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Trends in Summary Judgment Practice: 1975–2000

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Summary judgment in federal courts has been widely regarded as an initially underused procedural device that was revitalized by the 1986 Supreme Court trilogy of *Celotex*, *Anderson*, and *Matsushita*. Many legal scholars view the trilogy as a turning point in the use of summary judgment, signaling a greater emphasis on summary judgment as a necessary means to respond to claims and defenses that lack appropriate factual support. Recently, some commentators have worried that courts rely too heavily on summary judgment and other procedural methods of disposing of cases before trial, to the point that it threatens the right to trial. A recent study by the Federal Judicial Center confirms that summary judgment activity has increased over time, but points out that this increase was well underway before the trilogy.

Most legal scholars have attempted to assess summary judgment practice and the effect of the trilogy by reviewing published cases. However, relying only on published cases ignores the disposition of cases with summary judgment motions that are never recorded as formal opinions in the federal reporters or included in computerized legal reference systems.

The Center examined summary judgment practice in six federal district courts (the District of Maryland, the Eastern District of Pennsylvania, the Southern District of New York, the Eastern District of Louisiana, the Central District of California, and the Northern District of Illinois) during six time periods over twenty-five years (1975–2000), including four time periods after the Supreme Court trilogy. Center staff extracted information on summary judgment practice from 15,000 docket sheets in random samples of terminated cases. This is the first study to examine summary judgment practice and outcomes based on a review of docket sheet entries across multiple courts and multiple time periods for specific types of cases.

The study addresses the following questions:

- Have motions for summary judgment increased since 1975?
- Are motions for summary judgment more likely to be granted since 1975?
- Are cases more likely to be terminated by summary judgment since 1975?
- If summary judgment practice has changed over time, are changes in summary judgment practice limited to certain courts or to certain types of cases?
- If summary judgment practice has changed over time, to what extent are the changes due to the Supreme Court trilogy?

The study found that the likelihood of a case containing one or more motions for summary judgment increased *before* the Supreme Court trilogy, from approximately 12% in 1975 to 17% in 1986, and has remained fairly steady at approximately 19% since that time. Although the number of summary judgment motions increased from 1975–2000, this increase reflects, at least in part, an

increase in filings of civil rights cases that have always experienced a high rate of summary judgment motions. Surprisingly, no statistically significant changes over time were found in the outcome of defendants' or plaintiffs' summary judgment motions, after controlling for differences across courts and types of cases.

The study's findings call into question the interpretation that the trilogy led to expansive increases in summary judgment. The study suggests, instead, that changes in federal civil rules and case-management practices before the trilogy may have been more important in bringing about changes in summary judgment practice.

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Link to full report. For more information on this report, contact Joe Cecil (jcecil@fjc.gov) or Rebecca Eyre (reyre@fjc.gov). For a more detailed discussion of the design of this study, see Joe S. Cecil, Rebecca N. Eyre, Dean Miletich & David Rindskopf, *A Quarter Century of Summary Judgment Practice in Six Federal District Courts,* 4 J. Empirical Legal Stud. (Dec. 2007).

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