When is the verdict or judgment final?: An examination of post trial activity in civil litigation

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In the civil justice system, there is often an expectation of case resolution with jury and bench trials. The assumption that verdicts or judgments provide an end point to civil disputes, however, does not provide an accurate view of the full civil litigation process. Litigants can file motions requesting various forms of post trial relief as a means of challenging or modifying the trial court verdict or judgment. This article applies multivariate logistic regression techniques to examine the factors associated with post trial activity among a sample of tort and contract trials concluded in the nation's 75 most populous counties in 2005. Results show that the legal issues adjudicated at trial, the type of trial (bench/jury), damage award amounts, punitive damages, filing to disposition time, and trial length are all significantly associated with the decision of one or both litigants to seek post trial relief.

Introduction

In the American court system, scholars, policymakers, and the general public attach special significance to civil cases that reach the trial stage. The trial is viewed as a key factor in the civil litigation process because of the presumption of finality associated with civil cases litigated to and decided by bench (judge) or jury trial. Some scholars have depicted the trial as the pinnacle of the litigation pyramid that starts with the filing of a lawsuit, proceeds through an extensive discovery and motion process, and ends with a jury or judge finding for one of the litigants (Ostrom, Hanson, Daley, 1993; Galanter, 1983). The paradigm of trials serving as an endpoint for civil litigation, however, overlooks the fact that litigants have a range of options available to them that can result in the modification or complete reversal of trial court outcomes. After trial, litigants can

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engage in further settlement negotiations, file an appeal, or seek some form of post trial relief.

This paper will examine the contours of post trial activity in a sample of general civil[1] cases adjudicated before judges or juries in 2005. Initially, it will describe the different forms of post trial actions that litigants can utilize to challenge trial court verdicts and judgments and briefly summarize the literature on civil post trial activity. Next, the data used to analyze post trial activity in the extant paper will be described. A descriptive overview about the types of post trial relief requested by and granted to litigants will be provided. The study will then endeavor to model post trial activity through logistic regression analysis. The logistic regression discussion will cover key factors associated with a plaintiff's or defendant's decision to seek post trial relief in civil cases. The paper will conclude by summarizing findings from the post trial analyses and discuss directions for future research.

Paths of post trial activity

Litigants seeking to modify or overturn trial court verdicts or judgments have several options available to them. One of the most common ways to challenge a trial court decision is to file a direct appeal. Appealing a verdict or judgment from a trial court to an intermediate appellate court or court of last resort, however, can involve a time consuming process of producing the trial court record, submitting the appellate briefs, and arguing the legal issues before the appropriate appellate court (Cohen, 2006; Waters,

[1] Throughout this document, general civil refers to civil cases involving tort, contract, or real property issues. This paper covers post trial activity in civil cases only. It does not attempt to examine post trial litigation in criminal matters.

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2007).[2] Plaintiffs and defendants seeking quicker and more direct routes of disputing trial court outcomes can do so by filing post trial motions. Post trial motions are filed with the presiding judge immediately after the trial's conclusion and can produce results that range from the complete overturning of the jury's decision to the modification of an award payout (Cohen, 2004b; Ostrom et al., 1993).[3]

There are four major post trial motions that can be filed after the conclusion of a trial including motions for a judgment notwithstanding the verdict (JNOV), motions for a new trial, motions to modify the damage award, or motions for some "other" form of relief. Of all the forms of post trial relief available to litigants, a JNOV has the potential to most dramatically influence the trial court outcomes. JNOVs are filed in jury trials and provide a mechanism for directly challenging a jury's decision in favor of one party. In order to grant a JNOV, the judge must find that the evidence presented at trial so overwhelmingly favored the losing party that the jury's verdict must be immediately reversed and a judgment entered for the party which initially lost (Hannafor-Agor, 2004; Ostrom et al., 1993).

Motions for a new trial involve requests filed with the presiding judge to set aside the verdict or judgment and order the case tried again. Unlike JNOVs, these motions do not require the judge to rule in favor of particular party. Judges who grant new trial motions must find that the trial court outcome went against the great weight of the evidence. These motions can also be granted in circumstances not related to the presentation of evidence such as errors made in jury instructions or abuse of attorney discretion. Events that may lead to the filing of a new trial motion can occur at any time

[2] Findings from a Bureau of Justice Statistics (BJS) study on civil appeals shows the average appeal being resolved on the merits within 15 months after the appellate notice has been filed (Cohen, 2006).
[3] Litigants have the discretion to file both post trial motions and appeals in the same case.

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when the trial takes place; however, judges typically wait until the end of the trial before ruling on these motions (Hannafor-Agor, 2004; Ostrom, et. al, 1993).

Other post trial motions entail modifying, as opposed to overturning, trial court verdicts or judgments. One of the most common forms of relief parties seeking to modify trial court decisions can request are motions to modify the damage awards. Either plaintiffs or defendants can file an award adjustment motion. Typically, these motions involve attempts to increase or decrease the amount of economic, non-economic, or punitive damages awarded at trial. They can also include motions to compensate parties for attorney's fees and court costs (Hannafor-Agor, 2004).

For the purposes of this paper, the remaining forms of post trial relief have been condensed into an "other" category. The forms of post trial relief in this other category includes motions to correct errors that occurred at trial, modify court fees and costs, tax court costs, or amend judicial decisions in bench trials (Cohen, 2004b).

In summary, litigants seeking to challenge or modify trial court verdicts or judgments have several options available to them. They can appeal the trial court outcome to an intermediate appellate court or court of last resort or they can request that the presiding judge immediately consider reversing or modifying the trial court decision by filing a JNOV, new trial, award modification, or some other motion.[4] The utilization of post trial motions and appeals as a mechanism for modifying or overturning trial court decisions constitutes the core component of the current research. By focusing on post trial activity in general, with particular emphasis on the decision by one or both litigants to file

[4] Litigants can seek multiple forms of post trial relief after the trial has reached its conclusion. For example, litigants can file a motion for a new trial and a motion to amend the damage award in the same case.

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post trial motions, this paper will broaden our current understanding of the paths of post trial litigation in civil cases.

Scholars examining post trial activity in civil cases, for the most part, have focused on the effects of appellate litigation on trial court outcomes. These studies have explored how likely civil verdicts or judgments are reversed or affirmed on appeal.[5] In addition to the academic literature, several technical reports sponsored by the Bureau of Justice Statistics (BJS) and the National Center for State Courts (NCSC) have examined various components of civil litigation at the appellate levels and have explored issues related to case processing time, attrition in civil appeals, and the rates in which appellate courts affirm, reverse, or modify trial court outcomes.[6]

Although several academic studies and technical reports have focused on civil appellate litigation at the federal and state levels, to date only one academic paper has been published on the issue of post trial motion activity in civil cases. In an article published in *Justice System Journal*, Ostrom et al. (1993) examined both post trial motion and appellate activity among 744 tort bench and jury trials concluded during a three month timeframe in 27 state courts of general jurisdiction in 1989. Ostrom et al. found that litigants filed post trial motions in nearly a third of tort trials and notices of appeal in another 16% of tort trials. In an unpublished manuscript, Hannaford-Agor (2004) conducted a more recent study of post trial activity by examining general civil trials concluded in the nation's 75 most populous counties in 2001 in which litigants requested

[5] See Clermont & Eisenberg (2001) and Schnapper (1989) for an examination of civil appellate litigation in federal courts and Eisenberg & Heise (forthcoming 2009) for an analysis of civil appeals in state courts. Also see Waters & Sweikar (2007) for an analysis of the impact of alternative dispute resolution programs on appellate case processing time.

[6] See Cohen (2006) for BJS analysis of civil appellate litigation in state courts. See Waters & Sohni (2007); Waters (2007); Hanson (2001); and Chapper & Hanson (1990) for NCSC technical reports on civil appeals.

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post trial relief or filed a notice of appeal.[7] Hannaford-Agor reported litigants seeking post trial relief in 29% of general civil trials and filing notices of appeal in 16% of civil trials. Both Ostrom et al. (1993) and Hannaford-Agor (2004) also found that the decision of one or both parties to seek post trial relief is strongly influenced by the legal issues adjudicated at trial, type of trial (bench/jury), damage award amounts, filing to disposition time, and trial length.[8]

This paper will replicate, update, and enhance the previous research – both published and unpublished – on post trial motion activity in civil cases tried to verdict or judgment. The analysis of post trial motion activity will be updated through the utilization of civil trial data from the 2005 Civil Justice Survey of State Courts (CJSSC). In addition to examining more current data, this article will broaden our understanding of the factors that drive litigants to seek post trial relief by modeling post trial filing decisions separately for plaintiffs and defendants among trials won or lost by the plaintiff. Descriptive statistics of the types of post trial relief requested and granted will also be provided. Results will also be compared against the findings from the Ostrom et al. (1993) and Hannaford-Agor (2004) studies of post trial litigation.[9]

Examining Post Trial Behavior with Data from the 2005 Civil Justice Survey of State Courts

[7] The tort, contract, and real property trial data examined by Hannaford-Agor stem from the 2001 Civil Justice Survey of State Courts (CJSSC). More information on the CJSSC will be provided in the data section of this paper.

[8] BJS also reported on the types of post trial relief requested and granted in broader reports covering tort and contract trial litigation in the nation's 75 most populous counties (Cohen, 2005, 2004b).

[9] It should be noted that this article focuses on the dynamics of post trial activity rather than the effect of post trial litigation on actual award payouts. Several scholars have looked at the impact of post trial activity on jury awards including Hyman, Black, Zeiler, Silver & Sage (2007) examination of post verdict "haircuts" in medical malpractice trials. See also Vidmar, Robinson, & MacKillop (2006), Vidmar, MacKillop, Lee (2006) and Viscusi (2004) for other articles on the topic of post verdict award reductions.

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Data from the 2005 Civil Justice Survey of State Courts (CJSSC) were used to examine post trial litigant behavior in general civil bench and jury trials. The CJSSC is a joint data collection endeavor between BJS and NCSC and has collected data on general civil trials concluded in a sample of state courts during the years 1992, 1996, 2001, and 2005.[10] The 2005 CJSSC expanded on prior iterations of this project by collecting data from a nationally representative sample of general civil bench and jury trials disposed in state trial courts in 2005.[11]

The 2005 CJSSC produced national level estimates of general civil trial litigation through two sampling frameworks. First, the sample was designed so that inferences could be made about general civil trials litigated in the nation's 75 most populous counties. The 75 most populous counties design was maintained in order to compute trends in civil trial litigation. In addition to sampling civil trial litigation in the nation's 75 most populous counties, a sample of counties, from which to estimate the civil trial litigation in counties outside the 75 most populous, was developed. A total of 156 counties, 46 representing the nation's 75 most populous counties and 110 representing the remainder of the nation were used for the sample.

[10] The data for the 1992, 1996, 2001, 2005 CJSSC have been used to generate several BJS bulletins and special reports. Some of the most recent BJS bulletins on civil justice are titled "Civil Bench and Jury Trials in State Courts, 2005"; "Civil Trials and Verdicts in Large Counties, 2001," "Medical Malpractice Trials and Verdicts in Large Counties, 2001" and "Tort Trials and Verdicts in Large Counties, 2001" (Langton & Cohen, 2008, Cohen & Smith, 2004, Cohen, 2004 (a) (b)). These and earlier BJS reports and bulletins on civil justice can be accessed at http://www.ojp.usdoj.gov/bjs/civil.htm. These data have also been utilized by numerous law professors, political scientists, and other empirical legal scholars to examine various topics related to tort reform, punitive damages, and civil litigation generally (Eisenberg et al., 1997, 2001, 2002, 2009; Hans & Albertson, 2003; Heise, 2000; Sharkey, 2005). NCSC staff have also produced several technical reports and journal articles utilizing the CJSSC data (Hannaford-Agor, LaFountain, and Strickland, 2005; Ostrom, Rottman & Goerdt, 1996; Hanson, Ostrom & Rottman, 1996).

[11] The 2005 CJSSC examined general civil trial litigation in a national sample of counties. Prior CJSSC projects focused on general civil bench and jury trials concluded in a sample of the nation's 75 most populous counties.

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The second stage of the CJSSC sample design involved generating lists of cases that would be coded. Each participating jurisdiction was asked to identify a list of general civil cases that had been disposed of by bench or jury trial between January 1, 2005, and December 31, 2005.[12] The lists of trials initially generated were paired down substantially so that they could meet the strict definitional criteria for general civil bench or jury trials developed by the NCSC. Once the list of general civil trials had been generated, NCSC staff or local contractors reviewed the administrative record for each case and coded information about these cases.[13] Some of the information coded includes the types of civil cases adjudicated by trial; the characteristics and number of litigants engaged in these trials; the party who prevailed at trial; the amount of compensatory and punitive damages awarded to litigants after verdict or judgment; the dates in which key case and trial events took place; the number of days spent in trial; and requests for post trial relief (Langton & Cohen, 2008).

In order to gain an understanding of post trial activity in civil cases, the CJSSC data collection forms were revised in 2001 so that information on the types of post trial relief requested and granted could be recorded.[14] The revised forms allowed information to be collected on whether the plaintiff or defendant requested and was granted a motion for JNOV, new trial, amended award, or some other form of relief (Hannaford-Agor, 2004). The 2001 CJSSC also recorded whether the litigants filed a notice with the presiding trial court judge to take an appeal with the state's intermediate appellate court

[12] It should be noted that there were several exceptions to this general rule of sampling general civil bench and jury trials concluded in 2005. Some jurisdictions produced a list covering 12-months of trials for a fiscal as opposed to a calendar year. Civil trials that took place in state courts of limited jurisdiction were also excluded from the sample.

[13] The data collection forms used to code these civil trials are archived at the Interuniversity Consortium for Political and Social Research (ICPSR) at http://www.icpsr.umich.edu/.

[14] The 1992 and 1996 CJSSC did not collect information on whether post trial relief was sought or granted by the plaintiffs or defendants.

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or court of last resort.[15] In the 2005 CJSSC, similar types of post trial behavior by plaintiffs and defendants were coded for general civil trials concluded both at the national level and in the nation's 75 most populous counties.

The next section provides a descriptive overview of the types of post trial relief sought and granted in tort and contract trials concluded in state trial courts of general jurisdiction in 2005. Before presenting results, two major restrictions regarding the utilization of the 2005 CJSSC data in this paper should be noted. First, data were restricted to examining post trial litigation in the nation's 75 most populous counties rather than the national sample. The data were restricted to the 75 most populous counties because many counties in the national sample had relatively few trials disposed in 2005.[16] The small number of trials concluded in many rural counties presented problems in terms of controlling for county level effects in subsequent sections utilizing regression models. In addition, the percentages reported on post trial activity do not change appreciably when the nation's 75 most populous counties, as oppose to the national sample, are employed. Hence, for consistency purposes between the descriptive and regression sections, the extant study was restricted to an examination of post trial activity in the nation's 75 most populous counties. Secondly, real property trials were excluded from the analysis because many of these cases did not contain information on key outcome characteristics such as which litigant prevailed and the amount of damages awarded.

[15] The CJSSC has limited information on appellate activity in civil trials. Although the CJSSC codes whether the plaintiff or defendant filed a notice of appeal with the trial court judge, it does not gather data on the extent that these appeals were decided on the merits, affirmed, or reversed at the appellate court level. For the CJSSC projects conducted in 2001 and 2005, information on the disposition of civil appeals were collected in a supplemental survey that specifically examined civil trials on appeal.

[16] See Langton & Cohen (2008) showing many rural counties with 5 or fewer general civil trials concluded in 2005.

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Paths of post trial activity among tort and contract trials

A general overview of post trial activity among litigants in tort and contract trials[17] concluded in the nation's 75 most populous counties is provided in table 1. Overall, litigants requested post trial relief in an estimated 28% of civil trials and filed notices of appeal in 18% of civil trials.[18] Post trial motions were filed in nearly a third of trials won by the plaintiff and in a quarter of trials where the plaintiff did not prevail. In terms of appellate activity, appeals were filed at nearly identical rates among trials won (18%) and lost (17%) by the plaintiff. In conclusion, table 1 shows post trial activity taking place in a sizeable minority of civil trials concluded in the nation's 75 most populous counties. Among the civil trials examined, litigants filed either a post trial motion or an appeal in over a third (35%) of civil trials decided in 2005 (not shown in table 1).

Table 1. Post trial activity in general civil trials concluded in the nation's 75 most populous counties, 2005

Trial court outcome	Number of trials concluded	Percentage of civil trials in which litigants filed - Post trial motions	Appeals
All civil trials	10,490	28 %	18 %
Civil trials in which -			
Plaintiff won	5,682	31 %	18 %
Plaintiff lost	4,808	25	17

Note. Includes tort and contract bench and jury trials concluded in the nation's 75 most populous counties in 2005.
Real property trials and trials concluded outside the nation's 75 most populous counties were excluded.
Litigants can file both post trial motions and appeals in civil trials.
Source: Civil Justice Survey of State Courts, 2005

[17] Throughout the remainder of this paper, a civil trial refers to tort and contract trials concluded in the nation's 75 most populous counties in 2005.
[18] Table 1 combines post trial behavior for plaintiffs and defendants. In subsequent analyses, the post trial activity of plaintiffs and defendants is shown separately.

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Although table 1 illuminates the issue of post trial activity, it provides only a partial picture of the paths plaintiffs and defendants seek when challenging verdicts or judgments. Prior research shows plaintiffs and defendants filing post trial motions and appeals under different circumstances (Hannaford-Agor, 2004; Ostrom et al. 1993). The next set of analyses augments the statistics presented in table 1 by examining post trial behavior separately for plaintiffs and defendants in trials won or lost by the plaintiff.

Figure 1 shows the flow of post trial activity in 5,681 civil trials won by plaintiffs in the nation's 75 most populous counties in 2005. When examining civil trials where the plaintiff prevailed, one would expect defendants to challenge the verdict or judgment to a greater extent than plaintiffs (Hannaford-Agor, 2004). Figure 1, however, does not entirely support this contention. Defendants who lost at trial filed post trial motions (22%) at levels that were only somewhat higher compared to their plaintiff counterparts (14%). Wider discrepancies between plaintiffs and defendants were apparent concerning the filing of an appeal. Defendants (15%) were nearly three times as likely to file an appeal as plaintiffs (6%) in civil trials where the jury or judge found for the plaintiff.

In addition to the sizable minorities of plaintiff winners seeking to challenge trial court outcomes, courts granted post relief more frequently to plaintiffs than defendants. Over a third (37%) of plaintiff winners requesting post trial relief received it. Defendants, in comparison, were granted post trial relief in 1 out of 4 trials where they sought to amend or overturn trial decisions that found for the plaintiff.

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Figure 1. Flow of post trial activity in civil trials won by plaintiffs in general civil trials concluded in the nation's 75 most populous counties, 2005

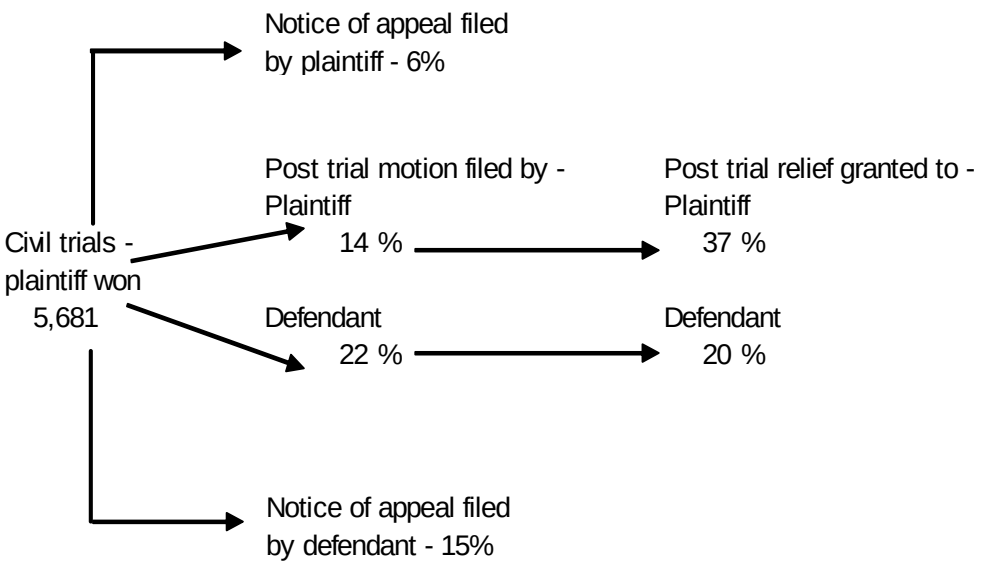
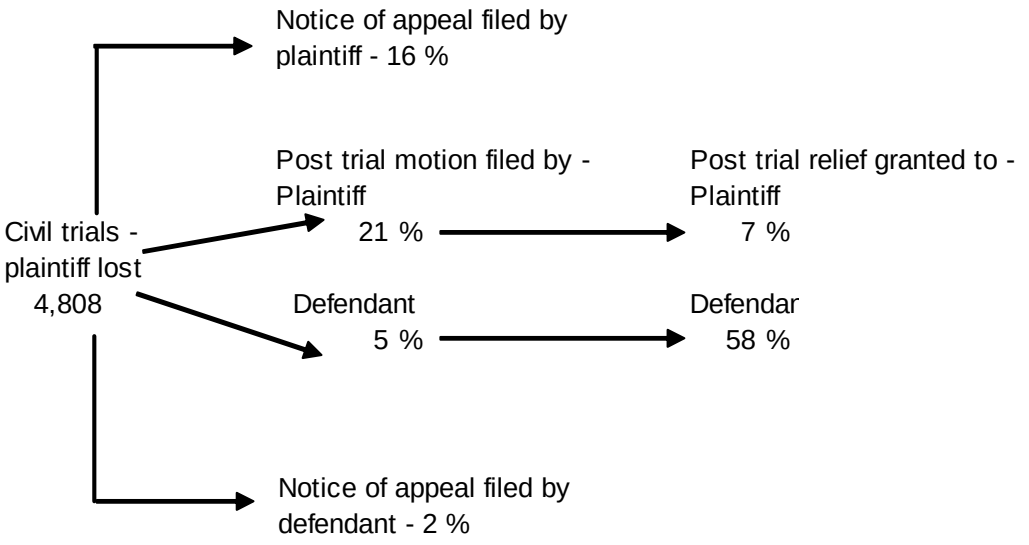


Figure 2 examines the flow of post trial activity in 4,808 civil trials lost by the plaintiffs in the nation's 75 most populous counties in 2005. Unlike trials where the plaintiff prevailed, figure 2 shows substantial divergence between the rates that plaintiffs and defendants engaged in post trial activity. Not surprisingly, plaintiffs filed post trial motions (21%) and appeals (16%) in considerable numbers of trials that they lost. Defendant winners, in comparison, sought post trial relief by filing motions or appeals in less than 5% of civil trials. In terms of ruling in favor of a post trial motion, courts granted post trial relief to only 7% of plaintiffs who sought it. Even though few defendants who won at trial requested relief, it was granted to nearly 60% of those defendants making a relief request.

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Figure 2. Flow of post trial activity in civil trials lost by plaintiffs in general civil trials concluded in the nation's 75 most populous counties, 2005



In summary, figures 1 and 2 show that the decision to seek post trial relief is significantly influenced by the party prevailing at trial. Trials won by plaintiffs generated substantial levels of post trial activity among both sets of litigants, while trials lost by plaintiffs witnessed considerable plaintiff but few defendant challenges. While it's not surprising to see litigants contesting trial court outcomes that went against them, it was somewhat unexpected to find sizable minorities of plaintiffs challenging favorable verdicts or judgments. There are, however, a variety of underlying factors that might drive plaintiff winners to seek post trial relief including dissatisfaction with the damage awards imposed at trial or attempts to have defendants pay court fees and costs or correct other errors (Hannaford-Agor, 2004; Cohen, 2004).

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The results discussed in the proceeding figures closely align with the research conducted by Hannaford-Agor (2004) and to a lesser extent Ostrom et al. (1993). Both papers found similar rates of post trial and appellate activity in civil bench and jury trials. In particular, Hannaford-Agor (2004) noted substantial levels of post trial activity occurring among both plaintiffs and defendants in trials won by the plaintiff.

Types of post trial relief requested and granted in civil trials

The analysis of post trial activity is further refined in tables 2 and 3 which examine the types of post trial relief requested and granted in civil trials concluded in the nation's 75 most populous in 2005. As previously mentioned, the 2005 CJSSC identified four major types of post trial relief that litigants could request and be granted including a motion a JNOV, new trial, amended award, and other relief.

The types of post trial motions requested by plaintiffs and defendants in trials won and lost by the plaintiff are shown in table 2. In general, plaintiffs who won at trial attempted to modify rather than overturn the verdict or judgment. Motions for an amended award or other forms of relief were requested by plaintiffs in about 10% of civil trials where they prevailed. Some plaintiff winners, however, were so dissatisfied with the trial court decision that they requested either a new trial (7% of trials) or more uncommonly a JNOV (2% of jury trials). Defendants who lost in trial, in comparison, tended to file motions that would result in the annulment of the verdict or judgment. Defendants filed JNOV and new trial motions in an estimated 21% of trials where the judge or jury found for the plaintiff.[19] Some trials saw defendant losers attempting to

[19] The 21% figure was computed by adding the 715 cases with defendant new trial motions to the 468 trials with defendant JNOV motions and dividing by the 5,681 trials with plaintiff winners. Calculations of the percent of trials where either a new trial or JNOV was requested are shown in table 2.

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modify rather than reverse trial court outcomes. Defendants requested award modifications and other forms of relief in about 11% of civil trials that they lost.

Compared to trials where the plaintiff prevailed, trials which the plaintiff lost produced appreciably different patterns of post trial activity for both plaintiffs and defendants. The majority of plaintiff losers sought to reverse the trial court outcome by filing new trial (18% of trials) or JNOV (6% of jury trials) motions. Less than 5% of plaintiff losers sought to modify the trial court decision by motioning for an amended award or other form of relief. Although very few defendant winners filed post trial motions, most that did sought other forms of relief.

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Table 2. Types of post trial relief sought in civil trials, by trial court outcome, in the nation's 75 most populous counties, 2005

Types of post trial relief motion by court outcomes	Civil trials in which post trial relief sought/a: Percent of all civil trials	Number
Plaintiff prevailed		
Types of plaintiff motions		
JNOV/b	2 %	84
New trial	6	369
Award modification	5	267
Other relief/c	5	265
Types of defendant motions		
JNOV/b	12 %	468
New trial	13	715
Award modification	5	301
Other relief/c	6	318
Plaintiff lost		
Types of plaintiff motions		
JNOV/b	6 %	232
New trial	18	861
Award modification	1	35
Other relief/c	3	134
Types of defendant motions		
JNOV/b	1 %	31
New trial	1	30
Award modification	--	19
Other relief/c	4	198

Note. The type of post trial relief sought will not sum to totals reported in other sections of this paper because the post trial relief categories are not mutually exclusive. Litigants can file for and be granted multiple forms of post trial relief.
a/Types of post trial relief sought calculated from 5,681 civil trials where the plaintiff won and 4,808 civil trials where the plaintiff lost.
b/Types of JNOVs sought calculated from civil jury trials; bench trials excluded from this calculation because a JNOV can be sought in jury trials only.
c/Other forms of relief include motions to correct errors that occurred in trial, modify court costs and fees, tax court costs, and amend judicial decisions in bench trials.
-- Less than 0.5%.

Table 3 examines the types of post trial relief granted to plaintiffs and defendants by trial court outcome. In general, courts were reluctant to grant motions that would result in the trial court outcomes being reversed or set aside. For example, a JNOV motion was granted to about 4% of plaintiffs and 9% of defendants who sought to reverse

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an unfavorable verdict. Courts were also highly unlikely to grant new trial motions filed by plaintiffs or defendants seeking to nullify adverse outcomes. About 7% of defendants and 5% of plaintiffs who requested a new trial, as a means of overturning a verdict or judgment that found for the opposing party, received it. Interestingly, courts were more likely to grant either a JNOV or new trial if the party requesting this form of relief had prevailed at trial. For instance, about a third of defendant winners requesting a JNOV were granted that form of relief.

In comparison to motions aimed at reversing or overturning trial court decisions, courts were more likely to grant motions that amended or modified trial court outcomes. In trials where plaintiffs prevailed, courts granted award modifications to 37% of plaintiffs and 32% of defendants who requested this form of relief. In addition, plaintiffs and defendants who subsequently requested other forms of relief after winning at trial received it in about 6 out of 10 trials. Even in trials where the plaintiff lost and the defendant was awarded damages, courts were willing to grant relief involving an award modification to 24% of plaintiffs and 68% of defendants.

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Table 3. Types of post trial relief granted in civil trials, by trial court outcome, in the nation's 75 most populous counties, 2005

Types of post trial relief motion by case outcomes	Civil trials in which post trial relief granted/a Percent	Number
Plaintiff prevailed		
Types of motions granted to plaintiffs		
JNOV/b	9 %	8
New trial	10	38
Award modification	37	98
Other relief/c	62	163
Types of motions granted to defendants		
JNOV/b	9 %	41
New trial	7	49
Award modification	32	97
Other relief/c	36	115
Plaintiff lost		
Types of motions granted to plaintiffs		
JNOV/b	4 %	9
New trial	5	39
Award modification	24	8
Other relief/c	18	24
Types of motions granted to defendants		
JNOV/b	32 %	10
New trial	20	6
Award modification	68	13
Other relief/c	63	125

Note. Data were missing for type of post trial relief granted from about 5% of the trials in some categories. The cases with missing post trial relief data were included in the percentage calculations.
The types of post trial relief granted will not sum to totals reported in other sections because the post trial relief categories are not mutually exclusive. Litigants can file for and be granted multiple forms of post trial relief.
a/Totals and types of post trial relief granted calculated from the base number of civil trials where the plaintiff or defendant sought post trial relief.
b/Types of JNOVs granted calculated from civil jury trials; bench trials excluded from this calculation because a JNOV can be sought in jury trials only.
c/Other forms of relief include motions to correct errors that occurred in trial, modify court costs and fees, tax court costs, and amend judicial decisions in bench trials.

In conclusion, it should not be too surprising to find courts being more amenable to modifying as opposed to completely reversing trial court decisions. For a judge to grant a JNOV, they basically have to find that "no reasonable trier of fact could find for

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[the prevailing party] given the evidence introduced at trial. In essence, a JNOV is a vote of no confidence in the reasonableness of the jury's decision" (Hannaford-Agor, 2004: 11). In addition to the exceptionally high standards for granting a JNOV, new trial motions can only be approved in cases where the trial court outcome went against the great weight of the evidence or an error committed at trial was so egregious that the only option available was to set aside the trial court verdict or judgment (Hannaford-Agor, 2004; Ostrom et al., 1993). Motions to amend damage awards or grant other forms of relief, in comparison, have lower evidentiary and legal thresholds.

One intriguing finding about the granting of post trial motions was the proclivity of courts to grant JNOVs and new trial motions to slightly more defendants than plaintiffs attempting to overturn adverse outcomes. JNOV motions, for instance, were granted to 9% of defendants and 4% of plaintiffs who filed this type of motion in an attempt to reverse an unfavorable outcome. Research by Clermont & Eisenberg (2001) and Eisenberg & Heise (2009) show similar patterns of favoritism towards defendants at the appellate court levels. Their research, combined with the current findings, suggests that trial courts might be more inclined towards overturning verdicts or judgments favoring plaintiffs than reversing pro-defendant outcomes.

Another unexpected finding concerned circumstances where the prevailing party requested and was granted either a JNOV or new trial. While it might seem reasonable for the prevailing party to request an award modification or some other form of relief, it was astonishing to find some prevailing plaintiffs and defendants requesting either a new trial or more incredibly, a complete reversal of the case outcome through the JNOV process. The decision by the prevailing party to motion for a JNOV or new trial could

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reflect ongoing settlement negotiations between the parties or other attributes of the lawsuits that were too complex to measure in the extant data collection. Although this paper cannot answer why parties who succeed at trial would seek to have that outcome reversed, it does illustrate that the legal issues and litigant relationships inherent in some civil lawsuits can be so multifaceted and complex that they produce quirky and odd outcomes.

Modeling the decision of litigants to seek post trial relief

The next step in this analysis is to use multivariate statistical techniques to further refine our understanding of the factors that influence plaintiffs and defendants to file post trial motions. While previous sections provided an overview of litigant post trial behavior, multivariate analysis can further assist in disentangling the effects of multiple factors on the odds of a plaintiff or defendant requesting post trial relief. Hence, the multivariate section will provide more details on the types of case and litigant characteristics that could influence post trial challenges. The multivariate analysis of post trial behavior proceeds in several parts. First, the dependent and independent variables utilized in the statistical models are detailed. Next, the discussion highlights the technical challenges inherent in modeling litigant post trial activity. Model results are then explicated and conclusions offered regarding the models' overall findings.

Four models were utilized to examine the factors influencing post trial relief motions. The first two models examined the odds of a plaintiff or defendant filing a post trial motion in trials where the plaintiff won, while the third and fourth models analyze the odds of a plaintiff or defendant requesting post trial relief in trials where the plaintiff

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lost.[20] The dependent variables of interest are whether the plaintiff or defendant filed a motion seeking post trial relief. The post trial relief dependent variable combines whether the plaintiff or defendant requested a JNOV, new trial, amended award, or some other form of relief.[21]

The independent variables used in these statistical models include: the types of civil cases (e.g., premises liability, product liability, medical malpractice, employment discrimination) litigated at trial; the type of trial (e.g., jury or bench); the organizational characteristics of the primary plaintiffs or defendants (e.g. individual or non – individual); the total amount of compensatory and punitive damages awarded at trial; the imposition of punitive damage awards; the time from filing to case disposition in months; and the actual number of days spent litigating a case at trial. The actual independent variables, their corresponding reference categories, and values are shown in table 4.[22]

[20] Post trial activity was examined through four models because the paths of post trial behavior are highly dependent upon the party seeking relief and the party prevailing at trial (Hannaford-Agor, 2004; Ostrom et al., 1993).

[21] It should be noted that the post trial dependent variable does not include whether the litigant filed a notice of appeal. Filing an appeal is inherently different from requesting post trial relief because post trial motions are decided by the presiding trial court judge and typically are ruled on immediately after being requested. Appeals, in contrast, involve a more complex process of taking the case to the appellate court for resolution. Although the CJSSC collects detailed information on post trial motions, it collects limited data on litigant appellate activity.

[22] Similar variables were utilized in the Ostrom et al. (1993) and Hannaford-Agor (2004) analyses of post trial litigation.

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Table 4. Profile of variables in post trial motion model in civil trials in the nation's 75 most populous counties, 2005

Variables	Coding	Mean	Standard Error
Civil trial case category			
Automobile accident*	1 = Automobile accident	0.337	0.010
Premises liability	1 = Premises liability	0.102	0.006
Product liability (includes asbestos)	1 = Product liability	0.021	0.002
Intentional tort	1 = Intentional tort	0.033	0.002
Medical malpractice	1 = Medical malpractice	0.116	0.005
Professional malpractice	1 = Professional malpractice	0.011	0.001
Other torts	1 = Other torts	0.049	0.002
Fraud	1 = Fraud	0.056	0.003
Seller plaintiff	1 = Seller plaintiff	0.105	0.004
Buyer plaintiff	1 = Buyer plaintiff	0.072	0.002
Employment discrimination or dispute	1 = Employment discrimination	0.040	0.002
Rental lease agreement	1 = Rental lease agreement	0.024	0.002
Other contracts	1 = Other contracts	0.033	0.002
Type of trial disposition			
Jury trial	1 = Jury trial	0.750	0.009
Litigant characteristics			
Organizational plaintiff	1 = Organizational plaintiff	0.171	0.004
Organizational defendant	1 = Organizational defendant	0.565	0.013
Damages awarded			
Overall damage award amounts**	Damage awards in dollars	$363,888	$38,155
Punitive damages awarded	1 = Punitive damages	0.026	0.002
Case processing time			
Filing to disposition time (in months)**	Case processing time in months	25.885	0.596
Trial length (in days)**	Days in trial	4.199	0.173

* Denotes reference variable in statistical model
** Denotes centered variable in regression model

Binary logistic regression models were used to estimate the odds of a plaintiff or defendant filing a post trial motions. Logistic regression is one widely accepted method for analyzing the effects of multiple independent factors on dichotomous or binomial outcomes such as whether the plaintiff or defendant sought post trial relief (Menard, 1995). The explanatory power of each independent value is expressed through a logit coefficient or odds ratio. A negative coefficient or odds ratio less than one denotes that the variable is related to a reduction in the likelihood of post trial motions, while a

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positive coefficient or odds ratio greater than one means that a particular variable is related to an increase in the likelihood or odds of post trial activity.[23]

Utilizing logistic regression to model post trial activity presented several technical challenges. First, the models were adjusted in order to take into account the stratified sampling framework of the CJSSC data. To reiterate, the CJSSC collects data from civil trials concluded in a stratified sample of 46 of the nation's 75 most populous counties. The results, hence, were adjusted to take into account the overall probabilities of the county appearing in the sample as well as the clustering of trials at the county level.[24] Another technical issue concerned the high levels of multicollinearity between case type[25] and the continuous independent variables related to damage awards, case processing time, and number of days in trial. Addressing the multicollinearity issue involved centering each continuous variable in all four logistic regression models.[26] Lastly, the logistic regression results are reported both through a standard discussion of odds ratios, beta coefficients, and tests of statistical significance as well as several figures

[23] Note that the size of the coefficient or odds ratio alone does not indicate a weak or strong relationship with the dependent variable. To conclude that a variable influences post trial activity, it must be statistically significant. A logistic regression coefficient or odds ratio is generally considered to be statistically significant when its significance level is .05 or greater or when its corresponding Wald-value is approximately 2 or greater or –2 or less.

[24] The svyset command in Stata 10.0 was used to adjust the logistic regression results by the CJSSC sampling framework. Using the svyset command involved finite population correction, which adjusted for the probability of a county appearing in a particular stratum. The svyset command also allowed for the standard errors to be adjusted in order to take into account clustering of trials by their primary sampling units (e.g., counties). (UCLA academic technology services, 2009). In addition to accounting for the county level clustering, this analysis explored applying a two – level modeling approach where residuals produced from county level regressions were added to the main model. Although the residuals were statistically significant, they did not change the model's overall findings. Consequently, the two-level modeling technique was not applied to the extant analysis.

[25] Case type refers to the legal issues litigated at trial. See table 4 for a list of the legal issues that were litigated to trial in the CJSSC data.

[26] Centering is a commonly used technique to address multicollinearity. Centering each continuous variable by its mean means subtracting the variable's mean from each case's value on that variable (that is, case type) and dividing by the standard deviation (Smith & Sasaki, 1979).

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showing predicted probabilities of litigant post trial activity by case type.[27] The predicted probabilities were calculated in order to make the results more interpretable to readers who are unfamiliar with multivariate analysis.

Before delving into the logistic regression results, it's crucial to stress that the models are not capable of assessing the impact of several key factors that could influence post trial behavior. The overall quality of attorney experience and advice, the complexity of the case being litigated, the value of the outcome to the litigant, and the motivation of the parties to continue with the case have considerable effects on the odds of a plaintiff or defendant seeking post trial relief. Unfortunately, the CJSSC does not capture the abovementioned case and party characteristics. Consequently, the models cannot provide a complete picture of the factors that influence the likelihood of post trial activity among plaintiffs and defendants. Although the models cannot assess the impact of all pertinent case and party characteristics, they can provide a preliminary understanding of why plaintiffs or defendants file post trial motions.

Key findings from logistic regression models on post trial activity

Table 5 reports logistic regression results examining the likelihood of a plaintiff or defendant filing post trial motions in trials won by the plaintiff.[28] Concerning the influence of case type, plaintiffs who won at trial were significantly more likely to seek

[27] The spost command "prchange" in Stata 10.0 was used to compute predicted probabilities. The spost command prchange calculates the predicted probabilities by setting all independent variables to their mean levels, setting the independent variable of interest to a value of one, multiplying the means of each independent variable by their respective logistic regression parameter estimates, taking the exponential function of the summed product of means and parameter estimates, and then calculating the probability of that exponential function (Long & Freese, 2005).

[28] All logistic regression models report logit coefficients, standard errors, odds ratios, tests of significance, and overall model fit through the Hosmer & Lemeshow goodness-of-fit tests. The Hosmer & Lemeshow test shows an adequate model fit for the plaintiff but not for the defendant post trial model.

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post trial relief in product liability and medical malpractice cases.[29] The odds of plaintiff winners filing post trial motions in product liability (2.06) and medical malpractice (1.78) cases were approximately two times greater compared to plaintiff winners in automobile accident trials. The logistic regression also showed none of the other case types significantly influencing plaintiff's post trial behavior.

In comparison to plaintiff winners, defendants who lost at trial had a significantly higher likelihood of requesting post trial relief for all case types. At a minimum, defendants who lost in premises liability and rental lease trials were two and a half times more likely to seek post trial relief compared to defendants in automobile accident trials. Some case categories had considerably greater influences on defendant post trial activity. For example, the odds of defendant losers filing post trial motions in professional malpractice, medical malpractice, or employment discrimination cases exceeded by a factor of six their counterparts in automobile accident disputes.

The models also show plaintiff and defendant post trial activity being influenced by the type of trial, damage awards, and case processing time. Both plaintiffs and defendants were significantly more likely to seek post trial relief in jury compared to bench trials. In terms of the damage awards, the impact of award compensation depended upon the party requesting post trial relief. For plaintiffs who won at trial, larger damage awards translated into decreased odds of plaintiff post trial motions but increased odds of defendant post trial motions. An increase in the damages awarded to the plaintiff, for instance, resulted in a 14% reduction in the odds of post trial challenges being filed by

[29] Automobile accident serves as the reference category for the case type variable. Only variables that were significantly associated with post trial activity are discussed in the section highlighting odds ratios and beta coefficients generated from the logistic regressions.

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the plaintiff and a 1.09 increase in the odds of defendant post trial challenges. [30] Punitive damages also had differing impacts on post trial activity. Plaintiff winners who received punitive damages were 44% less likely to seek post trial relief, while defendants were 2.6 times more likely to file post trial motions when they paid punitive damages. In addition, case processing time influenced litigant post trial activity. Basically, both parties were more likely to seek post trial relief in cases that took longer to process as measured in the number of months spent litigating a case to verdict or judgment and the number of days in trial.

One intriguing finding concerned the mixed influence of litigant characteristics on post trial activity. According to the model, litigant chacteristcs were important only for plaintiff post trial activity. Plaintiff winners were more likely to request post trial relief against organizational as opposed to individual defendants. Organization plaintiffs, however, were just as likely to seek post trial relief as individual plaintiffs. Moreover, defendant post trial behavior was not influenced by the organizational characteristics of either primary litigant.

[30] Since damage awards have been centered, a one unit change in damage awards does not equal a one dollar change; rather, a change in the damage awards should be translated into a one unit change in the centered damage award variable.

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Table 5. Logistic regression models of post trial motion activity in civil trials where the plaintiff prevailed, in the nation's 75 most populous counties, 2005

	Plaintiff filed post trial motion model			Defendant filed post trial motion model		
Variables in model	Coef.	Std. Err.	Odds Ratio	Coef.	Std. Err.	Odds Ratio
Civil trial case category						
Product liability (includes asbestos)	0.72	0.26	2.06 **	1.77	0.23	5.89 ***
Professional malpractice	0.59	0.45	1.81	2.02	0.23	7.52 ***
Medical malpractice	0.58	0.19	1.78 **	1.88	0.17	6.54 ***
Fraud	0.35	0.20	1.42	1.57	0.17	4.82 ***
Other contracts	0.30	0.30	1.35	1.53	0.21	4.60 ***
Intentional tort	0.26	0.20	1.29	1.07	0.25	2.92 ***
Employment discrimination or dispute	0.15	0.21	1.16	1.93	0.22	6.90 ***
Other torts	0.03	0.19	1.03	1.21	0.17	3.37 ***
Buyer plaintiff	-0.05	0.25	0.95	1.25	0.17	3.48 ***
Seller plaintiff	-0.12	0.27	0.89	1.05	0.25	2.85 ***
Premises liability	-0.17	0.12	0.85	0.92	0.14	2.50 ***
Rental lease agreement	-0.20	0.29	0.82	0.94	0.29	2.55 **
Type of trial disposition						
Jury trial	0.83	0.14	2.30 ***	1.20	0.15	3.33 ***
Litigant characteristics						
Organizational plaintiff	-0.02	0.08	0.98	0.03	0.13	1.03
Organizational defendant	0.33	0.09	1.38 ***	0.17	0.12	1.19
Damages awarded						
Overall damage award amounts	-0.15	0.03	0.86 ***	0.09	0.02	1.09 ***
Punitive damages awarded	-0.58	0.20	0.56 **	0.96	0.20	2.60 ***
Case processing time						
Filing to disposition time (in months)	0.12	0.04	1.13 **	0.12	0.03	1.13 ***
Trial length (in days)	0.13	0.03	1.14 ***	0.23	0.08	1.26 **
Model chi - square			219.41 ***	357.48 ***		
Log pseudolikelihood			-1259.56	-1556.71		
Hosmer-Lemeshow chi2			8.42	20.99		
Prob > chi2 =			0.39	0.01		
Population size			5,067	5,067		

Note. Reference group for case type is automobile accident trials, reference group for disposition type is bench trials, reference group for organizational plaintiff and defendant is individual plaintiff and defendant, reference group for punitive damages is no punitive damages awarded. Variables related to case processing time and overall damage awards are continuous.
Continuous variables in model centered by case type in order to take into account the multicollinearity between case type and variables related damage awards and case processing time.
Models account for clustering at the county-site level and the stratified sampling pattern.
Model adjusted to take into account the probability of a county appearing in the sample.
Source: Civil Justice Survey of State Courts, 2005
* p < .05
** p < .01
*** p < .001

Table 6 reports logistic regression results examining the likelihood of a plaintiff or defendant filing post trial motions in trials lost by the plaintiff.[31] Plaintiffs who lost at

[31] The Hosmer & Lemeshow test shows an adequate fit for both the plaintiff and defendant post trial models.

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trial were significantly more likely to seek post trial relief in several case types including contractual fraud, other contracts, product liability, intentional tort, and medical malpractice cases.[32] The odds of plaintiff losers requesting post trial relief, for example, were over one and a half times greater in fraud, other contractual, and product liability cases compared to automobile accident disputes. Defendants, in comparison, were more likely to file post trial motions in professional malpractice cases but less likely to seek post trial relief in cases involving product liability issues.

Similar to trials where the plaintiff won, trial type, damage awards, and case processing time also influenced post trial behavior in trials lost by the plaintiff. Both plaintiffs and defendants were more likely to request post trial relief in jury compared to bench trials. The effect of damage awards was the reverse of the plaintiff winner model. In trials where the defendant won, countersued, and received damages, larger damage awards were associated with an increased likelihood of the plaintiffs seeking post trial relief and a decreased likelihood of defendants engaging in post trial activity. In comparison to the first two models, case processing time had mixed effects on post trial behavior. Plaintiffs were more likely to ask for post trial relief in trials that took longer to adjudicate; however, the number of months spent in case litigation had no effect on plaintiff post trial activity. Conversely, defendants were more likely to file post trial motions in cases that took longer to process from filing to final decision. The number of days in trial, however, did not influence defendant post trial filing activity.

In addition to the abovementioned factors, post trial motions were also influenced by the organizational characteristics of the plaintiffs and defendants. Defendant winners,

[32] Plaintiffs were also nearly two times more likely to file post trial motions in professional malpractice cases; however, the odds ratios and beta coefficients for this case type were not statistically significant.

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in particular, were more likely to engage in post trial activity when the primary litigants were either an organizational plaintiff or defendant. Plaintiffs who lost at trial, in comparison, filed post trial motions more frequently against organizational defendants. There were no significant differences between individual and organizational plaintiffs in terms of challenging trial court outcomes.

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Table 6. Logistic regression models of post trial motion activity in civil trials where the plaintiff lost, in the nation's 75 most populous counties, 2005

	Plaintiff filed post trial motion model			Defendant filed post trial motion model		
Variables in model	Coef.	Std. Err.	Odds Ratio	Coef.	Std. Err.	Odds Ratio
Civil trial case category						
Fraud	0.94	0.13	2.57 ***	0.24	0.31	1.27
Other contracts	0.63	0.23	1.88 **	0.08	0.38	1.08
Professional malpractice	0.53	0.32	1.69	0.91	0.39	2.47 *
Product liability (includes asbestos)	0.45	0.19	1.57 *	-2.06	0.30	0.13 ***
Intentional tort	0.40	0.17	1.49 *	0.16	0.35	1.18
Seller plaintiff	0.31	0.21	1.36	-0.04	0.24	0.96
Medical malpractice	0.27	0.11	1.32 **	-0.18	0.31	0.84
Rental lease agreement	0.10	0.37	1.10	0.91	0.59	2.48
Other torts	0.06	0.18	1.06	0.09	0.24	1.10
Premises liability	0.04	0.13	1.04	-0.08	0.19	0.92
Buyer plaintiff	-0.08	0.18	0.92	0.34	0.31	1.41
Employment discrimination or dispute	-0.18	0.17	0.83	0.25	0.30	1.28
Type of trial disposition						
Jury trial	0.44	0.10	1.55 ***	0.95	0.19	2.58 ***
Litigant characteristics						
Organizational plaintiff	-0.20	0.15	0.82	0.73	0.21	2.07 ***
Organizational defendant	0.26	0.09	1.30 **	0.31	0.15	1.37 *
Damages awarded						
Overall damage award amounts	0.76	0.18	2.13 ***	-0.90	0.21	0.41 ***
Case processing time						
Filing to disposition time (in months)	0.03	0.04	1.03	0.25	0.07	1.29 ***
Trial length (in days)	0.37	0.03	1.45 ***	0.07	0.08	1.07
Model chi - square			126.49 ***	160.35 ***		
Log pseudolikelihood			-1575.99	-625.61		
Hosmer-Lemeshow chi2			5.07	7.43		
Prob > chi2 =			0.75	0.49		
Population size			4,385	4,385		

Note. Reference group for case type is automobile accident trials, reference group for disposition type is bench trials, reference group for organizational plaintiff and defendant is individual plaintiff and defendant.
Punitive damage award variable removed from model because defendant winners are rarely awarded punitive damages.
Continuous variables in model centered by case type in order to take into account the multicollinearity between case type and variables related damage awards and case processing time.
Models account for clustering at the county-site level and the stratified sampling pattern.
Model adjusted to take into account the probability of a county appearing in the sample.
Source: Civil Justice Survey of State Courts, 2005
* p < .05
** p < .01
*** p < .001

The next several figures examine predicted probabilities of litigants filing post trial motions by case type. Predicted probabilities of post trial activity were calculated

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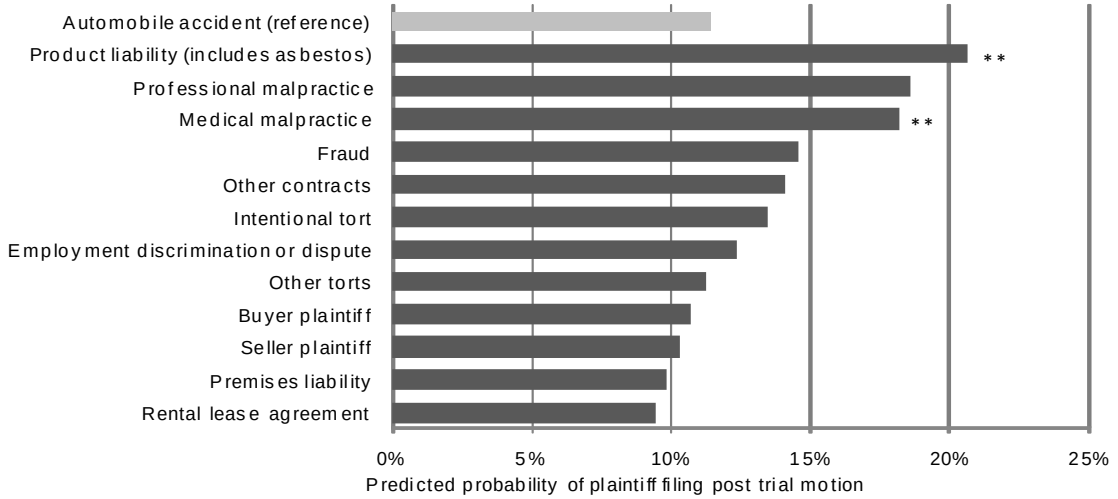
because they provide more interpretable and understandable results than the beta coefficients and odds ratios produced from the logistic regression analyses.[33] For the purposes of brevity, however, only the predicted probabilities for the civil case categories are shown. Since key relationships have been described in the proceeding tables, a reanalysis of the predicted probabilities for all variables would be somewhat repetitive. In essence, the predicted probabilities analysis provides another way to understand and interpret how post trial litigation is effected by case type and the overall likelihood that such motions will be filed.

Figures 3 and 4 examine the predicted probabilities of litigants filing post trial motions in civil trials won by the plaintiff. The predicted probability of plaintiff winners filing post trial motions ranged from 9% for rental lease cases to 21% for product liability cases.[34] Plaintiffs prevailing at trial were also predicted to file post motions in over 15% of professional (19%) and medical malpractice (18%) cases. Over half of defendants who lost at trial were predicted to seek post trial relief in product liability (55%), medical malpractice (56%), employment discrimination (59%), and professional malpractice cases (61%). In comparison, an estimated 16% of defendant losers in automobile accident cases were predicted to file post trial motions.

[33] The Stata macro "prhcange" was used to compute predicted probabilities. See footnote 27 for an explanation on how predicted probabilities were calculated.
[34] The predicted probability discussion highlights the probability of post trial motions occurring rather than whether a variable is significantly associated with post trial motion activity. See tables 5 and 6 for a discussion of significant relationships between key variables and post trial behavior.

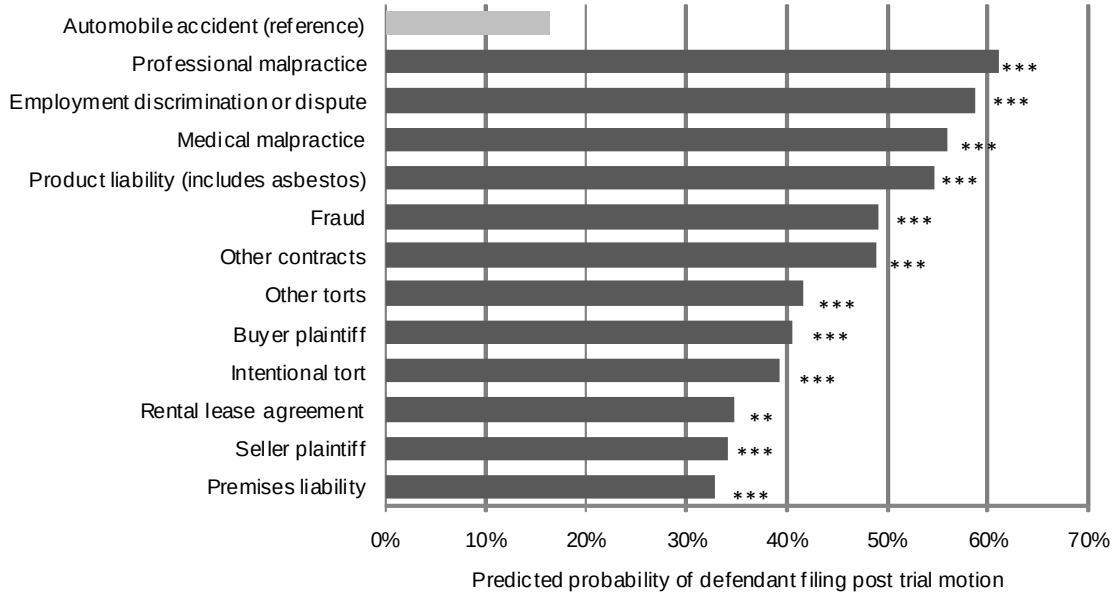
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Figure 3. Predicted probabilities of plaintiffs filing post trial motions in civil trials where the plaintiff won, by case type, in the nation's 75 most populous counties, 2005



Note. Predicted probabilities only shown for case type variables.
Predicted probabilities for other variables in model not shown.
Spost command "prchange" in Stata used to compute predicted probabilities.
* p < .05
** p < .01
*** p < .001

Figure 4. Predicted probabilities of defendants filing post trial motions in civil trials where the plaintiff won, by case type, in the nation's 75 most populous counties, 2005

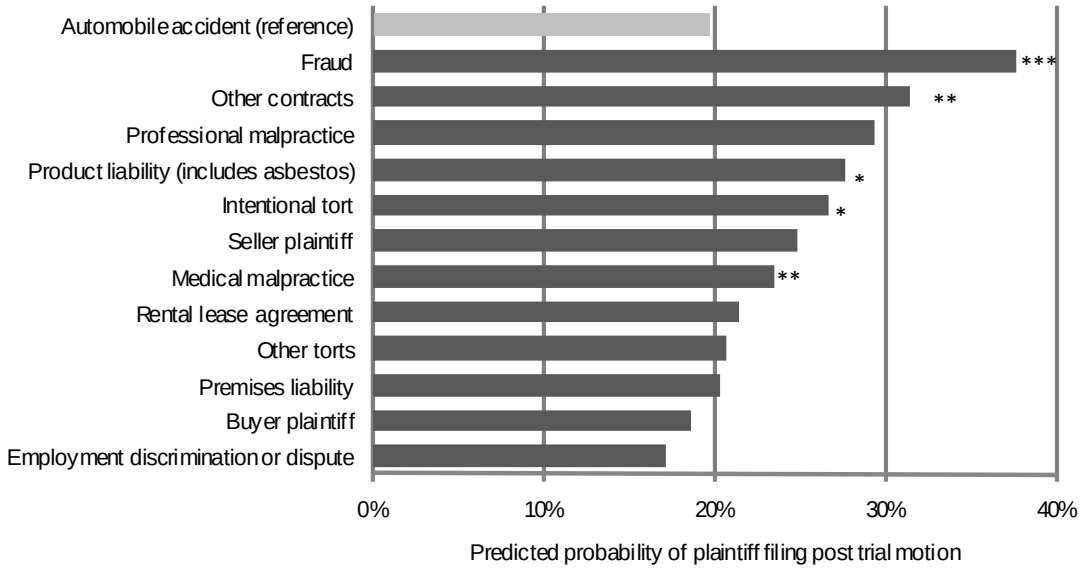


Note. Predicted probabilities only shown for case type variables.
Predicted probabilities for other variables in model not shown.
Spost command "prchange" in Stata used to compute predicted probabilities.
* p < .05
** p < .01
*** p < .001

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Figures 5 and 6 analyze the predicted probability of post trial behavior in civil trials where the plaintiff did not prevail. Plaintiff losers were predicted to request post trial relief in over 30% of other contracts (31%) and fraud (38%) cases. The probability of plaintiff post trial behavior also exceeded 25% in intentional tort, product liability, and professional malpractice cases. For defendants who won at trial, the predicted probabilities of post trial relief motion activity ranged from 1% in product liability cases to 10% in professional liability and rental lease cases.

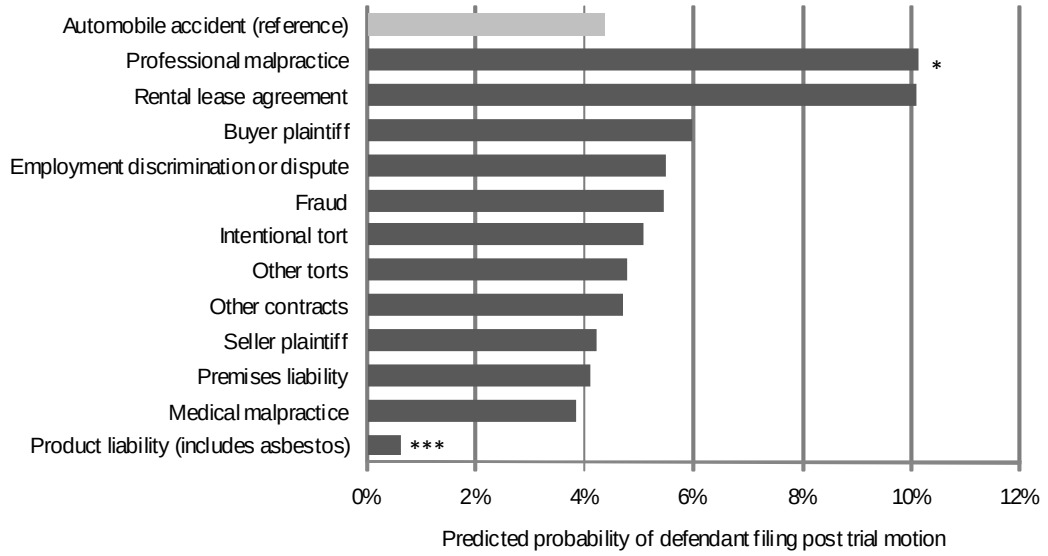
Figure 5. Predicted probabilities of plaintiffs filing post trial motions in civil trials where the plaintiff lost, by case type, in the nation's 75 most populous counties, 2005



Note. Predicted probabilities only shown for case type variables.
Predicted probabilities for other variables in model not shown.
Spost command "prchange" in Stata used to compute predicted probabilities.
* p < .05
** p < .01
*** p < .001

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Figure 6. Predicted probabilities of defendants filing post trial motions in civil trials where the plaintiff lost, by case type, in the nation's 75 most populous counties, 2005



Note. Predicted probabilities only shown for case type variables.
Predicted probabilities for other variables in model not shown.
Spost command "prchange" in Stata used to compute predicted probabilities.
* p < .05
** p < .01
*** p < .001

Discussion

This paper sought to examine the factors driving post trial behavior by modeling post trial motion activity among litigants who either won or lost at trial. Several variables were found to be significantly associated with requests for post trial relief including type of trial, damage awards, filing to disposition time, and trial length.[35] Punitive damages were also significantly associated with post trial activity in models where its impact could be assessed.[36] Regarding the influence of case type, some case categories such as product liability and medical malpractice were significantly associated with post trial motions across most of the models, while others had more mixed effects. Lastly, the models

[35] These variables were found to significantly influence post trial motion activity in at least three of the four models.
[36] The influence of punitive damages in trials lost by the plaintiff could not be ascertained because very few defendant winners were awarded punitive damages.

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reveal little differences between organizational and individual plaintiffs in terms of their proclivity for requesting post trial relief. Trials with organizational defendants, however, generated significantly higher levels of post trial activity in the majority of statistical models.

Although comparing these findings to earlier studies is slightly problematic because of the dissimilarities in research methodologies and types of data collected, Ostrom et al. (1993) and Hannaford-Agor (2004) reported strikingly similar results to the extant research.[37] Both manuscripts describe trial length, damage awards, punitive damages, and trial type as having significant impacts on post trial activity. Hannaford – Agor also reported similar patterns of post trial challenges by organizational litigants. Comparisons of how case type influences post trial challenges are not advisable because neither Ostrom et al. nor Hannaford-Agor analyzed post trial behavior in as many case types as the current study.[38]

The influence of trial type, damage awards, punitive damages, filing to disposition time, trial length, and, to a lesser extent, case type on post trial relief in this and prior studies, should not be too surprising. There are specific reasons why these factors play an influential role on litigant post trial filing decisions. The decision to seek a bench, rather than jury trial, might imply that the litigants are involved in a relatively narrow set of legal disputes. Once the judge has resolved these legal issues, the parties may have no more incentive to continue litigating the case (Ostrom et al. 1993). Concerning the influence of damage awards, larger damage awards generate more incentives and fewer

[37] Ostrom et al. focused on tort trials concluded in 27 jurisdictions and combined post trial motions with appeals. Hannaford-Agor analyzed post trial activity by merging, rather than separating, trials won and lost by the plaintiff.
[38] Ostrom et al. did not have information on contract trials, while Hannaford – Agor condensed all case types into the general categories of tort and contract for comparison purposes.

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costs for parties seeking to modify or overturn adverse outcomes. Litigants, moreover, can always raise the issue of award excessiveness in post trial challenges against substantial damage awards (Ostrom et al. 1993). Cases taking longer to process, both in terms of months from filing to verdict or judgment and days in trial, raise the likelihood of post trial activity because they tend to involve more complex legal and factual issues. As case complexity increases, so does the number of potential issues which could generate post trial challenges (Ostrom et al. 1993; Hannaford-Agor, 2004).

Case types that were more likely to generate post trial motions did so because they were associated with high stakes characteristics. Many medical malpractice cases, for example, tend to involve very serious injuries or wrongful death allegations. Damaging assertions to professional reputations may provide powerful reasons to challenge trial court outcomes in medical and professional malpractice cases. The tendency of multiple parties to seek compensation in product liability cases, along with the very serious injuries associated with this case type, may explain their importance in the post trial models. Lastly, insurance company business practices could explicate why so few defendant losers seek post trial relief in automobile accident compared to other civil cases. The vast majority of defendants in automobile accident disputes are represented by companies specializing in automobile insurance. It is possible that these companies maintain policies that attempt to hold down litigation costs by precluding further post trial activity once a verdict or judgment has been reached.

The fact that organizational litigants did not seek post trial relief at consistently higher levels than individual ones was slightly surprising. Prior literature has asserted that organizations such as businesses, governments, or hospitals should have greater capacity

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to engage in post trial challenges because they possess higher levels of legal expertise and financial resources than individual litigants (Galanter, 1974). Ostrom et al., however, has argued that party configuration will not necessarily translate into more post trial challenges because "additional [case and legal] complexities preclude a clear-cut repeat player effect, particularly between the decisions of whether to settle or appeal" (Ostrom et al., 1993: 112).

Conclusions

This article has sought to explore the extent that litigants engage in post trial behavior in civil cases concluded by bench or jury trial in the nation's 75 most populous counties in 2005. There are several key conclusions reached in the current research. One primary finding is that verdicts or judgments are challenged in a sizable minority of cases through post trial motions or appeals. Plaintiffs file post trial motions and notices of appeal in substantial minorities of trials where they won or lost. Defendants, in comparison, tend to challenge adverse trial court decisions but rarely dispute favorable outcomes. Deference to trial court decisions meant that courts rarely granted JNOVs or new trial motions; however, they were more likely to grant motions involving award modifications or other forms of relief. The decision to seek post trial relief is primarily driven by type of trial, damage awards, punitive damages, filing to disposition time, and trial length. Depending upon the type of case litigated, case type has some impact on post trial filing decisions. Lastly, post trial challenges did not occur at consistently higher levels among organizational compared to individual litigants.

In addition to these general conclusions, there are several unanswered issues and ideas for future research suggested by this article. First, it is interesting to note that courts

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seemed to grant JNOVs and new trial motions to slightly more defendants than plaintiffs who lose at trial. Prior research by Clermont & Eisenberg (2001) and Eisenberg & Heise (2009) show appellate courts engaging in similar patterns of anti-plaintiff behavior. Could trial court judges also be more predisposed towards overturning verdicts or judgments favoring plaintiffs than reversing pro-defendant trial court outcomes? Future research on post trial activity might want to employ multivariate analytical techniques to explore whether plaintiffs are experiencing reversals at the trial courts to a greater extent than defendants.

Another interesting research issue involves the potential impact of the appellate process on civil trial court outcomes. Although we have information on whether the plaintiff or defendant filed a notice of appeal with the trial court judge, no information is available on whether these appeals were actually adjudicated by the appellate courts. How many civil appeals are decided on the merits and how likely are appellate courts to affirm or reverse trial court outcomes? A study of trials from the CJSSC 2005 study that were appealed could address many of these key questions and provide a more complete picture of the post trial litigation in civil cases.[39]

[39] Recently, BJS has funded another study exploring civil trials on appeal with CJSSC data. Results form this study should be reported sometime in late 2010 or early 2011.

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