Patent Assertion Entity (PAE) Lawsuits:

An Empirical Study of Settlement Behavior and Litigation Outcomes

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Existing Narratives about PAEs

- PAEs bring lawsuits against a large number of defendants
- Behavior of PAEs are different from operating companies
  - Within PAEs (individual inventors, patent holding companies, failed startups, universities, aggregators), each have different economic motivations, and consequently litigate differently
  - PAEs bring hit-and-run lawsuits, seeking quick, nuisance-value settlements
  - PAEs lose on the merits 90% of the time

The Alleged "Boom" in PAE Litigation

- **"Suits brought by PAEs have tripled in just the last two years, rising from 29 percent of all infringement suits to 62 percent of all infringement suits."**
  - Colleen V. Chien, *Patent Assertion Entities*, Presentation to the DOJ/FTC hearing on PAEs
- "Patent infringement litigation by patent monetization entities has risen dramatically over a remarkably short period of time. One of the most striking results is that **in 2012, litigation by patent monetization entities represented a majority of the patent litigation filed in the United States.**
  - Robin Feldman, *The AIA 500 Expanded: The Effects of Patent Monetization Entities*

Research Design

- All patent lawsuits filed in 2010 and 2012
  - Removed extraneous cases (false marking, inventorship, term extension, etc…)
  - Approximately 8,000+ lawsuits in 2 years

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Measurement

Coded patent plaintiffs in eight categories:

1. Operating company
2. Universities
3. Individual inventors
4. Failed startups
5. Technology development companies
6. Patent holding companies
7. Mass patent aggregators
8. IP subsidiaries of operating company

Research Design

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  - Approximately 8,000+ lawsuits
- Classified patent holders
- **Manually counted number of defendants**
- **See, http://www.npedata.com**

Research Design

- Determined information about resolution per defendant in 2010
  - Date of resolution (pendency)
  - Type of resolution (voluntary dispositions; substantive dispositions; procedural dispositions; trials)

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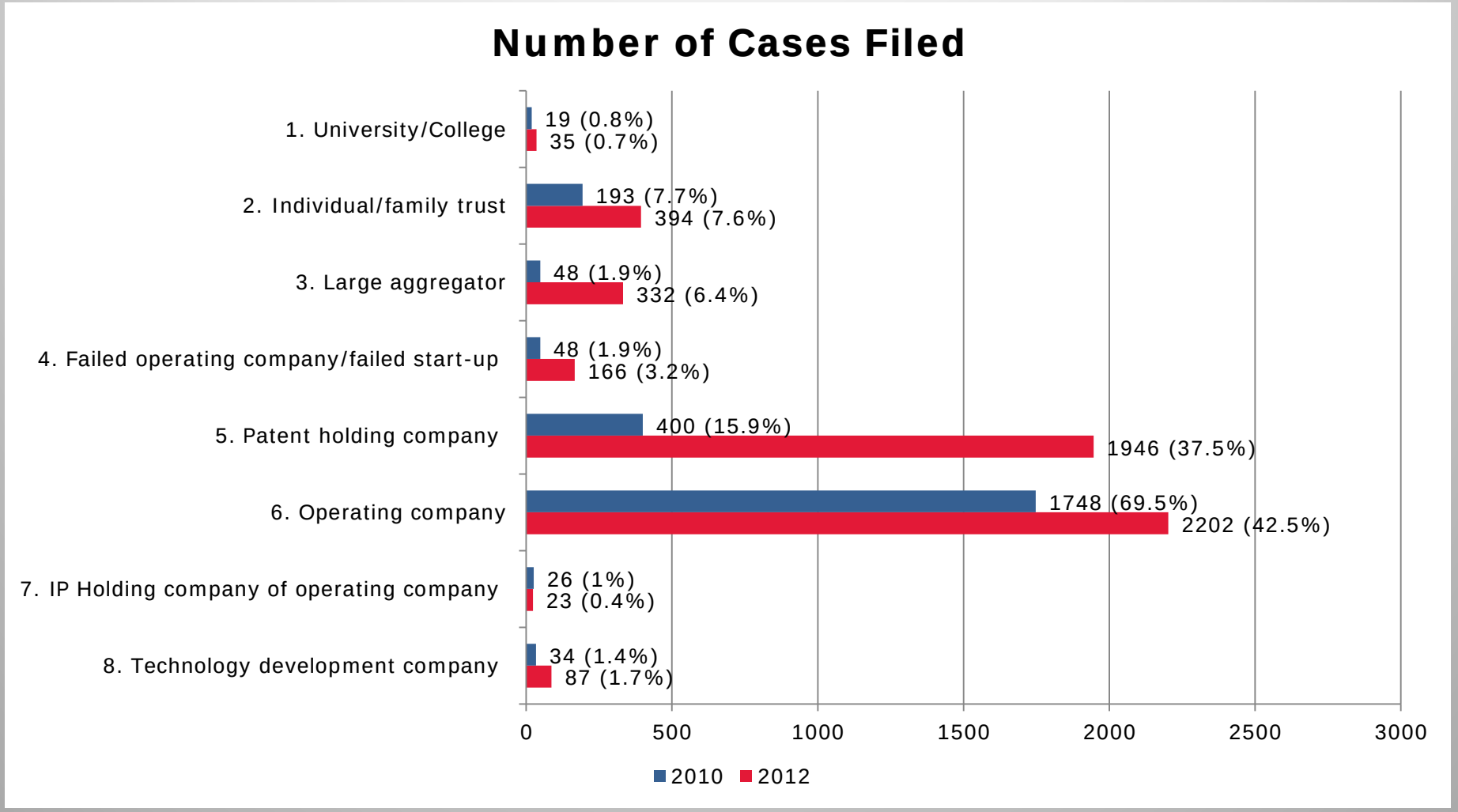
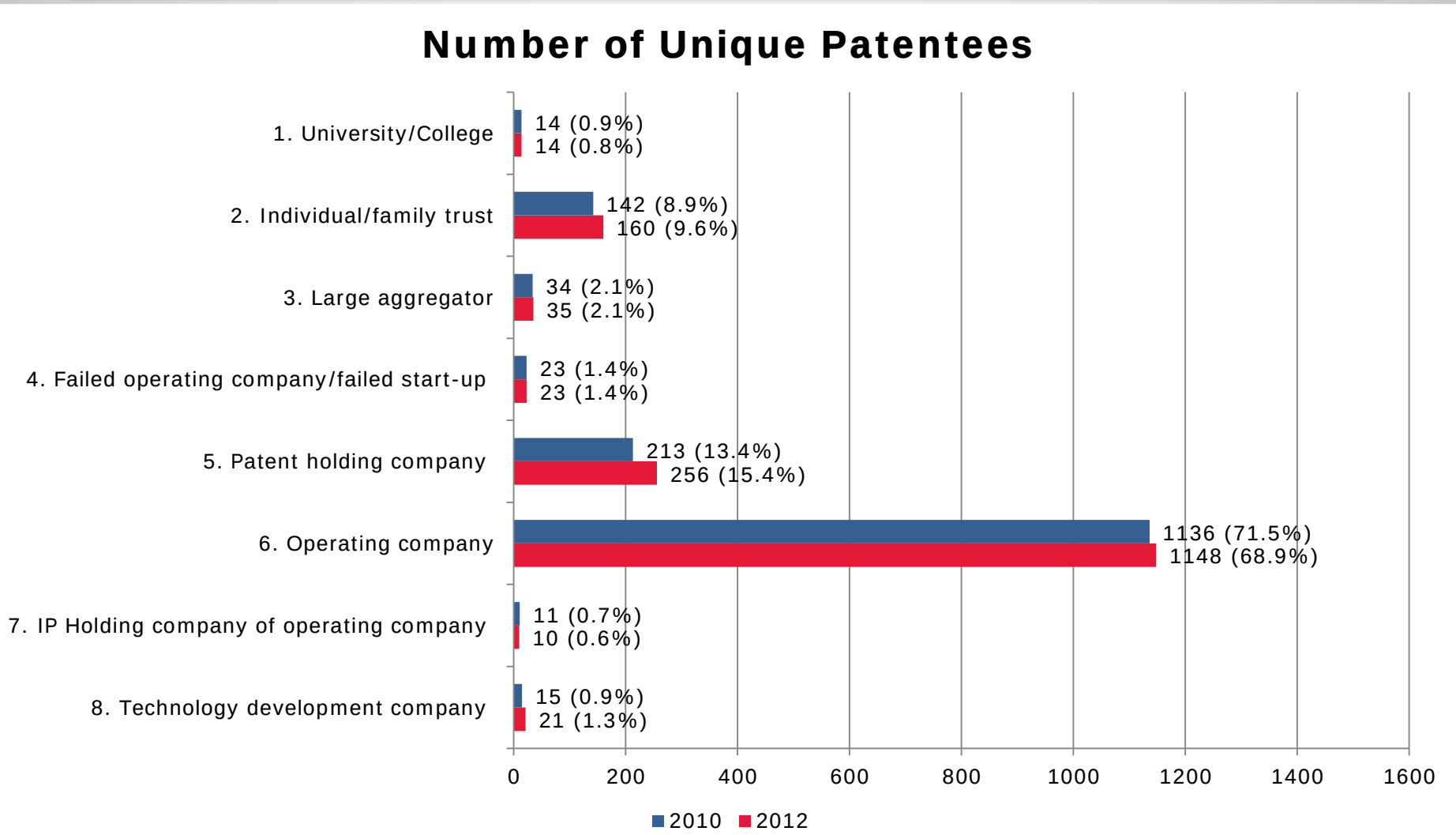
- Eliminated duplicative defendants within a lawsuit
  - *i.e.*, Fujitsu America, Inc.; Fujitsu Components America, Inc.

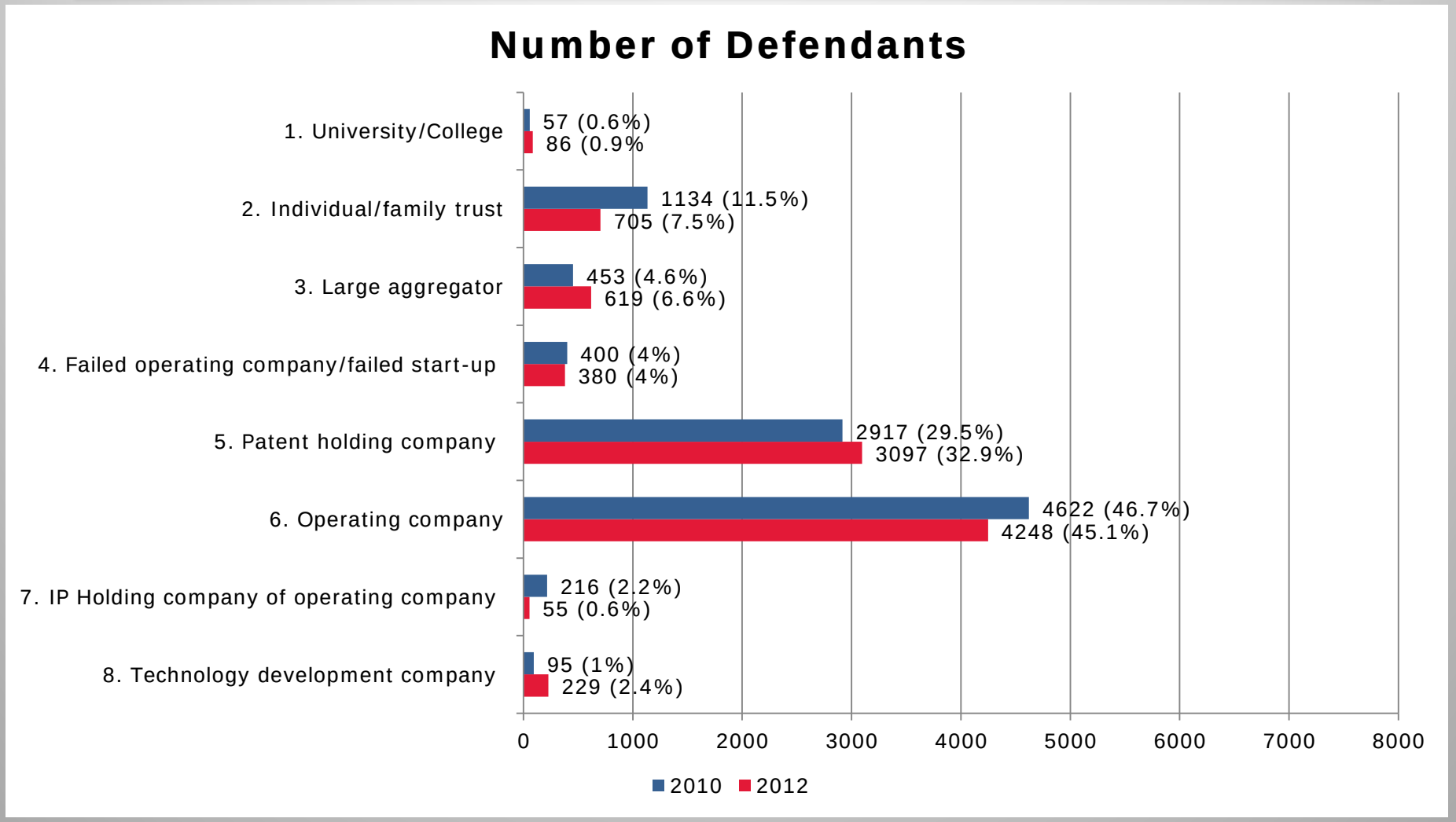
Results – Distribution of # of Lawsuits



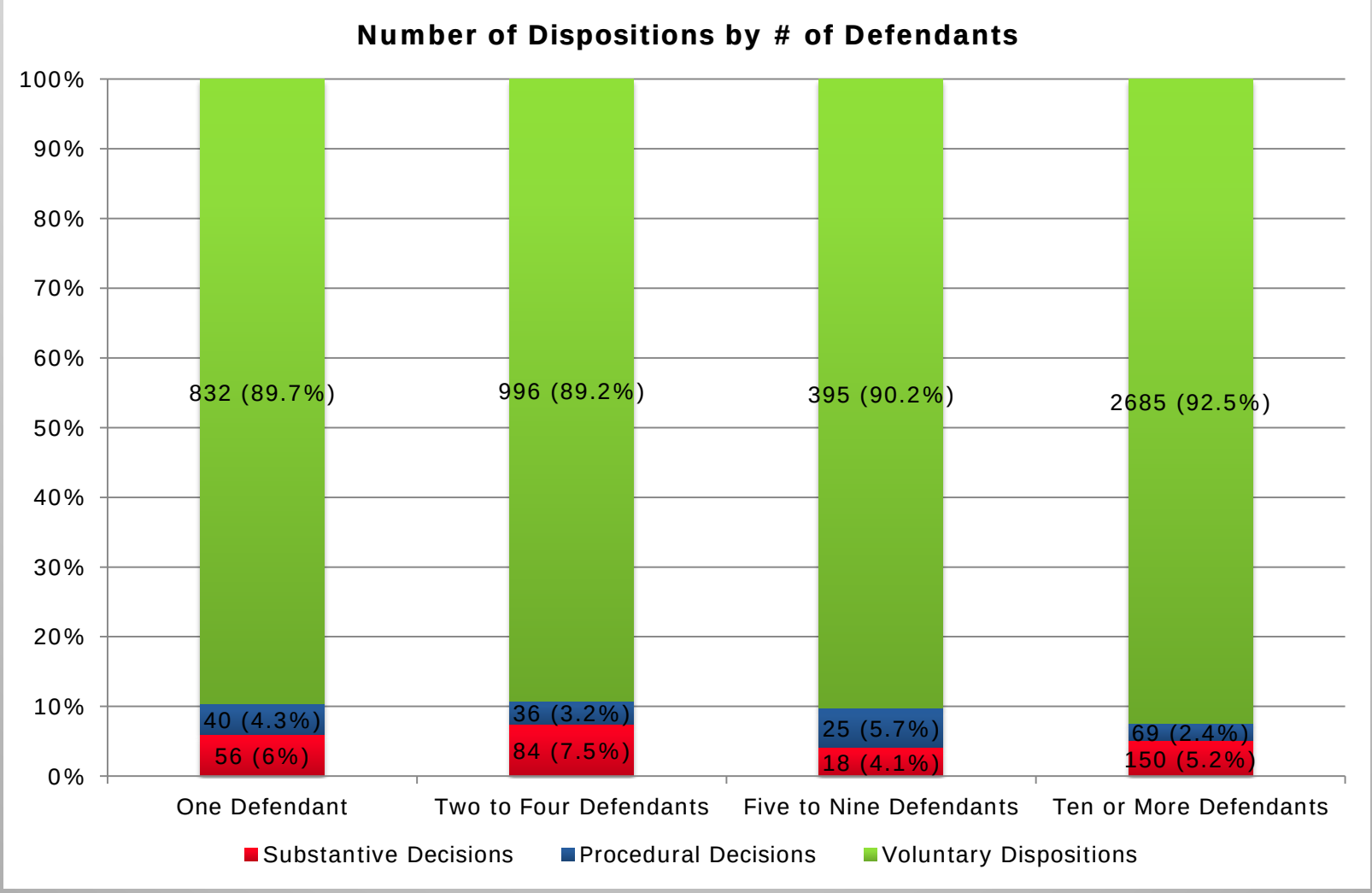
Results – Distribution of # of Unique Patentees



Results – Distribution of # Defendants



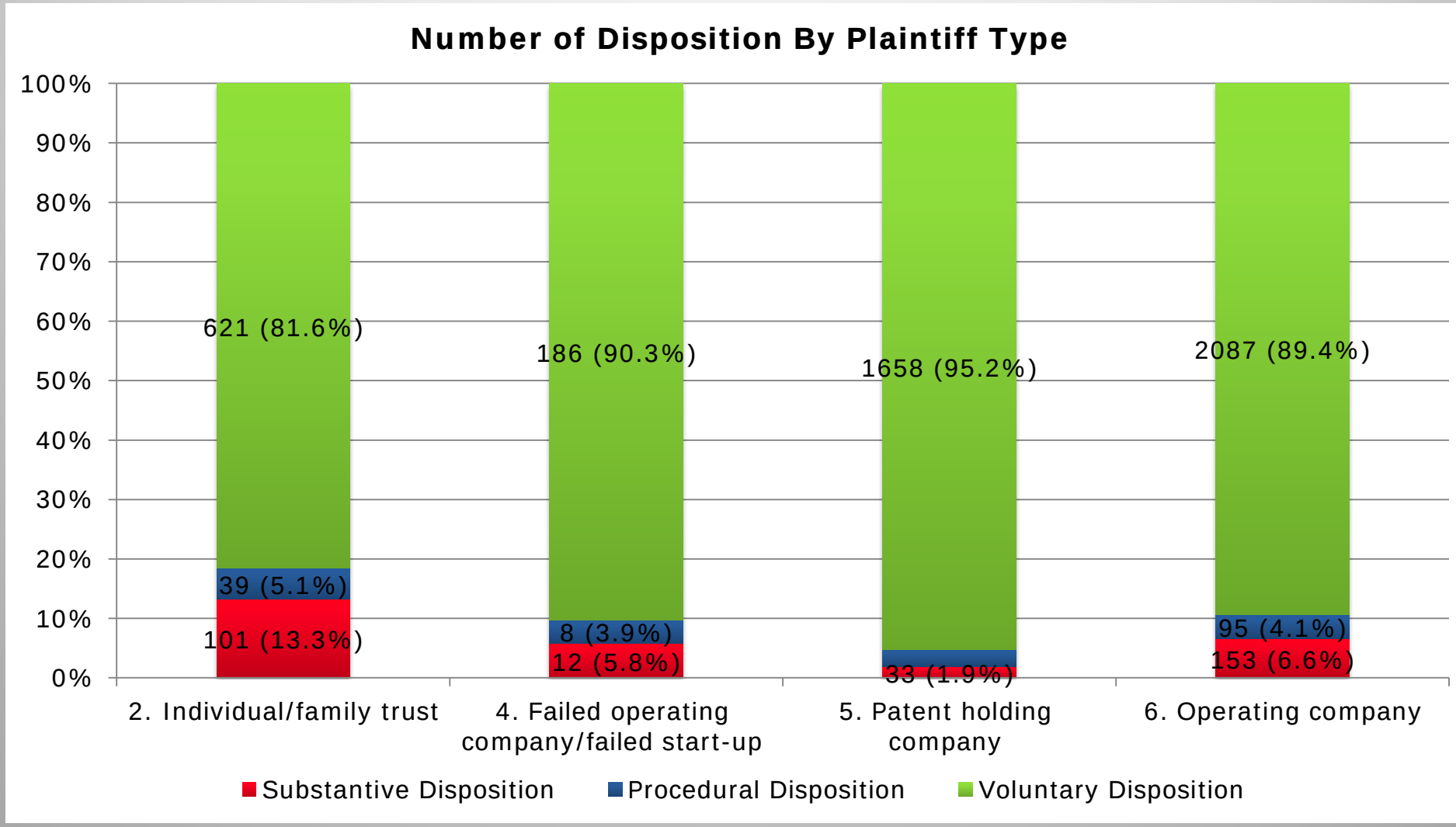
Results -- # of Named Defendants Type of Resolution



Results -- # of Named Defendants

- Word of caution: These do not correspond closely to entity type
  - Individual inventors, patent holding companies, failed startups, and operating companies all sometimes sue =>10 defendants
  - Canon, Apple, Eli Lilly, Lexmark>20 defendants each

Results – Type of Entity



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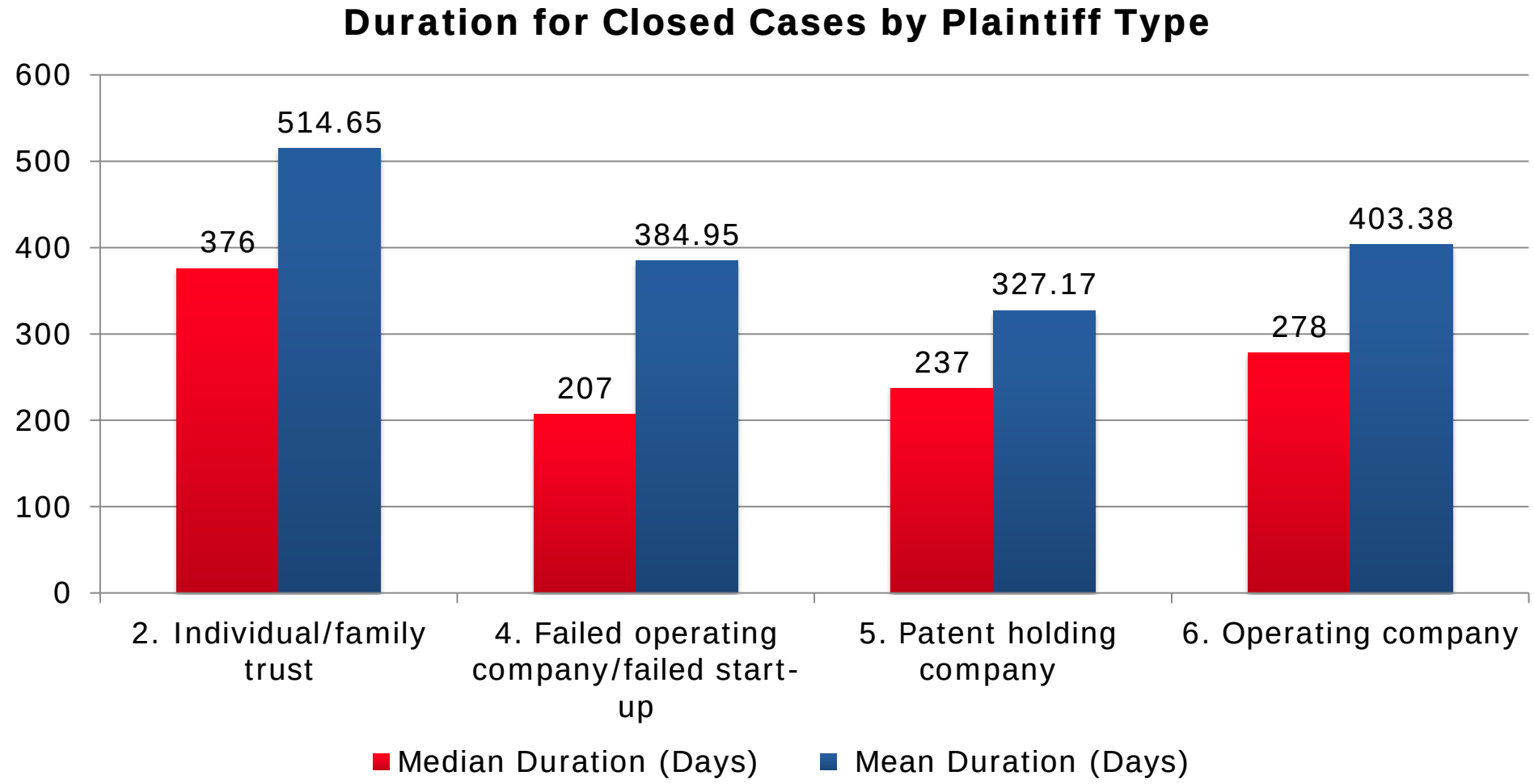
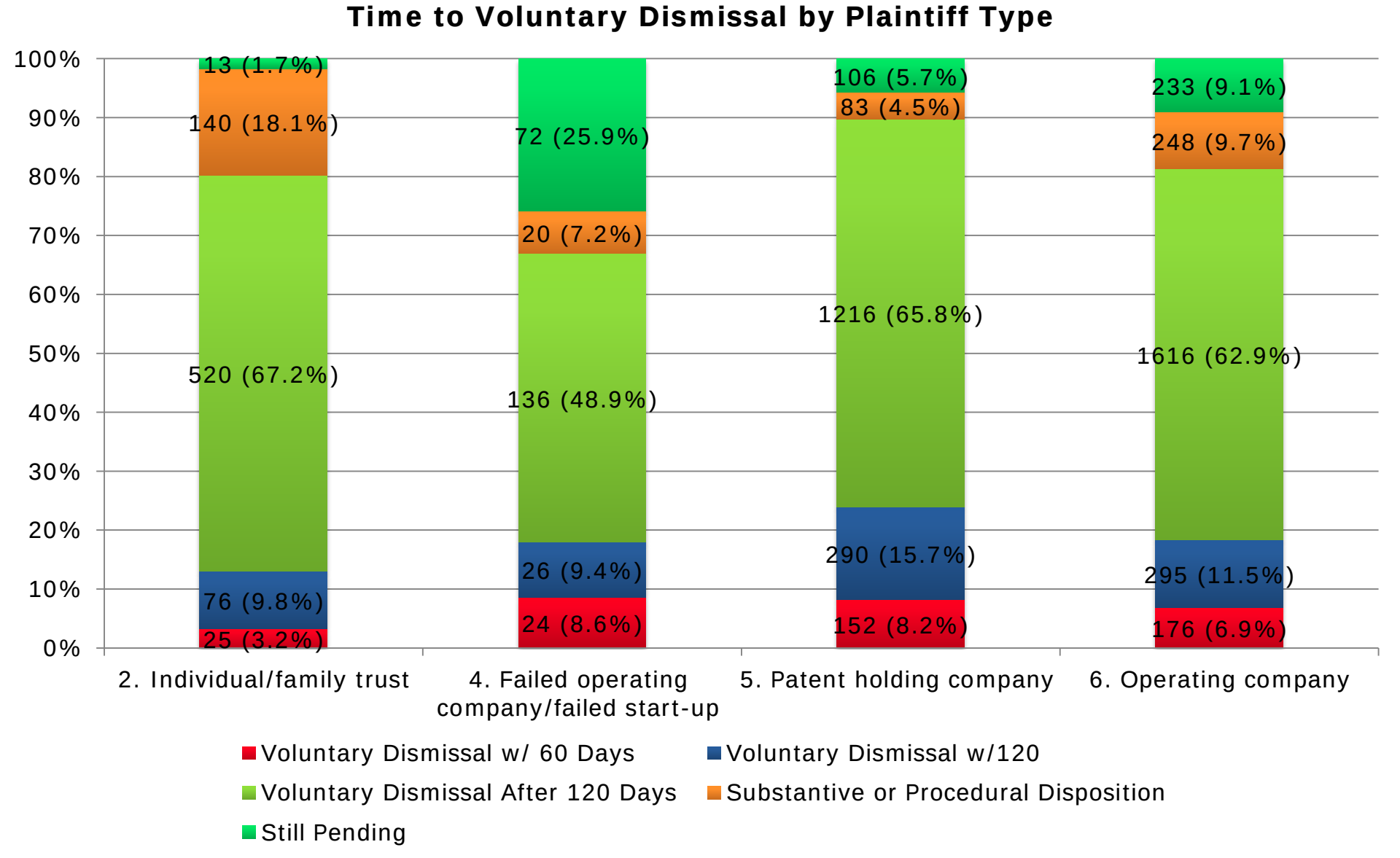


Results – Type of Entity & Early Settlements



SJ & Trial Winners

Entity	Patentee Prevail Rate
Operating Company	28.6%
PAE (combined)	19%

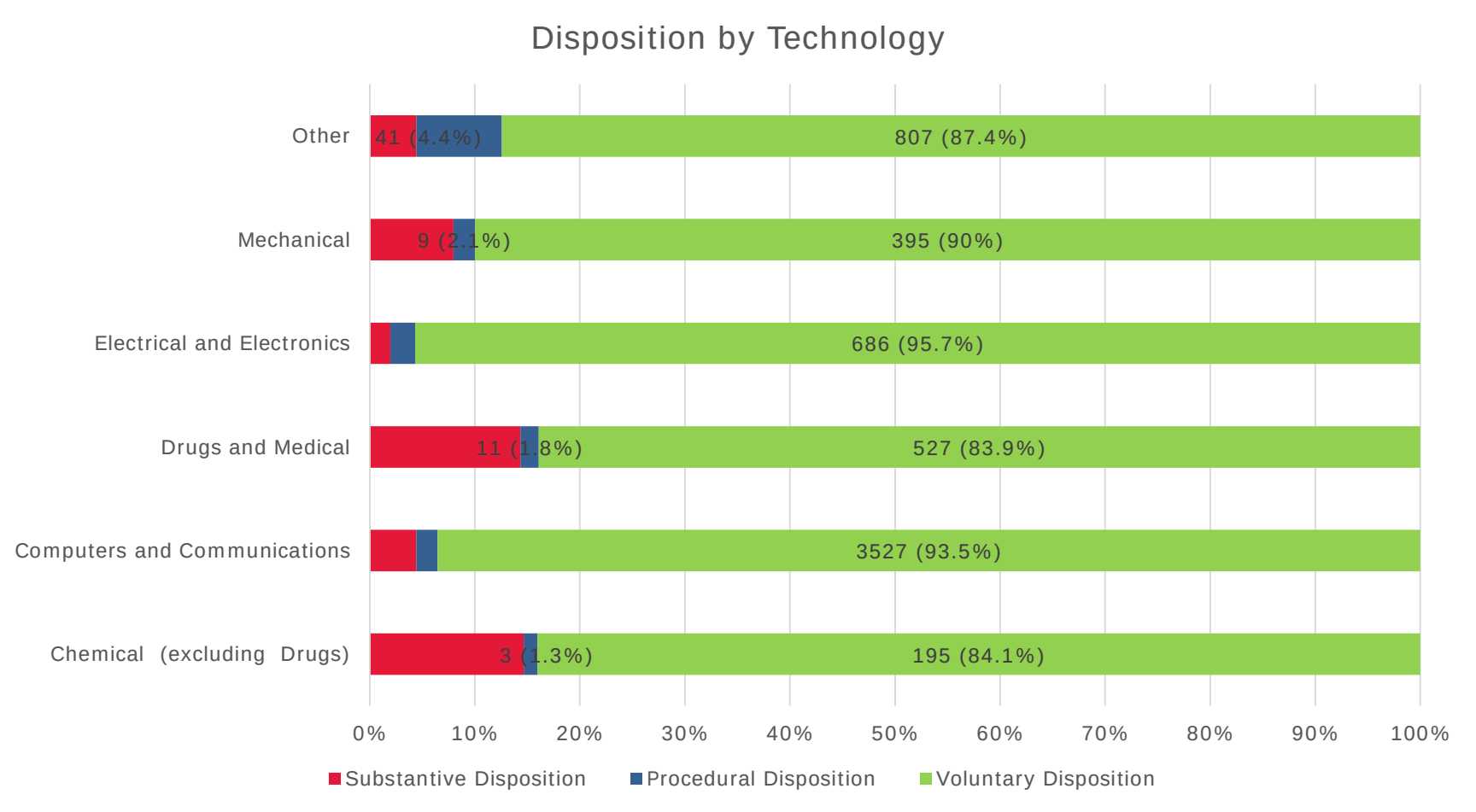
Note: PAE (combined) sample size is 58; OpCo is 182

Implications

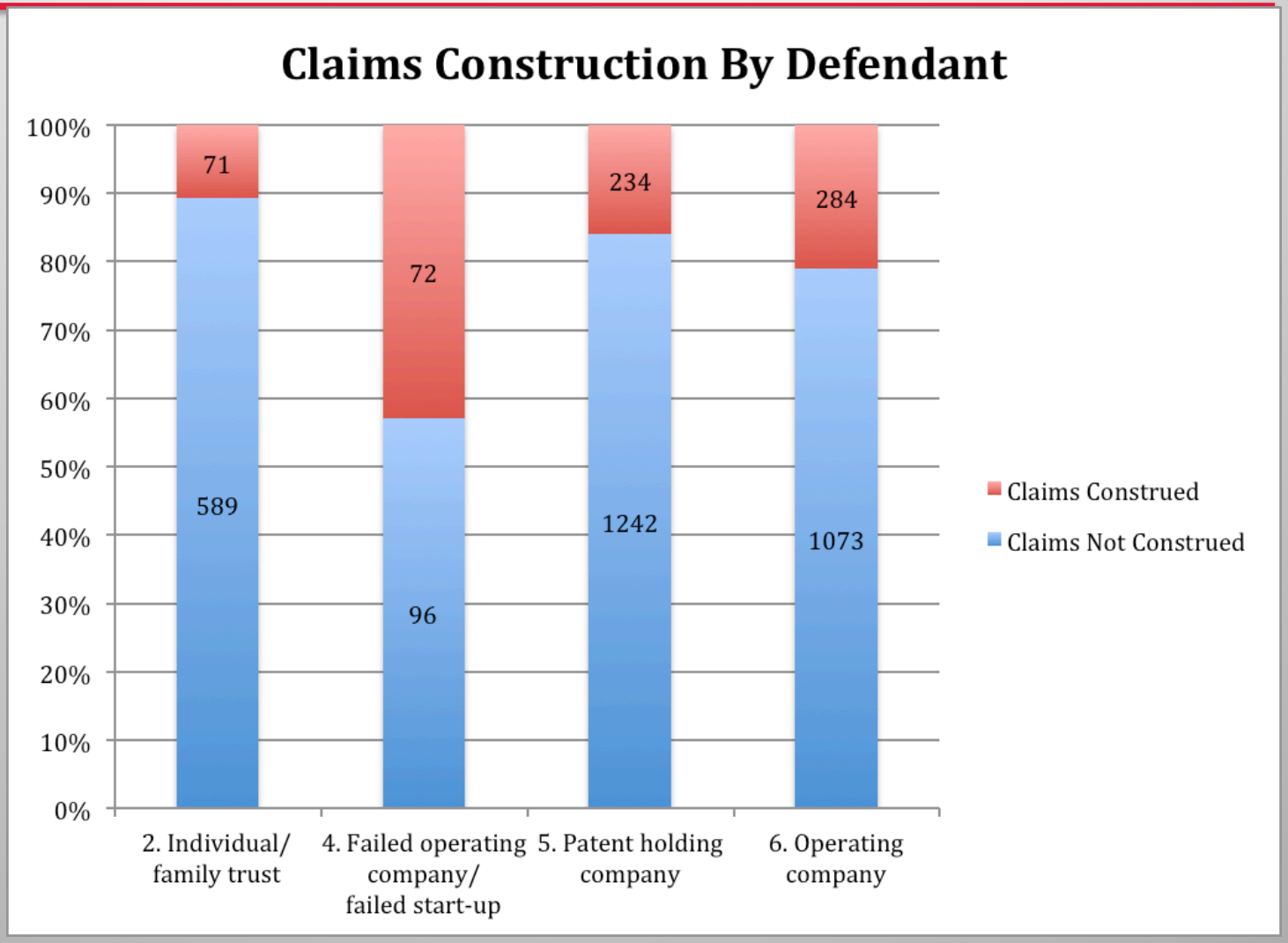
- Narratives and reality
- Check assumptions when comparing different years, *e.g.*, 35 U.S.C. § 299
- PAEs may be -- more like, than unlike -- operating companies; we are continuing to do more careful work on this topic.
- PAEs are complex, with potentially important differences between individual inventors and patent holding companies, for instance.

Thank you very much.
Questions?

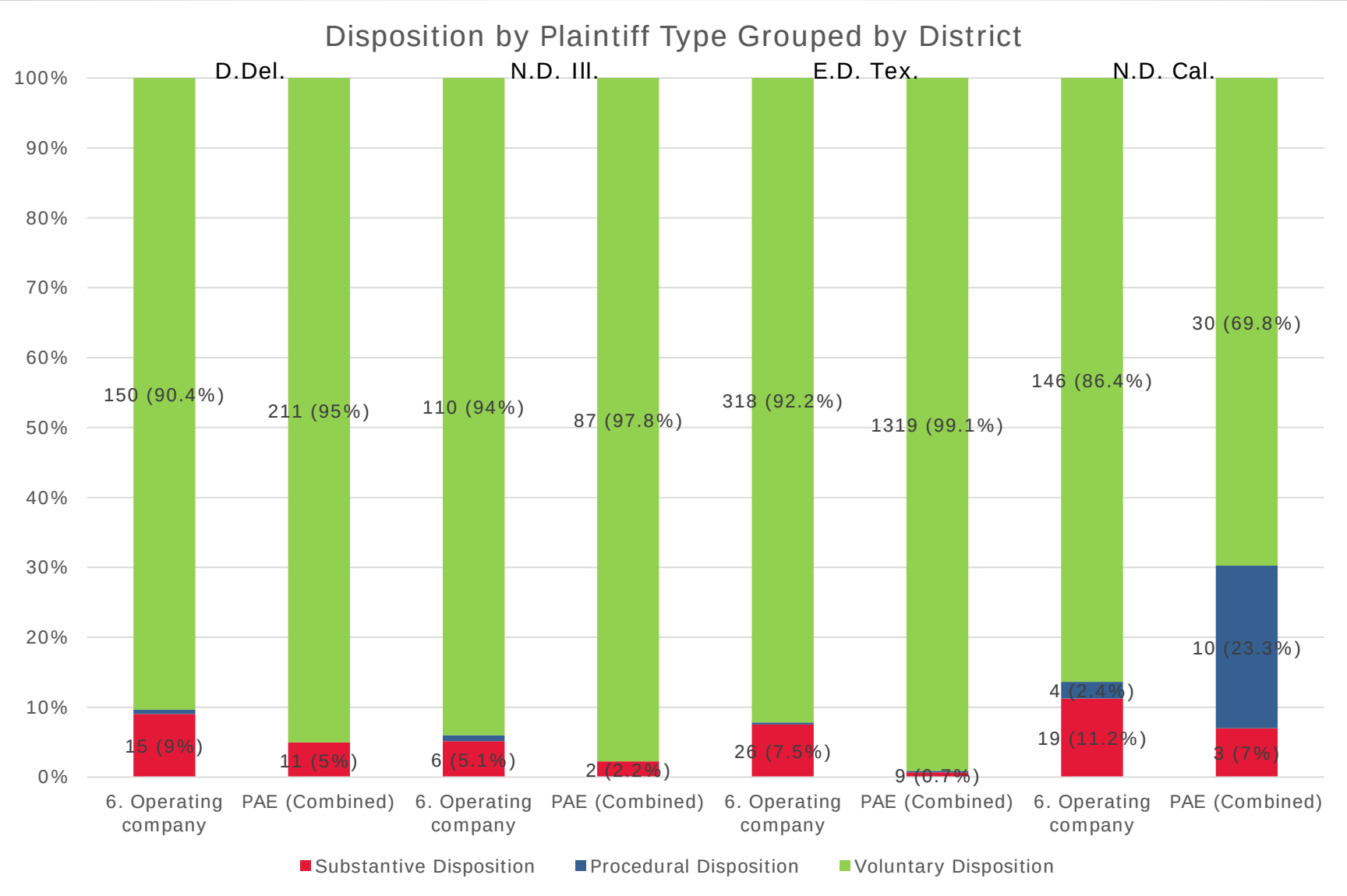
Results – Technology



Claim Construction – Type of Entity



Results – Judicial District



Truncation

Entity Type	District Closed	District Open
Individual/family trust	804 (99.01%)	8 (0.99%)
Failed operating company/failed start-up	228 (76%)	72 (24%)
Patent holding company	1770 (95.01%)	93(4.99%)
Operating company	2533 (91.72%)	229(8.29%)

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Preliminary Data:
Work in Progress

# of Defendants	Median Duration (days)	Mean Duration (days)
1	331.5	426.97
10>=	301	421.42

Caution: Outcomes is a Work In Progress

- Dataset is limited to lawsuits filed in a single year (2010)
- Limited truncation effect because of on-going cases (about ~2%)
- Statistical testing is ongoing
- Selection effect concerns