

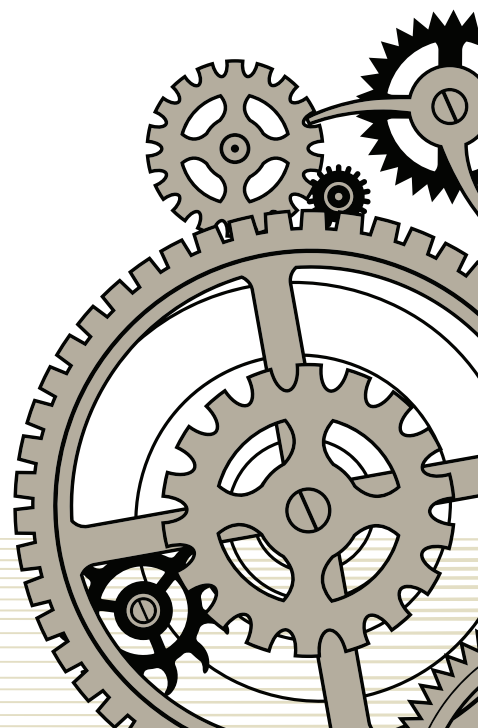
EFFICIENCY IN MOTION

SUMMARY JUDGMENT
IN THE
U.S. DISTRICT COURTS



IAALS
INSTITUTE *for the* ADVANCEMENT *of the*
AMERICAN LEGAL SYSTEM





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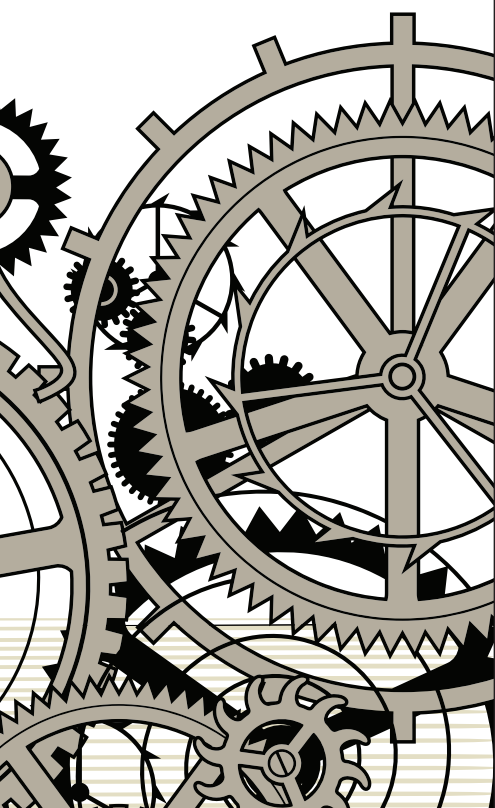
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PART OF IAALS' DISPOSITIVE
MOTIONS PRACTICE PROJECT

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INSTITUTE *for the* ADVANCEMENT
of the AMERICAN LEGAL SYSTEM



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IAALS, the Institute for the Advancement of the American Legal System, is a national, independent research center at the University of Denver dedicated to facilitating continuous improvement and advancing excellence in the American legal system. We are a “think tank” that goes one step further—we are practical and solution-oriented. Our mission is to forge innovative and practical solutions to problems within the American legal system. By leveraging a unique blend of empirical and legal research, innovative solutions, broad-based collaboration, communications, and ongoing measurement in strategically selected, high-impact areas, IAALS is empowering others with the knowledge, models, and will to advance a more accessible, efficient, and accountable American legal system.

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EXECUTIVE SUMMARY

IAALS' discussions with judges and attorneys around the country have confirmed that summary judgment is a source of controversy with the bench and the bar. Some view summary judgment as a shortcut that deprives litigants of their right to a trial. Some view the procedure as a necessary tool to manage unfounded litigation and control overburdened dockets. Others argue that, because of monetary incentives, defense attorneys automatically file summary judgment motions in every case, even when such costly motions are not in their own client's best interest. Along with discovery, judges around the country point to excessive motion practice as a source of cost and delay in our system. Attorneys point to the lengthy time that judges take to rule on summary judgment motions and the resulting, sometimes exponential, negative impact on the pretrial process.

At the same time, there is a growing effort by judges, and some attorneys, to make the summary judgment process more efficient. Innovations include holding a pre-motion conference to discuss the viability of a motion and to narrow issues. More and more lawyers are seeking to make motions practice more efficient for their clients, including evaluating whether a motion is the best choice, or whether proceeding directly to trial makes more sense under the particular circumstances of the case.

While various studies have looked at summary judgment in federal court—including our own 2009 study, *Case Processing in the Federal District Courts: A 21st Century Analysis*,¹ and research by the Federal Judicial Center in 2007²—there is not a more recent study that documents the current landscape of summary judgment practice and its role in the pretrial process. Thus, IAALS, the Institute for the Advancement of the American Legal System at the University of Denver, has undertaken this examination of federal PACER data from select United States District Courts to report on the current use of summary judgment in federal court and to inform a dialogue and possible recommendations seeking to make the summary judgment process more efficient.

Our docket study reveals a number of insights regarding the landscape of summary judgment in federal court, including grant rate, time to ruling, motions in context with their surrounding events, and innovative case management approaches.

This report contains the results of IAALS' data collection from ten United States District Courts. The landscape that emerges provides important information about the current use of summary judgment in the United States District Courts, as well as ways in which the process could be made more efficient.

- Summary judgment motions are filed in fewer cases than the bench and bar might expect. They are filed in approximately 13.7% of cases, with this proportion varying between 9.7% and 22% depending on the district. Thus, summary judgment motions are not filed in every case in the federal courts, as it sometimes seems to judges and lawyers. Nevertheless, a considerable number of cases in our system do include summary judgment motions and they represent a major expenditure of time and resources on the part of both the bench and the bar.

1 INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., *CIVIL CASE PROCESSING IN THE FEDERAL DISTRICT COURTS: A 21ST CENTURY ANALYSIS* 49-50 (2009) [hereinafter *CIVIL CASE PROCESSING*].

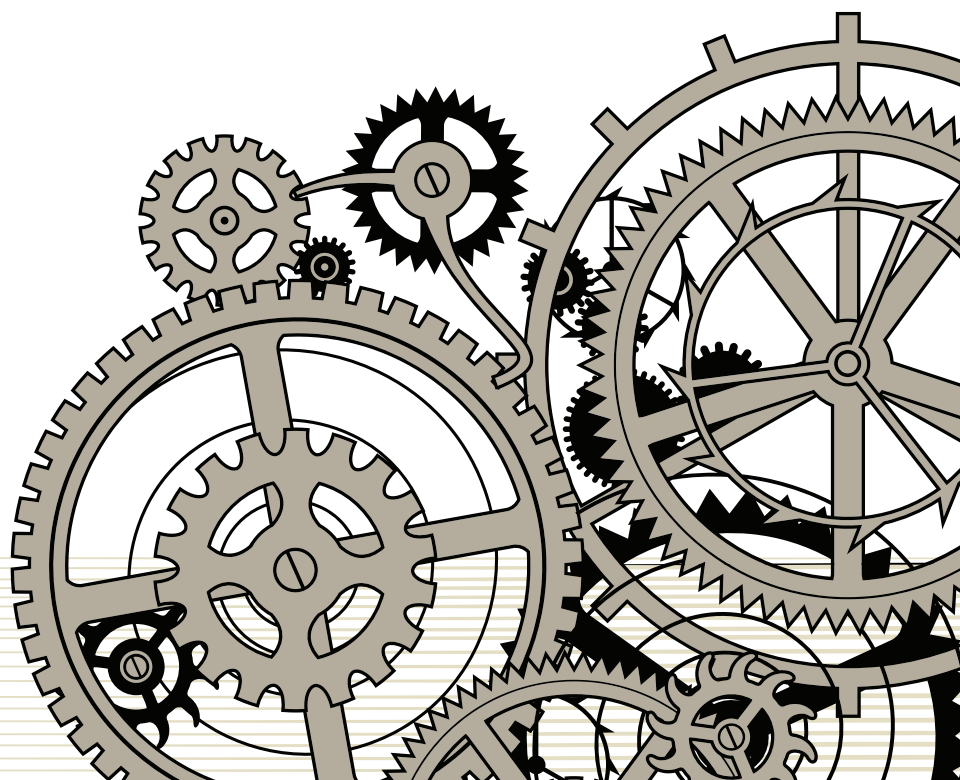
2 See, e.g., Joe S. Cecil et al., *A Quarter-Century of Summary Judgment Practice in Six Federal District Courts*, 4 J. EMP. LEG. STUDS. 861, 882 (2007).

- We observe significant differences across the district courts in terms of filing rate, motion and opinion page count, time to and type of disposition, time to and type of ruling, grant rate, and whether or not pre-motion hearings are utilized. The local rules and judicial practices also reflect great variation. The study reconfirms what has been shown in a number of prior studies—there are real differences between the various courts and legal communities in the United States.³ The results here suggest the need for identifying and implementing best practices and procedures toward the end goal of greater uniformity and efficiency for all. On average, the time to ruling from the filing party's reply brief is just under four months (113 days), but varies significantly by district.
- Significant differences also exist based on nature of suit, with variations in terms of time to disposition, time to ruling, motion and opinion length, and grant rate. Civil rights cases have the highest frequency of summary judgment motions, and the grant rate is highest for these cases as well, with summary judgment granted in whole 49.2% of the time. This highlights the possibility that case-type specific research may be valuable. Case-type specific reforms in the area of motion practice, as have been introduced in discovery,⁴ may be beneficial.
- While time to ruling on summary judgment motions varies significantly by district and nature of suit category, there is no significant variation when viewed through the lens of filing party or motion type (full or partial motion). For half of all motions, the time from the filing party's reply brief—when the motion is fully briefed and awaiting decision—to the ruling on the motion is just under four months at the median (113 days), and nearly five months at the mean (147 days). The presence of a magistrate's report and recommendation on the motion significantly increases the time to final ruling. A magistrate's report and recommendation is issued, on average, within 139 days, which is similar to the average across all motions at 147 days. However, the issuance of a final ruling by a district judge adds an additional 99 days, for a total of 238 days, or just under eight months for those motions where the court utilizes this process.
- District courts and judges around the country have adopted innovative approaches to summary judgment practice in an effort to focus the filing and ruling on those motions and make the overall process more efficient. One example is the use of pre-motion conferences, a practice that is more commonly used for discovery disputes but that can also be used for summary judgment motions. We found no significant difference between the mean time to ruling for cases with and without pre-motion conferences, although the results suggest the time may be slightly longer. That said, we did not analyze cases without motions for summary judgment, so we cannot speak to those motions that may not have been filed as a result of such conferences. In addition, the motions that are filed despite a pre-motion conference may present more challenging issues, thus accounting for the longer time to ruling. This is an area where supplemental research, and particularly qualitative research, is needed to further understand the impact of pre-motion conferences.

3 See, e.g., CIVIL CASE PROCESSING, *supra* note 1, at 85; THOMAS CHURCH, JR., ALAN CARLSON, JO-LYNNE LEE & TERESA TANN, NATIONAL CENTER FOR STATE COURTS, JUSTICE DELAYED: THE PACE OF LITIGATION IN URBAN TRIAL COURTS, EXECUTIVE SUMMARY 14 (1978).

4 See FED. JUDICIAL CTR., INITIAL DISCOVERY PROTOCOLS FOR FAIR LABOR STANDARDS ACT CASES NOT PLEADED AS COLLECTIVE ACTIONS (2018); FED. JUDICIAL CTR., PILOT PROJECT REGARDING INITIAL DISCOVERY PROTOCOLS FOR EMPLOYMENT CASES ALLEGING ADVERSE ACTION (2011).

Overall, this project provides an important window into summary judgment practice in our federal courts. Our intent is that this information serve as the foundation for robust conversation regarding current practices, challenges, and ideas for improving the process—on the part of the bench and the bar—for the benefit of litigants. This research is an important first step into understanding the current landscape of summary judgment and identifying areas for improvement. IAALS’ next step is to develop recommendations for reform based on this data and input from a broad base of stakeholders with different perspectives and experience—and ultimately, our goal is to support implementation and real impact on the ground designed to save litigants time and money in the process.



INTRODUCTION

Rule 56 of the Federal Rules of Civil Procedure provides that a party may move for summary judgment, and the court shall grant such a motion, if the movant shows “that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”⁵ The summary judgment process serves an important function in our system. It provides an avenue for weeding out cases that are not supported by the facts or the law. It is a tool by which the parties and the court can save resources by not having to go through a full trial to achieve resolution. At the same time, motions for summary judgment can be very expensive, and when they are filed in every case regardless of likelihood of success, the motion contributes to cost and delay rather than serving as a tool to prevent both.

While a significant focus of civil justice reform has been on the cost and delay of discovery, IAALS has heard the call for reform in the area of motions practice as well. Challenges exist at the state and federal levels, although both the challenges and the solutions may be unique to each system. A discussion of solutions has to begin with the current landscape. How many motions are filed, and who files them? Does this vary by district and nature of suit? How often are motions granted, and how promptly? To make recommendations, we need an initial lens through which to view what is happening on the ground. Through this study, we seek to answer those questions and provide that lens.

This report contains the results from ten United States District Courts. The cohort of terminated cases was identified using the Civil Integrated Data Base (Civil IDB), which is publicly available at www.fjc.gov. Our data was gathered from the dockets of 18,066 cases that closed between January 1, 2015 and December 31, 2015. Terminated cases in which there was summary judgment activity were identified using court electronic records.

We randomly sampled cases from those cases with at least one summary judgment motion to provide a statistically sound sample from each district. We reviewed and collected extensive information about each case and each motion filed within those cases, including nature of suit, claims and number of parties, court, judge and/or magistrate judges involved in the ruling, timing of motions practice, discovery and trial events, and ultimate disposition date and type. We excluded from this analysis cases such as Social Security and bankruptcy cases with different procedural postures from the typical civil cases that fall under the Federal Rules of Civil Procedure.

5 FED. R. CIV. P. 56(a).

EVALUATION DESIGN AND METHODOLOGY

In preparing to conduct this study, we first engaged in a thorough process of identifying districts for inclusion, as well as determining an appropriate set of criteria for individual cases to be included. Then, we developed strategies for selecting a random sample of cases and collecting the necessary data

from PACER. Once these steps were completed, we followed up with the selected study courts to gain further background regarding summary judgment practice in their districts. The subsections below describe each component of our process in detail.

STUDY DISTRICTS

Across the 12 federal circuits, there are 94 federal judicial districts. Given that a comprehensive study of all districts was not feasible, we developed a multi-step strategy for selecting a number of representative districts to study. Specifically, we selected a diverse set of study districts on the basis of multiple criteria, in roughly the following order: (1) size (as measured by the number of authorized district judges); (2) national rankings in judicial caseload profiles, based on information gathered from the Federal Court Management Statistics; (3) use of informal summary judgment procedures; and (4) geographic and population density.

Initially, we gathered court management statistics on all 94 districts to facilitate narrowing down potential study districts. We obtained this information from the Federal Court Management Statistics,⁶ a report which the courts release to the public on a quarterly basis. Given the range of case closing dates for this study—January 1, 2015 to December 31, 2015—we gathered information from the December 2015

reports. Information gathered in this step included district name, circuit, census region and division, number of authorized judgeships, number of vacant judgeship months, number of cases filed and terminated in the district, number of pending cases, weighted filings per authorized judgeship, and median time to disposition for civil cases.

DISTRICT SIZE

We divided the federal district courts into four categories based on size: small (4 or fewer authorized judgeships), medium (5-8 authorized judgeships), large (9-15 authorized judgeships), and extra-large (16-30 authorized judgeships).⁷ At this step, we did not account for visiting or senior judges, and instead took account of this information as part of the caseload analysis in step two. Within these size categories, we also considered mean time from filing to disposition. We divided the districts into high, mid-level, and low categories and selected courts with a variety of rankings.

⁶ See generally United States Courts, Statistics & Reports, Federal Court Management Statistics, <http://www.uscourts.gov/statistics-reports/analysis-reports/federal-court-management-statistics> (last visited Mar. 30, 2018). The Federal Court Management Statistics provide statistical profiles for each of the U.S. District Courts. The profiles include overall caseload statistics, actions per judgeship, and median time from filing to disposition. The actions per judgeship include the weighted filing statistics, which account for the different amount of time district judges require to resolve civil actions.

⁷ Authorized federal judgeships are Article III judgeships created by legislation enacted by Congress. See generally United States Courts, Judges & Judgeships, Authorized Judgeships, <http://www.uscourts.gov/judges-judgeships/authorized-judgeships> (last visited Mar. 30, 2018).

JUDICIAL CASELOAD

Next, we considered the number of filings per judgeship, recognizing that filings also vary by court. One challenge in comparing the court management data across districts is that the number of weighted filings is listed by active judgeship, and this does not reflect the impact on caseload of judicial vacancies or senior judges.⁸ To reflect the true number of weighted filings per active judge, we calculated a single value that reflects the true weighted filings per judgeship, including vacancies and senior judges: the number of weighted filings per active judgeship month. In addition to selecting courts within each size category based on time to disposition, we also selected courts with a low, moderate, or heavy number of weighted filings per active judgeship month.

INDIVIDUAL SUMMARY JUDGMENT PRACTICES

In identifying the select districts, we considered the local rules and individual judicial practices of the judges with regard to summary judgment. Courts fell into three categories in terms of their use of pre-motion requirements, including pre-motion conferences, letters, and/or meet and confer requirements: 1) jurisdiction-wide rules that require pre-filing activity, 2) no pre-filing rules, but a number of individual judges that require similar pre-filing activity, and 3) no pre-filing rules and relatively few individual judicial pre-filing requirements. Local rules and individual judicial practices related to page limits, accompanying statements of material fact, and limits on motions were also considered. Information was gathered from district-wide rules and individual practices as posted on the courts' official websites and corresponding individual judges' posted practices.

The goal of including a mixture of approaches was to take into account the diversity of summary judgment practices, and to provide the opportunity to analyze the impact of such practices to the extent possible. For example, Maine has a local rule that includes a pre-filing conference prior to the filing of any summary judgment motions, with an option for an alternative joint filing where the parties agree such a conference would not be helpful.⁹ While the Southern District of New York does not have such a local rule in place, the District implemented a Pilot Project for Complex Civil Cases from November 1, 2011 to October 31, 2014, and judges may continue to follow the provisions of the pilot, including the pilot's required pre-motion conferences for summary judgment motions.¹⁰ The continued use of this procedure is reflected in a number of the judges' individual practices and procedures. Other examples of individual practices include court-ordered limits of one motion for summary judgment or no partial motions. Half of the selected districts have a local rule requiring an accompanying statement of material fact for every motion for summary judgment.¹¹

GEOGRAPHY AND POPULATION DENSITY

Finally, we also took into account geographic diversity and developed environment (urban/rural) to ensure a diversity of jurisdictions across the country.

PACER FEE WAIVERS

PACER (Public Access to Court Electronic Records) provides access to full docket information for all cases filed in district courts and was the resource we used to collect data for inclusion in the study. Courts may provide exemptions to PACER fees, including to Section 501(c)(3) not-for-profit organizations and

8 Philip Habel & Kevin Scott, *New Measures of Judges' Caseload for the Federal District Courts, 1964-2012*, J.L. & COURTS 153 (Spring 2014).

9 MAINE LOCAL RULE 56(h).

10 See Standing Order M10-468, *In re: Pilot Project Regarding Case Management Techniques for Complex Civil Cases in the Southern District of New York* (Nov. 14, 2014), available at http://www.nysd.uscourts.gov/rules/Complex_Civil_Rules_Pilot_14.11.14.pdf.

11 The jurisdictions with local rules requiring a separate statement of material fact include Arizona, Connecticut, Maine, the Southern District of New York, and the Western District of Wisconsin.

individual researchers associated with educational institutions where the “exemption is necessary in order to avoid unreasonable burdens and to promote public access to information.”¹²

Ultimately, we sought PACER fee waivers from twelve district courts, and ten courts granted our request.¹³ Table 1 lists the districts that were included in this study.

*Table 1: Subject Districts*¹⁴

| DISTRICT | CIRCUIT | REGION | SIZE (NUMBER OF ACTIVE JUDGES) | MEDIAN TIME IN MONTHS FROM FILING TO DISPOSITION | ADJUSTED # WEIGHTED FILINGS PER ACTIVE JUDGESHIP MONTH |
|-------------------|------------------|------------------|--------------------------------------|---|--|
| Arizona | 9 th | West | Large (13) | Low | Moderate |
| Colorado | 10 th | West | Medium (7) | Mid-level | Moderate |
| Connecticut | 2 nd | New England | Medium (8) | Mid-level | Low |
| Maine | 1 st | New England | Small (3) | Low | Low |
| Southern New York | 2 nd | Mid- Atlantic | Extra-Large (28) | Mid-level | Moderate |
| Northern Ohio | 6 th | Midwest | Large (11) | High | Low |
| Oregon | 9 th | West | Medium (6) | High | Moderate |
| Middle Tennessee | 6 th | South | Small (4) | High | Heavy |
| Eastern Virginia | 4 th | South | Large (11) | Low | Low |
| Western Wisconsin | 7 th | Midwest | Small (3) | Low | Moderate |

12 United States Courts, Services & Forms, Electronic Public Access Fee Schedule, <http://www.uscourts.gov/services-forms/fees/electronic-public-access-fee-schedule> (last visited Mar. 30, 2018).

13 Electronic Public Access (EPA) fees apply for retrieving and viewing information through PACER. However, the Judicial Conference policy allows for restricted exemptions from this fee, including for Section 501(c)(3) not-for-profit organizations and individual researchers associated with educational institutions.

14 Table 1 reflects accurate information for the districts as of 2015, the time period of this study.

The methodology for district court selection was similar to the approach in IAALS' 2009 *Case Processing in the Federal District Courts* study.¹⁵ One difference is that the 2009 study did not account for

vacancies or senior judges. Given the increased number of vacancies in our federal system since 2009, and the impact that senior judges have on docket management,¹⁶ we have taken both into account.

DATA COLLECTION

Study Timeframe. For this study, we examined cases closed between January 1, 2015 and December 31, 2015. Cases that were closed prior to this timeframe, and then reopened and reclosed during the period of the study, were included. A case was considered closed if the docket indicated it was terminated, be it upon judgment or order after trial, dispositive motion, or other relevant terminating event. Cases with a judgment on appeal were considered closed for this study.¹⁷

Nature of Suit and Other Criteria. Federal civil district court cases are assigned a nature of the suit from a set of 102 codes, which the court has grouped into 16 broad categories.¹⁸ We reviewed each of these nature of suit categories, and the codes within them, to narrow our dataset to include those cases with comparable procedural postures; we excluded nature of suit categories that entail processes that diverge from the typical procedures as laid out in the Federal Rules of Civil Procedure. For those reasons, we also excluded class actions, cases consolidated in multi-district litigation proceedings or for other reasons, cases remanded from the court of appeals, cases remanded back to state court, and cases involving a change of venue.

Table 2: Included Nature of Suit Categories

| NATURE OF SUIT CATEGORY | DESCRIPTION |
|-------------------------|--|
| Civil Rights | Disputes related to ADA, employment, education, housing, voting, and welfare |
| Contract ¹⁹ | Contract disputes |
| Labor | Disputes related to ERISA, FLSA, FMLA, and other labor issues |
| Other Statutes | Disputes based on other statutes, including antitrust, environmental matters, and securities |
| Property Rights | Intellectual property disputes |
| Real Property | Disputes related to foreclosure, condemnation of land, torts to land, and other real property issues |
| Tort: Personal Injury | Disputes related to liability for personal injury damages |
| Tort: Personal Property | Disputes related to liability for damages to personal property |

Sampling Cases. Within the ten selected study districts, there were 18,066 closed cases that met our inclusion criteria. Of those cases, 2,473 (13.7%) cases contained at least one summary judgment motion. Because of the large number of cases and

15 CIVIL CASE PROCESSING, *supra* note 1. Several of the courts were also included in the 2009 IAALS study, including the Western District of Wisconsin, Colorado, Oregon, the Eastern District of Virginia, and Arizona.

16 Philip Habel & Kevin Scott, *New Measures of Judges' Caseload for the Federal District Courts, 1965-2012*, J. LAW & COURTS 153 (Spring 2014).

17 This evaluation focused on closed cases to ensure that the results are an accurate assessment of summary judgment activity. See Cecil, *supra* note 2, at 871.

18 A complete list of the U.S. District Court nature of suit codes and categorizations is included in Appendix A.

19 We excluded a few nature of suit codes within the contract category: recovery of defaulted student loans, recovery of overpayment and enforcement of judgment, and recovery of overpayment of veteran's benefits.

the impracticality of reviewing all of them, we randomly selected a sample containing at least one summary judgment motion from each district. The sample size from each district is sufficiently large to allow conclusions to be drawn within a $\pm 1.8\%$ margin of error, with a confidence level of more than 99%. In total, we reviewed 1,393 cases—and the 2,048 summary judgment motions contained within them—from the ten districts included in this report.²⁰

Case Reviews. To facilitate a robust and thorough analysis addressing each of our evaluation questions, we collected extensive information about each of the sampled cases, as well as about each summary judgment motion filed within those cases. At the case level, this information included district, nature of suit, number of parties and claims, pretrial deadlines, whether trial was held, and resolution date and type. With regard to summary judgment motions, we collected the filing party, motion type (full or partial), motion page count, dates of originating motion and

responsive motions, the existence and timing of pre-filing conferences, and the ultimate outcome, including timing, magistrate involvement, assigned Article III judge, and order page count. Importantly, we recognized that scheduled dates and deadlines within a case often change. For this reason, where any dates or deadlines changed throughout a case, we recorded only the most recent date, as any previous date would not accurately capture case events.

District Interviews. In addition to studying the data available through PACER, we also reached out to the district courts to gather information regarding their local rules, procedures, and culture. Calls were scheduled with representatives of the district courts who agreed to a conference call, while other districts responded in writing. The calls were held with judicial officers or high-level court administrators. The calls were held toward the end of data review to ensure that the final analysis and data synthesis was as fully informed as possible.

Margin of error tells us the maximum expected difference between a true population parameter and the estimate of that parameter obtained from the sample. The confidence interval tells us how often we can expect the true population parameter to fall within the margin of error. Thus, with a margin of error of $\pm 1.8\%$ and a confidence interval of more than 99%, we know that, if we pulled multiple samples from the same set of cases, we could expect that the true population value would fall within 1.8% of the observed sample value more than 99% of the time.

20 Arizona – 157 cases sampled/264 cases with at least one summary judgment motion (within the cases that met our criteria for inclusion in the study); Colorado – 169/300; Connecticut – 157/256; Maine – 41/45; S. New York – 242/649; N. Ohio – 145/231; Oregon – 134/204; M. Tennessee – 127/189; E. Virginia – 153/252; W. Wisconsin – 69/83; Overall – 1391/2473.

FINDINGS

We took a multi-faceted approach to analyzing case and summary judgment motion data. Specifically, we sought to understand any observed variations in the data across districts, nature of suit categories, filing

parties, and types of motions—especially where the observed variations proved statistically significant. The subsections that follow present the results of that analysis.

THE SUMMARY JUDGMENT LANDSCAPE

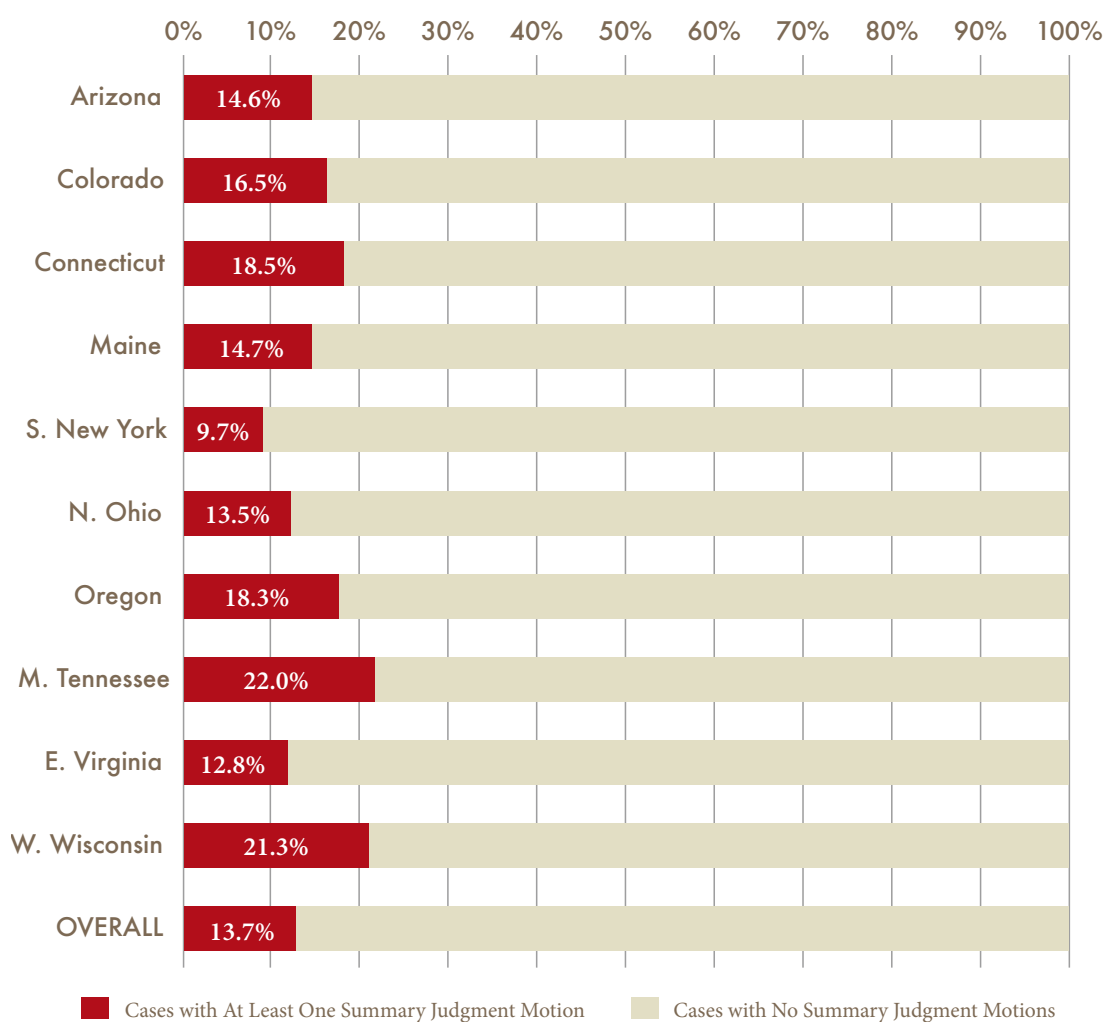
The filing rate of summary judgment motions in the overall docket varied across districts studied, with summary judgment motions filed in 13.7% of cases overall. Southern New York had the lowest percentage at 9.7% and the Middle District of Tennessee had the largest percentage of summary judgment motions filed at 22.0%. This represents a significantly different number of summary judgment motions depending on the court, with a

corresponding impact on the work of each court. In comparison, IAALS' 2009 *Case Processing* study found that 16.6% of cases had at least one summary judgment motion on the docket. Though this study reports on some overlapping and some different districts, the difference suggests a noteworthy decrease in summary judgment motions over the last ten years.²¹

The term **overall docket** refers to the entirety of cases within our study jurisdiction, whether or not a summary judgment motion was filed in the case. We use the term **summary judgment docket** to refer to the subset of cases within the overall docket containing at least one summary judgment motion.

21 CIVIL CASE PROCESSING, *supra* note 1, at 49-50.

Figure 1: Percentage of Cases with At Least One Summary Judgment Motion



The results presented above take into consideration all cases within the overall and summary judgment dockets. All results presented in the remainder of this report reflect information about the sampled cases.

Within the summary judgment docket, civil rights cases constituted a plurality (38.2%) of cases; within the overall docket, civil rights cases once again made up the largest proportion, though the proportion is smaller (29.6%). The next largest proportion of cases within the summary judgment docket was contract cases (21.9%); while contract cases are also the next largest proportion of cases

in the overall docket, the proportion was somewhat smaller (16.7%). Cases within other nature of suit categories were filed at lower rates within both the summary judgment docket and the overall docket. When there is a difference in the proportions between the summary judgment docket and the overall docket, it tells us that summary judgment motions are filed disproportionately in some types

of cases. Thus, because civil rights and contract cases each make up a larger portion of the summary judgment docket than the portion they constitute in the overall docket, we can conclude that summary judgment motions are filed in civil rights and contract cases more often than in cases in other nature of suit categories. It should be noted that there was considerable variation across districts in proportions of cases within nature of suit categories in both the overall docket and the summary judgment docket (see Appendix A).

Within our sample, the most common form of resolution was settlement, with a plurality (44.5%) of cases resolving by settlement across all districts. The next most common resolution type overall was summary judgment; more than one-third (37.6%) of cases resolved in this way. It should be noted, though, that there were significant variations in resolution

types across districts (see Table 3 below).²² Because the studied cases have progressed to the point of summary judgment motions, these cases have engaged in the pretrial process to some degree, and in some cases, to a significant degree. Notably, considering the data overall, jury trials were the method of disposition for 6.2% of cases. Thus, while jury trials have largely vanished in our system as a means of resolution at approximately 1%,²³ for those cases that proceed to summary judgment, a jury trial is a real possibility for case resolution. This is particularly true in the Districts of Maine and Colorado, where the percentage of jury trials is 14.6% and 9.5% respectively. For both districts, the proportion of cases resolved by trial is even higher when one includes bench trials, which raises these proportions to 19.5% and 10.7%, respectively.

Table 3: Summary Judgment Case Disposition by District

| DISTRICT | SETTLED | SUMMARY JUDGMENT | JURY TRIAL | BENCH TRIAL | OTHER |
|--------------|---------|------------------|------------|-------------|-------|
| Arizona | 52.2% | 31.8% | 5.1% | 3.8% | 7.0% |
| Colorado | 53.3% | 27.8% | 9.5% | 1.2% | 8.3% |
| Connecticut | 41.6% | 43.5% | 7.1% | 2.6% | 5.2% |
| Maine | 41.5% | 24.4% | 14.6% | 4.9% | 14.6% |
| S. New York | 42.1% | 42.1% | 3.7% | 2.5% | 9.5% |
| N. Ohio | 44.1% | 38.6% | 5.5% | 0.7% | 11.0% |
| Oregon | 40.4% | 40.4% | 5.9% | 4.4% | 8.8% |
| M. Tennessee | 47.2% | 36.2% | 7.9% | 2.4% | 6.3% |
| E. Virginia | 38.6% | 41.8% | 3.9% | 1.3% | 14.4% |
| W. Wisconsin | 39.1% | 39.1% | 7.2% | 1.4% | 13.0% |
| OVERALL | 44.5% | 37.6% | 6.2% | 2.4% | 9.3% |

22 $\chi^2(36, n = 1393) = 52.99, p = 0.03$. Throughout the report, we present results for inferential statistics in the footnotes. For purposes of interpretation, any result where the p-value is less than 0.05 is considered statistically significant.

23 See generally Marc Galanter, *The Decline of Trials in a Legalizing Society*, 51 VALPARAISO UNIV. L. REV. 7 (2017).

Those cases with summary judgment motions have an overall mean time to disposition of 694 days. However, the mean time to disposition for

those cases with summary judgment motions varied widely across the districts in the study.²⁴

Table 4: Time to Disposition by District (in days)

| DISTRICT | MEDIAN | MEAN | STANDARD DEVIATION |
|--------------------------------|--------|--------|--------------------|
| Arizona <i>n</i> = 157 | 658.0 | 673.3 | 338.5 |
| Colorado <i>n</i> = 169 | 530.0 | 605.9 | 343.3 |
| Connecticut <i>n</i> = 154 | 997.5 | 1039.1 | 501.2 |
| Maine <i>n</i> = 41 | 622.0 | 704.5 | 367.5 |
| S. New York <i>n</i> = 241 | 771.0 | 857.6 | 500.1 |
| N. Ohio <i>n</i> = 144 | 519.5 | 628.1 | 435.2 |
| Oregon <i>n</i> = 135 | 545.0 | 656.7 | 463.3 |
| M. Tennessee <i>n</i> = 127 | 635.0 | 698.8 | 337.9 |
| E. Virginia <i>n</i> = 152 | 304.5 | 350.2 | 187.7 |
| W. Wisconsin <i>n</i> = 69 | 519.0 | 567.6 | 224.2 |
| OVERALL <i>n</i> = 1389 | 590.0 | 694.0 | 438.2 |

²⁴ $F(9, 426) = 51.56, p < 0.001$

The nature of suit category also affected the time to disposition.²⁵ Civil rights (786.2 days) and property rights (736.9 days) took the longest to resolve on average. In contrast, real property (544.9 days) and personal injury tort (607.7 days) took the least time from filing to disposition, on average.²⁶

Table 5: Time to Disposition by Nature of Suit Category (in days)

| NATURE OF SUIT CATEGORY | MEDIAN | MEAN | STANDARD DEVIATION |
|--|--------|-------|--------------------|
| Civil Rights <i>n</i> = 559 | 657.0 | 786.2 | 442.7 |
| Contract <i>n</i> = 314 | 530.0 | 652.1 | 482.8 |
| Labor <i>n</i> = 89 | 550.0 | 622.5 | 343.5 |
| Other Statutes <i>n</i> = 142 | 493.5 | 637.4 | 477.2 |
| Property Rights <i>n</i> = 74 | 638.0 | 736.9 | 391.0 |
| Real Property <i>n</i> = 30 | 443.0 | 544.9 | 383.8 |
| Tort: Personal Injury <i>n</i> = 147 | 536.0 | 607.7 | 327.9 |
| Tort: Personal Property <i>n</i> = 33 | 671.0 | 694.8 | 362.0 |
| OVERALL <i>n</i> = 1389 | 590.0 | 694.0 | 438.2 |

25 F (7, 1380) = 4.88, p < 0.001
26 See generally Appendix A for a full list of nature of suit codes and categories.

MOTIONS

In addition to looking at summary judgment at the case level, this study provides insights at the motion level as well.

Summary judgment motions are predominantly full, rather than partial, motions. Motions that sought full summary judgment on all claims at issue were categorized as full, while motions that sought a ruling on only some of the claims were categorized as partial. Of the motions for summary judgment filed, nearly three-quarters (73.4%) sought full summary judgment, with the remaining one-quarter (26.6%)

seeking partial summary judgment. This finding—that full motions are more common than partial motions—was consistent across districts, as well as across nature of suit categories (with one notable exception).

A sizeable majority of motions in each district were full motions. Still, there is statistically significant variation in the proportions of full and partial motions by district.²⁷ Colorado saw the highest proportion of partial motions (38.9%), while Maine saw the lowest (10.9%).

Table 6: Motion Type by District

| DISTRICT | PARTIAL MOTIONS | FULL MOTIONS |
|--------------------------------|-----------------|--------------|
| Arizona <i>n</i> = 252 | 33.3% | 66.7% |
| Colorado <i>n</i> = 234 | 38.9% | 61.1% |
| Connecticut <i>n</i> = 222 | 20.5% | 79.5% |
| Maine <i>n</i> = 55 | 10.9% | 89.1% |
| S. New York <i>n</i> = 375 | 27.5% | 72.5% |
| N. Ohio <i>n</i> = 205 | 23.7% | 76.3% |
| Oregon <i>n</i> = 198 | 26.3% | 73.7% |
| M. Tennessee <i>n</i> = 171 | 25.7% | 74.3% |
| E. Virginia <i>n</i> = 236 | 22.0% | 78.0% |
| W. Wisconsin <i>n</i> = 95 | 16.8% | 83.2% |
| OVERALL <i>n</i> = 2041 | 26.6% | 73.4% |

²⁷ $\chi^2(9, n = 2041) = 43.39, p < 0.001$

In general, motions for full summary judgment predominated over partial motions across nature of suit categories. Indeed, for most categories, at least two-thirds of motions filed were for full summary judgment. However, in property rights cases, just

over half (54.2%) were partial motions. The variation observed in the filing of full versus partial motions among nature of suit categories was statistically significant.²⁸

Table 7: Motion Type by Nature of Suit Category

| NATURE OF SUIT CATEGORY | PARTIAL MOTIONS | FULL MOTIONS |
|--|-----------------|--------------|
| Civil Rights <i>n</i> = 765 | 15.3% | 84.7% |
| Contract <i>n</i> = 494 | 38.9% | 61.1% |
| Labor <i>n</i> = 129 | 25.6% | 74.4% |
| Other Statutes <i>n</i> = 230 | 24.8% | 75.2% |
| Property Rights <i>n</i> = 131 | 54.2% | 45.8% |
| Real Property <i>n</i> = 49 | 28.6% | 71.4% |
| Tort: Personal Injury <i>n</i> = 192 | 21.4% | 78.6% |
| Tort: Personal Property <i>n</i> = 51 | 33.3% | 66.7% |
| OVERALL <i>n</i> = 2041 | 26.6% | 73.4% |

28 χ^2 (7, *n* = 2041) = 143.86, *p* < 0.001

Summary judgment motions are more likely to be filed by defendants than plaintiffs. Overall, defendants filed more than two-thirds (69.9%) of summary judgment motions, whereas plaintiffs filed just under one-third (30.1%). Moreover, defendants filed motions for summary judgment at higher rates than did their plaintiff counterparts for all districts and all nature of suit categories.

Even though defendants filed a considerable majority of summary judgment motions within each district, we observed statistically significant differences in the party filing rate across districts.²⁹ Southern New York and Arizona had the largest proportions of motions filed by plaintiffs (39.2% and 35.7%, respectively), while Connecticut and the Middle District of Tennessee had the lowest (22.5% and 23.5%, respectively).

Table 8: Filing Party by District

| DISTRICT | FILED BY PLAINTIFF | FILED BY DEFENDANT |
|--------------------------------|--------------------|--------------------|
| Arizona <i>n</i> = 252 | 35.7% | 64.3% |
| Colorado <i>n</i> = 234 | 25.6% | 74.4% |
| Connecticut <i>n</i> = 218 | 22.5% | 77.5% |
| Maine <i>n</i> = 53 | 26.4% | 73.6% |
| S. New York <i>n</i> = 370 | 39.2% | 60.8% |
| N. Ohio <i>n</i> = 202 | 26.1% | 73.9% |
| Oregon <i>n</i> = 199 | 27.2% | 72.8% |
| M. Tennessee <i>n</i> = 170 | 23.5% | 76.5% |
| E. Virginia <i>n</i> = 233 | 32.6% | 67.4% |
| W. Wisconsin <i>n</i> = 94 | 29.8% | 70.2% |
| OVERALL <i>n</i> = 2025 | 30.1% | 69.9% |

²⁹ $\chi^2(9, n = 2025) = 33.32, p < 0.001$

Furthermore, the finding that summary judgment motions were more likely to be filed by defendants spanned nature of suit categories.³⁰ This disparity in filing rates was most prominent in personal injury tort and civil rights cases (86.8% and 84.7% filed

by defendants, respectively). Conversely, plaintiffs and defendants filed summary judgment motions at closer rates in contract and other statutes cases (53.3% and 55.1% filed by defendants, respectively).

Table 9: Filing Party by Nature of Suit Category

| NATURE OF SUIT CATEGORY | FILED BY PLAINTIFF | FILED BY DEFENDANT |
|--|--------------------|--------------------|
| Civil Rights <i>n</i> = 765 | 15.3% | 84.7% |
| Contract <i>n</i> = 490 | 46.7% | 53.3% |
| Labor <i>n</i> = 127 | 37.0% | 63.0% |
| Other Statutes <i>n</i> = 225 | 44.9% | 55.1% |
| Property Rights <i>n</i> = 127 | 40.9% | 59.1% |
| Real Property <i>n</i> = 49 | 38.8% | 61.2% |
| Tort: Personal Injury <i>n</i> = 189 | 13.2% | 86.8% |
| Tort: Personal Property <i>n</i> = 51 | 35.3% | 64.7% |
| OVERALL <i>n</i> = 2023 | 30.1% | 69.9% |

Considering the dataset as a whole, motions for summary judgment were 24 pages long, on average (median = 21.0).

Summary judgment motions vary in length based on filing party, nature of suit category, and district. However, whether the motions were full or partial did not significantly impact summary judgment motion page count. Page count was recorded based on the page count of the motion and incorporated memorandum of law. Separate statements of fact, required by local rule in half of the jurisdictions, were not included in this page count.³¹

Table 10: Motion Length (in Pages) by Filing Party ³²

| FILING PARTY | MEAN | MEDIAN |
|------------------------------|-------|--------|
| Plaintiff <i>n</i> = 589 | 21.84 | 20.0 |
| Defendant <i>n</i> = 1380 | 24.35 | 22.0 |

30 $\chi^2(7, n = 2023) = 205.67, p < 0.001$
31 See *supra* note 11.
32 $t(1967) = -3.86, p < 0.001$. Plaintiff: SD = 13.21, range = 1-99; defendant: SD = 13.25, range = 1-121.

Motions for full summary judgment were slightly longer, on average, than partial motions; however, this difference was not statistically significant.³³

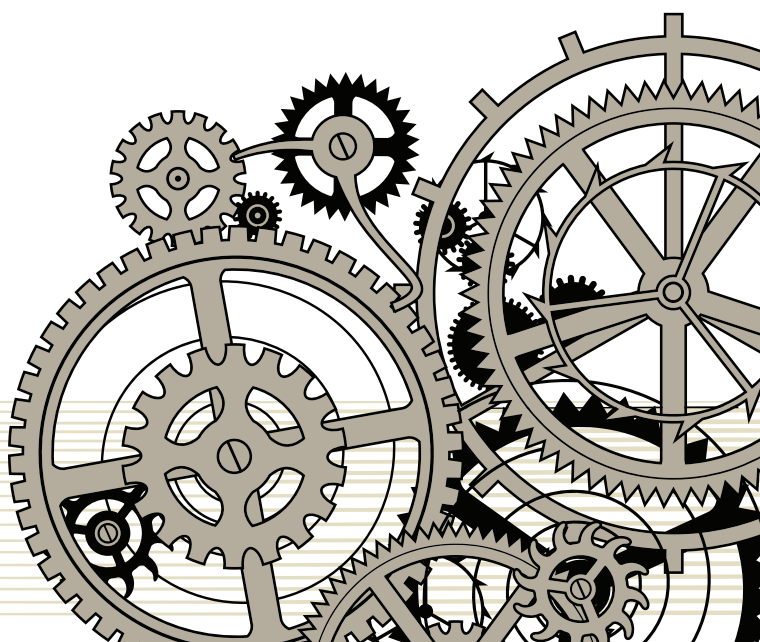
*Table 11:
Motion Length (in Pages) by Motion Type*

| MOTION TYPE | MEAN | MEDIAN |
|----------------------------------|-------|--------|
| Full Motion <i>n</i> = 1482 | 23.89 | 22.0 |
| Partial Motion <i>n</i> = 509 | 22.54 | 19.0 |

Average motion page count varied widely by nature of suit category.³⁴ With a mean of about 27 pages, civil rights cases had the longest motions by a fairly wide margin. Summary judgment motions filed in property rights and other statutes cases were also relatively long—motions in both of those nature of suit categories were about 25 pages, on average. Conversely, the shortest motions were found in real property, personal injury tort, and personal property tort cases; summary judgment motions in the two former categories were about 17 pages at the mean, while those in the latter were about 18 pages.

Table 12: Motion Length (in Pages) by Nature of Suit Category

| NATURE OF SUIT CATEGORY | MEAN | MEDIAN |
|--|-------|--------|
| Civil Rights <i>n</i> = 756 | 27.18 | 25.0 |
| Contract <i>n</i> = 471 | 21.01 | 20.0 |
| Labor <i>n</i> = 127 | 22.76 | 21.0 |
| Other Statutes <i>n</i> = 225 | 24.53 | 22.0 |
| Property Rights <i>n</i> = 121 | 24.53 | 23.0 |
| Real Property <i>n</i> = 49 | 17.29 | 14.0 |
| Tort: Personal Injury <i>n</i> = 192 | 17.23 | 16.0 |
| Tort: Personal Property <i>n</i> = 50 | 18.18 | 16.0 |



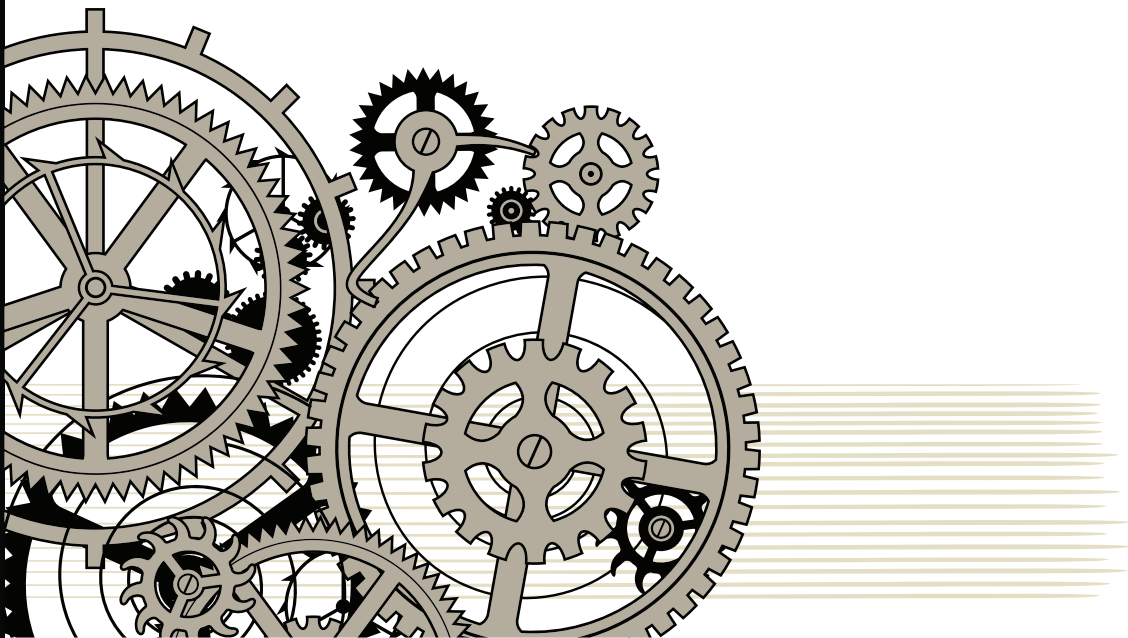
³³ $t(1989) = 1.93, p = 0.054$. Full motion: SD = 12.83, range = 1-121; Partial motion: SD = 14.35, range = 1-118.

³⁴ $F(7, 338) = 26.07, p < 0.01$. Civil Rights: SD = 15.09, range = 1-121; Contract: SD = 10.00, range = 3-73; Labor: SD = 11.99, range = 4-79; Other Statutes: SD = 14.13, range = 2-99; Property Rights: SD = 12.50, range = 4-89; Real Property: SD = 11.13, range = 1-51; Tort: Personal Injury: SD = 8.43, range = 3-69; Tort: Personal Property: SD = 9.47, range = 1-44.

Similarly, there was a great deal of variation in summary judgment motion page count among the studied districts.³⁵ Maine, Colorado, and Oregon had the shortest motions at about 18 pages, on average. At the other end of the spectrum, Connecticut had drastically longer motions, with an average of about 33 pages.

Table 13: Motion Length (in Pages) by District

| DISTRICT | MEAN | MEDIAN |
|--------------------------------|-------|--------|
| Arizona <i>n</i> = 250 | 22.00 | 19.5 |
| Colorado <i>n</i> = 228 | 18.66 | 18.0 |
| Connecticut <i>n</i> = 216 | 33.38 | 32.0 |
| Maine <i>n</i> = 55 | 18.36 | 17.0 |
| S. New York <i>n</i> = 357 | 25.99 | 27.0 |
| N. Ohio <i>n</i> = 197 | 20.20 | 19.0 |
| Oregon <i>n</i> = 195 | 18.66 | 19.0 |
| M. Tennessee <i>n</i> = 170 | 26.45 | 23.5 |
| E. Virginia <i>n</i> = 232 | 22.70 | 24.5 |
| W. Wisconsin <i>n</i> = 91 | 24.85 | 21.0 |



35 F (9, 583) = 25.00, *p* < 0.001. Arizona: SD = 14.63, range = 1-121; Colorado: SD = 10.29, range = 3-76; Connecticut: SD = 18.04, range = 3-95; Maine: SD = 9.70, range = 2-51; S. New York: SD = 10.74, range = 2-99; N. Ohio: SD = 7.99, range = 1-42; Oregon: SD = 10.86, range = 1-55; M. Tennessee: SD = 13.88, range = 5-77; E. Virginia: SD = 10.06, range = 1-51; W. Wisconsin: SD = 16.67, range = 1-89.

WRITTEN OPINIONS

There were significant differences in written opinion page count based on motion type, nature of suit category, and district, but the difference in written opinion page count for party type was not statistically significant.³⁶ The vast majority of orders issued on summary judgment motions were written opinions (81.4%), while the remainder were entered as minute orders (18.6%). Considering all written opinions in the dataset, average page count was 20 pages (median = 17.0).

The written opinions judges issued were virtually identical in length, on average, for both plaintiffs and defendants at about 20 pages.³⁷

Table 14: Written Opinion Length (in Pages) by Filing Party

| FILING PARTY | MEAN | MEDIAN |
|-----------------------------|-------|--------|
| Plaintiff <i>n</i> = 361 | 20.23 | 16.0 |
| Defendant <i>n</i> = 905 | 20.37 | 17.0 |

The difference in written opinion length for full and partial motions was found to be statistically significant.³⁸ Interestingly, opinions issued on partial motions were nearly three pages longer than full motions, on average.

Table 15: Written Opinion Length (in Pages) by Motion Type

| MOTION TYPE | MEAN | MEDIAN |
|----------------------------------|-------|--------|
| Full Motion <i>n</i> = 974 | 19.81 | 17.0 |
| Partial Motion <i>n</i> = 296 | 22.50 | 17.0 |

There was considerable variation in written opinion length by nature of suit category.³⁹ Written opinion page counts were lowest in personal property tort cases at about 14 pages at the mean. Opinions issued on summary judgment motions in property rights and civil rights cases were the longest, on average (about 22 and 26 pages, respectively).

Table 16: Written Opinion Length (in Pages) by Nature of Suit Category

| NATURE OF SUIT CATEGORY | MEAN | MEDIAN |
|--|-------|--------|
| Civil Rights <i>n</i> = 525 | 22.32 | 18.0 |
| Contract <i>n</i> = 285 | 17.93 | 15.0 |
| Labor <i>n</i> = 89 | 19.53 | 17.0 |
| Other Statutes <i>n</i> = 152 | 21.54 | 17.0 |
| Property Rights <i>n</i> = 76 | 25.93 | 19.0 |
| Real Property <i>n</i> = 21 | 15.00 | 10.0 |
| Tort: Personal Injury <i>n</i> = 97 | 15.62 | 14.0 |
| Tort: Personal Property <i>n</i> = 29 | 13.86 | 12.0 |

³⁶ Note that all calculations related to written opinions exclude summary judgment motions for which only a minute order was entered into the docket.

³⁷ $t(1265) = -0.132$, $p = 0.985$. Plaintiff: $SD = 15.23$, range = 2-107; Defendant: $SD = 13.62$, range = 2-87.

³⁸ $t(1269) = -2.85$, $p = 0.013$. Full: $SD = 13.27$, range = 2-87; Partial: $SD = 17.03$, range = 2-107.

³⁹ $F(7, 183) = 11.08$, $p < 0.001$. Civil Rights: $SD = 14.66$, range = 2-83; Contract: $SD = 11.82$, range = 2-70; Labor: $SD = 12.91$, range = 2-70; Other Statutes: $SD = 17.10$, range = 3-107; Property Rights: $SD = 18.74$, range = 4-73; Real Property: $SD = 9.38$, range = 4-37; Tort: Personal Injury: $SD = 9.25$, range = 4-54; Tort: Personal Property: $SD = 6.19$, range = 4-32.

Similarly, written opinions varied significantly in length across districts.⁴⁰ Arizona, Oregon, and Middle Tennessee had the lowest average written opinion page counts—about 16 pages for the former two and about 17 pages for the latter. Conversely, written opinions issued in Maine were nearly twice as long, at an average of about 31.5 pages.

Table 17:
Written Opinion Length (in Pages) by District

| DISTRICT | MEAN | MEDIAN |
|--------------------------------|-------|--------|
| Arizona <i>n</i> = 165 | 15.74 | 13.0 |
| Colorado <i>n</i> = 125 | 17.31 | 14.0 |
| Connecticut <i>n</i> = 154 | 23.32 | 19.0 |
| Maine <i>n</i> = 32 | 30.53 | 21.0 |
| S. New York <i>n</i> = 260 | 23.85 | 19.0 |
| N. Ohio <i>n</i> = 113 | 19.73 | 18.0 |
| Oregon <i>n</i> = 131 | 16.34 | 15.0 |
| M. Tennessee <i>n</i> = 107 | 16.60 | 16.0 |
| E. Virginia <i>n</i> = 120 | 23.39 | 17.0 |
| W. Wisconsin <i>n</i> = 70 | 22.54 | 20.5 |

Overall, hearings were held for about one-quarter (24.2%) of summary judgment motions; however, there are significant differences in approaches across districts with respect to hearings on summary judgment motions.⁴¹ In Colorado, Oregon, and the Middle District of Tennessee, less than 10% of summary judgment motions had hearings. Further, no hearings took place in the Western District of Wisconsin for the studied time

period. On the other end of the spectrum, N. Ohio (59.3%) and the Eastern District of Virginia (53.4%) held hearings more frequently than not. This is consistent with our discussions with the courts regarding their motions practices. For example, the Alexandria court in the Eastern District of Virginia has a Friday motions docket.

Table 18: *Post-Motion Hearings by District*

| DISTRICT | POST-MOTION HEARING HELD | |
|--------------------------------|--------------------------|--------|
| | YES | NO |
| Arizona <i>n</i> = 252 | 24.2% | 75.8% |
| Colorado <i>n</i> = 235 | 5.5% | 94.5% |
| Connecticut <i>n</i> = 222 | 36.5% | 63.5% |
| Maine <i>n</i> = 55 | 27.3% | 72.7% |
| S. New York <i>n</i> = 375 | 15.7% | 84.3% |
| N. Ohio <i>n</i> = 199 | 59.3% | 40.7% |
| Oregon <i>n</i> = 208 | 4.3% | 95.7% |
| M. Tennessee <i>n</i> = 171 | 7.0% | 93.0% |
| E. Virginia <i>n</i> = 236 | 53.4% | 46.6% |
| W. Wisconsin <i>n</i> = 95 | 0.0% | 100.0% |
| OVERALL <i>n</i> = 2048 | 24.2% | 75.8% |

We were also interested in knowing whether holding a post-motion hearing on a summary judgment motion impacted the time to ruling on the motion. Although the time to ruling was, on average, about eight days shorter when there was a hearing than when there was not, this difference was not statistically significant.⁴²

40 F (9, 363) = 10.36, *p* < 0.001. Arizona: SD = 11.00, range = 4-61; Colorado: SD = 12.26, range = 3-77; Connecticut: SD = 14.80, range = 4-70; Maine: SD = 24.74, range = 3-83; S. New York: SD = 3-107; N. Ohio: SD = 12.06, range = 2-68; Oregon: SD = 7.95, range = 4-42; M. Tennessee: SD = 9.54, range = 2-52; E. Virginia: SD = 16.88, range = 4-73, W. Wisconsin: SD = 11.51, range = 4-46.

41 χ^2 (9, *n* = 2048) = 424.67, *p* < 0.001

42 *t* (1498) = -0.930, *p* = 0.35

GRANT RATE

The vast majority (81.2%) of summary judgment motions received a ruling from the court, but there was also a considerable proportion that received no ruling (18.8%). Considering only summary judgment motions that were ruled upon, we found statistically significant differences in the rate at which summary judgment motions are granted in whole, granted in part, and denied based on district, case type, motion type, and party.

Of the summary judgment motions that received a ruling, a plurality were granted in whole (42.6%), just under one-quarter (22.0%) were granted in part, and just over one-third (35.4%) were denied.⁴³ Analysis of summary judgment motion rulings by district revealed statistically significant variation.⁴⁴ Summary judgment motions in Arizona (42.8%), Colorado (44.0%), and Maine (51.1%) were more likely to be denied than granted in whole or in part. Motions in all other districts were more likely to be granted in whole than receive any other ruling.

Table 19: Summary Judgment Ruling by District

| DISTRICT | GRANTED IN WHOLE | GRANTED IN PART | DENIED |
|--------------------------------|------------------|-----------------|--------|
| Arizona <i>n</i> = 187 | 39.0% | 18.2% | 42.8% |
| Colorado <i>n</i> = 160 | 36.3% | 19.6% | 44.0% |
| Connecticut <i>n</i> = 196 | 49.5% | 24.0% | 26.5% |
| Maine <i>n</i> = 47 | 23.4% | 25.5% | 51.1% |
| S. New York <i>n</i> = 319 | 40.8% | 22.3% | 37.0% |
| N. Ohio <i>n</i> = 159 | 48.4% | 27.0% | 24.5% |
| Oregon <i>n</i> = 143 | 44.1% | 22.4% | 33.6% |
| M. Tennessee <i>n</i> = 132 | 44.7% | 26.5% | 28.8% |
| E. Virginia <i>n</i> = 159 | 45.9% | 16.4% | 37.7% |
| W. Wisconsin <i>n</i> = 73 | 41.1% | 20.5% | 38.4% |

⁴³ For all ruling calculations, we excluded motions that were denied as moot (*n* = 81) due to the low occurrence of this ruling type.

⁴⁴ χ^2 (18, *n* = 1583) = 40.04, *p* = 0.002

Motions for full summary judgment are more likely to be granted in whole, while partial motions are more likely to be denied.⁴⁵ Full motions for summary judgment were granted in whole nearly half (46.3%) of the time, while about one-quarter were granted in part (22.7%), and the remaining third (31.1%) were denied. Partial motions, on the other hand, were denied almost half of the time (48.7%), granted in whole about one-third of the time (31.3%), and granted in part 20% of the time.

Table 20: Summary Judgment Ruling by Motion Type

| MOTION TYPE | GRANTED IN WHOLE | GRANTED IN PART | DENIED |
|-----------------------------------|------------------|-----------------|--------|
| Full Motions <i>n</i> = 1187 | 46.3% | 22.7% | 31.1% |
| Partial Motions <i>n</i> = 390 | 31.3% | 20.0% | 48.7% |

Ruling on summary judgment motions also varies significantly by filing party.⁴⁶ More than half (56.0%) of plaintiff motions were denied, while only about one-quarter (26.1%) were granted in whole. Conversely, about half (49.3%) of defendant motions were granted in whole, while the remainder were roughly split between being granted in part and denied (23.9% and 26.8%, respectively).

Table 21: Summary Judgment Ruling by Filing Party

| FILING PARTY | GRANTED IN WHOLE | GRANTED IN PART | DENIED |
|------------------------------|------------------|-----------------|--------|
| Plaintiff <i>n</i> = 1105 | 26.1% | 17.9% | 56.0% |
| Defendant <i>n</i> = 464 | 49.3% | 23.9% | 26.8% |

There are significant differences in grant rate based on nature of suit category⁴⁷. Summary judgment motions filed in civil rights (49.2%),

other statutes (40.3%), real property (51.9%), and personal property (48.6%) were most likely to be granted in whole. Motions filed in contract (42.3%), labor (40.0%), property rights (41.8%), and personal injury tort (43.4%) cases, however, were most likely to be denied.

Table 22: Summary Judgment Ruling by Grouped Nature of Suit Category

| NATURE OF SUIT CATEGORY | GRANTED IN WHOLE | GRANTED IN PART | DENIED |
|--|------------------|-----------------|--------|
| Civil Rights <i>n</i> = 653 | 49.2% | 23.3% | 27.6% |
| Contract <i>n</i> = 359 | 35.1% | 22.6% | 42.3% |
| Labor <i>n</i> = 105 | 36.2% | 23.8% | 40.0% |
| Other Statutes <i>n</i> = 181 | 40.3% | 19.9% | 39.8% |
| Property Rights <i>n</i> = 98 | 33.7% | 24.5% | 41.8% |
| Real Property <i>n</i> = 27 | 51.9% | 18.5% | 29.6% |
| Tort: Personal Injury <i>n</i> = 122 | 41.8% | 14.8% | 43.4% |
| Tort: Personal Property <i>n</i> = 37 | 48.6% | 18.9% | 32.4% |

Overall, a relatively small proportion of summary judgment motions were never ruled upon (18.8%). For an overwhelming majority (85.2%) of summary judgment motions that never resulted in a ruling, the case in which they were filed ultimately settled; conversely, with respect to motions that received a ruling, only about one-third (34.1%) occurred in cases that ended in settlement.⁴⁸

Considerable majorities of summary judgment motions in all nature of suit categories received rulings. Still, there was significant variation across districts in the proportions of motions that received

45 $X^2(2, n = 1577) = 42.15, p < 0.001$
46 $X^2(2, n = 1569) = 125.80, p < 0.001$
47 $X^2(14, n = 1582) = 41.37, p < 0.001$
48 $X^2(4, n = 2048) = 377.57, p < 0.001$

rulings versus those that did not.⁴⁹ The nature of suit categories with highest proportions of summary judgment motions without rulings were real property (36.0%) and personal injury torts (31.8%). In contrast, the nature of suit categories with the lowest proportion of summary judgment motions without rulings were personal property torts (15.7%) and civil rights (12.0%).

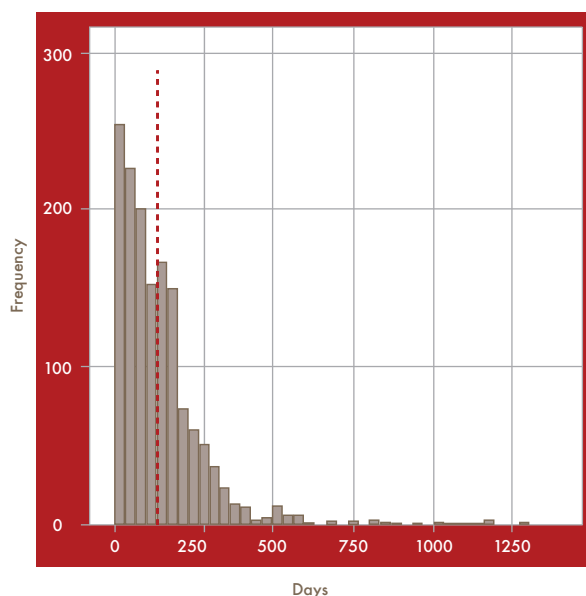
Table 23: Summary Judgment Ruling Status by Nature of Suit Category

| NATURE OF SUIT CATEGORY | NO RULING | RULING |
|--|-----------|--------|
| Civil Rights <i>n</i> = 786 | 12.0% | 88.0% |
| Contract <i>n</i> = 495 | 23.4% | 76.6% |
| Labor <i>n</i> = 129 | 16.3% | 83.7% |
| Other Statutes <i>n</i> = 230 | 17.4% | 82.6% |
| Property Rights <i>n</i> = 131 | 21.4% | 78.6% |
| Real Property <i>n</i> = 50 | 36.0% | 64.0% |
| Tort: Personal Injury <i>n</i> = 192 | 31.8% | 68.2% |
| Tort: Personal Property <i>n</i> = 51 | 15.7% | 84.3% |
| OVERALL <i>n</i> = 2046 | 18.8% | 81.2% |

TIME TO RULING

With respect to the timing of rulings on summary judgment motions, for half of all motions, the time from the filing party's reply brief—when the motion is fully briefed and awaiting decision—to the ruling on the motion is just under four months (113 days).⁵⁰ The mean time to ruling is nearly five months (147 days). Almost three-quarters (73.0%) receive a ruling within six months, and the vast majority (94.0%) of motions receive a ruling within one year. Figure 2 below illustrates the distribution of the timing of summary judgment rulings as related to the filing of the reply.

Figure 2: Summary Judgment Motion Filing Party's Reply to Ruling on the Motion



⁴⁹ $\chi^2 (7, n = 2046) = 63.03, p < 0.001$

⁵⁰ For some motions, the filing party did not file a reply brief. In those instances, where available, we used the non-filing party's response brief date to calculate time to ruling on the summary judgment motion (*n* = 217).

Time to ruling on summary judgment motions varies significantly by district, as well as by nature of suit category; however, there was no significant variation in time to ruling when viewed through the lens of filing party or motion type.

Analysis of time to ruling by district revealed significant differences across districts.⁵¹ Eastern Virginia had the shortest average time to ruling on summary judgment motions at 65 days—or about two months; Western Wisconsin and Northern Ohio also had relatively short mean times to ruling

at just over three months (91 days and 99 days, respectively). At the longer end of the spectrum, summary judgment motions in Middle Tennessee and Oregon received rulings after an average of about five months (153 days and 157 days, respectively); motions in Southern New York took a bit longer at an average of six months (183 days). Ruling on summary judgment motions in Connecticut took the longest by a wide margin at eight and a half months (257 days), on average.

Table 24: Time to Ruling by District (in days)

| DISTRICT | MEAN | STANDARD DEVIATION | MEDIAN |
|--------------------------------|--------|--------------------|--------|
| Arizona <i>n</i> = 177 | 122.71 | 95.63 | 84.0 |
| Colorado <i>n</i> = 157 | 138.94 | 113.80 | 132.0 |
| Connecticut <i>n</i> = 197 | 256.67 | 241.21 | 186.0 |
| Maine <i>n</i> = 44 | 124.64 | 73.94 | 118.5 |
| S. New York <i>n</i> = 274 | 182.58 | 143.67 | 161.5 |
| N. Ohio <i>n</i> = 155 | 98.75 | 80.22 | 126.0 |
| Oregon <i>n</i> = 136 | 156.97 | 149.33 | 80.5 |
| M. Tennessee <i>n</i> = 124 | 152.90 | 189.26 | 88.0 |
| E. Virginia <i>n</i> = 153 | 64.58 | 75.46 | 35.0 |
| W. Wisconsin <i>n</i> = 72 | 91.24 | 57.40 | 86.0 |

51 F (9, 463) = 26.38, *p* < 0.001

We also observed significant differences in time to ruling on summary judgment motions across nature of suit categories.⁵² Personal injury motions receive the fastest rulings, by far, with a mean time to ruling of less than three months, or 84 days. In contrast, civil rights (162 days) and personal property tort (159 days) cases receive a ruling in just over five

months, on average, while labor cases have the longest average time to ruling at six and two-thirds months (199 days). One possible explanation for the differences observed based on the nature of the cases is that motions may be more complex within certain case types and may, therefore, take longer to rule on.

Table 25: Time to Ruling by Nature of Suit Category (in days)

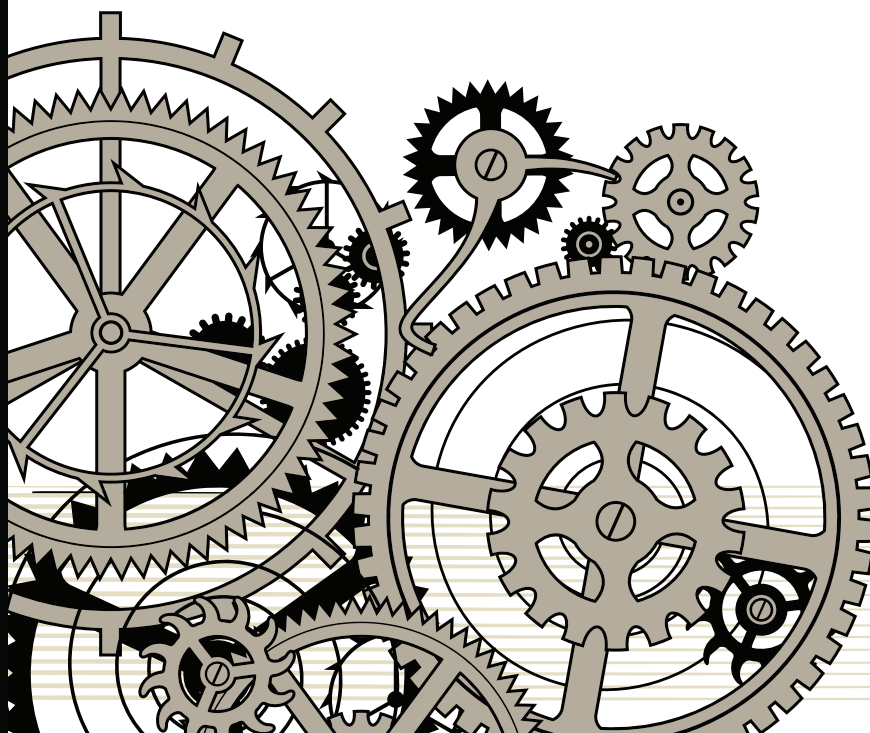
| NATURE OF SUIT CATEGORY | MEAN | STANDARD DEVIATION | MEDIAN |
|--|--------|--------------------|--------|
| Civil Rights <i>n</i> = 617 | 162.34 | 158.91 | 126.0 |
| Contract <i>n</i> = 340 | 146.06 | 138.25 | 123.0 |
| Labor <i>n</i> = 99 | 199.82 | 252.02 | 134.0 |
| Other Statutes <i>n</i> = 161 | 123.29 | 102.72 | 87.0 |
| Property Rights <i>n</i> = 92 | 139.75 | 164.29 | 90.0 |
| Real Property <i>n</i> = 21 | 132.14 | 96.65 | 114.5 |
| Tort: Personal Injury <i>n</i> = 119 | 83.79 | 68.87 | 71.0 |
| Tort: Personal Property <i>n</i> = 38 | 159.24 | 139.07 | 151.0 |

52 $F(7, 199.78) = 13.17, p < 0.001$

In terms of the non-significant results for filing party, the mean time to ruling on a plaintiff summary judgment motion was 144 days, while the mean time to ruling for defendant motions was 151 days.⁵³ Similarly, we observed non-significant results for motion type, where the mean time to ruling was 143 days for full motions and 158 days for partial motions.⁵⁴

The presence of a magistrate's report and recommendation pertaining to the motion significantly increased the time to final ruling on the motion.⁵⁵

In fact, summary judgment motions with magistrate reports took more than three months longer, on average (97 days)—that is, 238 days for motions with a magistrate's report compared with 142 days for those without. Digging a little deeper, we found that the time to the magistrate's report and recommendation is 139 days, on average, suggesting that the increase in time to ruling for motions with magistrate reports results from the additional time for the court to issue a ruling after receiving the recommendation from the magistrate.



53 $t(1473) = -0.69$, $p = 0.49$

54 $t(1480) = -1.95$, $p = 0.09$

55 $t(92.5) = 4.62$, $p < 0.001$. Further analysis showed that the presence of a magistrate report significantly reduces the likelihood that summary judgment motion ruling will occur sooner by 37% ($p < 0.01$).

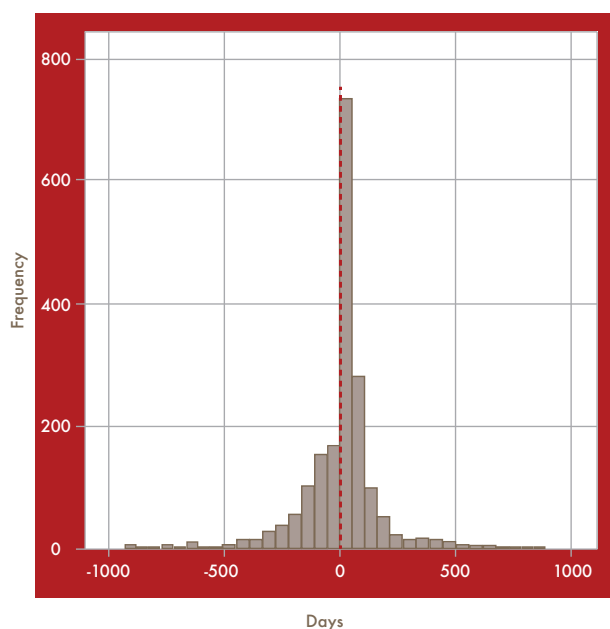
SUMMARY JUDGMENT MOTIONS IN CONTEXT

In addition to understanding the general landscape of the summary judgment caseload and how and when summary judgment motions were ruled upon, we also sought to gain a greater understanding of the timing of summary judgment activity related to other key case events.

About two-thirds (68.4%) of summary judgment motions were filed following the discovery deadline; the remaining third (32.8%) of motions were filed on or before the discovery deadline.⁵⁶

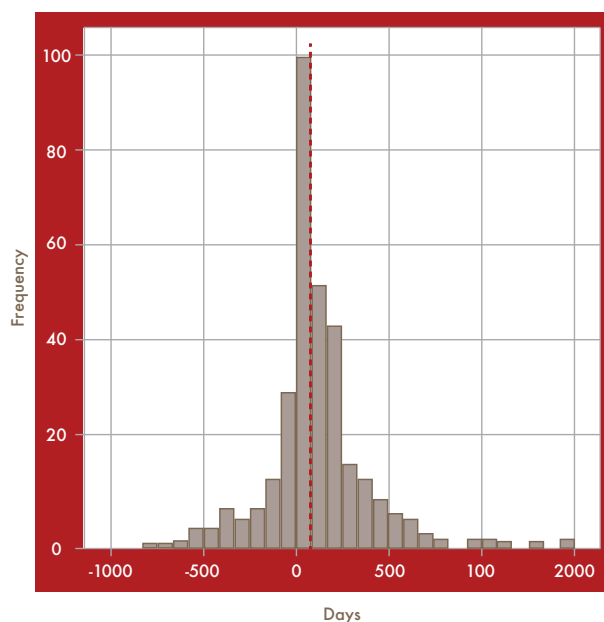
At the median, summary judgment motions were filed 29 days after the discovery deadline. More than half (52.3%) of all summary judgment motions were filed within 90 days following the discovery deadline. Still, nearly one-third (31.2%) were filed prior to the discovery deadline. Figure 3 illustrates the distribution of the timing of summary judgment motion filing in relation to the discovery deadline.

Figure 3: Summary Judgment Filing in Relation to Discovery Deadline



More than three-quarters (77.4%) of the time, judges issued rulings on summary judgment motions before the pre-trial conference; the remaining quarter (22.6%) of the time, the ruling was issued after the pre-trial conference. At the median, motions received a ruling 81 days prior to the pre-trial conference.

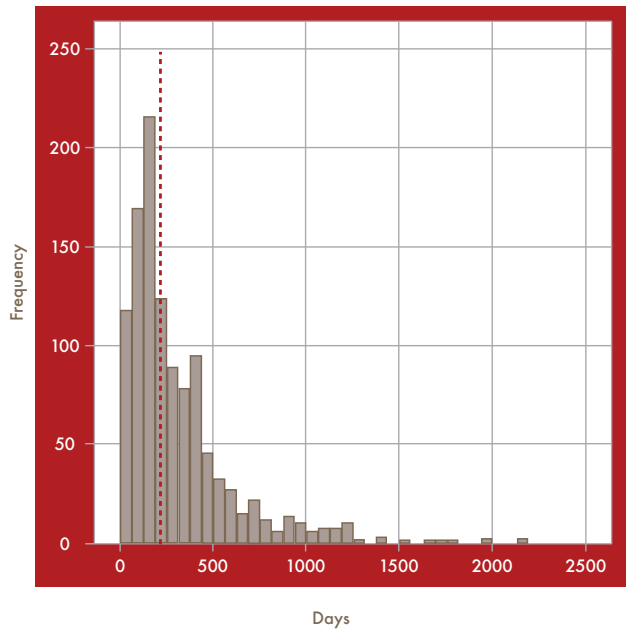
Figure 4: Summary Judgment Ruling in Relation to Pre-Trial Conference



⁵⁶ We reviewed each case to determine the latest set deadline for discovery. In total, 1858 summary judgment motions were filed in cases with a discovery deadline on the docket (90.7%). When there was no discovery deadline, the motion was not included in these calculations. This is true for any date calculation in the study.

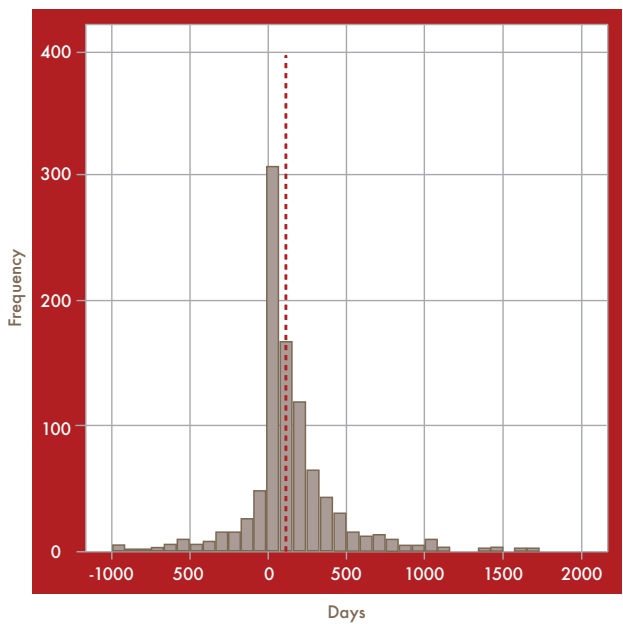
Half of all summary judgment motions were filed within about 7 months (203 days) prior to the scheduled trial date. Notably, though, nearly one-third (30.2%) of the time, summary judgment motion filing occurred a year or more before the scheduled trial date.

Figure 5: Summary Judgment Filing in Relation to Scheduled Trial Date



When compared to the scheduled trial date, summary judgment rulings were issued 95 days, or approximately three months, prior to trial at the median. As related to the trial date, half of summary judgment motions were ruled upon within 167 days—about 5.5 months—leading up to the scheduled trial date.

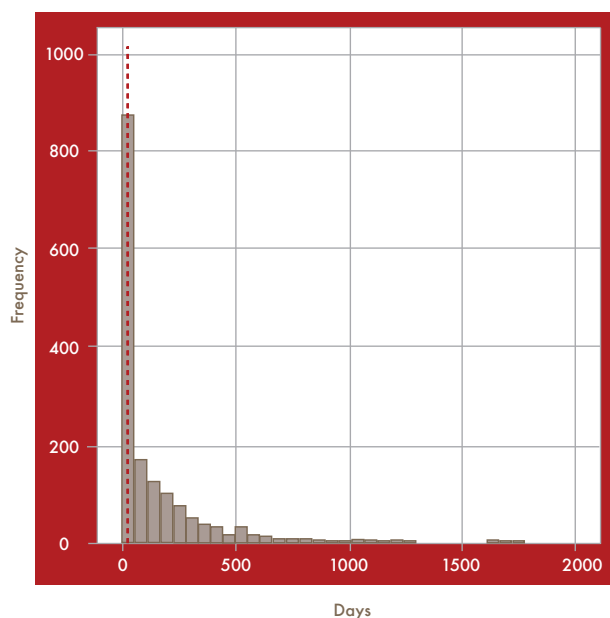
Figure 6: Summary Judgment Ruling in Relation to Scheduled Trial Date



Half of the time, case disposition followed ruling on the summary judgment motion by about one and a half months (45 days) or less. However, when the case disposed in some way other than summary judgment, case disposition occurred within just under five months (149 days) at the median. The number of summary judgment motions filed in a case impacted the time to ruling such that each additional summary judgment motion filed in a case significantly reduces the likelihood that a case will settle sooner by 84%.⁵⁷

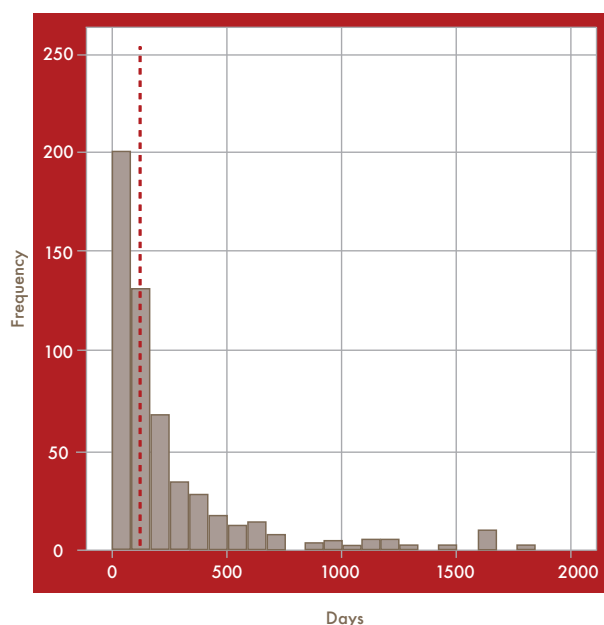
Civil rights and property cases both experienced longer durations between case filing and resolution.⁵⁸

Figure 7: Summary Judgment Ruling in Relation to Case Disposition



When parties settle, they settle 121 days, or about four months, following the ruling on the summary judgment motion, at the median. Still, a considerable proportion (17.3%) settle a year or more after the summary judgment motion receives a ruling.

Figure 8: Summary Judgment Ruling to Settlement



The number of summary judgment motions filed in a case significantly impacts the time between case filing and settlement. Each additional summary judgment motion filed in a case reduces the likelihood the case will settle sooner by 82%.⁵⁹ Other factors similarly increase the time between filing and settlement, including the number of defendants and the number of claims.⁶⁰ This supports the conclusion that as cases become more complex, the time to settlement increases. The time to settlement varies by nature of suit category, with civil rights, property rights, and real property cases experiencing longer durations between filing and settlement.⁶¹

⁵⁷ $p < 0.001$

⁵⁸ Civil rights cases are 73% less likely to resolve sooner than contract cases ($p < 0.001$). Property rights cases are 78% less likely to resolve sooner than contract cases ($p < 0.05$). Note that the statistical models employed here (hazard ratios) require one category within the data to be used as a reference category; we determined that contracts cases were the most appropriate reference category, so the results for nature of suit are framed in comparison with contracts cases.

⁵⁹ $p < 0.01$

⁶⁰ Number of defendants: $p < 0.05$. Number of claims: $p < 0.05$; number of claims is measured as the total number of claims and counterclaims found in the complaint and answer(s), respectively.

⁶¹ See Pilot Project Regarding Case Management Techniques, *supra* note 10.

RELATIONSHIP BETWEEN TIME TO RULING AND TIME TO CASE DISPOSITION

Another aspect of the study involved examining the relationship between the time it takes for summary judgment motions to be ruled upon and the time to disposition for the overall case. Indeed, the study found statistically significant correlations between these two variables within each group analyzed—that is, for filing party, motion type, nature of suit category, and district—though the strength of the correlations varied. For all variables, the observed correlations were positive, which indicates that, as the time to ruling on a summary judgment motion increases, so does the overall duration of the case.

For both plaintiff and defendant motions, the correlation between time to ruling on a summary judgment motion and the time to case disposition was moderate in strength.

Table 26: Correlation between Time to Ruling and Time to Case Disposition by Filing Party

| FILING PARTY | CORRELATION COEFFICIENT (P-VALUE) | INTERPRETATION |
|--------------|-----------------------------------|----------------|
| Plaintiff | 0.44 (< 0.01) | Moderate |
| Defendant | 0.45 (< 0.01) | Moderate |

The correlation between time to ruling on a motion and time to case disposition was moderate for both full and partial motions, though the relationship was stronger for full motions than for partial motions.

Table 27: Correlation between Time to Ruling and Time to Case Disposition by Motion Type

| MOTION TYPE | CORRELATION COEFFICIENT (P-VALUE) | INTERPRETATION |
|-------------|-----------------------------------|----------------|
| Full | 0.49 (< 0.01) | Moderate |
| Partial | 0.37 (< 0.01) | Moderate |

The **correlation coefficient** (*r*) gives us information about the strength and direction of the relationship between the two variables being analyzed—in this case, time to ruling on the summary judgment motion and time to case disposition. Correlation coefficients range in value from -1 to 1, where strength reaches a maximum 1 or -1 and decreases as values approach 0. There is no universally agreed-upon standard for interpreting correlation coefficients, but a common standard (and the one we apply here) is $0.1 < r < 0.3$ = weak correlation, $0.3 < r < 0.5$ = moderate correlation, $r > 0.5$ = strong correlation; the inverse interpretation applies for negative correlation coefficients. Positive correlation coefficients indicate that, as one variable increases, the other also increases; negative correlation coefficients indicate that, as one variable increases, the other decreases.

Analysis also demonstrated statistically significant correlations between time to ruling on a summary judgment motion and time to case disposition across nature of suit categories; however, this relationship varied in strength, depending on the category. Specifically, the relationship was strongest for civil rights ($r = 0.52$), real property ($r = 0.63$), and other statutes ($r = 0.76$) cases.

Table 28: Correlation between Time to Ruling and Time to Case Disposition by Nature of Suit Category

| NATURE OF SUIT CATEGORY | CORRELATION COEFFICIENT (P-VALUE) | INTERPRETATION |
|-------------------------|-----------------------------------|----------------|
| Civil Rights | 0.52 (< 0.01) | Strong |
| Contract | 0.45 (< 0.01) | Moderate |
| Labor | 0.44 (< 0.01) | Moderate |
| Other Statutes | 0.76 (< 0.01) | Strong |
| Property Rights | 0.37 (< 0.01) | Moderate |
| Real Property | 0.63 (< 0.01) | Strong |
| Tort: Personal Injury | 0.37 (< 0.01) | Moderate |
| Tort: Personal Property | 0.40 (< 0.01) | Moderate |

District by district, results for correlation between time to ruling on motions for summary judgment and case duration were mixed. In some districts—Middle Tennessee ($r = 0.52$), Connecticut ($r = 0.57$), Maine

($r = 0.57$), and Arizona ($r = 0.58$)—the relationship was strong. In Colorado ($r = 0.32$), Southern New York ($r = 0.34$), Northern Ohio ($r = 0.47$), and Eastern Virginia ($r = 0.47$), the correlation was moderate. The correlation was weak in Western Wisconsin ($r = 0.22$). Interestingly, there was no correlation observed in Oregon; thus, unlike what we found in other districts, there is no relationship between time to ruling on the motion and the overall duration of the case.

Table 29: Correlation between Time to Ruling and Time to Case Disposition by District

| DISTRICT | CORRELATION COEFFICIENT (P-VALUE) | INTERPRETATION |
|--------------|-----------------------------------|-----------------|
| Arizona | 0.58 (< 0.01) | Strong |
| Colorado | 0.32 (< 0.01) | Moderate |
| Connecticut | 0.57 (< 0.01) | Strong |
| Maine | 0.57 (< 0.01) | Strong |
| S. New York | 0.34 (< 0.01) | Moderate |
| N. Ohio | 0.47 (< 0.01) | Moderate |
| Oregon | 0.10 (0.23) | Non-significant |
| M. Tennessee | 0.52 (< 0.01) | Strong |
| E. Virginia | 0.47 (< 0.01) | Moderate |
| W. Wisconsin | 0.22 (0.07) | Weak |

INNOVATIVE APPROACHES TO CASE MANAGEMENT

District courts and judges around the country have adopted innovative approaches to summary judgment in an effort to focus the parties and the briefing, with the goal of a more efficient process overall. One example is the use of pre-motion conferences, a practice that is more commonly used for discovery disputes but that can also be used for summary judgment motions.⁶² Courts and judges hold these conferences with the intention of narrowing and refining the issues prior to briefing so that the summary judgment motion process is more efficient and the issues more focused. With respect to the districts in this study, Maine requires pre-motion conferences by rule, with an opt-out provision upon agreement of the parties, while some individual judges in the Southern District of New York have instituted these conferences informally in their cases following the implementation of a case management pilot project that encouraged use of such conferences.⁶³ Additionally, individual judges in other districts have implemented similar informal practices. The data is consistent with these local practices. Note that the following results related to innovative approaches to case management include only districts where at least one instance occurred within our dataset. More specifically, because Arizona, Middle Tennessee, and Western Wisconsin had no pre-motion conferences held within our dataset, we did not include those districts in any calculations related to pre-motion conferences.

A pre-motion hearing was held for the vast majority (72.7%) of summary judgment motions in Maine and nearly one-quarter (21.6%) of motions in the Southern District of New York. On the other end of the spectrum, no pre-motion conferences were held in Arizona, the Middle District of Tennessee, and the Western District

of Wisconsin. Table 30 shows the occurrence of pre-motion conferences across those districts where pre-motion conferences were held.

Table 30: Occurrence of Pre-Motion Conferences by District

| DISTRICT | PRE-MOTION CONFERENCE HELD | |
|-------------------------------|----------------------------|-------|
| | YES | NO |
| Colorado <i>n</i> = 235 | 0.9% | 99.1% |
| Connecticut <i>n</i> = 222 | 5.4% | 94.6% |
| Maine <i>n</i> = 55 | 72.7% | 27.3% |
| S. New York <i>n</i> = 375 | 21.6% | 78.4% |
| N. Ohio <i>n</i> = 199 | 2.0% | 98.0% |
| Oregon <i>n</i> = 208 | 1.4% | 98.6% |
| E. Virginia <i>n</i> = 236 | 2.5% | 97.5% |
| OVERALL <i>n</i> = 1530 | 9.7% | 90.3% |

62 See, e.g., Fed. R. Civ. P. 16(b)(3)(B)(v) (amended in 2015 to provide a scheduling order may “direct that before moving for an order relating to discovery, the movant must request a conference with the court.”)

63 See *Pilot Project Regarding Case Management Techniques*, *supra* note 10.

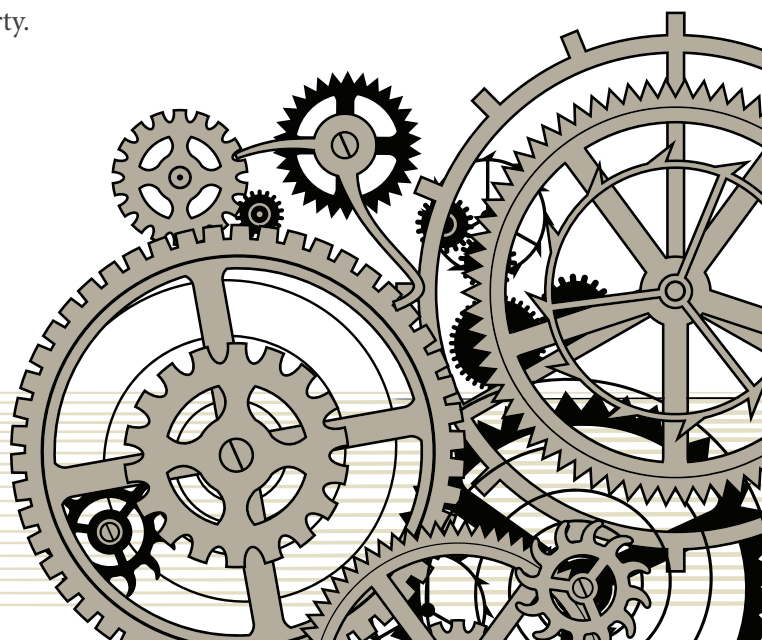
When a pre-motion conference was held, summary judgment motions were equally likely to be granted in whole, granted in part, or denied, with each ruling occurring about one-third of the time. However, when a pre-motion conference was not held, a plurality of summary judgment motions (44.4%) were granted in whole, while just over one-third were denied (34.9%) and only 20.7% were granted in part.⁶⁴ While the denial rate is similar regardless of the pre-motion conference, the motions are granted in part much more frequently when a pre-motion conference is held.

Table 31: Occurrence of Pre-Motion Conferences by Summary Judgment Ruling

| | GRANTED IN WHOLE | GRANTED IN PART | DENIED |
|----------|------------------|-----------------|--------|
| Held | 32.1% | 33.6% | 34.3% |
| Not Held | 44.4% | 20.7% | 34.9% |
| OVERALL | 43.0% | 22.2% | 34.8% |

We also explored whether any relationship exists between the occurrence of pre-motion conferences and nature of suit code, motion type, and filing party. None of these analyses produced significant results.

There was no significant difference between the mean time to ruling for cases with and without pre-motion conferences.⁶⁵ However, interestingly, the trend of the results suggest a *longer* time to ruling in instances where a pre-motion conference was held versus not (178 days and 152 days, respectively). Because we only conducted in-depth review on cases with at least one summary judgment motion for this study, we cannot say how often a pre-motion conference results in no motion being filed. In addition, the motions that are filed despite a pre-motion conference may present more challenging issues, thus accounting for the longer time to ruling. Some judges in Southern New York have implemented a pre-motion letter requirement. However, our analysis showed no relationship between occurrence of such letters and either nature of suit category, motion type, or filing party. Overall, this research highlights the need for supplemental research, and particularly qualitative research, to further understand the impact of pre-motion conferences.



⁶⁴ $\chi^2 (6, n = 1530) = 380.11, p < 0.001$

⁶⁵ $t (1120) = 1.78, p = 0.08$

IMPLICATIONS FOR SUMMARY JUDGMENT PRACTICE

In addition to providing insight into the summary judgment process in the United States District Courts, there are also several noteworthy conclusions that have implications for summary judgment practice—and possible recommendations for improving the process.

The first is that summary judgment practice varies across districts. The findings reflect statistically significant differences across the district courts in terms of filing rate, motion and opinion length, time to and type of disposition, time to and type of ruling, grant rate, and whether or not pre-motion hearings were held. These differences are reflected in a review of the local practices and procedures as well, which are unique in every district court studied. Individual local rules and judicial practices allow for tailoring of the one-size-fits-all Federal Rules of Civil Procedure to the local bench and bar culture, as well as experimentation and innovation at the district level. At the same time, variation can result in forum shopping and concerns of fairness. The findings reflect there is room for—and possibly a need for—greater consistency in summary judgment practice in our federal district courts.

Second, significant differences also exist across case types. The findings reflect statistical variations across case type in terms of time to disposition, time to ruling, motion and opinion length, and grant rate. These differences are less surprising, given that each case type has a very different legal and procedure posture. Civil rights cases continue to see the highest percentage of summary judgment motions. The grant rate for civil rights cases is also among the highest of the case types, with summary judgment motions filed in civil rights cases granted in whole 49.2% of the time. While variation by case type is expected, these results also highlight an area for further study and recommendations. Given these significant differences, case-type specific recommendations and innovations may be appropriate. IAALS has facilitated the development of case-type specific initial discovery protocols for employment actions alleging adverse action and Fair Labor Standards Act cases.⁶⁶ Case-type specific processes for summary judgment in civil rights cases may likewise be a way to make focused and significant improvements.

Third, the differences in time to ruling across processes are informative for increasing efficiency. For half of all motions, the time from the filing party's reply brief—when the motion is fully briefed and awaiting decision—to the ruling on the motion is just under four months (113 days). The presence of a magistrate's report and recommendation pertaining to the motion significantly increases the time to final ruling on the motion. While a magistrate's report and recommendation is issued in line with the average time to ruling for summary judgment motions, the added time to a final ruling from the court results in a much longer overall time to ruling of just under eight months. There may be efficiencies for the court, but from the litigant's perspective, this two-step process results in waiting much longer for a final ruling from the court. Additionally, the study reflects that courts and individual judges have adopted different procedures, including pre-motion conferences, to make the process more efficient. There was no significant difference between the mean time to ruling for cases with and without pre-motion conferences, although the results suggest the time may be slightly longer. That said, we did

⁶⁶ See INITIAL DISCOVERY PROTOCOLS FOR FAIR LABOR STANDARDS ACT CASES, *supra* note 4; PILOT PROJECT REGARDING INITIAL DISCOVERY PROTOCOLS FOR EMPLOYMENT CASES, *supra* note 4.

not analyze cases without motions for summary judgment, so we cannot speak to those motions that may not have been filed as a result of such conferences. This is an area where additional input from the bench and the bar on their experiences with these procedures is needed to fully understand the impact of pre-motion conferences.

A fourth takeaway is that while rule changes may be one recommendation for making the summary judgment process more efficient, rule changes alone will not address the issues of cost and delay currently associated with summary judgment in our courts. The most efficient districts have a strong local culture, across the bench and bar, that emphasizes moving cases in an expedited way toward disposition. The particular rules or use of pre-trial procedures alone are not determinative. Rather, there is a confluence of factors that impact how summary judgment motions are disposed within the system, and that same confluence of factors need to be considered in developing recommendations for improvement.

Finally, the study provides a clearer picture of summary judgment in our federal courts, and there is much to draw from when considering recommendations for improvement. The majority of summary judgment motions filed seek full judgment on all claims at issue. Property rights cases are the only cases that differ from this norm, with 54.2% of motions seeking partial summary judgment. Full motions are also more likely to be granted. The denial rate of partial motions may reflect the court's tendency to go to trial on all issues where trial is already guaranteed on some issues. Full motions are slightly longer, but not significantly so. If the length of the motion is a proxy for time and cost to the parties, partial motions likely are not less expensive, although there may be corresponding impacts on settlement and trial length. Further analysis into possible efficiencies related to the use of full versus partial motions is warranted.

As the time to ruling on a summary judgment motion increases, so does the overall duration of the case. Thus, for those cases where there is a shorter time to ruling, we can also expect that cases will have an overall shorter duration. National survey results support the conclusion that the longer a case goes on, the more it costs.⁶⁷ The results here provide additional support for timely rulings by the court on summary judgment motions.

This study is intended to provide an empirical basis for a national conversation about the current challenges of the summary judgment process. From the results of this study, it is clear that summary judgment motions play an important role in the resolution of a significant number of disputes in our federal courts. IAALS' hope is that such a conversation will lead to innovative reforms on the part of both the bench and the bar to ensure that summary judgment is used to achieve its intended goals—a more efficient process that supports a “just, speedy, and inexpensive” resolution in every case.

67 Across several nationwide surveys, at least three out of four attorneys agreed that “the longer a case goes on, the more it costs,” with a substantial portion expressing strong agreement. See AM. BAR ASS’N, ABA SECTION OF LITIGATION MEMBER SURVEY ON CIVIL PRACTICE: FULL REPORT 148 (2009) (between 24% and 34% of each respondent group strongly agreed); REBECCA M. HAMBURG & MATTHEW C. KOSKI, NAT’L EMP’T LAWYERS ASS’N, SUMMARY OF RESULTS OF FEDERAL JUDICIAL CENTER SURVEY OF NELA MEMBERS, FALL 2009 42 (2010) (21% STRONGLY AGREED); KIRSTEN BARRETT ET AL., MATHEMATICA POLICY RESEARCH, ACTL CIVIL LITIGATION SURVEY: FINAL REPORT 75-76 (2008) (on file with authors) (32% strongly agreed); AM. BAR ASS’N, ABA LITIGATION SURVEY, *supra* note 5, at 148 (between 24% and 34% of each respondent group strongly agreed)

APPENDIX A

Figure A1: Nature of Suit Categories within the Overall Docket (top line) and the Summary Judgment Docket (bottom line) within Each District

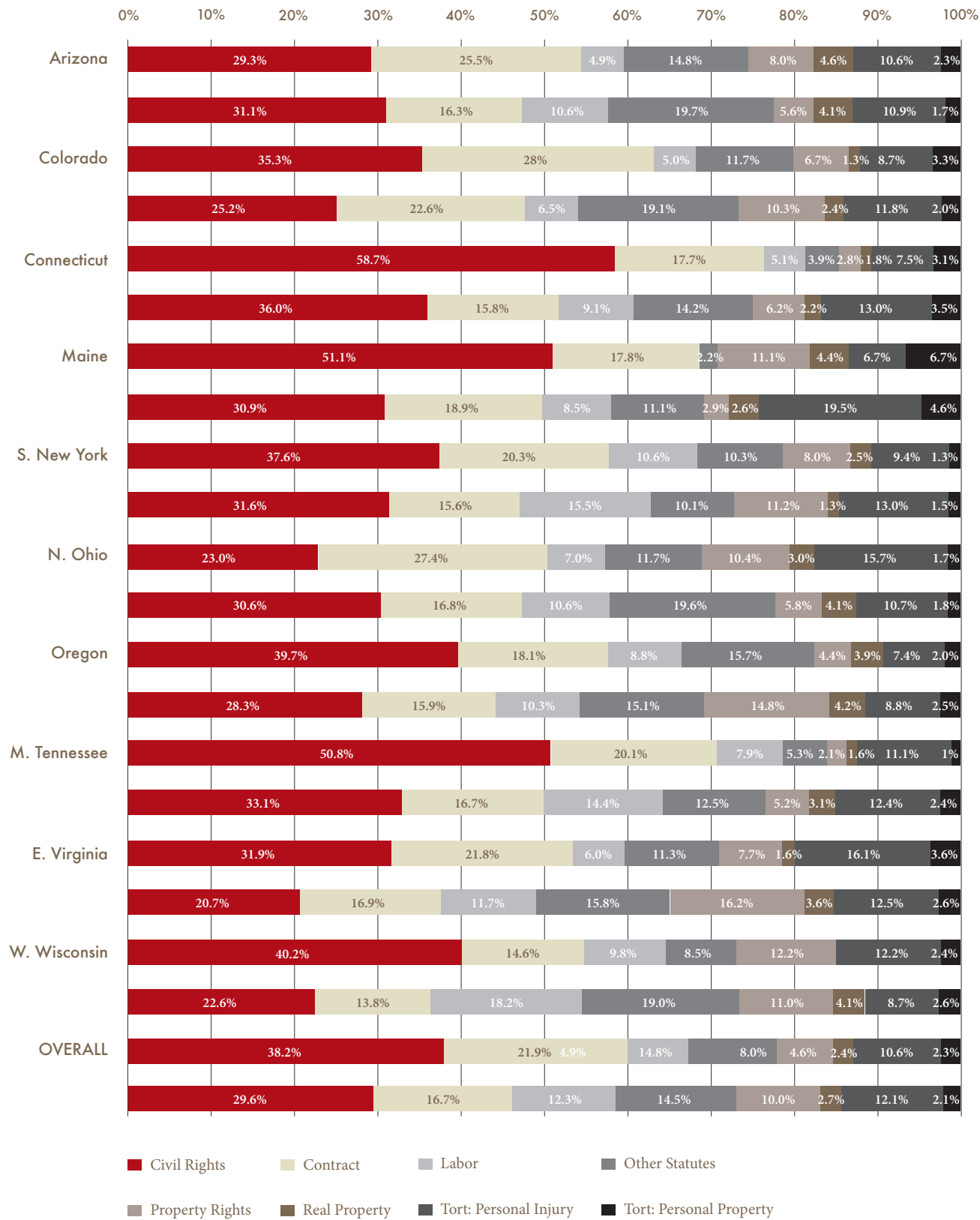


Table A1: Nature of Suit Categories and Codes¹

| NATURE OF SUIT CATEGORY | NATURE OF SUIT CODE |
|-------------------------|--|
| Bankruptcy | Appeal 28 USC 158 |
| | Withdrawal 28 USC 157 |
| Civil Rights | Americans w/ Disabilities - Other |
| | Americans w/ Disabilities - Employment |
| | Education |
| | Employment |
| | Housing/Accommodations |
| | Other Civil Rights |
| | Voting |
| | Welfare |
| Contract | Contract Product Liability |
| | Franchise |
| | Insurance |
| | Marine |
| | Medicare Act |
| | Miller Act |
| | Negotiable Instrument |
| | Other Contract |
| | Recovery of Defaulted Student Loans (Excl. Veterans) |
| | Recovery of Overpayment & Enforcement of Judgment |
| | Recovery of Overpayment of Veteran's Benefits |
| Federal Tax Suits | IRS-Third Party 26 USC 7609 |
| | Taxes (U.S. Plaintiff or Defendant) |
| Forfeiture/Penalty | Agriculture |
| | Airline Regulations |
| | Drug Related Seizure of Property 21 USC 881 |
| | Liquor Laws |
| | Occupational Safety/Health ¹ |
| | Other |
| | Other Food & Drug ¹ |
| | RR & Truck |

¹ See Public Access to Court Electronic Records, Nature of Suit, <https://www.pacer.gov/documents/natsuit.pdf>.

Table A1: Nature of Suit Categories and Codes (Continued)

| NATURE OF SUIT CATEGORY | NATURE OF SUIT CODE |
|------------------------------------|--|
| Labor | Employee Retirement Income Security Act |
| | Fair Labor Standards Act |
| | Family and Medical Leave Act |
| | Labor/Management Relations |
| | Labor/Management Reporting & Disclosure Act1 |
| | Other Labor Litigation |
| | Railway Labor Act |
| Other Statutes | Administrative Procedure Act/Review or Appeal of Agency Decision |
| | Agricultural Acts |
| | Antitrust |
| | Appeal of Fee Determination Under Equal Access to Justice Act1 |
| | Arbitration |
| | Banks and Banking |
| | Cable/Sat TV |
| | Commerce |
| | Constitutionality of State Statutes |
| | Consumer Credit |
| | Customer Challenge 12 USC 34101 |
| | Deportation |
| | Economic Stabilization Act |
| | Energy Allocation Act |
| | Environmental Matters |
| | Freedom of Information Act |
| | Other Statutory Actions |
| | Racketeer Influenced and Corrupt Organizations |
| | Securities/Commodities/Exchange |
| | Selective Service |
| | State Reapportionment |
| Prisoner Petitions | Motions to Vacate Sentence |
| Prisoner Petitions: Civil Detainee | Conditions of Confinement |
| Prisoner Petitions: Habeas Corpus | Civil Rights |
| | Death Penalty |
| | General |
| | Mandamus & Other |
| | Prison Condition |

Table A1: Nature of Suit Categories and Codes (Continued)

| NATURE OF SUIT CATEGORY | NATURE OF SUIT CODE |
|-------------------------|--|
| Property Rights | Copyrights |
| | Patent |
| | Trademark |
| Real Property | All Other Real Property |
| | Foreclosure |
| | Land Condemnation |
| | Rent Lease & Ejectment |
| | Tort Product Liability |
| | Torts to Land |
| | Black Lung (923) |
| | DIWC/DIWW (405(g)) |
| | HIA (1395ff) |
| | RSI (405(g)) |
| | SSID Title XVI |
| Tort: Personal Injury | Airplane |
| | Airplane Product Liability |
| | Asbestos Personal Injury Product Liability |
| | Assault, Libel, & Slander |
| | False Claims Act |
| | Federal Employers' Liability |
| | Marine |
| | Marine Product Liability |
| | Motor Vehicle |
| | Motor Vehicle Product Liability |
| | Other Personal Injury |
| | Personal Injury - Health Care/Pharmaceutical Personal Injury/Product Liability |
| | Personal Injury- Medical Malpractice |
| | Personal Injury- Product Liability |
| Tort: Personal Property | Other Fraud |
| | Other Personal Property Damage |
| | Property Damage Product Liability |
| | Truth in Lending |



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