



Appeals of Civil Trials Concluded in 2005

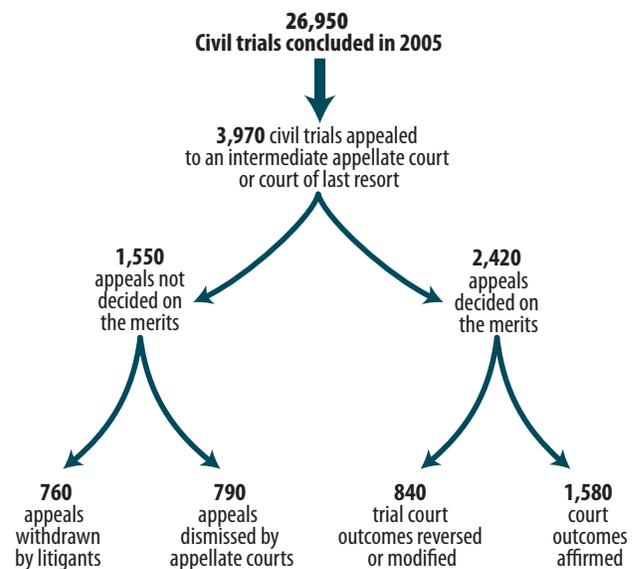
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Plaintiffs and defendants appealed 15% of the 26,950 tort, contract, and real property trials concluded in state trial courts in 2005. These 26,950 trials were a small percentage of the reported 7.5 million civil claims filed in all unified and general jurisdiction state courts nationwide. Among jurisdictions that provided counts of their trial and non-trial civil dispositions in 2005, trials collectively accounted for about 3% of all tort, contract, and real property dispositions in general jurisdiction courts.¹

This special report examines civil bench and jury trials concluded in state trial courts in 2005 that were appealed to an intermediate appellate court or court of last resort. It is the first report based on data collected in the Bureau of Justice Statistics' (BJS) Civil Justice Survey of Trials on Appeal (CJSTA). The CJSTA included information from court records on civil trials concluded in 2005 and tracked the subsequent appeals from 2005 through March 2010. Information collected included the types of civil cases appealed, appeals dismissed or withdrawn before being decided on the merits, and appeals resulting in the trial court decision being reversed or affirmed. The time from the filing of an appeal to final appellate court disposition was also measured.

¹See LaFountain, R., et. al. (2007). *Examining the Work of State Courts, 2006: A National Perspective from the Court Statistics Project*. National Center for State Courts; and *Civil Bench and Jury Trials in State Courts, 2005*, NCJ 223851, BJS Web.

FIGURE 1
Civil trials concluded in 2005 appealed to an intermediate appellate court or court of last resort



Note: Includes only one appeal for each trial with an appeal filed in an intermediate appellate court or court of last resort with initial review authority over the case. Detail may not sum to total due to rounding.

HIGHLIGHTS

- Plaintiffs and defendants appealed 3,970 (15%) of the 26,950 tort, contract, and real property bench and jury trials concluded in state trial courts in 2005 (figure 1).
- Nearly half (44%) of trials with damage awards of \$1 million or more were appealed; in comparison, appeals were filed in less than a fifth of trials with no damages (14%).
- Sixty-one percent of civil appeals were decided on the merits, while the remainder were dismissed or withdrawn.
- The trial court verdict or judgment was fully or partly reversed in 35% of civil appeals decided on the merits.
- Trials with damage awards of \$100,000 or more were reversed at a higher rate than trials with no damage awards.
- The average case processing time for appeals decided on the merits was 14 months, while appeals that were dismissed or withdrawn were disposed on average within 6 months.

Study provides insight into civil litigation

Few civil cases are actually tried, as most are settled by mutual agreement outside of the court system.² Because the terms of settlement agreements and other key aspects of cases resolved outside of court may not be publicly available, records from civil trials are the primary source of information on civil litigation in the United States. Civil trials appealed are also significant because they provide information about the finality of trial court verdicts and judgments and the likelihood that trial court outcomes could be reversed or modified on appeal. In comparison to cases disposed by trial, settlements are unlikely to be appealed because they tend to involve the resolution of disputes that could lead litigants to seek further legal remedies.

Among civil cases disposed through other means, such as dismissals or summary or default judgments, information on appeals arising from such dispositions was not included in this study.

Litigants appealed approximately 1 in 7 civil trials concluded in 2005

An estimated 26,950 civil trials involving tort, contract, and real property claims were disposed in 2005. Of these trials, 15% were appealed to a state intermediate appellate court or court of last resort (table 1). Appeals were filed in a higher percentage of contract cases (20%) than tort cases (11%). The appeal rate did not differ based on whether the plaintiff (14%) or defendant (13%) won at trial.

²See *Contract Cases in Large Counties*, NCJ 156664, BJS Web; and *Tort Cases in Large Counties*, NCJ 153177, BJS Web.

In general, cases involving larger award amounts at trial were associated with higher rates of appeal. About 44% of trials with awards of \$1 million or more were appealed, compared to 10% of trials in which the amount awarded was less than \$100,000 and 14% in which there was no award at trial. Appeals were filed for a third (33%) of trials in which punitive damages were awarded.

TABLE 1
Appeals of civil trials concluded in 2005, by case characteristics and party filing the appeal

Case characteristic	Number of trials	Percent of trials appealed by—		
		Any litigant	Plaintiff	Defendant
All trials	26,950	15%	8%	7%
Case type				
Tort	16,400	11%	7%	4%
Contract	8,920	20%	9	11
Real property	1,630	25%	6	18
Trial type				
Bench	8,540	17%	6%	11%
Jury	18,400	14%	8	6
Winner^a				
Plaintiff	14,710	14%	4%	10%
Defendant	10,510	13%	12	1
Award amount^b				
No award	10,780	14%	11%	3%
\$1–\$99,999	11,380	10%	4	6
\$100,000–\$999,999	3,530	26%	8	18
\$1 million or more	700	44%	16	28
Punitive damages awarded	810	33%	15%	18%

Note: Includes only one appeal for each trial with an appeal filed in an intermediate appellate court or a court of last resort with initial review authority. Excludes multiple appeals, cross appeals, and appeals filed in courts of last resort after intermediate appellate court review. (See *Methodology* for more information.) Information on litigant filing the appeal was available for more than 99.5% of appeals filed. Detail may not sum to total due to rounding. See appendix table 1 for standard errors.

^aExcludes data for real property trials.

^bIncludes awards to plaintiff winners and defendants on counter claims. Damage award information was available for 98% of civil trials.

The civil appellate process

The formal disposition of a civil case through a jury or bench trial is not necessarily the end of the civil justice process. Litigants have the right to seek appellate review of trial outcomes. Either plaintiffs or defendants can seek to reverse, modify, or challenge the trial court's decision by appealing the trial court verdict or judgment. The route of appeal depends on the state's organizational structure for appellate review.³ The majority of appellate systems are organized so that appeals are first heard by intermediate appellate courts with mandatory jurisdiction and then by courts of last resort with discretionary jurisdiction. Appellate courts with mandatory jurisdiction are required by their state constitution or statutes to review any case appealed to them, while appellate courts with discretionary jurisdiction can choose whether to review an appeal from an intermediate appellate court.

In some states, civil appeals bypassed the intermediate level of appellate review and were filed directly in courts of last resort. This might have happened for one of several reasons. Some states have never established intermediate appellate courts. In other instances, the intermediate appellate court lacked jurisdiction to hear the appeal. Occasionally, a case was transferred to the court of last resort by the intermediate appellate court without prior review. Several states in the Civil Justice Survey of Trials on Appeals (CJSTA) sample did not have intermediate appellate courts or had intermediate appellate courts with no review authority over civil appeals from trial courts.

³For a profile of the organizational structure of state appellate courts, see *State Court Organization, 2004* on the BJS website. Also see the National Center for State Courts profiles of the routes of appeal for civil cases at http://www.ncsconline.org/d_research/cp/CP_Query.aspx.

Litigants losing at trial were more likely to file an appeal

Appeal rates for civil trials concluded in 2005 were similar between plaintiffs (8%) and defendants (7%). The losing party at trial was more likely to file an appeal than the winner. Twelve percent of plaintiffs filed appeals when the defendant won at trial, and 10% of defendants filed appeals when the plaintiff won. By contrast, 4% of plaintiffs and 1% of defendants filed appeals after prevailing at trial. Factors that influence litigants to file appeals in trials where they have prevailed include dissatisfaction with the damage awards, attempts to have attorney fees or court costs assessed against one of the litigants, and the correction of trial court errors.

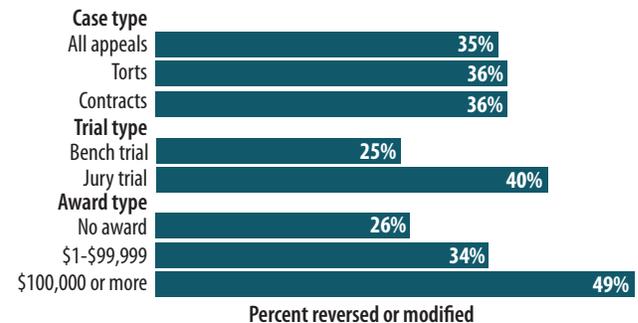
About two-fifths of appeals were withdrawn prior to disposition or were dismissed by the appellate court

Appellate courts did not always review the substantive legal issues raised in the appeal of a trial court verdict or judgment. Thirty-nine percent of all appeals of trial court cases concluded in 2005 were not reviewed on the merits because they were dismissed or withdrawn (table 2). Twenty percent of all appeals of trial court cases concluded in 2005 were dismissed by the appellate court because the court lacked jurisdiction to review the case, due to a procedural error, or for other reasons. Another 19% of appeals were withdrawn by the appellant or by stipulation of both parties. Appeals are typically withdrawn by the litigants if a settlement agreement is reached prior to appellate court resolution.

Appellate courts reversed or modified trial court outcomes for 1 in 3 appeals reviewed on the merits

Appellate courts reversed or modified the trial court outcomes of 35% of appeals decided on the merits (figure 2). About half of appeals in which trial court decisions were reversed involved a full reversal, while the other half entailed a partial reversal or other modification (not shown in figure). Courts reversed a somewhat higher percentage of appeals of jury trials (40%) than appeals of bench trials (25%). Trials with larger award amounts also were reversed at higher rates. For example, about half (49%) of appeals with damage awards of \$100,000 or more were reversed or modified by the appellate court. By contrast, 26% of appeals from trials with no damage awards were reversed on appeal. Reversal rates did not vary by the major case types (tort or contract).

FIGURE 2
Appeals decided on the merits, with trial court outcome reversed or modified



Note: Percent of reversed appeals are calculated from base of civil trials decided on the merits. Total includes real property cases, but does not include specific case types because there were too few real property trials to produce statistically reliable estimates of appellate court reversals. See appendix table 3 for standard errors.

TABLE 2
Appellate court disposition of civil trials concluded in 2005, by case characteristics

Case characteristic	Trials appealed	Percent of civil trials on appeal—					
		Reviewed on the merits			Not reviewed on the merits		
		Total	Affirmed ^a	Reversed ^b	Total	Dismissed ^c	Withdrawn ^d
All trials	3,970	61%	40%	21%	39%	20%	19%
Case type^e							
Tort	1,780	62%	40%	22%	38%	17%	21%
Contract	1,780	62%	39	22	39%	23	16
Trial type							
Bench	1,470	59%	44%	14%	41%	24%	18%
Jury	2,500	62%	37	25	38%	18	20
Award amount^f							
No award	1,530	61%	46%	16%	39%	25%	14%
\$1-\$99,999	1,120	56%	37	19	44%	21	23
\$100,000 or more	1,220	64%	32	31	37%	14	22

Note: Includes only one appeal for each trial with an appeal filed in an intermediate appellate court or a court of last resort with initial review authority. Excludes multiple appeals, cross appeals, appeals filed in courts of last resort after intermediate appellate court review, and data for appeals that were pending or had an unknown disposition at the end of the study. Detail may not sum to total due to rounding. See appendix table 2 for standard errors.

^aTrial court outcome affirmed by appellate court.

^bTrial court outcome reversed in whole or in part or modified, or case remanded to trial court for changes.

^cAppeal dismissed because of lack of jurisdiction, due to procedural error, or for other reasons.

^dAppeal withdrawn by one or both parties.

^eTotal includes real property cases, not shown separately because too few cases existed to produce statistically reliable estimates.

^fIncludes awards to plaintiff winners and defendants on counter claims. Damage award information was available for 98% of civil trials appealed.

Average case processing time for appeals decided on the merits was 14 months

Appeals of civil trials were filed with the appellate court an average of 4 months after the disposition of the lawsuit at trial (not shown in table). Once filed, appeals were processed in an average of 11 months (table 3). For cases in which the appellate court reviewed on the merits, the average time from the filing of the appeal to final disposition was 14 months. For those appeals that were dismissed or withdrawn, the average number of months from filing to case resolution was 6 months.

Among appeals decided on the merits, 38% were disposed within 12 months of the filing date, and 82% were disposed within 18 months of the filing date. In comparison to appeals decided on the merits, over 90% of appeals that were dismissed or withdrawn prior to disposition were resolved within 1 year.

TABLE 3
Case processing time of civil trials appealed between 2005 and 2010

Outcome in appellate court	Number of appeals	Mean number of months	Time from filing to disposition of appeal			
			Cumulative percent of appeals disposed within—			
			6 months	12 months	18 months	24 months
All appeals	3,900	11 mo.	27%	58%	82%	96%
Decided on the merits*	2,390	14	3	38	75	95
Dismissal or withdrawn	1,510	6	66	90	94	99

Note: Includes only one appeal for each trial with an appeal filed in an intermediate appellate court or a court of last resort with initial review authority. Excludes multiple appeals, cross appeals, appeals filed in courts of last resort after intermediate appellate court review, and data for appeals that were pending or had an unknown disposition at the end of the study. Case processing time data were available for 98% of trials appealed. Detail may not sum to total due to rounding. See appendix table 4 for standard errors.

*Includes cases the appellate court reviewed, affirming or reversing trial court outcomes.

Methodology

The Bureau of Justice Statistics' (BJS) Civil Justice Survey of Trials on Appeal (CJSTA) was based on 26,950 general civil (i.e., tort, contract, and real property) cases that were disposed by bench or jury trial in 156 counties participating in the 2005 Civil Justice Survey of State Courts (CJSSC). Subsequently, 3,970 of those cases were appealed to 84 appellate courts in 35 states.

National sample of general civil trials - CJSSC

The CJSSC generated national-level estimates on civil cases concluded by bench or jury trial in state courts of general jurisdiction in 2005. The sample was designed so that inferences could be made about general civil trials litigated in the nation's 75 most populous counties as well as general civil trials disposed in counties outside the 75 most populous.⁴

In general, the CJSSC sample for the 75 most populous counties is based on both civil disposition and county population data. It is a stratified sample with 46 of the 75 most populous counties selected. The 75 most populous counties were divided into five strata: four were based on the number of civil dispositions, and one stratum was added in 2001 to reflect population changes. Stratum 1 consisted of the 14 counties with the largest number of civil

case dispositions. Every county in stratum 1 was selected with certainty. Stratum 2 consisted of 13 counties with 11 chosen for the sample. Ten of the 18 counties were selected from stratum 3. Nine of the 26 counties in stratum 4 were included in the sample. Stratum 5 was added to the 2001 sample to replace Norfolk County, Massachusetts, which was a stratum 4 site that participated in the 1992 and 1996 studies but later fell out of the 75 most populous counties in the 2000 census. Mecklenburg County, North Carolina, and El Paso County, Texas, were randomly selected from the four counties whose population increased sufficiently that they joined the ranks of the 75 most populous counties.

The sample of civil trial litigation outside the nation's 75 most populous counties was constructed by first forming 2,518 primary sampling units (PSUs) from 3,066 counties—3,141 U.S. counties minus the 75 most populous counties. The PSUs were formed using the following criteria: (1) they respected state lines, (2) they were based on one or more contiguous counties, and (3) they had a minimum estimated population of 10,000 persons. The average number of counties in each PSU was 1.22, with a maximum of 5 counties per PSU.

The 2,518 PSUs were divided into 50 strata according to census region, population density, and population size. Two PSUs were selected with equal probability within each of the 50 strata for a total of 100 PSUs and 110 counties in the supplemental sample. Thus, a total of 156 counties, 46 representing the nation's 75 most populous and 110 representing the remainder of the nation, were used for

⁴The sample allowed for inferences to the 75 most populous counties because prior iterations of the CJSSC that were fielded in 1992, 1996, and 2001 were limited to these counties rather than the national sample.

the sample. Substitutes from a shadow sample replaced PSUs that were initially selected for the CJSSC but did not participate; therefore, non-response adjustments were not needed for this survey.

The second stage of the CJSSC sample design involved generating lists of general civil cases concluded by trial. Each participating jurisdiction was asked to identify a list of tort, contract, and real property cases that had been disposed of by jury or bench trial between January 1, 2005, and December 31, 2005. The unweighted data represented 8,872 tort, contract, and real property trials. When these trials are weighted, they represented 26,950 general civil bench and jury trials disposed in a national sample of counties.⁵ Because these data are from a weighted sample, they can be used to generate national estimates of civil trials that were appealed to an intermediate appellate court or court of last resort.

Civil Justice Survey of Trials on Appeal

The CJSTA tracked every general civil case concluded by bench or jury trial in 2005 in the 156 surveyed counties that were subsequently appealed to an intermediate appellate court or court of last resort. Of the 8,872 general civil cases concluded, plaintiffs and defendants filed 1,439 appeals in 61 intermediate appellate courts and 77 appeals in 23 courts of last resort for a total of 1,516 appeals. Of the appeals, 226 were secondary appeals, such as multiple or cross-appeals in which either the plaintiff or defendant filed an appeal after the initial appeal was filed. In addition, some of the appeals were appeals to courts of last resort following initial review by an intermediate appellate court. Because this report focuses on the disposition of initial appeals from civil trials, the 226 secondary appeals were excluded from the analysis.

Most appeals (1,243) were filed directly from the trial to the intermediate appellate courts; however, in several states civil appeals bypassed the intermediate appellate court (or no intermediate appellate court existed) and were filed directly with the court of last resort. In this study 47 civil cases were appealed directly to the court of last resort or were transferred by the intermediate appellate court, without review, to the court of last resort. These direct appeals to courts of last resort share the characteristics of trial cases appealed to the intermediate appellate level. The 47 appeals have therefore been combined with the remaining 1,243 cases appealed to the intermediate appellate courts. Combining the two sets of appeals allows for analysis of all civil cases that underwent initial appellate review after a decision was reached at the trial court level. When weighted, these 1,290 cases represent 3,970 appeals from a base of 26,950 civil trials.

⁵These data were summarized in the BJS report, *Civil Bench and Jury Trials in State Courts, 2005*, NCJ 223851, BJS Web.

The appeals were followed until they were withdrawn, dismissed, or decided on the merits in the appellate courts. All appeals were tracked until March 30, 2010. A total of five appeals had still not been decided in the intermediate appellate courts or courts of last resort at the end of the study or had an unknown disposition. These five cases were excluded from the tables analyzing manner of disposition and appellate reversal rates.

Many appeals that were withdrawn or dismissed may have settled, thereby rendering the ultimate outcomes for these cases unknown. The ultimate outcome for appeals that resulted in a reversal or modification was also difficult to determine. Many reversed appeals were deferred to the initial trial court for a new trial. Determining outcomes for cases sent back for a new trial and comparing the original trial court verdicts or judgments was not within this study's scope.

Detailed data on civil appeals were collected from the case management systems and administrative files of the intermediate appellate courts and courts of last resort. Staff from the data collection agent (National Center for State Courts) accessed the online case management systems of appellate courts to collect detailed case level appeal information. For those courts without online case access, contractors were hired to review appellate case files and complete data collection forms onsite, or staff from the data collection agent traveled to the court to complete the data collection. Several sites with relatively few cases mailed the National Center for State Courts the appropriate documentation, which was then coded into the data collection instrument. These methods resulted in a 100% response rate for the CJSTA.

Standard errors and confidence intervals

Because the data come from a sample, a sampling error and confidence intervals are associated with each reported number. Confidence intervals and standard errors for several key variables are reported in the appendix tables. These confidence intervals show where the reported CJSTA numbers would fall 95% of the time in repeated sampling. In addition, comparisons of percentages made in this report were tested to determine if observed differences were statistically significant. Differences described as higher, lower, or different passed a hypothesis test at the 0.05 level of statistical significance (95% confidence level). Since the number of civil trials appealed was relatively low, there were few differences in key outcomes such as the affirmance or reversal rates that tested at the 95% level across various case characteristics including type of trial (bench or jury). Hence, some comparisons were tested and found to be statistically significant at the 0.10 level (90% confidence level). For differences that tested at the 0.10 level, the term "somewhat" was used to note the nature of the difference.

Significance testing calculations were conducted at BJS using jackknife replication methods available in WESVAR PC. The replicate weights needed to produce the standard errors and confidence intervals were developed specifically for CJSSC and CJSTA by staff at WESTAT. Replication variance estimation consisted of repeatedly calculating estimates

for subgroups of the full sample and then computing the variance among these “replicate” estimates. When appropriately applied, this technique implicitly accounted for the complexity of both a sample design and the estimators that were used.

APPENDIX TABLE 1

Standard error and confidence interval estimates for appeals of civil trials concluded in 2005, by case characteristics and party filing the appeal

Cases characteristics	Percent of trials appealed by—								
	Any litigant			Plaintiff			Defendant		
	Standard error	95% confidence interval		Standard error	95% confidence interval		Standard error	95% confidence interval	
	Lower bound	Upper bound		Lower bound	Upper bound		Lower bound	Upper bound	
All trials	1.0%	13%	17%	0.6%	6%	9%	0.6%	6%	8%
Case type									
Tort	0.9%	9%	13%	0.8%	5%	8%	0.5%	3%	5%
Contract	1.8	16	24	1.3	6	11	1.3	9	14
Real property	6.7	12	38	2.0	2	10	5.8	6	29
Trial type									
Bench	1.8%	14%	21%	1.1%	4%	9%	1.5%	8%	13%
Jury	1.0	12	16	0.8	7	10	0.5	4	7
Winner									
Plaintiff	1.3%	12%	17%	0.7%	3%	6%	0.9%	8%	12%
Defendant	1.3	11	16	1.0	10	14	0.5	0	2
Award amount									
No award	1.3%	12%	17%	0.9%	9%	13%	0.9%	1%	5%
\$1–\$99,999	1.1	8	12	0.7	2	5	0.9	4	8
\$100,000–\$999,999	2.7	21	31	1.9	4	12	1.9	14	21
\$1,000,000 or more	5.0	34	54	4.5	7	25	3.2	22	35
Punitive damages awarded	6.5%	20%	46%	6.2%	3%	28%	4.5%	9%	27%

Note: Standard errors and confidence intervals were calculated by using a replication method (i.e., jackknife, specifically JKN) available in WESVAR PC. Confidence intervals were calculated at the 95% level.

APPENDIX TABLE 2

Standard error and confidence interval estimates for appellate court disposition of civil trials concluded in 2005, by case characteristics

Case characteristic	Percent of civil trials on appeal—																	
	Reviewed on the merits									Not reviewed on the merits								
	Total			Affirmed			Reversed			Total			Dismissed			Withdrawn		
Standard error	Lower bound	Upper bound	Standard error	Lower bound	Upper bound	Standard error	Lower bound	Upper bound	Standard error	Lower bound	Upper bound	Standard error	Lower bound	Upper bound	Standard error	Lower bound	Upper bound	
All trials	3.2%	55%	67%	3.2%	34%	46%	2.6%	16%	26%	3.2%	33%	45%	2.8%	14%	26%	2.6%	14%	24%
Case type																		
Tort	4.4%	53%	71%	3.8%	32%	47%	3.7%	15%	29%	4.4%	29%	47%	2.8%	12%	23%	3.4%	14%	28%
Contract	4.1	53	70	4.5	31	48	3.2	16	29	4.1	30	47	4.3	14	31	3.0	10	22
Trial type																		
Bench	5.6%	47%	70%	5.4%	33%	55%	2.9%	9%	20%	5.6%	30%	53%	5.8%	12%	35%	4.6%	9%	27%
Jury	4.1	54	70	3.7	30	45	3.9	17	33	4.1	30	46	2.8	12	23	2.8	14	25
Award amount																		
No award	4.8%	52%	71%	4.2%	37%	54%	3.5%	9%	23%	4.8%	29%	48%	4.4%	16%	33%	2.3%	10%	19%
\$1–\$99,999	6.0	44	68	4.9	27	47	4.4	10	28	6.0	32	56	5.2	11	32	5.6	12	34
\$100,000 or more	3.9	56	71	3.6	25	40	4.9	21	41	3.9	29	44	3.4	7	21	3.6	15	30

Note: Standard errors and confidence intervals were calculated by using a replication method (i.e., jackknife, specifically JKN) available in WESVAR PC. Confidence intervals were calculated at the 95% level.

APPENDIX TABLE 3

Standard error and confidence interval estimates for civil trial outcomes subsequently reversed or modified on the merits on appeal

Case characteristic	Trial court outcomes reversed or modified on appeal		
	Standard error	95% confidence interval	
		Lower bound	Upper bound
All trials	3.8%	27%	42%
Case type			
Tort	5.0%	26%	46%
Contract	5.2	26	46
Trial type			
Bench	4.8%	15%	34%
Jury	5.2	30	51
Award amount			
No award	5.0%	16%	36%
\$1–\$99,999	6.3	22	47
\$100,000 or more	6.1	37	61

Note: Standard errors and confidence intervals were calculated by using a replication method (i.e., jackknife, specifically JKN) available in WESVAR PC. Confidence intervals were calculated at the 95% level.

APPENDIX TABLE 4

Standard errors and confidence interval estimates for case processing time of civil trials appealed between 2005 and 2010

Outcome in appellate court	Time from filing to disposition of appeal		
	Standard error	Lower bound	Upper bound
All appeals	0.4 mo.	10 mo.	12 mo.
Decided on the merits	0.4	14	15
Dismissed or withdrawn	0.6	4	7

Note: Standard errors and confidence intervals were calculated by using a replication method (i.e., jackknife, specifically JKN) available in WESVAR PC. Confidence intervals were calculated at the 95% level.

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This report in PDF and in ASCII and its related statistical data and tables are available at the website: <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=1753>.