



The 2017 Carlton Fields Class Action Survey

Best Practices in Reducing Cost and
Managing Risk in Class Action Litigation



**CARLTON
FIELDS**





Table of Contents

Introduction	1
Executive Summary	2
Class Action Spending and Budgets.....	3
Type and Frequency of Class Actions	5
Exposure and Cost of Class Actions	16
How Companies Manage Class Actions.....	19
How Companies Approach Class Action Risk	21
Strategies for Managing Class Action Cost	38
Methodology and Approach.....	45
About Carlton Fields.....	45



Introduction

For the second consecutive year, class action spending is up, and the rise in spending is expected to continue in 2017. The potential exposure for companies currently managing class actions has increased. Across industries and practice areas, class actions continue to present legal departments with sizable risk.

The sixth annual Carlton Fields Class Action Survey is based on detailed interviews with general counsel or senior legal officers at 373 companies of all sizes and business types. They shared thoughts and best practices on class action exposure and management. We trust that their valuable insights will, in turn, help your company and its legal department manage these prevalent, costly lawsuits effectively and efficiently.

Copyright © 2017 by Carlton Fields Jordan Burt, P.A. All rights reserved.

This Carlton Fields publication should not be construed as legal advice on any specific facts or circumstances. The content is intended for general information purposes only and may be quoted or referred to in any other publication or proceeding only with proper citation (*The 2017 Carlton Fields Class Action Survey*, available at <http://ClassActionSurvey.com/>) or by linking to the firm's Class Action Survey website (<http://ClassActionSurvey.com/>). The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship.



Executive Summary

Class action spending is up for the second consecutive year, marking the reversal of a downward trend that occurred between 2011 and 2014.

Across industries, companies spent \$2.17 billion on class action lawsuits in 2016. While the percentage of companies managing at least one active class action declined, from a high of 60.6 percent in 2015 to 53.8 percent in 2016, companies perceive that the magnitude of their potential exposure and risk has increased. For companies managing class actions, volume has remained virtually unchanged from 2015, with most respondents reporting approximately six active cases.

Labor and employment matters displaced consumer fraud as the most common type of class action companies faced in 2016. Labor and employment cases now account for 37.7 percent of class actions and 38.9 percent of class action spending. This occurred as wage and hour claims surged and labor industry regulators implemented an aggressive enforcement strategy. Class actions involving intellectual property issues also rose to 7.5 percent. Data privacy class actions, highly anticipated for several years, remained a small percentage of matters overall. Although companies continue to report that these types of matters are a concern, less than 22 percent of companies have actually faced a data privacy class action.

Both the routine and highest-risk categories of class actions reflected increases this year, indicating that companies face class actions that are more polarized in terms of complexity and exposure level. The percentage of class actions in the bet-the-company and high-risk categories increased from 9.5 percent in 2015 to 25.3 percent, while the percentage of class actions in the routine category increased from 28 percent in 2015 to 38.7 percent. This impacted defense philosophies, with companies increasingly reporting that they either “go low” or, in complex cases, “defend at all costs.” In contrast, only 20.8 percent of companies reported using a “defend at the right cost” philosophy, down sharply from a high of 33.9 percent in 2015.

Though they increasingly face higher-risk and higher-exposure class actions, corporate legal departments continue to reduce the number of in-house attorneys used to manage those cases. Not surprisingly, these in-house attorneys are spending more time on class actions, and their companies are relying more heavily on outside counsel.

When evaluating the risks presented by class actions, exposure is still deemed the most important variable and “coming in under estimated exposure” remains a key determinant of success. Companies report that they resolve 62.5 percent of their class action lawsuits by settlement, and that most settlements occur before a class certification decision.

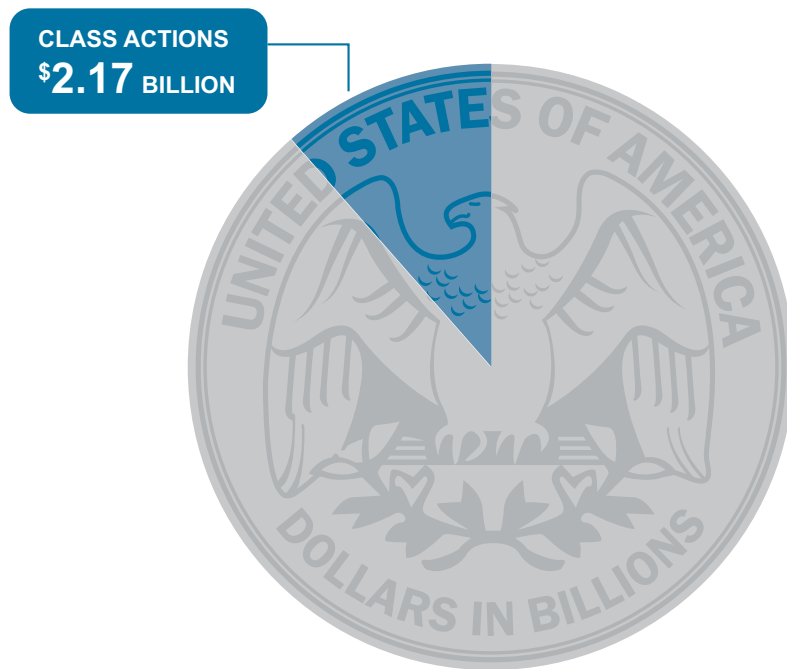
The use of alternative fee arrangements to manage class actions continued to decline. The percentage of companies that relied on AFAs in their defense of class actions dropped from 49.2 to 35.8 percent. This decline reflects the challenges inherent in using alternative fee structures to manage increasingly complex and unpredictable matters. Companies that do use AFAs continue to favor fixed fee structures.

Class Action Spending and Budgets

Class Action Spending Continues to Rise

Class action spending reached \$2.17 billion in 2016. This sum accounts for 11.2 percent of all litigation spending in the United States, up from 10.8 percent in 2015.

11.2 Percent of Litigation Spending in the U.S.

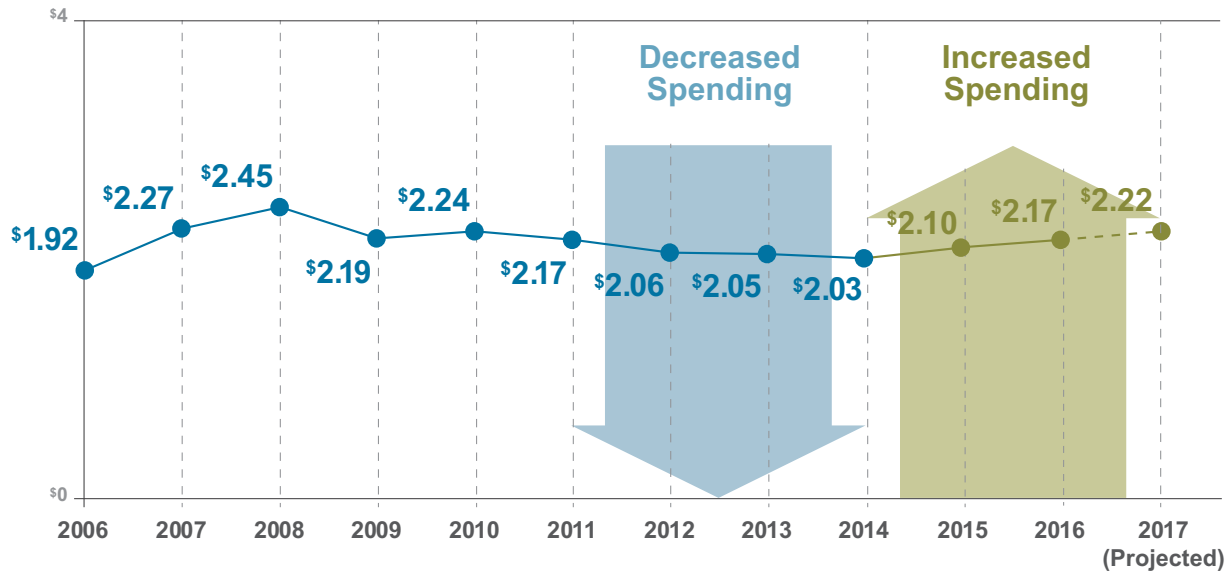


The Trend of Increased Class Action Spending is Expected to Continue in 2017

Class action spending rose to \$2.17 billion, up from \$2.10 billion in 2015, and is projected to climb to \$2.22 billion in 2017. This upward trend began in 2015, after four straight years of decline.

U.S. Corporate Legal Spending on Class Actions

\$ Billions



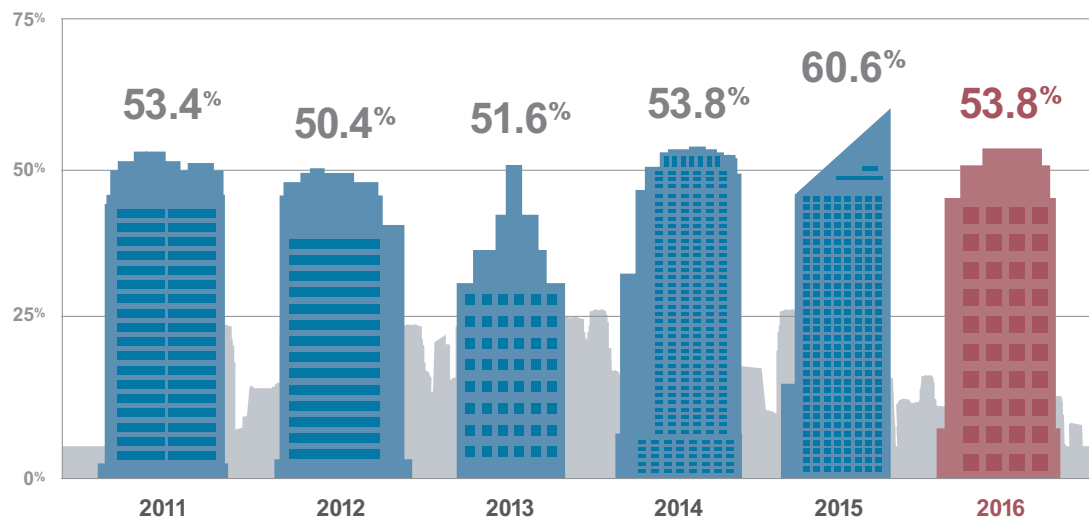
Type and Frequency of Class Actions

Percentage of Companies Managing Class Actions Returns to Historic Levels

After hitting a high of 60.6 percent in 2015, the percentage of companies managing class actions normalized to 53.8 percent in 2016.

Companies with Class Actions




Percent



Labor and Employment Actions Displace Consumer Fraud as Most Common Class Action Type

Labor and employment class actions have become the most common type of class action, making up 37.7 percent of matters and 38.9 percent of spending. Consumer fraud class actions, which represented the bulk of class actions in 2015, are now second, accounting for 19 percent of matters and 17.8 percent of spending. These practice areas are followed by product liability, securities, intellectual property, and antitrust. Data privacy class actions make up less than five percent of matters and spending.

Class Actions and Annual Spending Breakdown by Type Percent of Matters and Spending

 PRACTICE	 MATTERS	 SPENDING
LABOR & EMPLOYMENT	37.7%	38.9%
CONSUMER FRAUD	19.0%	17.8%
PRODUCT LIABILITY	9.9%	9.4%
SECURITIES	9.6%	10.7%
INTELLECTUAL PROPERTY	7.5%	5.9%
ANTITRUST	6.5%	7.9%
OTHER (INCLUDING CONTRACTS, DATA PRIVACY, INSURANCE)	9.8%	9.4%

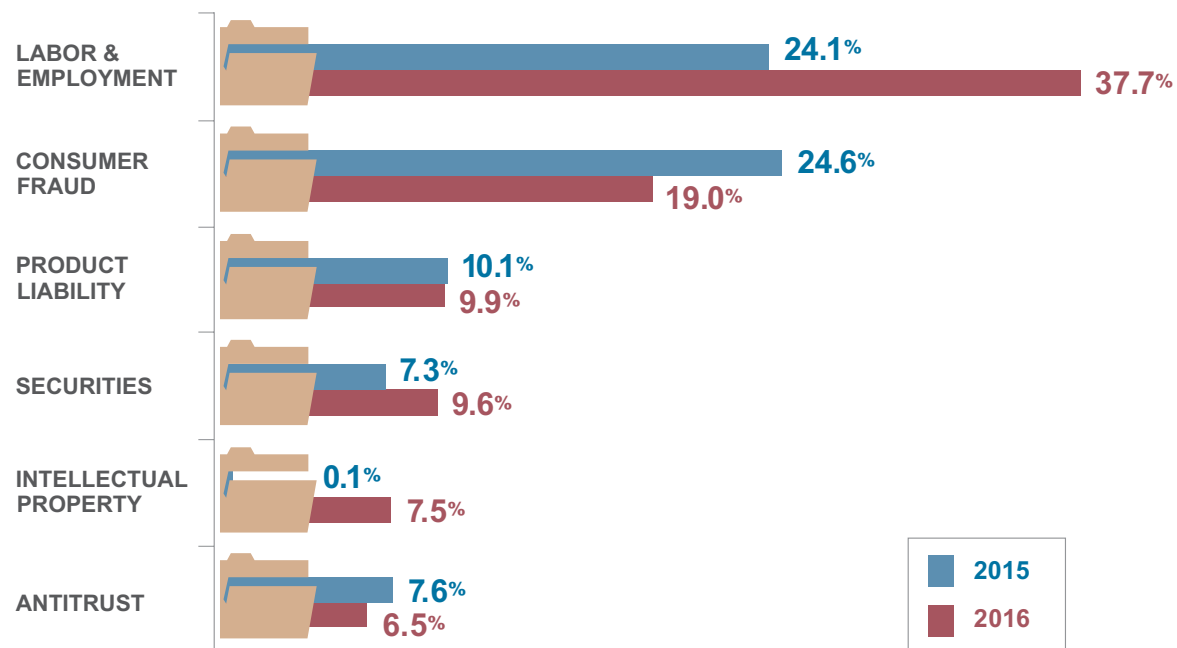
Copyright © 2017 Carlton Fields Jorden Burt, P.A.

Labor and Employment Class Actions Surge

The volume of labor and employment class actions increased by more than half, from 24.1 percent in 2015 to 37.7 percent. This upsurge occurred as wage and hour class action filings increased substantially — many in California. Consumer fraud class actions are down as a percentage of class actions for the second straight year, while companies reported a notable rise in the volume of intellectual property class actions.

Class Action Matters – Breakdown by Type

Percent of Matters



NOTE: Chart does not add up to 100%. Excludes other types of matters.

Copyright © 2017 Carlton Fields Jordan Burt, P.A.

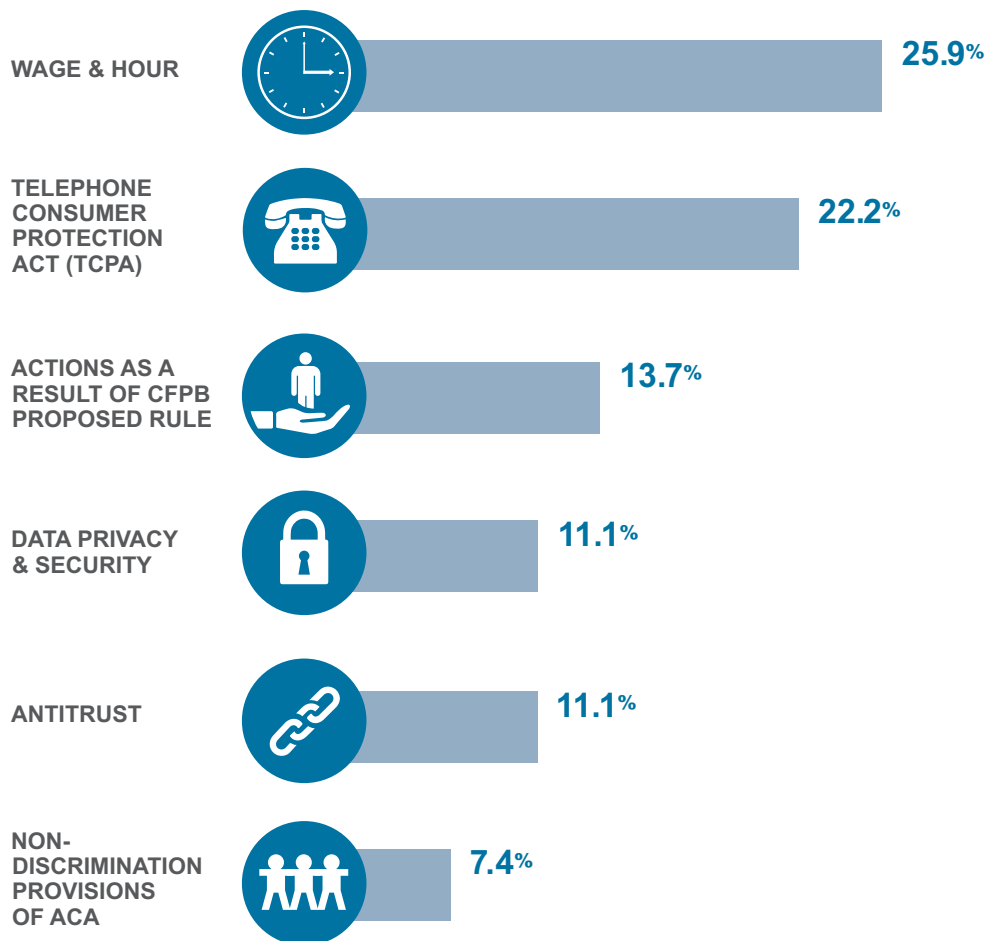
Wage and Hour and TCPA Class Actions Are the Predicted Next Wave

When corporate counsel were asked to predict the next wave of class actions, they most often named wage and hour, and TCPA compliance cases. Their emphasis on wage and hour issues is consistent with the rise in existing labor and employment matters, suggesting that companies do not expect any immediate relief from this type of litigation. These responses reflect a substantial change from 2014 and 2015 when companies predicted that more data privacy and security class actions were on the horizon.

Although data privacy and security cases have been slow to gain traction, they remain a concern. Many organizations have taken strong, preemptive measures to reduce their exposure to data breach litigation.

Predicted Next Wave of Class Actions

Percent of Companies



NOTE: Chart does not add up to 100%. Excludes responses under 7%.

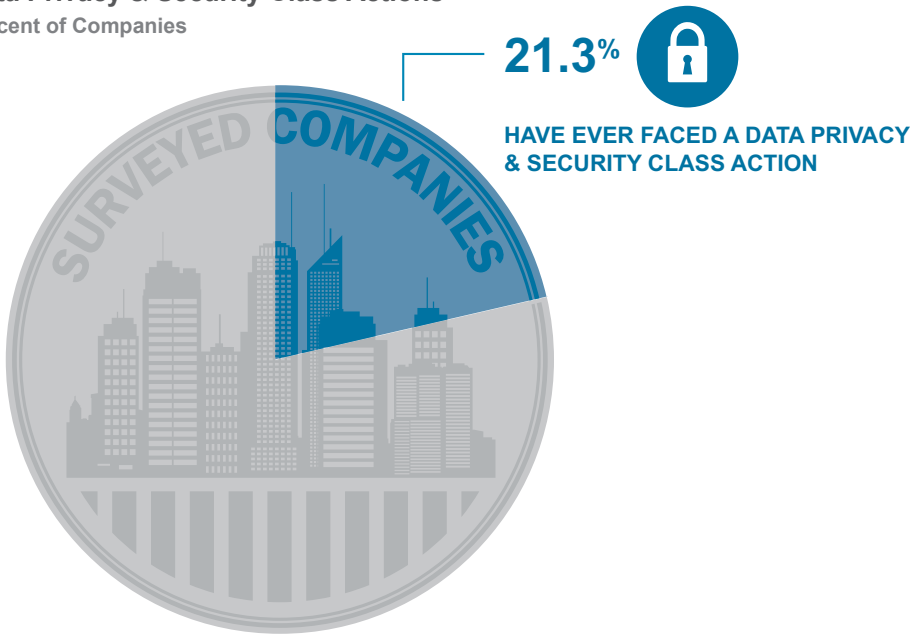
Copyright © 2017 Carlton Fields Jordan Burt, P.A.

Few Companies Have Actually Faced Data Privacy and Security Class Actions

Most companies have never faced a data privacy and security class action. Concern over the possibility of such litigation varies greatly among companies, and is largely industry driven. Businesses that retain personally identifiable consumer information are more likely to view data privacy and security class actions as a threat. They include health care providers, large retailers, financial institutions, and insurance companies.

Data Privacy & Security Class Actions

Percent of Companies



Copyright © 2017 Carlton Fields Jordan Burt, P.A.



In Their Own Words: Corporate Counsel Weigh in on Data Privacy and Security

“The threat greater than privacy is government enforcement. Federal agencies have been more aggressive and intense. With their expansive reach, the threat is greater than ever.”

*Associate General Counsel, Litigation
Fortune 500 Telecommunications Provider*

“I would give a ‘10’ to the issue of data privacy as a whole, but less than ‘5’ to our future exposure. We are taking an aggressive stance with preemptive measures.”

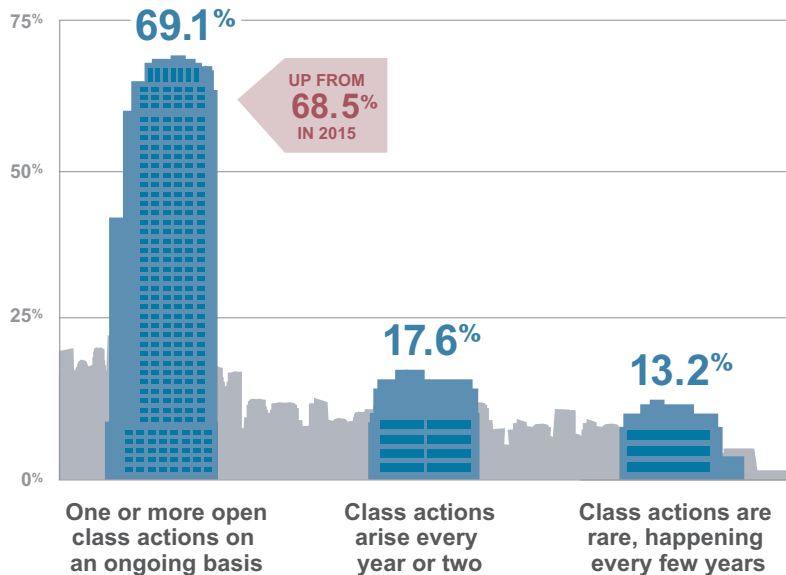
*Vice President of Labor & Employment
Leading Hospital Network*

Class Actions Remain a Part of Everyday Life for Many Organizations

Of the companies surveyed that reported handling class actions, the percentage indicating they had one or more open class actions on an ongoing basis was 69.1 percent, a slight increase from 68.5 percent last year. More companies, 17.6 percent, reported facing a class action “every year or two” compared to the 11.9 percent that provided the same response in 2015. The number of companies reporting that class actions are a rare occurrence was down more than six percentage points, to 13.2 percent.

Class Action Experience

Percent of Companies Handling Class Actions



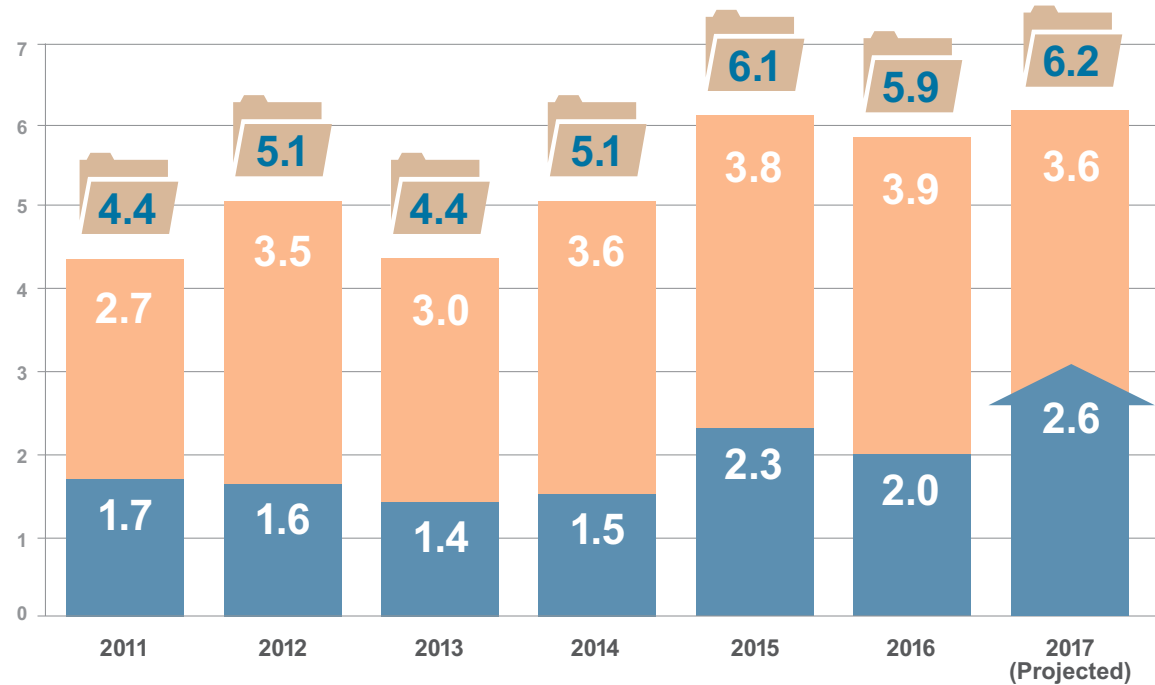
Copyright © 2017 Carlton Fields Jordan Burt, P.A.

Number of Class Actions Per Company is Projected to Rise

On average, companies managed 5.9 class actions in 2016, comparable to the number they managed in 2015. Companies averaged two new class actions in 2016. This number is projected to rise in 2017.

Current and Future Class Actions

Average Number of Matters Per Company



Copyright © 2017 Carlton Fields Jordan Burt, P.A.

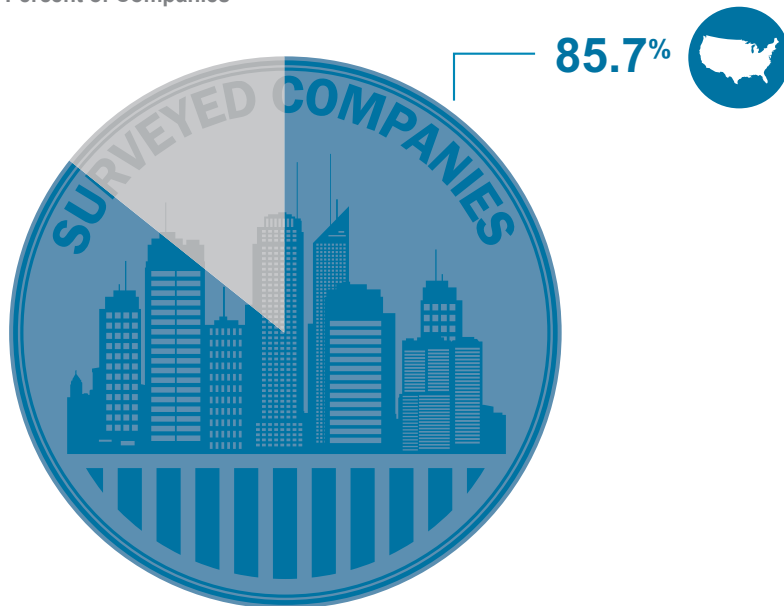


Most Companies Defend Class Actions in the United States Only

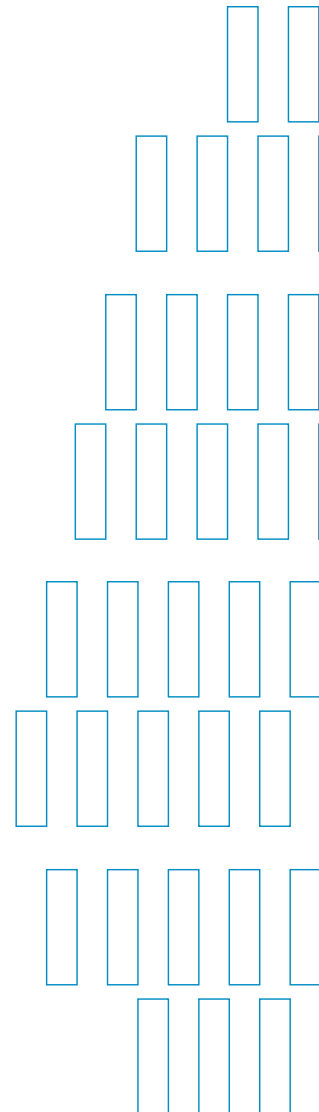
Of the companies that reported defending class actions in the past 12 months, nearly 86 percent said they are defending matters filed in the United States only. Companies that indicated they were defending class actions outside the United States reported that these matters were filed in Canada, the United Kingdom, Israel, Australia, the Netherlands, France, and Brazil.

Defending Class Actions in the U.S. Only

Percent of Companies



Copyright © 2017 Carlton Fields Jordan Burt, P.A.



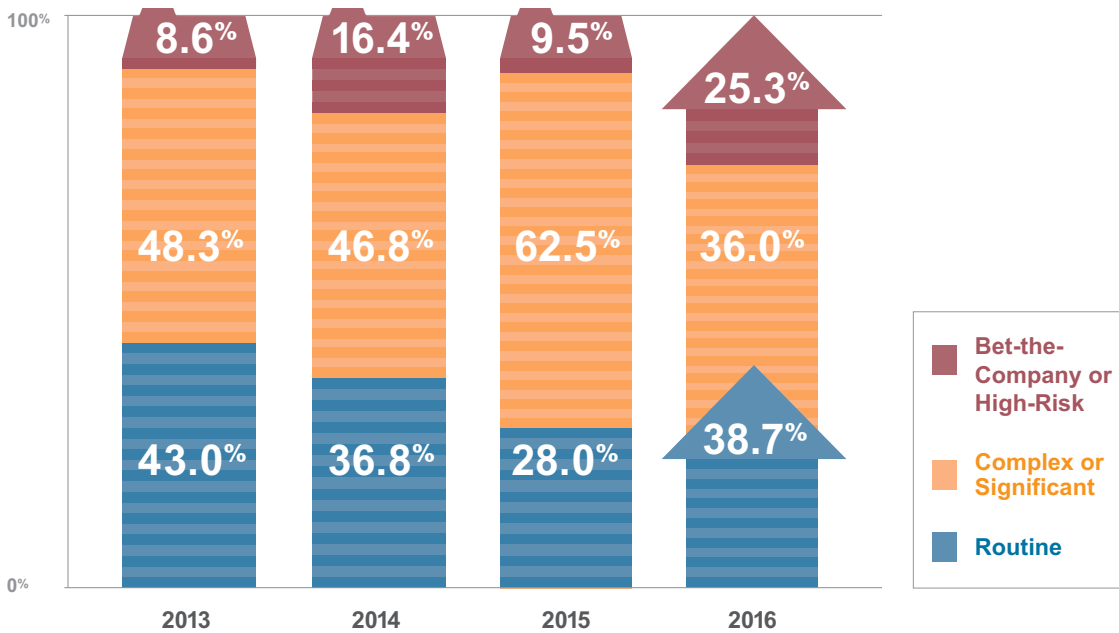
Class Action Exposure Becomes More Polarized

The volume of both routine and high-risk or bet-the-company class actions has risen, making class action exposure more polarized than in past years.

High-risk and bet-the-company class actions rose dramatically, from 9.5 percent to 25.3 percent, and the percentage of “routine” class actions also increased, by more than 10 percentage points to 38.7 percent.

Class Actions by Risk Level

Percent of Matters



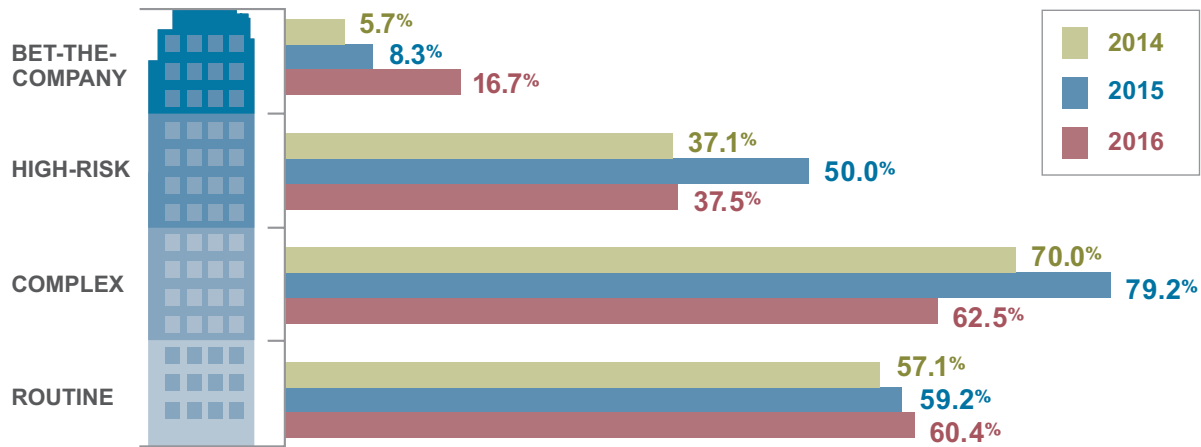
Copyright © 2017 Carlton Fields Jordan Burt, P.A.

The Number of Companies Facing Bet-the-Company Class Actions Doubles

Compared to 2015, twice as many companies are facing bet-the-company class actions in which the exposure is deemed potentially devastating to the company. Fewer companies report facing complex or high-risk class actions.

Companies Handling One or More Cases by Risk Level

Percent of Companies



Copyright © 2017 Carlton Fields Jordan Burt, P.A.

Exposure and Cost of Class Actions

Dramatic Ranges of Potential Exposure Across Risk Levels

Exposure levels vary greatly from company to company within each level of risk but are high across all categories. In the bet-the-company category, 75 percent of cases have exposure of \$15 billion or more. Even in class actions categorized as routine, exposure remains high with 75 percent of cases having exposure of \$2.1 million or more.

Exposure by Risk Level

	LOW	25 TH PERCENTILE	75 TH PERCENTILE	HIGH
BET-THE-COMPANY	\$1.0 Billion	\$15.0 Billion	\$81.3 Billion	\$110.0 Billion
HIGH-RISK	\$0.8 Million	\$30.0 Million	\$1.0 Billion	\$15.0 Billion
COMPLEX	\$0.1 Million	\$7.1 Million	\$73.8 Million	\$800.0 Million
ROUTINE	\$0.05 Million	\$2.1 Million	\$19.6 Million	\$300.0 Million

Copyright © 2017 Carlton Fields Jordan Burt, P.A.



Outside Counsel Fees in Class Actions Are on the Rise

As financial exposure and potential impact grows, companies spend more on outside counsel to help manage class actions and contain risk.

Per Matter Outside Counsel Annual Spending by Risk Level

	LOW	25 TH PERCENTILE	75 TH PERCENTILE	HIGH
BET-THE-COMPANY	\$3.0 Million	\$5.0 Million	\$11.0 Million	\$30.0 Million
HIGH-RISK	\$0.8 Million	\$1.4 Million	\$5.4 Million	\$7.5 Million
COMPLEX	\$0.1 Million	\$1.0 Million	\$1.5 Million	\$3.0 Million
ROUTINE	\$0.2 Million	\$0.3 Million	\$1.0 Million	\$1.5 Million

Copyright © 2017 Carlton Fields Jordan Burt, P.A.

For Most Companies, Insurance Does Not Cover Class Action Defense Costs

Just 28 percent of companies reported that insurance covers a portion of their class action defense costs, and the portion of defense costs that are covered is reported to be 30 percent or less.

Defense Costs Covered by Insurance

Percent of Companies



Copyright © 2017 Carlton Fields Jordan Burt, P.A.

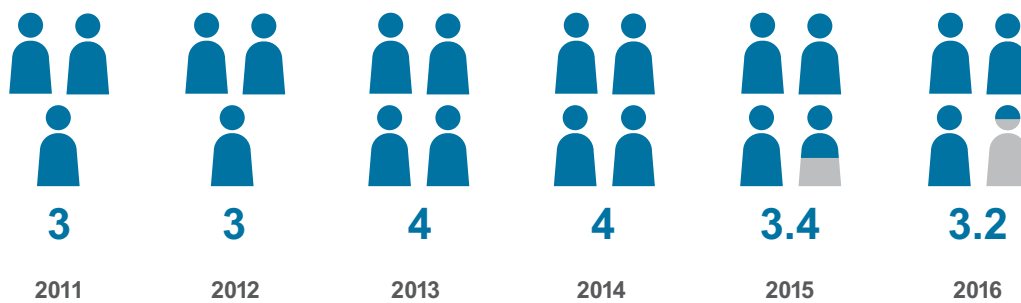
How Companies Manage Class Actions

In-House Staffing for Class Actions Continues to Decline

The number of in-house attorneys managing class actions varies widely by company. Although a handful of organizations report as many as 20 attorneys work on class actions, on average, companies rely on three to four attorneys to handle their class action work.

As fewer in-house attorneys are dedicated to class action management, organizations rely and spend more on trusted outside counsel. Reduced internal staffing, however, increases the number of hours each individual spends managing class actions.

In-House Attorneys Dedicated to Class Actions Average Number of Lawyers



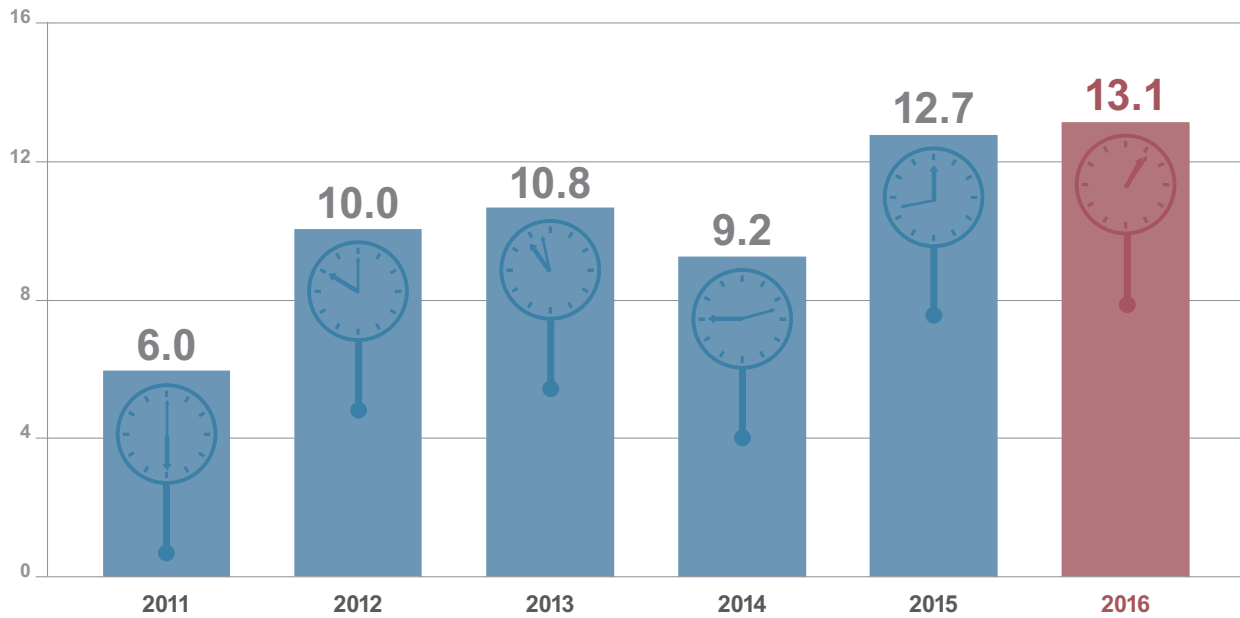
Copyright © 2017 Carlton Fields Jordan Burt, P.A.

In-House Attorney Time Spent Managing Class Actions Rises

For the second consecutive year, in-house attorney time spent managing class actions increased.

Aggregate Attorney Time Spent on Class Actions

Hours Per Week



Copyright © 2017 Carlton Fields Jordan Burt, P.A.

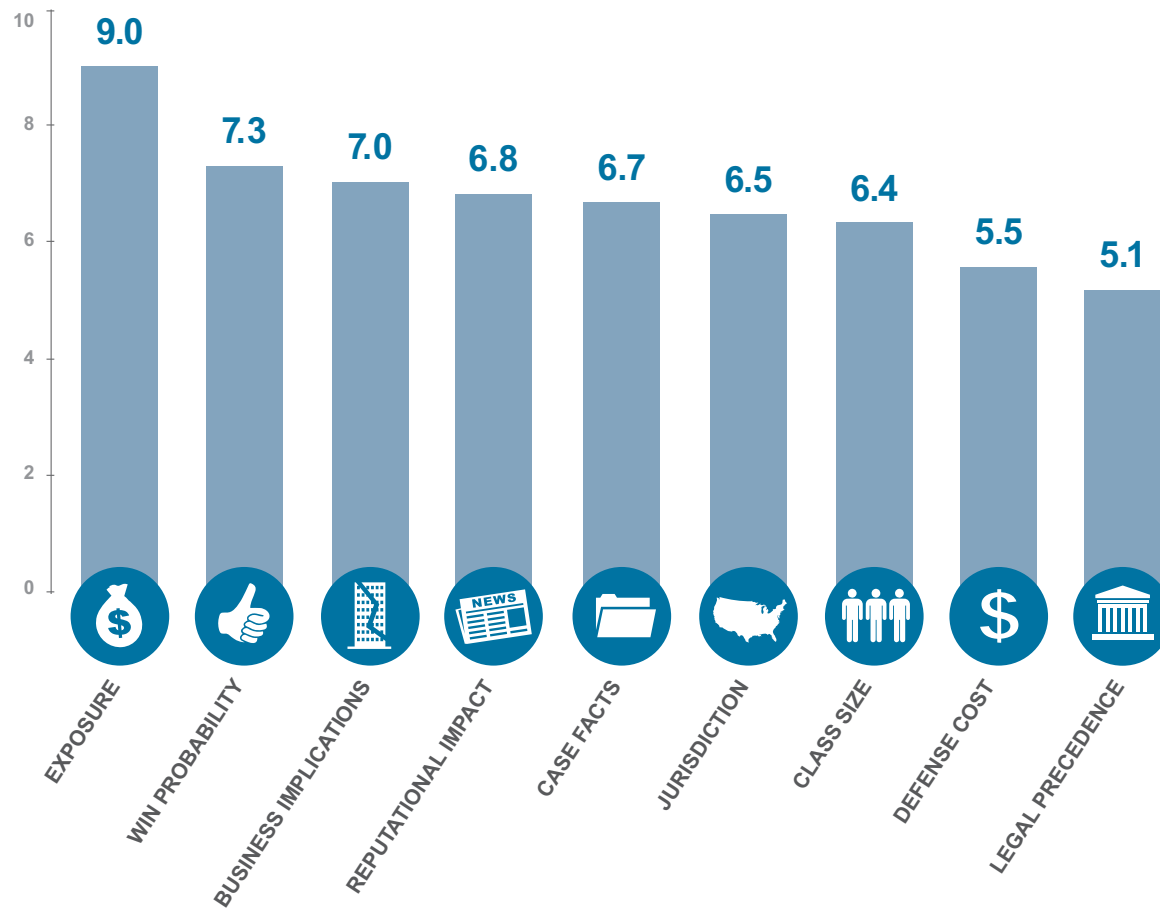
How Companies Approach Class Action Risk

Understanding Class Action Risk: Exposure and Win/Loss Probability Remain Primary Concerns for Corporate Counsel

For the fourth consecutive year, potential exposure is considered the most important risk factor by corporate counsel, followed by win probability and business implications.

Importance of Risk Variables

1-10 Rating

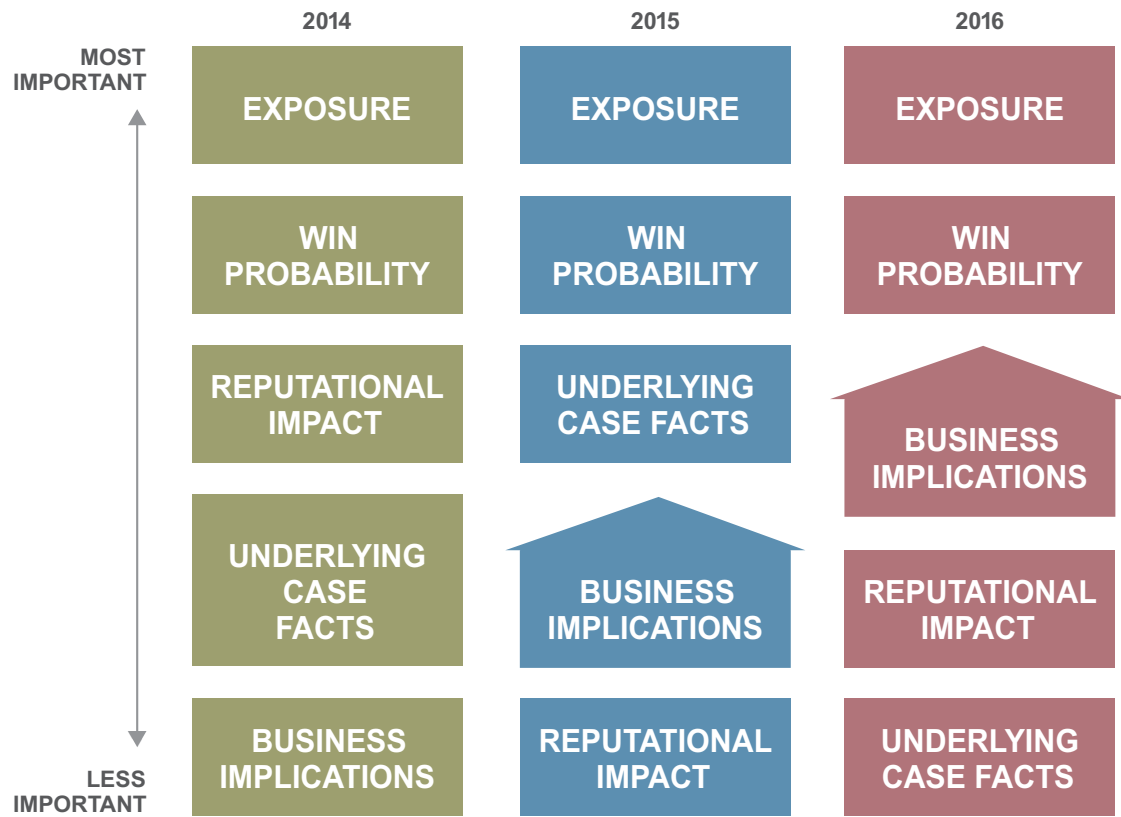


Copyright © 2017 Carlton Fields Jordan Burt, P.A.

Business Implications Rise in Importance When Companies Evaluate Class Action Risk

Over the past three years, companies have pointed to the business implications of class actions as an increasingly important variable when assessing risk. Business implications include the interruption of key revenue streams, and damage to profitability, capital, stock price, and brand perception. Reputational impact is closely related and implicates similar factors.

Importance of Risk Variables



Copyright © 2017 Carlton Fields Jordan Burt, P.A.



In Their Own Words: Corporate Counsel Offer Advice on Managing Class Action Litigation

“Have a good understanding of the business prior to a class action. Take the time to get out into the business; know the people and the processes. That enables you to get on top of things quickly.”

*General Counsel and Secretary
International Lending Consumer Goods Manufacturer*

“Try to completely understand the full scope of the risks before you become embedded in your position. The risks can emerge as you pull the case together. Wait to make up your mind about settling or fighting. Be flexible and manage expectations at the business level.”

*Vice President and Counsel
Multinational Insurance Provider*

“Every time you agree to certify a case, you will pay for it someplace else. If you have good defenses, keep fighting — hold them to their proof.”

*Litigation Team Leader
Fortune 500 Insurance Company*

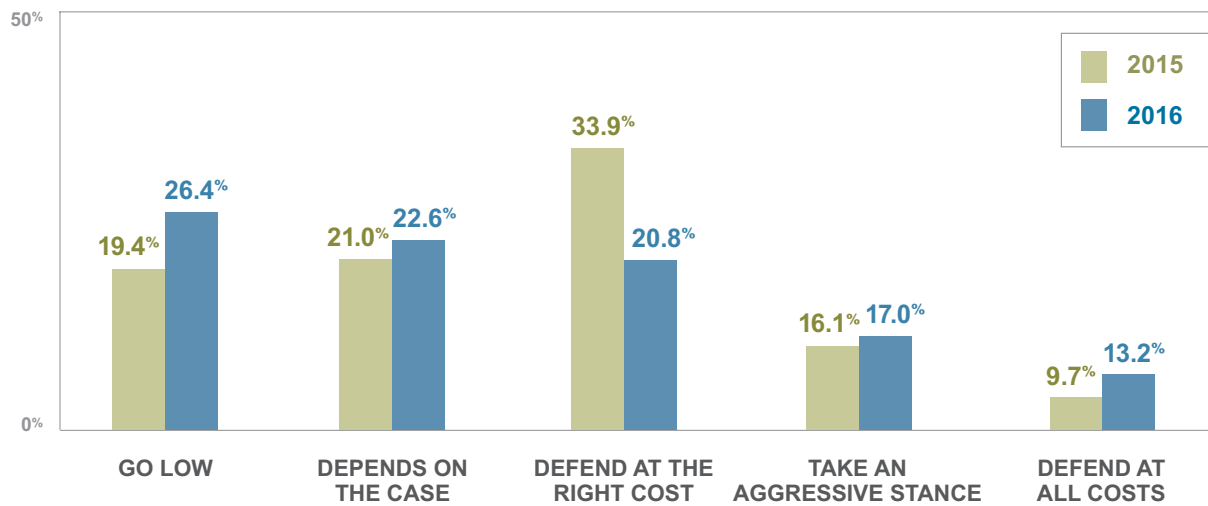
“Be realistic. Decide if you want to fight the merits or devote your efforts to mitigating the exposure. You can’t really do both at once.”

*Vice President and Assistant General Counsel
Leading Environmental and Industrial Service Provider*

As Risk and Exposure Rise, Defense Strategies Change

Reversing last year's upward trend toward companies defending class actions "at the right cost," a growing number of companies now describe their class action defense philosophy as "go low" or "defend at all costs." The "defend at the right cost" philosophy was reported by just 20.8 percent of companies, down from 33.9 percent in 2015. This movement closely correlates with the increased percentage of companies that report using the "go low" and "defend at all costs" strategies, and may be attributable to the substantial rise in both routine and higher-risk class actions.

Class Action Philosophies Percent of Companies



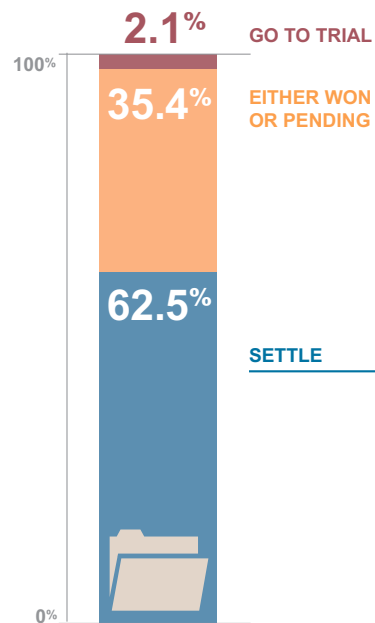
Copyright © 2017 Carlton Fields Jordan Burt, P.A.

Companies Settle More Than Half of Their Class Action Lawsuits

On average, companies settle 62.5 percent of their class actions. This is down from 68.7 percent in 2015. Nearly 62 percent of companies report settling cases brought as class actions before any class is certified.

Class Actions Settled and Settlement Timing

Percent of Class Actions



Percent of Companies

61.7%

SETTLEMENT
TYPICALLY
OCCURS PRE-
CERTIFICATION



23.4%

SETTLEMENT
TYPICALLY OCCURS
POST-CERTIFICATION

14.9%

SETTLEMENT OCCURS
EQUALLY PRE- AND
POST-CERTIFICATION

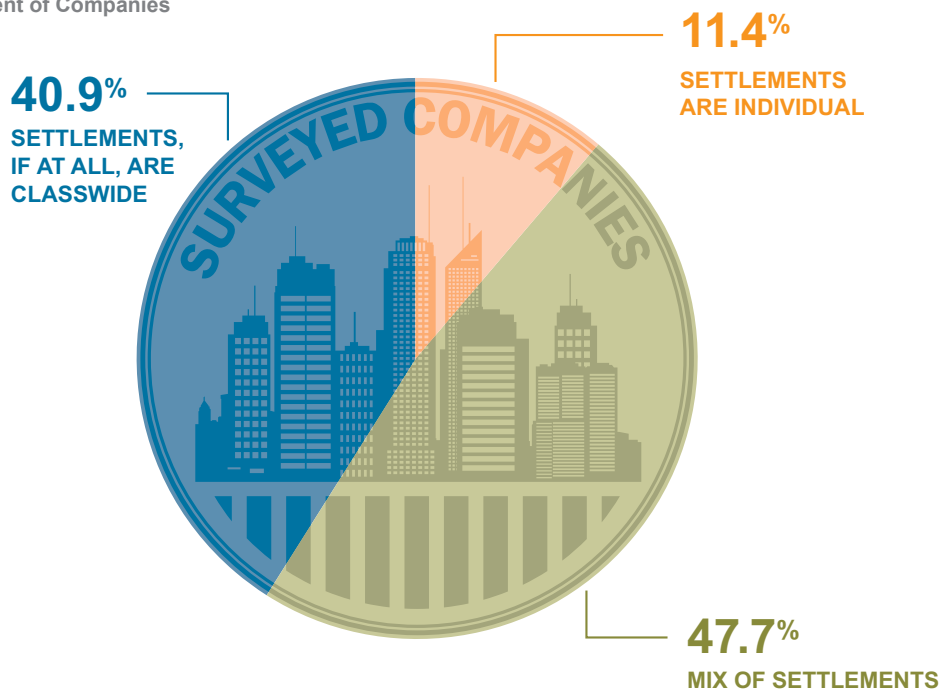
Copyright © 2017 Carlton Fields Jordan Burt, P.A.

Individual Settlements in Class Actions Are Less Common Than Classwide Settlements

Forty-one percent of companies reported that they settle class actions only on a classwide basis, while most organizations reported a mix of individual and classwide settlement types. In 2016, 11.4 percent of companies reported that they settled class actions only on an individual basis, but among all companies surveyed, 27.5 percent of class actions, on average, are reportedly settled on an individual basis.

Individual v. Classwide Settlements

Percent of Companies



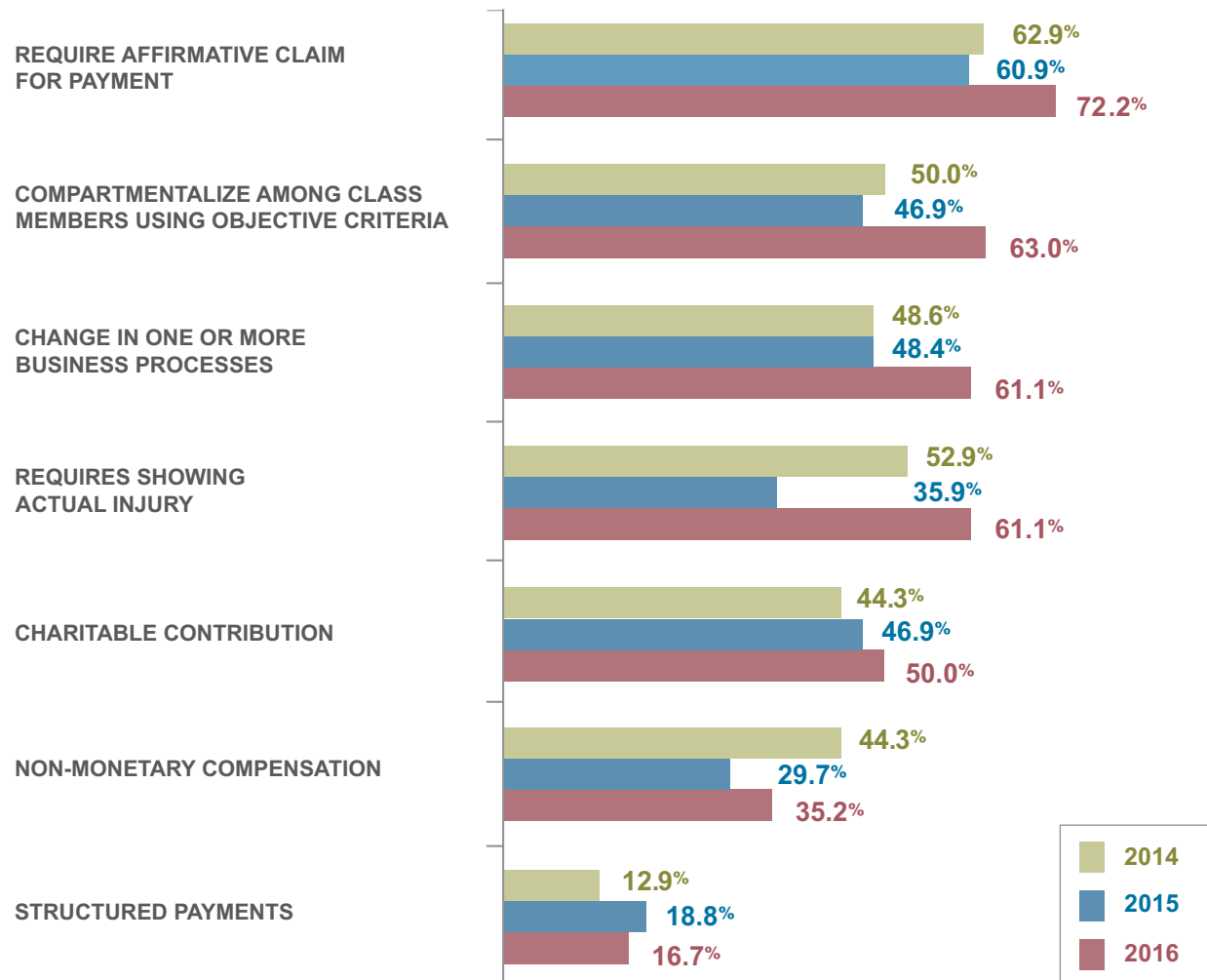
Copyright © 2017 Carlton Fields Jordan Burt, P.A.

Elements of Class Action Settlements

Class action settlements are structured in a variety of ways, and combinations are not uncommon. Companies require an affirmative claim for payment in nearly three-quarters of all class action settlements. Companies also report a notable increase in requiring class members to demonstrate an actual injury to participate, compartmentalizing or categorizing relief provided among class members, and agreeing to changes in one or more business processes. Although some courts criticize the practice harshly, 50 percent of companies report using charitable contributions, known as *cy pres*, in class action settlements.

Settlement Conditions

Percent of Companies



Copyright © 2017 Carlton Fields Jordan Burt, P.A.

Claims-Made Settlements Often Utilize a Common Fund

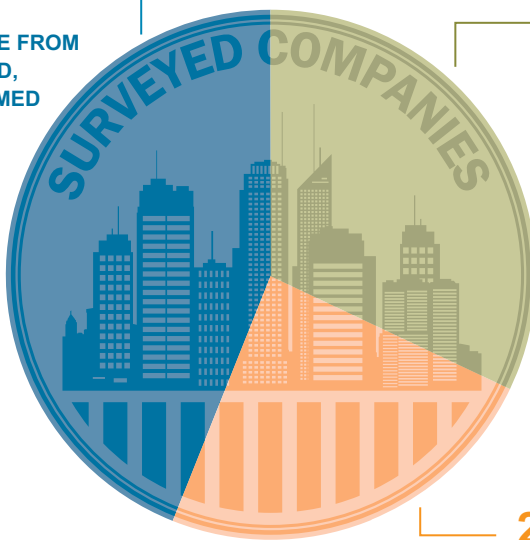
Where companies require an affirmative claim for payment in class action settlements, on average, a common fund is used 76 percent of the time. Nonetheless, companies report that in 56 percent of claims-made settlements, exposure is limited to the take rate of claims made, either because money reverts from the common fund to the defendant in such settlements, or because no common fund is used.

Claims-Made Settlement Types

Percent of Class Actions

44%

PAYMENTS MADE FROM A COMMON FUND, WHERE UNCLAIMED FUNDS DO NOT REVERT TO THE DEFENDANT



32%

PAYMENTS MADE FROM A COMMON FUND, WHERE UNCLAIMED FUNDS REVERT TO THE DEFENDANT

24%

PAYMENTS MADE BY THE DEFENDANT (NOT FROM A COMMON FUND) WHERE DEFENDANT'S EXPOSURE IS LIMITED TO THE TAKE RATE OF CLAIMS MADE

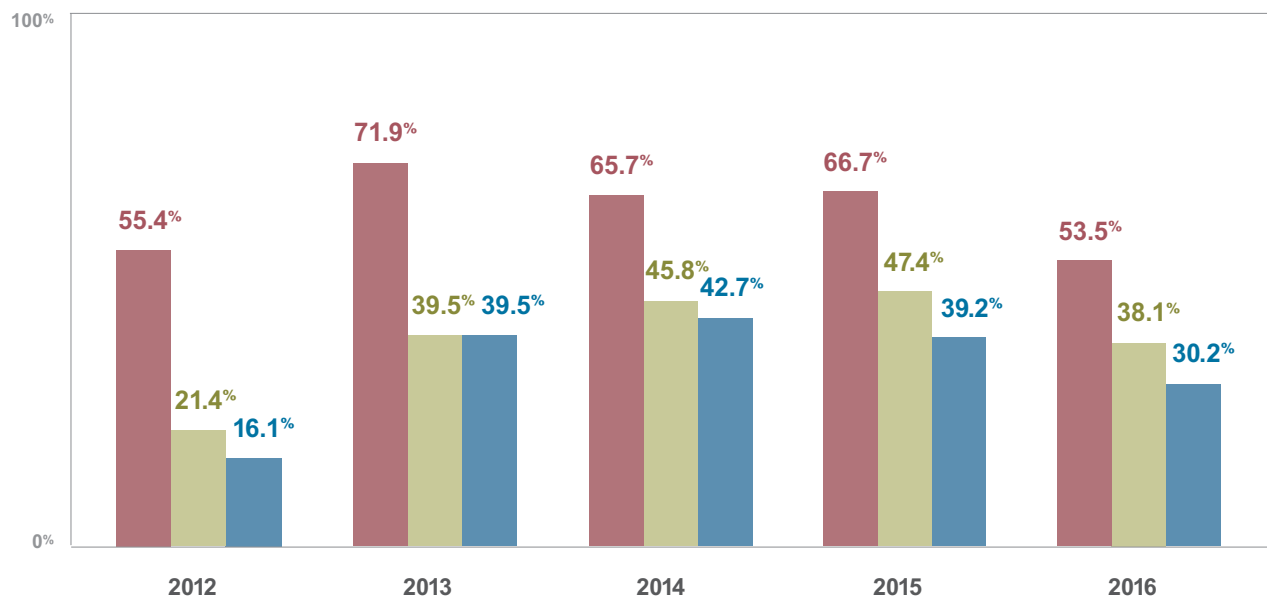
Copyright © 2017 Carlton Fields Jordan Burt, P.A.

Mandatory Arbitration Clause Use Decreased in 2016

In 2016, the percentage of companies using arbitration clauses in their contracts decreased. Arbitration clause usage may have been impacted by the Consumer Financial Protection Bureau's proposed rule that would ban the use of class action waivers in arbitration clauses in certain consumer financial contracts. The future of the proposed rule is uncertain, however, and there may be a resurgence in the use of mandatory arbitration clauses in such contracts if the rule is not implemented.

Arbitration Clause Usage

Percent of Companies



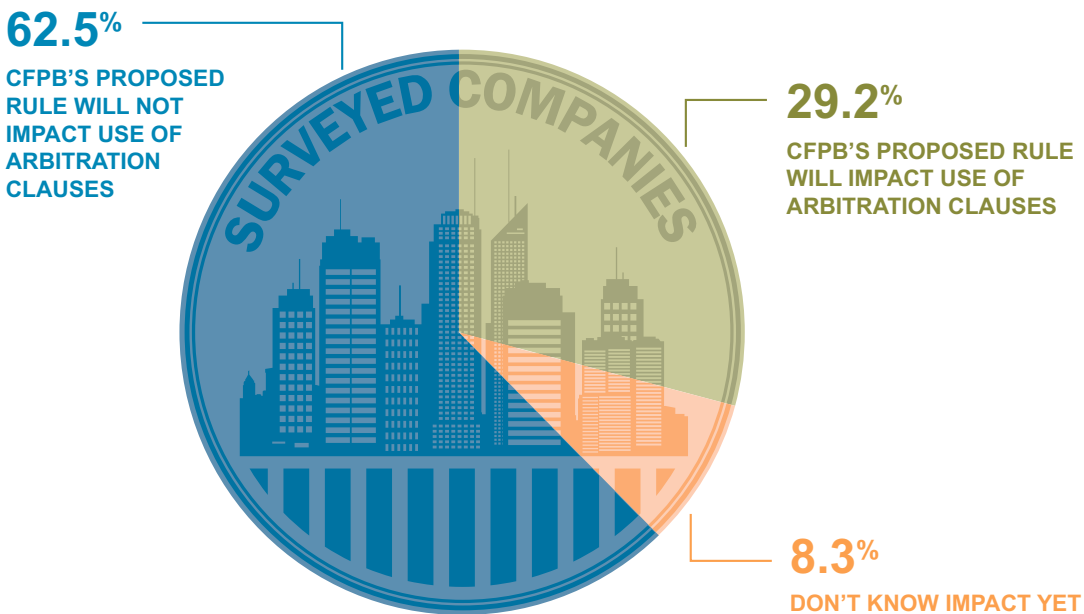
Copyright © 2017 Carlton Fields Jordan Burt, P.A.



Companies Potentially Impacted by CFPB's Proposed Rule Have Already Made Changes

Many companies that would be impacted by the Consumer Financial Protection Bureau's proposed rule banning class action waivers in arbitration clauses in certain consumer financial contracts have already made changes in anticipation of the ruling. Because the proposed rule impacts only those companies governed by the CFPB's rulings, however, more than 60 percent of companies report that their use of arbitration clauses will not change based on the proposed rule.

Potential Impact of Proposed CFPB Rule Percent of Companies

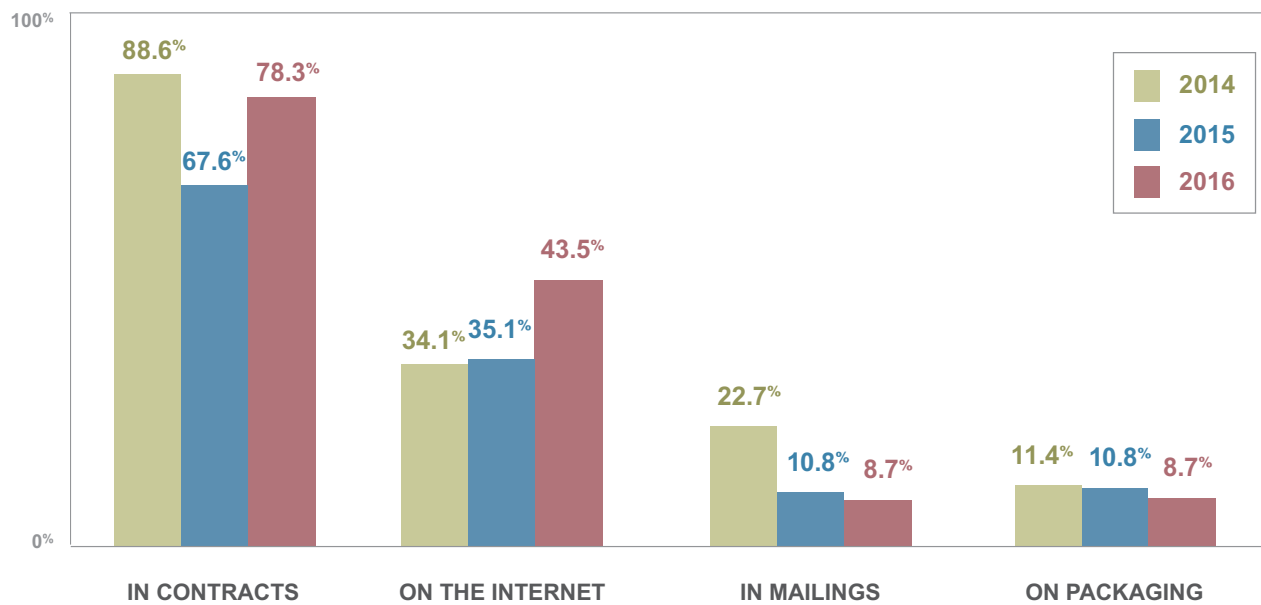


Copyright © 2017 Carlton Fields Jordan Burt, P.A.

Arbitration Provisions Are Commonly Found in Signed Contracts and Online Agreements

More than 78 percent of companies that use arbitration clauses incorporate these provisions into signed contracts. Posting the clauses online continues to grow as a popular secondary means of distribution. Other types of client communications (e.g., mailings and packaging) are infrequently used to relay arbitration information, and continue to decline in popularity.

Incorporation of Arbitration Provisions Percent of Companies



NOTE: Legal limitations, such as state insurance laws restricting the use of arbitration provisions, may apply to any of the options described above.

Copyright © 2017 Carlton Fields Jordan Burt, P.A.

In Their Own Words: Corporate Counsel Weigh in on the CFPB'S Proposed Rule on Arbitration Clauses

“There will be no change — we are already living up to the standards and this regime.”

*Managing Director and Global Head of Litigation
Multinational Financial Services Corporation*

“In the larger consumer areas it won't have an impact, but we will need to eliminate the clauses from other areas.”

*Assistant General Counsel
International Banking and Financial Services Company*

“It could affect broker-dealer matters. Some disputes that are currently resolved in arbitration could potentially be filed as class actions.”

*Vice President, Litigation and Regulatory
Global Financial Services Company*

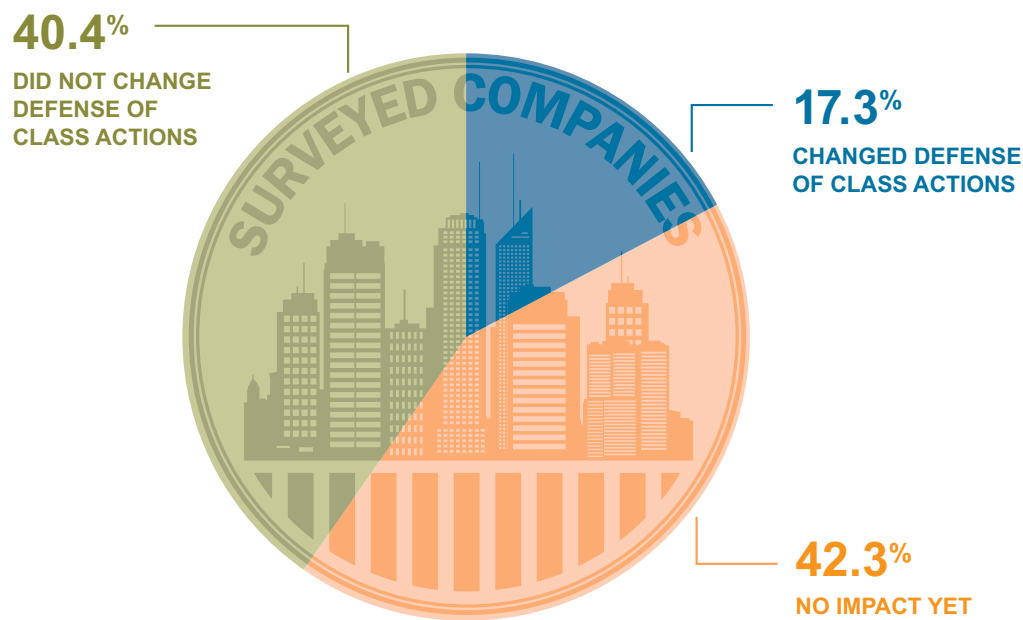
“Will not have a big impact because we are moving away from these clauses.”

*Managing Director and Global Head of Litigation
Multinational Financial Services Corporation*

Few Companies Report an Impact, So Far, From “Proportionality” Change in the Federal Discovery Rules

Fewer than 20 percent of companies report an impact, to date, from the recent changes to Federal Rule of Civil Procedure 26 that were designed to improve the federal civil discovery process by implementing an overarching concept of proportionality. More than 80 percent of companies say the new rule has not changed their defense of class actions. The long-term impact of the rule change remains to be seen.

Impact of New Proportionality Standard Percent of Companies



Copyright © 2017 Carlton Fields Jordan Burt, P.A.

**In Their Own Words: Corporate Counsel's Diverging Views
on the Changes to Federal Rule 26**

"We don't have to over-preserve documents and worry about how our retention looks to the court."

*Executive Director and Associate General Counsel
International Car Manufacturer*

"It has been a real positive change. We can fight now and we probably wouldn't have before it was changed."

*Head of Litigation
U.S. Bank and Financial Services Company*

"Our federal judges are still applying the old standards."

*Vice President
Global Health Care Provider*

"It did not have an impact. We already try to limit the scope of discovery."

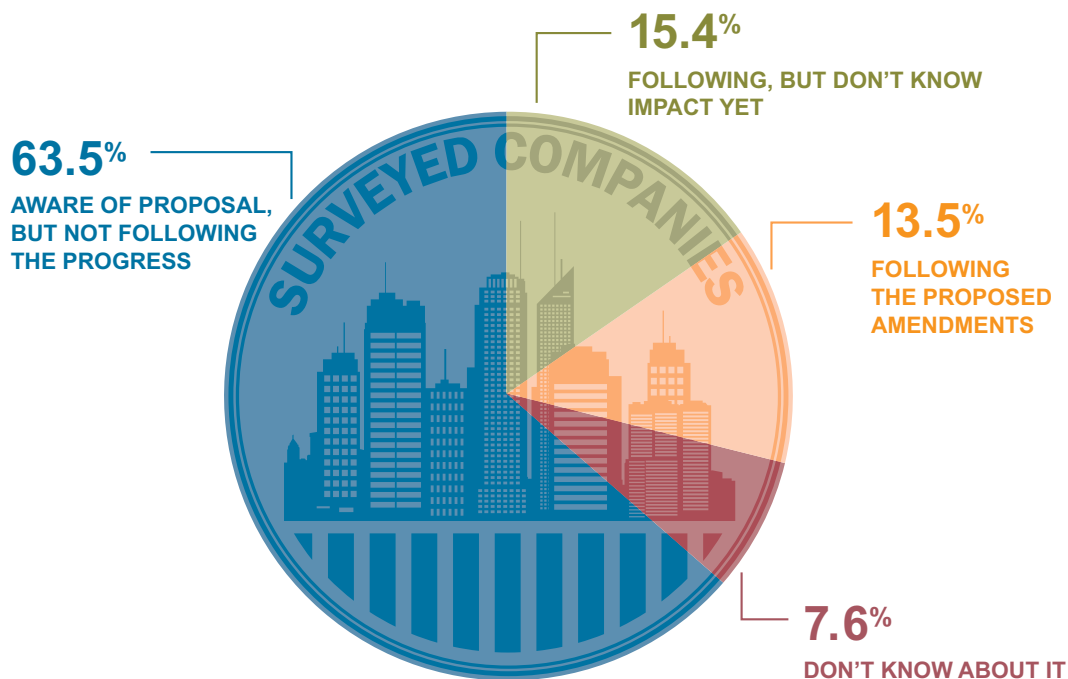
*General Counsel and Secretary
Well-Known Global Consumer Goods Manufacturer*

Companies Rely on Outside Counsel to Follow the Progress of Proposed Amendments to the Federal Class Action Rule

Most companies are generally aware of the proposed amendments to Federal Rule of Civil Procedure 23, but are not closely following the rule amendment process, relying instead on outside counsel to stay informed. Among other things, the proposed rule changes will require courts overseeing class actions to engage in a “front-loaded” analysis of all class action settlement proposals, and will require district court approval of any payments to settlement objectors made in exchange for the withdrawal of an objection or appeal. Of those companies that are following the proposal internally, 15.4 percent report uncertainty about the impact of the proposed rule changes.

Companies Following Proposed Changes

Percent of Companies



Copyright © 2017 Carlton Fields Jordan Burt, P.A.



In Their Own Words: Corporate Counsel Weigh in on Proposed Changes to FRCP 23

“I’m not following it. I depend on outside counsel to let me know if proposals or changes like this are relevant to us.”

*General Counsel
Privately Held International Consumer Goods Manufacturer*

“We pushed [for] some changes like the automatic right to appeal, ascertainability, and no injury component.”

*Litigation Team Leader
Fortune 500 Insurance and Financial Services Company*

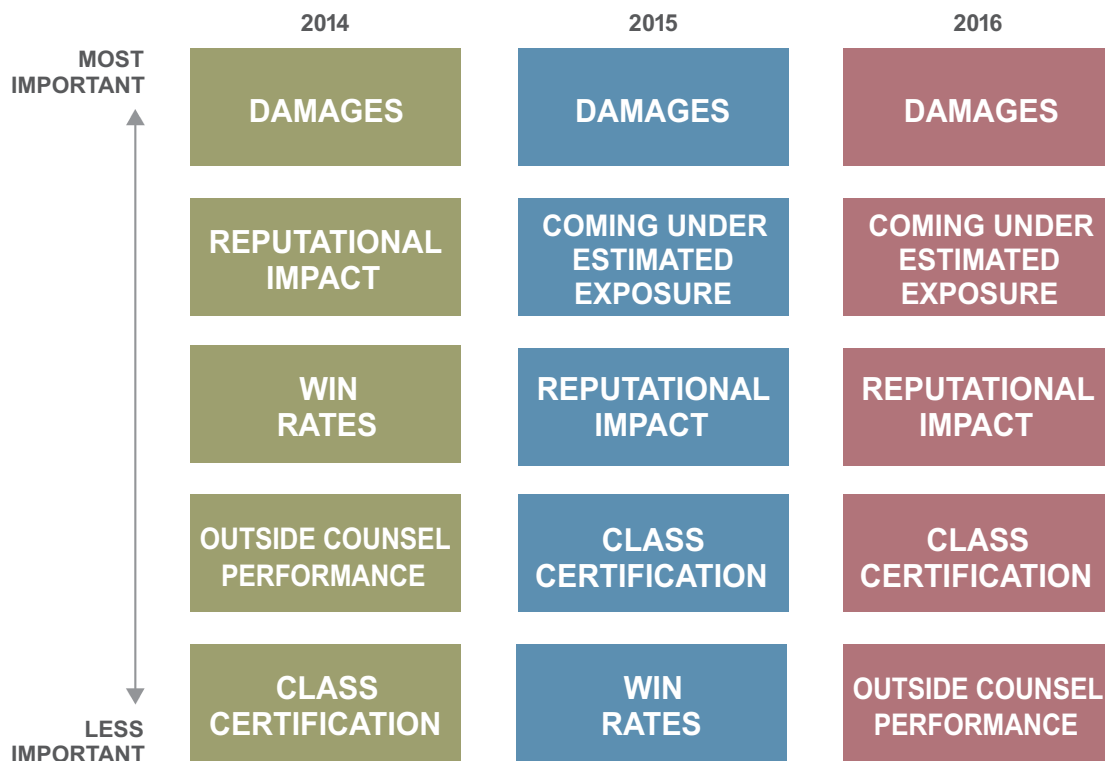
“We are following the proposal. If it is instituted, we will reduce our class actions costs as cases will be more defensible and easier to stop or settle.”

*Chief Litigation Counsel
Multibillion-Dollar American Manufacturer*

Minimal Change in How Companies Measure Success in Class Action Defense

Companies continue to identify damages (whether in a settlement or a trial) and coming in under exposure as the most important factors for evaluating success in their defense of class actions. Reputational impact and defeating class certification remain important.

Importance of Success Metrics



Copyright © 2017 Carlton Fields Jordan Burt, P.A.

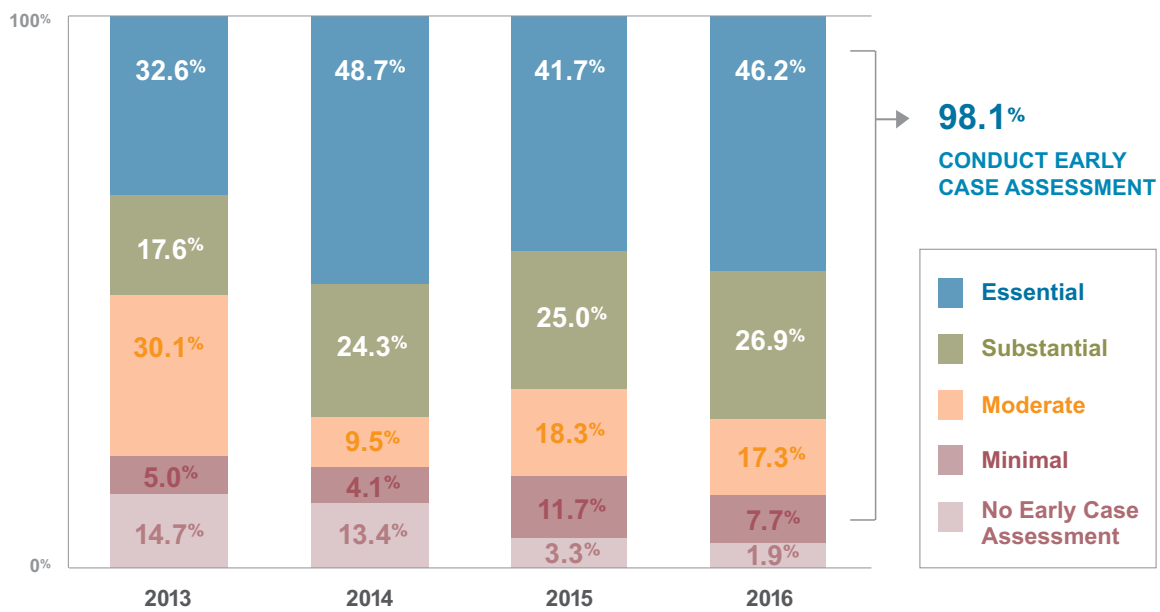
Strategies for Managing Class Action Cost

Almost All Companies Conduct Early Case Assessments

Virtually all companies now conduct early case assessments. Seventy-three percent of companies say outside counsel involvement in early case assessment is substantial or essential, up from 67 percent in 2015.

Outside Counsel Involvement in Early Case Assessment

Percent of Companies



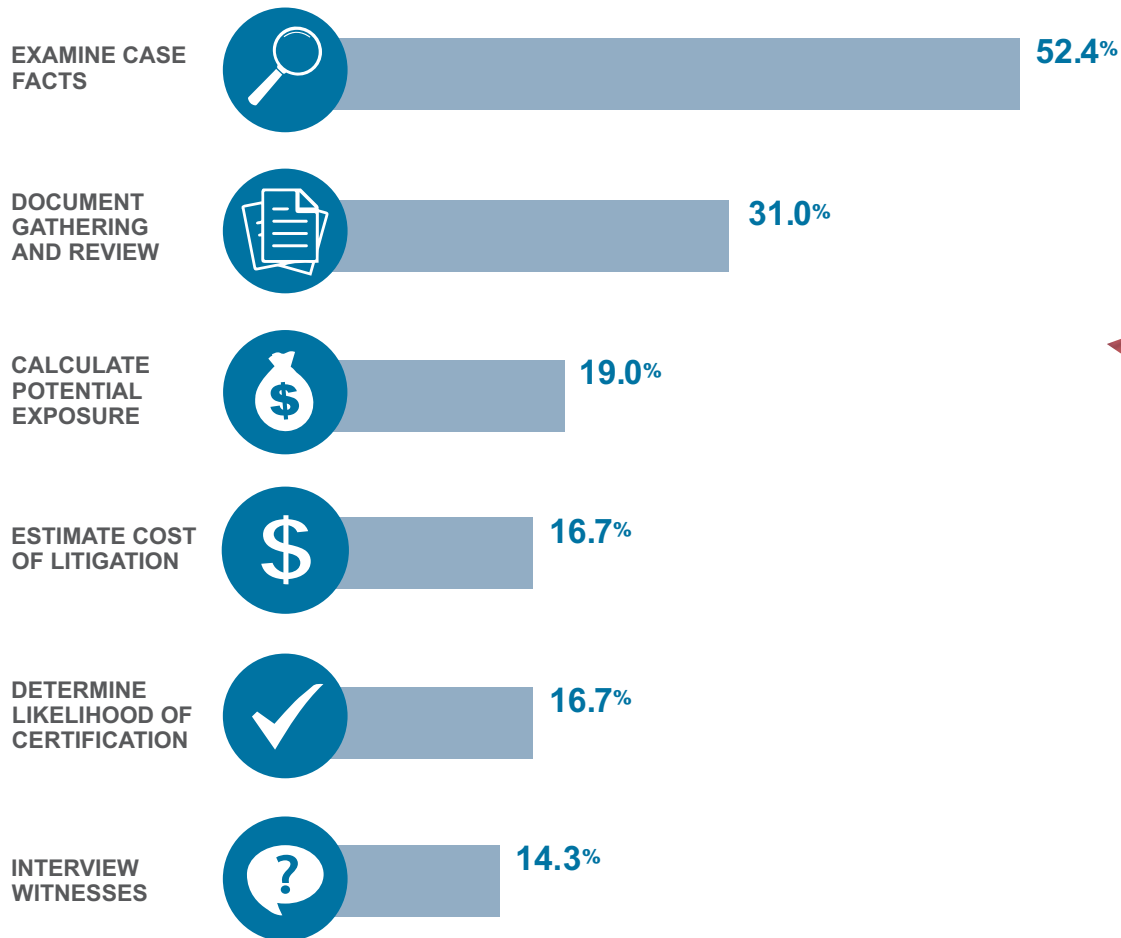
Copyright © 2017 Carlton Fields Jordan Burt, P.A.

Outside Counsel's Growing Role in Early Case Assessment

As companies reduce the number of in-house attorneys handling class actions, they rely more heavily on outside counsel during the early case assessment process. Companies primarily use outside counsel to help them examine case facts.

The Role of Outside Counsel in Early Case Assessment

Percent of Companies



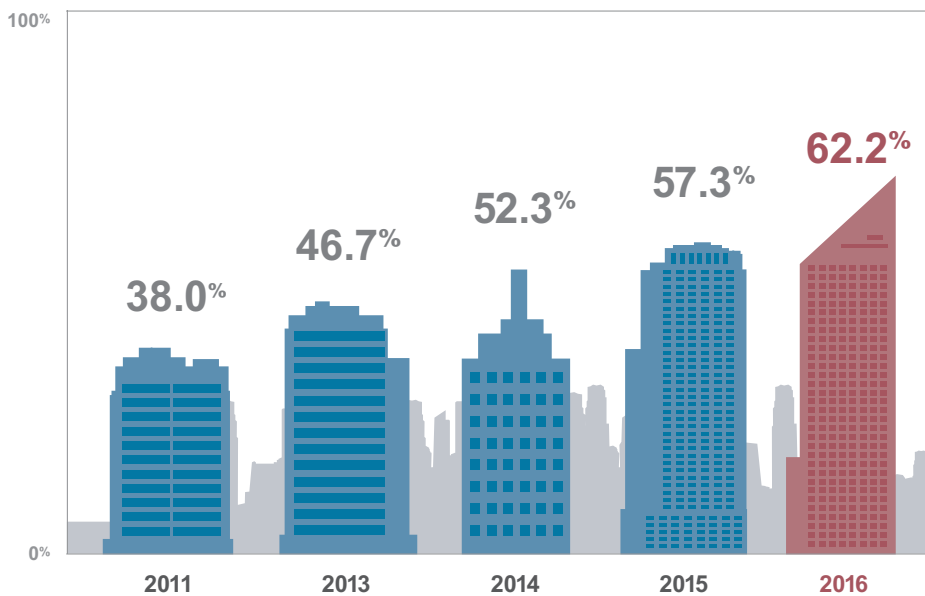
NOTE: Chart adds up to more than 100%. Multiple responses allowed.

Copyright © 2017 Carlton Fields Jordan Burt, P.A.

More Companies Make a Single Individual Accountable for Class Action Outcomes

A majority of companies hold a single individual accountable for class action outcomes. The number of companies that take this approach has increased steadily since 2011.

Assign a Single Individual Percent of Companies



NOTE: Data not available for 2012.

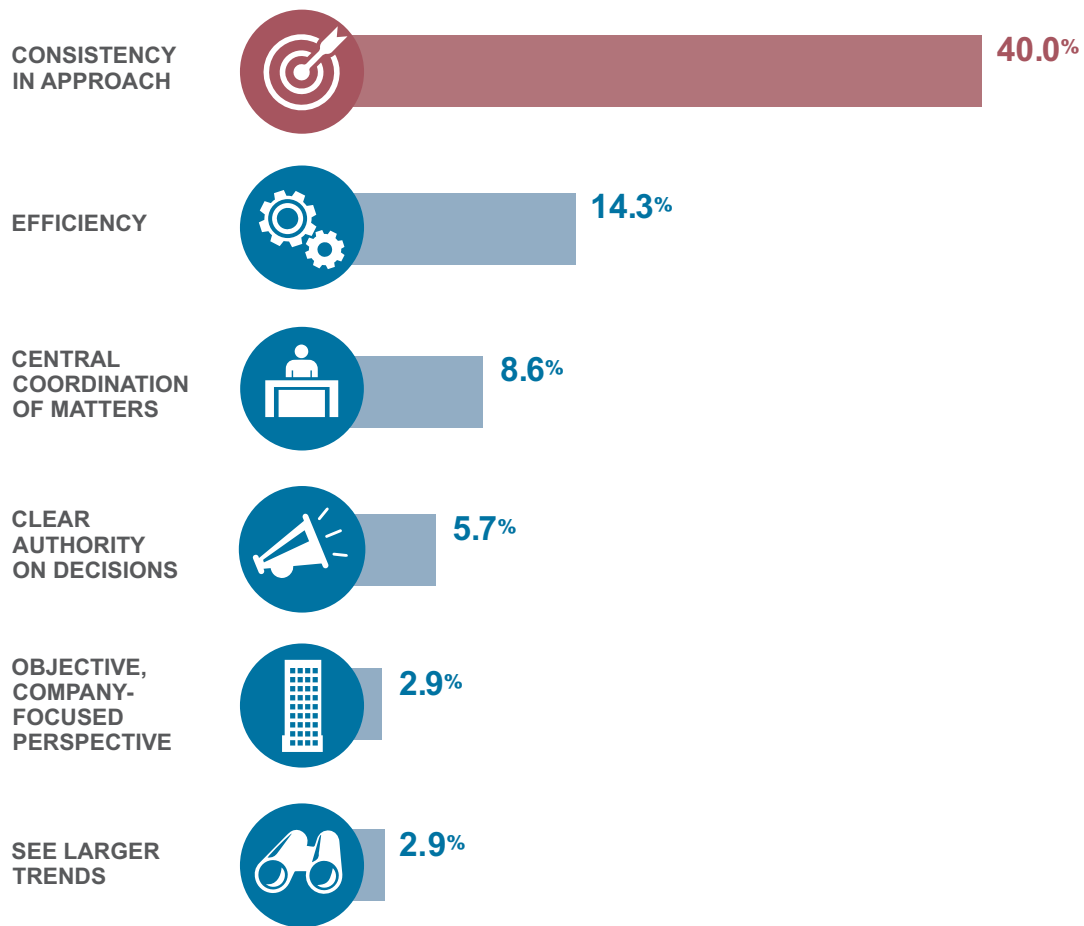
Copyright © 2017 Carlton Fields Jordan Burt, P.A.

A Consistent Approach is the Leading Benefit of Holding a Single Person Accountable

The leading benefit of holding a single individual accountable for class action outcomes is that it fosters a consistent approach to class action management. This benefit outpaces the next highest benefit, efficiency, by a factor of nearly three. At a time when class actions are becoming increasingly complex, companies gravitate toward predictable, structured approaches that help them better manage their risk.

Benefits of Having a Single Individual Accountable for Class Action Outcomes

Percent of Companies



NOTE: Chart does not add up to 100%. Factors accounting for less than 2% omitted.

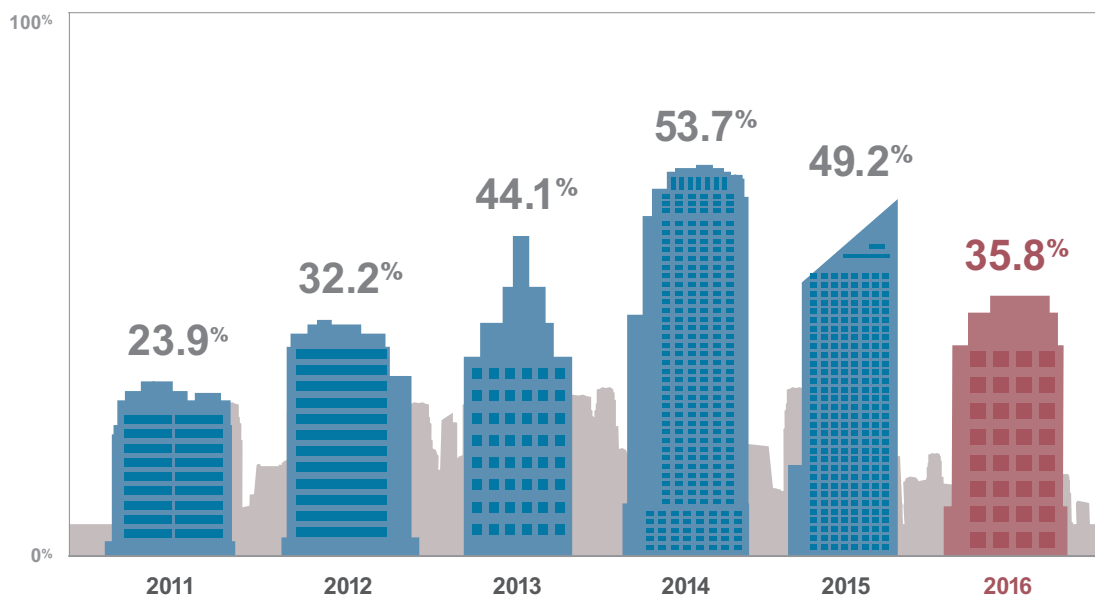
Copyright © 2017 Carlton Fields Jordan Burt, P.A.

Use of Alternative Fee Arrangements Continues to Decline

For the second straight year, fewer companies report using alternative fee arrangements for class actions. Less than 40 percent of companies currently rely on AFAs for their class action work. Corporate counsel find it overly complex to manage fair AFAs in class actions due to the unpredictability of class action litigation. However, nearly 80 percent of companies expect their AFA use to remain the same in 2017.

Alternative Fee Arrangement Use in Class Actions

Percent of Companies



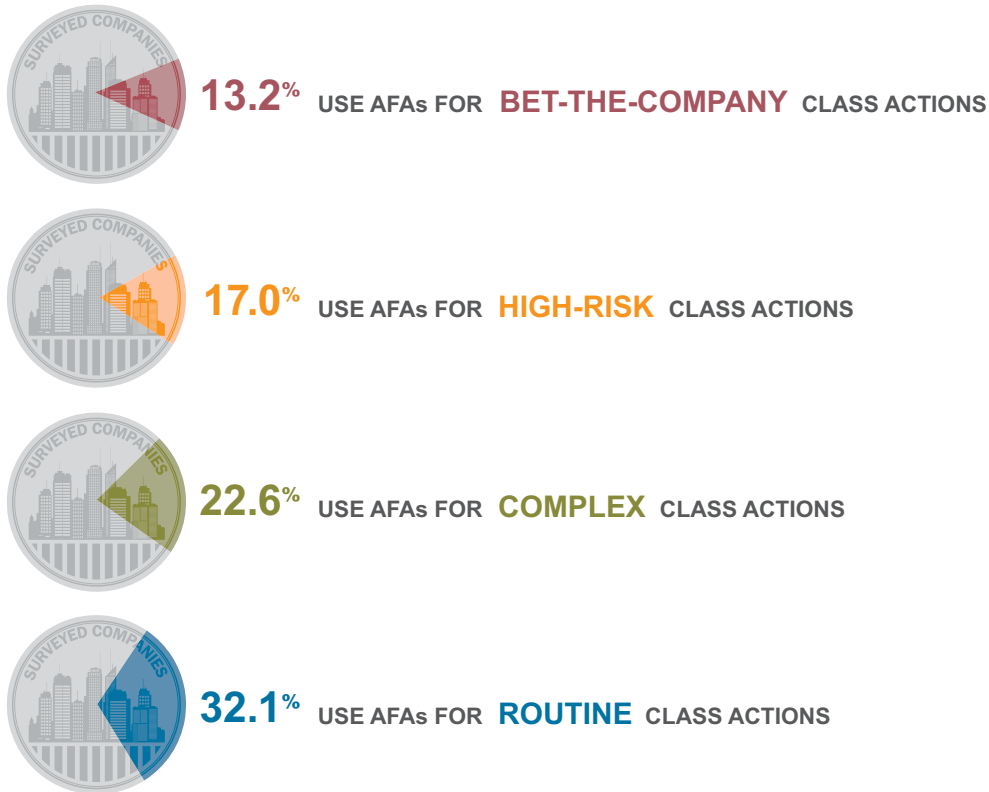
Copyright © 2017 Carlton Fields Jordan Burt, P.A.

Risk Level Impacts the Use of Alternative Fee Arrangements

Riskier class actions are less likely to be handled through AFAs. Companies are still unsure of the financial benefits of these arrangements in the class action context. As a result, and with few comparative mechanisms in place, the billable hour remains the most relied-upon fee arrangement in class cases.

Alternative Fee Arrangement Use in Class Actions

Percent of Companies



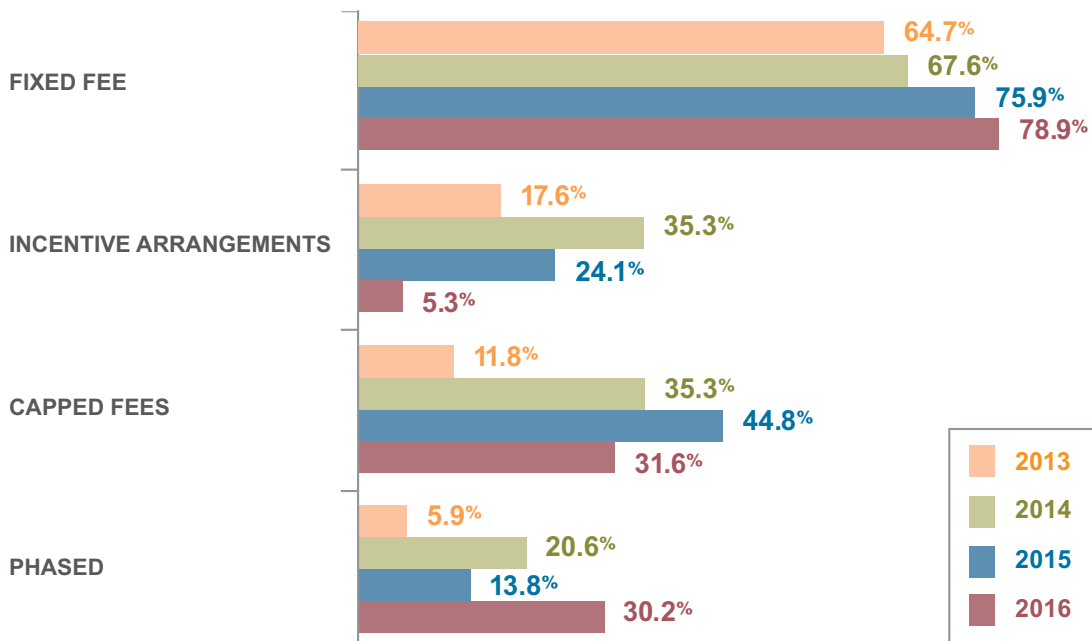
Copyright © 2017 Carlton Fields Jordan Burt, P.A.

Fixed Fees Remain the Leading Alternative Fee Arrangement Used for Class Actions

Fixed fees are still the go-to AFA for class action work. More companies are moving toward phased billing where work is assessed and billed by portion or segment of the litigation process. This approach offers predictability and more focused management of discrete components of class action work.

Alternative Fee Arrangement Types in Class Actions

Percent of AFAs



NOTE: Chart does not add up to 100%. Excludes responses under 5%.

Copyright © 2017 Carlton Fields Jordan Burt, P.A.

Methodology and Approach

The 2017 Carlton Fields Class Action Survey results were compiled from 387 in-depth interviews with general counsel, chief legal officers, and direct reports to general counsel of 373 companies.* Consistent with the approach used in past years, to control for bias and assure objectivity, Carlton Fields retains an independent consulting firm to select the companies and conduct the interviews. To obtain additional data on bet-the-company class actions, that firm augmented its work with supplemental research. The consulting firm provides only aggregate data to Carlton Fields. All individual responses and company names are kept confidential and excluded from the survey results.

Survey participants' companies had an average annual revenue of \$13.8 billion, and median annual revenue of \$4.9 billion. The surveyed companies operate in more than 25 industries, including banking and financial services, consumer goods, energy, high tech, insurance, manufacturing, pharmaceuticals, professional services, and retail.

About Carlton Fields

Carlton Fields Jordan Burt, P.A. has litigated and counseled clients in hundreds of class actions for more than 30 years in federal and state courts across the nation, and in arbitrations. These cases present unique challenges due to their different rules, enhanced scope, and higher stakes. The firm understands the potential impacts, costs, and risks associated with class actions, and is a leader in developing legal approaches and strategies for handling class action litigation.

If you would like to learn about the survey and how these results may impact you, or to discuss the Carlton Fields class action practice, please contact Julianna Thomas McCabe at jtmccabe@carltonfields.com or 305.347.6870, or Chris S. Coutroulis at ccoutroulis@carltonfields.com or 813.229.4301.

To obtain additional copies of this report, visit <http://ClassActionSurvey.com/>



Scan this QR code to view
Classified: The Class Action Blog.



Scan this QR code for more
class action resources.

* In addition, to present the survey results in context, pages three to five contain, with permission, information published by BTI Consulting Group.

Atlanta

One Atlantic Center

1201 W. Peachtree Street | Suite 3000
Atlanta, Georgia 30309-3455
404.815.3400 | fax 404.815.3415

Hartford

One State Street | Suite 1800
Hartford, Connecticut 06103-3102
860.392.5000 | fax 860.392.5058

Los Angeles

2000 Avenue of the Stars
Suite 530 North Tower
Los Angeles, California 90067-4707
310.843.6300 | fax 310.843.6301

Miami

Miami Tower

100 S.E. Second Street | Suite 4200
Miami, Florida 33131-2113
305.530.0050 | fax 305.530.0055

New York

Chrysler Building

405 Lexington Avenue | 36th Floor
New York, New York 10174-0002
212.785.2577 | fax 212.785.5203

Orlando

450 S. Orange Avenue | Suite 500
Orlando, Florida 32801-3370
407.849.0300 | fax 407.648.9099

Tallahassee

215 S. Monroe Street | Suite 500
Tallahassee, Florida 32301-1866
850.224.1585 | fax 850.222.0398

Tampa

Corporate Center Three at International Plaza

4221 W. Boy Scout Boulevard | Suite 1000
Tampa, Florida 33607-5780
813.223.7000 | fax 813.229.4133

Washington, DC

1025 Thomas Jefferson Street, NW
Suite 400 West
Washington, DC 20007-5208
202.965.8100 | fax 202.965.8104

West Palm Beach

CityPlace Tower

525 Okeechobee Boulevard | Suite 1200
West Palm Beach, Florida 33401-6350
561.659.7070 | fax 561.659.7368

Carlton Fields practices law in California through
Carlton Fields Jordan Burt, LLP.

