

PUBLICATION

Trial-Focused Team Reduces Demand by 94 Percent in Settlement for National Department Store Chain

Authors: David Gevertz

December 02, 2019

Q: Can you provide a brief overview of the case?

A: The plaintiff filed Sarbanes-Oxley and Dodd-Frank whistleblower claims, as well as a defamation claim, in the Northern District of Alabama against a publicly-held national department store chain. Specifically, he asserted that he was fired because he discovered and threatened to expose fraudulent activity on the part of department store employees who were manipulating internal figures reflecting the number of customers who applied for company-branded credit cards. This activity, he asserted, occurred nationwide and was material enough to have been disclosed in its financial reports, but was not. He also contended that this manipulation constituted wire fraud and occasionally led to identity theft of store customers by store employees. Finally, he claimed that his subsequent efforts to find employment were impeded by the client's whisper campaign that he was fired for his own integrity violations, thus constituting defamation per se. For its part, the client asserted that it terminated the plaintiff's employment on account of sustained interpersonal deficiencies, including the use of racially insensitive language and abuse of subordinates, often women and people of color. The company asserted truth and scope of employment defenses to the defamation claims.

The plaintiff sought backpay, extensive front pay, special damages, compensatory damages, punitive damages, and attorney's fees and costs. He was represented by three law firms, including a California firm with significant and well-publicized whistleblowing experience against Uber and other nationally prominent organizations.

Q: In a case with a lot of issues and moving parts like this, how do you develop an effective trial team without losing focus of the key issues?

A: [Jenna Bedsole](#) brought in the client and remained actively involved throughout the case, including throughout extensive depositions in Texas, Florida, Georgia, Alabama, and Wisconsin. She looped in [Hannah Jarrells](#) and me for assistance. As the case grew from large to very large, we delegated certain discovery tasks but agreed that at least one of us would be present for every deposition and hearing, and that at least one of us would exercise primary oversight for every filed brief. Maintaining that consistent team, and ensuring each team member was copied on and privy to every aspect of the case, was critical to our ability to work seamlessly.

Q: How did you manage the large volume of documents produced in the litigation?

A: This case involved the production of about 45,000 discrete documents, including voluminous spreadsheets that were never intended to be seen, much less understood, outside of the client's Credit Department. Luckily, Hannah has a financial acumen and knack for understanding a client's artificial intelligence-driven metrics and reports. The rest of the documents were primarily email chains that Ercy Castro was able to import and upload into our litigation support software. From there, we utilized keyword and custodian searches but concentrated the actual review to the core team in order to ensure that we understood how discrete parts of the case fit

together. We made extensive use of our outside vendor, which provided technical knowledge and a state-of-the-art review platform in order to accomplish the review.

Q: A lot of firms outsource trial graphics and presentation of evidence services. How did you handle these tasks in your lawsuit?

A: We outsourced some trial graphics, including an extensive story board, to a local graphics team we've used before. Other graphics, including timelines, organizational charts with photos of key trial witnesses, and photographic demonstratives, were created in-house by Leslie Goforth, an Atlanta legal assistant who has been doing this for years. She also edited video deposition excerpts for use at trial, which Ercy Castro leveraged to split the screen and show the jury specific exhibits the witnesses were referencing during their testimony.

Q: How important was it, in your view, to demonstrate a willingness to actually take a case like this to trial?

A: Until the final 72 hours, we did not have any settlement discussions during the months leading up to trial. Plaintiff's counsel's demand was simply far outside any reasonable value of the case to our client. For that reason, we never wavered from our belief that the case would be tried. So we filed exhaustive motions in limine, objections to the plaintiff's 250+ trial exhibits, jury charges, proposed voir dire, etc. While we don't know what caused plaintiff's counsel to reach out to us the weekend before trial, they ended up dropping their prior demand by 94 percent, which led to a settlement.

Even then, the team agreed to have Jenna handle all of the settlement dialogue while the rest of the group prepared for trial. Segregating the settlement dialogue from the trial preparation was helpful for everyone in that it did not distract from the team's trial preparation and offered the client significant leverage in negotiating the lowest possible amount knowing full well that we would show up for the first day of trial fully prepared.

Q: What lessons did you take away from this experience?

A: The Firm is blessed with an extraordinary range of resources. We were able to work across offices with little friction on account of our litigation software, WebEx offering, and geographic proximity to one another. We also have a deep bench of trial lawyers, not just "litigators," whom we were able to use as resources whenever we got stuck on a particular rule of evidence or opposing counsel tactic. It was enormously helpful for me to be able to pick up the phone or walk down the hall to solicit advice from these veterans.