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ARTICLE

THE USE AND SUCCESS OF SUMMARY JUDGMENT MOTIONS: A CASE STUDY OF SUMMARY JUDGMENT MOTION PRACTICE IN MINNEHAHA COUNTY

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I. INTRODUCTION

As judicial caseloads increase, putting a strain on court budgets and resources and delaying the resolution of cases, solutions are pursued to alleviate this strain. Summary judgment motions present one path that courts may take to more quickly dispose of cases that do not meet certain threshold legal requirements. Nevertheless, there is little research data on the use of summary judgment motions, as well as the success of those motions, particularly at the state court level. To address this important litigation issue, the Hagemann Center for Legal and Public Policy Research at the University of South Dakota conducted a research study of summary judgment motion practice in Minnehaha County—the most populated county in South Dakota.

The study evaluated over 477 litigation cases filed in Minnehaha County circuit courts. Although the study covered a three-year time period, it is only an introductory study of a very complicated area of civil litigation practice. As such, this study is intended to serve as a springboard for future studies. Nonetheless, the Hagemann Center study does yield some enlightening insights into how civil litigants use summary judgment motions and how courts deal with such motions.

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II. DESCRIPTION OF THE STUDY

This study was conducted by the Hagemann Center for Legal and Public Policy Research from 2009 to 2012, and it sought to identify any trends regarding summary judgment motion practice in Minnehaha County, South Dakota. Data was collected and reviewed for 2001, 2002, and 2003 on all motions for summary judgment or partial summary judgment filed in Minnehaha County circuit court.¹

To conduct this study, data was gathered from the Minnehaha County Director of Court Information and Publications.² This data contained the file numbers for all cases in which at least one motion for summary judgment or partial summary judgment was made. The identified case files were then obtained from the Minnehaha County Clerk of Courts and reviewed.³ This review resulted in the gathering of various technical and substantive data,⁴ with particular attention being paid to how each motion for summary judgment or motion for partial summary judgment was handled from filing to resolution.

Once all cases were reviewed, the information was then analyzed to gather certain foundational information, such as the average number of motions made per case, the breakdown of motions made by each party, the percentage of motions that were granted to each party, and the percentage

1. This study identified 540 motions for summary judgment and 48 motions for partial summary judgment. All motions were filed in Minnehaha County during the years covered by the review.

2. We would like to thank Jill M. Gusso, Director of Information & Publications for the South Dakota Unified Judicial System, for her work in helping us obtain reports of the civil filings for summary judgments made in Minnehaha County for the years 2001–2003. We would also like to thank Chuck Fechner, former Minnehaha Clerk of Courts, and Angelia Gries, current Minnehaha Clerk of Courts, as well as Betty Fokken and the staff at the Minnehaha County Courthouse for their assistance in obtaining the case files for this study.

3. 477 case files were reviewed.

4. Such data included: (1) case name and number, (2) type of case, (3) date the case was filed, (4) judge(s) assigned to the case, (5) whether a motion for summary judgment or motion for partial summary judgment was made, (6) whether each motion for summary judgment or motion for partial summary judgment was granted, (7) whether each granted motion for summary judgment or motion for partial summary judgment was appealed and the decision on appeal, (8) the name of the judge before whom the motion for summary judgment or motion for partial summary judgment was brought, (9) whether the case went to trial, (10) whether motions for directed verdict or motions for judgment notwithstanding the verdict were made in cases that went to trial and how they were resolved, (11) the final resolution of the case, and (12) the name of the judge who presided over the trial or final settlement of the case.

of granted motions that were appealed. Upon completion of this analysis, comparisons were made to identify any trends or patterns.

III. THE EXISTENCE OF RELATED STUDIES

Few studies have examined the disposition of cases at the state court level, and those that have do not specifically address the role of summary judgment in the resolution of those cases. There appears, however, to be a burgeoning movement to analyze data available from state courts, so it is possible that future research may be conducted to analyze the role that summary judgment plays in resolution of cases in state courts.

The recent effort to compile and analyze state court data has come from the National Center for State Courts (NCSC), which has compiled data on the disposition of state court cases from 1976–2002.⁵ A central finding of this NCSC research is that “despite substantial increases in the number of dispositions, the number and rate of jury trials has declined, often significantly, during the period 1976–2002 in almost all states included in the analysis.”⁶ Nevertheless, statistics could not be collected on all states because data was simply not available.⁷ The study only included data from 23 states for criminal matters and 22 states for civil matters.⁸

While the NSCS’s compilation of data is valuable for assessing general trends, it focused primarily on whether cases went to trial. It did not address any specific findings on summary judgment. Therefore, because the data in the Hagemann Center study focused on how motions for summary judgment were treated in state circuit courts and on appeal to the South Dakota Supreme Court, the findings of the two studies are not directly comparable.

For purposes of comparison, this study used federal court data compiled and analyzed in a 2007 memorandum from the Federal Judicial Center.⁹ The memorandum, which addresses the “Estimates of Summary Judgment Activity in Fiscal Year 2006,” provides insight as to the treatment of motions for both summary judgment and partial summary judgment across

5. See Brian J. Ostrom, Shauna M. Strickland, & Paula L. Hannaford-Agor, *Examining Trial Trends in State Courts: 1976–2002*, 1 J. EMPIRICAL LEGAL STUD. 755 (2004).

6. *Id.* at 756.

7. *Id.* at 760. Data for South Dakota was gathered and included in the study. *Id.*

8. *Id.* at 758.

9. Memorandum from Joe Cecil & George Cort on Estimates of Summary Judgment Activity in Fiscal Year 2006 to the Hon. Michael Baylson (Apr. 12, 2007 (Revised June 15, 2007)) (on file with publisher).

federal district courts.¹⁰ Researchers for the Hagemann Center study found that research and analysis of summary judgment trends have generally been conducted at the federal level, rather than at the state level. Therefore, in this respect, the study by the Hagemann Center is somewhat unique.

IV. KEY FINDINGS AND TRENDS OF THE HAGEMANN CENTER STUDY

A. *Motions for Summary Judgment*

	Total No. Cases	No. Cases with MSJ by party	Total No. MSJ by party	No. MSJ Granted	No. Granted MSJ Appealed	No. Granted MSJ Not Appealed
Defendant	477	149 (31.24%)	195 (1.31 per case)	74 (37.95%)	19 (25.68%)	55 (74.32%)
Plaintiff	477	321 (67.30%)	345 (1.07 per case)	190 (55.07%)	3 (1.58%)	187 (98.42%)
Combined	477		540	263 (48.89%)	22 (8.37%)	241 (91.63%)

The study revealed that plaintiffs were considerably more likely to file a motion for summary judgment than defendants. Plaintiffs filed at least one motion for summary judgment in 67.30% of the cases reviewed, whereas defendants filed a minimum of one motion for summary judgment less than half as often—in only 31.24% of the cases reviewed. Additionally, courts were more willing to grant motions for summary judgment filed by a plaintiff than those that were filed by defendants. Slightly more than half of the motions for summary judgment filed by plaintiffs were granted (55.07%), but only 37.95% of defendants' motions for summary judgment were granted.

Notably, plaintiffs were more aggressive than defendants in appealing motions for summary judgment that were granted—appealing 25.68% of summary judgments granted to defendants. Defendants, on the other hand, appealed summary judgments granted to plaintiffs in less than two percent of the cases (1.58%).¹¹

10. *Id.* at 1.

11. When motions for summary judgment filed by plaintiffs and defendants are considered together, only 8.37% of granted motions were appealed.

B. *Motions for Partial Summary Judgment*

	Total No. Cases*	No. Cases with MPSJ by party**	Total No. MPSJ by party	No. MPSJ Granted	No. Granted MPSJ Appealed	No. Granted MPSJ Not Appealed
Defendant	477	24 (5.03%)	32 (1.33 per case)	7 (21.88%)	1 (14.29%)	6 (85.71%)
Plaintiff	477	15 (3.14%)	16 (1.07 per case)	6 (37.50%)	4 (66.67%)	2 (33.33%)
Combined	477		48	13 (27.08%)	5 (38.46%)	8 (61.54%)

Far fewer motions for partial summary judgment were filed during the study period than were motions for summary judgment. Plaintiffs filed motions for partial summary judgment in only 3.14% of the cases reviewed, and defendants filed motions for partial summary judgment in 5.03% of the cases reviewed. Of those motions for partial summary judgment filed by plaintiffs, 37.50% were granted—and of those granted, 66.67% were appealed. Motions for partial summary judgment filed by defendants were granted in 21.88% of cases—and of those granted, only 14.29% were appealed.¹²

C. *Comparison with Other Related Studies*

In 2007, the Federal Judicial Center Division of Research (“FJCDR”) issued a memorandum to Judge Michael Baylson on the topic of summary judgment.¹³ The memorandum, which addresses the “Estimates of Summary Judgment Activity in Fiscal Year 2006,” provides insight as to the treatment of motions for both summary judgment and partial summary judgment across the federal district courts. The research showed that nationally, 17 motions for summary judgment were filed out of every 100

12. When motions for partial summary judgment filed by plaintiffs and defendants are considered together, around 27% were granted and 38% were appealed.

13. Memorandum from Joe Cecil & George Cort on Estimates of Summary Judgment Activity in Fiscal Year 2006 to the Hon. Michael Baylson (Apr. 12, 2007 (Revised June 15, 2007)) (on file with publisher).

cases terminated.¹⁴ Additionally, the research recognizes the variance in the level of summary judgment activity among the circuits.¹⁵

While a direct comparison between the Hagemann Center study and the FJCDR study is not possible, given the difference in the pool of cases reviewed (terminated cases, regardless of whether a motion was ever made, compared with cases necessarily involving some form of motion for summary judgment), it is helpful to compare the percentages of different types of motions filed. The FJCDR study shows that, of all summary judgment motions made across the circuits, 91% were for summary judgment, while only 9% were for partial summary judgment.¹⁶ In the Eighth Circuit specifically, the percentage of motions for summary judgment increased to 93% and the percentage of motions for partial summary judgment dropped to 6%.¹⁷

In the cases analyzed for the Hagemann Center study, a total of 588 motions were made. Of these motions, 91.84% were motions for summary judgment and 8.16% were motions for partial summary judgment. These percentages fall just above the FJCDR's national average for all federal courts, and just below the Eighth Circuit's percentage of motions for summary judgment. Moreover, the percentage revealed in the Hagemann Center study for partial summary judgment motions falls just below the FJCDR's national average and just above the Eighth Circuit's average.

It is also helpful to compare the Hagemann Center's findings regarding the percentage of motions granted with those surveyed in the FJCDR study, which found that approximately 60% of summary judgment motions were granted in whole or in part.¹⁸ In the Eighth Circuit, the comparable figure is 59%.¹⁹ But as found in the Hagemann Center study, the percentage of granted motions in Minnehaha County is 46.94%, which is notably lower than that in both the federal courts nationwide and the Eighth Circuit in particular.

A recent symposium addressing summary judgment practice over the past 25 years discussed the need for and relative paucity of empirical studies on summary judgment cases in federal courts. Like the FJCDR and Hagemann Center studies, the symposium participants called for further

14. *Id.* at 1.

15. *Id.*

16. *Id.*

17. *Id.* at 5.

18. *Id.* at 2.

19. *Id.* at 3.

collection of data “at both the state and federal level”²⁰ regarding the effectiveness of summary judgment as an executor of justice. Although there exists a wealth of academic work on the theoretical and strategic aspects of summary judgment, the symposium articulated the need to better understand the actual workings of summary judgment by, for instance, increasing the volume of summary judgments analyzed, the types of factors considered, and the ways in which summary judgment data are collected. According to symposium experts, “a key inquiry is missing: a systematic study of what is happening in summary judgment on the ground,” as well as a knowledge of summary judgment practice “at both the state and federal level.”²¹ The present study at the Hagemann Center represents an initial step toward what should become an ongoing trend.

D. *Trends Identified*

The data was further analyzed to identify the trending that might occur based on the type of cause of action involved. Three areas of trending are discussed below. For greater detail on these and other areas of trending, please reference Appendices A through E, which are included at the end of this article.

1. Foreclosure

Of the cases reviewed in this study, 40 involved foreclosure actions. Two of these foreclosure cases involved motions for default judgment rather than motions for summary judgment. Plaintiffs made both of these motions for default judgment, and both were granted.

The remaining 38 foreclosure actions resulted in 42 motions for summary judgment. The study revealed that defendants in these types of actions rarely filed motions for summary judgment. Of the 42 motions for summary judgment in foreclosure actions during the study period, defendants made only four, or 9.52%, of these motions. Three of these motions came from one case, and were all denied. As a result of a stipulated dismissal, the remaining motion was not decided.

Plaintiffs made the remaining 38 motions for summary judgment in foreclosure actions. With the exception of one, all motions that were

20. Brooke D. Coleman, *Summary Judgment: What We Think We Know Versus What We Ought to Know*, 43 LOY. U. CHI. L.J. 705, 706 (2012).

21. *Id.*

decided by the court were granted, which reveals a grant rate of 97.37%.²² A review of these motions reveals that 30 were granted and not appealed, while four were granted but ultimately vacated by stipulation of the parties. The court did not decide seven of the motions as a result of the parties reaching a settlement or stipulated dismissal.

2. Medical Malpractice

Medical malpractice or medical negligence was a listed cause of action in 21 of the cases reviewed. Motions for summary judgment were made in 20 of the 21 cases, resulting in a total of 29 motions for summary judgment.²³ Plaintiffs made only two, or 6.90%, of these motions. One of the motions made by plaintiffs was denied, and one was granted. None were appealed.

The remaining 27 motions for summary judgment were made by defendants. The court granted 15, or 55.6%, of the defendants' motions, and only two of the granted motions, which were made in the same case, were appealed. The South Dakota Supreme Court dismissed these appeals. The court denied eight, or 29.63%, of the motions made by defendants. None of these denials were appealed. According to the case files, the court never decided the remaining motions.²⁴

3. Debt Collection

The listed cause of action in 211 of the cases reviewed involved some form of debt collection.²⁵ These cases resulted in 213 motions for summary judgment, of which defendants made only 13, or 6.1%. The court granted six of these motions, and two of those granted were appealed. On appeal, one grant was affirmed and the other was remanded, where it was affirmed.

22. Only one motion for summary judgment made by a plaintiff was denied. Nevertheless, the plaintiff in that case made an additional motion for summary judgment, which was granted and not appealed.

23. One motion for partial summary judgment was made in one case. It was made by a defendant, was denied, and was not appealed.

24. For two of the motions, parties were able to reach a stipulation for dismissal. One case went to trial, and no detailed information was available on the remaining motion.

25. Debt collection, as included in this category, does not include those cases involving mortgage foreclosure. Rather, this category encompasses cases involving failure to pay, contract cases brought as a result of default on accounts, loan default (other than mortgage default), and other forms of nonpayment.

In ten of these cases, no motions for summary judgment were made. Rather, the cases were resolved through default judgment. Additionally, in ten different cases, no information was available on the handling of motions for summary judgment.

Three of the defendants' motions were denied and not appealed. The court did not decide the remaining four motions.²⁶

Plaintiffs made the remaining 200 motions, and 132, or 66%, were granted. Of those granted, two were appealed and affirmed. The court denied only 11, or 5.5%, of the motions made by plaintiffs. One of these denials was appealed and affirmed. The court did not decide 48 of the motions made by plaintiffs, primarily because the cases were handled through default judgment or the parties reached an agreement for a stipulated dismissal.

V. CONCLUSION

This study introduces an empirical examination of an area of civil litigation practice that has gone largely unexplored. Although some research has been done with respect to general trends of summary judgment practice in the federal courts, very little research has been done at the state court level. This study begins to address that void and provides an introductory empirical framework for evaluating how summary judgment motions are used in state court civil actions.

This study, examining the use of summary judgments over a three-year time period, reveals that the experience in Minnehaha County generally reflects the experience in the federal courts nationwide. Such a result could indicate one of two possibilities. First, the judicial experience with summary judgments tends to be fairly uniform across all jurisdictions. Alternatively, as the use of summary judgments might differ between federal and state courts, the experience in Minnehaha County might be unusual insofar as it seems to mirror the federal court experience.

The study suggests that different types of litigated matters might have differing rates of success regarding summary judgment motions. Indeed, practitioners in these areas will be able to identify whether such a trend reflects the unique nature of those types of cases. Perhaps future studies can better isolate other types of cases and how those cases might be more or less amenable to summary judgment motions.

There are many areas that were not covered by this study. For instance, it might be interesting to discover if an identifiable pattern exists regarding the characteristics of judges who are more or less willing to grant summary judgments. Are older, more experienced judges more or less willing to grant

26. Two of these motions were not decided as a result of stipulated dismissal. The file for the remaining two motions indicates that the case was dismissed for want of prosecution.

summary judgment motions? Are judges with a particular legal background more or less apt to grant summary judgment motions? Other potential areas of research could include what impact the filing of a motion for summary judgment has on a case, even if that motion is eventually denied. In other words, do cases in which summary judgment motions are filed tend to proceed more quickly to either trial or settlement?

Although this study attempts to provide an introductory glimpse into the use of summary judgment motions, there is much more research to be done, and many more questions to be answered.

APPENDICES

The following appendices break down the data gathered in the study for five different causes of action. Such analysis demonstrates that there may be areas where trending can be identified and analyzed for further use in understanding the handling of motions for summary judgment in Minnehaha County circuit courts. Please reference the following legend in reviewing each table:

Abbreviation	Term
PMSJ	Plaintiff motion for summary judgment
PMPSJ	Plaintiff motion for partial summary judgment
DMSJ	Defendant motion for summary judgment
DMPSJ	Defendant motion for partial summary judgment
G	Granted motion
D	Denied motion
NAG	Granted motion that was not appealed
NAD	Denied motion that was not appealed
AG	Granted motion that was appealed
AD	Denied motion that was appealed
ND	Not decided
NI	No information

The charts below represent a statistical analysis of motions for summary judgment in cases tried in Minnehaha County of South Dakota. The data is differentiated with respect to the motioning party, compared to the eventual outcome of the motion. Each chart contains data collected from a discrete subset of summary judgment cases: Appendix A being foreclosure disputes, Appendix B being medical malpractice disputes, Appendix C being debt collection disputes, Appendix D being personal injury disputes, and

Appendix E being child support disputes. The total number of cases evaluated is indicated below each chart.

APPENDIX A

Foreclosure	Total	G	D	NAG	NAD	AG	AD	ND	NI	
PMSJ	38	30	1	30	1	0	0	7	0	4 granted were vacated
PMPSJ	0	0	0	0	0	0	0	0	0	
DMSJ	4	0	0	0	0	0	0	4	0	Stipulated dismissal
DMPSJ	0	0	0	0	0	0	0	0	0	

Total cases involving foreclosure = 40

42 MSJ

0 MPSJ

0 NI

***This category includes cases involving failure to pay mortgage, debt collection on mortgage, contract, default on mortgage, etc.

APPENDIX B

Med. Mal.	Total	G	D	NAG	NAD	AG	AD	ND	NI
PMSJ	2	1	1	1	1	0	0	0	0
PMPSJ	0	0	0	0	0	0	0	0	0
DMSJ	27	15	8	13	8	2	0	3	1
DMPSJ	2	1	1	1	1	0	0	0	0

Total cases involving med. mal. = 21

29 MSJ

2 MPSJ

1 NI

APPENDIX C

Debt Coll.	Total	G	D	NAG	NAD	AG	AD	ND	NI	
PMSJ	200	132	11	130	10	2	1	48	9	One additional no info—no indication of who made MSJ; two ND because granted DJ instead; all three appeals affirmed
PMPSJ	1	0	1	0	1	0	0	0	0	
DMSJ	13	6	3	4	3	2	0	4	0	One appeal affirmed; One remanded and affirmed on remand
DMPSJ	0	0	0	0	0	0	0	0	0	

Total cases involving debt collection = 211

213 MSJ

1 MPSJ

10 NI

10 cases motion for DJ not SJ so not reported

***This category includes cases involving failure to pay contracts: default on account, nonpayment of account, debt collection other than mortgage/foreclosure, loan default, etc.

APPENDIX D

Pers. Inj.	Total	G	D	NAG	NAD	AG	AD	ND	NI	
PMSJ	12	5	4	5	4	0	0	2	1	
PMPSJ	4	2	1	1	1	1	0	1	0	One not granted in full; appeal affirmed
DMSJ	33	7	1 3	4	13	3	0	7	6	Two appeals reversed; one affirmed
DMPSJ	9	1	3	1	3	0	0	2	3	

Total cases involving personal injury = 34

45 MSJ

13 MPSJ

10 NI

APPENDIX E

Child Supp.	Total	G	D	NAG	NAD	AG	AD	ND	NI	
P MSJ	6	3	0	0	0	0	0	3	0	
P MPSJ	0	0	0	0	0	0	0	0	0	
D MSJ	2	0	2	0	1	0	1	0	0	Appeal dismissed
D MPSJ	0	0	0	0	0	0	0	0	0	

Total cases involving child support = 8

8 MSJ

0 MPSJ

1 case no motion