

**UNITED STATES DISTRICT COURT
ALFRED A. ARRAJ UNITED STATES COURTHOUSE
DENVER, COLORADO**

Boyd N. Boland
United States Magistrate Judge

303-844-6408

MEMORANDUM: Jury Verdicts 2010

This memorandum analyzes the jury verdicts¹ returned in civil cases in the District of Colorado during calendar year 2010.

A. OVERVIEW

Twenty-five cases were tried to jury verdicts in 2010, while 3,177 civil actions were filed. The ratio of cases tried to cases filed is 0.79%.²

The comparison is imprecise because none of the cases tried in 2010 was filed then. The date of filing of each civil case tried to a verdict in 2010 is set out below:

<u>Year Filed</u>	<u>No. Tried in 2009</u>
2009	2
2008	10
2007	9
2006	2
2001	2

¹It is important to distinguish between a jury's verdict and the judgment ultimately entered by the court. Except as noted, and particularly with the exception of Part D, *infra*, this memorandum is concerned with verdicts and not with judgments.

²In 2010, there were also eleven civil trials to the court and 22 criminal trials. Consequently, a total of 58 civil and criminal matters were tried in the District of Colorado. This is a decrease from 60 total trials in 2009, and 65 total trials in 2008.

The average time from the date a case was filed until trial was 35.6 months, or approximately three years. The shortest time from filing to trial was 14 months. Eight of the 25 cases (32%) were tried within two years of filing.

The number of civil jury trials fell to the lowest number in nine years. The number of civil jury trials to verdict in each of the last nine years is reported below:

<u>Year</u>	<u>No. of Cases Filed</u>	<u>No. of Civil Jury Trials</u>	<u>Rate of Trials</u>
2010	3,177	25	0.79%
2009	3,042	34	1.1
2008	2,838	29	1.0
2007	2,726	36	1.3
2006	2,607	38	1.5
2005	2,679	35	1.3
2004	2,698	51	1.89
2003	2,672	47	1.75
2002	2,464	52	2.1

B. TRIAL OUTCOMES: VERDICT AMOUNTS

Plaintiffs were successful at trial more often in 2010 than were defendants. Plaintiffs prevailed in 13 of the 25 jury trials (52%); defendants prevailed in 11 cases (44%). There was one split verdict, where the plaintiff prevailed in whole or in part on its claims and the defendants prevailed in whole or in part on their counterclaims. Rates of success for the last eight years are set out below:

<u>Year</u>	<u>No. of Civil Jury Trials</u>	<u>Plaintiffs Prevailed</u>	<u>Defendants Prevailed</u>	<u>Split Verdicts</u>
2010	25	13 (52%)	11 (44%) ³	1 (4%)
2009	34	15 (44%)	16 (47%) ⁴	3 (9%)
2008	29	12 (41%)	17 (59%) ⁵	0
2007	36	15 (42%)	21 (58%) ⁵	0
2006	38	24 (63%)	14 (37%)	0
2005	35	23 (66%)	11 (31%) ⁶	1 (3%)
2004	51	25 (49%)	26 (51%)	0
<u>2003</u>	<u>47</u>	<u>26 (55%)</u>	<u>21 (45%)</u>	<u>0</u>
TOTAL	270	139 (51%)	126 (47%)	4 (1%)

The largest verdict in 2010 was \$12,719,176 (in an intellectual property case), and the smallest verdict was \$10 (in a case involving the Fair Debt Collection Practices Act). The average verdict⁷ was \$1,569,233, and the median⁸ verdict was \$299,000. The following chart reports the amounts of the jury verdicts in 2010 from high to low:

³In one case tried in 2010, the verdict for the defendant included an award of \$221,631 on a counterclaim.

⁴In one case tried in 2009, the verdict for the defendant included an award of \$5,350,000 on a counterclaim.

⁵In one case tried in 2007, the verdict for the defendant included an award of \$16,000,000 on a counterclaim.

⁶In 2005, there was one split verdict, with the plaintiff being awarded \$57,672 on his claim for invasion of privacy and the defendant being awarded \$140,520 on its counterclaim for breach of the duty of loyalty.

⁷In calculating the average verdict in 2010, I included the net award to the plaintiff in the split verdict case and the amount awarded to a defendant on its counterclaim.

⁸The median is the point in the middle of a distribution. Half the verdicts exceeded the median and half were less than the median.

Rank	Amount	Type of Case
1	\$12,719,176	misappropriation of trade secret
2	4,143,416	breach of construction contract
3	3,500,000	breach of insurance contract
4	988,000	negligence: ski accident
5	482,000	ERISA
6	450,000	employment: disability discrimination
7	303,178	employment: race discrimination
8	299,000	fraud: oil well investment
9	221,633	counterclaim: breach of implied contract
10	217,323	split verdict: conversion
11	93,369	breach of contract
12	85,000	premises liability
13	18,954	breach of insurance contract
14	17,440	Fair Labor Standards Act
15	10	Fair Debt Collection Practices Act

Active district judges presided over 9 jury trials; senior judges presided over 11 jury trials; visiting judges presided over three trials; and magistrate judges presided over two trials. A breakdown of the trials by presiding judge follows:

Judge	Type of Case	Prevailing Party	Amount of Verdict
WYD 1 2 3	ERISA premises liability implied contract	P P D	\$482,812 85,000 --
RPM 1 2 3 4 5	negligence: ski accident employment: disability Fair Labor Standards Act negligence: medical malpractice negligence: airplane defect	P P P D D	988,000 450,000 17,440 -- --
JLK 1	employment: race	P	303,178
LTB 1 2 3	breach construction contract breach insurance contract employment: gender	P P D	4,143,416 18,954 --
WDM 1 2	FDCPA employment: gender	P D	10 --
REB 1 2 3	IP: trade secret civil rights: 1st Amendment negligence: medical malpractice	P D D	12,719,176 -- --
PAB 1 2 3	fraud: oil well contract breach lease contract tort: conversion/breach fiduciary duty	P P split	299,000 93,369 P: 265,138 D: 47,815
VISITING JUDGES			
TDLeonard 1	breach insurance contract	P	3,500,000
KHVratil 1	negligence: ski accident	D	--
TJMcAvoy 1	employment: public policy	D	--
MAGISTRATE JUDGES			
MEH 1	tortious interference with contract	D	--
KMT 1	breach cohabitation contract	D	--

The civil jury trials in 2010 required a total of 147 trial days. The longest trial lasted 15 days (involving breach of a construction contract); the shortest were two days. The average trial length was 5.9 days. The most common trial lengths were four and five days (5 cases each).

The lengths of the trials are specified below:

Trial Days	Type of Case	Prevailing Party
15	breach construction contract	P \$4,143,416
12	ERISA	P 482,812
10	breach implied contract	D 221,631 ⁹
10	negligence: medical malpractice	D --
9	IP: trade secret	P 12,719,176
7	breach insurance contract	P 3,500,000
7	employment: gender	D --
7	products liability: airplane	D --
6	conversion/fiduciary duty	split ¹⁰
6	employment: gender	D --
5	employment: public policy	D --
5	breach lease contract	P 93,369
5	employment: race	P 303,178
5	negligence: ski accident	P 988,000
5	tortious interference with contract	D --
4	negligence: medical malpractice	D --
4	negligence: ski accident	D --
4	breach cohabitation contract	D --
4	employment: disability	P 450,000
4	premises liability	P 85,000

⁹Awarded on defendant's counterclaim.

¹⁰The plaintiff was awarded \$265,138 on its claims and the defendants were awarded \$47,815 on their counterclaims, resulting in a net verdict to the plaintiff of \$217,323.

3	FDCPA	P	10
3	fraud: oil well contract	P	299,000
3	Fair Labor Standards Act		17,440
2	civil rights: 1st Amendment	D	--
2	breach insurance contract	P	18,954

Average lengths of trial, by nature of claim, are set out below:

Nature of Case	Average Trial Length (days)
ERISA	12
IP: trade secret	9
breach of contract	7.2
negligence	5.7
employment	5.4
misc. torts	4.7
FDCPA	3
FLSA	3
civil rights (other than employment)	2

C. BREAKDOWN BY NATURE OF CLAIM

The jury trials conducted in 2010 fell into seven categories based on the nature of the plaintiff's claim:

Category	No. of cases	% of cases tried
Breach of Contract	6	24%
Negligence	6	24
Employment	5	20
Miscellaneous Torts	4	16
Civil Rights (other than employment)	1	4
Intellectual Property	1	4
Misc. Federal Statutes (ERISA; FLSA; FDCPA)	3	12

At least eight of the 25 cases tried involved claims which permitted the award of

attorneys fees to a prevailing plaintiff. The plaintiffs won four of the eight cases (50%).

Motions for attorneys fees are pending in two of the four cases, and the other two cases settled before the attorneys fees issue was decided.

Costs were awarded in ten cases: four times to plaintiffs and six times to defendants. The average costs awarded to plaintiffs was \$3,790. The average costs awarded to defendants was \$7,629.

An analysis of the costs awarded is set out below:

Type of Case	Prevailing Party	Verdict	Costs Awarded
medical malpractice	D	--	\$20,188
medical malpractice	D	--	9,496
negligence: ski accident	P	\$988,000	7,745
employment: public policy	D	--	6,686
FDCPA	P	10	3,946
negligence: ski accident	D	--	3,672
employment: gender	D	--	3,136
civil rights: 1st Amendment	D	--	2,594
breach insurance contract	P	18,954	2,478
FLSA	P	17,440	990

1. Breach of Contract

Six of the 25 trials (24%) involved claims for breach of contract. Two of the six alleged breach of an insurance contract; three involved non-insurance contracts; and one alleged an implied contract. Overall, the plaintiffs prevailed in four of the six (66%) contract cases, and the defendants prevailed in two (33%).

The plaintiffs (insureds) prevailed in both cases alleging breach of an insurance contract, and were awarded \$3.5 million and \$18,954 respectively. The plaintiffs prevailed in the construction contract case and were awarded \$4,143,416. The plaintiff also prevailed in the breach of lease case and was awarded \$93,369. The defendants prevailed in the cases alleging breach of a cohabitation agreement and breach of an implied contract.

The trial outcomes are listed below:

Nature of Claim	Prevailing Party	Amount of Verdict
Insurance Contract 1	P	\$3,500,00
2	P	18,954
Construction contract 1	P	4,143,416
Lease Contract 1	P	93,369
Cohabitation Contract 1	D	--
Implied Contract 1	D	--

The average verdict for breach of contract was \$1,938,935.

2. Negligence

Six of the 25 jury trials (24%) in 2010 involved negligence claims. Two alleged negligence in connection with skiing accidents; two alleged medical malpractice; one alleged products liability (an airplane); and one alleged premises liability (slip and fall). The plaintiffs prevailed in one ski accident case and the premises liability case.

The trial outcomes, based on the nature of the claims, are listed below:

Nature of Claim	Prevailing Party	Amount of Verdict
ski accident		
1	P	\$988,000
2	D	--
medical malpractice		
1	D	--
2	D	--
premises liability		
1	P	85,000
products liability (airplane)	D	--

The average plaintiff's verdict in a negligence case was \$536,500.

3. Employment

Five of the 25 jury trials (20%) involved employment claims. Employment cases historically make up approximately 15% of the court's filings, but usually one-third of the jury trials. The number of employment cases tried in the last two years has declined significantly, however, with only five of 25 trials (20%) in 2010 and six of 34 trials (18%) in 2009.

The plaintiffs prevailed in two of the five employment cases (40%); the defendants prevailed in three cases (60%).

The largest verdict in an employment case in 2010 was \$450,000 in a case alleging disability discrimination. The other plaintiff's verdict was for \$303,178 in a case involving race discrimination.

Of the five employment cases tried, two alleged gender discrimination, and one each alleged disability discrimination, race discrimination, and termination in violation of public policy.

In the last nine years, 117 employment cases have been tried to verdict. The employment claims most frequently tried are retaliation and gender (29 cases each). The plaintiffs have prevailed in 58 employment cases (50%), and the defendants have prevailed in 59 cases (50%).

The historical trial results of the various employment claims asserted during the last nine years are analyzed below:

Nature of Claim	Cases Tried	Cases Won by Plaintiffs	Plaintiffs' Success Rate	Average Verdict
Retaliation	29	19	66%	\$280,047
Gender	29	13	45%	563,769
Disability	17	9	53%	2,275,000
Race/National Origin	18	5	28%	680,636
Age	8	3	38%	342,832
Public Employee	6	3	50%	455,887
Religion	2	2	100%	535,000
Public Policy Violation	3	1	33%	582,145
FMLA	1	1	100%	10,000
Luring	1	0	0%	--
Breach of Contract	3	2	66%	140,001
TOTAL	117	58	50%	692,459

The 58 cases tried to plaintiffs' verdicts in the last nine years have resulted in awards totalling \$40,162,608.

4. Miscellaneous Torts

Three of the 25 trials (12%) involved miscellaneous tort claims.

The plaintiff prevailed in one case, alleging fraud in connection with an oil well investment. The jury awarded \$299,000.

The jury delivered at a split verdict in a complex case arising out of a soured business venture involving the ownership of five companies. The jury found for the plaintiff on claims of conversion and breach of fiduciary duty, and awarded the plaintiff \$265,138. The jury found for the defendants on counterclaims alleging breach of contract and conversion, and awarded the defendants \$47,815. As a result, the plaintiff received a net verdict of \$217,323.

The defendant prevailed in the third case, alleging tortious interference with contract in connection with a medical practice.

The outcomes of the miscellaneous tort cases are summarized below:

Nature of claim	Prevailing Party	Amount of Verdict
fraud: oil well investment	P	\$299,000
conversion/breach of fiduciary duty	split	P: 265,138 D: 7,815
tortious interference with contract	D	--

5. Civil Rights (other than employment)

Civil rights cases (other than employment) accounted for one of the 25 trials (4%). This is a significant decrease from 2009, when eight of 34 trials (24%) alleged civil rights violations.

The defendant prevailed in the only civil rights case tried, which involved allegations of First Amendment violations in connection with an encounter with police.

Historically, civil rights cases have been among the most difficult for plaintiffs to win. In the last nine years, 50 civil rights cases have been tried to juries. The plaintiffs won eleven cases (22%), and the defendants prevailed in 39 (78%). The largest verdict in a civil rights case was \$1,000,000, involving the unlawful arrest of a state judge. (That verdict was reversed on appeal.) The smallest verdicts were for \$1. The plaintiffs' verdicts over the last nine years are as follows:

Nature of claim	Amount of verdict
Unlawful arrest	\$1,000,000
Unreasonable search	190,000
Excessive force	10,000
Unlawful arrest	10,000
Unreasonable search	6,500
Unlawful arrest	5,000
Retaliation: 1st Amendment	1,791
Retaliation	1,500
Equal protection	630
Unlawful arrest	1
Excessive force	1

The average verdict in a civil rights case over the last nine years is \$111,402. The median verdict is \$5,000. When the anomalous \$1 million verdict (which was reversed) is taken

out of the equation, the average verdict is \$22,542, and the median verdict is \$5,000.

6. Intellectual Property

One of the 25 trials (4%) involved an intellectual property claim. The plaintiff prevailed in an action alleging misappropriation of trade secrets. The jury awarded damages of \$12,719,176.

Plaintiffs have fared exceptionally well in intellectual property cases tried in this district. In the last nine years, 20 intellectual property cases have been tried, and the plaintiffs prevailed in 17 of them (85%). The historical results over the last nine years follow:

Nature of Claim	Cases Tried	Cases Won by Plaintiffs	Plaintiffs' Success Rate
Patent Infringement	8	8	100%
Trademark Infringement	4	2	50%
Breach of Non-Disclosure	1	1	100%
Piracy	1	1	100%
Theft of Trade Secrets	3	3	100%
Copyright Infringement	1	1	100%
Lanham Act	1	1	100%

The verdicts in these cases have ranged as follows:

Nature of Claim	Amount of Verdict
Patent infringement	\$51,000,000
Misappropriation of trade secrets	41,980,131
Trademark infringement	15,199,936
Patent Infringement	14,320,283
Misappropriation of trade secrets	12,719,176
Breach of non-disclosure	9,340,000
Patent Infringement	5,350,000
Trademark infringement	4,462,000
Patent infringement	1,850,000
Patent Infringement	1,679,616
Patent infringement	1,205,000
Patent infringement	728,484
Copyright infringement	511,910
Misappropriation of trade secret	100,000
Patent infringement	74,863
Piracy	10,000 ¹¹
Lanham Act	0
Total	160,531,399

The average verdict over the last nine years in an intellectual property case is \$9,443,023; the median verdict is \$4,462,000.

¹¹The plaintiff sought statutory damages only, which were awarded by the trial judge and not the jury.

7. Federal Statutory Claims

Three trials in 2010 involved various federal statutes, as follows:

Nature of Claim	Prevailing Party	Amount of Verdict
ERISA	P	\$482,812
FLSA	P	17,440
FDCPA	P	10

D. JUDGMENTS VARYING SUBSTANTIALLY FROM THE VERDICT

Although this memorandum is concerned primarily with jury verdicts, as distinguished from judgments entered by a judge, *see* note 1 *supra*, several of the judgments entered in 2010 varied substantially from the jury verdicts underlying them.

In one ski negligence case, the verdict was reduced from \$988,000 to \$769,841 due to the plaintiff's contributory negligence. Pre- and post-judgment interest of \$201,741 was added, as were costs of \$7,745, resulting in a judgment of \$949,327.

The verdict in the ERISA case was reduced by \$75,000 when the parties stipulated to the elimination of the award of punitive damages, resulting in a judgment of \$407,812

The verdict in the FLSA case was doubled to \$34,881, and costs of \$990 were awarded. The plaintiff's motion for attorneys fees is pending.

E. TRIALS VACATED DUE TO SETTLEMENT

Although 25 cases were tried to a verdict in 2010, seven other cases settled less than one week before trial or after the trial began. Viewed differently, seven of 25 cases (28%) that reached the eve of trial settled before a verdict was returned. These last minute settlements are difficult to understand.

F. CONCLUSION

The District of Colorado continues to experience the phenomenon of the “vanishing trial,” with only 25 civil cases (0.79%) being tried to jury verdicts in 2010. Plaintiffs fared better at trial than did defendants, with plaintiffs prevailing in 13 of the 25 trials (52%) and defendants prevailing in 11 cases (44%). The average verdict was \$1,569,233, and the median verdict was \$299,000.