



2022: THE YEAR IN REVIEW

U.S. DISTRICT COURT

DISTRICT OF COLORADO

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UNITED STATES MAGISTRATE JUDGE

AUGUST 30, 2023

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I. INTRODUCTION

In this report I have endeavored to bring the federal practitioner useful information that will hopefully assist in educating the federal bar about your United States District Court, District of Colorado (“the District”). You should use this information to help the Court fulfill the aspirations of Federal Rule of Civil Procedure 1 (“the just, speedy, and inexpensive determination of every action or proceeding”). The report presents, among other things, trial results, timing, and an overall picture of trial work in the District from January 1 – December 31, 2022, as well as longer-term data, information concerning dispositive motions practice, alternative dispute resolution, pro se and pro bono representation, Magistrate Judge consent, bankruptcy, and even appeals. Please feel free to contact me directly for specific information (so long as your query could not be construed as an *ex parte* communication), and if I can, I will respond.

II. YOUR DISTRICT OF COLORADO TRIAL BENCH

The District of Colorado has seven congressionally funded active District Judge positions (although it has an additional two positions that are recommended by the Judicial Conference but never authorized by Congress). Each federal district has a Chief District Judge, a position that is typically held for up to seven years (the Chief cannot be a senior District Judge). The Chief is allotted an extra chambers staff position and sometimes carries a slightly lower caseload to offset the added administrative responsibilities.

Once a District Judge achieves the “Rule of 80” (age plus years on the Article III bench, with a minimum age of sixty-five and minimum ten years on the bench required), he or she may elect (but is not required) to move to senior status, which opens up an active spot for appointment by the President. A senior District Judge may continue to carry a full caseload or a reduced caseload (usually a set percentage compared with an active District Judge caseload, perhaps sixty percent, fifty percent, etc.). Senior District Judges may carry a different percentage of a civil versus criminal caseload, or they may carry no criminal caseload at all (the converse rarely happens, *i.e.*, a criminal but no civil caseload). The level of the caseload determines how many chambers staff the senior District Judge is permitted. A senior District Judge may also exercise his or her prerogative to decline any particular case when it is assigned, without stating any other basis for recusing. In our District, a senior District Judge is typically designated to supervise (prior to ultimate assignment to a presiding judge) a particular area of the Court’s business, such as the administrative appeal docket, wiretaps, pro se cases, etc.

According to the Administrative Office of the United States Courts’ (“AO”) website, nationwide senior District Judges handle about twenty percent of the total district caseload. In this District, I believe that percentage has historically been higher. Indeed, in our District, senior

District Judges tried 23.21% of the trials to reach verdict in 2022 (seven civil jury trials; one civil bench trial; five criminal jury trials). Obviously, an active senior District Judge bench is an incredible benefit to a District.

Magistrate Judges are judicial officers of the District Court appointed by the District Judges of the Court to handle a variety of judicial proceedings. They serve renewable eight-year terms. They do not have “senior” status; they are either all in, or not in at all. Their criminal law responsibilities include the authority to issue arrest and search warrants, conduct preliminary proceedings in criminal cases (such as initial appearances and arraignments), and hear cases involving petty offenses committed on federal lands. In most districts, Colorado included, Magistrate Judges handle pretrial motions and hearings in civil and criminal cases. They also handle civil settlement conferences. While most civil cases are tried to District Judges, Magistrate Judges may also preside over civil trials if all parties consent, discussed in more detail in Section III. There is no such thing as “senior status” for a Magistrate Judge—they are either full-time or part-time. Colorado is a unique district in that it has two part-time Magistrate Judges (Durango and Grand Junction). Six full-time Magistrate Judge positions are allotted to Denver and one to Colorado Springs.

The past two years have involved significant shifts on the District’s bench worth noting. In 2022, the District had five to six senior District Judges, as District Judge Arguello moved to senior status in July 2022. The District also had five to seven active District Judges, with District Judges Sweeney and Wang joining the district bench in July 2022 and filling District Judge Jackson and Arguello’s vacancies respectively from their recent moves to senior status. Notably, former Magistrate Judge Wang was the first Magistrate Judge elevated to the district bench ever in our District last year. Upon joining that bench, her Magistrate Judge caseload was distributed among

the remaining Magistrate Judges, as was former Magistrate Judge Gordon P. Gallagher’s, who was elevated to District Judge in 2023. Magistrate Judge Tafoya also retired at the end of January 2022. Most of her cases were ultimately reassigned to Magistrate Judge Dominguez Braswell who joined the bench in July 2022. All in, these shifts created two full-time Denver Magistrate Judge vacancies over the course of 2022, yielding five to six full-time Magistrate Judges on the bench. The chart below identifies the District’s current bench and each Judge’s appointment date:

District Judges		Magistrate Judges	
Senior	Active	Full-Time	Part-Time
John L. Kane (1977)	Philip A. Brimmer (2008) (Chief Judge)	Michael E. Hegarty (2006)	James M. Candelaria (2019) (Durango)
Lewis T. Babcock (1988)	Daniel D. Domenico (2019)	Scott T. Varholak (2016)	Vacant (2023) (Grand Junction)
Marcia S. Krieger (2002)	Regina M. Rodriguez (2021)	S. Kato Crews (2018)	
Robert E. Blackburn (2002)	Charlotte N. Sweeney (2022)	N. Reid Neureiter (2018)	
Christine M. Arguello (2008)	Nina Y. Wang (2022)	Maritza Dominguez Braswell (2022) (Colorado Springs)	
William J. Martinez (2010)	Gordon P. Gallagher (2023) (Grand Junction)	Susan Prose (2023)	
R Brooke Jackson (2011)	Vacant (2023)	Kathryn A. Starnella (2023)	
Raymond P. Moore (2013)			

Turning to the current year, District Judges Martinez and Moore took senior status in February and June 2023 respectively, yielding six to eight senior District Judges throughout the year. These two shifts created two District Judge vacancies. In March 2023, former Magistrate Judge Gallagher filled District Judge Martinez’s vacancy marking the first District Judge to preside outside of Denver and specifically, in Grand Junction. This created a Grand Junction (part-time) Magistrate Judge vacancy that remains unfilled. Magistrate Judge Crews has a pending nomination

for District Judge Moore's vacancy. If successful, this too would create a Magistrate Judge vacancy, this time a Denver (full-time) vacancy. Moreover, in May 2023, Magistrate Judge Prose filled the vacancy created by former Magistrate Judge Wang's 2022 appointment as a District Judge. In August 2023, Magistrate Judge Mix retired, and Magistrate Judge Starnella filled that vacancy. As this shows, replacing a retired Magistrate Judge is easier because it can be planned for in advance whereas replacing a Magistrate Judge elevated to a District Judge takes longer. Indeed, replacement procedures must wait for Senate confirmation in the event a nomination is unsuccessful.

III. CONSENT

As a general rule, Magistrate Judges may preside over civil matters with consent of all parties (by filing the appropriate consent form). If not all parties consent, then a District Judge must preside over the litigation and a Magistrate Judge may continue on the case to hear matters the District Judge refers (*e.g.*, convening scheduling and status conferences, determining pretrial matters such as discovery and non-dispositive motions, providing recommendations on dispositive motions).

Historically, cases were drawn to only District Judges, and parties then had the ability to consent to a Magistrate Judge under 28 U.S.C. § 636(c)—“traditional 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. Of course, to keep the drawn Magistrate Judge as the presiding judicial officer, the parties must still unanimously consent. If they do not, the case is re-drawn to a District Judge, and the previously assigned Magistrate Judge stays on the case as well in a referral role. For either “traditional consent” or those cases drawn directly to a Magistrate Judge, if consent is accomplished, there will be only one judicial officer on the case (except when the parties seek, and are granted, a judicially conducted settlement conference or early neutral evaluation).

Regarding the efficacy of the direct draw program, from February 2014 through December 2022, Magistrate Judges received collectively 7,999 cases in 107 months under the direct assignment of cases. Of the total 3,374 civil cases filed in the District in 2022, 1,045 (30.97%) were directly drawn to Magistrate Judges. On average since 2014, 888 cases annually have been drawn directly to Magistrate Judges. Many cases never have a consent decision made because they

are (1) dismissed voluntarily before the time for consent arrives, (2) reassigned randomly because the assigned Magistrate Judge has a conflict, (3) reassigned to a District Judge because of an early dispositive issue (*e.g.*, temporary restraining order, motion to remand to state court, default, etc.) before consent has been accomplished, or for other reasons get reassigned, and, thus, must be handled by an Article III judge. However, an average of around 300 cases per year have consent accomplished. This is an average consent rate of 33.74%. The highest rate since 2014 has been 49.28% in 2015 and the lowest has been 25.66% in 2020.

In 2022, parties consented to directly drawn Magistrate Judges in 360 of the 1,045 cases for which these decisions were made, thus yielding a **34.45% rate of consent**, an increase from the record-low 25.66% in 2020. It is similarly an uptick from 32.02% in 2021, the second lowest consent rate. Indeed, the 2022 rate is within the range of pre-pandemic success rates and just above the nine-year average rate of 33.74%. The chart below illustrates the historic trends of consent in direct draw cases:

YEAR	CONSENT DECISIONS	ACHIEVED	DECLINED	SUCCESS RATE
2014	556	222	334	39.93%
2015	552	272	278	49.28%
2016	619	261	360	42.16%
2017	876	253	623	28.88%
2018	758	231	527	30.47%
2019	946	342	604	36.15%
2020	1,407	361	1,046	25.66%
2021	1,240	397	843	32.02%
2022	1,045	360	685	34.45%
Total:	7,999	2,699	5,300	33.74%
Average:	888.78	299.89	588.89	33.74%

Additionally, traditional consent was accomplished in 251 cases in 2022. This yields a total of 612 consent cases and an average of 87 civil cases per full-time Magistrate Judge. Of these 251 traditional consent cases, fifty-one administrative cases were consented to during the preliminary

steps. In an administrative case, which is usually a Social Security case, parties may consent to the jurisdiction of a Magistrate Judge before their case is drawn to a particular Magistrate Judge. Thus, in these cases, parties consent without knowing to which Magistrate Judge they will be assigned.

Although mathematically the introduction of direct draw to Magistrate Judges has, in absolute terms, reduced the number of civil cases that a District Judge carries, their workload has increased despite consent. Comparing the workload of the judges of the District, and the change in civil caseload over time, in 2013, the active District Judges in Colorado had an average of 224 civil cases pending. However, active District Judges had 1,636 civil cases pending in December 2022. This is an average of 233.71 cases per active District Judge.

As the District Judges' caseload increases, so do the cases referred to Magistrate Judges. At the end of 2022, Magistrate Judges were the referral judges for 1,816 civil cases, up from 1,770 cases in 2021, 1,670 cases in 2020, and 1,539 in 2019—a steady and significant increase. These 2022 referred cases yield an average of about 302.67 cases per full-time Magistrate Judge. Adding the 172 consent cases pending at that time, the average civil caseload per full-time Magistrate Judge at the end of 2022 was about 331.33 cases.

For many if not most referred civil cases, the Magistrate Judges handle most or all pretrial matters (scheduling, discovery disputes, settlement conferences, dispositive motions for report and recommendation, final pretrial conferences, and even pretrial evidentiary and Rule 702 motions). The bottom line for practitioners is that *all* judges in the District of Colorado are busy (a truth borne out in national statistics, showing our District to be one of the busiest in the nation), and the steady diet of criminal cases on a District Judge's docket (with the concomitant Speedy Trial and motions practice burdens) makes it only worse.

IV. 2022 AT A GLANCE

Our District remains one of the busiest district courts in the nation. In 2022, the District had 3,374 civil cases filed and 3,542 civil cases closed. The District also had 197 miscellaneous cases filed and 208 miscellaneous cases closed.¹ As for criminal cases, the District had 2,505 cases filed and 2,090 cases closed.

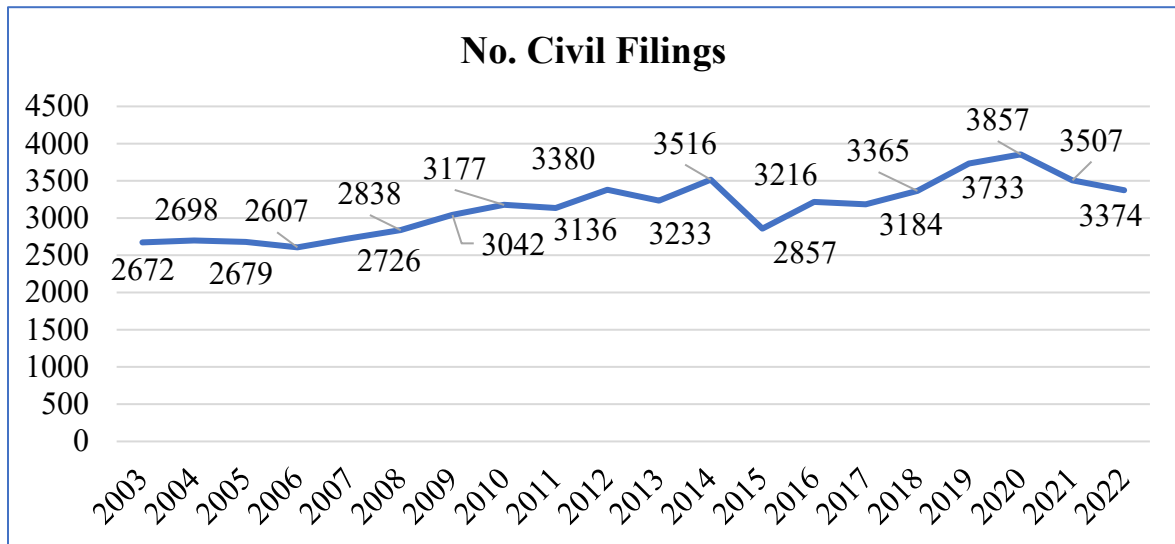
A. Civil Caseload

The AO tracks twelve-month periods on a quarterly basis that provide more context for how our District compares to the other ninety-four districts across the country. For the twelve-month reporting period ending December 31, 2022, our District remained in the top quarter for largest volume of civil case filings and fastest civil case disposition time. Interestingly, the median time to dispose of a case was 8.6 months. The District was also in the top third for highest volume of civil cases pending. These high figures underscore the significance of the speed in which a civil case is resolved in this District.

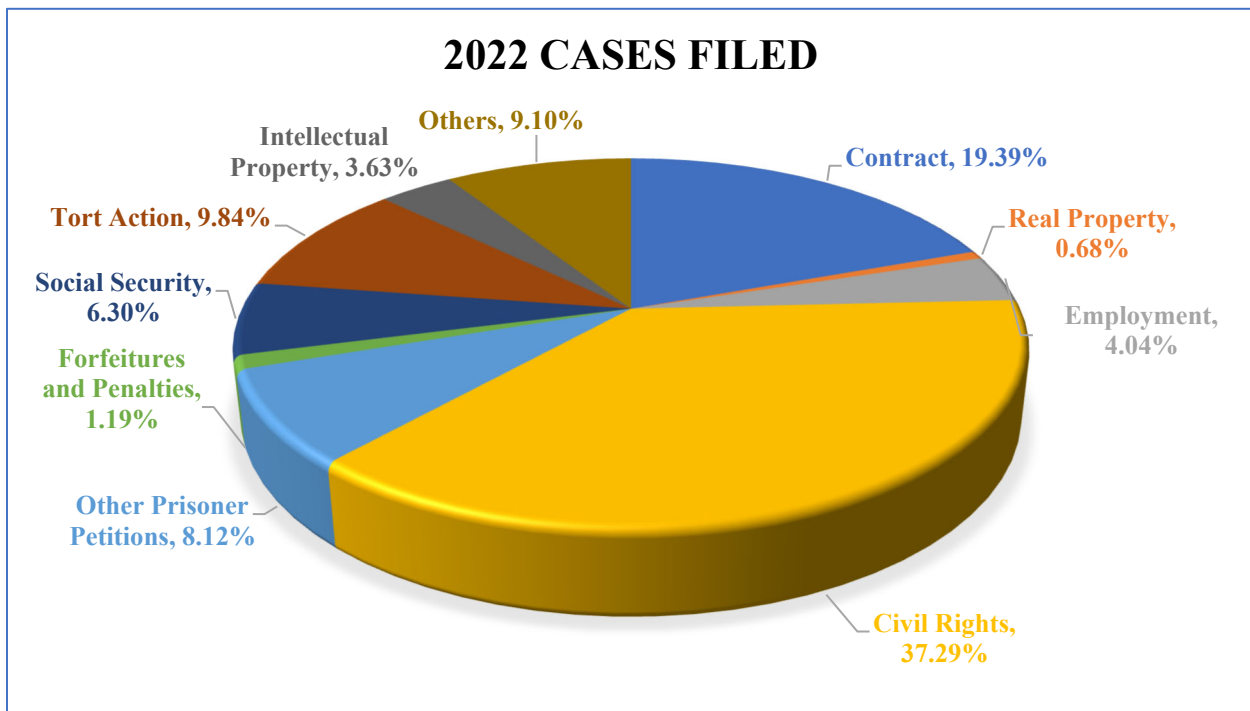
The **3,374 civil cases filed in the District in 2022** continues the prior year's decline and marks the lowest number of civil case filings since 2018. Consequently, this is lower than the five-year average of 3,580 civil case filings per year. However, this five-year period had record-high filings in 2020 (3,857) and 2019 (3,733). Reviewing more historical data shows that 2022 filings were also lower than the past decade's average of 3,390.6 case filings per year. Still, comparing the data for the past twenty years, 2022 continues the general pattern of higher case filings in this

¹ These cases are not properly considered criminal or civil cases, but may be related to criminal or civil cases pending within the District or another district. For instance, miscellaneous cases include motions to compel, enforce, or quash subpoenas from other districts, as well as motions to withdraw immunity for a witness or a warrant for arrest of a juror. The District's website has more information on categories of miscellaneous cases here: http://www.cod.uscourts.gov/Portals/0/Documents/Forms/CivilForms/Categories_of_Misc_Cases.pdf.

decade than the last. Indeed, 2022 filings are higher than the twenty-year average of 3,143.05 cases filed per year. The graph below shows the number of civil cases filed each year for this period:



Civil rights, contracts, and torts were the most popular categories of civil cases filed, commensurate with 2022 civil trials discussed below in Sections V and VI. The chart below displays the approximate breakdown of cases filed in 2022 by nature of suit.



B. Criminal Caseload

The AO also reviews cases filed as felonies and Class A misdemeanors as well as petty offenses assigned to District Judges (not Magistrate Judges). For the twelve-month reporting period ending December 31, 2022, our District had a 5.90% decrease in filings compared with 2021. This is the lowest number of criminal cases filed since 2000 second to 2020, the filings for which were undoubtedly affected by the COVID-19 pandemic. Still, 2022 was consistent with 2021 in that District was in the top 61% for largest number of case filings both years.

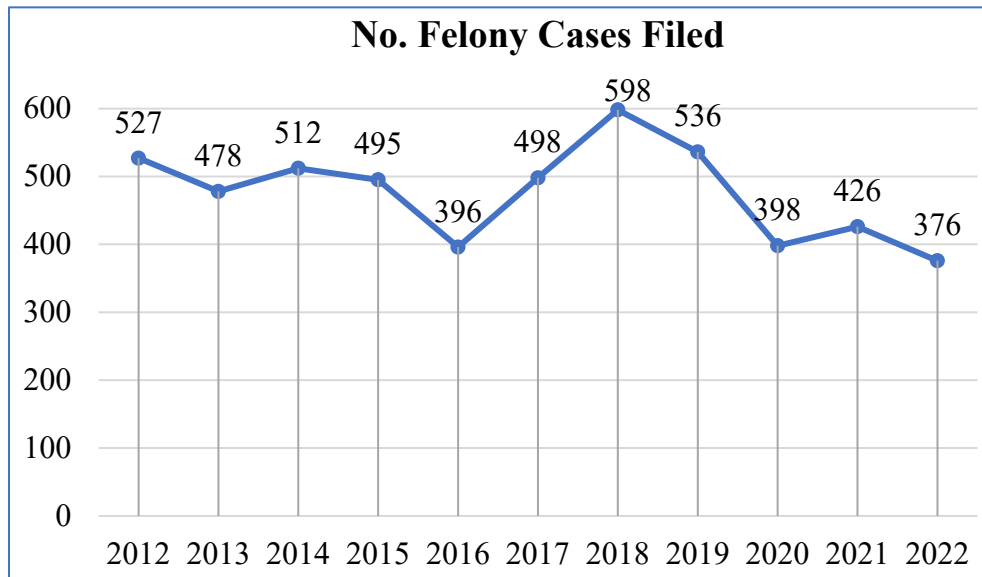
Turning to the District’s 2022 statistics, it had **439 indictments** filed, which includes superseding indictments (an amended indictment in an already-existing criminal case). The chart below further provides a breakdown of the District’s 2022 criminal caseload:

Case Type	No. Cases Filed	No. Cases Closed	No. Cases Pending On 12/31/2022	No. Defendants Added	No. Defendants Terminated	No. Defendants Pending On 12/31/2022	No. Fugitives Reported
Felony	376 ²	425	233	483 ³	278	209	38
Magistrate Judge	205	201	27	215	194	21	10
Misc. & Pen Register	347	302	51	339	313	38	0
Petty Offense	16	18	5	16	13	3	1
Search Warrant	1,554	1,144	519	1,559	1,106	464	0
Wire Tap	7	0	7	1	0	7	0

² This includes indictments transferred from other districts.

³ This figure also includes defendants transferred from other districts.

Only **376 new felony cases were filed in 2022**, continuing a general decline since 2018. As shown below, this is the lowest number of filings in the past eleven years. Notably, this includes 2020 which experienced a sharp decline likely from the COVID-19 pandemic. It is also far below this eleven-year period's average (476.36 filings per year), as well as even the average for the past five years (466.80).



C. Summary of Trials

In 2022, the District had fifty-six total cases tried to verdict, an uptick from fifty-two in 2021 which continues the District's rebound to pre-pandemic standards. The District had fifty-one jury trials (twenty-nine civil and twenty-two criminal) in 2022, an increase from forty-one jury trials in 2021. While the 2022 civil jury trial volume is consistent with twenty-seven civil jury trials in 2021, the overall increase in 2022 jury trials is largely attributed to a rise in criminal trials, as 2021 had only fourteen criminal jury trials. The District also had five bench trials (three civil and two criminal) in 2022, a decrease from eleven in 2021. While the criminal bench trials are approximately consistent between the two years, the drop is attributable to the civil bench trials as 2021 had eight civil bench trials and three criminal bench trials. It is also a notable decline from six civil bench trials in 2020 and 2019 and fifteen in 2018.

V. CIVIL JURY TRIALS

A. Overview

The District tried **twenty-nine civil jury trials to verdict in 2022**.⁴ One of these originated in Durango, two in Grand Junction, three in Pueblo, and the remaining twenty-three in Denver. Most of the twenty-nine civil jury trials tried to verdict in 2022 were filed between 2018 and 2020. Notably, one case was filed nine years prior in 2013. The chart below shows the filing year for each case:

Year Filed	No. Tried To Verdict In 2022
2013	1
2016	1
2017	2
2018	8
2019	9
2020	7
2021	1

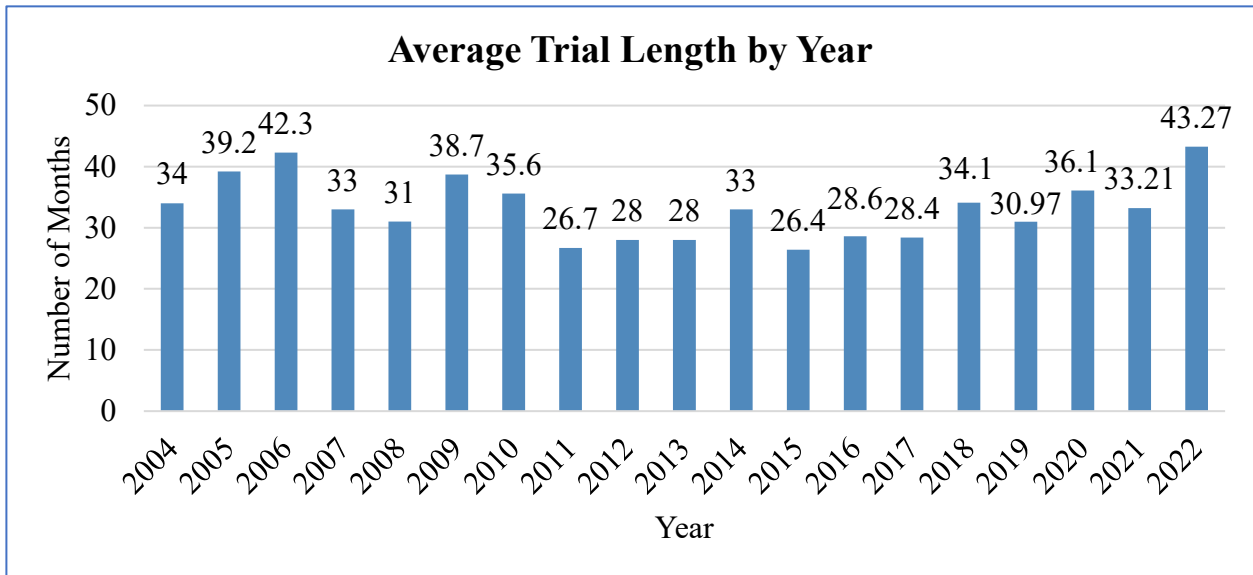
⁴ Five civil jury trials did not reach a verdict in 2022. Four settled during trial (double the number in 2021) and the Court granted judgment as a matter of law for the other.

B. Time to Trial

In 2022, the **average duration between a complaint's filing in the District and its first day of jury trial was 43.27 months**, which is a 30.28% increase from 33.21 months in 2021, an 19.85% increase from 36.1 months in 2020, and a 39.70% increase from 30.97 months in 2019.⁵ **This is a record delay between filing and trial since statistics have been maintained (2004).** The shortest time from filing to trial was 17.57 months (a slight improvement from the 17.6-month record in 2021) in an insurance case involving uninsured motorist benefits. The longest time from filing to trial was 109.63 months (significantly higher than the 79.9-month high in 2021) in a prisoner civil rights case filed in 2013 involving Title II of the Americans with Disability Act. That plaintiff appealed the Court's 2016 summary judgment rulings. The case was on appeal in 2017 and then re-opened in 2018 after the Tenth Circuit partially reversed the District's ruling. The next longest time to trial from filing was a Multi-District Litigation case filed in 2013 and then transferred to our District in 2020. Setting aside these two 2013 outliers, the longest time to trial from filing was 66.87 months and the average time to trial was **38.42 months** (much closer to, but still an increase from, the 2021 average of 33.21 months).

⁵ Again, this data analyzes only civil jury trials that reached verdicts. Ten of these 2022 cases originated in state court, all of which involved either contracts or insurance. The average duration between filing the complaint in state court and removing the civil action to the District was 1.22 months. The shortest time for a removal was 0.23 months (seven days) and the longest time was 3.13 months.

The graph below illustrates historic trends for average months to trial:



The chart below shows the average months to trial by nature of suit tried by civil jury in 2022:

Nature of Suit	Average Months to Trial
Breach of Contract	40.43
Non-Prisoner Civil Rights	39.00
Prisoner Civil Rights	73.90
Employment	34.57
Insurance	35.75
Other Federal Statutory Actions	33.70
Securities	31.27
Torts	46.64

Five of the twenty-nine civil jury trials in 2022 occurred within two years of filing in the District (14.71%), a significantly lower rate than recent years: eight of twenty-seven cases in 2021 (29.63%), two of eight cases in 2020 (25.00%), and nine of thirty-one cases in 2019 (29.03%). Three of these “under two years” cases (60.00%) were tried to Magistrate Judges, marking the first

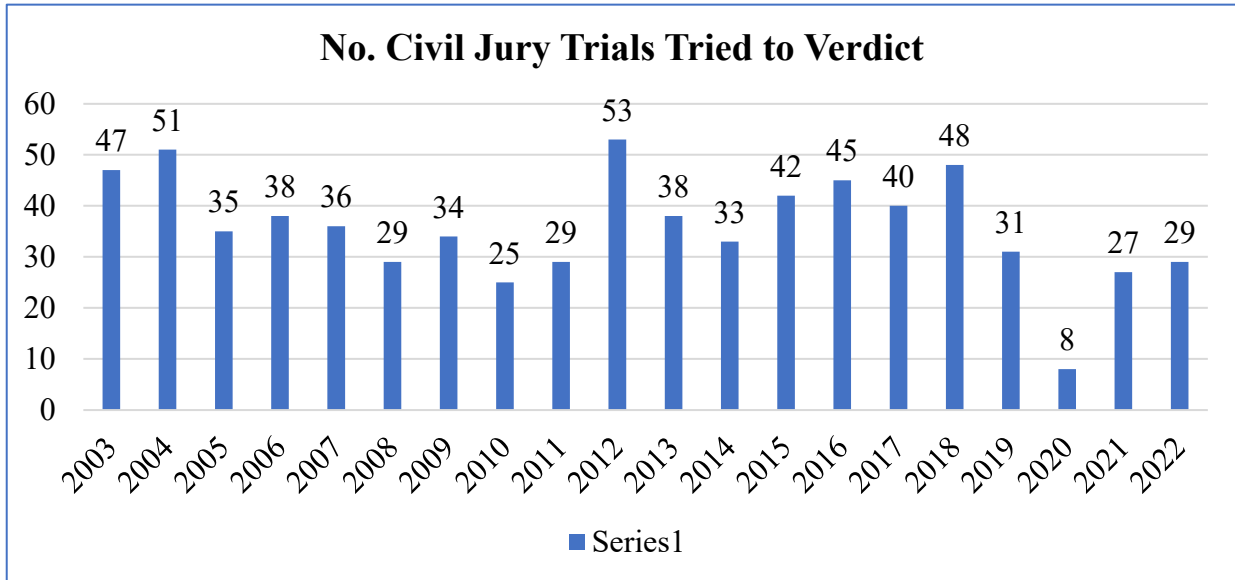
year since 2019 that a Magistrate Judge tried an “under two years” case. In fact, it is the highest percent of “under two years” cases tried to Magistrate Judges in the past five years.⁶

Returning to the twenty-nine jury trials as a whole, twenty-two of them were tried to District Judges with an average time to trial of 41.62 months. Of these, seven were tried to senior District Judges with an average 30.92 months to trial and fifteen were tried to active District Judges with an average of 48.25 months to trial. Additionally, seven of the 2022 civil jury trials to reach a verdict were tried to Magistrate Judges with an average time to trial of 48.43 months (38.23 months excluding the 2013 case).

⁶ In 2019, Magistrate Judges tried two of nine (22.22%) “under two years” cases, and in 2018, Magistrate Judges tried six of twenty-seven (also 22.22%) “under two years” cases.

C. Volume of Trials

The total volume of civil jury trials to reach verdict in 2022 (twenty-nine) slightly increased from 2021 (twenty-seven). Still, 2022 is the third lowest year in the past decade, including the 2020 record-low of eight trials. It is even among the lowest number of trials in the past twenty years as shown below:

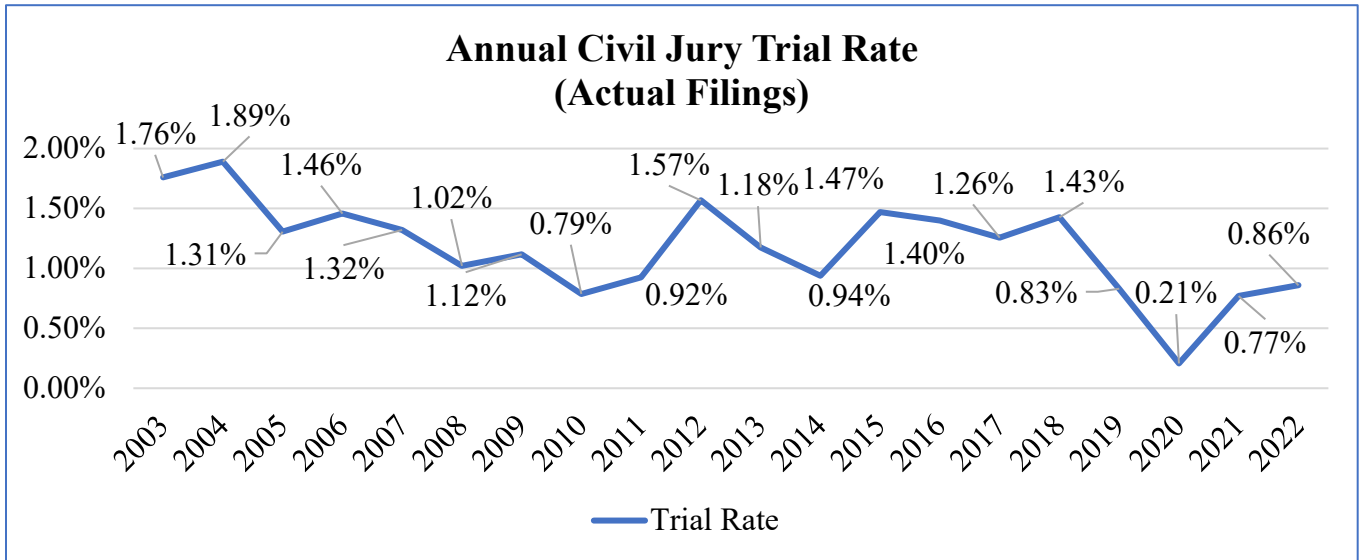


This reflects the COVID-19 pandemic’s continued effects on civil jury trials. While the pandemic may have encouraged settlements which could partially explain the lower numbers in 2022, it likely also delayed litigation that would have otherwise been tried in 2022 whether individual cases slowed down or were otherwise delayed from the District’s efforts to combat the spread of COVID-19.⁷ All in, this data suggests we will likely continue to see a rise in civil jury trials next year.

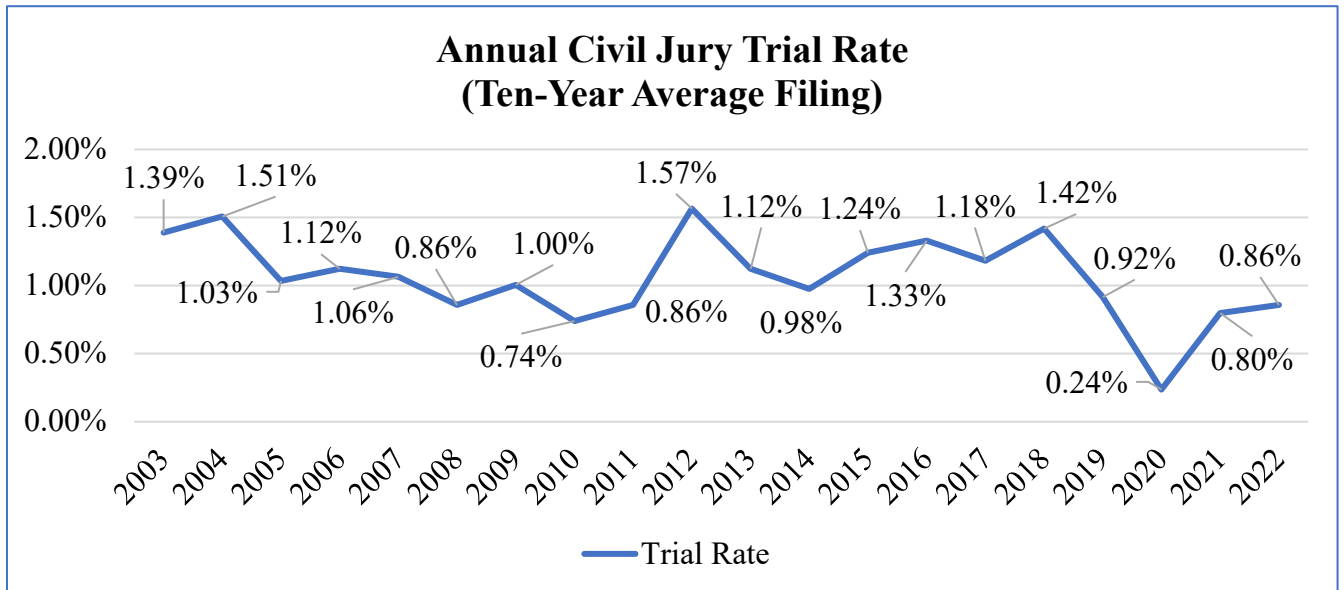
Comparing civil jury trials with verdicts to civil cases filed, 2022 had a 0.86% trial rate. Once again, this suggests a return to pre-pandemic standards as this continues the rise since the

⁷ From March through July of 2020, the District ceased all in-person proceedings. The District cautiously reopened for a few trials between July and October of 2020, but then shut down again following the second wave of Covid in Colorado. This second shutdown continued until March of 2021.

two-decade low in 2020. In fact, 2022 had the highest rate since 2018 which had a trial rate of 1.43%. The graph below shows the trial rates for the past twenty years:



Even if this rate is calculated using the ten-year average number of cases filed (3,384.20) in an attempt to standardize the most recent data, the outcome is not substantially different. As shown below, it yields the same overall trends—a 2022 rate on the lower end of pre-pandemic standards and confirmation civil jury trials have bounced back from the pandemic.



D. Parties' Success Rates

In 2022, **plaintiffs** prevailed in fifteen of twenty-nine civil jury trials that reached a verdict (**51.72%**) whereas **defendants** prevailed in ten (**34.48%**). This marks the second year since 2010 that plaintiffs enjoyed a higher success rate than defendants.⁸ One judgment, originally a split verdict with a 60.00% Plaintiff success rate that did not decide damages, was vacated after the parties reached a settlement. The remaining three trials had split verdicts, but plaintiffs had a higher success rate on a per claim basis of 63.64% while defendants' success rate was 36.36%.

Since 2003, the District has seen 718 civil jury trials. Plaintiffs prevailed in 340 of those (47.35%), and defendants prevailed in 367 (51.11%). There have been ten split verdicts (1.39%) and two judgments vacated (0.28%). The chart below presents success rates since 2003:

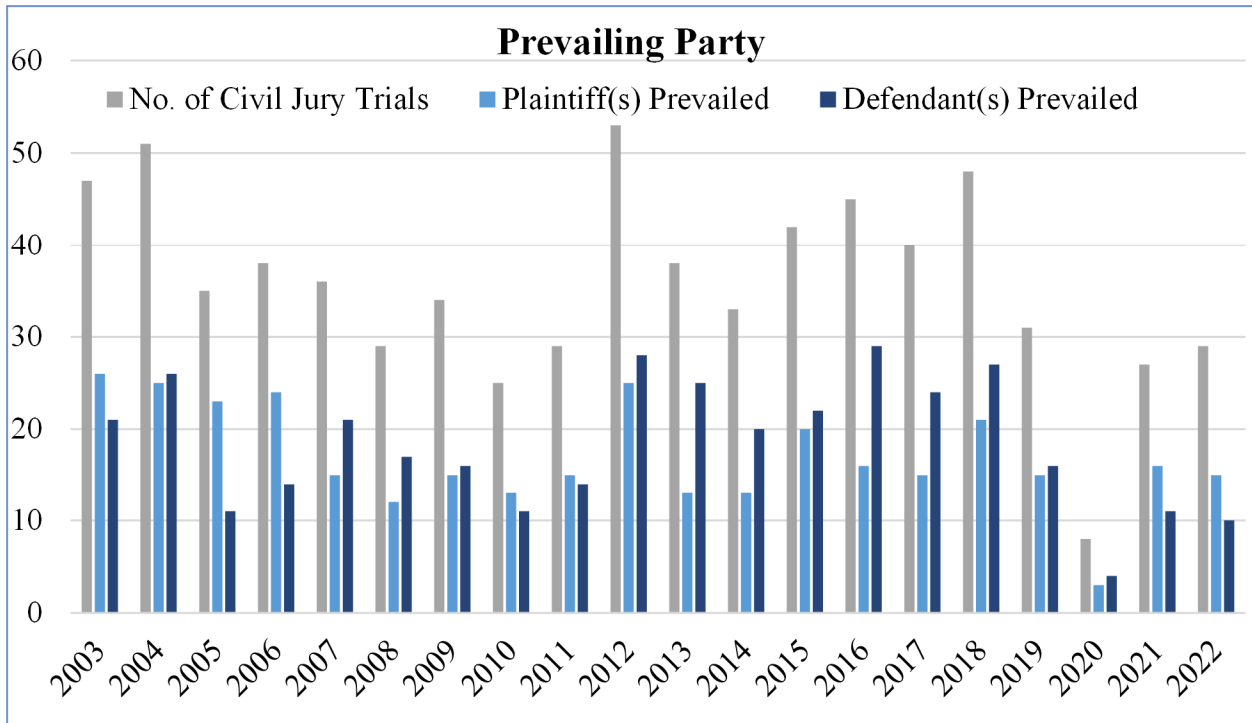
Year	No. Trials ⁹	Plaintiff(s) Prevailed	Defendant(s) Prevailed	Split Verdicts	Vacated
2003	47	26 (55.32%)	21 (44.68%)	0	0
2004	51	25 (49.02%)	26 (50.98%)	1	0
2005	35	23 (65.71%)	11 (31.43%)	0	0
2006	38	24 (63.16%)	14 (36.84%)	0	0
2007	36	15 (41.67%)	21 (58.33%)	0	0
2008	29	12 (41.38%)	17 (58.62%)	3	0
2009	34	15 (44.12%)	16 (47.06%)	1	0
2010	25	13 (52.00%)	11 (44.00%)	0	0
2011	30	15 (50.00%)	15 (50.00%)	0	0
2012	53	25 (47.17%)	28 (52.83%)	0	0
2013	38	14 (36.84%)	26 (68.42%)	0	0
2014	33	13 (39.39%)	20 (60.61%)	0	0
2015	42	20 (47.62%)	22 (52.38%)	0	0
2016	45	16 (35.56%)	29 (64.44%)	0	0
2017	40	15 (37.50%)	24 (60.00%)	1	0
2018	48	20 (41.67%)	27 (56.25%)	0	1
2019	31	15 (48.39%)	16 (51.61%)	0	0

⁸ In 2021, plaintiffs prevailed in sixteen of twenty-seven trials, yielding a plaintiff success rate of 59.26%. In 2010, plaintiffs prevailed in thirteen of the twenty-five trials, yielding a plaintiff success rate of 52.00%.

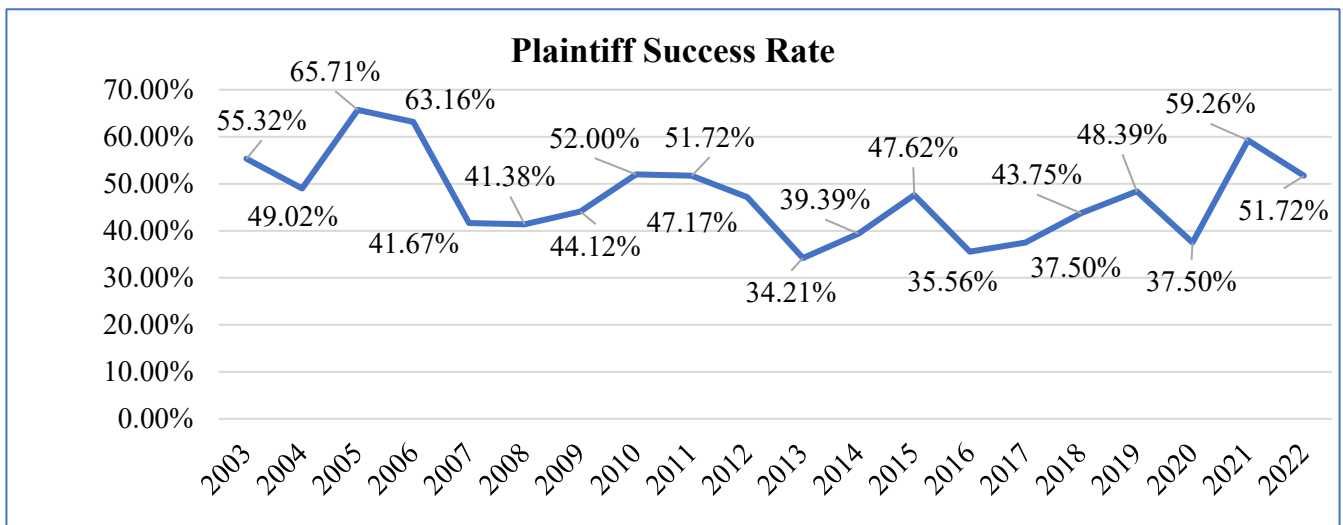
⁹ Number of civil jury trials to reach verdict.

2020	8	3 (37.50%)	4 (50.00%)	1	0
2021	27	16 (59.26%)	11 (40.74%)	0	0
2022	29	15 (51.72%)	10 (34.48%)	3	1
Total	718	340 (47.35%)	367 (51.11%)	10	2

The following graph also shows historic trends for prevailing parties:



Finally, the graph below illustrates the historical trend for plaintiff success rates. Of course, a graph charting defendant success rates over this period would be a symmetrical mirror image of the trend above.



E. Level of Awards

Eighteen civil jury trials resulted in plaintiff awards: the fifteen plaintiff verdicts and the three split verdicts. Six of these, including all three cases resulting in split verdicts, were tried to active District Judges. Five were tried to senior District Judges and four were tried to Magistrate Judges.

The jury did not determine damages in two of these cases, only liability. In the sole securities fraud case, the Court entered an award against the defendant entailing disgorgement and civil penalties for a total of \$9,282,074.65. And in a 2019 insurance case, the jury determined the defendant unreasonably delayed or denied payment of benefits and the Court later entered an award of \$931,200.00.¹⁰

Of the eighteen plaintiff awards, the Court modified four. First, a plaintiff prevailed in a personally injury motor vehicle civil action filed in 2020. The jury reached a verdict totaling \$4.3 million. The Court modified the award based on a state cap applied separately to each defendant for a total award of \$4,257,000.00. Second, a jury entered a split verdict in a contract case filed in 2019 involving claims of breach of contract, breach of the implied duty of good faith and fair dealing, and unjust enrichment, as well as counterclaims of misappropriation of trade secrets, interference with prospective business advantage, interference with contract, and unjust enrichment. The jury found the defendant/counter claimant prevailed on only its unjust enrichment counterclaim and awarded it \$1.00, marking the only counterclaim award in 2022. The jury also found the plaintiff prevailed on two of three claims, awarding the plaintiff \$1,027,500.00 on its breach of contract claim and \$10,000.00 on its breach of the implied duty of good faith and fair dealing. The Court, however, later found the plaintiff was not entitled to judgment in the latter so

¹⁰ For consistency with the discussion of the other awards, these figures omit any pre- or post-judgment interest that may have been awarded.

the final plaintiff award was \$1,027,500.00. Third, in a 2019 personal injury action with a gross negligence claim involving willful and wanton conduct, the jury awarded the plaintiff \$750,000 in noneconomic losses or injuries, \$3,250,000 in economic losses, and \$500,000 in physical impairment or disfigurement for a total of \$4.5 million. The Court later increased non-economic damages to \$936,030.00 and decreased economic damages to \$1,811,837.80 resulting in a final award of \$3,247,867.80. Finally, a jury found all twelve plaintiffs' claims prevailed in a 2020 civil rights action involving allegations of violations of protesters' First and Fourth Amendment rights under 42 U.S.C. § 1983.¹¹ Although the jury awarded plaintiffs \$14 million, the Court remitted the \$250,000.00 punitive damages award against the individual defendant to \$50,000.00. Accordingly, the final plaintiff award was \$13.8 million.

Analyzing the final 2022 civil jury plaintiff awards, the largest was \$13.8 million in the aforementioned civil rights case. This is significantly lower than the largest civil jury verdict in 2021 of \$156 million in a case regarding fiduciary duty, fraudulent concealment, fraudulent misrepresentation, and civil conspiracy claims. Still, it is much larger than both the largest civil jury verdict in 2020 of \$921,059.00 in a breach of insurance contract case and the largest civil jury verdict in 2019 of \$2,995,004.00 in an unlawful arrest case.

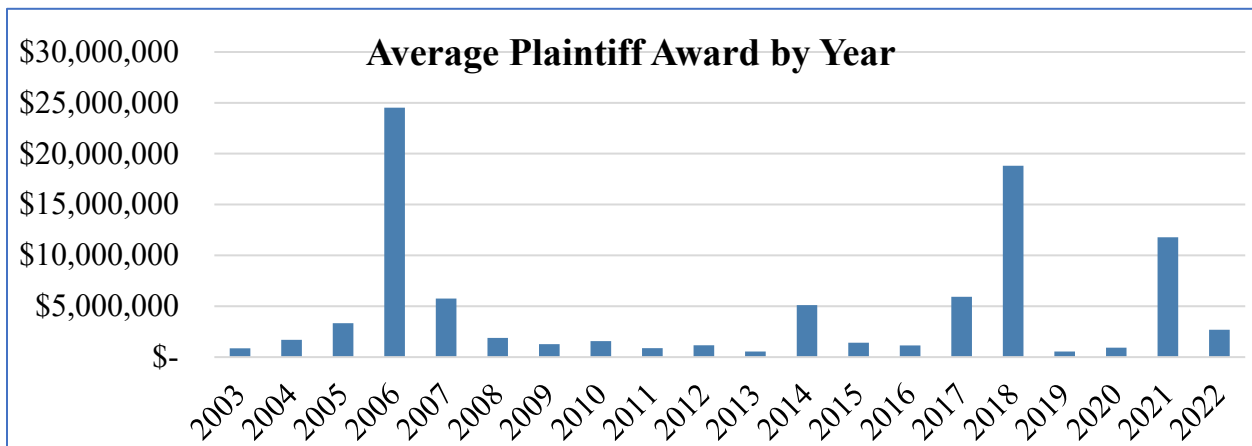
The smallest award in 2022 was \$5,000.00 in a contract case in which the plaintiff prevailed on his breach of contract claim but not his breach of implied warranty of fitness for a particular purpose claim. Once again, this figure is substantially smaller than that in 2021—\$37,900.00 in a case over discrimination under the Americans with Disabilities Act.¹² However, the smallest verdict in 2022 is consistent with more recent years. In 2020, the smallest verdict was \$3,190.00

¹¹ The Court granted a defense motion for judgment as a matter of law under Fed. R. Civ. P. 50 as to a thirteenth plaintiff's claims.

¹² In 2021, a plaintiff also prevailed in a jury trial regarding the ownership of several paintings but no monetary award was sought or rewarded.

in an intellectual property case and in 2019 the smallest verdict was \$6,000.00 in an auto accident case.

The **average plaintiff award in 2022 was \$2,683,703.59**, substantially lower than the average of \$11,768,570.25 in 2021, but significantly greater than both averages of \$365,906.00 in 2020 and \$545,968.00 in 2019. Excluding the highest and lowest verdicts of 2022, the average civil jury plaintiff award was \$2,156,354.04. This is larger than \$1,576,204.14 in 2021, which at the time was the largest average excluding the highest and lowest awards for the past several years since \$2,197,841.32 in 2017. The graph below shows historic trends in average plaintiff awards:



Additionally, of the eighteen cases with plaintiff awards, only five have had attorneys' fees awarded and only one of these was a split verdict case. The average attorneys' fees award was \$910,545.54. The highest fee award was \$2,856,303.00 and unsurprisingly this was entered in the case with the highest plaintiff award (2020 civil rights action). The lowest fee award was \$49,573.50, also entered in a civil rights case, specifically the prisoner civil rights action filed in 2013. Of note, three cases (including one with a split verdict) have pending motions for attorneys' fees.

The following chart reports civil trial jury verdicts in 2022 from highest to lowest:

Rank	Judge		Nature of Claims	Claims at Issue	Verdict	Plaintiff Award	Attorneys' Fees
1	RBJ	Senior District Judge	Civil Rights (42 U.S.C. § 1983)	First Amendment; Fourth Amendment	Plaintiffs ¹³	\$13,800,000.00	\$2,856,303.00
2	PAB	Active District Judge	Securities	Fraud in the Offer or Sale of Securities; Fraud in the Purchase or Sale of Securities	Plaintiff	\$9,282,074.65 ¹⁴	N/A
3	DDD	Active District Judge	Civil Rights (42 U.S.C. § 1983)	Excessive Force in Violation of the Eighth Amendment; Cruel and Unusual Punishment in Violation of the Eighth Amendment; False Imprisonment in Violation of the Fourth Amendment	Plaintiff	\$8,250,000.00	Pending ¹⁵

¹³ This jury trial did not completely resolve the case. Two additional jury trials were originally set for 2023 but both have been vacated. One involved the Curfew Arrest Class plaintiffs and the City and County of Denver and these parties are finalizing a settlement agreement. The other involved the plaintiffs' claims against the City of Aurora and four individual Aurora Police Department Officers. The Court has stayed this portion of the case pending the Aurora defendants' interlocutory appeal of the Court's order denying summary judgment based on qualified immunity.

¹⁴ This is comprised of \$5,779,908.38 disgorgement of net profits and a \$3,502,166.65 civil penalty.

¹⁵ The Court permitted the plaintiff to wait to move for attorneys' fees until the resolution of her pending appeal to the Tenth Circuit.

4	MEH	Magistrate Judge	Torts: Personal Injury Motor Vehicle	Negligence; Negligence Per Se Negligent Entrustment; Negligent Hiring and Retention; Negligent Training and Supervision	Plaintiff	\$4,257,000.00	N/A
5	SKC	Magistrate Judge	Prisoner Civil Rights ADA	Title II Americans with Disabilities Act Failure to Accommodate	Plaintiff	\$3,500,000.00	\$49,573.50
6	REB	Senior District Judge	Torts: Personal Injury Other	Gross Negligence Involving Willful and Wanton Conduct	Plaintiff	\$3,247,867.80	N/A
7	REB	Senior District Judge	Breach of Contract	Breach of Contract	Plaintiffs	\$1,146,522.00	N/A
8	RMR	Active District Judge	Breach of Contract	<u>Claims:</u> Breach of Contract for Damages; Breach of the Implied Duty of Good Faith and Fair Dealing; Unjust Enrichment <u>Counterclaims:</u> Misappropriation of Trade Secrets; Interference with Prospective Business Advantage; Interference with Contract; Unjust Enrichment	Split	\$1,027,500.00	\$880,509.19
9	DDD	Active District Judge	Torts: Assault, Libel, and Slander	Defamation	Plaintiff	\$950,000.00	N/A

10	RMR	Active District Judge	Insurance	Unreasonable Delay or Denial of Payment of Benefits	Plaintiffs	\$931,200.00	\$281,140.50
11	WJM	Active District Judge	Torts: Personal Injury Other	Breach of Fiduciary Duty	Split	\$600,000.00	Pending
12	CMA	Active District Judge	Civil Rights (42 U.S.C. § 1983)	Malicious Prosecution	Plaintiff	\$500,000.00	\$485,201.50
13	RBJ	Senior District Judge	Other Federal Statutory Causes of Action	Misappropriation of Trade Secrets; Intentional Interference with Prospective Contractual Relationships; Civil Conspiracy	Plaintiff	\$399,000.00	N/A
14	REB	Senior District Judge	Employment	Wrongful Termination in Violation of Public Policy	Plaintiff	\$188,000.00	N/A
15	NRN	Magistrate Judge	Insurance	Uninsured Motorist Benefits	Plaintiff	\$140,000.00	N/A
16	KLM	Magistrate Judge	Breach of Contract	<u>Claim</u> : Breach of Contract <u>Counterclaim</u> : Breach of Contract	Plaintiff	\$62,500.20	N/A ¹⁶
17	RM	Active District Judge	Civil Rights ADA	Americans with Disabilities Act; Section 504 of the Rehabilitation Act; Colorado Anti-Discrimination Act	Plaintiff	\$20,000.00	Pending
18	DDD	Active District Judge	Breach of Contract	Breach of Contract; Breach of Implied Warranty of Fitness for a Particular Purpose	Split	\$5,000.00	N/A

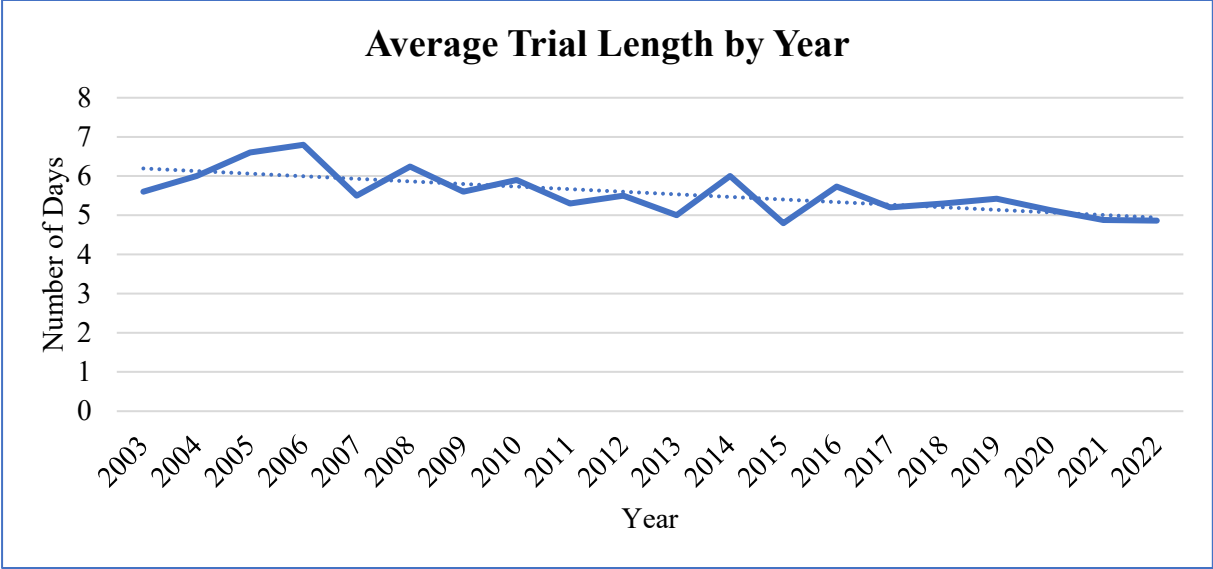
¹⁶ The parties settled on costs and attorneys' fees.

F. Trial Lengths

Civil jury trials that went to verdict in 2022 required 141 total days compared with 132 total trial days in 2021, forty-one in 2020, 168 in 2019, and 252 in 2018. The longest trial lasted fifteen days (civil rights action with the highest 2022 award), compared with ten days (insurance coverage) in 2021. The shortest trials lasted two days (civil rights) consistent with 2021 (replevin). The **average civil jury trial in 2022 lasted 4.86 days**, consistent with 4.88 days in 2021. Like 2021, the most common trial length was five days. For the sixteen cases tried to an active District Judge, the average trial length was 5.44 days. For the six cases tried to a senior District Judge, the average trial length was 3.71 days. For the seven cases tried to a Magistrate Judge, the average trial length was 4.00 days. The chart below shows the total number of cases for each trial length:

Number of Days	Number of Trials
2	2
3	5
4	8
5	9
6	1
7	1
8	1
9	1
15	1

The 4.86-day average trial length in 2022 was fairly similar to historical averages in the District as shown in the following graph:



G. Time to Judgment

For the twenty-nine civil jury trials to reach verdict in 2022, the **average time to judgment from the jury's verdict was 1.15 months**. At times, judgments were amended, usually to add pre- and/or post-judgment interest, costs, and fees but sometimes also to modify an award. This modestly extends the time to finality. Indeed, the average time to the last judgment from the jury's verdict was 2.02 months.¹⁷ In turn, the average time to judgment from filing the case in the District was 44.57 months. Again, calculating to the last judgment only slightly increases this figure as that average is 45.08 months.¹⁸ Under either calculus, the fastest time judgment was 0 days (*i.e.*, the same day the jury entered a verdict) whereas the longest time was 12.70 months.

Notably, **twelve of the twenty-nine cases were appealed to the Tenth Circuit (41.38%)**. Two of these cases each had two appeals resulting in fourteen total appeals. Seven of these appealed cases (58.33%) continue to have pending appeals. Eight of the fourteen total appeals (57.14%) remain pending. Correspondingly, five cases appealed (41.67%), or six appeals (42.86%), have been terminated. Parties dismissed three of these appeals (50.00%). The Tenth Circuit ruled on the other half on the merits, affirming two (33.33%) and reversing and remanding one (16.67%).

The next chart provides an overview on time to judgment and appeals organized by nature of suit:

¹⁷ To avoid significantly skewing this data, this figure excludes a pending final judgment in one case. There, the parties filed a proposed final judgment at the Court's order and it memorializes other Court orders so there should not be any substantive forthcoming changes.

¹⁸ Once again, this excludes the single pending final judgment.

Nature of Suit	Verdict to Judgment (months)	Verdict to Last Judgment (months)	Filing Suit to Judgment (months)	Filing Suit to Last Judgment (months)	Appealed?	Appeal Pending?
Breach of Contract	0.17	0.17	57	57	No	N/A
Breach of Contract	0.1	0.1	47.57	47.57	No	N/A
Breach of Contract	1.43	Pending	34.6	Pending	No	N/A
Breach of Contract	0	1.73	24.87	26.6	Yes	No
Civil Rights ADA	0.5	0.5	55.97	55.97	No	N/A
Civil Rights (42 U.S.C. § 1983)	0.3	5.07	49.93	54.7	Yes	Yes
Civil Rights (42 U.S.C. § 1983)	0.17	4.3	48.97	53.1	Yes (2)	Yes (2)
Civil Rights (42 U.S.C. § 1983)	0.03	0.03	21.03	21.03	Yes	No
Civil Rights (42 U.S.C. § 1983)	0.67	0.67	21.67	21.67	Yes	Yes
Employment	0	0	34.63	34.63	No	N/A
Insurance	1.77	1.77	65.9	65.9	No	N/A
Insurance	0	0	48.07	48.07	Yes (2)	Yes (1)
Insurance	0.03	0.03	44.2	44.2	Yes	No
Insurance	4.63	4.63	33.57	33.57	No	N/A
Insurance	0.17	0.17	24.33	24.33	No	N/A
Insurance	0.03	0.03	23.97	23.97	No	N/A
Insurance	0.5	2.97	18.13	20.6	No	N/A
Other Statutory Actions: Civil Action to Protect Trade Secrets	0.17	2.87	33.97	36.67	No	N/A
Prisoner Civil Rights ADA	4.33	4.4	114.1	114.17	No	N/A
Prisoner Civil Rights (42 U.S.C. § 1983)	0.03	0.03	67	67	No	N/A
Prisoner Civil Rights (42 U.S.C. § 1983)	0.03	0.03	45.3	45.3	No	N/A

Securities, Commodities, Exchange	4.77	4.77	36.37	36.37	No	N/A
Torts: Assault, Libel, and Slander	0.17	0.17	44.57	44.57	Yes	Yes
Torts: Personal Injury Medical Malpractice	0.1	0.1	43.13	43.13	No	N/A
Torts: Personal Injury Medical Malpractice	0.27	0.27	41.77	41.77	Yes	No
Torts: Personal Injury Motor Vehicle	0.33	2.63	22.5	24.8	Yes	No
Torts: Personal Injury Other	0	6.37	36.23	42.6	Yes	Yes
Torts: Personal Injury Other	12.7	12.7	44.9	44.9	Yes	Yes
Torts: Personal Injury Product Liability	0	0	108.17	108.17	No	N/A

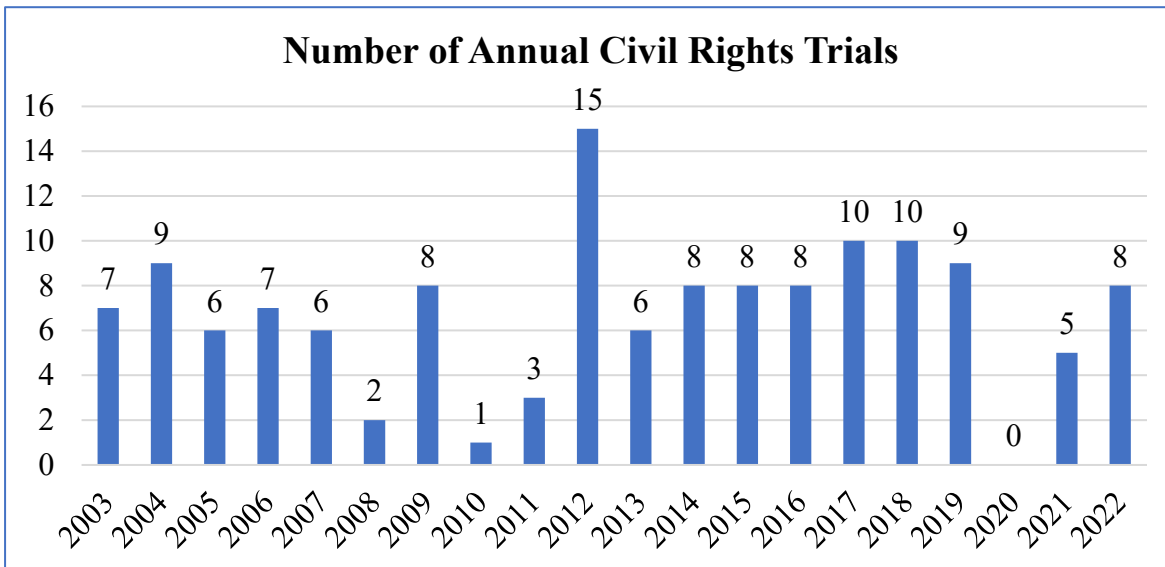
H. Nature of Claims

For the first time in ten years, the District did not have a civil jury trial involving intellectual property claims.¹⁹ Rather, the civil jury trials conducted in 2022 fall into the following categories:

Category	No. Cases	Percent of Cases Tried
Civil Rights	8	27.59%
Common Law Torts	7	24.14%
Insurance	7	24.14%
Breach of Contract	4	13.79%
Employment	1	3.45%
Tax and Securities	1	3.45%
Other Federal Statute	1	3.45%

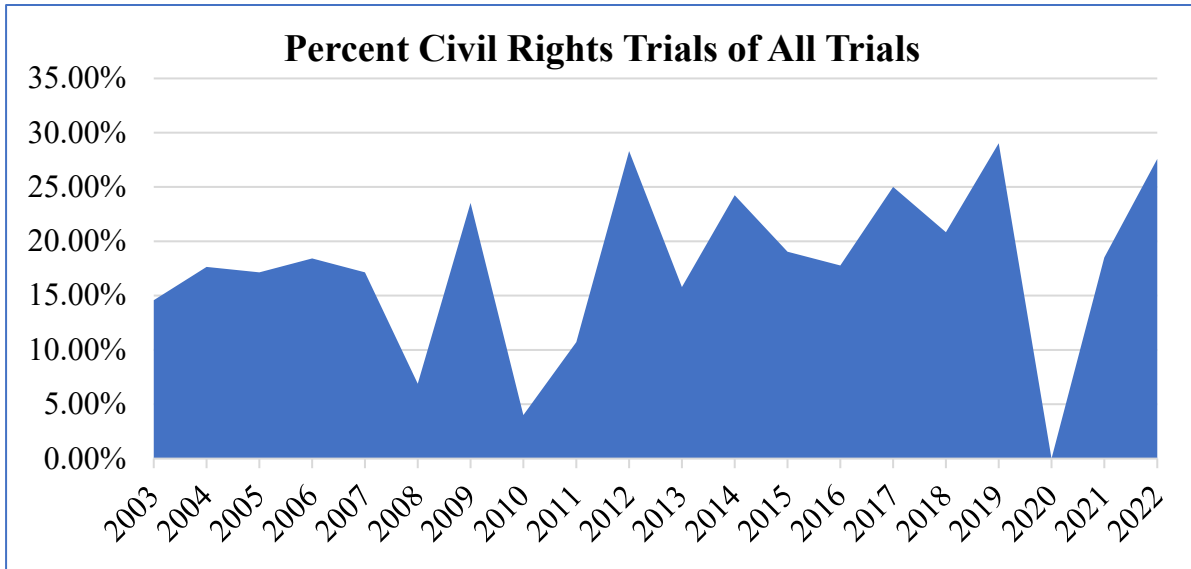
1. Civil Rights

Civil rights disputes accounted for eight of the twenty-nine civil jury trials in 2022 to reach verdict. This is the highest number since 2019 and notably higher than the twenty-year average of 6.65 trials. The graph below illustrates the historical trend for annual civil rights trials in the District:

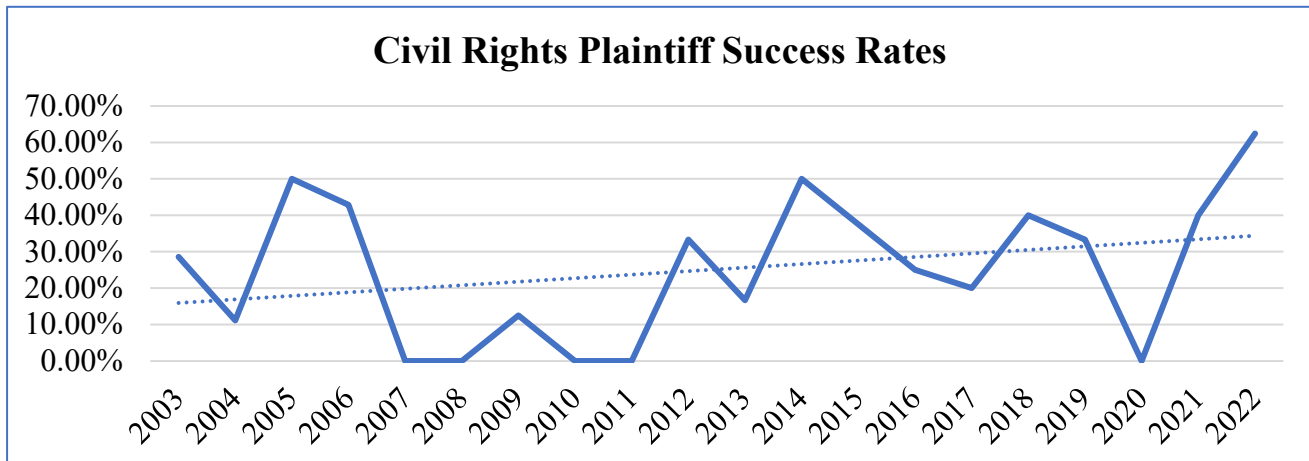


¹⁹ Indeed, the twenty-year average of intellectual property civil jury trials is 1.50 trials per year.

These eight trials were 27.59% of civil jury trials in 2022 to reach verdict. This is significantly higher than 18.52% in 2021 and in fact the third highest percentage in the twenty years the District has been tracking this information. Unsurprisingly, this is much higher than the 17.81% average for the past twenty years. The graph below depicts the twenty-year trend of percentage of all trials for civil rights trials:



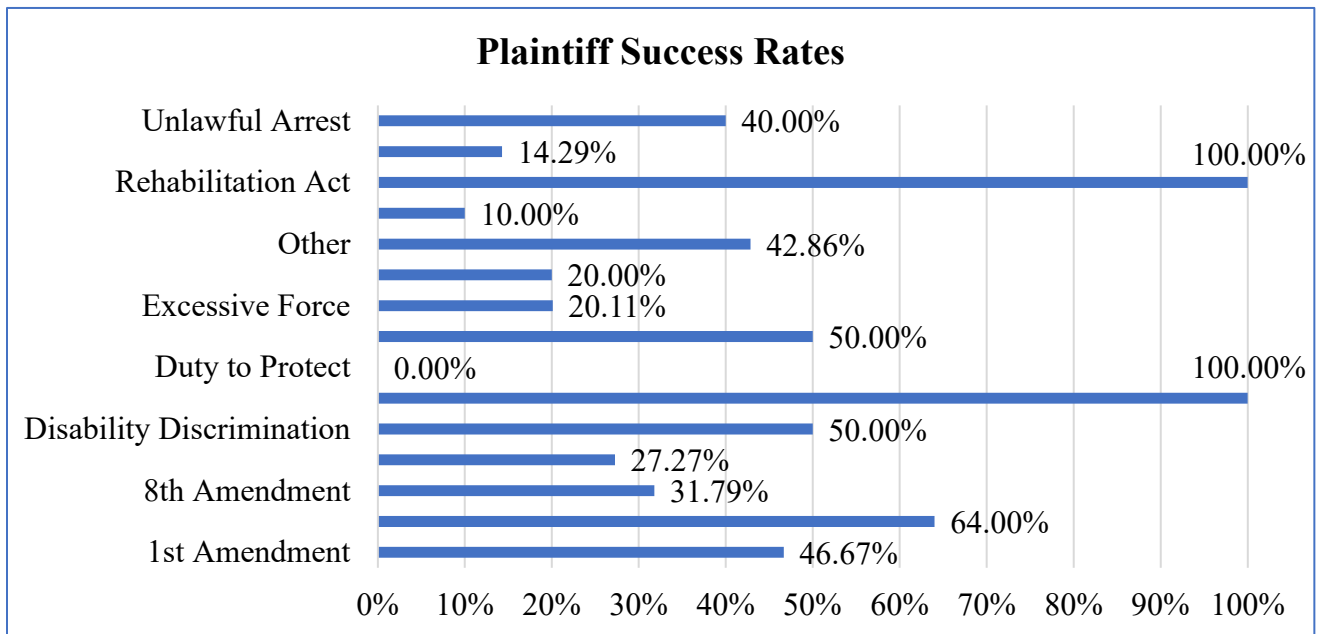
In 2022, **Plaintiffs prevailed in five of the eight civil rights jury trials (62.50%)**, an increase from two of the five civil rights cases (40.00%) in 2021. This is more than double the twenty-year average for civil rights plaintiff verdicts of 25.17%. The following graph illustrates the trend for plaintiff success rates in civil rights disputes:



The average of the five plaintiff awards in 2022 was \$5,214,000.00. The highest was \$13.8 million whereas the lowest was \$20,000.00. The chart below provides a breakdown of the civil rights disputes in 2022 by nature of claim:

Substantive Area	Verdict	Award
Americans with Disabilities Act Failure to Accommodate	Plaintiff	\$3,500,000.00
42 U.S.C. § 1983: Excessive Force	Defendants	N/A
Americans with Disabilities Act; Rehabilitation Act; Colorado Anti-Discrimination Act	Plaintiff	\$20,000.00
42 U.S.C. § 1983: Malicious Prosecution	Plaintiff	\$500,000.00
42 U.S.C. § 1983: Excessive Force	Defendants	N/A
42 U.S.C. § 1983: Excessive Force; Eighth Amendment (cruel and unusual punishment); Fourth Amendment (false imprisonment)	Plaintiff	\$8,250,000.00
42 U.S.C. § 1983: First and Fourth Amendments	Plaintiffs	\$13,800,000.00
42 U.S.C. § 1983: First Amendment	Defendant	N/A

The graph below shows the breakdown of plaintiff success rates by subject in every civil rights jury trial since 2003:²⁰



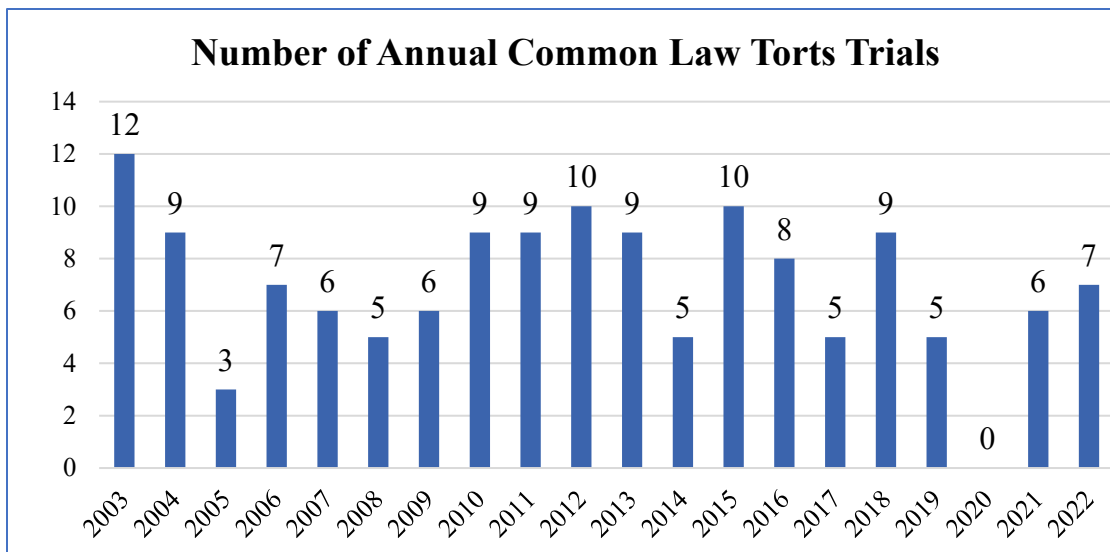
²⁰ For civil rights trials in which several claims were tried by a plaintiff, each of those claims has been recorded as a fraction of a trial (e.g., for a trial in which excessive force and prisoner rights were considered, a half point has been included in each of those rows).

The chart below further shows this breakdown by individual verdict:

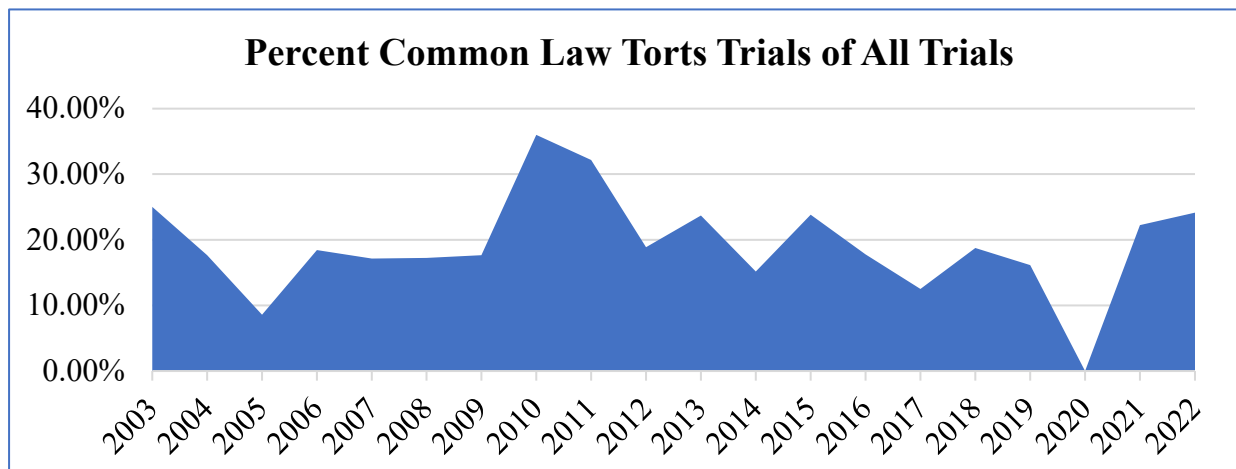
Type of Claim	Total Verdicts	Plaintiff Verdicts	Plaintiff Success Rate
1st Amendment	7.5	3.5	46.67%
4th Amendment	8.333	5.333	64.00%
8th Amendment	7.33	2.33	31.79%
Deliberate Indifference	5.5	1.5	27.27%
Disability Discrimination	6	3	50.00%
Due Process	2	2	100.00%
Duty to Protect	1	0	0.00%
Equal Protection	2	1	50.00%
Excessive Force	56.33	11.33	20.11%
Malicious Prosecution	5	1	20.00%
Other	7	3	42.86%
Prisoner Rights	10	1	10.00%
Rehabilitation Act	1	1	100.00%
Retaliation	7	1	14.29%
Unlawful Arrest	10	4	40.00%
Total	135.993	40.993	30.14%

2. Common Law Torts

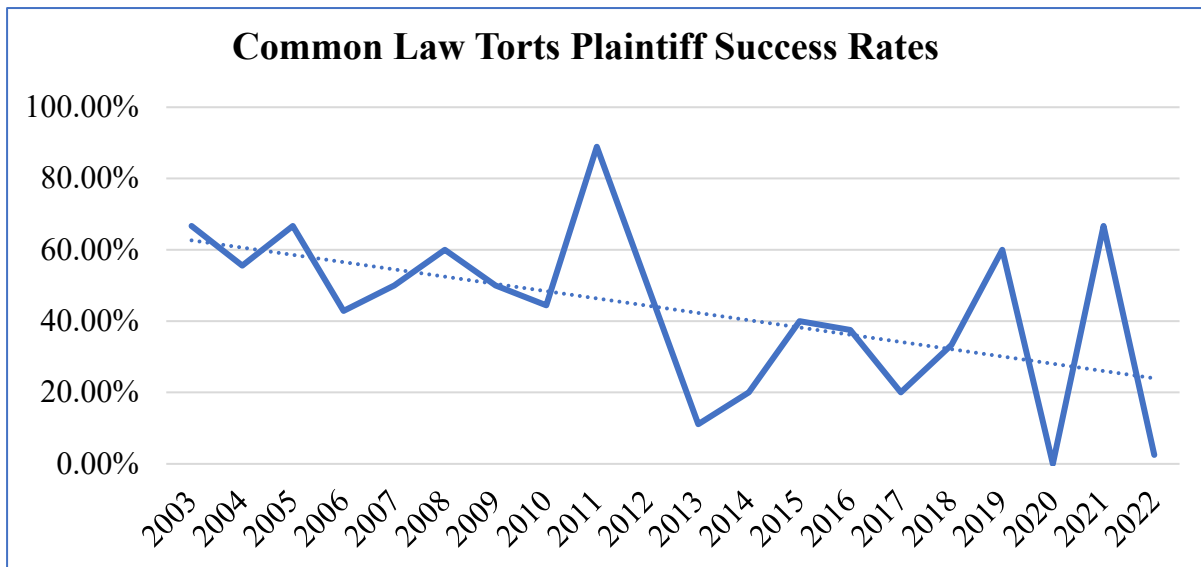
Common law torts accounted for seven of the twenty-nine civil jury trials in 2022 to reach verdict. This is the highest number of trials since 2018 and equal to the twenty-year average of seven common law torts trials per year. The graph below shows the District's trends for annual common law torts trials the past twenty years:



These seven cases were 24.14% of civil jury trials in 2022 to reach verdict. This is the highest percentage since 32.14% in 2011. It is also significantly higher than the twenty-year average of common law torts making up 19.14% of total civil jury trials to reach a verdict. The next graph shows the District's historical record for common law tort trial load:



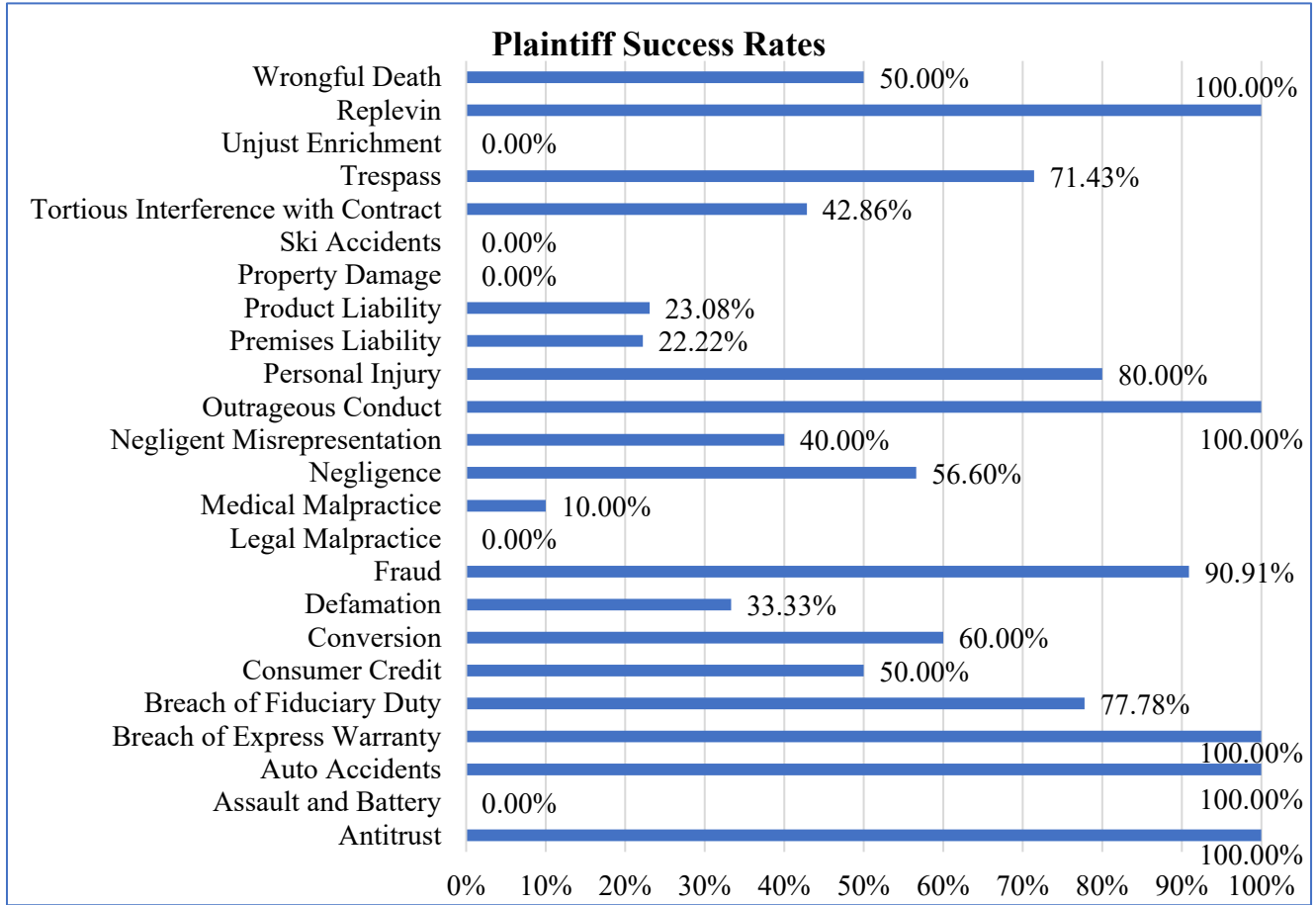
In 2022, **three of the eight civil rights jury trials resulted in plaintiff verdicts (37.50%)** and one resulted in a split verdict, with the plaintiff prevailing on its claim against one defendant but not the second defendant. Incorporating the latter on a per claim success rate (50.00%), the total plaintiff verdicts in the eight civil jury trials is approximately 43.00%. This is much smaller than 50.00% in 2021. Still, it is consistent with the 43.31% average for the past twenty years. The graph below shows plaintiff success rate trends in common law torts disputes for this time period:



The **average of the five plaintiff awards in 2022 was \$2,263,717**. The highest was \$4.257 million whereas the lowest was \$600,000. The chart below provides a breakdown of the common law tort disputes in 2022 by substantive area:

Substantive Area	Verdict	Award
Defamation	Plaintiff	\$950,000.00
Medical Malpractice (Negligence)	Defendant	N/A
Medical Malpractice (negligence)	Defendant	N/A
Personal Injury (Gross Negligence Involving Willful and Wanton Conduct)	Plaintiff	\$3,247,867.80
Breach of Fiduciary Duty	Split	\$600,000.00
Product Liability	Defendants	N/A
Auto Accident	Plaintiff	\$4,257,000.00

The graph below illustrates the breakdown of plaintiff success rates by subject for every type of common law tort tried since 2003:²¹



The next chart further details plaintiff success rates by individual verdict:

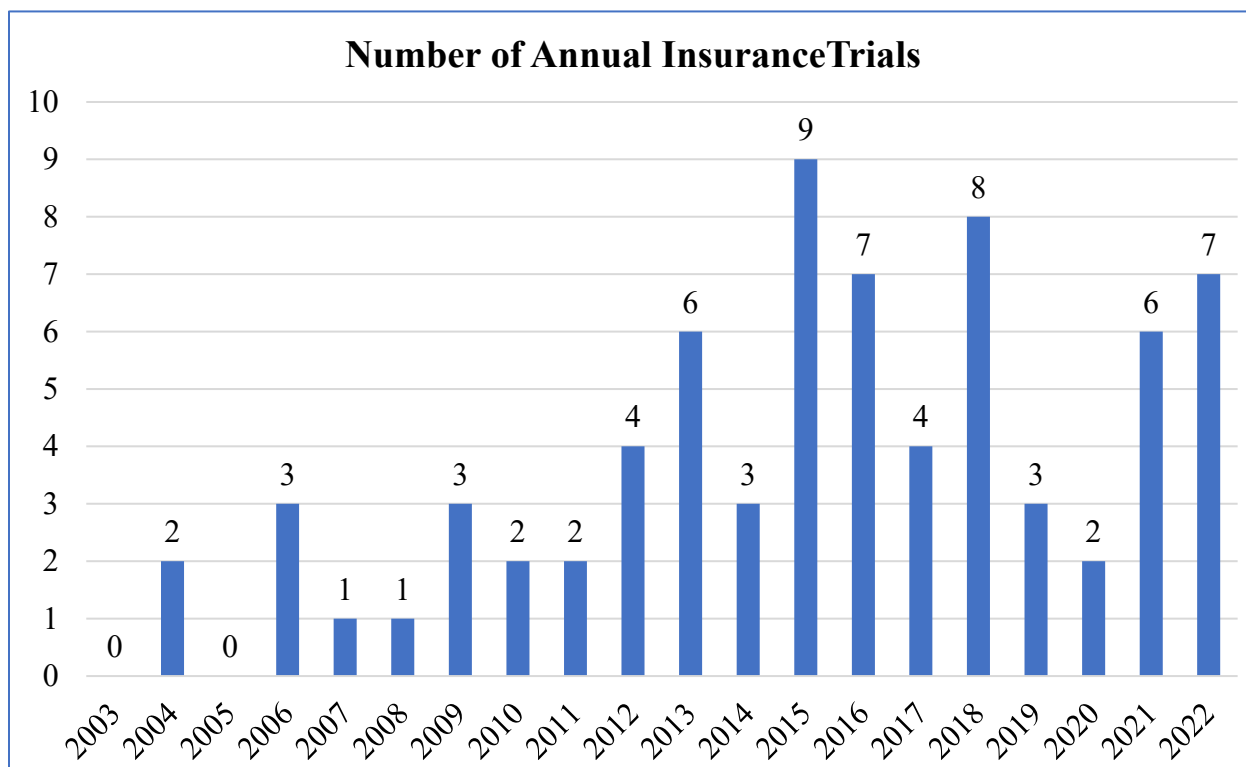
Substantive Area	Total Verdicts	Plaintiff's Verdicts	Plaintiff Success Rate
Antitrust	1	1	100.00%
Assault and Battery	2	0	0.00%
Auto Accidents	3	3	100.00%
Breach of Express Warranty	1	1	100.00%
Breach of Fiduciary Duty	2.25	1.75	77.78%
Consumer Credit	4	2	50.00%
Conversion	1.25	0.75	60.00%
Defamation	3	1	33.33%
Fraud	5.5	5	90.91%

²¹ For several trials over the past eighteen years, one case involved multiple claims. These cases have been broken into fractions based on the number and type of claims tried in each instance. Thus, some totals including fractions of cases.

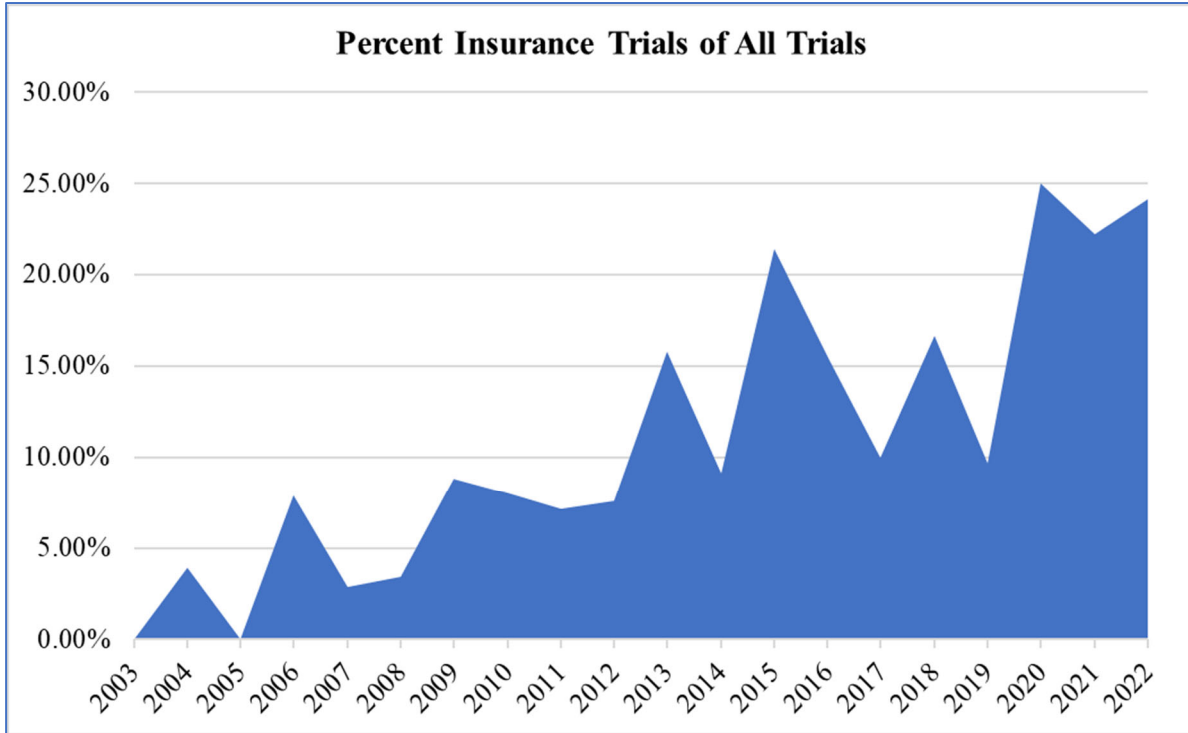
Legal Malpractice	0	0	0.00%
Medical Malpractice	20	2	10.00%
Negligence	53	30	56.60%
Negligent Misrepresentation	2.5	1	40.00%
Outrageous Conduct	2	2	100.00%
Personal Injury	10	8	80.00%
Premises Liability	9	2	22.22%
Product Liability	13	3	23.08%
Property Damage	0	0	0.00%
Ski Accidents	0	0	0.00%
Tortious Interference with Contract	1.75	0.75	42.86%
Trespass	1.75	1.25	71.43%
Unjust Enrichment	1	0	0.00%
Replevin	1	1	100.00%
Wrongful Death	2	1	50.00%
Total	140	67.5	48.21%

3. Insurance

In 2022, the District had **seven insurance contract civil jury trials reach verdict**. This is the highest number of insurance trials since eight cases were tried in 2018. Significantly, this is about double the twenty-year average of 3.65 trials per year. The graph below shows the District's history of annual insurance disputes:



In 2022, insurance trials accounted for 24.14% of the twenty-nine civil jury trials to reach verdict, a slight increase from 22.22% in 2021. Indeed, it continues the general increase over the past twenty years. Notably, this is more than twice the average percentage for the past twenty years: 10.96%. The graph below shows the twenty-year trend of the percentage of all trials in the District for which insurance trials account:



The chart below provides a breakdown of the 2022 insurance disputes tried by civil jury to a verdict:

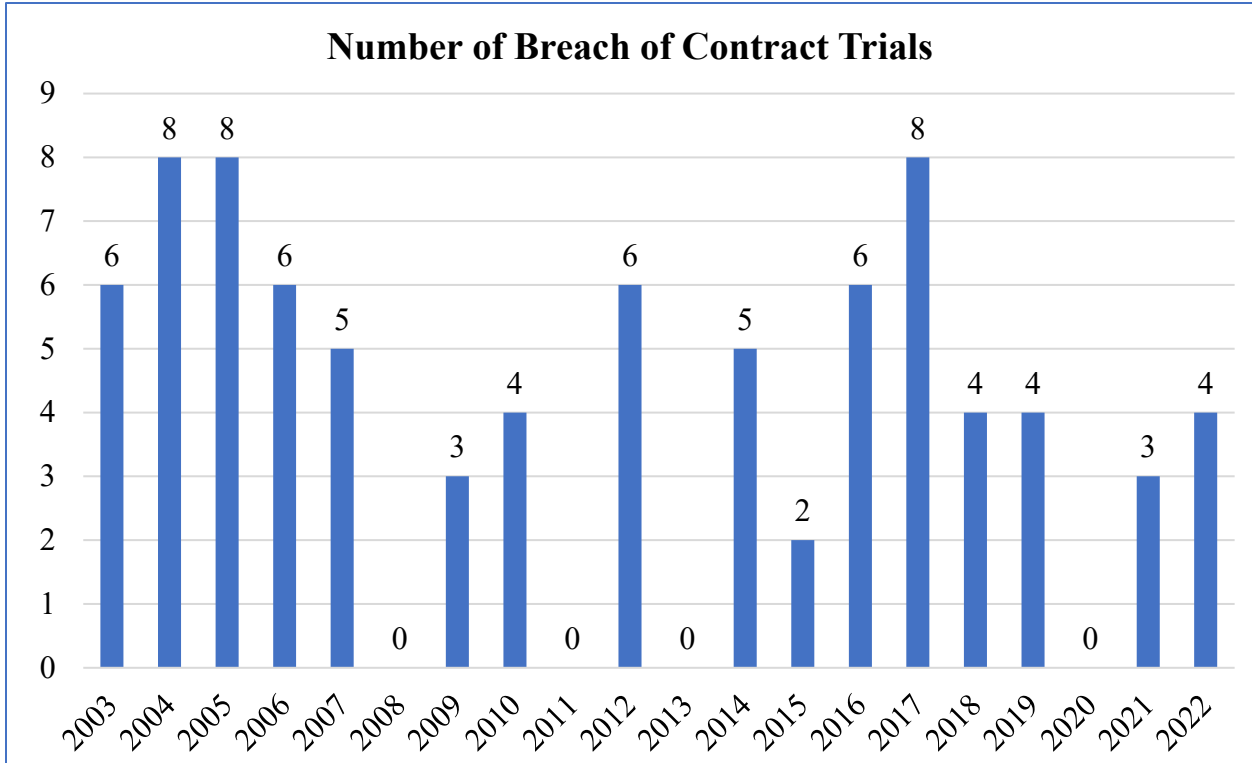
Claims	Verdict	Award
Breach of Contract; Bad Faith Breach of Insurance Contract; Unreasonable Denial or Delay of Payment of Insurance Benefits	Split	N/A (Parties settled post-trial)
Breach of Contract; Bad Faith Breach of Insurance Contract; Unreasonable Denial or Delay of Payment of Insurance Benefits	Defendant	N/A
Breach of Contract; Bad Faith Breach of Insurance Contract; Unreasonable Denial or Delay of Payment of Insurance Benefits	Defendant	N/A
Unreasonable Denial or Delay of Payment of Insurance Benefits	Plaintiffs	\$931,200.00
Breach of Contract; Unreasonable Denial or Delay of Payment of Insurance Benefits	Defendant	N/A
Breach of Contract; Bad Faith Breach of Insurance Contract;	Defendant	N/A
Recovery of Uninsured Motorist Benefits	Plaintiff	\$140,000.00

Two of the seven civil rights jury trials resulted in plaintiff verdicts (38.57%). One resulted in a split verdict, with the plaintiff prevailing on 60.00% of the claims yielding a total 37.14% plaintiff success rate. However, the jury decided liability only in the split verdict and the parties later settled causing the Court to vacate the judgment. Regardless of whether the split verdict is included, the 2022 plaintiff success rate in insurance civil jury trials is a big departure from the 50.00% rates in 2021 and 2020. It is similarly much lower than the twenty-year average of 54.81%.

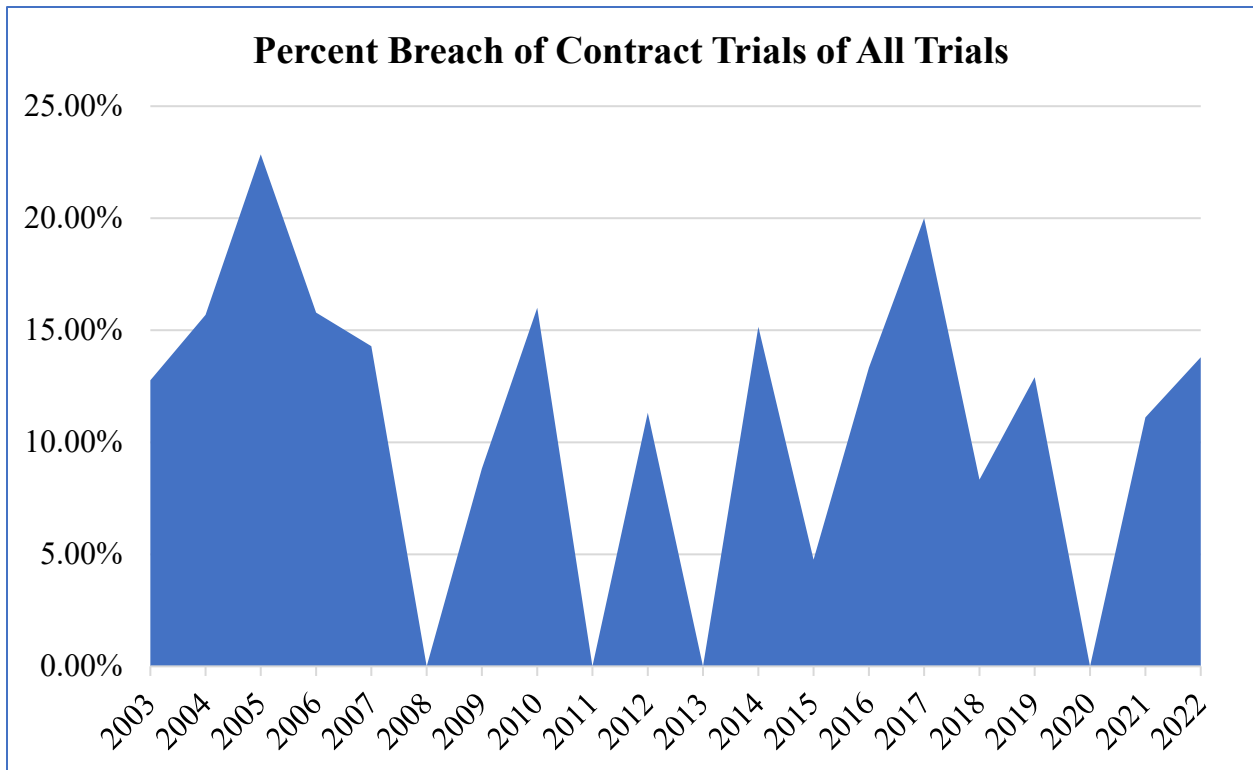
Because insurance disputes have historically made up only about 10.00% of total trials in the District, statistics regarding plaintiff win rate by year are somewhat misleading, as success rates can easily jump from 100% based on two cases in 2018 to 0.00% based on three cases in 2019. Accordingly, this report excludes illustrations of plaintiff success rates in insurance trials by year.

4. Breach of Contract

Breach of contract disputes, excepting insurance contracts, accounted for **four of the twenty-nine civil jury trials to reach verdict**. This is the highest number since 2019, and consistent with the twenty-year average of 4.1 trials per year. The graph below illustrates the District’s data for this period:



These four cases accounted for 13.79% total civil jury trials in 2022 to reach verdict. This is similar to the 10.85% historical average of breach of contract trials in the District over the past twenty years. The following graph below depicts the District’s historic trends for percentage of all trials to involve breach of contract claims:



The chart below provides an overview of the four breach of contract civil jury trials in 2022 to reach verdict:

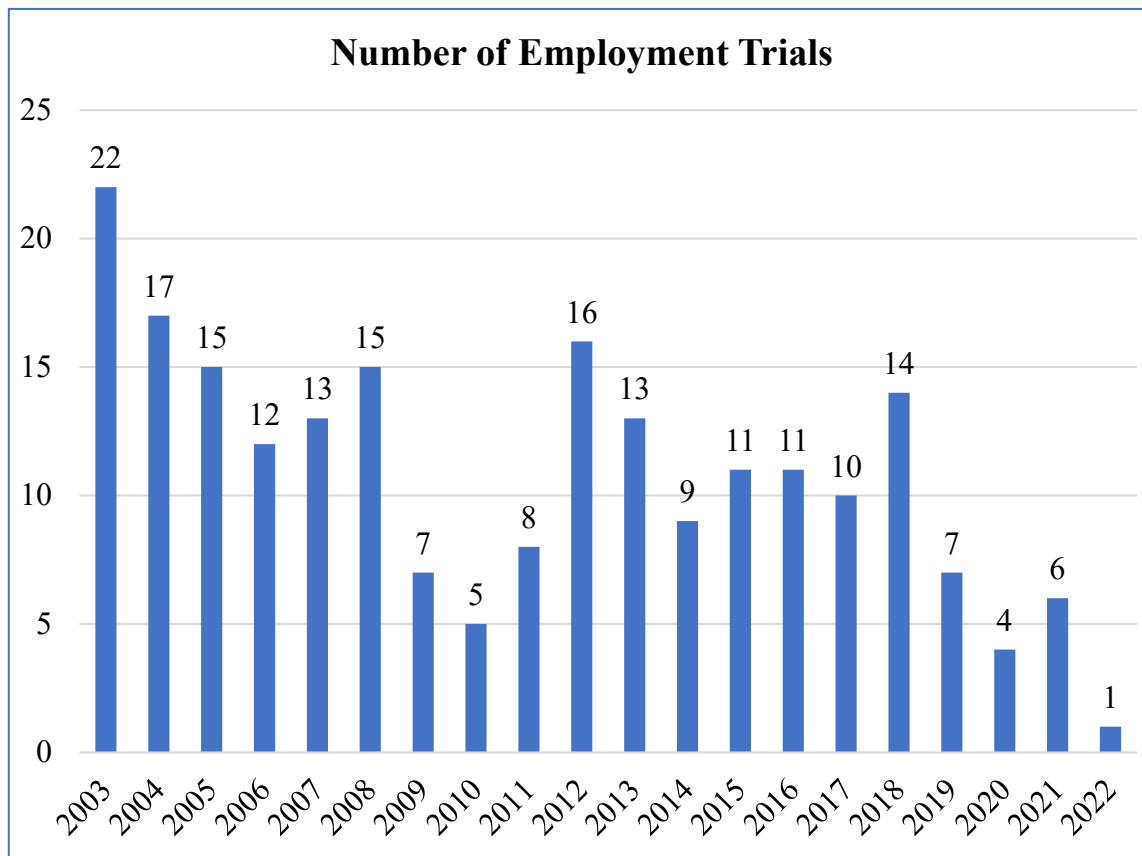
Claims	Verdict	Award
Breach of Contract	Plaintiff	\$62,500.20
Breach of Contract; Breach of Implied Warranty of Fitness for a Particular Purpose	Split	\$5,000.00
<u>Claims:</u> Breach of Contract for Damages; Breach of the Implied Duty of Good Faith and Fair Dealing; Unjust Enrichment <u>Counterclaims:</u> Misappropriation of Trade Secrets; Interference with Prospective Business Advantage; Interference with Contract; Unjust Enrichment	Split	Plaintiff: \$1,027,500.00 Defendant/Counter Claimant: \$1.00
Breach of Contract	Plaintiffs	\$1,146,522.00

As shown above, all four 2022 insurance civil jury trials resulted in plaintiff awards. Two resulted in plaintiff verdicts (50.00%). The other two resulted in split verdicts with a 66.67% success rate on a per claim basis. Analyzing all four trials on a per claim basis yields a **72.73% plaintiff success rate**. This is significantly lower than 100% in 2021. Interestingly, the District had no breach of contract cases in 2020, and in 2019 plaintiffs prevailed in zero of the four breach of contract trials.

Considering that breach of contract disputes have historically made up only about 10.00% of the District's trials, the data regarding plaintiff success rates is somewhat misleading, as it can jump from a 0.00% plaintiff win rate, based on no cases in 2020, to a 100.00% win rate, based on three cases in 2021. Therefore, this report excludes illustrations of plaintiff success rates for breach of contract disputes by year.

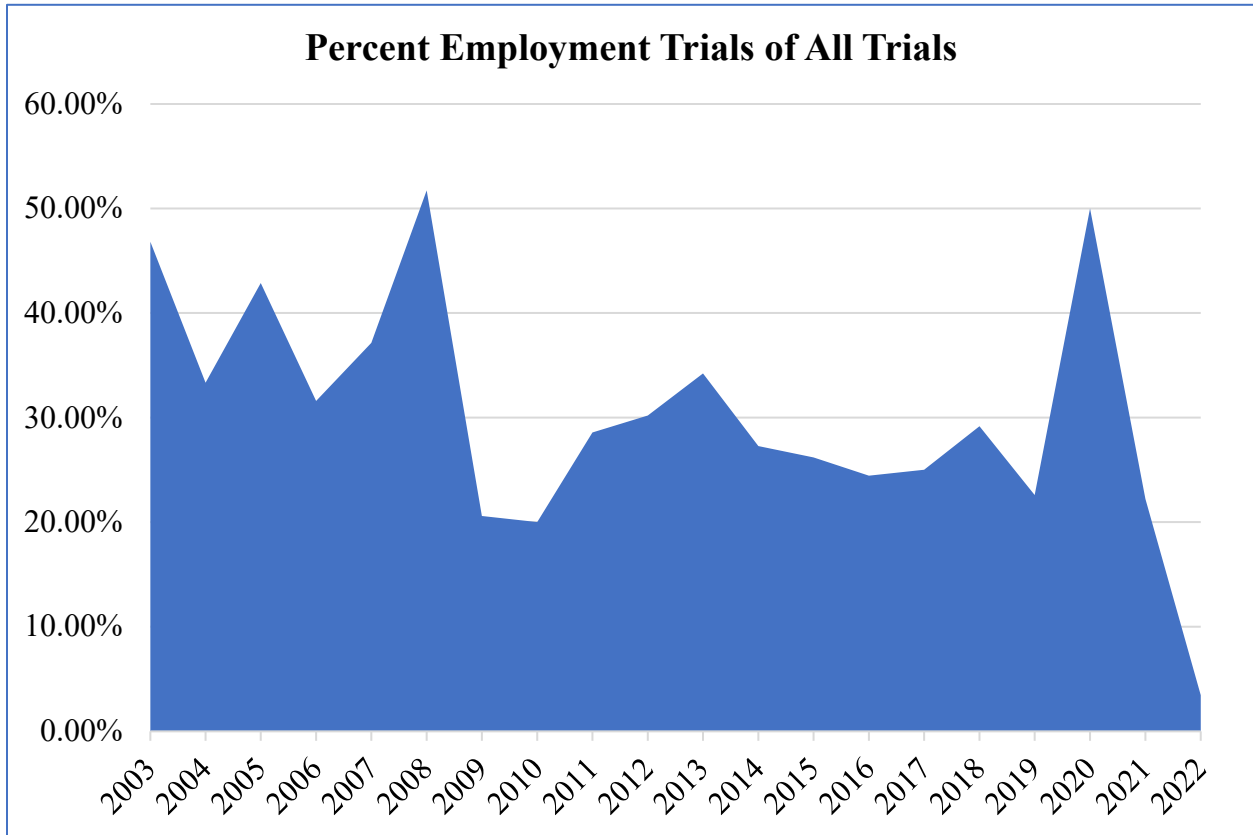
5. Employment

The District's **employment cases tried by civil jury to a verdict** decreased from six in 2021 to **one in 2022**.²² Notably, this is the lowest number in twenty years and significantly lower than the twenty-year average of 10.80 trials. The graph below shows the District's historical trend of annual employment trials:

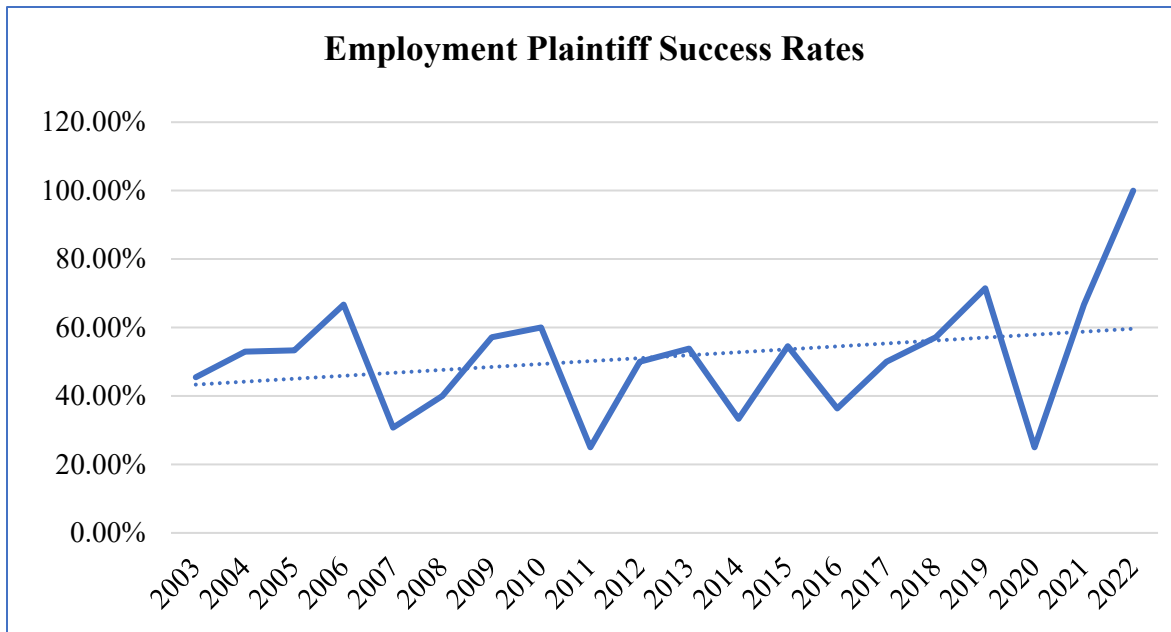


In 2022, employment trials were 3.45% of the twenty-nine civil jury trials to reach verdict, continuing the decline since 2020. However, this percentage is far below the twenty-year average percentage of 30.37% civil jury trials trying employment claims. The following graph depicts the trend for this period:

²² While this case was categorized as a civil rights accommodations case at filing, the only claim tried by the jury was an employment claim.



The jury rendered a **verdict for the plaintiff in the sole 2022 employment trial**, awarding the plaintiff \$188,000.00 on his wrongful termination in violation of public policy claim. This yields a 100.00% success rate in 2022, a twenty-year record. Indeed, it is almost double the twenty-year average of 51.48%. The next graph illustrates the trend for plaintiff success rates in employment disputes:



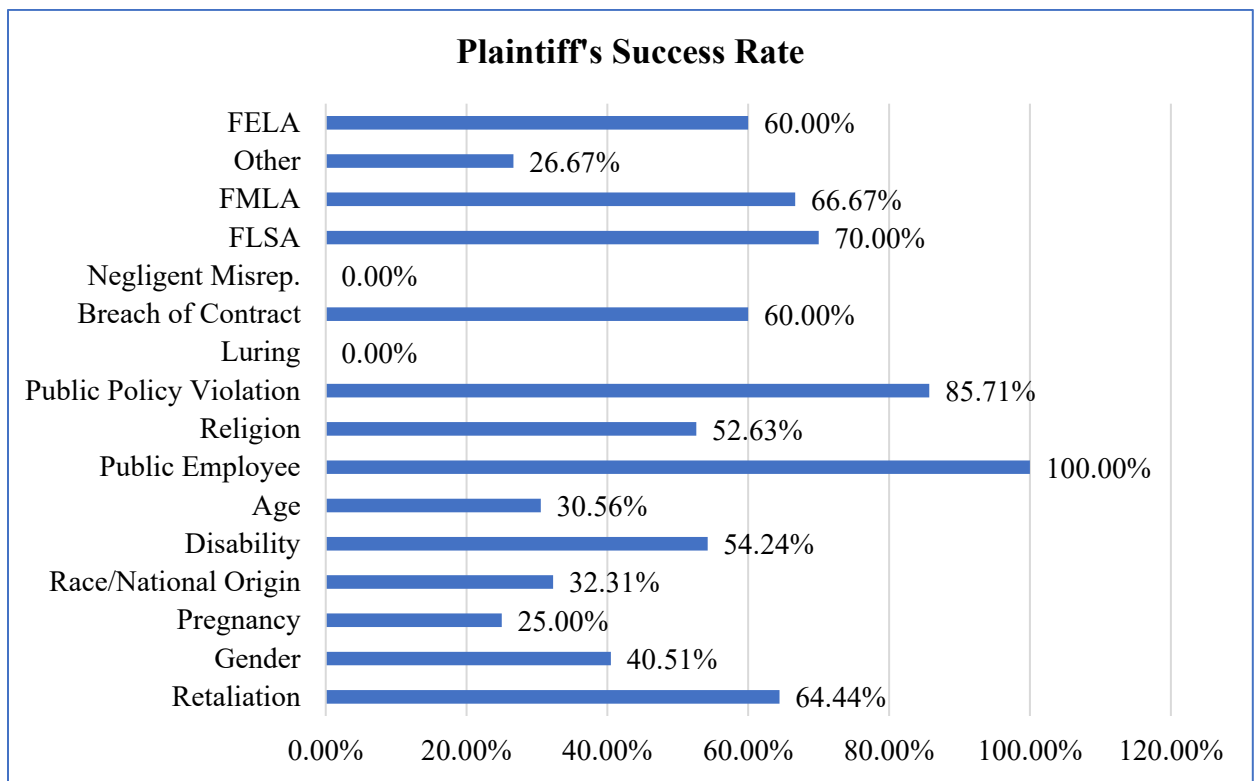
Since 2003, the District has tried 216 employment cases to verdict, and plaintiffs have prevailed in 106 of these, which represents a 49.07% plaintiff success rate. The employment claims most frequently tried during those twenty years were retaliation (forty-five) and gender discrimination (thirty-nine and one-half). The chart below displays historical verdicts rendered by nature of the claim asserted during the past twenty years:²³

Nature of Claim	Cases Tried	Cases Won by Plaintiff	Plaintiff's Success Rate
Retaliation	45	29	64.44%
Gender	39.50	16	40.51%
Pregnancy	4	1	25.00%
Race/National Origin	32.50	10.5	32.31%
Disability	29.50	16	54.24%
Age	18	5.5	30.56%
Public Employee	1	1	100.00%
Religion	9.50	5	52.63%
Public Policy Violation	7	6	85.71%
Luring	1	0	0.00%

²³ For several employment trials over the past twenty years, one case involved two claims which fell into distinct categories in this table. Rather than recording the same case twice, which would make calculating total cases misleading, cases with two claims have been broken into two “half-cases” and listed as 0.50 a case tried. Thus, some totals include half-cases.

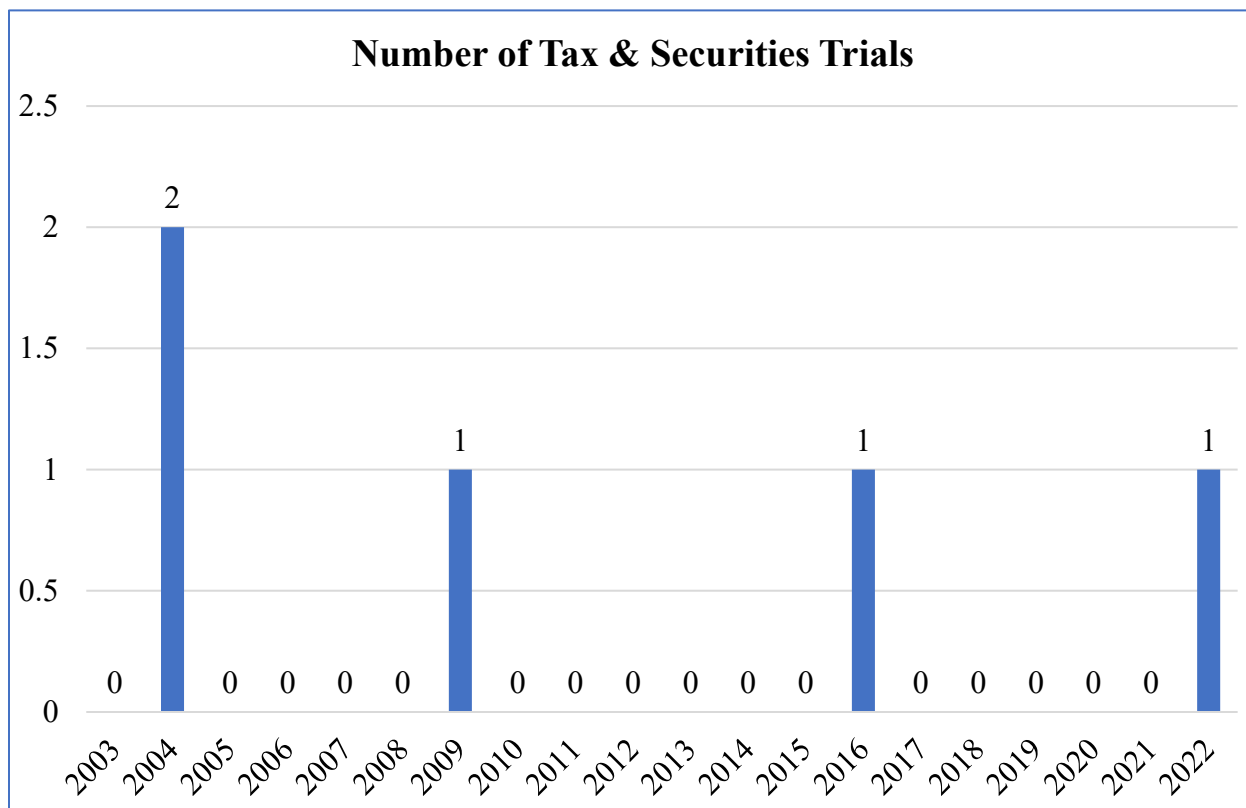
Breach of Contract	5	3	60.00%
Negligent Misrepresentation	0	0	0.00%
FLSA	10	7	70.00%
FMLA	1.50	1	66.67%
Other	7.50	2	26.67%
FELA	5	3	60.00%
Total	216	106	49.07%

As the graph below shows more effectively, public policy violation claims—the claim tried in 2022—have the second highest plaintiff success rate (85.71%):

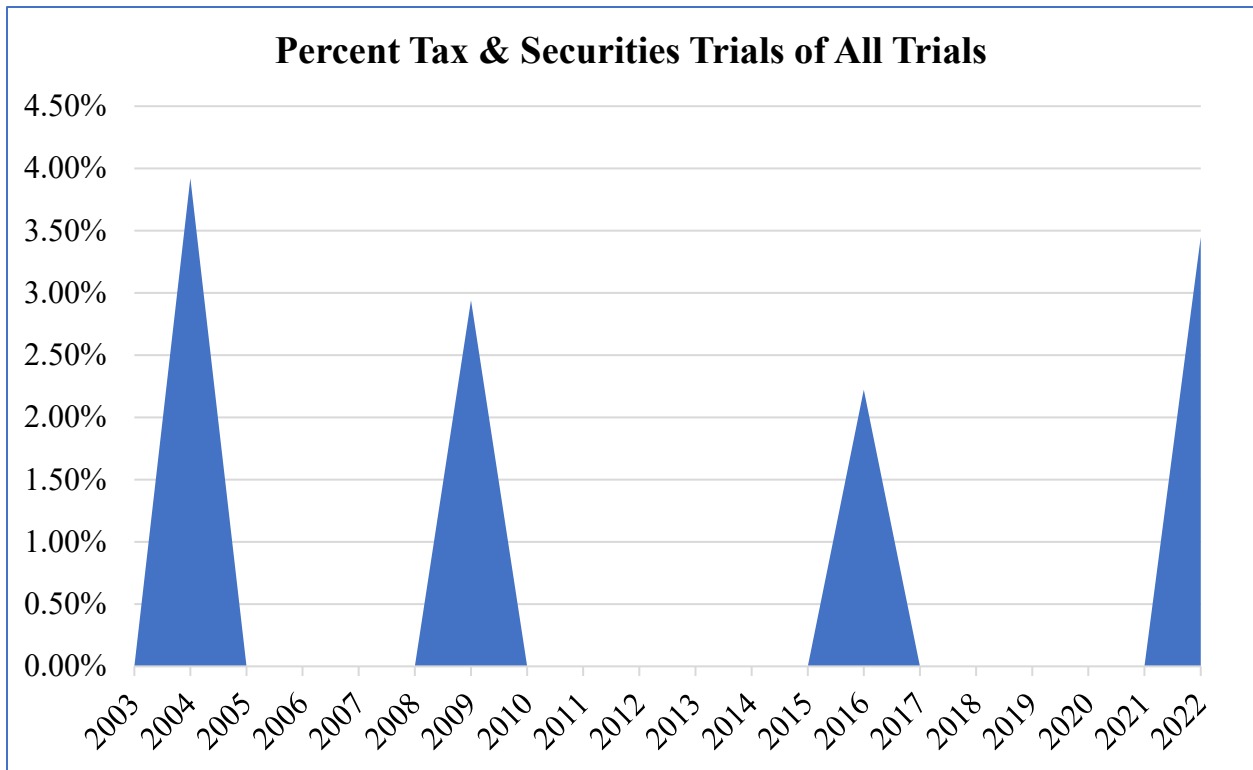


6. Tax and Securities

Only **one of the twenty-nine civil jury trials to reach verdict in 2022 involved a dispute over securities**. This marks the first tax or securities trial since 2016 and the fifth in the past twenty years. The graph below depicts the historical trend of tax and securities trials in the District:



The single 2022 trial also constitutes 3.45% of civil jury trials to reach verdict that year. This is notably higher than the District's twenty-year average of 0.63% of trials involving tax and securities issues. The graph on the following page illustrates these historic percentage trends:

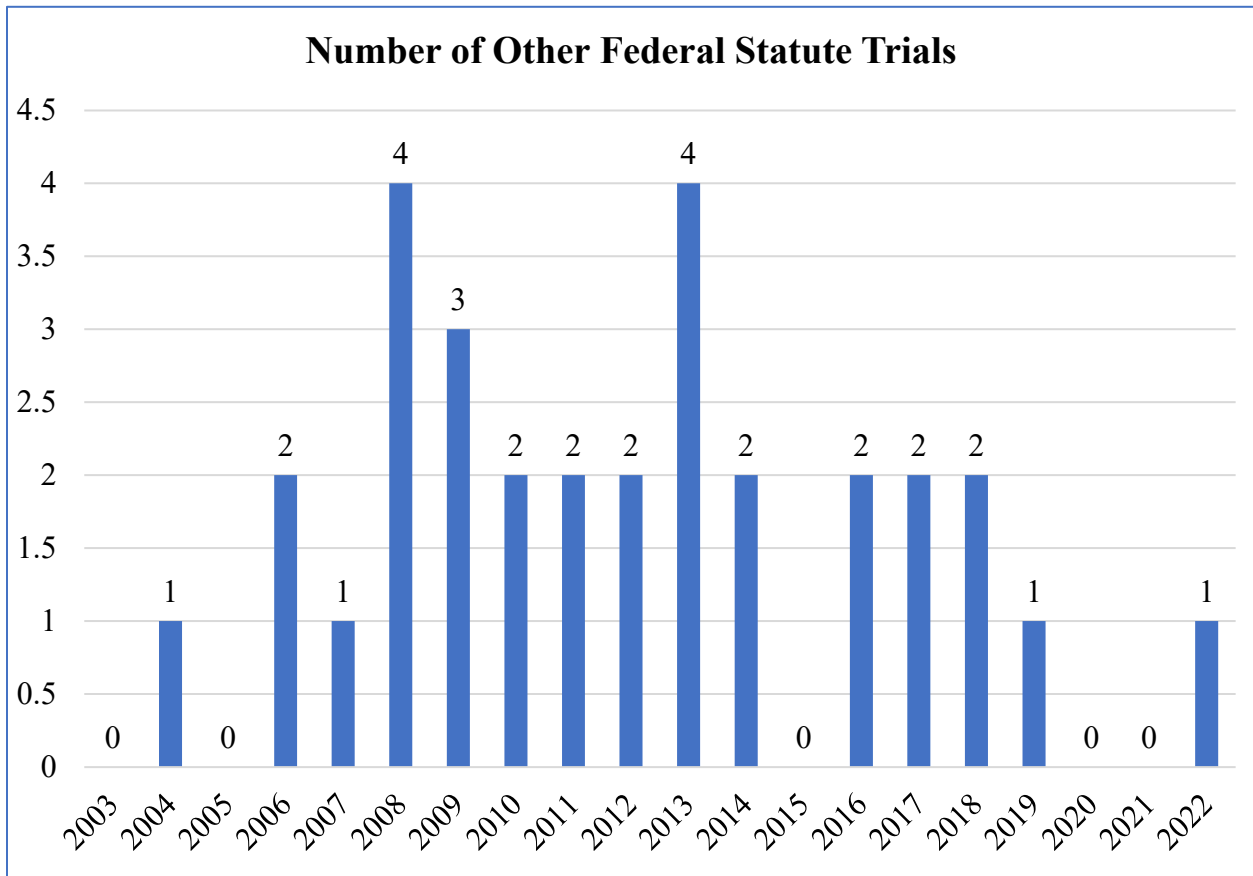


The **plaintiff prevailed against a pro se defendant in the only securities trial in 2022** yielding a 100.00% success rate. The jury determined liability only and the Court entered an award of \$9,282,074.65 for the plaintiff (\$5,779,908.38 disgorgement of net profits; \$3,502,166.65 civil penalty).

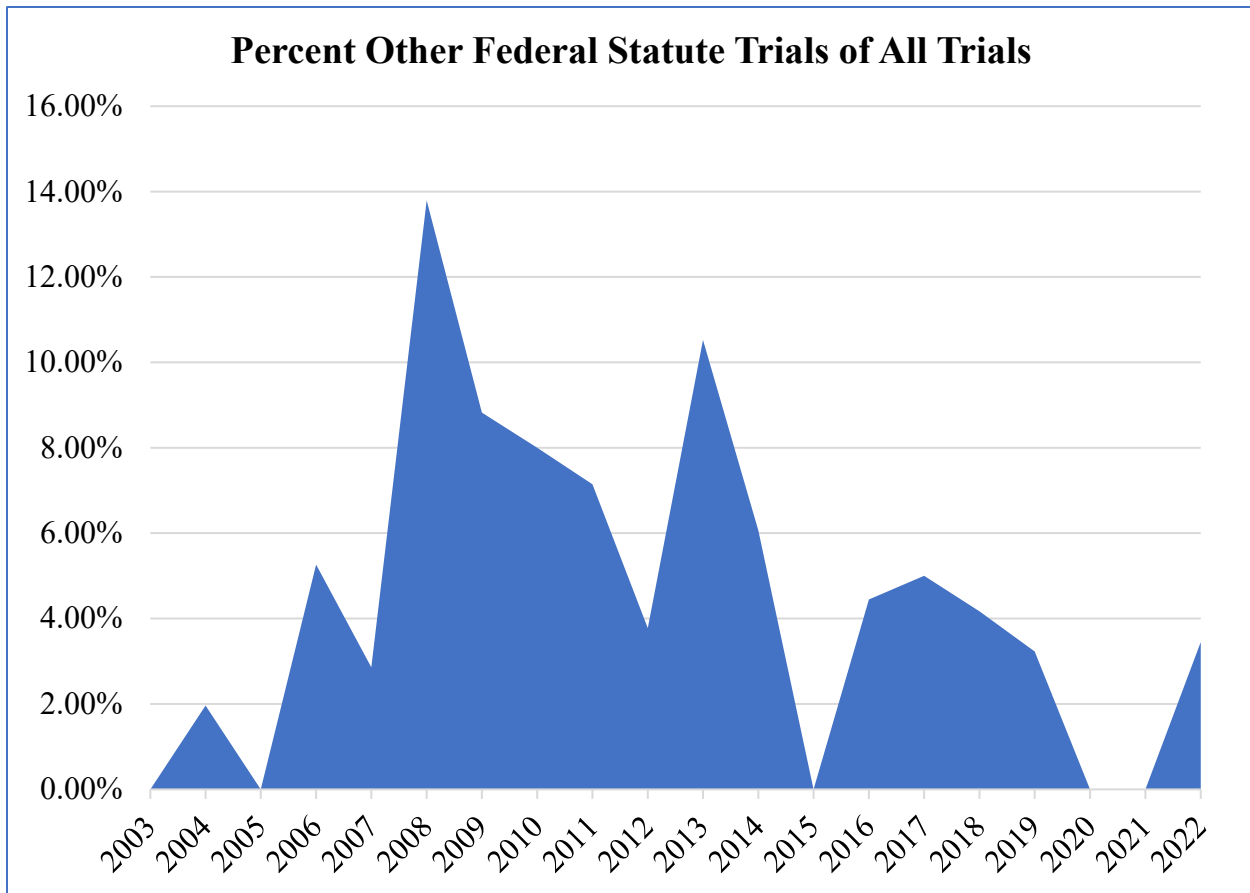
Because tax and securities disputes have historically made up less than 10.00% of total trials in the District, statistics regarding plaintiff win rate by year are somewhat misleading, as success rates can easily jump from 50.00% based on two cases in 2004, to 100.00% based on one case in 2009, to 0.00% based on one case in 2016. Therefore, this report excludes illustrations of plaintiff success rates in tax and securities trials by year.

7. Other Federal Statute

Finally, just **one of the twenty-nine civil jury trials to reach verdict in 2022 involved another federal statute**. This category of claims can include, among others, the Fair Debt Collection Practices Act, False Claims Act, Racketeer Influenced and Corrupt Organizations, Freedom of Information Act, antitrust, Telephone Consumer Protection Act, and securities/commodities/exchange claims. Here, the claim was a misappropriation of trade secrets. This is the first such trial since 2019. Setting aside the years with no trial in this category, this is the lowest number since 2007. The graph below illustrates this historical trend:



The single 2022 trial involving an “other federal statute” constitutes 3.45% of all 2022 civil jury trials to reach verdict, close to the District’s twenty-year average of 4.42% of trials. The next graph illustrates the historical trend of other federal statute trial percentages in the District:



The plaintiff prevailed on all three claims in the single 2022 “other federal statute” trial, yielding a 100.00% success rate. The jury awarded it \$399,000.00. Because “other federal statute” disputes have historically made up less than 10.00% of total trials in the District, statistics regarding plaintiff win rate by year are somewhat misleading, as success rates can easily jump from 25% based on four cases in 2008, to 66.67% based on three cases in 2009, to 100.00% based on two cases in 2010, to 50.00% based on two cases in 2011, and to 0.00% based on two cases in 2012. Therefore, this report excludes illustrations of plaintiff success rates in these trials by year.

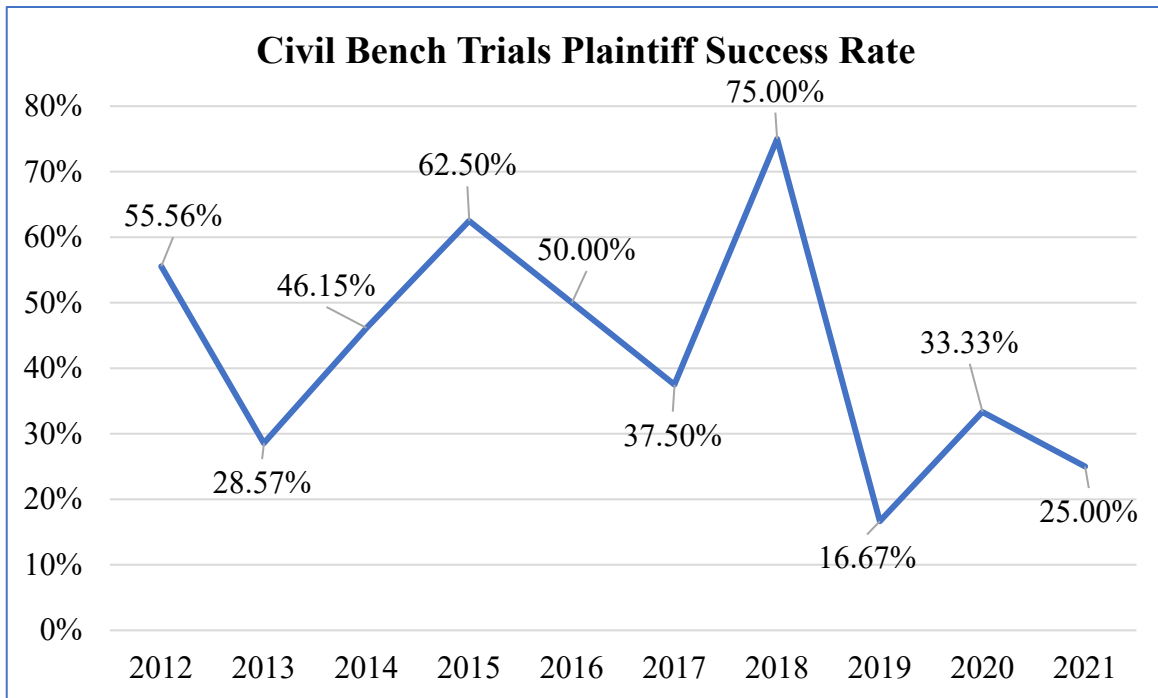
VI. CIVIL BENCH TRIALS

The District held **three civil bench trials in 2022**, a sharp decline from prior years. Indeed, the District held eight in 2021, six in 2020, and six in 2019. None of the 2022 civil bench trials were initiated by pro se litigants. Only one trial originated in Grand Junction whereas the other two originated in Denver. Of these three bench trials, two involved breach of contract claims (66.67%) and one fell into the other federal statute category (33.33%) as it involved environmental matters.

Verdicts were split in all three cases. In one trial, a plaintiff prevailed on a breach of contract claim but not the remaining conversion, unjust enrichment, and civil theft claims. In another, the plaintiff prevailed on a breach of contract claim so its promissory estoppel claim failed as a matter of law. Lastly, plaintiffs prevailed on a Clean Water Act claim against one defendant but not the other defendant. Notably, appeals remain pending in two of these three cases but only one appeal concerns a judgment and findings of fact and conclusions of law.²⁴

Determining success rates on a per claim basis in light of the split verdicts, **defendants had a 70.00% rate whereas plaintiffs had 30.00% rate**. Still, plaintiffs' success rate improved from the 25.00% rate in 2021. Historically, the District has issued judgments in favor of plaintiffs in forty-one of eighty-six, or 47.67%, of civil bench trials. Thus, the plaintiff success rate in 2022 was higher than historical averages. The next graph illustrates this historical data:

²⁴ The other appeals orders directing the defendants to apply property to satisfy an unpaid judgment, regarding sanctions for spoliation of evidence, and denying as moot a motion for a temporary restraining order and preliminary injunction.



The average time between the filing of a complaint in the District and a bench trial in **2022 was 32.67 months**, an increase from the 26.30-month average in 2021 but more consistent with prior years (*e.g.*, 41.3-month average in 2020 and 36.2-month average in 2019).²⁵ This 32.67-month average wait from file to trial for civil bench trials in 2022 was also much faster than the 43.27-month average time from file to trial for civil jury trials the same year discussed in Section V.B.

Moreover, the average civil bench trial length in 2022 was 3.33 days, a decline from the prior year's 4.46-day average. And the average time between the completion of a civil bench trial and the issue of the ruling was 0 months, with each Judge entering judgment the same day as their findings of fact and conclusions of law. In two of the three cases, however, at least one amended judgment was entered.²⁶ The average time between completion of a civil bench trial and the last

²⁵ One case tried in 2022 was originally filed in state court and removed to the District two months later.

²⁶ These amended judgments added awards of post-judgment interest and costs, set deadlines for briefing attorneys' fees, and clarified an award was a civil penalty paid to the United States Treasury.

judgment entered was 1.17 months. Using this latter figure for the purposes of finality, this continues a downward trend from recent years (2.32 months in 2021; 3.5 months in 2020).²⁷ The following page provides an overview of the nature of each bench trial and its outcome.

²⁷ The 2020 average was skewed somewhat by one ruling which took only eight days to issue. Without that ruling, the average time from trial to judgment would be 4.2 months, making the 2021 average an even more significant decrease in wait time.

2022 Civil Bench Trials

Judge	Claim	Award	Attorneys' Fees	Time					
				Filing Suit to Trial (Months)	Trial Length (Days)	Trial Completion to Judgment (Months)	Trial Completion to Last Judgment (Months)	Filing Suit to Judgment (Months)	Filing Suit to Last Judgment (Months)
RBJ	Breach of Contract; Conversion; Unjust Enrichment; Civil Theft	\$6,400,000.00 ²⁸	N/A	43.60	4	0	3.17	45.47	48.63
WJM	Clean Water Act	\$500,000.00	Pending ²⁹	35.90	4	0	.33	40.43	40.77
MEH	Breach of Contract; Promissory Estoppel	\$100,000.00	\$210,168.40	18.50	2	0	0	20.90	20.90

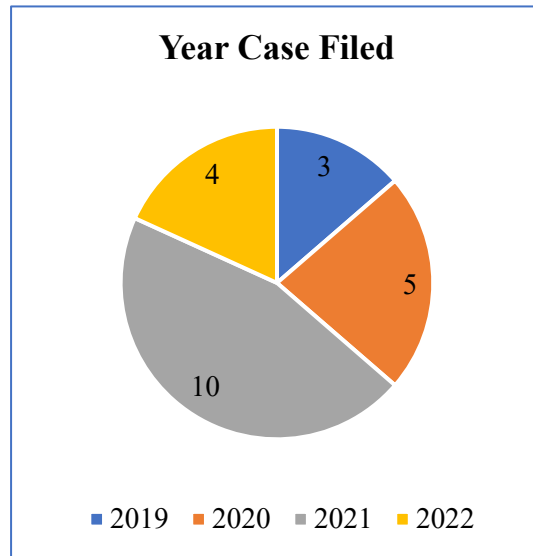
²⁸ An appeal of an order regarding the satisfaction of an unpaid judgment, sanctions for spoliation of evidence, and a motion for a temporary restraining order and preliminary injunction remains pending.

²⁹ A defendant's appeal of the Court's Findings of Fact and Conclusions of Law and Amended Final Judgment to the Tenth Circuit remains pending.

VII. CRIMINAL JURY TRIALS

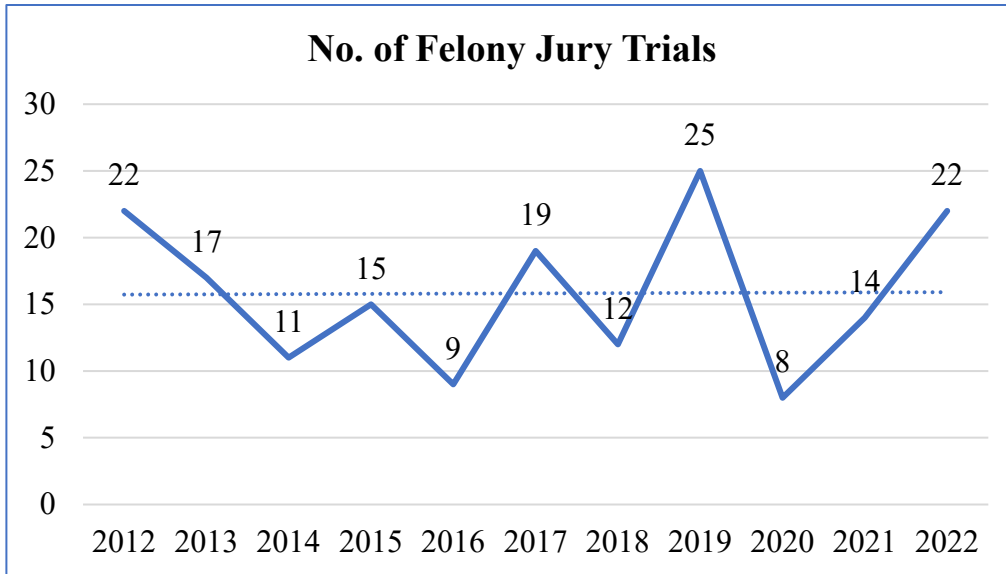
A. Overview

In 2022, twenty-two felony jury trials reached verdict. Two of these cases each had two jury trials in 2022 (a mistrial followed by a trial to verdict), yielding a total of twenty-four jury trials. Most felony cases tried to verdict in 2022—nearly half—were filed in 2021. The rest were filed in 2019, 2020, and 2022 as shown below:



B. Volume of Trials

Notably, 2022 had the second highest number of felony jury trials to reach verdict since 2012. Despite the high figure, the average number of felony jury trials remains consistent. The average since 2012 is 15.82 whereas the five-year average is 16.20. The graph on the next page shows the number of annual felony jury trials for the past seven years:

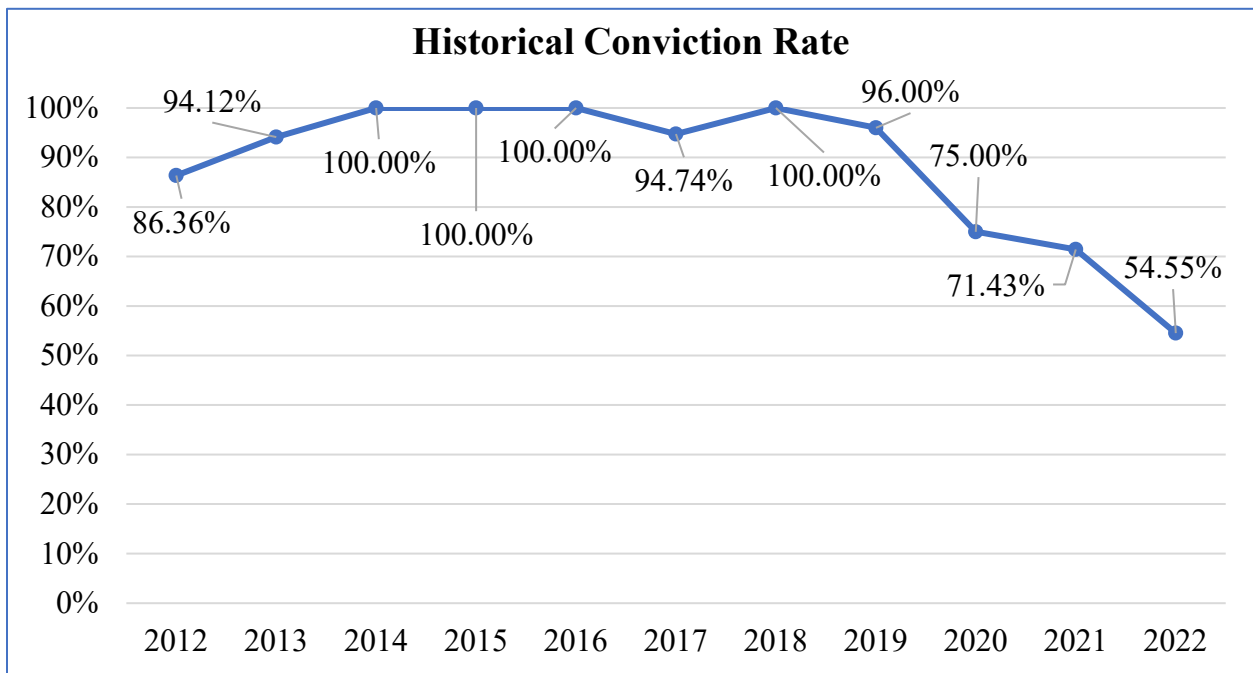


Based on the cases filed in 2022, the number of felony jury trials to reach verdict constitutes a **5.85% trial rate**. As such, 2022 had the highest trial rate in the past eleven years and larger than the eleven-year average of 3.35%:

Year	No. of Cases Filed	No. of Felony Jury Trials	Rate of Trials
2012	527	22	4.17%
2013	478	17	3.56%
2014	512	11	2.15%
2015	495	15	3.03%
2016	396	9	2.27%
2017	498	19	3.82%
2018	598	12	2.01%
2019	536	25	4.66%
2020	398	8	2.01%
2021	426	14	3.29%
2022	376	22	5.85%
Average	476.55	15.82	3.35%

C. Parties' Success Rates

The defendants were acquitted in ten felony jury trials, yielding a **41.67% success rate**—much higher than the prior year's 28.57% success rate. Notably, two of these acquittals were achieved after mistrials. Accordingly, the Government achieved **convictions in only twelve of twenty-two felony jury trials to reach verdict, which is a 54.55% conviction rate.**³⁰ Not only does this continue a four-year downward trend, but this sharp decline from the prior year's 71.43% conviction rate replaces 2021 as **the lowest conviction rate since the District started recording this data in 2012**, as depicted below.³¹



³⁰ This includes a split verdict in which the jury found a defendant guilty on five or six counts.

³¹ The District began compiling trial reports in 2003, but the reports only contained data for criminal trials until 2012.

D. Sentencing

In 2022, the most severe sentence imposed was five concurrent life sentences in a case where a jury found the defendant guilty on all counts—two counts of crossing state lines with intent to engage in a sexual act with a minor under twelve and two counts of transportation of a minor with intent to engage in sexual activity. This is significantly more severe than the longest 2021 sentence of 180 months. Notably, 2022 had five other sentences with longer imprisonment than 2021's most severe sentence. The least severe sentence in 2022 was forty-one months in a case for possession of a firearm and ammunition by a prohibited person. This is consistent with the lowest sentence in 2021 of forty months. Finally, the average none-life sentence in 2022 was 149.91, an increase from the average 106 months in 2021.

Notably, two sentences from 2022 convictions remain pending. These respective sentences are set for August and September 2023. Additionally, ten of the twelve cases with convictions have been appealed to the Tenth Circuit and all appeals remain pending.

The chart on the next page reports the 2022 felony prosecutions:

Judge	Crime(s) Charged	Verdict	Sentence (months)	Appealed?
REB	Possession of contraband in prison	Defendant	N/A	No
CMA	Crossing state lines with intent to engage in a sexual act with a minor under 12; transportation of a minor with intent to engage in sexual activity	Prosecution	Five concurrent life sentences	Yes
WJM	Assault on a federal officer	Defendant	N/A	No
PAB	Unlawful restraint of interstate trade and commerce	Defendants	N/A	No
RM	Possession of firearm by a prohibited person	Defendant	N/A	No
WJM	Possession with the intent to distribute 3,4-methylenedioxy-methamphetamine (MDMA), a Schedule I controlled substance; possession of a firearm in furtherance of a drug trafficking crime; felon in possession of a firearm	Prosecution	123	Yes
PAB	Possession of a firearm by a prohibited person	Prosecution	210	Yes
REB	Assault of an intimate partner by strangulation in Indian country	Defendant	N/A	No
WJM	Possession of a firearm by a prohibited person	Prosecution	44	Yes
RBJ	Hobbs Act Robbery and aiding and abetting the same; brandishing a firearm during a crime of violence; felon in possession of a firearm/possession of a firearm and ammunition by a prohibited person; discharging a firearm in furtherance of a crime of violence	Split ³²	318	Yes
WJM	Possession of a firearm in furtherance of a drug trafficking crime; Possession with intent to distribute 50 kilograms or less of marijuana, a Schedule I controlled substance; Possession with intent to distribute a mixture of methamphetamine, a Schedule II controlled substance	Prosecution	Pending	No

³² The jury found the defendant found guilty of all counts except discharging a firearm in furtherance of a crime of violence.

RM	Conspiracy to possess with intent to distribute 500 grams and more of a mixture and substance containing a detectable amount of methamphetamine; Possession with intent to distribute 500 grams and more of a mixture and substance containing a detectable amount of methamphetamine, a Schedule II controlled substance, and to intentionally aid, abet, counsel, command, induce, and procure the same; Possession with intent to distribute 40 grams and more of a mixture and substance containing a detectable amount of fentanyl, a Schedule II controlled substance; Possession of a firearm by a convicted felon	Defendant	N/A	No
PAB	Conspiracy to commit wire fraud; Wire fraud and aiding and abetting same; Conspiracy to engage in monetary transactions in proceeds of specified unlawful activity	Prosecution	Both Defendants: 72	No
WJM	Possession of a firearm/ammunition by a prohibited person	Defendant	N/A	No
RBJ	Conspiracy in restraint of trade to allocate employees	Defendants	N/A	No
WJM	Possession of ammunition and ammunition by a prohibited person	Prosecution	120	Yes
RM	Possess with intent to distribute 50 grams and more of methamphetamine (actual), a Schedule II controlled substance; Possession with the intent to distribute a mixture and substance containing a detectable amount of cocaine, a Schedule II controlled substance; Possession with the intent to distribute a mixture and substance containing a detectable amount of heroin, a Schedule I controlled substance	Prosecution	210	Yes
WJM	<u>First Defendant:</u> Foreign murder; mail fraud and aiding and abetting and willfully causing same	Prosecution	Pending	No
	<u>Second Defendant:</u> Accessory-after-the-fact; obstruction of a grand jury proceeding; perjury before a grand jury	Prosecution	204	Yes

PAB	Possession of a firearm and ammunition by a prohibited person	Prosecution	235	Yes
RM	Possession of a firearm/ammunition by a prohibited person	Defendant	N/A	No
RM	Possession of a firearm and ammunition by a prohibited person	Prosecution	41	Yes
REB	Assault of an intimate partner by strangulation in Indian country; Assault resulting in serious bodily injury in Indian country	Defendant	No	N/A

E. Time

Collectively, 116 days were spent trying the twenty-two felony jury trials reach verdict.³³

The **average felony jury trial was 5.27 days**, consistent with the 2021 average of four days. The longest trial was fifteen days long, up from ten in 2021. The shortest trial was two days, the same as in 2021. The chart below shows the total number of cases for each trial length:

Number of Days	Number of Trials
2	2
3	7
4	5
5	3
8	2
10	1
15	2

Additionally, the average time from filing the action to a trial that reached verdict in 2022 was 17.65 months. The average time from a verdict to a judgment was 3.57 months. And the average time from filing suit to judgment was 21.02 months. These averages exclude the two pending sentences so as to not skew the data.

³³ An additional twenty-three days were spent on the two mistrials.

VIII. CRIMINAL BENCH TRIALS

The District had **two criminal bench trials in 2022**. Notably, the **Government prevailed in both**.

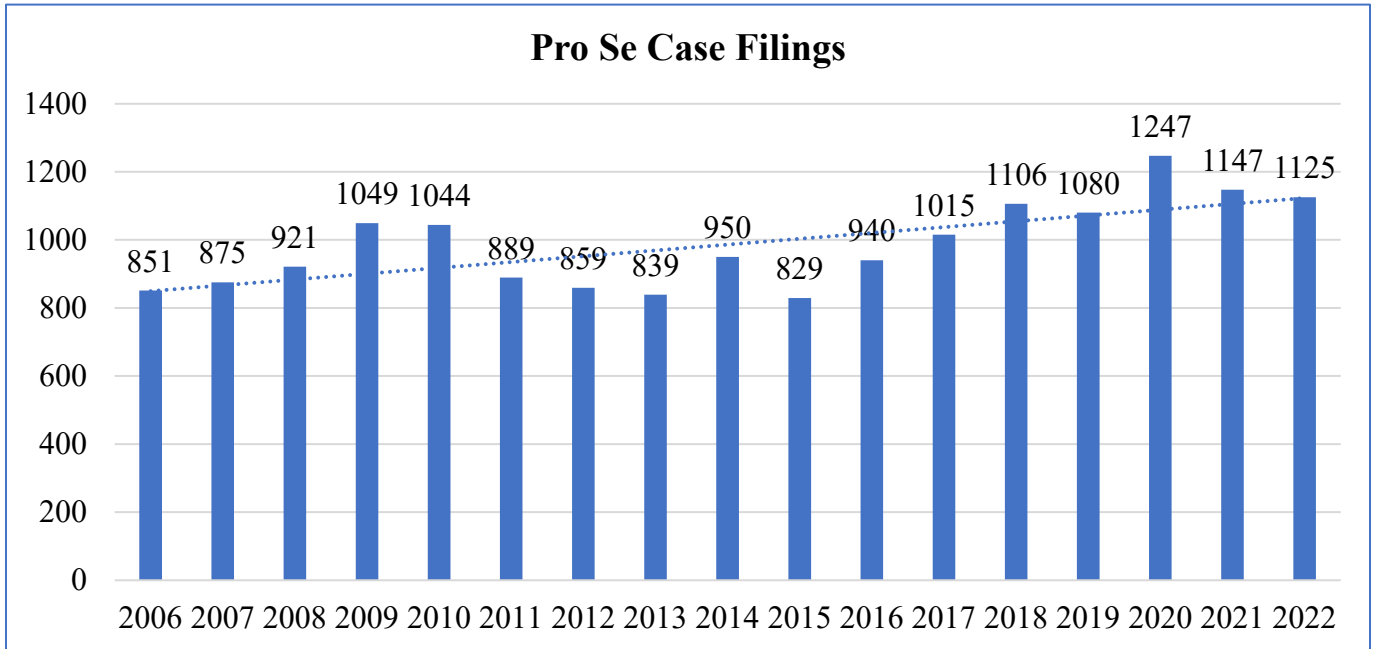
First, the Government achieved a felony conviction in one case for possession of a firearm and ammunition by a prohibited person. It took 4.30 months from filing to get to trial. The bench trial lasted one day and 4.20 months later a judgment was issued (six days after sentencing). The Court sentenced the defendant to thirty-seven months in prison. All in, it took 8.50 months from filing suit to get to judgment. The defendant's appeal to the Tenth Circuit remains pending.

Historically, there have been only ten felony bench trials in the District since 2012. The Government achieved convictions in eight, or 80.00%, of those cases. Thus, the 100.00% felony bench trial conviction rate in 2022 is higher than the average conviction rate in the District. Of course, this is a bit misleading given the single trial in 2022 and the overall small sample size of felony bench trials. These factors skew the reliability of the data. Still, the 2022 conviction rate was significantly higher than the 50.00% conviction rate in 2021. And it is more consistent with prior years that have had felony bench trials (100.00% in 2015; 75.00% in 2016; 100.00% in 2018).

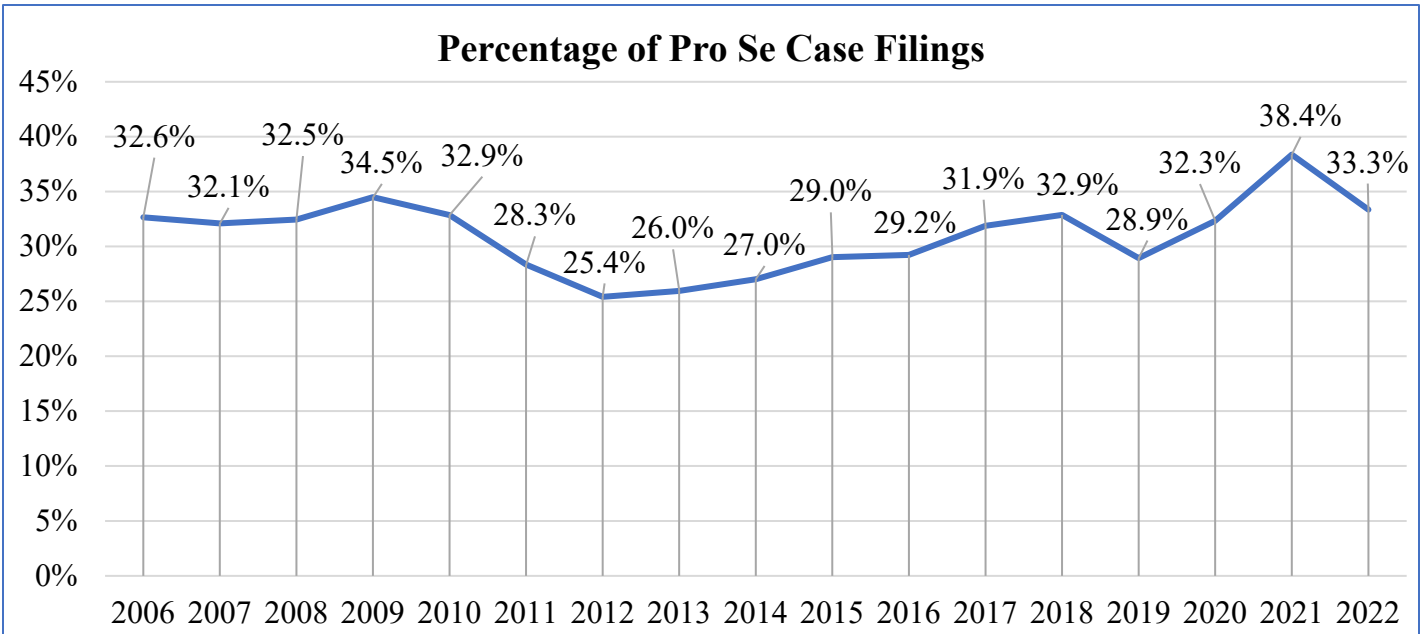
Second, the Government achieved a 2022 petty offense conviction for simple assault, within the special maritime and territorial jurisdiction of the United States. It took 2.33 months to trial. After a one-day trial before a Magistrate Judge, it took 3.7 months to enter a judgment. The judgment was entered the day after sentencing and within 6.40 months from filing suit. The Court sentenced the defendant to one year of probation. The defendant appealed to the Tenth Circuit and upon a joint motion from the parties, the Tenth Circuit transferred the appeal to the District Court. A District Judge affirmed the ruling in 6.47 months.

IX. PRO SE

Pro se litigants filed 1,125 cases in 2022. This continues the modest downward trend from the prior year. Over the past sixteen years, a total of 16,766 cases have been filed by pro se litigants for an average of 986.24 cases per year. The graph below outlines the number of pro se cases filed:



Since 2006, pro se filings have accounted for, on average, 31.01% of total civil filings. This year, pro se filings accounted for 33.30%. This is a decline from the 38.40% of civil filings in 2021, yet more consistent with historic trends illustrated below:



In 2022, pro se litigants filed four of the twenty-nine total civil trials to reach verdicts (13.79%). All four pro se litigants ultimately obtained counsel who tried their cases. Defendants prevailed in all but one of these jury trials, a prisoner civil rights case filed in 2013. Notably, three of these four cases involved prisoner civil rights and the Court appointed pro bono counsel in each of them. Interestingly, these cases were among the oldest tried in 2022, taking 109.63, 66.87, and 45.20 months each to get to trial from initiating the action in the District. The other pro se-initiated case involved personal injury medical malpractice. That pro se litigant obtained counsel on her own within two months of initiating the civil action.

X. PRO BONO

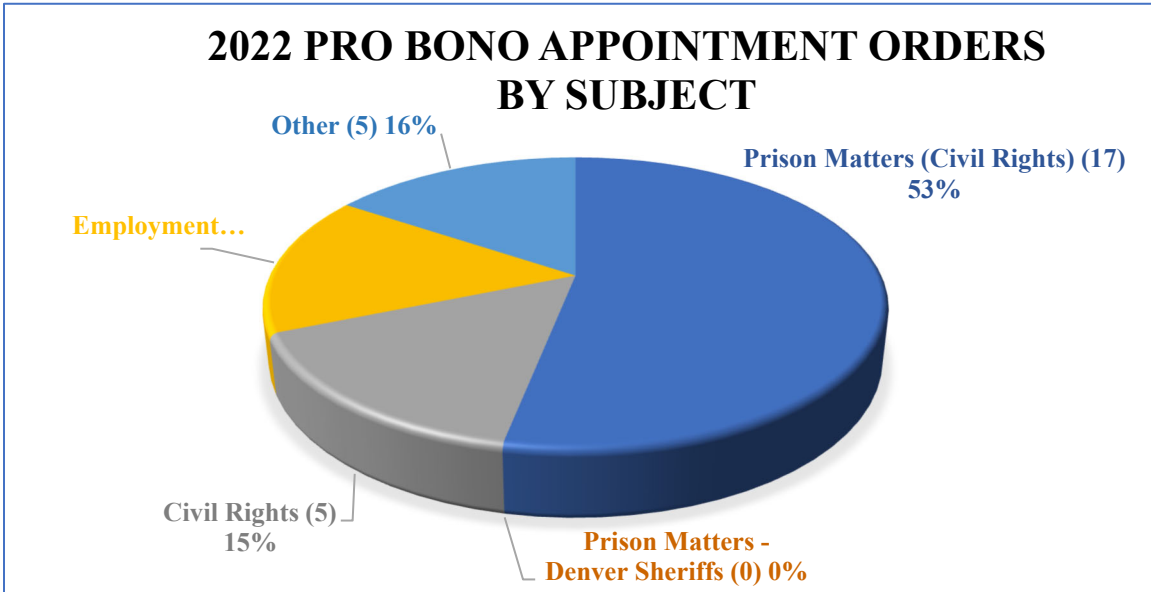
To ensure litigants have access to the Court, regardless of financial means, in 2013 the District began the Civil Pro Bono Panel program. The program helps appoint pro bono representation to litigants of limited means, as well as to assist pro se litigants in more technical aspects of litigation. For more information and statistics regarding the program, review the Civil Pro Bono Panel Annual Report at:

<http://www.cod.uscourts.gov/AttorneyInformation/CivilProBonoPanel-Details,andAvailableCases.aspx>

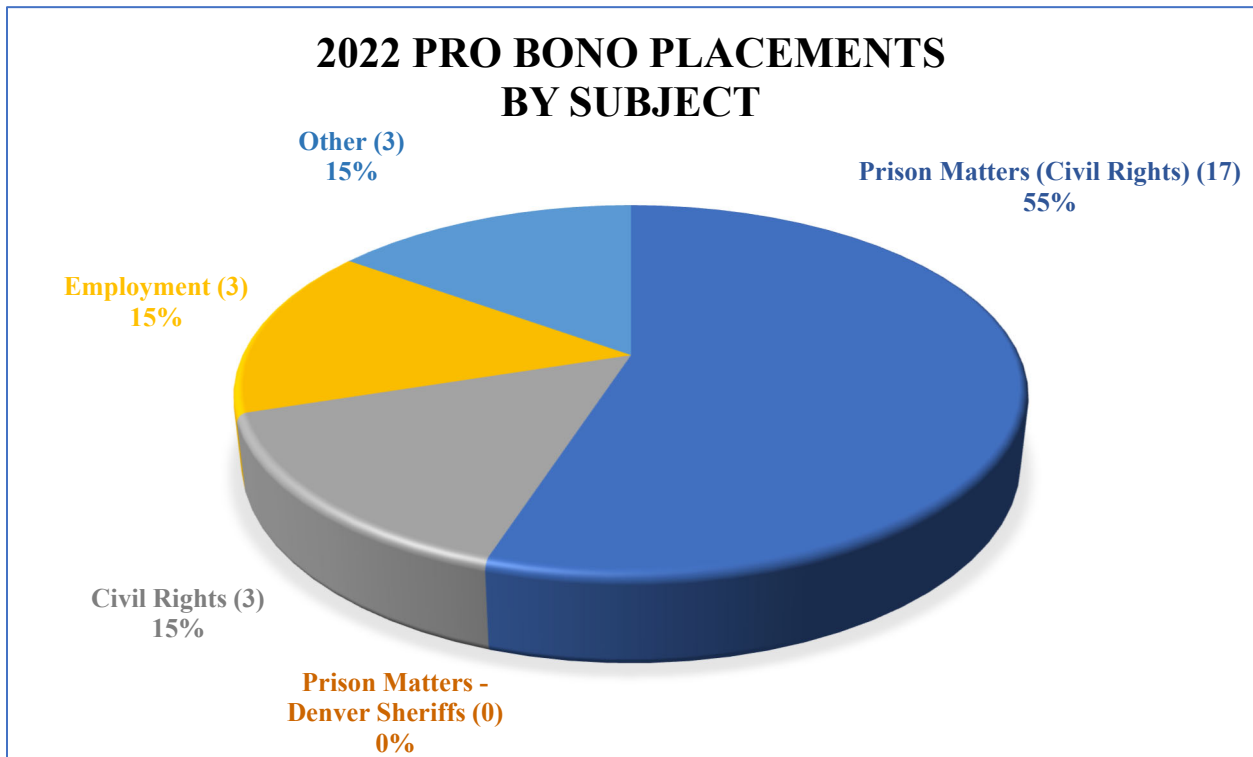
Notably, three 2022 civil jury trials involved pro bono counsel. All three involved prisoner civil rights. As demonstrated below, the majority of pro bono appointment orders and placements involved prisoner civil rights.

The District entered thirty-two pro bono appointment orders in 2022. Counsel was successfully placed in twenty of those cases, yielding a pro bono placement rate of 62.50%, consistent with the 63.00% placement rate in 2021. Since 2013, 475 pro bono appointment orders have been entered with 322 successful placements, yielding a 67.79% placement rate.

The thirty-two pro bono appointment orders by subject for 2022 are illustrated below:



The chart below illustrates the twenty successful appointments made in 2022 by subject:



XI. SOCIAL SECURITY CASES

There are usually some Social Security practitioners into whose hands this report often lands, so it might be useful to summarize the District's handling of these cases.

In 2022, plaintiffs filed 214 Social Security appeals. Of those, ninety-one are still pending judgment, thirty-nine have been decided, sixty were voluntarily remanded at the request of the Social Security Administration, eighteen were dismissed for failure to prosecute or other reasons, five were duplicate filings and were closed immediately, and one was transferred. Plaintiffs prevailed in eleven of the thirty-nine decided cases. Of the thirty-nine decided cases, twenty-one were assigned to District Judges and eighteen to Magistrate Judges. The average time from filing to decision was about ten months.

Parties may choose to consent to Magistrate Judge jurisdiction during the preliminary steps of their case. Usually, a consent decision is filed several months after filing the case but before the case is drawn to a presiding judge. Thus, consenting parties will not know to which Magistrate Judge they have consented, which was the case for the eighteen cases drawn to Magistrate Judges.

The number of cases reaching a final decision in 2022 (thirty-nine) was a notable increase from the number decided in 2021 (twelve). Compared to the 214 cases filed in 2022, significantly fewer were filed in 2021—165. Of the cases filed in 2021, nine still remain pending, and the oldest of these cases has now been pending for twenty months. Notably, sixty-two 2021 cases were voluntarily remanded by the Social Security Administration, nineteen were dismissed for failure to prosecute or other reasons, and six filings happened to be duplicate filings and thus were closed immediately. The average duration between the filing and judgment for cases decided in 2021 was about fourteen months. The average duration between filing and judgment for cases decided in 2022, excluding those voluntarily remanded or otherwise terminated, was ten months.

The estimated time from filing to decision is somewhat understated, because the nine 2021 cases yet to be decided will obviously make that average longer since they are older already. The same will probably be true for the ninety-one pending 2022 cases. It is safe to say that in most cases, a decision will take around fourteen months, sometimes longer, sometimes shorter, and in a clear minority of cases, it will take sixteen to twenty to months from filing to decision.

Coincidentally, when I was with the U.S. Attorney's Office, I supervised the handling of Social Security cases. Although voluntary remand occurred back then (I left in 2006), it is clear the Social Security Administration makes far more liberal use of a motion to voluntarily remand a case now than it did then. Thus, although in 2022 the Social Security Administration prevailed in twenty-eight of thirty-nine cases in which decisions have been rendered, a 71.80% percent success rate, by proactively remanding cases in which perhaps a likely reversal would have occurred, and by including those voluntary remands as plaintiffs' victories, plaintiffs achieved a reversal or voluntary remand in about 72.00% of the cases which did not involve dismissals or closures.

XII. SUMMARY JUDGMENT ORDERS

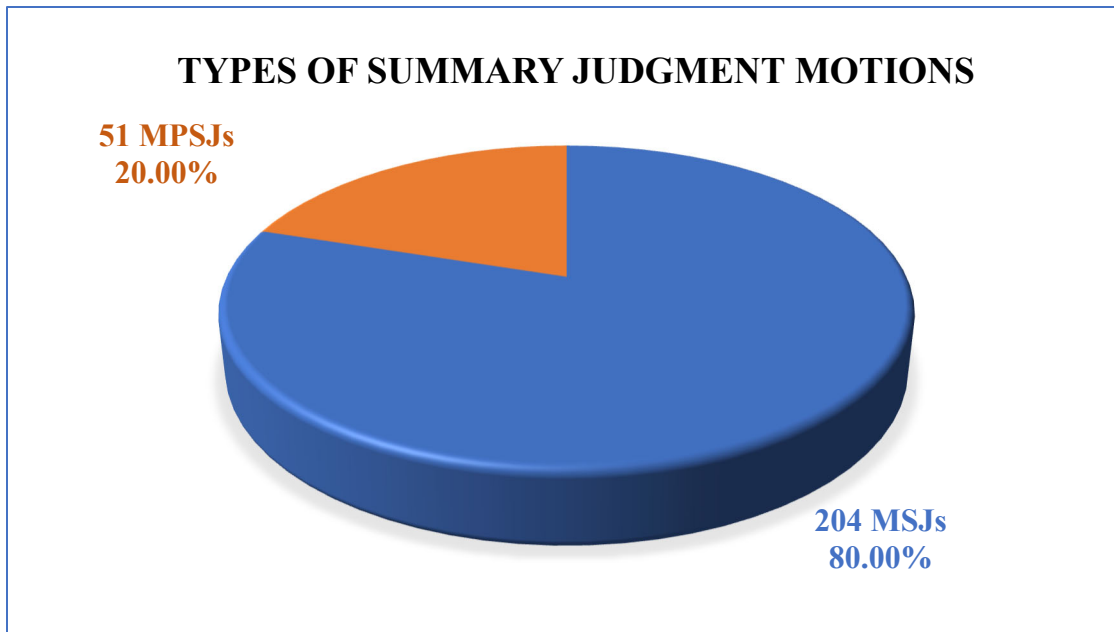
During 2022, litigants filed 531 summary judgment motions, including motions for partial summary judgment. This is an increase 502 motions in 2021. The District, in turn, entered 350 orders on 383 summary judgment motions, including motions for partial summary judgment. Of these, the District decided 255 motions (66.58%) on their merits and entered orders on 128 motions (33.42%) for other reasons (*e.g.*, finding or dismissing motions as moot because the parties reached a settlement or plaintiffs amended their complaint, or ordering that the Court was taking the motion under advisement at the end of an oral argument). The sections below discuss the motions decided on the merits in further detail.

A. Overview

Most summary judgment motions which were ruled on the merits arose in cases filed in 2020. Indeed, the majority of motions arose in cases pending for one to three years. However, there were some outliers with case filings spanning from 2013 to 2022. The chart below provides an overview:

Year Case Filed	No. Summary Judgment Motions Decided on Merits	Percentage of Summary Judgment Motions Decided on Merits
2013	3	1.47%
2016	4	1.96%
2017	4	1.96%
2018	13	6.37%
2019	44	21.57%
2020	118	57.84%
2021	66	32.35%
2022	3	1.47%

Of the 255 summary judgment motions decided on the merits in 2022, 204 were motions for summary judgment (“MSJs”) and fifty-one were motions for partial summary judgment (“MPSJs”). The next figure shows the breakdown by motion type:



District Judges ruled on 199 of the summary judgment motions (77.13%). Of these, 161 were MSJs (80.90%) and thirty-eight were MPSJs (19.10%). Of the 199 motions, 179 were filed in cases where District Judges referred the case generally to Magistrate Judges (89.95%). Yet, only twenty of these motions (11.17%) were referred to Magistrate Judges for recommendation. The remaining fifty-six summary judgment motions (21.71%) were decided by Magistrate Judges in consent cases (*i.e.*, the parties consented to Magistrate Judge trial jurisdiction).³⁴ Of these, forty-three were MSJs (76.79%) and thirteen were MPSJs (23.21%).

³⁴ This figure includes four motions in cases where parties consented to Magistrate Judge jurisdiction and Magistrate Judge Wang was the presiding Judge and then retained these cases upon elevating to a District Judge, ultimately ruling on these motions as a District Judge.

B. Time

The average number of months from filing any summary judgment motion to the order ruling on the merits was **7.72 months**. The longest duration was 29.63 months and the shortest was 0.20 months (four days). Naturally, MSJ orders generally took longer than MPSJ orders. The average number of months from filing MSJs to the order was 7.91 months whereas that average for MPSJs was 6.94 months. For MSJs, the highest was 29.63 months and the lowest was 0.20 months (four days). Contrastingly, the highest for MPSJs was 6.94 months and the lowest was 0.60 months (five days). Analyzing this data from yet another angle, the average number of months from filing any summary judgment motion to an order entered by a District Judge was 8.29 months. The longest duration was 29.63 months and the lowest was 0.20 months (four days). As for orders entered by Magistrate Judges on consent cases, the average time was 5.69 months, the highest was 12.53 months, and the lowest was 0.80 months.

Calculating from when the last summary judgment brief was filed (*e.g.*, reply, sur-reply, and amended briefs), on average it took **5.79 months to enter an order**.³⁵ The longest time was 27.73 months, and the shortest time was 0.07 months (two days). Again, these averages are higher for MSJs than MPSJs, but the delta is narrower than when calculating from filing the motion. The average wait time for MSJs was 5.89 months whereas the average wait time for MPSJs was 5.38 months. The longest duration for MSJs was 27.73 months and the shortest was 0.07 months (two days). For MPSJs, the longest time was 14.33 months and the shortest was 0.20 months (four days). For orders entered by District Judges, the average number of months from filing the last brief to entering the order was 6.28 months with a high of 27.73 months and low of 0.07 months (two

³⁵ To avoid skewing this data, this figure excludes the five instances where no responsive brief was filed.

days). As for orders entered by Magistrate Judges on consent cases, the average time was 4.02 months, the highest was 11.37 months, and the lowest was 0.20 months (four days).

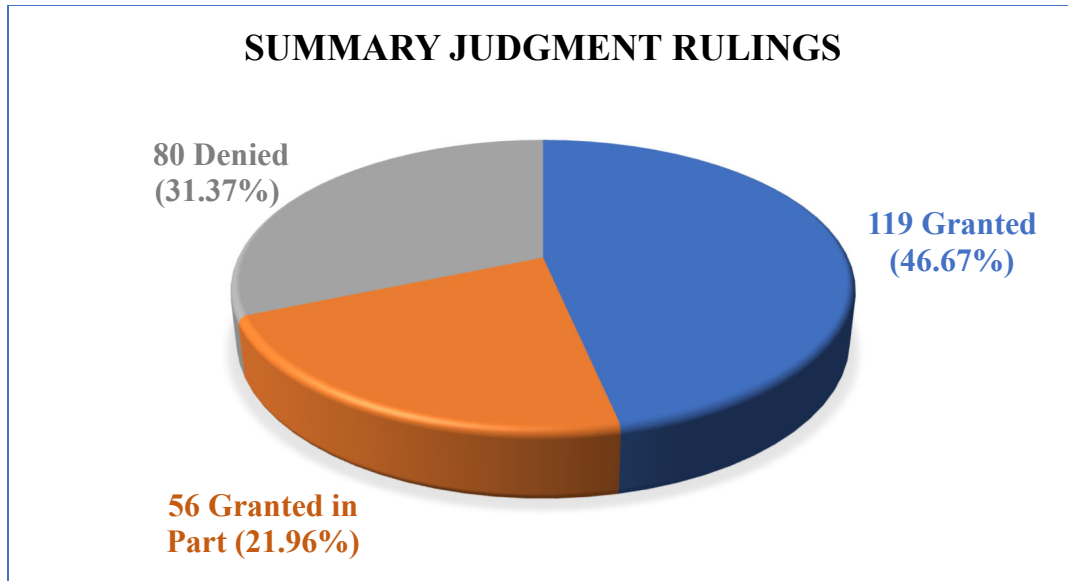
Unsurprisingly, summary judgment motions referred to Magistrate Judges for recommendation before a District Judge entered an order can take longer to resolve as they involve more briefing (*i.e.*, parties have fourteen days to file objections to recommendations which District Judges resolve in their final orders).³⁶ Referred motions took an average of 8.27 months from filing the motion to entering the order whereas other motions took an average of 7.67 months. Calculating from the last brief filed, referred motions took an average of 5.45 months and other motions took an average of 5.82 months. The longest duration for referred motions was 9.70 months compared to 27.73 months for other motions. The shortest duration for referred motions was 0.67 months compared to 0.07 months (two days) for other motions.

Analyzing referred motions further, it took an average of 5.51 months from filing a motion to entering a recommendation (with a high of 9.63 months and low of 2.23 months). It also took an average of 2.99 months from filing the last brief to entering a recommendation (with a high of 6.43 months and low of 0.13 months or four days). And it took an average of 2.77 months from entering the recommendation to entering the final order. Notably, the highest figure here (8.37 months) is greater than the average time from filing a motion without a recommendation to entering an order (7.67 months). However, the lowest time was a speedy 0.53 months.

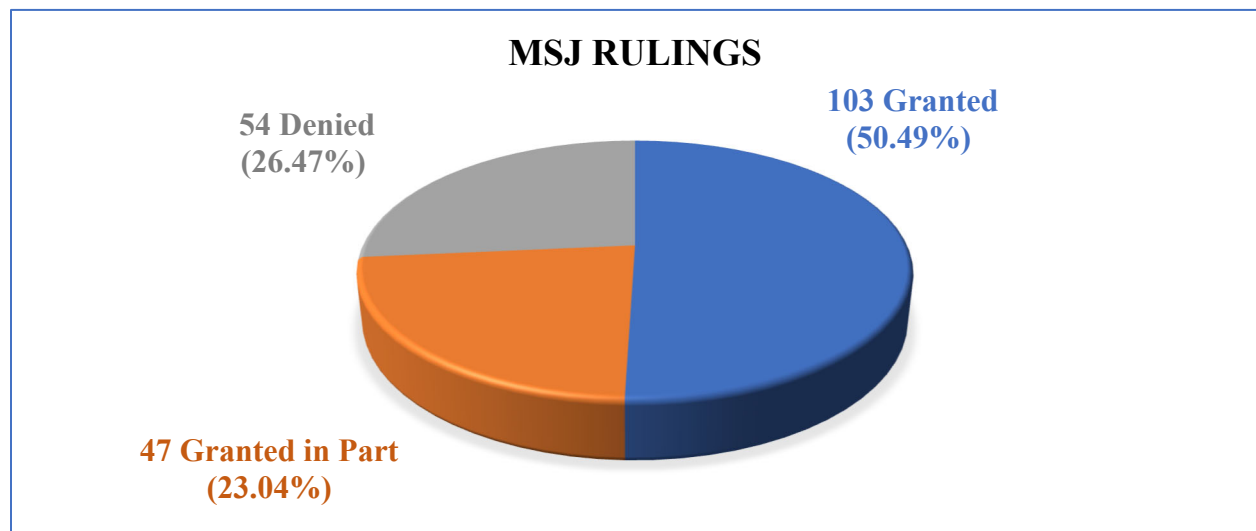
³⁶ Because only two MPSJs were referred to Magistrate Judges for recommendation, the report does not distinguish between MSJs and MPSJs here.

C. Rulings

Judges granted in their entirety most of the 255 summary judgment motions. However, Judges denied more than they granted in part motions. Specifically Judges granted 119 motions (46.67%), granted in part fifty-six motions (21.96%), and denied eighty motions (31.37%). The figure below shows an overview of this data:

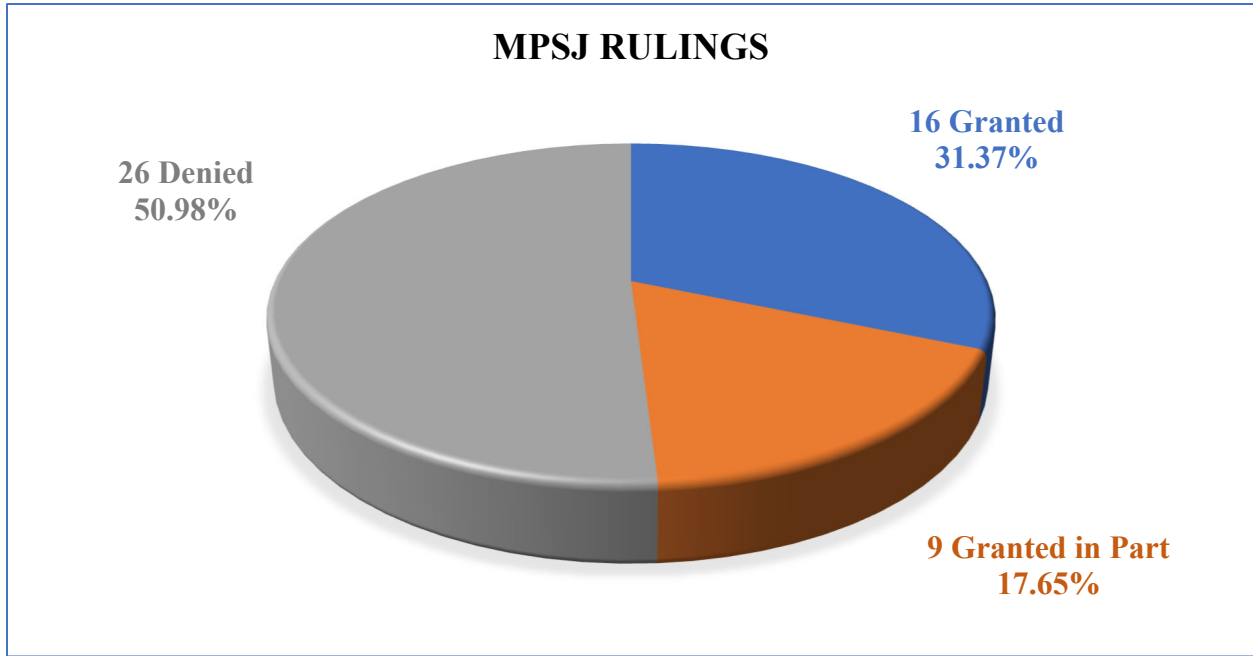


Focusing on the 204 MSJs, their rulings follow the same breakdown with most motions (50.49%) being granted, followed by denials (26.47%) and then grants in part (23.04%). The next figure provides an overview:



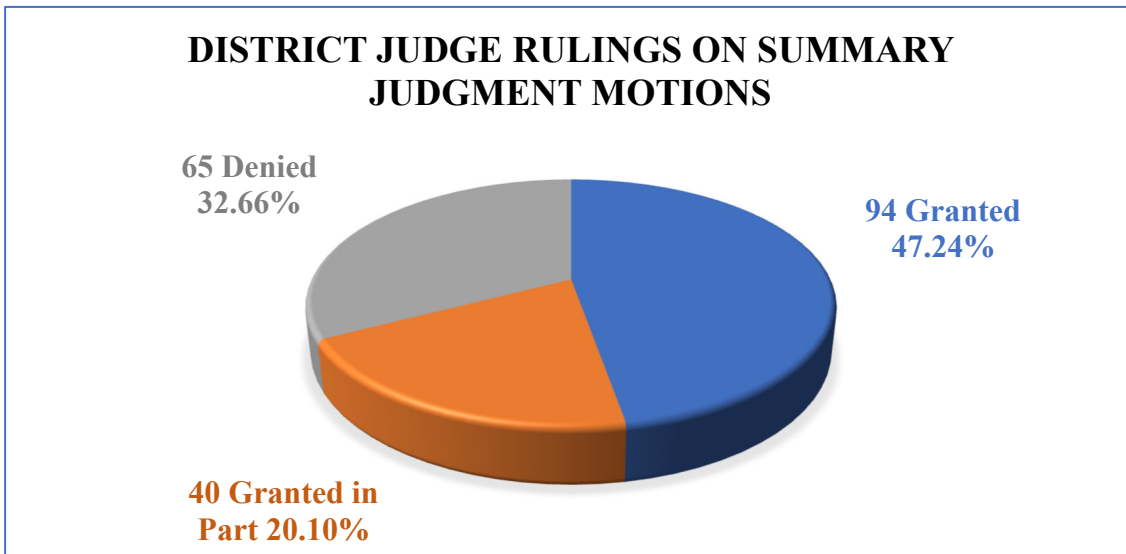
Turning to the fifty-one MPSJs, curiously most of these were denied (50.98%). However, an MPSJ was almost twice as likely to be granted in its entirety (31.37%) than in part (17.65%).

The next figure shows this data:

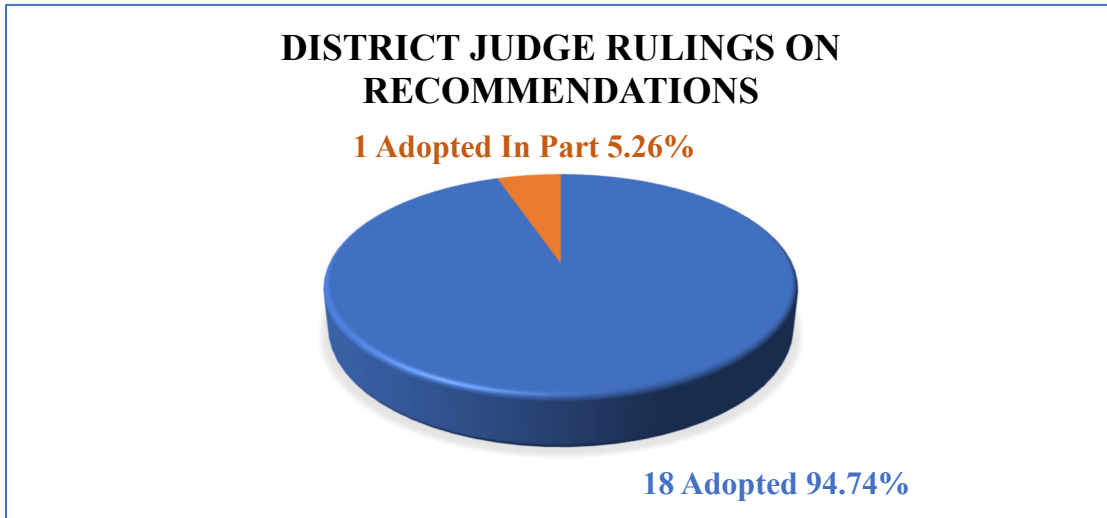


Of the 199 summary judgment motions District Judges decided on the merits, ninety-four were granted (47.24%), sixty-five were denied (32.66%), and forty were granted in part (20.10%).

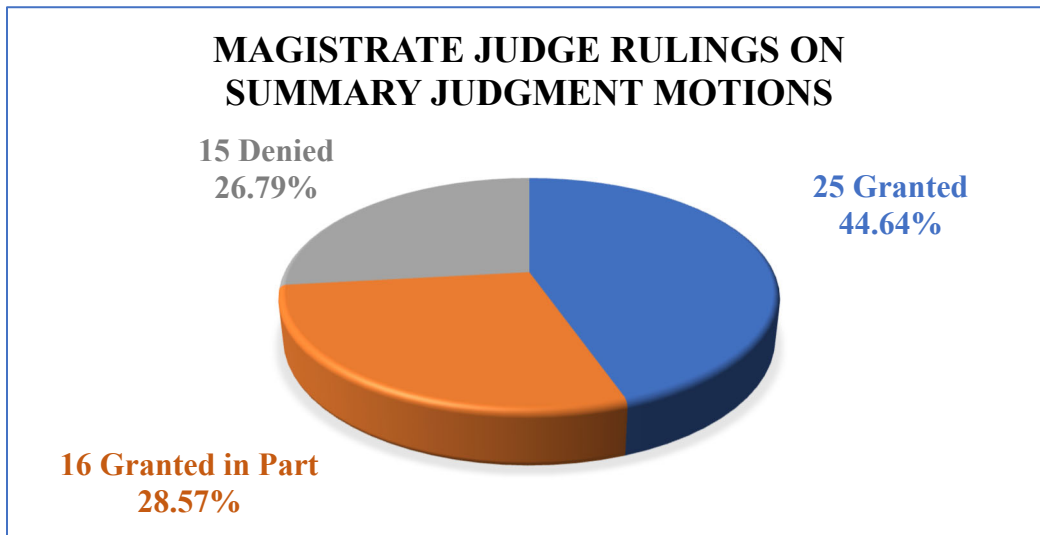
The figure below shows this breakdown:



Of the twenty summary judgment motions District Judges referred to Magistrate Judges for recommendation, District Judges ruled on nineteen on the merits. Of these, District Judges adopted in their entirety most of the Recommendations (94.74%). None were denied on the merits.³⁷ The figure below shows the rulings on the merits of Recommendations:



Of the fifty-six summary judgment motions Magistrate Judges decided in consent cases, twenty-five were granted (44.64%), sixteen were granted in part (28.57%), and fifteen were denied (26.79%). The next figure shows this data:



³⁷ A District Judge rejected as moot one recommendation where the record was supplemented after the Magistrate Judge entered the recommendation.

XIII. ALTERNATIVE DISPUTE RESOLUTION

In November 2011, the District instituted a new paradigm concerning alternative dispute resolution (“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.

The number of settlement conferences held had generally trended downward since the District began recording this data in 2012, through 2021. But in 2022, judges held 126 settlement conferences, the second highest total since 2012. This marks a sharp increase from the prior year’s record-low seventy-seven settlement conferences. At the time of publication, the District has seen over 100 settlement conferences in 2023, on track to be the highest number since 2012.

Meanwhile, the ENE is a virtually extinct (and unknown) procedure. In fact, as of January 2018, the Clerk’s Office of the District of Colorado ceased monthly reporting on ENEs. By 2020, the process appeared to have generally gone out of use, except for the occasional ENE in the District (perhaps among practitioners from other districts who know the procedure or find it efficacious).

The chart below shows the District’s ADR activity since 2012:

Year	Number of Settlement Conferences	Number of ENEs
2012	166	22
2013	116	15
2014	122	6
2015	79	15
2016	114	11

2017	115	4
2018	103	6
2019	129	7
2020	98	4
2021	77	2
2022	126	1
TOTAL	1,245 (113.2/year)	93 (8.5/year)

The author has a general sense that the success rate for settlement conferences in this District is well over 80%. Perhaps wearing the robe does make some difference!

For the practitioner’s information, Local Civil Rule (D.C.COLO.LcivR) 16.6 governs alternative dispute resolution in the District. It mentions early neutral evaluations “or other alternative dispute resolution proceeding” but does not contain the words “settlement conference.” It does not explicitly inform the practitioner exactly how to request a court-mediated settlement conference. Many District Judges use the following language in their beginning-of-the-case referrals to Magistrate Judges: “On the recommendation or informal request of the magistrate judge or on the request of the parties by motion, this court may direct the parties to engage in an early neutral evaluation, a settlement conference, or another alternative dispute resolution proceeding.” The current trend in referral language for District Judges, especially those appointed in recent years, is along the following: “[P]ursuant to Local Civ. R. 16.6 and at the discretion of the Magistrate Judge, [the Magistrate Judge may] convene such early neutral evaluation and/or settlement conferences and direct related procedures as may facilitate resolution of this case without the necessity of a motion or prior authorization of the undersigned.”

So generally, parties may file a motion for a settlement conference or may informally raise the matter with the District Judge or, more typically, the Magistrate Judge (perhaps at the

scheduling conference), seeking guidance on how to get a settlement conference. The judges of this District might, and often do, raise the prospect of a settlement conference sua sponte.

XIV. BANKRUPTCY

Another section in this annual statistics report is a summary of some of the activities of the Bankruptcy Court. As the reader knows, the United States Bankruptcy Court for the District of Colorado functions as a unit of the District and has subject-matter jurisdiction over bankruptcy cases. In 2022 Colorado had five Bankruptcy Judges:

Chief Judge Kimberley H. Tyson (2017)
Elizabeth E. Brown (2001) (retired June 30, 2023)
Michael E. Romero (2003)
Thomas B. McNamara (2015)
Joseph G. Rosania, Jr. (2016)

Also, Wyoming Bankruptcy Judge Cathleen D. Parker (2015) hears Chapter 7 filings from Larimer County, Colorado pursuant to a temporary assignment authorized by the Tenth Circuit Court of Appeals. The judges are appointed by the Tenth Circuit Court of Appeals and serve fourteen-year terms.

In 2022, the District saw 3,786 chapter 7 filings, 56 chapter 11 filings, 1,245 Chapter 13 filings, and five other filings for a total of 5,093 bankruptcy cases. That year saw the continuation of a decades-long decline in bankruptcy cases in this District (and, I suspect, nationwide). In **2010 there were 32,539** bankruptcy cases, equating to an **84.35% decrease in case load** in just over a decade. The change has been consistent and uninterrupted:

2010	32,539
2011	30,058
2012	26,115
2013	21,148
2014	17,134
2015	14,101
2016	12,537
2017	11,753
2018	11,177
2019	11,039
2020	8,278
2021	6,283

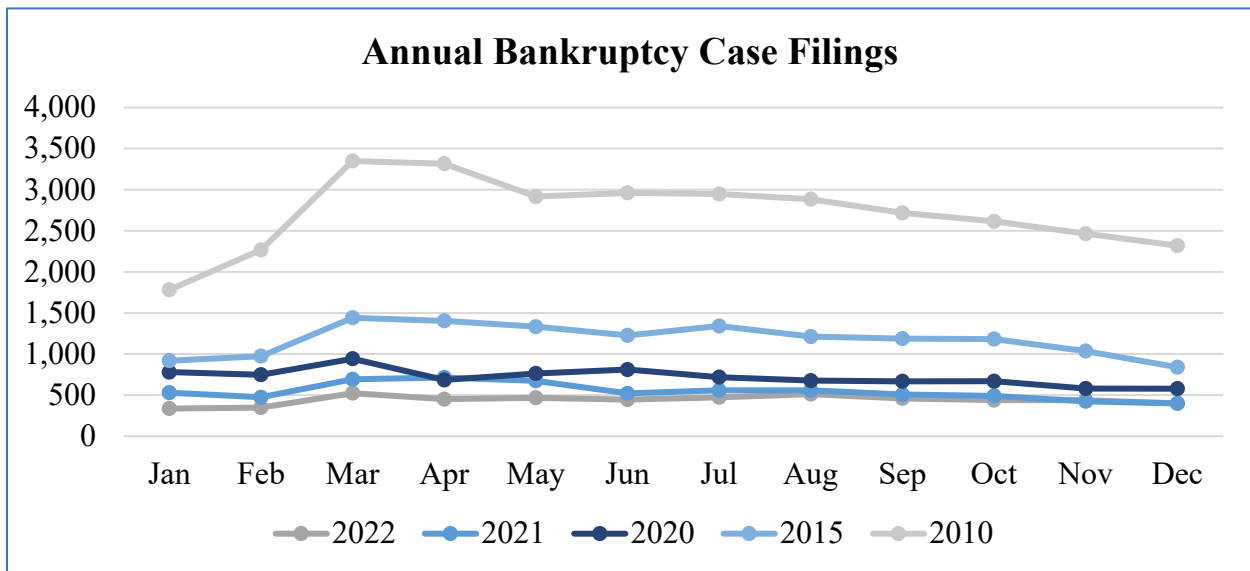
2022 5,093

The information above is from a bankruptcy noob (me). I asked the Clerk of the Bankruptcy Court to provide information about the work of that Court and he graciously obliged. I provide that here, with great thanks to the Clerk, Ken Gardner, and his staff:

The following data is accurate as of August 2023 and subject to minor fluctuation due to re-openings, chapter conversions, reassignments, and the natural flow of cases.

A. Filings & Workload

Bankruptcy filings in 2022 decreased 84.35% as compared the Court’s filing peak in 2010.



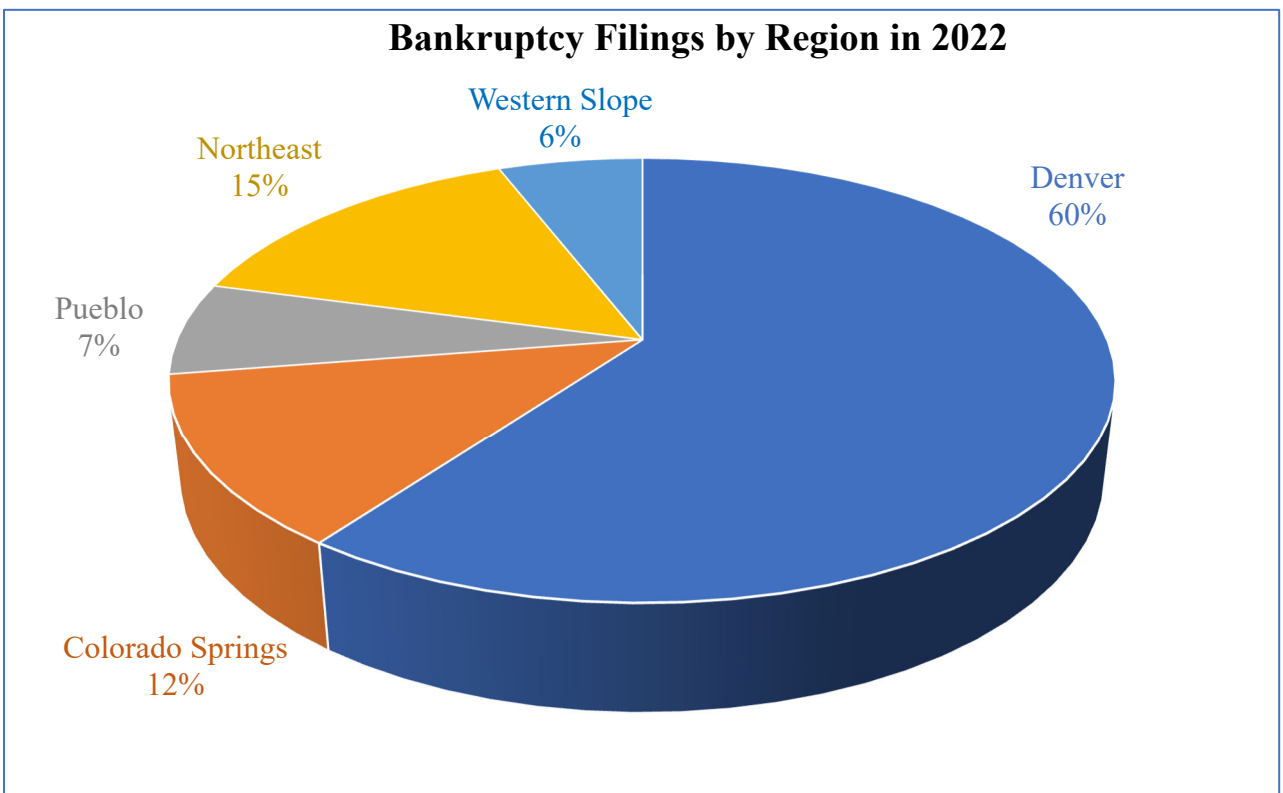
Workload, defined as cases, documents, and docket entries per case administrator, has decreased accordingly. Even with ongoing staffing reductions, employees performed less work per case than they ever have before.

Year	2010	2015	2020	2021	2022
Cases (Bk., Adv., Misc.)	8,625	14,097	8,625	6,550	5,414
Case Administrators (“CAs”)	18	25	18	17	15
Cases Per CA	479.2	563.9	479.2	385.3	360.9
Documents per CA	16,815.0	20,697	16,815.0	15,399.8	14,855.9
Entries per CA	21,409.2	30,477	21,409.2	19,451.2	19,180.9

B. Case Filings by Region

The District of Colorado is divided into five bankruptcy regions to correspond with panel trustee assignments determined by the U.S. Trustee’s office: Denver, Northeast, Colorado Springs, Pueblo, and the Western Slope. This aids in scheduling and management of debtors’ first meetings of creditors as required by 11 U.S.C. § 341.

Denver region debtors were responsible for 60% of the District’s new bankruptcy case filings in 2022. The other regions accounted for the remaining 40%.



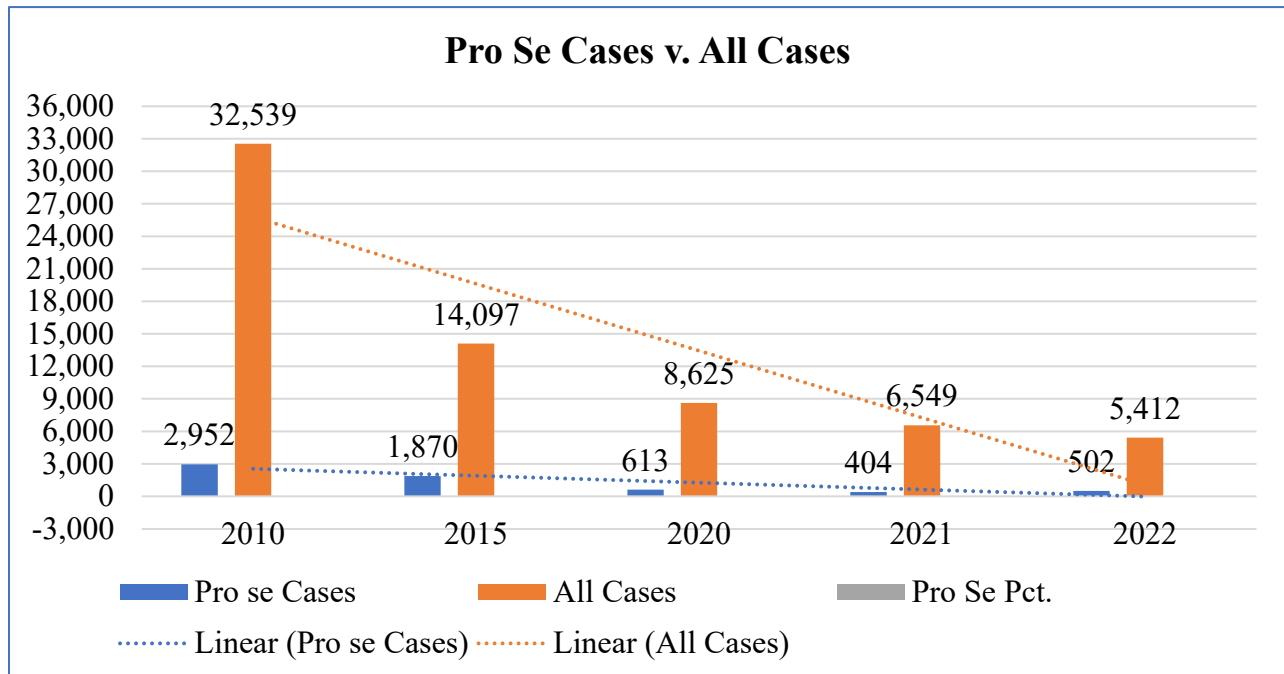
C. Case Dispositions by Chapter

In 2022, the Court disposed of about 8,800 cases. Just over 88% of these dispositions followed discharge orders, while approximately 10% were dismissed. Chapter 7 cases, chapter 13 cases, and adversary proceedings had the highest rates of dismissal in 2022. As of June 30, 2022, the median disposition time for chapter 7 cases was 4.6 months, and the median disposition time for chapter 13 cases was 44.8 months. These figures include all dispositions, discharges, and dismissals.

	Ch. 7	Ch. 9	Ch. 11	Ch. 12	Ch. 13	Ch. 15	Adv.	Misc.	Total
Discharges	6,603	0	5	0	1,145	0	n/a	n/a	7,753
Dismissals	149	0	28	4	587	0	152	0	920

D. Pro Se Participation

The Court’s pro se filing average since 2010 is 10.41%. In 2022, the pro se filing rate decreased slightly to 9.35%.



XV. THE FINAL WORD - APPEALS

Since 1998, 10,268 cases have been appealed from the District to the Tenth Circuit, an average of 428 cases per year. This encompasses all matters, including criminal, civil, prisoner petitions. In the last twenty years, that average increased to 486.2, a 14.00% increase. But in the most recent decade, that average decreased to 457.40.

Interestingly, the Tenth Circuit is still the third least-busy Circuit, once again ahead of only the District of Columbia and the First Circuit. Indeed, our Circuit sees anywhere from about 70.00% (Seventh), to about 60.00% (Third, Eighth), to about 50.00% (Sixth), to around 40.00% (Second, Fourth) to about 30.00% (Eleventh, Fifth) to an incredible 20.00% (Ninth) of the appellate work of sister Circuits. In 2022, the Tenth Circuit had 447 appellate matters docketed from the District of Colorado, a slight increase from the prior year's 430 matters.

Focusing on the most recent decade, an average of 380.30 civil cases were appealed and an average 382.70 civil appeals were terminated each year. In 2022, 365 civil cases were appealed and 372 were terminated. Based on the District's average number of civil cases filed and average number of cases appealed in the past ten years, there is an approximate 11.24% probability of an appeal of a civil case filed in this District. Turning to criminal cases, an annual average of 77.10 criminal cases were appealed and 78.30 were terminated over the past ten years. In 2022, 73 criminal cases were appealed, and 59 criminal appeals were terminated. Using the District's average number of criminal cases filed the past ten years and average number of cases appealed in the past decade, there is a 2.03% statistical probability that a criminal case filed in this District is appealed.

Even if a case is appealed to the Tenth Circuit, there is a low probability that it will be reversed. In 2022, the Circuit-wide reversal rate in the Tenth Circuit was 3.95%. That reversal rate

was 4.53% for criminal cases, 4.37% for prisoner petitions, and 7.47% for other civil matters. For the past twenty years, the overall **reversal rate for District of Colorado cases was 5.23%**.

For 2022, the time on all appeals in the Tenth Circuit (Circuit-wide, not limited to the District of Colorado), from **filing of the notice of appeal to the last appellate opinion or final order**, was **9.7 months** whereas the average time from **filing in the District Court to the last appellate opinion or final order** in 2022 was **32.5 months**. As set forth below, the data also tracks these statistics for prisoner petitions, other civil appeals, and criminal appeals. While this data shows the Tenth Circuit resolved appeals slightly faster than the prior year, its overall time is still generally consistent. For civil appeals in particular, I would think this is very useful information for a client.

Matters	Number of Months From Filing of the Notice of Appeal to the Last Appellate Opinion or Final Order		Number of Months From Filing in the District Court to the Last Appellate Opinion or Final Order	
	2021	2022	2021	2022
TOTAL	10.5	9.7	31.2	32.5
Prisoner Petitions	7.3	7.1	22.0	22.6
Other Civil Appeals	11.3	11.1	31.4	31.9
Criminal Appeals	11.1	9.8	41.5	40.3