



# Bureau of Justice Statistics Special Report

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## *2001 Supplemental Survey of Civil Appeals*

# Appeals from General Civil Trials in 46 Large Counties, 2001–2005

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In 46 large counties in 2001, 8,311 civil cases were concluded by trial. Plaintiffs and defendants appealed 1,204 (about 15%) of these tort, contract, or real property cases.

Of these 1,204 civil appeals, 43% were withdrawn, dismissed, or transferred from the appellate courts while the remaining 57% were decided on their merits.

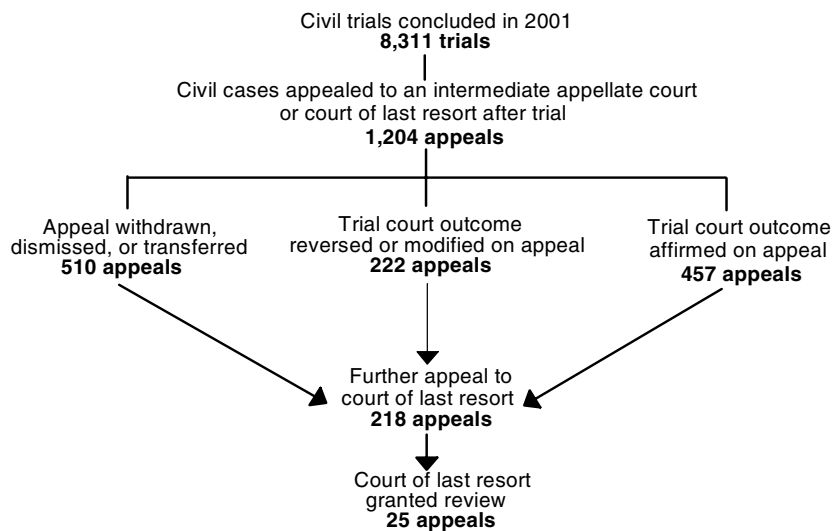
Of the civil appeals decided on the merits, the trial court verdict or judgment was affirmed in about two-thirds of the cases and reversed or modified in approximately a third. Most reversed or modified appeals were sent back to the trial court for a new trial or with additional instructions to modify the prejudgment award.

Of civil appeals disposed by the intermediate appellate courts, 218 cases (19%) were subsequently appealed to courts of last resort. Of these 218 cases that were further appealed, 12% or 25 cases were granted additional review by courts of last resort.

These findings are from the 2001 Supplemental Survey of Civil Appeals. This study tracked 1,204 general civil (tort, contract, or real property) trials concluded in 2001 in 46 large counties in which the trial verdict or judgment was appealed to an intermediate appellate court or court of last resort.

## Highlights

### Flow of civil trials concluded in 2001 that were appealed in 46 large counties from 2001-2005



Note: 15 appeals were pending at the end of the April 2005 study period.

- Among tort trial cases concluded in 2001, litigants filed appeals in approximately 33% of product liability and 18% of medical malpractice trials. Twenty-one percent of contract trials and 24% of real property trials were also appealed.

- Forty-three percent of civil appeals were dismissed or withdrawn prior to disposition. Appeals filed by defendants were dismissed or withdrawn (47%) at higher rates compared to appeals filed by plaintiffs (38%).

- Among appeals decided on the merits, two-thirds affirmed and a third reversed the trial court verdict.

- Trial court verdicts or judgments that found for plaintiffs were reversed or modified on appeal at higher rates compared to trial court outcomes favoring defendants (42% vs. 21%).

- Nearly three-fourths of civil appeals decided on the merits (73%) were resolved through the issuance of a signed majority/plurality opinion, while 28% were disposed of by an unsigned per curiam opinion.

These appeals were tracked through April of 2005.

The 2001 Supplemental Survey of Civil Appeals is part of a series examining civil trial litigation in the Nation's most populous counties. Earlier reports focused on general civil cases concluded by bench or jury trial in the Nation's most populous counties in 2001.<sup>1</sup>

### Civil appellate process

Litigants filing appeals must allege that the trial court misapplied the State's substantive or evidentiary laws, made a procedural mistake, or erred in holding that the verdict or findings were supported by the evidence.<sup>2</sup>

Either plaintiffs or defendants can seek to reverse, modify, or challenge the trial court's decision by appealing the verdict or judgment. Plaintiffs might appeal if they lose at trial or are dissatisfied with the damage award. Defendants might appeal a trial court decision finding in favor of the plaintiff.

In most States intermediate appellate courts represent the first level of appellate review. Intermediate appellate courts typically have mandatory jurisdiction over civil appeals, meaning that they are required by their State constitution or statutes to review any case appealed to them. These courts are primarily concerned with correcting errors at the trial court level.

In some States, the intermediate appellate court's jurisdiction is geographically divided. For example, California has six intermediate appellate court districts, and each of these districts hears appeals from certain designated counties. Other

<sup>1</sup>See *Civil Trial Cases and Verdicts in Large Counties, 2001* <<http://www.ojp.usdoj.gov/bjs/abstract/ctcvlc01.htm>>, *Medical Malpractice Trials and Verdicts in Large Counties, 2001*. <<http://www.ojp.usdoj.gov/bjs/abstract/mmtvlc01.htm>>, and *Tort Trial Cases and Verdicts in Large Counties, 2001* <<http://www.ojp.usdoj.gov/bjs/abstract/tvtvlc01.htm>>.

<sup>2</sup>See *National Center for State Courts Topics on Appellate Courts: Structure, Jurisdiction, and Process* at <<http://www.ncsconline.org>>.

States have only one intermediate appellate court to hear all appeals for that State. Courts of last resort represent the final level of State appellate review. Most courts of last resort have discretionary jurisdiction over civil appeals, meaning the court can choose whether to review an appeal from an intermediate appellate court. Cases reviewed by courts of last resort tend to involve legal or policy issues with broad implications for a State's legal system and citizens.<sup>3</sup>

### Types of general civil cases appealed from trial court

In 2001, 8,311 general civil cases were concluded by trial in 46 large counties (table 1). In about 15% or 1,204 of these trials, the plaintiffs or defendants filed an appeal after jury verdict or bench judgment. Litigants filed appeals in 11% of tort trials, 21% of contract trials, and 24% of real property trials in State courts.

<sup>3</sup>Rottman et al. 2000. *State Court Organization, 1998*. National Center for State Courts. Williamsburg, Virginia. <<http://www.ojp.usdoj.gov/bjs/abstract/sco98.htm>>.

Among tort trials approximately a third of product liability and professional malpractice trials generated an appeal. Eighteen percent of medical malpractice trials were appealed, while 5% of automobile accident trials resulted in an appeal. In contract cases about a third of employment discrimination and a quarter of tortious interference trials resulted in an appeal.

### Types of parties filing an appeal

After a civil trial reaches a verdict or judgment, the plaintiffs or defendants can file an appeal alleging that the trial court misapplied the State's substantive or evidentiary laws, made a procedural mistake, or erred in holding that the verdict or findings were supported by the evidence. The party filing the appeal is the appellant or petitioner and the party responding to the appeal is the appellee or respondent.<sup>4</sup>

<sup>4</sup>Sometimes both parties — plaintiffs and defendants — file notices of appeal. In this report, only the first appeal is counted, while the second, or cross-appeal, has been excluded from analysis.

**Table 1. General civil cases appealed from trial court, by type of case in 46 large counties, 2001-2005**

Type of civil cases	General civil trials concluded in 2001		
	Number	Trials appealed	
		Percent	Number
All civil cases <sup>a</sup>	8,311	14.5%	1,204
Tort cases	5,660	10.6%	600
Product liability	117	32.5	38
Professional malpractice	68	32.3	22
Slander/libel	62	29.2	18
Other or unknown tort <sup>b</sup>	372	20.4	76
Medical malpractice	851	17.5	149
Intentional tort	258	13.2	34
Premises liability	967	11.1	107
Automobile accident	2,967	5.3	156
Contract cases	2,470	20.8%	513
Employment discrimination	284	33.8	96
Tortious interference	82	25.7	21
Fraud	433	22.9	99
Buyer plaintiff	544	18.4	100
Other or unknown contract <sup>c</sup>	134	17.9	24
Seller plaintiff	801	17.5	140
Rental/lease	192	17.2	33
Real property cases	181	24.0%	44

Note: Detail may not sum to total because of rounding. For definitions of case categories, see *Methodology* section of *Civil Trial Cases and Verdicts in Large Counties, 2001* ([www.ojp.usdoj.gov/bjs/abstract/ctcvlc01.htm](http://www.ojp.usdoj.gov/bjs/abstract/ctcvlc01.htm)).

<sup>a</sup>Total for all 1,204 appeals includes 47 appeals that could not be classified into the tort, contract, or real property civil case categories.

<sup>b</sup>Includes animal attack, conversion, false arrest — imprisonment, and other tort cases.

<sup>c</sup>Includes mortgage foreclosure, partnership dispute, subrogation, and other contract cases.

**Table 2. Parties filing notice of appeal from trial court, by type of case in 46 large counties, 2001-2005**

Type of civil case appealed from trial court	Number of appeals	Percent of appeals filed by —	
		Plaintiff	Defendant
All civil cases <sup>a</sup>	1,204	48.0%	52.0%
Tort cases	600	53.3%	46.7%
Slander/libel	18	38.9	61.1
Professional malpractice	22	40.9	59.1
Intentional tort	34	44.1	55.9
Product liability	38	50.0	50.0
Other or unknown tort <sup>b</sup>	76	50.0	50.0
Premises liability	107	53.3	46.7
Automobile accident	156	54.5	45.5
Medical malpractice	149	60.4	39.6
Contract cases	513	41.9%	58.1%
Tortious interference	21	28.6	71.4
Seller plaintiff	140	36.4	63.6
Fraud	99	38.4	61.6
Buyer plaintiff	100	43.0	57.0
Rental/lease	33	45.5	54.5
Employment discrimination	96	49.0	51.0
Other or unknown contract <sup>c</sup>	24	62.5	37.5
Real property cases	44	61.4%	38.6%

Note: Detail may not sum to total because of rounding. Data on "appealing party" were available for 100% of civil appeals. For definitions of case categories, see *Methodology* section of *Civil Trial Cases and Verdicts in Large Counties, 2001* ([www.ojp.usdoj.gov/bjs/abstract/ctcvlc01.htm](http://www.ojp.usdoj.gov/bjs/abstract/ctcvlc01.htm)).

<sup>a</sup>Total for all 1,204 appeals includes 47 appeals that could not be classified into the tort, contract, or real property civil case categories.

<sup>b</sup>Includes animal attack, conversion, false arrest-imprisonment, and other tort cases.

<sup>c</sup>Includes mortgage foreclosure, partnership dispute, subrogation, and other contract cases.

Among all 1,204 civil appeals filed between 2001 and 2005, plaintiffs and defendants filed appeals at nearly equal rates; the defendants were appellants in 52% of civil appeals, while the plaintiffs were appellants in the remaining 48% (table 2).

Among tort trials appealed, plaintiffs (53%) were slightly more likely to be appellants than defendants (47%). Plaintiffs were appellants in 60% of

medical malpractice appeals. Plaintiffs and defendants were equally likely to file an appeal in product liability trials. Defendants constituted the majority of appellants (58%) in the 513 contract cases appealed from trial.

The trial court outcome is a substantial factor influencing whether the litigants seek to file an appeal. For example, defendants filed appeals in nearly four-fifths (79%) of trials appealed from a

**Table 3. Civil cases appealed from trial court, by party filing notice of appeal, and trial court outcome in 46 large counties, 2001-2005**

Trial court outcome	Civil cases appealed from trial court		
	Number	Percent of appeals filed by —	
		Plaintiff	Defendant
Judge or jury found for —			
Plaintiff	699	21.2%	78.8%
Defendant	458	90.4	9.6

Note: Data on trial court outcome of judge or jury finding for plaintiff or defendant were available for 96% of the 1,204 civil appeals.

verdict or judgment finding for the plaintiff (table 3). Plaintiffs were appellants in 90% of civil appeals from trials that produced a defense verdict or judgment.

Plaintiffs also filed appeals in 21% of civil appeals from trials that found for the plaintiff. Dissatisfaction with trial damage awards may induce a plaintiff who won at trial to file an appeal.

### Types of appellants

Of the 558 civil appeals filed by plaintiffs, individuals constituted 79% and businesses accounted for about 20% of plaintiff appellants (table 4). Governments and hospitals represented less than 2% of plaintiffs who filed an appeal.

Businesses constituted the majority (57%) of the 593 defendant appellants, while individuals accounted for approximately 29% of defendants who filed an appeal. Governments and hospitals represented the remaining 15% of defendant appellants.

### Disposition of civil cases appealed from trial court

Appeals from trial court verdicts or judgments can produce a variety of outcomes. After an appeal is filed, the parties may decide not to continue to pursue the appeal or the case may be dismissed by the appellate court. In appeals not withdrawn or dismissed, the appellate court reviews the arguments of the parties as well as the trial court record, then renders a decision on the merits by ruling on

**Table 4. Civil cases appealed from trial court, by types of plaintiffs and defendants in 46 large counties, 2001-2005**

Civil trial case type	Number	Total	Percent of appeals filed by —			
			Individual	Government	Business <sup>a</sup>	Hospital <sup>b</sup>
<b>Plaintiff appealed</b>						
All cases	558	100%	78.9%	1.1%	19.9%	0.2%
Tort cases	318	100	94.0	0.6	5.3	0.0
Contract cases	213	100	56.3	0.5	42.7	0.5
Real property cases	27	100	77.8	11.1	11.1	0.0
<b>Defendant appealed</b>						
All cases	593	100%	28.5%	7.1%	56.7%	7.8%
Tort cases	279	100	29.0	8.2	49.1	13.6
Contract cases	297	100	25.3	5.7	66.3	2.7
Real property cases	17	100	76.5	11.8	11.8	0.0

Note: Data on plaintiff type were available from 97% of trials appealed by plaintiff and data on defendant type were available from 95% of trials appealed by defendant. Plaintiff or defendant type for each case is whichever type appears first on this list: 1) hospital/medical company, (2) business, (3) governmental agency, and (4) individual. Detail may not sum to total because of rounding.

<sup>a</sup>Includes insurance companies, banks, and other businesses and organizations.

<sup>b</sup>Includes medical companies.

whether to affirm, reverse, or modify the trial court decision.

Trial court outcomes reversed or modified on appeal can also be remanded back to the trial court for further proceedings. In this report, those appeals that resulted in an affirmance, reversal, or modification of the trial court decision are considered to have been decided on the merits. Appeals not decided on the merits were dismissed or withdrawn from further appellate review.

Fifty-seven percent of the 1,189 civil appeals disposed during the 2001-

2005 study period were decided on the merits (table 5).<sup>5</sup>

The remaining 43% of appeals were either dismissed by the appellate court or withdrawn by the parties. Appeals filed by defendants were dismissed or withdrawn (47%) at higher rates compared to appeals filed by plaintiffs (38%).

Of the 510 appeals not decided on the merits, approximately 60% were withdrawn by one or both parties (not shown in a table). A primary reason for withdrawing an appeal is that the

<sup>5</sup>A total of 1,189 civil appeals were disposed during the 2001-2005 study period. The remaining 15 appeals were still pending as of April 2005.

parties have settled after the appeal is filed.

The appellate court dismissed the remaining 41% of the 510 appeals not decided on the merits. Nearly 70% of these dismissed appeals were removed from the appellate courts because of procedural errors. Other dismissed appeals were not reviewed because the appellate court lacked jurisdiction (16%) to hear the case (not shown in a table).

**Table 5. Disposition of civil cases appealed from trial court, by appealing party and civil case category in 46 large counties, 2001-2005**

Party filing notice of appeal and type of civil cases appealed from trial court	Civil appeals disposed 2001-2005		Percent of appeals reviewed on the merits —			Percent of appeals not reviewed on the merits —		
			Trial court outcome			Total	Appeal dismissed <sup>c</sup>	Appeal withdrawn <sup>d</sup>
	Number	Total	Total	Affirmed <sup>a</sup>	Reversed <sup>b</sup>			
All appeals <sup>e</sup>	1,189	100%	57.1%	38.4%	18.7%	42.9%	17.4%	25.5%
<b>Plaintiff filed notice of appeal<sup>e</sup></b>	575	100%	61.6%	45.4%	16.2%	38.4%	20.0%	18.4%
Tort cases	317	100	60.6	45.1	15.5	39.4	21.8	17.7
Contract cases	215	100	62.3	45.6	16.7	37.7	16.7	20.9
<b>Defendant filed notice of appeal<sup>e</sup></b>	614	100%	52.9%	31.9%	21.0%	47.1%	15.0%	32.1%
Tort cases	277	100	55.2	35.4	19.9	44.8	10.8	33.9
Contract cases	289	100	48.8	26.3	22.5	51.2	18.3	32.9

Note: Of the 1,204 primary appeals from the trial court, 15 were still pending after April 2005. Detail may not sum to total because of rounding.

<sup>a</sup>Includes appeals that were affirmed in whole.

<sup>b</sup>Includes appeals that were reversed in part, reversed in whole, modified, or remanded to the trial court.

<sup>c</sup>Includes appeals that were dismissed because of lack of jurisdiction, procedural error, or other reasons.

<sup>d</sup>Includes appeals that were withdrawn by the parties for a variety of reasons or were transferred to another court. Transfers accounted for less than 10% of withdrawn/transferred appeals.

<sup>e</sup>Tort and contract case categories will not sum to total because totals include property appeals and appeals that could not be classified into the tort or contract civil case categories.

**Table 6. Review of trial court outcomes on appeal, by party filing notice of appeal and trial court outcome in 46 large counties, 2001-2005**

Party filing notice of appeal and trial court outcome	Trial court outcome reviewed on appeal <sup>a</sup>			
	Number	Percent of appeals in which the trial court outcome was —		
		Total	Affirmed <sup>b</sup>	Reversed <sup>c</sup>
<b>Party filing notice of appeal</b>				
Total appeals	679	100%	67.3%	32.7%
Plaintiff appealed	354	100	73.7	26.3
Defendant appealed	325	100	60.3	39.7
<b>Trial court outcome appealed</b>				
Trial court found for plaintiff <sup>d</sup>	376	100%	58.5%	41.5%
Trial court found for defendant <sup>d</sup>	280	100	78.6	21.4

Note: Of the 1,204 primary appeals from the trial court, 15 were still pending after April 2005. Detail may not sum to total because of rounding.

<sup>a</sup>The 510 dismissed or withdrawn appeals were excluded from the table.

<sup>b</sup>Includes appeals that were affirmed in whole.

<sup>c</sup>Includes appeals that were reversed in part, reversed in whole, modified, or remanded to the trial court.

<sup>d</sup>Trial court outcome data will not sum to total because data on whether the judge or jury found for plaintiff or defendant were available for 96% of civil appeals.

## Review of trial court outcomes on appeal

Of the 679 appeals decided on the merits, the appellate court affirmed the trial court outcome in about two-thirds and reversed in a third (table 6). Appeals from trial court decisions favoring plaintiffs (42%) were more likely to be reversed or modified than appeals from trial court outcomes finding for defendants (21%).

## Reversals in civil cases appealed from trial court

An appellate court can reverse a trial court verdict or judgment completely or partially or make other modifications to the trial court outcome. Trial court decisions that are reversed on appeal are typically sent back to the trial court for further proceedings. In some appeals, however, the appellate court can remand the case without any reversal or other modification. This typically occurs when cases are remanded to the trial court for a recalculation of court fees or costs.

These remanded appeals have been combined with appeals that modified the trial court verdict or judgment for this report.

In about half of the 222 appeals in which the trial court verdict or judgment was reversed or modified, the appellate court reversed in full (table 7). The appellate court partially reversed the trial court verdict or judgment in 36% of these appeals and modified the trial court outcome in the remaining 13% of reversed appeals.

For defense verdicts or judgments reversed on appeal, the appellate court reversed 65% in whole and 27% in part. In comparison, plaintiffs who won at trial and had their case subsequently reversed on appeal were nearly as likely to receive a whole (45%) or partial (40%) reversal.

## Reversed or modified appeals remanded for further proceedings

Seventy percent of the 222 reversed or modified appeals were remanded back to the trial court for further proceedings (not shown in a table). Of the 154 remanded appeals for which data were available, about 42% were sent back for a new trial, while 23% were remanded for the purposes of an adjustment to the prejudgment award, prejudgment interest, or other court costs (table 8).

**Table 7. Reversals in civil cases appealed from trial court, by party filing notice of appeal and trial court outcome in 46 large counties, 2001-2005**

Party filing notice of appeal and trial court outcome	Number of appeals reversed	Percent of trial outcomes —			
		Total	Reversed in whole	Reversed in part <sup>a</sup>	Other modification <sup>b</sup>
<b>Party filing notice of appeal</b>					
Total appeals	222	100%	51.4%	35.6%	13.1%
Plaintiff appealed	93	100	58.1	30.1	11.8
Defendant appealed	129	100	46.5	39.5	14.0
<b>Trial court outcome appealed</b>					
Total appeals	216	100%	50.5%	36.1%	13.4%
Trial court found for plaintiff <sup>c</sup>	156	100	44.9	39.7	15.4
Trial court found for defendant <sup>c</sup>	60	100	65.0	26.7	8.3

Note: Of the 1,204 primary appeals from the trial court, 15 were still pending after April 2005. Table includes the 222 appeals that resulted in a reversal or modification of the trial court outcome. Detail may not sum to total because of rounding.

<sup>a</sup>Includes cases affirmed in part and reversed in part.

<sup>b</sup>Includes cases that were modified or remanded without any additional changes.

<sup>c</sup>Trial court outcome data will not equal party filing notice of appeal data because data on appeals from trial court outcomes were not available for all 222 reversed appeals.

**Table 8. Cases reversed on appeal and remanded to trial court in 46 large counties, 2001-2005**

Effect of remand to trial court	Appeals remanded to trial court	
	Number	Percent
Total	154	100.0%
Remanded for new trial <sup>a</sup>	65	42.2%
Other instructions <sup>b</sup>	40	26.0
Remand to adjust prejudgment award <sup>c</sup>	35	22.7
Remanded for recalculation of attorney fees <sup>d</sup>	9	5.8
Directed verdict or JNOV vacated <sup>e</sup>	5	3.2

Note: Of the 222 appeals that resulted in a reversal or modification of the trial court outcome, 155 were remanded to the trial court for further proceedings. Data on the effect of these remands were available for 154 of these 155 cases.

<sup>a</sup>Includes cases that were remanded to the trial court for new trial on damages, liability, and other issues.

<sup>b</sup>Includes cases remanded back to the trial court with further instructions, new damages hearings, or other issues.

<sup>c</sup>Includes cases in which prejudgment awards, prejudgment interest, or other court costs were modified.

<sup>d</sup>Includes cases in which attorneys fees were recalculated.

<sup>e</sup>Includes cases in which the trial court's decision to grant a directed verdict or Judgment not Withstanding the Verdict (JNOV) was vacated.

## Impact of trial damage awards on appellate reversal rates

Trials with large damage awards, in general, produced higher reversal rates compared to trials with relatively modest damage awards. For example, nearly half (48%) of appeals from trials with damage awards of over \$1 million were reversed or modified by the appellate courts (table 9). In comparison, the reversal rates for appeals from trials that produced damage awards ranging from \$1 to \$100,000 was 35%.

## Oral arguments on appeal

Many appellate courts allow the litigating parties to engage in oral argument. In appellate courts, oral argument takes place before a panel of judges and involves a question and answer process focusing on the issues raised on appeal. Oral arguments occurred in 44% of the 1,189 civil appeals disposed during the 2001–2005 study period (not shown in a table). Approximately 80% of appeals decided on the merits had oral arguments.

## Type of decision in civil cases appealed from trial court

Appellate courts utilize different approaches to resolve cases including issuing signed majority/plurality opinions or unsigned per curiam decisions. The resolution of a case through a majority/plurality opinion means that an individual justice wrote a majority opinion or several justices wrote separate plurality opinions describing the rationale for the appellate court's decision.

Unsigned per curiam refers to cases in which the appellate court issued a written decision that is not signed by the individual justices. Generally, per curiam opinions are shorter than majority/plurality opinions, do not identify the judge(s) who crafted the opinion, and are not viewed as setting precedence. The use of per curiam opinions also varies by appellate court. Some appellate courts use per curiam opinions extensively while others utilize them sparingly.

Appellate courts also issue orders that refer to short memos, usually unpublished, dismissing or withdrawing the appeal. A total of 250 orders were issued by the appellate courts and approximately 70% of them were applied to dismissed or withdrawn appeals (not shown in a table).

The appellate courts rendered a decision resulting in a signed majority/plurality opinion or an unsigned per curiam decision in 604 of the 679 appeals decided on the merits (table 10). The remaining 75 appeals decided on the merits resulted in decisions that were categorized as written orders. These written orders could not be classified into the signed or unsigned opinion categories and have been excluded from subsequent analysis.

## Examples of trial verdicts or judgments involving damage awards over \$1 million reversed on appeal

The decision by an appellate court to reverse a trial court's verdict or judgment can have different impacts on case outcomes. The following cases provide examples of the effects of appellate reversals on trial verdicts or judgments involving damage awards over \$1 million:

- A seller of a company (plaintiff) brought a fraud action lawsuit against the company's buyers (defendants) claiming they committed statutory fraud, common law fraud, and securities fraud. The case went to a jury trial which found in favor of the plaintiff and awarded \$4.7 million in damages. The defendant appealed asserting that the legal and factual evidence did not support the jury's findings of fraud and damages. The appellate court agreed with the defendant's contentions, reversed the trial court verdict in full, and held that the plaintiff could not take any of the \$4.7 million verdict (Source 125 S.W.3d 113).
- A plaintiff sued multiple defendants alleging they had engaged in malicious prosecution. The jury found for the plaintiff and awarded damages of \$8.9 million. Two defendants appealed the trial court verdict. The appellate court dismissed one appeal, but granted review for the other finding that the trial court had issued improper jury instructions. The appellate court reversed the trial court verdict for this one defendant and remanded the case back for a new trial on liability and damages. The other defendants remained liable to the plaintiff for their portion of the \$8.9 million award (Source 2003 WL 22080233; Cal.App.4 Dist, Opinion not published).
- A plaintiff sued a defendant over injuries sustained while working on a sea vessel that left the plaintiff a quadriplegic. The jury found for the plaintiff and awarded \$5.8 million in damages. The defendant appealed asserting that the trial court erred by refusing to admit evidence that the plaintiff would receive an annuity of \$10,000 per month in injury compensation. The appellate court found that the annuity payment evidence should have been admitted and remanded the case back to the trial court with instructions to reduce \$540,520 from the final judgment (Source 832 So.2d. 829).

**Table 9. Disposition of civil cases appealed from trial court by damages awarded at trial in 46 large counties, 2001-2005**

Damages awarded at trial	Number of appeals	Trial court outcome reviewed on appeal <sup>a</sup>		
		Percent of appeals which the trial court outcome was —		
		Total	Affirmed <sup>b</sup>	Reversed <sup>c</sup>
\$1-100,000	136	100%	64.7%	35.3%
\$100,001-1,000,000	157	100	58.6	41.1
Over \$1,000,000	86	100	52.3	47.7

Note: Of the 1,204 primary appeals from the trial court, 15 were still pending after April 2005.

<sup>a</sup>The 510 dismissed or withdrawn appeals were excluded from the table. Fifty-six percent of the 679 appeals decided on the merits had damages awarded at trial.

<sup>b</sup>Includes appeals that were affirmed in whole.

<sup>c</sup>Includes appeals that were reversed in part, reversed in whole, modified, or remanded to the trial court.

**Table 10. Type of decision in civil appeals decided on the merits in 46 large counties, 2001-2005**

Outcomes of appeals decided on the merits	Number of appeals decided on the merits	Percent of appeals that produced —	
		Signed majority/plurality opinion	Unsigned opinion (per curium)
Total appeals decided on the merits <sup>a</sup>	604	72.5%	27.5%
Trial court outcome affirmed <sup>b</sup>	408	69.9	30.1
Trial court outcome reversed <sup>c</sup>	196	78.1	21.9

Note: In 604 of the 679 appeals decided on the merits, the appellate court rendered a decision resulting in a signed or unsigned opinion. The remaining 75 appeals decided on the merits resulted in decisions that were categorized as written orders. These written orders could not be classified into the signed or unsigned opinion categories and have been excluded from the table and subsequent analysis. Detail may not sum to total because of rounding.

<sup>a</sup>The 510 appeals that were not decided on the merits have been excluded from this table. Some appellate courts issue orders for dismissed or withdrawn appeals, while others do not.

<sup>b</sup>Includes appeals that were affirmed in whole.

<sup>c</sup>Includes appeals that were reversed in part, reversed in whole, modified, or remanded to the trial court.

**Table 11. Published opinions in civil appeals decided on the merits, by type of decision in 46 large counties, 2001-2005**

Type of decision	Number of appeals	Percent of appeals that produced a published opinion
All appeals decided on the merits <sup>a</sup>	604	32.6%
Signed majority/plurality opinion	438	34.7
Unsigned opinion (per curium)	166	27.1
Appeal affirmed <sup>b</sup>	408	26.2%
Signed majority/plurality opinion	285	26.3
Unsigned opinion (per curium)	123	26.0
Appeal reversed <sup>c</sup>	196	45.9%
Signed majority/plurality opinion	153	50.3
Unsigned opinion (per curium)	43	30.2

Note: In 604 of the 679 appeals decided on the merits, the appellate court rendered a decision resulting in a signed or unsigned opinion. The remaining 75 appeals decided on the merits resulted in decisions that were categorized as written orders. These written orders could not be classified into the signed or unsigned opinion categories and hence, have been excluded from the table and subsequent analysis. Detail may not sum to total because of rounding.

<sup>a</sup>The 510 appeals that were not decided on the merits have been excluded from this table. Less than 2% of these appeals produced a published opinion.

<sup>b</sup>Includes appeals that were affirmed in whole.

<sup>c</sup>Includes appeals that were reversed in part, reversed in whole, modified, or remanded to the trial court.

About three-fourths (73%) of the 604 appeals decided on the merits were resolved through the issuance of a signed majority/plurality opinion, while the remaining 28% were decided by an unsigned per curiam opinion.

Appeals reversing trial court outcomes resulted in signed opinions (78%) more often than appeals affirming trial court outcomes (70%).

### Appeals producing published opinions

Once an opinion is published, it becomes precedent that can be cited by attorneys or other courts; rulings for unpublished opinions, in comparison, apply only to those cases for which they were written.<sup>6</sup>

A third of the 604 appeals decided on the merits produced a published opinion (table 11). Whether the trial court verdict or judgment was upheld on appeal influenced the decision to publish an opinion. Nearly half of appeals (46%) that reversed or modified the trial court decision resulted in a published opinion. In comparison, published opinions were generated in a quarter (26%) of appeals affirming the trial court decision.

<sup>6</sup>R. Schauffler, R. LaFountain, N. Kauder, & S. Strickland, *Examining the Work of State Courts, 2004: A National Perspective from the Court Statistics Project* (National Center for State Courts 2005).

## Dissenting opinions

When an opinion is published, sometimes not all the judges are in agreement with the majority's legal rationale or holding. In such cases, justices have discretion to write a dissenting opinion. Judges wrote dissents in about 7% of published opinions (not shown in figure). Nearly 10% of published opinions that completely reversed a trial court's verdict or judgment resulted in a dissent (figure 1). Dissents were somewhat less common among published opinions that reversed a trial court holding in part (7%) or affirmed a trial court decision (5%).

## Alternative dispute resolution in appellate courts

Some States have turned to mediation programs to encourage case settlement at the appellate level. In appellate court mediation programs, a third party mediator attempts to encourage the parties to settle prior to

case resolution by the court. Thirty-five percent of civil cases appealed from the trial courts of States participating in alternative dispute resolution programs were referred to appellate court mediation (table 12). About a third (34%) of the 259 referred appeals were resolved through mediation programs.

## Case processing time in civil appeals

Among all civil appeals, the average case processing time from filing of the appeal to final disposition was 11 months, with half of the appeals taking a minimum of 10 months to dispose (table 13). Appeals reversing or modifying the trial court verdict or judgment took an average of about 17 months to dispose, while appeals affirming the trial court decision were resolved within an average of 15 months. The average case processing time for appeals that were dismissed, withdrawn, or transferred was 6 months.

## Subsequent appeals to courts of last resort

Most of the 46 counties in this survey were located in States that had two levels of appellate review.<sup>7</sup> The first level involves review by an intermediate appellate court. In these States, parties dissatisfied with the intermediate appellate court's holding can appeal further to the State's court of last resort. Courts of last resort represent the final stages of appellate review. These courts have discretion to accept or reject appeals and the appeals they choose to hear tend to involve complex legal issues and have broad policy and legal implications.<sup>8</sup>

Approximately 19% of civil appeals disposed of by the intermediate appellate courts were subsequently appealed to courts of last resort for a total of 218 cases (table 14). The rate in which cases were further appealed varied by how they were handled at the intermediate appellate court level. About 43% of appeals that reversed or modified a trial court's verdict or judgment were further appealed to the court of last resort. Twenty-six percent of appeals affirming the trial court outcome were subsequently appealed to the court of last resort and about 1% of appeals that were dismissed, withdrawn, or transferred were further appealed.

Courts of last resort granted review in 12% of the 218 appeals from intermediate appellate courts. Eighteen percent of appeals from decisions to reverse or modify a trial court outcome were granted further review, and 6% of appeals from cases affirming a trial court decision were subsequently reviewed by courts of last resort.

<sup>7</sup>The exceptions are Honolulu, Hawaii and Fairfax, Virginia. In these States, civil cases are appealed directly from the trial court to the court of last resort.

<sup>8</sup>See Rottman et. al. 2000. *State Court Organization, 1998*. National Center for State Courts. Williamsburg, Virginia.

**Percent of published opinions with a dissent in civil cases appealed in 46 large counties, 2001-2005**

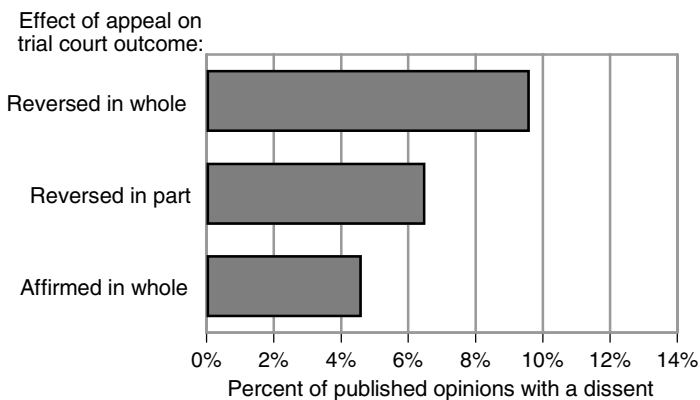


Figure 1

**Table 12. Number and percent of appeals referred to and resolved by alternative dispute resolution programs, by party filing notice of appeal, 2001-2005**

Party filing notice appeal	Total number of appeals	Percent of appeals referred to mediation	Number referred to mediation	Percent of those referred that were resolved through mediation
All civil cases	740	35.0%	259	33.6%
Plaintiff	349	28.1	98	25.5
Defendant	391	41.2	161	38.5

Note: Table excludes appellate courts which did not participate in mediation programs. These excluded courts include appellate courts with jurisdiction over appeals from Fresno, CA; Santa Clara, CA; Dade, FL; Palm Beach, FL; Fulton, GA; Cook, IL; DuPage, IL; Marion, IN; Hennepin, MN; Allegheny, PA; Philadelphia, PA; Fairfax, VA; King, WA; and Milwaukee, WI. Detail may not sum to total because of rounding.



**Table 13. Time from filing to disposition of civil appeals in 46 large counties, 2001-2005**

Type of disposition	Number of appeals	Time from filing to disposition of appeal				
		Number of months		Percent of appeals disposed in —		
		Mean	Median	Less than one year	One to two years	Over two years
All appeals <sup>a</sup>	1,189	11.2	10.4	56.5%	38.1%	5.4%
Trial court outcome affirmed on appeal <sup>b</sup>	457	14.7	14.0	33.3%	61.3%	5.5%
Trial court outcome reversed on appeal <sup>c</sup>	222	16.8	16.1	29.7	55.0	15.3
Appeal dismissed, withdrawn, or transferred <sup>d</sup>	510	5.6	4.1	89.0	10.0	1.0

Note: Of the 1,204 primary appeals from the trial court, 15 were still pending after April 2005.

Detail may not sum to total because of rounding.

<sup>a</sup>Disposition time data were available for 99% of appeals.

<sup>b</sup>Includes appeals that were affirmed in whole.

<sup>c</sup>Includes appeals that were reversed in part, reversed in whole, modified, or remanded to the trial court.

<sup>d</sup>Includes appeals that were dismissed because of lack of jurisdiction, procedural error, or other reasons, appeals that were withdrawn because of a post trial settlement, or transferred appeals.

**Table 14. Number of cases appealed from intermediate appellate courts (IAC) to courts of last resort (COLR) in 46 large counties, 2001-2005**

Type of disposition in IAC	Number of appeals decided by IAC	Percent appealed from IAC to COLR	Number of appeals from IAC to COLR	Percent of IAC appeals granted review by COLR
All appeals	1,162	18.8%	218	11.5%
Trial court outcome affirmed on appeal <sup>a</sup>	456	26.1	119	5.9
Trial court outcome reversed on appeal <sup>b</sup>	221	42.5	94	18.1
Appeal dismissed, withdrawn, or transferred <sup>c</sup>	485	1.0	5	*

Note: Of the 1,204 primary appeals, 29 were appealed directly from the trial court to the court of last resort. These appeals were excluded from this table. Appeals to courts of last resort were available for 1,162 of the 1,175 cases disposed by the intermediate appellate courts. Detail may not sum to total because of rounding.

<sup>a</sup>Includes appeals that were affirmed in whole.

<sup>b</sup>Includes appeals that were reversed in part, reversed in whole, modified, or remanded to the trial court.

<sup>c</sup>Includes appeals that were dismissed because of lack of jurisdiction, procedural error, or other reasons, appeals that were withdrawn because of a post trial settlement, or transferred appeals.

\*Too few cases to obtain statistically reliable results.

### Characteristics of appeals granted additional review by courts of last resort in 46 large counties, 2001–2005

Thirty primary appeals were disposed in the intermediate appellate courts in which the courts of last resort subsequently decided to grant additional review. In 25 of these appeals the petitioner requested, and the courts of last resort granted, additional review (see table 14). For the five additional appeals, the courts of last resort took jurisdictional control over the case prior to the parties requesting additional review.

Amicus briefs — meaning briefs filed by someone who is not a party to the litigation, but who believes that the court's decision may affect its interest — were filed in 30% of civil appeals granted additional review by courts of last resort.

Of the 30 appeals granted additional review in courts of last resort —

- 9 were pending at the end of the study period.
- 2 were dismissed or transferred.
- 19 were decided on the merits.

Among the 19 appeals decided on the merits in courts of last resort —

- trial court outcomes were reversed or modified in 10 appeals, 4 of which were completely reversed, 5 partially reversed, and 1 modified.
- 95% resulted in a signed majority/plurality opinion.
- 5% were decided through an unsigned per curiam opinion.
- all 19 produced a published decision and judges dissented in 42% of these published decisions.

The average case processing time from the filing of an appeal with a court of last resort to the disposition of that appeal was 15 months.

## 2001 Supplemental Survey of Civil Appeals: Intermediate Appellate and Court of Last Resort Opinion Survey

In addition to the data presented in this report, the National Center for State Courts (NCSC) coded 646 written opinions, unsigned per curiam opinions, or published orders produced by the intermediate appellate courts in this survey of civil appeals (Intermediate Appellate Court Opinion Survey). This dataset offers a rich set of contextual variables on civil opinions produced at the intermediate appellate court level.

Many opinions involve multiple legal issues and a maximum of eight issues for each appeal have been coded in this dataset. Some of the data fields include the number of legal issues handled on appeal, the alleged trial court errors addressed on appeal, and the underlying legal issues raised in these written opinions. The dataset also focuses on how the appellate courts resolved each legal issue raised, the standard of review utilized to decide these legal issues, and the primary statutory authority that served as a basis for addressing these issues.

The NCSC also coded 21 written opinions, unsigned per curiam opinions, or published orders produced by the courts of last resort in this survey of civil appeals (Court of Last Resort Opinion Survey). This dataset contains fields similar to the intermediate appellate court opinion survey. Some of the variable fields include number of issues addressed on appeal, types of issues handled on appeal, standard of review applied on appeal, and the resolution of each issue raised on appeal.

Several appendices on the Internet provide information on the types of data coded from these published opinions. The intermediate appellate court and court of last resort opinion surveys are available at the National Archive of Criminal Justice Data, maintained by the Inter-University Consortium for Political and Social Research at the University of Michigan (<http://www.icpsr.umich.edu/NACJD/index.html>), 1-800-999-0960.

### Methodology

#### *Definitions of disposition types*

**Jury trial:** A trial held before and decided by a group of laypersons selected according to the law presided over by a judge culminating in a verdict for the plaintiff(s) and/or defendant(s).

**Bench trial (nonjury trial):** A trial held in the absence of a jury and decided by a judge culminating in a judgment for the plaintiff(s) and/or defendant(s).

**Intermediate appellate court:** Intermediate appellate courts represent the first level of appellate review. Intermediate appellate courts typically have mandatory jurisdiction over civil appeals, meaning that they are required by their State constitution or statutes to review any case appealed to them.

**Courts of last resort:** Courts of last resort represent the final level of State appellate review. Most courts of last resort have discretionary jurisdiction over civil appeals, allowing them to choose whether to review an appeal from an intermediate appellate court.

**Affirmed appeal:** Appellate court upheld the entire trial court verdict or judgment.

**Reversed appeal:** Appellate court reversed the trial court verdict or judgment in whole or in part.

**Modified appeal:** Appellate court modified the trial court's resolution of an issue without remanding the case back to the trial court.

**Remanded appeal:** The appellate court sent the case back to the trial court for additional proceedings.

**Dismissed appeal:** The appellate court dismissed the case because the court lacked jurisdiction to hear the case, a procedural error prevented review of the issues raised, the appeal was improvidently granted, or no valid issue was raised on appeal.

**Withdrawn appeal:** Appeal was withdrawn by either or both parties.

**Transferred appeal:** Appeal was transferred to another court. Typically a transfer means that the appeal was sent from the intermediate appellate court to the court of last resort or transferred to another jurisdiction.

**Signed majority/plurality opinion:** A member of the appellate court wrote a majority opinion with detailed reasons for the decision, or members of the court wrote separate opinions that constitute a plurality.

**Unsigned (per curiam) opinion:** The appellate court issued a written decision not signed by any justice.

**Order:** The court issued an order dismissing or resolving the appeal.

#### *Sample of appeals*

This report is a follow up to the 2001 Civil Justice Survey of State Courts which examined 8,311 general civil cases (e.g., tort, contract, and real property) concluded by bench or jury trial in a sample of 46 of the Nation's 75 most populous counties in 2001. These cases were then weighted to represent the 11,908 general civil trials concluded in the Nation's 75 most populous counties.

Data from the 2001 Civil Trial Survey were used to produce several BJS reports describing the characteristics of civil litigation in State courts. These and other reports on civil justice can be accessed at <http://www.ojp.usdoj.gov/bjs/civil.htm>.

The 2001 Supplemental Survey of Civil Appeals study plan was to track every general civil case concluded by bench or jury trial in 2001 in the 46 surveyed counties that were subsequently appealed to an intermediate appellate court or court of last resort. In the 2001 Civil Justice Survey of State Courts,

information was collected for every general civil trial concluded in 43 of the 46 selected counties. In these counties, the 2001 Supplemental Survey of Civil Appeals collected information on all general trials that produced an appeal. In two of the remaining three counties, (Cook and Philadelphia), a sample of general civil trials was collected in the 2001 survey. In Bergen county some civil case files were unavailable for coding purposes. In these counties, the appeals survey was able to obtain information for both those general civil trials concluded in 2001 that were subsequently appealed and in addition, was able to collect information for those general civil appeals that were not captured at the trial court level.

The 2001 Supplemental Survey of Civil Appeals presents data on general civil appeals that originated from 46 of the Nation's 75 most populous counties. Unlike the 2001 Civil Justice Survey of State Courts, cases were not weighted to represent appeals in the Nation's 75 most populous counties.

The appeals were followed until they were withdrawn, dismissed, or decided on the merits in the appellate courts. All appeals were tracked until April 30, 2005. Appeals not disposed on that date are identified as pending.

Many appeals that were withdrawn or dismissed may settle, thereby rendering the ultimate outcomes for these cases unknown. The outcomes for appeals that resulted in a reversal or modification were also difficult to determine. Many reversed appeals were remanded back to the trial court for a new trial. Determining the eventual outcomes for those cases that were sent back for a new trial and how they compared to the original trial court's verdicts or judgments was not within this study's scope.

Of the 8,311 general civil cases concluded by trial in 46 large counties in 2001, plaintiffs and defendants filed 1,419 appeals. A total of 215 of these cases were secondary appeals such as cross-appeals in which either the plaintiff or defendant filed notice of appeal after the initial appeal was filed.

These 215 secondary appeals were excluded from further analysis. Most of the 1,204 primary appeals were filed directly from the trial to the intermediate appellate courts; however, in two States (Hawaii and Virginia), civil appeals bypass the intermediate appellate court and are filed directly with the court of last resort.

In Hawaii civil appeals go directly to the court of last resort, which has discretion to send the case to the intermediate appellate court. In this study, seven civil trials were appealed and remained in the Hawaii court of last resort. In Virginia civil cases are appealed directly from the trial court to the court of last resort. Virginia does not allow civil appeals as a matter of right. In this study 22 civil cases were appealed directly from the Virginia trial court to the court of last resort.

Since the intermediate appellate courts are bypassed in Hawaii and Virginia, the 29 appeals to courts of last resort

in these two States share the characteristics of trial cases appealed from verdict or judgment for further review at the intermediate appellate level. Appeals in Hawaii and Virginia, therefore, have been combined with the remaining 1,175 cases appealed from the trial to the intermediate appellate courts with jurisdiction over the surveyed counties. Appeals subsequently reviewed by courts of last resort after initially being reviewed by intermediate appellate courts are examined in the "Characteristics of appeals granted additional review by courts of last resort" text box of this report.

#### Data coding

For each appeal, a standard coding form was manually completed by on-site court staff and personnel from the National Center for State Courts to record detailed case processing information about that appeal. The standard coding form is available in the appellate database codebook.

**Appendix A. Primary basis of appeal for civil cases appealed from trial court, in 46 large counties, 2001-2005**

Basis for appeal <sup>a</sup>	Issues raised in civil appeals	
	Number	Percent
Total appeals	691	100%
Misapplication of substantive law or evidentiary law to the facts or improper jury instructions on law or evidence	142	20.5
Verdict or findings not supported by the evidence	129	18.7
Error in granting or denying directed verdict or judgment notwithstanding the verdict (JNOV) <sup>b</sup>	108	15.6
Trial court improperly admitted or excluded evidence	82	11.9
Error in granting or denying post trial motion for new trial or motion to modify the damage award <sup>b</sup>	70	10.1
Error in granting or denying motion for summary judgment or motion to dismiss case <sup>b</sup>	59	8.5
Other issues raised <sup>b</sup>	36	5.2
Procedural error allowed case to continue improperly	29	4.2
Trial court erred in granting or denying pretrial motion related to discovery, bifurcation, etc	20	2.9
Trial court improperly awarded or denied attorney fees <sup>b</sup>	16	2.3

Note: Of the 1,204 primary civil appeals, 691 resulted in an appellate brief submission. The primary basis of appeal could be determined for these appeals. In other appeals, the basis of appeal could not be determined because the case was dismissed, withdrawn, or transferred before an appellate brief was filed.

<sup>a</sup>There were multiple bases of appeal raised by appellants. The primary basis of appeal is identified in this text box. Secondary issues raised are excluded.

<sup>b</sup>There are often underlying issues raised when appeals involving error in granting or denying a directed verdict or JNOV, a post trial motion for new trial or damage award modification, motion for summary judgment or dismissal, attorney fees, or other errors is asserted. These underlying issues are not shown, but are available for analysis in the appellate database.



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This report and others from the Bureau of Justice Statistics are available through the Internet — <http://www.ojp.usdoj.gov/bjs/>

The data from the 2001 Supplemental Survey of Civil Appeals are available at the National Archive of Criminal Justice Data, maintained by the Inter-University Consortium for Political and Social Research at the University of Michigan, 1-800-999-0960. The archive may also be accessed at [www.icpsr.umich.edu/NACJD/](http://www.icpsr.umich.edu/NACJD/).

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The Bureau of Justice Statistics is the statistical agency of the U.S. Department of Justice. Jeffrey Sedgwick is the director.

BJS Special Reports address a specific topic in depth from one or more datasets that cover many topics.

Thomas H. Cohen wrote this report under the supervision of Steven K. Smith. Mark Motivans provided statistical review. Erica Smith provided technical review and comments.

Data collection was supervised by the National Center for State Courts (NCSC). Paula Hannaford-Agor was the project director. Paula Hannaford-Agor and Nicole Waters of the NCSC provided comments. Nicole Waters also provided data assistance. Katrina Baum, Joanna Bradford, Kristen Hughes, and Vicky Tsaparas also provided substantive editorial comments. Tina Dorsey and Marianne Zawitz produced and edited the report. Jayne Robinson prepared the report for final printing.

June 2006, NCJ 212979

**Appendix B. Selected characteristics of appellate courts participating in the 2001 Supplemental Survey of Civil Appeals**

Name and type of appellate court (C = Court of last resort) (I = Intermediate Court of Appeals	Location of court	Number of judges	Jurisdiction over civil appeals	Total number of appeals filed in 2001 <sup>a</sup>	Number of days notice of appeal must be filed after final decision <sup>b</sup>
<b>Arizona</b>					
I Arizona Court of Appeals, Division One	Phoenix	16	Mandatory	632	30
I Arizona Court of Appeals, Division Two	Tucson	6	Mandatory	220	30
<b>California</b>					
C California Supreme Court	San Francisco	7	Discretionary	1,263	10
I California Court of Appeal, First Appellate District	San Francisco	20	Mandatory	1,216	60
I California Court of Appeal, Second Appellate District	Los Angeles and Ventura	31	Mandatory	2,707	60
I California Court of Appeal, Fourth Appellate District	Riverside and Orange County	25	Mandatory	1,712	60
I California Court of Appeal, Fifth Appellate District	Fresno	10	Mandatory	303	60
I California Court of Appeal, Sixth Appellate District	San Jose	7	Mandatory	347	60
<b>Connecticut</b>					
C Connecticut Supreme Court	Hartford	7	Discretionary	545	20
I State of Connecticut, Appellate Court	Hartford	10	Mandatory	1,148	20
<b>Florida</b>					
C Florida Supreme Court	Tallahassee	7	Both <sup>c</sup>	2,777	30
I Third District Court of Appeal, State of Florida	Miami	11	Both <sup>c</sup>	NA	30
I Fourth District Court of Appeal, State of Florida	West Palm Beach	12	Both <sup>c</sup>	1,706	30
I Fifth District Court of Appeal, State of Florida	Daytona Beach	10	Both <sup>c</sup>	NA	30
<b>Georgia</b>					
I Court of Appeals of Georgia	Atlanta	12	Both <sup>c</sup>	3,260	30
<b>Hawaii</b>					
C Hawaii Supreme Court	Honolulu	5	Discretionary	819	30
I Hawaii Intermediate Court of Appeals	Honolulu	6	Mandatory	260	30
<b>Illinois<sup>d</sup></b>					
I Appellate Court of Illinois, First District	Chicago	18	Mandatory	3,901	30
I Appellate Court of Illinois, Second District	Elgin		Mandatory	1,499	30
<b>Indiana</b>					
I Indiana Court of Appeals, Second District	Indianapolis	15	Mandatory	2,055	30
<b>Kentucky</b>					
C Kentucky Supreme Court	Frankfort	7	Discretionary	1,155	30
I Kentucky Court of Appeals, Third Appellate District	Various cities in Kentucky	14	Mandatory	2,628	30
<b>Massachusetts</b>					
C Massachusetts Supreme Judicial Court	Boston	7	Both <sup>c</sup>	1,038	30
I Massachusetts Appeals Court	Boston	25	Mandatory	2,652	30
<b>Michigan</b>					
I Michigan Court of Appeals	Detroit and Troy	28	Mandatory	7,156	21
<b>Minnesota</b>					
C Minnesota Supreme Court	St. Paul	7	Both <sup>c</sup>	790	30
I Minnesota Court of Appeals	St. Paul	16	Mandatory	235	60
<b>Missouri</b>					
I Missouri Court of Appeals, Eastern District	St. Louis	14	Mandatory	1,632	10
<b>New Jersey</b>					
I Superior Court of New Jersey, Appellate Division	Various cities in New Jersey	34	Mandatory	7,069	45
<b>New York</b>					
I New York State Supreme Court, Appellate Division, First Dept	New York City	14	Mandatory	2,728	30
<b>North Carolina</b>					
C North Carolina Supreme Court	Raleigh	7	Discretionary	769	15
I North Carolina Court of Appeals	Raleigh	15	Mandatory	1,609	30
<b>Ohio</b>					
C Ohio Supreme Court	Columbus	7	Discretionary	2,249	45
I Eighth District Court of Appeals of Ohio <sup>e</sup>	Cleveland	Varies	Mandatory	10,745	NA
I Tenth District Court of Appeals of Ohio <sup>e</sup>	Columbus	Varies	Mandatory	10,745	NA

**Appendix B. (continued)**

Name and type of appellate court (C = Court of last resort) (I = Intermediate Court of Appeals)	Location of court	Number of judges	Jurisdiction over civil appeals	Total number of appeals filed in 2001 <sup>a</sup>	Number of days notice of appeal must be filed after final decision <sup>b</sup>
Pennsylvania					
C Pennsylvania Supreme Court	Meets in three cities <sup>f</sup>	7	Discretionary	3,233	30
I Pennsylvania Superior Court	Meets in three cities <sup>f</sup>	15	Both <sup>c</sup>	8,160	30
Texas					
C Texas Supreme Court	Austin	9	Discretionary	1,301	45
I First Court of Appeals, State of Texas <sup>g</sup>	Houston	80	Mandatory	11,984	30
I Fourth Court of Appeals, State of Texas <sup>g</sup>	San Antonio	80	Mandatory	11,984	30
I Fifth Court of Appeals, State of Texas <sup>g</sup>	Dallas	80	Mandatory	11,984	30
I Eighth Court of Appeals, State of Texas <sup>g</sup>	El Paso	80	Mandatory	11,984	30
Virginia					
C Supreme Court of Virginia	Richmond	7	Discretionary	3,026	30
Washington					
C Washington Supreme Court	Olympia	9	Discretionary	1,369	30
I Washington State Court of Appeals, Division One	Seattle	10	Mandatory	4,323	30
Wisconsin					
I Wisconsin Court of Appeals, District One	Milwaukee	16	Mandatory	3,342	90

Note: Table shows the selected characteristics of those appellate courts that participated in this survey of civil appeals. Characteristics of those appellate courts which did not process civil appeals for this study are not shown. For example, no civil appeals data were collected from the Wisconsin Supreme Court; hence, the characteristics of this court are not shown for this table. In Hawaii, appeals from the trial courts are initially filed with the Supreme Court, which may choose to hear the appeal itself or to assign the appeal to the Intermediate Court of Appeals. In Virginia, general civil cases are appealed directly from the trial court to the Supreme Court. Virginia does not allow a civil appeal to the Supreme Court as a matter of right.

<sup>a</sup>Includes all appeals (criminal, civil, etc) filed. Some courts provided filing data for 2001, while others provided filing data for 2002. Some courts provided filing data by fiscal year, and other courts provided filing data by calendar year.

<sup>b</sup>Shows the number of days in which an appeal must be filed after the trial court verdict or judgment, or in the case of an appeal to a court of last resort, the number of days after the intermediate appellate court rendered a decision.

<sup>c</sup>Both denotes that the appellate court had mandatory and discretionary jurisdiction.

<sup>d</sup>In Illinois, 18 judges are assigned to the first district and 6 judges to each of the remaining districts. Additional judges are assigned by the Supreme Court to the appellate court on a showing of need.

<sup>e</sup>Court of appeals filing includes the totals for both intermediate appellate courts in Ohio. Individual intermediate court data are not provided.

<sup>f</sup>Cities include Pittsburg, Philadelphia, and Harrisburg.

<sup>g</sup>Court of Appeals filing and judge data includes the totals for all the intermediate appellate courts in Texas. Individual intermediate court data are not provided.

**Appendix C. Number of issues addressed in civil appeals that produced a written opinion, unsigned per-curiam opinion, or published order in intermediate appellate courts, 2001-2005**

Affect of appeal on trial court outcome	Number of civil appeals with opinions	Number of issues addressed on appeal		Percent of issues addressed on appeal			
		Median	Mean	1 issue	2 - 3 issues	4 - 5 issues	6 or more issues
Total	646	3.0	3.4	24.8%	37.7%	22.8%	14.6%
Trial court outcome affirmed <sup>a</sup>	433	3.0	3.3	24.5%	40.9%	21.5%	13.2%
Trial court outcome affirmed in part, reversed in part —	134	4.0	4.7	5.2%	30.6%	37.3%	26.9%
Affirmed in part, reversed in part, no remand	30	4.0	4.1	10.0	33.3	40.0	16.7
Affirmed in part, reversed in part, remanded	104	4.0	4.9	3.8	29.8	36.5	29.8
Trial court outcome reversed in whole -	77	1.0	1.7	61.0%	32.5%	5.2%	1.3%
Reversed in whole, no remand	19	1.0	1.6	57.9	42.1	0.0	0.0
Reversed in whole, remanded for further proceedings	58	1.0	1.7	62.1	29.3	6.9	1.7

Note: Data source for Appendices C-F: 2001 Supplemental Survey of Civil Appeals Intermediate Appellate Court Opinion Survey. Data are available at the National Archive of Criminal Justice Data, maintained by the Inter-University Consortium for Political and Social Research at the University of Michigan (<http://www.icpsr.umich.edu/NACJD/index.html>), 1-800-999-0960. Appellate disposition data will not sum to total because two appeals could not be classified as either affirming or reversing the trial court outcome.

<sup>a</sup>Includes 4 appeals that were affirmed in part, not reversed, and yet were remanded back to the trial court for further proceedings.

**Appendix D. Types of trial court errors alleged in civil appeals that produced a written opinion, unsigned per-curiam opinion, or published order in intermediate appellate courts, 2001-2005**

Types of trial court errors alleged in written opinion — first issue addressed on appeal	Number of appeals	Percent
Total	646	100%
Jury instructions, substantive judge decision on law <sup>a</sup>	133	20.6%
Directed verdict, JNOV, Judgment as a matter of law <sup>b</sup>	111	17.2
Sufficiency of the evidence (verdict) <sup>c</sup>	94	14.6
Evidentiary ruling <sup>d</sup>	79	12.2
Pretrial error <sup>e</sup>	78	12.1
Motion for new trial <sup>f</sup>	41	6.3
Procedural error <sup>g</sup>	27	4.2
Attorneys' fees, costs, sanctions <sup>h</sup>	17	2.6
Trial error <sup>i</sup>	14	2.2
Sufficiency of the evidence (damages) <sup>j</sup>	14	2.2
Additur, Remittitur <sup>k</sup>	12	1.9
Jury issue <sup>l</sup>	10	1.5
Other trial court error <sup>m</sup>	10	1.5
Inconsistency <sup>n</sup>	6	0.9

Note: Many written opinions involve multiple legal issues and a maximum of eight issues for each appeal has been coded in this dataset. This appendix shows only the first alleged trial court issue asserted on appeal.

Other errors asserted are available in the appellate opinion dataset. Many of these alleged court errors also involve underlying legal issues. These are not shown but are available in the appellate opinion dataset.

<sup>a</sup>Alleged errors related to judicial application of governing law or the substantive content of jury instructions including jury instructions on witness credibility or the weight to be accorded to different types of evidence.

<sup>b</sup>Any order or decision related to a judicial determination on the merits of any claim or defense raised by a party at trial or post-trial including determination of any purely legal (judge) issues.

<sup>c</sup>Alleged errors that the evidence presented at trial does not support the verdict or judgment on liability.

<sup>d</sup>Any order or decision related to the admission or exclusion of evidence or witness testimony at trial.

<sup>e</sup>Any order or decision related to pretrial case management including discovery, class action certification, recusal or disqualification, non-trial dispositions (for example: arbitration awards, summary judgment, motion to dismiss) or other pretrial matters.

<sup>f</sup>Any order or decision related to post-trial motions for a new trial.

<sup>g</sup>Any order or decision related to procedural requirements such as personal jurisdiction, statute of limitations, venue, preclusion based on res judicata or collateral estoppel, or other jurisdictional basis.

<sup>h</sup>Any order or decision related to motions for the award of attorney's fees or costs.

<sup>i</sup>Any order or decision related to trial management including bifurcation, time permitted for witness examination, attorney misconduct (for example: improper argument), mistrial motions, or other trial matters.

<sup>j</sup>Alleged errors that the evidence presented at trial does not support the verdict or judgment on damages.

<sup>k</sup>Any order or decision related to post-trial modification of damage awards.

<sup>l</sup>Any order or decision related to jury administration (for example: composition of the pool or venire) or the selection or conduct of individual jurors.

<sup>m</sup>Other errors alleged that could not be classified.

<sup>n</sup>Any allegation that individual elements of the verdict or judgment are internally inconsistent.

**Appendix E. Standards of review utilized to address legal issues raised in civil appeals that produced a written opinion, unsigned per-curiam opinion, or published order in intermediate appellate courts, 2001-2005**

	Number of appeals	Percent
Total	630	100%
De novo <sup>a</sup>	255	40.5%
Abuse of discretion <sup>b</sup>	204	32.4
Clearly erroneous <sup>b</sup>	166	26.3
Other standard of review	5	0.8

Note: Many written opinions involve the use of multiple standards of review to address the legal issues raised. This appendix shows only the first standard of review used to address the initial legal issue raised on appeal. Standards review data were available for 98% of appeals that produced a written opinion, unsigned per-curiam opinion, or published order.

The standards of review refers to the levels of deference appellate courts apply when reviewing a trial court verdict or judgment.

<sup>a</sup>De novo review means that the appellate courts exercised the lowest levels of deference when reviewing trial court decisions.

<sup>b</sup>The clearly erroneous and abuse of discretion standards refer to the most deferential levels of review that appellate courts can apply to trial court decisions. Both standards of review are similar.

**Appendix F. Resolution of legal issues raised in civil appeals that produced a written opinion, unsigned per-curiam opinion, or published order in intermediate appellate courts, 2001-2005**

	Number of appeals	Percent
Total	642	100%
No error <sup>a</sup>	498	77.6%
Reversible error <sup>b</sup>	133	20.7
Harmless error <sup>c</sup>	10	1.6
Other resolution	1	0.2

Note: Many written opinions involve multiple legal issues that must be resolved. This appendix shows the resolution of the first legal issue raised on appeal. Resolution of appeals data were available for 99% of appeals that produced a written opinion, unsigned per-curiam opinion, or published order.

<sup>a</sup>Issue raised on appeal did not amount to an error at the trial court level.

<sup>b</sup>Issue raised on appeal constituted reversible error.

<sup>c</sup>Issue raised on appeal identified an error at the trial court level, however, that error was harmless.