

2019 Carlton Fields Class Action Survey

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

**CARLTON
FIELDS**

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Introduction

Carlton Fields is pleased to share its eighth annual Class Action Survey, which provides an overview of important issues and practices related to class action matters and management. This annual publication reports on historical trends captured since the inception of the survey and includes information related to emerging issues in class action litigation.

Class action spending has increased for four consecutive years, and it is expected to continue to rise in 2019. Not only are companies handling a higher volume of class action matters than ever before, they are also facing higher financial exposure and growing complexity in the cases they handle. Corporate counsel are bringing on additional in-house lawyers to manage growing class action workloads.

The 2019 Carlton Fields Class Action Survey is based on interviews with general counsel or senior legal officers at 395 *Fortune* 1000 and other large companies across a variety of industries. They shared their thoughts about class action exposure and best practices for class action management. We thank you for taking the time to review our survey, 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

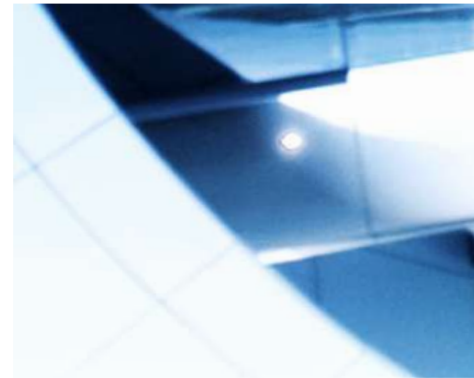
In 2018, class action spending rose to its highest level since the recession, reaching \$2.46 billion. While the number of companies that reported facing class actions in 2018 dropped slightly to 54 percent, the average number of matters per company increased from 6.3 in 2017 to 7.8 in 2018. Spending and matters are expected to increase again in 2019.

Labor and employment, consumer fraud, product liability, and antitrust matters account for 75 percent of class action spending. Labor and employment cases remain the most common type of action, accounting for 28.7 percent of matters and 26.1 percent of spending. In the past five years, nearly two-thirds of companies have faced at least one labor and employment class action, and, overwhelmingly, companies report that wage and hour matters are their top concern in this category. Companies identified the most important factors they consider in selecting counsel to defend labor and employment class actions, and the top three considerations are the law firm's class action experience, understanding of the business, and subject matter expertise.

The percentage of companies predicting data privacy and security as the next wave of class actions nearly doubled from last year's survey, increasing from 28.9 percent to 54.3 percent. Most companies, however, have not faced a data privacy and security class action, and express moderate concern about facing one in the future. A large majority report that their company has an action plan in place to handle a data breach. Although 8.7 percent of companies identified collective actions under the European Union's new privacy regulation (the "GDPR") as the next wave, most are not concerned about GDPR exposure. Approximately two-thirds of companies, however, reported concern stateside about the California Consumer Privacy Act, a data privacy law that goes into effect in 2020.

The percentage of companies facing class actions that they consider complex, high-risk, or bet-the-company increased in 2018, while fewer companies report facing lower exposure cases. Each year since 2016, companies have categorized more than one fourth of their class actions as either "bet-the-company" or "high-risk" matters. In line with the increased risk, companies are expanding internal staffing dedicated to the defense of class actions. On average, four to five in-house lawyers per company are managing class action matters now, an increase from three lawyers in 2017, and the first increase of in-house class action attorney headcount in five years.

In weighing the variables they consider most important in evaluating class action risk, companies ranked exposure as 8.9 on a 1-10 scale of importance. Win probability, relevant case law and facts, and reputational impact also were





ranked as important risk variables. Increasingly, companies facing class actions employ a case-by-case approach to class action management. Only 10.6 percent say they prefer to settle such matters early, while 21.3 percent take an aggressive stance and 14.9 percent employ a “defend at all costs” strategy. Still, cases filed as class actions are most often resolved by settlement, with 53.1 percent of companies reporting that settlements typically occur pre-certification. Thirty-nine percent of matters filed as class actions are settled on an individual basis.

As expected, the use of arbitration clauses increased in 2018, and the percentage of companies that included class action waivers in their arbitration clauses increased to near 50 percent. More companies now use arbitration clauses that bar class actions than in any prior year of the survey. Companies report that their decision about whether to use arbitration clauses in their contracts is based on a variety of factors, with the containment of litigation costs cited most often. Many companies continue to monitor the political environment in Washington for its impact on the regulatory climate and changes at the Supreme Court.

As companies work to contain costs and manage class action risk, nearly 90 percent now conduct early case assessments, and most use their outside law firms for this purpose. While many companies have routinely used outside counsel to assess case facts and exposure and develop strategy, in this year’s survey more companies report relying on outside counsel for an early assessment of win-loss probability. More than 95 percent of responding companies reported that they now rely on a small group of outside counsel to handle class actions, rather than a single firm or a large group of firms. The use of alternative fee arrangements (AFAs) in class actions declined slightly in 2018. More companies identified fixed fees as a successful type of AFA for class actions than any other category.

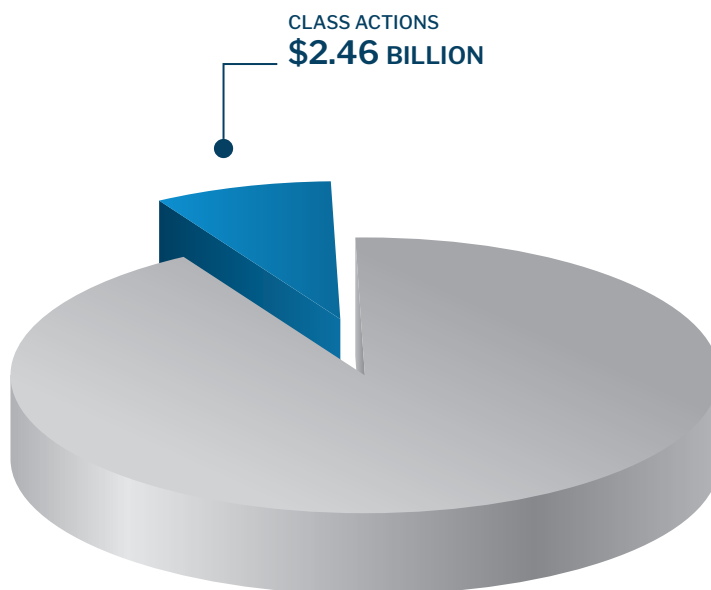
Finally, while most companies have not seen a reduction in class action discovery costs as a result of the federal proportionality standard, there are a host of strategies companies use to control electronic discovery costs in class litigation, including, among others, the aggressive negotiation of reasonable search terms, the use of a single e-discovery vendor, and the filing of motions to stay or for cost-shifting.

Class Action Spending and Budgets

Class Action Spending Increases For A Fourth Consecutive Year

Class action spending increased for a fourth consecutive year, to \$2.46 billion in 2018, accounting for 11.1 percent of all litigation spending in the United States.

\$22.25 Billion Market for Legal Services in Litigation

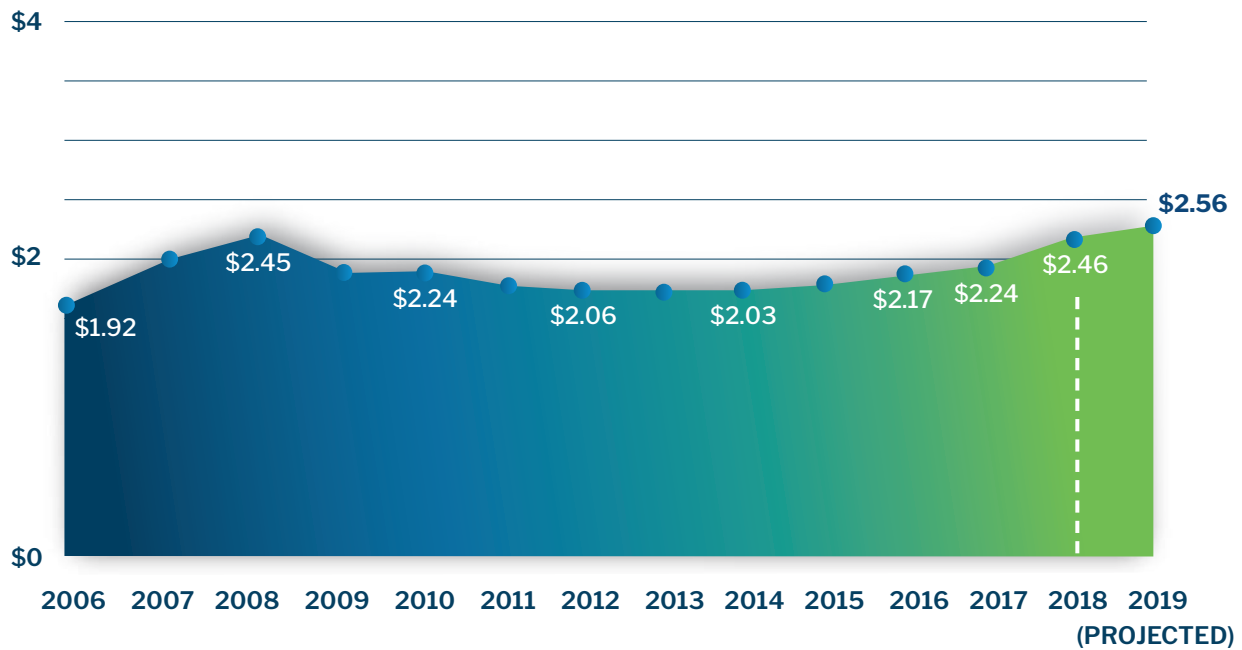


Class Action Spending Reaches Highest Level Since 2008

Corporate spending on class actions increased nearly 10 percent in 2018, reaching its highest level since 2008. Costs are likely to climb even further in 2019, driven by anticipated increases in both matters and exposure.

U.S. Corporate Legal Spending on Class Actions

\$ Billions

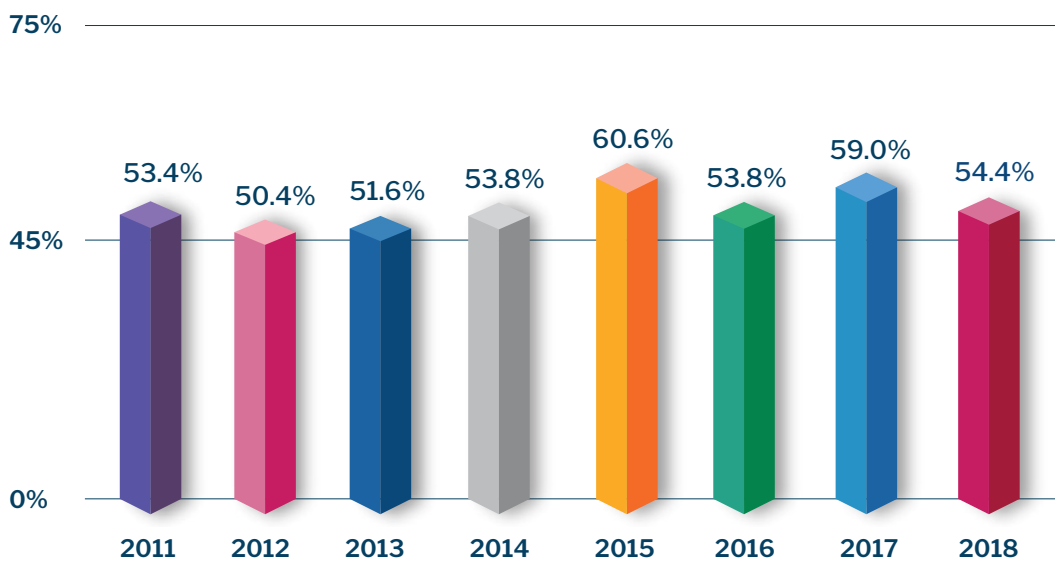


Type and Frequency of Class Actions

Percentage of Companies Managing Class Actions Remains Above 50 Percent

In 2018, 54.4 percent of companies faced class actions, consistent with the average over the last decade. The number of class actions per company managing them, however, is on the rise.

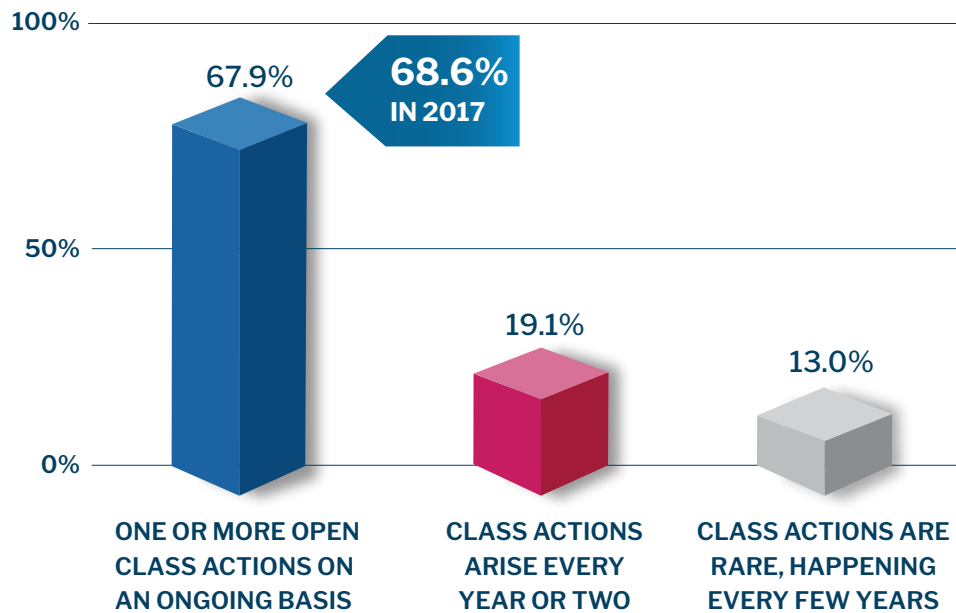
Companies with Class Actions Percent



Class Actions Are A Part Of Everyday Life For Most 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 67.9 percent, a number that has varied minimally over the last four years. More companies, 19.1 percent, reported facing a class action “every year or two” compared to the 14.8 percent that provided the same response in 2017. The number of companies reporting that class actions are a rare occurrence was down four percentage points to 13 percent.

Class Action Experience Percent of Companies



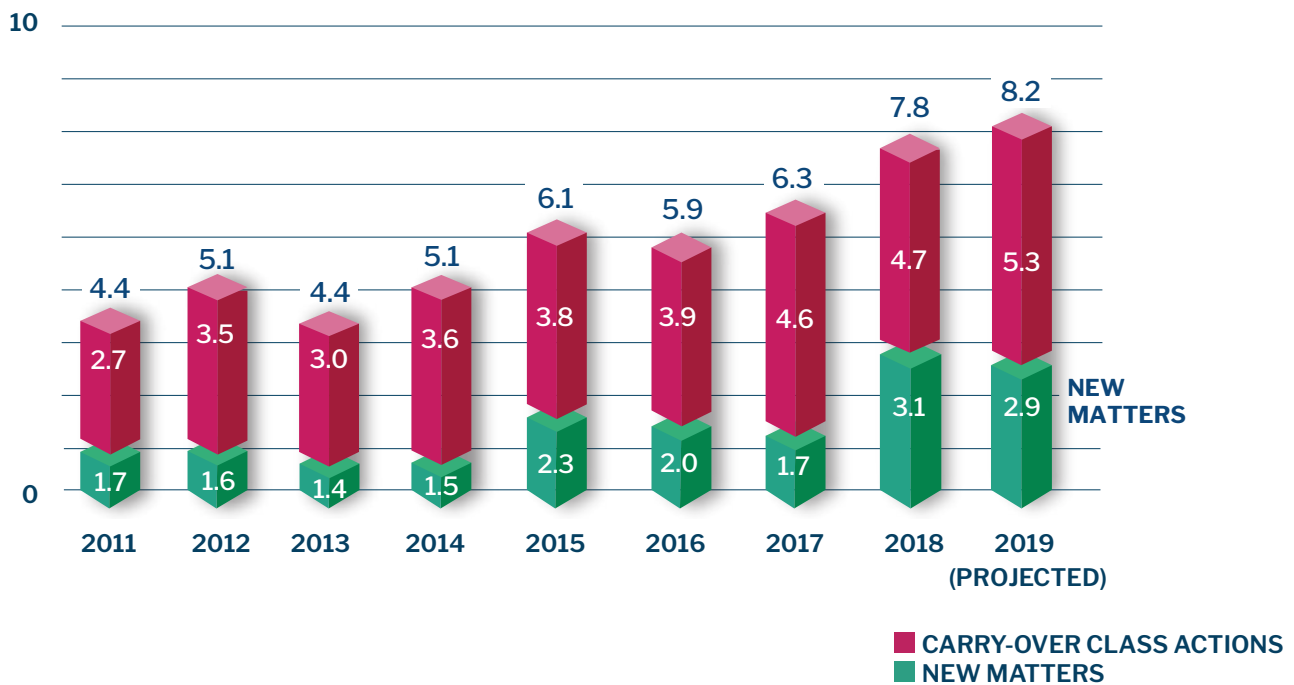
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On Average, Companies Are Managing More Class Actions Than Ever Before

The average company facing class actions managed 7.8 actions in 2018, a significant and higher-than-expected increase over the number of class actions they managed in 2017. This is the highest average number of class actions managed per company in the eight years of the survey. Companies expect this number to increase again, to 8.2 class actions in 2019.

Current and Future Class Actions

Average Number of Matters Per Company






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Labor & Employment And Consumer Fraud Matters Account For More Than Half Of Spending

Labor and employment and consumer fraud matters remain the two most common types of class actions. Together, they have driven the bulk of class action spending over the last five years.

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

 PRACTICE	 MATTERS	 SPENDING
LABOR & EMPLOYMENT	28.7%	26.1%
CONSUMER FRAUD	24.0%	23.6%
PRODUCT LIABILITY	12.5%	12.6%
ANTITRUST	9.5%	13.0%
SECURITIES	8.8%	11.0%
INTELLECTUAL PROPERTY	5.0%	5.0%
TECH STATUTORY VIOLATIONS	4.4%	3.6%
DATA PRIVACY	0.6%	0.2%
OTHER	6.5%	4.9%

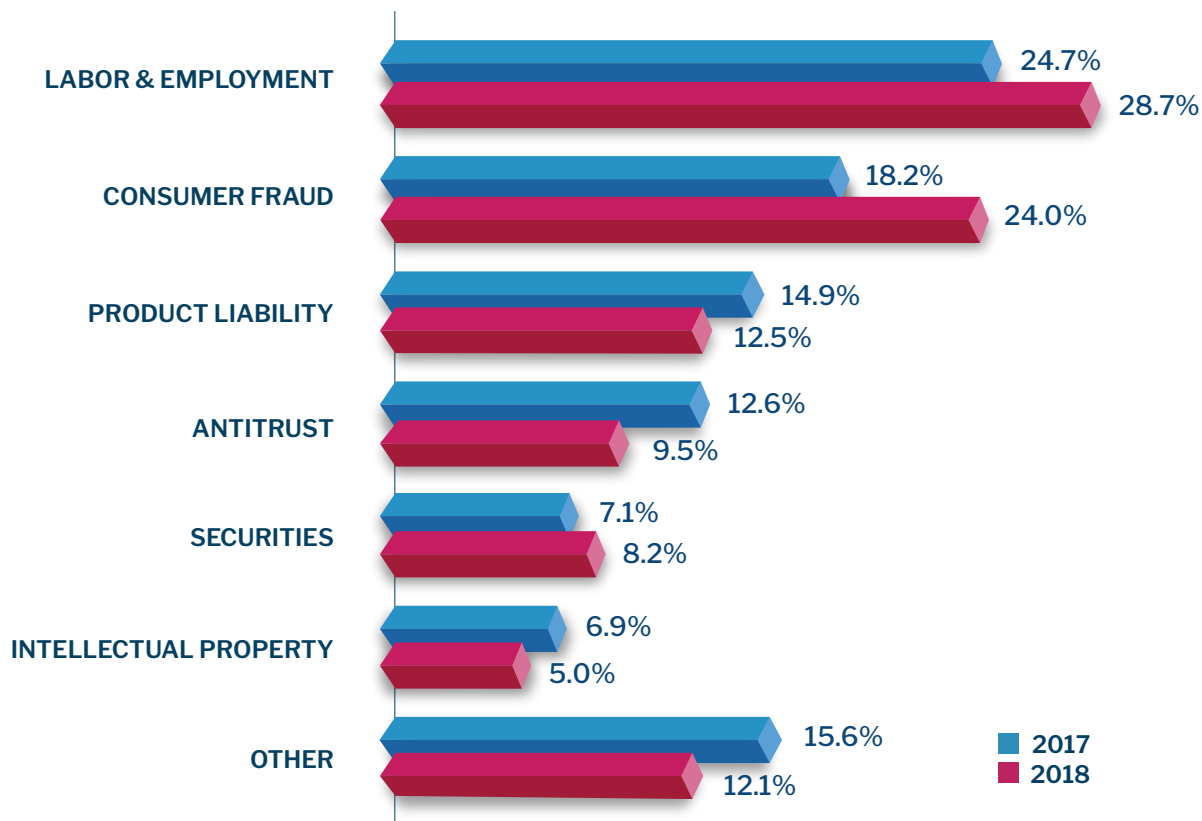
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Labor & Employment And Consumer Fraud Matters See Large Increases

After a decline in 2017, companies report labor and employment and consumer fraud matters represent a higher share of their class actions in 2018. The percentage of consumer fraud class action matters jumped nearly 6 percent, while labor and employment saw a 4 percent increase. Other significant class action categories, such as product liability, antitrust, and securities, remained steady or saw slight decreases.

Class Action Matters - Breakdown by Type

Percent of Matters

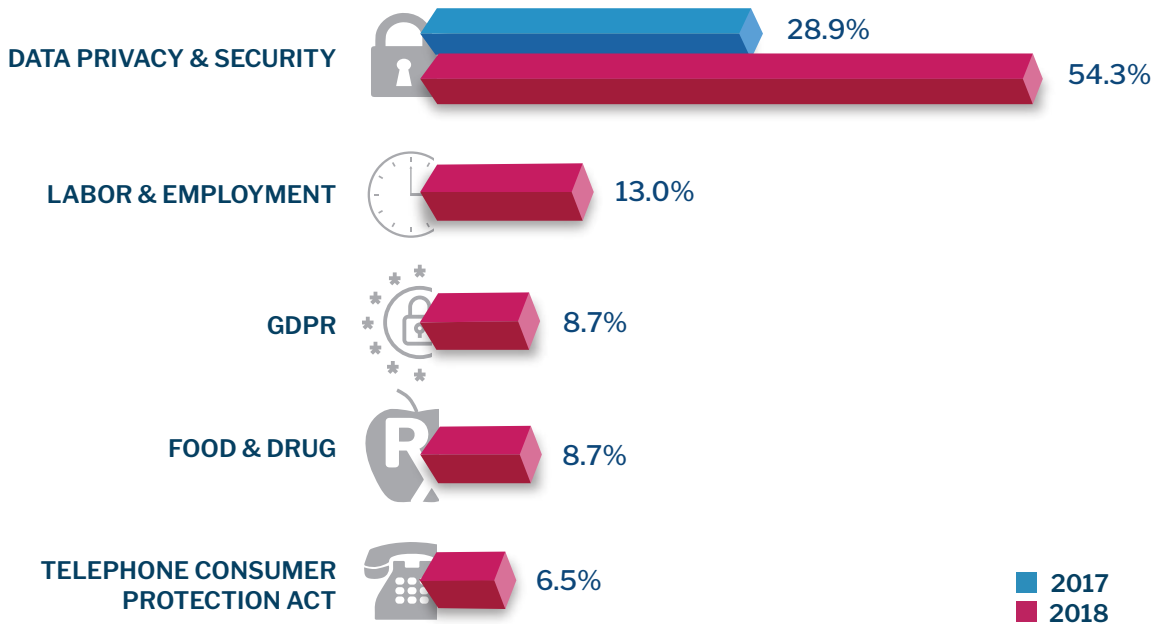


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Data Privacy Far Outpaces Other Categories As The Next Potential Wave Of Class Actions

More than half of legal decision-makers responsible for class actions believe data privacy and security will be the next wave of class actions, up from less than 30 percent in 2017. Thirteen percent of companies continue to see labor and employment matters as a source of future class litigation. The European Union's new privacy law, the General Data Protection Regulation (GDPR), also has hit the radar of corporate counsel.

Predicted Next Wave of Class Actions Percent of Companies

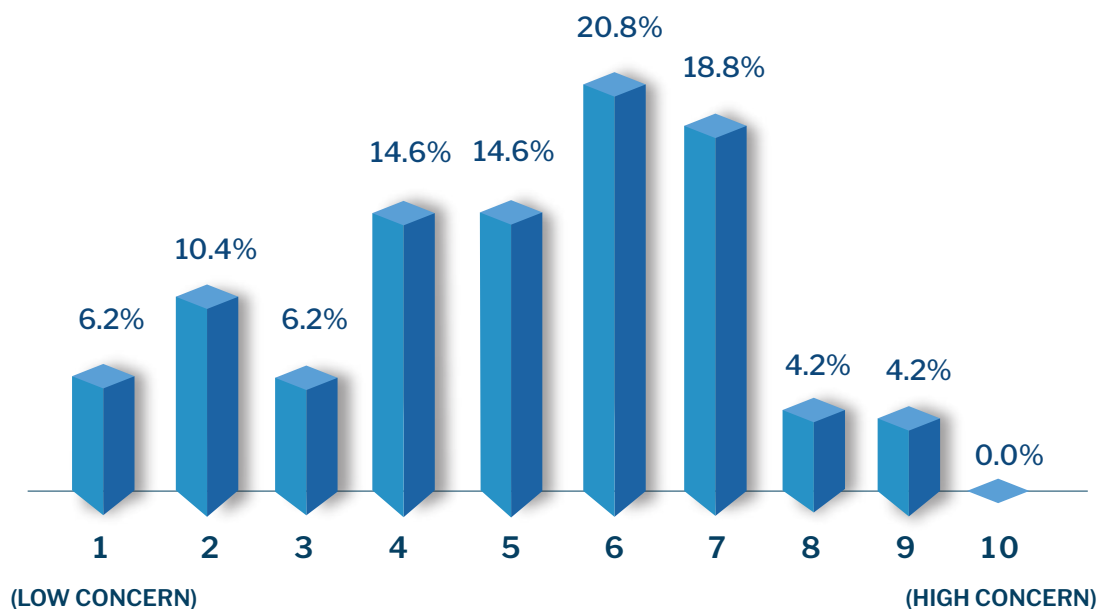


Note: Chart does not add up to 100%. Excludes responses under 6.5%.
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Data Breach Class Actions Not A Top Concern For The Majority Of Companies

While many companies see data privacy and security as the next wave of class actions, most companies report only a moderate level of concern over this type of litigation. On a scale of 1 to 10, with 10 being the highest level of concern, no company ranked its level of concern as high as 10, and less than 9 percent of all companies surveyed ranked their level of concern at 8 or higher.

Level of Concern About Facing a Future Data Breach Class Action Percent of Companies



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In Their Own Words: Corporate Counsel Discuss Their Level of Concern About Data Breach Class Actions

“I’m not concerned about this because we spend a lot of time and money on data security.”

—Deputy General Counsel
Financial Services Company

“I have some concern over these issues. It depends on the magnitude of the breach.”

—VP, Corporate Counsel - Litigation Management
Bank Holding Company

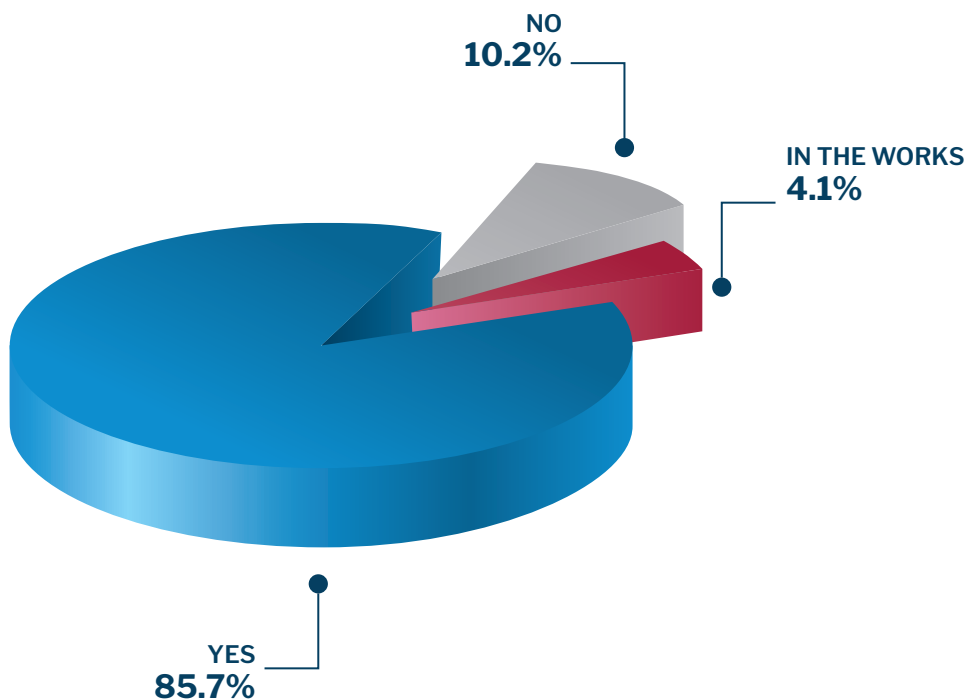
“This is a low concern for us. We’ve been proactive; our data are stored in escrow files.”

—SVP, Deputy Chief Legal Officer
National Financial Company

Most Companies Have A Strategic Plan In Place To Respond To A Data Breach

Eighty-six percent of companies have an action plan in place to limit the impact of a data breach, including class action exposure. An additional 4 percent are developing an action plan, while the remaining 10 percent reported that they have no data breach plan in place.

Data Breach Action Plan
Percent of Companies

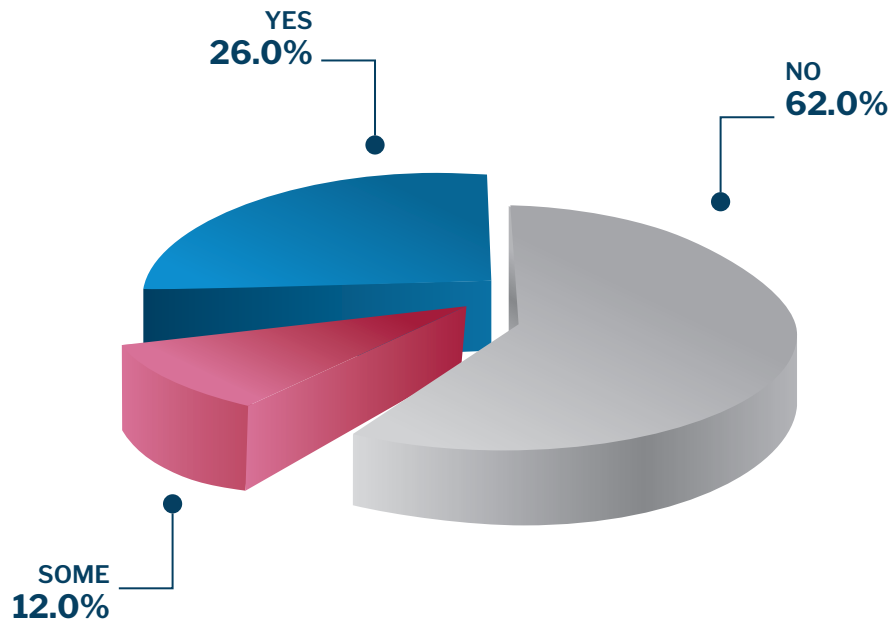


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The Majority Of Companies Display No Concern Over GDPR Class Actions

Only 38 percent of companies report some concern that the GDPR will increase their exposure to collective actions in other countries.

Concern About GDPR Exposure
Percent of Companies

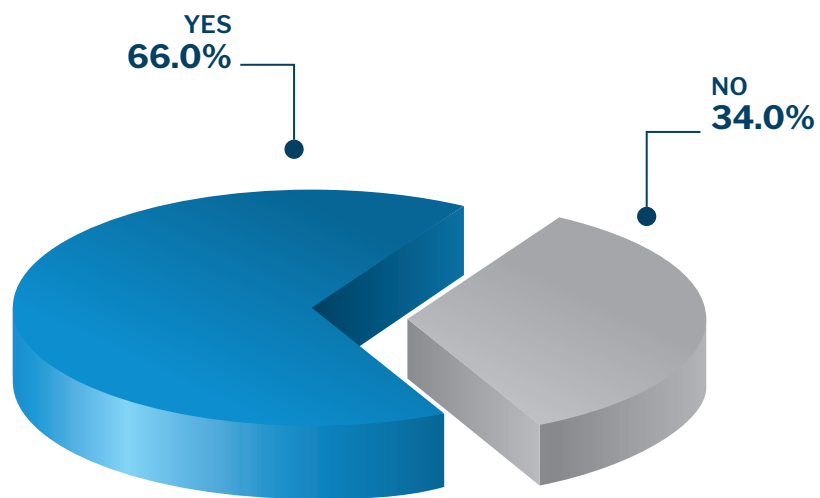


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Companies Express Concern About Exposure Under The California Consumer Privacy Act

Sixty-six percent of companies report concern about their future class action exposure as a result of the California Consumer Privacy Act. The state law goes into effect in January 2020 and amendments are expected in the interim.

Concern About California Privacy Statute Percent of Companies



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

“Yes, we are concerned about this, especially from a ‘copy-cat’ standpoint. Other states may begin to adopt similar [legislation].”

—Associate General Counsel
Domestic Insurance Company

“Yes. It's a big change for us, so we are monitoring this closely.”

—Vice President, Counsel
Domestic Life Insurance Company

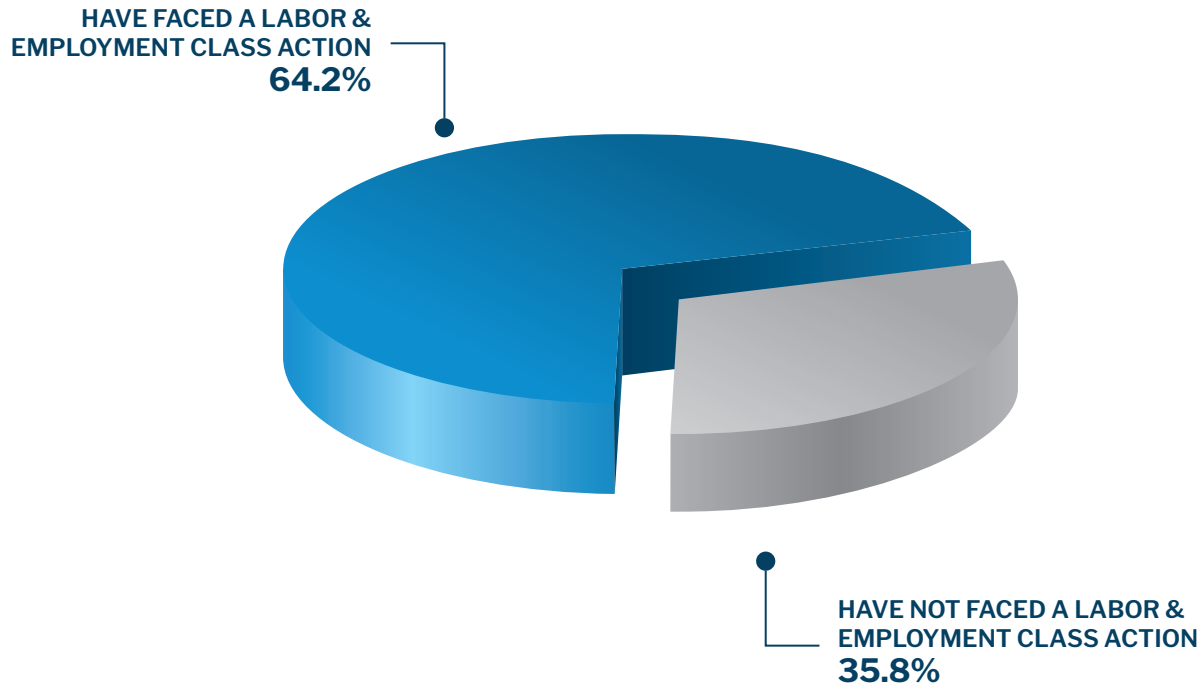
“I’m confident in our data security. Not worried at all.”

—SVP, Litigation & Employment
Hospitality Organization

A Majority Of Companies Have Faced A Labor & Employment Class Action In The Past Five Years

Sixty-four percent of companies surveyed report that they faced at least one labor and employment class action within the last five years. This figure is down from 75.5 percent in 2017. The average level of concern about facing a future labor and employment class action was 5.2 on a 1 to 10 scale. Companies that have not faced a labor and employment class action in the last five years report an average level of concern of only 3.3.

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



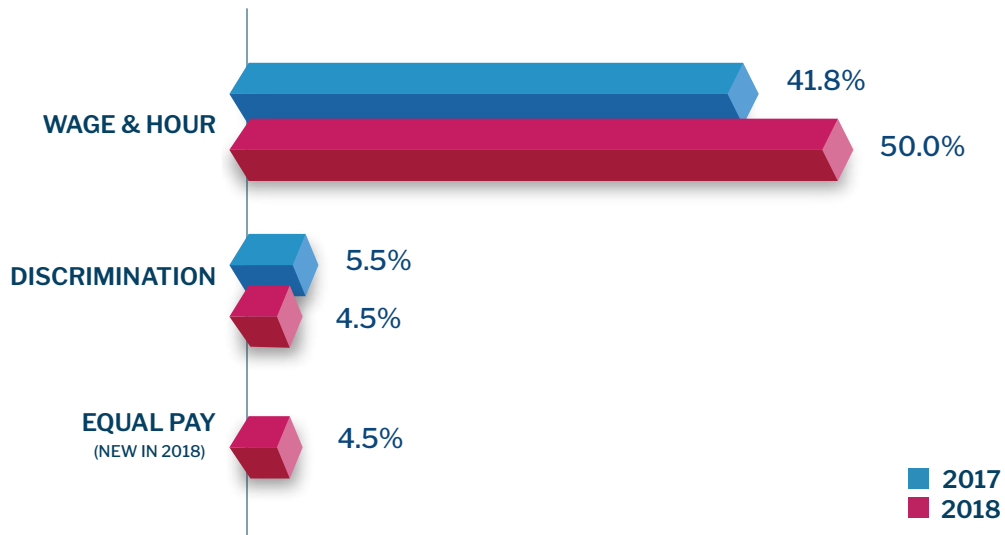
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Wage And Hour Class Actions Remain The Dominant Labor & Employment Concern

Nearly 70 percent of companies expressed some concern about facing a future labor and employment class action. Fifty percent identified wage and hour disputes as their top concern, a substantial increase from 2017. Discrimination and equal pay lawsuits were a distant second place, identified by just 4.5 percent of companies, respectively.

Labor & Employment Matters - Highest Level of Concern

Percent of Companies

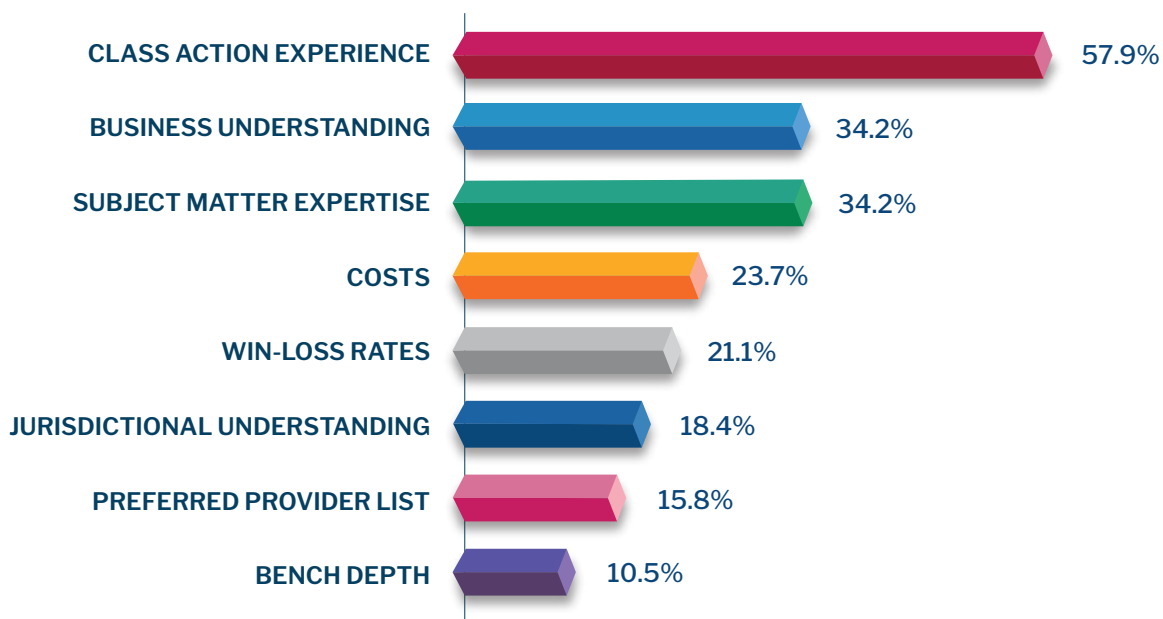


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Prior Experience Matters Most When Companies Hire Counsel To Defend High-Exposure Labor & Employment Class Actions

Prior class action experience is far and away the factor cited by most companies as influencing their decision about which law firm to hire when faced with a high-exposure labor and employment class action. Nearly 60 percent of companies identified this factor. Business and subject matter expertise were identified as factors by more than one-third of companies.

Factors Considered When Selecting Defense Counsel Percent of Companies



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In Their Own Words: Corporate Counsel Discuss Selection Of Labor & Employment Defense Counsel

“We look at experience in labor and employment, experience with class actions, rates, and external understanding of [our] group.”

—Assistant General Counsel
International Luxury Automotive Company

“We expect experience with the type of claim and the jurisdiction, bench strength and depth, the ability to provide early case assessment, creativity around resolution, and the ability to align with the business goals.”

—Senior Litigation Counsel
Fortune 500 Packaged Foods Company

“[We look for] experience in labor and employment, skills specific to class actions, and a record of success.”

—Assistant General Counsel
Multinational Utility Company

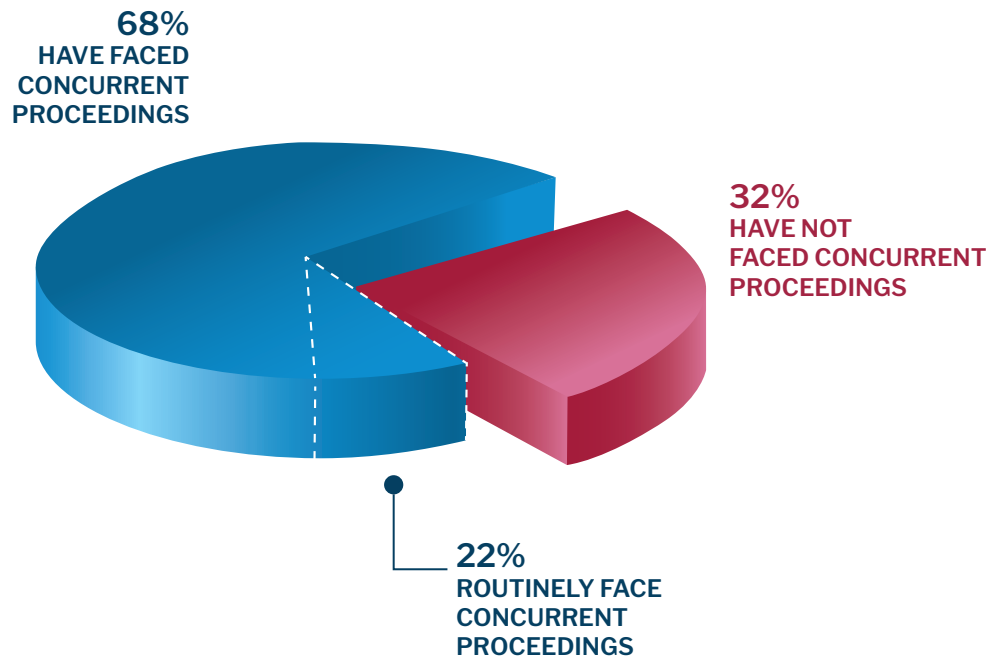
“I look for subject-matter expertise, ability to try a case, and familiarity with local judiciary and jurors.”

—SVP, Deputy Chief Legal Officer
Fortune 500 Insurance Company

Many Companies Regularly Face Concurrent Class Actions And Regulatory Proceedings

Sixty-eight percent of companies report they have faced concurrent class actions and regulatory proceedings, with 22 percent of companies reporting they face such concurrent proceedings on a routine basis. Most companies in that category are in the insurance, finance, and energy industries.

Frequency of Concurrent Class Actions & Regulatory Proceedings Percent of Companies

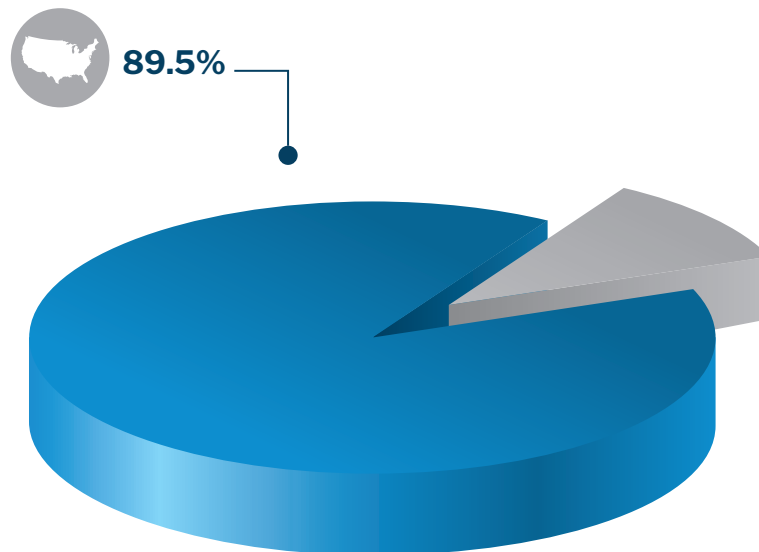


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Most Companies Are Facing Class Actions Only In The United States

Ninety percent of companies report that they are defending class actions filed in the United States only. Those facing foreign collective actions report that those matters have been filed in Canada, the United Kingdom, Israel, Argentina, Australia, Brazil, and Italy.

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

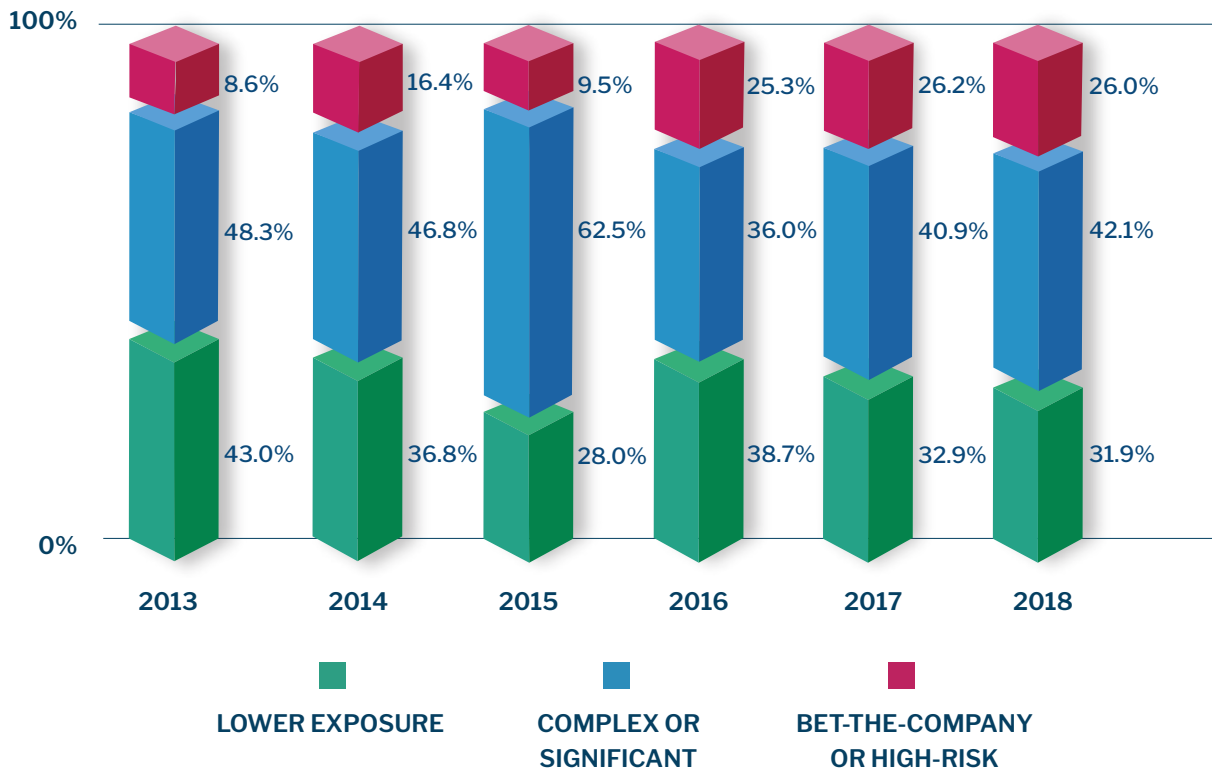


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Today's Class Actions Continue To Reflect High Levels Of Risk

Consistent with a steady increase that began in 2015, companies characterize 26 percent of their current class actions as falling into the bet-the-company and high-risk exposure categories. Matters categorized as complex or significant also rose from 40.9 percent in 2017 to 42.1 percent in 2018, while the percentage of class actions that companies classify as having lower exposure declined for the second consecutive year. The growing volume of higher-risk matters is consistent with the increase in class action spending over the past four years.

Class Actions by Risk Level Percent of Matters



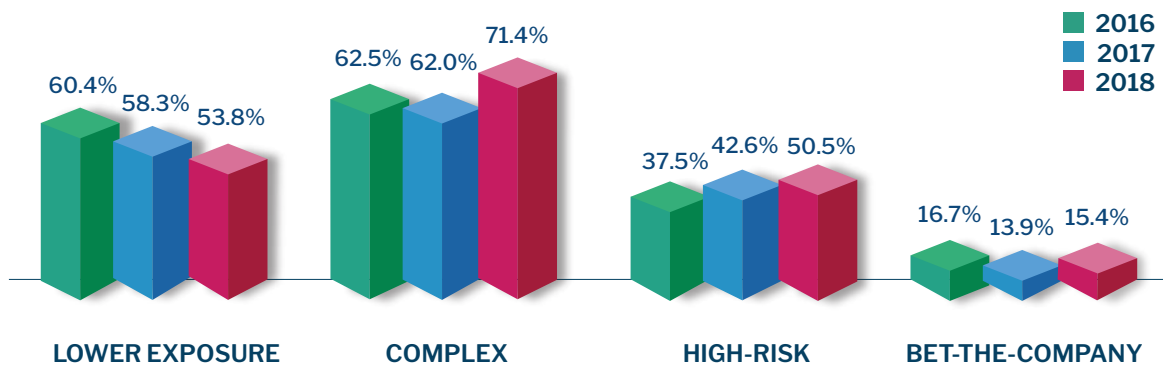
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Riskier Class Actions Are On The Rise

Across the board, the percentage of companies facing class actions that are considered complex, high-risk, or bet-the-company increased in 2018. After decreasing in 2017, the percentage of companies facing class actions in which the exposure is deemed potentially devastating increased 15.4 percent. The percentage of companies facing high-risk class actions increased from 42.6 percent to 50.5 percent. After two years of holding stable at around 62 percent, the percentage of companies facing complex class actions increased to 71.4 percent. The only category in which a lower percentage of companies report current class actions is the lower exposure category, down 4.5 percent from 2017.

Companies Handling One or More Cases by Risk Level

Percent of Companies

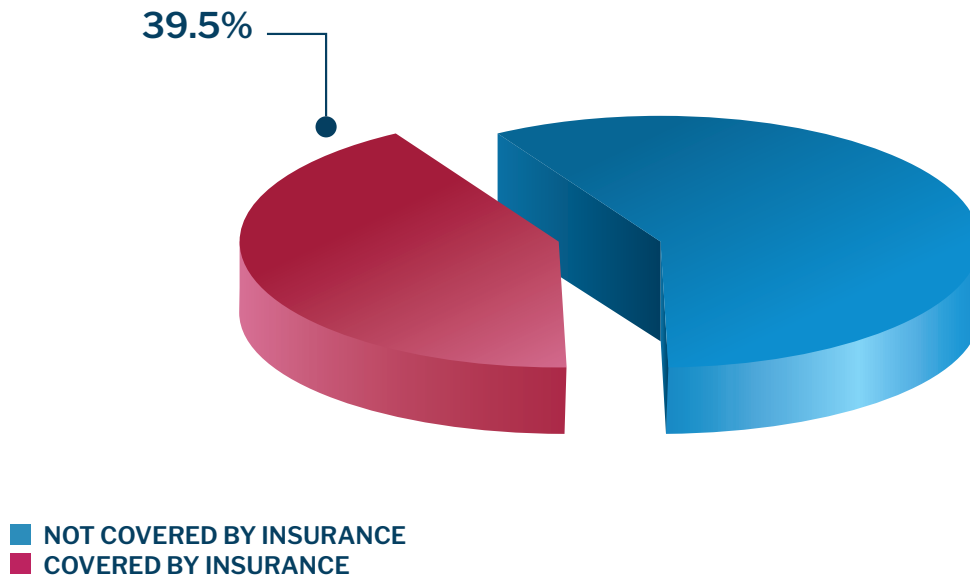


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Insurance Covers Class Action Defense Costs For Less Than Half Of Companies

In 2018, 39.5 percent of companies had a portion of their class action defense costs covered by insurance, which is unchanged from last year. Twenty-four percent of companies with insurance have full coverage outside the cost of self-retention.

Defense Costs Covered by Insurance Percent of Companies



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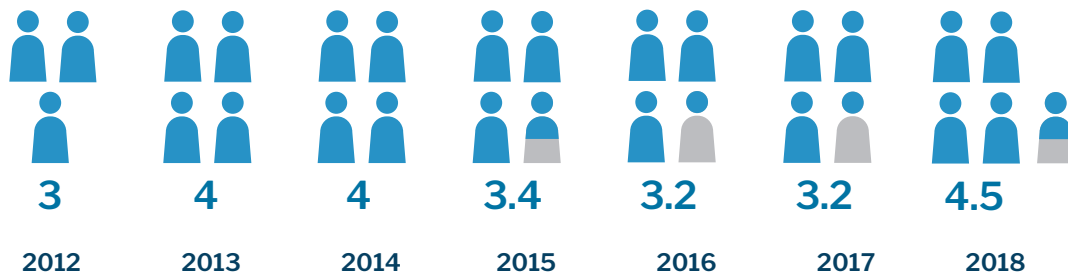
How Companies Manage Class Actions

In-House Staffing For Class Actions Finally Increases

On average, four to five in-house attorneys per company are fully or partially dedicated to class actions. As a result, the number of hours that each in-house attorney spent managing class actions declined slightly. Prior to 2018, in-house attorney headcount had not risen in five years.

In-House Attorneys Dedicated to Class Actions

Average Number of Lawyers

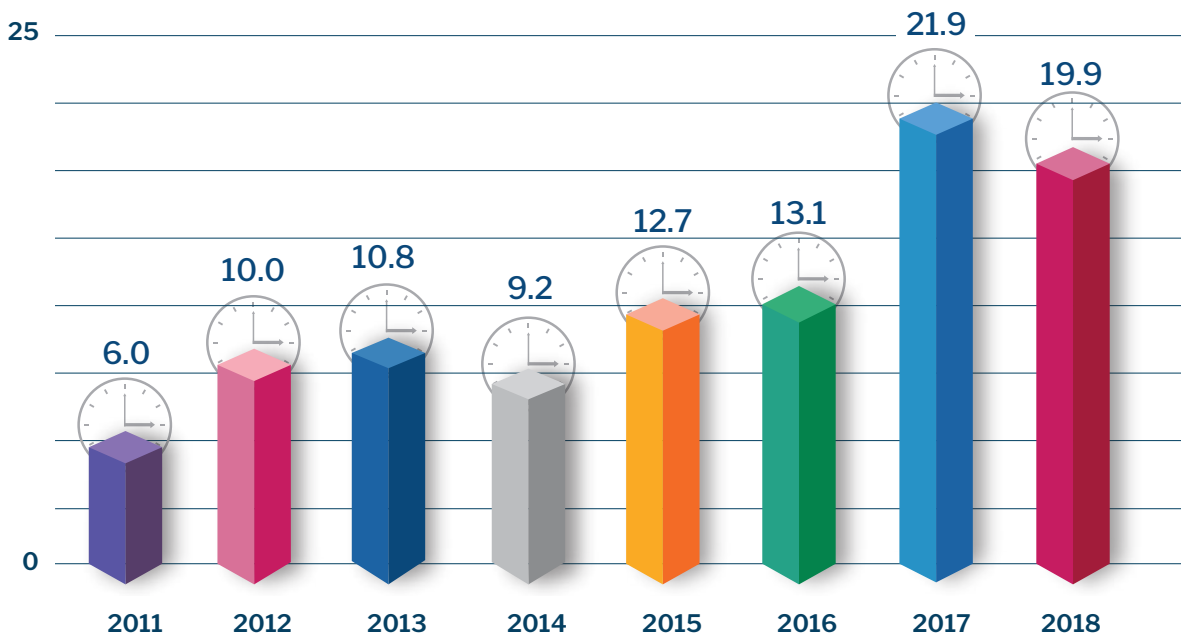


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The Average In-House Attorney Spends Twenty Hours Per Week On Class Actions

In-house attorneys spent approximately 20 hours per week dedicated to the defense of class actions. This is a decrease of approximately two hours per week from 2017, but remains high considering companies reported that their in-house lawyers spent only 13 hours per week on class action matters just two years ago.

Aggregate Attorney Time Spent on Class Actions Hours Per Week



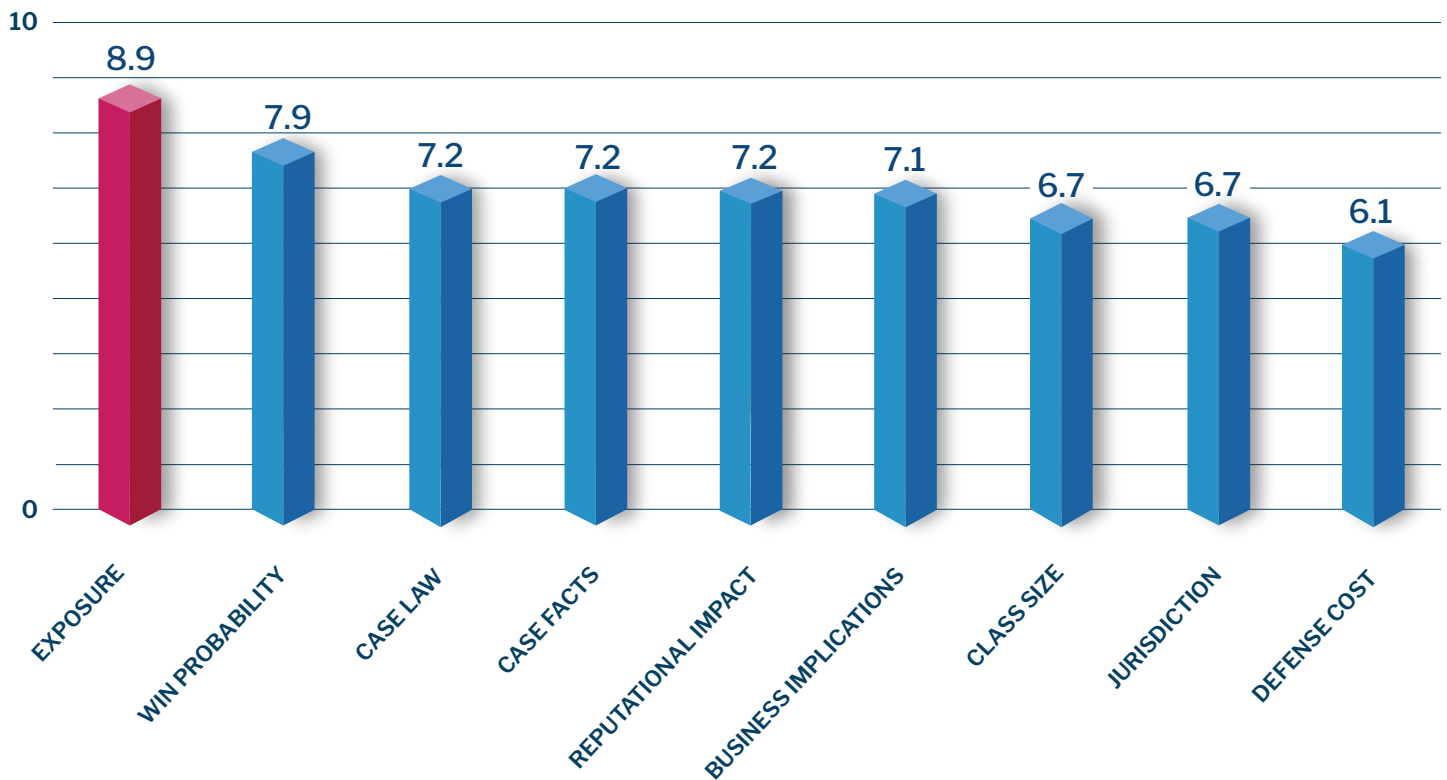
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How Companies Approach Class Action Risk

Companies Consistently Rank Exposure As The Most Important Risk Variable

For the sixth consecutive year, companies identify exposure as the most important variable they consider when evaluating class action risk. Corporate counsel rate factors such as win probability, applicable case law, and the underlying facts as less significant. Defense cost is the least important variable to companies when they assess class action risk, at a rating of 6.1 out of 10. These rankings reflect little change from 2017.

Importance of Risk Variables
1-10 Rating

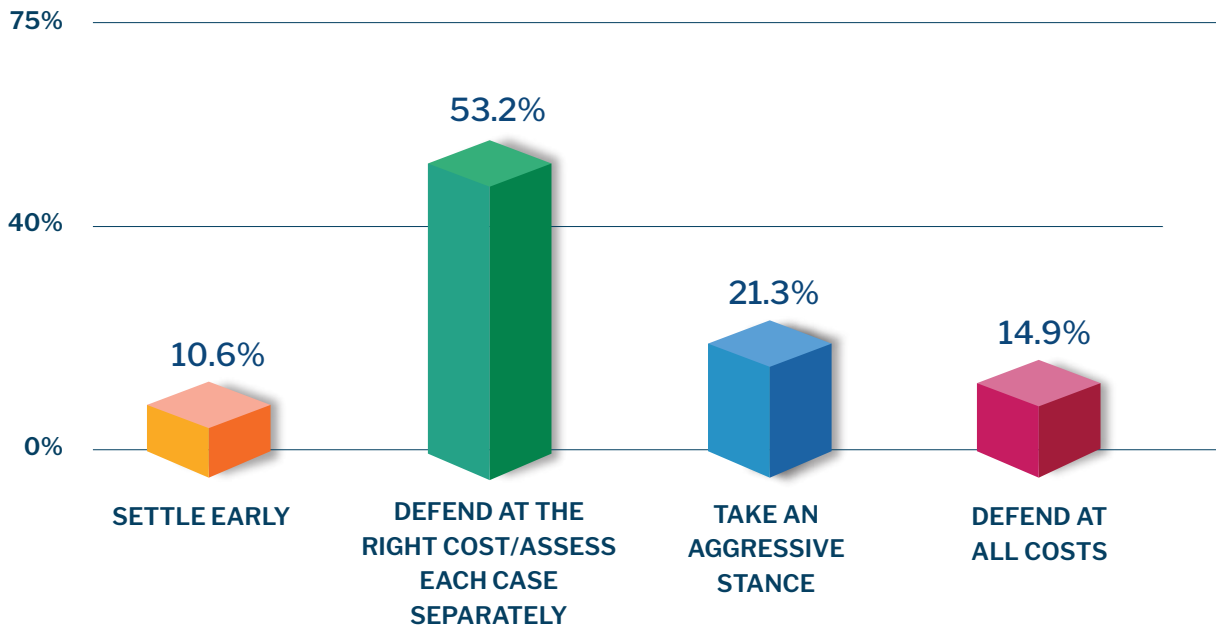


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With Increased Volume And Exposure, Many Companies Approach Each Class Action Separately To Formulate Their Defensive Strategy

In 2018, a majority of companies, 53.2 percent, assessed each class action separately to defend “at the right cost.” This is up from 39.6 percent of companies in 2017. Only 10.6 percent of companies report that they settle class actions early, while 21.3 percent take an aggressive stance and 14.9 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

“We follow two tracks, one to settle and one to fight. It's based on the case facts and each case is different, so our approach changes as needed to get the best outcome.”

—*VP & Chief Counsel*
Fortune 500 Financial Services Company

“It depends on the case. If the matter or claim is defensible we get aggressive. If not, we look for early resolution.”

—*Senior Litigation Counsel*
International Food & Drink Company

“[We are] very aggressive in our case assessment process and we try to get the case dismissed before certification whenever possible.”

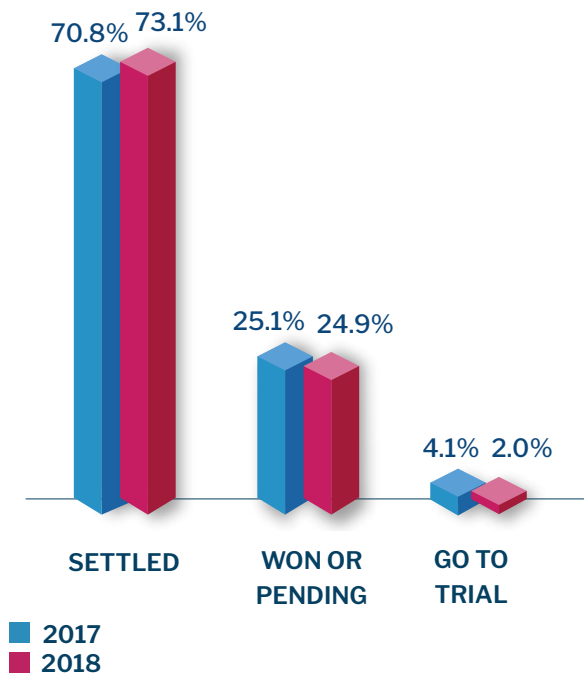
—*Chief Litigation Officer*
Fortune 500 Insurance Company

Class Action Settlements Continue To Rise

Settlement rates for class actions continue to rise, up to 73.1 percent in 2018 from 70.8 percent the previous year. Settlements are more likely to occur before a class certification. Only 2 percent of cases filed as class actions go to trial.

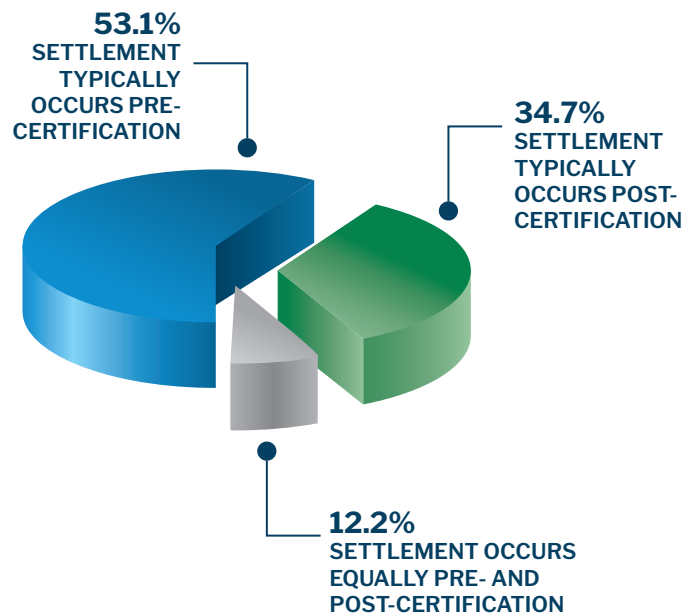
Class Actions Settled and Settlement Timing

Percent of Matters



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Percent of Companies



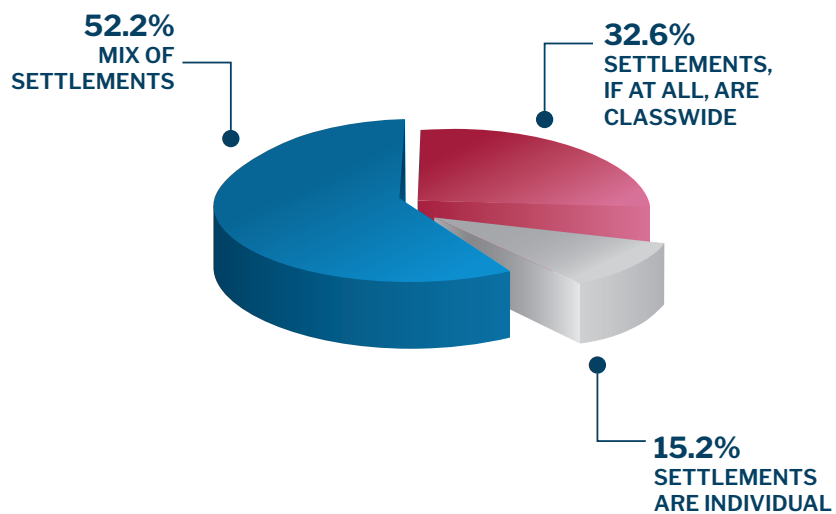
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An Increasing Number Of Companies Settle On An Individual Basis Only

Of the companies that settled class actions in 2018, 15.2 percent settled cases on an individual basis only, up from 6.2 percent in 2017. Still, more than half of companies that settled class actions reported a mix of both individual and classwide settlements. For companies that settled at least some of their class actions individually, 39.2 percent of their class action settlements were individual as opposed to classwide.

Individual v. Classwide Settlements

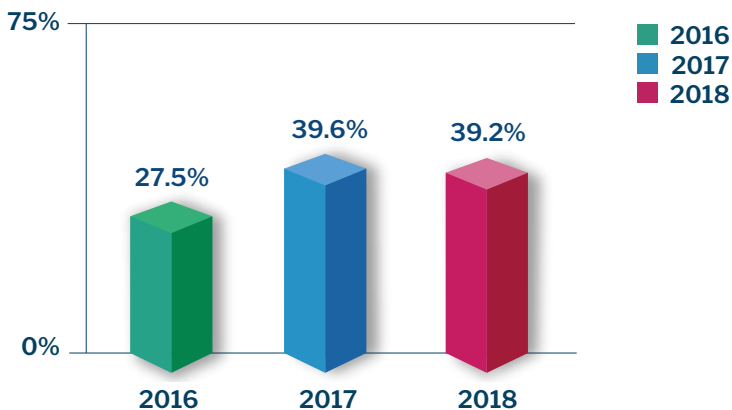
Percent of Companies



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Individual Settlements

Percent of Matters

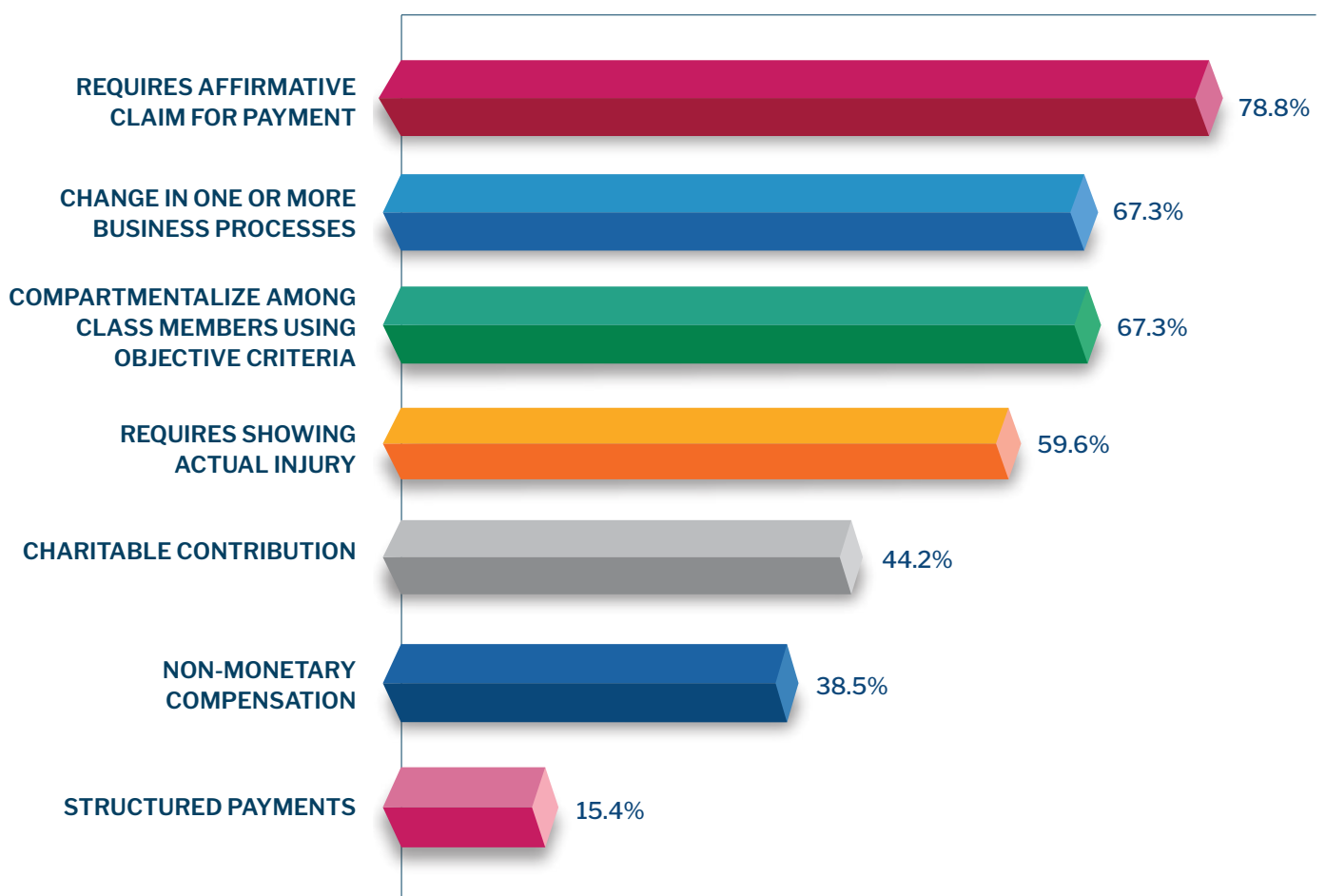


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Affirmative Claim Requirements Remain The Most Widely Utilized Condition Of Class Action Settlements

Nearly 79 percent of companies required an affirmative claim for payment as a class action settlement condition in 2018, a percentage that has incrementally, but steadily, increased over the last several years. Companies also were more likely in 2018 to differentiate among categories of class members, require a showing of actual injury, and include cy pres provisions in class action settlements. Non-monetary elements of compensation and structured payouts are reported as the least-utilized settlement conditions.

Settlement Conditions Percent of Companies

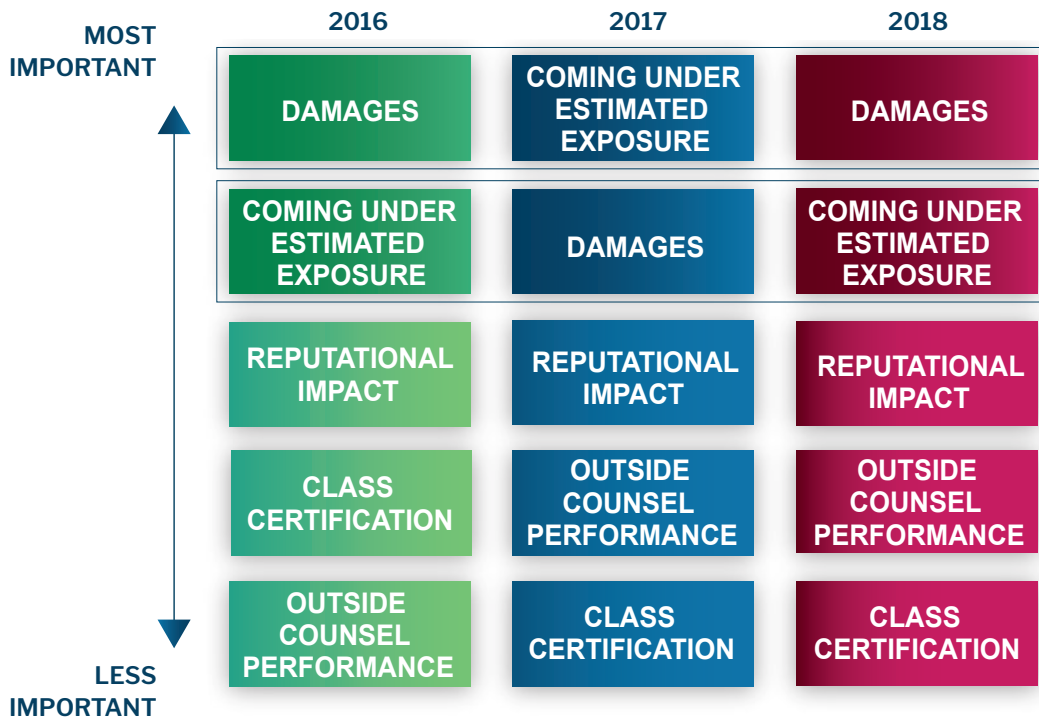


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Minimal Change In How Companies Measure Success In Class Action Defense

Companies 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. The order of importance for success metrics identified by companies has changed minimally over the years.

Importance of Success Metrics

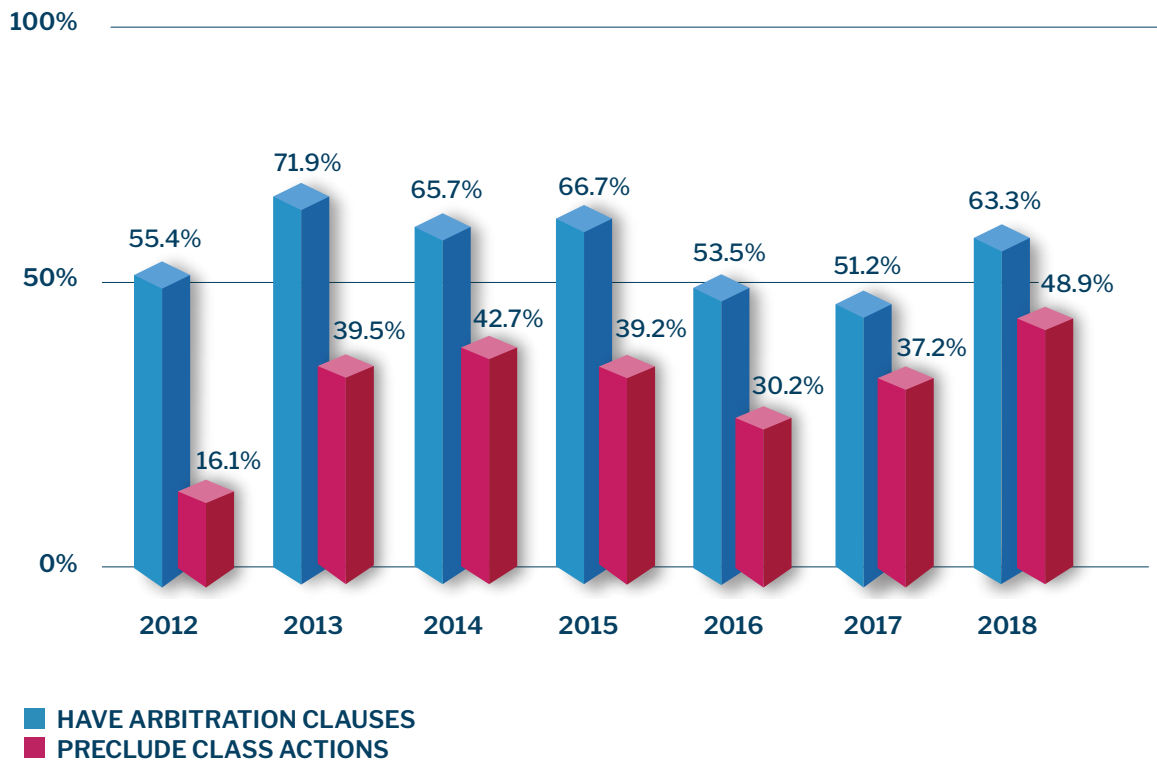


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More Companies Employ Mandatory Arbitration Clauses Precluding Class Arbitration

After the repeal of the Consumer Financial Protection Bureau's rule banning the use of class action waivers in certain arbitration agreements, the percentage of companies using such waivers increased to 37.2 percent in 2017. Now, 48.9 percent of companies report using such waivers, the highest percentage in the history of our survey. Overall, 63.3 percent of companies report using arbitration clauses in their contracts, up from 51.2 percent in 2017.

Arbitration Clause Usage Percent of Companies



Note: Other legal limitations, such as state insurance laws, restrict the use of arbitration provisions in certain contracts.
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In Their Own Words: Corporate Counsel Weigh In On The Use Of Arbitration Clauses

“We don't use these clauses. We are a service business and our commercial customers have options. They would resist mandatory arbitration agreements and could easily go to a competitor for service.”

—VP, Assistant General Counsel
Environmental Services Company

“We use these clauses because we see most class actions as deleterious, and driven by lawyers, so we see arbitration as more beneficial for the consumer, the individual.”

—Associate General Counsel - Litigation
Multinational Telecom Conglomerate

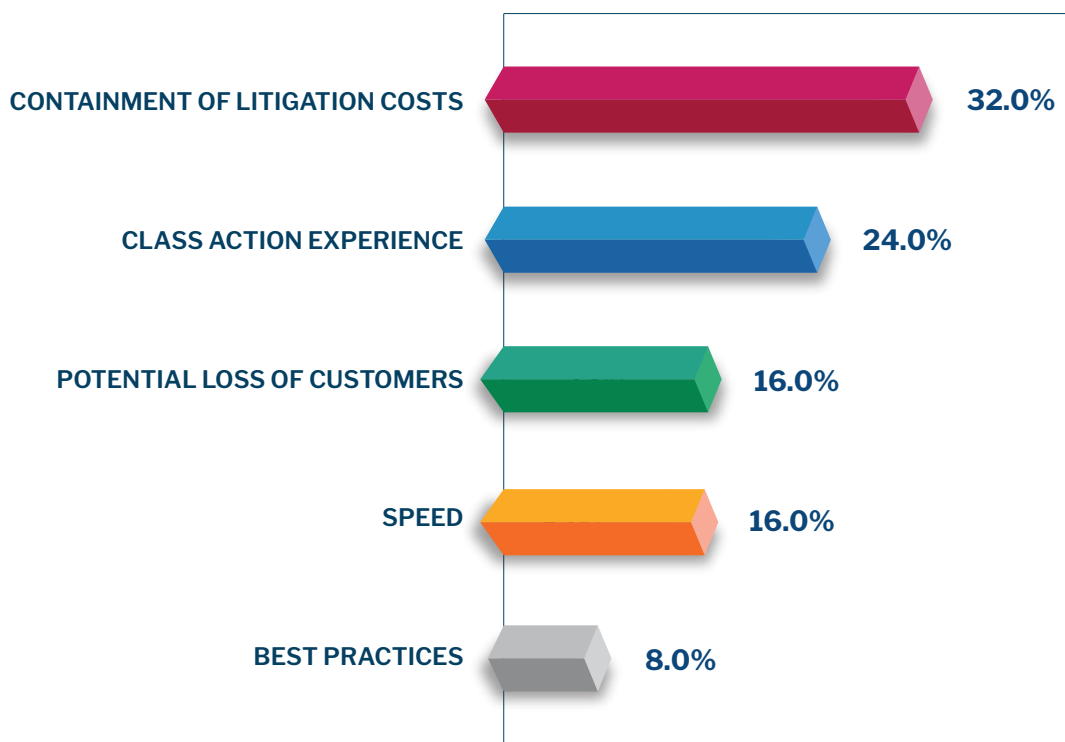
“We use arbitration clauses in our commercial contracts. We feel that arbitration will result in less discovery, less exposure. With a vendor, we prefer to go with litigation provisions because, after, we want to end the relationship.”

—Executive Director & Senior Counsel, Consumer Litigation
Domestic Health Care Company

Containment Of Litigation Costs Is Top Consideration In Decision To Use Arbitration Clauses

Companies identify containment of litigation costs more often than any other factor in their decision about whether to include arbitration clauses in their contracts. Sixteen percent of companies consider the potential loss of customers in making that decision.

Information Considered When Deciding to Use Arbitration Clauses Percent of Companies



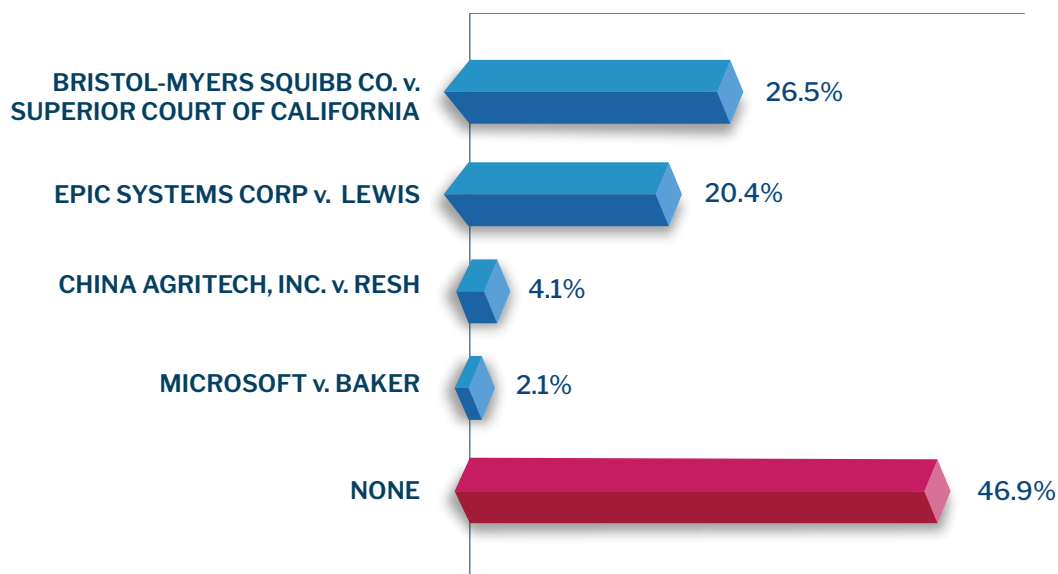
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The Impact of the Supreme Court and Politics on Risk

Recent Supreme Court Rulings Have A Limited Impact On The Management Of Class Actions

Nearly half of companies report that recent U.S. Supreme Court class action rulings have had no impact on their approach to class action management. One-quarter of companies identified the *Bristol-Myers Squibb* decision as the ruling that had the greatest impact on their management of class action cases. The second most impactful ruling was the *Epic Systems* collective action case identified by 20.4 percent of companies. Fewer companies identified *China Agritech* and *Baker*, Supreme Court decisions that, while important to class action defense counsel, relate to uncommon, technical issues.

Recent Rulings Impacting Class Action Management Percent of Companies



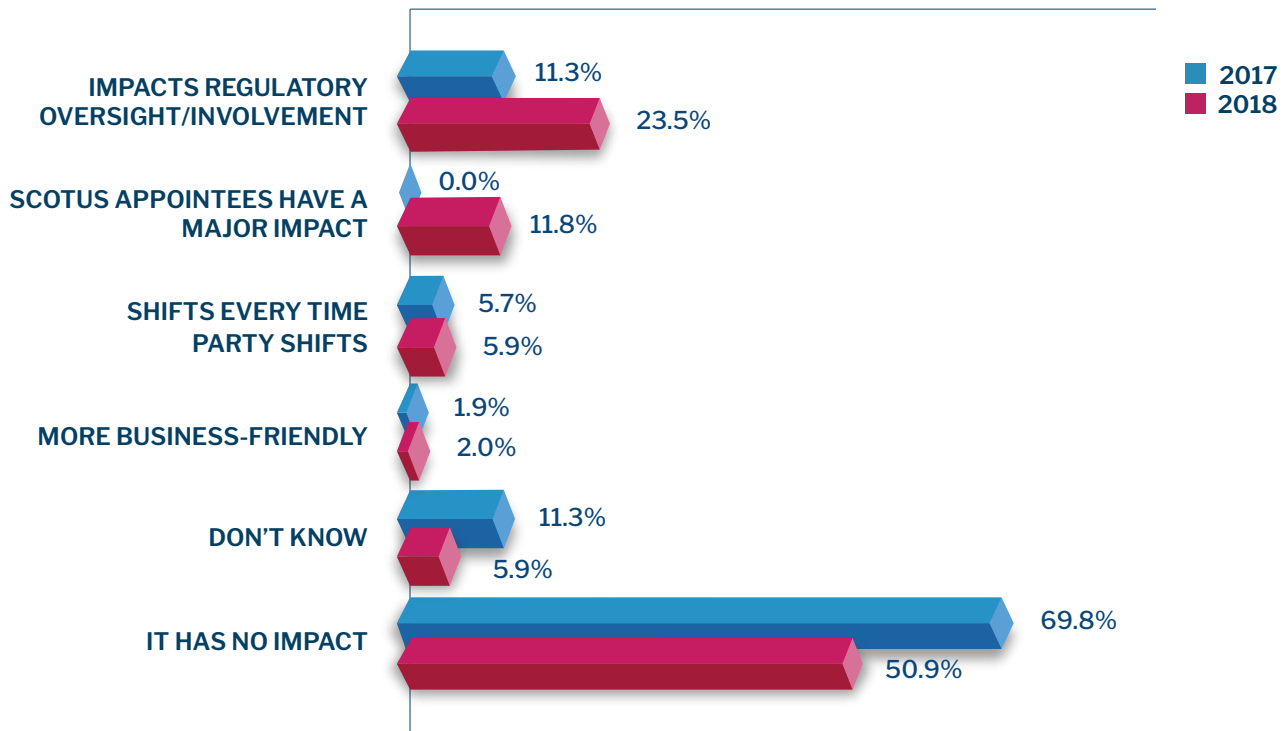
“These are important cases and have impacted some litigation but have yet to impact class actions.”

—Vice President of Litigation
Fortune 500 MedTech Company

More Companies See A Connection Between The Political Environment And Class Action Management

Nearly 50 percent of companies now believe that the political climate in Washington has some impact on their management of class actions, with 23.5 percent identifying regulatory oversight and involvement as having an impact. After the appointment of a second new Supreme Court justice in 2018, 11.8 percent of companies also reported that the composition of the Supreme Court is impactful.

Impact of the Political Climate on Class Actions Percent of Companies



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In Their Own Words: Corporate Counsel Address The Impact Of The Political Climate

“It depends on how you define over time. In a 20-year span it would depend on the makeup of the Supreme Court and how they approach certain rules.”

—Deputy General Counsel
Fortune 500 Bank

“Washington, D.C., is so polarized that usually nothing gets done.”

—Senior Attorney
Fortune 500 Insurance Company

“It hasn't yet, but we watch the regulations that impact our industry carefully.”

—Group Vice President, Litigation
International Hotel & Resort Company

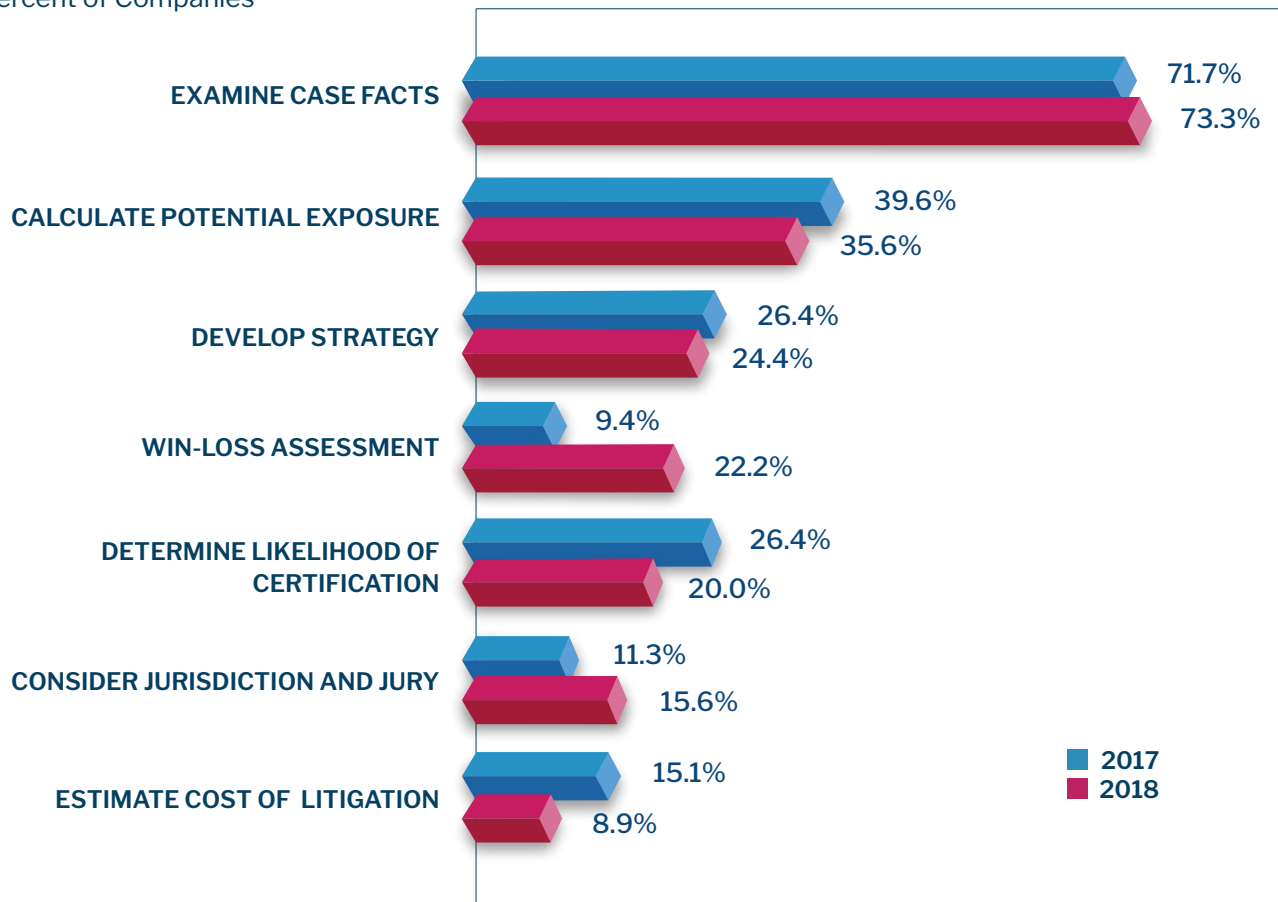
Strategies for Managing Class Action Cost

Companies Continue To Rely Heavily On Early Case Assessment With The Help Of Outside Counsel

More than 90 percent of companies use early case assessment as a tool to manage class action cost. As companies see an increase in the volume of class action matters and related exposure, they rely on outside counsel for a variety of early case assessment tasks and planning. Nearly three-quarters of corporate counsel report that they use outside counsel to analyze the facts of the case, and the role of outside counsel in helping with win-loss assessments doubled in 2018.

The Role of Outside Counsel in Early Case Assessment

Percent of Companies

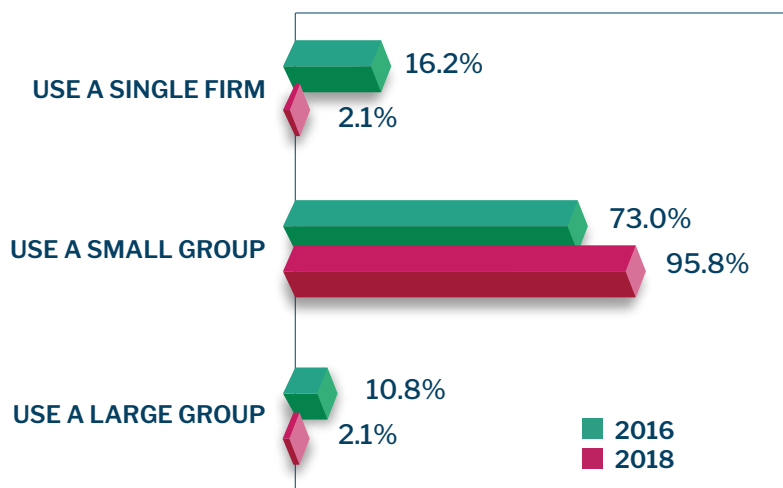


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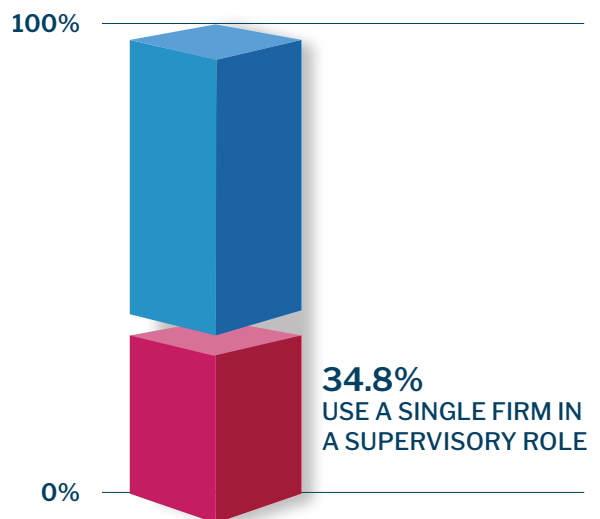
Most Companies Use A Small Group Of Law Firms To Manage Class Action Work

Only 2.1 percent of companies use one law firm to handle class action work, compared to 16.2 percent in 2016. Approximately 96 percent of companies now say they rely on a small team of law firms for their defense of class actions. This reflects a significant increase from the 73 percent reported in 2016. Thirty-five percent of companies use one firm in a supervisory role.

Role of Firms in Class Action Work Percent of Companies



Note: Chart does not add up to 100%. Other responses excluded.
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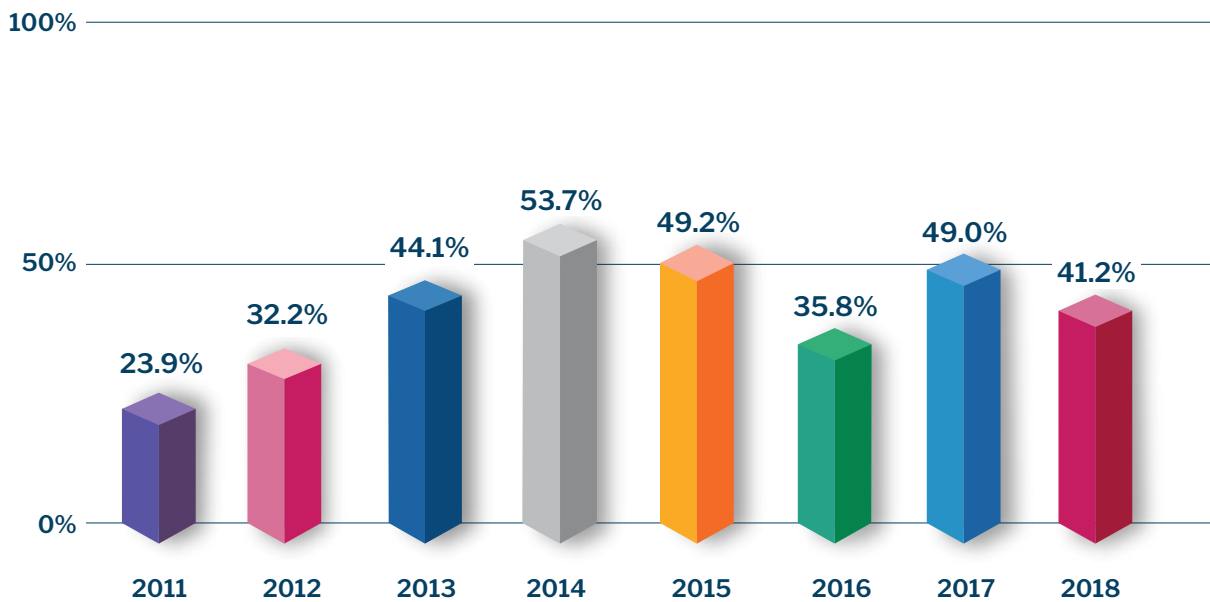


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Use Of Alternative Fee Arrangements In Class Action Matters Continues To Fluctuate

Companies rely on alternative fee arrangements as a tool to drive budget predictability and litigation management efficiency. In the class action context, however, the use of AFAs tends to fluctuate year over year. After companies reported increased use of AFAs for three years in a row between 2011 and 2015, in subsequent years, the percentage of companies using these arrangements has been up and down. In 2018, 41.2 percent of companies used AFAs for at least some of their class action work.

Alternative Fee Arrangement Use in Class Actions Percent of Companies

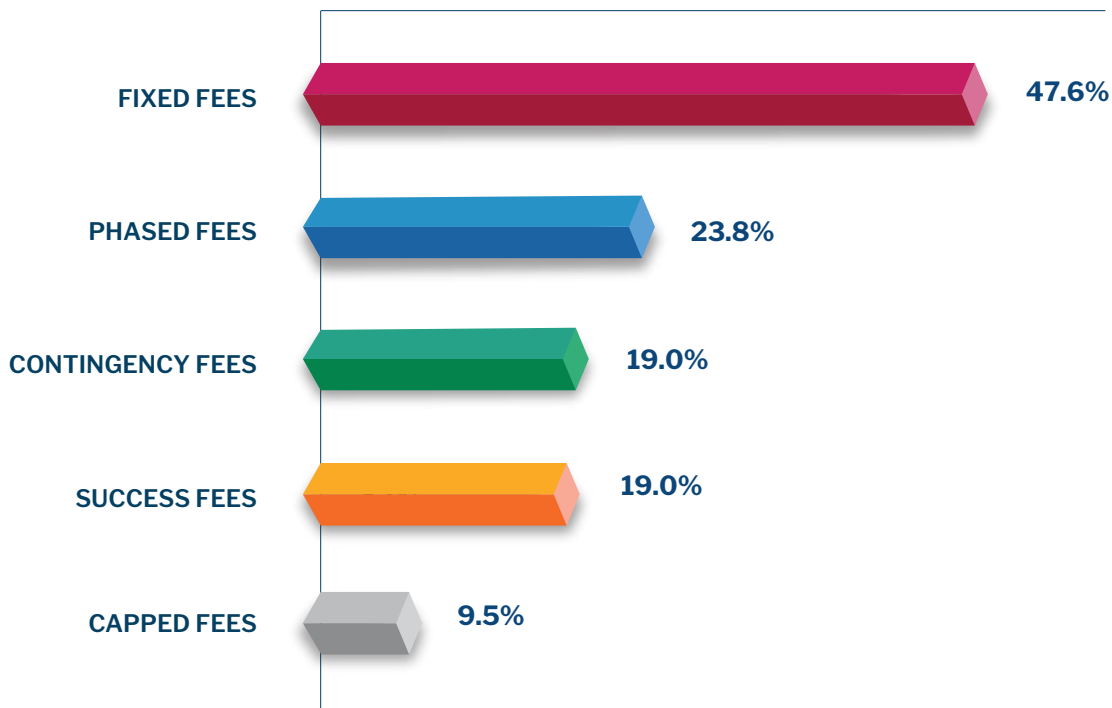


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Companies See Fixed Fees As The Most Successful Type Of AFA

Among companies that use AFAs, nearly half viewed fixed-fee arrangements as the most successful for class action cases. Companies also report success with phased-fee arrangements, in which work is assessed and billed separately for each segment of the litigation. Incentive arrangements such as contingency and success fees are also widely viewed as effective alternative fee options.

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

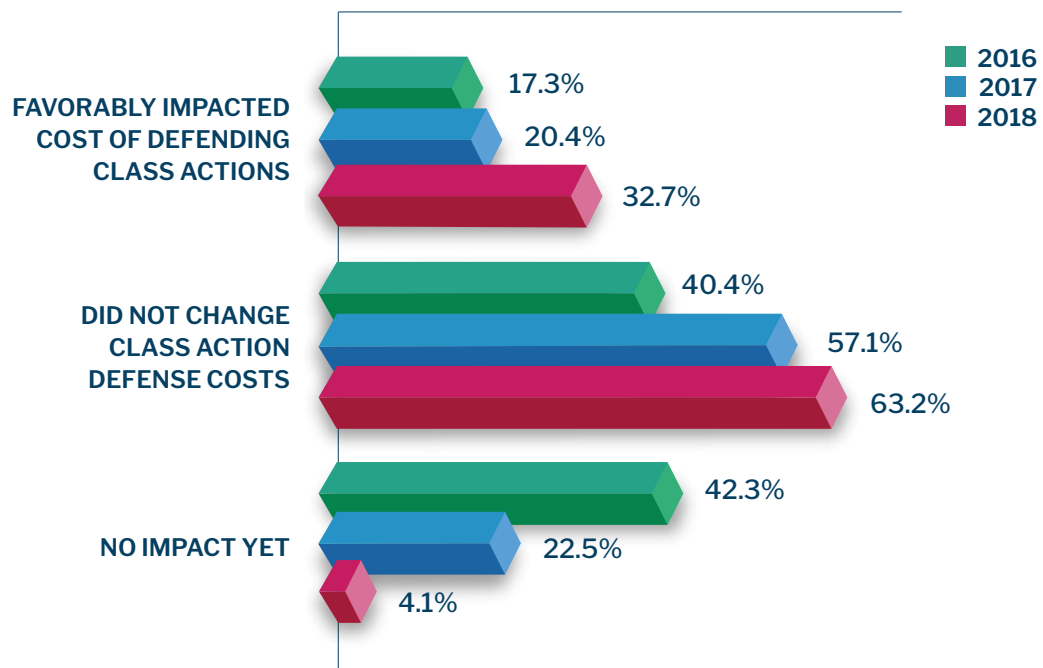


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Amendments To The Federal Discovery Rules Have Not Meaningfully Changed The Defense Of Class Actions For Most Companies

In 2015, the Federal Rules of Civil Procedure were amended to add an express proportionality requirement to the scope of discovery. Companies are no longer on the fence about whether this change has had an impact on the defense of class actions. Sixty-three percent of companies now report that the proportionality standard has not favorably impacted the cost of defense in class actions, nearly double the 32.7 percent of companies that have noticed an impact. Many companies that have not seen proportionality as a positive development report there is a lack of enforcement at the district court level.

Impact of Changes to Federal Discovery Rules Percent of Companies



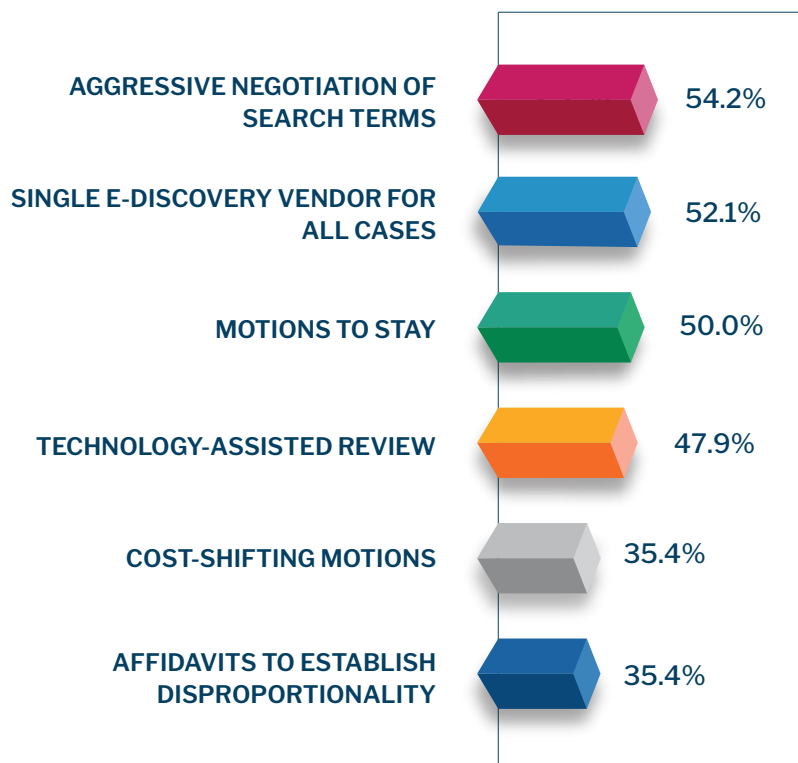
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Mitigating The Cost Of Electronic Discovery

Eighty-three percent of companies use a variety of strategies to control the cost of e-discovery, from the aggressive negotiation of search terms, to motions to stay discovery pending a ruling on a dispositive motion, among others.

Strategies Used

Percent of Companies



Note: Chart adds up to more than 100%. Multiple responses allowed.
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Methodology and Approach

The 2019 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. All individual responses and company names are kept confidential and excluded from the survey results.

Surveyed companies had an average annual revenue of \$14.8 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.

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.

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



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* In addition, to present the survey results in context, pages 6-8 contain, with permission, information published by BTI Consulting Group.

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