

Lex Machina

Environmental Litigation Report

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Introduction

Lex Machina is excited to release its first Environmental Litigation Report. Environmental litigation involves pollution, use of natural resources, protection of forests, rivers, plants, and animals, and other ways that humans interact with nature. Lex Machina's "Environmental" case type includes cases involving a dispute over regulation of the environment under any federal statute litigated in U.S. District Court. In addition to reviewing Lex Machina's cumulative data across the Environmental module, the report focuses on the three-year time period from January 1, 2016 to December 31, 2018 to showcase recent trends.

Lex Machina's Environmental practice area has six case type tags: CAA (Clean Air Act), CWA (Clean Water Act), ESA (Endangered Species Act), CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act), NEPA (National Environmental Policy Act), and RCRA (Resource Conservation and Recovery Act). Many of the analytics discussed in this report are broken down by case type tag. Environmental cases are not required to have any of these case type tags. Also, a case may have more than one tag. Therefore, the numbers in the case type columns will not necessarily add up to the number in the Environmental column. More information is available in the final section of this report entitled Data and Methodology.

Highlights

- Overall, more than 13,000 Environmental cases were filed between 2009 through 2018. Out of those, nearly 7,000 cases are associated with the Deepwater Horizon litigation.
- When excluding MDL associated cases, Environmental case filings declined steadily between 2009 and 2018.
- Due to California's geography and history of environmental advocacy, districts in California were three of the top five districts with the most Environmental case filings from 2016 to 2018.
- Judge Wiley Young Daniel from the District of Colorado presided over the most Environmental cases filed from 2016 to 2018.
- Government entities were the most active parties in Environmental litigation both as plaintiffs and defendants. After government parties, environmental interest organizations are the most active plaintiffs. Most active defendants also include Exxon which was named in lawsuits relating to its oil drilling, and Honeywell, which was named in a large number of CERCLA cases.
- Consent judgments, also known as Consent Decrees, are common in Environmental cases because many involve enforcement actions brought by government agencies such as the EPA.
- The most common findings were No NEPA Violation, Clean Water Act Violation, and Clean Air Act Violation. The latter two were mainly on consent.
- In 2016, the District Court for the Eastern District of Louisiana approved \$13.6 billion in damages in *In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010* for Clean Water Act violations.
- In 2017, the Northern District of California approved a \$4.15 billion consent judgment for Clean Air Act violations in *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*.

Table of Contents

- Case Filings 4
- Most Active Districts..... 9
- Most Active Judges..... 10
- Case Timing 11
- Most Active Parties 13
- Most Active Law Firms 18
- Case Resolutions 23
- Findings 26
- Remedies 29
- Damages..... 30
- Data and Methodology 32

Case Filings

Environmental case filings are strongly affected by multidistrict litigation (“MDL”), particularly the MDL surrounding the Deepwater Horizon oil spill. Overall, more than 13,000 Environmental cases were filed between 2009 through 2018. Out of those, nearly 7,000 cases are associated with the Deepwater Horizon litigation. The spill occurred in April 2010 and litigation began shortly thereafter. Case filings continue into 2019. As seen in the figure below, case filings spiked in 2013 and 2016, which were likely related to court-ordered filing deadlines for Plaintiffs who opted out of the Economic and Property Damages Settlement. For more information about tagging Deepwater Horizon cases please see the Data and Methodology section at the end of the report.

The remainder of this report looks at Environmental analytics excluding MDL associated cases. Only MDL master case filings are included. As such, the nearly 7,000 MDL associated cases related to the Deepwater Horizon are not included in the analytics in Figure 2 and below. Deepwater Horizon is not the only MDL in the Environmental practice area, but it is the largest. The other MDL associated cases are excluded as well.

When excluding MDL associated cases, Environmental case filings declined 31% from 2009 to 2018. This was a steady decline with two upticks in 2011 and 2016. The figures below show the case filings for each case type tag. All six case types have declined overall, although each at a different rate and pattern.

Figure 1: Deepwater Horizon Case Filings 2009 to 2018 (including MDL Associated Cases)

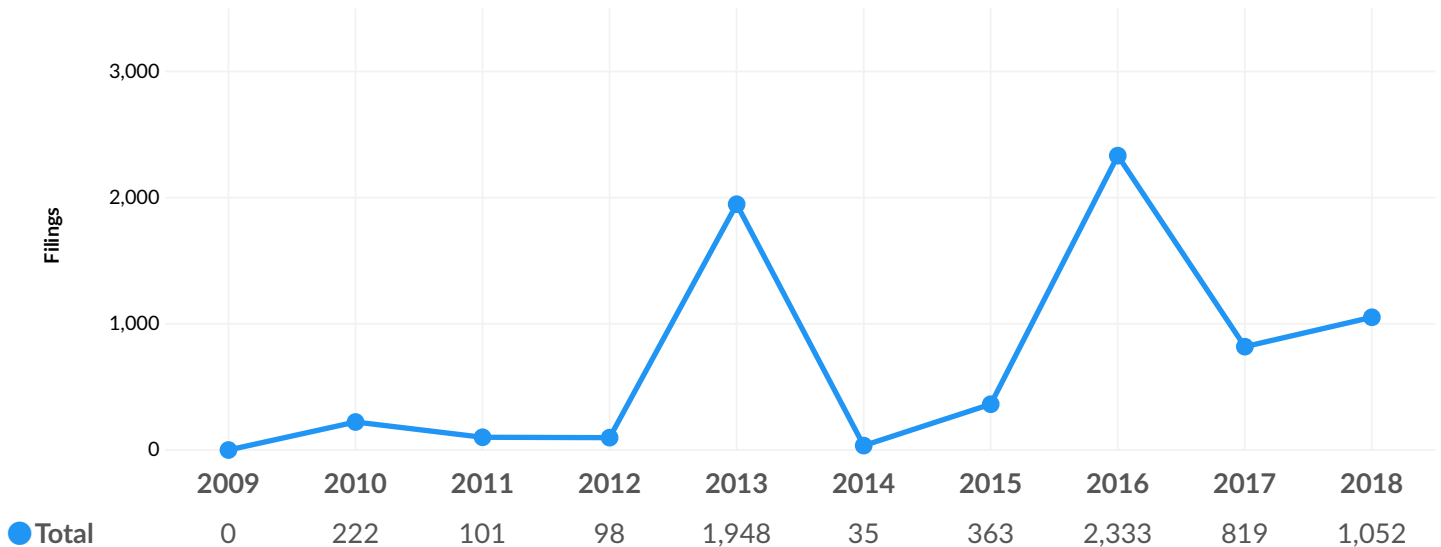


Figure 2: Environmental Case Filings 2009 to 2018

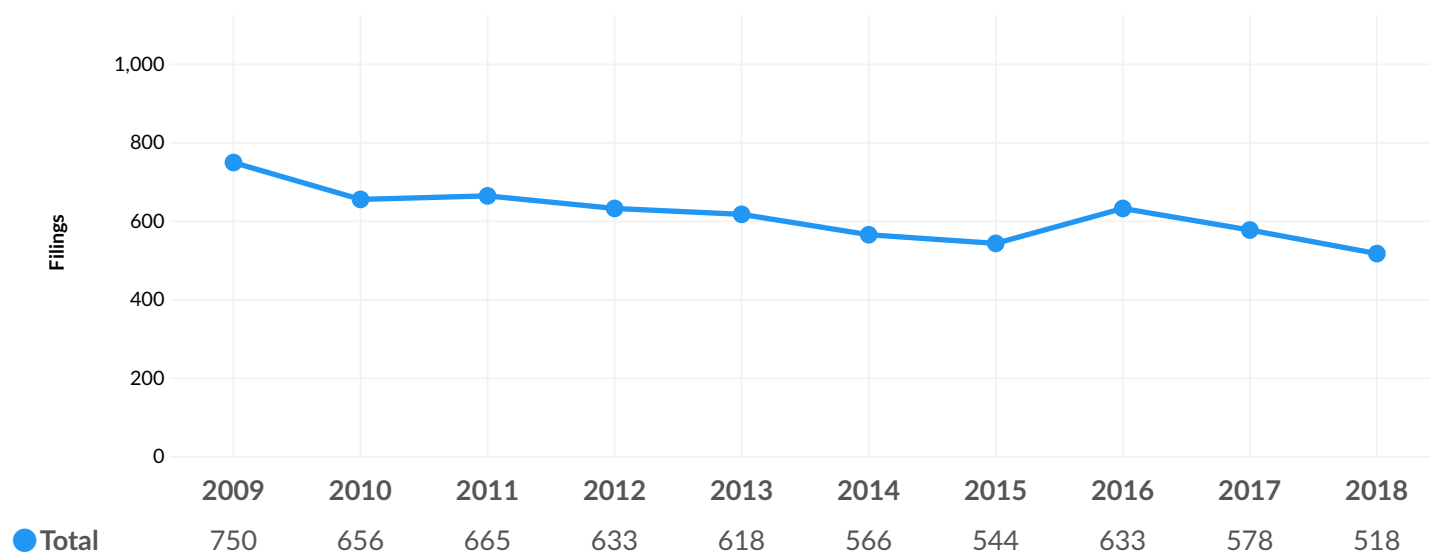


Figure 3: Clean Water Act Case Filings 2009 to 2018

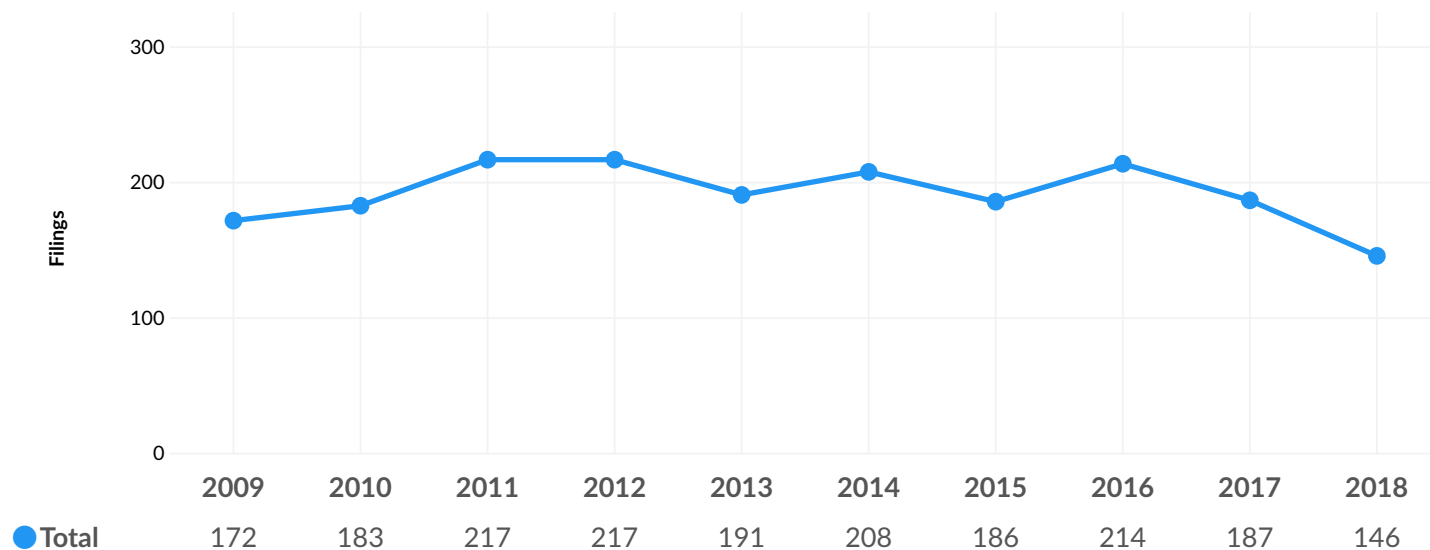


Figure 4: CERCLA Case Filings 2009 to 2018

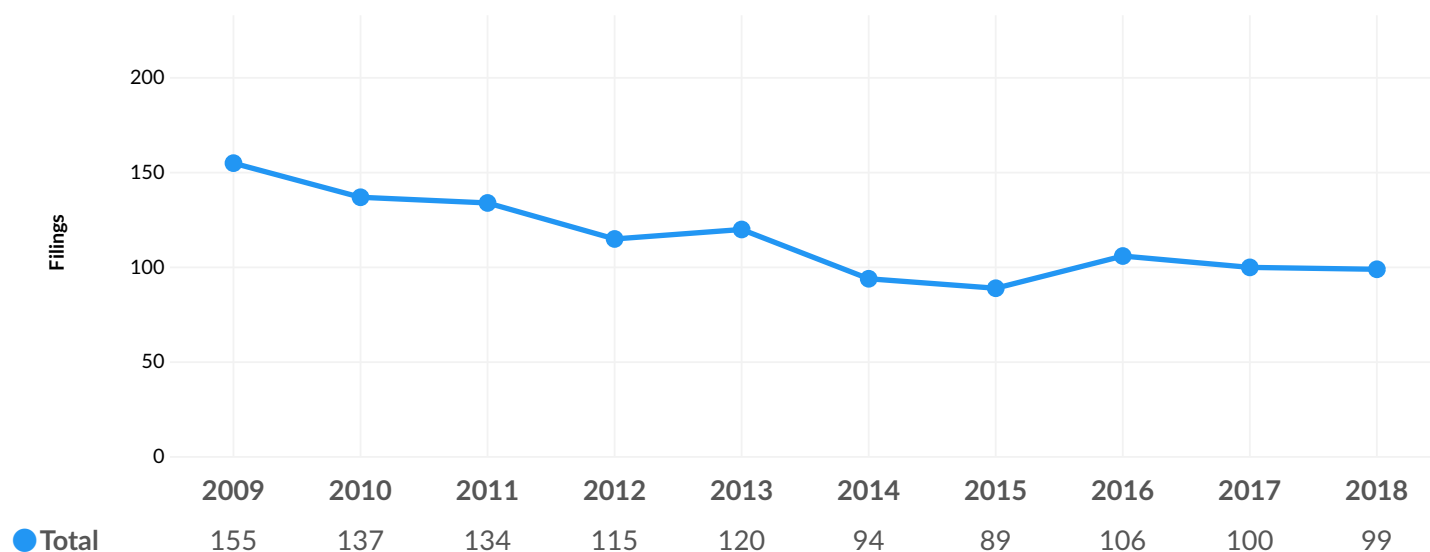


Figure 5: NEPA Case Filings 2009 to 2018

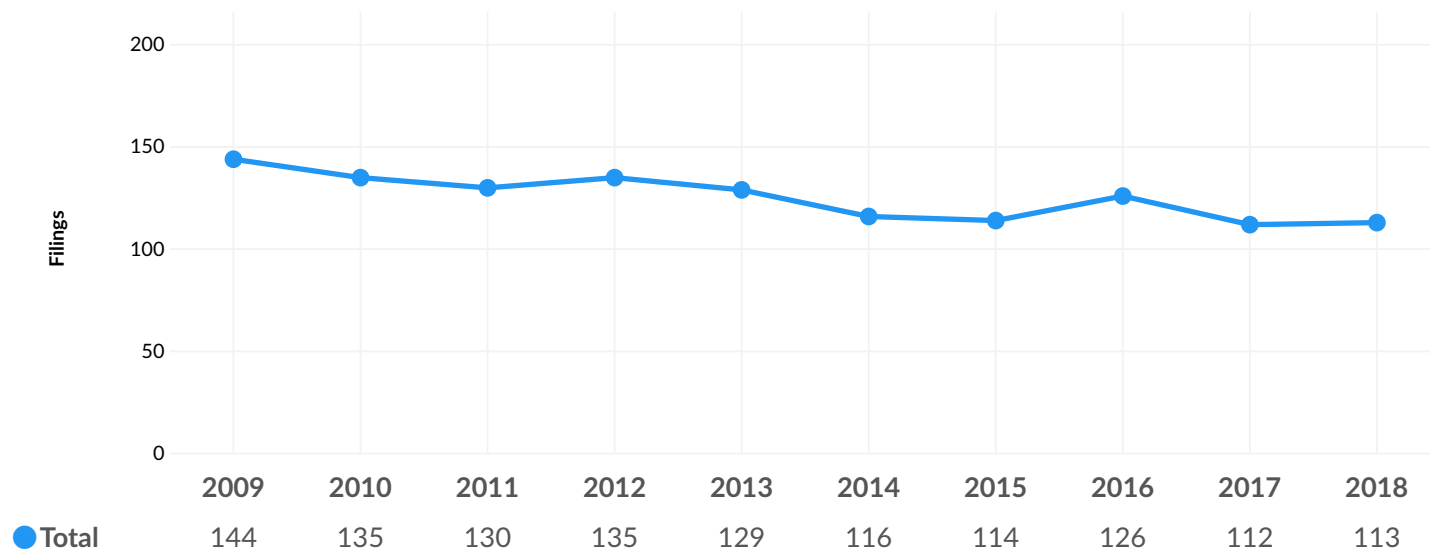


Figure 6: Endangered Species Act Case Filings 2009 to 2018

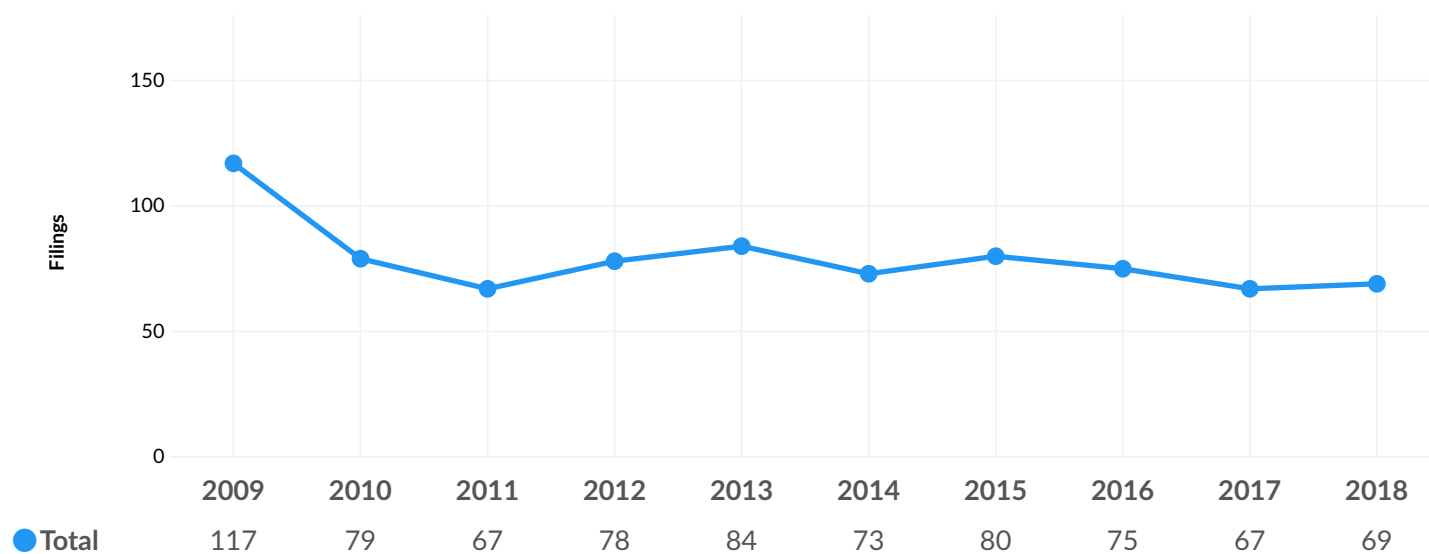


Figure 7: Clean Air Act Case Filings 2009 to 2018

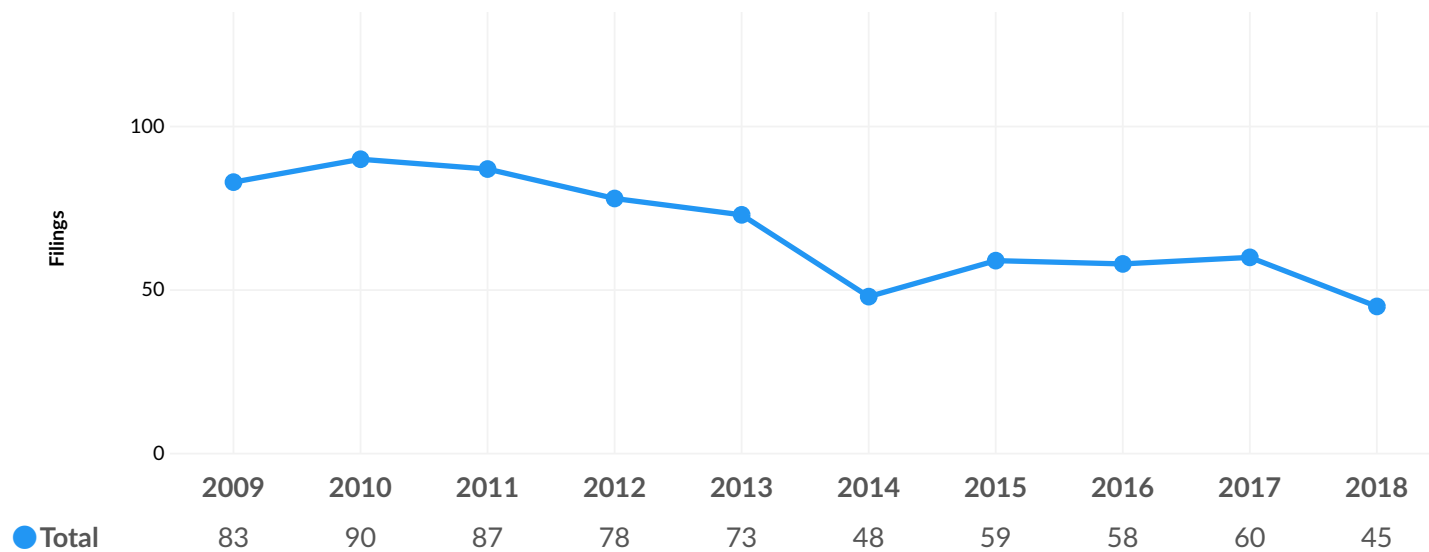
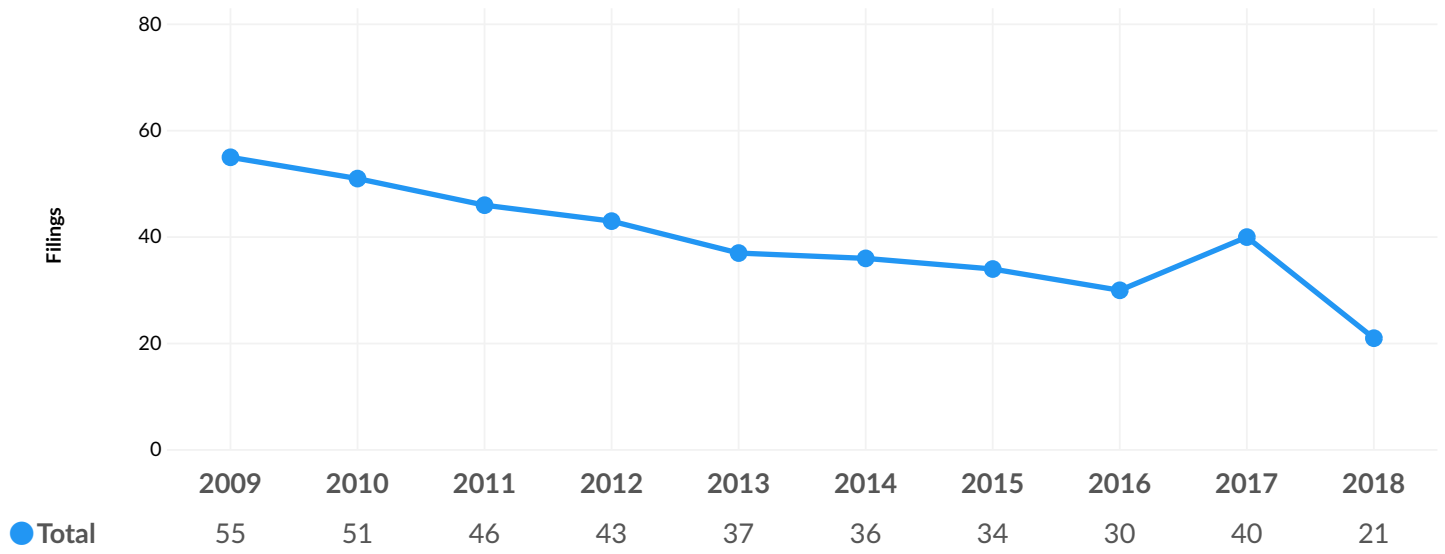


Figure 8: RCRA Case Filings 2009 to 2018



Most Active Districts

Due to California's geography and history of environmental advocacy, districts in California were three of the top five districts with the most Environmental case filings from 2016 to 2018. The District Court for the District of Columbia had the third most Environmental case filings with 137 and the Western District of Washington was fifth with 68 case filings.

In the figure below, the right-hand columns show the number of cases with each case type tag in the district. Different districts see particular claims based on the geography of the area. The District Court for the District of Columbia saw a variety of claims including the largest number of cases with an Endangered Species Act claim. Many of the most active districts saw a large number of Clean Water Act claims. On the other hand, more landlocked districts like the District of Montana have a large number of NEPA claims.

Figure 9: Most Active Districts by Environmental Case Filings 2016 to 2018

Court	Environmental	CWA	NEPA	CERCLA	ESA	CAA	RCRA
C.D.Cal.	147	85	16	32	7	3	13
N.D.Cal.	143	52	21	11	24	23	3
D.D.C.	137	16	43	2	35	29	2
E.D.Cal.	97	17	15	11	6	1	2
W.D.Wash.	68	42	5	5	9	6	0
D.Mass.	57	41	1	5	3	5	2
D.Mont.	53	5	35	2	21	0	0
D.Or.	51	5	25	4	18	0	1
D.Colo.	47	6	23	8	7	7	0
E.D.N.Y.	42	17	4	15	2	1	2
D.N.J.	38	5	2	17	1	2	3
D.Ariz.	30	1	16	7	12	1	0
D.Idaho	30	4	20	2	9	0	0
S.D.Cal.	28	23	2	2	2	0	4
E.D.La.	26	3	2	0	2	3	2
E.D.Mich.	26	3	3	7	2	1	1
S.D.N.Y.	26	8	3	5	0	2	3

Most Active Judges

Judge Wiley Young Daniel presided over the most Environmental cases filed from 2016 to 2018. Judge Daniel sits in the District of Colorado, which was the ninth most active district. Although Judge Daniel has seen a large number of Environmental cases in his particular district, each individual judge's case numbers are relatively low. No one judge saw more than 2% of Environmental cases filed from 2016 to 2018.

Judge experience with particular claims may make a difference in preparing case strategy. Looking at the most active judges' cases broken down by case type tags, many judges may be experienced only in certain areas of Environmental law. For example, within the three-year time period between 2016 and 2018, Judge Dolly Maizie Gee primarily heard cases alleging Clean Water Act violations, but also presided over three cases with CERCLA claims and one case with RCRA claims.

Figure 10: Most Active Judges by Environmental Case Filings 2016 to 2018

Judge	Court(s)	Environmental	CWA	NEPA	CERCLA	ESA	CAA	RCRA
Wiley Young Daniel	D.Colo.	27	2	17	0	4	5	0
Dana Lewis Christensen	D.Mont.	21	1	12	0	13	0	0
Dolly Maizie Gee	C.D.Cal.	18	14	0	3	0	0	1
John C. Coughenour	W.D.Wash.	18	10	3	1	6	2	0
Vince Girdhari Chhabria	E.D.Cal., N.D.Cal.	17	3	2	3	2	7	0
Christopher Reid Cooper	D.D.C.	16	1	4	0	2	7	0
Philip S. Gutierrez	C.D.Cal.	16	7	4	2	2	0	0
B. Lynn Winmill	D.Idaho	15	1	10	1	5	0	0
John A. Mendez	E.D.Cal.	14	5	3	5	1	0	0
Ketanji Brown Jackson	D.D.C.	14	2	4	1	2	4	0
Robert E. Blackburn	D.Colo., D.N.M.	14	2	11	1	3	1	0
William Horsley Orrick III	E.D.Cal., N.D.Cal.	14	2	3	1	4	3	1
Donald W. Molloy	D.Mont.	13	2	10	1	7	0	0
George H. Wu	C.D.Cal.	13	3	6	3	0	1	0
Yvonne Gonzalez Rogers	N.D.Cal.	13	3	3	0	1	4	0

Case Timing

Lex Machina provides case timing data to certain milestones, which can be used for planning and budgeting. While overall case timing in Environmental cases may be relevant, looking at case timing for a particular set of cases can be particularly informative. This section shows case timing across all Environmental cases. It then focuses on the Northern District of California and the District Court for the District of Columbia. Summary judgments are common in this practice area (as discussed below). Therefore, using data to predict the time to summary judgment in a particular district is incredibly useful.

In Environmental cases terminating from 2016 to 2018, the median time to summary judgment was 557 days. In looking only at the District Court for the District of Columbia, the median was 519 days. This can be compared to the Northern District of California, which has a median of 388 days to summary judgment. In comparing these two boxplots, the Northern District of California has a more elongated box, meaning greater variance in the district between the lower and upper quartiles. For more information, please review the Understanding Boxplots section at the end of this report.

Figure 11: Timing for Environmental Cases Terminating 2016 to 2018

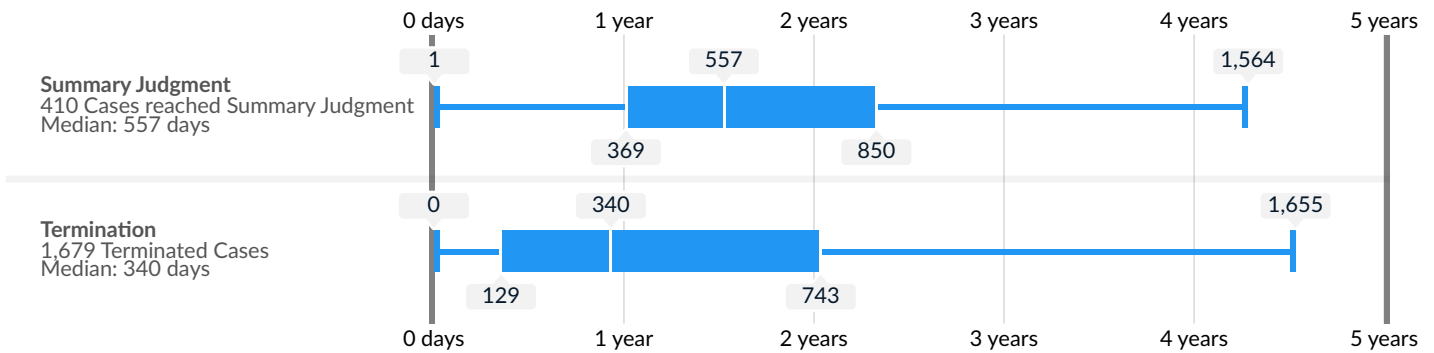


Figure 12: Timing for D.D.C. Environmental Cases Terminating 2016 to 2018

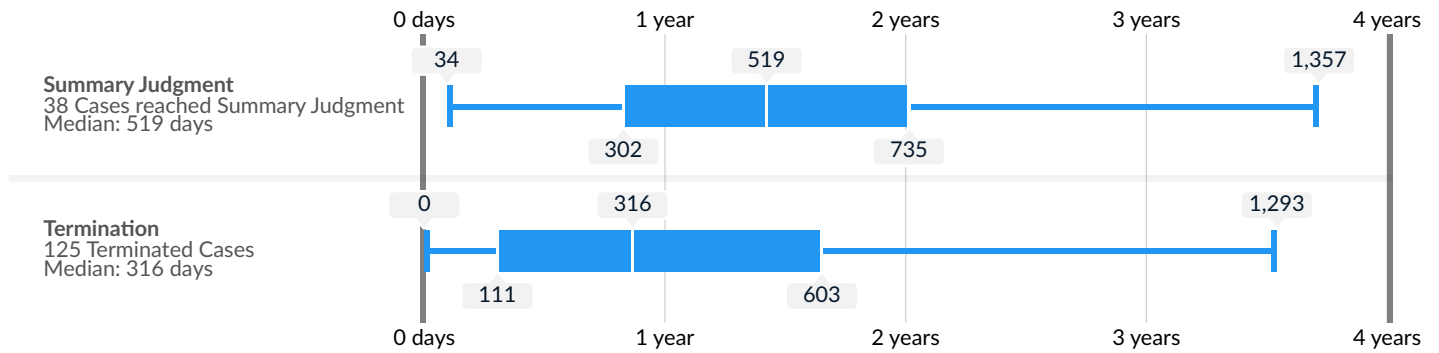
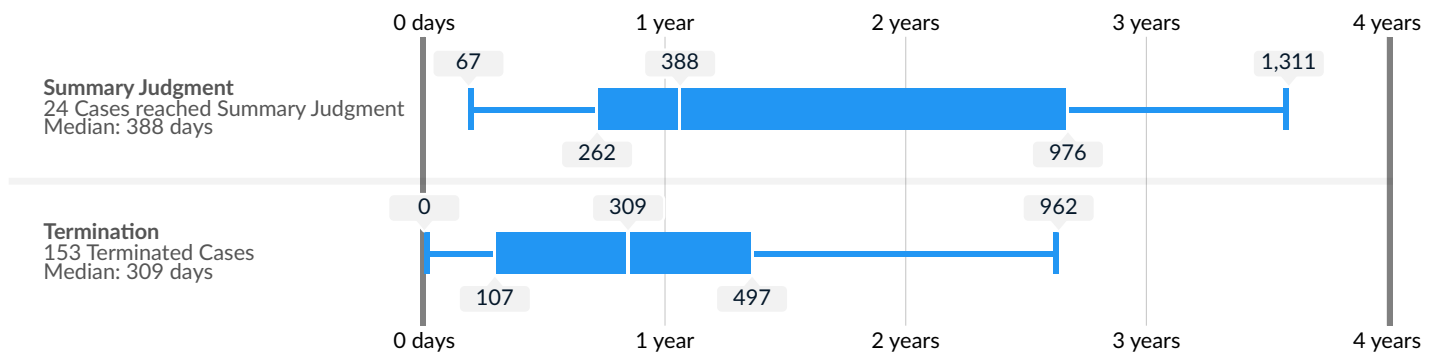


Figure 13: Timing for C.D.Cal. Environmental Cases Terminating 2016 to 2018



Most Active Parties

The figures in this section contain two lists: Most Active Plaintiffs and Most Active Defendants. Each list appears twice. The first figure shows case filings for the three-year time periods 2016-2018, 2013-2015, and 2010-2012, as well as the number of districts where the party appeared from 2010-2018. The following figure shows the parties' case filings broken down by case type tag. As with the districts and judges, the most active parties have particular specialties within the Environmental practice area.

Government entities were the most active parties in Environmental litigation both as plaintiffs and defendants. The federal government filed almost two-and-a-half times as many cases as the second most active plaintiff, the Center for Biological Diversity. Many environmental interest organizations have been plaintiffs in Environmental cases. In looking at plaintiffs' case filings by time period, some organizations slowed down, which is consistent with the overall downward trend in Environmental case filings. However, some organizations, such as the Center for Biological Diversity and the Conservation Law Foundation, increased filings in the last three-year period.

The most active defendants include government agencies, individuals in their capacity as government officials, and large corporations. Exxon was named in lawsuits relating to its oil drilling, while Honeywell was named in a large number of CERCLA cases.

Figure 14: Most Active Plaintiffs by Environmental Case Filings 2016 to 2018

Party	Case Count			Districts
	2016-2018	2013-2015	2010-2012	
United States of America	299	321	438	91
Center for Biological Diversity	120	83	88	37
Sierra Club	94	125	143	60
WildEarth Guardians	43	49	64	17
Conservation Law Foundation, Inc.	42	30	32	6
Natural Resources Defense Council	35	25	26	26
State of New York	27	9	14	7
Friends of Animals	24	22	0	13
California Sportfishing Protection Alliance	23	46	79	3
Defenders of Wildlife	22	25	21	20
Los Angeles Waterkeeper	21	15	0	1
Western Watersheds Project	19	29	24	13
Alliance for the Wild Rockies	18	23	16	5
California River Watch	18	32	9	4
Orange County Coastkeeper	18	15	2	1
California Department of Toxic Substances Control	16	11	5	3
Puget Soundkeeper Alliance	15	13	13	2
Coastal Environmental Rights Foundation	14	5	0	1
Environmental Integrity Project	14	9	7	3
The Wilderness Society	14	6	10	10

Figure 15: Most Active Plaintiffs by Environmental Case Filings 2016 to 2018 with Types

Party	Environmental	CWA	NEPA	CERCLA	ESA	CAA	RCRA
United States of America	299	91	0	107	1	80	10
Center for Biological Diversity	120	6	57	0	59	13	0
Sierra Club	94	19	37	1	14	29	6
WildEarth Guardians	43	2	31	0	13	2	0
Conservation Law Foundation, Inc.	42	36	1	0	3	0	2
Natural Resources Defense Council	35	5	12	0	9	2	1
State of New York	27	2	2	14	0	4	1
Friends of Animals	24	0	15	0	7	0	0
California Sportfishing Protection Alliance	23	14	1	0	0	0	0
Defenders of Wildlife	22	3	8	0	9	0	0
Los Angeles Waterkeeper	21	20	0	0	0	0	0
Western Watersheds Project	19	0	14	0	5	0	0
Alliance for the Wild Rockies	18	0	13	0	12	0	0
California River Watch	18	8	0	0	7	0	2
Orange County Coastkeeper	18	18	0	0	0	0	0
California Department of Toxic Substances Control	16	0	0	11	0	0	0
Puget Soundkeeper Alliance	15	15	0	0	0	0	0
Coastal Environmental Rights Foundation	14	14	0	0	0	0	0
Environmental Integrity Project	14	1	0	1	0	11	1
The Wilderness Society	14	0	10	0	3	0	0

Figure 16: Most Active Defendants by Environmental Case Filings 2016 to 2018

Party	Case Count			Districts
	2016-2018	2013-2015	2010-2012	
Ryan Zinke (Sec., Dept. of the Interior)	123	9	0	27
United States Fish and Wildlife Service	121	141	106	45
United States Forest Service	105	95	113	31
United States Department of the Interior	104	93	93	39
United States Environmental Protection Agency	89	70	115	60
Bureau of Land Management	80	49	76	23
Scott Pruitt (Administrator, Environmental Protection Agency)	71	7	1	25
United States Army Corps of Engineers	63	70	80	63
Sally Jewell (Sec., Dept. of the Interior)	59	149	18	36
United States of America	52	39	32	49
National Marine Fisheries Service	45	55	57	25
Gina McCarthy (Administrator, Environmental Protection Agency)	43	96	14	40
Greg Sheehan (Acting Director, U.S. Fish and Wildlife Service)	26	3	0	14
Jim Kurth (Deputy Director, U.S. Fish and Wildlife Service)	24	4	0	10
Andrew R. Wheeler (Administrator, Environmental Protection Agency)	21	0	1	7
Federal Highway Administration	20	20	31	32
United States Department of Agriculture	20	17	20	23
Brian Steed (Deputy Director, Bureau of Land Management)	19	0	0	7
Exxon Mobil Corporation	19	12	13	20
Honeywell International, Inc.	19	9	13	17

Figure 17: Most Active Defendants by Environmental Case Filings 2016 to 2018 with Types

Party	Environmental	CWA	NEPA	CERCLA	ESA	CAA	RCRA
Ryan Zinke (Sec., Dept. of the Interior)	123	3	65	0	55	0	0
United States Fish and Wildlife Service	121	8	56	1	95	0	0
United States Forest Service	105	3	79	0	27	0	0
United States Department of the Interior	104	6	71	0	38	1	0
United States Environmental Protection Agency	89	44	10	2	11	19	2
Bureau of Land Management	80	0	64	0	7	1	0
Scott Pruitt (Administrator, Environmental Protection Agency)	71	22	5	1	5	31	1
United States Army Corps of Engineers	63	40	35	1	20	0	0
Sally Jewell (Sec., Dept. of the Interior)	59	3	42	0	16	0	0
United States of America	52	8	9	27	4	0	1
National Marine Fisheries Service	45	1	16	0	31	0	0
Gina McCarthy (Administrator, Environmental Protection Agency)	43	12	0	1	0	23	1
Greg Sheehan (Acting Director, U.S. Fish and Wildlife Service)	26	0	9	0	21	0	0
Jim Kurth (Deputy Director, U.S. Fish and Wildlife Service)	24	2	14	0	18	0	0
Andrew R. Wheeler (Administrator, Environmental Protection Agency)	21	4	0	1	1	13	1
Federal Highway Administration	20	4	19	0	8	0	0
United States Department of Agriculture	20	1	16	0	3	0	0
Brian Steed (Deputy Director, Bureau of Land Management)	19	0	13	0	0	0	0
Exxon Mobil Corporation	19	1	0	5	0	8	2
Honeywell International, Inc.	19	3	0	19	0	0	0

Most Active Law Firms

The most active law firms are organized in the same manner as above, showing case filings over three separate three-year time periods, districts in which the law firm has appeared from 2010 to 2018, and case type tag. The most active counsel in Environmental cases for both plaintiffs and defendants was the Department of Justice. On the plaintiffs' side the DOJ litigated mainly CERCLA, Clean Water Act, and Clean Air Act claims. It litigated NEPA and Endangered Species Act claims on the defense side.

Several public policy law firms were most active plaintiffs' counsel including Earthjustice and Conservation Law. Besides the DOJ, the most active defendants' law firm was Hunton Andrews Kurth, which represented defendants in only 23 cases filed from 2016 to 2018. Many large law firms appear on behalf of defendants. Most defendants' counsel appeared in cases with Clean Water Act, Clean Air Act, and CERCLA claims.

Figure 18: Most Active Plaintiffs' Law Firms by Environmental Case Filings 2016 to 2018

Firm	Case Count			Districts
	2016-2018	2013-2015	2010-2012	
Department of Justice	307	328	438	91
Earthjustice	84	71	74	41
Conservation Law	41	32	32	6
Natural Resources Defense Council	31	15	21	24
State of California	31	15	14	6
Western Environmental Law Center	29	27	33	12
Smith & Lowney	28	34	74	7
State of New York	27	9	13	8
Lozeau Drury	25	41	33	4
Aqua Terra Aeris Law Group	23	4	2	3
Center for Biological Diversity	22	6	11	11
Friends of Animals	22	17	2	12
Lawyers for Clean Water	22	37	24	4
Advocates for the West	19	30	27	8
Brodsky & Smith	19	0	0	1
Los Angeles Waterkeeper	19	13	2	1
Meyer Glitzenstein & Eubanks	19	16	2	13
Southern Environmental Law Center	19	32	16	16
Super Law Group	19	23	11	6
Law Office of Jack Silver	18	33	16	4
WildEarth Guardians	18	30	35	12

Figure 19: Most Active Plaintiffs' Law Firms by Environmental Case Filings 2016 to 2018 with Types

Firm	Environmental	CWA	NEPA	CERCLA	ESA	CAA	RCRA	Districts
Department of Justice	307	94	1	108	1	80	12	78
Earthjustice	84	16	38	1	17	10	2	23
Conservation Law	41	36	2	0	3	0	2	4
Natural Resources Defense Council	31	5	11	0	9	0	1	14
State of California	31	3	7	10	1	4	0	6
Western Environmental Law Center	29	1	23	0	11	0	0	10
Smith & Lowney	28	23	1	0	0	3	0	3
State of New York	27	3	2	13	0	4	1	7
Lozeau Drury	25	21	0	0	0	0	0	3
Aqua Terra Aeris Law Group	23	16	0	0	3	0	0	3
Center for Biological Diversity	22	1	12	0	16	0	0	8
Friends of Animals	22	0	15	0	5	0	0	8
Lawyers for Clean Water	22	18	0	0	3	0	0	4
Advocates for the West	19	3	13	0	5	0	0	5
Brodsky & Smith	19	19	0	0	0	0	0	1
Los Angeles Waterkeeper	19	18	0	0	0	0	0	1
Meyer Glitzenstein & Eubanks	19	2	17	0	3	0	0	10
Southern Environmental Law Center	19	12	9	0	5	0	3	8
Super Law Group	19	19	0	0	0	0	2	5
Law Office of Jack Silver	18	8	0	0	7	0	2	4
WildEarth Guardians	18	0	11	0	6	2	0	7

Figure 20: Most Active Defendants' Law Firms by Environmental Case Filings 2016 to 2018

Firm	Case Count			Districts
	2016-2018	2013-2015	2010-2012	
Department of Justice	659	643	733	91
Hunton Andrews Kurth	23	15	18	29
Morgan Lewis & Bockius	20	12	12	23
Beveridge & Diamond	18	16	15	27
Arnold & Porter Kaye Scholer	17	16	19	17
Alston & Bird	16	5	4	11
Baker Botts	16	5	7	14
Castellon & Funderburk	16	7	11	4
Stoel Rives	16	13	9	12
Latham & Watkins	15	7	12	15
Shook, Hardy & Bacon	14	4	6	12
Barnes & Thornburg	13	7	10	15
Bryan Cave Leighton Paisner	13	7	10	15
Clark Hill	13	3	7	11
Sidley Austin	13	8	7	20
King & Spalding	12	7	5	14
Perkins Coie	12	10	27	21
Sive, Paget & Riesel	12	5	0	3
Wood Smith Henning & Berman	12	5	3	4
Crowell & Moring	11	5	9	17
Kirkland & Ellis	11	4	2	9
Munger Tolles & Olson	11	2	3	4

Figure 21: Most Active Defendants' Law Firms by Environmental Case Filings 2016 to 2018 with Types

Firm	Environmental	CWA	NEPA	CERCLA	ESA	CAA	RCRA	Districts
Department of Justice	659	98	333	37	174	57	6	77
Hunton Andrews Kurth	23	8	3	2	4	7	3	12
Morgan Lewis & Bockius	20	2	0	8	1	6	2	12
Beveridge & Diamond	18	3	3	5	0	2	3	14
Arnold & Porter Kaye Scholer	17	1	0	9	0	6	0	9
Alston & Bird	16	10	0	5	1	0	0	6
Baker Botts	16	3	0	2	1	8	0	8
Castellon & Funderburk	16	15	0	0	0	0	0	2
Stoel Rives	16	11	3	0	4	0	0	6
Latham & Watkins	15	2	0	5	0	6	0	9
Shook, Hardy & Bacon	14	1	0	7	0	5	1	7
Barnes & Thornburg	13	8	0	6	0	1	2	9
Bryan Cave Leighton Paisner	13	2	3	4	0	1	2	7
Clark Hill	13	1	0	5	0	0	2	5
Sidley Austin	13	2	1	1	0	7	0	12
King & Spalding	12	1	0	3	0	4	1	7
Perkins Coie	12	2	2	6	1	1	1	10
Sive, Paget & Riesel	12	5	1	7	0	0	0	3
Wood Smith Henning & Berman	12	2	2	8	0	0	2	4
Crowell & Moring	11	0	0	5	0	3	0	9
Kirkland & Ellis	11	0	0	0	0	5	1	6
Munger Tolles & Olson	11	1	0	0	0	6	0	3

Case Resolutions

Case resolution data tells a particular story about how easy or difficult it may be to win at certain points in litigation. The charts below show case resolutions for Environmental cases terminating from 2016 to 2018.

The green represents cases with a likely settlement resolution. In Environmental cases overall, 33% resolved with a likely settlement. This is very low compared to other practice areas. When looking only at certain claims, the case resolution percentages look a bit different. For example, 31% of NEPA cases resolved with a likely settlement versus 39% of CERCLA cases.

The red represents the portion of cases that resolved with a claimant win. This section includes default judgments and consent judgments. Environmental cases overall have a very high percentage of consent judgments. However, when broken down by case type, the data shows only one of the NEPA cases terminating from 2016 to 2018 resolved with a consent judgment, while 36% of cases with a CERCLA claim resolved with a consent judgment.

The blue represents the portion of cases that resolved with a claim defendant win. Looking at cases that resolved with a summary judgment, claim defendants won 148 times versus 123 claimant wins. However, claim defendants tended to win with a judgment on the pleadings, while claimants tended to win at trial. NEPA cases had a very large percentage of cases that resolved at summary judgment (13% of cases resolved with a claimant win and 28% of resolved with a claim defendant win). From 2016 to 2018, only 19 CERCLA cases resolved on summary judgment and 11 cases resolved at trial.

The government's involvement in Environmental litigation was a large factor in how cases resolve. The fourth figure below shows case resolutions in cases with a government plaintiff. In that figure, 79% of cases resolved with a consent judgment. No cases resolved in claim defendants' favor on the merits.

Figure 22: Case Resolutions for Environmental Cases Terminating 2016 to 2018

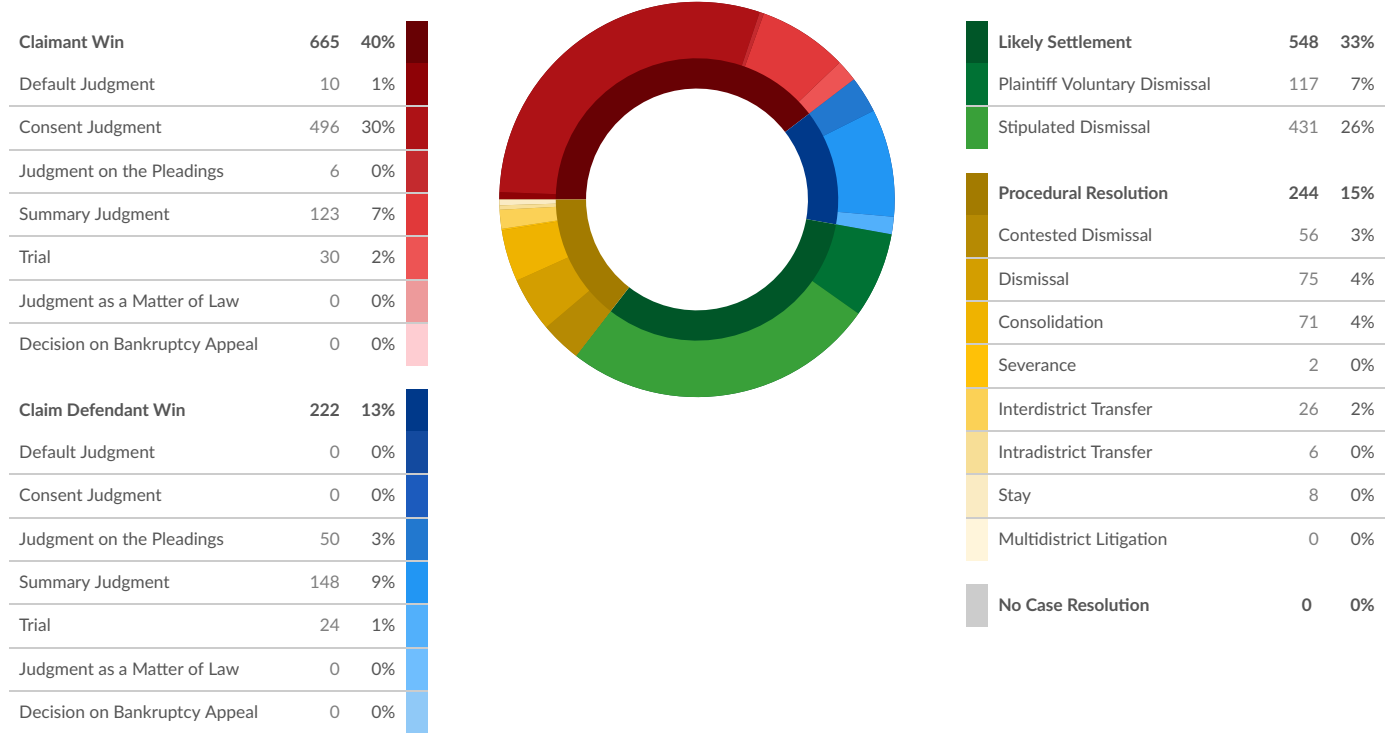


Figure 23: Case Resolutions for NEPA Cases Terminating 2016 to 2018

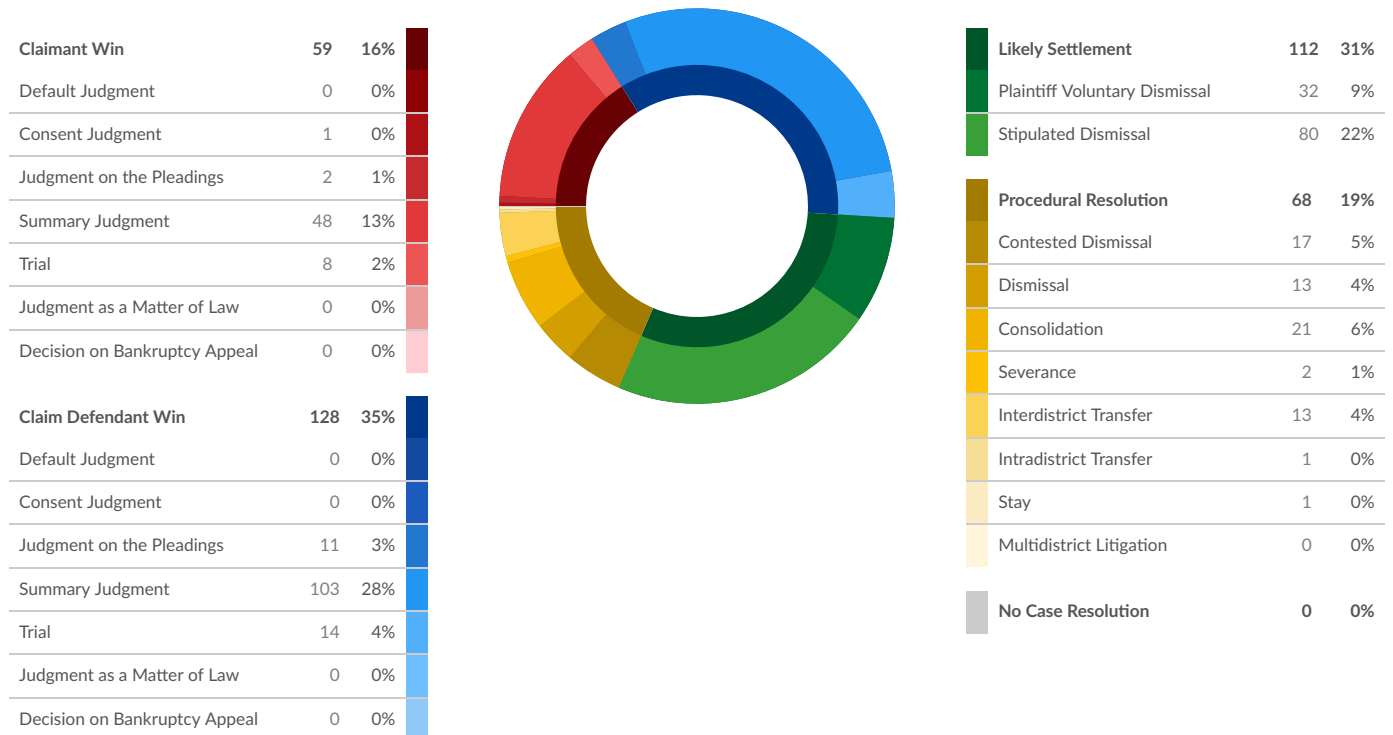


Figure 24: Case Resolutions for CERCLA Cases Terminating 2016 to 2018

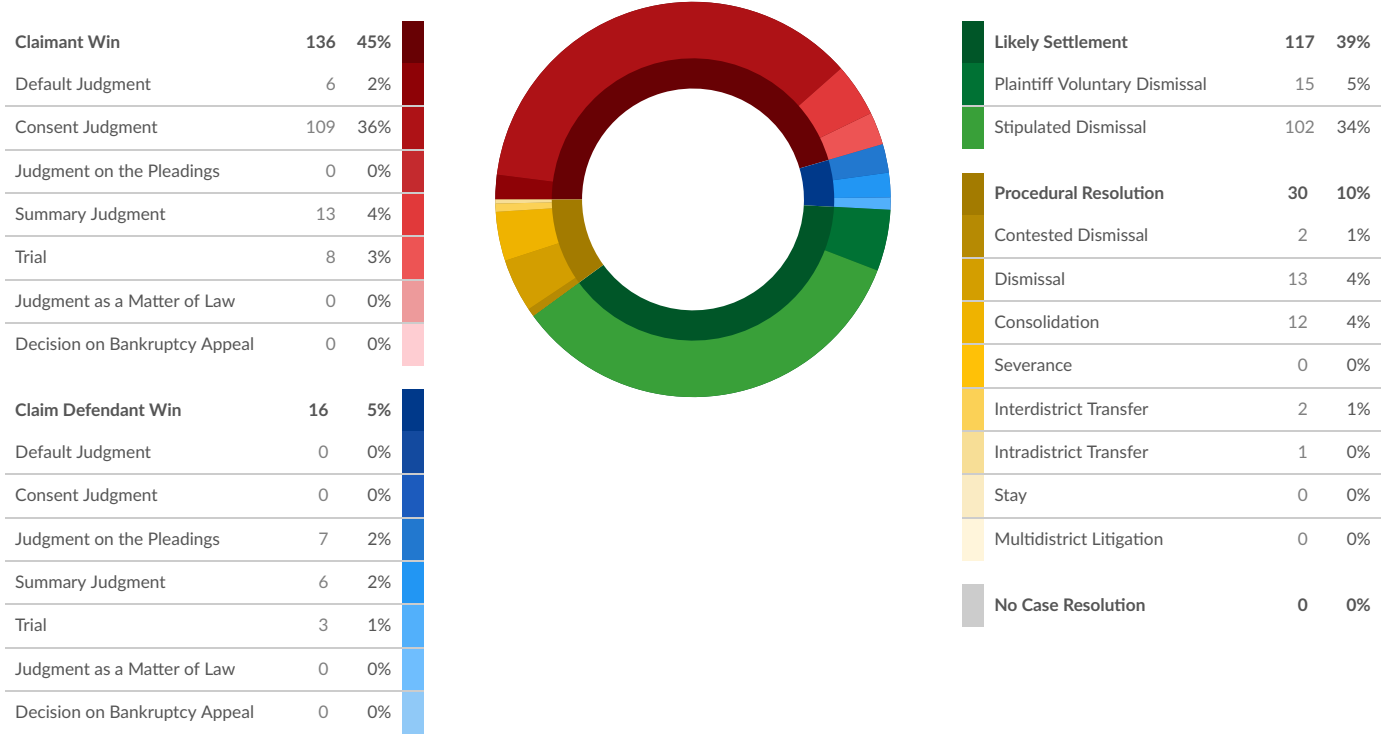
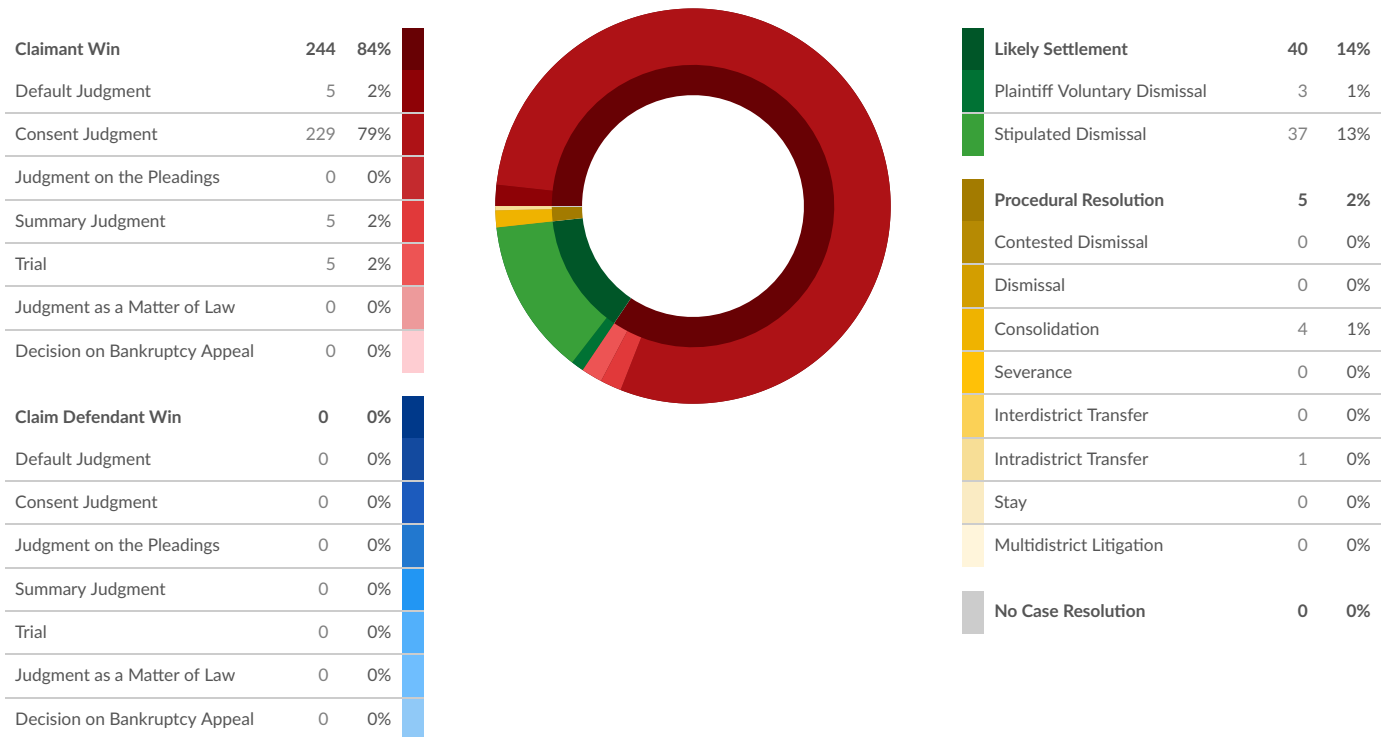


Figure 25: Case Resolutions for Government Plaintiff Environmental Cases Terminating 2016 to 2018



Findings

Lex Machina tracks findings at various stages of litigation. The first figure below shows the number of cases with a finding at each stage and overall. As seen with case resolutions, courts often make findings on consent judgment or summary judgment. The most common findings were No NEPA Violation, Clean Water Act Violation, and Clean Air Act Violation. The latter two were mainly on consent wherein a defendant agreed to pay statutory civil penalties. Consent judgments, also known as Consent Decrees, are common in Environmental cases because many involve enforcement actions brought by government agencies such as the EPA.

The second figure shows defense findings. There are fewer columns in this figure because there were no defense findings by consent or on default judgment during the time period. The court ruled most often on standing issues. No Standing was found in 46 cases, most often during a judgment on the pleadings, while Standing was found in 42 cases, most often at summary judgment. Other popular defense findings were Statute of Limitations Defense and Noncompliant Notice Defense.

Figure 26: Violation Findings for Cases Terminating 2016 to 2018

Finding	Default Judgment	Consent Judgment	Judgment on the Pleadings	Summary Judgment	Any Judgment Event	Trial	
CERCLA Liability	7	9	0	14	7	32	
No CERCLA Liability	0	0	6	14	4	23	
Clean Water Act Violation	2	81	0	17	7	106	
No Clean Water Act Violation	0	0	8	27	3	37	
Clean Air Act Violation	0	73	0	14	1	87	
No Clean Air Act Violation	0	0	3	7	1	11	
RCRA Violation	1	13	0	2	0	15	
No RCRA Violation	0	0	2	5	1	8	
NEPA Violation	0	0	2	39	7	48	
No NEPA Violation	0	0	9	113	14	133	
Endangered Species Act Violation	1	2	1	30	4	38	
No Endangered Species Act Violation	0	0	5	37	6	47	
SDWA Violation	1	2	1	1	0	5	
No SDWA Violation	0	0	1	0	0	1	
Other Environmental Violation	2	7	0	31	4	43	
No Other Environmental Violation	0	0	5	57	4	63	

Figure 27: Defense Findings for Cases Terminating 2016 to 2018

Finding	Judgment on the Pleadings	Summary Judgment	Trial	Any Judgment Event	
Standing		10	26	6	42
No Standing		23	20	3	46
Preemption of State Law		2	5	0	7
No Preemption of State Law		4	1	0	5
Statute of Limitations Defense		10	7	0	17
No Statute of Limitations Defense		2	7	0	9
Diligent Prosecution Defense		3	1	0	4
No Diligent Prosecution Defense		1	1	0	2
Noncompliant Notice Defense		13	1	0	14
No Noncompliant Notice Defense		0	6	0	6
No CERCLA Third Party / Landowner Defense		0	1	0	1
Failure to Exhaust Administrative Remedies Defense		4	5	0	9
No Failure to Exhaust Administrative Remedies Defense		0	1	0	1

Remedies

Equitable remedies are particularly important in Environmental cases, given they can affect how parties physically interact with the environment. Large numbers of remedies are entered in consent judgments. In cases terminating between 2016 through 2018, parties agreed to compliance or remediation plans in 283 cases as well as permanent injunctions in 323. In looking at judgments on the merits, temporary restraining orders and preliminary injunctions were denied around twice as often as they were granted. Additionally, courts granted administrative remand in 62 cases, meaning those cases went back to the government agency.

Figure 28: Remedies for Cases Terminating 2016 to 2018

Remedy	Default Judgment	Consent Judgment	Judgment on Merits	Any Judgment Event	
Compliance / Remediation Plan		1	283	10	294
Security Bond / Performance Guarantee		0	22	1	23
Administrative Remand		0	3	59	62
Permanent Injunction: Grant		2	323	25	349
Permanent Injunction: Deny		0	0	6	6
Preliminary Injunction: Grant		0	4	30	34
Preliminary Injunction: Deny		0	0	66	66
Temporary Restraining Order: Grant		0	1	12	13
Temporary Restraining Order: Deny		0	0	23	23

Damages

The number of Environmental cases with damages awards peaked in 2013 with 202 cases awarding almost \$1.25 billion in damages. While the number of cases per year with awards has gone down since then, 2016 and 2017 have the largest award amounts due to two large consent judgments. In 2016, the District Court for the Eastern District of Louisiana approved \$13.6 billion in damages in *In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico*, on April 20, 2010 for Clean Water Act violations. The parties agreed on \$8.1 billion in natural resource damages and \$5.5 billion in civil money penalties. In 2017, the District Court for the Northern District of California approved a \$4.15 billion consent judgement for Clean Air Act violations in *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, which consisted of \$2.7 billion in an environmental mitigation trust fund and \$1.45 billion in civil money penalties.

These large awards are also shown in the second figure below, which breaks down damages awards from 2016 to 2018 by damage type and judgment source. Over \$500 million in CERCLA Cost Recovery / Contribution damages were awarded during that time period, as well as almost \$33 million in Attorneys' Fees / Costs. Judgment on the Merits consists of damages awarded by a judge, as there were no Environmental jury awards from 2016 to 2018. CERCLA Cost Recovery / Contribution damages were the largest damages amount awarded on the merits at over \$71 million.

Figure 29: Total Environmental Damages Awarded from 2009 to 2018 (Excluding Attorneys' Fees / Costs and Prejudgment Interest)

Year	Cases	Amount
2018	159	\$357,759,650.66
2017	158	\$1,864,162,505.57
2016	154	\$16,552,368,384.88
2015	170	\$401,527,394.57
2014	167	\$599,837,339.14
2013	202	\$1,247,738,184.32
2012	189	\$570,277,358.84
2011	181	\$345,949,106.96
2010	189	\$458,149,729.60
2009	183	\$574,523,578.37

Figure 30: Total Environmental Damages Awarded from 2016 to 2018 by Judgment Source

Damages Type	Total	Total Awarded	Default		Judgment on Merits
	Cases		Judgment	Consent Judgment	
CERCLA Cost Recovery / Contribution	113	\$524,699,721.32	\$8,954,016.55	\$444,374,750.97	\$71,370,953.80
Natural Resource Damages / Assessment Costs	32	\$8,182,357,377.14	\$2,467,566.90	\$8,177,646,123.46	\$2,243,686.78
Civil Money Penalties	170	\$7,199,269,990.83	\$3,765,684.00	\$7,193,714,056.83	\$1,790,250.00
Environmental Project / Mitigation Fund	196	\$2,860,387,951.82	\$9,118,039.17	\$2,848,888,627.00	\$2,381,285.65
Other / Mixed Damage Types	4	\$7,575,500.00		\$7,575,500.00	
Attorneys' Fees / Costs	246	\$32,764,108.14	\$365,190.38	\$24,979,527.65	\$7,419,390.11
Prejudgment Interest	4	\$738,177.28	\$39,454.91		\$698,722.37

Data and Methodology

This report presents data from Lex Machina's Legal Analytics platform. Using machine learning and technology-assisted attorney review, raw data is extracted from PACER (Public Access to Court Electronic Records), which contains documents from federal district court. The raw data is then cleaned, tagged, structured, and loaded into Lex Machina's proprietary platform. This report is prepared by the Lex Machina Product Team using charts and graphs from the platform. Commentary is provided by Lex Machina's legal experts.

Lex Machina supplements and corrects primary data from PACER in a variety of ways, including:

- Correcting errors ranging from spelling mistakes to complex data problems
- Normalizing data on judges, parties, law firms, and attorneys
- Extracting records of law firms and attorneys not found in docket reports
- Tagging and categorizing cases
- Annotating case resolutions, damages, and dispositive rulings

What kinds of data does Lex Machina offer?

Lex Machina maintains a specialized database containing information about litigation in U.S. District Courts, the Delaware Court of Chancery, the U.S. Patent and Trademark Office's Patent Trial and Appeal Board, and the U.S. International Trade Commission. On a daily basis, Lex Machina requests and receives data from the various district courts' PACER systems on new cases and docket entries filed. Lex Machina's automated systems ensure the completeness and consistency of this data before analyzing it in conjunction with other data sources.

Lex Machina's litigation data does not include appeals or modifications of judgments on appeal.

This document was published in July 2019. The Lex Machina platform updates daily and therefore any numbers in this report will change as new cases get added to PACER with new information. This report is meant to provide trends and general research information as of the date of publication.

What is an Environmental case?

A case involving a dispute over regulation of the environment under any federal statute.

Note that claims under the Administrative Procedure Act are only included if they are predicated on agency action related to the implementation of a federal environmental statute.

What are the Environmental case type tags?

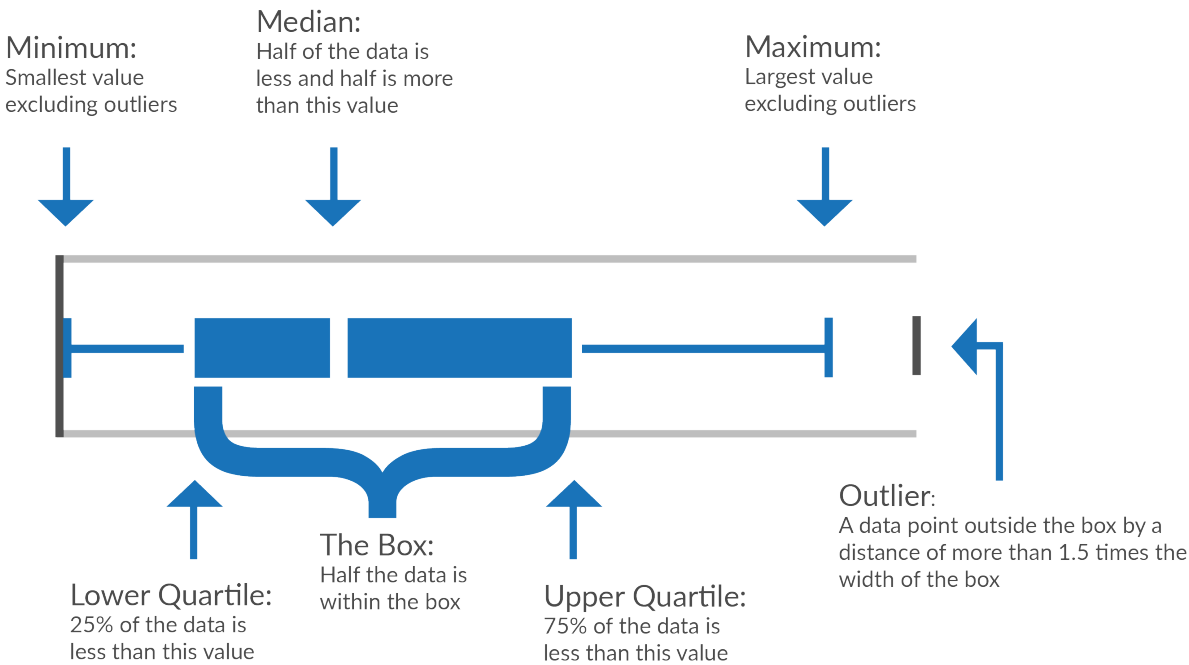
Lex Machina uses machine learning and natural language processing to create case tags that identify certain claims in a case. In the Environmental module, case tags identify six common types of claims:

- *CERCLA* – Cases involving claims brought under the Comprehensive Environmental Response, Compensation, and Liability Act. The purpose of CERCLA is to establish a Federal "Superfund" to clean up uncontrolled or abandoned hazardous waste sites as well as accidents, spills, and other emergency releases of pollutants and contaminants into the environment.
- *Clean Water Act (CWA)* – Cases involving claims brought under the Clean Water Act, which regulates the discharge of pollutants into the waters of the United States and quality standards for surface waters.
- *Clean Air Act (CAA)* – Cases involving claims brought under the Clean Air Act, which regulates air emissions from stationary and mobile sources as well as authorizes EPA to establish National Ambient Air Quality Standards (NAAQS).
- *Endangered Species Act (ESA)* – Cases involving claims brought under the Endangered Species Act, which is concerned with the conservation of threatened and endangered plants and animals and the habitats in which they are found.
- *RCRA* – Cases involving claims brought under the Resource Conservation and Recovery Act, which regulates the management of hazardous and non-hazardous solid waste.
- *NEPA* – Cases involving claims brought under the National Environmental Policy Act, which requires the preparation of an Environmental Impact Statement (EIS) and Environmental Assessments (EAs) for all major federal actions significantly affecting the environment.
- *Deepwater Horizon* – Cases that have been centralized by the Judicial Panel on Multi-District Litigation under MDL 2179 *In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010*, and cases where a claimant under The Deepwater Horizon Economic and Property Damages Settlement program has filed a Request for Discretionary Court Review with Judge Carl J. Barbier of the Eastern District of Louisiana (MDL 2179 docket number 14812).

Understanding Boxplots

Lex Machina's analytics use a data visualization known as the boxplot to convey information about the timing of significant events in a case. A boxplot summarizes a series of data points to help you understand the shape, or distribution of the values in those points. The boxplot is drawn based on five numbers: the median, the upper and lower quartiles, and the whiskers for a distribution.

Figure 31: Paying attention to these key parts of the plot will help you quickly understand what you need to know.



The four observations below explain the significance of a boxplot:

Median

- The middle dividing line of the box splits the data points evenly so that 50% fall to either side. It's a form of average that gives a single number representation of what to reasonably expect.

Box bounds

- The box encloses the middle-most 50% of the data points (from the 25th percentile to the 75th), with 25% of the data points falling outside to either side. This makes the box a good representation of the range one can reasonably expect.

Box compressed or elongated

- A more compressed box means that more data points fall into a smaller range of time and therefore are more consistent; in contrast a longer box means that the data points are spread out over a wider time period and are therefore less predictable.

Whiskers

- Whiskers are drawn to show the outside bounds of reasonable expectation, beyond which data points are considered outliers. By statistical convention, boxplots define outliers as points beyond more than 1.5 times the width of the box (sometimes called the "interquartile range").