civil case processing in the federal district courts

A 21st Century Analysis

INSTITUTE FOR THE ADVANCEMENT OF THE AMERICAN LEGAL SYSTEM

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EXECUTIVE SUMMARY AND RECOMMENDATIONS

The problem is simply stated but not easily solved: too many civil cases in American courts take too long to resolve. An incident or accident that takes less than a minute to unfold on the street or in a boardroom may take several years to be revisited and examined in a courtroom. During that time, litigants may feel economic pressure to settle the case even though they believe they would prevail on the merits. If they do not settle, they still have to contend with increasingly fading memories, and wait longer for financial resolution and emotional closure. And lengthy cases affect more than the litigants. From the judge's perspective, cases that linger on the docket take up time and resources that could be spent on other matters, and may involve retuning as judicial officers turn over. For attorneys, long cases similarly consume resources. And for the general public, extended cases epitomize government inefficiency and drive reduced public confidence in the judicial system.

For these reasons and others, there is already widespread agreement that delay in civil cases is a serious problem. In a recent national survey of nearly 1500 experienced litigation attorneys, 69% of respondents agreed that the civil justice system takes too long as a general matter, and 92% agreed that the longer a case goes on, the more it costs. The survey results echo findings from previous studies stretching back to the 1950s. Delay in civil cases is pervasive, and it is costly.

Many researchers have suggested that the best solution to preventing delay is to increase the judge's control over the timing of a case – a process known as caseflow management. But while much has been written about caseflow management, not every judge (and not every attorney or court administrator) has taken previous recommendations to heart, leading to wide discrepancies across courts in the time needed to bring a case to a close. This study found, for instance, that the same type of case may take two or three times as long on average to resolve in one district court than in another. As a practical matter, this means that litigants may have to wait months or even years longer for a resolution to their dispute simply because the case was filed in one court rather than another.

This study is concerned primarily with why this discrepancy exists. What contributes to delay in civil cases? What part of delay is occasioned by factors outside the civil docket, and what part can be lessened by different procedures implemented by judges, attorneys and court

administrators? We seek to answer these questions – and also test some of the existing assumptions about caseflow management – with new data drawn from nearly 7700 federal civil cases that were terminated between October 1, 2005 and September 30, 2006. Some of these cases were opened and closed in a matter of days; others took many years before reaching a final disposition. Looking at this wide range of cases, we find that some small changes in the approach to civil processing, easily within the ability of a single judge or attorney, may help individual cases move more quickly toward resolution. Other changes, admittedly more complex and reliant on the culture of the legal community as a whole, may also be necessary to assure that expeditious processing remains the norm for every civil case.

While we focus here solely on time to disposition and time between events, we do not mean to suggest that speed alone equals justice. In some cases, judges and counsel understandably need more time to collect and present appropriate information or to work through complex facts or legal theories. And "justice," however conceived, surely cannot be defined without reference to the use of adequate due process safeguards, the financial, physical and emotional cost to the parties, and the completeness and impartiality of the legal analysis. Delay, however, cannot be ignored; even the most thoughtful, fair and accurate result is discounted if it takes more time than necessary to reach. Not every case can or should reach resolution in three months, but in no case should resolution require three years.

At the end of this executive summary, we set forth a series of recommendations, based on findings from three different types of analysis. First, we identified the quantifiable areas of pretrial procedure that are most strongly correlated with overall disposition times. Put another way, we looked at the aspects of how a case is handled that give the strongest clues about how long a case will take from start to finish. Second, we compared how various procedural tools – including motions filed with the court, extensions of time, hearings and sanctions – are used in each district in the study. Finally, we spoke with court representatives and considered survey responses from attorneys in each district in the study, to see if elements of court culture contribute to the overall length of a case in a

manner that cannot be captured merely by numbers. We lay out each of our central findings below in bold, with an explanation immediately following.

Finding #1: Cases in which: (1) a trial date is set early, (2) discovery issues are raised and resolved within the set discovery period, and (3) dispositive motions are filed as early as possible tend to be resolved more quickly than cases where these things do not occur.

We examined the collective data from all 7700 closed cases, and looked for the strongest statistical relationships between the use of various procedural tools available to judges and counsel and the overall time from the filing to the disposition of a case. For example, with respect to motions to compel and similar motions disputing the exchange of information during the pretrial discovery process, we examined the number of such motions filed per case, the average time it took to resolve each motion, how long after an initial scheduling conference the motion was filed, whether a hearing was held, and whether the motion was granted. We then compared these data to the overall time from filing to disposition of each case. We ran similar queries for dispositive motions (i.e., those that resolve one or more substantive claims before trial), motions to extend deadlines, use of scheduling conferences, and trial settings, and looked for the strongest relationships with overall time to disposition. Ultimately, we found that the following measurements were the most strongly correlated with the overall length of the case:

1. The elapsed time between the filing of a case and the setting of a trial date;
2. The elapsed time between the scheduling conference required under Federal Rule of Civil Procedure 16 and a party's request for leave to conduct additional or extraordinary discovery; and
3. The elapsed time between the filing of a case and the filing of a motion disputing discovery, a motion to dismiss or a motion for summary judgment.

What exactly does this mean? In shorter cases, we more readily observed the early setting of a trial date, the avoidance of requests for additional discovery late in the discovery process, and earlier filing of motions that might resolve discovery disputes or resolve some or all of the claims immediately. In longer cases, we more frequently observed trial dates set much later after initial filing, late requests to conduct more discovery, and late filing of disputed discovery and dispositive

motions. Both the judge and the attorneys in a case have input into the ultimate timing of these events and accordingly, the timing of the case as a whole.

We note here (and not for the last time) that the strength of these correlations does not mean that, for example, an earlier setting of a trial directly *causes* a shorter time from filing to disposition. Correlation is not causation. But correlation is cause for attention. Where a particular practice or procedure is strongly correlated with a shorter overall time from case filing to disposition, we can expect that cases following that practice or procedure are more likely to have shorter disposition times.

Finding #2: About one-third of civil cases take more than a year to resolve.

Nearly two-thirds of cases in the study were resolved within one calendar year, and nearly 40% of cases were resolved in six months or fewer. However, about 35% of cases took more than one year to resolve, and the longest cases took ten years or more before a final resolution was reached. On average, the longest cases from filing to disposition by case type (otherwise known as "nature of suit") were stockholders' suits (mean time of 906 days to disposition), securities/commodities cases (mean time of 689 days) and environmental matters (mean time of 657 days). The shortest cases on average (by nature of suit) were tax customer challenges (65 days), rent lease & ejectment cases (89 days), and asbestos product liability cases (106 days). But nature of suit alone is not necessarily a good predictor of case length: for example, 83 employment discrimination cases in the study were resolved in less than three months, but an almost equal number – 89 cases – took between two and three *years* to complete.

Finding #3: Rule 16 scheduling conferences are held in less than half of all civil cases.

Federal Rule of Civil Procedure 16(b) mandates that the judge issue a scheduling order in most forms of civil action within 120 days after the complaint is filed. The judge also has discretion under Rule 16(a) to direct the parties to appear for a scheduling conference. In spite of this language, only 46% of the case dockets in the study showed evidence of a scheduling order and/or notation of a scheduling conference. This surprisingly low figure may be due in part to reasonable judgment by the

court about the trajectory of each case, and whether a Rule 16 conference is necessary. Nearly 33% of cases in the study terminated within 150 days of filing the complaint (the 150 days representing the 120-day deadline plus a 30-day cushion to account for cases where service of process or filing an answer was delayed). Another 15% of cases lasted beyond 150 days, but ended with a transfer, remand, dismissal on Rule 12 or other motion, default judgment, or dismissal for want of prosecution – circumstances in which holding a scheduling conference may not have been a good use of court resources. Still, the low percentage of cases where a Rule 16 conference was held suggests that scheduling conferences are not nearly as common as the Rules intend.

Finding #4: The time it takes a judge to rule on motions on disputed discovery, motions to dismiss, and motions for summary judgment varies significantly across courts.

We examined the patterns of rulings on motions raising discovery disputes – that is, motions to compel or quash discovery, impose discovery sanctions, or strike discovery responses. There was wide variation in the mean time it takes a judge to rule on these motions, from a low of 22 days on average in two districts to a high of 116 days on average in one district. The mean for all cases in the study was 48 days from filing to ruling – meaning the parties waited on average nearly seven weeks for a resolution to a discovery dispute.

Similar variation across courts was seen in motions to dismiss and motions for summary judgment. Across all cases, the mean time to rule on Rule 12 motions was almost 130 days, but when broken down by district the mean time varied from 63 days in the fastest court to 176 days in the slowest court. For all summary judgment motions, the mean time to rule was 166 days, but the variation across courts was even more pronounced: from a low of 63 days on average in the fastest court to a high of 254 days on average in the slowest court.

Finding #5: Motions to dismiss were frequently filed and granted, even before the *Twombly* decision.

In the wake of the U.S. Supreme Court's 2007 decision in *Bell Atlantic Corp. v. Twombly*, some commentators have suggested that motions to dismiss under Federal Rule of Civil Procedure 12 will be resurrected as a potent tool for defendants. In fact, motions to dismiss were never dead to

begin with; rather, they were routinely sought and granted before *Twombly* was decided. Almost 1800 motions under Rule 12(b) (motion to dismiss), 12(c) (judgment on the pleadings), or 12(f) (motion to strike) were filed in the 7700 cases studied. Nearly 84% of these motions sought dismissal of or judgment on the case in its entirety, and another 12.5% sought dismissal of or judgment on some claims. Over 44% of these Rule 12 motions were granted in their entirety, and another 10% were granted in part. Less than 30% of Rule 12 motions were flat-out denied.

The numbers were similarly high for motions for summary judgment brought under Rule 56. The study recorded nearly 2300 such motions in the 7700 cases, 70% of which sought full summary judgment. About 54% of all summary judgment motions in the study were granted in full or in part; in seven of the eight districts, at least half the motions were granted in full or in part.

Finding #6: Holding a hearing is associated with faster times to ruling for motions on disputed discovery, although the evidence is less clear with respect to dispositive motions.

We tracked whether a court decided each disputed discovery or dispositive motion with the assistance of an open court or telephonic hearing, or whether the judge decided the motion on the papers alone. For motions on disputed discovery, there was a marked reduction in mean time from filing to ruling when the court heard argument in the courtroom or by telephone. The mean time to rule was 56 days when no hearing was conducted, but only 35 and 39 days, respectively, for telephonic and open court hearings. While a thorough explanation of this difference is beyond the scope of this report, the 30% average reduction in time to rule when an open court hearing is held is certainly notable.

For Rule 12 motions, the difference in mean times from filing to ruling based on hearing type (or no hearing) was less pronounced. While Rule 12 motions with telephonic conferences were resolved in an average of 79 days (as opposed to 133 for no hearing), the number of such motions subject to telephonic conferences was a small fraction of those decided without a hearing. A larger number of Rule 12 motions were decided after an open court hearing, but the average time from filing to ruling of 118 days for open court hearings – representing only an 11% drop in time over not holding

a hearing at all – does not suggest strongly that holding hearings on motions to dismiss is a more efficient practice.

The situation is even more muddled for motions for summary judgment. The vast majority of these motions were resolved without a hearing, in a mean time of 172 days. Motions that were subject to a hearing were resolved in an average of 147 days, and the few with a telephonic hearing (nearly all of which were held in one district) took the longest to resolve on average – 198 days.

Finding #7: Many cases settle shortly after a motion to dismiss or a motion for summary judgment is denied.

The denial of a dispositive pretrial motion would not be expected to shorten the length of a case, because it would merely keep a case moving toward trial. In reality, cases often proceed toward a quick settlement after a dispositive motion is denied. In 17% of cases in the study in which a motion to dismiss was denied, the parties settled within 30 days after the motion was decided. For cases in which a motion for summary judgment was denied, nearly 25% settled within 30 days after the motion was decided, and nearly 40% settled within 90 days. These figures suggest that the parties look to the court to provide answers that affect settlement questions, and that denying motions to dismiss and for summary judgment provides valuable information to the parties about the strength of their respective claims and defenses.

Finding #8: About 90% of all motions to extend deadlines are granted in every court, but in courts with faster average overall times, many fewer motions to extend deadlines are filed.

Surprisingly, even the districts with the fastest overall times from filing to disposition granted motions to extend deadlines or continue major events about 90% of the time. This pattern held for relatively minor extensions (*i.e.*, to respond to a discovery request or continue a hearing) as well as continuances of major deadlines (to close all discovery, file dispositive motions, hold a pretrial conference, or begin trial). The major difference across districts was not the grant rate but the filing rate: in districts with lower overall mean times from filing to disposition, relatively few motions to extend deadlines were filed, while in districts with higher overall mean time to disposition, many more motions to extend time were filed. As one example, the study recorded a total of 1899 motions to

extend time to file or respond to discovery requests – an average of 24.7 motions per 100 cases. In the two fastest districts, the average number of filings for that same motion type was only 4 per 100 cases and 6 per 100 cases. With so few motions filed in those districts, a similar grant rate was less harmful in promoting delay.

Finding #9: External reporting of case management data does appear to encourage courts to rule more rapidly on certain motions than might otherwise be the case.

The Civil Justice Reform Act of 1990 and current Judicial Conference policy require external reporting of certain case management statistics from every U.S. District Court twice annually. These statistics include a count of all motions pending before each judge for six months or more, as of the semiannual reporting deadlines of March 31 and September 30. This study offers strong circumstantial evidence that judges rush to complete ruling on motions immediately prior to those reporting deadlines.

If judges ruled on motions at a perfectly constant rate, one would expect that on average about 8.5% of motions would be ruled upon during the last two weeks of March and the last two weeks of September combined in any given year. In fact, for those weeks during the study time period, rulings were handed down in about 11% of motions disputing discovery, 12% of Rule 12 motions, and 15% of motions for summary judgment – a noticeably higher rate. Furthermore, about 40% of motions disputing discovery and nearly 35% of summary judgment motions ruled on during the last two weeks of March or September had been pending for six months or more at the time of the ruling, meaning that they would have been listed on the individual judge's CJRA report if not resolved before the month-end deadline.

Finding #10: An attitude of efficiency, especially when embraced by both the bench and bar, can contribute to lower disposition times.

The statistical analyses discussed above are new and important, but they are not the end of the story. Such analyses can tell us what is happening, but not why. Accordingly, we also explored the specific role of judges and attorneys in creating efficient case processing times. We consider information gleaned from interviews with court administrators and judges in each of the subject

districts, designed to elicit their perspectives on the civil litigation process in their courts, as well as interviews with attorneys whose primary practice is in one of three of the subject courts. Based on their views and the voluminous existing literature, we have attempted to account for non-quantifiable factors that affect case processing time as well – factors such as local legal culture, court rules, a commitment to transparency, and judicial leadership. We find that efficient case processing is most likely to occur where the local legal community, steered by the expectations of the judiciary, embraces (or at least accepts) strong case management.

Perhaps also indicative of cultural norms, the study found that efficient courts move quickly at *every* stage of the case. The fastest courts in overall time to disposition were also the fastest courts in processing at each stage of the litigation, and the slowest courts overall were the slowest courts at each stage of litigation. Lowering overall time to disposition, then, does not appear to be a matter of addressing one or two specific pretrial practices, but rather striving to improve the time between events at every stage of the case.

RECOMMENDATIONS

Based on the findings set forth in detail in this report – both statistical and anecdotal – we offer some recommendations for expediting civil case processing. We offer the obvious but necessary caveats that our recommendations are not based on a review of every district court in the United States, nor are they based on direct courtroom observation or interviews with the parties or attorneys involved in the cases studied. And while the statistics speak for themselves, the conclusions we reasonably draw from those statistics have not yet been tested through pilot programs. Still, we believe our conclusions are reasonable and supported by sound empirical data, and we welcome experimentation within federal districts and state courts, and by individual judges, to test the conclusions more robustly. With those prefatory notes, we suggest that judges may be able to reduce processing times by:

1. Setting firm dates early in the pretrial process for the close of discovery, the filing of dispositive motions, and trial, and maintaining those dates except in rare and truly unusual circumstances;

2. Ruling expeditiously on motions, even when the motions are denied;

3. Limiting the number of extensions sought by the parties during any phase of the case;

4. Working to foster a local legal culture that accepts efficient case processing as the norm, and enforcing that culture through active judicial case management; and

5. Tracking the status of cases and motions through internal statistical reporting, and disseminating the results internally and externally as appropriate.

In the same vein, attorneys may also resolve cases more quickly for their clients by:

1. Agreeing to realistic deadlines early in the case and not seeking a deviation from those deadlines except under rare and truly unusual circumstances;

2. Commencing discovery early in the discovery period, so that any discovery disputes may be presented to the court and resolved well before the discovery deadline;

3. Filing dispositive motions as early as possible in the case; and

4. Working within the bar generally, and with opposing counsel specifically, to foster expectations of efficient case processing.

Many of the findings in this report support the conclusions reached by previous studies of civil case processing. Other findings offer new insights or question widely accepted beliefs about caseflow management. We hope that this study will be an important chapter in the development of case processing best practices, and will spur further research and renewed discussion and experimentation at both the federal and state level.

I. INTRODUCTION

This is an investigation into civil case processing in the United States District Courts. It broadly addresses two main issues: (1) the variation in the techniques, steps, and procedures that different judges and attorneys use to manage their civil cases, despite the existence of an (at least facially) uniform set of civil rules; and (2) the relationship between those techniques, steps, and procedures, and the amount of time it takes for cases to proceed from filing to disposition. Our objective is to explain how judges, attorneys and parties contribute to the overall length of a case through the procedures they adopt, tactics they use, and schedules to which they adhere.

By examining only the time variable in the Rule 1 trilogy of "just, speedy, and inexpensive" case dispositions, we do not mean to suggest that time to disposition, by itself, should be equated with justice. Indeed, this surely cannot be true. A just result in any case, civil or criminal, must take into account not only the time it took to resolve the dispute, but also the financial (and physical and emotional) cost to the litigants, thoroughness and impartiality of the legal analysis and application in conformity with established law at every stage of the case, and adequate safeguards for due process.[1] We also do not mean to equate time to disposition with fairness of procedure. A speedy time to disposition may be the result of conscious, good faith efforts of attorneys and judges to move a case to resolution, but it may also be the result of unacceptable procedural shortcuts, overwrought managerialism,[2] or economic pressure to settle.[3] Nevertheless, time is an important factor, and "speedy" resolution of cases an explicit goal.[4]

We recognize at the outset that not all civil cases are the same. Despite the existence of one national set of rules for civil cases – the Federal Rules of Civil Procedure – each case will follow a

[1] Here, "due process" includes not only traditional safeguards, but also the sense that at the end of the case, each litigant should feel as if he or she had a fair opportunity to be heard.
[2] At least one commentator has argued, for example, that granting a district judge broad power to control pretrial procedure increases the risk of arbitrary (and unreviewable) case management decisions, overt or unconscious bias, and coerced settlements. *See* Todd D. Peterson, *Restoring Structural Checks on Judicial Power in the Era of Managerial Judging*, 29 U.C. DAVIS L. REV. 41, 80-81 (1995).
[3] Philip G. Peters, Jr., *Health Courts?*, 88 B.U. L. REV. 227, 259 (2008) (noting pressure on plaintiffs in medical malpractice cases to settle); Jay M. Feinman, *Incentives for Litigation or Settlement in Large Tort Cases: Responding to Insurance Company Intransigence*, 13 ROGER WILLIAMS U. L. REV. 189, 227 (2008) (noting settlement pressure on defendants in malicious defense actions).
[4] Fed. R. Civ. P. 1.

procedural path unique to its nature of suit[5] and operative facts. Some cases are filed with the expectation of little discovery and a quick resolution through default judgment, consent judgment, or early settlement. Other cases may have extensive discovery on both liability and damages, specialized evidentiary hearings, and bifurcated trials. Some types of cases are appropriate for resolution on summary judgment; others are not. Accordingly, the Federal Rules are less like a flow chart and more like a buffet of procedural options for litigants.[6] It therefore makes sense – even discounting litigant objectives and judicial styles – that some types of civil cases will take more time to resolve than others.

Even for cases with the same nature of suit, however, the average time to disposition varies significantly from district court to district court. This study found, for example, that civil rights cases involving claims of employment discrimination took twice as long on average to resolve in one district court as they did in a different district court, even though both courts had the same number of district judges and a very similar civil caseload. For insurance cases in the same two courts, the mean difference in the overall case length was more than three times as long. Notable differences were also apparent in the way courts processed various components of a case, such as elapsed time to rule on motions, filing rates to motions for extensions of time, and the speed with which Rule 16 scheduling conferences were set after the case was filed.

This study is, at its core, an effort to understand why these variations occur. How is it that summary judgment motions in one court can be ruled upon in an average of two months after filing, while another court rules on them in an average of eight months? On what tools, processes and attitudes does each court rely, and can those tools and attitudes help explain the difference in time from court to court (or within some courts, from judge to judge)? Perhaps more importantly, can the

[5] The U.S. Courts organize all civil cases into several broad categories – contract, tort, civil rights, labor, etc. – and further subdivide those categories into "nature of suit" codes to reflect more precisely the subject matter of the suit. For example, the broad category of "Torts (Personal Injury)" contains nature of suit codes for, among other case types, airplane, marine, motor vehicle, medical malpractice, asbestos, and various forms of product liability suits. *See* Public Access to Court Electronic Records, Nature of Suit Codes, http://pacer.psc.uscourts.gov/natsuit.html.

[6] The Federal Rules of Civil Procedure were originally designed to be trans-substantive; that is, applicable across a broad range of substantive case types. *See generally* Robert M. Cover, *For James Wm. Moore: Some Reflections on a Reading of the Rules*, 84 YALE L.J. 718 (1975); *see also* Judith Resnik, *Failing Faith: Adjudicatory Procedure in Decline*, 53 U. CHI. L. REV. 494, 495 (1986). It was never anticipated, however, that the procedural path would be the same for each case.

tools and attitudes that promote faster resolution in some courts (and among some judges) be utilized in other courts and by other judges to achieve similarly successful results?

We have made every effort to be thoughtful, fair and accurate in our analysis. Our data were assembled by carefully reviewing the docket sheets of nearly 7700 civil cases that closed in eight United States District Courts between October 1, 2005 and September 30, 2006. By choosing a set time span for when cases closed, we captured cases that terminated one day after filing, as well as cases that were filed many years before the termination date. We entered extensive information about each case into a specially designed database, including details relating to the nature of suit, court, judges and/or magistrate judges involved, pretrial schedule, motion practice, extensions and continuances of deadlines, trials, court-ordered or court-sponsored alternative dispute resolution measures, number of parties and attorneys, and nature of final disposition. In six districts, we entered every case that closed during the time period, except for a few case types with atypical procedural postures (such as prisoner cases). In the two largest districts, we took a random sample of the cases and entered information on that sample. We also attempted to record, and where possible quantify, aspects of the court's culture, local legal culture, and judicial leadership to determine whether they helped explain the difference in case length. The conclusions from this extensive study follow.

II. HISTORY AND CONTEXT

Prior studies – both empirical and anecdotal – have suggested a number of factors that may contribute to the overall time it takes to process a civil case in the federal courts. These factors include the nature of the suit itself,[7] whether the district judge issues a written order or opinion,[8] whether the court holds a hearing on a motion,[9] and whether the court becomes directly involved in promoting settlement.[10] Several conclusions and assumptions from these earlier studies have been revisited over the years, sometimes with contradictory findings. Our primary objective here is not to validate or invalidate any particular set of conclusions, but rather to build upon prior work with the help of new data. Ultimately, we hope this report will cast light on the functioning of civil rules and caseflow management practices in the federal courts in the first decade of the twenty-first century.

The predecessors to our work date back nearly fifty years, beginning with an extensive study of civil case delay focusing on the Supreme Court of New York County in 1959.[11] But substantial interest in the impact of civil rules and individual judges' practices on the cost and speed of civil actions did not pick up steam until the mid-1970s. In 1976, the American Bar Association Commission on Standards in Judicial Administration released recommended standards for the administration of trial courts.[12] That same year, several prominent organizations sponsored the National Conference on the Cause of Popular Dissatisfaction with the Administration of Justice (the Pound Conference),[13] which focused on concerns about the American justice system and opportunities for improvement.

Shortly after the Pound Conference, the Federal Judicial Center (FJC) issued three studies on judicial control in civil litigation. The first study, directed by Steven Flanders, was published in 1977

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[7] *See* Robert A. Carp and Claude K. Rowland, *The Relationship Between Opinion Writing by Federal Trial Judges and the Termination Rates of the District Courts*, 5 JUST. SYS. J. 187, 189 (1979).
[8] *See* STEVEN FLANDERS ET AL., CASE MANAGEMENT AND COURT MANAGEMENT IN UNITED STATES DISTRICT COURTS 56 (1977) (noting that "The number of opinions published has a strong inverse relationship to terminations per judgeship"); *but see* Carp & Rowland, *supra* note 7, at 192 (concluding that "there is no empirical evidence to suggest any aggregate nationwide relationship between termination rates and published opinions by federal district judges.").
[9] FLANDERS, *supra* note 8, at 31-33.
[10] *Id*. at 37-39.
[11] HANS ZEISEL, HARRY KALVEN, JR. & BERNARD BUCHHOLZ, DELAY IN THE COURT (1959).
[12] ABA COMMISSION ON STANDARDS OF JUDICIAL ADMINISTRATION, STANDARDS RELATING TO TRIAL COURTS (1976).
[13] The conference, sponsored by the Judicial Conference of the United States, the American Bar Association, and the Conference of Chief Justices, commemorated the seventieth anniversary of Roscoe Pound's American Bar Association address of the same name.

and was entitled *Case Management and Court Management in United States District Courts* (the Flanders study).[14] That study reviewed the dockets of approximately 500 cases in each of six federal district courts located in metropolitan areas in order to identify characteristics of the fastest and slowest courts (measured, as in our study, by time from filing to disposition).[15] The FJC research team also visited the subject courts to discuss each judge's approach to handling his or her docket, both with the individual judge and with court staff.[16] Ultimately, the Flanders study concluded that the factors that primarily distinguish the fast and/or highly productive[17] courts were:

- An automatic procedure that assures, for every civil case, that pleadings are strictly monitored, discovery begins quickly and is completed within a reasonable time, and a prompt trial follows if needed;
- Procedures that minimize or eliminate judges' investment of time through the early stages of a case, until discovery is complete;
- A minimized role of the court in settlement;
- Relatively few written opinions prepared for publication; and
- Open court hearings for all proceedings that do not specifically require a confidential atmosphere.[18]

Another FJC study, focusing on discovery, followed in 1978 (the Connolly discovery study).[19] Using the same pool of cases as the Flanders study, the Connolly discovery study concluded that the "judiciary's use of effective case and court management techniques can help speed the termination of civil actions without impairing the quality of justice."[20] Specifically, the Connolly discovery study found that cases in which judges used "strong" discovery controls – early cutoff dates, finite periods for discovery activity, and infrequent grants of extensions – "exhibited dramatically shorter discovery times than cases before judges who used limited or no controls."[21]

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[14] FLANDERS, *supra* note 8.
[15] *Id.* at 18.
[16] *See id.* at 4.
[17] The Flanders study approximated a court's "productivity" by examining the number of cases terminated per judge in 1974-75, as well as the weighted number of filings per deputy clerk in the same time frame. The authors were quick to admit, however, that "At best, these measures incompletely represent productivity." *Id.*
[18] *Id.* at ix-x.
[19] PAUL R. CONNOLLY ET AL., JUDICIAL CONTROLS AND THE CIVIL LITIGATIVE PROCESS: DISCOVERY (1980).
[20] *Id.* at 3.
[21] *Id.* at 54.

A third FJC study was released in 1980, focusing on motion practice (the Connolly motion study).[22] That study matched the finding of the Flanders study that management of motion practice through "routine oral argument on motions combined with minimal preparation of opinions for publication"[23] was an effective means of "speed[ing] civil terminations without impairing the quality of justice."[24]

At the same time that the FJC was conducting its review of delay in the federal courts, various groups were attempting to identify analogous challenges in the state courts. In 1978 the National Center for State Courts published a study of twenty-one general jurisdiction courts in major cities across the United States, sampling 500 closed civil and 500 closed criminal cases from each court and conducting interviews with attorneys and court staff.[25] Importantly, that study emphasized for the first time the notion of local legal culture and court culture driving a court's efficiency. Specifically, the authors noted that

> informal expectations, attitudes, and practices of attorneys and judges have a great deal more to do with trial court delay than the aspects of a court system that can be gleaned from an annual report, organization chart, or compilation of local rules. These subjective elements of the local legal community affect the level of a court system's *concern* with the existing pace of civil and criminal litigation. If any one element is essential to the effort to reduce pretrial delay, it is concern by the court with delay as an institutional and social problem.[26]

The conclusions reached by the FJC and NCSC studies in the late 1970s were generally reproduced by several subsequent studies over the next decade.[27] Out of these studies developed a substantial body of literature and policy prescriptions dedicated to the concept of caseflow management.[28] These studies also fueled efforts to use statistical modeling as a means to identify

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[22] PAUL R. CONNOLLY & PATRICIA A. LOMBARD, JUDICIAL CONTROLS AND THE CIVIL LITIGATIVE PROCESS: MOTIONS (1980).
[23] *Id*. at 4-5.
[24] *Id*. at 4.
[25] *See* THOMAS CHURCH, JR., ET AL., JUSTICE DELAYED: THE PACE OF LITIGATION IN URBAN TRIAL COURTS 3-4 (1978).
[26] *Id*. at 5.
[27] *See, e.g.*, Joel B. Grossman et al., *Measuring the Pace of Civil Litigation in Federal and State Trial Courts*, 65 JUDICATURE 86, 112-13 (1981); BARRY MAHONEY ET AL., CHANGING TIMES IN TRIAL COURTS: CASEFLOW MANAGEMENT AND DELAY REDUCTION IN URBAN TRIAL COURTS (1988); JOHN GOERDT ET AL., EXAMINING COURT DELAY: THE PACE OF LITIGATION IN 26 URBAN TRIAL COURTS, 1987, at 38-41 (1989); TERENCE DUNGWORTH & NICHOLAS M. PACE, STATISTICAL OVERVIEW OF CIVIL LITIGATION IN THE FEDERAL COURTS (1990).
[28] Indeed, the 1980s and early 1990s might be considered a golden age of thought and experimentation with respect to caseflow management. *See generally* Ernest C. Friesen et al., *Justice in Felony Courts: A Prescription to Control Delay*, 2 WHITTIER L. REV. 7 (1979); LARRY L. SIPES ET AL., MANAGING TO REDUCE DELAY (1980); PATRICIA A.

sources of delay and reduce time consumed in the legal process, through techniques such as sequencing cases and case events in an optimal order.[29]

The problems associated with cost and delay also caught the eye of Congress. In 1990, that body passed the Civil Justice Reform Act (CJRA), which required each federal district court to develop a civil justice expense and delay reduction plan, the purposes of which were "to facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure just, speedy, and inexpensive resolutions of civil disputes."[30] The CJRA further required the Director of the Administrative Office of the United States Courts to prepare a semiannual report, available to the public, disclosing the number of motions pending more than six months, the number of submitted bench trials pending more than six months, and the number of cases pending more than three years for each judicial officer.[31] Following the expiration of the CJRA, the Judicial Conference of the United States adopted a policy that establishes the same reporting requirements.[32]

The CJRA also required an evaluation of ten pilot districts, as well as ten comparison districts that were not obligated to implement the Act's six preferred case management techniques.[33] The RAND Institute for Civil Justice was selected to conduct the evaluation. In 1996, RAND released the results of its study, based on a review of (among other things) more than 10,000 cases across the twenty selected districts; interviews with judicial officers, court staff and lawyers; mail surveys of

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EBENER ET AL., COURT EFFORTS TO REDUCE DELAY: A NATIONAL INVENTORY (1981); WILLIAM W. SCHWARTZER & ALAN HIRSCH, THE ELEMENTS OF CASE MANAGEMENT (1991); FEDERAL JUDICIAL CENTER, MANUAL FOR LITIGATION MANAGEMENT AND COST AND DELAY REDUCTION (1992); GOERDT ET AL., *supra* note 27, at 48-49; MAHONEY ET AL., *supra* note 27, at 197-205. *See also* DAVID C. STEELMAN ET AL., CASEFLOW MANAGEMENT: THE HEART OF COURT MANAGEMENT IN THE NEW MILLENNIUM (2000); JUDICIAL CONFERENCE OF THE UNITED STATES COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT, CIVIL LITIGATION MANAGEMENT MANUAL (2001).

[29] *See, e.g.*, Stuart S. Nagel & Marian Neef, *Time-Oriented Models and the Legal Process: Reducing Delay and Forecasting the Future*, 1978 WASH. U. L. Q. 467, 474-82 (1978).

[30] 28 U.S.C. § 471; *see also id*. § 473.

[31] *See* 28 U.S.C. § 476.

[32] JUDICIAL CONFERENCE OF THE UNITED STATES, THE CIVIL JUSTICE REFORM ACT OF 1990 FINAL REPORT: ALTERNATIVE PROPOSALS FOR REDUCTION OF COST AND DELAY ASSESSMENT OF PRINCIPLES, GUIDELINES & TECHNIQUES 2 (1997) [hereinafter JUDICIAL CONFERENCE REPORT].

[33] Civil Justice Reform Act, Pub. L. No. 101-650, sec. 105 (1990).

attorneys and litigants; surveys of judicial officers; court records; and each district's cost and delay reduction plan.[34]

The main findings of the RAND study were that the CJRA pilot program, as implemented, had little effect on time to disposition, litigation costs, participants' satisfaction with the process, and views of the fairness of the process. At the same time, however, the study concluded that "what judges do to manage cases matters."[35] Specifically, early judicial case management had the effect both of significantly reduced time to disposition and significantly *increased* costs to litigants (as measured by attorney work hours).[36] The RAND study estimated, though, that the increase in costs associated with early case management could be offset by early trial settings and a shortened discovery cutoff.[37] Finally, the study noted that since the adoption of public reporting requirements under the CJRA, there had been a 25% decrease in pending civil cases more than three years old.[38]

The Judicial Conference of the United States issued a response to the CJRA and the RAND study in May 1997.[39] While maintaining that the federal judiciary had "a longstanding commitment to sound case management,"[40] the Judicial Conference declined to endorse expansion of the entire package of CJRA reforms. Rather, the Judicial Conference proposed an "alternative cost and delay reduction program" built on eight measures to be implemented by the judiciary: (1) continuation of the CJRA Advisory Group process; (2) continued statistical reporting of caseflow management as prescribed by the CJRA; (3) encouraging the setting of early and firm trial dates and shorter discovery periods; (4) encouraging the effective use of magistrates; (5) increasing the role of the Chief Judge in case management; (6) encouraging intercircuit and intracircuit judicial assignments to promote efficient case management; (7) extending education regarding efficient case management to the entire legal community; and (8) encouraging the use of electronic technologies in the district courts, where

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[34] JAMES S. KAKALIK ET AL., IMPLEMENTATION OF THE CIVIL JUSTICE REFORM ACT IN PILOT AND COMPARISON DISTRICTS xv (1996)
[35] JAMES S. KAKALIK ET AL., JUST, SPEEDY, AND INEXPENSIVE? AN EVALUATION OF JUDICIAL CASE MANAGEMENT UNDER THE CIVIL JUSTICE REFORM ACT 1 (1996) [hereinafter JUST, SPEEDY, AND INEXPENSIVE?].
[36] *See id.* at 1-2.
[37] *Id.* at 2.
[38] *Id.* at 24.
[39] JUDICIAL CONFERENCE REPORT, *supra* note 32.
[40] *Id.* at 1.

appropriate.[41] In addition, the Judicial Conference asked Congress and the Executive Branch to recognize the impact on litigation delay posed by judicial vacancies, new criminal and civil statutes, and insufficient courtroom space.[42] More than a decade later, implementation of these measures has been mixed. The Advisory Groups have largely disbanded and their responsibilities have been folded into Rules Groups and Bench-Bar Committees. In some districts, work continues on improving internal statistical reporting, but it is unclear whether – and when – such reports will be made available to the public. And while the Judicial Conference's *Civil Litigation Management Manual* has incorporated caseflow management recommendations, there has been no universal adoption of many of the recommended techniques.

Since 1996, there have been no further studies concerning the entirety of case processing in the federal courts. Instead, the focus has turned to the mechanics of caseflow management and the need for all courts to address cost and delay issues.[43] These efforts are praiseworthy, but after more than a decade it is worthwhile to revisit their statistical underpinnings, especially because federal court docket data are now much more readily accessible for analysis. The federal Case Management/Electronic Case Filing (CM/ECF) system allows individual courts to run their own reports using nationally consistent categories and defined terms.[44] For a fee (waivable for research, as with this study), the public can also access dockets, calendars, filings, opinions, judgments, and a limited scope of reports on federal cases through the CM/ECF system and PACER interface.[45] The days of visiting the courthouse to pore over paper dockets and files are becoming fewer and fewer. This study would not have been possible, or certainly would have been more circumscribed, had the research team been limited to paper dockets and files.

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[41] *Id*. at 3-4.
[42] *Id*. at 4-5.
[43] *See, e.g.*, STEELMAN, *supra* note 28.
[44] *See* Rebecca Love Kourlis & Pamela A. Gagel, *Reinstalling the Courthouse Windows: Using Statistical Data to Promote Judicial Transparency and Accountability in Federal and State Courts*, 54 VILL. L. REV. ___, ___ (forthcoming).
[45] *See* PACER USER MANUAL FOR ECF COURTS 28-31 (updated Jan. 2006), *available at* http://www.pacer.psc.uscourts.gov/documents/pacermanual.pdf.

III. METHODOLOGY

A. Selection of Subject Courts

Subject courts for this study were chosen on the basis of four criteria, in roughly descending order of relative importance: (1) size (as measured by the number of authorized district judges);[46] (2) national rankings in judicial caseload profiles, based on publicly available Federal Court Management Statistics; (3) willingness of the subject court to grant a waiver of PACER access fees;[47] and (4) geographic diversity.

The size of the court, as measured by the number of authorized district judges, was a natural starting point. Courts may approach caseflow management differently based on the number of district judges they have: for example, courts with a large number of district judges may be better able than courts with fewer judges to populate many division offices simultaneously; compensate for the loss of a judge due to retirement or illness; or allow one judge to handle an entire category of cases. Smaller courts may find it easier than larger courts to create uniform practices among all district judges, and may enjoy greater ease of communication among a smaller group of judges. Accordingly, the study divided the federal district courts into three categories based on size: small courts (4 or fewer authorized district judgeships), medium (5-8 authorized judgeships), and large (9 or more authorized judgeships). In selecting districts, we did not account for visiting or senior judges. Neither did we explicitly account for vacant judge months in the Eastern District of Virginia, the only court in the study with recorded judicial vacancies during the 2005-06 period.

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[46] Each district court is authorized to have a certain number of full-time district judges by Congress. *See* 28 U.S.C. § 133. In addition, each court may control its caseload through the use of magistrate judges (appointed for terms pursuant to Article I of the Constitution), senior judges (district judges who have taken senior status and have substantial discretion over the type and volume of their caseloads), and visiting judges (who are assigned to another district but preside over specific cases). The Federal Court Management Statistics note the number of authorized judges per district, but do not account for senior or visiting judges, magistrate judges presiding by consent of the parties, or factors that impact the number of active district judges such as sickness, temporary personal hardship, or vacancies.

[47] Public access to federal court dockets is available through the PACER system at a set cost of eight cents per page viewed. *See* PACER MANUAL FOR ECF COURTS at 2 (updated Jan. 2006), *available at* http://www.pacer.psc.uscourts.gov/documents/pacermanual.pdf. This charge applies for search results even if the search yields no matches. *See id.* Although the charge for any one search or document view is capped at $2.40 – the cost of 30 pages – the cumulative charges for viewing nearly 8000 docket sheets, and many thousands of motions and pleadings, would quickly have totaled tens of thousands of dollars. IAALS expresses its gratitude to the district courts that each granted a waiver to allow it to conduct this research without incurring a substantial financial burden.

Within each size category, courts were arranged according to their national rankings in the September 2006 Federal Court Management Statistics. In this volume, the Administrative Office of the United States Courts identifies, district by district, various measures including the median time, in months, for civil cases from filing to disposition, and states each court's numerical standing among all districts and other districts in the circuit as of September 30 of each year.[48] These statistics are some of the only publicly available comparative numbers on median disposition times. Within each size category, we selected courts with high, mid-level, and low rankings for mean time from filing to disposition of civil cases, and sought PACER fee waivers from those courts. We deliberately sought out district courts with diverse rankings with respect to time from filing to disposition, including those districts with very high and very low rankings, in order to see whether we could isolate the factors that contributed to those rankings.

In all, IAALS sought waivers from fifteen district courts. Ten of those courts granted waivers, and eight were ultimately chosen for the study. The eight are the Districts of Arizona, Colorado, Delaware, Idaho, Eastern Missouri, Oregon, Eastern Virginia and Western Wisconsin. The general characteristics of each district are set forth in the chart below.

TABLE 1
SUBJECT DISTRICTS – SIZE AND 2006 FEDERAL COURT MANAGEMENT RANKINGS

District	Circuit	Size	Number of Authorized District Judges	Filing to Disposition Rank – Civil	Filing to Trial Rank
Arizona	9	Large	12	76	66
Colorado	10	Medium	7	34	66
Delaware	3	Small	4	91	49
Idaho	9	Small	2	90	63
E. Missouri	8	Medium	8	11	30
Oregon	9	Medium	6	71	54
E. Virginia	4	Large	11	3	1
W. Wisconsin	7	Small	2	2	4

As a final matter, the study sought to review courts from different parts of the United States. The subject districts represent substantial geographic and demographic variation, with both urban and rural areas and locations in the Mid-Atlantic, Midwest, Northwest, Rocky Mountain West, South and

[48] *See* http://www.uscourts.gov/library/statisticalreports.html.

Southwest. Although three of the district courts that were ultimately selected sit within the Ninth Circuit, they are quite different geographically. Arizona is a southwestern state bordering Mexico, Idaho touches Canada, and Oregon borders the Pacific Ocean. Arizona also has a significant urban population, while Idaho lacks large urban centers.

We offer a brief word on the courts that were part of the original study pool, but not part of this final study. The two district courts which granted waivers but which were not selected for the study were similar in size, Federal Court Management rankings, and geography to courts that were selected for the study. The five courts that did not grant waivers included one small court, three medium courts, and one large court. These five courts were evenly distributed in the Federal Court Management rankings for median time from filing to trial, but tended more toward the extremes for median time from filing to disposition (three "fast" courts, one average court, and one "slow" court).

The methodology of this study was similar but not identical to the methodology employed in the Flanders study. Like Flanders, we consulted with representatives of the subject courts and assembled a database based on an extensive study of docket sheets from closed cases.[49] We also sought out courts that tended more toward the extremes with respect to speed in civil case processing, although this study did incorporate two courts (Colorado and Oregon) that fell within the mid-range of the rankings for filing to disposition times.[50] Also like Flanders, this study examined both metropolitan courts and rural courts.[51] Unlike Flanders, we did not explicitly choose subject courts based on "productivity" (as measured by weighted case filings and terminations per active judgeship).[52] However, the courts in this study did exhibit variation in these "productivity" measurements. In all, three courts in the study were at or near the national average of 517 terminations per active judgeship in the 2006 Federal Court Management Statistics, three were below that average, one was well below, and one was well above.[53]

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[49] *See* FLANDERS, *supra* note 8, at 4.
[50] *See id.* at 3-4.
[51] *Id*. at 1.
[52] *See id.* at 1-2.
[53] *See* U.S. District Court – Judicial Caseload Profile: All District Courts, http://www.uscourts.gov/cgi-bin/cmsd2006.pl. Per-judge terminations for individual courts can be accessed through the same website.

B. Data Collection and Analysis

The study considered civil cases that were closed in the subject district courts between October 1, 2005 and September 30, 2006. Cases that were closed prior to that period but reopened and reclosed during that period were included in the study, but cases that were reopened after September 30, 2006 were not included. A case was considered closed if the docket indicated a termination date upon judgment or order after trial, motion or another relevant event. Cases with a judgment on appeal were treated as closed for purposes of the study.

Most civil case types (as defined by nature of suit), including those concerning contracts, real property, torts, civil rights, labor issues, bankruptcy, intellectual property, tax, and other federal statutes were included in the study. Certain nature of suit codes, however, were excluded. Specifically, we did not consider student loan cases, recovery of overpayment and enforcement of judgments, recovery of overpayment of veterans' benefits, forfeiture cases, social security cases, deportation proceedings, and most prisoner petitions.[54] These cases were omitted because they have procedural postures that do not reflect the typical civil cases that employ the Federal Rules of Civil Procedure. Some nature of suit codes that were included in the study are fairly broad and may include a wide range of factual scenarios (such as "Civil Rights – Employment" or "Other Contract" cases); however, we maintained the federal designations and did not attempt further subdivision for this study.

In the three small and three medium-sized districts, every (non-excluded) civil case closed during the relevant time period was examined and logged. However, the number of cases closed during the one-year study period varied directly with the size of the district. In the chosen time frame, there were only 374 closed civil cases in Western Wisconsin, which has two authorized district judges. By contrast, in the large districts of Arizona and Eastern Virginia, the numbers of closed civil cases in the same time frame were approximately 2300 and 3000, respectively. Because of the large numbers of closed cases in the two large districts, we randomly sampled a pool of approximately 400 closed

[54] Any prisoner petition filed under the federal Nature of Suit Code 510, 530, 535, 540, 550 or 555 was excluded. These cases generally involve allegations of wrongful imprisonment or prison conditions. However, cases filed by a prisoner that otherwise fell within one of the Nature of Suit categories selected for review were included in the study.

cases from those districts. The total number of cases logged for each district in the study is shown below.

TABLE 2
NUMBER OF CASES LOGGED BY DISTRICT

District	Number of Cases Entered
Arizona	377
Colorado	1902
Delaware	936
Idaho	406
Eastern Missouri	1916
Oregon	1362
Eastern Virginia	415
Western Wisconsin	374

The sample size for the Districts of Arizona and Eastern Virginia is sufficiently large to allow statistically significant conclusions to be drawn.[55] Throughout this report, wherever total numbers are compared between districts, the numbers have been normalized. For example, the number of summary judgment motions recorded per district is provided not in absolute terms, but as a ratio of summary judgment motions filed per 100 cases in each district.

Once the districts were selected, a limited number of cases were reviewed to help design a comprehensive database for data entry. Ultimately, a specialized database was developed with eight major categories of information on each case: (1) basic information on the case (such as case number, party names, nature of suit and cause code, number of named attorneys, opening and closing dates, disposition code and progress at point of termination); (2) information on the assignment of individual judges and magistrate judges to each case; (3) information concerning the parties' efforts at settlement, mediation, or other forms of alternative dispute resolution, to the extent they were recorded on the docket;[56] (4) information on each discovery motion filed; (5) information on each dispositive motion filed (including *pro forma* motions such as stipulations of dismissal); (6) information on

[55] The minimum necessary sample size was estimated to be 385 cases, based on a 95% confidence interval, an error tolerance E of 0.05, and a conservative estimate of .50 for the population proportion. For both districts, a random sample of approximately 420 cases was selected, although some cases in both districts were later removed because they did not fit the requisite nature of suit criteria.

[56] Only court-ordered settlement and alternative dispute resolution efforts appeared on the docket sheets. To the extent the parties held private mediation or settlement meetings, they would not be reflected in the docket and were not recorded.

selected other relevant motions filed (primarily seeking extensions of time); (7) information on the scheduling of major deadlines in the case (close of discovery, filing of dispositive motions, trial, etc.) and efforts to continue those deadlines as the case progressed; and (8) trial information. Screen shots of the specialized database are included in Appendix A.

We generally did not open pleadings and motions when logging them, relying instead on the data available on the docket sheet. Indeed, in some instances the actual documents were not even available via PACER. In two circumstances, however, motions and orders *were* electronically opened and reviewed: either the order was believed to contain a case management schedule that was not otherwise set out in the docket, or the title of the motion or order did not make clear its specific subject matter or nature (for example, documents merely entitled "Motion to Compel").

To promote consistency and accuracy in entering the relevant data, the database was populated in advance with drop-down menus for most categories. For example, with respect to what type of hearing (if any) was conducted on a motion, those entering data were required to choose between "No hearing", "Open court", "Telephonic", "Chambers" or "Videoconference." From time to time during the course of data entry, the IAALS Director of Research added new categories to the drop-down menus to reflect new or unanticipated docket entries. The final list of drop-down options is available in Appendix B.

The data in this report were not subjected to a formal inter-rater reliability study, because some members of the data entry staff ceased working on the project before data entry was complete and were later unavailable to participate in a reliability study. However, ongoing efforts to promote consistency in data entry were maintained throughout the project, including regular meetings among all data entry staff to discuss a uniform approach to entering information. Further, all data entry staff worked collectively in the same space, facilitating the sharing of information and allowing specific issues to be handled immediately and uniformly.

Once data entry was complete, the data were scoured for obvious errors and cleaned. Special queries were written to identify motions and cases whose time to ruling or disposition fell outside

expected norms,[57] and the docket sheets for those cases were individually double-checked to confirm the accuracy of the data. During the course of data analysis, a small number of additional data entry errors were identified and corrected. The final cleaned data were subjected to a range of statistical analyses, which are discussed later in this report.

C. Interviews with Subject Courts

In addition to reviewing the data available through PACER, the research staff scheduled conference calls with representatives of each subject court to discuss relevant findings. These representatives were either judicial officers or high-level court administrators (*i.e.*, the Clerk, Chief Deputy Clerk, or Deputy Clerks involved in the case management process). The first set of calls took place in November and December of 2007, with all districts except the District of Delaware electing to participate. Calls with each court lasted from one to two hours and initially focused on the court's use of magistrate judges, collection and dissemination of case management data (both internally and externally), and practices (if any) that the court had adopted to track and reduce delay in case processing. During the first round of calls, the preliminary statistical findings for each district were shared with the district representative. The information and explanations of unique processes for each court derived from the phone calls were integrated into our overall analysis.

A second round of calls took place in June 2008, after the bulk of the statistical analysis was completed. Prior to the second round, IAALS sent preliminary data from the study to all participating districts. Many of the second round calls focused on interpretations or understanding of these data, and in some instances additional analyses were performed after the call. IAALS also twice presented some of the preliminary data to groups of federal district and magistrate judges, and senior clerks, in order to elicit their observations and feedback. IAALS staff also contacted selected courts late in 2008 with additional questions on new statistical findings. IAALS expresses its gratitude to everyone in the subject courts who helped provide a richer understanding of the data.

[57] Queries were written to identify the following outliers: case length (filing to disposition) over four years; case filing to Rule 16 conference over two years; Rule 16 conference to pre-trial order over two years; and any motions pending over 12 months. The data scrubbing process also identified any negative time periods, motions or cases without ruling or termination information; and false indicators of trial verdicts and judgments.

D. Survey Data from Attorneys

This study is also informed by the results of a survey conducted by IAALS and the American College of Trial Lawyers (ACTL) Task Force on Discovery in the spring of 2008.[58] That survey sought both multiple choice answers and free-form comments about every major aspect of pretrial procedure from Fellows of the ACTL with a civil practice in the United States. Nearly 1500 Fellows responded to the survey. The comments from the survey were collated, and those comments from Fellows whose primary jurisdiction of practice lay in one of the eight subject courts of this study were carefully reviewed. In many instances, the comments provided an attorney's perspective that helped clarify or augment the empirical findings from the PACER data.

[58] For details on the survey methodology and key findings, *see* AMERICAN COLLEGE OF TRIAL LAWYERS & INSTITUTE FOR THE ADVANCEMENT OF THE AMERICAN LEGAL SYSTEM, INTERIM REPORT & 2008 LITIGATION SURVEY OF THE FELLOWS OF THE AMERICAN COLLEGE OF TRIAL LAWYERS (Sep. 9, 2008), *available at* http://www.du.edu/legalinstitute/form-ACTL-survey.html.

IV. FINDINGS

In this section, we consider the relationships between the overall time to disposition of a case and the timing of key events in the civil pretrial process, such as scheduling, discovery, and motion practice. We then explore how the eight subject districts handled the timing of these events. Before commencing this breakdown, however, it is worth taking a 30,000-foot view of times to disposition in the courts studied. From this vantage point, one fundamental conclusion stands out: similar cases are *not* processed in the same amount of time across the courts studied. Put another way, cases with the same nature of suit may take two or three times as long on average to resolve in one district court than in another district court, even when the two courts have roughly the same number of judges and roughly the same civil caseload. A few examples demonstrate the distinction in stark detail:

TABLE 3
TIME FROM FILING TO DISPOSITION FOR SELECTED NATURE OF SUIT CATEGORIES

CIVIL RIGHTS – EMPLOYMENT CASES

District	No. of cases	Mean time in days	Median time in days
Idaho	35	507.03	471
W. Wisconsin	31	257.16	249

INSURANCE CASES

District	No. of cases	Mean time in days	Median time in days
Idaho	19	433.63	385
W. Wisconsin	15	133.93	114

OTHER CIVIL RIGHTS CASES

District	No. of cases	Mean time in days	Median time in days
Colorado	192	423.61	300.5
E. Missouri	169	250.42	141

OTHER CONTRACT CASES

District	No. of cases	Mean time in days	Median time in days
Delaware	48	450.08	352
W. Wisconsin	55	148.56	126

While such strong distinctions were not evident for every case type and across every possible court pairing, the figures in Table 3 pointedly illustrate the gulf between filing and disposition times across

courts for certain common case types, even for cases that are generally considered to be more complex and require more time based on their nature of suit.[59]

The finding that the same case type can take much longer to resolve in one court than in another merely confirms long-held suspicions. Indeed, practicing attorneys have long asserted anecdotally that certain federal district courts, and certain judges within those courts, have a propensity to process cases more quickly than others.[60] The deeper and more meaningful question is why this is the case. We begin this inquiry in Subsection A by using the collected data from all cases to examine statistical correlations associated with the time between certain pretrial events and the overall time to disposition. In Subsection B we examine each court's practice in a more detailed way, looking at how judges and attorneys in each court approach the timing of critical pretrial events. Finally, in Subsection C we consider four non-quantifiable factors that may influence time to disposition: local legal culture, local rules and practices, transparency and reporting, and judicial leadership.

A. *Statistical Correlations*

In this Subsection we examine the degree to which the elapsed time between specific events in the civil pretrial process contribute to the overall time to resolve a case. The study found that while there is no single factor in the handling of civil cases that distinguishes faster courts from slower courts, certain factors are more closely correlated with the overall time to resolve a case than others.[61]

As discussed in greater detail below, among the variables with the strongest correlation to overall time to disposition were (1) the elapsed time from case filing to the setting of a trial date, (2)

[59] The federal judiciary has recognized and accounted for varying levels of complexity among civil cases in two primary ways. First, since 1946 the federal courts have adopted a "weighted filing" system which accounts for differences in time required for judges to resolve certain types of cases. An average case receives a weight of 1.0; higher weights are assessed for more complex cases demanding more judge time and lower weights are assessed to cases demanding relatively less judge time. Administrative Office of the United States Courts, Explanation of Selected Terms, http://www.uscourts.gov/fcmstat/cmsexpl07.pdf. Second, many courts have adopted principles of differentiated case management (DCM), which sets civil cases on different tracks (with different degrees of judicial management) based on the expected complexity of the case. *See* BUREAU OF JUSTICE ASSISTANCE, FACT SHEET: DIFFERENTIATED CASE MANAGEMENT 1 (Nov. 1995).

[60] Although we are aware of no formal study on the subject, anecdotal evidence suggests that the efficiency of a court in processing cases may be one factor in a party's decision as to where to file suit. *See, e.g.*, Jerry Crimmins, *Patent Plaintiffs Flock to "Rocket Docket" in Wis.*, CHICAGO DAILY L. BULL. (Aug. 14, 2008).

[61] The discussion that follows is based on an analysis of the 7688 cases in the eight district courts chosen for this study. We welcome further study of the same variables across a broader range of district courts to confirm our findings.

the elapsed time from the Rule 16 scheduling conference to the filing of a motion seeking leave to conduct additional discovery, and (3) the elapsed time from case filing to the filing of a motion to dismiss or a motion for summary judgment.

To anyone who has worked in or with the federal district courts, none of these individual findings is likely to be very surprising. Lower times from filing to disposition are frequently observed (at least informally) when a firm trial date is set early and maintained, discovery is kept on track, and dispositive motions are resolved at the earliest possible opportunity. In other words, maintaining a firm schedule for major pretrial events matters.

1. *The strongest correlations*

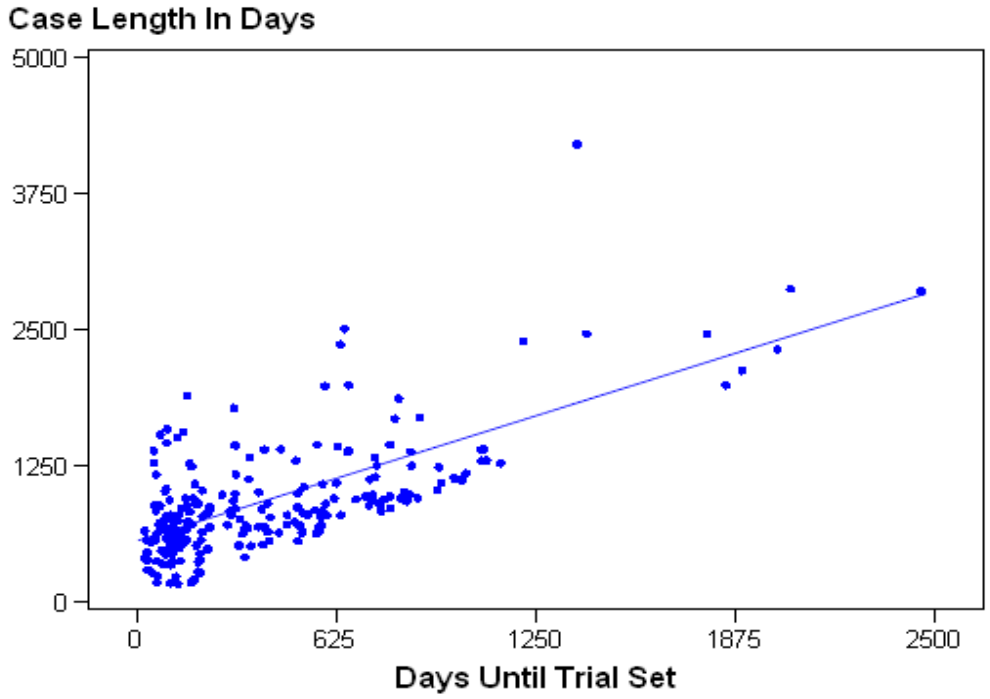
The study measured the statistical correlation between the overall time to disposition of a case and approximately fifty different variables in the case, focusing on the time between key events, the numbers of motions filed by the parties in any given category, and the time elapsed before a key event took place. Generally speaking, statistical correlations measure the degree of linear relationship between two variables; the stronger the correlation, the more the data will resemble a straight line when plotted on an x-y axis. The strength of a correlation is measured by Pearson's product moment coefficient, denoted by the letter "r." The absolute value of the coefficient "r" always falls between 0 and 1. The higher the absolute "r" value, the stronger the correlation; an "r" value of 0.8 indicates a much stronger correlation than an "r" value of 0.2, for example. If "r" is positive, the two variables increase in tandem; if "r" is negative, the dependent variable (here overall case length) decreases as the independent variable increases. The results of the correlation analysis are set out in Appendix D. We discuss the strongest and most interesting findings below.

a. <u>Elapsed time to set a trial date</u>

Some courts in the study set trial dates for all civil cases relatively early in the litigation, *i.e.*, at the time of the Rule 16 conference, while others on average did not set a trial date until discovery had closed and any dispositive motions resolved. Previous studies have suggested that scheduling an

early, firm trial date is a significant contributing factor to reducing pretrial delay.[62] To test this, we examined every case in which a trial date was set, and looked at the correlation between the time from filing to the setting of the trial date, and the overall time from filing to disposition. We did not include reopened cases or other cases in which a second trial date was set because of an appeal or a lengthy stay of the proceedings. The correlation between the time from filing to the time the trial was set and the overall length of the case (regardless of whether it actually went to trial) was fairly strong (r = 0.69215),[63] among the strongest observed anywhere in the study. Figure 1 demonstrates this correlation in graphical form. For the subset of cases in which a trial date was set and the case actually proceeded to trial, the correlation was even stronger (r = 0.70453). In other words, cases in which the trial date was set early in the litigation process tended to terminate earlier than cases in which the trial date was set later in the litigation process.

FIGURE 1
OVERALL CASE LENGTH IN DAYS VS. DAYS UNTIL TRIAL DATE SET



[62] *See, e.g.*, FLANDERS, *supra* note 8, at 33.
[63] Except where otherwise noted, the p value for all correlations was <.0001. *See* Appendix C. Simply put, the p value expresses the likelihood that an observed correlation is a coincidence. The smaller the p value, the more likely that a correlation observed in the sample exists for all cases. Here, the very small p value gives us confidence that the correlations found in this study are representative of the larger population of closed federal cases.

We recognize that for some, this may be a surprising and even unwelcome conclusion. Some judges and caseflow management experts have advocated for setting early firm dates only for the close of discovery and the filing of dispositive motions, reasoning that many cases will settle or otherwise terminate well before trial.[64] These same advocates argue that late firm trial dates allow for more prompt trial settings for those cases actually proceeding to trial, and greater flexibility on the judge's calendar. We do not question the facts behind this logic, nor can we assert based on our study that early firm trial dates *cause* cases to reach an earlier termination. Indeed, it may well be that early trial dates are a by-product of judges who already embrace efficient case processing, making the trial date indicative of a desire for a speedy resolution, not a causative factor.[65] Regardless, the numbers clearly show an unmistakable correlation between early trial settings and shorter time to disposition.

b. Elapsed time to file a motion seeking additional discovery

Another variable that was strongly correlated with overall time to disposition was the time that elapsed between the Rule 16 conference and a party's filing of a motion seeking leave to conduct additional or extraordinary discovery ($r = 0.74335$). While one should not conclude from this strong correlation that the time taken to file a discovery leave motion necessarily *causes* a longer overall case time, it nevertheless may be indicative of a domino effect that results from delayed starts to the discovery process. Many parties may not engage in critical aspects of discovery – particularly depositions – until less than a month remains before the court-ordered close of discovery. The basis for late-scheduled depositions may be entirely rational. Depositions may be very expensive, consuming up to seven hours of attorney time to conduct (the maximum time allowed per deposition under the Federal Rules) and countless additional attorney hours for preparation. Parties also bear the cost of stenographers and/or videographers, and in many cases travel and conference room rental expenses. If a case can be decided or settled on written discovery alone, it may well be more cost-

[64] *See, e.g.*, MASSACHUSETTS CONTINUING LEGAL EDUCATION, THE DISTRICT COURT SPEAKS § 3.1 (2008) (response of O'Toole, J.) ("After discovery is completed, I hold a status conference with the parties. If there are no dispositive motions planned, I set a trial date then. If there are dispositive motions planned, I await the outcome before setting a trial date.")

[65] We are indebted to Professor Steven Gensler for reminding us of this possibility.

effective. Furthermore, even if depositions are necessary, they frequently are used to explain or confirm documentary information provided earlier in the discovery process.

Nevertheless, late-scheduled depositions may have consequences. If information comes out at a late deposition that may lead the party to want to conduct additional discovery – for example, the need to request additional categories of documents or conduct depositions of a previously unknown witness – one or both parties may ask for an extension of the discovery deadline to accommodate the additional discovery. Furthermore, parties who file motions for leave to conduct additional discovery near the close of the discovery deadline (that is, those motions filed farther from the Rule 16 scheduling conference) may have a more pressing argument for an extension of that deadline than parties filing their motions earlier. A motion to extend the discovery deadline is frequently accompanied by a motion to extend the dispositive motion deadline as well. This can extend all major deadlines, creating a domino effect which ultimately can create a longer time to disposition.

In a similar vein, there was a moderately strong correlation between the ultimate time to disposition and the time between the filing of a case and the filing of a motion disputing discovery[66] ($r = 0.61139$). This correlation suggests that early filing (and presumably earlier resolution) of a motion disputing discovery keeps the overall discovery process on schedule.

Correlations between other characteristics of discovery motions and the overall time to disposition are considerably weaker. Although discovery disputes are often thought to tie up court time and resources disproportionately, the study found only a weak positive relationship between the time that elapses between the filing of a motion disputing discovery and the judge's ruling on it, and the overall length of the case from filing to disposition ($r = 0.24599$). In other words, while the time it takes for a judge to rule on a motion disputing discovery may be related to the overall length of the case, it is not a strong relationship.

[66] We consider "motions disputing discovery" to include motions to compel, quash, issue a sanction under Rule 37, or strike a discovery response. *See infra* p. 44.

c . Elapsed time to file motions to dismiss and motions for summary judgment

The study also looked at correlations with the characteristics of dispositive motions, particularly motions to dismiss and motions for summary judgment. Some of the stronger correlations with overall disposition time in the study involved the elapsed time after a case was filed until a party filed a motion to dismiss (r = 0.55932)[67] or a motion for summary judgment (r = 0.57742). While not as strong as other correlations in the study, there was a moderate relationship between how early in a case a motion to dismiss or motion for summary judgment was filed, and the overall case length.

The same strength of correlation was not observed with respect to the court's time to rule. Given that the purpose of Rule 12(b) is the dismissal of improper or non-viable claims early in the litigation, it might well be expected that a quick *grant* of a motion to dismiss would be strongly correlated with the overall time to disposition of the case. The study in fact found only a weak to moderate correlation (r = 0.37339) between the time to rule on a Rule 12 motion that is granted in whole or part and overall time to disposition of the case. Interestingly, a slightly stronger correlation (r = 0.39551) between the time to ruling and ultimate time to disposition exists for Rule 12 motions that are *not* granted by the court.

At first blush, it may seem odd that a judge's quick *denial* of a motion to dismiss would be more closely correlated with a faster resolution to the case. After all, if it is not dismissed, the case continues. But the ruling provides important insight into the judge's perception of the strengths and weaknesses of each party's position, and may offer incentives to one or more parties to explore settlement with greater speed or vigor than before the motion was decided. Indeed, the data show that in nearly 17% of the cases in which a Rule 12 motion was not granted in full, the case nevertheless terminated within 30 days of the ruling. And nearly 26% of such cases terminated within 90 days. This supports the conclusion that parties are seeking answers from the courts so that they can shape their case strategies or settlements accordingly. Even if denying a motion to dismiss does not result in

[67] We include motions for judgment on the pleadings under Rule 12(c) and motions to strike under Rule 12(f) in this category, because they have a similar effect as 12(b) motions to dismiss in removing one or more claims from the case if granted.

a quick settlement, ruling on the motion quickly shortens the time before an answer is filed and a Rule 16 conference is held.

As was the case with Rule 12 motions, there was only a weak to moderate correlation between the time the court took to rule on a summary judgment motion and the overall length of the case (r = 0.38034). Also, like Rule 12 motions, this correlation remained about the same regardless of whether the summary judgment motion was granted (r = 0.40398 for motions granted in full or part, and 0.36808 for motions denied, stricken or withdrawn). The correlation was also weak to moderate both for motions for partial summary judgment and full summary judgment, although there was a somewhat stronger relationship with overall time to disposition for motions for full summary judgment (r = 0.42245 for full summary judgment, 0.32138 for partial summary judgment). This is not surprising, since granting a motion for full summary judgment may remove a party and/or end a case in its entirety, whereas granting a motion for partial summary judgment will only remove certain issues from consideration for trial.

2. Other correlations

Some statistical correlations with overall time to disposition were weaker than might be expected, particularly the raw number of motions filed in a case. The number of motions disputing discovery (r = 0.27408), motions to extend time to respond to discovery (r = 0.26457) and especially motions to dismiss (r = 0.04588) bear a measurable but weak relationship to overall case length. With respect to motion practice, the stronger correlations lie in the timing of when motions are filed, not how many motions ultimately are presented to the court. Another correlation that might have been expected to be stronger was the relationship between the number of days between the filing of a case and the Rule 16 conference on the one hand, and the overall time from filing to disposition on the other hand (r = 0.33768).

B. *A Closer Look at Case Processing in Each of the Subject Courts*

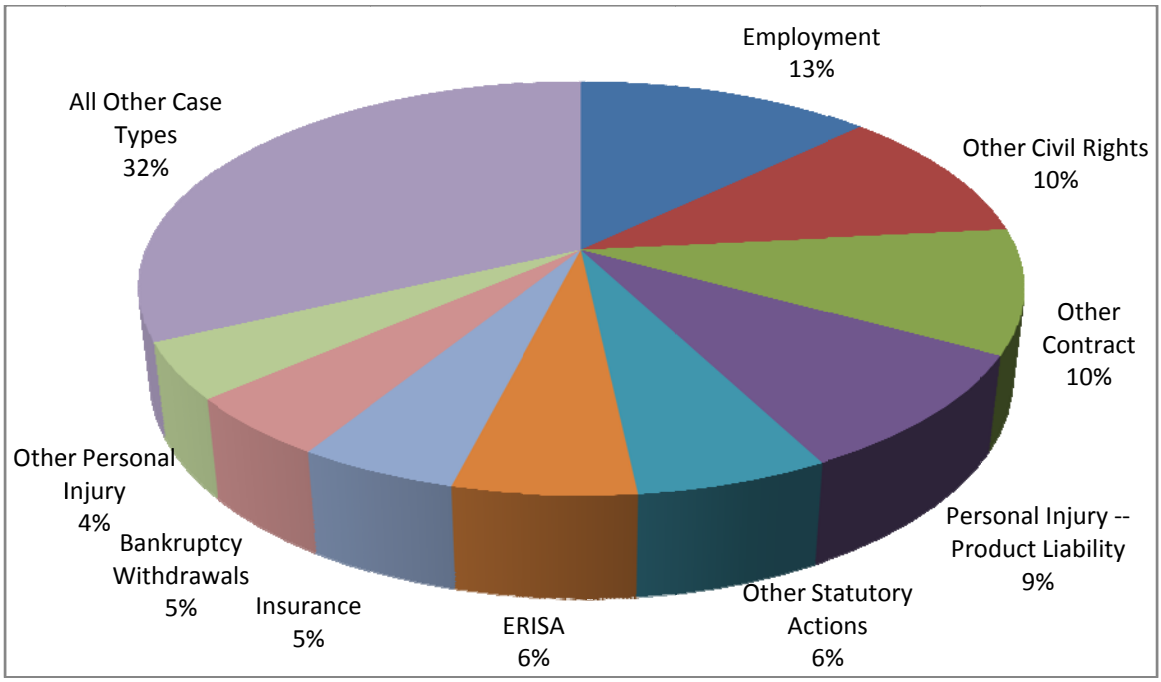
1. Overall Characteristics of the Cases and Subject Courts

a. Nature of suit

A total of 7688 cases were included in this study. As shown in Figure 2 on the next page, the two most common case types were civil rights cases involving allegations of employment discrimination (about 13% of the total) and what the Administrative Office of the U.S. Courts refers to as "Other Civil Rights" cases (about 10% of the total).[68] However, there were some interesting variations in case type by district. In the Western District of Wisconsin, for example, "Other Civil Rights" cases made up nearly 20% of closed cases during the subject time period. In the Eastern District of Virginia, over 24% of the randomly sampled closed cases were asbestos-related personal injury/product liability cases. And in the District of Delaware, over 36% of closed cases were bankruptcy withdrawals (i.e., withdrawals of the suit from the bankruptcy court to the district court under 28 U.S.C. § 157), and over 15% were patent cases. A breakdown of all cases by nature of suit is contained in Appendices D and E, and a breakdown of case types by district is contained in Appendix F.

[68] "Other Civil Rights" cases refer to any civil rights case not pertaining to voting, employment, housing/accommodations, welfare, or the Americans with Disabilities Act. A recent report by the Bureau of Justice Statistics found that filings in this category presented diverse issues such as civil rights of handicapped children, vocational disabilities, and education of children and adults with disabilities. BUREAU OF JUSTICE STATISTICS, SPECIAL REPORT: CIVIL RIGHTS COMPLAINTS IN U.S. DISTRICT COURTS, 1990-2006, at 3 (2008).

FIGURE 2
BREAKDOWN OF ALL CASES BY NATURE OF SUIT



b. Overall time to disposition

Most cases in fact do not linger very long on the docket. Nearly 40% of all cases logged were terminated in 180 days or fewer, with about 35% taking more than 365 days from filing to disposition. Only 4.2% lasted more than three years, the period that triggers a report requirement under the Civil Justice Reform Act and current Judicial Conference policy.[69]

[69] *See* 28 U.S.C. § 476(a)(3).

TABLE 4
DISTRIBUTION OF CASES BY OVERALL TIME FROM FILING TO DISPOSITION

Days to Disposition	No. of cases	Pct. of all cases
Less than 90 days	1516	19.7
91-180 days	1510	19.6
181-270 days	1163	15.1
271-365 days	800	10.4
366-547 days	1112	14.5
548-730 days	738	9.6
731-1095 days	527	6.9
More than 1095 days	323	4.2

The issues surrounding disposition time, however, are more nuanced than overall mean time to disposition. The nature of the suit can make a difference, because some case types are naturally more complex than others. As shown in Appendix E, for example, environmental cases took an average of 657 days to resolve, while relatively less complex personal injury-product liability cases terminated in an average of only 184 days. But disposition times are not necessarily uniform within a specific nature of suit. Further examination of three of the most common nature of suit types – Employment, Other Civil Rights and Other Contract – demonstrates that nature of suit alone does not plainly indicate how long a case may take to reach disposition. For example, as Table 5 shows, roughly the same percentage of employment cases terminated in under 90 days (8.4%) as did between 731 and 1095 days (8.9%). Some nature of suit types may be inherently more complex, but this does not mean that the nature of suit alone must dictate the amount of time they remain on the docket.

TABLE 5
OVERALL TIME FROM FILING TO DISPOSITION FOR EMPLOYMENT, "OTHER CIVIL RIGHTS" AND "OTHER CONTRACT" CASES

Days to Disposition	Pct. Employment Cases	Pct. Other Civil Rights Cases	Pct. Other Contract Cases
0-90 days	8.4	26.9	17.7
91-180 days	13.5	15.7	19.9
181-270 days	15.6	11.5	15.6
271-365 days	15.8	9.9	11.5
366-547 days	21.8	14.9	5.1
548-730 days	8.1	8.5	9.0
731-1095 days	8.9	8.0	8.2
More than 1095 days	4.0	4.6	3.9

The other macro factor affecting a case's overall time to disposition is the court (and individual judge) overseeing the case. As shown in Table 6 below, mean time to disposition varied widely across the districts in the study. However, not all judges within a "fast" court necessarily resolved cases efficiently, and not all judges within a "slow" court necessarily resolved cases slowly. In the District of Oregon, for example, six district judges handled at least 133 closed cases each, but the judge with the shortest mean disposition time terminated cases in an average of 303 days, while another judge took an average of 519 days. Similarly, in the District of Delaware, the four district judges with at least 165 closed cases each ranged from an average of 398 days from filing to termination to an average of 676 days. The variation in numbers is shown in Appendix G, although individual judge names are not specified.[70] Individual mean times were remarkably stable; only one judge in the study for whom more than 40 cases were logged saw a drop of more than 5% in mean time to disposition when the judge's longest case was removed. In other words, lengthy mean times to disposition are not reflective only of one or two bad cases. It is worth noting that the breakdown of case management numbers by individual judge is not publicly available through the Federal Court Management Statistics, although some data for individual judges is presented in semi-annual CJRA reports,[71] and the courts themselves may request reports in this format.

TABLE 6
OVERALL TIME TO DISPOSITION – ALL CASES – BY COURT

District	Mean Filing to Disposition in Days	Rank in Study	Rank in 2006 Federal Court Management Statistics
Western Wisconsin	157.27	1	2
Eastern Virginia	167.54	2	3
Eastern Missouri	252.10	3	11
Colorado	364.68	4	34
Oregon	385.99	5	71
Arizona	448.43	6	76
Idaho	481.32	7	90
Delaware	531.40	8	91

[70] The primary purpose of this study is to identify specific areas of inefficiency in civil case management and to develop recommendations for alleviating that inefficiency. We are aware that certain CJRA reports, and some jurisdictions within and without the United States, do disclose case management data by individual judge, and we do not discount the potential effect that public disclosure may have on a judge's commitment to case management.
[71] Such reports, while available in theory, are often difficult for the public to find and are frequently delayed by nine months or more, making real-time analysis of a judge's case-processing times difficult to discern.

c. Reopened cases

Finally, a word on case reopenings. While cases that were reopened and reclosed (in a few instances, multiple times) were included in the study, the numbers presented here reflect original filings and original closings except where specifically so designated. In all, 255 of the 7688 cases were reopened at some stage, 10% of them following appeal of a judgment upon a trial verdict. In addition, 29% of the 255 cases were reopened after an appeal of a judgment upon a granted dispositive motion. Because the elapsed time between the original closing of a case by the district court and reopening of the case after appeal could be years, and because this elapsed time was out of the district court's control, we do not account for it in this study. Indeed, reopenings raise issues beyond the scope of this study, related to interlocutory and appellate case processing.[72] We note, however, that just because a gap in time cannot be attributed to proceedings in the district court does not mean that the time was not significant to the parties: the mean time from original filing to final reclosing for reopened cases in the study was 1283 days, meaning the parties on average waited three-and-a-half years for a final resolution.

2. Scheduling conferences

Federal Rule of Civil Procedure 16(a) permits the court, at its discretion, to direct the parties to appear for a conference before trial "for such purposes as (1) expediting the disposition of the action; (2) establishing early and continuing control so that the case will not be protracted because of lack of management; (3) discouraging wasteful pretrial activities; (4) improving the quality of the trial through more thorough preparation; and (5) facilitating the settlement of the case." Rule 16(b) further directs that the judge shall in most cases enter a scheduling order "that limits the time (1) to join other parties and to amend the pleadings; (2) to file motions; and (3) to complete discovery." The rule also gives the judge latitude to include in the scheduling order provisions for the timing of initial disclosures, measures concerning privileged materials, and other key deadlines in the case.[73] In most

[72] We did not examine appellate reversal rates in this study, other than to note the recorded remands of trial verdicts, as discussed on page 63.

[73] Rule 16(b) now also contains a provision requiring the parties to discuss issues pertaining to the discovery of electronically stored information. That provision went into effect on December 1, 2006, and therefore no case in this study was subject to that specific requirement at the time a Rule 16 conference would have taken place.

of the courts included in this study, the typical scheduling order set out deadlines for the close of discovery (fact discovery, expert discovery, or both) and the deadline for the filing of dispositive motions. A number of courts also included in the scheduling order a date for the final pre-trial conference and the date of trial.

Many of the dockets reviewed for this study were not clear as to whether a Rule 16 conference was held. Some dockets logged a conference and a subsequent scheduling order. Others logged a scheduling order without a conference. Many others logged neither a conference nor an order. To avoid undercounting a scheduling event, we logged the date of the first entry that showed a schedule for at least the close of discovery, whether a minute order following a Rule 16 conference or a formal scheduling order. Our only exception to this practice was in logging Oregon cases, because a scheduling order issued automatically once the complaint was filed.[74] Because this action does not involve the parties and is purely ministerial, we also logged any subsequent entry showing that a formal Rule 16 conference took place. Interestingly, although local practice in Oregon requires the parties to participate in a Rule 16 conference notwithstanding the issuance of the scheduling order, in only 30% of Oregon cases was a Rule 16 conference logged on the docket.[75]

Collectively in the eight subject districts, judges held a scheduling conference and/or issued a scheduling order in only about 46% of cases. Given that Rule 16(b) mandates a scheduling order in most forms of civil action, the low percentage of cases that actually recorded a conference or formal issuance of a scheduling order is notable. Two factors may help explain the low number. First, many cases simply closed before a scheduling conference would have taken place or a scheduling order issued. Nearly 27% of cases in the study terminated within 120 days of filing the complaint, the outer limits of the time allowed by Rule 16(b)(8) for an order to issue. Another 6% of cases closed within 150 days of filing, suggesting that courts may not enforce the strict standards of Rule 16(b) if they believe settlement or some other form of disposition is forthcoming. A second factor is that for a number of cases, a judge may think that a scheduling conference (or even issuing a scheduling order)

[74] *See* D. Ore. L.R. 16.1(d).
[75] *See* D. Ore. Form 9.

would be a waste of time and resources. Cases that were ultimately remanded or transferred to another district (nearly 21% of cases taking over 150 days), disposed of through a Rule 12(b) motion (18.5%), subject to a default judgment (4.7%), or dismissed for want of prosecution (4.3%) fit into this category. In all, 48% of the cases in the study may not have benefitted from a Rule 16 conference as it is currently conceived because the cases terminated quickly or were not likely to remain with the court for long. In each of these situations, the judge likely believed that the value in bringing the parties together for a conference shortly before expected disposition was outweighed by the cost of doing so.

Certain case types were more likely to receive a Rule 16 conference or see the issuance of a scheduling order. Of the ten most common case types (as measured by nature of suit), the cases most likely to receive Rule 16 conferences or formal scheduling orders were bankruptcy withdrawals, with a conference or scheduling order issuing nearly 70% of the time. By contrast, personal injury actions based on product liability were subject to Rule 16 conferences or formal scheduling orders less than 11% of the time.

There was also considerable variation in the elapsed time between the filing of a case and a Rule 16 conference or issuance of a scheduling order. On average, less than two months elapsed in Western Wisconsin between the time a complaint was filed and the Rule 16 conference or issuance of scheduling order was held and/or scheduling order issued. In comparison, in Delaware the mean time from filing to the Rule 16 conference was approximately seven months. The variation among courts in the time taken to hold a scheduling conference or issue a scheduling order is particularly important because the date of the conference or scheduling order is a trigger for the commencement of most discovery in civil cases.[76]

[76] *See* Fed. R. Civ. P. 26(d)(1) ("A party may not seek discovery from any source before the parties have conferred as required by Rule 26(f) … or when authorized by these rules, by stipulation, or by court order."). The Rule 26(f) conference deadline is based on the date of the Rule 16 conference. *See* Fed. R. Civ. P. 26(f).

TABLE 7
RULE 16 SCHEDULING CONFERENCES AND SCHEDULING ORDERS

District	Total cases	Cases with Rule 16 conference and/or scheduling order	Pct. with Rule 16 conference and/or order	Filing to Rule 16 conf. or order in Days	
				Mean	Median
Arizona	377	189	50.13	186.69	154
Colorado	1903	1083	56.91	121.00	98
Delaware	936	526	56.20	211.25	174.5
Idaho	406	219	53.94	156.97	120
Eastern Missouri	1916	728	38.00	119.76	98
Oregon	1362	400[77]	29.37	150.20	120
Eastern Virginia	415	167	40.24	105.54	92
Western Wisconsin	374	230	61.50	59.21	51.5
TOTAL	**7688**	**3539**	**46.03**	**138.42**	**104.5**

3. Discovery motion practice

The study logged 6385 motions related to discovery. This total includes both contested and uncontested motions for protective orders, motions to compel, motions for discovery sanctions, and motions for leave to conduct discovery outside the boundaries prescribed by the scheduling order or applicable Local and Federal Rules. A complete listing of the frequency of all these discovery-related motions is contained in Appendix H. This total also includes motions to extend time to issue or respond to specific discovery requests, or to file or respond to a discovery motion.[78] The total does not include, however, motions to extend the deadline for the close of all discovery. That deadline was treated as a major continuance, and is discussed in Subsection 6(g) on page 59. In all, 6504 cases, or nearly 85% of the total, recorded no discovery motions of any type.

The absence or presence of discovery motions on a docket only tells so much about the quality and quantity of discovery in a case. After the amendments to Federal Rule of Civil Procedure 5 in 2000, parties no longer need to file discovery requests with the court. While the presence of discovery motions does give some indication as to areas of dispute (or, as in the case of a stipulated

[77] Because the District of Oregon requires a scheduling conference notwithstanding the issuance of the scheduling order, the figures for that District reflect only those cases where the docket reflected that a conference was actually held. If the mere issuance of scheduling order was also counted, Oregon's numbers would be close to 100%.
[78] Motions to extend time to respond to issue or respond to discovery requests, or to file or respond to a discovery motion, are analyzed together with other extension motions. *See infra* pp. 56-57.

motion for protective order, agreement), the absence of such motions only indicates that there is no discovery dispute for which the parties seek the judge's resolution. It may be that no discovery is taking place at all, or it may be that discovery is massive and costly but undisputed. But while the number of discovery motions on a docket cannot provide reliable information on the cost or volume of discovery, it does give insight into the impact of discovery on caseflow management. Simply put, discovery motions require attorney time to brief and court time to resolve.

Of particular interest to this study was the treatment of discovery motions that are most likely to be disputed: motions to compel, quash, strike a discovery response, or sanction a party.[79] These motions are collectively referred to here as "motions disputing discovery." In addition to the cost of drafting and responding, motions disputing discovery also require tangible outlays of time (to conference before filing,[80] to hold a hearing), and usually raise issues that give rise to discovery sanctions. Anecdotal evidence suggests that discovery disputes are often a source of frustration and aggravation to both the parties and the court.[81] Motions disputing discovery are also of particular interest because in many cases they may be a (very) rough proxy for the amount and severity of discovery in any given case.

As an initial matter, it is notable that motions disputing discovery appeared disproportionately in certain types of cases. For example, patent cases accounted for nearly 9.5% of all such motions in the study, although patent cases themselves comprised less than 4% of cases in the study. Similarly, employment cases (12.9% of cases in the study) accounted for 18.3% of motions disputing discovery,

[79] The motions analyzed here were those to compel the production of documents and things, compel answers to interrogatories, compel a deposition, compel a medical or mental examination, compel initial disclosures, compel an entry upon land, compel responses to requests for admission, compel multiple discovery issues (as part of one motion), compel unknown discovery issues, quash a subpoena, quash a motion to compel, quash a motion for a protective order, quash a deposition notice, quash interrogatories, strike interrogatory answers, strike other discovery responses, or impose sanctions resulting from discovery abuse.

[80] Parties are required to confer at least once before filing discovery motions with the court, in a good faith effort to resolve their disputes without court intervention. *See* Fed. R. Civ. P. 37(a)(1); *see also* D. Ariz. L.R. Civ. 7.2(j); D. Colo. L. R. Civ. 7.1(A); D. Del. L.R. Civ. 7.1.1; D. Idaho L.R. Civ. 37.1; E.D. Mo. L.R. Civ. 37-3.04(A); D. Ore. L.R. Civ. 7.1(a); E.D. Va. L.R. Civ. 37(E).

[81] This has been the case for decades. *See, e.g., Judges' Opinions on Procedural Issues: A Survey of State and Federal Trial Judges Who Spend at Least Half Their Time on General Civil Cases*, 69 B.U. L. REV. 731, 733 (1989) (noting results of an attitudinal survey showing that judges are critical of "[l]awyers who use discovery and motion practices simply to drive up the bill."). *See also generally, e.g.*, Edward F. Sherman, *The Judge's Role in Discovery*, 3 REV. LITIG. 89 (1982) (setting out the details of a conference discussion regarding the role of the judge in discovery, including management of discovery motions).

and "Other Contract" cases (9.7% of cases in the study) accounted for 15.5% of motions disputing discovery.

A high of 30.12 motions disputing discovery were filed for every 100 cases in the Eastern District of Virginia, and a low of 17.84 such motions filed for every 100 cases in the District of Delaware. In all, the study recorded 2052 such motions. In Eastern Virginia, a surprisingly high number of motions disputing discovery – nearly one in five – were withdrawn before the court could rule. Combined with the high rate of hearings in that district – two-thirds of motions were subject to a hearing – the high withdrawal rate at least suggests the possibility that attorneys use a motion disputing discovery as a "nuclear option" in many cases, and the actual filing of such a motion is enough to convince the parties to resolve their differences before the court does. In any event, sanctions do not seem to factor into the equation: the rate of filing motions for discovery sanctions and the rate of granting those sanctions in Eastern Virginia are not appreciably different from the other courts in the study.

TABLE 8
MOTIONS TO COMPEL, QUASH, ISSUE A RULE 37 SANCTION OR STRIKE DISCOVERY RESPONSES

District	Motions per 100 cases	Pct. granted in whole or part	Pct. withdrawn	Pct. denied as moot	Pct. with hearing	Filing to ruling in days	
						Mean	Median
Arizona	20.69	56.95	2.78	6.94	30.00	51.19	42
Colorado	28.48	39.52	9.88	13.24	44.54	44.96	28
Delaware	17.84	46.21	6.06	8.33	18.40	116.02	74
Idaho	26.85	58.82	8.24	22.35	27.38	79.95	66
E. Missouri	28.71	48.11	7.35	18.07	43.73	36.80	21
Oregon	29.52	53.53	0.00	20.00	22.84	44.80	26
E. Virginia	30.12	47.13	19.54	5.75	66.67	22.34	7
W. Wisc.	21.12	67.19	7.81	3.13	16.95	22.64	27
ALL COURTS	**26.69**	**48.07**	**7.72**	**14.93**	**35.28**	**48.05**	**29**

The most common motions disputing discovery were motions to compel the production of documents and things, accounting for just over 25% of the total. Motions to compel interrogatory answers accounted for a bit more than 7% of the total, and motions to compel depositions a bit less than 6%. Over 32% of disputed motions cast a wide net, either seeking to compel multiple types of

discovery, or otherwise not indicating in the title of the motion what the moving party was seeking to compel.[82] Motions to quash comprised 9% of the total number of motions disputing discovery, and motions for sanctions about 12%.

As a discrete category, discovery sanctions were sought rarely and granted even more rarely. The study recorded only 3.19 motions seeking discovery sanctions per 100 cases, with a high of 5.08 such motions per 100 cases in Western Wisconsin and a low of 0.49 such motions per 100 cases in Idaho. Slightly less than 26% of sanction motions were granted in all or part.

The elapsed time to rule on motions disputing discovery also varied significantly by court. Judges in both Eastern Virginia and Western Wisconsin both took just over 22 days from filing to ruling. The District of Delaware took over five times as long on average to rule on the same types of motions – more than 116 days. And while these districts have different caseload compositions (as one example, almost half the motions disputing discovery in Delaware arose in patent cases), a comparison of times from filing to ruling for cases with the same nature of suit showed the same discrepancy. For example, Delaware judges ruled on motions disputing discovery in employment discrimination cases in a mean time of 130 days, ten times longer than in Eastern Virginia, and twelve times longer than in Western Wisconsin. Similarly, Delaware judges ruled on motions disputing discovery in "Other Contract" cases in a mean time of 120 days, nine times longer than in Eastern Virginia and four times longer than in Western Wisconsin.[83]

4. Dispositive motion practice

a. Uncontested motions

The study collected data on all motions that sought to dispose of all or part of a case before trial. This included all motions to voluntarily dismiss the case, whether brought solely on the plaintiff's behalf under Rule 41(a), or brought jointly as the result of a settlement. Given that such

[82] Motions falling into this latter category are those in which the document was simply entitled "Motion to Compel" and the document itself could not be opened through the PACER interface. Such motions were logged as "Motion to Compel – Unknown Issues." Experience with documents bearing the same title that could be opened suggested that most such motions were seeking to compel multiple types of discovery.

[83] About 10% of disputed discovery motions in Delaware arose in employment discrimination cases, compared to 6% in Western Wisconsin and 23% in Eastern Virginia. For "Other Contract" cases, the percentages were 8% for Delaware and 13% for Eastern Virginia and Western Wisconsin.

motions were almost never opposed, it is unsurprising that 98% were granted, in a mean time of 6.2 days. Motions for consent judgments, which similarly represented the will of both parties to terminate the case, were also ruled on quickly (8.4 days on average) and granted 99% of the time.

b. Rule 12 motions

Of greater interest were dispositive motions that tended to be opposed; specifically, motions to dismiss or strike under Rule 12, and motions for summary judgment under Rule 56. Federal Rule of Civil Procedure 12(b) provides for dismissal of claims based on one or more procedural deficiencies, including lack of jurisdiction, improper venue, improper service of process, and failure to state a claim upon which relief can be granted. Rule 12(c) allows the court to grant judgment to a party strictly on the pleadings in the case, without additional evidence. Rule 12(f) allows the judge to strike an improper defense "or any redundant, immaterial, impertinent, or scandalous matter." Other than a motion based on subject matter jurisdiction, which is proper at any time,[84] motions under Rule 12(b) generally must be made before an answer is filed.

In all, the study recorded 1792 motions to dismiss or strike or for judgment on the pleadings, brought under Rule 12. Over 1500 of those motions – nearly 84% – sought full dismissal of the complaint. Another 225, or 12.5%, sought dismissal of some but not all claims. Of the nearly 1800 Rule 12 motions filed, over 44% were granted in their entirety and another 10% were granted in part. Slightly less than 30% of all Rule 12 motions were denied in their entirety.

It is important to note that these statistics on Rule 12 motions reflect motions filed and decided prior to the U.S. Supreme Court's 2007 decision in *Bell Atlantic v. Twombly*, which many scholars and practitioners believe may dramatically affect filing rates of Rule 12(b)(6) motions.[85] However, contrary to some post-*Twombly* pronouncements that Rule 12(b)(6) had been in a sleepy state of relative disuse before the Supreme Court's ruling,[86] the data here suggest that motions to dismiss were in fact well-used by attorneys, and frequently granted by the district courts, in the pre-

[84] Fed. R. Civ. P. 12(h)(3).
[85] 127 S. Ct. 1955 (2007). In *Twombly*, the Court interpreted Rule 8(a)(2) to require that a complaint contain "enough facts to state a claim to relief that is plausible on its face." Many have predicted that this holding will open the door to the filing – and granting – of more motions to dismiss.
[86] *See, e.g.*, Suja A. Thomas, *Why the Motion to Dismiss Is Now Unconstitutional*, 92 MINN. L. REV. 1851, 1851 (2008).

Twombly era. Indeed, nearly 15% of the cases in the study saw at least one motion filed under Rule 12(b), 12(c) or 12(f).

TABLE 9
RULE 12(b) MOTIONS TO DISMISS, RULE 12(c) MOTIONS FOR JUDGMENT ON THE PLEADINGS, AND RULE 12(f) MOTIONS TO STRIKE

District	Motions per 100 cases	Pct. granted in whole or part	Pct. denied as moot	Pct. with hearing	Filing to ruling in days	
					Mean	Median
Arizona	32.63	60.98	11.38	26.83	148.73	113
Colorado	29.32	45.34	19.89	10.57	171.78	146
Delaware	13.14	54.92	8.20	6.50	176.36	168
Idaho	24.14	71.43	2.04	19.39	143.92	116.5
E. Missouri	19.62	51.74	15.73	5.85	91.85	71.5
Oregon	24.60	62.19	11.94	28.36	103.52	86
E. Virginia	24.34	53.00	2.00	53.47	83.73	48.5
W. Wisconsin	20.86	65.38	6.41	1.28	63.47	49.5
ALL COURTS	**23.31**	**54.33**	**13.58**	**16.24**	**129.78**	**97**

There was reasonable consistency in filing rates on Rule 12 motions across courts. In five of the eight courts, between 20 and 30 Rule 12 motions were filed per 100 cases. The District of Arizona had the largest percentage of Rule 12 motions filed, with 32.6 motions per 100 cases, and the District of Delaware had the lowest percentage, with only 13.1 Rule 12 motions being filed per 100 cases.

The most significant intercourt discrepancy was in the time taken from filing to ruling. Despite receiving nearly 50% more Rule 12 motions per 100 cases than the District of Delaware, the Western District of Wisconsin disposed of its motions, on average, in about one-third of the time.

As with motions disputing discovery, the variation in time to ruling for Rule 12 motions transcended a court's mix of case types. All courts in the study, for example, saw a significant percentage (between 12 and 21%) of their Rule 12 motions arise in the context of "Other Contract" cases. Delaware resolved these motions in a mean time of 181 days, more than three times longer than in Western Wisconsin (54 days) and more than four-and-a-half times longer than Eastern Virginia (40 days). Similarly, although Colorado and Oregon saw nearly the same percentage of Rule

12 motions arise in the context of "Other Civil Rights" cases,[87] Oregon ruled on those motions in about half the time of Colorado on average (mean time of 83 days versus 161 days).

Interestingly, 13.6% of all Rule 12 motions – nearly one out of every seven – were denied as moot. This percentage of mooted motions was much larger than that observed for any other motion type. However, there were no obvious common characteristics for Rule 12 motions denied as moot. One might expect, for example, that the courts simply took an inordinately long time to address such motions, thereby rendering them moot. But the mean time for ruling on such motions was slightly less than 111 days – nearly three weeks *less* than the mean for all Rule 12 motions. Another possibility is that in many cases, the plaintiff filed an amended complaint that addressed deficiencies listed in the defendant's Rule 12 motion; under these circumstances, the judge may have deemed the motion moot in light of the amended complaint. One might also expect that cases with mooted Rule 12 motions settled earlier at a higher rate, and indeed slightly over 40% of cases with such motions did settle or were voluntarily dismissed. But significant percentages of such cases were also resolved on motion, by consent judgment, or by another form of dismissal.

c. Rule 56 motions

Federal Rule of Civil Procedure 56(c) allows the court to grant summary judgment to any party if "the pleadings, the discovery and the disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." The study identified 2297 motions filed or resolved under Rule 56. Of those, 1610, or 70%, sought full summary judgment. Another 27.5% sought summary judgment concerning only some of the claims at issue. The remaining motions – about 2.5% – were originally filed under Rule 12(b) but treated as or converted to Rule 56 motions for summary judgment.[88] In all, 16.6% of cases in the

[87] In Colorado, 23% of Rule 12 motions arose in "Other Civil Rights" cases; in Oregon it was 25%.

[88] Motions to dismiss filed under Rule 12(b) must be decided strictly on the pleadings. In rare circumstances, a party will attach additional evidence to a motion to dismiss in a manner that renders Rule 12(b) no longer applicable. In these circumstances, a court may treat the 12(b) motion and attached evidence as a motion for summary judgment under Rule 56 and take the attached evidence into account in issuing its ruling.

study had at least one summary judgment motion on the docket, a figure consistent with another recent study of federal summary judgment practice.[89]

Certain types of cases were much more prone to summary judgment practice. Table 10 below shows the eight case types (by nature of suit) with the highest frequency of summary judgment motions filed (where at least ten cases were logged in our study) For cases involving the constitutionality of state statutes, environmental matters, and the Freedom of Information Act – more Rule 56 motions were filed than actual cases. High numbers of summary judgment motion filings were also observed in two common case types – patent and insurance cases. In each of the eight most common case types, defendants filed more Rule 56 motions than plaintiffs. In seven of those eight case types, defendants also had a higher success rate with respect to the granting or partial granting of summary judgment. The notable exception was patent cases, where 40% of plaintiffs' motions were granted in full or part, but only 30% of defendants' motions were granted in full or part. Additional information on filing rates by nature of suit is available in Appendix D.

TABLE 10
CASE TYPES IN WHICH RULE 56 MOTIONS FOR SUMMARY JUDGMENT WERE MOST COMMONLY FILED

Nature of Suit	Motions per 100 cases	Pct. granted overall[90]	Pct. filed by plaintiff	Pct. granted	Pct. filed by defendant	Pct. granted
Constitutionality of State Statutes	133.33	60.00	45.00	44.44	50.00	70.00
Environmental Matters	109.64	50.55	41.76	21.05	47.25	74.42
Freedom of Information Act	106.25	47.06	47.06	25.00	52.94	66.67
Patent	75.85	31.83	25.56	40.35	70.40	29.94
Prop. Damage Product Liability	68.97	55.00	15.00	0.00	85.00	64.71
Foreclosure	63.04	28.26	34.48	30.00	58.62	58.82
Antitrust	60.00	73.33	13.33	50.00	86.67	76.92
Insurance	54.11	37.25	38.73	32.91	58.82	40.83

[89] Joe S. Cecil et al., *A Quarter-Century of Summary Judgment Practice in Six Federal District Courts*, 4 J. EMP. LEG. STUDS. 861, 882 (2007).
[90] All "Pct. granted" columns in Table 10 reflect motions granted in full or in part.

On the whole, motions for partial summary judgment were far less likely to be granted than motions for full summary judgment. Across all districts, only 25% of partial summary judgment motions were granted in their entirety, and another 14.2% were granted in part. Full summary judgment motions, however, were granted in their entirety more than 41% of the time, and in part 19% of the time. For all Rule 56 motions, nearly 37% were granted in full, 17.7% were granted in part, and 33.5% were denied. The remaining 11.8% of Rule 56 motions were either not ruled upon or terminated by the court without a formal ruling.

TABLE 11
RULE 56 MOTIONS FOR SUMMARY JUDGMENT – BY DISTRICT

District	Motions per 100 cases	Pct. granted in whole or part	Pct. with hearing	Filing to ruling in days	
				Mean	Median
Arizona	40.32	50.66	31.58	181.72	167
Colorado	28.27	51.30	17.10	254.48	191
Delaware	19.87	43.25	20.43	166.11	146
Idaho	50.99	64.25	23.67	167.15	141
Eastern Missouri	18.58	60.12	8.71	125.48	104.5
Oregon	46.62	53.36	58.74	145.34	119
Eastern Virginia	20.72	53.65	73.26	67.90	47.5
Western Wisconsin	36.63	63.51	2.92	63.09	53
ALL COURTS	**29.73**	**53.60**	**30.91**	**166.16**	**126**

As with other motions in this study, the short time from filing to ruling in Eastern Virginia and Western Wisconsin are immediately apparent. Judges in both courts resolved motions on average in less than ten weeks, as compared to an average of nearly twenty-four weeks for all courts in the study. The numbers in Western Wisconsin are particularly noteworthy because under that court's practice, the first 30 days after filing would be dedicated to completing briefing, meaning only an additional 33 days passed on average from the close of briefing to a final ruling. Also noteworthy are the low filing rates in the Districts of Delaware and Eastern Missouri. These rates might be attributed to the high percentage of bankruptcy and multidistrict litigation (MDL) cases, respectively, in those districts, which generally do not incorporate summary judgment motions.

As was observed with Rule 12 motions, a considerable number of cases terminated shortly after the court ruled on summary judgment motions. Obviously, the full granting of a motion seeking

summary judgment on all extant issues would have terminated the case on the date of the court's order. But of the 743 cases where a court *denied* a summary judgment motion in its entirety, 24.2% still terminated within 30 days of the ruling and nearly 40% terminated within 90 days of the ruling.[91] Similarly, of the 396 summary judgment motions which were granted only in part, 15.4% still terminated within 30 days after the ruling and 33.6% terminated within 90 days of the ruling. Again, these figures strongly suggest that the parties look to the court to provide answers that affect settlement discussions.

Summary judgment motions were the most likely to receive a formal written opinion from the judge. While the Flanders study concluded that faster courts saw "relatively few written opinions prepared for publication,"[92] that conclusion was not borne out in this study. Indeed, the courts with the highest ratios of opinions published in the Federal Supplement 2d or Federal Rules Decisions per judge from October 1, 2005 to September 30, 2006 were Western Wisconsin (31 opinions per judge) and Delaware (30 opinions per judge) – respectively, the fastest and slowest courts in the study as measured by mean overall time to disposition. When measured by opinions published in any reporter (including BNA reporters, U.S. Patents Quarterly, etc.), the results were the same: Western Wisconsin (44 opinions per judge) and Delaware (35 opinions per judge) are the most productive opinion publishers, even though their mean times to disposition are radically different. It therefore does not appear that time dedicated to drafting opinions necessarily impacts a court's efficiency – the fastest court also published the most opinions per judge.

5. The value of hearings and oral argument

There is varying belief as to the value of hearings to speed up rulings on discovery and dispositive motions. However, the data from this study suggest that holding a hearing does not impede the court from ruling quickly on a motion. Indeed, in every district, the mean time to rule on a motion for which an open court hearing was held was *less* than the mean time to rule on a motion where no hearing was held.

[91] These figures include cases in which a motion for summary judgment was denied and a cross-motion for summary judgment was granted.
[92] FLANDERS, *supra* note 8, at xi.

Hearings were particularly impactful for discovery motions. Motions disputing discovery subject to an open-court hearing were decided two-and-a-half weeks faster on average than motions disputing discovery that received no hearing, a drop in time of over 30%. This result might be explained in part by pressure on courts to resolve motions before CJRA deadlines; a motion otherwise subject to CJRA reporting often can be more quickly resolved through a telephonic or in-court hearing and oral ruling than through a written ruling on the briefs.[93]

TABLE 12
HEARING TYPE AND ELAPSED TIME TO RESOLUTION FOR MOTIONS DISPUTING DISCOVERY

District	Telephone	Mean days to rule with tel. hearing	Open Court	Mean days to rule with open ct hrg	No hearing	Mean days to rule with no hearing
Arizona	9	5.56	11	20.45	49	68.39
Colorado	1	56.00	211	39.11	264	51.70
Delaware	12	91.33	11	47.82	102	132.99
Idaho	0	---	23	63.52	61	85.87
E. Missouri	11	50.45	84	38.06	331	38.07
Oregon	79	29.36	68	46.20	193	50.10
E. Virginia	0	---	48	20.83	24	33.92
W. Wisconsin	6	12.50	4	11.75	49	26.29
TOTAL	**118**	**35.28**	**460**	**38.78**	**1073**	**56.08**

The value of hearings was less clear with respect to dispositive motions. Although the mean time to disposition for all Rule 12 motions was faster with open court hearings than no hearing at all (and much faster still for telephonic hearings), results varied widely by court. In five districts, motions subject to open court hearings were indeed resolved faster than those with no hearings, but the opposite was true in the Districts of Arizona and Oregon. Furthermore, in Oregon (the only district to use telephonic hearings regularly to handle Rule 12 motions), motions heard by telephone were resolved fastest of all on average. For Rule 56 motions, there was similarly no clear pattern: in three districts motions with open court hearings were resolved more quickly on average, in three districts motions with no hearing were resolved more quickly on average, and in two districts there was no meaningful distinction.

[93] Further consideration of the impact of CJRA reporting is set forth on pages 78-80 of this report.

TABLE 13
HEARING TYPE AND ELAPSED TIME TO RESOLUTION FOR RULE 12 MOTIONS

District	Telephone	Mean days to rule with tel hearing	Open Court	Mean days to rule with open ct hrg	No hearing	Mean days to rule with no hearing
Arizona	3	95.00	30	180.53	90	139.92
Colorado	0	---	59	101.92	499	180.04
Delaware	0	---	8	159.57	115	177.38
Idaho	1	239.00	18	134.17	79	144.94
E. Missouri	0	---	22	60.23	354	93.81
Oregon	19	75.63	76	137.45	240	94.99
E. Virginia	2	39.50	52	83.00	47	86.40
W. Wisconsin	1	8.00	0	---	77	64.19
TOTAL	**26**	**78.76**	**265**	**117.74**	**1501**	**132.77**

TABLE 14
HEARING TYPE AND ELAPSED TIME TO RESOLUTION FOR RULE 56 MOTIONS

District	Telephone	Mean days to rule with tel hearing	Open Court	Mean days to rule with open ct hrg	No hearing	Mean days to rule with no hearing
Arizona	1	28.00	47	197.98	104	175.85
Colorado	0	---	92	179.13	446	270.02
Delaware	11	145.09	27	193.56	148	162.64
Idaho	1	22.00	48	167.65	158	167.92
E. Missouri	0	---	31	173.13	325	120.94
Oregon	52	222.02	321	138.02	262	139.14
E. Virginia	2	39.50	61	60.56	23	89.83
W. Wisconsin	0	---	4	43.50	133	63.68
TOTAL	**67**	**197.70**	**631**	**146.87**	**1599**	**172.37**

6. Extensions and continuances

The study logged every motion to extend time or continue a major deadline. For the purposes of this report, we define a "continuance" as moving forward a deadline for the close of all discovery, the filing of dispositive motions, a pre-trial conference, or trial. We define an "extension" as moving forward any other deadline. Extensions are typically narrower in scope than continuances; as we define them, "extensions" include extensions of time to answer the complaint, respond to a motion or opposition, file a brief, and so on.

a. Overview of findings on extensions and continuances

With respect to extensions, three observations are particularly noteworthy. First, extensions of almost every sort were generally granted at least 90% of the time across all courts. Second, the filing rates for motions to extend time in Eastern Virginia and Western Wisconsin were consistently well below the mean for all courts in the study, meaning that even with a similar grant rate, the total number of extensions granted was much lower than in other districts. Third, for reasons that are not evident from the dockets alone, judges in the District of Idaho took much longer on average to rule on extension motions than those in any other district in the study.

One might expect that the more extensions granted per case, the longer the case would take. However, this study found only weak to moderate correlations between either the total number of extension motions per case or the time taken to rule on extension motions, and the overall length of the case. As discussed below, a more important measure may be how late in the discovery period the extension was granted, particularly if granting the extension leads to a continuance of the close of discovery or another date fixed in the scheduling order.

b. Extensions to answer the complaint

The sheer number of motions to extend time to answer the complaint (or counterclaims or crossclaims) was somewhat surprising – almost 40 such motions per 100 cases. These figures include extensions by stipulation. A District of Colorado Local Rule, for example, automatically grants defendants one stipulated extension to answer the complaint.[94]

Motions to extend time to answer stall a case almost immediately after it has begun. A typical extension of 30 days to answer means that the parties may have to wait another 30 days for a Rule 16 conference or scheduling order, if the judge decides to postpone the conference until the pleadings are complete. It also may mean that the parties must wait 30 days longer than they would otherwise to begin discovery in earnest. From a plaintiff's perspective, it means another 30 days until a recovery can occur.

[94] *See* D.Colo. L. Civ. R. 6.1(A).

TABLE 15
MOTIONS TO EXTEND TIME TO ANSWER COMPLAINT, COUNTERCLAIMS OR CROSSCLAIMS

District	Motions per 100 cases	Pct. Granted	Pct. with hearing	Filing to ruling in days	
				Mean	Median
Arizona	30.77	95.61	0.00	7.73	6
Colorado	53.65	91.27	1.89	5.56	2
Delaware	41.99	99.21	0.26	3.81	3
Idaho	17.73	97.10	0.00	17.10	6
Eastern Missouri	33.73	98.27	0.36	3.58	1
Oregon	44.71	97.34	1.16	4.20	2.5
Eastern Virginia	24.10	95.83	3.13	3.45	2
Western Wisconsin	13.90	88.24	0.00	2.82	1
ALL COURTS	**39.22**	**95.58**	**1.09**	**4.85**	**2**

Viewed from a caseflow management perspective, the question is what the parties are doing during the extension period. For example, if the parties are already close to a settlement, extending the time to answer allows them time to complete internal investigations and settlement discussions without incurring the expense of filing a formal answer. Similarly, in complex cases with numerous allegations, the defendant simply may need additional time to collect information in order to file an adequate answer. On the other hand, motions to extend time to answer may just as easily be a strategy for delay, to pressure plaintiffs into settlement or to drag out a case as long as possible in the hope of wearing down the opposing party. Most extension requests were unopposed, signaling that counsel are usually willing to support an opposing party's extension request as a professional courtesy (and with the expectation that a similar request would be honored when the tables are turned).

c. Extensions related to discovery

There was substantial variation across courts with respect to the frequency of motions to extend time to respond to an opposing party's discovery requests.[95] In the District of Colorado, more than 55 such motions were filed per 100 cases, while in Western Wisconsin and Eastern Virginia, the frequency was only 4 per 100 cases and 6 per 100 cases, respectively. Most districts granted about 90% of such motions; Western Wisconsin was the lowest, granting a bit less than 77%.

[95] These motions sought extensions of time to file or respond to discovery requests generally, disclose experts, file expert reports, file initial disclosures, serve a subpoena, conduct a medical examination, conduct a deposition, or otherwise complete outstanding discovery.

TABLE 16
MOTIONS TO EXTEND DEADLINES TO FILE OR RESPOND TO DISCOVERY REQUESTS

District	Motions per 100 cases	Pct. Granted	Pct. with hearing	Filing to ruling in days	
				Mean	Median
Arizona	24.40	82.35	3.53	11.41	7
Colorado	55.28	93.30	6.62	7.35	4
Delaware	7.69	90.00	0.00	9.24	3
Idaho	24.14	90.80	1.15	20.64	7
Eastern Missouri	10.91	89.16	5.03	7.45	3
Oregon	24.67	96.06	22.12	5.32	2
Eastern Virginia	6.02	95.83	20.83	3.88	2.5
Western Wisconsin	4.01	76.92	7.69	5.69	5
ALL COURTS	**24.70**	**92.39**	**8.91**	**7.83**	**3**

d. Extensions to respond to non-discovery motions

The study logged all motions to extend time to respond to motions raising issues unrelated to discovery, including dispositive motions. This category includes both extensions to respond to an original motion and extensions to file a reply or surreply brief. With respect to these motions, the variation in the number of motions filed per district is once again striking. Eastern Virginia and Western Wisconsin each had fewer than 14 motions filed per 100 cases; the average of all eight districts was more than four times that amount. Even though the grant rates for those two districts were in line with those of the other districts, the relatively miniscule proportion of motions filed means that many fewer extensions were granted overall. The high grant rate in Eastern Virginia – 96% – also suggests that low filing rates are not due to motions actually being denied; something else is discouraging filing.

TABLE 17
MOTIONS TO EXTEND TIME TO FILE OR RESPOND TO MOTIONS UNRELATED TO DISCOVERY

District	Motions per 100 cases	Pct. Granted	Pct. with hearing	Filing to ruling in days	
				Mean	Median
Arizona	64.99	94.32	0.43	7.98	5
Colorado	78.98	86.39	2.09	5.98	1
Delaware	39.21	98.29	0.57	4.20	3
Idaho	52.46	88.42	1.05	12.16	6
Eastern Missouri	51.77	94.79	0.88	4.40	1
Oregon	68.87	94.98	3.92	4.79	2
Eastern Virginia	12.53	95.65	4.35	4.02	3
Western Wisconsin	13.64	89.36	2.13	2.68	2
ALL COURTS	**56.85**	**91.86**	**1.99**	**5.54**	**2**

e. Extensions of a hearing or conference

The study logged all motions to extend a hearing or conference with the court, including status conferences and scheduling conferences. In nearly all districts, these motions were resolved within a day or two, and almost always granted. Western Wisconsin stands out for a relatively low grant rate of just under 80%, whereas all other subject courts granted at least 91% of the motions before them. Also of note is the strong variation in filing rates: most courts saw fewer than ten such motions filed per 100 cases, but the Districts of Oregon, Arizona and Colorado experienced much higher filing rates.

TABLE 18
MOTIONS TO STAY OR CONTINUE A HEARING OR CONFERENCE WITH THE COURT

District	Motions per 100 cases	Pct. Granted	Mean time from filing to ruling in days
Arizona	25.99	92.86	2.23
Colorado	37.41	91.24	1.91
Delaware	5.77	93.88	6.55
Idaho	6.40	100.00	1.77
Eastern Missouri	9.04	93.02	2.29
Oregon	15.93	97.67	0.40
Eastern Virginia	6.51	96.00	0.77
Western Wisconsin	8.02	79.31	1.14
ALL COURTS	**17.41**	**92.74**	**1.87**

f. Miscellaneous extensions

Finally, the study logged all other extension motions that did not fit into a predetermined category. These motions included, for example, motions to extend time to submit a schedule, file a stipulation of dismissal, serve process on a defendant, or submit supplemental authority. The very high filing rate observed in the District of Oregon is attributable to high numbers of motions to extend time to file a pretrial order in that district. Once again, the relatively low grant rate of 78% in the Western District of Wisconsin is notable.

TABLE 19
OTHER MOTIONS TO EXTEND TIME

District	Motions per 100 cases	Pct. Granted	Pct. with hearing	Filing to ruling in days	
				Mean	Median
Arizona	25.99	90.72	4.17	14.05	6
Colorado	33.63	89.72	4.11	6.92	2
Delaware	28.95	98.08	---	6.49	5
Idaho	9.85	97.44	---	12.84	5
Eastern Missouri	25.05	94.57	0.92	3.87	1
Oregon	81.42	98.01	16.92	3.93	2
Eastern Virginia	3.61	86.67	13.33	15.53	6
Western Wisconsin	2.41	77.78	---	3.22	2
ALL COURTS	**34.69**	**95.03**	**8.67**	**5.45**	**2**

g. Continuances

As noted above, for purposes of this study, "continuances" are defined as motions to continue any of four major case deadlines: the deadline for the close of all discovery, the deadline for the filing of dispositive motions, the date of the pretrial conference, and the trial date. In all, at least one such motion was filed in nearly 26% of the cases studied. Frequently, a single motion sought to continue several major deadlines. Some motions originally sought only to continue the discovery deadline but had the practical effect of bumping additional deadlines as the court set a new schedule. In many cases, the parties did not provide an explicit reason for seeking the continuance in the written motion, asserting only that additional time was needed. This occurred so frequently that the study could not meaningfully log the reasons given for seeking continuances. In some cases (particularly in Eastern Virginia and Western Wisconsin), the judges responded to a continuance motion based on an attorney scheduling conflict by shortening the original deadline rather than extending it.

The largest number of continuances sought related to the deadline for the close of discovery. As noted earlier in this report, anecdotal evidence suggests that it is not uncommon for attorneys to commence depositions and other forms of discovery in earnest well after the discovery period has formally started, causing them to run up against the final deadline with some discovery issues unresolved. Those issues may include outstanding discovery disputes, the need to conduct additional and unanticipated discovery based on new facts uncovered at a deposition or through discovery responses, or claims that more time is needed to complete depositions or a document production. And

indeed, the existence of these issues late in the discovery period does appear to increase the likelihood that the so-called "hard and fast" discovery deadline will prove malleable.

In order to measure the impact of minor discovery-related extensions or motions disputing discovery on the overall deadline for the close of discovery, we identified all cases in the study in which: (1) at least one motion disputing discovery or motion to extend time to file or respond to discovery requests was filed with the court, and (2) the close of discovery deadline was continued at least once. Across all courts and cases, the deadline for the close of discovery was continued 1834 times. About 17% of the granted continuances were sought within one month after the court granted a discovery motion; granting that motion late in the discovery period may have convinced the court that additional time for discovery was needed.

The decision to continue the close of discovery deadline may also have been influenced by the need to resolve still pending discovery motions. We looked at discovery motions that were ruled upon by the court in some fashion within one month after a continuance was sought – for 23% of the continuances, the judge ruled upon a discovery motion within 30 days.

Oregon's filing rate for motions seeking continuances far exceeds the filing rates of other courts in the study – again likely because the original case schedule is set automatically without direct attorney input. While early automatic scheduling may work for certain types of cases, the high number of continuance motions in Oregon suggests that some (or most) of the efficiencies gained by automatic scheduling may be offset by time spent asking for and granting continuances.

TABLE 20
MOTIONS TO CONTINUE CLOSE OF DISCOVERY DEADLINE

District	Motions per 100 cases	Pct. Granted	Mean length of extension in days (where granted)	Mean number of days before deadline that motion is filed
Arizona	38.73	93.01	96.65	28.45
Colorado	40.88	91.37	86.87	12.51
Delaware	30.88	96.34	186.86	12.75
Idaho	38.18	92.81	141.31	-3.90[96]
E. Missouri	12.40	93.51	95.51	19.56
Oregon	144.57	97.97	95.67	2.19
E. Virginia	2.89	91.67	75.36	40.58
W. Wisconsin	5.88	80.95	12.33	94.25
ALL COURTS	**46.96**	**95.58**	**100.65**	**7.38**

The very low level of motions seeking continuances of the discovery deadline in Eastern Virginia and Western Wisconsin is particularly notable, especially since the grant rates for such motions in those districts remains quite high. Eastern Virginia, for example, had a grant rate nearly identical to that of Colorado, but had fewer than three motions to continue the discovery cutoff per 100 cases, as compared to over 40 such motions in Colorado. The difference may be one of perception – attorneys practicing in Eastern Virginia may simply *expect* that a request to continue a discovery deadline will be denied. One judge in Eastern Virginia has reinforced this perception, noting that he could not recall granting a motion for any continuance in a civil case during his many years in the bench.[97] Clearly some continuances are being granted in Eastern Virginia – over 90% of those sought, in fact – but the pool of continuance motions is so small that the few granted motions do not significantly affect the overall case management figures.

Parties sought continuances of the other major deadlines at significantly lower rates than the discovery deadline, with some notable variation. Motions to continue the dispositive motion deadline were almost never sought in Eastern Virginia, and the average extension of that deadline in that district was one month, well below the roughly three-month average extension in most other subject courts. The disparity across courts in extension length was also notable for continuances of pretrial

[96] Indicates that, on average, the motion was filed almost four days after the deadline.
[97] T.S. Ellis, III, *Judicial Management of Patent Litigation in the United States: Expedited Procedures and Their Effects*, 9 FED. CIR. B.J. 541, 542 (2000).

conferences and trials. The mean continuance for a pretrial conference in the Western District of Wisconsin was 11.5 days and the mean continuance for a trial 46.6 days, whereas in the District of Idaho the mean continuance for a pretrial conference and trial date were 224 days and 243 days, respectively.

TABLE 21
MOTIONS TO CONTINUE DISPOSITIVE MOTION DEADLINES

District	Motions per 100 cases	Pct. Granted	Mean length of extension in days (where granted)	Mean number of days before deadline that motion is filed
Arizona	31.56	98.28	91.99	46.89
Colorado	34.84	92.91	84.20	36.99
Delaware	14.10	95.97	85.49	36.55
Idaho	28.82	98.20	124.63	32.33
Eastern Missouri	12.29	94.81	89.24	29.68
Oregon	82.01	99.18	82.67	12.59
Eastern Virginia	0.48	50.00	30.00	25.00
Western Wisconsin	11.23	75.61	43.21	12.25
ALL COURTS	**31.60**	**96.34**	**85.95**	**24.84**

TABLE 22
MOTIONS TO CONTINUE PRE-TRIAL CONFERENCES

District	Motions per 100 cases	Pct. Granted	Mean length of extension in days (where granted)	Mean number of days before deadline that motion is filed
Arizona	15.65	98.21	81.72	22.72
Colorado	27.80	94.30	91.45	48.73
Delaware	13.14	97.52	119.73	32.03
Idaho	4.68	100.00	224.18	33.11
Eastern Missouri	2.01	91.67	90.24	70.47
Oregon	21.95	99.66	106.39	49.86
Eastern Virginia	4.34	81.25	92.33	-2.38[98]
Western Wisconsin	4.81	88.89	11.50	134.67
ALL COURTS	**14.36**	**96.08**	**100.81**	**45.73**

[98] Indicates that, on average, the motion was filed more than two days after the deadline.

TABLE 23
MOTIONS TO CONTINUE TRIALS

District	Motions per 100 cases	Pct. Granted	Mean length of extension in days (where granted)	Mean number of days before deadline that motion is filed
Arizona	9.28	82.86	83.00	45.23
Colorado	8.36	86.09	183.01	65.27
Delaware	14.64	94.49	179.61	28.89
Idaho	19.46	97.18	242.59	47.72
Eastern Missouri	21.07	92.09	114.21	92.53
Oregon	13.17	97.18	117.21	74.76
Eastern Virginia	6.99	85.71	53.19	38.21
Western Wisconsin	9.63	75.00	46.62	45.20
ALL COURTS	**13.23**	**92.18**	**138.52**	**67.21**

7. Trials

The rate of trials begun per 100 cases was reasonably consistent across courts, with a mean rate of 3.60 trials begun per 100 cases for all cases studied. Nearly 78% of these trials reached verdict. These rates are somewhat higher than other recently published figures about changes in the trial rate,[99] but that is to be expected since this study did not account for certain civil cases (such as prisoner petitions and student loan cases) that almost never go to trial. More than 80% of trials in both the District of Colorado and the Western District of Wisconsin were conducted in front of juries, although the mean length of trials was three full days less in Western Wisconsin than in Colorado. Western Wisconsin is also notable because it had the highest rate of appeals from a trial verdict, but the second lowest rate of remands.

[99] *See, e.g.*, ADMINISTRATIVE OFFICE OF THE U.S. COURTS, 2006 REPORT OF THE DIRECTOR, tbl. C-4 (2006); Marc Galanter, *The Hundred Years Decline of Trials and the Thirty Years War*, 57 STAN. L. REV. 1255, 1259 (2005).

TABLE 24
BENCH AND JURY TRIALS

District	Trials per 100 cases	Pct. Jury trial	Mean length of trial in days	Pct. appealed	Pct. remanded on appeal
Arizona	3.98	60.00	5.27	40.00	0.00
Colorado	2.84	81.48	5.52	42.59	21.74
Delaware	4.81	44.44	5.58	37.78	35.29
Idaho	2.96	75.00	5.25	50.00	16.67
Eastern Missouri	2.35	75.56	4.09	46.67	21.74
Oregon	5.36	79.45	4.30	31.51	19.05
Eastern Virginia	2.65	45.45	2.82	27.27	33.33
Western Wisconsin	5.88	81.82	2.55	72.73	6.25
ALL COURTS	**3.60**	**71.12**	**4.69**	**41.52**	**20.00**

There remains considerable debate – and considerable variation in judges' practices – concerning whether trial dates should be set early in the litigation or much later in the litigation, usually after dispositive motions have been ruled upon. As noted above, setting a trial date early was strongly correlated with shorter overall disposition times in this study. The key to avoiding unnecessarily lengthy times to disposition, however, appears to be keeping the trial date firm. In fact, in many of the jurisdictions studied, only a minority of cases that actually went to trial did so on or before the original scheduled trial date. In many of the courts studied, the average delay from the original trial date to the actual start of trial was three to six months.[100]

TABLE 25
ADHERENCE TO ORIGINAL TRIAL SETTINGS[101]

District	Pct. of trials starting on or before original scheduled date	Delay from original trial date in days	
		Mean	Median
Arizona	57.1	75.71	0
Colorado	46.3	182.22	4.5
Delaware	57.8	128.73	0
Idaho	41.7	92.83	53
E. Missouri	39.5	137.00	59
Oregon	35.2	146.11	69
E. Virginia	66.7	54.33	0
W. Wisconsin	50.0	51.00	35
ALL COURTS	**44.8**	**137.96**	**7**

[100] These figures include only those trials where an original scheduled date was announced on the docket. In some cases, a trial date may have been scheduled but the information was not available on the docket sheet.
[101] These figures include only those trials in which a trial date was explicitly noted on the docket or in a court order that was PACER accessible. It therefore may be slightly underinclusive of all bench and jury trials.

8. Settlement

The study examined the impact of certain caseflow management practices on settlement. Here we considered a case to have settled if the docket either explicitly indicated that the parties had settled (*e.g.*, through a motion seeking approval of a settlement agreement), or if the docket contained a joint or stipulated dismissal of the action with prejudice. Voluntary dismissals by the plaintiff only were not counted as settlements. The study focused on two questions: Do certain practices make settlement more likely overall? And do certain practices encourage an earlier settlement than might occur in cases without these practices? Answers to these empirical questions may help to inform the debate over whether and when settlement may be preferable to trial, a debate we avoid in this paper. We examine three practices that may contribute to earlier settlement, or settlement generally: (1) court-sponsored settlement conferences or mediation, (2) a scheduling conference before the court, and (3) the early setting of a trial date.

a. Court-sponsored or court-ordered alternative dispute resolution

Three districts in the study recorded some form of court involvement in alternative dispute resolution (ADR) on their dockets: settlement conferences conducted by magistrate judges in Colorado and Oregon, and court-ordered mediation in Eastern Missouri. Although the Alternative Dispute Resolution Act of 1998 directs all courts to offer some kind of civil ADR,[102] dockets in the other five districts in the study did not reflect regular court-ordered ADR. Given the sensitivity and confidentiality of the discussions, the docket sheets unsurprisingly provided little information about the nature of the settlement conferences or mediation or how productive they were toward encouraging settlement. The collected data do show, however, that a court-sponsored settlement conference or court-ordered mediation event tends to occur 300-400 days into the life of a case; this is approximately the same amount of time that an average case would take to terminate completely. In other words, court-sponsored ADR tends to begin in earnest only after it becomes clear that a case will take longer than usual to bring to resolution. The data do not tell us, of course, whether the time at which the settlement conference or mediation is held is optimal, whether holding settlement

[102] 28 U.S.C. § 651(b).

conferences or mediations earlier in the process would lead to an earlier termination of the case, or whether (or how) the timing of a settlement conference or mediation impacts settlement quality.[103] What is clear is that once a settlement conference or mediation is held, most cases terminate within six months.

TABLE 26
TIME TO DISPOSITION AFTER COURT-DIRECTED ADR

Nature of Suit	District	Mean Time in Days from Filing to ADR Event	Mean Time in Days from ADR Event to Disposition
Employment	Colorado	345	182
	Oregon	456	101
	E. Missouri	340	129
Insurance	Colorado	304	126
	Oregon	343	327
	E. Missouri	408	108
Other Civil Rights	Colorado	416	229
	Oregon	602	162
	E. Missouri	397	145

b. Scheduling conferences

Direct court involvement is not the only hypothesized influence on settlement. Some commentators have also suggested that a scheduling conference itself may induce an earlier settlement or otherwise expedite the case disposition.[104] To explore these possibilities, we looked at settlement rates in all cases lasting at least 180 days, the point at which a Rule 16 conference would be expected to have taken place.[105] Where a Rule 16 conference was held or a formal scheduling order was entered, cases settled 54% of the time – a rate more than double that of cases with no scheduling conference or formal scheduling order. However, when cases resulting in a transfer, remand, court-ordered dismissal, or default judgment (*i.e.*, those cases where a scheduling conference may have been a waste of resources) were removed from consideration, the settlement rate for remaining cases

[103] *E.g.*, Robert G. Bone, *"To Encourage Settlement": Rule 68, Offers of Judgment, and the History of the Federal Rules of Civil Procedure*, 102 NW. U. L. REV. 1561, 1619-20 (2008).
[104] *See, e.g.*, Robert F. Peckham, *The Federal Judge as a Case Manager: The New Role in Guiding a Case from Filing to Disposition*, 69 CAL. L. REV. 770, 772 (1981).
[105] Under Rule 16, a scheduling conference must be held within the earlier of 120 days after any defendant has been served with the complaint or 90 days after any defendant has appeared. Fed. R. Civ. P. 16(b)(2). We chose a 180-day window to capture the majority cases in which service on the defendant does not occur immediately, but does occur within at least 60 days of filing.

without a scheduling conference rose to nearly 45%, still a lower rate than when a conference was held, but not dramatically so.

TABLE 27
RULE 16 CONFERENCES AND CASES

	No. of cases	Pct. settled	Pct. dismissed voluntarily	Mean time to disposition in days[106]
With conference or sched. order	3048	54.27	12.89	551.72
No conference or sched. order – all cases	1638	25.21	12.33	449.53
No conference or sched. order – excluding transfers, remands, court-ordered dismissals and default judgments	923	44.75	21.89	485.14

c. Setting early trial dates

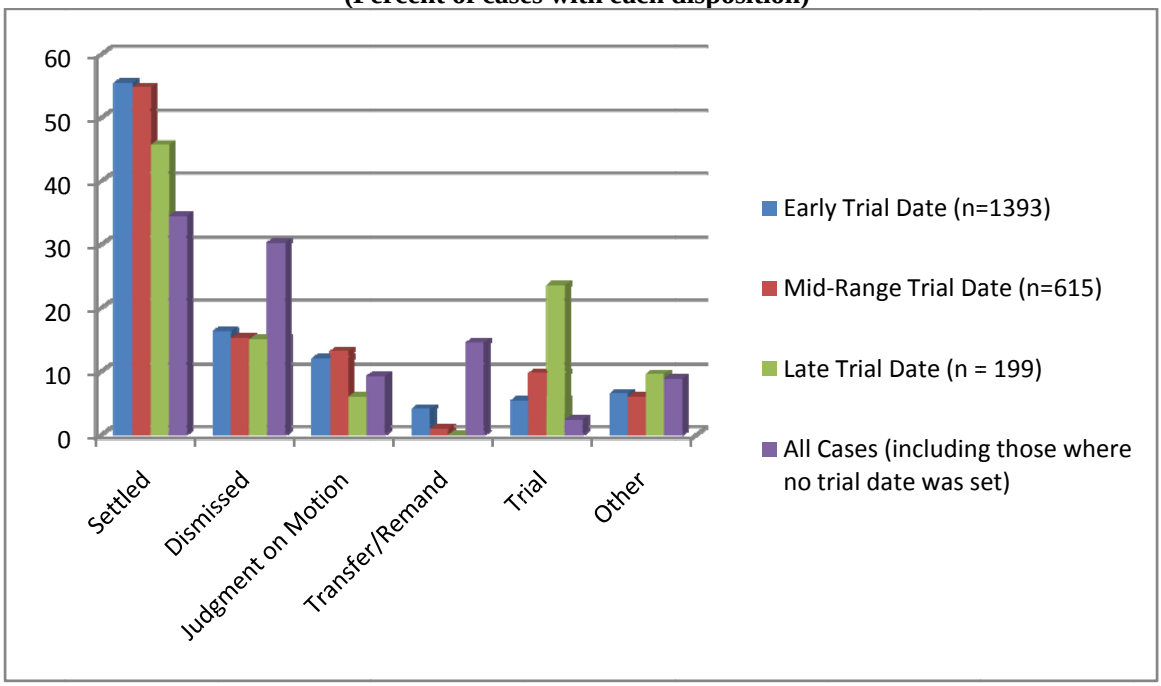
Commentators have also suggested that setting a trial date early in the litigation and holding it firm tends to promote settlement,[107] ostensibly because the parties know they have a finite window for negotiation. To test this, we looked at settlement rates among cases with trial dates set within 180 days of case filing ("Early Trial Date" cases), cases with trial dates set after the case had been pending at least 600 days ("Late Trial Date" cases), and cases in which the trial date was set between 180 days and 600 days after filing ("Mid-Range Trial Date" cases). The 180-day cutoff is intended to capture trial dates set during an original Rule 16 scheduling conference. The 600-day cutoff represents the mean time in the study from the filing of the case to ruling on a motion for summary judgment; Late Trial Date courts generally set trial dates after dispositive motions had been decided.

As shown in Figure 3 on the next page, Early Trial Date cases did indeed settle at a higher rate than Late Trial Date cases, but in all categories roughly half of the cases settled. Early Trial Date cases and Late Trial Date cases also were dismissed at essentially the same rate. Late Trial Date cases went to trial more frequently, an unsurprising result given that ordinary dispositive motion practice had already been exhausted in those cases. These figures cannot capture the pressure, if any, that a

[106] Where a case was opened and closed before a Rule 16 conference could take place, and subsequently reopened, the mean time to disposition is treated as commencing from the date of reopening.
[107] *E.g.*, Richard Marcus, *Slouching Toward Discretion*, 78 NOTRE DAME L. REV. 1561, 1592 (2003). As noted above, for cases that actually went to trial, there is a strong correlation between the number of days after filing that the trial date was set and the case's overall time to disposition.

date certain for trial places on individual litigants to settle, but they do demonstrate that the overall settlement rate is not substantially different between cases with early trial settings and cases with late trial settings.

FIGURE 3
DISPOSITION OF CASES BASED ON TIMING OF TRIAL SETTING
(Percent of cases with each disposition)



9. Use of magistrate judges

The study did not yield clear results on the most efficient roles for magistrate judges in civil case processing. The use of magistrate judges varied from district to district, and often within a district. Practice also varied widely across districts with respect to granting a magistrate judge jurisdiction to handle a case from start to finish; however, when asked to consent to a magistrate judge's jurisdiction, most parties did so.

In some districts, district judges preferred to handle Rule 16 conferences and discovery disputes themselves, while in other districts the district judges elected to assign those responsibilities to magistrate judges. In Idaho, Eastern Missouri and Western Wisconsin both district judges and magistrate judges were heavily involved in discovery issues, although the decision to assign a magistrate judge to discovery disputes varied by individual district judge. The decision to use or not

use a magistrate judge to handle scheduling or discovery matters bore little connection to the ultimate time to dispose of a case. Furthermore, there were no clear trends as to whether magistrate judge involvement in resolving motions disputing discovery led to faster resolution of either the specific motion or the entire case, as shown in the two tables below.

TABLE 28
MEAN DAYS FROM FILING TO RULING ON MOTIONS DISPUTING DISCOVERY FOR DISTRICT AND MAGISTRATE JUDGES

District	Days to Rule – District Judge			Days to Rule – Magistrate Judge		
	N	Mean	Median	N	Mean	Median
Arizona	245	28	7	6	16	7
Colorado	340	26	3	1924	16	5
Delaware	386	57	7	14	142	204.5
Idaho	97	50	12	167	53	31
Eastern Missouri	928	24	10	45	15	8
Oregon	687	23	6	452	16	3
Eastern Virginia	58	14	1.5	102	17	7
Western Wisconsin	85	16	6	64	15	6
TOTAL	**2826**	**29**	**6**	**2774**	**19**	**5**

TABLE 29
MEAN OVERALL CASE LENGTH WHEN DISTRICT OR MAGISTRATE JUDGES RULE ON DISCOVERY DISPUTES[108]

District	Case Length in Days – Dist. Judge			Case Length in Days – Mag. Judge		
	N	Mean	Median	N	Mean	Median
Arizona	245	900	789	6	970	999
Colorado	340	969	681	1924	777	613.5
Delaware	386	917	876	14	964	1020
Idaho	97	789	634	167	1024	878
E. Missouri	928	576	566	45	407	365
Oregon	687	764	689	452	807	695
E. Virginia	58	280	272	102	313	303
W. Wisconsin	85	247	212	64	388	365
TOTAL	**2826**	**735**	**653**	**2774**	**766**	**612**

Because the data are not clear-cut, this study does not recommend either greater or lesser involvement of magistrate judges in any specific area of civil case processing. In some instances, greater involvement of a magistrate judge may be highly beneficial. In other cases, direct and constant involvement of a district judge throughout the case may be the most efficient course of

[108] Cases involving the resolution of at least one motion disputing discovery.

action. Judges and attorneys are advised to consider the scope of their case, the level of comfort the district and magistrates judges have with a hands-on approach to case management, and the level of docket congestion in determining the highest and best use of a magistrate judge's time and skills.

10. A closer look at Arizona and Delaware

While all courts in the study experienced certain situations unique to their dockets and resources during the study period, two courts in particular were selected for additional analysis. The first such district is Arizona. In conversations after our initial data analysis, representatives from Arizona suggested that their numbers might have been unduly affected by large numbers of visiting judges, and cautioned that care should be taken to account for divisional differences between courts situated in Phoenix and Tucson. Arizona representatives also noted the perceived impact of that district's extremely large criminal docket.

The Arizona cases in the study, like those from Eastern Virginia, were chosen as a random sample of all eligible civil cases that closed in the study's time frame. Nearly all of the cases in the sample were presided over by an Arizona-based district judge. The study revealed little difference in overall time to disposition between judges in the Phoenix division and judges in the Tucson division – Phoenix judges completed their cases in a mean time of 430 days, while Tucson judges completed their cases in a mean time of 477 days. There was also little appreciable difference between senior district judges in Arizona who hear civil cases (all based in Phoenix) and those without senior status: senior judges as a group completed their cases in an average of 475 days. Reopenings and reclosings also were not at unusual levels in the Arizona sample – only nine cases in the Arizona sample were reopened at any point.

We conclude, then, that there was nothing inherently unusual about the Arizona sample. Nevertheless, the impact of Arizona's heavy criminal docket deserves consideration. Criminal felony filings amounted to 43% of all cases filed in the District in Arizona in 2006, a much higher percentage of criminal filings than in any other district in the study.[109] Overall, for the eight study districts,

[109] U.S. District Court – Judicial Caseload Profile, District of Arizona, *available at* http://www.uscourts.gov/cgi-bin/cmsd2006.pl.

criminal felonies made up about 28% of filings in 2006; in all federal district courts in the same time period, that figure was only 18%.[110] The annual percentage of felony filings in each district remained roughly constant for 2004 through 2006, with Arizona consistently higher than any other district in the study.

Criminal cases, of course, are required both by the United States Constitution and federal law to be resolved expediently, which can divert time and resources from the civil docket. While it is well outside the scope of this report to quantify the particular impact of the criminal docket on civil case processing (particularly when working only with civil PACER data), the higher percentage of criminal cases – and the speedy trial requirements they engender – may indeed affect Arizona's overall time to disposition of civil cases.

TABLE 30
FELONY FILINGS AS A PERCENTAGE OF THE OVERALL DOCKET FOR THE SUBJECT DISTRICTS 2004-2006[111]

District	Pct. Felony Filings 2006	Pct. Felony Filings 2005	Pct. Felony Filings 2004
Arizona	42.8	42.5	53.2
Colorado	13.1	14.1	15.4
Delaware	11.2	9.4	6.5
Idaho	27.1	28.0	24.4
E. Missouri	25.4	21.9	25.8
Oregon	20.9	19.9	21.0
E. Virginia	23.9	24.1	21.8
W. Wisconsin	22.6	20.4	16.6
TOTAL	**27.6**	**27.5**	**29.1**

Delaware was the second district chosen for special study. Our extended review there was spurred not by conversations with court representatives, but rather by some seemingly anomalous numbers. Throughout this report so far, the figures presented for the Delaware have included all 936 closed cases during the subject time period. But these numbers, in comparison to those from other districts, are somewhat puzzling. For example, for motions disputing discovery and Rule 12 motions, the District of Delaware had the lowest rate of filings per 100 cases, but the longest mean time from

[110] U.S. District Court – Judicial Caseload Profile, All District Courts, *available at* http://www.uscourts.gov/cgi-bin/cmsd2006.pl.
[111] Percentage of total criminal and civil case filings reported in Federal Court Management Statistics for each applicable year.

filing to ruling. The District of Delaware also had the highest rate of bench trials (as opposed to jury trials) of the courts in the study. Finally, nearly 48% of the closed civil cases in the study for the District of Delaware were bankruptcy appeals or bankruptcy withdrawals, two civil case types that were virtually nonexistent in the other courts in the study.

Because the caseload profile in Delaware was unique in the study, we reviewed the statistical profile of that district with bankruptcy cases removed. The results were perplexing. Overall, the mean time to disposition for all cases in the district dropped from 531 days to 473 – nearly a two-month decrease. At the same time, the number of motions disputing discovery, Rule 12 motions and Rule 56 motions per 100 cases each increased substantially, and the mean time from filing to ruling for those motions remained essentially the same. A drop in traditional motion practice was not contributing to the drop in disposition time.

An examination of motions to extend time provided greater insight. When bankruptcy cases were taken out of the mix, the number of "miscellaneous" extension motions in the District of Delaware dropped from nearly 29 per 100 cases to just over 10 per 100 cases. Ninety-four percent of the "miscellaneous" motions for bankruptcy cases were motions to extend time to serve the defendant, and those motions were almost universally granted. It appears that disposition of bankruptcy cases in the district court is not different than that of other civil cases once they have commenced in earnest, but the delays in starting the case with service upon the defendant are pervasive.

C. *Cultural Factors Affecting Case Processing*

The statistical study of the PACER docket data yields important but incomplete conclusions. It became clear during the course of the study that differences in time to disposition could not be explained solely with reference to descriptive statistics. To be sure, inputs to the system from the parties (such as the quantity, type and timing of motions) are important contributors to a case's ultimate time to disposition. But so are outputs – the rigidity or flexibility of the case management schedule, the time a judge takes to rule on a motion, the way he or she rules, and how each ruling affects the case schedule going forward. These questions lend themselves not just to quantitative analysis, but qualitative as well. Why do some judges rule more quickly than others on the same type

of motion? Why do some judges grant motions more frequently? Why does a rescheduled hearing in one court take place two weeks after the original hearing was scheduled, while in another court it takes place three days *earlier* than originally scheduled? What expectations do the attorneys have of the courts, and the courts of attorneys, with respect to the movement of a case toward final disposition?

To address these questions, we examine here the impact of four non-quantifiable (or at least less quantifiable) factors that may contribute to the variation in time to disposition of like cases across courts: (1) the local legal culture; (2) the culture of the district court; (3) transparency; and (4) judicial leadership.

1. *Local legal culture*

Efforts to explore "local legal culture" – that is, the "established expectations, practices, and informal rules of behavior of judges and attorneys"[112] in a community – go back several decades in one form or another, but the term itself came into common parlance after the National Center for State Courts released its *Justice Delayed* study in 1978. That report concluded that the "subjective elements of the local legal community affect the level of a court system's concern with the existing pace of civil and criminal litigation. If any one element is essential to the effort to reduce pretrial delay, it is concern by the court with delay as an institutional and social problem."[113]

A follow-up study by the National Center for State Courts tried to quantify some of the differences in local legal culture. The study posed twelve hypothetical criminal cases to judges and attorneys in four cities, and asked the respondents to provide an appropriate date for a jury trial to begin in each case, "given adequate staff to handle the caseload of prosecution, defense, and the court in a fair and expeditious manner[.]"[114] For hypotheticals involving serious criminal cases, the mean

[112] CHURCH., *supra* note 25, at 5. Others have offered their own definitions, following the same basic theme. For example, one set of commentators has defined "local legal culture" as "systematic and persistent variations in local legal practices as a consequence of a complex of perceptions and expectations shared by many practitioners and officials in a particular locality, and differing in identifiable ways from the practices, perceptions, and expectations existing in other localities subject to the same or a similar formal legal regime." Teresa A. Sullivan, Elizabeth Warren & Jay Lawrence Westbrook, *The Persistence of Local Legal Culture: Twenty Years of Evidence from the Federal Bankruptcy Courts*, 17 HARV. J.L. & PUB. POL'Y 801, 804 (1994).
[113] CHURCH, *supra* note 25, at 5.
[114] Thomas W. Church, Jr., *Who Sets the Pace of Litigation in Urban Trial Courts?*, 65 JUDICATURE 76, 82 (1981).

preferred number of days from arrest to trial varied from 60.6 in Miami to 131.7 in the Bronx.[115] The authors concluded that "practitioner norms regarding proper disposition time both mirror and support the existing pace of litigation in a court."[116]

A subsequent study by the Institute for Court Management found that even when there is general agreement in a legal community that court delay is a problem, that consensus actually *prevents* change unless it is accompanied by leadership and action – action that disrupts entrenched interests and fosters a certain amount of discomfort. The researchers explained:

> To talk about how slow civil cases move, about the need to change the situation, about how difficult it is to effect change, to recount the long history of workshops, symposia and crash programs that have not produced permanent change – these become comfortable topics of conversation in much the same way that the weather provides a focus for empty discussion. And like the weather, everyone talks about civil case delay, but no one does anything about it. To produce real change, the system itself has to change. People's attitudes toward discovery, settlement, continuances, etc., have to change. More importantly, the behavior of individuals would also have to change dramatically. These changes in behavior would be fairly profound; they would appear impolite, rash or irrational and would cause a great deal of discomfort to those affected. It is far easier merely to talk about the need for change.[117]

Change in processes and timing of civil litigation may be particularly challenging for attorneys because change disrupts established mental models of how the system should work. Professor Lynn Lopucki has explained that local legal cultures are "inevitable" because lawyers in any given community develop shared mental models of the law – models which often differ substantially from written laws and procedures but match closely with the mental models of other lawyers in the community.[118] Therefore, the norms and procedure emanating from interactions of lawyers and judges in a community are likely to be both more efficient and less accurate than the law and procedure in the books. If this model is correct, changing the rules to promote greater efficiency and reduce civil case delay will necessarily involve change in the attitudes and mental models of the lawyers and judges bound by the rules to achieve real results.

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[115] *Id*. at 84.
[116] *Id*. at 85.
[117] David R. Sherwood & Mark A. Clarke, *Toward an Understanding of "Local Legal Culture"*, 6 JUST. SYS. J. 200, 213-14 (1981).
[118] Lynn M. Lopucki, *Legal Culture, Legal Strategy, and the Law in Lawyers' Heads*, 90 NW. U. L. REV. 1498, 1542 (1996).

Not everyone is convinced that local legal culture holds much promise as an explanatory variable, however. One set of commentators has charged that "'local legal culture' can only 'explain' delay at a very high level of abstraction."[119] Research in the 1990s on the use of sanctions under Federal Rule of Civil Procedure 11 concluded that local legal culture "was at best a minor factor"[120] in variation between courts, and suggested that while local legal culture may be a useful explanation in criminal courts, this was not the case for civil litigation.[121]

Still, we find that the concept has powerful explanatory potential. One judge has suggested that a local legal culture that is capable of operating in an expedited docket regime and accepts such a process as fair and practical is "perhaps [the] *sine qua non* of an expedited docket system for all civil cases."[122] While it is unlikely that the local bar in any district would uniformly embrace an expedited regime from the outset, some comments from the ACTL Fellows survey (see page 27) suggest that attorneys will adjust as needed to a system in which deadlines really are fixed. As one survey respondent practicing in Western Wisconsin remarked, "I live in a rocket docket district. Although I objected when it was first introduced, I now think it is the better way to go."

2. *Local Rules and individual judge practices*

Another possible explanation is that the local rules adopted by each court and the individual practices adopted by each judge affect the parties' approach to a case from the outset. The thesis is straightforward: judges, both individually and collectively, may send messages to parties and counsel about the judges' commitment to expeditious resolution of cases through the individual or collective adoption of rules and procedures designed to move a case quickly. If local rules and practices carry influence, then changes to those rules and practices may impact overall time to disposition. In this study, however, there was not a clear trend between messages sent by local rules and practices, and the actual time to disposition of civil cases.

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[119] Joel B. Grossman et al., *Measuring the Pace of Civil Litigation in Federal and State Courts*, 65 JUDICATURE 86, 93 (1981).
[120] Herbert M. Kritzer & Frances Kahn Zemans, *Local Legal Culture and the Control of Litigation*, 27 LAW & SOC'Y REV. 535, 549 (1993).
[121] The authors hypothesized that "highly regularized, day-in, day-out interaction" is a regular feature of criminal courts and creates a "set of expectations concerning appropriate ways of handling cases," whereas the lack of regular interaction between attorneys on the civil side means that such expectations do not develop. *See id*. at 551.
[122] Ellis, *supra* note 97, at 544.

Some evidence in this study suggests that local legal culture works hand-in-hand with local rules and individual policies to influence the pace of litigation. For example, throughout the study, Colorado showed extremely high ratios of motions to extend time per 100 cases. Nearly 54 motions to extend time to answer the complaint, counterclaim or crossclaim were filed per 100 cases, as well as 55 motions per 100 cases to extend deadlines to respond to discovery requests, 79 motions per 100 cases to extend time to file or respond to non-discovery motions, and 37 motions per 100 cases to continue a hearing or conference. These ratios are much higher than those exhibited in any other district for any such extension motions. The reason probably lies in Colorado's Local Rule 6.1(A), which provides:

> **Extension on Stipulation.** The parties may stipulate in writing to a first extension of not more than 20 days beyond the time limits prescribed in the Federal Rules of Civil Procedure to respond to a complaint, cross-claim, counterclaim, third-party complaint, interrogatories, requests for production of documents, or requests for admissions. The stipulation must be filed before the expiration of the time limits to respond prescribed in the Federal Rules of Civil Procedure, and shall be effective upon filing, unless otherwise ordered.

Giving the parties a "free" first extension by stipulation may well have made sense from an administrative perspective when Local Rule 6.1(A) was first implemented; the judges would be relieved of a burden to rule on motions, and the parties would be given some additional flexibility. It appears, however, that attorneys and the court have internalized the rule, effectively adding 20 days to preset deadlines without commensurate benefit to the progress of the case.

In other districts, however, local legal culture appears to trump specific local rules and policies, even when the rules would suggest a more lax and permissive approach to case processing. Eastern Virginia's Local Rule 37(F), for example, provides in part that "Depending on the facts of the particular case, the Court in its discretion may, upon appropriate written motion by a party, allow an extension of time in excess of the time provided by the Federal Rules of Civil Procedure, these Local Rules, or previous Court order, within which to respond or to complete discovery or to reply to any discovery motions." The text of the rule suggests that the Court may be amenable to discovery extensions from time to time, and one might expect a reasonable number of parties to seek such extensions; in practice, however, the study showed that only 6 motions for extensions of time to file or

respond to discovery are filed per 100 cases in Eastern Virginia, less than one-fourth of the average rate across all eight districts. Similarly, even though several judges in Eastern Missouri have adopted a policy of handling "minor" extension requests less formally through a consent motion or electronic request, the rate at which extension motions are filed per 100 cases in that district is below average for every category of extensions studied. It appears that in these districts, the culture of extensions and continuances is influenced by factors other than the strict language of the local rule or practice, particularly the expectation that such extensions are disfavored.

Finally, the local legal culture may uniformly influence civil case processing in a district even though the judges themselves use vastly different rules and procedures. In Idaho, for example, the two district judges both had a mean time to disposition in the study of 450-500 days, even though the judges differ almost completely in their respective preferences for the judicial role in Rule 16 conferences, the timing of trial scheduling, the use of hearings to decide motions, extensions of deadlines before trial, and the use of magistrate judges to decide motions on disputed discovery. More may be at work than just local legal culture, but the close averages despite quite different approaches to managing civil cases suggests that the issue is more complex than just rules and procedures. Similarly, in this study the two district judges in Western Wisconsin both terminated cases in less than 200 days on average, even though there are virtually no local rules in the district (and none directly implicating the timing of cases); the judges have individualized procedures for summary judgment; and the two judges differ in their use of a magistrate judge for Rule 16 conferences and to decide motions on disputed discovery. This suggests that the expectation among the bench and bar in Western Wisconsin that cases will be processed expeditiously is a powerful proponent of speedy resolution, allowing the district judges to differ in certain of their approaches to case processing and still achieve fast results.

3. *Transparency and public reporting*

The potential impact of transparency also deserves discussion. Put simply, the question is whether (and to what extent) case time to disposition changes when the caseflow management statistics of a court and individual judges are made available to the public. Some prior studies have

indeed suggested court efficiency has increased when public statistical reporting commenced. The 1996 RAND study noted, for example, that from the time the CJRA's public reporting requirements went into effect in 1991 to September 1995, "the total number of all civil cases pending has increased, but the number of cases pending more than three years has dropped by about 25 percent from its pre-CJRA level."[123] While a direct cause-and-effect relationship could not be shown, the RAND report noted that the publication requirements "may have affected the number of cases pending more than three years."[124]

This study builds on the RAND finding by offering strong circumstantial evidence that CJRA reporting deadlines ***do*** foster more rapid ruling on motions. As shown below, a disproportionate number of rulings on Rule 12 motions, Rule 56 motions, and motions disputing discovery were made in the final two weeks of March and September, before the respective CJRA deadlines of March 31 and September 30. During the 31 total days from March 16-31 and from September 16-30 of each year, on average one would expect about 8.5% of any given motion type to be ruled upon. In fact, for those weeks during the study time period, rulings were handed down in about 11% of motions disputing discovery, 12% of Rule 12 motions, and 15% of Rule 56 motions. This suggests that judges are paying attention to the CJRA/Judicial Conference deadlines and working to rule on more motions than normal before those deadlines. Furthermore, over 40% of motions disputing discovery and nearly 35% of summary judgment motions ruled on during the last two weeks of March or September had been pending for six months or more, meaning that they would have been listed on an individual judge's CJRA report if not resolved before the month-end deadline. We do not suggest that every motion ruled upon during the last two weeks of March and September is motivated by external reporting concerns, but neither can the high number of motions resolved during those periods each year be considered purely an accident.

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[123] JUST, SPEEDY AND INEXPENSIVE?, *supra* note 35, at 24. At least one other commentator has noted this striking result, noting that "Of all the reforms [the CJRA] promoted, only the publication requirement seems to have resulted in the clearest reduction of case delays." Robert E. Litan, *Foreword* to Hon. Daniel B. Winslow, Justice Delayed: Improving the Administration of Civil Justice in the Massachusetts District and Superior Courts, http://www.pioneerinstitute.org/pdf/bgc_1998.pdf.

[124] JUST, SPEEDY, AND INEXPENSIVE?, *supra* note 35, at 24.

TABLE 31
RULING ON MOTIONS PRIOR TO CJRA DEADLINES

	Disputing Discovery	Rule 12	Rule 56
Pct. ruled March 16-31 or September 16-30	**10.95%**	**12.35%**	**15.04%**
March only	*5.16%*	*5.31%*	*7.78%*
September only	*5.79%*	*7.04%*	*7.26%*
Pct. of all motions over six months old			
March 16-31 ruling	15.55%	16.95%	19.41%
September 16-30 ruling	26.67%	19.31%	15.03%

Whether the increases in court efficiency stem directly from greater transparency, or whether both phenomena are derivative of a court's internal commitment to reduce delay and better serve the public, broadly available public reporting tends to be associated with visible improvements in time to disposition and caseload backlog. It is also worth noting, however, that publicly reported figures are frequently dismissed or their significance minimized when they are not favorable. When the Administrative Office of the U.S. Courts released its CJRA numbers for September 2006 to March 2007, many of the judges listed as having the largest pending case or pending motion backlogs were quick to point out the unusual circumstances they faced during the reporting period. Among the explanations for bad numbers were the recent assignment of multidistrict litigation cases, inherited dockets, or simple failure to account adequately for closed or terminated cases.[125]

It is true that statistical reporting cannot capture the entirety of a judge's administrative skills or particular challenges posed by the docket. But the limited data suggest that there may be something to public reporting – both as a stick (to shine the light on slower-moving judges and create pressure to move their caseloads more expeditiously) and as a carrot (to encourage individual judges and courts to adopt an active approach to case management and showcase their accomplishments). We therefore encourage additional experiments with public reporting.

[125] *See* Joe Palazzolo, *The Slowest Federal Judges in the Land*, LEGALTIMES, Jan. 14, 2008 (on file with author), *available a*t http://www.law.com/jsp/dc/PubArticleFriendlyDC.jsp?id=1199873125958. Certainly, as a historical matter, the problem of integrity of data collection – i.e., the assurance that the same event type was recorded similarly across jurisdictions – was a significant factor in the accuracy of caseflow management numbers.

4. Judicial leadership

Although attorneys and judges often dispute who is chiefly responsible for moving cases to efficient resolution, caseflow management proponents have long argued that the courts themselves bear the primary duty of managing the caseload appropriately.[126] And while the direct impact of judicial leadership is prone to be measured more through anecdotes than through hard data, the sheer determination of certain judges to bring better management to their dockets is visible in the faster jurisdictions in this study. Representatives from Western Wisconsin explained that that district became interested in caseflow management in the 1960s and 1970s under the leadership of Judge Hubert Will, a federal judge based in Chicago who championed early and continuing court involvement in civil cases.[127] That interest blossomed into a practice of regular, early case management in the early 1980s, when both current district judges – Judge Shabaz and Judge Crabb – began adopting firm deadlines for critical events in the litigation, and found that cases were resolved much more promptly than before. A committed judiciary, and a responsive local bar, helped fashion the district into one of the fastest in the country.

Similarly, the impact of judicial leadership on efficient case processing has taken on almost mythical status in Eastern Virginia, where several judges – among them Judge Albert Bryan Sr.[128] and Judge Walter E. Hoffman[129] – have been credited with introducing a firm scheduling protocol that developed into the "rocket docket" by the 1970s. Whoever was initially responsible for the scheduling protocol, the other judges in the district, and their successors over four decades, have each accepted efficient case management as a central role and responsibility. This responsibility manifests itself in maintaining deadlines, sometimes upon the threat of moving trial dates earlier if the parties appear to be lagging in their pretrial activities. As one judge in the district explained in 1998, after thirty years on the bench:

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[126] *E.g.*, Larry L. Sipes, *A Postscript on Delay and Its Future*, 65 JUDICATURE 114, 115 (1981) (predicting that "any delay reduction plan is doomed to failure unless key participants in the litigation process, particularly judges in leadership positions, desire to improve the pace of litigation and commit themselves to reducing delay.").
[127] *See* Hon. Hubert L. Will, *Judicial Responsibility for the Disposition of Litigation*, 75 F.R.D. 117 (1976).
[128] *See, e.g.*, Jerry Markon, *A Double Dose of Molasses in the Rocket Docket*, WASH. POST, Oct. 3, 2004, at C4; Tim Mazzucca, *In Alexandria Court, Lawyers Work in a Different Orbit*, WASH. BUS. J., Mar. 7, 2003.
[129] *See, e.g.*, Kim Dayton, *Case Management in the Eastern District of Virginia*, 26 U.S.F. L. REV. 445, 449 (1992); Hon. John A. Mackenzie et al., *A Tribute to Walter E. Hoffman*, 54 WASH. & LEE L. REV. 1339, 1340 (1997).

> You'd be shocked how many cases get settled if you set them for trial. My rule is if you need more than six months [for discovery] and you satisfy me that you do, around here when the lawyer tells you something you generally accept it. … If it's more than six months, the lawyers must report to me once a month and tell me what they've done toward discovery. The threat is that if nothing has been done by the time the attorney gives me his first report, the case is going to be moved back. Instead of waiting until next March, we're going to move it back until October. There's not much of a threat because the Bar doesn't wait.[130]

A determined, persuasive and collaborative judge – especially a Chief District Judge – does have the ability to persuade others in his or her district to adopt procedures and policies to effectuate the timely disposition of civil cases. Several avenues are available. The first – and the one within the most control of any judge – is to lead by example. In this vein, Judge Roger Waybright of Florida wrote eloquently in the late 1960s about how, on his own initiative, he was able to reduce his inherited docket of more than 800 pending cases to fewer than 200 pending cases in seven and a half years.[131] In his inherited docket, nearly 400 cases had been pending for more than a year, and some for up to 17 years; after seven years of careful management, only 23 cases were pending even over three months.[132] This concerted effort to reduce delay was not dictated from on high or explicitly demanded of the judge; rather, he understood it to be part of the responsibility of his office:

> The basic technique for reduction of delay is simple: a judge must adopt and apply the philosophy that every case assigned to him becomes his personal responsibility the moment it is filed. It is his duty to push the case to conclusion within the least amount of time reasonably needed for each particular case.[133]

Another approach is to institute a specialized program to bring the entire court up to speed in short order. The Eastern District of Pennsylvania instituted such an accelerated civil jury trial program for an eight-week period in the spring of 1967.[134] The purpose of the program was to try to dispose of as many cases as possible, and thereby eliminate them from the court's growing backlog, which had over 6600 pending civil cases, nearly 17% of which were civil cases pending three years or

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[130] Hon. Robert R. Merhige, Jr., *The Federal Courts: Observations from Thirty Years on the Bench*, 32 U. RICH. L. REV. 867, 875 (1998).
[131] Roger J. Waybright, *An Experiment in Justice Without Delay*, 52 JUDICATURE 334, 334 (1969).
[132] *Id*.
[133] *Id*. at 335.
[134] C. William Kraft, III, Comment, *The Accelerated Civil Jury Trial Program in the District Court for the Eastern District of Pennsylvania*, 13 VILL. L. REV. 137, 138 (1967).

longer as of June 30, 1966.[135] During the course of the program, the court strictly limited the number of trial continuances it granted,[136] narrowed the scope of settlement conferences,[137] reduced the number of pretrial conferences held,[138] and dedicated every available judge to the program.[139] Cases were assigned to a Ready Pool, with the five oldest cases in the Ready Pool for each day "locked in" and the parties required to be physically present at the courthouse and ready to begin as soon as a judge and courtroom were available.[140] Overall, the accelerated program disposed of 338 cases during its run, 85% of which were settled.[141] But perhaps the most intriguing observation was that the "increased disposition rate was not limited to the period encompassed by the Program."[142] Rather, there was movement toward increased disposition from the time the new procedures were announced to a period some weeks after the program formally ended.[143] Beyond merely "cleaning house," a program in this vein has the potential to introduce a new dynamic to the legal culture, in which both judges and counsel are made to recognize the value of holding dates firm and processing cases efficiently.

Judicial leadership in faster case processing, then, has manifested itself in several different ways. Some courts have had an "Aha" moment, and have taken it upon themselves to jumpstart a slow-moving process. Other courts have been driven by nagging backlog. Still others took a greater interest in case processing after directives from Congress and the Judicial Conference brought the issues to the national stage. The Eastern District of Missouri, for example, became particularly interested as part of the its initial CJRA process in the early 1990s. Whatever the initial spark, in most successful courts the driving force was internal, not external. Legislation and rules can only do so much. The commitment of judges (and attorneys and court administrators) to move cases more quickly ultimately creates the conditions of more expedient case processing.

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[135] *Id*. at 137.
[136] *Id*. at 138.
[137] *Id*.
[138] *Id*. at 138-39.
[139] *Id*. at 139.
[140] *Id*.
[141] *Id*. at 140.
[142] *Id*. at 145.
[143] *Id*.

Whatever the approach, judicial leadership in creating a culture of faster case processing nets identifiable results. A comparison of the relative pace of the eight districts at several stages of the pretrial process reveals that efficient caseflow management is manifest at every stage of the case. Put another way, the fastest courts overall are also the fastest courts at every stage of the case.

TABLE 32
RANKINGS OF SUBJECT COURTS IN ELAPSED TIME TO COMPLETE MAJOR PRETRIAL EVENTS (MEAN TIMES)

District	Overall Filing to Disposition	Filing to Rule 16 Conference	Ruling on Disputed Discovery Motions	Ruling - Rule 12 Motions	Ruling - Rule 56 Motions	Length of Discovery Deadline Extension	Set Trial Date
Arizona	6	7	6	6	7	6	8
Colorado	4	4	5	7	8	3	6
Delaware	8	8	8	8	5	8	7
Idaho	7	6	7	5	6	7	5
E. Missouri	3	3	3	3	3	4	3
Oregon	5	5	4	4	4	5	4
E. Virginia	2	2	1	2	2	2	2
W. Wisconsin	1	1	2	1	1	1	1

As shown in Table 32 above, the three districts with the fastest mean times to disposition (Western Wisconsin, Eastern Virginia, and Eastern Missouri) were also the three fastest with respect to holding a Rule 16 conference, resolving motions on disputed discovery, resolving Rule 12 motions, resolving Rule 56 motions, and setting a trial date after the case was filed. Conversely, districts with the slowest mean times to disposition also tended to be the slowest at each stage of the case. This suggests that there is no silver bullet that guarantees faster case processing, and improvement in no single area holds the key to improvement overall. Rather, reducing delay in civil cases requires an attitude of expediency throughout the pretrial process that starts in the courts and extends to the bar, litigants, and the public at large.

V. SUMMARY OBSERVATIONS

Three central conclusions come out of this study. The first is that there are specific areas of pretrial processing that are more closely correlated with the overall time to disposition of a civil case than others. In particular, faster disposition times tend to be strongly correlated with setting a trial date early in the litigation, filing motions for leave to conduct additional discovery as soon as possible after the Rule 16 conference (if such motions must be filed at all), and filing motions on disputed discovery, motions to dismiss and motions for summary judgment as soon as practicable in the life of the litigation. By contrast, the sheer number of motions filed in a case is not strongly correlated with the overall time to disposition, suggesting that courts can adopt methods for resolving large numbers of motions quickly and within a predetermined schedule (or conversely, may struggle to keep cases on pace even when motion practice is limited). Some areas of conventional wisdom about efficient case processing, such as limiting written publications or using magistrate judges to resolve motions on disputed discovery, did not bear out in our study. The evidence regarding the use of court-sponsored or court-directed alternative dispute resolution was not comfortably clear.

The second conclusion is that the existence of a uniform set of rules governing civil cases does not ensure a uniform experience for litigants as to the length of a case. Some district courts move cases much faster than others, both collectively and when broken down by nature of suit. Within some districts, the speed with which individual judges process cases also varies considerably. Even though each district has a unique caseload and faces unique challenges, nearly every federal district could set schedules earlier, grant fewer extensions, encourage earlier filing (and earlier resolution) of motions, and keep critical dates firm. The courts in our study that were faster in these areas also had faster mean times to disposition overall.

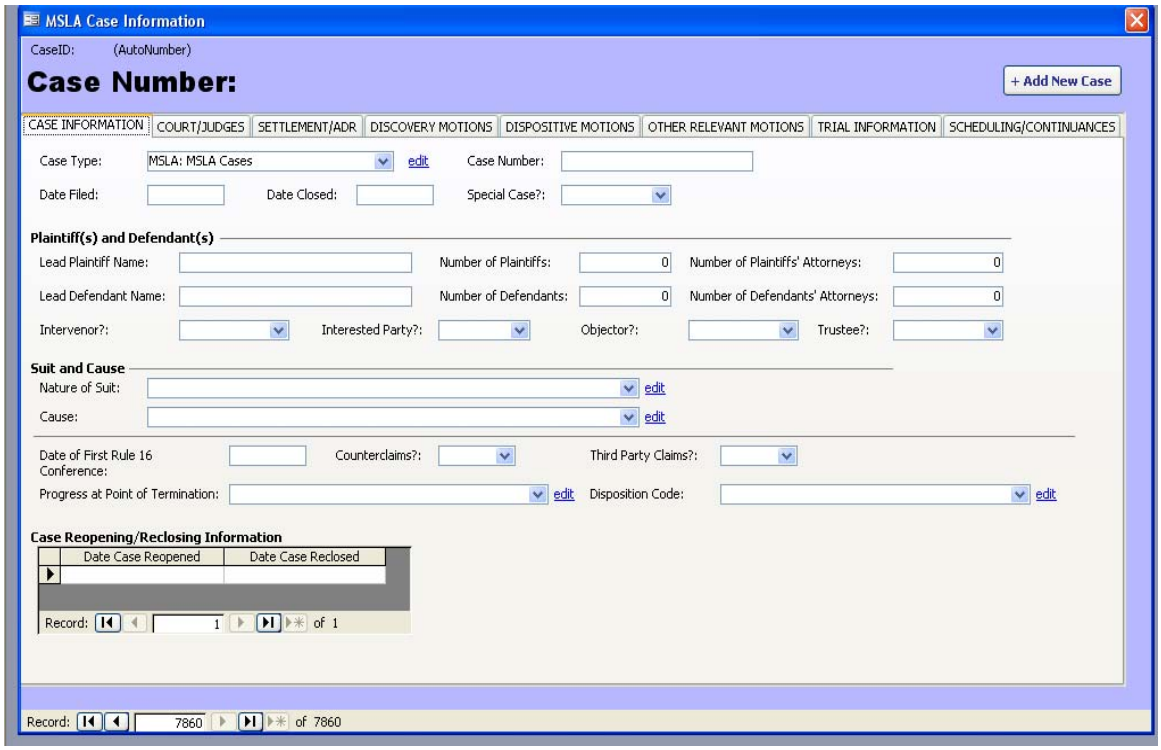
The third conclusion is that rules changes alone will not necessarily reduce delay. Rather, efficient caseflow is evidenced most strongly in districts in which both the court and the local legal community adopt an attitude that faster case processing is both possible and desirable. Judges wishing to improve the speed at which their civil cases progress toward trial or termination must accept the challenge of moving their dockets faster, and should embrace transparency and reporting to

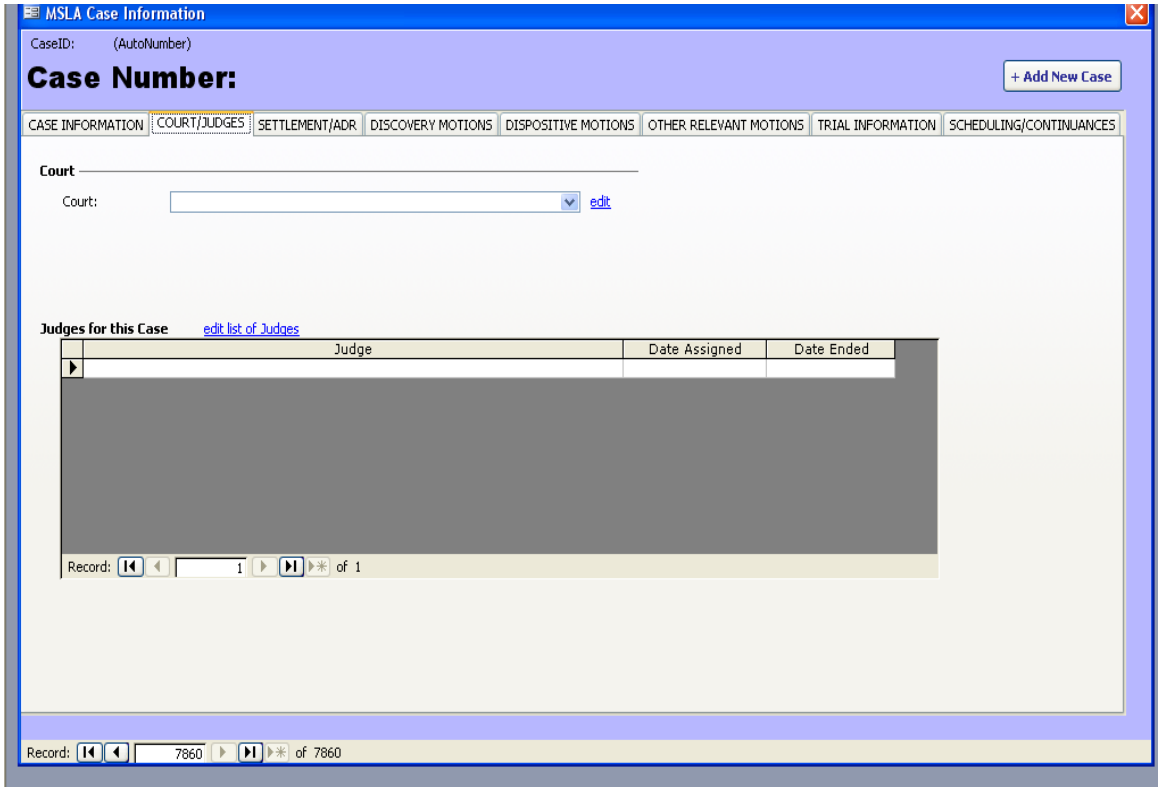
demonstrate how their efforts are serving individual litigants and the public at large. Judicial leadership in this vein is essential.

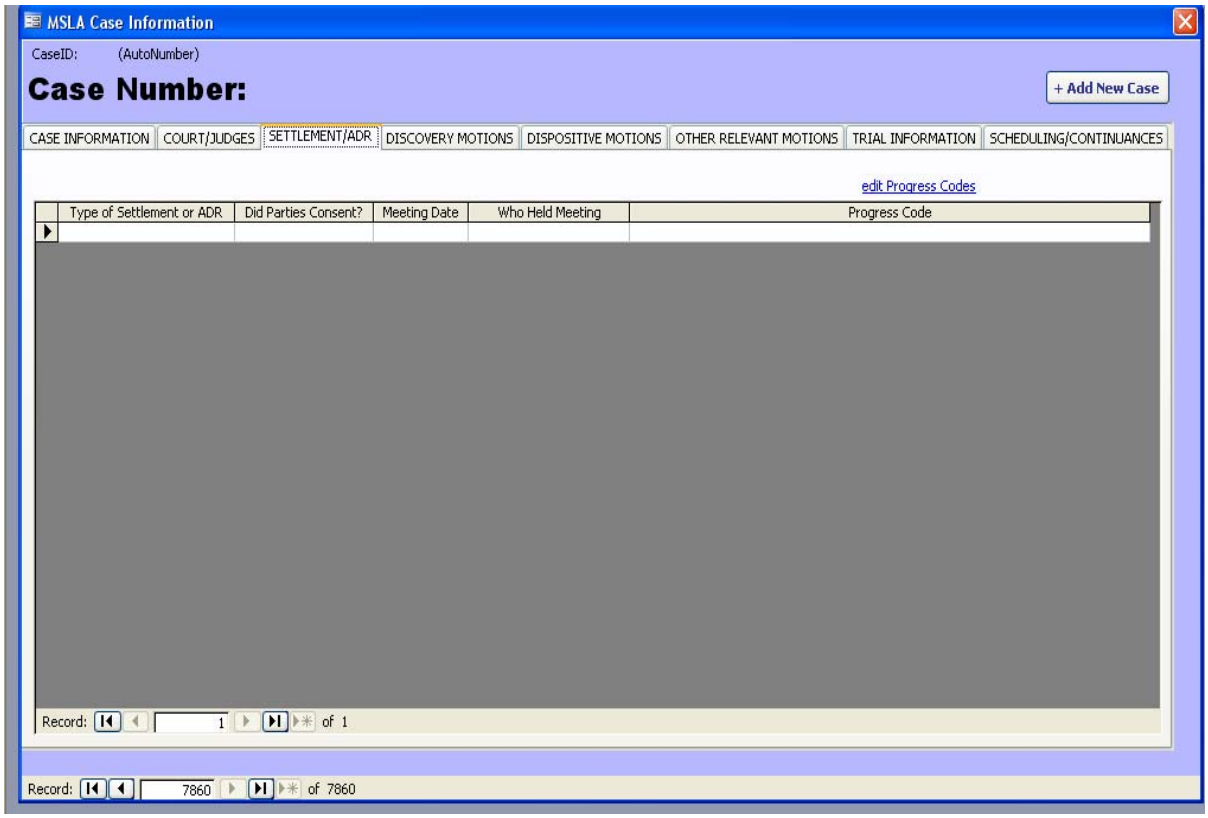
We intend our findings to be a starting point for further research, experimentation, and piloting. There are real differences between various courts and legal communities in the United States, and sometimes real differences between the players in state and federal courts, even in the same geographical area. What works for one district may not work in an identical way in another. But some trends are strong and too important to ignore. For example, what would happen if each district began granting only half of the extensions and continuances that it does currently? What would happen if judges encouraged motions to be filed as early as practicable, and were able to rule on discovery and dispositive motions even one week faster on average than they do now? What if courts agreed to distribute figures publicly showing how individual judges and judicial officers are keeping up with motion practice and filing to disposition times? The numbers in our study suggest that these changes might cause overall time to disposition to drop, perhaps significantly. Moreover, they might encourage a positive change in the culture of both the bar and the courts.

We encourage others to examine our findings and work to replicate them in their own districts. The information is already available through PACER and other court databases. Let this report be not the final word on case processing, but the herald of a new era in which statistical analysis works hand-in-hand with procedural and administrative changes to bring accessible, affordable, fair and swift justice to all who use the United States Courts.

APPENDIX A
ELECTRONIC DATA COLLECTION FORMS



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Case Number:
+ Add New Case
CASE INFORMATION
COURT/JUDGES
SETTLEMENT/ADR
DISCOVERY MOTIONS
DISPOSITIVE MOTIONS
OTHER RELEVANT MOTIONS
TRIAL INFORMATION
SCHEDULING/CONTINUANCES
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Type of Settlement or ADR
Did Parties Consent?
Meeting Date
Who Held Meeting
Progress Code
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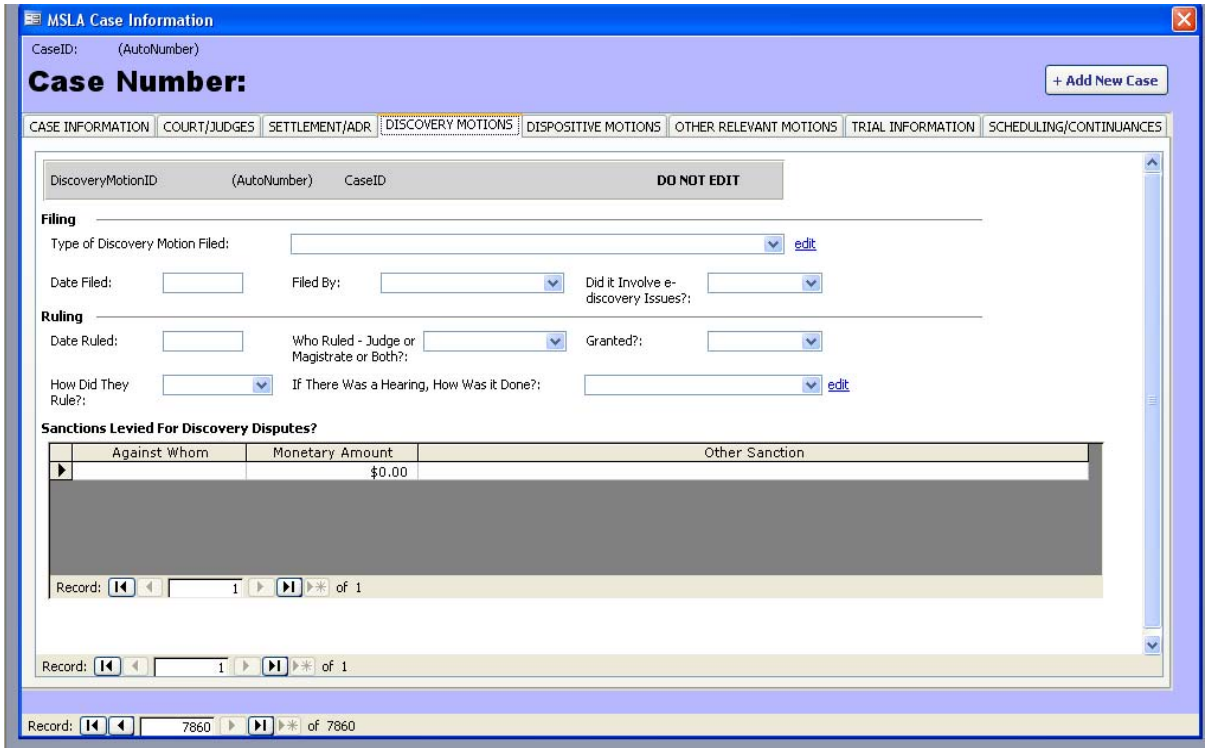
Record: 7860 of 7860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Case Number:
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CASE INFORMATION
COURT/JUDGES
SETTLEMENT/ADR
DISCOVERY MOTIONS
DISPOSITIVE MOTIONS
OTHER RELEVANT MOTIONS
TRIAL INFORMATION
SCHEDULING/CONTINUANCES
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Type of Discovery Motion Filed:
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Date Filed:
Filed By:
Did it Involve e-discovery Issues?:
Ruling
Date Ruled:
Who Ruled - Judge or Magistrate or Both?:
Granted?:
How Did They Rule?:
If There Was a Hearing, How Was it Done?:
edit
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Record: 1 of 1
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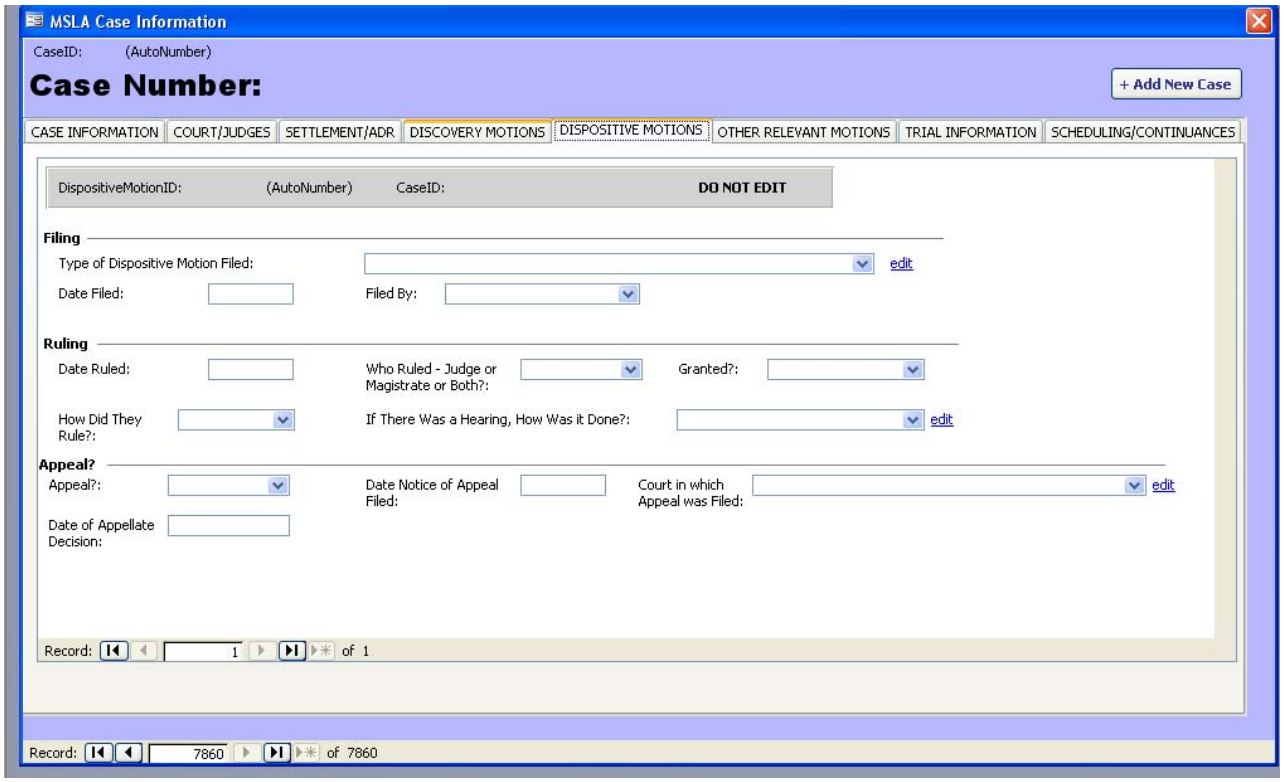
Record: 7860 of 7860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SETTLEMENT/ADR
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DISPOSITIVE MOTIONS
OTHER RELEVANT MOTIONS
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Date Filed:
Filed By:
Ruling
Date Ruled:
Who Ruled - Judge or Magistrate or Both?:
Granted?:
How Did They Rule?:
If There Was a Hearing, How Was it Done?:
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Appeal?
Appeal?:
Date Notice of Appeal Filed:
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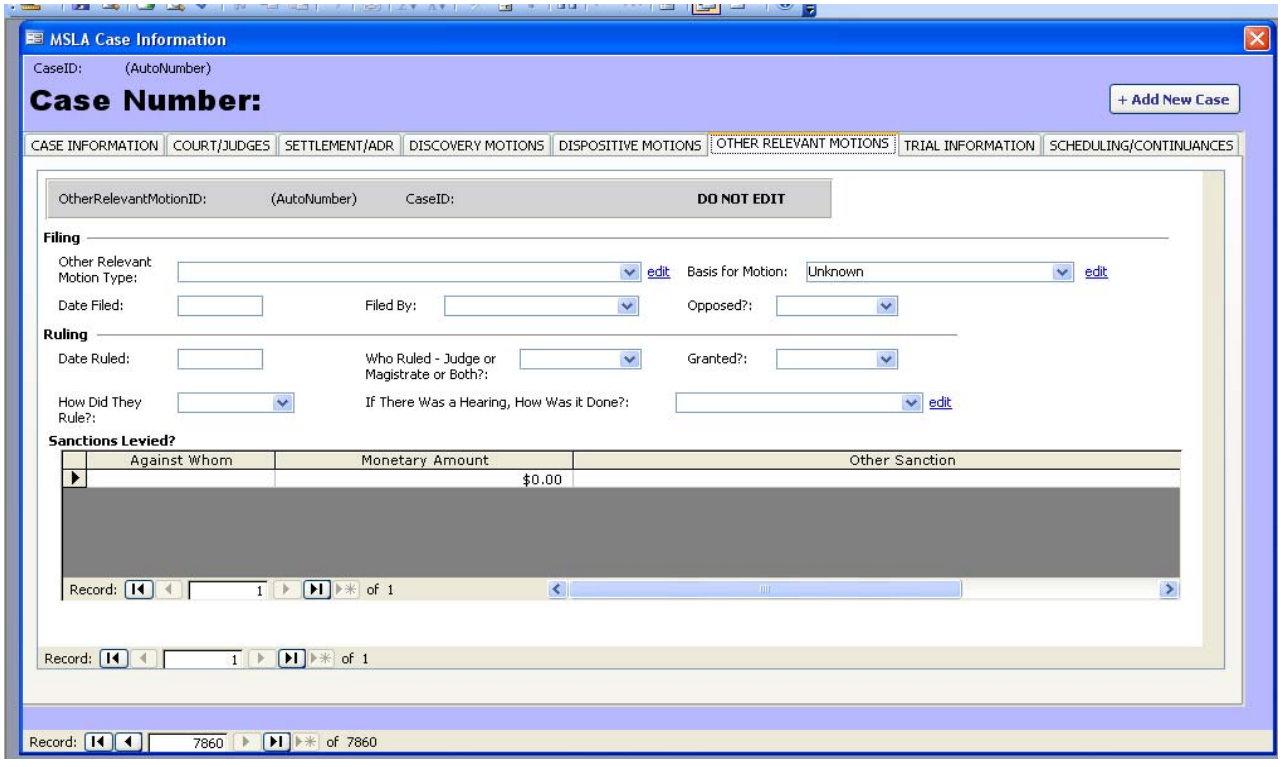
edit
Date of Appellate Decision:
Record: 1 of 1
Record: 7860 of 7860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+ Add New Case
CASE INFORMATION
COURT/JUDGES
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OTHER RELEVANT MOTIONS
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Date Filed:
Filed By:
Opposed?:
Ruling
Date Ruled:
Who Ruled - Judge or Magistrate or Both?:
Granted?:
How Did They Rule?:
If There Was a Hearing, How Was it Done?:
edit
Sanctions Levied?
Against Whom
Monetary Amount
Other Sanction
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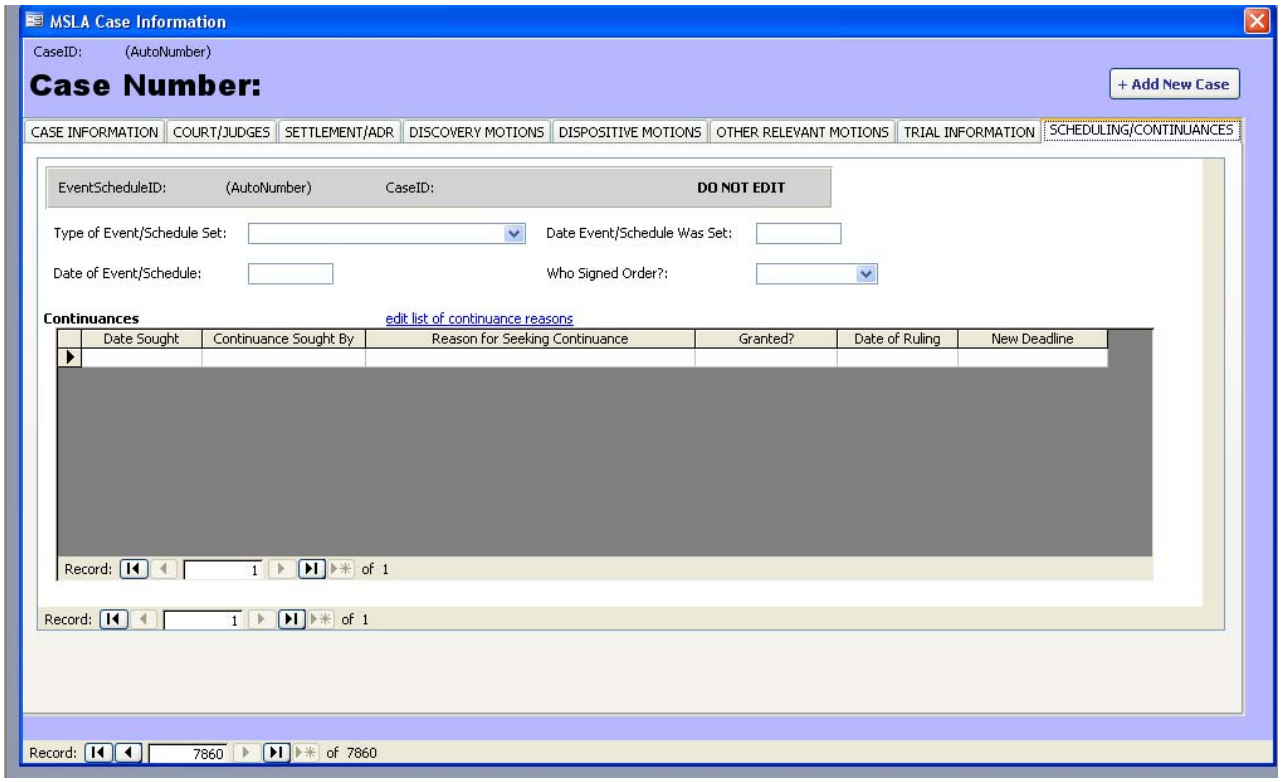
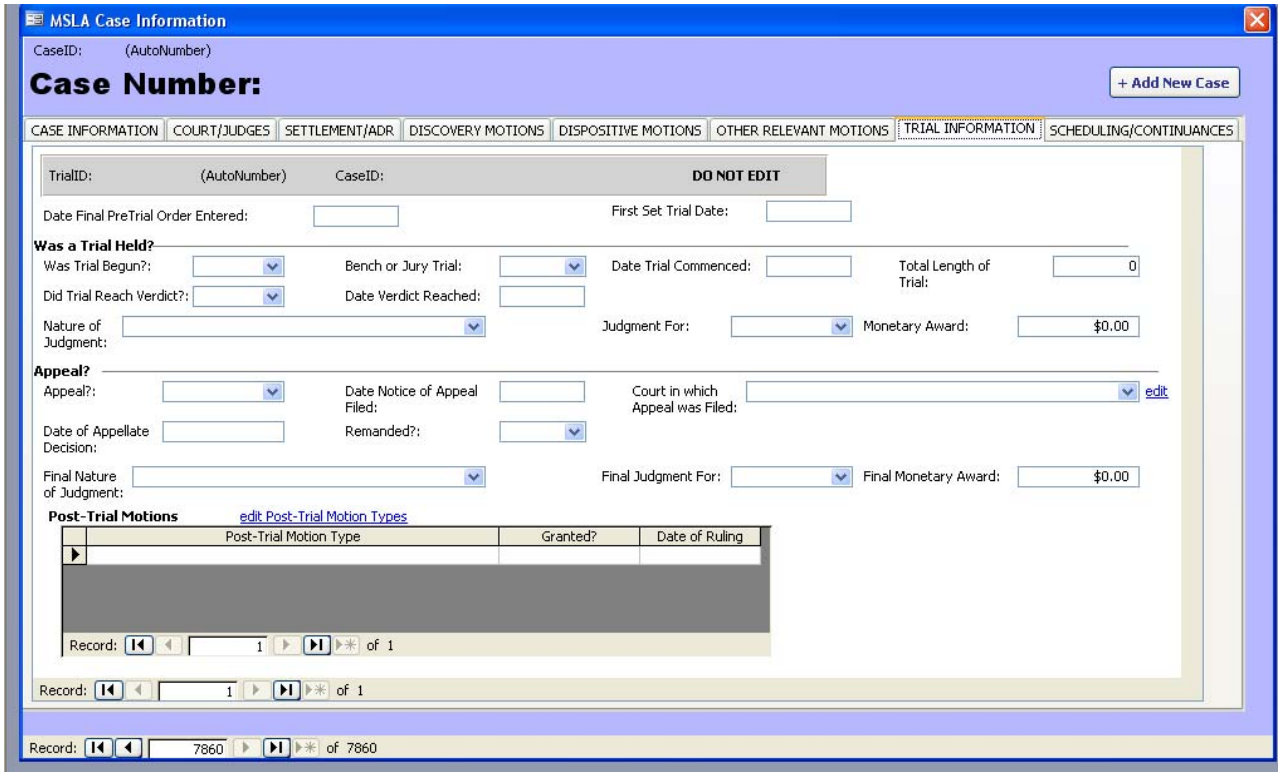
Record: 1 of 1
Record: 1 of 1
Record: 7860 of 7860


MSLA Case Information
CaseID: (AutoNumber)
Case Number:
+ Add New Case
CASE INFORMATION
COURT/JUDGES
SETTLEMENT/ADR
DISCOVERY MOTIONS
DISPOSITIVE MOTIONS
OTHER RELEVANT MOTIONS
TRIAL INFORMATION
SCHEDULING/CONTINUANCES
EventScheduleID: (AutoNumber) CaseID: DO NOT EDIT
Type of Event/Schedule Set:
Date Event/Schedule Was Set:
Date of Event/Schedule:
Who Signed Order?:
Continuances
edit list of continuance reasons
Date Sought
Continuance Sought By
Reason for Seeking Continuance
Granted?
Date of Ruling
New Deadline
Record: 1 of 1
Record: 1 of 1
Record: 7860 of 7860


MSLA Case Information
CaseID: (AutoNumber)
Case Number:
+ Add New Case
CASE INFORMATION
COURT/JUDGES
SETTLEMENT/ADR
DISCOVERY MOTIONS
DISPOSITIVE MOTIONS
OTHER RELEVANT MOTIONS
TRIAL INFORMATION
SCHEDULING/CONTINUANCES
TrialID: (AutoNumber) CaseID: DO NOT EDIT
Date Final PreTrial Order Entered:
First Set Trial Date:
Was a Trial Held?
Was Trial Begun?:
Bench or Jury Trial:
Date Trial Commenced:
Total Length of Trial:
0
Did Trial Reach Verdict?:
Date Verdict Reached:
Nature of Judgment:
Judgment For:
Monetary Award:
$0.00
Appeal?
Appeal?:
Date Notice of Appeal Filed:
Court in which Appeal was Filed:
edit
Date of Appellate Decision:
Remanded?:
Final Nature of Judgment:
Final Judgment For:
Final Monetary Award:
$0.00
Post-Trial Motions
edit Post-Trial Motion Types
Post-Trial Motion Type
Granted?
Date of Ruling
Record: 1 of 1
Record: 1 of 1
Record: 7860 of 7860

APPENDIX B
CODEBOOK FOR SELECTED DATA ENTRY VARIABLES

Nature of suit[144]

110: Insurance
120: Marine (Contract)
130: Miller Act
140: Negotiable Instrument
151: Medicare Act
160: Stockholders' Suits
190: Other Contract
195: Contract Product Liability
196: Franchise
210: Land Condemnation
220: Foreclosure
230: Rent Lease & Ejectment
240: Torts to Land
245: Tort Product Liability
290: All Other Real Property
310: Airplane
315: Airplane Product Liability
320: Assault, Libel & Slander
330: Federal Employees' Liability
340: Marine (Torts)
345: Marine Product Liability
350: Motor Vehicle
355: Motor Vehicle Product Liability
360: Other Personal Injury
362: Personal Injury – Medical Malpractice
365: Personal Injury – Product Liability
368: Asbestos Personal Injury – Product Liability
370: Other Fraud
371: Truth in Lending
380: Other Personal Property Damage
385: Property Damage – Product Liability
400: State Reapportionment
410: Antitrust
422: Bankruptcy Appeal – 28 U.S.C. § 158
423: Bankruptcy Withdrawal – 28 U.S.C. § 157
430: Banks and Banking
440: Other Civil Rights
441: Civil Rights – Voting
442: Civil Rights – Employment
443: Civil Rights – Housing/Accommodations
444: Civil Rights -- Welfare
445: Civil Rights – Americans with Disabilities Act – Employment
446: Civil Rights – Americans with Disabilities Act – Other
450: Commerce
460: Deportation
470: RICO
480: Consumer Credit
490: Cable/Satellite TV
710: Fair Labor Standards Act
720: Labor/Management Relations
730: Labor/Management Reporting and Disclosure Act
740: Railway Labor Act
790: Other Labor Litigation
791: ERISA
810: Selective Service
820: Copyright
830: Patent
840: Trademark
850: Securities/Commodities/Exchange
870: Taxes (U.S. Plaintiff or Defendant)
871: Taxes (IRS Third Party)
875: Customer Challenge – 12 U.S.C. §3410
890: Other Statutory Actions
891: Agricultural Acts
892: Economic Stabilization Act
893: Environmental Matters
894: Energy Allocation Act
895: Freedom of Information Act
900: Appeal of Free Determination Under Equal Access to Justice
950: Constitutionality of State Statutes

Cause[145]

05:552: Freedom of Information Act
05:554: Constitutionality of Maritime Statutes
05:701: Administrative Procedure Act
05:702: Administrative Procedure Act
05:704: Labor Litigation
07:1: Commodity Exchange Act
07:499: Agricultural Commodities Act
07:601: USDA Condemnation
08:1101: Illegal Immigrant Reform and Immigrant Responsibility Act
08:1446: Petition for Naturalization Hearing
08:1447: Petition for Naturalization Hearing
09:1: Federal Arbitration Act
09:10: Petition to Vacate Arbitration Award

[144] The numeric codes used in this category are assigned by the federal courts, and have been retained for this project.

[145] The numeric codes used in this category are assigned by the federal courts, and have been retained for this project. In rare circumstances, cases are assigned a nature of suit code but are not assigned a cause code.

09:201: Convention on Recognition and Enforcement of Foreign Arbitration Awards
10:1552: Armed Forces: Action to Correct Records
11:101: Bankruptcy
12:1821: Default on Loan by Promissory Note
15:1: Antitrust Litigation
15:77: Securities Fraud
15:78m(a): Securities Exchange Act
15:80: Investment Companies Act of 1940
15:717: Natural Gas Act
15:1051: Trademark Litigation
15:1114: Trademark Litigation
15:1121: Trademark Litigation
15:1125: Trademark Litigation
15:1126: Patent Infringement
15:1536: Patent Infringement
15:1601: Truth in Lending
15:1640: Truth in Lending
15:1681: Fair Credit Reporting Act
15:1691: Equal Credit Opportunity Act
15:1692: Fair Debt Collection Act
15:2301: Magnuson-Moss Warranty Act
16:1538: Endangered Species Act
17:101: Copyright Infringement
17:501: Copyright Infringement
17:1201: Digital Millennium Copyright Act
18:241: Conspiracy Against Citizen Rights
18:1030g: Fraud and Related Matters in Connection with Computers
18:1961: RICO
18:1962: RICO
18:1964: RICO
20:1400: Civil Rights of Handicapped Child
21:331: Food Drug & Cosmetic Act
26:6330: IRS: Appeal of Agency Determination
26:6702: IRS: Refund of Tax Penalty
26:7401: IRS: Tax Liability
26:7402: IRS: Petition to Enforce IRS Summons
26:7422: IRS: Refund Taxes
26:7429: IRS: Tax Jeopardy Assessment
26:7609: IRS: Petition to Quash IRS Subpoena
28:157: Motion for Withdrawal of Reference
28:157b: Bankruptcy Claim to be Tried in U.S. District Court
28:158: Notice of Appeal re: Bankruptcy Matter
28:451: Employment Discrimination
28:1132: ERISA
28:1330: Breach of Contract
28:1331: Federal Question
28:1331a: Federal Question: Real Property
28:1331dd: Federal Question: Discovery Disputes
28:1332: Diversity
28:1333: Admiralty
28:1334: Bankruptcy Appeal
28:1335: Interpleader Action
28:1337: Sherman-Clayton Act
28:1338: Copyright Infringement
28:1343: Violation of Civil Rights
28:1345: Property Damage
28:1346: Recovery of IRS Tax
28:1346: Breach of Contract
28:1346: Tort Claim
28:1346: Wrongful Death
28:1346: Undefined
28:1352: Miller Act
28:1361: Petition for Writ of Mandamus
28:1391: Personal Injury
28:1441: Petition for Removal
28:1442: Petition for Removal: Breach of Contract
28:1444: Petition for Removal – Foreclosure
28:1446: Petition for Removal – Personal Injury
28:1446: Petition for Removal
28:1446pl: Petition for Removal – Product Liability
28:1452: Removal of Claim in Civil Action Related to Bankruptcy Case
28:1651: Petition for Writ of Mandamus
28:1875: Protection of Jurors' Employment
28:2201: Declaratory Judgment
28:2409: Quiet Title Action
28:2410: Quiet Title
28:2412: Equal Access to Justice Act
28:2671: Federal Tort Claims Act
29:160(1): National Labor Relations Act
29:184: Violation of Collective Bargaining Agreement
29:185: Labor/Management Relations (Contract)
29:201: Fair Labor Standards Act
29:203: Equal Pay Act
29:206: Collect Unpaid Wages
29:401: Labor Management Disclosure Act
29:621: Job Discrimination (Age)
29:623: Job Discrimination (Age)
29:626: Job Discrimination (Age)
29:633: Job Discrimination (Age)
29:791: Job Discrimination (Rehabilitation Act)
29:794: Job Discrimination (Handicap)
29:1001: ERISA: Employee Retirement
29:1002: ERISA: Employee Retirement
29:1109: Breach of Fiduciary Duties
29:1132: ERISA: Employee Benefits
29:1145: ERISA
29:1149: Recover Pension and Profit Sharing
29:1161: ERISA/COBRA
29:1381: ERISA
29:1801: Farmworker Rights
29:2101: Worker Adjustment and Retaining Notification Act

29:2601: Family and Medical Leave Act
29:2611: Family and Medical Leave Act 1993
30:181: Mineral Lands Leasing Act
31:3729: False Claims Act
33:1319: Clean Water Act
33:1365: Environmental Matters
35:1: Patent Infringement
35:145: Patent Infringement
35:146: Review of Board of Patent Appeals Decision
35:183: Patent Infringement
35:256: Petition for Correction of Inventorship
35:271: Patent Infringement
38:4302: Veteran Reemployment Rights Act
40:258(a): Public Buildings and Property: Land Condemnation
40:270: Miller Act
40:3131: Miller Act
42:405: Fair Housing Act
42:1971: Voting Rights Act of 1965
42:1981: Job Discrimination (Race)
42:1981: Job Discrimination (Sex)
42:1981: Civil Rights (Other)
42:1983: Civil Rights Act
42:1985: Conspiracy to Interfere with Civil Rights
42:1986: Neglect of Duty
42:2000: Job Discrimination (Race)
42:2000: Job Discrimination (Sex)
42:2000: Job Discrimination (Age)
42:2000a: Title II
42:2000e: Job Discrimination (Employment)
42:3601: Fair Housing Act
42:4231: National Environmental Policy Act
42:4321: Review of Agency Action: Environment
42:6972: Resource and Recovery Act – Cotizen Suit
42:9607: Real Property Tort to Land
42:9613: CERCLA
42:11601: International Child Abduction Remedies Act
42:12101: Americans with Disabilities Act
42:12117: Americans with Disabilities Act
45:51: Railways: FELA
45:501: Amtrak
45:688: Jones Act
47:151: Communications Act of 1934
47:207: Wire and Radio Communication Service and Charges
47:227: Telephone Consumer Protection Act
47:332: Telecommunications Act of 1996
47:521: Cable and Consumer Protection and Competition Act of 1992
47:553: Cable Communications: Unauthorized Reception of Cable Services
49:11702: Violations of Interstate Commerce act
49:13706: Motor Carriers: Liability for Payment of Rates
49:14706: Carmack Amendment to Interstate Commerce Act

Type of discovery motion

Bifurcate discovery
Compel answers to interrogatories
Compel deposition
Compel discovery (multiple issues)
Compel discovery (unknown issues)[146]
Compel entry upon land
Compel medical examination
Compel mental examination
Compel production of documents
Compel responses to requests for admission
Exceed deposition limit
Expedite discovery
Extend time to conduct medical examination
Extend time to disclose experts
Extend time to file discovery motion
Extend time to file discovery requests
Extend time to file expert reports
Extend time to file reply in support of discovery motion
Extend time to file Rule 26(a)(1) initial disclosures
Extend time to respond to discovery motion
Extend time to respond to discovery requests
Failure to attend deposition or serve subpoena
Leave to conduct deposition after discovery cutoff
Leave to conduct discovery on other motions
Leave to conduct discovery prior to preliminary injunction hearing
Leave to serve Rule 34 request for entry upon land
Limit discovery
Maintain confidentiality designation
Modify discovery schedule
Protective order
Quash motion for protective order
Quash motion to compel
Quash subpoena
Sanctions
Stay discovery (pre-Rule 16 conference)
Stay discovery order (post-Rule 16 conference)
Terminate or limit examination

[146] To be used only where text of motion is unavailable and title of motion does not indicate specific issues.

Type of dispositive motion

Acceptance of offer of judgment
Alter or amend judgment (Rule 59)
Affirm judgment of bankruptcy court
Approve settlement agreement
Change venue/transfer
Compel arbitration
Consent judgment
Declaratory judgment
Default judgment
Dismiss under any rule except Rule 12(b) – full dismissal of one or more parties
Dismiss under any rule except Rule 12(b) – partial motion to dismiss
Dismiss under Rule 12(b) – full dismissal of one or more parties
Dismiss under Rule 12(b) – partial motion to dismiss
Dismiss under Rule 12(b) – treated as motion for summary judgment
Entry of judgment
Judgment as a matter of law
Judgment on partial findings (Rule 52)
Judgment on the pleadings
More definite statement
Order directing arbitration[147]
Order to show cause re: IRS summons
Order to show cause re: personal property
Order to show cause re: real property
Order to show cause why case should not be remanded
Order to show cause why claims should not be dismissed
Order to show cuase why parties should not be dismissed
Permanent injunction
Reconsider order on bankruptcy appeal
Reconsider order to remand
Refer case to bankruptcy court or bankruptcy appellate panel
Reinstate previously dismissed claims[148]
Remand to ERISA plan administrator
Remand to state court – all claims
Remand to state court – some claims or parties
Strike affirmative defenses
Strike one or more claims
Strike one or more parties
Summary judgment – full
Summary judgment – partial
Transfer
Voluntary dismissal of one or more parties[149]
Withdraw reference[150]

Type of other relevant motion

Administrative closure
Adopt special master's order
Amend offer of judgment
Appoint special master for discovery
Bifurcate briefings
Bifurcate trial
Certify class
Compel attendance at trial
Compel compliance with court order
Compel compliance with local rules
Confirm arbitration award
Consolidate
Continue hearing
Continue settlement conference
Continue status of scheduling conference
Costs associated with motion or filing
De-certify collective action
Declare prevailing party[151]
Defer ruling on motion
Disqualify counsel
Disqualify judge or magistrate
Enforce settlement agreement
Enjoin related state court cases
Entry of default
Expedite hearing
Extend time to amend answer
Extend time to amend complaint
Extend time to answer complaint
Extend time to challenge ruling
Extend time to designate non-party tortfeasors
Extend time to file for fees and costs
Extend time to file joint pretrial order
Extend time to file motion
Extend time to file notice of appeal
Extend time to file objection
Extend time to file opening brief
Extend time to file post-trial brief
Extend time to file pretrial documents
Extend time to file proposed jury instructions
Extend time to file reply brief (non-discovery)
Extend time to file settlement agreement
Extend time to file status report
Extend time to file stipulation of dismissal
Extend time to make first appearance

[147] All orders listed in this section are treated as sua sponte motions.
[148] While not technically a dispositive motion, it is grouped with similar motions for cataloging purposes.
[149] This category includes stipulations of dismissal as a result of settlement, which are treated as joint, unopposed voluntary motions to dismiss.
[150] For use in certain bankruptcy cases.
[151] This is used for the purpose of determining some statutory attorney fees.

Extend time to object to trial exhibits
Extend time to post bond
Extend time to reopen case
Extend time to respond to counterclaim
Extend time to respond to motion (non-discovery)
Extend time to respond to objection
Extend time to retain counsel
Extend time to serve defendant
Extend time to submit schedule
Extend temporary restraining order
File affidavit to proceed in forma pauperis
Intervene
Leave to amend answer
Leave to amend complaint
Leave to certify question of state law
Leave to file supplemental brief
Leave to file third party claim
Leave to proceed ex parte
Lift stay
Lift temporary restraining order
Limit damages
Limit evidence at hearing
Objections to magistrate's report/recommendations
Objections to magistrate's rulings
Objections to special master's recommendations
Preliminary injunction
Reassign case
Reconsider order
Release of property
Request briefing schedule
Request new trial
Request hearing or oral argument
Request settlement conference
Rule F injunction
Sanctions or attorney fees (non-discovery)
Set aside order
Sever parties
Shorten time to respond to motion
Stay all proceedings
Stay arbitration
Stay briefing schedule
Stay decision on pending motion
Stay entry of judgment
Stay hearing
Stay judgment pending appeal
Stay third party claim
Strike portion of motion
Substitute party
Temporary restraining order
Vacate arbitration award
Vacate default
Vacate order
Vacate trial judgment
Waiver of costs
Writ of mandamus

Progress at point of termination[152]

01: Before issues joined – no court action
02: Before issue joined – order entered
03: After issue joined – no court action
04: After issue joined – judgment on motion
05: After issue joined – pretrial conference held
06: After issue joined – during court trial
07: After issue joined – during jury trial
08: After issue joined – after court trial
09: After issue joined – after jury trial
10: After issue joined – other
11: Before issue joined – hearing held
12: Before issue joined – motion decided
13: After arbitration – request for trial de novo

Disposition code[153]

00: Transferred to another district
01: Remanded to state court
02: Dismissed – want of prosecution
03: Dismissed – lack of jurisdiction
04: Judgment – judgment on default
05: Judgment – judgment on consent
06: Judgment – motion before trial
07: Judgment – jury verdict
08: Judgment – directed verdict
09: Judgment – court trial
10: MDL transfer
11: Remanded to state agency
12: Dismissed – voluntarily
13: Dismissed – settled
14: Dismissed – other
15: Judgment – award of arbitrator
16: Stayed pending bankruptcy
17: Judgment -- other
18: Statistical closing
19: District court affirmed decision in its entirety
20: District court reversed decision in whole or part

[152] The numeric codes used in this category are assigned by the federal courts, and have been retained for this project.
[153] The numeric codes used in this category are assigned by the federal courts, and have been retained for this project.

APPENDIX C
PEARSON CORRELATION COEEFICIENTS

Dependent variable = overall case length from filing to disposition

Explanatory variable	Pearson correlation coefficient (r)	P value
Days from Filing to Rule 16	0.33768	<.0001
Number of motions disputing discovery filed per case	0.27408	<.0001
Days from filing case to filing motion disputing discovery	0.61139	<.0001
Days from Rule 16 to filing motion disputing discovery	0.06144	0.0198
Days from filing to ruling for motions disputing discovery	0.24599	<.0001
Number of discovery leave motions filed	0.20402	0.0260
Days from filing case to filing discovery leave motion	-0.05877	0.0584
Days from Rule 16 to filing discovery leave motion	0.74335	<.0001
Days from filing to ruling for discovery leave motion	0.03929	0.6240
Number of discovery request extension motions	0.27140	<.0001
Days from filing case to filing discovery request extension motion	0.46374	<.0001
Days from Rule 16 to filing discovery request extension motion	0.26457	<.0001
Days from filing to ruling for discovery request extension motions	-0.05004	0.0829
Number of motions to extend time to respond to discovery motion	0.13919	0.1279
Days from filing case to filing motion to extend time to respond to discovery motion	0.48300	<.0001
Days from Rule 16 to filing motion to extend time to respond to discovery motion	0.31752	<.0001
Days from filing to ruling for motions to extend time to respond to discovery motion	-0.03180	0.6532
Number of Rule 12 motions	0.04588	<.0001
Days from filing case to filing Rule 12 motion	0.55932	<.0001
Days from filing to ruling for Rule 12 motion	0.37345	<.0001
Number of Rule 56 motions	0.37623	<.0001
Days from filing case to filing Rule 56 motion	0.57742	<.0001
Days from Rule 16 to filing Rule 56 motion	0.45548	<.0001
Days from filing to ruling on Rule 56 motion	0.38034	<.0001
Number of non-concurrent extensions to answer	0.12833	<.0001
Days from filing case to filing motion to extend to answer	0.38433	<.0001
Days from filing to ruling for motions to extend to answer	0.01833	0.3281
Days from filing case to filing motion to continue a hearing	0.44111	<.0001
Days from Rule 16 to filing motion to continue a hearing	0.23002	<.0001
Days from filing to ruling for motions to continue a hearing	0.02576	0.3494
Number of motions to respond to non-discovery motions	0.43059	<.0001
Days from filing case to filing motion to respond to non-discovery motion	0.57859	<.0001

Explanatory variable	Pearson correlation coefficient (r)	P value
Days from Rule 16 to filing motion to respond to non-discovery motion	0.32726	<.0001
Days from filing to ruling for motions to respond to non-discovery motions	0.01811	0.2418
Number of days from filing case to filing miscellaneous motion to extend time	0.57901	<.0001
Number of days from Rule 16 to filing miscellaneous motion to extend time	0.45991	<.0001
Number of days from filing to ruling for miscellaneous motions to extend time	0.04287	0.0283
Number of motions to continue discovery deadline	0.34776	<.0001
Number of days from Rule 16 to filing of motion to continue discovery deadline	0.41058	<.0001
Length of discovery deadline continuance	0.22551	<.0001
Number of days before deadline that motion for discovery deadline extension is filed	-0.13579	<.0001
Number of motions to continue dispositive motion deadline	0.34442	<.0001
Number of days from Rule 16 to filing of motion to continue dispositive motion deadline	0.38344	<.0001
Length of dispositive motion deadline continuance	0.22832	<.0001
Number of days before deadline that motion for dispositive motion deadline extension is filed	-0.08401	<.0001
Number of motions to continue pre-trial conferences	0.35448	<.0001
Number of days from Rule 16 to filing of motion to continue pre-trial conference	0.60873	<.0001
Length of pre-trial conference continuance	0.14359	<.0001
Number of days before deadline that motion to continue pre-trial conference is filed	-0.15998	<.0001
Number of motions to continue trial	0.31808	<.0001
Number of days from Rule 16 to filing of motion to continue pre-trial conference	0.29017	<.0001
Length of trial continuance	0.23785	<.0001
Number of days before scheduled trial that motion to continue trial is filed	-0.16439	<.0001
Time from filing case to initial setting of trial date – all cases	0.69215	<.0001
Time from filing case to initial setting of trial date – cases that went to trial	0.70453	<.0001

APPENDIX D
DISCOVERY, MOTIONS AND TRIAL BY NATURE OF SUIT

Code	Nature of Suit	Total Cases Logged	% of All Logged Cases	% with Rule 16 Conf.	Discovery Disputes per 100 Cases	Mean Time to Rule on Discovery Disputes	Discovery Leave Requests Per 100 Cases	Mean Time to Rule on Discovery Leave	Discovery Request Extension Per 100 Cases	Mean Time to Rule on Discovery Request Extension	Rule 12 Motions Per 100 Cases	Mean Time to Rule on Rule 12 Motions	Rule 56 Motions Per 100 Cases	Mean Time to Rule on Rule 56 Motions	Trials Started Per 100 Cases	Mean Length of Completed Trial
110	Insurance	377	4.90	56.50	26.53	38.34	3.71	6.00	47.75	11.24	17.51	112.61	54.11	162.92	3.45	6.31
130	Miller Act	17	0.22	41.18	11.76	N/A	0.00	----	17.64	63.67	5.88	26.00	17.65	165.33	0.00	---
140	Negotiable Instrument	12	0.16	33.33	25.00	30.67	0.00	----	25.00	4.00	58.33	113.29	33.33	114.25	0.00	---
150	Contract Recovery/ Enforcement	1	0.01	100.00	0.00	0.00	0.00	----	0.00	0.00	100.00	35.00	0.00	----	0.00	---
151	Medicare Act	2	0.03	0.00	0.00	0.00	0.00	----	0.00	0.00	150.00	271.00	0.00	----	0.00	---
160	Stockholders' Suits	30	0.39	26.67	56.67	52.59	3.33	7.00	16.67	8.25	73.33	199.45	10.00	167.33	0.00	---
190	Other Contracts	742	9.65	51.75	42.86	49.35	3.10	16.73	36.66	10.24	36.79	120.31	34.37	173.28	5.26	4.95
195	Contract Product Liability	1	0.01	33.33	900.00	31.50	0.00	----	0.00	0.00	100.00	144.00	25.00	123.00	0.00	---
196	Franchise	15	0.20	26.66	0.00	0.00	0.00	----	13.33	4.50	0.00	----	6.67	67.00	0.00	---
210	Land Condemnation	5	0.07	60.00	20.00	21.00	0.00	----	60.00	12.67	20.00	22.00	40.00	119.00	0.00	---
220	Foreclosure	46	0.60	23.91	19.57	72.22	0.00	----	34.78	21.69	58.70	168.78	63.04	162.76	2.17	5.00
230	Rent Lease & Ejectment	5	0.07	0.00	0.00	0.00	0.00	----	0.00	0.00	0.00	----	0.00	----	0.00	---
240	Torts to Land	4	0.05	61.54	150.00	84.33	0.00	----	0.00	0.00	75.00	316.67	75.00	264.00	0.00	---
245	Tort Product Liability	13	0.17	25.00	0.00	0.00	0.00	----	0.00	0.00	15.38	24..00	7.69	48.00	0.00	---
290	All Other Real Property	39	0.51	38.46	10.26	28.00	0.00	----	20.51	9.43	51.28	168.00	23.08	178.22	0.00	---
310	Airplane	19	0.25	26.32	21.05	34.50	0.00	----	21.05	1.75	52.63	259.70	0.00	----	0.00	---
315	Airplane Product Liability	2	0.03	0.00	0.00	0.00	0.00	----	0.00	0.00	0.00	----	0.00	----	0.00	---
320	Assault, Libel & Slander	38	0.49	36.84	44.74	21.92	0.00	----	15.79	5.00	89.47	97.85	39.47	81.93	5.26	1.00
330	Federal Employers' Liability	14	0.18	42.86	57.14	69.25	0.00	----	42.86	2.17	7.14	28.00	28.57	128.75	14.29	6.50
345	Marine Product Liability	2	0.03	50.00	0.00	0.00	0.00	----	0.00	0.00	0.00	----	0.00	----	0.00	---
350	Motor Vehicle	226	2.94	62.39	44.69	39.50	3.98	16.67	27.88	6.52	7.96	97.28	9.73	115.68	3.98	1.56
355	Motor Vehicle Product Liability	21	0.27	52.38	38.10	71.60	4.76	31.00	61.90	20.08	19.05	115.50	14.28	165.00	0.00	---
360	Other Personal Injury	335	4.36	52.84	25.67	32.66	2.39	5.17	38.81	11.15	22.39	137.17	24.18	146.40	4.48	4.40
362	Personal Injury – Medical Malpractice	58	0.75	55.17	56.90	22.40	1.72	5.00	36.21	7.50	10.34	238.83	12.07	135.57	6.90	6.50
365	Personal Injury – Product Liability	718	9.34	10.86	6.55	23.30	0.97	29.00	8.91	8.10	5.15	59.81	5.01	128.28	0.70	3.60
368	Asbestos Personal Injury Product Liability	106	1.38	0.09	0.00	0.00	0.00	----	0.00	0.00	0.00	----	0.00	----	0.00	---
370	Other Fraud	58	0.75	48.28	60.34	38.15	6.90	3.25	31.03	5.13	51.72	137.80	17.24	201.00	5.17	5.00
371	Truth in Lending	3	0.05	33.33	0.00	0.00	0.00	----	33.33	1.00	166.67	148.00	33.33	27.00	0.00	---
380	Other Personal Property Damage	42	0.55	38.10	14.29	14.17	0.00	----	28.57	4.92	28.57	93.17	35.71	97.33	7.14	3.00
385	Property Damage Product Liability	29	0.38	62.07	13.79	253.00	0.00	----	31.03	3.22	10.35	46.33	68.97	163.75	6.90	3.00
410	Antitrust	25	0.33	44.00	112.00	38.25	0.00	----	36.00	14.75	84.00	183.67	60.00	272.77	4.00	17.00
422	Bankruptcy Appeal 28 USC § 158	166	2.16	1.20	0.60	12.00	0.00	----	1.20	13.00	6.02	182.40	1.20	8.00	0.60	2.00
423	Bankruptcy Withdrawal 28 USC § 157	365	4.75	69.04	3.29	48.86	0.00	----	1.37	12.40	1.10	157.67	4.66	211.29	2.19	1.88
430	Banks and Banking	11	0.14	27.27	27.27	13.33	0.00	----	9.09	1.00	45.45	129.60	18.18	51.50	0.00	---
440	Other Civil Rights	810	10.53	40.25	32.22	43.55	4.32	12.00	24.57	6.52	45.56	117.18	45.19	176.79	3.58	4.34
441	Voting	3	0.05	0.00	33.33	49.00	0.00	----	0.00	0.00	100.00	93.67	0.00	----	0.00	---
442	Employment	988	12.85	67.61	38.06	37.37	3.95	7.69	49.19	5.97	22.06	116.09	39.68	173.03	6.58	4.78
443	Housing/Accommodations	17	0.22	47.06	17.65	27.00	0.00	----	17.65	10.67	17.65	189.67	47.06	257.25	5.88	2.00
444	Welfare	3	0.05	33.33	0.00	0.00	0.00	----	0.00	0.00	66.67	86.50	66.67	73.00	0.00	---
445	Americans With Disabilities - - Employment	43	0.56	51.16	32.56	49.84	2.33	25.00	39.53	5.33	9.30	130.00	20.93	112.44	2.33	1.00
446	Americans With Disabilities – Other	22	0.29	54.55	0.00	0.00	0.00	----	0.00	0.00	27.27	300.00	9.09	41.50	0.00	---
450	Commerce	24	0.31	37.50	16.67	68.67	0.00	----	16.67	1.33	29.17	80.43	29.17	108.71	4.17	1.00
460	Deportation	1	0.01	0.00	0.00	0.00	0.00	----	0.00	0.00	0.00	----	0.00	----	0.00	---
470	RICO	26	0.34	38.46	157.69	34.91	19.23	7.40	46.15	3.67	180.77	167.68	50.00	174.38	3.85	1.00
480	Consumer Credit	97	1.26	32.99	26.80	22.50	0.00	----	4.12	3.50	18.56	79.44	8.25	39.88	0.00	---
490	Cable/Satellite TV	10	0.13	40.00	0.00	0.00	0.00	----	0.00	0.00	50.00	189.20	0.00	----	0.00	---
710	Fair Labor Standards Act	88	1.14	46.59	18.18	46.69	0.00	----	14.77	5.50	6.82	43.16	20.45	99.89	3.41	5.00
720	Labor/Management Relations	34	0.44	44.12	2.94	28.00	0.00	----	0.00	0.00	26.47	80.22	50.00	139.29	40.00	2.50
730	Labor/Management Reporting and Disclosure	5	0.07	40.00	20.00	118.00	0.00	----	0.00	0.00	20.00	1.00	40.00	128.00	0.00	---
740	Railway Labor Act	3	0.04	66.67	0.00	0.00	0.00	----	0.00	0.00	33.33	110.00	100.00	239.67	0.00	---
790	Other Labor Litigation	59	0.77	44.07	11.86	30.80	0.00	----	30.51	7.83	22.03	141.92	38.98	128.52	6.78	4.00
791	Labor: ERISA	433	5.63	38.57	11.32	62.59	0.46	9.00	15.47	12.35	12.47	107.81	23.33	145.22	1.39	1.50
810	Selective Service	1	0.01	0.00	0.00	0.00	0.00	----	0.00	0.00	0.00	----	0.00	----	0.00	---
820	Copyrights	168	2.18	27.98	12.50	34.67	1.19	6.00	2.38	3.75	14.29	97.29	11.90	98.65	0.60	1.00

Code	Nature of Suit	Total Cases Logged	% of All Logged Cases	% with Rule 16 Conf.	Discovery Disputes per 100 Cases	Mean Time to Rule on Discovery Disputes	Discovery Leave Requests Per 100 Cases	Mean Time to Rule on Discovery Leave	Discovery Request Extension Per 100 Cases	Mean Time to Rule on Discovery Request Extension	Rule 12 Motions Per 100 Cases	Mean Time to Rule on Rule 12 Motions	Rule 56 Motions Per 100 Cases	Mean Time to Rule on Rule 56 Motions	Trials Started Per 100 Cases	Mean Length of Completed Trial
830	Patent	294	3.82	50.00	65.99	94.61	2.72	12.63	32.65	7.45	19.39	138.39	75.85	167.52	12.59	7.35
840	Trademark	186	2.42	32.80	11.29	58.59	0.54	3.00	11.83	7.62	9.68	143.67	13.98	206.00	2.15	2.75
850	Securities/Commodities/ Exchange	92	1.20	20.65	21.74	60.35	1.09	4.00	14.13	4.77	48.91	271.58	7.61	222.29	1.09	7.00
870	Taxes (U.S. Plaintiff or Defendant)	99	1.29	30.30	8.08	41.00	0.00	----	0.00	0.00	18.18	142.89	18.18	102.61	1.01	---
871	IRS – Third Party 26 USC § 7609	9	0.11	0.00	33.33	97.67	0.00	----	11.11	13.00	88.89	131.75	44.44	44.50	0.00	---
875	Customer Challenge 12 USC § 3410	2	0.03	0.00	0.00	0.00	0.00	----	0.00	0.00	0.00	----	0.00	----	0.00	---
890	Other Statutory Actions	455	5.92	36.04	20.44	40.14	0.44	147.50	10.99	44.57	20.88	118.81	24.40	150.32	2.42	3.00
891	Agricultural Acts	20	0.26	20.00	0.00	0.00	0.00	----	0.00	0.00	10.00	96.50	60.00	126.33	0.00	---
893	Environmental Matters	83	1.08	28.92	22.89	162.50	2.41	29.00	22.89	15.78	43.37	203.61	109.64	234.42	0.00	---
895	Freedom of Information Act	16	0.20	50.00	18.75	27.33	0.00	----	0.00	0.00	18.75	351.33	106.25	204.82	0.00	---
900	Appeal of Fee Determination	1	0.01	0.00	0.00	0.00	0.00	----	0.00	0.00	0.00	----	0.00	---	0.00	---
950	Constitutionality of State Statutes	15	0.19	46.67	26.67	55.00	0.00	----	0.00	0.00	93.33	92.43	133.33	191.75	6.67	5.00
TOTAL		**7688**	**100.00**	**46.03**	**26.69**	**48.05**	**2.16**	**75.95**	**24.70**	**92.39**	**23.31**	**129.78**	**29.73**	**166.16**	**3.60**	**4.69**

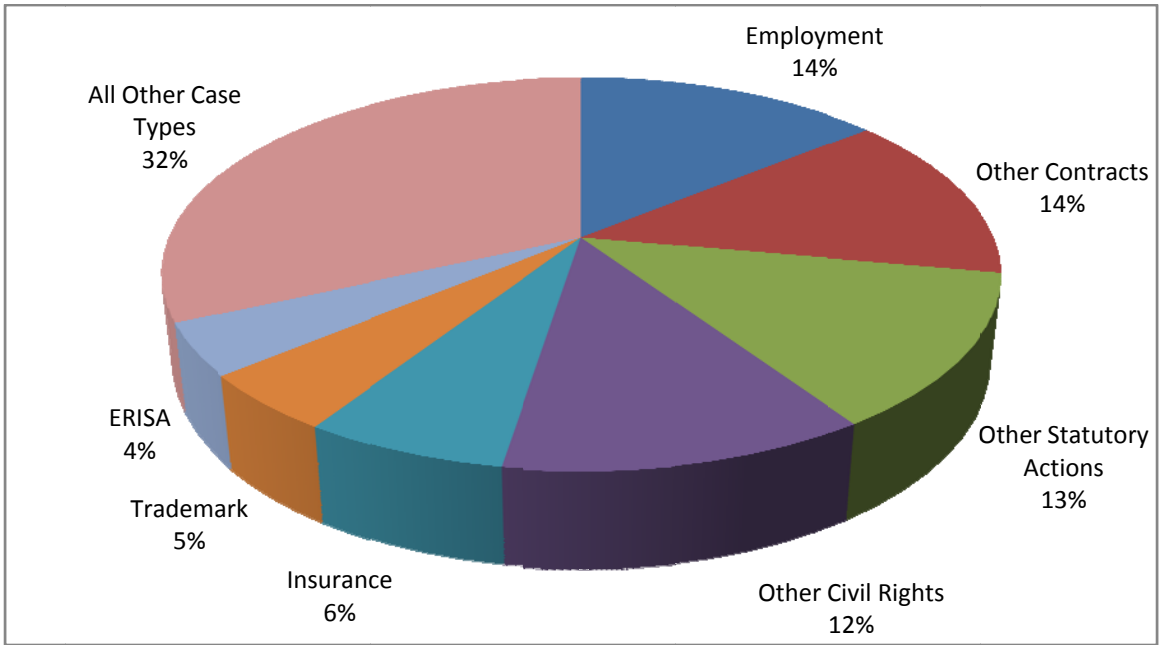
APPENDIX E
EXTENSIONS AND CONTINUANCES BY NATURE OF SUIT

Code	Nature of Suit	Time From Filing to Disposition (Days)	Extend Time to Answer Per 100	% Granted	Extend Time to Respond to Non-Discovery Motion Per 100	% Granted	Continue Hearing Per 100	% Granted	Discovery Deadline Continuances Per 100	% Granted	Dispositive Motion Deadline Continuances Per 100	% Granted	Pretrial Hearing Continuances Per 100	% Granted	Trial Continuances per 100	% Granted
110	Insurance	338.85	45.09	95.29	73.74	91.37	30.24	92.98	25.99	95.92	33.69	96.00	14.06	98.08	9.02	96.97
130	Miller Act	271.47	29.41	100.00	5.88	100.00	35.29	100.00	17.65	100.00	11.76	100.00	0.00	----	0.00	----
140	Negotiable Instrument	531.50	50.00	100.00	33.33	100.00	33.33	100.00	33.33	100.00	58.33	85.71	66.67	100.00	8.33	0.00
150	Contract Recovery/ Enforcement	108.00	0.00	----	0.00	----	0.00	----	0.00	----	0.00	----	0.00	----	0.00	----
151	Medicare Act	371.50	50.00	100.00	50.00	100.00	0.00	----	0.00	----	0.00	----	0.00	----	0.00	----
160	Stockholders' Suits	905.57	130.00	87.18	60.00	94.44	40.00	100.00	13.33	100.00	33.33	100.00	3.33	100.00	6.67	100.00
190	Other Contracts	356.10	46.63	95.66	73.72	93.24	22.78	42.38	25.07	96.24	38.81	96.09	16.31	96.52	13.88	88.89
195	Contract Product Liability	350.56	300.00	100.00	800.00	87.50	600.00	100.00	300.00	100.00	200.00	100.00	0.00	----	100.00	100.00
196	Franchise	125.93	53.33	87.50	13.33	100.00	26.67	50.00	13.33	100.00	0.00	----	0.00	----	0.00	----
210	Land Condemnation	318.40	0.00	----	20.00	100.00	120.00	100.00	20.00	100.00	60.00	100.00	0.00	----	20.00	100.00
220	Foreclosure	427.74	23.91	100.00	43.48	100.00	13.04	66.67	15.22	100.00	23.91	100.00	23.91	100.00	30.43	85.71
230	Rent Lease & Ejectment	89.50	0.00	----	0.00	----	0.00	----	0.00	----	0.00	----	0.00	----	0.00	----
240	Torts to Land	447.08	50.00	100.00	450.00	87.50	125.00	100.00	150.00	100.00	150.00	100.00	0.00	----	50.00	100.00
245	Tort Product Liability	215.50	0.00	----	0.00	----	7.69	100.00	7.69	100.00	7.69	100.00	0.00	----	0.00	----
290	All Other Real Property	344.90	43.59	100.00	87.18	88.24	46.15	83.33	15.38	83.33	20.51	100.00	7.69	100.00	5.13	100.00
310	Airplane	360.63	52.63	100.00	36.84	100.00	15.79	100.00	21.05	100.00	26.32	100.00	10.53	100.00	10.53	100.00
315	Airplane Product Liability	236.50	100.00	100.00	0.00	----	0.00	----	0.00	----	0.00	----	0.00	----	0.00	----
320	Assault, Libel & Slander	319.32	44.74	100.00	57.89	90.91	26.32	100.00	26.32	100.00	44.74	93.75	15.79	100.00	10.53	100.00
330	Federal Employers' Liability	408.93	42.86	100.00	14.29	50.00	50.00	100.00	28.57	100.00	35.71	100.00	78.57	100.00	42.86	100.00
345	Marine Product Liability	465.50	0.00	----	0.00	----	50.00	100.00	100.00	100.00	50.00	100.00	100.00	100.00	100.00	100.00
350	Motor Vehicle	319.27	11.95	92.59	14.16	84.38	21.68	95.92	25.66	93.10	20.35	100.00	10.18	95.45	15.93	86.11
355	Motor Vehicle Product Liability	394.71	52.38	100.00	76.19	93.75	38.10	87.50	47.62	100.00	80.95	100.00	38.10	83.33	9.52	50.00
360	Other Personal Injury	304.73	20.60	97.10	41.19	88.41	21.79	95.89	27.76	96.77	36.42	94.12	20.00	94.03	16.12	94.23
362	Personal Injury – Medical Malpractice	431.31	17.24	100.00	13.79	100.00	18.97	100.00	31.03	100.00	36.21	100.00	24.14	100.00	27.59	93.75
365	Personal Injury – Product Liability	184.59	25.21	97.79	38.86	94.62	6.41	97.83	5.29	97.37	6.96	98.00	3.06	95.24	4.46	100.00
368	Asbestos Personal Injury Product Liability	106.21	0.00	----	1.89	100.00	0.09	100.00	0.00	----	0.00	----	0.00	----	0.00	100.00
370	Other Fraud	338.50	65.52	92.11	87.93	80.39	24.14	71.43	22.41	92.31	25.86	86.67	20.69	75.00	15.52	75.00
371	Truth in Lending	246.00	33.33	100.00	0.00	----	33.33	100.00	0.00	----	0.00	----	0.00	----	0.00	
380	Other Personal Property Damage	323.62	26.19	100.00	21.43	100.00	19.05	100.00	28.57	100.00	45.24	100.00	28.57	100.00	26.19	90.91
385	Property Damage Product Liability	364.55	17.24	100.00	41.38	100.00	24.14	100.00	27.59	100.00	44.83	100.00	3.45	100.00	27.59	----
410	Antitrust	531.68	116.00	96.55	132.00	93.94	24.00	100.00	28.00	100.00	64.00	100.00	40.00	100.00	20.00	100.00
422	Bankruptcy Appeal 28 USC § 158	267.61	0.60	100.00	18.07	96.67	0.60	100.00	1.20	100.00	0.00	----	0.00	----	0.00	----
423	Bankruptcy Withdrawal 28 USC § 157	667.61	4.38	100.00	5.75	100.00	3.84	100.00	14.25	100.00	4.11	92.86	3.56	92.31	10.68	94.74
430	Banks and Banking	266.73	63.64	100.00	72.73	87.50	18.18	100.00	18.18	100.00	18.18	100.00	9.09	100.00	0.00	----
440	Other Civil Rights	354.08	38.15	94.50	70.62	94.41	21.36	93.06	26.79	94.93	48.02	97.13	19.75	97.45	16.05	92.13
441	Voting	252.67	0.00	----	100.00	100.00	0.00	----	0.00	----	0.00	----	0.00	----	0.00	----
442	Employment	417.20	32.79	95.37	76.52	92.86	27.27	91.45	39.47	95.64	65.49	95.15	28.34	97.07	27.53	90.60
443	Housing/Accommodations	551.12	23.53	100.00	52.94	77.78	11.76	100.00	35.29	100.00	35.29	100.00	0.00	----	52.94	100.00
444	Welfare	320.33	0.00	---	33.33	100.00	0.00	----	33.33	100.00	66.67	100.00	0.00	----	0.00	----
445	Americans With Disabilities -- Employment	276.88	23.26	100.00	51.16	95.45	25.58	90.91	34.88	86.67	30.23	92.31	16.28	100.00	6.98	100.00
446	Americans With Disabilities – Other	216.91	31.82	100.00	18.18	100.00	13.64	100.00	13.64	100.00	18.18	100.00	4.55	100.00	4.55	100.00
450	Commerce	236.96	41.67	100.00	54.17	100.00	12.50	100.00	16.67	100.00	25.00	100.00	8.33	100.00	8.33	100.00
470	RICO	418.62	103.85	88.89	188.46	79.59	11.54	100.00	30.77	75.00	53.85	92.31	38.46	70.00	19.23	80.00
480	Consumer Credit	167.32	48.45	95.74	9.28	100.00	8.25	62.50	14.43	100.00	7.22	100.00	1.03	100.00	5.15	100.00
490	Cable/Satellite TV	288.30	0.00	----	40.00	100.00	20.00	50.00	0.00	----	10.00	0.00	0.00		0.00	----
710	Fair Labor Standards Act	348.47	30.68	100.00	23.86	90.48	12.50	100.00	31.82	96.43	40.91	94.29	17.05	78.57	7.95	85.71
720	Labor/Management Relations	227.91	44.11	100.00	38.24	84.62	2.94	100.00	17.65	100.00	23.53	100.00	8.82	100.00	0.00	----
730	Labor/Management Reporting and Disclosure	281.00	40.00	100.00	40.00	100.00	0.00	----	0.00	----	0.00	----	0.00	----	0.00	----
740	Railway Labor Act	287.00	33.33	100.00	33.33	0.00	0.00	----	33.33	100.00	33.33	100.00	0.00	----	0.00	----
790	Other Labor Litigation	348.49	25.42	100.00	66.10	82.05	20.34	100.00	27.12	100.00	40.68	100.00	23.73	100.00	13.56	100.00
791	Labor: ERISA	279.27	37.41	96.91	48.50	92.86	12.24	94.34	14.78	93.75	25.87	94.39	7.62	96.77	8.55	91.43
810	Selective Service	296.00	100.00	0.00	0.00	----	0.00	----	0.00	----	0.00	----	0.00	----	0.00	----
820	Copyrights	221.40	31.55	94.34	14.29	100.00	7.14	91.67	10.12	100.00	8.33	100.00	7.14	91.67	8.33	100.00
830	Patent	490.41	118.03	97.98	105.44	96.13	10.88	96.88	23.13	94.12	33.67	95.70	27.89	97.47	21.77	90.00

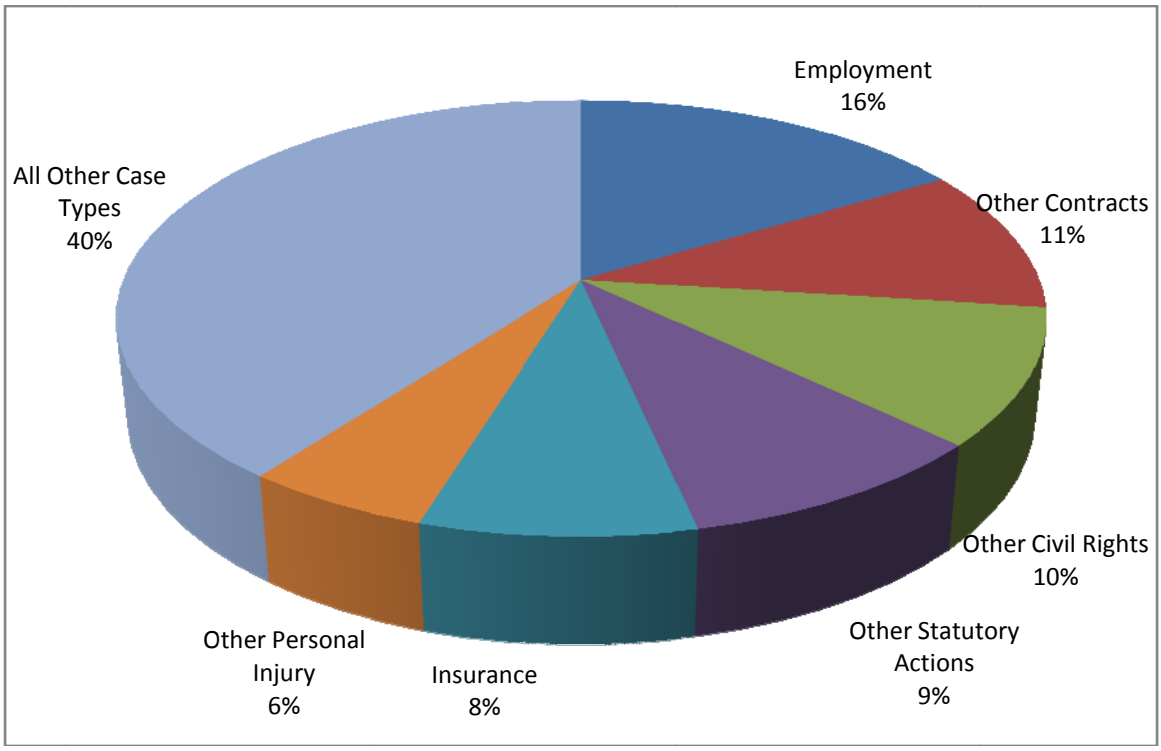
Code	Nature of Suit	Time From Filing to Disposition (Days)	Extend Time to Answer Per 100	% Granted	Extend Time to Respond to Non-Discovery Motion Per 100	% Granted	Continue Hearing Per 100	% Granted	Discovery Deadline Continuances Per 100	% Granted	Dispositive Motion Deadline Continuances Per 100	% Granted	Pretrial Hearing Continuances Per 100	% Granted	Trial Continuances per 100	% Granted
840	Trademark	242.25	55.38	96.12	33.87	85.71	11.83	86.36	13.98	96.15	12.90	100.00	7.53	100.00	3.76	100.00
850	Securities/Commodities/ Exchange	689.03	90.22	93.98	86.96	96.25	8.70	87.50	16.30	93.33	20.65	100.00	11.96	90.91	10.87	100.00
870	Taxes (U.S. Plaintiff or Defendant)	254.23	16.16	100.00	10.10	100.00	14.14	100.00	12.12	100.00	12.12	100.00	7.07	100.00	3.03	100.00
871	IRS – Third Party 26 USC § 7609	325.89	22.22	100.00	22.22	100.00	0.00	----	0.00	----	0.00	----	0.00	----	0.00	----
875	Customer Challenge 12 USC § 3410	64.50	0.00	----	0.00	----	0.00	----	0.00	----	0.00	----	0.00	----	0.00	----
890	Other Statutory Actions	306.12	30.99	94.33	36.70	91.02	10.77	91.84	14.51	98.48	22.42	99.01	5.93	95.45	6.37	89.66
891	Agricultural Acts	260.05	15.00	100.00	75.00	100.00	5.00	100.00	15.00	100.00	15.00	100.00	0.00	----	0.00	
893	Environmental Matters	657.60	69.88	96.55	159.04	96.97	19.28	93.75	20.48	100.00	39.76	100.00	10.84	100.00	12.05	100.00
895	Freedom of Information Act	428.69	37.50	100.00	112.50	100.00	0.00	----	12.50	100.00	12.50	100.00	0.00	----	6.25	100.00
900	Appeal of Fee Determination	132.00	0.00	----	0.00	----	0.00	----	0.00	----	0.00	----	0.00	----	0.00	----
950	Constitutionality of State Statutes	409.87	113.33	64.71	153.33	78.26	40.00	83.33	13.33	100.00	6.67	100.00	26.67	50.00	20.00	100.00
TOTAL		**350.21**	**39.22**	**95.58**	**56.85**	**91.56**	**17.41**	**92.74**	**46.96**	**95.58**	**31.60**	**96.34**	**14.36**	**96.08**	**13.23**	**92.18**

APPENDIX F
DISTRIBUTION OF CASES BY DISTRICT AND NATURE OF SUIT

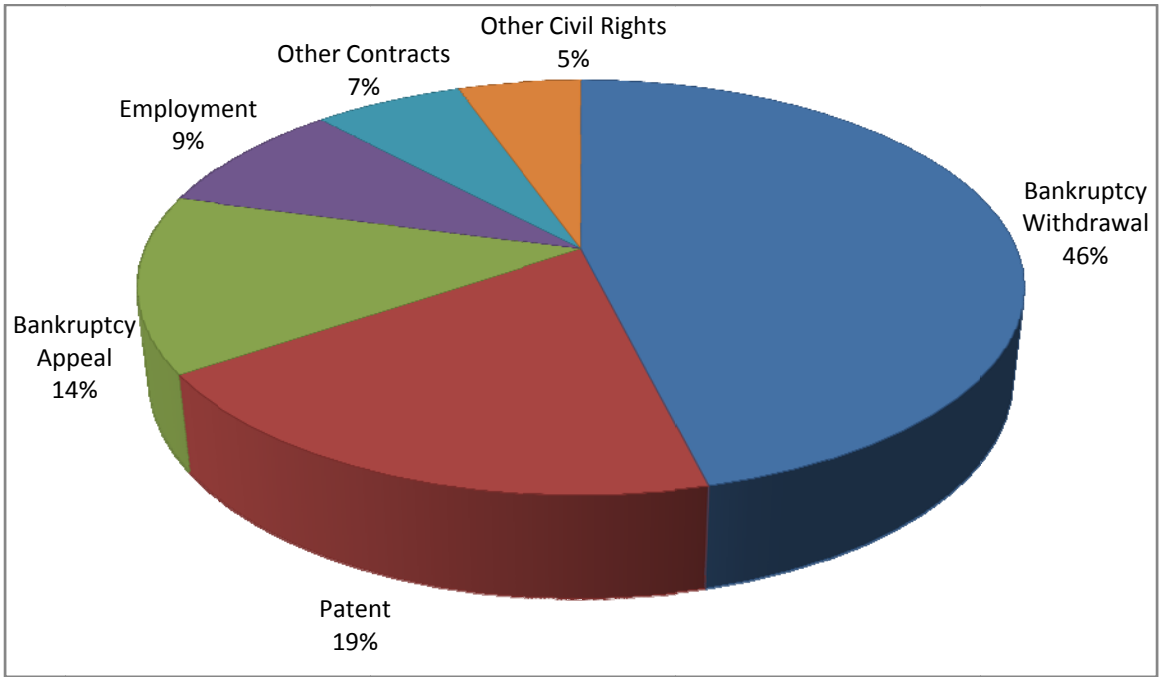
District of Arizona (N=377)



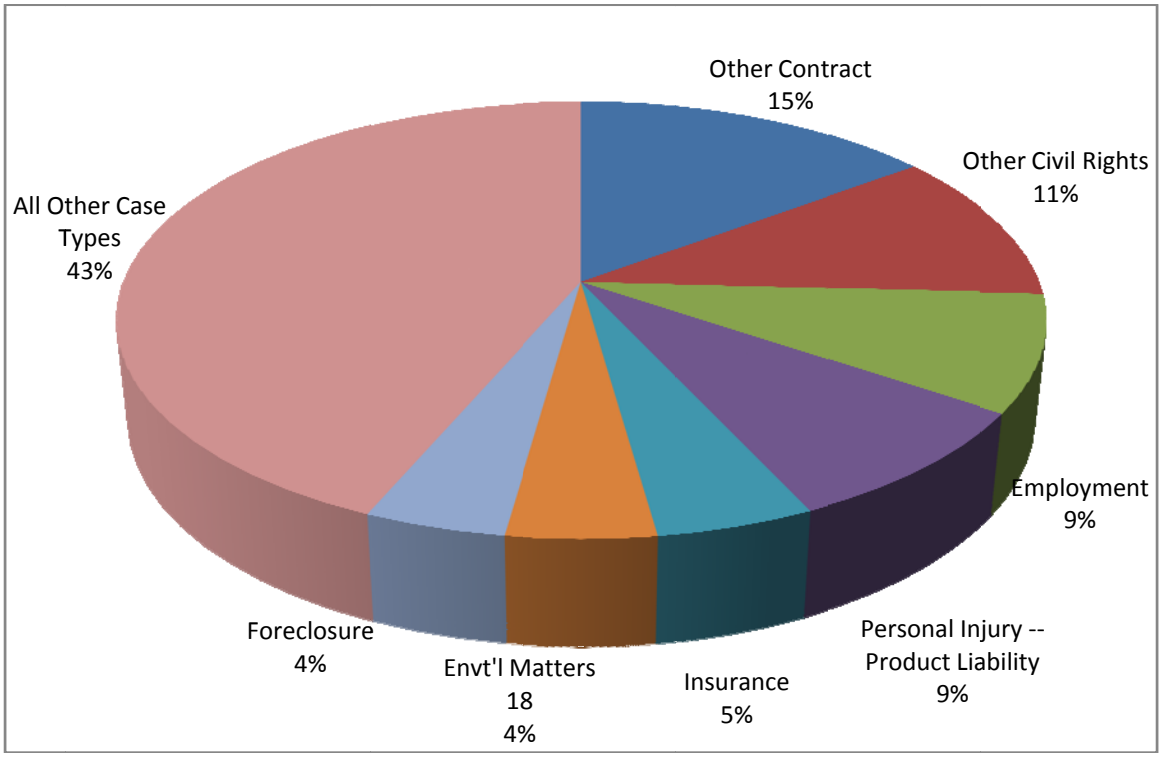
District of Colorado (N=1902)



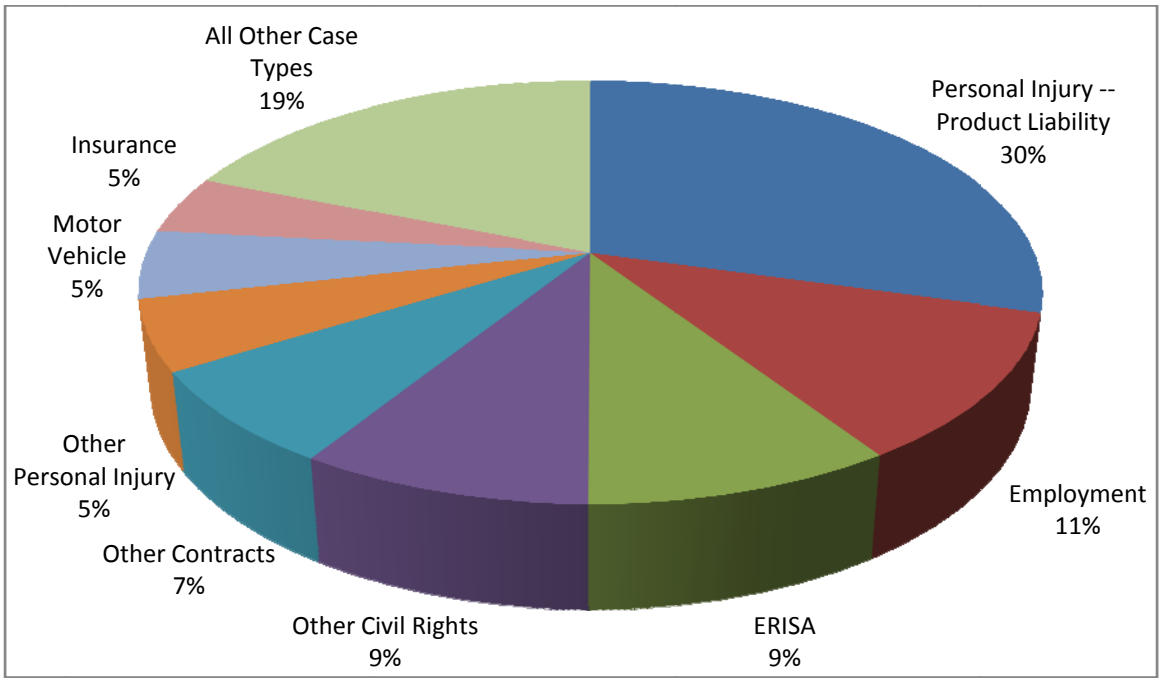
District of Delaware (N=936)



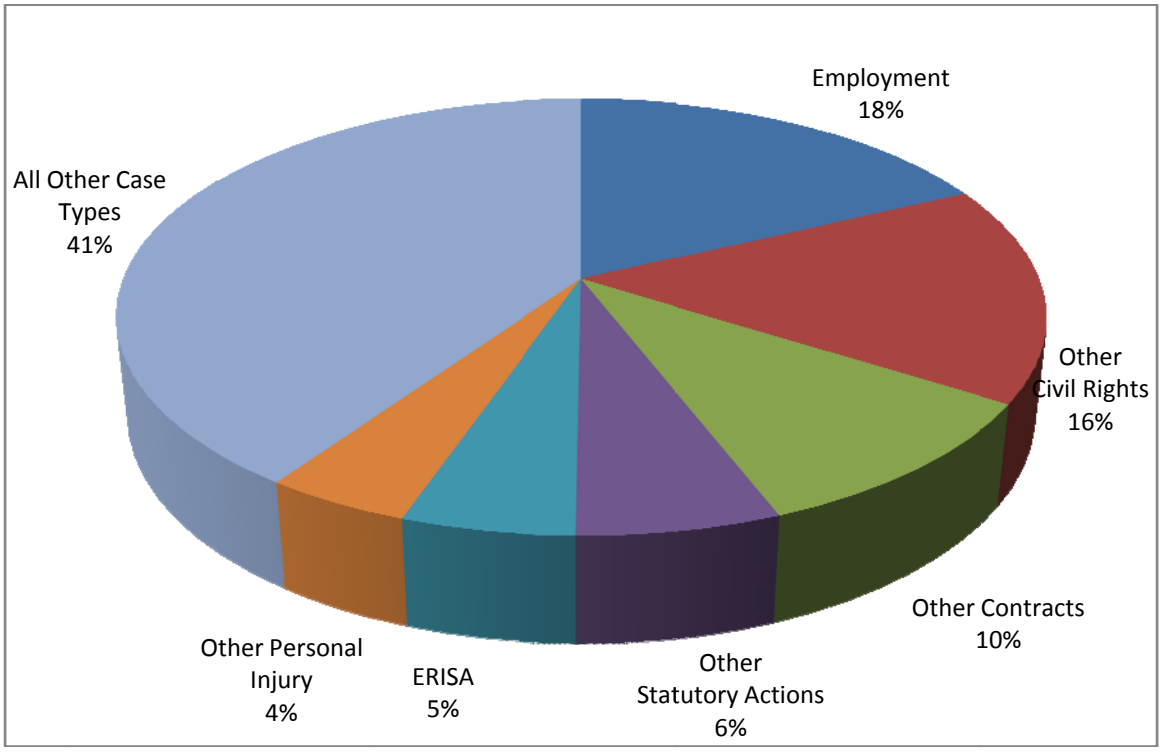
District of Idaho (N=406)



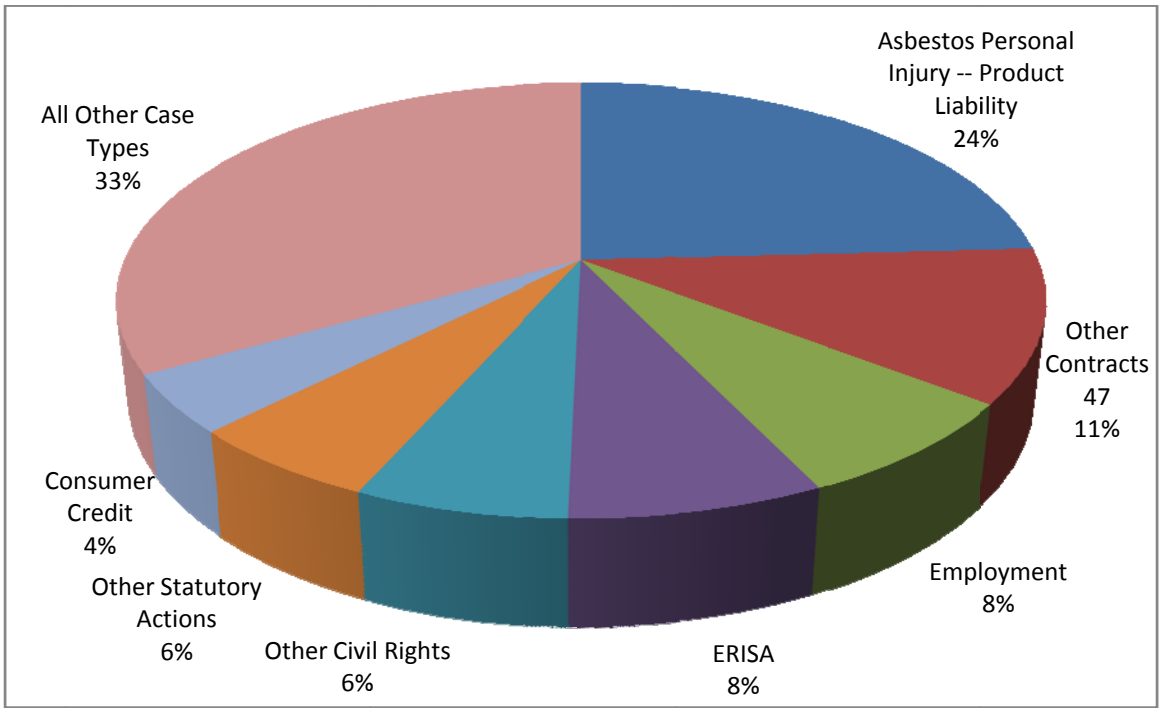
Eastern District of Missouri (N=1936)



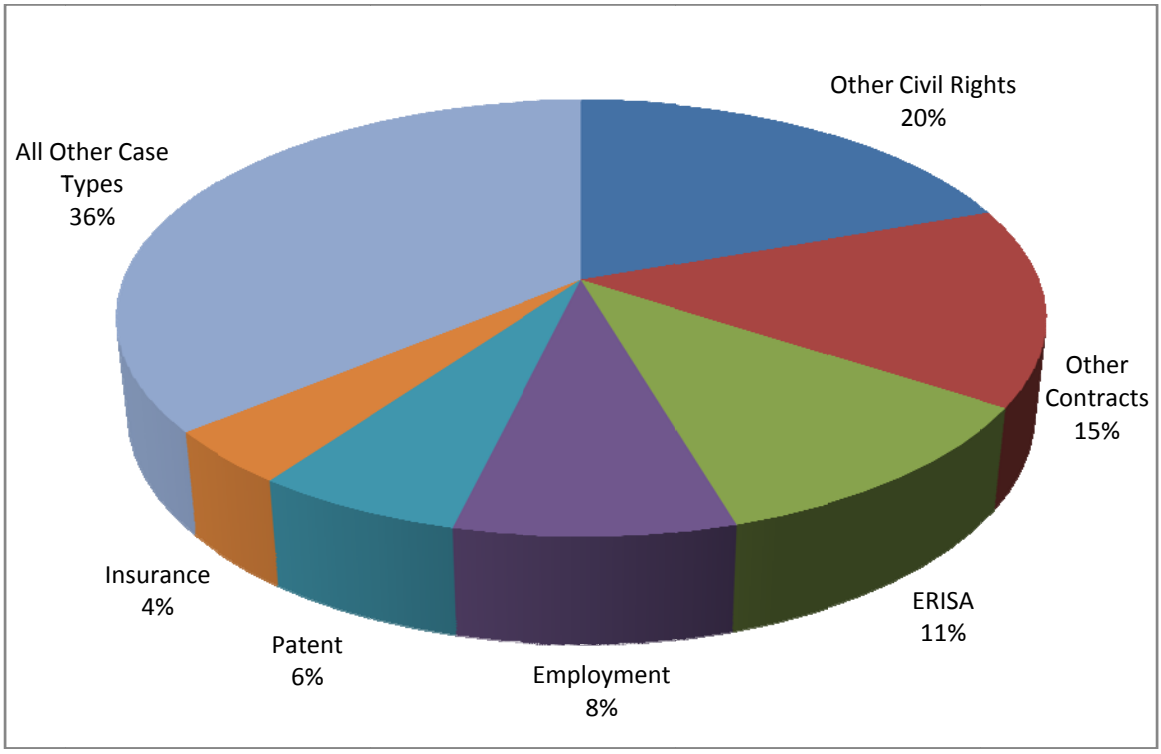
District of Oregon (N=1362)



Eastern District of Virginia (N=415)



Western District of Wisconsin (N=374)



APPENDIX G
OVERALL TIME TO DISPOSITION – ALL CASES – BY JUDGE

District Judge	Mean Time from Filing to Disposition in Days	Number of Cases[154]
Western Wisconsin		
Judge A	119.66	188
Judge B	199.14	174
Eastern Virginia		
Judge A	69.00	*
Judge B	107.31	103
Judge C	124.00	12
Judge D	136.30	10
Judge E	163.97	30
Judge F	167.61	33
Judge G	169.74	23
Judge H	176.72	39
Judge I	181.91	11
Judge J	182.66	38
Judge K	198.20	15
Judge L	202.79	14
Judge M	213.63	16
Judge N	216.00	25
Judge O	216.42	24
Judge P	232.00	*
Eastern Missouri		
Judge A	206.42	170
Judge B	223.14	165
Judge C	239.09	241
Judge D	239.70	159
Judge E	254.20	221
Judge F	259.43	182
Judge G	264.02	161
Judge H	264.54	175
Judge I	291.07	90
Judge J	414.00	*
Judge K	819.00	*
Colorado		
Judge A	263.30	136
Judge B	266.91	235
Judge C	306.94	175
Judge D	313.09	224
Judge E	327.27	188
Judge F	353.06	208
Judge G	360.19	225
Judge H	420.11	222
Judge I	455.84	185
Judge J	651.00	*
Judge K	801.67	*
Judge L	975.85	47
Judge M	2354.50	*
Oregon		
Judge A	303.49	160
Judge B	328.49	148
Judge C	365.99	170
Judge D	377.19	133

[154] An asterisk designates that the individual judge presided over fewer than ten cases in the study. We acknowledge that the means calculated on such small numbers should be interpreted with caution.

Judge E	410.66	146
Judge F	436.56	*
Judge G	481.33	40
Judge H	519.52	146
Judge I	538.40	*
Judge J	541.89	18
Arizona		
Judge A	189.00	*
Judge B	257.63	*
Judge C	317.42	12
Judge D	361.68	44
Judge E	393.63	16
Judge F	406.13	31
Judge G	411.32	25
Judge H	417.13	32
Judge I	424.91	22
Judge J	426.14	21
Judge K	443.17	29
Judge L	467.67	*
Judge M	488.00	22
Judge N	515.67	*
Judge O	531.75	16
Judge P	539.76	25
Judge Q	582.07	14
Judge R	912.00	*
Judge S	997.00	*
Judge T	1396.00	*
Judge U	1428.40	*
Idaho		
Judge A	84.00	*
Judge B	127.00	*
Judge C	132.00	*
Judge D	165.50	*
Judge E	183.00	*
Judge F	189.00	*
Judge G	208.00	*
Judge H	353.00	*
Judge I	358.00	*
Judge J	423.67	*
Judge K	428.00	*
Judge L	452.98	162
Judge M	491.28	151
Judge N	519.25	*
Judge O	619.00	*
Judge P	969.00	*
Judge Q	1607.00	*
Delaware		
Judge A	18.11	*
Judge B	169.29	*
Judge C	201.50	*
Judge D	315.50	*
Judge E	398.47	165
Judge F	520.03	355
Judge G	549.02	200
Judge H	675.77	192
Judge I	271.00	*

APPENDIX H
FREQUENCY OF DISCOVERY-RELATED MOTIONS

1560	Protective Order
865	Extend Time to Disclose Experts
565	Extend Time to Respond to Discovery Requests
518	Compel Production of Documents and Things
387	Compel Discovery (multiple issues)
289	Compel Discovery (unknown issues)
268	Extend Time to File Expert Reports
245	Sanctions
181	Quash Subpoena
164	Extend time to respond to discovery motion
153	Compel Answers to Interrogatories
127	Leave to Conduct Deposition After Discovery Cutoff
119	Compel deposition
73	Stay Discovery (Pre-Rule 16 conference)
69	Expedite Discovery
66	Extend time to complete discovery
53	Modify Discovery Schedule
50	Extend time to conduct deposition
50	Extend Time to File Rule 26(a)(1) Initial Disclosures
37	Quash Deposition Notices
34	Letters rogatory or international assistance
33	Compel Medical Examination
31	Compel initial disclosures
29	Extend time to file discovery requests
26	Extend time to file discovery motion
22	Leave to Conduct Discovery Prior to Rule 26(f) Conference
21	Strike other discovery responses
19	Extend time to file reply in support of discovery motion
17	Compel Mental Examination
17	Limit Discovery
16	Exceed Deposition Limit
14	Leave to Conduct Discovery on Other Motions
12	Leave to Conduct Discovery on Jurisdiction
10	Modify Protective Order
10	Bifurcate discovery
10	Preserve evidence
9	Compel Responses to Requests for A dmission
9	Motion to set discovery schedule
7	Compel witness testimony
7	Compel Entry Upon Land pursuant to Rule 37
6	Terminate or Limit Examination
6	Stay Discovery Pending Ruling on Dispositive Motion
6	Stay Deposition
6	Exceed interrogatory limit
6	Extend time to conduct medical examination
5	Stay Discovery in State Case
5	Consolidate Discovery
4	Leave to conduct deposition of a prisoner
4	Leave to Conduct Deposition of Plaintiff
4	Strike Interrogatory Answers
3	Leave to file interrogatories
3	Motion to stay discovery order
3	Leave to Conduct Telephonic Deposition
3	Leave to file supplemental discovery
2	Compel payment of expert fees
2	Motion for Independent Medical Examination
2	Extend Time to serve Subpoena
2	Compel expert witness fees
2	Quash motion for protective order
2	Designate rebuttal expert
2	Quash motion to compel
2	Enforce Protective Order
2	Maintain confidentiality designation
2	Leave to File Physical Exhibits
2	Reopen deposition
2	Stay production of documents

2	Leave to Conduct Depositions via Video Conference
1	Appear for deposition by telephone
1	Quash Interrogatories
1	Allow additional discovery after cutoff
1	Adjourn deposition
1	Remove confidentiality designation
1	Leave to Serve Rule 34 Request for Entry Upon Land
1	Leave to reopen depositions
1	Leave to conduct deposition of non-party witness
1	Coordinate Discovery with Related Cases
1	Deem Requests Admitted
1	Deposition protocol
1	E-Discovery Order
1	Leave to Defer Application for Attorney Fees/Sanctions Pending Mediation
1	Leave to conduct written discovery after cutoff
1	Leave to Conduct Lengthy Depositions
1	Leave to Conduct Discovery Prior to Preliminary Injunction Hearing
1	Leave to Conduct Discovery Beyond Administrative Record
1	Leave to Conduct Discovery After Trial
1	Hold Discovery in Abeyance Pending Ruling on Motion(s)
1	Continue deposition