

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

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

303-844-6408

**WHEN IN DOUBT, COUNT:
ADDING UP THE WORK OF THE DISTRICT COURT 2014**

For the second consecutive year, the United States District Court for the District of Colorado in 2014 experienced a slowdown in trials, conducting 33 civil jury trials to verdict; 14 civil trials to the court; 11 felony trials; and four petty offense trials. That is a total of 62 civil and criminal trials, down from 74 total trials in 2013 and from 91 total trials in 2012. The business of the district court is reported below.

I. CIVIL JURY TRIALS

A. Overview

Thirty-three civil cases were tried to jury verdicts in 2014, while 3,516 civil actions were filed. The ratio of cases tried to cases filed is 1%.

The comparison is imprecise because none of the cases tried in 2014 was filed then. The date of filing of each case tried to verdict in 2014 is reported below:

<u>Year Filed</u>	<u>No. Tried in 2013</u>
2013	6
2012	9
2011	12
2010	3
2009	3

The average time from case filing to a jury trial in 2014 was 33 months (2.9 years), which is an increase of five months from 2013. The shortest time from filing to trial was eleven months in a Fair Debt Collection Practices Act case. Nine of the 33 jury trials (27%) were tried within two years of filing. The average time to trial by judge was:

<u>Judge</u>	<u>Avg. Time to Trial</u>
MSK	40.5 mos.
REB	26.8
PAB	31.5
CMA	28.0
WJM	35.3
RBJ	22.8
RM	33.0
RPM	46.6
JLK	30.0
LTB	35.0
WYD	42.0
KLM	15.0

The number of civil jury trials in 2014 fell by 18% compared to 2013, when 40 civil jury cases were tried to verdict. The number of civil jury trials to verdict in each of the last 13 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>
2014	3,516	33	1.00%
2013	3,444	40	1.16
2012	3,380	53	1.57
2011	3,136	30	0.88
2010	3,177	25	0.79
2009	3,042	34	1.10
2008	2,838	29	1.00
2007	2,726	36	1.30
2006	2,607	38	1.50
2005	2,679	35	1.30
2004	2,698	51	1.89
2003	2,672	47	1.75
2002	2,464	52	2.10

B. Verdict Amounts

Defendants fared particularly well in 2014, prevailing in 20 of the 33 civil jury trials (61%),¹ while the plaintiffs prevailed in only 13 cases (39%). Rates of success since 2003 are reported below:

<u>Year</u>	<u>No. of Civil Jury Trials</u>	<u>Plaintiffs Prevailed</u>	<u>Defendants Prevailed</u>	<u>Split Verdicts</u>
2014	33	13 (39%)	20 (61%)	0
2013	40	14 (35%)	26 (65%) ²	0
2012	53	25 (47%)	28 (53%)	0
2011	30	15 (50%)	15 (50%)	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	451	220 (48.7%)	226 (50.1%)	5 (1.1%)

¹Three additional trials ended at the conclusion of the plaintiff's case with the judge directing a verdict for defendants under Fed. R. Civ. P. 50. Put differently, 8% of the civil jury trials ended in a directed verdict for the defense.

²In one case tried in 2013, the verdict for the defendant included an award of \$39,076 on a counterclaim.

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.

The largest verdict in 2014 was \$43,096,003 (in a breach of contract case involving an iPad application for aviation charts), and the smallest were \$1.⁷ The average verdict was \$5,109,410, and the median was \$832,000. The following chart reports the jury verdicts in 2014 from high to low:

Rank	Amount	Type of Case
1	\$43,096,003	breach of contract: iPad application
2	11,399,936	civil rights: deliberate indifference to medical need
3	4,650,000	civil rights: excessive force
4	2,501,300	breach of insurance contract
5	1,790,000	civil rights: illegal arrest
6	1,399,449 ⁸	breach of insurance contract
7	832,000	negligence: auto accident
8	365,000	employment: 1st Amendment violation
9	158,649	Federal Employers' Liability Act
10	130,001	breach of insurance contract
11	100,000	employment: race
12	1	civil rights: unreasonable search
13	1	breach of contract: real property lease

Active district judges presided over 25 jury trials; senior district judges presided over seven jury trials; and a magistrate judges presided over one jury trial.

⁷Juries awarded nominal damages in two cases, one involving a Fourth Amendment unreasonable search claim and the other alleging breach of a real property lease.

⁸The case was tried to a jury on the issue of liability, but the court determined the amount of damages.

A breakdown of the civil jury trials in 2014 by presiding judge follows:

Judge	Type of Case	Prevailing Party	Amount of Verdict
MSK	1. civil rights: illegal arrest	P	\$1,790,000
	2. employment: 1st Amendment	P	365,000
	3. employment: retaliation	D	--
	4. employment: gender	D	--
REB	1. Federal Employers' Liability Act	P	158,649
	2. breach of insurance contract	P	130,001
	3. employment: race	P	100,000
	4. negligence: legal malpractice	D	--
	5. patent infringement	D	--
	6. Fair Labor Standards Act	D	--
PAB	1. civil rights: excessive force	D	--
	2. negligence: medical malpractice	D	--
CMA	1. breach of insurance contract	P	1,399,449
	2. Fair Debt Collection Practices Act	D	--
	3. civil rights: cruel and unusual conditions (no water in cell)	D	--
WJM	1. breach of contract: iPad application	P	43,096,003
	2. breach of contract: electric rates	D	--
	3. civil rights: excessive force	D	--
RBJ	1. civil rights: deliberate indifference	P	11,399,936
	2. civil rights: excessive force	P	4,650,000
	3. negligence: auto accident	P	832,000
	4. negligence: dental malpractice	D	--
	5. breach of contract: satellite TV equipment installation	D	--
	6. Fair Debt Collection Practices Act	D	--
RM	1. employment: race	D	--
RPM	1. civil rights: unreasonable search	P	1
	2. civil rights: unreasonable search	D	--
	3. employment: race	D	--
JLK	1. breach of contract: sale of goods	D	--
LTB	1. negligence: auto accident	D	--
WYD	1. breach of contract: real property lease	P	1
	2. employment: gender	D	--
KLM	1. breach of insurance contract	P	2,501,300

1. Civil Rights (other than employment)

The highlight of the year are the civil rights cases. Eight cases proceeded to trial. Three alleged use of excessive force; two alleged unreasonable searches; and one each alleged deliberate indifference to a serious medical need, illegal arrest, and cruel and unusual conditions. The plaintiffs experienced unprecedented success, prevailing in four of the eight cases (50%) and receiving million dollar verdicts in three of the four.

The results are reported below:

Nature of Claim	Prevailing Party	Verdict
excessive force 1.	P	\$ 4,650,000
2.	D	--
3.	D	--
unreasonable search 1.	P	1
2.	D	--
deliberate indifference	P	11,399,936
illegal arrest	P	1,790,000
cruel and unusual conditions	D	--

Historically, civil rights cases have been among the most difficult for plaintiffs to win. In the last 13 years, 80 civil rights cases have been tried to verdict. The plaintiffs won 19 cases (24%), and the defendants prevailed in 61 (76%).

Prior to 2014, the largest verdict in a civil rights case was \$1,000,000, involving the unlawful arrest of a state judge, which was reversed on appeal. The smallest verdicts were \$1 each awarded in three cases.

The plaintiffs' verdicts over the last 13 years are reported below:

Nature of claim	Amount of verdict
deliberate indifference	\$11,399,936
excessive force	4,650,000
unlawful arrest	1,790,000
unlawful arrest	1,000,000
unreasonable search	190,000
excessive force	45,000
excessive force	40,000
cruel and unusual	32,002
excessive force	10,000
unlawful arrest	10,000
unreasonable search	6,500
unlawful arrest	5,000
cruel and unusual	2,000
retaliation: 1st Amendment	1,791
retaliation	1,500
equal protection	630
unlawful arrest	1
excessive force	1
unreasonable search	1

Previously, the average verdict in civil rights cases was \$89,628. With the record setting verdicts of 2014, the average soared to \$1,009,703. The median verdict is \$10,000.

2. Breach of Contract

Eight of the 33 trials (24%) involved claims for breach of contract. Three alleged breach of insurance contracts and five alleged breach of other kinds of commercial contracts. The largest verdict of the year was awarded in a case alleging breach of contract concerning an iPad application for aviation maps, where the jury awarded the application developer \$43,096,003. The jury awarded nominal damages of \$1 in a breach of lease case. Two of the insurance contract cases resulted in million dollar verdicts--\$2,501,300 and \$1,399,449. The results are reported below:

Nature of Claim	Prevailing Party	Amount of Verdict
breach of insurance contract		
1.	P	\$2,501,300 ⁹
2.	P	1,399,449
3.	P	130,001
breach of contract: iPad application	P	43,096,003 ¹⁰
breach of real property lease	P	1
breach of satellite TV equipment installation contract	D	--
breach of sale of goods contract	D	--
breach of electrical rates contract	D	--

The average verdict for breach of contract was \$9,425,350, and the median was \$1,399,449.

Over the last 13 years, there have been 83 jury trials alleging breach of contract. The plaintiffs prevailed in 52 (63%); the defendants prevailed in 28 (34%); and there were three split

⁹The verdict was reduced to \$1,514,300. The judge then awarded prejudgment interest of \$817,155 and costs of \$9,182, for a final judgment of \$2,340,637.

¹⁰On a post-trial motion, the judge reduced the award to \$21,537,503. He then awarded prejudgment interest of \$1,965,592 and costs of \$200,000, for a final judgment of \$23,703,095.

verdicts (4%).

3. Employment

Seven of the 33 jury trials (21%) involved employment claims. The plaintiffs prevailed in two of the cases (29%). The defendants prevailed in the remaining five (71%), including one where the plaintiff proceeded through trial pro se. The results by nature of the alleged discrimination are reported below:

Nature of Claim	Prevailing Party	Verdict
race 1.	P	\$100,000
2.	D	--
3.	D	--
1st Amendment	P	365,000
gender 1.	D	--
2.	D	--
retaliation	D	--

In the last 13 years, 159 employment cases have been tried to verdict. The employment claims most frequently tried involve retaliation (39) and gender (36). The plaintiffs prevailed in 74 employment cases (47%), and the defendants prevailed in 85 cases (53%).

The historical verdicts rendered by nature of the claim asserted over the past 13 years are reported below:

Nature of Claim	Cases Tried	Cases Won by Plaintiffs	Plaintiffs' Success Rate	Average Verdict
retaliation	39	25	64%	\$257,311
gender	36	14	39%	484,016
race/national origin	27	7	26%	694,921
disability	23	12	52%	959,887
age	11	3	27%	342,832
public employee	10	5	50%	404,745
religion	2	2	100%	535,000
public policy violation	5	3	60%	328,765
luring	1	0	0%	--
breach of contract	4	2	50%	140,001
negligent misrep.	1	1	100%	231,665
TOTAL	159	74	47%	

The 72 cases tried to plaintiffs' verdicts in the last 13 years have resulted in awards totaling \$43,443,283.

4. Common Law Torts

Five of the 33 jury trials to verdict (15%) involved common law tort claims. Three alleged professional negligence--medicine, dentistry, and law--and two involved negligence resulting in auto accidents. The plaintiff prevailed in only one tort case, involving an auto accident. The tort claims, by category, are specified below:

Nature of Claim	Prevailing Party	Amount of Verdict
negligence		
1. medical malpractice	D	--
2. dental malpractice	D	--
3. legal malpractice	D	--
4. auto accident	P	\$832,000 ¹¹
5. auto accident	D	--

Seventy-six negligence cases have been tried to verdict in the last 13 years. The plaintiffs prevailed in 36 of them (47%), and the defendants prevailed in the remaining 40 (53%). The total amount of damages awarded to plaintiffs in negligence cases over the last 13 years is \$61,990,312. Significantly, although 14 medical malpractice cases have been tried to verdict, the plaintiff has never prevailed.

¹¹The verdict was reduced to \$499,200 based on the plaintiff's contributory negligence. The judge awarded prejudgment interest of \$273,515 and costs of \$6,929, for a final judgment of \$779,644.

The historical verdicts by nature of the claim asserted over the last 13 years are reported

below:

Nature of Claim	Cases Tried	Cases Won by Plaintiffs	Plaintiffs' Success Rate	Average Verdict
personal injury (n.o.s.)	18	13	72%	\$1,804,120
product liability	18	10	56%	3,237,237
medical malpractice	14	0	0%	--
legal malpractice	1	0	0%	--
ski accidents	8	5	62.5%	571,566
auto accidents	10	6	60%	536,926
premises liability	5	1	20%	85,000
property damage	2	1	50%	0
TOTAL	76	36	47%	

5. Miscellaneous Federal Statutory Claims

Four jury trials in 2014 involved claims under various federal statutes--the Fair Debt Collection Practices Act (two cases); Federal Employers' Liability Act; and Fair Labor Standards Act. The plaintiff prevailed in the FELA case and was awarded damages of \$158,649. The defendants prevailed in the other cases.

6. Intellectual Property

After a two year hiatus, one intellectual property case was tried to verdict in 2014. The claim alleged patent infringement in connection with decorative LED lights. The defendant prevailed.

Historically, plaintiffs have fared exceptionally well in intellectual property cases in this district. In the last 13 years, 22 intellectual property cases have been tried to verdict, and the plaintiffs prevailed in 19 of them (86%).

The historical results over the last 13 years are reported below:

Nature of Claim	Cases Tried	Cases Won by Plaintiffs	Plaintiffs' Success Rate
patent infringement	9	8	89%
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 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 ¹²
copyright infringement	635
trademark infringement	82
Lanham Act	0
Total	160,532,116

The average verdict over the last 13 years in intellectual property cases is \$8,499,059; the median verdict is \$1,850,000.

¹²The plaintiff sought statutory damages only, which were awarded by the trial judge and not the jury.

II. CIVIL TRIALS TO THE COURT

Fourteen cases were tried to the court in 2014. The plaintiffs prevailed in seven (50%); the defendants prevailed in six (43%); and one case was continued to 2015 for further proceedings.

The average time from filing to a bench trial in 2014 was 32 months (2.7 years). This is one month less than the average time to trial in jury cases (33 months).

The average length of a bench trial was four days. The longest bench trial was nine days in an ejectment case, and the shortest were one day (2 cases).

Three of the bench trials resulted in rulings on the last day of trial or within days thereafter. In nine bench trials, the judges took an average of 2.2 months after the trial to render a decision. One case has been under advisement for ten months.

The nature of the bench trials and their outcomes are reported below:

Judge	Type of Case	Time to Trial (mos.)	Prevailing Party	Award
MSK	1. constitutional challenge: Colo. gun statute	29	D	statute declared valid regs. declared valid in part
	2. constitutional challenge: Special Admin. Measures	77	split	
	3. antitrust	33	D	--
	4. employment: race	27	D	--
WJM	1. RLUIPA	58	P	injunction entered allowing books
	2. civil rights: excessive force	45	D	
RBJ	1. citizenship petition	5	P	declaration of citizenship settled before award
	2. breach of insurance contract	26	P	
RM	1. breach of contract	30	D pending	--
	2. ejectment	29		
RPM	1. FTCA: postal truck accident	28	P ongoing	\$ 396,351
	2. FTCA: medical malpractice	28		
WYD	premises liability: bike trial	29	P	7,302,218
BNB	breach of contract: equipment rental	14	P	161,646

III. MAGISTRATE JUDGE UTILIZATION

A. Consent Jurisdiction

In a landmark move, the District of Colorado in 2014 approved the Pilot Program for the Direct Assignment of Cases to Magistrate Judges. The program, which took effect on February 3, 2014, calls for the direct assignment of civil cases in equal parts to each district and full time magistrate judge. To be effective, however, the parties must affirmatively consent to the jurisdiction of the magistrate judge, and cases are reassigned to district judges where consent is not given.

In 2013, prior to the enactment of the Pilot Program, parties consented to magistrate judge jurisdiction in only 50 of the 3,444 civil cases filed (1.5%). By contrast, in 2014 the parties consented to the jurisdiction of a magistrate judge in a total of 205 cases. Of these, 162 consents occurred in cases directly assigned under the Pilot Program, and 43 occurred under D.C.COLO.LCivR 72.2.

Since the Pilot Program began, there have been 3,140 civil actions filed eligible for direct assignment to magistrate judges, and 1,023 cases were randomly drawn to magistrate judges.

The chart reflects what happened after random assignment:

Cases drawn	1,023
Consents given	162 (15.8%)
Consents declined	334 (32.6%)
Consents pending	215 (21.0%)
Cases terminated before consent decided	217 (21.2%)

Consent has been declined more than twice as often as it has been given. Remarkably, 217 cases (21.2%) were voluntarily dismissed before the parties decided whether to consent.

Viewed differently, the parties decided whether to consent in 496 cases. In 162 instances

(or 33% of the time when the parties made a decision) the parties consented, while in 334 instances (or 67% of the time when a decision was made) the parties declined consent.

Looking at case filings as a whole, there were 3,516 civil actions filed in 2014. The parties consented to magistrate judge jurisdiction under the Pilot Program in 162 instances; consented under Local Rule 72.2 in 43 instances; and 217 cases were voluntarily dismissed before the consent issue was decided. A total of 422 cases, or 12% of the civil filings, will be or have been resolved by other than a district judge.

B. Alternative Dispute Resolution

In December 2011 the district court changed its policy concerning alternative dispute resolution (ADR). Prior to December 2011, the magistrate judges were heavily involved in ADR efforts. Subsequently, the involvement of the magistrate judges in ADR has dropped off significantly, as indicated below:

<u>Year</u>	<u>Settlement Conferences</u>	<u>Early Neutral Evaluations</u>
2014	122	6
2013	100	16
2012	166	22
2011	475	
2010	592	
2009	718	
2008	622	
2007	566	

There is no indication that the change in the ADR policy has had an adverse impact on case disposition in the District of Colorado. To the contrary, since 2011 the number of civil actions filed has increased by 12%. At the same time, the number of civil actions pending at the end of the year has increased by less than 5%. In other words, the district court is disposing of cases at a rate faster than the filings are increasing.

destruction of government property.

Details of the felony prosecutions in 2014 are reported below:

Judge	Crime Charged	Verdict	Sentence
REB	destruction of gov't property	convicted	pending
PAB	distribution of methamphetamine	convicted	188 mos. (15.6 yrs.)
CMA	1. false tax return 2. possession of methamphetamine and of a gun in furtherance	convicted	pending
		convicted	pending
WJM	possession of methamphetamine and of a gun in furtherance	convicted	72 mos. (6 yrs.)
RBJ	1. mailing threatening communications 2. wire/mail fraud and money laundering	convicted	108 mos. (9 yrs.)
		convicted	144 mos. (12 yrs.)
RM	1. impeding the IRS 2. possession of cocaine and of a gun in furtherance	convicted	18 mos.
		convicted	pending
JLK	1. distribution of Oxycodone 2. illegal reentry	convicted	pending
		convicted	48 mos.

Trial of the 11 felony cases required 59 days, for an average of 5 days per trial.

B. Petty Offense Trials

Magistrate Judge Gordon Gallagher in Grand Junction conducted four petty offense trials, all resulting in convictions. Two cases charged use of a motor vehicle in a closed area; one charged defacing government property; and the last charged residing on National Forest Service land.

V. CONCLUSION

Some things seem never to change. In the District of Colorado, the constants are increasing case filings, trials hovering around 1% of case filings, and jury verdicts nearly evenly split between plaintiffs and defendants.

But 2014 brought two landmark changes to the district court. The first was a dramatic increase in the success of plaintiffs in civil rights cases where, for the first time, plaintiffs

prevailed in one-half of the cases tried and received previously unheard of verdicts in the millions of dollars. The second was the philosophical change to place the magistrate judges on the wheel in civil cases, where they now are responsible for more than 10% of the docket.

This is my last statistical report as a magistrate judge, and I now move into retirement. It has been the greatest honor of my career to serve as a United States Magistrate Judge in the District of Colorado and to have worked with many of you in that capacity. Thank you for your commitment to the rule of law and for the respect that you have shown to me and to the court.