

*The Bond, Schoeneck & King
2007 Study of
Employment Discrimination Litigation
in the Northern and Western
Districts of New York*

BOND, SCHOENECK & KING, PLLC
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I. Introduction

For a number of years, employment litigation has often been cited by corporate America as a leading concern. To assist our clients in better understanding that risk, Bond, Schoeneck & King, PLLC (“BS&K”), in 2001, prepared a study of employment litigation and trends in the U.S. District Courts for the Western and Northern Districts of New York. The initial 2001 Study covered 1991 through 2000. This 2007 Study analyzes similar information for the period 2001 through 2006. It also analyzes 2001 through 2006 on a comparative basis with 1991-2000, and on a cumulative basis for the entire 1991-2006 period.

The information used to compile both the 2001 and this 2007 Study was provided by the Clerk’s Offices of the United States District Courts for the Northern and Western Districts of New York.

The Northern and Western Districts of New York (collectively “Upstate New York”) include the 49 county region from Buffalo to Albany and from the lower Hudson Valley to the Canadian border. The Northern District of New York is comprised of six divisions: Albany, Watertown, Malone/Plattsburgh, Binghamton, Utica, and Auburn/Syracuse. The Western District of New York is comprised of two divisions: Buffalo and Rochester. New York’s other two federal districts, the Southern and Eastern Districts, cover the remaining 13 counties in New York and include the Metropolitan New York area and Long Island.

From 2001 through 2006, a substantial number of employment discrimination cases were filed in the Northern and Western Districts of New York, but only a modest number of cases proceeded to trial. The average case was pending 1.54 years from initial filing through ultimate disposition in District Court. Cases tried before a jury were pending 2.67 years from filing to a jury verdict.

Defendant employers prevailed in more than 64% of the cases tried in Upstate New York. In cases in which the plaintiff prevailed, the average jury verdict was \$2,701,597, while the median verdict was \$231,250. The average attorneys’ fee award was \$66,372.

Between January 1, 2001 and December 31, 2006, there were 406 employment litigation cases filed and disposed of in the Northern District of New York and 651 employment litigation cases filed and disposed of in the Western District of New York. During this period, there was a total of 19,729 civil cases, of all types, filed in Upstate New York. For the earlier January 1, 1991 through December 31, 2000 time period of the 2001 Study, 1,206 employment litigation cases had been filed and disposed of in the Northern District of New York and 1,551 employment litigation cases had been filed and disposed of in the Western District of New York. During this earlier time period, there was a total of 34,381 civil cases, of all types, filed in Upstate New York.

The current data evidences a notable decline in the number of employment cases filed. During the 2001 through 2006 period, the Northern District averaged just over 67 employment cases a year, while the Western District averaged just over 108 cases per year. Upstate overall averaged just over 176 employment cases per year. These employment discrimination cases represented 5.36% of all civil cases filed in Upstate New York during the period.

During the earlier 1991 through 2000 period, the annual averages were approximately 120 cases for the Northern District, 155 cases for the Western District, and 275 cases overall for Upstate New York. Those employment cases represented 8% of all the civil cases filed in Upstate New York for that earlier time period. While the average number of civil cases of all types filed on an annual basis in Upstate New York during the 2001-2006 time period decreased over the earlier period by just over 4%, there was a 36% decline in employment cases as a percent of overall cases.

A more detailed analysis of this information, as well as information about the types of discrimination claims asserted and the law firms most active in employment litigation in Upstate New York, follows.

II. Analysis of Trial Results¹

A. How Many Cases Go to Trial?

As is generally true for all types of litigation, only a small fraction of the employment cases filed in the Northern and Western Districts were actually tried before a judge or jury. Overall, as shown in Chart 1, during the period of January 1, 2001 through December 31, 2006, only sixteen (1.51%) of the 1,057 employment litigation cases that were filed and concluded were tried before a jury: 11 in the Northern District and five in the Western District. Only one employment case in the Northern District was tried before a judge during the 2001-2006 period, while there were no bench trials in the Western District during that period. Thus, of 1,057 employment litigation cases filed in Upstate New York, only 17 (1.61%) were resolved by trial, while the vast majority of cases, 1,040 (98.39%), were disposed of without a trial. This is a decrease in the percentage of cases disposed of by trial compared to the earlier January 1, 1991 through December 31, 2000 period (4.24%), which is shown in Chart 2. Trial statistics for the cumulative 1991 through 2006 period are shown in Chart 3.

As with other types of litigation, only a small portion of employment discrimination cases actually go to trial. And, in the Northern and Western Districts of New York during 2001-2006, this number has declined.

¹ This Study is based entirely on data contained in custom reports prepared by the clerks of the Northern and Western Districts along with information taken from the Court's dockets. Bond, Schoeneck & King did not independently review the Court records of any of these actions and thus the analysis in this Study is necessarily dependent on the information contained in these reports and dockets. The Trial results in this section are based on data from January 1, 1991 through December 31, 2000 (contained in the first Study) and updated for January 1, 2001 through December 31, 2006.

Chart 1
Disposition of Employment Discrimination Cases
January 1, 2001 – December 31, 2006

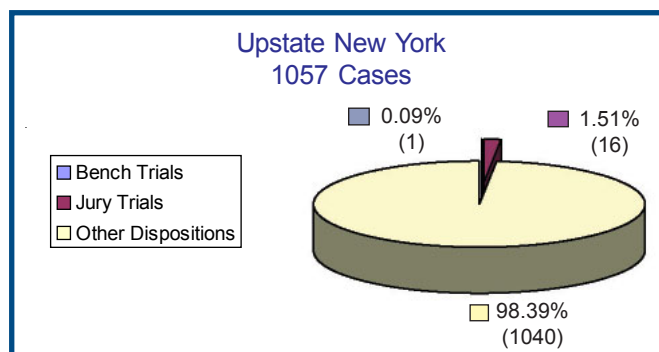
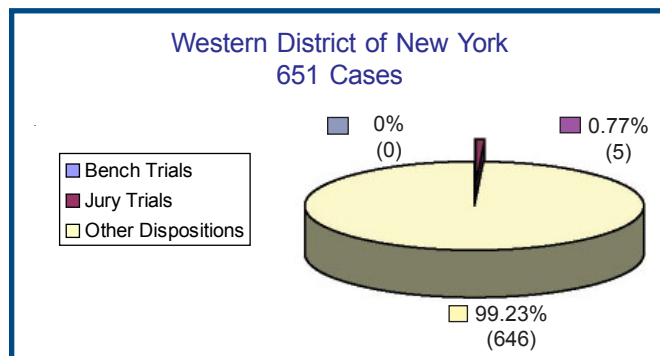
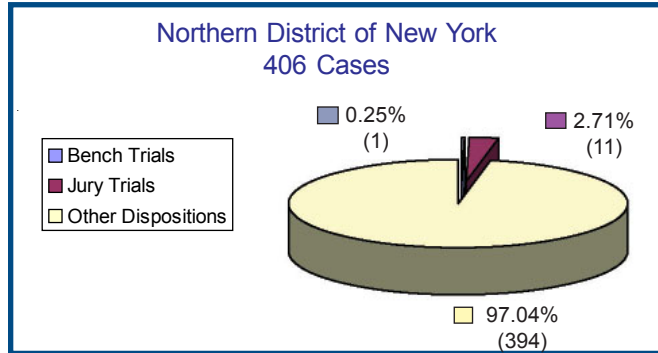


Chart 2
Disposition of Employment Discrimination Cases
January 1, 1991 – December 31, 2000

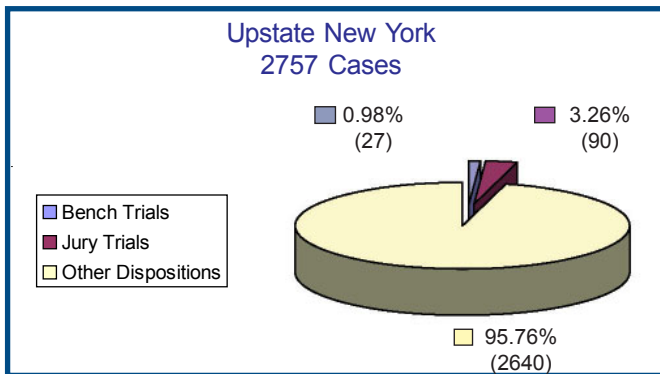
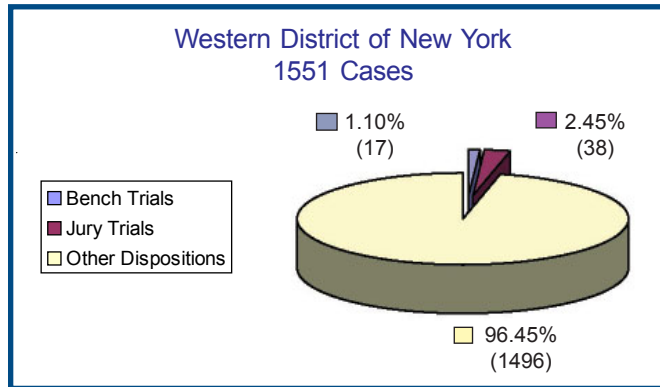
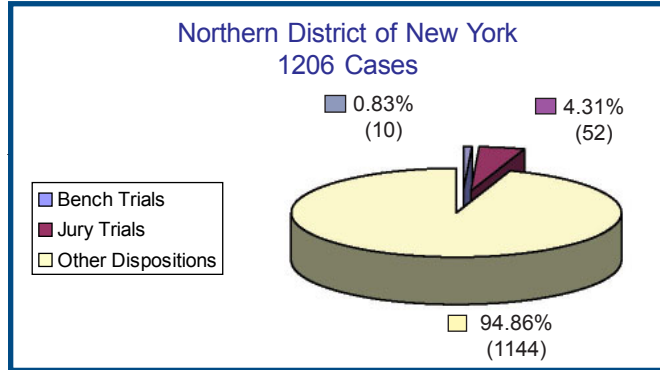
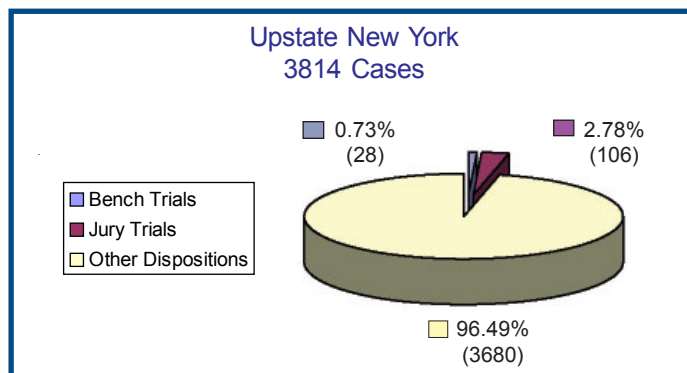
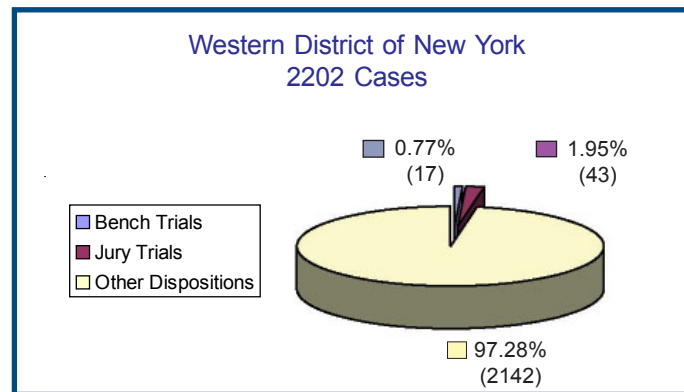
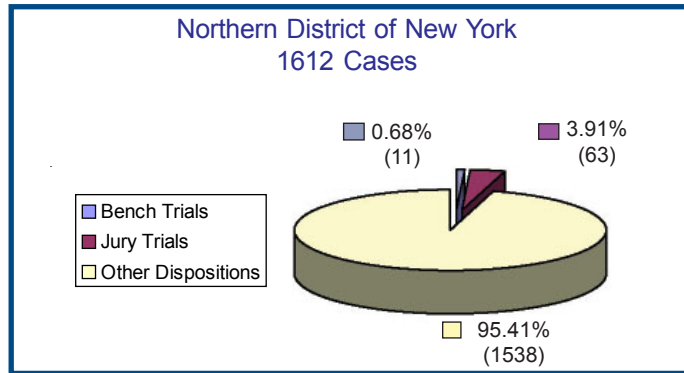


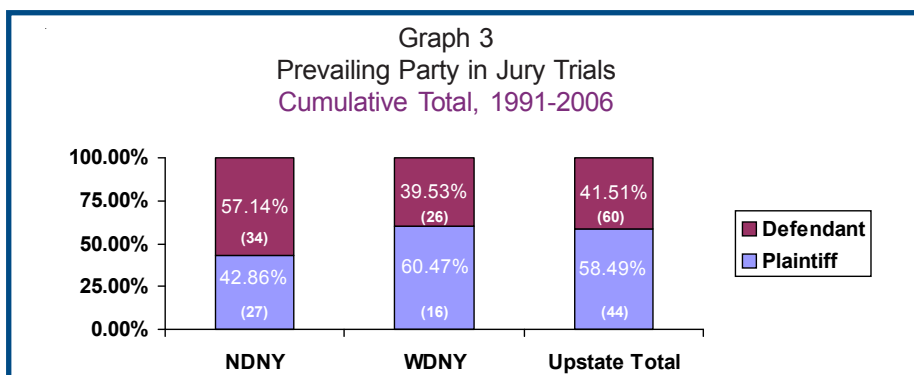
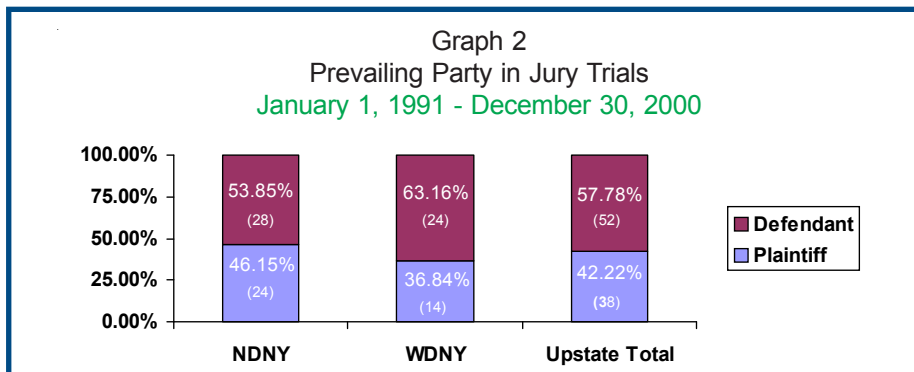
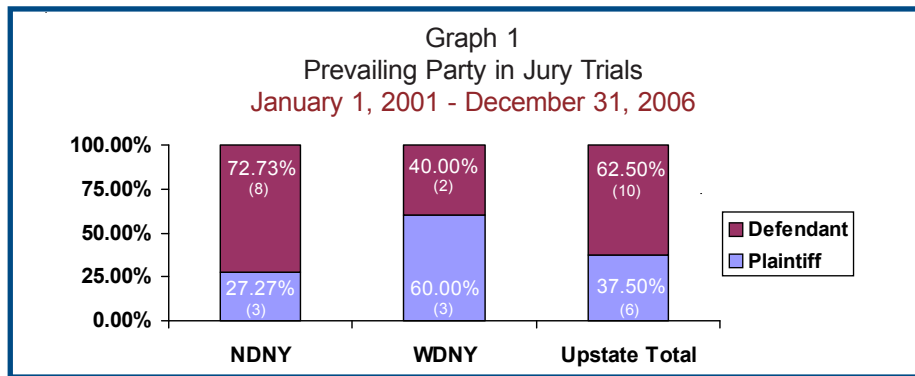
Chart 3
Disposition of Employment
Discrimination Cases Cumulative Total
Cumulative Total 1991-2006



B. Which Party Prevails More Often?

1. Jury Trials

For both periods studied, as well as on a cumulative basis, defendants prevailed in the majority of jury trials. In categorizing jury verdicts, this Study only considered the defendant the “prevailing party” if the plaintiff did not prevail on any claims against any of the defendants. Thus, where the defendant or defendants received a verdict in their favor on most claims, but the plaintiff prevailed on even one claim against only one defendant, this Study treats the plaintiff as the prevailing party. Even using this narrow definition, as shown in Graph 1, defendants prevailed in 10 (62.50%) of the jury trials in Upstate New York during the current time period, prevailing slightly more often than in the period previously studied (57.78%), which is shown in Graph 2. Graph 3 provides a breakdown for the cumulative period.

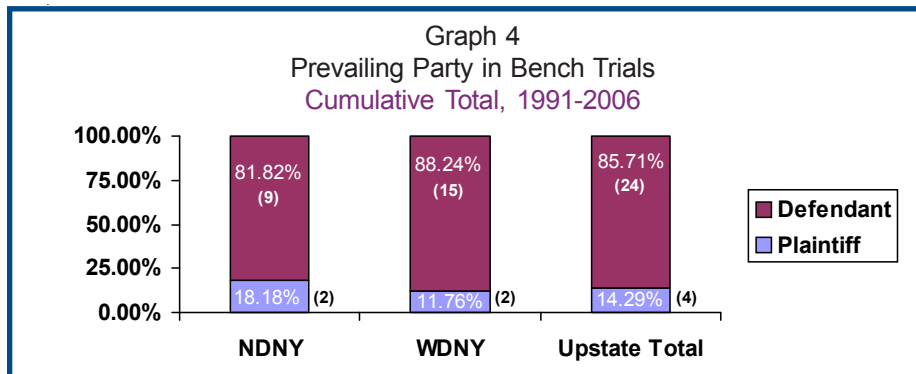


While the numbers show a slight increase overall for Upstate New York in the defendants' win rate for the current period, there has been a more notable shift in win rates within each District. During the earlier 1991-2000 study period, defendants in the Northern District prevailed in nearly 10% *fewer* cases than defendants in the Western District (53.85% vs. 63.16%). During the more recent 2001-2006 period, defendants in the Northern District prevailed in 32.73% *more* cases than defendants in the Western District (72.73% vs. 40.00%).

A study of jury verdicts in employment discrimination conducted by Jury Verdict Research for the 1999-2005 time period found that nationally defendants prevailed in only 32% to 39% of cases, depending on the year. Jury Verdict Research, Employment Practice Liability: Jury Award Trends and Statistics 2006 Edition, 42 (“JVR Study”). Thus, defendants have had much greater success in Upstate New York than nationally.

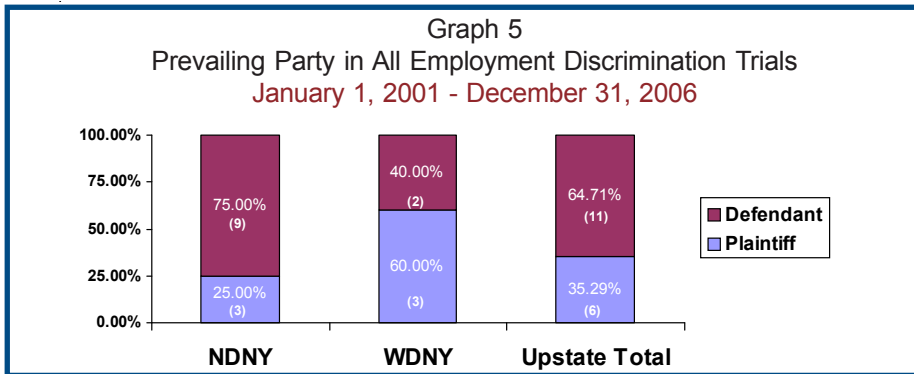
2. Bench Trials

As there was only one bench trial during 2001-2006 (and the defendant prevailed), it is more useful to consider bench trials only over the full 1991-2006 period. As shown in Graph 4, defendants prevailed in almost 82% (nine of 11) of the bench trials in the Northern District, in more than 88% of the bench trials in the Western District (15 of 17), and in almost 86% of the bench trials overall (24 of 28).

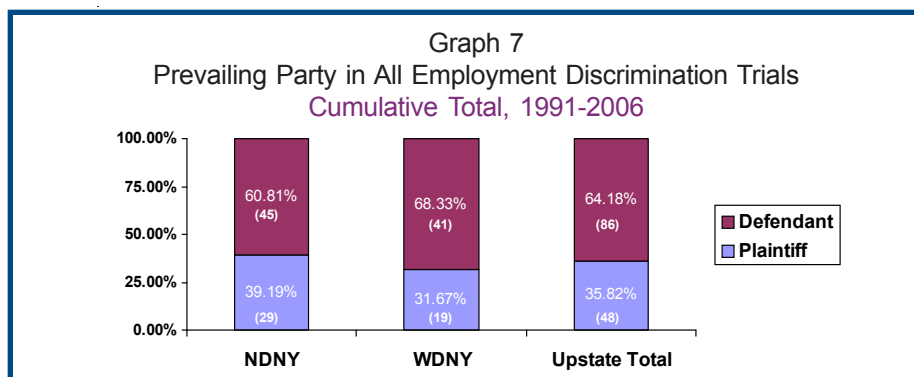
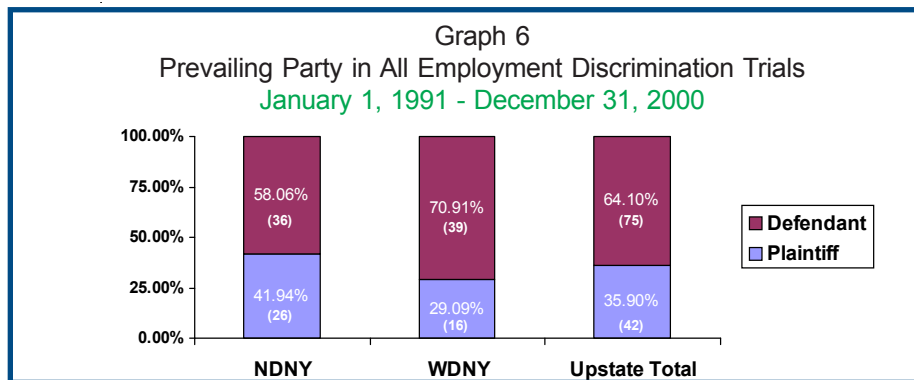


3. Combined Bench and Jury Trials

Overall, in the 2001-2006 period (Graph 5) defendants prevailed in the majority of employment discrimination cases that went to trial, prevailing 64.71% of the time. However, in the Northern District, defendants prevailed 75.00% of the time but only 40.00% of the time in the Western District. While this more recent period saw an increase in the win rate for defendants in the Northern District and a decrease in the defendant's win rate in the Western District compared to both the earlier 1991-2000 period and the cumulative period (Graphs 6 and 7), the overall Upstate New York win rate for defendants has remained very consistent throughout the periods reviewed.



In the Northern and Western Districts of New York, defendants continue to prevail in a majority of employment litigation trials.



C. When Plaintiffs Do Prevail after a Jury Trial, How Much Do They Win?

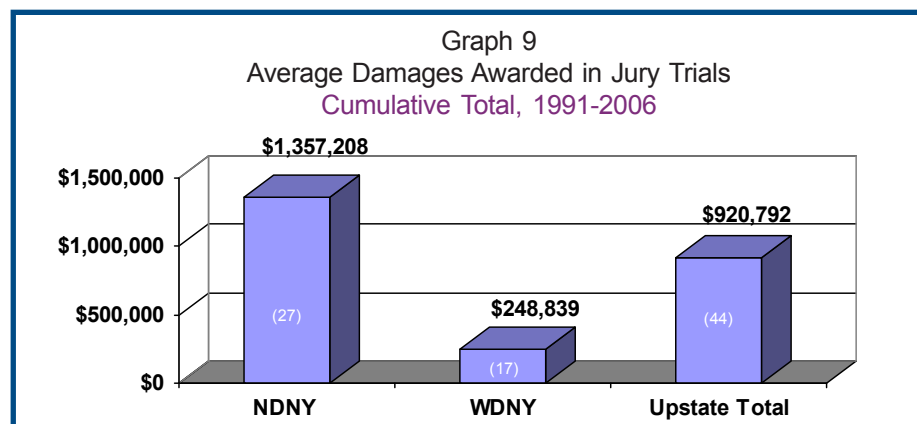
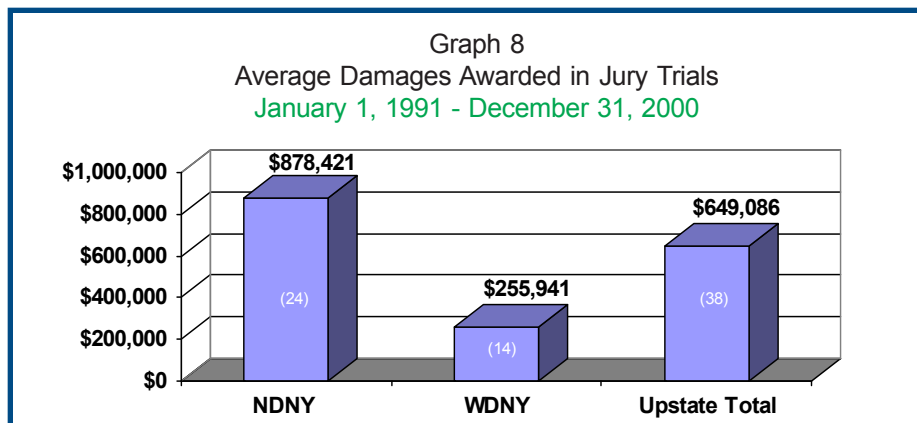
There were 16 jury trials in Upstate New York during the 2001-2006 period studied. In the six jury trials in which plaintiffs prevailed, the verdicts were:

Northern District: \$15,100,000 (Sex Discrimination)
 \$400,000 (Sex Discrimination)
 \$62,500 (Civil Rights Act)

Western District: \$575,250 (Sex Discrimination)
 \$45,001 (Sex Discrimination)
 \$26,830 (Sex Discrimination)

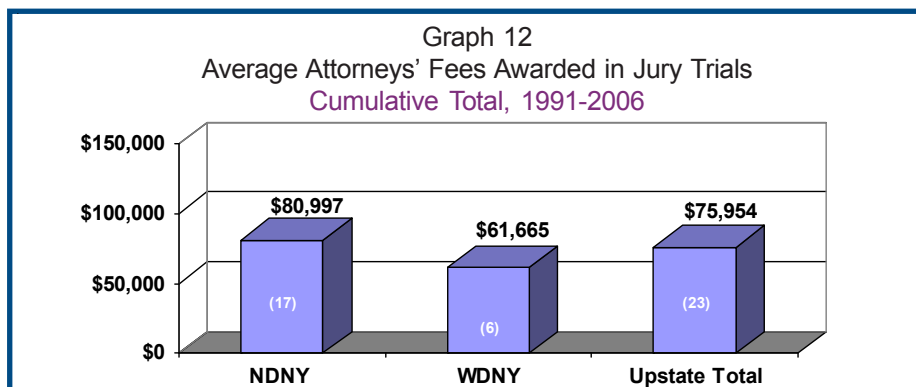
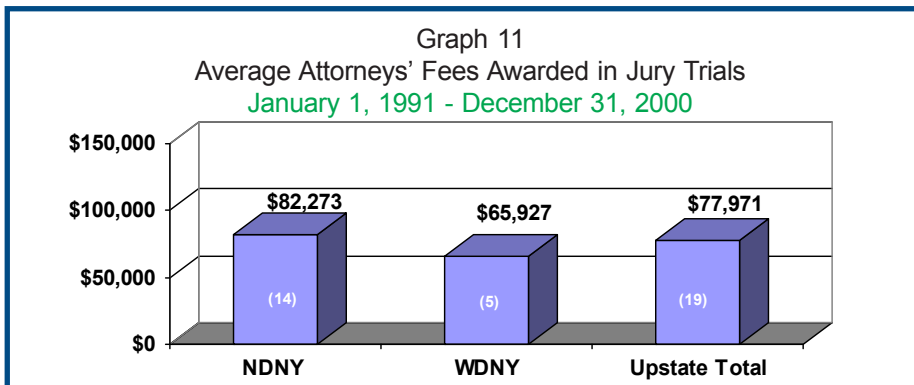
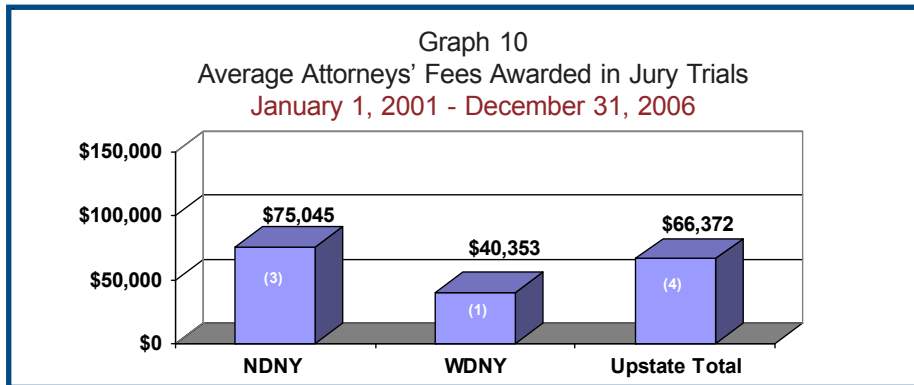
The average award for Upstate New York was \$2,701,597 (while the median award was \$231,250).

During the earlier 1991-2000 period (Graph 8), the average award in the Northern District was \$878,421; the average award in the Western District was \$255,941; and the average award in Upstate New York was \$649,086. The median award for Upstate New York during this period was \$107,252.



D. When Plaintiff's Prevail after a Jury Trial, How Much Is Awarded for Attorney's Fees?

The data on attorneys' fees awards in jury trials is limited and is not available for all six cases in which the plaintiff prevailed during the 2001-2006 period. In the four cases for which data is available (three cases in the Northern District and one case in the Western District) the average attorneys' fees award in Upstate New York was \$66,372 (the median award was \$70,176). There is a notable disparity between the Northern District's average of \$75,045 and the Western District's smaller average of \$40,353 as shown in Graph 10.² A similar disparity in average fees awards, in favor of the Northern District, existed for the 1991-2000 period (Graph 11). The Upstate New York median award for the 1991-2000 period was \$63,645.



²Fee awards in the Northern District were \$107,029; \$100,000; and \$18,106.70. The fee award in the Western District was \$40,352.95.

E. How Does Upstate New York Compare to Downstate and the Rest of the Nation With Respect to Verdicts and Awards?

There is no readily available data that permits a current comparison of the Northern and Western Districts to the Southern and Eastern Districts of New York.

An earlier study of employment discrimination trials in the Southern District covering April 1, 1997 through July 31, 2001, prepared by Orrick, Herrington & Sutcliffe, indicated that the median monetary award in the Southern District was \$95,554, while the median award for attorneys' fees was \$149,756. While this monetary award was surprisingly lower than the 1991-2000 Upstate New York amount analyzed in BS&K's 2001 Study, the attorneys' fees awarded were, not surprisingly, significantly higher (more than double) than the median reported in this 2007 Study for either the current 2001-2006 period or the earlier 1991-2000 period. Based on recently reported cases, the typical attorneys fees recovery in the Northern District is based on an hourly rate for partners of \$225³ and in the Western District on an hourly rate for partners of \$250⁴, while the recognized hourly rates for partners in the Southern and Eastern Districts are \$425⁵ and \$350⁶, respectively.

The findings of the BS&K 2007 Study are in line with those contained in the United States Department of Justice's Bureau of Justice Statistics' Special Report on Civil Rights Complaints in U.S. District Courts, 1990-1998, updated and published in January 2000. In 1998, only 5% of employment discrimination complaints disposed of nationally were disposed of by jury or bench trial, compared with 3.51% in Upstate New York during the cumulative period (1991-2006). In these trials, plaintiffs prevailed in only 35.5% nationally; again, very similar to the 35.82% in Upstate New York during the cumulative period. Finally, the median monetary award noted in the Department of Justice Report was \$137,000 nationally, while it was only \$107,252 (cumulatively) in Upstate New York.

By contrast, a more recent seven-year survey of employment discrimination cases conducted by Jury Verdict Research, focusing on just *jury trials*, found that for the 1999 to 2005 time period, plaintiffs prevailed nationally at the significantly higher rates of 61-68% (depending on the specific year).⁷ In addition, the national median jury award in employment discrimination cases for the 1999-2005 time period was \$175,538.⁸

³ See *Hoblock v. Albany County Bd. of Elections* (2006 U.S. Dist. LEXIS 81466, November 7, 2006)

⁴ See *Laforest v. Honeywell Int'l.* (2006 U.S. Dist. LEXIS 87039, December 1, 2006)

⁵ See *Gucci Am., Inc. v. Duty Free Apparel, Ltd.* (2004 U.S. Dist. LEXIS 7126, April 22, 2004)

⁶ See *Aiello v. Town of Brookhaven* (2005 U.S. Dist. LEXIS 11462, June 13, 2005)

⁷JVR Study at 42

⁸Id. at 25

III. Comprehensive Analysis of Employment Discrimination Litigation⁹

In an effort to glean additional data regarding employment discrimination litigation in Upstate New York, BS&K analyzed the dockets of all 1,057 employment discrimination cases filed and disposed of between January 1, 2001 and December 31, 2006 to determine the types of claims asserted, the attorneys representing the parties, the manner of disposition, and the average duration of these cases. The data was then compared to the information compiled by BS&K for its 2001 Study, which had analyzed similar information for the January 1, 1997 through December 31, 2000 period. In total, 1,776 cases were examined.

A. What Claims Are Asserted Most Often?

1. Northern and Western Districts

Consistent with BS&K's 2001 Study, plaintiffs in the Northern and Western Districts from 2001 through 2006 most frequently filed a gender claim. The second most commonly filed claim was for race discrimination. Overall, as a percent of claims, sex, age and disability discrimination claims dropped a bit for the 2001-2006 period, while the percentage of race claims rose.

Table 1
Causes of Action/Claims Filed
in the Northern & Western Districts of New York
January 1, 2001 through December 31, 2006

Claim/Cause of Action ¹⁰	NDNY	WDNY	Upstate Total
Sex	23.65%	23.50%	23.53%
Race	15.02%	23.50%	20.23%
Age	11.08%	10.60%	10.78%
Disability	11.58%	10.91%	11.15%
Employment Discrimination	12.07%	14.13%	13.33%
Civil Rights	20.44%	6.91%	12.10%
Miscellaneous	6.16%	10.45%	8.88%

Gender discrimination claims continue to be the most prevalent claims in Upstate New York, but race claims are becoming more common.

⁹ Part II of this Study, which analyzed trial results, used a cumulative time period of January 1, 1991 to December 31, 2006. This Part III analyzes data for a cumulative time period of January 1, 1997 to December 31, 2006. The different time period was necessitated by the availability of data.

¹⁰The characterization of the type of claim filed is necessarily limited by the methods used by the Courts to record this information. Federal Courts code cases based on only one claim – usually the first claim asserted in the complaint. As a result, a complaint with multiple claims (e.g., race and sex) will not be recorded as both a race and a sex claim. Federal Courts also classify claims using different categories than those used by other reporting bodies, such as the Equal Employment Opportunity Commission. For example, Federal Courts do not separately code retaliation, national origin, or religion claims but instead classify all such claims as “employment discrimination.” Thus comparisons between courts and administrative agencies (see Tables 4, 5 and 6), with respect to claims asserted, is of limited value. Further, in Federal Courts, “miscellaneous” claims can include ERISA, wage and hour and other non-discrimination causes of action/claims.

Table 2
Causes of Action/Claims Filed
in the Northern & Western Districts of New York
January 1, 1997- December 31, 2000

Claim/Cause of Action	NDNY	WDNY	Upstate Total
Sex	33.04%	20.59%	26.56%
Race	12.75%	23.53%	18.36%
Age	11.59%	12.57%	12.10%
Disability	9.57%	17.38%	13.63%
Employment Discrimination	13.33%	12.57%	12.93%
Civil Rights	17.39%	8.29%	12.66%
Miscellaneous	2.32%	5.08%	3.76%

Table 3
Causes of Action/Claims Filed
in the Northern & Western Districts of New York
Cumulative Total, 1997 - 2006

Claim/Cause of Action	NDNY	WDNY	Upstate Total
Sex	27.93%	22.44%	24.77%
Race	13.96%	23.51%	19.48%
Age	11.30%	11.32%	11.32%
Disability	10.64%	13.27%	12.16%
Employment Discrimination	11.97%	13.56%	13.29%
Civil Rights	19.02%	7.41%	11.94%
Miscellaneous	5.19%	8.59%	7.04%

Jury Verdict Research's recent study of nationwide jury trends for the 1999-2005 period found the following breakdown of employment discrimination claims asserted: sex – 39%; race 24%; disability – 16%; age – 14%; and other – 7%.¹¹

2. Federal and State Agencies

As Tables 4, 5 and 6 illustrate, recently available data (2002, 2003 and 2004, respectively) demonstrates that, by far, race discrimination is the most commonly asserted claim before the Equal Employment Opportunity Commission (asserted in almost 35% of all cases) on a nationwide basis. Data available from the New York State Division of Human Rights shows that disability discrimination and race discrimination are the two most commonly filed claims before that agency, each asserted in just more than one-third of the complaints filed.

For comparative purposes, data from the Northern and Western Districts, and for Upstate, is shown.

Table 4
Causes of Action/Claims Filed
before the Equal Employment Opportunity Commission (Nationwide)
& New York State Division of Human Rights
2004

Claim/Cause of Action	NDNY	WDNY	Upstate Total	EEOC¹²	NYSDHR¹³
Sex	32.10%	21.38%	25.22%	30.53%	27.8%
Race	20.99%	25.52%	23.89%	34.87%	34.3%
Age	18.52%	11.03%	13.72%	22.46%	14.9%
Disability	6.17%	11.03%	9.29%	19.36%	34.8%
National Origin	N/A	N/A	N/A	10.53%	16.3%
Religion	N/A	N/A	N/A	3.11%	4.5%

Table 5
Causes of Action/Claims Filed
before the Equal Employment Opportunity Commission (Nationwide)
& New York State Division of Human Rights
2003

Claim/Cause of Action	NDNY	WDNY	Upstate Total	EEOC⁹	NYSDHR¹⁰
Sex	25.33%	30.08%	28.28%	29.97%	25.5%
Race	14.67%	25.20%	21.21%	35.09%	34.4%
Age	5.33%	10.57%	8.59%	23.53%	15.8%
Disability	16.00%	11.38%	13.13%	18.92%	35.2%
National Origin	N/A	N/A	N/A	10.39%	17.0%
Religion	N/A	N/A	N/A	3.05%	4.9%

¹² The percentage refers to the percentage of total EEOC charges containing a particular claim filed during the specified fiscal year. EEOC statistics, unlike those for the Northern and Western Districts, separately account for each claim asserted in a charge. Since charges often claim multiple types of discrimination, the percentages for the various types of discrimination claims asserted will total more than 100 percent.

¹³ The percentage refers to the percentage of total NYSDHR complaints containing a particular claim filed during the specified fiscal year. NYSDHR statistics, unlike those for the Northern and Western Districts, separately account for each claim. Since complaints often claim multiple types of discrimination, the percentages for the various types of discrimination will total more than 100 percent.

Table 6
Causes of Action/Claims Filed
before the Equal Employment Opportunity Commission (Nationwide)
& New York State Division of Human Rights
2002

Claim/Cause of Action	NDNY	WDNY	Upstate Total	EEOC⁹	NYSDHR¹⁰
Sex	26.03%	32.05%	29.14%	30.24%	27.1%
Race	12.33%	20.51%	16.56%	35.42%	34.9%
Age	8.22%	14.10%	11.26%	23.59%	16.4%
Disability	13.70%	10.26%	11.92%	18.91%	31.4%
National Origin	N/A	N/A	N/A	10.71%	18.7%
Religion	N/A	N/A	N/A	3.05%	4.7%

B. Who Represents The Parties Most Often?

In looking at employment discrimination litigation in the Northern and Western Districts, BS&K again came out on the top of the defense list, representing employers in more cases than any other law firm. Tables 7, 8, and 9 show the top ten firms representing defendants at any time during litigation proceedings¹⁴ for January 1, 2001 through December 31, 2006 (1,057 total cases) and January 1, 1997 through December 31, 2000 (719 total cases), as well as for the cumulative 1997-2006 period (a total of the 1,776 cases).

Table 7
Law Firms Representing Defendants in
Employment Discrimination Actions
in the Northern and Western Districts
January 1, 2001 and December 31, 2006

Upstate Totals	
Bond, Schoeneck & King	110
Nixon Peabody	67
Phillips Lytle	56
Harter Secrest & Emery	55
NYS Attorney General	49
US Attorney General	41
Hodgson Russ	38
Harris Beach & Wilcox	31
Damon & Morey	31
Jackson Lewis	21

Table 8
Law Firms Representing Defendants in
Employment Discrimination Actions
in the Northern and Western Districts
January 1, 1997 and December 31, 2000

Upstate Totals	
Bond, Schoeneck & King	68
Nixon Peabody	48
NYS Attorney General	37
Phillips Lytle	25
Hodgson Russ	22
US Attorney General	21
Damon & Morey	20
Harris Beach & Wilcox	18
Jaekle Fleischmann	14
Whiteman Osterman & Hanna	12

¹⁴ In cases where more than one firm is listed as representing a party, all of the firms have been counted.

Table 9
Law Firms Representing Defendants in
Employment Discrimination Actions
in the Northern and Western Districts
Cumulative Total, 1997-2006

Upstate Totals

Bond, Schoeneck & King	178
Nixon Peabody	115
NYS Attorney General	86
Phillips Lytle	81
US Attorney General	62
Hodgson Russ	60
Damon & Morey	51
Harris Beach & Wilcox	49
Jaeckle Fleischmann	30
Jackson Lewis	29

Tables 10, 11, and 12 show, respectively, the top ten firms representing plaintiffs in the Northern and Western Districts for the January 1, 2001 through December 31, 2006 time period and for the January 1, 1997 through December 31, 2000 time period, as well as on a cumulative basis.

Table 10
Law Firms Representing Plaintiffs in
Employment Discrimination Actions
in the Northern and Western Districts
January 1, 2001 and December 31, 2006

Upstate Totals

Marianetti, Donna	45
Dolin, Thomas & Solomon LLP	41
Chiacchia & Fleming	35
The De Lorenzo Law Firm	33
Agola, Christina A.	23
Creighton, Pearce, Johnson & Giroux	20
Office of Stefan D. Berg	19
Moriarty & Dee	18
Sanders & Sanders	17
Law Office of Michelle Y. Cimino	16
E.E.O.C.	16
Davis, James P.	11

Table 11
Law Firms Representing Plaintiffs in
Employment Discrimination Actions
in the Northern and Western Districts
January 1, 1997 And December 31, 2000

Upstate Totals	
Sanders & Sanders	21
Deily Dautel & Mooney	20
Siegel Kelleher & Kahn	19
Marianetti, Donna	15
Chiacchia & Fleming	14
Office of Stefan Berg	13
Lipsitz Green	13
Davis, James P.	11
The De Lorenzo Law Firm	10
Gleason, Dunn, Walsh & O'Shea	9
Office of Charles Harding	9
E.E.O.C	8
Bilgore, Reich, Levine & Kantor	8

Table 12
Law Firms Representing Plaintiffs in
Employment Discrimination Actions
in the Northern and Western Districts
Cumulative Total, 1997-2006

Upstate Totals	
Marianetti, Donna	60
Chiacchia & Fleming	49
Dolin, Thomas & Solomon LLP	44
The De Lorenzo Law Firm	43
Sanders & Sanders	38
Office of Stefan Berg	36
Siegel Kelleher & Kahn	30
Deily Dautel & Mooney	24
Moriarty & Dee	23
Davis, James P.	22

C. What Happens to Cases Filed?

In both Districts in Upstate New York, employment discrimination litigation is most often disposed of prior to trial, through settlement or motion. Tables 13, 14, and 15 describe the manner in which cases have been concluded in the Northern and Western Districts of New York.

Table 13
Disposition of Employment Discrimination Cases
in the Northern and Western Districts of New York
January 1, 2001 through December 31, 2006

Disposition (Code)	NDNY	WDNY	Upstate Total
Settled	40.89%	36.41%	38.13%
Misc. Dismissals ¹⁵	12.70%	26.88%	21.19%
Motion Before Trial ¹⁶	19.95%	16.13%	17.60%
Dismissed voluntarily by plaintiff	13.05%	9.37%	10.79%
Jury Trials	2.71%	0.77%	1.51%
Bench Trials	0.25%	0.00%	0.09%
Other Dispositions ¹⁷	10.45%	10.44%	10.69%

Table 14
Disposition of Employment Discrimination Cases
in the Northern and Western Districts of New York
January 1, 1997 to December 31, 2000

Disposition (Code)	NDNY	WDNY	Upstate Total
Settled	37.68%	35.03%	36.30%
Misc. Dismissals	10.44%	20.86%	15.72%
Motion Before Trial	20.58%	20.59%	20.58%
Dismissed voluntarily by plaintiff	17.68%	10.43%	13.91%
Jury Trials	2.32%	2.41%	2.36%
Bench Trials	0.58%	0.00%	0.28%
Other Dispositions	10.73%	10.70%	10.85%

¹⁵ "Misc. Dismissals" include those cases dismissed due to lack of jurisdiction, want of prosecution or other miscellaneous reasons.

¹⁶ "Motion Before Trial" includes those cases dismissed through substantive motions to dismiss or motions for summary judgment.

¹⁷ "Other Dispositions" includes those cases disposed of due to a statistical closing, remand or transfer to state court, remand to federal agency or other similar reasons.

Table 15
Disposition of Employment Discrimination Cases
in the Northern and Western Districts of New York
Cumulative Total, 1997 - 2006

Disposition (Code)	NDNY	WDNY	Upstate Total
Settled	39.41%	35.90%	37.39%
Misc. Dismissals	11.32%	24.68%	19.03%
Motion Before Trial	20.24%	17.76%	18.81%
Dismissed voluntarily by plaintiff	15.18%	9.76%	12.05%
Jury Trials	2.53%	1.37%	1.86%
Bench Trials	0.40%	0.00%	0.17%
Other Dispositions	10.92%	10.53%	10.69%

D. How Long Does It Take To Conclude a Case?

Finally, for the 2001-2006 period the average employment discrimination case in Upstate New York was pending 1.54 years (18.5 months) from filing to ultimate disposition, about a 0.29 year (3.48 months) increase from the 1997-2000 period. As Table 16 shows, in the Northern District, cases were settled in an average of 1.48 years (17.8 months), disposed of by motion before trial in 2.19 years (26.3 months), and resolved by jury trial in an average of 2.42 years (29.0 months). Statistics for the Western District were similar, with cases settling in an average of 1.58 years (19.0 months), disposed of by a motion before trial in 2.04 years (24.5 months), and resolved by jury trial in an average of 3.19 years (38.3 months).

Table 16
Average Length of Employment Discrimination Actions
(in years)
January 1, 2001 to December 31, 2006

Disposition (Code)	NDNY	WDNY	Upstate Total
Jury Trials	2.42	3.19	2.67
Bench Trials	2.06	0.00	2.06
Motion Before Trial	2.19	2.04	2.10
Settlement	1.38	1.61	1.52
Misc. Dismissals	1.21	1.37	1.42
All Dispositions	1.48	1.58	1.54

Table 17
Average Length of Employment Discrimination Actions
(in years)
January 1, 1997 to December 31, 2000

Disposition (Code)	NDNY	WDNY	Upstate Total
Jury Trials	2.57	1.88	2.21
Bench Trials	1.99	0.00	1.99
Motion Before Trial	1.46	1.53	1.50
Settlement	1.29	1.27	1.28
Misc. Dismissals	0.62	1.07	0.85
All Dispositions	1.21	1.25	1.23

Table 18
Average Length of Employment Discrimination Actions
(in years)
Cumulative Total, 1997-2006

Disposition (Code)	NDNY	WDNY	Upstate Total
Jury Trials	2.49	2.35	2.43
Bench Trials	2.01	0.00	1.07
Motion Before Trial	1.85	1.83	1.83
Settlement	1.34	1.49	1.42
Misc. Dismissals	1.11	1.32	1.27
All Dispositions	1.35	1.46	1.42

IV. Trends and Conclusions

When comparing the data reviewed in our 2001 Study to the data reviewed in this 2007 Study, several trends can be noted.

First, the Northern and Western Districts are seeing a smaller portion of their dockets taken up by employment discrimination litigation.

Second, the Northern and Western Districts are seeing a slight shift in the types of claims asserted by plaintiffs, with an increase in the percentage of race claims and a decrease in the percentage of sex, age and disability claims.

Third, cases are somewhat more likely to be settled, with 1.83% more cases being settled in the January 1, 2001 through December 31, 2006 time period than in the prior period. However, plaintiffs tend to be less willing to dismiss a case voluntarily, with 3.12% fewer cases being dismissed on this basis. Further, fewer cases are being disposed of by motion before trial (substantive motions to dismiss and/or motions for summary judgment), while slightly more cases are being disposed of by miscellaneous dismissals (motions based on lack of jurisdiction or want of prosecution).

Fourth, litigants are seeing an increase in the amount of time between the filing and the conclusion of a case. Overall, it took 0.31 of a year (3.72 months) longer for a case to be disposed of in Upstate New York between 2001 and 2006 than it did between 1997 and 2000. Jury trials saw an increase in time from filing until ultimate disposition of approximately 0.46 years (5.52 months), while it took an additional 0.07 years (just less than 1 month) for cases to be disposed of by bench trial.

Finally, in terms of bench and jury trials, defendants continue to prevail more often than plaintiffs in employment cases, contrary to national trends for jury trials. With respect to jury trials, the median damages award in Upstate New York has increased by \$123,998, while the median attorneys' fee award has increased by \$6,531.

About Bond, Schoeneck & King, PLLC

A full service firm with 160 attorneys and offices in New York, Florida and Kansas, BS&K has been engaged in the practice of Labor and Employment Law since the passage of the National Labor Relations Act in 1935. With nearly 60 labor, employment and employee benefits attorneys, BS&K has one of the largest workplace practices in the Northeast. Our clients include Fortune 500 corporations, regional and local businesses, manufacturers, colleges and universities, healthcare institutions, public employers, utilities and other service industry employers throughout the country.

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