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An Analysis of Civil Case Data  
Collected from  
September 1997 - May 1999  
February 2000

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alaska judicial council

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September 1997 - May 1999***

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# Introduction

In 1997, responding to public interest in tort reform and the work of the Governor's Commission on Civil Justice, the legislature passed tort reform legislation. One relatively minor part of the legislation required that the Alaska Judicial Council report on closed civil cases, using data from forms filled in by attorneys and parties in the cases. This report summarizes the findings from the data reported to the Council through May 31, 1999, and makes recommendations for future data collection and use to improve the information available to the legislature and public.

## Chapter I Background of Report

The 1997 broad tort reform legislation that required the Alaska Judicial Council to collect data about civil cases was intended to give the legislature and the public information about the civil case process. This report presents the data collected by the Council from September 1997 through May 31, 1999.

This introductory chapter presents background on the civil case data project, and discusses limitations of the data. Chapter II presents the data for most civil cases, excluding administrative appeals, forcible entry and detainer (FED) actions, and driving while intoxicated (DWI) vehicle forfeiture actions. Data on these three excluded case types are presented in Chapter III. Chapter IV presents the Council's conclusions, both on the data and on how the data collection process can be improved.

The report has three appendices. The first is the Council's data collection form used to capture the data for this report, and the second is the Council's revised form that has been in use from June 1999. The third appendix is the statutory amendment passed by the legislature in 1999 that changed the data collection process.

### A. Purpose of legislation

The Alaska Legislature adopted "tort reform" legislation in 1997 that addressed a broad range of issues concerning civil cases.<sup>1</sup> One relatively minor part of the legislation required the Alaska Judicial

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<sup>1</sup> Ch. 26, SLA 1997. See Appendix C.

Council to collect very specific information concerning the resolution of civil cases.<sup>2</sup> A.S. 09.68.130 provided:

**Sec. 09.68.130 Collection of settlement information.** (a) Except as provided in (c) of this section, the Alaska Judicial Council shall collect and evaluate information relating to the compromise or other resolution of all civil litigation. The information shall be collected on a form developed by the council for that purpose and must include:

- (1) the case name and file number;
- (2) a general description of the claims being settled;
- (3) if the case is resolved by way of settlement,
  - (A) the gross dollar amount of the settlement;
  - (B) to whom the settlement was paid;
  - (C) the dollar amount of advanced costs and attorney fees that were deducted from the gross dollar amount.

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<sup>2</sup> Ch. 26, Section 32, SLA 1997. Another section of the legislation required the Council to work with the Court System to develop alternative dispute resolution proposals. The December 1997 report, *Report to the Alaska Legislature: Alternative Dispute Resolution in the Alaska Court System* that fulfilled this requirement is available from the Council and at <http://ajc.state.ak.us/Reports/adrframe.htm>.

The legislation also amended Alaska Civil Rule 41(a)<sup>3</sup> and Alaska Appellate Rule 511<sup>4</sup> to require the submission of the civil case data when cases were dismissed pursuant to these rules. The Alaska Supreme Court subsequently amended these court rules to reflect these additions. The Court also added language concerning the effective date of the legislation that limited the reporting requirement to cases accruing on or after the legislation's effective date of August 7, 1997.<sup>5</sup>

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<sup>3</sup> Ch. 26, Section 41, SLA 1997 added a new subparagraph to Civil Rule 41(a) to provide:

(3) Settlement Information. If a voluntary dismissal under this rule is the result of compromise or other settlement of the parties, the parties shall submit to the Alaska Judicial Council the information required under AS 09.68.130. A notice of dismissal made under (1)[a] of this subsection must be accompanied by a certification signed by or on behalf of the plaintiff that the information required under AS 09.68.130 has been submitted to the Alaska Judicial Council. A stipulation of dismissal made under (1)[b] of this subsection must be accompanied by a certification signed by or on behalf of all parties who have appeared in the action. The requirements of this paragraph do not apply to the types of cases listed in AS 09.68.130(c).

<sup>4</sup> Ch. 26, Section 46, SLA 1997 added a new paragraph to Appellate Rule 511 to provide:

(e) Settlement Information. If a dismissal under (a) or (b) of this rule is the result of compromise or other settlement between the parties, the parties shall submit to the Alaska Judicial Council the information required under AS 09.68.130. A dismissal by agreement under (a) of this rule must be accompanied by a certification signed by the attorneys of record for all parties that the information required under AS 09.68.130 has been submitted to the Alaska Judicial Council. A dismissal by the appellant or petitioner made under (b) of this rule must be accompanied by a certification signed by the appellant's or petitioner's attorney of record. The requirements of this subsection do not apply to the types of cases listed in AS 09.68.130(c).

<sup>5</sup> Civil Rule 41(a)(3) now provides:

(3) Information about the Resolution of Civil Cases. If an action is voluntarily dismissed under paragraph (a) of this rule, each party or, if a party is represented by an attorney, the party's attorney must submit the information described in AS 09.68.130(a) to the Alaska Judicial Council. The information must be submitted with 30 days after the case is finally resolved as to that party and on a form specified by the Alaska Judicial Council. The following types of cases are exempt from this requirement:

Appellate Rule 511(e) now provides:

(e) Information about the Resolution of Civil Cases. If a proceeding is dismissed under paragraph (a) or (b) of this rule, each party or, if a party is represented by an attorney, the party's attorney must submit the information described in AS 09.68.130(a) to the Alaska Judicial Council. The information must be submitted within 30 days after the proceeding is finally resolved as to that party and on a form specified by the Alaska Judicial Council. The following types

Based on the legislation, the Judicial Council designed and distributed a form to collect the civil case data. The form is attached as Appendix A. The Council received 2,034 of these forms between September 1997 and May 31, 1999. This data is discussed in Chapters II and III of this report.

## **B. Limitations of Data**

The data presented in this report is not comprehensive. Conclusions based on the data must be carefully considered in this context.

### **1. Civil Case Data Forms Had to Be Submitted in Too Many Cases**

After a preliminary analysis of the data from the first year and a half, the Judicial Council concluded that the list of excluded case types in AS 09.68.130(b) should encompass three additional types of civil cases: administrative appeals, forcible entry and detainer actions, and vehicle impound or forfeiture actions under municipal ordinance. The Legislature probably did not anticipate needing information about these cases when it passed the reporting requirement, and the information from those cases did not add appreciably to understanding the dynamics of civil litigation. Legislation passed in 1999 eliminated the need for parties to file forms in these cases. See Appendix C.<sup>6</sup>

This report summarizes the data collected for these three case types before the statutory change in Chapter III. Of the 1,685 total nonduplicated forms submitted to the Judicial Council, 67 (4%) involved administrative appeals, 598 (36%) involved vehicle impound or forfeiture actions under municipal ordinance, and 119 (7%) involved FED actions. Chapter III provides information for each of these types of cases.

### **2. Civil Case Forms Were Submitted in Only a Small Percentage of Cases**

A much more serious problem than having unnecessary data for some case types was the fact that the Council received civil case data forms in only a small percentage of civil cases. A total of 2,034 forms were submitted for 1,685 cases. However, the trial courts decided approximately 22,421 “other” civil cases (excluding domestic cases, children’s matters, probate and domestic violence) in the fiscal year of 1998, about half the total length of time during which forms were being submitted.

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of cases are exempt from this requirement:

<sup>6</sup>Two additional types of civil cases probably should be excluded: habeas corpus petitions under Civil Rule 86 and post-conviction relief applications under Criminal Rule 35.1. These actions are nominally civil (and are assigned a civil case number) but are in substance attacks on criminal convictions.

Thus, forms were submitted to the Council in only about 5% of the cases envisioned by the Legislature.

Further, while the Council received at least one form in 1,685 cases, the civil case data form was submitted by more than one party in only 349 (17%) of the 2,034 total cases. Thus, even with the small number of cases where the Council has data, the data usually comes only from one side in the litigation.

There are several reasons for this lack of data. First, the implementing statute's effective date inadvertently only required attorneys and litigants to submit data to the Council only in cases arising after August 7, 1997. This was the general implementation date for the tort reform statute. While tying the implementation date to the accrual date of civil actions made perfect sense for the 98% of the "tort reform" legislation that applied new rules and limitations to bringing and conducting civil cases, it meant that the Council would only slowly begin receiving data on civil cases. This limitation, however, has gradually assumed less significance now that it has been about two and one-half years since the 1997 effective date.<sup>7</sup>

Second, the original reporting requirement required the Judicial Council to collect civil case data upon the resolution of all civil cases except those subcategories specifically excluded. However, the legislation only imposed an affirmative obligation on attorneys and pro se litigants to submit the information on their resolved cases in a minority of cases.<sup>8</sup> Thus, the data received by the Council was limited even in those cases which had arisen after the statute's general effective date. The 1999 amendment has resolved this problem, at least for future reporting, by imposing an express duty on attorneys and unrepresented litigants to complete and submit the Council's civil case data form within 30 days of the resolution of all civil litigation not specifically excluded.

Third, at least some attorneys simply resisted filing the civil case data form with the Council because they believed it invaded their client's privacy, it was an unfair expense to impose on their clients, or for other reasons. Council staff talked to at least several attorneys who stated that they were considering challenging the reporting requirement in court, although none actually did, at least as far as the Council is aware. Council staff heard at least anecdotally that defense counsel have in some cases offered plaintiffs a premium in settlements not to submit data on the case to the Council. It is

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<sup>7</sup> The 1999 amendment was intended to apply the reporting requirement to all cases closed after the amendment's effective date. However, at least one attorney has argued persuasively that it did not successfully accomplish this result.

<sup>8</sup> 41(a)(3) was amended to require an attorney who was voluntarily dismissing a case to file the form. Appellate Rule 511(e) was amended to require attorneys to file the form when appellate cases were dismissed under Rule 511(a) or (b). However, these two situations represent only a small minority of civil cases.

difficult to assess the extent of this reluctance to file the form, particularly given the statutory problems discussed above. Chapter four of this report discusses steps the Council plans to take to address attorneys' concerns in this area.

### **3. The Judicial Council Could Have More Effectively Solicited Attorneys to Submit Data**

In retrospect, the Judicial Council could have (and is now taking) additional steps to collect civil case data. First, the Council has adopted a policy to review the completeness of the data forms on submission and to immediately write to those submitting incomplete data.

Second, the Council added fields on the form asking respondents to list other parties in the case. The Council now sends a letter to these parties if they do not send in their forms.

Third, the Council has written to attorneys several more times about the statutory obligation to submit the case data forms. Fourth, the Council has redesigned the form to simplify it as much as possible within the Council's statutory directives.

Fifth, the Council has designed and implemented an Internet version of the case data form. Thus, data can be submitted online without ever filling out a paper file.

## **Chapter II Civil Case Data: Main Data Set**

The database used for this analysis included only civil cases that were not FEDs, DWI forfeitures or administrative appeals. If both parties filed a data form, the analysis used only one form.<sup>9</sup> The database contained 901 cases, including 561 plaintiffs' forms, 321 defendants' forms and forms from six "other" types of parties (thirteen forms were missing information about the party that filed the form).

### **A. Types of cases with settlement information available**

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<sup>9</sup> In each case in which duplicate forms were filed, the Council kept the case with the most information provided and deleted, for this analysis, the remaining data form or forms (a few cases had three parties and attorneys filed three separate forms). Since the Council received multiple case forms in only 349 of these 2,034 cases, it was not possible to conduct any meaningful analysis based on multiple forms in each case.

This analysis relies only on the types of cases for which attorneys or parties filed the settlement forms. Types of cases in the database included debt (30%), other civil and other business disputes (total: 21%), personal injuries (28% total: auto 16%, premises 5%, product 1% and other 6%) and several smaller groups including malpractice (1%), property damage (7%) and employment (3%). Ten percent of the cases were missing information about the type of case.

A review of all comparable 1998 civil cases for Anchorage<sup>10</sup> suggested that the cases in the present database (71% of the cases in this database were filed in Anchorage) roughly reflected the distribution of all comparable civil cases filed in Anchorage. For that year, debt cases constituted 40% of the civil caseload (excluding domestic relations, and other cases excluded from the settlement data). Other civil and other business dispute together were 27%, personal injury was 23%, malpractice cases were 2%, property damage was 3%, real estate was 3% and injunctive relief was 2%.

The settlement case database included fewer debt cases (30% as compared to 40% for the total of Anchorage civil cases for 1998) but more personal injury (28% as compared to 23% for all 1998 Anchorage cases) and property damage cases (8% in the settlement case database as compared to 3% of all Anchorage civil cases). The differences in proportions of cases between the two databases were small enough to permit the statement that the settlement case database reflected the usual distribution of cases in the Anchorage court fairly well. In other words, it is not apparent that any significant group of cases is seriously under represented in the settlement case database.

## **B. Relief sought in complaint**

The types of damages and relief sought by parties filing forms centered heavily on compensation for actual damages (68%), followed by compensation for non-economic damages (24%) and punitive damages (12%). Over half of the parties requested costs and attorneys' fees (53%), and a few (8%) requested injunctive relief. A party could have requested more than one type of relief, so percentages do not add to 100%.

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<sup>10</sup> Data provided by Alaska Court System.

## **C. Time to Disposition**

Information about time to disposition was missing in 8% of the cases, because one or both dates were omitted from the case form. The longest time to disposition was 3,147 days (about 8 ½ years, for a judgment amount of only \$17,000. The client received \$10,000 after the attorney deducted a 41% contingency fee). The shortest time to disposition was shown as zero days, i.e., the case opened and closed on the same day, with no judgment amount. About half the cases (53%) settled between 61 and 360 days (about two to twelve months), with 20% settling in one to sixty days and 19% taking more than 360 days.

## **D. How attorneys settled cases**

Among these cases, attorneys used some form of alternative dispute resolution (ADR) in ten percent of the reported cases (N=93). Most of these cases were mediated; ten received early neutral evaluation; and one was arbitrated. A smaller number, 54 (6%), actually settled because of an ADR method, according to the attorneys completing the forms. A handful of cases (23) settled after a jury trial (eight) or bench trial (fifteen). About 26% of the cases had been dismissed, 5% had a final judgment and 67% settled.

Assuming that approximately equal numbers of plaintiff and defense attorneys appeared in the 901 cases<sup>11</sup> more plaintiffs' attorneys apparently filed case settlement forms. Sixty-two percent (N = 557) of the forms came from the first plaintiff's attorney. About half that amount (36%) came from the first defendant's attorney, and 1% came from other persons.

## **E. Settlement/judgment amounts recorded**

Judgment (settlement) amounts ranged from zero to about \$16,500,000. It was not always clear how much of the settlement the client actually obtained, because the plaintiff did not return a form or the information was not entered. For 28% of the forms, the judgment amount<sup>12</sup> was missing or shown as \$0.00. The data supplied did not allow the analysis to distinguish accurately between cases with a settlement amount of \$0.00 and those for which no information was supplied. As a result, this section

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<sup>11</sup> If a case had more than two parties, of course, multiple attorneys might have appeared. Fifty cases showed information for a second participant, either plaintiff, defense or other. Eleven cases showed information for a third party(is). The sixty-one cases represented 10% of the database.

<sup>12</sup> The form asked for judgment amounts to be shown in two different locations, on page one and page two. Because an amount was shown more frequently on page one, the data used throughout the report comes from that page. For comparison, about 28% of the forms had no judgment amount shown on page one; about 35% had no judgment amount shown on page two of the form.

of the analysis looks only at cases with a settlement of \$1 or more. Of the 653 forms that showed a dollar amount for judgment, 451 or 69% were less than \$20,000, and 543 (83%) were less than \$50,000.

Settlement judgment amounts overall appeared to be slightly lower than the tort jury verdicts<sup>13</sup> documented in an earlier study by the Judicial Council. About 61% of the jury verdicts in the earlier jury verdict study with a monetary amount were less than \$20,000, and 77% were less than \$50,000. The comparison of jury verdicts for tort cases and settlement amounts for torts and other civil cases suggests that most civil cases are actually valued by parties and triers of fact at well under the district court jurisdictional limits, despite the fact that many are handled by the superior court.

Looking only at the smaller set of settled cases that could be identified as torts (personal injury, malpractice and property damage, but not including the business and other civil cases that also may have been torts), the analysis showed that settlement cases had slightly higher final amounts than tort jury verdicts. Only 57% of the settled cases had amounts less than \$20,000. Employment cases had the highest average settlements, with only 45% less than \$20,000.

Larger settlements were less frequent in the settlement case database than in the tort jury verdict analysis. About 14% of the cases in this database had settlement amounts of \$50,000 or more,<sup>14</sup> versus 24% of the tort jury verdicts with amounts that high.<sup>15</sup> Four (1%) cases settled for \$500,000 or more, with the highest reported settlement at \$16,500,000. Another 7% settled for amounts between \$100,000 and \$499,999. By comparison, higher percentages (6%) of tort jury verdicts studied were \$500,000 and over, and between \$100,000 and \$499,999 (9%). Part of the reason for the difference may be that for the settled cases, information available did not permit identification of business torts. In the tort jury verdict study, the highest awards tended to go to businesses rather than individuals.

Although the monetary amounts may appear to be slightly higher for jury trials than for settlements,<sup>16</sup> parties have many reasons for settling a case rather than taking it to trial. Strength of the evidence is

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<sup>13</sup> Jury verdict data for tort cases is found in *Report of the Governor's Advisory Task Force on Civil Justice Reform*, 1996, at Appendix C, page 9. "Over half (58%) of all superior court jury verdicts that contained a damage award were less than \$50,000 (the jurisdictional amount for superior court). About one-third of the superior court verdicts were less than \$10,000. Overall, [including district court jury verdicts] about 61% of all jury verdicts awarded damages under \$20,000." *Id.* at page 8.

<sup>14</sup> Persons filing forms did not include information about the settlement amount on 27% of the forms.

<sup>15</sup> *Supra* at p.8.

<sup>16</sup> Because the data are being compared across two entirely different databases, no *statistical* conclusions were drawn about the similarities between the jury trial verdicts and the settlement amounts.

one factor often cited by attorneys as important in decisions about whether to go to trial or settle, along with Rule 82 attorneys' fees and the vigor with which each party holds to its position.<sup>17</sup> Despite some differences, judgment amounts in tort verdict cases and settlement amounts in this database resembled each other strongly. The similarities supported the hypothesis that factors other than the value of the case were important in parties' decisions about whether to go to trial. In many cases, parties would probably not obtain a better judgment by going to trial than by settling.

The slightly higher amounts awarded after trial may suggest that as the stakes increased, the value of going to trial increased. However, we did not have an adequate database or comparison data to study whether the increased jury verdict awards offset the increased time and costs required to actually try a case. Also, a settlement is a guaranteed award, free from the risks of trial and post-judgment actions, making it more attractive in many situations.

For a handful of forms (22 cases), the judgment form listed a second judgment for another party. In some cases, the two parties were spouses and the judgment amounts were split between them. In others, the judgment amount shown was the same for both parties. The forms did not have enough information to permit a detailed analysis of the reasons for the variations in the amounts recorded.

## **F. Liability Insurance to Cover Judgment**

The form asked parties to record the percent of the judgment that liability insurance covered. Most forms (79%) did not enter the information or entered zero. Of the forms that said that liability insurance covered a percentage of the judgment, almost all (96%, N = 180) said that it covered 100%. Many of the cases in which some percentage of the judgment was covered by insurance were personal injury automobile cases (56%). Smaller percentages of the cases covered by liability insurance were personal injury product and other types of personal injury cases (17%), personal injury premises cases (15%) and property damage cases (9%). Virtually all were 100% insured.

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<sup>17</sup> See in general, Chapter 7, pp. 99 - 123, *Alaska's English Rule: Attorney's Fee Shifting in Civil Cases* for a discussion of factors attorneys consider in deciding whether to try a case or settle it.

## **G. Non-economic, punitive and declaratory relief awards**

Punitive amounts were included in only five settlements, despite having been asked for in 108 cases (12%). The amounts awarded for punitive damages in settlements ranged from less than \$10,000 to two amounts more than \$100,000. In two of the punitive damages cases, the case settled after a bench trial; in another, the award was statutory. None of the cases with a punitive award had involved any alternative dispute resolution. The case types with punitive included personal injury (auto), property damage, other civil case and employment.

Declaratory relief was included in three awards. Non-economic damages were included in 43 settlements (5%).

## **H. Types of Attorneys' Fees**

Overall, attorneys who charged hourly fees showed them as falling into a fairly well-defined set of ranges (half of the forms did not include information about the attorney's fee charged). About 12% of those who did provide the information charged between \$50 and \$125 per hour. Nearly one-third (32%) charged between \$126 and \$149, and 27% charged \$150. Another 11% charged \$151 to \$169 per hour, and the remaining 18% charged \$170 or more. A total of 83% charged less than \$170 per hour.

One-third of plaintiffs' attorneys charged contingency fees, as compared to 49% who said they charged an hourly fee (the remainder either did not give the information or used another fee arrangement). Only two defendants' attorneys showed a contingency fee arrangement, with 82% saying that they were paid an hourly rate.

A small number of persons filing the case settlement forms were paid by arrangements other than hourly or contingency fees. Twenty said that they had charged a flat fee, mostly in debt or other civil cases. Four (20%) of those charging a flat fee were defendants; the rest were plaintiffs or others. Fifty-six persons filing forms described themselves as "in-house" attorneys, with most representing government bodies, including the state and boroughs or municipalities. They were about evenly divided between plaintiffs' attorneys and defense.

Twenty-one cases were pro se. Seven were debt cases filed by one person against several defendants. The remainder of the pro se parties appeared in a mix of case types, including malpractice, personal injury (automobile), property damage and other civil. Six of the pro se parties said that they were defendants; the rest were plaintiffs.

## **I. Amounts of attorneys' fees**

In general, the total amount in attorneys' fees<sup>18</sup> for the party filing the form was less than \$5,000 (when filing the form, 216 parties, 24%, did not provide information about the total amount of attorneys' fees to the party out of the total settlement amount). Nineteen percent of the parties showed between \$1 and \$499 in attorneys' fees, and 29% showed \$500 to \$1,999.<sup>19</sup> Twenty-two percent of the cases showed total fees between \$2,000 and \$4,999. Only 4% of the forms with data showed total attorneys' fees to the party's attorney as more than \$50,000. Including the costs that were shown as part of the judgment made little difference in these figures.

Comparing the total amounts obtained for attorneys charging hourly fees and those for attorneys charging contingency fees showed that a statistically significant larger percentage of small total amounts went to hourly-paid attorneys. Fifty percent of the attorneys with hourly fees received total amounts less than \$2,000, as compared to 31% of the attorneys with contingency fees. Many more attorneys charged hourly fees than charged contingency fees. The picture that emerges is one in which attorneys were more likely to charge contingency fees in selected cases; if they did receive a settlement in those cases, it was likely to be \$2,000 or more. This is consistent with the analysis above that showed that attorneys charged contingency fees in a limited number of types of cases, and that contingency fees were a fee arrangement used almost exclusively by plaintiffs' attorneys.

Persons completing the forms also were asked to show the "Attorney Fees/Costs for (payable to) this Party by Another Party; or Against this Party to Another Party." Very little data was available for any of these categories. A total of 64 persons gave information about attorney fees payable to this party by another party, and 59 persons showed costs payable. Attorneys' fees payable ranged from \$5 to more than \$50,000. Costs payable ranged from \$7 to more than \$5,000. Too little data was available to permit any detailed analysis. Eleven persons said that the party providing the form was required to pay attorneys' fees to another party, with amounts ranging from about \$200 to more than \$20,000. Only two persons showed payment of costs by the party filing the form to another party. About 24% said that attorneys' fee awards were separable from the remainder of the settlement, and 23% said that costs were separable from the remainder of the settlement.

## **J. Amount of settlement that was paid to client**

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<sup>18</sup> This includes all fees, whether hourly, contingent, flat rate or other method of charging.

<sup>19</sup> Given that the modal attorney fee was \$150/hour, and 29% of the parties had between \$500 and \$1,999 in total fees, the data suggest that many cases took between about 3 and 13 hours to resolve.

After attorneys' fees and costs, the balance of the monetary settlement would be paid to the prevailing party or parties. Persons filing the form gave information about the amount paid to the client or party for 41% of the cases. The form could not distinguish between parties whose settlement did not involve a monetary payment, and those forms on which the information was not provided.

One party in the group of cases for which the information was known received more than \$500,000. The most common payment was between \$1,000 and \$4,999 (39%), with a substantial number (30%) receiving between \$5,000 and \$19,999. This is consistent with the earlier finding that most settlement amounts were less than \$50,000, and a majority were less than \$20,000. Eleven percent of the clients received between \$20,000 and \$49,999, and 10% received between \$50,000 and \$499,999. By case type, the larger settlements went to parties in personal injury, employment, and other civil cases. Smaller settlements occurred in debt and property damage cases.

To better understand the size of the case, a variable was created that subtracted attorney fees and costs from the judgment amount shown. Although this is a rough measure because the variable did not distinguish whether the defendant or the plaintiff reported the fees and costs, it gives some sense of the net value of the settlement and the size of the case. Using this measure, the largest cases tended to be malpractice, personal injury (automobile, product and other) and other business cases. Debt cases tended to have a small bottom line (less than \$2,000). Employment cases tended to be mid-range.

The same case size variable was analyzed in the context of types of fees charged and length of time to disposition of the case. In general, contingent fees were somewhat more common among mid-size cases (about \$2,000 to \$49,999), while hourly fees were more common in smaller cases. For the top group of cases (more than \$50,000), hourly and contingent fees occurred about equally often. As might be expected, short times to disposition (one day to 120 days) were associated with low value cases (less than \$2,000). The larger cases (\$10,000 and over) tended to take 180 days or more to reach a disposition. However, some cases from each value group appeared in almost every category of time to disposition (e.g., among the cases with a bottom-line value of more than \$50,000, five took one to thirty days for disposition, four took thirty-one to sixty days, four took sixty-one to 120 days, and so on). Similarly, one case with a value of less than \$500 took more than 360 days to disposition, and six cases with this value took 181 to 360 days.

A slightly different analysis looked at the percentage of the settlement that went to attorneys' fees, depending on whether the attorney used a contingent fee or hourly or other arrangement. With contingent fee arrangements, about one-third (36%) of the clients paid out less than 33% of the settlement for attorneys' fees. A majority (57%) paid 33% to 39% of the judgment in attorneys' fees, and 7% of the parties paid 40% or more of the settlement for attorneys' fees. Conversely, about two-thirds of those cases filed by plaintiffs in which the attorney charged an hourly fee had less than one-

third of the settlement going into attorneys' fees. This is consistent with other findings that many of the cases in which hourly fees (or other arrangements) are charged are small, short-lived debt, other civil or other business dispute cases in which the plaintiff often is an organization rather than an individual.

## **K. Plaintiffs' attorneys**

More plaintiffs' attorneys filed case information forms than did any other group (62% of the forms were filed by plaintiffs' attorneys). About 41% of the plaintiffs' attorneys said that they charged an hourly fee and gave information about its size. Plaintiffs' attorneys showed the fees obtained on an hourly basis as ranging from about \$50 to \$300, with relatively few more than \$150 (68% had fees of \$150 or less). One-quarter (25%) charged between \$126 and \$149, and 30% charged \$150. About one-fifth (21%, N = 47) said they charged \$170 or more. The nine attorneys in this group who charged \$200 or more per hour had primarily debt or other business cases. One case was an auto property damage suit and the remaining cases involved other civil issues. None of them used ADR to settle their cases.

Plaintiffs' attorneys who charged an hourly fee were concentrated in debt (130, or 54%), other civil (47, or 20%) and other business disputes (32, or 13%). Only 14 (6%) showed personal injury, property damage or employment as the category for the case. This categorization suggests that a large proportion of the plaintiffs paying on an hourly basis were businesses or corporations.

Contingency fees were the preferred method of payment for a smaller percentage (187 or 33%) of the plaintiff's attorneys in this group of cases (187 attorneys said that they used a contingency fee but only 176 reported information about the fee charged). Most (89%) charged between 10% and 33%, with the largest numbers falling between 25% and 33%. A handful charged 40% (N=11), with one at 50%.

Most plaintiffs' attorneys who charged contingency fees showed a judgment and money for the client, in contrast to 30% of the plaintiffs' attorneys overall who did not list judgment amounts or a recovery for the plaintiff. Plaintiffs' attorneys who charged hourly fees typically had somewhat shorter cases. Contingency cases lasted longer, which is a relatively small but statistically significant finding.

Plaintiffs' attorneys who charged contingency fees handled a variety of cases. About one-third of the 175 for whom case type information was available (32%) litigated personal injury auto cases and about 27% handled debt or other business disputes. Over one-quarter (28%) were other personal injury cases, and smaller numbers were property damage or employment cases. Of the 54 cases with judgment amounts of \$100,000 or more, 35% were reported by attorneys who charged contingent fees.

Contingency fee cases predominated among the longest cases (more than 360 days to disposition). Hourly fee cases predominated slightly among the shorter cases (1 day to 120 days). Among the medium-length cases (121 days to 360 days), there was no significant difference when cases were analyzed by the type of fee charged.

## **L. Defendants' attorneys**

Most defendants' attorneys charged hourly fees. Eighty-two percent of defense attorneys worked on an hourly fee, with 9% characterizing themselves as in-house, and 7% in other categories. The 28 in-house defense attorneys who filed the settlement forms handled mainly personal injury automobile (42%, N = 10) cases and other civil (25%, N = 6).

Their fee ranges resembled those reported by plaintiffs' attorneys. Of the 220 defense attorneys who reported the hourly rate charged, most charged \$140 or \$150 (25% of all defense attorneys filing forms showed rates of \$140/hour and 24% showed rates of \$150/hour). Only seven charged \$200 per hour or more. Of these seven, four litigated debt cases, two had property damage-other cases, and one handled an "other civil" case. This profile of case types with high hourly fees was similar to that for plaintiffs' attorneys (in both instances, debt cases predominated), but in both instances, the numbers of cases are too small to draw conclusions.

Defendants' attorneys forms did not have information about the total judgment in 26% of the case forms filed. For those forms with information, the most common judgment amounts shown were \$5,000 to \$19,999 (36%). About one-quarter were less than \$5,000, and about 21% were \$50,000 or over. Nineteen percent were between \$20,000 and \$49,999. This analysis does not show whether these amounts were paid to plaintiff, defendant, or some other arrangement.

## **Chapter III**

# **Administrative Appeals, FEDs, and DWI Forfeitures**

This chapter reports the data collected for three types of cases, administrative appeals, forcible entry and detainer (FED) and DWI Forfeiture/Impound actions. New legislation, effective May 7, 1999 has excluded these cases from further data collection. The cases reported in Chapter 2 that were not FED, DWI forfeiture or administrative appeal cases are referred to for purposes of this chapter as the main dataset.

DWI forfeitures and FEDs tend to be routine cases, prosecuted for relatively small amounts of money in uncomplicated cases.<sup>20</sup> Administrative appeals are a different type of case, because the court acts as an appellate court for various administrative agencies and programs, particularly for motor vehicle license revocations. As such, the settlements tend to be different in nature than those that the legislature originally intended to study. The data included here are for cases closed through May 31, 1999.

### **A. Forcible Entry and Detainer (FED) cases**

During the study period, 119 forcible entry and detainer (FED) cases were reported to the Judicial Council. In Anchorage, in 1998, 1,772 FED cases were filed. This suggests that only a small fraction of the FED cases heard in Alaska courts were reported by attorneys or parties to the Judicial Council.

Plaintiffs' attorneys filed nearly all of the FED cases in the database (110 out of 119). Parties did not use mediation in FED cases (as compared to 9% of the main data set) and none of them were resolved using alternative dispute resolution methods of any sort.

The parties were more interested in injunctive relief than in the main data set cases (22% of FED cases, compared with 6% of those who sought injunctive relief in the main data set cases). This is understandable given the nature of FED action. Parties also sought compensation for actual relief in 60% of the FED cases, much more frequently than the 40% of other types of cases. Parties in FED actions sought costs and attorney's fees in 55% of the cases (significantly less often than the 69% in the main data set).

FED cases appeared to fall into the low middle range of civil cases in terms of judgment amount - although they typically were not large cases, they were not among the smallest cases either. For the

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<sup>20</sup> A very small number of FEDs are larger cases, involving complex issues and larger sums of money.

cases in which judgment information was available (56, or 47%), two-thirds (66%) had amounts between \$1,000 and \$4,999. About 21% of the cases had amounts of \$999 or less. For the main data set cases, by comparison, 17% had judgments between \$1,000 and \$4,999, and 46% had judgment amounts less than \$1,000. Costs constituted only a small part of the FED judgments. The parties had costs of \$1 to \$149 in many (75%) cases. In only 25% of the cases did the settlement allow \$150 or more for costs.

Most attorneys (67%) handling FED cases charged \$150/hour. Relatively few charged more or less. This was a significantly different pattern than the pattern among all attorneys who filed forms. It also differed from the patterns for DWI (most counsel who filed forms were in-house counsel for the Municipality of Anchorage) or administrative appeals (most counsel - 68% - charged \$150, but a sizable group - 24% - charged between \$50 and \$125).

Most attorneys received small fees for FED cases, with 68% of settlements including a total attorney's fee between \$1 and \$499. Another 26% totaled between \$500 and \$1,999. By comparison, 33% of other types of cases had attorneys' fees in the settlements totaling \$2,000 or more. Attorneys' fees totals for Driving While Intoxicated (DWI) forfeiture cases were less than \$500 (99%), and for administrative appeals, they were more comparable to cases generally, with one-third at \$2,000 or more.

The FED cases usually took a short time to handle. Nearly half (48%) were completed within thirty days, significantly less time than for all other cases considered as a group. The remainder were fairly evenly divided, with only 7% of the cases taking more than 361 days.

## **B. Administrative Appeals**

The Council received 67 civil case data forms concerning administrative appeals. All were from separate cases. The cases in which the Council received forms constituted only about 13% of the administrative appeals decided in this time period.<sup>21</sup>

Thirty-nine of the cases (58%) were administrative appeals of Division of Motor Vehicles License revocations. Seven were appeals of Department of Corrections decisions, with three additional cases from Parole Board decisions. Two cases were Worker's Compensation appeals, one involved a Permanent Fund Dividend, and one involved the Division of Fish and Game. The type of fourteen administrative appeals was not apparent.

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<sup>21</sup> There were 270 administrative appeals decided in 1997 (this report, however only begins with data from September 1997) and 261 in 1998, a total of 531. Alaska Court System Annual Reports for 1997 and 1998.

Of the persons filing case forms who identified whether they were plaintiffs or defendants, (a total of 20, or 30% of the 67 cases), thirteen were defendants and seven were plaintiffs. The remainder of the filers did not identify themselves.

The case forms also did not contain complete information about the types of relief sought. In 16% of administrative appeals, the plaintiff sought costs and attorney's fees; in 6%, compensation of actual costs, and in 19%, injunctive relief. Because a party might have sought more than one type of relief, the percentages are not additive.

None of the administrative appeals used alternative dispute resolution or settled because of ADR.

Judgment amounts were available for only nine of the administrative appeals. Seven of the amounts were less than \$5,000. The amounts in the settlements for costs were available for eighteen cases. Half (nine) were between \$1 and \$69. One-third were at the higher end, with four between \$500 and \$2,500, and two more than \$2,500.

The nature of the cases may be better reflected in the attorneys' fees information than in the judgment and costs information. Nearly three-quarters (73%) of the attorneys in the cases identified themselves as in-house counsel, significantly higher than the percentage of in-house counsel in the main data set cases (30%). Over half (57%) gave information about their hourly rates. Of these, most (68%) charged \$150/hour. A substantial minority showed low rates, ranging from \$50 to \$125/hour. Again, this was a very different pattern of attorneys' fees than that found in other types of cases, which tended to be much more evenly distributed.

Information about the total amount of attorneys' fees in the settlement was available for only 23 cases (about 34% of the 67 administrative appeals), which may be related to the exceptionally high number of in-house counsel involved in the cases, or the low number of cases in which monetary relief was sought (according to the forms filed). Of the forms that gave amounts for total attorneys' fees in the settlement, just over half (57%) showed less than \$2,000. Almost all of the other forms showed attorneys' fees totaling between \$10,000 and \$49,999. This was a distinctly different pattern of total attorneys' fees in settlements in other types of cases, about half of which tended to be less than \$500, with the remainder fairly evenly distributed in the remaining categories.

Administrative appeals cases tended to take significantly longer to dispose of than the other types of cases studied. While 60% of other types of cases had been closed within 120 days, only 37% of administrative appeal cases ended that quickly. At the high end, only 13% of other types of cases took more than 361 days to settle, but 23% of administrative appeals fell into that category.

## C. Driving While Intoxicated (DWI) Forfeiture/Impound Cases

The database included 597 cases characterized as Driving While Intoxicated (DWI) Forfeiture/Impound. These cases typically arose under the Anchorage municipal ordinance<sup>22</sup> that allows the impounding and forfeiture of the motor vehicle of a drunk driver. Typically the cases are handled by a municipal attorney's office, and vary little from one case to the next.

For these cases, plaintiffs' attorneys (typically a municipal attorney) filed 94% of the forms and defendants or their attorneys filed 6%. Nearly three-quarters (72%) of the attorneys characterized themselves as in-house counsel. Twenty-seven described themselves as legal services, and one person filing said "pro se."

None of the cases involved or was resolved by alternative means of dispute resolution. In these cases, 97% of parties sought costs and attorneys' fees.

Virtually all of the cases (96%) had a judgment amount between \$1 and \$999. Another 3% (20 cases) had amounts between \$1,000 and \$4,999. Attorney's fees totaled between \$1 and \$499 for 99% of the DWI forfeiture cases. Only four forms listed a rate charged per hour, and the rates listed on those forms were evenly distributed between \$126 and \$170 or more.

The DWI forfeiture cases took significantly less time than other types of cases to handle. Nearly three-quarters (72%) were completed within thirty days. Only 14% of other types of cases were completed so quickly. Fourteen percent took 31 to 60 days and 8% took 61 to 120 days. In contrast, over half (56%) of other case types took 121 days or longer to complete.

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<sup>22</sup> AMC 9.28.026. Forty-five of the cases were based on a comparable Fairbanks ordinance.

## Chapter IV

# Conclusions and Recommendations

The focus in this report was primarily on the monetary outcomes of settled civil cases, for those cases reported to the Council from September of 1997 through May of 1999. Data could not clearly distinguish between cases without information and cases with a monetary return of \$0.00. Overall, 69% of the settlements for which a dollar amount was shown were less than \$20,000, and 83% were less than \$50,000. Cases that could be identified as torts (personal injury, malpractice and property damage) had slightly higher settlements, with 57% less than \$20,000, and employment cases had the highest average settlements, with 45% less than \$20,000. For comparison, in a study of tort jury verdicts, the Council found that 61% of the cases had verdicts less than \$20,000.

At the higher end of settlement amounts, about 17% of the cases in this database had settlement amounts of \$50,000 or more, as compared to 24% of those in the tort jury verdict study. Seven percent of the settlement amounts fell between \$100,000 and \$499,999, compared to 9% of the tort jury verdicts in that range, and 1% of the settlement amounts were \$500,000 or more, compared to 6% of the tort jury verdicts.

We conclude on the basis of the data available that settlements for comparable types of cases were similar to jury verdicts, except at the high end of the cases. We did not have sufficient data to determine whether the likelihood of getting at least some money was higher for settled cases than for jury-tried cases. The data did not support a hypothesis that clients settled for substantially lower amounts than they could have received at trial, or the converse hypothesis that jury verdicts were substantially higher than settlement amounts in most cases.

We also looked to see what attorneys charged, what percentage attorneys' fees were of the settlement, and what amounts clients typically received after payment of attorneys' fees and costs. Half the forms filed or fewer had information about these questions. Of the forms filed, the typical attorney's hourly fee was between \$126 and \$150. About one-third of the plaintiffs' attorneys charged contingency fees, typically between 30% and 40% of the total settlement. The total amount paid in attorneys' fees was usually less than \$5,000, and almost half of the cases had attorneys' fees less than \$2,000. Clients most commonly received between \$1,000 and \$4,999 (39%) or \$5,000 to \$19,999 (30%). The larger settlements went to parties in personal injury, employment and other civil cases. Smaller settlements tended to occur in debt and property damage cases.

Cases took relatively short times to disposition, with cases settled for less than \$2,000 taking the shortest times - one day to 120 days - on average. Larger cases, more than \$10,000 in settlement amounts, had taken more than 180 days to settle typically.

Given the paucity of data collected by the Council for this initial report, probably the most important conclusions in this report deal with what the Legislature and Council have done to improve the collection of civil case data. The first important step in this regard was the 1999 legislative amendment that imposed an affirmative duty on attorneys, as well as pro se litigants, to submit the Council's civil case data form upon the resolution of covered civil cases within 30 days of the resolution of these cases, and limited the types of cases where data had to be submitted.

The second step has been taken by the Council to improve data collection based on its experiences up to now. The changes include further publicizing of the requirement to file the forms with the Council, immediately following up on forms that have missing or incomplete data, adding fields to the form asking for other parties in the case so that the Council can write these other parties if they do not initially submit case data, simplifying the case data collection form, and designing an Internet version of the form which allows parties and attorneys to submit data easily over the Internet.

It appears that these legislative and procedural changes have resulted in improved reporting. There were only 901 forms filed with the Council in the 21 months covered by this report<sup>23</sup>. By contrast, there have been approximately 1,156 forms filed with the Council in the seven remaining months of 1999.

The Judicial Council recommends that the Legislature, after review of this report, more particularly define the purposes and goals of the Council's collection of civil case data. This would help to assure attorneys that there is an adequate justification for submitting the data, and would allow the Council to better target the purposes and goals in its next report.

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<sup>23</sup> This count excludes the three case types which were excluded from the reporting requirement in the 1999 legislative amendment.

## **Appendix A**

**An Analysis of Civil Case Data  
Collected from  
September 1997-May 1999**



# Information About the Resolution of Civil Cases

Send to Judicial Council:  
Not Court

Complete Both Sides  
Confidential

Attorneys/parties must submit the information contained in this form upon the resolution (whether by dismissal, settlement, final judgment, etc.) of most civil cases in Alaska state courts. See AS 09.68.138; Civil Rule 41(a)(3); Appellate Rule 511(e). Complete all the information on both sides of this page. The only excluded civil case types are:

- divorce and dissolution;
- adoption, custody, support, visitation, and emancipation of children;
- children-in-need-of-aid cases under 47.10 or delinquent minors cases under 47.12;
- domestic violence protective orders under AS 18.66.100-18.66.180;
- estate, guardianship, and trust cases filed under AS 13; and
- small claims under AS 22.15.040

The information collected in this form is confidential and will be used for the sole purpose of compiling statistics and summaries in a manner that does not allow the identification of particular cases or parties. AS 09.68.130(b).

Trial Court Case Number (use all caps)

Case Name (use all caps)

\_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ C I \_\_\_\_\_  
 V. \_\_\_\_\_

**Case Type (check all applicable)**

Medical Malpractice       Property Damage - Other  
 Legal Malpractice       Employment  
 Other Malpractice       FED  
 Personal Injury - Auto       Debt  
 Personal Injury - Premises       Administrative Review  
 Personal Injury - Product       Other Business Dispute  
 Personal Injury - Other       Other Civil  
 Property Damage - Auto

**Date Filed:**  
 \_\_\_\_ / \_\_\_\_ / \_\_\_\_

**Date Disposed:**  
 \_\_\_\_ / \_\_\_\_ / \_\_\_\_

**Relief Sought (check all applicable)**

Compensatory: Actual  
 Compensatory: Non-Economic  
 Punitive  
 Costs/Attorney Fees  
 Injunctive Relief

**Total Judgment/Settlement**      **% of Judgment Covered by Liability Insurance**

\$ \_\_\_\_\_<sup>00</sup>      \_\_\_\_\_%

**Disposition: (pick one)**

Dismissed  
 Settlement  
 Final Judgment

**Disposition After? (check all applicable)**

Bench Trial  
 Jury Trial  
 Appeal Filed      Appeal # \_\_\_\_\_

**Non-Economic Award** \_\_\_\_\_<sup>00</sup>

**Punitive Award** \$ \_\_\_\_\_<sup>00</sup>

**Declaratory Relief Award?**       Yes       No

**Did you use Alternative Dispute Resolution?**

Mediation  
 Arbitration  
 Early Neutral Evaluation

**Did your case settle as a result of ADR?**

Yes       No

**Notes**

Send the completed form to:  
Alaska Judicial Council  
1029 West Third Avenue  
Suite 201  
Anchorage, AK 99501

See the Council's home page at <http://www.ajc.state.ak.us> or call the Council at (907) 279-2526 for copies of the form. You can also pick up copies of the form at any court clerk's office. E-mail [bill@ajc.state.ak.us](mailto:bill@ajc.state.ak.us) with questions.

Do not fill in: for AJC use only.

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## **Appendix B**

**An Analysis of Civil Case Data  
Collected from  
September 1997-May 1999**

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Fill out and submit  
this form on the  
Internet at  
www.ajc.state.ak.us

## Information About the Resolution of Civil Cases

Send to Judicial Council:  
Not Court  
Complete Both Sides  
Confidential

Attorneys/parties are required by statute to submit the information contained in this form upon the resolution (whether by dismissal, settlement, final judgment, etc.) of most civil cases in Alaska state courts. See AS 09.68.130; Civil Rule 41(a)(3); Appellate Rule 511(e). Complete all the information on both sides of this page. The only excluded civil case types are:

1. divorce and dissolution;
2. adoption, custody, support, visitation, and emancipation of children;
3. children-in-need-of-aid cases under 47.10 or delinquent minors cases under 47.12;
4. domestic violence protective orders under AS 18.66.100-18.66.180;
5. estate, guardianship, and trust cases filed under AS 13;
6. small claims under AS 22.15.040;
7. forcible entry and detainer (FED) cases;
8. administrative appeals; and
9. motor vehicle impound/forfeiture actions under municipal ordinance.

These last three  
exceptions (7-9)  
were added in  
1999.

The information collected in this form is confidential and will be used only to compile statistics and summaries in a manner that does not allow the identification of particular cases or parties. AS 09.68.130(b).

Trial Court Case Number

Case Name

\_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ C I \_\_\_\_\_

v. \_\_\_\_\_

<b>Case Type (check all applicable)</b> <input type="radio"/> Medical Malpractice <input type="radio"/> Property Damage - Auto <input type="radio"/> Legal Malpractice <input type="radio"/> Property Damage - Other <input type="radio"/> Other Malpractice <input type="radio"/> Employment <input type="radio"/> Personal Injury - Auto <input type="radio"/> Debt <input type="radio"/> Personal Injury - Premises <input type="radio"/> Other Business Dispute <input type="radio"/> Personal Injury - Product <input type="radio"/> Real Estate <input type="radio"/> Personal Injury - Other <input type="radio"/> Other Civil	<b>Date Filed:</b> ____/____/____ <b>Date Disposed:</b> ____/____/____	<b>Relief Sought (check all applicable)</b> <input type="radio"/> Compensatory: Actual <input type="radio"/> Compensatory: Non-Economic <input type="radio"/> Punitive <input type="radio"/> Costs/Attorney Fees <input type="radio"/> Injunctive Relief
<b>Total Judgment/Settlement</b> \$ _____		<b>% of Judgment Covered by Liability Insurance</b> _____ %
<b>Disposition: (pick one)</b> <input type="radio"/> Dismissed <input type="radio"/> Settlement <input type="radio"/> Judgment	<b>Disposition After? (check all applicable)</b> <input type="radio"/> Bench Trial <input type="radio"/> Jury Trial    Appeal # _____ <input type="radio"/> Appeal Filed	<b>Non-Economic Award \$</b> _____ <b>Punitive Award \$</b> _____ <b>Declaratory Relief Award?</b> <input type="radio"/> Yes <input type="radio"/> No

Send the completed form to:  
Alaska Judicial Council  
1029 West Third Avenue  
Suite 201  
Anchorage, AK 99501

This form may be filled in and submitted on the Council's  
Internet home page at <http://www.ajc.state.ak.us>. Call the  
Council at (907) 279-2526 for copies of the form. E-mail  
[bill@ajc.state.ak.us](mailto:bill@ajc.state.ak.us) with questions.

Each party, including pro se parties, must complete this form. Attorneys submitting the form for more than one party should attach an additional page 2 (this page) with the information about each of the parties' fees and costs.

The Party's Own Fees and Costs				Attorney Fees/Costs for (payable to) this Party by Another Party; or Against this Party to Another Party	
Party Name/Type (complete for each party filing this form)	Fee Type	Percent of Judgment if contingent; hourly rate if hourly <sup>1</sup>	Total (of the party's own) Fees	Gross Settlement (for or against this party) including Attorney Fees and Costs	Total money to Client after all Fees/Costs <sup>2</sup> Deducted (if any)
First Name _____ Last Name _____ <input type="radio"/> Plaintiff/Petitioner <input type="radio"/> Defendant/Respondent <input type="radio"/> Other (specify below) _____	<input type="radio"/> Contingent <input type="radio"/> Hourly <input type="radio"/> Flat Fee <input type="radio"/> State/Local <input type="radio"/> In-house <input type="radio"/> Pro Se <input type="radio"/> Other	_____ % of Judgment Or \$ _____ /hr. if hourly	\$ _____	Attorney Fees Awards Not Separable? <input type="radio"/> 3 For \$ _____ Against \$ _____	Costs Awards Not Separable? <input type="radio"/> 3 For \$ _____ Against \$ _____

**Did you use Alternative Dispute Resolution?**

Mediation  
 Arbitration  
 Early Neutral Evaluation  
 Settlement Conference

**Did your case settle as a result of ADR?**

Yes     No

1 Round all money amounts to the nearest dollar.  
 2 "Costs" as used on this form is limited to litigation costs (excluding attorney fees) and does not include such things as medical expenses.  
 3 If attorney fees/costs are not separable from the gross judgment (usually the case for settlements), check this box and go to the next item.

Other Parties	Their Attorney

**Notes**

Signature (of attorney, or party if no attorney) \_\_\_\_\_

Printed Name (of attorney, or party if no attorney) \_\_\_\_\_

Date Form Submitted \_\_\_\_\_ Telephone Number \_\_\_\_\_ Page 2 of 2

## **Appendix C**

**An Analysis of Civil Case Data  
Collected from  
September 1997-May 1999**



# alaska judicial council

1029 W. Third Avenue, Suite 201, Anchorage, Alaska 99501-1981 (907) 279-2526 FAX (907) 276-5046  
http://www.state.ak.us/local/akpages/COURTS/AJC/home.htm E-Mail: 72302.1261@compuserve.com

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Supreme Court

## MEMORANDUM

**TO:** Governor's Task Force on Civil Justice Reform

**FROM:** Susanne Di Pietro<sup>SDD</sup> and Teri Carns

**DATE:** December 3, 1996

**RE:** Analysis of Case File Data: Alaska Tort Jury Verdicts, 1985-1995

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The Task Force asked the Judicial Council to gather data on jury verdicts in tort cases from five state court locations for the previous decade. Because of the Task Force's accelerated schedule and limited research budget, the Council concentrated on the subjects most relevant to the Task Force's work. The study was not intended to be comprehensive, although it should give a reasonably accurate snapshot of jury awards in tort trials in Alaska in the past ten years. This memo reports the data and gives a general analysis of the results.<sup>1</sup> Task Force members interested in additional analysis may contact Judicial Council staff.

### **I. Methodology**

The Judicial Council asked the Alaska Court System's Office of Technical Operations to identify all cases that had gone to jury trial within the past ten years at each of five court locations. Technical Operations gave the Council two different lists of civil cases with jury

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<sup>1</sup> Available upon request from the Judicial Council are copies of the frequencies and cross-tabulations upon which the following analysis is based.

verdicts.<sup>2</sup> After reconciling the lists as much as possible, the Council's researcher looked at each case that the court system had identified as containing a jury verdict.<sup>3</sup> After discarding non-tort cases and cases that were still open, the Council was left with a data base consisting of 233 closed, tort jury verdict cases: 157 from Anchorage,<sup>4</sup> 57 from Fairbanks, 6 from Bethel and 13 from Juneau.<sup>5</sup> Because the Task Force was particularly interested in large jury verdicts, Council staff also informally polled a number of experienced litigation attorneys on large, tort jury verdicts that they could remember in the past ten years.<sup>6</sup>

Council staff designed a data base using Microsoft Access software to record information about the cases. The Council's researcher took the data from three sources: the complaint, the jury verdict, and the final judgment form. In addition, the researcher recorded information about post-trial motions, whether the case was appealed, and the outcome of the appeal. Council staff then transferred the data base containing the 233 cases into SPSS for Windows (a statistical analysis software program). All analyses were performed with SPSS.

## **II. Limitations of this Study**

As discussed above, this study was not intended to be a comprehensive analysis of tort litigation in Alaska. First, the data base probably does not contain all tort jury verdict cases within the past decade, because the court system's lists of jury verdict cases probably were not complete. Some cases in some communities did not appear on the list. Also, because of the way the court system archives old cases, time and money did not permit the Council's researcher to

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<sup>2</sup> The trials came from superior court twelve-person and six-person jury panels, and from district court six-person jury panels. About 87% of the cases were superior court matters and 13% were district court.

<sup>3</sup> The Council's researcher, who lives in Anchorage, traveled to Fairbanks to code cases from that location. The Attorney General's office arranged for an attorney and a paralegal, respectively, to code the cases from Bethel and Juneau. The Nome clerk of court reported the two cases from that location.

<sup>4</sup> The 157 Anchorage cases came from a pool of 424 cases identified by the court as potentially containing a civil jury verdict. The Council's researcher examined and discarded 157 other Anchorage jury verdicts that were not tort cases or did not qualify for another reason.

<sup>5</sup> In addition, the Council researched jury verdicts in Nome in the last ten years. The court's records showed four civil trials, two of which did not qualify for the study (one was still on appeal and one was a judge-trying case). Time constraints prevented including the remaining two Nome cases in the data base; however, we discuss them in this memo where relevant.

<sup>6</sup> Based on the attorneys' responses, staff found one case (from Bethel) that was missing from the court system's master lists. Other cases also may be missing from the data base.

review all of the older Anchorage cases. On balance, however, Judicial Council staff believe that the data base offers a reasonably accurate assessment of tort jury trial cases in the five locations.

### **III. Findings**

This section discusses the Council's findings about the 233 tort jury verdict cases. The Council recorded information from the case files about a number of substantive issues, including what types of tort cases went to trial, who the parties were, which party prevailed, and what types and amounts of damages were awarded. The Council also recorded information about a number of procedural issues, including how often judges awarded costs and attorney's fees, how long cases took to resolve, how often cases were appealed, and how often appellate decisions changed the jury's verdict.

#### **A. Case Types**

The study grouped cases into twelve substantive categories. Over a third (37%) of the tort cases that went to jury trial in the last decade were automobile accident cases. The second most common type of case was premises liability (17%). The third most common was malpractice (13%).<sup>7</sup> Other types of cases, in descending order of frequency, included employment (7%, or 17 cases) general injury (7%, or 17 cases), general property damage (7%, or 16 cases), intentional torts (5%, or 12 cases) and product liability (3%, or 7 cases). The Council also found a handful of insurance bad faith cases (about 1%), and two common carrier cases (less than 1%).

#### **B. Parties**

Most cases were brought by an individual plaintiff or a family. In only six per cent of cases was a plaintiff an organization (organizations included businesses and state and municipal governments). In contrast, defendants often were organizations. In 63% of the cases, the plaintiff named at least one organization as a defendant. Individuals also appeared as defendants in many cases. In 58% of the cases, the plaintiff named at least one individual (excluding professionals) as a defendant. Thirty percent of all individual defendants were adult males, and fourteen per cent were adult females. Plaintiffs named more than one defendant in slightly fewer than half of all cases (44%).

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<sup>7</sup> Most of the malpractice cases were medical malpractice. Of the thirty-one malpractice cases in the data base, twenty-six (84%) were medical malpractice.

### C. Liability/Outcomes

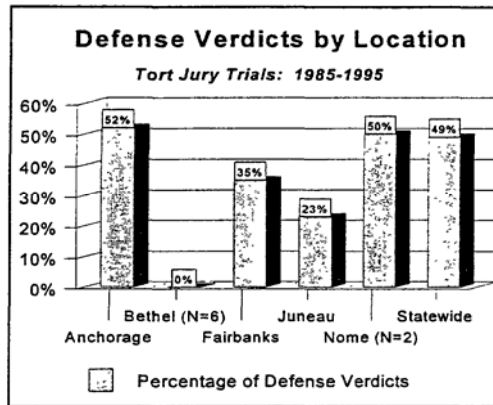


Chart 1  
Alaska Judicial Council Jury Verdict Study 1996

Overall, plaintiffs and defendants were about equally likely to prevail at trial. Juries returned plaintiff verdicts in just over half (51%) of all tort trials statewide. In an additional four per cent of the cases (N=10), both the plaintiff and the defendant received awards. Further analysis revealed that plaintiffs' chances of prevailing varied by court location and type of case.

Chart 1 graphically depicts the differences in defense verdicts by location. Bethel was the most plaintiff-friendly forum, with all six jury verdicts

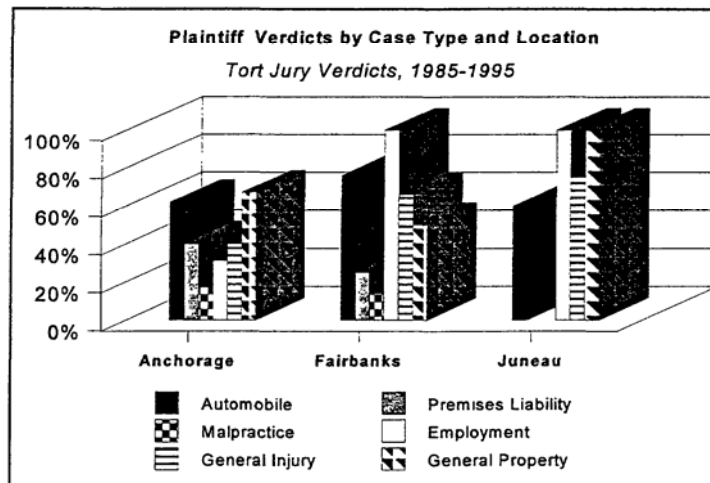
going against defendants.<sup>8</sup> Next came Juneau, where juries returned plaintiff verdicts in 77% of the cases examined. In Fairbanks, 56% of verdicts went to plaintiffs. In Anchorage juries returned verdicts for plaintiffs 45% of the time.<sup>9</sup> In the two Nome cases, one was a defense verdict and one was for the plaintiff.

Analyzed by case type, plaintiffs were most likely to prevail in automobile accident trials (66% of the time) and general property (56% of the time). Defendants were most likely to prevail in medical malpractice cases (81% of the time) and premises liability (59% of the time). Outcomes in insurance bad faith, employment and general injury cases appeared to have split about evenly between plaintiffs and defendants. In sum, only 118 of our total of 233 cases involved jury verdicts for plaintiffs.

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<sup>8</sup> Readers should be very careful about drawing conclusions from the Bethel data, because interview information suggested that defendants prevailed in other Bethel jury cases that were not included in this study.

<sup>9</sup> In about three percent of the cases, juries awarded some to both parties.



**Chart 2**  
 Alaska Judicial Council Jury Verdict Study 1996

Chart 2 depicts the percentages of verdicts juries returned for plaintiffs, broken down by court location and type of case.<sup>10</sup> Consistent with the statewide trends discussed above, plaintiffs in automobile cases prevailed more often in Fairbanks than in Anchorage. However, Juneau plaintiffs bringing automobile accident cases prevailed slightly less often (60% of the time) than did Fairbanks plaintiffs (76% of the time).

**D. Allocation of Fault**

Juries did not often allocate fault to plaintiffs, and where they did allocate fault, they did not tend to view plaintiffs as contributing substantially to their own injuries. Juries allocated fault in 12% of the cases; in only six of those cases (14%) did they assign half or more of the fault to the plaintiff.

<sup>10</sup> Bethel and Nome had too few cases to be included in this chart. This chart does not include cases in which the jury awarded some amount to both parties.

### E. Damages

The study distinguished between economic, non-economic and punitive damages, and between amounts awarded by the jury and amounts set out in the final judgment. This section describes the types and amounts of damages awarded.

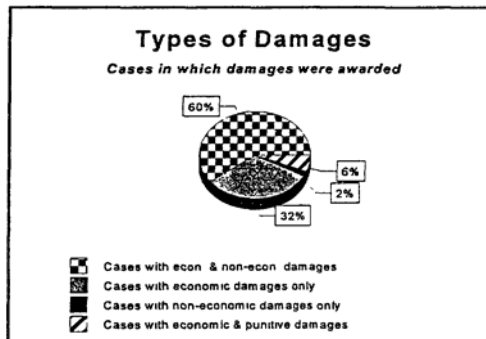


Chart 3  
Alaska Judicial Council Jury Verdict Study 1996

Of the 117 cases in which juries awarded damages, the majority (61%) contained both economic and non-economic awards. About a third (32%) of the cases contained only economic damage awards. Only two cases (2%) contained a non-economic damage award without any other kind of damage award.<sup>12</sup>

**1. Types of Damages.** The study examined fifteen different types of damages including economic, non-economic and punitive.<sup>11</sup> Economic damages included lost wages, medical bills, and property damage. Non-economic damages included pain and suffering, emotional distress, loss of consortium and loss of enjoyment. Damages also were divided by whether they were for past or future losses.

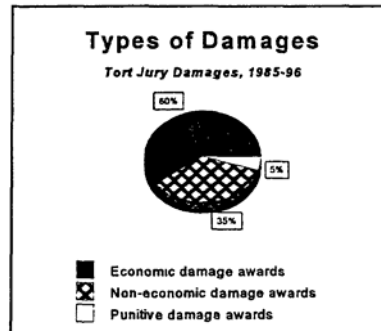


Chart 4  
Alaska Judicial Council Jury Verdict Study 1996

<sup>11</sup> This section examines the 358 separate damage awards found in 118 cases. Note that more than one type of damage could have been awarded in a single case.

<sup>12</sup> Six percent of the cases (N=7) contained an economic damage award and a punitive damage award, but no non-economic damage award.

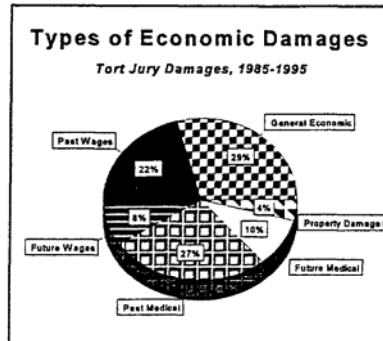


Chart 5  
 Alaska Judicial Council Jury Verdict Study 1996

The study also counted up the total number of damage awards from all of the cases in which juries awarded damages. Of the 358 damage awards recorded, economic damages were more common than non-economic damages. Chart 4 shows that well over half (60%) of all damage awards were to compensate for economic losses, while 35% were for non-economic losses and 5% were punitive damage awards.

Examining both economic and non-economic damages, the study measured how often juries made awards for losses in the future, as opposed to losses already suffered. Future damages included future lost wages, future medical expenses, future pain and suffering, and future loss of enjoyment. The data showed that juries did not often make awards for future damages. For example, of the 358 damage awards recorded, only twenty were for future medical expenses (about 6% of all damage awards), twenty-three were for future pain and suffering (about 6% of all damage awards) and one was for future loss of enjoyment (0.3% of all damage awards).

Within the category of economic damages, the study examined awards made for six specific types of losses (see Chart 5). The most commonly awarded economic damages included past wages and past medical expenses. Chart 5 shows the details of the economic damage awards.

The study also examined awards made for eight specific categories of non-economic losses (not including punitive damages). Keeping in mind that non-economic damage awards constituted only about a third of all damage awards, the most commonly awarded non-economic damage was for past pain and suffering. Chart 6 shows the details of the non-economic damage awards.

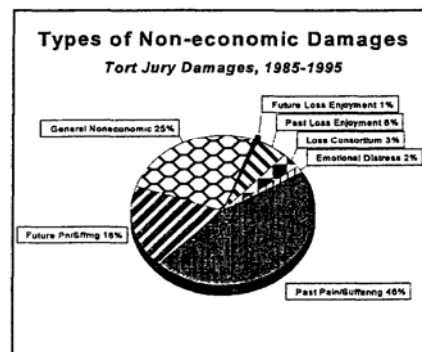


Chart 6  
 Alaska Judicial Council Jury Verdict Study 1996

Further analysis revealed that juries seldom made awards for certain kinds of non-economic losses. Jury awards for loss of consortium constituted only about 3% of all non-economic damages (1% of all damage awards). Awards for past loss of enjoyment constituted about 6% of the non-economic damage awards (about 2% of all damage awards). Awards for emotional distress constituted about 2% of non-economic damage awards (less than 1% of all damage awards).

**2. Amounts of Damage Awards.** Many jury verdicts were relatively small. In fact, over half (58%) of all superior court jury verdicts that contained a damage award were less than \$50,000 (the jurisdictional amount for superior court). About a third of the superior court verdicts were less than \$10,000. Overall, about 61% of all jury verdicts awarded damages under \$20,000.

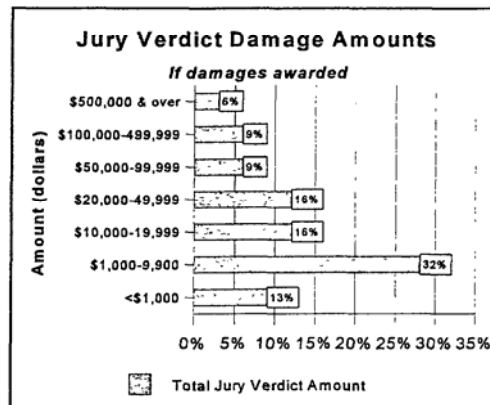


Chart 6  
Alaska Judicial Council Jury Verdict Study 1996

A relatively small percentage of damage awards were large. Six percent of all damage awards exceeded \$500,000, and an additional nine percent fell between \$100,000 and \$500,000. Chart 6 summarizes the overall amounts of damage awards for all cases in which damages were awarded.<sup>13</sup>

Some damage amounts varied by location and case type. For example, jury awards in Fairbanks automobile accident cases were somewhat smaller than those in Anchorage auto cases.<sup>14</sup>

**3. Punitive Damages.** Plaintiffs requested punitive damages 27% of the time; however, juries awarded them in only about 6% of the cases (17 punitive damage awards were made in 15 cases).<sup>15</sup> Table 1 on the next page shows that while a few punitive damage awards were

<sup>13</sup> The chart does not show whether plaintiffs or defendants received the awards.

<sup>14</sup> One explanation for the discrepancy is that a higher proportion of Fairbanks automobile cases were filed in district rather than superior court.

<sup>15</sup> In one case, the jury made small awards to both the plaintiff and the defendant. In the other case, the jury gave the plaintiff one punitive damage award on each of two separate claims.

very large, about half were under \$60,000. Four of the cases in which juries made punitive awards involved intentional torts (for example, tortious interference with business contracts). Juries also awarded punitive damages in two employment cases, two non-auto personal injury cases, one property damage case, one insurance bad faith claim and one automobile accident involving a drunken driver. The chart does not show whether the awards were paid, as that information is not available from court records.

Punitive Damage Awards: Anchorage, Bethel, Fairbanks, Juneau, Nome 1985-1995				
Case Type	Jury Compensatory Award (does not include fault allocation)	Jury Punitive Award	Appeal?	Appeal Outcome
Intentional Tort	\$3,025	\$250 and \$100 (one to each)	No	
Property	\$8,338	\$3,000	No	
Intentional Tort	\$4,387	\$5,000	No	
Insurance Bad Faith	\$1,001,087	\$10,000	Yes	Punitive damages reversed
Automobile	\$575	\$20,000	No	
Intentional Tort	\$87,934	\$20,000	No	
Intentional Tort	\$17,000	\$60,000	No	
Employment	\$112,273	\$132,000	Yes	Settled
General Injury	\$692,282	\$150,000	Yes	Settled
Personal Injury	\$738,765	\$150,000	Yes	Settled
Intentional Tort	Pl. won \$17,300 against def. 1. Def. 2 won \$23,500 against pl.	\$250,000	No	
Product Liability	\$3,004,500	\$500,000	No	
Employment/ defamation	\$303,604	\$500,000	No	
Insurance Bad Faith (automobile)	\$18,008	\$1,200,000	Yes	Punitive damages reversed
Intentional Tort (business dispute)	\$9,473,770	\$25,300,000	Yes	Settled

**Table 1**  
 Alaska Judicial Council Jury Verdict Study 1996

#### **F. Costs and Fees**

The study collected limited information about costs and attorney's fees. Because cases sometimes settled and were dismissed before judgment or before entry of costs and attorney's fees, some cases included in the study lacked cost and fee awards. Normally, judges award costs and attorney's fees to prevailing parties after trial based on guidelines set out in court rules and statutes.

**1. Costs.** The awarding of costs is governed by Alaska Rule of Civil Procedure 79. The party entitled to costs must request them within ten days or forfeit the right to recover them. Items allowed to the prevailing party as costs include the expense of taking depositions and producing exhibits, the expense of service, filing fees, fees for transcripts, computerized research, and other expenses necessarily incurred.

The Council found a cost award in about half (54%) of the cases studied. About 16% of all cost awards were \$1,000 or less. About 42% of cost awards fell between \$1,000 and \$5,000, and another 24% fell between \$10,000 and \$58,000. No cost awards exceeded \$58,000.

**2. Attorney's Fees.** The awarding of attorney's fees is governed by Alaska Rule of Civil Procedure 82 and Alaska Statute § 9.60.010. The statute authorizes the supreme court to determine what attorney's fees, if any, may be awarded to a prevailing party in a civil action. The court rule sets out a schedule for calculating fee awards based on whether the plaintiff or the defendant prevailed. The prevailing party is not entitled to be reimbursed for all its attorney's fees, except in extraordinary circumstances. Thus, the fee award amounts reported below probably represent only a fraction of the amounts spent by parties on their attorneys.<sup>16</sup>

The Judicial Council found an attorneys' fee award in about 64% of the cases in this study.<sup>17</sup> The largest group of fee awards fell between \$15,000 and \$50,000 (about 29% of fee awards). About 23% of fee awards fell between \$4,000 and \$10,000. Nineteen percent of the fee awards were under \$4,000, and 11% fell between \$10,000 and \$15,000. A few fee awards were large: 17% fell between \$50,000 and \$166,000, and the largest award exceeded \$166,199.

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<sup>16</sup> For more information about attorney's fee awards in state and federal civil cases in Anchorage, see the Judicial Council's report: ALASKA'S ENGLISH RULE: ATTORNEY'S FEE SHIFTING IN CIVIL CASES (October, 1995) at 91-97.

<sup>17</sup> Fee awards were made to both plaintiffs and defendants.

### **G. Offers of Judgment**

Alaska Civil Rule 68 and Alaska Statute § 09.30.065 control offers of judgment. An unaccepted offer of judgment made pursuant to Rule 68 in effect changes the time and conditions under which a party can become the prevailing party for purposes of attorney's fee awards.

The Council found evidence of offers of judgment in 53 cases (32% of the cases studied); however, readers should be cautious when interpreting this finding. First, the 32% figure under reports the number of offers which appeared in the cases reviewed, because this study did not systematically search each file for offers of judgment. Second, the 32% figure under reports the frequency with which offers of judgment were made in jury trial cases, because it includes only those offers that were filed with the court.<sup>18</sup> Of the offers of judgment found in the case files, the smallest was \$1,000 and the largest was \$575,000. About half (53%) of the offers were \$10,000 or less. Ten of the offers (19%) were \$100,000 or more.

### **H. Appeals**

The Judicial Council found evidence of an appeal in only a quarter of all the cases (N=58), although six out of the fifteen cases involving punitive damage awards were appealed. Of the fifty-eight cases in which an appeal was filed, only twenty completed the entire appeal process; the remaining 67% were settled or otherwise dismissed before the supreme court rendered an opinion. Of the twenty supreme court rulings, only four (20%) changed the amount of the jury verdict. Sixteen of the appellate opinions caused no change in the jury verdict. Thus, with the exception of punitive damage cases, only a relatively small portion of cases are appealed, and only a very few jury verdicts are changed as the result of an appeal.

### **I. Length of Cases**

The study examined three variables related to how long it took to resolve cases. The study measured the amount of time that elapsed from the day the case was filed until it was closed,<sup>19</sup> time elapsed between case filing until trial, and time elapsed between trial and case closing.

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<sup>18</sup> Rule 68 does not require an offer of judgment to be filed in the court case file.

<sup>19</sup> The court system administratively closes cases after all proceedings are finished; however, we do not know how much time typically elapses between the end of case activity and the official closing date.

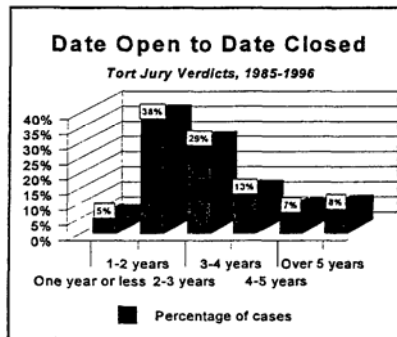


Chart 7  
 Alaska Judicial Council Jury Verdict Study 1996

Chart 7 gives the data on total time from filing until closing. The chart shows that although few cases were resolved within a year, many were resolved within two to four years. Thirty-eight percent of the cases were opened and closed within two years, and another 42% of the cases were resolved in two to four years. About 8% of the cases took longer than five years to resolve. Because all of these cases had a jury verdict, they do not represent the typical civil case in Alaska's courts.<sup>20</sup>

Chart 8 gives the breakdown of the time that elapsed between filing the cases and the trial. About fourteen percent of all the cases went to trial within one year of filing, while another 21% went to trial between one year and eighteen months after filing. Most (85%) of the cases were tried within three years.

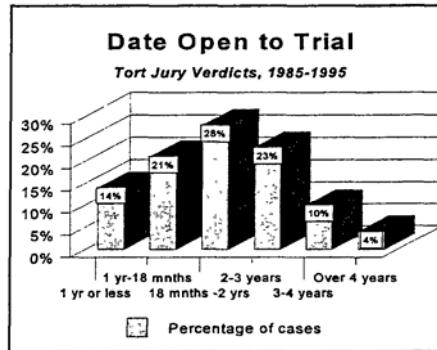


Chart 8  
 Alaska Judicial Council Jury Verdict Study 1996

The data showed that many of the cases closed relatively soon after the trial was concluded. Over half (59%) of the cases were closed within four months after trial. Seventy percent were closed by six months after trial, and 83% were closed by a year after the trial. A small percentage of cases (17%) remained open more than a year after trial; these may have been awaiting appellate decisions.

### J. Conclusion

This review of 233 jury verdicts in tort cases in Anchorage, Fairbanks, Bethel, Juneau and Nome over the past decade by and large showed that Alaska juries found for plaintiffs and

<sup>20</sup> About 4% of tort cases went to trial (including judge-tried cases) in a sample of 1993 Anchorage civil cases. ALASKA JUDICIAL COUNCIL, ALASKA'S ENGLISH RULE, *supra* note 15, at 86.

defendants about equally, although variations existed based on the type of case and the location of the jury. When they made awards, juries tended to give less than the amount requested in the complaint: the bulk of superior court awards were less than \$50,000. In both superior and district court verdicts, damages for economic losses were more common than those for non-economic losses, and awards for future losses of any kind were relatively rare. Juries awarded punitive damages in only 15 of the 233 cases studied, and many of those awards were less than \$60,000.

The study also suggested that parties did not often ask the appellate court to correct mistakes made at trial. Only about a quarter of the jury verdicts were appealed, although six of the fifteen punitive damage cases were appealed. Parties who did appeal seldom waited for the court to render an opinion before settling or otherwise resolving the case. Finally, the data showed that many of these cases were resolved within two to four years of filing.

## Alaska Tort Jury Verdicts by Year<sup>1</sup>

Trial Date	Total Number of Cases	Number of Cases With Plaintiff Award	Number of Cases With Verdict Over \$1 Million	Average Jury Award in Cases With Plaintiff Award	Average Jury Award Excluding Awards Over \$1 Million in Cases With Plaintiff Award
1988	21	10		\$215,763	\$215,763
1989	26	11		\$61,590	\$61,590
1990	32	12	2	\$272,875	\$68,797
1991	23	14	1	\$2,590,278	\$114,625
1992	22	10	1	\$367,264	\$52,066
1993	33	24	2	\$252,030	\$78,183
1994	39	13		\$186,100	\$186,000
1995	28	14		\$66,738	\$66,738
1996 <sup>2</sup>	9	6	1	\$1,177,136	\$32,019
<b>Totals</b>	<b>233</b>	<b>114</b>	<b>7</b>	<b>\$576,642</b>	<b>\$97,309</b>

Alaska Judicial Council 1996

<sup>1</sup> Figures do not reflect any reductions by trial or appellate courts.

<sup>2</sup> Partial year figures.