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INTRODUCTION

We acknowledge and appreciate the funding of this issue (Vol. 10, No. 13) by the Cades Foundation.

The articles included in this unique issue are thoughtful and stimulating. John Barkai, Elizabeth Kent, and Pamela Martin examine the circumstances of the vast majority of civil lawsuits that are not resolved by trial. Bernard Bays and Michelle Da Rosa expound on Hawaii's current housing crisis and the actions being taken by the state legislature and county councils about it. Edmund Leong analyzes the impact and effectiveness of the Judicial Selection Commission. James Gifford analyzes the statutory scheme behind *State v. Aganon*, 97 Haw. 299 (2001). Mark Shklov provides enlightenment about China through his interview with Russell Leu, who formerly practiced in Hawaii and who is living in China. He works in the China Practice Group of Taft, Stettinius & Hollister LLP at its offices in Columbus, Cincinnati, and Cleveland, Ohio and spends substantial time in Beijing. Former William S. Richardson School of Law Dean Larry Foster was found working at the Zhong Lun law firm, a full-service commercial law firm with 250 lawyers in four offices around China. Rick Eichor gives an update of the unfair and deceptive acts law against the backdrop of the recent cases, *Courbat v. Dahana Ranch, Inc.*, 111 Haw. 254 (2006) and *Hawaii Medical Association v. HMSA*, 2006 Haw. LEXIS 464 (Sept. 8, 2006). Arthur Reinwald discusses reasonable trustee fees under the Hawaii Probate Code. Charles Carson presents his perspective in managing a complex construction defect case.

We hope you enjoy this issue.

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SETTLING CIVIL LAWSUITS IN THE HAWAII CIRCUIT COURTS

by JOHN BARKAI, ELIZABETH KENT, AND PAMELA MARTIN*

I. INTRODUCTION

Ninety-eight percent of civil cases settle,[1] right? Well, not exactly. Although claims of settlement rates of 90% and above are stated frequently,[2] settlement rates really are not that high. Many commentators start with an accurate picture of low, single digit trial rates (typically 2-3%),[3] but then they inappropriately assume the inverse - namely that all the remaining cases are settled. Their faulty logic ignores the fact that a significant proportion of cases are terminated for reasons other than trial or

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* John Barkai is a professor of law at the University of Hawaii's William S. Richardson School of Law. Elizabeth Kent is the director of the Hawaii State Judiciary's Center for Alternative Dispute Resolution (Center). Pamela Martin was a research analyst for the Center, and currently is the Division Administrator at the Hawaii State Department of Labor and Industrial Relations, Wage Standards Division.

This report was completed with the assistance of many people. The University of Hawaii's Program on Conflict Resolution, run by Karen Cross, and funded in part by the Hewlett Foundation, provided seed grant monies for the project. Chief Justice Ronald Moon and Michael Broderick, former Administrative Director of the Hawaii Judiciary, provided guidance and support, and Dennis Koyama of the Judiciary's computer division assisted in collecting data. Importantly, Andrew Ovenden who recently graduated with a Ph.D. in Sociology processed the data.

Justice Frank Padgett reviewed earlier drafts and gave us valuable guidance in the analysis of the data. Matthew Moneyhon also reviewed drafts and helped rewrite them. Many law students and Center volunteers contributed time to the project, including Cliff Afong, Kathy Harter, Jack Houtz, Stuart Ing, Erika Ireland, Angela Lovitt, Gerritt Smith, Jessie Varble, Carmen Wong, and Diane Yuen. Brennan MacDowell spent countless hours inputting data and reviewing surveys with his careful eye. Ashley Masuoka oversaw collection of all data and data correlation. She was the "glue" that held the extensive data collection together.

Becky Sugawa fixed computer glitches, solved problems, and moved the research forward. Kathryn Nishiki provided tireless quality assistance in typing and retyping drafts and was always attentive to details.

[1] See Association of Trial Lawyers of America, Discovery: Overcoming Obstacles in Getting to the Truth, 2 Ann. 2004 ATLA-CLE 1425 (2004); David Rosenberg, Adding A Second Opt-out To Rule 23(b)(3) Class Actions: Cost Without Benefit, 2003 U. Chi. Legal F. 19; Scot Wilson, Corporate Criticism On The Internet: The Fine Line Between Anonymous Speech And Cybersmear, 29 Pepp. L. Rev. 533, 551 (2002); Robert E. Margulies, How To Win In Mediation, 218-DEC N.J. Law. 66 (2002).

[2] A Westlaw search found three articles that said "97% of cases settle," two articles that said "96% of cases settle," 20 articles that said "95% of cases settle," and 53 articles that said "90% of cases settle." One article even said, "99 & 44/100 percent of cases settle."

[3] Brian J. Ostrom and Neal B. Kauder, eds., Examining the Work of State Courts, 1996; A National Perspective From the Court Statistics Project, 11 (National Center for State Courts, 1997).

settlement, and their error goes undetected because Hawaii and most other state judicial systems do not collect information about settlements.[4]

On the other hand, other people, speaking more cautiously, say that "most cases"[5] settle. Is this opinion closer to the mark or does this opinion vastly underestimate the rate of settlement? Knowing which statistic is true should be important information for lawyers, clients, and policy makers. Unfortunately, accurate empirical data about settlement rates do not exist.

Although information about settlement is mainly anecdotal, the information about case filings is available, empirical, and accurate. Almost 100 million lawsuits are filed in the United States each year. More precisely, approximately 98 million cases were filed in state and federal courts in the United States in 2002.[6] However, that figure includes over 57 million traffic court cases. Focusing only on civil cases, there were nonetheless over 16 million civil cases filed in state and federal courts in the United States in 2002, with nearly 8 million[7] of those cases filed in state courts of general jurisdiction.[8] Generally, less than 3% of civil cases reach a trial verdict, and less than 1% of all civil dispositions are jury trials,[9] although rates of non-jury trials can vary significantly across states.[10] Therefore, perhaps up to 97% of cases are resolved by means other than by trial.

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[4] Recently, the National Center for State Courts suggested that settlement data be collected routinely in all state courts. The National Center for State Courts' new State Court Guide to Statistical Reporting, 2003, suggests data collection methods that would result in some limited settlement statistics. The purpose of the new reporting guide is to "provide trial, appellate, and state court administrators with a more accurate picture of court caseloads and workloads," National Center for State Courts, Caseload Highlights, Vol. 9, Number 2, 1, Nov. 2003. This guide suggests that courts use 8 categories of non-trial dispositions. The categories include 5 categories of non-settlement -- Dismissed Want of Prosecution, Default Judgment, Summary Judgment, Other Dismissal, Transfer to Another Court -- as well as 3 categories of settlement; Without Judicial Action, With Judicial Action, and by Alternative Dispute Resolution. Id. at 4. Understanding settlement and collecting settlement data however will still be complex because the Guide suggests counting settlements during jury trials and settlements during non-jury trials as separate categories in the Trial Disposition section of the data under the label of "Disposed After Start." Id. at 5. In other words, apparently such settlements made during the course of trial will be counted as "trials."

[5] A Westlaw search found 505 cites saying "most cases settle."

[6] The civil and criminal caseloads for state courts vastly exceed the caseloads for federal courts. Statistics for 2002 are the most recent statistics available. There were over 96 million cases filed in state courts and over 2 million cases filed in the federal courts. The State Court statistics are from Brian J. Ostrom, Neal B. Kauder, and Robert C. LaFountain, eds., Examining the Work of State Courts, 2003, A National Perspective From the Court Statistics Project, 11 (National Center for State Courts, 2004). http://www.ncsconline.org/D_Research/csp/2003_Files/2003_Main_Page.html (last visited July 5, 2005). There were approximately 16.3 million civil cases, 15.4 million criminal cases, 4.6 million domestic cases, 2.0 million juvenile cases, and 57.6 million traffic cases filed in the 15,588 state trial courts during 2003 [hereinafter Examining the Work 2003].

The federal court data is from http://www.uscourts.gov/judicialfactsfigures/contents.html (last visited July 5, 2005). There were over 250,000 civil cases, 62,000 criminal cases, 1,250,000 bankruptcy actions, and 800,000 cases before magistrates filed in the federal courts in fiscal year 2003.

[7] Ibid.

[8] A general jurisdiction court is the highest trial court in the state and the court where the most serious criminal cases and high-stakes civil cases are handled. National Center for State Courts, Caseload Highlights: Examining The Work of The State Courts, Vol. 1, Number 1, 1 (Aug. 1995). In Hawaii, the Circuit Courts are courts of general jurisdiction.

[9] Supra note 6.

[10] Examining the Work of State Courts, 2003 supra note 6 at 22 reports that 7% of cases were disposed of by non-jury trials in 21 Unified and General Jurisdiction Trial Courts, including Hawaii. However that non-jury trial rates vary significantly from

The pattern of dispositions and trials in Hawaii courts seems to be very much the same as the national pattern. There were 3,643 civil cases filed in Hawaii Circuit Courts in 2003-2004. [11] Of the 5,082 cases that terminated during that same time period, less than 2 percent (only 85 cases or 1.67 percent) reached a trial verdict. Jury trials were extremely rare. There were only 17 completed civil jury trials in Hawaii Circuit Courts in 2003-2004 which is a jury trial rate of 0.3%.[12]

Despite many generalizations about the prevalence of settlement and the growing focus on and use of alternative dispute resolution, empirical research on settlement continues to be very limited.[13] Therefore, the Center for Alternative Dispute Resolution, a program within the State of Hawaii Judiciary, and the University of Hawaii Law School collaborated to study settlements in civil cases in Hawaii Circuit Courts. We hoped to learn as much as we could about civil litigation in general, civil settlements in particular, and other information that might be helpful in facilitating settlements and making civil case processing more effective.

What happens in the vast majority of civil lawsuits that are not resolved by trial is the subject of this article. Our study posed some basic questions about settlement: How many cases settle? What kinds of cases settle? When do cases settle? Why do cases settle? We also wanted to learn more about the length of time cases remained open as well as the type and amount of pretrial discovery. Because excessive cost and delay have long been considered the two primary evils of the civil justice system, any information we could learn about these topics also would be helpful. Finally, we also wanted to compile some baseline statistics about litigation in Hawaii that might be helpful in the future for policy makers both locally and nationally.

Tennessee with a 17% non-jury trial rate (7 states have non-jury trial rates of 10% or above) to Florida with a 0.5% non-jury trial rate. Hawaii was one of 7 states with a 1% non-jury trial rate.

[11] 2004 Annual Report, Statistical Supplement, The Judiciary, State of Hawaii, Table 7 http://www.courts.state.hi.us/attachment/4D44FE74F4DF1267F34A9452DD/2004arstatsupp.pdf, last visited July 5, 2005.

[12] Ibid. Some jury trials are started but not completed. For example, in 2003-2004 there were 8 civil jury trials started but not completed. We assume that most of these cases ended in settlements during trial, but we did not research that question. The court statistics report both completed and non-completed trials. In this paper, when we refer to trials, we always mean completed trials.

[13] Two studies that have researched settlement are Herbert M. Kritzer, Adjudication to Settlement: Shading in the Gray, 70 Judicature 161, 163 (1986) and Milton Heumann & Jonathan M. Hyman, Negotiation Methods and Litigation Settlement Methods in New Jersey: "You Can't Always Get What You Want," 12 Ohio St. J. on Disp. Resol. 253 (1997).

II. METHODOLOGY

Two different data sets were collected to answer our research questions. The first data set was a printout of computerized court docket sheets ("the docket sheet data") of over 3,000 terminated cases, and the second data set was over 400 surveys of lawyers who represented parties in some of those terminated cases ("the lawyer surveys"). We also used the Hawaii Judiciary's own statistical reports in our research.[14]

Near the time of our data collection for this study, the Bureau of Justice Statistics (BOJS) measured case dispositions in contract and tort cases across the nation.[15] Although BOJS studies had some differences in approach compared to our approach (for example, the BOJS contract study includes foreclosures in the contract cases), to a large degree the BOJS studies and our study mirrored each other.

A. Docket Sheet Data

Our study examined the docket sheets of all 3,183 cases that terminated in all Hawaii Circuit Courts during the six-month period between April 1996 and September 1996.[16] Because approximately 7,600 civil cases were filed in the Circuit Courts in Hawaii during the fiscal year 1996-1997, our six-month sample represented about one-half of the cases filed during the fiscal year. The docket sheets for all terminated cases were collected and sorted by circuit[17] and type of case.[18] The cases were then coded for specific information, including the type of case, the circuit in which it was filed, and the length of time the case was open. The study also recorded significant milestones, such as discovery requests and other filings.[19] The case specific information was entered into a database and analyzed. Ultimately, the docket sheets were of minimal assistance in determining if, how, and under what conditions cases settled.

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[14] The most current report is available on line at http://www.courts.state.hi.us/attachment/4D44FE74F4DF1267F34A9452DD/2004arstatsupp.pdf, (last visited July 5, 2005.)

[15] See Marika F.X. Litras, Sidra Lee Gifford, and Carol J. DeFrances, Contract Trials and Verdicts in Large Counties, 1996, Bureau of Justice Statistics Special Report, August 2000, NCJ 179769 and Lea S. Gifford, Carol J. DeFrances, and Marika F.X. Litras, Contract Trials and Verdicts in Large Counties, 1996, Bureau of Justice Statistics Special Report, August 2000, NCJ 179769.

[16] Approximately 7,400 civil cases were filed in the Circuit Courts in Hawaii during fiscal year 1995-1996, and 7,600 civil cases were filed during fiscal year 1996-1997, comprising the two fiscal years overlapping our study period. See, Hawaii State Judiciary, Annual Report July 1, 1995 to June 30, 1996, (1996), and Hawaii State Judiciary, Annual Report July 1, 1996 to June 30, 1997, (1997). By comparison, only 3,643 civil cases, less than one-half the 1995-1996 total, were filed in the Circuit Courts in Hawaii during fiscal year 2002-2003. See, Hawaii State Judiciary, Annual Report July 1, 2002 to June 30, 2003, (2004).

[17] In this report we do not report data analyzed by circuits.

[18] In all, there were sixteen categories of cases. Those included the following categories: assault and battery, agency appeal, contract, condemnation, construction defects, declaratory judgment, foreclosure, foreclosure of agreements of sale, jury demand from district court, legal malpractice, medical malpractice, motor vehicle tort, non-vehicle tort, products liability, and a general category called "other."

[19] Specifically, the following information was coded: civil file number and circuit, case type, start date, termination date, how the case was terminated [default judgment; dismissed for inaction; dismissed by motion; notice of dismissal with prejudice; notice of dismissal without prejudice; stipulation for dismissal; and acceptance of non-binding arbitration award], date back to litigation from non-binding arbitration; trial verdict; stipulated judgment; number of noticed written and oral depositions, number of certificates of service filed for requests for interrogatories or production of documents; filing of a pretrial statement; filing of a settlement conference statement or the holding of a settlement conference; and the total amount of time the case was open.

Three categories of cases emerged as the largest components of the civil docket: tort cases represented 36.4% of the cases, foreclosure cases comprised 31.3%, and contract cases represented 16.1%. The remaining 16.2% of cases were grouped together as "other".[20] See Table 1.

Table 1.	Percent of Types of Cases in Docket Sheet Data (n=3,183)
Tort[21]	36.4%
Contract	16.1%
Foreclosure[22]	31.3%
Other	16.2%
Total	100%

We concentrated our analysis and focused the subsequent lawyer survey exclusively on the tort and contract cases because we thought that tort and contract cases were of the most interest both in Hawaii and nationally,[23] and that the high percentage of foreclosure cases was atypical and reflected an unusual economic recession in Hawaii. The docket sheet data showed that many foreclosure cases were resolved in summary dispositions with little or no discovery. We believed that foreclosure cases took little of the courts' resources, their pattern of litigation did not include a sufficient number of trackable items from the docket sheets, the high proportion of foreclosure cases on the docket during our study period made them unique and unlikely to be very useful for court planning purposes, and that the effort to survey these cases would not be worth the benefit to our study. We excluded "other" cases because they did not seem to fit any pattern and, like foreclosure cases, the effort to survey these cases would not be worth the benefit.

B. Lawyer Surveys

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[20] "Other" included the following number of cases: 14 jury demands - District Court, 31 assault/battery, 9 construction defects, 22 medical malpractice, 7 legal malpractice, 13 product liability, 10 condemnation, 47 agency appeals, 56 declaratory judgments, 1 A/S foreclosure, 303 other civil actions, and 2 complaints.

[21] The court records distinguish between motor vehicle torts and non-motor vehicle torts that comprised 24.5% and 11.9% respectively of the 1,158 total tort cases. A comparison between the two types of torts is included where substantial differences appeared.

[22] Given that this study was conducted during a recession period in Hawaii's economy, foreclosure cases comprised an unusually high percentage of the docket compared to the disposition patterns in previous years. Unlike many states that experienced a strong economy in the 1990's, since 1991, Hawaii faced an economic downturn. The foreclosure and bankruptcy filing rates rose dramatically in a five-year period by approximately 400%. For instance, in 1991, 815 foreclosure cases and 1,004 Chapter 7 bankruptcy cases were filed. In 1997, the figures were 3,148 and 4,012, respectively. Department of Business, Economic Development, and Tourism, The State of Hawaii Data Book, at 123 and 569 (1998), see also Hawaii State Judiciary, Annual Report July 1, 1990 to June 30, 1991, (1991).

[23] See reports found at Bureau of Justice Statistics, U.S. Dep't of Justice, Civil Justice Statistics, at http://www.ojp.usdoj.gov/bjs/civil.htm (last revised July 1, 2005) and the National Center for State Courts, http://www.ncsconline.org/D_Research/csp/2003_Files/2003_Main_Page.html (last visited July 5, 2005).

Surveys of lawyers who litigated some of the 3,183 terminated cases included in the study functioned as the second data source. The survey was designed to provide more information about the litigation and settlement process than could be learned from the docket sheets.[24] A copy of the survey questionnaire with a summary of the responses is included as Appendix A.

The surveys asked about negotiated settlements, judicial assistance, pretrial and settlement conferences,[25] pretrial discovery, ADR (alternative dispute resolution) events, demographic information about the lawyers and their law practice, and two open-ended questions about settlement ("Is there anything that would have made this case settle earlier?" and "Were there any other important factors leading to settlement?").

The surveys were sent to a random sample of lawyers who represented clients in tort and contract cases among our data set of 3,183 cases. Cases first were selected randomly, with some modification to allow representation from all circuits in the State, and modification to avoid excessive, duplicate surveying of the same lawyers. All lawyers from each selected case were sent a survey developed specifically for this study. The response rate was approximately 50% with 412 surveys[26] returned representing 279 different cases.[27]

Although the docket sheet analysis supplied a wealth of quantifiable data, a deeper understanding of the data is found when the docket sheet data is compared with information supplied by the lawyers litigating these cases. We were able to match the surveys with the docket sheet data for 410 surveys representing 278 tort and contract cases[28] which includes matched responses from both plaintiffs' and defendants' lawyers in 121 cases. This "combined data" set of 278 different cases made it possible to compare the empirical data from the courts with the lawyers' perceptions of the case. The 278 records in this group were selected by keeping the earliest survey entered in the data set, regardless of whether the survey came from a plaintiff or defendant.[29] The mix of type of cases (contract, motor vehicle tort, and non-motor vehicle tort) is similar across both the docket sheet data and the lawyer survey data.[30]

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[24] Docket sheets may indicate how, but not why a case terminated. For example, although the docket sheet may note termination due to inaction (meaning a failure to serve the complaint or failure to file documents required by the court), the reason for the inaction will not be noted. Was lawyer inattention the cause? Or was it because the case was settled? Lawyers know that the court will dismiss a case if no action is taken, so some lawyers may choose simply not to file the paper work to formally dismiss the case. Similarly, the court's docket sheet may note a case was terminated after a decision on a summary judgment motion when, in fact, counsel negotiated a settlement after entry of the order.

[25] For the cases in this study, in the First Circuit, mandatory settlement conferences were held approximately thirty days before trial. Haw. Cir. Ct. R. 12.(1996). Voluntary settlement conferences could be held anytime upon the mutual request of lawyers and parties. Under the First Circuit's master calendar system, cases were assigned to a trial judge just before trial, usually about two weeks. Today, the judges have individual calendars, not a single master calendar.

In the Neighbor Island circuits, the trial judge assigned to the case set mandatory settlement conferences. These settlement conferences could occur anytime after filing. Voluntary settlement conferences were held upon mutual request.

[26] Although 412 surveys were returned, analysis of the data set in some areas varies because some responses were incomplete.

[27] Replies from plaintiffs' and defendants' lawyers were almost equal with 209 plaintiff lawyers and 203 defense lawyers responding.

[28] Foreclosure cases were not surveyed and so the match is limited to tort and contract cases.

[29] This data set had 58% plaintiff surveys.

[30] The docket sheet data (n=1674) had 31% contract cases, the total survey data (n=412) also had 31% contract cases, and the

The "combined" data reinforced the difficulty of measuring settlement. On some survey questions, the attorneys' recollection was not compatible with the docket sheet information collected on the same case. For example, in 7% of the cases where the docket sheets indicated a stipulation for dismissal, lawyers did not report reaching a negotiated settlement. Furthermore, when a trial verdict was entered in the docket sheet, more lawyers reported reaching a negotiated settlement than not.

III. TRIALS, SETTLEMENTS, AND OTHER DISPOSITIONS

A. Trials

The percentage of cases terminating in trial in Hawaii each year is not difficult to determine. The Hawaii Judiciary annually publishes a statistical report that indicates the number of terminated cases, pending cases, and number of trial dispositions during the year.[31] However, we used the docket sheets to find the data on trials because we also wanted additional information about each case. Docket sheets track the filings and actions taken on individual cases, and are a good source for empirical data. The information recorded on the docket sheets is generally standardized and consistent.

The data, reported in Table 2, shows, as expected, that very few cases ended in a trial verdict. Only 2% of all cases in the sample (or 63 of 3,158 cases) were disposed of by a trial verdict from a jury or non-jury trial.[32] Just less than 2% of tort cases and 3% of contract cases ended in a trial verdict. Foreclosure and tort cases were least likely to end in a trial verdict.

Table 2.	Percent of Cases Disposed of by Trial Verdict
Foreclosure (n=991)	1.1%
Tort (n=1146)	1.9%
Contracts (n=511)	3.1%
Other (n=510)	2.7%
All Cases (n=3158)	2.0%

B. A Historical Perspective on Trials and Trial Rates

To add some historical perspective to the above numbers, we subsequently determined that the number of civil jury trials (93 civil jury trials) in Hawaii in 1996 was the highest number of civil jury trials

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combined data set (n=278) had 26% contract cases.

[31] See various Annual Reports, Statistical Supplement, The Judiciary, State of Hawaii, Table 7. The most current Annual Report is available on the web at: http://www.courts.state.hi.us/attachment/4D44FE74F4DF1267F34A9452DD/2004arstatsupp.pdf, (last visited July 5, 2005.)

[32] These trial verdict statistics for the State of Hawaii are slightly lower than national statistics. The National Center for State Courts reports that 3.3% of cases are disposed of by trial (jury or non-jury). The Bureau of Justice Statistics reported trial verdicts accounted for 3% of all tort cases disposed of nationally. See, Steven Smith; Carol J. DeFrances, and Patrick A. Langan, Civil Justice Survey of State Courts, 1992 Bureau of Justice Statistics, United States Department of Justice, Office of Justice Programs, April 1995, NCJ-153177.

for the past 20 years in Hawaii, and the number of civil non-jury trials (294 civil non-jury trials) in Hawaii in 1996 was the highest number of civil non-jury trials for nearly 30 years in Hawaii.[33]

By reviewing the data from the Hawaii Judiciary's Annual Reports for the past 25 years (up to 2004), we find that the civil trial rate is decreasing, especially for tort and contract cases. For example, while the contract case trial rate generally has been in the 2 to 3% range over the past 25 years, for the past 8 years the contract trial rate has been less than 2% and sometimes less than 1%. In the past 25 years, the tort trial rate has varied considerably. Twenty to 25 years ago, the tort trial rate was 5-7%. However, in the past 15 years, with the exception of 1995, the tort trial rate has been less than 2%. In fact, for the past 2 years, the tort trial rate has been less than 1%. This Hawaii trend in trials seems to be following the trend documented by some national researchers on what has been called "The Vanishing Trial."[34]

Case filings have also decreased. The total numbers of case filings for all civil, torts, and contract cases have recently been about one-half the number of filings that Hawaii had in the mid-1990s.

C. Settlements and Other Dispositions

Settlements were the central focus of our study. However, settlements are difficult to accurately determine from case docket sheets. Court records do not keep track of settlements. Instead, docket sheets list the formal mode of case termination in terms of civil procedure actions such as "stipulation for dismissal," "default judgment," "termination by motion," "notice of dismissal without prejudice," etc. We had to draw inferences about settlements from such procedural descriptions.

We found nine discrete methods of termination frequently listed on the docket sheets, and so we coded the docket sheet data by these nine common terminations and one additional category of "other." The termination data is presented in Table 3 below.

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[33] Source, National Center for State Courts http://www.ncsconline.org/D_Research/csp/TrialTrends/CivilTrials.xls (last visited July 5, 2005).

[34] Marc Galanter, The Vanishing Trial, Disp. Resol. Mag., Winter 2004, at 3, explained that in the past 40 years in federal courts the number of civil dispositions has increased by a factor of 5 (going from approximately 50,000 to 258,000), but the number of trials has dropped 20 percent. See also, Marc Galanter, The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts, 1 J. Empirical Legal Stud. 459 (2004).

Table 3	Percent of Cases Terminated				
Court Record of Disposition	All cases (n=3158)	Foreclosure (n=991)	Tort (n=1146)	Contract (n=478)	Other (n=510)
Stipulation for Dismissal	44.0%	18.0%	72.0%	34.0%	42.0%
Notice of Dismissal with Prejudice	4.0	1.0	7.0	5.0	2.0
CAAP Award Accepted	2.0	0	5.0	0.0	0.0
Stipulated Judgment	2.0	1.0	0.0	6.0	7.0
Sub-total of Settled Cases	52.0	20.0	84.0	45.0	51.0
Termination by Motion	17.0	44.0	2.0	5.0	9.0
Notice of Dismissal Without Prejudice	12.0	28.0	3.0	9.0	6.0
Default Judgment	8.0	3.0	4.0	24.0	12.0
Dismissal by Court for Inaction	5.0	4.0	3.0	7.0	8.0
Trial Verdict	2.0	1.0	2.0	3.0	3.0
Other	4.0	1.0	3.0	7.0	11.0
Total (rounded to 100%)	100	101	101	100	100

The disposition categories included trial verdict, default judgment, stipulated judgment, dismissal by court for inaction, dismissal by motion, notice of dismissal with prejudice, notice of dismissal without prejudice, stipulation for dismissal, court-annexed arbitration program (CAAP)[35] award accepted, and "other." These modes of termination indicate what the lawyers titled the pleading or dispositive motion that resulted in the termination of the cases. To draw what we think are logical inferences about which cases settled, we reviewed the various types of terminations, conferred with local practitioners and court personnel, and then made judgments about whether or not the various modes of termination most likely represented settlements or court adjudicated terminations.[36]

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[35] The Court-Annexed Arbitration Program (CAAP) is Hawaii's mandatory, non-binding arbitration program for tort cases with a probable jury award of $150,000 or less. See Hawaii Arbitration Rules. John Barkai & Gene Kassebaum, "Pushing the Limits on Court-Annexed Arbitration: The Hawaii Experience," 14 Justice System Journal 133 (1991); John Barkai & Gene Kassebaum, "Using Court-Annexed Arbitration to Reduce Litigant Costs and to Increase the Pace of Litigation," 16 Pepperdine L. Rev. 43 (1989); John Barkai & Gene Kassebaum, "The Impact of Discovery Limitations on Pace, Cost and Satisfaction in Court Annexed Arbitration," 11 U. Haw. L. Rev. 81 (1989).

[36] The Bureau of Justice Statistics also uses "educated guesses" to determine settlement rates.

For the purpose of this study, we used the definition of settlement as defined in the Dictionary of Conflict Resolution - an "agreement or arrangement ending a dispute." See, Douglas Yarn, Dictionary of Conflict Resolution 392 (1999). This definition requires that the parties accept some solution and refrain from further disputing on the matter.

We concluded that "stipulation for dismissal,"[37] "notice of dismissal with prejudice,"[38] "stipulated judgment,"[39] and "acceptance of a Court-Annexed Arbitration Program (CAAP) award"[40] all were settlements.

On the other hand, we also concluded that "termination by motion,"[41] "default judgment,"[42] "dismissal by court for inaction,"[43] and "other"[44] were not settlements. A "notice of dismissal without prejudice"[45] could be either a settlement or a non-settlement. To be conservative, we classified a notice of dismissal without prejudice as a non-settlement.

Using our classifications of modes of terminations to determine settlements, the data revealed that almost 84% of tort cases settle under either a "stipulation to dismiss," "notice of dismissal with prejudice," "stipulated judgment" or an "acceptance of a CAAP award." Since only about 2% of tort cases go to trial, that leaves approximately 14% of tort cases that have a non-trial, non-settlement disposition - which could include a court's dispositive ruling (summary judgment, motion to dismiss, etc.), withdrawal or inaction by the plaintiff, or transfer to another court. So although the majority of tort cases may settle, certainly 98% of them do not settle as this study defines "settle."

Contract cases showed only a 45% settlement rate when measured by the number of cases that terminated by a "stipulation to dismiss," "notice of dismissal with prejudice," or "stipulated judgment." By

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[37] The "stipulation for dismissal" under Hawaii Rule of Civil Procedure 41(a) indicates that the parties came to an agreement to dismiss the case - in essence, that the case settled.

[38] A "notice of dismissal with prejudice" under Hawaii Rule of Civil Procedure 41 may be requested by parties or ordered by the court. A party is unlikely to dismiss his own case with prejudice unless the case was settled.

[39] "Stipulated judgments" are agreements between the parties, which the judge turns into a judgment. It is an agreement between the parties on what terms the case terminate. The parties have reached an agreement to terminate the case. The document is drafted by the parties, but submitted to the court to allow the court to enter "judgment." Although cases terminated by "stipulated judgment" have the effect of court adjudication, they are in fact settlements.

[40] "Acceptance of a CAAP award" relates to Hawaii's mandatory, non-binding arbitration program. When a non-binding award is accepted, and a trial de novo is not requested, we considered that to be a settlement because the parties both agreed to accept the award and not ask for a trial de novo.

[41] "Termination by motion" includes a variety of different types of substantive motions including Rule 12(b) motions for judgment on the pleadings under Hawaii Rule of Civil Procedure 12(b), summary judgment motions under Hawaii Rule of Civil Procedure 56, and any disposition by a motion adjudicated by court. These types of terminations do not generally indicate settlements.

[42] A "default judgment" can be requested against the defendant under Hawaii Rule of Civil Procedure 55 when the party against whom the judgment is sought does not respond. A "default judgment" is an adjudication on the merits and should not be considered as a settlement.

[43] A "dismissal by court for inaction" under Hawaii Rule of Civil Procedure 41 and Hawaii Rule of the Circuit Court 29 can be entered against a plaintiff who fails to take any action after filing a complaint. The court treats this type of dismissal as an adjudication on the merits.

[44] The "other" category of case disposition was our "catch all" for cases that did not fit into any of the nine specified modes of termination. To be conservative, we classified "other" as non-settlements.

[45] A "notice of dismissal without prejudice" under Hawaii Rule of Civil Procedure 41(a) allows a plaintiff to dismiss an action if it is filed before the return date, the service of an answer, or a motion for summary judgment. The court docket sheets do not provide any specific information why the notice was filed.

this data, the majority of contract cases do not settle. If we are less conservative in our classification of dismissals and assume that some "dismissals without prejudice" are in fact settlements, the settlement rate for contract cases appears closer to 50%. After factoring in a 2% trial rate, approximately 50% of the contract cases have a non-trial, non-settlement disposition. Clearly 98% of the cases do not settle.

Foreclosure cases have a far lower incidence of settlement than other cases. Only 20% of cases implied settlement, that is, termination by either "stipulation to dismiss," "notice of dismissal with prejudice," or "stipulated judgment."[46] It appears that nearly three-quarters of foreclosure cases do not settle.

Table 4 sets out the percent of cases that this study defined as settled.

Table 4	Percent of Cases That "Settled"	Percent of Cases that are not tried[47] and not settled
Torts (n=1,146)	84%	14%
Contract (n=478)	45%	53%
Other (n=510)	51%	47%
Foreclosure (n=991)	20%	78%
All Cases (n=3,158)	52%	46%

After reviewing the docket-sheet data and discussing the data with local practioners, we have concluded several things about these modes of termination. First, trying to determine whether cases settled from the docket sheets will always be problematic.[48] Nonetheless, the docket sheets do provide useful information. Second, the types of terminations vary widely among the various types of cases. In other words, tort cases show a different pattern of terminations than do contract, foreclosure, and "other" cases. Finally, if courts and policymakers have a serious interest in settlement, they should change some of the record keeping practices and track settlements.

Among the most interesting findings from the docket sheet analysis was that the "stipulation for dismissal" was more than twice as common as any other mode of termination. Almost three-quarters (72%) of tort cases, more than one-third (34%) of the contract cases, 42% of the "other" cases, and 44% of all cases were terminated by stipulations for dismissal. Foreclosure case closings by this means were significantly lower at 18%. Stipulations for dismissal are clearly settlements.

The second most common method of case disposition was "termination by motion." The docket sheets indicate that 17% of all cases terminated that way. Disposition by motion was most commonly found in foreclosure cases with more than 44% of foreclosures terminating that way. Termination by motion was much less common in tort cases (2%) and contract cases (5%). Termination by motion is clearly an adjudication and not a settlement.

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[46] "Acceptance of CAAP award" is not included here because the program is only for tort cases.

[47] Assuming a 2 percent trial rate.

[48] Herbert Kritzer reached this same conclusion about docket sheet analysis almost 20 years ago. Herbert M. Kritzer, Adjudication to Settlement: Shading in the Gray, 70 Judicature 161, 163 (1986).

While 12% of all cases terminated by "notice of dismissal without prejudice," more than one-quarter (27.5%) of the foreclosure cases were disposed of this way, but only 3% of tort cases and 9% of contract cases were terminated this way. Most importantly, most practitioners agreed that it is hard to classify "notice of dismissal without prejudice" as always a settlement or always a non-settlement.

The only other method of termination that appeared more than ten percent of the time was the "default judgment." Although cases disposed of through "default judgment" represented less than one-tenth of all the cases tracked, almost one-fourth (24%) of contract cases were disposed of this way.[49] Assuming that default judgments indicate a lack of settlement, this termination method has a major impact on the settlement rate for contract cases.

D. Determining Settlements From The Lawyer Surveys

The lawyer surveys provided another source of useful information on the question of what percent of cases settle. Most of the questions on the lawyer survey focused on the termination of the particular case surveyed. The survey asked how and when the case settled, significant factors contributing to the settlement process, and the extent of judicial involvement in settlement. The attorney survey first asked whether a negotiated settlement was reached, and if one was reached how and when it was reached. A response to either the timing or assistance of a negotiated settlement was interpreted as a settled case. All other cases were considered to be resolved by an adjudication on the merits.

Table 5 shows that 85% lawyers indicated their tort or contract case settled.[50] More specifically, the data showed that 86% of tort cases settled and 84% of contract cases settled.[51]

Table 5	Percent of Settled Cases Reported by Lawyers
	Settled
Torts (n=281)	86%
Contract (n=118)	84%
All cases (n=399)	85%

In Hawaii, torts cases are classified as motor vehicle and non-motor vehicle torts. The motor vehicle torts showed a higher settlement rate (89%) than did non-motor vehicle torts (80%). Interestingly, motor vehicle torts also show a higher trial rate nationally than did non-motor vehicle torts.

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[49] The National Center for State Courts reported that 35% of terminated contract cases in a 7-state study in 2002 ended in a default. See Examining 2003, graphics section, page 2 at http://www.ncsconline.org/D_Research/csp/2003_Files/2003_Civil_Graphics.pdf (last visited July 5, 2005).

[50] The calculations of percentage do not include the surveys that were returned indicating the case was not terminated.

[51] Admittedly, having contract settlement rates in the 80% range seems high, considering that nationally, on average, 27 percent of civil cases end by default judgments. In 21 states, the default rate averaged 27% for all civil cases, ranging from 4% in Alaska to 54% in Kansas. Hawaii was one of the 21 reporting states, but no data on defaults was available for Hawaii. See Examining the Work 2003, supra note 6 at 22.

Table 6 Tort Cases	Percent of Settled Cases Reported by Lawyers
	Settled
Motor vehicle torts (n=180)	89%
Non-motor vehicle torts (n=101)	80%
All tort (n=281)	86%

The two sources of data - lawyer surveys and docket sheets - offer similar findings on the percentage of tort cases that settle (84% of torts settle according to the docket sheets and 86% settle according to the lawyer surveys), but differ quite markedly on the percentage of contract cases that settle (only 45% of the contract cases settle according to the docket sheets and 84% settle according to the lawyer surveys). Quite simply, we have no explanation for these inconsistent findings on contract cases. It does suggest that if knowledge about settlements is important (and we believe that it is important), then the courts should collect information about settlements such as suggested by the recent proposal by the National Center for State Courts.[52] While it appears that many cases settle, it is very difficult to determine what percent of cases settle. And, quite obviously nowhere near 95 percent of cases settle, especially non-tort cases.

E. Settlement Conferences

Because settlement conferences are thought to be very helpful in aiding settlement, we designed a survey question to learn about the use and effectiveness of settlement conferences. Lawyers were asked if the negotiated settlement was reached with or without judicial assistance.[53] As Table 7 indicates, slightly less than one-quarter (23%) of respondents indicated that their case was settled with some judicial assistance, and three-quarters (75%) of respondents who settled reached a negotiated settlement without judicial assistance. Our data did not show how many cases had judicial assistance but did not settle. More contract cases (32%) settled with judicial assistance than did non-motor vehicle torts (24%) or did motor vehicle torts (18%).

Table 7	Settled With or Without Judicial Assistance			
Settled	All Cases (n=341)	Contract (n=99)	Non-motor Vehicle Torts (n=81)	Motor Vehicle Torts (n=161)
With judicial assistance	23%	32%	24%	18%
Without judicial assistance	75%	67%	74%	80%
No indication	2%	1%	2%	2%

[52] Supra note 4.

[53] The term "judicial assistance" was not defined in the survey and therefore the interpretation of judicial assistance by lawyers may vary across responses (for example, assistance by the judicial system as opposed to assistance by the judge).

We hypothesized that appearing before a judge would assist with the settlement process. Therefore, the survey inquired about the total number of appearances before a judge, including, motions, pretrial conferences, and settlement conferences. Predictably, cases that settled with judicial assistance had more appearances before a judge than those cases that settled without judicial assistance.

Settlements that lawyers did not attribute to judicial assistance did not report as many appearances in court. Cases that settled with judicial assistance averaged 3.5 appearances for contract cases, slightly over two appearances (2.2) for motor vehicle torts, and just over four appearances (4.1) for non-motor vehicle torts, see Table 8. Those cases that settled without judicial assistance averaged just over one (1.1) appearance for contract cases, not even one appearance (0.4) for motor vehicle torts and not even one appearance (0.6) for non-motor vehicle torts. Table 8 also indicates that cases that settled with judicial assistance had more than three times as many appearances before a judge than did those cases that settled without judicial assistance.

Table 8	Average Number of Appearances in Front of a Judge By Respondents Reporting Negotiated Settlements		
	Contract	Motor vehicle torts	Non-motor vehicle torts
With judicial assistance (n=80)	3.5	2.2	4.1
Without judicial assistance (n=255)	1.1	0.4	0.6

The lack of appearances before a judge did not appear to bother lawyers. When lawyers were asked about their preferences for judicial involvement, more than three-fourths (77%) of responses indicated that the settlement process was appropriate and that no change was preferred. Additionally, in response to an open-ended question asking what could have been done to settle the case earlier, 59% of lawyers offered no response.

On the other hand, of those lawyers who provided a response to the question, "Is there anything that would have made this case settle earlier?", the most common suggestions were focused on having more efficient and earlier judicial involvement. It is almost as if the lawyers wanted it both ways. They indicated that they did not need any change in judicial involvement, yet many lawyers would have preferred earlier and more efficient judicial involvement.

The survey also asked lawyers about their satisfaction levels with the terms of the settlement and the settlement process. We thought that it was possible that lawyers might like the settlement terms (thinking they got a "good deal"), but that they might not like the settlement process. Somewhat to our surprise, the lawyers did not seem to distinguish the terms of settlement from the process of settlement. If they liked one, they also liked the other. And, generally, they did like the terms of the settlement that they negotiated. As seen in Table 9, the vast majority (92%) of lawyers were either very satisfied or at least satisfied, with both their settlement terms and settlement process.

Table 9	Satisfaction Levels With Settlement			
	Very Satisfied	Satisfied	Dissatisfied	Very Dissatisfied
Settlement Terms (n=359)	25.6%	66.3%	3.9%	3.3%
Settlement Process (n=338)	22.5%	68.9%	5.9%	2.7%

F. Factors in Settlement

Because we sought to learn as much as possible about the factors affecting settlement, the longest question in the survey asked the lawyers to report on and rank the impact of methods of negotiation, meetings with and hearings before judges, and the use of ADR processes. This question provided a wealth of information to analyze. We provided a list of eleven specific events and offered one additional choice listed as "other." The lawyers were asked to check all of the listed events that occurred and then to indicate which of the various events had the most impact on settlement by indicating the top three events as 1, 2, and 3.[54]

The 11 events we examined can be arranged into three major groupings:

1) methods of negotiation, face-to-face negotiation between attorneys, face-to-face negotiation with attorneys and parties, telephone negotiation between attorneys, letter/fax negotiation between attorneys, and communication with insurance agent,
2) meetings with and hearings before judges, (motion for summary judgment, pretrial conference, and judicial settlement conference), and
3) various ADR processes (settlement conference,[55] court annexed arbitration (CAAP) decision, binding arbitration, and mediation).

We analyzed the data many different ways. Table 10 shows some of the most important data. It should be no surprise that the most frequently occurring events affecting settlement were various types of negotiation (face-to-face negotiation between attorneys, face-to-face negotiation with attorneys and parties, telephone negotiation between attorneys, letter/fax negotiation between attorneys, and communication with insurance agent). As Table 10 indicates, four types of negotiation were the most frequently occurring events. Telephone negotiations between the lawyers representing the opposing parties occurred in 80% of the cases, and were thus by far the most frequently occurring of all the events. Letter or fax negotiations took place in 57% of the cases, and face-to-face negotiations between lawyers took place in 49% of the cases. Each of these "big three" types of negotiation took place in almost 50% or more of the cases. The second tier of settlement affecting events took place in about 25% of the cases (communication with insurance agents 27%, court-annexed arbitration 24%, and judicial settlement conferences 22%). This second tier included two ADR events (CAAP and settlement conferences). The remaining five events took place in anywhere from 17% to just 1% of all cases. At the bottom of this third tier were the two traditional ADR processes, mediation and binding arbitration. Of course, binding arbitration did not merely affect settlement. Binding arbitration ended the case.

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[54] Not all the surveys were completed as directed. Some responders did not list any events, some did not rank any events, some ranked more than one factor as having the same level of impact, and some ranked more than 3 factors. As a result, the number of surveys used to report the survey data will vary depending on the valid data available for each question.

[55] Although settlement conferences only appeared one time in the survey, settlement conferences can fit in two categories: meetings with judges and ADR processes.

Table 10. Events that occurred, Events that were ranked 1-3, and Events that ranked # 1

	Occurred n=380	% Occurred	Ranked 1-3 n=230	% Rank 1-3	Ranked #1 n=230	% Rank #1
Telephone negotiation between lawyers	304	80%	175	76%	74	32%
Letter/fax negotiation between lawyers	215	57%	118	51%	16	7%
Face-to-face negotiation between lawyers	187	49%	93	40%	32	14%
Communication with insurance agent	101	27%	55	24%	28	12%
Court annexed arbitration (CAAP)	92	24%	49	21%	34	15%
Judicial settlement conference	84	22%	45	20%	27	12%
Face-to-face negotiation with lawyers and parties	65	17%	38	17%	19	8%
Motion for summary judgment	53	14%	22	10%	12	5%
Pretrial conference	37	10%	15	7%	2	1%
Mediation	15	4%	6	3%	4	2%
Binding arbitration	2	1%	2	1%	2	1%

Table 10 also shows that when the lawyers ranked the events having the greatest impact on settlement of their case, the top three factors were the same three that occurred most often. Telephone negotiations remained as the top ranked event.

Table 10 shows that a slightly different pattern emerged when we analyzed which events were ranked as the number one event in the settlement of the cases, a measurement which we called "impact." Telephone negotiations between lawyers remains the event with the greatest impact on settlement. With 32% of the cases indicating telephone negotiations was the event with the greatest impact, it has 2 to nearly 3 times more impact than its closest competitors (court-annexed arbitration 15%, face-to-face negotiations between lawyers 14%, settlement conferences 12%, and communication with insurance agents 12%). Court-annexed arbitration 15%, the event with the second highest impact, really has an even greater impact because this non-binding form of arbitration is only available in tort cases. CAAP would be ranked number one in 20% of the 172 tort cases we surveyed if we excluded the contract cases. The greatest

change between the rankings as we move the analysis from occurrences, to ranking events 1-3, to number one rankings is that letter/fax negotiation goes from the event occurring second most frequently (57%) and being ranked 1-3 second most frequently (51%) to being the number one event in settlement only 7% of the time. Mediation, arbitration, and pretrial conferences are at the very bottom of the list of events ranked number 1 at only 1-2%.

Yet another way to look at the events is not to just see what events are ranked as number one, but to analyze how often a event is ranked number one compared to the number of times that event was ranked at all. We called this the "Impact Percentage." Using that approach as reported in Table 11, the ADR events dramatically rise to the top. Arbitration has a 100% Impact Percentage (admittedly it is a very small sample size of only 2), and court-annexed arbitration, mediation, and settlement conferences all have an Impact Percentages of 60% or over (they were ranked number one in 60 or more percent of the cases in which they were ranked). By this measure, the telephone negotiation "only" has a 42% Impact Percentage. Pretrial conferences are the only event that has an Impact Percentage lower than the five types of negotiation that were available.

Table 11. Impact Percentages. Events that impact settlement. Number of times ranked #1 by number of times ranked.

n = 230	# of times ranked # 1	# of times ranked	Impact %: #1/# ranked
Binding arbitration	2	2	100%
Court annexed arbitration program (CAAP) decision	34	49	69%
Mediation	4	6	67%
Judicial settlement conference	27	45	60%
Motion for summary judgment	12	22	55%
Communication with insurance agent	28	55	51%
Face-to-face negotiation with lawyers and parties	19	38	50%
Telephone negotiation between lawyers	74	175	42%
Face-to-face negotiation between lawyers	32	93	34%
Letter/fax negotiation between lawyers	16	118	14%
Pretrial conference	2	15	13%

Table 12 below shows the events ranked number one as contributing to settlement for four different groups of cases: contracts, motor vehicle torts, non-motor vehicle torts, and all torts (a combination motor vehicle and non-motor vehicle torts). Differences appear looking at the top three events ranked first in each type of case. While all types of cases ranked telephone conversations first, second and third events for contract cases proved to be "judicial settlement conferences" and "motions for summary judgment," while lawyers in motor vehicle cases attributed "communications with insurance agent" and "CAAP" as the second and third events contributing to settlement. In non-motor vehicle cases lawyers gave credit to "CAAP" and "face to face negotiations" after telephone conversations.

This data shows that different events had widely varying impacts with different types of cases. For example, court-annexed arbitration was the number one event contributing to settlement in 18% of all tort cases but in only 1% of contract cases. Communication with insurance agents was the number one event contributing to settlement in 14% of all tort cases but in only 3% of contract cases. Motions for summary judgment were the number one event contributing to settlement in 14% of contract cases but in only 2% of all tort cases. The other events were roughly comparable across both contract and all tort cases, and the events were ranked quite similarly across motor vehicle and non-motor vehicle cases.

Table 12	Events Contributing to Settlement Ranked Number One by Lawyers				
	All Cases (n=384)	Contract (n=104)	Motor Vehicle Tort (n=178)	Non-Motor Vehicle Tort (n=102)	All Torts (n=28)
Telephone negotiations between lawyers	28%	29%	25%	33%	28%
Court annexed arbitration (CAAP) decision	13%	1%	17%	19%	18%
Judicial settlement conference	12%	16%	11%	11%	11%
Face-to-face negotiation with lawyers	12%	12%	11%	14%	12%
Communication with insurance agent	11%	3%	19%	6%	14%
Face-to-face negotiation with lawyers and parties	8%	12%	8%	4%	7%
Letter/fax negotiation between lawyers	6%	9%	6%	5%	6%
Motion for summary judgment	6%	14%	1%	5%	2%
Mediation	3%	5%	2%	2%	2%
Pretrial conference	1%	1%	1%	2%	1%
Binding arbitration	0%	0%	1%	0%	1%

G. ADR Events

We considered four events to be ADR processes: settlement conference, court-annexed arbitration (CAAP) decision, binding arbitration, and mediation. Table 13 shows that of the 257 cases that reported survey information about occurring events, 108 cases [108/257] or 42% reported some ADR event happening. There were 126 ADR events (63 CAAP hearings, 52 settlement conferences, 9 mediation sessions, and 2 binding arbitration hearings) reported as taking place in 108 different cases. In 7% of the cases, there were two ADR events [18/257]. Court-annexed arbitration hearings took place in 25% of cases, settlement conferences took place in 20% of the cases, and mediations and arbitrations were extremely rare. Court-annexed arbitration took place in 37% of the tort cases. Interestingly, 25 of these 108 cases with ADR events did not settle. That means that among the cases with ADR events, 77% settled.

Table 13. ADR Events

	Occurrences	Percent of Occurrences
Court-annexed arbitration hearings	63	25%
Settlement conferences	52	20%
Mediations	9	4%
Binding Arbitrations	2	1%

H. Types of Negotiation

The survey asked about five different types of negotiations: face-to-face negotiation between attorneys, face-to-face negotiation with attorneys and parties, telephone negotiation between attorneys, letter/fax negotiation between attorneys, and communication with insurance agent. Table 14 shows how many different types of negotiation took place in various cases. Of the 245 cases that indicated that some type of negotiation took place, multiple types on negotiation took place in 80% [195/245] of the cases. In 2% [6/245] of the cases, all five types of negotiations occurred; in 13% [31/245] of the cases, four types of negotiations occurred; in 24% [58/245] of the cases, three types of negotiations occurred; in 41% [100/245] of the cases, two types of negotiations occurred; in 20% [50/245] of the cases, just one type of negotiation occurred. Therefore, in 80% of the cases, there were two or more types on negotiation taking place. Multiple types of negotiation taking place in the same case is seldom, if ever, referred to in the negotiation literature. And in our experience, when the topic of negotiation is taught, no one teaches about multiple types of negotiations taking place in the same case.

Table 14. Number of Types of Negotiations

# of Negotiation Events	Occurred	% of cases with events	Cumulative %
1	50	20%	20%
2	100	41%	61%
3	58	24%	85%
4	31	13%	98%
5	6	2%	100%

I. Why Did Cases Settle Or Not Settle?

In an attempt to determine if the use of various events might have accounted for why cases settled or did not settle, we compared the use of the events in the cases that settled and in the cases that did not settle, and the data is presented in Table 15 below. Most of the events were used approximately equally in

both cases that settled and those that did not. The three areas that show some variation are telephone negotiations (82% settlement, 65% non-settlement), communication with insurance agent (30% settlement, 5% non-settlement), and court-annexed arbitration decision (21% settlement, 49% non-settlement). We are not confident that the use or non-use of these events made any difference in whether a case settled or not. For one thing, our sample size was very small; e.g., we had only 2 cases that did not settle after communication with an insurance agent. For another thing, we did not attempt to examine combinations of events; e.g., would it make a difference if there were no telephone negotiations, but there was a CAAP hearing? We would need a larger sample size to confidently generate any hypotheses on these points. For now, our experience tells us that other non-measurable events, such as personalities of the lawyers and parties, as well as the facts of the particular cases had more of an impact on whether a case settled or not. We simply cannot offer any empirical evidence to support anecdotal hypotheses.

Table 15 Events in settlement and non-settlement

	% Settled (n=218)	% Not Settled (n=37)
Face-to-face negotiation between lawyers	46%	43%
Face-to-face negotiation with lawyers and parties	18%	16%
Telephone negotiation between lawyers	82%	65%
Letter/fax negotiation between lawyers	59%	49%
Communication with insurance agent	30%	5%
Motion for summary judgment	13%	19%
Pretrial conference	7%	16%
Judicial settlement conference	21%	19%
Court annexed arbitration (CAAP) decision	21%	49%
Binding arbitration decision	0%	3%
Mediation session (non-judicial)	3%	5%

J. Disposition Time

Because one of the greatest criticisms of the civil justice system is delay, we examined how long cases were open and pending in court. Disposition time was calculated from the date the complaint was

filed to the date a final judgment, order, or notice terminating the case was filed. The data showed a disposition-time range from 3 days to a maximum of 3,971 days (approximately 10 years and 2 months). As Table 16 indicates, the average length of time a case was open was 433 days, and the median length of time for all cases was 308 days. Contract cases had a median disposition time of almost one year (360 days) and tort cases had a median disposition time of 445 days.

Table 16	Disposition Times Of Civil Cases	
	Average	Median
Foreclosure (n=995)	228 days	160 days
Contract (n=514)	504 days	360 days
Tort (n=1,159)	540 days	445 days
Other (n=515)	516 days	403 days
All Cases (n=3,183)	433 days	308 days

As Table 17 indicates, more than half of all cases terminated within a year, with 50% of the contract cases terminating within one year, and 39% of the tort cases terminating within one year.[56]

Table 17	Percent of Cases Terminating Within One Year
Contract (n=514)	50%
Tort (n=1,159)	39%
All Cases (n=3,182)	56%

As Table 18 indicates, non-motor vehicle torts had the lowest percentage of cases terminating within one year with less than one-third (32%) terminating within one year, while less than one-half (43%) of the motor vehicle tort cases terminated within one year.

Table 18	Percent of Tort Cases Terminating Within One Year
Motor Vehicle Tort (n=781)	43%
Non-motor Vehicle Tort (n=378)	32%
All Torts (n=1,159)	39%

[56] The data for foreclosure and "other" cases have been calculated and are on file with the authors, but we have removed that data from the subsequent tables to make the presentation of the findings less confusing.

Table 19 indicates that by the two-year mark, about one-quarter of the cases are still pending cases (24% of contracts and 26% of torts).

Table 19	Percent of Cases Pending After Two Years
Foreclosure (n=42)	4.2%
Contract (n=125)	24.3%
Tort (n=301)	26.0%
Other (n=133)	25.9%
All Cases (n=601)	18.9%

Table 20 indicates that, as expected, cases that end in settlements are pending for shorter time periods.

Table 20	Median Disposition Time in Days		
	Stipulation to Dismiss	Trial Verdict	Non-binding arbitration Award Accepted
Contract	630 (n=176)	799 (n=16)	Not applicable
Torts	504 (n=820)	835 (n=22)	405 (n=51)

In approximately one-fourth of the tort cases, the case entered CAAP and remained in the program long enough to have a hearing and receive an award, which means that the case did not settle during the arbitration process. As Table 21 indicates, in the cases in which an award was accepted, the median days to disposition was 405 days, more than a month shorter than the median disposition time for all tort cases (445 days). For these cases, the ADR process reduced the median disposition time by only 9% (40 of 445 days). However, the median number of days it took to terminate cases that did not accept the non-binding arbitration award (the award was appealed and at least one party requested a trial de novo) was 707 days, which is much closer to 832 days of the median of tort cases disposed of by a trial verdict. Hence, in 83% (256 of 307 cases) of the cases where the award was appealed but later settled before trial, this ADR process came much closer to the median number of days until a trial verdict than to the median days until disposition of all tort cases. We could not determine if the ADR process itself caused the delay, or whether these cases took more time because they were more complex. It is possible that in some situations ADR causes, rather than, reduces delay.

Table 21	Median Days to Disposition of Tort Cases
All tort cases (n=1,159)	445 days
Tort cases that accepted the CAAP award (n=51)	405 days
Tort cases returned to litigation after CAAP (n=256)	707 days
Tort cases disposed of by trial verdict (n=22)	832 days

One specific concern about the timing of case disposition is how late in the litigation process a case settles. We believe that the later a case settles, typically the greater the litigation costs. Late settlements are sometimes referred to as "settling on the courthouse steps."

To determine if a large percentage of cases were "settling on the courthouse steps," lawyers were asked if the timing of their negotiated settlement was more than thirty days before the scheduled trial, less than thirty days before trial, or on the day of trial. As Table 22 indicates, 80% of the lawyers indicated that negotiated settlements were made more than thirty days before hearings, meaning that cases are not in fact frequently settled on the "courthouse steps."

Table 22	Timing of Negotiated Settlement			
	Contract (n=87)	Motor Vehicle Tort (n=150)	Non-vehicle Tort (n=77)	All Cases (n=314)
More than 30 days before trial	79.3%	84.0%	75.3%	80.6%
Less than 30 days before trial	18.4%	16.0%	20.8%	17.8%
On the day of trial or after trial began	2.3%	0%	3.9%	1.6%
Totals	100%	100%	100%	100%

K. Pretrial Discovery

Because pretrial discovery is considered to be one of the major costs of litigation and also a factor in delay, we wanted a measure of discovery in the cases we studied. As a result, we extracted from the docket sheet data the number of notices of depositions (both oral and written), requests for interrogatories, and the requests for production of documents.

There was a great variance in pretrial discovery depending upon the type of case. Tort cases exhibited the most discovery and foreclosure cases exhibited the least discovery. As Table 23 indicates, almost two-thirds (66%) of all civil cases had no court recorded discovery requests at all. There were no discovery requests in 99% of foreclosure cases, 71% of contract cases, and 35% of tort cases.

Table 23	Cases Showing No Record of Discovery
	Percent
Foreclosure (n=981)	99%
Tort (n=1,112)	35%
Contract (n= 478)	71%
Other (n=454)	68%
All Cases (n=3,025)	66%

Table 24 shows the percentage of cases where there was at least one court-recorded instance of an oral or written deposition noticed, interrogatory request, or a request for production of documents. By this measurement, tort cases exhibited the greatest amount of all types of discovery. Foreclosure cases, for all practical purposes, did not use formal discovery procedures.

Table 24	Percent of Cases Where at Least One of the Following Discovery Requests was Recorded			
	Oral Depositions Noticed	Written Depositions Noticed	Interrogatory Requests	Requests for Production of Documents
Torts (n=1,159)	49%	54%	19%	15%
Foreclosure (n=995)	1%	<1%	<1%	<1%
Contract (n=514)	23%	13%	8%	11%
Other (n=515)	24%	18%	12%	12%
All cases (n=3,183)	25%	24%	10%	9%

We compared the number of oral discovery notices for tort cases that terminated in a stipulation to dismiss (which we believed would be a settlement) to the number of oral discovery notices for tort cases that terminated in a trial verdict. The differences were striking. As Table 25 indicates, for tort cases, the number of depositions noticed before a trial verdict terminated the case was 3 to 6 times greater than when a case terminated by a stipulation to dismiss.[57]

Table 25	Average Number of Notices for Oral Depositions Recorded in the Court Docket	
Tort	Stipulation to Dismiss	Trial Verdict
Motor vehicle	2.0 (n=564)	6.4 (n=12)
Non-motor vehicle	3.2 (n=256)	19.5[58] (n=10)

Two questions in the lawyer survey focused on the amount of discovery in each case. First, lawyers were asked to estimate the percentage of discovery completed in their case, compared to the

[57] Because of the small sample size, 12 motor vehicle tort trials and only 10 non-motor vehicle tort trials, we have to wonder whether data on number of deposition to tort trials was an aberration.

[58] The median number of notices for oral depositions for non-motor vehicle torts ending in trial verdicts is 8. The average figure is skewed in this small sample by one case with 75 depositions. If that case is not included in the sample, the average number of notices for oral depositions is 13.3.

amount of discovery completed in a case similar to the survey case but prepared for trial.[59] Our intent was to determine if settling before trial reduced the need for some of the pretrial discovery.

As Table 26 indicates, the amount of discovery completed was spread relatively evenly across all tort and contract cases that were surveyed. We did not attempt to correlate the length of time a case was open with the amount of discovery completed.

Table 26	Amount of Completed Discovery					
Percent of Discovery Completed	0%	0-25%	26-50%	51-75%	76-99%	100%
Settled Cases (n=324)	7.4%	25.3%	19.1%	21.9%	17.3%	9.0%

An additional two-part question asked about the total number of depositions taken (both expert and lay witness depositions), the number of expert depositions taken, and asked for estimates of how many additional depositions would have had to be taken had the case gone to trial. The average number of depositions per case was at least two, which correlated to the docket sheet data analysis. However, 40% of those who responded to the question reported taking no depositions at all.

Lawyers also reported how many depositions they would have taken had they not reached a negotiated settlement. Table 27 compares the average number of depositions taken before settlement was reached with the average number of depositions that might have been taken had the case gone to trial. Typically, if the case had gone to trial, the lawyers expected to take about 2 to 3 times more depositions than if they settled their cases.

Table 27	Average Number of Depositions Taken, Additional Depositions That Would Have Been Taken If There Had Been A Trial			
	All Cases (n=412)	Contract (n=126)	Motor Vehicle Torts (n=182)	Non-motor Vehicle Torts (n=104)
Average # of depositions taken before case terminated	2.8	1.5	2.7	4.4
Estimated average # of additional depositions if no settlement	4.0	3.6	4.2	4.1

A somewhat similar pattern emerges in the depositions of experts, which is usually a more cost-intensive practice. As Table 28 indicates, on average if cases settled before a trial, there were few depositions of experts taken (0.1 to 0.4 on average). However, if the case would go to trial, the lawyers anticipated taking 1 or 2 depositions before trial.

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[59] The exact question was: "Assume that the amount of discovery you normally would have done before starting trial on a case like this one is 100%. At the time this case terminated, what percentage of such discovery had been completed?"

Table 28	Average Number of Depositions of Experts		
	Contract (n=126)	Motor Vehicle Torts (n=182)	Non-Motor Vehicle Torts (n=104)
Average number of expert depositions taken before case terminated	.1	.4	.4
Average number of additional expert deposition that would have been taken if no negotiated settlement had been reached	1.2	2.6	2.0

L. Demographic Information about the Lawyers

The survey asked some demographic questions about the lawyers who responded to the surveys. Overall, the lawyers had practiced law for an average of 15 years. As Table 29 illustrates, there was little significant difference in the average years of experience for cases reporting negotiated settlements as compared to those where respondents reported no negotiated settlement.

Table 29	Average Number of Years Experience Practicing Law		
	Contract	Motor vehicle torts	Non-motor vehicle torts
Settled cases	17.3	15.1	15.9
Non-Settled cases	13.6	15.9	15.8

Lawyers also provided information concerning their ADR training, and whether they served as a CAAP arbitrator. As Table 30 indicates, 75% of the lawyers stated they had previously served as a CAAP arbitrator, and 65% stated that they had training in ADR, either through a class in law school or a negotiation or ADR seminar since starting practice. Table 30 sets out the details of CAAP arbitrators' training experience.

The art of the negotiated settlement has been the subject of many volumes and the topic of instruction in law schools and continuing legal education courses. The data from this survey uncovered that there are still many lawyers who do not have formal training in ADR methods and techniques.

Table 30	Attorneys Who Have Served as CAAP arbitrators (n=296)

Table 30	Attorneys Who Have Served as CAAP arbitrators (n=296)
No negotiation or ADR class taken in law school or since starting practice	35%
Negotiation or ADR class taken either in law school or since starting practice	65%

IV. SUMMARY OF FINDINGS

The Docket

The Circuit Court civil docket was comprised of 36% tort, 31% foreclosure, 16% contract, and 16% "other" cases.

Types of Cases

Tort cases were most likely to settle by a "stipulation for dismissal," had the longest time to disposition, and had the greatest incidence of discovery.

Foreclosure cases were most often terminated by court adjudication with "dismissal by motion" had the shortest median disposition time (160 days), and recorded almost no discovery.

Contract and "other" cases showed more variation in disposition methods, had disposition times much closer to tort cases than to foreclosure cases, and had some discovery.

Filings

Civil filings have decreased over the years. In 1982-1983 there were 8921 civil cases filed; in 2003-2004 there were 3643 civil cases filed. There has been a substantial drop in filings in the past 7 years.

Trials

Only 2% of cases ended in a trial verdict during the study period. The trial rate is now less than 2%. Jury trials were one-third of one percent for all civil cases terminated in 2003-2004, and the jury trial rate has been less than 1% since 1987. Nationally, there are reports of the "Vanishing Trial Phenomenon" and research shows that over the past 40 years not only has the trial rate fallen but also that absolute number of trials has decreased in Federal Court even though filings have increased five fold.

The trial rate is Hawaii is lower than the national average.

The Court does not keep track of which and how many cases settle (but we think it would be a good idea if the Court did this).

Settlement

While the data confirms that "most cases settle" it also identifies a substantial group of cases that neither go to trial nor settle.

The pattern of dispositions and actions taken on individual cases vary significantly across the variety of types of civil cases that comprise the civil docket.

Although "most cases settle," the percentage of cases that settle varies dramatically by the type of case. About 84% of tort, 45% of contract, 20% of foreclosure, and 51% of "other" cases settle. Contrary to the popular saying, nowhere near 90% or more of cases settle (although torts come close).

By subtracting trials and settlement from total terminations, we conclude that 14% of tort, 53% of contract, 78% of foreclosure, and 47% of "other" cases terminate under conditions other than settlement or trial.

Stipulation for Dismissal was the most common method of termination (44% of the cases), and we believe that such a termination indicates a settlement. Termination by Motion was the most common non-settlement method of termination (17% of the cases).

Satisfaction with Settlements

The vast majority of lawyers were satisfied with both their settlement terms (92%) and the settlement process (91%).

Types of Negotiation

Five types of negotiations were identified -- face-to-face negotiation between attorneys, face-to-face negotiation with attorneys and parties, telephone negotiation between attorneys, letter/fax negotiation between attorneys, and communication with insurance agent.

Seventy-nine percent of the cases used 2 or more types of negotiations.

Telephone negotiations were the single most commonly occurring type of negotiations. Telephone negotiations occurred in 80% of the cases surveyed.

Telephone, letter/fax, and face-to-face negotiations took place in almost 50% or more of the cases, telephone (80%), letter/fax (57%), and face-to-face (49%).

The lawyers rated telephone negotiations as the event with the most impact on settlement. Therefore, telephone negotiations not only occurred most frequently, but they were also viewed as the most effective event in the settlement of cases.

ADR

Forty-two percent of the cases used some form of ADR process (defined as settlement conference, court annexed arbitration program (CAAP), binding arbitration, and mediation).

Three ADR events -- binding arbitration, court-annexed arbitration, and settlement conferences -- had the greatest impact in the cases where they occurred.

Events Impacting Settlement

Certain events occurred in many cases and had a great contribution to settlement in various types of cases. For example, CAAP was used almost exclusively in tort cases and was the event having the second largest contribution to settlement after telephone negotiations. Communication with insurance agents was a major factor in the settlement of tort cases but not in contract cases (probably because there is seldom insurance coverage in contract cases). Motions for summary judgment had a greater impact on the settlement of contract cases than on tort cases.

We could not predict whether a case will settle or not based upon the events that took place in the case. In other words, from our data, settlements and non-settlements looked alike: e.g., failure to use CAAP did not mean that a case was less likely to settle.

Judicial Assistance

Less than one-quarter of the cases are settled with judicial assistance.

Three-quarters of lawyers indicated that they did not need more judicial assistance in settlement.

Lawyers believed that having more efficient and earlier judicial involvement would have made their case settle earlier.

All types of cases had shorter median times to disposition when settlements were reached with judicial assistance.

Judicial assistance with settlement negotiations resulted in shorter times to disposition of a case only when cases were open more than one year.

When judicial assistance occurred, it was ranked highly and frequently was the event having the greatest impact on settling the case.

Disposition Time

The average disposition time from filing until final disposition in the Circuit Court was 433 days (the median was 308 - but that included 36% foreclosure cases).

Tort cases had an average disposition time of 540 days (the median was 445 days).

Contract cases had an average disposition time of 504 days (the median was 360 days).

Tort cases that had a CAAP award and then later settled after the case returned to the trial track had a median disposition time of 707 days compared to 405 days for cases where the award was accepted and 445 days for all cases. In these cases where the CAAP awards were not accepted, ADR might have contribution to delay.[60]

The vast majority of cases (80%) do not "settle on the courthouse steps;" they terminate more than 30 days before trial.

Pretrial Discovery

Two-thirds of all civil cases had no recorded discovery requests, and 65% of tort cases did have recorded discovery requests.

Not surprisingly, there was more discovery in cases that ended in trials than in other cases.

Lawyers estimated that if their case had gone to trial, they would have needed to take 2 to 3 times the number of depositions they took in cases that settled.

Demographics

The average lawyer on the surveyed cases had been practicing law for 15 years.

75% of the lawyers had served as a CAAP arbitrator.

35% of the lawyers had not taken a negotiation or ADR class.

V. CONCLUSION

This study was designed to learn more about settlements in general and the civil docket in particular. It confirmed many common beliefs about civil litigation and settlement, and it also revealed many surprises. Because settlement is such an extensive part of civil litigation and because of the increasing use of ADR, settlement needs greater study and quantitative analysis. Even in the twenty-first century, the study of settlements is in its infancy. We did not find a generally agreed upon definition of settlement for

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[60] ADR is generally described as having positive benefits on the docket generally and individual cases specifically; see Thomas J. Stipanowich, ADR and the Vanishing Trial," Disp. Resol. Mag., Winter 2004, at 7.

record keeping purposes.[61] Most courts do not even keep statistics on settlements (which we think they should). The main court record keeping seems to be keeping track of how many cases are filed, how many are terminated, and how many are pending. Specific information about how and why cases are terminated is largely unknown.

Tracking and coding data for this study was tedious. But with advances and modifications in the court record keeping system and in technology, in the future, statistics on specific settlement measurements may be regularly tabulated and additional studies of settlement could be more easily developed. Shortly after the data was collected for this study, several significant changes were made in civil case processing.[62] Therefore, this study also can serve as the benchmark with which to measure the effectiveness of these and other changes.

This study did not expect to disprove the conventional wisdom that most cases do not go to trial, and of course it did not. However, it did find empirical evidence that not all those cases settle, and it brought to light information about settlement practices. This information can help lawyers plan legal strategies, assist litigants, inform the training of lawyers, and provide input for administrators who design court processes. This study provides a benchmark describing what exists and providing an analysis to determine what is needed. We hope it will be used to compare future information about the courts in Hawaii and around the nation. Knowledge about the settlement process is a valuable tool for everyone who uses the courts.

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[61] We defined "settlements" as cases that are terminated by an agreement between the parties, and not a decision made by a judge or a jury. We defined "adjudication" as cases that are terminated by a decision made by a judge or a jury.

[62] A change to Hawaii Circuit Court Rule 12 shortened the time period for filing a pre-trial statement from one year to eight months from the filing of the complaint effective January 1, 1997. Discovery cut-off dates were moved from thirty days before trial to sixty days before trial. The Circuit Courts of the First Judicial Circuit moved from a master calendar to an individual calendar.

APPENDIX A

Responses are from 412 returned surveys as of5/12/00. Contract=126; Motor Vehicle= 182; Non-vehicle tort=104

QUESTIONNAIRE (Please answer all relevant questions)

1. Under what conditions did this case end for your client? Please check **ALL** that apply in both columns.

278 respondents did not check any box in this column

No ans.=75	**Negotiated Settlement** (how reached)		1	**Default Judgment**
257	• Without judicial assistance		3	**Dismissed by Court for Inaction**
80	• With judicial assistance		15	**Dismissed by Court Pursuant to Motion**
No ans.=98	**Negotiated Settlement** (timing)		12	**Mediated Settlement** (non- judge mediator)
253	• MORE than 30 days before trial		59	**Arbitration Award**
56	• LESS than 30 days before trial		10	**Trial Verdict**
5	• On the day of trial or after trial began		31	**Other**, please specify:

2. Check all of the following that occurred in this case. In the next column, rate which 3 factors had the greatest positive impact on the settlement process (with 1 having the most impact, 2 having the next most impact, etc.).

	Occurred	R: ık - 1; 2; 3 Total
Face-to-face negotiation between attorneys	192	46; 58; 47 Tot.=151
Face-to-face negotiation with attorneys and parties	69	30; 13; 12 Tot.=55
Telephone negotiation between attorneys	308	108; 86; 63 Tot.=257
Letter/fax negotiation between attorneys	219	24; 92; 53 Tot.=169
Communication with Insurance agent	103	42; 21; 16 Tot.=78
Motion for summary judgment	57	21; 6; 12 Tot. = 39
Pretrial conference	39	4: 5: 13 Tot.= 22
Judicial settlement conference	88	47; 16; 9; Tot.= 72
Court Annexed Arbitration (CAAP) decision	92	51; 9; 14; Tot.= 74
Binding arbitration decision	2	2; 0; 0; Tot= 2
Mediation session (non-judicial)	16	10; 0; 2 Tot.=12
Other, please specify	212	

3. Were there any other important factors leading to settlement? **Answer on file.**

4. a. How many times did you appear before a judge in this case (including on motions, pretrial conference, settlement conference, etc.)?

No answer =24; 0 times = 210;1 time = 63;2 times =33; 3 times = 34; 4 times=18;>4 times=310

b. How many times did you appear before a judge for settlement conferences?

No answer=28; 0 times = 289;1 time =38; 2 times =43; 3 times =10; 4 times=2; >4 times=2

4. In this case, I would have preferred (please check one):Note: Responses do not =412 b/c 5 responses picked two answers.

36	more judicial involvement in the settlement process
3	less judicial involvement in the settlement process
318	no change, the settlement process was appropriate
12	other settlement or ADR options to be more available (which option?_____)

43 No answer

6. Is there anything that would have made this case settle earlier?
Answers on file.
168 = no answer; 130 = "No"; and 114 made comments.

7. Assume that the amount of discovery you normally would have done before starting trial on a case like this one is 100%. At the time this case terminated, what percentage of such discovery had been completed? **No answers=35**

0%=**31**	1 - 25%=**92**	26 - 50%=**69**	51 - 75%=**80**	76 - 99%=**65**	100%=**40**

8. In this case, if this case had gone to trial,

How many total depositions were taken? **0=156 1=61; 2=49; 3=29; 4=22; >4=71; No answer=24**		How many additional depositions would have been taken?**0=62 1=17; 2=45; 3=50; 4=52; >4=125; No answer=61**	
How many depositions of experts? **0=316; 1= 20; 2=13; 3=9; 4=3; >4=6; No answer=45**		How many additional depositions of experts? **0=100; 1=47; 2=95; 3=36; 4=21; >4=42; No answer=71**	

9. How satisfied were you with:

	Very Satisfied	**Satisfied**	**Dissatisfied**	**Very Dissatisfied**
the settlement terms of this case? **53 NA**	**92**	**238**	**17**	**12**
the settlement process in this case? **74 NA**	**76**	**233**	**20**	**9**

10. In what city is your principle office?
_17_ Hilo **__312_**Honolulu **__18_**Kona **__6_**Lihue **__21_**Wailuku **__38____**Other

11. How many years have you practiced law? _____years
    1-10 yrs.=90; 11-15 yrs=103; 16-20yrs=106; 20+ yrs = 86; no answer=27
12. What percentage of your working time do you spend on litigation (Including time with clients, pre-trial work, settlement efforts, trials, etc.)? ___%
    1-25%=15; 26-50%=49; 51-75%=51; 76-100%=271; No answer=26
13. a. Did you take a negotiation or ADR course in law school? **85** Yes **306** No **21** No answer
    b. Did you take a negotiation or ADR seminar since starting practice? **180** Yes **213** No **19** No answer
14. Have you served as a CAAP arbitrator? **296** Yes **98** No **18** No answer
15. Have you served as a mediator? **106** Yes **286** No **20** No answer

THANK YOU FOR ANSWERING THIS QUESTIONNAIRE