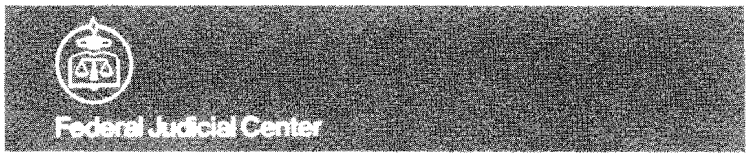
Summary Judgment Practice in Three District Courts



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SUMMARY JUDGMENT PRACTICE IN THREE DISTRICT COURTS

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Table of Contents

List of Tables

Foreword

With the cost of litigation of increasing concern to bench and bar alike, there has been renewed interest in the use of summary judgment as a potentially effective tool to avoid unnecessary trials. A finding that "there is no genuine issue as to any material fact" terminates the proceedings, subject always to appeal. Perhaps of greater significance, summary judgment can bring the costly process of discovery within appropriate bounds by eliminating issues that are either frivolous or immaterial.

It bears emphasis that the rules provide for partial summary judgment, making it possible to eliminate particular issues that are not the subject of genuine controversy, even though there remain other issues requiring trial. Removing even one such issue from a complicated case can translate into significant savings, for the court and more particularly for the litigants.

Despite the potential utility of summary judgment, it has in recent years been used even less frequently than heretofore. As indicated in the present study, there was a sharp decline from 1975 to 1986 in the percentage of cases disposed of by this mechanism. The reasons for the decline remain unclear; perhaps some courts of appeals were perceived as being unreceptive to such motions, or perhaps there was a lack of clarity in the standards for imposition of summary judgment. For whatever the reason, summary judgment became a neglected tool at a time when the perceived need for precisely such a device was commanding increasing attention.

At professional meetings and circuit conferences lawyers have been heard to claim that the judges were unreceptive to motions for summary judgment. The trial judges, in turn, argued that the appeals courts were inhospitable to summary judgment and that the rates of reversal of dispositions following the grant of summary judgment had a chilling effect. However, as Chief Judge Wilfred Feinberg took occasion to point out recently in an important opinion, misperception by both the bar and the trial bench of what the appellate courts were doing in fact may have been the root of the problem.

In any event, the Supreme Court has recently clarified the standards for summary judgment, and a number of courts of appeals have indicated a greater receptivity toward its use. Some early in-

dicative data presented in this report suggest that summary judgment may today be expanding to occupy a more prominent role in the resolution of cases. This places the federal courts at a crucial point in the development of summary judgment. Without question, it is important to prevent abuse of a device that denies a litigant the right to trial, but a vigilant bench can prevent abuse. It will require careful balancing to achieve the potential for controlling frivolous filings and the improper introduction of frivolous issues, while safeguarding the rights of parties to have genuine factual disputes resolved at trial. This report, focusing on what has been, is designed to be helpful in achieving that balance.

A. Leo Levin

Introduction and Summary

Summary judgment permits a court to enter judgment in a case when the material facts are not in dispute and the party moving for summary judgment is entitled to judgment as a matter of law.[1] Occasionally, parties stipulate to the factual issues, in effect agreeing to submit the case for summary judgment. More often, some of the facts are disputed, and the court must determine if resolution of the disputed facts is necessary to the litigation. If so, a trial will be required to resolve the dispute. However, if the court determines that there are no "genuine issues of material fact," the court may enter summary judgment over the objection of a party and avoid the time and expense of a trial.

Summary judgment does not appear to be used to the extent anticipated by the Federal Rules of Civil Procedure. Judge William Schwarzer, in a recent influential article, describes summary judgment practice as "plagued by confusion and uncertainty."[2] Over the years the impression has grown that litigants are reluctant to move for summary judgment, district courts are reluctant to grant summary judgments, and courts of appeals are reluctant to uphold summary judgments.[3]

This report, undertaken at the request of the Advisory Committee on Civil Rules of the Judicial Conference of the United States, describes summary judgment activity in three federal district courts and compares recent practices in those courts with their practices in 1975. It also examines rates of reversal of summary judgment in two courts of appeals. The findings of this study can be summarized as follows:

- Summary judgment motions are filed in approximately 16 percent of civil cases.

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1. Summary judgment may be entered "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c).

2. Schwarzer, *Summary Judgment Under the Federal Rules: Defining Genuine Issues of Material Fact,* 99 F.R.D. 465 (N.D. Cal. 1984).

3. For commentary on summary judgment, see Final Report of the Second Circuit Committee on the Pretrial Phase of Civil Litigation (June 1986) [hereinafter Final Report]; Currie, *Thoughts on Directed Verdicts and Summary Judgments,* 45 U. Chi. L. Rev. 72, 76-78 (1977); Goettel, *Appellate Fact Finding—and Other Atrocities,* 13

- Summary judgment motions by defendants are far more common than motions by plaintiffs and are especially common in multiparty cases.
- Summary judgment motions are currently (i.e., in 1986) filed in about the same percentage of cases as they were in 1975.
- The percentage of cases terminated by summary judgment has decreased by approximately one-half over the eleven-year period examined.
- Appeals for review of grants of motions for summary judgment occur in 13 to 17 percent of eligible cases.
- Summary judgments are reversed on appeal at a rate that closely approximates the overall rate of reversal for all civil appeals.

This study coincides with what may be the eve of a revitalization of the role of summary judgment. Three recent decisions of the Supreme Court have clarified the standards for summary judgment in such a way that judges are likely to feel more free to decide cases by summary judgment.[4] Subsequent decisions by lower courts have sought to correct the impression that summary judgment is viewed with disfavor.[5] Since the cases examined in this study were termi-

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Litigation 7 (1986); Louis, *Federal Summary Judgment Doctrine: A Critical Analysis*, 83 Yale L.J. 745 (1974).

4. In Celotex Corp. v. Catrett, 106 S. Ct. 2548, 2555 (1986), the Court indicated that the moving party need not support its motion for summary judgment with affidavits negating the elements of the opponent's claim, thereby diminishing the burden on the moving party:

> Summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal rules as a whole, which are designed "to secure a just, speedy and inexpensive determination of every action." Fed. Rule Civ. Proc. 1. . . . Rule 56 must be construed with due regard not only for the rights of persons asserting claims and defenses that are adequately based in fact to have those claims and defenses tried to a jury, but also for the rights of persons opposing such claims and defenses to demonstrate in the manner provided by the rule, prior to trial, that the claims and defenses have no factual basis.

In Anderson v. Liberty Lobby, Inc., 106 S. Ct. 2505 (1986), a libel case, the Court indicated that the judge may consider any heightened standard of proof in determining if evidence is sufficient to overcome a motion for summary judgment. Finally, in Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 106 S. Ct. 1348, 1356 (1986), the Court affirmed the summary judgment in a complex antitrust suit involving massive amounts of evidence, rejecting the notion that "metaphysical doubt as to the material facts" could defeat a summary judgment motion.

5. Knight v. U.S. Fire Ins. Co., 804 F.2d 9, 12 (2d Cir. 1986) ("It appears that in this circuit some litigants are reluctant to make full use of the summary judgment process because of their perception that this court is unsympathetic to such motions and frequently reverses grants of summary judgment. Whatever may have been the accuracy of this view in years gone by, it is decidedly inaccurate at the present

nated prior to these recent decisions, the results of this study provide a measure of summary judgment activity against which future changes may be assessed.

Design of the Study

Docket sheets were examined for summary judgment activity in six hundred civil cases. These cases were selected at random from cases terminated between July 1, 1985, and June 30, 1986, in three federal district courts—the Eastern District of Pennsylvania, the Central District of California, and the District of Maryland. These districts were chosen for the study because of the availability of comparable data on summary judgment practice in those courts in 1975.

Characteristics of the three judicial districts are presented in table 1. In 1985, these three district courts terminated 8 percent of all civil cases terminated by federal district courts. The random sample of six hundred cases fairly represents the types of cases terminated in each of the three judicial districts. However, these cases are not representative of federal civil cases nationwide. The selected sample includes more personal injury cases and fewer Social Security cases than would be included in a representative national sample.[6]

To permit a fuller description of summary judgment practice, the information taken from the docket sheets was combined with statistical information gathered by the Administrative Office of the United States Courts and by the Second and Ninth Circuit Courts of Appeals. No information concerning the content of the summary judgment motion, the materials offered to support the motion, the content of the judge's order, or informal communications regarding summary judgment was collected.

The analyses presented in this report exclude thirty-six Social Security cases initially selected as part of the random sample. After selecting the sample we learned that summary judgment

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time"); Professional Managers, Inc. v. Fawer, Brian, Hardy & Zatzkis, 799 F.2d 218 (5th Cir. 1986); Valentine v. Joliet Township High School Dist. No. 204, 802 F.2d 981 (7th Cir. 1986); Raynor v. Richardson-Merrell, Inc., 643 F. Supp. 238 (D.D.C. 1986).

6. Because analyses of the data revealed that summary judgment motions are common in Social Security cases and rare in personal injury cases, this imbalance in the sample is likely to result in an underestimate of the level of summary judgment activity nationwide.

TABLE 1
Characteristics of the Judicial Districts Studied

Characteristic	E.D. Pa.	C.D. Cal.	D. Md.
Total judgeships	19	22	10
Terminated cases per judgeship	439 (69)	474 (57)	519 (46)
Pending cases per judgeship	312 (19)	473 (53)	462 (50)
Filing to disposition of civil cases in months	7 (37)	6 (19)	6 (19)

SOURCE: These characteristics are taken from Administrative Office of the U.S. Courts, Federal Court Management Statistics—1986.

NOTE: The numbers in parentheses indicate the rank of the court in relation to the other 93 district courts, with the lowest rankings indicating the greatest number of terminated cases, the fewest number of pending cases, and the briefest time from filing to disposition.

practice in Social Security cases is unlike summary judgment practice generally. In most Social Security cases the court's role is limited to reviewing the record of an administrative proceeding in which an individual's eligibility for benefits has been denied, and determining if the findings of the administrative law judge are supported by substantial evidence and are free from serious procedural error.[7] Motions for summary judgment are routinely used for presenting the issues to the court in these cases, even though there is no opportunity for a trial or further findings of fact.[8] Thus, only by excluding from our analyses cases in which the court had no jurisdiction to make findings of fact can we accurately determine the manner in which judicial discretion with regard to summary judgment is being exercised.

7. L. Liebman, Disability Appeals in Social Security Programs (Federal Judicial Center 1985).

8. Summary judgment motions were filed in thirty-one of the thirty-six Social Security cases, with the five remaining cases being dismissed before the issue was joined. Both parties filed summary judgment motions in twenty-six of the thirty-one cases with such motions. Summary judgment was granted in twelve of the thirty-one cases, with the remaining nineteen cases being remanded to the agency, a disposition that may reasonably be considered the equivalent of a grant of a summary judgment motion by the plaintiff.

Characteristics of Summary Judgment Motions

Since more than one summary judgment motion may be filed in a case, a description of summary judgment practice must include an examination of the characteristics of the individual *motions* for summary judgment, which is presented in this section, as well as an examination of the characteristics of the *cases* in which the motions are filed, which is presented in the following section.

As indicated in table 2, a total of 140 motions for summary judgment were filed in the 564 cases.[9] Almost half of the summary judgment motions were filed in the District of Maryland. This appears to be due to the types of cases filed in the District of Maryland rather than to some specific characteristic of litigation practice in the district.[10] Summary judgment motions by defendants were far more common than motions by plaintiffs. In the three districts studied, defendants filed respectively 71 percent, 59 percent, and 80 percent of the motions for summary judgment. In multiparty cases it was common for more than one defendant to file such a motion. Motions by third parties were rare.

One-third of the motions for summary judgment were granted (in whole or in part), one-third were denied, and the court took no action in the remaining third. Frequently, no action was taken because the case settled soon after the motion was filed. In other instances, the case was dismissed before the motion for summary judgment was reached.[11] In a few instances, motions for summary judgment were taken under consideration but never acted upon as the case proceeded to a disposition of the disputed facts. Although the figures are not presented in table 2, in all three districts motions by defendants were more likely to be granted than were motions by plaintiffs.

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9. Seven motions for partial summary judgment were combined with motions for summary judgment for purposes of analysis.

10. There were no statistically significant differences in summary judgment practices across the three districts within cases of the same type.

11. A common practice by defendants was to file a motion "to dismiss or in the alternative for summary judgment." These motions were counted as motions for summary judgment. However, it is possible that other motions for summary judgment were overlooked. Federal Rule of Civil Procedure 12(b) indicates that if a motion to dismiss for failure to state a claim is supported by affidavits or other information outside the pleadings, it should be treated as a motion for summary judgment. The cursory entries on the docket sheets made it difficult to identify such instances, if in fact they occurred.

TABLE 2
Summary Judgment Motions by Party and Outcome

	E.D. Pa.		C.D. Cal.		D. Md.		Total or Average
Number of cases[1]	194		188		182		564
Number of motions filed	35		39		66		140
Motions filed by—							
Plaintiff	26%	(9)	36%	(14)	18%	(12)	27%
Defendant	71%	(25)	59%	(23)	80%	(53)	70%
Third party	3%	(1)	5%	(2)	2%	(1)	3%
Outcome of motion							
Granted	34%	(12)	28%	(11)	23%	(15)	28%
Granted in part	3%	(1)	8%	(3)	9%	(6)	7%
Denied	31%	(11)	23%	(9)	38%	(25)	31%
No action recorded	31%	(11)	41%	(16)	30%	(20)	34%

[1]These figures do not include 36 Social Security cases selected in the random sample. Six of the Social Security cases were from the Eastern District of Pennsylvania, 12 were from the Central District of California, and 18 were from the District of Maryland.

Types of Cases in Which Motions Were Filed

Another informative measure of summary judgment practice is based on cases rather than individual motions. As indicated in table 3, the percentage of cases with at least one summary judgment motion differed little across the three districts, averaging 16 percent. The percentage of cases in the sample disposed of by summary judgment ranged from 3 percent in the Eastern District of Pennsylvania to 6 percent in the Central District of California.

TABLE 3
Degree of Summary Judgment Activity

	E.D. Pa.		C.D. Cal.		D. Md.		Total or Average
Number of cases	194		188		182		
Cases with at least one motion	14%	(27)	16%	(30)	18%	(32)	16%
Cases disposed of by grant of motion	3%	(5)	6%	(11)	4%	(7)	4%

Statistical analyses revealed that summary judgment practice varies greatly with the type of case. Table 4 shows that motions for summary judgment were especially common in civil rights cases. These motions were almost always filed by the defendant. Summary judgment motions were rare in personal injury cases. One notable exception was a case claiming personal injuries from asbestos, in which a motion for summary judgment was made by the plaintiff and by each of the thirteen defendants.[12] Six percent of the contracts cases, 7 percent of the civil rights cases, and 7 percent of the prisoner cases were disposed of by summary judgment.[13] Only 1 percent of the personal injury cases were disposed of by summary judgment.

TABLE 4
Summary Judgment Activity by Type of Case

Type of Case	One or More Motions	Disposed of by Motion
Civil rights (57)	30% (17)	7% (4)
Contracts (200)	14% (27)	6% (11)
Prisoner (60)	20% (12)	7% (4)
Personal injury (115)	11% (13)	1% (1)
Other[1] (132)	15% (20)	2% (3)

[1]The most common types of cases in this category were claims under the Employee Retirement Income Security Act of 1974 (22 cases), bankruptcy cases (20), and cases involving other statutory actions (20).

Appeals of Summary Judgments

Only four appeals for review of grants of summary judgment motions were found in the sample of 564 cases. Initially, we were surprised by the small number of appeals. However, a separate examination of summary judgment appeals in the Central District of California verified that our sample included a representative number of appeals. Of the four cases appealed, one was affirmed,

12. There was more than one motion for summary judgment in about 5 percent of the cases in each of the districts. Such instances usually took the form of a motion by both the plaintiff and the defendant, but motions by more than one defendant were common in multiparty cases.

13. A case was considered disposed of if the grant of the motion for summary judgment terminated consideration of the merits of the case, even though subsidiary questions such as attorneys' fees may still have required resolution.

one was reversed, and two were withdrawn or disposed of prior to submission to the panel. With little information on the docket sheets to indicate appealability, it is difficult to determine with accuracy the rate of appeal of summary judgments. However, assuming the cases in the present sample accurately represent the number of summary judgments that are appealed nationwide, it appears that between 13 percent and 17 percent of cases in which summary judgment motions are granted are appealed.[14]

Concern has been expressed that the courts of appeals are unsympathetic to summary judgment motions, reversing summary judgments in disproportionate numbers and thereby causing district court judges to become reluctant to employ summary judgment in instances in which it would be proper. This concern, however, seems to be based on a misperception. Judge Schwarzer's article on summary judgment[15] and a recent study by the Second Circuit Committee on the Pretrial Phase of Civil Litigation[16] each present data indicating that the rate of affirmance of summary judgments is close to the overall rate of affirmance for all civil cases on appeal. Table 5 presents more recent data from the Ninth Circuit and comparable data prepared for the Second Circuit committee. These data confirm that summary judgments are reversed at a rate that closely approximates the rate of reversal for all civil appeals.

The information in table 5 suggests the need for reconsideration of the origin of the misperception that summary judgments are reversed in disproportionate numbers. Both Judge Schwarzer and the Second Circuit committee speculate that district court judges have been misled into believing that summary judgments are disfavored because they see only published opinions concerning summary judgment, which are more likely than unpublished opinions to involve a reversal of the lower court's action. They point to the sharp difference between the reversal rate for published summary judgment appeals and the reversal rate for other civil appeals—published and unpublished together—as evidence for such an origin of the misperception. However, we believe a more appropriate com-

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14. The two estimates of the rate of appeal are derived from two estimates of the number of appealable cases—a liberal estimate based on the number of cases in which a summary judgment motion was granted (31) and a conservative estimate based on the number of cases in which a grant of a summary judgment motion terminated the case (23). With so few cases, the confidence intervals around these estimates are very large. For the estimated rate of appeal of 13 percent, the confidence interval (alpha = .05) ranges from 3 percent to 26 percent. For the estimated rate of appeal of 17 percent, the confidence interval (alpha = .05) ranges from 6 percent to 30 percent.

15. Schwarzer, *supra* note 2.

16. Final Report, *supra* note 3.

TABLE 5
Rates of Reversal on Appeal

Circuit	Total	Published	Unpublished
Second			
Summary judgments	22%	40%	2%
Civil appeals	18%	36%	3%
Ninth			
Summary judgments	22%	28%	16%
Civil appeals	20%	31%	12%

SOURCE: Figures for the outcome of appeals of summary judgments in the Second Circuit come from a memorandum to Maurice Rosenberg and Ettie Ward from Vincent Flanagan and Amy Moller, Office of the Circuit Executive, U.S. Court of Appeals for the Second Circuit (Aug. 30, 1985). Figures for the outcome of appeals of summary judgments in the Ninth Circuit come from the Staff Attorney Data Base maintained by the Ninth Circuit. Figures for total civil appeals in both the Second and the Ninth Circuits come from the Integrated Data Base maintained by the Federal Judicial Center, which contains information collected by the Administrative Office of the U.S. Courts.

NOTE: This table includes all civil appeals reversed, vacated, or reversed and remanded between July 1, 1983, and June 30, 1985, after oral hearing or submission on briefs. Unlike for the analyses of district court data, Social Security cases were not removed from these analyses. Social Security cases constitute approximately 5 percent of the civil appeals submitted in the Second Circuit and approximately 4 percent of those submitted in the Ninth Circuit.

parison is between the published summary judgment appeals and other published civil appeals. Neither Judge Schwarzer nor the Second Circuit committee had available the reversal rate for all published civil appeals. As shown in table 5, the rate of reversal for published summary judgment appeals is very similar to the rate of reversal for all published appeals. It is therefore unlikely that district court judges attending only to published cases would perceive a high reversal rate for summary judgment appeals, especially in the Ninth Circuit, where the reversal rate for published summary judgment appeals is slightly lower than the reversal rate for all published civil appeals.

The misperception may have arisen in a number of other ways. When district court judges rule on motions for summary judgment, they are undoubtedly aware that the possibility of appeal, and therefore of reversal, exists only if the motion is granted. Perhaps this results in a heightened awareness of the possibility of reversal of summary judgments—relative to reversal of other dispositions—and thus greater attention to such reversals when they occur. As the number of civil appeals has risen, perhaps the corresponding increase in the number of reversals of summary judgments has drawn the attention of district court judges and generated a degree of concern that did not exist when reversals were fewer in number.

Or perhaps the heightened awareness is due to pointed criticism of district court practices in the summary judgments that are reversed—or to reversal of a single or several summary judgments with which the judges are particularly familiar.

Comparison of reversal rates for summary judgment cases and civil cases generally provides further possible reasons for the misperception. In the general civil category—or even in a subcategory such as contracts—the grounds for reversal range over a wide topography of procedural and substantive issues. It is rare for a single issue to dominate the appellate activity. In the summary judgment category, however, the reversals are almost always on the identical ground. Consequently, even though the rate of reversal for summary judgments is consistent with the rate of reversal for other categories, summary judgment reversals may seem more frequent because of the repetition of a single rationale. That factor may in turn heighten awareness of appellate activity on the subject; the cycle is obvious and endless. Finally, a number of programs in various circuits have addressed the proper role of summary judgment. While these programs were developed to address an existing concern, it is possible that they have also contributed to widespread acceptance of the misperception, as well as prompted the search for a solution to the problem.

Changes in Summary Judgment Practice over Time

A decade ago, information on pretrial motions in the three federal district courts examined in this study was collected for another study conducted by the Center.[17] Comparisons with the earlier data suggest that cases are now less likely to be terminated by summary judgment.[18]

17. P. Connolly & P. Lombard, Judicial Controls and the Civil Litigative Process: Motions, at table 20 (Federal Judicial Center 1980). Some of the data used in the earlier study came from unpublished tables retained by Patricia Lombard.

18. A more sensitive measure of change in summary judgment practice would examine grants of motions for summary judgment. However, we were limited by the nature of the earlier data to comparisons of cases terminated by grants of motions for summary judgment. In addition, since the 1975 data included no Social Security disability claims or similar appeals from administrative agency decisions, the Social Security cases in the 1986 data are excluded from these comparisons.

TABLE 6
Percentage of Cases with at Least One Summary Judgment Motion

Year	E.D. Pa.	C.D. Cal.	D. Md.
1975	14% (71/499)	16% (85/543)	24% (122/506)
1986	14% (27/194)	16% (30/188)	18%[a] (32/182)

[a]Decrease of 6 percent in the District of Maryland approaches statistical significance ($z = 1.71, p < .10$).

As indicated in table 6, the percentage of cases in 1986 with at least one motion for summary judgment is very close to the percentage of cases in 1975. In two of the districts there was no change over time. In the District of Maryland the percentage of cases with at least one summary judgment motion dropped from 24 percent in 1975 to 18 percent in 1986, a decrease that is just short of statistical significance.

TABLE 7
Percentage of Cases with at Least One Summary Judgment Motion Disposed of by Summary Judgment

Year	E.D. Pa.	C.D. Cal.	D. Md.
1975	44% (31/71)	66% (56/85)	56% (68/122)
1986	19%[a] (5/27)	37%[b] (11/30)	22%[c] (7/32)

[a]Decrease of 25 percent in the Eastern District of Pennsylvania is statistically significant ($z = 2.07, p < .05$).

[b]Decrease of 29 percent in the Central District of California is statistically significant ($z = 2.57, p < .01$).

[c]Decrease of 34 percent in the District of Maryland is statistically significant ($z = 3.35, p < .001$).

At the same time, these three courts appear to be less likely to dispose of cases through grants of summary judgment motions. As indicated in table 7, disposition by summary judgment decreased by about one-half in each of the three districts over the eleven-year period, a decrease that is statistically significant for each of the districts. (The percentages in table 7 were computed by dividing the number of cases disposed of by summary judgment by the number of cases in which a summary judgment motion was made.) The information in tables 6 and 7 indicates that attorneys' practices in moving for summary judgment have remained fairly stable over the past decade despite the decreasing likelihood that a summary judgment motion will dispose of a case.

These findings describe summary judgment practice prior to recent decisions of the Supreme Court and the courts of appeals clarifying the standards for granting summary judgment. Although we have no data on practices in these three courts since June 1986, there are indications from other courts that summary judgments are awarded at rates higher than the above figures suggest. An examination of eighty-two summary judgment motions decided in the Southern and Eastern Districts of New York between October 1 and December 31, 1986, found that 71 percent of the motions were granted (in whole or in part).[19] Another examination of summary judgment motions decided since September 1, 1986, found that 69 percent were granted in the District of Arizona (18 of 26 motions), 88 percent were granted in the District of the District of Columbia (7 of 8 motions), and 63 percent were granted in the Western District of Texas (19 of 30 motions).[20] The comparable figures for motions decided between July 1, 1985, and June 30, 1986, in the three districts examined in the present study are 45 percent in the Eastern District of Pennsylvania (14 of 31 motions), 58 percent in the Central District of California (18 of 31 motions), and 37 percent in the District of Maryland (28 of 76 motions).[21]

It is possible that summary judgments have always been granted at lower rates in the districts included in this study than in other districts. However, it is also possible that a broad shift in practice favoring summary judgment is taking place across all federal dis-

19. New York State Bar Association, Committee on Federal Courts, Summary Judgment Subcommittee, Summary Judgment in the Second Circuit (Mar. 23, 1987). A review of the opinions in these cases revealed that the district courts were led by *Celotex* and *Anderson* to examine closely the burdens of proof imposed by the substantive law on the moving and nonmoving parties. It is likely that the district courts were also influenced by the decision of the Second Circuit Court of Appeals in *Knight,* indicating a receptivity to motions for summary judgment. *See supra* notes 4 and 5 and accompanying text.

20. These findings are based on data retrieved from a pilot automated docketing system for civil cases under development by the Division of Innovations and Systems Development of the Federal Judicial Center. This system is available in very few districts, and is not available in the three districts included in this study. We appreciate the assistance of Gary Bockweg and Michael Greenwood in retrieving this information.

21. The percentages reported in table 2 are not directly comparable with the figures for the New York courts, since the percentages in table 2 include motions on which no action was taken and exclude Social Security cases. It was necessary to include motions that were made but not decided because the purpose of this study was to determine if there have been changes in the role of summary judgment in disposing of cases. Social Security cases were excluded for reasons explained earlier. In contrast, the New York study sought to learn if judges are now more willing to grant motions for summary judgment and therefore examined only those cases in which motions for summary judgment were decided. The percentages reported here are comparable with the New York figures in that they exclude motions on which no action was taken and include motions in Social Security cases.

trict courts. Such a change might be in response to the recent decisions by the higher courts offering guidance on the standards for awarding summary judgment. An additional examination of summary judgment practice may be needed, using this study as a reference point, to assess the extent of this change.

Conclusions

A full understanding of the role of summary judgment practice requires consideration of a broader range of issues than was possible here. Nevertheless, the findings of this study suggest that summary judgment motions are employed primarily by defendants and are granted in about one-third of instances. Summary judgment motions are especially common in civil rights cases and are rare in personal injury cases.

Summary judgment practice has changed in the three districts during the eleven-year period examined. While summary judgment motions are currently filed at about the same rate as they were in the past, it appears less likely that such motions will dispose of a case. In each of the three districts, summary judgments are awarded about half as often as they were in 1975. The reasons for this change are not clear. Although it has been suggested that courts of appeals reverse a disproportionately high number of summary judgments, examination of data from the Second and Ninth Circuit Courts of Appeals indicates a pattern of reversals that is similar to that of other civil appeals.

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