

This memo was published originally as Appendix C to the 1996 "Report of the Governor's Advisory Task Force on Civil Justice Reform."

MEMORANDUM

TO: Governor's Task Force on Civil Justice Reform

FROM: Susanne Di Pietro and Teri Carns

DATE: December 3, 1996

RE: Analysis of Case File Data: Alaska Tort Jury Verdicts, 1985-1995

The Task Force asked the Judicial Council to gather data on jury verdicts in tort cases from five state court locations for the previous decade. Because of the Task Force's accelerated schedule and limited research budget, the Council concentrated on the subjects most relevant to the Task Force's work. The study was not intended to be comprehensive, although it should give a reasonably accurate snapshot of jury awards in tort trials in Alaska in the past ten years. This memo reports the data and gives a general analysis of the results.¹ Task Force members interested in additional analysis may contact Judicial Council staff.

I. Methodology

The Judicial Council asked the Alaska Court System's Office of Technical Operations to identify all cases that had gone to jury trial within the past ten years at each of five court locations. Technical Operations gave the Council two different lists of civil cases with jury verdicts.² After

¹ Available upon request from the Judicial Council are copies of the frequencies and cross-tabulations upon which the following analysis is based.

² The trials came from superior court twelve-person and six-person jury panels, and from district court six-person jury panels. About 87% of the cases were superior court matters and 13% were district court.

reconciling the lists as much as possible, the Council's researcher looked at each case that the court system had identified as containing a jury verdict.³ After discarding non-tort cases and cases that were still open, the Council was left with a data base consisting of 233 closed, tort jury verdict cases: 157 from Anchorage,⁴ 57 from Fairbanks, 6 from Bethel and 13 from Juneau.⁵ Because the Task Force was particularly interested in large jury verdicts, Council staff also informally polled a number of experienced litigation attorneys on large, tort jury verdicts that they could remember in the past ten years.⁶

Council staff designed a data base using Microsoft Access software to record information about the cases. The Council's researcher took the data from three sources: the complaint, the jury verdict, and the final judgment form. In addition, the researcher recorded information about post-trial motions, whether the case was appealed, and the outcome of the appeal. Council staff then transferred the data base containing the 233 cases into SPSS for Windows (a statistical analysis software program). All analyses were performed with SPSS.

II. Limitations of this Study

As discussed above, this study was not intended to be a comprehensive analysis of tort litigation in Alaska. First, the data base probably does not contain all tort jury verdict cases within the past decade, because the court system's lists of jury verdict cases probably were not complete. Some cases in some communities did not appear on the list. Also, because of the way the court system archives old cases, time and money did not permit the Council's researcher to review all of the older Anchorage cases. On balance, however, Judicial Council staff believe that the data base offers a reasonably accurate assessment of tort jury trial cases in the five locations.

³ The Council's researcher, who lives in Anchorage, traveled to Fairbanks to code cases from that location. The Attorney General's office arranged for an attorney and a paralegal, respectively, to code the cases from Bethel and Juneau. The Nome clerk of court reported the two cases from that location.

⁴ The 157 Anchorage cases came from a pool of 424 cases identified by the court as potentially containing a civil jury verdict. The Council's researcher examined and discarded 157 other Anchorage jury verdicts that were not tort cases or did not qualify for another reason.

⁵ In addition, the Council researched jury verdicts in Nome in the last ten years. The court's records showed four civil trials, two of which did not qualify for the study (one was still on appeal and one was a judge-trying case). Time constraints prevented including the remaining two Nome cases in the data base; however, we discuss them in this memo where relevant.

⁶ Based on the attorneys' responses, staff found one case (from Bethel) that was missing from the court system's master lists. Other cases also may be missing from the data base.

III. Findings

This section discusses the Council's findings about the 233 tort jury verdict cases. The Council recorded information from the case files about a number of substantive issues, including what types of tort cases went to trial, who the parties were, which party prevailed, and what types and amounts of damages were awarded. The Council also recorded information about a number of procedural issues, including how often judges awarded costs and attorney's fees, how long cases took to resolve, how often cases were appealed, and how often appellate decisions changed the jury's verdict.

A. Case Types

The study grouped cases into twelve substantive categories. Over a third (37%) of the tort cases that went to jury trial in the last decade were automobile accident cases. The second most common type of case was premises liability (17%). The third most common was malpractice (13%).⁷ Other types of cases, in descending order of frequency, included employment (7%, or 17 cases) general injury (7%, or 17 cases), general property damage (7%, or 16 cases), intentional torts (5%, or 12 cases) and product liability (3%, or 7 cases). The Council also found a handful of insurance bad faith cases (about 1%), and two common carrier cases (less than 1%).

B. Parties

Most cases were brought by an individual plaintiff or a family. In only six per cent of cases was a plaintiff an organization (organizations included businesses and state and municipal governments). In contrast, defendants often were organizations. In 63% of the cases, the plaintiff named at least one organization as a defendant. Individuals also appeared as defendants in many cases. In 58% of the cases, the plaintiff named at least one individual (excluding professionals) as a defendant. Thirty percent of all individual defendants were adult males, and fourteen per cent were adult females. Plaintiffs named more than one defendant in slightly fewer than half of all cases (44%).

C. Liability/Outcomes

⁷ Most of the malpractice cases were medical malpractice. Of the thirty-one malpractice cases in the data base, twenty-six (84%) were medical malpractice.

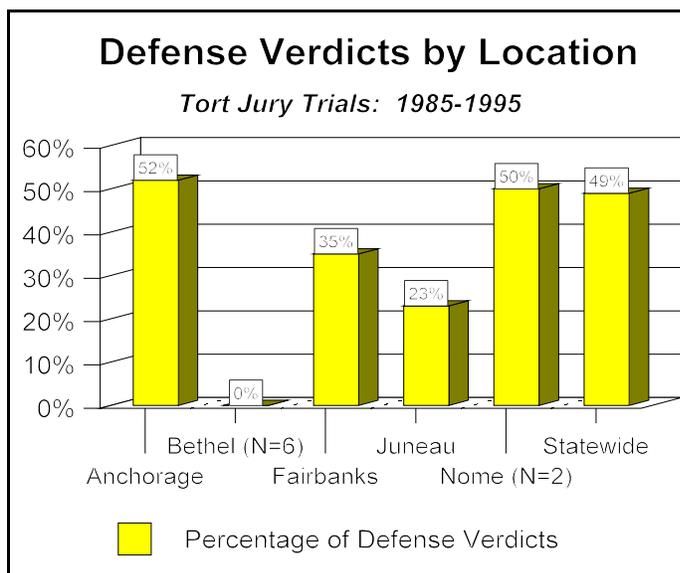


Chart 1

Alaska Judicial Council Jury Verdict Study 1996

Overall, plaintiffs and defendants were about equally likely to prevail at trial. Juries returned plaintiff verdicts in just over half (51%) of all tort trials statewide. In an additional four per cent of the cases (N=10), both the plaintiff and the defendant received awards. Further analysis revealed that plaintiffs' chances of prevailing varied by court location and type of case.

Chart 1 graphically depicts the differences in defense verdicts by location. Bethel was the most plaintiff-friendly forum, with all six jury verdicts going against defendants.⁸ Next came

Juneau, where juries returned plaintiff verdicts in 77% of the cases examined. In Fairbanks, 56% of verdicts went to plaintiffs. In Anchorage juries returned verdicts for plaintiffs 45% of the time.⁹ In the two Nome cases, one was a defense verdict and one was for the plaintiff.

Analyzed by case type, plaintiffs were most likely to prevail in automobile accident trials (66% of the time) and general property (56% of the time). Defendants were most likely to prevail in medical malpractice cases (81% of the time) and premises liability (59% of the time). Outcomes in insurance bad faith, employment and general injury cases appeared to have split about evenly between plaintiffs and defendants. In sum, only 118 of our total of 233 cases involved jury verdicts for plaintiffs.

⁸ Readers should be very careful about drawing conclusions from the Bethel data, because interview information suggested that defendants prevailed in other Bethel jury cases that were not included in this study.

⁹ In about three percent of the cases, juries awarded some to both parties.

Chart 2 depicts the percentages of verdicts juries returned for plaintiffs, broken down by

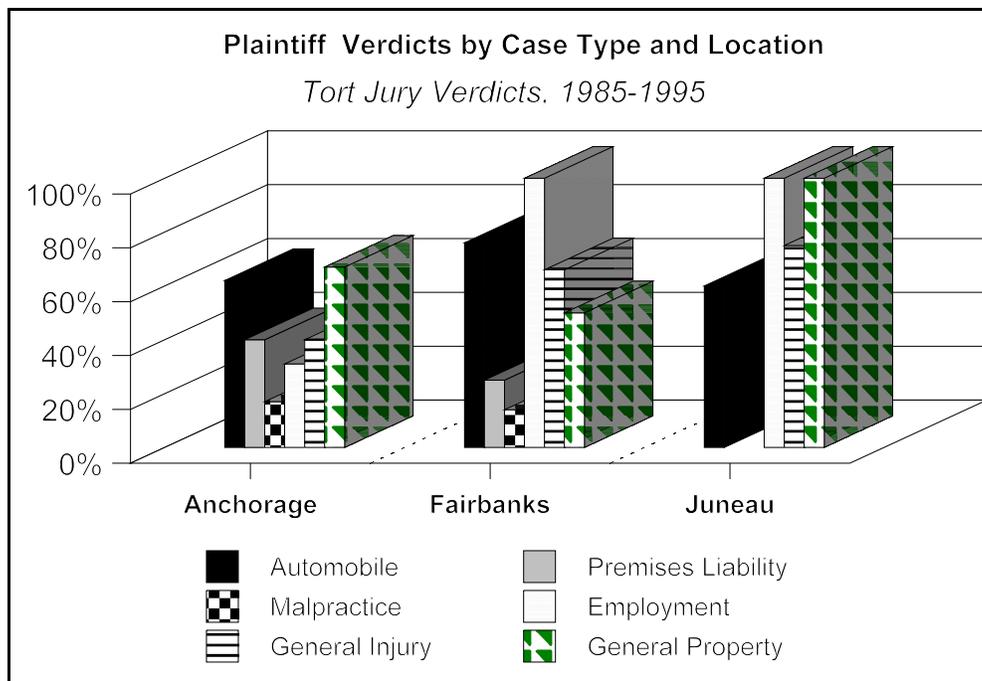


Chart 2
Alaska Judicial Council Jury Verdict Study 1996

court location and type of case.¹⁰ Consistent with the statewide trends discussed above, plaintiffs in automobile cases prevailed more often in Fairbanks than in Anchorage. However, Juneau plaintiffs bringing automobile accident cases prevailed slightly less often (60% of the time) than did Fairbanks plaintiffs (76% of the time).

D. Allocation of Fault

Juries did not often allocate fault to plaintiffs, and where they did allocate fault, they did not tend to view plaintiffs as contributing substantially to their own injuries. Juries allocated fault in 12% of the cases; in only six of those cases (14%) did they assign half or more of the fault to the plaintiff.

E. Damages

¹⁰ Bethel and Nome had too few cases to be included in this chart. This chart does not include cases in which the jury awarded some amount to both parties.

The study distinguished between economic, non-economic and punitive damages, and between amounts awarded by the jury and amounts set out in the final judgment. This section describes the types and amounts of damages awarded.

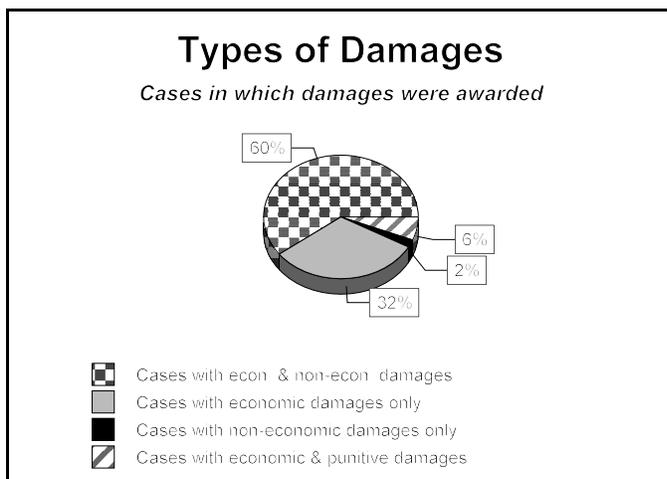


Chart 3

Alaska Judicial Council Jury Verdict Study 1996

Of the 117 cases in which juries awarded damages, the majority (61%) contained both economic and non-economic awards. About a third (32%) of the cases contained only economic damage awards. Only two cases (2%) contained a non-economic damage award without any other kind of damage award.¹²

1. Types of Damages. The study examined fifteen different types of damages including economic, non-economic and punitive.¹¹ Economic damages included lost wages, medical bills and property damage. Non-economic damages included pain and suffering, emotional distress, loss of consortium and loss of enjoyment. Damages also were divided by whether they were for past or future losses.

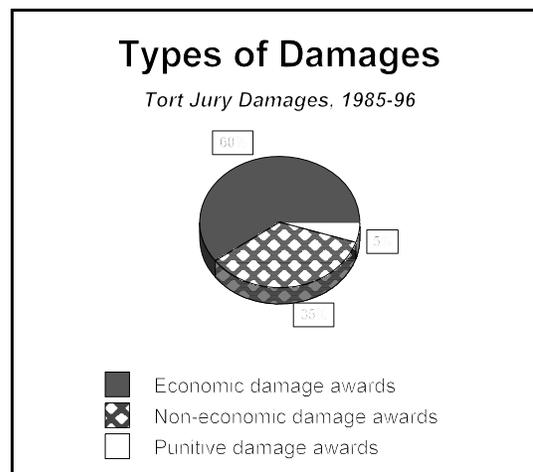


Chart 4

Alaska Judicial Council Jury Verdict Study 1996

¹¹ This section examines the 358 separate damage awards found in 118 cases. Note that more than one type of damage could have been awarded in a single case.

¹² Six percent of the cases (N=7) contained an economic damage award and a punitive damage award, but no non-economic damage award.

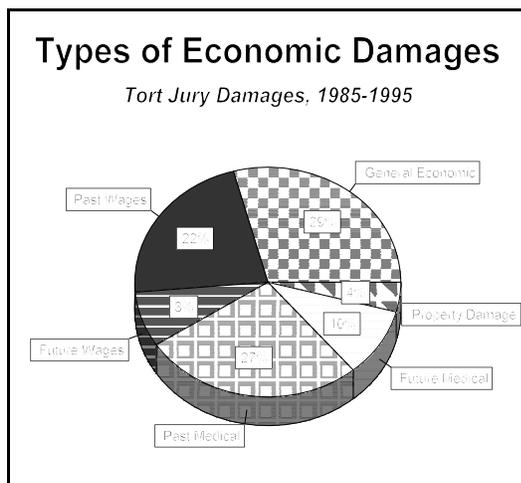


Chart 5
Alaska Judicial Council Jury Verdict Study 1996

The study also counted up the total number of damage awards from all of the cases in which juries awarded damages. Of the 358 damage awards recorded, economic damages were more common than non-economic damages. Chart 4 shows that well over half (60%) of all damage awards were to compensate for economic losses, while 35% were for non-economic losses and 5% were punitive damage awards.

Examining both economic and non-economic damages, the study measured how often juries made awards for losses in the future, as opposed to losses already suffered. Future damages included future lost wages, future medical expenses, future pain and suffering, and future loss of enjoyment. The data showed that juries did not often make awards for future damages. For example, of the 358 damage awards recorded, only twenty were for future medical expenses (about 6% of all damage awards), twenty-three were for future pain and suffering (about 6% of all damage awards) and one was for future loss of enjoyment (0.3% of all damage awards).

Within the category of economic damages, the study examined awards made for six specific types of losses (see Chart 5). The most commonly awarded economic damages included past wages and past medical expenses. Chart 5 shows the details of the economic damage awards.

The study also examined awards made for eight specific categories of non-economic losses (not including punitive damages). Keeping in mind that non-economic damage awards constituted only about a third of all damage awards, the most commonly awarded non-economic damage was for past pain and suffering. Chart 6 shows the details of the non-economic damage awards.

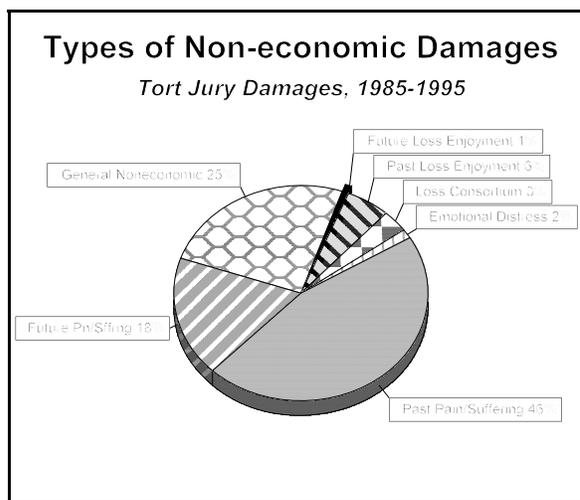


Chart 6
Alaska Judicial Council Jury Verdict Study 1996

Further analysis revealed that juries seldom made awards for certain kinds of non-economic losses. Jury awards for loss of consortium constituted only about 3% of all non-economic damages (1% of all damage awards). Awards for past loss of enjoyment constituted about 6% of the non-economic damage awards (about 2% of all damage awards). Awards for emotional distress constituted about 2% of non-economic damage awards (less than 1% of all damage awards).

2. Amounts of Damage Awards. Many jury verdicts were relatively small. In fact, over half (58%) of all superior court jury verdicts that contained a damage award were less than \$50,000 (the jurisdictional amount for superior court). About a third of the superior court verdicts were less than \$10,000. Overall, about 61% of all jury verdicts awarded damages under \$20,000.

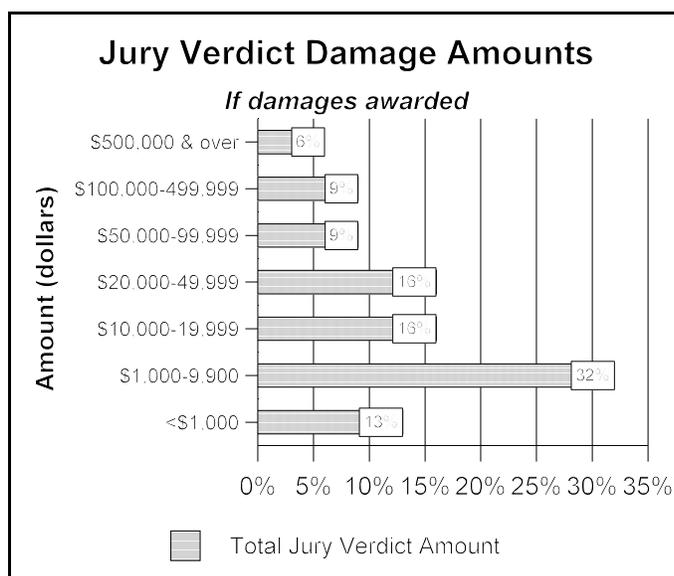


Chart 6
 Alaska Judicial Council Jury Verdict Study 1996

A relatively small percentage of damage awards were large. Six percent of all damage awards exceeded \$500,000, and an additional nine percent fell between \$100,000 and \$500,000. Chart 6 summarizes the overall amounts of damage awards for all cases in which damages were awarded.¹³

Some damage amounts varied by location and case type. For example, jury awards in Fairbanks automobile accident cases were somewhat smaller than those in Anchorage auto cases.¹⁴

3. Punitive Damages. Plaintiffs requested punitive damages 27% of the time; however, juries awarded them in only about 6% of the cases (17 punitive damage awards were made in 15 cases).¹⁵ Table 1 on the next page shows that while a few punitive damage awards were very large, about half were under \$60,000. Four of the cases in which juries made punitive awards involved intentional torts (for example, tortious interference with business contracts). Juries also awarded punitive damages in

¹³ The chart does not show whether plaintiffs or defendants received the awards.

¹⁴ One explanation for the discrepancy is that a higher proportion of Fairbanks automobile cases were filed in district rather than superior court.

¹⁵ In one case, the jury made small awards to both the plaintiff and the defendant. In the other case, the jury gave the plaintiff one punitive damage award on each of two separate claims.

two employment cases, two non-auto personal injury cases, one property damage case, one insurance bad faith claim and one automobile accident involving a drunken driver. The chart does not show whether the awards were paid, as that information is not available from court records.

| Punitive Damage Awards: Anchorage, Bethel, Fairbanks, Juneau, Nome 1985-1995 | | | | |
|---|--|----------------------------------|----------------|---------------------------|
| Case Type | Jury Compensatory Award (does not include fault allocation) | Jury Punitive Award | Appeal? | Appeal Outcome |
| Intentional Tort | \$3,025 | \$250 and \$100 (one to each) | No | |
| Property | \$8,338 | \$3,000 | No | |
| Intentional Tort | \$4,387 | \$5,000 | No | |
| Insurance Bad Faith | \$1,001,087 | \$10,000 | Yes | Punitive damages reversed |
| Automobile | \$575 | \$20,000 | No | |
| Intentional Tort | \$87,934 | \$20,000 | No | |
| Intentional Tort | \$17,000 | \$60,000 | No | |
| Employment | \$112,273 | \$132,000 | Yes | Settled |
| General Injury | \$692,282 | \$150,000 | Yes | Settled |
| Personal Injury | \$738,765 | \$150,000 | Yes | Settled |
| Intentional Tort | Pl. won \$17,300 against def. 1. Def. 2 won \$23,500 against pl. | \$250,000 | No | |
| Product Liability | \$3,004,500 | \$500,000 | No | |
| Employment/ defamation | \$303,604 | \$500,000 | No | |
| Insurance Bad Faith (automobile) | \$18,008 | \$1,200,000 | Yes | Punitive damages reversed |
| Intentional Tort (business dispute) | \$9,473,770 | \$25,300,000 | Yes | Settled |

Table 1

Alaska Judicial Council Jury Verdict Study 1996

F. Costs and Fees

The study collected limited information about costs and attorney's fees. Because cases sometimes settled and were dismissed before judgment or before entry of costs and attorney's fees,

some cases included in the study lacked cost and fee awards. Normally, judges award costs and attorney's fees to prevailing parties after trial based on guidelines set out in court rules and statutes.

1. Costs. The awarding of costs is governed by Alaska Rule of Civil Procedure 79. The party entitled to costs must request them within ten days or forfeit the right to recover them. Items allowed to the prevailing party as costs include the expense of taking depositions and producing exhibits, the expense of service, filing fees, fees for transcripts, computerized research, and other expenses necessarily incurred.

The Council found a cost award in about half (54%) of the cases studied. About 16% of all cost awards were \$1,000 or less. About 42% of cost awards fell between \$1,000 and \$5,000, and another 24% fell between \$10,000 and \$58,000. No cost awards exceeded \$58,000.

2. Attorney's Fees. The awarding of attorney's fees is governed by Alaska Rule of Civil Procedure 82 and Alaska Statute § 9.60.010. The statute authorizes the supreme court to determine what attorney's fees, if any, may be awarded to a prevailing party in a civil action. The court rule sets out a schedule for calculating fee awards based on whether the plaintiff or the defendant prevailed. The prevailing party is not entitled to be reimbursed for all its attorney's fees, except in extraordinary circumstances. Thus, the fee award amounts reported below probably represent only a fraction of the amounts spent by parties on their attorneys.¹⁶

The Judicial Council found an attorneys' fee award in about 64% of the cases in this study.¹⁷ The largest group of fee awards fell between \$15,000 and \$50,000 (about 29% of fee awards). About 23% of fee awards fell between \$4,000 and \$10,000. Nineteen percent of the fee awards were under \$4,000, and 11% fell between \$10,000 and \$15,000. A few fee awards were large: 17% fell between \$50,000 and \$166,000, and the largest award exceeded \$166,199.

¹⁶ For more information about attorney's fee awards in state and federal civil cases in Anchorage, see the Judicial Council's report: ALASKA'S ENGLISH RULE: ATTORNEY'S FEE SHIFTING IN CIVIL CASES (October, 1995) at 91-97.

¹⁷ Fee awards were made to both plaintiffs and defendants.

G. Offers of Judgment

Alaska Civil Rule 68 and Alaska Statute § 09.30.065 control offers of judgment. An unaccepted offer of judgment made pursuant to Rule 68 in effect changes the time and conditions under which a party can become the prevailing party for purposes of attorney's fee awards.

The Council found evidence of offers of judgment in 53 cases (32% of the cases studied); however, readers should be cautious when interpreting this finding. First, the 32% figure under reports the number of offers which appeared in the cases reviewed, because this study did not systematically search each file for offers of judgment. Second, the 32% figure under reports the frequency with which offers of judgment were made in jury trial cases, because it includes only those offers that were filed with the court.¹⁸ Of the offers of judgment found in the case files, the smallest was \$1,000 and the largest was \$575,000. About half (53%) of the offers were \$10,000 or less. Ten of the offers (19%) were \$100,000 or more.

H. Appeals

The Judicial Council found evidence of an appeal in only a quarter of all the cases (N=58), although six out of the fifteen cases involving punitive damage awards were appealed. Of the fifty-eight cases in which an appeal was filed, only twenty completed the entire appeal process; the remaining 67% were settled or otherwise dismissed before the supreme court rendered an opinion. Of the twenty supreme court rulings, only four (20%) changed the amount of the jury verdict. Sixteen of the appellate opinions caused no change in the jury verdict. Thus, with the exception of punitive damage cases, only a relatively small portion of cases are appealed, and only a very few jury verdicts are changed as the result of an appeal.

I. Length of Cases

The study examined three variables related to how long it took to resolve cases. The study measured the amount of time that elapsed from the day the case was filed until it was closed,¹⁹ time elapsed between case filing until trial, and time elapsed between trial and case closing.

¹⁸ Rule 68 does not require an offer of judgment to be filed in the court case file.

¹⁹ The court system administratively closes cases after all proceedings are finished; however, we do not know how much time typically elapses between the end of case activity and the official closing date.

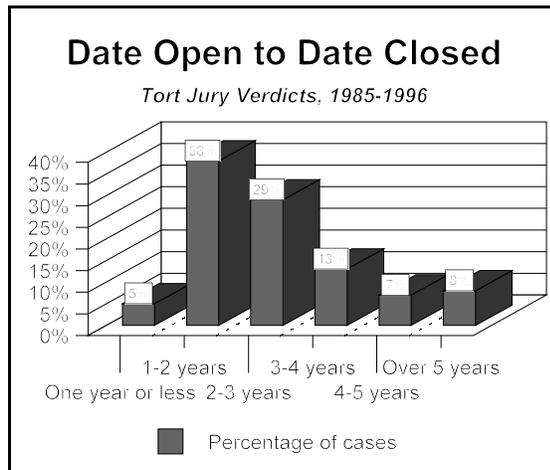


Chart 7
Alaska Judicial Council Jury Verdict Study 1996

elapsed between filing the cases and the trial. About fourteen percent of all the cases went to trial within one year of filing, while another 21% went to trial between one year and eighteen months after filing. Most (85%) of the cases were tried within three years.

The data showed that many of the cases closed relatively soon after the trial was concluded. Over half (59%) of the cases were closed within four months after trial. Seventy percent were closed by six months after trial, and 83% were closed by a year after the trial. A small percentage of cases (17%) remained open more than a year after trial; these may have been awaiting appellate decisions.

J. Conclusion

This review of 233 jury verdicts in tort cases in Anchorage, Fairbanks, Bethel, Juneau and Nome over the past decade by and large showed that Alaska juries found for plaintiffs and defendants about equally, although variations existed based on the type of case and the location of the jury. When they made awards, juries tended to give less than the amount requested in the

Chart 7 gives the data on total time from filing until closing. The chart shows that although few cases were resolved within a year, many were resolved within two to four years. Thirty-eight percent of the cases were opened and closed within two years, and another 42% of the cases were resolved in two to four years. About 8% of the cases took longer than five years to resolve. Because all of these cases had a jury verdict, they do not represent the typical civil case in Alaska's courts.²⁰

Chart 8 gives the breakdown of the time that

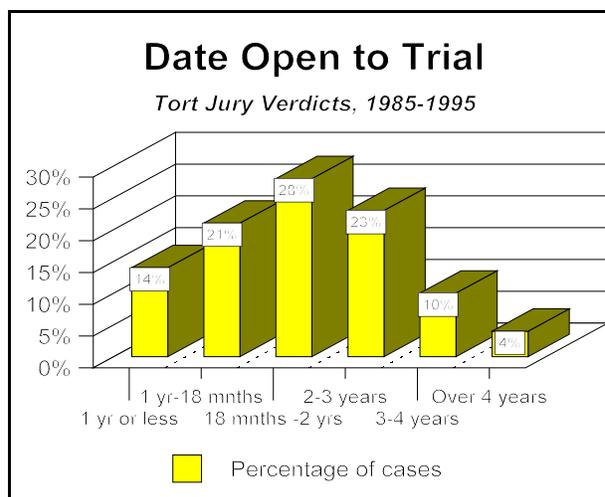


Chart 8
Alaska Judicial Council Jury Verdict Study 1996

²⁰ About 4% of tort cases went to trial (including judge-tried cases) in a sample of 1993 Anchorage civil cases. ALASKA JUDICIAL COUNCIL, ALASKA'S ENGLISH RULE, *supra* note 15, at 86.

complaint: the bulk of superior court awards were less than \$50,000. In both superior and district court verdicts, damages for economic losses were more common than those for non-economic losses, and awards for future losses of any kind were relatively rare. Juries awarded punitive damages in only 15 of the 233 cases studied, and many of those awards were less than \$60,000.

The study also suggested that parties did not often ask the appellate court to correct mistakes made at trial. Only about a quarter of the jury verdicts were appealed, although six of the fifteen punitive damage cases were appealed. Parties who did appeal seldom waited for the court to render an opinion before settling or otherwise resolving the case. Finally, the data showed that many of these cases were resolved within two to four years of filing.