



2021: THE YEAR IN REVIEW

U.S. DISTRICT COURT

DISTRICT OF COLORADO

MICHAEL E. HEGARTY

UNITED STATES MAGISTRATE JUDGE

AUGUST 26, 2022

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In this report I have endeavored to bring the federal practitioner useful information that will hopefully assist in educating the federal bar about your District of Colorado (“the District”). You should use this information to help the Court fulfill the aspirations of Federal Rule of Civil Procedure 1 (the just, speedy, and inexpensive determination of every action or proceeding). The report presents, among other things, trial results, timing, and an overall picture of trial work in the District from January 1 - December 31, 2021, as well as longer-term data, information concerning dispositive motions practice, ADR, pro se and pro bono representation, Magistrate Judge consent, bankruptcy, and even appeals. Please feel free to contact me directly for specific information (so long as your query could not be construed as an *ex parte* communication), and if I can, I will respond.

I. SUMMARY OF TRIALS

In 2021, the District had fifty-two total cases tried to verdict.¹ This included twenty-seven civil jury trials and fourteen criminal jury trials, for a total of forty-one jury trials. This is unsurprisingly a significant increase over the number of trials in calendar year 2020, during which only eight civil jury trials and eight criminal jury trials reached a verdict. Compared to the years prior to 2020, 2021 saw a slightly lower number of trials, though certainly much closer to the five-year average than 2020 had been.

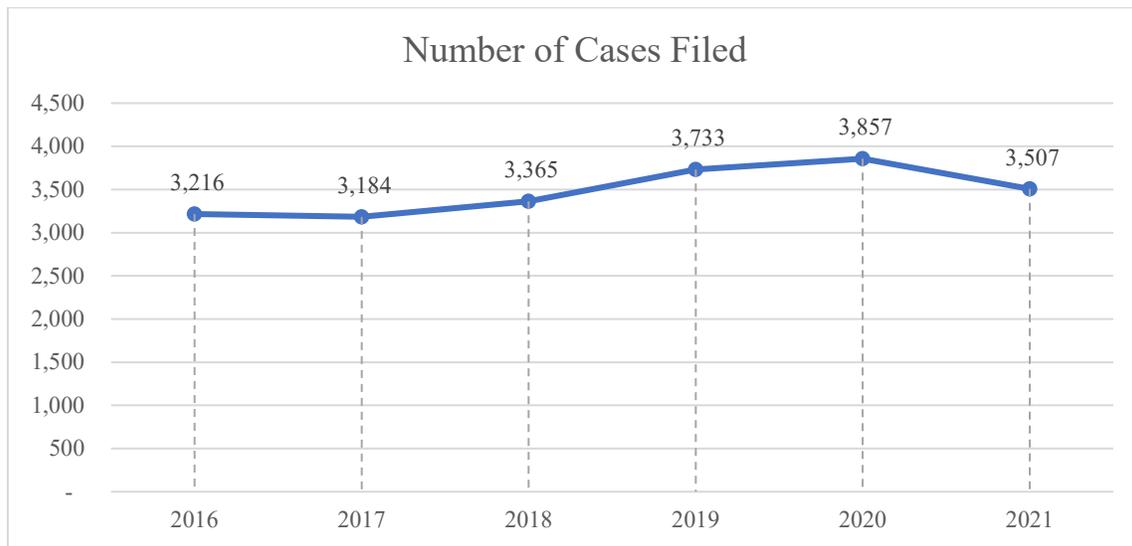
Additionally, the District had eight civil bench trials and three criminal bench trials. This represents an increase over both 2020’s six civil bench trials and 2019’s six civil bench trials. This is still markedly less than the fifteen civil bench trials in 2018.

¹ Two civil jury trials were settled during trial. One civil bench trial was settled after the trial but before any judgment was entered. Finally, in one criminal jury trial, the judge declared a mistrial after twenty-nine days of trial and rescheduled the trial for 2022. These trials are not included in the statistics, although this obviously leaves the 2021 numbers slightly understated when viewed in the light of a litigant’s access to trials in our court.

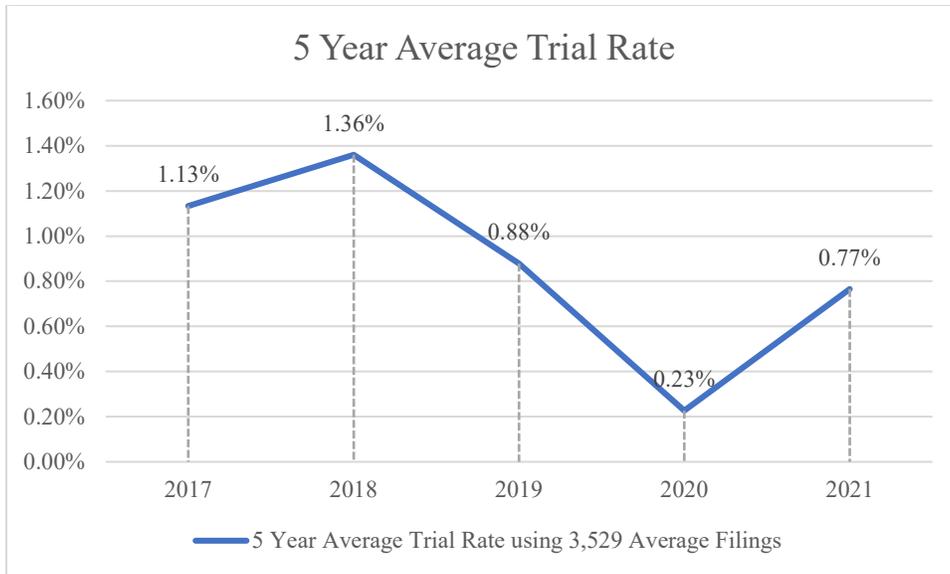
II. CIVIL JURY TRIALS

A. Overview

The District tried **twenty-seven civil jury trials to verdict in 2021**, which, excepting 2020, is the lowest total since twenty-five civil jury trials in 2010. Likewise, the 3,507 civil cases filed during 2021 marked the lowest number of filings since 3,365 in 2018. The number of cases filed during each of the past six years is illustrated in the chart below:



Taking the five-year average of cases filed since 2017 of 3,529 (rounded to the nearest whole number) and comparing it with the twenty-seven civil jury verdicts in 2021 yields a 0.77% trial rate, which is unsurprisingly a significant increase over 0.23% in 2020 using the same 3,529 total. Excepting 2020, the trial rate in 2021 was lower than the trial rates over the last several years, as is illustrated below:



The filing year for each civil case tried to jury verdict in 2021 is reported below:

Year Filed	No. Tried in 2021
2015	1
2016	1
2017	2
2018	10
2019	9
2020	4

B. Time to Trial

In 2021, the **average duration between a complaint's filing and its first day of jury trial was 33.21 months**, which is an 8.02% decrease from 36.1 months in 2020 and a 7.22% increase from 30.97 months in 2019. The shortest time from filing to trial was 17.6 months in a case involving the Fair Labor Standards Act. The longest time from filing to trial was 79.9 months in a case involving Fourth Amendment excessive force, which returned to the District after an interlocutory appeal. Eight of the twenty-seven cases tried occurred within two years of filing (29.63%), compared with two of eight cases in 2020 (25%) and nine of thirty-one cases in 2019

(29.03%). District Judges tried all eight of these “under two years” cases, which marks the second year in a row that no “under two years” cases were tried to a Magistrate Judge.²

Twenty-two of the twenty-seven total cases in 2021 were tried to a District Judge, with an average time to trial of 34.4 months, and five were tried to a Magistrate Judge, with an average time to trial of 27.9 months.

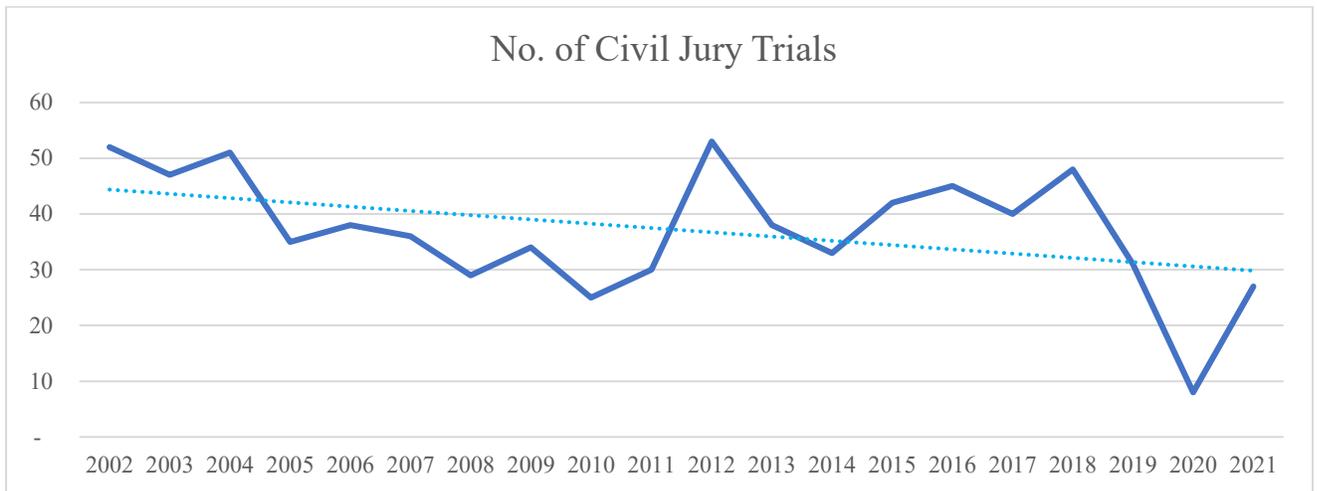
C. Volume of Trials

The total volume of trials in 2021 was slightly down compared to prior years, excepting 2020. In 2021, the District tried twenty-seven civil jury cases to verdict, which is the **lowest total during the past decade, excepting 2020**. The significant decrease in trial volume during 2020 and 2021 compared to historical trends is certainly another result of the District’s efforts to combat the spread of Covid 19. From March through July of 2020, the District ceased all in-person proceedings. The District cautiously reopened for a few trials between July and October of 2020, but then shut down again following the second wave of Covid in Colorado. This second shutdown continued until March of 2021. Thus, **the District’s trial period in 2021 was abbreviated by almost three months**. Furthermore, even once the District was open again, most cases did not reach trial until several months later, as is evident per the trial-by month-analysis. That data is included below:

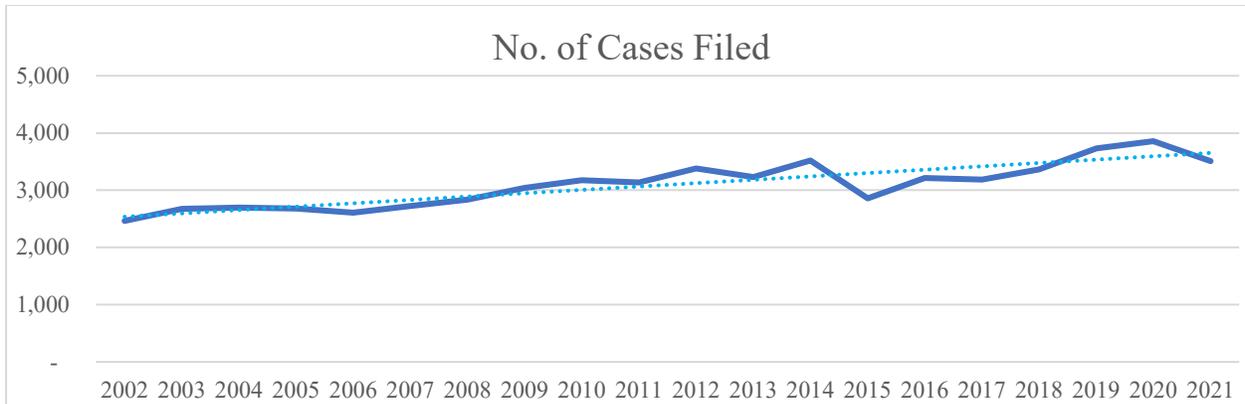
² In 2019, two of nine (22.22%) “under two years” cases were tried to a Magistrate Judge, and in 2018, six of twenty-seven (also 22.22%) were tried to a Magistrate Judge.



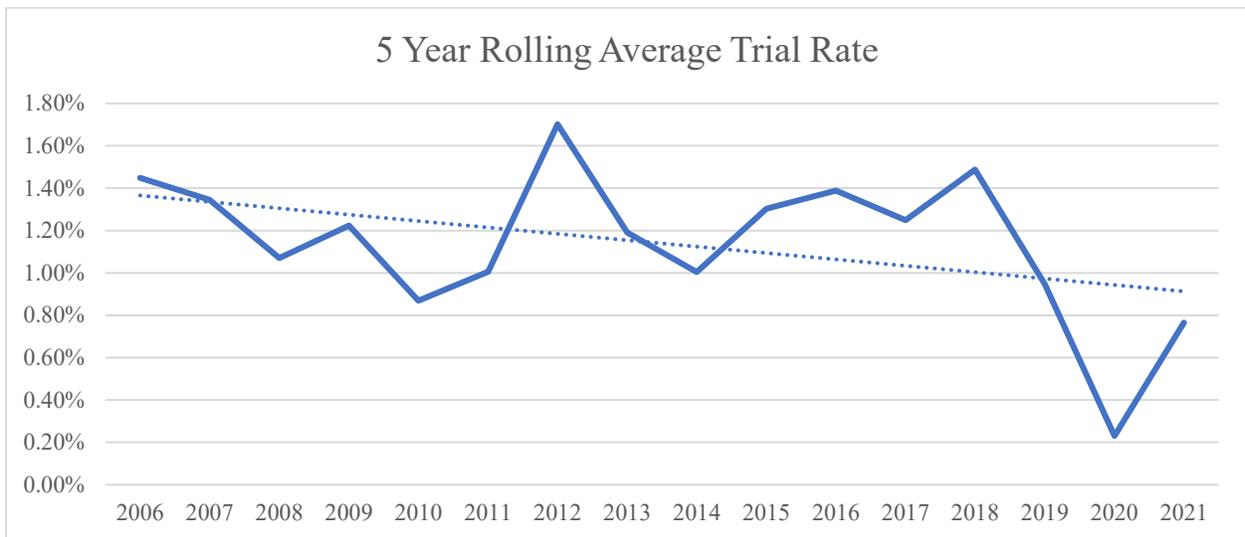
The continuing effects of Covid are also visible in the long-term civil jury trial trend. The number of civil jury trials since the District began recording this data in 2002 is illustrated below:



The 3,507 civil cases filed in 2021 represented a relatively lower total compared to the last several years. However, this filing total is only 0.63% lower than the five-year average case filings of 3,529, and it is in fact 13.33% more filings than the 3,094 all-time average filings since 2002. Below are the number of cases filed for each year of the past nineteen years:



The rate of filings which reached civil jury trial in 2021 was 0.77%, given the five-year average of 3,529 filings. Using a five-year rolling average this represents the lowest trial rate excepting 2020 since the District began recording this data.³ This is illustrated below:



The trial rate can also be calculated using each year's filings as an approximation of total case filings. That data is included below:

Year	No. of Cases Filed	No. of Civil Jury Trials	Rate of Trials
2002	2,464	52	2.11%
2003	2,672	47	1.76%
2004	2,698	51	1.89%

³ The District began recording data for filing rates in 2002. Given that a five-year rolling average must be based on five-years of trailing data, the first year for which a rolling five-year average can be calculated in 2006.

2005	2,679	35	1.31%
2006	2,607	38	1.46%
2007	2,726	36	1.32%
2008	2,838	29	1.02%
2009	3,042	34	1.12%
2010	3,177	25	0.79%
2011	3,136	30	0.96%
2012	3,380	53	1.57%
2013	3,233	38	1.18%
2014	3,517	33	0.94%
2015	2,857	42	1.47%
2016	3,216	45	1.40%
2017	3,184	40	1.26%
2018	3,365	48	1.43%
2019	3,733	31	0.83%
2020	3,857	8	0.21%
2021	3,507	27	0.77%
Average	3,094	37	1.24%

Given the drop in cases tried in both 2020 and 2021, the five-year average of thirty-one trials per year is significantly lower than the all-time average of thirty-seven trials per year. Excluding the 2020 data from that calculation, however, the adjusted five-year average is thirty-eight trials per year, which is much closer to, and in fact higher than, the all-time average.⁴

D. Parties' Success Rates

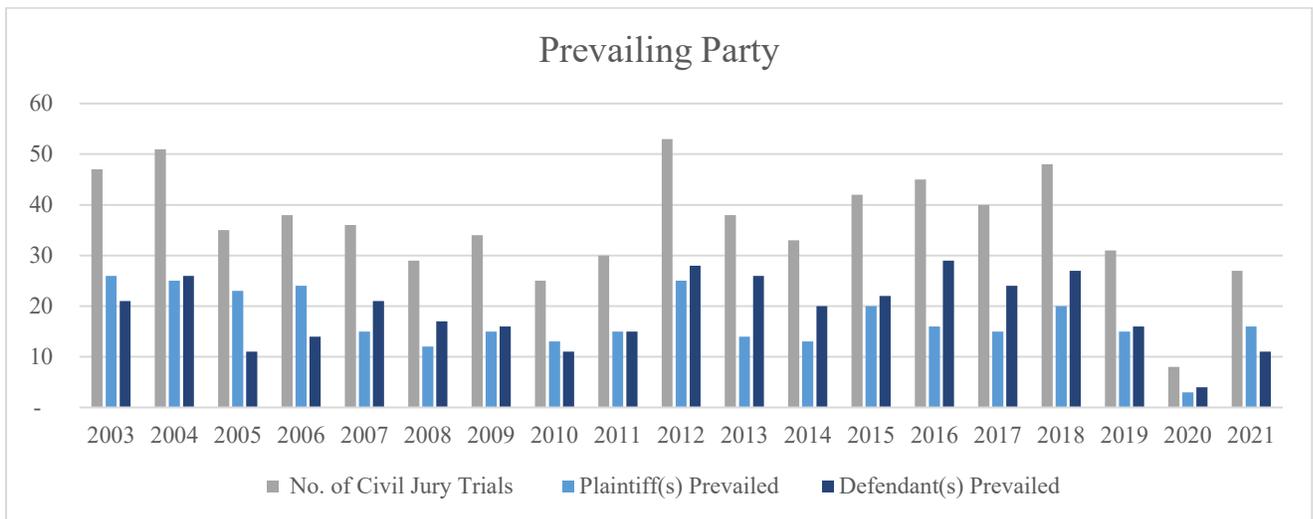
Plaintiffs prevailed in sixteen of the twenty-seven civil jury trials (**59.26%**), **defendants** prevailed in eleven of trials (**40.74%**), and as noted above, two civil jury trials settled during the trial. These two cases have been excluded from the calculations. Significantly, **2021 marks the first year since 2010 that plaintiffs enjoyed a higher success rate than defendants.**⁵ Since 2003, the District has seen 690 civil jury trials. Plaintiffs prevailed in 325 of those (47.10%), and

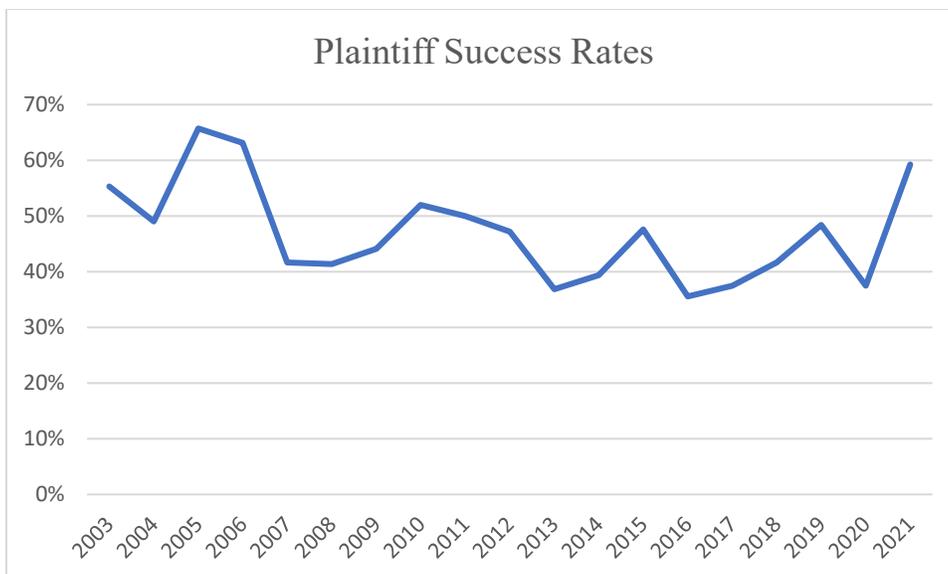
⁴ The all-time average is the average of trials per year for every year, including 2020, since the District began recording data in 2002.

⁵ In 2010, plaintiffs prevailed in thirteen of the twenty-five trials, yielding a plaintiff success rate of 52%

defendants prevailed in 359 (52.03%). There have been seven split verdicts (1.01%) and one judgment vacated (0.14%). Rates of success since 2003 are presented below:

Year	No. of Civil Jury Trials	Plaintiff(s) Prevailed	Defendant(s) Prevailed	Split Verdicts	Vacated
2003	47	26 (55.32%)	21 (44.68%)	0	0
2004	51	25 (49.02%)	26 (50.98%)	1	0
2005	35	23 (65.71%)	11 (31.43%)	0	0
2006	38	24 (63.16%)	14 (36.84%)	0	0
2007	36	15 (41.67%)	21 (58.33%)	0	0
2008	29	12 (41.38%)	17 (58.62%)	3	0
2009	34	15 (44.12%)	16 (47.06%)	1	0
2010	25	13 (52.00%)	11 (44.00%)	0	0
2011	30	15 (50.00%)	15 (50.00%)	0	0
2012	53	25 (47.17%)	28 (52.83%)	0	0
2013	38	14 (36.84%)	26 (68.42%)	0	0
2014	33	13 (39.39%)	20 (60.61%)	0	0
2015	42	20 (47.62%)	22 (52.38%)	0	0
2016	45	16 (35.56%)	29 (64.44%)	0	0
2017	40	15 (37.50%)	24 (60.00%)	1	0
2018	48	20 (41.67%)	27 (56.25%)	0	1
2019	31	15 (48.39%)	16 (51.61%)	0	0
2020	8	3 (37.50%)	4 (50.00%)	1	0
2021	27	16 (59.26%)	11 (40.74%)	0	0
Total	690	325 (47.10%)	359 (52.03%)	7	1





The historical trend for plaintiff success rates is illustrated above. Of course, a diagram charting defendant success rates over this period would be a symmetrical mirror image of the trend above.

E. Level of Plaintiff’s Verdicts

The largest civil jury verdict in 2021 was \$156 million in a case for fiduciary duty, fraudulent concealment, fraudulent misrepresentation, and civil conspiracy. This is significantly greater than both the largest civil jury verdict in 2020 of \$921,059 in a breach of insurance contract case and the largest civil jury verdict in 2019 of \$2,995,004 in an unlawful arrest case. The smallest verdict in 2021 was \$37,900 in a case over discrimination under the Americans with Disabilities Act.⁶ This too is substantially larger than both the smallest verdict in 2020 of \$3,190 in an intellectual property case and the smallest verdict in 2019 of \$6,000 in an auto accident case. The average plaintiff’s verdict in 2021 was \$11,768,570.25⁷, which is substantially greater than both

⁶ There was also a verdict for the Plaintiff in a case over the ownership of several paintings. The jury found that the plaintiff, not the defendant, owned the paintings. There was no monetary award sought or rewarded.

⁷ This average is calculated excluding the case over the ownership of the paintings, as the plaintiff was not seeking a monetary award.

the average of \$365,906 in 2020 and \$545,968 in 2019. Excluding the highest and lowest verdicts of 2021, the average award was \$1,576,204.14. This is much larger than the averages excluding the highest and lowest awards for the past several years since \$2,197,841.32 in 2017. The following chart reports civil trial jury verdicts in 2021 from highest to lowest:

Rank	Subject	Verdict	Award
1	Fiduciary Duty, Fraudulent Concealment, Fraudulent Misrepresentation, And Civil Conspiracy	Plaintiff	\$156,000,000.00
2	Breach Of Contract (Lease and Performance)	Plaintiff	\$6,037,553.89
3	Section 1983: Unlawful Arrest and Search	Plaintiff	\$3,410,000.00
4	Americans With Disabilities Act	Plaintiff	\$3,000,000.00
5	1983: Excessive Force	Plaintiff	\$2,531,000.00
6	1981: Race	Plaintiff	\$2,500,000.00
7	Dec Action On Insurance Coverage	Counterclaimant	\$1,590,373.46
8	Breach Of Contract, Bad Faith	Plaintiff	\$792,239.00
9	Breach Of Express Warranty, Breach of Implied Warranty, Unjust Enrichment, Promissory Estoppel	Plaintiff	\$739,966.67
10	Negligence, Breach of Duty, Conversion, Theft, Trespass, Tortious Interference	Plaintiff	\$478,625.22
11	1st Party Breach of Auto Insurance Contract	Plaintiff	\$375,000.00
12	Dec Action On Insurance Coverage	Counterclaimant	\$353,492.39
13	1st Party Trifecta Homeowners' Insurance Contract	Plaintiff	\$292,401.00
14	1st Party Breach of Auto Insurance Contract	Plaintiff	\$150,000.00
15	1st Party Trifecta Insurance Contract	Plaintiff	\$143,588.00
16	Unjust Enrichment, New York Labor Law, Breach of Contract	Plaintiff	\$40,280.00
17	Americans With Disabilities Act	Plaintiff	\$37,900.00
18	Replevin	Plaintiff	N/A

Twenty-two of the twenty-seven civil jury trials in 2021 were tried to a District Judge.

Below is a breakdown of those cases by Judge:

Judge	Substantive Area	Verdict	Award	Attorney's Fees
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CMA	Americans with Disabilities Act	Plaintiff	\$37,900.00 ⁸	
CMA	Misappropriation of Trade Secrets, Intentional Interference, Breach of Contract	Defendant		
DDD	1st Party Breach of Auto Insurance Contract	Plaintiff	\$150,000.00	
DDD	Section 1983: Excessive Force	Defendant		
DDD	Age Discrimination in Employment Act	Defendant		
RBJ	Fiduciary Duty, Fraudulent Concealment, Fraudulent Misrepresentation, and Civil Conspiracy	Plaintiff	\$156,000,000.00	
RBJ	Section 1981: Race	Plaintiff	\$2,500,000.00 ⁹	
RBJ	Breach of Contract, Bad Faith	Plaintiff	\$792,239.00	
RBJ	Unjust Enrichment, New York Labor Law, Breach of Contract	Plaintiff	\$40,280.00	
RBJ	Replevin	Plaintiff		
RBJ	Dec Action on Insurance Coverage	Defendant		
RBJ	Title VII: Race, Sex; 1981: Race, Equal Pay Act: Sex	Defendant		
REB	1st Party Trifecta Homeowners' Insurance Contract	Plaintiff	\$292,401.00 ¹⁰	\$391,295.50
RM	Breach of Contract (Lease and Performance)	Plaintiff	\$6,037,553.89	
RM	1st Party Trifecta Insurance Contract	Plaintiff	\$143,588.00 ¹¹	
RM	Section 1983: Excessive Force	Defendant		
RM	Dec Action on Insurance Coverage	Counterclaimant	\$1,590,373.46	\$1,048,034.75
RM	Dec Action on Insurance Coverage	Counterclaimant	\$353,492.39	
RMR	1st Party Breach of Auto Insurance Contract	Plaintiff	\$375,000.00	
WJM	Section 1983: Excessive Force	Plaintiff	\$2,531,000.00	\$1,132,327.40
WJM	Fair Housing Act, Americans with Disabilities Act, The Rehabilitation Act of 1973	Defendant		
WJM	Medical Malpractice	Defendant		

The other five cases were tried to a Magistrate Judge. Below is a breakdown of those cases

by Judge:

⁸ Attorney's fees were resolved by the parties.

⁹ Attorney's fees were resolved by the parties.

¹⁰ The District Judge doubled this amount to \$584,800.00 based on the Colorado statute.

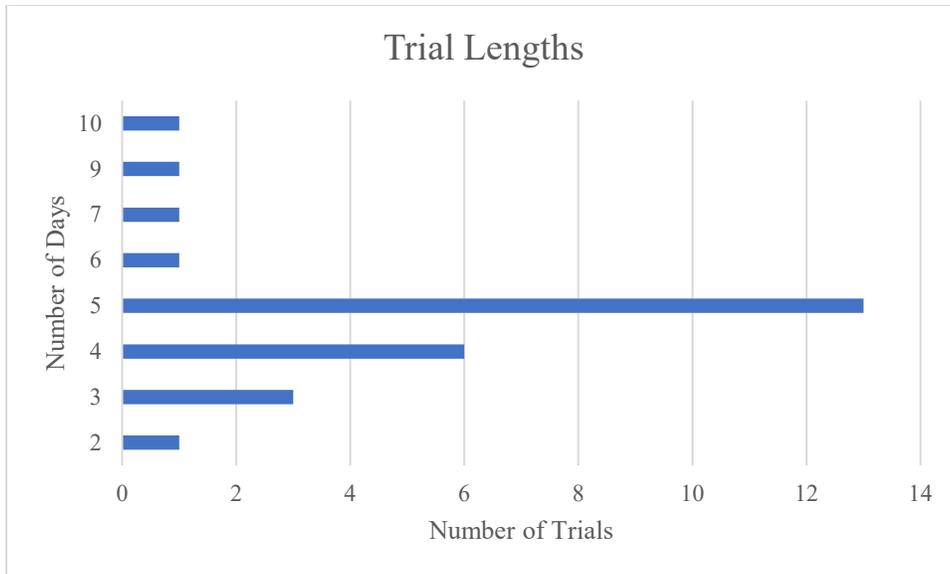
¹¹ The parties settled before the issue of fees and double damages was determined.

Judge	Substantive Area	Verdict	Award	Attorney's Fees
KLM	Breach of Express Warranty, Breach of Implied Warranty, Unjust Enrichment, Promissory Estoppel	Plaintiff	\$739,966.67	
MEH	Section 1983: Unlawful Arrest and Search	Plaintiff	\$3,410,000.00	\$602,071.00
MEH	Americans with Disabilities Act	Plaintiff	\$3,000,000.00 ¹²	
MEH	Breach of Duty, Intentional Interference, Trespass, Civil Theft, Conversion	Plaintiff	\$478,625.22	\$503,827.50
SKC	Premises Liability	Defendant		

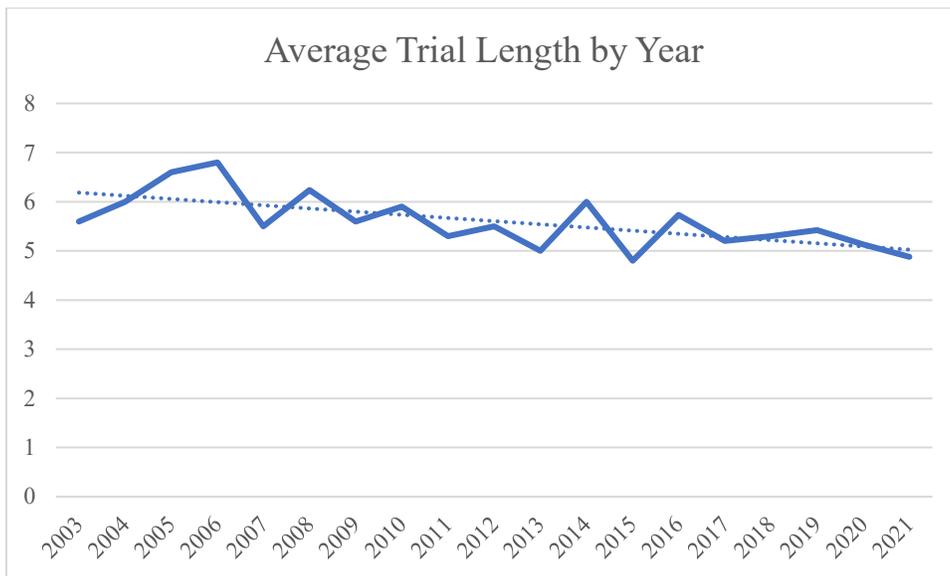
F. Trial Lengths

Civil jury trials that went to verdict in 2021 required 132 total trial days compared with forty-one in 2020, 168 in 2019, and 252 in 2018. The longest trial lasted ten days (Dec action on insurance coverage); the shortest trial lasted two days (Replevin). The average trial lasted 4.88 days, and the most common trial length was five days. For the twenty-two cases tried to a District Judge, the average trial length was 4.96 days. For the five cases tried to a Magistrate Judge, the average trial length was 4.50 days. The total number of cases for each trial length is illustrated below:

¹² This was the amount requested in Plaintiff's counsel's closing. The statutory limit, of course, is \$300,000.00. The case settled before the issue of attorney's fees was addressed or final judgment was entered.



The 4.88 days average trial length in 2021 was fairly similar to historical averages in the District. That data is included below:



G. Nature of Claims

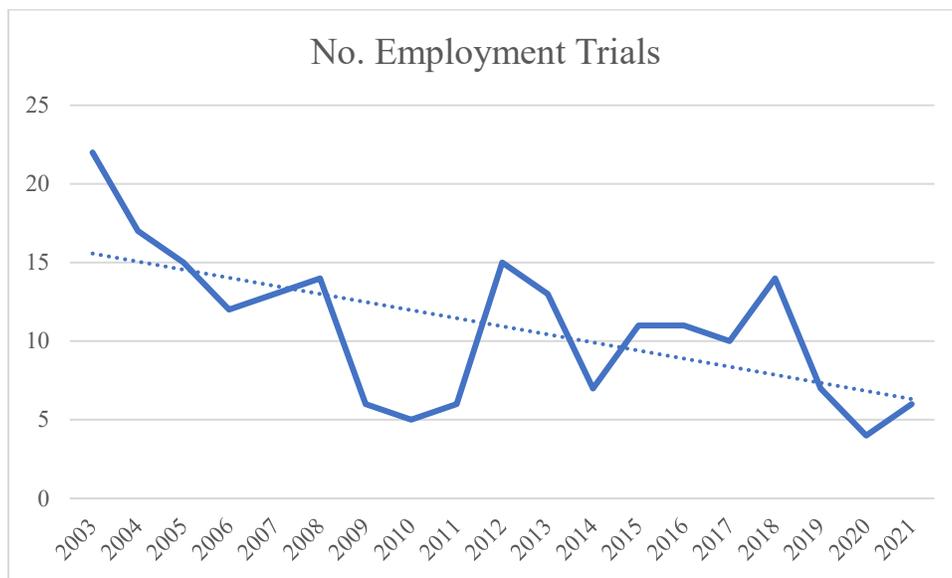
The civil jury trials conducted in 2021 fall into the following categories:

Category	No. Cases	Percent of Cases Tried
Employment	6	14.81%

Common Law Tort	6	22.22%
Insurance	6	22.22%
Civil Rights	5	14.81%
Breach of Contract	3	11.11%
Intellectual Property	1	3.70%

1. Employment

The District’s employment cases increased from four in 2020 to six in 2021. These six cases accounted for 22.22% of the total civil jury trials in 2021, which is slightly lower than the all-time employment average of 30.23% of trials. The history of the District’s employment trial load can be seen below:



The plaintiff prevailed in four cases and the defendant prevailed in the other two. The results by nature of claim are reported below:

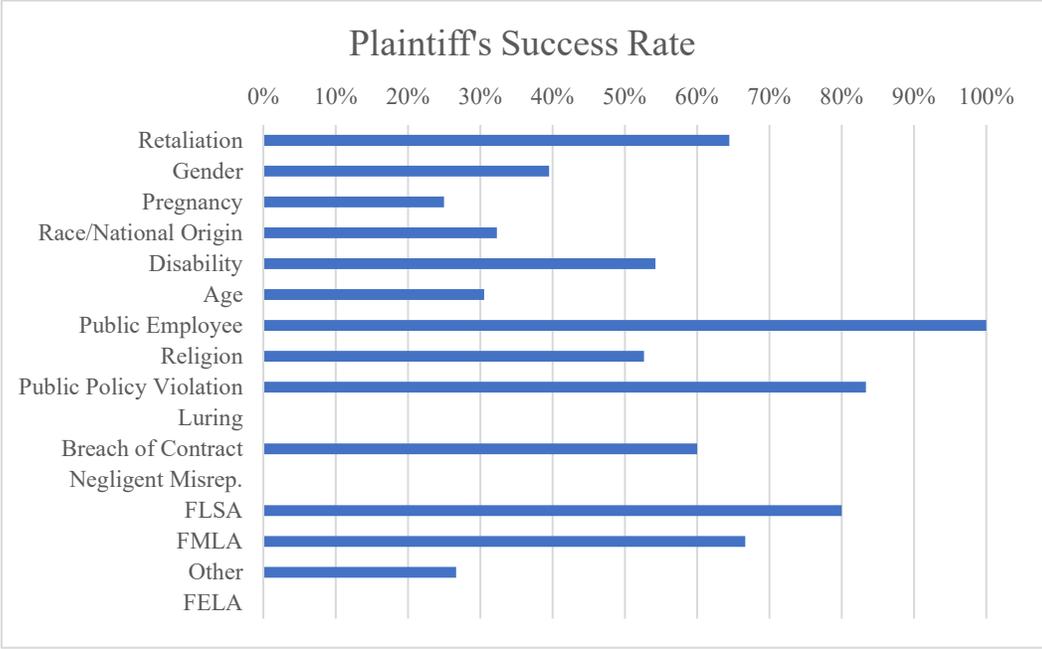
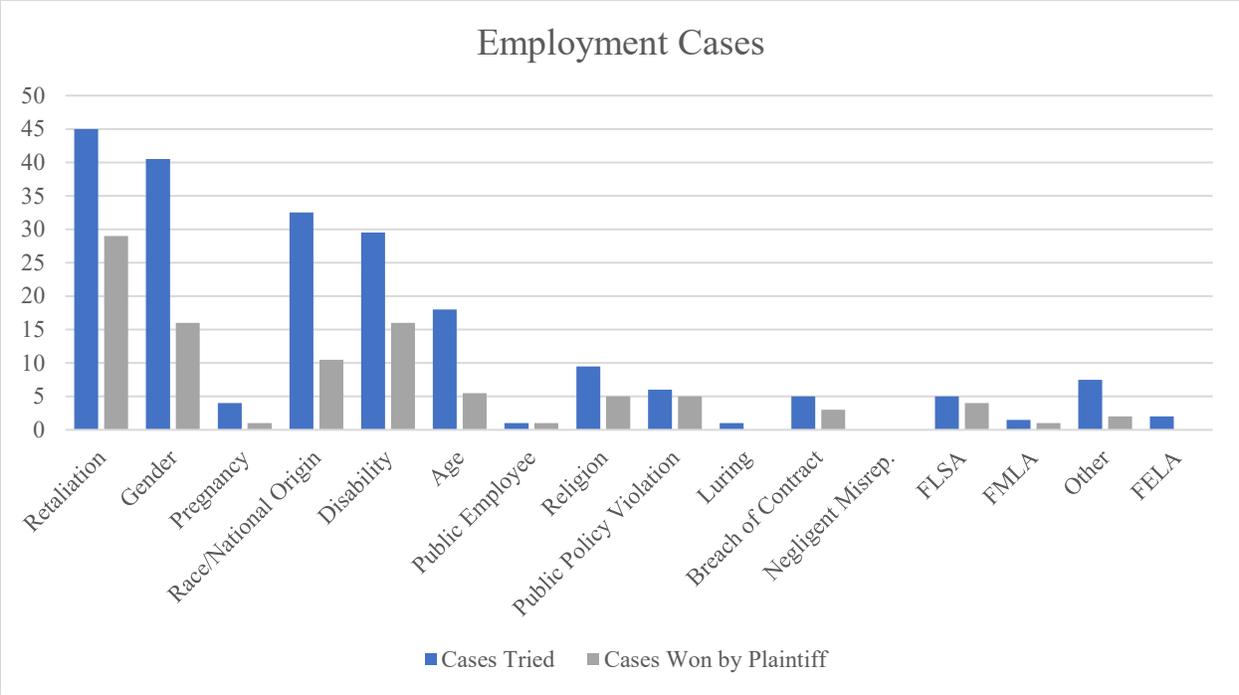
Substantive Area	Verdict	Award
Age Discrimination in Employment Act	Defendant	
Americans with Disabilities Act	Plaintiff	\$ 37,900.00
Americans with Disabilities Act	Plaintiff	\$ 3,000,000.00
Section 1981: Race	Plaintiff	\$ 2,500,000.00

Title VII: Race, Sex; 1981: Race; Equal Pay Act: Sex	Defendant	
Unjust Enrichment, New York Labor Law, Breach of Contract	Plaintiff	\$ 40,280.00

Since 2003, the District has tried 208 employment cases to verdict, and plaintiffs have prevailed in ninety-nine of these, which represents a 47.60% plaintiff win rate. The employment claims most frequently tried during those eighteen years were retaliation (forty-five) and gender discrimination (forty and one-half). Historical verdicts rendered by nature of the claim asserted during the past nineteen years are shown below:¹³

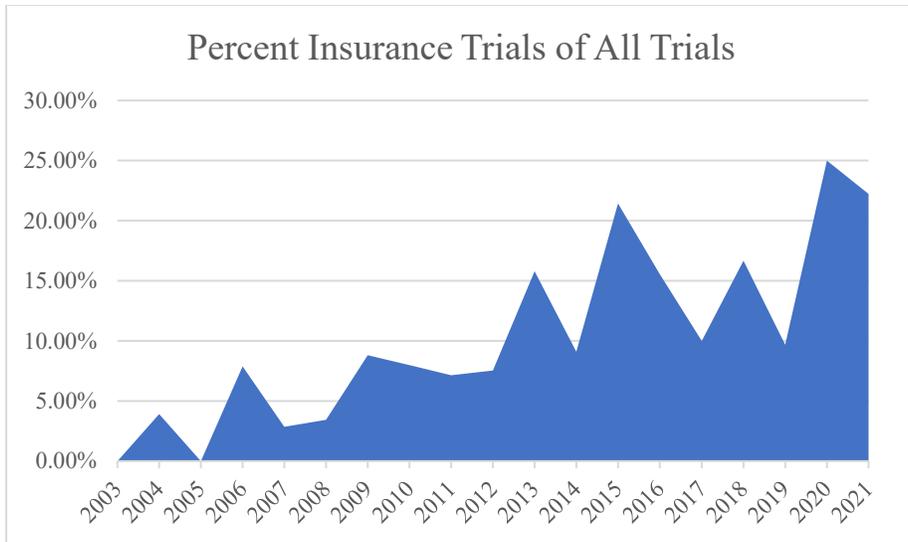
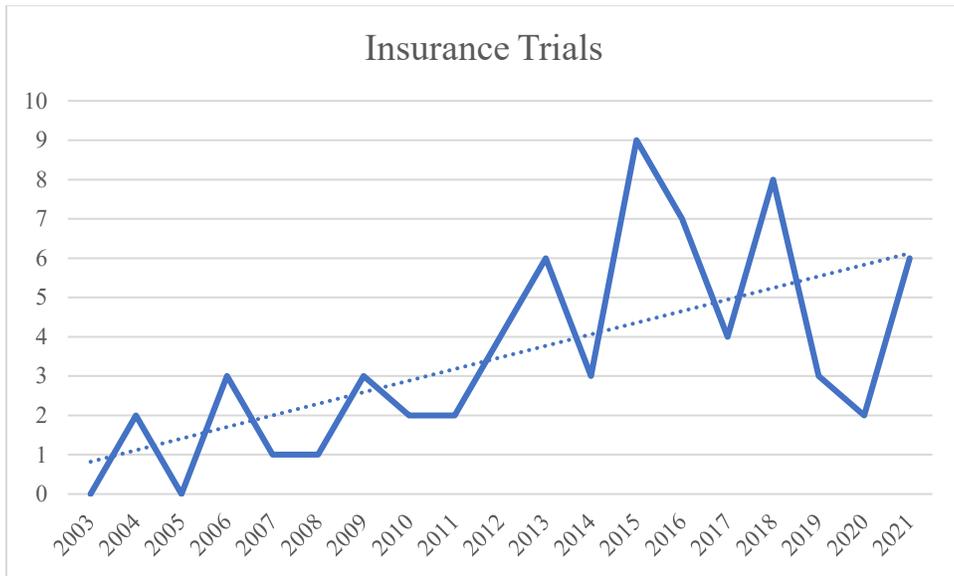
Nature of Claim	Cases Tried	Cases Won by Plaintiff	Plaintiff's Success Rate
Retaliation	45	29	64.44%
Gender	40.5	16	39.51%
Pregnancy	4	1	25.00%
Race/National Origin	32.5	10.5	32.31%
Disability	29.5	16	54.24%
Age	18	5.5	30.56%
Public Employee	1	1	100.00%
Religion	9.5	5	52.63%
Public Policy Violation	6	5	83.33%
Luring	1	0	0.00%
Breach of Contract	5	3	60.00%
FLSA	5	4	80.00%
FMLA	1.5	1	66.67%
Other	7.5	2	26.67%
FELA	2	0	0.00%
Total	208	99	47.60%

¹³ For several employment trials over the past eighteen years, one case involved two claims which fell into distinct categories in this table. Rather than recording the same case twice, which would make calculating total cases misleading, cases with two claims have been broken into two “half-cases” and listed as 0.5 a case tried. Thus, some totals include half-cases.



2. Insurance

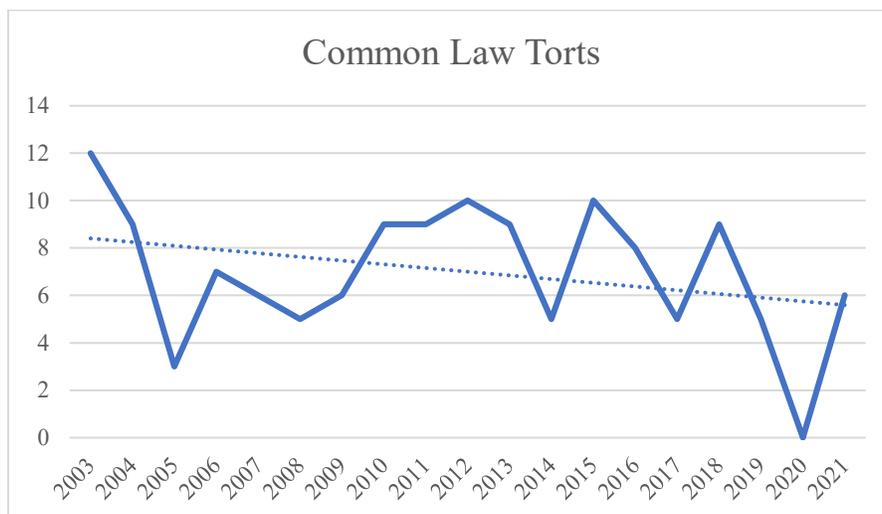
In 2021, the District had six insurance contract civil jury trials, which is a substantial increase from only two insurance trials in 2020 and three in 2019. Over the past nineteen years, insurance disputes accounted for 9.61% of civil jury trials, so the six of twenty-seven employment trials in 2021, which gives an insurance trial volume of 22.22%, is a substantial increase in insurance disputes over historical averages. The history of insurance disputes in the District is illustrated below:



Of the six insurance trials in 2021, the plaintiff prevailed in three trials, and the defendant prevailed in three trials, two of which the defendant won a counterclaim. This yields a plaintiff success rate of 50%, which is equivalent to the 50% plaintiff win rate for insurance trials in 2020, but much greater than the 0% plaintiff win rate in 2019. The 50% plaintiff win rate in 2021 is also very close to the 58.49% plaintiff win rate, based on thirty-one plaintiff verdicts of fifty-three total, for all insurance trials in the District since 2003. Because insurance disputes have historically only made up about 10% of total trials in the District, statistics regarding plaintiff win rate by year are somewhat misleading, as success rates can easily jump from 100% based on two cases in 2018 to 0% based on three cases, in 2019. Therefore, illustrations of plaintiff success rates in insurance trials by year have not been included in this report.

3. Common Law Torts

Common law torts accounted for six of the twenty-seven, or 22.22%, of civil jury trials in 2021. This is fairly similar to the nineteen-year average of common law torts making up 19.33% of total civil jury trials. The District’s historical record for common law tort trial load is illustrated below:



Below is a chart breaking down the 2021 common law torts by substantive area:

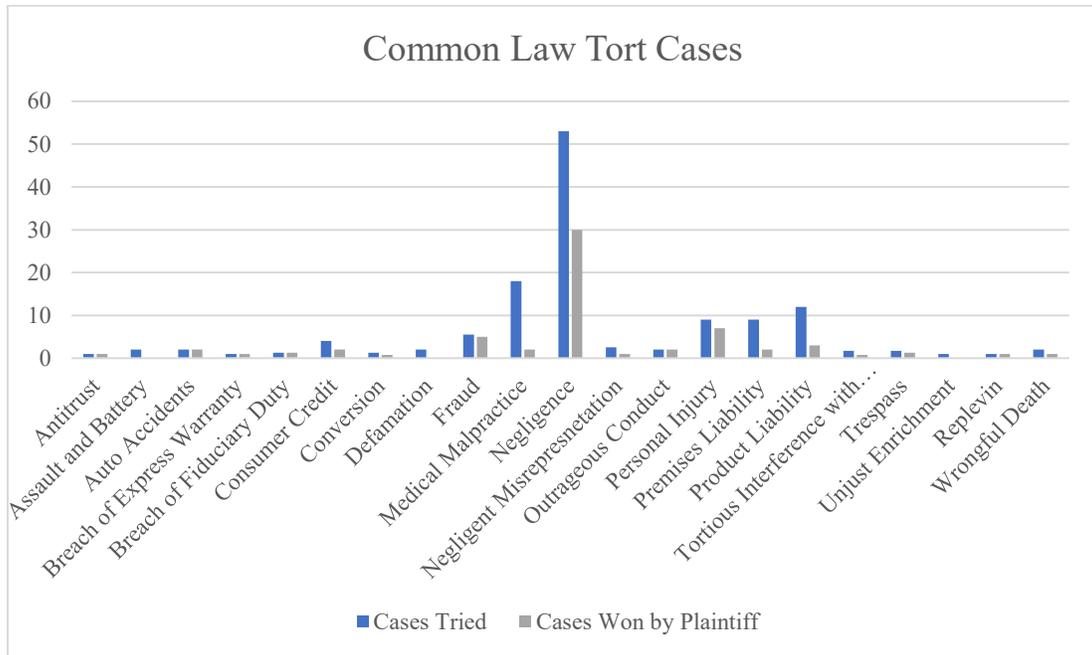
Substantive Area	Verdict	Award
Fiduciary Duty, Fraudulent Concealment, Fraudulent Misrepresentation, and Civil Conspiracy	Plaintiff	\$156,000,000.00
Breach of Express Warranty, Breach of Implied Warranty, Unjust Enrichment, Promissory Estoppel	Plaintiff	\$739,966.67
Negligence, Breach of Duty, Conversion, Theft, Trespass, Tortious Interference	Plaintiff	\$478,625.22
Medical Malpractice	Defendant	
Premises Liability	Defendant	
Replevin	Plaintiff	N/A

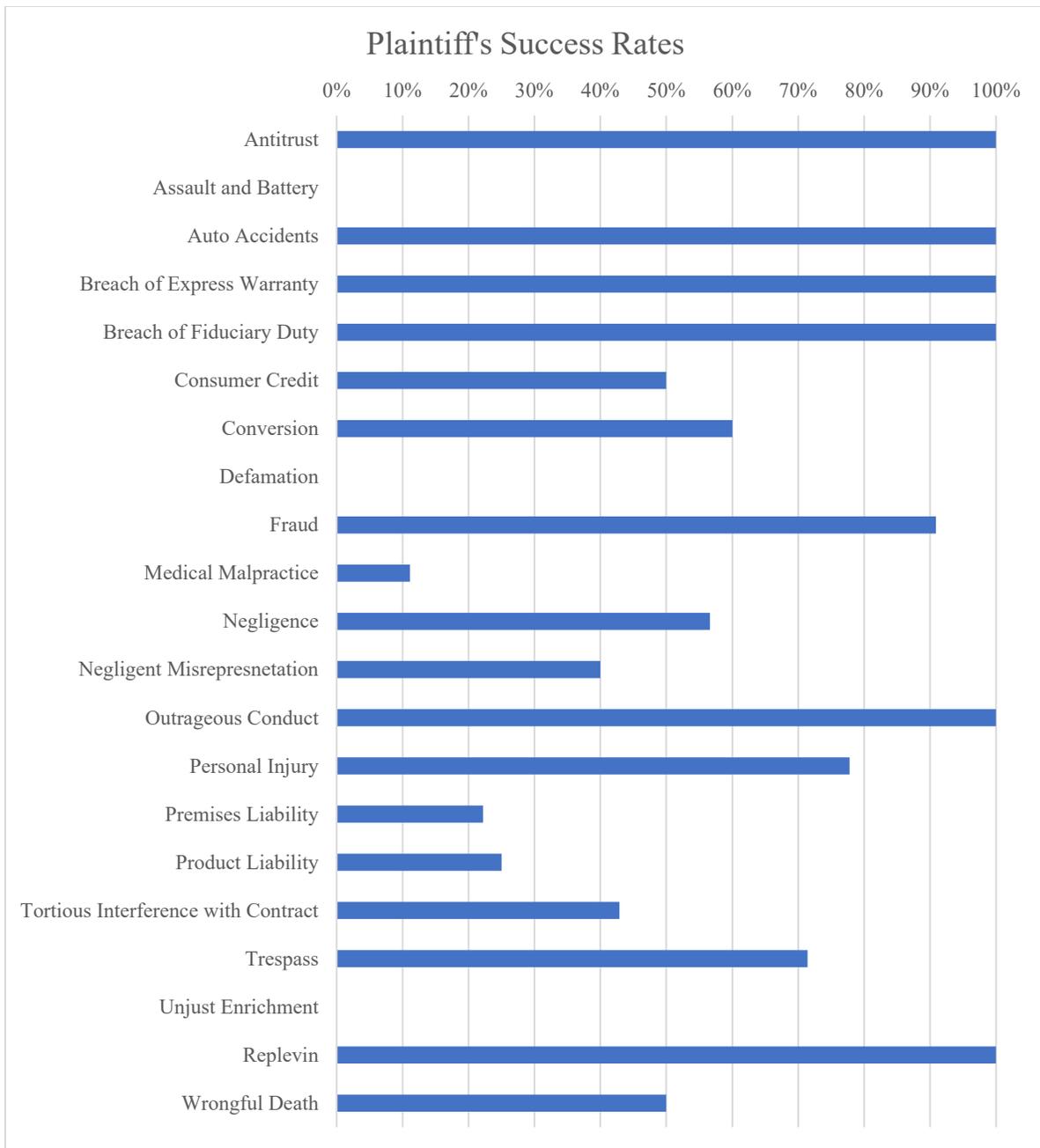
Plaintiffs prevailed in three of the six common law tort civil jury trials in 2021. The District saw no common law tort trials in 2020, and plaintiffs prevailed in two of the five common law tort cases in 2019. The largest verdict for a common law tort awarded in 2021 was \$156,000,000 in a fiduciary duty and fraud case. This was also the largest award in the District for the year. The average plaintiff's award for common law torts was \$52,406,197.30. Below is a chart detailing the plaintiff success rates for every type of common law tort tried since 2003:¹⁴

Substantive Area	Total Verdicts	Plaintiff's Verdicts	Plaintiff Success Rate
Antitrust	1	1	100.00%
Assault and Battery	2	0	0.00%
Auto Accidents	2	2	100.00%
Breach of Express Warranty	1	1	100.00%
Breach of Fiduciary Duty	1.25	1.25	100.00%
Consumer Credit	4	2	50.00%
Conversion	1.25	0.75	60.00%
Defamation	2	0	0.00%
Fraud	5.5	5	90.91%
Medical Malpractice	18	2	11.11%
Negligence	53	30	56.60%
Negligent Misrepresentation	2.5	1	40.00%
Outrageous Conduct	2	2	100.00%
Personal Injury	9	7	77.78%
Premises Liability	9	2	22.22%

¹⁴ For several trials over the past eighteen years, one case involved multiple claims. These cases have been broken into fractions based on the number and type of claims tried in each instance. Thus, some totals including fractions of cases.

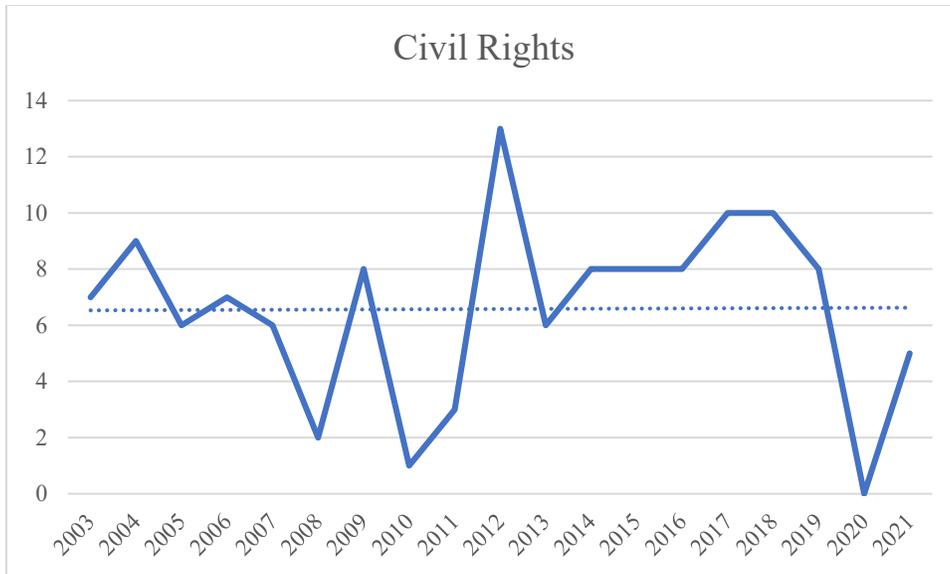
Product Liability	12	3	25.00%
Tortious Interference with Contract	1.75	0.75	42.86%
Trespass	1.75	1.25	71.43%
Unjust Enrichment	1	0	0.00%
Replevin	1	1	100.00%
Wrongful Death	2	1	50.00%
Total	132	63	47.73%



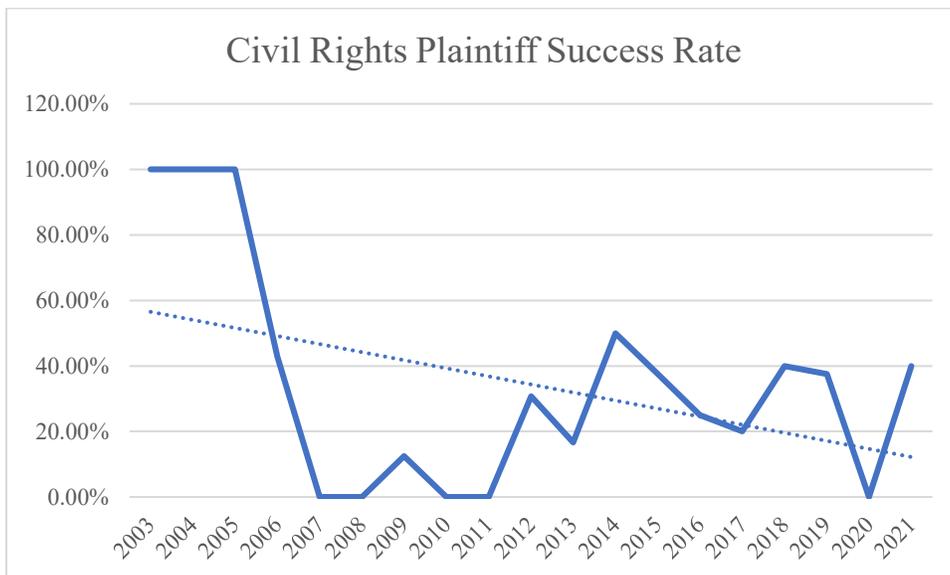


4. Civil Rights

Civil rights disputes accounted for five of the twenty-seven, or 18.52%, of civil jury trials in 2021. This is very similar to the nineteen-year average of 18.17% civil rights disputes in the District. The historical trend for civil rights litigation in the District is illustrated below:



Plaintiffs prevailed in two of the five civil rights cases, or 40%, in 2021. This is somewhat larger than the nineteen-year average for civil rights plaintiff’s verdicts of 32.41%. The trend for plaintiff success rates in civil rights disputes is illustrated below:



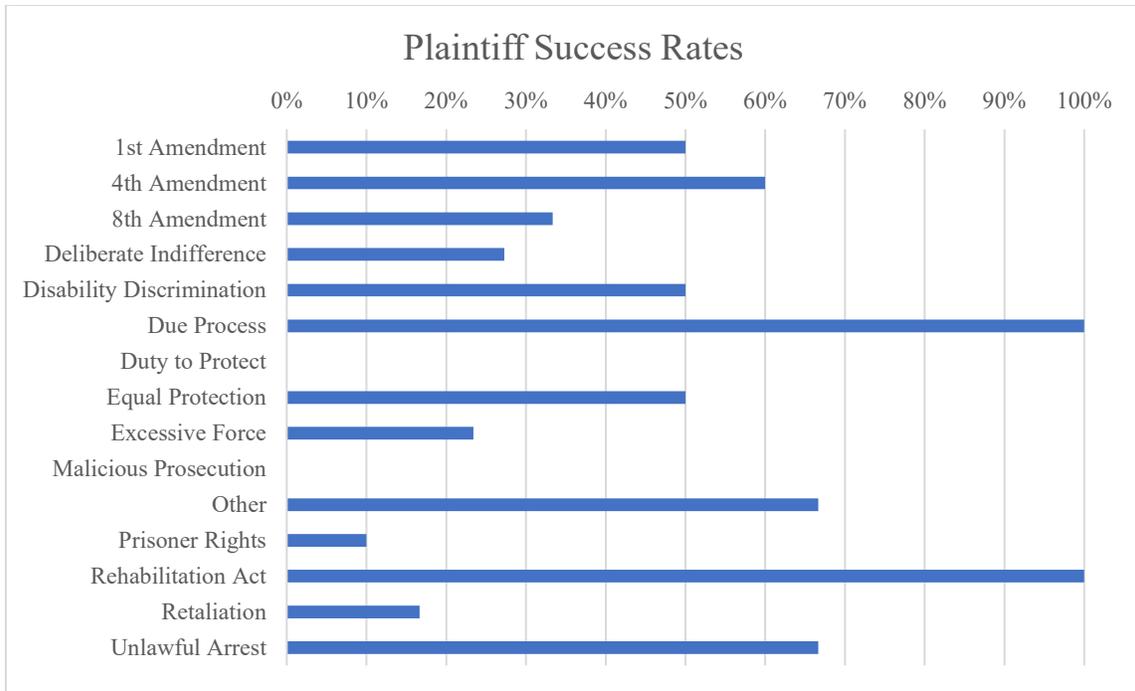
The two plaintiff verdicts in 2021 were for \$2,531,000 and \$3,410,000 respectively. The breakdown of the civil rights disputes in 2021 by nature of claim is included below:

Substantive Area	Verdict	Award
Fair Housing Act, Americans with Disabilities Act, The Rehabilitation Act of 1973	Defendant	
Section 1983: Excessive Force	Plaintiff	\$ 2,531,000.00
Section 1983: Excessive Force	Defendant	
Section 1983: Excessive Force	Defendant	
Section 1983: Unlawful Arrest and Search	Plaintiff	\$ 3,410,000.00

The breakdown of every civil rights civil jury trial since 2003 by subject is included below:¹⁵

Type of Claim	Total Verdicts	Plaintiff Verdicts	Plaintiff Success Rate
1st Amendment	6	3	50.00%
4th Amendment	7.5	4.5	60.00%
8th Amendment	6	2	33.33%
Deliberate Indifference	5.5	1.5	27.27%
Disability Discrimination	2	1	50.00%
Due Process	2	2	100.00%
Duty to Protect	1	0	0.00%
Equal Protection	2	1	50.00%
Excessive Force	47	11	23.40%
Malicious Prosecution	4	0	0.00%
Other	3	2	66.67%
Prisoner Rights	10	1	10.00%
Rehabilitation Act	1	1	100.00%
Retaliation	6	1	16.67%
Unlawful Arrest	6	4	66.67%
Total	109	35	32.11%

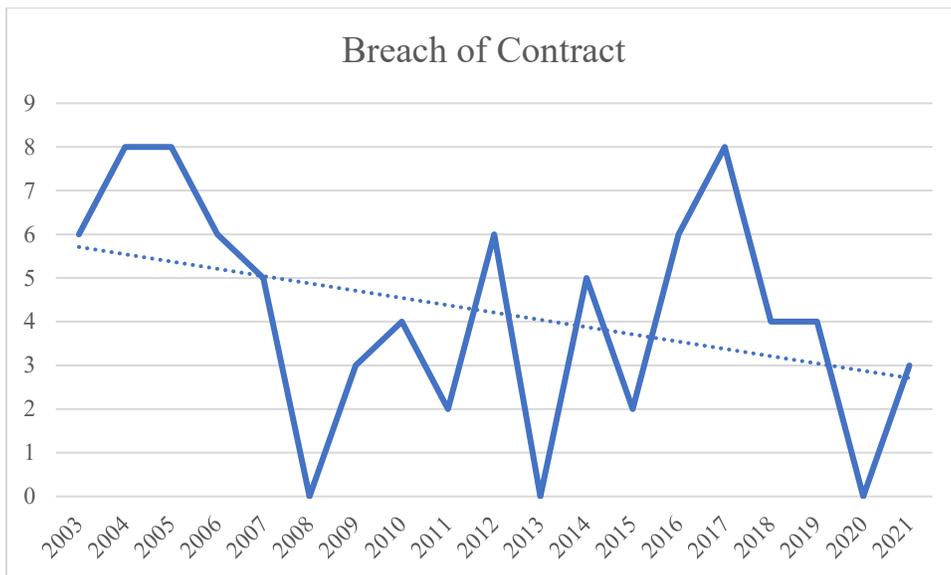
¹⁵ For Civil Rights trials in which several claims were tried by the plaintiff, each of those claims has been recorded as a fraction of a trial (e.g., for a trial in which Excessive Force and Prisoner Rights were considered, a half point has been included in each of those rows).



5. Breach of Contract

Breach of contract disputes, excepting employment and insurance contracts, accounted for three of the twenty-seven, or 11.11%, of total civil jury trials in 2021. This is very similar to the 11.64% historical average of breach of contract trials in the District over the past nineteen years.

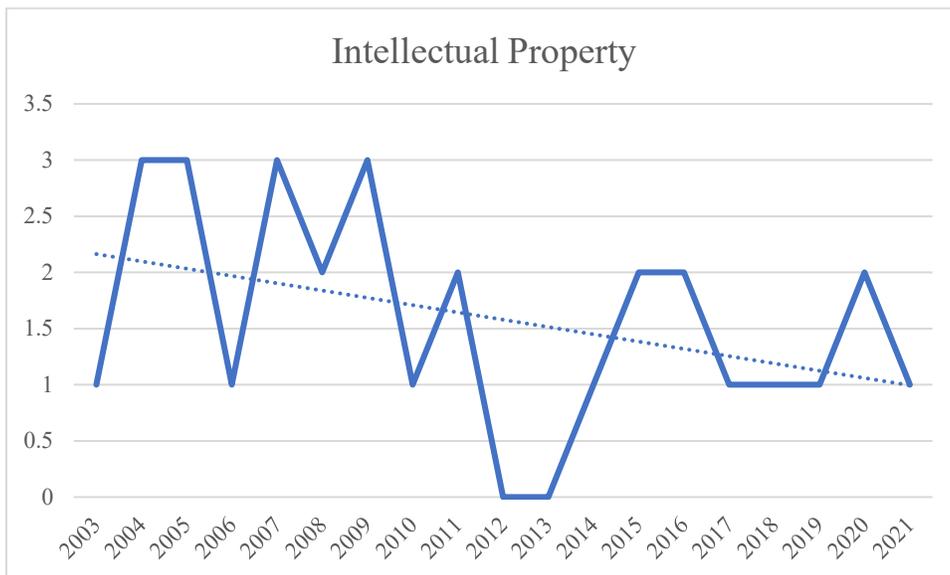
The data for that period is illustrated below:



Plaintiffs prevailed in all three breach of contract cases. The largest plaintiff verdict was for \$6,037,553.89, and the average verdict was \$1,291,382.74. The District saw no breach of contract cases in 2020, and in 2019 plaintiffs prevailed in zero of the four breach of contract trials. Historically, the District has seen sixty-five breach of contract cases since 2003, and plaintiffs have prevailed in fifty-three, or 81.54%, of those cases. Considering that breach of contract disputes have historically made up only about 10% of the District’s trials, the data regarding plaintiff success rates is somewhat misleading, as it can jump from a 0% plaintiff win rate, based on no cases in 2020, to a 100% win rate, based on three cases, in 2021. Therefore, charts illustrating plaintiff success rates for breach of contract disputes by year have not been included in this report.

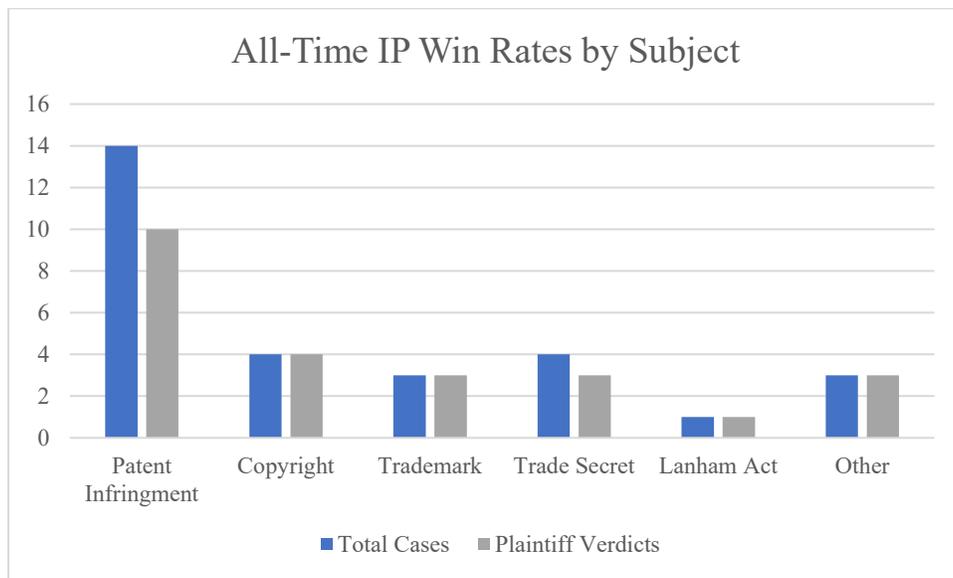
6. Intellectual Property

One of the twenty-seven, or 3.70%, of civil jury trials in 2021 involved a dispute over intellectual property. This is slightly below the District’s nineteen-year average of 4.36% of trials. The historical trend of intellectual property trials in the District is illustrated below:



The defendant won the only intellectual property trial in 2021. This marks a substantial departure from historical averages for intellectual property claims in the District; since 2003, plaintiffs have prevailed in twenty-four of the twenty-nine total intellectual property cases, or 82.67%. Part of the discrepancy between this very high plaintiff success rate and the low plaintiff success rate in 2021 can be explained by the relatively few intellectual property cases tried in the District. Because less than 5% of the District’s trials since 2003 have involved claims related to intellectual property, in any given year the District may hear only one or two intellectual property claims, and this small sample may cause misleading trends in data, as is the case for the change from a 100% plaintiff win rate from two trials in 2020 to a 0% plaintiff win rate from one trial in 2021. For this reason, charts demonstrating win rate trends are not useful for understanding parties’ chances of success in intellectual property disputes, and therefore these illustrations have not been included in this report.

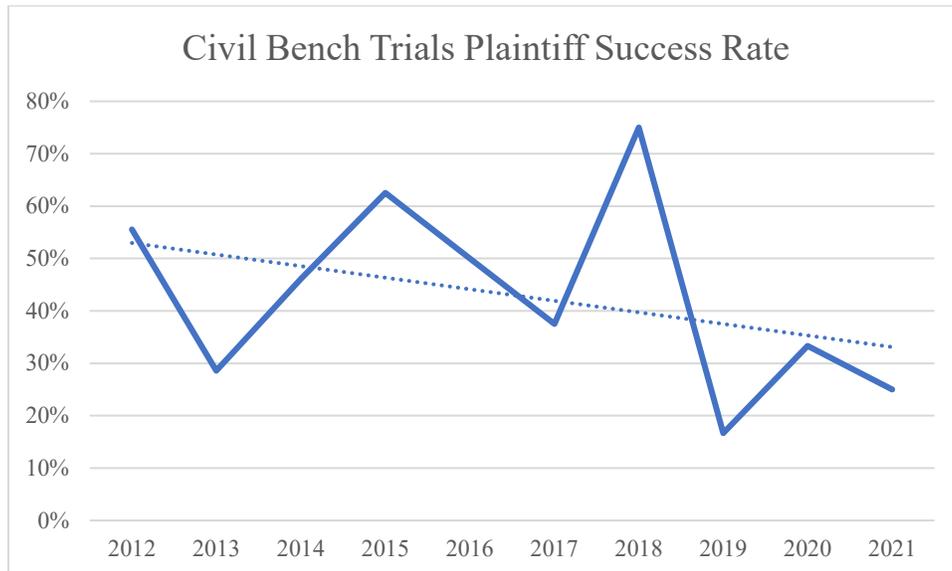
The data is more legible when considering plaintiff success rates by type of intellectual property claim. The historical breakdown of plaintiff verdicts by claim is included below:



III. CIVIL BENCH TRIALS

The District held **eight civil bench trials in 2021**, which is a slight increase from six civil bench trials in 2020 and six in 2019. Plaintiffs prevailed in two of the eight cases: a case involving libel, slander, and assault, and a breach of contract case. Defendants prevailed in the other six cases: a breach of settlement agreement case; a Title IX sexual harassment, 1993 deliberate indifference, and negligence case; two breach of contract cases; a Federal Tort Claims Act case; and a civil theft and conversion case. Thus, plaintiffs prevailed in 25% of the civil bench trials in 2021, which is a markedly lower win rate than the 40% in 2020. Additionally, there was a ninth civil bench trial held, but the parties settled before the judgment was entered, so that trial has been excluded from the calculations.

Historically, the District has issued judgments in favor of the plaintiff in thirty-eight of eighty-three, or 45.78%, of civil bench trials. Thus, the plaintiff success rate in 2021 was lower than historical averages. That data is illustrated below:



The **average time between the filing of a complaint and a bench trial in 2021 was 26.30 months**, which is substantially shorter than both the 41.3-month average in 2020 and the 36.2-

month average in 2019. That 26.30-month average wait from file to trial for civil bench trials in 2021 was also slightly shorter than the 33.21-month average time from file to trial for civil jury trials this year. The average time between the completion of a civil bench trial and the issue of the ruling was 2.32 months. This represents a substantial decrease from the average of 3.5 months from trial to ruling in 2020.¹⁶ The average trial length was 4.46 days.

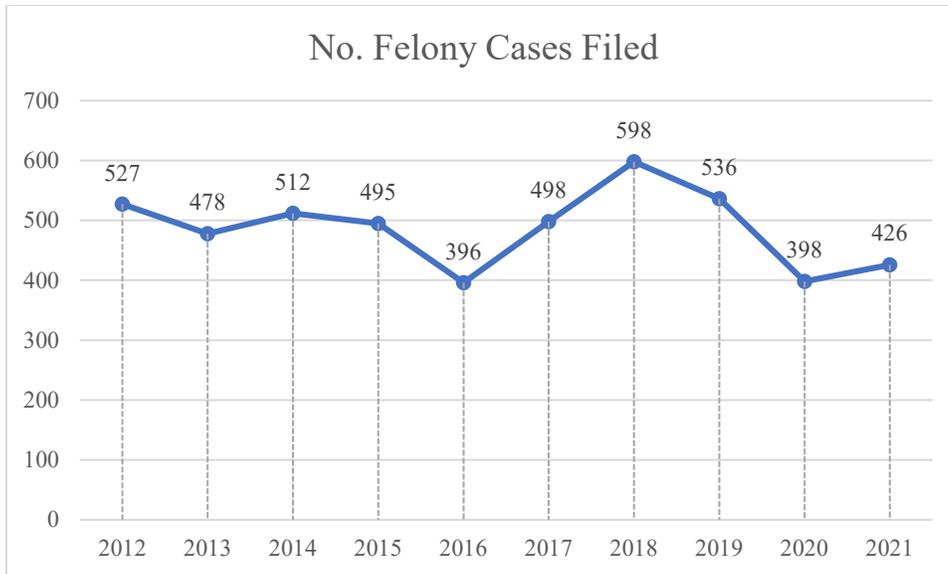
The nature of each bench trials and its outcomes is reported below:

Judge	Substantive Area	Verdict	Award	Time For Filing to Judgment (Mos.)
MEH	Civil Theft, Conversion	Defendant		10.67
PAB	Injunctive And Declaratory Relief, Breach of Contract, Violation of Colorado Law	Defendant		36.17
RBJ	Federal Tort Claims Act	Defendant		17.67
RBJ	Libel, Slander, Tortious Interference	Plaintiff	\$ 70,000.00	34.57
RBJ	Breach of Contract	Plaintiff	\$ 4,750,688.47	13.93
RM	Breach of Settlement Agreement, Damages Only	Defendant	\$ 5,152,683.74	43.87
RM	Title IX: Sexual Harassment; Section 1983: Deliberate Indifference; Negligence	Defendant		41.30
RM	Breach of Contract	Defendant		32.23

IV. CRIMINAL JURY TRIALS

There were **426 felony cases filed in 2021**, more than the 398 filed in 2020 and fewer than the 536 filed in 2019. This is also fewer than the average filings per year for the last nine years of 486.6 filings. The last nine years' filings are illustrated below:

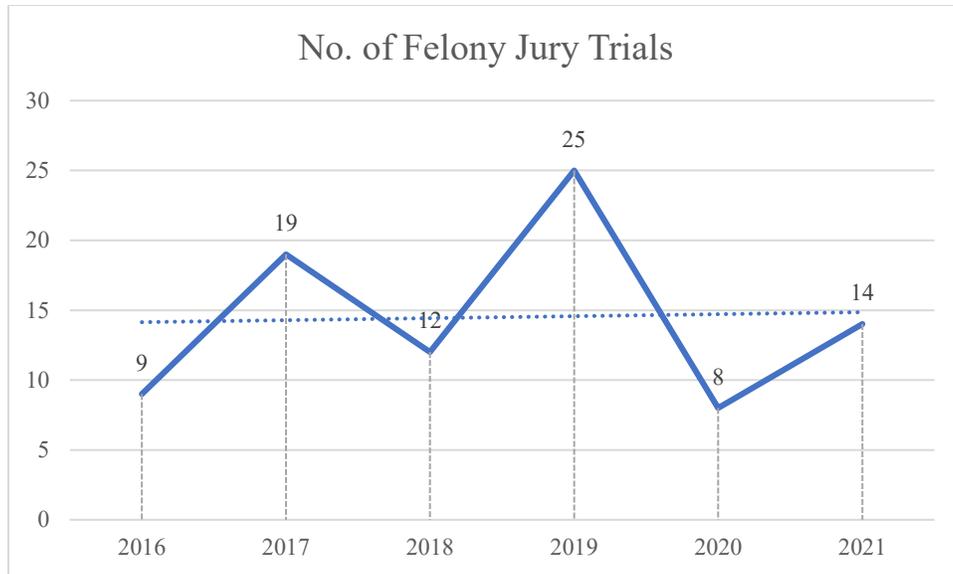
¹⁶ The 2020 average was skewed somewhat by one ruling which took only eight days to issue. Without that ruling, the average time from trial to judgment would be 4.2 months, making the 2021 average an even more significant decrease in wait time.



In 2021, fourteen felony cases proceeded to jury trial. Based on the five-year average felony filings of 491.2, this represents a trial rate of 2.85%. This represents an increase over the 1.63% trial rate in 2020, but it is much smaller than the 5.50% trial rate in 2019, where all three years are compared via the five-year average of 491.6 filings. The past several years can also be compared by taking the number of felony jury trials as a percent of the total cases filed each year. That comparison is included below:

Year	No. of Cases Filed	No. of Felony Jury Trials	Rate of Trials
2012	527	22	4.17%
2013	478	17	3.56%
2014	512	11	2.15%
2015	495	15	3.03%
2016	396	9	2.27%
2017	498	19	3.82%
2018	598	12	2.01%
2019	536	25	4.66%
2020	398	8	2.01%
2021	426	14	3.29%
Average	486.4	15.2	3.10%

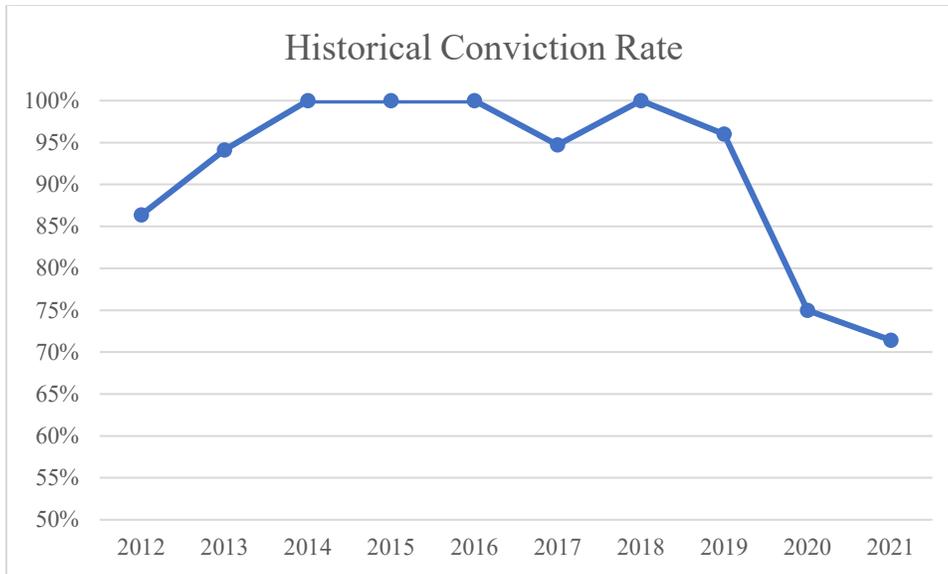
The trend for number of felony jury trials for the past several years is included below:



The government achieved **convictions in ten of the fourteen total felony jury trials**, which is a **71.43% conviction rate**. The defense prevailed in the other four trials, yielding a 28.57% success rate. There was also one case during which the judge declared a mistrial and that case is pending retrial; this case has been excluded from the calculations.

The 71.43% conviction rate in 2021 is the lowest conviction rate since the District began recording this data in 2012.¹⁷ Furthermore, the average conviction rate over that period is 91.76%, which is over 20% greater than 2021's conviction rate. The only year comparable to 2021's prosecution success rate was 2020, during which the government achieved a 75% conviction rate. The data for the past ten years' conviction rates is included below:

¹⁷ The District began compiling trial reports in 2003, but the reports only contained data for criminal trials until 2012.



The most severe sentence imposed was 180 months in a case for interference with commerce by threats and violence. The least severe sentence imposed was forty months for distribution of Fentanyl. The average sentence was 106 months.

The felony prosecutions in 2021 are reported below:

Judge	Crime Charged	Verdict	Sentence (Mos.)
CMA	Distribution of Fentanyl Resulting in Death	Prosecution	40
CMA	Possession of a Firearm by a Felon, Possession with Intent to Distribute Methamphetamine	Prosecution	120
DDD	Distribution of and Possession with Intent to Distribute 50 Grams or More of Methamphetamine (Actual), a Schedule II Controlled Substance	Prosecution	144
RBJ	Interference with Commerce by Threats or Violence	Prosecution	180
RBJ	Bank Robbery	Defense	
REB	Unlawful Possession of A Firearm By a Felon	Defense	
REB	Possession with Intent to Distribute a Controlled Substance	Prosecution	120
REB	Assault Resulting in Serious Bodily Injury in Indian Country, Assault with a Dangerous Weapon in Indian Country	Prosecution	78
RM	Growing, Possessing, and Intending to Distribute Marijuana	Prosecution	120
RM	Unlawful Possession of A Firearm by a Felon	Defense	
RM	Carjacking and Possession of A Firearm by a Felon	Prosecution	120
RMR	Possession of Ammunition by a Convicted Felon	Prosecution	87
WJM	Possession of a Firearm by a Felon, Possession with Intent to Distribute Methamphetamine, and Possession of a Firearm in Furtherance of a Drug Trafficking Crime	Prosecution	120

WJM	Possession with Intent to Distribute Methamphetamine and Cocaine	Defense	
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Collectively, fifty-six days were spent trying these fourteen criminal jury cases, for an average of four days per trial. The longest criminal jury trial lasted ten days, and the shortest trial lasted two days. The most common trial length was four days with five occurrences.

The average time from a defendant’s initial appearance to trial in 2021 was 21.80 months. This is substantially longer than the average of ten months in 2020 and 10.8 months in 2019.

The longest time from initial appearance to trial was 41.83 months in an interference with commerce by threats and violence case. The shortest time from initial appearance to trial was 14.42 months in a case for possession of ammunition by a convicted felon. Ten of the fourteen trials occurred in under two years from initial appearances.

V. CRIMINAL BENCH TRIALS

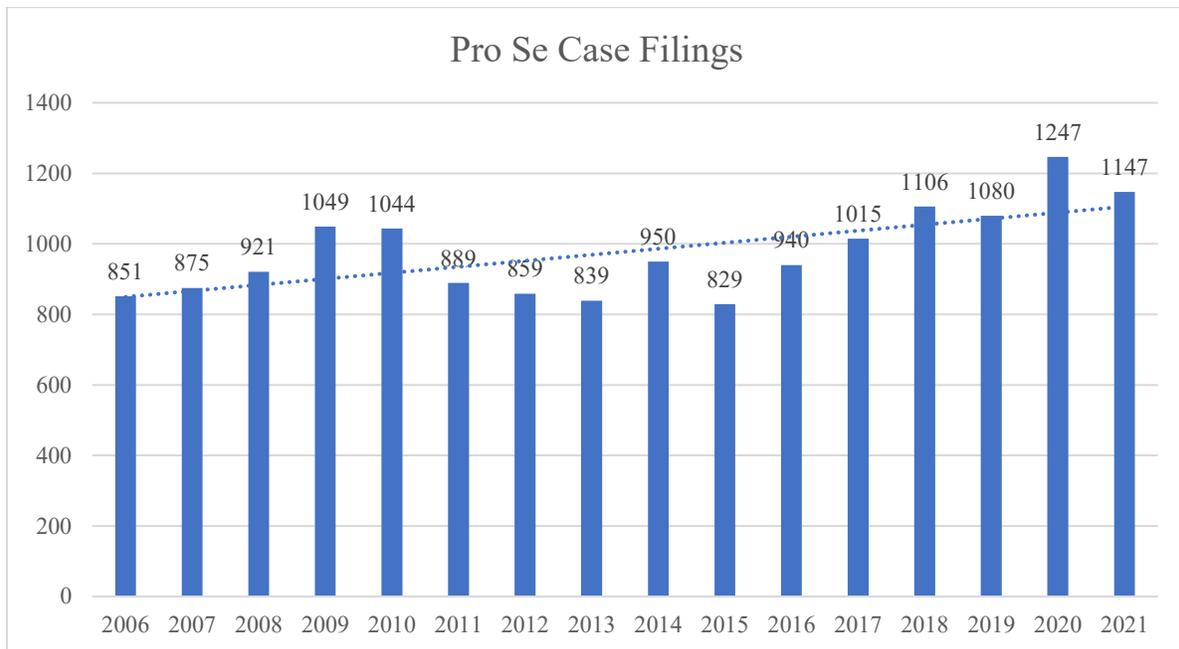
The District saw two felony bench trials in 2021. The government achieved a conviction in one case for possession of a firearm and ammunition by a prohibited person. The defense won the other case, which was for assaulting, resisting, and impeding a federal employee. The cases took 16.77 months and 17.03 months from initial appearances to trial and one and two days to try, respectively. For the convicted defendant, the judgment was issued 3.23 months after the completion of trial, and the defendant was sentenced to thirty-seven months.

Historically, there have only been nine felony bench trials in the District since 2012. The government achieved convictions in seven, or 77.78%, of those cases. Thus, the 50% felony bench trial conviction rate in 2021 is significantly lower than the average conviction rates in the District. This discrepancy, however, is somewhat misleading, as the small sample size of felony bench trials skews the reliability of the data.

There was one misdemeanor bench trial in 2021. The government achieved a conviction. The defendant was charged with operation of a snowmobile off a designated road. The defendant was sentenced to pay a \$10,020 fine. That case took 10.67 months to reach trial and took one day to try.

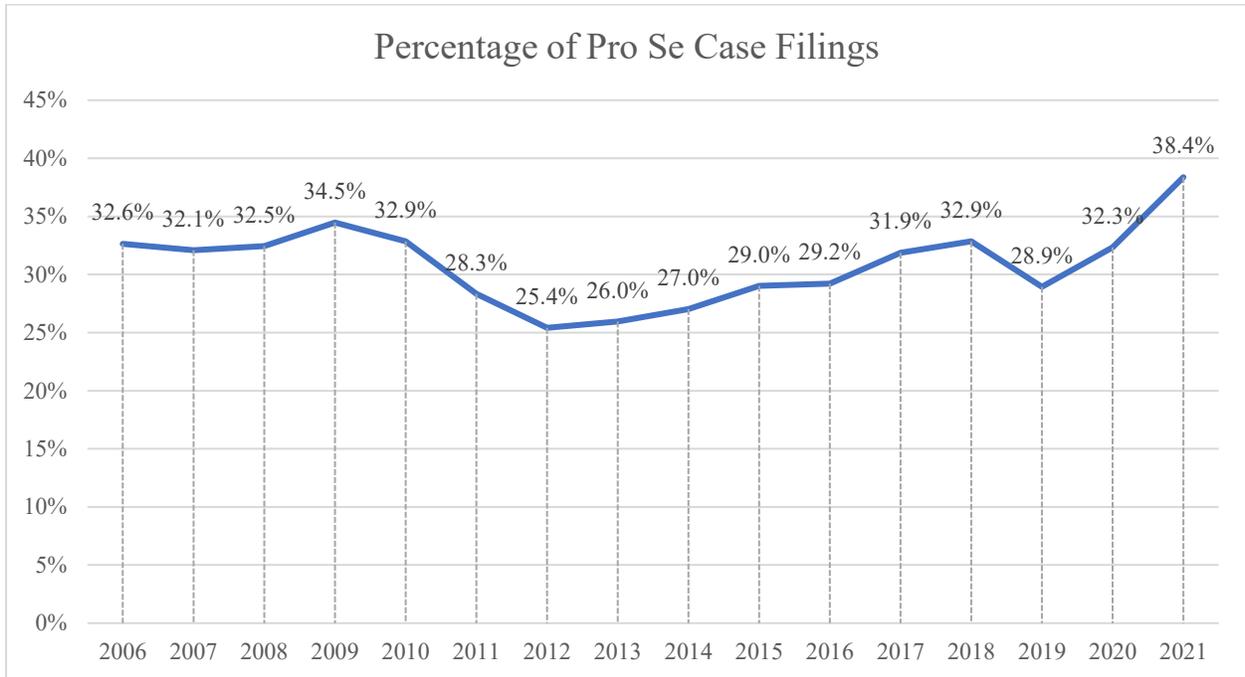
VI. PRO SE

There were 1,147 cases filed by pro se litigants in 2021. This is a slight decrease from the 1,247 pro se cases filed in 2020. Over the past sixteen years, a total of 15,641 cases have been filed by pro se litigants for an average of 977.56 cases per year. The number of pro se cases filed each year is outlined in the chart below:



Since 2012, pro se filings have accounted for, on average, 30.87% of total civil filings. This year, pro se filings accounted for 38.4% of total filings. This marks the largest percentage of pro se filings since the District began collecting this data in 2006. The next closest year on record was

34.5% of total filings in 2009. The trend in pro se filings as a percent of total civil filings is illustrated below:



In 2021, two of the thirty-five total civil trials were originally filed by pro se litigants. There was also a third civil trial conducted which was originally filed by a pro se litigant, but that case settled after the trial before the judgment was entered and has therefore been excluded from the calculations. One of the claims was for Title IX discrimination, and the other was for breach of contract. Both cases were tried to the bench, and the defendant prevailed in both trials. In neither of the pro se cases was pro bono counsel appointed.

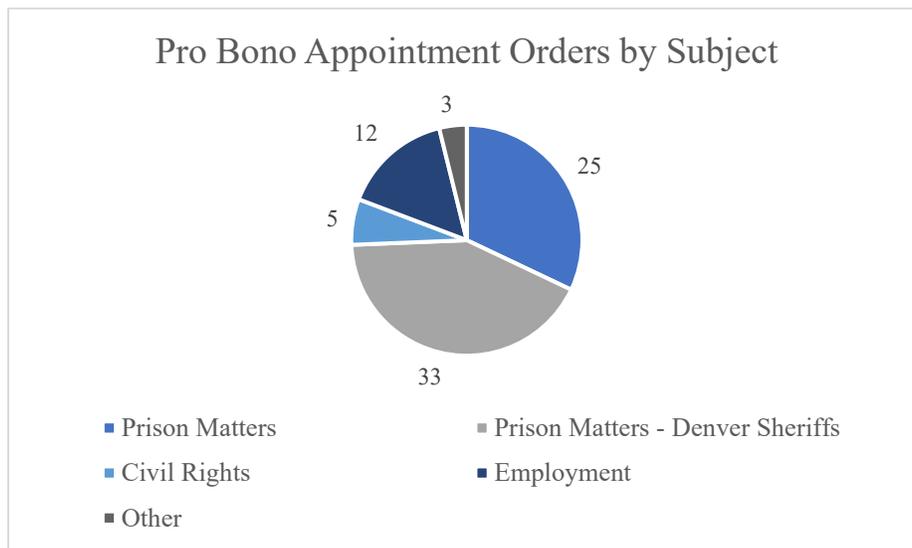
VII. PRO BONO

To ensure litigants have access to the court, regardless of financial means, in 2013 the District began the Civil Pro Bono Panel program. The program helps appoint pro bono representation to litigants of limited means, as well as to assist pro se litigants in more technical

aspects of litigation. For more information and statistics regarding the program, review the [Civil Pro Bono Panel Annual Report](#).

In 2021, there were no civil trials involving pro bono counsel.

The District entered seventy-eight pro bono appointment orders in 2021. In forty-nine of those cases, counsel was successfully placed, yielding a pro bono placement rate of 63%. Since 2013, 443 pro bono appointment orders have been entered, with 302 successful placements, yielding a 68% placement rate. The pro bono appointment orders by subject for 2021 are illustrated below:



Of the seventy-eight appointment orders issued, forty-nine successful appointments were made. Those appointments by subject are illustrated below:



VIII. SOCIAL SECURITY CASES

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

In 2021, plaintiffs filed one hundred sixty-five Social Security appeals. Of those, sixty-five are still pending judgment, twelve have been decided, sixty-two were voluntarily remanded at the request of the Social Security Administration, nineteen were dismissed for failure to prosecute or other reasons, six were duplicate filings and were closed immediately, and one was transferred. Plaintiff prevailed in three of the twelve decided cases. Of the twelve decided cases, four were assigned to District Judges, and eight to Magistrate Judges. The average time from filing to decision was about fourteen months.

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

Because so few 2021 Social Security cases have reached final decision, the sample size is not large enough to be representative of trends in the District. By considering cases filed in 2020, one can view a more accurate summary of Social Security trends. Two hundred thirty-nine SSA cases were filed in 2020, significantly more than 2021. Of the cases filed in 2020, 107 have reached verdict. Of those, plaintiffs prevailed in thirty-nine and defendant Social Security Administration in sixty-eight. The average duration between the filing and judgment for these cases was about fifteen months, with the shortest time being only 8.9 months and the longest being twenty-six months. Sixty-three of the decided cases were assigned to District Judges, and those cases took an average of 16.4 months to reach judgment. The other forty-four decided cases were drawn to Magistrate Judges, and those cases took on average 16.2 months to reach verdict. Additionally, there are still thirteen cases from 2020 to be decided, and the oldest of these cases has now been pending for forty-nine months. Eighty-nine 2020 cases were voluntarily remanded by the SSA, fifteen were dismissed for failure to prosecute or other reasons, seven filings happened to be duplicate filings and thus were closed immediately, and plaintiffs voluntarily dismissed eight others.

The estimated time from filing to decision is somewhat understated, because the thirteen 2020 cases yet to be decided will obviously make that average longer since they are older already. The same will probably be true for the sixty-five pending 2021 cases. It is safe to say that in the majority of cases, a decision will take around fifteen-sixteen months, sometimes longer, sometimes shorter, and in a clear minority of cases, it will take twenty-four to thirty months from filing to decision.

Coincidentally, when I was with the U.S. Attorney's Office, I supervised the handling of Social Security cases. Although voluntary remand occurred back then (I left in 2006), it is clear

the Social Security Administration makes far more liberal use of a motion to voluntarily remand a case now than it did then. Thus, although in 2020-21 the SSA prevailed in seventy-seven of 119 cases in which decisions have been rendered, a 65% success rate, by proactively remanding cases in which perhaps a likely reversal would have occurred, and by including those voluntary remands as plaintiffs' victories, plaintiffs achieved a reversal or voluntary remand in about 71% of the cases which did not involve dismissals or closures.

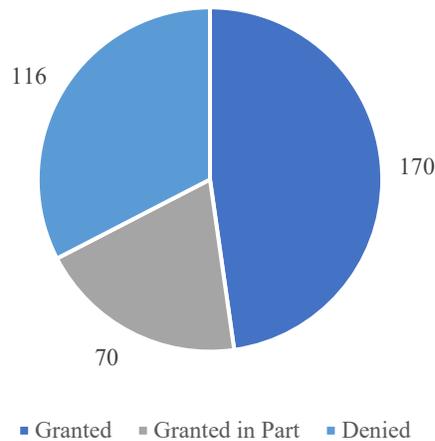
IX. SUMMARY JUDGMENT ORDERS

For the first time since the District began recording these statistics, we are presenting data for summary judgment orders. During 2021, litigants filed 502 motions for summary judgment, of which 335 have been terminated. Of those, 243 motions were decided based on the merits of the motion, and the other ninety-two were dismissed for other reasons, usually due to the parties reaching a settlement agreement.

Between January of 2021 and July of 2022, the District issued 356 orders on motions for summary judgment based on the merits of each motion.¹⁸ Of those, judges granted 170 motions (47.8%), granted in part seventy motions (19.7%), and denied 116 motions (32.6%). The data for summary judgment orders entered during this period is included below:

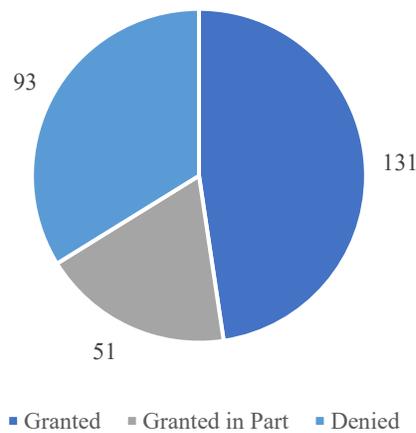
¹⁸ In pursuit of greater statistical accuracy, this section analyzes data for every summary judgment order between January of 2021 and July of 2022. The results of this analysis, therefore, are broader than only 2021 decisions but also, therefore, more applicable.

Summary Judgment Orders Jan 2021 - July 2022

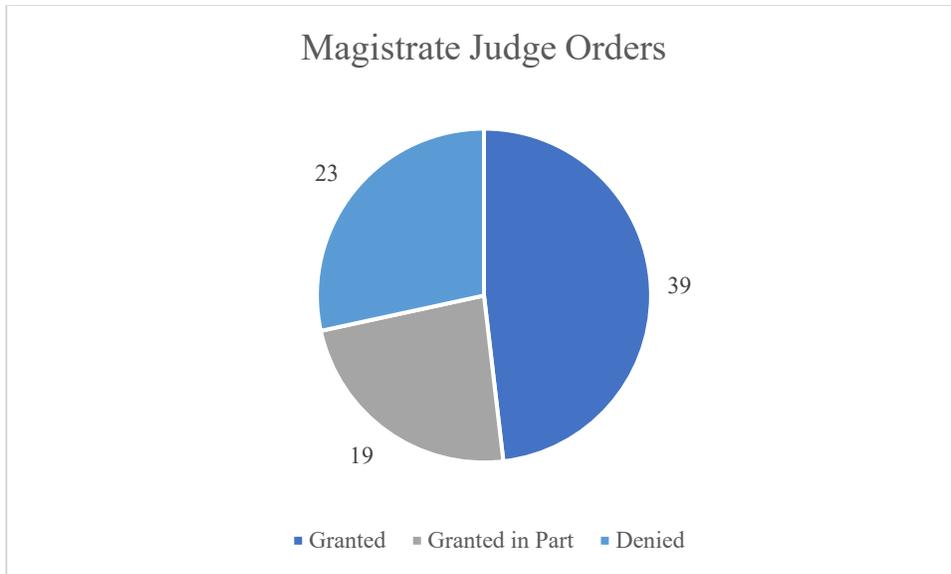


District Judges entered 275 of the 356 summary judgment orders. Of those, 131 were granted (47.6%), fifty-one were granted in part (18.5%), and ninety-three were denied (33.8%). The breakdown of the District Judges' rulings is included below:

District Judge Orders



The other eighty-one summary judgment orders were entered by Magistrate Judges. Of those, thirty-nine were granted (48.1%), nineteen were granted in part (23.5%), and twenty-three were denied (28.4%). The breakdown of Magistrate Judge rulings is illustrated below:



For the 2021 orders, the average wait between the time the motion for summary judgment was filed and the time a judge entered an order on that motion was 7.81 months. Interestingly, the average wait differed slightly based on the ruling entered. For motions which were granted, the average wait was 8.01 months; for motions granted in part, the average wait was 7.48 months; and for motions denied, the average was 7.81 months. For District Judges, the average wait was 7.79 months, and for Magistrate Judges the average wait was 7.87 months. Of course, these wait times may be slightly skewed because 167 of the 502 summary judgments filed during 2021 have not yet been decided.

X. CONSENT

In February 2014, the District initiated a Pilot Project on Consent, utilizing the full-time Magistrate Judges in the drawing of civil lawsuits. Under this project and the subsequent Local Rule arising therefrom, the Magistrate Judges are given an equal draw of civil cases with the active District Judges. Of course, to keep the drawn Magistrate Judge as the presiding judicial officer, the parties must unanimously consent (by filing the appropriate consent form). If they do not, the

case is drawn to a District Judge, and the previously assigned Magistrate Judge stays on the case as well in a referral role. Additionally, under 28 U.S.C. § 636(c), parties have long had the ability to choose “traditional consent,” *i.e.*, when a case is drawn to a District Judge, the parties may consent to a Magistrate Judge instead. For either “traditional consent” or those cases drawn directly to a Magistrate Judge, if consent is accomplished, there will be only one judicial officer on the case (except when the parties seek, and are granted, a judicially conducted settlement conference or early neutral evaluation).

Although mathematically the introduction of direct draw to Magistrate Judges has, in absolute terms, reduced the number of civil cases that a District Judge carries, their workload has increased despite consent. Comparing the workload of the judges of the District, and the change in civil caseload over time, in 2013, the active District Judges in Colorado had an average of 224 civil cases pending. However, the active District Judges had 287 civil cases pending at the end of 2021, compared to 304 at the end of 2020 (up from 238 in December 2019). This is a three-year average of 276 cases, a 23.3 percent increase over the 2013 figure. Further, in December 2021, Magistrate Judges were the presiding judicial officer (on consent) in 901 civil cases, down from 930 pending cases in 2020 but up from 865 in 2019. This resulted in an average of 101 civil consent cases per full-time Magistrate Judge.

As the District Judges’ caseload increases, so do the cases referred to Magistrate Judges. At the end of 2021, Magistrate Judges were the referral judges for 1770 civil cases, up from 1670 cases in 2020 and 1539 in 2019, a steady and significant increase. For 2021, the consent and referral cases assigned to the Magistrate Judges equated to a per judge civil caseload of about 345 cases. For many if not most of these referred civil cases, the Magistrate Judges handle most or all pretrial matters (scheduling, discovery disputes, settlement conferences, dispositive motions for

report and recommendation, final pretrial conferences, and even pretrial evidentiary and Rule 702 motions). The bottom line for practitioners is that *all* judges in the District of Colorado are busy (a truth borne out in national statistics, showing our District to be one of the busiest in the nation), and the steady diet of criminal cases on a District Judge's docket (with the concomitant Speedy Trial and motions practice burdens) make it only worse.

Regarding the efficacy of the direct draw program, from February 2014 through December 2021, Magistrate Judges received collectively 7128 cases in ninety-five months under the direct assignment of cases. Of the total 3,507 civil cases filed in the District in 2021, 1219 (34.8%) were directly drawn to Magistrate Judges. On average since 2014, 1,043 cases annually have been drawn directly to Magistrate Judges. Many cases never have a consent decision made because they are (1) dismissed voluntarily before the time for consent arrives, (2) reassigned randomly because the assigned Magistrate Judge has a conflict, (3) reassigned to a District Judge because of an early dispositive issue (*e.g.*, temporary restraining order, motion to remand to state court, default, etc.) before consent has been accomplished, or other reasons, and, thus, must be handled by an Article III judge, and other causes. However, an average of around 290-300 cases per year have consent accomplished.

In 2014, the then-novel "direct draw" of a Magistrate Judge in a civil case resulted in a nearly 50% rate of consent (*i.e.*, 50% of the time the parties consented, 50% did not consent). That percentage went down to approximately 40% in 2014 and has bumped around between 29% and 30% since then. In 2021, parties consented to directly drawn Magistrate Judges in 391 of the 1,234 cases for which these decisions were made, thus yielding a **27% rate of consent**, which is the

lowest rate since the District began reporting this data in 2014.¹⁹ Additionally, traditional consent was accomplished in sixty of the 2021 cases. Given the 391 direct consents and the sixty traditional consents, the consent to Magistrate Judges during 2021 rises to 30%. Finally, Magistrate Judges were consented to during the preliminary steps of thirty-three administrative cases. In an administrative case, which is usually a Social Security case, parties may consent to the jurisdiction of a Magistrate Judge before their case is drawn to a particular Magistrate Judge. Thus, in these cases, parties consent without knowing to which Magistrate Judge they will be assigned. When administrative case consents are included in total consents, the total for 2021 rises to 32%, which is still lower than the District’s all-time average, but not substantially so. Consent decisions since 2014 are illustrated below²⁰:

YEAR	CONSENT DECISIONS	ACHIEVED	DECLINED	SUCCESS RATE
2014	556	222	334	39.9%
2015	552	272	278	49.3%
2016	619	261	360	42.2%
2017	876	253	623	28.9%
2018	758	231	527	30.5%
2019	946	342	604	36.2%
2020		361		N/A
2021	1240	397	843	31.7%

¹⁹ In 2021, the District also saw 288 direct draw cases in which no consent decision was made for any of the various reasons already discussed. These cases have been excluded from the calculations, as they do not reflect party consent decisions.

²⁰ In 2020, the Clerk’s Office changed the manner in which consent was calculated, making it difficult to determine absent looking at the docket sheet for all 3500 cases filed in a given year. This extensive review was performed for 2021, thus this year’s statistics are likely the most accurate to date. Such a review was not performed for 2020 and, although that data is unavailable, an informed estimate would be about the same as for 2021.

XI. ALTERNATIVE DISPUTE RESOLUTION

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

The number of settlement conferences held has been trending downwards since the District began recording this data in 2012. In 2021, judges held only seventy-seven settlement conferences, which marks the lowest total over that period. As of June 2022, however, the District has held sixty-seven settlement conferences, which puts it on track for the most settlement conferences since 2012.

Since 2012, the District has experienced the following ADR activity:

2012:	166 settlement conferences	18 ENEs
2013:	116 settlement conferences	15 ENEs
2014:	122 settlement conferences	8 ENEs
2015:	79 settlement conferences	15 ENEs
2016:	114 settlement conferences	8 ENEs
2017:	115 settlement conferences	2 ENEs
2018:	103 settlement conferences	1 ENE
2019:	129 settlement conferences	None known
2020:	98 settlement conferences	None known
2021:	77 settlement conferences	None known

Totals: 1176 settlement conferences (117.6/year) 67(+) ENEs (6.7/year)

The ENE is a virtually extinct (and unknown) procedure. In fact, as of January 2018, the Clerk's Office of the District of Colorado ceased monthly reporting on ENEs. In 2019, the process appears to have gone out of use entirely. There may be an occasional ENE in the District (perhaps among practitioners from other districts who find the procedure efficacious).

XII. YOUR DISTRICT OF COLORADO TRIAL BENCH

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

Once a District Judge achieves the "Rule of 80" (age plus years on the Article III bench, with a minimum age of sixty-five and minimum ten years on the bench required), he or she may elect (but is not required) to move to senior status, which opens up an active spot for appointment by the President. A senior District Judge may continue to carry a full caseload or a reduced caseload (usually a set percentage compared with an active District Judge caseload, perhaps sixty percent, fifty percent, etc.). Senior District Judges may carry a different percentage of a civil versus criminal caseload, or they may carry no criminal caseload at all (the converse rarely happens, *i.e.*, a criminal but no civil caseload). The level of the case load determines how many chambers staff the senior District Judge is permitted. A senior District Judge may also exercise his or her prerogative to decline any particular case when it is assigned. In our District a senior District Judge is typically

designated to supervise (prior to ultimate assignment to a presiding judge) a particular area of the Court's business, such as the administrative appeal docket, wiretaps, pro se cases, etc.

According to the Administrative Office of the United States Court's website, nationwide senior District Judges handle about twenty percent of the total district caseload. In this District, I believe that percentage has historically been higher. Obviously, an active senior District Judge bench is an incredible benefit to a District.

In our District, your **senior District Judges** and the dates of their appointment are:

John L. Kane (1978)
Lewis T. Babcock (1988)
Robert E. Blackburn (2002)
Marcia S. Krieger (2002)
R. Brooke Jackson (2011)
Christine M. Arguello (2008)

Your **active District Judges** are:

Philip A. Brimmer (2008) (Chief Judge)
William J. Martinez (2011)
Raymond P. Moore (2013)
Daniel D. Domenico (2019)
Regina M. Rodriguez (2021)
Charlotte N. Sweeney (2022)
Nina Y. Wang (2022)

Magistrate Judges are judicial officers of the District Court appointed by the District Judges of the Court to handle a variety of judicial proceedings. They serve eight-year terms. They have authority to issue warrants, conduct preliminary proceedings in criminal cases, such as initial appearances and arraignments, and hear cases involving petty offenses committed on federal lands. In most districts, Magistrate Judges handle pretrial motions and hearings in civil and criminal cases. They also handle civil settlement conferences. While most civil cases are tried by District Judges, Magistrate Judges may also preside over civil trials if all parties consent. There is no such thing as "senior status" for a Magistrate Judge – they are either full-time or part-time. Colorado is

a unique district in that it has two part-time Magistrate Judges (Durango and Grand Junction). Six full-time Magistrate Judge positions are allotted to Denver and one to Colorado Springs. There is currently a Denver vacancy.

In our District, your **full-time Magistrate Judges** and the dates of their appointment are:

Michael E. Hegarty (2006)
Kristen L. Mix (2007)
Scott T. Varholak (2016)
S. Kato Crews (2018)
N. Reid Neureiter (2018)
Maritza Dominguez Braswell (2022) (Colorado Springs)

Your **part-time Magistrate Judges** are:

Gordon P. Gallagher (2012) (Grand Junction)
James M. Candelaria (2019) (Durango)

XIII. BANKRUPTCY

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

Chief Judge Kimberley H. Tyson (2017)
Elizabeth E. Brown (2001)
Michael E. Romero (2003)
Thomas B. McNamara (2015)
Cathleen D. Parker (2015) (Wyoming & Colorado)
Joseph G. Rosania, Jr. (2016)

These judges are appointed by the Tenth Circuit Court of Appeals and serve fourteen-year terms.

In 2021, the District saw 5043 Chapter 7 filings, sixty-seven Chapter 11, 1168 Chapter 13, and five other filings for a total of 6283 cases. That year saw the continuation of a decades-long decline in bankruptcy cases in this District (and, I suspect, nationwide). In **2010 there were 32,539**

cases, equating to an **80.6% decrease in case load** in just over a decade. The change has been consistent and uninterrupted:

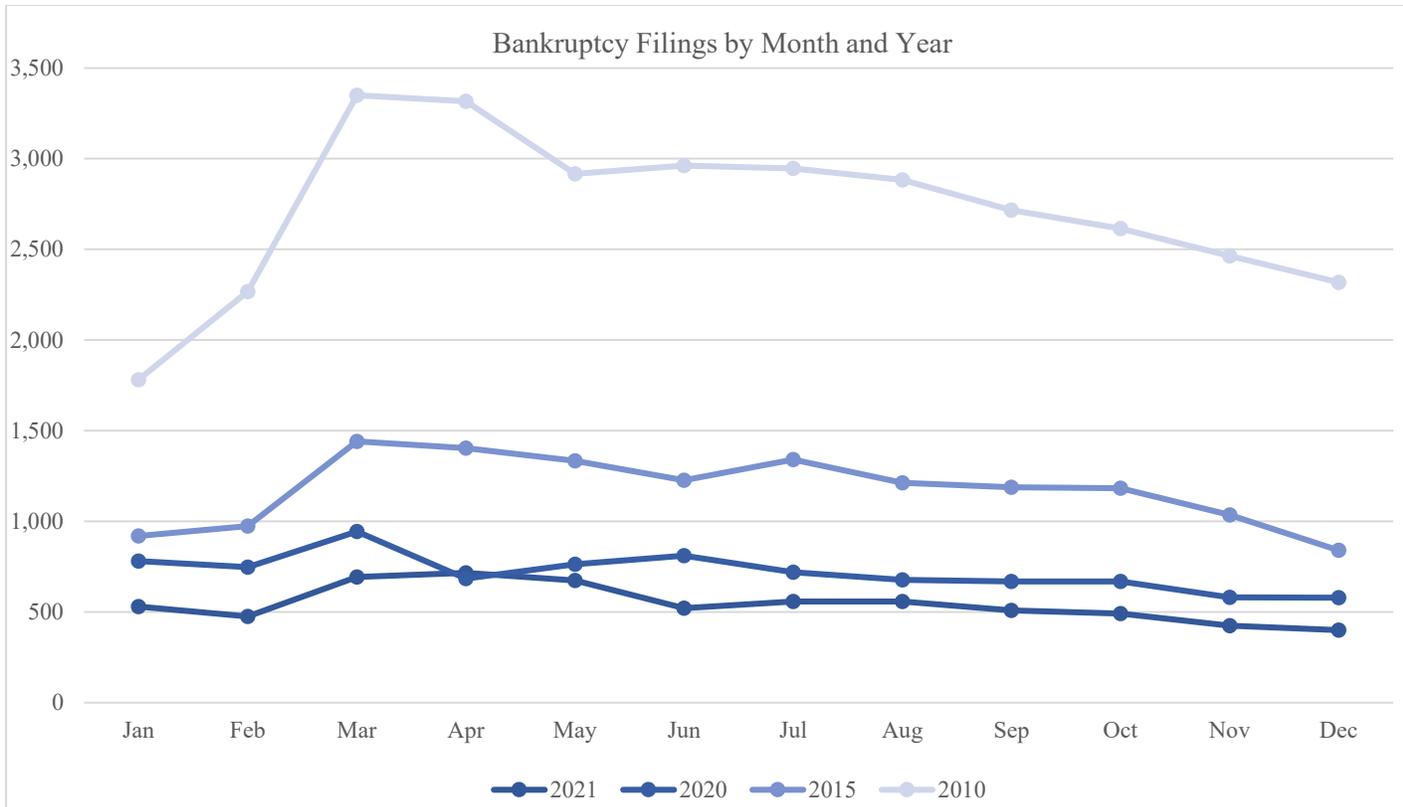
2010	32,539
2011	30,058
2012	26,115
2013	21,148
2014	17,134
2015	14,101
2016	12,537
2017	11,753
2018	11,177
2019	11,039
2020	8,278
2021	6,283

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

The following data is accurate as of September 2022 and subject to minor fluctuation due to re-openings, chapter conversions, reassignments, and the natural flow of cases.

A. Filings & Workload

Bankruptcy filings in 2021 decreased 80.5% as compared the Court's filing peak in 2010.



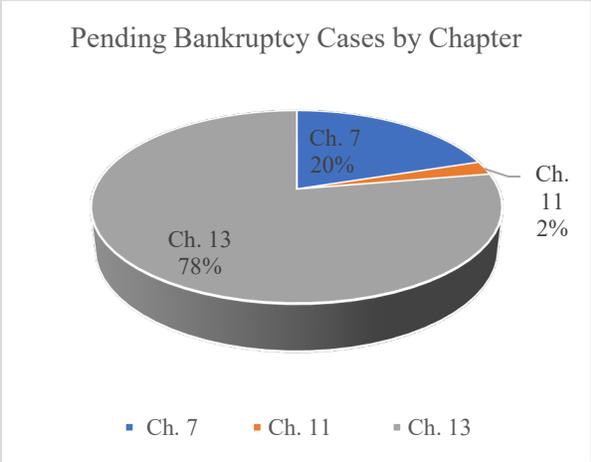
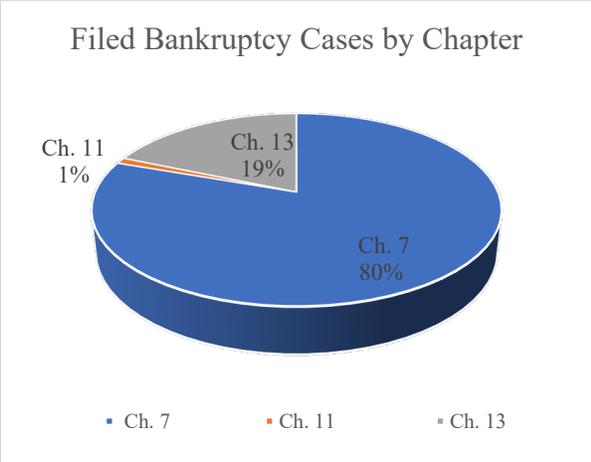
Workload, defined as cases, documents, and docket entries per case administrator, has decreased accordingly. Even with ongoing staffing reductions, employees performed less work per case than they ever have before.

Year	2010	2015	2016	2017	2018	2019	2020	2021
Cases (Bk., Adv., Misc.)	33,56	14,62	13,10	12,36	11,61	11,46	8,625	6,550
Case Administrators (“CA”)	25	25	25	20	20	20	19	17
Cases Per CA	1,342.4	585.2	524.0	618.3	580.8	573.0	479.2	385.3

	37,31	20,69	19,44	23,22	21,27	20,14	16,815.	15,399.
Documents per CA	4	7	1	0	0	3	0	8
	63,57	30,47	27,49	32,39	27,62	26,02	21,409.	19,451.
Entries per CA	2	7	8	9	5	9	2	2

B. Case Filings and Pending Cases by Chapter

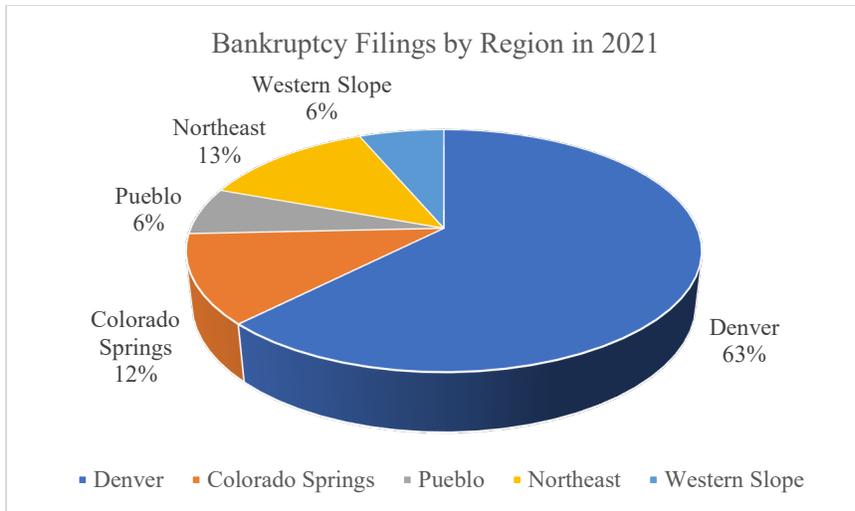
Chapter 7 filings comprised 80% of the Court’s 2021 bankruptcy filings, but only 20% of the Court’s pending bankruptcy caseload.



C. Case Filings by Region

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

Denver region debtors were responsible for 63% of the District’s new bankruptcy case filings in 2021. The other regions accounted for the remaining 37%.



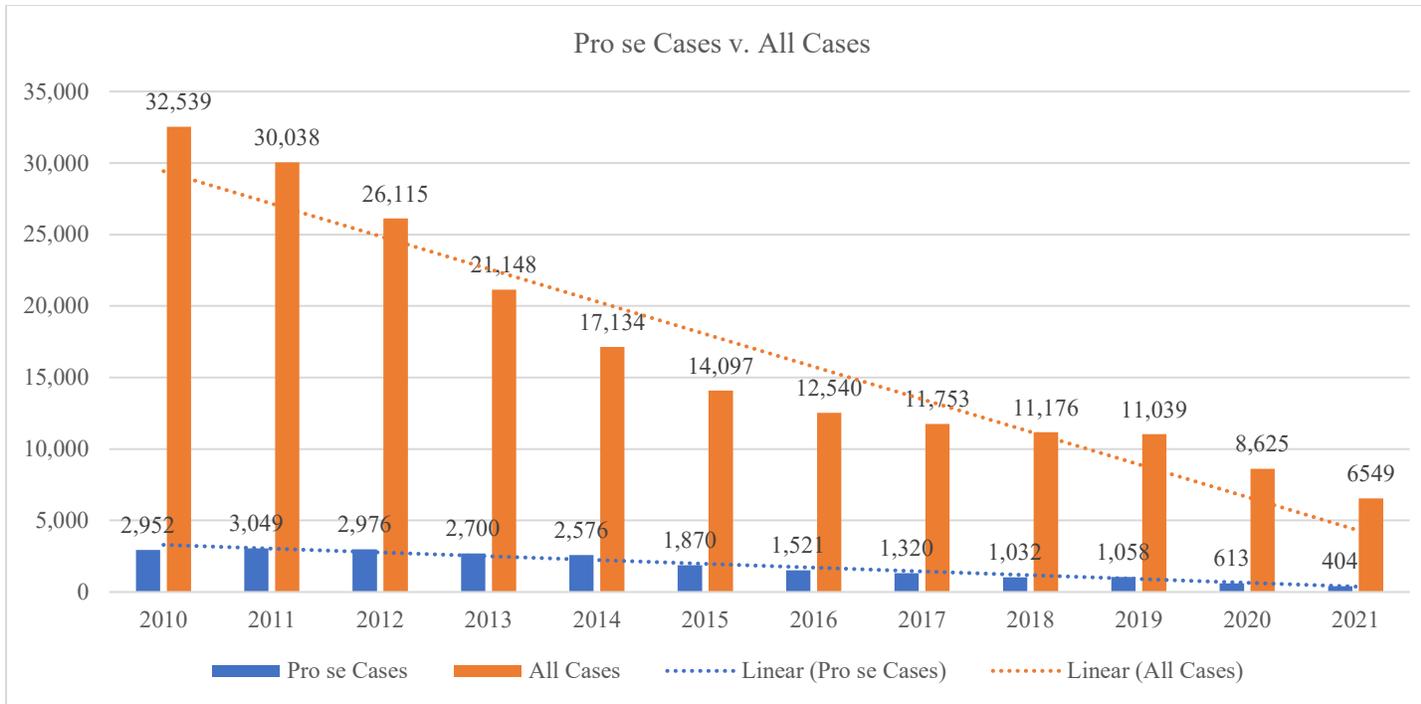
D. Case Dispositions by Chapter

In 2021, the Court disposed of about 8,800 cases. Just over 88% of these dispositions followed discharge orders, while approximately 10% were dismissed. Chapter 7 cases, chapter 13 cases, and adversary proceedings had the highest rates of dismissal in 2021. As of June 30, 2021, the median disposition time for chapter 7 cases was 4.6 months, and the median disposition time for chapter 13 cases was 44.8 months. These figures include all dispositions, discharges, and dismissals.

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

E. Pro Se Participation

The Court’s pro se filing average since 2010 is 10.6%. In 2020, the pro se filing rate decreased to 6.17%.



IV. THE FINAL WORD - APPEALS

Again for the first time, this report will contain a few words about what happens when your case is finished in the District Court. With the assistance of the able staff of the Circuit, I present this summary.

Because information concerning the District goes back to 2002, it was logical to fold in some appeal information dating to that year. In that twenty-year period, there has been an annual average of 491.5 appeals (all matters, including criminal, civil, prisoner petitions, etc.) from the District of Colorado to the Tenth Circuit. What is interesting is that from 2002-2011, the annual average was 523, while in the past ten years, it has been 460, a double digit (12%) decrease. The civil appeal portion of these numbers for 2002-2011 was an annual average of 428 appeals, while 2012-2021 was an average of 378 appeals, also an approximate 12% decrease. In 2021 there were

368 civil appeals (including original proceedings, which are relatively few). Given the total number of cases filed year in and year out, there is statistically a 10-11% probability that a civil case ends in an appeal.

Also fascinating is that the Tenth Circuit is the third least-busy Circuit, ahead of only the District of Columbia and the First Circuit. Indeed, our Circuit sees anywhere from about 60% (Third, Seventh, Eighth) to around 40% (Second, Fourth, Sixth, Eleventh) to 25% (Fifth) to an incredible 15% (Ninth) of the appellate work of sister Circuits. In 2021, the District of Colorado had 430 appellate matters docketed from the District of Colorado.

The Circuit-wide affirmance rate in the Tenth Circuit for general civil cases was 92.4%, while nationally, for all Circuits, it was 87.4%. The Tenth Circuit's data does not parse out civil versus criminal affirmance rates for our District. For the past twenty years, the overall **affirmance rate** for District of Colorado cases was **81%**.

For 2021, the time on appeal in the Tenth Circuit (Circuit-wide, not limited to the District of Colorado), from **filing of the notice of appeal** to the **last appellate opinion or final order**, was **10.1 months**, while the average time from **filing in the District Court** to **last appellate opinion** or final order was **31.1 months**. I would think this is very useful information for a client. Of course, these times are shorter than what we would expect for a typical civil case, because the appellate statistics lump all civil and criminal appeals and prisoner petitions together in getting these time frames. And, indeed, for prisoner petitions, and the time from petition to final order for those was 7.3 months; for criminal appeals it was 11.1 months; and for civil cases, it was 11.3 months.