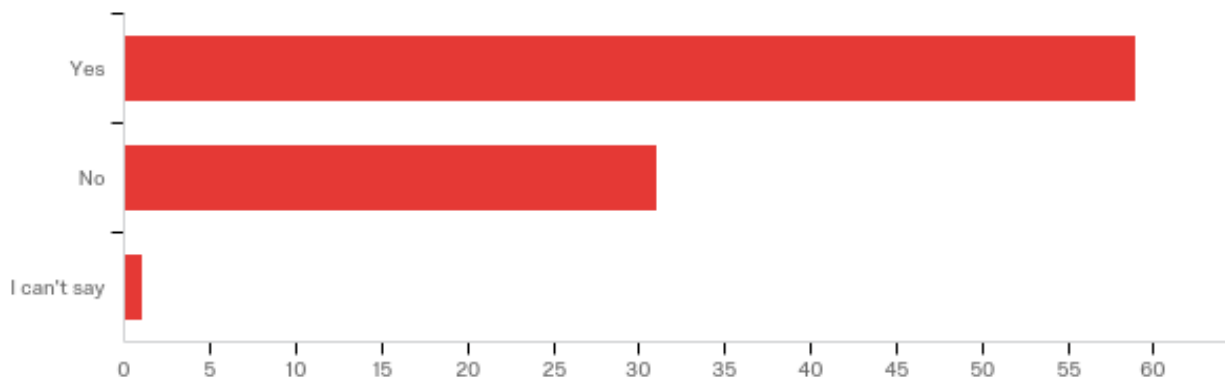


# National Case-Based Survey of Counsel Regarding Discovery, Electronic Discovery, Litigation Practices, and the Costs of Civil Litigation

In February 2019, the Duke Law-Bolch Judicial Institute forwarded this survey to a national random sample of attorneys in federal court cases, which terminated in the last quarter of 2018. The survey contained questions that were similar to the ones asked by the Federal Judicial Center in their 2009 study, which was intended to aid the Judicial Conference Advisory Committee on Civil Rules. (Please note that the numbering of questions includes gaps, which were caused by eliminating certain questions not relevant to this survey.)

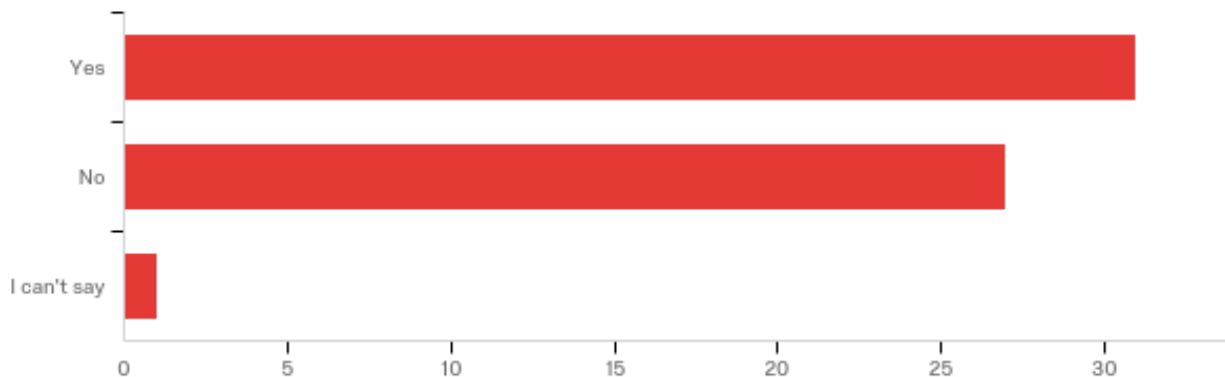
The number of respondents (91) is insufficient to draw meaningful inferences or conclusions. But the responses may provide useful insights.

**1 - After the filing of the complaint and before the first pretrial conference, did you or any attorney for your client confer with opposing counsel—by telephone, correspondence, or in- person—to plan for discovery in the named case?**



Answer	%	Count
Yes	64.84%	59
No	34.07%	31
I can't say	1.10%	1
Total	100%	91

**2 - If Yes, did the conference to plan for discovery include discussion of electronically stored information?**



Answer	%	Count
Yes	52.54%	31
No	45.76%	27
I can't say	1.69%	1
Total	100%	59

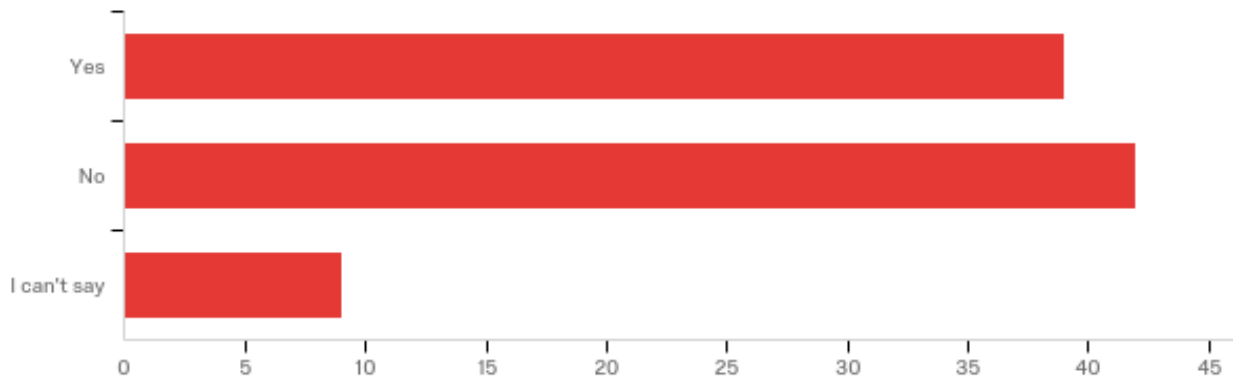
**3 - If Yes, did the discussion of discovery of electronically stored information include any of the following topics related to collection (Check all that apply):**

#	Answer	%	Count
a.	Restricting the scope or avoiding altogether the discovery of electronically stored information	47.62%	10
b.	The scope, cost, method, or duration of preserving electronically stored information	47.62%	10
c.	The parties' practices with respect to retention of electronically stored information	66.67%	14
d.	The potential cost or burden of collecting, reviewing, and producing electronically stored information	33.33%	7
e.	The possibility of phased discovery of electronically stored information	19.05%	4
f.	Whether potentially responsive information was stored on a device or in a format that a party considered "not reasonably accessible"	19.05%	4
g.	The possibility of sampling electronically stored information from a particular source to determine if production was justified	9.52%	2
h.	Issues relating to information contained in dynamic data bases	0.00%	0
i.	Issues relating to Instant Messaging, Voicemail, VoiceoverIP and the like	9.52%	2
j.	Use of culling techniques such as date ranges or file extensions	28.57%	6
k.	Methods of searching for or reducing the scope of responsive documents by topic, including but not limited to the use of keyword search terms or deduplication for electronic documents	57.14%	12
l.	Methods of searching for or reducing the scope of responsive documents by custodian or location regarding electronically stored information	47.62%	10
	Total	100%	21

**4 - Did the discussion of discovery of electronically stored information include any of the following topics related to production (Check all that apply):**

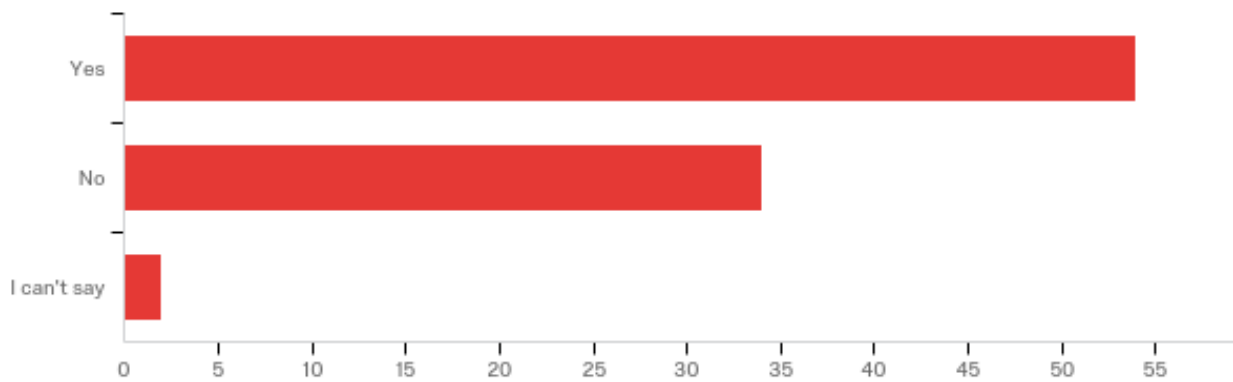
#	Answer	%	Count
a.	Format of production of electronically stored information (pdf, tiff, native format)	76.00%	19
b.	The need for, or content of, accompanying load files (files used to import code or images into a database)	16.00%	4
c.	Media on which the parties routinely maintain electronically stored information	20.00%	5
d.	Media of production of electronically stored information (e.g., paper printouts, compact disks, hard drives)	40.00%	10
e.	Document indexing or other method of organizing responsive electronic documents	12.00%	3
f.	The production of metadata (metadata is information regarding the history or management of an electronic file usually not apparent to a reader viewing a hard copy or screen image)	36.00%	9
g.	Methods of handling confidential or trade secret information, privileged communications, or information subject to work-product privilege	44.00%	11
h.	Privilege log issues	48.00%	12
i.	An agreement to permit a producing party to "claw back" or retract privileged material inadvertently produced	56.00%	14
j.	An agreement to permit a requesting party to take a "quick peek" at documents prior to privilege review without the producing party's waiver of privilege	8.00%	2
	Total	100%	25

5 - Did your client place a “litigation hold” or “freeze” on deletion of electronically stored information in anticipation of or in response to the filing of the complaint in the named case?



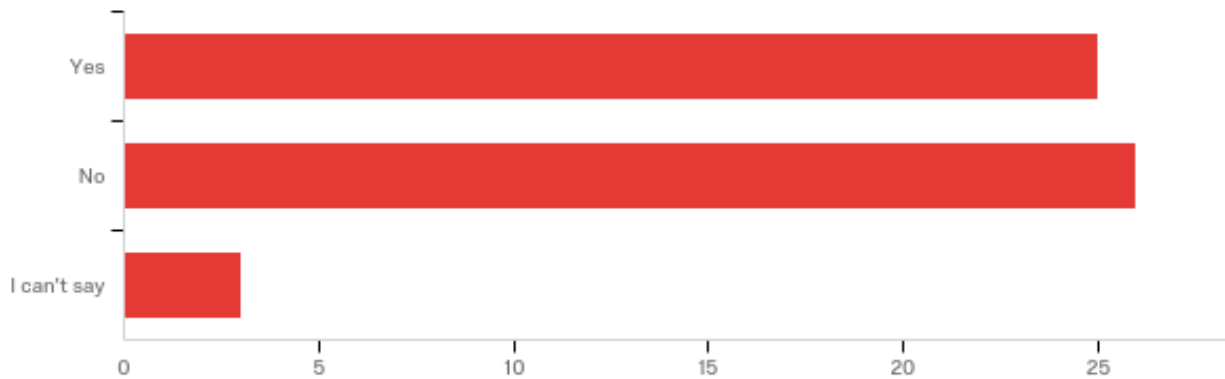
	Answer	%	Count
	Yes	43.33%	39
	No	46.67%	42
	I can't say	10.00%	9
	Total	100%	90

6 - Did the court adopt a discovery plan?



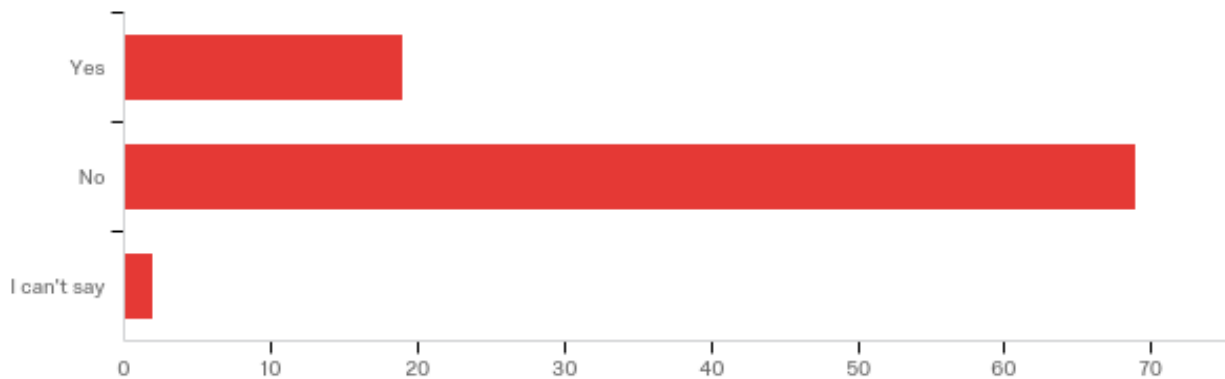
	Answer	%	Count
	Yes	60.00%	54
	No	37.78%	34
	I can't say	2.22%	2
	Total	100%	90

**7 - If Yes, did the discovery plan include provisions related to electronically stored information?**



Answer	%	Count
Yes	46.30%	25
No	48.15%	26
I can't say	5.56%	3
Total	100%	54

**8 - Before discovery began, did the parties agree how they would address the inadvertent disclosure of privileged materials through discovery?**



Answer	%	Count
Yes	21.11%	19
No	76.67%	69
I can't say	2.22%	2
Total	100%	90

**9 - What types of discovery occurred in the named case? Where indicated, please provide additional information (Check all that apply):** Text boxes are provided after selected questions in which you can provide additional information.

#	Answer	%	Count
a.	Initial disclosure of non-expert documents, including but not limited to electronically stored documents	63.51%	47
b.	Informal exchange of documents, including but not limited to electronically stored documents	43.24%	32
c.	If informal exchange of documents, including but not limited to electronically stored documents were not used, did you discuss making an informal exchange with counsel for the other side?	13.51%	10
d.	Informal exchange of other materials	17.57%	13
e.	Interrogatories	67.57%	50
f.	Request for production of documents, including but not limited to electronically stored documents	63.51%	47
g.	Disclosure of expert reports: How many expert witnesses did each side identify? Your side:	29.73%	22
h.	Disclosure of expert reports: How many expert witnesses did each side identify? The opposing side:	28.38%	21
i.	Depositions of experts: How many experts did your side depose?	24.32%	18
j.	Depositions of experts: How many experts did the opposing side depose?	18.92%	14
k.	How many expert depositions lasted more than seven hours?	17.57%	13
l.	Depositions of non-experts: How many non-experts did your side depose?	44.59%	33
m.	Depositions of non-experts: How many non-experts did the opposing side depose?	43.24%	32
n.	How many non-expert depositions lasted more than seven hours?	39.19%	29
o.	Requests for admission: How many requests were propounded? Your side:	33.78%	25
p.	Requests for admission: How many requests were propounded? Opposing side:	28.38%	21
q.	Physical or mental examination	6.76%	5
r.	Inspection of property, computer equipment or media, or designated objects	5.41%	4
s.	Third-party subpoenas: How many third-party subpoenas were issued? Your side:	31.08%	23
t.	Third-party subpoenas: How many third-party subpoenas were issued? The opposing side:	31.08%	23
	Total	100%	74

9(a) If informal exchange of documents, including but not limited to electronically stored documents were not used, did you discuss making an informal exchange with counsel for the other side?

We had the initial exchange and served document demands and interrogatories on each other.

No.

No discovery occurred in this case. The complaint was a request for an injunction. When the judge denied the emergency nature of the request, there was no reason to go forward and the case was dismissed before the defendant answered

Removed bad house case. We exchanged reports and mediated early. Case settled.

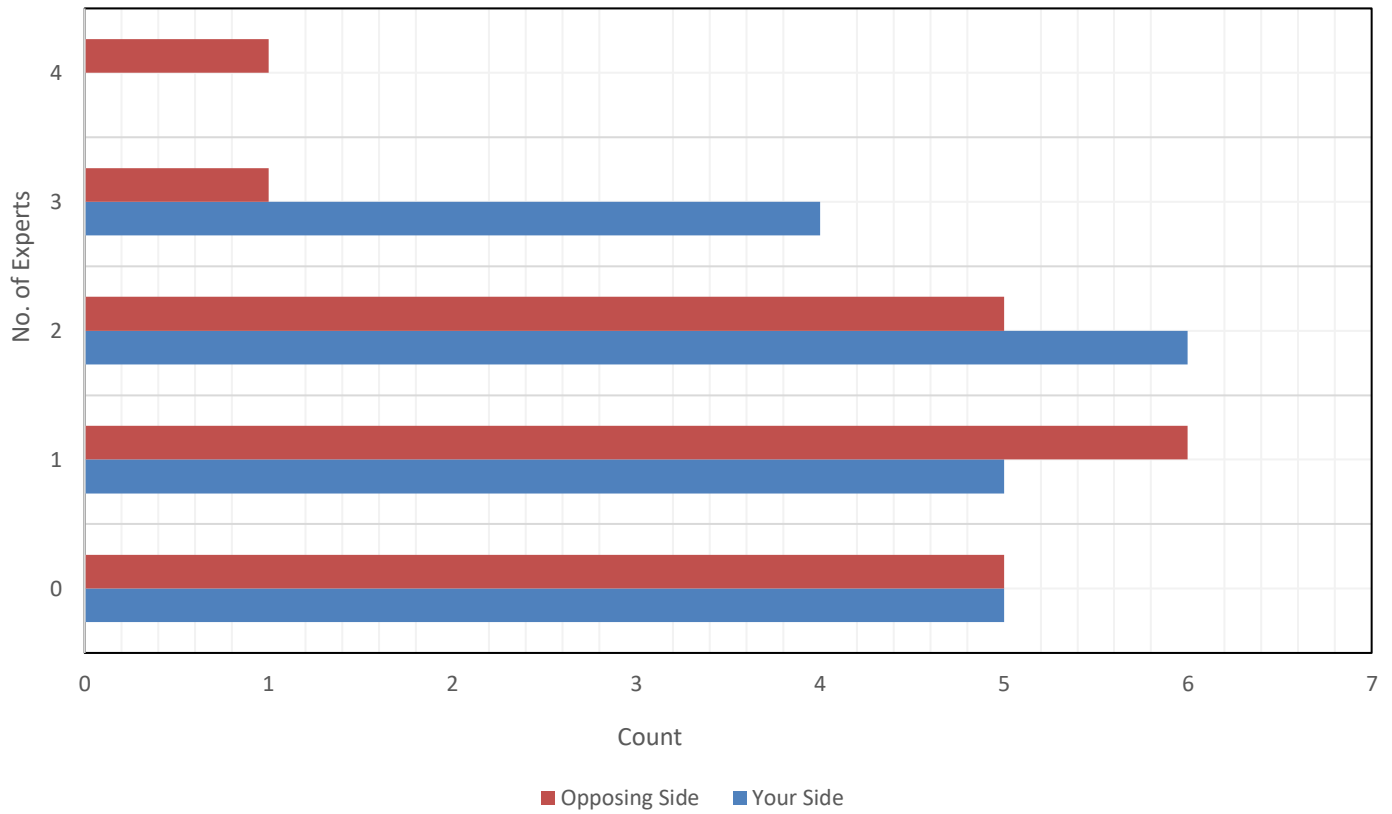
Written discovery and depositions of parties and a healthcare provider

No discovery has occurred in case; parties have been litigating judgment on the pleadings.

There was no discovery. The judge treated a 12(b)(6) motion as a motion for summary judgment and entered judgment for the plaintiffs based on the law and the absence of any genuine issue of material fact.

The case was an appeal from the administrative hearing under the IDEA. In such cases, the appeal is from the record at hearing, and thus no discovery

## Disclosure of Expert Reports

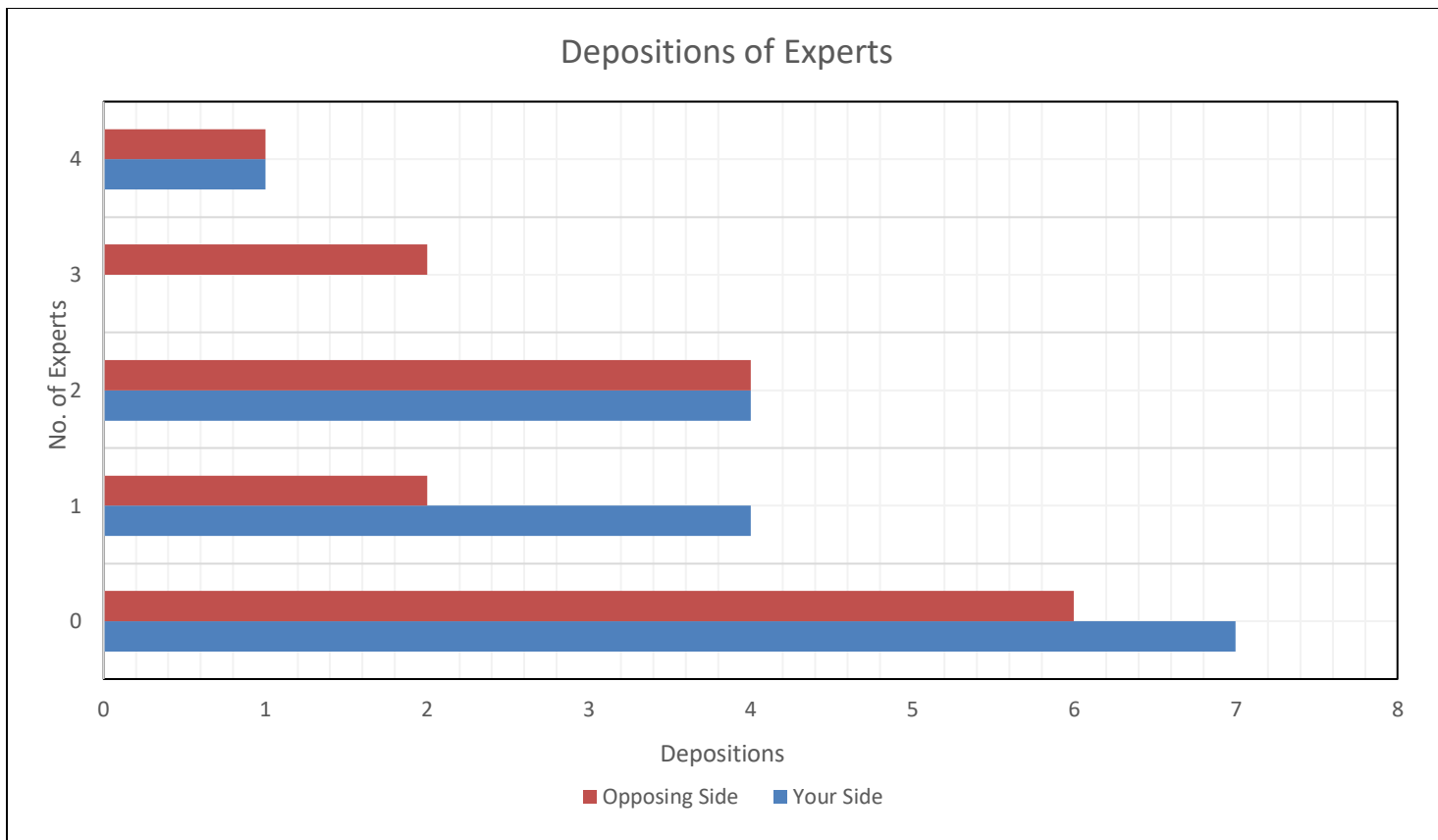


9(b) Disclosure of expert reports: How many expert witnesses did each side identify? Your side: -

Answer	Count
0	5
1	5
2	3
3	4
4	0

9(c) Disclosure of expert reports: How many expert witnesses did each side identify? The opposing side:

Answer	Count
0	5
1	6
2	5
3	1
4	1



9(d) Depositions of experts: How many experts did your side depose?

Answer	Count
0	7
1	4
2	4
4	1

9(e) Depositions of experts: How many experts did the opposing side depose?

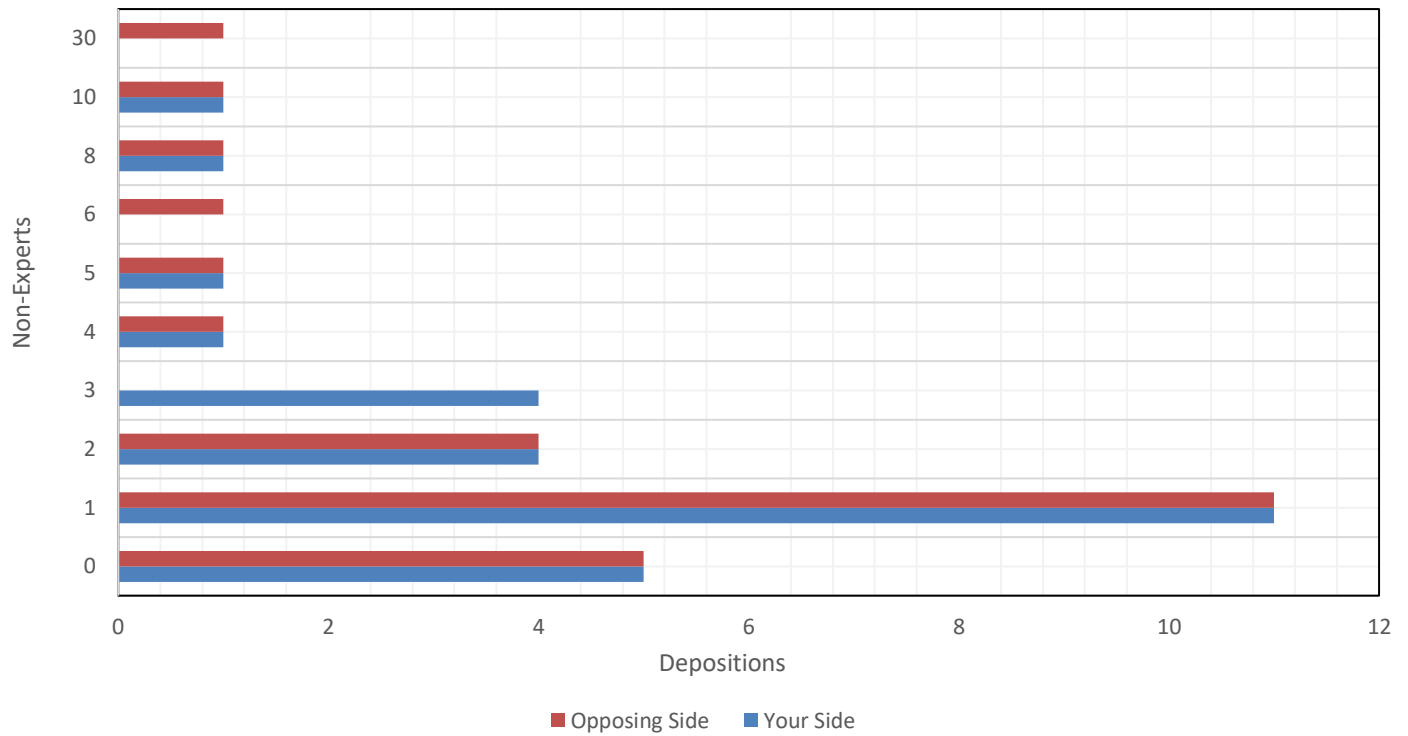
Answer	Count
0	6
1	2
2	4
3	2

9(f) How many expert depositions lasted more than seven hours?

Answer	Count
Fewer than 7 hours	11
More than 7 hours	13



## Depositions of Non-Experts

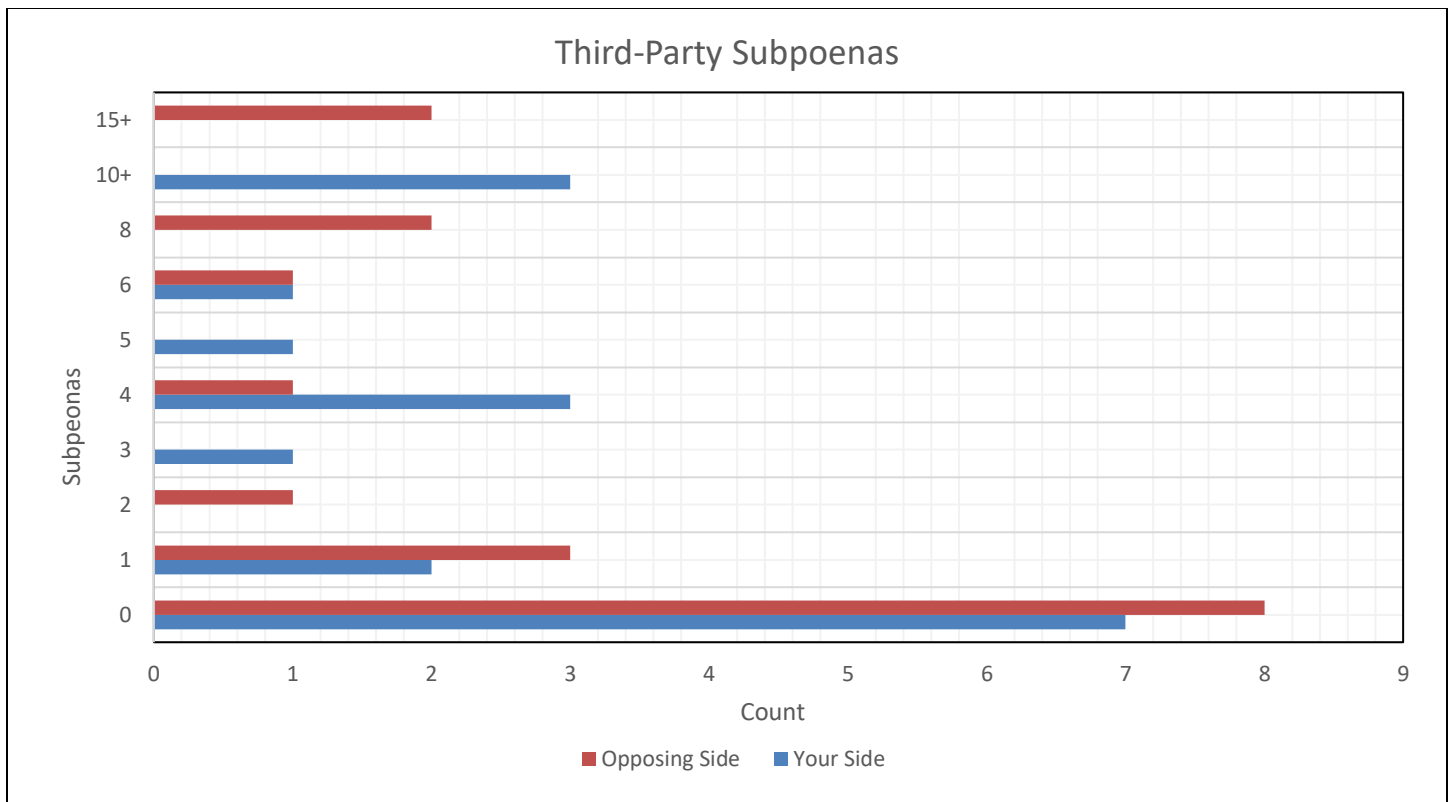


9(g) Depositions of non-experts: How many non-experts did your side depose?

Answer	Count	Answer	Count
0	5	0	5
1	11	1	11
2	4	2	4
3	4	4	1
4	1	5	1
5	1	6	1
8	1	8	1
10	1	10	1
		30	1

9(i) How many non-expert depositions lasted more than seven hours?

Answer	Count
Fewer than 7 hours	27
More than 7 hours	2



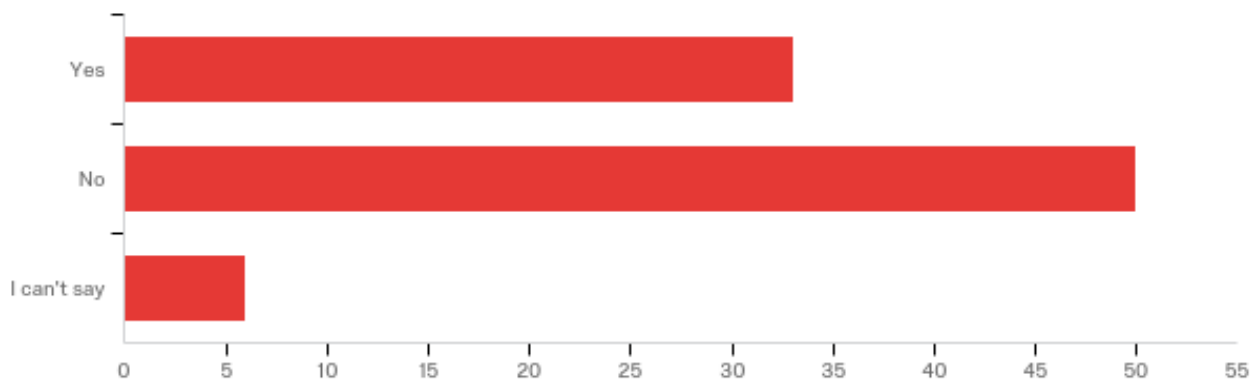
9(s) Third-party subpoenas: How many third-party subpoenas were issued? Your side:

Answer	Count
0	7
1	2
3	1
4	4
5	5
6	6
10+	3

9(t) Third-party subpoenas: How many third-party subpoenas were issued? The opposing side:

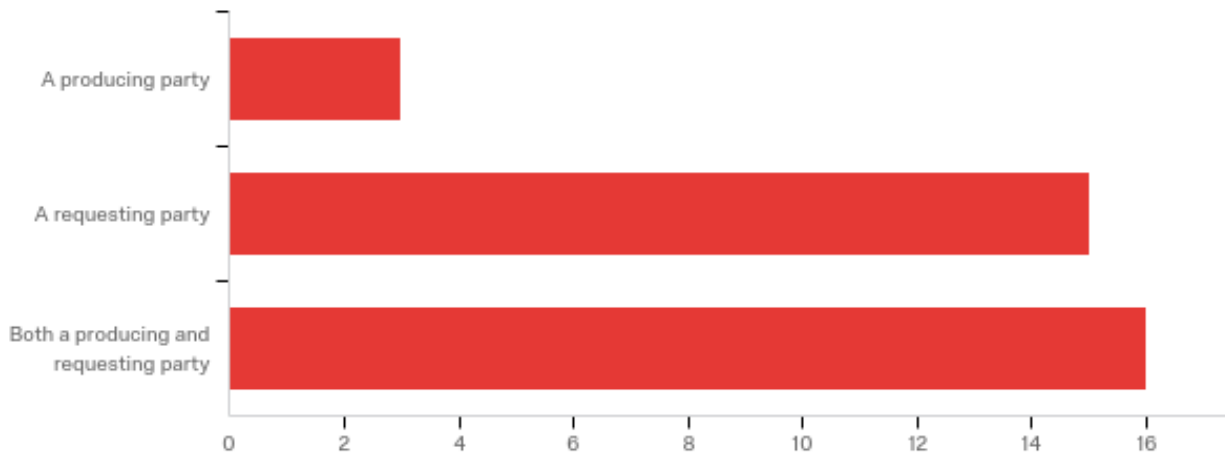
Answer	Count
0	8
1	3
2	1
4	1
6	1
8	2
15+	2

10 - Did any party in the named case request production of electronically stored information?



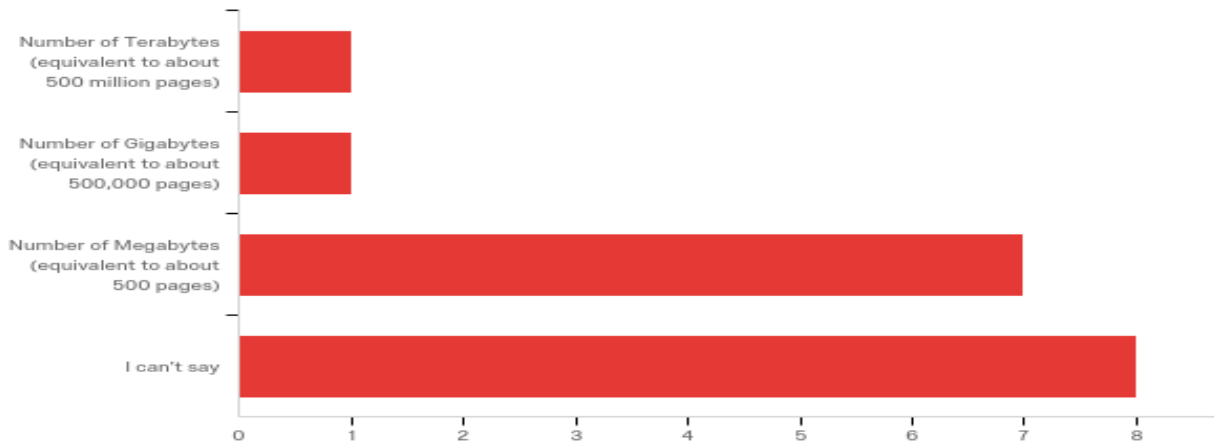
Answer	%	Count
Yes	37.08%	33
No	56.18%	50
I can't say	6.74%	6
Total	100%	89

11 - If yes, with respect to electronically stored information, was your client:



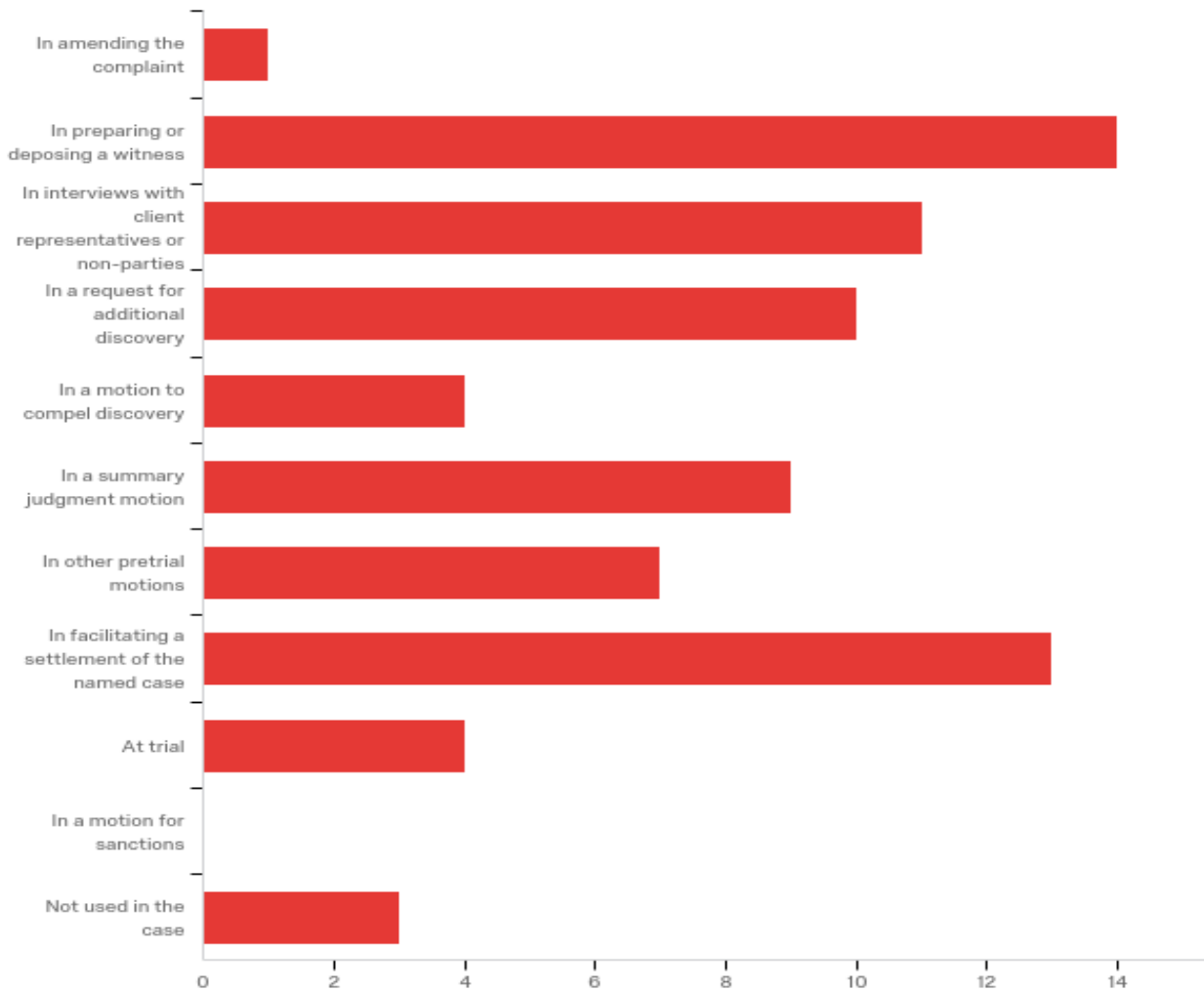
Answer	%	Count
A producing party	8.82%	3
A requesting party	44.12%	15
Both a producing and requesting party	47.06%	16
Total	100%	34

14 - The next set of questions asks about the amount of electronically stored information produced to the requesting party. The amount of information may be estimated using bytes OR by using counts of the media of production (e.g., number of compact disks, number of hardcopy pages). Please estimate, if possible, the amount of electronically stored information produced by your client in the named case in bytes. (Check one)



Answer	%	Count
Number of Terabytes (equivalent to about 500 million pages)	5.88%	1
Number of Gigabytes (equivalent to about 500,000 pages)	5.88%	1
Number of Megabytes (equivalent to about 500 pages)	41.18%	7
I can't say	47.06%	8
Total	100%	17

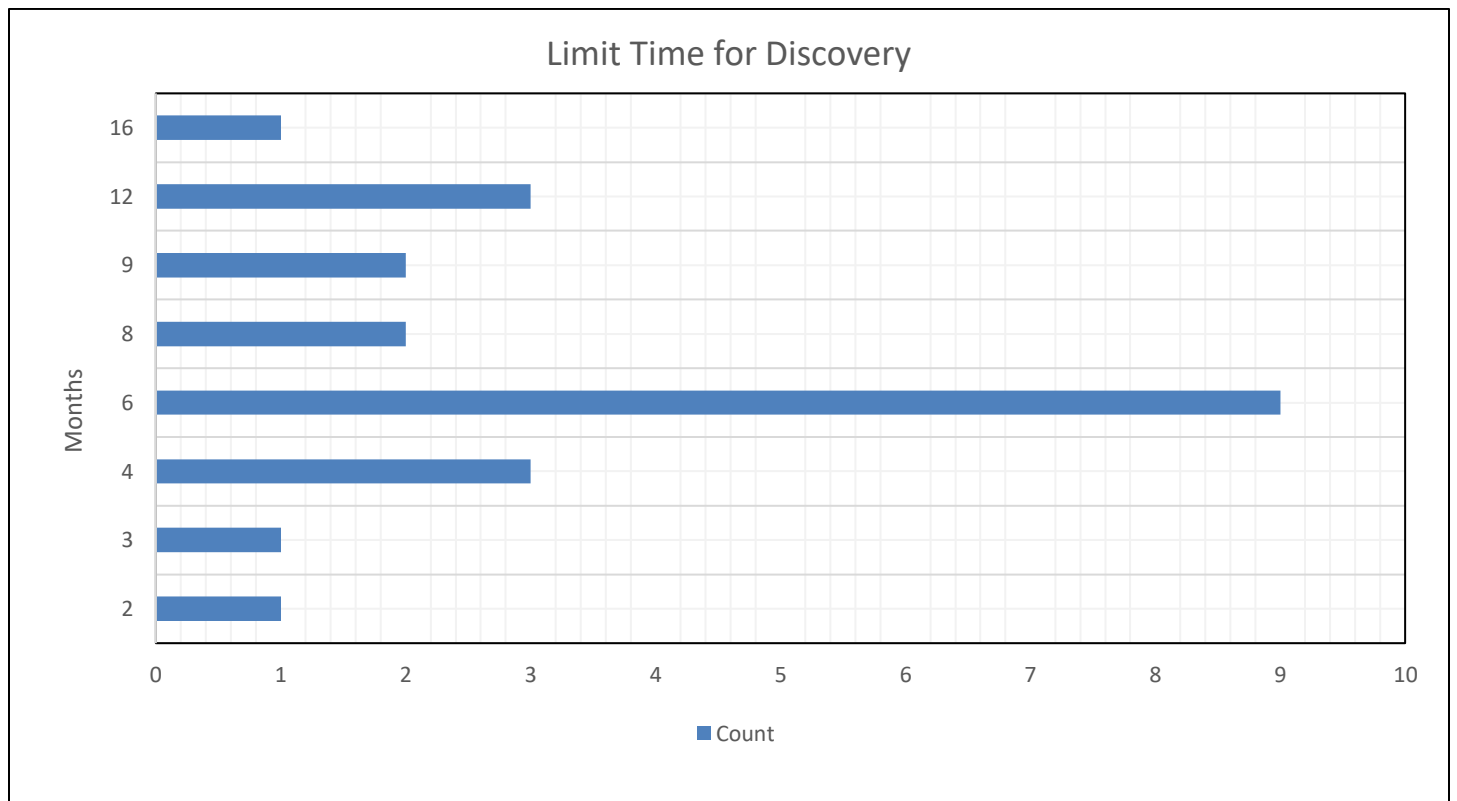
19 - How was the electronically stored information produced through discovery used in the litigation? Please check all that apply:



	Answer	%	Count
	In amending the complaint	3.23%	1
	In preparing or deposing a witness	45.16%	14
	In interviews with client representatives or non-parties	35.48%	11
	In a request for additional discovery	32.26%	10
	In a motion to compel discovery	12.90%	4
	In a summary judgment motion	29.03%	9
	In other pretrial motions	22.58%	7
	In facilitating a settlement of the named case	41.94%	13
	At trial	12.90%	4
	In a motion for sanctions	0.00%	0
	Not used in the case	9.68%	3
	Total	100%	31

**20 - Did a judicial officer, including a special master or other neutral, do any of the following in the named case with respect to discovery in general, including electronic discovery? (Check all that apply)**

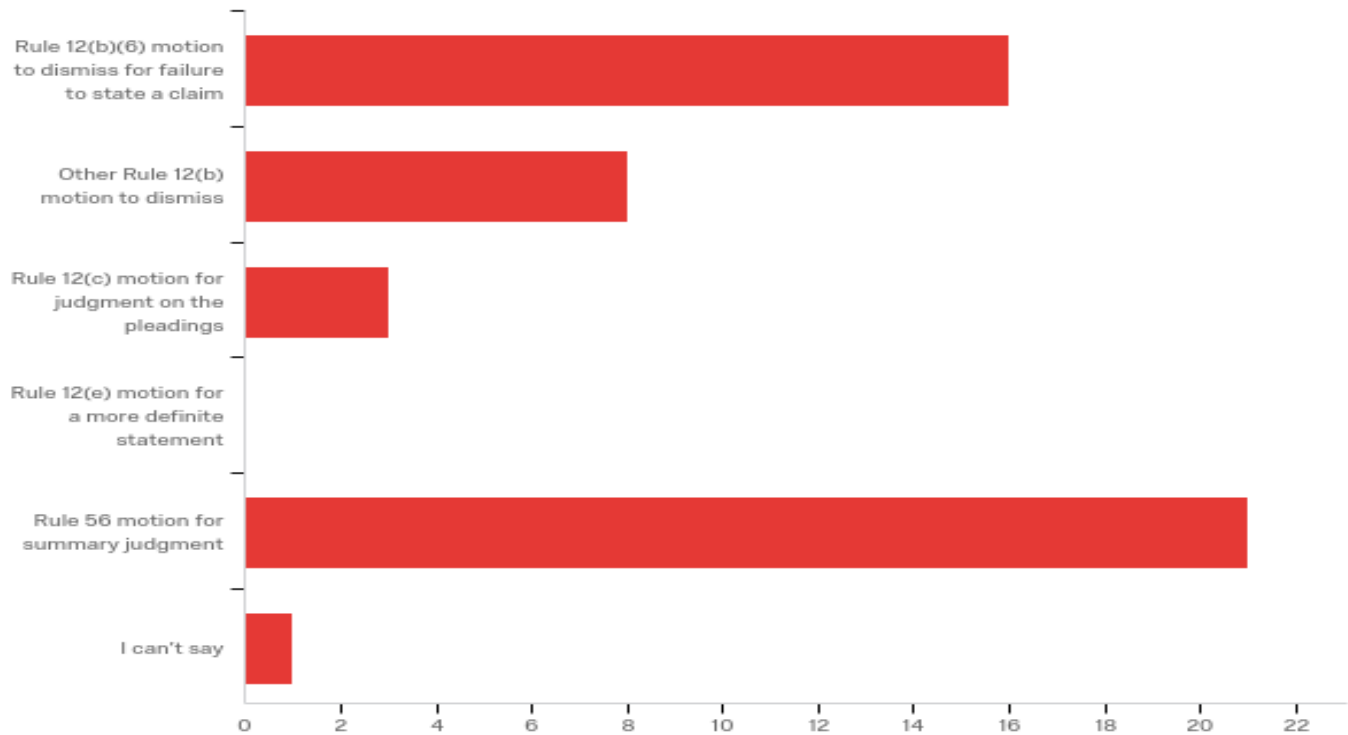
	Answer	%	Count
a.	Hold a conference (by telephone, correspondence, or in-person) to consider a plan involving discovery	67.50%	27
b.	Hold a conference (by telephone, correspondence, or in-person) to address discovery issues not addressed in a discovery plan	22.50%	9
c.	Limit the time for completion of discovery - If so, how many months?	62.50%	25
d.	Appoint a neutral to oversee discovery issues	2.50%	1
e.	Refer any discovery issue to a magistrate judge	20.00%	8
f.	Grant a motion for protective order limiting discovery	27.50%	11
g.	Deny a motion for protective order limiting discovery	5.00%	2
h.	Grant a motion to compel discovery	15.00%	6
i.	Deny a motion to compel discovery	7.50%	3
j.	Rule on any other discovery motion	25.00%	10
k.	Impose sanctions related to discovery	5.00%	2
	Total	100%	40



**20(a) Did the court limit the time for completion of discovery - If so, how many months?**

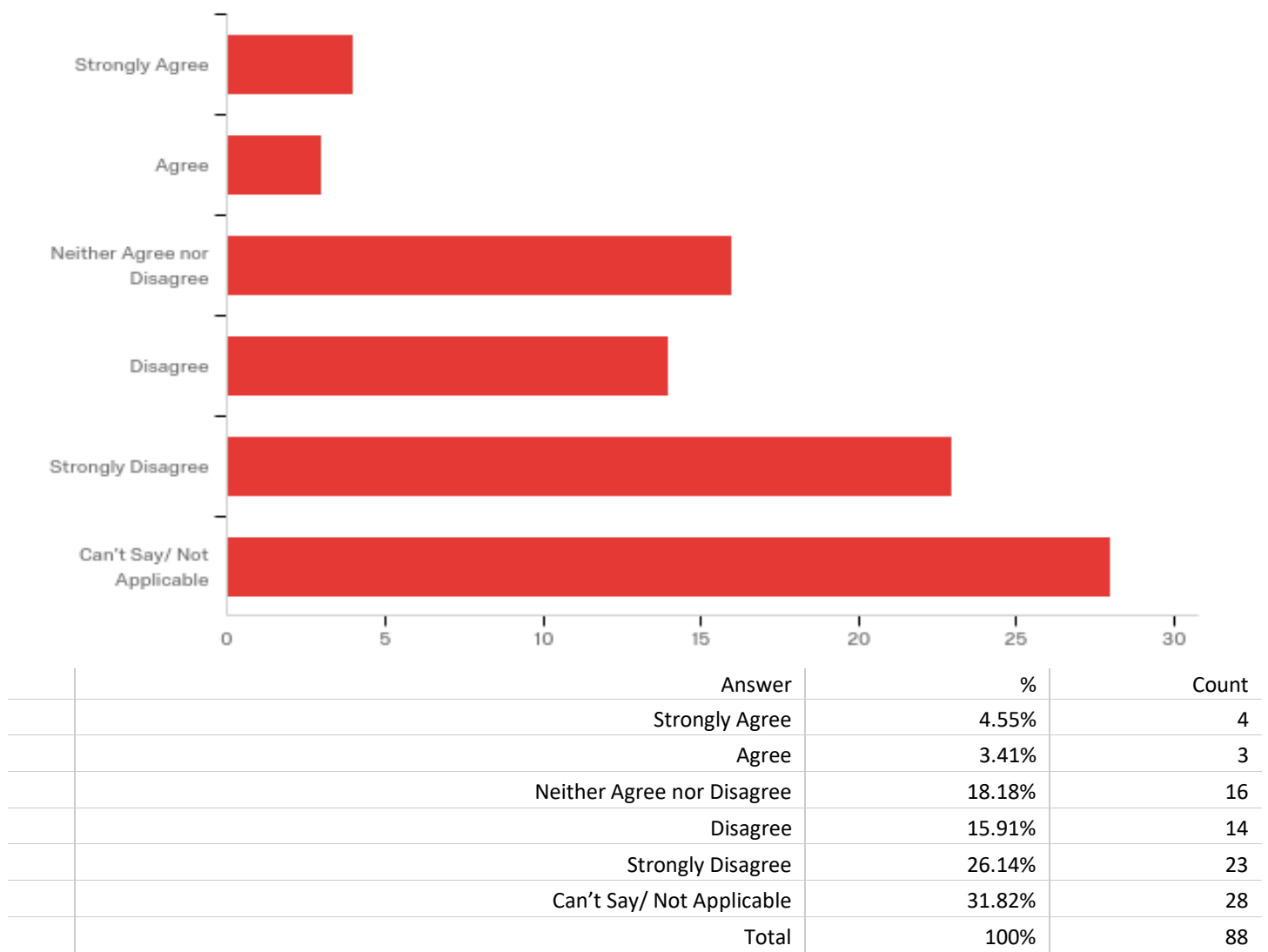
Answer	Count
2 months	1
3 months	1
4 months	3
6 months	9
8 months	2
9 months	2
12 months	3
16 months	1

21 - Did the court rule on any of the following motions? (Check all that apply)

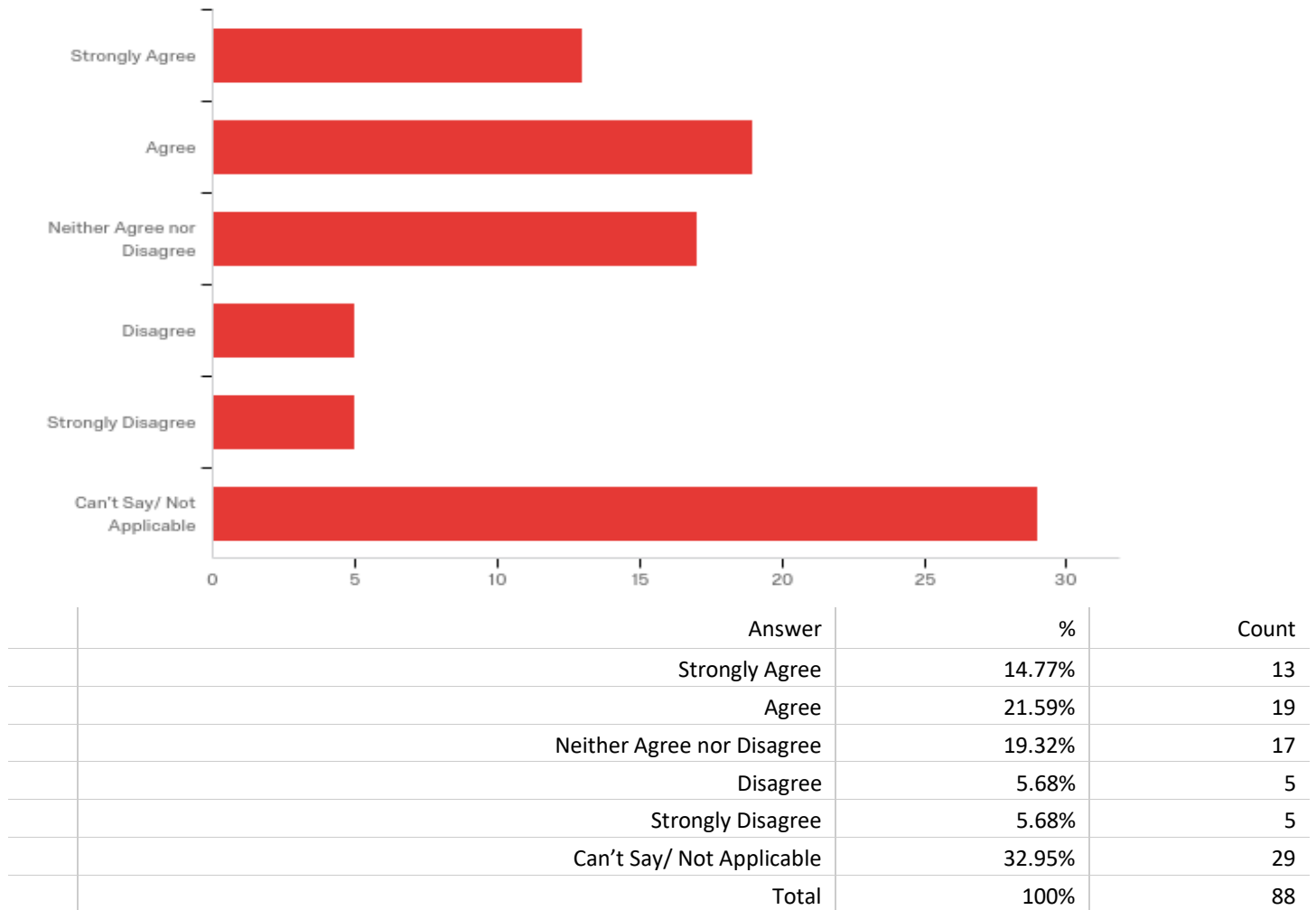


	Answer	%	Count
	Rule 12(b)(6) motion to dismiss for failure to state a claim	43.24%	16
	Other Rule 12(b) motion to dismiss	21.62%	8
	Rule 12(c) motion for judgment on the pleadings	8.11%	3
	Rule 12(e) motion for a more definite statement	0.00%	0
	Rule 56 motion for summary judgment	56.76%	21
	I can't say	2.70%	1
	Total	100%	37

22 - The potential costs of discovery, including but not limited to electronic discovery, to the producing party influenced my client's choice of forum in the named case.

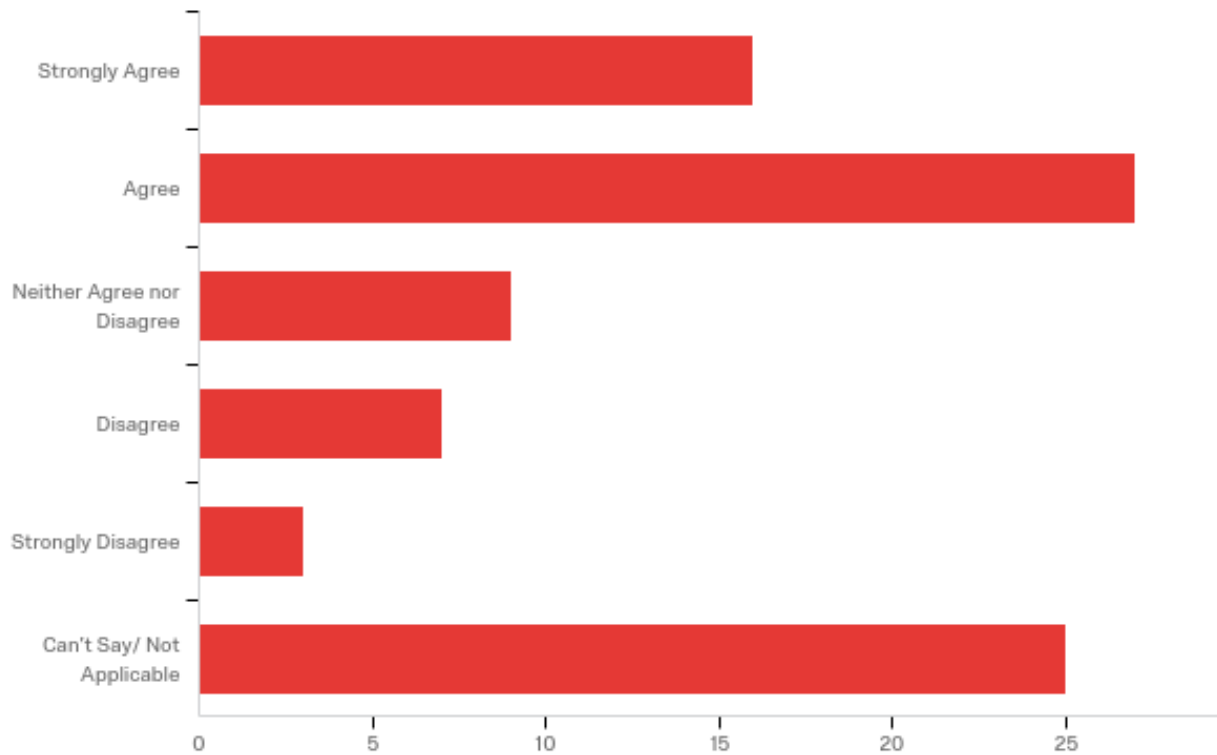


23 - The discovery produced, including but not limited to electronically stored information, increased the fairness of the outcome of the named case.



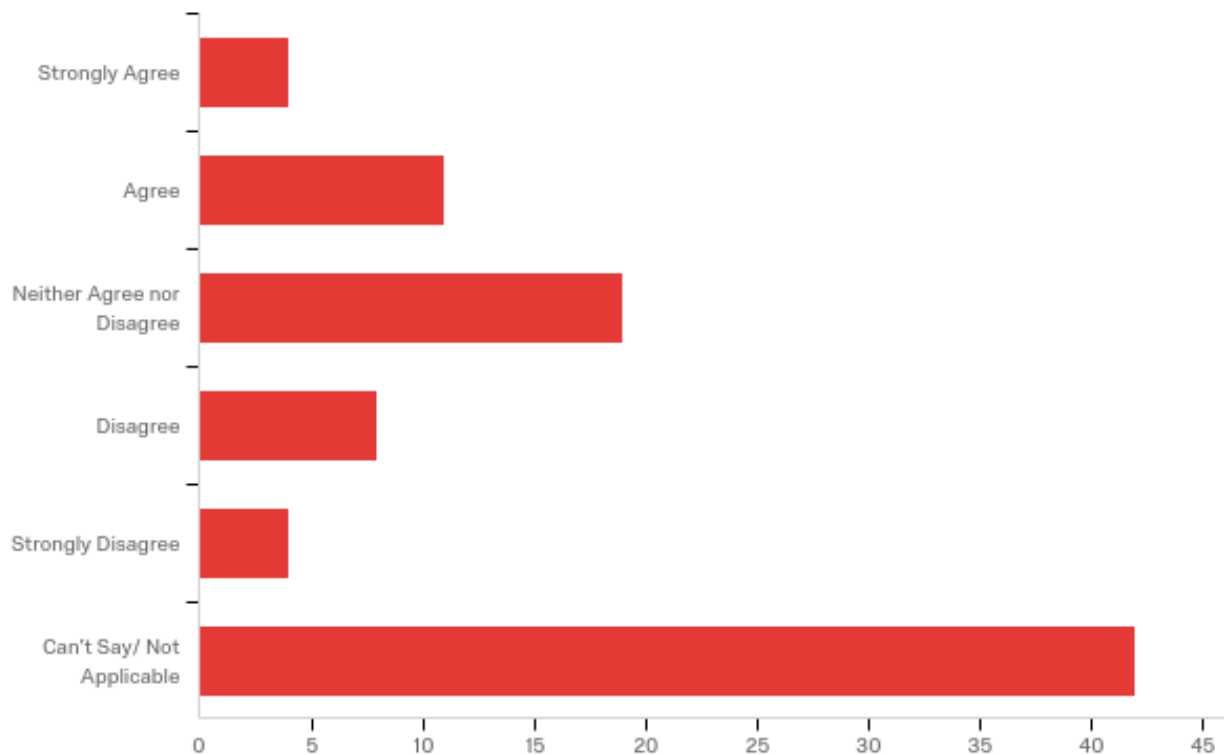


24 - The parties in the named case were able to reduce the cost and burden of the named case by cooperating in discovery.



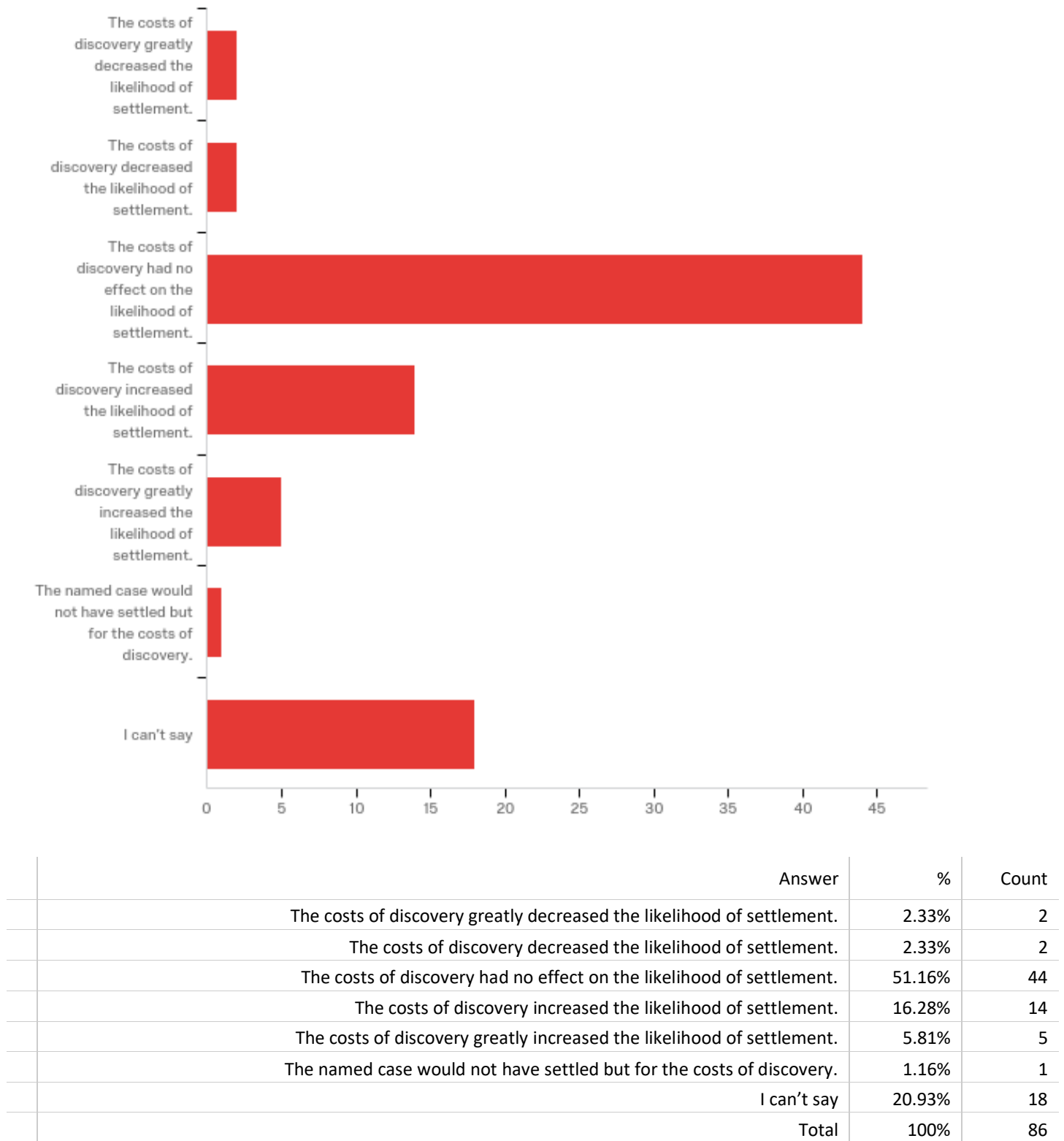
Answer	%	Count
Strongly Agree	18.39%	16
Agree	31.03%	27
Neither Agree nor Disagree	10.34%	9
Disagree	8.05%	7
Strongly Disagree	3.45%	3
Can't Say/ Not Applicable	28.74%	25
Total	100%	87

25 - The parties would have saved a significant amount of time and money in the named case had they cooperated in discovery.

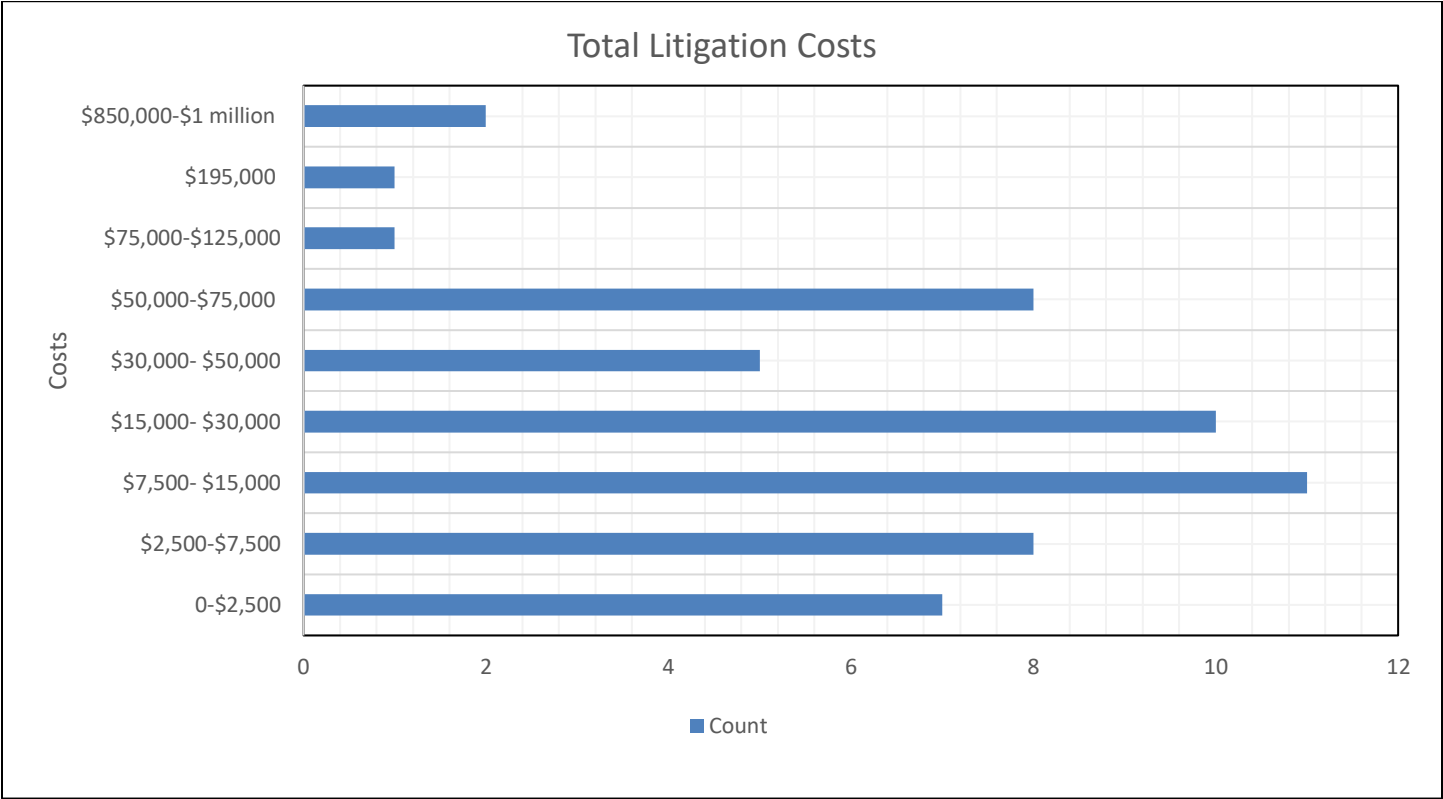


Answer	%	Count
Strongly Agree	4.55%	4
Agree	12.50%	11
Neither Agree nor Disagree	21.59%	19
Disagree	9.09%	8
Strongly Disagree	4.55%	4
Can't Say/ Not Applicable	47.73%	42
Total	100%	88

26 - What effect on settlement did the costs of discovery, including but not limited to electronic discovery, have in the named case?

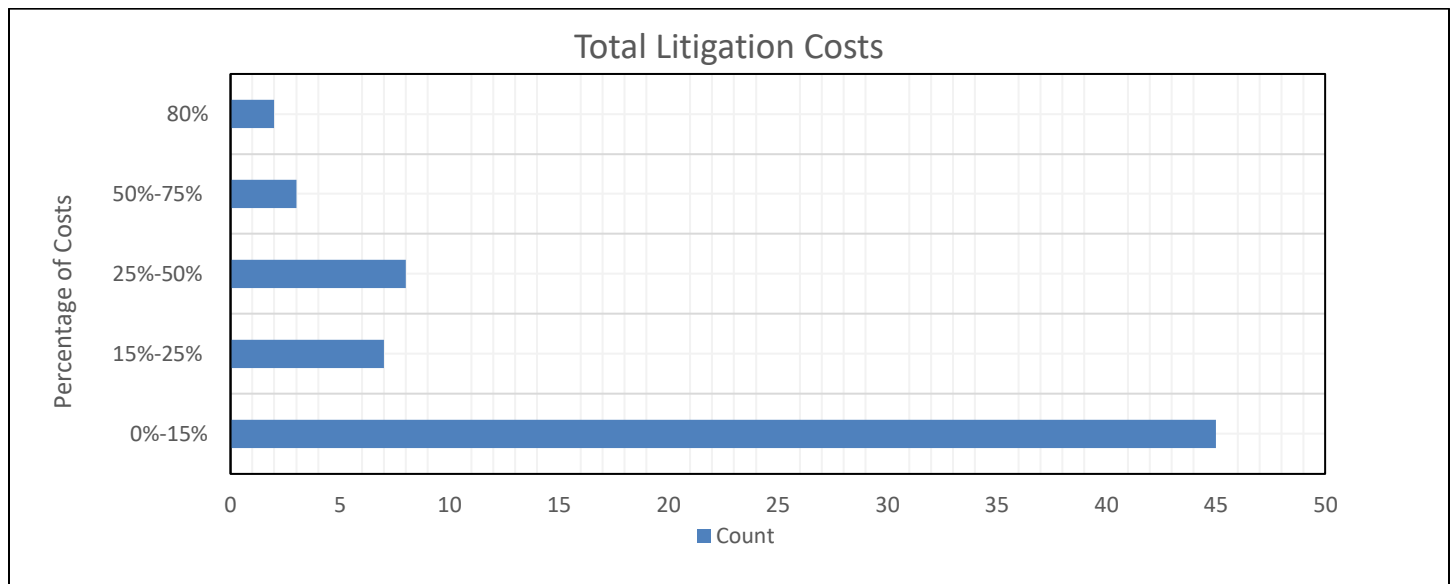


27 - Please estimate, if possible, the total litigation costs for your firm and your client in the named case, including the costs of discovery and any hourly fees for attorneys or paralegals. If the case was handled on a contingency fee basis, please estimate the total litigation costs to your firm.



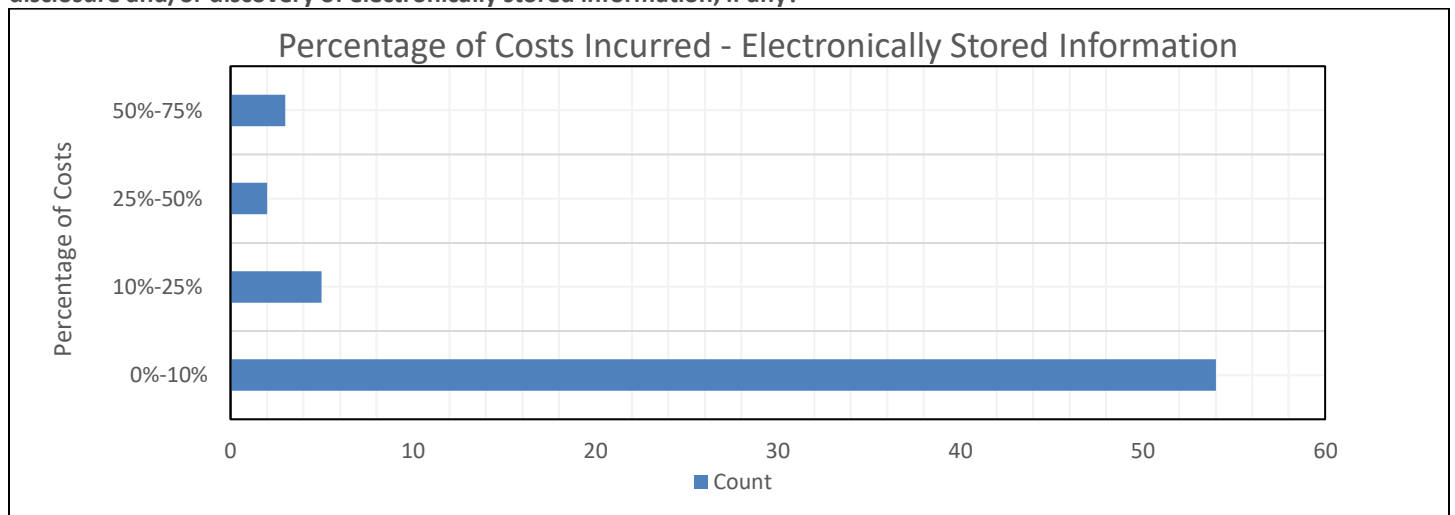
Answer	Count
0-\$2,500	7
\$2,500-\$7,500	8
\$7,500- \$15,000	11
\$15,000- \$30,000	10
\$30,000- \$50,000	5
\$50,000-\$75,000	8
\$75,000-\$125,000	1
\$195,000	1
\$850,000-\$1 million	2

**28 - Approximately what percentage of the total litigation costs in the named case was incurred in requesting and/or producing disclosure and/or discovery, not limited to the discovery of electronically stored information?**



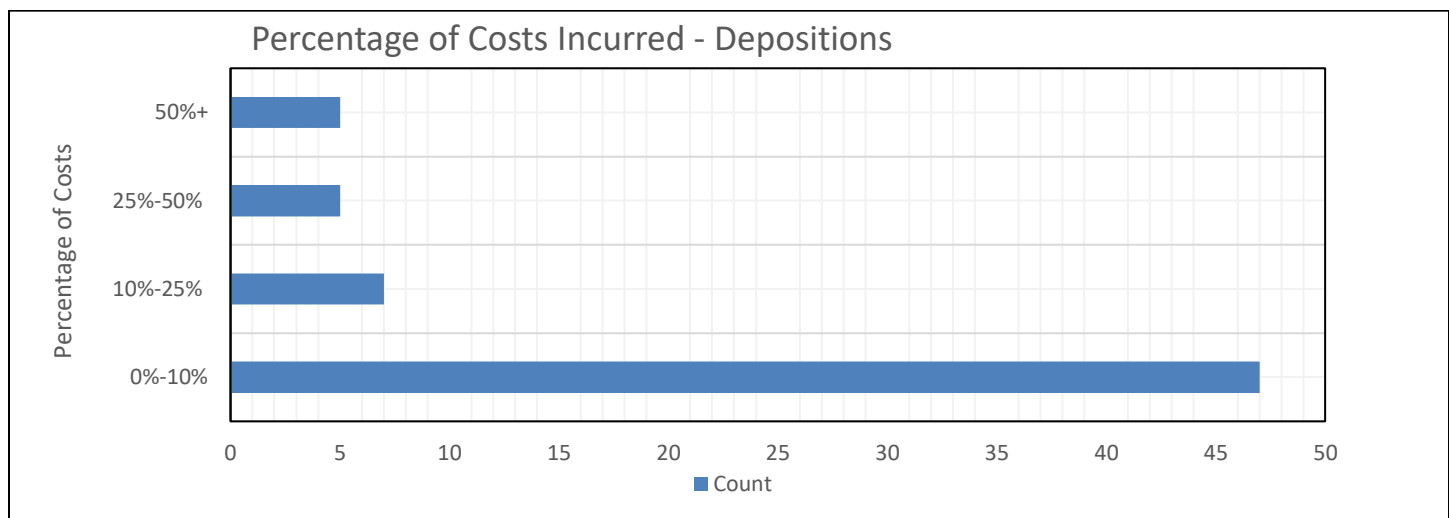
Answer	Count
0%-15%	45
15%-25%	7
25%-50%	8
50%-75%	3
80%	2

**29 - Of the costs of discovery in the named case, approximately what percentage was incurred in requesting and/or producing disclosure and/or discovery of electronically stored information, if any?**



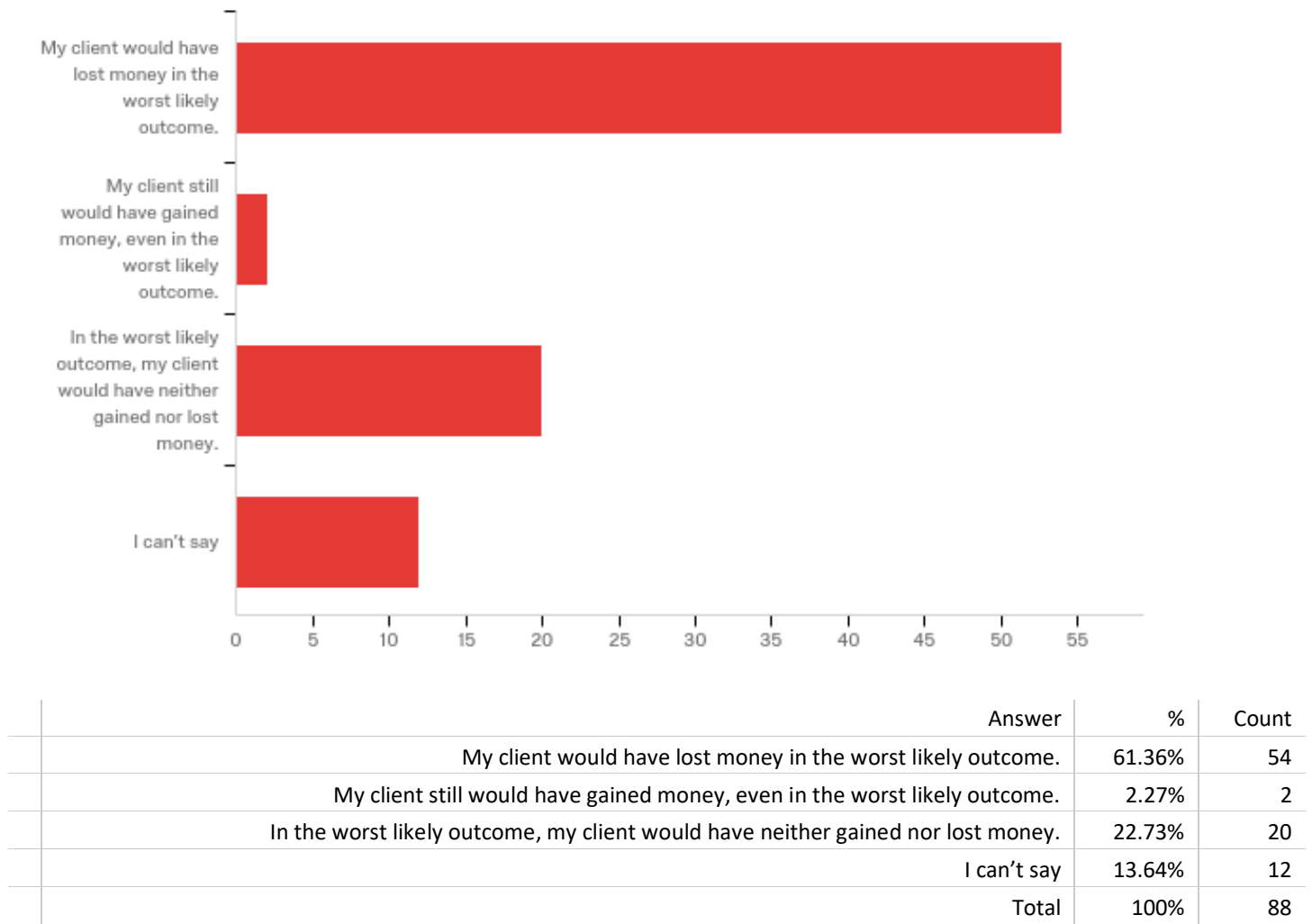
Answer	Count
0%-10%	54
10%-25%	5
25%-50%	2
50% -75%	3

30 - Of the costs of discovery in the named case, approximately what percentage was incurred in preparing for and taking depositions?

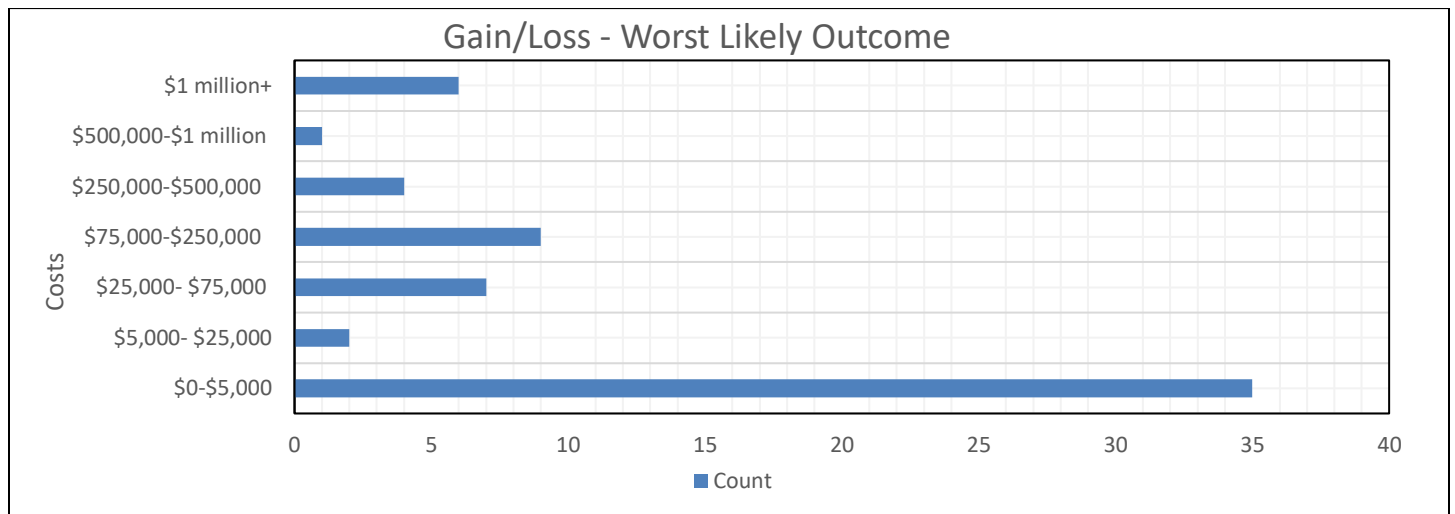


Answer	Count
0%-10%	47
10% - 25%	7
25% - 50%	5
50%+	5

31 - The next two pairs of questions attempt to measure how much was at stake for your client in the named case, aside from the costs of the litigation itself. If possible, please estimate and include the monetary value of any nonmonetary relief at stake. If the named case had ended in the worst likely outcome, given the law and the facts, how would your client have stood at the end of the case with respect to damages, monetary relief, and quantifiable nonmonetary relief. (Check one)

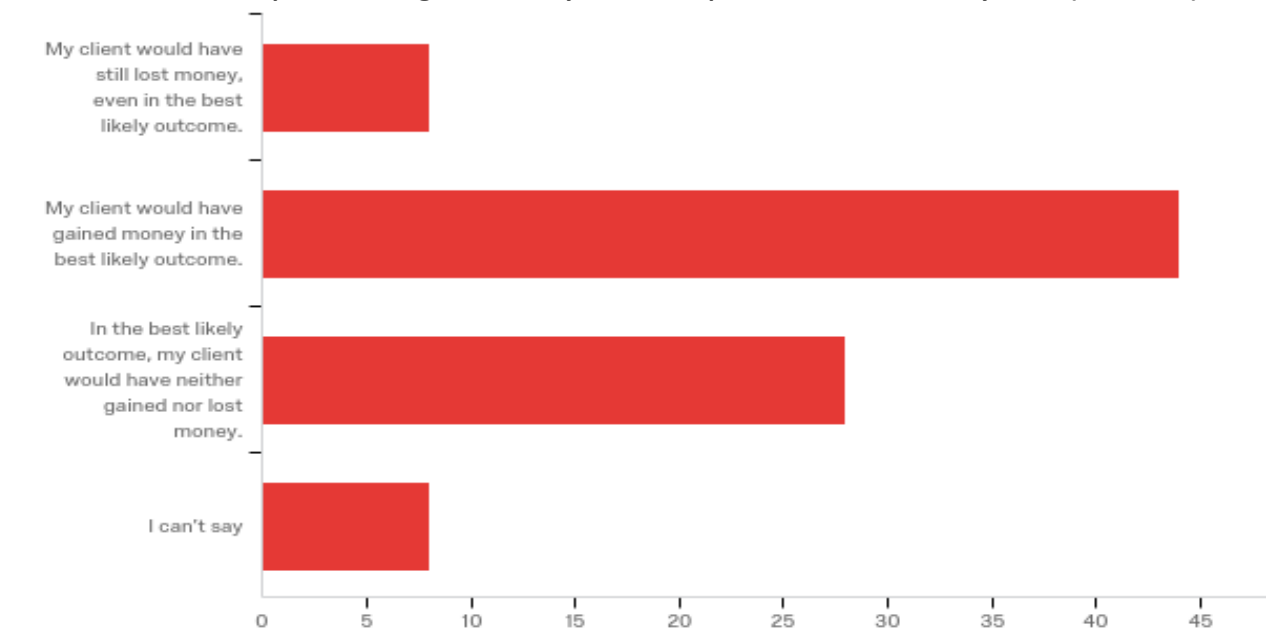


31a - Please estimate, in dollars, the gain or loss your client would have experienced in the worst likely outcome.



Answer	Count
\$0-\$5,000	35
\$5,000- \$25,000	2
\$25,000- \$75,000	7
\$75,000-\$250,000	9
\$250,000-\$500,000	4
\$500,000-\$1 million	1
\$1 million+	6

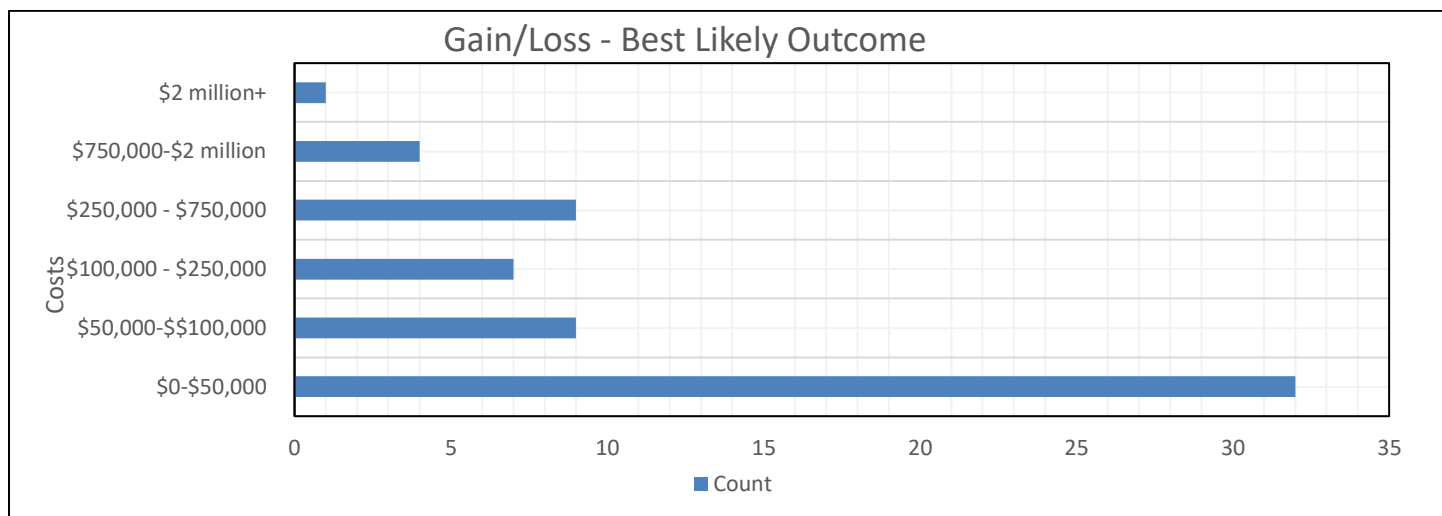
32 - If the named case had ended in the best likely outcome, given the law and the facts, how would your client have stood at the end of the case with respect to damages, monetary relief, and quantifiable nonmonetary relief. (Check one)



Answer	%	Count
My client would have still lost money, even in the best likely outcome.	9.09%	8
My client would have gained money in the best likely outcome.	50.00%	44
In the best likely outcome, my client would have neither gained nor lost money.	31.82%	28
I can't say	9.09%	8
Total	100%	88

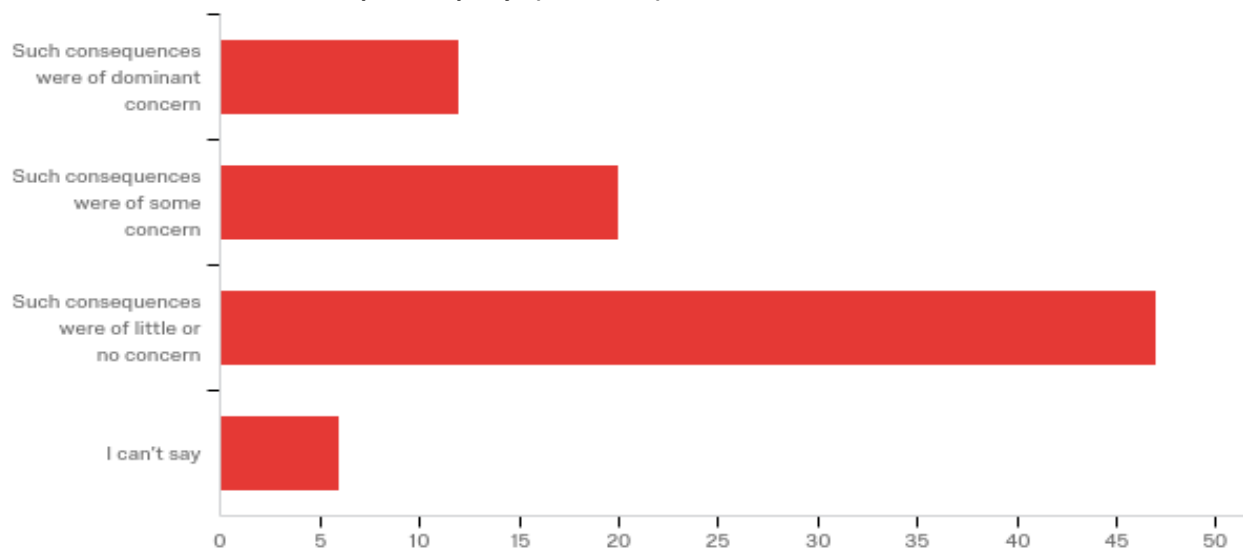


32a - Please estimate, in dollars, the gain or loss your client would have experienced in the best likely outcome.



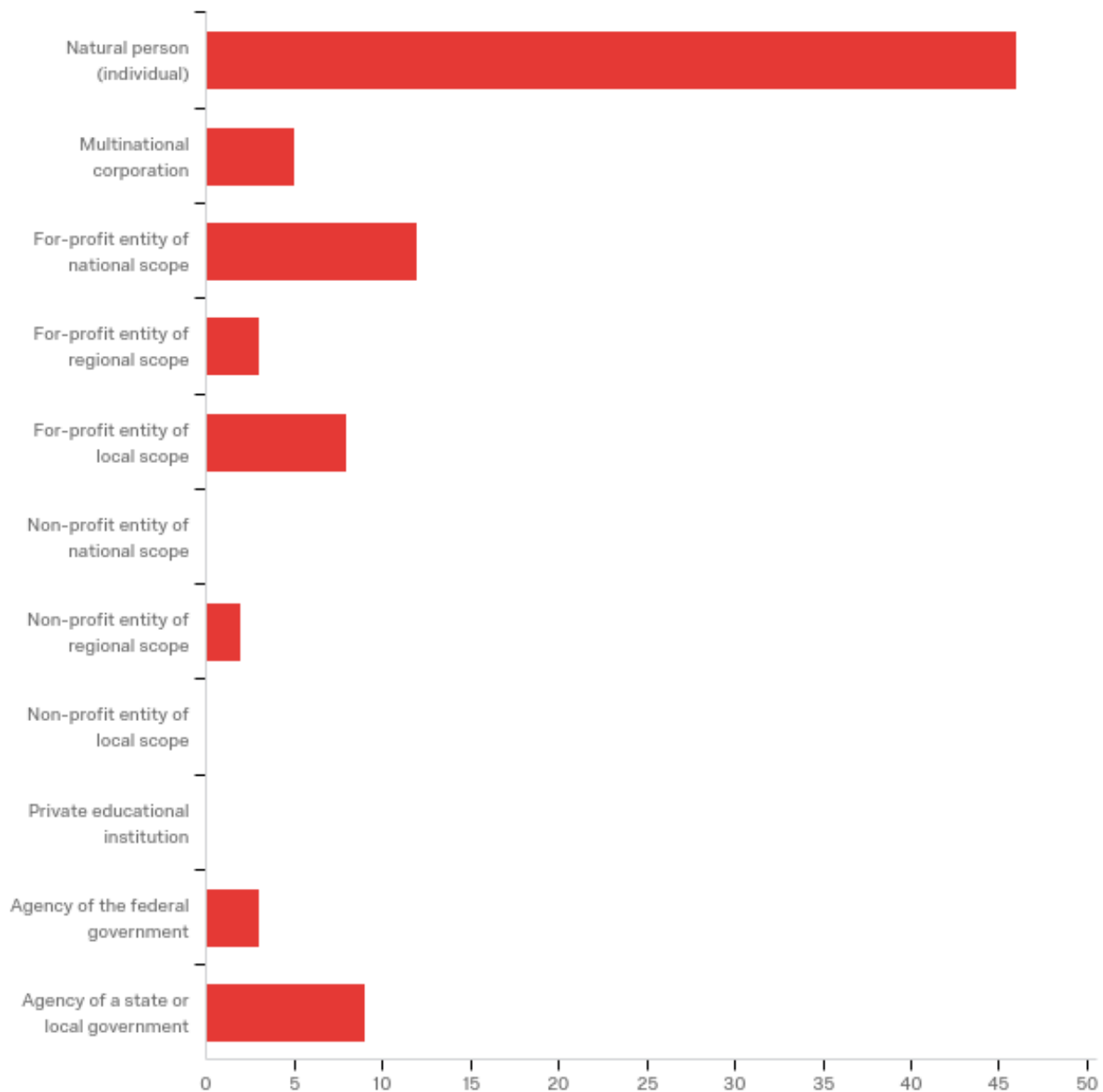
Answer	Count
\$0-\$50,000	32
\$50,000-\$100,000	9
\$100,000 - \$250,000	7
\$250,000 - \$750,000	9
\$750,000-\$2 million	4
\$2 million+	1

33 - To what extent were you concerned in the named case about nonmonetary relief or about possible consequences to your client, beyond the relief sought, such as future litigation based on similar claims, legal precedent, harm to reputation, or a desire to maintain a business relationship with a party? (Check one)



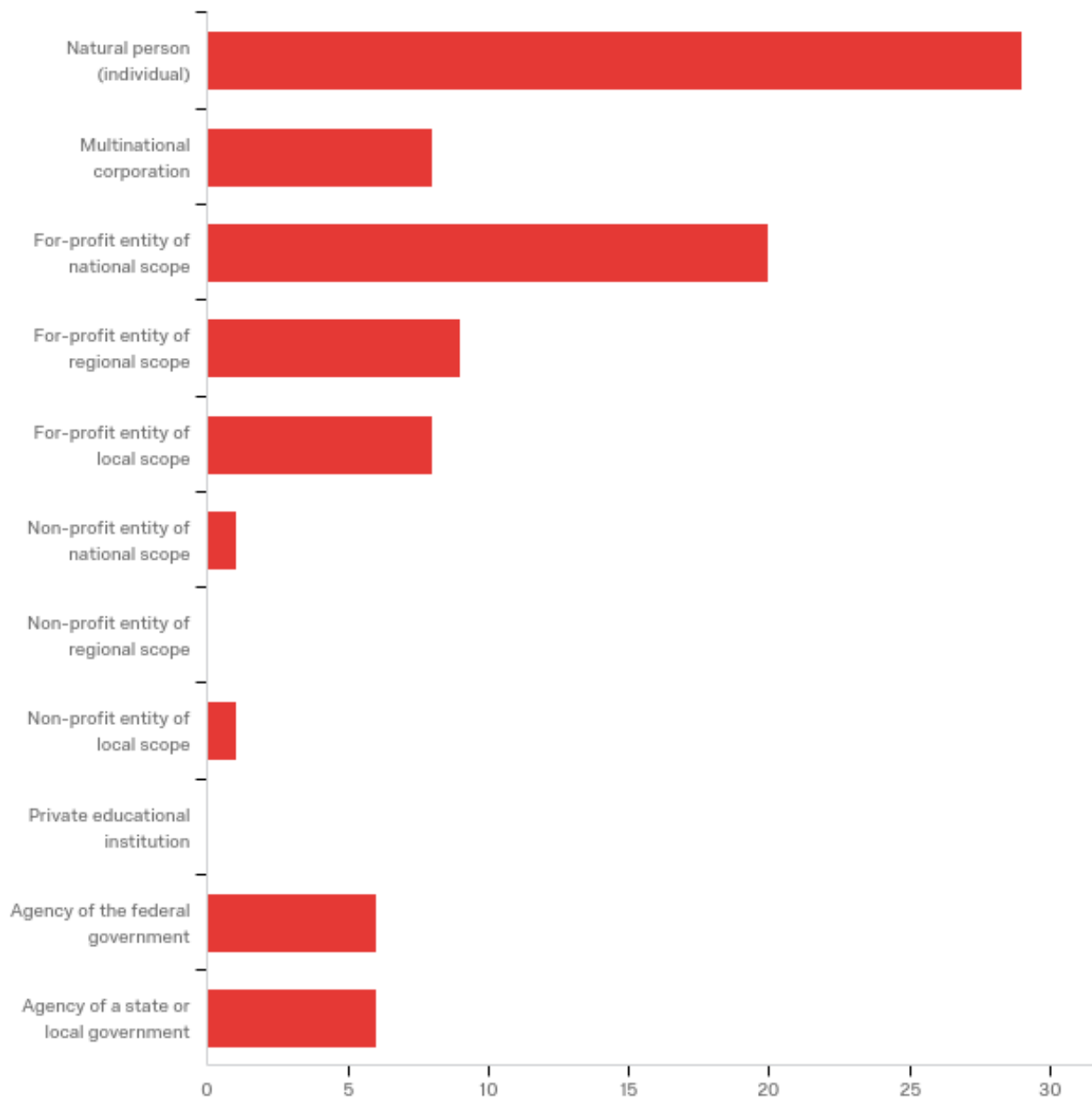
Answer	%	Count
Such consequences were of dominant concern	14.12%	12
Such consequences were of some concern	23.53%	20
Such consequences were of little or no concern	55.29%	47
I can't say	7.06%	6
Total	100%	85

34 - Which of the following best describes your client? (Check one)



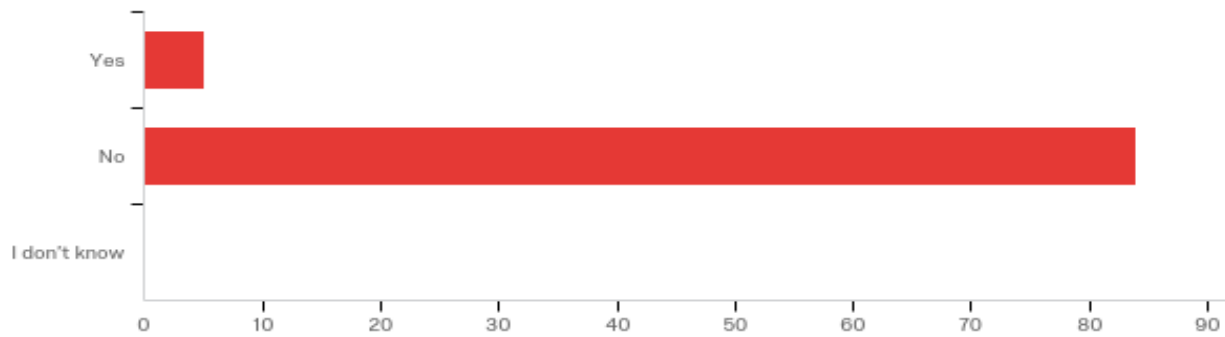
	Answer	%	Count
	Natural person (individual)	52.27%	46
	Multinational corporation	5.68%	5
	For-profit entity of national scope	13.64%	12
	For-profit entity of regional scope	3.41%	3
	For-profit entity of local scope	9.09%	8
	Non-profit entity of national scope	0.00%	0
	Non-profit entity of regional scope	2.27%	2
	Non-profit entity of local scope	0.00%	0
	Private educational institution	0.00%	0
	Agency of the federal government	3.41%	3
	Agency of a state or local government	10.23%	9
	Total	100%	88

35 - Which of the following best describes the opposing party? (Check one)



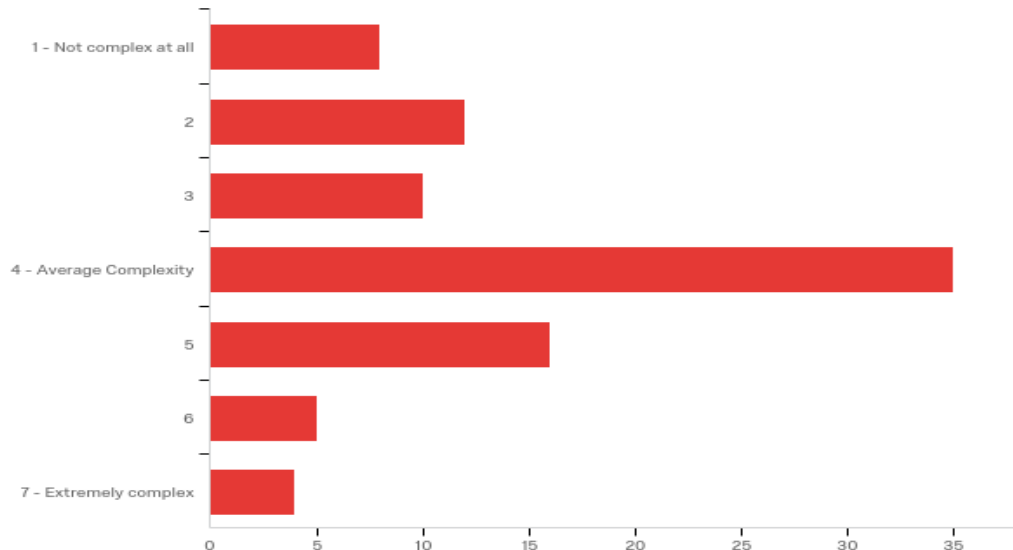
	Answer	%	Count
	Natural person (individual)	32.95%	29
	Multinational corporation	9.09%	8
	For-profit entity of national scope	22.73%	20
	For-profit entity of regional scope	10.23%	9
	For-profit entity of local scope	9.09%	8
	Non-profit entity of national scope	1.14%	1
	Non-profit entity of regional scope	0.00%	0
	Non-profit entity of local scope	1.14%	1
	Private educational institution	0.00%	0
	Agency of the federal government	6.82%	6
	Agency of a state or local government	6.82%	6
	Total	100%	88

**36 - Did the plaintiff in the named case make class action allegations at any point?**



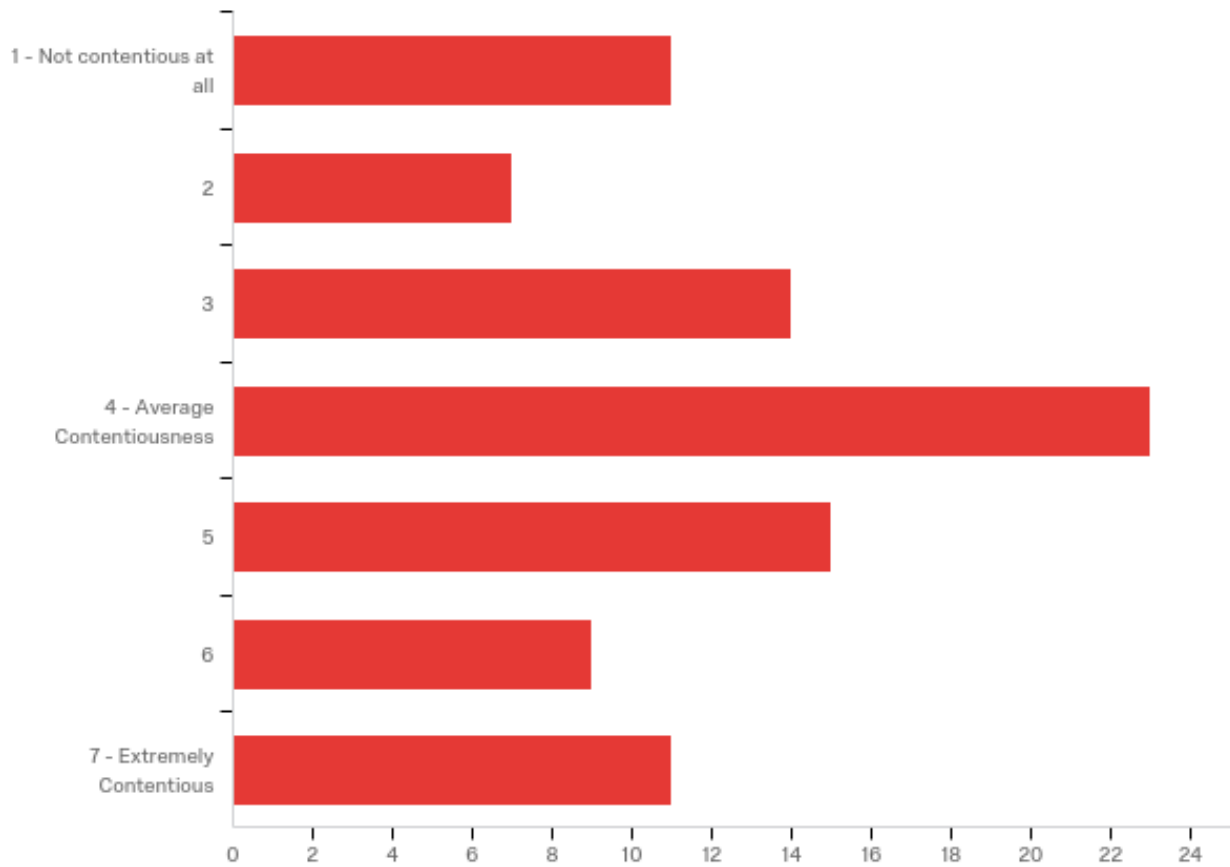
	Answer	%	Count
	Yes	5.62%	5
	No	94.38%	84
	I don't know	0.00%	0
	Total	100%	89

**37 - How complex were the factual issues in the named case? On a scale of 1 to 7, with 1 being not complex at all, 4 being average complexity, and 7 being extremely complex:**



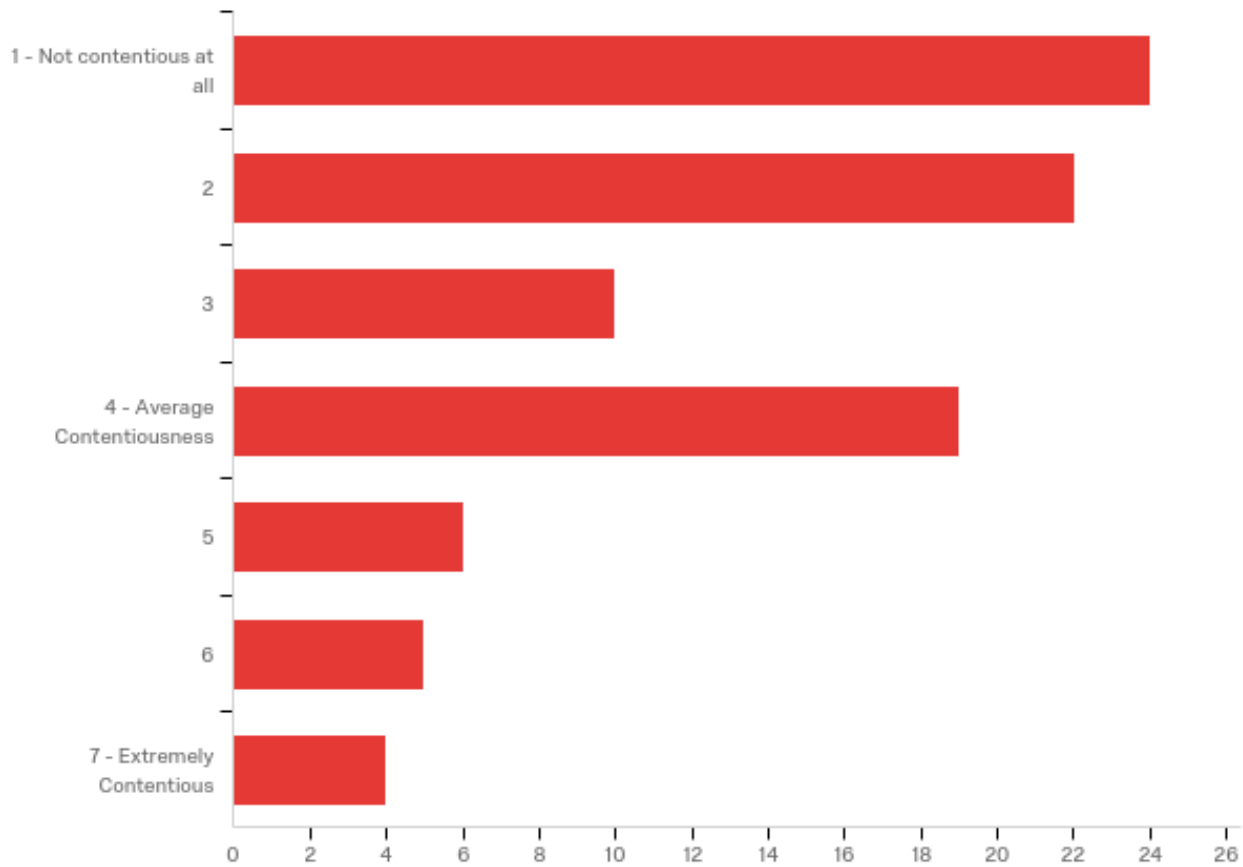
	Answer	%	Count
	1 - Not complex at all	8.89%	8
	2	13.33%	12
	3	11.11%	10
	4 - Average Complexity	38.89%	35
	5	17.78%	16
	6	5.56%	5
	7 - Extremely complex	4.44%	4
	Total	100%	90

**38 - How contentious was the relationship between the parties in the named case? On a scale of 1 to 7, with 1 being not contentious at all, 4 being average contentiousness, and 7 being extremely contentious:**



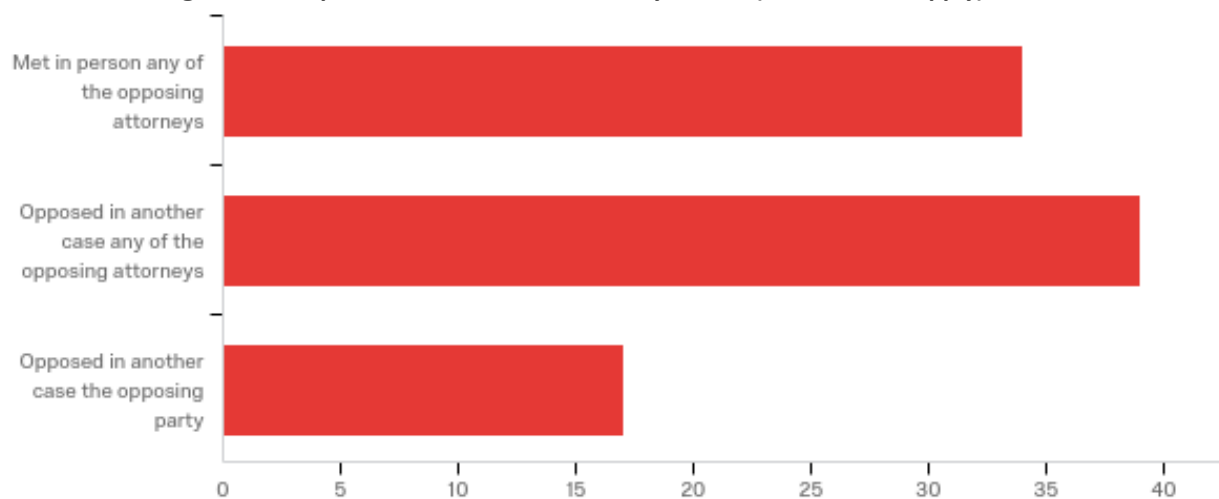
	Answer	%	Count
	1 - Not contentious at all	12.22%	11
	2	7.78%	7
	3	15.56%	14
	4 - Average Contentiousness	25.56%	23
	5	16.67%	15
	6	10.00%	9
	7 - Extremely Contentious	12.22%	11
	Total	100%	90

39 - How contentious was the relationship between the attorneys in the named case? On a scale of 1 to 7, with 1 being not contentious at all, 4 being average contentiousness, and 7 being extremely contentious:



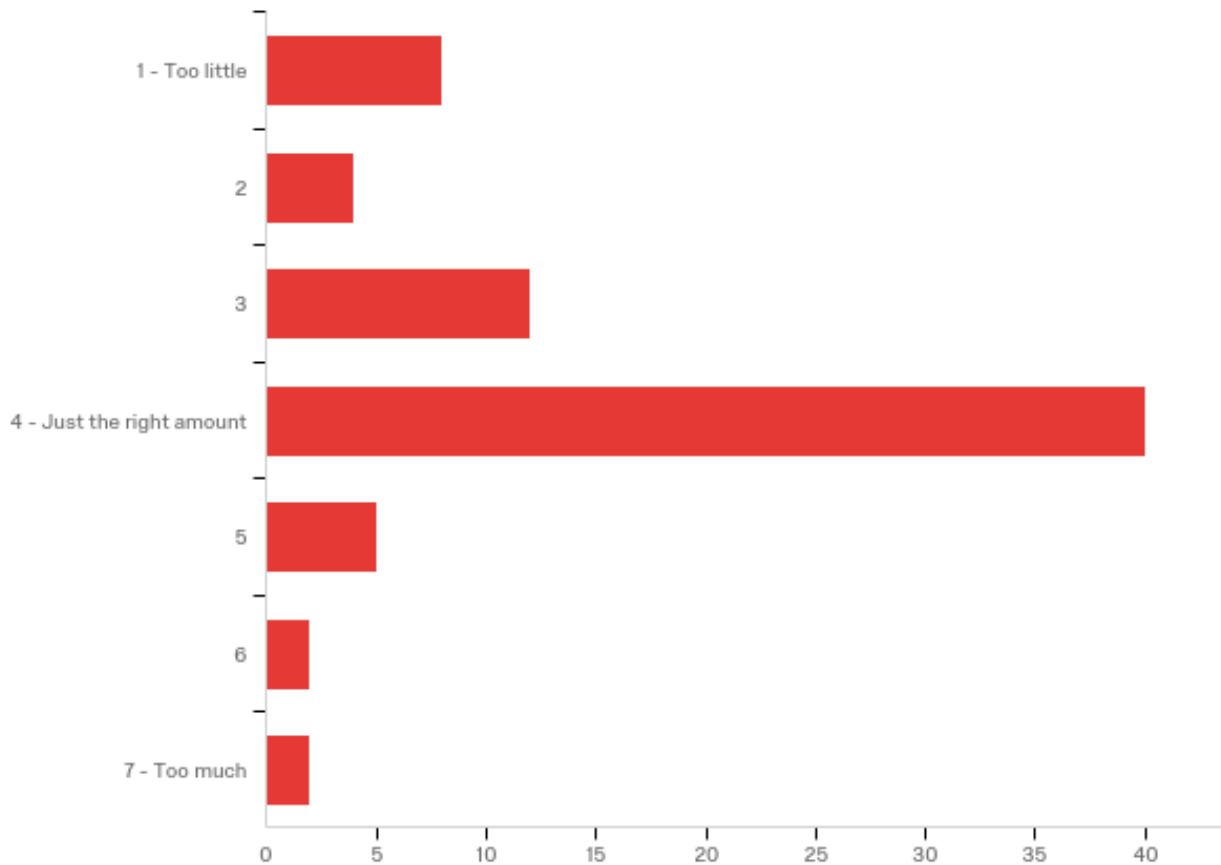
	Answer	%	Count
	1 - Not contentious at all	26.67%	24
	2	24.44%	22
	3	11.11%	10
	4 - Average Contentiousness	21.11%	19
	5	6.67%	6
	6	5.56%	5
	7 - Extremely Contentious	4.44%	4
	Total	100%	90

40 - Before the filing of the complaint in the named case, had you ever (check all that apply):



	Answer	%	Count
	Met in person any of the opposing attorneys	70.83%	34
	Opposed in another case any of the opposing attorneys	81.25%	39
	Opposed in another case the opposing party	35.42%	17
	Total	100%	48

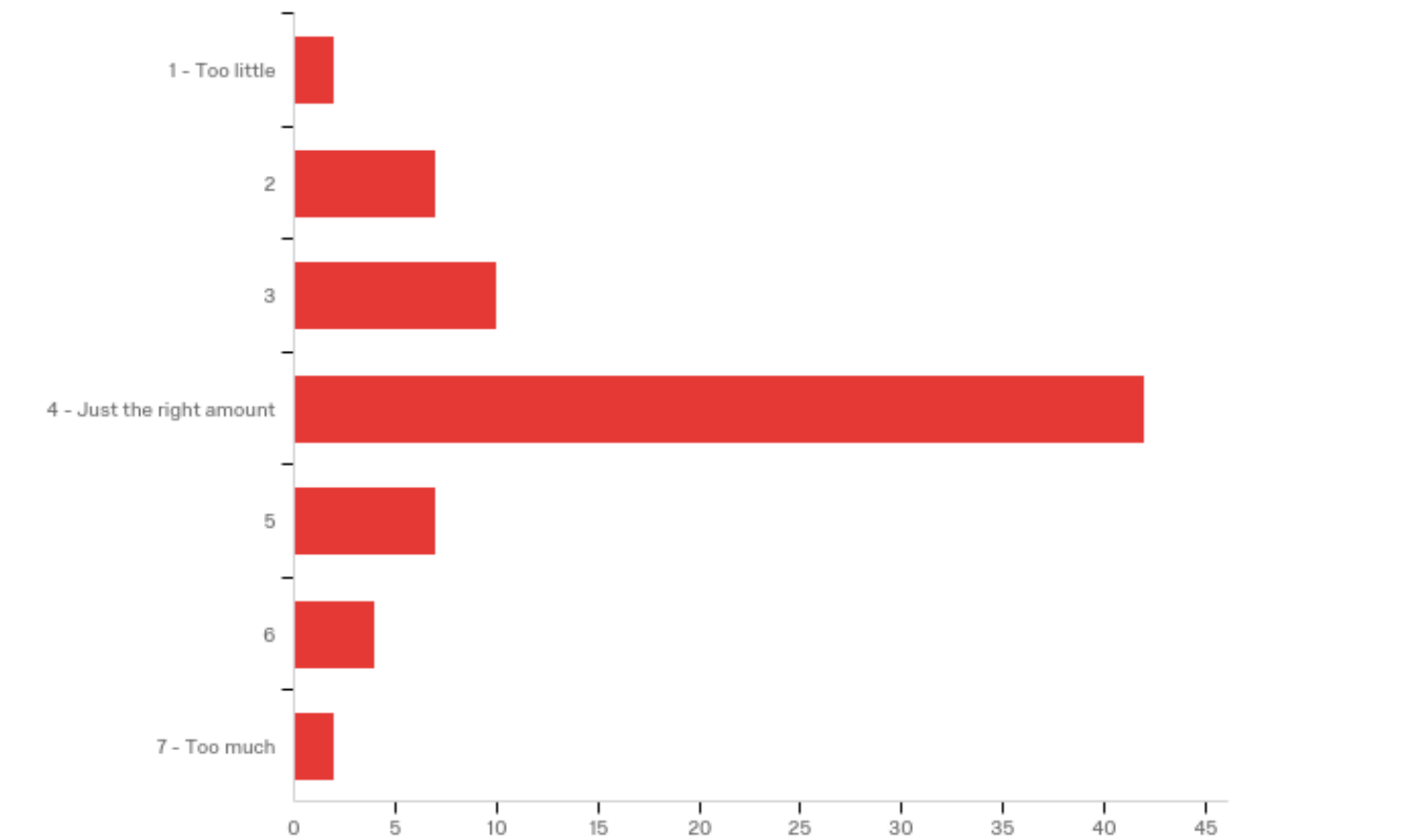
41 - How much information did the disclosure and discovery generated by the parties in the named case yield? On a scale of 1 to 7, with 1 being too little, 4 being just the right amount, and 7 being too much:



	Answer	%	Count
	1 - Too little	10.96%	8
	2	5.48%	4
	3	16.44%	12
	4 - Just the right amount	54.79%	40
	5	6.85%	5
	6	2.74%	2
	7 - Too much	2.74%	2
	Total	100%	73

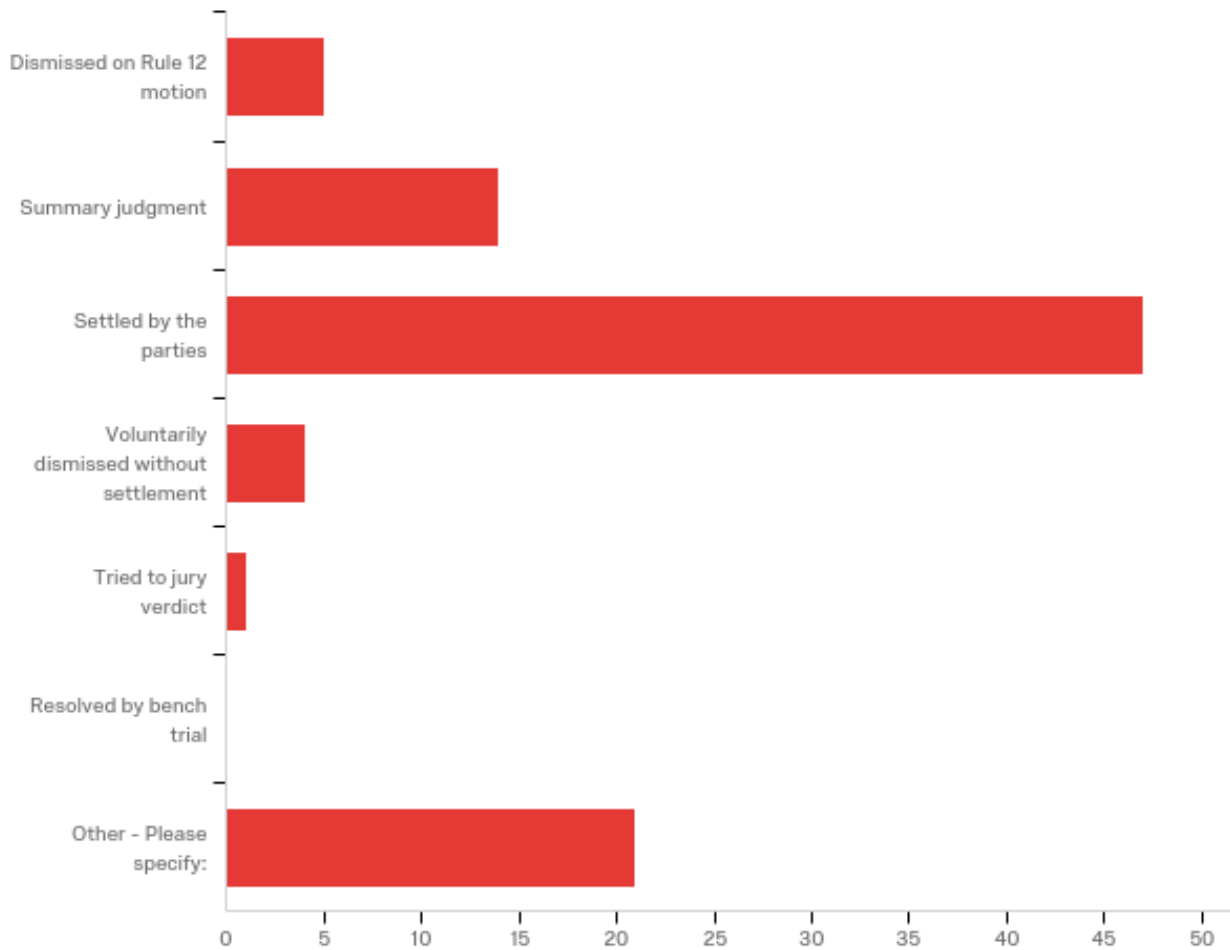


42 - How did the costs of discovery to your side in the named case compare to your client’s stakes? On a scale of 1 to 7, with 1 being too little, 4 being just the right amount, and 7 being too much:



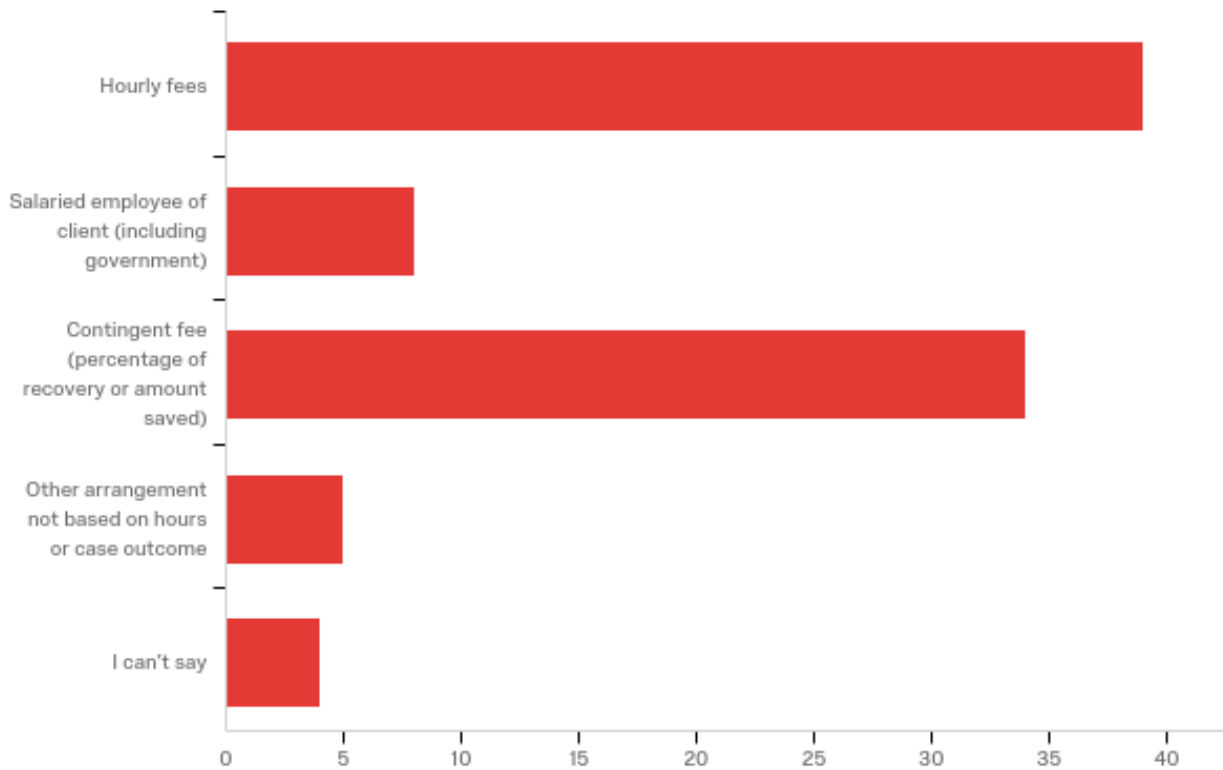
	Answer	%	Count
	1 - Too little	2.70%	2
	2	9.46%	7
	3	13.51%	10
	4 - Just the right amount	56.76%	42
	5	9.46%	7
	6	5.41%	4
	7 - Too much	2.70%	2
	Total	100%	74

43 - How was the named case ultimately resolved in district court? (Check one)



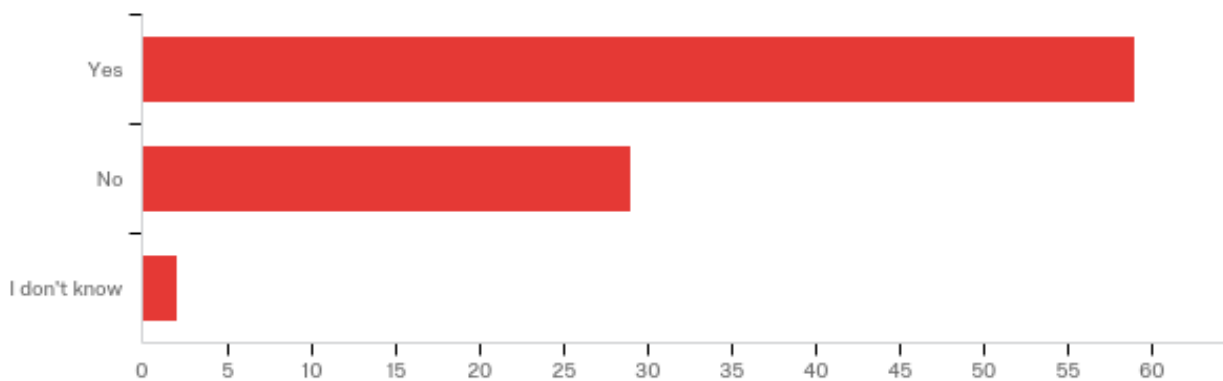
	Answer	%	Count
	Dismissed on Rule 12 motion	5.62%	5
	Summary judgment	15.73%	14
	Settled by the parties	52.81%	47
	Voluntarily dismissed without settlement	4.49%	4
	Tried to jury verdict	1.12%	1
	Resolved by bench trial	0.00%	0
	Other - Please specify:	23.60%	21
	Total	100%	89

44 - What was your primary arrangement with your client regarding attorney fees in the named case? (Check one)



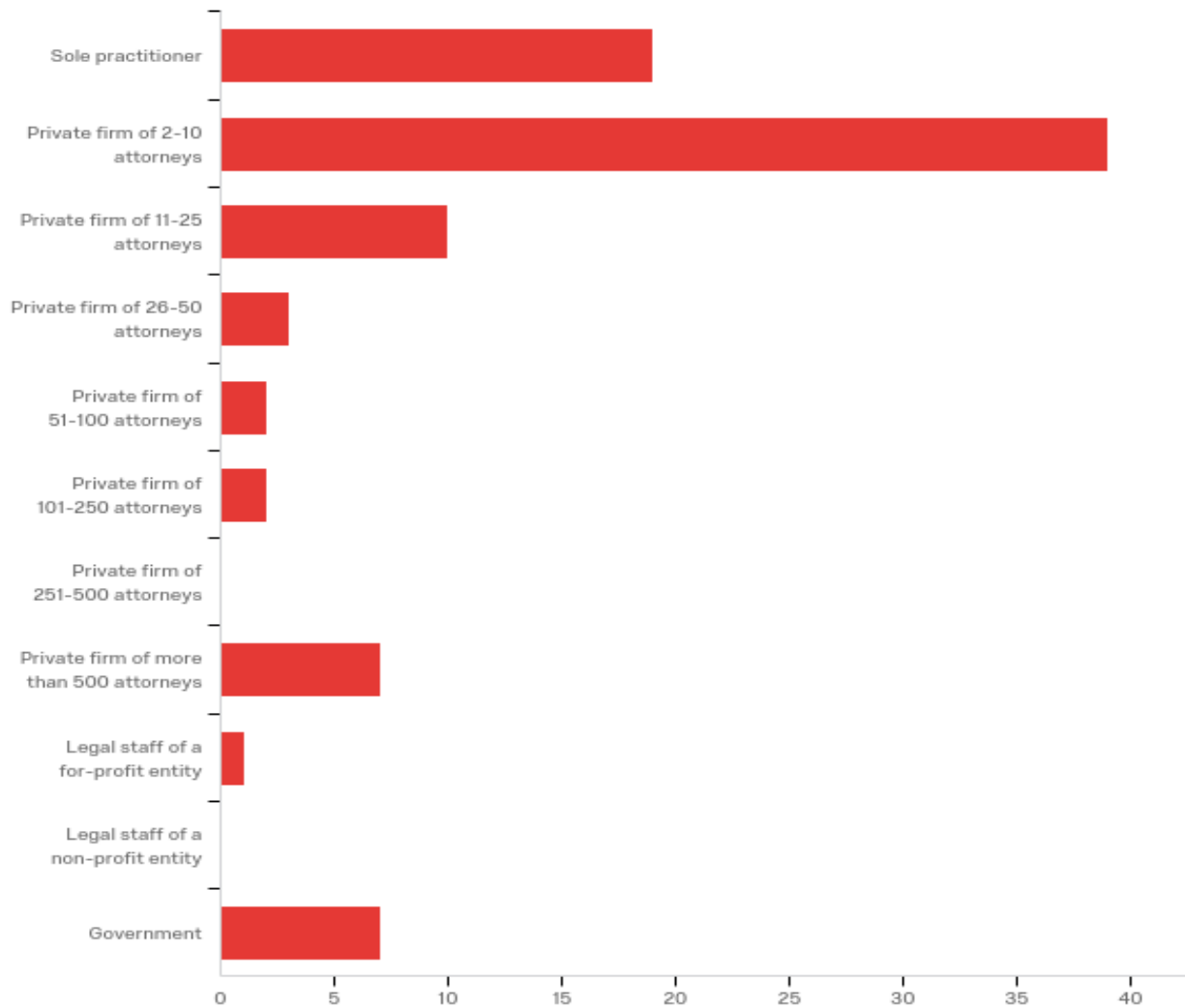
Answer	%	Count
Hourly fees	43.33%	39
Salaried employee of client (including government)	8.89%	8
Contingent fee (percentage of recovery or amount saved)	37.78%	34
Other arrangement not based on hours or case outcome	5.56%	5
I can't say	4.44%	4
Total	100%	90

45 - Was there a statutory provision for recovery of attorney fees applicable to any claim in the named case? (Check one)



Answer	%	Count
Yes	65.56%	59
No	32.22%	29
I don't know	2.22%	2
Total	100%	90

46 - Which of the following best describes your law practice setting? (Check one)



Answer	%	Count
Sole practitioner	21.11%	19
Private firm of 2-10 attorneys	43.33%	39
Private firm of 11-25 attorneys	11.11%	10
Private firm of 26-50 attorneys	3.33%	3
Private firm of 51-100 attorneys	2.22%	2
Private firm of 101-250 attorneys	2.22%	2
Private firm of 251-500 attorneys	0.00%	0
Private firm of more than 500 attorneys	7.78%	7
Legal staff of a for-profit entity	1.11%	1
Legal staff of a non-profit entity	0.00%	0
Government	7.78%	7
Total	100%	90

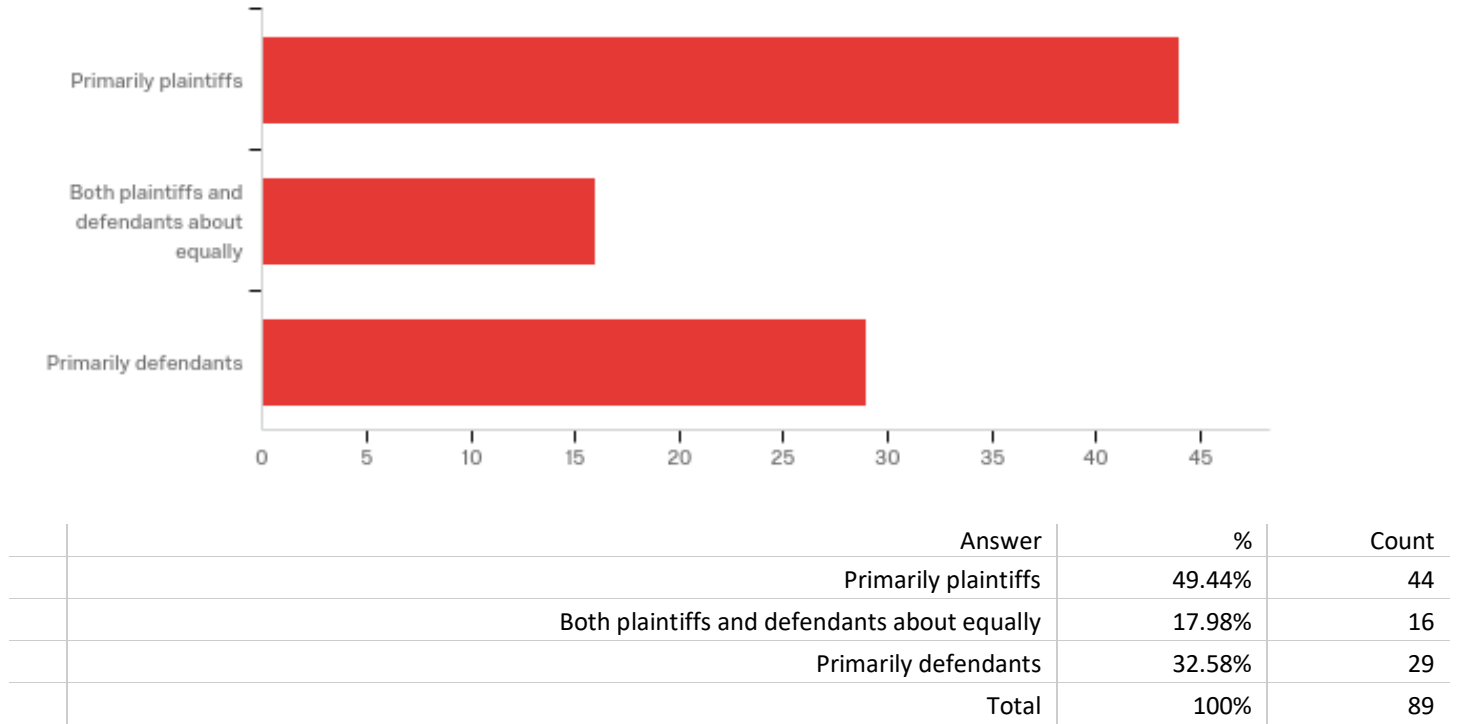
48 - **Please estimate** the percentage of your work time during the past five years spent on civil litigation in the federal courts. If less than five years of practice, estimate the percentage of your work time during your years of practice dedicated to civil litigation in the federal courts.

0%-25% (30 times);
25%-50% (23 times);
50%-75% (10 times);
75%-100% (23 times)

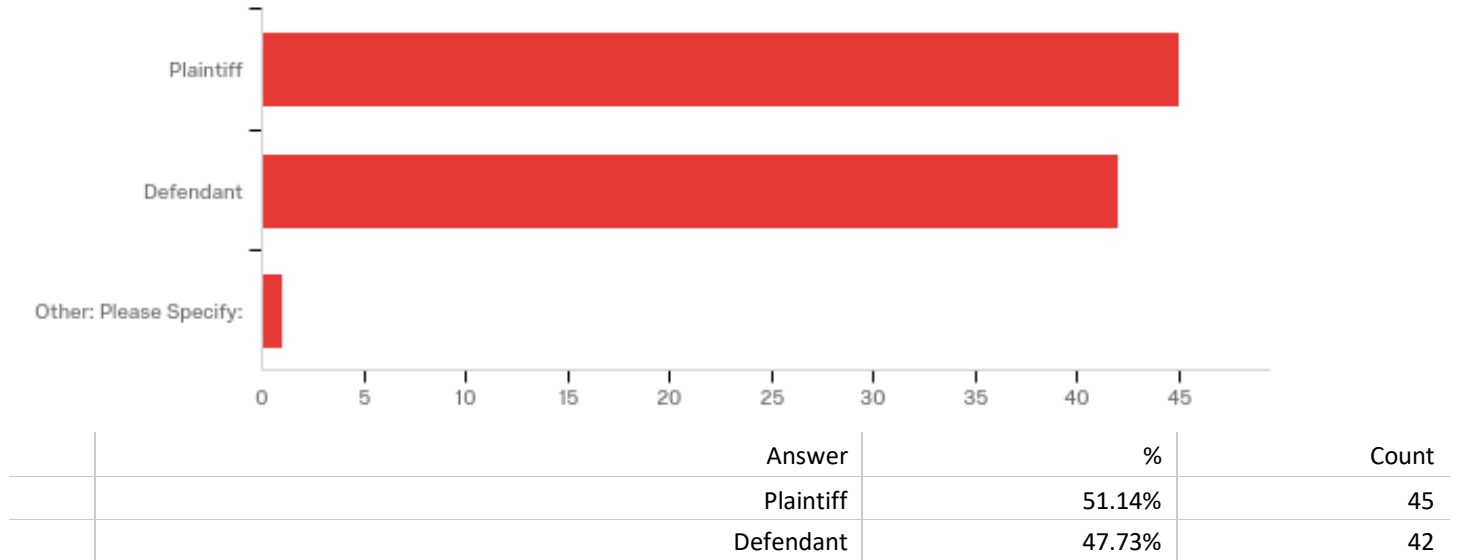
50 - **Please estimate**: what percentage of your practice is spent in discovery-related activities?

0%-25% (42 times);
25%-50% (19 times);
50%-75% (19 times);
75%-100% (2 times)

52 - Do you primarily represent plaintiffs, defendants, or both? (Check one)

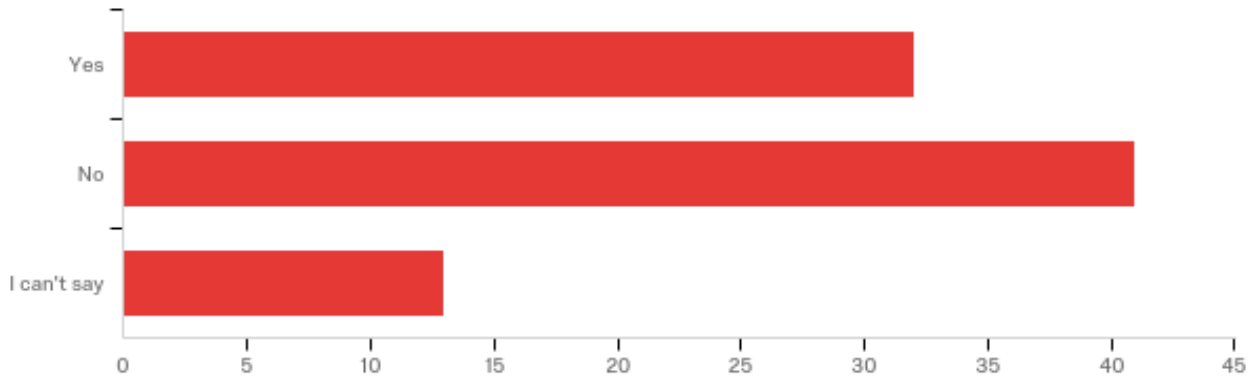


53 - In the named case, did you represent a (Check one)



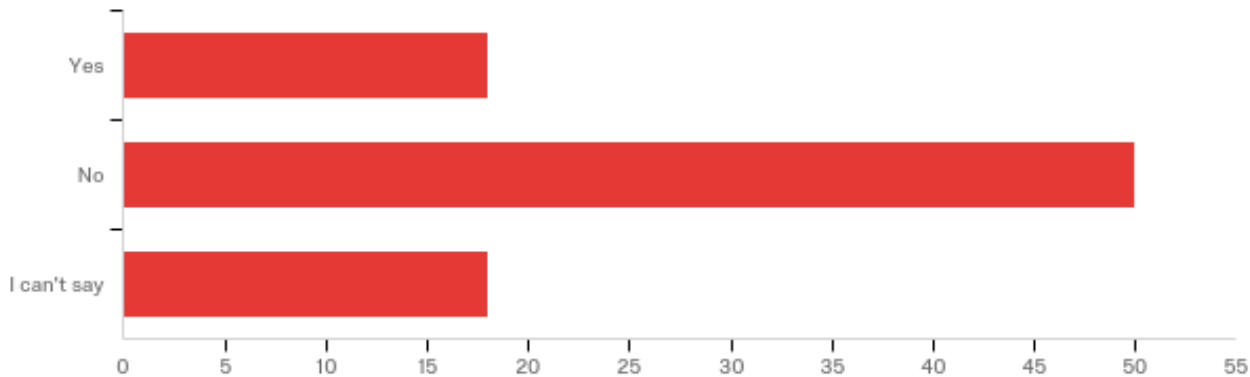
	Other: Please Specify:	1.14%	1
	Total	100%	88

**54 - Have any of your clients tried to reduce the costs of discovery, including but not limited to electronic discovery, by doing discovery-related work themselves or by contracting for discovery-related services?**



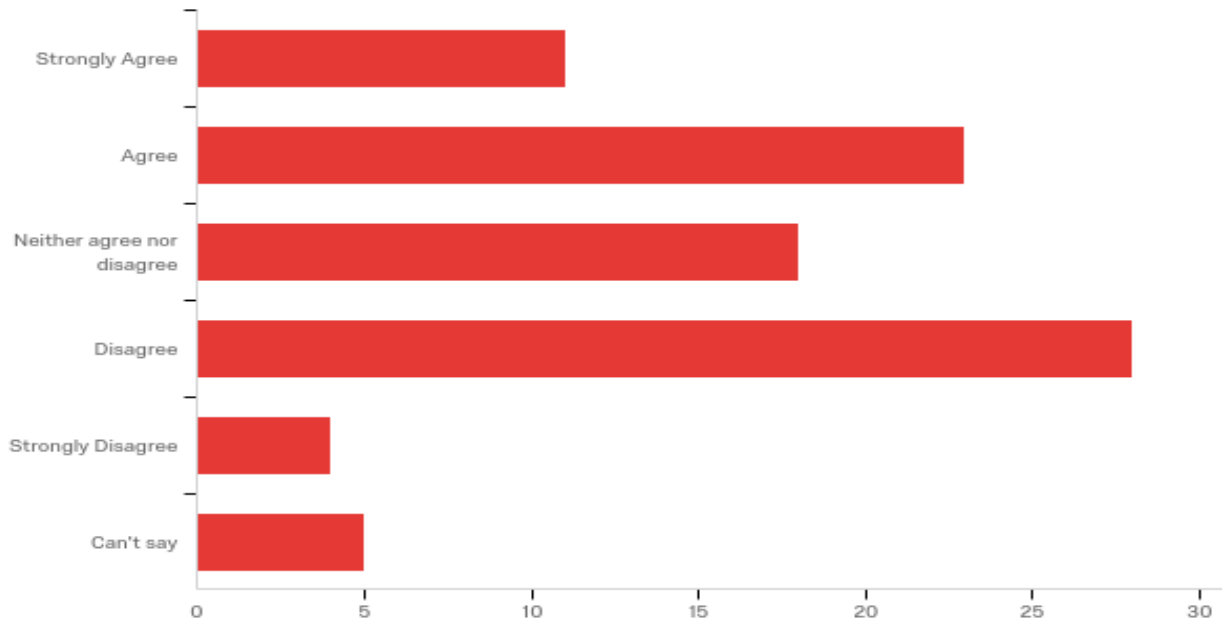
Answer	%	Count
Yes	37.21%	32
No	47.67%	41
I can't say	15.12%	13
Total	100%	86

**55 - Have any of your clients tried to reduce the costs of electronic discovery by implementing information management programs designed for that purpose?**



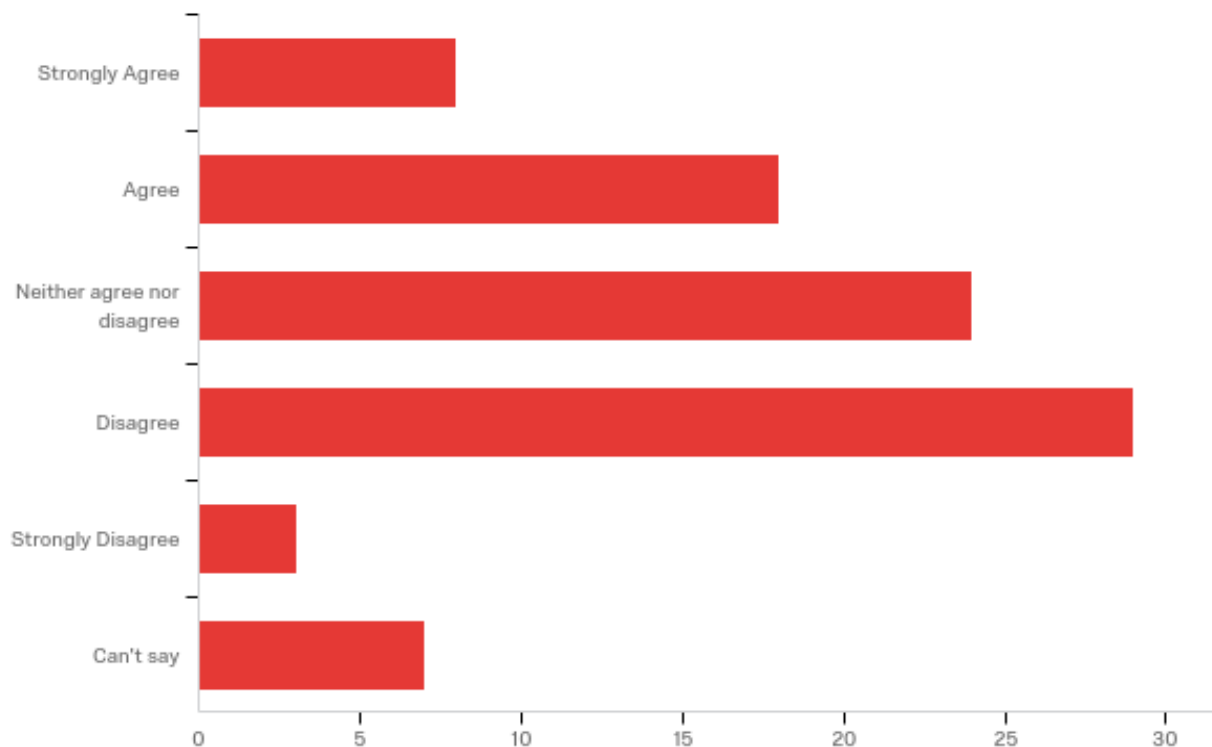
Answer	%	Count
Yes	20.93%	18
No	58.14%	50
I can't say	20.93%	18
Total	100%	86

56 - Litigation in the federal courts is more expensive than litigation in the state courts in which I primarily practice.



#	Answer	%	Count
1	Strongly Agree	12.36%	11
2	Agree	25.84%	23
4	Neither agree nor disagree	20.22%	18
6	Disagree	31.46%	28
7	Strongly Disagree	4.49%	4
8	Can't say	5.62%	5
	Total	100%	89

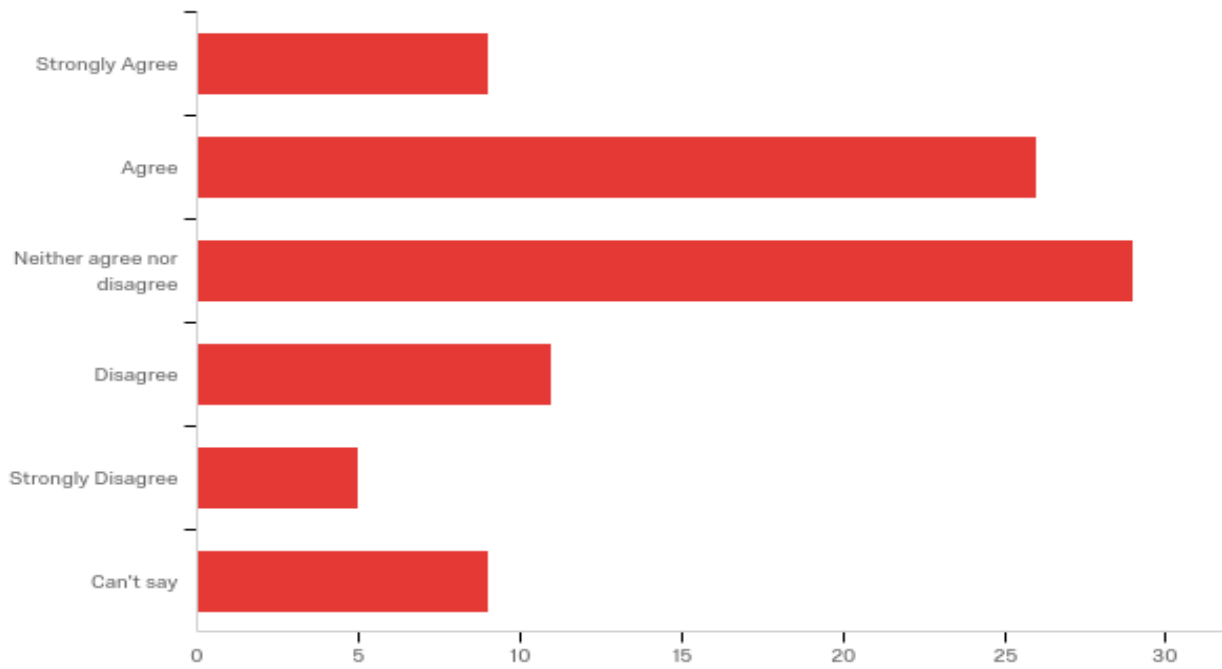
57 - Discovery in the federal courts is more expensive than discovery in the state courts in which I primarily practice.



	Answer	%	Count
	Strongly Agree	8.99%	8
	Agree	20.22%	18
	Neither agree nor disagree	26.97%	24
	Disagree	32.58%	29
	Strongly Disagree	3.37%	3
	Can't say	7.87%	7
	Total	100%	89

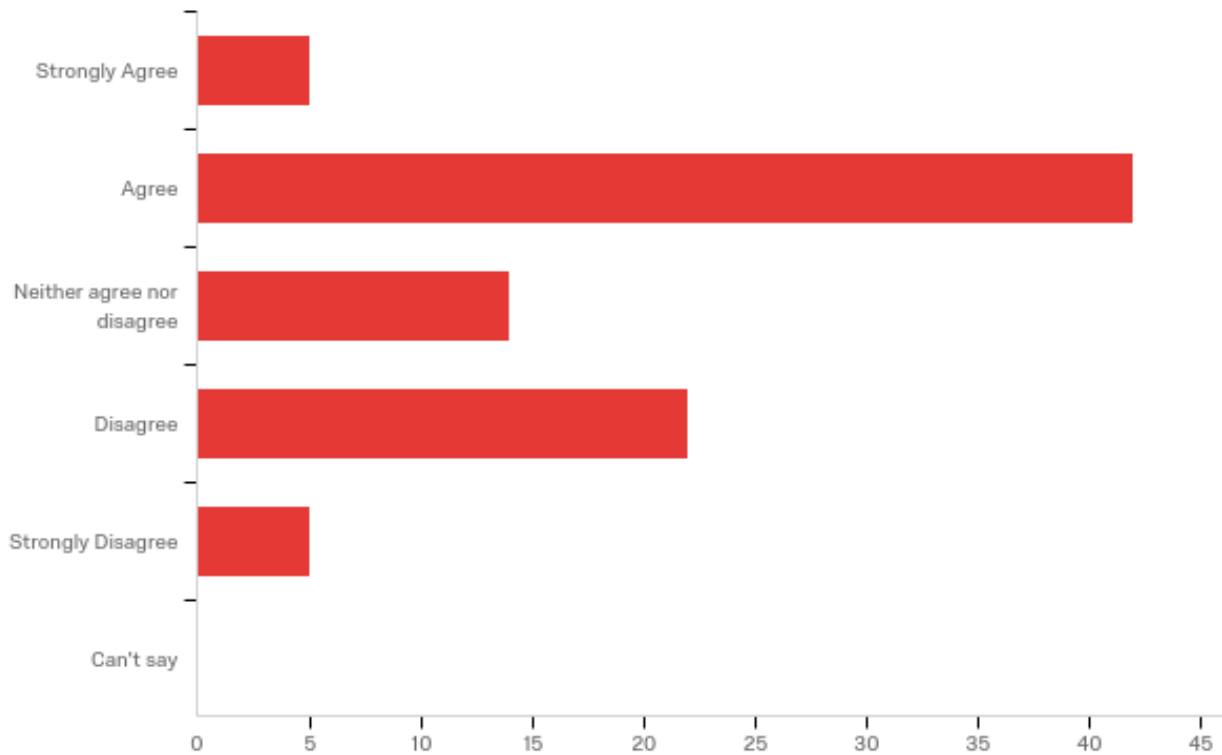


58 - Discovery in federal courts leads to more reliable and predictable case outcomes than in courts with more restricted discovery.



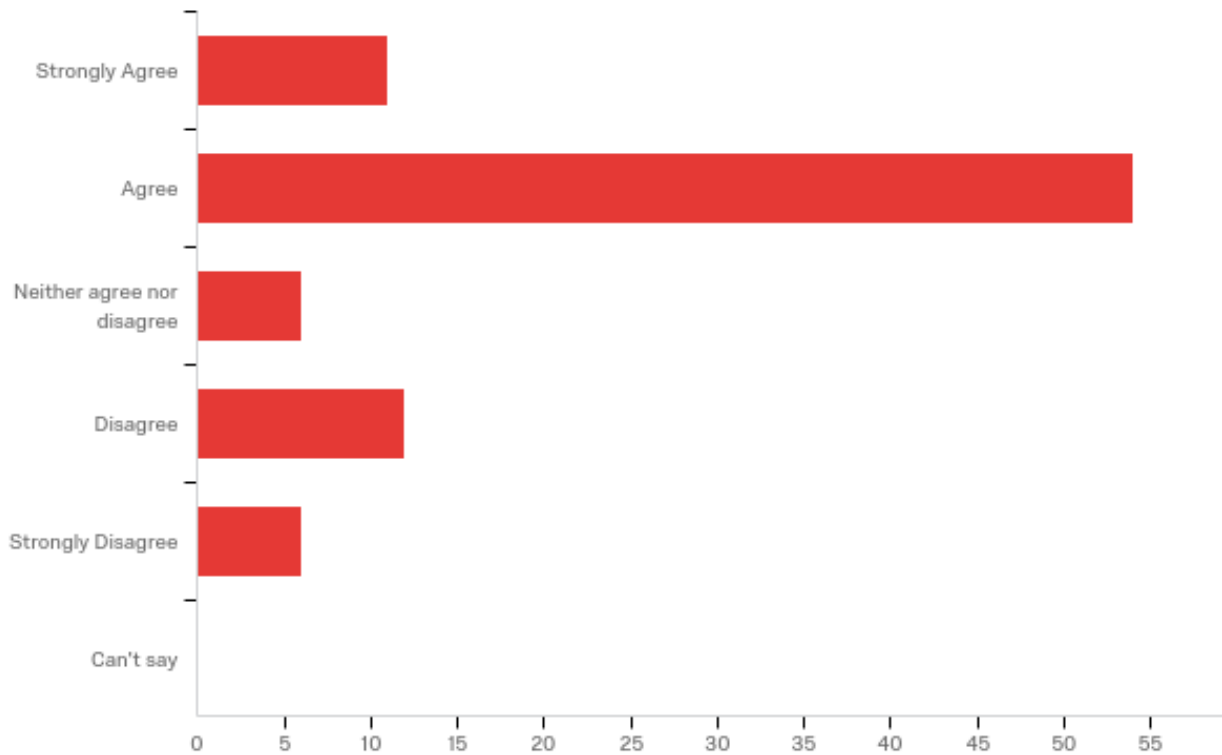
Answer	%	Count
Strongly Agree	10.11%	9
Agree	29.21%	26
Neither agree nor disagree	32.58%	29
Disagree	12.36%	11
Strongly Disagree	5.62%	5
Can't say	10.11%	9
Total	100%	89

59 - The outcomes of cases in the federal system are generally fair.



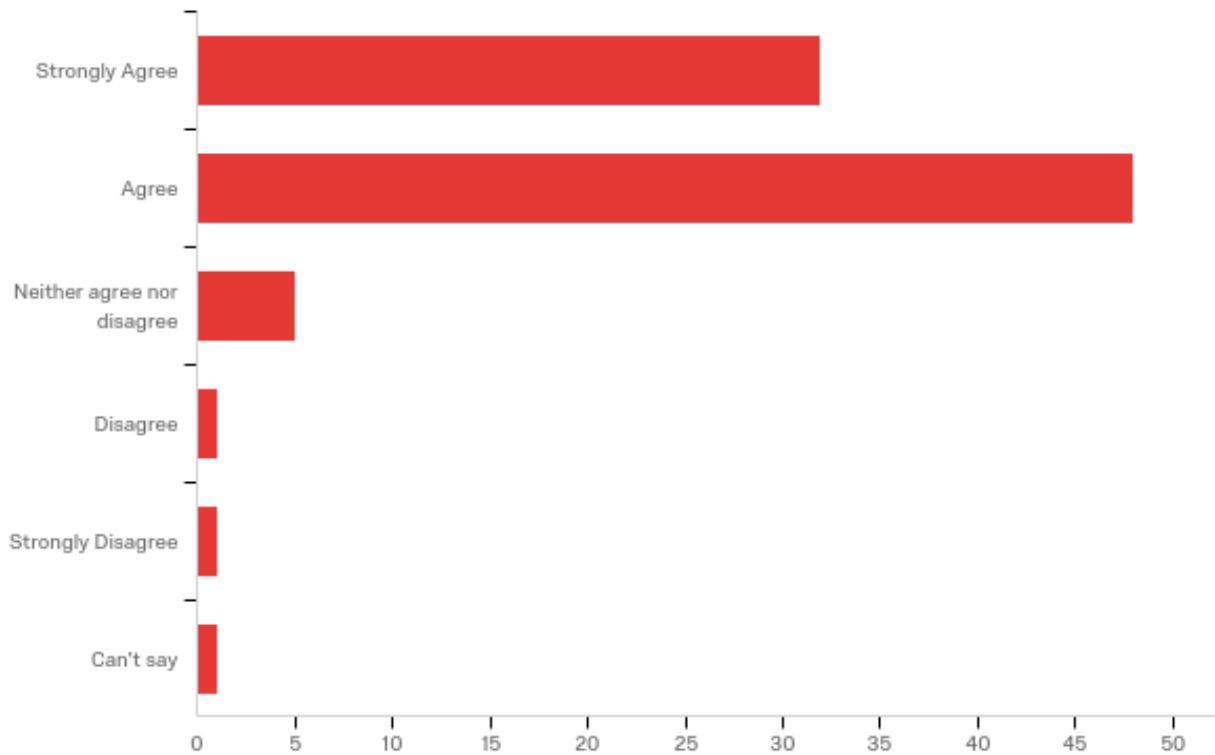
Answer	%	Count
Strongly Agree	5.68%	5
Agree	47.73%	42
Neither agree nor disagree	15.91%	14
Disagree	25.00%	22
Strongly Disagree	5.68%	5
Can't say	0.00%	0
Total	100%	88

60 - The procedures employed in the federal system are generally fair.



Answer	%	Count
Strongly Agree	12.36%	11
Agree	60.67%	54
Neither agree nor disagree	6.74%	6
Disagree	13.48%	12
Strongly Disagree	6.74%	6
Can't say	0.00%	0
Total	100%	89

61 - Attorneys can cooperate in discovery while still being zealous advocates for their clients.

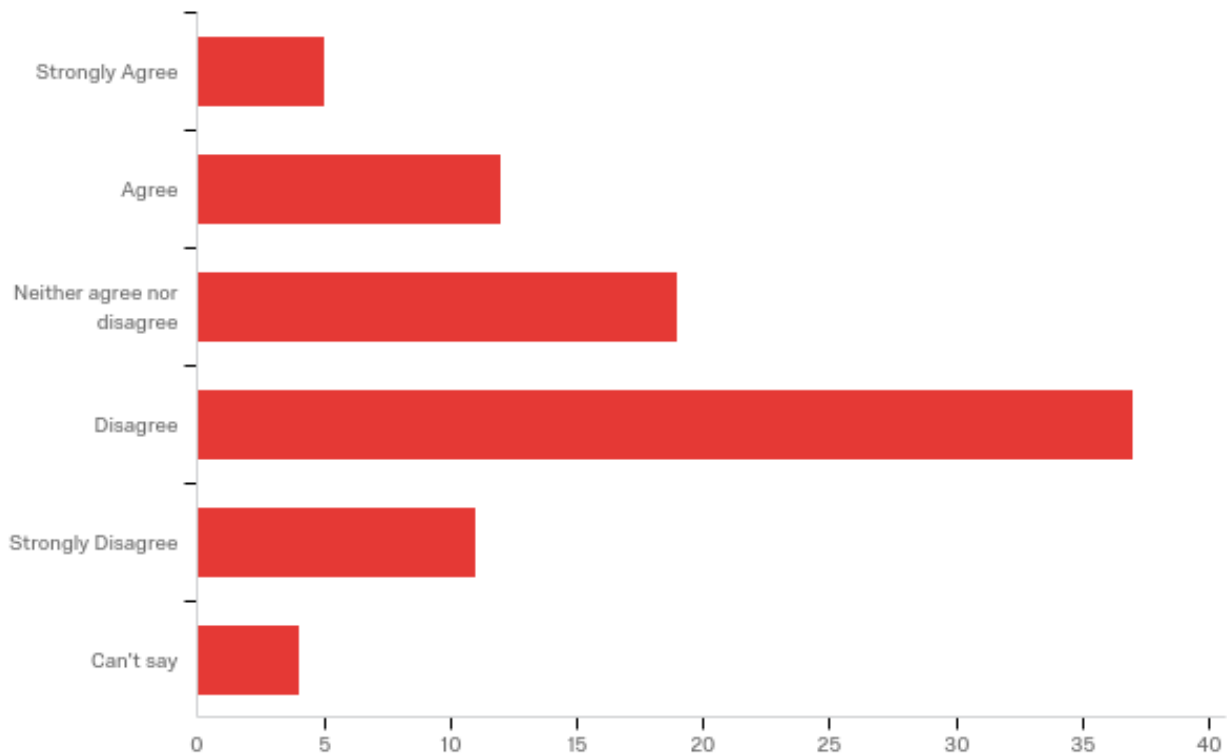


Answer	%	Count
Strongly Agree	36.36%	32
Agree	54.55%	48
Neither agree nor disagree	5.68%	5
Disagree	1.14%	1
Strongly Disagree	1.14%	1
Can't say	1.14%	1
Total	100%	88

**62 - In the typical case in federal court, the cost of discovery should be no more than the following percentage of the total litigation costs of any party:**

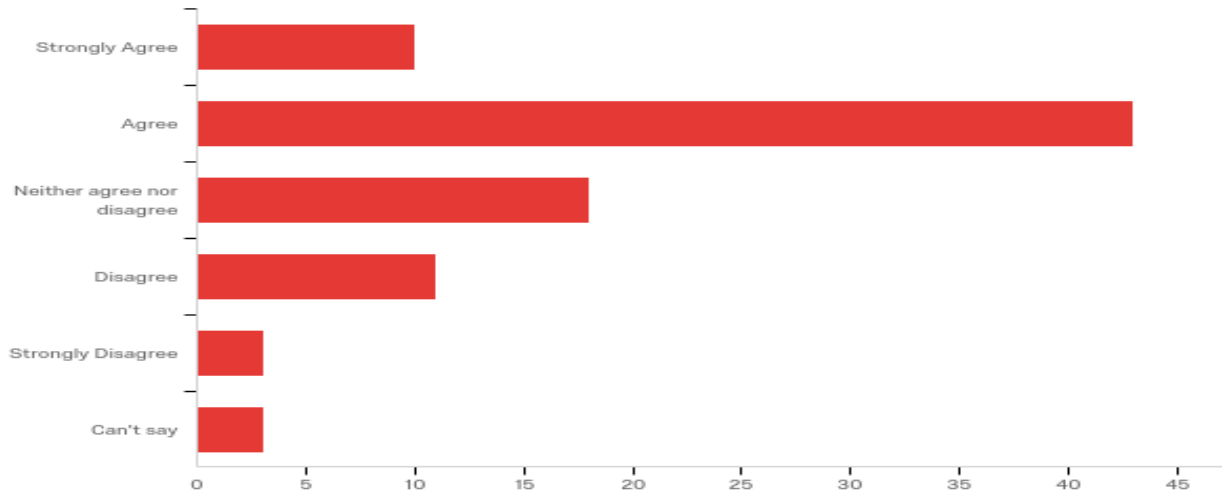
Answer	Count
0%	0
15%	7
15%-25%	13
25%-50%	25
50%+	10

**63 - Discovery is abused in almost every case in federal court.**



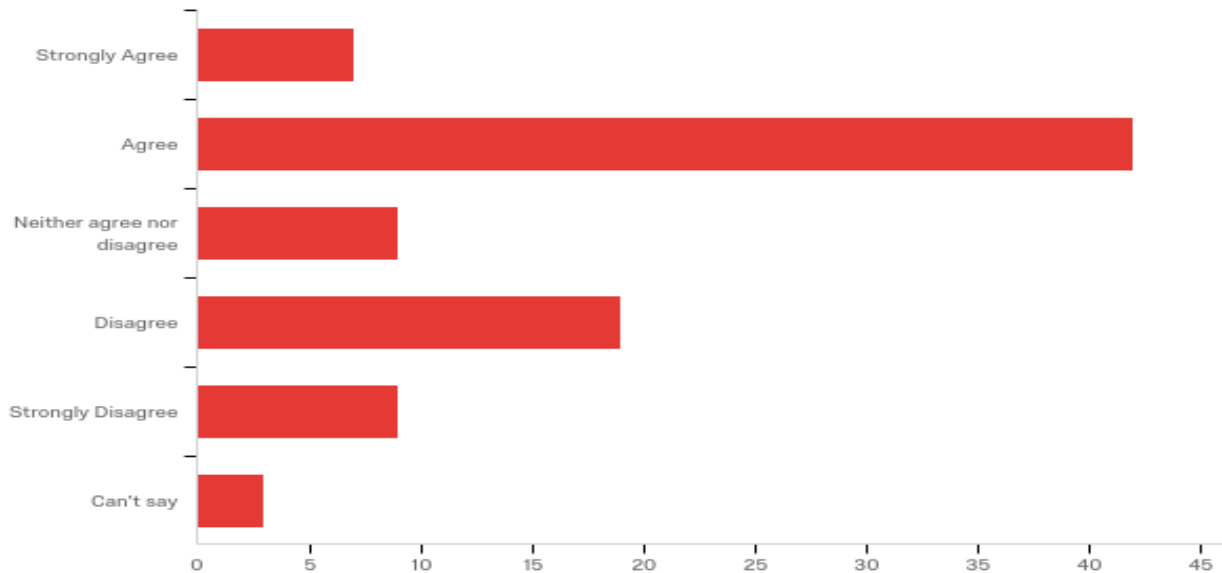
Answer	%	Count
Strongly Agree	5.68%	5
Agree	13.64%	12
Neither agree nor disagree	21.59%	19
Disagree	42.05%	37
Strongly Disagree	12.50%	11
Can't say	4.55%	4
Total	100%	88

**64 - Responding parties increase the cost and burden of discovery in federal court through delay and avoidance tactics.**



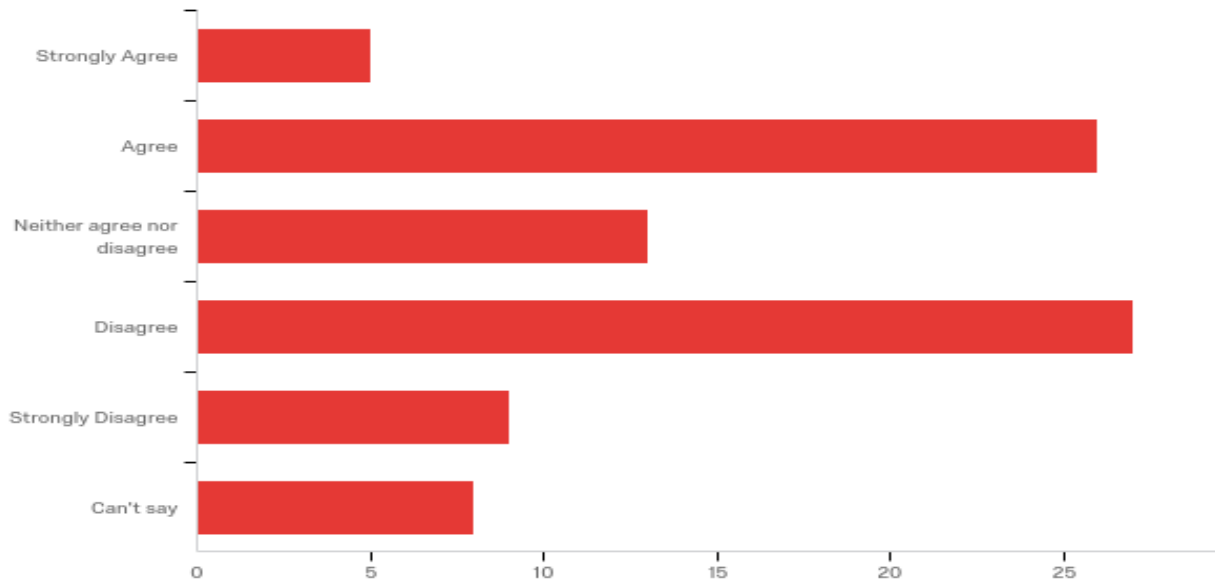
Answer	%	Count
Strongly Agree	11.36%	10
Agree	48.86%	43
Neither agree nor disagree	20.45%	18
Disagree	12.50%	11
Strongly Disagree	3.41%	3
Can't say	3.41%	3
Total	100%	88

**65 - The cost of litigating in federal court, including the cost of discovery, has caused at least one of my clients to settle a case that they would not have settled but for those costs.**



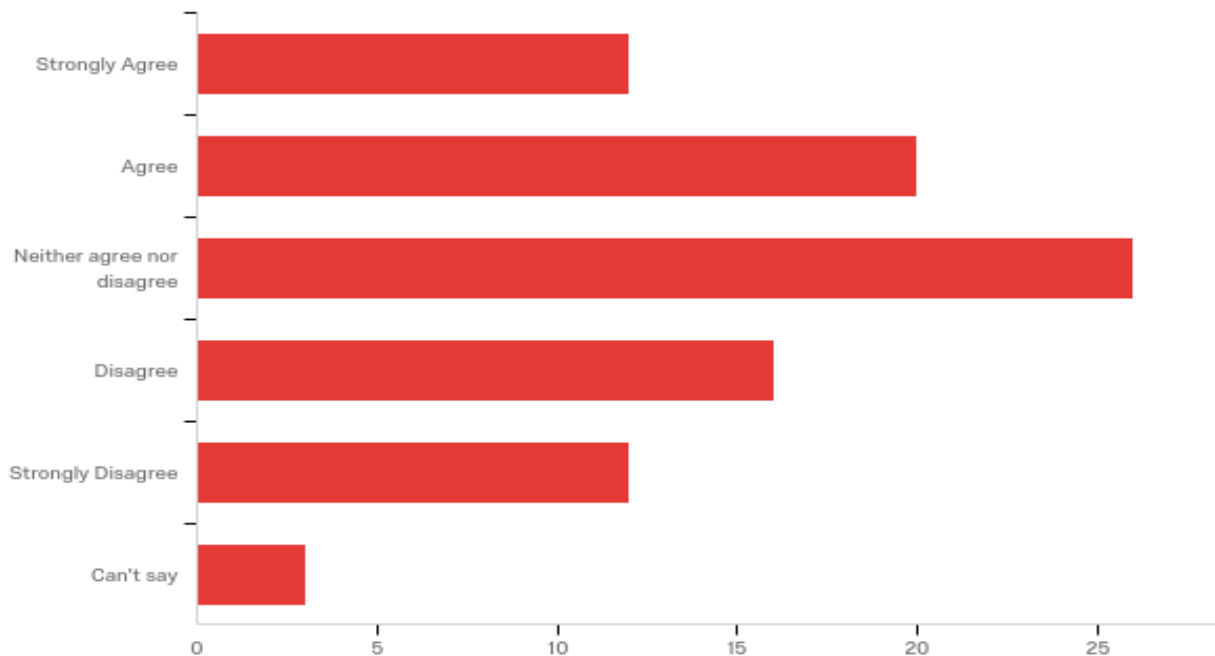
Answer	%	Count
Strongly Agree	7.87%	7
Agree	47.19%	42
Neither agree nor disagree	10.11%	9
Disagree	21.35%	19
Strongly Disagree	10.11%	9
Can't say	3.37%	3
Total	100%	89

66 - The cost of litigating in federal court, including the cost of discovery, has caused at least one of my clients to abandon a claim that they would not have abandoned but for those costs.



Answer	%	Count
Strongly Agree	5.68%	5
Agree	29.55%	26
Neither agree nor disagree	14.77%	13
Disagree	30.68%	27
Strongly Disagree	10.23%	9
Can't say	9.09%	8
Total	100%	88

67 - It would be better if more cases went to trial.



Answer	%	Count
Strongly Agree	13.48%	12
Agree	22.47%	20
Neither agree nor disagree	29.21%	26

	Disagree	17.98%	16
	Strongly Disagree	13.48%	12
	Can't say	3.37%	3
	Total	100%	89



**68 - Please enter any comments you may have on the subjects addressed in this survey in the box below:**

Please enter any comments you may have on the subjects addressed in this survey in the box below:

Generally the corporations involved attempt to game the discovery system by making it more difficult to get the relevant info from them.

court extremely corrupted

This case settled without ever being formally served on the defendants. Accordingly, it is not an appropriate case to be represented in this survey.

Litigation is terrible way to solve actual problems, regardless of discovery costs. Reasonableness of discovery costs hinges almost exclusively on general reasonableness of opposing counsel. (Government rarely has any preference for broad or cumbersome discovery - agencies are not nimble in general and only recently even have the capacity to comply with e-discovery obligations.)

My practice typically involves ERISA litigation so discovery is usually not a major factor.

Federal courts in general are more reliable and fair to all parties.

Have no answer for No. 62.

The Federal District Courts are much more racially bias against Black lawyers and litigants. This has been steadily increasing over the past eight years.

Most of my District Court cases have settled before serious discovery.

My case was a habeas petition, and settled early, so there was really no discovery.

Summary judgment is abused by many federal judges. The standards are not followed and many judges are engaged in blatant fact-finding. This, more than any discovery issue, is substantially distorting the federal courts in civil rights case.

surveys like this can't evaluate the problem. Much more discovery from all sources and and few burdensome claims tolerated. Privileged s/b restricted and is claimed it should generally evaiewed by the opposing attorney under a non-disclosure order and if the reviewing attorney sees the need move seek in-camera review to use the material at trial. Defense counsel regularly withhold the most relevant evidence and are seldom punished (Injured Plaintiff's generally don't have that ability). Only when the truth is forthcoming can their be justice. The discovery rules only protect big business and insurance companies. Even with much broader discovery only when severe (defense ending sanctions become customary for willful non-disclosure will violations end.

Sorry that my case was remanded after a discovery conference, so I could answer the first group of questions but the rest were not applicable until the end. As a plaintiffs attorney, I would summarize my thoughts this way: Document and electronic discovery tends to work better in federal courts than state courts, and I usually obtain more documents more easily, but it is a much less favorable venue for reasons primarily related to Daubert and summary judgment, so I avoid it if possible in any kind of complex case.

This case was an outlier in that it resolved very early. I have a similar case in the Middle District of Florida that has lingered for approximately three years, primarily due to delays in ruling by the Court. Our Motion for FLSA Conditional Certification was pending more than ten months (and as a result a large part of the class's claims became time barred - the Court denied Plaintiff's Motion for Equitable Tolling based on the delay). The Magistrate and District Judge in that case say they are just too busy and will get around to looking at Plaintiff's motions once they have been pending for more than six months. The FLSA track scheduling orders in these case prevent the parties from engaging in discovery beyond the Plaintiff's timesheets and paystubs (so no discovery of ESI until the case has been on file for many months).

Less than 15% of my cases involved Electronic Discovery. The Federal court system is not much different than state court system in terms of rules of procedure and evidence. Primary difference is Federal bench is overwhelmed with cases, many vacancies, and not enough staff.

Electronic discovery is still in it's infancy In practices like mine. ATTEMPTS TO LIMIT DISCOVERY A BLATANTLY UNFAIR TO PLAINTIFFS.

This was a a FOIA without discovery and so the vast majority of the questions were basically not applicable. Further, all of my federal practice involved Mandamus, FOIA, review of removal orders or Administrative Procedure Act, none of which involved discovery, which made the questions aimed at my general experience also inapplicable. Finally, I don't practice in state courts and so have no way of comparing federal and state practice. In short, I think my responses were not helpful and should be disregarded.

The subject case settled after informal exchange of documents between counsel, and before involvement of the assigned judge.

Daubert motions on experts have greatly increased expenses, have led to abuses and led to unpredictability. That practice should be abolished.

Discovery has turned into a dance that is not as productive and simple as it should be.

I appeared in the case in question after a Default Judgment had been entered. I succeeded in vacating the Default, settling on terms, and having the Court accept and enter a consent judgment without admission of liability.

The federal court system is designed to aid large corporations and beat down little plaintiffs. The summary judgment standard and the way it is applied by federal judges undercuts a Plaintiff's right to trial by jury under the 7th Amendment. Judges in fact weigh evidence and decide cases based on whether they want to take the time to hear them, not whether there is a question of fact. This opinion is widely held by all members of the bar. Defense attorneys remove cases regularly to federal court. Plaintiffs avoid federal court.

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Defendants in employment cases game discovery to limit information and drive up costs to plaintiffs rendering a reasonable settlement impossible.

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My practice is primarily appellate, and any trial work is about legal, rather than factual, issues. Discovery rarely figures in my practice.

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My primary complaint involves the settlement conference procedure requiring both sides to agree to a settlement conference. If no agreement, no conference.

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This survey seems likely to obtain unreliable results, at least as it applies to my work as a civil rights lawyer, due to phrasing of certain questions and the ambiguity of certain terms. In my experience, defendants have all of the money and the power and the documents/ESI and are hiding the truth. Defense lawyers, to varying degrees, seek to limit discovery so we cannot uncover the truth. The questions, my impression of them anyway, is that they are, even if unintentionally, oriented towards commercial litigation. I would hate for the results of this survey to be used to justify limits on discovery that impair my ability to hold government actors and agencies accountable.

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the survey should first ask whether the case was disposed of on a dispositive motion because that would have limited the relevance of most of the other questions.

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The survey is not geared toward the appeals to court from the decisions issued in the administrative due process hearings convened under the IDEA

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Very small case. Settled quickly for \$4T after we made an offer of judgment. Thus, many of the above questions are hard to answer.

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