

# **Trends in Summary Judgment Practice:**

## **A Preliminary Analysis**

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The drop in trial rate in civil cases over the past three decades prompts many hypotheses about the cause. One possible explanation is an increase in dispositive motions, especially motions for summary judgment. The Center has collected information on dispositive motions in cases terminated in six federal district courts for the years 1975, 1985, 1988, 1990, 1995 and 2000. This preliminary analysis examines changes in summary judgment practice.

This analysis reveals an increase in the rate at which summary judgment motions are filed, especially in the eleven-year period preceding the Supreme Court's trilogy of summary judgment decisions in 1986.<sup>1</sup> An apparent increase in summary judgment filings immediately following the trilogy may be due to increased dispositions of asbestos cases rather than a broad change regarding summary judgment practice. The rate at which motions are filed appears to have leveled off in recent years. Higher rates of summary judgment are especially notable in civil rights cases.

### **Which courts and cases are the findings based on?**

We obtained data on summary judgment practice in the Districts of Maryland, Eastern Pennsylvania, Southern New York, Eastern Louisiana, Central California, and Northern Illinois. Existing administrative records do not provide the necessary data, and thus we examined docket sheets for random samples of cases terminated during the six time periods (see Table 1).<sup>2</sup> For each case, we recorded each summary judgment motion filed, whether the motion was granted in whole or in part, and whether the motion terminated the case. We also recorded the nature of the case (tort, contract, civil rights, other<sup>3</sup>), as well as the court and time period.

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<sup>1</sup> Celotex Corp. v. Catrett, 477 U.S. 317 (1986); Anderson v. Liberty Lobby, 477 U.S. 242 (1986); and Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574 (1986).

<sup>2</sup> For purposes of this analysis we excluded prisoner cases, social security cases, student loan repayment cases, and multi-district litigation cases.

<sup>3</sup> The "other" category of cases was comprised of all the cases that could not be fairly characterized as contract, torts or civil rights cases. The most common type of case was recorded as "other statutory action."

The 1975 sample provides a base rate of summary judgment practice.<sup>4</sup> The data from 1985 and 1988 permit an assessment of levels of summary judgment activity before and after the Supreme Court trilogy.<sup>5</sup> The 1990 sample is used to check the levels of activity found in the 1988 sample. The 1995 and 2000 samples provide an indication of recent levels of activity.

**Table 1: Number of Cases Sampled**

<u>District</u>	<u>Year</u>						<u>Total</u>
	<u>1975</u>	<u>1985</u>	<u>1988</u>	<u>1990</u>	<u>1995</u>	<u>2000</u>	
E.D. Pa.	490	221	336	330	600	600	<b>2577</b>
C.D. Cal.	533	185	346	330	600	600	<b>2594</b>
D. Md.	489	173	304	350	600	600	<b>2516</b>
E.D. La.	488	210	329	336	600	600	<b>2563</b>
S.D.N.Y.	197	220	333	340	600	600	<b>2290</b>
N.D. Ill.	228	197	308	339	600	600	<b>2272</b>
<b>Total</b>	<b>2425</b>	<b>1206</b>	<b>1956</b>	<b>2025</b>	<b>3600</b>	<b>3600</b>	<b>14,812</b>

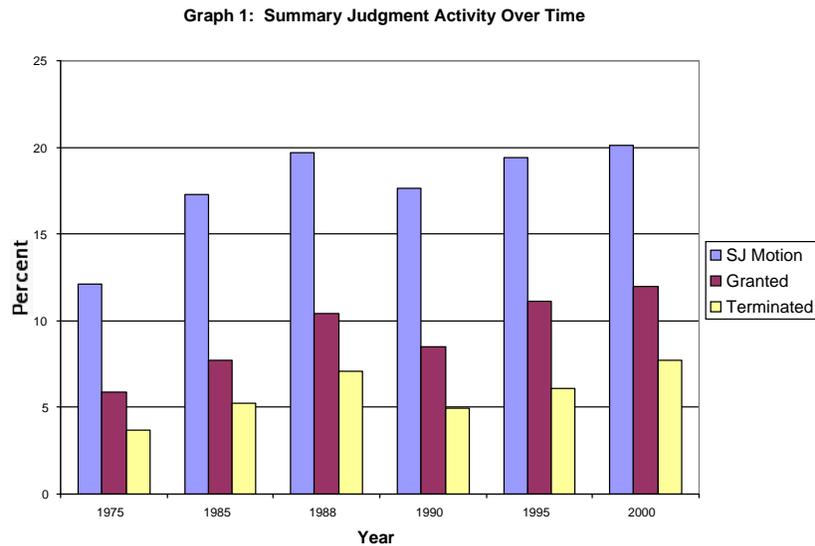
**Have there been increases in the rate at which motions for summary judgment are filed, are granted, and terminate cases?**

Graph 1 shows that the overall rate at which summary judgment motions are filed has increased since 1975. For each year, the graph indicates the percent of cases with

<sup>4</sup> These 1975 data were gathered for a previous study of motion practice. See P. Connolly and P. Lombard, *Judicial Controls and the Civil Litigative Process: Motions* (Federal Judicial Center, 1980). Data for the other five time periods were collected as part of this study over a fifteen-year period.

<sup>5</sup> Our previous examination of summary judgment practice following the Supreme Court trilogy is reported in Joe S. Cecil, *Trends in Summary Judgment Practice: A Summary of Findings*, 1 FJC Directions 11 (1991).

motions filed, the percent of cases with motions granted in whole or in part, and the percent of cases terminated by summary judgment. The percentage of cases with summary judgment motions, averaged across the six courts in the study, has increased from approximately 12% in 1975, to 17% in 1985, to 19% in 1988. Summary judgment filing rates have remained fairly steady since 1985. Even though there appears to be an increase in filing rate following the trilogy in 1986, this may reflect an unusual number of asbestos cases terminated by summary judgment in 1988. Preliminary statistical tests indicate that the minor increases since 1985 may be due to chance variations in the sample, not to any consistent change in activity across the courts. Additional statistical analyses will be carried out to determine if there are changes in summary judgment practice in particular types of cases.

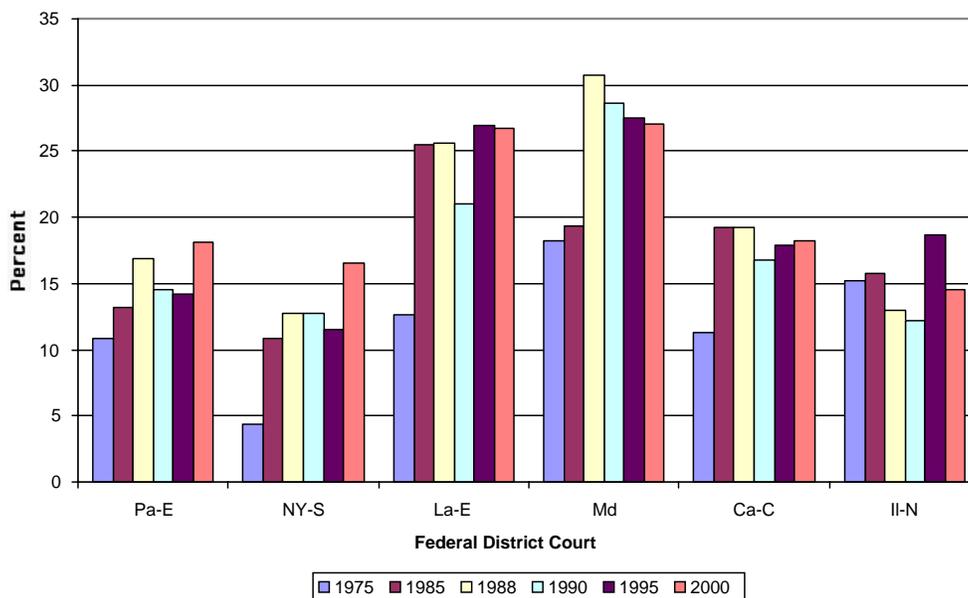


Graph 1 also shows an increase between 1975 and 2000 for the percentage of cases with motions granted in whole or in part, as well as cases terminated by summary judgment. The percentage of cases with one or more motions granted in whole or in part increased from 6% to 12%. The percentage of cases terminated by summary judgment increased from 3.7% in 1975 to 7.7% in 2000.

### Are the changes in filing rate limited to certain courts?

Graph 2 shows that summary judgment activity varies greatly across the six districts studied. Southern New York generally has a lower level of summary judgment activity than the other courts, Maryland has the highest level of activity. In five of the six courts (excepting Northern Illinois), the rate of filing motions for summary judgment appears to have increased during the period from 1975 to 2000. In three courts—Southern New York, Central California, and Eastern Louisiana—the largest increase takes place from 1975 to 1985 (i.e., before the trilogy). In Maryland, the largest increase occurs between 1985 and 1988, but this may reflect a concentration of asbestos cases, which are often terminated by summary judgment. In Eastern Pennsylvania, activity has increased at a modest rate over time. Northern Illinois follows a different pattern from the other five courts; between 1975 and 1985 summary judgment activity remained essentially stable, then declined in 1988 and 1990. In 1995 summary judgment activity increased to 17% before returning to its previous level, which is the lowest level of summary judgment activity among the courts in 2000.

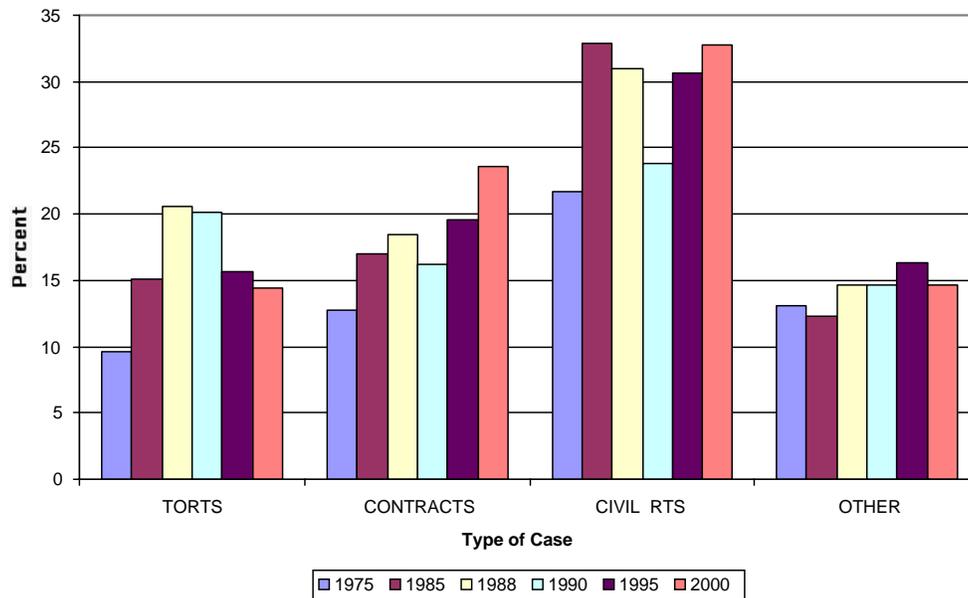
Graph 2: Summary Judgment Motions in Six Federal District Courts



### Are the changes in filing rate limited to certain types of cases?

We have also explored the pattern of summary judgment activity in particular types of cases. Graph 3 shows that summary judgment activity varies greatly across types of cases, with notably higher rates in civil rights cases. Changes over time also seem to vary by type of case. Contract cases show a fairly steady increase over time. Torts cases reveal high rates of summary judgment in 1988 and 1990, perhaps related to the termination of asbestos cases. Civil rights cases show a surprising drop in 1990, then return to previously high levels in following years. Summary judgment in “other” cases (comprised of the remaining types of cases) appears steady over time.

Graph 3: Summary Judgment in Types of Cases



### Comment

Summary judgment has become a more prominent part of civil litigation in the past twenty-five years. The rate at which motions are filed has increased by more than half over that time; the rate at which cases include motions granted in whole or in part, and the rate at which cases are terminated by summary judgment has doubled.

The pattern of change in summary judgment practice is more complex than initially expected. District courts vary greatly in levels of summary judgment activity. Some of this variation may be due to variation in types of cases filed across courts and over time. Our analysis so far has not been able to isolate any effect from the Supreme Court trilogy independent of changes in the filing rate of asbestos litigation. More sophisticated statistical tests will be necessary to sort out the contribution of these various factors to changes in summary judgment activity.

Some judges and attorneys are surprised that the percentage of cases with summary judgment activity is not higher. These graphs are based on random samples of terminated cases, many of which may have terminated with little or no judicial involvement. Additional analyses will examine summary judgment activity in only those cases in which the issue has been joined and judges have become involved in the litigation.

Further analyses also will examine motions filed in product liability and employment discrimination cases, the effect of partial summary judgment on settlement activity, and the rate at which summary judgment is appealed and reversed. Following these analyses, the project will examine changes in other dispositive motions, including motions to dismiss under FRCivP 12(b), motions for judgment on the pleadings under FRCivP 12(c), motions for a default judgment, and motions to dismiss for failure to prosecute.