



# CIVIL JUSTICE INITIATIVE

## ASSESSING THE LANDSCAPE OF CIVIL LITIGATION: A DO-IT-YOURSELF GUIDE FOR STATE COURTS

The NCSC *Landscape of Civil Litigation in State Courts* examined case characteristics and outcomes for civil cases disposed between July 1, 2012 and June 30, 2013 in state courts with civil jurisdiction in 10 urban counties. That study revealed a substantial difference between the beliefs held by judges and lawyers about civil caseloads and actual civil caseloads. Although much of the contemporary debate about civil justice reform is focused on issues related to high-value tort and commercial contract cases, civil caseloads in state courts are predominantly comprised of consumer debt collection, landlord/tenant, lower-value contract, and small claims cases.

There was, however, considerable variation in case characteristics and outcomes among the 10 counties that participated in the study. Most of the variation was due to differences in the organizational structure of the respective courts, especially the monetary thresholds that determine where cases can be filed and the procedural rules governing caseload management in each court. To ensure that state courts adopt policies and procedures appropriate to their unique circumstances, the CCJ Civil Justice Improvements Committee recommends that state courts begin their civil justice improvement efforts by conducting their own *Landscape of Civil Litigation* study.<sup>1</sup> This document offers guidance on the procedures courts should employ to collect, analyze, interpret, and present data to civil justice stakeholders on civil caseloads.

### Comparability with the NCSC *Landscape* Study

The NCSC *Landscape* study focused on non-domestic general civil (primarily tort, contract, and real property) and small claims cases. Appeals from lower courts and administrative agencies, post-judgment enforcement actions, and domestic and criminal-related actions (e.g., civil protection orders, habeas petitions, criminal bond matters) can comprise a sizeable portion of the overall civil caseload and should be reflected in the analysis. To ensure comparability with the NCSC *Landscape* study, however, domestic, probate, and other non-criminal case types should be excluded.

A *Landscape* study may be most easily accomplished on a statewide basis, particularly in states that routinely use caseload statistics to guide policymaking decisions related to judicial assignment, staffing, facilities, and other resource allocations. A statewide case management system will facilitate this type of research study due to the comparative ease of collecting data and the greater likelihood that court staff will employ a common coding system.

In some jurisdictions, however, local courts may also find it useful to undertake a *Landscape* investigation. If so, they should endeavor to coordinate the research among all courts with jurisdiction over civil cases within a common geographic area (e.g., a single county or a judicial circuit that encompasses multiple counties). As discussed below, the existence of multiple courts in which litigants can file a civil case has an interactive effect on their respective caseloads. For example, numerous studies have documented how plaintiffs may claim an amount in controversy higher or lower than the actual value of the case to take advantage of rules and procedures available in one court but not the other.<sup>2</sup> Those relationships and their effects on caseload characteristics are easier for courts to visualize, and to predict the likely impact of changes in court rules, procedures, or operational practices, when considered in this larger context.

---

<sup>1</sup> CCJ CIVIL JUSTICE IMPROVEMENTS COMMITTEE, RECOMMENDATIONS TO REDUCE COST AND DELAY IN THE DELIVERY OF CIVIL JUSTICE, Recommendation 14.1 (“Court systems should undertake their own “Landscape of Civil Litigation” to determine which recommendations in this Report are advisable for implementation in their jurisdiction.”) (2016).

<sup>2</sup> PAULA HANNAFORD-AGOR & CYNTHIA G. LEE, UTAH: IMPACT OF THE REVISIONS TO RULE 26 ON DISCOVERY PRACTICE IN THE UTAH DISTRICT COURTS 10-12 (Apr. 2015) (documenting significant tier inflation by attorneys in non-debt collection and non-domestic civil cases); PAULA HANNAFORD-AGOR ET AL., THE LANDSCAPE OF CIVIL LITIGATION IN STATE COURTS 17-19 (2015) (citing findings that debt collection plaintiffs routinely understated the amount in controversy to file in the Marion County Small Claims Court).

To replicate the Landscape study, courts should extract data from the relevant case management system(s) for all cases that have been fully disposed over a relatively recent 12-month period. The data elements extracted should include:

- Case name;
- Docket number;
- Filing date;
- Disposition date;
- Case type;
- Manner of disposition;
- Amount of any judgments awarded; and
- Representation status of the plaintiffs and defendants.<sup>3</sup>

Depending on the architecture of the case management system, the data may involve multiple records per case (e.g., to reflect judgments awarded among multiple plaintiffs or against multiple defendants, or to reflect multiple attorneys representing different litigants within the case). Some data may be reflected as text fields rather than numerical or alphabetical codes. Before beginning to analyze the data, it will be necessary to aggregate records such that all of the information is reflected in a single record for each case. Details about how those records should be cleaned and aggregated are described below. Each record should include a field identifying the court from which the data was extracted. Text fields should be recoded into numerical codes to simplify data analysis. In addition to extracting the raw data, courts should also obtain copies of any coding protocols employed by court staff when entering data into the case management system.

Basic Landscape analyses (e.g., raw counts, averages) can be performed using Excel or a similar spreadsheet application, but the size of these datasets in most courts will make it difficult to perform more sophisticated analyses such as testing for statistical differences. Instead, courts should convert the dataset into a format compatible for dedicated statistical software such as SPSS, STATA, R or SAS. If the research personnel conducting the analyses do not have access to those resources, the court should contract with a professional or academic research institution with relevant expertise.

### Distribution of Civil Cases among General and Limited Jurisdiction Courts or among Trial Calendars within Single-Tiered Courts

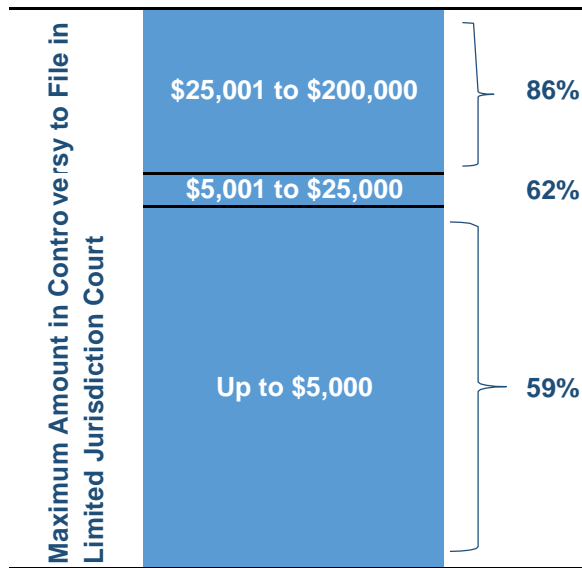
Court organizational structures dictate the options available to litigants about where to file a civil case and what policies, procedures, and court practices will determine its subsequent management by the court. To the extent that litigants have discretion about where to file cases, how they exercise that discretion can provide court policymakers with insight about the relative advantages and disadvantages of those policies, procedures, and practices.

In states with both general and limited jurisdiction courts, the amount-in-controversy alleged in the complaint often determines which courts have jurisdiction over the case. Typically, the higher the monetary threshold for filing in the limited jurisdiction court, the larger the proportion of civil cases in the limited jurisdiction court (see Figure 1). Although the monetary value of the case will be the predominant factor affecting choice of venue, litigants will sometimes modify claims to be able to file in a preferred court or to avoid a disfavored one. In multi-tiered courts with concurrent jurisdiction, factors such as judicial assignment practices, the availability of mandatory ADR, procedural and evidentiary rules and practices, and perceptions of the speed, cost, and fairness of each venue will also affect litigant choices. Although single-tiered courts do not offer an alternate venue to the state court, many local courts nonetheless segment their civil dockets (e.g., small claims, landlord tenant, claims under \$50,000, claims subject to mandatory ADR, complex or business cases, etc.), likewise affecting strategic pleading by litigants.

---

<sup>3</sup> The NCSC also requested the answer date, the number of plaintiffs and defendants, the amount in controversy, the judge name, the litigant names, and outcome of adjudicated dispositions. Too few of the participating courts could provide those data elements, and the NCSC was unable to perform additional analyses on these data.

Figure 1: Proportion of Total Civil Caseload Filed in the Limited Jurisdiction Court\*



\* Based on 2013 civil case filings in 25 states with multi-tier civil courts

### Caseload Composition

Researchers should construct two variables to reflect case type. One should describe the broader case category (e.g., tort, contract, real property, small claims, “other civil” and, if necessary, unknown case type). The second variable should provide a more granular focus on individual case types within each category. For both variables, use civil case definitions from the NCSC *State Court Guide to Statistical Reporting* (see Table 1).<sup>4</sup> Many courts do not identify case types at the more granular level. If so, it will be necessary to code cases as “other” within each case category (e.g., contract-other, tort-other).

Contract	Buyer plaintiff
	Debt Collection
	Employment dispute-discrimination
	Employment dispute-other
	Fraud
	Landlord/Tenant dispute-other
	Landlord/Tenant dispute-unlawful detainer
	Mortgage Foreclosure
	Contract-other
Tort	Automobile tort
	Intentional tort
	Malpractice-medical
	Malpractice-other
	Premises liability
	Product liability
	Slander/libel/defamation
	Tort-other
Real Property	Eminent domain Real property-other
Small Claims	Small Claims

<sup>4</sup> [NCSC COURT STATISTICS PROJECT, STATE COURT GUIDE TO STATISTICAL REPORTING \(Ver. 2.1.1, Oct. 15, 2015\).](#)

Other Civil	Appeal from administrative agency
	Appeal from limited jurisdiction court
	Civil appeals-other
	Habeas corpus
	Non-domestic relations restraining order
	Post-judgment enforcement
	Tax
	Writ
Civil-other	
Unknown	Unknown

### Manner of Disposition

Documenting how civil cases are actually resolved can be somewhat challenging. Courts traditionally record the procedural significance of a disposition in the case management system rather than the actual type of disposition. Consequently, a case may be recorded as “dismissed” for a variety of reasons including failure to prosecute, upon motion by the plaintiff for withdrawal or non-suit, and upon notice that the parties have settled the case. Similarly, a case disposed by “judgment” may indicate either a default judgment, an agreed or stipulated judgment (settlement), or an adjudication on the merits in a bench or jury trial, summary judgment, or arbitration decision. Researchers should consult the coding protocols employed by court staff to verify routine coding practices for each of the participating courts.

To replicate the approach employed in the *Landscape of Civil Litigation in State Courts*, analysts should develop two separate fields to reflect disposition, one which describes the broader disposition category and another that provides more granular information about the type of disposition. If possible to do so from data entered on the case management system, courts should also create a field indicating the prevailing litigant in cases disposed by an adjudicative proceeding (e.g., bench or jury trial, directed verdict, arbitration decision). Table 2 describes the disposition categories and codes employed in the *Landscape* study.

**Table 2: Manner of Disposition Categories and Types**

Dismissal	Withdrawal	
	Dismissed	
	Dismissed without prejudice	
	Dismissed for failure to prosecute	
Judgment	Default judgment	
	Summary judgment	
	Unspecified judgment	
Settlement	Settlement	
	Agreed judgment	
	Stipulated judgment	
	Dismissal with prejudice	
Adjudicated Disposition	Jury trial	} <b>Prevailing Litigant</b>
	Bench trial	
	Directed verdict	
	Arbitration decision	
Other Disposition	Change of venue	
	Removal to federal court	
	Transferred	
Unknown	Bankruptcy stay	
	Unknown	

Further complicating the analysis, some case management systems will record the disposition type for each defendant named in the case (e.g., default judgment entered against Defendant 1, dismissed with prejudice against Defendant 2, etc.) In the NCSC *Landscape* study, researchers coded the disposition that resulted in the complete resolution of the case. Table 3 illustrates an example in which a tort case with fifteen defendants produced the

following disposition outcomes:

<b>Table 3: Disposition Codes with Multiple Defendants</b>			
Defendant	Disposition	Party Disposition Date	Case Disposition Date
D1	ORDER OF DISMISSAL (F.W.O.P.)	11/20/2012	11/20/2012
D2	ORDER OF DISMISSAL (F.W.O.P.)	11/20/2012	11/20/2012
D3	ORDER OF DISMISSAL (F.W.O.P.)	11/20/2012	11/20/2012
D4	ORDER OF DISMISSAL	3/11/2011	11/20/2012
D5	SUMMARY FINAL JUDGMENT	4/3/2003	11/20/2012
D6	ORDER OF DISMISSAL	3/11/2011	11/20/2012
D7	ORDER OF DISMISSAL (F.W.O.P.)	11/20/2012	11/20/2012
D8	ORDER OF DISMISSAL (F.W.O.P.)	11/20/2012	11/20/2012
D9	ORDER OF DISMISSAL (F.W.O.P.)	11/20/2012	11/20/2012
D10	SUMMARY FINAL JUDGMENT	8/23/2002	11/20/2012
D11	SUMMARY FINAL JUDGMENT	8/23/2002	11/20/2012
D12	SUMMARY FINAL JUDGMENT	2/15/2002	11/20/2012
D13	SUMMARY FINAL JUDGMENT	2/15/2002	11/20/2012
D14	SUMMARY FINAL JUDGMENT	2/15/2002	11/20/2012
D15	ORDER OF DISMISSAL (F.W.O.P.)	11/20/2012	11/20/2012

The case, which was initiated in 1998, was resolved for five defendants in 2002 and another in 2003, all by summary judgment. Two defendants were resolved by order of dismissal in 2011, but the case was ultimately resolved by order of dismissal for want of prosecution in November, 2012, affecting the remaining seven defendants. In the database, this case is classified as disposed by dismissal for want of prosecution in 2012.

### Judgment Amounts

Other than alleging a sufficient amount in controversy to satisfy jurisdictional requirements, very few courts require litigants to specify the monetary damages at issue in the pleadings. Consequently, the most reliable information about the value of a case is the actual judgment entered for cases in which a monetary judgment was awarded. This field can be somewhat challenging for researchers to analyze, however, due to the common practice in many courts of entering multiple judgments in the same case. Typically this occurs under three different circumstances.

First, some courts routinely break monetary judgments into separate components (e.g., damage award, attorneys' fees, prejudgment interest, post-judgment interest, court costs, etc.). Before undertaking any data cleaning on judgments entered with this format, verify whether any of the judgment awards is labeled "total damage award" or similar language. If so, select only these judgment awards (excluding the individual component judgments) to avoid doubling the actual judgment award. If only the component judgments have been entered onto the system, aggregate the components into a total judgment award. For instance, Table 4 shows case outcomes in multiple records as "Judgment Components." In this instance, the judgment awarded in the case is the sum of these components, \$2,102.

<b>Table 4: Monetary Judgments Reported as Components</b>	
Judgment Amount	Judgment Component
\$1,966.50	Costs
\$135.50	Rent in Arrears

Second, in cases involving multiple defendants, some courts enter separate judgments against each individual defendant. If so, aggregate the damage awards into a single damage award for each case. For example, in an auto-tort case, two defendants each receive a judgment against them of \$6,126.85, producing a total judgment amount of \$12,253.70.

Third, cases in which a judgment is subsequently modified will generally include both the original judgment and any subsequent judgments in the case management system. If so, researchers should select only the last judgment entered before the case was disposed. In the example shown in Table 5, the court entered a judgment for \$16,451.66 on March 3, 2011, then voided the original judgment and entered a modified judgment in the amount of \$17,313 on October 17, 2012. In this example, only the judgment for \$17,313 should be selected.

**Table 5: Subsequently Modified Judgments**

Judgment Date	Judgment Amount (\$)
3/3/2011	16,451.66
10/17/2012	17,313.00

When analyzing and presenting information about judgment amounts, exclude cases in which the judgment amount was \$0 (e.g., equitable relief, prevailing defendant). Also, be cautious about reporting the average (mean) judgment entered in cases because these are often skewed upward due to extremely high judgments awarded in a very small proportion of cases. A more meaningful description of judgment awards involves reporting the median (50th percentile) and interquartile range (25th and 75th percentiles). These values are less susceptible to skewing by statistical outliers, and thus provide a more reliable picture of the normal range of judgment awards. See Table 6.

**Table 6: Judgment Amounts Exceeding \$0\***

	N	Interquartile Range		
		25th	50th	75th
<b>Overall</b>	<b>227,812</b>	<b>\$ 1,273</b>	<b>\$ 2,441</b>	<b>\$ 5,154</b>
<b>Case Type</b>				
Real Property	102	\$ 2,181	\$ 12,789	\$ 105,822
Tort	3,554	\$ 2,999	\$ 6,000	\$ 12,169
Other	9,704	\$ 749	\$ 2,002	\$ 4,219
Contract	160,465	\$ 1,251	\$ 2,272	\$ 4,981
Small Claims	39,517	\$ 1,568	\$ 3,000	\$ 6,000

Another useful technique is to report the distribution of judgment awards based on discrete ranges of particular significance to each jurisdiction (e.g., less than \$5,000, \$5,000 to \$24,999, \$25,000 to \$49,999, etc.). See Table 7.

**Table 7: Judgments Exceeding \$0**

	N	%
Less than \$5,000	170,459	73.4%
\$5,000 to \$9,999	36,115	15.6%
\$10,000 to \$24,999	18,665	8.0%
\$25,000 to \$49,999	3,331	1.4%
\$50,000 to \$99,999	1,682	0.7%
\$100,000 to \$249,999	1,089	0.5%

\$250,000 or more	868	0.4%
-------------------	-----	------

## Representation Status

The *State Court Guide to Statistical Reporting* includes guidelines for documenting the presence of self-represented litigants—specifically, that a case should be counted as a case with self-represented litigants if one or more parties were self-represented *at any time during the life of the case*.<sup>5</sup> If the case management system includes plaintiff and defendant representation status that conforms to the *State Court Guide* specifications, researchers should extract those data elements to document the representation status of litigants.

However, most court automation systems have not yet implemented the *State Court Guide* definitions for self-represented litigants into their programming. Instead, representation status is usually documented by entering the name, bar number, and contact information for an attorney who appears on behalf of a litigant in the pleadings or other court filings. If a litigant is self-represented, the case management system may prompt court staff to enter “pro se” or a similar designation in the attorney information field; alternatively, the field may be left blank. If the data fields indicating the representation status of the litigants do not conform to the *State Court Guide* definitions, researchers should extract these data elements to document representation status *at the time of case disposition*.

In cases involving multiple plaintiffs or multiple defendants, some of which are represented by counsel and some of which are self-represented (e.g., a case involving a business litigant that is represented by counsel and the individual owners of the business who are self-represented), researchers should code those litigants as represented by counsel on the presumption that the benefit of attorney representation to a co-plaintiff or co-defendant will accrue to all litigants on the same side. If the defendant fails to respond to the complaint or otherwise enter an appearance, code the representation status as “unknown” rather than self-represented.

## Time to Disposition

Time to disposition should be determined by counting the number of days from the filing date to the disposition date. If fields exist in the database that indicate that the case was placed in inactive status for any period of time, subtract the amount of time that the case was inactive from the total time to disposition amount. Similar to judgment amounts, average disposition times are susceptible to skewing due to statistical outliers; median and interquartile ranges provide more reliable information about normal disposition times (E.g., see Table 6). If the state has adopted time standards for civil cases, report the proportion of cases that comply with those standards. Otherwise, report compliance with the *Model Time Standards for Trial Courts* (see Table 8).

**Table 8: Cases Disposed within *Model Time Standard* Guidelines**

	N	Percent disposed within		
		180 Days	365 Days	540 Days
<b>Model Time Standards</b>		<b>75</b>	<b>90</b>	<b>98</b>
<b><i>Landscape of Civil Litigation</i></b>	820,893	59	75	82
Small Claims	110,274	76	88	92
Other Civil	79,077	53	73	81
Contract	553,271	61	75	81
Real Property	5,745	37	57	73
Tort	60,460	27	53	69

<sup>5</sup> *Id.* at 31-32.