

**Selecting the Forum:
State vs. Federal**

VIVA LA DIFFÉRENCE!

P. Kevin Castel, U.S.D.J.

Selecting the Forum: State vs. Federal



Exclusive Jurisdiction

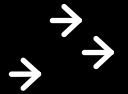
State

- Matrimonial
- Estate Administration

Federal

- Patent, Copyright & Trademark
- Securities Exchange Act of 1934
- Sherman and Clayton Act
- ERISA (yes and no)
- Admiralty (yes and no)
- CERCLA

Overlapping Jurisdiction



- State and Federal Concurrent Jurisdiction:

Section 1983

Securities Act of 1933

RICO

Title VII & ADA

- Diversity Jurisdiction

Nature of Claim as Factor in Forum Selection

- Are attorney's fees recoverable?
- Receptive to Class Action treatment?
- Will the claim be removable by the defendant?
- How hostile/friendly/familiar is the Court with this type of claim?

Jury Selection & Structure

State

- Lawyer conducted
- 6 person jury— plus
2 alternates
- 3 preemptories plus
one for alternate
- 5/6 Verdict

Federal

- Judge conducted
- 6 to 12 person jury—no
alternates
- 3 preemptories
- Unanimous Verdict

Jury Composition

State

County of Filing Only

Federal

Manhattan: Bronx,
Manhattan, Westchester,
Rockland and Putnam
Counties

Westchester: Westchester,
Duchess, Orange,
Rockland, Putnam &
Sullivan Counties

Brooklyn & Central Islip:
Brooklyn, Queens, Staten
Island, Nassau & Suffolk

Jury Recap

Hypothetical Bronx Claim

State

Need to persuade 5 Bronx jurors

Federal

Need to persuade 8 or 10 jurors from Manhattan, Bronx and 4 northern counties—some of whom live as many as 100 miles away

Discovery of Non-Parties in Other States

State

The Old Commission
Process made easier by

Uniform Interstate
Depositions and
Discovery Act

Federal

Rule 45: Signature of an
attorney

Evidentiary Differences

State:

- Frye
- Subsequent design changes admissible on strict product liability claim
- Present sense impression requires corroboration

Federal:

- Daubert
- Subsequent design changes inadmissible
- No corroboration

Monetary Threshold

State:

- Commercial Div.
\$500,000 (eff. 2/17/14)
- Non-Commercial Div.
None

Federal:

- Diversity Claims
\$75,000, exclusive of
interest and costs
- Federal Question
None

Appellate Climate

State

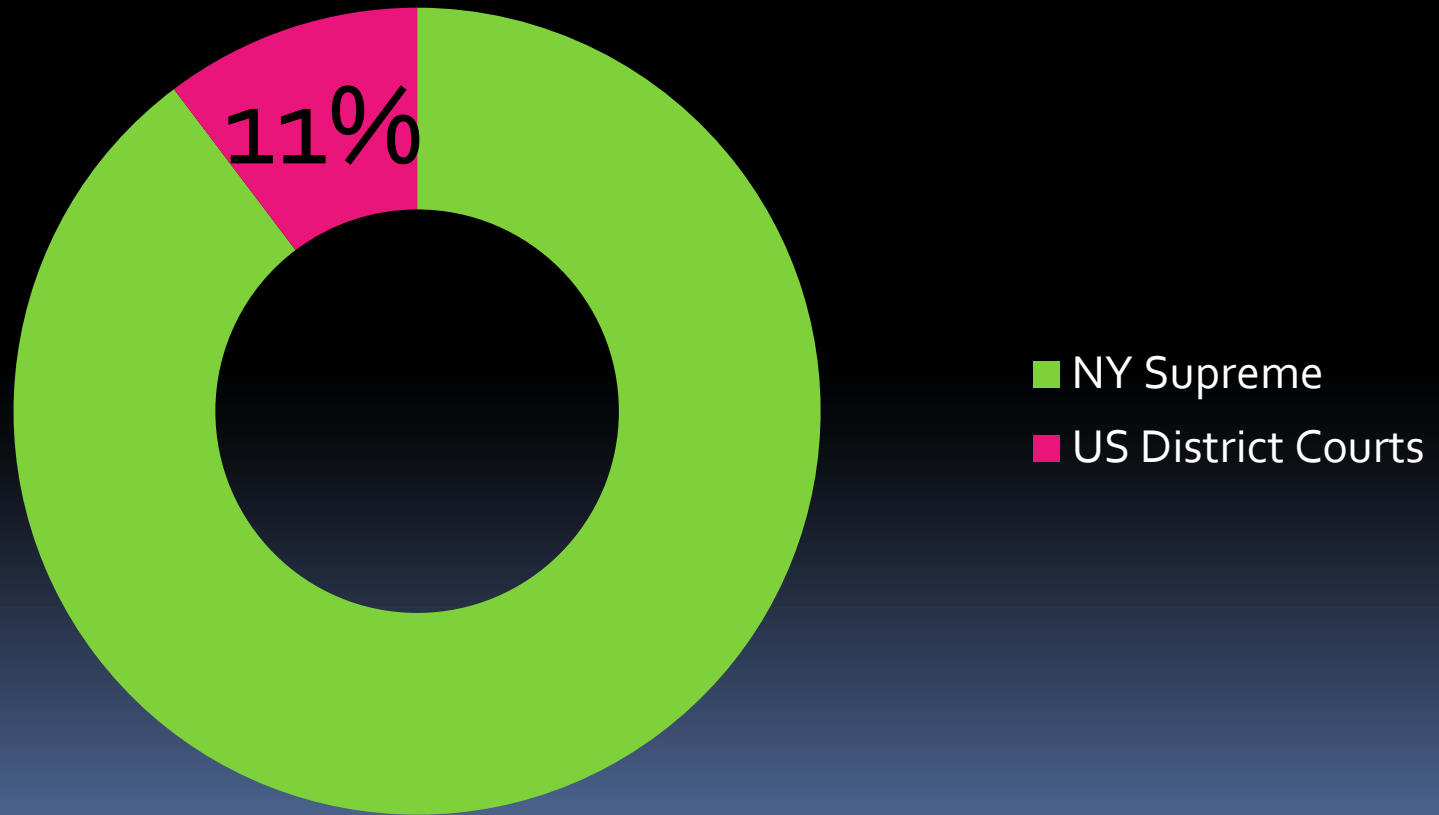
- Interlocutory Appeals BUT No Automatic Stay
- Final judgment: Remittur friendly?

Federal

- No Interlocutory Appeals, EXCEPT Rule 23(f), 1292(b), grant or denial of a preliminary injunction
- Final judgment: Remittur friendly?

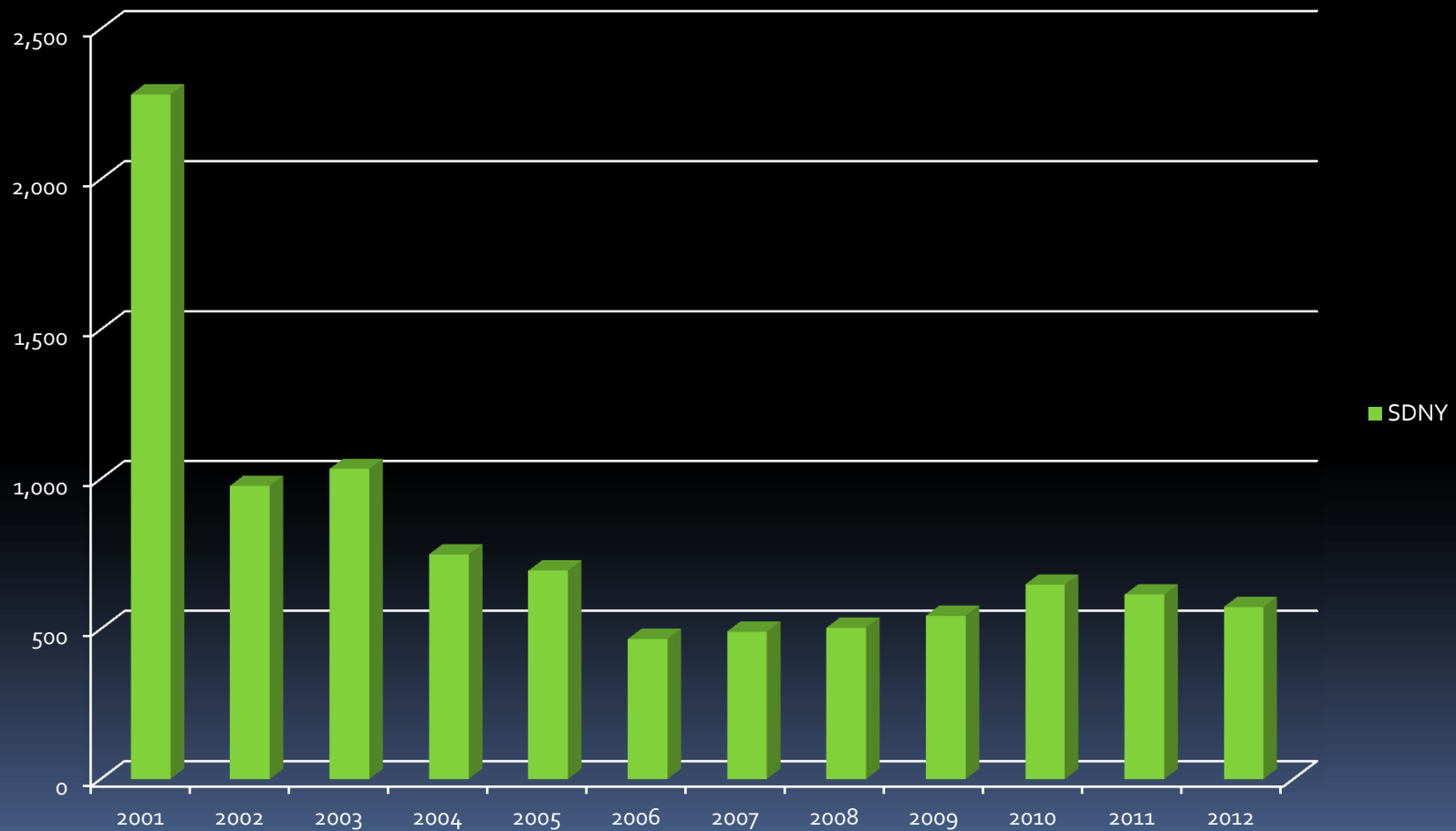
US District Court Civil Filings (S.D.N.Y., E.D.N.Y.,
W.D.N.Y. & N.D.N.Y.) as a % of NY Supreme Civil Filings

State-wide 2012 Filings



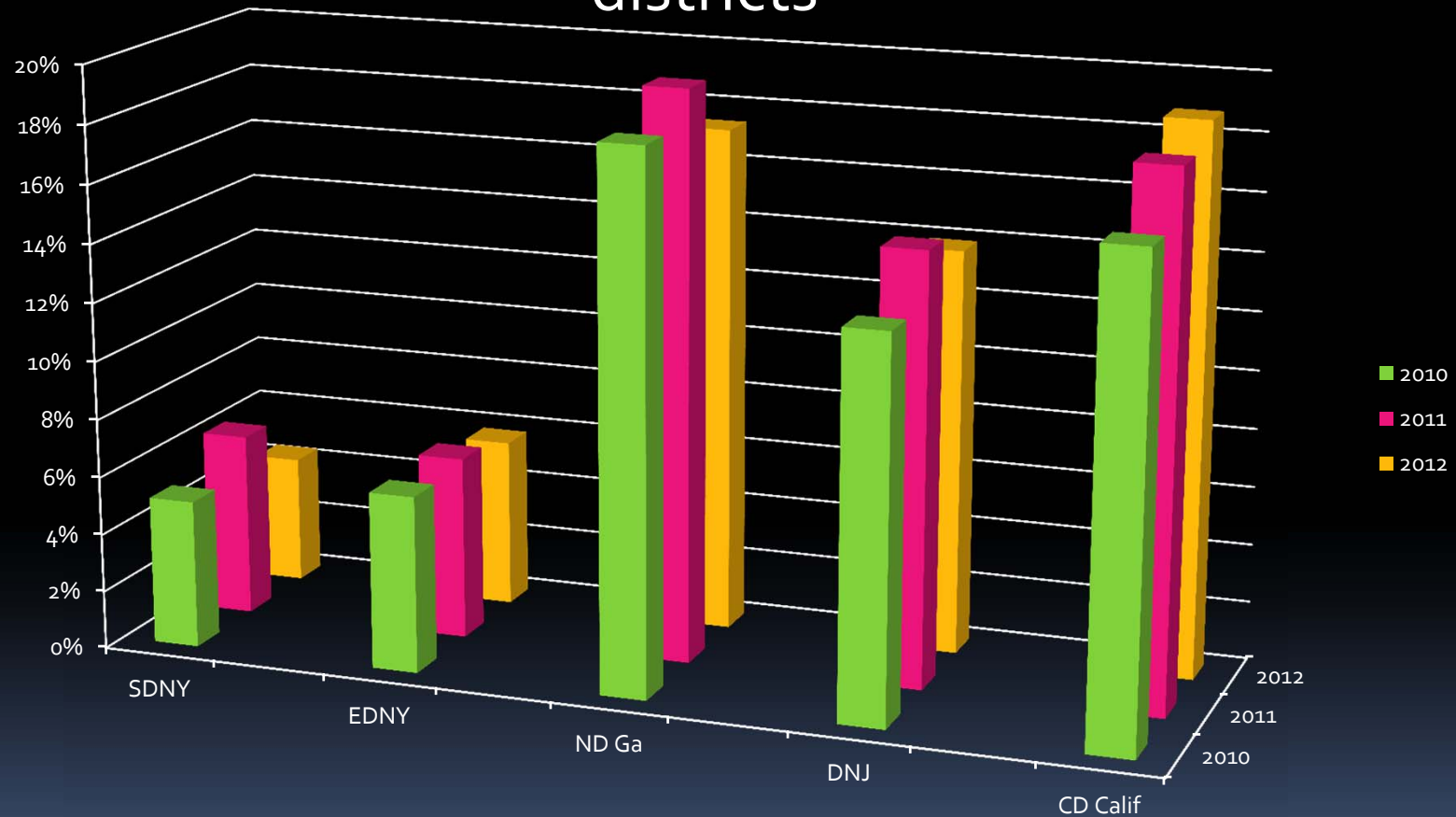
SDNY Removals

About 500 or 6% of filings

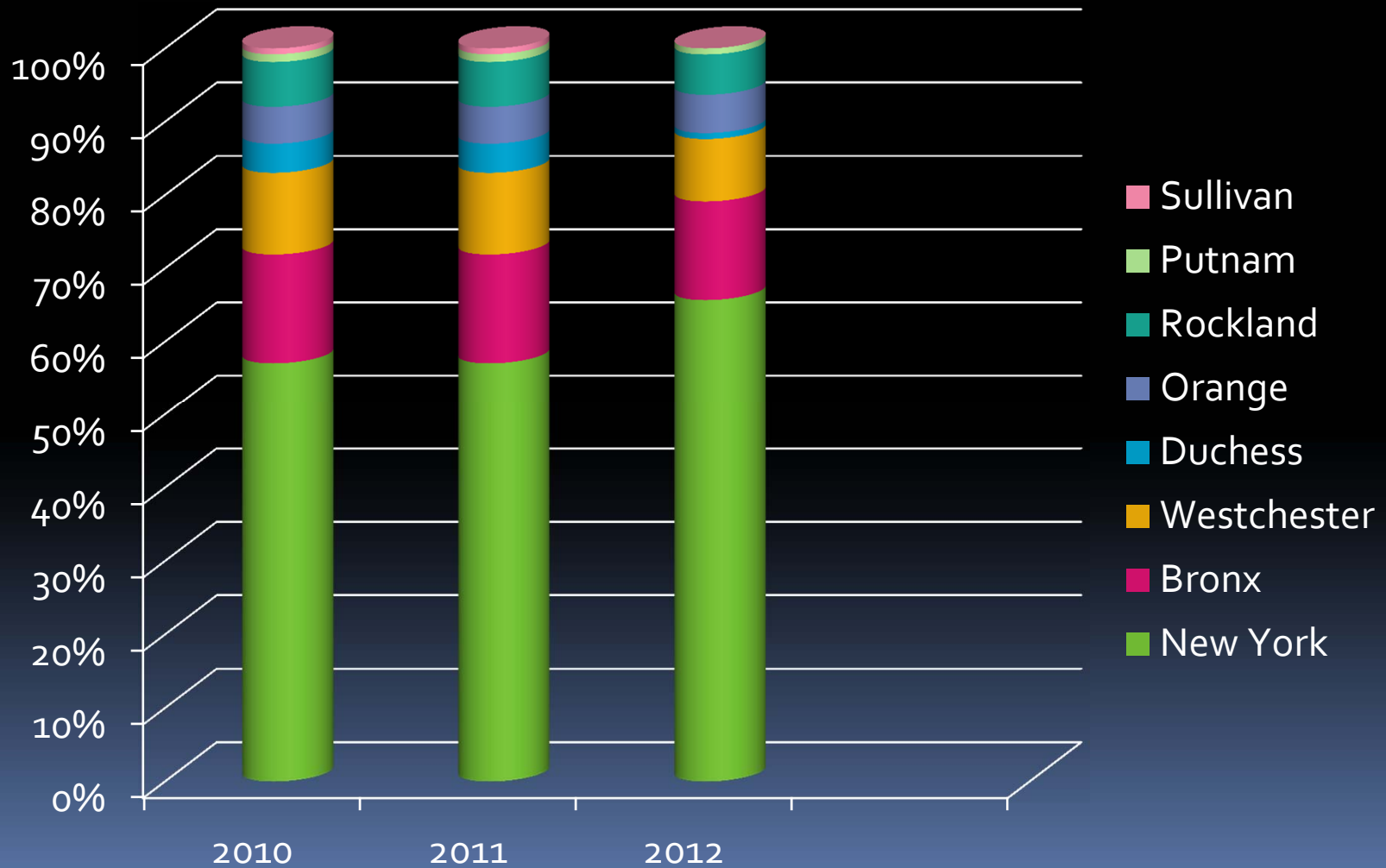


SDNY & EDNY

Removal rates are low compared to many other districts



County of Removal





Federal

1.3%

2010-2012 SDNY & EDNY
Civil Cases that proceeded to trial as a % of all
terminations

National average = 1.1%



State

3.3%

% of Cases Resulting in a Verdict or
Non-Jury Decision 2013

SDNY & EDNY

All Civil Cases: Filing to
Termination

8 Months

Civil Cases That Proceed to Trial

28 Months

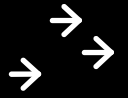
State: RJI to Disposition (in Months)

Contract	Med Mal	Motor Vehicle	Other Torts	TOTAL
35	103	51	66	56

NY County: Commercial Division

18

Why one over the other?



“They’re motion-happy”

“I’m known in that Court”

“Takes too long to get to trial”

“Wrong kind of settlement pressure”

“Scary Judges”

“Too many rules”

“They hate cases like this”

“The Commercial Division is great!”

“Too Little Supervision”

Thank you

- Hon. Gail Prudenti, New York State Office of Court Administration
- Gail Miller, Senior Management Analyst, New York State Office of Court Administration
- Karen Milton, Circuit Executive, Second Circuit
- Janice Kish and Chris Cooper, Office of Circuit Executive, Second Circuit
- Ruby Krajick, Clerk, and Richard Wilson, Deputy Clerk, S.D.N.Y.
- Professor Vincent C. Alexander, St. John's Law School



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