

THE

ECONOMIC

JUDICIAL

REPORT[®]

ALABAMA

COURT OF CIVIL APPEALS

JUDICIAL EVALUATION

2005

The Economic Judicial Report[®]

Prepared by:
Judicial Evaluation Institute, Washington, D.C.,
and Sequoyah Information Systems[®]

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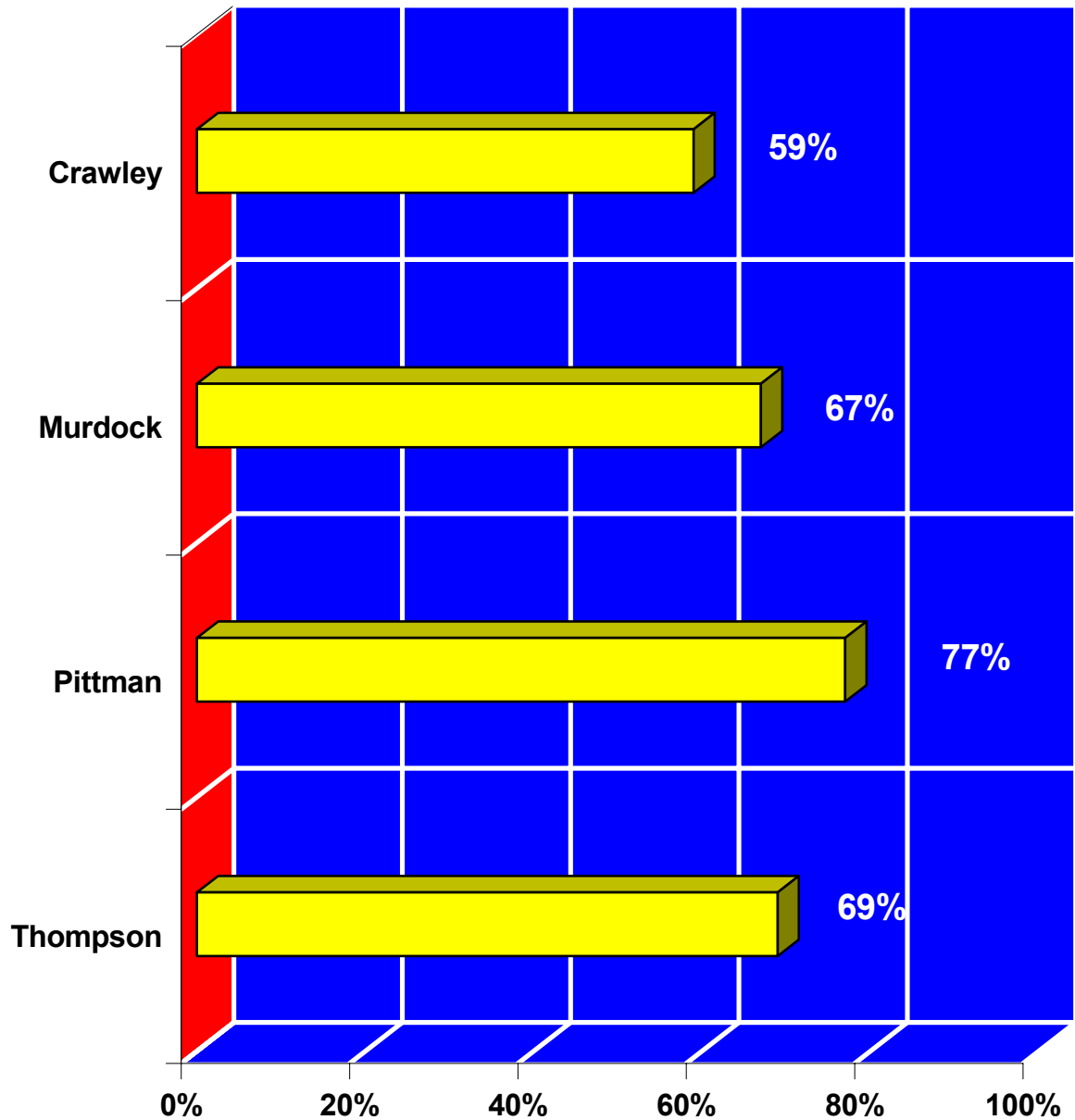
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Summary of Results

ALABAMA COURT OF CIVIL APPEALS

The higher the score, the more the judge's decisions have had the effect of restraining the spread of liability.



Judge Tommy E. Bryan, who began serving on the Alabama Court of Civil Appeals in 2005, was not scored because he did not participate in a sufficient number of cases evaluated in the study.

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Questions & Answers

What is the Alabama Court of Civil Appeals Judicial Evaluation?

The Alabama Court of Civil Appeals Judicial Evaluation evaluates the judges of the Court of Civil Appeals on issues of civil liability. It assesses each judge's record, in comparison to the records of the other judges on this court, in cases that involve civil liability creation and expansion—or restraint.

Why was this project undertaken?

The purpose of this project is to give the people of Alabama meaningful information about the state's intermediate civil appellate court judges.

Who commissioned this study?

This study was commissioned by the Judicial Evaluation Institute for Economic Issues (JEI). JEI is a Washington, D.C.–based research institute formed to educate the public on the importance of evaluating judges' performance with respect to the spread of liability in American society and its effect on our prosperity and our institutional life. JEI encourages the development of information necessary to accomplish that task.

Who actually prepared this study?

The Economic Judicial Report (EJR), based in Oklahoma, and JEI prepared the study. Recognized as the national leaders in conducting judicial evaluations, EJR and JEI have completed similar studies of the judiciaries in many states, including Arkansas, California, Colorado, Florida, Georgia, Illinois, Kentucky, Louisiana, Michigan, Mississippi, Montana, Nevada, New Mexico, North Carolina, Pennsylvania, Texas, Washington, and West Virginia. Using attorneys to do all the research and analysis, we have earned a reputation for producing careful, non-partisan reports that provide an accurate reflection of each judge's values and jurisprudence with respect to liability in our civil justice system.

Explain the rating given to each judge.

Each member of the Alabama Court of Civil Appeals has been evaluated on his or her decisions in six broad areas of law and the effect of those decisions on civil liability in Alabama's law and courts. The areas are: employment, insurance, medical malpractice, "other liability lawsuits," product liability, and workers' compensation. Each judge is given an overall cumulative score. The higher the score, the more the judge's opinions have had the effect of restraining liability, in EJR's and JEI's opinion.

Do EJR and JEI have a point of view?

Yes. EJR and JEI evaluate these judges from a particular substantive-policy point of view. The fundamental policy premise behind the evaluations is that the extremes of expansion of civil liability in the American courts over recent decades inhibit growth, discourage enterprise, and change for the worse the way we conduct our personal and professional lives. Judge-made law in the state courts has created much of this liability expansion and many of its destructive features. The evaluation assesses a judge's record, in comparison to the records of other judges on this same court, on issues that involve the creation of liability and expansion of liability, or, on the other hand, the restriction or tempering of liability. The evaluation focuses especially on cases where the judges have disagreed with each other or with other courts that have adjudicated the same case, and it compares the voting records of the judges in these cases.

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Questions & Answers

What do EJR and JEI mean by “liability”?

EJR and JEI do not mean simply manufacturers’ and merchants’ liability, or product liability. The “expansion of liability” means that all of us are more and more vulnerable to being sued for an ever greater array of causes. Judge-made law has made employers, school teachers, other professionals, school boards, towns and counties, churches and voluntary associations, our colleges and universities, neighbors and schoolmates, caregivers, physicians and pharmacists more likely to have their activities and decisions second-guessed by lawyers and to be dragged into litigation.

What criteria were used to evaluate the judges on the Court of Civil Appeals?

EJR and JEI believe that an inordinate spread of civil liability has harmed American economic and institutional life. EJR and JEI have developed strict criteria for evaluating judges objectively from this point of view. The report includes cases spanning a period of years to provide the best understanding of a judge’s philosophy in cases affecting the spread of liability in our society. The decisions chosen for inclusion in the report are principally those that meet two criteria: first, in the opinion of EJR and JEI they will tend either to expand liability even further or, conversely, help stop its spread; second, they present legal issues about which judges who heard or reviewed a case disagreed. Among the questions we ask are whether a decision further expands liability, tends to affect the availability of beneficial services, creates certainty or uncertainty in the law, tends to encourage or discourage business expansion in Alabama, and fosters or discourages job creation in the state.

Are EJR and JEI saying they want judges to give a higher priority to slowing down the spread of liability than to impartiality and proper application of the law?

Absolutely not. Nor are we saying it is preferable for a judge to have a 100% rating. If a common sense, faithful reading of a statute or the common law says that a certain injured person should be compensated for that injury, or that one business or not-for-profit agency has somehow wronged another person or entity, we believe that is how a judge should decide the case. EJR and JEI want judges to follow the law and do justice. As indicated above, it is principally when judges do not agree that this evaluation studies and critiques their decisions. By analyzing a judge’s record over numbers of cases where outcomes have not been dictated clearly or easily by current law (and therefore the judges have disagreed), this study gives insight into each judge’s philosophy and values. And these beliefs and values are very important, for much of the law applied in our courts is “common law” or “judge made” law. Torts law, for instance, is largely a matter of common law. Judges create these common-law rules, one precedent at a time.

Aren’t fairness and impartiality the most important traits for a judge?

Without question, fairness and impartiality are the first qualities we should expect all our judges to strive for. Rating fairness—even defining fairness—is virtually impossible, however. Every judge would claim to be fair and impartial in every case, but still we have split decisions in which judges disagree. Where the controlling law is susceptible to disagreement, or when judges are in effect “making new law,” judges are forced, consciously or not, to look to another guide to help them form their individual opinions or votes on the case—and this other guide, finally, will be their own beliefs and philosophy about judging and liability. Voters and other selectors of judges are entitled to know the pattern of each judge’s rulings.

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Questions & Answers

What do EJR and JEI believe are the practical implications of restraint in the area of civil liability?

A small business can plan its growth better when the body of law that governs its activities and responsibilities is steady, clear and predictable. Businesses of all sizes are more likely to locate and expand in Alabama if they know they will be in a legal climate where the courts can be relied on to give statutes the meaning that the legislature intended. The price of automobile insurance, malpractice insurance, and homeowners' and renters' insurance will be lower in an Alabama where people have a clear sense of what the court will do if there is an accident or other unfortunate event.

What do EJR and JEI mean when they suggest that the rapid spread of liability in recent decades has harmed American institutional life?

They mean that towns and schools and churches will be better able to ask, "How can we serve the people?"—if they don't have to ask first, "Will a lawsuit and a surprise ruling ruin us?" They mean that higher scoring judges have fostered a legal climate in which fewer of citizens' dollars have to be spent to protect against lawsuits, a society that lets voluntary associations and families concentrate more on their essential purposes and less on avoiding lawyers and litigation.

Is this a one-time project?

No, we plan to update this study biennially.

Are EJR and JEI endorsing any of the members of the Alabama Court of Civil Appeals based on these ratings?

No. We hope to contribute to a more informed public discussion. In the past, citizens typically had little or no information on the records of their judges. Information they did have tended to be anecdotal and limited to a highly publicized case or two. This did not constitute a sound basis for assessing a judge's record. It also was unfair to the judges. For the first time, Alabama citizens now have reliable, empirical judicial ratings of their intermediate civil appellate court. These ratings are based on issues of civil liability that are important to their families, places of employment, and communities.

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Evaluation Criteria

OBJECTIVE

The purpose of this study is to evaluate judicial rulings on issues that affect civil liability in our system of justice. Evaluation of the judiciary is a complicated and difficult process involving sometimes subjective determinations. Although this evaluation inevitably contains some subjectivity in the opinion of EJR and JEI, we adhere to strict criteria to achieve the most objective evaluation possible.

EVALUATION CRITERIA

The fact that there are so often differing opinions among judges is evidence that the law frequently is subject to interpretation. This characteristic of the law heightens the impact of judicial rulings and makes these evaluations an important informational tool.

- **The cases chosen for evaluation we believe will have the effect either of slowing the spread of liability in the law or accelerating it.** The report evaluates both cases that affect liability in particular industries and professions, such as manufacturing, insurance, and health care, and cases in areas that affect business and institutional liability in general – areas such as employment law, workers' compensation, and torts. A few cases from each category have been summarized to give the reader an insight into the analysis involved in evaluating the cases. These cases are located at the beginning of their respective categories. The remaining cases in the report are not summarized in the report, but are listed and show the ratings given to the current judges who participated in the decisions.
- **We include cases spanning a period of years.** As a general rule, the greater the number of cases reviewed, the higher the degree of confidence we have in our understanding of the general philosophy of each judge. A judge who has been on the court longer usually will have participated in more cases.
- **Each judge has been assigned an overall score.** The overall score indicates the percentage of cases evaluated in which we believe the judge made a decision that tends to have the effect of moderating the spread of liability in the state's law and, consequently, in the state's economic and institutional life. The higher the score, the more often the judge's rulings have had this effect.

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Evaluation Criteria

CATEGORIES OF LAW

- Employment
- Insurance
- Medical Malpractice
- Product Liability
- Workers' Compensation
- Other Liability Lawsuits

CIVIL LIABILITY ISSUES

EJR and JEI consider a variety of issues in selecting and evaluating cases that affect civil liability in our system of justice. These issues include whether a decision will have the effect of exposing more people to being sued, or discouraging other judges from dismissing far-fetched claims, or making the state's law more uncertain and unpredictable. Consideration of such issues underscores the interrelationship of judge-created liability and the state's economic and institutional health.

JUDICIAL SCORING

EJR's and JEI's evaluation of the effect a decision is likely to have on liability in the state's law determines the judge's score. Judges are not scored if they did not participate in a decision, were not on the court at the time of the decision, or were replaced by a visiting judge. A judge who wrote the opinion in the case is not scored differently for having authored the opinion. Minority opinions are substantively reviewed to determine each judge's position on the determinative issue(s) in each case. In the event the judge previously sat on a lower court adjudicating the case, the score the judge received while serving on that court may be provided, but it is not used in calculating the judge's score in this study.

CASE PARTICIPATION

As a general rule, the more cases in which we have been able to study and score a given judge's vote, the more confident we are that our overall rating of that judge gives an accurate insight into his or her judicial values and philosophy. A judge who has been on the court longer usually will have participated in more cases.

FINAL SCORES

An overall cumulative score has been computed for each judge in the study. As previously noted, the higher the judge's evaluation score, the more of his or her decisions we believe have the effect of moderating the spread of liability.

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Evaluation Criteria

LEGEND

Each judge is rated according to his or her participation in each case. Each case summary includes a rating for the overall effect of the case and for the effect of each judge's decision. The following abbreviations are used:

+	Positive rating	The judge's decision tends to slow the expansion of liability.
-	Negative rating	The judge's decision has the effect of expanding liability.
∅	No rating	The judge's decision does not lend itself to a definite rating.
NDO	No differing opinion	Every judge that heard the case agreed with the ruling.
1st Imp.	First impression	The issue in the case presents a novel question of law for the decision of the court.
(+) or (-)	Ruled at trial	The judge ruled at a lower court level. The ruling is not included in the judge's overall score, but is provided with the case summary for informational purposes.
*	See case notation	The case contains some feature that merits further explanation.

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The Appellate Process

QUESTIONS OF LAW

The plaintiff or defendant may appeal a lower court's ruling to an appellate court. Appeals may be based on alleged errors in trial procedure or on questions of substantive law, that is, interpretation of the law by the trial judge. This study primarily focuses on appeals involving questions of substantive law.

METHOD OF REVIEW

On appeal, the appellate court reviews the written record of the case. The record consists of papers and exhibits filed in the trial court as well as the court reporter's transcript of the trial. The court reviews the case based solely on the record. There is no jury, and the court does not see witnesses or hear testimony. New evidence cannot be presented on appeal. As a general rule, the court may hear oral arguments by the attorneys.

THE OPINION

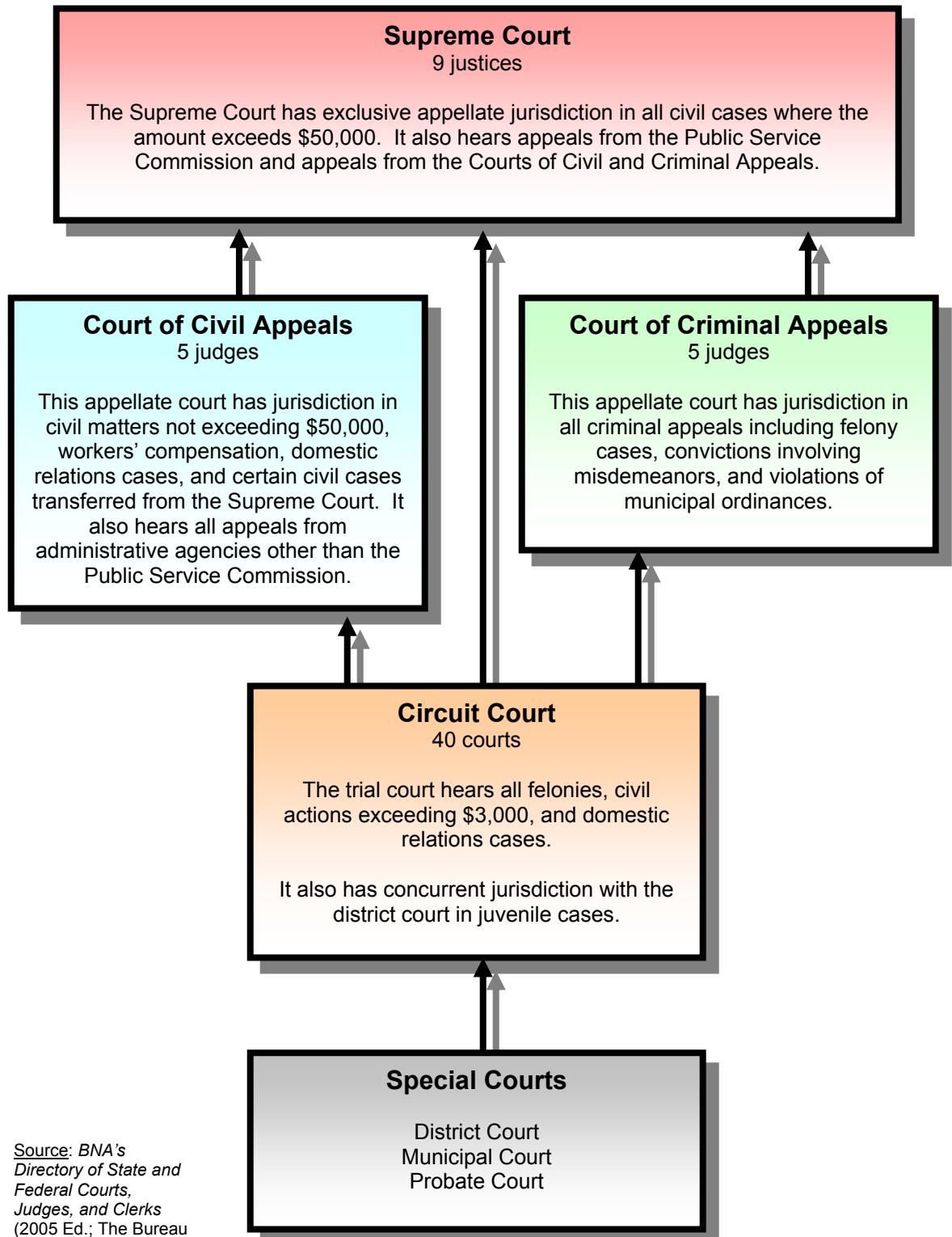
When the appellate court reaches a decision, in most instances one judge is assigned the task of writing the majority opinion. An opinion is a statement of the court's decision and the reasons for which that decision is made. The opinion will show how many judges agreed with the decision. A judge agreeing with the majority opinion may write a separate opinion explaining why he or she concurred. If a judge disagrees with the majority opinion, he or she may file a dissenting opinion.

As a general rule, the court may do one or more of the following in rendering a decision:

- The court may agree with the lower court's ruling.
- The court may fundamentally agree with the lower court's ruling, but alter the ruling or return the case to the lower court for further proceedings.
- The court may set aside the lower court's ruling, rendering a new decision in its place.
- The court may disagree with and set aside the lower court's ruling and return the case to the lower court for further proceedings.
- The court may answer a question regarding state law for a federal court or lower state court, or for the state legislature.

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Alabama State Court Structure



Source: BNA's
Directory of State and
Federal Courts,
Judges, and Clerks
(2005 Ed.; The Bureau
of National Affairs, Inc.,
Washington, D.C.)

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Court Description

ALABAMA COURT OF CIVIL APPEALS

The Alabama Court of Civil Appeals is one of the state's two intermediate appellate courts. It has original appellate jurisdiction in all civil appeals where the amount in controversy does not exceed \$50,000. The Alabama Supreme Court also may transfer to the Court certain civil cases that initially were appealed to the Supreme Court.

The Court of Civil Appeals has jurisdiction of all appeals from administrative agencies in which a judgment was rendered in the circuit court. The Court exercises jurisdiction over appeals in workmen's compensation cases and domestic relations cases, including annulment, divorce, alimony, child support, adoption, and child custody cases.

The Court of Civil Appeals consists of five judges who are elected in statewide partisan elections for six-year terms. The Governor fills the vacancy on the Court through appointment. An appointed judge holds office until the next general election held at least six months after the vacancy occurs. A successor judge is then chosen at the election and holds the office for the remainder of the unexpired term.

JUDGES AND TERMS OF OFFICE

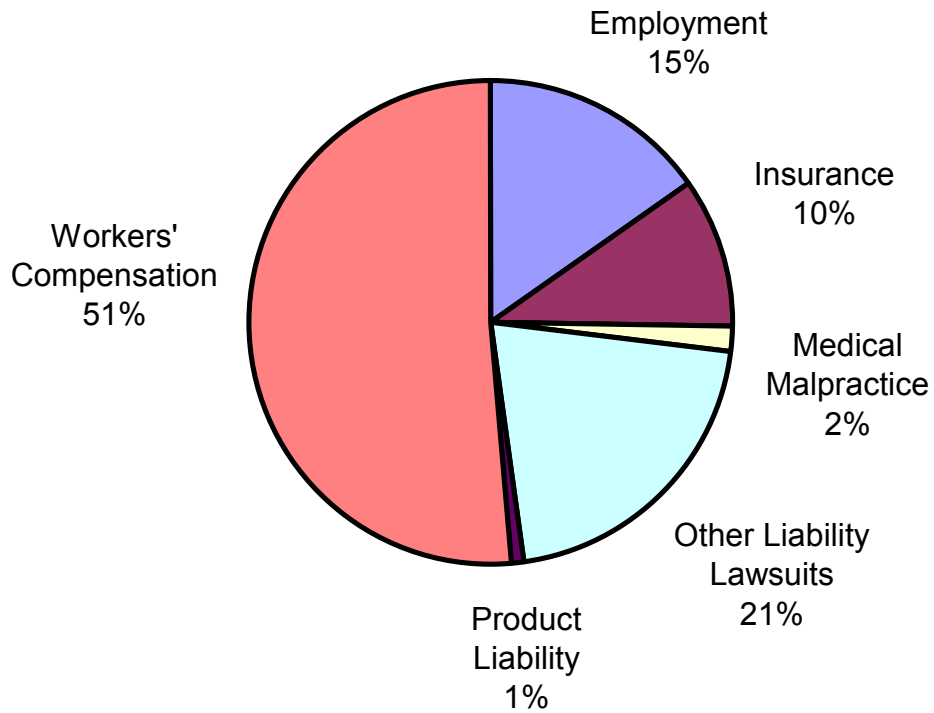
Name	Service Began	Term Ends
Tommy E. Bryan	2005	2010
John B. Crawley	1995	2006
B. Glenn Murdock	2001	2006
Craig S. Pittman	2001	2006
William C. Thompson	1997	2008

Source: Court information was provided by the American Judicature Society website (<http://www.ajs.org>), *Judicial Yellow Book* (Spring 2005), and the Alabama Judicial System Online website (<http://www.judicial.state.al.us>).

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Distribution of Cases

ALABAMA COURT OF CIVIL APPEALS



CASE DISTRIBUTION

Of the cases selected for this report, the largest category is Workers' Compensation at 51%.

Other categories are:

Employment	15%
Insurance	10%
Medical Malpractice	2%
Other Liability Lawsuits	21%
Product Liability	1%



Case Index