



Jury Trials in 2024: Seyfarth's Employment Trial Team on Lessons from the Front Lines

Part 2: Throw Out the Old Litigation Playbook

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Seyfarth Shaw LLP

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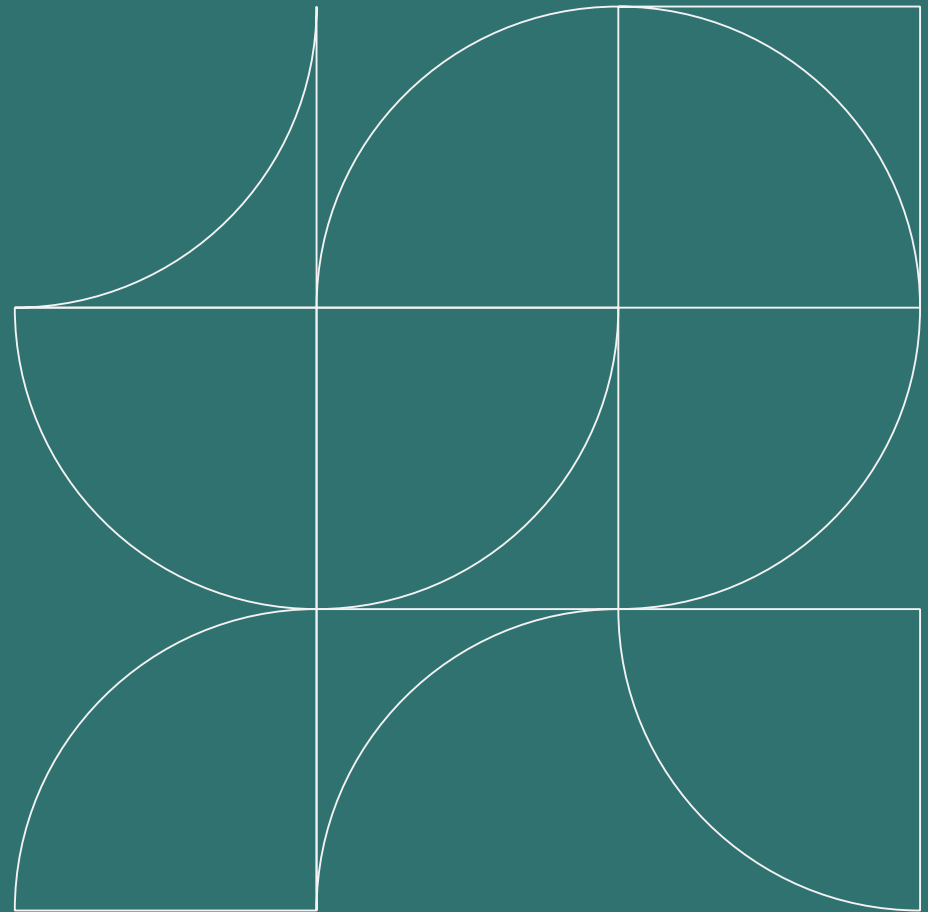


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Agenda

- 01** Tides of Change – The old way and what has changed
- 02** Adjusting Litigation Strategy
- 03** Practical Tips for Bullet-Proofing Pre-Trial Preparation

Tides of Change

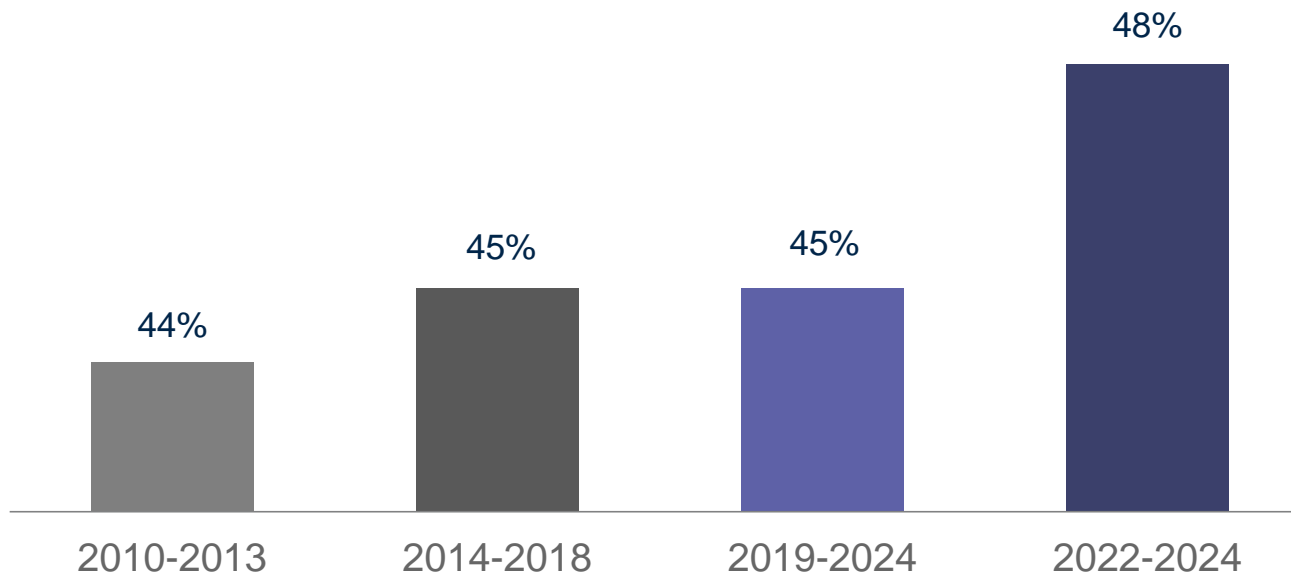


The “Old” Way



- Where possible, the focus is on creating a record for summary judgment
- Plaintiff’s deposition is used to get clear admissions to support motion
- Often driven by the *McDonnell Douglas/Burdine* burden shifting analysis

More Cases Are Surviving Summary Judgment

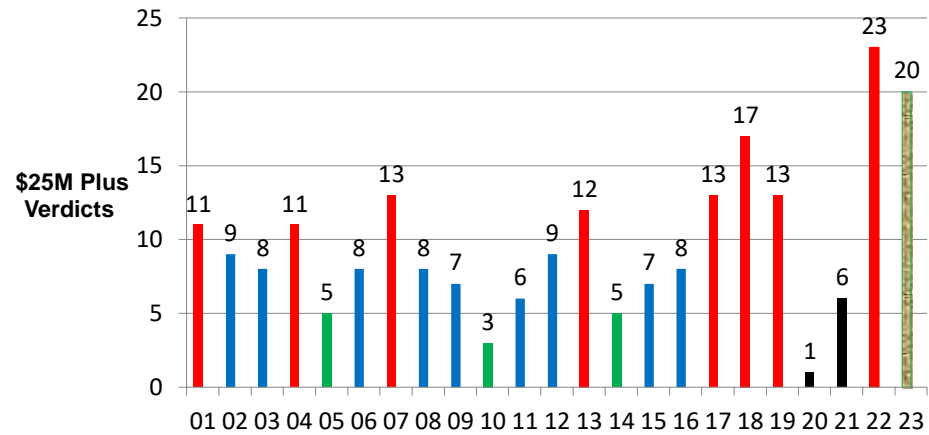


Percentage of cases surviving summary judgment in federal discrimination, harassment, and retaliation cases from 2010-2024

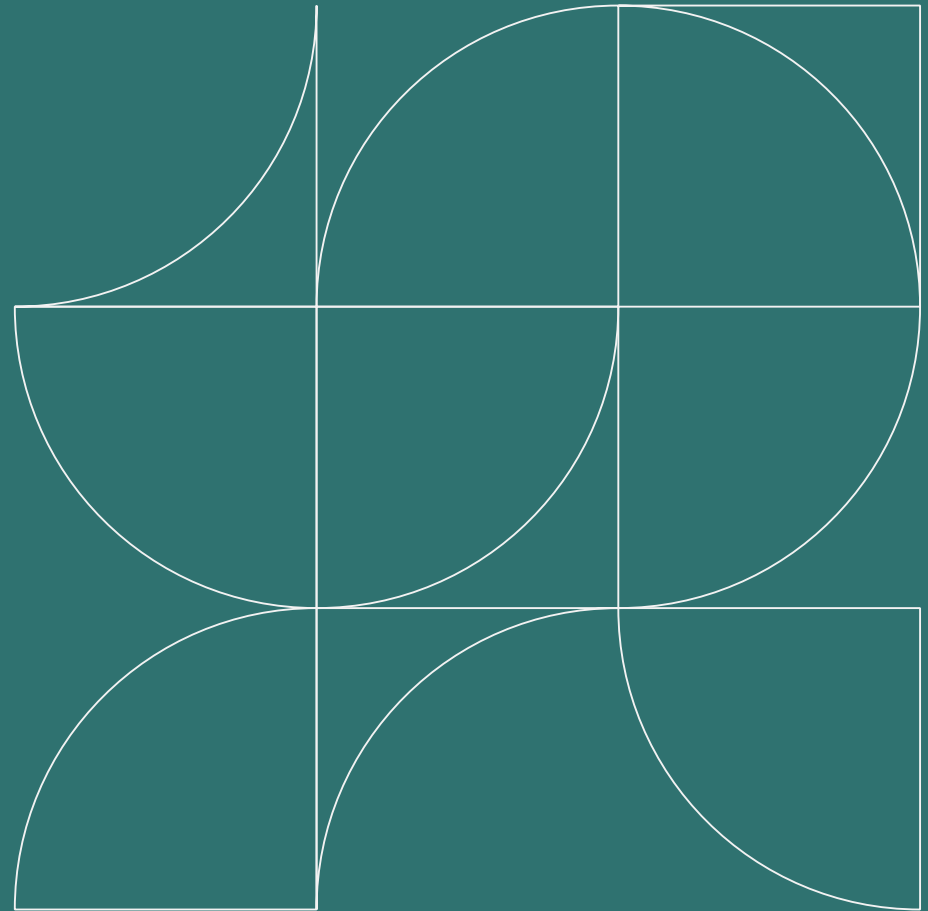
Era of Explosive Verdicts

\$25M+ Verdicts, 2001-23

Data known as of 10/31/2023



Adjusting Litigation Strategy



Trial-Focused Discovery Strategy



Jury Instructions

- Jury instructions should guide case strategy from the start
- Roadmap for entire case
- This means having a work draft early (during discovery!)



Written Discovery & Privilege Issues

- Employers have a legitimate right to withhold privileged information from discovery
- Plaintiffs' bar is trying to portray an employer's use of privilege as hiding something from the jury
- Plays on juries' suspicions about corporations



Plaintiff's Deposition



- Let the plaintiff talk!
- Opportunity to identify themes for trial
- Not trying to get perfect answers to leading questions – save that for trial

Depositions of Employer Witnesses

- Critically important for trial preparation
- Witnesses job is to shape the story that gets told at trial
- Must be prepared for deposition, but also must understand their role in the bigger picture



Using Discovery to Develop Themes for Trial

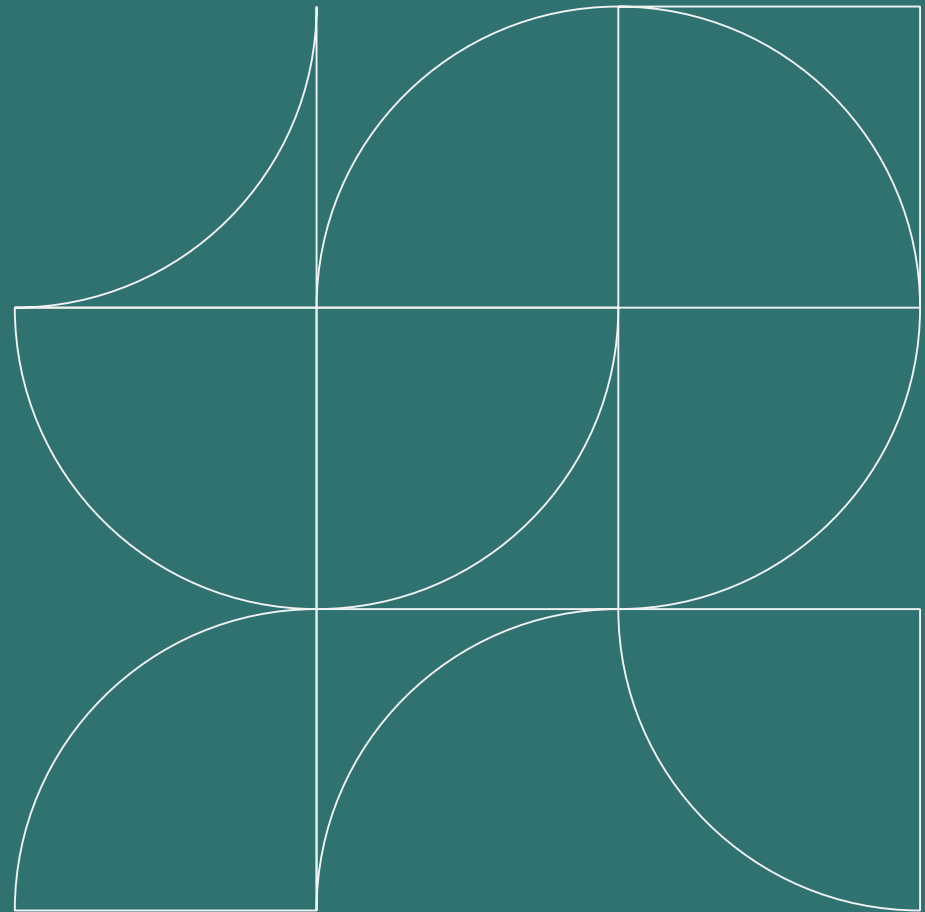
- Keep running list of thoughts, themes, story throughout discovery



Settlement

- Many cases settle well before trial, but explosive jury verdicts are making this harder
- A focus on preparing for trial may aid settlement leverage

Practical Tips for Bullet-Proofing Pre- Trial Preparation



COVID Delays



Witness Preparation

- Company witnesses should have a good idea of their role in the case from deposition preparation
- Important to meet with witnesses early and often to prepare for trial





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