

Effective Strategies and Trend-Spotting in Patent Damages

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Insert Weather Joke Here

Main Topics

- Damages fact development
- Expert depositions
- Challenging experts

Timing Matters

- Focus on money early
- Think about settlement structure and precedent
- Bifurcation
- Reverse bifurcation

Damages fact development—interplay
with liability development

(with apologies to the Bard)

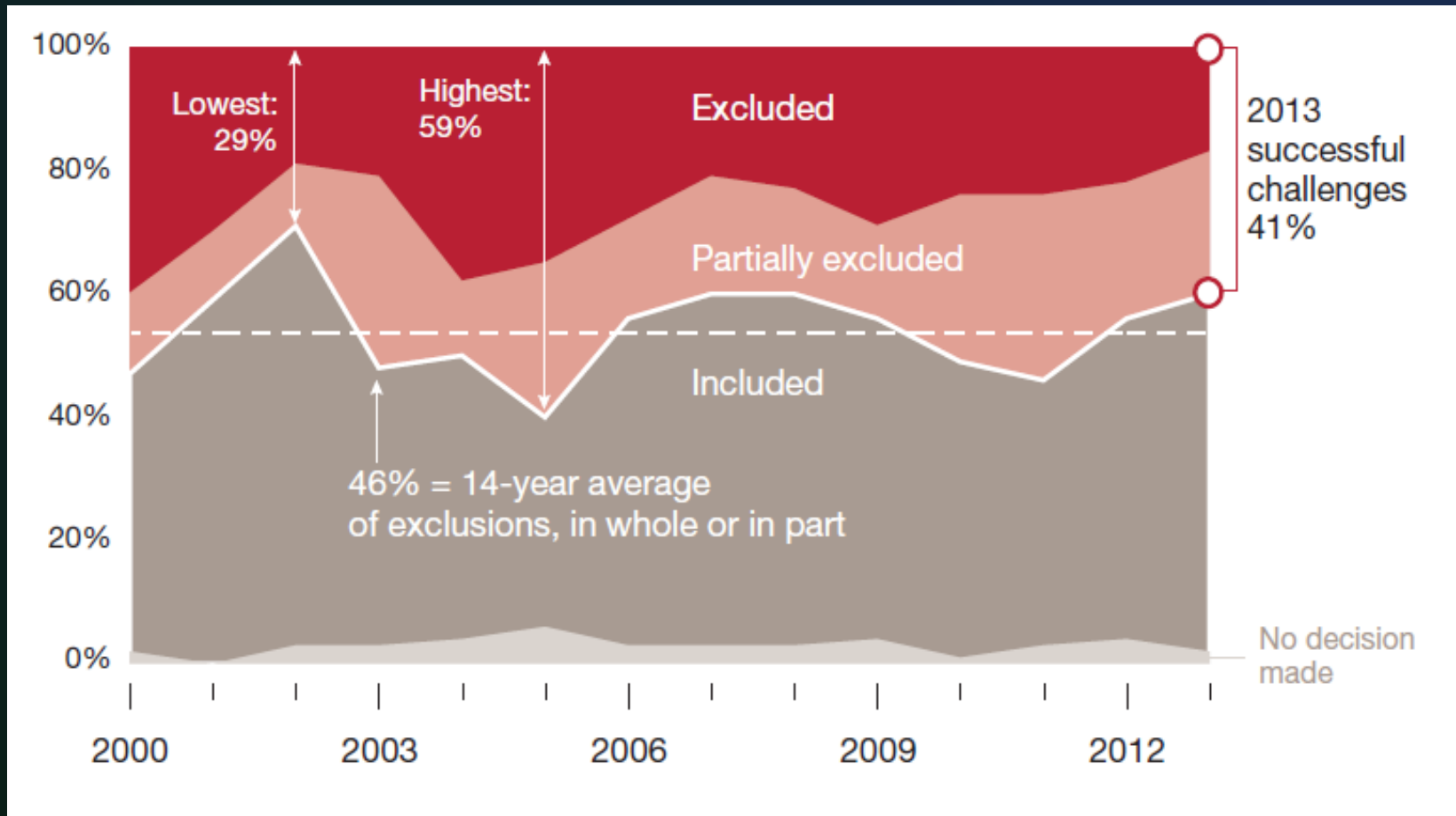
To depose or not to depose? That
is the question.

(and with further apologies)

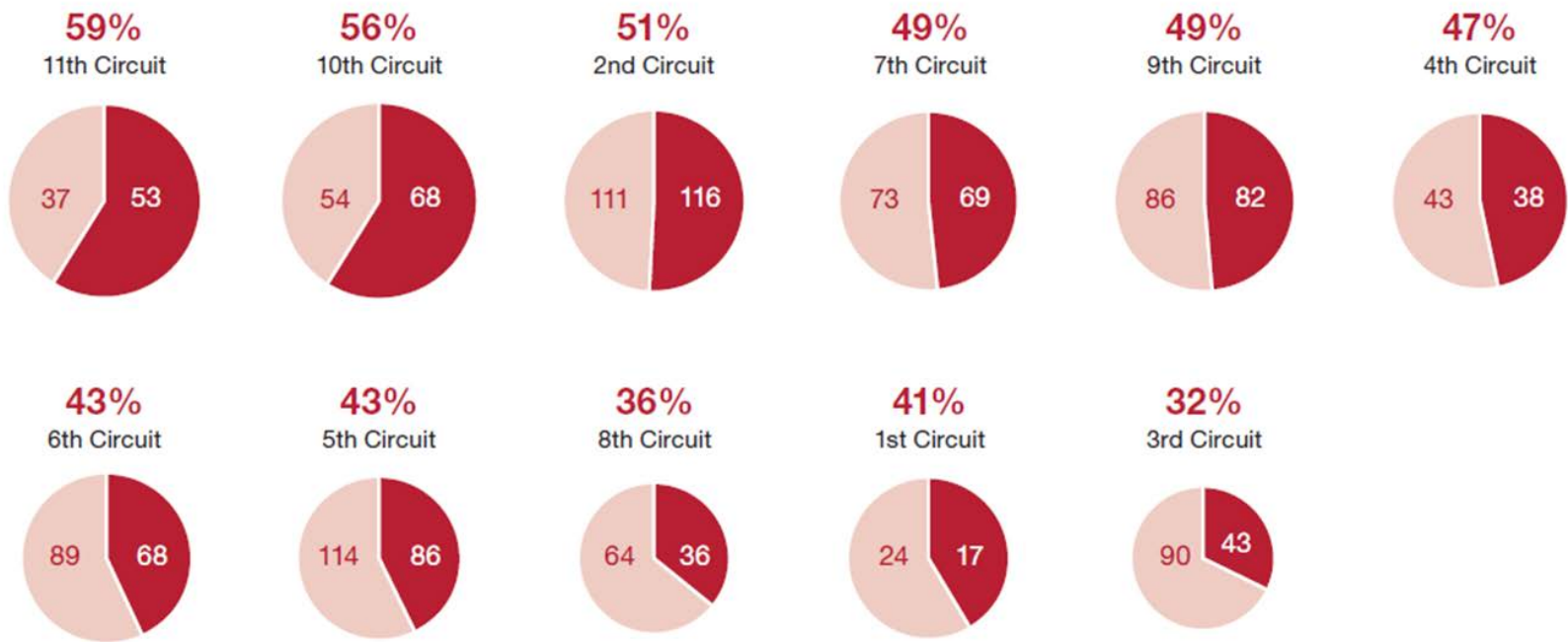
To *Daubert* challenge
or cross-examine?

A yearly study of trends and outcomes – 2013 PwC Study

Grant, Partial Grant, and Denial



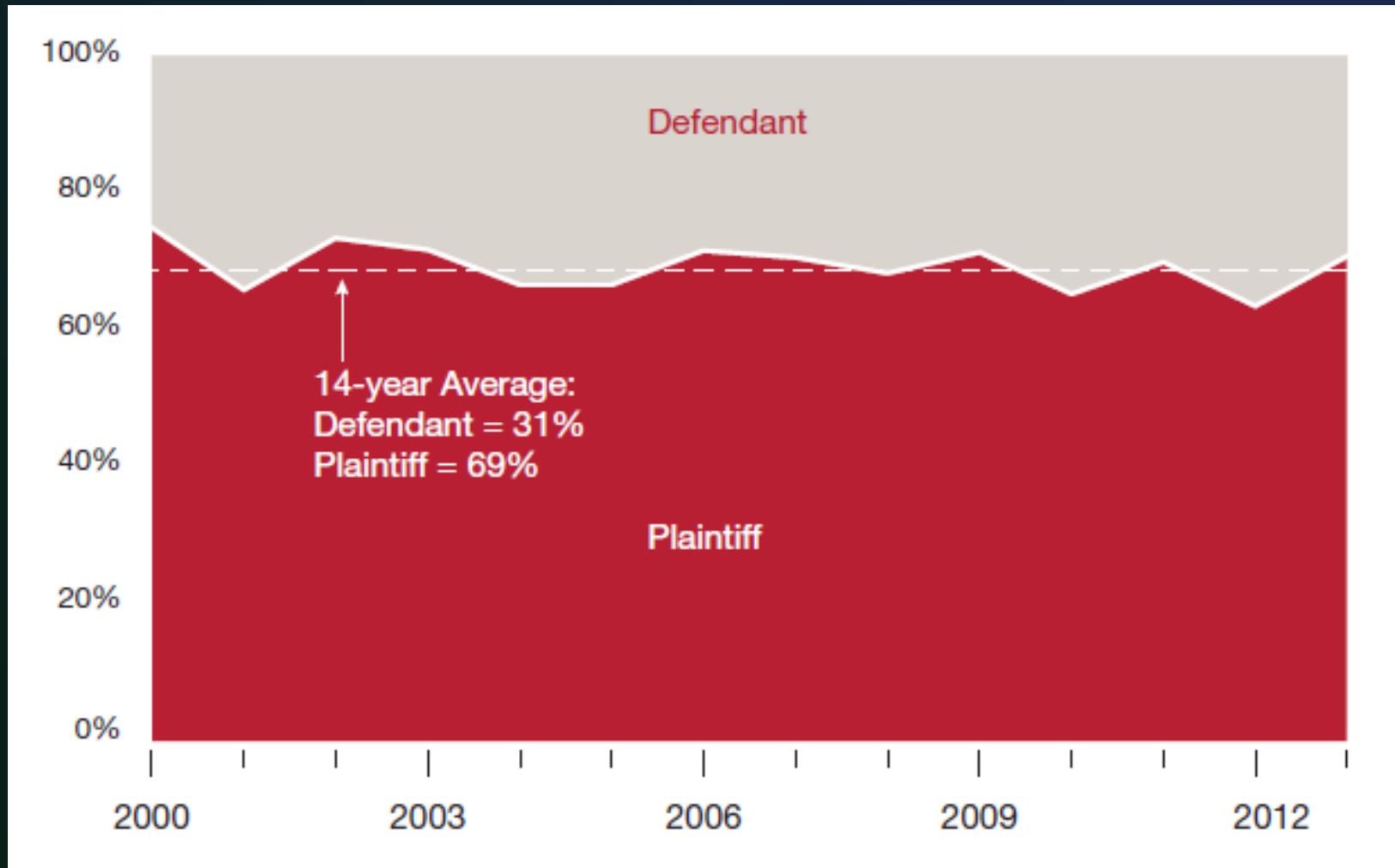
Success rate of *Daubert* challenges to financial expert witnesses, by Circuit



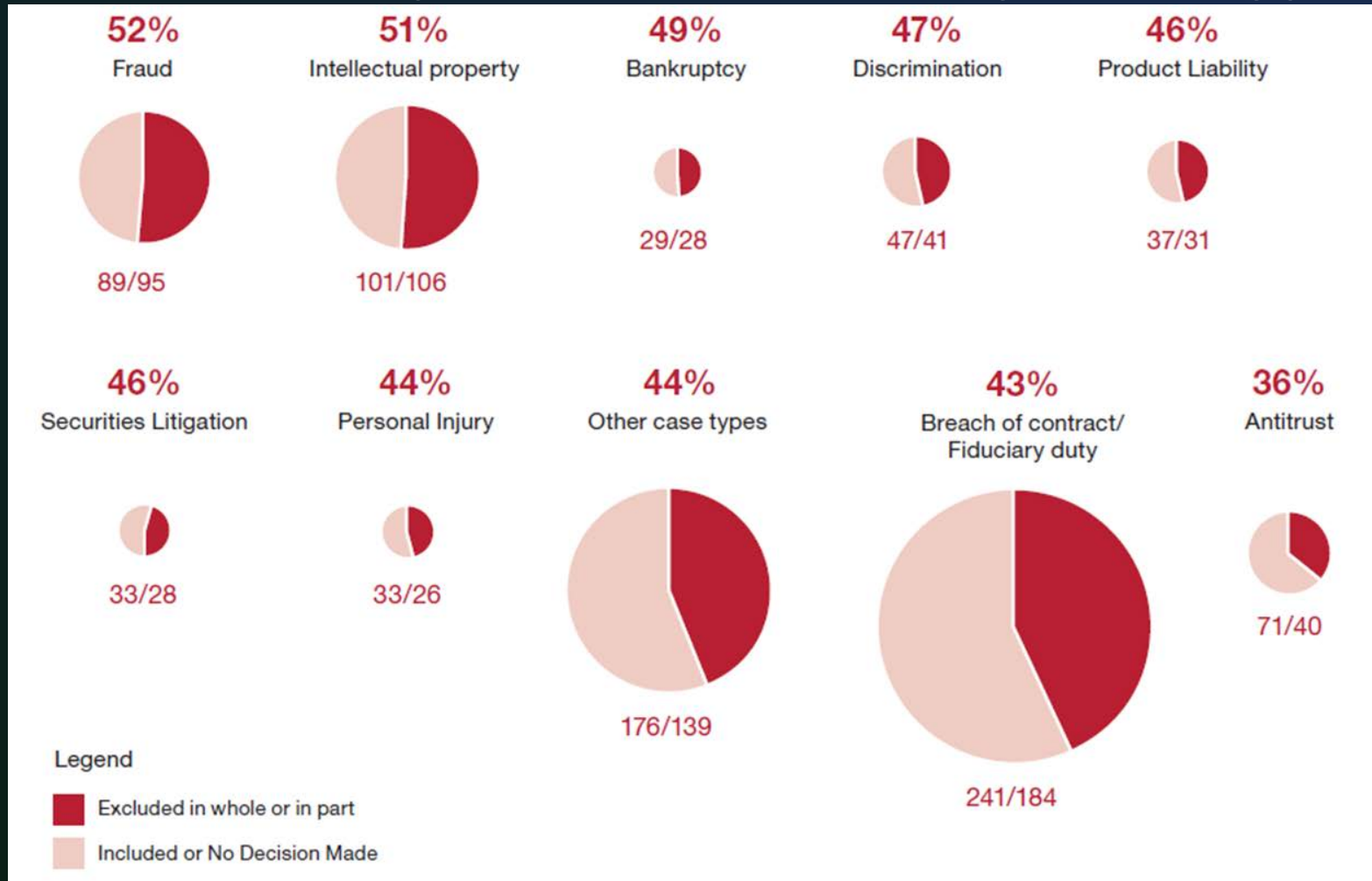
Legend

- Excluded in whole or in part
- Included or No Decision Made

Which side wins?



Success rate of *Daubert* challenges to financial expert witnesses, by case type



[Trial] is nasty, brutish and short.

What's Enough for a New Trial?

- Failure to apportion/change in the law
- Unexplained overlap with contract damages or failure to justify damages of 6x defendant's profits
- Where the judge can divine what the jury did and concludes it wasn't supported by law

What's Enough for Remittitur?

- Royalty base 2.5 times what experts for both parties testified
- Judge just thought it was too high, given apportionment-like evidence

And What's Enough for JMOL?

- Apparently, next to nothing.

Should you get a mulligan on
damages?