Let's Stop Spreading Rumors About Settlement and Litigation: A Comparative Study of Settlement and Litigation in Hawaii Courts

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Have you ever heard a lawyer or judge say, "At least 95%or more of all cases settle?" Well, they were wrong![1] Although it is probably true that less than 5% of civil cases end with a trial verdict, it is incorrect to assume the inverse—that the remaining 95% settle.

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[1] Almost all the literature that explores settlements has found that settlement rates vary depending upon the type of case (tort, contract, civil rights, etc.). Except for tort cases, none of the settlement rates exceed 60%, and even torts do not exceed 90%. Although researchers have long demonstrated that 95% of cases do not settle, lawyers, judges, and many academics continue to get it wrong. A recent Westlaw search in the journals and law reviews database found 656 citations to the phrase "most cases settle." Search conducted Aug. 18, 2012. A Westlaw search found three articles that said "97% of cases settle," two articles that said "96% of cases settle," twenty articles that said 95% of cases settle and fifty-three articles that said "90% of cases settle." One article even said "99 & 44/100 percent of cases settle."

Perhaps we need more conversations between researchers and members of the bar. *See* DONALD HARRIS ET AL., COMPENSATION AND SUPPORT FOR ILLNESS AND INJURY 93 (1984); H. LAURENCE ROSS, SETTLED OUT OF COURT: THE SOCIAL PROCESS OF INSURANCE CLAIMS ADJUSTMENT 179 (1980) (this classic study suggested a very high settlement rate for torts); D. TRUBEK, J. GROSSMAN, W. FELSTINER, H. KRITZER& A. SARAT, CIVIL LITIGATION RESEARCH PROJECT: FINAL REPORT (1983); Kevin M. Clermont, *Litigation Realities Redux*, 84 NOTRE DAME L. REV. 1919 (2009); Kevin M. Clermont & Stewart J. Schwab, *Employment Discrimination Plaintiffs in Federal Court: From Bad to Worse?*, 3 HARV. L. & POL'Y REV. 1033 (2009); Theodore Eisenberg & Charlotte Lanvers, *What Is the Settlement Rate and Why Should We Care*, 6 J. EMPIRICAL LEGAL STUD. 111 (2009); Marc Galanter, *The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts*, 1 J. EMPIRICAL LEGAL STUD. 459 (2004); Marc Galanter & Mia Cahill, *Most Cases Settle: Judicial Promotion and Regulation of Settlements*, 46 STANFORD L. REV. 1339 (1994); Dwight Golann, *Dropped Medical Malpractice Claims: Their Surprising Frequency, Apparent Causes, and Potential Remedies*, 30 HEALTH AFF. 1343 (2011); Samuel Gross & Kent Syverud, *Getting to No: A Study of Settlement Negotiations and the Selection of Cases for Trial*, 90 MICH. L. REV. 319 (1991); Samuel Gross & Kent Syverud, *Don't Try: Civil Jury Verdicts in a System Geared to Settlement*, 44 UCLA L. REV. 1, 51 (1996); Gillian K. Hadfield, *Where Have All the Trials Gone? Settlements, Nontrial Adjudications, and Statistical Artifacts in the Changing Disposition of Federal Civil Cases*, 1 J. EMPIRICAL LEGAL STUD. 705 (2004); Milton Heumann& Jonathan M. Hyman, *Negotiation Methods and Litigation*

How many cases do settle? How are they settled? What happens to most cases as they go through the civil litigation system? How much pretrial discovery takes place? How often are cases resolved by a default judgment or a court ruling on a dispositive motion? Could a settlement have been negotiated earlier, and if so, what would have been the best way to discuss settlement? Does a lawyer's training have an impact on the lawyer's effectiveness in settlement negotiations? What other factors influence settlement?

This article begins to answer the above questions and also reports on civil litigation and settlement in the Circuit Courts[2]of Hawaii in 2007 and compares that 2007 data to what was happening eleven years earlier in those same courts when we completed a similar study.[3]During our two studies, we analyzed over 4,000 docket sheets and surveyed 500 lawyers.[4] The resulting data and our analysis can help lawyers, courts, and parties to better understand and plan for what happens to cases as they move through court systems. In addition to the data for our two study years, in this article we also review long-term data about the case filings and trial rates of the past fifty years in Hawaii and the federal courts.

Public statistics about civil law suits in almost every jurisdiction in the United States are very limited. Most judicial systems simply report the number of cases filed, terminated, tried, and pending.[5] Few, if

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Settlement Methods in New Jersey: You Can't Always Get What You Want, 12 OHIO ST. J. ON DISP. RESOL. 253 (1997); Jason Scott Johnston & Joel Waldfogel, *Does Repeat Play Elicit Cooperation? Evidence from Federal Civil Litigation*, 31 J. LEGAL STUD.39, 40 (2002) Jay. P. Kesan & Gwendolyn G. Ball, *How Are Patent Cases Resolved? An Empirical Examination of the Adjudication and Settlement of Patent Disputes*, 84 WASH. U. L. REV. 237 (2006);Daniel P. Kessler & Daniel L. Rubinfeld, *Empirical Study of the Civil Justice System, in* 1 HANDBOOK OF LAW & ECONOMICS 381–83 (A. Mitchell Polinsky& Steven Shavell eds., 2007); Randall A. Kiser, Martin A. Asher & Blakeley B. McShane, *Let's Not Make a Deal: An Empirical Study of Decision Making in Unsuccessful Settlement Negotiations*, 5 J. EMPIRICAL LEGAL STUD. 551 (2008); Minna J. Kotkin, *Outing Outcomes: An Empirical Study of Confidential Employment Discrimination Settlements*, 64 WASH. & LEE L. REV. 111 (2007); Robert Moog, *Piercing the Veil of Statewide Data: The Case of Vanishing Trials in North Carolina*, 6 J. EMPIRICAL LEGAL STUD. 147 (2009); Frank E.A. Sander, *The Obsession with Settlement Rates*, 11 NEGOTIATION J. 329, 331 (1995); Stewart J. Schwab & Theodore Eisenberg, *Explaining Constitutional Tort Litigation: The Influence of the Attorney Fees Statute and the Government as Defendant*, 73 CORNELL L. REV. 719 (1988); W. Kip Viscusi, *Product and Occupational Liability*, 5 J. ECON. PERSPECTIVES 71, 84 (1991); Carl Baar, *The Myth of Settlement* (1999) (unpublished paper prepared for the Annual Meeting of the Law and Society Association, *available at* http://siteresourc es.worldbank.org/INTLAWJUSTINST/Resources/MythofSettlement.pdf).

[2] Circuit courts in Hawaii have exclusive jurisdiction in civil cases where the contested amount exceeds $25,000 and in probate and guardianship cases. Circuit courts share concurrent jurisdiction with district courts in civil, non-jury cases in which the amounts in controversy are between $10,000 and $25,000. The circuit courts also have jurisdiction over mechanics' liens and misdemeanor violations transferred from the district courts for jury trials. *Circuit Courts*, HAWAI'I STATE JUDICIARY, http://www.courts.state.hi.us/courts/circuit/circuit_courts.html (last visited Jan. 21, 2013).

[3] John Barkai, Elizabeth Kent& Pamela Martin, *Settling Civil Lawsuits in the Hawaii Circuit Courts*, 10 HAW. BAR J. 73 (2006), *available at*http://www.courts.state.hi.us/docs/HSB/HSBAarticle_SettlingLawsuitsInHI.pdf and http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1435047. For a five page summary of this 1996 study, *see* John Barkai, Elizabeth Kent & Pamela Martin, *A Profile of Settlement*, 42 CT. REV.34 (2006), *available at*http://papers.ssrn.com/sol3/papers.cfm?ab stract_id=1434793, http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1024&co ntext=ajacourtreview, and http://aja.ncsc.dni.us/courtrv/cr42-3and4/CR42-3BarkaiKent Martin.pdf.

[4] Our samples of docket sheets represented 13% of the total number of cases filed during 2007, and 42% in 1996.

[5] *See* THE JUDICIARY: STATE OF HAWAI'I, 2011 ANNUAL REPORT STATISTICAL SUPPLEMENT (2011), *available at* http://www.courts.state.hi.us/docs/news_and_reports _docs/annual_reports/Jud_Statistical_Sup_2011.pdf.

any, courts report settlements. However, a better understanding of settlements can help court systems more effectively administer justice and assist lawyers and parties as they negotiate and consider whether to accept a settlement offer.

Our primary purpose in the 1996 and the 2007 studies, therefore, was to provide accurate empirical data about settlements and to discover other information about civil litigation that might be helpful to lawyers, parties, and courts. For example, we wanted to learn how many cases actually did settle and what happened to the rest of the cases that did not settle or terminate with a trial. We also wanted to know if all types of cases settled at the same rate, when in the litigation process the cases settled, whether the lawyers were satisfied with their settlements, the length of time cases remained open, and the type and amount of pretrial discovery which occurred. We also wanted to compile baseline statistics about litigation and settlement. Doing studies in both 1996 and 2007 allowed us to make comparisons and observe trends.

After our first large study in 1996, we undertook the second, smaller, comparative study more than a decade later to see if the patterns of litigation and settlement were consistent over time, evaluate whether the use of ADR during the intervening decade changed, assess trends in the disposition of civil cases, and seek the perceptions of lawyers about settlement. We also wanted to assess whether technological changes, such as e-mail and the internet, had an impact on the settlement process and litigation.

Methodology

Both of our studies used similar data sets— (1) docket sheets from terminated cases, and (2) surveys sent to a sample of lawyers who represented clients in those cases.

In the 1996 study, docket sheet data was extracted from all 3,183 cases that terminated in all Hawaii Circuit Courts during the six-month period between April and September 1996.[6]Our sample represented 42% of the cases filed during that calendar year. Docket sheets for all terminated cases were collected and sorted by circuit and type of case.[7]The cases were then coded for information such as 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.[8]The case specific information was entered into a

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[6] The sample of terminated cases for the 1996 study straddled two fiscal years. 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. *See* THE JUDICIARY: STATE OF HAWAI'I, ANNUAL REPORT: JULY 1, 1995 TO JUNE 30, 1996 (1996); THE JUDICIARY: STATE OF HAWAI'I, ANNUAL REPORT: JULY 1, 1996 TO JUNE 30, 1997 (1997). The number of all civil cases used in our 1996 study is the average of those two fiscal years. There were more than twice as many cases filed in 1996 as there were in 2007. In fact, there were almost as many foreclosure cases filed in 1996 (3,623) as there were in the total civil docket in 2007 (3,582).

[7] In all, there were sixteen categories of cases in our sample: 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."

[8] 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], the date the case was returned to litigation from the court's non-binding arbitration program; trial verdict; stipulated judgment; number of noticed written and oral depositions, number of certificates of service filed for requests for

database and analyzed. Ultimately, the docket sheets were of minimal assistance in determining if, how, and under what conditions cases settled.

The second data set for the 1996 study was data extracted from 412 surveys ("the lawyer surveys")returned from lawyers who represented parties in some of those terminated cases. Analysis focused on the tort and contract cases because tort and contract cases were of the most interest both in Hawaii and nationally.[9] Additionally, the high percentage of foreclosure cases in our data set in the year of our study was atypical and reflected the effect of an unusual economic recession in Hawaii.

In the 2007 study, the docket sheet data was derived from over 450 cases randomly selected, using every fifth docket sheet of the circuit court cases that terminated between January 1 and June 30, 2007. Once this group of cases was selected, surveys were sent to a random sample of lawyers who represented clients in tort and contract cases among our data set. Cases to be surveyed first were selected randomly, and then we did some modification to allow representation from all circuits in the State and to avoid excessive, multiple surveying of the same lawyers. Ultimately, we had seventy-one useable surveys. The docket sheet sample size for the second study was approximately one-seventh (1/7th) the size of the docket sheet sample for the first study. We also used the Hawaii Judiciary's statistical reports in both our studies.[10]

An Overview of the Hawaii Circuit Court Civil Docket—A Static Look at the Docket

As shown in Chart 1 below, in 2007 the Circuit Court civil docket was comprised of three major categories of cases: 39% tort cases, 20% contract cases, and 41% "other" [11][sic] cases.[12]

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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.

[9] See reports found at *Civil Cases*, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, http://www.bjs.gov/index.cfm?ty=tp&tid=45 (last visited Dec. 21, 2013); NATIONAL CENTER FOR STATE COURTS, http://www.courtstatistics.org (last visited Feb. 16, 2013).

[10] For the most current report, see THE JUDICIARY: STATE OF HAWAI'I, 2011 ANNUAL REPORT (2011),*available at*http://www.courts.state.hi.us/docs/news_and_reports_docs/annual_reports/Jud_Annual_Report_2011.pdf(Jan. 21, 2013).

[11] The published court statistics available in the Judiciary's Annual Statistical Reports list four major types of cases: contract; personal injury, property damage, or both, motor vehicle; personal injury or property damage or both, non-motor vehicle; condemnation, and other civil action. The official court statistics also list two other types of cases—district court transfers and condemnation. Because they are typically less than 1% each of the annual caseload, we included transfers and condemnation cases within "other" cases for purposes of our studies.

[12] "Other" cases include: agency appeal, condemnation, construction defects, declaratory judgment, foreclosure, foreclosure of agreements of sale, jury demand from district court, and the judiciary's general category of "other."

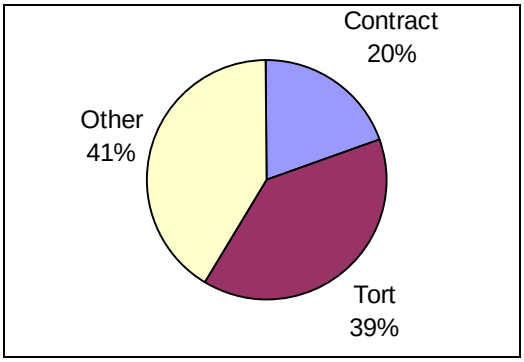

Chart 1 – Hawaii Circuit Court Civil Docket 2007

As shown in Table 1 below, the distribution of cases in the civil docket was quite similar in 1996 and 2007, at least in percentage terms—contracts were about 20% of the docket, torts were in the30% range, and "other" were in the 40% range. The size of the docket, however, was larger in 1996 than in 2007, and the percentages of the various types of cases fluctuated significantly within the decade between the study periods and over the last thirty years.

Table 1	Percent / Number of Types of Civil Cases Filed	
	2007	1996
Tort	39%	31%
Contract	20%	21%
"Other"	41%	48%
Total civil cases filed for the year	3,582	7,516

A Comment on Foreclosure Cases

Although court statistics available to the public do not report foreclosure cases as a separate category of civil cases,[13] in the 1996 study we reported foreclosure cases as a separate category because, during

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[13] The way civil cases are reported in the Judiciary statistical reports has not changed much since Hawaii became a state in 1959. In the 1960 annual report, cases were simply noted in large, general categories of civil and criminal. By 1964, civil actions were reported in six categories—contract, personal injury, property damage (both personal injury and property damage), condemnation, and "other." The personal injury, property damage, and both personal injury and property damage categories were broken down into two categories - motor vehicle and "other." Now, many years later, the reports still look almost exactly the same except that the category called "personal injury, property damage, or both" are broken out into two categories—"motor vehicle" and "non-motor vehicle"—and in addition there is a category for district court transfers. So apart from a formatting change and the addition of district court transfers, the reporting has remained largely consistent for over forty-five years. The most current Annual Reports are available on the web at: http://www.courts.state.hi.us/ news_and_reports/reports/reports.html (Jan. 21, 2013). The Annual Reports, which provide

that difficult economic time, 31% of the total civil docket were foreclosure cases.[14] In contrast, in 2007, only 5% of the docket was foreclosure cases.[15] Therefore, in some tables within this article, we report "other" cases in two ways—with and without foreclosure cases.

Table 1A	Foreclosure Cases as a Percent of the Total Civil Docket	
	2007	1996
Foreclosures	5%	31%

Foreclosure cases are different from other civil cases in terms of settlement rates, amount of pretrial discovery, and in other ways. Therefore, generalizations about "all" cases from the 1996 study are greatly impacted by the fact that almost one-third of the cases in 1996 were foreclosure cases.

The Size of the Civil Docket—A Dynamic Look at the Docket

Chart 2 below shows the size of the civil docket in Hawaii from 1960 through 2011.

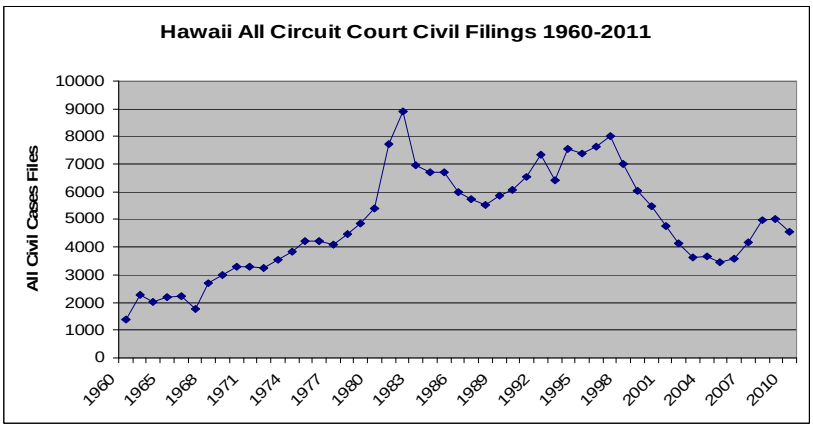

Chart 2

This chart shows that although the size of the civil docket steadily increased in the first twenty-three years after Hawaii became a state in 1959, since the early 1980s the docket size has cycled through

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data on all civil filings for Hawaii courts from 1960 until the present, are on file with the authors and available upon request.

[14] The Hawaii Judiciary provided the information about foreclosure cases to us for our study.

[15] In our 2007 sample of the docket, there were twenty-three foreclosure cases, twelve declaratory judgments, nine partition/quiet titles, and seven injunction cases. It should be noted that there was a change in the foreclosure law and in 2007; the general trend was to file non-judicial foreclosure cases. At the time this article was written, the number of judicial foreclosure filings had risen dramatically.

increases and decreases. Although one might expect total civil filings to steadily increase as Hawaii's population did,[16] the number of total civil filings fluctuated significantly over the years, and the chart of total civil filings has definite peaks and valleys. Compared to other states, however, Hawaii has a low number of case filings on a per capita basis.[17]

Over the past thirty-five years, total civil filings have ranged from a high of over 8,900 in 1983 to a low of approximately 3,400 in 2006. Just within the decade between our two studies, total civil filings ranged from a high of over 8,000 in 1998 to a low of barely 3,400 in 2006. Interestingly, the number of total civil filings in the early 1970s and the mid-2000s were quite similar.

Although we did not realize it at the time of our studies, as shown by Chart 2 above, by coincidence our two studies were conducted in two years when Hawaii had a near-record high (in 1996) and a near-record low (in 2007) number of civil filings.[18] There were less than one-half the number of civil filings in 2007 (3,582 cases) than in 1996 (7,516 cases).[19]The chart also shows that the 1996 study was conducted after almost a decade of steadily increasing case filings, and the 2007 study was conducted after almost a decade of steadily decreasing caseloads.

Even though the size of the total civil docket was drastically different in 1996 and 2007, there were similar proportions of tort and contract cases in both studies. In 1996, there were 2.3 tort cases for every contract case; in 2007, there were 2.5 tort cases for every contract case.

As seen in Table 2 below, for the last twenty years, the average distribution of cases in the civil docket has been 19% contract cases, 34% tort cases, and 47%"other" cases. Furthermore, for the two study years, the percentages of the docket looked relatively similar, even though the size of the docket was different.

Table 2	Percentage of Cases in the Civil Docket		
	2007 Study Year	1996 Study Year	Average for 1991 to 2011

[16] Hawaii's population steadily increased from about 600,000 in 1960 to over 1.3 million in 2010.THE RECORDS PROJECT, HAWAII CENSUS RECORD INFORMATION ONLINE, http://recordsproject.com/census /hawaii.asp (last visited Jan. 21, 2013);*State & Country QuickFacts*, U.S. DEPARTMENT OF CENSUS, http://quickfacts.census.gov/qfd/ states/15000.html (last visited Jan. 21, 2013).

[17] Of the twenty-nine states with statistics reported by the National Center for State Courts, Hawaii has the lowest reported per capita number of civil cases filed (2,493 civil cases per 100,000 of population). The median per capita filings for the twenty-nine states was 5,398 per 100,000 of population. NAT'L CTR. FOR STATE COURTS, EXAMINING THE WORK OF STATE COURTS: AN ANALYSIS OF 2008 STATE COURT CASELOADS 25 (2010).

[18] Data on all civil filings for Hawaii courts from 1960 until the present is on file with the authors and available upon request.

[19] The 2007 study was done when Hawaii had the second lowest number of civil filings in almost forty years. Only 2006 had a lower number of civil filings with 3,448 civil cases filed. Although there were less than 4,000 civil cases filed each year between 2004 and 2007, to find another year where there were less than 4,000 cases filed requires going back to 1975. The 1996 study was done when Hawaii had one of the highest number of civil filings in the past fifty years. Although there were slightly more than 8,000 cases filed in 1998, to find the next year with more civil cases filed after 1996 requires going back to 1983.

Contracts	20%	21%	19%
Torts	39%	31%	34%
"Other"Cases	41%	48%	47%

These averages mask some wide fluctuations in the percentage of types of cases filed over the past twenty years.[20] As Chart 3 below shows, over the past forty-five years, the percentage of contract, tort, and other cases has varied quite significantly.

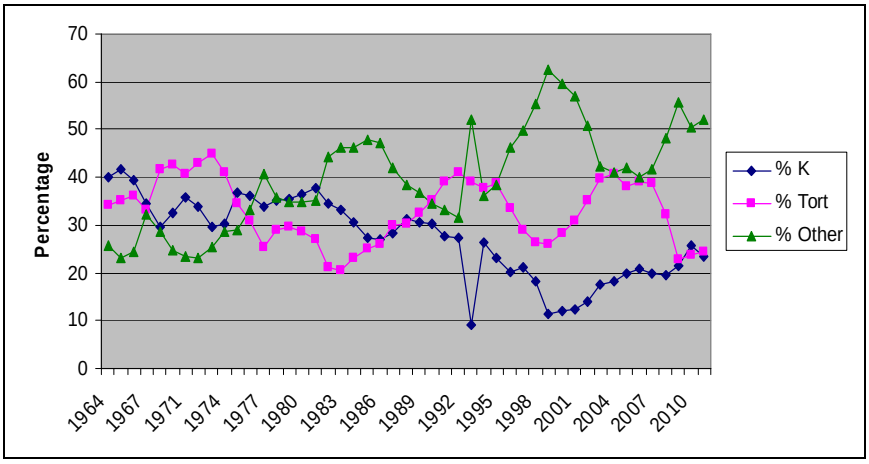

Chart 3 – Variations in Types of Civil Filings (by percentages of docket)

Chart 3 shows that there are various series of years where increases and then decreases in certain types of cases seemed to be almost mirror images of the opposite decreases and then increases of other types of cases. For example, between 1967 and 1975, the percentage of tort cases rose and then fell while the percentage of "other" cases fell and then rose; between 1981 and 1992, the percentage of "other" cases rose and then fell while the percentage of contract and tort cases fell and then rose; between 1996 and 2004, the percentage of "other" cases rose and then fell while the percentage of contract and tort cases fell and then rose; and finally, between 2006 and 2008, the percentage of "other" cases rose while the percentage of tort cases fell. Although we do not have an explanation for this pattern, it happened often enough that it bears noting and may be useful for future predictions, as well as worthy of future study.

Trials

[20] In the past twenty years, contract cases filed have been as low as 9% of the docket (1993) and as high as 26% (2010); tort cases as low as 23% (2009) and as high as 41% (1992 and 2004); "other" cases have been as low as 31% (1992) and as high as 63% (1999).

Trials are rare. Jury trials are very rare. Few cases ever go all the way to a trial verdict. As can be seen in Chart 4 below,[21] the percentage of civil cases resolved by a trial verdict in Hawaii has steadily decreased over the past forty-five years and now hovers slightly below 2%.[22]

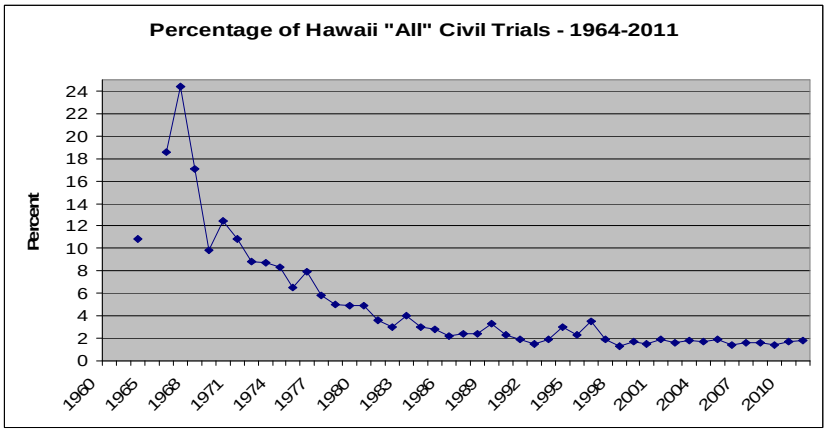

Chart 4[23]

In the first few years after Hawaii became a state, the trial rate was 10% or higher each year. Since 1971, that percentage has moved steadily downward from 12% to below 2%. From 1981 until 1990, the rate was generally on a downward trend from 4%towards 2%. Since 1997, less than 2%of cases were resolved by trial in Hawaii circuit courts every year.

For all categories of civil cases except torts, there are fewer jury trials than non-jury trials.[24]For example, in 2011, only 8% of all circuit court civil trials were jury trials.[25]The percentage of civil cases

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[21] We have computed the annual trial rates since statehood in 1959, and they appear in Appendix B with other annual statistics. The percentage of cases terminating in trial in Hawaii each year is reported in the Judiciary's Annual Statistical Report, a statistical report that reports the number of terminated cases, pending cases, and number of trial dispositions during the year. This chart was created from those annual reports. STATE OF HAWAII, 2011 JUDICIARY ANNUAL REPORT SUPPLEMENT, table 7 (2011), *available at*http://www.courts.state.hi.us/docs/news_and_reports_docs/annual_reports/Jud_Statistical_Sup_2011.pdf.The most current Annual Reports are available on the web at http://www.courts.state.hi.us/news_and_reports/reports/reports.html (last visited Dec. 21, 2013).

[22] To a large degree, the Hawaii long-term data on trials replicate the "Vanishing Trial" phenomenon seen in the federal courts and in some other state courts. *See* Hope Viner Samborn, *The Vanishing Trial*, 88 A.B.A. J. 24 (2002).

[23] The Judiciary started to report the number of trials in 1964, but did not report them in 1965, which explains the single dot for 1964.

[24] Non-jury trials conducted and decided by a judge without a jury are also called "bench," "jury-waived," or "waiver" trials. LANGTON & THOMAS H. COHEN, CIVIL BENCH AND JURY TRIALS IN STATE COURTS1, 2 (2005), *available at*http://bjs.ojp.usdoj.gov/content/pub/pdf/cbjtsc05.pdf (90% of tort trials nationally in state court are jury trials, but only 36% of contract trials are jury trials).

[25] In contrast, 60% of circuit court criminal trials were jury trials in 2011. There were 107 criminal jury trials. STATE OF HAWAII, 2011 JUDICIARY ANNUAL REPORT STATISTICAL SUPPLEMENT, table 7 (2011), *available at*

terminating with a jury trial has not exceeded 1% since 1987. In fact, the percentage of civil cases terminating with a jury trial has not exceeded one-half a percent since 1996. Hawaii has not had more than twenty civil jury trial verdicts per year since 2002.For almost the last twenty years, the jury trial rate for torts has always exceeded the jury trial rate for contract cases.

As can be seen by Table 3 below, the percentage of all civil cases disposed of by trial (jury and non-jury) in our study years was less than 2% in 2007 and less than 3% in 1996. Specific types of cases, e.g., contract and tort, had different trial rates. The 2007 data allowed us to calculate a 1.6% civil trial rate for the reported fifty-one trials that year (twelve jury and thirty-nine non-jury trials)[26] resulting from the termination of 3,179 terminated civil cases.[27] Table 3A below shows that the percentage of cases disposed of by jury trial was very low in 2007—0.7% of tort cases, 0.2% of contract cases, 0.2% of "other" cases, and 0.2% of "all" cases. In 1996 the jury trial rates were slightly higher with rates of 1% for tort cases, 0.4% for contract cases, 0.5% for "other" cases, and 0.4% for "all" cases.[28]

Table 3	2007 Percent of Cases Disposed of by Trial Verdict (Jury and Non-jury)	1996 Percent of Cases Disposed of by Trial Verdict (Jury and Non-jury)
Data Source: Hawaii Judiciary's Annual Reports[29]		
Tort	1%	2%
Contracts	1%	4%
Other	2%	3%
All Cases	> 2%	> 3%

http://www.courts.state.hi.us/docs/ news_and_reports_docs/annual_reports/Jud_Statistical_Sup_2011.pdf.

[26] Of these fifty-one total (jury and non-jury) trials, there were eight contact trials, thirteen tort trials, and thirty "other" trials.

[27] Many lawyers and judges have said that the number of completed jury trials reported in the Judiciary's annual reports seems lower than their experience. We think the reason for this is that some cases that go to a trial verdict are actually resolved by a settlement soon after the verdict and are recorded in the court's statistics in a non-trial termination category. Also, data entry for a trial completed in one fiscal year may not take place until the next fiscal year, depending on when final documents are submitted to the court.

[28] The number of dispositions by civil jury trials (93) and civil non-jury trials (294) in Hawaii in 1996 were the highest numbers in almost thirty years (see data in the appendix B).By reviewing the data for the past thirty years, 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%–3% range over the past twenty-five years, for the past fifteen years the contract trial has been less than 2% and sometimes less than 1%. In the past twenty-five years, the tort trial rate has varied considerably. Twenty to twenty-five years ago, the tort trial rate was 5%–7%. However, for over twenty years, with the exception of 1995, the tort trial rate has been 2% or less, and sometimes less than 1%. In fact, a few times, including the past two 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." *See* Marc Galanter, *The Vanishing Trial*, DISP. RESOL. MAG., Winter 2004, at 3; *see also* Galanter, *supra* note 1.

[29] We used the Judiciary's Annual Statistical Reports for the number of cases disposed of by trial each year. The Judiciary's Annual Statistical Report provided the number of trials for each category of case. We calculated the percentage of trials and rounded to the nearest whole number.

Data Source: Docket Sheets for a sample of cases		
Foreclosure	0%	1%

Table 3A	2007 Percent of Cases Disposed of by Jury Trial Verdict	1996 Percent of Cases Disposed of by Jury Trial Verdict
Data Source: Hawaii Judiciary's Annual Reports		
Tort	0.7%	1.0%
Contracts	0.2%	0.4%
Other	0.2%	0.5%
All Cases	0.4%	0.6%

Comparing Hawaii Civil Filings and Trial Rates with Federal Court Data: Fluctuating Filings and Vanishing Trials

Although accurate empirical data about settlement rates do not exist and therefore information about settlement is mainly anecdotal, the information about case filings and terminations is available. The patterns of filings and trial rates for Hawaii civil cases are similar to the patterns for federal courts.

Over 100 million lawsuits are filed in the United States each year. More precisely, in 2010 (the last year for which complete statistics are available), approximately 106 million cases were filed in state and federal courts in the United States.[30]The vast majority of court filings in the United States are in state courts, not federal courts. There were about 2 million cases in federal court—approximately 300,000 civil cases, almost 100,000 criminal defendants (federal courts report defendants, not cases), over 1.5 million bankruptcy cases, and other categories of post-conviction supervision and pretrial supervision[31]—and 104 million cases filed in state courts—including approximately 56 million traffic cases, 21 million criminal cases, 20million civil cases, 6 million domestic cases, and 2 million juvenile cases. Generally, less than 3% of state civil cases reach a trial verdict, and less than 1% of all civil dispositions are jury trials,[32]

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[30] The State Court statistics are from NAT'L CENT. FOR STATE COURTS, EXAMINING THE WORK OF STATE COURTS: AN ANALYSIS OF 2010 STATE COURT CASELOADS (2012), *available at*http://www.courtstatistics.org/Other-Pages/CSP2010.aspx(last visited Feb. 16, 2013). The federal court data are from the statistical report on the federal courts. *Judicial Business of the United States Courts: Judicial Caseload Indicators*, U.S. COURTS, http://www.uscourts.gov/Viewer.aspx?doc=/uscourts/Statistics/FederalJudicialCaseloadStatistics/2011/front/IndicatorsMar11.pdf (last visited Feb. 16, 2013). The trial rate for the over 300,000 terminated federal court civil cases was 1.1%.

[31]*See Federal District Court Workload Increases in Fiscal Year 2011*, U.S. COURTS (Mar. 13, 2012), http://www.uscourts.gov/News/NewsView/12-0313/Federal_District_Court_Workload_Increases_in_Fiscal_Year_2011.aspx; *Statistical Tables for the Federal Judiciary*, U.S. COURTS (June 30, 2011), http://www.us courts.gov/Statistics/StatisticalTablesForTheFederalJudiciary/June2011.aspx.

[32] *See* NAT'L CENT. FOR STATE COURTS, EXAMINING THE WORK OF STATE COURTS, *200*322 (2004), *available at* http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=3981.

although rates of non-jury trials can vary significantly across states.[33] Therefore, up to 97% of cases are resolved by means other than by trial, but of course not all of those 97%aresettled.

In the years between our two studies, Professor Marc Galanter published an article entitled "The Vanishing Trial."[34]In that article Galanter statistically demonstrated that in the federal courts, over a period of forty years (1962–2002), federal civil filings[35] increased "by a factor of five" (going from approximately 50,000 to 258,000), while the absolute number of trials decreased 20%. Because the number of trials decreased as the number of filings increased, the result was a dramatic decrease in the percentage of cases that went to trial. Trial dispositions fell from 12% in 1963 to less than 2% in 2002.[36]Galanter's research related to fluctuations in civil filings and trial rates in federal courts were similar to the information about Hawaii courts until 1998.

We supplemented Galanter's data about federal court civil filings and trial rates, which only went up to 2002,with more recent data about the federal courts for the last decade to give us two data sets—Hawaii and the federal courts. Thus Chart 5 shows data for each court for over fifty years, from the early 1960s through 2011.[37]Although Galanter's research reported that federal civil filings nationwide had increased by a "factor of five" in over forty years (1962–2002), in fact, the factor of five increase happened in only a little more than twenty years (1962–1985) and thereafter remained relatively stable. In fact, between 1985 and 2005, in only one year were federal civil filings higher than the 1985 number of filings.

Chart 5 also shows that the patterns for Hawaii and federal courts civil filings are similar (at least for the first forty years) showing a steady growth for twenty years after 1960, followed by a leveling off for the next twenty years. Since 1998, federal filings have had some ups and downs but were largely constant. However, since 1998, Hawaii cases showed a significant decrease for nine years, and then filings started to rise again. Since 2007, federal civil filings increased 7,000 to 10,000 cases (2% to 4%) per year. Since 2004 Hawaii civil filings also increased but increased at a higher rate (3% to 19%) than federal filings (although 2011 showed a downturn). As a point of comparison, nationally, state court filings have steadily increased since the year 2000, and are now 28% higher than the 2000 level.[38]

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[33] *Id.* at 22 reports that 7% of cases were disposed of by non-jury trials in twenty-one unified and General Jurisdiction Trial Courts, including Hawaii. However, non-jury trial rates vary significantly from Tennessee with a 17% non-jury trial rate (seven states have non-jury trial rates of 10% or above) to Florida with a 0.5% non-jury trial rate. Hawaii was one of seven states with a 1% non-jury trial rate.

[34] *See* Galanter, *supra* note 1. *See also* Galanter, *The Vanishing Trial*, DISP. RESOL. MAG., Winter 2004, at 3.

[35] The civil filings that Galanter followed were only a minor percentage (less than 15%) of the total federal civil docket. Consistently, the highest percentage of filings in the federal docket is bankruptcy cases, which can be up to 75% of filings.

[36] Galanter, *supra* note 1, at 461, 533–34.

[37] We are using the data for Hawaii terminations, not filings, but we think that gives us comparable data on trial rates.

[38] *See* NAT'L CENT. FOR STATE COURTS, EXAMINING THE WORK OF STATE COURTS: AN ANALYSIS OF 2009 STATE COURT CASELOADS 8 (2011), *available at* http://www.courtstatistics.org/Other-Pages/CSP2009.aspx.

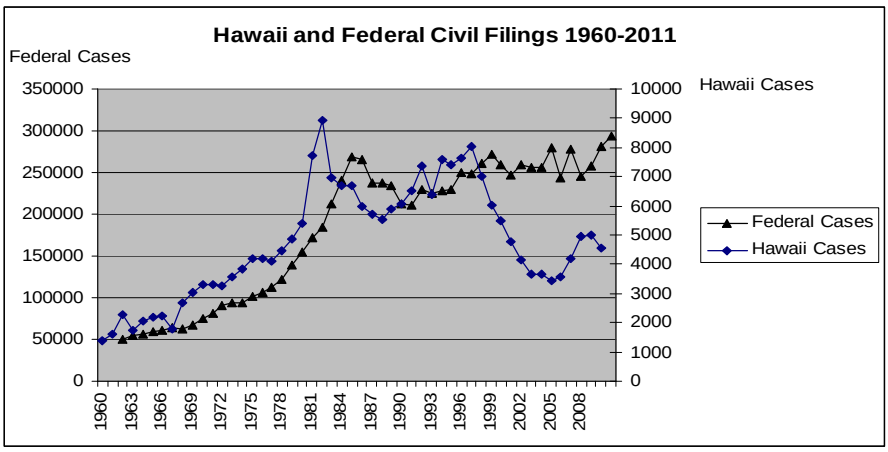

Chart 5

There is one other significant difference when comparing Hawaii with federal filings that is not apparent when using the Galanter data for comparison. When looking at "civil" filings, Galanter used the federal court statistics on "civil" filings, which do not include bankruptcy cases. Bankruptcy cases, at times, comprise three-quarters of the federal caseload (these cases tend to fluctuate with the economic climate). For example, in 1997, near the time of our first study, there were almost 1,500,000 bankruptcy cases filed in federal court.[39] In contrast, in 2007, there were 800,000 bankruptcy filings.[40] However, by 2010, federal bankruptcy filings were again over 1,500,000 per year. Hawaii civil filings include foreclosure cases, another type of case that varies with the economic conditions. At the time of our first study in 1996, 31% of the civil docket was foreclosure cases, but in 2007 only 5% of the docket was foreclosure cases. Currently, foreclosure cases are again a large component of the civil docket in Hawaii.[41]

"Vanishing Trials" in Hawaii Too

One of the most frequently reported findings from Galanter's "vanishing trials" research was that the trial rate dramatically decreased in federal courts (from 12% in 1963 to less than 2% in 2002) in the forty-

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[39] OFFICE OF HUMAN RES. AND STATISTICS, STATISTICS DIVISION, FEDERAL JUDICIAL CASELOAD: RECENT TRENDS 14 (2001), *available at* http (last visited Feb. 2, 2013).

[40] *Federal District Court Workload Increases in Fiscal Year 2011*, *supra* note 31.

[41] Of the 7,013 civil cases filed in 2012, 4,138 were foreclosure cases—59% of the docket. Foreclosure cases are now the largest component of the civil docket. *See* THE JUDICIARY: STATE OF HAWAII, 2012 JUDICIARY ANNUAL REPORT STATISTICAL SUPPLEMENT, table 7 (2012), *available at* http://www.courts.state.hi.us/docs/news_and_reports_docs/annual_reports/Jud_Statistical_Sup_2012.pdf.

plus years from 1960 until 2002.[42]We reviewed Galanter's research, supplemented it by finding the federal trial rate through 2011, and then compared the Hawaii and federal trial rates.

The trial[43]rates for Hawaii and the federal courts from 1962 until 2011 are shown in Chart 6 below. The comparisons between the Hawaii and federal court patterns are even more similar for trial rates than they were for total filings. Both court systems started out with trial rates of over 10% and then saw those rates continuously decrease to where the trial rates in both systems now hover near 2%.

Hawaii courts obviously had their own "vanishing trials" experience. Chart 6 shows that after averaging a 20% trial rate from 1966-1968, the trial rate in Hawaii decreased, and since 1997, the trial rate has been less than 2% each year. Although not shown in Chart 6, the jury trial rate in Hawaii has been 1% or less for every year since 1984. Although people have asked, "Where have all the trials gone?,"[44] we do not attempt to answer that question in this article.

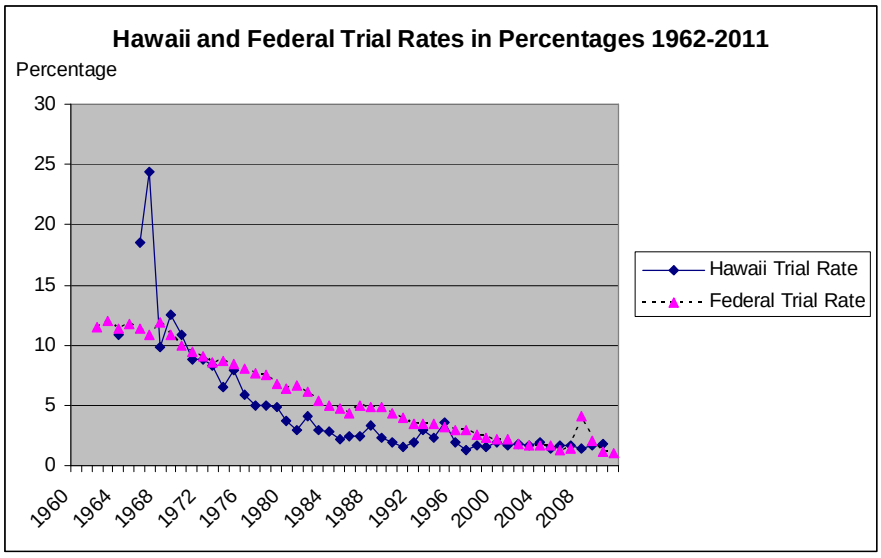

Chart 6

Discerning Settlements from Dispositions

Settlements were the focus of our study. Although "settlement" might sound like a clear, simple concept, there is no judicial definition uniformly used by the courts for what is a "settlement."[45]Those

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[42] Since 1984, total federal civil filings have remained relatively constant, but the federal trial rate has continued to steadily decrease from 5% to 2%.

[43] Hawaii and the federal courts use slightly different measures for determining what is a "trial." The federal courts include every case that begins trial as a "trial." Hawaii courts, on the other hand, only count completed trials as "trials" and have a separate category in its statistics for trials not completed.

[44]*See* Hadfield, *supra* note 1.

[45] For the purpose of this study, we used the definition of settlement as defined in the Dictionary of Conflict

who previously studied settlements used varying definitions when they computed their settlement rates.[46]Settlement rates may differ because of which types of dispositions are counted as a settlement, and which cases are counted as having terminated.[47]For example, if default judgments and abandonment of claims (giving up and not proceeding with the lawsuit for any reason) are counted as settlements, that would increase the settlement rate (especially for contract cases, which have many more default judgments and abandonments than do tort cases).[48] Furthermore, previous studies have shown that settlement rates vary by the type of case[49]—in fact, some researchers talk of a "hierarchy" of settlement rates.[50] In our study, we considered a case to be settled when it was terminated.

No matter what definition of settlement is used, the most difficult determination is deciding, based upon the court records, whether a case settled or not. The problem is that docket sheets do not track settlements. Instead, docket sheets list the title of the documents filed in court. To determine whether a case settled, [51] we had to draw inferences based on the titles of the documents filed in each case.[52]Although there may be many documents filed in a case, usually only one document represents the final termination of a lawsuit.[53]

Resolution—an "agreement or arrangement ending a dispute." *See* DOUGLAS YARN, DICTIONARY OF CONFLICT RESOLUTION 392 (1999). This definition of settlement requires that the parties accept some solution and refrain from further disputing the matter. *See also* Eisenberg & Lanvers, *supra* note 1, at 114. Similarly, there is no uniformly used definition for what is a "court." In fact, there are so many definitions of what is a "court" that the National Center for State Courts, has to itself define what is a court in order to say how many courts there are in the United States. *See* NAT'L CENT. FOR STATE COURTS, A NATIONAL PERSPECTIVE FROM THE COURT STATISTICS PROJECT: EXAMINING THE WORK OF STATE COURTS, 2006 9 (2007).

[46] *See* Herbert M. Kritzer, *Adjudication to Settlement: Shading in the Gray*, 70 JUDICATURE 161, 162–64 (1986).*See also* Clermont, *supra* note 1, at 1053–56; Eisenberg &Lanvers, *supra* note 1;Galanter& Cahill, *supra* note 1, at 1339–40.

[47] *See* Eisenberg & Lanvers, *supra* note 1, at 116.

[48] *See* Golann, *supra* note 1 (a study of over 3,600 Massachusetts medical malpractice claims from 2006 to 2010 that showed that in 46.4% of malpractice cases and 58.6% of claims against individual defendants (there were 1.72 defendants per claim), the plaintiffs eventually dropped the case or claim without a decision or recovery). *See also* Baar, *supra* note 1. Based upon a study of civil cases in Toronto, Canada from 1973 to 1994, the study found that settlement is only one of three major outcomes other than trial. The other major non-trial outcomes are default and abandonment. Both default and abandonment (also called "no disposition") each occurred more often than settlement.

[49] *See* CAROL J. DEFRANCES& STEVEN K. SMITH, CONTRACT CASES IN LARGE COUNTIES: CIVIL JUSTICE SURVEY OF STATE COURTS 8 (1996), *available at* http://www.bjs.gov/content/pub/pdf/ccilc.pdf (showing a 49% settlement rate for contract cases and a 73% settlement rate for tort cases). Incidentally, this study of state courts of general jurisdiction in the Nation's 75 largest counties included Honolulu. The City and County of Honolulu, which includes the entire island of Oahu, was the venue for over 80% of the cases in our studies. Urban Honolulu has 25% of Hawaii's population; the City and County of Honolulu (the whole island of Oahu) has 70% of Hawaii's population. *Economic Development & Tourism*, HAWAII DEPARTMENT OF BUSINESS, http://hawaii.gov/dbedt/info/census/population-estimate (last visited Sept. 5, 2012).

[50] Tort cases tend to have the highest settlement rate, followed by contract cases; in federal court, the settlement rates for employment discrimination cases and constitutional torts are lower. *See* Eisenberg & Lanvers, *supra* note 1, at 135.

[51] *Id.* at 127(lamenting that most "settlements are based on inferences without express information that a case settled").

[52] *Id.* ("Most of the categories coded as settlements are based on inferences without express information that a case settled.").

[53] Of course if there were multiple parties on either side of the case, the case may have terminated at different times for different parties. This is especially true if the case did not terminate with a trial verdict.

Termination of Hawaii Cases

When looking at the docket sheets for each case, we found nine methods of termination frequently listed on the docket sheets—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)[54] award accepted, and "other." These docket entries were what the lawyers titled each pleading or motion that was filed in a case. To draw what we think are logical inferences about which terminations were settlements, we reviewed the various types of terminations available, conferred with local practitioners and court personnel, and then concluded that "stipulation for dismissal,"[55] "notice of dismissal with prejudice,"[56] "stipulated judgment,"[57] and "acceptance of a Court-Annexed Arbitration Program (CAAP) award"[58] were most likely settlements.[59]

Based on our discussions and experience, we decided that "dismissal by motion,"[60] "default judgment,"[61] and "dismissal by court for inaction,"[62] were most likely not settlements. The first two

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[54] 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* John Barkai& Gene Kassebaum, *Pushing the Limits on Court-Annexed Arbitration: The Hawaii Experience*, 14 JUST. SYS. J. 133 (1991), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1435575; 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), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1435560; 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), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1435561.

[55] 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. Haw. R. Civ. P. 41.1.

[56] 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. *Id*.

[57] "Stipulated judgments" are agreements drafted by the parties and submitted to the court for a judge to turn into a judgment. It is an agreement between the parties on what terms the case will terminate. Although cases terminated by "stipulated judgment" have the effect of court adjudication, they are in fact settlements.

[58] "Acceptance of a CAAP award" means that the parties accept the arbitrator's non-binding award and do not request a trial de novo.

[59] The Bureau of Justice Statistics, part of the U.S. Department of Justice, also uses estimates based upon docket sheets to determine settlement rates. They call their statistic an "agreed settlement" or "agreed judgment." *See* DEFRANCES& SMITH, *supra* note 49.

[60] "Dismissal by motion" includes a variety of different 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 the court. These types of terminations do not generally indicate settlements.

[61] 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 we did not consider it a settlement. Haw. R. Civ. P. 55.

[62] A "dismissal by court for inaction" under Hawaii Rule of Civil Procedure 41 and Hawaii Rule of the Circuit Courts

require a determination on the merits of the case. A dismissal for inaction means that, for whatever reason, the plaintiff did not comply with court-imposed deadlines to keep the case moving forward. A "notice of dismissal without prejudice"[63] could be either a settlement or a non-settlement. To be conservative, a "dismissal for inaction" and a "notice of dismissal without prejudice" were classified as non-settlements.

After reviewing the docket-sheet data and discussing the data with local practitioners, we concluded several things about these modes of termination. First, trying to determine whether cases settled from the docket sheets will always be problematic.[64] Nonetheless, the docket entries provide useful information. Second, the types of terminations vary among the various types of cases. In other words, tort cases show a different pattern of terminations than do contracts, foreclosures, and "other" cases. Finally, if courts and policymakers have a serious interest in promoting settlement, we encourage them to change some record keeping practices and track dispositions and settlements more explicitly.

The termination data for the 2007 and 1996 studies are presented in Table 4A and 4B below. In those tables, we arranged the data to show (1) all the dispositions that we determined represent settlements, (2) those dispositions which represent non-settled/non-tried cases, and (3) trial verdicts.

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29 can be entered against a plaintiff who fails to take any action after filing a complaint. Haw. R. Civ. P. 41.1.

[63] 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 as to why the notice was filed. *Id.*

[64] More than 25 years ago, Herbert Kritzer reached this same conclusion about docket sheet analysis with the Wisconsin Civil Litigation Research Project. Kritzer, *supra* note 46, at 163. The Bureau of Justice Statistics essentially compiles their statistics the same way we did—staff review each case file and code the information to determine disposition type. *See* DEFRANCES& SMITH, *supra* note 49.

Table 4A 2007 Study	Percent of Cases Terminated			
Title of Filed Document	All cases (n=449)	Tort (n=217)	Contract (n=86)	Other (n=146)
Stipulation for Dismissal	60%	76%	47%	47%
Notice of Dismissal with Prejudice	4%	5%	2%	3%
CAAP Award Accepted	3%	6%	0%	0%
Stipulated Judgment	3%	1%	6%	5%
Sub-total of Settled Cases	70%	88%	54%	55%
Dismissal by Motion	10%	4%	14%	16%
Notice of Dismissal Without Prejudice	4%	2%	5%	5%
Default Judgment	6%	1%	15%	10%
Dismissal by Court for Inaction	7%	4%	10%	9%
Sub-total of non-settled, non-tried cases	27%	11%	44%	40%
Trial Verdict	3%	1%	1%	5%
Total (rounded to 100%)	100%	100%	100%	100%

Table 4B 1996 Study	Percent of Cases Terminated				
Title of Filed Document	All cases (n=3158)	Foreclosure (n=991)	Tort (n=1146)	Contract (n=478)	Other (n=510)
Stipulation for Dismissal	44%	17%	71%	34%	42%
Notice of Dismissal with Prejudice	4%	1%	7%	5%	2%
CAAP Award Accepted	2%	0%	5%	0%	0%
Stipulated Judgment	2%	1%	0%	6%	7%
Sub-total of Settled Cases	52%	20%	84%	45%	51%
Dismissal by Motion	17%	44%	2%	5%	9%
Notice of Dismissal Without Prejudice	12%	28%	3%	9%	6%
Default Judgment	8%	3%	4%	24%	12%
Dismissal by Court for Inaction	5%	4%	3%	7%	8%
Other[65]	4%	1%	3%	7%	11%
Sub-total of non-settled, non-tried cases	46%	80%	15%	52%	46%
Trial Verdict	3%	1%	1%	5%	2%
Total (rounded to 100%)	100%	100%	100%	100%	100%

Percentage of Cases That Settle and Those That Do Not

Using our classifications of modes of terminations to determine settlements, we concluded and report in Table 5 below, that in 2007,88% of tort cases, 54% of contract cases, 55% of "other," and 70% of "all" cases settled. Our findings are in line with data from the 1992 study by the Bureau of Justice Statistics research which found a 73% settlement rate for torts and a 49% settlement rate for contract cases, [65 and] in line with settlement rates reported by other researchers.[66]

[65] The "other" was our "catch all" for documents titled with some case caption other than the ones we have listed. To be conservative, we classified "other" as non-settlements.

[66] *See* DEFRANCES& SMITH, *supra* note 49; *see supra* note 1.

Table 5	2007 Percent of Cases "Settled"	1996 Percent of Cases "Settled"
Tort	88% (n=217)	84% (n=1,146)
Contract	54% (n=86)	45% (n=478)
Foreclosure	47% (n=23)	20% (n=991)
"Other" cases without foreclosure	55% (n=146)	51% (n=510)
All Cases	70% (n=449)	52% (n=3,158)

In 2007, the settlement rate had increased slightly for tort, contract, and "other" cases compared to our study in 1996, but increased more significantly for foreclosure (27%) and "all" (18%) cases.[67]Because Hawaii (and most other jurisdictions we know of) does not track settlement rates, except for our two data points of 2007 and 1996, we have no indication whether settlement rates fluctuate over time like filings do.

It is clear from our data that 95%or more of cases do not result in a settlement.[68]Although torts come close to a 90% settlement rate, for most other types of civil cases the settlement rate was only near 50%.

So what happens to the cases that do not end with a trial and do not settle? As seen in Table 5A below,11% of tort cases, 44% of contract cases, 40% of "other" cases, and 27% of "all" cases in our 2007 study were neither tried nor settled, which means they resolved by different means. This is not surprising because the data in Table 4A and 4B show that a higher percentage of contract and "other" cases terminated by motions (for instance, motions for summary judgment) and default judgments compared to tort cases. For example, in 2007, 14% of contract cases and 16% of "other" cases were dismissed by motion, compared to only 4% of tort cases. Likewise, 15% of contract cases and 10% of "other" cases terminated with default judgments compared to only 1% of tort cases.[69] Our findings are similar to findings from other researches such as the Bureau of Justice Statistics.[70]

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[67] A major difference between the dockets in 2007 and 1996 was the percentage of foreclosure cases. Foreclosure cases were a small part of the 2007 study (5%) and had a settlement rate of 47%. In our 1996 study, foreclosure cases were a much larger percentage of the docket (31%) and had a settlement rate of only 20%. We believe that the general economic climate may have accounted for this difference in settlement rates for foreclosure cases. In difficult economic times, many foreclosure case filings end in a judgment of foreclosure, which accounts for a low settlement rate. In better economic times, such as during the time of the 2007 study, more home buyers were likely to be able to negotiate a settlement that might prevent a foreclosure judgment. Because foreclosure cases had a very low settlement rate and comprised almost one-third of the docket filings in 1996, having a higher settlement rate and being only 5% of the docket in 2007, greatly increased the settlement rate for "all" cases from 52% in 1996 to 70% in 2007.

[68] *See supra* note 1.

[69] In 1996, a more difficult economic climate than 2007, 24% of contract cases terminated by default judgment.

[70]The Bureau of Justice Statistics found, for tort and contract cases in the Nation's 75 largest counties, that 26% of contract cases but only 3% of tort cases terminated by default judgment. *See* DEFRANCES & SMITH, *supra* note 49, at 8.

Table 5A 2007	Percent of Cases "Settled"	Percent of Cases Tried[71]	Percent of Cases Not Tried and Not Settled
Tort (n=217)	88%	1%	11%
Contract (n=86)	54%	1%	44%
Other (n=146)	55%	5%	40%
All Cases (n=449)	70%	3%	27%

Looking back at Table 4A, we see that termination by "stipulation for dismissal" (which we believe were the bulk of settlements) was more than twice as common as any other mode of termination.[72]The second most common method of case disposition was "dismissal by motion," which was 10% of all cases terminated. Dismissal by motion is clearly adjudication and not a settlement. Disposition by motion was most commonly found in foreclosure cases (30%), but was also commonly found in contract cases (14%) and "other cases" (16%).Dismissal by motion was much less common in tort cases (4%).

"Default judgment" is especially worth noting because, although cases disposed of through "default judgment" represented only 6% of all the cases tracked, 15% of contract cases and 10% of "other" cases were disposed of in this way.[73] Assuming that default judgments indicate a lack of settlement, this termination method has a major impact on the settlement rate for contract and "other" cases.

Judicial Assistance and Settlement Conferences

Two survey questions asked about the use and effectiveness of judicial assistance and settlement conferences. Lawyers whose cases settled were asked if the settlement was reached with or without judicial assistance.[74]Often having a conference scheduled with a judge might increase the possibility of settlement, inducing lawyers to communicate with each other because of the impending conference.

As Table 6 indicates below, about one-fifth (21%) of lawyers indicated that their cases were settled with some judicial assistance, and slightly more than three-quarters (77%) of lawyers whose cases settled indicated that they reached a settlement without judicial assistance. Table 6 also shows that the 1996 data[75]on judicial assistance was almost identical with the 2007 data. In both studies, more than three-quarters of the cases settled without judicial assistance.

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[71] The percent of cases tried is from the Hawaii Judiciary's Annual Statistical Report.

[72] Three-quarters (76%) of tort cases and almost one-half (47%) of both contract and "other" cases were terminated by stipulations for dismissal.

[73] *See*Ostrom et al., *supra* note 32. The National Center for State Courts reported in a 7-state study in 2002 that 35% of terminated contract cases ended in a default.

[74] The term "judicial assistance" was not defined in the survey and therefore the interpretation of whether there was "judicial assistance "in a case probably varied between responding lawyers. "Judicial assistance" could be interpreted as events other than settlement conferences.

[75] In the 1996 study, a higher percentage of contract cases (32%) settled with "judicial assistance" than did non-motor vehicle torts (24%) or motor vehicle torts (18%). However, we were not able to calculate the frequency of judicial assistance for settled cases by type of case for the 2007 study because of the manner in which the data was collected.

Table 6	2007 Settled With or Without Judicial Assistance	1996 Settled With or Without Judicial Assistance
Settled	n=43	n=341
With Judicial Assistance	21%	23%
Without Judicial Assistance	77%	75%
No Indication	2%	2%

The survey asked about the total number of appearances before a judge, such as for motions, pretrial conferences, and settlement conferences. As can be seen from Table 7, in approximately one-half (49%) of the cases, lawyers did not appear before a judge. The data was consistent between the 1996 and 2007 studies.

Table 7	How Many Appearances Before a Judge?	
Number of Appearances	2007 n=51	1996 n=389
0	49%	54%
1	22%	16%
2	10%	8%
3	6%	9%
4	4%	5%
>4	10%	8%

The survey specifically inquired about the total number of settlement conferences before a judge. As can be seen from Table 8, there were no settlement conferences in almost three-quarters (71%) of the cases. Again, the data was consistent between the 1996 and 2007 studies.

Table 8	How Many Settlement Conferences?	
Number of Conferences	2007 n=49	1996 n=384
0	71%	74%
1	12%	10%
2	4%	11%
3	6%	3%
4	4%	1%
>4	0%	1%

The lawyers were asked whether they wanted more judicial involvement in the settlement process. In 2007, the vast[76]majority of attorneys did not want more judicial involvement in the settlement process. Again, the responses in 1996 and 2007 were consistent.[77]

Table 9	Preferences for Judicial Involvement in the Settlement Process (in percent)	
	2007 n=50	1996 n=369
More judicial involvement	8%	10%
Less judicial involvement	0%	1%
No change, settlement process is appropriate	92%	86%
Other	0%	3%

Satisfaction with Settlement

The survey asked lawyers to indicate their satisfaction levels with the terms of the settlements and the settlement processes. We asked about satisfaction in two different ways because we thought it was possible that lawyers might like the settlement terms but that they might not like the settlement processor, in the alternative, might like the process but not like the terms of the settlement.

The lawyers did not seem to distinguish the terms of settlement from the process of settlement. If they liked one, they liked the other, and largely they liked both for settlements they negotiated. As seen in Table 10, in the 2007 study, 92% of lawyers were either "very satisfied" or at least "satisfied," with both their settlement terms and settlement processes. In fact, compared to the 1996 data, the percentage of lawyers who were "very satisfied" with both the settlement terms and the settlement process had increased in the 2007 survey while the percentage of dissatisfied lawyers essentially remained the same. In fact, this finding may contradict the old adage that in a good settlement both parties should be somewhat dissatisfied.

Table 10	2007 Satisfaction Levels With Settlement			
	Very Satisfied	Satisfied	Dissatisfied	Very Dissatisfied

[76] We use "vast," as used in the phrase "vast majority," to mean statistics of 80% or more.

[77] We also used an open-ended survey question asking what could have been done to settle the case earlier. In response, 58% of lawyers indicated there was nothing that would have made the case settle earlier, 30% offered various ideas, and 12% of the lawyers surveyed did not answer the question. Suggestions included judge's assistance (but only one such answer), opponent being more reasonable, a requirement that parties and insurers be present, having local counsel, earlier communication, and mandatory mediation.

Settlement Terms (n=44)	39%	53%	5%	2%
Settlement Process (n=38)	42%	50%	8%	0%
	1996 Satisfaction Levels With Settlement			
	Very Satisfied	Satisfied	Dissatisfied	Very Dissatisfied
Settlement Terms (n=359)	26%	66%	4%	3%
Settlement Process (n=338)	23%	69%	6%	3%

Factors in Settlement

Because we wanted to learn as much as possible about the factors affecting settlement, the longest and most complex 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.

The survey offered a list of twelve specific events that might impact settlement and offered one additional choice listed as "other." The lawyers were asked to check all of the listed events that occurred and then to rank which of the various events had the greatest impact on settlement.

The twelve events were grouped as follows: (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, e-mail [78] 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, court-annexed arbitration program (CAAP) decision, binding arbitration, and mediation.

Data was analyzed by the following:(1) how often certain settlement events occurred;(2) how often various settlement events were ranked among the top three events influencing settlement;(3) what settlement event was ranked as the most important in each case; and (4) how frequently a settlement event was ranked as the most important settlement event compared to how often that event was ranked in the top three settlement events.

Table 11A below presents a summary of the factors in settlement for the 2007 study and Table 11B presents a similar summary for the 1996 study for comparison. Later tables will examine the data in greater detail and compare the two studies. Please note that the sample size for the 2007 study was quite limited—58 surveys indicated that events occurred and 47 surveys had a ranking for those events. The sample size for the 1996 study was much larger—380 surveys indicated events occurred and 230 surveys ranked those events.

The most frequently occurring events affecting settlement were negotiations that took place directly between counsel without the use of a third-party—a judge, mediator, or arbitrator. Third-party ADR

[78] In the 1996 study we did not ask about e-mail; we only asked about fax.

processes occurred much less frequently than did direct negotiations, but when these third-party processes did occur, they had a great impact on settlement.

Table 11A – Factors in Settlement	2007 data n=58 surveys indicated the events occurred; 47 surveys ranked the events			
	% Occurred	% Ranked 1-3	% Ranked #1	Impact % ranked # 1 divided by #of times ranked at all
Telephone negotiation between lawyers	72%	72%	26%	35%
Face-to-face negotiation between lawyers	57%	49%	17%	35%
Letter/fax negotiation between lawyers	43%	32%	6%	20%
Court-annexed arbitration (CAAP)	33%	32%	13%	40%
E-mail negotiation between lawyers	31%	19%	4%	22%
Face-to-face negotiation with lawyers and parties	24%	17%	11%	63%
Judicial settlement conference	17%	17%	13%	75%
Communication with insurance agent	14%	11%	4%	40%
Motion for summary judgment	14%	11%	9%	80%
Pretrial conference	14%	6%	6%	100%
Binding arbitration	7%	6%	4%	67%
Mediation	2%	2%	2%	100%
Other	7%	9%	9%	100%

Face-to-face negotiation between lawyers	49%	40%	14%	34%
Communication with insurance agent	27%	24%	12%	51%
Court-annexed arbitration (CAAP)	24%	21%	15%	69%
E-mail negotiation between lawyers	n/a	n/a	n/a	n/a
Judicial settlement conference	22%	20%	12%	60%

Face-to-face negotiation with lawyers and parties	17%	17%	8%	50%
Motion for summary judgment	14%	10%	5%	55%
Pretrial conference	10%	7%	1%	13%
Mediation	4%	3%	2%	67%
Binding arbitration	1%	1%	1%	100%

The Most Frequently Occurring Settlement Events

Chart 7 shows the frequency of the settlement events in 2007.

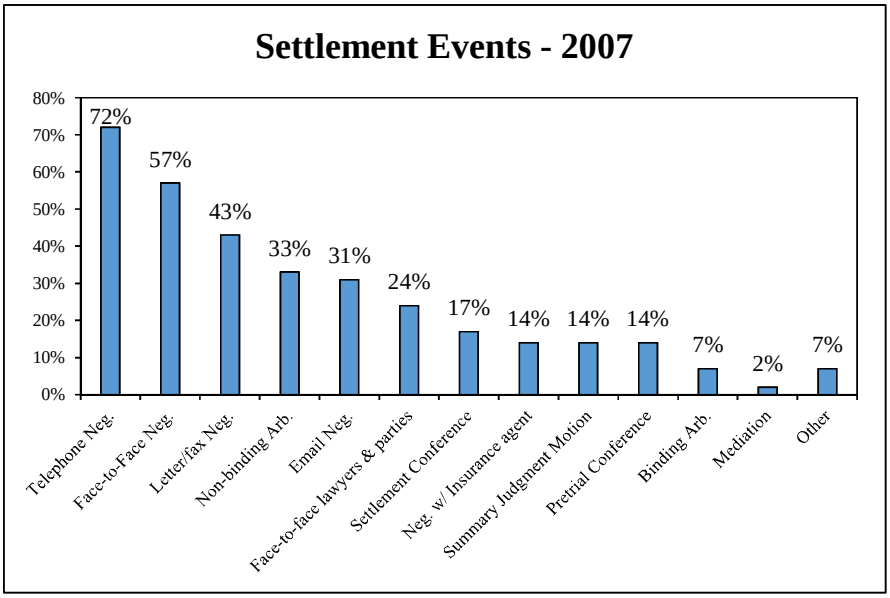

Chart 7

Table 12 below reports on how often various settlement events occurred and compares the data between our two studies. The settlement events are listed in the order of the most frequently occurring in the 2007 study.

As can be seen by Chart 7 and Table 12, three types of negotiation were the most frequently occurring settlement events in the 2007 study. Telephone negotiations between the lawyers representing opposing parties occurred in almost three-quarters (72%) of the cases, and were thus by far the most frequently occurring of all the settlement events. Two other types of negotiations took place in about one-half of all cases reporting settlement events: face-to-face negotiations between lawyers (57%) and letter/fax negotiations between lawyers (43%).

A second group of settlement events took place in about one-third of the cases: non-binding arbitration hearings[79] (33%), e-mail negotiation between lawyers (31%), and face-to-face negotiations with lawyers and parties (24%).

Table 12	Factors in Settlement Occurrences	
	% Occurred in 2007 n=58	% Occurred in 1996 n=380
Telephone negotiation between lawyers	72%	80%
Face-to-face negotiation between lawyers	57%	49%

[79] In Hawaii, these non-binding arbitration hearings are conducted in the Hawaii Court-Annexed Arbitration Program, or CAAP. CAAP is used almost exclusively for tort cases.

Letter/fax negotiation between lawyers	43%	57%
Court-annexed arbitration (CAAP)	33%	24%
E-mail negotiation between lawyers	31%	(not asked in 1996)
Face-to-face negotiation with lawyers and parties	24%	17%
Judicial settlement conference	17%	22%
Communication with insurance agent	14%	27%
Motion for summary judgment	14%	14%
Pretrial conference	14%	10%
Binding arbitration	7%	1%
Mediation	2%	4%
Other	7%	n/a

Other settlement events occurred less frequently: judicial settlement conferences (17%), communications with insurance agents (14%), motions for summary judgment (14%), and pretrial conferences (14%).The three primary ways that judges engage in or influence settlement activities—settlement conferences, pretrial conferences, and motions for summary judgment—each occurred in only 17% or less of cases. Traditional ADR activities occurred very infrequently[80]—binding arbitration (7%) and mediation (2%). "Other" activities occurred in 7% of the cases.

The pattern of occurrences of settlement events in the 2007 study is quite similar to the 1996 study. Telephone negotiations between the lawyers were the most prevalent settlement event in both studies. Except for court-annexed arbitration proceedings—which ranked fourth in our 2007 study (33%) and fifth in the 1996 study (24%)—various types of negotiations and communications between the lawyers occurred much more frequently than any activities where judges were involved (motions for summary judgments, judicial settlement conferences, and pretrial conferences). The classic ADR processes of arbitration and mediation are the least frequently occurring in both studies having only single digit occurrences.

Probably the most significant difference between the two data sets is that e-mail negotiations took place in 31% of the 2007 study (ranking fifth in occurrences), and were not even asked about in the 1996 study.

Ranking the Impact of Settlement Events

[80] This infrequent occurrence of mediation is contrary to anecdotal information about the use of mediation that the authors hear when talking with Hawaii lawyers and judges.

Table 13below shows that when lawyers were asked to rank the three events having the greatest impact on settlement in their case, the order of the events were exactly the same as the order of the events when the lawyers just indicated the occurrence of the events. Lawyers obviously most frequently do what they think has the greatest impact on settlement. Telephone negotiations remained as the top ranked event and the ADR processes of mediation and binding arbitration were again at the bottom of the list. Again, there was a remarkable similarity between the 1996 and 2007 data sets (with the exception of e-mail correspondence).

Table 13 – Factors in Settlement	Ranking the Impact of Settlement Events	
	2007 % Ranked 1-3	1996 % Ranked 1-3
Telephone negotiation between lawyers	72%	76%
Face-to-face negotiation between lawyers	49%	51%
Letter/fax negotiation between lawyers	32%	40%
Court-annexed arbitration (CAAP)	32%	24%
E-mail negotiation between lawyers	19%	21%
Face-to-face negotiation with lawyers and parties	17%	n/a
Judicial settlement conference	17%	20%
Communication with insurance agent	11%	17%
Motion for summary judgment	11%	10%
Pretrial conference	6%	7%
Binding arbitration	6%	3%
Mediation	2%	1%
Other	9%	--

The Most Important Settlement Event – Ranked #1

Table 14 below shows that a slightly different pattern emerged when we analyzed which single settlement event was ranked as the number 1 event in the settlement of the cases, a measurement we called “impact.” Obviously, the range of percentages for the factors narrows significantly because only one factor can be ranked as the most important event. Telephone negotiations and face-to-face negotiations between lawyers remain the two factors most often reported as the most important settlement factor. In 2007, telephone negotiations were ranked as the most important settlement event in 26% of the cases, and therefore had twice as much impact as its closest competitors (face-to-face negotiation between lawyers, judicial settlement conference, court-annexed arbitration, and face-to-face negotiation with

lawyers and parties).[81] A face-to-face negotiation between the parties was the second factor on all settlement measurements.

Table 14	Factors in Settlement The Most Important Settlement Events % of Time Ranked # 1	
	2007 % Ranked #1 n=47	1996 % Ranked #1 n=230
Telephone negotiation between lawyers	26%	32%
Face-to-face negotiation between lawyers	17%	14%
Judicial settlement conference	13%	12%
Court-annexed arbitration (CAAP)	13%	15%
Face-to-face negotiation with lawyers and parties	11%	8%
Other	9%	n/a
Motion for summary judgment	9%	5%
Pretrial conference	6%	1%
Letter/fax negotiation between lawyers	6%	7%
E-mail negotiation between lawyers	4%	n/a
Communication with insurance agent	4%	12%
Binding arbitration	4%	1%
Mediation	2%	2%

Mediation and binding arbitration are at the bottom of the list. In contrast, court-annexed arbitration had a slightly greater impact because this non-binding form of arbitration was available primarily in tort cases.[82]

It would appear that putting negotiation demands in writing, in any form, seems to not be used nearly as frequently as telephone negotiations. Letter/fax negotiations—the third most frequently occurring factor—and e-mail negotiations between lawyers—the fifth most frequently occurring factor—were only ranked as the top factor in settlement in 6% and 4% of the cases, respectively.

The Impact Percentage – How Often Ranked #1 When Ranked At All

Yet another way to look at the events is not to just see what events are ranked as #1, but to analyze how often an event is ranked #1 compared to the number of times that event was ranked at all. Some settlement events do not happen in many cases, but when they do occur they have a large impact.

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[81] For example, telephone negotiations occurred most often (72% of the cases), was most often ranked 1, 2, or 3 (72% of the time), and was the factor most often ranked as the # 1 factor in settlement (26% of the time).

[82] Court-annexed arbitration was ranked first in 20% of the tort cases.

Table 15	Factors in Settlement – Impact Percentage	
	2007 Impact % ranked # 1 divided by % ranked 1-3 n=47	1996 Impact % ranked # 1 divided by % ranked 1-3 n=230
Pretrial conference	100%	13%
Mediation	100%	67%
Other	100%	n/a
Motion for summary judgment	80%	55%
Judicial settlement conference	75%	60%
Binding arbitration	67%	100%
Face-to-face negotiation with lawyers and parties	63%	50%
Court-annexed arbitration (CAAP)	40%	69%
Communication with insurance agent	40%	51%
Telephone negotiation between lawyers	35%	42%
Face-to-face negotiation between lawyers	35%	34%
E-mail negotiation between lawyers	22%	n/a
Letter/fax negotiation between lawyers	20%	14%

Using this "Impact Percentage" measurement, mediation and pretrial conferences have an impact percentage of 100%—meaning that whenever they were ranked as one of the settlement factors, they were always ranked # 1. By this measurement, motions for summary judgment had an impact percentage of 80%, judicial settlement conferences 75%, and binding arbitration 67%. Furthermore, by this measurement, the two most frequently occurring factors of settlement-telephone negotiations and face-to-face negotiations between the lawyers only have an impact percentage of 35%.

Use of ADR Processes

In 41% of the cases, some form of ADR process (settlement conference, non-binding arbitration (CAAP), binding arbitration, or mediation) was used. Non-binding arbitration for tort cases was the most commonly used ADR process, and was used in 33% of the cases, which was 66% of the cases where ADR was used.

Although the individual ADR proceedings rank low in occurrences, they rank very high when their impact percentage is considered. For example, binding arbitration and mediation occurred in only 7% and 2% of the cases respectively, and meeting with the judge in a judicial settlement conference or a pretrial conference occurred only in 17% and 14% of the cases respectively.[83]However, when looking at the

[83] Although pretrial conferences had a 100% impact factor percentage in the 2007 study, it was only 13% in the 1996 study. Overall, however, the impact factor percentage numbers are more similar.

impact of those proceedings, an entirely different picture emerges. In 2007, judicial settlement conferences were ranked highest 75% of the time they were ranked at all (although this was only 6 of 8 cases) and pretrial conferences, mediation, and binding arbitration were ranked highest every time (100% of the time) they were ranked in the top three settlement events. In other words, ADR had a great impact when it was used.

Multiple Settlement Events

Both the 1996 and 2007 data sets convincingly show that in the vast majority (84%) of legal cases where there is settlement activity, there are multiple negotiation and settlement events taking place. In fact, having more than one settlement event in a case is the rule, not the exception. Furthermore, Table 16 shows more settlement events in 2007—mean of 3.3 settlement events per case—whereas the 1996 study reported a mean of 3.0 settlement events per case.

Survey data also showed that in 2007, more cases had more settlement events than the cases did in 1996. Table 16 below shows that in 2007 the vast majority (84%) of the cases reporting settlement events[84] had two or more settlement events, 58% reported three or more settlement events, 45% reported four settlement events, 27% reported five settlement events, 12% reported six settlement events, and a few cases had more than six settlement events. Merely 16% of the cases reported only one settlement event. In the 1996 study, 80% of the cases reported two or more settlement events, 39% reported three or more settlement events, and 15% reported four or more settlement events.

Table 16		Settlement Events in Cases Reporting Settlement Events				
2007 n=55				1996 n=245		
Mean number of settlement events=3.3				Mean number of Settlement events=3.0		
Number of reported settlement events in a case	Percent of cases with this number of settlement events	Cumulative percent of settlement events	Percent of cases with this many or more settlement events	Percent of cases with this number of settlement events	Cumulative percent of settlement events	Percent of cases with this many or more settlement events
1	16%	16%	100%	20%	20%	100%
2	27%	43%	84%	41%	61%	80%
3	13%	56%	58%	24%	85%	39%
4	18%	74%	45%	13%	98%	15%
5	15%	89%	27%	2%	100%	2%
6	4%	93%	12%	n/a		
7	4%	97%	8%	n/a		
8	4%	100%	4%	n/a		

Presented in a slightly different format, the data on settlement events in 2007 appears as Chart 8 below.

[84] For this data, we only looked at cases that both settled and reported settlement events. Some surveys did not report any settlement events and those cases are not included in these calculations.

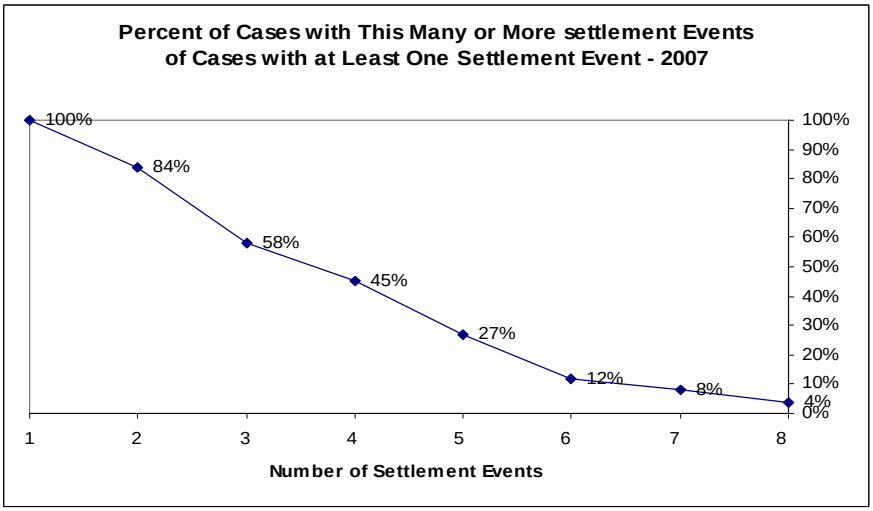

Chart 8

Teaching and Research Implications

Our findings about telephone negotiations and multiple methods of negotiation could be very important for negotiation teaching and training, as well as for ADR research. Most law school negotiation classes and other negotiation training sessions focus almost exclusively on face-to-face negotiations. Although face-to-face negotiations occurred frequently in our dataset (57% of the time), they are not the most frequently used type of settlement negotiation in legal cases. Telephone negotiations between opposing attorneys occurred in 72% of the cases that reported settlement activity, making telephone negotiations the most frequently occurring settlement event. Furthermore, lawyers ranked telephone negotiations as the most important factor in settlements almost twice as often as any other settlement event (26% for telephone negotiations compared to 17% for face-to-face negotiation, 13% for both judicial settlement conferences and court-annexed arbitration).

These research findings about telephone negotiation have an obvious implication—more negotiation teaching, training, and research should focus on telephone negotiations and not assume that face-to-face negotiation is the exclusive, or even the primary method of legal negotiation. Our research shows that in law practice, lawyers negotiate over the phone more often than they negotiate face-to-face.

Negotiation teachers and researchers also should recognize that most legal cases use multiple methods of negotiation and settlement activity in a single case. To our knowledge, no one teaches about, or does research upon, the use of multiple means of negotiation in a single case. This topic is very open to theory creation, practice pointers, and research.

Disposition Time

Because one of the greatest criticisms of the civil justice system is delay, we examined how long cases were pending in court before they terminated. Although "clearance rates"[85]and disposition times are important issues for most court systems, courts seldom publish such statistics for the public.[86]Therefore, we calculated disposition times for the cases within our samples. Disposition times were calculated from the date the complaint was filed until the date a final judgment, order, or notice terminating the case was filed. Although it is hard to generalize about the disposition time data, a fair summary might be that about three-quarters of civil cases take one to two years to complete (assuming no appeals), but about one-quarter of cases will take two years or more to complete.

Disposition times for individual cases varied greatly—ranging from 35 days to 4,140 days (over 11 years). As Table 17 indicates below, in 2007, the average length of time "all" cases in our sample were open was 682 days (a little less than 2 years), and the median[87]length of time for all cases was 524 days (a little less than 18 months).[88] At first glance, the 2007 data seems to indicate a large increase in disposition times compared to 1996 when the average disposition time was only 433 days and the median disposition time was 308 days for "all" cases.

However, considering that foreclosure cases comprised 31% of the docket in 1996 and only 5% of the docket in 2007, looking at the mean or median disposition time for "all" cases might lead to a distorted perspective on disposition times. The much shorter disposition times for the large number of foreclosure cases in 1996 decreased the overall disposition time for "all" cases in 1996. Therefore, we thought it would be helpful to also compare the disposition times for contract and tort cases in the two studies. We found that in 2007, contract cases had an average disposition time of 678 days (the median was 509 days), and tort cases had an average disposition time of 682 days (the median was 539 days). Both contract and tort cases showed a 5 to 6 month increase in disposition time from 1996.

Another way courts look at disposition time is to look at the percentage of cases that terminate within one and within two years. As Table 18 shows, in 2007, approximately one-quarter of all cases terminated within 1 year, and almost three-quarters of all cases terminated within 2 years.

Table 17	2007 Disposition Times Of Civil Cases n=449		1996 Disposition Times Of Civil Cases n=3183	
	Average	Median	Average	Median
All Cases	682 days	524 days	433 days	308 days
Contract	678 days	509 days	504 days	360 days
Tort	682 days	539 days	540 days	445 days
Foreclosure	711 days	406 days	228 days	160 days

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[85] *See* THE NAT'L CTR. FOR STATE COURTS, COURTOOLS: CLEARANCE RATES 1 (2005). "Clearance rate" is the number of terminated cases as a percentage of the number of cases filed. It is used as a measure of whether a court is keeping up with its incoming caseload.

[86] California publishes clearance rates for its courts. *See* JUDICIAL COUNCIL OF CALIFORNIA, 2011 COURT STATISTIC REPORTS, STATEWIDE CASELOAD TRENDS, 2000-2001 THROUGH 2009-2010 3 (Christine Miklas & Christopher Woodby eds., 2011), *available at*http://www.courts.ca.gov/documents/2011CourtStatisticsReport.pdf.

[87] The median is the mid-point between the highest and lowest values in a set.

[88] At the extreme end of the range, nine cases were pending for more than 6 years.

Other[89]	679 days	508 days	516 days	403 days

Table 18	Percent of Cases Terminating Within One Year (n=449)	Percent of Cases Terminating Within Two Years (n=449)	Percent of Cases Terminating Within One Year (n=3,182)	Percent of Cases Terminating Within Two Years (n=3,182)
	2007		1996	
Contract	36%	70%	50%	76%
Tort	17%	72%	39%	74%
Foreclosure	44%	78%	N/A	96%
Other[90]	30%	73%	N/A	74%
All Cases	26%	72%	56%	81%

Timing of settlement compared to a trial or hearing date

A specific concern about case disposition is how late in the litigation process a case settles. We believe that when a case settles later rather than earlier, usually the litigation costs are higher. Late settlements are sometimes described as cases that "settle on the courthouse steps"—meaning that they were settled just before the lawyers and parties walked into the courthouse on the day of trial.

To determine how many cases were "settling on the courthouse steps," our survey asked attorneys if the timing of their negotiated settlement was more than thirty days before hearings, less than thirty days before hearings, or on the day of the hearing or after the hearing began.[91]As Table 19 indicates below, over 50% of the lawyers indicated that negotiated settlements were made more than thirty days before their hearing or trial date. However, 22%of the cases settled within 30 days before the hearing or trial, and 22% settled on the day of the hearing or trial. Although there was a small data set (n=32) in 2007, the data showed an increasing tendency to settle closer to the trial or hearing date compared to the 1996 data. The most dramatic difference was a 20% increase in cases surveyed that settled on the day of the hearing or trial (the rate increased from 2% to 22%).

Table 19	Timing of Negotiated Settlements	
	2007 All Cases (n=32)	1996 All Cases (n=314)

[89] In this table, foreclosure cases are reported separate from "other" cases to make better comparisons with the 1996 data.

[90] In this table, foreclosure cases are reported separate from "other" cases to make better comparisons with the 1996 data.

[91] We had meant to ask if the case was settled before the trial date, but our question was not precise.

More than 30 days before the hearing	56%	81%
Less than 30 days before the hearing	22%	18%
On the day of hearings or after hearing began	22%	2%

The judicial statistics indicate that a significant percentage of cases starting a trial do not complete the trial and reach a verdict. We believe that most of the trials that are not completed result in settlements during the trial process. Hawaii judicial statistics about jury and non-jury trials report both the number of trials completed and "trials not completed." Combining the data for jury and non-jury trials shows that in 2007, 33% of the trials that began were not completed. In 1996, only 11% of the trials that began were not completed. The data from the two studies suggests a trend of increasing settlements during the trial process, but we have not analyzed the data for the other, non-study years.

Table 20below indicates that in 2007, tort cases that ended in Stipulation to Dismiss (settlements) were pending for about the same amount of time (556 days) as cases that end with trial verdicts (568 days).Interestingly, tort cases that settle with a Stipulation to Dismiss also were open about the same amount of time as cases that terminated as a result of CAAP awards that are accepted (551 days). In the 1996 study, in contrast, cases that terminated after a CAAP award terminated 100 days sooner (405 days) than cases that terminated with a Stipulation to Dismiss (504 days). Further, trial verdicts came much later in the process (835 days).

Table 20 Median Disposition Time in Days			
2007			
	Stipulation to Dismiss (interpreted as settlements)	Trial Verdict	Court annexed arbitration award accepted
Contract	658 (n=40)	736 (n=1)	N/A
Torts	556 (n=165)	568 (n=3)	551 (n=12)
1996			
	Stipulation to Dismiss	Trial Verdict	CAAP award accepted
Contract	630 (n=176)	799 (n=16)	N/A
Torts	504 (n=820)	835 (n=22)	405 (n=51)

Table 20 also indicates that the length of time contract cases were open did not change significantly in the years between the two studies. Between 1996 and 2007, the median disposition times for settled contact cases as indicated by a Stipulation to Dismiss was 658 days in 2007 as compared to 630 days in 1996—a difference of only 28 days. There was only 1 contract trial verdict during the 2007 study period; comparing that data with 1996 data did not seem relevant.

Pretrial Discovery

Because pretrial discovery is considered to be one of the major costs of litigation and also a factor in delay, we wanted to assess the amount of pretrial discovery in the cases we studied. Therefore, we

extracted from the docket sheets of our sample various indicators of pretrial discovery such as the number of notices of depositions (both oral and written), requests for interrogatories, and requests for production of documents.

In the 2007 study, 54% of "all" cases had some pretrial discovery requests, and there were usually multiple discovery requests in a single case. As Table 21indicates below, almost one-half (46%)[92] of all civil cases showed no recorded pretrial discovery. Among the cases with pretrial discovery, there was a great variance in pretrial discovery depending upon the type of case. Tort cases exhibited the most pretrial discovery, and foreclosure cases exhibited the least. Almost two-thirds of contract cases (65%), the vast majority of foreclosure cases (87%), and more than half of "other" cases (56%) had no court recorded discovery requests. However, only 21% of tort cases indicated no discovery. Tort cases are really in a class unto themselves.

Percent of Cases Without Pretrial Discovery

Table 21	2007 % Cases Showing No Record of Discovery (n=449)	1996 % Cases Showing No Record of Discovery (n=3183)
All civil cases	46%	66%
Contract	65%	71%
Tort	21%	33%
Foreclosure	87%	99 %
Other (excluding foreclosure cases)	56%	68%
Other if Foreclosures are included[93]	59%	n/a

[92] The percentage for "all civil" cases was adjusted to match the percentage of cases of each type in the court's annual report. Because our sample of the docket ended up including slightly different percentages of various types of cases than was found in the court records for the entire year, when computing the percentage for "all cases" we used, for example, the percentage of cases with no pretrial discovery from our sample of tort cases but we used the court's percentage of tort cases when we computed the percentage for "all cases."

[93] Foreclosure cases are combined with "other" cases for this statistic. For three reasons in this table we present both foreclosure cases separately and also combined with "Other" cases: (1) there were so many foreclosure cases in the 1996 and they had a great impact on the discovery statistics for "All Cases," (2) there were so few foreclosure cases in our 2007 data sample, and (3) because there was seldom any discovery in foreclosure cases (only 13% showed any pretrial discovery).

Chart 8 below graphically depicts the percentage of cases without pretrial discovery.

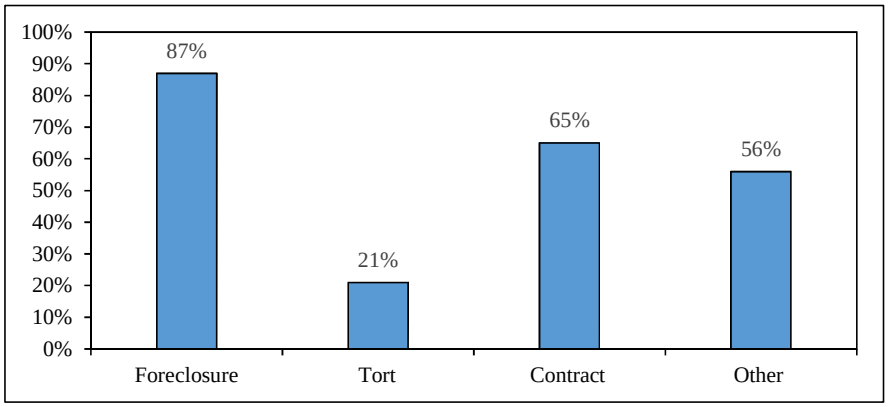

Chart 8

There was much more pretrial discovery in tort cases than in any other type of case. Because tort cases made up almost one-half of our docket sample (48%),[94] the more frequent use of discovery in tort cases strongly impacted the average amount of discovery for "all" cases. In fact, if it were not for tort cases, there would be no discovery in the majority of cases. Based upon our analysis of the docket sheets, it would be hard to show that there is any "discovery abuse" in Hawaii.[95]

Although Table 21 above reports on cases with no pretrial discovery, it also shows the inverse—that there was more discovery in all types of cases in the 2007 study[96] than in the 1996 study. In 1996, 35% of all tort cases showed no discovery, but in 2007 only 21% of tort cases showed no discovery. Both contract and "other" cases showed more cases with discovery in the 2007 study.

Foreclosure cases seldom have much discovery. In the 1996 study, 99% of foreclosure cases showed "no discovery," but in the 2007 study 87% of foreclosure cases showed "no discovery." Similarly, in the 1996 study 71% of contract cases had no recorded discovery, but in the 2007 study 65% of contract cases had no discovery.

We also looked at the types of pretrial discovery for various types of cases, and we calculated the percentage of cases where there was at least one court-recorded instance of an oral or written deposition noticed, an interrogatory request, or a request for production of documents. Table 22below shows that about one-third of "all cases" used some form of pretrial discovery.

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[94] Tort cases were 39% of the docket.

[95] Perhaps "discovery abuse" is the topic of a different era. A search of legal journals finds few articles about discovery abuse written in the last few years.

[96] Note that the sample size was much larger in the 1996 study. In 1996 we reviewed the records of over 3000 cases, which was almost 43% of the entire docket. Remind us to never take on such a large project again. In 2007 we reviewed the records of only about 450 cases, which was 13% of the total docket that year.

Table 22	2007 Percent of Cases Where at Least One of the Following Discovery Requests was Recorded			
	Oral Depositions Noticed	Written Depositions Noticed	Interrogatory Requests	Requests for Productions of Documents
All Cases (n=449)	42%	39%	29%	32%
Torts (n=217)	61%	59%	40%	42%
Contract (n=86)	21%	19%	11%	17%
Foreclosure (n=23)	0%	4%	4%	13%
Other without Foreclosure (n=123)	31%	23%	26%	29%
Other including foreclosure (n=146)	26%	20%	23%	26%
	1996 Percent of Cases Where at Least One of the Following Discovery Requests was Recorded			
	Oral Depositions Noticed	Written Depositions Noticed	Interrogatory Requests	Requests for Productions of Documents
All Cases (n=3,183)	25%	24%	10%	9%
Torts (n=1,159)	49%	54%	19%	15%
Contract (n=514)	23%	13%	8%	11%
Foreclosure (n=995)	1%	<1%	<1%	<1%
Other (n=515)	24%	18%	12%	12%

There was an increased use of discovery in 2007 compared to 1996. The data for pretrial discovery confirms what we have already observed—that tort cases exhibited the greatest amount of pretrial discovery—and that tort cases used all forms of pretrial discovery more than any other type of case. Tort cases used oral depositions and written depositions in about 60% of cases, and interrogatories and requests for production of documents in about 40% of the cases. In 2007, the use of oral depositions increased in tort cases by more than 10% compared to our 1996 study, and the use of interrogatories more than doubled from 19% in the 1996 study to 40% in the 2007 study. Requests for production of documents in tort cases increased from 15% in 1996 to 42% in 2007. Pretrial discovery in contract and

other cases also increased for most types of discovery between the two studies. Foreclosure cases, for all practical purposes, did not use formal pretrial discovery procedures.

Table 22 also shows that in 2007, discovery in contract cases increased somewhat from 1996, except for oral depositions. Oral depositions and interrogatories increased more significantly in tort cases (increasing13% and 20% respectively), which, considering the high proportion of torts in our data sample (and that there are not a high proportion of foreclosure cases with no discovery in the recent study), impacted the overall percentage of discovery for "all cases" when aggregated. The greatest increase in discovery requests occurred in the requests for production of documents which shows a 27% increase for torts, a 6% increase for contracts, a 14% increase for "other," and a 23% increase for "all" cases. Also of note, the percent for interrogatory requests increased for torts by 21%, and increased for "other" cases by 14%.

We wanted to know not only if a case had a certain type of discovery event, but also how frequently certain types of discovery were used in a single case. Table 23below indicates that the average number of discovery requests occurring in a case with at least one discovery event was ten discovery requests. Torts had the highest average number of discovery requests (11, while foreclosures had the lowest average (3)).Contracts and "other" cases averaged7 and 9, respectively.

Table 23	Average Number of Discovery Requests for Cases with at Least One Discovery Request
Torts (n=172)	11
Contract (n=30)	7
Other (n=57)	9
All Cases (n=259)	10

Table 24shows that the average number of discovery requests varied by the type of case. Torts had highest average number of written and oral depositions, as well as the highest overall average number of discovery requests. Other types of cases had much less discovery than did torts. Foreclosures had the highest average number of document production requests but otherwise had the lowest number of discovery requests.

Table 24Number of Cases with at Least One Discovery Request					
	Average Number of Written Depositions	Average Number of Oral Depositions	Number of Interrogatories Requested	Average of Document Production Requests	Overall Average of Discovery Requests
Torts (n=172)	6	4	1	1	11
Contract (n=30)	2	3	1	1	7
Foreclosure (n=3)	<1	0	1	2	3
Other (n=54)	3	3	2	1	9

All Cases (n=259)	5	3	1	1	10

Two additional 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 terminated case, comparing the completed discovery to the amount of discovery that they estimated would have been completed if their case had gone to trial.[97]Our intent was to determine if settling before trial reduced the need for some of the pretrial discovery.

Table 25 below shows that the amount of discovery completed at the time the case was terminated was almost always less than the amount of pretrial discovery that lawyers say they would have competed if the case had gone to trial. The percent of completed discovery was spread relatively evenly across all tort and contract cases that were surveyed. Only 9% of cases in both the 2007 and 1996 studies had the full amount of discovery when they terminated. In both studies, the remaining cases had a fairly even distribution of discovery. In 2007, 17% of cases had competed only1-25% of pretrial discovery when they terminated; 23% had completed 26-50%; 19% had completed 51-75%; 17% had completed 76-99%; 9% had completed all discovery. The obvious conclusion is that settling cases before trial significantly reduces the amount of pretrial discovery necessary for a case. Table 25 also shows that the amount of completed discovery was similar for both studies.

Table 25	Amount of Completed Discovery When the Case Settled					
Percent of Discovery Completed Compared to 100% if a Trial	0%	1%-25%	26%-50%	51%-75%	76%-99%	100%
2007 Settled Cases(n=53)	10%	17%	23%	19%	17%	9%
1996 Settled Cases(n=324)	7%	25%	19%	22%	17%	9%

An additional two-part question asked about the total number of both lay and expert depositions[98]taken in the case, as well as an estimate of how many additional lay and expert depositions would have had to be taken had the case gone to trial. As Table 26 indicates, the 2007 cases averaged 3 lay and 3 expert depositions at the time they terminated. If the case had gone to trial, on average, lawyers

[97] 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?"

[98] In the 2007 study we were not able to separate the survey data for tort and contract cases. However, in the 1996 study we found that tort cases had twice as many pretrial depositions as did contract cases. *See* Barkai et al., *supra* note 3, at 27 (table 28).

expected to take 3 additional lay depositions and 1.5 to 2additional expert depositions. This information about discovery is very similar to the information from the 1996 survey. The data indicates that discovery of lay witnesses doubles when a case goes to trial and discovery of expert witnesses at least triples when a case goes to trial. Of course, greater discovery would mean greater costs. The length of time a case was open was not correlated with the amount of discovery completed.

Table 26	Average Number of Depositions Taken and Additional Depositions That Would Have Been Taken Had There Been A Trial			
	2007 (n=48)		1996 (n=412)	
	Lay Depositions	Expert Depositions	Lay Depositions	Expert Depositions
Average # of depositions taken before case terminated	3	0.5	3	>.5
Estimated average # of additional depositions if no settlement	3	1.5	4	2

Demographic Information about the Lawyers

Through our survey, we collected demographic information about the lawyers' practice and their prior ADR training and experience, which is summarized in Table 27 below.

Table 27	Demographic Information about lawyers and their practices	
	2007 (n=71)	1996 (n=412)
Average years in law practice	26 years	15 years
Took a Negotiation or ADR class in law school	20%	22%

Took a Negotiation or ADR seminar since starting law practice	60%	46%
Took a Negotiation or ADR seminar in law school or since starting law practice	69%	n/a
Served as a CAAP (Hawaii's Court Annexed Arbitration Program) arbitrator	84%	75%
Served as a mediator	37%	27%

Lawyers' Prior ADR Experience

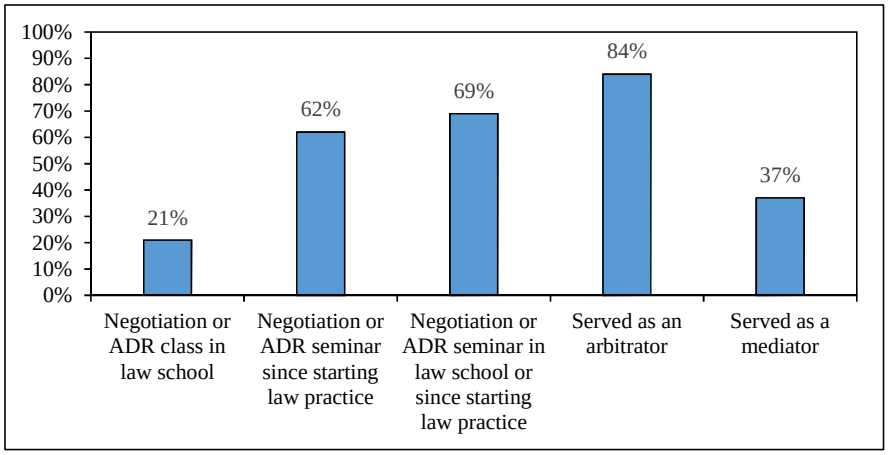

Chart 9

The lawyers who completed the 2007 survey had practiced law for an average of 26 years.[99] The 26 years of experience average for lawyers in 2007 was a surprising increase from the 15 years of experience for the lawyers in our first study in 1996. Eighty percent of the lawyers in our survey practiced in Honolulu on the island of Oahu[100] and 20% practiced on the Neighbor Islands (9% from Hawaii Island, 6% from Maui, and 6% from Kauai).[101] On average, the lawyers surveyed spent 74% of their work time on

[99] The most experienced lawyer surveyed had been in practice for 48 years and the least experienced had been in practice for 8 years.

[100] The island of Oahu has 69% of the population for the state of Hawaii. *State & County QuickFacts*, UNITED STATES CENSUS BUREAU (Mar. 25, 2012), http://quickfacts.census.gov/qfd/states/15/15003.html.

[101] *See* Lyn Flanigan, *PERSPECTIVES HSBA Update: 2010*, 14 HAW. B. J. 28 (2010). The age of the lawyers and where they practiced, as reported in the survey, is consistent with published information about the lawyers of Hawaii. In

litigation.[102] Only 12% of the responding lawyers spent less than 50% of their time on litigation.

The lawyers also provided information about their ADR training and whether they had previously served as an arbitrator or mediator. About one-fifth (21%) of the lawyers had taken a negotiation or ADR course during law school;[103] but 62% had taken such a course since starting law practice (it was 46% in 1996). Because some lawyers had taken a negotiation or ADR course both in school and in practice, in total about two-thirds (69%) of the lawyers had taken some previous negotiation or ADR course.

The vast majority (84%) of the lawyers had served as an arbitrator in Hawaii's non-binding arbitration program for tort cases (CAAP), and about one third (37%) had served as a mediator in some conflict.

In both studies, we compared the years of experience practicing law with whether the case settled or not. Our hypothesis was that lawyers who had been in practice longer were likely to have a higher settlement rate. However, there was no significant difference in the average lawyer's years of experience for cases reporting negotiated settlements as compared to those reporting no settlement.[104]

Conclusion

Despite many generalizations about the prevalence of settlement in the civil justice system and the growth in ADR, empirical research on settlement continues to be very limited. Also, there is a discrepancy between what is believed about settlement rates by lawyers, judges, and others actively involved in America's civil justice system and the information verified by researchers.

This article showed, as prior research by others has shown, that 90% or more of all civil cases do NOT end with settlements. Although a very high percentage of tort cases settle, [105]barely one-half of other civil cases settle. And, in most court systems, contract cases make up more than three-quarters of general civil cases.[106]Therefore, the settlement rate for "all" cases is probably much closer to 50% or 60%

2010, there were 4,141 active lawyers in Hawaii with 84% on Oahu, 7% on Hawaii Island, 6% on Maui, and 3% on Kauai. In addition, 57% of the lawyers were 50 years old or older. The 60-69 year age bracket was by far the fastest growing group from 2008 to 2010. In fact, all other 10-year brackets decreased since 2008, but the 60-69 age group increased 37% between 2008 and 2010.

[102] The estimates of time spent on litigation ranged from 15% to 100%.

[103] In 2007, only 20% of the lawyers had taken a negotiation or ADR course during law school, as compared to 22% in 1996. As ADR teachers and trainers we had hoped to find a higher percentage of lawyers had taken an ADR class in law school. Of course, because the average practice experience was 26 years, many of these lawyers had been in law school before the growth of law school ADR classes.

[104] *See* Jane Goodman-Delahunty, Maria Hartwig, Pär Anders Granhag& Elizabeth F. Loftus, *Insightful or Wishful: Lawyers' Ability to Predict Case Outcomes*, 16 PSYCHOL. PUB. POL'Y & L. 133 (2010) (finding that overall, lawyers were overconfident in their predictions of case outcomes and more years of legal experience did not improve their ability to more accurately predict outcomes).

[105] Possible reasons for the higher settlement rate for torts, which has been found in every study of settlements, include the contingent fee arrangement for torts (plaintiff's lawyers might screen cases in different ways than other civil lawyers and only take cases where there is a good likelihood of recovery), and an insurance company might stand behind the individually named defendants (so there is a "deep pocket") unlike so many civil debt collection cases where the defendant did not have enough money in the first place.

[106] Contract cases are 84% of general civil cases in unified court systems (torts are only12%) and 77% of general civil cases in general jurisdiction courts (torts are 18%). *See* NAT'L CENT. FOR STATE COURTS, EXAMINING THE WORK OF

than to 90%, which means that almost one-half of all cases neither end in a trial nor are settled. Some of those cases are adjudicated (decided based upon a legal motion), but many may also be abandoned for various reasons.

Our studies in 1996 and 2007 were designed to learn more about settlements in general, and the Hawaii state court civil docket in particular. The two data sets provide a snapshot of litigation of civil cases in the Hawaii circuit courts, and that data may be useful to parties and lawyers as they look at individual cases and compare them to the "average" case.

Because settlement is such an extensive, but undocumented, 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.

In closing, we strongly encourage lawyers, judges, and policymakers to never again say "90% or more of all cases settle." It just isn't true. Let's stop spreading rumors about the court system because they build unrealistic expectations, which may lead to disappointment by those using the courts. Instead, we should put more resources into finding out what really happens in our courts. Accurate information is needed to make good decisions.

STATE COURTS, 2007: A NATIONAL PERSPECTIVE FROM THE COURT STATISTICS PROJECT 21 (2008).

Summary of Findings

- These findings are based upon studies conducted in 2007and 1996 in Hawaii Circuit Courts and based upon the analysis of almost 4000 individual case docket sheets and almost 500 lawyer surveys.
- Contrary to common belief among lawyers and judges, 90% or more of cases do not settle.
- Although torts come close to a 90% settlement rate, for most other types of civil cases, the settlement rate hovers near 50%.
- The percentage of settlements varies significantly among the various types of civil cases that comprise the civil docket (tort, contract, and "other" cases).
- Specific types of cases, e.g., contract and tort, had difference trial rates.
- The differences in settlement rates for different types of cases in our studies are consistent with the hierarchy of settlement rates reported by other researchers in other settlement studies.

Docket Filings

- The Hawaii Circuit Court civil docket was comprised of three major categories of cases: 39% tort cases, 20% contract cases, and 41% "other" cases.
- Number of total civil filings has fluctuated significantly over the years.
- By coincidence, our two studies were conducted in two years when Hawaii had a near-record high (in 1996) and a near-record low (in 2007) number of civil filings.
- Total civil filings have ranged from a high of over 8900 in 1983 to a low of barely 3400 in 2006. In the decade between our two studies, total civil filings have ranged from a high of over 8000 in 1998 to a low of barely 3400 in 2006.
- For the two study years, the percentages of the docket looked relatively stable.
- The percentage of contract, tort, and other cases has varied quite significantly over the past 45 years.

Trials

- Trials are rare. Jury trials are very rare. Few cases ever go all the way to a trial verdict.
- Since 1971, the trial rate has moved steadily downward from 12% to at or below 2%in both Hawaii and federal courts.
- Since 1997, the trial rate in Hawaii has been less than 2% every year.
- The percentage of civil cases terminating with a jury trial has not exceeded 1% since 1987.
- Since 1996, the percentage of civil cases terminating with a jury trial has not exceeded .5%.
- Since 2002, Hawaii has not had more than 20 civil jury trials in one year.
- In 2011, there were only 6 civil jury trials, which mean only 0.15%of the civil docket had a jury trial.
- For all categories of civil cases except torts, there are fewer jury trials than non-jury trials. In 2011, only 8%of all Circuit Court civil trials were jury trials.
- Specific types of cases (contract, tort, "other") had different trial rates.

Hawaii State Court Compared to Federal Court

- The patterns of Hawaii and federal courts civil filings and trial rates are rather similar.
- Hawaii court filings showed the same pattern as the federal courts from 1960 until 1996, and

then after 1996, federal filings remained rather stable while Hawaii filings significantly decreased. Recently, Hawaii civil case filings started to increase again.

- The comparisons between the Hawaii and federal court patterns are even more similar for trial rates than they were for total filings. Both court systems started out with trial rates of over 12% and then saw those rates continuously decrease to where the trial rates in both systems now hover at or below 2%.
- Hawaii courts had their own "vanishing trials" experience, which has been much talked about for federal courts.

Settlements

- There is no agreed upon definition for what is a "settlement."
- Although "most" cases settle before reaching a trial—if "most" means more than 50%—the percentage of cases that settle varies dramatically by the type of case. About 88% of tort, but only 54% of contract, and 55% of "other," cases settle.

Other Forms of Termination

- 11% of tort, 44% of contract, 40% of "other," and 27% of "all" cases were neither tried nor settled.
- Contract and "other" cases show a much higher percentage of cases not settled or tried than do tort cases.
- A much higher percentage of contract and "other" cases terminated by (both summary judgment and other) motions and default judgment compared to tort cases.
- "Stipulation for dismissal" (which we believe were the bulk of settlements) was more than twice as common as any other mode of termination.
- Three-quarters (76%) of tort cases, almost one-half (47%) of the contract cases, and almost one-half (47%) of "other" cases were terminated by stipulations for dismissal.
- The second most common method of case disposition, 10%, was "Dismissal by Motion." Disposition by motion was most commonly found in foreclosure cases (30%), and also in contract cases (14%) and "other" cases (16%).
- "Default judgment" represented less than only 6% of all the cases, but was 15% of contract cases and 10% of "other" cases.

Termination by Case Type

- Tort cases had the highest settlement rate, were most likely to settle by a "stipulation for dismissal," had the longest time to disposition, and showed the greatest amount of pretrial 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.

Settlements and Other Dispositions

- 15% of contract cases and 10% of "other" cases were disposed of by default judgment. Tort cases seldom ended with default judgments.
- Because tort cases are almost one-half of the docket and because tort cases have the highest settlement rate, tort cases drive up the overall settlement rate for "all" cases.
- Our data confirms that more than one-half of all cases settle, and it also identifies a substantial proportion of non-tort cases that neither go to trial nor settle.

Judicial Assistance & Settlement Conferences

- 77% of cases settled without judicial assistance.
- 49%of the cases had no appearances before a judge.
- 71% of cases did not have a settlement conference.
- Lawyers were very satisfied with the amount of judicial assistance in their case. 92% of lawyers wanted no change in the amount of judicial assistance they received and they thought the amount of assistance with appropriate. Only 8% wanted more judicial assistance.
- When judicial assistance did occur, it was ranked highly and frequently it was ranked as the event having the greatest impact on settling the case.

Satisfaction with Settlements

- 92% of lawyers were satisfied with both their settlement terms and the settlement process.

Factors in Settlement - Types of Negotiation

- The most common types of negotiations and the rate of their occurrence were: telephone negotiation between attorneys 72%, face-to-face negotiation between attorneys 57%, letter/fax negotiation between attorneys 43%, e-mail negotiations 31%, face-to-face negotiation with attorneys and parties 24%, and communication with insurance agent 14%.
- The three primary ways that judges engage in or influence settlement (settlement conferences, pretrial conferences, and motions for summary judgment) each occurred in only 17% or less of cases.
- Traditional ADR activities such as binding arbitration (7% of the cases) and mediation (2% of the cases) occurred very infrequently.
- Except for court annexed arbitration proceedings, which ranked fourth in our 2007 study (33%) and fifth in the 1996 study (24%), various types of negotiations and communications between the lawyers occurred much more frequently than any activities where judges, mediators, or arbitrators were involved (motions for summary judgments, judicial settlement conferences, and pretrial conferences).
- Telephone negotiation was the event with the greatest impact on settlement.
- Telephone negotiation had 2 times more impact than its closest competitors (face-to-face negotiation between lawyers 17%, judicial settlement conference 13%, court-annexed arbitration 13%, and face-to-face negotiation with lawyers and parties 11%).
- Telephone, letter/fax, and face-to-face negotiations took place in over 50% or more of the cases.
- There is a growing prominence of e-mail negotiations, but telephone negotiations are still the most common form of negotiation by lawyers.

- The lawyers rated telephone negotiations as the event with the most positive 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.
- Although telephone negotiations were the single most commonly occurring type of negotiations, this type of negotiation is almost never taught in law schools.
- Some settlement events that happen infrequently, such as court-annexed arbitration or mediation, are rated very highly by the lawyers when they do occur.

Use of ADR

- 41% of the cases used some form of ADR process (defined as settlement conference, non-binding arbitration (CAAP), binding arbitration, or mediation).
- Non-binding arbitration (for tort cases) was the most commonly used ADR process. It was used in 27% of the cases, which were 66% of the cases where ADR was used.
- Binding arbitration, mediation, pretrial conferences, motion for summary judgment, and settlement conferences had the greatest impact in the cases where they occurred, but these ADR events occurred infrequently.

Events Impacting Settlement

- Non-binding arbitration (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. Motions for summary judgment had a greater impact on the settlement of contract cases than on tort cases.
- Based upon the data collected, one could not predict whether a case will settle or not based upon the events that took place in the case. In other words, the data from settlements and non-settlements looked very much alike.

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Multiple Settlement Events - Multi-Channel Negotiation

- Multiple negotiation and settlement events took place in the majority of legal cases where there was settlement activity.
- In cases reporting settlement events, the mean number of settlement events was 3.3.
- 84% of the cases reporting settlement events had 2 or more settlement events, 58% reported 3 or more settlement events, 45% reported 4 settlement events, 27% reported 5 settlement events, 12% reported 6 settlement events, and a few cases had more than 6 settlement events.

Disposition Time

- The mean (average) disposition time for all cases from filing until final disposition was a little less than 2 years (682 days) and the median disposition time was a little less than 18 months (524 days).
- For specific types of cases the disposition times were:
    - Tort mean disposition 682 days (median 539 days);
    - Contract mean disposition 678 days (median 509 days).
- The disposition times for all types of cases have increased significantly (between 150 and 200

days) since the 1996 study—but fewer foreclosure cases may be a contributing reason. However, disposition times for contact and torts cases also increased significantly (150 and 95 days respectively).

- 56% of the cases settled more than 30 days before trial, but 22% settled on the day of the hearing or trial (or after it began) which was a large increase over the previous study where only 2% of cases settled on the day of trial or hearing.
- 72% or cases terminated within 2 years of filing, but fewer cases of all types terminated within 1 year of filing as compared to the previous study.

Pretrial Discovery

- There was a great variance in the amount of pretrial discovery depending upon the type of case.
- Tort cases exhibited the most discovery and foreclosure cases exhibited the least.
- 46% of all civil cases showed no recorded pretrial discovery.
- There was more pretrial discovery in all types of cases in 2007 compared to 1996.
- 42% of "all" civil cases, 65% of contract cases, and 56%-59% "other" cases had no court recorded discovery requests at all. However, only 21% of all tort cases showed no discovery.
- Because tort cases made up almost one-half of our sample, the more frequent use of discovery in tort cases strongly impacted the average amount of discovery for all cases. If it were not for tort cases, there would be no discovery in the majority of cases.
- The average number of discovery requests occurring in a case with at least one discovery event was 10 requests.
- About one-third of "all" cases used some form of pretrial discovery.
- Cases averaged 3 lay and 3 expert depositions at the time they terminated.
- The amount of discovery completed at the time the case was terminated was almost always less than the amount of pretrial discovery that lawyers say there would have been completed if the case had gone to trial. If the case had gone to trial, on average, lawyers expected to take 3 additional lay depositions and 1.5 to 2 additional expert depositions.
- There were oral and written depositions in about 40% of all cases and interrogatory requests, and requests for production of documents in about 30% of the cases. Tort cases indicated oral and written depositions in about 60% of all cases and interrogatory requests, and requests for production of documents in about 40% of the cases. Contract cases indicated oral and written depositions in about 20% of all cases and interrogatory requests, and requests for production of documents in about 10-15% of the cases.
- Lawyers estimated that discovery of lay witnesses would double if a case went to trial and discovery of expert witnesses would at least triple.

Demographics

- The lawyers surveyed had been practicing law for an average of 26 years.
- 84% of the lawyers had served as an arbitrator (probably in a non-binding arbitration program).
- 37% of the lawyers had served as a mediator.
- 69% had taken a negotiation or an ADR course in law school or since starting law practice.

- The lawyers surveyed spent 74% of their work time on litigation; only 12% of them spent less than 50% of their time on litigation.

APPENDIX A
Responses are from 71 returned surveys; 43 indicated some form of settlement

2006 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.

11	**Negotiated Settlement** (how reached)	3	**Default Judgment**
33	Without judicial assistance	1	**Dismissed by Court for Inaction**
9	With judicial assistance	3	**Dismissed by Court Pursuant to Motion**
2	**Negotiated Settlement** (timing)	2	**Mediated Settlement** (non- judge mediator)
18	MORE than 30 days before hearings	15	**Arbitration Award**
7	LESS than 30 days before hearings	3	**Trial Verdict**
7	On the day of hearings or after hearings began		**Other**, please specify: (**SEE ATTACHED**)

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 5847Rank - 1; 2; 3 Total		
Face-to-face negotiation between attorneys	32	8, 10, 5
Face-to-face negotiation with attorneys and parties	14	5,1,2
Telephone negotiation between attorneys	42	12,14,8
Letter/fax negotiation between attorneys	25	3,5,7
E-mail negotiations between attorneys	16	2,3,3
Communication with Insurance agent	8	2,0,3
Motion for summary judgment	8	4,1,0
Pretrial conference	8	3,0,0
Judicial settlement conference	10	6,1,1
Court Annexed Arbitration (CAAP) decision	19	6,5,4
Binding arbitration decision	4	2,1,0
Mediation session (non-judicial) Other, please specify	1 4	1,0,0, 4

3. Were there any other important factors leading to settlement?
   See attached

4. a. How many times did you appear before a judge in this case (including on motions, pretrial conference, settlement conference, etc.)?
   No answer=19; 0 times=25; 1 time=11; 2 times=5; 3 times=3; 4 times=2; >4 times=5

   b. How many times did you appear before a judge for settlement conferences?
   No answer=16; 0 times=36; 1 time=6; 2 times=2; 3 times=3; 4 times=2; >4 times=n/a

5. In this case, I would have preferred (please check one):

4	more judicial involvement in the settlement process
0	less judicial involvement in the settlement process
46	no change, the settlement process was appropriate other settlement or ADR options to be more available (which option?_____)

No answer=21

6. Is there anything that would have made this case settle earlier?
Various attached answers.

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%=**7**	1%-25%=**9**	26%-50%=**15**	51%-75%=**11**	76%-99%=**10**	100%=**6**

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

How many total depositions were taken?**0=9; 1=10; 2=9; 3=5; 4=4; >4=9;** **No answer=23**	How many additional depositions would have been taken? **0=8; 1=4; 2=7; 3=6; 4=5; >4=12;** **No answer=26**
How many depositions of experts?**0=33; 1=6; 2=3No answer=28**	How many additional depositions of experts? **0=11; 1=8; 2=12; 3=1; 4=1; >4=4; No answer=33**

9. How satisfied were you with:

Percent of Satisfaction	Very Satisfied	Satisfied	Dissatisfied	Very Dissatisfied
the settlement terms of this case? N=48	19 40%	26 54%	2 4%	1 2%
the settlement process in this case? N=44	18 41%	22 50%	3 7%	1 2%

10. In what city is your principle office?
3 Hilo **43** Honolulu **2** Kona **-** Lihue **3** Wailuku **3** Other

11. How many years have you practiced law?____years
1-10 yrs.=2: 11-15 yrs=12; 16-20yrs=53; 20-25yrs=23; 26-30yrs=11; 31-35yrs=16; 37-48yrs=5

12. What percentage of your working time do you spend on litigation (Including time with clients, pre-trial work, settlement efforts, trials, etc.)?___%
74% average
1%-25%=4; 26%-50%=15; 51%-75%=12; 76%-100%=35; No answer=n/a

13. a. Did you take a negotiation or ADR course in law school? **14** Yes **53** No **n/a** No answer

b. Did you take a negotiation or ADR seminar since starting practice? **39** Yes **24** No **2** No answer

14. Have you served as a CAAP arbitrator? **57** Yes **11** No **13** No answer

15. Have you served as a mediator? **23** Yes **40** No **4** No answer

THANK YOU FOR ANSWERING THIS QUESTIONNAIRE

APPENDIX B

Responses are from 412 returned surveys. Contract=126; Motor Vehicle=182; Non-vehicle tort=104

1996 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 hearings	59	**Arbitration Award**
56	LESS than 30 days before hearings	10	**Trial Verdict**
5	On the day of hearings or after hearings 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	**Rank - 1; 2; 3** Total
Face-to-face negotiation between attorneys	192	46; 58; 47Tot.=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? **See attached Table**
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
5. 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?_____)

No answer=43

6. Is there anything that would have made this case settle earlier?
See attached Table

No answer=168; "No"=130; 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%=**3 1**	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

APPENDIX C

Hawaii Circuit Court Statistics – Filings, Terminations, and Trials 1960-2011

	Filed	Terminated	Non-Jury Trial	Jury Trial	Total Trials	% of Non-jury Trials	% of jury Trials	% of Trials
1960	1406	1173	N/A	N/A	-	-	-	-
1962	2261	1219	N/A	N/A	-	-	-	-
1964	2036	1426	101	53	154	7.1	3.7	10.8
1965	2201	1746	N/A	N/A	-	-	-	-
1966	2222	1678	287	24	311	17.1	1.4	18.5
1967	1791	1145	252	27	279	22.0	2.4	24.4
1968	2243	1911	225	46	271	14.7	2.4	17.1
1969	2694	2677	198	65	263	7.4	2.4	9.8
1970	3014	3035	302	77	379	10.0	2.5	12.5
1971	3288	3312	250	109	359	7.5	3.3	10.8
1972	3299	3229	200	84	284	6.2	2.6	8.8
1973	3262	3029	182	83	265	6.0	2.7	8.7
1974	3556	2575	127	88	215	4.9	3.4	8.3
1975	3835	3870	168	85	253	4.3	2.2	6.5
1976	4204	3462	173	102	275	5.0	2.9	7.9
1977	4212	3732	138	80	218	3.7	2.1	5.8
1978	4090	4073	139	64	203	3.4	1.6	5.0
1979	4479	3367	105	62	167	3.1	1.8	5.0
1980	4862	3871	121	68	189	3.1	1.8	4.9
1981	5421	3627	75	57	132	2.1	1.6	3.6
1982	7733	4401	96	36	132	2.2	0.8	3.0
1983	8921	4732	115	76	191	2.4	1.6	4.0
1984	6960	13918	265	152	417	1.9	1.1	3.0
1985	6709	6288	108	66	174	1.7	1.1	2.8
1986	6718	7465	98	67	165	1.3	0.9	2.2
1987	5987	4977	68	53	121	1.4	1.1	2.4
1988	5732	4977	68	53	121	1.4	1.1	2.4
1989	5524	5405	133	47	180	2.5	0.9	3.3
1990	5875	6418	113	36	149	1.8	0.6	2.3
1991	6070	6421	82	42	124	1.3	0.7	1.9

1992	6530	7095	74	30	104	1.0	0.4	1.5
1993	7359	7368	70	73	143	1.0	1.0	1.9
1994	6401	5389	118	42	160	2.2	0.8	3.0
1995	7573	5873	103	31	134	1.8	0.5	2.3
1996	7390	9284	280	50	330	3.0	0.5	3.6
1997	7642	5498	65	41	106	1.2	0.8	1.9
1998	8021	8226	84	23	107	1.0	0.3	1.3
1999	6992	7173	97	24	121	1.4	0.3	1.7
2000	6032	8672	100	31	131	1.2	0.4	1.5
2001	5497	5645	80	29	109	1.4	0.5	1.9
2002	4770	5525	70	21	91	1.3	0.4	1.7
2003	4133	4549	63	21	84	1.4	0.5	1.9
2004	3643	5082	68	17	85	1.3	0.3	1.7
2005	3661	4127	63	16	79	1.5	0.4	1.9
2006	3448	3745	41	10	51	1.1	0.3	1.4
2007	3582	3179	39	12	51	1.2	0.4	1.6
2008	4198	3558	41	17	58	1.2	0.5	1.6
2009	4972	3706	41	12	53	1.1	0.3	1.4
2010	5019	3981	53	14	67	1.3	0.4	1.7
2011	4538	3958	68	6	72	1.7	0.2	1.8

APPENDIX D

Hawaii Circuit Court – Types of Cases – 1960-2011

	All Civil	Contract	Torts	Other	% K	% Tort	% Other
1960	1406	N/A	N/A	N/A			
1962	2261	N/A	N/A	N/A			
1964	2036	818	695	523	40	34	26
1965	2201	916	777	508	42	35	23
1966	2222	875	803	544	39	36	24
1967	1791	618	593	580	35	33	32
1968	2243	708	857	678	32	37	31
1969	2694	797	1121	776	30	42	29
1970	3014	981	1283	750	33	43	25
1971	3288	1177	1342	769	36	41	23
1972	3299	1122	1413	764	34	43	23
1973	3262	966	1468	828	30	45	25
1974	3556	1075	1460	1021	30	41	29
1975	3835	1408	1320	1107	37	34	29
1976	4204	1513	1298	1393	36	31	33
1977	4212	1428	1069	1715	34	25	41
1978	4090	1434	1185	1471	35	29	36
1979	4479	1596	1324	1559	36	30	35
1980	4862	1770	1396	1696	36	29	35
1981	5421	2047	1468	1906	38	27	35
1982	7733	2670	1635	3428	35	21	44
1983	8921	2966	1831	4124	33	21	46
1984	6960	2131	1611	3218	31	23	46
1985	6709	1830	1676	3203	27	25	48
1986	6718	1807	1749	3162	27	26	47
1987	5987	1690	1785	2512	28	30	42
1988	5732	1798	1736	2198	31	30	38
1989	5524	1695	1793	2036	31	32	37
1990	5875	1784	2065	2026	30	35	34

1991	6070	1685	2365	2020	28	39	33
1992	6530	1787	2689	2054	27	41	31
1993	7359	659	2871	3829	9	39	52
1994	6401	1680	2417	2304	26	38	36
1995	7573	1739	2934	2900	23	39	38
1996	7390	1494	2468	3428	20	33	46
1997	7642	1620	2205	3817	21	29	50
1998	8021	1469	2105	4447	18	26	55
1999	6992	794	1820	4378	11	26	63
2000	6032	735	1706	3591	12	28	60
2001	5497	672	1693	3132	12	31	57
2002	4770	666	1682	2422	14	35	51
2003	4133	732	1647	1754	18	40	42
2004	3643	659	1484	1500	18	41	41
2005	3661	728	1392	1541	20	38	42
2006	3448	724	1345	1379	21	39	40
2007	3582	709	1383	1490	20	39	42
2008	4198	826	1352	2020	20	32	48
2009	4972	1069	1134	2769	22	23	56
2010	5019	1283	1200	2536	26	24	51
2011	4538	1063	1105	2370	23	24	52

Federal Court – Civil Filings & Percent of Dispositions During or After Trial		
Cases Filed		Percent of Dispositions During/After Trial
50320	1962	11.5%
54513	1963	12.0
56332	1964	11.4
59063	1965	11.8
60449	1966	11.4
64556	1967	10.9
67914	1969	10.9
75101	1970	10.0
81478	1971	9.4
90177	1972	9.1
93917	1973	8.5
94188	1974	8.7

101089	1975	8.4
106103	1976	8.1
113093	1977	7.7
121955	1978	7.5
138874	1979	6.8
153950	1980	6.4
172126	1981	6.6
184853	1982	6.1
212979	1983	5.4
240750	1984	5.0
268070	1985	4.7
265082	1986	4.4
236937	1987	5.0
237634	1988	4.9
233971	1989	4.9
213020	1990	4.3
210410	1991	4.0
230171	1992	3.5
225278	1993	3.4
227448	1994	3.5
229051	1995	3.2
249832	1996	3.0
249118	1997	3.0
261669	1998	2.6
271936	1999	2.3
259046	2000	2.2
247433	2001	2.2
258876	2002	1.8
256000	2003	1.6
256000	2004	1.7
279000	2005	1.6
244000	2006	1.3
278000	2007	1.4
245000	2008	4.1
258000	2009	2.0
282000	2010	1.2
294000	2011	1.0