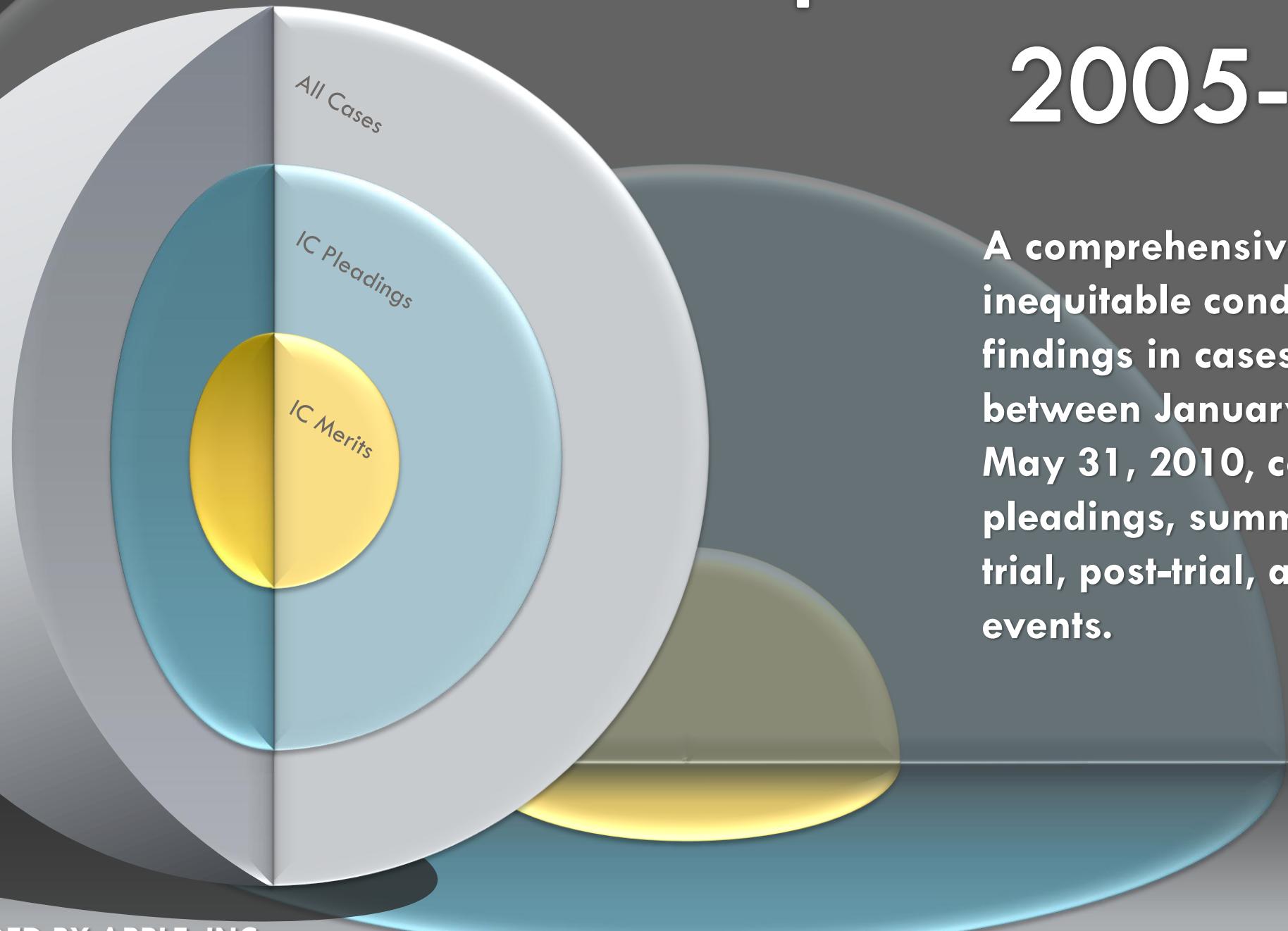


# Inequitable Conduct: 2005-2010

A comprehensive study of inequitable conduct (IC) findings in cases terminated between January 1, 2005 and May 31, 2010, covering pleadings, summary judgment, trial, post-trial, and appellate events.



# Inequitable Conduct Study: Methodology

**PURPOSE.** To find and analyze all inequitable conduct (IC) outcomes in U.S. patent infringement cases.

**METHODS.** The IC data set was generated by analyzing discrete district court and appellate case events for cases terminated between January 1, 2005 and May 31, 2010 (“date range”). The IC data set includes an estimate of the number of cases in which IC was plead , and a determination of the number of cases in which a finding of IC or no IC was made on the merits. IC Pleadings were estimated by counting the number of IC references in pleading documents. In cases with multiple IC Pleading references, only one reference was counted per case. IC Merit Findings were determined by analyzing judgment documents filed during the date range. For each IC Merit Finding, the Case Phase of the merit event was noted. If two or more IC Merit Findings were found in the same case, or the same IC Merit Finding was found in two or more consolidated cases, only one event was included in the IC data set. If the same IC Merit Finding occurred in multiple phases of a case, only the latest finding is counted. Alternatively, if disparate findings are made, only the finding of IC is counted.

**DEFINITIONS.** **IC Pleadings** are district court case events in which IC is asserted as a defense or counter-claim. **IC District Court Findings** are district court case events in which IC is found before any appellate rulings on IC. **IC Merit Findings** are district court and appellate case events in which a final determination of IC or no IC is made by judge or jury in the context of patent unenforceability. IC Merit Findings findings reflect the final state of IC in a case after appellate activity during the date range. IC Merit Findings include IC findings made as a matter of law (on summary judgment or judgment as a matter of law), as a finding of fact (at a jury or bench trial), or as an appellate court reversal (on appeal). Case events not recorded as IC Merit Findings include: (1) grants of motions to dismiss the IC defense/counter-claim, (2) findings of IC based on collateral or assignor estoppel, (3) findings of IC that are vacated on appeal, and (4) findings of IC in the context of § 285 motions only. **Case Phase** is the phase of a case in which an IC Merit Finding occurred. Case Phases are distributed into: (A) the Summary Judgment Phase, in which merit findings occurred in a grant of summary judgment, (B) the Trial Phase, in which merit findings occurred in a jury verdict or a judge’s findings of fact & conclusions of law, (C) the Post-Trial Phase, in which merit findings occurred in a JMOL, and (D) the Appeal Phase, in which merit findings occurred when the Federal Circuit reversed a district court finding.

# Inequitable Conduct Events by Case

All Patent Infringement Cases

All counts are made within the set of cases terminated between January 1, 2005 and May 31, 2010 ("date range"); only IC Merit Finding events that occurred during the date range are represented; IC Pleadings are likely underestimated due to the unavailability of some electronic documents from 2000-2004, a date range that contributes 525 of the total 3,033 IC Pleadings.

Cases with IC Pleadings

Cases with IC/No IC Findings

Cases with IC  
Findings

41

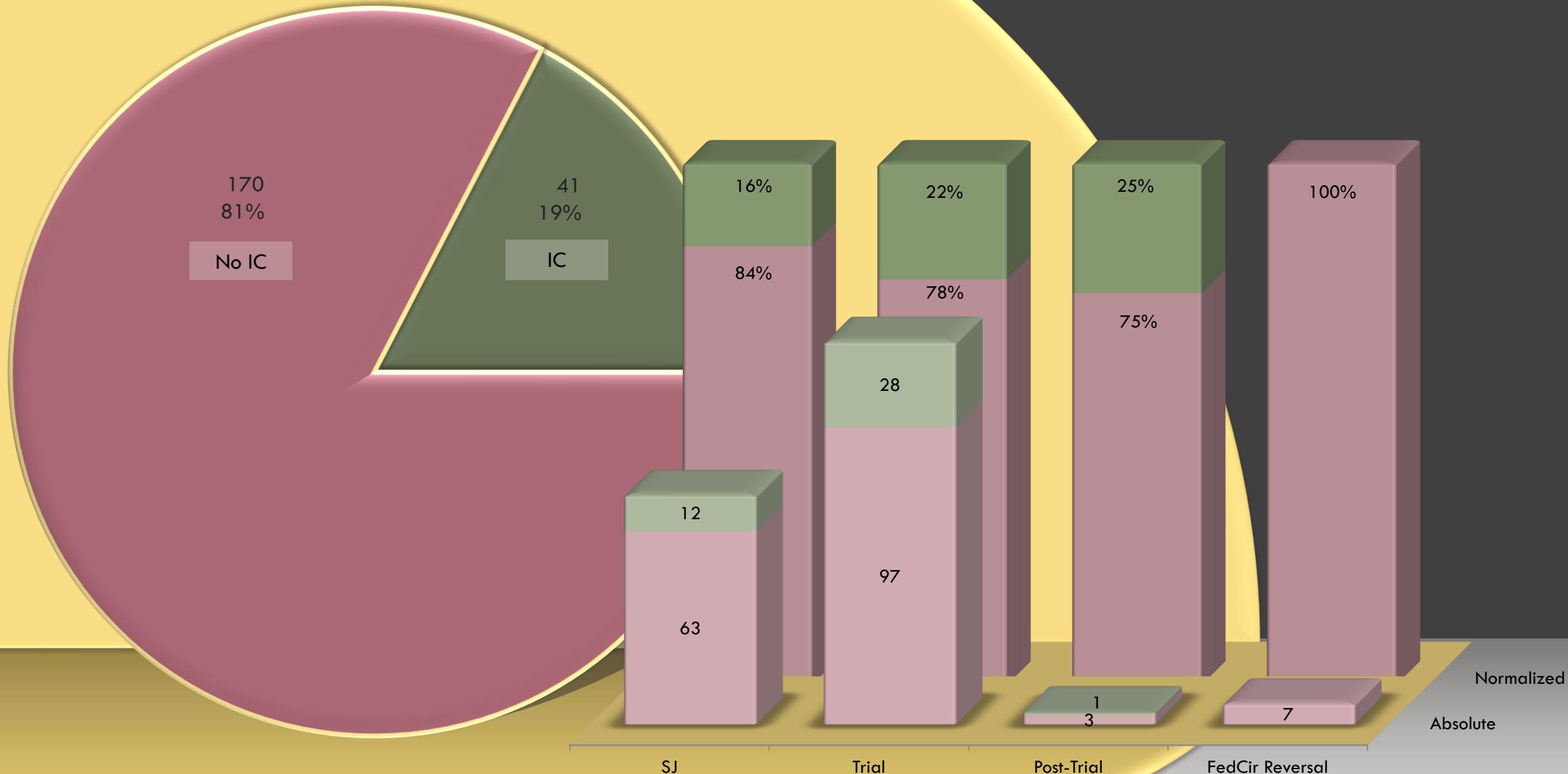
211

3,033

Number of Cases: 13,786

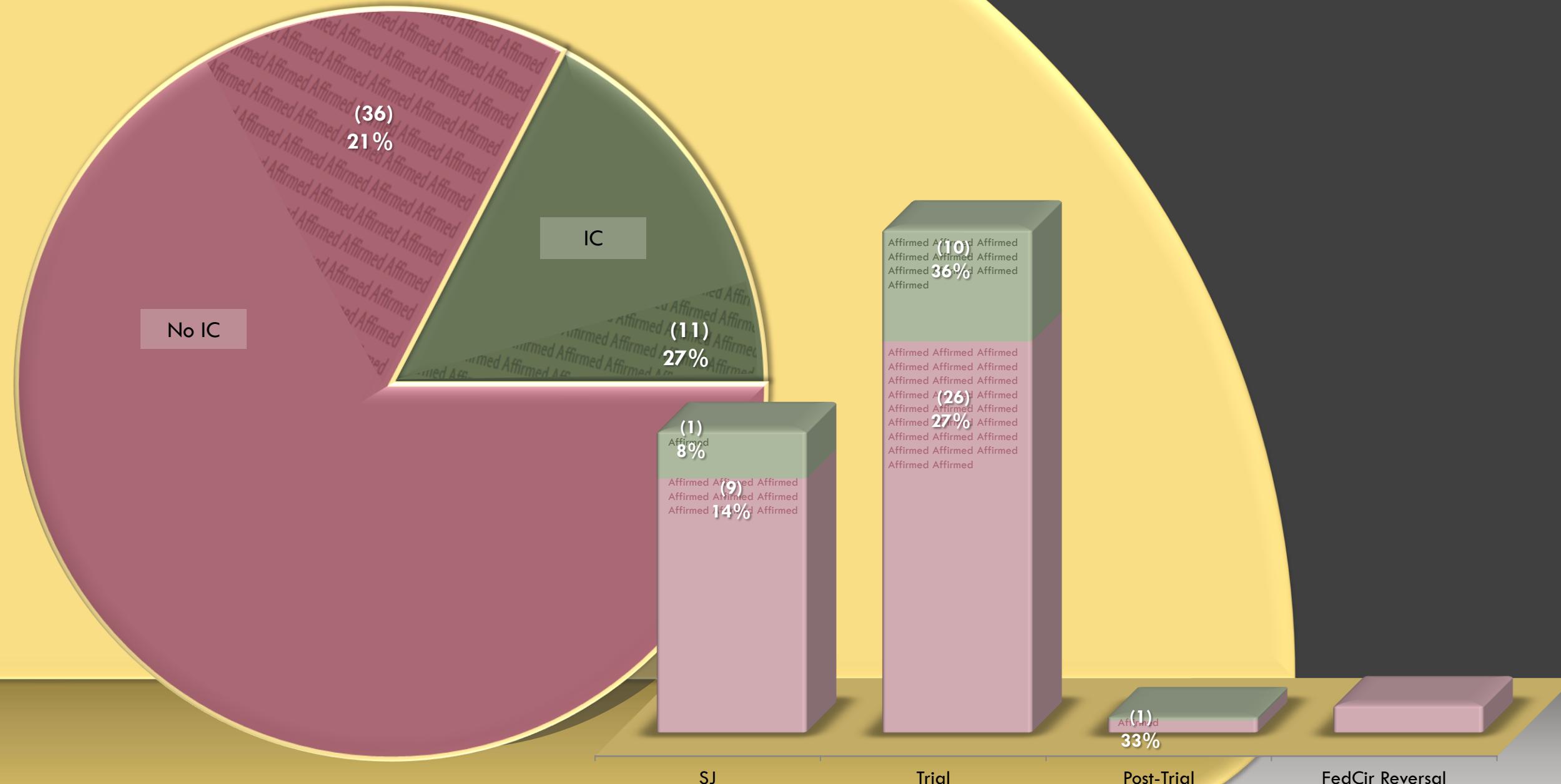
# Inequitable Conduct Merit Findings: Phase of Case

Counting one IC Merit Finding per case out of district court and appellate case events between January 1, 2005 and May 31, 2010; IC Merit Findings do not include instances in which the appellate court vacated a district court ruling.



# Inequitable Conduct Merit Findings: Appellate Affirmations

Counting appellate IC affirmation events between January 1, 2005 and May 31, 2010.



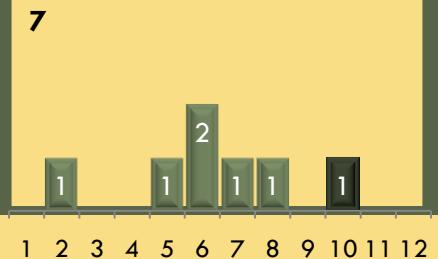
# Inequitable Conduct Merit Findings: Annual Breakdown

Finding of IC

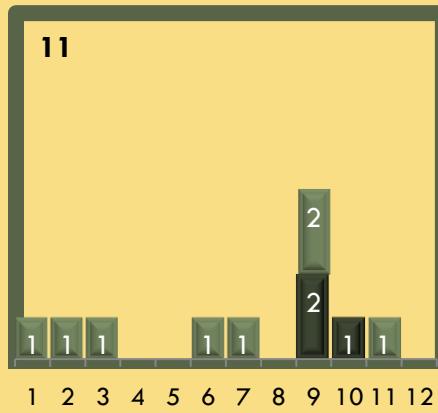
2005



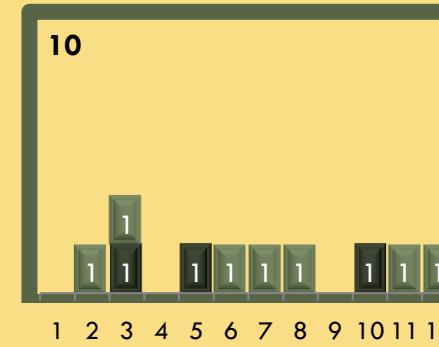
2006



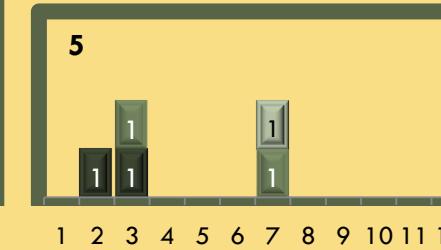
2007



2008



2009

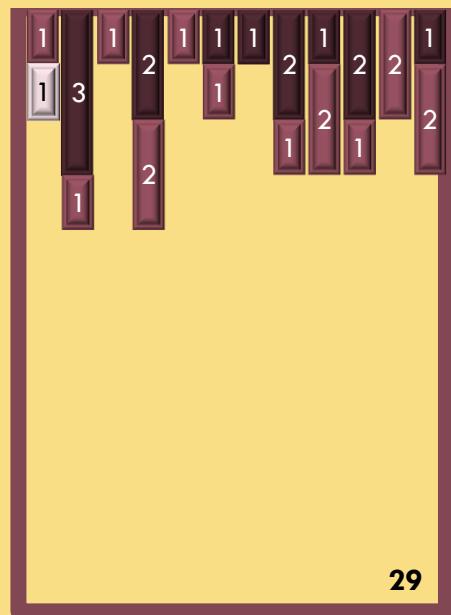


2010

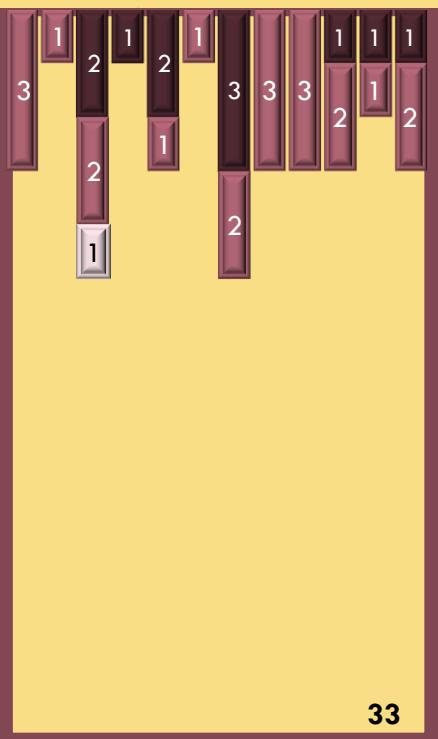


Finding of No IC

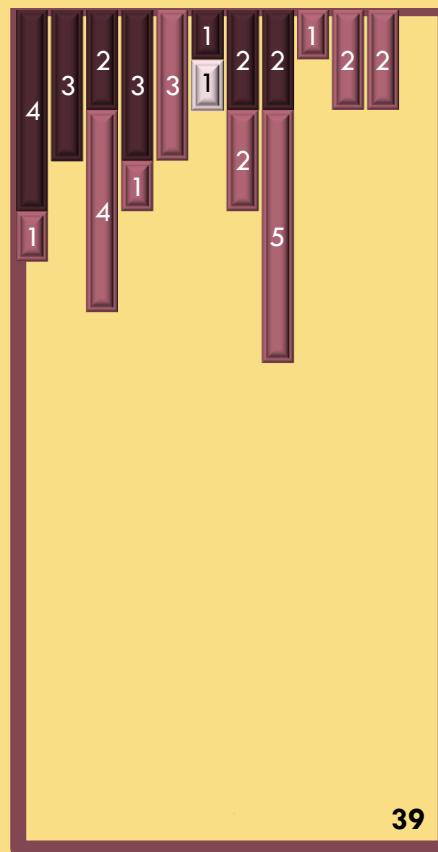
2005



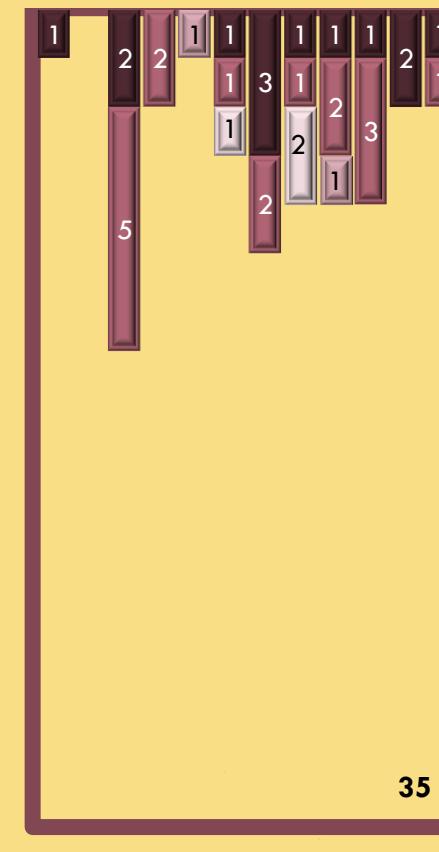
2006



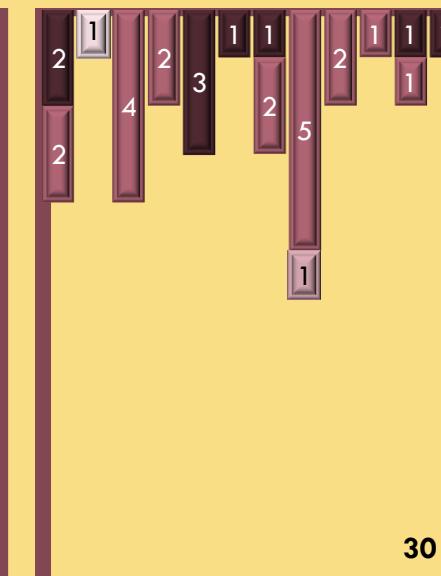
2007



2008

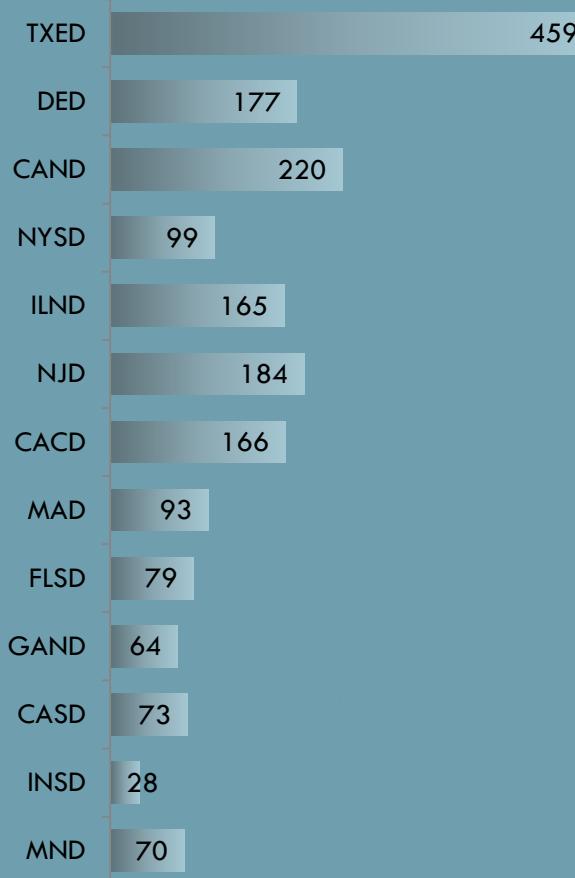


2009



# Inequitable Conduct District Court Findings

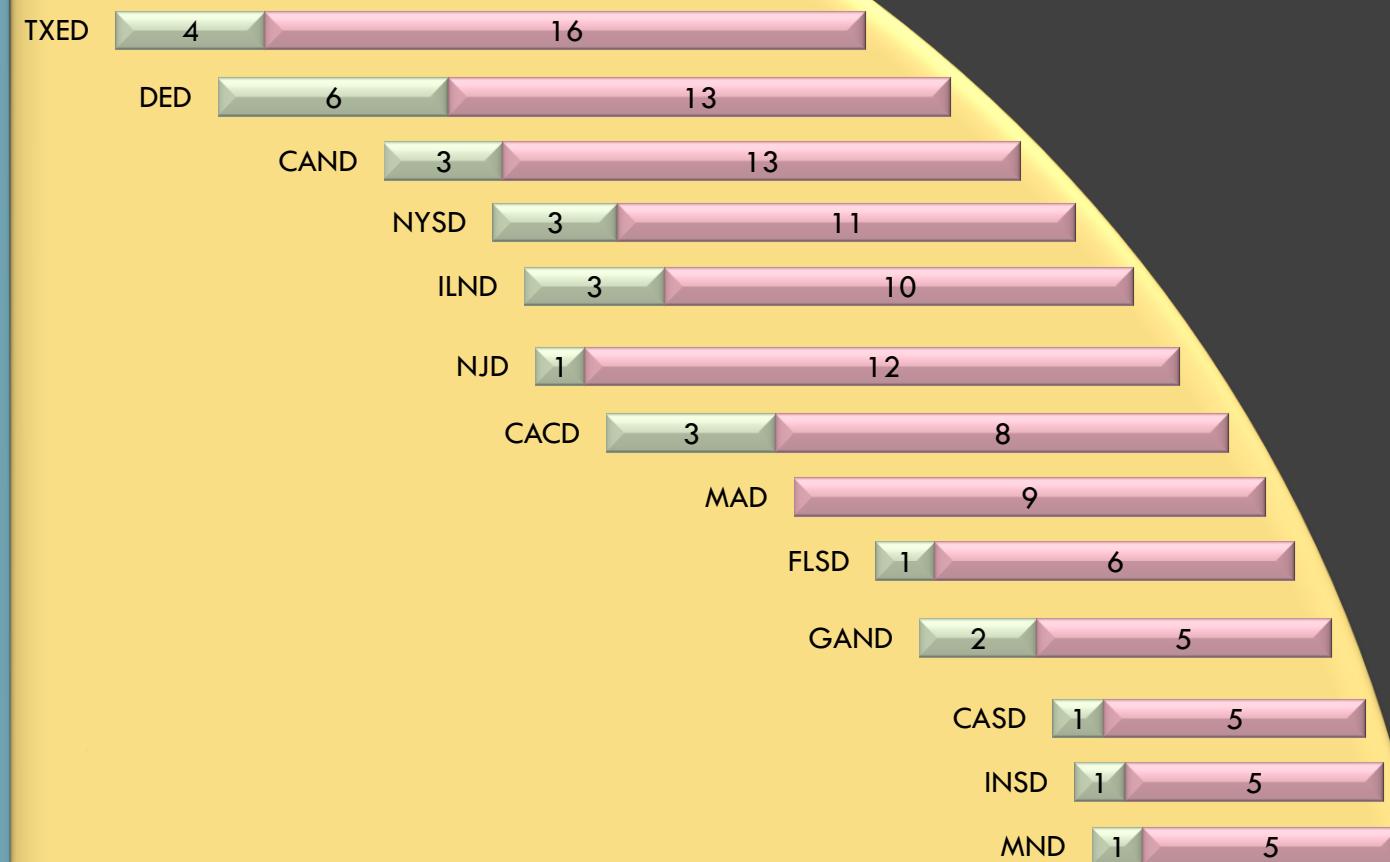
IC District Court Findings represent district court merit findings on IC between January 1, 2005 and May 31, 2010 before any appellate rulings on IC.



Other IC Pleadings

1,156

IC Pleadings



Districts with ≤4 IC District Court Findings.

District	IC	No IC
Other	21	48

IC District Court Findings