

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

**Michael E. Hegarty
United States Magistrate Judge**

**2018 STATISTICS FOR THE
U.S. DISTRICT COURT, DISTRICT OF COLORADO**

This memorandum analyzes trial results and statistics¹ in civil and criminal cases in the District of Colorado (“the District”) from January 1, 2018, through December 31, 2018, as well as information concerning dispositive motions practice, ADR, and Magistrate Judge consent.

TRIALS

I. SUMMARY

In 2018, the District saw seventy-eight total cases tried to verdict.² This includes forty-eight civil jury trials and twelve criminal jury trials, for a total of sixty jury trials (last year saw a total of sixty-one jury trials including forty civil jury trials and twenty-one criminal jury trials). Additionally, the District saw fifteen civil bench trials and one criminal bench trial (last year saw a total of nine civil bench trials and no criminal bench trials). This represents a slight decline in total jury trials that reached a verdict after last year saw an increase in total jury trials for the first time after a five-year period of decline.³ The overall take from this year is that it appears we may have leveled off on the number of jury trials in the District after a recent steady decline.

¹ Statistics reflect trial verdicts as opposed to dispositions entered by the court through some other mechanism.

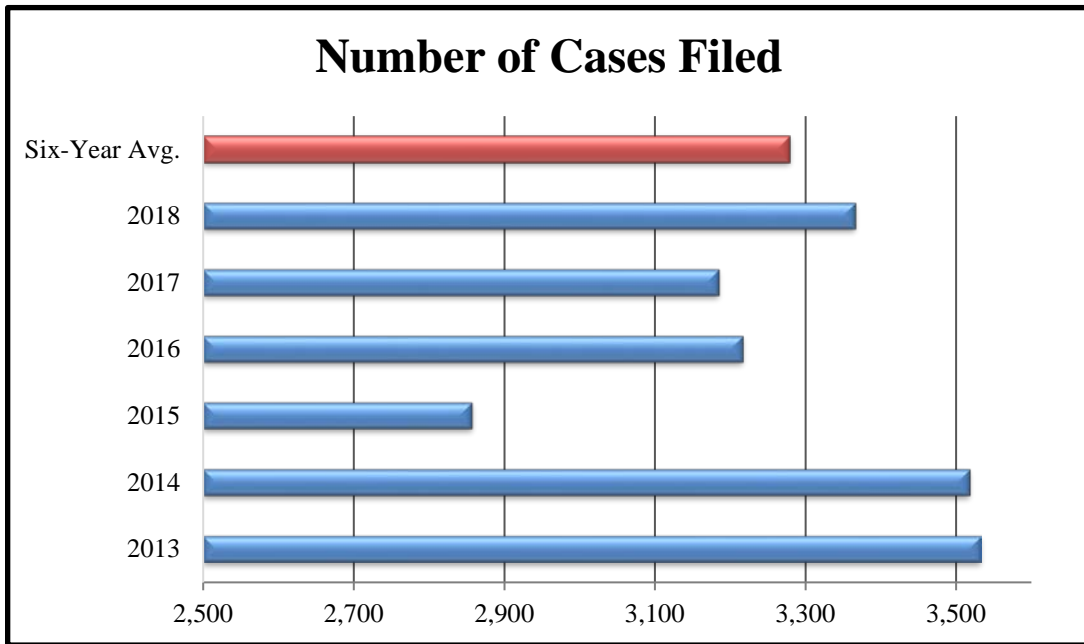
² One civil case settled during jury trial, and one jury trial concluded on a judgement as a matter of law at halftime. These are not included in the statistics, although this obviously leaves the 2018 numbers slightly understated when viewed in the light of a litigant’s access to trials in our court.

³ The previous years saw fifty-five civil and criminal jury trials in 2016; fifty-eight in 2015; sixty-two in 2014; and seventy-four in 2013.

II. CIVIL JURY TRIALS

A. Overview

The District tried forty-eight civil cases to jury verdicts in 2018.⁴ Litigants filed a total of 3,365 civil cases in 2018; 3,184 cases in 2017; 3,216 in 2016; 2,857 in 2015; 3,517 in 2014; and 3,532 in 2013. These figures are demonstrated in the chart below:



Taking the average cases filed in 2013 through 2018 of 3,279 (rounded to the nearest whole number) and comparing it with the forty-eight civil jury verdicts in 2018 represents a 1.46% trial rate, an increase from last year's 1.22 % rate using the same 3,279 cases total. The filing date for each case tried to jury verdict in 2018 is reported below:

⁴ It should be noted that one of the forty-eight trials represented actually resulted in judgment vacated. I have included this trial in the total number of trials reaching jury verdicts as the case used all normal judiciary resources. However, I adjust the numbers accordingly when discussing parties' success rates later in this report.

<u>Year Filed</u>	<u>No. Tried in 2018</u>
2017	7
2016	20
2015	10
2014	6
2013	3
2012	1
2011	0
2010	1

B. Time to Trial

The average time from civil case filing to jury trial in 2018 was 34.1 months, a statistically significant (20%) increase from the 28.4 months in 2017. The shortest time from filing to trial was ten months and involved a *pro se* plaintiff (FLSA – overtime pay). The longest time was ninety-six months (Title VII Retaliation), however it should be noted that thirty-three of those months were spent on appeal. Further, twenty-seven of the forty-eight cases were tried within two years of filing (56.2%), compared with seventeen of the forty cases last year (42.5%). Six of these cases were tried to a Magistrate Judge, matching the number of cases tried to a Magistrate Judge in 2017.⁵ The average time to trial for cases tried to a Magistrate Judge was 26.5 months, about 25% faster than the overall average.

⁵ In actuality, seven total jury trials were tried to a Magistrate Judge. However, in one case (1983 excessive force-prisoner rights), Magistrate Judge Tafoya vacated judgement in favor of the plaintiff, retried the case, and during the re-trial entered judgement as a matter of law at halftime for the defendant. Accordingly, the trial resulting in judgment as matter of law is not included in

C. Volume of Trials

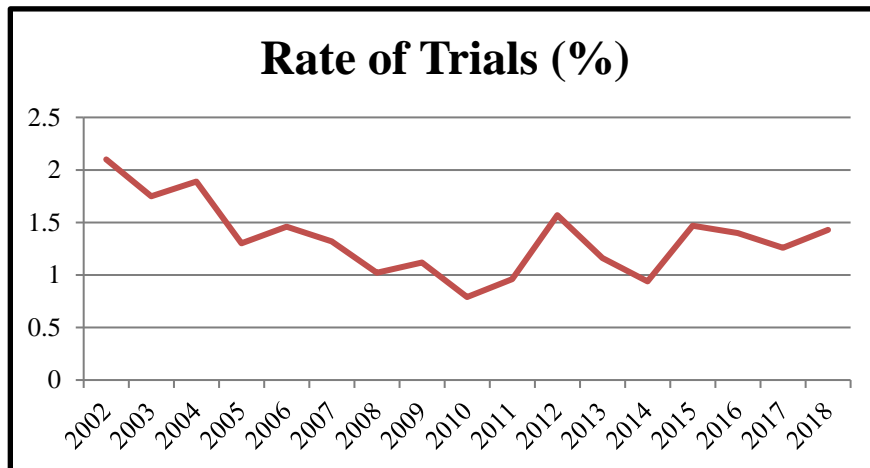
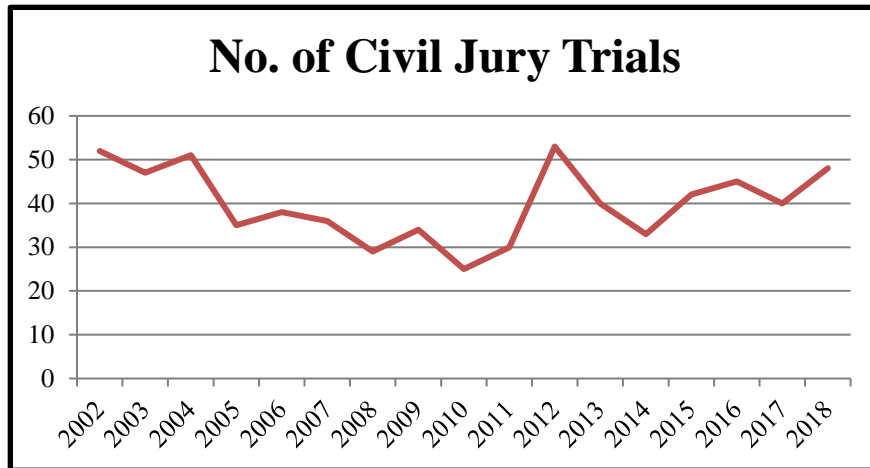
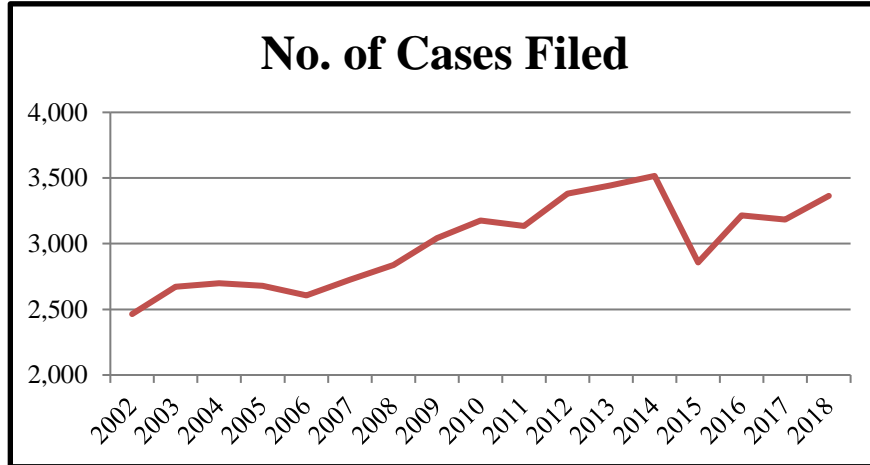
The number of civil jury trials that reached a verdict in 2018 (forty-eight) rose from that number in 2017 (forty) and 2016 (forty-five). Similarly, the number of civil cases filed in 2018 (3,365) was slightly higher than 2014-2018 five-year average of 3,227. This is a 5.7% deviation from total cases filed in 2017 (3,184). However, 2017 saw only a 1% deviation from the total cases filed in 2016 (3,216). Indeed, prior to 2017 the biggest change year to year in raw case filings since the District (*i.e.*, Magistrate Judge Boland) began tracking numbers was a 359-case increase from 2015 – 2016 (12.6% increase). Thus, 2018 saw a statistically significant increase in filings from the number of filings in 2017.

Relevant statistics regarding civil jury trials, in each of the last seventeen years are reported below:

<u>Year</u>	<u>No. of Cases Filed</u>	<u>No. of Civil Jury Trials</u>	<u>Rate of Trials (%)</u>
2018	3,365	48	1.43
2017	3,184	40	1.26
2016	3,216	45	1.40
2015	2,857	42	1.47
2014	3,516	33	0.94
2013	3,444	40	1.16
2012	3,380	53	1.57
2011	3,136	30	0.96
2010	3,177	25	0.79
2009	3,042	34	1.12
2008	2,838	29	1.02
2007	2,726	36	1.32
2006	2,607	38	1.46
2005	2,679	35	1.30
2004	2,698	51	1.89

the total number, but it should also be noted that one of the six trials represented above resulted in judgment vacated.

2003	2,672	47	1.75
2002	2,464	52	2.10
Average	3,000	39.29	1.33



The five-year average from 2014 through 2018 is 41.6 trials per year, close to the seventeen-year average of 39.29 trials per year.

D. Parties’ Success Rates

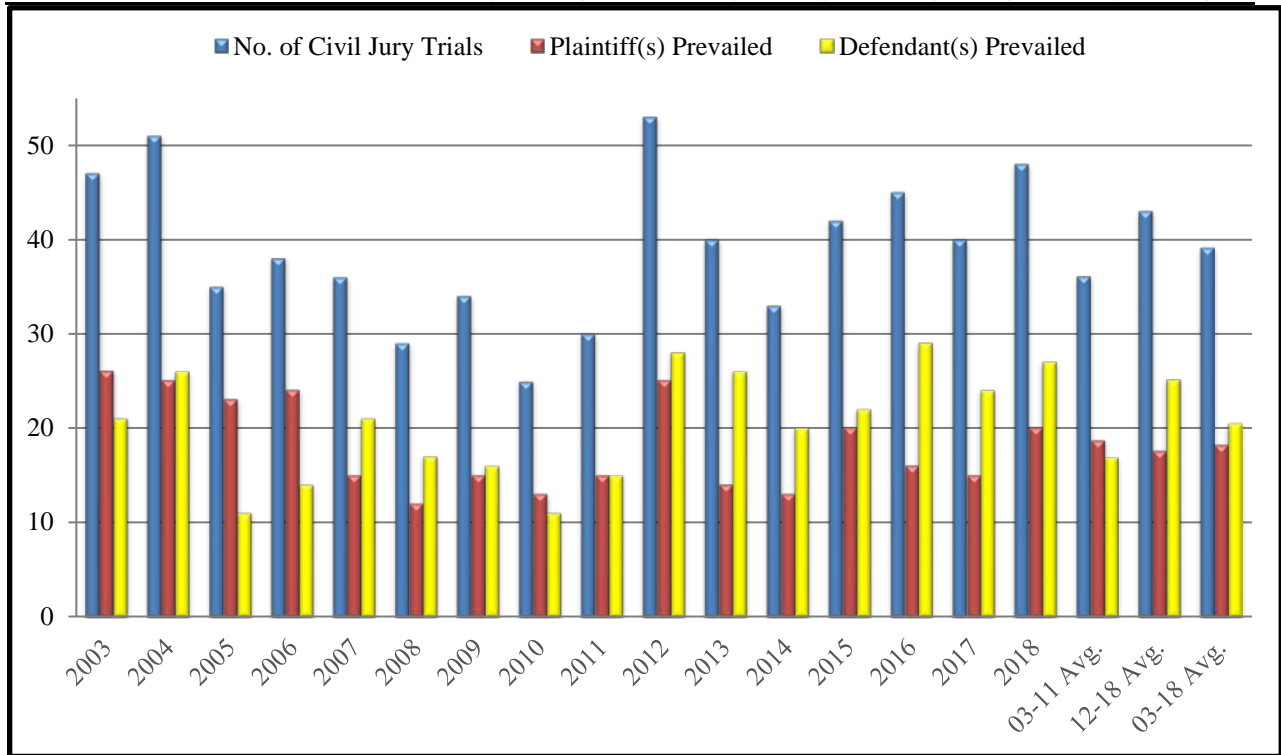
Defendants prevailed in twenty-seven of the forty-eight jury trials (56.25%), while plaintiffs prevailed in twenty-one of the trials (43.75%). However, it should be noted that in one of the twenty-one verdicts in favor of the plaintiff, judgment was vacated and a new trial was held (1983 excessive force-prisoner rights). In that new trial, judgment as a matter of law was entered at halftime. When the original verdict for the plaintiff is not included in the numbers, the statistics show defendants prevailed 57.5% of the time and plaintiffs prevailed 42.5% of the time.⁶ As noted above, one case settled during trial and one resulted in judgment as a matter of law. These two cases are not included in the overall number of jury trials reaching verdict.

Since 2003, there have been 626 civil jury trials. The plaintiffs prevailed in 291(46.5%) and the defendants prevailed in 328 (52.4%). There were six (0.95%) split verdicts and one (0.16%) judgment vacated. Rates of success since 2003 are presented below:

Year	No. of Civil Jury Trials	Plaintiff(s) Prevailed	Defendant(s) Prevailed	Split Verdicts	Judgment Vacated
2018	48	20 (43.7%)	27 (56.3%)	0	1
2017	40	15 (37.5%)	24 (60.0%)	1	0
2016	45	16 (35.5%)	29 (64.5%)	0	0
2015	42	20 (47.6%)	22 (52.4%)	0	0
2014	33	13 (39.4%)	20 (60.6%)	0	0
2013	40	14 (35.0%)	26 (65.0%)	0	0
2012	53	25 (47.2%)	28 (52.8%)	0	0
2011	30	15 (50.0%)	15 (50.0%)	0	0
2010	25	13 (52.0%)	11 (44.0%)	0	0
2009	34	15 (44.1%)	16 (47.1%)	1	0
2008	29	12 (41.1%)	17 (58.6%)	3	0
2007	36	15 (41.8%)	21 (58.3%)	0	0

⁶ As I move forward in calculating parties’ success rates, I will rely on the total numbers and percentages that exclude the original verdict in favor of plaintiffs and the award of \$6,000,000 since judgment was vacated and the damages never were actually awarded to the plaintiff.

2006	38	24 (63.2%)	14 (36.8%)	0	0
2005	35	23 (65.7%)	11 (31.4%)	0	0
2004	51	25 (49.0%)	26 (51.0%)	1	0
2003	47	26 (55.3%)	21 (44.7%)	0	0
TOTAL	626	291 (46.5%)	328 (52.4%)	6 (0.1%)	1 (0.02%)



Although cumulative success rates of plaintiffs and defendants are rather similar dating back to 2003, a different view shows that plaintiffs prevailed in 51.7% of trials in the nine-year period from 2003 to 2011. However, in the seven-year period from 2012 through 2018, plaintiffs have only prevailed 40.9% of the time, while defendants have prevailed 58.5% the time. In the past three years, 2016-2018, defendants prevailed at a rate of 60.2%.

E. Level of Plaintiffs' Verdicts

The largest civil jury verdict in 2018 was \$383,500,000.00 split between three separate plaintiffs in a medical malpractice/device case, with \$275,000,000.00 being punitive damages. The smallest verdict was a \$1.00 verdict in a Title VII pregnancy discrimination case, while the next smallest was \$250.00 in a 1983 deliberate indifference –prisoner rights case. By comparison,

the largest verdict in 2017 was \$60,215,413.00 in a breach of contract case. The average civil jury verdict in 2018 was \$18,804,790.90,⁷ but eliminating the largest and smallest verdicts, the average was \$593,476.08. In 2017, the average verdict amount after eliminating the largest and smallest verdicts was \$2,197,841.32. The following chart reports the jury verdicts in 2018 from highest to lowest:

Rank	Amount	Type of Case
1	\$383,500,000.00	Personal Injury (Med. Mal)
2	\$6,333,000.00	Personal Injury (Med. Mal)
3	\$1,742,900.00	Wrongful Discharge in Violation of Public Policy
4	\$410,031.00	ADEA
5	\$400,000.00	FCRA
6	\$385,598.90	Rehabilitation Act
7	\$331,921.00	Colorado Wage Claim Act
8	\$267,250.00	1983 Excessive force/unlawful seizure
9	\$262,197.00	Copyright Infringement
10	\$196,785.47	Breach of Contract (insurance coverage)
11	\$115,440.00	Breach of Contract
12	\$81,244.85	Breach of Contract (insurance coverage)

⁷ This number does not include the \$6,000,000 awarded to the plaintiff when the judgment was vacated, since plaintiff was never actually awarded the amount.

13	\$72,900.00	Breach of Contract
14	\$53,827.87	Personal Injury (CO Ski Safety Act)
15	\$23,321.38	FLSA
16	\$2,720.29	FMLA
17	\$2,302.00	Title VII: Retaliation
18	\$878.75	FLSA
19	\$250.00	1983 Deliberate Indifference –prisoner rights
20	\$1.00	Title VII: Pregnancy Discrimination

Note: One trial involved a defendant who prevailed on a counterclaim. The defendant was awarded \$713,762.14. I am including this case as a defense verdict and not as a plaintiff verdict. First, it is true that the defendants prevailed. Second, in my experience, a defendant often has a claim that it never would have raised had the defendant not been sued in the first place; therefore, including this case as a defense verdict is consistent with these statistics serving as information on which a plaintiff could assess whether to file a lawsuit in the first place. This is especially true in the case discussed in this paragraph – a bad faith insurance case in which the insurance company counterclaimed for fraud.

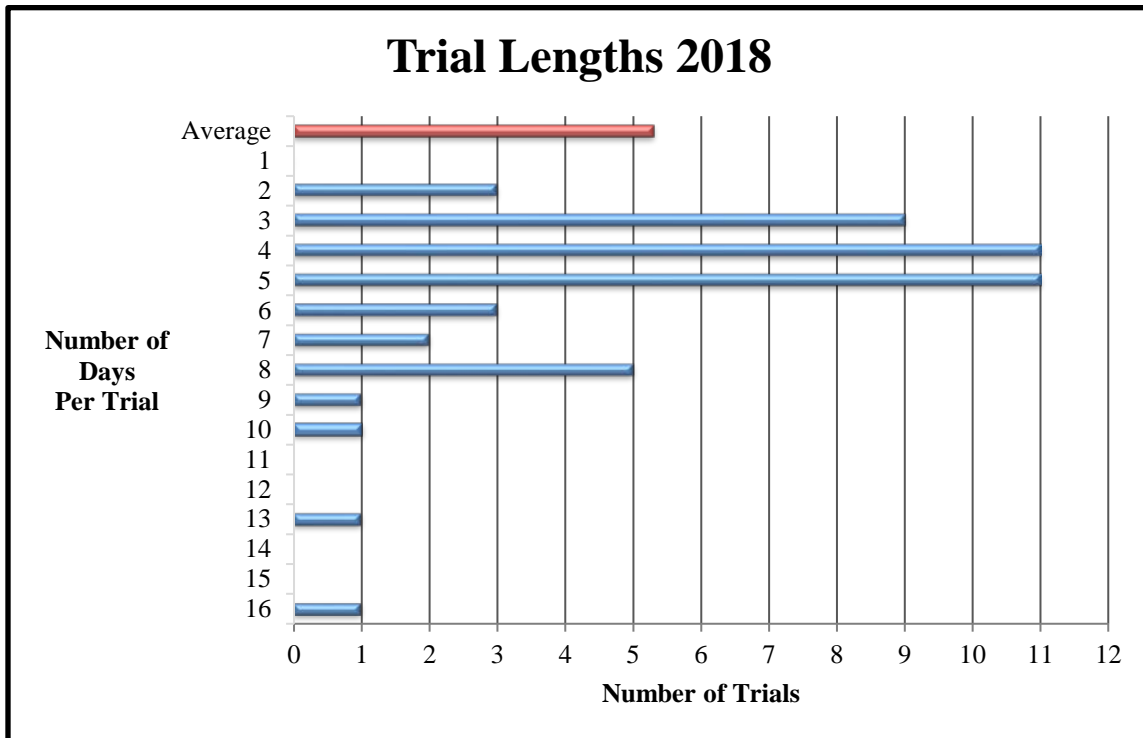
Active District Judges presided over twenty-seven jury trials (compared with twenty-one last year); Senior District Judges presided over fifteen jury trials (compared with thirteen last year); and Magistrate Judges presided over six jury trials (equal to the six trials last year; one was by Wyoming Magistrate Judge Kelly Rankin). The following is a breakdown of civil jury trials in 2018 by presiding judge:

Judge	Type of Case	Prevailing Party	Amount of Verdict
MSK	FLSA	P	\$23,321.38
	1983: Deliberate Indifference –prisoner rights	P	\$250.00
	Title VII: Retaliation/Race Discrimination	D	
PAB	Colorado Wage Claim Act	P	\$331,921.00
	FMLA	P	\$2,720.29
	Personal Injury (Med. Mal)	D	
	1983: Deliberate Indifference	D	
	Colorado Premises Liability Act	D	
CMA	Copyright Infringement	P	\$262,197.00
	FLSA	P	\$878.75
	Title VII: Pregnancy Discrimination	P	\$1.00
	Title VII: Retaliation	D	
	Breach of Contract (insurance coverage)	D	
	Wrongful Death	D	
	Breach of Contract (insurance coverage)	D	
WJM	Breach of Contract/Counterclaim	D	\$713,762.14
	Breach of Contract (insurance coverage)	P	\$196,785.47
	Breach of Contract (insurance coverage)	P	\$81,244.85
	Breach of Contract	P	\$72,900.00
	Title VII Retaliation/libel	P	\$2,302.00
	Malicious Prosecution	D	
	1983: Excessive Force	D	
	Personal Injury (products liability)	D	
RBJ	Personal Injury (Med. Mal)	P	\$383,500,000.00
	Negligence (Products liability)	D	
	Personal Injury (Med. Mal)	D	
RM	Breach of Contract	P	\$115,440.00
DME	Title VII: Retaliation/ADA	D	
RPM	Rehabilitation Act	P	\$300,000.00
	Breach of Contract (insurance coverage)	D	
	1983: Excessive Force	D	

	Breach of Contract (insurance coverage)	D	
JLK	Breach of Contract	D	
LTB	Breach of Contract (insurance coverage)	D	
WYD	Personal Injury (Med. Mal)	P	\$6,333,000.00
	ADEA	P	\$410,031.00
	FCRA	P	\$400,000.00
	1983: Excessive Force	P	\$267,250.00
	Personal Injury (CO Ski Safety Act)	P	\$53,827.87
	Title VII Race & ADEA	D	
	1983: Excessive Force	D	
REB	RICO	D	
MEH	Wrongful Discharge in Violation of Public Policy	P	\$1,742,900.00
	ADEA	D	
KMT	1983 Excessive Force –prisoner rights	Jmt. Vacated: P	\$6,000,000.00
NYW	Breach of Contract (insurance coverage)	D	
	FCRA	D	
KHR	FLSA	D	

F. Trial Lengths

Civil jury trials that went to verdict in 2018 required 252 total trial days compared with 208 in 2017. The longest trial lasted sixteen days (Wrongful Discharge in Violation of Public Policy); the shortest lasted two days (three times: 1983 Deliberate Indifference- prisoner rights; FCRA; 1983 Excessive Force). The average trial length was 5.3 days, while the most common trial length was tied between four days and five days (each eleven times). For the six cases tried to a Magistrate Judge, the average trial length was 6.5 days. The total cases at each trial length were as follows: sixteen days (1), thirteen days (1), ten days (1), nine days (1), eight days (5), seven days (2), six days (3), five days (11), four days (11), three days (9), and two days (3). These figures are represented in the chart below:



G. Nature of Claims

The jury trials conducted in 2018 fall into the following categories⁸:

Category	Number of Cases	Percent of Cases Tried
Breach of Contract	3	6.3%
Breach of Contract (insurance coverage)	9	18.8%
Employment	15	31.2%

⁸All racial discrimination on the job, ADEA, ADA, wage claim issues, etc. have been included in the “employment” category; the other 1983-type claims are included in the “civil rights” category.

Common Law Torts	10	20.8%
Civil Rights	7	14.6%
Intellectual Property	1	2.1%
FCRA	2	4.2%
RICO	1	2.1%

1. Breach of Contract (non-insurance)

We had three breach of contract trials in 2018, which is lower than the previous years; 2017 (eight), 2016 (six), 2015 (eleven), and 2014 (eight). During the last seventeen years, there have been 111 jury trials alleging breach of contract, an average of 6.5 per year. Of those, the plaintiffs prevailed in sixty-seven cases and the defendants prevailed in forty cases, and there were four split verdicts.

In 2018, plaintiffs prevailed in only one case, and defendants prevailed in the other two. The plaintiff was awarded \$72,900.00. These trials lasted from eight to four days, with the average being 5.3 days.

2. Breach of Insurance Contract

We had nine jury trials for breach of contract regarding insurance coverage. Three of those resulted in verdicts for the plaintiff, while the defendant prevailed in the other five cases. The average verdict awarded was \$47,021.13.

3. Employment

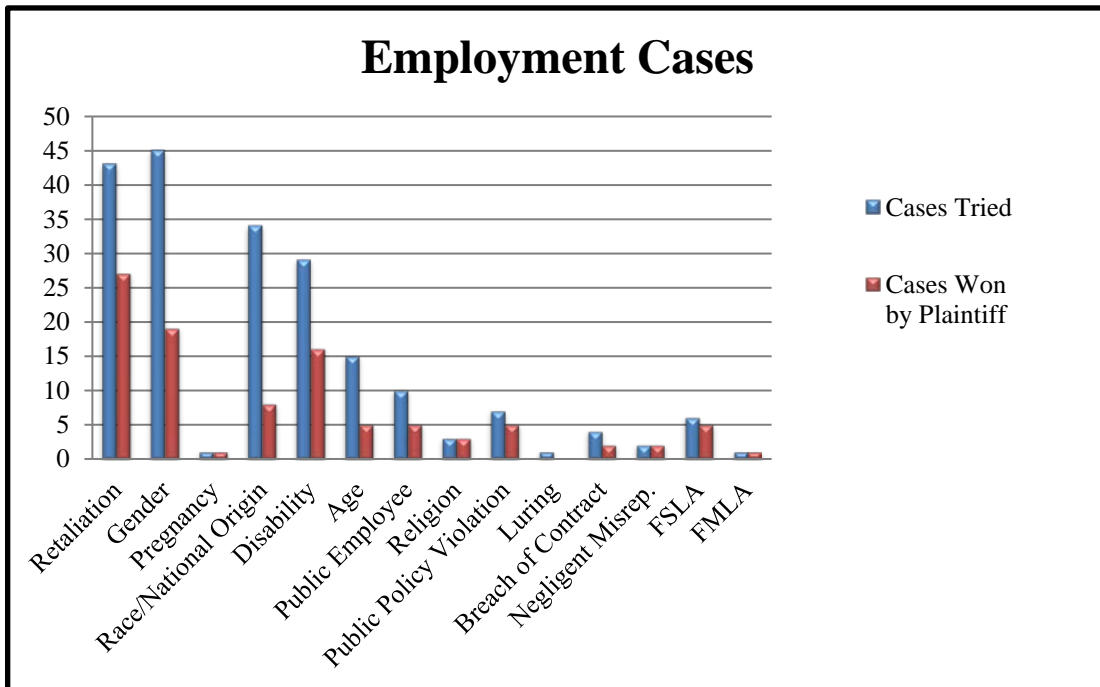
The District's employment cases increased to fourteen cases in 2018 from seven cases in 2017. The plaintiffs prevailed in seven (50%) of cases leaving the defendants to prevail in the other seven (50%). The results by nature of the alleged discrimination are reported below:

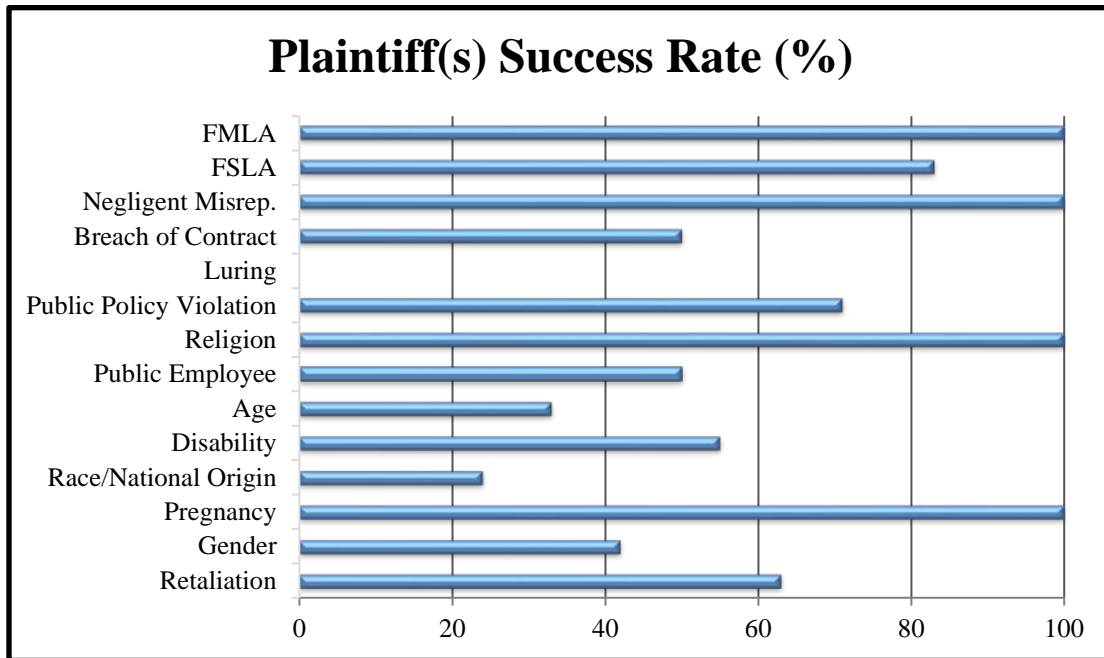
Nature of Claim	Prevailing Party	Verdict
Age	D P	\$410,031.00
FLSA	P P P D	\$878.75 \$23,321.38 \$331,921.00
FMLA	P	\$2,720.29
Pregnancy	P	\$1.00
Race/ADEA	D	
Disability/Retaliation	D	
Public Policy	P	\$1,742,900.00
Race/National Origin	D	
Rehabilitation Act	P	\$300,000.00
Retaliation	D P	\$2,302.00

In the last seventeen years, 201 employment cases have been tried to verdict. The employment claims most frequently tried are gender (forty-five) and retaliation (forty-three). The plaintiffs have prevailed in ninety-eight employment cases (49%), and the defendants have prevailed in one hundred and two cases (51%). Historical verdicts rendered by nature of the claim asserted during the past seventeen years are as follows:

Nature of Claim	Cases Tried	Cases Won by Plaintiff	Plaintiff's Success Rate
Retaliation	43	27	63%
Gender	45	19	42%
Pregnancy	1	1	100%
Race/National Origin	34	8	24%
Disability	29	16	55%
Age	15	5	33%

Public Employee	10	5	50%
Religion	3	3	100%
Public Policy Violation	7	5	71%
Luring	1	0	0%
Breach of Contract	4	2	50%
Negligent Misrep.	2	2	100%
FSLA	6	5	83%
FMLA	1	1	100%
Total	201	99	49%





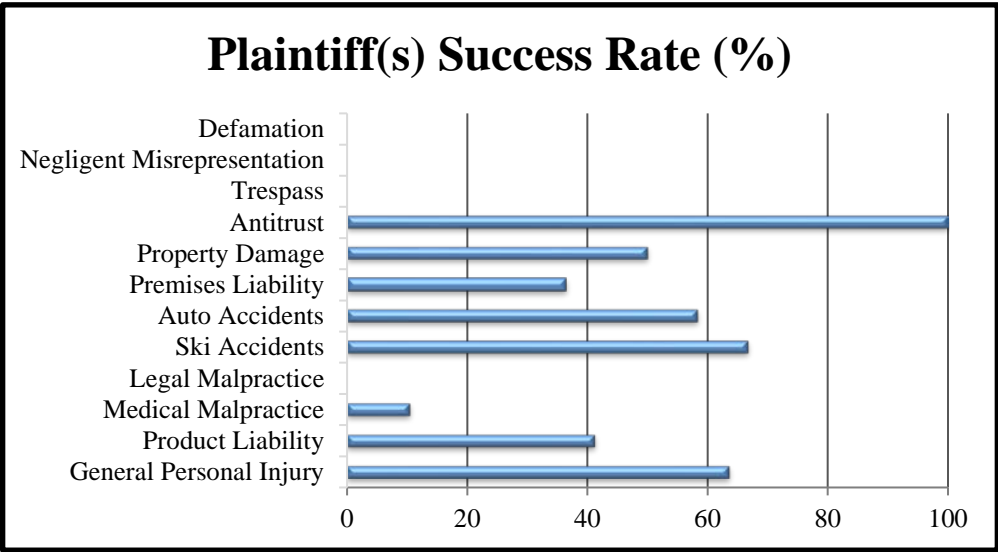
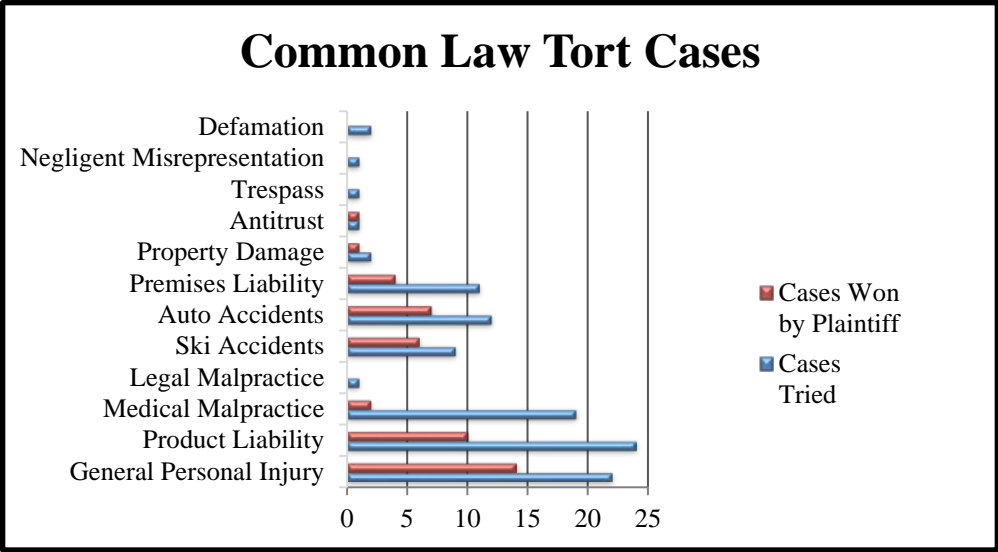
4. Common Law Torts

Common law torts doubled to ten jury trials in 2018 from five in 2017. These cases made up 20.8% of all civil cases tried to jury in 2018. The plaintiff prevailed three times, and the largest verdict awarded was \$383,500,000.00 in a medical malpractice case (each of the three plaintiffs averaged more than \$125,000,000 in damages). The results by nature of the alleged discrimination are below.

Nature of Claim	Prevailing Party	Verdict
Medical Malpractice	D	
	D	
	P	\$6,333,000.00
	P	\$383,500,000.00
Product Liability	D	
	D	
Wrongful Death	D	
Auto Accident	D	
Premises Liability	D	
Ski Accident	P	\$53,827.87

In the last seventeen years, litigants have tried 105 tort claims to verdicts. Plaintiffs have prevailed forty-five times (42.9%), and defendants have won sixty times (57.1%). The total amount of damages awarded to plaintiffs in tort cases in the last seventeen years is \$456,304,360.00 for an average of \$10,140,096.90 per plaintiff's verdict. However, eliminating the significant award of \$383,500,000 won this year, the average is \$1,654,644.55 per plaintiff's verdict. Notably, prior to this year, none of the previous fifteen medical malpractices cases tried to verdict prevailed in favor of the plaintiff. In 2018, for the first time in seventeen years, the plaintiff prevailed on two medical malpractice cases.

Nature of Claim	Cases Tried	Cases Won by Plaintiff	Plaintiff's Success Rate
General Personal Injury	22	14	63.6%
Product Liability	24	10	41.2%
Medical Malpractice	19	2	10.5%
Legal Malpractice	1	0	0%
Ski Accidents	9	6	66.7%
Auto Accidents	12	7	58.3%
Premises Liability	11	4	36.4%
Property Damage	2	1	50%
Antitrust	1	1	100%
Trespass	1	0	0%
Negligent Misrepresentation	1	0	0%
Defamation	2	0	0%
Total	105	45	42.9%



5. Civil Rights

The number of civil rights cases decreased from ten to nine this year. In 2018 there were four excessive force trials, two prisoner rights trials (with one ending in judgment vacated), one deliberate indifference trial, one 1983 Rehabilitation Act trial, and one malicious prosecution trial. Plaintiffs prevailed in four of the cases.

Nature of Claim	Prevailing Party	Verdict
Prisoner Rights	P	\$250.00
Prisoner Rights	*Jmt. Vacated: P	\$6,000,000.00

Excessive Force/Unlawful Seizure	P	\$267,250.00
Deliberate Indifference	D	
Excessive Force	D	
Excessive Force	D	
Excessive Force	D	
Malicious Prosecution	D	

In the last seventeen years, 115 civil rights cases have been tried to verdict. The plaintiffs won thirty cases (26%), and the defendants prevailed in eighty-five cases (74%). Historically, the largest civil rights verdict in the last seventeen years was a deliberate indifference claim resulting in an \$11,399,936.00 verdict. In contrast, juries have returned \$1.00 verdict three separate times. Plaintiffs' verdicts over the last seventeen years are reported below:

Nature of Claim	Amount of Verdict
Deliberate Indifference	\$11,399,936.00
Prisoner Rights	Jmt Vacated: \$6,000,000.00
Excessive Force	\$4,650,000.00
Disability Discrimination	\$2,200,000.00
Unlawful Arrest	\$1,790,000.00
Taking/Due Process/Defamation	\$1,669,177.56
Unlawful Arrest	\$1,000,000.00
Retaliation: First Amendment	\$779,590.00

First Amendment Employment	\$650,000.00
Excessive Force	\$400,000.00
Excessive Force/Unlawful Seizure	\$300,000.00
Unreasonable Search and Seizure	\$267,250.00
False Arrest and Excessive Force	\$190,000.00
4 th and 14 th Amendment Violations	\$130,000.00
Excessive Force	\$72,583.00
Excessive Force	\$50,000.00
Excessive Force	\$45,000.00
Cruel and Unusual	\$40,000.00
Excessive Force	\$32,002.00
Unlawful Arrest	\$10,000.00
Unreasonable Search	\$10,000.00
Unlawful Arrest	\$6,500.00
Cruel and Unusual	\$5,000.00
Retaliation: 1 st Amendment	\$2,000.00

Retaliation	\$1,791.00
Equal Protection	\$1,500.00
Prisoner Rights	\$630.00
Unlawful Arrest	\$250.00
Excessive Force	\$1.00
Unreasonable Search	\$1.00
Average	\$1.00
Total	\$1,022,684.26
	\$31,703,212.56⁹

The average verdict in civil rights cases is \$1,022,684.26. After excluding the anomalous \$11 million verdict from 2014, the average is \$676,755.87.

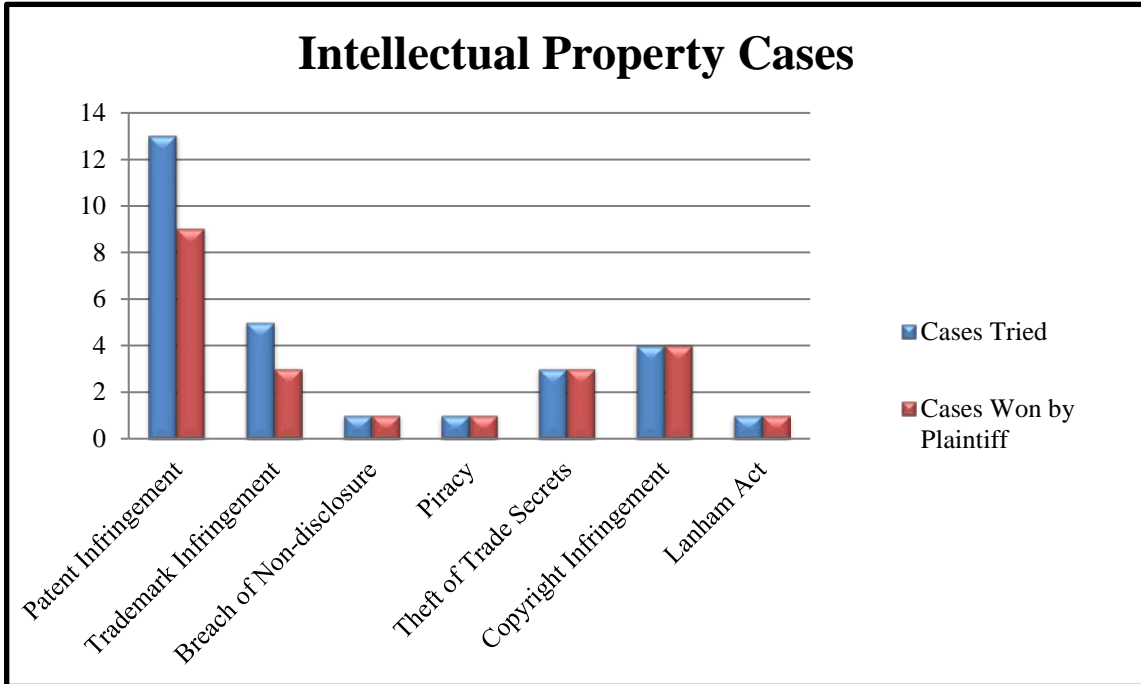
6. Intellectual Property

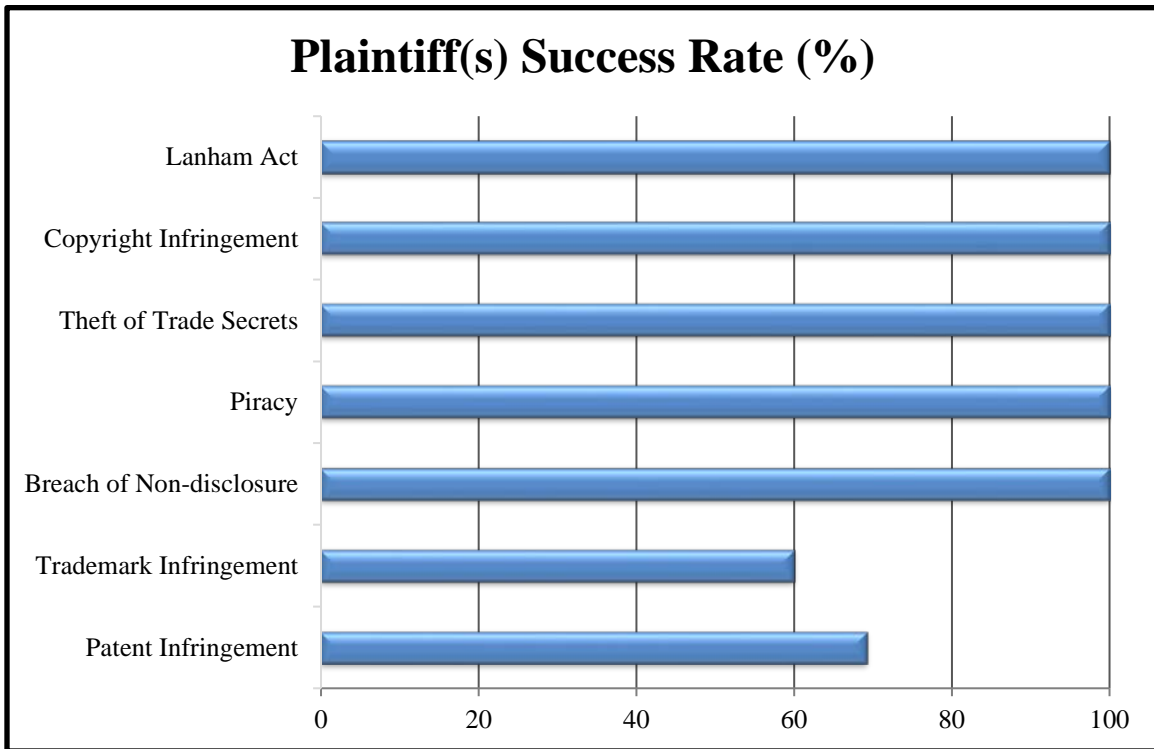
The District had just one intellectual property jury trial in 2018, a copyright infringement case. The plaintiff prevailed and was awarded \$262,197.00.

⁹ Note: these numbers include the \$6,000,000 verdict in the vacated judgment. Without including this case, the sum is \$25,703,213.56 and the average is \$856,744.00.

Historically, plaintiffs have fared well in intellectual property cases in this District. In the last seventeen years, twenty-eight intellectual property cases have been tried to verdict, and the plaintiff prevailed in twenty-two of them (78.6%).

The results over the last seventeen years are reported below:





III. CIVIL BENCH TRIALS

Judges in this District held fifteen civil bench trials in 2018; as of June 2019, three of those cases are still pending verdict (with an average age since trial of 12 months). This compares with nine civil bench trials in 2017. So far, the plaintiff (one a counterclaim defendant) prevailed in ten of the 2018 cases: a FCTA case, a First Amendment civil rights case, a Trademark Infringement/unfair competition case, a Religious Freedom Restoration Act case, a CEA case, a FOIA case, an insurance case (the defendant won on a counterclaim to vacate an appraisal award), a contract case, and a Clean Water Act case. The defendant prevailed in two cases so far, a Title VII race case, and an FCTA case. I suppose this is fairly remarkable, an 83% success rate in bench trials, when plaintiffs jury trials for the past six years have averaged only have a 40% success rate!

The average time from filing to a judgment (including those not yet decided) for bench trials in 2018 was 35.5 months,¹⁰ which is longer than the 31.4 months for jury trials. The average length of a bench trial was 3.3 days. The longest was a Clean Water Act case, which took nine days. Although the average recovery was \$2,487,089.78, with such a statistically small sample of four verdicts with dollar amounts, I would not place any significance in the number.

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

Judge	Type of Case	Time to Judgment (mos.)	Prevailing Party	Award
CMA	Trademark Infringement	51+	Pending	
CMA	Breach of Contract	44+	Pending	
CMA	Title VII 1964	18	D	
KLM	FCTA	24	P	\$281,809.98
KLM	FLSA	33+	Pending	
MSK	Insurance Coverage	33	P (c l D)	Appraisal Vacated
MSK	Breach of Contract	36	P	\$8,192,800.00
MSK	1983: First Amendment	9	P	Injunctive Relief
NRN	FTCA	49	D	
RBJ	Trademark Infringement/unfair competition	24	P	\$31,678.65
RBJ	Religious Freedom Restoration Act	39	P	Injunctive Relief
REB	CEA	35	P	\$1,442,070.51
REB	Patent Infringement	50+	P	Declaratory Jmt.
RM	FOIA	62	P	Declaratory Jmt.
RPM	Clean Water Act	23.5	P	*settlement discussion in

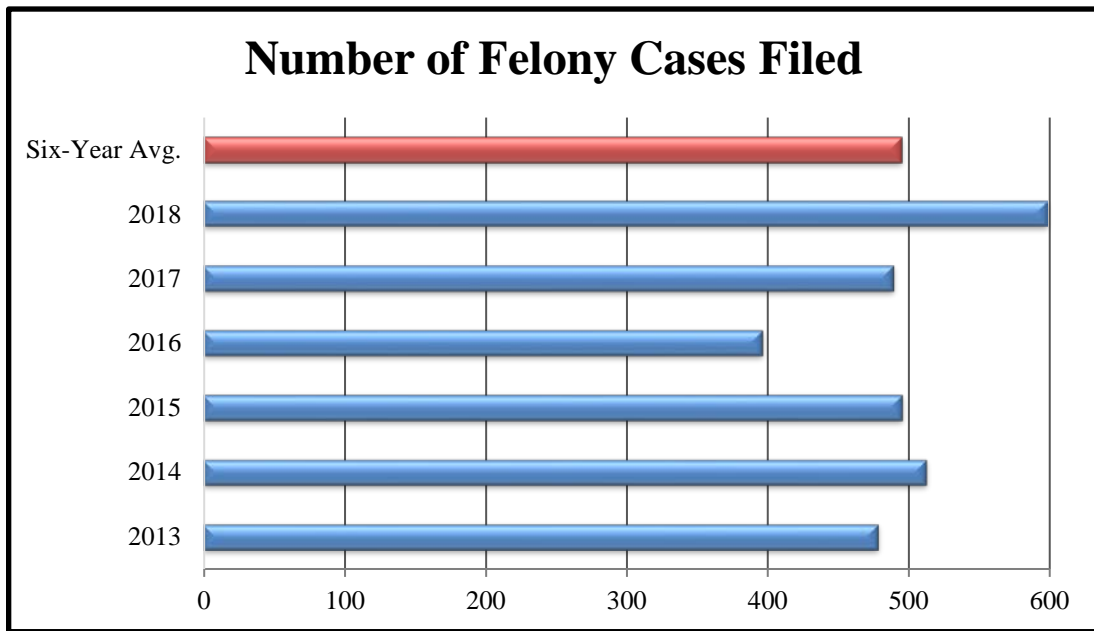
¹⁰ This average will rise only slightly with the conclusion of the pending cases.

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CRIMINAL TRIALS

A. Felony Trials

There were 598 felony cases filed in 2018. Comparatively, there were 489 filed in 2017; 396 in 2016; 495 in 2015; 512 in 2014; and 478 in 2013. These figures are charted below:



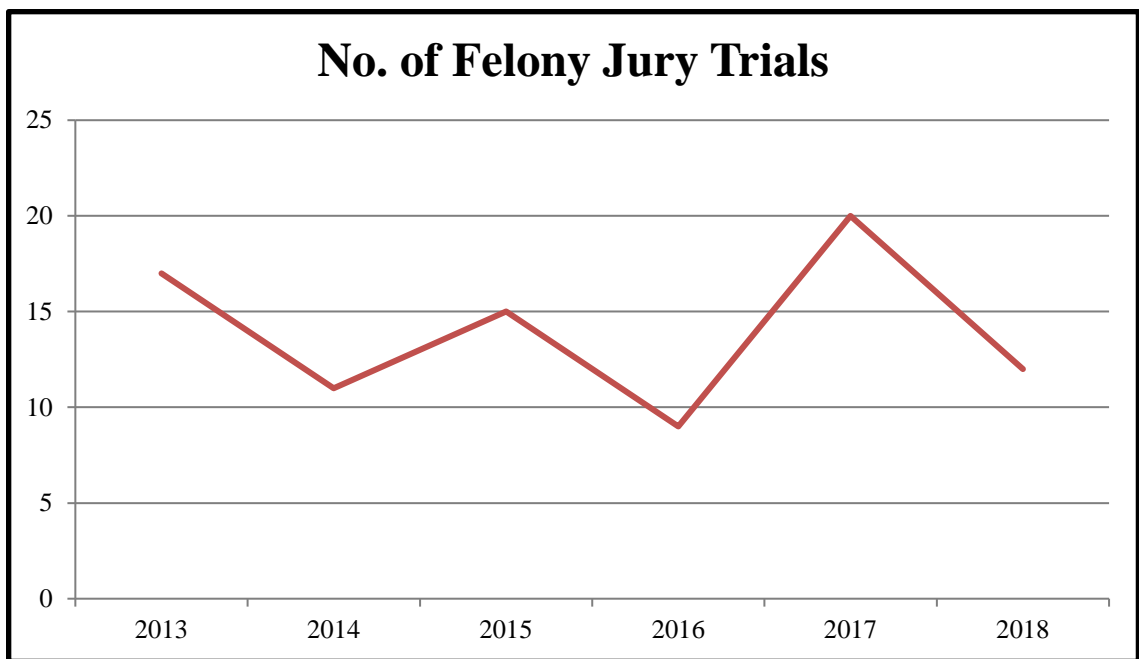
In 2018, twelve cases proceeded to jury trial.¹¹ This represents a 2.42% trial rate, based on an annual average of 495 cases filed between 2013 and 2018. This is a decrease from last year’s 4.04% rate using the same 495 average case total. The average over the past six years is 2.85% cases tried versus the average 495 cases filed in a year.

The number of felony jury trials that reached verdict in each of the last six years is reported below:

¹¹ A total of fourteen criminal trials reached verdict in 2018, twelve were tried by jury and two were bench trials.

<u>Year</u>	<u>No. of Cases Filed</u>	<u>No. of Felony Jury Trials</u>	<u>Rate of Trials (%)</u>
2018	598	12	2.01
2017	489	20	4.09
2016	396	9	2.27
2015	495	15	3.03
2014	512	11	2.15
2013	478	17	3.56
Average	494.6	14	2.85

A visual of the number of felony jury trials per year for the last six years is presented below:



The government achieved convictions in thirteen of the fourteen total felony trials, with one bench trial resulting in a verdict for the defendant. The defendants have been sentenced in twelve of the thirteen felony cases that found in favor of government. The most severe sentence imposed was 178 months for drug possession and conspiracy. The least severe sentence was 24 months for false tax return.

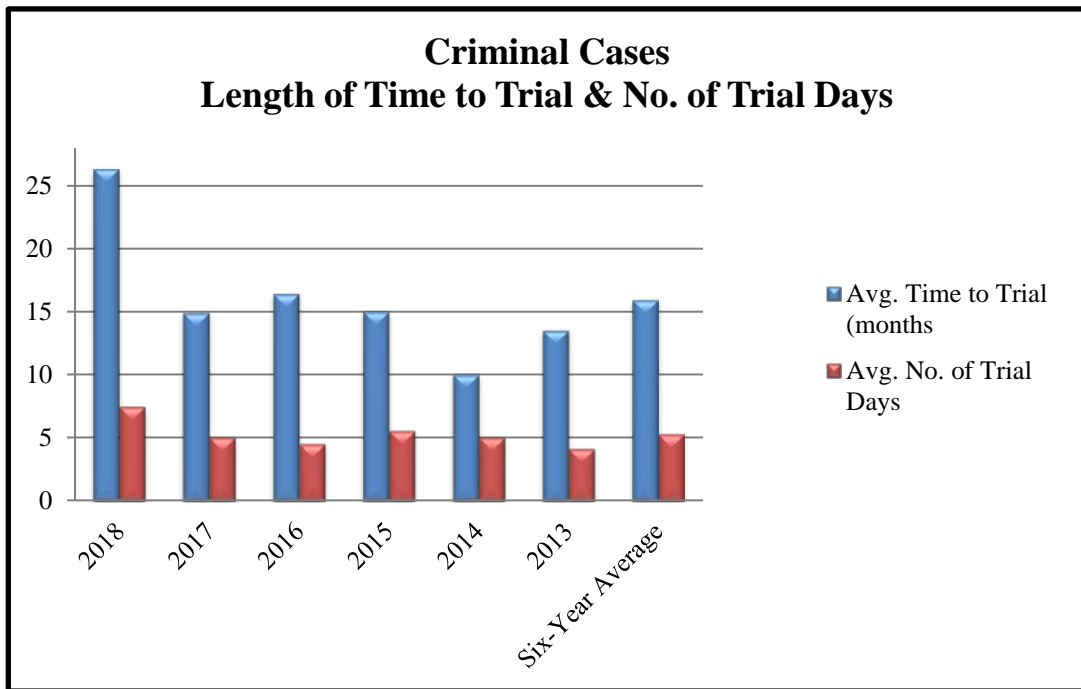
The felony prosecutions in 2018 are reported below:

Judge	Crime Charged	Verdict	Sentence
JLK	Conspiracy to provide material support/resources to foreign terrorist organization	Convicted	132 mos.
PAB	Mail/Wire Fraud and Money laundering	Convicted	70 mos.
	False Statements (in application for U.S. passport)	Convicted	27 mos.
	Attempted sex trafficking of child	Convicted	Pending
REB	Possession of contraband in prison	Convicted	37 mos.
	Illegal re-entry after deportation *Bench Trial*	Convicted	48 mos.
RBJ	Conspiracy to defraud the U.S.	Convicted	24 mos.
	Wire and Securities Fraud	Convicted	58 mos.
	Conspiracy to distribute	Convicted	42 mos.
	False statements (during purchase of a firearm) *Bench Trial*	Acquitted	N/A
WJM	Unlicensed export of a firearm	Convicted	36 mos.
RM	Drug possession/conspiracy	Convicted	178 mos.
	Convicted Felon in possession of firearm	Convicted	100 mos.
MSK	Bank Fraud and False claims	Convicted	70 mos.

Collectively, eighty-nine days were spent trying these twelve jury cases, for an average of 7.4 days per trial. However, the longest jury trial lasted twenty-five days (conspiracy to provide material support and resources to foreign terrorist organization); more than twice the length of the next longest trial. Removing this twenty-five day outlier from the calculations, an average of 5.8 days was spent in trial, falling much closer to last year's average of five days per trial.

The average time from a defendant’s initial appearance to trial in 2018, including both jury and bench trials, was 26.3 months. This is substantially longer than the 2017 average of 14.9 months and the 2013-2018 average of 15.9 months. The longest case from initial appearance to trial was 75 months (the same case that took twenty–five days in trial; conspiracy to provide material support and resources to foreign terrorist organization). On the other end, two felony cases were brought to trial within three months of filing. These included a one-day bench trial where the defendant was acquitted for false statements made during the purchase of a firearm, and a four day jury trial for felon in possession of a firearm that resulted in a conviction.

The average time to trial and days per trial for the last six years are presented in the chart below:



A. Misdemeanor Jury Trials

There were no misdemeanor trials in 2018. There was only one misdemeanor jury trial in 2017.

B. Petty Offense Bench Trials

There was only one petty offense bench trial held in the District this year, an illegal maintaining on National Forest, tried by Magistrate Judge Mix. The Defendant presented *pro se*, and judgment was entered for the government. There were no petty offense bench trials held last year. Over the past six years, the District has averaged 2.3 petty offense bench trials per year.

OTHER RELEVANT DISTRICT INFORMATION

V. CONSENT

In February 2014, the District initiated a Pilot Project on Consent, utilizing the full-time Magistrate Judges in the drawing of civil lawsuits. Under this project and the subsequent Local Rule arising therefrom, the Magistrate Judges are given an equal draw of civil cases with the active District Judges.

Through December 2018, under the direct assignment of cases, the Magistrate Judges received collectively 4,511 cases in fifty-nine months, so about 11.0 cases per full-time Magistrate Judge per month. In those 4,511 cases, a consent decision was made in 3,361, with 1,239 consenting and 2,122 not consenting, for a consent success rate of 36.9%, a downward trend from last year's inception-to-date average of 38.7%.¹² For the other 1,150 cases in which no consent decision had been made, there were 226 awaiting a consent decision, 870 were terminated prior to a consent decision, and the remaining fifty-four cases were re-drawn due to the assigned judicial officer recusing or transferring the case.

¹² This appears to compare very favorably with other districts which utilize our system of direct assignment with early decision making on consent. There are districts in which parties have both a direct draw and may engage in traditional consent until the time of trial and, indeed, are encouraged to do so by both District Judges and Magistrate Judges. Such districts experience a higher rate of consent.

As of December 31, 2018, the Magistrate Judges had 755 consent cases among them, for an average (per full-time Magistrate Judge) of 108. In December 2013 (the year prior to the Pilot Project), the Magistrate Judges had thirty-seven cases, or six each. Obviously, this has been a substantial change in the District.

By way of comparison, as of December 31, 2013, the active District Judges in Colorado averaged 224 civil cases, while as of December 31, 2018, they averaged 229, up from 217 last year. The Senior District Judges averaged 161 cases in December 2013 and 103 in December 2018, which is somewhat misleading as an average. The busiest three Senior District Judges averaged 149 cases, while the other two averaged 35. A Senior District Judge has the prerogative of determining the number of cases he/she will carry.

A table showing the year-by-year comparison of the consent rate in the District is provided below:

YEAR	CONSENT DECISIONS	ACHIEVED	DECLINED	SUCCESS RATE
2014	556	222	334	40.0%
2015	552	272	278	49.3%
2016	619	261	360	42.2%
2017	876	253	623	28.9%
2018	758	231	527	30.5%
TOTALS	3361	1239	1595	36.9%

VI. ALTERNATIVE DISPUTE RESOLUTION

In November 2011, the District instituted a new paradigm concerning ADR, offering an Early Neutral Evaluation (“ENE”) as the presumptive process, with settlement conferences occurring only on motion to the presiding judicial officer. In 2009, the first full year with six full-time Magistrate Judges, the District had 717 settlement conferences. In 2011, the last (essentially) full year of Magistrate Judges conducting settlement conferences on a regular basis, the District held 486 settlement conferences.

After the ENE was instituted, the District has experienced the following ADR activity:

2012:	166 settlement conferences	18 ENEs
2013:	116 settlement conferences	15 ENEs
2014:	122 settlement conferences	8 ENEs
2015:	79 settlement conferences	15 ENEs
2016:	114 settlement conferences	8 ENEs
2017:	115 settlement conferences	2 ENEs
2018:	103 settlement conferences	Unknown
Totals:	815 settlement conferences	66+ ENEs

Therefore, we have moved from approximately 700 settlement conferences per year to approximately 116 settlement conferences and eleven ENEs. The ENE is a virtually ignored (and unknown) procedure. In fact, as of January 2018, the Clerk’s Office of the District of Colorado ceased monthly reporting on ENEs.