

# Trends: Close Up

December 2017

## Civil Justice Myths

Five years ago, the Conference of Chief Justices convened a Civil Justice Improvements Committee to make recommendations for best practices in state court civil justice cases. To inform the committee's deliberations, NCSC undertook a study titled *The Landscape of Civil Litigation in State Courts*. The 2015 Landscape study presents a very different picture of civil caseloads than is generally characterized in 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. To have an appreciable effect on case outcomes, civil justice improvement efforts cannot continue to focus on the tip of the iceberg—that is, high-stakes tort and commercial litigation issues—but must instead focus on issues affecting the larger civil caseload.

### Myth 1. High-value tort and commercial claims dominate civil caseloads.

The Landscape study examined civil case characteristics and outcomes by focusing on all civil cases filed in state courts in 10 urban counties.<sup>1</sup> The study found that contract cases comprised two-thirds (64%) of

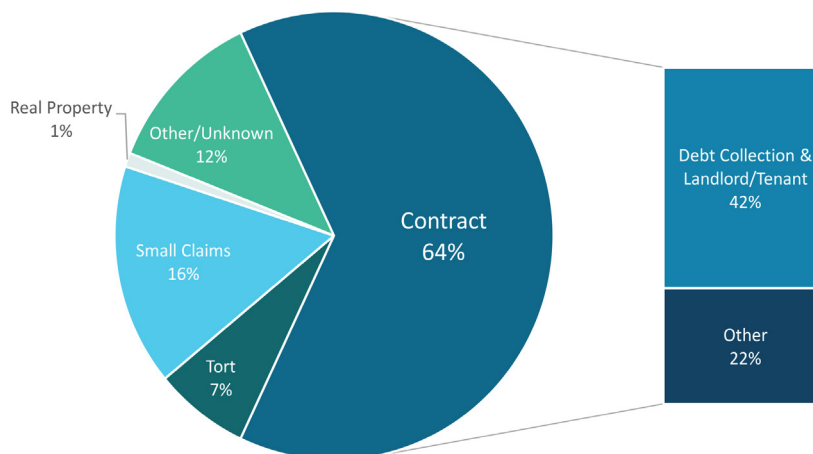
## About the Series



These special reports are part of the National Center for State Courts' "Trends in the State Courts" series and serve as informative and timely updates for state court leaders. Any opinions expressed herein are those of the authors, not necessarily of the National Center for State Courts.

civil cases, of which 42% were debt collection or landlord/tenant cases. Almost two-thirds of contract cases were debt collection (37%) or landlord/tenant cases (29%). The remaining civil caseload consisted of small claims (16%), other or unknown civil (12%), tort (7%), and real property cases (1%). Overall, therefore, more than half of civil caseloads (58%) are comprised of relatively low-value debt collection, landlord/tenant, and small claims cases.

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<sup>1</sup> The 10 urban counties studied: Maricopa Co., AZ; Santa Clara Co., CA; Miami-Dade, FL; Oahu, HI; Cook Co., IL; Marion Co., IN; Bergen Co., NJ; Cuyahoga Co., OH; Allegheny Co., PA; and Harris Co., TX.

### Debt Collection Dispositions

More than half (51%) of debt collection cases in the Landscape study resulted in a formal judgment. In nearly half of these (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%).

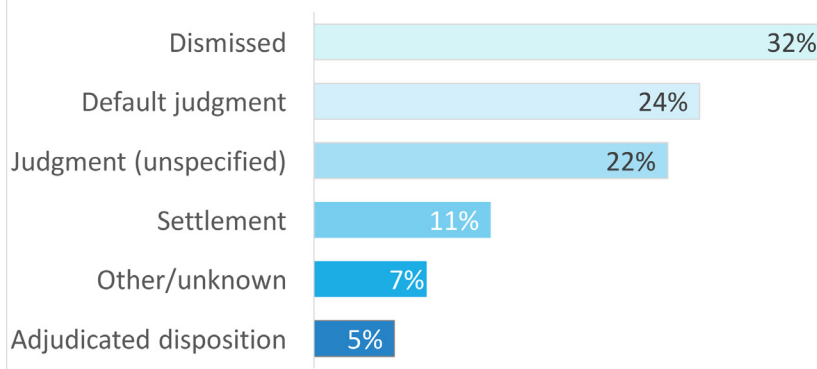
Half of all judgments (51%) in debt collection cases resulted in a monetary award, but the overwhelming majority of these were for modest sums: the average (mean) award was \$12,767, and 90% were

\$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 progressively 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% 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 also showed a significant asymmetry in representation: plaintiffs were represented by attorneys in 98% of cases, but defendants were represented in only 16% of cases.

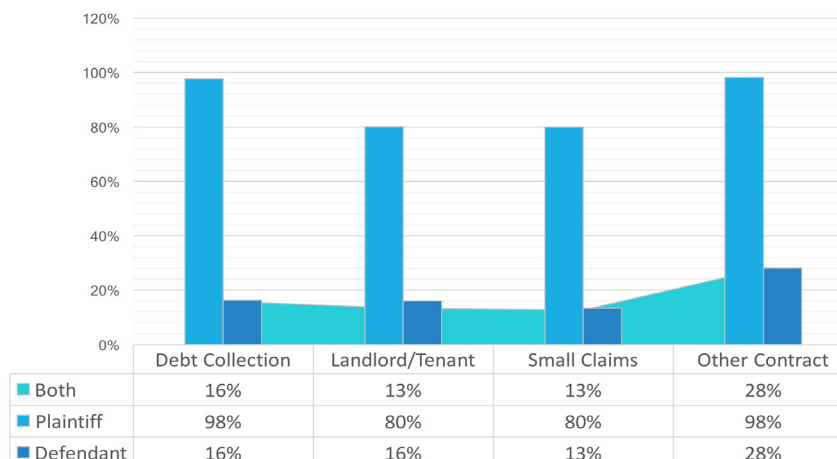
### Myth 2. Most civil cases are resolved in adversarial proceedings.

Majority of debt collection cases are resolved administratively



### Myth 3. Both parties represent themselves.

Asymmetry between plaintiff and defendant representation



### Landlord/Tenant Dispositions

Courts in seven of the Landscape counties provided 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% sought both eviction and past-due rent payments, and 2% 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% of which were default judgments. Just under one-quarter of these cases was dismissed, and 9% 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 relatively modest. The average award was \$4,551, and 90% 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 also the fastest cases to resolve (even faster than small claims). The average disposition time was three months, but 75% 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% of defendants were represented. Moreover, many of the self-represented plaintiffs are property management companies with extensive experience prosecuting landlord/tenant claims.

### Small Claims Dispositions

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.<sup>2</sup> 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.<sup>3</sup>

Today all states have small claims dockets to manage lower-value cases. The monetary thresholds range from \$1,500 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).

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%) of small claims judgments included a monetary award, which averaged \$4,500. 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% of debt collection judgments greatly exceed the largest 10% of small claims judgments. In fact, in 85% of debt collection cases in which a

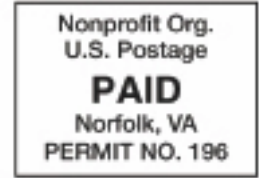
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<sup>2</sup> JOHN C. RUHNKA & STEVEN WELLER, SMALL CLAIMS COURTS: A NATIONAL EXAMINATION 2-3 (1978).

<sup>3</sup> *Id.* at 5-6.



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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.

Any efforts at improving civil justice in state courts must first begin with recognizing the truth about civil caseloads. The majority of state court civil cases are of relatively low-value, are resolved administratively, and are defended by self-represented litigants.

**Myth 4. Small claims are often settled.**

**Small claims are the least likely to settle**

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