve of Trial
2011	35	29	6 (17%)
2010	32	25	7 (22%)
2009	39	34	5 (13%)
2008	36	29	7 (19%)
2007	49	36	13 (27%)
2006	48	38	10 (21%)

These last-minute settlements constitute an enormous drain on judicial resources that reasonably could be avoided by the parties.

F. CONCLUSION

The District of Colorado continues to experience the phenomenon of the vanishing trial, with only 29 civil cases (0.92%) being tried to jury verdicts through December 2, 2011.

Plaintiffs have fared slightly better at trial than have defendants, with plaintiffs prevailing in 15 of the 29 trials (52%) and defendants prevailing in 14 cases (48%). The average verdict is \$871,075, and the median verdict is \$336,000.