

# Impact of the Utah Online Dispute Resolution (ODR) Pilot Program: **Final Report**

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# Executive Summary

## BACKGROUND

Access to justice within the civil justice system has been a decades-long concern for state and local courts. In small claims cases, where both self-represented litigants and default judgments are common, courts have taken various approaches to ensure access and fairness. The most recent development in state court responses is the use of online dispute resolution (ODR), consisting of an internet-based software platform allowing litigants to negotiate a settlement to their cases or, if negotiations fail, exchange information and relevant evidence to narrow the factual and legal issues to be decided in a formal court hearing. Utah became one of the first states to begin exploring ODR as an access-to-justice solution and officially launched its ODR pilot program in September 2018.

In collaboration with NCSC staff, an evaluation framework was developed to assess the appropriateness, efficacy, and sustainability of the Utah ODR program and the following program objectives were identified:

- Reduce default rates
- Decrease litigant costs
- Decrease the access to justice gap due to socioeconomic status
- Increase settlement rates
- Decrease post-judgment enforcement actions
- Increase satisfaction of judgments
- Equalize the burden of litigation on first-time parties versus repeat parties
- Promote litigant satisfaction with case outcomes
- Promote litigant perceptions of procedural justice
- Decrease court costs

Drawing from these objectives, the Utah ODR pilot project evaluation focused on measuring the anticipated outcomes of reduced time to disposition, reduced default judgement rates, increased settlement rates, and decreased post-judgment enforcement actions. Measures of litigant satisfaction and perceptions of procedural fairness were not examined due to the inability of obtaining baseline survey data necessary to compare ODR participants with non-ODR participants.

## FINDINGS

The findings from the evaluation showed mixed results in relation to the anticipated outcomes, but one clear success of the ODR project was in measures of case processing. The proportion of cases requiring more than one hearing to fully resolve decreased across all disposition types, and the average time to disposition decreased by 5 weeks or more for all disposition types, other than dismissals. This coupled with dismissals and default judgements being handled administratively allowed for more effective case calendaring and use of judicial resources.

Although cases disposed at a faster rate, the ODR pilot project showed little impact on the manner of disposition and did not show significant changes in default judgement rates or settlement rates. In cases that did reach settlement, however, preliminary data on the rate of post-judgment enforcement actions suggest that the terms of payment plans may be more workable for defendants using the ODR platform compared to the baseline cases. Additionally, case outcomes and litigant interactions within the ODR platform show improved geographic and time accessibility for litigants, as evidenced by the number of litigant interactions that took place outside regular court hours and the decrease in rate of default judgments for litigants residing both in West Valley City and outside Salt Lake County.

## RECOMMENDATIONS

Based on the findings that default judgement rates were not reduced with the ODR program, the NCSC recommends the implementation of design recommendations outlined in the University of Arizona usability study followed by a reevaluation of the impact of the ODR pilot project on default judgement rates. These recommendations include changes in the content and format of the summons and affidavit that are served on the defendant, as well as platform design changes which may address technology barriers impeding defendants' ability to respond and successfully negotiate a workable settlement agreement to repay valid debts.

Additionally, the Utah Courts System should explore the expansion of litigant education resources to convince defendants, who may already be distrustful of the justice system, that responding to the lawsuit is in their best interest. Involvement of community partners should be considered, including perhaps social service agencies and nonprofit organizations that might be able to provide additional financial assistance.

Finally, although measures of litigant satisfaction and perceptions of procedural justice were not examined in this evaluation, these remain critical performance measures for the courts. The NCSC recommends the Utah Court System collect baseline survey data from litigants in small claims cases in other justice courts that have not yet implemented ODR for use in examining these measures in the future.

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# Introduction

Over the past several decades, state and local courts in the United States have become increasingly concerned about the inability of large numbers of people to access the civil justice system to address routine legal problems. The most commonly cited factor is the cost of legal services from licensed attorneys, which often exceeds the financial means of lower-income and even middle-class individuals. A 2015 study of civil caseloads in state courts found that 76% of nondomestic civil cases had at least one self-represented litigant (SRL).<sup>1</sup> Defendants were 3.5 times more likely to be self-represented than plaintiffs. A subsequent study of family court caseloads found that 72% of domestic relations cases had at least one SRL.<sup>2</sup>

A more nuanced view of the impact of costs on access to justice has emerged more recently. In a 2011 study, Professor Rebecca Sandefur concluded that while legal costs were one factor leading to increased rates of self-representation, a more significant factor was litigants' perceptions that securing legal assistance would not significantly affect the outcome of the case—in essence, reducing the relative value of legal representation to zero.<sup>3</sup> The 2015 study of non-domestic civil caseloads also found that 75% of damage awards entered against defendants in civil cases were less than \$5,124.<sup>4</sup> In most instances, the cost of legal representation would exceed the judgment amount by a wide margin, making it irrational from an economic standpoint to hire a lawyer, even if the lawyer could successfully change the case outcome such that the defendant prevailed on the merits or avoided any monetary settlement.

Common to both studies was the finding that only a small proportion of these cases are ultimately adjudicated on the merits. Many cases were uncontested—that is, defendants failed to file an answer or otherwise respond to the complaint, which generally resulted in default judgments. Parties in contested cases negotiated settlements, sometimes with assistance through mediation or other court-provided ADR programs.<sup>5</sup> Given the asymmetry in representation between plaintiffs and defendants, the relatively low rate of adjudicated cases raises concerns about the lack of judicial oversight to ensure that default judgments comply with procedural due process and that settlements are objectively fair to both parties.<sup>6</sup>

State court responses to the influx of self-represented litigants have shifted over time. In the 1980s and 1990s, courts strongly preferred that litigants be represented by competent legal counsel. They encouraged state and federal legislatures to fund Legal Aid/Legal Services programs for low-income people and urged the private bar to provide pro bono legal services for those who did not qualify for Legal Aid. However, when the supply of lawyers providing free or low-cost legal services failed to keep pace with the demand, courts developed a variety of self-help programs to provide simplified forms and instructional materials for cases with the highest volume of self-represented litigants. For people who could not easily travel to the courthouse during regular business hours, many courts migrated these materials to court websites. Other technology improvements included the development of “hot-doc” applications in which litigants complete mandatory court forms through an interactive question-and-answer software, which can then be e-filed in court.

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<sup>1</sup> PAULA HANNAFORD-AGOR, SCOTT GRAVES & SHELLEY SPACEK MILLER, THE LANDSCAPE OF CIVIL LITIGATION IN STATE COURTS 31-33 (NCSC 2015) (*hereinafter* CIVIL LANDSCAPE).

<sup>2</sup> PAULA HANNAFORD-AGOR, LYDIA HAMBLIN, BRITTNEY VIA & NATALIE KNOWLTON, THE LANDSCAPE OF DOMESTIC RELATIONS CASES IN STATE COURTS. 20-24 (NCSC 2018) (*hereinafter* DOMESTIC RELATIONS LANDSCAPE).

<sup>3</sup> Rebecca L. Sandefur, *The Impact of Counsel: An Analysis of Empirical Evidence*, 9 SEATTLE J. SOC. JUST. 51 (2010-2011).

<sup>4</sup> CIVIL LANDSCAPE, *supra* n. 1, at 23-25.

<sup>5</sup> *Id.* DOMESTIC RELATIONS LANDSCAPE, *supra* note 2, at 16-19.

<sup>6</sup> CCJ CIVIL JUSTICE IMPROVEMENTS COMMITTEE, CALL TO ACTION: ACHIEVING CIVIL JUSTICE FOR ALL, Recommendation 11 and 12 (NCSC 2016).

The most recent development in self-help services for civil litigants is online dispute resolution (ODR), which generally consists of an Internet-based software platform on which litigants can negotiate a settlement to their cases or, if negotiations fail, exchange information and relevant evidence to narrow the factual and legal issues to be decided in a formal court hearing. ODR programs were first developed by online commercial businesses such as PayPal, eBay, and Amazon to resolve disputes more effectively between buyers and sellers. Over the past three years, a small handful of courts began offering ODR programs in a variety of case types including small claims; consumer debt; simple divorce including child support, child custody, and visitation, and child support enforcement; and noncriminal traffic cases.<sup>7</sup> ODR programs typically feature a streamlined process to reduce procedural complexity compared to traditional litigation. Many programs also offer online mediation services for parties who have difficulty negotiating a settlement directly. A growing number of commercial vendors now offer ODR software that is designed to interface with court case management systems (CMS).

## UTAH ODR PILOT PROGRAM FOR SMALL CLAIMS CASES

Although its ODR pilot program did not officially launch until September 2018, Utah was one of the first states to begin exploring ODR as an access-to-justice solution. Rather than implementing a commercial ODR system, Utah developed an in-house system designed to interface with CORIS, the statewide CMS. The ODR system was initially designed and piloted for small claims cases, which in Utah are cases seeking money damages less than \$11,000 and are exclusively heard by the justice courts.<sup>8</sup> The Utah ODR system was first piloted in the justice court in West Valley City, a suburb of Salt Lake City, on September 19, 2018.<sup>9</sup>

The ODR program was intended to increase access for litigants in civil cases by providing an online platform on which litigants could negotiate with each other asynchronously at any time of day or night, any day of the week, and without having to physically appear in court to resolve their case. The platform features a mobile-enabled interface through which litigants can describe their positions with respect to the dispute, exchange documentation (e.g., documents, photographs) to support those positions, negotiate the terms of a settlement agreement, or if they fail to agree, identify their primary areas of disagreement for a justice court judge to consider during an in-court hearing. Each case referred to the ODR program is assigned a court "facilitator" to assist the parties, also asynchronously, with using the platform and negotiating a settlement. The facilitator can help draft settlement agreements or a trial preparation statement.<sup>10</sup>

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<sup>7</sup> ODR programs have been launched or are in development in Connecticut (traffic and consumer debt), Florida (small claims, simplified divorce, and traffic), Hawaii (small claims), Iowa (small claims, consumer debt, landlord/tenant), Kansas (divorce), Michigan (child support enforcement, traffic, and bond/capias warrants), Nevada (divorce), New Hampshire (small claims), New Mexico (consumer debt), Utah (small claims), Tennessee (medical debt), and Texas (small claims and consumer debt).

<sup>8</sup> Utah Code § 78A-8-102. As part of its ODR program design, the Utah Administrative Office of the Courts (AOC) conducted a study of small claims cases and found that caseloads were predominantly composed of consumer debt cases filed by payday lenders.

<sup>9</sup> The pilot project was extended to the Orem and Carbon County Justice Courts on August 5, 2019.

<sup>10</sup> In addition to explaining technical issues related to ODR and assisting in settlement negotiations, facilitators are authorized to provide information to one or both parties regarding court procedures, to evaluate the claim or defenses alleged by the parties, and to establish deadlines to resolve the case. Utah Supreme Court Standing Order No. 13 (regarding Small Claims Online Dispute Pilot Project) Paragraph 6.

In addition to developing the ODR platform tools, the Utah Supreme Court simplified the procedural rules governing small claims cases and accelerated the timeframe in which certain case events had to take place.<sup>11</sup> Table 1 compares steps and timelines for the traditional and ODR small claims processes.

**Table 1: Time Frames for Key Events in Small Claims Cases**

	<b>Traditional Small Claims Process</b>	<b>Online Dispute Resolution</b>
Plaintiff Register for ODR	n/a	within 7 days of filing
Service on Defendant	30 days before trial date	within 120 days of filing
Proof of Service	within 10 days after service date	within 7 days of service date
Defendant Register for ODR	n/a	within 14 days of service date
Facilitator Assigned	n/a	within 7 days of defendant registration
Settlement Negotiations	anytime before trial date	14 days after facilitator engagement with parties
Court Trial	10 weeks after filing	7 to 21 days after unsuccessful facilitation

Under the traditional procedure in the West Valley City Justice Court, hearings for small claims cases were scheduled for a date approximately 10 weeks after filing. Upon filing the complaint, the plaintiff had to serve the defendant within 120 days of filing and at least 30 days before trial.<sup>12</sup> To meet the deadline, therefore, the plaintiff had approximately 6 weeks to serve the defendant or risk having the complaint dismissed for failure to serve. The defendant was not required to file an answer in response to the complaint. However, if the defendant failed to appear on the scheduled hearing date to contest the claim, a default judgment was entered for the amount of damages alleged in the complaint.

In terms of the internal operating practices, the West Valley City Clerk of Court would typically schedule up to 50 cases for each two-hour small claims calendar. It was the experience of the West Valley City magistrates and clerks that in nine out of ten cases, one or both parties would typically fail to appear for the hearing. Consequently, the first hour or more of each small claims calendar was dedicated to processing dismissals and default judgments. While this administrative work was underway, the West Valley City Justice Court would offer mediation services with volunteer mediators for cases in which both parties appeared for the hearing. If the parties were able to settle the lawsuit in mediation, the settlement agreement would be filed in court; if not, and time permitting, the magistrate would hear the case and enter a judgment on the merits. In many instances, however, the magistrate would not have time to hear all the cases on the calendar and the case would be reset for a future date.

Under rules governing the ODR pilot project in the West Valley City Justice Court, participation in the ODR platform for small claims cases is mandatory unless the court grants an exemption to either the plaintiff or defendant due to undue hardship. Undue hardship is defined as a party's inability to "access the online system to participate in the online process without substantial difficulty or expense."<sup>13</sup> The rules governing service of process are the same in the ODR platform as the traditional process—that is, the plaintiff must serve the defendant with the complaint within 120 days of filing. Unless an objection is filed, the plaintiff must register on the ODR system within 7 days of filing and the defendant must register within 14 days of service.<sup>14</sup> A facilitator is assigned to the case within 7 days after both parties have registered.<sup>15</sup>

<sup>11</sup> Utah Supreme Court Standing Order No. 13 (Sept. 19, 2018); Utah Rule of Small Claims Procedure.

<sup>12</sup> Proof of service was required to be filed within 10 days. Utah Rule of Small Claims Procedure 3; Utah Rule of Civil Procedure 4.

<sup>13</sup> Utah Supreme Court Standing Order No. 13 (regarding Small Claims Online Dispute Pilot Project) Paragraph 5.

<sup>14</sup> *Id.* at Paragraph 4.

<sup>15</sup> *Id.* at Paragraph 6.



As a practical matter, unless there is a significant delay in serving the defendant, the time frame for the parties to begin negotiating the merits of their cases is reduced from approximately 10 weeks (date of the first scheduled hearing in the traditional small claims process) to 3 or 4 weeks on the ODR platform.

The business practices for the West Valley City Justice Court have also changed since implementation of the ODR pilot project. For example, if the defendant fails to register on the ODR platform or to request an exemption, the plaintiff may file a motion for default judgment.<sup>16</sup> Default judgments are managed administratively rather than on an active court calendar. If the parties fail to engage with each other to reach a settlement or to draft a trial preparation statement within 14 days, the facilitator informs the court to set a trial date for 7 to 21 days after receipt of the facilitator's notice.<sup>17</sup> Because default judgments and dismissals are managed administratively in the ODR pilot project, the clerk of court typically schedules only up to 6 cases for hearing during a two-hour small claims calendar. Volunteer mediators are still available during the small claims calendars to assist parties who wish to attempt an in-person settlement on the day of the hearing. Only rarely are magistrates unable to hear all the scheduled cases on the small claims calendar, so it is extremely rare for a case to be rescheduled due to lack of time.

## NCSC FRAMEWORK FOR THE UTAH ODR EVALUATION

Under a grant from the State Justice Institute,<sup>18</sup> NCSC professional staff participated as both advisors and observers in many of the ODR planning meetings as part of a broader effort to develop a consistent evaluation framework for access-to-justice programs. For the Utah ODR pilot project, NCSC staff offered expertise on appropriate evaluation criteria and meaningful data to assess the appropriateness, efficacy, and sustainability of the ODR program.<sup>19</sup> In discussions with the ODR planning team, the NCSC identified the following program objectives and how ODR would achieve those objectives:

- **Reduce default rates.** A major factor preventing defendants from responding to small claims lawsuits is believed to be the inaccessibility of the court in terms of time and distance. By providing a venue for defendants to engage with plaintiffs 24/7, the ODR program eliminates the conditions that result in many default judgments.
- **Decrease litigant costs.** The ODR platform saves both plaintiffs and defendants from traveling to the court for scheduled hearings, eliminating both travel and other expenses (lost income, childcare, opportunity costs) incurred due to the court appearance.
- **Decrease the access-to-justice gap due to socioeconomic status.** Decreased litigation costs will make it possible for defendants, who might be otherwise unable to participate in the civil justice system due to financial limitations, to respond to lawsuits.
- **Increase settlement rates.** The expanded opportunities for plaintiffs and defendants to engage one another online will result in increased case settlements.
- **Decrease post-judgment enforcement actions.** Greater engagement by defendants will lead to settlements that are fair and workable for both parties which in turn will reduce the need for plaintiffs to seek post-judgment enforcement.

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<sup>16</sup> *Id.* at Paragraph 4.

<sup>17</sup> *Id.* at Paragraph 8.

<sup>18</sup> SJI-16-P-290.

<sup>19</sup> The NCSC evaluation framework is based on INCREASING ACCESS TO JUSTICE THROUGH EXPANDED “ROLES BEYOND LAWYERS”: PRELIMINARY EVALUATION AND CLASSIFICATION FRAMEWORKS (Discussion Draft, April 2015).

- **Increase satisfaction of judgments.** Defendants who negotiate fair and workable settlement agreements will be better able to comply with the terms of those agreements, ultimately making them more likely to pay the debt.
- **Equalize the asymmetry in expertise between first-time parties and repeat parties.** The information embedded in the ODR platform and the assistance of trained facilitators will provide a more equal playing field for plaintiffs and defendants to negotiate a fair settlement.
- **Promote litigant satisfaction with case outcomes.** Fair and effective settlement agreements provide both plaintiffs and defendants with better case outcomes than default judgments, which can be expensive for plaintiffs seeking enforcement and can have a greater financial impact on defendants.
- **Promote litigant perceptions of procedural justice.** Providing an ODR platform for litigants to resolve cases online will communicate the court's intent to provide a fair and effective process for litigants to resolve their disputes.
- **Decrease court costs.** The rules and business processes enacted to support the ODR pilot project streamline in-court procedures, allowing many cases to be resolved administratively without the need for an in-court hearing before a magistrate. Cases that do require a judicial decision can be prioritized on the calendar, ensuring that cases are scheduled and heard in a timely manner.

In addition to these working hypotheses about the anticipated impact of the ODR pilot project, the NCSC also expects to explore how litigants engage in an ODR environment, and how facilitator styles affect this engagement, by studying the text exchanges captured in the platform.



# Methods and Data

The CORIS case management system provided records for 3,355 small claims cases filed between September 19, 2017 and August 8, 2019. A supplemental data extract on case dispositions was provided in December 2019. Just over half (1,781) of the cases were filed before the ODR pilot project launched on September 18, 2018 (baseline sample). The remaining 1,574 cases were filed after the ODR platform launched. Eighteen cases were granted an exemption from participating in ODR due to one or both parties' inability to access the online system or participate in the process without substantial difficulty or expense.<sup>20</sup>

The data from CORIS included details such as the filing and disposition dates, case outcomes, amount in controversy, names of the parties, a record of the date of service, whether either party was represented by an attorney, hearing dates, documents filed, and whether the case went to mediation. For the ODR cases, in addition to the data from CORIS, the ODR platform provided data on the facilitators assigned to each of the cases, messages exchanged between parties on the platform, and logs of the documents filed as well as the outcome of ODR. The court also provided addresses for defendants in the baseline and ODR samples to explore correlations between case outcomes and geography.<sup>21</sup> The addresses were used to identify census tracts in the United States Census Bureau and match demographic data on income, education, and other socio-economic indicators. Data were also available on the messages and documents that parties exchanged on the ODR platform. The messages were analyzed using a text-analysis software to understand the parties' engagement on the ODR platform and its role in the outcome.

NCSC planned to survey litigants to explore litigant satisfaction with case outcomes and perceptions of procedural justice; however, a baseline survey documenting litigants' views was not conducted in the West Valley Justice Court before the launch of the ODR pilot project. Attempts to survey litigants in a jurisdiction with similar litigant demographics and procedural operations yielded an unsatisfactory response rate. Consequently, this evaluation does not address program objectives related to litigant satisfaction and procedural justice. NCSC staff visited the site in May 2019 and met with the planning team, judicial officers, and magistrates in West Valley. During this visit, they observed a post-ODR small claims calendar and gathered anecdotal evidence about its implementation.

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<sup>20</sup> The defendant requested the exemption in 10 cases, the plaintiff requested the exemption in 7 cases, and both parties requested the exemption in one case. All exemptions filed by parties during the pilot project were granted by the court.

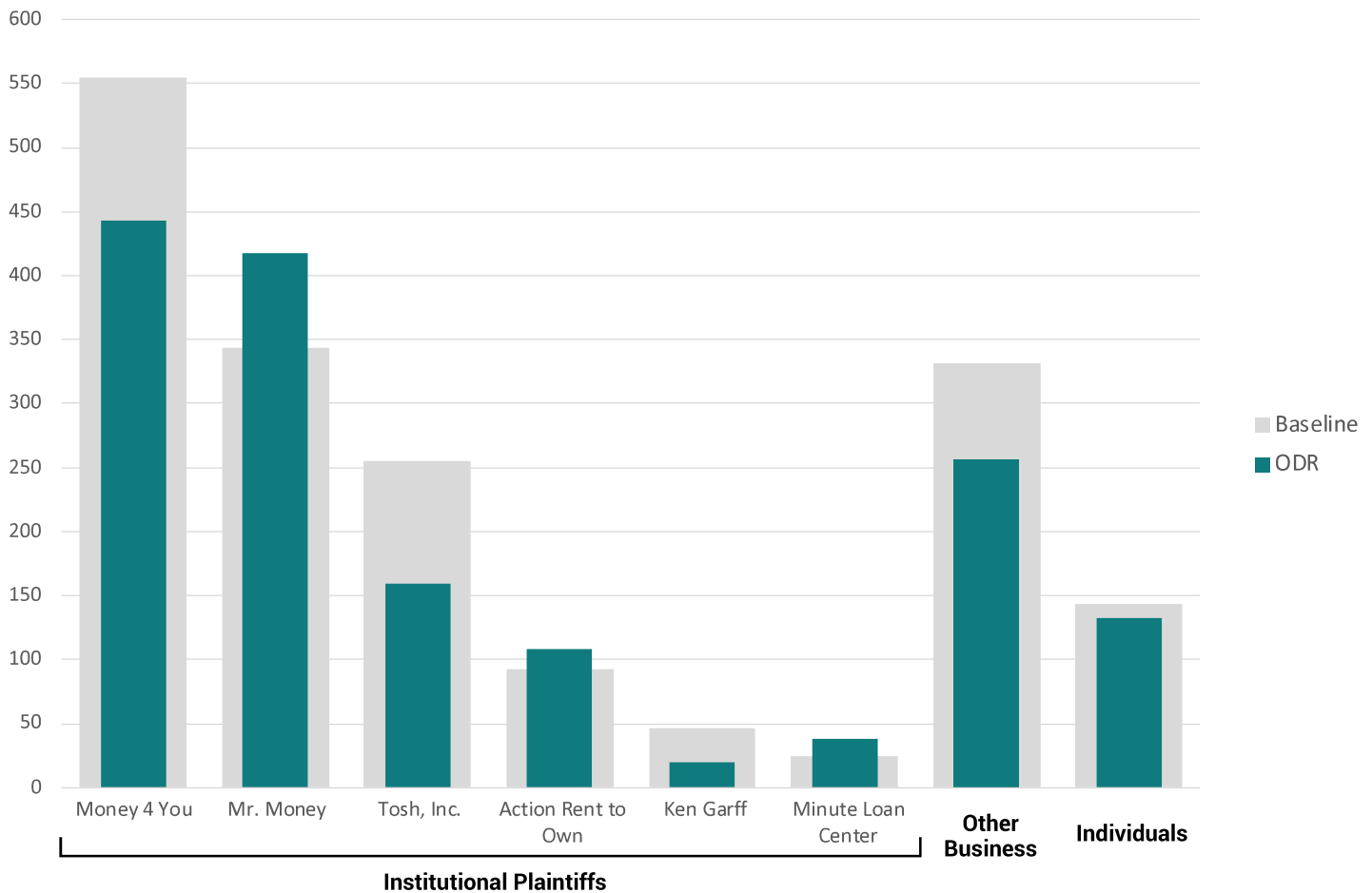
<sup>21</sup> One limitation of the data was incomplete or unavailable addresses for nearly 40% of defendants in the baseline sample, making it difficult to establish conclusive correlations between the outcomes of the cases and their geographic distribution. Addresses in the ODR dataset were also missing, as well as cases where multiple addresses were listed for a single defendant. Some cases also had multiple defendants and, therefore, multiple addresses listed with the case.

# Findings

## LITIGANT AND CASE CHARACTERISTICS

The majority of small claims cases were filed by only a handful of institutional plaintiffs.<sup>22</sup> Figure 1, for example, shows that two institutional plaintiffs (Money 4 You, Mr. Money) accounted for half of all small claims cases filed in both the baselines and ODR samples; six distinct institutional plaintiffs accounted for nearly three-quarters of cases.<sup>23</sup> Other institutional plaintiffs accounted for approximately one-sixth of the cases (baseline n=320, 18.6%; ODR n=252, 16.3%) while individual plaintiffs accounted for only 8% of cases in both samples (baseline n=152, ODR n=131). In contrast, defendants in these cases overwhelmingly were individual litigants (95.7% baseline, 98.6% ODR). Eight percent (8%) of both caseload samples involved defendants in multiple cases.

**Figure 1: Frequency of Small Claims Cases Filed, by Plaintiff**



<sup>22</sup> Institutional plaintiffs were identified by the absence of a plaintiff first name in the CORIS database.

<sup>23</sup> Four of the top institutional plaintiffs were payday lenders and check-cashing services (Money 4 You, Mr. Money, Tosh, Inc., and Minute Loan Center). Action Rent-to-Own sells and finances home electronics, appliances, computers, and furniture, and Ken Garff Automotive Group sells and finances new and used automobiles.

The defendants' addresses were geocoded by census tract using the U.S. Census Bureau Geocoder tool.<sup>24</sup> More than one-third of defendants had West Valley City addresses, and 82% had addresses within Salt Lake County. Six percent of defendants had out-of-state addresses, some as far away as Alaska, Florida, North Carolina, and Massachusetts.

Geocoded addresses for defendants residing in Salt Lake County were also matched to data from the United States Census Bureau to make comparisons between the defendant pool and the average resident of Salt Lake County.<sup>25</sup> In both the baseline and ODR samples, defendants were more likely to reside in neighborhoods with lower educational attainment, lower incomes, larger proportions of racial or ethnic minorities, larger proportions of residents below the poverty level, and larger proportions of residents with limited English proficiency.<sup>26</sup> All of these are hurdles when engaging with the courts. Due to limitations in ecological validity, demographic and socioeconomic characteristics cannot be ascribed to individual defendants. It can, however, be reasonably inferred that, on average, a defendant in a small claims case is likely to be more socially and economically disadvantaged than the average resident in the county.

**Table 2: Sociodemographic Characteristics of Defendant Pool**

		Salt Lake County (n = 1,152,633)	Defendant Pool	
			Baseline (n=1,011)	ODR (n=906)
<b>Income</b>	Median household income (\$)	\$72,047	\$58,396	\$58,505
<b>Race</b>	% White	80	65	66
	% Black	2	2	3
	% Native American	< 1	1	1
	% Asian	4	5	5
	% Hawaiian or OPI	1	3	2
	% Other Race	9	20	18
	% Two or more races	3	4	4
<b>Hispanic</b>	% Hispanic	17	32	29
<b>Employment</b>	% Labor force participation	71	72	72
<b>Education</b>	% no HS degree	10	18	18
	% HS degree	24	32	31
	% some college or Associate degree	35	33	33
	% Bachelor's degree or higher	31	17	17
<b>Language</b>	% English speakers	96.5	92.5	92.6
<b>Poverty</b>	% adult below poverty	9.7	12	12.3

<sup>24</sup> NCSC staff uploaded 2,570 defendant address records to the U.S. Census Bureau Geocoder Tool, which returned geocoded results for 2,504 records: 810 exact match, 700 non-exact match, 935 no match, 59 tie, 66 no return.

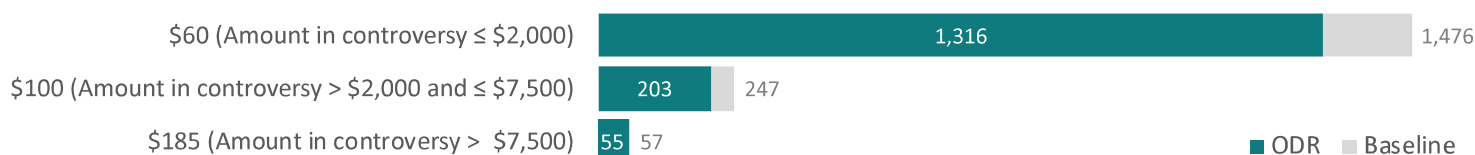
<sup>25</sup> Census Bureau tables for Salt Lake County included education (S1501), income (S1901), race (B02001), Hispanic/Latino origin (B03003), poverty (S1701), employment (S2301) and English language abilities (B16005). The NCSC also compared demographic characteristics for West Valley City. Defendant pool more closely reflected income (\$59,954), race/ethnicity (65.4% white, 2.0% black, 1.3% native American, 5.0% Asian, 3.6% HPI, 19.0% Other Race, 3.8% 2+ races, 33.1% Hispanic/Latino), employment (72.5%) and poverty (13.8%) for West Valley City, but had higher college education (2.2%) and English fluency rates (84.5%).

<sup>26</sup> Defendants in the baseline and ODR samples lived in neighborhoods with comparable employment rates.

## AMOUNT IN CONTROVERSY

Although small claims cases can be filed for amounts up to \$11,000, most cases in the analysis were filed for considerably lower amounts. The mean amount in controversy was \$1,544 in the baseline sample and \$1,523 in the ODR sample.<sup>27</sup> Figure 2 shows the number of cases filed in each filing-fee category, indicative of the amount in controversy. Although there are fewer cases in ODR than in the baseline, by virtue of their similar characteristics, the two are suitable for comparison.

**Figure 2: Frequency of Case Filings, by Filing Fee Category**



## REPRESENTATION STATUS

Although attorneys are permitted to represent parties in small claims cases, the vast majority of both plaintiffs and defendants were unrepresented in both the baseline and ODR cases. In the baseline sample, an attorney of record was identified for the plaintiff in only 27 cases (1.5%) and for the defendant in only 23 cases (1.3%).<sup>28</sup> In the ODR sample, attorneys for the parties were identified for the plaintiff in only 23 cases (1.5%) and for the defendant in only 14 cases (0.9%). Although the actual number of cases in which attorneys represent either party is extremely small, the rate of defendant representation in the ODR sample is significantly lower than in the baseline sample, especially after controlling for cases in which no return of service was filed.<sup>29</sup>

## MANNER OF DISPOSITION

CORIS employs 15 different values to reflect the operational and legal significance of the manner of disposition for small claims cases, not all of which are mutually exclusive. To facilitate analysis, NCSC staff aggregated these values into five discrete categories, as shown in Table 3. Dismissed/withdrawn cases include cases in which the parties reached an out-of-court settlement, but the details of that agreement were not filed with the court. Settlements reflect all cases in which the parties negotiated an agreement, including agreements to file the settlement as a legal judgment (ostensibly to facilitate post-judgment enforcement, if necessary). Judgments reflect in-court adjudications, but do not indicate the prevailing party. As of December 23, 2019, all but one of the baseline cases (0.1%) and 374 of the ODR cases (23.7%) had been fully disposed.

**Table 3: Aggregated Categories for Manner of Disposition**

NCSC	CORIS
Dismissed:	Dismissed without prejudice, Dismissed, No cause of action, Withdrawn
Default Judgment:	Default judgment clerk, Default judgment judge
Settlement:	Agreed judgment, Dismissed with prejudice, Judgment stipulation, Settlement agreement-no judgment, Stipulated agreement, Settlement agreement & judgment
Judgment:	Judgment bench trial, Judgment
Other Disposition:	Removed to District Court

<sup>27</sup> The \$21 difference in means was not statistically significant.

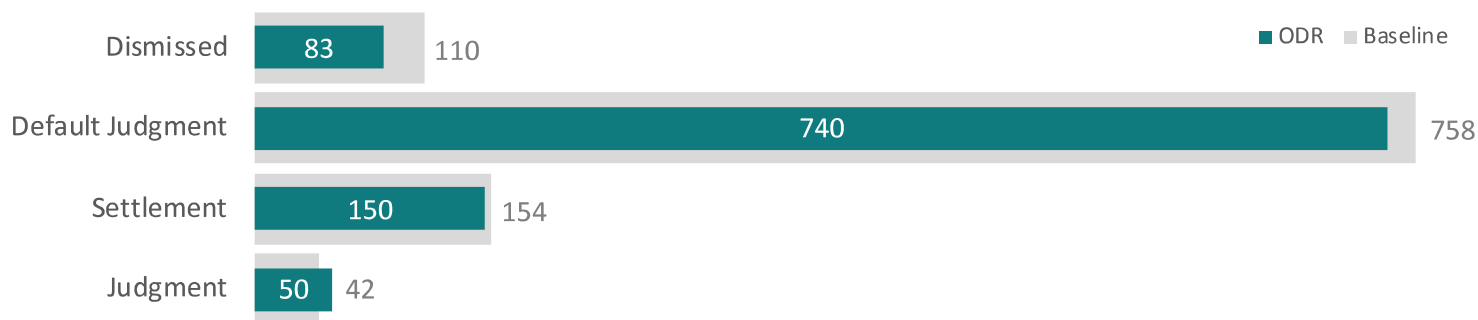
<sup>28</sup> Defendant representation status is unknown in baseline cases disposed by default judgment and in ODR cases in which the defendant did not register on the ODR platform.

<sup>29</sup> Baseline defendant represented=2.2%, ODR defendant represented=0.9%; Pearson's Chi-Square=8.096 (df=1), p=0.004.

The defendant received notice of the lawsuit in 60% of the baseline cases and 68% of the ODR cases, which reflects a statistically significant increase.<sup>30</sup> It is not clear what caused this unanticipated result; it is possible that the accelerated time frame for plaintiffs to register on the ODR platform after filing the case incentivizes expedited service of process. Because service of process is a fundamental requirement for litigation to proceed in the ODR pilot project, cases in which service was not perfected are excluded from analyses of case outcomes.

As shown in Figure 3, the manner of disposition for the baseline and ODR cases in which the defendant was served are comparable across all four categories. This result is surprising and disappointing given the expectation that ODR would reduce default judgment rates and increase settlement rates. However, a closer examination of ODR cases with default judgments offers a more nuanced view. Default judgments generally refer to cases in which the defendant failed to respond at all to the lawsuit. In the ODR cases, however, the defendant initially responded to the lawsuit by registering on the platform in 40 of the 740 cases (5.4%). That is, the defendant engaged in the litigation process for a short time, but later decided to discontinue participation.<sup>31</sup> An apples-to-apples comparison of cases in which the defendant entirely failed to respond indicates a slight (68.4%), albeit not statistically significant, decrease in the default judgment rate compared to baseline cases. A usability study of the Utah ODR platform found that more than one-third of study participants did not understand the summons and affidavit information directing them to register on the ODR platform.<sup>32</sup> Study participants also experienced difficulty entering the URL for the platform on their phones, and registering and logging onto the platform.<sup>33</sup> These user design factors may have negatively affected the ODR program objective of reducing default rates.

**Figure 3: Frequency of Cases, by Manner of Disposition**



Analyses of the proximity of defendants to the West Valley Justice Court indicates that the opportunity to use ODR also affects the default judgment rate. In the baseline sample, there was no difference in the default rate based on defendants' geographic proximity to the courthouse. In the ODR sample, however, defendants living in West Valley City (65.9%) and defendants living in Utah, but outside Salt Lake County (58.9%), were significantly less likely to default compared to defendants living elsewhere in Salt Lake County (77.0%), suggesting that ODR may improve access to justice for defendants for whom socioeconomic status or geography impedes their ability to engage in litigation.<sup>34</sup>

<sup>30</sup> A service return affidavit entered in CORIS was the basis for concluding that service of process was perfected in the baseline sample; in the ODR sample, a service return affidavit, or the defendant's registration on the ODR platform, was the basis for concluding that service of process was performed.  $F=21.276$  ( $df=1, 3290$ ),  $p<.001$ . Pending cases were excluded from the analysis.

Consequently, the increase in service returns cannot be ascribed to cases in which a return service affidavit was filed but final disposition had not been entered.

<sup>31</sup> See discussion about text exchanges *infra* at 15-17.

<sup>32</sup> STACY BUTLER ET AL., THE UTAH ONLINE DISPUTE RESOLUTION PLATFORM: A USABILITY EVALUATION AND REPORT 26 (Sept. 8, 2020).

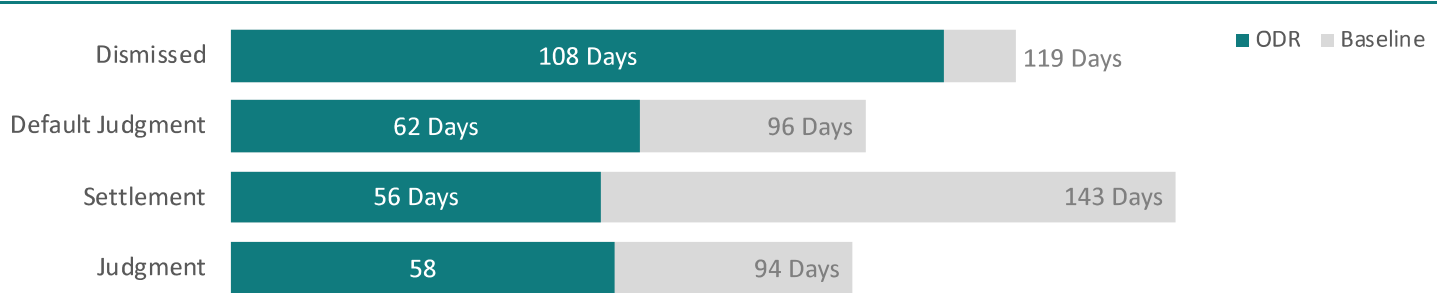
<sup>33</sup> *Id.* at 30, 40.

<sup>34</sup>  $F=3.964$  ( $df 3, 751$ ),  $p=0.008$ .

## TIME TO DISPOSITION

The procedural rules for the ODR pilot project were designed to streamline and accelerate the litigation process. Figure 4 displays the average (mean) number of days from filing to disposition, controlling for manner of disposition, for fully disposed baseline and ODR cases in which a return service affidavit was filed. Time-to-disposition decreased by more than one month for default judgments and adjudicated judgments, and by nearly three months for settlements, all of which were statistically significant. Average time-to-disposition for cases dismissed or withdrawn decreased by 11 days, which was not statistically significant.<sup>35</sup>

**Figure 4: Time to Disposition (days), by Manner of Disposition**



Decreased time for internal benchmark events contributed greatly to the reduction in overall disposition time. The average number of days from filing to the service return date was 76 in the baseline sample compared to 47 in the ODR sample.<sup>36</sup> On average, defendants registered on the ODR platform 11 days after being served. Forty-three percent of the baseline cases and 51 percent of the ODR cases disposed without a formal hearing. Baseline cases had nearly twice as many pretrial or trial hearings as ODR cases,<sup>37</sup> and the average number of days from the service return to the first court hearing was 93 in the baseline sample and 62 in the ODR sample.<sup>38</sup>

The ODR cases in Figure 4 do not include 374 cases that were still pending as of December 23, 2019. Consequently, the actual number of days from filing to disposition at the time the data were extracted skews lower due to the exclusion of cases that have not yet resolved. To account for pending cases in the analyses, the NCSC employed Kaplan-Meier survival analysis.<sup>39</sup> Figure 5 depicts the overall survival time of cases in ODR (red line) and the baseline (blue line) samples. The shaded area around the survival curves shows the 95% confidence interval. Both curves begin at 100% of cases pending on the filing date. The probability that half of the cases had disposed occurs at approximately day 75 in the ODR sample, more than one month earlier (Day 115) than in the baseline sample. The shaded areas around each line do not overlap, indicating that the difference is statistically significant.

<sup>35</sup> Time to disposition was also longest for cases that were dismissed or withdrawn, likely due to the longer time (120 days) allowed for the plaintiff to serve the defendant.

<sup>36</sup>  $F(df\ 1, 1970) = 74.401, p < .001$ .

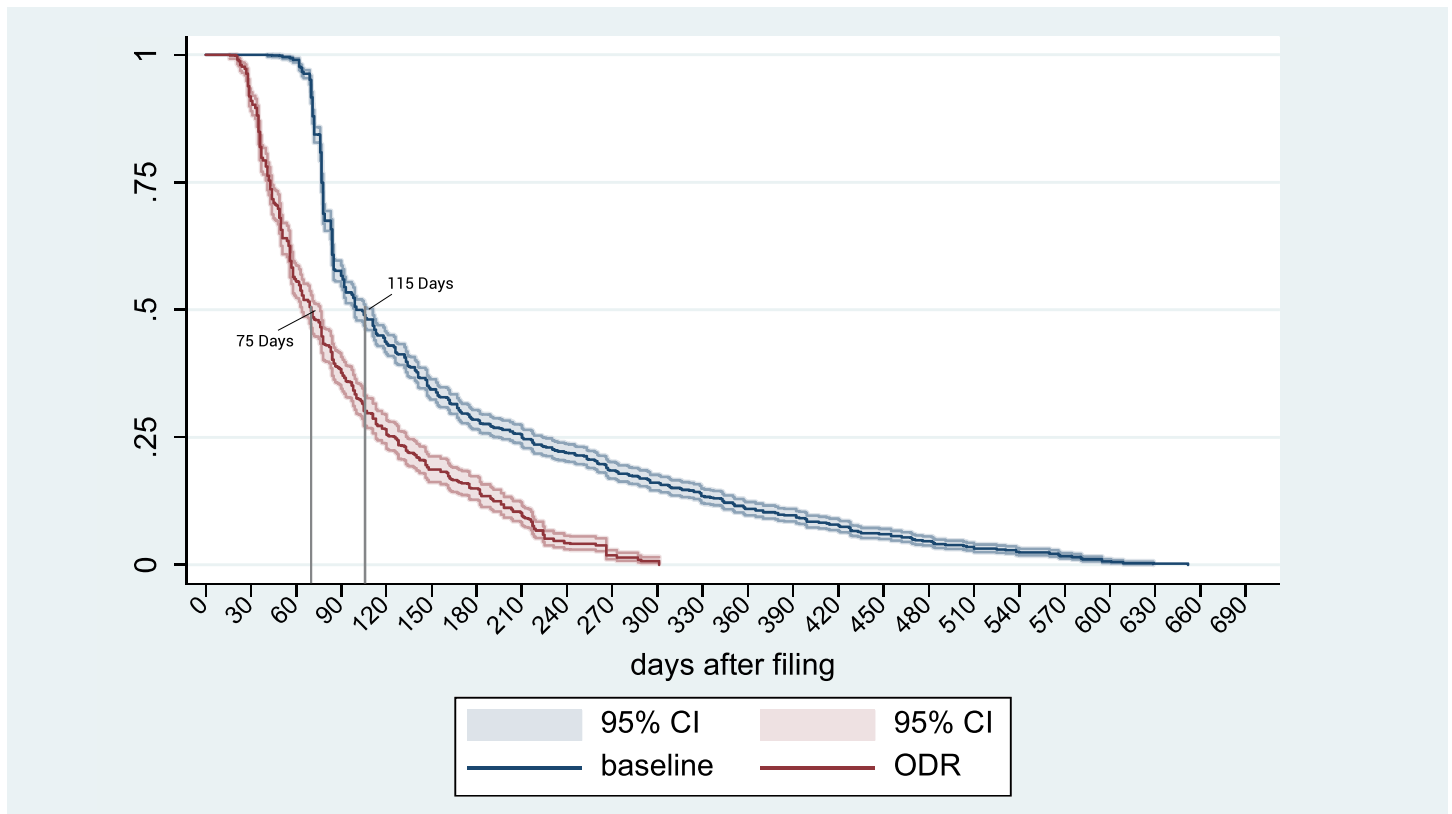
<sup>37</sup> Average number of pretrial or trial hearings: baseline=2.04, ODR=1.15.  $F(df\ 1, 1760) = 976.614, p < .001$ .

<sup>38</sup>  $F(df\ 1, 1760) = 372.019, p < .001$ .

<sup>39</sup> Survival analysis examines how long a unit (e.g., civil case) “survives” in one state (e.g., pending) before experiencing “failure” or a transition to another state (e.g., disposed). Survival models eliminate the bias associated with comparisons of average time-to-disposition. The Kaplan-Meier technique relies upon no assumptions regarding the shape of the baseline survivor function, estimating the function entirely on the basis of the available data and eliminating the possibility of bias due to faulty assumptions about the functional form. The technique estimates the survivor function by calculating the cumulative probability of survival at each failure point. Each case in which the event of failure was observed is factored into the analysis along the entire curve. A censored observation, in which the event of failure was not observed, is only factored into the analysis up to the time when observation ceased. JANET M. BOX-STEFFENSMEIER & BRADFORD S. JONES, EVENT HISTORY MODELING 7-16 (2004).



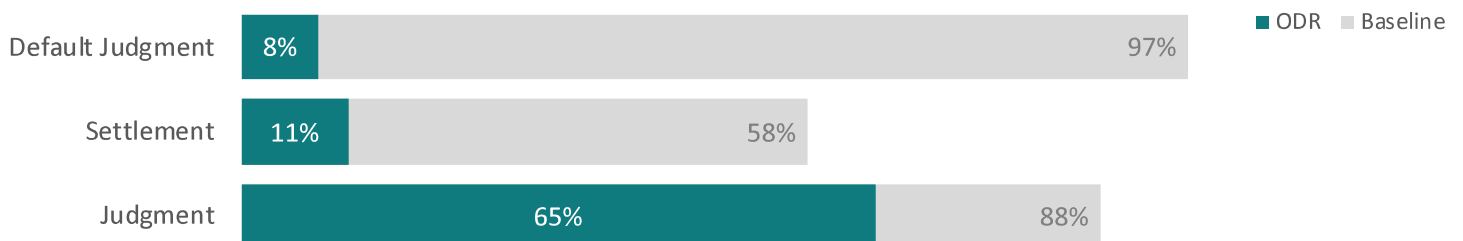
**Figure 5: Cumulative Probability of Survival without Disposition**



## PRETRIAL HEARINGS

In addition to streamlining the court process for litigants, the ODR pilot project streamlined internal case processing for small claims. Management of dismissals for failure to prosecute and default judgments became administrative rather than judicial procedures, leading to improved case calendaring and use of judicial resources. ODR cases that were set for trial because the litigants could not negotiate a settlement online rarely had to be continued due to lack of time on the calendar. Figure 6 shows the number of closed cases requiring more than one pretrial or trial hearing to dispose. Almost all of the baseline cases disposed by default judgment (97%) required more than one hearing to fully resolve; only 8% of ODR cases ending in default required more than one hearing to resolve, generally after the defendant failed to appear for the in-court hearing. ODR cases resolved by settlement were more than five times less likely than baseline cases to require more than one hearing to fully dispose. Nearly nine out of every ten baseline cases adjudicated in court (88%) required more than one hearing compared to 65% of ODR cases.

**Figure 6: Percentage of Cases Requiring More than 1 Court Hearing, by Manner of Disposition**



## MEDIATION

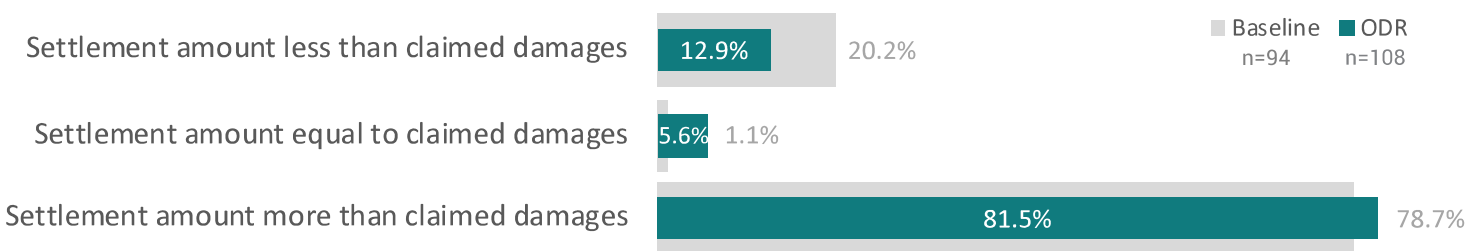
Before the ODR platform launched in September 2018, in-court mediation was offered to litigants appearing for small claims hearings. Litigants in 67 baseline cases participated in mediation on the day of their in-court hearing; 51 cases ultimately reached a full settlement (76%) and an additional 2 cases reached a partial settlement (3%). Twenty-five ODR cases participated in in-court mediation, 11 of which reached an agreement (44%). It is not surprising that mediation efforts in cases that had already failed to settle in ODR, and thus were set for trial, were less successful compared to the baseline cases, in which the mediation was the first formal opportunity that the parties had to settle. In fact, it is somewhat surprising that nearly half of those cases did ultimately settle through mediation.

## SETTLEMENTS IN ODR

An underlying premise of all civil litigation, especially debt collection cases, is that litigants who reach a settlement will ultimately be better off than litigants whose cases are resolved through either a default judgment or an adjudicated judgment. By negotiating the settlement terms, creditors theoretically have a greater probability of being paid and can avoid additional court costs associated with judgment enforcement efforts. Debtors may secure more workable payment terms and can avoid having additional fees and costs tacked onto the judgment.

An examination of settlements in the baseline and ODR samples found that the amount of the settlement was documented in case files in 56% of baseline settlements and 80% of ODR settlements; the remaining settlement agreements did not disclose details concerning settlement amounts or payment plans. Comparing the claimed damages in the complaint to the settlement amount revealed no significant difference overall between the baseline and ODR cases. In both samples, the settlement amount was greater than the claimed damages in approximately four out of every five cases, likely due to the addition of fees and costs.<sup>40</sup>

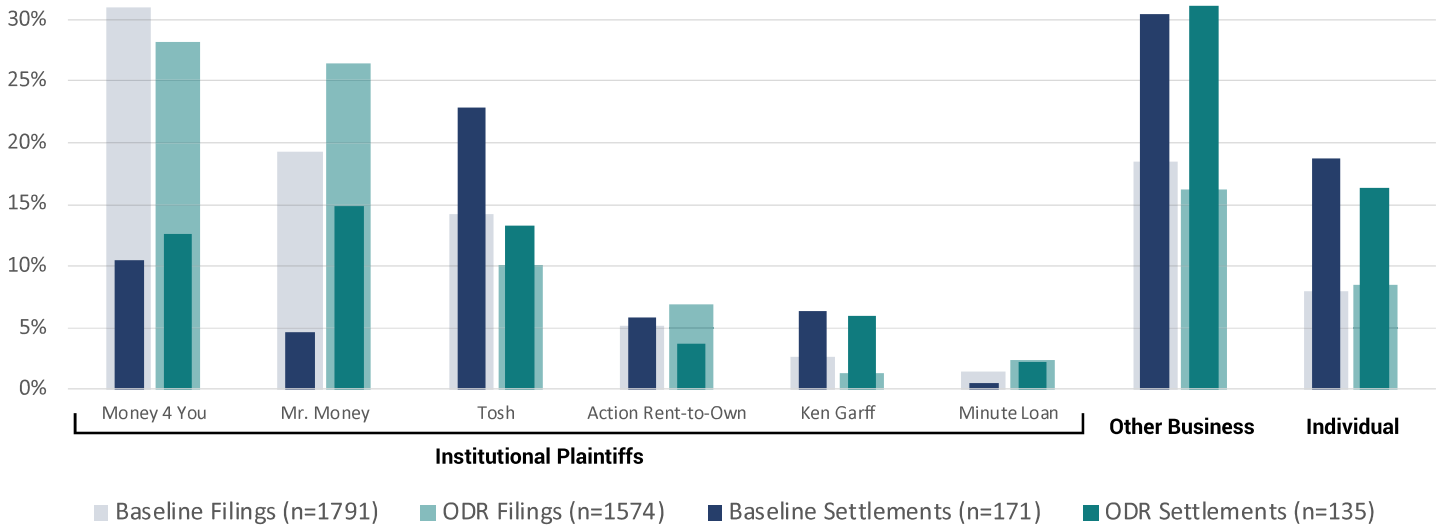
**Figure 7: Comparison of Settlement to Claimed Damages**



Recall, however, that a small number of institutional plaintiffs filed a large majority of small claims cases in both the baseline and ODR samples. A similar comparison of settlements (Figure 8) shows that these plaintiffs are considerably less successful in reaching settlements. The two most frequent filers accounted for at least half of the filings in both samples, but only 16% of settlements in the baseline and 28% of settlements in ODR. The top six filers accounted for three-quarters of filings, but just over half of settlements. In contrast, settlement rates for the remaining institutional filers and for the individual filers were nearly double their filing rates.

<sup>40</sup> The average settlement amount exceeded the amount the claimed amount by 57% in the baseline sample and 14% in the ODR sample. The difference in the average ratio is due primarily to several large outliers in the baseline sample, including one case in which the settlement was more than 36 times larger than the claimed amount.

**Figure 8: Percentage Filings and Settlements by Plaintiff**



Although these institutional plaintiffs were less successful at reaching a settlement with defendants, the monetary value of settlements was generally more favorable to plaintiffs when they were successful. That is, the settlement amount was consistently more than the amount-in-controversy for the top six institutional plaintiffs in both the baseline and ODR samples. Other business plaintiffs fared better in ODR settlements than in the baseline sample; on average, the settlement amount was 7% higher than the amount-in-controversy in the ODR sample and 7% lower in the baseline sample. In contrast, the settlement amount for cases filed by individual plaintiffs was one-sixth of the amount-in-controversy in the baseline sample and one-fourth in the ODR sample, suggesting that individual plaintiffs are much more willing than business plaintiffs to accept a lower monetary amount in settlements.<sup>41</sup> Given the dominance of the large institutional filers in both samples, it is possible that inflexible negotiating styles on the part of the plaintiffs are at least partially responsible for the parties' inability to reach a settlement.

## POST-JUDGMENT ACTIVITY

Securing a judgment or settlement in small claims cases is not always the end of the litigation process. Creditors frequently must return to court to enforce the judgment through garnishment or asset seizure, which typically involves additional in-court hearings. An anticipated outcome of the ODR program was a decrease in the amount of post-judgment activity, indicating that the terms of settlements obtained through ODR were sufficiently fair and workable for defendants to pay the debt. Overall, 8.8% of the baseline cases ultimately had one or more post-judgment hearings compared to 6.2% of the ODR cases. However, this overall analysis includes the majority of cases disposed by default judgment, in which defendants failed to engage in the litigation process, and thus no change in the rate of post-judgment activity would be expected. Looking only at cases disposed by settlement, 10 of the baseline cases (5.9%) had post-judgment activity compared to only 3 of the ODR cases (2.2%). Eight cases (0.4%) were appealed during the baseline period and 4 cases (0.2%) of the cases filed after the ODR platform was launched were appealed. Although these samples are too small to measure statistical significance, the reduced rate of post-judgment enforcement activity in ODR is promising.

<sup>41</sup> The difference in the value of the settlement compared to the claimed damages was statistically different between business and individual plaintiffs in both the baseline and ODR samples. Baseline  $F=19.839$ ,  $df=92$ ,  $p<.001$ ; ODR  $F=78.966$ ,  $df=106$ ,  $p<.001$ .

## ODR CHAT BUBBLES

A total of 1,574 cases were filed in the ODR system during the study period. After both parties logon, a court-appointed facilitator is assigned to the case. At the time of data extraction, a total of 229 cases (14.5%) had been assigned to a facilitator. When examining these cases, facilitators accounted for the highest number of messages on the platform. This higher percentage of total messages may be attributable to the fact that facilitators usually began messaging with 2-4 messages regarding the ODR process and the role of the facilitator. The number of chats between the defendant and plaintiff groups are comparable. An examination of the time individuals utilize the ODR system determined that many participants accessed the system outside of typical working hours (before 9am, after 5pm, or on the weekends). For example, 20% of plaintiff messages, 32% of defendant messages, and 45% of facilitator messages are sent during off-hours. In some cases, chat bubbles indicated that the parties experienced difficulty with the ODR platform, especially when uploading documents and signing agreements.<sup>42</sup>

**Table 4: Number of ODR Chats by Participant**

ODR Participant	#	%	Average per Case
Facilitator	2,528	39.0%	11
Plaintiff	2,037	31.4%	9
Defendant	1,919	29.6%	8

Each facilitator managed approximately 40 cases. Within these cases facilitators exchanged an average of 11 messages. There were four instances in which a case was assigned to two facilitators. Overall, the facilitator responses are relatively uniform. If both parties had been engaging before the facilitator joining, the facilitator usually recapped the information provided or asked for more clarifying information such as the details of the proposed agreements, including what types of payments would be accepted and the respective timeline, or what to bring to trial. In 13 cases, facilitators encouraged the parties to chat privately with the facilitator via email.<sup>43</sup> However, private communications via email does not appear to improve the likelihood of a successful negotiation; only one of the 13 cases in which this offer was made resulted in a settlement agreement in ODR.

**Table 5: Number of Chats per Case, by Facilitator**

Facilitator	Total Cases	Total messages	Average messages/case
Facilitator2	38	452	12
Facilitator3	32	329	10
Facilitator4	40	751	19
Facilitator5	42	288	7
Facilitator6	40	377	9
Facilitator7	41	331	8
<b>Overall</b>	<b>233*</b>	<b>2528</b>	<b>11</b>

**Note:** Unique cases assigned to a facilitator (n = 229), 233\* includes cases assigned to two facilitators.

<sup>42</sup> The Innovation for Justice Program at the University of Arizona conducted a usability study of the Utah ODR platform that found that 7 out of 8 study participants were unable to complete the document-sharing task, and 5 of 7 participants were unable to complete the agreement signing task. BUTLER ET AL., *supra* note 32, at 50, 58.

<sup>43</sup> One facilitator offered to communicate with litigants through private email more frequently than other facilitators, in approximately one-third of the assigned cases.

Examples of how facilitators engaged with plaintiffs and defendants in common ways to move the negotiation process forward can be found below. These examples include outlining facts or agreements, inquiring for more information, engaging a party in negotiations, reality checking the parties about the consequences of their respective positions, and providing information about small claims court.

"It appears Plaintiff is proposing a payment plan of \$70 every other week until this debt is paid in full, and appears willing to start the first payment in a month from now. Defendant, is this proposal acceptable? If not, what amount can you agree to and how frequently can you make payments?"

"Thank you to both of you for your responses. It seems that you both are agreeable to a payment plan but that there is a difference of \$300.00 between your offers. As I said earlier, court can be a gamble, no one knows what the judge would do. Is there another offer that either of you would like to put on 'the table'? Defendant, think what might happen if the Judge gave a judgement over the \$500.00 amount. What would that do to your finances? The court doesn't set up payment plans. Plaintiff, what are your chances of getting an \$800.00 award? Do you have enough proof to sway the Judge to your argument? What happens if the judgement was considerably less, or even if the case was dismissed you receive nothing? Are you prepared if that might happen? ... By using this process, you both have the ability to define an arrangement that each of you can live with."

"Small Claims is a court of proof. Both sides had entered into a contract. Each of you are looking at different parts of the contract to back your position. What will the Judge look at? Will he take the same position as one of you, or neither of you? As always, court is a gamble. Do both of you feel it's worth the time and money to go to court over \$1,500.00."

"It is helpful in negotiations to be calm and respectful to the other party. The way this usually works is for one party to offer a proposal for resolving the matter and the other party responds. Sometimes a solution can be worked out; sometimes it cannot. We have until next Monday to see if we can reach an agreement. If we cannot do so, the matter will be referred to the court and a trial date will be set. So would one of you be willing to propose a settlement?"

One concern about ODR relates to whether litigants would be less civil with one another online than in court. Participants on the ODR system rarely used insulting or inflammatory language, such as calling one another dishonest or a liar, or referring to the negotiations as stupid/dumb. Among the cases in which these types of remarks were used, fewer than 20% came to a settlement agreement. In terms of referencing an attorney or seeking legal representation, approximately 17% of cases (39) mentioned legal aid. Far fewer cases (7) had an attorney respond on behalf of the plaintiff or the defendant. Of these cases, only two came to a settlement agreement.

At the time of data extraction, a total of 122 (54.5%) cases in which both the plaintiff and the defendant participated in the ODR system (n=224) reached and submitted a settlement agreement. Among the cases that settled, there were on average 11 facilitator comments, 9 defendant comments, 9 plaintiff comments, and 5 messages exchanged before a facilitator appeared. In 36 cases (29.5%), the parties reached an agreement before the facilitator joined the ODR chat. Upon examining the opening statements used by defendants, there are some obvious differences between cases that reached a settlement agreement and those that did not. For example, 118 cases opened with a statement to offer to settle the claim or pay an amount to settle the claim (openers 7 and 8), a total of 92 (78%) of these cases came to a settlement agreement. When defendants opened by disagreeing with the claim or parts of the claim (82 cases), 64 (78%) of these cases failed to agree on a settlement. Nearly a dozen cases reached agreements but failed to have both parties sign the settlement agreement, which then triggered a trial preparation document to be submitted. In most of these cases, the defendant failed to sign the agreement or stopped participating in the ODR session.

**Table 6: Frequency of Defendant Opening Position and Settlement Rates**

Defendant Opening Statement	Total Responses	Settlement	No Settlement
I want options to pay this claim.	0	0%	0%
This claim is part of a bankruptcy.	4	0%	4%
I don't owe this claim.	7	29%	71%
I don't agree with the claim.	57	18%	82%
I disagree with some parts of the claim.	25	32%	68%
I agree with most of the claim, but I can't pay it.	17	59%	41%
I want to offer to settle this claim.	28	71%	29%
I am willing to pay (at least) \$xxx to settle this claim.	90	80%	20%
<b>TOTAL</b>	<b>228</b>	<b>54%</b>	<b>46%</b>

**Note:** From the 229 unique cases, one case does not include an opening message from the defendant. Overall, there are five chats in which only the plaintiff or defendant and facilitator are chatting. In terms of chats where both parties participate, n= 224.

In 47 settlement cases (38.5%), the plaintiff rejects the defendants' opening offer and counters with a number that would be sufficient to stop the legal or garnishment process. Many defendants accept this counteroffer immediately and move toward outlining the conditions of the agreement. In some cases, the plaintiff reminds the defendant that garnishment is an option they would consider if negotiations fail.

### Examples of Plaintiff Counter-offers

"\$50 a month would be over 2 years of payments, which is too long to extend this out. We can do a 12-month arrangement with the first 3 months @ \$50 a month & after those 3 months, payments would go up to \$145.00 a month to pay off the balance within 12 months."

"Defendant, the balance on your account with filing and service fee is \$2449.11. I'm unable to accept \$100 per month. We would like to have this account paid in full within 6 months. The payment would need to be \$408.19."

"Unfortunately, we are unable to lower the sufficient payment amount. If we were to file a garnishment of your wages, 25% would roughly be \$350 a month vs the \$100 that we are asking. It is already going to take roughly 8 months to pay the balance in full."

The number of cases which settled by facilitator is outlined below. Overall, the facilitators had relatively similar percentages regarding the number of cases which came to a settlement agreement.

**Table 7: Facilitator Settlement Rates**

Facilitator	Total Cases	Number Settlements	% of Cases that Settled
Facilitator2	38	21	55.3%
Facilitator3	32	16	50.0%
Facilitator4	40	22	55.0%
Facilitator5	42	22	52.4%
Facilitator6	40	23	57.5%
Facilitator7	41	18	43.9%
<b>Overall</b>	<b>233</b>	<b>122</b>	<b>53.3%*</b>

**Note:** The percentage of cases that settled was calculated by the number of settlements divided by unique cases (n=229).

# Conclusions and Recommendations

Small claims cases filed in the justice courts in Utah involve many of the same issues confronting courts across the country. Civil caseloads are overwhelmingly composed of consumer debt cases characterized by asymmetrical representation status, with mostly represented, repeat player creditors as plaintiffs and unrepresented debtors as defendants. Default judgment rates are distressingly high given the conventional wisdom that debtors fare better if they engage in meaningful negotiations to achieve a workable settlement agreement, rather than prolonging the inevitable and incurring additional costs that they will ultimately have to pay. Although securing a default judgment is a highly mechanized and mostly foolproof process, creditors may still incur unreasonable costs and delays in getting valid debts repaid. The Utah ODR pilot project launched in September 2018 to address these problems by providing a platform for defendants in small claims cases to engage with plaintiffs to reach fair and workable settlements. The anticipated outcomes from the pilot project were reduced default rates, increased settlement rates, reduced time to disposition, and decreased post-judgment enforcement actions.

The data for this evaluation included CMS data for 3,355 small claims cases in the West Valley Justice Court, with approximately half filed before and half filed after the ODR pilot project launched on September 18, 2018. In almost all respects, the cases in the baseline and ODR samples had comparable characteristics. Of particular note, a small number of institutional plaintiffs comprised more than three-quarters of the cases, and the claimed amount of the debt was comparable in both samples. Defendants were almost entirely self-represented and, based on demographic characteristics of their neighborhoods, were most likely socially and economically disadvantaged compared to the average resident of Salt Lake County. Although defendants were overwhelmingly self-represented in both the baseline and ODR samples, the rate of representation was even lower in the ODR sample (0.9%) compared to the baseline sample (2.2%).

The ODR pilot project was an unqualified success for the court: the process for litigants on the ODR platform significantly streamlined internal court processing. Dismissals and default judgments were managed administratively, which led to better case calendaring and use of judicial resources. The proportion of cases requiring more than one hearing to fully resolve decreased across all disposition types. Except for dismissals, the average time to disposition decreased by 5 weeks or more for all disposition types, clearing caseloads faster and more effectively.

Although cases disposed at a faster rate, the ODR pilot project had little impact on the overall manner of disposition. Taking into account defendants who logged onto the platform, but then abandoned settlement negotiations, there was a slight decrease in default judgments, but not as much as anticipated. Settlement and adjudicated judgment rates were also comparable in the baseline and ODR cases. Case outcomes and litigant interactions within the ODR platform, however, show improved geographic and time accessibility for litigants, as evidenced by the number of litigant interactions that took place outside regular court hours and the decreased rate of default judgments for litigants residing both in West Valley City and outside Salt Lake County.

In cases that reached a settlement, there was no appreciable change in the monetary value of the settlement agreement as compared to the claimed damages, but preliminary data on the rate of post-judgment enforcement actions suggest that the terms of payment plans may be more workable for defendants using the ODR platform compared to the baseline cases. The defendants' position at the beginning of negotiations is the primary factor affecting the likelihood of a settlement agreement. Cases in which defendants selected an option indicating willingness to pay the debt were significantly more likely to reach settlement than those in which the defendant contested some of the claim. In nearly one-third of the cases, the parties reached an agreement before the facilitator assignment. In the remaining cases, the involvement of facilitators in reality

testing the settlement terms for both plaintiffs and defendants may provide for more durable arrangements than litigants in the baseline sample were able to achieve working independently or with an in-court mediator constrained by ethical obligations about suggesting settlement terms.

Despite promising results for cases in which litigants were able to engage in meaningful negotiations, the ODR pilot program failed to achieve its objective to reduce default judgment rates. The University of Arizona usability study recommended changes in the content and format of the summons and affidavit served on the defendant, and in the platform design itself, which may address technology barriers impeding defendants' ability to respond and to successfully negotiate a workable settlement agreement to repay valid debts. The Utah Court System should reevaluate the impact of the ODR pilot project on default rates after implementing these design recommendations (in progress).

Platform design improvements, however, may not address defendant perceptions that they are better off, or at least no worse off, by delaying engagement with the plaintiff for as long as possible. This is fundamentally a marketing problem about how to convince defendants, who may already be distrustful of the justice system, that responding to the lawsuit is in their best interest (e.g., by giving them access to information about their legal rights; engaging the assistance of a trained facilitator to negotiate a workable settlement agreement and ensure that they understand its terms; and avoiding post-judgment interest and supplemental fees associated with post-judgment enforcement actions). To make this point more convincingly, the Utah Courts System should explore the development of additional litigant education resources and outreach to community partners, including perhaps social service agencies and nonprofit organizations that might be able to provide additional financial assistance.

Finally, the NCSC was unable to secure baseline survey data to measure baseline measures of litigant satisfaction and perceptions of procedural justice and, consequently, did not collect data on these measures from litigants who participated in ODR. Nevertheless, these are critical performance measures for the courts. The NCSC recommends that the Utah Judicial Branch collect baseline survey data from litigants in small claims cases in other justice courts that have not yet implemented ODR for use in examining these measures in the future.



