

2020

**CARLTON FIELDS
CLASS ACTION
SURVEY**

**BEST PRACTICES
IN REDUCING
COST AND
MANAGING RISK
IN CLASS ACTION
LITIGATION**

**CARLTON
FIELDS**

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Introduction

As we head to print on the ninth annual Carlton Fields Class Action Survey, the unprecedented COVID-19 health and related economic crisis has wrought permanent change to business practices worldwide. There is little doubt that litigation management and, as relevant to this publication, the management and risk reduction strategies for classwide litigation will also change. Already, corporate America faces a rising tide of more than 500 new class action matters stemming from the coronavirus outbreak, and as the country cautiously takes steps to reopen, new risks emerge. We hope that this year's survey serves as a resource while you navigate these changes. As in past years, this report provides an overview of important issues and practices related to class action matters and management. It summarizes historical trends captured since the inception of the survey and includes information related to emerging issues in class action litigation.

Even before the recent spike in class action filings related to the pandemic, corporations reported yet another annual increase in class action spending. Spending has increased for five consecutive years, and it likely will continue to rise in 2020. Companies are also handling a higher volume of class action matters than ever before, with complex and high-risk matters making up the bulk of existing cases.

The 2020 Carlton Fields Class Action Survey is based on interviews with general counsel or senior legal officers at more than 400 *Fortune* 1000 and other large companies across a variety of industries. We thank you for taking the time to review our report, and trust you will find valuable information that helps your company and its legal department manage these prevalent, costly lawsuits both effectively and efficiently.

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Executive Summary

In 2019, class action spending rose yet again, reaching \$2.64 billion. The average number of matters per company increased from 7.8 in 2018 to 10.2 in 2019. Before the COVID-19 pandemic, companies reported that spending and matters were expected to increase again in 2020. In the second quarter of 2020, that expectation has become a reality. Facing a rash of new matters, 70 percent of legal decision-makers now expect an increase in class litigation this year, while virtually none report an expected decrease.

Insurance class actions are on the rise, accounting for 10.7 percent of matters and 14 percent of spending. As in past years, however, the highest percentage of matters and spending are attributable to labor and employment and consumer fraud actions. Labor and employment cases account for 26.9 percent of matters and 26.4 percent of spending. In the past five years, more than two-thirds of companies have faced at least one labor and employment class action, and, in this year's survey, contractor misclassification and employee data privacy matters emerged as new concerns on the labor and employment front.

The percentage of companies predicting data privacy and security as the next wave of class actions increased from last year's survey, from 54.3 percent to 58.2 percent. Companies point to new and anticipated state privacy legislation as an area fraught with class action risk. More than three-fourths of companies reported concern about the California Consumer Privacy Act (the CCPA), a data privacy law that went into effect in January 2020. One such survey respondent referred to the CCPA as a "walking lawsuit." The percentage of companies concerned about exposure resulting from the European Union's privacy regulation (the GDPR) increased by one-third. The overwhelming majority of companies, 93.8 percent, have not faced a class action lawsuit related to a data breach, and all have a data breach action plan either in place or in the works.

The percentage of companies facing class actions categorized as lower exposure matters increased to 63.5 percent, nearly 10 percentage points higher than last year's survey, and per company, the percentage of lower exposure class actions increased for the first time in three years. Fewer companies were facing actions classified as complex, high-risk, or bet-the-company, with the percentage of companies facing bet-the-company cases declining to 10.6 percent, its lowest level since 2015. Insurance coverage for class litigation decreased this year, with only 22.2 percent of companies reporting that some portion of their class action defense costs were covered by insurance. Companies carrying insurance reported that higher deductibles and various exclusions limited coverage. With respect to staffing, an uptick in in-house resources reported in last year's survey was partially reversed this year as companies reported going from an average of 4.5 to 4.2 in-house lawyers dedicated to class action defense. Those attorneys spent an average of 12 hours per week managing class actions.

In weighing the variables they consider most important in evaluating class action risk, companies ranked exposure as 9.1 on a 1 to 10 scale of importance. Year over year, companies have consistently ranked exposure as having the highest level of importance over other risk factors. Assessing the risks early was a theme that resonated throughout this year's survey, with



approximately 62 percent of companies reporting that they conduct an early exposure analysis to defend class action matters “at the right cost.” Only 12.7 percent prefer to settle such matters early, while 10.9 percent reported a “defend at all costs” philosophy. While most class actions are eventually settled, often on an individual basis, companies reported that 8.5 percent of cases originally filed with class allegations are litigated through trial. This is a substantial increase over the 2 percent reported last year.

For many reasons, companies often favor individualized arbitration over class action litigation and, where possible, include arbitration clauses in their contracts as a “best practice.” The percentage of companies that included arbitration clauses in their contracts increased to 77.1 percent this year, and 55 percent of those companies include class action waivers in their arbitration provisions.

The two most important elements identified by companies to control costs and manage class action risk are an early analysis of case facts and, based on those facts, a preliminary calculation of potential exposure. Companies also seek to control costs with alternative fee arrangements (AFAs), and AFA usage was up 13 percentage points over the prior year. As in past years, companies reported that they prefer fixed and phased AFAs, but they have also used caps, success awards, blended rates, and more sophisticated arrangements tailored to a specific case. Companies reported a more robust approach to controlling discovery costs in their class actions. Nearly 73 percent responded that bifurcating discovery is a beneficial class action management strategy. A higher percentage than in past years also reported using motion practice, an aggressive negotiation of search terms, and similar tools to combat overly broad or disproportionate discovery demands.

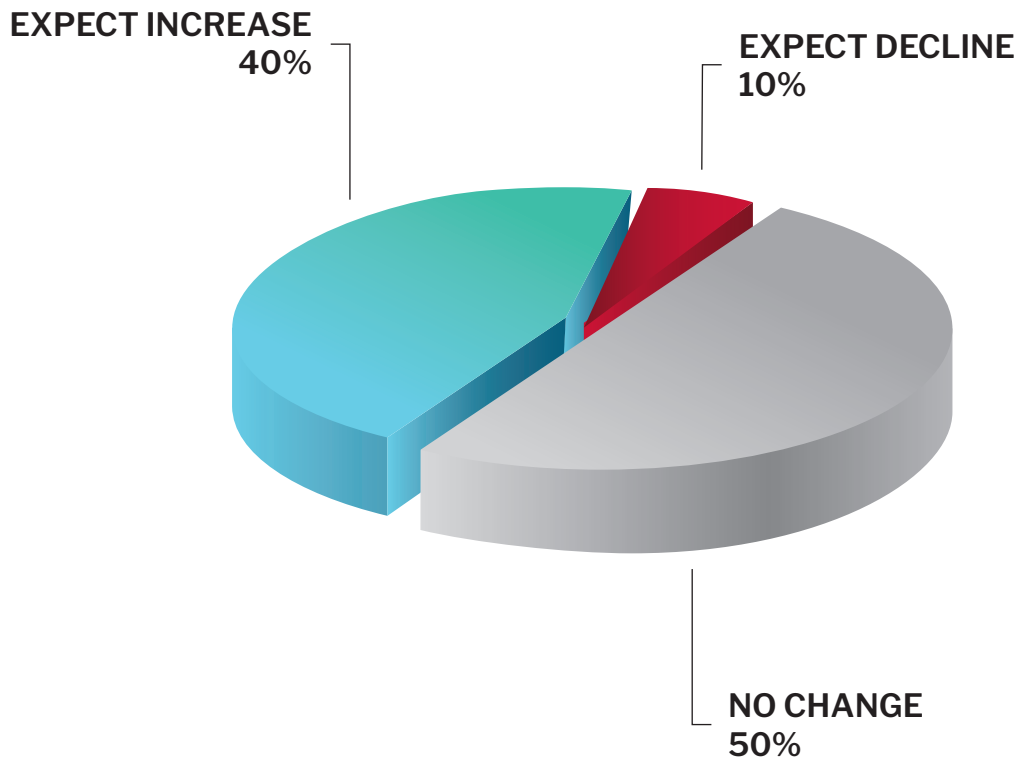
Finally, we asked companies participating in this year’s survey to identify areas in which outside counsel can improve their performance and provide innovative solutions to class action management. Thirty-one percent identified excellent client service as an area for improvement, and 45.3 percent mentioned understanding the client’s business risks as important to outside counsel’s role. Companies also identified and elaborated on five sources of innovation for class action management: aggressiveness, strategic planning, immediate early case evaluation, scenario planning, and the implementation of thoughtful cost management strategies.

Preliminary Assessment: The Impact of COVID-19

Companies Underestimated An Impending Wave Of COVID-19 Class Actions

In the first 30 days of the nationwide COVID-19 pandemic, companies gave a preliminary assessment about whether they expected an increase in class action activity as a result of the pandemic. At that time, 50 percent of legal decision-makers were reporting that they expected no change in their company's level of class action activity, while 40 percent expected at least some increase. Ten percent reported a belief that class action activity would actually decline from a lack of funding caused by the pandemic. These predictions underestimated the impact of COVID-19 on class action litigation.

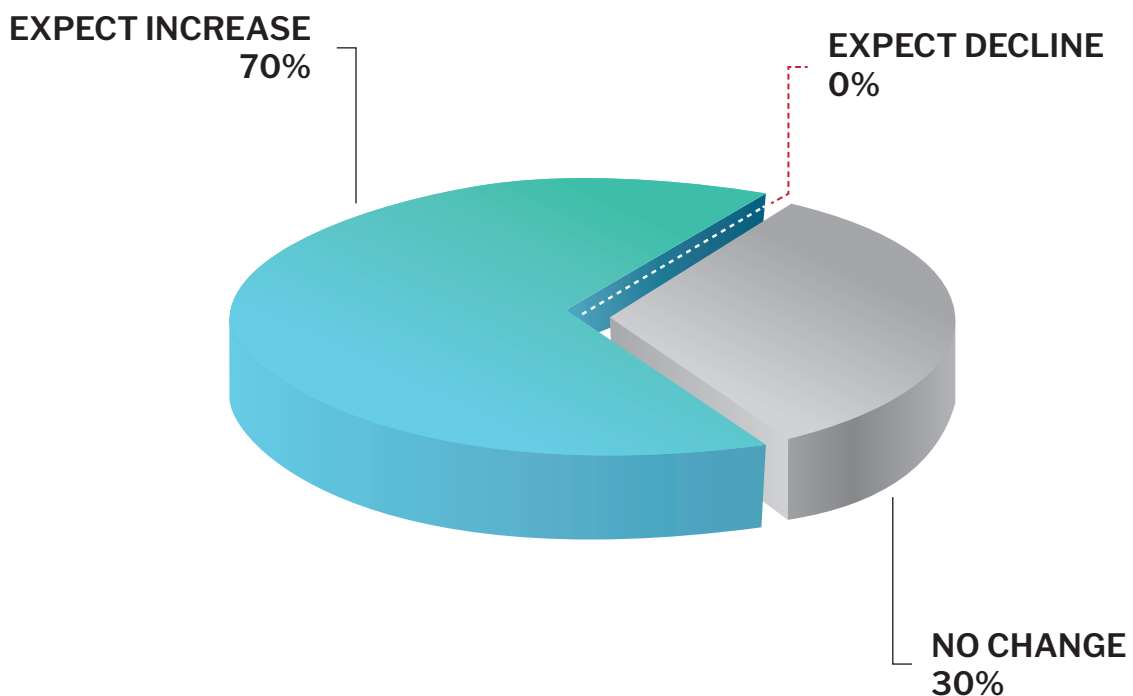
Expected COVID-19 Class Action Activity – March 2020
Percent of Companies



Companies Face The Reality Of COVID-19 Class Actions

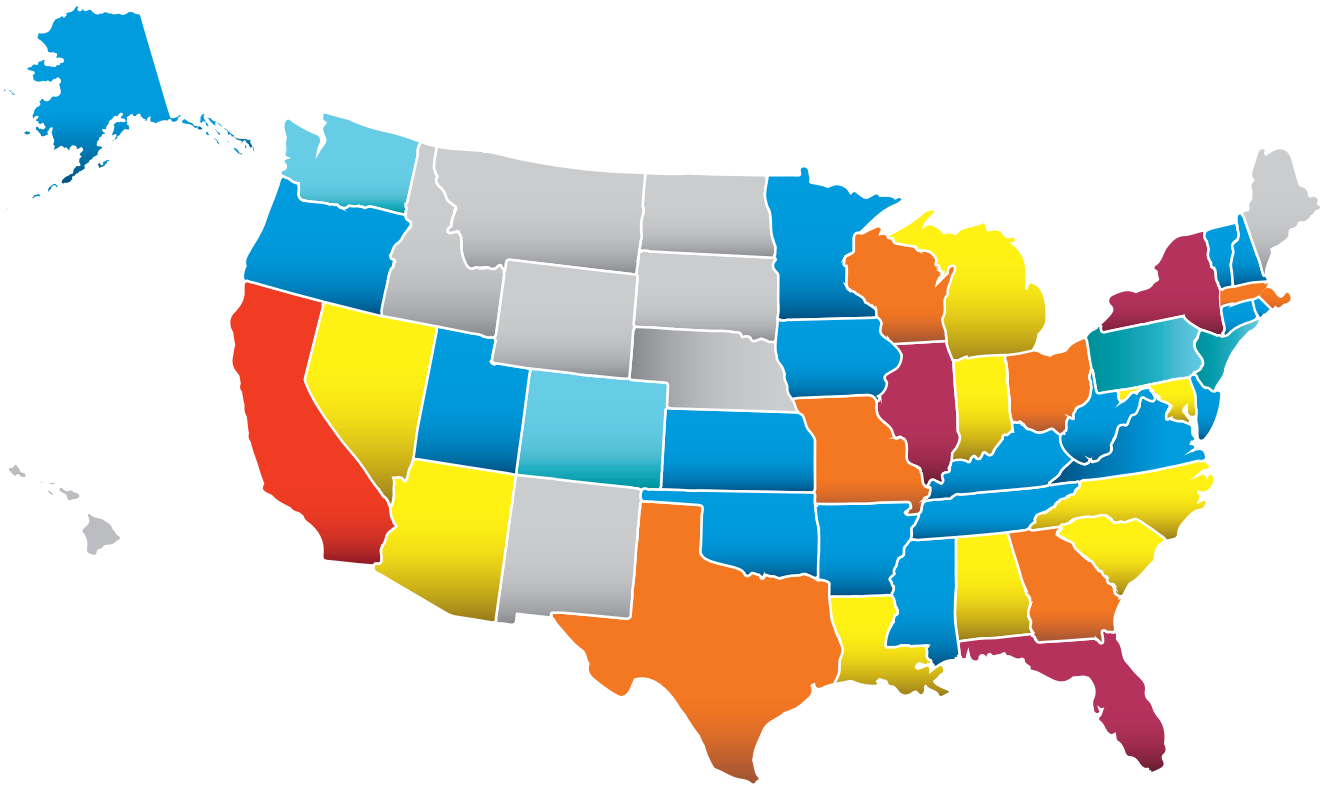
By early April 2020, the plaintiff's class action bar had mobilized and identified new theories of potential class liability over business decisions surrounding the novel coronavirus. Class actions related to COVID-19 were filed at a rapid pace against companies in a variety of industries, including sports and entertainment, insurance, education, transportation, travel, products, online retail, and others. By mid-May 2020, as the number of COVID-19 class action filings approached 500, more than 70 percent of companies reported an expected increase in class actions, and virtually none reported an expected decline. More than 40 percent reported that COVID-19 class action litigation could result in settlements of other class action matters that were pending before the pandemic.

Expected COVID-19 Class Action Activity – May 2020
Percent of Companies



COVID-19 Class Actions By State

By the end of May 2020, more than 560 COVID-19 class actions had been filed nationwide. California filings exceeded 100. New York, Florida, and Illinois each had more than 40 cases.

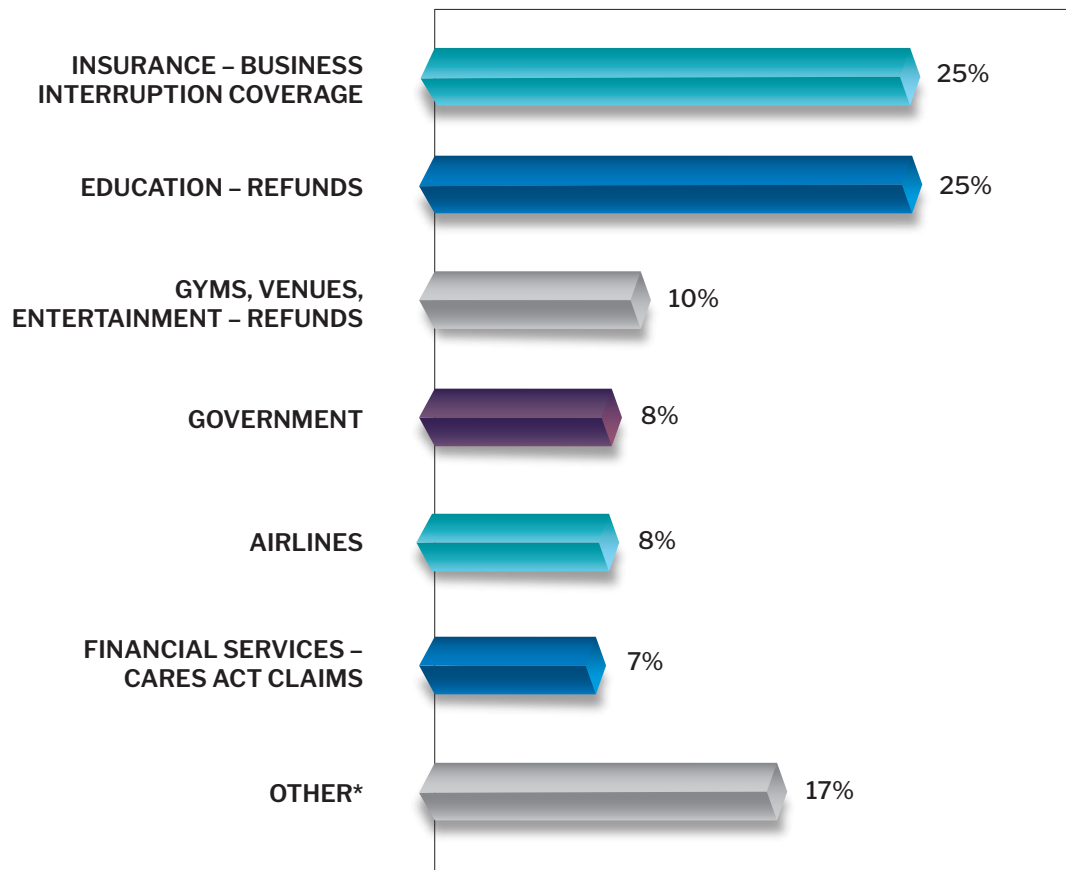


NUMBER OF CASES AS OF MAY 31, 2020



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COVID-19 Class Actions By Category



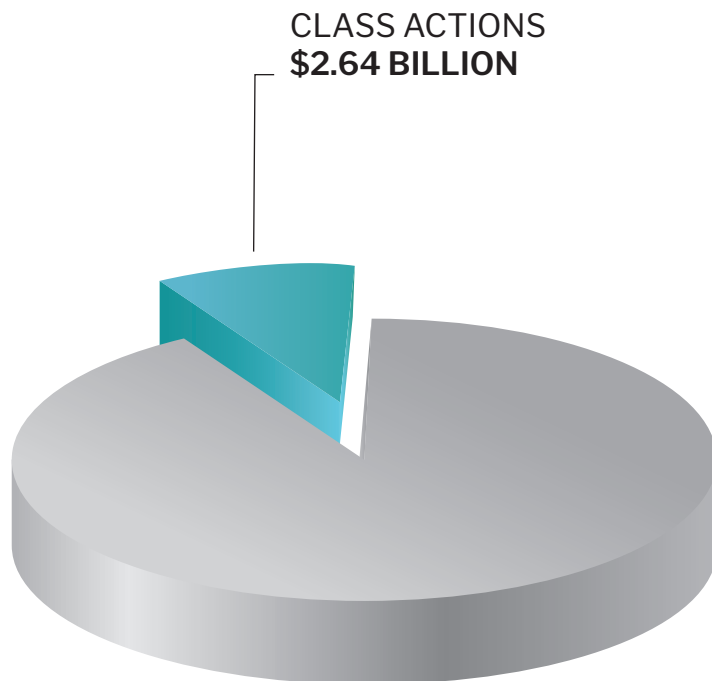
*Note: Other category includes prison, employment, cruise line negligence, price gouging, etc.
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Class Action Spending and Budgets

Class Action Spending Increases For A Fifth Consecutive Year

Spending on class action defense increased for a fifth consecutive year and now accounts for 11.6 percent of all litigation spending in the United States.

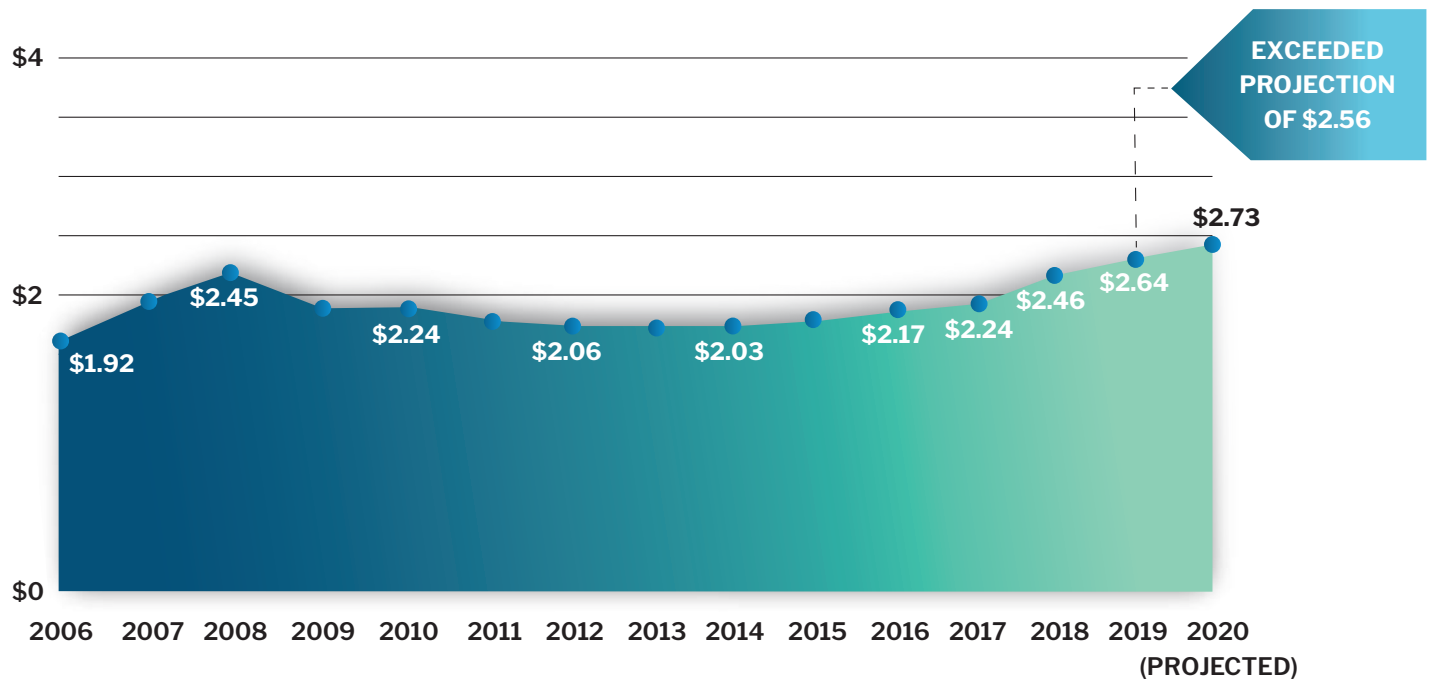
\$22.75 Billion Market for Legal Services in Litigation



Class Action Spending Reaches New High

Our 2019 report anticipated that corporate spending on class actions could increase more than 4 percent and might reach \$2.56 billion. Instead, spending increased 7.3 percent in 2019, surpassing the previous high of \$2.45 billion in 2008. While the full impact of the global COVID-19 pandemic is difficult to predict, costs are likely to climb even further in 2020, driven by an anticipated increase in the volume of matters.

U.S. Corporate Legal Spending on Class Actions \$ Billions

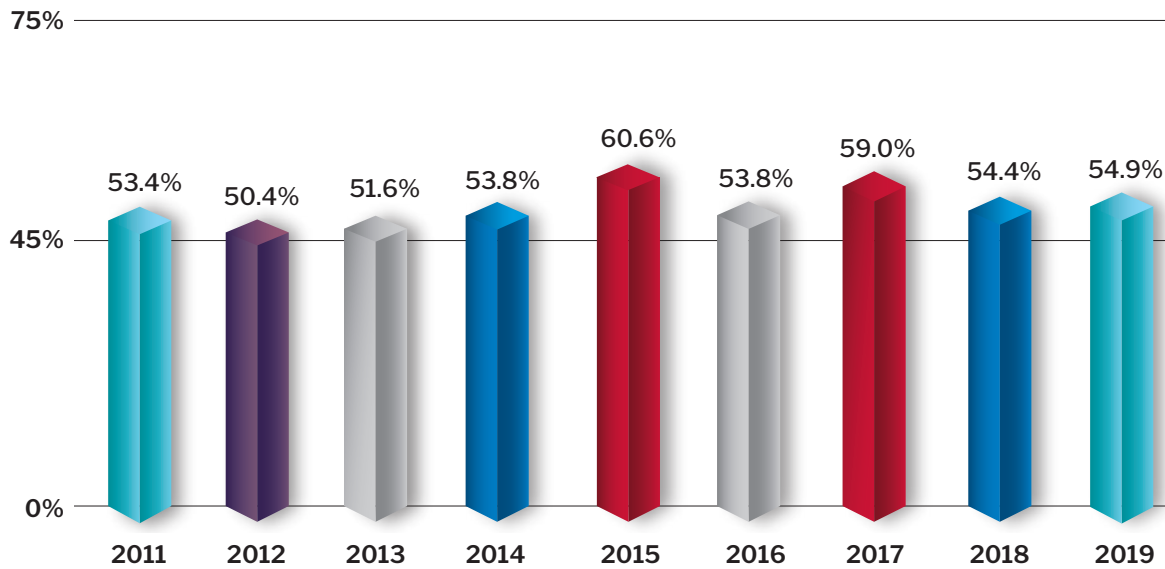


Type and Frequency of Class Actions

Percentage Of Companies Managing Class Actions Does Not Change

In 2019, 54.9 percent of surveyed companies faced class actions, reflecting no significant change from the prior year. As indicated on page 14 of this report, however, the number of matters those companies faced has more than doubled in the last two years.

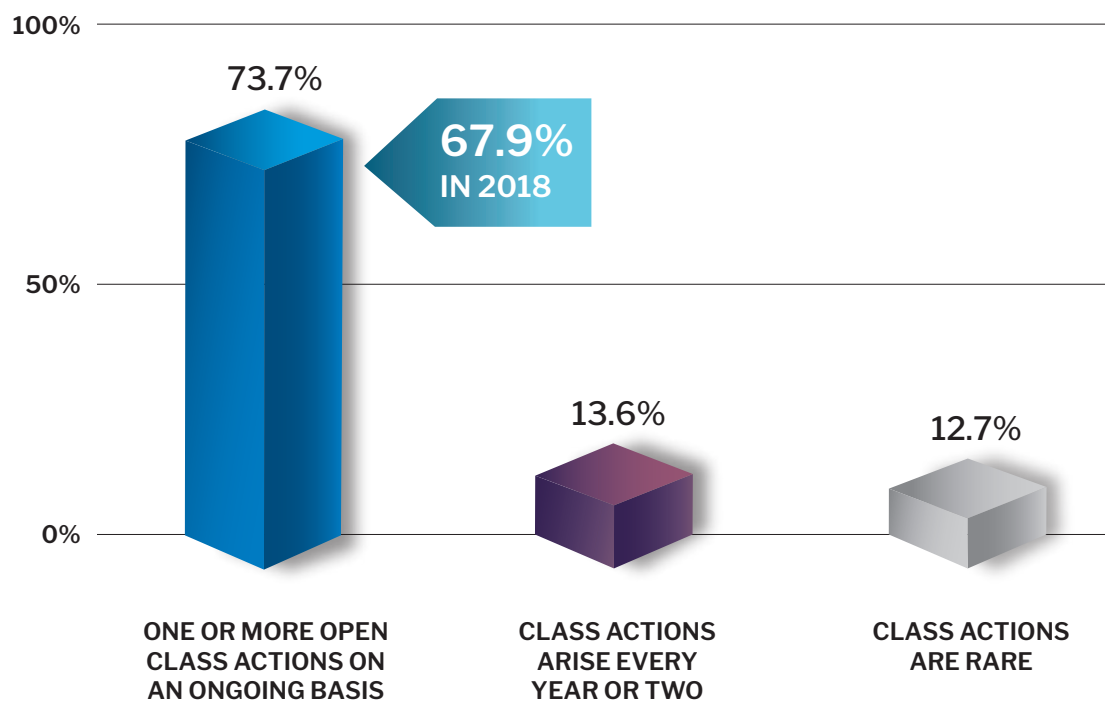
Companies With Class Actions Percent of Companies



Managing Class Actions Is The Routine For Many Organizations

Nearly three-quarters of the companies managing class actions report that they had one or more open class actions on an ongoing basis in 2019. Fewer companies, 13.6 percent, reported facing a class action “every year or two” compared to 19.1 percent in 2018. The number of companies reporting that class actions are a rare occurrence decreased slightly to 12.7 percent.

Class Action Experience Percent of Companies



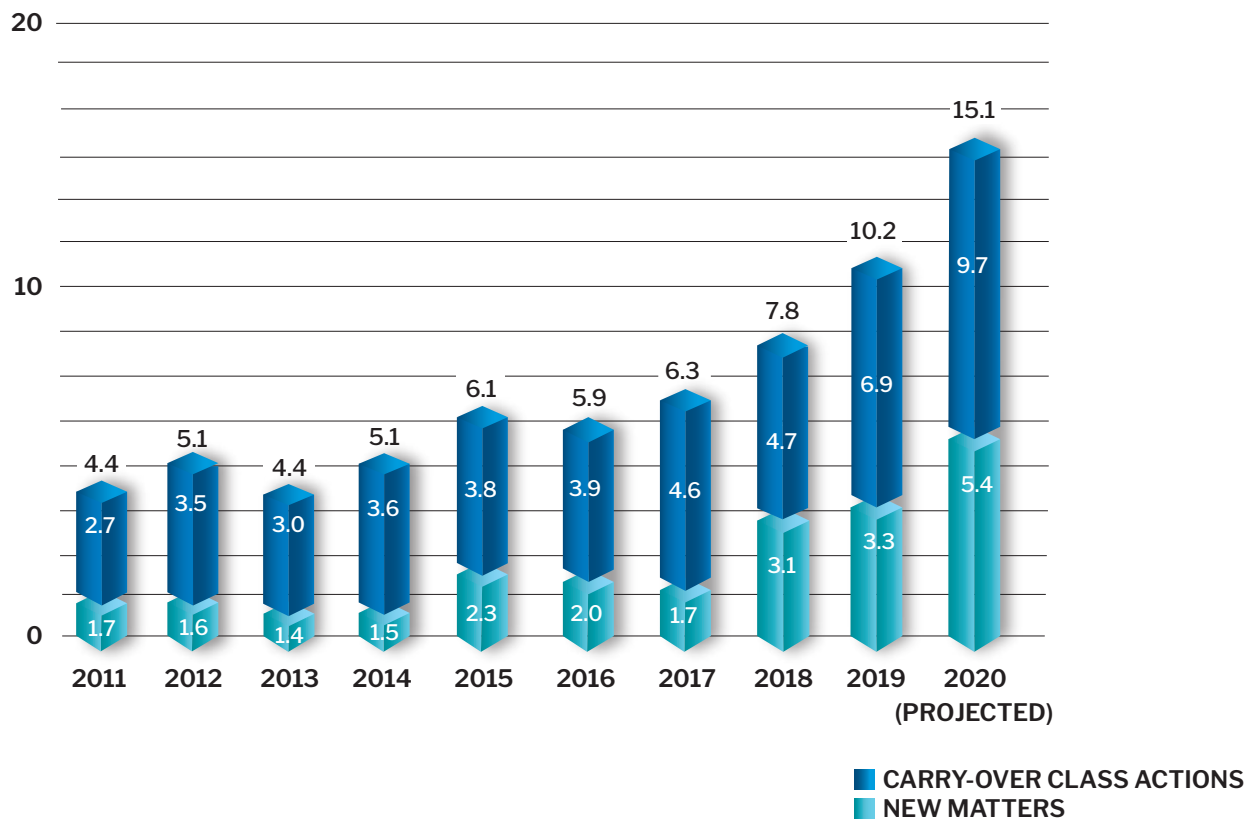
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Class Actions Managed Per Company Increase For A Third Straight Year

In 2018, the average company facing class actions managed 7.8 matters. In 2019, that figure has increased to 10.2 class actions per company. This is the third consecutive year in which companies have reported an overall increase in the number of class action matters per company, and the first year in which the average has reached double digits. Companies expect this number to increase again, to 15.1 class actions in 2020.

Current and Future Class Actions

Average Number of Matters Per Company






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Consumer Fraud Matters No Longer Account For One-Quarter Of Matters And Spending

Labor and employment continues to account for more than 25 percent of class action matters and spending. Cases and spending in the consumer fraud category, on the other hand, are down 8 percentage points from our last survey. Insurance matters increased to the fourth most common and third most expensive category of class actions. Data privacy cases rose but are still at just 1 percent of matters.

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

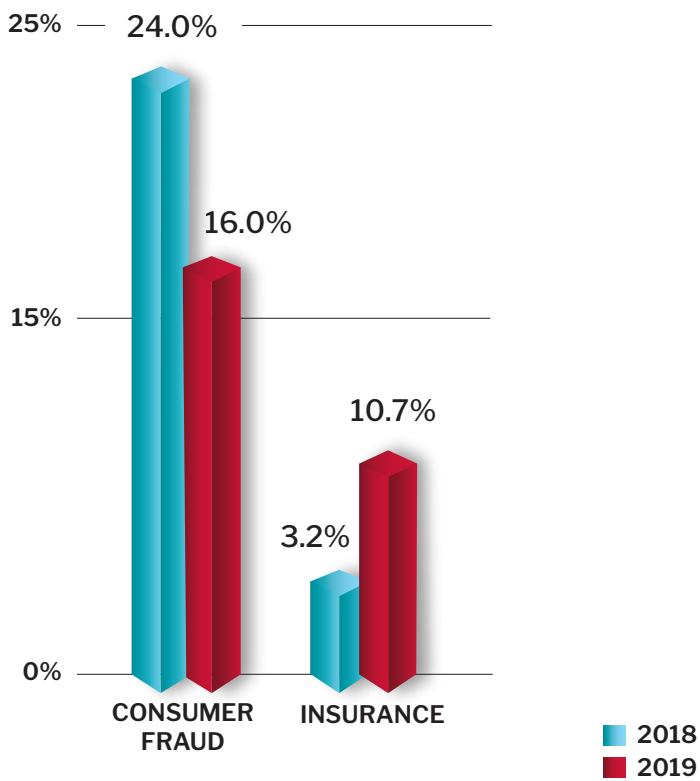
	 PRACTICE	 MATTERS	 SPENDING
LABOR & EMPLOYMENT		26.9%	26.4%
CONSUMER FRAUD		16.0%	15.6%
PRODUCT LIABILITY		11.6%	9.4%
INSURANCE		10.7%	14.0%
ANTITRUST		9.0%	9.2%
TECH STATUTORY VIOLATIONS		8.3%	5.7%
SECURITIES		7.7%	9.5%
INTELLECTUAL PROPERTY		3.0%	2.4%
DATA PRIVACY		1.1%	1.0%
OTHER		5.7%	6.8%

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Insurance And Consumer Fraud Matters Reveal Shift In Composition Of Class Action Matters

While insurance class actions spiked as a percentage of matters, consumer fraud class actions decreased below the 2017 level of 18.2 percent of matters.

Class Action Matters - Breakdown by Type
Percent of Matters



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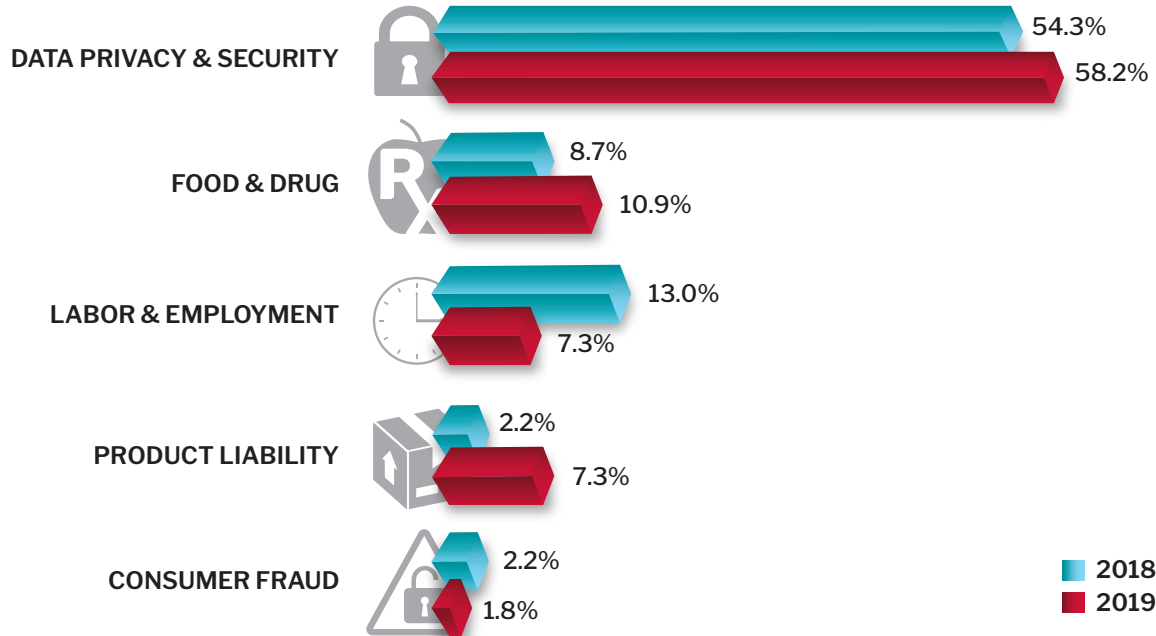
Companies Predict That Data Privacy Statutes Will Drive The Next Wave Of Class Actions

Beginning in 2018, legal decision-makers responsible for class actions began to report overwhelmingly their belief that data privacy and security will be the next wave of class actions, resulting from new causes of action created by privacy statutes. Few companies, however, report having faced a data privacy class action. In a shift away from labor and employment, other growing areas of concern include food and drug, and product liability matters.

Predicted Next Wave of Class Actions Percent of Companies

“We will see many more data privacy actions as more states adopt regulations like the CCPA. They are almost a new species of law and will continue to be challenging as the plaintiff’s bar continues creative, aggressive suits.”

—Senior Vice President
Leading Insurance Provider

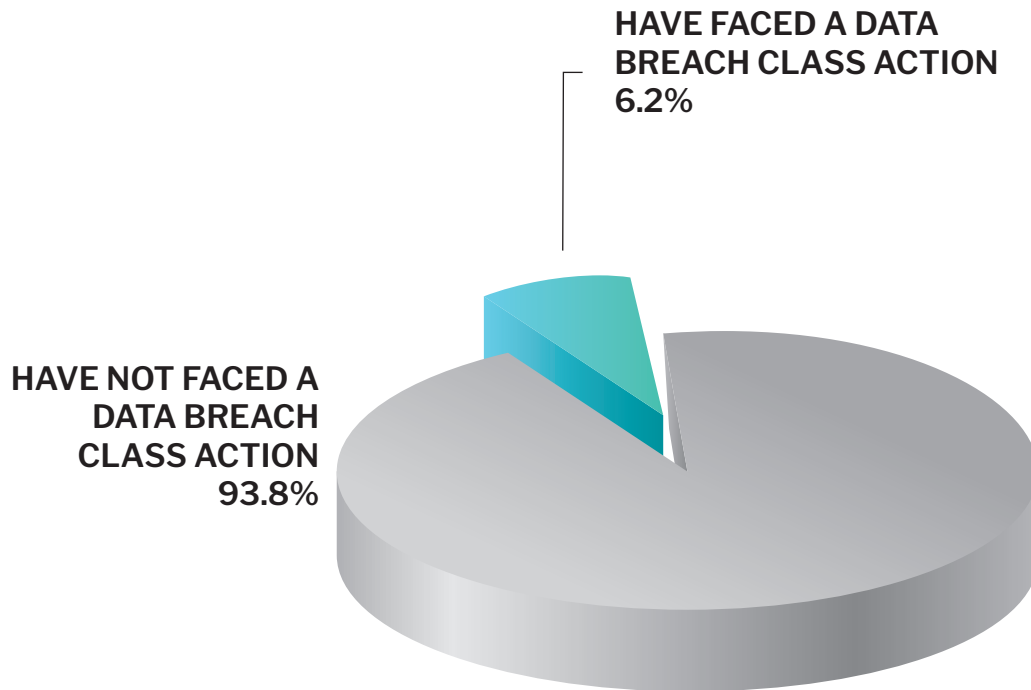


Note: Chart does not add up to 100%. Excludes responses under 5%.
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In Their Own Words: Corporate Counsel Discuss Data Breach Response Plans

In this year's survey, for the first time, 100 percent of surveyed companies reported that they have prepared, or are working on, a formal data breach action plan. Only 6.2 percent of companies have actually faced a data breach class action.

Data Breach Class Actions Percent of Companies



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In Their Own Words: Corporate Counsel Discuss Level Of Concern Regarding Data Breach Class Actions

“We have a privacy officer and an information security officer who is both a lawyer and an IT expert. We have a security policy, which is set forth in the event of a breach. We have tabletop exercises on that. We have internal IT experts. We are very proactive in data security.”

—General Counsel and Chief Legal Officer
Domestic Insurance Provider

“We take data security and cybersecurity very seriously because we have all of the customer information but also the power grids. I never think about it because it’s housed in a whole other department; we have a whole cybersecurity department.”

—Corporate Counsel
Major Electric Utility

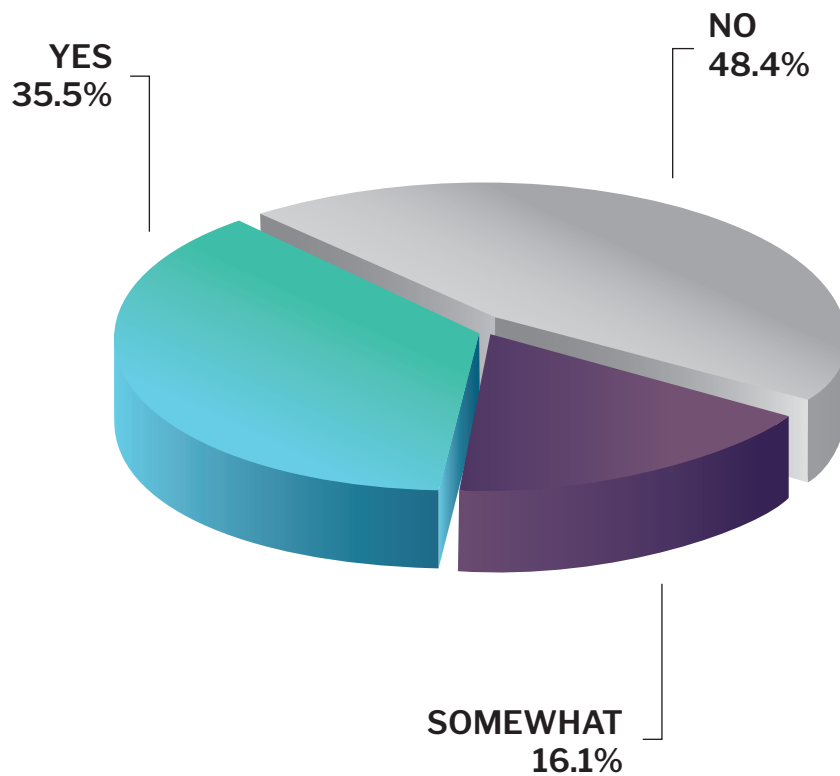
“Yes, we do have plans in place. We are regulated by the states and the Federal Reserve because we are a bank and they oversee the plans and run occasional tests.”

—Associate General Counsel, Litigation
Fortune 100 Insurance Provider

More Companies Report Some Concern Over GDPR Class Actions

Overall, 51.6 percent of companies reported some concern that the GDPR will increase their exposure to collective actions in other countries. This is an increase over 2018, when only 38 percent of companies expressed such concerns.

Concerned About GDPR Exposure
Percent of Companies

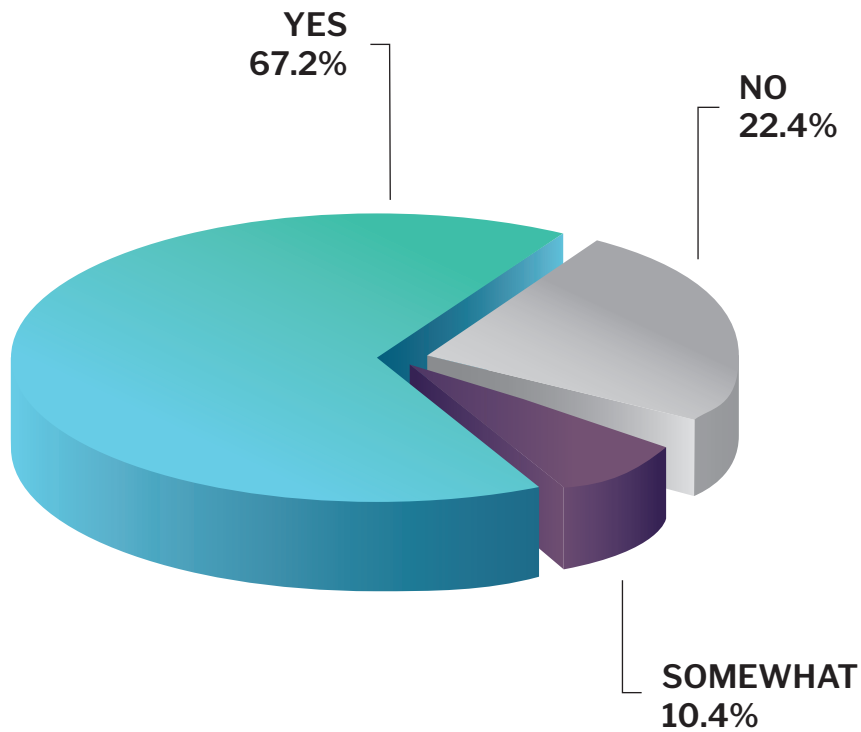


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Majority Of Companies Recognize Potential Class Action Exposure Under The California Consumer Privacy Act

More than three-quarters of surveyed companies express some concern about their future class action exposure as a result of the California Consumer Privacy Act. The CCPA became effective in January 2020.

Concerned About California Privacy Statute Percent of Companies



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In Their Own Words: Companies Discuss The California Consumer Privacy Act

“We will see actions in California even though we don’t operate there. The privacy statute is designed to overreach geographically.”

—General Counsel
Major National Restaurant Chain

“The CCPA is a walking lawsuit.”

—Vice President and General Counsel
International Shipping Company

“Minimal concern. ... the compliance group deals with it. We’re not Facebook, [so] we’re not close to the individual end customer like other companies.”

—Deputy General Counsel, Litigation
Fortune 500 Manufacturing Company

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Percentage Of Companies That Have Faced A Labor & Employment Class Action Is Relatively Unchanged

Sixty-seven percent of companies report that they faced at least one labor and employment class action within the last five years, up from 64.2 percent in 2018. Those companies express a moderate level of concern about facing similar cases in the future, reporting an average level of concern of 5.7 on a scale of 1 to 10. On the other hand, companies that have not faced a labor and employment collective action report a level of concern of only 3.0 on the same 1 to 10 scale.

Labor & Employment Class Actions in the Last Five Years Percent of Companies

**HAVE FACED A LABOR &
EMPLOYMENT CLASS ACTION**
67.3%



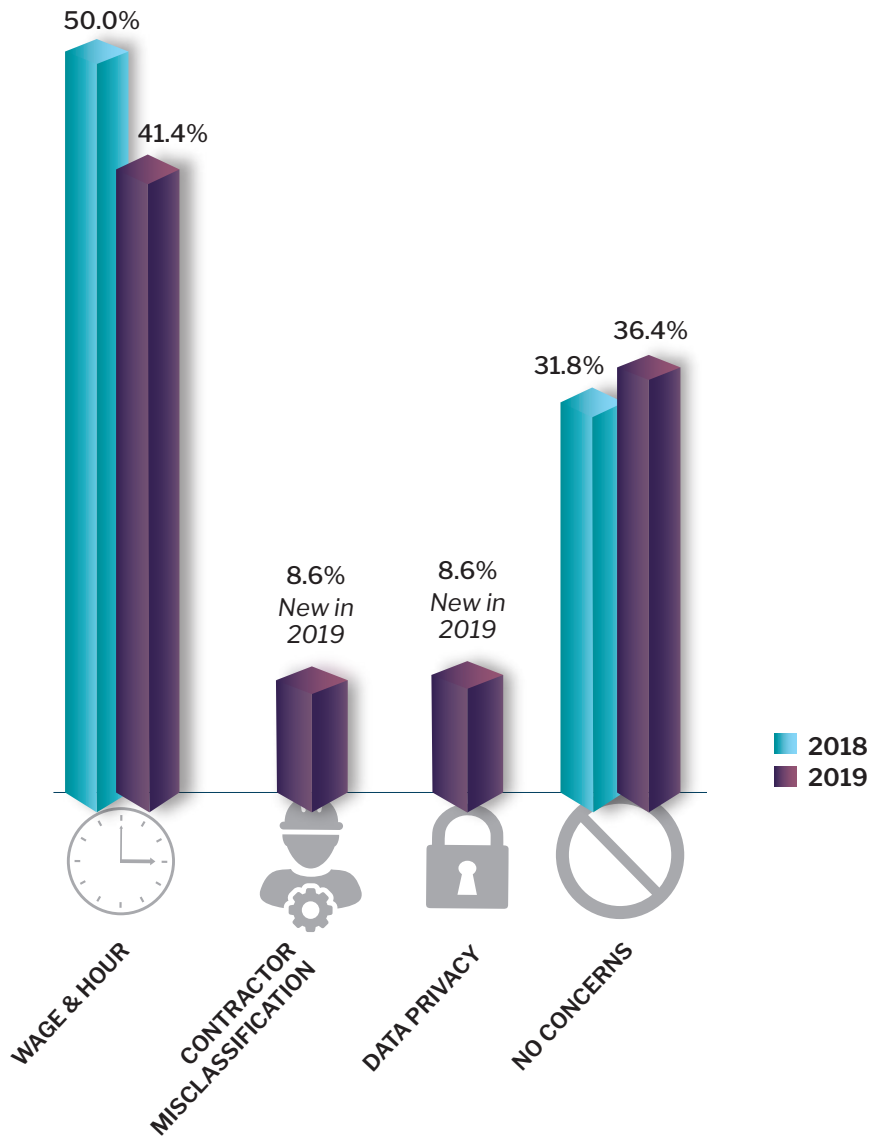
**HAVE NOT FACED A LABOR &
EMPLOYMENT CLASS ACTION**
32.7%

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Wage And Hour Class Actions Remain The Dominant Labor & Employment Concern

The number of companies that expressed no concern about a future labor and employment class action increased to 36.4 percent of companies. Forty-one percent identified wage and hour disputes as their top concern, down from 50 percent in 2018. Contractor misclassification and data privacy lawsuits emerged as new concerns in 2019.

Labor & Employment Matters - Highest Level of Concern Percent of Companies

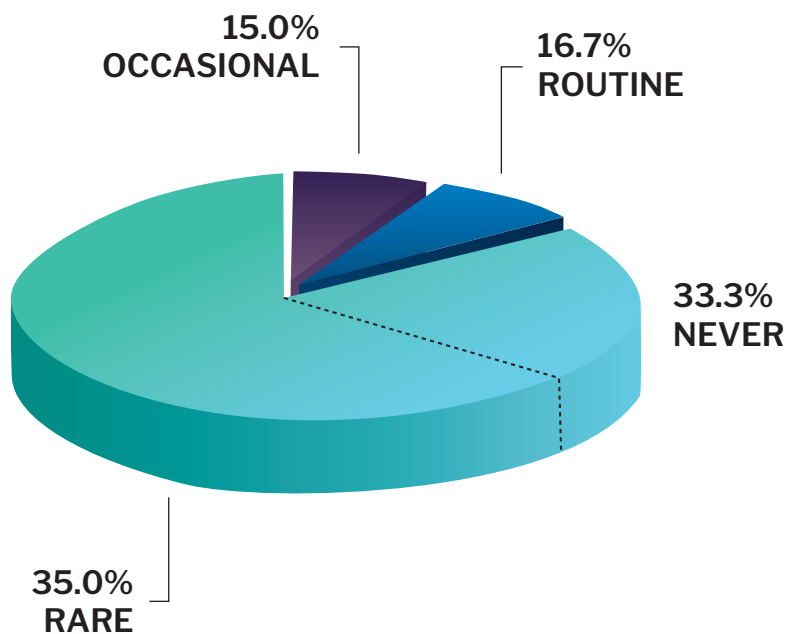


Note: Chart highlights selected categories and does not add up to 100%.
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Whether Companies Regularly Face Concurrent Class Actions And Regulatory Proceedings Varies By Industry

Companies in the insurance, finance, and energy industries often face concurrent class actions and regulatory proceedings. In 2019, however, 68.3 percent of surveyed companies across all industries report that they never or rarely face such concurrent proceedings.

Frequency of Concurrent Class Actions and Regulatory Proceedings
Percent of Companies

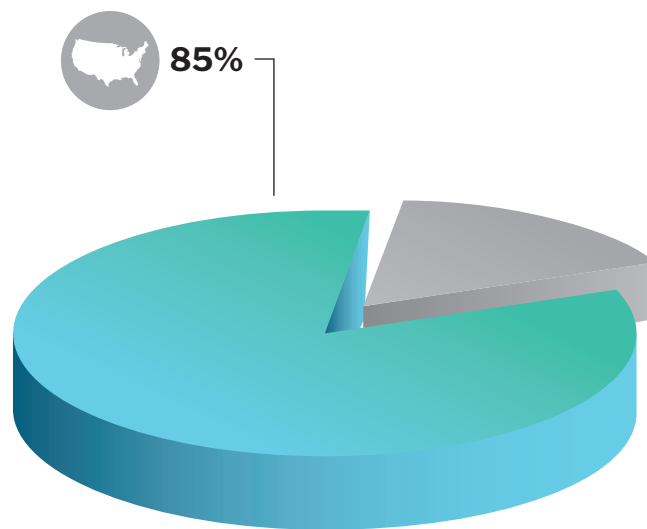


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Few Companies Face Class Actions Outside The United States

Only 15 percent of companies report that they are defending class actions filed outside the United States, and those cases have been filed primarily in Canada and Brazil.

Defending Class Actions in the U.S. Only Percent of Companies

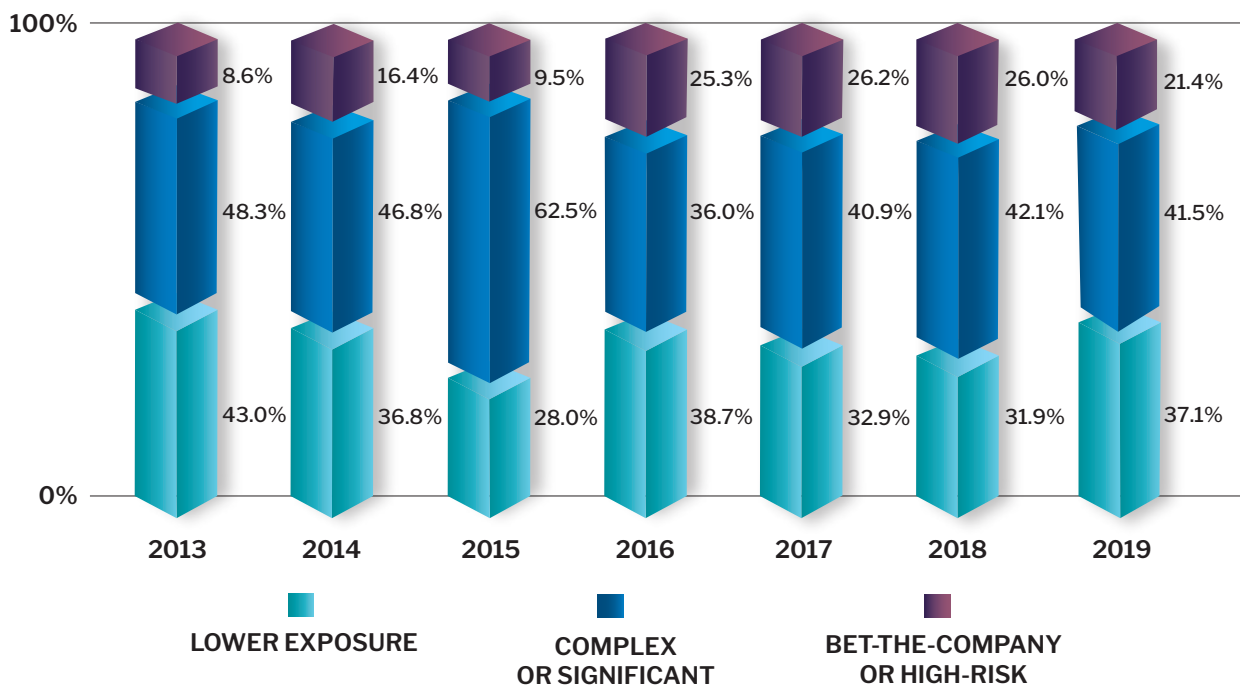


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Lower Exposure Class Actions Grow, While Higher Risk Matters Reflect A Decline

Companies characterize 21.4 percent of their current class actions as falling into the bet-the-company and high-risk exposure categories. Matters categorized as complex or significant declined slightly from 42.1 percent in 2018 to 41.5 percent in 2019, while the percentage of class actions that companies classify as having lower exposure increased for the first time in three years.

Class Actions by Risk Level
Percent of Matters

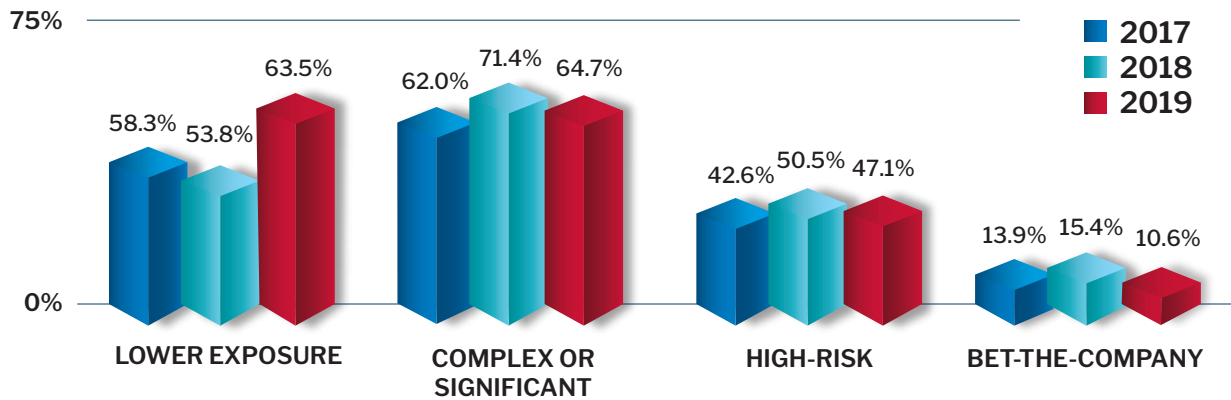


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More Companies Are Managing Lower Exposure Class Actions

The percentage of companies facing class actions categorized as “bet-the-company” declined to 10.6 percent, the lowest level since 2015, while those that reported facing lower exposure class actions increased to 63.5 percent. The percentage of companies facing high-risk class actions decreased from 50.5 percent to 47.1 percent. After an increase to 71.4 percent in 2018, the percentage of companies facing complex or significant class actions decreased to 64.7 percent.

Companies Handling One or More Cases by Risk Level Percent of Companies

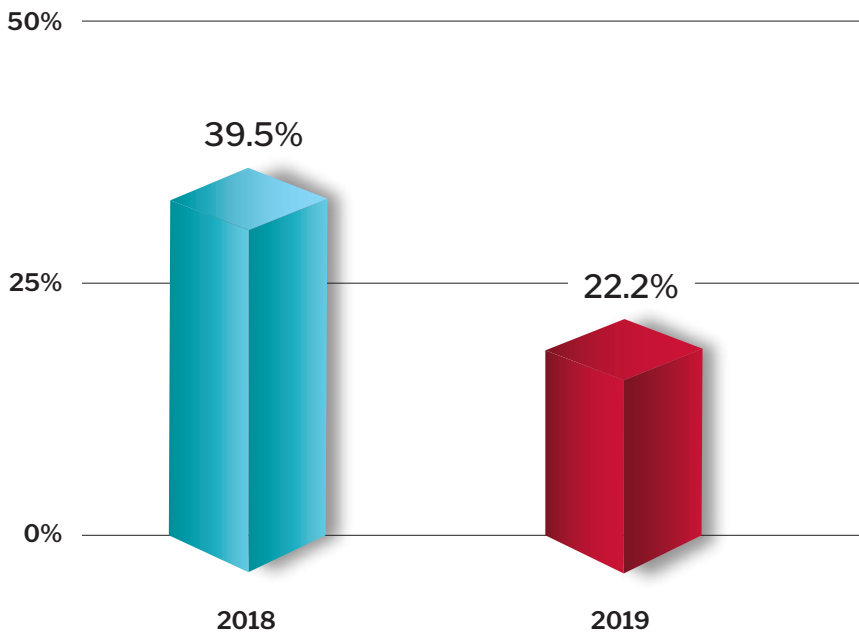


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More Companies Self-Insure Their Class Action Exposure

In 2019, 22.2 percent of companies had a portion of their class action defense costs covered by insurance, which is a significant decrease from the 39.5 percent of companies reporting some coverage last year. As more companies self-insure, those that have coverage report higher deductibles and more exclusions, particularly in the labor and employment context. Companies with insurance report that just 11.7 percent of their class action defense costs are covered.

Defense Costs Covered by Insurance Percent of Companies



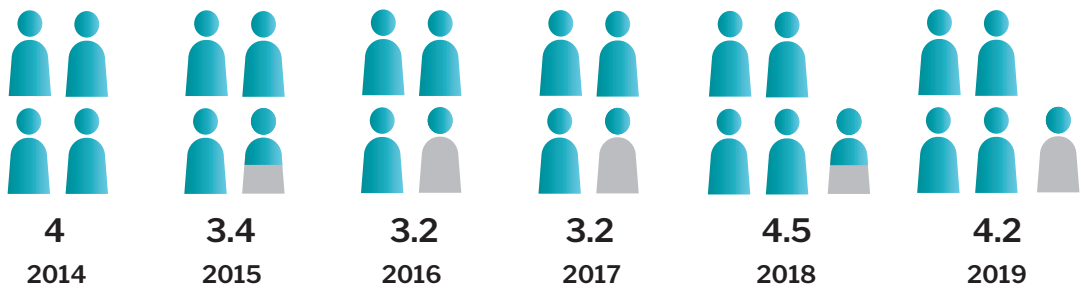
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How Companies Manage Class Actions

In-House Staffing For Class Actions Holds Steady

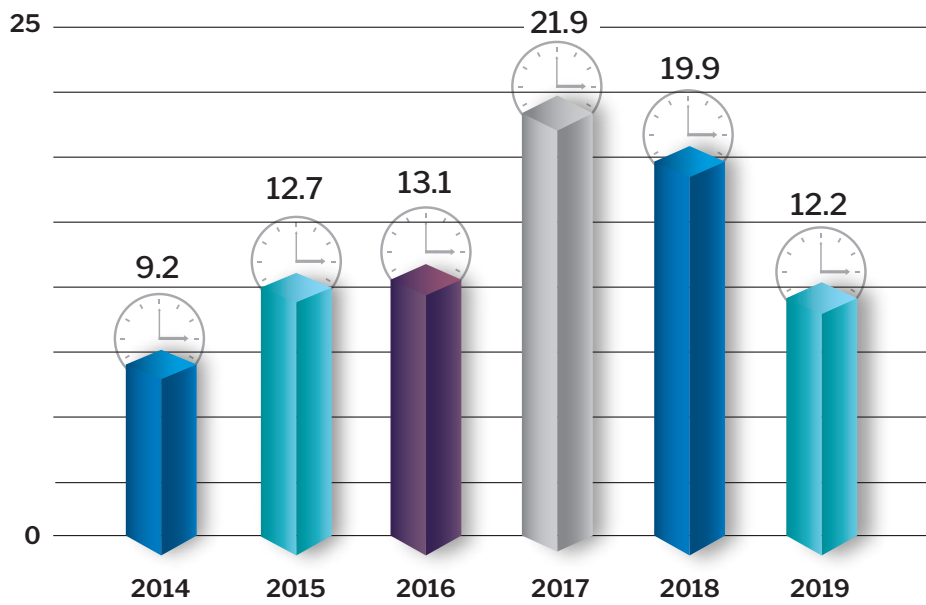
On average, four to five in-house attorneys per company are fully or partially dedicated to class actions. The number of hours each in-house attorney dedicates to managing class action litigation has declined, however, from a high of 21.9 in 2017 to 12.2 hours a week in 2019.

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



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Aggregate Attorney Time Spent on Class Actions Hours Per Week



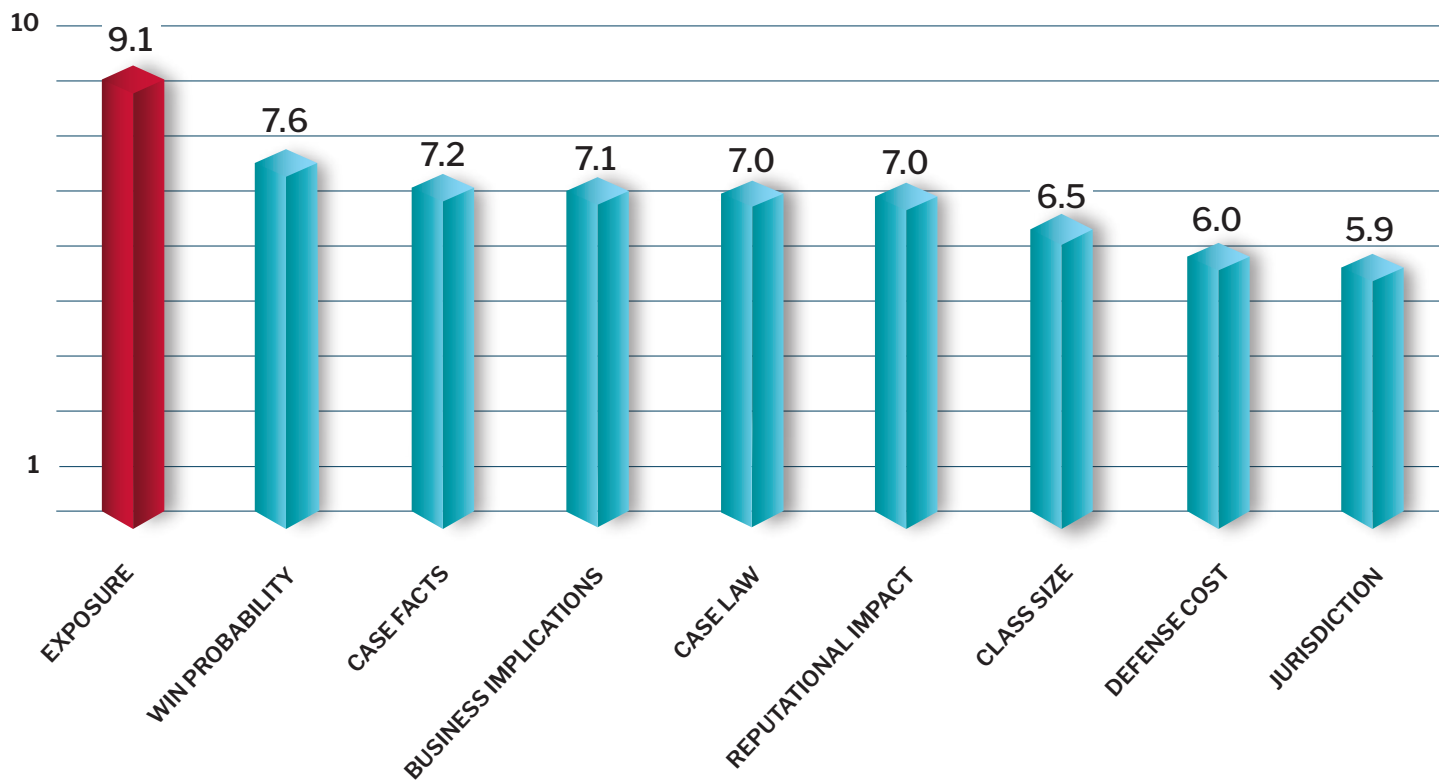
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How Companies Approach Class Action Risk

Companies Evaluate Class Action Risk Factors Consistently Over The Years

Companies continue to identify exposure as the most important variable they consider when evaluating class action risk. The only change in the 2019 ranking of categories saw defense costs overtake jurisdiction in importance. All risk variables maintained ratings similar to prior years.

Importance of Risk Variables
1-10 Rating

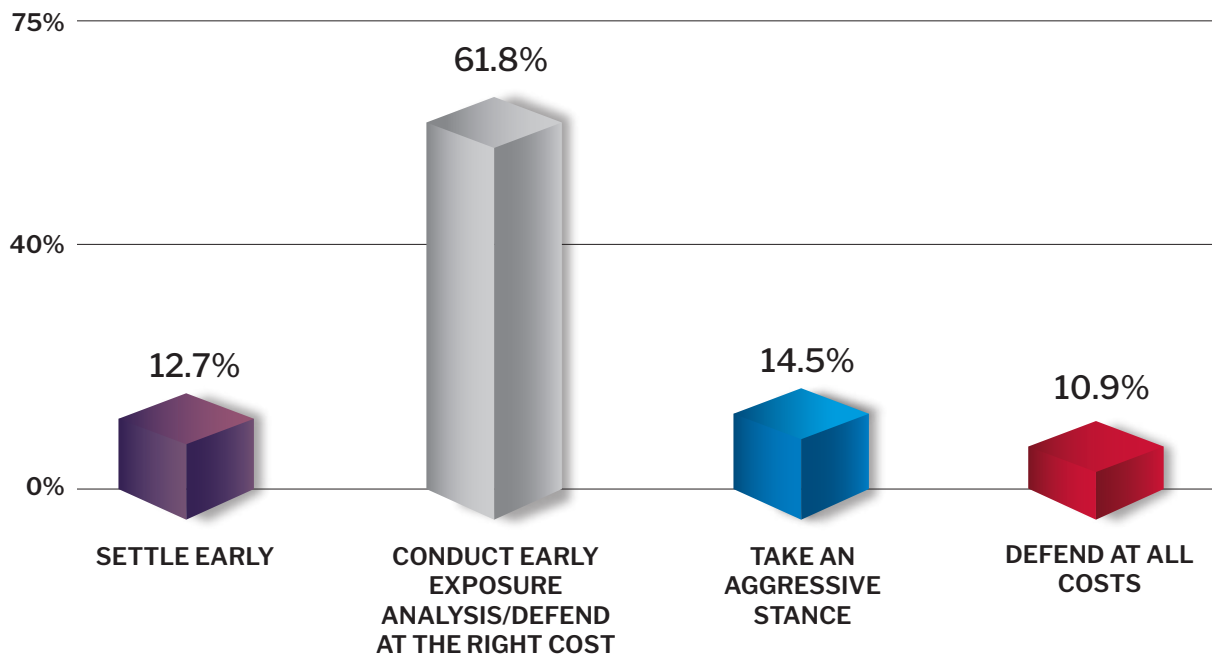


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Companies Assess Exposure Early To Defend At The Right Cost

More than ever, companies seek to defend class action matters “at the right cost” with 61.8 percent reporting that they assess exposure early to develop a litigation strategy. Only 12.7 percent of companies use an approach that considers early settlement, while 14.5 percent take an aggressive stance and 10.9 percent employ a “defend at all costs” strategy.

Class Action Defense Philosophies Percent of Companies



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In Their Own Words: Corporate Counsel Discuss Their Class Action Defense Strategies

“Prepare an analysis of the claim as early as possible; analyze exposure and potential class size; assess the likelihood of surviving motions for summary judgment.”

—Vice President and Corporate Counsel
Private Vacation Ownership Company

“Having a rapid response to the class action in identifying the facts, issues, and concerns. Collect them quickly and interview the witnesses so you can determine right away whether you will fight or settle.”

—Associate General Counsel, Litigation
International Bank

“You have to do a proper risk assessment. If you miss a big risk or misidentify something as a bigger risk than it is, you are not properly allocating resources.”

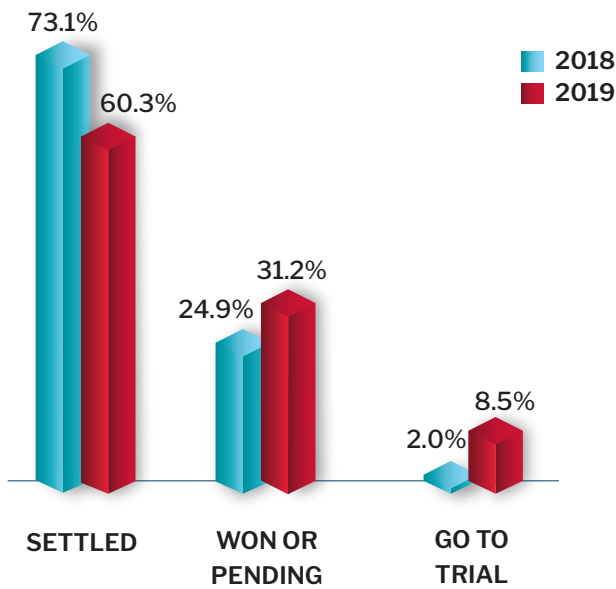
— Vice President and General Counsel
Major Shipping Company

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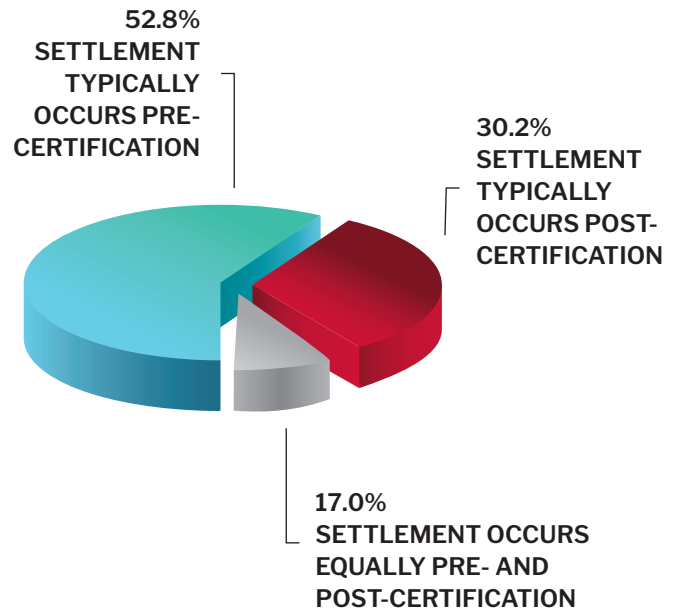
More Companies Are Taking Their Chances At Trial

Settlement rates for class actions declined, down to 60.3 percent in 2019 from 73.1 percent the previous year. As reported in prior years, settlements are more likely to occur before a class certification decision. Companies reported taking a much higher percentage of their cases to trial in 2019, 8.5 percent compared to just 2 percent in 2018, although this includes cases that were filed as class actions but went to trial on an individual basis.

Class Actions Settled and Settlement Timing Percent of Matters



Percent of Companies

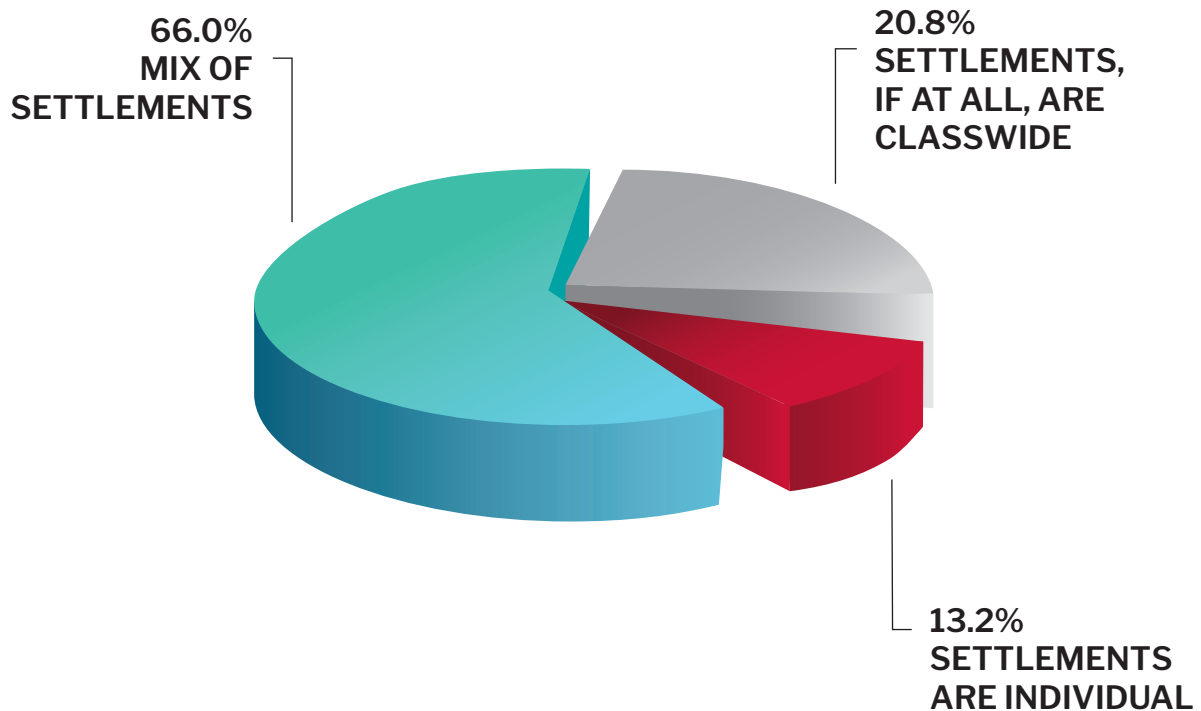


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Fewer Companies Report Settling Exclusively On A Classwide Basis

Of the companies that settled class actions in 2019, 13.2 percent settled all of their cases on an individual basis, down from 15.2 percent in 2018. The percentage of companies that settled class actions exclusively on a classwide basis also went down, from 32.6 percent in 2018 to 20.8 percent in 2019. As a result, more companies, 66 percent, reported a mix of both individual and classwide settlements. For companies that settled at least some of their class actions individually, 39 percent of their class action settlements were individual as opposed to classwide.

Individual v. Classwide Settlements Percent of Companies

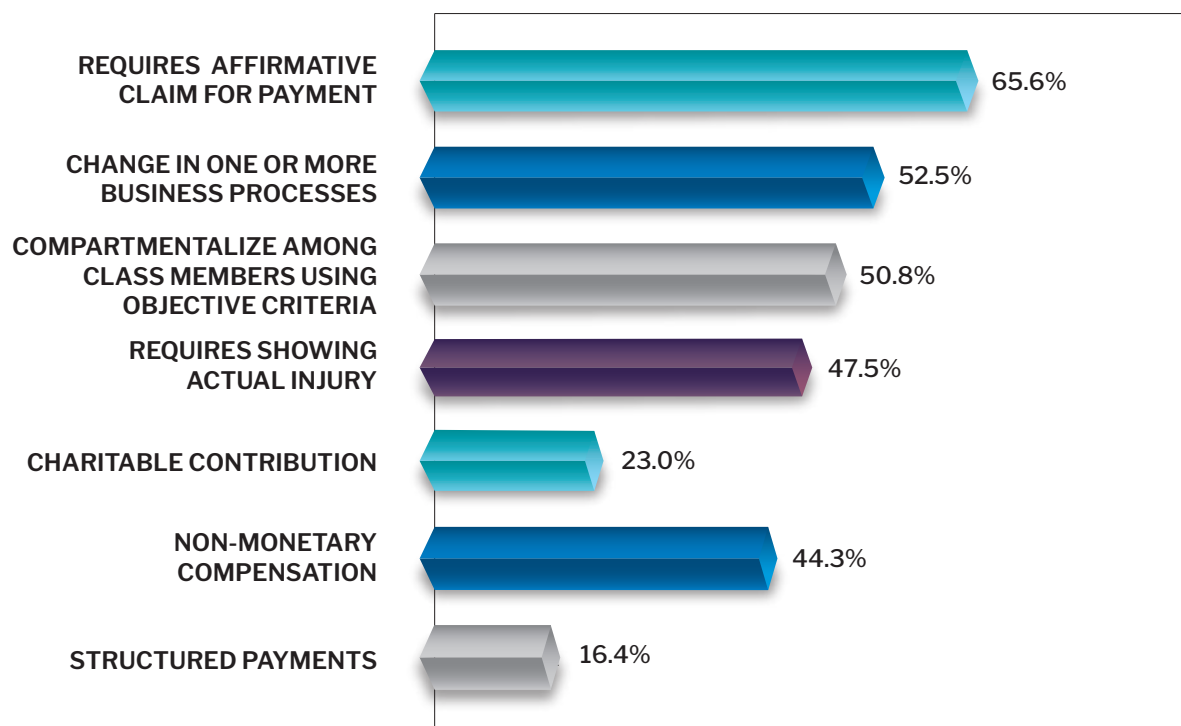


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More Companies Include Non-Monetary Compensation As An Element Of Class Action Settlements

The percentage of companies that reported including non-monetary compensation in class action settlements has increased 9 percentage points over the past two years, to 44.3 percent in 2019. Less than one-quarter of companies used charitable contributions, or *cy pres*, as an element of classwide settlements in 2019. This is the lowest percentage of companies using *cy pres* since we began tracking the elements of class action settlements in 2014. It is a substantial reduction from last year's survey, when 44.2 percent of companies settled cases involving some type of charitable contribution. Certain other settlement conditions also saw a reduction in usage in 2019, including the most popular condition of requiring an affirmative claim for payment. However, the order of the four most widely used settlement conditions did not change.

Settlement Conditions Percent of Companies

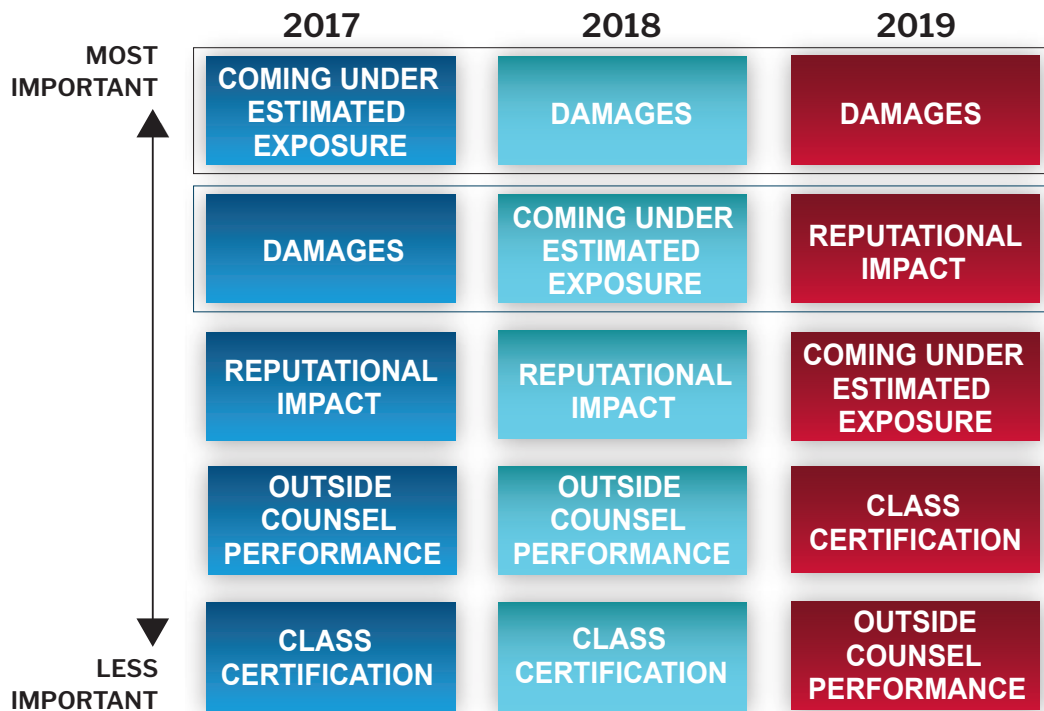


Note: Chart adds up to more than 100%. Multiple responses allowed.
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Companies Continue To Measure Success Based On Results

Although companies report that reputational impact took on greater importance in 2019 as a measure of success, they remain focused on the ultimate cost of class action litigation. Damages and coming in under the estimated exposure remain as two of the top three categories of success metrics.

Importance of Success Metrics



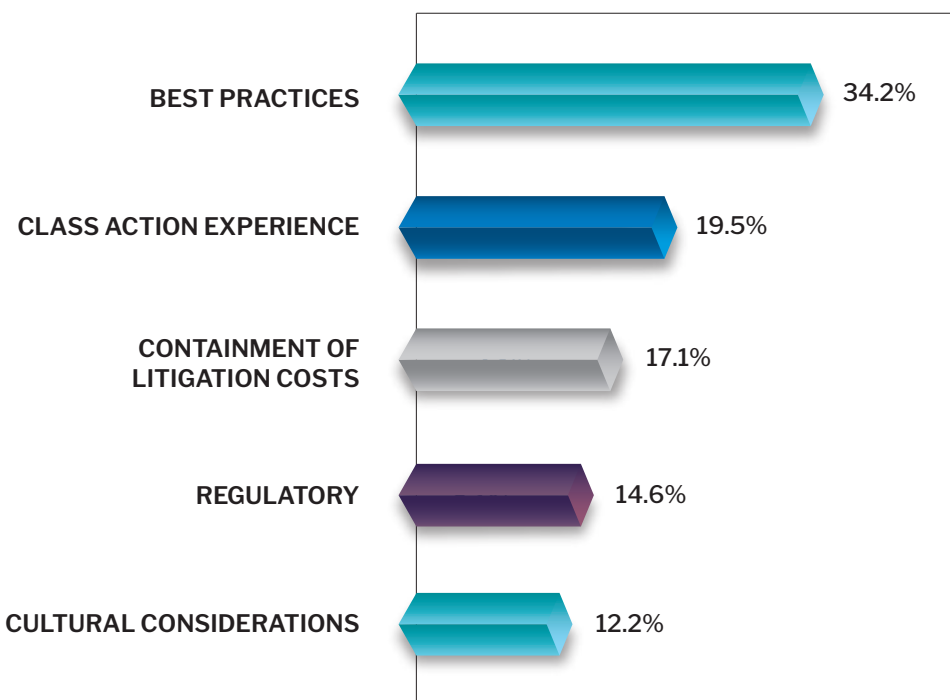
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Companies Focus On Best Practices When Deciding On Arbitration Clauses

In 2019, best practices overtook containment of litigation costs and class action experience as the most important factor companies considered in deciding whether to include arbitration clauses in their contracts. Thirty-four percent of companies cited best practices as a consideration, up from just 8 percent in 2018. Regulatory considerations entered the top five. Certain industries face regulatory restrictions that prohibit the use of arbitration provisions in their contracts.

Information Considered When Deciding to Use Arbitration Clauses

Percent of Companies

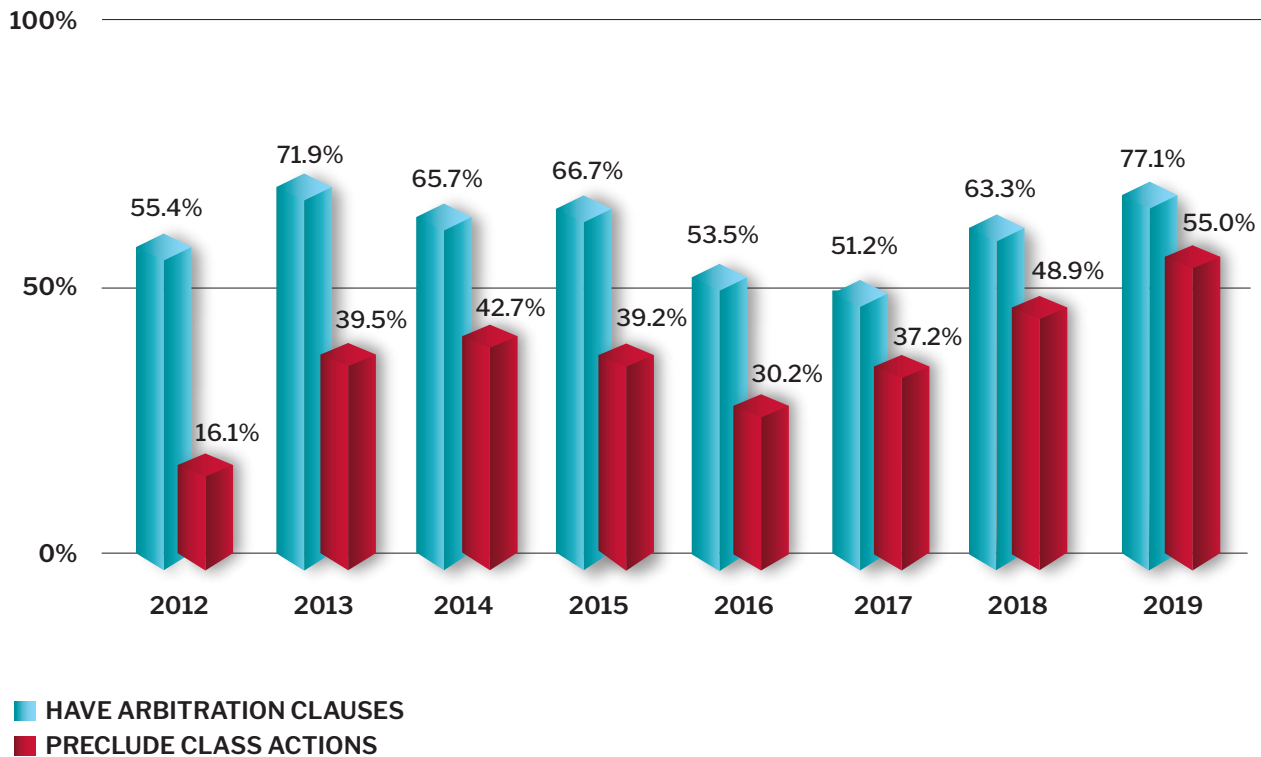


Note: Chart adds up to more than 100%. Multiple responses allowed. Displaying the top five responses.
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Most Arbitration Clauses Now Include Class Action Waivers

More companies than ever before are using arbitration clauses in their contracts, and more of those clauses include class action waiver provisions. The percentage of companies using class action waivers in their arbitration clauses increased in 2019, to 55 percent, up from 48.9 percent last year. This is the third consecutive year that the use of class waivers has increased.

Arbitration Clause Usage Percent of Companies

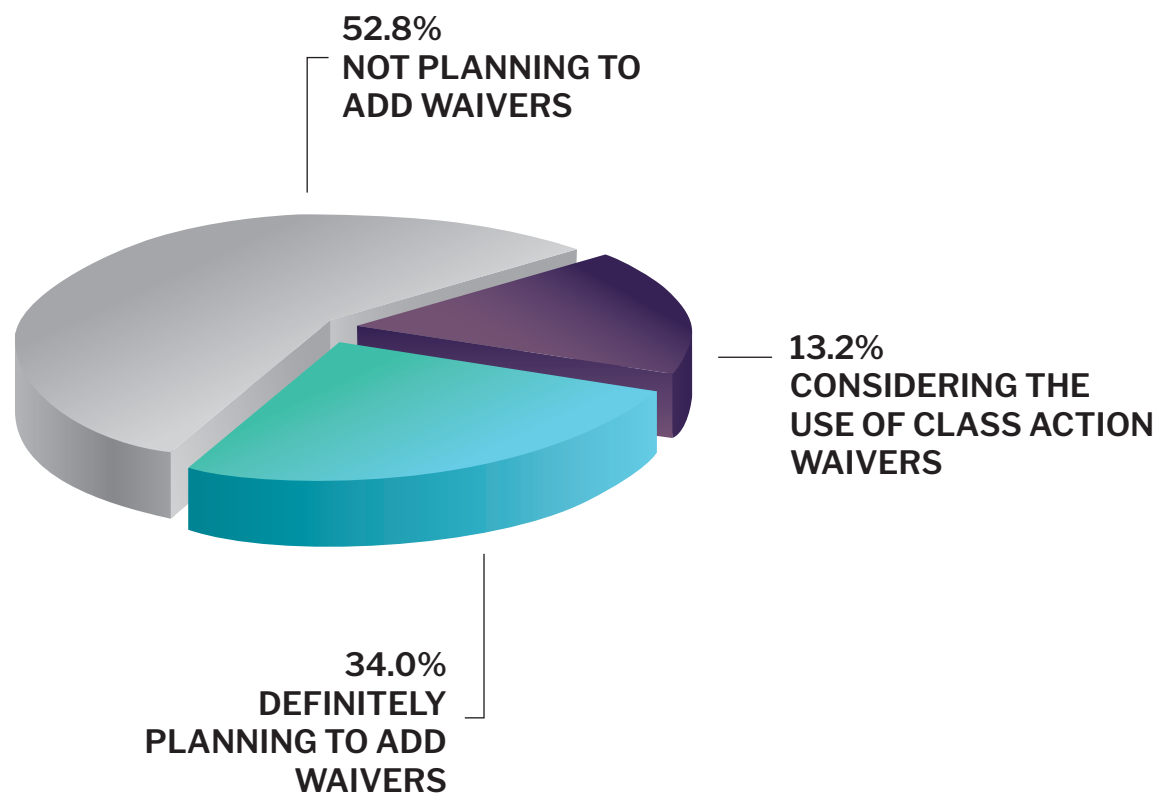


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Companies Without Class Action Waivers In Their Arbitration Clauses Are Split Over Whether To Use Such Waivers In The Future

Although most companies with arbitration clauses are now using class action waivers, we asked those that are not whether they plan to add such clauses in the future. Thirty-four percent of those companies said they definitely plan to add waivers to existing arbitration clauses, and 13.2 percent said they are considering it. Approximately 53 percent said that they will not.

Companies Considering the Use of Class Action Waivers Percent of Companies



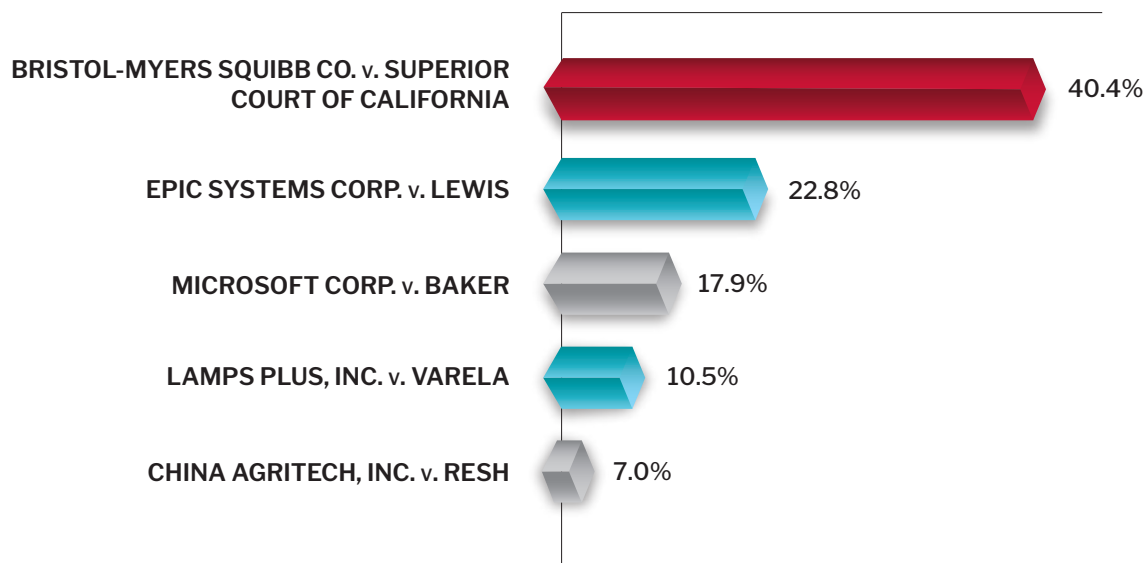
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The Impact of the Supreme Court on Risk

Recent Supreme Court Rulings That Impact Class Action Management

Forty percent of companies identified the Supreme Court's personal jurisdiction decision in *Bristol-Myers Squibb* as a recent Supreme Court ruling relevant to their management of class actions. The second most identified ruling was the *Epic Systems* collective action case enforcing arbitration agreements with class action waivers, identified by 22.8 percent of companies.

Recent Rulings Impacting Class Action Management Percent of Companies



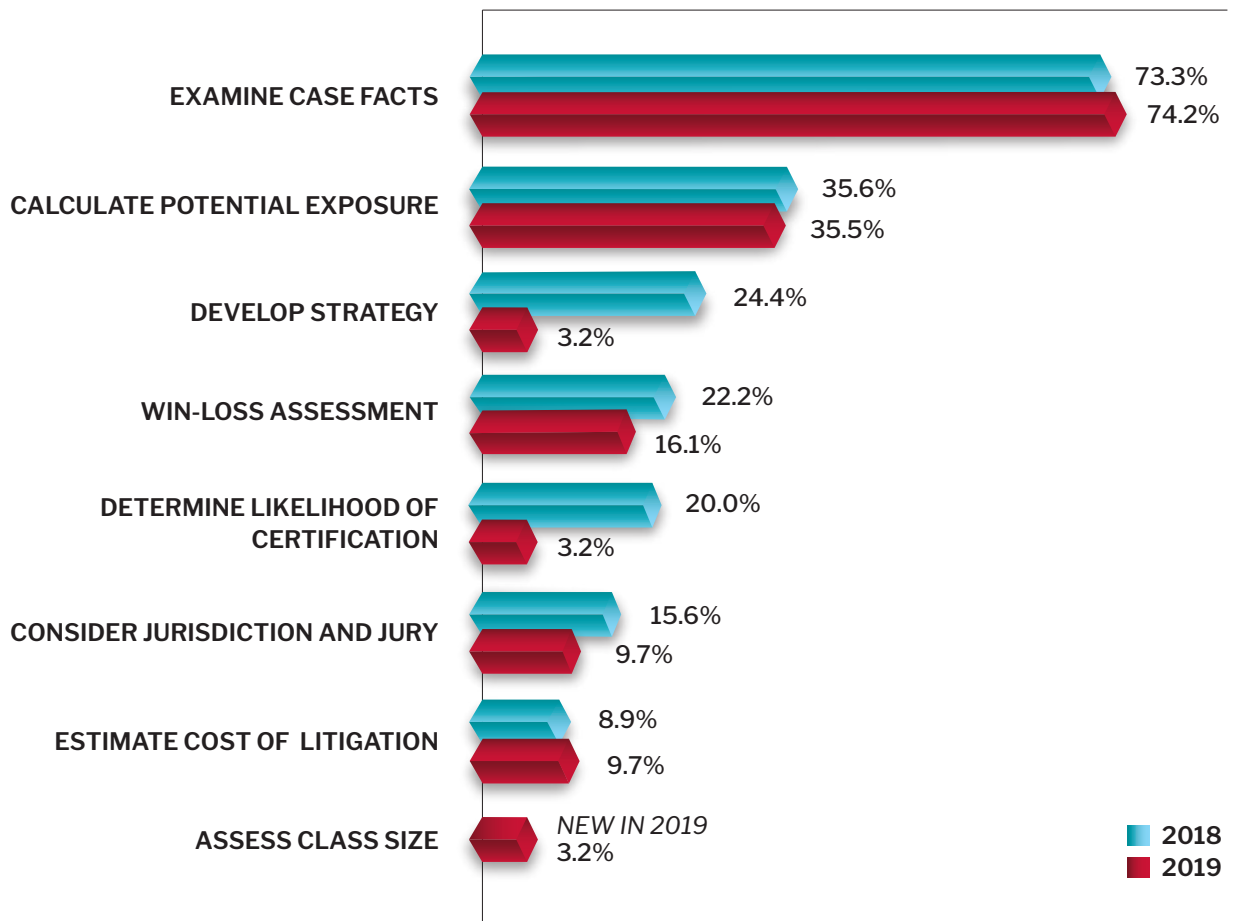
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Strategies for Managing Class Action Cost

Companies Focus On Exposure In Early Case Assessments

As in prior years, virtually all companies conduct an early case assessment when faced with a new class action. Companies report that the two most important elements of any such assessment are an examination of the case facts and calculating the potential exposure. As they focus on exposure and deal with a higher volume of cases, fewer companies report that they develop strategy, determine the likelihood of class certification, or consider the jurisdiction and jury during their initial early case assessment. Instead, strategic plans are being developed after companies conduct their exposure analysis.

Type of Early Case Assessment
Percent of Companies

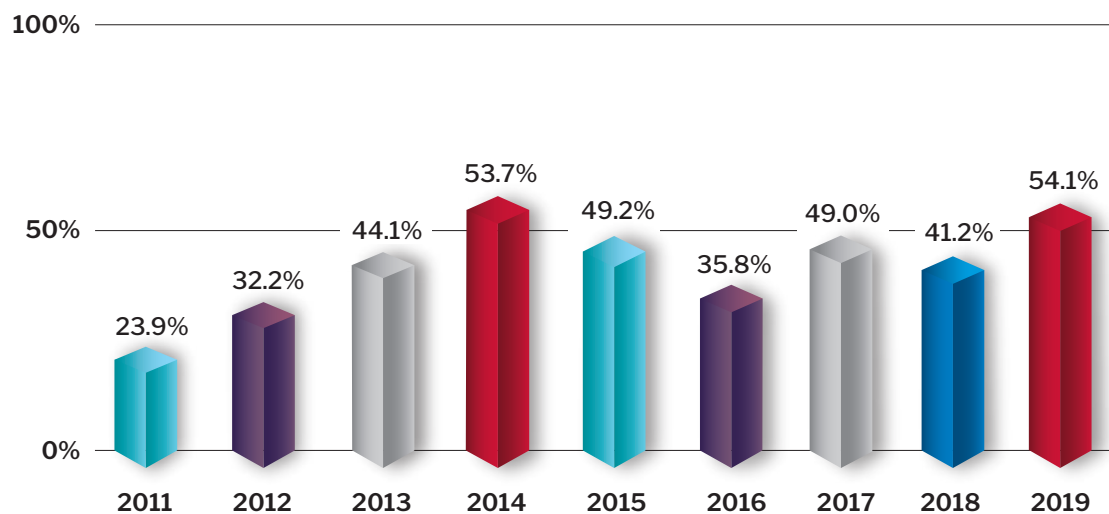


Note: Chart adds up to more than 100%. Multiple responses allowed.
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Majority Of Companies Report The Use Of Alternative Fee Arrangements In Class Action Matters

Exceeding the high watermark from 2014, 54.1 percent of companies now report that they rely on alternative fee arrangements as a class action management tool. As we reported in prior years, the use of AFAs falls in and out of favor as a class action cost management strategy.

Alternative Fee Arrangement Use in Class Actions Percent of Companies

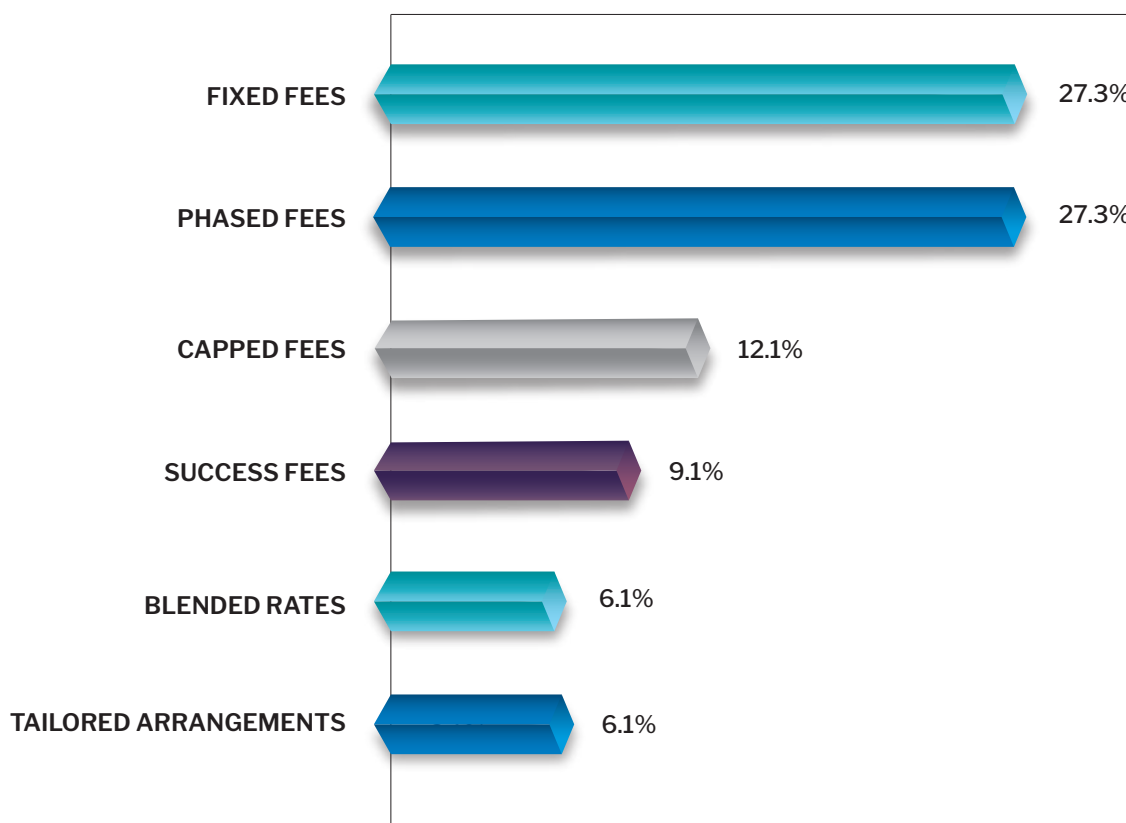


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Companies Prefer Fixed And Phased Alternative Fee Arrangements In Class Actions

Among companies that use AFAs, more than one-quarter identified fixed fees and phased payments as the most successful for class actions. Companies also reported using arrangements such as capped fees, success fees, blended rates, and more sophisticated arrangements specifically tailored for a given case. Contingency fees were not identified by any respondents in this year's survey.

Success of Alternative Fee Arrangement Types in Class Actions
Percent of Companies

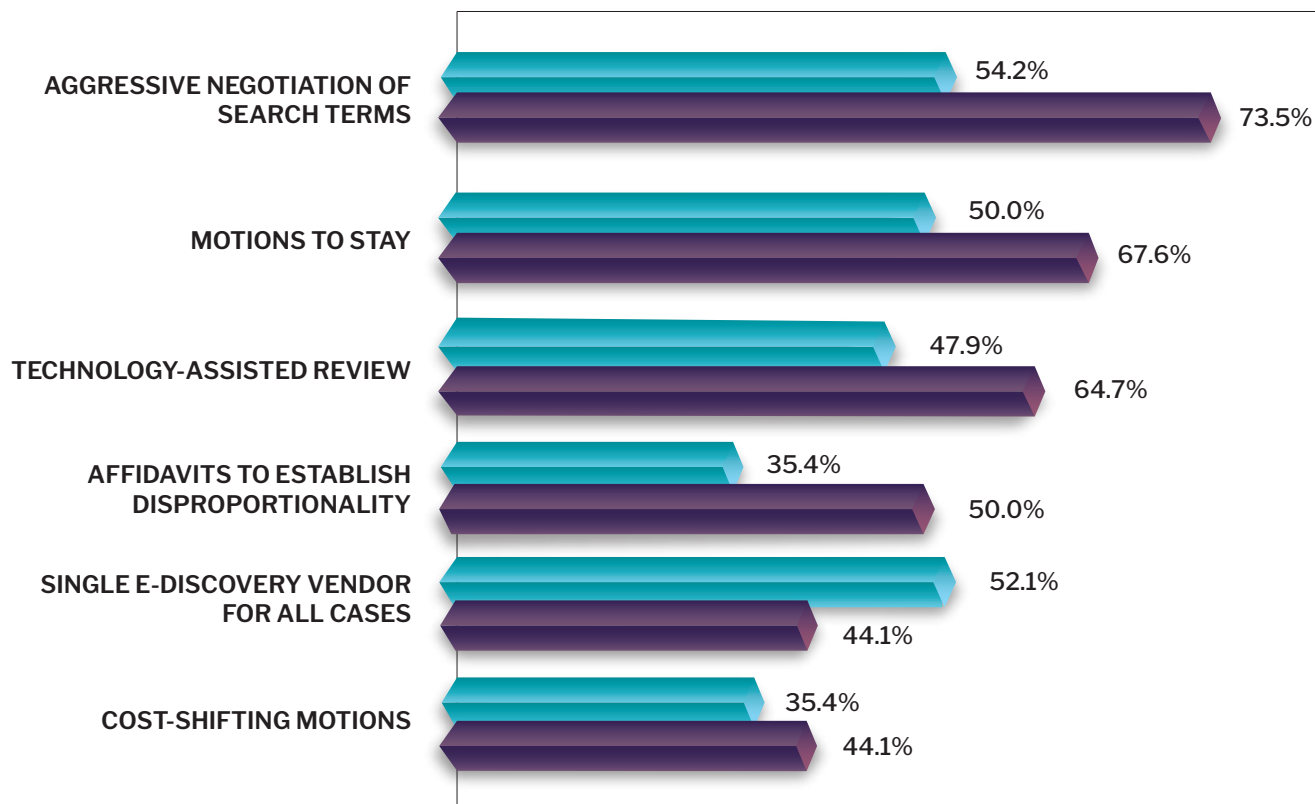


Note: Chart adds up to less than 100%; reports the percentage of companies responding affirmatively in each category.
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Mitigating The Cost Of E-Discovery

On average, companies reported that discovery expenses comprised half of their class action spending, with variations by industry and based on the nature of the claims. Because modern discovery is so costly, more than 90 percent of companies employ strategies to control those costs. In 2019, companies took a more assertive approach to managing e-discovery and reported an increase in the use of nearly every mitigation strategy.

Strategies Used Percent of Companies



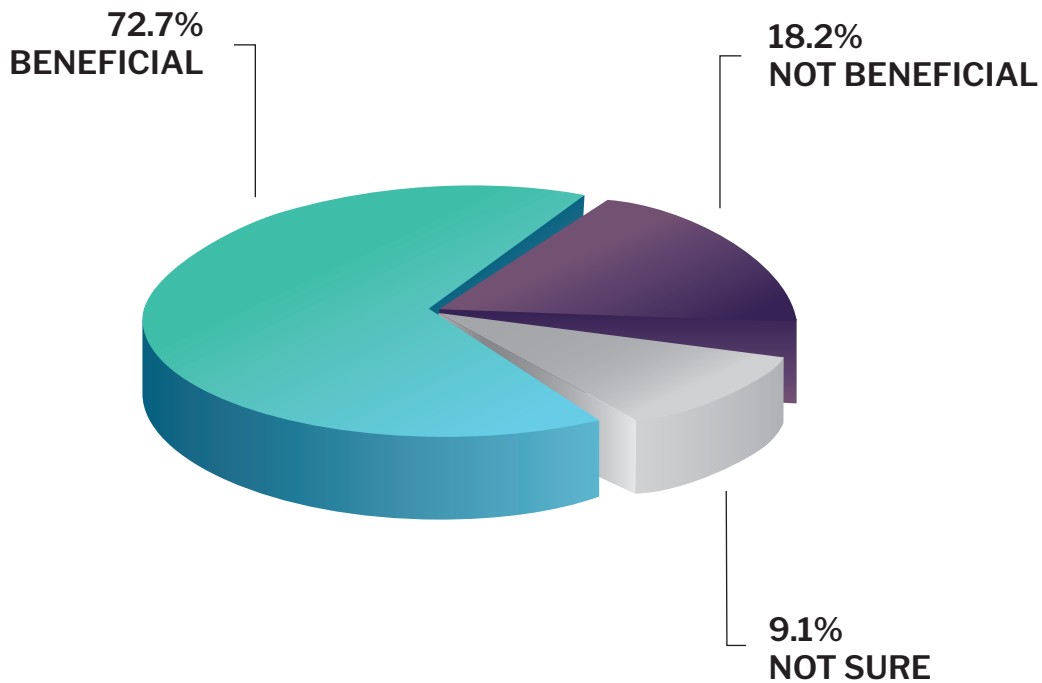
■ 2018
■ 2019

Note: Chart adds up to more than 100%. Multiple responses allowed.
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Most Companies See A Benefit In Bifurcating Discovery

Nearly three-quarters of companies report that bifurcating discovery is a beneficial tool in their defense of class actions.

Bifurcating Discovery as Helpful Approach to Class Action Defense Percent of Companies



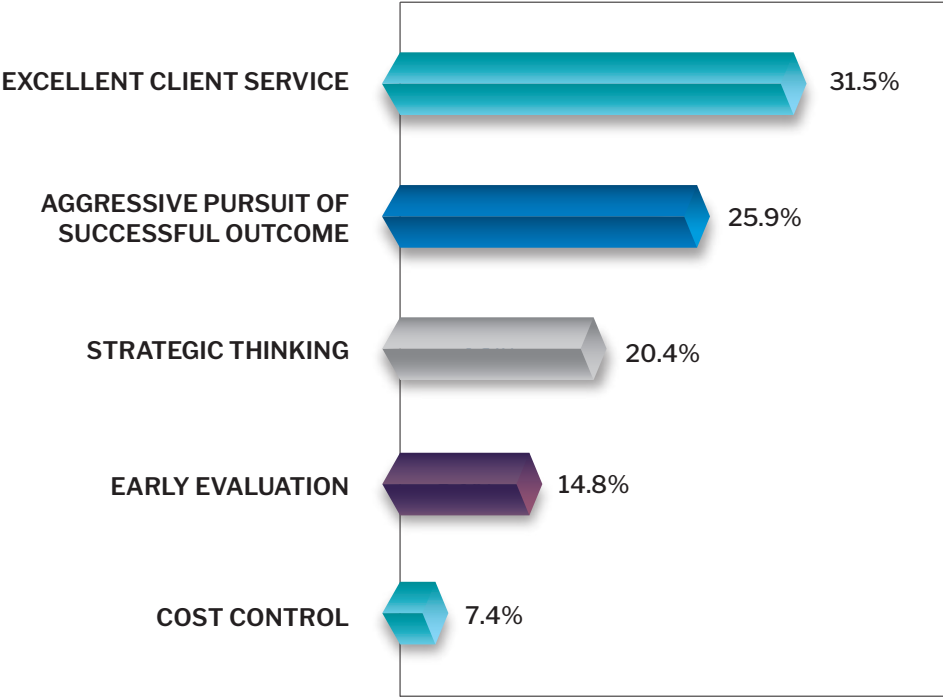
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Improving Outside Counsel Performance in Class Action Defense

Companies Look For Improved Client Service From Outside Counsel

Nearly one-third of companies identified client service as the top area of improvement for outside counsel performance in defending class actions, including improved practicality, communication, business understanding, staffing, and client focus. Top decision-makers also want aggressive advocacy and strategic thinking about a range of realistic outcomes.

Areas of Improvement
Percent of Companies

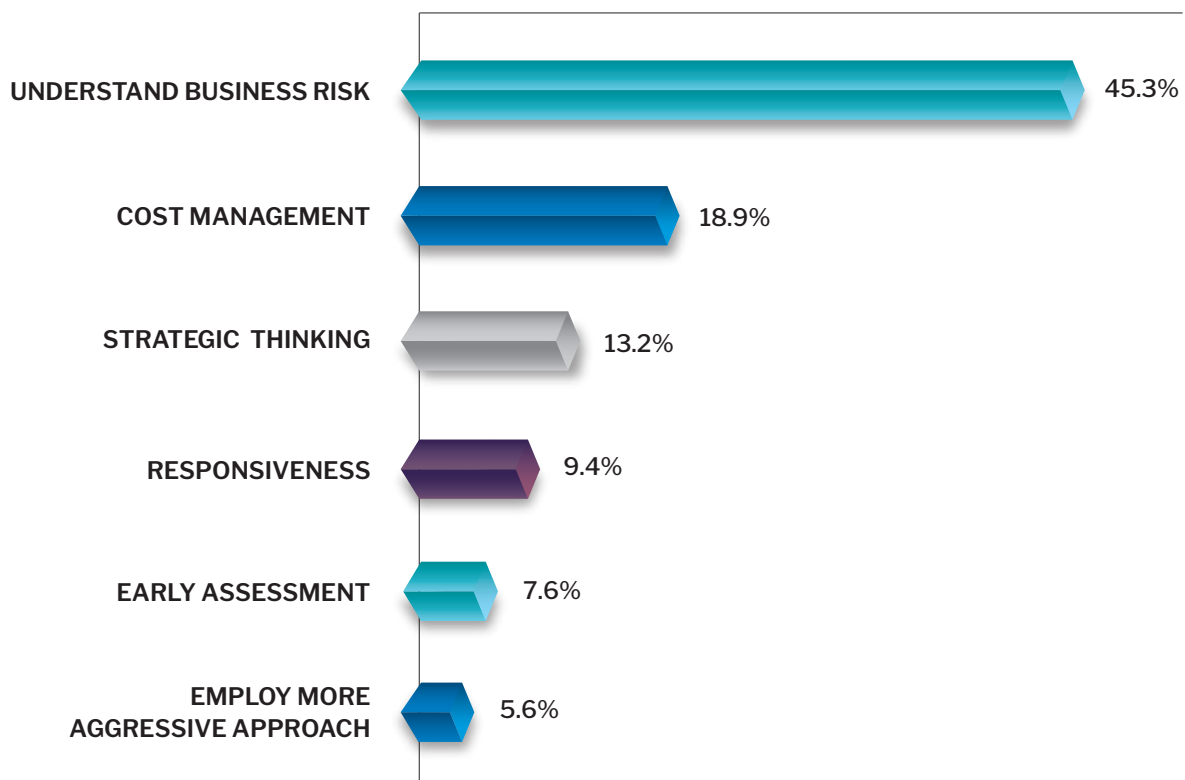


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Outside Counsel's Understanding Of Business Risk Improves Class Action Management

Forty-five percent of companies report that their outside counsel should understand the business risk presented by each class action to assist the company in managing these costly matters. This was the single most important factor cited and was identified as essential to in-house counsel's evaluation of the case and its potential financial exposure.

Outside Counsel's Role in Improving Class Action Management Percent of Companies



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Companies Identify Five Sources of Innovation in Class Action Defense



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Aggressiveness

- Define appropriate and forceful action plan
- Offer a range of options
- Provide frequent strategic updates



Strategic Planning

- Define litigation objectives
- Align objectives with risk tolerance
- Assess constraints
- Establish a time horizon



Immediate Early Case Evaluation

- First 30 to 45 days
- Identify range of outcomes
- Identify worst-case scenario
- Evaluate all available facts
- Provide educated assessment of probable results



Scenario Planning

- Conduct a sensitivity analysis for each scenario
- Calculate exposure under various scenarios
- Formulate contingency plans
- Update scenarios as case evolves



Cost Management

- Develop initial high-level budget
- Provide budget tracking
- Consider phased fee arrangements





Methodology and Approach

The 2020 Carlton Fields Class Action Survey results were compiled from 415 interviews with general counsel, chief legal officers, and direct reports to general counsel. Consistent with the approach used in past years, to control for bias and assure objectivity, Carlton Fields retained an independent consulting firm to select the companies and conduct the interviews. The consulting firm provides only aggregate data to Carlton Fields. Individual responses and company names are kept confidential and excluded from the survey results.

Surveyed companies had an average annual revenue of \$21.8 billion, and median annual revenue of \$6.7 billion. They operate in more than 25 industries, including banking and financial services, consumer goods, energy, high tech, insurance, manufacturing, pharmaceuticals, professional services, and retail trade. Survey participants included 41.6 percent general counsel or chief legal officers and 58.4 percent direct reports to general counsel.

About Carlton Fields

Carlton Fields has litigated and counseled clients in hundreds of class actions for more than 35 years in federal and state courts across the nation. 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 305.347.6870, jtmccabe@carltonfields.com, or **Michael Wolgin** at 305.347.6880, mwolgin@carltonfields.com.

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