

HIGHLIGHTS

CASELOAD

**The Landscape of Civil
Litigation in State Courts:
Examining Debt Collection, Landlord/
Tenant and Small Claims Cases**

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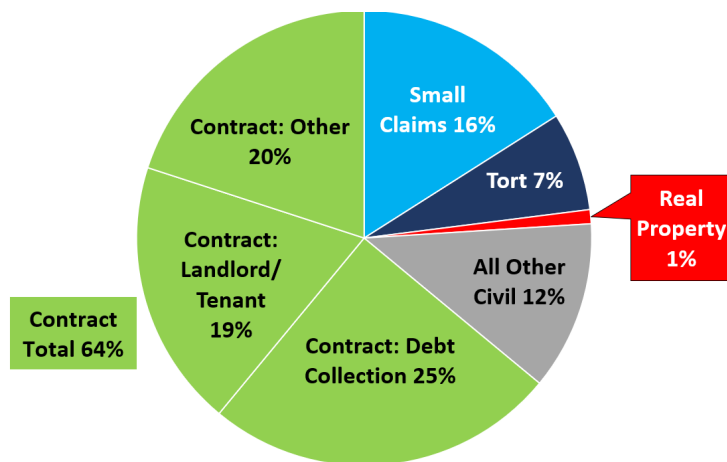
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To inform the deliberations of the Conference of Chief Justices' Civil Justice Improvements Committee, the *Landscape of Civil Litigation in State Courts* project examined case characteristics in all courts with (non-Domestic Relations) Civil jurisdiction in 10 urban counties. A total of 21 separate trial court entities participated in study: 2 single-tiered courts, 10 general jurisdiction courts, and 9 limited jurisdiction courts. This was the first NCSC study to document the entirety of Civil caseloads in state courts, rather than focusing on caseloads for one layer of the trial court.

The courts extracted case-level data from their case management systems for all Civil cases disposed between July 1, 2012 and June 30, 2013. The NCSC applied standard data definitions to format and combine the records into a dataset consisting of more than 900,000 Civil cases. Collectively, we estimate that the Civil caseloads for these 21 courts comprised approximately 5 percent of the total Civil caseload in all state courts.

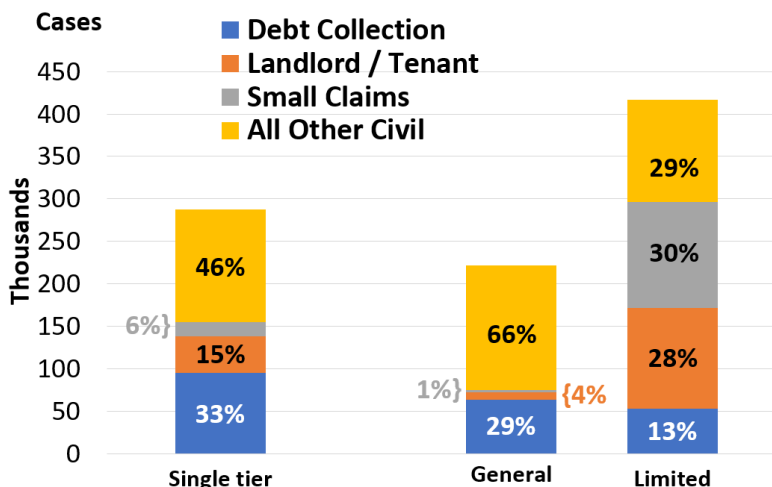
The study found that contract cases comprised nearly two-thirds (64%) of Civil cases and that most contract cases were debt collection (25%) or landlord/tenant cases (19%). The remaining Civil caseload consisted of other contracts, such as employment disputes, contract fraud, and mortgage foreclosure (20%), small claims (16%), other Civil, such as probate, civil appeals, and mental health (12%), tort (7%), and real property cases (1%). Therefore, 60 percent of Civil caseloads are comprised of debt collection, landlord/tenant, and relatively low-value small claims cases. The *Landscape* study afforded the NCSC an opportunity to examine these cases in greater detail.

CASELOAD COMPOSITION, LANDSCAPE OF CIVIL LITIGATION IN STATE COURTS, 2013 DATA



One of the greatest challenges of studying Civil caseloads is making accurate comparisons across states. Nationally, only 10 states (plus the District of Columbia and Puerto Rico) process all Civil cases in a single trial court tier. The structural organization of two-tiered trial courts in the remaining 40 states reflect a variety of subject matter and amount-in-controversy jurisdiction. As a result, Civil caseload characteristics vary across states based on trial court structure, although aggregate Civil caseloads may be quite similar.

CASELOAD COMPOSITION BY TIER, LANDSCAPE OF CIVIL LITIGATION IN STATE COURTS, 2013 DATA



EXAMPLE: Consider a \$6,000 debt collection case.



In **Florida**, the case can only be filed as a contract case in the County Court (limited tier with exclusive jurisdiction for cases \$5,001 to \$15,000). The case cannot be filed as a small claims case in the County Court (exclusive jurisdiction up to \$5,000) or in the Circuit Court (general tier with exclusive jurisdiction for cases \$15,001 and over).



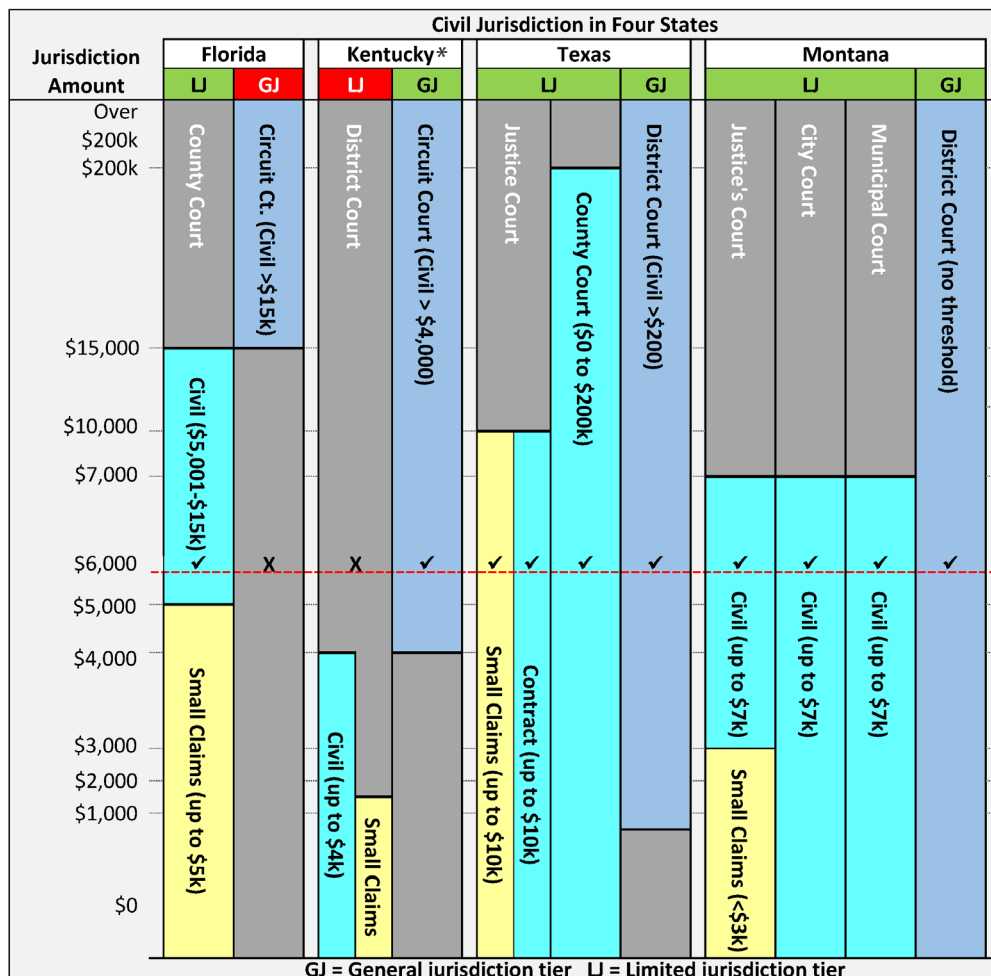
In **Kentucky***, the case can only be filed as a contract case in the Circuit Court (general tier with exclusive jurisdiction for cases \$4,001 and over). The case cannot be filed in the District Court (limited tier with exclusive jurisdiction for cases up to \$4,000, including small claims up to \$1,500).



In **Texas**, the case could be filed either as a contract case in the District Court (general tier with jurisdiction for cases \$201 and over), or as a contract case in the County Court (limited tier with jurisdiction up to \$200,000), OR as either a contract case or a small claims case in the Justice Court (limited tier with jurisdiction up to \$10,000 including small claims up to \$10,000).



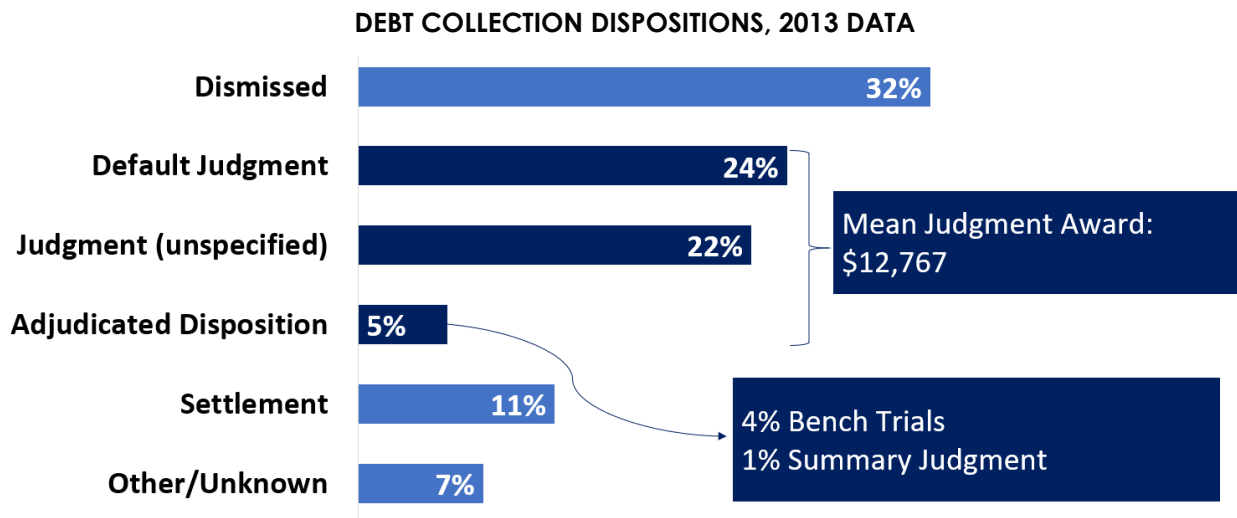
In **Montana**, the case could be filed as a contract case in the District Court (general tier, no monetary threshold) or in the Justice's Court, City Court, or Municipal Court (limited tier with jurisdiction over cases up to \$7,000). The case cannot be filed as a small claims case in the Justice's Court (exclusive jurisdiction up to \$3,000).



*Kentucky's monetary limits for civil cases increased since the *Landscape* study. However, the changes did not affect the example.

Profile of Debt Collection Cases

Debt collection is a contract case type that typically involves a business plaintiff seeking payment for goods or services provided to the defendant pursuant to a contract. Debt collection companies often purchase these debts from the original creditor, and then file debt collection cases in bulk in court. State courts experienced a spike in debt collection filings following the 2008-2009 economic recession, but filings have since returned to their pre-2008 levels. Allegations of abusive and unlawful debt collection practices have prompted the federal Consumer Financial Protection Bureau (CFPB) to pay greater attention to these types of cases.



More than half (51%) of debt collection cases in the *Landscape* study resulted in a formal judgment. In nearly half of these cases (24%), the defendant did not contest the claim and the case was disposed by default judgment. It is likely that a substantial portion of the unspecified judgments were also default judgments, but the courts did not record them as such in the case management system. Most of the remaining cases were either dismissed (32%) or settled (11%).

Five percent of debt collection cases were adjudicated on the merits, most of which were bench trials (4%) and summary judgments (1%). Obtaining a summary judgment order is a more exacting process subject to greater judicial scrutiny, but it is correspondingly more difficult to set aside than a default judgment. Attorneys in state courts will sometimes pursue summary judgment in uncontested cases, but only if the value of the case warrants the investment in time and legal expertise. Only 220 cases (0.1%) were disposed by jury trial or arbitration.

Half of all judgments (51%) in debt collection cases resulted in a monetary award, but the overwhelming majority of these were for modest sums: the average (mean) award was \$12,767, and 90 percent were \$15,786 or less. The average judgment award was significantly larger for debt collection cases disposed by bench trial (\$33,826) or summary judgment (\$190,884) or jury trial (\$447,491), all of which require greater investments in time and legal expertise to pursue.

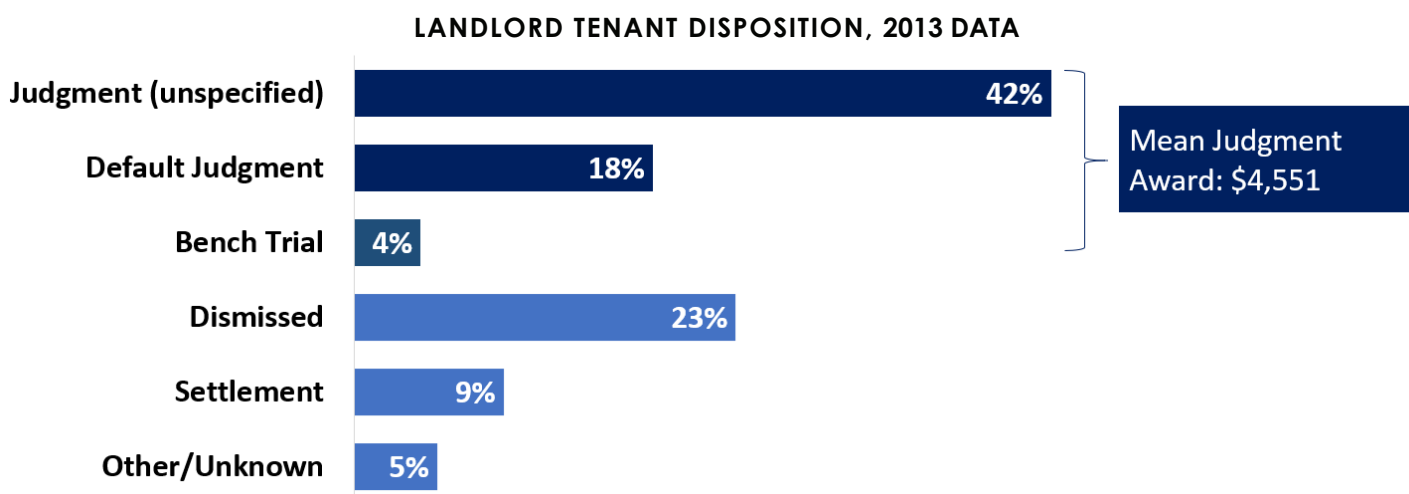
On average, debt collection cases in the *Landscape* dataset took approximately 10 months (304 days) to resolve, and 75 percent of debt collection cases were resolved in 11 months or less. But at the 90th percentile, debt collection cases took more than 2.5 years to resolve. Debt collection cases were also characterized by great asymmetries in the representation status of litigants. Plaintiffs were represented by attorneys in 98 percent of cases, but defendants were represented in only 16 percent of cases.

Profile of Landlord/Tenant Cases

Landlord/tenant is a contract case type involving claims that a landlord or tenant has breached a residential or commercial lease agreement. In most cases, the landlord appears as the plaintiff seeking eviction of the tenant from the property, payment of past due rent, or both. Less frequently, the tenant may appear as a plaintiff seeking injunctive relief, such as compliance with state or local housing regulations, protection from interference with the tenant's legal use of the property, or return of a security deposit.

Courts in seven of the *Landscape* counties were able to provide specific information about the nature of the claims and the relief sought in landlord/tenant cases. More than half (57%) were cases filed by landlords seeking eviction of the tenant only; 38 percent sought both eviction and past due rent payments, and two percent sought past due rent payments only. Three percent of the landlord/tenant cases involved utilities, escrow payments, or other issues including claims of state or local housing violations.

Almost two-thirds (64%) of landlord/tenant cases resulted in a final judgment, 18 percent of which were default judgments. Just under one-quarter of these cases was dismissed, and nine percent were settled. Four percent of landlord/tenant cases were disposed by bench trial. Half of the judgments included a monetary award, but like the debt collection judgments, these were extremely modest. The average award was \$4,551 and 90 percent of all awards greater than zero were \$4,000 or less. Only cases involving "other" landlord/tenant claims resulted in more substantial judgment awards (mean \$11,026).



Landlord/tenant cases were the only cases to resolve more quickly than small claims. The average time to disposition was 3 months, but 75 percent of landlord/tenant cases were resolved in six weeks or less. Compared to debt collection cases, plaintiffs were less likely to be represented by counsel (80%), but the asymmetry between plaintiff and defendant representation was still very large; only 16 percent of defendants were represented.

Debt Collection and Landlord/Tenant Cases Compared to "Other" Contract Cases

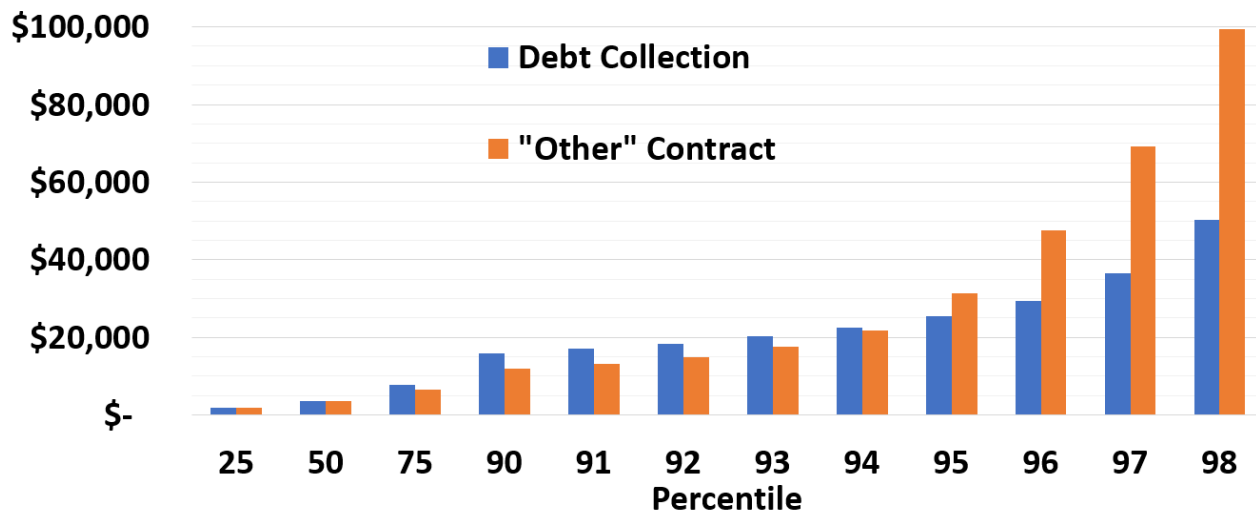
Debt collection and landlord/tenant cases comprised approximately two-thirds of contract cases; the remaining contract cases consisted of other non-debt and non-landlord/tenant contract cases including employment disputes, partnership disputes, fraud, mortgage foreclosure, and commercial breach of contract claims. As the following table illustrates, these "other" contract cases differed from debt collection and landlord/tenant cases in significant ways. Specifically, they were less likely to have been disposed through a formal adjudicative proceeding and judgment awards were larger on average. They also took more time to resolve than debt collection or landlord/tenant cases, and it was approximately twice as likely that both litigants would be represented by attorneys.

COMPARISON OF “OTHER” CONTRACT CASE CHARACTERISTICS, 2013 DATA

	“Other” Contract	Debt Collection	Landlord/ Tenant
Disposed by Any Judgment	58%	51%	63%
Disposed by Adjudication	1%	5%	4%
Mean Judgment Amount	\$28,966	\$12,767	\$4,551
Mean Disposition Time (days)	445	304	100
Both Parties Represented	28%	16%	13%

Although the judgment amounts and disposition times suggest that “other” contract cases are qualitatively different from debt collection and landlord/tenant cases, these differences result primarily from litigant representation status rather than from the monetary value of the cases themselves. The judgment awards in 95 percent of the debt collection and “other” contract cases, for example, generally fall within \$4,000 of each other, and, in fact, 94 percent of debt collection judgments exceed “other” contract judgments. Only at the 95th percentile do the judgment awards for “other” contract cases begin to pull away from the debt collection cases. This suggests that, at most, 5 percent of contract cases (3 percent of Civil caseloads overall) consist of the high-value commercial litigation that dominates contemporary debates about the civil justice system.

JUDGMENT AWARDS IN DEBT COLLECTION AND “OTHER” CONTRACT CASES, BY PERCENTILE, 2013 DATA



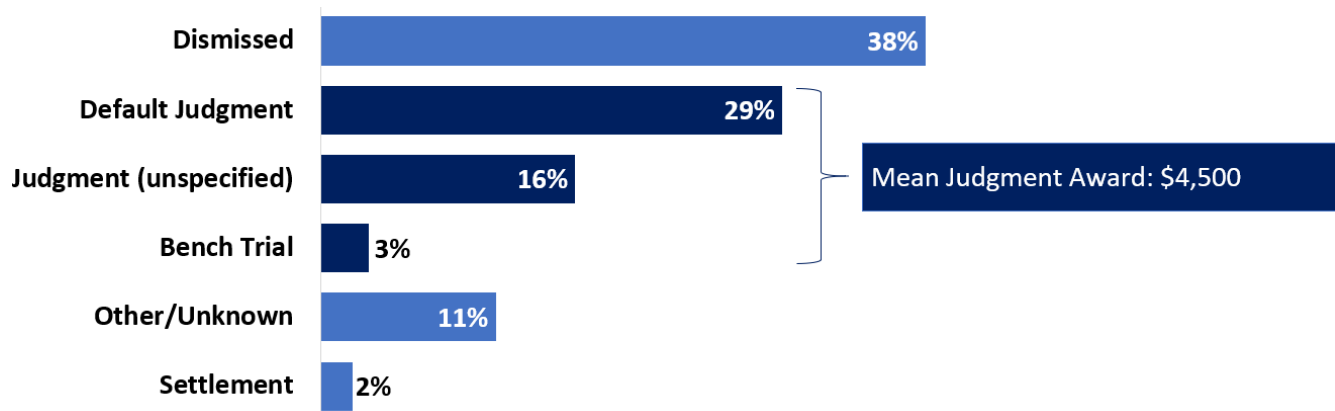
Profile of Small Claims Cases

Beginning in the early 1900s, state courts implemented small claims calendars with the goal of providing a speedy, low cost, simplified procedure primarily for self-represented litigants.¹ They were not, however, entirely without controversy. By the 1960s, a number of researchers had identified problems with these courts including concerns that when business plaintiffs were permitted to file in small claims courts, they tended to dominate these calendars. If business plaintiffs were permitted to retain legal representation, self-represented litigants were often significantly disadvantaged.²

Today all states have small claims dockets to manage lower-value cases. The upper monetary limits range from \$2,500 in Kentucky to \$25,000 in Tennessee. In states with a multi-tier court organization, limited jurisdiction courts typically exercise exclusive jurisdiction over small claims dockets. In the *Landscape* counties, the monetary thresholds ranged from \$3,000 (Bergen and Cuyahoga Counties) to \$12,000 (Allegheny County).

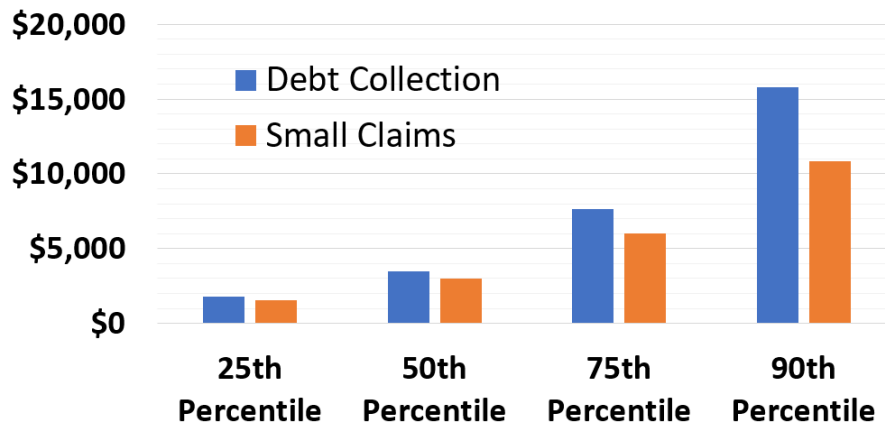
1 JOHN C. RUHNKA & STEVEN WELLER, SMALL CLAIMS COURTS: A NATIONAL EXAMINATION 2-3 (1978).
 2 *Id.* at 5-6.

SMALL CLAIMS DISPOSITIONS, 2013 DATA



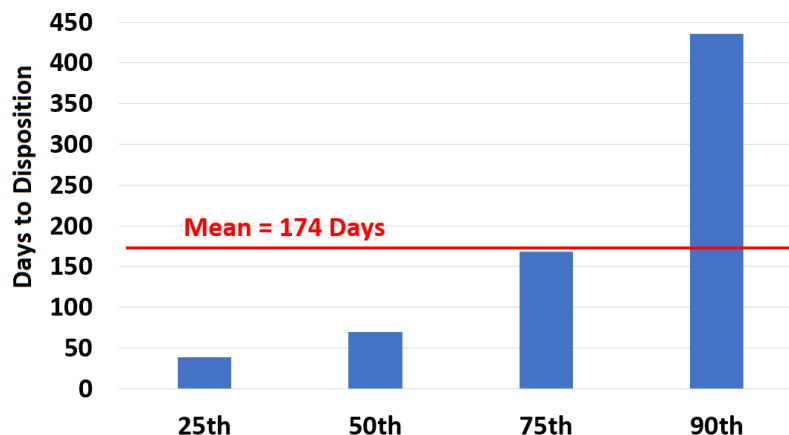
More than one-third (38%) of the small claims cases were dismissed, and more than one-quarter (29%) were disposed by default judgment. Of all of the case types in the *Landscape* dataset, small claims were the least likely to settle (2%). Three percent of small claims were formally adjudicated, almost all by bench trial. More than half (57%, not shown) of small claims judgments included a monetary award, which averaged \$4,500.

JUDGMENT AMOUNTS FOR DEBT COLLECTION AND SMALL CLAIMS, BY PERCENTILE, 2013 DATA



Interestingly, the monetary value of small claims judgments was roughly equivalent to debt collection judgments in the vast majority of cases. Only the largest 10 percent of debt collection judgments greatly exceeded the largest 10 percent of small claims judgments. In fact, in 85 percent of debt collection cases in which a judgment award was entered, the plaintiff likely could have filed the original case as a small claims case rather than as a standard debt collection case.

NUMBER OF DAYS TO DISPOSITION IN SMALL CLAIMS CASES, 2013 (N=109,568)



The median disposition time for small claims cases was 2 months, and nearly 90 percent of small claims were fully disposed within one year. Cases that took longer than one year to resolve were most often administratively dismissed, ostensibly for failure to prosecute.

PERCENT OF LITIGANTS REPRESENTED IN SMALL CLAIMS CASES, 2013 DATA

<u>N</u>	<u>Plaintiff</u>	<u>Defendant</u>	<u>Both</u>
92,472	80%	13%	13%

Lawyers were permitted to represent clients in small claims court in seven of the 10 *Landscape* counties. This explains the surprisingly large proportion of small claims plaintiffs (80%) who were represented by attorneys. Only 13 percent of defendants were represented.

Conclusions and Implications for State Courts

Data from the *Landscape* study present a very different picture of Civil caseloads than is generally based on contemporary debates about the civil justice system. Civil caseloads in state courts are dominated by lower-value contract, debt collection, landlord/tenant, and small claims cases. Most are resolved administratively rather than through adversarial proceedings. Litigants represented themselves in more than three-quarters of these cases. This realization prompted the Conference of Chief Justices to endorse recommendations that courts refocus their attention on high-volume Civil dockets to ensure that case outcomes comply with basic procedural requirements to notice, standing, timeliness, and sufficiency of documentation supporting the relief sought; to manage uncontested cases to assure steady, timely progress toward case resolution; and to increase convenience to litigants by simplifying the court-litigant interaction and creating on-demand court assistance services.



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